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SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GEORGETOWN) 2009-GS-22-778

The State,
Plaintiff,
vs.
Terron Gerhard Dizzley,
Defendant.

Transcript of Record
August 27, 28, 30, 2012

B E F O R E :

Honorable J. Michael Baxley
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

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THE COURT: Okay.

MR. HIXSON: He's the only victim's representative and he is ---

THE COURT: That would not apply. Sequestration would not apply to the victim's father. He would be permitted to stay here because you introduced him as the family member and the representative before we even began.

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right, now, Mr. Barr, I want to make sure, you said there are no witnesses on the motions, but are there, are there witnesses on this side of the courtroom who are in your case in reply?

MR. BARR: No, sir, no, sir, Judge.

THE COURT: All right, thank you.

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right, well, then please be seated and, Mr. Barr, go ahead now with your points in reply.

MR. BARR: Now, Judge, as it relates to the statements, alleged statements that were supposedly made at the scene, it would be our position that the statements at this point do not come within the hearsay exception provided by the - what we generally call, really what it is it would be Rule 803 or 802, I believe, let's see, be 804(B)(2) of the South Carolina Rules of Criminal Procedure and we're looking specifically at there is a more recent case I think and Scott

has shared that case with me, I do have, I do - we both have, citing some of the same authority, but if you look at State versus, State versus Bethea, the Court says in that case that the rule in regard to such hearsay testimony and that is that it's well-settled, that first of all the death must be imminent at the time the declaration occurred, that is the declaration in question, secondly, the declaration must be so fully aware or the declarant must be so fully aware of this as to be without any hope of life, has to be without any hope of life, and thirdly, that the subject of the charge must be the death of the declarant and the circumstances of death must be the subject of the declaration. Your Honor, it would be our position that, that following the case law as well as following the rules that none of these statements would come within, within those exceptions to the hearsay rule, and I'm speaking specifically as to whether or not the evidence would actually establish that the declarant would have been fully aware of an imminent death. Now, of course, Judge, I realize that from the standpoint of where you're sitting now and I would - I'm just I'm stating our position but, but I mean, you could only argue - you could only rule in a preliminary way because the State hasn't laid their foundation.

THE COURT: Right.

MR. BARR: Now, in addition and for the record, it would be our position that even if the evidence was find or

you concluded that the State did lay the appropriate foundation and, and that, and that these statements do come within the exceptions to the hearsay rule, then we would take the position that, that in addition to the confrontation clause argument which is constitutional the - under the South Carolina Rules of Evidence under Rule 403 that these statements should be included because of the danger of unfair prejudice and because of, of that the probative value of the evidence would be - would substantially outweigh the probative value and it would be our position that irrespective of what the ultimate ruling is as far as admissibility then we would ask the Court to examine the testimony or evidence under and in light of Rule 403.

THE COURT: Well, let me ask you to focus for a moment on Rule 803 subsection two and subsection one, which is the excited utterance exception as well as the present sense impression. Regarding the first two statements which were apparently made there at the scene, what do you say to those?

MR. BARR: Well, Your Honor, I don't, and again, I think that, you know, without, without a foundation it's very difficult to, to - because - to actually say what the statements would be because and in either case before the rule becomes applicable clearly the Prosecution is required to establish a foundation.

THE COURT: Very good.

MR. BARR: And to the extent that there is some dispute, differences as it relates to the foundation, then clearly once that question is answered, which it has to be answered, then I think we would then be in a position to comment on whether or not the declarations would actually be admissible.

THE COURT: All right, let's go ahead. Let's, let's break this down into two separate areas. One would be what happened at the scene, the other would be after the scene. Let's go first to what happened at the scene, and please call your witnesses on that regard.

MR. HIXSON: Thank you, Your Honor. At this time the State would call D.J. Morris, Douglas Morris.

THE COURT: Please come forward and take, please come forward and take the oath of a witness.

MR. HIXSON: Madam court reporter, his nickname's D.J. Douglas is his real name.

THE COURT: All right, sir, please come up to the front if you would to take the oath of a witness. Ms. Knox and our clerk will administer the oath to you.

Whereupon, Douglas Morris was called to the stand, duly sworn by the clerk and testified as follows:

THE COURT: Please begin by stating your full name for the record, sir.

MR. MORRIS: Douglas Jerrold Morris.

THE COURT: All right, you're going to have to get a little close to that microphone and speak up so we can all hear you.

MR. MORRIS: Douglas Jerrold Morris.

THE COURT: And what was your middle name, sir?

MR. MORRIS: Jerrold.

THE COURT: G-E, please spell that for our court reporter?

MR. MORRIS: J-E-R-R-O-L-D.

THE COURT: Thank you. Go ahead.

MR. HIXSON: Thank you, Your Honor.

EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir.

A Good afternoon.

Q How you doing today?

A All right.

Q Do you know Aundry Evans?

A Yes, sir.

Q And who is that?

A He was like a brother to me.

Q Okay, he's passed on on December 1st, 2012, or excuse me, 2008; is that right?

A Sir?

Q Did he get shot December 1st of 2008?

A Yes, sir.
Q Okay, and were you there?
A Yes, sir.
Q Okay, tell us about where that happened?
A It happened at Club Paradise in Oatland Community, out there next Brown's Ferry.
Q Okay, and you happened to be out there that night?
A I was out there actually as a fryer for him because his fryer wasn't able to work that night.
Q Okay, and fryer, what do you mean by that?
A Like frying hot wings in, in the kitchen pretty much.
Q Cooking up chicken wings, huh?
A Yes, sir.
Q Okay, well, tell us about getting towards the evening hours, getting closer to 11:30, did anything unusual happen earlier in that evening?
A No, sir, we - like we really didn't talk that much, but he came to me and asked me if I would be able to work because his fryer wasn't coming in.
Q Okay, and when you say he, using a pronoun, who are you talking about?
A Aundry Evans.
Q Okay, okay, so, the night's going all right. At some point in time did something extraordinary happened?
A Yes, sir.

Q Well, tell, tell the Court about that.
A I was coming out to bring an order of wings out, and as I was approaching the bar I heard the door fly wide open. Well, when the door came open there was a dude probably about five-five to five-eight, somewhere up in that area. He had a black mask on, a black hat and a black T-shirt. That's what I could have saw. When he came in, the first thing he said, he said, "I told you I would get you, right?" That's, that's exactly what he said and when he said that he proceeded to fire shots.
Q Okay, and who did he, who did he fire shots at?
A Aundry Evans.
Q Did he hit him?
A Yes.
Q Okay, do you recall about how many shots were fired?
A There was at least seven shots fired.
Q Okay, how about were there other folks in the, in the sports bar part of the club, were there any folks there?
A Yes, sir, there was.
Q About how many approximately?
A There was probably about 15, 20 people out there.
Q Okay, and then once the shots were fired what did you do?
A When the shots was fired after or before he left?
Q I mean, I'll get you back in time, you said the door flew open, somebody walked up made a statement and then shots started firing. At the time those shots fired what did you

do?
A I was down behind the bar.
Q And why were you there?
A Because shots were fired.
Q Fair enough. What did the gunman do after the shots were fired?
A He proceeded to leave out the building.
Q And did he take off running out, did he walk out, did he say anything?
A He, he took off running out.
Q Okay, and then what happened after the gunman left?
A After he left I walked over to Aundry to see if he was all right. He was laying on his back holding his stomach and everybody was trying to lift him up, but in between that time of them trying to lift him up, Aundry did clearly state, "I cannot believe D done this to me. I recognize his voice."
Q Okay, what was the environment or the - what was the environment like after the shooting in the, in that space?
A I mean, everybody was in shock. Like after, after he stated the name I guess a couple of friends that had been out there before had knew who D was or whatever. They was in shock. I was in shock myself from just seeing him a couple of times before.
Q Okay, did you know Terron Dizzley prior to that evening?
A I seen him like four or five times before, but as far as

like having a conversation like, no, no, sir, I don't.
Q Okay, now, at the time those statements were made, at this time that Aundry said that did he appear to be in pain to you?
A Yes, sir, he did.
Q Tell us, tell the Court about what his demeanor was like during this period of time.
A He appeared to be in pain, but you can look in his face and tell that he was shocked that D had done that to him.
Q Okay, did - when you said 15 people started out, how many folks were around him do you recall when that statement was made? Did people leave the sports club or ---
A It was probably about four or five because right after D left out everybody else cleared the scene.
Q Okay, okay, about how much time transpired between the time you see the door fly open until the shots are fired then D leaves and then you hear that statement? About how long from the time the shot, the shots were fired till Aundry Evans said those words?
A It was probably approximately a minute because right after he left I ran, I ran over there to Aundry and, you know, he was holding his stomach and everybody was panicking. He, he stated what he said.
Q Okay, okay, tell us about how the rest of that period ended for you? What happened after - did someone call 911?

A Yes, sir.
Q And tell us what happened after that.
A After the police got there they pretty much ran everybody out, got Aundry, made sure, got him in the back of the ambulance and I guess they were questioning him sitting there, whatever, but they wouldn't let nobody go back in to get anything, like I had, I had a jacket in there, I had money in there. There was numerous things in my pockets, in my jackets that I really needed, but I couldn't go get because the police taped it off.
Q Okay, did you see Aundry again?
A No, sir, I didn't.
MR. HIXSON: I have no further questions from this witness, Your Honor.
THE COURT: All right, cross examination.
MR. BARR: Thank you, Judge.

EXAMINATION

BY MR. BARR:
Q Mr. Morris, as I understand it when you, you were at the club to do some frying of some, do some frying for, for Aundry?
A Yes, sir.
Q And at the time that the gunman came in had you started frying already?
A No, sir, I was bringing out an order of wings.

Q So the order of wings that you were bringing out had been prepared by somebody else?
A No, sir, they were prepared by me. I was bringing them out.
Q So you had already started frying wings?
A Yes, sir, but the grill was already off and cooled down. I was bringing the wings out.
Q So, so the place where you fry the wings and where Aundry was you're actually in two different locations?
A The place where the - yes, sir.
Q And approximately how far is the place where you were frying the wings and where Aundry was either standing or sitting when the shooter came in?
A Probably about 15 feet.
Q And was Aundry positioned looking at you or was he looking in another direction or how was he looking when the shooter came, what position was he in when the shooter came in?
A I wouldn't be able to tell you because I wasn't looking at him. I was bringing out some wings.
Q All right, now, you said the shooter came in and the shooter was disguised?
A Yes, sir, he was.
Q What - how was he disguised?
A He was disguised with either a black bandanna or

something across his face. The only thing you could see is his eyes. He had on a black hat and a black T-shirt. That was all I was able to see because I was behind the bar.
Q So you couldn't see his eyes?
A No, sir, he never looked me in my face.
Q So you never saw his eyes?
A I never looked him directly in the eyes, but the way he had the bandanna around his face it was where people could see his eyes.
Q Now, you indicated that, that after or before Aundry was shot the shooter made a statement and I wrote it down. You said that the shooter said, and I quote, "I told you I would get you." Now, is that what, was that your testimony just a few minutes ago?
A Yes, sir.
Q And are you certain about that?
A Yes, sir.
Q Now, when the shooter made that statement do you know whether he was talking to Aundry?
A No, sir, I don't but I'm pretty sure he was considering Aundry was the person he fired at.
Q Were there any other people in the store, in the, in the, in the lounge?
A Yes, sir.
Q And you don't know whether he was talking to Aundry.

Now, after Aundry was shot and you said he, he fell to the floor?
A Yes, sir.
Q And when he fell to the floor did he fell forward or backward?
A I, I couldn't tell you.
Q Did you see him then when he fell?
A No, sir, I didn't.
Q So then there was a period of time that you took your eyes off of Aundry and you came back to him?
A All right, like do you all have the drawing of the map of where I can show where I was and what I was doing?
Q Well, we can probably get into that a little bit later, but for just purposes of this motion I just want to know ---
A Yes, sir, I did take my eyes off him to make sure the shooter left out the door.
Q Now, when you took your eyes off of him did anybody else get to Aundry before you did?
A Mr. Maurice did.
Q Maurice?
A Mo or however you want to say it.
Q Is that the same Mo that Aundry asked for?
A Yes, sir.
Q So, Maurice was attending Aundry before you actually got your hands on him?

A Yes, sir, they were all standing around the pool tables. They were all right there. I was way across the bar like get - bringing chicken wings out.
Q So, when, when Aundry made the statement, "I can't believe" - well, tell me again what statement did he make now?
A "I can't believe Little D shot me. I recognize his voice."
Q "I cannot believe Little D shot me. I recognize his voice." Now, the first time you said, "I cannot believe that Little D did this to me," and you're now saying that he said, "I cannot believe that Little D shot me. I recognize his voice. I cannot believe Little D shot me." Is that what he said? "I recognize his voice." Is that, is that what Aundry said?
A He said, "I cannot believe Little D did this to me," but shot me I said it because it's pretty much the same thing.
Q Pretty much the same thing. Now, other than the statement that you just related to the Court, the shooter did not make any other verbal statements?
A No, sir.
Q I just got about two more questions. Now, you said there were some people trying to prop Aundry up when you went over and physically touched his body; is that correct?
A Yes, sir.
Q And tell me the identity, if you know, the identity of

the people that were trying to prop him up?
A I don't know anybody that was out there. I knew maybe three people at the most.
Q Now ---
A And that was Maurice, Aundry himself and a man named Gary.
Q Was, was Maurice trying to prop him up?
A No, sir.
Q Well, what was Maurice doing?
A I think he was standing there with me. I don't quite remember because this was four years, but I think he was standing there with me telling everybody to just let him stay there.
Q So when you touched him, you did physically touch his body?
A No, sir.
Q You didn't touch him?
A No, sir.
Q You didn't try to prop him up? Was there anybody else standing as close as you were to him?
A There were a few people. We were all about the same, right there, like, all right, the microphone's Aundry, we're all about this far off.
Q But you don't know any of their identities?
A No, sir.
Q Now, how long did you stay there with Aundry before you

left?
A Until the paramedics came and got him.
Q So, when the paramedics came they moved you out of the way?
A Yes, sir.
Q Did Aundry make any more statements from the time that you heard him make the statement that you just referred to between the time that you went and propped him up until the time the paramedics came?
A Not really.
Q You're sure about that?
A I'm pretty sure. There was a lot of commotion going on, a lot of yelling and screaming, but I'm pretty sure he didn't say anything. Everything he said, if he said anything you had to be within two feet of him to hear him because he wasn't trying to strain himself.
Q Well, but, but you were within two feet of him and you were listening to what he said?
A I was.
Q And there were no more statements made by him?
A No, sir.
Q Thank you, sir. I have nothing further.
THE COURT: Is there redirect?

REEXAMINATION

BY MR. HIXSON:

Q You gave that statement four years ago to law enforcement at the time. Did you, did you, were you interviewed by law enforcement right after this incident?
A Maybe about a month.
Q And you told them what you told us today?
A Yes, sir.
MR. HIXSON: I have no further questions, Your Honor.

EXAMINATION

BY THE COURT:
Q All right, sir, let me ask you one. I want to make sure I understood. You said that when this individual first burst through the doors what specifically did he say?
A He said, "I told you I would get you."
Q All right, so, "I told you I would get you," is what he said.
THE COURT: All right, thank you and I'm going to let you be seated or actually you may exit the courtroom will be fine. Thank you, sir, and since you may testify during the course of the trial as well I'm going to let you go ahead and leave the courtroom if you will, please. Thank you, sir. Please call your next witness.
MR. HIXSON: Maurice Giles.
THE COURT: All right, sir, please come forward and take the oath of a witness.
Whereupon, Maurice Giles was called to the stand, duly

sworn by the clerk and testified as follows:

THE CLERK: Please be seated.

THE COURT: Mr. Hixson.

MR. HIXSON: Thank you, Your Honor.

EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir.

A How you doing?

Q How you doing today?

A All right.

Q You sound good, speak, that's a good, good, good volume. You know Aundry Evans?

A Yes, sir.

Q And how'd you know Aundry Evans?

A I met Aundry the year that he got shot, maybe about two or three weeks before that. I sold him some furniture to the club that he was renting because I used to own the club before.

Q Okay, and we're getting straight to the point, we don't have to tell the whole story since the jury's not here.

THE COURT: And counsel, let's do this.

MR. HIXSON: Okay.

THE COURT: I didn't ask you your full name when we began. Tell us your full name, please.

MR. GILES: Maurice Giles.

THE COURT: And how do you spell your last name, sir?
MR. GILES: G-I-L-E-S.
THE COURT: All right, thank you. Go ahead, counsel.
MR. HIXSON: Thank you, Your Honor.
BY MR. HIXSON:
Q Let's go right to the evening of the shooting. That's December 1st of 2008. Do you recall that day?
A Yes, sir.
Q Tell us about what you were doing that day going into the evening hours and what happened?
A That afternoon I left the gym at Choppée playing basketball and Dre had told me to come by the club because it was Monday night football to hang out and I told him I wasn't, you know, I was tired, but I still come by.
Q Okay, let's clarify something. You used a nickname there. When you said Dre who are you referring to?
A Aundry.
Q Okay, the victim, the deceased?
A Yes.
Q Okay, go ahead. I just wanted to make sure it was clear for the record.
A So after leaving the gym I went straight to the club where we was watching Monday night football, eating oysters and playing pool.
Q Okay, at some point in time did something extraordinary

happen that evening?
A About 11:30 that night a gunman came through the door waving a handgun, ran past, ran past me and started shooting Dre.
Q Okay, do you recall if the gunman, as he came through the door, do you recall if he said anything or not?
A During the time when he came through the door and passed me he made a comment to where, "I told you it wasn't over."
Q Okay, and then do you - could you see who he was, could you see who the gunman was speaking to or trying to speak to?
A At the time he came through the door and when he made the comment he was probably about maybe about four, five feet in front of me when he was making the comment.
Q Okay, did he appear as if, did the gunman appear as if he was looking for a particular person when he came through the door?
A Yes.
Q And tell us about that, why do you say that?
A The reason I said that is because he passed about two or three people before he got to Dre, Aundry.
Q Okay, what was the physical characteristics of the shooter?
A The shooter was a short black male, had on a mask, couldn't see who it was, but I know I'm five foot seven so I know the person was shorter than me. They have to be about

five five.
Q Okay, now, tell us about at some point what was your initial reaction to seeing the gunman come through the door?
A Actually I thought it was someone playing until I heard the gunshots.
Q Okay, and take us from there.
A After I hear the gunshots and I saw the gunman pointing the gun at Dre and shooting Dre that's when I dropped on the floor under the pool table and watched while the gunman shot Dre. Dre fell to the ground. It was like two other guys that ran into the open area of the club and the gunman ran behind them into the doorway, bust, took a shot at them and ran out the door.
Q Okay, did the gunman say anything after the shooting before he left the building?
A No, sir.
Q Okay, tell us about what happened then.
A After the gunman left the building, I got up off the floor. I ran over to Aundry and was, well, actually at the time I woke Aundry up. He was passed out probably maybe a quick second or two. I woke him up and then started applying pressure to his bleeding areas.
Q Okay, what areas do you recall that you tried to apply pressure? Where, where did you see that he was hurt?
A In his back, in his leg, and I'm not sure where the other

one was.
Q Okay, okay, at some point in time did Aundry say anything to you?
A On the time on the floor after he realized what was going on he said, "I can't believe Little D shot me."
Q Okay, did he - do you recall him saying anything else?
A All he said after that was, "That was Little D."
Q Okay, what was - about how much time do you think transpired from the time that the door, the gunman came in the room till the time that and the shots were fired till the time that the deceased made that statement to you? About how long do you think?
A It happened pretty fast, probably about a little less than two minutes. I mean, it was way less than that. It happened real fast.
Q Okay, and what was the environment inside this little sports bar, the club? What was it like when this was going on or just after it happened?
A Chaos, everybody was screaming trying to figure out what was going on making sure that everybody else was all right and we just sent someone out to make a 911 call.
Q Okay, let's get back to you were there with Aundry. What were you doing? You said you were applying pressure to Aundry I guess?
A Yes, sir.

Q Tell us what happened from then on towards when the ambulance finally showed up or did the ambulance finally show up?
A The ambulance finally showed up and when the ambulance showed up I got out of their way or whatever, went outside to see exactly what was going on and then that's when we found out that the rest of the building was shot up.
Q Okay, do you know, do you know Terron Dizzley?
A No, I don't.
Q Did you know him then prior to that or tell us about that?
A No, sir.
Q Okay, what was Aundry Evans' condition? What was he like right after the shots were fired?
A After the shots were fired he figured out what was going on he was in, in good mind. He knew exactly what he was talking about.
Q Now, he knew what he was talking about, but how about physically? Did he, did he appear to be under the stress of the event that just happened?
A Yes.
Q And in what way do you say that?
A I mean, he was just in shock, you know. When, I mean, you get shot, you laying on the ground, bullets burning, he was just in shock.

Q Okay, when's the last time you saw Aundry Evans?
A That was the last time I saw him.
Q Okay, did you stay around until he got placed in the ambulance?
A After he got placed in the ambulance was the last time I saw him.
Q Okay, did you, did you, did he say anything else to you the rest of that evening?
A No, that was it.
Q Okay.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: And now cross examination.

MR. BARR: Yes, sir.

EXAMINATION

BY MR. BARR:

Q Now, Mr. Giles, did Aundry, whenever he referred to you did he usually refer to you as Mo?
A Yes, sir.
Q And you indicated that - well, tell me where were you when you initially saw the gunman, the first time you laid your eyes on him?
A Standing by the first pool table.
Q Were you closer to Aundry? Did you see - do you know Douglas Morris?
A Yes.

Q And was Douglas Morris in the Paradise Lounge at the time that Aundry was shot?
A I'm not sure.
Q You're not sure?
A No, I'm not sure.
Q There did come to be a time when you saw, initially saw the gunman come into the club?
A Yes, sir.
Q And describe his appearance to me, please.
A He was a short black male. He had a mask on his face, more of a scarf, a shirt tied around his head, so I mean his face was covered.
Q And could you see his eyes?
A I think so. I believe so.
Q You believe so?
A Yes.
Q Do you have a recollection of whether or not you did see his eyes?
A I saw his eyes, but I couldn't tell you who eyes were they.
Q Now, when the gunman, you said when he came in he made a statement, he said, "I told you it was not over"?
A Yes.
Q Is that correct?
A Yes.

Q Are you sure about that?
A Yes.
Q Did the gunman make any other statements?
A Not that I heard of.
Q At the time the gunman made the statement, do you recall whether or not you saw Mr. Douglas Morris anywhere in the club?
A Well, I couldn't tell you that because if someone's waving a gun at you in the club I'm not looking to see who else is around.
Q So when the assailant came in, he was waving the gun?
A Yes.
Q Wasn't pointing it at any particular person?
A He came through with the gun in the air like that bouncing around, so that's why I thought the person was joking.
Q And then he commenced to shooting Aundry?
A Yes.
Q Now, when, when the gunfire went off were you looking at Aundry?
A Yes.
Q And you saw him when he fell?
A I saw him when he fell.
Q And the gunman was still in the building?
A Yes.

Q So you hesitated before you approached to render aid to Aundry?
A No, I hesitated because I was shocked, and after being shocked and saw where Aundry fall that's when I jumped under the table seeing that this guy was serious.
Q So you did not - you didn't immediately go to Aundry's aid?
A You not going to nobody's aid you see somebody getting shot.
Q My question was so you did not immediately go to his aid, you waited?
A Yes, I waited after the gunman left.
Q Until the gunman left?
A Yes.
Q And after the gunman left you then approached Aundry?
A Yes.
Q And did you touch him?
A Yes.
Q And I believe somebody may have been handing you some bandages or towels or something that you were applying to his wounds?
A Yes.
Q And do you recall who that person was?
A Not sure.
Q But you do remember receiving?

A I remember receiving towels.
Q All right, now, did Aundry - he made some verbal statement at that time?
A Yes.
Q And what did he say?
A He say he can't believe that Little D shot him, "That was Little D."
Q Now, it's very important is that exactly what he said, "I can't believe Little D shot me?"
A Yes.
Q You sure about that?
A I'm sure.
Q Didn't say anything else?
A He said, "Little D shot me."
Q Did he say, "I can't believe Little D shot me," or, "Little D shot me?"
A "I can't believe Little D shot me. That's Little D." Those were exact words.
Q Thank you, sir, I have nothing further.
THE COURT: And are there - is there redirect?
MR. HIXSON: No, Your Honor.
THE COURT: All right, sir, you may step down. Thank you, and we'll let you exit the courtroom at this time.
A No problem.
THE COURT: Counsel, I believe you have two other

statements. Please call your next witness.

MR. HIXSON: I do, Your Honor. At this time the State would call Naomi Alston, and Your Honor, for clarification, these aren't - kind of the same statements. They're later on in time. These are the ones at the hospital.

THE COURT: Okay, ma'am, please - thank you. Please come forward and approach the witness chair and follow our clerk's instructions.

Whereupon, Naomi Alston is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Would you please be seated and state your full name for the record, spelling your first and last name.

MS. ALSTON: Naomi Alston, N-A-O-M-I, Alston, A-L-S-T-O-N.

THE CLERK: Thank you, please be seated.

THE COURT: All right, counsel.

EXAMINATION

BY MR. HIXSON:

Q Good afternoon, ma'am, how are you?

A I'm good.

Q Can you speak up just a little bit for me, okay?

A Uh-huh.

Q How about now, how are you doing today?

A I'm good.

Q All right, do you know a fellow named Aundry Evans?

A Yes, sir.
Q And how do you know Aundry Evans?
A Well, he was my fiancé.
Q Okay, and do you all have children in common?
A Yes, sir, we have two, two girls.
Q Okay, okay, and let's go back in time around November into December of 2008, okay?
A Okay.
Q Did you know that - about Aundry Evans' involvement with the Paradise Club, the First and Ten Sports Bar?
A Yes, sir.
Q Tell us about your role in that.
A Well, he came to me, he said that this is something that he wanted to do. So he found the location. So we went together to draw up the lease with the guy and everything and - but as far as getting a business license or whatever he had to do to get it up and going we did it together.
Q Okay, and for the purpose of this hearing let's just fast forward a little bit to the evening of December 1st of 2008, okay? Were you there at the time when Mr. Evans was shot? Were you at the club?
A I was - I wasn't there. I was home.
Q Okay, now, take us, take us - your evening from that perspective from there on, okay? So you're at home?
A I was home.

Q Tell us what happened.
A I got in from work and I was getting the girls ready for bed. Normally Dre would call letting - if he's not there to say the girls' prayers together he will call them over the phone and he knows 8:30, 9 o'clock is the girls' bedtime. I called him several, several times, didn't receive a answer. I dozed. I was - me and my girls we went to bed. The phone rang and I got a call from a guy named Dash. He was like, "Chevon," and I was like, "No, this not Chevon. This is Naomi." He was like, "Dre just got shot." I got up, still in my night clothes. I ran to my sister Chevon. I said, "Please watch the kids. Something just happened to Dre."

I got in my car and as I was driving, I was coming from Dunbar Road, and the club is located in Oatland. When I got to the stop sign I guess that's - believe it's 51, 41 and I saw some officers. So then that's when I went driving. I was speeding, and then when I got - when I turnt down the road that's when the officers with the blue lights, the sheriff was driving behind me. So then when I got to the club I went in and I saw Mo, which is Maurice, he was leaning down by Dre by the pool tables. I went - ran up to him and I was like, "What happened?" He was like, "I can't believe he just shot me," and I was like, "Who, who shot you?" He was like, "D." I said, "D?" He was like, "Yes, Little D he shot me." So Maurice was putting - I was like, "Where did you get shoot,"

and he moved his hand from off of his - Mo moved his hand off of Aundry's stomach, and I was like, "Where," and you could see a little hole there and I - you didn't see that much blood. So I was like - he asked Mo to put pressure on it, and I was like, "No, don't put pressure on it." So he was like, "Go, Babe, just go call my dad." I got up. I went outside and that's when the officers taped off and I couldn't get back in and I spoke to his father and told his father and his father asked me, "Where you guys was going." He said, I told him we was going to Georgetown Memorial. His father said, "Okay, I'll meet you there."

Q Okay, let's focus a little bit on that before we go on down to the hospital. How far away are you from the club? You started to talk about it a little bit, out in Oatland. From the time you got the telephone call till the time you made it to the Paradise Club or the sports bar about how, about how far is that and how long do you think it took you to get there?

A It took me, I believe, it was less than 10 minutes, less than seven. It wasn't that long, that far.

Q Okay, and when you got, when you got there and got to the club tell us about where everybody was at in the club.

A Well, I remember when I pulled up there was one guy outside and when I got in, I ran in I saw Mo and I saw Aundry. I did see another gentleman. I can't remember who all, how

many people was there, but I remember seeing the guy standing outside. He was all upset and then there was Mo was on the floor with Aundry and myself and it was another guy standing inside of the, the bar area.

Q Okay, about how long do you think you stayed there until the ambulance got there, from the time you got there till the ambulance arrived?

A About 10 minutes.

Q Okay, what happened then later on, did the ambulance take Aundry to the hospital?

A Well, they - when they, when they took him out the club the ambulance sat there for about 10 minutes, 10, 15 minutes and I went, I knocked on the door and I was like, "What's going on?" They was like they was trying to get him, get everything started before they actually pulled off and that's when they - once they got him situated and everything they drove off and they went on to Georgetown Memorial Hospital.

Q Okay, can you describe just what the scene was like a little bit like when you arrived? What was the environment like inside that club when you got there?

A Well, everybody was in shock. Dre he was popping sweat. Maurice was shaking his head like, "I can't believe this just happened," and everybody was just looking like how this just happen?

Q And how about Aundry himself, what was his demeanor like?

A He was laying there. He was sweating and he was like shaking his head. He was like, "I can't believe he shot me, Babe."
Q Okay, let's go, they get him in the - get in the ambulance and they - he goes to the hospital?
A Uh-huh.
Q Okay, tell us about that.
A When we got to the hospital I wanted to go to the back. My mom took me to the hospital, but they won't let no one back.
Q What do you mean by that, a little more detail, what do you mean go back in the back? What do you mean? What are you, what are you trying to do?
A To go see Aundry.
Q Okay.
A To see if he's okay. The nurse said that being that it was a shooting they wasn't to - for protection or whatever, they wasn't going to let anyone back at that time. About maybe 20 minutes, well, Aundry dad he came I think about five minutes after I got there and I told him that he was in the - that Dre was in the back and we sat down together in the waiting room and that's when the nurse came and said that we can go to the back. His dad went to the back and then that's when they came and got me and I went to the back and I spoke with Dre and I said, "Why won't you talk to the investigators?

Why won't you let them know what, what you said to me?" He said, "Babe, don't worry about it. Everything will be okay," and that's when he just basically changed the subject and he told me that he was sorry for everything, but he needed me then and that's when the nurse came and said they had to get him ready to transport him.

Q Okay, let's talk about that a little bit. You mentioned, "Why won't you" - you were asking him why he wouldn't talk to the police. Explain that a little bit more. What do you mean?

A "Why won't you let them know who you said did this to you, who shot you?" He said he didn't - "Everything was going to be okay, Babe."

Q Did he indicate if he was going to do anything about it?

A He said that he was - everything was going to be taken care of.

Q Okay, it's kind of important, be very specific about what your recollection is that he said about that, what he had - what is in his, I guess, present state of mind at the time that that happened, what did he say about ---

A When I asked him ---

MR. BARR: Judge, we're leading, we're leading them now.

THE COURT: I'm going to sustain, counsel. Please - let me - let him re-ask the question. Please rephrase your

question.
Q If you can recall when you got back in the hospital room and what statements that Mr. Evans made to you in the hospital room about ---
A He said to me, I asked him if he was okay and I said, "Why won't you talk to the investigators, the police officers to let them know who shot you?" He said, "Babe, don't worry about it, everything is taken care of. I'll take care of it."
Q Okay.
A Then he changed the subject.
Q Okay, and then what, what subject did he change it to?
A He apologized to me. He told me that he was sorry for everything that has happened and he loved me and he needed me right then.
Q Okay, was he referring to personal life things? Is that, is that what - what, what was he apologizing for? I'm just trying to clarify that for the Court. The Court's trying to understand.
A Well ---
Q So, what - without going into all of it, but what personal things was he apologizing for?
A Well, I know that he was seeing another young lady.
Q Okay, that's fine. That's what I was trying to get across. Did he talk about the identity of the shooter at all

in the hospital to you?
A He didn't.
Q Okay, what happened with him while you were there? Was he being worked on medically?
A At that time he wasn't, but he was sweating a lot and that's when the nurse came in and said they had to get him ready.
Q Okay, ready for what? To?
A To transport him over to Charleston, MUSC.
Q Okay, let's go back into the club again where that - that statement was in the club. I think you already mentioned, but let's just clarify about how much time you think transpired from the time that you left the club till you made it to the hospital?
A From the club to the hospital?
Q Uh-huh.
A About 20 minutes.
Q Okay, okay.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right, and now we'll have cross examination. Mr. Barr.

MR. BARR: Thank you, Your Honor.

EXAMINATION

BY MR. BARR:
Q Now, Ms. Alston, when you got the phone call regarding

Mr. Evans having been shot, you got a phone call from Dash, isn't that correct, somebody that goes by the name of Dash?
A Yes, sir.
Q And they identified you - identified themself to you as Dash?
A Well, when he came across the phone, I knew who he was.
Q Well, do you ---
THE COURT: Excuse me just a moment. Counsel, I believe you're leaning on a microphone. We can hear the feedback.
MR. BARR: Thank you, Judge.
THE COURT: Yes, sir, go ahead.
BY MR. BARR:
Q Now, do you know whether or not he's got - Dash is a nickname. Do know whether or not he's got another name?
A I don't know his; his real name.
Q And you said that you were about to put the children to bed or you had put the children to bed?
A We were already in bed when I received the call.
Q And do you recall exactly what time it was when you got the call?
A I don't remember the time but it was after 8:30.
Q And did you get the call on your house phone or on your cell phone?
A House phone.

Q And you said it was after 8:30?
A Yes, sir.
Q And the person that you spoke with told you that Mr. Evans had been shot but he didn't say anything about who he thought shot him?
A No.
Q And you didn't ask?
A I didn't.
Q You then got dressed?
A No, sir.
Q What did you do then?
A I just got out of my bed, grabbed my keys, yelled at my sister to, "Watch the kids, Dre just got shot."
Q You were dressed already?
A I was in my night clothes.
Q And you wore your night clothes out to the ---
A Yes, sir, I did.
Q And where do you say you live now or did you say?
A At that time it was 2701 Dunbar Road.
Q In Oatland, 2701 Dunbar Road?
A Yes, sir.
Q And you then drove to the club?
A Yes, sir.
Q Do you know how long it took you to get to the club?
A About seven minutes, if that.

Q And when you got there where was Mr. Evans?
A He was laying on the floor by the pool table.
Q And do you recollect if there was anybody standing there or laying there or sitting there with him?
A Maurice, Mo, he was leaning with Aundry.
Q Maurice, Mo?
A Uh-huh.
Q You said he was leaning there with him?
A Yeah, he had his hand across on Aundry.
Q And at that time did Aundry make any statements to you?
A I asked him what happened.
Q And what did he say?
A He said, "I can't believe he shot me, Babe," and I said, "Who, who shot you?" He said, "D." I said, "D, who?" He was like, "D, Little D."
Q He said Little D?
A Uh-huh.
Q "I can't believe he shot me, Babe."
A Uh-huh.
Q "Who," "Little D," and you said Mo was holding his body?
A He wasn't holding his body.
Q What was he doing?
A He was kneeled down beside him. He had his hand across his stomach, his side.
Q Had his hand across his side?

A Uh-huh.
Q And that person that you're referring to, Mo, is the same person that's also known as Maurice?
A Yes, sir.
Q And the last name is known to be what?
A Giles.
Q Maurice Giles?
A Uh-huh.
Q Now, when you - the police had not - was the police there when you got there?
A No, sir, they were behind me.
Q So now the police came in after you got there?
A When I was turning down Oatland Road the officers were coming in that direction and I turned down that road before they did.
Q I see, and did Mr. Evans tell you anything else before the police arrived?
A Yes, he did.
Q What else did he tell you?
A He said, "Can you please go call my dad?"
Q And did you then go call his father for him?
A Yes, sir, I left out and I went outside.
Q So at the nightclub that was the end of the conversation between you and Mr. Evans?
A No, sir, I spoke with him again at the hospital.

Q All right, now, when you spoke with him at the hospital you told him or you asked him, "Why will you not tell the police who shot you?"
A Yes, sir.
Q That's what you told him?
A That's what I asked him.
Q Now, the police tried to question him and he refused to talk with the police; is that correct?
A I believe so.
Q How did you know that?
A Because when I walked - before I walked in the room he said, "Why won't he talk to us?"
Q Pardon me?
A The officer asked me, "Why won't he let us know who did this to him?"
Q Now, which officer asked you that?
A I can't remember who.
Q You don't see the officer in this courtroom that asked you that?
A No, sir.
Q But you distinctively remember a police officer asking you, "Why will he not tell us who shot him?"
A Yes.
Q All right, you don't know Officer Morris; do you?
A No, sir.

Q Now, when the officer, whoever he was, asked you that, had you spoken with Mr. Evans at Georgetown Memorial Hospital?
A After I spoke with the officer I walked in the room.
Q So when he asked you, "Why will Mr. Evans not tell us who shot him," you had not spoken with the police officer prior to that time?
A No, sir.
Q Did you see a police officer speaking with him, when I say him I'm talking about Mr. Evans, before you went back to see Mr. Evans?
A No, sir, I did not.
Q And you said you were then allowed or you were at the hospital in the ER and were allowed to go back along with Mr. Evans' father?
A No, his father went in before me and then they came and got me and I went to the back.
Q Were you present during any portion of the time that Mr. Evans, Jr., or with Mr. Evans, Sr.?
A No, sir.
Q You were not present at any time when the two of them were together?
A His father was already out the room when I walked in the room.
Q His father had already left out of the room?
A No, his - yes, sir.

Q So his father actually, when I say his I'm talking about Mr. Evans, Jr.'s, father, went into the ER where he was before you went in?
A Yes, sir.
Q Did Mr. Evans, Sr., go back in to talk with his son after you left out of the ER with Mr. Evans, Jr.?
A I didn't see. The nurse went - the nurse, the nurse was in the room. They were getting him ready to transport him to MUSC.
Q Now, he was then taken by helicopter to MUSC?
A Yes, sir.
Q Did you see anybody else talking with Mr. Evans, Jr., after you left out of his room at the ER?
A His mom, she walked in the room and she said, "Son, I'll be over there," and she kissed him.
Q So if there was conversation between Mr. Evans the son and Mr. Evans the father you don't know the content of that conversation if there was?
A No, sir, I don't.
THE COURT: Anything further?
Q Has Mr. Evans, Sr., shared with you the content of the conversation, if any?
A No, sir.
Q He hadn't told you anything he and his son talked about?
A No, sir.

Q Thank you, ma'am, I have nothing further.

THE COURT: Is there redirect?

MR. HIXSON: Just one question, Your Honor.

REEXAMINATION

BY MR. HIXSON:

Q Relating to Mr. Evans' demeanor when you saw him in the hospital, based on what you saw do you believe that Mr. Evans thought he was going to survive this gunshot wound?

MR. BARR: Objection, Your Honor.

THE COURT: Sustained, leading.

Q Okay, do you have an opinion on how you feel about what his prognosis, how ---

MR. BARR: Objection, irrelevant. It's the state of mind of the declarant.

THE COURT: I understand, just a moment. The question was - counsel, you've got to lay a foundation for it. I'm going to sustain not on the basis of ---

MR. HIXSON: Sure.

THE COURT: Well, I'm going to sustain on the basis that there's no foundation for that question to be asked.

BY MR. HIXSON:

Q We go back, can we go back to the time that you were in the hospital room with Aundry?

A Uh-huh.

Q What was his physical condition as far as you could tell?

A He - to me he looked like he, he was fine, that he was, he was in pain because he was sweating and he, he was a little bit shaken. So he was in pain. I thought that it was just a big boo-boo and they was going to put a Band-Aid on him and he was fine.

Q The nature of the conversation that you two were having, you know, you said I - he - I think earlier on you said he apologized, things like that?

A Uh-huh.

Q From your perspective, from your thought were those future, forward-looking conversations?

A Yes, sir.

MR. BARR: Your Honor, Your Honor, objection. Even, even though this is a motion and we're, we're doing I think we're getting into some new matters that - I think we're still subject to cross and reply and what is brought out on cross and reply.

THE COURT: Okay.

MR. BARR: And I don't think the import of our conversation would be such that these inferences could be developed from this line of testimony based on the cross examination.

THE COURT: How is this appropriate redirect?

MR. HIXSON: That's fine, Your Honor. I thought we were talking about the demeanor of the victim and all that,

that as a result I thought that was relevant but that's fine.

THE COURT: All right.

MR. HIXSON: I think there's enough on the record.

THE COURT: Sustained. Sir, or ma'am, excuse me. I'm going to let you step down and you're free to leave the room at this time. Thank you. Please call your next witness.

MR. HIXSON: Aundry Evans, Sr.

THE COURT: And please come forward and take the oath of a witness.

Whereupon, Aundry Nathaniel Evans, Sr., was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Would you please state your full name for the record and spell it, please?

MR. EVANS: Aundry Nathaniel Evans, Sr.

THE CLERK: Could you spell it for us, please?

MR. EVANS: A-U-N-D-R-Y, N-A-T-H-A-N-I-E-L, E-V-A-N-S.

THE CLERK: Thank you, sir. Please be seated.

THE COURT: You may proceed.

MR. HIXSON: Thank you.

EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir.

A Good afternoon.

Q I know you know a young man named Aundry Evans?

A Of course.

Q And tell the Court your relationship.
A That's my son.
Q Okay, we'll get straight to the point for the purpose of this hearing, okay?
A Very good.
Q We'll get right to around December 1st of 2008, do you recall that evening?
A Of course.
Q Okay, please take the Court briefly through what happened as far - from your perspective that evening.
A I was in bed, actually had retired for the night. Got a phone call from Naomi and said Aundry had been shot. I asked them, I said, "Well, where, how's he doing and where are you all at," and she told me they were going to Georgetown Memorial. I said, "I'll meet you there," and I got there, and of course, they had the place on lockdown, and for a few minutes. They came and told me I could go in the back. So I went in the back and walked over to him and said, "Hey, son, how you doing," and he looked at me, and I said, "What happened," and he said, "Little D shot me." I said, "Little D, who's Little D?" He said, "You know Uncle James' brother Ralph's stepson." I still didn't know who Little D was but I said, "Well have you told the authorities," and he said, "No." I said, "Well, why haven't you?" He stopped talking. Then I looked and one of the deputies had come around the corner and

was close kind of listening. So he asked him to please leave. He say, "I want to talk to my father." So he left. After the deputy left he looked back at me. I said, "Well, why didn't - why won't you tell?" He says, he said, "Dad, you don't understand." About that time his condition was getting a little worse and they asked me to leave out that they may attend to him. I walked outside still in disbelief and somewhat just disarrayed, and the deputy came up to me and asked me, "Did he tell you what happened?" Well, it was the same deputy, and at that time I thought it was disrespectful for him to stick his head down while I was trying to talk with my son. I told him no. So he says then, "Well, if he did would you have told me?" I said, "I don't know." Then he gave me his card and said, "Well if anything else come up let me know." At that point in time I stood at the outside of the room around the corner while they were working on him.

