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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Grace Gilchrist Knie, Circuit Court Judge

MAURICE ROBERTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000652

APPENDIX

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D. JAMES - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. Yes, ma'am.

2 Q. But let's be clear. You actually gave them three
3 different statements, right?

4 A. Yes, ma'am.

5 Q. And in your initial conversations with them, did you
6 admit to being present when this happened?

7 A. No, ma'am, I didn't admit to being present when it
8 happened.

9 Q. Okay, and did they actually confront you with some
10 additional information from witnesses that caused you to
11 give a second statement?

12 A. Yes, ma'am.

13 Q. And, in that statement, what did you tell them?

14 A. I can't necessarily remember it. I haven't seen the
15 paperwork in a long time.

16 Q. Well, did you tell them that you actually were there?

17 A. I can't necessarily remember.

18 Q. And if I showed you a copy, would that help you ---

19 A. Yes, ma'am.

20 Q. --- remember? In the second statement -- is that your
21 statement and your signature?

22 A. Yes, ma'am.

23 Q. Okay, and if you want to take just a second to look at
24 it.

25 MR. SUTHERLAND: Please the court, Your Honor? I

1 believe the question was did you say you were there in the
2 second statement.

3 MS. SIMPSON: And I was just giving him a moment to
4 look over ---

5 THE COURT: That's exactly right.

6 BY MS. SIMPSON:

7 Q. And so having a chance to review, in the second
8 statement you actually admitted to police that you were
9 there?

10 A. Yes, ma'am.

11 Q. And all these statements, let's see, you were advised
12 of your rights, I believe, about 9:30 in the morning
13 because you turned yourself in in the morning ---

14 A. Yes, ma'am.

15 Q. --- right? And then they spoke with you around 10:00,
16 and that's when you initially denied any involvement or
17 knowledge about what was going on?

18 A. Yes, ma'am.

19 Q. And then they had another conversation with you where
20 they gave information to where they knew that you were
21 involved in it some way?

22 A. Yes, ma'am.

23 Q. And at that point, you admitted to being here?

24 A. Yes, ma'am.

25 Q. Did you actually give a third statement as well that

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1 day?

2 A. Yes, ma'am.

3 Q. And that's the same day a few hours later after
4 they approached you with even more information, or they
5 just wanted to follow up with you on some things,
6 correct?

7 A. Yes, ma'am.

8 Q. And you're currently charged with murder, correct?

9 A. Yes, ma'am.

10 Q. And facing thirty to life on that ---

11 A. Yes, ma'am.

12 Q. --- for this incident, for these offenses?

13 A. Yes, ma'am.

14 Q. And you're currently charged with attempted armed
15 robbery, correct?

16 A. Attempted armed robbery?

17 Q. For these -- for this incident.

18

19 A. I don't think we had an armed robbery charge for this
20 incident.

21 Q. Well, assuming that you do, you're facing zero to
22 twenty on that, and then you also had a burglary first
23 charge, correct?

24 A. Yes, ma'am.

25 Q. Which carries fifteen to life?

1 A. Yes, ma'am.

2 Q. And two counts of attempted murder, correct?

3 A. Yes, ma'am.

4 Q. Which carries zero to thirty years?

5 A. Yes, ma'am.

6 Q. Now, you also currently have other pending charges in
7 our office as well, correct?

8 A. Yes, ma'am.

9 Q. Including possession with intent to distribute
10 marijuana, which carries five years?

11 A. Yes, ma'am.

12 Q. And possession with intent to distribute marijuana
13 within the proximity of a school, which carries ten years?
14 Somewhere around -- carries some time, right?

15 A. Yes, ma'am.

16 Q. And you actually have another set of offenses, too?

17 A. Yes, ma'am.

18 Q. Correct? Criminal sexual conduct first?

19 A. Yes, ma'am, pending.

20 Q. Pending, and you're facing, I believe, zero to thirty
21 years on that? Does that sound right?

22 A. I really don't know what it, what it carries.

23 Q. What it carries. Well, you're also facing kidnapping
24 charges, zero to thirty ---

25 A. Yes, ma'am.

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1 Q. --- right? And armed robbery charges from that
2 incident, which carries ten to thirty years?

3 A. Yes, ma'am.

4 Q. Okay, and as far as your testimony goes, have you been
5 made any promises ---

6 A. No, ma'am.

7 Q. --- by my office? Have you been threatened in any way
8 to testify here today?

9 A. Yes, in a sense.

10 Q. And we'll get to that as far as the threats that were
11 made to you today. But as promises, as far as promises of
12 leniency or hope or rewards, our office is not promised you
13 anything with respect to your charges, correct?

14 A. No, ma'am.

15 Q. You have no offers or no deals, right?

16 A. No, ma'am.

17 Q. But you're hoping that your cooperation here today
18 will help you out somewhere down the road?

19 A. I would say so.

20 Q. Now, we mentioned threats. Were you actually
21 transported with the defendant, Maurice Roberts?

22 A. Yes, ma'am.

23 Q. And that occurred today?

24 A. Yesterday.

25 MR. SUTHERLAND: Your Honor, briefly, may we approach?

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 MR. SUTHERLAND: Yes, sir, just like to object to the
3 testimony regarding my client being currently incarcerated.

4 THE COURT: Overruled.

5 MR. SUTHERLAND: On the grounds that it's prejudicial.

6 THE COURT: Overruled.

7 BY MS. SIMPSON:

8 Q. So, Demetrice, were you actually transported with
9 Maurice Roberts here today?

10 A. Well, not today but yesterday.

11 Q. Yesterday, and did you speak with him or did he speak
12 to you?

13 A. Yes, ma'am.

14 Q. Can you tell the jury what he said to you?

15 A. He told me that if I didn't testify today, that he
16 would try to free my name out of this, but if I did, that I
17 should just remember that he know where my dad live at.

18 Q. Okay, and how did you respond?

19 A. I asked him what he meant by that.

20 Q. And did he say anything back to you?

21 A. He told me whatever it means to me.

22 Q. Okay, and did you view that as a threat?

23 A. Yes, ma'am.

24 MS. SIMPSON: Beg the court's indulgence one
25 moment.

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1 (A PAUSE.)

2 BY MS. SIMPSON:

3 Q. When the shots went off in the driveway, who was
4 standing over?

5 A. Maurice.

6 Q. Okay, and the person you know as shooting, firing the
7 gun, standing over the guy lying on the ground, do you see
8 him here in the courtroom today?

9 A. Yes, ma'am.

10 Q. And is that the same person who threatened you
11 earlier?

12 A. Yesterday, yes, ma'am.

13 Q. Can you point him out for the court or at least -- I'm
14 sorry. I know you can't point high. Can you tell us what
15 he's wearing?

16 A. The light white and blue striped dress suit, something
17 like that, stripes.

18 Q. Okay.

19 MS. SIMPSON: Your Honor, let the record reflect he's
20 identified the defendant.

21 Thank you, Mr. James.

22 MR. SUTHERLAND: Please the court, sir?

23 CROSS-EXAMINATION BY MR. SUTHERLAND:

24 Q. Mr. James.

25 A. Yes, sir.

1 Q. I'm going to start at the end with what you just
2 testified to before the jury, and your testimony was that
3 he either threatened you and had said if you don't testify
4 that he would get you out from under this?

5 A. That he'll try to free my name.

6 Q. Try to free your name. You didn't threaten him?

7 A. No, sir.

8 Q. You didn't tell him that he should have talked to your
9 lawyer like you asked him to?

10 A. No, sir.

11 Q. Okay. You didn't say that you were taking him down
12 with you?

13 A. No, sir.

14 Q. Okay. One thing I think we should -- I got to ask you
15 about. You have a previous conviction. I'll talk to you a
16 little bit about the pending charge. You have a previous
17 conviction that wasn't mentioned for carrying weapons on
18 the school property. Is that correct?

19 A. On school property?

20 Q. As a juvenile.

21 A. Oh, I'm on probation.

22 Q. Okay. All right. Before, I guess before we get to
23 everything that you're charged with, the way that I hear
24 your testimony here today is that this is all sort of by
25 happenstance. That you were just in the wrong place at the

D. JAMES - CROSS-EXAMINATION BY MR. SUTHERLAND

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1 wrong time, and that you had no criminal intent. Is that
2 what your testimony is?

3 A. Yes, sir.

4 Q. And that -- I believe your testimony on direct was
5 that you went to help your dear friend who was in a
6 scuffle. Is that correct?

7 A. Yes, sir.

8 Q. All right. I would like to ask you basically just to
9 go through and sort of categorize and add all this.
10 There's, there's three different sets of charges that
11 you're facing. The solicitor mentioned those charges.

12 A. Yes, sir.

13 Q. There's possession with intent to distribute
14 marijuana?

15 A. Yes, sir.

16 Q. Possession with intent to distribute marijuana near a
17 school?

18 A. Yes, sir.

19 Q. Okay, and so you're looking at fifteen years on those,
20 right?

21 A. Yes, sir.

22 Q. There's this case here. You have a murder charge?

23 A. Yes, sir.

24 Q. And you have a burglary first?

25 A. Yes, sir.

1 Q. And the murder charge carries thirty to life. It
2 carries up to the life prison. That's what you're looking
3 at, right?

4 A. Yes, sir.

5 Q. And the burglary first carries up to life in prison.
6 That's what you're looking at on that.

7 A. Yes, sir.

8 Q. Okay. The attempted armed robbery carries up to
9 twenty. Did you say that you weren't certain about that?

10 A. I didn't know I was charged with that.

11 Q. Okay. Carries up to twenty and there are two
12 attempted murders that carry up to thirty years a piece.
13 Is that correct?

14 A. Yes, sir.

15 Q. And then there's a third incident or set of charges
16 that you have. There's a criminal sexual conduct in the
17 first degree.

18 A. Yes, sir.

19 Q. That carries thirty years. There's a kidnapping along
20 with that that carries thirty years. Is that correct?

21 A. Yes, sir.

22 Q. And there's also an armed robbery along with that that
23 carries thirty years?

24 A. Yes, sir.

25 Q. So, you are looking at two life sentences plus a 185

D. JAMES - CROSS-EXAMINATION BY MR. SUTHERLAND

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1 years based on the charges that are pending with this
2 office against you right now. Is that ---

3 A. Yes, sir.

4 Q. Is that about right? With respect to your -- you're
5 here today cooperating within the state. I wanted to ask
6 you about your CSC, your criminal sexual conduct, and your
7 kidnapping and your armed robbery charge. Are you
8 cooperating with the state against Deshawn McClary in that
9 case?

10 A. No, sir.

11 Q. You're not cooperating in that case. And it is your
12 -- well, it's your testimony you said you had no -- that
13 you did not shoot Trent. Is that your testimony?

14 A. No, sir.

15 Q. Okay. Thank you.

16 MR. SUTHERLAND: No further questions, Your Honor.

17 MS. SIMPSON: Nothing further from the state, Your
18 Honor.

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

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: Next witness.

22 MS. WALKER: The state calls Timothy Lee,
23 Investigator Timothy Lee, Your Honor.

24 TIMOTHY LEE, BEING DULY SWORN,

25 TESTIFIES AS FOLLOWS:

T. LEE - DIRECT EXAMINATION BY MS. WALKER

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1 CLERK OF COURT: All right. Have a seat in the
2 witness stand, please. State your name for the record,
3 please.

4 WITNESS: Timothy Lee. L-e-e.

5 DIRECT EXAMINATION BY MS. WALKER:

6 Q. Good afternoon, Investigator Lee.

7 A. Good afternoon.

8 Q. Sir, can you tell me where you're, where you are
9 currently employed?

10 A. I am with Richland County Sheriff's Department in the
11 Crime Scene Unit.

12 Q. And how long have you been in the Crime Scene Unit?

13 A. Six and a half years.

14 Q. And can you tell the jury a little bit about what you
15 do as a member of the Crime Scene Unit at the sheriff's
16 department?

17 A. A Crime Scene Unit is responsible for responding and
18 collecting evidence at a crime such as photographs,
19 physical evidence, blood, and so forth. We're asked on
20 many different types of cases from burglaries to homicides
21 to assist in collection of this evidence to be used in
22 court.

23 Q. And on January 28th, did you become involved in the
24 investigation of this case?

25 A. I did. I was contacted by Sergeant Lindler to take

T. LEE - DIRECT EXAMINATION BY MS. WALKER

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1 photographs of an eye injury.

2 Q. And to whom -- of whom were you taking those
3 photographs?

4 A. Of a one Maurice Roberts, Jr.

5 Q. Let me show you State's Exhibits 201 through 204 and
6 ask you if you recognize these.

7 A. These are photographs of an eye injury.

8 Q. Do these fairly and accurately depict the, the injury
9 you saw that day?

10 A. They do. Redness in the eye and then there's going to
11 be some bruising underneath the eye.

12 (A PAUSE.)

13 MR. SUTHERLAND: No objection, Your Honor.

14 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
15 STATE'S EXHIBIT NUMBERS 201, 202, 203, 204.)

16 BY MS. WALKER:

17 Q. So, you photographed, I guess, maybe a black eye?
18 Would that be a good term for it?

19 A. It would be equivalent to a black eye, yes. There was
20 the darkening underneath the eyelid area and then the
21 bloodshot in the eye area.

22 Q. And where were these photographs taken, sir?

23 A. At headquarters.

24 Q. And taking those photographs, is that the extent of
25 your involvement in this case?

T. LEE - CROSS-EXAMINATION BY MR. SUTHERLAND

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1 A. That was. That was it.

2 Q. Thank you, sir.

3 MS. WALKER: I don't have any further questions.

4 WITNESS: Thank you.

5 MR. SUTHERLAND: May it please the court, briefly?

6 CROSS-EXAMINATION BY MR. SUTHERLAND:

7 Q. What was the date, sir, that you took the photographs?

8 A. The date that it was taken was January 28, 2013, and
9 at approximately 4:10 in the afternoon.

10 Q. Thank you, sir.

11 MR. SUTHERLAND: No further questions, Your Honor.

12 THE COURT: Ms. Walker, anything else?

13 MS. WALKER: No, sir.

14 THE COURT: You may step down. May he be released?

15 WITNESS: Thank you.

16 THE COURT: Thank you.

17 (THE WITNESS EXITS THE STAND.)

18 THE COURT: Next witness, please.

19 MS. WALKER: State calls Vincent Nelson, Jr.

20 (A PAUSE.)

21 VINCENT NELSON, JR., BEING DULY

22 SWORN, TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Have a seat in the witness stand,
24 please. State your name, please.

25 WITNESS: Vincent Nelson, Jr.

V. NELSON - DIRECT EXAMINATION BY MS. WALKER

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1 DIRECT EXAMINATION BY MS. WALKER:

2 Q. Mr. Nelson, you pled guilty earlier this week to
3 several charges stemming from your involvement in this
4 crime. Isn't that correct?

5 A. Yes, ma'am.

6 Q. You pled guilty to two counts of attempted murder?

7 A. Yes, ma'am.

8 Q. You pled guilty to voluntary manslaughter as the
9 lesser-included offense of murder?

10 A. Yes, ma'am.

11 Q. You pled guilty to attempted armed robbery?

12 A. Yes, ma'am.

13 Q. And you pled guilty to burglary first degree?

14 A. Yes, ma'am.

15 Q. And you haven't been sentenced for those crimes yet?

16 A. No, ma'am.

17 Q. For burglary first degree, do you know how much time
18 you're facing?

19 A. Yes, ma'am.

20 Q. How much time?

21 A. Fifteen to life.

22 Q. For voluntary manslaughter, how much time are you
23 facing?

24 A. Five to thirty.

25 Q. Excuse me?

1 A. Five to thirty.

2 Q. Two the thirty?

3 A. Five.

4 Q. For the two counts of attempted murder, how much time
5 are you facing?

6 A. Zero to thirty.

7 Q. And for the attempted armed robbery, how much time are
8 you facing?

9 A. Zero to twenty.

10 Q. And that's your understanding?

11 A. Yes, ma'am.

12 Q. And your sentencing has been differed. That's
13 correct? They're going to put off your sentencing?

14 A. Yes, ma'am.

15 Q. And you're wanting thirty years for all of that,
16 right?

17 A. Yes, ma'am.

18 Q. But you're facing up to life in prison?

19 A. Yes, ma'am.

20 Q. And that's contingent upon your truthful testimony
21 here today?

22 A. Yes, ma'am.

23 Q. You know Maurice Roberts?

24 A. Yes, ma'am.

25 Q. How do you know him?

V. NELSON - DIRECT EXAMINATION BY MS. WALKER

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1 A. Staying with him.

2 Q. You were staying with him?

3 A. Yes, ma'am.

4 Q. You know Troy and Trent Scott?

5 THE COURT: Speak up for me, please. Speak up a
6 little bit.

7 BY MS. WALKER:

8 A. Yes, ma'am.

9 Q. How do you know Troy and Trent Scott?

10 A. I met them through my cousin a couple years ago.

11 Q. Did you ever stay with them?

12 A. Yes, ma'am.

13 Q. Did you know their parents?

14 A. Yes, ma'am.

15 Q. Were you an invited guest in their home?

16 A. Yes, ma'am.

17 Q. Did they give you food?

18 A. Yes, ma'am.

19 Q. Give you clothes sometimes?

20 A. Yes, ma'am.

21 Q. And they let you stay there when you needed to?

22 A. Yes, ma'am.

23 Q. Did you know Joshua Williams?

24 A. Yes, ma'am.

25 Q. How do you know him?

1 A. He's a friend of the family.

2 Q. Like you?

3 A. Yes, ma'am.

4 Q. What about Brandon Jones? Did you know Brandon?

5 A. That was their cousin.

6 Q. That was whose cousin?

7 A. The Scotts.

8 Q. And would all of y'all hang out over there at the
9 Scotts' home?

10 A. Yes, ma'am.

11 Q. And tell this jury what type things you were allowed
12 to do as an invited guest in the Scott home. Did you hang
13 out in the studio?

14 A. Yes, ma'am.

15 Q. And what did you do in the studio? Did y'all make
16 music or listen to music?

17 A. Yes, ma'am.

18 Q. Both of those things. I want to ask you about some
19 other people. Did you know Deshawn McClary?

20 A. Not personally, but I know him.

21 Q. You did not personally know Deshawn McClary? You
22 never hung out with him?

23 A. I hung around him, but I didn't know him.

24 Q. Okay, I'm confused. Did you know him?

25 A. Yes, ma'am. He wasn't, like, my friend or anything.

V. NELSON - DIRECT EXAMINATION BY MS. WALKER

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1 Q. But you knew who he was?

2 A. Yes, ma'am.

3 Q. Would you describe him as like an acquaintance?

4 A. Something like that.

5 Q. What about Demetrice James?

6 A. Same thing.

7 Q. But Maurice was your friend?

8 A. Yes, ma'am.

9 Q. And the others were just people that you hung out with
10 occasionally?

11 A. They were from the neighborhood.

12 Q. What neighborhood is that?

13 A. Hammond Village.

14 Q. Back in January of 2013, were you hanging out with
15 Deshawn, Demetrice, and Maurice?

16 A. Yes, ma'am.

17 Q. Did y'all have a -- did y'all do rap music together?

18 A. I mean, Demetrice, I know he rap. I never made a
19 song.

20 Q. You didn't make a song with him?

21 THE COURT: Speak up a little bit for me.

22 BY MS. WALKER:

23 Q. Listen to me. You see her? She needs to take down
24 everything that you're saying, okay, so you have to speak
25 loudly and clearly so she can understand you.

1 You said you never made a song with Demetrice?

2 A. No, ma'am.

3 Q. What about Maurice?

4 A. He doesn't rap.

5 THE COURT: Pull that microphone closer to him,
6 please. Thank you.

7 BY MS. WALKER:

8 Q. Deshawn?

9 A. I don't remember.

10 Q. So, y'all didn't have a rap group called 600? That's
11 your testimony here today?

12 A. I didn't say that.

13 Q. Did y'all have a rap group called 600?

14 A. Yes.

15 Q. The four of you did?

16 A. The ones that rapped.

17 Q. Tell me who was in the rap group 600.

18 A. Me and Demetrice and a couple other people.

19 Q. Who were the couple of other people?

20 A. Like people he know, I know used to get together.

21 Q. Do these people have names?

22 A. Yes.

23 Q. What are their names?

24 A. (THERE IS NO RESPONSE.)

25 THE COURT: What were their names? That's a simple

V. NELSON - DIRECT EXAMINATION BY MS. WALKER

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1 question.

2 A. (THERE IS NO RESPONSE.)

3 Q. You don't want to talk about the rest of the people?

4 A. No.

5 Q. Okay. I'll move on. Were you over at Maurice's house
6 on January 25th?

7 A. Yes.

8 Q. And what were y'all doing over at Maurice's house?

9 A. Watching TV.

10 Q. This is your friend Maurice?

11 A. Yes.

12 Q. Who is now not a member of 600?

13 A. No.

14 Q. Okay, and your friend Maurice, who all was over at his
15 house?

16 A. Demetrice was, Deshawn, and a couple other people.

17 Q. And you, you don't want to talk about their names
18 either?

19 A. No.

20 Q. At some point, did you start telling them about some
21 studio equipment you knew of?

22 A. Yes.

23 Q. And who were you telling this information to?

24 A. Just speaking out in general.

25 Q. Well, when you were speaking out in general, who could

1 hear you?

2 A. Everyone.

3 Q. Who was everybody?

4 A. Everybody that was in the house.

5 Q. What were their names?

6 A. Demetrice there. Well, Deshawn, Maurice, and other
7 people.

8 Q. Maurice could hear you at this point?

9 A. Yes.

10 Q. Deshawn could hear you?

11 A. Yes.

12 Q. And Demetrice, Deshawn, Maurice, and what were you
13 telling them about this rap, rap -- or this studio
14 equipment?

15 A. Just like what kind of stuff it was.

16 Q. Well, why were you telling them that?

17 A. Talking too much.

18 Q. Did you tell them that you knew of a lick that you
19 could do?

20 A. No.

21 Q. So, you never used those words?

22 A. No.

23 Q. You know what a lick is?

24 A. Yes.

25 Q. What's a lick?

V. NELSON - DIRECT EXAMINATION BY MS. WALKER

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1 A. Basically like a robbery or something.

2 Q. Kind of like a robbery?

3 A. Yes.

4 Q. So, you randomly, while when you're talking to them,
5 just start talking about this studio equipment. Tell me.
6 What kind of nicknames do you go by?

7 A. Junior.

8 Q. Any other nicknames?

9 A. No.

10 Q. You don't go by J School?

11 A. That's a rap name.

12 Q. So, it's not your nickname? It's your rap name?

13 A. Yes.

14 Q. And at any point, did you tell them that you could get
15 them into that house with the rap -- with the studio
16 equipment?

17 A. Yes.

18 Q. And who did you tell that to?

19 A. Everyone.

20 Q. All right, tell me. When you say everyone, I want you
21 to give me specific names as to who you said I can get you
22 into that house.

23 A. Demetrice, Deshawn.

24 Q. Where was your good friend Maurice?

25 A. He was in the house.

1 Q. Could he hear you?

2 A. Yes.

3 Q. So, they were Demetrice, Deshawn, and Maurice, yes?

4 A. (THERE IS NO RESPONSE.)

5 Q. That's a question; it's a yes or no question. Could
6 Maurice hear you when you said I can get you into that
7 house?

8 A. Yes.

9 Q. And why were you trying to get them into that house?

10 A. (THERE IS NO RESPONSE.)

11 Q. Mr. Nelson? Mr. Nelson?

12 A. (THERE IS NO RESPONSE.)

13 Q. You're looking around. Do you have an attorney?

14 A. Yes.

15 Q. Is she in the courtroom?

16 A. Yes, ma'am.

17 Q. Where is she seated? Is that her waiving?

18 A. Yes, ma'am.

19 Q. Okay. Why were you trying to get them into that
20 house?

21 A. (THERE IS NO RESPONSE.)

22 Q. Do you remember giving a statement to the police about
23 this?

24 A. Yes.

25 Q. Do you remember telling the police why you tried to

V. NELSON - DIRECT EXAMINATION BY MS. WALKER

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1 get into that house? Do you remember saying that:

2 They were all talking about it. They asked me if
3 I could get into the house. I guess I was sort
4 of like the guinea pig.

5 Do you want me to show you the statement?

6 A. I know what I said.

7 Q. What did you say?

8 A. I know what I said.

9 Q. Then answer the question. Did you say that you were
10 sort of like the guinea pig for getting them into that
11 house?

12 A. Yes.

13 Q. And this is the house of your good friends who would
14 let you stay there and fed you and clothed you, right?

15 A. Yes.

16 Q. And what was the purpose of getting them into the
17 house?

18 A. (THERE IS NO RESPONSE.)

19 THE COURT: All right, hold on one second. Mr.
20 Bailiff, ask her to leave, please.

21 (A PAUSE AS MEMBER OF THE GALLERY EXITS THE
22 COURTROOM.)

23 THE COURT: Thank you. You may proceed.

24 MS. WALKER: Thank you, Your Honor.

25 BY MS. WALKER:

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1 Q. Mr. Nelson, I'm going to ask you again. What was the
2 purpose of getting them into that house?

3 THE COURT: Hold on a second. Hold on a second. All
4 right, gentleman.

5 (A PAUSE AS ANOTHER MEMBER OF THE GALLERY EXITS THE
6 COURTROOM.)

7 MS. SHURLING: Your Honor.

8 THE COURT: Let's take a quick break.

9 MS. WALKER: Yes, sir.

10 THE COURT: Ladies and gentlemen, we'll take a quick
11 break. Step to your jury room.

12 Everybody remain seated.

13 (THE JURY EXITS AT 2:58 P.M.)

14 THE COURT: All right, everyone's behavior has been
15 exemplary to this point. If you cannot control yourself,
16 if you cannot control your emotions, I'm asking you to step
17 out now, please.

18 MS. SHURLING: Your Honor, would it possible ---

19 THE COURT: Just a second, please.

20 Anyone need to leave? Thank you.

21 Mr. Nelson, I'm going to give you a second with your
22 lawyer. Your cooperation is obviously not forthcoming, and
23 you may want to speak with your lawyer. She's right here;
24 she'll walk up there and speak with you.

25 (OFF THE RECORD AS WITNESS CONFERS WITH TARA D.

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1 SHURLING.)

2 THE COURT: All right, bring the jury back in, please.

3 MS. SHURLING: Your Honor, may I quickly ask him...

4 (WITNESS CONFERS WITH TARA D. SHURLING.)

5 MS. SHURLING: Thank you.

6 MS. WALKER: Your Honor, may I approach?

7 THE COURT: Yes, you may.

8 (OFF-THE-RECORD BENCH CONFERENCE.)

9 MS. SHURLING: Your Honor, may we approach?

10 THE COURT: Yes, ma'am.

11 (OFF-THE-RECORD BENCH CONFERENCE WITH ALL ATTORNEYS,
12 INCLUDING MS. SHURLING.)

13 (THE JURY ENTERS AT 3:08 P.M.)

14 THE COURT: You may proceed.

15 MS. WALKER: Thank you, Your Honor.

16 BY MS. WALKER:

17 Q. Mr. Nelson, what was the purpose of you getting
18 Maurice Roberts, Deshawn McClary, and Demetrice James into
19 the Scott residence?

20 A. (THERE IS NO RESPONSE.)

21 Q. You keep looking over there. Have you been
22 threatened? Are you afraid?

23 A. (THERE IS NO RESPONSE.)

24 Q. I need you to say. I need you to give audible
25 answers. You have to say yes or no.

1 A. No, ma'am.

2 Q. You're not afraid?

3 A. No, ma'am.

4 Q. So, are you going to answer my question? What was the
5 purpose of you getting them into that house? Do you
6 remember giving a statement to law enforcement?

7 A. Yes, ma'am.

8 Q. Do you remember being down at the sheriff's
9 department?

10 A. Yes, ma'am.

11 Q. And the statement was made on January 28th. You
12 remember that?

13 A. Yes, ma'am.

14 Q. You remember them advising you of your rights?

15 A. Yes, ma'am.

16 Q. They told you you had the right to remain silent?

17 A. Yes, ma'am.

18 Q. That you had the right to an attorney?

19 A. Yes, ma'am.

20 Q. That if you decided to speak with them, you could
21 decide to stop speaking with them at any point, and they
22 would stop asking you questions?

23 A. Yes, ma'am.

24 Q. And you waived those rights, right?

25 A. Yes, ma'am.

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1 Q. And you decided to speak to them?

2 A. Yes, ma'am.

3 Q. And did you tell them the truth about what happened?

4 A. Yes, ma'am.

5 Q. Do you remember telling them that you were the guinea
6 pig, and that y'all were going to do a lick at that house?

7 A. Yes, ma'am.

8 Q. And tell me about what a lick is.

9 A. A robbery.

10 Q. And this was at the Scott house?

11 A. Yes, ma'am.

12 Q. Do you remember telling them that y'all were going to
13 go in and get the studio equipment that was in the house?

14 A. Yes, ma'am.

15 Q. And that this was you, Maurice, Deshawn, and
16 Demetrice?

17 A. Yes, ma'am.

18 Q. Do you remember telling them that you were given a
19 cell phone on that night?

20 A. Yes, ma'am.

21 Q. And whose cell phone was that?

22 A. It was Maurice.

23 Q. It was whose?

24 A. Maurice.

25 Q. Maurice Roberts?

1 A. Yes, ma'am.

2 Q. And what was the purpose of his giving you a cell
3 phone?

4 A. So they could call me whenever I got there.

5 Q. So they could call you whenever you got there?

6 A. Yes, ma'am.

7 Q. And where is there?

8 A. Scotts' house.

9 Q. And when they were going to call you when you got
10 there, was that so that you could tell them how many people
11 were in the house?

12 A. Yes, ma'am.

13 Q. Because you didn't want your friends to walk into this
14 lick blind, right?

15 A. Yes, ma'am.

16 Q. They needed as much information as possible?

17 A. Yes, ma'am.

18 Q. And did the four of you then decide to leave Maurice's
19 house and walk toward the Scotts' house to commit this
20 lick?

21 A. Yes, ma'am.

22 Q. The same house where you'd spent so much time, right?

23 A. Yes, ma'am.

24 Q. Because you knew the layout of that house pretty good
25 because you'd been there so much?

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1 A. Yes, ma'am.

2 Q. Did you tell them to come down the driveway and go
3 towards the basement?

4 A. No, ma'am.

5 Q. They just lucked up on that part?

6 A. Yes, ma'am.

7 Q. Did the four of you leave together, or did you leave a
8 little bit before the other three?

9 A. We left out the house together, but I kind of went off
10 on my way first.

11 Q. Because there needed to be some separation between you
12 and the other three, right?

13 A. Yes, ma'am.

14 Q. Because you didn't want your other friends to get
15 suspicious ---

16 MR. SUTHERLAND: Objection to leading.

17 Q. --- that you'd set them up for a robbery ---

18 THE COURT: Hold on. Hold on. Hold on.

19 MS. WALKER: I'm sorry, Judge.

20 MR. SUTHERLAND: Leading.

21 THE COURT: Sustained. Restate, restate the question
22 in a direct manner.

23 MS. WALKER: Yes, Your Honor.

24 THE COURT: Please.

25 BY MS. WALKER:

1 Q. Why did you leave a little -- or why did you separate
2 from the other three?

3 A. So we wouldn't get there together.

4 Q. And why was it important for y'all not to get there
5 together?

6 A. Because they never seen them before, so I didn't want
7 everybody...

8 Q. They'd never seen them before?

9 A. No, ma'am.

10 Q. How long, do you remember how long that walk was from
11 Maurice's house to the Scott house?

12 A. Not long.

13 Q. And when you got to the Scott house, what did you do?

14 A. I rung the doorbell.

15 Q. Did they let you in?

16 A. Yes, ma'am.

17 Q. Who let you in?

18 A. The dad.

19 Q. Do you remember his name?

20 A. Chandler.

21 Q. Chandler?

22 A. Yes, ma'am.

23 Q. And he let you in because he trusted you, right?

24 A. Yes, ma'am.

25 Q. You had been there before?

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1 A. Yes, ma'am.

2 Q. And when Chandler let you in, where did you go?

3 A. Downstairs.

4 Q. To the basement?

5 A. Yes, ma'am.

6 Q. Is that where the studio is?

7 A. Yes, ma'am.

8 Q. And who all was down there when you got to the
9 basement?

10 A. Troy, Trey, Josh, Brandon.

11 Q. Did you see Cari Pearson that night?

12 A. I didn't see her, but I know she was there.

13 Q. Who was the first person you saw when you got down
14 there?

15 A. The four of them.

16 Q. All four of them? You saw them at the same time?

17 A. They were in the studio.

18 Q. What were they doing?

19 A. Listening to music.

20 Q. Were they -- did they seem surprised to see you?

21 A. Yes, ma'am.

22 Q. Why were they surprised to see you? Had you been
23 there in a long time?

24 A. No, ma'am.

25 Q. But you just kind of showed up that night?

1 A. Yes, ma'am.

2 Q. But they welcomed you?

3 A. Yes, ma'am.

4 Q. And did you use that cell phone that Maurice gave you
5 to make contact with your other three friends?

6 A. Yes, ma'am.

7 Q. Let me show you what has been marked as State's
8 Exhibit 38. You recognize this?

9 A. Yes, ma'am.

10 Q. How do you recognize this?

11 A. It's the phone I was using.

12 Q. Whose phone is it, though?

13 A. Maurice.

14 Q. And did you call your friends to let them know you'd
15 made it in?

16 A. They called me.

17 Q. They called you? Who called you?

18 A. I can't remember.

19 Q. You can't remember which one of them called you?

20 A. No, ma'am.

21 (COUNSELORS CONFER.)

22 MR. SUTHERLAND: No objection, Your Honor.

23 MS. WALKER: Your Honor, at this point the state seeks
24 to admit Exhibit 38 into evidence.

25 THE COURT: Without objection.

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1 (CELL PHONE MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 38.)

3 BY MS. WALKER:

4 Q. And they called you on this phone?

5 A. Yes, ma'am.

6 Q. Did you let them know that you'd made it in?

7 A. Yes, ma'am.

8 Q. Did you tell them who all was there?

9 A. Yes, ma'am.

10 Q. Were they going to come do the lick that y'all had
11 planned?

12 A. Yes, ma'am.

13 Q. And after you called your friends and let them know
14 that you'd made it in to this house, what did you do?

15 A. Kind of waited around first.

16 Q. And after you finished waiting around, what did you
17 do?

18 A. Decided to go outside.

19 Q. You decided to go outside?

20 A. Yes, ma'am.

21 Q. Go outside to do what?

22 A. Smoke.

23 Q. Did you have cigarettes that night?

24 A. No, ma'am.

25 Q. Who were you going to get those cigarettes from?

1 A. Brandon.

2 Q. Did you ask him to have a cigarette?

3 A. Yes, ma'am.

4 Q. How many times did you ask him?

5 A. Twice.

6 Q. And did he give you a cigarette?

7 A. Yes.

8 Q. Because he was your friend?

9 A. (THERE IS NO RESPONSE.)

10 Q. Because he was your friend?

11 A. Yes, ma'am.

12 Q. And was that some sort of signal to the others that it
13 was go time for the lick?

14 A. No, ma'am.

15 Q. So, you getting those guys out of the house wasn't a
16 signal?

17 A. They wasn't supposed to come with me.

18 Q. Who was supposed to come with you?

19 A. They wasn't.

20 Q. They weren't? Who went outside with you?

21 A. Josh and Brandon.

22 Q. How long were y'all outside before I guess the lick
23 started?

24 A. Not long.

25 Q. Once you got outside, tell me what you saw.

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1 A. Soon as we got outside, that's when everybody came
2 down the hill.

3 Q. Who is everybody?

4 A. Deshawn, Demetrice.

5 Q. You keep leaving one name out. Who is everybody?

6 A. Maurice.

7 Q. Okay, because that's your friend, right?

8 A. Yes, ma'am.

9 Q. And these other two are just associates?

10 A. Yes, ma'am.

11 Q. You don't owe them any loyalty?

12 A. No, ma'am.

13 Q. But you should be loyal to your friend, right?

14 A. Yes, ma'am.

15 Q. So once your two associates, Deshawn and Demetrice,
16 came down the hill along with your friend Maurice, what
17 happened?

18 A. (THERE IS NO RESPONSE.)

19 Q. Mr. Nelson, can you remember what happened?

20 A. (THERE IS NO RESPONSE.)

21 Q. Don't look over there. Look over here. Can you
22 remember what happened? Do you remember giving a statement
23 to the police about what happened?

24 A. Yes, ma'am.

25 Q. Do you remember that statement being at the Richland

1 County Sheriff's Department headquarters?

2 A. Yes, ma'am.

3 Q. Did you see a gun that night at that house?

4 A. Yes, ma'am.

5 Q. Who had the gun?

6 A. (THERE IS NO RESPONSE.)

7 Q. I'm going to show you a copy of your statement, okay?

8 MR. SUTHERLAND: Objection to foundation, Your Honor.

9 He's non-responsive. He's not saying that he can't

10 remember or that his recollection could be refreshed.

11 THE COURT: I agree.

12 BY MS. WALKER:

13 Q. Do you remember telling them that Maurice had a gun?

14 A. Yes, ma'am.

15 Q. So, who had a gun that night?

16 A. Maurice.

17 Q. And what did he do with that gun?

18 A. (THERE IS NO RESPONSE.)

19 Q. Mr. Nelson, do you remember telling the police what he
20 did with that gun?

21 A. Yes, ma'am.

22 Q. Where were Brandon and Josh when all this was going
23 on?

24 A. Standing outside. Brandon was standing by me.

25 Q. Did anybody point a gun at you?

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1 A. (THERE IS NO RESPONSE.)

2 Q. Mr. Nelson, did anybody point a gun at you that night?

3 A. Yes, ma'am.

4 Q. Who pointed a gun at you that night?

5 A. (THERE IS NO RESPONSE.)

6 Q. Do you remember giving that statement to police and
7 signing it on January 28, 2013, at the sheriff's
8 department?

9 A. Yes, ma'am.

10 Q. Do you remember telling them who pointed a gun at ---
11 MR. SUTHERLAND: Objection to foundation. He said he
12 remembers.

13 MS. WALKER: Asking him if he remembered what he said.

14 THE COURT: Do you remember what you said?

15 WITNESS: Yes, sir.

16 THE COURT: Who pointed the gun at you?

17 WITNESS: Maurice.

18 BY MS. WALKER:

19 Q. What did you do when that gun got pointed at you?

20 A. Nothing.

21 Q. Because you knew he wasn't going to shoot you, right?

22 A. Yes.

23 MR. SUTHERLAND: Leading, Your Honor. Objection.

24 THE COURT: Rephrase the question; ask direct
25 questions.

1 MS. WALKER: Yes, Your Honor.

2 BY MS. WALKER:

3 Q. Were you afraid that he was going to shoot you?

4 A. No, ma'am.

5 Q. Did you see an altercation take place between any of
6 those people down at the bottom of that hill?

7 A. (THERE IS NO RESPONSE.)

8 Q. Mr. Nelson, did you see a fight break out at the
9 bottom of that hill?

10 A. Not a fight.

11 Q. How would you describe it?

12 A. Somebody got hit.

13 Q. Who got hit?

14 A. Brandon.

15 Q. Who hit him?

16 A. (THERE IS NO RESPONSE.)

17 Q. Did you hit him?

18 A. No, ma'am.

19 Q. Did Josh hit him?

20 A. No, ma'am.

21 Q. Did Deshawn hit him?

22 A. No, ma'am.

23 Q. Did Demetrice hit him?

24 A. No, ma'am.

25 Q. So, that leaves one other person, right? Did Maurice

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1 hit him?

2 A. Yes, ma'am.

3 Q. What did Brandon do after he got hit?

4 A. He fell.

5 Q. Did he say anything?

6 A. No, ma'am.

7 Q. Now at that point in time, Brandon's on the ground.

8 Where is Josh?

9 A. On the ground.

10 Q. He's on the ground, too?

11 A. Yes, ma'am.

12 Q. Had he been hit?

13 A. I didn't see him get hit.

14 Q. But he was on the ground?

15 A. Yes, ma'am.

16 Q. And where were you?

17 A. Still just standing there.

18 Q. Where was Deshawn?

19 A. Standing outside.

20 Q. Was he close to you?

21 A. Not real close.

22 Q. Was he close to Josh?

23 A. Yes, ma'am.

24 Q. Where was Demetrice?

25 A. Standing there.

1 Q. Near you?

2 A. Yes, ma'am.

3 Q. What about Maurice?

4 A. Standing there.

5 Q. After those -- Josh and Brandon are on the ground,
6 what did y'all do?

7 A. Still stood there. I didn't do anything.

8 Q. Were you in shock?

9 A. Yes, ma'am.

10 Q. What did Demetrice and Maurice do?

11 A. Tried to go in the house.

12 Q. The Scott boys' house?

13 A. Yes, ma'am.

14 Q. To go do the lick?

15 A. Yes, ma'am.

16 Q. And did you ever go back in the house?

17 A. No, ma'am.

18 Q. Could you see what happened in that house?

19 A. No, ma'am.

20 Q. Could you see any fighting near the house?

21 A. No, ma'am.

22 Q. Did Demetrice and Maurice make it into the house?

23 A. I seen Demetrice's arm get stuck in the door.

24 Q. Where was Maurice at this point?

25 A. In the house.

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1 Q. Maurice was in the house.

2 Q. So, he did make it in the house?

3 A. Yes, ma'am.

4 Q. So, after Maurice is in the house and Demetrice's arm
5 was stuck in the doorway, what happened?

6 A. I ran.

7 Q. You ran?

8 A. Yes, ma'am.

9 Q. At this point, was this robbery going the way y'all
10 planned it?

11 A. No, ma'am.

12 Q. What happened as you were running?

13 A. I heard two shots go off.

14 Q. Did you look back?

15 A. No, ma'am.

16 Q. You just kept running?

17 A. Yes, ma'am.

18 Q. How many shots did you hear that night?

19 A. Several.

20 Q. But at first you heard two?

21 A. Yes, ma'am.

22 Q. About how much time passed before you heard another
23 shot?

24 A. It wasn't a long time.

25 Q. Seconds, minutes?

1 A. Probably close to a minute.

2 Q. After you heard those first two shots and that time
3 passed, how many shots did you hear?

4 A. Five or six.

5 Q. And this whole time, you were running away?

6 A. Yes, ma'am.

7 Q. Did you see those shots?

8 A. No, ma'am.

9 Q. Where did you run to?

10 A. Back to Maurice's house.

11 Q. Who was there when you got there?

12 A. I got there first.

13 Q. You got there first. So, no one was there?

14 A. Yes, ma'am.

15 Q. Did you wait outside for them?

16 A. No, ma'am.

17 Q. Between Maurice's house and the Scotts' house as you
18 were running away, did you shed clothing or anything like
19 that?

20 A. Yes, ma'am.

21 Q. Why did you do that?

22 A. My hat came off.

23 Q. Your hat came off?

24 A. Yes, ma'am.

25 Q. What kind of hat was it? Do you remember?

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1 A. Blue Yankees hat.

2 Q. Anything else? That's the only thing you lost that
3 night?

4 A. Yes, ma'am.

5 Q. When you were running away, did you hear any --
6 anybody talking or yelling or screaming while those shots
7 were going off?

8 A. No, ma'am.

9 Q. You didn't hear that?

10 A. Not anybody screaming.

11 Q. Did you hear anybody say anything?

12 A. Can't remember.

13 Q. Would it refresh your memory if I gave you a copy of
14 your statement?

15 A. Yes, ma'am.

16 Q. Here you go. Read that part if it refreshes your
17 memory.

18 (A PAUSE.)

19 Q. You remember now what happened that night?

20 A. Yes, ma'am.

21 Q. And you gave more than one statement, right?

22 A. Yes, ma'am.

23 Q. Do you remember now?

24 A. Yes, ma'am.

25 Q. What did you hear when you were running away?

1 A. (THERE IS NO RESPONSE.)

2 Q. Mr. Nelson, do you remember making that statement?

3 A. Yes, ma'am.

4 Q. At the sheriff's department?

5 A. Yes, ma'am.

6 Q. On January 31st?

7 A. Yes, ma'am.

8 Q. Back then you said you heard somebody yell, and excuse
9 my language, but: Get that nigger; get that nigger. Right?

10 A. Yes, ma'am.

11 Q. Do you remember who you heard yelling that?

12 A. No, ma'am.

13 Q. Do you remember who you told the police you heard
14 yelling that?

15 A. Yes, ma'am.

16 Q. Who did you tell police you heard yelling that?

17 A. Either Deshawn or Demetrice.

18 Q. And that Deshawn or Demetrice were yelling to get him?

19 A. Yes, ma'am.

20 Q. It wasn't Maurice that yelled that because you'd
21 recognize your friend's voice, right?

22 A. Yes, ma'am.

23 Q. After you made it back to Maurice's house, did the
24 others eventually meet you there?

25 A. Yes, ma'am.

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1 Q. Who met you there?

2 A. Maurice and Deshawn.

3 Q. Not -- but not Demetrice?

4 A. No, ma'am.

5 THE COURT: Speak up. Pull the microphone a little
6 closer. Thank you, sir.

7 BY MS. WALKER:

8 Q. Who met you there?

9 A. Demetrice and Deshawn.

10 Q. Who met you at Maurice's house?

11 A. I met Maurice and Deshawn.

12 Q. Maurice and Deshawn?

13 A. Yes, ma'am.

14 Q. Did you see the gun again that night?

15 A. No, ma'am.

16 Q. Have you seen the gun since?

17 A. No, ma'am.

18 Q. Maurice pointed it at you?

19 A. No, ma'am.

20 Q. Did y'all ever talk about what happened?

21 A. No, ma'am.

22 Q. What did y'all do once y'all made it into Maurice's
23 house?

24 A. I just sat there.

25 Q. You sat there?

1 A. Yes, ma'am.

2 Q. Well, what did Deshawn do?

3 A. He left.

4 Q. What about Maurice? What did he do? Do you remember
5 what he did?

6 A. Yes, ma'am.

7 Q. What was that?

8 A. He went upstairs.

9 Q. What did he do while he was upstairs?

10 A. Changed clothes.

11 Q. Out of the clothes that he'd been wearing during the
12 lick?

13 A. Yes, ma'am.

14 Q. And those clothes that he was wearing during the lick,
15 what did he do with them?

16 A. (THERE IS NO RESPONSE.)

17 Q. Mr. Nelson, what did he do with the clothes that he
18 was wearing during the lick?

19 A. (THERE IS NO RESPONSE.)

20 Q. Do you remember telling law enforcement officers what
21 he did with the clothes during the lick?

22 A. Yes, ma'am.

23 Q. And what did you tell them?

24 A. Put bleach on them.

25 Q. You don't want to talk about that here today, do you?

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1 A. (THERE IS NO RESPONSE.)

2 Q. Do you know if Maurice got injured during that lick
3 that y'all did?

4 A. Yes, ma'am.

5 Q. Where did he get hit?

6 A. Eye was swollen.

7 Q. Did you try to help him take care of his swollen eye?

8 A. I got him some ice.

9 Q. You got him some ice?

10 A. Yes, ma'am.

11 Q. You're going to take care of your friend?

12 A. Yes, ma'am.

13 Q. At that point, did you know that your other friend had
14 been shot?

15 A. I was putting two and two together that somebody got
16 shot.

17 Q. How was Maurice's demeanor when he got back to the
18 apartment after he bleached his clothes? How was he
19 acting?

20 A. Can't really explain it.

21 Q. Try.

22 A. (THERE IS NO RESPONSE.)

23 Q. Was he acting like his normal self?

24 A. Nobody was. Nobody was acting like themselves.

25 Q. None of y'all were? Because y'all's lick went bad?

1 A. (THERE IS NO RESPONSE.)

2 Q. Where did you stay that night?

3 A. Maurice's house.

4 Q. Did you eventually find out that your friend Brandon
5 had been murdered?

6 A. Yes, ma'am.

7 Q. When did you find that out?

8 A. Like the next day.

9 Q. And that next day, were you still with Maurice?

10 A. Yes, ma'am.

11 Q. What did y'all do?

12 A. Nothing.

13 Q. Did you see Jwaun Duckett that day?

14 A. Yes, ma'am.

15 Q. Where did y'all see him?

16 A. He had a birthday party.

17 Q. So, the day after this lick that involved one of your
18 friends being murdered, you and Maurice Roberts went to a
19 birthday party?

20 A. Yes, ma'am.

21 Q. The kind of gun that was used that night, do you
22 remember what kind of gun it was?

23 A. Yes, ma'am.

24 Q. What kind of gun was it?

25 A. A .45.

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1 Q. Had you seen the gun before that night?

2 A. Yes, ma'am.

3 Q. Where had you seen it?

4 A. Outside. I saw it -- the neighborhood.

5 Q. Outside of where?

6 A. Neighborhood.

7 Q. Outside of the neighborhood?

8 A. Yes, ma'am.

9 Q. What neighborhood is that?

10 A. Hammond Village.

11 Q. Did you wear masks that night?

12 A. No, ma'am.

13 Q. What about gloves?

14 A. Yes, ma'am.

15 Q. What kind of gloves were they?

16 A. Latex gloves.

17 Q. Who gave those to y'all?

18 A. They were on the table.

19 Q. I can't hear you.

20 A. They were on the table.

21 Q. On the table where?

22 A. At Maurice's house.

23 Q. And y'all got those before you went to do the lick?

24 A. Yes, ma'am.

25 Q. Now, you eventually got arrested for this, right?

1 A. Yes, ma'am.

2 Q. And where were you when you got arrested?

3 A. At Maurice's house.

4 Q. And where did they take you once they found you at
5 Maurice's house?

6 A. (THERE IS NO RESPONSE.)

7 Q. Mr. Nelson, where did they take you once they arrested
8 you at Maurice's house?

9 A. They sat me in the car at first.

10 Q. Then where did you go?

11 A. To the precinct.

12 Q. Sheriff's department?

13 A. Yes, ma'am.

14 Q. Did you talk to the investigators?

15 A. Yes, ma'am.

16 Q. And you gave them the two statements we discussed?

17 A. Yes, ma'am.

18 Q. Before they took those statements, did they tell you
19 about your rights?

20 A. Yes, ma'am.

21 Q. And you waived those rights to talk to them?

22 A. Yes, ma'am.

23 Q. Did they ask you about the gun?

24 A. Yes, ma'am.

25 Q. Did you tell Maurice that they asked you about the

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1 gun?

2 A. Yes, ma'am.

3 Q. And what did Maurice tell you when you told him that
4 the investigators kept asking you about that gun?

5 A. He said he's not worrying about it.

6 Q. He said what?

7 A. He's not worrying about it.

8 Q. That he's not worried about the gun?

9 A. Yes, ma'am.

10 MS. WALKER: Your Honor, beg the court's indulgence?

11 (A PAUSE.)

12 BY MS. WALKER:

13 Q. Did you and Maurice ever have a conversation about
14 that night, about what happened at Williamsburg Drive?

15 A. No, ma'am.

16 Q. Did y'all ever talk about how y'all could get away
17 with it?

18 A. No, ma'am.

19 Q. Do you remember giving a statement to law enforcement?

20 A. Yes, ma'am.

21 Q. Do you remember telling them that y'all talked about
22 how to get away with it?

23 A. No, ma'am.

24 Q. I show you your statement, okay?

25 (A PAUSE.)

1 Q. Do you remember that?

2 A. Yes, ma'am.

3 Q. And how were y'all going to get away with it?

4 A. He said don't talk to anybody.

5 Q. You got to speak up.

6 THE COURT: Speak up.

7 A. He said don't talk to anybody.

8 Q. He said don't talk to anybody? Who said don't talk to
9 anybody?

10 A. Maurice.

11 Q. Maurice?

12 A. Yes, ma'am.

13 Q. The person you saw with the gun that night, your good
14 friend, and the person who you -- told you not to talk to
15 anybody about this, do you see him in the courtroom?

16 A. Yes, ma'am.

17 Q. Where is he?

18 A. Sitting at the table.

19 Q. What does he have on?

20 A. A dress shirt.

21 MS. WALKER: Your Honor, may the record reflect that
22 he's identified the defendant? No further questions.

23 MR. SUTHERLAND: May it please the court?

24 THE COURT: Mr. Foreman, y'all okay? We'll
25 cross-examine this one witness, and then we'll take a

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1 little quick break and finish up this afternoon.

2 MR. SUTHERLAND: Yes, sir. Thank you, Judge.

3 CROSS-EXAMINATION BY MR. SUTHERLAND:

4 Q. Mr. Nelson, you, you seem reluctant to testify here
5 today.

6 A. Yes, sir.

7 Q. It's true that what happens to you, your fate -- you
8 pled guilty to all of these things on Monday. Is that
9 correct?

10 A. Yes, sir.

11 Q. And what happens to you is dependent upon whether the
12 government believes that you testified truthfully or not?

13 MS. WALKER: Object, Your Honor.

14 THE COURT: The objection is?

15 MS. WALKER: Misstating the defendant's deal.

16 THE COURT: Overruled.

17 MR. SUTHERLAND: Thank you. Thank you, Judge.

18 BY MR. SUTHERLAND:

19 Q. Whether or not the government believes that you've
20 testified truthfully. Isn't that right?

21 A. Yes, sir.

22 Q. So, if they say that you haven't testify truthfully,
23 then your -- you pled the, the murder down to voluntary
24 manslaughter, so you're only looking at thirty on that
25 versus life on that. Is that your understanding?

1 A. Yes, sir.

2 Q. You're still looking at life on the burglary first,
3 and you got 120 years' worth of other charges. Is that
4 your understanding?

5 A. Yes, sir.

6 Q. And you certainly don't want to do life plus 120
7 years, do you?

8 A. No, sir.

9 Q. I've got to ask you about a couple of things that you
10 weren't real responsive to -- it's my duty -- with respect
11 to what the government lawyers were asking you. You were
12 speaking about other people were in the room when you were
13 speaking about the studio. Do you recall when the
14 government was asking you about that?

15 A. Yes, sir.

16 Q. Are you willing to name those other people now?

17 A. (THERE IS NO RESPONSE.)

18 Q. I'll take that as non-responsive. Did you -- did I
19 hear correctly? Did you admit to wear gloves when, when
20 you were being direct examined by the government?

21 A. Yes, sir.

22 Q. Okay. Ultimately, this is about trust; it's about
23 reliability. You -- do you expect this jury to trust your
24 testimony here today?

25 A. Yes, sir.

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1 MS. WALKER: Objection, Your Honor.

2 THE COURT: Sustained. It's the jury's determination
3 as to who's telling the truth.

4 BY MR. SUTHERLAND:

5 Q. The people -- one of the reasons that you were able to
6 get into the home of Chandler Davis and everyone, the whole
7 family over there, was because they trusted you. Is that,
8 is that correct?

9 A. Yes, sir.

10 Q. And the fact of the matter is they brought you into
11 their home, right?

12 A. Yes, sir.

13 Q. And they would take -- they took you in? They took
14 you to church?

15 A. Yes, sir.

16 Q. And they put a roof over your head? They fed you?
17 They clothed you?

18 A. Yes, sir.

19 Q. And they believed in you?

20 A. Yes, sir.

21 Q. And you betrayed them?

22 A. Yes, sir.

23 MR. SUTHERLAND: All right. Thank you.

24 No further questions, Your Honor.

25 THE COURT: Ms. Walker?

1 MS. WALKER: No further questions, Your Honor.

2 THE COURT: All right, you may step down.

3 Everybody remain seated.

4 (THE WITNESS EXITS THE STAND.)

5 THE COURT: Mr. Foreman, ladies and gentlemen, we'll
6 take about a ten-minute break. That'll take us till about
7 4, five after 4, come back and we'll go till 5, and then
8 before you leave tonight, I'll sort of see where we are and
9 plan for tomorrow.

10 Don't discuss the case. Do not start deliberating.

11 Everyone else please remain seated.

12 (A PAUSE.)

13 THE COURT: Just sit tight one second. That last
14 witness, let's let him clear the hall for safety purposes.

15 (A PAUSE.)

16 (THE JURY EXITS AT 3:46 PM.)

17 THE COURT: Anything from the state before we take our
18 break?

19 MS. WALKER: Nothing, Your Honor.

20 THE COURT: Mr. Sutherland.

21 MR. SUTHERLAND: Only that my client needs to use
22 restroom.

23 THE COURT: He'll be allowed during the break.

24 (OFF THE RECORD.)

25 (SWABS MARKED AS STATE'S EXHIBIT NUMBER 205 FOR

1 IDENTIFICATION.)

2 (DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 206 FOR
3 IDENTIFICATION.)

4 (CLOTHING MARKED AS STATE'S EXHIBIT NUMBER 207 FOR
5 IDENTIFICATION.)

6 THE COURT: Sir in the pink shirt, stand up. All
7 right, you are barred from my courtroom. Out.

8 (A PAUSE AS AUDIENCE MEMBER EXITS THE COURTROOM.)

9 THE COURT: All right, ladies and gentlemen, y'all
10 have been wonderful in here. I don't know what happened
11 outside, but security purposes, y'all understand I cannot
12 tolerate that, and they will not be allowed back in here to
13 protect all of us. I mean, I don't know what's going on,
14 and I know it's heated emotions and everything else. But I
15 have to be concerned for everybody's safety in here,
16 including y'all. So, that's why they're not allowed back
17 in the courtroom.

18 State ready to proceed?

19 MS. SIMPSON: I'm looking actually for one ---

20 MS. CAMPBELL: I can go ahead and put up another
21 witness.

22 MS. SIMPSON: Okay.

23 THE COURT: Sorry. State ---

24 MS. SIMPSON: I was looking for one item of evidence,
25 but if we can put up another witness, I can find what ---

1 THE COURT: Ms. Campbell?

2 MS. CAMPBELL: Yes, sir.

3 THE COURT: Can you call somebody else?

4 MS. CAMPBELL: I can call somebody else.

5 THE COURT: All right. Ready for the jury?

6 MS. CAMPBELL: Yes, sir.

7 (THE JURY ENTERS AT 4:08 P.M.)

8 THE COURT: You may call your next witness.

9 MS. CAMPBELL: May it please the court, Your Honor?

10 THE COURT: Yes, ma'am.

11 MS. CAMPBELL: We call Terri Gleason.

12 TERRI GLEASON, BEING DULY SWORN,

13 TESTIFIES AS FOLLOWS:

14 CLERK OF COURT: Thank you. Have a seat in the
15 witness stand, please. State your name for the record.

16 WITNESS: Terri Gleason.

17 VOIR DIRE EXAMINATION BY MS. CAMPBELL:

18 Q. Ms. Gleason, where are you employed?

19 A. I work with the Richland County Sheriff's Department
20 in the ---

21 Q. You need to get a little closer to that microphone.

22 For some reason this week in here it's just not ---

23 A. Okay. Is that better?

24 Q. That's much better.

25 A. Okay. Richland County Sheriff's Department in their

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1 forensic science laboratory.

2 Q. And what do you do there?

3 A. I am a firearms and toolmark examiner.

4 Q. What do your duties include as a firearms and toolmark
5 examiner?

6 A. Our primary duties are to look at fired ammunition
7 components, as well as other tools and their markings, and
8 see how they relate in terms of a firearm, if it's
9 submitted, or how many firearms or of what type of firearm
10 if a gun is not submitted.

11 Q. Can you tell this jury a little bit about your
12 education and your training?

13 A. Sure. I have a Bachelor of Arts in both criminal
14 justice and psychology from the University of Georgia and a
15 Master of Science in forensic science from the University
16 of New Haven.

17 In July of 1999 I began work with the Georgia Bureau
18 of Investigations State Crime Lab in Atlanta, Georgia. At
19 that time I underwent an extensive two-year training
20 program dealing specifically with firearms and toolmark
21 examinations. During that time, in addition to receiving
22 certification from the GBI, I also received certification
23 from the Federal Bureau of Investigation in muzzle to
24 target distance determination and from the Bureau of
25 Alcohol, Tobacco & Firearms in serial number restoration.

1 To date, I've logged over 3,500 hours on the
2 comparison microscope, which is our primary instrument,
3 completed over 3,000 weapon examinations, and approximately
4 950 actual firearm and toolmark cases. I'm also a member
5 of our professional organization, which is the Association
6 of Firearm and Toolmark Examiners.

7 Q. Have you testified before as an expert, specifically
8 for the purposes of this case, in ballistics?

9 A. Yes, I have.

10 Q. And approximately how many times have you been
11 qualified as an expert in ballistics examination?

12 A. Approximately fifty.

13 MS. CAMPBELL: Your Honor, at this time we'd offer her
14 as an expert in ballistics.

15 MR. SUTHERLAND: No objection, Judge.

16 THE COURT: Thank you.

17 All right, this witness will be qualified as such and
18 allowed to give opinion testimony in her field. Thank you.

19 MS. CAMPBELL: Thank you, Your Honor.

20 DIRECT EXAMINATION BY MS. CAMPBELL:

21 Q. Before we talk, in general as a ballistics expert,
22 what type of evidence do you generally look at and what
23 determinations can you make?

24 A. Okay. Generally we get fired ammunition components
25 from, from scenes or from autopsies. So, when a -- before

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1 a gun is fired, the, the ammunition is called a cartridge.
2 At the time of firing, it separates into components, that
3 being a bullet and a cartridge case. So, we frequently
4 will get those from scenes or autopsy and we also will get
5 firearms at times. Sometimes we don't; sometimes they're
6 never submitted. But look at all three of them if they
7 relate to one another, whether the bullet came from a
8 specific firearm, whether a cartridge case came from a
9 specific firearm, and then if no firearm is submitted, we
10 tell them what type of firearm and how many firearms may
11 have been involved in that scene.

12 Q. And in a case you just mentioned that typically you
13 look at evidence gathered at a scene, you mentioned the
14 word cartridge casing, and I believe you used the term
15 bullet?

16 A. Yes.

17 Q. Is that sometimes synonymous with the word projectile?

18 A. Yes.

19 Q. And a projectile itself, the cartridge casing, where
20 is it located on the actual -- when the bullet is what I
21 called intact before it is fired, where are those
22 components all located?

23 A. Okay. The intact, as you say, bullet is a cartridge.
24 So, it's in a single component. You have a cartridge case,
25 and then the bullet sits in the head of cartridge case.

1 The cartridge case itself holds the gunpowder that is
2 ignited during firing. When that, when that actually
3 burns, it creates a great amount of pressure, and that
4 pushes the bullet out of the head of the cartridge, out of
5 the head of the cartridge case and goes down the, the
6 barrel and out the firearm.

7 Q. And in this case, I'm going to talk specifically about
8 handguns. Are there typically two different types of
9 handguns that are used in many assault and murder cases?

10 A. There are. There are two primary types that we see,
11 that being a pistol and a revolver. A revolver gets its
12 name from the revolving cylinder that sits in the rear of
13 the firearm. That cylinder has multiple chambers. Each of
14 those chambers holds one unfired cartridge. As the trigger
15 on that firearm is pulled, the cylinder rotates and aligns
16 a chamber with the barrel. As the trigger is pulled, that
17 cartridge is fired and the bullet is expelled down the
18 bore. And with the revolver, what's unique to that versus
19 a pistol is that the cartridge case remains inside the
20 firearm until someone manually extracts it.

21 Q. Let me stop you there. When we're talking about a
22 revolver, if this sounds silly, but it's the way I can
23 relate to it, but like when you see the old cowboy movies
24 and they pull out the thing and pull down the thing that
25 twirls around.

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1 A. Uh-huh.

2 Q. Is that what we're talking about when we're talking
3 about a revolver?

4 A. Yes.

5 Q. But when you're talking about pistol, is it also
6 referred to as a semiautomatic weapon?

7 A. Yes, it is.

8 Q. And what is a semiautomatic weapon? How is it
9 typically loaded, and how does it handle the cartridge
10 casings once the projectile is expelled?

11 A. Well, with, with a semiautomatic pistol, instead of
12 having those individual chambers inside a cylinder, it has
13 one chamber that's actually an integral part of the
14 chamber. I mean, it's part, it's part of the barrel. The
15 chamber just sits at the back half of it.

16 The cartridges, instead of being loaded in the
17 individual chambers, are actually loaded into a magazine
18 that sits in the grip of the firearm, and then during
19 firing, the slide moves rearward. And as it comes forward,
20 it picks up one of those cartridges out of the magazine
21 that's in the grip and sticks it up into the chamber making
22 it ready to fire. Then when you pull the trigger, the
23 firing pin comes forward, strikes a primer, which is a tiny
24 disk in the cartridge that creates a spark. That spark
25 ignites the gunpowder that I was telling you was inside of

1 the cartridge case. That gunpowder then expands rapidly
2 from a solid to a gas, forces the bullet down and out the
3 barrel. And the cartridge case, in this case the slide
4 again comes rearward as part of that force pushing
5 backwards, and a cartridge case is expelled out of the
6 cartridge -- out of the firearm.

7 Q. It's expelled out of the firearm?

8 A. Yes.

9 Q. So, the cartridge case -- so, the bullet or projectile
10 actually goes out the front end where it's supposed to?

11 A. Correct.

12 Q. And then the cartridge case is actually expelled out
13 of the rear part of the, the gun. Is that correct?

14 A. More side. More side of the firearm.

15 Q. More side?

16 A. Uh-huh.

17 Q. And in every case, can you tell whether the cartridge
18 casing -- what direction it would be expelled in?

19 A. No. Generally speaking, a large percentage of firearm
20 manufacturers, the firearm design allows them to go right
21 and rearward. However, there are several types of actions
22 or mechanisms that affect that. And for us to determine
23 it, we have to have a firearm and we actually do testing
24 because some go straight up, some go forward, some actually
25 go off to the left.

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1 Q. And if you found a number of, say, spent shell casings
2 on the ground in a general area, could that generally tell
3 you anything, or does it just depend on what happens to the
4 cartridge casing once it's expelled? How the gun is held,
5 things of that nature?

6 A. All of the things that, that you mentioned come into
7 play when determining -- if we had a gun submitted, we
8 could actually do what's called an ejection pattern testing
9 where we take standard stamped with the firearm and we have
10 a XY access filled out, and we can get a range that can
11 give them more information as to where the shooter might
12 have been at the time.