Q Tell us a little bit what happened then, kind of a compact version of it when you left the room. Did ultimately Mr. Evans, was he ultimately life-flighted, your son?

A Excuse me, I didn't hear you.

Q Was your son ultimately sent to the hospital in MUSC?

A Yes, yes, he was. I got - I received a call because I spoke with Naomi after that. I stayed there until the helicopter took off, took off and I spoke with Naomi. She was going right away and I wanted to make sure she had everything

she needed. I needed to go back home and take care of some business and I told her I'd be - will be on just a little later and it wasn't too much longer I got a phone call that said he did not make it, that he died in flight.

Q Okay, okay, let's go back to the room when you first got there. About how much time do you think transpired between you receiving the telephone call until you were in the room with your son?

A It's difficult to tell because with such tragedy going on in your head you're not, not aware of time. You don't have a good sense of time, but I would imagine no more than about 30 minutes.

Q Okay, then once you're in the hotel [sic] room tell us about what your son's demeanor was like at that time in the hospital room?

A As I said, he was there. He know - he was - you could tell that he was in his right mind, of course, and Andy was one that, I call him Andy, everyone else calls him Dre, but his nickname at the house, Aundry Nathanial Evans, Jr.'s, nickname was Andy, and we called him Andy and he didn't show much emotions, even when he was in pain you, you know he, he would say he hurt, but you wouldn't really, really tell but you - I knew that you could see in his eyes that he was somewhat dazed but ---

Q Did, did he seem to recall to you, do you think the

nature of his statements was recalling a present condition that he was suffering, was he suffering the effects of the gunshot wounds?

A Of course.

Q Okay.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right, is there cross examination?

EXAMINATION

BY MR. BARR:

Q Now, Mr. Evans, of course that's Reverend Evans, right?

A Either one would work.

Q All right, sir, I want to make sure. Now, Reverend Evans, I want to make sure that I got exactly what you said, that your son told you that, "Little D shot me," did he tell you that?

A That is correct.

Q And you, you, you asked him, "Who is Little D?"

A That is correct.

THE COURT: Mr. Barr, it may be - help you to know on your cross examination due to the passage of time it seems unlikely that this is a res gestae utterance.

MR. BARR: Yes, sir.

THE COURT: And so I just would go ahead and tell you that at this point. Having heard sufficiently what the testimony is I'm not certain of the length needed for your

cross. I just simply tell you that, sir.

MR. BARR: Well, Judge, I, I'm, I'm always ready to take one in the bag.

BY MR. BARR:

Q One, one - who have you told, if anybody, before today that your son told you that Little D is Uncle Ralph's stepson?

A Uncle James' ---

Q Uncle James.

A --- brother's Ralph stepson.

Q Yes, sir.

A I preach my son's funeral ---

Q I want to know how many ---

A --- and I told everyone there that he knew who shot him.

Q Listen to my question.

A Now I didn't give a name.

Q Listen to my question please.

A Your question I told ---

Q Yes, sir.

A --- my wife.

Q Did you tell law enforcement?

A I said earlier.

Q Pardon me?

A I said earlier when the law enforcement asked me was the same officer that came in and interrupt my conversation with him. When he asked me I told him no because I thought it was

rude of him.

Q Thank you, sir. I have nothing further.

THE COURT: Very good. Anything further?

MR. HIXSON: No, Your Honor.

THE COURT: Reverend, thank you, sir. I'm going to let you be seated. You may return to your seat.

A Thank you, sir.

THE COURT: Thank you. All right, ladies and gentlemen, let's - we're going to take an approximate 10 minute break having heard the testimony on these issues. This is all your witnesses, counsel?

MR. HIXSON: Yes, Your Honor, now just argument on the, on the, on the law, that's it.

THE COURT: All right, let's - we're going to stand down for approximately 10 minutes, come back and take brief argument and the Court will be prepared to rule.

MR. HIXSON: Thank you, Your Honor.

THE COURT: All right, the Court's in recess now 10 minutes. We'll be back here at four o'clock.

OFF THE RECORD

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

THE COURT: Please be at ease, ladies and gentlemen. All right, counsel, I have had the benefit of reviewing res gestae issues previously. What I would and also the benefit

of the testimony here today and observed the witnesses, listened closely to the testimony. What I'd like to do is go ahead and rule and rather than take further argument, let you argue why you believe that ruling is not correct in sort of a reply rather than take further arguments on the issues because I'm fairly familiar with where we find ourselves. Are we ready to go forward then in that regard? What says the State?

MR. HIXSON: Yes, Your Honor.

THE COURT: And the Defense?

MR. BARR: Yes, sir.

THE COURT: All right, very good, just a moment. First of all, on the first statement which is where the unknown individual busted in the door and said either, "I told you I would get you," or "I told you this wasn't over," depending on which witness whose testimony you accept, the Court does not find that this fits under the excited utterance exception for really more than one reason. One of the reasons and the foremost reason is is that the declarant has, the statement has to be made under the stress of the excitement of the event, but yet at that moment the event had not yet occurred. Now, this gentleman may have had some stress in his life and may have been anticipating something, but the incident that would generate the res gestae exception had not yet occurred. Secondly, the Court is concerned that, you know, often if you read the rules it talks about the declarant

unavailable or the declarant being available, but here because the declarant is unknown other than certain circumstantial evidence the Court has seen thus far, it would seem that it would be unfair and highly prejudicial to permit that statement in under res gestae and then have the State work behind that statement attempting to prove, I assume, that there was some animosity between the Defendant and the victim which would require the Defendant or give the Defendant the motive to come in and say, "I told you I would get you." This Court is not of the opinion that that particular statement is necessary to the Prosecution or the attempt to adduce the evidence of animosity or difficulty. The Court finds the statement so unreliable that it would be inappropriate to admit it.

The statement while Mr. Evans was on the floor of the Paradise Club where he says, again, somewhat depending on which witness you talk to, "I can't believe Little D shot me and I recognize his voice," would fit within the requirements of Rule 803. It happened within one to two minutes of the event, that would not permit cool reflection or some other deliberative process on the part of the declarant. It would seem to have just been his immediate statement as to what he had perceived had just happened to him and what he had observed. The Court finds that that is precisely what the excited utterance exception to the hearsay rule intends in

allowing such evidence in, and thus the Court will permit that. For the subsequent statements that were made to the witness who is, whose first name was Naomi, just one moment, Ms. Alston's testimony because, again, they're on the floor some seven to eight minutes by her estimation, although the Court recognizes she would have had to leave her house, travel to the place, may have had some type of encounter with the police, I'm not certain, and then arrive on the scene and be able to speak to the deceased, well, now the deceased, the Court finds that there's too much passage of time to permit the, that evidence to come in under a, an excited utterance and also makes the same finding for any discussion that was had at the hospital. Simply by that time there would've been a passage of more than 30 minutes, and while there are some cases that permit 30 minutes passage under certain circumstances, at this point having left the scene into the treatment process the Court just simply does not believe that the excited utterance exception would permit those, that testimony and nor present sense impression because it just is not an event that is unfolding as the statement is made. So that would be the ruling of the Court. Now, we also, though, have not taken up the 403 issue on the one statement the Court has permitted in and we can hear from you briefly on that, Mr. Barr, but let me go back to the - Mr. Hixson, who's the one moving for these statements to come in and if you wish to

reply as to why you believe the Court may have erred with regard to any of those I'll be glad to hear from you, Mr. Hixson.

MR. HIXSON: Thank you, Your Honor, as it relates to the statement of the shooter in this case, the only person in the building, the only person with a mask was ID'd as five foot five and who the shooter or the Defendant or, excuse me, the deceased says is Little D. I didn't try to move, I didn't want to move that statement in under an excited utterance. I believe that's a statement of a party opponent and as a result of that that statement should come into evidence. There are not more speakers. He is the only declarant, and, and all those statements obviously go against the party opponent. So I didn't mean to mislead the Court.

THE COURT: I understand.

MR. HIXSON: But I didn't mean, I was not trying to ---

THE COURT: Okay.

MR. HIXSON: -- try to claim that he was under the stress of the event. He caused the event. He was expressing statements of motive, which are always admissible, relating to that as long as Your Honor doesn't find them unduly prejudicial.

THE COURT: Well, let's, let's talk about that. You're assuming that the party who made that is the opponent

and I'm assuming that one of the defenses or one of the issues in this case is the identification of the shooter, and thus I'm concerned that, that the evidence - it's not necessary for that statement to come in for anyone who saw the shooter walk into that or run into that building to testify about what they saw. What, what that injects into it is a motive, and I assume the purpose of the motive is thus so that you can have, follow that with some circumstantial evidence of animus or difficulty between the Defendant. That animus or difficulty may come in without that statement is the Court's impression, depending on what the, what the, what the evidence of that animus is, but I just simply at this point do not perceive that that statement advances the issues in the case or assists the jury or should be permitted for any reason because of the unknown nature, unidentified nature of whom the speaker was. That's the Court's immediate impression on your attempt to get that one statement into evidence.

MR. HIXSON: And that is right because I have to prove the element of express malice, express intent as it relates to a murder. This isn't an accidental killing based on an armed robbery. There are multiple gunshot wounds. The evidence that we will present is there are five, four individuals outside the building with shotguns protecting the person that goes in to actually do the shooting, and as such is that a random armed robbery or not? We know that based on that

testimony that the pool of potential offenders have been narrowed to one person who has a personal relationship with the person he's going after and that's the only evidence that we have that shows express intent to commit malice, to commit murder against Aundry Evans. "I told you this wasn't over," targets him, fires three shots into his body. Without that it could mislead the jury to believe this is an armed robbery gone by, he was the purveyor, maybe he has money when - it's a statement of a party opponent, express statement of intent to kill that human, not kill him.

THE COURT: Okay, all right, but ---

MR. HIXSON: That's the argument in closing.

THE COURT: Well, all right, well, let me follow on that though. A statement of a party opponent you must first establish that the statement was made by a party, that means someone in this case, an opponent, someone against you. Well, there's obviously an opponent over here. Well, the issue is whether or not the Defendant is a party opponent, the shooter is a party opponent.

MR. HIXSON: That's the entire issue at trial, no question it's an ID case, no question, a hundred percent that, but there is no dispute at trial that the declarant of that statement is the sole gunman in the building. There aren't four there, there's one.

THE COURT: Okay.

MR. HIXSON: So whoever shot Aundry Evans is the gunman. The issue at trial is whether the guy that shot him is Mr. Dizzley, but there is no question that that statement was made by the gunman. Whoever shot Aundry Evans did it intentionally with malice aforethought because according to his own statement it's not over.

THE COURT: All right, well, let me just ask, Mr. Barr, we've not heard from you. Do you contest that, that first statement coming in?

MR. BARR: Judge, I - no, sir, Judge, I, I think you're absolutely right then what that would done - what that would actually do is it attribute to him, you know, and I think your ruling clearly takes that into consideration. That's, that's one of the issues.

THE COURT: All right, so in other words you oppose that statement coming in?

MR. BARR: Yes, sir.

THE COURT: Just wanted to make sure.

MR. BARR: Yes, sir.

THE COURT: All right, let me continue to consider that then, gentlemen, and anything as to the other, as to the other three statements?

MR. HIXSON: No, I believe the excited utterance I would concur with Your Honor's ruling relating to that. I understand Your Honor's position relating to the statements in

the hospital, certainly understand that. There's one small clarification that I wanted. My understanding I was an advocate for Ms. Alston's statement about, "Don't worry about this, honey, I'll take care of this myself," something along those lines. I don't believe that's an excited utterance. My, my understanding is that is a - it's a present state of mind. What I'm trying to refer to is he didn't think he was going to die. He thought he was going to go forward. That's why I'm not moving the Court under a dying declaration because I think there's plenty of evidence that he thought he was going to make it and he was going to handle this himself and that's why he didn't want to talk to law enforcement, and so it's not a statement of ID against the shooter. It's a - it's evidencing his mental state and specifically State versus Griffin, statements of the declarant's then existing state of mind, emotions, sensations or physical condition such as intent, plan, motive, design, mental feeling, pain and bodily health, but not a statement from memory or belief as to what he thought. So I'm moving the Court, under that present state of mind, he is able to say, "Don't worry about this, honey, I'll get - I'll take care of this," whatever the court reporter, madam court reporter said she said under present state of mind. That's why he didn't want to talk to law enforcement or police. Without allowing that in allows contradictory testimony, witness pitting to say, "He didn't

tell the police but he told this, so don't believe him." The explanation why he didn't is he thought he was going to make it, he was going to handle it himself and that's what I would move relating to those statements, but I have no argument relating to the other ones, Your Honor.

THE COURT: Okay, Mr. Barr, you want to be heard on that last argument?

MR. BARR: Judge, again, I, I, you know, I'd certainly take the position that the Court has actually ruled correctly. Assuming that you were to even consider the argument that the Prosecution makes, there is still the issue of the relevance, and of course whether or not he at some point would make up for whatever indiscretions he had committed to Ms. Alston that's neither here nor there, I mean, it's not relevant to the issues here. So, clearly, I think aside from the fact that it simply just doesn't fit, it still would not even be relevant if it ---

THE COURT: Right, well, it seems to me, Mr. Hixson, what you're attempting to do is to ascribe perhaps a noble purpose to the actions of the deceased in not cooperating with the police or at least a reason for doing so, but if I'm understanding what I'm hearing the back side of that is that it would be the intent to commit a crime or at least to respond crime on crime and I'm not certain that, well, first of all, I'm not certain that advances your case, but that's

not for the Court to say, that's for you to decide your strategy and your tactic. I'm not certain that it is admissible in that it's somewhat, somewhat speculative as to what that meant because it could really mean one of, one of several things. I took it to mean that he did not believe he was going to die and thus it was not a dying declaration. I did not realize that you then believe that it would make that statement admissible as a statement of then existing mental, emotional or physical condition, and just, just one moment, please.

Mr. Hixson, I'm disinclined to allow that in, but I will consider that further over the evening time, but I believe for purposes of what's happening today, again, all these rulings really are somewhat preliminary. The Court it just seems unlikely that that would be permitted in.

MR. HIXSON: Your Honor, just one other comment for your consideration.

THE COURT: Thank you.

MR. HIXSON: My only concern is that if we get into a position that Aundry Evans wouldn't tell anybody because he didn't know who it was that's when it becomes relevant. If Mr. Barr's defense, and obviously we don't know until we get into the body of the case, if he says he wouldn't tell the police, he wouldn't tell anybody why, I would just like to have the ability to respond to that in my case in chief that

that is, it's because he thought he was going to live and going to take care of this. He didn't need any police help. He was going to handle it himself.

THE COURT: Well, in that situation, of course, that would be reply testimony that would be - have been opened the door, but I am concerned on the front of that to allow you to open the door to go into it when it may not be an issue that the Defense raises and it just seems to me not to be competent evidence, and so again, I hear what you're saying. Let me consider that further and I'll be pleased to tell you first thing in the morning whether there's been a change in the Court's position.

MR. HIXSON: Thank you, Your Honor.

THE COURT: Thank you. All right, now, one last thing that I have to take up. I know there are other, folks waiting on other matters here, but that's the 403 analysis on the statement that is made on the floor by the deceased, and Mr. Barr, let me just hear from you briefly why you believe that the prejudice of that outweighs its probative value.

MR. BARR: Your Honor, what actually happens there is, of course, and I realize that from the standpoint of credibility once the - if the evidence comes in then it becomes an issue of credibility. However, in this case and I think Your Honor has had the benefit of hearing the variations in the testimony as it relates to that particular issue

clearly if under the circumstances Mr., Mr., and I'm not expressing an opinion at this point as to whether or not the Defendant will ultimately take the witness stand, but what it actually does is it almost forces him into a position that he almost has to take the witness stand because this the kind of testimony that almost would have to be refuted if he would have any hopes of at least undoing some of the prejudicial nature of the testimony, and in this case clearly I just don't believe that he should be on the one hand implicitly forced to have to take the witness stand in order to defend himself against something that he otherwise couldn't defend himself against.

THE COURT: All right, very good, just a moment, please. You want to be heard on that, Mr. Hixson, the issue of 403, prejudice.

MR. HIXSON: No, certainly think obviously it's prejudicial. That's why the State wants to use it in the prosecution, but it's the most probative evidence there is. That's the deceased saying who's the man that perpetrated the killing against him, and so I'll ask you to allow that in.

THE COURT: All right, first of all, for Reverend Evans and others who are here in the courtroom on behalf of the victim's family, just none of this happens in a vacuum. I realize you think, well, goodness I've had the life of my son has been taken and what he says in this last moment should be

admissible simply because it would only seem fair that someone who is just about to pass away that and they make some statement as to the fault of the person who did this or who did it or something about the circumstances it's only fair to let it in because they're not here to testify for themselves. That's balanced against, though, the Defendant's right, constitutional right to confront the evidence and witnesses against him, as well as his right to remain silent and not strip that right from him by someone who allegedly said something without the benefit or the credibility or the believability of that statement being contested here in the courtroom before the jury. That's really the crux of where we find ourselves, and ladies and gentlemen who really over the centuries have developed this hearsay rule have taken the position that something should come in as an exception to hearsay if it seems inherently trustworthy or reliable and one of the circumstances that the authors of the rule have found to be reliable is if we are in the stress or excitement of an event then what you just blurt and say out of your mouth without having the opportunity to reflect or plan or think about what the good or bad of what you're saying is, well, then it's generally considered to be reliable. That's why the Court allows it in, but we also have a rule that says if something comes in that is so inherently prejudicial or damaging that the Defendant cannot refute it, then it would be

unfair on the basis of prejudice to permit it in. So the Court's required to balance the prejudice of the statement versus the probative value of the statement and make a decision as to whether it is appropriate for the evidence to come in. I'm going to agree with Mr. Hixson that, of course, it's prejudicial. The State wouldn't be attempting to put it in if it didn't carry a prejudicial tag to it, thus this is why they want it in, but the Court finds that, first of all, it meets the requirements of the hearsay rule. It is probative because not only did the deceased express an opinion who shot him, but gave a basis for that opinion which was that he recognized the voice of the individual who shot him. The Court finds that that's highly probative. As to the prejudice, and I will, I will put the specifics of the reasoning on the, on the record tomorrow before we begin the various components of prejudice that the Court is reviewing, but the Court simply finds that's the probative nature of that statement giving, given this incident where someone attempted to cover their face, came in in what appears to be execution fashion or with specific intent to harm an individual, one specific person came in, opened fire, then fled, that it is, that probative nature of the identity is higher than the prejudicial damage of the statement. Again, the Court will put the specific reasons on prejudice on the record in the morning.

Now, anything further - I'm going to deny your motion on 403, Mr. Barr, and allow that to come in. Anything further before we close the record in this matter?

MR. HIXSON: Your Honor, just to add to Your Honor's discussion, obviously because this wasn't testimony, it was a non-testimonial situation, it wasn't in a formal interviewing setting, it was statements made somewhat spontaneously, and as such, the Crawford analysis means that if we fall back onto traditionally accepted and reliable hearsay exception such as excited utterance there's no Sixth Amendment violation relating to that, and I just want to require that we consider that non-testimonial situation.

THE COURT: Thank you. All right, anything further we need to take up before we close this matter for the day to pick it up at 9:30 tomorrow morning? Anything from Defense?

MR. BARR: No, sir.

THE COURT: From the State?

MR. HIXSON: No, Your Honor.

THE COURT: All right, then, gentlemen, please be on time. The Court will be here before, well before 9:30 tomorrow morning. I'll come out a couple of minutes beforehand, put the reasons again on that prejudicial issue on the record, take care of any other matters and be prepared as a courtesy to the jury to start at 9:30 since that's when we told them we will. All right, Court's in recess now in this

case until 9:30 tomorrow morning.

MR. HIXSON: Thank you, Your Honor.

THE COURT: Thank you.

MR. BARR: Thank you, Judge.

THE COURT: Yes, sir.

OFF THE RECORD

(On the record, Tuesday, August 28, 2012. The following takes place outside the presence of the jury.)

THE COURT: Good morning, everyone. All right, I'm told our last juror has just arrived and thus all of our jury is in place. Counsel, let me conclude our rulings from yesterday so our record will be clear. It is my understanding that - well, I recall that we left yesterday the issue of the statement made by the individual who burst in the room which was something that the - would be, depending on which witness you believe, "I told you it wasn't over," or "I told you I'd get you," Mr. Hixson tells us that he has some additional information that will come in through the first and second witnesses in his case and what I would intend to do is just simply wait until we hear that evidence to make a final determination, but at this point that statement is not in and please do not address that issue to the jury in your opening comments and the Court will revisit that after we hear from the first two witnesses. We also left open the issue yesterday about the ---

MR. BARR: Your Honor, please, before we leave the first issue I'm not sure I understood exactly what - did you say something about additional information?

THE COURT: Well, I've excluded it, but Mr. Hixson tells us that there is - I excluded it because first of all we're not sure who that individual was. It doesn't necessarily come in as a party opponent because that's the issue in this case. Mr. Hixson tells us that his argument was there's additional testimony that will be heard. I stated that I would leave it open and reconsider it over the evening. It's not admissible at this point. If something comes out in - from another witness that would lay a foundation that may make it appropriate then the Court will review that at that time, but as for now it's not in evidence. All right, so, please don't address it in opening, and again, all of these rulings are preliminary as you know, as you commented yesterday, Mr. Barr, and then finally I commented that I would do an analysis of the prejudicial impact, this is under Rule 403, of the statements that were made to Mr. Morris and Mr. Giles within one to three minutes of the shooting and those statements are to the effect of, "I can't believe Little D done this to me," or "Little D shot me," or "I recognized his voice and it was Little D," these are the various comments we heard the witnesses say that the deceased made. I determined yesterday that they were of probative value, of substantial

probative value and in looking at the prejudice of it I find that obviously that statement tends to exclude others because it implicates the Defendant and it implicates the Defendant to a level of spontaneous certainty at least on the part of the deceased. However, the Court does not find and our Supreme Court has held that to let that in is not a violation of the confrontation clause. You'll see that discussed in a couple of cases that are fairly on point which is State versus Dennis, 337 S.C. 275, and State versus Burdette, B-U-R-D-E-T-T-E, 335 S.C. 34, and the Court perceives even determining the prejudice that exists in that statement that the probative value is still greater and for those reasons the Court's going to permit that in, not going to exclude it under Rule 403. Now, with that said I believe we are ready to bring in the jury if there's nothing else from the parties. I'll be glad to hear from the State if there's anything further.

MR. HIXSON: No, Your Honor.

THE COURT: And the Defense?

MR. BARR: Judge, for the record, our position would simply be this as it relates to the ruling that you made on yesterday. Of course when I indicated that the rulings would be, that it would be necessary for the State to lay a foundation, and then, of course, if they lay the appropriate foundation then that had to be done before the issue of admissibility could really be addressed and it would be the

Defense's contention that that's already been done, and as far as the admissibility issue it would be our position that that issue has already been settled by you. Now, I think it would be terribly unfair to allow the Solicitor's Office to now, for whatever reason, after we've - after we are through with the issue of admissibility present some additional evidence be it such that it could be used as a foundation or whatever such that the issue of the admissibility of the statement is still subject to review and it would be our position that that - that you have ruled on that, that the statement is inadmissible and that any additional evidence or any additional testimony or whatever kind of evidence that the Prosecution might use as foundation to support the admissibility of a statement that we've done in pretrial or in a motion in limine really is what from where we'd be sitting it'd be a motion in limine, that once you've ruled on that, ruled on that, on that issue then it's, it's not admissible.

THE COURT: All right, well, your position is noted, and as you know, Mr. Barr, right now the evidentiary field in this case is wide open. There's no evidence in the record. We'll see what comes, whether or not it will alter the position of the Court that this statement should be excluded, well, that remains to be seen. So before we worry about that position I just simply give you the heads-up that it is within the realm of possibility that it could happen, be aware of

that and the positions that you take with the jury and we'll see what the evidence is. There is not sufficient evidence thus far, but again, all those rulings I made yesterday are reserved with the understanding that there may be some change depending on what comes in the evidence. So I - let's just leave it there, we do that in every case and before it comes in we'll give you ample time if it should reach that point to state your reasons for disagreement, the prejudice you believe you would incur because of the way in which it evolved and give you a full right to be heard on that issue. All right, let's, let's bring in the jury, please.

MR. HIXSON: Your Honor, there are witnesses in the courtroom.

THE COURT: All right, and our witnesses who are here because we've sequestered the witnesses we'd ask counsel to please advise them if they would leave at this time other than those that were allowed to stay yesterday.

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

(Whereupon, jury sworn by clerk.)

THE COURT: All right, good morning, ladies and gentlemen. Welcome back to the courtroom on this rainy morning. I trust you had a nice evening and thank you again for returning to the Court and let me ask you is there any juror that did not take the oath that was just administered

recognizes Mr. Hixson for opening statement from the Prosecution.

MR. HIXSON: Thank you, Your Honor. May it please the court?

THE COURT: Yes, sir, Mr. Hixson.

MR. HIXSON: Chicken wings, oysters and Monday night football, sounds pretty good, doesn't it, coming to the fall of the year? For some folks it's almost like paradise. For Aundry Evans it was. See, Aundry operated the Paradise Sports Club, Paradise Club, and on December 1st of 2008 that's what he was doing, had friends of his, patrons of his club, a sports bar, First and Ten Sports Bar attached to the Paradise Club. That was his dream. What he wanted to do he wanted to open up a restaurant, was his first effort at it, been open a little bit, started to get a little bit of folks coming in, and as often happens when you start to see a little bit of success, not much, other folks want to kind of be involved in it. Terron Dizzley wanted to be involved in it, wanted to see if he could be a business partner with him, help him out. That's how the relationship started. Now, they knew each other prior to this from the neighborhood and things like that, but in the events leading up to December 1st of 2008 something happened with that business partnership and it ended with the murder of Aundry Evans on December 1st of 2008, a little bit, 11:30 p.m., a little bit after probably Monday

night football was over that evening.

The case is very straightforward. What you hear are folks, a couple of folks that were in there at the time. When the door blew open, a masked gunman, five foot five in height approximately, came in, walked up to Aundry Evans and fired three shots into his body. Aundry went to the floor. The gunman took off. The man that got shot face to face with his former business partner identified him, said, "I can't believe Little D just shot me. That was Little D. I recognize his voice." A couple of folks heard that. You'll hear their testimony when they heard when the victim in the case identified the person that shot him. He was wearing a mask. He left. Law enforcement shows up, normal investigation ensues. They find Little D, arrest him, here we are.

You'll also hear from Dr. Cynthia Schandl, who was the doctor from MUSC. She's a forensic pathologist, and she'll take the stand and testify about what her results of her autopsy was, that Mr. Dizzley [sic] died as a proximate result of gunshot wounds to his body, that he, in fact, bled to death with a bullet wound to his iliac artery that nicked it and he lasted a little bit before he passed on on the way to MUSC.

You'll hear a little testimony about the days prior leading up to this on why in the world someone would want to do this to somebody on December 1st of 2008, and then it will be up to you.

The case is very straightforward. There's not a lot of drama for writers in television. We'll put it up and that's the case. You decide and then after it's over I'll come right back before you and I'll ask you to find Terron Dizzley guilty of the murder of Aundry Evans.

Now when you think about that murder charge, it's surprisingly enough one of the most serious charges in all of South Carolina. The elements are pretty straightforward, the unlawful killing of the person of another, of a human being with malice aforethought, either express or implied. That's it. Aundry Evans is a human being or he was. He was killed. The person that killed him, express malice, that's one of the things that you have to come through, and in the end you'll decide whether or not the person that died as a result of his gunshot wounds was telling the truth. That's it. Thank you for your attention.

THE COURT: Now, opening statement for the Defendant.

MR. BARR: If it please the Court, Judge.

THE COURT: Yes, sir, Mr. Barr.

MR. BARR: Mr. Solicitor, ladies and gentlemen, let me just take this opportunity again to tell you that my name is Charles David Barr and I practice law in Kingstree. I've been practicing over there now probably 32, 33 years. I've heard, I've heard a lot of opening statements in a whole lot of cases. I've tried a lot of criminal cases and I think this

might be the first case that I've ever tried with Solicitor Hixson, and I tell you as I sat there and I listened to the opening remarks, which really are designed to put the case itself in a posture, I wish it was as simple as chicken wings and dissolved partnerships, but it's just not that simple. It's just not that simple, and as Mr. Hixson attempted to personalize the victim in this case, I don't, I don't, I don't want to personalize Terron Dizzley, but he, he is, he is pretty much the central figure in this case because he is the person that's charged with murder and, and, and he is the reason why you're here today. You're not here so much to deal with the issue of something that's already taken place that all of us regret but none of us can change. As we go through this life and as we have experiences we'll find in many cases that there are a lot of things that we regret, but once they've happened we can't change them, but now I tell you that, first of all, I'd like to associate myself with the remarks, very good remarks that's already been made by an able trial judge who has given you some very excellent preliminary instructions as to what your duties and responsibility is as it relates to this case today, that's today.

Now, one of the things that he pointed out to you, the very first thing he pointed out to you is that this is a criminal trial. It's a criminal trial. It's different from a civil trial and I know that some of you indicated that perhaps

you've served on a jury in a courtroom before. I don't know whether or not that experience has been in a criminal case or in a civil case, but one of the first things His Honor mentioned to you, well, this is a criminal case. One of the major differences in a criminal case and a civil case is the standard of proof. The standard of proof in a criminal case is proof beyond a reasonable doubt. The standard of proof in a civil case is by the preponderance of the evidence or by the greater weight of the evidence, different standards altogether. Now, at the appropriate time His Honor will instruct you on exactly what those standards mean and particularly as it relates to proof beyond a reasonable doubt. I'm not going to talk about that now, but now, notice that I said His Honor will instruct you, which brings us to another issue and that is an issue that the Court has already alluded to that is your duty and responsibilities as triers of fact. I tell you that if this case was just as simple as Mr. Terron Dizzley for whatever reason that the Prosecution might suggest took it upon himself to take the life of Mr. Evans I doubt that we'd be here. It's not that simple. The Defendant has pled not guilty to the charge of murder and His Honor will also, in addition to instructing you on the standard of proof, will tell you what murder is, and of course, I would agree that Mr. Hixson has done an excellent job in outlining the elements of murder.

In South Carolina, as well as in most states, any criminal offense is composed of what we call elements and elements are the component parts that make up the complete offense. In other words, in the case of say for instance larceny or grand larceny it's the taking and the carrying away of the personal property of another of a certain value with the intent to deprive, that all of those are elements of the offense. Well, murder, the unlawful killing of a person, the person with malice aforethought. Now, but let me tell you something, as to any criminal offense, one of the elements and the element that perhaps the Prosecutor hasn't mentioned is identification. Now, it was suggested to you that the evidence is going to show - well, I'm going to tell you I learned a long time ago not to tell juries what evidence is going to show because I don't know what it's going to show. His Honor has already instructed you concerning, in a preliminary way, what your duty and responsibilities will be as it relates to the evidence that will be presented in this case and there will be different kinds of evidence. Generally, most times, evidence will fit into about three categories, might be demonstrative evidence, that is somebody might bring something in here, might put up a screen and might show you and demonstrate something to you in order to get you to be able to perceive of the facts and the circumstances such that you can develop in your own mind and decide what a

pertinent issue of fact is as it relates to what is being demonstrated to you. It might be testimony, that is people might come and take this witness stand and then might take - and I'll tell you that they might swear to tell the truth and we'll talk - I'm going to talk, and His Honor referred to it as the credibility of witnesses because, see, even when a person gets on the witness stand one of the things as jurors that you'll have to decide is the witness's credibility, that is their believability. Can't believe everything everybody is saying and I don't think this case is going to be any different from any other. You just simply cannot take, but as the judge, as the trier of facts you'll have to decide using that vast collection of experiences that you've accumulated over the years that allow you to ferret out the truth in a situation where it might very well appear that the testimony might be conflicting, but that's your duty and your responsibility. Now, of course, in addition to testimonial evidence and it's all testimonial, but there might be some kind of document. It might be documentary evidence. Even that kind of evidence is subject to being scrutinized because you have to authenticate it in order to bring it and present it to you as jurors as evidence in a case. So, so as it relates to the testimony particularly because I think that that's what generally this case, will decide this case you are the sole judges of the credibility of witnesses that take this

witness stand. His Honor is the giver of the law.

Now, what do we have? We have the facts as you find them to be and we have sort of the rules of the road, rules of the road that we have to follow and the rules of the road will be the law and when you take the two and put them together His Honor will tell you that you'll have to come up in this case with a verdict, and a unanimous verdict and a verdict which speaks the truth based on the law and the evidence.

Now, just about two other things I want to mention to you and I'm going to sit down and we're going to start this case and that's as it relates to the law. If you notice Mr. Hixson and I had a bunch of papers that we were fumbling through as you all were qualifying the jurors looking at all our notes that we'd collected on you and, and what we were doing is we're trying to ferret them out and trying to make sure that we've got in terms of personalities we're putting people on the jury that are willing to take the law as His Honor gives it to you and to follow it. See, some people don't like what the law is, for whatever reason, and they may decide, "Well, look, I'm not going to follow it," but we think we've got 12 people in this case, 14 people with the alternates that are willing and receptive enough to take the law whether we like it or not and apply it to the facts as we find them to be and to come back with a verdict that speaks the truth.

Now, presumption of innocence, His Honor told you in his

preliminary instructions that right now as we start this trial and I'm getting ready to sit down, but as we start this trial Terron Dizzley, irrespective of how heinous we might think the crime of murder might be, he is presumed innocent, he's presumed innocent, and it is solely the responsibility of the Prosecution to prove his guilt. The burden of proof never shifts in a criminal case. It is absolutely the responsibility of the Prosecution to prove his guilt on each and every element of the offense, including identification, and now, ladies and gentlemen, I'll tell you this much and I'm going to sit down. You know, I've heard many Prosecutors say, well, it's up to you. Well, if it's up to you at the end of the day in a criminal case and it's up to you, then you need to look seriously at the Prosecution's proof because if you hadn't been convinced beyond a reasonable doubt once His Honor instructs you on the law then the Prosecution hasn't met its burden of proof. Don't allow the Prosecution in any case to shift the burden of the responsibility of presenting and proving a case to you. Your duty and your responsibility is limited to that of jurors, not of collecting evidence and coming to prove a case.

I simply would like to say to you on behalf of my client and on behalf of the family that we certainly, at this juncture in this trial, we thank you for the responsibility and the dedication that you have shown to your commitment when

you got your summons for this jury service, and I certainly hope that by the time this trial is over something will have happened in the course of the trial that will give you a healthy, healthier respect and a better understanding of the criminal justice system, not only as it exists here in Georgetown County, but as it exists throughout the State of South Carolina and throughout the United States. Thank you.

THE COURT: Prosecution, please call your first witness.

MR. HIXSON: Thank you, Your Honor. At this time the State would call Naomi Alston, please.

THE COURT: Ladies and gentlemen, the witnesses have been sequestered meaning that before they testified they are out of the proceedings and so it'll take a moment. We'll bring them in one at a time. After they testify they may remain in the courtroom. I tell you that, it'll take us a moment when we call a witness to actually go retrieve the witness from down the hall.

All right, ma'am, please come forward to take the oath of a witness.

Whereupon, Naomi Alston was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Please take a seat and state your name for the record.

MS. ALSTON: Naomi Alston.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good morning, ma'am, how are you?

A Good morning, fine.

Q All right, so tell us what you do for a living?

A I'm in - I work at Captain's Quarters Resort. I'm a - I work in reservations.

Q Okay, you from Georgetown County?

A No, sir, I'm from Charleston County.

Q Okay, and how long have you lived in Georgetown County?

A I've lived in Georgetown for about, about six, six years.

Q Okay, so were you living in Georgetown back in 2008?

A Yes, sir, I was.

Q Okay, and we take you back to that time period do you know somebody named Aundry Evans?

A Yes, sir, I do.

Q Okay, and tell us about that.

A Aundry Evans was my fiancé at the time. We were living together.

Q And how did you guys - tell us how you guys met?

A I was over at my cousin's house, Danielle Jenkins, in Plantation Apartments and one of his home boys is her, her baby daddy. So Aundry and him was really close, so I met him over there the summer of 2002.

Q And at some point in time it sounds like you guys

developed a personal relationship then, huh?
A Yes, sir, we did.
Q Okay, well, let's start getting closer to around November of 2008 around that time period.
A Uh-huh.
Q Tell us what Aundry was doing for a living and what happened after that?
A November 2008?
Q Yeah, right in that time period about when he started getting interested in the Paradise Club.
A Well, at that time he was - he, he did some construction, I mean, electrician work. So he was doing that off and on. He came to me. He always had an idea that he wanted to open a restaurant because he loved to cook. So he saw the opportunity of doing the sports bar down in the Oatland Community. So that's when he came to me and said this is what he had an idea to do so that he could save the money and then open up a restaurant.
Q Okay, did he ask you if you wanted to be a part of it or involved in it?
A Yes, he did.
Q Tell us about that.
A We went, we went down to the guy that was renting the building and we signed up a lease - well, got a contract and everything signed up. We got the building and everything and

we got the papers together to get the license and everything straight that he needed to open the business.

Q Okay, and so at some point in time did Mr. Evans open up his business?

A Yes, sir, he did.

Q How did things go up there at first?

A Everything - it was slow, but everybody in the community they came and got a few things, shoot some pools and it was, it was good.

Q Okay, and in some time - what period of time are we talking about? Do you recall?

A This was in October that he opened.

Q Okay, do you know Terron Dizzley?

A Yes, sir, I do.

Q And do you know does he go by the name Little D?

A Yes, sir.

Q Okay, do you see him here in the courtroom today?

A Yes, sir, I do.

Q And where is he, can you point him out?

A He's sitting over there.

Q Okay, at some point in time did you - tell me about how you came to know Mr. Dizzley?

A Well, me and Aundry was together. I know he was on the phone with him a couple of times. The first time I met him was in Florence at the mall. I met him then and from then I

met him three more times after that, but Aundry he was on the phone with him a lot and they talking. When he's leaving the house he said, "I'm going to meet D and I'll be back in a couple of hours," or ---

Q Did D have or you or Mr. Dizzley did he have any, excuse me, relationship with the club or anything like that? What's your understanding?

A As far as I know, no, he didn't.

Q Okay, let's talk about going into October, November 29th of 2008. Do you recall that day and what happened that day?

A Yes, sir.

Q Tell us about that.

A I got off from work, was working at Lowe's in Conway and Dre called me. He said that he wasn't ---

Q And who is Dre? You got - who?

A Aundry.

Q Okay.

A Aundry called me and he said that he needed me to go down to open up for him because he wasn't, he wasn't there and I said okay. So on my way, left work and I went to the club and I went inside and he told me that what to prep up and everything. So then he told me I needed to wait on the DJ. So I was there by myself. So I didn't want to leave, sit in the club and have the door unlocked waiting on the guy. So I went outside and sat in my car that was parked a couple of

feet from the side entrance. I saw D pull up a couple of times and I was on the phone with Aundry and he told me do not let him in the club. I did not ask him why.

MR. BARR: Your Honor, I'm going to, I'm going to have to object ---

THE COURT: Sustained

MR. BARR: --- to hearsay.

THE COURT: Sustained.

MR. BARR: And I'm going to move to strike it.

THE COURT: And let me, let me speak to the jury about that just a moment. Now, there are certain exceptions to the hearsay rule, but typically something said by someone outside of these proceedings is not admissible. It's a hear-say. That's why we have the hearsay rule. I think we all remember from when we were children you could sit in a circle and someone would whisper something, it'd come back around to the other side of the circle and it would have completely changed. So the hearsay rule is to avoid testimony that may or may not be - well, let's just put it this way, the best evidence of what someone said is not having someone who may have heard it repeat what they heard someone say. So I'm going to sustain for that reason and that's the basis for the hearsay rule. Now, there are many exceptions to the hearsay rule and we'll see as we go into that whether certain statements may fall within those exceptions. Sustained, counsel.

MR. HIXSON: Thank you, Your Honor.

THE COURT: And let me just, ma'am, say to you it's best not to testify about what someone said or someone told you simply because it violates the hearsay rule under most circumstances. Okay? Go ahead.

Q Okay, so you were - let's - let me kind of lead you back toward your spot there. So you were sitting in your car?

A Uh-huh.

Q And you had been on the telephone with Aundry, is that right?

A Uh-huh.

REPORTER: Is that a yes? I'm sorry.

A Yes, ma'am. I'm sorry.

Q Okay, and you had seen the Defendant driving around at the club; is that correct?

A Yes, sir.

Q Okay, based on your conversation that you had with Aundry did you let Little D enter the club?

A No, I didn't let him in.

Q Okay, now, take, take us from that point forward, if you'd just tell us what happened from that point forward?

A Okay, I didn't let him in. D, he did get out of his vehicle and he saw that I was on the phone and he came - I had my window cracked. I cracked my window. He said, "Tell your pussy ass boyfriend to come deal with me himself and don't

send his woman," and Aundry heard him. So then I told D if he don't leave I will call the police. He left. He went inside his vehicle, and at that time I was still on the phone with Aundry and he was asking me did he go or anything.

Q I'm sorry. Don't, don't talk about that.

A Okay, and so he drove off and then he came back. So then that's when I waved my phone and I told him I was calling the police.

Q Okay.

A And I called them.

Q Did you, in fact, call 911?

A Yes, sir, I did.

Q Let me show you what's been marked as State's Exhibit Eight for identification purposes only, Your Honor, see if you recognize that item.

A Yes, sir, I do.

Q What is that, describe that to the jury what you're looking at?

A It's the 911 call that I did that night.

Q Okay, and how do you know that that one specifically is?

A Because my initials is on it.

Q Okay, did you have a chance to review that?

A Yes, sir, I did.

Q And is that contents of that disc a fair and accurate representation of the telephone call you made to 911 on

November 29th of 2008?

A Yes, sir.

MR. HIXSON: Your Honor, at this time the State would move this into evidence and ask to publish it to the jury.

THE COURT: All right, is there objection?

MR. BARR: No objection, Judge.

THE COURT: All right, then you may move it into evidence.

(State's Exhibit Number Eight [CD- 911 Call] admitted into evidence and appropriately marked.)

THE COURT: Has asked to publish it meaning that they wish at this time to play the call and you may do so. Without objection in evidence and just a moment, madam court reporter, do you need to mark that in some way?

REPORTER: No, sir, I'll get it later, thank you.

THE COURT: Very good, thank you.

MR. HIXSON: I'll hand the cover back, Judge.

(Whereupon, State's Exhibit Number Eight played in open court.)

BY MR. HIXSON:

Q You recognize that?

A Yes, sir.

Q So that was - what's the date on that, November 29th; is that correct?

A Yes, sir.

Q After you made the 911 call what happened then?
A After I made the call an officer he did come out. At that time D wasn't there, but as the officer was talking to me he pulled up.
Q Who pulled up?
A D.
Q Okay.
A He pulled up and then it was two officers and one of the officers he went to talk to D and that's when they came back to me and told me what he wanted. He said that he wanted some TVs that was in the club. I told the officers that I did not know of any TVs that he had in the club, whatever him and Aundry did I preferred him waiting till Aundry got back and they can deal with it. The officer told him that he couldn't get into the building and that he needed to leave.
Q And did he leave?
A Yes, sir, he did leave.
Q Okay, is that the last time that you saw Terron Dizzley prior to the - Mr. Evans losing his life?
A Yes, sir, it was the last time.
Q Okay, let me show you a couple of pictures if you don't mind. I've already shown this to Defense counsel. See, if you'd just look at all those and just see if you recognize those. If you can keep them in order that'd help me a little bit.

A Yes, sir, I do.
Q Okay, and then for the madam court reporter, I've handed the witness here are the photos State's Exhibit One, State's Two, State's Three, State's Four, State's Five, State's Six and State's Seven. These are all for identification purposes only. Do you recognize these?
A Yes, sir, I do.
Q And I'll take them, unless Defense counsel has an objection, however he wants me to do them. What are those photographs, generally speaking?
A This is a photo of the side door, of one of the doors of the club.
Q Okay, tell you what, let me, let me try to do it this way, okay, once you - you've recognized all of them, but are these photographs a fair and accurate representation of different spots in the 899 Oatland?
A In the club, yes, sir, it is.
Q Okay, let's talk specifically about State's Exhibit Number One.
THE COURT: And counsel, just one moment, madam court reporter, what did you mark the CD as please?
REPORTER: Eight.
THE COURT: Eight?
REPORTER: Yes, sir.
THE COURT: Very good, thank you. Go ahead.

REPORTER: Thank you.
Q Okay, and can you describe that?
A This is the outside on the left side of the building one of the doors.
Q Okay.
A And in the front of the building.
Q And is that a fair and accurate representation of 899 Oatland?
A Yes, sir, it is.
Q Okay.
MR. HIXSON: At this time the State would move State's One into evidence.
THE COURT: Without objection.
MR. HIXSON: Okay.
THE COURT: Is there objection?
MR. BARR: No, sir.
THE COURT: Hearing none.
(State's Exhibit Number One [Photograph] admitted into evidence and appropriately marked.)
MR. HIXSON: May I publish that to the jury?
THE COURT: You may.
MR. HIXSON: That's slide one, please.
BY MR. HIXSON:
Q If you'll look on your screen it should come up on the computer screens. Can you see your screen?

A Yes, sir.
Q Is that the same as that?
A Yes, sir, it is.
Q Okay, great. Now, if can you describe to the jury what they're looking at. It's the first time they've ever seen it.
A The building to the front right there where the concrete is that's the front door. There's a side entrance right there that was never used and on the side the steps there is an entrance into the club, also.
Q Okay, let me show you marked - what's been marked State's Exhibit Number Two see if you recognize that.
A Yes, this is the side building that you can walk into, directly into the bar area.
Q Like the sports bar section?
A Yes, sir.
Q Okay, I'm referring to State's Exhibit Two, that's a fair and accurate representation?
A Yes, sir it is.
MR. HIXSON: Like to move that into evidence, State's Two.
MR. BARR: No objection, Judge.
THE COURT: All right, now, let me ask is there any, is there an objection to any of these photos?
MR. BARR: No, sir; no, sir.
THE COURT: All right, then all in evidence without

objection and you may proceed.

(State's Exhibit Numbers Two through Seven [Photographs] admitted into evidence and appropriately marked.)

MR. HIXSON: Thank you, Your Honor, very much. If we can pull up slide number two.

BY MR. HIXSON:

Q And please describe that to the jury what they're looking at on their screens?

A The side building, the door right there is the side of the club where you can walk into the sports bar area.

Q Okay, let's show you State's Exhibit Three in evidence, that's slide number three, describe what that is.

A This is the bar area. As soon as you walk in that side door that's the entrance to the bar.

Q Okay, State's Four in evidence, that's also slide four let's try that and describe that.

A This is if you're walking to your right, if you come in through that side inside the sports bar.

Q Okay, State's Five, slide five in evidence, just please describe that?

A This is inside the sports bar, the pool tables and the bar right there.

Q All right, and finally for this round describe State's Six, that's slide six.

A This is the pool table inside the bar and the door that's

behind it. You can walk into the club area.
Q Looks like a dance club is that what you mean by?
A Yeah.
Q Okay, thanks. Let's hold on to this one. Okay, so, when last we were taking some testimony I think you were November 29th and the police had arrived and Little D had left, is that right?
A Uh-huh.
Q Okay.
A Yes, sir.
Q Tell us what happened, tell us what happened on the November 30th and then December 1st, what, what was going on?
A Well, I was home and Aundry didn't call. I was getting ready to put me and my girls to bed. He knows eight, 8:30, no later than nine I - we go to bed. So he didn't call. So I called him several times. I didn't get an answer and it was, it was shocking because if he's not there to say their prayers with the girls he will call them on the phone and he'll say them with the oldest and I didn't call him back and we fell, me and the girls we fell asleep and then the phone rang. It was a gentleman called. He was like, "Chevon." I told him, no, this was Naomi. He said, "Dre just got shot." I grabbed my keys, jumped in my car and I drove down to the club.
Q Okay, let me ask you about the 30th going back. Were you taking care of the club at all for Aundry during that period

of time?
A On the ---
Q After the 29th right?
A After the 29th, no.
Q Okay, okay, so you got a phone call, not, not good news?
A Right.
Q Take us from there.
A And I got in my car and I drove down to Oatland. As I was driving I saw blue lights in front of me. I turned in before - turned down Oatland Road before the officers, the sheriff they pulled in behind me. So as I was driving I pulled up to the club. I saw one gentleman standing outside. I walked in through that side door. As I walked in I saw Aundry laying on the floor and I saw Mo kneeled down beside him and Mo was holding down on Aundry's stomach, more his side, and as I kneeled down I asked him what happened. He said ---

MR. BARR: Objection, Your Honor.

MR. HIXSON: Your Honor, we had pretrial rulings on this. Your Honor I believe had found this is admissible under an excited utterance.

THE COURT: All right, just one, just one moment, please.

Counsel, let me get to step up if you will, please.

(Whereupon, a bench conference is held in the presence

but out of the hearing of the jury.)

THE COURT: I'm going to sustain the objection as - because that would be hearsay and you may proceed to your next question, counsel.

BY MR. HIXSON:

Q After Mr. Evans made that statement, whatever statement that was, what was the demeanor, what was the environment like in that room when you were there?

A Everybody there, the people that I saw there they were shocked. Dre, he was laying there shaking his head and by the looks of him I could tell that he was shocked, that he couldn't believe that this, that this had just happened to him.

Q Okay, did help arrive?

A Help did arrive.

Q Okay, in what form? What happened after that?

A After that Mo was putting pressure down on Aundry's stomach and I told him not to, don't do that, and - can I say what he told me to call his father and ---

THE COURT: I'll let you address that to counsel.

A Okay.

THE COURT: If you have a question go ahead.

Q Please go ahead.

A Okay, at that time Aundry said, "Go outside," he said, "Go call my dad." I left him and I went outside to call his

dad. The officers, they were coming in and when I got off the - I spoke to his dad. His dad asked me, I told him that Aundry had just got shot. He asked me, "What hospital are you going to?" I told him Georgetown Memorial. He said, "Okay, I'll meet you there." I was trying to go back in the building, but at this time the sheriff told me that I could not, one officer told me I couldn't go in and they had the yellow tape taped around the, the club. So the ambulance came and they brought Aundry out. They were sitting there for ten, 15 minutes before they left to drive him off and I knocked on the door of the ambulance and I asked him why wasn't they driving off, what's taking them so long. They told me that they had to get him, everything ready before they start in route to the hospital, and then my mom she came and she, she took me to the hospital.

Q Okay, did you have a chance to see Aundry at the hospital?

A Yes, sir, I did.

Q Okay, what happened after your visit to the hospital? What did - do you know what they did with Aundry, what kind of care that he received?

A Well, I knew they - Georgetown Memorial Hospital?

Q Yes, yes, ma'am.

A Georgetown Memorial they, they flew him to MUSC.

Q Okay, and tell us about that, did you get to see him

again?
A I did, but not the way that I wanted to.
Q Okay, well, tell us about that.
A When I got to MUSC I was still in my night clothes and when my sister brought my car to me she brought me some change in clothes. I got - when I got there I went and I told the nurse that I was there, and she said, "Okay." Then I told her I was going to the restroom to change my clothes. I changed my clothes. I came back out. The nurse came up to me and I asked her, "Can I go see him?" She said, "I'm trying to get in contact with his family." I told her that his father said he was - he'll be down in the morning. His mom said the same, and I said I was there, "I'm his fiancée." She said that she - he needed a mother or father, a close family relative there. I gave her the number to his father, and she said, "I'll be right back with you." So she came back. She said she couldn't get in contact with him. I told her, "I can give you his sister's number." She said, "I'll take that number down," and then I asked her, "Can we go to - can I go see him?" She said, "That's fine." So I grabbed my things and we started walking and I asked her how was he doing, "Is he good," and she was like, "I'll let the doctor and the chaplain talk to you." We didn't walk into a normal emergency room where the rooms were. We was walking more to like a conference area. When I walked in the room, as I was walking it was like just

me and the nurse, but as I looked around, turned around it was like three, four more nurse behind us. I walked in the room. It was a table with some chairs. The doctor was there. The chaplain was there, and I asked her, I said, "Is, is he okay," and she - I was thinking they were going to tell me, "He won't be able to walk again," or something like that because he was fine. I didn't expect them to say what they said to me. So she said, "I'm sorry, Ms. Alston, Aundry passed away." At that time from the first time I met him up until the last that my youngest was born all that just flashed back. All I could just think about what I'm going to tell my girls?

MR. HIXSON: Beg the Court's indulgence, Your Honor.

A But ---

MR. HIXSON: Beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

BY MR. HIXSON:

Q Just ask you one more question, kind of a light-hearted question compared to that. This all happened in Georgetown County?

A No, sir, this happened in Charleston County.

Q Excuse me, I'm sorry. I'm trying to get away from that. It's tough for you. I mean the shooting itself, the Paradise Club and all that, is that in Georgetown County?

A Yes, sir, it is.

Q Okay.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right, ladies and gentlemen, let's take a break before we go to cross examination. We'll take an approximate ten minute break at this time. Again, please don't discuss the case, just enjoy your break, and our bailiffs will take you to the jury room, and ma'am, you're welcome to step down. I'd just ask you not to speak to lawyers on either side since you're under testimony at this time, but you're welcome to stand down and take a break as well. All right?

A Can I go out?

THE COURT: You may.

A I have to stay?

THE COURT: Yes, ma'am.

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

THE COURT: All right, ladies and gentlemen, court will be in recess now for 10 to 15 minutes.

OFF THE RECORD

(On the record, the following takes place outside the presence of the jury.)

THE COURT: Thank you, ladies and gentlemen, please, please be seated. Please be at ease, everyone, and Ms. Alston, you want to return to the stand? Were you able to take a break, ma'am?

A Thank you.

THE COURT: All right, very good. Please come back and be seated.

(Complies with request.)

THE COURT: Okay, Mr. Barr, you ready for cross examination?

MR. BARR: Yes, sir.

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

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

THE COURT: All right, welcome back, ladies and gentlemen, and you will recall we ended direct examination at the close of the first session and now we move to cross examination. Mr. Barr, you may proceed.

MR. BARR: Thank you, Judge.

CROSS EXAMINATION

BY MR. BARR:

Q Ms. Alston, do you own a 2002 Mazda?

A At that time I did.

Q At what time is that now?

A Around 2008. I don't have it anymore.

Q And were you the registered owner of the vehicle?

A No, sir, I was not.

Q Who was the registered owner?

A Aundry Evans was.

Q And was that vehicle involved in a collision on or about the time ---
A Yes.
Q --- of Aundry's death?
A Yes, sir, it did.
Q And who was driving it at the time?
A I was.
Q Where did you have the collision?
A In Sampit.
MR. HIXSON: Your Honor, I'm going to object on relevance. I may need to approach.
THE COURT: All right.
MR. BARR: Your Honor, I'm going to, I'm going to get to, I mean, if I'm allowed, two or three more questions, an issue regarding credibility.
THE COURT: All right, let me, let me - I'm going to overrule your objection at this time, but please move to the point, counsel.
BY MR. BARR:
Q Did you file an insurance claim concerning the ---
A Yes, yes, sir, I did.
Q And whose name did you file it in?
A Aundry Evans.
Q Did you file it after Aundry's death?
A Yes, sir, I did.

Q But you filed it in his name?
A Yes, sir.
Q When you filed it in his name after he had died did you lie to the insurance company?
A By saying what to the insurance company?
Q You said you filed the claim after he had died?
A Yes, sir.
Q And you filed it in his name?
A Yes, sir.
Q Well, he didn't file it because he was already dead. So you filed it after he died in his name. Were you lying when you filed it?
A Well, the vehicle was my vehicle, but it was registered under Dre's name and I was down as a driver of the vehicle. So, yes, I did call the insurance claim in.
Q And you called it in his name?
A Yes, sir, because the insurance was - he was the main person on the insurance.
Q Did you have somebody else call the insurance company and tell them Aundry was still alive?
A No, sir, I did not. I called in the claim.
Q All right, you said that you and Aundry were, you referred to him as your fiancé?
A Yes, sir.
Q And that he was living with you?

A Yes, sir.
Q Who is Jerliether Jones? Do you know her?
A No, I don't - I probably know her nickname if ---
Q Aundry was married at one time; is that correct?
A Yes, sir, he was.
Q And what was his wife's name?
A Itika Brown.
Q And they had children?
A Yes, sir, two.
Q And you and Aundry have children?
A Yes, sir.
Q Do you know of any other children he had?
A No, sir.
Q You indicated that he got interested in the club.
A Yes, sir.
Q And decided that that was a means by which he could make some money and do an investment?
A Yes, sir, and a restaurant.
Q Now, prior to getting involved in the club what kind of work was Aundry doing?
A He used to work at ARS in Charleston County as an electrician.
Q And when was he working in Charleston County as an electrician?
A That was 2004, 2005.

Q Now, after 2005 what kind of work was he doing?
A He was still doing a little bit of electrician work here and there, and he also he had purchased a box truck and he was selling seafood, shrimp.
Q And you don't know of any other kind of activities that Aundry was involved in that generated money for him, do you?
A Yes, sir.
Q Tell us about it.
A Well, he used to, he used to hustle.
Q He used to hustle?
A Yes, sir.
Q In fact, his hustling got him in trouble because he had some people that were looking for him and they intended to do him in, didn't they?
MR. HIXSON: Your Honor, object to that, Your Honor. There's absolutely no foundation of any kind of for that.
THE COURT: Sustained as to foundation, counsel.
MR. BARR: Well, I'll rephrase the question.
BY MR. BARR:
Q You said he used to hustle. What do you mean he used to hustle?
A He used to sell drugs.
Q Sell drugs, and was he selling drugs when he was living in the house with you and your two children?
A He never brought it there.

Q Never brought it there, now, you acknowledge that he used to sell the drugs. How is that he used to get the drugs? Do you know?
A No, sir, I don't.
MR. HIXSON: Once again, Your Honor, that's - there's no foundation for any of this kind of stuff in the record ---
THE COURT: Sustained.
MR. HIXSON: --- anything.
THE COURT: I'm going to sustain. The witness has answered she has no knowledge of that area.
MR. BARR: All right, sir.
BY MR. BARR:
Q Tell me about this, this club that you say that Aundry created for himself. Now, the truth is the club was originally owned by Aundry's brother; was it not?
A No, sir, it wasn't.
Q Do you deny that Aundry's brother had warrants for him and he had to switch the name of the club over to your name?
A No, sir.
Q Do you deny that?
A I was not aware of that.
Q You were not conceived as an original partner in this club business, were you?
A Well, me and Aundry went together to draw the lease up and we signed the lease and the lease was in my name.

Q Do you have a written lease?
A A written lease?
Q Yes, ma'am.
A I don't have it, I don't have it on me. I have one at home.
Q And, and who was the landlord on the lease?
A I can't remember the guy's name. It was a - his, his first name is Terry. He was the guy that we met and we signed the lease with.
Q Was it Terry Gamble?
A Yes, sir.
Q Now, Terry Gamble was not the owner of that property. You saw Terry Gamble in this courtroom yesterday; did you not?
A I didn't, I didn't catch him.
Q You didn't see him sitting right back here?
A No, sir, I did not.
Q Did you know the nature of the relationship, business relationship that Mr. Evans and Terron Dizzley have?
A I thought that it was just homeboys, friends.
Q Have you ever sat down and listened to them discuss the club?
A No, sir, I have not. Aundry did come to me and said that Gerhard wanted to become partners in the club and I asked him if he sure that was a good idea and I told him that my name was on it and I felt that it was just me and him.

Q Now, what is the brother's name?
A Aundry's brother?
Q Yes, ma'am.
A Nicholas.
Q And what's his last name?
A Evans.
Q Nicholas Evans had no part in the business?
A No, sir.
Q And you never at any time have any meeting with Aundry and Terron Dizzley where they counted money or counted receipts or anything regarding the building?
A Not to my knowledge, no, sir.
Q How many times would you say you've actually had a discussion in person with Terron Dizzley?
A I met him once. Dre told me that he wanted - well, me and him personally, that D wanted to have a party at the club and I met him to get a money order.
Q And the - when you met him did you have an occasion to call his name?
A I can't remember. I don't believe I did. All I did was did what Dre asked me to do.
Q Where did you meet him?
A I can't remember.
Q Well, then, were there other occasion where you met him personally?

A I - me and Dre and the kids were at Orangeburg at the park and he came to the park and I went along with the kids and him and Dre went off together.
Q Did you have an occasion to call his name there?
A I said, "Hey, D, how you doing?"
Q Now, "Hey, D, how you doing?"
A Uh-huh.
Q Did you ever have an occasion to call him Little D?
A Yeah, I did.
Q When did you do that?
A Was around that same time because his son, Aundry's son asked him, "Dad, who is that? It look like a little boy," and he said, "No, son, that's Little D," and ---
Q So, now, where were you then?
A I was right there before we walked off to go to - for the kids to play.
Q That was in Orangeburg?
A Yes, sir, that was in Orangeburg.
Q And you referred to him as Little D?
A Well, when we walked off his son asked him, asked me, "What his name is again, Omi?" I said, "His name is Little D."
Q Now, you had never heard Aundry refer to Terron Dizzley as Little D, have you?
A Yes, sir.

Q You heard him refer to him as D and Little D?
A I heard him D, Dez, Gerhard, Little D.
Q You heard him refer to him by four different names?
A Uh-huh.
REPORTER: Is that a yes?
A Yes, ma'am.
Q Now, in November when you called or you did the 911 call and you called the law enforcement officer, as I understand it Mr. Evans was not present at the club?
A He was not.
Q And Terron Dizzley was at the club?
A Yes, sir, he was.
Q When you arrived at the club was Mr. Dizzley there when you arrived?
A No, he wasn't.
Q He came after you?
A Yes, sir.
Q Now, when he came to the club did he come directly to you and have a conversation with you?
A He went to the door, pulled it, then he came to my window to my car. I downed the window for him, cracked the window for him.
Q What if anything did he say to you?
A What he said to me?
Q Yes, ma'am.

A At that time I was on the phone with Aundry. He said, "Tell your pussy ass nigger to come out here and deal with me himself and don't send his woman."
Q Now, he didn't say anything to you about going in the club?
A He didn't say it to me.
Q Was there anybody else that he spoke to?
A No, sir.
Q Did I hear you say earlier that he asked about a TV?
A He told the officer, once they came, he told the officer that he wanted, that he wanted his TV from out of the club. The officer came to me and told me what he said.
Q So as I understand it you actually saw Mr. Evans and Mr. Dizzley together on at least three occasions?
A Yes, sir.
Q Do you think it could have been more than three times?
A It could have. That's the only time I - well, the only time I've seen him, but I know they've been together because there's plenty of times that Aundry called him and D was together.
Q They were together pretty often?
A Yes, sir.
Q And of course, the reason and the way that you know that they were together often was because you were there as well; is that correct?

A I wasn't there when Aundry, D and myself, when - if it was me and Aundry together and D came up I would walk off. I never sat with his company.
Q Tell me or tell the ladies and gentlemen of this jury whether if ever you ever heard Aundry and Terron Dizzley argue with each other.
A I have.
Q Where were you when you heard them arguing with each other?
A I was in the passenger side.
Q Where?
A Of the - of a vehicle.
Q What vehicle?
A The Mazda and Aundry was driving.
Q And when was this?
A I can't remember.
Q You can't remember. Do you ever remember any time that you heard the two of them arguing?
A If I could remember any time they argued?
Q Yes, ma'am.
A In person?
Q Yes, ma'am.
A No, sir.
Q So then you never heard them arguing?
A I did hear them argue.

Q Well, where were you when you hear them, you heard them arguing?
A Uh-huh.
Q Where were they?
A I don't know where he was. Me and Aundry was together in the car.
Q And what were they arguing about?
A I'm not sure what they were arguing about, but Dre was upset and he was like, "I'll deal with you later. I'll talk to you later," and he said some foul language, but I couldn't hear what D was saying, but ---
Q How do you know he was talking to D?
A Because when he got off the phone I asked him who that was. He said, "That was D."
Q So, now, you were interested in the conversation, you were interested enough in the conversation to find out who he was talking to, but you don't know what they were talking about?
A I don't, don't know what they were talking about. I was concerned because Aundry was upset.
Q So did you ask Aundry, "What are you upset with D about?"
A No, I didn't. I just said, "Whatever you're upset about you're taking your anger out on me, so could you please stop?"
Q So you were not concerned at all about whatever it was that Aundry and D were angry or arguing about?

A It's like with Aundry I've done that before and when he's upset I try my best not to egg on what he's upset about because I was uncomfortable. So as me and him grew together and I learned him I learned certain things that I didn't bother asking him.

Q Well, then, Ms. Alston, would it be fair to say that to the best of your knowledge you never one time even though you were familiar with Aundry and Terron Dizzley, you never one time heard them arguing about anything having to do with that nightclub?

MR. HIXSON: Arguing or that's all right, asked and answered. She's answered it twice now. She said she's heard two arguments at least and continue to ask and answered.

THE COURT: Overruled, counsel.

MR. BARR: Your Honor ---

THE COURT: I'm going to overrule. Go ahead.

MR. BARR: Thank you, sir.

THE COURT: Ma'am, did you hear the question or you need it again?

A Could you repeat it?

Q Is it true that not one time did you ever hear Aundry and Mr. Terron Dizzley arguing about anything having to do with that nightclub?

A I didn't hear them argue about the nightclub.

Q Thank you, ma'am. I have nothing further.

THE COURT: Now, when we have a presentation of a witness we have direct and then cross and if new issues are brought up on cross we go back on redirect to address the new issues. Is there redirect, counsel?

MR. HIXSON: No, Your Honor.

THE COURT: All right, then, ma'am, you may step down, and you're welcome to remain in the courtroom if you wish or you're welcome to leave if you wish. It's your choice. Thank you. Please call your next witness.

MR. HIXSON: The State would call Maurice Giles, please.

THE CLERK: Please come forward to take the oath of a witness.

Whereupon, Maurice Giles was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Please take a seat and state your full name for the record.

MR. GILES: Maurice Giles.

MR. HIXSON: May I approach, Your Honor?

THE COURT: You may.

MR. HIXSON: I apologize.

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

THE COURT: All right, ladies and gentlemen, from time to time there'll be a legal issue that will arise that I need

to take up outside of your presence, just like when the - when you're determining the facts we won't be back in the jury room with you, I'm going to ask you to step from the courtroom while we discuss an issue of law and please don't discuss the case, just enjoy this little extra break coming your way and we'll send for you as soon as we're done and we'll remain where we are while you depart the courtroom.

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

THE COURT: All right, let's - let me memorialize, madam court reporter, for the record what happened here was we called a witness, Mr. Hixson asked to step up to the bench, along with Defense counsel, Mr. Barr, told me that he would intend with this witness to bring in the statement made by the shooter when the statement burst, excuse me, when the shooter burst into the club. We had this hearing yesterday. I temporarily or preliminarily excluded it due to lack of foundation. One of the issues was a lack of animus that I had seen between the deceased and the Defendant. Now this witness, Ms. Alston, came in and testified clearly about an animus, in fact it appears that it, it was perhaps in the, based on her testimony, in the middle of or the throws of some sort of dispute between the Defendant and the deceased. Mr. Hixson, my first question to you is why didn't that come yesterday so I would have the benefit of that when we took up

this matter?

MR. HIXSON: I know it was my fault, Your Honor. I believe I wasn't clear relating to the - honestly that statement came in while we were talking about the excited utterances of the ID of the individual. So I was kind of referring to the, "Little D shot me," statements and I wasn't focused on when he came through the door and said that. I - honestly I didn't even give Your Honor, I anticipated that coming in as a statement of a party opponent similar to in an armed robbery situation when a masked gunman comes in an armed robbery and he slams a note to the counter, that note's admissible as a statement of the declarant, "Give me all your money," even though the ID is in question. All those are typically statements of party opponents or present state of mind, the statement of malice, and I honestly didn't foresee the conflict on the statement, Your Honor. I was more concerned about the identity of the shooters and I wasn't clear to the Court on what my intention was and I apologize.

THE COURT: All right, well, for whoever may be reviewing this record let me just state that one of the issues yesterday when you wanted to bring that statement in from a party opponent was clearly the identity of the shooter because this is an identification case. This is what the issue is in this case and I felt it unfair with the lack of animus and dispute between the deceased and the Defendant to pin that

statement on this Defendant potentially when there was no showing that there would be a basis or a reason for this shooter if he was the Defendant to make this statement. Now Ms. Alston has come in and testified about what appears to be, as I just said a moment ago, an ongoing dispute between the Defendant and the deceased, which in this Court's opinion, changes the lay of the testimony. Mr. Hixson has given me a valid reason for why we didn't hear this testimony yesterday.

Now, in response, Mr. Barr, let me hear from you on the issue and also let me hear from you on the issue of how this change in position here during the first day of trial may prejudice your Defendant in your opinion if it has or the presentation of your case. Go ahead, sir.

MR. BARR: Your Honor, first of all with respect to, to, to, to what you've described as a showing of animosity if, if, if - our position would be, if I recall correctly, the last thing, the very last thing this witness said was that she has not witnessed one time where there was any argument between Mr. Dizzley and Mr. Evans. Now, I thought that was her testimony. So as far as the animosity perspective our position would just simply be that based on this witness's testimony first as it relates to the issue at hand and that is concerning the nightclub, the Prosecution's theory is that and in the Solicitor's opening statement he talked about a partnership having gone bad, which is really the State's

theory as it relates to the motive in this case. So her testimony is that she, she, she was not aware and had not personally heard any argument between the two regarding the nightclub.

Now, Your Honor, as it relates to prejudice what actually happens is there's no question that this case is an identification case and to attribute the statement from an evidentiary standpoint, that is to allow it to come into evidence as a statement having been made by Mr. Dizzley, Your Honor, I just - I don't, I don't see how we could do that and clearly when he and his defense is that he was not the person. Now, what would happen is, aside from being denied the right to confront the accuser, which would in this case be the statement, he would almost be forced to give up his right not to incriminate himself or not to take the witness stand and the burden would then actually shift upon him to disprove that he made the statement. So, Your Honor, again I would reiterate that as far as the admissibility of the statement clearly I don't, I don't, I don't think the statement coming from whoever it came from is admissible under the circumstances.

THE COURT: All right, and let me say, Mr. Barr, and to Mr. Hixson, and all the others in the courtroom, the Court just tries to be fair to constantly be aware of the checks and balances that occur within evidence in this case, and Mr.

Barr, I gave you some substantial leeway a moment ago with Ms. Alston when you asked about and raised the specter of whether or not the deceased may have been involved in the drug business, whether there may be - have been some dispute with someone who would be a supplier, perhaps a middle man in the drug business, and so you have raised an issue here that would, would point to others unknown at this point who may have some reason to have a dispute with the deceased. However, Mr. Hixson put forth in Ms. Alston's testimony a specific reason for which there may be some dispute between the Defendant and the deceased and while you say that her last statement in testimony was that she never heard them have an argument about the club, well, first of all, that's a factual issue ultimately for the jury to determine, that issue nevertheless raised that they did have disputes, not certain of what the genesis of that dispute may be, but it apparently rose to the level of argumentation and foul language between the two, also it appears that there is some proximity to the time of this dispute and the death of Mr. Evans. So for all of these reasons the Court is going to alter the position it took yesterday. Yesterday I said when the shooter burst in the door it could not come in under res gestae because there was no excited utterance, excuse me, there was no startling event at that moment. The shooter, of course, created that event, but this preceded the event, but 803(3) says that a

statement of a declarant and whether that declarant is available is immaterial. The Court also believes that whether the identity of that declarant is known is also immaterial, says that in a statement of a declarant's then existing state of mind, emotion and then it skips, has one or two more words, then it says, (such as intent, plan, motive, design or mental feeling), every one of those would apply in this outburst if you will that would have come from the gentleman who burst into the door of the club. So I find clearly now that I have the foundational evidence that 803(3), 803, subsection 3 applies here and the Court is going to permit that evidence to come in. Now, we're ready to bring the jury in?

MR. BARR: Judge, just, I just want to make sure that the record clearly reflects that our position as it relates to - even if you find that it's relevant and probative that we would object to it under, under Rule 403.

THE COURT: All right, sir, and, and that's where I began my comments, Mr. Barr.

MR. BARR: Yes, sir, all right, Judge, I just want to make sure the record is clear.

THE COURT: Very good, it does, and I appreciate you giving me the opportunity to speak to it ---

MR. BARR: Yes, sir.

THE COURT: --- because you have pointed out there are other individuals who may have some dispute with Mr. Evans for

whatever reason and thus I believe the prejudice to you is lessened by the fact that you were given the opportunity to explore the illicit business endeavors of the deceased and raise that issue and that's, this, in my opinion, lessens the prejudice to the Defendant because the jury may determine this is an issue with some unknown individual who's out there in the community perhaps engaged in an illicit business relationship with the deceased. For these reasons the Court is going to permit that evidence to come in because I find the prejudice is reduced by that.

MR. HIXSON: I have just briefly one issue relating to - I was going to make an objection along those lines relating to third-party guilt, the admissibility of, some of those comments aren't admissible under theory of third-party guilt unless they're specifically allocated to a Defendant. I just want to make the Court aware of that of a future objection or along those lines and we'll see when we get there, but I don't know how else to couch that.

THE COURT: Well, we'll see, we'll see how it evolves, but of course once it comes in the record, you know, almost all evidence carries with it a carrot to help you and a stick not to, to, to, to injure the position and thus we'll have to see how that evolves. I cannot limit at this point ---

MR. BARR: Yes, sir, and Judge ---

THE COURT: --- what Mr. Barr does with it.

MR. BARR: --- Judge, of course, and I think the Solicitor concede that, that there is, with respect to an overview of this case, there is - there are witnesses who have - who've, who've actually gone a whole lot further in that theory as it relates to third-party involvement than, than, than, than in my reference to this witness today.

THE COURT: All right, well, we'll just simply wait and see how the evidence evolves in this case as it proceeds.

All right, now, with that understanding and thank you for your patience with us while we had that discussion. Please bring in the jury.

(Whereupon, the following takes places in the presence of the jury.)

THE COURT: All right, ladies and gentlemen, thank you for your understanding. We have resolved the issue that was before us. We were in direct examination or getting ready to start direct examination, and Mr. Hixson, you may proceed with Mr. Giles.

MR. HIXSON: Thank you, Your Honor.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good morning, sir, how are you?

A Good morning.

Q Make sure you speak into that microphone nice and loud.

So tell us about yourself, what you do for a living?
A Run nightclubs.
Q Okay, and how long you been around Georgetown County?
A Practically all my life, besides the time I went in the military.
Q Okay, did you serve in the military?
A Yes, sir.
Q And what branch?
A Army.
Q Okay, when'd you get out?
A 2001.
Q Okay, and so were you around Georgetown County around the fall of 2008?
A Yes, sir.
Q Okay, and did at some point in time did you come to know a man named Aundry Evans?
A Yes, sir.
Q Tell us about that.
A I met Aundry probably about a month before he got shot and I just knew him because I ran the club that he got shot in prior to that.
Q Okay.
A And I sold him the furniture that was inside the club and ever since then we just became friends.
Q So let's go back to around October to November of 2008.

You talked about your involvement with selling - were you partners with Aundry Evans?
A No, sir.
Q Well, tell us about your relationship then. Did you, did you help him with the club?
A Yes, sir, he called me up maybe two weeks after that and was asking me to help him bring people into the club because business wasn't doing too well and he knew since I ran the club before that he wanted me to help promote the club for him.
Q Okay, and what does, promoting what does that mean? What do you? What do you do to promote?
A Actually I go out and basically you get people to have parties and bring them in for the business can actually make more money.
Q Okay, so everything looked - were you aware of any problems leading up to December of 2008?
A No, sir.
Q Okay, well, tell us about December of 2008, December 1st specifically. Tell us about that day.
A Well, December the 1st that was Monday night, Monday night football was on. I had just left the gym and I decided to go out there to the Paradise Club or whatever with Aundry and the rest of the fellows that was inside the club and we were just shooting pool and watching the football game.

Q Okay, did anything - do you recall roughly how many people you think were in the club at that time earlier in the evening?
A During that time probably about 13, 14 people.
Q Okay, anything interesting happen that night?
A Yes, about 11:30 a gunman came through the door waving a handgun, came in, ran past me and started shooting Aundry.
Q Okay, let's take that in a little more detail, okay? Do you recall what the individual that came through the door what he was wearing?
A His face was covered, actually he had more like a scarf or a shirt over his, the bottom part of his face or whatever and had, I mean, had a skully cap or something on. So his face was covered.
Q Okay, what was your reaction when you first saw or take us through what your reaction was.
A Well, when I first saw the gunman coming through the door my first reaction was I thought it was someone playing because I mean in that area we don't usually have nobody come in or intruding like that waving a handgun. So actually I thought it was someone actually playing with the gun until I saw them go over there and start shooting Aundry.
Q Okay, describe what the fellow looked like to you, and you know, how he was acting.
A Short guy about five foot five and the reason I say that

is because I'm five foot seven. So the guy is, I know was shorter than me and it was a black male.
Q Okay, what was his demeanor like?
A As in?
Q I mean, how was he acting? When he - you know, you say he opens the door, comes in ---
A Excited, he was more excited, you know, adrenaline pumping.
Q Okay, and how do you - and why do you say that? Help the jury understand why you say excited.
A The reason I say that because the gunman came through the door was more, when he was running he was like bouncing in, just waving the gun.
Q Okay, did he - what direction did he go when he went right in the club? Who did he go towards when he came into the club?
A When he came in the club and went straight to Aundry.
Q Okay, let me show you a couple of pictures, okay?
MR. HIXSON: These are all into evidence, Your Honor, I believe, and I'm referring to State's Exhibit One through Six or, excuse me, One through Seven.
BY MR. HIXSON:
Q Let me show you State's One, it's slide number one. It'll come up here on the screen, and if you can describe that photograph to the jury.

A That's the front end of the Paradise Club.
Q Okay, and then how about State's Two, which is slide number two?
A That's the side door to which the gunman entered.
Q Okay, so, if you're staring at that photograph describe which direction you go with that door's open ---
A You go ---
Q --- where you were.
A You go straight in, then you would have to make a right and straight down is where I was standing.
Q Okay, let me show you State's Exhibit Number Three.
A That's the bar soon as you open the door.
Q Okay, from - to orient the photograph, where the guy, whoever took that photograph, describe where they would be standing in relation to the rest of the club.
A He was standing straight in that door. The door that you open he was standing straight in the door. Your - the bar's right in front and to your right would actually be the pool tables.
Q Okay, is that the door the gunman entered?
A Yes, sir.
Q Okay, let me show you what's been marked State's Exhibit Number Four. That's already in evidence, Your Honor, and see if you - describe that photograph, what the jury's looking at.
A Once you step through the door and you make that right

turn that's what you see in the rest of the club, that's exactly where the pool tables are.

Q Okay, what area in the club was it when you first saw the shooter in relation to that photograph?

A Actually, in relationship, in relations to this photograph I saw him right in between the two booths.

Q Okay, were - the booths are the wooden colored things, the wooden, wood-grain things in the photograph?

A Yes.

Q Okay, where - let me show you State's Exhibit, slide number five, see if you recognize that, Mr. Giles.

A Yes.

Q Describe - obviously we're - describe that to the jury, where everyone was standing, where Aundry was standing and where you were standing, things like that.

A Okay, the first pool table over to your right, I was standing by that pool table. Aundry was standing by the second pool table where that black pole is located at right there.

Q Okay, and how far do you think that is from the door to the pool table, how or let me put it this way, how much time do you think it would take for someone to enter that door to get to the corner of that pool table?

A No time, actually blink an eye.

Q Okay, let me show you State's Exhibit Six, that's slide

number six, see if you recognize that.
A Yep, that's the pool table that Aundry was standing by.
Q Okay, and where were you in relation to that?
A I was over to the pool table to the right side.
Q Okay, now, when the shooter came in the door and you indicated earlier that he had walked straight to Aundry did he say something to Aundry on the way into the club?
A On the way into the club the shooter came and said, and said that he thought it was over.
Q Okay, and who was that comment directed to?
A Aundry.
Q Okay, then what happened after he said that?
A After that that's when the guns, the gun started going off and he shot Aundry and then when Aundry fell to the ground and then I realized what was going on, I jumped under the pool table.
Q Okay, let me show you what's been marked State's Exhibit Seven. That's slide, slide seven. What is that? Describe that.
A That's the blood from Aundry that was on the floor.
Q Okay, while Aundry Evans was lying there what were you doing?
A Applying pressure to the areas that got shot, that he got shot at.
Q Okay, so, Mr. Giles, tell me what transpired after. How

many shots do you think were fired, what you could recall?
A Probably about four or five.
Q Okay, what happened - what did the shooter do after the shots were fired?
A After the shots were fired two other guys ran into the open area of the club. The shooter stepped just slightly in the doorway of the club going into the bigger part of the club and let a round off and then after that he turned around and exit the club out the same door that he came in.
Q Okay, now, you mentioned other guys. Who were the other guys you're talking about?
A The other guy one was J. Russell Brown and the other guy was - I'm not sure exactly his name.
Q And were they customers of the club?
A They were customers at the club.
Q Okay, let's go back to State's Exhibit Six and that's a photograph, Your Honor, in evidence. That's slide six and describe that last little bit, the orientation of the photograph and the doors and such, what, what are we referring to?
A That door right there to the left side, the left-hand side, that, that goes into the bigger part of the club and what the gunman did after Aundry fell to the ground, some guys were over here by the, by the bar and they figured that the gunman since he was standing right there probably saw them or

whatever and they dashed out and ran out that door into the open area. So the gunman went in pursuit right behind them, stood in the doorway and let a gun - let a shot off.

Q And after those shots were fired what did the shooter do?

A He ran back out the club through the same door that he came in.

Q Did he say anything on the way out the door?

A No, sir.

Q Okay, about how long do you think that whole incident transpired, how long did it take for that whole thing to happen what you just said, from the door opening to him going out the door?

A It was, it was very quick, but it felt like a long time just sitting there, but it, it happened really quick.

Q Once Aundry was shot what did you do?

A Got up off the floor, went over there to his aid.

Q Okay, and how did you try to help him?

A By holding pressure to the areas that he got shot to stop him from bleeding.

Q Okay, what was the, what was the environment and everything in the bar at the time? Obviously, you know, it's kind of a simple question I guess, but you know, what was inside that sports bar like at the time the shots were fired?

A Stressful, everybody was confused. I mean, no one knew exactly what was going on.

Q Okay, how was Aundry doing?
A At the time he wasn't doing well at all. Like I said, he was on the floor or whatever. He was bleeding, but he just, he knew exactly what happened. He knew he was shot and stuff, so.
Q Did he tell you anything?
A Yes.
Q What did he say?
MR. BARR: Objection, Your Honor.
THE COURT: All right, I'm going to overrule the objection. Ladies and gentlemen, I will tell you that one of the exceptions to the hearsay rule is that if something is said under what's called the excited utterance exception which is a startling event and a comment or statement made while under the stress of a startling event or condition, the Court's going to overrule the objection. You may ask the question again, please.
MR. HIXSON: Thank you, Your Honor.
BY MR. HIXSON:
Q While you're on the floor tending to Aundry, did he say anything to you?
A Yes, sir.
Q And what did he say to you?
A He said, "I can't believe Little D shot me. That's Little D."

Q Did he tell you how he knew it was Little D?
A He say he knew it was Little D from his voice.
Q Okay, do you know Little D?
A No, sir.
Q Had you seen Terron Dizzley prior to that?
A No, sir.
Q Had you seen him after that?
A No, sir.
Q Okay, did you know who Aundry was referring to when he made that statement to you? I mean, did you know a person named Little D existed?
A Well, that just from him talking he said, you know, he had somebody named Little D was his partner, but I never met him.
Q Okay, do you recall if anybody else was around assisting Aundry during that period of time?
A A couple of guys. I can't remember exactly who I told to go outside and call 911, but whoever was passing me the towel.
Q Okay, did all 13 folks or whatever you referred to approximately hang around the club or did folks take off or what?
A Folks took off.
Q How long did you spend, how much time did you spend with Aundry Evans there on the floor prior to help arriving?
A Until the ambulance came.

Q About how long do you think that was?
A Probably about 25 minutes.
Q Okay, what was his condition during that time that you were with him until, until you last saw him or until you saw him get in the ambulance?
A He was all right. He was fine, I mean, besides being shot. I mean, he was up and talking.
Q Okay, ultimately did he - ambulance arrive and help arrive?
A Yes.
Q Okay, when's the last time that you saw Aundry Evans?
A When the ambulance picked him up off the floor.
Q Okay.
MR. HIXSON: Beg the Court's indulgence for a moment.
THE COURT: Yes, sir.
BY MR. HIXSON:
Q Let me clarify something, I guess there's - when that, when the shooter came in the, came in the door before, when he saw Aundry could you say what, what did he say?
A He said, "You thought it was over."
Q Could you say that? "You thought it was over," is that what?
A Yeah.
Q Okay.
MR. HIXSON: I have no further questions for this

witness, Your Honor.

THE COURT: And now cross examination.

CROSS EXAMINATION

BY MR. BARR:

Q You said he said, "You, you thought it was over." Now, you don't know what he was referring to, the shooter that is?

A No, I didn't know what he was referring to.

Q And at the time that, that you ran over or went over to assist Aundry after he was shot, was there any other person attempting to assist him?

A No, I know I was there.

Q Pardon me?

A I was on the - I said I know I was there. I was on the floor with him.

Q So then you were the first person that made physical contact with Aundry after he was shot?

A Yes, sir.

Q And you, you, you indicated that, that Aundry said that, "I don't believe that Little D shot me."

A No, he said, "I couldn't believe Little D shot me."

Q "Couldn't believe that he shot me?"

A "That's Little D."

Q Now, at the time that he made that statement, was there anybody else standing anywhere near where you and Aundry were at the time?

A Yeah, people was standing around, but like I was told - like I was telling you I was on the floor tending to Aundry.
Q Now, you, you've talked about this incident with a number of people before, haven't you?
A No, not really.
Q Well, you gave the - you talked to it with the law enforcement, didn't you?
A Yeah, I talked to the law enforcement.
Q And you've never discussed it with anybody else that was out at the club the night that this incident took place?
A No, because a lot of people didn't want to be involved with it.
Q Didn't want to be involved, a lot of people didn't want to be involved. You don't - do you know why?
A No, I don't, maybe it's because they're scared of the law enforcement. I'm not sure.
Q Maybe because they're scared of law enforcement?
A Yes.
Q Did you see anybody else with guns other than the shooter that you've described?
A No, sir.
Q You saw nobody else?
A Nobody else.
Q You didn't go outside?
A No, sir.