13 But things like how -- if it's held sideways, or if
14 it's held up, the type of gun and the action, again, those
15 all can depend on. If you find a group together, you know,
16 you would generally think that it would have provided some
17 information if we had a gun. If you find it scattered,
18 that doesn't mean as much because they can be kicked after
19 the EMS arrives, and as different people are on the scene,
20 things can get moved.

21 Q. And when we're talking about the cartridge casing
22 being expelled from the gun, can you say exactly how many
23 feet, inches, or if it's just dribbled out of the gun, how
24 it was expelled?

25 A. No.

1 Q. Typically, though, how, how -- what kind of distance
2 are we talking about that the cartridge case comes out of
3 the side of the gun?

4 A. Even in our controlled experiments it can vary within
5 many feet. You can have some that just fall off and fall
6 to the side, but you actually have some that can go out up
7 to 20 feet. So, it just depends, again, on the type of
8 firearm.

9 Q. I'm going to turn your attention specifically as to
10 the evidence that you were able to review and to examine in
11 this case. Did you ever have an actual gun that was
12 recovered in this case?

13 A. We did not.

14 Q. And is that unusual in homicide case?

15 A. It's not.

16 Q. Why not?

17 A. Often times there are a variety of circumstances that
18 happen. The suspect may get rid of the firearm by dumping
19 it somewhere. I've even heard of cases where somebody
20 actually rents out firearms for the weekends so you can get
21 a firearm and then give it back and whatever. Gangs
22 sometimes switch them around within the gang. So, there's
23 a variety of reasons that a gun never makes it to us and is
24 collected.

25 Q. I'm going to go through briefly the actual evidence

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1 that was collected from the crime scene in this case and
2 was submitted to you. The first thing I'm going to show
3 you is State's Exhibit Number 19.

4 (A PAUSE.)

5 Q. I'm going to show you State's Exhibits 18 and 19. Are
6 those two of the items that were submitted to you?

7 A. Yes, they are.

8 Q. And, in addition to that, did you also -- what are
9 those two items?

10 A. They're in sealed containers; I'm not going to open
11 them.

12 Q. That's fine.

13 A. Based on my markings, when we seal these and put our
14 initials and the date that we sealed them on here, and
15 these are all still intact. So, within these envelopes,
16 State's Exhibit 19 is one fired .45 auto caliber cartridge
17 case, and State's Exhibit 18 is a fired metal jacket bullet
18 fragment.

19 Q. And when you're talking about a metal bullet fragment,
20 what part are we talking about? Just -- I don't understand
21 that stuff.

22 A. So, when we're talking about the cartridge and the
23 bullet sits in the head of the cartridge, with
24 semiautomatics, the most common type of bullet we're going
25 to find is a metal jacket, which means it normally has a

1 lead core that's surrounded by a metal jacketing. Often
2 times during firing, that jacketing can be -- separates and
3 stand alone in the target, and may be the only thing
4 collected. Or depending on if it hits a hard surface, the
5 bullet might get damaged so you only get parts of the
6 bullet. So, when I say a fragment, that means instead of
7 having the intact entire bullet, we just have part of that
8 bullet.

9 Q. And I notice in this case there are more actually
10 cartridge cases that are recovered rather than intact or
11 partial projectiles. Is that unusual?

12 A. It's not and actually when I was counting them up, I
13 believe it's even.

14 Q. It's even?

15 A. Even eight. Now ---

16 Q. Although some are fragments?

17 A. --- some are fragments. So, you can't necessarily
18 assume that they're each standing individually, but there
19 is the potential for all eight cartridge cases to be
20 grouped with a, with a, a bullet or projectile.

21 Q. And next I'm going to show you State's Exhibit Number
22 15. Does this include the balance of the evidence that you
23 examined?

24 A. Yes, it does.

25 Q. And what is that evidence?

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1 A. Sorry. State's Exhibit 15 also has my initials and
2 date and has not been opened. So, based on the items on
3 here, we have the remainder of the evidence I had in this
4 case, which is going to be an additional seven fired .45
5 auto caliber cartridge cases, five intact metal jacketed
6 bullets, and two fired metal jacket fragments, along with
7 two pieces of lead that are likely from just the four.
8 Again when it, when it hit or it made contact, it broke
9 into pieces and there's some lead pieces as well.

10 Q. And so the lead is the actual core of the ---

11 A. Yes.

12 Q. --- of the actual projectile or bullet?

13 A. Right. It's the inner surface.

14 Q. And ---

15 A. And then that's on the outside.

16 Q. Could you open that, and just for illustration pick
17 out one of the cartridge casings versus one of the other
18 pieces so you can show the jury what we're talking about?

19 A. Actually, do you want me to open 18 and 19 so we don't
20 have to open the big package because they have one of each?

21 Q. No, let's open -- that's a fragment in the other one.

22 A. Oh, okay. You wants it intact?

23 Q. Yeah, I want it intact. Okay, and these have sub-item
24 numbers from y'all's ---

25 A. Yes, we have individual item numbers.

1 Q. And this one, I believe, is Number 52?

2 A. Yes.

3 Q. And I'm holding this up. Item Number 52, which came
4 out of State's Exhibit Number 15, what is this?

5 A. That is a fired metal jacketed bullet.

6 Q. And you also mentioned that there's a lead core.
7 Where would that be?

8 A. That is contained inside the jacket. Actually if you
9 were to look at the face of the bullet, you can see the
10 lead core in the base and then the jacket surrounding it.

11 Q. And this comes out of what part of the gun?

12 A. That comes out of the barrel or the bore of the
13 firearm.

14 Q. And this is what you referred to as the ---

15 A. Bullet.

16 Q. And the cartridge casings which we've been discussing
17 and are going to discuss some more out of Item Number 48
18 from State's Exhibit 18. Is that it?

19 A. Yes, and that's the body of the cartridge. So, before
20 it's fired, that's what holds all the individual
21 components, and that's fired and they separate.

22 Q. I notice here on the base of it there's some writing.

23 A. Yes, the base of the cartridge has the head stamp,
24 which is your manufacturer's information as well as the
25 caliber. And the gold circle at the base is actually the

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1 primer, which I was telling you has that explosive mixture
2 that produces the spark for the firing pin.

3 Q. And this is the part in a semiautomatic handgun that
4 would be expelled and stay at the crime scene if there's a
5 shooting that occurred?

6 A. That's correct.

7 Q. So, the actual part would have been in it would have
8 been expelled out of the front of the gun?

9 A. Yes.

10 Q. In your examination of the evidence that was submitted
11 to you, what, if any, comparisons were you able to make and
12 conclusions that you came up with?

13 A. In this case I examined all of the fired bullets to
14 one another, as well as the fragments, and I compared all
15 of the cartridge cases to one another. All of the
16 cartridge cases were able to be determined to have been
17 fired by one firearm consistent with being a .45 auto
18 caliber semiautomatic pistol.

19 Q. Okay. Let me stop you there.

20 A. Okay.

21 Q. You mentioned that it's a .45 caliber semiautomatic
22 pistol.

23 A. Yes.

24 Q. When you say .45 caliber, what does that mean ---

25 A. That's ---

1 Q. --- versus a .22 or a .25?

2 A. Sure. That's simply the numeric value for the
3 diameter of the bore for that firearm. The, the firearm
4 for which that was fired was designed to fire a .45 caliber
5 cartridge.

6 Q. So, say if you have a .45 caliber bullet versus a .22
7 caliber bullet, which is bigger?

8 A. The .45.

9 Q. And if you have a .45 caliber bullet, can it be fired
10 from a .22 caliber gun?

11 A. No, it cannot.

12 Q. So, in this case, all of the cartridge cases that you
13 found were what size?

14 A. They were .45 auto caliber.

15 Q. And when you compared all the cartridge cases from the
16 scene in this case, what were your conclusions?

17 A. I was able to determine that they all were fired by
18 one firearm.

19 Q. As far as the projectiles or the bullets that were
20 recovered or the fragments as well, were you able to do any
21 examinations as to those?

22 A. Yes. The only items I could not do anything with were
23 the two lead fragments that I mentioned to you. Because
24 the lead is on the inside of that jacket, they don't get
25 any markings. So, they're considered unsuitable for

1 comparison.

2 Q. And again, how does the bullet and/or the cartridge
3 casings receive markings that are later able to be
4 identified, identified?

5 A. For that I would go back to how the firearm is
6 manufactured, starting with what generally marks the
7 bullet. Each firearm is designed to have a set number of
8 grooves that are either cut or formed into the barrel of
9 the firearm. These grooves will have either a left or a
10 right-hand twist and are known as the rifling for that
11 firearm. During the rifling process, the firearm goes for
12 -- through a variety of machine processes, and each of
13 these machining processes leaves behind microscopic
14 imperfections in the form of nicks, spurs, cuts, scratches
15 that are inside of that barrel. Those kind of become
16 unique, like a fingerprint, for that barrel. So, when the
17 firearm is fired and the bullet travels down the barrel, it
18 receives those markings in a unique pattern that we then
19 look for when we're comparing them to one another.

20 Likewise with the cartridge case, the chamber and the
21 breach face which is the part of firearm that just supports
22 the head of the cartridge case, which is what I was telling
23 you had the head stamp, the manufacturing information on
24 it, that's pressed backwards. Just as the bullet is
25 pressed forward and out of the firearm, the cartridge case

1 is pushed backwards, and so any microscopic imperfections
2 that are left on that breach face get impressed onto the
3 cartridge case. And we look for those imperfections to let
4 you know if it's from the same firearm or not.

5 Q. And these rifling characteristics as you described, as
6 well as the breach face characteristics that are imprinted,
7 are those unique to the gun?

8 A. They are unique to the -- to our scientific standard,
9 yes.

10 Q. So, even if, say, I have two Smith & Wesson forty --
11 well, I don't know if they make forty ---

12 A. Sure.

13 Q. Or several of the same guns.

14 A. Yes, each one would be unique, that's correct.

15 Q. Evens if it's the same caliber or the same maker?

16 A. Yes.

17 Q. Continue with your -- what you found on the ---

18 A. So, with the fired bullets and the fired jacket
19 fragments, I was also able to say that all of them were
20 fired from one firearm.

21 Q. So, all the cartridge casing were fired from one gun?

22 A. Yes.

23 Q. And all these were fired from one gun?

24 A. That's correct.

25 Q. And can you tell if it was the same gun?

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1 A. We can't, no.

2 Q. But of the same caliber?

3 A. They are the same caliber.

4 Q. And are they consistent with having been found --
5 fired by one gun?

6 A. We can't really say that they're consistent with
7 having been fired by one gun other than the fact they're
8 the same caliber because we can't link the, the bullet back
9 to having been in that particular cartridge case. On a
10 very rare occasion you're able to make that comparison, but
11 generally speaking, the marks that it gets during firing
12 override any marks that it would have had from the
13 cartridge case. But we can't kind of put them back
14 together.

15 Q. Had you been -- had the gun been able to be recovered
16 in this case, however, could you have matched those with
17 some test firing?

18 A. Yes, definitely. We would have, we would have done
19 test fires and got scuff marks from the firearm and then
20 compared them back to be able to say if that was from one
21 firearm.

22 Q. But in this case, all the fired cartridge cases did
23 come from one gun, which is a .45 caliber?

24 A. Yes.

25 Q. As well as all the bullets that you were able to make

1 determinations came from the same gun as well?

2 A. That's correct.

3 Q. When we talk about the lead, or you weren't able to do
4 any determination on ---

5 A. Right.

6 Q. Can you show the jury what that is?

7 A. What it looks like?

8 Q. And the reason you can't?

9 A. So when we received what's my Item 55 of State's
10 Exhibit 15, we actually sub-itemize it if it -- because it
11 came to us in three pieces. So, we have this copper piece,
12 which is actually part of the jacketing, and then we have
13 two lead pieces that came. And because they were inside of
14 this jacket, we can't use any comparison on those.

15 Q. And is it unusual for it to become fragmented ---

16 A. No.

17 Q. --- when it's been fired?

18 A. No, it's not.

19 Q. So, your conclusions in this case is all the cartridge
20 casing are fired by what caliber weapon?

21 A. A .45 auto caliber.

22 Q. Okay, and would that have been the same gun?

23 A. Yes, all one gun.

24 Q. And all the projectiles that you were able to make
25 determinations on were fired from what caliber?

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1 A. They are also consistent, through identification, to
2 being a .45 auto and from one firearm.

3 Q. And are you able to make any further determinations
4 without the actual gun itself?

5 A. No. We did, based on the rifling characteristics,
6 come up with a possible list of firearms, but we can't say
7 anything specific.

8 Q. And the firearms that you came up with a list were all
9 semiautomatic or pistols?

10 A. The majority of them were pistols. There were a
11 couple that had rifle carbines or revolvers, but those are
12 really unusual circumstances. This all comes into an FBI
13 database that compiles every firearm. Nothing about this
14 item suggests that it came out of a revolver.

15 Q. So, this would be consistent with having come out of a
16 semiautomatic or a pistol, not a revolver?

17 A. Correct.

18 Q. Thank you.

19 MS. CAMPBELL: I don't have any further questions.

20 MR. SUTHERLAND: No questions of this witness, Your
21 Honor.

22 THE COURT: Thank you. You may step down.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Next witness, please.

25 MS. SIMPSON: State calls John Barron.

1 JOHN BARRON, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please state your name for the
4 record.

5 WITNESS: My name is John Barron. B-a-r-r-o-n.

6 VOIR DIRE EXAMINATION BY MS. SIMPSON:

7 Q. Mr. Barron, what is your profession?

8 A. I'm a forensic serologist and DNA analyst at Richland
9 County Sheriff's Department.

10 Q. Okay, and how long have you been a DNA analyst with
11 Richland County?

12 A. With Richland County, since 2004. Prior to that with
13 the South Carolina Law Enforcement Division, otherwise
14 known as SLED.

15 Q. And as an analyst, what are some of your duties?
16 What are your responsibilities?

17 A. My responsibility is to examine any evidence brought
18 into our laboratory or any swabs or cuttings or smudged
19 fingerprints or anything that might have biological
20 material on it to determine if there can be developed a DNA
21 pattern that can be used to identify a person.

22 Q. Okay, and can you tell the jury a little bit about
23 your educational background and your training in this
24 field?

25 A. Okay. I have a Bachelor's of Science degree in

J. BARRON - VOIR DIRE EXAMINATION BY MS. SIMPSON

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1 microbiology from Clemson University. As far as serology,
2 which is the identification of human body fluids and
3 materials, I was trained at SLED through the experts there,
4 as well as through the FBI, particular specific training in
5 that area. All that took place prior to the advent of DNA
6 analysis.

7 DNA analysis that is done today began at SLED in 1999.
8 I was one of the first DNA analysts to be trained. We
9 received training from the FBI, as well as the
10 manufacturers of the instruments and chemicals used to
11 develop DNA profiles. I completed a competency examination
12 in the year 2000, began doing DNA cases since that time,
13 and analyzed DNA from various items that -- at least, you
14 know, several hundred a year since that time, and complete
15 twice a year what we call a proficiency test, which is an
16 unknown DNA samples that are submitted. I develop a
17 profile and send that profile off, and I have a one hundred
18 percent complete proficiency. In other words, they're
19 always right.

20 In 2004 I became part of the Richland County DNA
21 laboratory. As a matter of fact, myself and another
22 examiner from SLED came to Richland County, set up the DNA
23 laboratory. As a part of that, we have trained another DNA
24 analyst and two DNA technicians to help us out. I have
25 been testifying since 2004 in DNA and probably have

1 testified at least sixty, seventy times.

2 Q. Okay, and you mentioned the distinct term, I guess,
3 DNA and then serology before that. What's included within
4 serology?

5 A. Serology is the identification of biological materials
6 such as blood, semen in the case of sexual assault cases,
7 tissue, hair, anything to do with the human body that could
8 develop a DNA profile.

9 Q. And your lab, is it actually accredited as well?

10 A. It is. We are accredited by an accreditation agency
11 called the as ASCLAD or American Society of Crime
12 Laboratory Directors. We have received accreditation since
13 2005 in DNA and the rest of the laboratory at a later time.

14 Q. And you said you participated in proficiency testing.
15 Is your work with respect to an individual case analyzed or
16 peer reviewed as well?

17 A. It is. As a part of our certification we are required
18 to have another qualified DNA analyst to review the work
19 and to agree with the conclusions prior to submission of a
20 report.

21 MS. SIMPSON: Your Honor, at this time I would offer
22 John Barron as an expert in DNA and serological, I guess,
23 analysis.

24 MR. SUTHERLAND: No objection, Your Honor.

25 THE COURT: All right. He'll be allowed to render

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1 opinion testimony in that field. I've qualified him as an
2 expert.

3 DIRECT EXAMINATION BY MS. SIMPSON:

4 Q. Okay, and just a little bit, can you tell us what DNA
5 is in, in our bodies?

6 A. DNA is a magic molecule that's in cells in your body
7 that identifies you as who you are. Not only as a human
8 being, but you individually. So, DNA is unique to you.
9 It, it would be the same in any part: any tissue in your
10 body, your blood, your, your semen if you're a male, your
11 hair, your tissue. Any part of you would have that
12 material with that DNA molecule in there, and unless you
13 have an identical twin, it is completely unique to you and
14 no other human being would have that DNA.

15 Q. And are some source -- you said it would be the same
16 no matter what tissue it came from from a person's body.
17 Are some sources better as far as collection or ability to
18 identify and collect DNA better than others?

19 A. Well, as far as the substances that would be better,
20 like a blood sample would be really good, a tissue sample
21 would be really good. When it gets to be difficult is skin
22 cells that might be sloughed off from your hands that -- on
23 say if you touched an, an object or touched a -- or had a
24 piece of clothing or something like that where your skin
25 cells might be present on it. We don't know how many skin

1 cells are there. There's no specific test to tell us that.
2 So, sometimes we get the results and sometimes you do not
3 get results with that type of testing with DNA.

4 Q. Okay. So, it just depends on if necessarily -- touch
5 something doesn't mean that my -- that you would be able
6 just to develop a DNA profile on that touch?

7 A. Not necessarily. There are a lot of unknown factors
8 involved on that as far as whether or not you individually
9 shed a lot of skin cells, or whether or not the object that
10 you touched held the skin cells, or whether they're wiped
11 off, et cetera.

12 Q. Can you tell the jury a little bit about what a known
13 standard is?

14 A. A known standard would be known sample taken from your
15 body. Originally we, we collected blood samples. But we
16 found that the skin cells on the inside of your mouth from
17 your cheek and your gum gave us the, of course, the same
18 results and it wasn't as invasive. And so presently,
19 unless you're deceased, we just simply swab the inside of
20 your mouth as a known sample from you, and that known
21 sample will identify you based on your DNA, and it can be
22 used to compare it to any evidence in the case.

23 Q. Okay, and so known samples are very important for
24 comparison purposes ---

25 A. Absolutely.

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1 Q. --- correct? Turning your attention to this case, did
2 you have occasion to analyze, or were certain items of
3 evidence actually submitted to you for analysis?

4 A. Yeah, they were submitted to the DNA laboratory for
5 analysis. There was a, a -- many items actually.

6 Q. Okay, and we'll go through all those items, but I
7 first want to just kind of go through the known standards
8 that you had that we just discussed. I'm going to show you
9 what's been marked as State's Exhibit 35. Do you recognize
10 that?

11 A. Yes.

12 Q. And when that item came to you, was it properly sealed
13 and packaged?

14 A. Correct. Any, any item that comes into our laboratory
15 must be properly sealed and packaged or we do not accept
16 it.

17 Q. Okay, and what is that item?

18 A. This is a mouth swab. It's called a buccal swab.
19 That's because the cells from the inside of your mouth are
20 called buccal cells. But basically it's the skin cells
21 from the inside of your mouth. From M. Roberts.

22 Q. Okay.

23 A. Not sure what his first -- oh, Maurice Roberts.

24 Q. Okay.

25 MS. SIMPSON: Your Honor, at this time we would offer

1 State's Exhibit 35 into evidence.

2 MR. SUTHERLAND: No objection, Your Honor.

3 (BUCCAL SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 35.)

5 BY MS. SIMPSON:

6 Q. Then I'm going to show you what's been marked as
7 State's Exhibit 32. Do you recognize this item as well?

8 A. Yes. That's, again, a swab from the mouth of Brandon
9 Jones.

10 Q. Okay, and that would have been one of the victims, the
11 deceased victims in the case, correct?

12 A. Yes, it would have.

13 MS. SIMPSON: Your Honor, at this time ---

14 Q. And when it came to you, was it properly sealed and
15 packaged?

16 A. Again, all of it is unless we ---

17 Q. Okay.

18 A. We won't take it if it's not.

19 MS. SIMPSON: Your Honor, at this time we would offer
20 State's Exhibit 32.

21 MR. SUTHERLAND: No objection.

22 (BUCCAL SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
23 NUMBER 32.)

24 BY MS. SIMPSON:

25 Q. And moving along, I'm going to show you what's been

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1 marked as State's Exhibit 26. Do you recognize this?

2 A. Yes. This is a Buccal swab from Trenton Scott.

3 MS. SIMPSON: Your Honor, at this time I would offer
4 State's Exhibit 26 into evidence.

5 MR. SUTHERLAND: No objection, Your Honor.

6 (BUCCAL SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
7 NUMBER 26.)

8 BY MS. SIMPSON:

9 Q. And then State's Exhibit 25, do you recognize this?

10 A. Yes, this is swab from Deshawn McClary.

11 Q. Okay.

12 MS. SIMPSON: And, Your Honor, at this time the state
13 would offer State's 25 into evidence.

14 MR. SUTHERLAND: No objection, sir.

15 (BUCCAL SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
16 NUMBER 25.)

17 BY MS. SIMPSON:

18 Q. And State's Exhibit 23, do you recognize that?

19 A. This is a, a swab from James. Is that correct?

20 Q. A Demetrice ---

21 A. Demetrice James.

22 MS. SIMPSON: Your Honor, at this time we would offer
23 State's Exhibit 23 into evidence.

24 (A PAUSE.)

25 MR. SUTHERLAND: Without objection, sir.

1 (BUCCAL SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 23.)

3 BY MS. SIMPSON:

4 Q. And State's 22, do you recognize that?

5 A. Yes, it's a swab from Joshua Williams.

6 MS. SIMPSON: Your Honor, at this time we would offer
7 State's 22 into evidence.

8 MR. SUTHERLAND: No objection.

9 (BUCCAL SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
10 NUMBER 22.)

11 BY MS. SIMPSON:

12 Q. And finally I'm going to show you what's been marked
13 as State's 205. These are actually -- do you recognize
14 those items?

15 A. Yes.

16 Q. And what are those?

17 A. They are swabs from the right-hand fist of Troy Scott.

18 Q. Okay, and those are not known standards, correct, or
19 known ---

20 A. They are not.

21 Q. Or buccal swabs as we've just seen?

22 A. They're not. I assume, when I get a swab like that,
23 they're looking for foreign DNA from it as well as -- well,
24 it's going to be a given I find the person whose hands were
25 swabbed. It is the hope, I assume, that you find someone

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1 else's DNA.

2 Q. Okay. So, these aren't for purposes of having a known
3 standard?

4 A. No. No, it has to be a mouth swab or either a blood
5 sample.

6 Q. And those items I sub -- that we just identified,
7 those were submitted to you for comparison, correct?

8 A. That is correct.

9 Q. I'm also going to show you what's been marked as
10 State's Exhibit 41, 42, 40, and 39. Do you recognize these
11 items?

12 A. Yes.

13 Q. Okay, and what are those items?

14 A. Item -- oh, State's Exhibit 41 is our Item 88, which
15 is a glove from marker A.

16 Q. Okay, and---

17 A. And this is a stain, I guess you might say, that was
18 taken from that.

19 Q. All right.

20 MS. SIMPSON: Your Honor, at this time we would offer
21 State's Exhibit 41 into evidence.

22 MR. SUTHERLAND: No objection, sir.

23 (GLOVE MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
24 41.)

25 BY MS. SIMPSON:

1 A. And then State's Exhibit 42 is our Item Number 89,
2 which is a glove from marker B.

3 Q. Okay.

4 MS. SIMPSON: And, Your Honor, at this time we would
5 offer State's Exhibit 42 into evidence.

6 MR. SUTHERLAND: No objection.

7 (GLOVE MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
8 42.)

9 BY MS. SIMPSON:

10 A. State's Exhibit 40 is our Item 91, which is a glove
11 from marker F.

12 Q. Okay, and we're identifying markers at marker F and
13 glove and items by certain names. Do you necessarily know
14 where these items were collected from or the nature of the
15 crime scene or the background of the case when these are
16 submitted to you?

17 A. I do not know the nature of the crime scene. I was
18 not at the crime scene. I assumed, when somebody says
19 marker A, B, C, D, that these are marked by the crime scene
20 investigator as a point of reference at the crime scene.

21 Q. And so your job is for analysis. You actually just
22 analyze the items of evidence, correct?

23 A. Correct. I used what they identified the item as on
24 my report.

25 Q. Okay.

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1 MS. SIMPSON: And, Your Honor, at this time state
2 would offer State's Exhibit 40 into evidence.

3 MR. SUTHERLAND: No objections, sir.

4 (GLOVE MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
5 40.)

6 BY MS. SIMPSON:

7 A. And State's Exhibit 39 is our Item 91, which is a
8 glove from marker C.

9 Q. Okay.

10 MS. SIMPSON: Your Honor, at this time the state would
11 offer State's Exhibit 39 into evidence.

12 MR. SUTHERLAND: No objections.

13 (GLOVES MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
14 39.)

15 BY MS. SIMPSON:

16 Q. Let's focus a little bit on the other items. What
17 items were submitted to you for testing?

18 A. The first item is I have on my list is a swab from a
19 fired .45 caliber, casing number two.

20 Q. And how are swabs generally collected from an item?

21 A. A swab, folks, our investigators who use swabs to
22 collect evidence are instructed to use sterile water or
23 saline and moisten the swab, and then the object is swabbed
24 and dried and packaged and submitted to the laboratory.

25 Q. So, you don't actually get this cartridge casing for

1 testing? You get a swab that may have been taken from the
2 casing?

3 A. Sometimes I get a cartridge casing, but most of the
4 times a swab from it.

5 Q. And what other items did you receive?

6 A. The next item was a swab from the fired .45 caliber
7 casing number 5, and also another .45 caliber swab from
8 number 6, a .45 caliber casing swab number 10, and .45
9 caliber casing swab number 11. I received seven cigarette
10 butts, an Icehouse beer can. Another swab from a fired .45
11 caliber casing number 13. A swab from a beer can marker Q,
12 a shirt from marker E, a baseball cap from marker D.

13 A glove, marker A, we've already talked about, and
14 from that glove, marker A, I would -- in the laboratory, we
15 collected a swab from the inside of that glove. That is
16 done to determine if we can recover skin cells from the
17 individual that was wearing the glove, but also it was
18 noted on that glove that there was a stain, a reddish
19 stain, which was determined to be blood, which would also
20 have been tested separately for DNA. And we've already
21 talked about the gloves and the buccal swabs, and that's
22 pretty much it.

23 Q. Okay, and the seven cigarette butts, when they're
24 analyzed or -- is each butt, I guess cigarette butt,
25 analyzed separately, or do you give them a separate item

1 number?

2 A. They are. And if we can identify the brand, we try to
3 do that, but sometimes that is not possible.

4 Q. Okay, and in this case, what type of testing did you
5 do? Did you do any serological? I may be pronouncing it
6 wrong.

7 A. That's correct.

8 Q. Serological testing.

9 A. Serological testing in this case would involve the
10 testing for blood.

11 Q. And did you actually do that in this case?

12 A. I did. Any item that contained a, a stain that might
13 be blood, it was tested for the presence of blood.

14 Q. Okay, and did you actually make some findings with
15 respect to whether there were, whether there was blood,
16 blood located on certain items or indicated on certain
17 items?

18 A. The only item I found that blood was indicated on was
19 Item 88.2, which is the red stain on the outside of this
20 glove from marker A.

21 Q. And is this testing for blood done prior to the type
22 of testing that you would do for DNA?

23 A. It is.

24 Q. And ---

25 A. So, some small part of a stain is used, is consumed

1 for that analysis, but it's a very sensitive test and very,
2 very minuscule amount is used.

3 Q. Okay, and tell the jury about the process that you
4 used with respect to analyzing these items of evidence,
5 specifically the swabs and things of that nature, for DNA.

6 A. Okay. First of all, we have to remove the DNA from
7 the cell itself. So, the swab is cut up, put into a tube.
8 Digesting chemicals are placed on it. It's placed into an
9 incubator for several hours many times overnight.

10 During that process, the cellular material is broken
11 down; the DNA's now freed from being encased in a molecule
12 or the cell. So, the cell wall is destroyed, et cetera, et
13 cetera. So, then the DNA now is part of the conglomeration
14 of material that was found in that, that tissue that's
15 inside that tube.

16 So, now the DNA has to be purified. So, the next
17 process you will -- it goes through is to purify the DNA,
18 to remove everything else but the DNA. Once that is done,
19 we -- our next step is to determine how much DNA we
20 recovered. Many times we recover no DNA. So, the analysis
21 stops at that point. But if we do recover DNA, we want to
22 know how much is there because too much DNA added to the
23 next instrument which develops the profile will actually
24 overload the instrument and give us false readings. So,
25 the -- if we recover DNA, we have to dilute it if it's too

1 much to the certain amount of DNA, which would be
2 appropriate for analysis.

3 Once that's done, then we copy certain portions of the
4 DNA. DNA's a very long molecule. It took years to decode
5 it, if you kept up with the news. But only a very small
6 portion of it is used to identify individuals. Scientists
7 discovered these portions of it that could be used for
8 that. It is portions of the molecule that are not tied to
9 any particular trait or disease, and so it is used solely
10 for human identification. We, we copy up to twenty-two
11 places on that DNA molecule and -- to determine whether or
12 not it matches an individual.

13 Once it's copied and it's separated in the instrument
14 and a profile is developed, and that then is -- can be
15 compared to known profiles from individuals to see whether
16 or not that DNA belongs to them. Many times it's a
17 mixture. So, we would determine, the best of our ability,
18 if an individual is involved in that mixture or not.

19 Q. Okay, and we'll go through the results with respect to
20 DNA for each individual item starting with Item 17---

21 THE COURT: Ms. Simpson?

22 Q. --- involved from fired cartridge casing.

23 THE COURT: Ms. Simpson.

24 Q. Were you able to extract any ---

25 (OFF-THE-RECORD BENCH CONFERENCE.)

1 THE COURT: Mr. Foreman, ladies and gentlemen, we're
2 going to finish a portion of this testimony. It's about
3 maybe -- she says twenty seconds, but I know that's not
4 correct. Maybe five minutes and then we'll -- I'll tell
5 y'all sort of where we are, okay?

6 FOREPERSON: Yes, sir.

7 BY MS. SIMPSON:

8 Q. Tomorrow we'll come back and go through your
9 individual results, but at this point in time, did you
10 actually do some individual inspection and testing for
11 blood on items 100 -- well, right now I'm showing you
12 what's been marked as State's Exhibit 37, items 101, 102,
13 and 103, or 10 ---

14 A. That's correct. 101, 102, and 103. Identified as
15 black hooded jacket, black coat, black brown jeans, and
16 green camo pants.

17 MS. SIMPSON: And, Your Honor, at this time we would
18 offer State's Exhibit 37 into evidence.

19 MR. SUTHERLAND: Without objection, sir.

20 (CLOTHES MARKED INTO EVIDENCE AS STATE'S EXHIBIT
21 NUMBER 37.)

22 BY MS. SIMPSON:

23 Q. And then going back, I don't believe these are in
24 evidence yet, what's been marked as State's Exhibit 36.
25 Did you actually have the opportunity to analyze these

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1 items or certain of these items?

2 A. Yes. This, this is some of the gloves we talked
3 about, the baseball cap. All of those.

4 Q. Okay.

5 MS. SIMPSON: And, Your Honor, at this time the state
6 would offer State's Exhibit 36 into evidence.

7 MR. SUTHERLAND: No objection, sir.

8 (CLOTHES MARKED INTO EVIDENCE AS STATE'S EXHIBIT
9 NUMBER 36.)

10 BY MS. SIMPSON:

11 Q. And finally were you also requested to review and test
12 item 100, which is marked as State's Exhibit 206 -- 207.
13 Sorry. It's hard to find -- item 100.

14 A. Yes. This was another black, brown, and green camo
15 jacket.

16 Q. All right.

17 MS. SIMPSON: And, Your Honor, at this time the state
18 would offer State's Exhibit 207 into evidence.

19 MR. SUTHERLAND: No objection, sir.

20 (CLOTHING MARKED INTO EVIDENCE AS STATE'S EXHIBIT
21 NUMBER 207.)

22 MS. SIMPSON: All right. Thank you, Your Honor. I
23 just will finish with the results tomorrow.

24 THE COURT: Just a little longer than thirty seconds.

25 MS. SIMPSON: At least a minute maybe. Within a

1 minute.

2 THE COURT: Mr. Foreman, ladies and gentlemen, I'm
3 going to give you my best guess. The trial has moved along
4 rather smoothly. I think we've been very efficient with
5 your time, but it looks like, if all are estimates are
6 about correct, we'll probably finish all the testimony
7 midafternoon tomorrow, which is Thursday. And what I
8 normally like to do, if we finish midafternoon, if we went
9 straight into the arguments and charges, that meant you
10 wouldn't get the jury -- you wouldn't get the case till
11 Thursday after 5:00.

12 So, what I normally do when that sort of timeframe
13 comes in there, we would just go ahead and break at the
14 conclusion of the testimony, come back in where everybody's
15 fresh Friday morning, the arguments, the charge, and then
16 you would start your deliberations. We obviously would
17 order your lunch in so you won't have to leave, and y'all
18 will get the case. Then deliberate at how -- you know, at
19 your speed. Is that a doable deal? Does that sound good?

20 FOREPERSON: Yes, sir.

21 THE COURT: All right. So, what -- if we finish a
22 little earlier tomorrow, obviously we'll, we'll just have
23 to play it by ear, but I -- my best guess right now.

24 FOREPERSON: Yes, sir.

25 THE COURT: So, I'm going to excuse you now for the

1 balance of the evening. Is 9:30 okay in the morning? I
2 don't have anything in the morning. We could start at
3 9:00, but you tell me, 9:00 or 9:30? 9:30?

4 FOREPERSON: 9:00 is fine, sir.

5 THE COURT: All right. We'll start at 9:00 in the
6 morning. How about some biscuits?

7 You got money for that one more time? Sure, you do.
8 Richland is a big -- I'll pay for them.

9 Y'all want biscuits again?

10 FOREPERSON: Yes, sir.

11 THE COURT: Okay. So, if you want biscuits, be here a
12 little bit before 9:00. I can't let you bring them out
13 here.

14 FOREPERSON: Yes, sir.

15 THE COURT: And then we'll see how it goes tomorrow.
16 Y'all have been great. Y'all paid great attention. Really
17 appreciate it, the way you've handled yourselves. We're
18 going to now let you go. Don't discuss the case. Don't
19 deliberate. Don't let anyone discuss it with you.

20 I hadn't seen any news people here. So, I don't think
21 it's on the news, but don't -- if it is, don't look at it.
22 We will decide it here in this courtroom.

23 Everyone else please remain seated. I'm going to let
24 my jury go now.

25 Mr. Foreman, Mr. Foreman, come back in here for me,

1 please. How about just have them sit tight in the jury
2 room a second. We're going to have a -- y'all are parked
3 across the street, I think?

4 FOREPERSON: Yes, sir.

5 THE COURT: I'm going to have a deputy escort y'all
6 across. I'll tell you about it after everything is over,
7 said, and done. Just sit tight, and we'll have a deputy
8 escort you across.

9 FOREPERSON: Yes, sir.

10 THE COURT: Thank you.

11 FOREPERSON: Sure.

12 THE COURT: Thank you, sir.

13 (THE JURY EXITS AT 5:03 PM.)

14 THE COURT: Anything for the record before we break
15 this afternoon?

16 MS. CAMPBELL: No, sir, but we are submitting requests
17 to charge in the morning? Is that okay?

18 THE COURT: That will be fine.

19 MS. CAMPBELL: Okay.

20 THE COURT: And since we're going to start at 9:00, we
21 might as well just go ahead and do the final arguments as
22 soon as we finish the testimony.

23 MR. SUTHERLAND: There we go.

24 THE COURT: Anything for the defendant?

25 MR. SUTHERLAND: No, sir. No, sir.

1 THE COURT: All right. Okay. Like we did yesterday,
2 I'm going to ask the families back here, y'all leave first
3 today. Give y'all the first shot out.

4 Y'all please sit tight until they leave. Y'all don't
5 discuss your testimony with anybody tonight.

6 (WHEREUPON, THE CASE IS AT EASE.)

7 THURSDAY, FEBRUARY 27, 2014

8 (COURT RESUMES AT 9:05 AM.)

9 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBIT
10 NUMBERS 208 THROUGH 222 FOR IDENTIFICATION.)

11 (CLOTHING MARKED AS STATE'S EXHIBIT NUMBER 223 FOR
12 IDENTIFICATION.)

13 (FINGERPRINT CARDS MARKED INDIVIDUALLY AS STATE'S
14 EXHIBIT NUMBERS 224, 225, 226, 227.)

15 THE COURT: Good morning. Anything for the record
16 before we start, Ms. Walker?

17 MS. WALKER: No, sir.

18 MR. SUTHERLAND: No, sir

19 THE COURT: Bring the jury in, please.

20 (THE JURY ENTERS AT 9:05 AM.)

21 THE COURT: Good morning, Mr. Foreman, ladies and
22 gentlemen. Hope you had a pleasant evening. Hope your
23 sausage biscuits or biscuits, pleural, were good. Thank
24 the clerk.

25 You may continue with your examination of this

1 witness.

2 MS. SIMPSON: Thank you, Your Honor. May it please
3 the court?

4 DIRECT EXAMINATION BY MS. SIMPSON RESUMES:

5 Q. Mr. Barron, we're in the process of introducing
6 evidence. I'm going to show you one more item that has
7 been marked as a State's Exhibit 223. Do you recognize
8 that?

9 A. Yes. That is some clothing that was submitted for --
10 to examine for blood.

11 Q. Okay, and exhibits ---

12 MR. SUTHERLAND: Without objection.

13 MS. SIMPSON: Your Honor, at this time the state would
14 offer State's 223 into evidence.

15 THE COURT: Without objection.

16 (CLOTHING MARKED INTO EVIDENCE AS STATE'S EXHIBIT
17 NUMBER 223.)

18 BY MS. SIMPSON:

19 Q. Now I want to go through some of the individual
20 results with respect to the items that you tested, and
21 we'll backtrack just a little bit beginning with item 17,
22 the swab fired .45 caliber casing marker number 2.

23 A. Correct. There was no DNA extracted from that item.

24 Q. Okay, and with respect to item 20?

25 A. Again, no DNA extracted from that item either.

J. BARRON - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. And that, too, was a caliber casing as well?

2 A. That is a fired .45 caliber casing, yes.

3 Q. And then item 21.

4 A. Item 21 is another fired casing that was -- no DNA was
5 found on that item.

6 Q. Okay, and then item 22, which is the swab collected
7 from the fired .45 caliber casing marker Number 10, what
8 was your result with respect to that one?

9 A. That item did have a, a DNA on it. I developed a
10 profile and it matched Brandon Jones.

11 Q. And explain to the jury, because I know you all have
12 specific terminology and standards with respect to your
13 results. What does it mean that it actually matched
14 Brandon Jones?

15 A. It means that all of the DNA markers that we copied
16 and developed a profile from are the same as Brandon Jones,
17 and because they are identical to him, they match him and
18 will not match anybody else other than if he perhaps has an
19 identical twin.

20 Q. And I want to talk to you, backtrack again, about
21 population frequencies and things of that nature. Can you
22 tell us what a frequency is and how you go about making a
23 determination of whether a frequency can be determined?

24 A. Yes. A frequency is a statistic, and the reason why
25 we can testify that the DNA profile is an individual is

1 based upon that statistic, how frequent is that profile in
2 the population. So, if we were to take a person at random
3 and just develop his DNA profile, would it match this
4 profile. So, the rarer that frequency is, the less likely
5 it would be somebody else. So, it comes a point when the
6 frequency is so rare, that it becomes impossible to be
7 anybody else. So, in this case, the frequency is so
8 extremely rare that within all reasonable scientific
9 certainty, no one else on the planet Earth would have that
10 DNA profile.

11 Q. And what was the actual, I guess, number to that
12 frequency?

13 A. Well, it's a number that I'm sure nobody in the
14 courtroom is ever heard of. It was 13 nonillion. That is
15 13 followed by 30 zeros. Planet Earth has approximately
16 eight billion -- going on eight billion, which is an eight
17 followed by eight zeros.

18 Q. So, there was no doubt that that DNA was Brandon
19 Jones?

20 A. That's correct. It would -- statistically speaking,
21 it is so rare that it would be no way that anybody else
22 would have that profile.

23 Q. And then moving to item 23, what was the result with
24 respect to that item?

25 A. Item 23 is also a fired cartridge casing, and it also

1 had a DNA matching Brandon Jones.

2 Q. Okay, and it's the same essential frequency that we
3 had before?

4 A. Well, I made a statement on my report that says also
5 matches Brandon Jones. That means it is essentially the
6 same. It could be missing a couple of alleles, that's the
7 term, the markers, but, again the frequency is so rare that
8 it absolutely belongs to Brandon Jones.

9 Q. And moving to item 41, which was actually seven
10 cigarette butts, can we go through those individually and
11 tell me what your results were with respect to you?
12 Specifically, start with 41.1.

13 A. Looking at it -- I grouped them together as, as their
14 commonality. Can I use this?

15 Q. Yeah, that will work.

16 A. Okay. Because 41.1, which is a Newport brand
17 cigarette and 41.4, which is a Maverick brand cigarette
18 butt, belonged to a female that we don't know who it is,
19 but I know it's a female. I was not given any female
20 standards or known samples to compare it to. So, that,
21 that person remains unknown to me.

22 Item 41.5 and 41.6 have the DNA profile of Brandon
23 Jones. 41.5 is a -- and 41.6 are unknown brand of
24 cigarette butt. In other words, there was no identifying
25 markers on that cigarette butt to tell me what brand it

1 was. But 41 -- one of them had -- well, both of them were
2 a mixture of Brandon Jones and this unknown female ---

3 Q. And ---

4 A. --- that I was referring to.

5 Q. And again, explain the result when you have a mixture.
6 What does that mean?

7 A. A mixture means two individuals contributed DNA to
8 that sample. So, with a cigarette butt, it would be
9 assumed that they shared smoking the cigarette.

10 Q. And are you clearly able to identify, based on I guess
11 DNA and how it's developed, whether it's male DNA or female
12 DNA?

13 A. Yes, there's one -- we develop a sex marker, the X and
14 Y genes.

15 Q. And again, no female samples were actually submitted
16 to you?

17 A. No.

18 Q. On ---

19 A. And one other one was 41.7, which is the other
20 cigarette butt, is a mixture of two individuals. The major
21 contributor is from an unknown male, and there was a minor
22 contributor that was too weak for match purposes. In other
23 words, there can be another individual there. It's just so
24 weak that I could not make any statistical reference to it,
25 and so I say that's too weak for match purposes. I can't

J. BARRON - DIRECT EXAMINATION BY MS. SIMPSON

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1 apply some sort of value or weight to it, then it's too
2 weak, but there was an unknown male. In other words, a
3 male that did not match any of the male standards that I
4 received. So, there's another person on this cigarette.

5 Q. And you all have, I guess, standards you said when the
6 minor contributor's too weak, you all have established
7 standards essentially to make that determination before you
8 can ---

9 A. That's correct.

10 Q. --- I guess say that the DNA matches or doesn't match
11 or is a contributor, correct?

12 A. Correct. We do not like to make any incriminating
13 statement as far as DNA if we cannot apply some sort of
14 statistical value to it.

15 Q. Okay, and then on item 41.3. I believe you were able
16 also to extract some DNA that matched Brandon Jones?

17 A. Yes. Yeah, 41.3 is one with a single source matching
18 Brandon Jones. So, he would have been the only one smoking
19 that cigarette.

20 Q. Okay, and one of the items -- let me make sure I'm
21 right. Did you actually have -- let me move my arm. Let's
22 move onto -- I believe we've accounted for all the
23 cigarette butts, correct?

24 A. I think there was one more 41.2, which was another
25 cigarette butt, Newport brand, was also Brandon Jones.

1 Q. Okay, and then moving to the Icehouse beer can, what
2 was your result on Item 43?

3 A. 43. All right, item 43 is a mixture of two
4 individuals. Brandon Jones and Vincent Nelson, cannot be
5 excluded as these two individuals, and so when you have a
6 mixture, one of the ways you can state the weight to it
7 statistically is doing what we call a mixture calculation.
8 So, we have two assumptions. We have the assumption that
9 it's Brandon Jones and Vincent Nelson's DNA, and then the
10 other assumption would be whether just two random
11 individuals who, who are on this cigarette butt.

12 So, what we do is develop what we call a likelihood
13 ratio. So, what is the likelihood that it is Brandon Jones
14 and Vincent Nelson versus the likelihood it's just two
15 random individuals picked out in the population? All, and
16 that statistic is 1.9 decillion times more likely that it
17 is Brandon Jones and Vincent Nelson versus a mixture of two
18 unknown unrelated individuals, and decillion is another one
19 of those big numbers. It is 1.9 plus 31 zeros. So, again
20 we have, within all reasonable scientific certainty, the
21 fact that this cigarette butt was smoked -- I mean, excuse
22 me, this beer was -- had DNA from these two individuals,
23 Brandon Jones and Vincent Nelson.

24 Q. And then moving to item 49.

25 A. Okay. Item 49.

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1 Q. Which I believe is a swab from a fired cartridge
2 casing.

3 A. Are you sure about the number because I don't --
4 that's -- I have a 59.

5 Q. Oh, no, I apologize. I am not sure about the number.
6 59.

7 A. 59.

8 Q. Sorry.

9 A. 59 is another fired .45 caliber casing and that was
10 another item that had no DNA.

11 Q. Thank you, and then moving to item 60, the swab from
12 the beer can at marker 2.

13 A. All right. Item 60 is also a mixture. The major
14 contributor -- in other words, when you have a mixture, you
15 have a major/minor contributor. Major being dominant DNA
16 pattern. A minor meaning some other low level individual.
17 So, the major contributor matches Brandon Jones and this
18 minor contributor is one of those that is too weak for me
19 to make any type of conclusion to.

20 Q. And then with respect to -- I believe you analyzed
21 some swabs from the hands or the fist of Troy Scott. Can
22 you tell us about your results on those items?

23 A. Okay. That would be item 77 through 79?

24 Q. Yes, sir.

25 A. Okay. Okay. Item 77 and 79, and all three of these

1 are swabs from the right-hand fist of Troy Scott, 77 and
2 79, which is two of them, no DNA unlike Troy Scott. So,
3 when we swab an individual's body, we expect to find their
4 DNA. So what we want to look for is something unlike that
5 person. So, when I say there's in DNA unlike Troy Scott,
6 that means that's all -- only DNA we found, which is
7 expected, and then the other swab was a mixture and, of
8 course, Troy Scott is the major contributor and this minor
9 contributor is so extremely weak, I'm not -- I can't make
10 any statistical conclusion to it. So, I'm going to say
11 it's too weak for comparison or for match purposes.

12 Q. Okay, but on that, with the mixture, there's
13 definitely someone else's DNA other than Troy Scott. You
14 just can't identify ---

15 A. Right.

16 Q. --- or make a conclusion?

17 A. I cannot make any conclusions to it, but there is
18 indications that there is somebody else there.

19 Q. Okay, and then I believe the swab from the right-hand
20 fist.

21 A. Right, those are all swabs from the right-hand fist.

22 Q. And on the item number 79, again that's no DNA ---

23 A. That's just ---

24 Q. --- was found?

25 A. Yeah, just Troy Scott's DNA.

J. BARRON - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Then moving to item 86, the shirt at marker E, what
2 was your result?

3 A. 86. 86, no DNA was extracted from the item.

4 Q. Okay, and the next item I believe is a hat?

5 A. The baseball cap from marker D, item 87.

6 Q. And what was your result with respect to that item?

7 A. Let's see. Okay. Item 87 matches Vincent Nelson.

8 So, I would conclude that Vincent Nelson was wearing that
9 hat at one time.

10 Q. And were you actually able to, I guess, establish a
11 population frequency ---

12 A. Yes, I was.

13 Q. --- to that as well?

14 A. Yes, I was. The frequency of that was 9.6 sextillion
15 times more likely that it belongs to Vincent Nelson than
16 someone from random population, and that is 9.6 followed by
17 20 zeros. Again, way beyond the population of planet
18 Earth. So, to a reason, reason -- within reasonable
19 scientific certainty, that DNA is from Vincent Nelson.

20 Q. And then moving on to the glove at marker A or the
21 swab from the glove, can you tell us about your result and
22 where that swab was actually taken from?

23 A. The glove from marker A, on the outside of the glove
24 was a red-brown stain, which is a clue in the lab that that
25 might be blood, and it was tested for blood. It was

1 positive. So, the DNA from that blood matched Vincent
2 Nelson and the same statistical value, and then the other
3 objective is who was wearing the glove. So, I mean, you
4 can have somebody else's glove on the outside, but who's
5 wearing the glove? So, we swab the inside of the glove to
6 recover the skin cells from the individual wearing the
7 glove, and that DNA also indicated it was Vincent Nelson's
8 DNA. So, we had his own blood on the glove he was wearing.

9 Q. And then on item 89, the glove found at marker B, and
10 I believe item 90, the glove at marker C, what were your
11 results?

12 A. Those gloves, we swabbed the inside and did not
13 recover any DNA.

14 Q. And then item 91, the glove found at marker F, can you
15 explain the result as to that item?

16 A. Item 91, the glove from marker F, this one contained a
17 small amount of, of DNA. When we get that, there is a
18 another step we can do is what we call developing a Y
19 chromosomal DNA pattern, a Y chromosome that's only found
20 in males. So, if we have a, a low level of DNA that is not
21 totally too weak, we can target the male chromosome, see if
22 we can get something from that, and in this case I was able
23 to do that. Couldn't tell you much about the other DNA
24 that I was referring to. That's called the nuclear DNA,
25 but the Y chromosomal DNA is just specifically targeting

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1 the male DNA on that sample, and I was able to develop a Y
2 chromosome pattern.

3 And the thing about the Y chromosomal DNA match is
4 that it can match other males in your biological family.
5 So, your brother, assuming you have the same mother and
6 father, would have the same Y chromosome as you. Your
7 father, biological father, would have the same DNA profile.
8 If you had -- if you were old enough to have a child, a
9 male child that would have the same Y DNA chromosomal
10 pattern. So -- but people, generally speaking in other
11 families, would not match. So, it's not as strong a DNA
12 match, but it is a DNA match and we can apply a statistical
13 value is it.

14 So, this Y chromosomal DNA pattern does match Vincent
15 Nelson, and it could match anybody else in his paternally
16 related biological life. Not his mother's line, but his
17 father's line, if you will.

18 And there is what we call the United States Y
19 Chromosomal DNA Database that we access, and that, that Y
20 chromosomal database is an accumulation of all these Y
21 chromosomal patterns, and so over time that number
22 increases. So, we simply do a, a comparison to that big
23 database and see how many times this pattern is in there,
24 all right, because it could be distant relatives as well.
25 So -- and it turned out that this pattern was in 18 of

1 22,497 individuals that were in that database, and that
2 comes out to be, frequency speaking, one in every 1,250
3 individuals. So, you can see it's not nearly as strong as
4 the other, but it does, does have implications. So,
5 statistically speaking, what that's saying is one out of
6 every 1,250 males could match that DNA.

7 Q. And have that -- and based on your findings, though,
8 because of the Y chromosomal, and excuse my pronunciation,
9 Vincent, Vincent Nelson, though, would be paternally
10 related to him?

11 A. Correct and nobody else that I tested would, would fit
12 in as well. So, only Vincent Nelson in this group of
13 individuals that I tested would match that DNA.

14 Q. Okay. So, he himself could actually be the
15 contributor ---

16 A. Yes.

17 Q. --- on that item? You were actually requested to
18 inspect certain items, I believe. Item -- a black jacket
19 or bio-bag, sorry, in State's 223 for blood. Did you
20 conduct testing on that?

21 A. Yes. Those items were examined to see if there was
22 any blood stains on them, and none were found.

23 Q. Okay, and it indicates that it's a bio-bag containing
24 Roberts's clothing, correct?

25 A. Correct. Right. I mean, I don't know who Roberts is

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1 in, in this case until today, but the bag said the clothing
2 belonged to him. So, I'm assuming they were recovered from
3 his bedroom or his house or wherever indicated, or he
4 identified them as his clothing. But anyway, those clothes
5 did not have any blood on them.

6 Q. Okay, and what type of testing did you do? How, how
7 did you test for that?

8 A. Well, to find blood, we, we do have a very sensitive
9 presumptive test. So, we searched the items to see if
10 there's any possible stain. Some stains look like blood
11 are not blood. Some stains, you know, are dirty or
12 whatever and maybe blood's mixed in. But all we do is just
13 take a swab and swab the area and put certain reagents on
14 there that will react with blood. A very sensitive test.
15 I mean, you can dilute blood to where you can also never --
16 not even see it and it will turn up positive. So, a lot of
17 times we just simply search it, any possible stains, swab
18 it. Some items like shoes, we may even just swab all the
19 shoes if we can't see any stains and see if there was any
20 blood on them.

21 Q. And you also had what's been marked as State's 207, a
22 black, brown, and green camo jacket. Did you do -- were
23 you requested to test for blood on that item as well?

24 A. Yes.

25 Q. And what was the results of that?

1 A. Again, we searched it and did not find any, anything
2 indicated for blood on it.

3 Q. Okay, and then also in what's been marked as State's
4 Exhibit 37 containing three separate items, can you tell us
5 what those items were?

6 A. Okay. 101 was a black hooded zipper jacket and then a
7 black coat. Item 102, and I know they're a pair of camo
8 pants, green and brown and black.

9 Q. Okay, and with respect to those items, did you conduct
10 some testing as well?

11 A. Yes. Again they were searched for blood and did not
12 find any.

13 Q. And explain to the jury what affect might bleaching
14 clothing or washing clothing have on your ability to
15 collect or obtain DNA from that item.

16 A. It would greatly diminish that. It would have to be a
17 very incomplete wash if it, if it -- we were still able to
18 recover any.

19 Q. All right, and also talking -- going back a little bit
20 to cartridge casings versus projectiles, that's essentially
21 the two components of a bullet, correct?

22 A. Correct.

23 Q. And the cartridge casing is what's actually ejected?

24 A. Okay. It's the, excuse me, the metal jacket that
25 holds, that holds the projectile, and then when it's fired,

J. BARRON - DIRECT EXAMINATION BY MS. SIMPSON

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1 it's ejected from the pistol onto the ground around it.

2 Q. And hypothetically speaking, a projectile, if it goes
3 through an item or a person, what is the likelihood that
4 DNA will result? What, or what ---

5 A. Well, it will more than likely have the DNA of the
6 person that it, that it penetrated.

7 Q. Okay. So, the probative value of conducting testing
8 on projectiles versus cartridge casings isn't nearly as
9 high?

10 A. Not unless, you know, for some strange reason any
11 question as to what -- who the projectile passed through.

12 Q. Okay. So, where there is no question about who the
13 projectile passed through, you would make ---

14 A. Normally we're not asked to examine that.

15 Q. Because it would mostly be the victim?

16 A. Exactly.

17 Q. Okay. Also where you have blood at the scene, and the
18 -- only an indication that it would be a -- the victim's
19 blood, what would be the probative value of testing those
20 swabs or that, that blood at the scene?

21 A. Negligible. I mean, very often you find blood in and
22 around the victim's body or, you know, the victim's car, if
23 he was shot in the car. Generally speaking we don't
24 examine that. It's obvious to the crime scene individuals
25 who the blood came from.

1 Q. And as far as assessing what items to test, do you
2 collaborate with the investigators in some cases, or do
3 they actually make the decision?

4 A. We ask the investigators to fill out a request form.
5 We work on a lot of cases, and a lot of times we can't keep
6 them all straight. So, we have to refer to our request
7 form as to what items they want tested. Very often in
8 murder cases we may actually meet with them and discuss,
9 you know, the probative value of various items as far as
10 DNA and decide from that point at -- what items should be
11 tested.

12 Q. Okay, and -- but it's relying -- you all don't have
13 all the information regarding the actual crime itself or
14 the crime scene and things of that nature? That's the
15 investigators who would have the most knowledge?

16 A. Yes, absolutely.

17 MS. SIMPSON: Beg the court's indulgence.

18 (A PAUSE.)

19 MS. SIMPSON: Thank you.

20 MR. SUTHERLAND: Please the court, sir?

21 CROSS-EXAMINATION BY MR. SUTHERLAND:

22 Q. Morning, sir. How are you?

23 A. Good morning.

24 Q. On your direct testimony, sir, you had -- this was
25 actually yesterday. You had testified that there were up

J. BARRON - CROSS-EXAMINATION BY MR. SUTHERLAND

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1 to twenty-two locations that, that you would look at in, in
2 order to try to establish a match?

3 A. Yes.

4 Q. Okay, and what I'd like to try to do is maybe just
5 draw a little picture up here of what these measurements
6 look like on these electropherogram -- graphs, and I'll
7 just do -- show the standard graph on that here. You know,
8 specifically right now I'm looking at item 7, item 78,
9 which was the, the fist of Mr. Scott.

10 THE COURT: Hold on a second. What is 78 so we'll all
11 be on the same page?

12 MR. SUTHERLAND: Oh, item 78 is a DNA swab from Mr.
13 Scott's fist, yes, sir.

14 BY MR. SUTHERLAND:

15 Q. Okay. Now, typically you had said that this item is a
16 match for Mr. Scott. Then what should -- it makes sense
17 since it was his fist.

18 A. Yes.

19 Q. And what I see on here are a couple of peaks and then
20 there is a number assigned to those peaks.

21 A. Yes.

22 Q. And that's sort of just a measurement. I mean, y'all
23 do a chemical process and then measure. Is -- could you
24 explain what those numbers are and how we get to those
25 numbers?

1 A. Sure. The reason why we're able to use DNA to
2 identify people is what we call random units in the DNA
3 molecule. So, when you see a second, that means there's
4 seven random repeat units in that position. You see an
5 eight, that means there's eight random repeat units in that
6 position. So, for the sake of simplification, we just call
7 it a 7/8.

8 So, in DNA you get -- one of those numbers would come
9 from your mom. One would come from your dad because you
10 inherit half your DNA from your mother and half from your
11 father. So, this individual would be referred to what we
12 call a 7/8.

13 Now, when we see just two peaks -- and, by the way,
14 you can see one peak because your mother and father could
15 actually give you the same number. So, that's possible as
16 well. So, one or two peaks indicates one person. So, when
17 you start seeing more than that, that's when you get a
18 mixture.

19 Q. Thank you, sir. And so in this particular -- the TH01
20 in the, in item 78, there is another number here, which is
21 a number nine?

22 A. Yes.

23 Q. Is that correct, sir?

24 A. That's correct. If -- he's referring to our -- what
25 we call electropherogram, which is the DNA picture, if you

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1 will, of that individual and seven and eight are very very
2 tall peaks. That's the major contributor which matches,
3 was it Troy Scott?

4 Q. Yes, sir.

5 A. All right. So, Troy Scott is a 7/8, and 7/8 is the
6 predominant DNA pattern there, and then we see this nine,
7 which is a very, very, very small peak relatively speaking.
8 It's -- looks like a small bump on the graph. Okay, but
9 the, the software indicates that there is -- there was
10 copied a nine repeat unit there of another individual. But
11 since that nine is so small, I cannot really make a whole
12 lot of judgment to it except whoever that person is had a
13 nine.

14 Q. All right. Thank you, sir. And just briefly, we've
15 talked about how this matches Mr. Scott, but if this had
16 been, say, a seven and a nine rather than a seven and eight
17 in that position, then it would not match Mr. Scott?

18 A. That's correct.

19 Q. Okay, or if it had been -- let's see, homozygous
20 or ---

21 A. Homozygous is a DNA term meaning one peak.

22 Q. Okay. Thank you, and if it had been just, say, a
23 seven or -- well, let's say, just say a nine, then it
24 wouldn't Mr. Scott either?

25 A. Right. I didn't see a 7/8, I just saw a nine, and

1 that nine was large enough for me to make a judgment, then
2 I would say it did not match his.

3 Q. So, ultimately this came from somebody else?

4 A. Absolutely.

5 Q. All right, sir, and there is a item Number 85, which
6 is the DNA swab from Maurice Roberts. Oh, sorry.

7 A. Okay.

8 Q. Oh, I can get a pointer, I think.

9 THE COURT: If you need to write up there that's fine,
10 but ---

11 MR. SUTHERLAND: I got ---

12 THE COURT: I just -- my jurors can't ---

13 MR. SUTHERLAND: --- this thing here.

14 THE COURT: Make sure they can all see.

15 BY MR. SUTHERLAND:

16 Q. All right.

17 THE COURT: If you can't see, raise your hand.

18 Q. But I need to correct ---

19 A. I'm sorry. I have a whole bunch of these, and I got
20 to find the one you're talking about.

21 Q. Oh, absolutely. I just pulled three of them out of
22 all of them.

23 THE COURT: Which one is it you're looking for?

24 A. All right, item 85 is the DNA from Roberts. In other
25 words, it's his known sample.

1 Q. Okay, and actually at TH01 for Maurice, he also has a
2 7/8 there?

3 A. Yes, he does. Yes, sir. You have to remember there's
4 one locus and so you can, randomly speaking, have two
5 people with the same DNA at that one locus, but we're
6 dealing with twenty-two. So, therefore, you have to look
7 at the frequency of the whole thing.

8 Q. Okay. Right. It's -- I mean, it's possible that
9 anyone or probable -- it's likely that a number of people
10 in this courtroom will have the same alleles at some
11 locations?

12 A. That's correct. I have actually -- you know, I've
13 been looking at it for many, many years now. I've actually
14 seen people, two unrelated random people match each other
15 of up to six or seven loci, and there's -- a loci is a
16 locus or a point in the DNA molecule. So, when we're
17 dealing with twenty, fifteen to twenty-two, you know, and
18 never seen anybody more than six or seven. So, when you
19 get beyond that -- and actually speaking statistically,
20 when you get beyond that is when you get into the big
21 numbers.

22 Q. All, and but -- oops. Sorry, but there is no --
23 there's no number nine here ---

24 A. No.

25 Q. --- for Maurice Roberts?

1 A. So, the point is Maurice Roberts is not the
2 contributor of number nine.

3 Q. Of number nine?

4 A. That's correct.

5 Q. And we actually got to the point pretty quick there.
6 So, let's see. You tested all these clothing items, which
7 your testimony, for blood and there was no blood on them?

8 A. Correct.

9 Q. There was -- Vincent Nelson's blood was on a swab from
10 a glove or what ---

11 A. Yes.

12 Q. From one of the items and that matched, and he also
13 had DNA on a -- was it a beer can?

14 A. A beer can, cigarette butts, a, a hat.

15 Q. Okay.

16 A. And I think -- well ---

17 Q. Well, there it is. My overarching point is it's all
18 Nelson's DNA. Thank you, sir.

19 MR. SUTHERLAND: No further questions.

20 THE COURT: Ms. Simpson, any redirect?

21 MS. SIMPSON: Beg the court's indulgence.

22 (A PAUSE.)

23 REDIRECT EXAMINATION BY MS. SIMPSON:

24 Q. All right, one brief question. Looking at -- and I
25 don't have before me what you have before you. With

1 respect to number nine, you can't say that that's Maurice
2 Roberts or Demetrice James, correct, based on the swabs
3 that you had in the known standards?

4 A. I'd have to look at Demetrice James's profile to
5 refresh my recollection to be able to say. Do you know
6 which number he is?

7 Q. Let me -- 92, and just as a follow up, the reality is
8 number nine is too weak to reliably interpret with respect
9 to your standards, correct, as far as the minor
10 contributor?

11 A. That allele number nine is so weak that I'm not going
12 to make any -- I'm not able to make any statistical
13 determination. If you want to ask me specifically if
14 someone's profile has a nine, then I can answer that yes or
15 no. In this case, Mr. Roberts was a no. So, theoretically
16 speaking, he -- well, absolutely speaking he did not
17 contribute that nine. He couldn't because it's not part of
18 his DNA and this other individual is Mr. James? Is that
19 what you're saying?

20 Q. Yes.

21 A. Mr. James did not either. He is an 8/11. So ---

22 Q. And just to be clear, Maurice Roberts, he does match
23 the seven and eight, correct?

24 A. Maurice Roberts is also a 7/8, yes. So, at that locus
25 he could be hidden in the 7/8 that matched the other Mr.

1 Scott.

2 MS. SIMPSON: Okay. Thank you.

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

5 MR. SUTHERLAND: Oh, may I recross?

6 THE COURT: I don't allow recross. That's
7 discretionary. What do you got, one question?

8 MR. SUTHERLAND: Yes, sir, there's actually another
9 locus.

10 THE COURT: I'll allow it.

11 MR. SUTHERLAND: Thank you, sir. Okay.

12 THE COURT: That's against my rule.

13 MR. SUTHERLAND: I appreciate it, Judge.

14 RECROSS EXAMINATION BY MR. SUTHERLAND:

15 Q. Okay. Back ---

16 THE COURT: You know, if I let the lawyers recross,
17 recross, redirect, recross, redirect, we might be here ---

18 MR. SUTHERLAND: Yes, sir, I won't ask him anything
19 that long. Certainly do appreciate it.

20 THE COURT: I know you won't. You've been very
21 efficient with your questions.

22 MR. SUTHERLAND: Thank you.

23 BY MR. SUTHERLAND:

24 Q. Okay. So, back to item 78, and this time ---

25 THE COURT: 78 is what, please?

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1 MR. SUTHERLAND: Oh, and 78 is the swab from Mr.
2 Scott's fist.

3 BY MR. SUTHERLAND:

4 Q. Okay. So, this time I'm going to go down to
5 D5S818 ---

6 MS. SIMPSON: Objection, Your Honor, with respect to
7 -- I believe where defense counsel is going is outside the
8 scope of my cross-examination or my redirect. I apologize.