Q But now you said as the shooter left the shooter let off another round or at least one other gunfire at somebody or ---
A Yes, sir, yes, he did.
Q Who did he shoot at?
A J. Russell Brown.
Q Who?
A J. Russell Brown.
Q J. Russell Brown?
A Yes.
Q Now, who's J. Russell Brown?
A He's a guy that was inside the club that night. He's right there from the community.
Q Right there from the community.
A Yes.
Q And he took a shot at J. Russell Brown? That's your testimony?
A Yes.
Q Now, this armed or this armed shooter that came into the club, in terms of how he looked to you, you said he was about, about, about five feet five inches tall. That's what you said, right?
A Yes, sir.
Q And I don't think you mentioned anything about his weight. What - how, how - what kind of stature was he?
A Small guy, probably, probably about 165, 75 pounds.

Q About 165 or 175 pounds. You said he was bouncing around when he came inside?
A Yes.
Q But he had on a mask?
A His face was covered.
Q Could you see - was his hand covered as well?
A I'm not sure, but I kept my eyes on the gun.
Q Well, he had the gun in his hand, right?
A Yes.
Q But you didn't see his hands?
A Not sure if his hand was covered or not.
Q You, you did talk, you did talk with law enforcement and you gave them a statement, didn't you?
A Yes, I did.
Q And do you recollect whether you told them that you had seen his hands?
A No, I never told them that.
Q And so you don't, you don't know what color his skin was?
A Yeah, I could tell you what color his skin was from the mere fact he didn't have nothing covering his eyes. He was a black male.
Q Well, when I say skin, was he either - black folks, some of them are different complexion, some light, dark, very dark. Can - did you get - did you get an idea of, of - or about what his complexion was?

A Well, I could and I could tell you this it's probably was about my complexion, but also in the nightclub it's a little darker, too. The light plays a situation, but I mean, he, he was my complexion. I could tell clearly.
Q Your complexion?
A Yes.
Q You think you darker or lighter than Terron Dizzley?
A We probably about fair.
Q Pardon me?
A I say we probably about fair.
Q You think you all are about the same thing?
A Yeah.
Q But the person that you saw, you saw the skin and it was about your complexion?
A Yes.
Q Now, you said that the individual only said one thing when he came in the club, "You thought this was over." That is what you said earlier?
A Yes.
Q And I noted after you saw Mr. Evans shot and he was a friend of yours, wasn't he?
A I just met him. We became friends.
Q Well, you were helping him promote the club?
A Yes.
Q Did you know him before he got the club?

A No, sir.
Q Now, as far as you knew, he was the owner of the club?
A No, sir.
Q Who was the owner?
A Naomi, his girlfriend. I knew he was running the club.
Q But Naomi was the owner?
A Yes.
Q And do you know how long she had been the owner of the club?
A I'm not sure. Like I said, he just got the nightclub. So it wasn't that long.
Q Do you know if his brother was ever involved with the club?
A I'm not sure.
Q You never had any discussion with his brother talking about promoting the club, you never had talked any business with the brother?
A No.
Q The only person you ever spoke to was Mr. Evans?
A Yes.
Q Now, when you saw - and you did see when he was shot?
A Yes.
Q You saw the man fire the gun at him?
A Yes, sir.
Q And it, it probably frightened you?

A Yes, sir.
Q And in fact it probably frightened you so much as you said you were looking for some cover?
A I did.
Q And you took cover?
A Took cover after I realized what was going on.
Q And when you came out from under the cover the shooter, whoever he was, had already left?
A Yes.
Q So then you had an opportunity to talk with Mr. Evans?
A Yes.
Q Whatever the circumstances was that created a circumstance of fear you, you obviously thought that it was over then, you could come out and talk to him?
A Yes.
Q Now, you heard the gunman said, "You thought it was over." Were you concerned about what it was that the gunman was referring to that wasn't over?
A No, because at the time I, I didn't realize what was going on.
Q You wasn't - you didn't ask Aundry, "What in the world does that man mean," you thought it was - you didn't ask him that?
A No, I didn't have to ask him that. The man is on the ground bleeding.

Q Pardon me?
A He's on the ground bleeding. I don't have to ask him that. I'm there to aid him. I'm not particular what the, what caused the situation.
Q So you were not at least concerned about why some, some bandit or shooter that was disguised in - you did say black ---
A Yes.
Q --- would run into the club and just start shooting people and in particular just come and start shooting Aundry. You, you weren't concerned, you did - you were not curious about that?
A At the time that's not a factor. The factor was the guy was on the ground bleeding. I was there to help him.
Q So you didn't ask him anything about ---
A No, sir.
Q Now, you said that he made some statements to you, is that correct?
A Yes, sir.
Q And it's your testimony that those statements were made to you voluntarily?
A Yes.
Q Not in response to any questions that you asked him but ---
A No, I didn't ask him any questions.

Q And when you - as you were rendering aid there came a time when somebody else came along and start assisting you, is that right?
A Yes.
Q And who was that?
A I'm not sure, whoever passed me the towel.
Q Pardon me?
A Whoever passed me the towel. I'm not sure.
Q These are the towels that you were trying to use to compact the wound?
A Yes.
MR. BARR: The Court's indulgence for just a second, Your Honor.
BY MR. BARR:
Q You said that you did have a conversation with the, with law enforcement concerning this incident and telling them what you saw and what you heard?
A Yes, sir.
Q And I'm going to show you a statement, looks like it may have been given by you. Take a look at that and tell me whether you recognize it.
A Yeah, this is one of the statements I gave. I gave about ten of them because they all called me in about ten times.
Q You gave about ten of them?
A And all of them are the same.

MR. HIXSON: Your Honor, I object. I'm happy to have in the statement. We need a foundation on why the witness is reading from the statement, but ---

MR. BARR: Well, I, Judge ---

MR. HIXSON: --- the foundation.

MR. BARR: --- I'm, I'm going to impeach him and I wanted him to see the statement before.

THE COURT: Well, I'm going to sustain the objection. If you have a reason to impeach him or a question for which to impeach him please proceed into that, which would lay the foundation and then review the statement if that's appropriate.

BY MR. BARR:

Q When you gave your statement on the 2nd of December, do you have a recollection as to whether or not you mentioned anything to the police about the gunman coming in and saying anything?

A No.

Q You didn't mention that?

A No.

Q Now, when you gave this statement on December 2nd that was the day after the shooting?

A No, it was a couple of hours after the shooting.

Q A couple of hours after the shooting?

A Yes.

Q And the shooting, I would assume, would have been fresh in your mind?
A Well, not - I mean, it was fresh in my mind, but at the same time, yeah, I'm still startled on what happened, the events that happened.
Q Well, now, is it fresher or is it better in your mind that you could recall it better today or December 2nd?
A I mean both.
Q Both, but you don't deny that when you gave that statement on the 2nd you didn't mention anything about the shooter saying anything, did you?
A That was my first initial statement. You probably see another statement that I had in there. After lying down for a while and thinking about what happened I made those comments in the next statement.
Q Did you discuss what you may or may not have seen with anybody else before you gave a statement?
A No, sir.
Q Now, you don't deny that according to you and you said in here today that that's how Mr. Evans knew it was Mr. Dizzley that shot him because he heard his voice?
A Yes.
Q That's what you said?
A Yes.
Q So, now, if you were telling the police that Mr. Evans

knew who shot him and the person that shot him was Mr. Dizzley then you would agree that it would have been important to tell him how he would have heard his voice. That would have been important, wouldn't you think so?

A Yes, sir.

Q But you left it out?

A That was the first statement that I gave early that morning, maybe three or four hours after the shooting. Right then after the shooting I'm startled, I didn't remember everything exactly that happened right then, but after calming down and replaying on what happened in my mind that same night that's what happened, that's what was said.

Q The same night you said? You gave another statement December 2nd that same night. Tell me whether or not that's your statement. That is your statement?

A Yes, sir.

Q Now, you don't deny that in that same statement in that same night you said not one word about anybody coming in saying that you thought it was over. You didn't say that, did you?

A No, sir, if you look at the statement it was just a statement on the event of what happened and in that statement I told you what happened from the time the gunman came in the door with the gun till the time I went under the pool table. After that that's where the statement stops.

Q Now, you, you, you were asked by law enforcement to give a statement, an accurate statement recalling what you had observed and you clearly gave at least two statements that, that night.
A Well, actually they didn't tell me give a accurate statement. They told me, "Tell what happened because we know you was frightened and we know you probably won't get everything in the same statement at one time." I probably could have write you a book on that, what happened that night, but at the same time I just summed it up.
Q Tell the ladies and gentlemen when you finally remembered after you gave the two statements that night wherein you never mentioned anything about the gunman saying something, when did you finally remember that the gunman said something?
A Probably about a day or two afterwards, after, after settling down and going over the events in my mind of what happened that night.
Q And then you called the police and tell them, "Look, I made a mistake. I didn't include something."
A No, I didn't make a mistake.
Q Well, they did ask you to write down what was important, did they not?
A No, they just told me give, write down example of what happened and like sum it up. That's all a quick summary.
Q So you didn't consider, at the time that you were

writing, you didn't consider that it should have been important that you write an accurate statement?

A At the time I wasn't thinking about what nobody was saying. I told you what happened in the, in the event.

Q Are you sure, Mr. Giles, absolutely certain that Mr. Evans told you that he heard the voice of the shooter and he knew the voice was the voice of Little D, you sure he told you that?

A That's exactly what he said.

Q But your explanation is because you were shaken up ---

A Yes.

Q --- you couldn't remember to write it down and give it to the police?

A Yes.

Q All right, but, but you also never, ever called them and said, "Look, I've got something very important that I left out and I need to give you another statement"?

A I didn't have to call them. They called me.

Q To get another statement?

A Yes.

Q Thank you, sir. I have nothing further.

THE COURT: Is there redirect?

MR. HIXSON: Yes, Your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. HIXSON:

Q Just relating to this, this statement things, do you recall meeting with Investigator Melvin, Mike Nelson from the Georgetown County Sheriff's Office on December 2nd about four o'clock in the morning?

A Yeah, that was four o'clock in the morning, that was like four or five hours after the shooting.

Q Okay, and at that time did you give Officer Nelson a written statement?

A Yes.

Q Okay, and in that did you describe a description of the, of the shooter and what you saw happen?

A Yes.

Q Did you also give another written statement slightly after midnight to the Georgetown County Sheriff's Department?

A Yes.

Q And was that statement - did you describe the same events in that statement?

A Yes.

Q And then sometimes around four o'clock on December 2nd do you recall meeting with Melvin Garrett from the Georgetown County Sheriff's Department?

A Again, yes.

Q Okay, and at that time did you do a - give him an oral statement?

A Yes.
Q And do you recall the substance of that oral statement? Did you talk about the events of the day?
A That's the oral statement where he went into detail in the - trying to figure out everything that was going on.
Q And in that statement did you mention what Little D, what Aundry Evans said to you?
A Yes.
Q That Little D did it?
A Yes.
Q And that was - beg the Court's indulgence - on December 2nd of 2008, is that correct?
A Yes.
MR. HIXSON: I have no further questions, Your Honor.
THE COURT: All right, sir, you may step down and you're welcome to remain in the courtroom now that you've testified or you're welcome to leave if you wish.
A Okay.
THE COURT: Have a good day, sir.
MR. BARR: Your Honor, I - can I, can I get one more question?
THE COURT: All right, before you step away, now, what would be the new issue brought up on redirect that would permit you to go back to this witness?
MR. BARR: Well, Judge, the date of the statement

that I have is December 2nd, 2008, and he just said that he changed his mind, he gave them a different statement and ---

THE COURT: Well, we'll let you - if you don't mind, sir.

A That's fine.

THE COURT: I know you thought you had been released, but hold on just one moment.

A Yeah, that's fine.

THE COURT: We'll take that issue up. Go ahead, Mr. Barr.

RECROSS EXAMINATION

BY MR. BARR:

Q Now, this is your December 2nd, 2008, statement, is it not?

MR. HIXSON: Your Honor, I object. Just the - I'd be happy to have him admit it into evidence so we could talk about this thing instead of tiptoeing around it.

MR. BARR: Well, Judge, I don't ---

MR. HIXSON: If he wants to show it to the witness, he lays the, lay a foundation and we'll admit it so the jury can read it, and that's great.

THE COURT: Well, before we do that, for - the witness may or may not, for whatever reason counsel may not wish to submit it into evidence. If you wish to question the witness and you believe that there is something new brought up just

ask your question first and then if the answer is not what you thought it should be then you may allow the witness to review the statement before.

MR. BARR: Well, Judge, I have no intention of putting his hearsay statement into evidence.

THE COURT: Okay.

BY MR. BARR:

Q But now, you don't deny that on the very same date that you claim that you gave an oral statement you got a written statement here where you didn't even mention any of that.

A You understand what I just told you? I did about ten statements. I did three on the 2nd, one four o'clock that morning, another 12 o'clock that same night and another one later on that afternoon. That was three alone right there.

Q They all different?

A No, they the same. You can - they probably got it over there. You can read it, the same stuff in it.

THE COURT: Anything further?

MR. BARR: No, sir.

THE COURT: Any redirect on those final issues?

MR. HIXSON: No, Your Honor.

THE COURT: All right, then, sir, you're free to go ---

A No problem.

THE COURT: --- or, or free to remain. Thank you.

Mr. Hixson, how long do you believe direct will be on your next witness, sir?

MR. HIXSON: I'd like to think less than half an hour, but if it's goes longer I'd be accused of being a liar. So ---

THE COURT: Okay.

MR. HIXSON: --- all told cross examination my guess is it may take an hour. I would think it would be less than that, very similar to Mr. Giles, but he took, he took a while.

THE COURT: Well, let's go ahead and take our lunch break at this time, ladies and gentlemen, rather than go into another witness and not have to break in the middle of that witness. What we'll do is it's 12:15 now and let's, let's take an hour and a half for lunch, and we'll - what we'll do is we'll come back at 1:45. So that'll be approximately a quarter till two and lunch is on your own. With whomever you have lunch please don't discuss the case, but just enjoy your lunch and we'll see you back in the jury room at a quarter till two and we'll remain where we are out of respect for you as you depart the courtroom. Have a nice lunch, ladies and gentlemen. We'll see you at 1:45.

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

THE COURT: All right, the jury is out. The jury door is closed. We had some twists and turns in the evidence. Is

there anything that either side wishes to place on the record at this point in the event a review based on what happened this morning with the evidentiary decisions made by the Court? What says the State?

MR. HIXSON: No, Your Honor.

THE COURT: Anything from Defense?

MR. BARR: No, sir, Judge.

THE COURT: Very good. Then we will be in recess until a quarter till two.

OFF THE RECORD

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

THE COURT: Counsel, you may be aware we are waiting on one of our jurors who is present, but unfortunately had left their lights on in their car and had to go back to cut them off. So they're here on the premises, probably good and wet by now, but will be in momentarily.

BAILIFF: All the jurors are here.

THE COURT: We're ready, very good. So they're all, they're all in the jury room now?

BAILIFF: Yes, yes.

THE COURT: Well, if all of our jurors are here we'll go ahead and bring in the jury then.

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

THE COURT: All right, welcome back, ladies and gentlemen. Is everyone reasonably dry there in the jury box? Of course, with having no windows in this courtroom we didn't realize when we took our lunch break that we were sending you out into a monsoon, but it appears that everyone has made it back in one piece. You will recall we were in the State's case and now we remain there. Please call your next witness, Mr. Hixson.

MR. HIXSON: Thank you, Your Honor, at this time the state would call Dr. Cynthia Schandl.

THE COURT: Please come forward to take the oath of a witness.

Whereupon, Cynthia Schandl was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Please be seated, state your full name and spell it for the record, please.

MS. SCHANDL: Cynthia Anna Schandl, S-C-H-A-N-D-L.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good afternoon, ma'am.

A Hi.

Q Please tell this Court what you do for a living.

A I am a forensic pathologist employed at the Medical University of South Carolina in Charleston, South Carolina.

Q Could you please describe to the jury what a - what does

a forensic pathologist do?
A A forensic pathologist is a doctor who has been trained first in the field of pathology and then subspecialty field of forensic pathology. Pathology is the study of disease and forensic pathology is the study of disease as it relates to the law. So when those cases, particularly autopsy cases where people die and there's a possibility that there might be a legal aspect to that death whether it's because they were murdered or whether it was because they hurt themselves or were in an accident or perhaps they died in the hospital and people are concerned that the person was on the job when they died, many different things fall under forensic pathology, but essentially it's the study of disease, which includes injuries, when that disease involves somebody who may have some legal aspect to their death.
Q Okay, and about how long have you performed these duties?
A I've been performing autopsies and forensic autopsies since 2000 and I've been on faculty at the Medical University of South Carolina since 2004.
Q Okay, well, that certainly sounds like you need some specialized training or something to do that job. Can you describe what you need to do to be qualified to be a forensic pathologist?
A Yes, to be a forensic pathologist first you have to go to college. So I have my bachelor's degree in biology from the

California State University in San Bernardino. Following that, I came to the Medical University of South Carolina where I did four years of medical school as well as four years of graduate school. Following those eight years I did get a license to practice medicine in the State of South Carolina as well as the State of Florida. Following that licensure is when that specialized training in pathology occurs. It's called a residency training program, and so there's four years of anatomic and clinical pathology training following medical school, and then again, since I chose the subspecialty of forensic pathology, there is a fellowship program and that is an additional year of subspecialty training specifically in forensic pathology, and in addition to the training there are also board examinations that are prepared by the American Board of Pathology which is a national organization, and I am board certified in those three areas that I am trained in, anatomic pathology, clinical pathology and forensic pathology. So once all those things are done and the board exams and all that sort of stuff, you can call yourself a forensic pathologist.

Q Okay, you mentioned a little bit about your experience in forensic pathology also. Have you testified in court on autopsies you've performed in the past?

A Yes, sir.

Q Approximately how many autopsies you think you have

performed?
A I've performed over 1500, somewhere probably closer to 2000 autopsies.
Q And you've testified in court in prior occasions in South Carolina, in courts of South Carolina?
A Yes, sir, state, federal and military courts.
Q Okay.
MR. HIXSON: Your Honor, at this time the State would offer Dr. Cynthia Schandl as an expert in the field of forensic pathology.
THE COURT: All right, ladies and gentlemen, the witness is offered as an expert witness. Our previous witnesses have been lay witnesses. Lay witnesses can come in and testify about what they saw or heard or did, but an expert witness because of a knowledge, training, experience, education in a particular field may come in and testify about what they saw or heard or did, but also what opinion they derived from that that's within their area of expertise. What we do is when a witness is offered as an expert witness we stop there. We go to the other side of the case to determine whether or not there are questions on the issue of expertise of the witness. Mr. Barr, is there objection or questions for the witness?
MR. BARR: No, sir.
THE COURT: All right, then the witness is so

qualified, and ladies and gentlemen, just one comment about the meaning of that. This testimony is not given for the purposes of controlling your judgment simply because it's an expert witness but for assisting you if you deem it to be helpful in finding matters of fact that are before you that are within the expert's purview. With that understanding you may proceed.

MR. HIXSON: Thank you.

BY MR. HIXSON:

Q Doctor, did you have an opportunity to perform an autopsy on the person of Aundry Evans, Jr.?

A Yes, sir.

Q And where did that autopsy take place?

A That autopsy took place at the Medical University of South Carolina in the autopsy section.

Q Okay, and could you please describe what you found during the course of your autopsy?

A Yes, so, an autopsy examination begins when our office, our forensic pathology section at MUSC is contacted by one of the county coroners. They refer cases to our office from their different counties in this state. So in this case it was referred from the Georgetown County Coroner to our office. We get some information at that point as to the circumstances surrounding the death and the body comes from wherever they are in South Carolina to the Medical University of South

Carolina for an autopsy examination. Our part of the autopsy begins when the body comes up from the morgue to the autopsy suite where there are tables and the body is placed on the table. We look at the body externally. Again, we're looking for identifying features such as height and weight, eye color, those sorts of things and we're also looking for any injuries and we write those things down. We take pictures of them, and following that if there's clothing we can potentially need to examine the clothing. For example, if there are gunshots and like there are in this case we're going to make sure that the clothing and the gunshots, gunshots correspond with one another for example. So we'll also look at the clothing and take pictures of that. Following that, we will go to what's commonly thought of as the autopsy, which is the internal part of the examination where the Y incision is made and we're looking at the organs inside of the body. Again, we're looking for disease processes and we're looking for injuries and all of those things are done and other things that we also do consistently on forensic autopsy cases are take fluids for toxicology studies and take tissues from different organs to look at under the microscope, again, looking for disease or injuries that we didn't see with the eye or to confirm those things that we're seeing with the eye, and all those things were done on this case as well. The main findings on this case were multiple gunshot wounds.

Q Okay, could you please describe, as they relate to the gunshot wounds, your external examination of the deceased and the location of some of the wounds, a number of wounds you're referring to?

A Yes, so Mr. Evans had multiple gunshot wounds. When we talk about a gunshot wound it's a defect that may be an entrance wound so where the bullet goes in or it may be an exit wound where the bullet goes out. So if someone is shot one time there may be just one gunshot wound if the bullet went in and stopped and we get a bullet out. That would be one, one defect, one gunshot wound, but if it goes all the way through and out, then we're going to have two gunshot wounds for that one shot and there's not going to be a bullet in the body. So those are the two things we talk about. We talk about penetrating gunshot wounds. A penetrating gunshot wound is when it doesn't go all the way through and you find a bullet. So you have one gunshot wound, one hole, and a perforating gunshot wound is what we call it when it goes all the way through, so it perforates all the way through the body. So we have penetrating gunshot wounds on the one hand and perforating gunshot wounds on the other. In this case he has at least four but possibly five shots to him. The reason I say at least four and possibly five is because one of the gunshot wounds goes through the left leg in the area of the thigh and then it seems to also re-enter the right leg and go

through the right leg. So we have four holes for that particular gunshot wound. It's going through the left leg and then through the right leg all the way through both legs. So that could be one gunshot wound if it goes all the way through both legs, right, or it could be two if it went through one leg and the bullet's somewhere in the room and another gunshot wound went through the other leg and it's somewhere in the room. So that's why I'm saying four or five because that particular gunshot wound, although it looks like one that went through both legs, could be two, one that went through one leg and the other that goes through the other leg.

The other ones aren't like that. The addition - the other gunshot wounds one is to his side above his hip on his left side in the abdomen region. That gunshot wound goes through one of his arteries called the iliac artery that's about as thick as my pinky and it's sort of in the pelvic region and it goes through the colon, which is also called the large bowel. It's part of your digestive system and then it goes out the right leg. So that's one of the perforating gunshot wounds. We have no bullet because it's out of the body, went into the side, through that iliac artery, through the colon and out the leg. Okay, so that's our other - another one. One of the other ones goes into the side lower down at the hip area and smashes into the long bone of the thigh that's called the femur and stops there. So, again,

that's going to be a penetrating gunshot wound because the bullet's not coming out of the body. We actually retrieve that bullet from the wound and then there's another one that's similar to that that's going into the back of the leg and hitting that same long bone, that femur and again stopping there. So the two bullets that are hitting the long bone of the left leg, the femur, stop in the leg and together I can't tell you which one did more damage, but together they broke that femur and caused fracture to the hipbone as well. So the femur is broken and the hipbone is also broken from those two wounds. So those, those are all the wounds.

So let me go back through them just to refresh. We have a perforating gunshot wound to the left side of the abdomen. That one went through that iliac artery and the colon and out perforating. We had two to the left leg that stopped in the left leg and caused fractures to that, to that femur, and then we had the one that went through the left leg and through the right leg and out. So those are the four or again possibly five if you count the one going through the right leg as a separate gunshot wound.

Q Now, as it relates to the severity of them and ultimately what causes the loss of Mr. Evans' life, can you describe that particular wound, the one you're referring to, and the effect, the physiological effect of that wound would have on Mr. Evans?

A Yes, so the, the, the particular gunshot wound that I am most concerned about and the one that I believe caused Mr. Evans' death is the one that went from his side in his abdomen through that iliac artery and through the colon and out, that perforating gunshot wound, perforating, went all the way through. The reason for that, and the reason I think that's the one that killed him, is that when I have him at autopsy he has almost 2 liters, he has 1,800 milliliters which is almost 2 liters, was one of, you know, big two liter bottle of Coke, that much blood in his abdomen still when I see him and that's a great deal of blood. So from my point of view essentially he bled out from that perforation, from that gunshot wound to that artery, that iliac artery that's in the pelvis.

Q Okay, and what timetable do you think, if you can talk about a timetable, about how long he'd be viable until the wound would, he would succumb to that wound?

A That, that I can't tell you with any certainty. That's much easier to document clinically by how he does after the shooting. So the gun - the bullet went through that artery and one would expect him to begin losing blood at that time, but how fast he loses blood is going to depend on how many tissues are around that vessel and how well that artery is able to squash the blood out of those tissues into a free space, into the belly space. So as it's pushing against those tissues it might, at first, it might not be leaking a lot of

blood out into a free space. It might be, most of it might still be going where it's meant to go. So I can't tell you that, when I see him, how long he could live with that injury. It's certainly going to depend on his particular clinical course, what happened to him.

Q Do the nature of the significant findings, would that affect his ability to think or speak or for as far as your expert opinion is concerned?

A As long as he was conscious I have, I have no - there's no trauma to the head, there's no trauma to the brain or the brainstem, no trauma to the airways, nothing that would suggest that he wouldn't be able to speak or think as long as he was alert enough, you know, enough blood flowing to his brain that he's awake.

Q Okay, and in this particular case the findings of it, were you familiar with him being life flighted to MUSC, was that part of the information that you were presented, too, for your expert opinion?

A Yes.

Q And what does that tell you about the fact that he was life flighted, did that indicate that medical professionals thought that he was viable for a period of time?

A Well, so when, when a, when a, when a hospital is medevacing or taking somebody emergently particularly by helicopter to MUSC what that means to me is that he has

injuries that they're not able to treat adequately at that outside hospital. They just don't have as much facility as, as, as they do at MUSC. They don't have as much to work with. So what that tells me is that they were concerned about him and they thought that he needs to go to MUSC and have more advanced care than they could provide there.

Q Okay, well, doctor, to a reasonable degree of medical certainty, can you give your opinion as to what the proximate cause of Aundry Evans' death was on December 1st of 2008?

A Left iliac artery and colon perforations due to a distant perforating gunshot wound to the abdomen.

Q So he died as a result of a gunshot wound in your opinion?

A Yes, sir.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: And cross examination.

MR. BARR: Judge, I've just got ---

CROSS EXAMINATION

BY MR. BARR:

Q Doctor, you mentioned the two types of gunshot wounds?

A Yes, sir.

Q And in this case I think your findings were that essentially there were two types consistent with what the two types are. Did you, did you have any, any, any, any - the, the, the bullets themselves? Did you collect any during your

autopsy?
A Yes, sir, I collected two bullets.
Q And did you turn them back over to the Georgetown County Sheriff Deputies?
A One moment. They were transferred to Jennifer Flowers with the Georgetown County Sheriff's Office, yes, sir.
Q All right, and your office wouldn't make - wouldn't, wouldn't do analysis or give any opinions regarding caliber or as far as the gunshots?
A The bullets themselves what we - the, the examination that we perform on the bullets is simply to measure them in inches. That gives us an idea of their size, but no, we're not determining their caliber.
Q And are you able to determine, during the course of your autopsy, whether or not the wounds to the body, whether or not they're all caused by the same caliber weapon?
A No, sir.
Q Cannot do that?
A I cannot do that.
Q Thank you, ma'am.
A Yes, sir.
THE COURT: Is there redirect?
MR. HIXSON: No, sir.
THE COURT: All right, any objection to the release of the witness?

MR. BARR: No, sir.

THE COURT: Hearing none, then, ma'am, you're free to leave. You're not required to leave, but free to leave if you wish. Have a good day. All right, please call your next witness.

MR. HIXSON: At this time the State would call Doug Morris, Douglas Morris.

THE COURT: Please come forward to take the oath of a witness.

Whereupon, Douglas Jerrold Morris was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Would you please take a seat, state your full name and spell it for the record, please.

MR. MORRIS: Yes, ma'am. Douglas Jerrold Morris, D-O-U-G-L-A-S, J-E-R-R-O-L-D, M-O-R-R-I-S.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir, how are you?

A All right.

Q Okay, make sure you speak up a little bit in that microphone, okay?

A Yes, sir.

Q The jury wants to hear what you have to say. So tell me how long you lived in Georgetown County?

A Pretty much all 18 years of my life.

Q Okay, at some point in time did you come to know a young man named Aundry Evans?
A Yes, sir, I did.
Q And what was your relationship with Aundry Evans like?
A He was pretty much like a brother to me. Him and my sister had some kind of relationship going on.
Q Okay, and so we're talking about around the fall of 2008? Is that ---
A Yes, sir.
Q Okay, and are you familiar with the Paradise Club?
A Yes, sir.
Q Okay, you ever been there?
A Yes, sir.
Q Okay, were you there around December 1st of 2008?
A Yes, sir, I was.
Q Okay, tell us about that day, you know, towards the evening hours. Tell us about what was going on.
A I really don't know what was going on. I know he came to me and said that his fryer couldn't come in that night. So he asked me to go in for him and I went in.
Q Okay, fryer, what do you mean by that? What do you?
A Like cooking in the kitchen.
Q Okay, cooking, okay, did you do that?
A Yes, sir.
Q And when you said he, who are you referring to?

A Aundry Evans.
Q Okay, so, you - you all went to the club together?
A Yes, sir.
Q Okay, do you recall about what time you got there roughly speaking?
A No, sir.
Q Okay, at some point in time during that evening did something extraordinary happen?
A Yes, sir.
Q Okay, well, tell the jury about what happened immediately before that and in through the rest of the evening?
A Excuse me.
Q Just tell us about what happened once - around when something extraordinary happened in the club.
A I was coming out to bring out an order of wings when a man approximately five-five to five-eight he came in the door, the door flew open. You heard it when it hit back, and soon as it did I looked and around the time when I looked a man was been in the corner and he specifically stated, "I told you I would get you, right," and when he stated that he pulled out a pistol and at that time I ducked down behind the counter.
Q Okay, let me show you a couple of pictures.
MR. HIXSON: Your Honor, these are in evidence. These are State's One through Seven I'm referring to.
BY MR. HIXSON:

Q I'm going to show you what's been marked as State's Three and that's slide number three. It'll show up here, but you can look off the hardcopy and see if you recognize that.
A Yes, sir, that's the exact area where I was at.
Q Okay, describe that to the jury. The jury's never seen that. So what are you referring to when you're looking at?
A What I'm looking at?
Q Uh-huh.
A I'm looking ---
Q Like where is the bar, where are you standing, things like that?
A Okay, how he got to go to - like right here.
Q Okay.
A I can - can I point it out to them?
Q Sure, that's great.
A Okay, on the picture like right here I was standing about right there behind the bar and there was a customer sitting right there, right there and right there.
Q Okay, let me show you, I don't know if this helps or not, a photograph that's State's Exhibit Four. That's item, slide four. See if that helps clarify. I don't know if it helps or not.
A This is about where he was at when I ducked down behind the counter.
Q Okay, you said the door flew open, I believe, and a

fellow came in. Do you recall what the fellow was wearing, the shooter?
A He had a black bandanna around his face, a black hat and a black T-shirt. That's all I could have seen from, from behind the bar where I was at.
Q And when he said those words to - you said he said something on the way up. Did he appear, did he appear to be going towards a particular individual?
A. The way he said it you really couldn't tell who it was going to because the guys were all standing in the crowd, but being that the person he shot you would kind of figure he said it to Aundry.
Q Okay, what happened - how - you said, I believe you said you saw a gun come out and then you went for cover. Take the - tell the story from that point on.
A When I ducked down I really don't know exactly what happened after he said, "I told you I would get you, right." I heard about approximately seven gunshots go off, and once I heard the door flew back open I got up and he was gone. When I got to Aundry, Aundry was laying on the floor. It was probably 30 seconds in between. Aundry was laying on the floor holding his stomach looking like he was in shock and exactly what he stated is, "I cannot believe Little D done this to me. I recognize his voice."
Q Was anybody else around Aundry when you heard those - you

heard him say that?
A There were a few people around, but there is, there's only two other guys besides Aundry himself that I remember their name.
Q Okay, do you recall whether Maurice Giles was there?
A Yes, sir.
Q Do you recall names of anybody else?
A Another man named Gary.
Q Okay.
A I wouldn't know his last name or where he would be or none of that.
Q Okay, after you heard that tell us what happened. I think you were tending or you were down there near Aundry according to your testimony. Tell - take us through what happened after that.
A What happened after that?
Q Yeah.
A Every - it was pretty much a big commotion. Everybody was running around yelling and people were screaming, "Call the police, call the police," and all that right there. It, it was crazy because they was trying to help him get up and put him on the pool table but I - me and Maurice was trying to tell them let him stay right there, let him stay calm down there.
Q Okay, did you know prior to this Terron Dizzley?

A I saw him a few times before.
Q Okay, did you know him by a nickname?
A D.
Q Okay, and do you recognize D in the courtroom today?
A Yes, sir, I do.
Q And where is he?
A Sitting right there.
Q Okay, after folks try and help him, after the police and stuff at some point in time did, did medical assistance come help Aundry?
A Yes, sir.
Q Tell us about that.
A It probably was about 10 minutes later they arrived on the scene and they, they were trying to keep everybody calm and soon as they got on the scene, you know, I stood over him for maybe about 30 seconds later. Then I stepped outside to call my mother.
Q Okay, is that the last time you saw Aundry Evans alive?
A When they brought him out the building and put him in the back of the ambulance.
Q Okay.
MR. HIXSON: Beg the court's indulgence, Your Honor. Your Honor, I have no further questions of Mr. Morris. Please answer any questions Mr. Barr has; okay?
THE COURT: All right, cross examination.

CROSS EXAMINATION

BY MR. BARR:

Q Mr., Mr. Morris, do you remember yesterday in this courtroom telling me that you heard Mr. Evans [sic] say and I quote, "I told you I would get you." Do you remember telling me that?

A Yes, sir, I do.

Q And do you remember me asking you whether or not you were absolutely certain that this is what he said? Do you remember that?

A Yes, sir.

Q Now, are you still absolutely certain that that's what he said?

A Yes, sir.

Q And what else did he say if anything?

A What else did he say?

Q Yes, sir.

A There was nothing after that.

Q Nothing after that?

A Gunshots.

Q Now, you do know Maurice Giles?

A I know of him. I've seen him, you know, but far as like, far as friends and talking to him on a daily basis, no, sir.

Q At the time that you were assisting Mr. Evans was there any other person assisting him?

A Mr. Maurice and Gary was beside us and I really didn't pay nobody else any attention.
Q So Maurice was assisting Mr. Evans during the same time you were?
A He, he was standing right there.
Q Was he doing anything to assist Mr. Evans?
A I couldn't tell you. My eyes was focused on Mr. Evans. I can only tell you what I see and what I heard.
Q You said the assailant came into the building and if you would imagine that I'm the assailant with the gun and imagine that you're ---
A Can you, can you, can you explain to me what that means?
Q Pardon me?
A Can you explain to me what that means?
Q The shooter, the shooter.
A Okay.
Q And imagine that you're in a position where Mr. Evans was. Tell me when - tell me whether or not in terms of when the shots were fired, what distance was there between Mr. Evans and the shooter? Now, am I closer or further away than the distance as you recall it?
A I wouldn't be able to tell you because I was ducked down behind the bar.
Q Well, so you ducked down behind the bar prior to the time

the shooting started?
A Yes, sir.
Q So you didn't see when Mr. Evans was shot?
A No, sir.
Q Did you see the shooter at any point in close proximity to Mr. Evans?
A No, sir.
Q Never got close to him?
A When he entered the building and he pulled out the gun and stated what he stated I ducked down behind the bar.
Q Now, from the time he ducked down or from the time that he entered the building and pulled out the gun did he wait and started shooting or did he start shooting right away?
A From the time he entered the building?
Q Yes, sir.
A He didn't start shooting right away.
Q What did he do?
A He stated what he stated, and after that I couldn't tell you what he done. I couldn't tell you how close he got, where he was at or nothing else that happened. I can only tell you what I heard.
Q So when you saw Mr. Evans, the last time you saw him and the last time you saw the shooter, can you tell me approximately what distance they were apart when you last saw them?

A Can you repeat that for me, please?
Q Can you tell me approximately what distance the shooter was from Mr. Evans the last time you saw the shooter?
A The last time I saw him?
Q Yes, sir.
A They was probably about the distance in between us maybe, maybe a little bit further.
Q About the distance, a little bit further. Now, you, you said that you couldn't recognize the shooter because he had on, he had some covering over his face. Now is that your testimony?
A Yes, sir.
Q And as best as you can determine, what kind of covering was it?
A It seemed to be a black bandanna around his face.
Q Around his face?
A Yes, sir.
Q Black bandanna?
A And he also had on a black hat.
Q Black hat?
A Yes, sir.
Q A cap or?
A A baseball cap like the fitted.
Q So you couldn't see the back of his head and you couldn't see the front of his head?

A No, sir.
Q So if you couldn't see the front of his head you couldn't see his mouth either?
A No, sir.
Q If you couldn't see his mouth then his mouth was covered, sir?
A Yes, sir.
Q So whatever he said, if he said anything, he said it through covering over his mouth?
A I'm pretty sure he did if his mouth was covered.
Q Pardon me?
A I'm pretty sure he did if his mouth was covered.
Q Now, you've indicated that - did you talk - did you, did you ask any questions of Mr. Evans after you found that he was shot?
A No, sir, I tried to keep everybody calm.
Q And you didn't - you said that Mr. - you've known Mr. Evans for a while and he's got some kind of relationship with your sister. What's your sister's name?
A Jerliether Jones.
Q And does your ---
A Can, can I ask you a question?
Q No, sir. Now, you can explain yourself if you wanted to, but not ask questions. Now, Ms. Jerliether Jones you said that - do you know the nature of the kind of relationship that

exists between them?
A No, sir, I don't. I don't get in their business. Their business is their business. I don't get in it.
Q They don't have children together?
A No, sir.
Q Okay, do you know whether or not he stayed at her house from time to time?
A Can you repeat that for me?
Q Do you know whether he stayed at her house from time to time?
A Yes, sir, he did.
Q Do you know and was she referring to him as her fiancé?
A She was.
Q And she was referring to him as her fiancé at the time that this shooting occurred?
A Yes, sir, she was.
Q Now, you don't know Ms. Alston; do you?
A No, sir, I don't.
Q Do you know who claimed to be owner of the nightclub?
A No, sir, I don't. They business is they business. He asked me to go work and that's what I was there for.
Q Pardon me?
A They business is their business. He asked me to go work and that's what I was there for.

Q So you never heard the name Naomi Alston?
A I knew she was his baby mamma. I knew she had a baby by him. That's it.
Q But as far as you know she didn't have any ownership or management interest in the club?
A I don't know. He didn't tell me his business.
MR. HIXSON: Your Honor, object to that. That's asked and answered.
MR. BARR: Judge, I'm sorry if I asked it earlier. I apologize.
THE COURT: I'm going to sustain, counsel.
BY MR. BARR:
Q Now, did you see any other men dressed in similar attire or similar fashion as the person that came in and did the shooting?
A No, sir, I didn't.
Q Did you hear anybody else fire shots?
MR. HIXSON: Your Honor, I object to that relating to - hear, I thought he was talking about hearsay testimony, Your Honor.
A That's what that would be being that I was inside the building and I couldn't hear nothing outside.
MR. BARR: Your Honor, there's an objection? I'm not sure.
THE COURT: I believe the objection was actually

withdrawn, was it not?

MR. HIXSON: I've withdrawn that because I - I thought he was talking about, excuse me, hearsay testimony, but you phrased it as he heard anything. I apologize.

THE COURT: He withdrew it and the witness answered.

MR. BARR: Thank you.

BY MR. BARR:

Q All right, now, so, you didn't see any other men doing any shooting?

A If I'm inside the bar looking at Aundry how can I see some other men doing some shooting?

Q Did you see the shooter shoot at anyone else other than ---

A How can I see that if when he shot I was ducked down behind the bar?

Q All right, so, when the shooter supposedly made this statement that you claim that he made about, "I told you I would get you," you were under the bar?

A At that time I was standing up taking out a order of wings. When he made that statement, are you listening, are you, when he made that statement and pulled out the pistol I ducked down behind the bar.

Q Dropped your wings, dropped your chicken, whatever you had and ---

A Yes, you want to go look on the bar floor, I mean, I'm pretty sure if nobody has been in there yet.

MR. HIXSON: Your Honor, I object. He's being a little argumentative.

THE COURT: I'm going to overrule the objection. The jury's observing this ---

MR. HIXSON: Okay.

THE COURT: --- discussion and ---

MR. BARR: Thank you, Your Honor.

THE COURT: Go ahead. Further questions?

BY MR. BARR:

Q So when you, when you jumped under the bar and got covered there hadn't been any shots fired?

A No, sir, but there was a gun pulled out. Am I supposed to stand right there, "Hey, he got a gun," and smile?

Q So, so, so the truth of the matter is if Aundry was shot you don't know who shot him? Sir?

A That's the truth, but you got to also look at the fact that when I got to him when he was on the floor after the shooter ran out the building I'm pretty sure Aundry saw who shot at him and he wouldn't yell out Little D if one of the people inside the bar shot at him.

Q Well, now, you were hiding under the chair, under the bar?

A This is all he say, she say.

Q So ---
A That's what you're pretty much going off right now.
Q Now, he - Aundry is a friend of yours?
A He was like a brother to me.
Q And would you not agree that you want to see somebody go down for his shooting?
A Yes, I do, the man sitting in that chair right there that shot my brother.
Q Now, if you say that he shot your brother and you didn't see him shoot him it must be because of somebody else told you that, is that true?
A No, sir, it's not. Oh, hold on, my bad, yes, sir, it was somebody else did told me that. Aundry told me that when he specifically stated, "I can't believe Little D done this to me. I recognize his voice."
Q And told you nothing else?
A How was I, how was I supposed to hear anything else that the man was saying?
Q Now, at the time and I've just got a few more questions, Judge, at the time that you were under the table or whatever, wherever you were, do you know where Maurice Guiles, do you know where he was?
A No, sir, I don't. I wasn't paying him no attention. I was taking out a order of wings. I can tell you they was in the area by the pool tables. I can tell you that much if you

want to know that.
Q Well, that's what I'm asking you. Do you know where he was?
A I don't know the exact spot, but I know he was somewhere close to the pool tables.
Q So when the shots were fired you don't know whether Maurice was under a table like you were or where he was, do you?
A No, sir, I don't because when the shots were fired I was ducked down behind the bar.
Q All right, sir. Thank you, sir. I have nothing further.
THE COURT: Is there redirect?
MR. HIXSON: No, Your Honor.
THE COURT: All right, sir, you are free to leave or you're free to remain if you wish.
A Thank you. I'm leaving.
THE COURT: Very good. Have a good day. Please call your next witness.
MR. HIXSON: Investigator Dustin Morris from the Georgetown County Sheriff's Office.
THE COURT: All right, sir, please come forward and take the oath of a witness.
Whereupon, Dustin Monroe Morris was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Please take your seat and state your full name for the record and then spell it, please.