9 THE COURT: Well, she asked about Maurice on redirect
10 and she asked about James on redirect and she asked about
11 -- I'll allow it.

12 MR. SUTHERLAND: Thank you, sir.

13 BY MR. SUTHERLAND:

14 Q. It is D5S818 down where there's that 11/12/13.

15 A. Yes.

16 Q. Okay. So, here D5S -- S814. Okay. Sorry to be
17 coming -- I didn't expect to be back up here. Sorry.
18 Okay. So, that has an eleven and a thirteen?

19 A. Correct.

20 Q. And that matches Mr. Scott?

21 A. That's correct.

22 Q. Okay, and then there is a twelve also, and on item
23 Number 85, which is Maurice Roberts, at D5S818 there is no
24 twelve. Is that correct, sir?

25 A. Maurice Roberts is an 8/11.

1 Q. Okay. So, again, we got another one which does not
2 match Maurice Roberts?

3 A. Well, your picture is ---

4 Q. Oh, sorry.

5 A. Your twelve should come in front of the thirteen.

6 Q. Oh, come in front of the thirteen. Sorry. This
7 should be right there?

8 A. Right. That's what it would reflect, the original
9 graph of the twelve ---

10 Q. Yes, sir.

11 A. --- would have been ---

12 Q. Sorry. Sorry about that.

13 A. That's okay.

14 Q. But Maurice does not have a twelve?

15 A. Maurice does not have a twelve, no. He is an 8/11 and
16 there no eight there. However, the twelve is indicating of
17 a minor contributor. That twelve could be explained by
18 what we call stutter. That is a ---

19 Q. Yes, sir.

20 A. Again, we're getting into very technical issues here.
21 When you copy DNA, the allele in front of it can actually
22 be produced without it being there. And what happens is in
23 the process of copying a thirteen, randomly speaking on a
24 smaller level, it skips a repeat, a repeat unit, and so out
25 of the copying process. It's an error in the copy machine,

1 if you will, that happens randomly and that is called
2 stutter. So, I don't know whether that twelve is truly an
3 allele or whether it's a stutter peak.

4 Q. Yes, sir.

5 A. And when you get -- if it is a true allele, true
6 allele, that means there's, there's a minor contributor
7 there. I don't know whether there's one or two or three
8 minor contributors there. I can't really tell. And when
9 you get to that low level, you have what we call drop out.

10 So, I could -- since the -- let me see the other. The
11 eleven peak is higher than the thirteen peak, which is
12 normal. You don't always get exactly the same in the
13 copying process, but it is always a possibility that one
14 higher -- is higher than another, there's a minor
15 contributor contributing to that, adding to it, if you
16 will. And since it's so small, it could be a drop out.
17 So, it could be any other allele to go with that 11. So,
18 it could be 7/11, an 8/11, a 9/11, 11/10. So, that's why
19 when you get to that low level we don't interpret it
20 because there's, there's too many unknowns involved.

21 Q. Yes, sir, and when you're speaking about levels, as
22 this -- there's a -- there are numbers out here and there
23 are also numbers that are assigned to the little box. It's
24 sort of like a scale out here.

25 A. Correct.

1 Q. Okay.

2 A. The, the height of the peak determines its relatively
3 -- relative strength, if you will. So, it's just a, a way
4 of relating the computer software to human understanding.
5 So, the higher the peak, the bigger the number, the science
6 to it. So, when you get low level peaks, you get numbers
7 that are so small that you don't know whether there's other
8 numbers that also are there or not because you can have a
9 complete drop out.

10 I've actually seen low level DNA where I know the
11 individual, in actual testing, the individual has two
12 alleles, but we only find one of them when we amplify it.
13 So, that's called drop out.

14 Q. Yes, sir.

15 A. If I did it again I might get both of them. It's,
16 it's called a random process. In copying, you have low
17 level. There are occasions where you might just get one
18 and not the other.

19 Q. All right. Thank you, sir, and back to the scale,
20 back to TH01 on item 78, we've got 18/96 is the number for
21 the seven and we've got 14/84 for the eight.

22 A. Correct.

23 Q. But then we have 80 for the nine.

24 A. Right.

25 Q. So with this, with this being this weak, basically

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1 these numbers, even though there's a distinction there -- I
2 mean, they're similar. You looked at it and you thought
3 this is the major contributor here.

4 A. Right.

5 Q. Okay, and this nine -- and if, if this actually is an
6 allele, this twelve would be a minor contributor?

7 A. That's correct.

8 Q. And neither the nine or the twelve match Maurice
9 Roberts?

10 A. No.

11 Q. Okay. Thank you.

12 MR. SUTHERLAND: I have no further questions.

13 THE COURT: All right. You may step down now.

14 (THE WITNESS EXITS THE STAND.)

15 THE COURT: Next witness, please.

16 MS. WALKER: Your Honor, the state calls Dr. Durso.

17 THE COURT: And she is?

18 MS. WALKER: She's a pathologist.

19 THE COURT: All right. We've got some young children
20 in audience. Let's let them step out please. Ladies, this
21 is not appropriate testimony for children.

22 AMY DURSO, BEING DULY SWORN,
23 TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Have a seat in the witness stand,
25 please.

A. DURSO - VOIR DIRE EXAMINATION BY MS. WALKER

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1 THE COURT: State your name for the record.

2 WITNESS: I'm Dr. Amy Durso, D-u-r-s-o.

3 THE COURT: One second, please.

4 MS. WALKER: Yes, Your Honor.

5 (A PAUSE.)

6 THE COURT: All right. You may proceed.

7 MS. WALKER: Thank you.

8 VOIR DIRE EXAMINATION BY MS. WALKER:

9 Q. Dr. Durso, good morning.

10 A. Good morning.

11 Q. Can you tell me where you're currently employed?

12 A. I'm currently employed at Professional Pathology
13 Services as a forensic pathologist.

14 Q. And what exactly is a forensic pathologist?

15 A. So, a forensic pathologist is a medical doctor, and
16 basically my primary function is to perform autopsies or
17 examination on bodies after death to determine the cause of
18 death, as well as to document any injuries or illnesses.

19 Q. And how long have you been with Professional Pathology
20 Services?

21 A. Around three and a half years.

22 Q. Can you tell us a little bit about your training and,
23 and background that, that led to you becoming a
24 pathologist?

25 A. Sure. So, I obtained a Bachelor's Degree in

A. DURSO - VOIR DIRE EXAMINATION BY MS. WALKER

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1 psychology at Emory University. After that I went to the
2 University of North Carolina at Chapel Hill for medical
3 school where I got my four-year medical degree. I then
4 went to Wake Forest University, where I spent four years
5 doing anatomical and clinical pathology training, and then
6 I stayed there for an additional year to do training,
7 specifically in the field of forensic pathology.

8 Q. And when you talk about doing, doing autopsies, can
9 you explain for the jury what it is that you do when you do
10 an autopsy?

11 A. Sure. So, an autopsy starts. You know, you can --
12 we're given a brief history and then we start with the
13 external examination, which goes for me noting, noting, eye
14 color, the length of the body, the weight, and we notice
15 any scars, any injuries to the outside of the body.

16 And after we finish our external examination, we begin
17 our internal examination, which begins with us making a
18 Y-shaped incision that goes from both shoulders down to the
19 sternum, the middle of the chest, and downward where you
20 flip the skin and some of the muscle tissue back. We're
21 able to remove the front of the ribcage, and we can then
22 see all of the major internal organs.

23 We look at them, notice any collections of fluid, any
24 injuries, and then remove the organs one by one and
25 individually examine them and weigh them. We also examine

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1 the brain by making an incision in the back of the head,
2 reflecting the scalp and then removing the top portion of
3 the skull so we can remove the brain and examine that as
4 well.

5 Q. And that is the process by which you determine the
6 manner and cause of death?

7 A. Yes.

8 Q. Have you testified before in court?

9 A. Yes.

10 Q. As an expert?

11 A. Yes.

12 Q. How many times, Doctor?

13 A. I think five or six times.

14 MS. WALKER: Your Honor, at this point we offer Dr.
15 Durso as an expert in forensic pathology.

16 THE COURT: Any cross-examination on her
17 qualifications?

18 MR. SUTHERLAND: No, sir, no objection.

19 THE COURT: All right. She'll be allowed to render
20 opinion testimony in the field of forensic pathology.
21 Thank you.

22 DIRECT EXAMINATION BY MS. WALKER:

23 Q. I want to turn your attention back to January of 2013,
24 the process with which you just described. Did you perform
25 an autopsy on a Mr. Brandon Jones?

A. DURSO - DIRECT EXAMINATION BY MS. WALKER

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1 A. Yes, I did.

2 Q. Do you remember the date of that autopsy?

3 A. It was January 26, 2013.

4 Q. And how old was Mr. Jones at the time?

5 A. He was twenty-two years old.

6 Q. You said you determined the length and the weight of
7 the body. What was the length and the weight of Mr. ---

8 A. He was a 147 pounds and 66 inches. So, about 5/6.

9 Q. Dr. Durso, where was that autopsy performed?

10 A. In the morgue at Palmetto-Health Richland Hospital.

11 Q. Can you describe to the jury how Mr. Jones's body was
12 presented to you?

13 A. So, it comes sealed in a body bag, the person's name
14 on the outside of the body bag. I did this autopsy for the
15 Richland County Coroner's Office. The Richland County
16 Coroner's Office usually unlocks the body bag. Usually
17 there's a seal on the body bag. They open the body bag,
18 and then they take photographs, and we begin our
19 examination.

20 Q. Were employees of the coroner's office with you during
21 this examination?

22 A. Yes.

23 Q. And is that standard?

24 A. Yes.

25 Q. What about members of the Richland County Sheriff's

1 Department?

2 A. Usually someone is there as well, yes.

3 Q. And can you -- what were your initial observations of
4 Mr. Jones?

5 A. He appeared to be a trauma patient with multiple
6 gunshot wounds. It also appeared that he had undergone
7 significant medical intervention in an attempt to save his
8 life where he had undergone some large surgical incisions.

9 Q. And how many gunshot wounds were you able to determine
10 this victim suffered?

11 A. He suffered five exiting gunshot wounds. So, he had
12 five entrance wounds and five exit wounds.

13 Q. Can you describe for the jury how you're able to
14 determine whether or not a gunshot wound is an entrance
15 wound or an exit wound?

16 A. Sure. So, they have very different appearances. An
17 entrance wound, as the bullet perforates into the body, it
18 begins for a split second to push against the skin, which
19 actually causes an abrasion around the entrance. So, it's
20 called an abrasion collar, and they're usually round
21 because the bullet's spinning and going, you know, nose
22 first into the body.

23 Exit wounds are usually more -- a little bit more
24 atypical looking. They don't usually have an abrasion
25 collar because after going through the body, they hit

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1 things and they start flipping and, you know, spinning.
2 They're not going first nose first and spinning like they
3 first did when they come out of the barrel of the gun.

4 Sometimes exit wounds can have a little bit of an
5 abrasion collar if the skin is pressed up against something
6 hard, either another piece of skin or a wall or a tight
7 piece of clothing, and as a bullet comes out, it pushes the
8 skin up against the hard object and that's called a short
9 exit wound, but we can usually determine, by following the
10 bullet path, which is the entrance and which is the exit.

11 Q. Dr. Durso, do you diagram these entrance and exit
12 wounds?

13 A. I do.

14 Q. I want to show you what's been marked as State's
15 Exhibit 206 and ask you if you recognize this.

16 A. I do.

17 MR. SUTHERLAND: No objection, Your Honor.

18 MS. WALKER: Your Honor, at this time the state seeks
19 to admit Exhibit 206 into evidence.

20 THE COURT: Without objection.

21 (DIAGRAM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
22 NUMBER 206.)

23 MS. WALKER: Your Honor, may the witness step down?

24 THE COURT: She may. Doctor, if you would step down.
25 I'm sure she's going to ask you to explain that exhibit.

1 Ladies and gentlemen of the jury, if at any time you
2 cannot see it, just raise your hand. I will make them
3 reposition themselves.

4 BY MS. WALKER:

5 Q. Is this the diagram of Brandon Jones?

6 A. Yes.

7 Q. As indicated here?

8 A. Yes.

9 Q. And how many entrance and exit wounds were there -- or
10 entrance wounds?

11 A. Five.

12 Q. Can you please walk this jury through those entrance
13 wounds?

14 A. Can I walk through the whole ---

15 Q. The whole -- yes.

16 A. Okay. So, the first wound I'm going to describe
17 enters the right back here. I called it H here. So, it's
18 going to be right upper back. That's an entrance wound.
19 So, after perforating through the back here, it goes to the
20 ribcage, perforates through the right lower lobe of the
21 lung, goes through the lung, and exits right over here kind
22 of over on the right side. So, this projectile is going
23 from back to front, from left to right, and slightly
24 downwards. So -- and it perforates the right lung. So,
25 that's the first gunshot wound I noticed.

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1 Q. The projectile went at a downward angle?

2 A. Slightly downwards, going downwards.

3 Q. Okay, and then the next.

4 A. So, the next gunshot wound I'm going to describe, the
5 entrance wound is labeled P here. I mean, left back. It
6 perpetrates into the -- through the ribcage. It then
7 perforates the left lung, the opposite lung here. It
8 then also perforates through the liver and through the
9 stomach, and then exits through the stomach here, which is
10 labeled I.

11 This is actually an open incision here, which is made
12 by the surgeon in an attempt to save his life, and the exit
13 -- they actually cut through part of the entry wound there,
14 but I was still able to see, you know, to kind of push it
15 back together and see where the exit wound was. So, it
16 came out here. And so this projectile was going, again,
17 from back to front, also from left to right, and slightly
18 downwards.

19 Q. Okay.

20 A. Okay.

21 Q. Is there a -- the initial gunshot wound because there
22 are just two ---

23 A. That's two. So, the third gunshot wound enters here
24 on the left hip area. It then goes through mainly just
25 soft tissue muscle and exits here on the back of the left

1 leg. It didn't hit any major vital structures, meaning it
2 didn't hit any major organs, did not hit any major vascular
3 structures like any major arteries or anything like that.
4 So, that wound alone would not have killed him.

5 Q. Okay.

6 A. And that wound was going, again, from left to right,
7 slightly downward, and this is actually the one that went
8 slightly from the front to the back.

9 Okay, the fourth gunshot wound I noted was here on the
10 left neck. So, there were two holes right next to each
11 other, and I could actually put a probe through and connect
12 the two. So, it actually was very superficial; it just
13 kind of went through skin. I couldn't tell which direction
14 it was going in. There was nothing within these two to
15 tell me if it was going from back to front or front to
16 back. I cannot tell you.

17 The last gunshot wound, the fifth gunshot wound, is in
18 the right arm over here. So, the entrance wound is labeled
19 E. It's right here on the back part of his arm, and it
20 actually exits over here onto the front part of his arm.
21 It did actually perforate the fracture the ulna, which is
22 one of the arm bones over here, and those are all five
23 wounds.

24 Q. And we, we assign, I guess, a number to them, a
25 sequential order. Is that necessarily the order in which

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1 the victim was shot?

2 A. No. It's just the order in which I documented them.

3 I cannot tell which order these wounds occurred in.

4 Q. So if I'm to understand you, there's one here in this
5 area ---

6 A. Yes.

7 Q. --- in the left arm? Neck?

8 A. Yes.

9 Q. Back?

10 A. Two to the back.

11 Q. Two to the back.

12 A. One exited over here on the right side and the other
13 exited here going towards the stomach.

14 Q. Yes, ma'am.

15 A. And then there's the one to the left hip that comes
16 out the back of the left leg.

17 Q. Okay, and which, if any of these gunshot wounds, was
18 the fatal gunshot wound?

19 A. The two most fatal wounds would then be these that
20 entered the back that perpetrated between these two. Both
21 lungs were perpetrated, as well as the liver, which bleeds
22 profusely when it's perforated. So, those will be from the
23 single wounds.

24 Q. And were you able to document any other abnormality or
25 abrasions to the -- this victim?

1 A. Yes. He had some little abrasions on his forehead and
2 his knee. They were kind of dry in appearance, to make me
3 think they occurred right around the time of death, but
4 there wasn't a lot of wet flow to it to make them look
5 fresher. So, he likely fell kind of face forward onto his
6 knee with his head straight down.

7 Q. And if he had been hit in the head before that, would
8 that also cause ---

9 A. Yeah.

10 Q. --- injury to the head? Doctor, will you take the
11 stand, please?

12 Those wounds that we just went over, the gunshot
13 wounds, were you able to determine a range at which those
14 gunshot wounds were made?

15 A. I was not. So, the things we looked for to see how
16 close or how far a gunshot wound is, we look for soot, you
17 know, which comes right out of the barrel of the gun. It
18 has to be pretty close to have soot. So, within six inches
19 at most, and stippling, which is from little particles of
20 gunpowder that actually hit the skin and kind abrade the
21 skin because it's kind of little scrapes.

22 I have not seen either of those. However, if there
23 was thick clothing or if the bullet went through something
24 else first, you also would not see those. So, I was not
25 able to determine a range because I did not see soot or

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1 stippling on the skin.

2 Q. And I guess like the month like January when it was
3 cold outside, if someone has on several layers of clothing,
4 would that inhibit your ability to see soot or stippling?

5 A. Yes, several layers of thick clothing.

6 MS. WALKER: Beg the court's indulgence, Your Honor.

7 (A PAUSE.)

8 MS. WALKER: I have no further questions. Thank you,
9 Doctor.

10 THE COURT: Cross.

11 MR. SUTHERLAND: Just briefly.

12 CROSS-EXAMINATION BY MR. SUTHERLAND:

13 Q. Doctor, hi. Just wanted to, to go over just the last
14 bit ---

15 A. Sure.

16 Q. --- really. When you said it's indeterminate and you
17 couldn't tell, is there sort of a maximum or a minimum
18 range? I think you said it would have to be a certain
19 distance away to get the soot or the stippling on it?

20 A. Right.

21 Q. Okay. Then within six inches with the soot and with
22 the stippling?

23 A. It's around twelve to eighteen inches that you would
24 see stippling.

25 Q. Okay, twelve to eighteen inches, but because none of

A. DURSO - CROSS-EXAMINATION / REDIRECT EXAMINATION

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1 that was present, you really can't tell?

2 A. I cannot tell.

3 Q. So, would it just then be potentially out to the range
4 of the firearm -- of the distance, you know, if I had a
5 rifle from here to across the room?

6 A. I couldn't tell.

7 Q. Okay. Couldn't tell. All right. Thank you.

8 MR. SUTHERLAND: No further questions.

9 THE COURT: Thank you.

10 REDIRECT EXAMINATION BY MS. WALKER:

11 Q. The gunshot wounds that you noted on Brandon Jones,
12 were they consistent with someone standing over him, maybe
13 twelve to eighteen inches away and firing at his body?

14 A. It's possible, yes.

15 Q. Thank you, Dr. Durso.

16 MS. WALKER: I have nothing further.

17 THE COURT: All right. You may step down. May she be
18 released from her subpoena?

19 MS. WALKER: Yes, sir.

20 THE COURT: Thank you, Doctor.

21 WITNESS: Thank you.

22 THE COURT: You're certainly welcome to go.

23 (THE WITNESS EXITS THE STAND.)

24 THE COURT: Next witness, please.

25 MS. SIMPSON: State calls Trisha Odom.

T. ODOM - VOIR DIRE EXAMINATION BY MS. SIMPSON

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1 THE COURT: Ms. Odom, please.

2 Ms. Odom is what type of witness please?

3 MS. WALKER: The fingerprint analyst.

4 THE COURT: All right. Ladies, if y'all want to get
5 your children, you're welcome to. Give me one second and
6 let this family get back in the courtroom.

7 TRISHA ODOM, BEING DULY SWORN,
8 TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Have a seat in the witness stand,
10 please.

11 THE COURT: Ms. Simpson, hold on one second.

12 MS. SIMPSON: Yes, sir.

13 (A PAUSE.)

14 THE COURT: All right. Thank you.

15 CLERK OF COURT: State your name for the record.

16 WITNESS: My name is Trisha Collins Odom. The
17 spelling of my last name is O-d-o-m.

18 DIRECT EXAMINATION BY MS. SIMPSON:

19 Q. Investigator Odom, where are you employed?

20 A. At the Richland County Sheriff's Department.

21 Q. And what is your current position there?

22 A. I am senior latent prints analyst.

23 Q. As a senior latent print analyst, are you part of the
24 Crime Scene Unit as a whole?

25 A. Yes, ma'am.

1 Q. And are you actually trained in a number of different
2 areas involving crime scene investigation?

3 A. I am.

4 Q. Can you tell the jury a little by about your education
5 and your background with crime scene investigation, to
6 include fingerprint analysis?

7 A. Sure. I have a degree in criminal justice from the
8 University of South Carolina. I started as a patrol
9 officer for the City of Forest Acres, where I attended the
10 police academy. And then in 1999 I joined the Richland
11 County Sheriff's Department as a road deputy. In December
12 of that year, I was promoted to the -- what we call then
13 the forensics unit and started my training in crime scene
14 and latent print analysis.

15 In addition to an on-the-job training program, I've
16 also been to a number of training classes and seminars that
17 help me not only with the crime scene aspect of my job, but
18 also the latent prints aspect, which is what my primary
19 duties are now. Shall I go over some of those?

20 Q. Certainly.

21 A. Yeah, I've been to an advanced palm print
22 identification course, a basic fingerprint training course,
23 forensic ridgeology course, and ridgeology is just a, a
24 fancy word for the way we do our comparisons. I've also
25 been to a latent print examination, a complex latent print

T. ODOM - VOIR DIRE EXAMINATION BY MS. SIMPSON

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1 examination course in addition to processing courses and
2 chemical processing courses and reconstruction courses
3 involved with the crime scene portion of our job.

4 Q. And as the senior latent print analyst, what do your
5 current job duties include?

6 A. My primary responsibility is to do the comparison, all
7 of the latent prints that come in to our department. Crime
8 scene units and regular street level deputies will turn in
9 latent prints, and we have a fingerprint system that all of
10 them that are sufficient are submitted through, and that's
11 typically where we get our comparison opportunities. And
12 we try to determine who made the latent prints that were
13 left behind at a crime scene.

14 Q. And do you actually participate in continuing
15 educational courses or training ---

16 A. Yes.

17 Q. --- as well? All right, and have you testified as an
18 expert before?

19 A. I have.

20 MS. SIMPSON: Your Honor, at this time ---

21 Q. about how many times would you say you've testified as
22 an expert?

23 A. Twenty-seven.

24 MS. SIMPSON: Your Honor, at this time I would offer
25 Investigator Odom as an expert ---

1 THE COURT: Any ---

2 MS. SIMPSON: --- in fingerprint analysis.

3 THE COURT: Any cross-examination of her
4 qualifications?

5 MR. SUTHERLAND: No, sir, no objection.

6 THE COURT: All right. She'll be allowed to render
7 opinion testimony, qualified as an expert in the field of
8 fingerprint analysis.

9 MS. SIMPSON: Thank you, Your Honor.

10 DIRECT EXAMINATION BY MS. SIMPSON:

11 Q. Now, you've used the term latent print. What exactly
12 is a latent print?

13 A. Well, the word latent just means unseen. But in the
14 crime scene world, we use the term latent print to describe
15 any kind of fingerprint that's collected from a crime
16 scene. It can be latent, unseen, meaning you have to do
17 something to make it visible like process it with
18 fingerprint powder or some chemicals that we have. It can
19 also be visible, like in blood or mud or oil, and it also
20 can be a 3D print, which we call plastic print.

21 Q. And with respect to fingerprints, can you tell us how
22 they identify an individual? Are you able to identify an
23 individual from a fingerprint?

24 A. Yes, ma'am. If you take a look at the little lines
25 that are on your fingerprint tips, the lower digits of your

T. ODOM - DIRECT EXAMINATION BY MS. SIMPSON

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1 fingers and your palm area, these little lines we call
2 ridges. They're friction ridges; they help you grasp
3 things. The way the friction ridges are on your -- each of
4 your fingers is absolutely individual. No one else in the
5 entire world has the same fingerprints that you do, and you
6 don't have the same fingerprints on each of your
7 fingertips.

8 Now, the fingerprints can be classified into three
9 basic types. They are a roll pattern, which is just
10 circular pattern. They can be a looping formation, which
11 means that the ridges start on one side of the finger, come
12 up, loop around, and they exit out the same side of the
13 finger or an arch formation, which is the ridges start on
14 one side of the finger. They could potentially sort of
15 thrust up and then go back down and exit out the other
16 finger. So, everybody falls into one of those three
17 patterns, that your fingers falls into one of those three
18 patterns.

19 But in addition to those pattern types, we also have
20 these very small details on each of the ridges that are
21 called minutiae points. Minutiae points are typically --
22 they fall into three categories. They can either be where
23 a ridge flows on the fingers and then stops. We call that
24 an ending ridge. They also branch out into two or three
25 different ridges. We call that a bifurcation, or they can

1 be a very, very small ridge formation, and we call that a
2 dot because it looks exactly like that, a dot.

3 Now, the way that we determine who makes the
4 fingerprint is to take a look at those small ridge details
5 and see if we can find those same details in the known
6 print that we have.

7 Q. And so for comparison purposes, you would need a known
8 print as well as, I guess, the latent print or print
9 developed from some item or surface?

10 A. That's right.

11 Q. Can you tell the jury about how fingerprints are left
12 on a surface or how they, how they're left and how that
13 surface may affect the ability to collect the print?

14 A. I usually describe a fingerprint as a lot like a, a
15 stamp that you get at a craft, a craft store. If it's --
16 if the same amount of ink is applied at the same pressure,
17 at the -- on a level surface, it's going to be the exact
18 same impression over and over again.

19 Well, your finger's a little bit different, of course,
20 because it's flexible. The skin there is flexible. It can
21 move; it can bend. So, it's not going to be exactly the
22 same every single time. The surface, if it's flat and
23 smooth, it's a really good surface. But if it's got a
24 texture to it, a lot of times you'll lose the ridge detail
25 in that texture. If the fingers are very dirty or very

T. ODOM - DIRECT EXAMINATION BY MS. SIMPSON

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1 clean, you might not be a fingerprint because the, the
2 ridges will fill in with whatever the, the dirt is. If
3 it's dirt or oil or blood or something like that, it
4 sometimes will obscure those fine details and not allow us
5 to look or to be able to see the small details, or if your
6 finger's completely dry.

7 The ink that I refer to in most cases is going to be
8 the sweat and the oils that, that everybody exudes just
9 during the course of a day. If you just washed your
10 fingers, you're a lot less likely to leave a fingerprint
11 behind than you are if you, say, are sweating just a little
12 bit.

13 So, in a perfect world, if you have an absolutely
14 perfect finger that doesn't have any kind of damage to it
15 caused by disease or, or some sort of defect, and you have
16 the perfect amount of sweat or oil, and you have a perfect
17 surface, you're typically going to get a fingerprint. But
18 that doesn't happen a whole lot.

19 Q. And how do persons -- actually, I believe you referred
20 to an ink stamp. So, if I directly touch a perfect
21 surface, what about, like, if I swipe or move? You can
22 smudge the fingerprint as well, correct?

23 A. Sure. Just like if you were writing with an ink pen
24 and you, as you wrote, you rubbed through it, that ink's
25 going to get smudged out. So, if you touch and then move,

1 that ridge detail is going to be smudged away so we won't
2 be able to see it.

3 Q. Okay, and you talked a little bit about the
4 fingerprints, how they're collected from an item. Can you
5 explain the processes regarding the powder that is used or
6 the, I guess, Super Glue from my lay -- layman's term?

7 A. Okay. Well, there's several different ways to process
8 an item to develop latent prints. Again, with latent
9 prints, they're unseen. So, you have to do something to
10 make them visible. We have a process that the fancy name
11 is cyanoacrylate ester, but it's just a really fancy
12 version of Super Glue. That's all it is.

13 You heat it up. You put an item in a shut up box. We
14 have a big nice chamber that we use. We use a little bit
15 of humidity and the Super Glue turns into a gas. The gas
16 adheres to the moisture in the fingerprint, and it
17 stabilizes it so that you can later on possibly process it
18 with fingerprint powder to make it more visible.

19 Now, the Super Glue itself, when it, when it sets up
20 the fingerprint, it's white. So, you can see it, but it's
21 a lot easier to see it if you use -- like, we have carbon
22 or graphite powder that we put on the item, and everybody's
23 seen on TV where they have the fingerprint brush and they,
24 they do the little twirly thing, and they get the perfect
25 fingerprint, and that's the basic idea of it. So, with the

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1 Super Glue, you basically stabilize the fingerprints so
2 that you can then process it with the powder, and the
3 powder is what actually makes it visible.

4 Now, we don't lift a fingerprint itself. What we'll
5 do is apply the tape to the fingerprint that's been
6 developed and lift it up, and what we're actually lifting
7 up is the powder that's on the impression rather than the
8 fingerprint itself. We'll put that on the fingerprint card
9 and that's what people turn in, the deputies and the
10 investigators turn in to us to see if we can determine who
11 it came from. Excuse me.

12 Q. And as far as when making comparisons, what are some
13 of the basic factors or similarities or things that you're
14 looking for with respect to the print?

15 A. It's -- we're going to go back to those, those
16 minutiae points that I referred to earlier, the
17 bifurcations, the ended ridges, and the dots, and not just
18 that there is a bifurcation at a particular location, but
19 how the ridge itself is shaped is what we're looking for.

20 Q. And in order to make a comparison, do you actually --
21 you stated that latent prints are submitted to you, but do
22 you actually need a known print as well to actually compare
23 it to?

24 A. Yes, ma'am.

25 Q. And turning your attention to this page, did you

1 actually receive some print cards ---

2 A. I did.

3 Q. --- containing known prints ---

4 A. I did.

5 Q. --- of certain individuals?

6 A. Yes.

7 Q. I'm going to show you what's been marked as State's
8 224, 225, 226, and 227. Do you recognize these?

9 A. Yes, ma'am.

10 Q. And what are those?

11 A. These are the fingerprint cards or four of the
12 fingerprint cards that I used in making comparisons on in
13 this case.

14 MS. SIMPSON: Okay, and ---

15 MR. SUTHERLAND: No objection, Your Honor.

16 MS. SIMPSON: Your Honor, at this time I'd offer
17 State's 224, 225, 226, and 227 into evidence.

18 (FINGERPRINT CARDS MARKED INDIVIDUALLY INTO EVIDENCE
19 AS STATE'S EXHIBIT NUMBERS 224, 225, 226, 227.)

20 BY MS. SIMPSON:

21 Q. Now, who -- these are inked cards. How are -- how
22 does that differ from a latent print? What do you know
23 about a known inked card?

24 A. Well, it's a known standard. That's what this --
25 another term for an inked card is just a known standard.

T. ODOM - DIRECT EXAMINATION BY MS. SIMPSON

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1 We know the person that the fingerprint is coming from.

2 Q. Okay. So, there's no doubt that that person's prints
3 are on those cards?

4 A. Right.

5 Q. Whose prints did you have in -- located on the print
6 cards?

7 A. I have a Vincent Phillip Nelson, Jr. I have a ---

8 THE COURT: What number is he, please?

9 WITNESS: I'm sorry. That's 224.

10 BY MS. SIMPSON:

11 A. On State's 225 I have Demetrice Roosevelt James, 225.

12 On 226 I have a Maurice Alphonso Roberts. And on 227 I
13 have a Deshawn McClary. No middle name is indicated.

14 Q. And I'm also going to show you -- let me back up.
15 Postmortem prints, what is meant by that term?

16 A. Postmortem prints are known fingerprint standards that
17 are typically rolled at an autopsy.

18 Q. And I want to show you what's been marked as State's
19 Exhibit 33. Do you recognize that?

20 A. Yes, I do.

21 Q. And what is that?

22 A. These are the postmortem fingerprints of Brandon N.
23 Jones.

24 MS. SIMPSON: Your Honor, at this time I would offer
25 State's Exhibit 33 into evidence.

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1 MR. SUTHERLAND: No objections.

2 (POSTMORTEM PRINTS MARKED INTO EVIDENCE AS STATE'S
3 EXHIBIT NUMBER 33.)

4 BY MS. SIMPSON:

5 Q. And were those items, the known prints, the
6 postmortems, as well as the print cards, used for
7 comparisons in this case?

8 A. Yes, ma'am.

9 Q. And did you also -- well, what items did you receive
10 from ---

11 A. I received ---

12 Q. --- there?

13 A. I'm sorry. I received four latent fingerprint cards
14 to compare.

15 Q. To compare to the known prints that you had?

16 A. Yes, ma'am.

17 Q. And tell us a little bit about what the latent -- the
18 items that you actually examined and received.

19 A. Okay. The latent prints cards, what we'll do is each
20 individual latent card, we will give it an L number and L
21 just stands for latent, and then we will sub-number all of
22 the individual latent prints that are on that card. In
23 this case, I received four latent print cards and each of
24 them had a single latent identifiable or what we would call
25 ridge detail prints on them.

T. ODOM - DIRECT EXAMINATION BY MS. SIMPSON

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1 L-1 was a latent card bearing a partial latent print
2 which was developed and lifted by Investigator Rainsford
3 from the rear driver's side passenger door rear. When I
4 write my reports I always try to use the exact same
5 verbiage as is on the back of the latent print card when
6 it's turned in. So, that's what Investigator Rainsford
7 gave as the location of the finger, the latent fingerprint
8 was lifted from.

9 L-2 was a latent print card bearing a partial latent
10 print developed and lifted by Investigator Rainsford from
11 the rear driver's side passenger door front.

12 L-3 was a latent print card bearing a personal latent
13 print developed and lifted by Investigator Y. Woods from an
14 Icehouse beer can.

15 L-4 was a latent print card bearing a partial latent
16 print developed and lifted by Investigator Y. Woods from an
17 Icehouse beer can, and those the -- all of the latent print
18 cards that I received.

19 Q. Okay, and once you received those cards, what is your
20 next step in the process?

21 A. First what we do is we determine whether or not
22 there's enough ridge detail to make a comparison. There
23 are times that we get latent print cards that are turned
24 in, and you can see that there is some sort of impression
25 on there, but there's not enough ridge detail in the

1 fingerprint to make any kind of determination, and we refer
2 to those as being no value. Once we determine it to be no
3 -- of no value, we don't do any kind of comparison on it.

4 Q. Okay, and in this case, were you actually to -- able
5 to make some conclusions based on your comparison?

6 A. I was.

7 Q. Let's go through those.

8 A. Okay.

9 Q. Beginning with L-1, I believe the print developed from
10 the rear driver's side passenger door.

11 A. That's right. I was able to exclude all of the known
12 fingerprint samples from anyone having placed that on the
13 car.

14 Q. Okay, and then with respect to item L-2.

15 A. L-2 was of no value.

16 Q. All right, and when you say you were able to exclude
17 anyone from the -- that you had, those are excluded from
18 the known print cards you have?

19 A. Right, these five individuals did not make that
20 fingerprint.

21 Q. Okay. Then item L-2 also, I believe, from the rear
22 driver's side door of the car?

23 A. That's correct, and that was of no value.

24 Q. And then item L-3, this is from the Icehouse beer can.

25 A. Yes, ma'am, the Icehouse beer can. That was made by

T. ODOM - DIRECT EXAMINATION BY MS. SIMPSON

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1 Brandon Jones's left thumb.

2 Q. Okay, and are you able and do you document where that
3 print is collected from on the item such as the beer can?
4 Do you necessarily know where the print came from off the
5 beer can?

6 A. I don't and that's why I try to always use what the,
7 the lifting officer puts on the card because I have no
8 independent knowledge of where it came from.

9 Q. Okay, but there's no doubt that Brandon Jones's print
10 was on that beer can?

11 A. That's right.

12 Q. And then finally with respect to L-4, what was your
13 determination?

14 A. L-4.1 was of no value.

15 Q. Okay. Now, we know we can't time DNA, meaning that
16 one DNA may have been left on an item or how long the DNA
17 may have been on that item. Is that the same kind of
18 concept with fingerprints? Are you able to time them?

19 A. No. No, ma'am. There is no valid way to determine at
20 what point a fingerprint was left.

21 Q. Okay.

22 MS. SIMPSON: Thank you, Ms. Odom.

23 MR. SUTHERLAND: No questions, Your Honor.

24 THE COURT: All right, you may step down.

25 (THE WITNESS EXITS THE STAND.)

1 THE COURT: All right, we're going to take about a ten
2 to fifteen minute break. Just let me know when you're
3 ready. Please do not discuss the case or deliberate.

4 Everyone else remain seated.

5 (THE JURY EXITS AT 10:27 AM.)

6 THE COURT: Anything from the state before we break?

7 MS. SIMPSON: Nothing, Your Honor.

8 MR. SUTHERLAND: No, sir.

9 THE COURT: All right. Ms. Campbell, let me see you
10 or one of you, whoever can give me an idea. All right,
11 we'll stand at ease for about ten minutes.

12 (OFF THE RECORD.)

13 THE COURT: Anything for the record before we start
14 back by the state?

15 MS. WALKER: Nothing from the state, Your Honor.

16 MR. SUTHERLAND: Nothing from the defense.

17 (THE JURY ENTERS AT 10:44 AM.)

18 THE COURT: Next witness, please.

19 MS. CAMPBELL: May it please the court? State calls
20 Deshawn McClary.

21 DESHAWN MCCLARY, BEING DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Have a seat the witness stand,
24 please. State your name for the record.

25 THE WITNESS: Deshawn McClary.

D. McCLARY - DIRECT EXAMINATION BY MS. CAMPBELL

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1 DIRECT EXAMINATION BY MS. CAMPBELL:

2 Q. Deshawn, how old are you?

3 A. Twenty years old.

4 Q. And where are you from?

5 A. Orangeburg, South Carolina.

6 Q. Do you know the defendant, Maurice Roberts?

7 A. Yes, ma'am.

8 Q. How do you know Maurice Roberts?

9 A. Friends.

10 Q. And how long have been you been knowing Maurice
11 Roberts?

12 A. A few years now.

13 Q. How did you meet him?

14 A. School.

15 Q. What school was that, sir?

16 A. Columbia High School.

17 Q. So, you're from Orangeburg, but you moved to Columbia
18 at some point?

19 A. Yes, ma'am.

20 Q. And what years did you attend Columbia High School?

21 A. 2007 to 2010.

22 Q. Did you graduate?

23 A. No, ma'am.

24 Q. What grade did you go through?

25 A. Till eleventh grade.

1 Q. Do you know Demetrice James?

2 A. Yes, ma'am.

3 Q. And how do you know Demetrice James?

4 A. Friends.

5 Q. Where did you meet Demetrice?

6 A. School.

7 Q. Same school?

8 A. Yes, ma'am.

9 Q. And were all y'all at school together, you, Maurice,
10 and Demetrice?

11 A. Yes, ma'am.

12 Q. But you also -- did you know Vincent Nelson?

13 A. Yes, ma'am.

14 Q. And how do you know him?

15 A. From being out in the neighborhood.

16 Q. And when you say from being out in the neighborhood,
17 what neighborhood are we talking about?

18 A. Hammond Village.

19 Q. And why would you be in the Hammond Village
20 neighborhood?

21 A. Maurice's house.

22 Q. How often would you go over to Maurice's house?

23 A. Almost every day.

24 Q. And that's where you met Vincent?

25 A. Yes, ma'am.

D. McCLARY - DIRECT EXAMINATION BY MS. CAMPBELL

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1 Q. Were you closer to Maurice than you were to Vincent?

2 A. Yes, ma'am.

3 Q. Did Vincent have a nickname?

4 A. Junior.

5 Q. Junior?

6 A. Yes, ma'am.

7 Q. Have you ever heard him called J School?

8 A. No, ma'am.

9 Q. So, you know him as Junior?

10 A. Yes, ma'am.

11 Q. Are you familiar with a rap group called 600?

12 A. Yes, ma'am.

13 Q. And were you part of the 600 group?

14 A. Yes, ma'am.

15 Q. And where would y'all do your music?

16 A. Most of the time at Demetrice house.

17 Q. And, in fact, do you have any, any kind of tattoo?

18 A. Yes, ma'am.

19 Q. And what is your tattoo of?

20 A. 600 and my name on my left arm.

21 Q. And according to you, who all was in the group?

22 A. Me, Maurice, Demetrice, Junior, and two other fellows.

23 Q. That weren't involved in what we're going to talk
24 about today?

25 A. No, ma'am.

1 Q. Did you know Jwaun Duckett?

2 A. Yes, ma'am.

3 Q. And how did you know Jwaun Duckett?

4 A. He was part of 600.

5 Q. Did you ever see Jwaun Duckett over at Maurice's
6 house?

7 A. Yes, ma'am.

8 Q. Who all lived in Maurice's house?

9 A. Him, his mother, and his father.

10 Q. And where was Maurice's house?

11 A. Hammond Village.

12 Q. Before I go any further, you've got pending charges in
13 the solicitor's office?

14 A. Yes, ma'am.

15 Q. And do you have a pending murder charge associated
16 with this case?

17 A. Yes, ma'am.

18 Q. And do you know what sentence that carries?

19 A. Yes, ma'am.

20 Q. You could get as little as thirty years up to life,
21 and you also have a burglary first charge. Is that
22 correct?

23 A. Yes, ma'am.

24 Q. Do you know what your burglary first charge carries?

25 A. Yes, ma'am.

D. McCLARY - DIRECT EXAMINATION BY MS. CAMPBELL

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1 Q. And what's the minimum it carries?

2 A. Fifteen.

3 Q. Up to?

4 A. Thirty to life.

5 Q. Life?

6 A. Yes, ma'am.

7 Q. You also have two counts of attempted murder in
8 association with this case. Is that correct?

9 A. Yes, ma'am.

10 Q. And do you know what those carry?

11 A. Yes, ma'am.

12 Q. What's the maximum those carry?

13 A. Thirty years.

14 Q. So, anywhere up to thirty years?

15 A. Yes, ma'am.

16 Q. From zero to thirty. You also have an attempted armed
17 robbery charge in this case. Is that correct?

18 A. Yes, ma'am.

19 Q. And do you know what it carries?

20 A. Yes, ma'am.

21 Q. What does it carry?

22 A. The same as the other attempted murder.

23 Q. But really zero to twenty. In addition to that, you
24 have a possession of a firearm by a felon?

25 A. Yes, ma'am.

1 Q. And that carries up to five years?

2 A. Yes, ma'am.

3 Q. And finally you have a criminal sexual conduct in the
4 first degree charge?

5 A. Yes, ma'am.

6 Q. And a kidnapping charge?

7 A. Yes, ma'am.

8 Q. And an armed robbery charge?

9 A. Yes, ma'am.

10 Q. And each of those carry up to thirty years as well.
11 Is that correct?

12 A. Yes, ma'am.

13 Q. Do you have a lawyer?

14 A. Yes, ma'am.

15 Q. What's his name?

16 A. Tristan Shaffer.

17 Q. Have you been promised any deals for your testimony
18 here today?

19 A. No, ma'am.

20 Q. Anybody promised you any kind of reduction?

21 A. No, ma'am.

22 Q. Any kind of deal down the road?

23 A. No, ma'am.

24 Q. But you hope, down the road, somebody will consider
25 your testimony if it's truthful?

D. McCLARY - DIRECT EXAMINATION BY MS. CAMPBELL

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1 A. Yes, ma'am.

2 Q. But nobody from my office, the judge, or anyone else
3 has promised you anything?

4 A. No, ma'am.

5 Q. So, you're facing a minimum of two life sentences plus
6 however many other years?

7 A. Yes, ma'am.

8 Q. As far as your prior record, back in 2012 were you
9 convicted of common-law robbery?

10 A. Yes, ma'am.

11 Q. I want to turn your attention back to January the 25th
12 of last year. Were you over at Maurice's house that day?

13 A. Yes, ma'am.

14 Q. And why did you go over there that day?

15 A. Just a normal day.

16 Q. It's what you did every day pretty much, right?

17 A. Yes, ma'am.

18 Q. And when you went over there that day, who all was
19 over there that evening?

20 A. Me, Maurice, his daddy, Junior.

21 Q. What happened after you got over there?

22 A. Well, when I got there, everybody was just basically
23 watching TV, sitting around. I asked Maurice daddy if he
24 wanted to play cards.

25 Q. You asked Maurice's dad?

1 A. Yes, ma'am.

2 Q. If he wanted to play cards?

3 A. Yes, ma'am.

4 Q. So, what happened?

5 A. We was at the table playing cards and overheard
6 Maurice and Junior talking about the studio and ---

7 Q. About the studio?

8 A. Yes, ma'am.

9 Q. And who was talking about that?

10 A. Maurice and Junior.

11 Q. And where was Demetrice at that point? Do you know?

12 A. No, ma'am.

13 Q. Okay, but it was definitely Maurice and Junior
14 talking?

15 A. Yes, ma'am.

16 Q. And what were they talking about?

17 A. Studio, something about a studio. I overheard them
18 and I asked him what he was talking about.

19 Q. And what did they tell you they were talking about?

20 A. Say they had a lick on a studio.

21 Q. Had a what on a studio?

22 A. A lick.

23 Q. A lick?

24 A. Yes, ma'am.

25 Q. Did you know what they meant when they said they ---

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1 A. A robbery.

2 Q. And did they say they already done a lick on the
3 studio or that they wanted to?

4 A. Wanted to.

5 Q. What happened next?

6 A. After that, I went outside. Demetrice showed up after
7 I had already went outside.

8 Q. Okay.

9 A. When I was outside, they came outside. They said we
10 was going to go and plan the robbery or whatnot.

11 Q. In preparation for the robbery, did y'all take any
12 precautions?

13 A. No, ma'am, not that I'm aware of.

14 Q. You don't remember anything about some gloves?

15 A. Well ---

16 MR. SUTHERLAND: Objection, Your Honor. Leading.

17 THE COURT: Sustained. Rephrase the question.

18 BY MS. CAMPBELL:

19 Q. What were you wearing?

20 A. I had on a -- some blue jeans and a black shirt and a
21 black jacket.

22 Q. At any point, did you get anything else from Maurice
23 to put on?

24 A. Yes, ma'am.

25 Q. And what was that?

1 A. He gave me, me to put some gloves to put on.

2 Q. Some gloves to put on?

3 A. Yes, ma'am, latex gloves.

4 Q. And did you put them on?

5 A. Yes, ma'am.

6 Q. Did Demetrice put them on?

7 A. Yes, ma'am.

8 Q. Was Maurice wearing them?

9 A. I believe so.

10 Q. What was the plan that night?

11 A. It was to go over there and get the studio, meet back
12 up.

13 Q. Who all was participating?

14 A. Me, Maurice, Junior, Demetrice, Demetrice.

15 Q. And what was Junior's role?

16 A. He basically set it up.

17 Q. What was he supposed to do when, when y'all got over
18 there?

19 A. Go in the house and scope everything out. He was
20 supposed to call my cell phone, let us know when to come.

21 Q. He was supposed to call your cell phone?

22 A. Yes, ma'am.

23 Q. And let you know when to come. Did he have a phone
24 that night?

25 A. He had Maurice's phone.

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1 Q. And who gave him that phone?

2 A. Maurice did.

3 Q. So, did Vincent go on before you, after you, or at
4 what point?

5 A. Before.

6 Q. And where were y'all when he went in the house?

7 A. Walking up and down the street.

8 Q. At some point, did you get some phone calls ---

9 A. Yes, ma'am.

10 Q. --- or texts?

11 A. Yes, ma'am, he called and he asked to speak Maurice.
12 I gave Maurice the phone, and I don't know what they
13 discussed.

14 Q. At some point, did you get a text from him?

15 A. Yes, ma'am. A few minutes after that, he sent a text
16 to my phone saying he was outside with two of the guys.

17 Q. Two of the guys, and was that the plan?

18 A. Yes, ma'am.

19 Q. And why was he supposed to be outside with two other
20 guys?

21 A. He asked to bring them outside for the -- so we can
22 set them up, I guess.

23 Q. That night were you armed?

24 A. No, ma'am.

25 Q. You weren't?

1 A. No, ma'am.

2 Q. You didn't have any weapon on you?

3 A. Oh, yes, ma'am. I had a pocketknife.

4 Q. Was anybody else in your group armed?

5 A. Yes, ma'am.

6 Q. Who?

7 A. Maurice.

8 Q. What type of weapon did he have?

9 A. He had a gun.

10 Q. Had you ever seen that gun before?

11 A. Yes, ma'am.

12 Q. Where had you seen that gun?

13 A. Maurice's house.

14 Q. Whose gun was it?

15 A. It was Maurice's.

16 Q. Where at Maurice's house had you seen that gun before?

17 A. Laying on the couch beside him.

18 Q. Once you got the text message and the phone call --
19 did the phone call come in first or the text message?

20 A. Phone call.

21 Q. And then was there a text message?

22 A. Yes, ma'am.

23 Q. What did y'all do?

24 A. Maurice took off running down there, down the hill
25 through the driveway. Once he got there, seen him break

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1 out in an altercation where he at. Demetrice took off
2 behind him and I came up. Once we got there, everything
3 got settled down.

4 Q. Let me slow you down a little bit. Who went in first?

5 A. Maurice.

6 Q. And at that point could you see the gun?

7 A. No, ma'am.

8 Q. You said he ran where?

9 A. Down the driveway.

10 Q. And who went in after him?

11 A. Demetrice.

12 Q. And where did they go down the driveway? Where did
13 they end up?

14 A. By a truck right by the side door.

15 Q. And who all was standing out -- were there any people
16 outside that you could see?

17 A. Yes, ma'am, Vincent and two other fellows.

18 Q. You mentioned that somebody got into an altercation.

19 A. Yes, ma'am.

20 Q. Where in the driveway was that?

21 A. You said where?

22 Q. Yes.

23 A. It's on the side of the house.

24 Q. On the side of the house, down next to the house?

25 A. Yes, ma'am.

1 Q. And who got in the altercation down there?

2 A. Maurice.

3 Q. What were you doing?

4 A. I was coming down the driveway still.

5 Q. Was there anybody near you at that point?

6 A. No, ma'am.

7 Q. What did you do?

8 A. Once I got down the driveway, a fellow was running
9 towards me. Slammed him to the pavement.

10 Q. You slammed him to the pavement?

11 A. Yes, ma'am.

12 Q. Was he a big guy or a little guy?

13 A. Pretty big.

14 Q. And what was your role in the robbery that night?

15 A. I was the watch out.

16 Q. Okay. Who were you watching over?

17 A. Maurice.

18 Q. Were you standing near any of the victims?

19 A. Yes, ma'am.

20 Q. And which victim were you, were you next to?

21 A. I believe the deceased.

22 Q. You mentioned that Maurice was down in front of you
23 and Demetrice was in front of you. Did they ever go into
24 the house?

25 A. Yes, ma'am.

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1 Q. And did you go into the house?

2 A. No, ma'am.

3 Q. How many people actually went into the house that
4 night?

5 A. Demetrice and Maurice.

6 Q. And once they got into the house, where was the door
7 that they went in? How did they get in the house?

8 A. Just right by the -- I guess you say it's still the
9 driveway. It's the side door.

10 Q. And was that on the top floor or the bottom floor?

11 A. Bottom.

12 Q. Once they got inside, could you see what was going on
13 at that point?

14 A. No, ma'am.

15 Q. What were you doing?

16 A. I was still standing beside one of the victims.

17 Q. And what was Vincent doing?

18 A. Standing behind -- beside the other victim.

19 Q. Was anybody saying anything?

20 A. No, ma'am.

21 Q. Not at that point?

22 A. No, ma'am.

23 Q. Okay. What happened next?

24 A. About a couple minutes went by. I heard a gunshot.

25 Q. Could you tell where the gunshot came from?

1 A. Inside of the house.

2 Q. And who was in the house at that point?

3 A. Demetrice and Maurice.

4 Q. What happened next?

5 A. Demetrice came running out. Maurice came running out
6 behind him.

7 Q. That's what you saw when you looked up?

8 A. Yes, ma'am.

9 Q. Then what did you see?

10 A. Maurice with the gun in his hand.

11 Q. At that point Maurice has got the gun in his hand?

12 A. Yes, ma'am.

13 Q. Could you see where the gun was when they went inside
14 the house?

15 A. Maurice had the gun.

16 Q. And when you looked up and saw them coming out of the
17 house, who had the gun?

18 A. Maurice had the gun.

19 Q. At that point?

20 A. Yes, ma'am.

21 Q. Do you know who had the gun inside the house?

22 A. No, ma'am.

23 Q. What did you see when you saw Maurice come into the
24 driveway with the gun?

25 A. Demetrice ran up the driveway. I was still standing

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1 by the victim. I heard Vincent yell let's go, yell 600
2 let's go.

3 Q. He yelled 600?

4 A. Yes, ma'am.

5 Q. Let's go?

6 A. Yes, ma'am.

7 Q. And 600 is name of your rap group?

8 A. Yes, ma'am.

9 Q. And what happened next?

10 A. I heard shots going off. I looked. Maurice was
11 standing over the fellow shooting.

12 Q. Which fellow?

13 A. The deceased.

14 Q. The guy that he shot, did he ever have a weapon?

15 A. Not that I was aware of.

16 Q. And where were you when you looked over and saw him
17 shooting?

18 A. Standing beside the guy.

19 Q. And what was going through your mind?

20 A. The first thing I thought was run.

21 Q. Did you shoot the guy in the driveway?

22 A. No, ma'am.

23 Q. Did Demetrice shoot the guy in the driveway?

24 A. No, ma'am.

25 Q. You said you thought to run?

1 A. Yes, ma'am.

2 Q. So, what did you do?

3 A. I ran.

4 Q. Where was Vincent at that point? Do you know?

5 A. I believe he had already ran.

6 Q. Where was Demetrice?

7 A. At the top of the driveway.

8 Q. When you ran, did you run -- where did you run to?

9 A. Back to Maurice's house.

10 Q. On the way back to his house, did you discard any
11 clothing?

12 A. No, ma'am.

13 Q. Did you still have on your gloves?

14 A. No, ma'am. I threw, I threw mines off while running.

15 Q. While you were running?

16 A. Yes, ma'am.

17 Q. And you ran back to Demetrice's house?

18 A. No, ma'am.

19 Q. I'm sorry. Maurice's house. I apologize.

20 A. Yes, ma'am.

21 Q. And once you got to Maurice's house, was anybody else
22 there?

23 A. Once I got there, no, ma'am.

24 Q. Was his father there?

25 A. Yes, ma'am, his father and I believe another one of

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1 his cousins, I think.

2 Q. Did anybody else show up back at Maurice's house?

3 A. Yes, ma'am.

4 Q. Who?

5 A. Maurice, Demetrice, and the other. Vincent showed up.

6 Q. And that night, did anybody talk about what happened?

7 A. Not really.

8 Q. Did you see the gun once you got back to the house?

9 A. Yes, ma'am.

10 Q. And who had the gun?

11 A. Maurice.

12 Q. Do you know what he did with it?

13 A. No, ma'am.

14 Q. What did y'all go over there to rob? What was the
15 plan? What were y'all stealing?

16 A. To take the studio equipment.

17 Q. Once you got back to that house, did you realize that
18 you had been injured?

19 A. Yes, ma'am.

20 Q. And how had you been injured?

21 A. A bullet scraped my leg.

22 Q. Scraped your leg?

23 A. Yes, ma'am.

24 Q. But you could still run?

25 A. Yes, ma'am.

1 Q. Prior to going over there that night, did anyone ever
2 put on any extra clothing?

3 A. Yes, ma'am.

4 Q. Who was that?

5 A. Maurice did.

6 Q. The gun that you saw him that -- Maurice's gun, do you
7 know what kind of gun it was?

8 A. I believe it was a .45 caliber.

9 Q. The knife that you had, did you ever pull it out that
10 night?

11 A. Yes, ma'am.

12 Q. And why did you pull out your knife?

13 A. Holding the man down on the ground.

14 Q. And that's what you did with it?

15 A. Yes, ma'am.

16 Q. Do you remember the man's name or anything?

17 A. No, ma'am, not that I recall.

18 Q. Once y'all got back in the house, what area of the
19 house did Maurice go to?

20 A. He ran upstairs.

21 Q. And do you remember anything that stuck in your mind
22 after he went upstairs?

23 A. I smelled bleach.

24 Q. You smelled bleach?

25 A. Yes, ma'am.

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1 Q. And do you know why you smelled bleach?

2 A. No, ma'am.

3 Q. That night did you know that he had actually killed
4 Brandon Jones?

5 A. No, ma'am.

6 Q. Did you know how many times he shot that gun into
7 Brandon Jones?

8 A. No, ma'am.

9 Q. How many gunshots did you hear out there in the
10 driveway?

11 A. A couple. Four or five.

12 Q. Did you stay at Maurice's that night?

13 A. No, ma'am.

14 Q. Where did you go?

15 A. Back to my brother's house.

16 Q. Where is your brother's house?

17 A. On Broad River Road behind Applebee's.

18 Q. When did you find out that Brandon Jones had died?

19 A. The next day.

20 Q. So, at that point did you turn yourself in?

21 A. No, ma'am.

22 Q. Did you talk to Maurice about what he had done?

23 A. No, ma'am.

24 Q. Over the next several days, did you have any contact
25 with Maurice?

1 A. No, ma'am.

2 Q. Even though you usually went over there every day?
3 Why didn't you go back?

4 A. I was afraid.

5 Q. At some point did the police find you?

6 A. Yes, ma'am.

7 Q. And that would have been ten days, eleven days later
8 about?

9 A. Maybe a week.

10 Q. A week later?

11 A. Yes, ma'am.

12 Q. And you didn't talk to them at first, did you?

13 A. No, ma'am.

14 Q. And later on were you being questioned on a separate
15 offense?

16 A. Yes, ma'am.

17 Q. And did you tell those investigators at Columbia
18 Police Department you wanted to talk to the county
19 officers?

20 A. Yes, ma'am.

21 Q. And did they come and, and get you?

22 A. Yes, ma'am.

23 Q. And at that point, were you in custody?

24 A. Yes, ma'am.

25 Q. And were you under arrest for the murder, the

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1 burglary, the attempted murder, the attempted armed robbery
2 in this case?

3 A. Yes, ma'am.

4 Q. But you decided to talk to them?

5 A. Yes, ma'am.

6 Q. All right. Did you talk to them without a lawyer?

7 A. Yes, ma'am.

8 Q. Did they advise you of your rights?

9 A. Yes, ma'am.

10 Q. Did they go through all your rights with you?

11 A. Yes, ma'am.

12 Q. And that was Investigator Boland and Investigator
13 Tanner?

14 A. Yes, ma'am.

15 Q. And did you tell them you wanted to waive your rights
16 to tell what you knew about what happened that night?

17 A. Yes, ma'am.

18 Q. And did you give them statements about what you had
19 seen?

20 A. Yes, ma'am.

21 MS. CAMPBELL: Beg the court's indulgence.

22 (A PAUSE.)

23 Q. What happened to your phone?

24 A. Threw it away when I was in Orangeburg.

25 Q. One thing. Do you remember giving your statement -- a

1 minute ago you testified that Demetrice went back to the
2 house with you.

3 A. Yes, ma'am.

4 Q. Do you remember giving them a statement about who was
5 back at the house that you saw?

6 A. Yes, ma'am.

7 Q. And who, who did you indicate went back to the house
8 with you?

9 A. Junior and Maurice.

10 Q. Okay. Not Demetrice?

11 A. He was there, too. They must not put it in the
12 statement, though.

13 Q. The person that you saw shooting that night in the
14 driveway that you said shot five times ---

15 A. Yes, ma'am.

16 Q. --- or four or five times, do you see him here in the
17 courtroom?

18 A. Yes, ma'am.

19 Q. Can you describe what he's wearing and where he's
20 sitting?

21 A. White colored shirt on, dress shirt.

22 MS. CAMPBELL: Your Honor, may the record reflect he's
23 identified the defendant? Thank you.

24 MR. SUTHERLAND: Please the court, sir?

25 CROSS-EXAMINATION BY MR. SUTHERLAND:

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1 Q. Mr. McClary.

2 A. Yes, sir.

3 Q. I'm Tivis. I don't believe we've met. I don't know.
4 I may have been in your dorm before visiting other clients,
5 but I'm, I'm Tivis Sutherland. I'm going to ask you some
6 questions about your testimony here obviously, and we'll go
7 back over your record and what you're looking at in a
8 little while.

9 You had testified just now that when you were arrested
10 and in -- charged with the murder, the burglary first, the
11 two attempted murders, and the attempted armed robbery that
12 you did not talk to investigators at that time. Was that
13 your testimony?

14 A. Yes, sir.

15 Q. But you testified that after Columbia police officers
16 had arrested you and charged you with criminal sexual
17 conduct third, a rape charge, charged you with armed
18 robbery, and charged you with kidnapping, that when you
19 were in the custody of the Columbia Police Department, you
20 notified them that you wanted to speak with the
21 investigators in Richland County. Is that correct?

22 A. Yes, sir.

23 Q. Okay. I heard your testimony. You said in the
24 beginning that Junior was supposed to call you. Is that
25 right?

1 A. Yes, sir, my phone. He was supposed to call my phone.

2 Q. Okay. Sure. Sure. Sure, and at the end, after
3 everything has pretty much happened, Junior yells 600 let's
4 go?

5 A. Yes, sir.

6 Q. Are you sure that he didn't yell don't do it, 600,
7 don't do it?

8 A. No, sir.

9 Q. Okay. He didn't yell that, and you testified that you
10 have tattoos on your shoulder?

11 A. Yes, sir.

12 Q. And it's a tattoo with 600 on it?

13 A. Yes, sir.

14 Q. But your testimony here today is that Maurice is in
15 600?

16 A. Yes, sir.

17 Q. Okay. I don't -- I didn't hear you say that Demetrice
18 James had a gun on him or shot anybody during your
19 testimony. Am I, am I right that you did not say that?

20 A. No, sir.

21 Q. Okay. Now, Demetrice James is your co-defendant in
22 the criminal sexual conduct case and the armed robbery case
23 and the kidnapping case. Is that correct?

24 A. Yes, sir.

25 Q. Are you cooperating against Demetrice James in that

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1 case?

2 A. No, sir.

3 Q. Okay, and I think last week you got a strong-armed
4 robbery, you got a conviction for that. Is that correct?

5 A. Yes, sir.

6 Q. Okay, and that was the year before this incident right
7 here, in 2012?

8 A. Yes, sir.

9 Q. And this incident occurred in the -- about three and a
10 half weeks into 2013, in January of 2013. Is that correct?

11 A. Yes, sir.

12 Q. Okay, and Ms. Campbell actually went over it with you.
13 I, I forgot. On the 14th of January, which was ---

14 MS. CAMPBELL: Objection, Your Honor. May we
15 approach?

16 THE COURT: Yes, ma'am.

17 (OFF-THE-RECORD BENCH CONFERENCE.)

18 BY MR. SUTHERLAND:

19 Q. Okay. So, on the 14th of January, which was twelve
20 days beforehand, you were arrested. Is that correct?

21 A. Yes, sir.

22 Q. Okay, and you were charged with possession of a weapon
23 by a person convicted of a violent crime. Is that correct?

24 A. Yes, sir.

25 Q. And I really think, really think we're about to the

1 end of it. Again, it's two life sentences plus 185 years,
2 same as the other fellow.

3 MR. SUTHERLAND: So, I have no further questions.
4 Good luck to you.

5 MS. CAMPBELL: May it please the court? Just one
6 question.

7 REDIRECT EXAMINATION BY MS. CAMPBELL:

8 Q. He asked you about the phone calls. Do you remember
9 what your phone number was?

10 A. No, ma'am.

11 Q. Do you remember giving a statement back ---

12 MR. SUTHERLAND: Judge, she's trying to get
13 additional, additional evidence in.

14 THE COURT: You asked him about the phone calls.

15 MR. SUTHERLAND: Okay.

16 THE COURT: She can.

17 BY MS. CAMPBELL:

18 Q. Is this part of your statement?

19 A. Yes, ma'am.

20 Q. And does that help refresh your memory?

21 A. Yes, ma'am.

22 Q. What was the phone number of the phone call that
23 Vincent Nelson made to you that night?

24 A. (803) 297-4625.

25 Q. 4625?

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1 A. Yes, ma'am.

2 Q. Thank you, sir.

3 MS. CAMPBELL: I don't have anything further.

4 THE COURT: Officer.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: Next witness, please.

7 MS. SIMPSON: State calls Sergeant Scott Faust.

8 STEPHEN SCOTT FAUST, BEING DULY

9 SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Have a seat in the witness stand,
11 please. State your name for the record.

12 WITNESS: Stephen Scott Faust.

13 DIRECT EXAMINATION BY MS. SIMPSON:

14 Q. Sergeant Faust, where are you employed?

15 A. The Richland County Sheriff's Department.

16 Q. And how long have you been with Richland County
17 Sheriff's Department?

18 A. This September will be nineteen years.

19 Q. And what is your current position?

20 A. I am a supervisor over the Special Victims Unit.

21 Q. And what exactly is the Special Victims Unit?

22 A. It is where we investigate in criminal sexual conduct,
23 which is commonly known as rape, involving adults,
24 children. We also look over child abuse. Also investigate
25 missing persons and runaways. Also incorrigible children.

1 We assist families in that matter, too.

2 Q. And while you are over the Special Victims Unit now,
3 with respect to your law enforcement background, have you
4 been involved in homicide investigations and robbery
5 investigations and pretty much ---

6 A. Numerous.

7 Q. --- any kind ---

8 A. I've worked just about every case there is to work.

9 Q. And even as a sergeant, do you sometimes work as an on
10 call ---

11 A. Once every ---

12 Q. --- detective?

13 A. Once every seven weeks we are on call, and I have a
14 team of anywhere to four to six investigators. From
15 Thursday at midnight until the following Thursday at
16 midnight we are on call. During the weekend we handle
17 everything, and during the weekdays we work from 3:30 in
18 the afternoon until 7:00 in the morning.

19 Q. And when you're on call, do you receive pretty much
20 any type of case that may come in?

21 A. That's correct.

22 Q. I want to turn your attention to January of 2013.
23 What was -- were you still in your same position with
24 Richland County?

25 A. Yes. I was a supervisor over the Special Victims

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1 Unit.

2 Q. And were you actually working on call?

3 A. We worked.

4 Q. And did you have occasion to become involved in this
5 case?

6 A. That is correct. At approximately 11:30 our desk
7 sergeant, which is where calls are, are centered through,
8 go through, I received a call from them indicating that we
9 had an incident we referred to as a home invasion with
10 shots fired and people injured.

11 Q. Okay, and if you can speak up just a little bit or
12 maybe pull the mic forward. What type of call came in that
13 was forwarded to you?

14 A. This was what we consider a home invasion. Basically
15 a burglary, but it's with a weapon where people are
16 injured, where shots were fired.

17 Q. And did you learn that there was a victim, multiple
18 victims involved?

19 A. That, that's correct.

20 Q. And that one what -- possibly who was still living,
21 but it was very critical?

22 A. Critically injured.

23 Q. But at this point in the investigation when you were
24 first notified, the deceased, Brandon Jones, was still
25 alive?

1 A. That's correct.

2 Q. After being notified, what did you do?

3 A. I started sending out part of the team members, to
4 include Investigator Boland. Contacted Investigator Bass.
5 Also Investigator Hinson. I would learn that Investigator
6 Bass was over in that area helping out other officers in a
7 unrelated matter, and started having a couple of them
8 headed toward the incident location. Had another
9 investigator, Hinson, head towards the hospital to assess
10 the, the injured parties, and then, and then from there I
11 just took in intel and then put people where they needed to
12 be and handled what I needed to assist.

13 Q. And in a case like this, as things are happening
14 quickly, you know, multiple victims, are a number of
15 investigators required with respect to dealing with the
16 information and the amount of information that's coming to
17 you?

18 A. That's correct.

19 Q. And does all the information coming to you necessarily
20 end up becoming involved or related to the actual shooting
21 or incident?

22 A. No, and when this thing happened at 11:30, it, you
23 know -- anything and everything that could possibly be
24 related basically comes in and comes in to me, and then we
25 assess it, evaluate it, and determine whether or not it's

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1 part of the case or we eliminate it.

2 Q. And Investigator Bass you indicated was near the
3 scene. Did he locate two witnesses who were not injured?

4 A. That is correct.

5 Q. Who were those people?

6 A. Troy Scott and Cari Pearson.

7 Q. And did they actually agree to come and give
8 statements?

9 A. Yes.

10 Q. And did they also identify a person who may be
11 involved with respect to this shooting?

12 A. We, we had a name to start off with.

13 Q. And what name was that?

14 A. I would be told Jonathan or J School was the name that
15 we were trying to identify, and it was somebody that was
16 known to them.

17 Q. Okay, and that's just the initial information, pretty
18 much all you had with respect to identifying ---

19 A. That is.

20 Q. --- the person that they knew?

21 A. Within thirty, forty-five minutes of the incident that
22 I got.

23 Q. Were you also advised -- or without telling me
24 exactly what all you learned, were efforts made to identify
25 J School and Jonathan?

1 A. Yes.

2 Q. Tell me a little bit about those efforts and what kind
3 of intel you had coming in.

4 A. Well, the, the key piece was that Cari believed that
5 she was friends with them on Facebook. So, at that point
6 in time we had her log into her Facebook, and then we went
7 to that particular person's profile.

8 Q. And were you actually or someone in your office able
9 to identify the real name of that individual that she ---

10 A. Yes.

11 Q. --- had known, and what was that name?

12 A. His -- he would be positively identified by his date
13 of birth of [REDACTED]/91 and Vincent Phillip Nelson, Jr., was
14 what we were able to determine off of Facebook, which gave
15 us the positive identification where we were able to locate
16 more information on that individual.

17 Q. Okay, and after learning, I guess, of his identity,
18 did you actually -- were statements taken from both Troy
19 and Cari?

20 A. That's correct. I took them from Troy and another
21 investigator took it from Cari. Investigator Bass.

22 Q. And during the course of this, were you actually
23 notified by another deputy with a K-9 -- from the K-9 unit,
24 Abraham or Aber?

25 A. That is correct.

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1 Q. And what information -- as a result of the efforts you
2 received from him, what did you do?

3 A. At the time of the call we had units, again, in that
4 area. Actually some of them reported, reported hearing the
5 gunshots. You know, at that time there -- everybody's on
6 high alert. They observed a car speeding off from that
7 area just within a close approximate range. Not
8 specifically from the incident location, but in that area
9 of River Drive near Club Crush, if that will kind of give
10 you a parameter. At that time they pulled the vehicle
11 over, and some of the just initial descriptions had some
12 consistencies with the suspects. But after we looked into
13 them, we were able to rule them out.

14 Q. Okay, and did you actually -- I believe Troy Scott,
15 was he still at headquarters?

16 A. He was with me when this information was, was -- got
17 to me and specifics of the information. The traffic stop
18 was -- happened immediately, but as it was filtered in and
19 people were assessing and gathering information and talking
20 to them, it then began to filter in to me.

21 Q. And based on, I guess, photographs and information
22 obtained from Troy that you gave him regarding those
23 suspects, were you able to eliminate them?

24 A. We were.

25 Q. And did he positively eliminate them as being the

1 shooters or involved in the incident?

2 A. He was able to say that the three people that were in
3 that vehicle were not involved, that he did not see them on
4 -- at the incident location.

5 Q. And there was also information given to you from that
6 traffic stop regarding a weapon that had been found.

7 A. That is ---

8 Q. Can you tell us ---

9 A. That is correct.

10 Q. Tell us about that.

11 A. They located a weapon in the vehicle that was a thirty
12 -- a .380 pistol. And based off the information of that, I
13 then wanted to have people, the crime scene and law
14 enforcement that was at the crime scene on Williamsburg,
15 find out if there were any shell casings and, if so, find
16 out if there were any .380s, and I was able to find out
17 that they were not .380s. They were, in fact, .45 caliber
18 shell casings. So, then I knew that that gun was not going
19 to be the gun I was looking for that was at the incident
20 location at Williamsburg.

21 Q. Okay, and I apologize. After that, did you continue
22 your investigation on identifying possible associates with
23 Vincent Nelson?

24 A. The following day we did have somebody come forward
25 and offer up a name based off of obviously the victims

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1 communicating and saying that this is what they looked
2 like. A friend who was not at the scene who was not a
3 victim offered up a possible suspect's name.

4 Q. Let me see if I can find these here. Backing up,
5 before we get to that -- I'm sorry. I jumped ahead. You
6 actually, when speaking with Troy, did you learn that he
7 was involved in an altercation?

8 A. Yes, that in between the struggle that he would end up
9 throwing a fist punch and connecting with one of the
10 suspects.

11 Q. Okay, and because of that information, out of an
12 abundance of caution, what did you do?

13 A. Just knowing the possibility of getting DNA when you
14 have a skin transfer -- a punch to somebody's face could
15 conceivably have a skin transfer -- I would ask Troy that
16 if he had washed his hands, that would pretty much all but
17 cleanse anything. But also with -- you know, I didn't go
18 into detail about shaking hands or hugging anybody, but --
19 or putting his hand in his pocket, but I did ask did you
20 wash your hands and he stated no. So, I figured that it
21 would be a, a -- worth trying to swab his hands, the
22 outside fist portion of his hands, to see if we got any of
23 suspect's DNA to try to identify them.

24 Q. I'm going to show you what's already in evidence as
25 State's 205. Are those the swabs that you actually

1 collected?

2 A. Yes. That is my hand writing and I listed where I
3 collected them, the right fist area, and swabbed it.
4 That's correct.

5 Q. And this point it's early in the investigation. You
6 only have one possible suspect identified. So, you were
7 continuing to look ---

8 A. Technical ---

9 Q. --- for any possible leads?

10 A. Technically, at that time we only had a name of
11 Jonathan and J School. We didn't get Jonathan, also known
12 as J School, positively identified until the next day. So,
13 any and all efforts to try to identify who the suspects
14 were, we were going to -- I was going to do everything I
15 possibly could to try to identify them.

16 Q. Okay, and turning your attention to the 26th, did you
17 learn of an individual by the name of William Liberty who
18 wanted to speak with you?

19 A. That is correct, and, again, our desk sergeant kind of
20 is a filter. If you call 576-3000, which is our main
21 number, and often people call in after a significant
22 incident that's been on the news. He called our desk
23 sergeant who, in turn, called me and stated that they
24 wanted to supply some information in reference to the night
25 of the murder investigation that we were working.

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1 Q. And so it's not uncommon for you to get a number of
2 calls?

3 A. That's correct.

4 Q. And with respect to Mr. Liberty, did you actually
5 speak with him and gain some information?

6 A. We did.

7 Q. And did he give you information based on what he had
8 heard about the suspect's description?

9 A. Based off of what people were telling him some of the
10 suspects looked like, he offered up a name of Leonard
11 Gaston.

12 Q. And did your investigation reveal that he was actually
13 ever present at the scene or had the opportunity to view
14 anything that happened at the incident location?

15 A. William Liberty?

16 Q. Yes.

17 A. Yes, he was not present. He was not a witness; he was
18 not at the [REDACTED] the night of the
19 incident. He was not there.

20 Q. Okay. So -- but you still spoke with him and gathered
21 whatever information he asked of you?

22 A. We will take any leads in until we can rule it out or
23 till we can solve the case.

24 Q. Did you actually, as a result of the information that
25 you had -- did he indicate who Leonard Gaston was and who

1 he was associated with?

2 A. He did. He indicated that he hangs out with that
3 particular -- that crew. Specifically J School.

4 Q. And as a result of the information, did you create a
5 lineup containing Leonard Gaston?

6 A. We did, once we thought we identified who Leonard
7 Gaston was.

8 Q. Or Leonard.

9 A. Leonard. Well, there was a -- some confusion about
10 his name, Leonard, Leonard. Just trying to figure out what
11 his correct information was.

12 Q. Okay, and again, at this point, did you speak with
13 Troy Scott again?

14 A. I did.

15 Q. And was he actually shown additional lineups ---

16 A. He was.

17 Q. --- at that point?

18 A. He was shown a lineup and asked if anybody in that
19 particular lineup was at the incident where the shooting,
20 the home invasion took place.

21 Q. Okay, and with respect to the lineup containing
22 Leonard Gaston, what did he indicate to you?

23 A. He indicated that he thought a particular picture in
24 that lineup was Leonard. But when asked is that a person
25 that was at the crime scene, he stated no, that was not the

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1 person there, nor was that the person that shot his
2 brother.

3 Q. And what was that last part? I apologize.

4 A. He looked at the photo lineup and said that's Leonard.
5 I believe that's Leonard, it looks like Leonard, and then
6 when I said is that the person that was at the crime scene.
7 Is that the person that shot your brother? He said no,
8 that is not the person.

9 Q. Moving on to January 27th, did you have further
10 involvement in this case?

11 A. Yes.

12 Q. Specifically did you go back to the incident location?

13 A. I did. We did a walk through with Trey and Joshua --
14 Josh.

15 Q. Joshua?

16 A. Joshua.

17 Q. And what was the purpose of going back to the scene?

18 A. Just wanted to get a feel for what happened.
19 Obviously some people in that neighborhood initially talked
20 to us due to their injuries. So, we wanted to just do a
21 walk through to make sure we weren't missing anything.
22 Just get a good feel for the crime scene and, and then at
23 that point get statements from people we had not been able
24 to get statements from at that time.

25 Q. And were you still attempting to locate J School or

1 Vincent Nelson, his whereabouts?

2 A. That, that is correct.

3 Q. And did either Trey or Josh indicate that they could
4 possibly point out where he stayed or lived?

5 A. That is correct.

6 Q. And as a result of that information, what did you do?

7 A. I took Trey with me, put him in my car and -- of
8 course with his consent -- and he drove me to two
9 locations. One specifically at [REDACTED], where he
10 stated that that was J School, Jonathan's grandparents, and
11 then he also took me to where he thought that he hung out
12 most, which is where his child's mother lived, which is on
13 Broad River Terrace.

14 Q. Okay, and ---

15 A. And ---

16 Q. Oh, I'm sorry.

17 A. And he stated that he didn't know specifically where
18 she lived. So, I didn't go into that particular apartment
19 complex. I just notated that that was the location where
20 she was possibly living.

21 Q. Now, at this point Trey's out of the hospital. So,
22 you're actually able to talk to him about possibly giving a
23 statement to law enforcement as well?

24 A. That is correct.

25 Q. And did he, in fact, give a statement to law

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1 enforcement?

2 A. He gave a statement. I want to say that one was taken
3 by Investigator Boland, the statement, and then I was not
4 present for the statement, but then I came in afterwards.

5 Q. And did you learn that he had also been shown some
6 lineups of both -- who he knew to be J School?

7 A. I, I, I was present for the showing of the photo
8 lineup.

9 Q. Okay, and did he actually identify someone in that
10 lineup?

11 A. He did. He identified -- just -- he -- Vincent
12 Nelson.

13 Q. Okay, and was he also shown a lineup containing
14 Leonard Gaston?

15 A. We did. Out of -- just to make sure, since there was
16 some mention that Leonard Gaston was there, we wanted to
17 have full confidence that he was not involved since Trey
18 was there, the person that was shot that was looking and
19 fighting with the person in front of him. And he indicated
20 that he was -- that Leonard Gaston is not the person that
21 he was involved in that incident.

22 Q. So, he said in that lineup he actually didn't -- he
23 indicated that no one ---

24 A. Yeah.

25 Q. --- was involved?

1 A. Yeah, no one in that lineup was involved at the time
2 of the incident.

3 Q. And while all this is going on, there are a number of
4 investigators. You've mentioned Boland, Hinson. Are they
5 covering different aspects of the investigation?

6 A. That is correct.

7 Q. Moving to, I believe, January 28th, did you receive
8 some information regarding this case in reference to an
9 anonymous tip that had been received?

10 A. As I'm again, I'm the on-call investigator, so that
11 weekend when we left Sunday, late Sunday night, early
12 Monday morning, I would go home to get rest and then the,
13 the day shift investigators then come in and start running
14 with it. At approximately 3:30ish when I came in, I
15 received a call from Investigator Todd Jordan, who received
16 a call from -- a Housing Authority Officer Cruz asked me to
17 call him. That somebody called him and offered up some
18 potential evidence involved in the murder, and at that time
19 I followed up with him.

20 I spoke to Officer Cruz, and he stated that the
21 specific information was that -- his words to me was that
22 somebody said that J.G., which I felt likely meant Calli G,
23 which was the Facebook name of Jonathan or Junior or the --
24 also known as Vincent Nelson, and Maurice Roberts put a
25 shirt and hat behind the Building 8 at Hammond Village,

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1 which was off of Marlboro Street. When I heard that, I
2 felt like I needed to go follow up and, and look into this.

3 Q. Did you actually go out to Building 8 at Hammond
4 Village?

5 A. I want out to assess the situation, and once I got
6 there I determined that this -- I learned that Vincent and
7 Maurice had been taken into custody. So, with those names
8 being connected by this tipster, I felt that this is
9 evidence that we needed to collect, and at that time I
10 called our lab unit to come process and collect evidence.

11 Q. And I'm going to show you what's been marked as
12 State's 209, 208, 210, 211, 212, 213, and 214, and 215,
13 216, and 217, 218, 219, 220, 221, and 222, and ask if you
14 recognize these.

15 MR. SUTHERLAND: I've looked at them. No objection.

16 Q. Okay.

17 A. On January 28th, these -- that's the scene that I saw
18 minus the yellow markers, which were obviously were put,
19 put down by our lab unit, but those -- that is what I
20 found, and at that time determined that they probably --
21 that they were tied in and that we needed to look into
22 them.

23 Q. Okay.

24 MS. SIMPSON: Your Honor, at this time I would offer
25 into evidence State's 208 through 222.

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1 MR. SUTHERLAND: Those are the ones that I've, I've
2 reviewed?

3 MS. SIMPSON: Yes.

4 MR. SUTHERLAND: There's no objection.

5 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
6 STATE'S EXHIBIT NUMBERS 208, 209, 210, 211, 212, 213, 214,
7 215, 216, 217, 218, 219, 220, 221, 222.)

8 BY MS. SIMPSON:

9 Q. Okay. I'm going to show you -- in Hammond Village,
10 did you learn -- you said you learned about Maurice
11 Roberts.

12 A. That, that is correct.

13 Q. Who was in custody?

14 A. Yes.

15 Q. And were you aware that he also lived in Hammond
16 Village at the time?

17 A. I learned that he lived in close proximity to Building
18 8.

19 Q. I'm going to show you what's in as State's 209 and
20 what is that?

21 A. That is the approach that if I -- if you're looking at
22 that picture, if you go up on the side of that building
23 that you can see and hang a left, approximately 25 to 35
24 feet down behind that building is where I located the next
25 set of pictures.

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1 Q. And I believe -- we'll start with 210 and 208. Let's
2 start with 210.

3 A. That's ---

4 Q. Is that the back of the building?

5 A. As you're looking at the front of the building and you
6 go to the side of it, what you can see in the picture, then
7 hang a left, that is the view you will see.

8 Q. And so this building, Building 8, kind of backs up to
9 a fairly wooded area ---

10 A. That's correct.

11 Q. --- in Hammond Village? And then with respect to 208
12 -- let me get a farther away picture. State's 211, what is
13 that?

14 A. That is where the items that we located -- that we
15 collected were located.

16 Q. All right. So, that's how it was when you approached
17 it?

18 A. That's correct. I believe there is a yellow marker
19 there, but, but that is, that is untouched, uncollected.

20 Q. And these items are kind of scattered and also behind
21 -- to be honest, I'm not sure exactly what that is in the
22 picture, but a fence area in the woods, wooded area,
23 correct?

24 A. That, that is correct.

25 Q. Then in State's 208, what do we see here?

1 A. That is a plastic glove, latex glove, that is
2 basically looked, looks -- appears to be thrown and is
3 hanging on some branches.

4 Q. Okay. So, this area has branches, trees, kind of
5 woods around it?

6 A. Yes.

7 Q. And then in 212, State's 212 and 213, this is been
8 marked. What do we see at marker A?

9 A. Marker A is a latex glove.

10 Q. So, this is another glove and these were kind of
11 scattered as though they had just been thrown, dropped, or
12 tossed?

13 A. That is correct. They were in close proximity, but
14 they were not on top of each other. Within about a
15 10-by-10 foot area.

16 Q. And then in State's 214, I believe we can see the
17 proximity of marker A and marker B?

18 A. That is correct.

19 Q. And both of those are the gloves that were located at
20 the scene. And State's 215 and 216, are those just close
21 ups ---

22 A. Yes.

23 Q. --- of those items?

24 A. Yes.

25 Q. Finally, we also have what is in State's 217 and 218.

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1 What is that?

2 A. That is an additional glove; that is the one that was
3 actually in the branches that you saw without the marker.
4 The markers are there to easily refer to the particular
5 ones versus staying -- one of the four that are in that
6 area. Those are identifiers.

7 Q. Okay, and you're standing here as the Crime Scene Unit
8 is actually marking and photographing and collecting?

9 A. I was just standing in proximity, but not in the crime
10 scene.

11 Q. Okay, and in State's 219 and 220, what do we see here?

12 A. That's a blue hat and a black shirt.

13 Q. And these were located in close proximity to the
14 gloves as well?

15 A. That is correct.

16 Q. And then 221 and 222 are actually both the hat and
17 what other item?

18 A. Another latex glove.

19 Q. And were these items ultimately, which are already in
20 evidence, collected...

21 (A PAUSE.)

22 Q. Is this the blue hat that we saw in the pictures?

23 A. That is correct.

24 Q. And it's a Yankees ball cap, correct?

25 A. Yes, NY, which would stand for the Yankees, New York.

1 Q. And the glove I'm going to show that is already been
2 introduced -- I'm sorry. The hat. Offering State's 36.
3 The gloves in State's 41, 39, 40, and 42, are those the
4 gloves that were collected from the scene?

5 A. That's correct, and they are marked with the
6 identifiers that we see in the pictures.

7 Q. Okay. So, marker A is the glove found at marker A?

8 A. That, that is correct.

9 Q. And all these items were collected, properly filled,
10 packaged, and not tampered with in any way?

11 A. That is correct.

12 Q. And they were submitted into evidence for further
13 testing?

14 A. Yes.

15 Q. I believe a -- also a black shirt was found at the
16 scene?

17 A. That, that's it. Yes, ma'am.

18 Q. I'm a little too close. Okay, and after January 28th
19 and collecting the -- or in observing these items, were you
20 involved in the investigation further?

21 A. No. Obvious -- when I came in that Monday, earlier
22 that morning, the investigators had come and picked up
23 where we had left off and developed some significant breaks
24 in the case. And at that point, the investigators that
25 were involved that morning then carried on with the

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1 investigation.

2 Q. Okay, and did you apprise them of everything that had
3 been going on with the course of the investigation up to
4 that point?

5 A. I did, and on top of -- you know, I -- yes, and there
6 was an additional name that I did offer up based on while I
7 was out there at that particular crime scene.

8 Q. Okay, and what was that additional name and how did
9 you come about finding it out?

10 A. There was a CPD Investigator Danue, Investigator
11 Eunice, E-u-n-i-c-e, who states that he knew Roberts, and
12 with him having knowledge and being familiar with that
13 area, I asked him if he knew of anybody that he hung out
14 with that had short, approximate inch-long, twisty type
15 dreads, and that he would offer up the name Demetrice
16 Roosevelt. That he had seen them two together.

17 Q. All, and outside of that, that was the extent of your
18 involvement in this investigation?

19 A. I passed on what I had learned to the investigators
20 who were working earlier that morning, and that was my
21 extent to that point.

22 Q. All right. Thank you.

23 MR. SUTHERLAND: Please the court?

24 MS. SIMPSON: Beg the court's indulgence.

25 (A PAUSE.)

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1 BY MS. SIMPSON:

2 Q. I show you, I apologize, State's 199 and State's 200.
3 Have you had the opportunity to review these?

4 A. Yes.

5 Q. And did they fairly and accurately depict the
6 areas ---

7 A. They do.

8 Q. --- where you were?

9 A. They do. One depicts the overall picture of where the
10 Hammond Village is and the crime scene. The other one is
11 more of where I was at Hammond Village collecting the
12 evidence, and I believe one of the defendants also lived
13 at.

14 MS. SIMPSON: And, Your Honor, at this time I would
15 offer State's 199 and 200 ---

16 MR. SUTHERLAND: No objection.

17 MS. SIMPSON: --- into evidence.

18 THE COURT: Without objection.

19 (BLOW UPS OF PHOTOGRAPHS MARKED INDIVIDUALLY INTO
20 EVIDENCE AS STATE'S EXHIBIT NUMBERS 199, 200.)

21 BY MS. SIMPSON:

22 Q. And actually if you can point out, we'll start with
23 State's 199 if you ---

24 MS. SIMPSON: Permission for the witness to step down?

25 Q. Or tell us what area we're looking at here and what

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1 we're seeing.

2 A. This is the overall, overview of the Hammond -- the,
3 the location where I found the evidence that we just
4 discussed and also where the incident location -- the
5 incident location is here. This is River Drive. That's
6 Broad River, and Williamsburg is right here, which is a
7 close-up picture that the second picture we'll see is, is
8 the crime scene area where I was at, and this is the
9 victim's location.

10 Q. Or is this -- near Marlboro Street, is that the
11 Hammond Village area?

12 A. I've got them backwards. I apologize. Yes,
13 Williamsburg is where the incident location was, and this
14 is where I was and where one of the defendants lives. I
15 apologize. I had them backwards.

16 Q. And not to make them look bigger, but are these in
17 fairly close proximity to one another?

18 A. That is correct.

19 Q. In looking at State's 200, a close up of Hammond
20 Village, tell us what we see and where you were.

21 A. Again, this is River Drive. This is where -- if
22 you're coming down River Drive, the way I go in, you turn
23 onto Marlboro Street, and then Hammond Village is these two
24 streets right here that are unnamed. They're basically
25 apartment complexes that are marked off by initial numbers

1 such as one, and then each apartment inside is, is -- has
2 a, a -- delegated a separate number such as like 1-1 or
3 1-2. So, if there's eight apartments in a particular
4 building or there's some small ones such as where I was, I
5 came down and when you -- you go over some speed bumps.
6 This is -- like, this starts one, two, three, and the eight
7 is numbered -- the one I was behind is right specifically
8 here. That was the little -- the picture where you see
9 walking beside, that's where I go, and then you take a left
10 to go behind the building. That's where I was.

11 Q. Okay. So, behind the building in this kind of
12 treated, shaded wooded area?

13 A. That is correct. That is correct.

14 Q. All right. Thank you, and do you know where in
15 Hammond Village the defendant lived or if he lived in
16 Hammond Village?

17 A. I do know that -- I do know the building. Again, if
18 this is where I was collecting the evidence, he would have
19 stayed in this building right here, which is, again, they
20 do have a small, spaced out periodically, maybe two to
21 three little stairwells that you can walk through. You
22 don't have to go through the woods. But there are some
23 stairwells. But the majority of this is wooded area, and,
24 again, that's where I was, and this is the building that,
25 that the defendant lived in.

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1 Q. So, there are kind of some cut-throughs or ways to
2 run ---

3 A. Right.

4 Q. --- from Building 8 around to where ---

5 A. For example ---

6 Q. --- the defendant lived?

7 A. For example, there may be stairwell here, and a
8 stairwell here, and one right here to where somebody from
9 the top could go down without having to go through woods or
10 walking around.

11 Q. And they could also probably travel through the woods?

12 A. And you could also go through the woods. Be smarter
13 to go through the stairs, but you could go through the
14 woods.

15 MS. SIMPSON: Thank you, Sergeant.

16 MR. SUTHERLAND: Please the court now?

17 WITNESS: Yes, sir.

18 CROSS-EXAMINATION BY MR. SUTHERLAND:

19 Q. Sir, how are you?

20 A. Doing very well.

21 Q. Actually I wanted to -- sorry.

22 MR. SUTHERLAND: Your Honor, may I approach him with
23 this? Thank you.

24 Q. Could you show again. Had a little bit of trouble
25 catching that.

1 A. Okay.

2 THE COURT: Give me the exhibit number, please. The
3 exhibit number?

4 MR. SUTHERLAND: Oh, yes, sir, Exhibit Number 200.

5 THE COURT: Thank you.

6 BY MR. SUTHERLAND:

7 Q. Exhibit Number 200, you were showing where you were.

8 A. All right. This, this is River Drive. I turn in to
9 go to this location off -- from Marlboro and then I take a
10 right. This is just a -- maybe two, three blocks. I go
11 down here. This is where I collected the, the gloves, and
12 this is where the defendant lived.

13 Q. Okay. So, he lived here and you found all this stuff
14 over here?

15 A. That's correct.

16 Q. Okay. I just thought you testified it was behind the
17 house.

18 A. It, it was behind the house that I indicated.

19 Q. Okay. All right. Let's see, and I guess I'll ask.
20 There were some pictures, and we'll go ahead and keep on
21 that. So, you'd gotten the gloves and you'd gotten some
22 clothing and that was submitted for DNA testing.

23 A. That is correct.

24 Q. And that's been testified to by Mr. Barron?

25 A. That is correct.

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1 Q. Okay. I'm going to ask you about some of your direct
2 testimony. First I want to start with you showed the
3 lineups to Cari Pearson and to Troy?

4 A. I showed them to Troy, I believe.

5 Q. Not to Cari Pearson?

6 A. I did not show them to Cari.

7 Q. Okay. Leaving that aside, your testimony on direct
8 was that he had said to you that he thought Leonard was
9 there, but when you showed him the lineup, he said that,
10 that he definitely was not there?

11 A. He is saying that the name Leonard Gaston was the
12 shooter, but then when I showed him a picture he goes
13 that's, that's not the guy that was there.

14 Q. So, in his statement that he gave you, he said yeah,
15 he was there, Leonard was the guy that was there?

16 A. That is correct. I believe he was influenced by
17 William Liberty. Based off of conversations of giving a
18 description, we developed that name, identified who that
19 name was, and then put him in a lineup and said do you see
20 anybody that you fought with or that shot your brother in
21 this picture, and he said no.

22 Q. Okay. So, in the statement that you took, he said
23 that he was there. He was in the room. Is that correct?

24 A. Based off of what William Liberty supplied the name as
25 the descriptions they were talking about, he is saying

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1 Leonard Gaston was there. But when I put a picture, he
2 said no.

3 Q. So, your answer is yes?

4 A. That is correct. He ---

5 Q. Okay. Thank you. Thank you. Thank you.

6 THE COURT: Well, hold on.

7 MS. SIMPSON: Objection, Your Honor.

8 THE COURT: Whoa, whoa. He has a right to explain his
9 answer.

10 MR. SUTHERLAND: Oh, yes, sir. I'm sorry.

11 THE COURT: Do you need to explain, yes?

12 BY MR. SUTHERLAND:

13 A. I said it several times, but again in the statement he
14 says based off a conversation, Leonard Gaston is the guy
15 who was there. When I put Leonard Gaston's picture in
16 front of me, he said that looked like Leonard, Leonard, but
17 that's not the guy that was there.

18 Q. Okay. Do you have the statement that you took in
19 front of you?

20 A. Not in front of me.

21 Q. If I were -- now, this has some highlighting on it
22 from me, but if I were to show you a copy of it, would you
23 be able to recognize it?

24 A. Absolutely.

25 Q. Okay. No question, signatures, and ---

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1 A. That is the -- looks like an identical copy.

2 Q. Okay. Now, I've actually highlighted up at the top:

3 Personally appeared before me, 26th day of

4 January, at 1710 hours.

5 A. Yes.

6 Q. And it's military time. It's ten minutes after 5:00.

7 A. That's correct.

8 Q. Okay. Do you have a copy of the lineup that you
9 showed to Troy?

10 A. I do not have a copy in front of me. I think it's in
11 evidence.

12 Q. If I showed you a copy of it, would it be helpful to
13 you?

14 A. If it's identical, yes, sir.

15 MS. SIMPSON: Your Honor, if I could just see it?

16 MR. SUTHERLAND: You don't have it?

17 MS. SIMPSON: I just need to see what he's shown the
18 witness.

19 THE COURT: Certainly. Be nice.

20 MS. SIMPSON: Okay. Thank you.

21 THE COURT: Is that already in evidence? Is that one
22 of the lineups that's in evidence? Do y'all recall which
23 number it might be?

24 MR. SUTHERLAND: Actually, sir, I -- thank you, Your
25 Honor. I can look through ---

1 THE COURT: No, don't take a lot of time, but I want
2 to keep the record straight.

3 MR. SUTHERLAND: Okay.

4 THE COURT: It's already in evidence. That's a copy
5 of lineup that's already in evidence.

6 MR. SUTHERLAND: That's already in evidence.

7 THE COURT: Everybody agree on that? All right. Ask
8 the question.

9 BY MR. SUTHERLAND:

10 Q. Okay. Dated -- now. Is that it? That's got a little
11 note up in the corner?

12 A. That is my handwriting.

13 Q. And it's dated January 26th, '13, and it says 4:47 PM.

14 A. That's correct.

15 Q. So, that's 1647 PM?

16 A. Yes, sir.

17 Q. 1647 military time? I'm sorry.

18 A. That's correct.

19 Q. Okay. Your testimony is that in the statement, he
20 said he was there and he said that guy was shooting. In
21 his statement he said that. But when I showed him the
22 lineup, he said oh, no, that's definitely not the guy that
23 was there?

24 A. That is correct, and he stated that he would be able
25 to identify that person in a lineup that was there.

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1 Q. But the statement is at 1710 hours, which is 5:10 PM,
2 and the lineup is at 4:47 PM. So, the lineup was before
3 the statement?

4 A. They contradict one another and I -- it's based off of
5 which he -- Liberty's influence on him.

6 Q. But your testimony was when he saw the lineup, he said
7 oh, no, that's not the guy. He definitely was not there.

8 A. It contradicts itself, but I'm -- he stated to me -- I
9 showed Troy a lineup. He was not able to pick Leonard as
10 the guy with the twisties, but did say number 6 looked like
11 Leonard. When I asked Troy if the guy in the picture was
12 the guy that shot his brother, he said no. He contradicts
13 himself.

14 Q. Okay. What I'm referring to particularly is your
15 testimony.

16 MR. SUTHERLAND: If, if I may, Your Honor, I'm just
17 going to put the timeline over here.

18 Q. Okay, lineup 4:47 PM. Date -- 5:10 PM, 1710 hours,
19 which would make this 1647. So I understand your testimony
20 and what, what you're doing is you're, you're ---

21 MS. SIMPSON: Objection, Your Honor.

22 THE COURT: Let's, let's -- wait. Whoa, whoa, whoa,
23 whoa, whoa. He hadn't asked the question yet. What you're
24 doing is ---

25 MS. SIMPSON: I know.

1 THE COURT: Hold on. What you're -- don't ask -- ask
2 the question.

3 BY MR. SUTHERLAND:

4 Q. What you're giving actually is your opinion rather
5 than ---

6 MS. SIMPSON: Objection.

7 THE COURT: Hold on.

8 Q. --- rather than what actually happened?

9 THE COURT: Hold on a second. You object to that?

10 MS. SIMPSON: I'm a little confused by the question,
11 but no, I'm not.

12 THE COURT: Is that an objection?

13 MS. SIMPSON: My objection as to -- if he could just
14 ask a question.

15 MR. SUTHERLAND: I can rephrase. I can rephrase it.

16 MS. SIMPSON: Whether he knew ---

17 THE COURT: Just a second. Please restate it.

18 MR. SUTHERLAND: Yes, sir.

19 BY MR. SUTHERLAND:

20 Q. In other words, you've testified repeatedly, in answer
21 to my questions, that they were unduly influenced by
22 someone else, by William Liberty?

23 A. That is correct.

24 Q. And that's your opinion?

25 A. The, the facts turned out to be that everybody

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1 consistently said the shooter had a -- twisties, little
2 short dreads no more than an inch long. Leonard Gaston
3 would come to be -- find out that his twisties or dreads
4 were four to five inches long. So, it was clear he was not
5 our guy.

6 Q. Okay, but, you know, you mentioned facts. Again, it
7 is a fact that you showed the lineup to him before you took
8 the statement, or is that a fact?

9 A. I will tell you again. In his photo lineup he said
10 that's not the shooter. In his statement he is saying
11 Leonard Gaston is the shooter. I -- contradicts himself.
12 But when he's shown the picture, he's saying that's not the
13 guy that was at the crime scene.

14 Q. Okay. The point I'm making is that you are
15 contradicting yourself in your testimony.

16 MS. SIMPSON: Objection, Your Honor. If he can just
17 ask a question.

18 THE COURT: Well, rephrase the question.

19 BY MR. SUTHERLAND:

20 Q. Did you testify on direct that you took the statement,
21 he said that's the guy, but when you showed him the lineup
22 he said that it's not the guy?

23 A. Again, I, I will say that the photo lineup, he's not
24 saying it's in there. In his statement minutes later, he
25 says that is the guy who shot him. That is based off of

1 William Liberty's information to him.

2 Q. Okay. Okay. It's becoming clear. Okay.

3 THE COURT: Wait a minute. Is that a question?

4 MR. SUTHERLAND: I'm, I'm sorry. I'm sorry, Your
5 Honor. You know what? No further questions. Thank you
6 very much.

7 THE COURT: Anything on redirect?

8 MS. SIMPSON: Begging the court's indulgence.

9 THE COURT: Yes, ma'am.

10 MS. SIMPSON: No redirect, Your Honor.

11 THE COURT: Thank you. You may step down.

12 WITNESS: Thank you, sir.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: Mr. Foreman, ladies and gentlemen,
15 everybody okay?

16 FOREPERSON: We're good.

17 THE COURT: You may call your next witness.

18 MS. WALKER: Your Honor, the state calls Captain Scott
19 McDonald.

20 THE COURT: Captain, if you would come around, please.

21 SCOTT McDONALD, BEING DULY SWORN,

22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Have a seat in the witness stand,
24 please. State your name for the record.

25 THE WITNESS: Scott McDonald.

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1 DIRECT EXAMINATION BY MS. WALKER:

2 Q. Is it captain now?

3 A. It's captain now, yes, ma'am.

4 Q. Okay. Captain McDonald, where are you currently
5 employed?

6 A. Richland County Sheriff's Department.

7 Q. And what do you do at the sheriff's department?

8 A. I'm a supervisor over the Major Crimes Unit and have a
9 couple other additional duties since I made captain. I'm
10 also over technical services and the Intelligence Unit as
11 well.

12 Q. And how long have you been at the sheriff's
13 department?

14 A. Twenty-five years.

15 Q. Can you tell us what the investigating unit of the
16 sheriff's department does, the unit does?

17 A. The Major Crimes Unit, we investigate all assaults,
18 robberies, home invasions, homicides, suicides.

19 Q. On -- back in January of last year, did you have the
20 occasion to become involved in the investigation of the
21 homicide that we're here for today?

22 A. Yes, I did. I got a call early the morning of the
23 26th from Sergeant Faust informing me of this homicide.
24 They were interviewing witnesses at that point, trying to
25 develop further information. Later that morning I would

1 also come in maybe late 11, 12ish on the 26th. I would
2 come in to see what I could do to try to help move the case
3 along. They had all gone home after being out all night.

4 Q. When you're dealing with a crime of this gravity, is
5 it peculiar for multiple investigators to become involved
6 in different aspects of the case?

7 A. No, not at all. We, we utilize a number of
8 investigators on murders. Very common.

9 Q. And what would your role become as you became involved
10 in this investigation?

11 A. I was the supervisor trying to help perpetuate this
12 investigation to identify suspects.

13 Q. And on the 26th, were y'all able to identity one of
14 the suspects?

15 A. Yes, we were. We were able to get the J School
16 subject identified. After looking through many databases
17 and photos and things like that, we were able to get a
18 match to one that matched his Facebook post and the picture
19 that we had, and that was confirmed through his date of
20 birth. And we were able to positively ID him as being one
21 in the same Vincent Phillip Nelson, Jr.

22 Q. That same day, would you meet with one of the victims
23 in this case, Mr. Troy Scott?

24 A. I would.

25 Q. And what was the purpose of meeting with Mr. Scott?

1 A. We -- I had prepared a photo lineup with Vincent
2 Nelson in it, and I believe at this point we had also met
3 with Mr. Liberty, and he had supplied the name of Leonard,
4 the subject who lived on Union Street. Said that Mr.
5 Nelson only associated himself with a couple people, and
6 based on the description he was given by the Scotts, he
7 believed that Leonard could be one of the parties involved
8 in this incident. I did some research on some databases
9 and came up with a Leonard Gaston living on Union Street,
10 and I put him in a photo lineup as well.

11 Q. And were you aware at that time that Mr. Liberty was
12 never at the incident location?

13 A. I was.

14 Q. But he was trying to be helpful, I guess?

15 A. He was trying to be helpful. He knew Mr. Nelson and
16 knew his associates, and he didn't associate with very many
17 people, which limited the scope of the possible other
18 suspects. And based on the description that the Scotts had
19 given to him, he suggested this name.

20 Q. And did you ---

21 A. So ---

22 Q. You said you put Mr. Gaston in a photo lineup?

23 A. I did.

24 Q. Did Troy Scott, who was actually present at the crime
25 scene, identify Mr. Gaston as being a participant in this

1 murder?

2 A. No, he did not.

3 Q. I would like to turn your attention, Captain, to the
4 28th of January of last year. Did you continue to be
5 involved in this investigation?

6 A. Yes. By this point Investigator Boland, who had
7 responded initially that night, was the primary
8 investigator assigned to the case. We all -- I had also
9 put Investigator Tanner as his secondary to run on the case
10 with him. Myself and two of my sergeants in the Major
11 Crimes Unit, Sergeant Isenhoward and Sergeant Lindler, were
12 also assisting.

13 Q. And at that point, did you become aware of a possible
14 location of Vincent Nelson, Jr.?

15 A. Right. We had an address on Stucowa Drive. I believe
16 [REDACTED] was a previous residence. I instructed
17 the investigators to get warrants for murder and the other
18 associated charges and a search warrant for this residence.
19 We all responded to this location in hopes of locating Mr.
20 Nelson and searching the residence.

21 Q. And what was that location? That was the Stucowa
22 Drive location?

23 A. That's correct.

24 Q. And was Mr. Nelson at that location?

25 A. He was not. We made contact with a family member who

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1 told us that he no longer lived there. We had other
2 information on some other locations we wanted to check from
3 various databases that he had another address we wanted to
4 check out that he had been associated with.

5 Q. And, Captain, did y'all, did y'all, in fact, check out
6 that address?

7 A. We did. We went to Hammond Village Apartment [REDACTED],
8 knocked on door there to see if we could locate him.

9 Q. Tell us what happened once you knocked on the door at
10 Hammond Village.

11 A. When we knocked on the door, didn't get a response.
12 Knocked again. We heard some rumbling, some noise inside.
13 We obviously believed someone was inside. We continued to
14 knock, identified ourselves ---

15 Q. Okay.

16 A. --- as being with the Richland County Sheriff's
17 Department. Please open the door; please open the door.
18 In my best estimation, we were probably outside a minute
19 and a half or so, maybe two minutes, before someone finally
20 came to the door, which was Mr. Maurice Roberts, Sr., who
21 answered the door.

22 Q. And Mr. Maurice Roberts, Sr., what is his relationship
23 to the defendant?

24 A. He would be the defendant's father.

25 Q. And did you speak with Mr., Mr. Roberts, Sr.?

1 A. We did, yes, and we explained why we were there. We
2 explained we were looking for Vincent Nelson. This was a
3 previous address he used before, and we had an arrest
4 warrant for him.

5 Q. And did Mr. -- did the senior Mr. Nelson tell you
6 whether or not -- or I'm sorry, the senior Mr. Roberts tell
7 you whether or not Mr. Nelson was in the residence?

8 A. He denied him being present. We asked if we could
9 come in to check for ourselves, which he did allow us to
10 do.

11 Q. And was his information to you, in fact, a lie?

12 A. Yes, it was. Sergeant Isenhoward immediately spotted
13 subject asleep on the couch, and as we approached that
14 person, it, in fact, was Vincent Nelson.

15 Q. And at this point, were -- in fact, were you making
16 entry into the residence as well?

17 A. Yes, me and several of the other investigators.

18 Q. Who, aside from the investigators, who were the actual
19 people that were occupying the residence at that time?

20 A. There was Mr. Roberts, Sr., who we had spoken with;
21 Maurice Roberts, Jr.; Maurice's mother, whose name escapes
22 me at the moment. We found another subject, upon clearing
23 the residence, upstairs: Jwaun Duckett. He was in a
24 closet.

25 Shortly after making entry and placing Mr. Nelson

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1 under arrest, myself and another investigator, I think
2 myself and Isenhoward, talked to Mr. Roberts, Sr., about
3 conducting a consent to search. Since we had located a
4 murder suspect in there, obviously we were interested in a
5 weapon or anything else that might tie into this case. So,
6 we did get consent to search.

7 MR. SUTHERLAND: Objection. That's hearsay. Consent
8 from Maurice, Sr.

9 THE COURT: Overruled.

10 MR. SUTHERLAND: Yes, sir.

11 BY MS. WALKER:

12 A. We did get the consent to search. That's when the
13 other investigators went upstairs and located Mr. Duckett.
14 We located some cell phones, a small bit of marijuana, and
15 we were continuing to talk to Mr. Roberts.

16 MR. SUTHERLAND: Objection, Your Honor. May we
17 approach, sir?

18 THE COURT: Yes, sir.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 THE COURT: All right, Mr. Foreman, ladies and
21 gentlemen of the jury, obviously the fact that they found a
22 little bit of marijuana hasn't got anything to do with this
23 case. So, just disregard that. It's not any element of
24 any of the offenses that we're dealing with. That's just
25 something collaterally that was found in the house. That

1 hasn't got anything to do with the trial of this case.

2 Is that satisfactory?

3 MR. SUTHERLAND: Yes, sir.

4 MS. WALKER: Thank you, Your Honor.

5 BY MS. WALKER:

6 Q. After conducting the search of the home and finding, I
7 guess at that point, Mr. Duckett, Mr. Roberts, Jr., and
8 Vincent Nelson, Jr., did you continue to, to, I guess, make
9 contact and try to figure out who all was involved in the
10 murder?

11 A. That's correct. We continued talking to Mr. Roberts,
12 Sr., and to Maurice, trying to gather more information
13 because at this point we knew we had several individuals
14 involved. We just didn't know who, other than Mr. Nelson.

15 As we were talking, both Mr., Mr. Roberts, Sr., and
16 Maurice, Jr., indicated that Nelson went off and used a
17 cell phone, one of their cell phones. It was very common.
18 In fact, Maurice Roberts, Jr., pointed out, in fact, that
19 on the night of this incident that Vincent Nelson did, in
20 fact, have his cell phone.

21 Q. And did he tell you which cell phone -- how many cell
22 phones did you locate in that home?

23 A. I believe there were three.

24 Q. And did he tell you which cell phone he said Vincent
25 Nelson, Jr., had?

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1 A. Yes. It was his phone, which was a camouflaged phone,
2 as he called it. It had a plastic cover on it that's
3 camouflaged in color.

4 Q. And did you take custody of that phone?

5 A. Yes, that and the other two phones as well, but
6 especially the other one.

7 Q. And did you have further contact with Maurice Roberts,
8 Jr., that day?

9 A. Yes, I did. Once he started telling us about, you
10 know, his phone had been used that night, we were curious
11 as to what else he might know. So, at that point I asked
12 him, in front of his father, if he would ride down to the
13 sheriff's department with us and discuss this further. And
14 he fully agreed to voluntarily come to headquarters with
15 us. He was -- wasn't under arrest. He wasn't put in
16 handcuffs. He was just asked to come in our car.

17 Q. And did you transport him to headquarters?

18 A. I did, myself and Sergeant Lindler.

19 Q. And at -- during that drive, did you have any
20 conversation with him about the actual murder?

21 A. Not at that time. We just had small talk, I believe.
22 You know, where you go to school, how far did you go in
23 school, just, you know, small talk. Nothing about the case
24 at that point.

25 Q. When you got him to headquarters, did y'all's

1 conversation turn towards actually discussing the facts of
2 this case?

3 A. Right. The first thing I did when we got into my
4 office, along with Sergeant Lindler, was pull out an
5 advisement of rights form. I didn't know what he might
6 inform me of.

7 Q. Let me show you State's Exhibit Number 1 and ask you
8 if you recognize that.

9 A. Yes. This is the form where I advised Mr. Roberts of
10 his advice of rights and his waiver of rights.

11 MS. WALKER: Your Honor, at this time the state seeks
12 to admit Exhibit 1 into evidence.

13 MR. SUTHERLAND: Previous objection, Your Honor.

14 THE COURT: You're protected on your previous
15 objection.

16 MR. SUTHERLAND: Yes, sir.

17 (ADVICE OF RIGHTS FORM MARKED INTO EVIDENCE AS STATE'S
18 EXHIBIT NUMBER 1.)

19 BY MS. WALKER:

20 Q. Can you explain to the jury how you advised Mr.
21 Roberts of his rights and walked him through that?

22 A. We have a form. It's our Richland County Sheriff's
23 Department interrogation Advice of Rights form that I went
24 over with Mr. Roberts. On here is his name; the location
25 this occurred at, which was Richland County Sheriff's

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1 Department; the officers that were present when I advised
2 him of his rights, which were myself, Sergeant Isenhoward
3 and Sergeant Lindler; the date, which was January 28, 2013;
4 and the time 1425, which military time is 2:25 PM. I then
5 proceeded to go down reading each line here, which I'll
6 read to you, and I put a check after each line indicating
7 -- asking Maurice if he understood what I was reading him,
8 and, if he did, then I would put a check there and continue
9 on. So, I started off:

10 Before we ask you any questions, you must
11 understand your rights. You agree?

12 He understood that.

13 You have the right to remain silent.

14 He agreed he understood that.

15 Anything you say can be used against you in
16 court.

17 Once again, the same.

18 You have the right to talk to a lawyer for advice
19 before we ask you any questions and have the
20 lawyer with you during any questioning.

21 He understood that.

22 If you cannot afford a lawyer, one will be
23 appointed for you before any questioning if you
24 wish.

25 He understood that.

1 If you decide to answer questions now without a
2 lawyer present, you still have the right to stop
3 answering at any time. You also have the right
4 to stop answering at any time until you talk to a
5 lawyer.

6 Once again, he understood that and agreed to talk to
7 us. I then proceeded to read the waiver of rights. I
8 read this and it's the -- states:

9 I have read this statement of my rights and
10 understand what my rights are. I am willing to
11 talk and answer questions. I understand and know
12 what I am doing. No promises have been made to
13 me, and no pressure or coercion of any kind has
14 been used against me.

15 As I went over this, I stopped at the word coercion.
16 A lot of people don't, don't know what that means. I asked
17 him if knew what it meant. He wasn't sure. I explained to
18 him coercion is force. I'm not going to force you to talk
19 to me; we're just going to talk. No one's going to put a
20 gun to your head or anything like that. This is a
21 voluntary thing, and he understood exactly what I meant by
22 that.

23 I then checked this section off as well. I asked him
24 if he understood his rights that I've read to him up here
25 and to agree to talk to us. If he would please sign this

1 form, which he did, and this was witnessed by myself and
2 Sergeant Lindler.

3 Q. And at that point, after advisement of his rights, was
4 Maurice Roberts under arrest?

5 A. No, he was not.

6 Q. Was he free to leave at any point in time?

7 A. He was. This was just out of an abundance of caution
8 in murder investigations. You know, we're very cognizant
9 of rights and we didn't know what he might tell us. So, we
10 wanted to make sure we had advised him of his rights at
11 this point.

12 Q. And, and what room at the sheriff's department did
13 this conversation take place at?

14 A. In my office.

15 Q. And who all was present for that?

16 A. For the advice of rights, Sergeant Isenhoward and
17 Sergeant Lindler. Isenhoward would depart right after
18 this. He went to go interview Mr. Duckett.

19 Q. And did he -- did Maurice Roberts appear to understand
20 what you were saying?

21 A. Yes.

22 Q. Did he appear to be under the influence of any drugs
23 or alcohol?

24 A. No, not at all.

25 Q. Did he engage with you in a way that made you

1 understand that he understood the questions you were asking
2 him?

3 A. Yes, he did.

4 Q. Was he deprived of food during this conversation?

5 A. No.

6 Q. Was he deprived of water during this conversation?

7 A. No.

8 Q. And after advising Maurice Roberts of his rights and
9 him waiving those rights, did he, in fact, give you a
10 statement?

11 A. He did. Initially he denied any involvement or any
12 knowledge.

13 MR. SUTHERLAND: I renew my previous objections, Your
14 Honor.

15 THE COURT: Previous objection?

16 MR. SUTHERLAND: Oh, the previous objection was on the
17 waiver, and this objection is on the statement, sir.

18 THE COURT: You are protected.

19 MR. SUTHERLAND: Thank you, sir.

20 BY MS. WALKER:

21 A. He initially told us he didn't have any involvement or
22 knowledge in this incident. We talked a little bit about
23 this, kind of laid it out. How did you know, you know,
24 who, who are some of the other people that may be involved,
25 that kind of thing. Weren't going too far at that point.

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1 Sergeant Isenhoward would periodically check back with
2 us. He was interviewing Mr. Duckett, as well as Major
3 Smith and Investigator Boland were interviewing Nelson.
4 So, information was starting to flow about the incident,
5 and we're starting to get some more information about
6 parties involved. Of course, both of those parties
7 indicated Maurice was involved in this incident. As we
8 started to confront Maurice with some of these facts, his
9 story started to change.

10 Q. And in an investigation, is it uncommon for suspects
11 to deny involvement until confronted with certain evidence?

12 A. That happens all the time, yes.

13 Q. And at some point, did he begin to make certain
14 admissions?

15 A. Yes, he did.

16 Q. And were those admissions reduced to writing?

17 A. They were.

18 Q. Let me show you what's been marked as State's Exhibit
19 2 and ask you if you recognize this.

20 A. Yes. This is a written statement I took from Maurice
21 that day.

22 MS. WALKER: Your Honor, at this point the state seeks
23 to admit Exhibit 2 into evidence.

24 THE COURT: All right. Same objections earlier noted?

25 MR. SUTHERLAND: Yes, sir.

1 (STATEMENT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 2.)

3 MS. WALKER: Your Honor, permission for the captain to
4 publish that statement to the jury?

5 BY MS. WALKER:

6 A. This is a statement I took from Maurice Roberts on
7 January 28, 2013, at 1522 hours, which would be at 3:22 PM.
8 This was taken in, in the presence of myself and Sergeant
9 Lindler. It's in a question and answer format, and I'm
10 asking the questions and Maurice Roberts, Jr., is answering
11 the questions, and it begins:

12 Question: What can you tell me about the
13 shooting that took place on January 25th, 2013,
14 at [REDACTED]?

15 Answer: I was at my house that night around
16 10:00 or 10:25 PM with Junior. That's when 600
17 and Metro came over to my house. While we were
18 there, Junior talked about going over to his
19 homeboy's house for a lick. He said they had a
20 studio there. Junior said the house was over
21 there by the Village. Junior had my cell phone
22 and left the house about five minutes before me.
23 600 and Metro did -- left about five minutes
24 before 600 and Metro did. The plan was that
25 Junior would get inside and then call us to let

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1 us know when to come. We then began to walk over
2 towards E.E. Taylor School. While we were
3 walking, 600 got a phone call from Junior. 600
4 gave me the phone. Junior told me that he was
5 in, that his homey's daddy let him in. I told
6 Junior that he didn't need to do this shit with
7 the boy's daddy there. I was walking down
8 Williamsburg with 600 and Metro. I stopped when
9 I got in front of the house. Metro and 600 kept
10 walking past the house and then turned around and
11 came back up to the house and took off running
12 down the driveway. I saw them telling the people
13 to get down. 600 and Metro began tussling with
14 someone in the driveway. I saw him tussling and
15 ran down the driveway to help out. The boy had
16 600 on the ground, and I ran down and pulled the
17 boy off of 600. When I did this, the guy turned
18 around and hit me with his elbow in my eye, and
19 the boy then turned around and hit me with his
20 first. 600 then pistol whipped the boy and he
21 fell down. 600 then went down -- then went to
22 the doorway of the door at the bottom of the
23 driveway. 600 was trying to get the door open.
24 The other boys were trying to shut the door on
25 him, and he got his arm or hand stuck in the door

1 and was screaming for help. I ran over and tried
2 to help push the door open so 600 could get his
3 hand out. That is when I heard the gunshot go
4 off from 600's gun. After the first shot, 600
5 and I back away from the door. That's when 600
6 ran up the hill and started shooting the boy that
7 was down in the middle of the driveway about
8 halfway up. When I saw this, I took off running
9 and ran back to my house. When I got back to my
10 house, I was the first one there. Junior then
11 showed up. Junior was saying niggas don't know
12 how to listen. I cut on the TV and turned on the
13 news to see if there was anything about what had
14 just happened. I went and got some ice to put on
15 my eye. I then laid down and fell asleep.
16 Junior woke me up about 2:00 AM. Junior wakes me
17 up to show me something on Facebook. It said
18 rest in peace, Beezy.

19 Q. And did you know who Beezy was?

20 A. Beezy was the, the victim in this, yes.

21 Q. Of the nickname for Brandon Jones?

22 A. Brandon Jones, yes.

23 Q. Go ahead, sir.

24 A. Maurice says:

25 I said damn, bro, to Junior and then went back to

1 sleep.

2 Question: While you were at the house during
3 this incident, did you hear someone ask how many
4 people were in the house?

5 Yes, whoever the guy that got shot was being
6 asked how many people were in the house by 600.

7 Question: Did you shoot anyone that night on
8 Williamsburg Drive?

9 Answer: No.

10 Did you have a gun with you that night, January
11 25th, 2013?

12 Answer: No.

13 Who had the gun and did the shooting?
14 600.

15 Question: What is 600's real name?

16 Answer: I don't know his name. I just know of
17 him.

18 Question: Can you describe 600 to me?

19 He's about 6 foot, skinny fellow, albino. He was
20 wearing all black, I think. Twenty-one years
21 old.

22 Question: What were you wearing that night?

23 Brown camouflaged pants, black hoodie with a hole
24 in the left shoulder. I accidentally bleached it
25 yesterday when I was doing the dishes.

1 Question: Who is Metro?

2 I don't know his real name. Black male, 5/7 to
3 5/8, average build, nineteen years old, medium
4 complexion. He was wearing a skull cap with a
5 hoodie over it. I think he would -- I think he
6 was wearing all black as well.

7 Question: Where is the gun at now?

8 Answer: I don't know, sir.

9 Questions: Is the picture I showed you, Vincent
10 Nelson, the person you know as Junior?

11 Answer: Yes.

12 Q. Now, did, did that conclude the written statement?

13 A. Yes, it did.

14 Q. And I guess he -- the clothes that he accidentally
15 bleached while doing, was it the dishes?

16 A. That's what he said.

17 Q. Well, did y'all recover those?

18 A. I believe we did, yes.

19 Q. And the cell phone, I want to show you what's been
20 marked as State's Exhibit 38. Ask if you recognize this.

21 A. Yes. This is the camouflaged cell phone that Mr.
22 Maurice Roberts pointed out to me as being his phone that
23 Vincent Nelson had used on the night of this incident.

24 Q. And do you recall who this phone was -- who actually
25 had this phone when you recovered it?

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1 A. I believe it was given to me by Investigator
2 Isenhoward. Mr. Duckett had been given the phone.

3 Q. Mr. Duckett who'd been in the closet?

4 A. Yes.

5 Q. And you said that he did, in fact, find out that the
6 victim had died that night and then he went back to sleep?

7 A. Right.

8 Q. I want to show what's been marked as State's Exhibits
9 203 and 204. Is this the way Mr. Roberts looked when you
10 met with him?

11 A. Yes, it is.

12 Q. And was that black eye significant to y'all?

13 A. It was. We knew, as he said, he had been assaulted
14 while engaged in this incident in the eye, which is evident
15 from the pictures. We had one of the lab personnel come
16 over and take pictures of him in my office to document
17 that.

18 Q. And as a part of your investigation, do you deal a lot
19 with the, with cell phones that are involved in crimes?

20 A. Yes, I do.

21 Q. And did you get the phones, the cell phone records for
22 the cell phone I showed you?

23 A. I did. They were through Cleartalk Wireless, which I
24 know was here earlier this week to testify. Particularly
25 -- that particular number was 803-2787. I requested

1 the call detail records and any text message detail that
2 they could provide.

3 Q. And did those records confirm other or collect -- did
4 those records confirm other information that you had
5 involving this murder?

6 A. Yes, they did. Specifically the text messages.

7 Q. And have you prepared a -- I say a Powerpoint
8 presentation that shows those text messages?

9 A. Right, yes. Very brief one, yes.

10 Q. And would that aid you in, in explaining those text
11 messages to the jury?

12 A. Yes.

13 MS. WALKER: Your Honor, may we approach?

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 THE COURT: All right, y'all step up the Powerpoint,
16 please.

17 MS. WALKER: Yes, sir.

18 THE COURT: Mr. Foreman, ladies and gentlemen, we're
19 going to finish the direct examination of this witness,
20 break for lunch, come back, and we'll, if everything goes
21 according to plans, we'll finish the testimony at 3:30,
22 4:00 this afternoon, and we will stay here and go over
23 everything that we have to go over so there'll be no
24 hesitation in the morning. When we come back, we can go
25 straight into arguments and the charge.

1 FOREPERSON: Yes, sir.

2 THE COURT: Fair enough?

3 FOREPERSON: Yes, sir.

4 THE COURT: Ms. Walker, are you going to set that up,
5 or are you going to have someone set it up?

6 MS. WALKER: I don't know how to set it up, Your
7 Honor.

8 THE COURT: You're very, very honest.

9 Mr. Foreman, you see those wires? That looks like the
10 wiring in my garage. How in the world?

11 (A PAUSE.)

12 THE COURT: Sir, give her a hand. Everybody okay?

13 MS. WALKER: Your Honor, may the witness step down?

14 THE COURT: Yes, ma'am.

15 MS. WALKER: Thank you.

16 THE COURT: Need the lights dim? Are we A-okay?
17 Everybody see?

18 FOREPERSON: Dim the lights a little.

19 THE COURT: Dim the lights. Who's the light dimmer?
20 Careful. Tell me when. All right, let me move over here
21 so I can see.

22 MS. WALKER: Yes, sir.

23 (A PAUSE.)

24 THE COURT: Can everybody see? Let's see. Ms.
25 Walker, you want to break for lunch and fix this over the

1 lunch break? Will that be our -- is it about ready to
2 be ---

3 MS. WALKER: I'm being told it's about ready, Judge.

4 THE COURT: Okay. I can tell it's about ready.

5 MS. WALKER: I apologize, Your Honor.

6 THE COURT: That's all right. I'm being real patient.

7 MS. WALKER: Your Honor, we are having technical
8 difficulties.

9 WITNESS: I apologize.

10 THE COURT: I would agree with you.

11 MS. WALKER: Can we have a break, Your Honor? I
12 apologize.

13 THE COURT: Mr. Foreman, ladies and gentlemen, it is
14 -- it's 12:30. How long do you think you -- ma'am, get
15 some lights on. How long you need for lunch?

16 (A PAUSE.)

17 THE COURT: All right, it's 12:30, 12:30, 1:30. How
18 about quarter till 2:00? Is that good? That's an hour and
19 ten minutes.

20 FOREPERSON: Yes, sir.

21 THE COURT: Is that right? All right. Please don't
22 discuss the case. Don't deliberate, and we'll have all
23 this ready to go when you get back so we won't have any
24 delay, and we should finish the testimony mid afternoon
25 or ---

1 FOREPERSON: Yes, sir.

2 THE COURT: All right. Everybody else please remain
3 seated.

4 Don't discuss the case and don't deliberate.

5 (THE JURY EXITS AT 12:34 PM.)

6 THE COURT: All right, any -- let me have order,
7 please. Anything from the state before we break?

8 Mr. CAMPBELL: Nothing from the state, Your Honor.

9 MR. SUTHERLAND: Nothing from here, sir.

10 THE COURT: All right. If y'all have any proposed
11 jury charges and you're in a position over lunch to have
12 them to me ---

13 MS. CAMPBELL: No, sir.

14 THE COURT: And ---

15 MS. CAMPBELL: I just asked her about those.

16 THE COURT: Mr. Sutherland, you going to have anything
17 you want me to look at?

18 MR. SUTHERLAND: I had actually put some together,
19 Judge. I was wondering if maybe something might develop or
20 I might add one or more.

21 THE COURT: This not a difficult charge, but just hand
22 me what you've got, and then I can be looking at them, and
23 we'll discuss the charges and the verdict form before we
24 leave today so we won't have to do anything in the morning.

25 MR. SUTHERLAND: Thank you, Your Honor.

1 THE COURT: All right. We'll stand at ease until
2 about quarter -- about an hour now.

3 Ms. Walker, we'll see how good your technical skills
4 are in the next hour.

5 MS. WALKER: I'll work on it, Judge.

6 (OFF THE RECORD.)

7 THE COURT: All right, state ready to proceed?

8 MS. WALKER: Yes, sir, Your Honor.

9 THE COURT: Defense ready to proceed?

10 MR. SUTHERLAND: Yes, sir.

11 THE COURT: All right. Bring the jury in, please.

12 (THE JURY ENTERS AT 1:47 PM.)

13 THE COURT: Okay, ready to proceed, ma'am?

14 MS. WALKER: Yes, Your Honor.

15 THE COURT: And you've guaranteed it will work?

16 MS. WALKER: Yes. Yes, sir.

17 THE COURT: I'll hold you in contempt if it does not.

18 MS. WALKER: Your Honor, may the witness step off the
19 stand?

20 THE COURT: You may.

21 MS. WALKER: Lower the lights again. Is that good?

22 Can everybody see?

23 THE COURT: That's fine. Thank you, ma'am.

24 BY MS. WALKER:

25 Q. Captain McDonald, before we broke I think you said you

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1 used cell phone records that have been already entered into
2 evidence to produce this Powerpoint?

3 A. That's correct.

4 Q. Can you describe for the jury what we're seeing here?

5 A. What you see here are the text message detail report
6 for Cleartalk Wireless, cell phone number (803) [REDACTED]-2787,
7 which is the Maurice Roberts cell phone that he identified
8 as being his phone. And I'm into the date where this
9 incident occurred. This phone was used by Vincent Nelson.

10 What you see here, you see a lot of gobblygook --
11 well, I'll try to explain it to you. This is the date and
12 the time. This stuff here really isn't relative but
13 1/25/2013, 2258 hours, which is 10:58 to 51 seconds, this
14 was an SMS message, which is a text message. This is the
15 phone it was originated from. This is the phone it went
16 to. I'm sorry. That's backwards. This is the phone it
17 originated from. It's Roberts's cell phone. It was sent
18 to this phone, which is Mr. Deshawn McClary's phone.

19 Q. And I know that this, this is not your language, but
20 will you please read for the jury the text message that was
21 sent from Maurice Roberts's cell phone that Vincent Nelson
22 had to the cell phone of Deshawn McClary?

23 A. He sent the text: It's fo niggas in here and they dat.
24 And the way this does this, everything is done twice. So,
25 this wasn't a secondary message. It was the same message.

1 It just read the thing twice for some reason on their
2 system.

3 Q. And at -- that was at 10:58?

4 A. That's correct.

5 Q. And at 11:08, did that cell phone send another message
6 to that same number?

7 A. It did. It said: Come on, I got two outside.

8 Q. And the next text message?

9 A. It's at 2311, which is 11:11 PM and 59 seconds. This
10 is Deshawn McClary's phone responding to the phone used by
11 Vincent Nelson saying: On the way.

12 Q. And, finally, what's the last text message that we
13 have up there?

14 A. 2312, another one is sent saying: Come on, I got two
15 outside.

16 Q. And did that information corroborate the rest of what
17 you learned throughout the course of the investigation?

18 A. It did. When we looked at the actual cell phone
19 itself, these messages were on there as well. This is
20 Maurice Roberts's cell phone that we recovered January 28th
21 when we're at the residence he identified as being his
22 phone, and the phone that was used by Vincent Nelson on
23 January 25th, that phone right there that she's holding up.