THE COURT: I tell you, sir, while you're getting organized I'm going to stand up for a moment, ladies and gentlemen. If any of you on the jury who have been sitting for a little while if you want to stand up, feel free to do so, just a change of blood flow around, just make yourself comfortable when you're ready.

MR. MORRIS: My name is Dustin Monroe Morris, D-U-S-T-I-N, M-O-N-R-O-E, M-O-R-R-I-S.

THE COURT: And ladies and gentlemen of the jury, let me say you may have noticed the witness was not sequestered and rose from a seat over there. When, when the Court has a sequestration order, that is the witnesses are sequestered, the State is allowed to remain in the room, the - what we call the case officer, that is the chief prosecuting officer, the chief investigating officer on any particular case, as well as the Defendant, if the Defendant should decide to testify or not, of course the Defendant is allowed to remain in the room. All right, you may proceed.

MR. HIXSON: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. HIXSON:

Q Good afternoon, sir.

A Good afternoon.

Q Tell us what you do for a living.
A I'm a criminal investigator with the Georgetown County Sheriff's Office.
Q And how long have you served in that capacity?
A I've been an investigator, well, I've been a police officer for 17 years. I've been a criminal investigator for approximately 15 of those years. I've served 10 years with the Georgetown Police Department. I've been with the Sheriff's Office now for seven years.
Q And so, obviously, you were working for the Sheriff's Department back around 2008?
A Yes, sir, I was.
Q At some point in time did you have some kind of contact with the investigation of the murder of Aundry Evans, Jr.?
A Yes, sir, around December the 8th of or 5th to 8th, somewhere in that area, I was assigned as the lead investigator in the case.
Q Okay, considering this happened on the 1st, what, what's your understanding of what transpired prior to your involvement?
A My understanding was that a few investigators had been involved in the case as far as processing the crime scene, interviewing witnesses that occurred, that happened that night as far as collecting evidence, also attending the autopsy and

putting together information leading to the identity of the Defendant.

Q Okay, so what happens then from your perspective once you come in, since you didn't respond to the crime scene itself, when you come in a couple of days later what's your process that you go through to get up to speed?

A Well, basically why I was brought into the case is I was the senior investigator at the Sheriff's Office at the time. Serving in that capacity I had served on a few murder cases. So I was brought in to actually kind of oversee the investigation and kind of coordinate it based on my experience. So I came in and kind of gave direction to other investigators.

Q Okay, did you review documents that had been generated prior to your involvement ---

A Yes, I did.

Q --- things like that? And based on a review of that, what's your understanding of the status of the case when you got involved in it?

A My understanding was that several witnesses had been interviewed. In speaking with the witnesses they identified the Defendant as an individual known as Little D. Subsequent investigation revealed that his true identity was Terron Dizzley.

MR. BARR: Your Honor, I'm going to object at this

point and I'm going to move to strike. This witness said that they identified and I think that needs to be cleared up to the jury.

THE COURT: Very good, sustained. Counsel, that is actually a hearsay reference and let's let the witness ---

MR. BARR: Yes, sir.

THE COURT: --- testify about what he did once he got involved. Go ahead.

MR. HIXSON: Okay, fair enough.

BY MR. HIXSON:

Q But safe to say at some point during the investigation you generated a suspect?

A Yes, sir.

Q And what suspect did you generate?

A Terron Dizzley.

Q Okay, and how did you come to generate him as a suspect, not what anybody said, but what was it based on?

A Right, it was based on eyewitness interviews or should I say witness interviews.

Q Okay, and what did you do with that information once you identified? What do you - what steps do you go through to continue on with it?

A Basically when I became involved and formulated his name I began conducting more interviews of more witnesses

ascertaining more information as his, his relationship with the deceased, also his - their relationship prior to, you know, the incident happening, taking that information, generating what I would say would be information that would lead him from other witnesses to exactly what happened that evening and then kind of following up from there on out.

Q Okay, did you make any effort to locate Mr. Dizzley?

A Yes, sir, myself and another investigator, Melvin Garrett, traveled to Orangeburg and attempted to locate him with the assistance of the Orangeburg County Sheriff's Office.

Q I guess to preface this, to find him were you able to generate and what steps you go to generate a description of him, his residence to try to find him?

A Well, once obtaining his information, his name was run through DMV and other outlets to identify his location and his address, vehicles and stuff of that nature.

Q And tell us what you found.

A I found that we've got a DMV information on Terron Gerhard Dizzley with an Orangeburg address, a little bit further information identified his family members as well being from the Orangeburg area.

Q Did it give a description of him?

A Yes, sir.
Q What was that?
A Five foot five to five foot six, about 160 pounds, black male.
Q Okay, once you received that information did you go to Orangeburg?
A Yes, I did.
Q And tell us about what you'd go through to try to locate Mr. Dizzley?
A We met with the - with members of the Orangeburg County Sheriff's Office with addresses that we had ascertained through the investigation in attempt to locate him. We located a couple of witnesses, also located his father in that area, made them aware that we were looking to speak with him.
Q Did you make any steps in the local media and try to identify him?
A Yes, sir, once an arrest warrant was obtained information was distributed through area media outlets such as TV stations, newspapers, which would have been from the Georgetown County all the way to the Orangeburg County area in attempt to help, help us locate him.
Q Okay, and at some point in time I believe did you receive a phone call from an attorney representing Mr. Dizzley?
A Yes, sir, I received a phone call from an attorney out

of Columbia to assist him with the surrender of Mr. Dizzley.

Q And did, in fact, do you recall what time, date that was, at some point in time did you come in contact with Mr. Dizzley?

A Yes, sir, I did. I believe it was around December the 12th, myself and another deputy drove to Columbia, actually met with that attorney and Mr. Dizzley at the Richland County Sheriff's Office and he was taken into custody and transported back to Georgetown County.

Q Okay, and was, I guess, processed with this charge, is that safe to say?

A Yes, he was.

Q And do you - have had continuing involvement in the investigation of the case since the time of the killing up until we bring it to court?

A Yes, sir.

Q And during that period of time has anybody ever contacted you to give you any information about the whereabouts or anybody else involved in this killing?

A No, sir.

Q You have no contact from any member of the public saying he was anyplace else other than the Paradise Club?

A No, sir.

Q Okay.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: And is there cross examination?

CROSS EXAMINATION

BY MR. BARR:

Q You said that you're not - that you're familiar with the file. Would that mean that you're pretty much in charge of the case file?

A Yes, sir.

Q And you also indicated a few minutes ago in response to a question that the Solicitor asked you that you were familiar with the statements that were taken?

A Yes, sir.

Q And you indicated that as far as you know no witness had suggested that there was anybody else connected with this, this shooting?

A Yes, sir.

Q Are you familiar with the statement of Larry Cooper?

A I'd have to look at it. I'm not - I don't remember it offhand, no, sir.

Q Are you familiar with the statement of Gary Wendell Gibson?

A Again, I'd have to look at it. Thank you. My comment to this would be that I did not take this statement. It shows that the - this was conducted by the Solicitor's Office. This

would not be a statement that I collected, so, I've never seen this.

Q So, so, so the statements that are collected by the Solicitor's Office and by law enforcement investigating this shooting they're not necessarily all kept together, there are two tracks going on?

A If you want to put it that way. Everything that we generate we turn over to the Solicitor's Office.

Q Now, now, of course, had you, had you had the benefit of the statement that you just looked at your comment regarding not having any other information regarding anybody else would you have modified that any?

A Would you like me to read the statement because I did not read it just now. I just ---

MR. HIXSON: Your Honor, objection to that, we're getting hearsay statements in. He has to call a witness to cross him on the statement, not have hearsay come in through an investigator.

THE COURT: Just a moment.

MR. BARR: Well, Your Honor, what he did is he opened it when he said ---

THE COURT: Understand, you say he opened the door on the issue. Just a moment, please. The question was was whether or not this witness was contacted by anyone who had any knowledge of others involvement and the answer was no.

You have produced a statement that apparently was not under this, according to this witness, not under his purview, taken by someone in the Solicitor's Office. So I'm going to sustain the objection as to that question because I do not believe the Solicitor opened the door on things outside of what would have been generated by this officer. So for that reason I'm going to sustain the objection on hearsay and relevance and you may move forward to your next question.

Q Are you familiar with the collection of shells, spent bullet cartridges from the accident scene, incident scene?

A I have read the generated reports showing where everything was located, yes.

Q Now, you don't deny that there are approximately in excess of 20 shells fired that you all collected?

A That sounds a reasonable number, yes.

Q Yeah, in fact, there are approximately three or four other masked individuals that you have right in that report that was supposedly involved in the shooting at this club at the time, wasn't it?

A Which report are you referring to?

Q Your file.

A Well, are you referring to what you just handed me?

Q No, sir, no, sir.

A Or from my case file?

Q I'm referring to your case file.
A Yes, there was statements taken that were several individuals outside the club but that only one person entered the club firing the shots.
Q One person entered the club, but now approximately how many people were there outside shooting?
A I'd say four, five at the most.
Q All, all dressed in black all camouflaged?
A Yes, they were all disguised, yes.
Q Now, how many people have you arrested?
A One.
Q Terron Dizzley?
A Yes, sir.
Q Now, if I hadn't mentioned that, do you intend to tell us about that?
A My job is to answer your question right now.
Q Sir?
A My job is to answer your question.
Q You think the - well, let me ask you this question, do you think it's important that this jury would've known about what I just asked you about the other four people? Do you think it's important?
A I don't think my opinion is relevant on that question. I just - we know one person entered the location and fired shots. That was it, causing the death of Mr. Evans.

Q Well, you are the chief, you are the chief investigator, are you not?
A Yes, sir.
Q And you are searching for justice, are you not?
A Yes, sir.
Q Now, the spent shells, cartridges that were all collected from outside what did you all do with them?
A They were sent to the state lab, State Law Enforcement Division for analysis.
Q And you had them analyzed?
A They were analyzed ---
Q And you got a report back?
A --- for, for fingerprints, yes, sir.
Q And you sent them to SLED?
A Yes, sir.
Q And you sent them to the various different departments in SLED, trace, DNA, you did do that?
A Yes, sir, that was done.
Q Now, how long you say you been an investigator?
A About 15 years.
Q Fifteen years, have you ever sent or during the course of your investigation you've had an occasion to collect items and sent to the DNA lab in Columbia?
A Yes, sir.
Q Generally why do you do that?

A Well, it assists in identifying or obtaining evidence to identify a suspect.
Q And as far as DNA wouldn't you agree that that's usually forensic evidence?
A Yes, sir.
Q Now, can you tell the ladies and gentlemen of the jury in this case with all the items that you collected from inside the building, and you did collect quite a few of them, with all the shell casings and everything that you collect on the outside do you have a report of any forensic analysis?
A No, sir.
Q None?
A None to identify him.
Q Do you have a report of any forensic analysis detailing the forensic value of any evidence that you collected during your entire investigation of the shooting?
A Can you rephrase that?
Q Did you send or do you have a report where you got the results of a forensic analysis for anything that you collected in connection with this case?
A Yes, sir.
Q DNA?
A No, sir.
Q Well, I tell you what tell us what you sent to SLED DNA

lab?
A I would need to look at the case file to see what evidence was submitted. I do not have that up here with me right now.
Q How far is it away?
A A few feet.
Q Take, take a look at it. Tell, tell us what you sent.
A Do you mind handing it to me?
Q Yes, sir.
MR. HIXSON: Your Honor, can we have a specific question asked and answered so we can lay a foundation for what because he said forensic, DNA and what a specific question about what forensic testing because there's 18 different things up there they can test, departments.
THE COURT: Well, let's do this, if you'd hand him his file first so he's in a position to respond and then we'll kick off that process with a specific question from Mr. Barr.
MR. HIXSON: Thank you, Your Honor.
A Thank you.
THE COURT: Now, Mr. Barr, you're on cross. You can lead your witness obviously.
MR. BARR: Yes, sir.
THE COURT: Or excuse me, you can lead the State's witness and go ahead, sir.

MR. BARR: Thank you, Judge.
BY MR. BARR:
Q Now, can you tell us, Officer Morris, approximately how many items of physical evidence that you sent to SLED, that you sent to their DNA department to be examined?
A Well, specifically DNA ---
Q Yes, sir.
A --- let me, let me check. I see that five shell casings were submitted or, I'm sorry, three shell casings and two bullets were submitted for DNA and those were submitted by Investigator Melvin Garrett.
Q You testified earlier that there were approximately 20 some odd shell casings collected outside the building?
A Now, you led me into 20 and I agreed it was probably about that many.
Q Well, I can show them to you if you want me to.
A I was just responding to what you said.
Q But you do ---
A I'd say there were several, yes, sir.
Q Yes, sir, it was approximately 20. Now, out of that 20 how many of the 20 outside the building did you send if any?
A I can tell you any - I don't have all the SLED results. I'm sure the Solicitor's Office would have those. I have what was received during the course of the investigation, not

afterwards in this particular file. The other results would've been placed in the records at the Sheriff's Office.

Q Now, you are the head of the investigation?

A Right.

Q And all wheels turn toward you, you would agree - tell the ladies and gentlemen generally what the purpose as a chief investigator especially in a large city like Georgetown, why do you collect or do you collect and try to find evidence to be examined for forensic purposes?

A It assists in identifying a suspect. It also finding bullets and shell casings assist in - when - if you find a murder weapon or a weapon that was used in a crime you can link it back. In this case there was no gun found. So the bullets and shell casings serve no absolute purpose as far as identifying, you know, who would've owned the gun.

Q Well, inasmuch as in this case there's no weapon found, would you not agree that that would be all the more reason to try to be able to identify the people that are associated with this shooting?

A Right, well the - like I said, there were shell casings and bullets submitted, there were - the majority were submitted for latent prints which we were negative in finding any latent prints on the, on the shell casings.

Q Now, of course, as far as forensic in a DNA lab you don't

send, what you sent them to the DNA lab for is you're looking at, you looking for DNA, aren't you?

A Well, DNA, if a person's not on file, if you don't have a known standard from a suspect to compare DNA it does you absolutely no good.

Q Now, suppose, and just listen to me hypothetically, there is a known standard in the FBI file for me and I had my hands on one of those bullets, spent shells and I dropped it, you would agree that as long as there's a standard in that, in the AFIS file for me you could identify me as a person handling that bullet, couldn't you?

MR. HIXSON: I would object to that. He prefaced the question by it's a hypothetical. He can't answer that.

MR. BARR: I can rephrase it, Judge.

THE COURT: Well, overrule the objection. You may answer it. Do you need it repeated or may you - if so please answer if you don't need it repeated.

A I believe you're referring DNA and latent prints in the same sentence.

Q No, sir, that's not what I'm doing.

A Well, then if you wouldn't mind rephrasing the question, repeating it for me, please.

Q Now, you do collect evidence during the course of your investigation when you're investigating a crime?

A Yes, sir.

Q Especially homicides?
A Yes, sir.
Q And you've got either you yourself or somebody under your supervision you go out and you collect anything that you find that might have evidentiary value, don't you do that?
A That's right.
Q That's kind of how it gets done and that's kind of the standard of doing it with the police. Now, there are items that you send to the latent prints division of SLED for fingerprints, don't you?
A Yes, sir.
Q And there are other items even after you receive them from SLED latent print division they may go on to the DNA division to be examined further for forensic evidence, aren't they?
A It could be that way, yes, sir.
THE COURT: Mr. Barr, excuse me.
Q Now, you would ---
THE COURT: I'm going to break in. Ladies and gentlemen of the jury, I know sometimes it's difficult, you go to lunch and then you be seated in the chair and it gets a little bit sleepy here in the courtroom. Let's do this. We're going to take a little break just to make sure we're all up and focused. So we're going to stand down. Let's do this, sir. If you would please not speak to officers, to lawyers on

either side of the case we're going to take about a 10 or 15 minute break.

A Okay.

THE COURT: And then we'll come back and resume the cross examination. So, let's remain where we are while our jury returns to the jury room, please.

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

THE COURT: All right, ladies and gentlemen, we'll be in recess now approximately 15 minutes.

OFF THE RECORD

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

THE COURT: All right, let's let the record reflect that we had two of our jurors that I saw that seemed to be nodding. I don't believe any of the jurors from my observation and I was watching them were what I would call profoundly asleep, but I do not wish for, given the stakes of this proceeding, any juror to even appear to be nodding as it's unsettling to the participants in the courtroom as well as perhaps to the other jurors, and I will remark to them when they come back in not to focus on any particular juror or to embarrass anyone, but about the fact that if they feel themselves nodding if they would let us know that then I'm going to suggest, just as we did or I did earlier, that they

stand and change the blood flow. So, in any event, I wanted the record to reflect I don't believe any of the jurors have in any way missed any portion of the trial and I didn't want the fact that we stopped to create by no reference to it, on the jury create the belief that a juror may have missed a substantial portion of the trial because that's not what occurred. Please bring the jury in.

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

THE COURT: All right, ladies and gentlemen, first of all, welcome back to the courtroom. I trust you had a nice break. Obviously we're about some fairly weighty issues and important business here in the courtroom. If you feel yourself nodding off, if you'll let us know. As I did earlier, we can just stand up and change the blood flow and be focused on it. Sometimes after lunch it may get a little warm in the courtroom, but it's not so easy as to just go to the thermostat and change the temperature. This is an energy efficient building for which the temperature controls are offsite, and thus if we need to change temperature, if anyone's uncomfortable let me know that. We can't immediately change it but we can have it changed. It'll take a little bit of time to make sure everyone's comfortable, but it seemed perhaps just a touch warm in here and so that's why I thought we should take a break, and if you will recall we were in the

middle of the cross examination. So let's start again with the question, Mr. Barr, if you wish to ask the same question or if you wish to move to another question go ahead, sir.

MR. BARR: Yes, sir.

BY MR. BARR:

Q For identification only one cumulative exhibit, Defense One.

THE COURT: Very good, we'll mark Defense One for ID.

(Whereupon, Defense Exhibit Number One [Case File] marked for identification.)

Q And, Officer Morris, I'm going to hand you now what's been ---

MR. HIXSON: Your Honor, mind if I take a look and see what he's ---

THE COURT: Yeah, let's let the, let's let the State take a look at it, please.

(Solicitor and Defense counsel confer.)

BY MR. BARR:

Q I'm going to hand you now what's been provided for me by means of discovery ---

A Okay.

Q --- by the Solicitor's Office and ask you whether you can identify those photographs?

A It's quite a few pictures, but they appear to be pictures of the crime scene and of evidence collected.

Q By you and your staff?
A Yeah, by - yes, sir.
Q And do they accurately depict the condition of the building, cars around the building, the location of shell casings, etcetera, at the time that you and your officers were doing the investigation?
A The pictures I'm seeing specifically to the front the first pictures are during the daylight hours which would not be accurate depiction of what happened that night. There would be crime scene photos that would depict what was that night, went back the next day and actually looked back for more evidence.
Q These are the crime scene photos that your office produced and provided me with a copy of?
A Right, again, there's several here. They're during the daylight hours. This investigation started that night and continued through the next day as far as taking pictures at the scene, yes, sir.
Q Yes, sir, now, of course, if there wasn't - if it wasn't connected with the crime scene, if it wasn't evidence you all wouldn't have it in here, would you?
A Exactly.
Q Yes, sir.
MR. BARR: Your Honor, at this time Defense Number One we'd move into evidence.

MR. HIXSON: Your Honor, I object. We don't know when any of that damage was caused. That's why it's not admitted. We have no foundation of when any damage occurred before, during, after. We know what occurred when the photographs were taken, but it could've been taken months prior to any of these photographs. That's why they're not reliable and we can't - object to admitting them. There's no foundation.

THE COURT: All right, ladies and gentlemen, what we'll do is rather than rule on that at this point and delay these proceedings or have to take argument I'm going to take that matter under advisement, Mr. Barr, and attempt and rule on it at some later time in the case, advise the jury of the ruling as well as the parties. Now, did you intend to pull something from it and publish?

MR. BARR: No, well, what I can do, Judge, of course, I can have the individual officer who snapped the picture.

THE COURT: You could.

MR. BARR: Bring him here and identify them one at a time. They gave them to me.

THE COURT: Well, I understand that and we'd be here quite some time doing that.

MR. BARR: Yes, sir.

THE COURT: And I appreciate your courtesy but what I think the better course is is rather than in the middle of the

trial is, that is in the middle of testimony, is let Mr. Hixson and you have an opportunity to review certain of them, take a look at it. Some may be agreeable, some may not and then make a determination as to what if any or if all goes to the jury.

MR. BARR: All right, sir.

THE COURT: All right, and ladies and gentlemen, just so we'll all be on the same wavelength what we're really talking about here is that - and you may have noted we keep close track of what is in evidence and what is not. If something is in evidence it goes back to the jury room with you when you retire to deliberate. If it's not, for example, if it's marked for identification only and not as an exhibit then it does not go back with you to the jury room. So that's the crux of what this issue is about, and we'll resolve it before we reach the end of the trial and please proceed with further questions if you have any.

BY MR. BARR:

Q Now, with respect to what is contained in Defense Exhibit Number One, there are a number of what appear to be bullet holes.

THE COURT: I think you're pretty close to a microphone and that's tough on our court reporter when that's ---

MR. BARR: Oh, I'm sorry.

THE COURT: --- popping in her ear.
BY MR. BARR:
Q There are a number of what appear to be bullet holes in the building and in vehicles around the building. Is it the Sheriff's Department's contention that these, the bullet holes they occurred in connection with the shooting at the lounge?
A I'd like to answer that by saying I didn't take those photographs, so it's possible that the photographer that took them possibly assumed that they were in connection. That would be a fair and accurate statement, yes.
Q Now, of course, you don't know of any reason why the Solicitor's Office or the Sheriff's Office would send me a bunch of photographs that would have nothing to do with this case, do you?
A I don't think they would, no.
Q All right, one other thing I want to ask you about. You've indicated that you ---
MR. BARR: Your Honor, I'm going to let this stay at the desk.
THE COURT: You may leave it there on the court reporter's stand.
BY MR. BARR:
Q --- that you, that you, you developed a profile and determined that Mr. Tyrone Dizzley was a suspect in this case?
A Yes, sir.

Q Now, and, and, and you indicated on direct examination a number of steps that you took after you had a warrant issued for Mr. Dizzley to locate Mr. Dizzley?
A Yes, sir.
Q Is that correct?
A That's right.
Q Now, of course, you don't deny that Mr. Dizzley lives in Orangeburg?
A I don't deny that, no.
Q And when you found out where he lived and you went to Orangeburg to collect him or to confront him or to serve the warrant, you did not see him initially, but you met some members of his family?
A That's right.
Q Now, approximately how long did it take between the time that his family became aware that the Sheriff Department in Georgetown County was looking for him how long, how much time transpired between the time that you got a call from his lawyer to make arrangements to turn him in?
A One second, let me look at my report.
Q All right, sir.
A Two days.
Q Two days?
A Yes, sir.
Q And he turned himself in?

A With the help of an attorney, yes, sir.
Q Yes, sir, he's got a right to have a lawyer, right?
A Yes, sir.
Q All right, thank you, sir. I have nothing further.
THE COURT: Is there redirect?
MR. HIXSON: Yes, sir.

REDIRECT EXAMINATION

BY MR. HIXSON:

Q Let's talk about the kind of general investigative techniques we're talking about, Mr. Barr was referring to, evidence collection and investigation and stuff like that. Generally speaking, with your training and experience, when you rely on a crime scene that you're trying to figure out what happens what would a walk-through and an evidence collection photographs be like for, for a brand-new crime?
A A brand-new crime it would, it would depict the actual state of the building, the state of the location, exactly what is there when we arrived without anything being manipulated or tampered with. If there's any type of evidence it's going to stay in that exact location as when we arrive. It would eventually be marked with evidence markers and photographed prior to being collected as evidence. Each thing, each item would be then individually packaged to be submitted for analysis.
Q Do you find that your approach to collecting a piece of

evidence exclusive or inclusive? In other words, do you collect more than you think you need to find out what's going on later on down the road?

A Absolutely.

Q And describe that more for us?

A Anything that - because we don't know, we're not there at the time that the, the crime happens. So anything and everything that just seems out of place, it could be a cigarette butt, it could be shell casings, it could be beer cans, anything, you don't know at the time because during the course of the investigation you put it together. You talk to witnesses. They indicate what belongs or what they saw somebody hold and what they saw somebody using. I mean, anything can come in to play at a later time. At first arriving at the scene we don't know. That's why we collect as much as we can and then we can filter through it towards the end of the investigation.

Q Does that apply also to the taking of a photograph?

A Absolutely.

Q And describe that for us.

A Well, you want to take pictures of damage. You never know when somebody might say that the damage was incurred during the crime itself. It could be something that was there prior to us getting there. It could be shell casings that could've been there before. You just don't know. It could be

anything out of the ordinary, but you want to depict everything as you see it and if that means taking a hundred pictures for one item you're going to do so. We keep what we collect. You know, we don't discard it. That's why you would see hundreds of photographs that may not have any relevance to you, but we're going to keep it just in case something comes up that we need to be able to put that picture to something that we've identified in the investigation.

Q In fact, I think you mentioned to Mr. Barr you did collect pistol casings from the inside of the club, is that correct?

A That's right.

Q And one of those I think Mr. Barr indicated those were submitted to State Law Enforcement Division?

A They were. They were submitted. I was attempting to answer that, but they were submitted for latents and after latents came back negative for prints they were submitted for DNA analysis. I apologize. I do not have the report on me. I cannot tell you if there was DNA, but to my knowledge there was never anybody identified through DNA analysis.

MR. BARR: Your Honor, object, I'm going to object, Your Honor. The, the, the Prosecution has not provided us with any report from the DNA division of the SLED lab.

THE COURT: All right.

MR. BARR: And therefore, this witness would be

totally incompetent to testify unless the Prosecution admits malfeasance. Otherwise, he has not seen a DNA, a report.

THE COURT: All right, just ---

MR. BARR: And that no one exists.

THE COURT: --- just a moment, Mr. Barr. Remember, again, ladies and gentlemen, what the lawyers say in the courtroom is not evidence. It's argument. It's a position they take, should not bear upon your view of the evidence. I'm going to overrule your objection, Mr. Barr, because you opened the door on this issue when you began questioning this witness about DNA. Whether or not there's some report to be later determined, well, or placed in evidence through some other witness, well, that remains to be seen, but at this juncture we just find that it is what it is as they say. The State has the right to put up their case as they believe it's appropriate, and thus I'm going to overrule your objection and you may proceed. Now, if some new ---

MR. BARR: Well, Your Honor, I do have one additional objection.

THE COURT: All right, go ahead.

MR. BARR: Under the rules of discovery we have filed a, a pretrial discovery motion.

THE COURT: All right.

MR. BARR: I do not have a report from the DNA Division and if the Prosecution is now going to have this

witness testify regarding the results of a report then I want a copy of the report at the time that he's cross examining the witness.

THE COURT: Well, again, I believe you've opened the door on that issue, but that is an appropriate request. Let's see where the witness goes with that, and if there should be some document given to you then I feel sure that the Solicitor will be willing to do so, but I can't determine in advance what his question is going to be. If you believe there has been a Rule Five violation, which is the rule that talks about disclosure, or Brady versus Maryland, which is case law that controls this violation, then we'll take that up at a later time rather than delay these proceedings, but we'll take it up before the end of the proceedings so we can make a determination. All right, please proceed.

MR. HIXSON: Your Honor, as clarification for the record I have a signed, returned discovery marking SLED forensic report received by Mr. Barr and signed by Mr. Barr March 12th, 2009, and it refers to the report and it's signed by Mr. Barr. I need to correct that because that's relating to professional responsibility.

THE COURT: All right.

MR. HIXSON: So correct that on the record. It's signed by Mr. Barr and I'll provide that as a Court's Exhibit also as proof of providing that document.

THE COURT: Very good, we, we - I - the Court takes no position on that. I'm hearing two different versions of the facts on that. Again, the Court takes no position. Please proceed.

MR. HIXSON: Thank you, Your Honor.

BY MR. HIXSON:

Q To be clear you sent that to latent prints, and is that correct, for casings on the DNA? So it's the Latent Prints Department not the DNA Department, isn't that correct?

A Well, it was a - what we do is a two-step process. It's a SLED lab request form that we complete which it details all the items of evidence that we want analyzed. It also break - we have to break it down individually as to what we want done with that evidence. This particular case we requested that the shell casings be processed for latent prints and then they be sent to the DNA Department with SLED to determine if there's any DNA profile present on the shell casings. That's what was done in this case.

Q Can you - based on your experience as an investigator can you describe to the jury the difficulty of obtaining touch DNA?

A I'm not an expert on the issue. I just know that ---

Q I don't want your opinion.

A --- I just know that touch DNA is, it's basically when if you touch an item and you leave skin cells. Several people

can touch the same item. There's going to be several different kinds of skin cells. In this case if it was skin cells from a shell casing it could've been from the manufacturer. It could've been the person that was actually putting them in a box.

MR. BARR: Your Honor, I'm, I'm going, I'm going to object. This witness is not competent to testify.

THE COURT: Overruled, Mr. Barr. Again, you opened the door and raised these issues and the State is attempting to respond. This - what the witness is testifying to really does not go into expertise. It's just general and common knowledge with regard to DNA. So if you want to finish your response go ahead. You were in the middle of it.

MR. BARR: Note our objection for the record, Judge.

THE COURT: So noted, overruled.

A As I was saying it could be handled by someone in the manufacturing plant, their DNA, touch DNA could be placed on it as well. It's several factors. If myself and one of you guys went target shooting and we both handled each other's bullets, I mean, we're both going to have our touch DNA. It's a mixture. It's no - it's not exact locating science to determine who - you'd have to be able to pinpoint at the time that the shell casing was actually in somebody's hand and then placing them in the gun to shoot it.

Q Could you, in fact, recover something that had been

touched and have no skin cells falling off the handler?
A Absolutely. From my experience, touch DNA you have to have handled it for quite some time for those skin cells to actually rub off. It would - it wouldn't be like me touching that piece of paper that briefly and letting off skin cells.
Q Let's relate to the, the recovery. I think you already testified and indicated that, that 40-caliber pistol cartridges I think you'd indicated were recovered from inside the, of the club?
A There were casings from inside the club, yes.
Q Now, let's talk about this volume of casings Mr. Barr had discussed outside in the roadway. Do you have any idea how long those casings had been there?
A I have no idea.
Q Do you, do you know whether or not what caliber or what type of weapon would fire those casings?
A I'd have to look at the report. I didn't actually collect those items. They were collected by our evidence custodian, but I know that there were a mixture of shell casings located outside.
Q Okay, if you could, please, can you tell whether or not a rifle or a pistol had fired those ones out by the roadway? I believe that is in your - refresh your recollection in your report.
A Just bear with me one second while I look at my report.

There appeared to be some rounds consistent with rifling or rifle casings as being shot from a rifle as well as shell casings from a handgun.

Q But there were - were there any rifle casings recovered inside the building?

A No, sir.

Q Okay, based on this information do you attempt to locate any potential additional suspects or any potential co-conspirators with this Defendant that may have been outside during the course of this shooting?

A The witnesses that were outside were interviewed. They provided no information as far as identifying the suspects that may have been involved and that's as far as we could go with it. We - no other information was developed other than Mr. Dizzley in this investigation.

Q So, there have been no - you've never been able to identify those folks if they were involved in it, is that correct?

A No, sir.

Q Okay, is Mr. Dizzley the only individual that's ever been arrested in conjunction with the killing of Aundry Evans?

A Yes, sir.

MR. HIXSON: I have no further questions, Your Honor.

THE COURT: All right, anything new brought up on that recross, anything, excuse me, on redirect, anything new?

Nothing further? All right, very good.

MR. BARR: I have nothing further from this witness, Judge.

THE COURT: All right, then, sir, you may step down and return to your seat. Thank you.

A Thank you.

THE COURT: Please call your next witness.

MR. HIXSON: Beg the Court's indulgence, Your Honor, one minute?

THE COURT: Yes, sir.

MR. HIXSON: Your Honor, at this time the State rests its case.

THE COURT: All right, then, ladies and gentlemen, let's do this. At the end of every case when one party rests then the Court has certain matters we need to take up at this time. So we're going to give you a break, let you return to the jury room, take up any issues that may be reviewable at this point and then we'll be back in touch with you shortly with further instructions is the way we proceed from here. So, please, return to the jury room, enjoy your break. We'll be with you shortly.

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

THE COURT: All right, the jury has cleared the room. So, now, at the close of the State's case I'll be glad to hear

any motions. Yes, sir. Yes, sir, if they wish to go outside to take a break, good luck staying dry if they wish to do that.

All right, are there motions now from Defense?

MR. BARR: Yes, sir, Judge, I intend to make our motions, but I wanted, there's one other thing I think we need to get clear for the record before we get away from it if we can.

THE COURT: Yes, sir, go ahead.

MR. BARR: That's the document that the Solicitor referred to which is my acceptance of service on the discovery material. That acceptance of service does not acknowledge having received a report from the DNA lab of SLED. It acknowledged having received several different reports, latent prints, but it did not include DNA lab.

THE COURT: All right.

MR. BARR: All right, sir.

THE COURT: Well, now, let's, let's follow that up. First of all, all of that is very baffling to the jury. So rather than go tit-for-tat any further on that argument I just, I just cut it off for us to take up out of the presence of the jury. If you believe there's been a Rule Five violation or if you believe there's been a Brady violation, if that somehow is exculpatory material then I would ask you to specifically call that to my attention. You may not be in a

position to do that right now.

MR. BARR: I'm not saying that there has been a Brady violation, no, sir, absolutely not.

THE COURT: All right, very good. Then I'll just leave that matter as it is. Now, we've got on the desk here a document that you, that you have stated you wish to put in evidence. It's not in evidence at this point, and I thought that after the hours, today's proceedings I would let you gentlemen look at that to determine whether there's some portions of it you can agree upon and if not we'll come back a little early and slug it out in the morning as to what's in there and what's not and let you call witnesses to lay a foundation for what's not if you wish to do that and we'll just have to take it up tomorrow.

MR. BARR: Judge, of course, my objection was the witness was testifying as to the results of DNA analysis.

THE COURT: All right.

MR. BARR: And not that, that the fact that the report was sent. I think that's as far as he could go. Clearly, I think they sent the report, but they never received a report back. So as far as testifying concerning the results, as far as we know, there was never any analysis done, at least we don't have a report. Now, Judge, Your Honor, with respect to our motions at the time ---

MR. HIXSON: Mr. Barr, can I just clarify on - with

him, not fighting about anything, I just thought while it's on the record ---

THE COURT: Please.

MR. HIXSON: --- tightly I could respond right here and then move on from there, if that's okay.

THE COURT: Yes, for completeness, for completeness of the record you want to respond to that go ahead.

MR. HIXSON: Please do. I showed Mr. Barr, we've had good discussions relating to that and that's why I try to clear up on the record. It's labeled a latent print report. It's not a DNA report, but they reference the DNA materials and that's what was provided. I don't have a DNA report actually downstairs. Mr. Barr and I talked about it and he said, "Is there any DNA forensics in here," said, "I don't have anything, this is all I have." So we're in agreement relating to that. I just think it's appropriate to address it immediately and I have the - if Your Honor deems it appropriate I have the report that we've all seen. We know what's going on in this, if you needed a Court's Exhibit just to clarify and put that matter behind us. I just wanted - thought further application, explanation was appropriate.

THE COURT: Well, we'll, we'll let you, we'll let you parties make that a Court Exhibit if you both agree, but that, of course, to us there's no shock in that because the, the low likelihood of obtaining a DNA touch successful result compared

to a known profile or against an AFIS database versus the cost of doing that on a bunch of shell casings that are found out in the parking lot that's no surprise at all. My concern to us, my concern is whether now the jury has a perception that there is either a sleight of hand with evidence not produced or the failure to adduce evidence that could be dispositive and we'll just have to think about that overnight as to whether there needs to be some cautionary instruction. I just leave it to both sides, and again, I'm not saying that one is trying to be unfair or to somehow prejudice the jury, but I just think we need to consider whether or not based upon what we would expect the jurors will take away from the television that you can get DNA off of anything at any time and do it right there while you're at the scene that perhaps we need to have some discussion in a curative instruction at a later time, but anyway, gentlemen that's - we'll talk about that after you've had a chance to think it further. The record's clear. So, now, let's go back to motions, Mr. Barr.

MR. BARR: Judge, we would respectfully move for a directed verdict of not guilty. It would be the Defendant's position that not only has the Prosecution failed to present evidence from which this jury might reasonably conclude that there is at least some evidence as to each and every element of the offense of murder. In addition, Your Honor, we would take the same position as it relates to the identification

issue, that is that the State has failed to present sufficient evidence from which this jury might reasonably conclude that the Defendant, Mr. Dizzley, did, in fact, commit the offense that he is charged with having committed.

THE COURT: All right, sir, just, just one moment, please. All right, you want to be heard in response, Mr. Hixson?

MR. HIXSON: Yes, Your Honor, we believe that we've made a sufficient showing on each element of the offenses charged. Murder, obviously, we've had two identifications directly that, that it's unequivocal that indicated that Mr. Dizzley was the one that shot Aundry Evans as well as a reason for that identification. We had some circumstantial evidence surrounding Mr. Dizzley about his height, that it is the same as ID'd by the shooter. We established the motive as it relates to why someone might want to do something like that. Certainly that testimony, that the proximate cause of Mr. Evans' passing was, in fact, gunshot wound and the statement submitted relating to the motive also established the malice. So it doesn't appear if there was any - the prior difficulties doesn't seem like it was a heat of passion type thing that would enrage someone to violent such as in a lesser included of voluntary manslaughter. As such, we think we have a scintilla of evidence on each element going forward to the jury on murder and would ask that Your Honor find there is, in

fact, sufficient evidence to submit this case to the jury.

THE COURT: Very good. Mr. Barr, let me respond to you at this point. I'm going to respectfully deny your motion. First of all I find as Mr. Hixson has argued that and again I should say initially it's not for the Court to weigh the evidence. The question is does there exist evidence in this case that is appropriate evidence, admissible evidence in the case in this record that would tend to prove the guilt of the accused on each of the elements of the charge of murder and I find that there is. This is an identification case basically. The State has adduced both direct evidence through hearsay exceptions, but nevertheless direct evidence from the deceased as to the identity of the shooter as well as circumstantial evidence from other sources as to the identity of the shooter. Thus the Court finds this is not, the case is not wholly, that's with a W, wholly circumstantial and the Court finds that there is sufficient evidence in this record to go forward. Are there further issues or motions from the Defense at this time?

MR. BARR: No, sir, Judge.

THE COURT: And Mr. Barr, let me ask you before I talk with your client about this, do you intend to - I know you've offered an exhibit here, but do you intend to put up a defense?

MR. BARR: Your Honor, we hadn't, hadn't made a firm

decision yet and, of course, we, we have our witnesses subpoenaed for in the morning.

THE COURT: All right.

MR. BARR: And if it's all right with the Court we would - it would only take a few minutes to - however, I would ask that the Court this afternoon advise him of his rights to or to not take the witness stand and we could have that done this evening and we won't have to do it in the morning.

THE COURT: Very good, we'll do that. Let's make sure we all understand where we find ourselves. The Defense has not put any evidence in. They attempted to. The Court did not accept it. There was objection. There were questions, and so, Mr. Barr, if you decide it over the evening that the Defense would not put up a witness and would - Defendant would not testify you would have the benefit of the last argument at this point.

MR. BARR: Yes, sir.

THE COURT: If you wish, however, over the evening hour to talk with Mr. Hixson and attempt to resolve this issue on this document here and put evidence in, well, then, of course, obviously you would not argue last and I would expect you would be calling additional witnesses. Now, as to whether or not you want to call the Defendant let me speak now, if I may, with the Defendant and, sir, I'm going to get you, if you would, stand please just where you are, please follow our

clerk's instructions. We're going to place you under oath.

(Whereupon, the Defendant is sworn by the clerk.)

THE COURT: All right, Mr. Dizzley, you can put your hand down and let me just ask you certain questions now. As you are aware because you're sitting here in the courtroom with us watching this, the State has rested which means we're at the point in the case where the Defendant would put up a case if you intend to do so and do you understand that?

MR. DIZZLEY: Yes, sir.

THE COURT: All right, and has Mr. Barr talked with you before today about your right to testify in this proceeding as well as your right to remain silent in this proceeding?

MR. DIZZLEY: Yes, sir.

THE COURT: And have you in your belief understood the things he's explained to you about those two rights?

MR. DIZZLEY: Yes, sir.

THE COURT: All right, I want you to understand that in this proceeding you have the right to remain silent which means that you cannot be compelled to testify and if you choose not to testify then the Court will explain to the jury that this is your right to do so and they may not use that against you in any way and should not even be mentioned in their jury deliberations because you have the constitutional right to remain silent and that's because you have no burden

of proof and do you understand that, sir?

MR. DIZZLEY: Yes, sir.

THE COURT: And I've just described to you your right to remain silent. Is what I've told you the same thing Mr. Barr told you about your right to remain silent?

MR. DIZZLEY: Yes, sir.

THE COURT: All right, sir, and do you have any questions about your right to remain silent or what I've just talked with you about?

MR. DIZZLEY: No, sir.

THE COURT: By the same token, you have the right to testify in this proceeding which means you can take the stand right here, be sworn in and testify to tell your version of events, but if you do so you will also be subject not only to direct examination from your own attorney but cross examination from the State in the presence of the jury. If you have a prior criminal record then some of those charges may come in against you on the issue of credibility and believability, and of course, the jury will observe the entire testimony and they may use it for you or against you as they determine the facts in the case to be and do you understand that, sir?

MR. DIZZLEY: Yes, sir.

THE COURT: And do you have any questions about your right to testify which is what I've just discussed with you?

MR. DIZZLEY: No, sir.

THE COURT: And is what I've told you about your right to testify the same thing that Mr. Barr told you about your right to testify?

MR. DIZZLEY: Yes, sir.

THE COURT: All right, now, Mr. Barr tells me you've not yet made your decision as to whether you intend to testify, is that correct, sir?

MR. DIZZLEY: Yes, sir.

THE COURT: All right, then we will - I will ask you finally, do you have any questions about our discussion we've just had or your right to remain silent or your right to testify?

MR. DIZZLEY: No, sir.

THE COURT: All right, very good, anything further, Mr. Barr, you would have me discuss with Mr. Dizzley about those rights?

MR. BARR: No, sir, Judge.

THE COURT: And Mr. Hixson?

MR. HIXSON: No, Your Honor.

THE COURT: All right, then, sir, I'm going to let you be seated and it would be my intention we would bring this jury back, tell them that we have - we will end the proceedings, take up with whether or not the Defendant will call a witness or put up a case first thing in the morning and

be prepared to go at 9:30. What I would ask counsel to do is be here at 9:15 ready to go. We have prepared copies of what we believe the charge to be that you can have now and take with you over the evening hour. If you would please come and be here at nine o'clock then we can have our charge conference, 9:15 to 9:20, we can resolve any other issues and be ready to go forward in whichever way the Defense wishes to proceed. Any objections to that from the State?