24 Q. Okay.

25 A. This is just documentation of how it appeared. I then

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1 took the case off it in order to photograph it, and then
2 the next slide you'll see is some text messages.

3 This is Maurice Roberts's cell phone once again, cell
4 phone used by Vincent Nelson on 1/25/13. This is a text
5 message sent by Vincent Nelson to Deshawn McClary's phone,
6 just like we saw on the phone records. It's fo niggas in
7 here and they dat. 1/25/2013 at 10:58 and 41 seconds.

8 You see Small Head there. That is how Maurice had
9 Deshawn McClary's listed as his contact, in his contacts as
10 Small Head. This is Maurice Roberts's cell phone used by
11 Vincent Nelson again on the 25th. The text message sent
12 from Deshawn McClary's phone to Vincent Nelson where they
13 say: We're on the way, 600.

14 And once again one more from Vincent Nelson sent to
15 Deshawn McClary's phone: Come on, I got two outside.
16 1/25/2013 at 11:52 PM to Small Head, which is Deshawn
17 McClary in contacts, and that was the extent of the text
18 messages.

19 Q. Thank you, sir. Will you return back to the witness
20 stand?

21 After taking that, the statement and cell phone from
22 Maurice Roberts -- statement from Maurice Roberts and in
23 reviewing that cell phone, can you tell us what you did
24 next in your investigation?

25 A. Upon completion of the statement of Maurice, and

1 completion of the statements with Mr. Jwaun Duckett and
2 Vincent Nelson, obviously by this point, we knew Maurice
3 was a primary participant in this incident, and he was
4 charged with murder, two counts of attempted murder,
5 attempted armed robbery, and burglary first.

6 Q. And did you make contact with the, the other co-
7 defendants in this case as well?

8 A. We did. Over the course of the next day or two, the
9 very next day we were in contact with Demetrice James. We
10 got a call from his father actually. We'd been by there
11 later in the afternoon and had missed -- no one was at
12 home, and we got the call from his father, father, the
13 following morning saying he wanted to turn himself in, and
14 we had gotten search warrants and arrest warrants. So, we
15 did meet over at the residence, executed a search warrant,
16 and Mr. James was arrested.

17 Q. And are you a -- he was arrested at his residence?

18 A. Mr. James was, yes.

19 Q. And what about finally, I guess, Deshawn McClary?

20 A. Deshawn McClary was apprehended a few days later by
21 our fugitive team down in Orangeburg.

22 Q. The person who gave you the statement that, that we
23 went over earlier about bleaching the clothes, do you see
24 that person in the courtroom?

25 A. Yes. He's sitting at the defense table with a white

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1 shirt and stripes next to his attorney.

2 MS. WALKER: Your Honor, may the record reflect that
3 he's identified the defendant? No further questions.

4 MR. SUTHERLAND: May it please the court?

5 CROSS-EXAMINATION BY MR. SUTHERLAND:

6 Q. Is there a -- Captain McDonald, how are you?

7 A. Good.

8 Q. Okay. Just go through a few things. Sort of the same
9 stuff. What was interesting that I, that I saw in the text
10 messages up here was Deshawn McClary's phone.

11 A. Uh-huh.

12 Q. He texted on the way, 600. Do you remember reading
13 that?

14 A. Right.

15 Q. Okay, and he has a tattoo, are you aware of that, on
16 his right shoulder or his left shoulder?

17 A. He does have at the tattoo with 600 on it, yeah. I'm
18 not sure which shoulder.

19 Q. Thank you. I mean, that's it for that part of it.

20 I want to talk to you about the statement. I heard
21 you testify on direct that Maurice was not in custody at
22 the time he got in the car with you and went to the
23 sheriff's department.

24 A. That's correct.

25 Q. Okay. How much time do you think elapsed between,

1 total, between your getting in the car with him and him
2 basically being put in the D cell for transport?

3 A. Probably two to two and a half hours.

4 Q. Okay, and when you took him down and you went through
5 -- I believe your testimony was that at first he was saying
6 that he was denying involvement in it?

7 A. He had no information on the murder or the incident at
8 all. We got a little snippet while at the residence when
9 we were asking some questions and where he volunteered
10 well, Vincent had his phone that night. That kind of set
11 the light bulb off: well, maybe he knows a little bit more
12 than what he's saying. So, that's why we asked him to come
13 to headquarters to talk about this a little further.

14 Q. Okay. Okay, and let's see. When he was sitting with
15 you, there were other investigators that were coming in
16 from other interview rooms?

17 A. Sergeant Isenhoward came in and out probably two or
18 three times during that time. I think Sergeant Lindler,
19 who was present, may have stepped out once or twice to get
20 further information for me as well.

21 Q. And was Vincent Nelson there?

22 A. Vincent Nelson was being interviewed by Major Smith
23 and Investigator Boland, and Sergeant Isenhoward was
24 interviewing Jwaun Duckett.

25 Q. Okay, and during your interview and an investigator

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1 would come in, and would he just flat out say so and so
2 said that, or actually saying this, or would he just say
3 hey, the other guy's ---

4 A. He would come in, and I may step out with him briefly.

5 Q. Okay.

6 A. You know, just to see what information we had learned,
7 and as things started come together, the two statements we
8 were getting from Mr. Duckett and from Mr. Nelson seemed to
9 be in line with each other, and they were being separated,
10 they were -- had been separated totally, but they were
11 given similar type statements, which went against the
12 interest of Mr. Roberts obviously. So, that's when we
13 began to confront him with some of these issues that were
14 coming up, and he eventually gave the statement that I
15 published.

16 Q. Okay, and so it's you go out, you get information, you
17 come back in, and then you say look. Your buddies are over
18 here and they've saying X, Y, Z. Is that pretty much the
19 way that it went?

20 A. Something like that only, you know, we would, you
21 know, let on that we knew some, some more of the details
22 that he hadn't been honest with us about. And one thing we
23 stressed, when we sat down with this, I said, you know,
24 whatever you know about this, we need to be honest and up
25 front, and it's very typical, in these investigations, that

1 doesn't always occur initially.

2 Q. Sure. Sure.

3 A. But once we start confirming with facts that we do
4 know and they realize we know, often times they will start
5 to tell more of the truth once they realize they can't
6 bluff us or lie to us.

7 Q. Okay. When do -- would you tell him or would another
8 officer come in? When you said you would confront him with
9 the information, so do you -- you would say this person is
10 saying that this happened, so you need to go ahead and own
11 up ---

12 A. I may ---

13 Q. --- to us or ---

14 A. I may have said Jwaun says this, or I may have just
15 said we've learned from the other interviews that this
16 occurred, you know, this happened. You supposedly did
17 this, you know, that type thing, and we were engaging in
18 conversation about that.

19 Q. Okay, and ultimately you typed up the statement?

20 A. That's correct.

21 Q. Did he ask you to read it to him?

22 A. I read it to him without him asking me. Every time we
23 take a statement, not only as we're going through it, but I
24 confer with him to make sure I'm typing what he -- what his
25 response was accurately. Upon the completion of that

1 statement, I read it back in its entirety making sure --
2 and I tell them stop me if there's any anything incorrect
3 or we need to change.

4 We went through the entire statement. He never
5 stopped me; he never told me to change anything. After I
6 read it back to him, I then presented it to him for him to
7 read over before he signed it and I said if this is your
8 statement, then we don't need to change anything. You
9 know, go ahead and sign this as being your statement. He
10 agreed it was his substantially. He signed it in two
11 places on all the forms, and then I witnessed it and
12 Sergeant Lindler witnessed it as well.

13 Q. Okay. Did you interview him, or anything you remember
14 about maybe education background, or did you have any
15 information maybe he was in special education classes or
16 anything like that?

17 A. I have no information about that. My information was
18 he made it to the eleventh grade. He could read; he could
19 write. He wasn't under the influence of any drugs or
20 alcohol at the time we were speaking with him. He seemed
21 fully cognizant of what was going on, and he knew he was
22 there voluntarily.

23 Q. Okay, and you had testified on direct about the waiver
24 of rights form and reading the rights?

25 A. Correct.

1 Q. And I believe that you told him, or your direct
2 testimony was no one is holding a gun to your head?

3 A. When I, when I get to the word coercion on the, the
4 waiver of rights section, a lot of people don't, don't know
5 what coercion means. So, I always stop there and I ask
6 them do you know what coercion means, and he had some
7 hesitation like he didn't understand.

8 So, I said coercion is force, intimidation, anything
9 like that. I'm not putting a gun to your head to make you
10 talk today. I'm not, you know, withholding food from you
11 or anything like that, but I just went over, you know, what
12 coercion means, and he understood after I explained to him.
13 And I said no one is -- here today is coercing you, forcing
14 you to talk and he agreed no, he was there voluntarily.

15 Q. Okay. Okay. Thank you, but you did say I'm not
16 holding a gun to your head?

17 A. Correct.

18 Q. Okay. So, you had typed the statement up, and this is
19 how you all do statements at Richland County?

20 A. That is our policy to do a written statement, that's
21 correct.

22 Q. Have -- why not a tape recorder like Columbia Police
23 Department or video like Lexington and Kershaw? Why not an
24 actual recording rather than typing it up?

25 A. It's been our policy, as long as I've been an

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1 investigator, that we take written statements, which
2 written statements are the truest form of a statement.
3 There's no mistaking, once it's put down on paper, what
4 it's meant and referred by it. It's reviewed at length
5 with the defendant or with the witness to make sure this is
6 the correct statement, and that's been our policy. We're
7 not equipped with the video cameras and the recording
8 equipment and all that it would take to do those type
9 things, and plus it's our policy. So, I have to follow
10 policy.

11 Q. Sure. Sure I understand. But a digital recorder or
12 something like that at CVS ---

13 A. That's, that's not our policy. I cannot record an
14 interview, no.

15 Q. Okay, and you just testified that the, the written is
16 the truest form?

17 A. That's correct.

18 Q. As opposed to videotaping someone talking or audio
19 taping someone talking?

20 A. In our review of the way these statements are taken,
21 it is the truest form to put the written word down. It
22 will not change. It will not degrade. It will not be
23 destroyed by being near a magnet, things like that that --
24 videotapes and audiotapes and things like that. There is
25 that possibility, and when this is down, several copies are

1 made. It's scanned so we have a permanent record of it.

2 Q. Okay. Okay. Let me, me make sure that that's it.

3 Oh, the lineups that you showed people where they picked
4 people, they picked picture number 6, right, other than the
5 one from SLED?

6 A. Specific?

7 Q. Okay.

8 A. Do you have specific ones?

9 Q. Okay. Faust, McDonald to Troy Scott of J School,
10 Vincent Nelson.

11 A. I don't have that in front of me. So, I don't know
12 that.

13 Q. Does that sound right?

14 A. It could be.

15 Q. Okay.

16 MR. SUTHERLAND: Your Honor, may I get the...

17 Q. Okay, I have State's Exhibit Number 7 here, which is -
18 - Investigators Faust, McDonald showed me six pictures,
19 okay, and this is Troy Scott. Do you recognize that?

20 A. Yes, I do.

21 Q. And does picture number 6 depict ---

22 A. The bottom right is the pick. I don't see 1, 2, 3, 4,
23 5, 6 on here, but I see ---

24 Q. Yeah, well, bottom, bottom right.

25 A. Bottom right.

S. McDONALD - REDIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Some of them say 6. Some of them have those numbers
2 on them.

3 A. This one is actually identified by the picture number
4 not by any position, but ---

5 Q. Bottom right where the 6 is on some of them. Yeah,
6 same one. Okay. All right.

7 A. There's no, there's no 6 on that particular one, no.

8 Q. Certainly. Certainly. Appreciate it.

9 MR. SUTHERLAND: No further questions.

10 THE COURT: Redirect?

11 MS. WALKER: Yes, Your Honor.

12 REDIRECT EXAMINATION BY MS. WALKER:

13 Q. Captain McDonald, he asked you questions about a text
14 message that said 600 is on the way.

15 A. Yeah, he asked me a question about that. I think the
16 text message read: On the way, 600.

17 Q. Who was Deshawn McClary with when 600 was on the way?

18 A. Demetrice James and Deshawn McClary. I'm sorry --
19 Demetrice James, Maurice Roberts.

20 Q. Thank you, sir.

21 MS. WALKER: I have no further questions.

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

23 (THE WITNESS EXITS THE STAND.)

24 MS. CAMPBELL: May it please the court? State calls
25 Investigator Boland.

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 JAMES BOLAND, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Have a seat in the witness stand,
4 please. State your name for the record.

5 WITNESS: James Boland.

6 DIRECT EXAMINATION BY MS. CAMPBELL:

7 Q. Investigator Boland, where are you employed?

8 A. Richland County Sheriff's Department.

9 Q. What do you do there, sir?

10 A. I'm an investigator with the criminal investigator
11 division.

12 Q. How long have you been in law enforcement?

13 A. Seventeen years.

14 Q. I want to turn your attention back to January the 25th
15 of 2013. Did you become involved in the investigation of
16 the murder that occurred on Williamsburg Drive?

17 A. Oh, I did, yes, ma'am.

18 Q. And how did you become involved, sir?

19 A. I was working evening shift, much like Sergeant Faust
20 indicated earlier.

21 Q. Speak up a little bit.

22 A. Excuse me. I'm sorry.

23 Q. I'm sorry. It's just the ---

24 A. Like Sergeant Faust spoke of earlier, he was the
25 evening shift supervisor. I was on his team. I got a call

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 from -- I believe it was the desk sergeant trying to make
2 contact with the supervisor in that particular area of
3 Columbia in reference to a shooting incident at an incident
4 location.

5 Q. Once you had gotten the information, where did you
6 proceed?

7 A. I then went to [REDACTED].

8 Q. And approximately what time was it when you arrived
9 there?

10 A. Approximately 11:30 PM. Excuse me. 11:50 PM.

11 Q. And on the way to the Williamsburg Drive where the
12 shooting actually occurred, did you become aware of some
13 information, something about a stop near the scene?

14 A. Yes. One of our K-9 officers had been working the
15 area and had noticed a car coming up -- I believe it was
16 McQueen Street, which is one block over from Williamsburg.
17 He actually conducted a traffic stop on McCrae Street.
18 McCrae Street and Williamsburg are actually perpendicular
19 intersections from E.E. Taylor Elementary School.

20 Q. And the people that were stopped in that car, at one
21 point were they actually placed in lineups and shown to at
22 least one of the victims?

23 A. Yes. As Sergeant Faust indicated earlier, I was at
24 the scene. I had got the information regarding a Jonathan
25 or J School was involved in the shooting incident on

1 Williamsburg. I also learned about the suspects involved
2 in the Williamsburg -- their physical description. Several
3 of the individuals in the car that had been stopped by the
4 K-9 officer had those physical descriptions about them that
5 night. So, we went to great length to learn who they were
6 and if they were involved or not.

7 Q. During the course of the investigation, I believe
8 Investigator Faust showed Mr. Troy Scott, I believe,
9 State's Exhibits 3, 4, and 5. Is that correct?

10 A. Yes, that's correct.

11 Q. And was Mr. Scott able to identify any of those people
12 as being involved in the crime which we're here today
13 about?

14 A. No, none of them were picked.

15 Q. And during the course of your investigation, I believe
16 there was also testing done on these individuals as well?

17 A. Yes.

18 Q. And in the course of your investigation, were you able
19 to eliminate those three individuals stopped at the scene
20 as being involved in anyway?

21 A. Yes. It was very cold that night, and I remember this
22 night very well because I was out there in that cold for
23 several hours trying to discern whether or not these
24 individuals were a part of this or not. But after Sergeant
25 Faust was able to speak with Troy Scott and another witness

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 at headquarters, we then discerned that they were not
2 involved.

3 Q. And that was corroborated during the course of your
4 investigation?

5 A. Correct.

6 Q. Moving on to when you arrived at Williamsburg Drive,
7 did you meet with deputies there at the scene?

8 A. I did.

9 Q. And who all was there by the time you got there?

10 A. I met with Deputy Sullivan who was on scene. He may
11 have been the -- one of the supervisors out there. I know
12 that Deputy Grant was out there. Investigator Beeler and
13 Investigator Woods from our Crime Scene Unit were also
14 present.

15 Q. And by the time you got there, were any of the victims
16 that had been injured in this still at the scene, or had
17 they been transported to the hospital?

18 A. No. There had been three victims that were
19 transported.

20 Q. While at the scene, did you take -- obtain some
21 information about the possible identity of one of the
22 people involved?

23 A. I did. I learned that, that there was a J School that
24 the witnesses at the scene knew him by that name there.

25 Q. And was there some additional information about where

1 he might possibly reside that was provided to you that
2 night that you followed up on?

3 A. Yes. I was directed to meet with Investigator Bass.
4 He had earlier transported the witnesses to headquarters to
5 talk to Sergeant Faust. I was then directed by Sergeant
6 Faust to travel over to Broad River Road, further up Broad
7 River Road in the Seminole Road area to locate possible
8 addresses connected with J School.

9 Q. And were there a number of addresses that you obtained
10 in that area on Broad River?

11 A. Yes. We particularly were interested in ■■■, ■■■, and
12 ■■■, and again with that information kind of narrowed the
13 search down to what part of Stucowa we wanted to look at.
14 So, those houses were in that close proximity of where we
15 had been directed to.

16 Q. And that would later prove of some significance in
17 this investigation?

18 A. Yes, ma'am.

19 Q. After getting those addresses, this street numbers
20 actually, did you then return to headquarters?

21 A. I did.

22 Q. And once back at headquarters, were you able to get
23 additional information about this person known as J School?

24 A. Yes. We -- I learned from Sergeant Faust that while I
25 was still at the scene, he had spoken with the witnesses

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 back at headquarters, and they were able to access Facebook
2 and get a, a picture of this J School through the -- also
3 date of birth and then learning his name was Vincent
4 Nelson, Jr.

5 Q. And let me back up for a second to -- while at the
6 crime scene itself that night, you didn't do actually any
7 of the processing yourself, did you?

8 A. No, I did not.

9 Q. That's not your role?

10 A. No, I -- most of my time that night was out there
11 filtering information regarding the three individuals in
12 the car. Again, one of the persons in the car was named
13 Jonathan. So, when you got a Jonathan on scene fitting a
14 physical description similar to that at the incident, and
15 all we know is J School is involved, we want to be very
16 careful and not to, to let those people go on their own.

17 Q. And while you were at the crime scene, did you observe
18 a vehicle that investigator, I believe Rainsford, processed
19 there at the scene?

20 A. I did. There was a...

21 Q. State's Exhibit 54, does that show part of that
22 vehicle?

23 A. Yes, it shows the front of a -- looks like a red
24 Toyota Tundra parked in the driveway.

25 Q. And he actually processed that automobile, I believe,

1 was actually lifted some prints?

2 A. Yeah. I think he returned the next morning and when
3 the scene was still held by us with Sergeant Richards.

4 Q. And, however, during the course of your investigation,
5 was there any information that anybody had ever touched
6 that car?

7 A. No.

8 Q. And after y'all were able to identify J School as
9 Vincent Phillip Nelson that night, approximately what time
10 was it when you actually went home?

11 A. It was between 6:00 and 6:30 AM the morning of the
12 26th.

13 Q. That next day, which would actually be the daytime
14 hours of the 26th, did you return to participate in the
15 investigation?

16 A. I did. I returned back to headquarters approximately
17 1:30 PM.

18 Q. Once you got to headquarters, what happened?

19 A. I got to headquarters, and at the time Captain
20 McDonald was in his office, and he was conducting some
21 database searches to try to see if we can get some more
22 information on this Vincent Nelson.

23 Q. There at headquarters that day, did you make contact
24 with family members for Brandon Jones?

25 A. I did. I spoke with a paternal grandfather, Mr.

1 Prealeau.

2 Q. And you can't say what he said, but did you -- was he
3 able to give you some information?

4 A. Yes.

5 Q. That day did you and Investigator Faust also meet with
6 a Mr. Troy Scott and Mr. William Liberty?

7 A. Yes.

8 Q. And Mr. Liberty's name has come up. Was he actually
9 there at the scene the night when the, the events occurred?

10 A. No, he was not.

11 Q. Was he -- what, what was he trying to do? Was he
12 trying to help, or hurt, or what?

13 A. Mr. Liberty, based on the descriptions that were given
14 by Troy as to who was involved in this thing at the house,
15 based on that description of the individuals, they then
16 tried to deduce who were possibly known acquaintances of
17 Mr. Nelson that would fit that description.

18 Q. That afternoon did you meet with Cari Pearson as well
19 as Mr. Scott?

20 A. I did.

21 Q. And did you actually take a statement from Ms.
22 Pearson?

23 A. I did.

24 Q. And was she also shown some lineups that day? You
25 can't say what she said.

1 A. Yes, she saw two photo lineups.

2 Q. And you're referring to your case notes in this case?

3 A. Right.

4 Q. Okay, and was she able to positively identify one
5 person out of those two lineups?

6 A. She did.

7 Q. And who was that?

8 A. Vincent Nelson.

9 Q. Later that evening, did you also meet with Joshua
10 Williams and Troy Scott?

11 A. I did.

12 Q. Without saying what they said, were you able to get
13 additional information from them?

14 A. Yes.

15 Q. The next day did your investigation continue?

16 A. Yes.

17 Q. On the 27th, what did you do?

18 A. Sergeant Faust and I traveled over back to the scene
19 again because the layout of the house was really difficult
20 in trying to convey the layout of the house, if you will.
21 So, I felt it would be necessary that before we went any
22 further, I think it would be best if we -- everybody would
23 know, who obviously had been involved in it thus far, was
24 familiar with it. And so we went back and we -- I showed
25 Sergeant Faust the scene.

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1 Q. And that would have been on that Sunday. Is that
2 correct?

3 A. That's correct.

4 Q. The next Monday morning, a meeting occurred?

5 A. Yes. Supervisors, I met with all the supervisors.

6 Q. And that include Major Smith?

7 A. It would -- it is, yes.

8 Q. Captain McDonald?

9 A. Yes.

10 Q. And other people, I believe Sergeant Lindler?

11 A. Yes.

12 Q. And at that point, what decisions were made?

13 A. We decided that we had enough to draft a search
14 warrant, procure a search warrant for the address
15 associated with Vincent Nelson at [REDACTED].

16 Q. And that's the same area where you had initially been
17 directed to?

18 A. Correct.

19 Q. And you have just narrowed it down?

20 A. Correct.

21 Q. So, you got a search warrant for that address?

22 A. Correct.

23 Q. And is that proper protocol before trying to enter
24 someone's house ---

25 A. Yes.

1 Q. --- in a search for evidence?

2 A. Right.

3 Q. Did you also obtain any arrest warrants based on just
4 the information you had that Monday the 28th?

5 A. Yes.

6 Q. And who did you ---

7 A. I got ---

8 Q. --- get warrants on?

9 A. I signed a warrant for murder and burglary first on
10 Vincent Nelson.

11 Q. And within a few days after that, did you follow up
12 with Vincent Nelson some more on this?

13 A. Yes.

14 Q. And would those be for the remaining charges that
15 we're here about today?

16 A. Yes.

17 Q. At that point, was anyone in custody?

18 A. No.

19 Q. Once you had gotten the arrest warrants as well as the
20 search warrants for Stucowa Drive, what did you do?

21 A. We went -- we -- myself, McDonald, Lindler,
22 Isenhoward, Investigator Tanner, who had been assigned to
23 assist, all traveled over to Stucowa Drive.

24 Q. And once you got to Stucowa Drive, what did you learn?

25 A. There was no one at the residence, and as we were

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1 leaving, I believe Sergeant Isenhoward was flagged down by
2 an individual that said that a resident associated with
3 Stucowa Drive would be coming back to that address to
4 assist us in entering the home.

5 Q. And, in fact, did someone come back to that residence
6 that had custody over it?

7 A. Yes.

8 Q. Or was living there?

9 A. Yes.

10 Q. And who was that?

11 A. Amanda Green.

12 Q. And did you ask for any type of permission to enter
13 that house?

14 A. Yes. She gave consensual search of, of the home.

15 Q. And were you able to, after talking to her, gather
16 additional information as to possible whereabouts of
17 Vincent Nelson?

18 A. Yes. She directed us over toward Broad River Terrace,
19 which is a female residence that she knew that would be an
20 acquaintance with Mr. Nelson.

21 Q. And what was that female's name?

22 A. Sierra Nathan.

23 Q. Once you had searched the Stucowa residence and gotten
24 the additional information, where did you go?

25 A. We then traveled to Broad River Terrace, Apartment

1 [REDACTED]. Ms. Nathan was not home, but we did make contact with
2 her sister, and she gave us consent to just search the
3 residence, make sure Mr. Nelson wasn't there.

4 || Q. And, in fact, was he not there?

5 A. No, he was not.

6 Q. That day did you also -- were you also aware of
7 another possible address associated with Vincent Nelson?

8 || A. Yes.

9 Q. And what was that address, sir?

10 A. That would be Marlboro, [REDACTED], Apartment
11 [REDACTED].

12 Q. [REDACTED], and what's the name of that apartment
13 complex?

14 A. That would be Hammond Village.

15 Q. And apartment [REDACTED], ultimately did you learn -- and at
16 that time, did you know whose residence that was?

17 A. No, I did not.

18 Q. And ultimately did you learn whose residence was --
19 that was?

20 A. That was Mr. Roberts's address.

21 Q. The defendant here today?

22 A. It is.

23 Q. And how were you able to associate Vincent Nelson with
24 that address back on January the 14th of 2013?

25 A. Database searches on Vincent Nelson.

1 Q. And what type of database search, search on Vincent
2 Nelson?

3 A. When police reports are filed with our agencies, they
4 are hopefully sometimes submitted in a timely manner to a
5 database to which, if something happens in Charleston and
6 that information is entered into the database, and if I put
7 that same name or address or anything associated with it,
8 that would pop up in that database. And that's where we
9 learned this, another address associated with Vincent
10 Nelson.

11 Q. And when you reviewed that report associating Vincent
12 Nelson with the [REDACTED] apartment at Hammond Village, was
13 another name at which time brought to your attention?

14 A. Yes.

15 Q. And whose name was that?

16 A. Deshawn McClary.

17 Q. And at that point, did you have any knowledge that
18 either Maurice Roberts or Deshawn McClary were involved?

19 A. No. We were going there to look for Mr. Nelson.

20 Q. Once you got that information, where did you go?

21 A. We then traveled to [REDACTED] Hammond Village.

22 Q. Once there, what happened? What did you do and what
23 happened?

24 A. Well, honestly most apartments have back doors. So,
25 myself and Investigator Tanner covered the rear entrance or

1 rear door while other investigators went to the front door
2 to make contact.

3 Q. And once inside -- who was inside? Was Captain
4 McDonald one of the ones that went in the front?

5 A. I believe he did enter, yes.

6 Q. And who was actually located in the home that day?

7 A. By the time I came back around the outside of the
8 apartment building, I had learned that they had located Mr.
9 Nelson. He was escorted out. He was then direct --
10 directed to my car, and then also they were saying -- they,
11 they actually brought two individuals out. I was with
12 Nelson. I didn't know who these other two people were.

13 Q. Later did you learn their identities?

14 A. I did.

15 Q. Who were they?

16 A. Maurice Roberts, Jr., and Jwaun Duckett.

17 Q. And at that point, who was the only one of those three
18 that was under arrest?

19 A. Mr. Nelson.

20 Q. Mr. Nelson?

21 A. Uh-huh.

22 Q. You mentioned that Mr. Nelson was then placed in your
23 vehicle?

24 A. Correct.

25 Q. And were Mr. Duckett and Mr. Roberts, did they also

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 agree to come down and talk separately?

2 A. I had no interaction between Mr. Duckett or Mr.
3 Roberts on that -- at that time.

4 Q. Okay, but were they transported to headquarters?

5 A. Yes.

6 Q. And that would have been Captain McDonald that would
7 have done that?

8 A. Correct.

9 Q. Once everyone is transported back to headquarters on
10 Two Notch Road, were interviews taking place?

11 A. Yes. Major Smith and I interviewed Vincent Nelson.

12 Q. Prior to interviewing Mr. Nelson, did you advise him
13 of any rights?

14 A. He was advised, yes.

15 Q. And did he agree to talk to you?

16 A. He did.

17 Q. Did he understand his rights?

18 A. He did.

19 Q. And that day did he give a statement?

20 A. He did.

21 Q. And you can't say what he said, but was that statement
22 reduced to writing as is your protocol?

23 A. It was.

24 Q. Did he have the opportunity to review it?

25 A. Yes.

1 Q. And did he actually sign off on that statement?

2 A. Yes.

3 Q. That day Mr. Roberts was also interviewed?

4 A. Yes.

5 Q. And you didn't actually participate in that, did you?

6 A. No, I did not.

7 Q. As well as Mr. Duckett?

8 A. Yes.

9 Q. As a result of those interviews, did y'all develop
10 some more lineups?

11 A. Yes.

12 Q. And what lineups did y'all develop?

13 A. Two separate lineups were drafted to include Deshawn
14 McClary and Demetrice James.

15 Q. Based on that additional information y'all got on the
16 28th, having interviewed Mr. Nelson, Mr. Roberts, and Mr.
17 Duckett, did you obtain additional warrants in the case?

18 A. Yes.

19 Q. And at that point on the 28th, after talking to those
20 two people, who was placed under arrest as a result of his
21 statement?

22 A. On the 28th?

23 Q. Uh-huh.

24 A. Maurice Roberts.

25 Q. Maurice Roberts, the defendant?

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 A. Yes.

2 Q. And that was before you'd even had the opportunity to
3 talk to either Mr. James or Mr. McClary?

4 A. Correct.

5 Q. The next day did you also get warrants for those two
6 individuals?

7 A. Yes.

8 Q. Did you make any attempts to try to find Demetrice
9 James?

10 A. Yes.

11 Q. Where did you go?

12 A. We went to [REDACTED]. We attempted to make
13 contact. There's no one home.

14 Q. Okay, and did you ever confirm that that was his
15 actual address for him?

16 A. Yes.

17 Q. And later that day, did you obtain a search warrant
18 for that residence?

19 A. Yes.

20 Q. That day did you get some information from Demetrice
21 James's father?

22 A. Yeah. I had gotten word that Mr. James's father had
23 phoned the sheriff's department.

24 Q. At that point what did y'all do?

25 A. We then traveled over River Drive.

1 Q. And when you got there, who was there?

2 A. Mr. James was there.

3 Q. Was he taken into custody at that point?

4 A. He was.

5 Q. Was he served with his arrest warrants?

6 A. He was.

7 Q. That day did you actually conduct an interview of
8 Demetrice James?

9 A. I did.

10 Q. Prior to him being interviewed, what, if any, rights
11 was he advised of?

12 A. His Miranda rights.

13 Q. And did he indicate he understood his rights?

14 A. Yes.

15 Q. And did he indicate if he wanted to talk to you?

16 A. Yes.

17 Q. And at any point when we're talking about these advice
18 of rights and everything, before you talk to someone, would
19 you promise him anything?

20 A. No.

21 Q. Did you threaten him in anyway?

22 A. No.

23 Q. And was he voluntarily talking with you?

24 A. Yes.

25 Q. You can't say what he said to you, but did he then

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 give a statement on his versions of events?

2 A. He did.

3 Q. So, at this point you got statements from -- who all
4 has been charged in this case?

5 A. Vincent Nelson, Maurice Roberts, and Demetrice James.

6 Q. The next day, on January the 31st, did you go down to
7 serve additional warrants on Vincent Nelson?

8 A. Yes, we did.

9 Q. And while there, did you talk to Mr. Nelson again?

10 A. Yes. After we had obviously took -- spoken with Mr.
11 James and gotten his side of the story, then I wanted to
12 again reinterview Mr. Nelson and see if he had additional
13 information.

14 Q. Is that unusual in an investigation for people to not
15 be totally forthcoming?

16 A. No, it's quite common.

17 Q. And at that point, was he advised of his rights?

18 A. He was.

19 Q. And, again, did he agree to talk to you?

20 A. He did.

21 Q. And did he give you another statement?

22 A. Yes, he did.

23 Q. I want to turn your attention to February the 1st of
24 2013. Did y'all respond back to one of the residences?

25 A. Yes. Investigator Tanner and myself went back over to

1 Marlboro Street, the residence of Mr. Roberts.

2 Q. What was the purpose of y'all going back to that
3 residence?

4 A. To look for possible clothing or anything associated
5 with this case.

6 Q. Once you got there, what did you initially observe?

7 A. In front of the -- of Building 15 was a large rollback
8 container much like a dumpster, if you will. It was opened
9 on the top. It appeared that -- I think furniture or trash
10 or something was being taken out of an apartment.

11 Q. Did you locate anything that you collected then?

12 A. Right. Before I got to the apartment, trying to make
13 contact ---

14 THE COURT: Hold on one second, please.

15 (A PAUSE.)

16 BY MS. CAMPBELL:

17 A. Before I got to the apartment to make contact, I
18 stepped up onto the, the container to see if there was
19 anything in there that might be of any value, and I did
20 locate a camouflaged jacket.

21 Q. And did you collect that that day?

22 A. Yes.

23 Q. Did you also make contact with any inhabitants of the
24 house at [REDACTED] Hammond Village?

25 A. Yes, we made contact with Vanessa Roberts.

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 Q. And who is she?

2 A. Maurice's mother.

3 Q. And what, if anything, did she allow y'all to do?

4 A. She signed a consent to search form for us to search
5 the apartment.

6 Q. And at that point, once she had signed off with a
7 consent to search, which is necessary before y'all go in,
8 right?

9 A. Correct.

10 Q. Did y'all start searching the area?

11 A. We did.

12 Q. And what did you find?

13 A. We put -- we located several different pieces of
14 clothing: a black puffy jacket, a pair of camouflaged
15 pants. We got a black hoodie zip up had bleach stains,
16 what appeared to be bleach stains on it.

17 Q. I'll get back to that in a moment. While you were
18 there at the residence searching, however, did something
19 happen that caused you to terminate your search?

20 A. Yes. Maurice's father came home. Was very upset that
21 we were there. He, he began cursing, became very
22 belligerent to us, was actually yelling at Ms. Roberts for
23 letting us into the home. We told him that he -- he then
24 told us to leave. We told him to calm down, and then we,
25 we left, taking the items that we had collected.

1 Q. Now I'm showing you what's been marked as State's
2 Exhibit Number -- it's got an exhibit number on it. 37.
3 Do you recognize this box of items?

4 A. Yes.

5 Q. And what are those, sir?

6 A. Those would be the items I collected on February 1st.

7 Q. And I'm going to do this all at once. When Maurice
8 Roberts was taken into custody, did you also collect any
9 clothing from him at that time?

10 A. Yes. We took his clothing.

11 Q. And I show you State's Exhibit, I can't read it, 223.
12 Do you recognize that?

13 A. Yes.

14 Q. And is that the clothing that you collected from him
15 when he was arrested?

16 A. May I see the date? Yes, January 28th.

17 Q. But State's Exhibit 37, that's the clothing you found
18 in your search at the home later?

19 A. Yes.

20 Q. As far as items you collected, you mentioned a camo
21 jacket?

22 A. Yes.

23 Q. And the -- where was that located?

24 A. In the rollback container.

25 Q. And I show you State's Exhibit 207. Do you recognize

1 that?

2 A. Yes.

3 Q. And is that the other item you collected that day when
4 you went back when Ms. Roberts initially let you in?

5 A. Yes.

6 Q. Specifically, is there any part of Maurice's statement
7 where he talked about clothing he wore that day?

8 A. Yes, ma'am.

9 Q. And specifically what description of clothing were you
10 looking for?

11 A. We were particularly interested in the, the white
12 hoodie with the hole to the left shoulder that you talked
13 about how he had accidentally bleached it yesterday when he
14 was doing the dishes. Also he indicated he had on brown
15 camouflaged pants.

16 Q. The items that you found at the home, if you could
17 just pull those out. Was there anything that you found
18 that would corroborate -- and again, these all come from
19 Demetrice? Not Demetrice. Maurice Roberts's house?

20 A. This is a black one -- it's a black, one could argue,
21 that -- a puffy style jacket. It was located in the home.
22 This would be the brown, black, and green camouflaged pants
23 that was collected from the home.

24 Q. And again, when you're collecting these items, you
25 don't know if they have any significance or not, do you?

1 A. Not at that time, no.

2 Q. However, when you collected the jacket you're about to
3 show them, was it significant?

4 A. I think so, yes. This is a black zip-up fleece type
5 jacket with a hole near the left shoulder, what appears to
6 be bleach marks on the jacket as well.

7 Q. In your experience as an investigator over major
8 crimes, do people sometimes use bleach to clean up?

9 A. Yes.

10 Q. And is it effective?

11 A. Yes.

12 Q. After conducting that search and recovering those
13 items, where did you go?

14 A. After Investigator Tanner and I left Maurice's house,
15 I wanted to tank -- take Tanner back by the incident
16 location so he too could be better versed in the scene. We
17 also met with two individuals at the house.

18 Q. While there, did you show some lineups to any of the
19 victims in this case?

20 A. Yes.

21 Q. Who?

22 A. Trey Scott and Troy Scott were shown photo lineups.

23 Q. And I show you State's Exhibit Number -- were they
24 shown together or separate or how did that occur?

25 A. No. Investigator Tanner showed one lineup to Trey

1 Scott, and I showed Troy Scott a photo lineup.

2 Q. And were they separated when this happened?

3 A. Yes.

4 Q. And what's the purpose in that?

5 A. So it won't contaminate the purity of the, the lineup
6 or the accurate positive pick of one, and to make sure that
7 each individual was independent decision making the choice
8 in the lineup.

9 Q. And at any time do you tell them look at this, it's
10 going to be Maurice Roberts, or use any names or anything
11 of that sort?

12 A. No. Typically I say to them I'm going to show you a
13 series of pictures. In these photographs may or may not be
14 the person associated with this incident.

15 Q. And you didn't tell them what role the person would
16 have that they're looking at or anything?

17 A. No.

18 Q. I show you State's Exhibit Number 9. Do you recognize
19 that one?

20 A. Yes. This is a photo lineup affidavit that I signed
21 after showing the photo lineup to Troy Scott.

22 Q. And was Troy able to identify anyone?

23 A. Yes, he did.

24 Q. And who did he identify?

25 A. Maurice Roberts.

1 Q. And he indicated that was number 612408?

2 A. Yes.

3 Q. And the same lineup, I believe, was shown to -- when
4 was that done?

5 A. Investigator Tanner showed Trenton Scott the photo
6 lineup including Maurice Roberts. He, too, picked Maurice
7 Roberts in that lineup.

8 Q. And to your knowledge, did anyone tell them who to
9 pick, influence them in any way?

10 A. Not at all.

11 Q. That day did you also get information about the
12 whereabouts of Deshawn McClary?

13 A. Yes. We learned that McClary had been apprehended by
14 the State Law Enforcement Division down in Orangeburg
15 County.

16 Q. And what happened once he was apprehended?

17 A. He was brought to our headquarters on Two Notch Road,
18 where I then proceeded to attempt to interview him.

19 Q. And the interview was not actually done that day. Is
20 that correct?

21 A. Well, the -- I, I spoke to him.

22 Q. You spoke to him briefly?

23 A. Briefly, yeah. I mean, he didn't give a statement
24 that day.

25 Q. He didn't want to give a statement that day?

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 A. No. He -- I spoke to him about the, the incident and
2 how he was alleged -- reported by the co-defendants to be
3 involved in it, and he, he didn't want to talk to us.

4 Q. But on February the 6th, some five days later, did you
5 receive information again about Deshawn McClary?

6 A. Yes.

7 Q. And tell the jury about that.

8 A. We were contacted by investigators at the Columbia
9 Police Department that McClary was in their custody talking
10 to them about a separate matter, and that though he did not
11 want to talk to city investigators about that particular
12 incident, we were asked -- excuse me. They were asked by
13 McClary to then call us so we could go down there and talk
14 to McClary about the incident that happened on
15 Williamsburg.

16 Q. Once you received that information, did you make
17 contact with Mr. McClary?

18 A. Yes. Tanner and myself traveled to the -- their
19 office on Devine Street and met with McClary.

20 Q. Once there, what, if any, rights did you advise him of
21 prior to talking to him?

22 A. He was advised of the same Miranda rights that he was
23 advised five days earlier.

24 Q. And at that point, did he indicate whether or not he
25 wanted to talk to you?

1 A. He did.

2 Q. And did he sign off on his waiver of rights?

3 A. He did.

4 Q. And did he agree to talk to you?

5 A. Oh, yeah.

6 Q. And did you promise anything or force him to talk to
7 you at that time?

8 A. No.

9 Q. And once there, you can't say what he said, but did he
10 give you a statement?

11 A. He did.

12 Q. And finally on February 7th, did you then go back to
13 the Roberts' residence to execute the search warrant?

14 A. Yes.

15 Q. Don't say what you found.

16 A. Okay. No, I won't. But yes, we, we traveled back
17 over there and.

18 Q. And searched for further evidence?

19 A. Yes.

20 Q. Nothing of significance?

21 A. Right.

22 Q. Okay. To this trial. As part of your investigation,
23 is some evidence usually sent away for DNA testing?

24 A. Yes.

25 Q. And to that event, do you also collect what's known as

J. BOLAND - DIRECT EXAMINATION BY MS. CAMPBELL

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1 buccal swabs or known DNA samples from different people?

2 A. Yes.

3 Q. And I'm going to show you State's Exhibits 25, 26, 23,
4 and 22. Were these all buccal swabs that were collected by
5 you?

6 A. Yes. This a buccal swab retrieved from Trent Scott,
7 Deshawn McClary, Demetrice James, and Joshua Williams.

8 Q. And those were actually collected by you?

9 A. Yes.

10 Q. In addition to that, did Sergeant Lindler also collect
11 buccal swabs from the defendant himself?

12 A. He did.

13 Q. And that would be Maurice Roberts?

14 A. Yes.

15 Q. Finally, State's Exhibit 24 and 205, were these buccal
16 swabs from Troy Scott in this case?

17 A. Yes.

18 Q. And those were actually collected?

19 A. Yes.

20 Q. And when y'all collect buccal swabs, what precautions
21 do you take to make sure that the integrity of the actual
22 swab itself is intact?

23 A. You wear rubber gloves much like I did before I took
24 the clothes out of the box. We, we either -- or put the
25 gloves on your hands obviously, and we explain to them what

1 the, what the process is so there's no fumbling, no
2 questions. The swab is then taken out of the wrapper by
3 the subject, and then they actually insert it into the box
4 container as well.

5 Q. Okay.

6 MS. CAMPBELL: Your Honor, at this time I believe 24
7 is not in evidence yet. We move that in, and the rest are
8 in evidence.

9 MR. SUTHERLAND: And I have no objection, Your Honor.

10 (SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
11 24.)

12 BY MS. CAMPBELL:

13 Q. During the course of your investigation, different
14 defendants in this case indicated different -- they, they
15 had different roles?

16 A. Yes.

17 Q. Is it unusual, in your experience, for a defendant to
18 either switch his role, to minimize it?

19 A. Not unusual at all.

20 Q. Or to try to point the finger at somebody else?

21 A. Yeah. They, they either minimize what they did or
22 then just project what actually happened on somebody else.

23 Q. In this case, how many people were charged with
24 murder, burglary, robbery, and attempted murder in this
25 case?

J. BOLAND - CROSS-EXAMINATION BY MR. SUTHERLAND

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1 A. Four people.

2 Q. And how can all four be charged?

3 A. Hand of one, hand of all.

4 MS. CAMPBELL: Thank you.

5 MR. SUTHERLAND: Please the court, sir?

6 THE COURT: You through, Ms. Campbell?

7 MS. CAMPBELL: Yes, sir.

8 THE COURT: All right.

9 MR. SUTHERLAND: Thank you.

10 CROSS-EXAMINATION BY MR. SUTHERLAND:

11 Q. Sir.

12 A. Hey.

13 Q. Going to sort of hopscotch around a little bit. I was
14 thinking that you testified about was that it's not
15 uncommon for people to come in and to minimize it and to
16 deflect, but it's sort of human nature when you're caught
17 in the headlights. But sometimes people do come in and
18 tell, tell every -- tell the truth right away. Is that ---

19 A. It's rare.

20 Q. Rare? Sorry.

21 A. Especially when they're a suspect.

22 Q. Okay. I know where you are on that. Something kind
23 of stood out to me also that you said that McClary didn't
24 want to talk to CPD?

25 A. Right.

1 Q. Now, do you have the -- do you have the audiotape from
2 the CPD or the audio disk now? I guess tape is dating me a
3 little bit. Do you have the audio disk from the CPD
4 interview in your case file?

5 A. I, I don't know if it's in the file or not. I mean, I
6 know that they had mentioned something about a tape, yeah.

7 Q. Okay. Would it surprise you if he had talked to them?

8 A. Who, McClary?

9 Q. Yes.

10 A. In what detail, I don't know.

11 Q. Okay. Sure. Sure. I'm just getting into stuff that
12 jumps out here. Okay. Oh, you had testified on direct
13 that, let's see, Cari Pearson had been shown lineups that
14 had picked one person. That was Vincent Nelson. Is that
15 -- do you recall your testimony?

16 A. Yes.

17 Q. Didn't she pick two people? The second person was
18 Leonard Gaston, and if, if -- I have the -- if I had the
19 lineup, would it help to refresh your ---

20 A. That would help, yes, sir.

21 Q. Sure.

22 A. Thank you.

23 Q. All right.

24 MR. SUTHERLAND: Your Honor, may I approach?

25 THE COURT: You may.

J. BOLAND - CROSS-EXAMINATION BY MR. SUTHERLAND

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1 MR. SUTHERLAND: Thank you, sir. There we are.

2 BY MR. SUTHERLAND:

3 A. Yes.

4 Q. All right, and he is the -- see number 6 at the -- he
5 is the bottom right?

6 A. Bottom right.

7 Q. Okay. Okay. Initially way back when you first
8 started testifying, you talked about reporting out to that
9 street that was -- that intersected Williamsburg is McCrae
10 Street?

11 A. I believe it is.

12 Q. And there were three fellows in there?

13 A. Yes.

14 Q. There was a gun?

15 A. Yes.

16 Q. There was some dope in there?

17 A. Yes.

18 Q. Okay, and some of that I believe you testified, you
19 know, camouflage clothing and that sort of thing?

20 A. Yes.

21 Q. And you spent a lot of time out there?

22 A. Yes.

23 Q. And showing lineups to -- I believe it was Troy?

24 A. Based on what Sergeant Faust was telling me, yeah, I
25 think some photo lineups or photos of those that were

1 involved in a traffic stop were then shown to Troy at
2 headquarters.

3 Q. Okay, but Troy was the only on the inside of the
4 incident during, during the incident location?

5 A. Right.

6 Q. Josh was outside. Do you know if the lineups were
7 shown to Josh?

8 A. No. Josh was at the hospital at the time.

9 Q. Okay. Sure. Sure. And, you know, I understand.

10 MR. SUTHERLAND: And beg the court's indulgence.

11 (A PAUSE.)

12 MR. SUTHERLAND: Don't want to miss anything. Okay.

13 Thank you very much. No further questions.

14 THE COURT: Ma'am.

15 MS. CAMPBELL: Yes, sir, briefly.

16 REDIRECT EXAMINATION BY MS. CAMPBELL:

17 Q. He asked you about Josh being shown lineups. What was
18 Josh's condition or ability to see that night?

19 A. Limited.

20 Q. And did he tell you that upfront?

21 A. Yes.

22 Q. And who was the other person he was able to identify?

23 A. Vincent Nelson.

24 Q. He asked you about the second lineup shown to Cari.

25 In the first lineup, she identified School or J School?

J. BOLAND - REDIRECT EXAM / J. SMITH - DIRECT EXAM

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1 A. Yes.

2 Q. And in the second lineup, what did she say in her
3 statement, the highlighted part?

4 A. The question I asked in the second photo lineup:
5 What role did the person selected play at the
6 house last night?

7 Answer: He looked like the guy that had the Army
8 fatigue jacket on.

9 Q. He looked like the guy. And who were the two people
10 that actually got up close and personal with the two people
11 that went inside the house that day?

12 A. Troy and Trent.

13 MS. CAMPBELL: Thank you.

14 THE COURT: You may step down.

15 THE WITNESS: Thank you.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: You may call your next witness.

18 MS. CAMPBELL: State calls James Smith.

19 JAMES S. SMITH, BEING DULY SWORN,
20 TESTIFIES AS FOLLOWS:

21 CLERK OF COURT: Have a seat in the witness stand,
22 please. State your name, please.

23 THE WITNESS: James Standin Smith.

24 DIRECT EXAMINATION BY MS. CAMPBELL

25 Q. Major Smith, where are you employed?

1 A. Richland County Sheriff's Department.

2 Q. What do you do there, sir?

3 A. I am a supervisor of the criminal investigator
4 division. I hold rank of major.

5 Q. And how long have you been in law enforcement?

6 A. Thirty years this June.

7 Q. Is it major over the, the whole criminal division?

8 Excuse me. And what do your duties include?

9 A. Well, now I do more administrative things, much to my
10 chagrin, but sometimes I still get involved in some cases.
11 Most cases that are in the consult type capacity. Some
12 cases I get a little bit more involved, depending on the
13 nature of the case and what needs to be done.

14 Q. And did you become somewhat actively involved in this
15 case?

16 A. I did.

17 Q. When did you learn about the homicide, the murder that
18 occurred that we're here about?

19 A. Any time we have a homicide, I get, I get a call at
20 home or wherever I'm located, and I learned about it over
21 the course of the weekend by then Lieutenant McDonald,
22 who's now captain.

23 Q. And at that point, were certain people dispatched to
24 initiate the investigation?

25 A. Yes. We have a, we have a system in place where we

J. SMITH - DIRECT EXAMINATION BY MS. CAMPBELL

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1 have a sergeant on call, as Sergeant Faust testified to,
2 and they're responsible for dispatching a team. We always
3 have a lead detective that's on call who we trust to work
4 these homicides, a competent veteran investigator. In this
5 case it was Investigator Boland, and he -- that, that team
6 is sent out as soon as a homicide takes place.

7 Q. I want to turn your attention to your active
8 involvement starting on Monday the 28th. Did y'all have a,
9 an opportunity to meet on this case?

10 A. Usually the way it seems to work out, we had a lot of
11 homicides on the weekend. I don't really know what that
12 reason is, but we do. And often times, Monday morning
13 rolls around where everybody's in place. We'll, we'll have
14 a meeting so everybody can get up to speed on it, and we
15 did in this case. A number of us met, to include some of
16 the forensic people, lab people, and that kind of thing.

17 Q. And at this point, had any of the participants in this
18 crime been identified?

19 A. Yes. Over the course of the weekend, Vincent Nelson
20 had been identified as the person who I would call the
21 set-up man, the man that obviously went inside and set this
22 thing up. When I came in, after reviewing the statements
23 that had been taken and analysis of his actions and some of
24 the things that he said, it was obvious to me that he was
25 the set-up man. It was obvious to me that probable cause

1 existed to get arrest warrants for him.

2 Q. And at that point, what did y'all do?

3 A. I instructed Captain McDonald and Sergeant Isenhoward
4 and Sergeant Lindler -- who were, at that point in time,
5 were supervising the murder -- that I believed that
6 probable cause existed and to go ahead and get arrest
7 warrants. To try to locate a residence for him, to get a
8 search warrant, which is standard practice.

9 Q. So, at that point you got arrest warrants for Vincent
10 Nelson?

11 A. Yes.

12 Q. And you also had a search warrant?

13 A. We -- I think they had identified a residence maybe on
14 Stucowa Drive. It was enough of a background there to get
15 a search warrant for that location.

16 Q. And that day, you didn't go out to actually Stucowa
17 Drive, but did other investigators go there searching for
18 Mr. Nelson?

19 A. Yes. As you've heard, a number of -- Captain
20 McDonald, sergeants, and I think Boland and Tanner all went
21 to Stucowa Drive.

22 Q. That morning, did you also develop an additional
23 possible place to find Vincent Nelson?

24 A. Yes. Just as Investigator Boland explained the
25 databases, and I think in this particular incident, he was

J. SMITH - DIRECT EXAMINATION BY MS. CAMPBELL

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1 talk about SCIATS, which is a statewide database run by the
2 Fusion Center at SLED, that catalogs all incident reports
3 with cooperating agencies. In this particular incident,
4 CPD is an agency who reports out to SCIATS. Therefore,
5 there was a report linking him to █████ Hammond Village.

6 Q. And at that point, did you have any knowledge about
7 Maurice Roberts being involved in this particular incident?

8 A. None whatsoever.

9 Q. And, in fact, did you even know about Mr. Maurice
10 Roberts's residence when you got that information?

11 A. I believe the -- I'm not sure where that incident
12 report listed him by name, but I want to say it did not.

13 Q. That day around 12:30, did you participate in the
14 actual search for Vincent Nelson?

15 A. The, the detectives were already at █████, and I was
16 able to get free and go over there and meet them. So, I
17 did join in that around 12:30.

18 Q. Tell the jury what you saw, what you observed when you
19 got there.

20 A. When I got there, I think Investigator Tanner had Mr.
21 Duckett in his automobile talking to him. I believe
22 Captain McDonald may have been talking to Maurice Roberts
23 in his automobile, and I knew that Vincent Nelson had been
24 located and arrested, and I believe Boland had him at that
25 point in time.

1 Q. And it's your information that at that point, all
2 three of those young men were then transported back to
3 headquarters?

4 A. Yes.

5 Q. And once they got back to headquarters, did you make
6 contact with any of them?

7 A. Yes, I actually -- you got three, three individuals
8 who needed to be interviewed. Typically these interviews
9 are done by, by two investigators. I just happened to be
10 involved in the interview of Vincent Nelson with
11 Investigator Boland.

12 Q. And who was actually involved in the interview of
13 Maurice Roberts?

14 A. I believe it was then Lieutenant McDonald and Sergeant
15 Lindler.

16 Q. Lieutenant McDonald and Sergeant Lindler that are here
17 in court?

18 A. Yes.

19 Q. During the course of interviewing these people, is it
20 unusual for y'all to exchange information as you're
21 interviewing people independently?

22 A. It's very common.

23 Q. And explain that to the jury.

24 A. Well, when you have multiple co-defendants and/or
25 multiple witnesses and you happen to have the benefit of

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1 having them at the same time, to be interviewing them, you
2 have the benefit of comparing notes, if you will. So,
3 understanding having done this a number of years and done
4 thousands of interviews, I know how individuals will
5 minimize their involvement.

6 In other words, they'll, they'll get to the point
7 where they feel like, yeah, I'm involved in it, but this is
8 what I did, and it's substantially less than what, what
9 they really did. And when you have somebody else you're
10 interviewing who's saying what they really did, then you
11 can go sort of confront them, if you will, with that.

12 Q. And is it unusual, as in this case for a person when
13 they're arrested, in the initial interview to totally deny
14 being involved?

15 A. It's very common.

16 Q. And then when confronted with information, say, by
17 co-defendants, they may come off with some of their role?

18 A. Yes. It's sort of like testing the waters to see if I
19 get away with saying I didn't do it at all. And then when
20 you realize the waters aren't friendly, then you start
21 giving a little bit up, and slowly it comes out and you get
22 to a point where just, you know, they're going to tell you
23 everything that they're going to tell you at that point in
24 time about their involvement.

25 Q. Can you force them to come, come completely clean?

1 A. No.

2 Q. Jwuan Duckett, did he play a pivotal role in this
3 investigation?

4 A. He -- it was -- the timing on Jwaun Duckett was, was
5 very instrumental in this case because of him being there
6 when they went to [REDACTED], and having direct knowledge of the
7 planning of this, of this crime. It was timely to be able
8 to interview Mr. Duckett at the time Mr. Nelson was taken
9 into custody and at the time Maurice Roberts came to
10 headquarters because he defined fully the planning and the
11 participants in this, in this crime. All four of them.

12 Q. While you were talking to Mr. Nelson, were you also
13 able to develop the names of two additional co-defendants,
14 beside Mr. Roberts and besides Mr. Nelson, that you were
15 able to confirm through investigation procedures?

16 A. Yes. We, we, at that point in time, we were able to
17 identify Demetrice James and Deshawn McClary.
18 Particularly, we were able to get Deshawn McClary's name
19 off of the previously mentioned CPD report.

20 Q. Once -- well, you already had arrest warrants for Mr.
21 Nelson at that point?

22 A. Yes.

23 Q. He was under arrest?

24 A. He was under arrest.

25 Q. After Mr. Roberts's statement that day, was the

J. SMITH - DIRECT EXAMINATION BY MS. CAMPBELL

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1 decision made on whether or not to arrest him?

2 A. Yes. His statement, coupled with the statements of
3 Vincent Nelson and Mr. Duckett, provided substantial
4 probable cause to charge Mr. Roberts.

5 Q. And was he charged in this case?

6 A. He was charged in the same manner that Mr. Nelson was.

7 Q. And what were those charges?

8 A. Murder, burglary first degree, two counts of attempted
9 murder, and attempted armed robbery.

10 Q. And, in fact, all of them -- were all four of the
11 defendants in this case charged with all those charges?

12 A. They were.

13 Q. And as far as witness information from the crime
14 scene, is it unusual to get some conflicting information as
15 far as what may have been said or heard in any crime scene
16 such as the one you have here?

17 A. It's not unusual and actually it's something we
18 actually expect. If, if you have multiple witnesses to a
19 crime and everybody's story is sort of cookie cutter, it's
20 highly suspicious. Different witnesses see different
21 slices of the pie, if you will, at different times. One
22 person may have seen a, a black cap. One person may see a
23 dark brown cap. It doesn't mean that they're, they're
24 wrong, that they think that's what they saw, and that, that
25 gives it credibility, especially in something that's

1 happening with the -- as fast as this incident and as
2 violent as it was. For those witnesses to, to see what
3 they did see was, was, was good.

4 Q. And, and you had an opportunity to review Mr.
5 Roberts's statement?

6 A. I did.

7 Q. And specifically in reviewing that, was there any
8 evidence that either of the young men out in the driveway,
9 Brandon Jones or Josh Williams, ever involved -- were
10 involved in hitting somebody?

11 A. No.

12 Q. But was there something about Mr. Roberts, when he was
13 arrested, that he had to explain?

14 A. He had a goose or a black eye, a goose egg or a black
15 eye on his, on his face, and he explained it by claiming
16 that he was struck in the driveway. Of course, we knew by
17 that point in time an altercation in the house is where one
18 of the Scott brothers had actually struck one of the -- as
19 you heard him testify, I believe it was the young man that
20 had some marshal art skills, struck one of the defendants
21 in the face.

22 Q. And in this case, independently, were you also aware
23 that the two men inside were able to identify the
24 defendant?

25 A. Yes. We -- as, as we learned who the players were

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1 showed, more lineups, both of the Scott brothers identified
2 Maurice Roberts, and they would have only identified
3 individuals that were in the house or, or Vincent Nelson,
4 the set-up man.

5 Q. And as far as Maurice Roberts's statement, is his
6 account of what happened inconsistent in some significant
7 areas as far as what the victims say happened?

8 A. His account -- basically he supplanted himself for Mr.
9 McClary. He is identified not only by the Scott brothers.
10 All three co-defendants identified his actions that he
11 tried to put on Mr. McClary in his statements. So, he
12 simply tried to insert himself in Mr. McClary's role as
13 being the person that was out in the driveway when all the
14 evidence and all the statements indicate that he was with
15 Mr. James in the house.

16 Q. And is Mr. McClary's appearance significantly ---

17 A. Substantially different, and I believe in Mr.
18 Roberts's own statement he refers to him as albino.

19 Q. And in your review of the evidence in this case, the
20 roles, whose, whose gun was it?

21 A. It was Maurice Roberts's gun.

22 Q. And where does the planning take place?

23 A. At Maurice Roberts's apartment, [REDACTED] Hammond Village.

24 Q. And where did they flee to afterwards?

25 A. [REDACTED] Hammond Village.

1 Q. And from the credible evidence, the shooter?

2 A. It's Maurice Roberts.

3 Q. Of Mr. Jones?

4 A. That's correct.

5 Q. Not from the inside?

6 A. That's correct.

7 Q. Thank you.

8 MS. CAMPBELL: I have no further questions.

9 MR. SUTHERLAND: Please the court, sir?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION BY Mr. SUTHERLAND

12 Q. Mr. Smith, how are you?

13 A. Fine, Mr. Sutherland, and you?

14 Q. I'm doing well enough here.

15 A. I understand.

16 Q. Well, you testified that the credible evidence points
17 to Maurice as shooting outside?

18 A. Yes.

19 Q. And that's -- those fellows right there, Deshawn
20 McClary, Demetrice James, and Vincent Nelson ---

21 A. I believe they all indicate that.

22 Q. Okay, and so they're credible to you?

23 A. In this particular instance they are, yes, sir.

24 Q. Okay. Fair enough.

25 A. They all defined their involvement. Demetrice

J. SMITH - CROSS-EXAMINATION BY MR. SUTHERLAND

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1 James ---

2 THE COURT: All right. Hold, hold on one second.

3 Let's -- listen, fellows, ladies. This jury determines the
4 credibility of the witnesses. Not the witnesses. So, that
5 is y'all's sole responsibility to determine who's telling
6 the truth. Not this witness. So, move on to another area.

7 MR. SUTHERLAND: Yes, indeed. Thank you, Your Honor.

8 BY MR. SUTHERLAND:

9 Q. Okay. We're going to be brief here. You had arrived
10 at Hammond Village, you said was around 12:30?

11 A. It was.

12 Q. It was the same stuff, and you noted in your report at
13 about that time, Roberts was soon taken into custody?

14 A. That's what my report says, yes, sir.

15 Q. Okay, and that was around 12:30 before he left?

16 A. That was what my report indicates, yes, sir.

17 Q. Okay. Thank you.

18 MR. SUTHERLAND: No further questions, Your Honor.

19 THE COURT: Anything on redirect?

20 MS. CAMPBELL: No, sir.

21 (THE WITNESS EXITS THE STAND.)

22 THE COURT: Next witness.

23 MS. WALKER: Your Honor, at this time the state rests.

24 THE COURT: Okay, Mr. Foreman, ladies and gentlemen of
25 the jury, that concludes the testimony presented by the

1 state. Please return to your jury room for a few minutes,
2 and I will bring you back out and let you know where we're
3 going. Do not discuss the case; do not deliberate.

4 (THE JURY EXITS AT 3:06 PM.)

5 THE COURT: Motions by the state?

6 MS. WALKER: No motions, Your Honor.

7 THE COURT: By the defendant?

8 MR. SUTHERLAND: May it please the court, Your Honor?

9 THE COURT: Yes, sir.

10 MR. SUTHERLAND: At, at this time I will renew all my
11 previous motions and objections with respect to the, with
12 respect to the state -- with respect to lineup, and
13 anything that -- including but not limited to the pretrial
14 motions and the objections that followed during the trial.

15 Also, I, at this time, I would move, Your Honor, to
16 direct a verdict in favor of Mr. Roberts with respect to
17 each of the charges, as I must. Our argument would be that
18 the evidence is not competent to support a guilty verdict,
19 sir.

20 THE COURT: Well, obviously you are more than
21 protected. I think I have all through the trial on your
22 objections to the lineup and to the statements, et cetera.

23 MR. SUTHERLAND: Yes, sir.

24 THE COURT: And I don't know that you can do anything
25 else to protect yourself other than what you've done.

1 As to your motions for directed verdict, obviously
2 there's a wealth of evidence in the record that, if the
3 jury believes, that would certainly support a verdict in
4 favor of the state against your client if they believe it.
5 They may not believe it. I don't know. That's their job
6 to determine ---

7 MR. SUTHERLAND: Yes, sir.

8 THE COURT: --- what the true facts are. But if they
9 do determine the testimony that they've heard and the
10 evidence that they've heard from the co-defendants and
11 circumstantial evidence, as well as the direct evidence,
12 there is a wealth of evidence that would support a
13 conviction if they find the evidence to be true.
14 Therefore, I respectfully decline and deny your motion for
15 directed verdict.

16 MR. SUTHERLAND: Thank you, sir.

17 THE COURT: Anything else?

18 MR. SUTHERLAND: No, sir.

19 THE COURT: All right, sir, do you intend to present
20 any evidence?

21 MR. SUTHERLAND: We do not intend to present any
22 evidence.

23 THE COURT: Okay. Mr. Roberts, you stand up for me
24 please.

25 DEFENDANT: Yes, sir.

1 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

2 THE COURT: Thank you. Mr. Roberts, we've reached the
3 stage in the trial now where obviously you can present your
4 side of the story.

5 DEFENDANT: Yes, sir.

6 THE COURT: That means that you can call witnesses to
7 testify in your behalf. You can call and introduce
8 relevant exhibits.

9 DEFENDANT: Yes, sir.

10 THE COURT: And you can take that witness stand, and
11 you can testify in your own defense.

12 DEFENDANT: Yes, sir.

13 THE COURT: You understand that?

14 DEFENDANT: Yes, sir.

15 THE COURT: However, you also have the constitutional
16 right to remain silent.

17 DEFENDANT: Yes, sir.

18 THE COURT: The constitution says that you cannot be
19 forced to testify in any case against you. You have the
20 absolute right to remain silent.

21 Now, if you do decide to testify, obviously you will
22 be subject to the same rules that everybody else has to
23 endure. You will be subjected to cross-examination on any
24 relevant subject in the case.

25 Does he have a record for impeachment purposes,

1 ladies?

2 MS. CAMPBELL: Your Honor, he has a juvenile record.
3 I think it's for larceny.

4 MR. SUTHERLAND: Judge, I'm not even, at this time,
5 aware of what the conviction is actually in ---

6 MS. CAMPBELL: We can just assume he doesn't.

7 MR. SUTHERLAND: But no adult record.

8 THE COURT: That's fine.

9 If, if you take the stand, you'll be subjected to
10 cross-examination by the state on any relevant subject in
11 the case.

12 DEFENDANT: Yes, sir.

13 THE COURT: If you decide to exercise your
14 constitutional right to remain silent, then obviously I
15 would tell the jury that you have the right to remain
16 silent, and the fact that you exercised your constitutional
17 right to remain silent cannot be used against you in any
18 manner whatsoever when they deliberate your guilt or
19 innocence.

20 DEFENDANT: Yes, sir.

21 THE COURT: In fact, I would further instruct them
22 that they can't mention the fact that you didn't testify.
23 That can't be used in their deliberations for or against
24 you. In other words, it's not to be considered at all.
25 You have the absolute right to remain silent. You do not

1 have any burden of proving anything. You have the right to
2 remain silent, and that's your constitutional right, and
3 they can't infer anything from the fact that you exercised
4 that.

5 DEFENDANT: Yes, sir.

6 THE COURT: Now, do you understand that?

7 DEFENDANT: Yes, sir.

8 THE COURT: Now, do you, do you wish to exercise your
9 right to remain silent, or do you wish to testify in this
10 case?

11 DEFENDANT: My right to remain silent.

12 THE COURT: All right. Any questions you want to ask
13 me about that?

14 DEFENDANT: No, sir.

15 THE COURT: How about your lawyer?

16 DEFENDANT: No, sir.

17 THE COURT: Okay. So, you realize we can all tell you
18 what it means, but, in the end, it's your personal
19 decision. You have to make that decision.

20 DEFENDANT: Yes, sir.

21 THE COURT: And it's your decision not to testify?

22 DEFENDANT: Yes, sir.

23 THE COURT: Okay. I respect that. Thank you. And
24 you -- they will be given an instruction when I charge them
25 that you have that right, and they're not to use it against

1 you in any manner. You'll hear me tell them that when I
2 instruct the jury. Okay?

3 DEFENDANT: Yes, sir.

4 THE COURT: Anything else? Any other witnesses you
5 intend to call?

6 MR. SUTHERLAND: No witnesses, Your Honor. My, my
7 investigator basically followed up with their witnesses.

8 THE COURT: I understand.

9 MR. SUTHERLAND: And the testimony was pretty much
10 consistent with minor variations. So, no impeachment, sir.

11 THE COURT: Okay. You may be seated.

12 MR. SUTHERLAND: Yes, sir.

13 THE COURT: All right. What do we have left to do?
14 I'm going to bring the jury in and tell them that that
15 concludes all the testimony. We've got to go over the jury
16 charges, the verdict forms. Shouldn't take real long.
17 What time suits y'all to start in the morning, 9:00?

18 MR. SUTHERLAND: Yes, sir.

19 THE COURT: 9:30?

20 MR. SUTHERLAND: Yes, sir.

21 THE COURT: You ready, you ready to go this afternoon?

22 MR. SUTHERLAND: I will right now, sir. I will be
23 happy to do the charges and instructions.

24 THE COURT: Ms. Walker?

25 MS. WALKER: Whatever pleases the court, Your Honor.

1 THE COURT: All right. I knew that was coming. All
2 right. Bring the jury in, please.

3 (THE JURY ENTERS AT 3:13 PM.)

4 THE COURT: Mr. Foreman, ladies and gentlemen, it's
5 about 3:20. That concludes all of the testimony in the
6 case, and normally what we have to do now, I have to go
7 over with the lawyers the various instructions that I will
8 give you so we'll all be on the same page when I give you
9 my instructions. And they'll know what my instructions are
10 so when they argue to you, if they want to incorporate any
11 of that into it.

12 That normally takes us -- we got five different
13 indictments, and it's going to take us forty-five minutes
14 to an hour to do all that with the verdict forms and
15 things. So, that would put us at 4:30ish, and I just think
16 probably the best way to do is let them break for the day
17 and start in the morning.

18 I'll start at whatever time y'all wish to start, and
19 you're -- anything after 9:00. I can't start earlier than
20 that because the courthouse is not opened until -- I can
21 start at 9:00 or 9:30.

22 Here's the plans for tomorrow. Once we come in, we'll
23 have everything out of the way. I won't say out of the
24 way. We'll have all of our things that we're supposed to
25 do done so we can start right in with the argument. The

1 state will go first, followed by the defendant, and then
2 once they have completed their arguments, then I will
3 instruct you or charge you on the law, and then once all
4 that is done, you will receive the case and you start your
5 deliberations.

6 I will go ahead and make plans to order you a box
7 lunch, and y'all can -- don't they get a menu to decide
8 what they get?

9 CLERK OF COURT: Yes, sir.

10 THE COURT: We don't have to order for them?

11 CLERK OF COURT: I'll give them a menu.

12 THE COURT: You get to choose your sandwich, plural,
13 sandwiches, however many you want. So, what we do, when we
14 come in in the morning, you eat your sausage biscuit and --
15 unless you want fruit tomorrow. You might want bananas and
16 -- just trying to see what kind of...

17 FOREPERSON: Yes, sir.

18 THE COURT: I understand. So, what we do in the
19 morning, we'll go ahead and give you a menu. So, the point
20 I'm trying to make is once you start deliberating and once
21 the argument's over and I charge, you'll have it. You
22 don't have to break for lunch. You can go straight through
23 and deliberate at your, your speed that you want, however
24 you want to do it. And then once you complete it, then
25 that will be obviously the end of it. Is that fair? That

1 good for everybody?

2 FOREPERSON: Yes, sir.

3 THE COURT: All right. I will see you. Tell me.

4 JURY: (En masse) 9:00.

5 JUROR: Your Honor, I have a question. With the two
6 alternates, I assume we're going to be here in the morning
7 to have our sausage biscuit. I understand that.

8 THE COURT: You want two?

9 JUROR: But once you charge the jury, while the other
10 twelve are here, what happens to the alternates at that
11 time? What -- do we go to deliberate as well or ---

12 THE COURT: No, sir.

13 JUROR: Do we go down to the jury room?

14 THE COURT: No, sir. I, I'll find you a place to sit,
15 but I normally won't make you stay long. You can stay as
16 long as you like, but I won't make you stay during the
17 whole deliberations. That would be up to you. Once we get
18 started in the deliberations, we got everybody, I think
19 we'll be safe to go from there.

20 JUROR: Thank you, sir.

21 THE COURT: We'll discuss it in the morning, but you
22 won't be -- you won't have to stay. That's normally the
23 way I do it.

24 Any objections by the state, by the defendant?

25 MR. SUTHERLAND: No, sir.

1 THE COURT: It's sort of like being invited to the
2 dance, but you can't dance. It's what I tell all
3 alternates, but we can't -- it's hard to plan on a five-day
4 trial without alternates. Sometimes things just happen.
5 You don't know, and maybe in the morning something will
6 happen. I don't know. That's, that's normally the way we
7 do that. So, I'll have your biscuits here and we'll start
8 at 9:00. Does that suit?

9 FOREPERSON: Yes, sir.

10 THE COURT: So, see you at 9:00. Have a pleasant
11 evening. Don't discuss the case. Don't do any independent
12 research. Don't look at anything on the news. I hadn't
13 seen anything on the news about it.

14 Once again I commend each and every one of you. Y'all
15 have paid extreme attention and I, I really thank you.
16 It's been a pleasure working with you.

17 FOREPERSON: Yes, sir.

18 THE COURT: Thank y'all.

19 Everybody else remain seated.

20 (THE JURY EXITS AT 3:18 PM.)

21 THE COURT: All right, are y'all ready? Do you want
22 to take a little bathroom -- need a bathroom -- let's take
23 a stretch-your-leg break. We'll come back in in about ten
24 minutes. We'll go over the jury charges, verdict form, and
25 any other matters that we may have.

1 MR. SUTHERLAND: Yes, sir.

2 THE COURT: Thank you.

3 (OFF THE RECORD.)

4 THE COURT: State's ready?

5 MR. SUTHERLAND: Ready, sir.

6 THE COURT: Ms. Campbell, you ready?

7 MS. CAMPBELL: Yes, sir.

8 THE COURT: More importantly, Ms. Walker, you ready?

9 MS. WALKER: Yes, sir, I'm ready.

10 MR. SUTHERLAND: Judge, it seems -- oh, should I
11 begin, sir?

12 THE COURT: I think I'm going to begin.

13 MR. SUTHERLAND: Yes, sir, absolutely.

14 THE COURT: All right, here's what I intend to charge.

15 I always charge obviously multiple indictments. Each one
16 of them has to be proven separately and distinctly of the
17 other. Then I go into presumption of innocence. Then I
18 charge reasonable doubt. My charge on reasonable doubt is
19 it's the kind of doubt that would cause a reasonable person
20 to hesitate to act, and then I go into proof beyond a
21 reasonable doubt is doubt that leaves you firmly convinced
22 of the defendant's guilt. Very few things in the world, so
23 on, so forth. If you are firmly convinced, then find him
24 guilty. If you're -- on the other hand, if you're not,
25 there's a real possibility he's not guilty, give him the

1 benefit of the doubt. That's that language. It's
2 paraphrasing.

3 I'll charge duties of a judge and jury, about they're
4 the finders of the facts. I am the judge of the law. I
5 have no right to have any comment about the facts. If I've
6 done anything that looks like I do, then please just set it
7 aside.

8 All right, y'all want a direct and circumstantial
9 evidence charge? State?

10 MS. CAMPBELL: Whatever you think is appropriate,
11 Judge. I guess there are -- it's mostly direct evidence.
12 I guess there's some circumstantial evidence. I don't know
13 if, if Mr. Sutherland wants one.

14 MR. SUTHERLAND: Well, if they don't want a
15 circumstantial evidence charge, I'll withdraw my suggested
16 circumstantial. Oh, I haven't even turned that one in,
17 sir. So, no need for circumstantial evidence charge.

18 THE COURT: Very well. That's probably the best thing
19 not just, just ---

20 MS. CAMPBELL: Just not to do it?

21 THE COURT: Yeah. And then I'll go from -- we can
22 come back to that if you've got questions.

23 MS. CAMPBELL: No, sir, we don't.

24 THE COURT: Then I'll charge credibility of witnesses
25 and that's standard: credibility, and believe everything

1 one witness says, nothing, a little bit, part, bias,
2 prejudice, you know, appearance of the witness on the
3 witness stand. Use common sense.

4 I will give an expert witness charge. I will charge
5 failure of the defendant to testify is not to be used
6 against him in any manner whatsoever. I'll charge prior
7 record of a witness. It can be used only for credibility,
8 believability.

9 I will charge obviously the hand of one is the hand of
10 all, and I probably will charge that before I go into each
11 of the specific indictments, and my hand of one hand of all
12 is, is very very similar to the proposed request the state
13 is handed up. But it simply says:

14 If a crime is committed by two or more people who
15 are acting together in committing a crime, the
16 act of one is the act of all. A person who joins
17 in with another to accomplish an illegal purpose
18 is criminally responsible for everything done by
19 the other person which occurs as a natural
20 consequence of the acts done in carrying out the
21 common plan and purpose. For example, two people
22 can be guilty of killing another person when only
23 one of the two had a gun, there was only one
24 bullet, and only one of the two fired the shot
25 that caused the death. Two or more people are

1 together acting together, assisting each other in
2 committing the offense, the act of one is the act
3 of all or, as it is sometimes said, the hand of
4 one is the hand of all, and that's what I charge
5 on that.

6 MR. SUTHERLAND: Would, would it be possible, sir, to
7 get natural and probable consequence language?

8 THE COURT: What do you want now?

9 MR. SUTHERLAND: I believe Your Honor had said is a
10 natural consequence of, of the act and then I believe it --
11 actually, the state might have handed up one that included
12 the natural and probable consequence of, of an act. It, it
13 may seem like a small distinction, but it would be
14 something that I would hope would be charged as well.
15 Let's see.

16 MS. CAMPBELL: Judge?

17 MR. SUTHERLAND: As a probable and natural consequence
18 of the acts done.

19 THE COURT: The state handed me, handed me that?

20 MR. SUTHERLAND: Yes, sir. That was their request to
21 charge. I don't think there's a caption on it.

22 MS. CAMPBELL: That wasn't our hand of one, hand of
23 all handed up.

24 THE COURT: Which one was that, Ms. Campbell?

25 MS. CAMPBELL: It's Ralph King Anderson and it's one

1 -- I mean, if you're doing hand of one, hand of all, I
2 think you covered everything that's within that one anyway.
3 Basically it talks about if the purpose is something other
4 than such as robbery, the killing occurs. I think it's
5 redundant, as a couple of mine are. It's the one that
6 says:

7 Two or more combined together to commit an
8 unlawful act such as robbery, and in the
9 execution of that criminal act a homicide is
10 committed by one of the actors.

11 MR. SUTHERLAND: And, Your Honor, I do have ---

12 THE COURT: Hand it up here.

13 MR. SUTHERLAND: I don't think it has a caption on it
14 as to what the charge is.

15 THE COURT: Let me see it.

16 MR. SUTHERLAND: Yes, sir.

17 THE COURT: I'm sure I got it here. I just misplaced
18 it.

19 MR. SUTHERLAND: The only distinction would be what I
20 highlighted there. It would be as a natural consequence is
21 probable or natural consequence.

22 THE COURT: So, you want me to charge the one that Ms.
23 Campbell gave me, which is the same thing I just said
24 except it has probable or natural?

25 MR. SUTHERLAND: Yes, sir, just the only distinction

1 is the probable.

2 THE COURT: No problem.

3 MS. CAMPBELL: Your Honor, we would, we -- hand of
4 one, hand of all is the one similar to what you just said
5 you're going to charge. We, therefore, do not have that
6 language in it. We prefer your charge.

7 THE COURT: All right. Here's, here's what I'm going
8 to do. I'm going to charge what I just read. If the crime
9 is committed by two or more people, what I just read, and
10 then I will add to it:

11 If two or more people combined to commit an
12 unlawful act, and in the execution of that
13 criminal act the homicide is committed by one of
14 the actors as a probable or natural consequence
15 of the acts done.

16 So forth and so on. That's the Ralph King Anderson
17 charge that you handed up.

18 MR. SUTHERLAND: Thank you.

19 THE COURT: Fair enough?

20 MS. CAMPBELL: Thank you.

21 THE COURT: Fair to both sides?

22 MR. SUTHERLAND: Yes, sir.

23 THE COURT: See how easy it is? All right, and hold
24 that one. All right. I think that covers all the just
25 general propositions of law, and you handed me one about

1 unanimous verdict. I do that at the end.

2 MR. SUTHERLAND: Yes, sir.

3 THE COURT: So, let's turn to our charge. Jst a
4 regular murder statute is what I charge.

5 MS. CAMPBELL: Yes, sir.

6 MR. SUTHERLAND: Two ---

7 THE COURT: Y'all want to hear it?

8 MS. CAMPBELL: No.

9 THE COURT: If you want to hear it, you got to wait a
10 second. Mr. Sutherland, it's as follows:

11 Defendant is charged with murder. The state must
12 prove beyond a reasonable doubt that the
13 defendant killed another person with malice
14 aforethought. Malice is hatred, ill will, or
15 hostility towards another person. It is the
16 intentional doing of a wrongful act without just
17 cause or excuse, and with an intent to inflict an
18 injury, or under circumstances that the law will
19 infer an evil intent. Malice aforethought does
20 not have to exist for any particular amount of
21 time. It may be inferred or expressed.

22 I don't use inferred from a deadly weapon.

23 MR. SUTHERLAND: Thank you, sir.

24 THE COURT: Do not use that. Now, is there anything
25 else you want me to add to that by the state? You handed

1 me a ---

2 MS. CAMPBELL: The --

3 THE COURT: You said malice conveys the meaning of
4 hatred, ill will, or hostility. *State vs. Heyward*.

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: Signifies a general malignant and
7 recklessness of the lives and safety of others. I think
8 that's what mine says.

9 MS. CAMPBELL: I need to know if the -- I know that
10 the quote is correct. I just need to double check the
11 cite. I think that's *State vs. Mouzon*.

12 THE COURT: Well, you've got it here from ---

13 MS. CAMPBELL: I know. I've got it from *Heyward*.
14 I'll double check that.

15 THE COURT: But I think mine covers it. But I will
16 add, in the legal sense, malice does not necessarily --
17 I've got that. You've got one in here that I don't have in
18 my general charge. It's the law says if one intentionally
19 kills another during the commission of a felony, the
20 implication of malice may arise, *State vs. Norris*.

21 MS. CAMPBELL: Yes, sir.

22 THE COURT: I assume you want that one.

23 MS. CAMPBELL: Yes, sir.

24 THE COURT: All right.

25 MS. CAMPBELL: Along -- and we put in the limiting

1 instruction on that. It's just an inference, an
2 evidentiary factor.

3 THE COURT: That's correct. All right, and then I go
4 to attempted murder.

5 Ms. Walker, you'll be happy to know I'm going to my
6 Ipad to look at the latest law on attempted murder. I'm
7 doing it by myself.

8 MS. WALKER: That is impressive, sir.

9 THE COURT: All right, my charge is:

10 The defendant is charged with attempted murder.
11 In order to prove this crime, the state must
12 prove beyond a reasonable doubt the defendant
13 attempted to kill another person with malice
14 aforethought.

15 Same thing, and then I will read:

16 An attempt is an effort to accomplish a crime
17 which does not succeed. An attempt includes a
18 specific intent to do a particular criminal act,
19 along with an act falling short of the act
20 intended. The state must show more than mere
21 preparation and intent. There must be some overt
22 act committed in the effort to commit the crime.
23 Intent means intending the result which actually
24 occurs, not accidentally or involuntarily.

25 Et cetera, et cetera. Okay. So, that's attempt,

1 attempted murder. Then we go to burglary first.

2 MS. CAMPBELL: Judge, before you -- can I ask?

3 THE COURT: Yes, ma'am.

4 MS. CAMPBELL: I had handed up one that we had gotten
5 off the suggested jury instructions talking about specific
6 intent to kill is not an element of attempted murder.

7 THE COURT: Okay.

8 MS. CAMPBELL: Will you consider that one?

9 THE COURT: Mr. Sutherland, what do you say to that?

10 MR. SUTHERLAND: I have a specific objection to the
11 character of the instrument used, the manner in which it
12 was used. I -- a little bit reminiscent of the argument
13 with the deadly weapon, the *Belcher* language, sir.

14 THE COURT: Where, where are you looking at?

15 MR. SUTHERLAND: This will be ---

16 THE COURT: Evidence of the character of the act, the
17 character of the instrument used, the manner in
18 which it was used, the purpose to be accomplished
19 and resulting wounds may be considered?

20 MR. SUTHERLAND: Yes, sir, and I, I immediately
21 thought of *Belcher* when I was reading the character of the
22 instrument used, and I'd, I'd be satisfied with Your
23 Honor's charge.

24 MS. CAMPBELL: We've got no problems with taking out
25 that sentence.

1 THE COURT: All right. I'm going to, I'm going to
2 redact evidence of the character down through which the act
3 was committed.

4 MS. CAMPBELL: We'll just take out that whole
5 sentence, Your Honor?

6 THE COURT: Yes, ma'am.

7 MS. CAMPBELL: Yes, sir.

8 THE COURT: All right. Burglary first is just the
9 regular burglary first charge. Y'all okay on that? I
10 mean, it's straight out of the statute. Well, this is
11 burglary first.

12 MS. CAMPBELL: The aggravated. Aggravating.

13 THE COURT: Let's see what we got on burglary. All
14 right, my charge is this:

15 The defendant is charged with first degree
16 burglary. The state must prove first beyond a
17 reasonable doubt that the defendant entered a
18 dwelling without consent.

19 And then I define a dwelling.

20 Next the state must prove beyond a reasonable
21 doubt the defendant intended to commit a crime,
22 either a felony or a misdemeanor, at the time of
23 the entry. And, finally, the state must prove
24 beyond a reasonable doubt that, one, when
25 entering or while in the dwelling or when

1 fleeing, the defendant or an accomplice was armed
2 with a deadly weapon or with a deadly weapon; or,
3 when entering, while in the dwelling, or when
4 fleeing, caused physical injury to anyone not
5 participating in the crime; when entering, while
6 in the dwelling, or when fleeing, the defendant
7 or accomplice used or threatened to use a
8 dangerous object; when entering or while in the
9 dwelling or when fleeing, the defendant or
10 accomplice displayed what was or appeared to be a
11 knife or pistol or revolver.

12 Those would be the four, wouldn't it? He didn't have
13 any prior offenses?

14 MS. CAMPBELL: No, sir, he has no prior offenses.

15 THE COURT: And then the last one was -- number six
16 says: The defendant entered, remained, or -- in the
17 dwelling in the nighttime.

18 MS. CAMPBELL: Yes, sir.

19 THE COURT: That would be applicable, would it not?

20 MS. CAMPBELL: Yes, sir.

21 MR. SUTHERLAND: Yes, sir.

22 THE COURT: So, it would be every one except the two
23 priors?

24 MR. SUTHERLAND: Yes, sir.

25 THE COURT: And then the last one would be attempted

1 armed robbery, and it would be:

2 The defendant is charged with attempted armed
3 robbery. In order to prove this offense, the
4 state must first prove beyond a reasonable doubt
5 that the defendant attempted to take personal
6 property from the person of another. Must also
7 prove beyond a reasonable doubt that the
8 defendant attempted to carry the property away
9 intending to permanently deprive. And, finally,
10 the state must prove beyond a reasonable doubt
11 that the defendant attempted to commit the
12 robbery while armed with a deadly weapon.

13 That's basically it, isn't it?

14 MS. CAMPBELL: Yes, sir. I think it's while armed
15 with a deadly weapon or a representation.

16 THE COURT: Well ---

17 MS. CAMPBELL: In this case, it doesn't matter either
18 way.

19 THE COURT: A deadly weapon or an instrument which is
20 likely to cause death or great bodily harm, but it's no
21 question, in this case, it was a weapon. So ---

22 MS. CAMPBELL: There's no question in this case. So,
23 I don't think it's an issue.

24 THE COURT: And then after I do all those, I -- the
25 verdict has to be unanimous. Can't be -- nobody to punish,

1 nobody to reward. Based on your review of the evidence,
2 and what you determined the true facts to be, and apply it
3 to the law. Anything else?

4 MS. CAMPBELL: No, sir.

5 MR. SUTHERLAND: Nothing from the defense, sir.

6 THE COURT: I'll have five verdict forms as to each
7 indictment. We find the defendant not guilty. We find the
8 defendant guilty of murder. On the two attempted murders,
9 I will put the name of the individual on each indictment so
10 they'll have that, and then attempted armed robbery and
11 burglary. I think that ought to cover it.

12 MR. SUTHERLAND: I'm sorry. What?

13 THE COURT: But I will be here in the morning about
14 8:30 or maybe earlier. And if anybody has anything they
15 want to bring up with me, just walk back in chambers, and
16 we will see if we can resolve it and then put it on the
17 record.

18 MS. CAMPBELL: Your Honor, the only other housekeeping
19 matter, and I'm not sure. There's one item. It's 205 that
20 was testified to and everything. The court reporter
21 indicates it wasn't actually formally put in. I don't
22 think Mr. Sutherland has any problems. It's something he
23 wants. It's the swabs from the fist.

24 MR. SUTHERLAND: I don't have any objection. I mean,
25 it's not inculpatory, but bring them back in for that.

1 MS. CAMPBELL: I don't think we have to bring them
2 back in if it was testified to. It was just oversight.

3 THE COURT: All right. That will be allowed.

4 (SWABS MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
5 205.)

6 THE COURT: No question that defense has the last
7 argument. Is that correct?

8 MS. CAMPBELL: Correct.

9 THE COURT: Correct?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: What else can I do to help?

12 MS. CAMPBELL: I think we're good.

13 MR. SUTHERLAND: I can't believe it.

14 THE COURT: Ms. Simpson, you going to be on, on deck
15 circling in case your co-counsel has a tummy ache in the
16 morning?

17 MS. SIMPSON: I'm always on deck, Your Honor, ready to
18 go. She had enough crackers and Ginger Ale. I think
19 she'll be fine.

20 THE COURT: I hope you feel better. Seriously.

21 MS. CAMPBELL: Thank you, Your Honor. I appreciate
22 that.

23 THE COURT: Well, I thank all of y'all. Y'all have
24 been most professional and civil and prepared. I think
25 we've moved rather efficiently.

1 All right, anything else before we break?

2 MR. SUTHERLAND: No, sir.

3 MS. CAMPBELL: No, Your Honor.

4 THE COURT: All right. Defendant's in custody.

5 (WHEREUPON, THE CASE IS AT EASE.)

6 *FRIDAY, FEBRUARY 28, 2014*

7 (COURT RESUMES AT 9:00 AM.)

8 THE COURT: All right, the state ready to proceed?

9 MS. WALKER: Yes, Your Honor.

10 THE COURT: Defendant?

11 MR. SUTHERLAND: Yes, sir.

12 THE COURT: All right, bring the jury in, please.

13 (THE JURY ENTERS AT 9:01 AM.)

14 THE COURT: Good morning Mr. Foreman, ladies and
15 gentlemen. We're going to -- represented we're going to
16 start with closing arguments. The state will go first,
17 followed by the defendant, and then I will charge or
18 instruct you on the law.

19 Please bear in mind that closing statements, like
20 opening statements, is not evidence in the case. You've
21 already heard all the evidence. Obviously, both sides are
22 advocating for their respective sides. So, they will be
23 arguing the evidence as they see it, but you've heard the
24 evidence, and you know what it is. So, please listen
25 carefully to closing arguments, and then we will be close

1 to being able to start with deliberations.

2 MS. WALKER: Thank you, Your Honor. May it please the
3 court?

4 THE COURT: Yes, ma'am.

5 MS. WALKER: Good morning.

6 THE JURY: (*en masse*) Good Morning.

7 MS. WALKER: Before I get started, the first thing
8 that I want to do on behalf of the State of South Carolina,
9 Richland County, the Scott family, the Williams family, and
10 most importantly the Jones family is thank you for your
11 time and for your attention and for your service this week.

12 You have been exposed this week to what is, quite
13 frankly, an unspeakable tragedy. The pictures you've
14 looked at, the testimony you've heard is something that we
15 ask citizens to do here in Richland County as part of their
16 jury service. And if those things -- as I'm sure at times
17 they did -- offend you, I want to apologize for that and
18 ask that you not hold what were sometimes gruesome and
19 troubling details against the State of South Carolina or
20 the victims in this case.

21 As Ms. Simpson told you earlier this week, what we
22 were going to talk about was an example of how little value
23 some people in our community place on human life. As Mr.
24 Sutherland said, the constitution protects citizens to
25 gives them rights, but the laws, the laws that affect this

1 case and the laws that I'm going to talk to you about
2 briefly are the laws that protect citizens from people like
3 Mr. Roberts.

4 This case, in a criminal case, like in all criminal
5 cases, the state has the burden of proving Maurice
6 Roberts's guilt beyond a reasonable doubt, which leads me
7 to the first thing that I want to talk to you about, and
8 that is what is reasonable doubt.

9 It's not proof beyond all possible doubt. Reasonable
10 doubt is doubt the leaves you firmly convinced of the
11 defendant's guilt. There are very few things in life or in
12 the world that we know with absolute certainty, and in
13 criminal cases the law does not require that proof
14 overcomes every possible doubt. If, based on your
15 consideration of the evidence, you are firmly convinced
16 that the defendant is guilty of the crime charged, you must
17 find the defendant guilty. If, on the other hand, you
18 think there is a real possibility that the defendant is not
19 guilty, you must give the defendant the benefit of that
20 doubt and find him not guilty.

21 For the crimes with which Maurice Roberts is charged,
22 you will hear Judge Early tell you -- and if during this
23 recitation of the law I say something that differs from
24 what Judge Early says, listen to Judge Early. If during my
25 review of the facts as they've been exposed here this week,

1 if what I say is different from how you remember it, go
2 with your memory because the law that makes you the judge
3 of the facts of this case is the same one that makes Judge
4 Early the judge of the law in this case. And he will
5 instruct you that if a crime is committed by two or more
6 people, like in this case with these four co-defendants,
7 and those people are acting together in committing the
8 crime, the act one of one of them is the act of all of
9 them. A person who joins with another to commit an
10 unlawful act is criminally responsible for everything done
11 by the other person which happens as a probable or natural
12 consequence of the acts done in carrying out the common
13 plan and purpose.

14 For example, two people or, in this case, four people
15 can be guilty of killing another person when only one of
16 the two had a gun, there was only one bullet, and only one
17 of the two fired the shot that caused the death. If two or
18 more people are together, acting together, assisting each
19 other in committing the offense, the act of one is the act
20 of all. Or, as it is sometimes said, the hand of one is
21 the hand of all.

22 There's been a lot of questions this week about who
23 actually pulled that trigger that night. Was it Deshawn?
24 Was it Demetrice? Was it Vincent? Or was it, as I think
25 we've proven here this week, Maurice Roberts? What the

1 hand of one, hand of all means is that, quite frankly, it
2 doesn't matter. Once the four of them got together and
3 decided to go commit this lick and went into a home with --
4 armed with a weapon, committing a home invasion, the act of
5 one of them became the act of all of them. All of them are
6 equally responsible for their actions that night once they
7 got together and decided to go commit a home invasion armed
8 with a .45 pistol.

9 The judge will further charge you that if two or more
10 combine together to commit an unlawful act, such as
11 robbery, and in the execution of that criminal act a
12 homicide is committed by one of the actors as a probable or
13 an actual consequence of the acts done in pursuance of the
14 common design, all present and participating in the
15 unlawful, in the unlawful undertaking are as guilty as the
16 one who committed the fatal act.

17 Regardless of which one of them actually pulled the
18 trigger, they are all equally guilty. Vincent Nelson,
19 Deshawn McClary, and Demetrice James are all just as guilty
20 as Maurice Roberts for the murder of Brandon Jones and the
21 attempted murders that occurred that night. The common
22 purpose may not have been to kill and murder, but if it was
23 unlawful -- as, for instance, to break into someone's home
24 and steal -- and in the execution of this common purpose, a
25 homicide was committed by one as a probable or natural

1 consequence of the acts done in pursuance of the common
2 design, then all present participating in the unlawful
3 common design are as guilty as the slayer.

4 When you arm yourself, when you invade someone's home,
5 someone's castle, a death in there is a natural and
6 probable consequence. Why else take a gun if you don't
7 intend to use it? And for those actions, Maurice Roberts
8 and all of his co-defendants have been charged with murder,
9 attempted armed robbery, attempted murder, and burglary in
10 the first degree.

11 In this state, murder is the killing of any person
12 with malice aforethought, either expressed or inferred.
13 Malice is a word that our courts have gone further in
14 defining. They define malice as hatred, ill will, or
15 hostility towards another person. It is the intentional
16 doing of a wrongful act without just cause or excuse. It
17 is an intent to inflict injury under circumstances that the
18 law will infer an evil intent. It's also been defined as
19 not necessarily a party's ill will towards the individual
20 injured, but signifies whether -- a general malignant
21 recklessness of the lives and safety of others, or
22 condition of mind which shows a heart, regardless of social
23 duty, and faithfully bent on mischief.

24 The facts in this case, what Maurice Roberts and his
25 co-defendants did on that night, ladies and gentlemen,

1 things don't get much more malicious than what they did.
2 They got together. They executed and strategized to go get
3 studio equipment. They walked from Maurice Roberts's home
4 to the victim's home. And as Brandon Jones was on the
5 ground begging not to be shot, this defendant unloads his
6 gun into Brandon's body. There are few things that one
7 will ever hear more malicious than what Maurice Roberts did
8 on January 25th of 2013.

9 The malice that I just talked to you about does not
10 need to exist for any particular time before the act is
11 committed. It may exist in the mind of the defendant just
12 before and at the time the act is committed. Therefore,
13 there must be a combination of the previous evil intent and
14 the act. When he takes that gun and he points it down to a
15 defenseless person who he's already pistol whipped and
16 rendered helpless, at that point there was malice, and he
17 pulled that trigger. And the malice, combined with the
18 pulling of that trigger and death of Brandon Jones, is
19 murder.

20 But even further, the law says if one intentionally
21 kills another during the commission of a felony, like an
22 armed robbery or a burglary, the implication of malice may
23 arise. If facts are proved beyond a reasonable doubt
24 sufficient to raise an inference of malice to your
25 satisfaction, this inference would be simply an evidentiary

1 fact to be taken in consideration by you, the jury, along
2 with the other evidence in the case, and you make give it
3 such weight as you determine it should receive.

4 The law also allows the jury to infer malice if you
5 conclude the homicide was a proximate and direct result of
6 the commission of the felony. And for that regard, the
7 attempted armed robbery would be a felony under our law.
8 You can imply that malice existed if a person is in the
9 commission of a felony, and at the time of that attempt
10 executes a fatal blow. That's murder and that's the charge
11 for which the defendants have been charged in the death of
12 Brandon Jones.

13 They've also been charged with two counts of attempted
14 murder. You've heard from Joshua Williams and Trent Scott
15 that they actually shot that night. It's a, basically a
16 murder but the victim survives, attempted murder. The
17 state must prove the defendant attempted to kill another
18 person with malice aforethought, either expressed or
19 implied.

20 An attempt is an effort to accomplish a crime which
21 does not succeed. An attempt includes a specific intent to
22 do a particular criminal act, along with an act -- excuse
23 me, along with an act falling short of the act intended.

24 The state must show more than mere preparation and
25 intent. At this point, it's not like they just talked

1 about going to go do this armed robbery, and then decided
2 not to do it. They talked about it, and then they went to
3 go commit the armed robbery and the burglary, and as a
4 result the attempted murders and murder.

5 The state must show more than mere preparation and
6 intent. There must be some overt act: walking over to the
7 house, trying to break into the home, pointing a gun at
8 people's faces, demanding money. There must be some overt
9 act committed in the effort to commit the crime.

10 Intent means intending the result which actually
11 occurs, not accidentally or involuntary. Intent may be
12 shown by acts and conduct of the defendant, and other
13 circumstances from which you may naturally and reasonably
14 infer intent.

15 They have been charged with attempted murder in the
16 shooting of Joshua Williams and Trent Scott. Attempted
17 murder, a specific intent to kill is not an element of
18 attempted murder, but there must be a general intent to
19 commit serious bodily injury, like shooting someone.

20 Intent means intending the result that actually occurs, not
21 accidentally or involuntary, or involuntary. Intent may be
22 shown by acts and conduct of the defendant and other
23 circumstances from which you may naturally and reasonably
24 infer intent. Intent may also be inferred when it is
25 demonstrated that the defendant voluntarily and willfully

1 commits an act, the natural tendency of which is to destroy
2 another's life.

3 Not only did he pistol whip them. He then shot them.
4 Trent Scott was shot, Joshua Williams was shot, but what is
5 not in that charge and what Judge Early will not charge you
6 is that the seriousness of the injury matters in an
7 attempted murder. A person can shoot at another person and
8 completely miss them and still be charged with attempted
9 murder.

10 The EMS workers told you that the wounds were cared
11 for. That they were superficial wounds to Joshua Williams.
12 The fact that he missed doesn't make him any less guilty of
13 attempted murder. The fact that he didn't have the ability
14 to shoot at a sitting target with Trent Scott and Josh
15 Williams like he did with Brandon Jones doesn't make
16 Maurice Roberts or any of his co-defendants, for that
17 matter, any less guilty of attempted murder.

18 They've also been charged with armed robbery. The
19 state must first prove beyond a reasonable doubt the
20 defendant attempted to take personal property from the
21 person or presence of another person. The state must also
22 prove beyond a reasonable doubt that the defendant
23 attempted to carry the property away, intending to
24 permanently deprive the owner of the property, and to keep
25 the property for the defendant's own use.

1 Finally, the state must prove beyond a reasonable
2 doubt the defendant was armed with a deadly weapon during
3 the attempted robbery. A deadly weapon is an article,
4 instrument, or substance which is likely to cause death or
5 great bodily harm. Whether an instrument has been used as
6 a deadly weapon depends on the facts and circumstances of
7 each case.

8 There is no doubt in this case that the gun in
9 question was a deadly weapon. It killed someone. There's
10 no doubt in this case that that was the intended purpose of
11 it. Co-defendant after co-defendant after co-defendant
12 told you that there was a gun out. That they were going to
13 go get studio equipment, and that that was the purpose of
14 going over to the Scott residence that night.

15 The following example of instruments which may be
16 deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
17 dagger, a knife, a slingshot, metal knuckles, a razor,
18 gasoline, a fire bomb or molotov cocktail, and the lighter.

19 And lastly, they've been charged with burglary in the
20 first degree. A person is guilty of burglary in the first
21 degree if the person enters a dwelling without consent and
22 with the intent to commit a crime in the dwelling. And
23 either, one, when effecting entry or while in the dwelling
24 or in immediate flight he or an accomplice in the crime is
25 armed with a deadly weapon. Here we have going into house

1 with a gun. When, in effecting entry, while in the
2 dwelling, or in immediate flight he or an accomplice in the
3 crime causes physical injury to a person who is not a
4 participant in the crime.

5 In this case, they caused physical injury to three
6 people. And, ladies and gentlemen, we need only one of
7 these, but as you will see, we have multiple elements to
8 make this defendant and his co-defendants guilty of
9 burglary in the first degree.

10 When, in effecting entry, or while in the dwelling, or
11 in immediate flight, he or an accomplice in the crime uses
12 or threatens the use of a dangerous instrument. They're in
13 there, and he said I'm about to pull. I'm about to pull.
14 Threatens the use of a dangerous instrument.

15 Or lastly, when, in effecting entry or while in the
16 dwelling or in immediate flight, he or an accomplice is
17 entering or remains during the hours of darkness.
18 Testified that it was -- Joshua Williams testified that it
19 was dark outside. They all said it was around 10:00 when
20 this burglary happened. All four of those elements
21 required are present in this case.

22 And lastly, and what this case and just about every
23 other case boils down to is the credibility of witnesses.
24 In determining the believability of witnesses who have
25 testified in this case, you may believe one witness over

1 several witnesses, or several witnesses over one witness.
2 You may believe a part of the testimony of a witness and
3 reject the remaining part of that testimony of the same
4 witness. You may believe the testimony of a witness in its
5 entirety or reject the testimony of a witness in its
6 entirety. You may consider whether any witness has exhibit
7 to you -- has exhibited to you any interest, bias,
8 prejudice, or other motive in this case, and I'm going to
9 get back to this much -- in more, much more depth later.
10 But you may also consider the appearance and manner of a
11 witness while on the witness stand. Those are the laws
12 that are going to be applied to the facts of this case.

13 And as the three of us were preparing for this trial,
14 Ms. Campbell, Ms. Simpson, and I, we began to look at the
15 evidence as we thought it would play out in court and to
16 try to anticipate what defense Mr. Sutherland may use in a
17 crime like this. How do you defend a case in which the
18 victims can identify your client as the person who broke
19 into their home, pointed a gun at them, began to fight
20 them? How do you defend a case like that? How do you
21 defend a case when not one but three co-defendants are
22 testifying against your client? How do you defend a case
23 in which your client confesses and implicates his own guilt
24 in the crimes? How do you defend a case in which the cell
25 phone, the text messages that your client and his

1 co-defendants sent to each other that night to plan the
2 armed robbery and burglary and eventually attempted murders
3 and murder, how do you defend a case where he still has his
4 text messages on his phone? How do you defend a case with
5 such overwhelming evidence of your client's guilt? How do
6 you defend a case when your client, according to his own
7 friends, stood over a helpless young man and shot him to
8 death? How do you defend the indefensible? And, quite
9 frankly, we were at a loss.

10 And it wasn't until Tuesday when Mr. Sutherland began
11 his opening statement that I began to understand what the
12 defense was going to be in this case. Just don't talk
13 about it; don't talk about the case. Talk about the scary
14 government lawyers over there. Talk about the constitution
15 and the protection that it affords to citizens, but by all
16 means don't talk about the facts of this case because
17 maybe, just maybe if you can scare the jury enough of these
18 ladies at this table, they will be so caught up in being
19 afraid of them that they will forget about the pistol
20 whipping, armed robbing, burglarizing murderer of a client
21 he has sitting beside him.

22 It's a novel defense, I guess, but one that's not
23 going to work because I've watched all of you as you've
24 paid close attention, as you've reviewed the exhibits, and
25 as you've listened to the witnesses in this case, witnesses

1 like Joshua Williams.

2 He was the first victim that testified, and he took
3 the stand, and he told all of you about what happened that
4 night. That he was at the Scott home. That he'd been
5 welcomed into their home. He was with his best friend,
6 Brandon. That they were hanging out in the basement as
7 usual, and that a guy that he knew by the name of J School,
8 Vincent Nelson, Jr., came over to that home and it
9 surprised them because they hadn't seen Vincent Nelson,
10 Jr., in a while, and that J School was acting weird. He
11 was on the phone, and that that was weird because they
12 don't know him to have a phone. That he was pacing back
13 and forth, and that he kept asking Brandon Jones for a
14 cigarette. He wanted to go outside and smoke.

15 He told you that they eventually went outside,
16 Brandon, Josh, and Vincent Nelson, Jr., and that because he
17 didn't want to be disrespectful of the home, he walked up
18 to the top of the hill to smoke his cigarette so that he
19 wouldn't ash near a driveway.

20 He said that three guys kept walking back and forth.
21 That he didn't like it because he didn't like the
22 intimidation factor, and that before he knew it, they ran
23 back at him. One of them hit him in the head with a
24 pistol. That he went down. That he was in and out of
25 consciousness. That he saw them run down the hill. He

1 heard scuffling. They entered the home, and that after he
2 got hit with that pistol, the only thing he could do was
3 play dead.

4 And that after they came out of that home, he heard
5 his best friend, Brandon, beg for his life. Don't shoot
6 me. Don't shoot me, and as he was begging for his life, he
7 heard a series of gunshots go off and that a jolt of pain
8 went through his body, and that he saw eight shoes run up
9 the hill.

10 Credibility, judge Josh's credibility. He didn't put
11 in a bunch of extra evidence; he didn't go identify people
12 that he couldn't identify. He said I couldn't see their
13 faces. I'd been pistol whipped. The only thing that I
14 knew to do was play dead.

15 You heard from Troy Scott, and he did identify people.
16 He identified not only J School, but he identified Maurice
17 Roberts and Demetrice James as well. Troy said that he was
18 in the bedroom with his girlfriend, Cari, who also
19 testified. That he heard a crash outside of the bedroom
20 and that he was confused because people knew better than to
21 the fight in his mother's home. That when he walked out of
22 the bedroom, he saw a stranger in his home fighting with
23 his little brother. That he went to go help his little
24 brother. That as he was doing that, another person ran
25 into the room, and that they began to fight them and push

1 them out of the home because it was his job and his little
2 brother's job to not let them get any further into the
3 home. To protect Cari, to protect their parents, to
4 protect their home.

5 And you heard from his little brother, Trent Scott.
6 He was walking down the stairs with hangers. That he saw
7 this defendant running into the home pointing a gun, and
8 that he knew at that point in time it was go time. That he
9 had to fight him. That he had to get him out of his house.
10 That he knew he had to do those things or die trying.

11 And both Troy and Trent said that as though -- as they
12 were fighting them, as they became entangled in the most
13 intimate of battles, wrestling on the ground, picking them
14 up, one of them put somebody in a Full Nelson. They pushed
15 them out of the house. They were able to get good looks at
16 them, and both of them identify Maurice Roberts and
17 Demetrice James as the two men who ran into their home that
18 night. They identified Vincent Nelson. But the person
19 that they never identified was Deshawn McClary, the person
20 that they never saw that night because Deshawn McClary
21 never entered the home. They identified the other three,
22 though. Judge their credibility.

23 And if -- one way to judge someone's credibility when
24 they take the witness stand is to see if the things they
25 say to you, if the testimony they give is corroborated by

1 other evidence. Talks about that fight that took place in
2 the red room -- or in the orange room where he had to throw
3 down those hangers and fight to keep those intruders out of
4 his home or die trying. Here is the red room; here are
5 those hangers strewn across the floor, the corroboration of
6 their testimony.

7 Cari Pearson was there, too. She said that she heard
8 the crash. She followed her boyfriend out, and that she
9 really couldn't get close enough. She couldn't tell who
10 was fighting. She saw a gun, and she ran back inside. She
11 didn't know whether to run or hide, so she just paced until
12 she heard all those gunshots. And at that point in time,
13 she didn't know what to do because she thought that her
14 boyfriend had just been shot.

15 And that she gets to Trenton. Sees that his arm --
16 he's bleeding from his arm. They run upstairs to Mr. and
17 Ms. Davis's bedroom. They knock on the door. They tell
18 them what's going on. Then more gunshots rang out.

19 Finally you heard from Mr. Davis. He's the one who
20 let Vincent Nelson, Jr., into the house. He was a friend
21 of his children's, someone who'd been in the home before,
22 someone who he trusted, and sent him downstairs. And it
23 wasn't until later when he was awakened by the frantic
24 banging on his door by those kids, and that nobody knew
25 where Brandon was. Then he left the house, concerned about

1 the young man he considered to be like a son. That he
2 found Branson on that cold driveway that January night
3 bleeding out, begging for help, and that he called 911.
4 Judge the credibility of those witnesses.

5 In order to try to corroborate this evidence, what we
6 bring forward to you, our expert witnesses. Those are
7 witnesses that -- the judge will advise you, as he advised
8 you while they were testifying -- who can render an opinion
9 based upon their expertise, their training, their
10 education.

11 Witnesses like Terri Gleason, who said that all of the
12 projectiles and all of the shell casings that were found on
13 that scene came from a .45. It was not just any .45, but
14 they all came from the same .45. There was one weapon in
15 play that night, and it was a .45 that just happens to be
16 the same type of gun that Maurice Roberts has, the same
17 type of gun that Maurice Roberts had that night. The type
18 of gun that Jwuan Duckett has seen him with, the same type
19 of gun that Vincent Nelson, Jr., has seen him with, and the
20 same type of gun that his co-defendants saw him with on
21 that night.

22 John Barron, he was the DNA expert, and there was a
23 lot of back and forth and number writing and peaks. But
24 basically what that boiled down to was Vincent Nelson, Jr.,
25 discarding a bunch of clothes behind none other than

1 Maurice Roberts's house after that burglary, armed robbery,
2 murder, and attempted murder. That Vincent Nelson, Jr.'s
3 DNA was on some gloves and a hat. That Vincent Nelson, Jr.
4 -- Vincent Nelson, Jr.'s DNA was also at the crime scene on
5 a beer can, the same beer can that had Brandon Jones's DNA
6 on it.

7 And they went back and forth over the DNA swabs from
8 the Scott brother's hand who'd been involved in the fight,
9 and there was a minor contributor and a major contributor.
10 The major contributor, not surprisingly, was the person
11 whose hands they were, and the minor contributor was too
12 weak to reliably interpret. He didn't include anyone; he
13 didn't exclude anyone. There wasn't enough DNA to get a
14 fair and accurate reading for him to render a result.

15 Then there was Dr. Amy Durso. She's the pathologist
16 who performed the autopsy in this case. She testified that
17 Brandon Jones was shot five times, one of them to the back
18 left hand as he shielded himself, providing the only
19 defense he could. That the other shot went through his
20 neck. The other shot went through his hip, and that he was
21 shot twice in the back. That as those bullets ripped
22 through his body, destroying his lungs and his liver, he
23 bleed out. Those five gunshots caused the death of Brandon
24 Jones.

25 He was shot in the back at downward angle, one through

1 the hand. She said that those shots were consistent with
2 someone, and as Deshawn McClary testified, standing over
3 Brandon Jones just unloading a gun into him.

4 There were several law enforcement officers that you
5 heard from. Reginald Grant, he was the first responding
6 officer; he was the first witness on the stand. Came in
7 and he said that they got gunshots, a call that gunshots
8 were -- had been fired. That people were hurt. That he
9 originally drove past the house. It was the same thing the
10 witness said, that he saw the cop drive past the house, and
11 he went up and waved him down and brought him back to the
12 right home. That when he got there and he saw other law
13 enforcement personal officers, EMS tending to the victims,
14 and so he, as is protocol, secured the crime scene and
15 began a crime scene log.

16 Michael Beeler, Yvonne Woods, Stan Richards, and
17 Timothy Lee, they were the crime scene investigators. They
18 were the ones who took the photographs that night, who
19 collected the evidence that night, and talked about the
20 things that they saw and observed: the blood-spattered
21 driveway, the blood inside, the damage to the interior of
22 the home that's seen in these pictures. They collected the
23 shell casings from that home, the shell casing that's there
24 inside that red room.

25 And especially Investigator Lee, who was called

1 several days later to take a picture of Maurice Roberts.
2 Remember the boys said that they'd got into a fight with
3 the people inside, and that he was able to hit one of them
4 in the eye? It wasn't Deshawn McClary who Maurice Roberts
5 claims went into the house that had a black eye. It was
6 Maurice Roberts. Still visible several days later.

7 You heard from Investigator Cruz, who's with the
8 Columbia Housing Authority. Hammond Village is one of the
9 areas that's under his supervision. He knows Maurice
10 Roberts, and that he got a phone calls about some clothes
11 connected to a possible murder that were hidden behind
12 Maurice Roberts's apartment, in that apartment complex.
13 That he went out there, and there were clothes there. That
14 he called CPD and Richland County because he didn't know
15 which agency may be involved in that murder. And then when
16 he met Scott Faust, he took him those clothes.

17 Scott Faust, who testified that there was an anonymous
18 tip that came in that Maurice Roberts and Vincent Nelson
19 had stashed clothes they'd used during a murder behind
20 Maurice's apartment, and those clothes had Vincent Nelson's
21 DNA on it.

22 You heard from Investigator Boland; he's the lead
23 investigator of the case. He talked about how the
24 investigation progressed, about the statements that they
25 were getting in. How each co-defendant not only implicated

1 himself but implicated all of his other co-defendants in
2 that crime, in that burglary, in that armed robbery
3 attempt, those attempted murders, and the murder of Brandon
4 Jones.

5 You heard from Agent Smith, thirty years of law
6 enforcement, and this case developed and evolved much the
7 way many of his other cases have. There are multiple
8 co-defendants. They get statements. They minimize their
9 own roles; they shift blame to other people. But that
10 because of the laws of this state, they can shift blame and
11 blame each other for being the shooter all they want, but
12 that it doesn't matter because under the laws of this
13 state, they are all equally responsible for what they did
14 that night. The non-shooters are just as guilty and just
15 as responsible in the death of Brandon Jones as Maurice
16 Roberts is.

17 Lastly, you heard from Captain Scott McDonald. He
18 went over, you know, tracking down Vincent Nelson, Jr., at
19 Maurice Roberts's apartment, and they knocked on the door.
20 Maurice Roberts, Sr., came to the door. That they asked
21 him if Vincent Nelson, Jr., was inside, and that Maurice
22 Roberts, Sr., lied to them. That Vincent Nelson, Jr., was
23 found asleep on the couch. Jwuan Duckett was found hiding
24 in a closet with Maurice Roberts, Jr.'s cell phone. And
25 that Maurice Roberts, Jr., gave them information that

1 Vincent Nelson, Jr., used his cell phone on the night of
2 the murder.

3 And that after receiving that information, they asked
4 Maurice Roberts, Jr., to go down the sheriff's department
5 with him in his father's presence. That Maurice Roberts,
6 Jr., went willingly, and that because in cases like this he
7 never really knows what's going to happen, out of an
8 abundance of caution, he read Maurice Roberts, Jr., his
9 rights.

10 You're going to have a copy of this with you back in
11 the jury room, but I want to go over the Advice of Rights
12 and the statement with you as well. On January 28th at
13 2:25 at the Richland County Sheriff's Department, the
14 rights that were read to him and checked off:

15 Before we ask you any question, you must
16 understand your rights. You have the right to
17 remain silent. Anything you say can be used
18 against you in court. You have the right to talk
19 to a lawyer for advice before we ask you any
20 questions, and to have a lawyer with you during
21 and questioning. If you cannot afford a lawyer,
22 one will be appointed for you before any
23 questioning if you wish. If you decide to answer
24 questions now without a lawyer present, you still
25 have the right to stop answering at any -- at any

1 time. You also have the right to stop answering
2 at any time until you talk to a lawyer.

3 Maurice Roberts signed here, as did Chris Lindler. He
4 then waived those rights.

5 I have read the statement of my rights and
6 understand what my rights are. I am willing to
7 talk and answer questions. I understand and know
8 what I am doing. No promises have been made to
9 me, and no pressure or coercion of any kind ---

10 Coercion is underlined because he went and further
11 explained what coercion meant to him.

12 --- of any kind has been used against me.

13 Maurice Roberts waived those rights because at that
14 point, Maurice Roberts was just going to deny being there.
15 He told them I don't know what you're talking about. I
16 wasn't there; I didn't have anything to do with it.
17 Because what Maurice Roberts thought, incorrectly, was that
18 the boys, his 600 rap group, would never turn on him. They
19 would never implicate Maurice Roberts in a crime. I wasn't
20 there; I don't know what you're talking about.

21 But as his plan begins to unravel, as he's confronted
22 with the statements of Jwuan Duckett, who is telling them
23 everyone who was involved, and Vincent Nelson, Jr., who is
24 also implicating himself and Maurice Roberts, he has to
25 change his strategy. He can no longer deny being there

1 because that's not going to work.

2 So, he shifts his lies. He's got to acknowledge being
3 there, but he begins to minimize his role. Again, at the
4 top of this page that you will have back with you in the
5 jury room are the rights that were read to him earlier.
6 And then they say what can you tell me about the shooting
7 that took place on January 25, 2013, at [REDACTED]
8 [REDACTED]? Says:

9 I was at my house that night around 10, 10:25 PM
10 with Junior. That's when 600 and Metro came over
11 to my house. While we were there, Junior talked
12 about going over to his homeboys' house for a
13 lick. He said they had a studio there. Junior
14 said the house was over there by the Village.
15 Junior had my cell phone and left the house about
16 five minutes before me, 600, and Metro did. The
17 plan was the Junior would get inside and then
18 call us, let us know when to come. We then began
19 to walk over toward E.E. Taylor School. While we
20 were walking, 600 got a phone call from Junior.
21 600 gave me the phone. Junior told -- Junior
22 told me that he was in, that his homies' daddy
23 let him in. I told Junior that he didn't need to
24 do this shit with the boys' daddy there. I was
25 walking down Williamsburg with 600 and Metro. I

1 stopped when I got in front of the house. Metro
2 and 600 kept walking past the house and then turn
3 around and came back up to the house and took off
4 running down the drive.

5 At this point is when he begins to switch his role.
6 Not, not being there, but to make Deshawn McClary, who he
7 calls 600, responsible for the things he did that night.

8 I saw them telling people to get down. 600 and
9 Metro began tussling with someone in the
10 driveway. I saw them tussling and ran down the
11 driveway to help out. The boy had 600 on the
12 ground. I ran down and pulled the boy off 600.
13 When I did this, the guy turned around and hit me
14 with his elbow in my eye. The boy then turned
15 around and hit me with his fist. 600 then pistol
16 whipped the boy and felt down. 600 then went to
17 the doorway of the door at the bottom of the
18 driveway. 600 was trying to get the door open.
19 The other boys were trying to shut the door on
20 him, and he got his arm or hand stuck in the door
21 and was screaming for help. I ran over and tried
22 to help push the door open so 600 could get his
23 hand out. That is when I heard the gunshot go
24 off from 600's gun.

25 Now it's 600's gun. The gun that everyone has seen

1 Maurice Roberts with, he now makes -- that's 600's gun.

2 After the first shot, 600 and I back away from
3 the door. That's when 600 ran up the hill and
4 started shooting the boy that was down in the
5 middle of the driveway about halfway up. When I
6 saw this, I took off running and ran back to my
7 house. When I got back to my house, I was the
8 first one there. Junior then shows up. Junior
9 was saying ---

10 And excuse my language.

11 --- Niggas don't know how to listen. I cut on
12 the TV and turn on the news to see if there was
13 anything about what had just happened. I went
14 and got some ice to put on my eye. I then laid
15 down and fell asleep. Junior woke me up about
16 2:00. Junior wakes me up to show me something on
17 Facebook. It said RIP Beezy. I said damn, bro,
18 to Junior and then went back to sleep.

19 He realizes at this point that he has been involved in
20 a murder. Someone has died, and Maurice Roberts's reaction
21 is to say damn, bro, and go back to sleep. He didn't lose
22 a wink of sleep over this; he shot someone to death, and he
23 said damn, bro, and goes back to sleep.

24 Next question is:

25 While you were at the house during this incident,

1 did you hear someone ask how many people were in
2 that house? Yeah. Whoever the guy that got shot
3 was being asked how many people were in the house
4 by 600. Did you shoot anyone that night on
5 Williamsburg Drive?

6 And his answer is no.

7 Did you have a gun with you on that night? No.
8 Who had the gun and did the shooting? 600. What
9 is 600's real name? I don't know his name; I
10 just know of him.

11 Now he doesn't even know this person who's been at
12 this house, with whom he's decided to commit an armed
13 robbery and burglary.

14 Can you describe 600? About 6 feet, skinny
15 fellow, albino. He was wearing all black, I
16 think. Twenty-one years old.

17 No one that entered that house that night was
18 described as being 6 feet, twenty-one, or albino. They
19 were both described as being much shorter and having a
20 brown complexion.

21 In this crowd, Deshawn McClary sticks out. He's about
22 a foot taller almost than Demetrice James and Maurice
23 Roberts. But that is who, on this occasion before he's
24 confronted with some of the facts of the case, Maurice
25 Roberts decides to blame for that murder.

1 What were you wearing that night? Brown
2 camouflage pants, a black hoodie with a hole in
3 the left shoulder. I accidentally bleached it
4 yesterday. I accidentally bleached it yesterday
5 when I was doing the dishes.

6 And that may be actually the most absurd part of this
7 whole case. He just happens to accidentally bleach the
8 clothes he's used during a murder while he's doing the
9 dishes. Is that credible? Does that sound true to you, or
10 does that sound made up and contrived by a young man who is
11 now backed into a corner?

12 He is the only defendant that night that felt the need
13 to go home and bleach his clothes because he was the only
14 defendant that night that was close to Brandon Jones as he
15 executed him for Brandon Jones's blood to splash back onto
16 this clothes. He had to get that blood off of him. And as
17 John Barron testified, the bleaching would have destroyed
18 that evidence. This wasn't an accident that occurred while
19 he was doing some chores around the house. This was an
20 attempt to cover up a murder that he had been involved in.

21 Who is metro? I don't know his real name. Black
22 male. 5/7, 5/8. Average build. Nineteen years
23 old. Medium complexion. He was wearing a skull
24 cap with a hoodie over it. I think he was
25 wearing all black as well. Where is the gun at

1 now? I don't know, sir. Is the picture I showed
2 you of Vincent Nelson the person you know as
3 Junior? Yes.

4 And they asked him questions about that gun, the gun
5 that people had seen on multiple occasion at Maurice
6 Roberts's house, the gun that since has gone missing.

7 If you want to ignore all of the other evidence in
8 this case, Maurice Roberts's statement alone makes him
9 guilty of these crimes. He admits to planning this, to
10 going over to the house to execute the plan, to helping out
11 as his, as his friend is tussling. If you want to ignore
12 the rest of this evidence and just take Maurice Roberts's
13 version of his role in the crime that night, his version
14 alone makes him guilty.

15 But Maurice Roberts, when confronted with more of the
16 evidence in this case that he and Demetrice had been picked
17 out of a photo lineups, and everybody knows Deshawn McClary
18 was acting as the lookout that night and never entered the
19 home, he began to evolve his story once again to try to
20 come up with some sort of defense for his actions that
21 night. He then shifts the blame from I wasn't there to I
22 was there and I never went inside -- that was all 600 -- to
23 it was Demetrice James. That's what he begins to tell
24 people. It was Demetrice who fired the shots that night.
25 His story is evolving as he's looking for a way out, for

1 any way that he doesn't have to take responsibility for his
2 actions that night.

3 And lastly, the people who he never thought would turn
4 on him: Jwuan Duckett, Demetrice James, Vincent Nelson,
5 Jr., and Deshawn McClary. And as they testified, the thing
6 that struck out -- that stuck out to me was that they all
7 testified that they were much closer to Maurice Roberts
8 than they were to anybody else in that group. He had
9 surrounded himself with people who owed more loyalty to him
10 than they did to each other because if he did that, they
11 may tell on each other, they may flip on each other, but
12 they would never turn on him. It was a gamble he took, and
13 it was a gamble that he took and lost because they gave
14 statements to police implicating Maurice Roberts.

15 They said that he was the one with the gun that night.
16 Some of them said they didn't see the actual shooting, but
17 the only person that they saw with the gun that night was
18 Maurice Roberts. And when he realized that their loyalty
19 wasn't going to be enough to silence them, he then began to
20 threaten them.

21 Jwuan Duckett, the one who was found with Maurice
22 Roberts's cell phone hiding in Maurice Roberts's closet,
23 came in, and he testified that he was at Maurice's house.
24 That he heard Deshawn, Maurice, Demetrice, and Vincent
25 Nelson, Jr., planning this armed robbery. That they were

1 going to go get studio equipment, and he didn't go with
2 them.

3 He talked about the rap group that they had, The 600.
4 And when he talked to police, he said that Maurice Roberts
5 was a part of 600. But when he took the stand, he backed
6 off of that a little bit until he was confronted with
7 evidence of his own statement. Jwuan Duckett came in here
8 and testified against Maurice Roberts, something Maurice
9 Roberts never thought would happen.

10 And there was Demetrice James. Demetrice, according
11 to his testimony, was walking to the studio. They were
12 going to go do a rap song, when all of a sudden an armed
13 robbery breaks out. He sees Maurice running down the hill.
14 He goes down to try to help Maurice, who he continually
15 referred to as his good friend. And that in the midst of
16 that, he sees Maurice with a gun, and that gun was shuffled
17 back and forth. That he did have the gun at one point,
18 which is corroborated by the testimony of Scott brothers,
19 and that the gun went off, and that he gave it to Maurice.
20 And then the gun went off several more times.

21 Then there was Vincent Nelson, Jr., perhaps most
22 tedious testimony to take place in any courtroom in this
23 state. He gave a statement to police. He came in here and
24 he took the stand, and he looked out in that crowd, he
25 looked at Maurice, and he was at times rendered mute. But

1 he couldn't get away from the statement he'd already given.
2 He couldn't get away from pointing out that Maurice Roberts
3 was a part of that plan. That he went inside to be the
4 guinea pig. That he texted from Maurice Roberts's cell
5 phone, told them the number of people that were in the
6 house. That Maurice Roberts, after he'd gotten two people
7 outside of the house, came down at him and pointed a gun at
8 him. That he saw Maurice Roberts pistol whip people. That
9 he saw Maurice Roberts and Demetrice go into the home.
10 That he stayed out with one of the victims while Deshawn
11 McClary was with the other. That as they came out of that
12 home, he began to run away, and he heard more gunshots go
13 off, but the person he saw with the gun that night was
14 Maurice Roberts.

15 That when they got back, they needed to clean
16 themselves up. That Maurice Roberts went upstairs that
17 night -- not the next day when he was washing dishes -- but
18 that night, and when he came back downstairs, he smelled
19 bleach. Then Maurice Roberts told him to keep his mouth
20 shut, and if they kept their mouths shut, they would be
21 fine.

22 And finally there was Deshawn McClary. He testified
23 that 600 was the name of their rap group. That they
24 planned the robbery. That the cell phones were exchanged.
25 That his cell phone was the one that the group had, and

1 they were walking over to commit this robbery. That he was
2 acting as a lookout that night. That he saw Maurice and
3 Demetrice go down the hill and begin to fight. Vincent
4 Nelson was down that hill as well. That they went into the
5 house and a struggle continued there, and as they came out,
6 he saw Maurice Roberts stand over whom he referred to as
7 the deceased and shoot him five or six times. He said that
8 they ran off.

9 Mr. Sutherland questioned their credibility. He said
10 these guys are, are rapists, they are armed robbers, they
11 are kidnappers. You can't take their word for it, and that
12 all may be true, but we didn't pick the witnesses in this
13 case. If I picked the witnesses in this case, we would
14 have had a bunch of nuns and school teachers up here
15 telling you about what happened. The person who picked the
16 witnesses in this case was Maurice Roberts. These are his
17 friends. He hangs out with armed robbing, rapist
18 kidnappers. He picked the witness in this case; they're
19 his friends. They're not my friends, they're not Troy
20 Scott's friends, they're not Josh Williams's friends,
21 they're not Trent Scott's friends, and they are most
22 certainly not Brandon Jones's friends.

23 And he talks about the fact that those guys had
24 committed armed robberies before -- also true -- with
25 Deshawn McClary and Demetrice James. But in those armed

1 robberies that they had committed before, no one ever died.
2 What was different this time and what escalated the armed
3 robberies that may have been committed to murders was the
4 action of Maurice Roberts. He was the X factor that night;
5 he is what took them from armed robberies to murder. Judge
6 their credibility. Determine if what they say is
7 corroborated by other evidence, by the other victims, and
8 partially by Maurice Roberts's own statement.

9 All those people that I just discussed with you
10 testified. They took the stand, and they told you what
11 they perceived that night, what they witnessed that night,
12 or what they did over the course of this investigation.
13 And this case, as I stated earlier, comes down to
14 credibility. You're either going to believe the testimony,
15 you're going to believe the cell phone records, you're
16 going to believe hoodie, the DNA, the ballistics, the
17 pictures that are before you, or you're not.

18 And the thing that is most troubling about all of this
19 is that Maurice Roberts sits there, head hung. It's a far
20 cry from the man that entered that house pointing guns at
21 people. He's not meek and mild. He wasn't that night. He
22 wanted studio equipment, and he was going to take it.
23 Studio equipment. We are here talking about a dead young
24 man because of studio equipment.

25 People take lives for the most absurd of reasons these

1 days. You're wearing the wrong color. You're in the wrong
2 neighborhood. You looked at me funny. Your music is too
3 loud. Well, in this case, because Maurice Roberts wanted
4 something, and he was going to take it.

5 And what's the most saddening is that you heard
6 testimony about the type people Mr. and Ms. Chandler Davis
7 and their boys were. They had kids from all over the
8 neighborhood in their home when they had no place else to
9 go, when they didn't have food to eat, when they didn't
10 have clothes on their back, or when they wanted to simply
11 to hang out. If Maurice Roberts, Deshawn McClary,
12 Demetrice James, and Vincent Nelson, Jr., would have just
13 asked to hang out, just asked to use that studio equipment,
14 I'm sure Ms. Davis would have let them. But instead we are
15 here with one life taken and countless lives altered by
16 their actions because Maurice Roberts and his friends
17 wanted studio equipment.