MR. HIXSON: No, Your Honor.

THE COURT: And from Defense?

MR. BARR: No, sir, Judge.

THE COURT: All right, then, let's bring in the jury, please.

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

THE COURT: All right, ladies and gentlemen, welcome back. We really are pretty close to the end of the business day. As you know the State rested a few moments ago. Rather than calling additional witnesses today we will wait until tomorrow morning for the Defense to make a determination as to whether they intend to put up a case because, again, they have no burden of proof and also after that's concluded we'll begin the arguments and charge. There's no reason or benefit to going forward at this late hour when we change sides of the case. So we're going to stop for the day and what I'd ask you

to do is be - and by the way, there's no windows, so I don't know if I'm sending you out to a monsoon again or not, but if it is if you need one of our officers to help you get to your car with an umbrella we'll do our best to provide that for you and what I would ask that you do is be back in your jury room again at 9:30 tomorrow morning. We will start at 9:30, and again this evening please don't discuss this case with anyone including your loved ones at home. Don't undertake any investigations. Just get a good night's rest and be back at 9:30 tomorrow morning. Don't call the juror number. There's no need to do that. Just be back at 9:30. Any questions now from our jury panel about scheduling?

(No response.)

THE COURT: All right, well, then we will see you at 9:30 and as we do every day out of respect we will remain where we are while you depart the courtroom first. Have a good afternoon, ladies and gentlemen.

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

THE COURT: All right, anything further for our record today?

MR. HIXSON: No, Your Honor.

THE COURT: Very good, gentlemen, if you would step up we'll give you, again, this charge is not set in stone, but if you would meet me in chambers tomorrow morning at nine

o'clock we'll be prepared to have a charge conference and if you'd step forward and get the charge we are in recess now, ladies and gentlemen, until 9:30 here in the courtroom tomorrow morning.

OFF THE RECORD

(On the record, August 30, 2012. Jury deliberations continue at 9:42 a.m.)

(Note from jury [Court's Exhibit Number Five] received at 10:03 a.m. Reply from Court sent back to jury at 10:21 a.m.)

(Note from jury at 11:12 a.m. The following takes place outside the presence of the jury.)

THE COURT: Let's go back now on the record in the case of the State versus Dizzley. We have a message from the jury, ladies and gentlemen, or counsel, you want to step up and look at it? Have you already seen it?

MR. BARR: I've seen it, Judge.

THE COURT: All right, very good. It would be the State's intention at this time to bring the jury back, including our alternates, and give an Allen charge and I'll be glad to hear from either side as to whether you object or concur with that procedure. What says the State?

MR. HIXSON: I concur, Your Honor.

THE COURT: All right, and Mr. Barr, you want to be heard?

client for just a second.

THE COURT: Very good. We'll wait a moment.

MR. BARR: Nothing from the Defendant, Judge.

THE COURT: Very good. Madam court reporter, let's mark this as a Court's Exhibit, please, this note, and would you please bring our two alternate jurors from the back and then would you please bring our jury panel from the jury room.

MR. BARR: And Judge, I think we've just got one now.

THE COURT: Are we down to one now, all right.

(Whereupon, the following takes place in the presence of the jury at 11:25 a.m.)

THE COURT: Welcome. I don't think you're going to need your pad. That's what some of the jurors are asking. I can hear them in the back. So I think you're fine where you are. That's fine. We'll wait a moment. We're fine. We're also waiting on our alternate to join us. So we'll just be at ease for a moment. Ladies and gentlemen, just while we are waiting for our others to join us I want to thank you for coming back today. I know that probably some of you, if you were like me, were confronted by a flood on the way home yesterday and I couldn't help but go notice as I drove by your business, Mr. Thompson, I believe it flooded yesterday; did it not?

MR. THOMPSON: No, no.

THE COURT: It did not? All right, well, it had some heavy standing water near it.

MR. THOMPSON: It was close.

THE COURT: Very good. Well, I, I appreciate your willingness to be back today and when we had such adverse weather conditions yesterday. We're going to wait just one moment for our alternate and we have at least one of our alternates is still remaining with us.

While we have our 12 though assembled in the courtroom let me ask, ladies and gentlemen, when we were apart from one another last night is there any member of the jury panel who had a discussion with any third person concerning or any other jury panel member for that matter during the evening break concerning the facts of this case? If you did please raise your hand.

(No response.)

THE COURT: And again, let's let the record reflect no one has raised their hands. Thank you for complying with the Court's request. Welcome back, and we still, we still have Ms. Morrison with us this morning as well, is that correct? All right, good. Here she comes. Good morning.

All right, and ladies and gentlemen, I'm going to ask you if you would just secure the back door so that we won't have people coming and going as we talk with the jury here.

Ladies and gentlemen, first of all, welcome back to the courtroom and I have received your message that you've been unable to reach a verdict in the case, and as I instructed you

earlier and as we're all aware the verdict in this case must be unanimous. Now just thinking about this though at any time there is a matter in dispute it isn't always easy for even two people to agree who may be discussing it, much less 12, and so when 12 are required to agree on something well it's even more difficult and in most cases I think we would all agree that absolute certainty can never be reached and that's not what is expected. However, you have a duty to make every reasonable effort to reach a unanimous verdict if you can. In doing this you should consult with one another just as you have been doing, express your own views, but listen openly to the opinions of your fellow jurors, tell each other how you feel and why you feel that way and discuss your differences with open minds as opposed to closed minds, and although the verdict of the jury must be unanimous every one of you has the right to your own opinion and the verdict that you agree to must be your own verdict, the result of your own convictions and you should not give up a firmly held belief merely to be in agreement with fellow jurors. The majority should consider the minority's opinion and the minority should consider the majority's opinion and each of you should consider the others opinion. You should carefully consider and respect the opinions of each other and reevaluate your position for its reasonableness, correctness and impartiality. You must lay aside all outside matters and reexamine the questions before

you based on the law as I gave you and the evidence as you found it in the case.

Now, let's talk about what happens if you do not agree or cannot agree on a verdict. If that happens and the Court declares a mistrial and what that means is that nobody wins, neither the State nor the Defendant. It just means that at some future time this case will be tried again with some other jury sitting where, where you sit today. The same participants will come in, same witnesses, most likely give the same testimony, the same lawyers will basically ask the same questions and we'll go through the entire process of the trial again.

Now, you were selected in the same manner and from the same jury pool really, the community, as any future jury will be and there's no reason for me to suppose or expect that the case would ever be submitted to 12 more intelligent and capable, that is capable, impartial and conscientious and competent jurors than you are and that some greater evidence or more or clear evidence will be adduced on one side or the other.

So, ladies and gentlemen, I'm going to ask you to return to your deliberations one more time. If you're unable to reach a verdict please advise me of that, but I ask you in compliance with the instructions that I've given you to go back and try again and out of respect for you and your efforts

we're going to remain where we are while you return to the jury room. Thank you, ladies and gentlemen.

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

THE COURT: That's fine. If they wish to take a smoke break please give them that opportunity. Now, any objection to the charge that's just been given by the Court from the State?

MR. HIXSON: No, Your Honor.

MR. BARR: No, Judge.

THE COURT: And from Defense. Then hearing none then we're ready to move into other business now, Mr. Hixson, and please call your next case.

OFF THE RECORD

(On the record. Note from jury at 12:20 p.m. The following takes place outside the presence of the jury.)

THE COURT: Let's go back in the record, on the record in the case of the State versus Dizzley and while everyone is coming back in let's go ahead and bring the jury in and let's bring our alternate jurors. Ms. Owens, if you'd bring the alternate jurors as well into the courtroom.

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

THE COURT: All right, ladies and gentlemen, welcome back and Mr. Grate, Mr. Foreman, ladies and gentlemen of the

jury, I've received a message that tells me that the jury is still deadlocked and unable to reach a decision in this case and I wanted to, first of all, tell you one or two things that I have on my mind and heart about this matter. First of all, I don't want you to think in any way that your exercise as jurors has been a failure on your part because you could not reach a verdict. That's not a failure on your part. That's really the strength of our system because we bring diverse citizens from different backgrounds all from the same community to hear a set of facts and make a decision as to whether or not in criminal court a person is guilty or innocent.

Now, what you've told us is that you can't reach a unanimous decision, and I would say to you to that that's not a failure on your part. That's actually a strong message to the Prosecution that they are unable to meet the burden of proof to the extent that they can bring back a unanimous verdict.

Now, the way this process actually works is it is up to the Solicitor as to whether they will dismiss the charge or whether they will retry this case or perhaps redevelop the charge in some way and bring a separate charge of some kind and try that. It's a - the decision rests with the Solicitor. It's not within the control of the Defendant, but what's going to happen here is the Court is going to declare a mistrial,

but I don't want you to believe in any way, zero way that that somehow you are responsible for that because you are not. You're given a set of facts that were the best that the State could adduce from what happened and what they were able to determine, they put that up to you and you brought back a wise and common sense decision that you simply could not agree upon it. There's a message in that and so you've accomplished your purpose.

(Instructions for juror payment given and jury dismissed.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Terron Gerhard Dizzley, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on August 27, 28 and 30th, 2012.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L Hurley

Grace L. Hurley, CVR-CM-M

Official Reporter

September 14, 2013.

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	CASE NO. 2012-GS-22-178
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	(DAY THREE ONLY)
	)	
TERRON GERHARD DIZZLEY,	)	
	)	
Defendant.	)	
	)	

RECEIVED
MAR 30 2023
SC Court of Appeals

August 29, 2012
Georgetown, South Carolina

B E F O R E:

THE HONORABLE MICHAEL BAXLEY, Judge; and a jury

A P P E A R A N C E S:

SCOTT HIXSON, Esquire
Attorney for the Plaintiff

CHARLES DAVID BARR, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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AUGUST 29, 2012

(WHEREAS this matter was scheduled for a trial, the defendant appeared along with his counsel of record. The third day of the trial began at 9:33 a.m.)

THE COURT: All right, counsel. I believe the jury is actually standing in the foyer and ready to go. Are we ready for the jury?

MR. HIXSON: Yes, Your Honor.

THE COURT: Defense?

MR. BARR: Yes, sir.

THE COURT: All right, very good. Please bring in the jury.

(Whereupon, the jury enters the courtroom at 9:34 a.m.)

THE COURT: Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: I trust you had a nice evening and a little bit drier here today to come back to the courthouse and I want to ask, since we were last together is there any member of the jury panel that has had a discussion of the facts or concerning the facts of this case with any third person? If so, please raise your hand. Let's let the record reflect no one has raised their hand. Thank you again for complying with the Court's request.

Let me introduce to you this morning, we have a different court reporter you may notice. Ms. Krystal Smith, who is

actually from Florence, is working with us today. Welcome to the -- to the courtroom, Ms. Smith.

And you will recall at the end of the day yesterday, the State rested. We now move to the defense to determine whether they wish to call witnesses and put up a case at this time and, Mr. Barr, do you intend to call witnesses?

MR. BARR: Yes, sir, Judge.

THE COURT: Please call your first witness.

MR. BARR: The defense calls Investigator Morris.

THE COURT: All right. Please return to the stand, Mr. Morris. Please remember that you remain under oath from yesterday.

THE WITNESS: Yes, sir.

THE COURT: All right, very good.

INVESTIGATOR DUSTIN MORRIS,

being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BARR:

Q: Investigator Morris, how are you this morning?

A: Good, sir. How about yourself?

Q: Oh, I'm blessed. Thank you. I've just got a few things I want to -- want to -- want to touch on with you this morning. Now, as a part of your investigation, did you -- did you have an occasion to visit with Mr. Evans at the emergency room in Georgetown?

A: No, sir, I did not.
Q: You did not visit with him?
A: No, sir.
Q: Okay and do you know which one of your investigators, if any, visited with him?
A: I couldn't hear you, sir.
Q: Do you know which one of your investigators, if any, visited with him at the emergency room?
A: Yes. That was Investigator Mike Nelson.
Q: Mike who?
A: Nelson.
Q: Nelson. Yes, sir. That was the name and I believe Mike Nelson wrote a statement and in that statement -- which was a part of your investigative report; is that correct?
A: Yes, sir.
Q: And did he describe him as being lucid at the time that he saw him?
A: Yes, he did.
Q: All right. Now, in terms of where we stopped yesterday with the -- with the -- with the other people that were at the club that appeared to be -- that were also dressed in the black and -- and -- and had weapons outside the club, all right? Now, I believe there is in your investigation or your ---

MR. HIXSON: Your Honor, I object. This is his witness.

He gets to ask questions, but you don't get to lead him. This is not a cross examination.

THE COURT: That's correct, Mr. Barr.

MR. BARR: I -- I'll rephrase the question, Judge.

THE COURT: Your objection is sustained. Let me just talk to the jury. There's a difference in questioning witnesses. Yesterday, Mr. Barr was actually on cross. When you're on direct, you cannot lead your witness. A leading question is a question that has the answer contained within it. This is for example. If you had -- if this was a car wreck case and the question is was the car blue, that's a leading question because the answer is contained within the question. If you just said what color was the car, well, that is appropriate because that's not a leading question. Now, when you cross a witness, you can lead them to see if they hold to what they testified to on direct, but when you call a witness, under most circumstances you cannot lead that witness, and there's an objection. I sustained it. Go ahead, Mr. Barr, if you have appropriate questions.

MR. BARR: Thank you, Judge.

Q: Now, as I understand it, the people outside as well as the shooter all got in one car and took off?

A: Yes, sir.

Q: All right. Now, you've been in law enforcement for sixteen years I believe; right?

THE COURT: That's leading, counsel.

Q: How long have you been in law enforcement?

A: Seventeen years.

Q: Seventeen years. Have you ever investigated a homicide before?

A: Yes, I have.

Q: Probably lots of them?

A: A few, yes, sir.

Q: And are you familiar with the term the hand of one is the hand of all?

A: Yes, sir.

Q: Would you -- would you -- would you not agree that if the other people assisted the shooter ---

MR. HIXSON: I'm going to object again. He's got to ask a question, not pose the answer. That's a leading question.

THE COURT: So ---

MR. BARR: You're sustaining the objection?

THE COURT: Yes, sir.

Q: You said that you are familiar with the hands of one is the hands of all?

A: Yes, sir.

Q: The -- the people that got in the car with the shooter and -- and -- and left, my understanding is that they were also firing shots outside.

MR. HIXSON: Once again, Your Honor, he's -- that's a

leading question.

Q: Were they firing shots outside?

A: My understanding was they were holding the witnesses at bay and there may have been a couple of shots fired outside. Yes, sir.

Q: Would you consider that assisting the shooter?

A: Yes, sir.

Q: Now, you said that you are familiar with the hands of one is the hands of all?

A: Yes, sir.

Q: If they were assisting the shooter, would you call that aiding and abetting?

A: I would call that active participants.

Q: And could they all -- all be charged with murder?

A: I'm not here to determine the elements of the crime, but I would say they would be charged with the assisting of the crime. Yes, sir.

Q: Murder?

A: Yes, sir.

MR. BARR: Thank you, sir. I have nothing further.

THE COURT: Now, you have a cross examination with your witness.

MR. HIXSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HIXSON:

Q: Now, Investigator -- Investigator Morris, isn't it true that you investigated this crime for a significant period of time?

A: Yes, sir.

Q: And isn't it true that you looked at -- well, this case is from 2008; right?

A: Yes, sir.

Q: And a lot of work went into this thing; isn't that fair to say?

A: Yes, sir.

Q: As a matter of fact, four years' worth of trying to get into the front of the courtroom right today; isn't that right?

A: Yes, sir.

Q: In fact, did you make a significant -- isn't it true that you made a significant effort to identify masked gunmen in this parking lot? Isn't that true?

A: That's true.

Q: Submitted cartridges to SLED to try to find any evidence that we could bring before this jury; isn't that true?

A: Yes, sir.

Q: Submitted rifle casings, in fact, collected on the roadway to see if they were relevant in this case; isn't that true?

A: That's true.

(Whereupon, counsel displays the envelope marked Defense

Exhibit Number 1 for ID only.)

Q: Mr. Barr brought this to your attention yesterday and had you look at these. Are these all photographs that you procured during the course of your investigation to try to determine if there was any credible evidence to bring before this jury?

A: Yes, sir.

Q: Did you do that?

A: Yes, sir.

Q: You looked at them all?

A: Yes, sir.

Q: And isn't it true that during the course of a normal investigation one by one you determine what's relevant and what's not relevant? Isn't that right?

A: That's correct.

Q: Now, how long did that take you?

A: A while.

Q: Now, isn't it true during the course of an investigation like this that the facts lead you to the direction of who you're going to ultimately arrest? Isn't that right?

A: That's right.

Q: You don't pick the person that you're going to arrest. The person picks them by their conduct; don't they?

A: That's correct.

Q: Do you have any credible information that the identity of

the co-conspirators of Terron Dizzley that were in that parking lot holding those witnesses at bay with weapons while he killed Andre Evans? Do you know who they were?

A: No, I do not.

Q: If you knew, would you charge them?

A: Yes, sir, I would.

Q: Would you bring them before a jury just like this to try to convict them of murder?

A: Absolutely.

Q: Let's talk about alibi witnesses for a second. Okay? During the course of an investigation, isn't it true that sometimes you get a lot of anonymous telephone calls?

A: Yes, sir.

Q: Isn't that right? And what generally are the purpose of anonymous telephone calls?

A: Anonymous telephone calls are so a person will not be identifiable. They want to provide information to law enforcement to give us a -- a lead to follow if you try to find out who did the crime.

Q: And what's the problem for your perspective? Isn't it true the problem with anonymous calls is they won't take the witness stand and testify under oath of what's up?

A: That's correct.

Q: They may give you a direction; isn't that true?

A: That's right.

Q: But they were not there at the end of it to stand in front of the jury with their hand on the Bible saying this is what I saw; are they?

A: Right.

Q: But did you get any anonymous calls in this?

A: We got a couple. Yes, sir, we did.

Q: All right and isn't it true that all those anonymous calls you got led to this man? Isn't that correct?

A: Yes, sir.

Q: Nobody did you ever -- isn't it true that you never received anybody that told you that Terron Dizzley was anywhere else other than at the crime scene killing Andre Evans? Isn't that true?

A: No, I did not.

Q: You never received a phone call that he was with Claress [phonetic] Jamison?

A: No, sir.

Q: You never heard a call from Laqesha Felder that said that he was with me, you're charging the wrong guy?

A: No, I did not.

Q: You never received a telephone call from Daniel Robinson; did you?

A: No, sir.

Q: You never received a call from Terron Dizzley's brother that he was with him at the time of the killing; did you?

A: No, sir.

Q: And if you had, would you have followed up on it?

A: Absolutely.

Q: Would you have interviewed them?

A: Yes, sir.

Q: And determined whether or not that that exactly was what happened?

A: Yes, sir.

Q: Isn't it true that maybe that would have forced you to arrest somebody else?

A: Yes, sir.

Q: Never heard of it?

A: None.

MR. HIXSON: I have no further questions.

THE COURT: Is there redirect?

MR. BARR: No, sir.

THE COURT: All right, sir. You may step down.

(Whereupon, the witness leaves the stand at 9:45 a.m.)

THE COURT: And Mr. Barr, please call your next witness.

MR. BARR: The defense calls Ms. Laqesha Felder.

THE COURT: And give us the name again, please?

MR. BARR: Laqesha Felder.

THE COURT: Ms. Laqesha Felder?

MR. BARR: Yes, sir.

THE COURT: All right, very good. Please bring in the

witness.

(Whereupon, there is a pause in the proceedings as the witness is brought into the courtroom from sequestration.)

THE COURT: Ma'am, please come forward and take the oath of a witness.

THE CLERK: Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

WITNESS: Yes.

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

WITNESS: Laqesha Felder, L-A-Q-E-S-H-A F-E-L-D-E-R.

LAQESHA FELDER, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BARR:

Q: Ms. Felder, how are you today?

A: Fine.

Q: Good. Tell me something. You are familiar with the circumstances for which you are in court today?

A: Yes.

Q: And did you know Mr. Andre Evans?

A: I knew him, but I didn't know him. The only reason I knew him was through Shard.

Q: Now, have you had an occasion to have been visited by any investigators with the Georgetown County Sheriff's Office?

A: Visited? Not me, no.

Q: They have not came and asked you any questions?

A: No. They left a card and I called -- called them back.

Q: They did what now?

A: Left a card and I called them back.

Q: Now, when you say they, who are you referring to?

A: Investigator who came ---

Q: You ---

A: --- to my old residence in Orangeburg.

Q: Do you remember his name?

A: No, sir.

Q: But he left a card? He was an officer with the Georgetown County Sheriff's Office?

A: Yes.

Q: And you -- you returned the phone call?

A: Yes.

Q: Or you called him back?

A: I called him back.

Q: And did he ever -- you -- did you leave a message for him?

A: No. When I called him, he answered his phone.

Q: You talked with him then?

A: Mm-hmm.

Q: Oh, I see. You talked with him on the telephone. Ma'am, you spoke to him on the telephone?

A: Yes.

Q: All right. Now, you know Terron Dizzley?

A: Yes.

Q: And tell me how it is that you came to know him?

A: Well, I knew his little brother, Devaughn. He moved to Orangeburg like 2003 and me and Devaughn was like friends so Devaughn -- when he moved there, Devaughn introduced us and we was friends ever since.

Q: And are you more than friends now?

A: Yes.

Q: When you say more than friends, what does that mean?

A: We have a relationship. We've been in a relationship since my son turned two and he's seven now.

Q: And do you and Terron live together now?

A: Yes.

Q: How long have you been living together?

A: Going on five years.

Q: Are you expecting a child?

A: Yes.

Q: Now, tell me if you would, please, ma'am, do you know or did you know anything about his parents at the time that you met him?

A: Further on in the relationship, I met his father and his

mother.

Q: And are they in the courtroom?

A: Yes.

Q: And are they the people that's seated directly behind me? The man and the woman on the front row?

A: Yes.

Q: Now, does his mother live in Orangeburg? Do you know?

A: No.

Q: Where does she live?

A: Sanford, like Georgetown, Sanford, the little town of Sanford.

Q: I see. Do you know what his mother does?

A: She was a school teacher.

Q: And do you know -- how about his father?

A: No. I just know he's retired.

Q: I see, but -- but you and -- and Terron live together now?

A: Mm-hmm.

Q: Now, were you living together or did you know each other in December of 2008?

A: Yes.

Q: And did you -- how did you find out or did you know when -- after -- when Terron -- when Mr. Evans got shot and killed, how did you find out about it?

A: Somebody called him that morning.

Q: Called who?

A: Shard -- well, Terron. I call him -- I call him Shard.

Q: You call him Shard?

A: Yeah.

Q: Do you know who called him?

A: No. I don't know who called him, but he got a phone call that morning because we were still asleep.

Q: And that's how he learned about it?

A: Yes.

Q: Now, when you say you got a phone call that morning, what's your understanding of the morning that he got the phone call?

A: He told me that Andre got shot and he asked him was he all right.

Q: Now, was -- was Terron at home with you all night?

A: Yes. We was together all that day.

Q: You and who?

A: Me and Shard.

Q: And was anybody else with you?

A: My kids.

Q: And where were y'all that day?

A: My grandmother's house on Jamison.

Q: Right across from South Carolina State College?

A: Yeah, you might as well say. It's an elementary school, the back road by the middle school, Howard Middle School.

Q: Now, when did you and -- and - and -- and Terron -- were you also together on what would have been the 29th of November?
A: Yes, because my birth -- my daughter's birthday is the 28th.
Q: Were y'all -- were you -- were you living at your grandmother's house then?
A: No. We had our own place.
Q: You and Tyrone had your own place?
A: Mm-hmm.
Q: And you were living there?
A: Yes.
Q: And were you with him on the 29th, the 30th, December 1st? Were you with him?
A: We're always together, not unless he go and chill with some of his friends and then I get dropped off at my grandma's house and then me and my best friend did sit there for a while and chill until he come back.
Q: Did -- from -- from November 29th or November 30th, did Terron have an occasion to go outside of your presence?
A: He's always like -- if he wanted to chill with his friends, yeah.
Q: Who were the friends?
A: Stephon, J. Boogie, which we call him Daniel. His name is Daniel Robinson.
Q: Yes, ma'am.

A: There's a lot -- there's a lot of friends in Orangeburg and we might go to this little -- like this little bar called Carnell's, you know.

Q: And the people that you just mentioned, they came up here with you this morning?

A: Mm-hmm.

Q: From where?

A: Orangeburg.

Q: From Orangeburg? Now, do you remember seeing Terron with anybody or seeing your -- Mr. Dizzley with anybody else other than the people you just mentioned during that time from -- on the 1st of December?

A: No.

Q: And he didn't leave Orangeburg?

A: No.

Q: You sure about that?

A: I'm sure.

Q: Now, you said that somebody called Terron and told him that Mr. Evans had gotten shot that morning?

A: Yes.

Q: And that would have been December 2nd?

A: Yes.

Q: Now, were you with him when he turned himself in to law enforcement?

A: Yes, but I didn't go with him. His mother went with him.

Q: His mother did?

A: Yes.

Q: Brought him back to Georgetown?

A: Yes.

Q: His mother brought him back to Georgetown?

A: I think she did, yes.

Q: Thank you, ma'am. Would you answer any questions that Mr. Hixson might have?

A: Yes.

THE COURT: And cross examination.

MR. HIXSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HIXSON:

Q: How are you doing, Ms. Felder?

A: I'm doing good.

Q: Do you need a drink of water or something? Are you all right?

A: No, I'm fine.

Q: Okay. Do you mind if I get one?

A: Go ahead.

Q: So I see you've got a baby on the way. Congratulations.

A: Thank you.

Q: Is this your first one?

A: No.

Q: It's not your first one? How many do you have?

A: Two, one's sixteen -- one about to be sixteen and one about to be seven.

Q: Ah, they're a handful, huh?

A: Not really because they're far apart, so.

Q: Not too bad, okay. So tell us -- tell us about how you live or where you live up in Orangeburg. You said you lived with the defendant, Mr. Dizzley; is that right?

A: Yeah. We stayed on the outside of a little town called Bolen Town.

Q: Mm-hmm.

A: Like going toward Norway.

Q: Yeah.

A: In -- in a trailer.

Q: Is it a nice place?

A: Yeah, it was nice.

Q: Y'all ---

A: Quiet in the country.

Q: Is that where you live right now?

A: No. Right now, we're in -- we're in Greeleyville.

Q: Okay. So you lived there before? We're talking about 2008 is when you lived in the trailer out there?

A: Mm-hmm.

Q: And then now you live in a different spot?

A: Yes.

Q: So all told, about how long have you guys -- how long

have y'all lived together probably all told?

A: Since my son was two, probably going on five years.

Q: All right. So tell me about that. Do you own the place free and clear? Are you renting the trailer or what's the deal? Renting the place in Greeleyville?

A: Well, no. It's his mother's trailer.

Q: Okay.

A: So she let us have it.

Q: So you don't pay any rent or anything there?

A: No.

Q: You don't have to; Mom's taking care of that? I mean your -- you know, stepmom. I know you're not married, but you're ---

A: Yeah.

Q: --- together. You guys are committed. So what do you do for a living?

A: Well, I was a forklift driver, but right now I'm not working.

Q: Okay. When's the last time you were a forklift driver?

A: What, February of this year.

Q: Okay. How about Terron? What does Terron do for a living?

A: He cuts hair; he's a barber.

Q: Okay and so does -- does Terron have most of the income coming into the house since you haven't been working? You've

been out for a little bit.

A: Yeah.

Q: Okay.

A: Since the drive is so long, he go every weekend to the barber shop because he drive to Orangeburg. He drives back and forth to Orangeburg and goes to the barber shop.

Q: Okay. So I guess if you're staying with Terron's mama, right? Terron's mama's house?

A: Mm-hmm.

Q: And Terron is making all the money in the house until I suppose when you -- how's -- how's he do with the kids? Does he take care of the kids pretty well?

A: Yeah.

Q: Not bad. No child support issues?

A: No.

Q: He's been taking care of you since, you know, you haven't been working?

A: Well, I get unemployment, so.

Q: Okay. So you've got a little bit coming in, too.

A: Yes.

Q: Okay. So, well, let's -- let's go just a little bit further on the line. I think you made a mention to -- about receiving a business card at the door. Let me show you something and see if it refreshes your recollection on who actually talked to you from the business card on the door. Do

you recognize that?

A: Yes.

Q: That's it; right?

A: Mm-hmm.

Q: All right. Can you read that to the jury, please?

A: Mr. Stephen B. Brown ---

Q: Yeah.

A: --- Investigator and I called his cell phone and ---

Q: And what else does it say? He's an investigator for who?

A: Solicitor's Office.

Q: Okay. So you didn't talk to anybody from the Sheriff's Department; did you?

A: No.

Q: Okay. In fact, that was probably two weeks ago you talked to Mr. Brown; isn't that right? This man standing right here?

A: Yes.

Q: Well, actually you talked to him on the telephone ---

A: On the telephone.

Q: --- so you wouldn't recognize his face.

A: So I wouldn't know how he looked.

Q: That's right. I apologize and during the course of that, the -- that was August 15th to be precise that you talked to Stephen Brown. So let me ask you this. When you said in your testimony to Mr. Barr that the first time you heard that Andre

Evans, somebody that you knew, was murdered was December 2nd. Sometime December 2nd, you said that Mr. Dizzley got a telephone call?

A: That morning, yes.

Q: How many times have you ever received a telephone call that somebody that you knew had been murdered? Has that ever happened to you before?

A: Yes. I just received one earlier this week. Well, I say about last week Thursday, my mother called me and told me that my cousin, somebody had shot him in the back of his head, so.

Q: I'm very sorry to hear that and I hope to God that he gets caught. It's a startling event; isn't it?

A: It is, yes.

Q: It enrages you and gets you upset, especially when someone that you knew what happened; isn't that right? You want to find the guy that did it; don't you?

A: Yes.

Q: Especially with Andre Evans. I don't want to talk about your personal situation because I don't know enough about it and I don't want to offend you; okay? And then when did you realize December 12th that Terron Dizzley was going to be accused of killing this person? Is that when you found out about that? When Terron got arrested?

A: Well, when I found out about it, he told me that his mama called him ---

Q: Mm-hmm.
A: --- and was telling him that people were telling her saying that he was a suspect in a murder, so.
Q: And this was prior to him getting arrested when -- when y'all were still up in Orangeburg?
A: Yes.
Q: Okay. So he hadn't turned himself in yet and you're up in Orangeburg and you already got a little bit of wind somehow that Mr. Dizzley was a suspect in Andre Evans' murder; is that right? Isn't that true?
A: Mm-hmm.
Q: Okay.
THE COURT: Now, was that a yes, ma'am?
WITNESS: Oh, yes, sir.
Q: Okay and then ultimately, Mr. Dizzley, the father of your child, is going to Georgetown County Detention Center and charged with murder; isn't that right?
A: Yes.
Q: Okay and that certainly -- isn't that true that's a startling, shocking event? Someone's getting charged with murder, especially someone that you love and take care of; isn't that right? Or takes care of you, isn't that right?
A: Yes.
Q: That's a startling event?
A: Yes.

Q: Okay and probably more startling than that, wouldn't you agree that someone you care about is murdered and they're falsely accused and they're accused of something they don't do? I mean isn't that more of a travesty than someone that's charged with murder with something they really did?

A: It is.

Q: Yeah, absolutely it is; isn't it? And so here you are knowing 2008, 2009, 2010, 2011, 2012. Never talked to the Sheriff's Department, never say there's a travesty of justice going on in this world; someone is falsely accused of murder. He's been setting with me the whole time and I'm going to keep my mouth shut. Isn't it true I'm not going to say a word to anybody until the Solicitor's Office contacts you and asks you about an alibi witness notice we get from defense counsel. That's the first time you say it; isn't that right?

A: Mm-hmm, pretty much.

Q: Isn't that right? So you let the man that you love hang under the cloud of murder for more than four years, y'all living together, talking about it, having children in common -- congratulations -- and decide I'm just going to wait until he goes to trial on this thing. Isn't it true that if you don't do what Terron Dizzley says, you're kicked out of your mama's house, you don't have any income coming into this house, and you've got a childless baby -- or a fatherless baby; isn't that true? If he's going to be in prison ---

A: No.

Q: Okay. Well, let's ask the statement -- let's talk about the statement you gave over the telephone to Steve Brown and, of course, Mr. Brown is trying to find out the truth of what happened as well because we're still trying to decide who to call to trial; isn't that right? On August 15th, you returned his telephone call just like you told Mr. Brown. This trial started on the 27th. August 15th, 2012, isn't it true that Investigator Brown asked you were you with Terron Dizzley?

A: Yes.

Q: And you said ---

A: Yes.

Q: --- "Yes, I was." And he asked you -- isn't it true he asked you what day was that and you said, "I don't know. Whatever day it was, he was with me all day."

A: See, I didn't say it like that. I said it was so long ago.

Q: Mm-hmm. Isn't it true while you're having a conversation with Mr. Brown, you're on the telephone talking to somebody in the background talking about what day was it, what day was it, and you said December 2nd and I guess it's December 2nd; isn't that true?

A: I was on my way to Orangeburg. I had my kids in the back. I wasn't talking to anybody else. I was driving that day.

Q: There's nobody on the background of that telephone call telling you what to say over the telephone?
A: No.
Q: Okay. Let's talk about Terron's and Andre Evans' business relationship. Isn't it true that in the course of Investigator Brown's discussion with you over the telephone, you told him that Andre and Terron were best buds and you've never seen a single problem at all with them?
A: I haven't because he used to come to Orangeburg like -- when he used to come to Orangeburg, he used to come and stay at the house sometimes.
Q: But nothing was wrong? Why in the world could anything bad have happened between those two because they were great?
A: Exactly.
Q: I think you said they're childhood friends; didn't you?
A: I said they went to school together.
Q: Went to school together?
A: Mm-hmm.
Q: And then they're getting into business -- some kind of business together. I guess we're not really clear what that business is yet, but they're in business some degree together; aren't they?
A: Yes.
Q: But isn't it true he gets a call on December 2nd and never goes to the man's funeral? Never goes; does he?

A: I wouldn't go neither if people were saying I was a suspect.

MR. HIXSON: No further questions, Your Honor.

THE COURT: Is there redirect?

MR. BARR: Yes, sir, Judge.

REDIRECT EXAMINATION

BY MR. BARR:

Q: Ms. -- Ms. -- Ms. Laqesha Felder?

A: Yes.

Q: Do you recall back in September of 2010 whether Andre [sic.] asked you or -- asked you whether or not you would give your name to -- to his lawyer as an alibi witness?

A: Andre?

Q: Yes, ma'am.

A: No.

Q: In 2010?

A: In 2010, no. He never asked me that.

Q: He didn't ask you that?

A: No.

Q: Have -- was there ever a time after -- from the time that you heard about Mr. Evans' shooting, was there ever a time that you ever told anybody anything other than that he was with -- Andre [sic.] with you -- I mean that Mr. Dizzley was ---

MR. HIXSON: Your Honor, I'm going to object. This is

his witness. You've got to ask the question. You can't tell her what to say.

THE COURT: That's leading.

MR. BARR: I'll rephrase the question, Judge.

THE COURT: Sustained.

Q: Did you ever tell anybody at any time from December 1st of 2008 that Andre [sic.] was not with you at the time this occurred?

A: I never -- we never talked about it.

Q: You never talked about it?

A: No.

Q: So nobody never asked you?

A: Nobody never asked me.

Q: Thank you, ma'am.

MR. BARR: I have nothing further.

THE COURT: All right, ma'am, you may step down. You are free to remain if you wish in the courtroom or you're free to leave if you wish.

(Whereupon, the witness leaves the stand at 10:05 a.m.)

THE COURT: Please call your next witness.

MR. BARR: The defense calls Mr. Daniel Robinson.

(Whereupon, there is a pause in the proceedings as the witness is brought into the courtroom from sequestration.)

THE COURT: All right, Mr. Robinson, please come forward

to take the oath of a witness, sir.

THE CLERK: Do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

WITNESS: Yes.

THE CLERK: Please take a seat, state your full name for the record, and then spell it, please.

WITNESS: All right. My name is Daniel Robinson, D-A-N-I-E-L R-O-B-I-N-S-O-N.

THE COURT: Mr. Barr?

DANIEL ROBINSON, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BARR:

Q: Mr. Robinson, where do you live?

A: Orangeburg, South Carolina.

Q: Orangeburg?

A: Yes.

Q: And how long have you lived in Orangeburg?

A: All my life.

Q: What do you do in Orangeburg?

A: I work at a car wash.

Q: And do you -- do you know Terron Dizzley?

A: Yeah.

Q: Did you also know Andre Evans?

A: Yes, I know of him. Yeah, I know him.

Q: Had -- have you ever met Andre Evans?

A: I met him, yeah.

Q: Where did you meet him?

A: At my house and at the Club Paradise.

Q: So you -- you've been to Club Paradise here in Georgetown?

A: Right.

Q: Do you remember when you were there?

A: Yeah, a Halloween party.

Q: A Halloween party?

A: Yes.

Q: All right. Now, how long have you known Terron Dizzley?

A: Over five years.

Q: And when did you meet him?

A: 2005, 2006, over five years.

Q: So now you knew him in December of 2008?

A: Yes.

Q: When did you first learn that Mr. Evans had been shot?

A: A couple of days after I saw Mr. Dizzley.

Q: How did you learn that he was shot?

A: Oh, through -- through the streets.

Q: Somebody told you?

A: Yes.

Q: And did you know that Andre -- or that Terron was

suspected of shooting Mr. Evans?

A: There was word in the street after I found out that happened.

Q: Everything goes in the street; doesn't it?

A: Yes.

Q: People hear things?

A: Right.

Q: Now, did you or -- at the time, did you find out -- when you were told what time it was -- when they claimed that Mr. Evans was shot, did you know what time it was?

A: Yes. Well, I heard - at the time when they said that he got shot, I was actually with him that night, yeah.

Q: And who else was with you?

A: Me, him and his brother.

Q: And is his brother Devaughn Dizzley?

A: Yes.

Q: Tell the ladies and gentlemen of this jury what y'all did that night?

A: They came to -- they came to my house around 8:45, nine o'clock.

Q: That's the night of December 1st of 2008?

A: Yes.

Q: All right and what happened?

A: We politicked for a while, about an hour, almost an hour, and then they left. Actually, he brought his brother around

to come to see me before he go back home. He did.

Q: Was -- was Laqesha Felder with you -- with him -- with Terron and his brother?

A: Nah, she was around to her grandmother's house.

Q: And where does the grandmother live?

A: About two streets over from me at the time.

Q: So you lived near Laqesha where she was living on Jamison -- Jamison Street at the time?

A: Yes. I know I could walk there in less than five minutes.

Q: Now, has anybody ever asked you whether -- other than anylaw enforcement people or any lawyers, including lawyers, whether or not you were with Mr. Dizzley on the night of December 1st of 2008?

A: No. This is my first time being asked ---

Q: Now ---

A: --- by any law enforcement or a lawyer.

Q: Did you feel called upon to volunteer that information to anybody?

A: No. I just know the truth and I was with him that night. When I heard everything, when I first about him getting involved, nah, because that's from here to there. That's not going to happen. It's too long. It's what? A couple of hours? An hour and some change? Two hours?

Q: Are you absolutely certain that you were with Terron

Dizzley the night of December 1st, 2008?

A: Absolutely positive. He was at my house. He left my house before ten o'clock. Absolutely positive.

Q: Would you answer any questions Mr. Hixson might have for you?

THE COURT: Cross examination.

MR. HIXSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HIXSON:

Q: Good afternoon, sir. How are you doing?

A: I'm doing pretty good.

Q: All right. Do you need water or something? Are you good?

A: Yeah, I'm good.

Q: Okay. So how do you know Terron Dizzley?

A: Just being in the neighborhood in Orangeburg.

Q: In Orangeburg? All right. Did y'all grow up together? Know each other growing up or anything?

A: No. We didn't grow up together, but over the years, yeah, we got to know each other pretty good.

Q: All right. Y'all socialize together? Anything? Hang out?

A: All the time.

Q: What do y'all like to do?

A: Politic about life and have a good time.

Q: Politicking? Do you mean just talking and chewing the -- chewing the fat, so to speak?
A: Yeah.
Q: That's what we call it where I'm from.
A: Pretty much.
THE COURT: And, Mr. Hixson, just remember our court reporter can't take two people down at one time.
MR. HIXSON: Thank you. I apologize, Your Honor. I'll slow her down a little bit.
THE COURT: Wait until the question is finished before you answer and wait until the answer is finished before you question. Go ahead, sir.
MR. HIXSON: Thank you, Your Honor. I apologize.
THE COURT: Thank you.
Q: Where do y'all like to go out in Orangeburg?
A: Well, we did -- we hung out in the neighborhood a lot.
Q: Mm-hmm.
A: And we go to each other's houses, you know, cook out and things of that nature.
Q: Uh-huh. How about you mentioned you had been to the Paradise Club. You got places up in Orangeburg up that way y'all like to go that are kind of like the Paradise Club?
A: Yes. There's a couple spots, but we really don't hang too much. You know, it was just a project that he was going through a lot and we come to see how it was and all.

Q: That's cool. I see. I think you said a Halloween party I think ---

A: Yes.

Q: --- you said you went to.

A: Yes.

Q: Are your family from Orangeburg up that way?

A: Yeah, all my family is from Orangeburg.

Q: Okay. Does your family know Mr. Dizzley's family? I know they're ---

A: No, uh-uh.

Q: --- prominent in the community. There are a lot of Dizzley's up there I think.

A: No. Yeah, I don't know about his mama and all. I don't know them.

Q: Now, how about the -- how about the Robinson's? I hear the Robinson's and the Jamison's, those family names up that way are -- are pretty prevalent; aren't they?

A: Yeah. We're a big family, yeah.

Q: Yeah. So tell us about it. I think you said your family -- or went over to the Jamison's, you were talking about the Jamison's. The grandma's house is just right around the corner?

A: Right.

Q: She actually lives on Jamison Road; doesn't she?

A: Yes.

Q: Like named after the family? That's ---

A: Yes, Jamison, yeah.

Q: That's pretty ---

A: Jamison stays on Jamison, yeah.

Q: I bet a lot of folks know everybody up there; don't they?

A: Pretty much.

Q: Okay. So I think you were talking about what y'all like to do. You talked politicking and stuff like that. Who do y'all usually hang out with when you're up there in Orangeburg just hanging out politicking and stuff?

A: Family, friends.

Q: All right.

A: People in the whole neighborhood. Everybody knows each other.

Q: I know. If everybody is -- somebody is kind of tight; aren't they? I mean you mentioned Terron's brother?

A: Yes.

Q: Y'all hang with him?

A: Yes.

Q: Okay.

A: When he comes in town.

Q: Okay. Where does he live?

A: Charleston.

Q: Okay.

A: All right.