18 As I said earlier, ladies and gentlemen, you're going
19 to either believe the evidence or not, the proof beyond a
20 reasonable doubt. If you are not firmly convinced that
21 Maurice Roberts on January 25th of 2013 planned with his
22 friends an armed robbery, if their own testimony doesn't
23 convince you of that, if you aren't convinced by the cell
24 phone records -- they exchanged cell phones in order to
25 carry out this plan. If you aren't convinced by the

1 testimony that they then walked there and the victims'
2 interactions with them, Maurice Roberts's black eye, the
3 identity of the Scott brothers of Maurice Roberts, if you
4 aren't convinced by that, if you aren't convinced by the
5 bleached clothes, if you aren't convinced by Maurice
6 Roberts's own statement that Maurice Roberts is guilty of
7 burglary in the first degree, two counts of attempted
8 murder, armed robbery, and murder, then let him go. Find
9 him not guilty. Walk him out of the back of this
10 courtroom.

11 But if, on the other hand, you believe in credible,
12 relevant, admissible evidence that we brought before you
13 this week, then find Maurice Roberts guilty. Hold him
14 accountable and return guilty verdicts for those five
15 charges.

16 I thank you for your time and attention this week.

17 THE COURT: Mr. Foreman, y'all okay? Everybody good?

18 FOREPERSON: Yes, sir.

19 MR. SUTHERLAND: Please the court, Judge?

20 THE COURT: Yes, sir.

21 MR. SUTHERLAND: Ladies, gentlemen, good morning.

22 This has been here since the beginning, and it's been here
23 since my opening statement.

24 I think I just heard that my defense of the
25 indefensible is that be very, very afraid of the

1 government. I, I think that's it was characterized, and I
2 think that was the end of it.

3 Fortunately, as we do when people take -- and we
4 actually have a record of what I said in the beginning, and
5 I have to tell you. I was deeply concerned about making
6 promises in the beginning because I don't really have any
7 control outside of objecting to things. You may have heard
8 me say something was cumulative, or there was, you know,
9 too much blood in the picture. Outside of that, I don't
10 really have any control over the evidence that, that they
11 put in. It's their call.

12 I, I, I recall saying that I think, and I'm sure I was
13 hedging. I'm almost one hundred percent that you're going
14 to hear people come in here and testify that Demetrice
15 James shot somebody, and you, you did hear that.

16 I also said let's see who the DNA points to and who it
17 points away from. We've heard the characterization of the
18 testimony of the DNA expert by the government lawyer, by my
19 colleague, by Meghan Walker, but we've also heard the DNA
20 expert testify. And I was writing this down as his
21 testified. He said that is not, that is not Maurice
22 Roberts. He said if that 12 is not a stutter, if it's an
23 allele, that is not Maurice Roberts. That's his testimony
24 of their expert of the swabs on the fist.

25 Speaking of corroborating evidence as to whether you

1 know somebody's mistaken about something or not, this is
2 about as reliable a form of evidence as I think may ever be
3 conceived. Numbers into the decillions, nonillions, 31
4 zeros, 32 zeros. I mean, with -- we're advancing pretty
5 rapidly scientifically. I don't know that it's ever going
6 to get more reliable than that.

7 That was not Maurice's DNA on that fist; that's not
8 him. If that's not a stutter, that's not him. That's the
9 testimony, and that's the most reliable evidence that
10 you're going to hear in this case, and that's what I talked
11 about in the beginning.

12 I also talked about the government, and I also talked
13 about government agents, and I'm going to talk about, you
14 know, the behavior of some of the government agents during
15 this case and during, during their testimony, the way that
16 he was treated because when we talk about statements, you
17 heard a lot of people referring -- there were a lot of
18 references to paper. Ironically, the last line of
19 testimony in this case was Major Smith saying that's what
20 it says in the report. Well, that was his report. When I
21 asked him what does it say:

22 I arrived at 12:30. Maurice Roberts was taken
23 into custody soon after, soon after 12:30.

24 The reason that that was important to me was because
25 Lieutenant McDonald had testified that he could have left

1 at any time; he was free to go. He voluntarily came down
2 to the sheriff's department with him. That is a
3 contradiction. That's called impeaching him. I was
4 impeaching Lieutenant McDonald with Major Smith's own
5 statement. And his response to that was the same as Jwuan
6 Duckett's response, frankly. That's what it says in the
7 paper. They were confronting their witnesses that they put
8 on the stand to come here and tell you things with these
9 pieces of paper when they were all typed up and drafted by
10 the investigators in this case.

11 Now, am I imputing any impure motives or anything?
12 I'm sure that they believed that they were on the right
13 track and that they were, that they were narrowing this
14 down, and that they, they were solving this thing.

15 What I am saying is, and what I'm saying and arguing
16 is actually corroborated by the witness testimony is they
17 fall back on these papers, on the paperwork in whatever way
18 suits their purpose. If a witness is saying something that
19 they don't like that's supposed to be saying what they want
20 them to say, what about what's on, on this paper?

21 If Major Smith is testifying, then he says, oh, that's
22 just in the paper. So, on the one hand, papers that
23 they're throwing around are rock solid. You see his
24 statement here. He said X, Y, Z. That's the presentation
25 of this statement of these papers typed by Lieutenant

1 McDonald that they say is what he said. But then the flip
2 side to that is when it doesn't go along with their purpose
3 or what they're trying to present to you, well, that's just
4 in the report. That's just what the report says. The
5 report's inaccurate.

6 And that's the point that I'm trying to make about the
7 papers. If you want to know what somebody says, Lieutenant
8 McDonald says the truest, the truest form of recording a
9 statement is on paper. I asked what about taping it, and I
10 know -- I don't think there's tape anymore, but y'all know
11 what I'm talking about, digitally recording. What about
12 that? Well, something could happen to that. What about
13 videotape? Would it be ideal if rather than putting
14 something up here that's going to be disputed -- it is in
15 dispute -- and just reading something that's typed by a
16 police office that has a little signature on the bottom,
17 how about this idea? What about a CD player, a -- or a
18 digital audio player, or I guess they hook computer and
19 speakers. What about the sound of people's voices when
20 they are saying -- confronting Duckett, or they're saying
21 that Maurice said something? What about a TV, and what
22 about hitting play, and what about watching that?
23 Lexington does it; Lexington does video. City of Columbia
24 does audio. I asked about this. Kershaw, which is in the
25 same circuit, does videotape. His answer is, well, it's

1 our policy, our policy. That's the answer that he gives.

2 Well, I mean, ultimately what, what does it serve?
3 The, the testimony is they sat around. He was in custody
4 or not in custody according to McDonald, but in custody
5 according to Major Smith for two, two and a half hours,
6 something to that extent. It takes how much time to sign a
7 piece of paper? How much time to read it? He testified I
8 read it to him is what he testified to. I asked. Well, is
9 -- do you know anything about any special ed cases or --
10 and he said no. No, no. I always read it.

11 And when he was saying that it was free and it was
12 voluntary, I told him I'm not going to put a gun to your
13 head. Now, he volunteered that on the stand: I'm not going
14 to put a gun to your head. I would think anyone upon
15 hearing that -- I mean, how, how is any reasonable person
16 supposed to take that statement when they're in custody?
17 They're down at the sheriff's department; they're locked in
18 there. There are officers everywhere. They're in an
19 office with two to three, according to the testimony -- I'm
20 sorry. I'm starting to get a little dry mouth up here
21 talking so much. But two to three officers at any time.
22 They're all armed, and you don't have to sign it. I'm not
23 going to put a gun to your head. How would a reasonable
24 person take that? Would they take that as -- whether it
25 was meant to be a threat or not, is that threatening? I

1 believe it is; I believe it is. I believe it's reasonable
2 to, to feel threatened.

3 You're seventeen years old. I cannot imagine being
4 seventeen years old under circumstances like that. So, the
5 idea that the, you know, the defense is going to be, you
6 know, the government here, just, just be afraid of it,
7 that's nonsense.

8 What the defense is, it's based on science, and it's
9 based on facts, and it's based on their testimony that it
10 is just better to write -- for us to write things and for
11 people to sign them. It's more reliable; it's more
12 credible. People would believe those more than an audio or
13 a video.

14 I did come up, and I actually spoke about Deshawn
15 McClary. 600 has a 600 tattoo on, on his shoulder.
16 Demetrice James. Vincent Nelson. I said where is this DNA
17 evidence going to point to? Is it going to point to him or
18 away from him? Is it going to point to someone up here or
19 away from them?

20 The hard science to a scientific certainty -- again
21 that I'm sure will never be surpassed; I can't say never,
22 but it would be extraordinary -- shows this. He had
23 gloves, but he was inside. He did have gloves. There were
24 gloves with his DNA inside and with, with blood on the
25 outside, but he, he had gloves on. So, at some, at some

1 point during this, he put on gloves. His DNA is on those
2 gloves. His DNA is at the scene. What is it, a beer can
3 or cigarette butt, whatever he was testifying to at that
4 point.

5 And these young men know him, and they've known him
6 for a year or two because these are good people is why they
7 know him. This is a troubled young man. You all remember
8 the map of where Maurice's place is and where they were
9 looking at this stuff. It's not right behind his house,
10 but I'll leave that to your memory. It's over in the same
11 neighborhood.

12 But what was he doing over at Maurice's house? He was
13 sleeping there. He's homeless. He was taken in there as
14 he was taken in over at these good people's house, and they
15 took him to church. They fed him. They gave him money,
16 and you could tell from Mr. Chandler Davis's testimony that
17 some children are treated and looked upon as sons that
18 they, they help in this fashion. These are about the most
19 decent people I could think of, and this is what he does to
20 decent people, to people who are saving his life, whether
21 he realizes it or not.

22 They talk about, well, he's -- everybody's loyal to
23 Maurice. Everyone is afraid of little, seventeen-year-old
24 Maurice because why?

25 600, what does that mean? Whatever we know, we know

1 he has a 600 tattoo, and we know that Josh outside after
2 getting hit, after falling hears don't do it, 600, don't do
3 it. That is uncontradicted by anything. In fact, it's
4 even supported by him.

5 Well, who were -- who would, who would be -- who would
6 anyone be speaking to? Don't do it, Fred. Don't do it,
7 Joe. Don't do it, 600. Who is 600 and who's not 600?

8 I heard Deshawn McClary get up there and oh, yes, he's
9 600. All of their other witnesses that came in that was in
10 custody who, frankly, have very little credibility --
11 everybody's self-interested. I mean, at least Mr. Duckett
12 is already doing his time for whatever he's done. So, he's
13 not -- maybe he should be the most credible person.

14 Ideally, I think if you weigh it out, you can rely
15 more on his testimony than on anybody else's. He says no.
16 He can't rat. He's not 600. Demetrice James, the innocent
17 bystander who's identified as, as shooting someone, even he
18 said no, no. He can't rat. He's not 600. Deshawn
19 McClary, oh, yes, he's -- he is 600. He's in 600.

20 Well, what's significant about that? What's
21 significant about that to me in listening to the
22 government's theory that evolved over the course of time,
23 over the course of the evidence in this case is apparently
24 this guy, Maurice, decided I'm going to switch identities
25 with him. I'm going to switch identities with him. I

1 mean, he comes in and he says exactly what they want him to
2 say. These people are supposed to come in and say -- and
3 they get confronted with the paper. I mean, he's still
4 looking at one life sentence plus ninety-something years.

5 Rapists, talk -- talking about rape, at one point she
6 said yeah, they're going around robbing somebody, but they
7 didn't kill anybody. And yet these are the same people
8 that are saying that they raped someone, and they kidnapped
9 them, and arm robbed them at the same time. That -- that's
10 -- that speaks a little something to credibility, I think,
11 about this one and this one.

12 Are they -- do they have a mutual interest here?
13 Well, are you cooperating against him? No. Are you
14 cooperating against him -- no -- in this separate case
15 where it's ninety years?

16 Ninety years at eighty-five percent is a lot of time;
17 it's a lot of time. They're not cooperating against each
18 other in that case, but they sure are here in this case to
19 cooperate against him.

20 And maybe he didn't get the message that Maurice --
21 and another thing. Maurice, that's -- it's Maurice. It's
22 not, you know, Metro, Young, this, that, J, G, this, that,
23 and the other. He didn't get the message that oh, no, no,
24 600 is Maurice because don't do it, 600. Don't do it.
25 That's, that's the testimony. That's what happened out

1 there when those shots were being fired. He said don't do
2 it, 600. Don't do it. Not don't do it, Maurice, because
3 it would have been because he's Maurice, no nicknames.
4 Nobody up here saying that he had this nickname, that
5 nickname, everybody else.

6 And it's fine to have nicknames. I mean, I'm -- my
7 name's Tivis. My people are from up in the mountains,
8 They came over from Scotland. I'm the fourth. It's just a
9 name we keep going, and my son is the fifth. You know, my
10 grandpa was Junior. My dad's Chip. They call me Buck. I
11 call Tivi Tivi because we've rotated to where's there's
12 only -- it's just the way it goes, right?

13 But -- and he's Maurice, Jr., and there's nobody
14 calling him Junior or anything. His name is Maurice. So,
15 he, he doesn't fit there. He doesn't fit this, this
16 presentation, this.

17 If, if, if you all, if y'all are not going to believe
18 the -- all the stuff we threw up against the wall in this
19 case, well, just send him home, and that's -- she said.
20 Well, in amongst everything that they're throwing up
21 against the wall are actually some things that are pretty
22 solid.

23 With respect to the identifications, we did hear
24 testimony from both young men, who are not at fault here.
25 I've never implied that, and I never would. All good

1 people. From both young men [SNAPS FINGERS] instantly, and
2 I snapped my finger in cross-examination. Is this how
3 quick it was on? Yes. Trent was a little more effusive
4 and enthusiastic. He's got his kung fu stuff and it didn't
5 -- but both of them said immediately. The hangers hit the
6 floor. We get -- he comes. I get hit.

7 So, that's the length of time when there's no
8 engagement going on. That's the length of time where you
9 take a look at somebody that's got a -- or they've got
10 whatever they've got going on.

11 And why is that important? I'm not impugning their
12 character, but for identification, one of the things you've
13 got to consider is the length of time, opportunity somebody
14 had to view a person's face. Now, you may well get back
15 there and decide, well, sure but, you know, there were
16 other times there were, there were fighting going on.

17 However, this is significant because you kept hearing
18 the name Leonard Gaston. The reason that you kept hearing
19 the name Leonard Gaston is because he kept being inserted
20 into these lineups in the bottom right, or picture number
21 6. It's my view. I can't say in any way, shape, or form
22 that this young man that they were showing these pictures
23 to people was there, nor would I, but Troy picked him. He
24 said he was there.

25 Faust says -- what did he say? He said he gave me a

1 statement and he said yeah, he was there. That's the guy
2 that was in the house. But when I showed him the lineup,
3 he said wait a minute. No, no, that's not him. That was
4 his testimony, and we went back and forth about it for a
5 while, and he kept explaining, well, they're under the
6 influence of, of other people. They're under the influence
7 of people, not mindful of the irony of what his, his
8 testimony is putting out in front of y'all.

9 Well, if they're under the influence of other people,
10 if somebody's saying hey, it might be this guy, how about
11 under the influence of police officers putting pictures of
12 people they're known for two years in the same spot? And
13 then handing them lineup after lineup after lineup after
14 lineup where everybody they want them to pick is in that
15 same spot? I'm wondering if maybe that is as suggestive or
16 influential as, as he testified as a friend saying hey,
17 that sounds like this dude I know. And, I mean, I wonder.
18 That's why this is significant, and for whatever reason, it
19 was like pulling teeth until the timeline started to get
20 straight, and that's fine.

21 You know, all, all of these law enforcement officers,
22 they're not a bunch of, you know, nefarious characters, you
23 know, trying to destroy people's lives. They're out there,
24 and they're on a mission, and they believe in it, and they
25 believe in it, and they're following it, and they're doing

1 the best they can, and they jump to the wrong conclusions
2 sometimes. I mean, it happens. They do things wrong
3 sometimes.

4 His enthusiasm to get up here and try and explain away
5 this. You know, remember oh, I never forget a face? Did
6 you tell Faust that he was in there? No. Well, lineup,
7 lineup -- no, I, I never forget a face. I said okay, I see
8 you're anticipating where I'm going. Well, we're all human
9 beings and there ain't nothing -- I mean, there ain't
10 nothing wrong with that, but, you know, this, this, this is
11 what -- the state, now it was in papers. But, I mean, I
12 suspect when people are telling them what they hear, they
13 might, you know, treat it a little differently.

14 So, we're talking about identifications, and we are
15 sticking, by and large, with what I said in the opening.
16 So, that, that's the defense in this case. We should be
17 very wary of government agents coming in, overwhelming
18 people, seventeen-year-old kids.

19 Now, these kids up here, twenty, twenty-one,
20 twenty-two, young people do awful things. You know,
21 there's no doubt about that. You know, rapes, armed
22 robberies and that, but it is maybe different sometimes to,
23 to recall what we're hearing, especially the way the media
24 hypes itself up, about, you know, all this violence in
25 everything. It may be difficult to keep in mind that we're

1 still talking about kids here; we're talking about kids
2 here. We're talking about troubled kids here, but we're
3 not talking about him. He's not 600; he's not.

4 I mean, if you want to do baseball scores, ladies and
5 gentlemen, or however you want to think it. I can't tell
6 you how because y'all are judging the facts. You just put
7 up the numbers. How many of their witnesses that are
8 supposed to be saying what they want them to say said he
9 is, and how many said he ain't?

10 Ultimately, people, we've got burglary, a prior
11 burglary here. Was it -- prior robbery here. Those are
12 actually impeachable offenses, and those are things, you
13 know, that you're supposed to consider.

14 How about this? Eleven, twelve days before this, the
15 600 tattoo guy, eleven, twelve days before this, he's
16 arrested in Hammond Village, according to Major Smith.
17 He's charged with possession of a weapon by a person
18 convicted of a violent crime. Was it a .45? Was it a
19 .380? Was it an AR-15? Was it an AK-47? Well, what are
20 we talking about here? We don't know, but this is eleven
21 or twelve days this person that's saying I saw the gun. I
22 saw it before; I saw it after. Switches up a little bit,
23 whatever. I saw it. It's his. I saw it before we left; I
24 saw it before we got back. Eleven, twelve days later, that
25 charge is pending in that office. So, if they're accusing

1 him of that, if they arrested him with a firearm or accused
2 him of discharging a firearm, whatever they accused him of,
3 we know within less than two weeks he was armed because
4 some of their agents are alleging that. So, according to
5 them, he had the gun within the two weeks before this
6 period of time.

7 All that I can, all that I can do and all that I can
8 ask is look at the evidence. Look at the law. And, you
9 know, she says, well, you don't believe this, you don't
10 believe that, well, let him go. What, what it is is if you
11 have reason to doubt something, if something's making you
12 pause or making you hesitate a little bit, that's what a
13 reasonable doubt is. That's the degree -- you have to be
14 firmly convinced with no hesitation, no hesitation.

15 The judge is going to instruct y'all on the law, but
16 I'll just hang that out there. That's what the law is
17 about reasonable doubt, no hesitation about this.

18 Well, just in the opening, the DNA expert and Faust,
19 we have IDs, we have hard science, and we have all this
20 testimony, all the statements, and I probably should add --
21 because I linked him to Major Smith -- to put Duckett,
22 Major Smith because they both talked about these law
23 enforcement papers in different ways. Him: Well, that's
24 what it says there. Him: Well, it says that there. That's
25 what -- completely different. No, I don't remember that.

1 That's in what you're showing me. Well, that's only in
2 what you're asking me about. Just polar opposites up here.

3 I think I should put probably -- add -- I'm sorry for
4 the mess, but I don't have machines that create this sort
5 of stuff. I do have a Sharpie, though.

6 (A PAUSE.)

7 MR. SUTHERLAND: Lieutenant McDonald, and I'm going to
8 sort of link him to Major Smith just to make that point.
9 Let's put voluntary statement. Custody is the key here.
10 We talked to him. He said he'd come on out in the car with
11 us. He said sure. Come on down. Then he just started
12 talking to us. He waived his rights, all that. He was not
13 in custody; he was free to leave at any time.

14 Major Smith arrived at 12:30. Maurice was in custody
15 shortly after I arrived. After he arrived before they
16 left. Again, that's impeachment.

17 Now, Lieutenant -- or Captain McDonald. He got
18 promoted two weeks ago. Where's he at? Okay, sorry.
19 Captain McDonald, and that's just to show a couple of the
20 points that I'm making. They're inconsistent with one
21 another about whether he was in custody. It's important
22 about whether he was in custody, whether he was under
23 arrest, or whether he was free to leave. That's
24 significant, the amount of control the police officers have
25 over you. Well, hey, you don't have to sign it. I'm not

1 going to put a gun to your head. Maybe it's one thing
2 that, I don't know, that might still be pretty unnerving,
3 sitting right out in your own front yard.

4 But this is real. You should be wary of the
5 government indeed because that, sitting over there, every
6 time we buy anything from a hotdog to a house, the
7 government gets a cut, okay? All that power in these
8 proceedings is focused here on that kid, Maurice, right
9 over there. All the resources that are available to them,
10 they're prosecuting him, okay? That's power versus a kid.

11 I'm sitting over there with him, and I will stand with
12 him throughout this process. I don't have a problem with
13 that. But, I mean, I want to be clear. We've got power
14 versus a kid. And what we have, speaking about the
15 constitution in passing, are the protections: his right to
16 have me come up here and to help him, his right not to have
17 to talk to police, his right to have a statement not be
18 considered if it wasn't freely and voluntarily given, if
19 this was a threat. Was he in custody? Was he not in
20 custody? These are all the sorts of things y'all are going
21 to be going through.

22 I'm going to look through my little notes here and
23 make sure I haven't left anything out. I mean, I feel like
24 I've said everything any -- anyway because the same
25 principles apply across the board to all the evidence in

1 the case.

2 (A PAUSE.)

3 MR. SUTHERLAND: Well, I forgot to mention -- there
4 was mention of gunshot residue tests that they did on three
5 guys that they stopped near the incident location that were
6 dressed similarly, similar descriptions. What happened to
7 the gunshot residue tests? Would that be significant?
8 Might be something you'd want to know.

9 Ladies and gentlemen, I have to tell you that's it. I
10 certainly appreciate your consideration and your
11 willingness to serve here. This is, as we talked about in
12 the beginning, in peacetime, this is about as significant
13 as it gets because this defines who we are. This is man's
14 relationship, woman's relationship to her government and,
15 you know, what are the limits? What are the boundaries?
16 How far can they go? What can they do to a person? What
17 can they do to a guilty person? It's the same thing they
18 can do to an innocent person. They can do it to one
19 person; they can do it to all of us.

20 Thanks again for your time and consideration, and very
21 much appreciate it.

22 Thank you, sir.

23 THE COURT: Mr. Foreman, ladies and gentlemen, we've
24 been at it almost two hours. Let's take a quick bathroom
25 break and let my court reporter stretch herself, and we'll

1 come back in about ten minutes. I'll charge you. Then it
2 will be turned over to you to start your deliberations.
3 However, do not start any deliberations until we finish all
4 these proceedings.

5 Everybody remain seated, please.

6 (THE JURY EXITS AT 10:41 AM.)

7 THE COURT: All right, we'll stand at ease for about
8 ten minutes.

9 (OFF THE RECORD.)

10 THE COURT: Anything from the state before we start?

11 MS. WALKER: Nothing from the state, Your Honor.
12 Sorry.

13 MR. SUTHERLAND: Nothing from defense, sir.

14 THE COURT: Thank you.

15 All right, bring the jury in.

16 (THE JURY ENTERS AT 10:55 AM.)

17 *JURY CHARGE*

18 THE COURT: Mr. Foreman, ladies and gentlemen of the
19 jury, the charge is really what we just call instructions.
20 You'll hear a lot of the same things that you've heard in
21 closing arguments with the lawyers who were explaining, but
22 my charges is sort of broken down into two parts. The
23 first part deals with general principles of criminal law
24 that I charge in all cases involving a general sessions
25 case. Once we go through that, then we will go into the

1 four separate offenses that are involved in this case.

2 Let me, before I really get started, let me remind you
3 in this case, the defendant is charged with five
4 indictments. They are indictment for murder, two
5 indictments for attempted murder, an indictment for
6 attempted armed robbery, and an indictment for burglary in
7 the first degree.

8 Now, let me once again remind you the fact that he has
9 been charged and arrested and indicted, that is not
10 evidence in the case. There should be no inferences of
11 guilt from the fact that he was indicted. The indictments
12 are simply the charging documents by way this case comes
13 into the courtroom.

14 As I said, there are five indictments. Each
15 indictment charges a separate and distinct offense. You
16 must decide each indictment separately on the evidence and
17 the law applicable to it, uninfluenced by your decision as
18 to any other indictment. He may be convicted or acquitted
19 on any or all of the offenses charged, and you will be
20 asked to write a separate verdict of not guilty or guilty
21 for each indictment. So, at the end when I hand you the
22 verdict form, that will be five verdict forms for the five
23 indictments. You must consider each one of those separate
24 and apart from the others.

25 To these five indictments, the defendant has pled not

1 guilty, and a plea of not guilty puts the burden on the
2 State of South Carolina to prove the defendant guilty by
3 proof beyond a reasonable doubt.

4 A person charged with committing a criminal offense in
5 our state is never, never required to prove himself
6 innocent. I charge and instruct you that it is an
7 important constitutional rule of law that a defendant in a
8 criminal trial, no matter how serious the charges may be,
9 will always be presumed to be innocent of the crimes for
10 which he was indicted unless guilt is proven to you by
11 evidence satisfying you of that guilt beyond a reasonable
12 doubt.

13 Presumption of innocence does not end when you start
14 your deliberations, but it stays with the defendant
15 throughout the trial until you reach a verdict of guilt
16 based on evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is not a mere legal
19 theory or phrase. As I said, it is a substantial
20 constitutional right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence that
22 the defendant's guilt has been proven to you beyond a
23 reasonable doubt.

24 What is a reasonable doubt? Our courts have defined
25 reasonable doubt many, many times in the past. The real

1 short definition of reasonable doubt is the kind of doubt
2 that would cause a reasonable person to hesitate to act,
3 the kind of doubt that would cause a reasonable person to
4 hesitate to act.

5 The state has the burden of proving the defendant
6 guilty of all five indictments beyond a reasonable doubt.
7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the defendant's guilt. As you've heard
9 before, there are very few things in the world that we know
10 with absolute certainty, and in criminal cases the law does
11 not require proof that overcomes every possible doubt. If,
12 based on your consideration of the evidence, you are firmly
13 convinced that the defendant is guilty of the crimes
14 charged, then you must find him guilty. However, if, on
15 the other hand, there is a real possibility that the
16 defendant is not guilty, then you must give him the benefit
17 of the doubt and find him not guilty.

18 Let me remind you, ladies and gentlemen, that during
19 the trial of the case, you and I have had separate and
20 distinct duties to perform. My duties are mainly twofold:
21 to instruct and charge you on the law, and to rule on the
22 admissibility of evidence. Once that evidence is admitted
23 into the trial of the case, it becomes up to you to
24 determine what the true facts are. You are, as I told you
25 earlier, collectively acting as one. You are the judge of

1 the facts.

2 Now, please. This been a five-day trial, and if I
3 have done anything up here to make you think I have an
4 opinion about the facts please, disregard it. The law does
5 not allow me to have any opinion whatsoever about the
6 facts. That is your sole providence, your duty, your
7 responsibility, and I can't have anything to do with that.
8 So, if I have smiled or frowned or raised my eyebrows or
9 bit on my glasses or acted aggravated or whatever, that's
10 just me. I'm not commenting on the facts; I just can't do
11 that. So, don't infer from anything I've done that I have
12 an opinion of these facts. That's, that's your job and
13 your job only. That's obviously, as I told you Monday,
14 Tuesday, that's the biggest job in the whole trial of this
15 case, your responsibility.

16 And in carrying out that responsibility, necessarily
17 you must determine the credibility of the witnesses who
18 have testified in this case. Credibility simply means
19 believability: what do you believe. It becomes your duty
20 as jurors to analyze and evaluate the evidence and
21 determine which evidence convinces you of its truth.

22 Now, in carrying out this responsibility or this
23 obligation to determine the believability or credibility of
24 the witnesses who have testified in this case, you can
25 believe one witness over several, several over one. You

1 can disbelieve everything a witness says. You can believe
2 a portion and disbelieve a portion. In other words, use
3 your everyday commonsense in dealing with fellow citizens,
4 family, employees, whatever. You know how to judge when
5 somebody is telling you the truth. So, it becomes your
6 duty to determine what the true facts are in the case.

7 You may consider whether any witness has exhibited to
8 you any interest, bias, prejudice, or other motive in this
9 case. Also you may consider how the witness appeared and
10 his mannerisms on the witness stand while he testified.

11 In this case, we qualified several people as experts
12 in several fields. Normally our rules of evidence do not
13 permit a witness to testify to opinions or conclusions. An
14 exception to this rule is what we call the expert witness
15 rule. A person or a witness who by education and
16 experience has become expert in some art, science,
17 profession, or calling may state an opinion as to relevant
18 and material matters in which the witness claims to be an
19 expert, and may also state the reasons for that opinion.

20 You should consider any expert opinion evidence
21 received in this case like any other evidence and give it
22 the weight you think it deserves, if any. If you decide
23 that the opinion of an expert witness is not based on
24 sufficient education and experience, or if you conclude
25 that the reasons given in support of the opinion are not

1 sound, or that the opinion is outweighed by other evidence,
2 you can disregard the expert's opinion entirely.

3 An expert witness's testimony is to be given no
4 greater weight than that of any other witness simply
5 because the witness is an expert. Further, you are not
6 required to accept an expert's opinion even though it is
7 not contradicted.

8 Another substantial constitutional protection that
9 people have who are accused of crimes is that they have the
10 right, the absolute right, the constitutional right to
11 remain silent. They do not have to testify. So, I charge
12 you, instruct you, and emphasize the fact that the
13 defendant did not testify in this case is not a factor to
14 be considered by you in any manner whatsoever in your
15 deliberations and in your consideration on the question of
16 the guilt or the innocence of the defendant. As I said, it
17 must not be considered by you in any manner whatsoever. A
18 defendant has the constitutional right to remain silent,
19 and the assertion of that right must not be considered by
20 you in your deliberations. I repeat. Under your oath, you
21 are to drawn absolutely no conclusion whatsoever from the
22 fact the defendant did not testify in this case. The fact
23 that he did not testify should not even be discussed in the
24 jury room.

25 As I've told you, the burden of proof is on the State

1 of South Carolina, and the defendant is not required to
2 prove his innocence. The burden of proof remains on the
3 state to prove guilt beyond a reasonable doubt. So, the
4 fact that he did not testify is something that should not
5 be considered, nor be discussed when you deliberate his
6 guilt or innocence.

7 In this case, there is a legal theory that from your
8 view of the evidence may be applicable. It's called hand
9 of one. If a crime is committed by two or more people who
10 are acting together in committing a crime, the act of one
11 is the act of all. A person who joins with another to
12 accomplish an illegal purpose is criminally responsible for
13 everything done by the other person which occurs as a
14 natural consequence of the acts done in carrying out the
15 common plan and purpose.

16 And example is often given that two people can be
17 guilty of killing another person, and only one of the two
18 had a gun, and there was only one bullet, and only one of
19 the two fired the shot that caused the death. If two or
20 more people are together, acting together, assisting each
21 other in committing the offense, the act of one is the act
22 of all, or as it's sometimes stated the hand of one is the
23 hand of all.

24 Prior knowledge that a crime is going to be committed
25 without more is not sufficient to make a person guilty of

1 that crime. Mere knowledge that another person is going to
2 commit a crime, even if the defendant is present when the
3 crime is committed, is not sufficient to convict the
4 defendant as a principal participant. Guilt as a principal
5 is shown by actual or constructive presence at the scene as
6 a result of a prior arrangement. Therefore, the finding of
7 a prior arrangement or common scheme is necessary for a
8 finding of guilt as the principal of the offense.

9 The state must prove beyond a reasonable doubt by
10 competent evidence the theory of the hand of one is the
11 hand of all. Where two or more people acting with a common
12 plan or intent are present at the commission of a crime, it
13 does not matter who actually commits the crime. All are
14 guilty. The hand of one is the hand of all.

15 Present at the commission of a crime means to be
16 sufficiently near to aid and abet and assist in the
17 commission of the crime; however, mere presence is not
18 sufficient. I tell you again. If two or more people
19 combine together to commit an unlawful act, such as a
20 robbery, and in the execution of that criminal act a
21 homicide is committed by one of the actors as a probable or
22 natural consequence of the acts done in pursuit of the
23 common desire, all present participating in the unlawful
24 undertaking are as guilty as the one who committed the
25 fatal act.

1 The common purpose may not have been to kill and
2 murder. But if it was unlawful -- as, for instance, to
3 break in and steal -- and in the execution of this common
4 purpose is a homicide that's committed, if during the
5 execution of this common purpose a homicide is committed
6 that by one as a probable or natural consequence of the
7 acts done in pursuit of the common design, then all present
8 participating in the unlawful common acts are as guilty as
9 the one pulling the trigger. That's the law dealing with
10 the hand of one is the hand of all.

11 An issue in this case may be or is claimed to be the
12 identification of the defendant as the person who committed
13 the crime charged. And state has the burden of proving
14 identity beyond a reasonable doubt. You must be satisfied
15 beyond a reasonable doubt of the accuracy of the
16 identification of the defendant before you may convict the
17 defendant.

18 Identification testimony is an expression of belief or
19 impression by a witness. You must determine the accuracy
20 of the identification of the defendant. You must consider
21 the believability of each identification witness in the
22 same way as any other witness. You may consider whether
23 the witness had an adequate opportunity to observe the
24 offender at the time of the offense. This will be affected
25 by things as how long or short a time was available, how

1 far or close the witness was, the lighting conditions, and
2 whether the witness had a chance to see or know the person
3 in the past.

4 Once again I instruct you the burden of proof on the
5 state extends to every element of the crime charged, and
6 this specifically includes the burden of proving beyond a
7 reasonable doubt the identity of the defendant as the
8 person who committed the crime or participated in the
9 commission of the crime. If, after examining the
10 testimony, you have reasonable doubt as to the accuracy of
11 the identification, then you must find the defendant not
12 guilty.

13 In this case, we had several witnesses who testified,
14 and they have a past criminal record. A person who has a
15 past criminal record is competent to testify during a
16 trial. A past record does not affect the ability of that
17 witness to testify. Past record may only be considered by
18 you, if at all, in determining the credibility or the
19 believability of the witness. So, they are competent to
20 testify, and the only consideration you can give on the
21 past record is using that to determine his or her
22 believability or credibility.

23 In this case, a statement alleged to have been made by
24 the defendant has been admitted into evidence in this case.
25 One of the things we had to do was determine whether or not

1 that statement was admissible. I made the decision that it
2 is admissible, but you make the ultimate decision of
3 whether or not state -- strike that -- as to whether or not
4 the defendant made the statement.

5 If the defendant did make the statement, then you must
6 determine whether the statement was made by the defendant
7 voluntarily and of his own free will. This means that the
8 statement was not caused by pressure, force, fear, threats,
9 coercion, or intimidation, or by any hope or promise of
10 leniency, or a reward of any kind.

11 In determining whether the statement was voluntary,
12 you should consider both the characteristics of the
13 defendant and the details of the questioning. Some of the
14 facts that you may consider are the age of the defendant;
15 the defendant's education or lack thereof; his mental
16 ability or capacity, his intelligence, his background and
17 environment; the place and length of the detention, the
18 nature of the questions; and the advice or lack thereof to
19 the defendant of his constitutional rights to remain
20 silent; the statement could be used against him in a court
21 of law; the right to have a lawyer present; if he cannot
22 afford a lawyer, a lawyer would be appointed to represent
23 him; and that he could stop making a statement at any time.
24 You must carefully consider all of the surrounding
25 circumstances before you give any weight to an alleged

1 statement.

2 The state has the burden of proving beyond a
3 reasonable doubt that the alleged statement was voluntary.
4 If you determine it was, you may give the statement any
5 further consideration that you deem proper. You must,
6 therefore, decide what weight, if any, should be given to
7 the alleged statement. If you determine the alleged
8 statement was not the free and voluntary statement of the
9 defendant, you should not consider it at all.

10 All right, Mr. Foreman, ladies and gentlemen of the
11 jury, that's sort of the general propositions of law and
12 constitutional protections that we have in most all cases,
13 except this case the hand of one is the hand of all is not
14 necessarily in all cases. It's just when you have a group
15 participating or allegedly participating.

16 Let's turn now. There are five indictments, four
17 separate offenses. So, we'll take them one at the time.
18 In one of the indictments, the defendant is charged with
19 murder. The state must prove beyond a reasonable doubt
20 that the defendant killed another person with malice
21 aforethought, killed another person with malice
22 aforethought. Malice has been defined by our courts is
23 hatred, ill will, or hostility towards another person. It
24 is the intentional doing of a wrongful act without just
25 cause or excuse and with intent to inflict an injury, or

1 under circumstances that the law will infer an evil intent.

2 Malice aforethought does not require that malice exist
3 for any particular time before the act was committed, but
4 malice must exist in the mind of the defendant just before
5 and at the time of -- the act is committed. Therefore,
6 there must be a combination of the previous evil intent and
7 the act.

8 Malice aforethought can be either expressed malice or
9 inferred malice aforethought. The terms expressed and
10 inferred do not mean that there are different kinds of
11 malice, but merely the manner in which malice may be shown
12 to exist. That is either by direct evidence or by
13 inference from the facts and circumstances which are
14 proved.

15 Expressed malice is shown when a person speaks words
16 which express hatred or ill will for another, or when the
17 person prepared beforehand to do the act which was later
18 accomplished. For example, lying in wait for a person or
19 any other acts of preparation going to show that the deed
20 was within the defendant's mind would be expressed malice.
21 Malice may be inferred from conduct showing a total
22 disregard for human life.

23 The law says that if one intentionally kills another
24 during the commission of a felony, in implication of malice
25 may arise. If facts are proved beyond a reasonable doubt

1 sufficient to raise an inference of malice to your
2 satisfaction, this inference would be simply an evidentiary
3 fact to be taken into consideration by you, the jury, along
4 with other evidence in the case, and you may give it such
5 weight as you determine it should receive.

6 The law also allows the jury to infer malice if you
7 conclude that the murder was a proximate, direct result of
8 the commission of a felony. And for that regard, armed
9 robbery and burglary in the first degree would be felonies
10 under our law. You can imply that malice existed if a
11 person is in the commission of a felony at the time of the
12 fatal blow or shot. So, that is the law on murder. State
13 must prove beyond a reasonable doubt that the defendant
14 killed another person with malice aforethought.

15 Now, we have two indictments dealing with attempted
16 murder, and attempted murder, he's charged with that. That
17 is simply in order to prove this crime, the state must
18 prove the crime of attempted murder. The state must prove
19 the defendant attempted to kill another person with malice
20 aforethought, either expressed or implied. It's the same
21 thing as except this is an attempt, and the law defines an
22 attempt is an effort to accomplish a crime which did not
23 succeed. An attempt includes a specific act, to do a
24 particular criminal act, along with act falling short of
25 the act intended. You intended to do something but fell

1 short of it. That's attempted murder. You attempted to
2 kill someone with malice aforethought.

3 The state must show more than mere preparation and
4 intent. There's must be some overt act committed in the
5 effort to commit the crime. Intent means intending the
6 result which actually occurs, not accidentally or
7 voluntarily. Intent may be shown by acts and conduct of
8 the defendant and other circumstances from which you may
9 naturally and reasonably infer intent. So, that's the
10 burden that the state must meet on the attempted murder: he
11 attempted to commit the crime of murder, killing someone
12 with malice aforethought. Attempting.

13 Now, there are two other offenses that we have the
14 indictments for. I got to take them in one order or the
15 other, so don't put any significance in the order I'm
16 placing them. Let's talk about first-degree burglary.

17 The defendant is indicted and charged with burglary in
18 the first degree. The state must first prove beyond a
19 reasonable doubt, first thing they must prove beyond a
20 reasonable doubt: that the defendant entered a dwelling
21 without consent. Our law defines a dwelling as any
22 building or portion of a building in which a person
23 ordinarily sleeps. So, they first must prove that the
24 defendant entered a building where someone sleeps, without
25 consent, beyond a reasonable doubt.

1 Now, order that -- strike that. In order to prove
2 that the defendant entered the dwelling, the state does not
3 have to show that the defendant's entire body entered the
4 dwelling. The smallest entry is sufficient. It may be any
5 part of the body, such as a hand or foot or even an
6 instrument. And the state does not have to prove that
7 force was used to gain entry.

8 Now, the second element of the burglary in the first
9 degree is that the state must prove beyond a reasonable
10 doubt that the defendant intended to commit a crime, either
11 a felony or misdemeanor, at the time of the entry. The
12 mere entry into a dwelling without consent is not burglary.
13 If the intent to commit a crime is formed after the entry,
14 it is not burglary. However, on the other hand, if the
15 defendant intended to commit a crime at the time of the
16 entry, it is a burglary even if the intent was abandoned,
17 and it does not matter that the intended crime was not
18 completed. So, the state must prove beyond a reasonable
19 doubt that a person has entered a dwelling without consent,
20 and that he intended to commit a crime at the time of the
21 entry. And then the state must prove beyond a reasonable
22 doubt one of several things. The first one is this, and
23 these are and/or. All they have to do is one of them; they
24 don't have to prove all of them.

25 When entering the dwelling and while in the dwelling

1 or when leaving the dwelling, the defendant or an
2 accomplice was armed with a deadly weapon. A deadly weapon
3 has been defined by our courts to include a pistol. Or,
4 and/or when entering and while in the dwelling or when
5 leaving, the defendant or an accomplice caused physical
6 injury to anyone not participating in the crime. And/or
7 when entering, while in the dwelling or when fleeing, the
8 defendant or an accomplice used or threatened to use a
9 dangerous object. And, and/or when entering, while in the
10 dwelling or when fleeing, the defendant or an accomplice
11 displayed what was or appeared to be a pistol, knife,
12 revolver, and other types of firearms. And/or the
13 defendant entered or remained in the dwelling in the
14 nighttime. The courts have defined nighttime as the period
15 between sunset and sunrise when there is not enough
16 daylight to a person's face except by artificial light or
17 the moonlight. So, that is burglary in the first degree.

18 And the last indictment is attempted armed robbery.
19 In order to prove the defendant is guilty of the crime of
20 attempted armed robbery, the state must first prove to you
21 beyond a reasonable doubt that the defendant attempted to
22 take personal property from the person or presence of
23 another person. Property is the presence of a person if it
24 is within that person's reach, control. Or so the person
25 could, if not overcome with violence or prevented by fear,

1 keep possession of the property. So, first element is the
2 state must prove beyond a reasonable doubt that the
3 defendant attempted to take personal property from the
4 person of another, from another person.

5 The state must also prove beyond a reasonable doubt
6 that the defendant attempted to carry the property away,
7 intending to permanently deprive the owner of the property,
8 and to keep the property for the defendant's own use. The
9 slightest removal of the property or the complete
10 possession of the property, even for an instant, by the
11 defendant is sufficient to show a taking and carrying away
12 of the property.

13 The taking and carrying away of the property, or the
14 attempt to take and carry away the property, must be have
15 been done with violence or by putting the owner of the
16 property in fear of violence.

17 And the third thing the state must prove beyond a
18 reasonable doubt, that while attempting to commit the
19 robbery, the defendant was armed with a deadly weapon, and
20 a deadly weapon is defined as any type of instrument which
21 is likely to cause death or great bodily harm. So, those
22 are the elements of attempted armed robbery.

23 Mr. Foreman, you will have in the jury room a number
24 of things. Obviously, you will have all of the exhibits to
25 review, however you wish to review them.

1 You will have a verdict form as to all five
2 indictments. They are simply, simply written: As to the
3 offense of murder, we find the defendant not guilty or we
4 find the defendant guilty. I have two for the attempted
5 murder, and in those two we have identified on one
6 indictment or one verdict form the attempted murder of
7 Joshua Williams, and the other one is for the attempted
8 murder of Trenton Scott. So, you'll have -- those will be
9 identified, and then obviously you've got the verdict form
10 for burglary first degree and attempted armed robbery. All
11 of them have two choices: not guilty or guilty.

12 Your verdict must be unanimous; all twelve of you must
13 unanimously agree as to the verdict as to each, each
14 indictment, all five indictments. You are not -- in
15 considering your verdict, in reaching your verdict, we're
16 not here to punish any enemies, reward any friends. You
17 are to make a deliberation based on -- deliberate
18 deliberation based on the evidence, determining what the
19 true evidence, what the true facts are, applying that to my
20 instructions. And then you will be in a position to render
21 a verdict of either not guilty or guilty.

22 Verdict simply means to speak the truth. That's what
23 you're doing as representatives of the community in
24 deciding this matter.

25 There are times when you deliberate that you may have

1 a question that you want to ask me, and questions range
2 anywhere from A to Z, and here's the protocol. If you have
3 a question, please write it out on a, on a pad that they'll
4 have back there for you. Knock on the door and hand it to
5 the bailiff, and he'll hand it to me, and I'll discuss it
6 with the lawyers. Sometimes I can answer it; sometimes I
7 can't. It just depends on what the question is, but I will
8 do my best to, if I can answer it, to answer it. If I
9 can't, I tell you I can't answer it, and I'll give you the
10 reason after it's all over and said and done.

11 So, we're now at the point in the trial where we're
12 going to turn it over to you and your eleven jurors. I'm
13 going to ask you to return to your jury room. We have
14 ordered lunch for you. I'm not sure when it will get here.
15 Shouldn't be too long. You have the choice when the lunch
16 comes to stop deliberating and eat, or you can deliberate
17 while you eat. I just can't let you go out once I start --
18 once you start deliberating, so you're back there jury
19 room. So, y'all are in charge of doing it however you want
20 to.

21 So, I'm going to ask you to go back there in just a
22 few minutes. I'm going to ask you. Do not start yet
23 deliberating. I have to make sure that we have all the
24 exhibits collected. They'll be brought back to you, and I
25 have to ask the lawyers if I've left anything out, or I

1 said anything they want me to change. That won't take us
2 but five minutes, and then once the bailiff brings you the
3 verdict forms and the exhibits, then you may commence your
4 deliberation, okay?

5 Mr. Bailiff, if you would put my twelve jurors in the
6 jury room. Separate my two alternates, and I'll come back
7 and talk with them in just a few minutes.

8 Everybody else remain seated.

9 (THE JURY EXITS AT 11:30 AM.)

10 THE COURT: Any objections, requested additions, or
11 deletions by the state?

12 MS. CAMPBELL: Your Honor, the only thing I think we
13 discussed yesterday that wasn't in was with the attempted
14 murder. There was a paragraph about specific intent to
15 kill, and Mr. Sutherland requested we delete a sentence out
16 of that, which we agreed to that. And I believe that was
17 the only thing we would have any anything to say about.

18 THE COURT: You happen to have that with you, Ms.
19 Campbell?

20 MS. CAMPBELL: I have it upstairs.

21 THE COURT: I've got it.

22 (A PAUSE.)

23 THE COURT: Other than that, anything else, ma'am?

24 MS. CAMPBELL: No, sir.

25 THE COURT: Mr. Sutherland, any ---

1 MR. SUTHERLAND: No, sir.

2 THE COURT: --- exceptions, deletions?

3 MR. SUTHERLAND: No exceptions, sir.

4 MS. CAMPBELL: It's just this paragraph. That it.

5 There was a sentence I remember Mr. Sutherland asked to be
6 removed.

7 MR. SUTHERLAND: That's the one where I said it looked
8 like *Belcher*.

9 THE COURT: It did, and I said I was going to take
10 that out.

11 MS. CAMPBELL: We definitely removed it.

12 MR. SUTHERLAND: Oh, because I was looking while she
13 was putting it up there. Let me look at my notes.

14 THE COURT: I know what I said. They're going to get
15 it. I'll bring them back and do it.

16 MS. CAMPBELL: Thank you, sir.

17 THE COURT: Anything else?

18 MS. CAMPBELL: No, sir.

19 MR. SUTHERLAND: No, sir.

20 THE COURT: Give me a second. Everybody sit tight for
21 one second.

22 (A PAUSE.)

23 THE COURT: All right, the state has asked that I
24 charge this:

25 A specific intent to kill is not an element of

1 attempted murder, but there must be a general
2 intent to commit serious bodily injury. Intent
3 may be shown by acts and conduct of the defendant
4 and other circumstances from which you may
5 naturally and reasonably infer intent.

6 I am not going to charge, not the language:

7 Evidence of the character of the act, the
8 character of the instrument used, the manner in
9 which it was used, the purpose to be
10 accomplished, and the resulting wounds or
11 injuries they can consider in determining the
12 intent with which the act was committed.

13 I will leave that out. I will include:

14 Intent may also be inferred when it is
15 demonstrated that the defendant voluntarily and
16 willfully commits an act, the natural tendency of
17 which is to destroy another's life.

18 MS. CAMPBELL: Thank you.

19 THE COURT: That's what we discussed yesterday.

20 MR. SUTHERLAND: Yes, sir.

21 THE COURT: Bring them back in one second.

22 While you are doing that, look at the verdict forms.

23 They are as I said. It's just simply not guilty, guilty.

24 MR. SUTHERLAND: Yes, sir.

25 THE COURT: As to all five indictments. Make sure you

1 sign off on that.

2 (A PAUSE.)

3 MR. SUTHERLAND: Thank you, Your Honor.

4 (THE JURY ENTERS AT 11:34 AM.)

5 THE COURT: Mr. Foreman, ladies and gentlemen, on the
6 indictment dealing with attempted murder, I left out one
7 proposition of law that I had this morning, but I left it
8 back in my chambers.

9 Dealing with the offense of attempted murder, a
10 specific intent to kill is not an element of attempted
11 murder, but there must be a general intent to commit
12 serious bodily injury. A specific intent to kill is not an
13 element of attempted murder, but there must be a general
14 intent to commit serious bodily injury.

15 Intent means intending the result which actually
16 occurs and not accidentally or involuntarily. Intent may
17 be shown by acts and conduct of the defendant and other
18 circumstances from which you may naturally and reasonably
19 infer intent.

20 Intent may also be inferred when it is demonstrated
21 that the defendant voluntarily and willfully commits an
22 act, the natural tendency of which is to destroy another's
23 life. So, that's an element of attempted murder I've left
24 out of the charge.

25 FOREPERSON: Sir, will we have a copy of the laws as

1 written in the deliberation room? Cannot?

2 THE COURT: I'll discuss it with the lawyers. If I
3 can send it back there, I will.

4 FOREPERSON: Yes, sir.

5 THE COURT: They, they don't encourage that. When I
6 say they, that's higher powers.

7 FOREPERSON: Yes, sir.

8 THE COURT: But if you have any questions during the
9 deliberation about -- that I can recharge any of the law
10 you wish me to recharge.

11 FOREPERSON: Yes, sir.

12 THE COURT: Just ask and I will bring you right back
13 out here, and I'll read any of that that y'all want me to
14 reread.

15 FOREPERSON: Yes, sir.

16 THE COURT: Fair enough?

17 FOREPERSON: Fair.

18 THE COURT: All right. All right, still don't start
19 deliberating. I got to bring all the stuff in there.

20 (THE JURY EXITS AT 11:36 AM.)

21 THE COURT: Any objection to that addition to the
22 charge by the state?

23 MS. CAMPBELL: No, sir.

24 THE COURT: By the defendant?

25 MR. SUTHERLAND: No, sir.

1 THE COURT: Any additional requests by anybody?

2 MR. SUTHERLAND: No additional requests, Your Honor.

3 MS. CAMPBELL: None.

4 THE COURT: Thank you. All right, let the record
5 reflect both sides, state and defendant, have reviewed the
6 verdict form. All are, all are in agreement with the form
7 itself.

8 If y'all would please come up and make sure we have
9 all of the exhibits so I can put that on the record, and
10 then we will turn it to the -- turn them all in to the jury
11 so they can commence their deliberations. Who wants that
12 job? I want one of the lawyers to do it.

13 (A PAUSE.)

14 THE COURT: Let the record reflect that both defense
15 counsel and state have reviewed all the exhibits of the
16 court reporter. They are all in order. They've reviewed
17 the verdict form and have no opposition to it. Is that
18 correct for the state?

19 MS. SIMPSON: That's correct, Your Honor.

20 MR. SUTHERLAND: Yes, sir.

21 THE COURT: Defense?

22 All right, let's make sure the alternates are out of
23 the jury room, and please come get the exhibits.

24 (A PAUSE.)

25 THE COURT: All right, tell them they may start their

1 deliberations. Here's the verdict forms.

2 BAILIFF: Thank you, sir.

3 THE COURT: I note it is ---

4 BAILIFF: We have two alternates in the jury room.

5 THE COURT: I'll speak to them. 11:53.

6 (JURY DELIBERATIONS BEGIN AT 11:53 AM.)

7 THE COURT: Ms. Campbell, what's y'all's protocol up
8 here about alternates? How long do you let them sit?

9 MS. CAMPBELL: Tell me whatever you think is
10 appropriate, Judge. We're fine with it. Some judges let
11 them go right away, and some have them sit for an hour or
12 two just to make sure.

13 THE COURT: I'm going to let them eat their lunch, and
14 then I'll probably let them go after that.

15 MS. CAMPBELL: That's great.

16 THE COURT: All right, y'all stand at ease. I will be
17 in my chambers if you need me. Don't get too far away.

18 (OFF THE RECORD.)

19 THE COURT: All right, ladies and gentlemen, we have a
20 verdict. I obviously do not know what it is, don't know
21 what it is, but fair warning. If you cannot control
22 yourselves, whether it be not guilty or guilty, I'm going
23 to ask that you leave now. I will not tolerate any, any
24 outburst, emotional outburst. If you do, we'll have to
25 deal with it.

1 So, y'all have been wonderful for the most part.
2 Y'all have; y'all have. The ones that aren't in here gave
3 me a little trouble, but I don't think I need to tell you,
4 but if y'all just don't think you can accept the verdict
5 without emotion, please leave now. We have a lot of
6 security around, so we will not tolerate it.

7 State ready to receive the verdict?

8 MS. WALKER: Yes, Your Honor.

9 MR. SUTHERLAND: Yes, sir.

10 (COURT JURY NOTE MARKED INTO EVIDENCE AS COURT'S
11 EXHIBIT NUMBER 1.)

12 (THE JURY ENTERS AT 1:19 PM.)

13 THE COURT: Mr. Foreman, have y'all reached a verdict?

14 FOREPERSON: Yes, sir.

15 THE COURT: If you can hand the verdict form to the
16 bailiff, please.

17 (A PAUSE.)

18 THE COURT: You may publish it.

19 VERDICT

20 CLERK OF COURT: In Court of Common Pleas -- in the
21 Court of General Sessions for the Fifth Judicial Circuit,
22 State of South Carolina, the County of Richland, the *State*
23 *of South Carolina vs. Maurice A. Roberts.* As to the
24 offense of attempted armed robbery, we, the jury, find the
25 defendant guilty. Signed by the foreman and dated February

1 28, 2014.

2 As to the offense of burglary in the first degree, we,
3 the jury, find the defendant guilty. Signed by the foreman
4 and dated February 28, 2014.

5 As to the offense of attempted murder of Trenton
6 Scott, we, the jury, find the defendant guilty. We
7 unanimously agree. Signed by the foreperson and dated
8 February 28, 2014.

9 As to the offense of attempted murder of Joshua
10 Williams, we, the jury, find the defendant guilty. We
11 unanimously agree. Signed by the foreperson, dated
12 February 28, 2014.

13 As to the offense of murder, we, the jury, find the
14 defendant guilty. We unanimously agree. Signed by the
15 foreperson, dated February 28, 2014.

16 Mr. Foreman, is this your verdict and the verdict of
17 the entire jury?

18 FOREPERSON: Yes, ma'am.

19 CLERK OF COURT: Thank you.

20 THE COURT: Anything further from the jury before I
21 dismiss them by the state?

22 MS. WALKER: Nothing, Your Honor.

23 THE COURT: By the defendant?

24 MR. SUTHERLAND: Poll the jury, sir.

25 THE COURT: Ma'am.

1 CLERK OF COURT: Mr. Foreman and ladies and gentlemen
2 of the jury, I'm going to ask each of you two questions. I
3 need you to answer each of these questions.

4 Number 92, was this your verdict?

5 JUROR: Yes, ma'am.

6 CLERK OF COURT: Are they still your verdicts?

7 JUROR: Yes, ma'am.

8 CLERK OF COURT: Number 300, were these your verdicts?

9 JUROR: Yes, ma'am.

10 CLERK OF COURT: Are they still your verdicts?

11 JUROR: Yes, ma'am.

12 CLERK OF COURT: Number 33, were these your verdicts?

13 JUROR: Yes, ma'am.

14 CLERK OF COURT: Are they still your verdicts?

15 JUROR: Yes, ma'am.

16 CLERK OF COURT: Number 155, are these your verdicts?

17 JUROR: Yes, ma'am.

18 CLERK OF COURT: Are they still your verdicts?

19 JUROR: Yes, ma'am.

20 CLERK OF COURT: Number 38, were these your verdicts?

21 JUROR: Yes, ma'am.

22 CLERK OF COURT: Are they still your verdicts?

23 JUROR: Yes, ma'am.

24 CLERK OF COURT: Number 132, were these your verdicts?

25 JUROR: Yes, ma'am.

1 CLERK OF COURT: Are they still your verdicts?

2 JUROR: Yes, ma'am.

3 CLERK OF COURT: Number 114, are these your verdicts?

4 JUROR: Yes, ma'am.

5 CLERK OF COURT: Are they still your verdicts?

6 JUROR: Yes, ma'am.

7 CLERK OF COURT: Number 264, were these your verdicts?

8 JUROR: Yes, ma'am.

9 CLERK OF COURT: Are they still your verdicts?

10 JUROR: Yes, ma'am.

11 CLERK OF COURT: Number 164, were these your verdicts?

12 JUROR: Yes, ma'am.

13 CLERK OF COURT: Are they still your verdicts?

14 JUROR: Yes, ma'am.

15 CLERK OF COURT: Number 10, were these your verdicts?

16 JUROR: Yes, ma'am.

17 CLERK OF COURT: Are they still your verdicts?

18 JUROR: Yes, ma'am.

19 CLERK OF COURT: Number 122, were these your verdicts?

20 JUROR: Yes, ma'am.

21 CLERK OF COURT: Are they still your verdicts?

22 JUROR: Yes, ma'am.

23 CLERK OF COURT: Number 170, were these your verdicts?

24 JUROR: Yes, ma'am.

25 CLERK OF COURT: Are they still your verdicts?

1 JUROR: Yes, ma'am.

2 CLERK OF COURT: Jury's polled, Your Honor.

3 THE COURT: All right, the jury's been polled. All of
4 them answered the questions in the affirmative. Anything
5 else for the jury before I dismiss them?

6 MR. SUTHERLAND: No, sir.

7 THE COURT: Mr. Foreman, ladies and gentlemen of the
8 jury, I've said this every day, but I truly mean it. Y'all
9 have been a remarkable jury. This is not an easy case to
10 listen to; it's such a sad situation. Young kids, it's --
11 I don't know what's gotten into some of our people. It's
12 just terrible, and y'all have paid close attention. I
13 never looked over there where you weren't, every one of
14 you, just riveted on the testimony, and you've done your
15 job well. I appreciate it. I thank you on behalf of the
16 citizens of Richland judiciary and everyone involved. At
17 this time, I am going to release you.

18 Madame Clerk, they'll receive a check in the mail.
19 You have a check for them?

20 CLERK OF COURT: I have their checks.

21 THE COURT: Huge checks. Anybody need a work excuse,
22 she'll be glad to handle that as well. So, if you'll
23 return back to your jury room, she'll be glad to disperse
24 the checks. And what we have left to do is obviously I
25 have to impose sentencing on him. That will take us about

1 thirty minutes to get all the paperwork up. You're welcome
2 to come back in and sit, or you certainly are free to go,
3 but I thank you on behalf of everyone. You've been a
4 wonderful, attentive jury, and nobody could ask for
5 anything more than y'all have given us. Thank you.

6 Everybody else remain seated, please.

7 (THE JURY EXITS AT 1:24 PM.)

8 THE COURT: Mr. Sutherland, I'm going to be back up
9 here not next week but the week after. If you wish to have
10 ten days to file your posttrial motions, I'll be more than
11 happy to give you that time.

12 MR. SUTHERLAND: Yes, sir, and I'll, I'll, I'll
13 prepare it.

14 THE COURT: So, I'll be back a week from Monday, and
15 we can also at that time sentence Ms. Shurling's client
16 that same week.

17 Y'all have your sentence sheets prepared, or do we
18 need...

19 MS. WALKER: We need a few minutes to get those
20 together.

21 THE COURT: All right. I'm going to go back in
22 chambers. For those in the audience that are required,
23 once that is done, then I will sentence the defendant, and
24 then that will conclude the proceedings.

25 So, as soon as y'all get those ready, ma'am, just let

1 me know so we won't have to dilly dally.

2 (OFF THE RECORD.)

3 THE COURT: All right, Mr. Sutherland, anything you
4 want to tell me before I impose sentence on your client?

5 MR. SUTHERLAND: Yes, sir. If it pleases the court?
6 As I mentioned to the jury in -- I -- it has been a
7 privilege for me to represent Maurice and to get to know
8 his family. He was seventeen years old at the time of this
9 incident. I met him shortly thereafter, within maybe six,
10 eight weeks.

11 He has been working with me, and he's done a lot.
12 He's a lot better at reading and everything since, since I
13 first met him. He's been pretty helpful in the
14 preparation. As Your Honor noted, I mean, he was able,
15 able to testify, and I wasn't too worried about it.

16 He has had an issue from the very beginning about his
17 family thinking that he shot or that he had killed somebody
18 and, you know, that, that remains a concern. I've
19 explained to his family about accomplice liability and
20 everything to that effect.

21 I do not believe that -- I do not believe that he shot
22 Brandon Jones, our view of the evidence. I understand
23 that's the state's position.

24 THE COURT: Well, it's not for me to decide, not for
25 you to decide ---

1 MR. SUTHERLAND: Yes.

2 THE COURT: --- not for the state.

3 MR. SUTHERLAND: Yes, sir.

4 THE COURT: The jury decided that ---

5 MR. SUTHERLAND: And ultimately ---

6 THE COURT: --- at least he participated in it.

7 MR. SUTHERLAND: Yes, sir. Ultimately under
8 accomplice liability that's, that's not really an issue as
9 to guilt or innocence.

10 I've ask the court to consider is his age ---

11 MR. SUTHERLAND: He's eighteen.

12 MR. SUTHERLAND: --- at the time of the offense.

13 THE COURT: Seventeen at the time?

14 MR. SUTHERLAND: Yes, sir. I'd like to say the
15 relative culpability. There's no real way to know what,
16 what the jury thought about who shot whom, but, you know,
17 that's my belief. It's been my belief all along, and it
18 will remain my belief that he did not shoot either of those
19 young men, sir.

20 I, I understand the tragedy that's befallen everybody
21 connected to Brandon and Trent and Troy, and it's a, it's a
22 terrible situation, terrible circumstance and I'm sorry to
23 them.

24 I just hope that the court might consider a sentence
25 near the minimum sentence, and it carries day for day.

1 I've told him if he was to get thirty years day for day,
2 he'd be five years older than I am when he comes out, and I
3 do believe it would be appropriate. That -- that's my view
4 of his role, sir, and I'd ask the court consider the
5 minimum sentence. Thank you.

6 THE COURT: Thank you.

7 Anything you want to tell me, sir?

8 DEFENDANT: Well, I just -- well, about, like?

9 MR. SUTHERLAND: Do you, do you want to say anything?
10 Don't ---

11 THE COURT: You don't have to say a thing.

12 DEFENDANT: I just, you know, I would like to
13 apologize to the family for, you know, what happened.

14 MR. SUTHERLAND: Don't go further.

15 Thank you, sir.

16 THE COURT: Yes, ma'am, Ms. Simpson.

17 MS. SIMPSON: Thank you. May it please the court?
18 First I'll start with the defendant's prior record. Even
19 though he is a juvenile three months prior to this
20 incident, he was actually convicted of grand larceny as
21 well as burglary third degree.

22 Your Honor, with respect to the facts of this case,
23 you've sat here throughout the trial. This truly is a
24 tragic and heinous incident. All, all involved are youths
25 and very young. However, with respect to this and what the

1 evidence shows, it is the state's position, as I stated and
2 the jury has spoken, that the defendant had a gun. He used
3 that gun in shooting after the armed robbery that they went
4 there to do for studio equipment, which that in and of
5 itself, I think, speaks volumes.

6 When that door was locked and that access was gone,
7 this defendant or co-defendant, however it's viewed -- as I
8 said, the state's position is that Maurice Roberts is the
9 shooter. Had the opportunity and the choice to walk away.
10 He already pistol whipped. The victim was down, Brandon
11 Jones pleading for his life. He was shot essentially in
12 the back and arms, all defensive wounds. Helpless,
13 unarmed, and there was absolutely no reason that he had to
14 die that day.

15 As far as the Scotts, their home was invaded, a home
16 that they had opened to really those in the community, in
17 their neighborhood and allowed in their home as a safe
18 place. I don't know that they can ever get that sense of
19 security or trust which -- to help other youths. I believe
20 that's been taken from them, and it's just something that
21 you can't get back. And that's above the fact that their
22 lives or their family's lives were at risk the day that
23 they went in there armed with a gun, with a plan, and the
24 plan was premeditated, whether or not the murder was
25 premeditated.

1 So, Your Honor, we would be asking for an appropriate
2 sentence. We're actually in agreement with what the
3 victims will be asking for in this case. And some of them
4 would like to speak, Your Honor. Specifically, Gwendolyn
5 Sugar Davis would like to speak on behalf of Trenton and
6 Troy. That is their mother. Nicole Simmons will be
7 speaking on behalf of the mother -- or will be speaking on
8 behalf of Joshua Williams. That is his mother, as well as
9 Lavon Scott, the mother of the deceased victim in this
10 case, Brandon Jones.