Q: Where did he live back in 2008?
A: His brother?
Q: Yeah.
A: Charleston, yeah.
Q: In Charleston down that way?
A: Charleston, Summerville, Charleston.
Q: North Charleston actually, isn't it? I think ---
A: Okay.
Q: I mean same thing.
A: Charleston.
Q: Same thing, okay. Well, you talked a little bit about -- first off, can you -- can you tell me Laqesha Felder was doing during the course of, you know, when y'all were over hanging out with you and Terron and -- and Devaughn? Excuse me, Devaughn, his brother, yourself. You say that Laqesha wasn't with you?
A: Really, I don't know what she was doing. She was around at her grandmother's house and we was at my house.
Q: Yeah, so no question you just can't say what Laqesha was doing because she wasn't with you; right?
A: Yes, right, exactly.
Q: Okay. You also said something about it was around ten o'clock I think you talked about or something like that, you know, around there at that time period and you also mentioned something about the word on the street or something right

around December 2nd is how you found out that Andre Evans got shot.

A: Yeah, it was like a couple days later, about two days, at least a day or two, two days later. Yeah, I heard about it.

Q: Did Terron tell you?

A: Nah. I ain't -- I haven't -- I didn't see him. After that day I seen him that night, I didn't see him no more.

Q: Okay.

A: Yeah.

Q: Fair enough. So when did you find out that he actually got arrested instead of just word on the street that he was a suspect? When did he actually get -- when did you finally know that he actually got hooked up and handcuffed and taken to jail on this thing?

A: A while later, a couple weeks later, something like that. I heard ---

Q: A couple weeks?

A: Yeah.

Q: And we're talking about 2008; right?

A: Yeah. He turned himself in, yeah.

Q: Okay. Before I get into that, let me think about a couple things. Do you have a cell phone?

A: Yeah.

Q: Do you have a cell phone on you?

A: Uh-huh.

Q: I know this is silly because I know you know how to use it.

A: Right.

Q: Okay. Let me ask you this question here. You've been in a little trouble with the law before; haven't you?

A: Yes.

Q: You got a little -- as a matter of fact, you've got convicted out of Georgia for possession of cocaine; isn't that right?

A: Not Georgia.

Q: Yeah. Isn't that right? Isn't that true?

A: Oh, yeah, okay, yeah.

Q: It's -- you got a probationary sentence on a felony though?

A: Right.

Q: Okay, that's cool. So how did you know what day -- I guess when the trial started, how did you know when to come to court on Monday -- this Monday when this trial started? How did you know that?

A: How did I know?

Q: Yeah.

A: Actually, I forgot and he came and got me and told me about it and everything.

Q: Who came to get you?

A: Terron.

Q: The defendant's attorney is the one that told you to come to court?

A: No, he did.

Q: Mr. Dizzley did?

A: Yeah.

Q: Okay, that's cool. So you had a conversation with Mr. Dizzley about being in court and testifying?

A: Yeah. I told him I would be here because I know. Yeah, I'd testify for him because I know where he was that night.

Q: Okay.

A: December 1st.

Q: Okay. Well, let me ask you this question, too, then. Have you ever testified in a murder trial before?

A: No, I haven't.

Q: That's a big deal; isn't it?

A: Yeah.

Q: You kind of nervous?

A: No, not really.

Q: Well, I mean, you know, someone that's being tried for murder, that's a -- kind of an intense thing. I mean they write TV dramas about this kind of stuff; don't they?

A: Yes, sir.

Q: I mean the word on a street a killing and you've got word on the street everywhere about what's going on pretty quickly; don't you?

A: Right.
Q: When he gets hooked up and arrested, not even a conviction but an arrest, isn't that true that, man, that's word on the street fast; isn't it?
A: Right.
Q: But that's back in 2008.
A: Uh-huh.
Q: 2009 goes by. A man is wrongfully getting convicted of murder. No conversation, don't tell law enforcement this man is wrongfully convicted of murder. He couldn't have done it because he was at my house. Now, his girlfriend wasn't around, but he was here. Isn't that right? Isn't that what you're saying? 2010 goes by, no conversation with anybody. 2011 goes by. Y'all get the drill now. 2012 goes by with nothing, no conversation, no chance to exonerate anybody.
A: Right.
Q: Don't tell law enforcement you got the wrong man, don't let this happen, and the only time you think to come to court is when the defendant tells you to come to court; isn't that right?
A: That's -- we been talked about it, but they set the date. Then when he came to me, yeah, I'll be there for you because I know where you was.
Q: Yeah.
A: I'll be here for him.

Q: You said you had a cell phone; right?

A: Yes.

Q: Do you know how to use it?

A: Yes.

Q: You know how to hit 9-1-1; don't you?

A: Yeah.

Q: That goes right to the police; doesn't it?

A: All the time.

Q: Right now, you could tell them right now. You didn't do it; did you?

A: No.

MR. HIXSON: No further questions.

THE COURT: Is there redirect?

MR. BARR: No, sir.

THE COURT: All right, sir. You are free to step down and free to leave if you wish or free to remain. That's your choice. Thank you.

(Whereupon, the witness leaves the stand at 10:18 a.m.)

THE COURT: Please call your next witness.

MR. BARR: Mr. Stephon Jamison.

(Whereupon, there is a pause in the proceedings as the witness is brought into the courtroom from sequestration.)

THE COURT: All right, ladies and gentlemen, while we're waiting a moment for the witness to come in, let me talk with

you about something. When we take our next break, I'm going to ask you to elect among yourselves your own foreperson and here's how I'd ask you to do that.

I'm going to let our alternate jurors, if you would kindly -- that's Ms. Moore and Ms. Marson. If you all would, preside during that time, but it should not be you that's chosen because ultimately you may not sit to deliberate with the twelve. That's remains to be seen, but you may preside to assist the jury in choosing.

You may even have a vote in the foreperson choice. That may be a foreman or a forewoman; that's your choice, ladies and gentlemen, and I would suggest to you the best foreperson is one who is not a dictator or controller of opinion, but someone who can facilitate discussion and moderate discussion because ultimately your verdict has to be unanimous and I think you know one another by now -- some of you may have known one another before you came in -- and you'd be in a better position to choose your foreperson than the Court.

So we'll talk with you a moment about that when we stand down to take our next morning break. Is our witness ready? All right, please -- please come in, sir, and come forward to take the oath of a witness.

THE CLERK: Sir, do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth ---

WITNESS: Yes, ma'am.

THE CLERK: --- so help you God?

WITNESS: Yes, ma'am.

THE CLERK: Please be seated and state your name for the record and spell it, please.

STEPHON JAMISON, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BARR:

Q: Mr. Jamison?

A: Yes, sir.

Q: How are you?

A: Fine. How are you?

THE COURT: Sir, excuse me just for a moment. Give us your full name, if you will, please.

WITNESS: Stephon Jamison.

THE COURT: Spell that for us for our record, please.

WITNESS: S-T-E-P-H-O-N J-A-M-I-S-O-N.

THE COURT: Thank you. Go ahead, Counsel.

MR. BARR: Thank you, sir.

Q: Where do you live, Mr. Jamison?

A: In Orangeburg.

Q: And how long have you lived in Orangeburg?

A: All my life.

Q: What do you do?

A: Currently, right now I'm in the process of going to school.

Q: And where do you go to school?

A: I'm currently attending O.C. Tech.

Q: And how long have you been attending Tech?

A: Just recently, just started back.

Q: Now, what are you studying in school?

A: Chemical engineering.

Q: Do you know Terron Dizzley?

A: Yes, sir.

Q: How long have you known him?

A: About five, six years around.

Q: Do you know his girlfriend, Laqesha Felder?

A: Yes, sir.

Q: Are y'all related?

A: She's my sister's best friend.

Q: Your sister's best friend?

A: Mm-hmm.

Q: Now, did you know Mr. Andre Evans?

A: Somewhat.

Q: Had you ever met him before?

A: Once or twice.

Q: Where did you meet him?

A: In Orangeburg.

Q: So he was in Orangeburg when you met him?

A: Mm-hmm.

Q: Now, when he got shot, did you hear about it?

A: Yes, sir. I received a call like a day later.

Q: How did you -- who -- who called you?

A: Terron's brother called me and informed me.

Q: Devaughn called you?

A: Mm-hmm.

THE COURT: All right. I'm going to get you to say yes, sir, or no, if you would, so our court reporter can take that down and what was that answer? Was that a yes?

WITNESS: Yes, sir.

Q: Devaughn Dizzley called you?

A: Yes, sir.

Q: And told you that Mr. Evans had gotten shot?

A: Yes, sir.

Q: Now, Mr. Jamison, after you heard about him having gotten shot, did you have an occasion to see Terron Dizzley?

A: Yes, sir, I did.

Q: Where did you see him?

A: We was at my house chilling.

Q: When was that?

A: We had got the call around the 2nd, but on the 1st when they said it happened, we were together.

Q: And what were y'all doing?

A: Just chilling, same thing we do every day.

Q: You and who?

A: Me and Terron.

Q: Was anybody else with you?

A: Laqesha was. We were at my grandmother's house.

Q: Now, did y'all see -- did y'all see Mr. ---

MR. HIXSON: I'm going to object, Your Honor. He's got to ask the question, not suggest the answer.

THE COURT: Very good. Please don't lead your witness, Counsel.

Q: Did you -- did you see anybody that day?

A: Yes, sir.

Q: Who did you see?

A: Terron and Laqesha.

Q: And what did y'all do? Just tell the ladies and the gentlemen of the jury from the time that morning what did y'all do all day long.

A: Pretty much the same thing. We just chilled around my grandmother's house. That was like the hang-out spot. So we would just cool it there for the remainder of the day, you know, went and grabbed something to eat. Pretty much typical stuff.

Q: Did you see Daniel Robinson?

A: Sir?

Q: Did you see Daniel Robinson?

A: Yes, sir.

Q: Where did you see him?

A: Around the corner to his house.

Q: Did y'all hang out together for a while, too?

A: Yeah, not long though, just swing by, holler at him, left, went back to my grandmother's house.

Q: You and Terron?

A: Yes, sir.

Q: How about his brother, Devaughn? Was he with y'all?

A: He hadn't gotten in town yet.

Q: Now, what time was it when you went back to your grandmother's house?

A: It was about -- he came over like around one, one thirty. I'd say we got back to the house like around two thirty, three o'clock that afternoon.

Q: Okay and what did y'all do or what did you do from two thirty that afternoon until twelve o'clock that night?

A: We was just chilling. He left with me around like nine thirty, nine o'clock.

Q: And who did he leave with?

A: Laqesha.

Q: Now, Mr. Jamison, are you sure that Terron ---

MR. HIXSON: He's already asked and answered that question.

THE COURT: Well, let me hear the question first before I can rule, but remember ---

MR. BARR: Is that an objection?

THE COURT: Yes, sir. It was asked and answered was the objection and I've deferred decision. Let me hear the question. Now, before you answer, let me listen to what this question is going to be, Mr. Jamison. Go ahead.

MR. BARR: Here's what -- answer any questions Mr. Hixson might ask you, please.

THE COURT: All right, very good. Is there cross examination?

MR. HIXSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HIXSON:

Q: Hey, Mr. Jamison, how are you doing?

A: Fine. How are you?

Q: Okay. You're going to school for chemical engineering?

A: Yeah.

Q: That's outstanding, congratulations.

A: Thanks.

Q: That stuff is tough. I hope you're good at it.

A: Yeah, at times.

Q: You said you're living up in Orangeburg; isn't that right?

A: Mm-hmm.

Q: And that you know Terron Dizzley?

A: Yes, sir.
Q: About five or six years or something like that?
A: Yes, sir.
Q: I think your testimony said that you were hanging out with Laqesha Felder. Isn't it true you said that you were hanging out with Laqesha Felder and Terron earlier that evening? Isn't that right?
A: Yes, sir.
Q: And isn't it true that you said that you weren't hanging around with Daniel Robinson at all? As a matter of fact, you just stopped by and said, hey, what's up, I think is what you said, and then you went over to your grandma's house.
A: That's all there was really.
Q: Yeah and you -- that didn't last very long, just a couple of minutes or so I think you said? You testified, isn't it true, just ---
A: Twenty minutes at the most, nothing major.
Q: Okay and, in fact, isn't it true that you said that Devaughn Dizzley hadn't even gotten into town yet? You didn't see Devaughn because Devaughn hadn't made it into town yet that night?
A: We was waiting for him. When he did came around there, you know, we did talk or whatever. It wasn't nothing major like that though.
Q: Okay and I think isn't it true you testified that you

left grandma's house at nine thirty? Terron and Laqesha left together and went home, but Devaughn wasn't there nor Daniel Robinson wasn't there either according to your testimony. Isn't that right?

A: Yeah, we went around -- we went around to Daniel Robinson's house.

Q: About nine thirty?

A: Mm-hmm.

Q: Okay. So you weren't with Terron Dizzley around eleven thirty that evening? Those guys had already left; isn't that true? According to what you just testified to?

A: No, sir, I wasn't with him around eleven thirty.

Q: Or ten thirty? Last time you said -- isn't it true you testified nine thirty? Isn't that correct?

A: Yes, sir.

MR. HIXSON: I have no further questions.

THE COURT: Is there redirect?

MR. BARR: No, sir.

THE COURT: All right, sir, then you may step down and you're free to leave the courtroom if you wish or free to remain. It's your choice.

(Whereupon, the witness leaves the stand at 10:28 a.m.)

MR. BARR: The defense calls Mr. Devaughn Dizzley.

THE COURT: All right, sir, and just a moment. Before you bring in Mr. Dizzley, I'm going -- are you going to leave

or are you going to be seated?

MR. JAMISON: I'm about to sit down.

THE COURT: All right. Go ahead and have a seat, please. Counsel, we've had several objections about leading questions and I just want to just make sure. Our witnesses are sequestered, this is important testimony, and I'm going to direct you not to suggest a name to the witness as to whom they were with, but simply let the witness tell us that. Do not lead the witnesses because once the leading occurs and the objection comes afterwards, well, as they say, the horse is out of the barn door. So please make sure you do not lead your witness in this coming testimony.

All right, sir, thank you. Please bring in the witness.

(Whereupon, there is a pause in the proceedings until the witness is brought into the courtroom from sequestration.)

THE COURT: Please come forward to take the oath of a witness.

THE CLERK: Sir, do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

WITNESS: Yes.

THE CLERK: Thank you. Please be seated and state your full name for the record and then spell it, please.

WITNESS: Leon Devaughn Dizzley, Jr.

LEON DEVAUGHN DIZZLEY, JR., being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. BARR:

Q: Mr. Dizzley, where do you live? Where do you live?

A: Charleston.

Q: And have you ever lived in Georgetown?

A: No, I've never lived in Georgetown.

Q: Do you have family in Georgetown?

A: Yes.

Q: Who do you have here?

A: My brother and my other brother lives in Georgetown and my mother and stepfather.

Q: They live in Georgetown?

A: Yes.

Q: Now, did you know Andre Evans?

A: Yes, I did.

Q: How long have you known him?

A: For years, maybe like 2004 or '05.

Q: When you first met him, where did you meet him?

A: I was living in Orangeburg. He came to the house. That's when I first met him.

Q: To your house?

A: Yes.

Q: And approximately how many times you saw him after he

came to your house initially?

A: Plenty of times.

Q: And did you -- when you learned -- and you did learn about his death at some point?

A: Yes.

Q: Where were you when you learned about his death?

A: Summerville, South Carolina.

Q: And did you have an occasion to get in touch with your brother?

A: Yes.

Q: After learning about his death?

A: Yes, I did.

Q: When was the first time that that happened?

A: The following morning.

Q: And when you contacted your brother the following morning, what time was it? Do you know approximately what time that was?

A: It was real early in the morning, maybe about eleven o'clock.

Q: Now, the day before, December 1st, did you see your brother, Terron?

A: The day before December 1st?

Q: Yes, the day -- the day of December 1st?

A: Yes, I did.

Q: Tell -- tell the ladies and gentlemen of this jury

exactly what you did on the day of December 1st, 2008?

A: Well, I came to Orangeburg and I always come see my brother.

Q: What time did you get to Orangeburg?

A: I probably got to Orangeburg about -- I got to -- I arrived in Orangeburg maybe eight o'clock and I got to my brother's probably about eight thirty when I got to him.

Q: And was he at home?

A: No. He was at Jamison at Stephon's house and then we went to Twin's house.

Q: To whose house?

A: Twin.

Q: Is that a nickname?

A: Yes.

Q: Who do you call Twin?

A: Mr. Robinson. I think that's his real name. I know him by Twin.

Q: Would that be ---

A: We went to his house and ---

Q: --- Daniel Robinson?

A: Yes.

Q: And -- and what time was it when you went to Daniel's house?

A: Nine o'clock.

Q: What did you do after that?

A: Well, we sit there. We hang around a little bit, had a few drinks.

Q: And then what did you do?

A: I left.

Q: What time did you leave?

A: Like nine thirty.

Q: And when you left, where did you go?

A: Back home to Summerville.

Q: And when you left, where was Terron?

A: He was with me when I left. We went back to Stephon's house.

Q: I see. Well, then when you went back to Stephon's house ---

A: I left from there and went back to Summerville then.

Q: Well, what time did you leave Stephon's house?

A: I left Stephon's house probably ten o'clock.

Q: That night?

A: Yes.

Q: And did you leave Terron there at Stephon's house or ---

A: Yes.

Q: You left him at Stephon's house?

A: Yes.

Q: With who?

A: Him, Laqesha, the girlfriend.

Q: And you didn't -- you -- did you see him again that night

or day?

A: No, not after that. I went back to Summerville. I was at my girlfriend's house.

Q: Would you answer any questions that Mr. Dixon might have -- Hixson might have for you?

THE COURT: Cross examination.

MR. HIXSON: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. HIXSON:

Q: Hey, Mr. Dizzley, how are you?

A: All right.

Q: Sorry to meet you under these circumstances. It's probably got to be tough with your brother sitting over there.

A: Yes.

Q: So you grew up together brothers, huh?

A: Say that again?

Q: You obviously grew up together brothers?

A: Yes.

Q: Y'all get a chance to spend a bunch of time with each other growing up? Were y'all good friends growing up?

A: Yes.

Q: What did y'all like to do together?

A: Everything.

Q: Kid stuff?

A: Yeah.

Q: Riding bikes, just playing around, stuff like ---
A: Yeah. We went to church a lot and everything.
Q: That's good. You're younger than he is; aren't you?
A: Yes.
Q: Did y'all fight like brothers do or did y'all get along pretty well the whole time?
A: No, we always got along.
Q: That's cool. Did you spend -- socialize together? Well, how far apart were you in school? Did you go in school together the same grades and all that kind of thing?
A: No. I didn't go to school with him.
Q: Okay. I didn't know if, you know, you were in the same building, but different classes or something. I didn't know.
A: No. I went to school in Lee County.
Q: Okay, okay. Going to church and stuff I guess because your dad is a pastor, isn't he?
A: Yes.
Q: And so you go and listen to your dad preach from time to time?
A: Yes.
Q: That's neat. Well, let's fast forward a little bit to -- how often do you think you go see your brother prior to all this stuff happening? You know, did you -- weekly? Monthly? A couple days a week?
A: Weekly.

Q: Weekly? Y'all call and talk to each other on the phone a fair amount?
A: Yes.
Q: It's pretty close, you guys are pretty close?
A: Yes.
Q: That's good. Family is important?
A: Yes.
Q: So let's go a little forward to the night this stuff happened or just before then. I'm not going to spend a lot of time on it because it sounds like you headed on back to Summerville at ten o'clock. So you don't know what happened after ten o'clock; do you? You couldn't?
A: No.
Q: So you have no idea where Terron Dizzley was for over an hour and a half while you leave to go to Summerville. How far is it from here to Summerville -- from Orangeburg to Summerville? That's what? An hour and a half?
A: No, maybe 45 minutes.
Q: Forty-five minutes?
A: Yeah.
Q: Okay. You've been a little bit of trouble in the past; haven't you? Just a little bit.
A: Nothing major.
Q: You've got a possession of cocaine with intent to distribute?

A: No.

Q: Was it, let me see, manufacture and possession of other controlled substance? Okay, that's probably a marijuana charge; I apologize.

A: Yes.

Q: And it looks like your -- that's 2005; right?

A: Yes.

Q: Okay.

MR. HIXSON: I have no further questions.

THE COURT: Is there redirect?

MR. BARR: No, sir, Judge.

THE COURT: All right, sir, you may step down. You're free to remain in the courtroom or free to leave, whichever you prefer.

(Whereupon, the witness leaves the stand at 10:38 a.m.)

THE COURT: Please call your next witness.

MR. BARR: Your Honor, at this time, the defense rests.

THE COURT: The defense rests, all right. Will there be reply testimony?

MR. HIXSON: No, Your Honor.

THE COURT: All right, very good. Ladies and gentlemen, let's do this. Let's take our morning break. We may actually take a break maybe a little bit extended because I have certain issues I need to work with on the lawyers to prepare for the closing arguments and the conclusion of the case, but

what I'd ask you to do is go back and go ahead and take your break and then after about -- after you've had your break, if you would, please at the call of your alternate jurors choose your foreperson, write the name down on the list -- on a piece of paper and send that out and we'll be glad to receive that information, and then as soon as we're prepared and ready to go into closing arguments, we'll bring you back in the courtroom. Now, we'll remain where we are while you go and enjoy your break.

(Whereupon, the jury exits the courtroom at 10:39 a.m.)

THE COURT: All right, ladies and gentlemen, before we stand down let's take any motions that may be outstanding at this time here at the close of all the evidence. Are there any motions from either party? First, to the defense?

MR. BARR: Your Honor, at this time we would renew the previous motions we made at the end of the presentation of the State's case on the same grounds.

THE COURT: All right and for the same reasons, the Court is going to deny those motions and submit this issue to the jury.

Now, we left open the issue of this large packet of photographs. Just one moment. We left open this question about the packet of photographs. Does the defense wish to place that into evidence or is it simply remaining to be marked for ID only?

MR. BARR: For ID only.

THE COURT: Very good. For the jury, are there any other issues that we need to take up at this time prior to coming back for closing statements from the defense?

MR. BARR: No, sir.

THE COURT: Hearing none, from the State?

MR. HIXSON: Your Honor, for ID only I assume that means that can't be used in the course of the closing argument?

THE COURT: Well, it's not in evidence so it's not to be shown to the jury and it doesn't go back with the jury when they -- when they retire to deliberate. So, ladies and gentlemen, let's stand down ourselves for approximately ten minutes subject to the call of the jury, but we'll be in recess approximately ten to fifteen minutes. Thank you.

(Whereupon, there is a break in the proceedings from 10:41 a.m. until 10:57 a.m.)

THE COURT: All right and then, ladies and gentlemen, of the jury -- I mean in the courtroom, let me say that John R. Grate, that's the foreperson that has been chosen by the jury and that is Juror Number 50. We'll see Mr. Grate in the foreperson's seat when the jury comes in.

THE BAILIFF: He was sitting there already.

THE COURT: Well, that's all right. We'll put him right back in the same seat.

THE BAILIFF: Yes, sir.

THE COURT: And please -- please bring in the jury. Well, actually here comes the defendant now so please -- I believe we're ready. Please bring in the jury.

(Whereupon, the jury enters the courtroom at 10:59 a.m.)

THE COURT: All right, ladies and gentlemen, welcome back to the courtroom. I want to first thank Ms. Port and Ms. Morrison for your assistance in presiding over the jury while they chose Mr. Grate as their foreperson and, sir, congratulations to you on the confidence that your colleagues have shown in choosing you as foreperson and I'll talk with you a little bit further in the -- in the instructions at the end of the matter right before you retire to deliberate about your role as foreperson, but in advance I say thank you for your willingness to serve.

All right. Now, ladies and gentlemen, we are at the point in the case where we will have closing arguments, the charge on the law, and also let me talk with you about something that I know that's important to you and actually to all of us, which would be your lunch today, and what is going to happen is that our clerk, Ms. White, and her staff are kindly going to provide lunch for you today. We're going to order some sub sandwiches that should arrive roughly about the time we finish with the charge and arguments so that you can have your lunch without deliberating, that is arguing or talking amongst yourselves about the case. You'll just enjoy

your lunch and your alternates will be able to remain with you for lunch. Then after your lunch is completed when you all are finished, we'll take away the -- the trash that may not be needed any longer. We'll ask our alternates to step out and then you will retire to deliberate. So we'll sort of try to set it up in that process. Hopefully, we'll be able to work on that schedule.

Now, you may recall I told you at the beginning of the case that we would end this case or reach the deliberation stage with the lawyers coming before you in closing argument and the Court would give you the charge on the law. We talked among ourselves and I'm actually going to give you the charge first. So I'm going to tell you what the law is first and then the lawyers are going to come behind me and they are going to have their closing arguments. The way the closing arguments will be structured is the defense will go first and the prosecution -- the State will go last.

Again, I would remind you that what the lawyers say in closing it is not evidence in the case. You've heard the evidence now. You will have the exhibits with you that were placed into evidence during the course of the trial and so we will proceed in that fashion.

Now, let me also say before I begin the actual formal charge to you, I -- I remember when we talked on Monday, which was really not that long ago, I mentioned the fact when we

first started together Monday morning and you were chosen as a jury that you had busy lives before you got here, and I want to thank you, ladies and gentlemen, for setting aside those busy lives and engaging in this process to the extent that you had to -- the full extent that you have because every time I've looked at the jury, just as I'm looking at you now, you've been sitting there with what I call rapt attention, close focus, and I'm grateful that you put aside your busy lives to that extent because this is some very important issues we have before us and I know now that when you retire to deliberate, you're going to be in a position to decide the facts and determine the facts of it because you've listened closely to the testimony and to the arguments in the case and, again, I thank you for that, ladies and gentlemen.

CHARGE ON THE LAW BY THE COURT

Now, Mr. Foreman, as you know, and members of the jury, the State has charged the defendant, Terron Gerhard Dizzley, with one count of murder, The State, of course, is seated at the table closest to you. The defendant, Mr. Dizzley, is seated at the table furthest from you.

And you also heard the defendant plead not guilty to that charge, which denied the allegations that were in the indictment, and as I explained to you -- and I don't want to sound like a broken record, but it is of extreme importance. The indictment is just simply a set of accusations and charges

against the defendant. It's not evidence. It's not necessary that it be considered as the truth because the evidence you should consider is the testimony of the witnesses in the case, as well as any exhibits placed in the record during the course of the trial.

I will tell you that the defendant comes into this courtroom clothed with a presumption of innocence and that presumption of innocence continues with the defendant throughout the case and entitles him to a verdict of not guilty unless and until that presumption of innocence is dispelled by evidence that satisfies you the jury beyond a reasonable doubt that the defendant is guilty of the -- of the offense charged and the State has proved each and every element of the alleged crime beyond a reasonable doubt.

Now, as I told you at the beginning of the trial, you are the judges of the facts. You're the sole fact finders in this case and I went over with you some factors that you may use in determining credibility and believability which are necessary tools to determine the facts in the case, and you may also remember I discussed with you the fact that this is something you do every day and you should apply those same common factors that you use every day in determining credibility and believability here in the courtroom.

But I will say that when you determine the facts after considering all the testimony of the witnesses and the

exhibits, you the jury may believe as much or as little of any one testimony -- any one witness's testimony you think appropriate. You can believe one witness against a whole group of witnesses. You may completely -- or you may accept part of a witness's testimony and completely disbelieve the rest. These are your prerogatives in determining the facts.

I will tell you that the facts or the fact that certain testimony is not directly controverted doesn't mean you have to accept it as true and undisputed because you must first deal with the credibility and the believability of the witness through which that testimony comes. Keep in mind, ladies and gentlemen, throughout the process of finding the facts, you have one objective, and that is to search for and find the truth regardless of from which witness or from which side of the case that truth may come.

Now, there are two types of evidence in cases such as these. There is direct evidence and there is circumstantial evidence.

Direct evidence is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness who tells about what they saw or heard or did. That's direct evidence.

Circumstantial evidence is indirect evidence. Circumstantial evidence is proof of a set or chain of facts that then indicate the existence of another fact.

I will tell you that the law makes no distinction between the weight or value to be given either direct or circumstantial evidence, nor the amount required of direct or circumstantial evidence. There is not a greater degree of certainty of one required over the other. I should say you should consider all the evidence in this case, both direct and circumstantial, and after you consider and weigh all the evidence in the case, if you're not convinced of the guilt of the defendant beyond a reasonable doubt, then you must find the defendant not guilty.

Now, I said a moment ago that you must go on and you must weigh the evidence. While I've been back in your jury room before, not while you've been back there, and I think you probably noticed there's not a set of scales to go back there and weigh the evidence. Well, obviously, that's because that's entirely a mental process, but I would say this about that. Evidence that weighs with you is evidence that convinces you of its truth. Again, regardless of from which witness or from which side of the case that may come.

Now, the same Constitution that makes you the judges of the facts makes me the judge of the law and, as I told you, one of my responsibilities as the presiding officer is to give you the charge on the law, which is what I'm doing now, and I will tell you that you should accept the law as I give it to you, and neither you nor I should accept what we may have

heard on the street what the law is because I can tell you there's a lot of bad information out on the street about what the law may be on any particular issue or even what you or I believe is a better idea. We should accept the law as I give it, apply it to the facts as you find it, and if you do that, ladies and gentlemen, then you will reach a verdict which is just and which is true.

Now, in a criminal prosecution of this type, as I've already stated, the State bears the burden of proof. Again, you've noticed nobody switched chairs out there in the courtroom arena. The State is still seated at the table closest to you and the State has the burden of proof. The defense has no burden of proof. The defendant is presumed innocent of these charges.

I will tell you that in this state according to the Constitution, the prosecution must prove its case to a standard of proof we call beyond a reasonable doubt before there may be a finding of guilt. Let me say this again. We had some people coming and going. Let's make sure we got this straight. In this state according to the Constitution, the prosecution must prove its case to the standard of proof we call beyond a reasonable doubt, which is -- that is before a finding of guilt may occur, and if the State fails to meet this high burden and it is a high burden, the defendant is entitled to an acquittal.

So you say, all right, well, then what is a reasonable doubt? Well, I will tell you first what it's not. It is not an imaginary or a fanciful doubt or a weak doubt. It's a substantial doubt. It's a doubt that the words imply, a doubt for which you can give or assign a reason based on the testimony and the evidence in the case. I think you and I know that a reasonable doubt is not any sort of a doubt.

All right, sir, I'm going to ask you to seal that back door. So if we'd come on in and have a seat, but that's the last folks coming in because it could pull the jury's attention away while we're charging. No one else is coming in the door. Let's go back and start again on the point about reasonable doubt.

A reasonable doubt is not any sort of a doubt. You and I know from everyday life experiences that you may have some kind of a doubt about any matter that arises, no matter how trivial it may be, such as what tie to wear to an event, what pair of shoes to wear to a particular occasion. That's not a reasonable doubt. A reasonable doubt is a doubt that makes a sincere, honest, conscientious juror in search of the truth hesitate to act.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. If you have a doubt for which you can give or assign a reason as to the guilt of the defendant based on the evidence in the case, then

he is entitled to a verdict of not guilty.

A reasonable doubt may arise from evidence that's in the case or from the lack or absence of evidence in the case. If you the jury must make the determination of whether or not reasonable doubt exists as to the guilt of the defendant in this case, I will tell you that the very fact that the jury goes back in the jury room and engages in a full and free discussion of the issues of guilt or not guilt with a conversational ebb and flow on those issues doesn't automatically mean that reasonable doubt exists in this case or in any other case for that matter.

Now, criminal intent is a necessary element of each crime that must be proved by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances that surround the situation. There's no way to prove intent to some mathematical certainty. You and I know that medical science will not -- not allow us to open up someone's mind and look in and determine what a particular person had in mind or what was their intent at a particular time. So the law states that criminal intent may be inferred from the circumstances shown to have existed both before and after an act. This is how you the jury make a determination of whether or not the element requiring intent is present.

Criminal intent is a state of mind that operates jointly

with an act or an omission in the commission of a crime. Criminal intent is a mental state of conscious wrongdoing. So it's up to you -- up to you, ladies and gentlemen of the jury, to determine whether or not the circumstances or the facts prove intent in this case, and I'll tell you the State must prove criminal intent beyond a reasonable doubt just as the State must prove every element of a charge beyond a reasonable doubt.

Now, also in this case, I instruct you and emphasize the fact that the defendant did not testify, as you are aware, and that is not a factor to be considered by you in any way in your deliberation and in your consideration of the issues of guilt or innocence in this case. It must not be considered by you in any manner whatsoever and that's because the defendant has a constitutional right to remain silent and the assertion of that right should not be held against him in any way or even considered in your deliberations.

And I repeat to you that under the oath you took when we began this case, you are to draw no conclusion whatsoever from the fact that the defendant did not testify. This should not even be discussed in the jury room because the defendant has a right not to testify and that's because the burden of proof, as I've always continued to state, always remains on the State -- on the prosecution. The defendant is not required to prove his innocence and the burden of proof remains on the State to

prove guilt beyond a reasonable doubt before a conviction can occur.

Now, let me define for you the charge of murder. As you are aware, the defendant in this case is charged with murder. In order to prove this case, the State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought.

Malice is hatred or ill will or hostility towards another person. It's the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or even death or under circumstances that the law will infer an evil intent. Malice aforethought does not require that the malice exist for any particular time before the act was committed, but the malice must exist in the mind of the defendant just before and at the time the act is committed. Therefore, it must be a combination of evil intent and the act.

Malice aforethought may be express or it may be inferred. Now, these terms express and inferred don't mean different kinds of malice, but merely the way in which malice may be shown to exist. That's either by direct evidence or by inference from the facts and circumstances that are proved.

Express malice is shown when a person speaks words that express hatred or ill will for another or when the person prepares beforehand to do some act that's later accomplished.

For example, lying in wait for someone is a form of express malice or any other act going to showing preparation and that the deed was in the defendant's mind at the time of the preparation. Well, that would be express malice.

Malice may be inferred, however, from conduct that shows a total disregard for human life. Inferred malice may also arise when a deed is committed with a deadly weapon and a deadly weapon is any article or instrument or substance that's likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and the circumstances of each case.

Now, that was the definition of murder, but I will tell you that the defendant has raised the defense of alibi. You heard that in the courtroom and in order to establish an alibi, it must be shown the defendant was at another specified place at the time that the crime was committed and that it's therefore impossible for the defendant to have been at the scene of the crime. Mere denial of presence at the scene of a crime doesn't constitute an alibi, but there's no burden on the defendant to prove an alibi. The burden is on the State to prove beyond a reasonable doubt the defendant was actually present at the crime scene, actually participated in it, and was not somewhere else. In other words, the State has the burden of disproving the alibi defense.

Now, also at issue in this case is the identification of

the defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before you may convict the defendant.

Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the defendant. You must consider the believability of each identification witness in the same way as you would any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or how short a time was available, how far or close that witness or individual was from the event. Also, the lighting conditions. It may be affected by whether or not the witness had a chance to see or know the person in the past.

Once again, I instruct you the burden of proof is on the State and that extends to every element of the crime charged and this specifically includes the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the crime. If after examining the testimony you have a reasonable -- reasonable doubt as to the accuracy of the identification, then you must find the defendant not guilty.

All right. Now, Mr. Foreman and ladies and gentlemen of

the jury, in a few minutes after you hear from counsel, you're going to retire to consider this verdict and to deliberate and as you do that, I want to express to you -- and I know you are -- that you be mindful of the importance of your responsibility. You're not called upon to serve as jurors very often and I know that you might say, well, thank goodness, and you may recall that the other -- on Monday I told you that you can only be required to serve one time in a three year period in the same court. There's a reason for that and the reason is this. It's a difficult -- it's a difficult task, ladies and gentlemen, and it requires you and I to reach the height of freeing our minds of all outside or improper influence because you and I are acting for the community and seeing to it that every trial here is fair and every verdict here is just.

Now, you have probably observed that the presiding officer in this court, which, of course, happens to be me in this trial, is referred to as Your Honor, and I know you know that's not some title given to me. That's a title that's assigned to the position that I'm privileged to hold and that's because this Court is entrusted with the honor of this community, this county, this state, and indeed this nation to see to it that every trial here is fair and that every defendant here receives fair and impartial justice.

Now, you the jury in a moment -- a few moments are going

to take into your custody and preservation the honor of this community and this state, this county and this nation. Now, when I say that to you, please understand I'm not telling you how to decide this case. That's not my point. That would be improper, but what my point is is this. As the presiding officer, it is of vital importance to me that whatever verdict you reach be the -- be the result of your going back into the jury room, confining your evidence to -- or your deliberations to the evidence put forth in this courtroom, weigh that evidence fairly and impartially, apply that evidence to the law that I have given you here in this charge, and if you do that -- and I have every confidence that that is what you will do -- then you will reach a verdict which is just and fair and I will tell you, ladies and gentlemen, everyone in this courtroom on both sides of this case are entitled -- are entitled to justice, nothing more and nothing less. We owe no support any party. We owe no sympathy to any party.

Now, ladies and gentlemen, I am of the confirmed opinion that whatever verdict you reach will be the result of a fair and impartial deliberation on the part of the jury. Now, remember, Mr. Foreman and ladies and gentlemen of the jury, your verdict must be unanimous and I will talk with you a little bit further about that when I go over the verdict form with you after we conclude closing arguments from counsel. At this time, the Court recognizes Mr. Barr for closing argument.

MR. BARR: Thank you, Judge. Mr. Foreman, ladies and gentlemen, you know, I -- I tried many murder cases over the years and what I usually do and I try to remember is that the first thing I do is -- is I express to the jury my sincere sympathy to the victim's family. I'm a trial lawyer, but I'm also a person and I know people hurt when they have and lose a loved one. I know that.

I tell you though there's some things that we have to do that there's just no easy way to go about doing it and there's just no way that's totally unobtrusive in order to get it done, and what we're doing here today is one of those things because what we're called upon today is we're called upon to address the situation that occurred a long time ago and recall about it to address it from the perspective of the criminal justice system.

You know, I heard the doctor say an interesting word earlier on yesterday. She mentioned the word forensic and she associated that word with that element of what she does, which deals with matters that are significant from a legal standpoint. That's what she mentioned and, you know, I said, well, I guess when you look at the criminal justice system, it's -- it's kind of a forensic thing because here what we're concerned about is to present a situation where a person is charged with a crime and to adjudicate that person's guilt or

innocence.

Now, how do we do that? Again, we've got some rules of the road and the rules of road though I tell you sometimes and His Honor in this case he's already given you the rules of the road. That is the rules that apply to the facts as you find them to be in this case. He's already charged you on the law and, you know, here is one of the rules of the road that I don't necessarily like.

Under our procedure in criminal court, the solicitor gets to open on the law or choose to open on the law and close, that is to present the last argument. The defense is in the middle. The defense is never last unless the defense chooses not to put up any evidence. Then that way the defense gets to go last. Now, what am I saying? I'm saying that I -- I've got a lot of respect for Scott Hixson and I know he's a very good trial lawyer and I know that from the standpoint of pointing out to you some things that -- that -- that he's hoping that will impress upon your minds and are to persuade you to adopt the prosecution's view of the evidence in this case.

I know that he's going to do an excellent job in doing that and I'm just -- I'm so sad that I'm not going to get the opportunity to come back after him and tell you why I think his theory is flawed. So I'm not going to get another opportunity to speak with you irrespective of what, but I will

tell you right now that I am delighted and I'm just pleased. I'm always -- I always -- I consider Georgetown my second home and I always enjoy trying cases over here.

Now, let me just say that, you know, when -- when I came before you with our opening statement and I mentioned to you that I'm reluctant to tell juries what the evidence will show because the prosecution had suggested to you, well, here is this case about how Terron Dizzley has committed a gruesome murder as a result of a business deal going bad, a partnership going bad. Now, ladies and gentlemen, His Honor has already instructed you on the law. Notice he didn't say anything about motive because motive is not an element of any criminal offense and it doesn't have to be proven, but generally motive -- people do things for reasons. People do things for reasons and just your common sense we know that. Now, motive in this case according to the prosecution -- and I'm going to hold them to what they started with -- is that, well, a business deal went bad between Terron Dizzley and between Mr. Evans and, as a result, Terron Dizzley came along one night and shot up Mr. Evans in retaliation for the bad business deal.

Now, what do we have? What -- what does the evidence show? First of all, if I recall the testimony correctly and -- and don't hold it against my client if I don't, but the last question that I asked Ms. Alston from this witness stand, I said are you aware and can you tell me when you were present

at any time you ever heard an argument between Terron Dizzley and Mr. Evans concerning this nightclub, and if I'm not mistaken, her answer was never. Now, if I'm mistaken, call it as you see it.

So now, what evidence is there under the prosecution's theory of why Mr. Dizzley would have came and shot Mr. Evans? What evidence is there in this case? Now, let me -- let me tell you something. Now -- and I -- I hate to -- His Honor -- this is a very important case. This is -- anytime that somebody is charged with murder, it's -- it's important, but now, in many cases prosecutors will come to you and say, look, you have to decide the guilt or innocence of the person charged with the crime. That is you have to decide whether in this case Terron Dizzley killed Mr. Evans or not.

Well, I agree with that, but I -- I've got -- I'll add a caveat to it because what you're deciding, ladies and gentlemen, what you're called upon to decide, that is the forensic aspects of this criminal justice system says that what you decide is whether or not the prosecution has proven the defendant's guilt, and His Honor has instructed you on the law as it relates to who has the burden of proof. Moreover, he has instructed you as to the standard of proof, which is something we talked about earlier, proof beyond a reasonable doubt.

Now, ladies and gentlemen, identification is very

important in this case, but now I would submit to you that when you look at that standard of proof beyond a reasonable doubt, that kind of doubt that would cause a person to hesitate to act -- wait just a second. Let me talk about something else right now.

Let's talk about the evidence and what the prosecution has -- has presented to you because, if you remember, I told you that there are a number of things the way you can present evidence: testimonial evidence, demonstrative evidence, documentary evidence. Now, in this case, I think most of the evidence has come from this witness stand, testimonial evidence.

Now, if you notice when a person comes to the witness stand, before they get on the witness stand and they are allowed to testify, they put their hand on the Bible and they swear to tell the truth, the whole truth, and nothing but the truth, and if they don't swear, they affirm. Now, let me just share something with you. If this is the gospel on what they swear is what Christ brought from God the father, now if you don't accept him, this simply doesn't mean anything to you. You can put your hand on it and -- and -- and then say whatever you want to say. You have no fear whatsoever about lying.

So -- so you got to have it in you. You -- you've got to accept it. Unless you -- unless you've been born again to

tell the truth, this ain't going to mean nothing. Now, I'm not going to explain or tell you why people don't tell the truth, but now for whatever reason they don't always do and I'm sure they all have their reasons. His Honor will instruct you that as it relates to this issue of credibility, that is believability, you can believe all of what a witness say, none of what they say. Ladies and gentlemen, it's up to you to decide what, if any, weight to give to any testimony that comes from this witness stand.

Now, you know, I know Ms. Alston is hurt, but now if you remember when I asked her -- I said, look, do you know Clarice Jones? No, I don't know her. It turned out that the brother got up here and said, well, Clarice Jones is Mr. Evans' fiancee. Well, Ms. Alston says I'm his fiancee. Well, now she -- she probably knew that, and I asked her about the insurance claim. I asked her for a reason because now you don't -- you don't file an insurance claim in somebody's name after you die and you know you don't do that.

Now, when it comes to -- and it's the same thing. If you notice when -- and now, what Mr. Hixson did is he -- when he -- when the alibi witnesses took the witness stand, he brought a piece of paper with him and said, look, weren't you convicted of using cocaine. Now, what -- what does that fall? Under our law, a conviction can be used to impeach the witness. It could be used on the issue of credibility,

truthfulness, integrity.