11 THE COURT: Thank you.

12 MS. DAVIS: On behalf of Troy and Trenton Scott ---

13 THE COURT: Your name, please, ma'am? I'm sorry, your
14 name?

15 MS. DAVIS: My name is Gwendolyn Sugar Davis.

16 THE COURT: Ms. Davis.

17 MS. DAVIS: On behalf of Troy and Trenton, my other
18 boys, and Brandon Scott, we are saddened. We've had a
19 loss. If I would have know that they wanted equipment that
20 bad, I would have bought it for them. Caused my husband a
21 whole, whole lot of pain. They tore up and destroyed our
22 home for no reason at all. It didn't have to be that way.
23 If you would have know anything about us, we would have
24 given it to you.

25 THE COURT: Well, I feel like I've learned a lot about

1 you, and you certainly are a very caring, giving, and
2 benevolent person. I believe you; I believe you would have
3 absolutely given it to him.

4 MS. DAVIS: And I don't know whether my husband will
5 ever recover from this. Von and Mr. Scott trusted us with
6 their son, and you all betrayed their trust. We, we had a
7 great loss. It was a great, big misunderstanding. Brandon
8 wasn't a child that just came off the street. Brandon was
9 raised as Troy and Trenton cousin, so he wasn't homeless.
10 He wasn't somebody that just came by. Brandon was a part
11 of our family.

12 We didn't just take kids off the street. We have
13 judge, we have lawyer kids as well. Our job was to let the
14 parents know where their child was, and we would
15 temporarily keep them, keep the children off the street
16 until they get theyself together.

17 But we've had a real, real bad loss. Trent has a scar
18 for life, and now we and other children that we maybe could
19 help, because of this, we are so much more cautious. Thank
20 you very much.

21 THE COURT: Thank you, ma'am.

22 MS. DAVIS: For everyone, talking about everyone.

23 MS. SIMMONS: My name is Nicole Simmons; I am the
24 mother of Joshua Williams. First and foremost, I want to
25 apologize, Your Honor, for my son outburst the other day.

1 He was not being -- trying to be rude. He was just angry.

2 THE COURT: I accept your apology, and I understand.

3 MS. SIMMONS: He's just very hurt because with me, you
4 know, me raising him by myself as a single mother before I
5 got married, I always told my children -- because he has
6 four sisters up under him -- you know, be careful of your
7 surroundings. Be careful who you call your friends because
8 everybody is not their friend.

9 And he have learned since this has happened to him
10 that he cannot trust anyone. He, he cannot. He has lost
11 jobs because of this. He just has just lost a lot, but
12 right now since the support of my mom, the support of his
13 stepfather, and the support of his sisters, you know, you
14 have to be very supportive of him, and he is continuing
15 with his music. He's continuing to go to church. He doing
16 what he needs to do to do what he need to do.

17 As a family, since, since he apologized, I forgive
18 him, but I'll tell you the reason why I forgive him.
19 Because in order for me and my family to get our blessings
20 that are on the way, I have to forgive, but I can never
21 forget what happened because this is a tragedy that -- it
22 shouldn't have happened.

23 Myself, if I knew the situation, I'm just like Ms.
24 Davis. I would have bought it for them; my son would have
25 bought it for them. But it didn't have to happen this way.

1 Thank you.

2 MS. SCOTT: Good afternoon. I'm Lavon Scott. Sorry.
3 I'm Lavon Scott. I'm Brandon Jones's mother.

4 I stand before you brokenhearted. Brandon was my
5 firstborn, my only son. I have to decide or we have to
6 decide how we're going to explain to his one-year-old
7 daughter why she can never touch her daddy. She knows his
8 pictures. She can see video tape of him playing basketball
9 or hear his music, but her daddy will never be tangible to
10 her because of decisions that were made. That they were
11 totally necessary.

12 I, too, taught him to trust who he was around, and so
13 when my seventy-three-year-old daddy decided in the cold to
14 drive Brandon from Fairfield County to who we know as
15 Sugar's house, a safe place to be, so that he could make
16 music like he did pretty much on a weekly basis -- Brandon
17 was grown. He was twenty-two years old, but I knew where
18 he was because my dad would let me know. That's how we
19 communicate. I always pray for his protection over my
20 child, and I knew where he was going was a safe place to
21 be.

22 So, for this to take place -- I kind of knew they
23 didn't know who Brandon was because he was charming. He
24 was fun. He could make you mad and laugh in the same
25 breath. He was the most handsome, brown skinned, blue-eyed

1 young man you could ever meet.

2 I am heartbroken. The structure of my family has been
3 forever changed because of decisions young men, who I know
4 if they knew Brandon wouldn't have made this decision. He
5 could have talked them out of it. He would. So, I ask
6 that all those involved are punished to the fullest extent
7 of the law.

8 I thank the Richland County Sheriff's Department for
9 their diligent work. I thank the solicitors and their
10 assistance, and I thank the jury and you, sir, for your
11 time. Thank you.

12 MS. SIMPSON: Your Honor, that will be all from the
13 state.

14 THE COURT: Anything else?

15 MR. SUTHERLAND: Nothing. Nothing further, sir.

16 THE COURT: To everyone in the courtroom, obviously
17 imposing sentence on an eighteen-year-old man,
18 eighteen-year-old boy, young man, is obviously a
19 responsibility that my job gives me that I do not relish at
20 all.

21 Mr. Roberts, I've been doing this a long time. I
22 practiced law for thirty years. I represented six
23 defendants for death penalty cases, along with literally
24 hundreds of other defendants. As a sitting judge, I've
25 tried I don't know how many, too many murders, too many

1 murders, too many, and this is about as senseless as one
2 gets.

3 To plan an escapade to steal recording equipment from
4 a family that would have given it to you, to go over and
5 entice them out of the house, to go in there with a pistol
6 -- and so the robbery may have gone South. It may have
7 gone South, and maybe things would have been a lot
8 different, but no.

9 Did y'all get into a fist fight like when we were
10 growing up? We settled our differences. When you get a
11 man down on the ground who's begging for his life -- don't
12 shoot me, don't shoot me, don't shoot me -- and you shoot
13 him once, twice, three times, four times, five times, it's
14 nothing more than an execution. I just -- it's beyond me
15 how things like this happen and why they happen and why
16 should they happen over something that's senseless as
17 trying to steal some equipment you can go down to Best Buy
18 and buy for probably next to nothing. We're thankful that
19 we don't have two other murder cases against you. Thankful
20 those young men survived their gunshot wounds.

21 So, we're trying to pass upon you. It's tough to send
22 a young man eighteen years of age away for a long time, but
23 it's even tougher to allow someone with your lack of
24 responsibility, your lack of any kind of respect for human
25 life to remain associated with others in society who want

1 to live their lives by the law. I have to protect them
2 from people like you. So, I'm going to segregate you from
3 society until you get old enough when hopefully you'll
4 become a responsible citizen.

5 *SENTENCE OF THE COURT*

6 THE COURT: As to the offense of murder, the sentence
7 of this court is you be committed to the state Department
8 of Corrections for a period of forty-five years. As to the
9 two attempted murder charges, the sentence of the court is
10 you be committed to the state Department of Corrections for
11 a period of thirty years. As to the burglary first, it's
12 the sentence of the court you be committed to the state
13 Department of Corrections for a period of forty-five years.
14 As to the attempted robbery, it's the sentence of the court
15 you be sentenced to the Department of Corrections for a
16 period of twenty years. All the sentences will run
17 concurrent to your forty-five year murder sentence that you
18 will do day for day. Good luck to you.

19 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 24TH, 25TH, 26TH, 27TH, and 28TH DAYS OF FEBRUARY,
2014.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

S/ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 4TH, 2014

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Richland)Maurice A Roberts # 359058)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

2017 JUL 26 AM 9:03
 JEANETTE M. MCBRIDE
 CLERK OF COURT
 RICHLAND COUNTY
 FILED

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 Broad River Correctional Inst.
2. Name and location of Court which imposed sentence Richland County 5th Circuit 1701 main st Columbia 29201
3. Name(s) of co-defendant(s) (if any) Demetrice James Vincent Nelson Jr Deshawn McClary
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2013-GS-40-1449, 2013-GS-40-1452

(b) 2013-68-40-1458 , 2013-68-40-1460 ,(c) 2013-68-40-1481

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 2/28/14 45 years 3 months 3 years(b) 45 years 2 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty yes

(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. The State of South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. July 13 2016

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(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 Counsel / Ineffective Appellate Counsel
 (b) Due Process Violation
 (c) Prosecutorial Misconduct

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Ineffective Assistance of Counsel / Ineffective Appellate Counsel
 (b) Due Process Violation
 (c) Prosecutorial Misconduct

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. Motion for Resentencing
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Richland County 5th Circuit 1701 Main St
 ii. Columbia 29201
 iii. _____

iv. _____
 (c) the disposition thereof: _____

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

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) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Tivis C. Sutherland

 ii. Roberts Dudek

 iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. _____

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

Revised 3/2003

STATE OF SOUTH CAROLINA)
 County of Richland)

VERIFICATION

I, Maurice Roberts, 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.

Maurice Roberts

SWORN to and subscribed before me this 23
 day of June, 2017.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 8/16/2026



ALAN WILSON
ATTORNEY GENERAL

May 14, 2018

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
Post Office Box 192
Columbia, South Carolina 29202

Re: Maurice Roberts, #35905 v. State of South Carolina
2017-CP-40-4450

Dear Ms. McBride:

Enclosed please find the original **Return, Partial Motion to Dismiss, and Motion for More Definite Statement** in the above-captioned case for filing in your office.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/can
Enclosure

cc: Jonathan D. Waller, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
	)	
Maurice Roberts, #359058,	)	2017-CP-40-4450
	)	
Applicant,	)	
	)	
v.	)	RETURN, PARTIAL MOTION TO
	)	DIMISS AND MOTION FOR MORE
	)	DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State ("Respondent"), making its return to the application for post-conviction relief filed on July 26, 2017, would respectfully show this Court:

I. Procedural History

Maurice Roberts ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. In February 2013, the Richland County Grand Jury indicted Applicant for two counts of attempted murder (2013-GS-40-01458, 2013-GS-40-01460), murder (2013-GS-40-01452), attempted armed robbery (2013-GS-40-01481), and first-degree burglary (2013-GS-40-01449). These charges resulted from an incident where Applicant and three other individuals participated in the unlawful entry of a home during an armed robbery attempt. As a result of the incident, a murder and two attempted murders occurred.

On February 24, 2014, Applicant's case was called to trial before the Honorable Doyet A. Early, III, circuit court judge. Tivis C. Sutherland, IV, Esquire represented Applicant. Assistant Solicitors Luck Campbell, Nicole M. Simpson, and Meghan L. Walker of the Fifth Circuit Solicitor's Office prosecuted the case. On February 28, 2015, the jury found Applicant guilty as indicted. Judge Early sentenced Applicant to imprisonment for concurrent terms of forty-five

years for first-degree burglary, thirty years for each count of attempted murder, forty-five years for murder, and twenty years for attempted armed robbery.

Applicant filed a timely notice of appeal. On September 1, 2015, Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense-Office of Appellate Defense filed a brief on Applicant's behalf. The issues on appeal were whether the trial court erred in allowing testimony informing the jury Applicant was incarcerated during his trial, and whether the trial court failed to adequately consider his juvenile status and thereby imposed a *de facto* life sentence of forty-five years' imprisonment when his relative culpability should have been considered during an individualized sentencing hearing. On the first issue, the Court of Appeals held that the testimony was admissible as probative, as it described Applicant's threats to his codefendant to keep him from testifying while being transported to the courthouse. On the second issue, the court found the issue was not preserved as the issue was not raised to or ruled upon by the circuit court. These findings were contained in a ruling from the South Carolina Court of Appeals affirming Applicant's conviction on July 13, 2016. State v. Roberts, Op. No. 2016-UP-358 (S.C. Ct. App 2016). The remittitur was returned to the circuit court on August 11, 2016.

II. Summary of Facts Adduced at Trial

The Burglary: Victims' Perspectives

The evening of January 25, 2013, Trenton Scott was hanging out at home with his brother Troy Scott, with his brother's girlfriend Cari Pearson, and with friends Joshua Williams and Brandon Jones. (Tr. p. 327, line 23–p. 330, line 9). The home belonged to Trenton and Troy's parents, Chandler¹ and Gwendolyn Sugar Davis, who were upstairs at the time. (Tr. p. 233, lines

¹ Chandler Davis was Trenton and Troy's stepfather. (Tr. p. 248, line 22–p. 249, line 14).

5–15; Tr. p. 248, line 22–p. 249, line 14). Trenton, Troy, and their friends were in the downstairs part of the home where there was a small recording studio with a laptop computer, a microphone, and speakers. (Tr. p. 324, line 1–p. 330, line 9). Jones was recording music. (Tr. p. 330, lines 2–7). Williams and Troy were playing a video game. (Tr. p. 233, lines 16–24).

Around 10 o'clock that night, Vincent Nelson² showed up downstairs. (Tr. p. 234, lines 2–17; Tr. p. 330, lines 10–18). Trenton had not seen Nelson in two months before that night.³ (Tr. p. 330, line 13–p. 331, line 1). According to Trenton, Nelson was acting “out of character”—he was pacing back and forth, and he received a number of phone calls, which was odd since Nelson did not normally have a cell phone. (Tr. p. 331, lines 2–16). Williams overheard Nelson on the phone, saying “[‘]yo, I’m inside. I’m good. I’m good.[’]” (Tr. p. 236, lines 1–3). At some point, Nelson began to pressure Jones to go outside to smoke a cigarette, and Jones eventually gave in. (Tr. p. 331, line 17–p. 332, line 1). Nelson went outside first, and Jones and Williams followed him. (Tr. p. 237, line 2–p. 238, line 5).

Outside, Williams smoked his cigarette and stood apart from Nelson and Jones, who stayed closer to the house. (Tr. p. 237, line 20–p. 239, line 10). Williams noticed three individuals walking back and forth in his vicinity. (Tr. p. 239, line 11–p. 240, line 6). Once Williams had finished his cigarette, he went back toward Nelson and Jones. (Tr. p. 240, lines 2–6). At that point, one of the three individuals walked up to Williams, put a gun in his face, and told him to get on the ground if he wanted to live. (Tr. p. 240, lines 7–13). The gunman then hit Williams with the gun, knocking him down the hill. (Tr. p. 240, lines 14–22). Next, the

² Nelson had numerous nicknames, including Junior, Calli G, Calli Junior, and J School. (Tr. p. 234, lines 11–17).

³ Nelson stayed with Trenton and Troy’s family occasionally. (Tr. p. 441, lines 2–21). According to Troy, his parents opened up their home to Nelson because “[h]e was just a little less fortunate than others.” (Tr. p. 441, lines 15–18).

gunman approached Jones, who began begging for his life. (Tr. p. 240, line 23–p. 241, line 15). The gunman asked Jones where the keys to the car were, and Jones responded that he did not know. (Tr. p. 241, lines 16–22). The gunman then went up to Nelson and asked where the keys were, and Nelson responded, “[‘]it’s two in the house.[’]” (Tr. p. 242, lines 5–7). The other two individuals then came down the hill, and the gunman went into the house. (Tr. p. 242, lines 5–13). Williams testified that two of the burglars (who Williams did not identify) began beating him, and they attempted to rob him but were unable to find anything. (Tr. p. 242, lines 14–24). Williams could hear scuffling and glass breaking inside the house. (Tr. p. 242, line 5–p. 243, line 8).

Trenton, who had remained inside, testified that he was taking some hangers to a room downstairs when Appellant⁴ ran toward him with the gun pointed at his head. (Tr. p. 332, line 2–p. 333, line 6). The lights were on, and Appellant did not have anything covering his face, so Trenton was able to get a good look at him. (Tr. p. 333, line 15–24). Appellant hit Trenton in the head with the gun, which caused Trenton to fall, but Trenton got back up and hit Appellant in the face, and Appellant fell into a glass table and dropped the gun. (Tr. p. 334, lines 3–24). The two then started scuffling to get the gun. (Tr. p. 334, lines 23–25). A man who Trenton identified as Demetrice James entered and got the gun, which Appellant had managed to retrieve at some point. (Tr. p. 334, line 21–p. 336, line 7). Around that time, Troy, who had heard the glass breaking, entered the room. (Tr. p. 336, lines 8–15; Tr. p. 448, lines 7–19). Troy pulled Trenton and Appellant apart. (Tr. p. 448, lines 13–25). Appellant attempted to go further into the house, but Trenton stopped him by throwing him to the ground. (Tr. p. 336, lines 8–15).

⁴ Both Trenton and Troy identified Appellant by name as one of the burglars who entered their house. (Tr. p. 332, line 12–p. 333, line 24; Tr. p. 448, line 13–p. 449, line 10). While neither of them knew Appellant at the time he came into their home, they learned his name after-the-fact. (Tr. p. 332, line 12–p. 333, line 24; Tr. p. 448, line 13–p. 449, line 10).

James then pointed the gun at them and said, “[‘]I’m about to shoot.[’]” (Tr. p. 336, lines 16–18). Trenton then picked Appellant up and held him “so . . . if he did shoot, he was going to hit him.” (Tr. p. 336, lines 16–20). Trenton then pushed Appellant into Demetrice, and Trenton and Troy attempted to push the two burglars out and to barricade themselves further inside the house. (Tr. p. 337, lines 1–11). The brothers could not get the door closed, so they opened it and resumed fighting with Appellant and James. (Tr. p. 338, line 6–p. 340, line 23). The burglars began moving toward the back door to the house, but before they ran out, James fired a shot, which hit Trenton. (Tr. p. 340, line 19–p. 341, line 15).

Outside, Williams heard Nelson yelling “[‘]let’s go, let’s go, let’s go.[’]” (Tr. p. 243, lines 6–8). According to Williams, he then heard “[‘]600, 600 don’t do it.[’] Pow, pow, pow, pow, pow, pow, pow, . . .” and he felt a jolt of pain, but he no longer heard Jones. (Tr. p. 243, lines 15–20). Williams watched “eight pair of shoes run up the hill, and Vincent Nelson, Jr., was with them.” (Tr. p. 243, lines 20–22).

The Burglary: Co-Defendants’ Perspectives

Appellant’s friend Jwaun Duckett and all of Appellant’s co-defendants—Demetrice James,⁵ Vincent Nelson, Jr., and Deshawn McClary⁶—testified against Appellant. Appellant and his four co-defendants were members of a rap group called 600.⁷ (Tr. p. 403, lines 6–16; Tr. p. 663, line 11–p. 664, line 4).

⁵ According to Duckett, James’s nicknames include Metro and Young. (Tr. p. 421, line 24–p. 422, line 1). James denied that he is called any of those names and said his nicknames were Meat and Meachy. (Tr. p. 486, lines 10–17).

⁶ Defense counsel told the jury that McClary’s nickname was “600.” (Tr. p. 219, lines 24–25). McClary testified that he had a tattoo of “600” on his left arm. (Tr. p. 663, lines 17–20).

⁷ In a statement to police, Duckett told police that Appellant was a part of 600, but Duckett testified at trial that Appellant was not a member of 600. (Tr. p. 410, line 19–p. 411, line 13).

Duckett testified that he was with Appellant on January 25, 2013, when Appellant talked about participating in “a lick.”⁸ (Tr. p. 408, line 6–p. 410, line 18). James, Nelson, and McClary were also present at the time. (Tr. p. 410, lines 9–16). Duckett informed the group that he did not want to be involved. (Tr. p. 409, line 3–p. 412, line 19).

Nelson told the group about the studio equipment at the Davis’s house. (Tr. p. 521, line 5–p. 522, line 17). He also served as the “guinea pig” to get them into the house. (Tr. p. 521, line 14–p. 525, line 15). Nelson testified that he was given Appellant’s cell phone, and the plan was for him to go in the house, and they would call him when they got there. (Tr. p. 529, line 18–p. 530, line 17).

James testified that he got together with Appellant and McClary on the night of January 25, 2013, and he agreed to go with them to meet up with Nelson at a studio. (Tr. p. 487, line 17–p. 489, line 11). According to James, he saw Nelson at the end of the driveway talking with another individual, and when he went to greet Nelson, Appellant ran past him and ended up in an altercation with one of the individuals. (Tr. p. 489, lines 12–23). James followed, but by the time James got to where Appellant had been, Appellant had moved on to another altercation. (Tr. p. 490, line 10–p. 492, line 13). James admitted to getting involved in that second altercation, which took place inside the house, though he claimed he participated because Appellant was “a dear friend,” and he did not want him to get beat up. (Tr. p. 492, lines 2–16). James saw Appellant pull out a gun in the midst of the fighting, but Appellant dropped it, and James went and picked it up. (Tr. p. 493, line 9–p. 494, line 5). James testified that he tried to run out the door, but his arm got caught in the door, at which time the gun was snatched from him, and it went off. (Tr. p. 494, lines 1–14). Once James got outside, he started running, but he

⁸ “A lick” is a break-in. (Tr. p. 409, lines 3–13).

turned back to see Appellant standing over someone in the driveway. (Tr. p. 495, line 1–p. 496, line 12). James saw Appellant shoot once, but he heard several shots after that. (Tr. p. 496, line 6–p. 497, line 10).

McClary, who had remained outside, heard a gunshot a couple minutes after Appellant and James went inside the house. (Tr. p. 672, line 4–p. 675, line 22). James then came running out of the house with Appellant behind him. (Tr. p. 676, lines 4–6). According to McClary, Appellant had the gun in his hand at that point. (Tr. p. 676, lines 7–20). McClary heard Nelson yell, “[‘]600 let’s go.[’]” (Tr. p. 676, line 23–p. 677, line 8). Then, McClary “heard shots going off. [He] looked. Maurice was standing over the fellow shooting.” (Tr. p. 677, lines 10–11).

Nelson also ran away after the failed robbery. (Tr. p. 543, line 4–p. 544, line 6). Nelson heard a number of shots as he was running away.⁹ (Tr. p. 543, line 18–p. 544, line 8). According to a statement he made to police, Nelson also heard either James or McClary yelling, “[‘]Get that n*****; get that n*****.[’]” (Tr. p. 545, line 5–p. 546, line 22). Nelson testified that he, Appellant, and McClary met back at Appellant’s house. (Tr. p. 546, line 23–p. 547, line 21). Appellant went upstairs to change clothes, and he put bleach on the clothes he had worn during the attempted robbery.¹⁰ (Tr. p. 548, line 4–p. 549, line 1).

Duckett got a call from Appellant around midnight on January 26th. (Tr. p. 414, line 7–p. 417, line 1). Appellant wished Duckett a happy birthday, but when Duckett asked about going over to Appellant’s place, Appellant told him not to come over because there was too much going on. (Tr. p. 416, line 1–p. 417, line 1).

The Burglary: Appellant’s Version

⁹ Nelson had earlier testified that Appellant had a gun the night of the burglary, but he did not testify as to who had the gun when he heard the shots go off. (Tr. p. 538, line 3–p. 539, line 22).

¹⁰ McClary’s testimony corroborated this. McClary testified that when they arrived at the house, Appellant went upstairs, and then McClary smelled bleach. (Tr. p. 680, line 18–p. 681, line 2).

Appellant gave a statement to police on January 28, 2013, in which he recalled the events of January 25, 2013. (Tr. p. 740, line 12–p. 744, line 11). Appellant admitted that he was with “600,” “Metro,” and “Junior” that night and that there was a plan to do “a lick,” but he distanced himself from the shooting, claiming that “600” was the one with the gun during the burglary. (Tr. p. 740, line 12–p. 744, line 11). When police asked Appellant what he was wearing that night, he answered, “[b]rown camouflaged pants, black hoodie with a hole in the left shoulder. I accidentally bleached it yesterday when I was doing the dishes.” (Tr. p. 743, lines 22–25).

The police concluded that Appellant was the shooter from the evidence they collected. (Tr. p. 810, lines 1–6). The Scott brothers identified Appellant as one of the participants in the crime. (Tr. p. 808, line 22–p. 809, line 4). Regarding Appellant’s account of January 25th, Major James Smith testified as follows:

His account—basically he supplanted himself for Mr. McClary. He is identified not only by the Scott brothers. All three co-defendants identified his actions that he tried to put on Mr. McClary in his statements. So, he simply tried to insert himself in Mr. McClary’s role as being the person that was out in the driveway when all the evidence and all the statements indicate that he was with Mr. James in the house.

(Tr. p. 809, lines 8–15).

III. Allegations and Relief Requested in Application

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
2. Ineffective Assistance of Appellate Counsel
3. Prosecutorial Misconduct
4. Due Process Violation

Attached to this return are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Trial Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. Applicant has failed to state with any specificity the specific facts giving rise to this allegation and has failed to state clearly the relief sought. Additionally, this allegation is not supported by any other additional information in the application.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at

625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The 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 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.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Response to Allegations of Ineffective Assistance of Appellate Counsel

Applicant also alleges ineffective assistance of his appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (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.

Respondent contends that 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. Respondent requests an evidentiary hearing on this allegation.

VI. Response to Allegations of Prosecutorial Misconduct

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Notwithstanding the procedural bar to this claim, Respondent submits that Applicant provides no evidence to suggest prosecutorial impropriety. Therefore, Respondent submits that this allegation should be summarily dismissed.

VII. Response to Allegations of Due Process Violations

Applicant alleges a denial of due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

VIII. Motion for a More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based and include verified facts to support the grounds, and state clearly the relief desired.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing.

Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based and to state clearly the relief that is made.

IX. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Request for an Evidentiary Hearing

WHEREFORE, Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 14, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2017-CP-40-4450
	)	
MAURICE ROBERTS, #359058,	)	
	)	
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, Partial Motion to Dismiss, and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D Waller
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201

DATED this the 14th day of May, 2018.


Carmen A. Nord, Legal Assistant
For Respondent



ANGELL
MOLONY
ATTORNEYS AT LAW

Jonathan Waller <jonathan@angellmolony.com>

Maurice Roberts v State

Jonathan Waller <jonathan@angellmolony.com>
To: David Spencer <DSpencer@scag.gov>

Thu, Mar 24, 2022 at 10:07 AM

David

You are exactly right and I again apologize. I will send a formal amendment but the allegations will be:

1. IAC for failing to preserve for appeal/properly argue for impeachment of co-def on Page 399 of transcript.
2. IAC with missed objections during the testimony of Demetrice James and Vincent Nelson. (Honestly, those testimonies were difficult at best).
3. Missed objection during testimony of McDonald on p. 739.
3. No valid trial strategy to bringing in credibility of witnesses on Page 810.
4. No objection/valid trial strategy to incorrect jury charge regarding attempted murder.

I think that it is it. I will obviously ask some background/trial prep/investigation questions, but the issues above are the ones I will be raising.

Thank you
Jonathan

[Quoted text hidden]

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2017-CP-40-04450
	)	
	)	
	)	
	)	
Maurice A. Roberts	)	TRANSCRIPT OF RECORD
vs.	)	
State Of South Carolina	)	
	)	March 28, 2022
DEFENDANT	)	Columbia, South Carolina

B E F O R E:

THE HONORABLE GRACE G. KNIE.

A P P E A R A N C E S:

JOHNATHAN D. WALLER, ESQ.
Attorney for the Applicant

DAVID A. SPENCER, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KESHIA REED
Official Court Reporter

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

Maurice Roberts

Mr. Waller	8		34	

Mr. Spencer		22		

Tivis Sutherland

Mr. Waller	36		60	

Mr. Spencer		48		

Certificate of Reporter 81

1 THE COURT: And we ready?

2 MR. WALLER: Yes, we're ready, your Honor.

3 THE COURT: Okay. And so is the applicant here?

4 MR. WALLER: He is here, your Honor.

5 THE COURT: Okay. Mr. Roberts.

6 MR. ROBERTS: Yes, ma'am.

7 THE COURT: Okay. Is there a reason that he's
8 not seated next to counsel?

9 MR. WALLER: Just that I just got here, your
10 Honor.

11 THE COURT: Okay. All right. Let's have him
12 come on around, okay. Take your time. All right. We are
13 on the record with regard to Maurice A. Roberts vs. The
14 State of South Carolina. This is civil action number
15 2017-CP-40-4450. Present representing the applicant is
16 Jonathan D. Waller. Present representing the State is
17 David A. Spencer. Mr. Roberts is present here today. Let
18 me go ahead and I'll just put him under oath to begin
19 with, okay. Sir, you are Mr. Roberts, Maurice Roberts?

20 MR. ROBERTS: Yes, ma'am.

21 THE COURT: Will you please rise. If you'll
22 raise your right hand. Do you swear or affirm that any
23 testimony you give will be the truth?

24 MR. ROBERTS: Yes, ma'am.

25 THE COURT: Thank you. You can be seated. And

1 so this is before me as a merits not as a motion, correct.

2 MR. WALLER: That's correct, Judge.

3 MR. SPENCER: That's correct, your Honor.

4 THE COURT: Okay. And so I am happy to allow
5 counsel to make a brief opening summation if you'd like
6 to, and, I guess, before we get too far into this, I know
7 there are a lot of folks here in courtroom and I'm not
8 familiar with you all. I just want to make sure there's
9 no motion to sequester any witnesses?

10 MR. WALLER: None from the applicant, your
11 Honor.

12 MR. SPENCER: No, your Honor.

13 THE COURT: Okay. All right. So, again, I'm
14 happy to have a brief summation that will assist me more
15 than you all as to your positions, and then we will begin
16 the applicant's case, okay.

17 MR. WALLER: Your Honor, Mr. Spencer -- I
18 imagine will give the procedural history of the case, but
19 just enough so the Court's aware, this case has been
20 pending for some time. At some point during the case, the
21 matter was stayed. Mr. Roberts was granted the ability to
22 seek resentencing under Aiken vs. Byars. He received a 45
23 year sentence, so it didn't fit directly, but there were
24 some other Supreme Court cases the United States Supreme
25 Court that looked at the de facto life sentences. And I

1 did not represent him on the resentencing, but that took
2 place for several years. And so then we're able to get
3 back to his PCR, so that's why the case is a little bit
4 old.

5 Judge, our allegations here today stem solely
6 from the trial of this case and things that took place on
7 behalf of his counsel, Mr. Sutherland, during the trial.
8 Judge, we have just a few instances that we think affected
9 the outcome of the trial and fell below the deficient
10 standard. Judge, the first was in failing to preserve for
11 appeal on properly argued for impeachment of co-defendant.
12 Judge, that's on page 399 of the transcript. We'll
13 certainly get to the specifics just so you're aware.

14 THE COURT: Yes, sir.

15 MR. WALLER: We have numerous times we think
16 there were missed objections during the testimony of both
17 Demetrius James and Vincent Nelson. I don't specifically
18 have page cites of those, Judge, because there was --
19 really throughout Mr. Nelson's testimony was difficult as
20 the best way to describe it for I think everyone involved.
21 Judge, and missed objection during the testimony of
22 Investigator McDonald that's on page 739 of the
23 transcript. There was an allegation of ineffective
24 assistance of counsel on page 810. And then finally we
25 have some concern and raise the allegation regarding the

1 jury charge related to the attempted murder, which there
2 were two counts in this case.

3 THE COURT: Okay.

4 MR. WALLER: Judge, this is a trial. It was a
5 lengthy trial. There were four co-defendants initially
6 charged, three of them testified at Mr. Roberts' trial.
7 It was a home invasion of a home regarding a music studio
8 in the basement of a home. Judge, there were numerous
9 witnesses or eyewitness eyewitnesses as well as law
10 enforcement testified. So it was quite a lengthy trial.
11 The transcript was 900 something pages, so it did take
12 sometime. We're ready to proceed when the Court is ready.

13 THE COURT: Thank you. Okay, Mr. Spencer.

14 MR. SPENCER: Thank you, your Honor. The
15 procedural history I did have something -- I believe I had
16 something to bring up also. Mr. Roberts was indicted for
17 murder, attempted murder. He was indicted for two counts
18 of attempted murder, murder, attempted armed robbery,
19 first degree burglary, and he was tried in February of
20 2015. He was found guilty of all the charges. Judge
21 Early was the presiding judge. He sentenced the applicant
22 to 45 years for murder and also for first degree burglary
23 and 30 years for the remaining charges the attempted
24 murder and the attempted excuse me -- 20 years for
25 attempted arm robbery, 30 years for both counts of

1 attempted murder. They all run concurrent. He was -- he
2 did file an appeal. He's represented by Mr. Dudek. And
3 we had discussed that we weren't -- there were no
4 allegations of it -- ineffective assistance of trial
5 counsel today.

6 Your Honor, Mr. Waller did last week send me
7 kind of an update on the allegations that he was going to
8 raise today. Your Honor, we're pretty clear except that,
9 you know, that he wasn't specific as to Mr. James or
10 Mr. Nelson's testimony where there should be objections.
11 So I may ask for some leeway in that in terms of the jury
12 instructions for attempted murder. I do have some case
13 law I can hand a copy of it to Mr. Waller and I can bring
14 that up now or at the conclusion of everything whichever
15 suits your Honor. And with that, I think we're ready go
16 forward.

17 THE COURT: Okay. And so the issue regarding
18 the charge which -- is it about attempted murder?

19 MR. SPENCER: It's about attempted murder. As I
20 understand it, the issue is whether -- well, general
21 intent was the jury instruction for the attempted murder.
22 There is a 2014 trial. King comes out in 2015. And this
23 is the Court of Appeals King comes out in 2015 says guess
24 what this is a specific intent crime, and then that result
25 is affirmed and result in 2017 by the Supreme Court. I

1 have some argument to lay out on that and that's my
2 understanding however of what the -- of what that
3 allegation is regarding, what they're alleging.

4 THE COURT: Okay. Well, then why don't we just
5 take up as it comes, okay. I don't want you all to start
6 -- I don't want to rush and get you all out of your order.
7 And I will allow you all to make summaries, of course, at
8 the end, all right.

9 MR. WALLER: Thank you, your Honor.

10 THE COURT: Okay. And so, Mr. Waller.

11 MR. WALLER: Thank you, your Honor. The
12 applicant will call Maurice Roberts.

13 THE COURT: Okay. Sir, take your time, okay,
14 and go up to the witness stand.

15 MR. ROBERTS: My name is Maurice Roberts
16 R-O-B-E-R-T-S.

17 MR. WALLER: Your Honor, may it please the
18 Court.

19 THE COURT: Yes, sir.

20 WHEREUPON,

21 Maurice Roberts,
22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WALLER:

25 Q Good afternoon, Mr. Roberts. How are you today?

1 A I'm doing good, sir.

2 Q All right. Mr. Roberts, I want to take you back if I
3 can to where you were first arrested on these charges, do
4 you recall that?

5 A Yes, sir.

6 Q Okay. When you were first arrested, what were you
7 charged with?

8 A When I was first arrested or when I first came in
9 contact with police?

10 Q When you first arrested, did you have all of the
11 charges?

12 A No, sir, I did not have all them charges.

13 Q Okay.

14 A I had I believe murder, two attempted murders and
15 first degree burglary.

16 Q Okay.

17 MR. WALLER: Your Honor, may he remove his mask
18 while he's on the witness stand or at least lower it?

19 THE COURT: If that's fine with the court
20 reporter. Okay. All right. Thank you.

21 MR. WALLER: Thank you, your Honor. So
22 everybody can hear, so she can hear to make a good record.

23 A Yes, sir.

24 Q So you do not have all of the charges at that point?

25 A No, sir, I did not have all charges at that time.

1 Q All right. What were you originally charged with?

2 A I was originally charged with murder, first degree
3 burglary, and two attempted murders.

4 Q Okay. And those -- you were arrested and then, I
5 guess, taken to Alvin S. Glenn, is that right?

6 A Yes, sir.

7 Q Okay. At what point did you have a lawyer to
8 represent you?

9 A I had one lawyer and then he got off the case for
10 whatever reason it was. Then I got another lawyer who I
11 believe stayed on there for a little bit longer than what
12 he did and then I got Mr. Tivis.

13 Q Okay. How did you -- the first two lawyers how did
14 you get them? Did you hire them, were they appointed to
15 represent you?

16 A Appointed like -- I think they call it -- I guess,
17 not at that time, I guess, it's a direct -- what you call
18 it -- a public defender.

19 Q Okay. So they were appointed to represent you. Do
20 you remember meeting with them?

21 A I talk with one of them, but it was just basically
22 telling me that I wasn't going to get a -- what they call
23 it -- a bond hearing I didn't get a bond hearing.

24 Q Okay. Was one of those lawyers Mr. Collins, Craig
25 Collins?

- 1 A Yes.
- 2 Q Okay. Was he the first or the second?
- 3 A I believe he was the second one.
- 4 Q Okay. About how long did he represent you before
- 5 Mr. Sutherland came on your case?
- 6 A Not very long at all.
- 7 Q Okay. Those first two lawyers and I'm not
- 8 specifically asking about either one of them, but did you
- 9 all have a chance to go over any discovery in your case?
- 10 A Nothing.
- 11 Q Okay. Do you know if they had it at the time?
- 12 A Not to my knowledge.
- 13 Q Okay. When Mister -- how long after you were
- 14 arrested did Mr. Sutherland come to represent you?
- 15 A I'm not exactly sure at the time, but I know that it
- 16 had probably been at least a month or so.
- 17 Q Okay. Your case went to trial just over a year after
- 18 the incident year or a year after you were arrested, is
- 19 that right?
- 20 A Like 12 months something like that.
- 21 Q Okay. So if Mr. Sutherland was appointed or became
- 22 your lawyer about a month after you were arrested, so he
- 23 represented you for close to a year, is that right?
- 24 A Yes, close to a year.
- 25 Q Did you and Mr. Sutherland have a chance to discuss

1 the evidence in your case?

2 A Evidence, no. It was more like a -- I mean, it's
3 more like a popcorn like I'm here your lawyer type thing.

4 Q Okay. You were -- did you ever get a bond hearing?

5 A Never have received a bond hearing.

6 Q Okay. So you were in the detention center for the
7 entire time until you came to trial?

8 A Yes, sir.

9 Q Okay. Did you and Mr. Sutherland ever discuss having
10 copies of your discovery materials in the detention
11 center?

12 A I asked him about it and he told me that he would get
13 it to my mother them, but I tried to explain that my mom
14 them was sick. And my father has like an eighth grade
15 education, so he didn't know how to use their computer to
16 even get information. So I would ask for him to give it
17 directly to me and never received.

18 Q Okay. Did you all talk about you having discovery
19 materials in the detention center what that might cost?

20 A I was told that for it to be printed out that it
21 would cause them a pretty nice penny for it to get printed
22 out, so like it was basically like get your people to get
23 it to you.

24 MR. SPENCER: Your Honor.

25 THE COURT: Yes, sir.

1 MR. SPENCER: Your Honor, as I understand it,
2 there's no allegations of like failure to investigate or
3 anything like this. It's all stuff that's just off the
4 face of the trial transcript, so I don't understand why we
5 need to go into such detail through discovery. So I just
6 object on relevance.

7 MR. WALLER: I was just laying some ground work
8 about how Mr. Sutherland came to represent him and what
9 they talked about, Judge. I'm not getting into the actual
10 materials themselves just kind of in general.

11 THE COURT: Okay. I'll allow it as just some
12 background, okay. Thank you.

13 MR. WALLER: Thank you, your Honor.

14 BY MR. WALLER:

15 Q All right. Mr. Roberts, when you and Mr.
16 Sutherland had a chance to meet, finally you said that you
17 didn't have your discovery, but you all were able to
18 discuss it a little bit just lawyer and client talking, is
19 that right?

20 A Yes, sir.

21 Q Okay. Did you all discuss what your defenses to this
22 -- these allegations might be?

23 A I had no idea what we was doing.

24 Q Okay. Did you ask him?

25 A I ask, but it was more like to me I didn't get a

1 direct answer. It was more like from what I was taking
2 in, it was just like he was coming up as we go.

3 Q Okay. You had three co-defendants in this case, is
4 that right?

5 A Yes, sir.

6 Q Okay. And each of them ultimately testified at the
7 trial against you?

8 A Yes, sir.

9 Q Okay. You gave a statement to law enforcement prior
10 to your arrest, is that right?

11 A Yes, sir.

12 Q Okay. Did you and Mr. Sutherland discuss anything
13 related to the statements of you or your three
14 co-defendants and how you may use that in your defense?

15 A As far as what my co-defendants, it was just
16 basically that they had prior -- another charge outside of
17 this. And that was pretty much his thing try to pretty
18 much prove like they were already doing stuff like that,
19 that was all that I knew ---

20 Q Okay.

21 A --- because they had prior charges.

22 Q Okay. The four statements that were given to law
23 enforcement were not all the same, is that fair to say?

24 A No.

25 Q Okay. Did you and Mr. Sutherland discuss how, you

1 know, you might raise a defense to that during the trial?

2 A No, understanding how we were going to take care of
3 this like I didn't understand.

4 Q Okay. At what point did you make the ultimate
5 decision you were going to go and proceed to trial?

6 A That was -- well, I believe in like in November I was
7 told that I was going to go to trial in November, but, I
8 guess, the holidays came up sooner I'm not exactly. And
9 then, I guess, February we came back. So it was pretty
10 much that November where everything was like, you know,
11 we're going to trial.

12 Q Okay. What did you and Mr. Sutherland talk about as
13 far as your strategies and getting ready for trial?

14 A It was really no strategy besides me getting a piece
15 of paper and him telling me, no, this is what I need to
16 say.

17 Q Okay. When you mention that you were originally
18 scheduled to go to trial in November, but it got push back
19 maybe because of the holidays until February?

20 A Yeah.

21 Q During that time, did you and Mr. Sutherland have a
22 chance to meet or discuss the case at tall?

23 A More towards getting closer to the trial like the
24 weeks prior to it we had more interaction, but it still
25 wasn't nothing lengthy. Like, I would see him come and

1 speak to other inmates, and I would have to, hey, Mr.
2 Tivis, like what's going on or can you give me an update.
3 And, well, I'll be back to talk to you. And it might not
4 be exactly when he said he would, but, I mean, it
5 eventually come.

6 Q Okay. So when he came, what did you all talk about?

7 A Basically that I'm going to get time pretty much, and
8 I'm going to go to trial, that's what's like pretty much
9 that if I'm expecting to get a plea or anything like that
10 did not give me no plea anything like that. So that was
11 pretty much the extent that we going to go to trial and
12 see what it is because like it wasn't no plea until I
13 actually went to trial.

14 Q Okay. When you say you were going to get time, what
15 did you -- how did you understand what he meant?

16 A Pretty much my understanding that I -- once I got the
17 -- pretty much the way that I took the information once I
18 got it, I just told my mom like if you think that I'm
19 going to get anything less than ten years or 15 years or
20 anything like that, that thought been went out the window.

21 Q Okay. So you thought you were going to get convicted
22 from the beginning?

23 A Yes, from the beginning.

24 Q Once the trial began, did you -- obviously, you and
25 Mr. Sutherland were sitting at the table together?

1 A Yes.

2 Q Were you all able to communicate at all?

3 A Yes, we communicated, but it was more like I'm here
4 and we gone go all the way to the end. Like, it wasn't
5 still like -- know it wasn't like a this what we gone do
6 plan A, plan B, plan C. It wasn't, no, never, no, set
7 plan.

8 Q Were you able to have a pad and pencil or pen to make
9 notes?

10 A Me?

11 Q Yes, sir.

12 A No, I didn't have any of that.

13 Q Okay. Were you able to during breaks have a
14 conversation with Mr. Sutherland during questioning of a
15 witness?

16 A Not while directly question the witness because like
17 I didn't know what -- like he didn't tell me what I could
18 or like I was real young at the time. I was -- just turn
19 18 at the time, so I didn't know much of nothing.

20 Q Okay. How about at the end of the day were you able
21 to talk with him?

22 A Yes, just briefly like things could go either way
23 type things at the end of the day. Then, you know, I see
24 you tomorrow type name to the end of the trial.

25 Q Okay. As the trial progressed, what was your

1 understanding of your defense? You said it kept moving
2 beforehand. As trial was going, what did you think you
3 all were raising?

4 A To be honest, I just knew from where he was reading
5 from papers as far as the DNA and like stuff like that
6 going over those informations and stuff like that, but
7 other than like that I didn't have no -- I still didn't
8 see where we were going with this to even prove that I
9 wasn't even that type of person or anything.

10 Q Okay. You just touched on this just a little bit, so
11 at the time of the trial how old were you?

12 A At the time of trial I was 18.

13 Q Okay. So at the time of the incident were you 17?

14 A Seventeen.

15 Q Okay. Were you house -- were you house in the adult
16 population?

17 A Adult population.

18 Q Okay. So there be no difference as far as
19 Mr. Sutherland able to meet with you?

20 A No.

21 Q Okay. Three of the witnesses in your trial were your
22 co-defendants?

23 A Yes, correct.

24 Q And you knew them prior to this incident, is that
25 fair to say?

1 A Yes.

2 Q Okay. When they are testifying or you know they're
3 going to testify, what did you and Mr. Sutherland talk
4 about their, you know, up and coming testimony or as it
5 was happening.

6 A Well, the only thing knew about Vincent was that he
7 had took a plea because prior to the trial starting, I
8 think, they gave him a plea or something like that. So
9 that was pretty much my knowledge of him and that he was
10 probably going to testify because from my understanding
11 that he made an agreement with the State to get the 35
12 years. It was in order for him to testify, but when he
13 started testifying, you know, it didn't -- it was not a
14 smooth -- it was not smooth.

15 Q Okay. He had already entered a plea, but he had not
16 been sentenced at the time, is that correct?

17 A Yes, from my understanding that until he made the
18 actual testimony, he would not be able to go through with
19 the actual court signing off on the plea.

20 Q Okay. During his testimony -- and if you don't
21 recall that's fine. Did you remember the court taking
22 breaks for -- let him talk to his attorney or just
23 stopping for whatever reason?

24 A Yes.

25 Q During those breaks, did you and Mr. Sutherland have

1 a chance to discuss his testimony?

2 A Not his -- not like what happened with his testimony
3 more less that from like he was pausing, and I'm assuming
4 that the -- it was either another attorney -- even was not
5 his attorney, but it was even the judge or the -- what it
6 is -- not you, but like a type of lawyer that he is like
7 the other side ---

8 Q Prosecutor.

9 A Said something to his lawyer and then they stepped
10 out for a second where pretty much from my understanding
11 that if he was kind of stopping in his testimony if he
12 didn't go through with his testimony that he would lose
13 that the plea opportunity that he had.

14 Q Okay. And at the end of all the evidence in the case
15 ---

16 MR. SPENCER: Your Honor, I would just move to
17 strike. I think to realize basically we elicited some
18 testimony about what the attorney might have said to the
19 co-defendant -- Mr. Nelson's attorney said to Mr. Nelson,
20 so I would move -- I would object on hearsay grounds.

21 MR. WALLER: I think it was his present sense
22 impression at the time. He's certainly doesn't know what
23 Mr. Nelson and his attorney spoke about. I think it's a
24 reasonable inference on his part that Mr. Nelson has
25 already entered into a plea, but hasn't been sentenced

1 very withholding as far as even refusing to answer
2 questions until he spoke with his attorney. I think that
3 is a reasonable inference on Mr. Roberts part, but it's
4 not germane to our case, so I'll certainly move on from
5 there, your Honor. I'll certainly move on from that.

6 THE COURT: Thank you. So I believe the
7 statement is being withdrawn. So is the objection?

8 MR. SPENCER: Yes, withdrawn and struck and I'm
9 happy.

10 THE COURT: Okay.

11 MR. WALLER: Certainly, your Honor.

12 THE COURT: Please move forward.

13 MR. WALLER: Thank you, your Honor.

14 BY MR. WALLER:

15 Q Mr. Roberts, at the close of the State's case they
16 rested. There was no more evidence coming into the trial.
17 Before the closing arguments were given by the attorneys,
18 did you and Mr. Sutherland have a chance to discuss his
19 closing argument, how things had gone? Were you able to
20 talk before the closing arguments?

21 A I mean, me and him didn't do much talking. I mean,
22 it was little things throughout the trial that I feel like
23 when I would whisper to him like that's not true or that
24 didn't happen. And he would tell me, oh, okay, I got it.
25 Well, I'm not quite sure that the jury or the judge is

1 listening. So like he didn't -- like things that I felt
2 were wrong, like he didn't say nothing about those things.

3 Q Okay. So once the trial started, he was trying the
4 case and you were kind of just sitting at the table?

5 A Yes, just pretty much watching.

6 Q Okay. Mr. Roberts, I think I've asked you all the
7 questions that I have for you. Is there anything you
8 think I've left out or neglected to ask you about
9 Mr. Sutherland's representation of you at the trial
10 specifically?

11 A No, sir, besides that he didn't do what he was
12 suppose to do like -- how he showed up at the trial, but
13 that wasn't enough.

14 MR. WALLER: Thank you, Mr. Roberts. Please
15 answer any questions Mr. Spencer has for you.

16 MR. ROBERTS: Yes, sir.

17 THE COURT: Yes, sir, cross-examination.

18 MR. SPENCER: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. SPENCER:

21 Q Mr. Roberts, at the beginning of the hearing you
22 heard the allegations that your attorney was going to
23 raise today, right?

24 A Yeah.

25 Q And that involves whether -- for instance whether or

1 not Mr. Sutherland should have objected to certain
2 testimony, is that your understanding?

3 A Say that again, sir?

4 Q Basically, you agree with me that you heard
5 Mr. Waller tell the judge the allegations that are getting
6 raised today, correct, the claim of ineffective assistance
7 of counsel?

8 A Yes, sir.

9 Q Okay. And you haven't testified about any those
10 allegations. You don't have any information on those
11 allegations, is that correct?

12 A What allegations?

13 Q The allegations of ineffective assistance of counsel.
14 You're leaving that to Mr. Waller ---

15 A Can you ---

16 THE COURT: I need to make one thing clear. Let
17 him finish his question and then you can answer, so this
18 lady can take everything down to make a record.

19 MR. ROBERTS: Yes, ma'am, I apologize.

20 THE COURT: All right. Restate your question.

21 MR. SPENCER: Thank you, your Honor. I'll try
22 to slow down a little bit too.

23 BY MR. SPENCER:

24 Q You heard Mr. Waller, he laid out some allegations
25 such as failure to impeach the co-defendant with the

1 common law robbery. He talked a little bit about the jury
2 instructions for attempted murder. He gave a few other
3 allegations. Do you recall that?

4 A Yeah, I guess.

5 Q Okay. And then you're not -- you're leaving it to
6 Mr. Waller to make these arguments, is that correct?

7 A I'm not sure what you're asking. He's my lawyer.

8 Q Okay. I'll move on then.

9 A Can he like state it in another way because I'm not
10 understanding like how he's asking. I'm kind of confused.

11 THE COURT: Rephrase your question.

12 MR. SPENCER: Sure.

13 BY MR. SPENCER:

14 Q Your testimony was just directed towards explaining
15 how you felt during the trial and how you felt during
16 Mr. Sutherland's representation, is that correct?

17 A Yeah, the way personal felt, right?

18 Q Yes. I think we understand each other now. And what
19 I wanted to ask you is you don't have any legal training,
20 do you?

21 A No, sir.

22 Q Okay. So in terms of your understanding what is
23 happening, you don't have that because you don't have any
24 legal training?

25 A Are you saying that -- I mean, I'm a person if I feel

1 that something's wrong or not in my best interest that's
2 where I'm coming from in this situation.

3 Q You were counting on Mr. Sutherland to decide what
4 needed to be objected to and that sort of thing, is that
5 correct?

6 A I didn't know no better.

7 Q Now, I want to talk about the trial a little bit with
8 you and you talk about the evidence. You mention three
9 different co-defendants testified against you?

10 A Correct.

11 Q And also Mr. Duckette he testified?

12 A Yes, sir.

13 Q And he wasn't actually a co-defendant, was he?

14 A No, sir.

15 Q Okay. And basically what happened is the police came
16 over to your house and they were looking for Mr. Nelson,
17 is that correct?

18 A Yes, sir.

19 Q And Mr. Nelson in fact was actually sleeping on your
20 couch, right?

21 A Yes, sir.

22 Q And Mr. Duckette was found after they arrested
23 Mr. Nelson. They swept the house basically the police
24 went through the house and they found Mr. Duckette in the
25 closet with your cell phone?

1 A I don't think that's how it happened.

2 Q Do you recall that being evidence that was presented
3 at trial?

4 A No, I don't think that's how it was presented.

5 Q Let me ask you this, that's when you actually went to
6 the police station though, right?

7 A I did go to the police station after they did arrest
8 Vincent Nelson and take, I guess, pretty much us into
9 custody, I guess, I don't know.

10 Q And you weren't charged with anything right at that
11 point?

12 A I mean, I don't know. They said something to me
13 about some weed, so I thought that I might have got in
14 trouble for some weed or something.

15 Q That's right. There was some marijuana found in the
16 house, right?

17 A Yeah.

18 Q But you weren't actually charged with anything
19 regarding this -- these charges at that point, right?

20 A I mean not that I know of. I mean, it was very
21 little -- pretty much little talking, you know, pretty
22 much. I was told that it was weed or if my mom them -- if
23 I didn't want my mom them to get in trouble for it or I
24 didn't want my dad them to get in trouble for it -- I had
25 to pretty much take that weed charge.

1 Q Now, they were talking about -- they also wanted to
2 talk to you about this armed robbery and the burglary,
3 this armed robbery, this murder that occurred over at the
4 Davis', right?

5 A They ask questions, but as I was saying like I
6 wasn't -- like they said I did it.

7 Q And ultimately you gave a statement to police that
8 was introduced at trial, right?

9 A Yes.

10 Q And it basically said that you were over there,
11 right? You admitted that you were over there at the house
12 when this burglary occurred, correct?

13 A I didn't write that statement though.

14 Q You didn't write the statement, but the police said
15 that that was your statement?

16 A I didn't write it though.

17 Q Right. The police wrote it for you?

18 A Police wrote it for me.

19 Q And they read you your rights?

20 A And read me my rights.

21 Q And all that, right? Do you remember your attorney
22 challenging that statement?

23 A I believe that he did challenge that statement.

24 Q And as a matter of fact in closing argument, he
25 argued that despite what the officers testified at trial

1 that you were in custody, right? At the time you gave
2 that statement?

3 A Assuming that if you speaking on the weed because
4 that's what I knew that I was ---

5 Q No, I'm not talking about the weed. I'm talking
6 about the -- I'm talking about your trial for murder,
7 attempted murder, burglary ---

8 A I was already in custody, sir.

9 Q Right.

10 A I did not have the ability to leave the crime scene.

11 Q And that's my point -- excuse me. I didn't mean to
12 cut you off. That's my point. That is what
13 Mr. Sutherland was arguing to the jury in closing
14 argument. He was arguing that your statement was not
15 voluntary, right?

16 A It wasn't.

17 Q And so that's the defense you wanted and that's the
18 defense you getting, right?

19 A No, that's not what I wanted. I mean, that's what he
20 -- I guess, he put together, but at that time I'm telling
21 you that I didn't understand where we were going with it.

22 Q Okay. Okay. Now, let me ask you this, there were
23 two brothers that were the victims of the burglary, right,
24 Trenton Scott and, I think, the other one was Tyson Scott,
25 right?

1 A Yes, sir, from what the paper say I don't know the
2 two individuals.

3 Q You don't know those two names?

4 A I don't know the two individuals.

5 Q Okay. And they didn't know you, did they?

6 A From my knowledge, no, they don't know who I am.

7 Q But they picked you both out of a -- both picked you
8 out of a photographic lineup. Do you recall that evidence
9 being presented at trial?

10 A I remember that being at trial, but that was after
11 they was -- after someone else came in and said something
12 about a photo lineup and gave other people and said that
13 someone who didn't have nothing to do with this also pick
14 them out of a photo lineup, so how correct could that be.

15 Q Well, would you agree with me the two brothers both
16 picked you out of the photographic lineup as one of the
17 burglars that bust in their house?

18 A That's what the paperwork, sir, say, sir, but as you
19 look,, it also does say that someone else came along with
20 them and said that was these people. And those people
21 that they did also pick out as well.

22 Q You're saying they pick somebody else out?

23 A Yes, someone completely different that had nothing to
24 do with this.

25 Q Because I realize about the two brothers. They're

1 saying you just don't remember that happening at the
2 trial?

3 A What I'm saying is that I don't know if them guys
4 actually pick those out. It could have been the other
5 person for all I know. I don't know, sir.

6 Q But do you recall that evidence being presented?

7 A I recall a photo lineup showing that they -- that
8 someone pick someone, but I don't know once again was it
9 them or was it the person that came along with them.

10 Q And you were here for the whole trial, right?

11 A Yes, sir.

12 Q And so all this you're saying you don't recall those
13 two witnesses testifying that you were one of those two
14 men that broke into the house and that they were fighting
15 with and ---

16 A All that came out after the fact of them saying after
17 them going through the fact that someone else was -- got
18 chose in a photo lineup that didn't have nothing to do
19 with the case.

20 Q Well, let me ask you not only asking you about what
21 comes out at trial. Joshua Williams he was one of the
22 individuals was outside during the burglary?

23 A Once, again, I don't know any of the individuals from
24 that night, sir.

25 Q Did you -- do you remember Joshua Williams testifying

1 at trial?

2 A I remember people testifying.

3 Q And ---

4 MR. SPENCER: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 (WHEREUPON, a pause in the proceedings.)

7 BY MR. SPENCER:

8 Q Let me ask you about one of the co-defendants,
9 Vincent Nelson.

10 A Yes, sir.

11 Q Now, he testified that you all discussed during this
12 burglary inside this house and that he -- Vincent Nelson
13 knew these people, right?

14 A From my understanding, he knew them.

15 Q And Vincent Nelson went inside first and he had your
16 phone when he went inside the Davis' house, right?

17 A I mean, did not know that he had my phone.

18 Q You didn't -- you don't remember that testimony at
19 trial?

20 A What's the testimony?

21 Q That Mr. Nelson had your cell phone and made a call
22 from inside Davis' house?

23 A Yeah, I know that he had my phone, but as I was
24 saying, I didn't know that he had my phone, just like the
25 other guy that y'all said had my phone which I didn't know

1 that he had it.

2 Q Okay.

3 A It was a phone that just lay around it didn't --
4 anybody could use it.

5 Q Let's talk about that statement police -- to the
6 police if you would just ---

7 MR. SPENCER: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 (WHEREUPON, a pause in the proceedings.)

10 BY MR. SPENCER:

11 Q Now, do you remember at the trial that the State
12 introduced a statement that they said was your statement?
13 Do you recall that?

14 A Yes, I remember them trying to bring that statement
15 in.

16 Q Okay. And let me read the statement to you and see
17 what sounds familiar what was presented at trial. I was
18 at my house that night around ten or 10:25 p.m. with
19 Junior.

20 MR. SPENCER: Your Honor, I'm on page 740 of the
21 transcript.

22 BY MR. SPENCER:

23 Q That's when Six Hundred and Metro came over to my
24 house. While we were there, Junior talked about going
25 over to his homeboy's house for a lick. He said they had

1 a studio there. Junior said the house was over there by
2 the village. Junior had my cell phone and left the house
3 about five minutes before me. Six Hundred and Metro did
4 left about five minutes before Six Hundred and Metro did.
5 Junior would get inside and then call us to let us know
6 when to come. We then begin to walk over towards E.
7 Taylor school. While we were walking, Six Hundred got a
8 phone call from Junior. Six Hundred gave me the phone.
9 Junior told me that he was in, that his homie's let them
10 in. And I skip down a little bit. I stopped when I got
11 in front of the house. Metro and Six Hundred kept walking
12 past the house and turned around and came back up to the
13 house and took off running down the driveway. I saw them
14 telling the people to get down. Six Hundred and Metro
15 began tussling with someone in the driveway. I saw him
16 tussling and ran down to help out. The boy had Six
17 Hundred on the ground. I ran down and pulled the boy off
18 Six Hundred. When I did, the guy turned around and hit me
19 with his elbow in my eye. He -- you -- in the statement,
20 you said that Six Hundred pistol whipped the boy. Six
21 Hundred was trying to get the door open to get inside the
22 house I think. And you testified excuse me -- in your
23 statement, you said that Six Hundred is the one who shot
24 the gun. Do you remember that statement being presented
25 at trial?

1 A I remember the statement being presented, but that's
2 the same statement that I was telling you that I did not
3 write and did not testify and did not speak on it while I
4 was in trial.

5 Q You actually had a -- you didn't testify at the jury
6 trial, but you testified beforehand concerning the
7 statement, correct?

8 A Yes, because I was told that's what I needed to do.

9 Q And so you got to explain everything you wanted to
10 about that statement to the judge?

11 A Well, not everything because as I said earlier that
12 list of things were written down were typed up and pretty
13 much if I hear him say key things this is what I suppose
14 to type in -- tap in on, I suppose to say this. No,
15 pretty much he would -- what's the word, lead.

16 Q But you agree that this statement puts you at the
17 scene of the crime and involved in the crime?

18 A I didn't write it.

19 MR. SPENCER: Your Honor, I have no further
20 questions.

21 THE COURT: Okay. Thank you. Any redirect?

22 REDIRECT EXAMINATION

23 BY MR. WALLER:

24 Q Mr. Roberts, Mr. Spencer asked you questions
25 regarding evidence that was presented at trial, what

1 certain people testified to. Do you have any question
2 with the transcript or the accuracy of what happened at
3 the trial?

4 A Can you rephrase that please, sir?

5 Q Yes, sir. You proceeded to trial and maintained your
6 innocence through the entire time ---

7 A Yes, sir.

8 Q --- until now, is that correct?

9 A Yes, still innocent.

10 Q What happened at the trial you're not questioning
11 what the transcript says took place at the trial?

12 A Yeah, yeah, whatever is in the transcript, I'm saying
13 that it's in the transcript. I'm not saying that it's not
14 there, but I did not make that statement. And I'm not
15 gone ever say that I did make that statement because I
16 didn't.

17 Q Okay. And your trial was several years ago?

18 A Yes, sir, a very long time ago, so some things are
19 here and some things are not.

20 Q So you don't necessarily remember exactly who
21 testified to specifically what at the trial?

22 A No, sir.

23 MR. WALLER: Thank you, Mr. Roberts. I have
24 nothing further.

25 MR. SPENCER: I have no further questions, your

1 Honor.

2 THE COURT: All right. Thank you.

3 Sir, you may step down, watch your step, okay.

4 MR. ROBERTS: Okay. Thank you.

5 (WHEREUPON, the witness leaves the witness
6 stand.)

7 MR. WALLER: Your Honor, the applicant will call
8 Tivis Sutherland to the stand.

9 THE COURT: Please come forward. Do you swear
10 or affirm that the testimony you give will be the truth?

11 MR. SUTHERLAND: I do.

12 THE COURT: Watch your step, sir, state your
13 full name again for the record, spell your last name.

14 MR. SUTHERLAND: My first name is Tivis. It's
15 T-I-V-I-S last name Sutherland S-U-T-H-E-R-L-A-N-D.

16 MR. WALLER: May it please the Court.

17 THE COURT: Yes, sir.

18 WHEREUPON,

19 Tivis Sutherland,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WALLER:

23 Q Good afternoon, Mr. Sutherland. How are you today?

24 A Well enough, well enough.

25 Q All right. Mr. Sutherland, how did you come to

1 represent Maurice Roberts?

2 A I think -- you know, he testified that he had two
3 prior. I don't remember how many he had prior, but I got
4 appointed to represent him.

5 Q Okay. You are not officially with the public
6 defender's office, is that correct?

7 A Not since 2005.

8 Q Okay. So how did you get appointed on his case?

9 A When the public defender's office gets a co-defendant
10 case, that office is like a single lawyer. You know, we
11 were down to nine when I was down there. They got like 40
12 over there now, but it's still like one lawyer. So they
13 kick out to criminal attorneys in town case conflict cases
14 as long as criminal attorneys are willing to take them.
15 I'm willing.

16 Q So there was a conflict and so that's how you were
17 appointed?

18 A That's it. I can't remember. Tara Shurling had
19 Vincent Nelson. I can't remember which one they had.

20 Q Okay. All right. And when were appointed to
21 represent Mr. Roberts, did he have all of the charges or
22 were they added later on, do you recall?

23 A I do not remember honestly. In my mind, it was just
24 one, you know, thing through. I mean, if they indicted
25 him for something else later -- I mean, Ms. Campbell had

1 the case, so anything could have happened.

2 Q Okay. Do you have any recollection of conducting a
3 bond hearing on his behalf?

4 A I don't think so.

5 Q Okay. But you weren't on the case from the very
6 beginning, is that right?

7 A That's true.

8 Q Okay. By the time you were appointed, was the
9 discovery complete? Did you have everything?

10 A I don't recall having problems with discovery having
11 -- I mean, I recall being satisfied with their production
12 if that's what you're asking.

13 Q Okay. But there was DNA, obviously, forensic testing
14 certain things that might take a little bit longer than
15 statements?

16 A It comes in little chunks.

17 Q Okay. But you didn't have any concerns about
18 receiving it?

19 A No, I mean, I didn't feel like they were slow walking
20 it. Although -- no, this is not that trial. I'm sorry
21 Ms. Campbell on the fourth day of a murder trial tried to
22 drop 150 pages of discovery on me one time, but this was
23 not that time.

24 Q Okay. Nothing to do with this case?

25 A Right.

1 Q Okay. When you receive that discovery, were you able
2 to discuss it with Mr. Roberts?

3 A I remember talking to him about the case, and I don't
4 remember if he had copies. If he says he didn't have
5 copies, then, you know, that's the recollection here.
6 Typically, in serious cases, I don't like my clients to
7 have copies of discovery down there just because of the
8 snitches.

9 Q You say down there you mean in the detention center?

10 A At the detention center, yes, sir.

11 Q What -- at some point Mr. Roberts decides he's going
12 to go to trial, is that accurate?

13 A I don't think they made an offer, did they? I don't
14 think they made an offer to like the second day of trial.

15 Q Okay. What did you and Mr. Roberts discuss as far as
16 strategy preparing for trial and what was your plan?

17 A What we worked really closely on was, you know, he
18 testified and he told me, you know, this isn't my
19 statement. You know, I didn't write this. The cops wrote
20 it. And so we spent a lot time working towards the Denno
21 hearing. I mean, we talked about other things, but, you
22 know, his role in this thing was going to be to get up
23 there and testify in the Denno hearing and see if we could
24 get this thing out of there.

25 Q Okay. Let me back up just a little bit. What was