Now, let me tell you about this case. There's no question in my mind that Naomi Alston, even though she might come here and say that she was the owner of that club, she ain't the owner of the club. That was impromptu. The man that owned the club was Mr. Evans and he was the man running the club. I asked Ms. Alston -- I said, look, what kind of business -- what was he doing and where was he getting his money? Now, she reluctantly said he was selling dope. That's what she said, selling dope. Now, I'm sure being the kind of church man that she claimed he was, calling the kids and saying prayers every night, I'm sure he wasn't selling dope at the house.

I mean what in the world -- what -- what -- four or five shooters with hoods on and black uniforms shooting up a place and -- and -- and -- and coming in and shooting. You know, now it's been bringing me to this issue. Now, I don't know -- as I said in terms of motive, I don't know why, but it's not our charge to find out why. It's our charge to decide whether or not the prosecution has proved that Terron Dizzley shot and killed Mr. Evans. That's what our charge is.

So now I asked Officer Morris about the people outside that was doing the shooting because see, again, I tell you if I hadn't mentioned it, I just generally I don't believe that Officer Morris would have told you one thing about anybody

outside doing any shooting and I don't think he would have told you one thing about those twenty shell casings that they found outside if I hadn't mentioned it.

I really -- in fact, when I mentioned what -- now, ladies and gentlemen, this is not in evidence, but when I had these pictures identified as Defense Exhibit Number 1, which are -- they were identified as photographs that were taken of the scene. Now, unless somebody is fooling me, Officer Morris almost -- almost said, look, I don't know what some of these are, but my good Lord, these are photographs that were taken of a crime scene. They wasn't taken because somebody was out there sightseeing. They were taken of the crime scene because they've got significance. That's why somebody went out there and took them. An investigator went out there and took them.

Now, quite frankly, I think that -- now, why would that -- well, let me tell you what. Now, there's no question in my mind and now Solicitor Hixson asked the alibi witness about, well, why didn't you come forth and tell. Let me tell you something. People run from the law. Now, some people call 9-1-1 with information which is a good thing, but everybody don't do that. I'm going to just be frank with you. Everybody don't look for the police. Everybody -- when you see the police coming, there's trouble.

Now, maybe it shouldn't be that way, but I tell you -- I said, Officer Morris, did you or one of your investigators

have an opportunity to talk with -- with Mr. Evans at Georgetown Memorial? Yes. Not me, but one of the other officers. Did -- did he describe his condition as lucid? Yes. Lucid, we know what lucid means. Lucid means you got good mind. Now, I didn't hear one police officer come in here and say anything about Terron Dizzley, about Mr. Evans saying, well, Terron Dizzley shot me.

Now, this isn't identification. Now, look -- look at what we're dealing with. This -- this is the heart of this -- this case. Now, what we're dealing with is the issue of whether or not -- we don't deny that somebody got killed and I'm sorry that happened, but whether or not this man did it and whether or not the prosecution has proven to you that he did it and proven it by beyond a reasonable doubt. No, they haven't. There's not one police officer has come in here and said anything about -- and clearly the opportunity was there if it was true, but instead, now, you've got a man that -- now, this is according to Mr. Morris and Mr. Guiles.

Of course, if you remember, Mr. Guiles had two written statements, neither of which he managed to include in the statement that the shooter came in and said you thought it was over or something to that effect. Two written statements and neither one did he have that in there. Now, I don't know whether or not -- but now, ladies and gentlemen, I'm not -- I'm not called -- what I'm called upon -- and I don't know

what -- but it would seem to me that something that was as important as that, the man would have remembered it and he would have wrote it in at least one of the written statements that he had said it.

Moreover, the prosecution says, well, look, we want you to accept the identification of a man who is now deceased, an identification that was made by the man who is now deceased who had three or four seconds to hear somebody's voice and the identification based on hearing his voice for three or four seconds muffled with something over their mouth. That was -- that was a -- I said, look, was the face covered? Yeah, the face was covered. So the face was covered.

Now -- and notice that was after he acknowledged that he didn't even see the shooting because he was under the chair or someplace safe to be, but -- so what you've got -- and I said, well, tell me how close I am to you before you -- and if I'm not mistaken, ladies and gentlemen, I was standing way back here and he was still sitting in there in a place at least that far away.

Now, this is not a vision issue because you couldn't see nothing. It certainly can't be a height issue because you got ninety-nine zillion people the height of Terron Dizzley. You can't identify him by that. The only method by which he claimed he identified with him was that couple of seconds that he claimed he heard. And this is what the witness said. He

told me he knew him by his voice.

Now, His Honor said in order for you to find the defendant guilty, in order for you to find the -- the identification in this case is accurate, you have to find beyond a reasonable doubt that it's accurate. Now, if we went by the same standard, that is if I took Scott Hixson's approach and said, well, look, you're guilty or you've been found guilty of possession with intent to -- or found guilty of using cocaine and therefore I'm going to impeach you with this, what standard would I do with a drug dealer on the issue of his identification in four seconds muffled.

If that's -- if you -- if you're talking about doubt, ladies and gentlemen, now I can -- I'm talking about a person that sells poison that kills people. That's what it does. It causes all kind of people to get killed, and in this case may have very well caused another death. Can't stop it.

Now, I cannot believe -- first of all, Terron Dizzley and his alibi witnesses are not responsible for going out and finding out who the guns were in them black suits. Now, that's just not -- that's not the prosecution -- that's not -- it's not the defendant's responsibility, and it's not a witness's responsibility to come forward and say we're alibi witnesses. That's not their -- but now, I tell you -- now, Officer Morris said -- now, don't get me wrong. The man does a good job. I said, well, look, here's what -- when I go back

to all the spent shells and whatever and I sent them to him, not to trace. He sent them to one of the SLED labs and they came back. They found nothing and then I sent them from there to DNA. Well, apparently they never came back from DNA because there's no DNA -- no report of a DNA analysis.

Now, why -- why do I consider this? I consider it important because in the world of forensic, that's what forensics is all about, and to simply say, well, look, I -- I looked at this and I determined that, well, this is touch evidence here. You know, there can't be no DNA.

My Lord, when that woman walked by me yesterday, I almost trembled in my boots when they started talking about her education and credentials. Four years for this, four years for that. I hardly do three or four -- three years and I mean I'm talking about four years on top of four years on top. I said my Lord, don't get in her away. Don't -- don't -- because I mean that -- you look at that and she was staring straight. Lord have mercy. It takes commitment to do that, but now that's forensics and you're talking about somebody there that will give you an opinion about why something -- now, don't get me wrong. Now, Officer Morris -- but now, you just cannot give no opinion as to whether or not something has forensic value because you're not qualified to do that. I mean it takes some special training to do that.

Now, I don't know that they would have revealed anything

that would have changed this, but I know one thing. Four bandits are still running around the area somewhere who were out there shooting up this place, along with the shooter that they claim was Terron Dizzley.

Now, I'm not responsible for finding and catching him and arresting him. That's the -- the police. You know, that job is not an easy job and people don't always come and confess and say, look, I did it. I mean you've got to stay on the case and -- and continue the investigation, and I'm sure this investigation is probably continuing right now because whatever this precipitated this is a whole lot bigger than what we've heard in this courtroom.

I said, Officer, if -- if those men aided and abetted, would they not be guilty of hands of one is the hands of all murder? Yes, they would. Well, my goodness. Well, our investigation led us to Terron Dizzley. What investigation? And what led you to him? Based on what we've heard in this courtroom, the only thing that led you to Terron Dizzley going back to the identification issue with the three or four seconds supposedly of an excited utterance made by a person that we cannot even now cross examine. Moreover, made by somebody that, based on what has been presented to us, the only basis for his identification was a couple of seconds of hearing a muffled voice. Hadn't heard it anymore.

Ladies and gentlemen, I'm going to sit down and I just --

I don't know -- I don't know anything else to tell you other than I just -- please just consider what has been proven in this case and what hasn't been proven. His Honor told you all, he said if you're not firmly convinced on the issue of the identification of the element of the offense of murder. I don't need to talk about murder. I don't deny somebody got killed, but the issue of identification is an issue that the prosecution has to prove in this case beyond a reasonable doubt, the kind of doubt that would cause -- in other words.

Now, Mr. Hixson is going to have his theory. I know he's going to and I know it's going to be good, too. Now, please listen to it, but don't get persuaded by it because I think what you've heard with respect to our analysis, I think it's a critical good look at the issues of this case and I ask you to consider them. I ask you to consider this. I ask you to be polite and listen, but certainly consider it because I don't think the prosecution has done -- it's not that anybody hasn't done their job, but again, we're talking about what the law requires, not emotions, and His Honor has already set that out because he's -- if the evidence doesn't leave you firmly convinced -- firmly convinced, not just convinced, but firmly convinced. In other words, if there is a doubt as to whether or not as to any element, that doubt must be resolved on the defendant's behalf and you must find him not guilty. That's why he is presumed not guilty.

That's why his alibi witnesses -- as he told you, the defendant doesn't have to prove alibi. The prosecution has to disprove. The prosecution has -- has to prove to you beyond a reasonable doubt that the four people that got up here -- now, I know they're going to say, well, the girlfriend and the boyfriend and the friends. Well, I mean who else is the man supposed to be around other than family? I mean that's who -- that's who he was with in Orangeburg. I mean he didn't just jump up and say it's ten o'clock. I think I'm going to ride on down to Georgetown and shoot somebody tonight. According to his girlfriend, the man stayed at home and went to bed with her. He didn't do it.

Let me just say again that it's always unfortunate to try a case like this, but I don't want you to feel that you're being dumped on because, ladies and gentlemen, you're all qualified to do what you're being called upon to do because over the years you've collected a vast amount of experience that allows you to sit in judgment over your fellow man and allows you to come to this jury service and resolve issues of fact that otherwise our legal system says that this is how they ought to be resolved.

So you're discharging your civic responsibility. I applaud you for doing it. A lot of people when they get the jury summons, they do the worst thing in the world and put it in the trashcan or calling the clerks saying how do I get out

of this, but you've acknowledged your responsibility and we thank you for that, particularly those of us that directly work in this criminal justice system each and every day.

Therefore, on behalf of the Honorable Judge Baxley, myself, the Clerk of Court, and the Solicitor's Office, we thank you for your -- your service and we know that you will take everything that you've heard in this case and that you will do effective deliberation and you will use, of course, the law, the rules of the road, as His Honor has given to you, and in this case you'll come back and find the defendant -- not that somebody didn't get killed, but just the proof in this case, the proof that's required, has not been presented and, therefore, the law says that you must find the defendant not guilty because he is not guilty. Thank you.

THE COURT: Mr. Hixson, before you begin, let's see if there's -- Ms. Owens, please check and see if there's anyone who wishes to come in or if anyone wishes to leave at this point.

THE BAILIFF: Yes, sir.

THE COURT: Thank you.

(Whereupon, there is a pause in the proceedings.)

THE COURT: All right, very good. Then, Mr. Hixson, at this time we recognize the State for closing arguments.

MR. HIXSON: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. HIXSON: Simple truths, fundamental facts, basic things. That's what life is all about. That's what everyday life is all about. TV wants to make big crime dramas and stuff so sophisticated and so crazy. There's all kinds of twists and turns. Of course, people are getting paid millions and millions of dollars to try to make you watch TV to twist and turn to try to figure it out, but we know every day of our lives, it's the basic things, it's the simple things. Things go together and that's how you know if someone's telling the truth or not.

Chicken wings and Monday Night Football. Football game is on, husband comes home, got a little smell of hot sauce on him. Brother, you've been eating chicken wings, haven't you? That's simple things, basic, go together. You know what's going on no matter what he says because you live your life that way. Everybody lives their life that way.

Is there any more -- anything more sacred than the words of a dead man on who shot him? He can't do much about it. He isn't going to make it. If Terron Dizzley had hit him a little higher in the body, knocked him out like that, he'd never be in the courtroom. If he knocked him out before he could say those words, he'd be out running around in the street just like the four guys that were watching his back in the parking lot all dressed alike. The only reason those guys aren't in the room is because they didn't enter the club.

We've got testimony of the guy who entered the club. One person entered the club. One person, Terron Dizzley.

Simple things, basic truths. That's what the case is about. That's what most cases are about. Of course, they don't start out that way. Imagine getting a telephone call someone was killed. What in the world just happened?

How many times are you driving down the road and you look over at a car wreck and there's all kind of flashing lights and stuff like that going on? You go, man, rubbernecking. What just happened? No idea what happened. Law enforcement has to show up. The fire department shows up. What's the first thing you do? Start talking to witnesses. What did you see? Simple things, basic truths. A guy came across the center line and hit me. Who? Where? I don't know, but we better start taking some pictures. We better start figuring out what's going on. A bunch of pictures. Highway patrol shows up. Sheriff's Department shows up. Everybody shows up. Tons and tons of photographs and digital pictures. What's this piece of glass here? I don't know what it is, but we better see. Was that there before? Was that there after? I don't know. In the end, what's it come down to? Somebody was the eyewitness testimony that saw that one thing happen. It's simple.

Mr. Barr can't have it both ways. He can't argue one thing and then another thing. He's stuck with what his

presentation to you is. I stood up and said chicken wings, oyster and beer, business was going good, and Mr. Dizzley wanted to be his business partner. I never said what kind of business they were in. I don't know what -- excuse me. You know from the presentation of the witness Naomi Alston didn't know what and didn't want him to be a part of the business. Naomi Alston said something to the effect he's bad news. My name is on the lease. I don't want anything -- I don't want anything to do with it.

So if Mr. Barr is going to get up here and talk about the victim Andre Evans selling poison, killing people, who is his business partner? Who is on the phone with him all the time? Terron Dizzley. You think he'd kill somebody over a television in the club? Do you think he killed somebody over a TV in a club? That's what he told the police he was trying to go into the club for on November 29th. That's what he said. Simple things. You can give the man twenty bucks to go to the pawn shop and buy a TV. It isn't about a TV. That doesn't make any sense. That doesn't make sense.

We know the witnesses -- the alibi witnesses got up here and testified with possession with intent to distribute cocaine and marijuana convictions and marijuana convictions and cocaine convictions. We know that Naomi Alston said I don't know what their business was. They never talked to me about it, but I heard about blood between the two of them. I

heard it.

Now, Naomi Alston, if you recall, said I never saw them fight head to head, but on two occasions she said I heard them get going on the phone and then she got the little brunt of it at the club on November 29th. There is a 9-1-1 tape in evidence that you can listen to. Press play. You already heard it. It was two minutes long, something like that, not a lot of fireworks on there.

Laqesha Felder said that Terron Dizzley was with her the whole night of the 29th, that he couldn't even have been there. So in order to get an alibi witness to get this, he had to think about this on the 29th and the 1st and stuff. That's just not credible -- not credible. That's somebody looking out for a man. You can understand why you'd want to. It just doesn't mean it's the truth. We'll get into that a little bit more. Let's just go back a little bit.

So there isn't any testimony. It's very confusing about what his business is. I think E.J. Jones said I didn't go into his business. I don't know what his business was. All I know is there was something wrong with some kind of business deal at some point in time that led four masked dudes, five including Terron Dizzley, to stay in the car, to one go in and say I told you this wasn't over, five foot five inches tall, popping, handgun. Handgun shell casings recovered from the floor. There were no rifle casings in the floor. The reason

you don't hear about shell casings is because it's not relevant. If we were trying the guys in the car, it would be relevant.

(Whereupon, counsel holds up Defense Exhibit Number 1 for ID only, the packet of photographs.)

We saw a little bit of this. Let me show you how this works. I bet y'all don't know what's in this. I bet you if you knew what was in this, you'd find my client not guilty. I wish you could see it. So look over here or better yet why don't you look over here and don't look over there. Look over here.

Don't talk about someone who is five foot five inches tall. You're right. There's a lot of five foot five inch tall individuals in the world. How many five foot five inch business partners does Andre Evans know? How many five foot five business partners does Andre Evans know that obviously knows him by saying I told you this wasn't over? The window of the universe of folks is starting to get narrower, aren't they? It's a little smaller now, even smaller.

Now, we got a guy in a club. Let's talk about the entrance of the club. It's very basic. When there's an assailant that comes into a door, what does that tell you about the assailant? He dictates the violence of action. He decides who is going to get hurt, when they're going to get hurt, how they're going to get hurt on his timetable. You're

going to watch and see who's in the house and who's in the club and what mask he wears, what weapon he uses, and he chooses to engage in that conduct.

Maurice Guiles is playing pool. He and Noisha [phonetic] just got back from the gym. They didn't dictate the terms of that engagement. Dizzley dictated it. He had protection outside, unnamed assailants. He chose the weapon of choice. He chose the range in which to encounter and he wanted to make sure that Andre Evans knew what this was about. I told you this wasn't over. I told you I was going to get you. Four shots or five I recall according to what the doctor said. It was a through, through, through and through here. That's malice aforethought. That's an intentional indication. We have both express and implied malice. In other words, I told you I'm going to get you and as a preparation for the crime including the attempt to disguise himself indicates he intended to do harm and intended to kill. He intended to kill Andre Evans. No question about that. There's no question about that. Identity is the entire thing.

Now, Mr. Barr may have mentioned him wearing a mask or something like that. How many times have you been someplace out in your house and your loved one comes home and says, honey, I'm home? How many times have you heard that voice? You know it's your loved one, your brother, sister, whatever. You don't go who is that. You know them because you've talked

to them over and over again. You were friends for a while, brother, friends, know -- everybody knows him. There's no question with beyond a reasonable doubt that you know who you know when you hear it. You know. You know your preacher's voice. You know your child's voice. You know your business partner bud's voice.

Because you will recall, everything looked pretty good prior to November 29th. Whatever happened -- and we may never know -- just got -- went south somewhere around November 29th. You don't have to believe Naomi Alston. Listen to 9-1-1. She's close enough and she knew what was up enough to call for help. This guy is trying to get in the club. He wanted in there for some reason and then he certainly without hesitation expressed his interest to do -- to be upset with Andre Evans and I won't repeat what she said, if you recall what her testimony was. I respect y'all a little more than that. In other words, you get down here and have your man take care of it with me. Uncontroverted that that qualification and that problem took place. That's manifest intent to do harm. Okay? Simple things.

Now, one thing, do you honestly believe that a dying man didn't try to identify who shot him? That he didn't -- that you don't believe that he didn't say that. You believe that Maurice Guiles made it up and lied about that. Now, Mr. Barr is a talented attorney and he worked on those boys for a while

trying to get them to come off of it. They absolutely didn't move.

MR. BARR: Your Honor, objection. There's no evidence that the man was dying. This was an excited utterance, not a dying ---

THE COURT: All right. Let me ---

MR. HIXSON: I'll clarify that, Your Honor.

THE COURT: Well, let me respond to your objection in this way. Ladies and gentlemen of the jury, you are the judge of the facts. You make the determinations from the evidence, whether it be direct or circumstantial evidence, as I've already discussed with you. That is for the jury to determine. On that basis, I'm going to overrule the objection and they jury, of course, is aware of what the evidence is. Mr. Hixson, please proceed.

MR. HIXSON: There is no question that Mr. Evans was shot. I'll use that term shot. There's no question he died within two hours of the time that he was shot. There's no question he knew that he was shot. I'll just leave that one alone. Nonetheless, Maurice Guiles, no question in his mind what he said. I can't believe Little D shot me. That was Little D. I recognized his voice. Holding blood to him -- holding onto a towel to try keep blood.

DJ Morris walking up, the first time he ever cooked in there. He was cooking chicken wings. He walks out. Mr.

Morris got a little frustrated on the course of the stand. He said that was like my brother to me. Yes, I want to get the man that hit him. Yes, I want to. I want to convict the man that shot my brother. They're not really brothers; they're like brothers. So that much animosity towards him.

If the man is going to lie, that's a bad lie. If he's going to lie, why didn't he say I saw his face. He didn't have a mask. I saw him. That's Terron Dizzley. If he's really going to lie, why just half lie? Why don't give the whole thing if you're really want to get the boy. Say yeah, I saw him. He said I'm Terron Dizzley. I'm here to do business. And he didn't say that. He told what he saw and that's all there is. There's not a lot of this. There's a lot of work done, but all we got.

Do you believe the man who was killed identified the man who shot him? Do you believe it? If you do, he's guilty, period. That's all there is to it. If you do not believe that he said that, if you do not believe DJ Morris and you do not believe Maurice Guiles, that he didn't say that, that's all there is. Simple things. Basic things.

Let's talk about alibi for a second, okay? Laqesha Felder got up here. Sometimes you never know how an alibi is going to go one way or another. It was great. Made my case. I couldn't have done better if I had called her myself because Laqesha Felder says she was with him all day, with him all day

on the 29th. So the 9-1-1 tape can't be true if she's telling the truth. I didn't know that one was coming out. She also said, no, I saw some other folks there with me, but when the investigator contacted me, I don't know what day it was, but whatever day it was, he was with me all day. That's not credible. It's not believable and absolutely not credible.

The best part about it is the four witnesses are eternally inconsistent because you go to Daniel Robinson, he said I didn't see Laqesha that day. I was with Terron. Laqesha wasn't with him. I don't -- I can't say anything about her. Well, there's a problem there, right? We're talking about the same guy. Daniel says he was with me, but Laqesha wasn't and I can't say where Laqesha was. Laqesha is saying I was with him the entire time. There's real problems there. In other words, it's not reality.

I mean that's Hollywood stuff. It's not basic truth. In addition to that, Daniel talked about -- about Mr. Robinson talked about leaving around ten o'clock. The time on Mr. Robinson wasn't really precise, but from Orangeburg to Oatland isn't an hour and a half. The killing happened around eleven thirty.

Let's talk about time even more when we get to Stephon Jamison. Now, I take no pride in these fellows, but I'm sure they're good friends with the family and everything else. They've got to have a reason for to help out their fellow. A

little comment on that. Law enforcement, the Solicitor's Office, the State, the citizens, we don't pick who we try. The evidence points to a direction in where we have to go.

The first time we get to meet any of these folks, we're standing in front of a jury trial with these folks, but the evidence is the evidence. It's basic and when it's there, you must go forward. You have an ethical duty to go forward. You don't get a chance to help out your brother or you don't get a chance to help out somebody. It is what it is. It stands for itself.

So when Stephon Jamison said that he was hanging out with Laqesha and Terron, but the problem is Daniel said he was hanging out with Terron and Devaughn, his brother. They can't be all hanging out together because they say they're not hanging out together. So they can't know where Terron was. Most of all, Stephon said that he left at nine thirty. He didn't see Laqesha, and then Terron left at nine thirty and went back to their house most likely. Nine thirty. So that's completely contradictory to what the other folks said.

And finally, I don't take any pleasure talking to Terron's brother, his younger brother, his family. He doesn't want to be here. He said I left at ten o'clock. I didn't talk to him too much about that. He said he left at ten o'clock and didn't see his brother after that. That's what he testified under oath to. He's not even an alibi witness. He

wasn't there at the time of the shooting. He can't say whether he was there or not. I'm sure that if he could, he would have been more than happy to say I was with him, but he can't say that. He saw him at ten o'clock. He's gone.

So we got four witnesses that really have no value to the case. Laqesha Felder is the only one that said that she was with him the whole time, but Daniel Robinson guts that testimony when he says I didn't see Laqesha and I was with Terron. So there is no alibi. That's gone.

So what's that mean? We come back to destroying the investigation. It's got to be something else. Look over here. Don't look over there. There's got to be four guys -- five guys. Today is Terron Dizzley's day in court. There may be a day in court for somebody else, but that doesn't matter. Today is the evidence we have against Terron Dizzley.

I'll tell you what. There are four head in the parking lot of the club looking out for Terron Dizzley. We had four folks testify here looking out for Terron Dizzley. We know that.

So let's get back to the basics and wrap this thing up right. That's how it started. Simple, basic truths. We have bad blood at the club. Whatever business dealings are, I don't know. I know Mr. Barr has thrown everybody out of the -- everybody's involved in the drug trade. Are you firmly convinced there was bad blood prior to November 29th or

least the 29th? Yes. It's on tape. No question. So much so that Naomi Alston called the police on Terron Dizzley. No question about that.

You don't have to prove motive, but I don't how you can convict somebody if you don't understand something's wrong. Very rarely does somebody just go shoot somebody for no reason. There's bad blood. It's on tape. Are you firmly convinced of that? Absolutely.

Are you firmly convinced that he knows Terron Dizzley through whatever business dealings they had? Yes, uncontroverted and reinforced by defense counsel. It's uncontroverted Naomi Alston didn't want him involved in the business. Bad news. Uncontroverted.

Uncontroverted that a five foot five man walks up with prior knowledge, picks the point of attack, and goes and kills one human being when there's several others in the bar with five shots, and before he does so, he says I told you this wasn't over. I told you I'd get you, and he did. Uncontroverted, no question. The only question is ID. That universe is getting smaller; isn't it? Five foot five, prior bad blood, and you know what seals the deal? Uncontroverted, no question, Andre Evans tried to tell -- is telling you and I'm telling you through him, I can't believe Little D just did that. I can't believe he did that. That was Terron Dizzley. That was Little D. And there is no question that Little D is

Terron Dizzley. He was picked out twice in court.

Y'all are about ready to get this case. All fourteen of you are going to go back to the jury room, you're going to talk a little bit, and then when it gets started, the two alternates are going to come out and wait and then the case is yours. But there's going to be something else in the courtroom there -- in the jury room with you and you won't hear it at first. It should be sitting quietly in the corner. Some of you may hear it when you first walk in and her name is Justice and she'll be quietly talking to each and every one of you. Some of you may have already heard that, but as time goes by as you think about it, as you talk about it, you'll hear that voice getting louder and louder. Guilty, guilty, until you are all unanimous and you come out here and you speak the words of Justice and you say guilty, Terron Dizzley, for the crime of murder. Thank you.

THE COURT: All right, ladies and gentlemen, let me talk with you a moment just about the verdict form and the deliberative process. Let me say to you, Mr. Grate, again I've not been back in your jury room, but it's a fairly large room and you have some who may be seated at the table and some may be over at the wall, some fully engaged, some not fully engaged on a particular issue, but if anyone wishes to be heard on a particular issue, as the foreperson and as the moderator of the discussion, give that person an opportunity

to be heard on the issue so that not only will your verdict be a consensus verdict, but it will indeed be a unanimous verdict, which is what is required.

The verdict form has only one question on it. It simply says this: As to the charge of murder, we the jury unanimously find the defendant, Terron -- Terron Gerhard Dizzley, beyond a reasonable doubt, colon, and then there's two choices. Let me say to you, when I have two choices to give you, I can't give them to you at the same place on the piece of paper. One must come before the other, but there's no priority. There's no preference. There's simply one listed before the other. The first one is not guilty and the second one is guilty. Those are your choices. There's a line in front of each of those words and whichever it is, please mark appropriately with a check or an X, whichever is your unanimous verdict, and then you sign at the bottom, Mr. Grate, and it says right above your signature, I certify that this verdict is the unanimous decision of the jury. So when you sign, you're certifying to us that the jury's verdict is unanimous.

Now, if at some point you wish to take a break during deliberations once the deliberations start, then knock on the door, ladies and gentlemen. We'll make that available to you. Some may wish to go outside to take a break or just separate for a few moments, but if you do that, please stop your

deliberations of both -- both groups because it's possible that two separate groups can reach two different conclusions at the same time. So just wait until you all are back together to resume your deliberations.

Let me say again to our alternate jurors, I'm grateful for your service. Many times when we reach this point, the alternates -- it is determined they will not deliberate with the twelve and they say, well, you know, I have wasted my time. Well, you have not because I will tell you that in our system twelve jurors are required for a case of this type. If for some reason I didn't have a juror -- an alternate juror and even now while we're getting ready to deliberate if someone got sick, had an emergency, or whatever may happen with them and we would have less than twelve, we'd have to declare a mistrial and this case would have to be retried. Your presence here has prevented that and I'm grateful for your willingness to serve and thankful for your service.

What I'm actually going to ask you to do is that once the deliberations begin, we may -- and you've had your lunch, we may ask you to remain with us in the event during the deliberations someone is unable to continue. In that unlikely event, we will give you some more instructions on that at the close of the lunch hour.

Now, Madam Clerk, can you tell me if lunch has arrived yet? I'll tell you what let's do. What I'm going to let you

all -- rather than go ahead and separate you now to begin -- begin deliberations, I'm going to let you just take a break for a few minutes. You just heard the clerk was telling me they think ten to fifteen minutes and lunch is on the way, and we're just going to let you enjoy your break, spend some time with your alternate jurors, get to say good-bye. When lunch comes, y'all enjoy your lunch and then after you've concluded, we will come away with the trash and we'll ask our alternate jurors to step out and begin deliberations at that time.

So just go back and enjoy your break and we will bring your lunch to you as soon as you begin -- as soon as it arrives and please do not begin your deliberations.

(Whereupon, the jury exits the courtroom at 12:13 p.m.)

THE COURT: All right. The jury is now clear. I ask you is there objection or exception to the charge given by the Court to the jury? What says the State?

MR. HIXSON: None.

THE COURT: And what says the defense?

MR. BARR: Nothing.

THE COURT: And, counsel, while we're waiting, let's -- let's just come up and let's look at the exhibits, please, in conjunction with our clerk as well as our court reporter. Make sure everything is in order and then we will have them sent in at the appropriate time. If they want to go out and take a smoke break, please let the jury do so.

(Whereupon, the exhibits are checked by counsel.)

THE COURT: All right and ---

MR. HIXSON: It's okay, Your Honor.

THE COURT: All right. The evidence is in order and, ladies and gentlemen, we're going to stand down now subject to the arrival of lunch for the jury and then the jury's deliberations. Counsel, if you leave this floor, please make sure that my clerk or our county clerk has your cell number and please don't go far because we may need you immediately in the event of a question. This Court is now in recess.

MR. HIXSON: Thank you, Your Honor.

MR. BARR: Judge, I do have a Family Court matter. We've got Family Court going on on the second floor.

THE COURT: Yes, they do. They have a busy court day. Good luck to you, Mr. Barr. We'll be in recess now awaiting the call of the jury.

(Whereupon, there is a break in the proceedings from 12:14 p.m. until 1:07 p.m. for lunch.)

(Whereupon, jury deliberations begin at 1:07 p.m. The two alternate jurors are separated from the jury and held in another room during deliberations.)

THE COURT: All right. We have a message from the jury. We have a message from the jury that asks -- that requests -- it is a note that essentially asks audio transtape -- I think is the word -- of all four. And so what I would intend to do

is to respond to them that this will take approximately an hour and if they wish for it to be played, then we will bring them in and play it. Is that satisfactory, Mr. Barr?

MR. BARR: Yes, sir.

THE COURT: All right. Here's the response back, Mr. Bailiff, if you would take that in to them, please. Thank you. And we'll just wait for a reply. I asked them if they wished to hear all four and advised them of the collective time it will take.

(Whereupon, there is a pause in the proceedings.)

THE BAILIFF: They want to hear it.

THE COURT: All right. Let's bring our two alternate jurors in and have them seated in the alternate seats. We've retained the alternates in sequestration while the jury has been deliberating.

(Whereupon, there is a pause in the proceedings until the alternate jurors enter the courtroom.)

THE COURT: All right. We now have our two alternates back in the courtroom. Please come in and be seated. The jury has asked that we replay some testimony. Thank you for your courtesy and patience in waiting for us and we want to bring you out first to let you know what it is we're going to hear, and we'll bring the rest of the jury out and begin the process. The jury has asked that we hear four defense witnesses on the issue of alibi and we are going to bring the

jury out and play that testimony through the court reporter. So welcome back to the courtroom and please bring in the jury.

(Whereupon, the jury enters the courtroom at 3:57 p.m.)

THE COURT: All right, ladies and gentlemen, welcome back to the courtroom. While our court reporter is setting up, let me explain the process that we use. In each of the courtrooms in South Carolina where we have a court reporter, the court reporter is manually taking down the testimony, but we also run an actual tape in the event the jury wishes to hear some testimony so that -- as opposed to someone reading it back and using their own inflection or intonation or punctuation. We actually just play back exactly what the witnesses said. So the reason that we play the entire direct and cross of the witnesses is we're not certain when the jury asks what specifically you're looking for and it may be as we try to pinpoint, we would miss something that a particular juror may wish to have.

So we are set up now to play all four witnesses, one after the other, direct and cross. We're going to have to test the sound system to make sure that you're able to hear from the tape and let's give that a try, please.

(Whereupon, a sound test is performed.)

THE COURT: Are you able to hear that, ladies and gentlemen?

(Whereupon, the jurors indicate positively.)

THE COURT: Good.

(Whereupon, testimony is played from audiotape in open court before the jury of the following four witnesses: Laqesha Felder, Daniel Robinson, Stephon Jamison, and Leon Devaughn Dizzley, Jr.)

THE COURT: All right, ladies and gentlemen, that concludes the request of the four witnesses. We'll let you return to your jury room. Let me ask, ladies and gentlemen, is there anybody on the jury who needs to call someone because it's five o'clock and they may be expecting you? All right. Well, let's do this. We'll give you an opportunity to make a call before the jury begins their deliberations. All right? So if y'all will just make provisions for that. To our alternates, we appreciate your longsuffering and patience and please return to your area.

(Whereupon, the jury exits the courtroom at 4:52 p.m.)

THE COURT: Ladies and gentlemen, the rest of us will be in recess subject to the call of the jury.

(Whereupon, there is a break in the proceedings from 4:53 p.m. until 5:23 p.m.)

THE COURT: Ladies and gentlemen, what we're going to do is we're just going to make a blind draw among the two alternates. It appears that our jury has not been able to reach a verdict this afternoon according to a message that they've sent us and thus we are going to send the jury home

and bring them back tomorrow morning to begin their deliberations. Our two alternates were sequestered. We're going to choose by random draw between the two and have one of them return tomorrow in the event we lose one of our jurors overnight to illness or emergency or whatever may happen. Is there objection to drawing the name of a juror between the two just at random from a cup in which we have those two names from the State?

MR. HIXSON: No, Your Honor.

THE COURT: And from the defense?

MR. BARR: No, sir.

THE COURT: All right, very good. Now, what I'm asking you to do, Madam Clerk, if you'll just draw without looking from the two names in that cup. And you have drawn the name of Ms. Morrison, who is Juror Number 95. And let's bring our two alternates, if you will, and we'll seat them in the -- in the box.

(Whereupon, the alternate jurors enter the courtroom at 5:26 p.m.)

THE COURT: And then while our alternates are coming in we will bring the rest of the jury as well. All right, ladies, please come join us, if you will, one more time to your seats. We're going to bring the rest of the jury in to sit with you as well.

(Whereupon, the jury enters the courtroom at 5:26 p.m.)

THE COURT: All right, Mr. Foreman, ladies and gentlemen of the jury, welcome back to the courtroom. We have received a message that you are unable to reach a verdict this afternoon and what we're going to do is we're going to end these proceedings for the day and we're just going to stop for the day and let you come back tomorrow morning and overnight have an opportunity to reflect upon your deliberations that you've had and come back tomorrow morning and see where you stand. What we will do is we will ask you to be back at nine thirty tomorrow morning in the jury room.

Now, you probably have noticed that they have been very gracious about it, that Ms. Port and Ms. Morrison, who are our alternate jurors, have remained with us and what they've done is they've been sequestered in a room up front in the event that one of you should have the inability to go forward, have an emergency, or something would happen, and we certainly hope it would not. We were prepared in the event that it did.

I will tell you that we have now placed your two names randomly in a cup and we have made a blind draw and, Ms. Morrison, your name has been drawn and we would ask you to return tomorrow morning as well and we're going to release Ms. Port so that we will not have to bring both of you back tomorrow morning. But, Ms. Morrison, if you would kindly return tomorrow morning and come to the courtroom, then we'll place you in the front room again. We'll try not to just

leave you there sitting there with nothing to do. If you wish to bring a book to read or whatever you wish, please do.

Now, ladies and gentlemen of the jury, let me talk a little bit more about tonight. Please, when you go home, do not undertake any type of investigation or analysis on legal points or factual points, whatever may have been occurring with the jury room. Just have a good evening. Free your mind. Take a break and come back tomorrow morning and begin again. We're going to take up your notes and we're not going to review them, but we're going to keep them secure and give them back to you in the morning without reviewing them.

So if you want to close your book, feel free to. Please write your name either on the first page or someplace that's appropriate. If you would, put your juror tag on it as an excellent way to do that so that tomorrow morning you will be able to pick the book back up. Now, let me say the reason we do that is to make sure we're all on the same wavelength. Again, this is not for us to review your notes, your personal comments or thoughts, whatever they may be, because we will not do -- no one will do that, but this is to preserve the confidentiality of jury proceedings and we will keep those notes secure and give them to you in the morning.

Okay, Ms. Knox has -- with her years of experience here has reminded me that it's best not to leave your badge on the book because it will have to be scanned in in the morning when

you walk in the door. So if you would, just put your name on the first page or somewhere on the front of the book if you can so no one has to look into it even to identify whose it is would be fine and we will look to see you tomorrow morning at nine thirty.

Now, again please don't discuss this with your loved ones at home what's happening because that would be inappropriate because clearly you're a jury under deliberation at this time. All right, any questions from our jury about scheduling?

Then, Ms. Port, as you leave, ma'am, I will come down and shake your hand for my expression of gratitude for your service and then we'll see the rest of our jurors tomorrow morning. We'll remain where we are as you depart the courtroom. Have a good day and someone will take up your books as you're leaving -- leaving the jury box.

And I hate to tell you this again. It was raining when I last looked outdoors. Hopefully, it stopped in the last couple minutes.

(Whereupon, the jury exits the courtroom at 5:31 p.m.)

THE COURT: All right, ladies and gentlemen, we will be in recess. The staff will be in -- please be in by nine and -- because there will be other defendants -- other individuals here who will have bonds, pleas and other matters. We'll pick up with the jury at nine thirty. This Court is in recess for the day.

(Whereupon, the proceedings end at 5:32 p.m. for the day.)

(Whereupon, the jury notes are marked as Court's Exhibit Number 1.)

--- END REQUESTED TRANSCRIPT ---

STATE OF SOUTH CAROLINA)

) CERTIFICATE

COUNTY OF FLORENCE)

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth 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 above captioned case, relative to appeal, in the Court of General Sessions for Georgetown County, South Carolina, on the 29th day of August 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Krystal J. Smith

Court Reporter

Florence, South Carolina

October 26, 2013

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SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2009-GS-22-00778

The State,
Plaintiff,
vs.
Terron Gerhard Dizzley,
Defendant.

Transcript of Record
March 31, 2014
April 1-3, 2014

B E F O R E :

Honorable Roger L. Couch
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

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Attorney for Plaintiff

Charles Barr, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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(On the record, March 31, 2014, State v. Terron Gerhard Dizzley. The following takes place outside the presence of the jury panel.)

MS. BAILEY: I'm not sure where his attorney is.

THE COURT: We'll find out.

Mr. Dizzley, stand up, please. Order, please. Mr. Dizzley, who's your attorney?

MR. DIZZLEY: Mr. Charles Barr.

THE COURT: Is this him coming in?

MR. DIZZLEY: Yes, sir.

THE COURT: All right. That's okay. Come forward, sir. Thank you.

MR. BARR: How you today, Judge?

THE COURT: I'm fine. How about yourself?

MR. BARR: I'm blessed.

THE COURT: Good. All right. Counselor, do you have any requested voir dire or any witness list for me?

MR. BARR: Yes, sir.

THE COURT: Yes, sir. You may approach.

MR. BARR: Thank you, Judge.

THE COURT: Thank you. Thank you. Roger Couch, nice to meet you.

MR. BARR: Charles David Barr.

THE COURT: Yes, sir. Nice to see you.

MR. BARR: Your Honor, as far as the -- there is a blank

space here, and what we're requesting is that the Solicitor's Office identify the members of her staff in the voir dire.

THE COURT: Are you saying the people who are participating in this trial?

MR. BARR: No, sir. Judge, number one reads whether any members of the panel, in the jury panel are related by blood or marriage to the 15th Circuit Solicitor, Jimmy A. Richardson, or any of his Deputies and/or Assistant Solicitors, and I'm just not sure how many assistants there are in, in this office, but I know Ms. Bailey would know, and I would just want the Assistant Solicitors in this office to be identified.

THE COURT: All right. Can you tell me?

MS. BAILEY: Yes, Your Honor. There's five. Well, there's a Deputy, Alicia Richardson, and there are four Assistant Solicitors.

THE COURT: Could you write those on a piece of paper for me and hand it up?

MS. BAILEY: Yes, Your Honor.

THE COURT: I don't mind calling their name.

MS. BAILEY: Your Honor, just to clarify, does he mean just the Georgetown Office or all of the 15th Circuit?

MR. BARR: No. Just the Georgetown Office.

THE COURT: There we go.

MS. BAILEY: Did you hand up something?

MR. BARR: Yes.

THE COURT: He's handed up proposed voir dire and a witness list. I'll give you a chance to look at that before we bring the jury in.

MS. BAILEY: Thank you. Your Honor, I see that number two in the proposed voir dire is the Solicitor's staff in Georgetown County.

THE COURT: Yes.

MS. BAILEY: We've got probably a dozen staff members.

THE COURT: He said just the Assistant Solicitors. So that's all I'm going to ask about.

MS. BAILEY: Okay. Thank you, Your Honor.

MR. BARR: Well, Judge, that's -- she, she's referring to number two.

MS. BAILEY: Yes. Yes.

THE COURT: Well, how many people are we talking about here?

MS. BAILEY: I mean, we, we can provide it, but --

MS. RICHARDSON: It's 14 people total in the Georgetown Office.

THE COURT: Twenty-four?

MS. BAILEY: Fourteen.

MS. RICHARDSON: Fourteen total in the Georgetown Office.

THE COURT: Okay. Well, why don't I just ask you folks to identify all those people when I call on you, get you to introduce that and then identify anyone who works in the

office there.

MS. BAILEY: Thank you.

THE COURT: Is that sufficient, Mr. Barr?

MR. BARR: Yes, sir.

THE COURT: Thank you. Now, Solicitor, would you call the case, please?

MS. BAILEY: Yes, Your Honor.

THE COURT: Thank you.

MS. BAILEY: The State calls 2009-GS-22-778, that is a true-billed indictment for murder. It's the State v. Terron Gerhard Dizzley.

THE COURT: All right. Now, Mr. Barr, has your client been arraigned on the charges?

MR. BARR: Not since the first trial.

THE COURT: All right. Would you -- is he waiving arraignment at this time or do you wish to proceed with arraignment?

MR. BARR: I wish to proceed with arraignment, Judge.

THE COURT: All right. If you'll pass up the indictment, please.

MR. BARR: Yes, sir.

MS. BAILEY: Your Honor, I believe the Clerk's Office has the original indictment.

THE COURT: All right. Then I'm going to need that. Thank you. Please swear the Defendant for me.

(The Defendant is sworn by the clerk.)

THE COURT: Mr. Dizzley, you can stand there by your counsel. Thank you, sir. Mr. Dizzley, I'm going to go over with you the indictment in this case. I'd like for you to listen to what I'm going over with you at this time. The indictment is in case number 09-GS-22-778. The indictment is for the offense of murder. The indictment states that Terron and am I pronouncing that right, Terron?

MR. DIZZLEY: Yes, sir.

THE COURT: Gerhard Dizzley did in Georgetown County on or about December 1st of 2008 willfully, feloniously and intentionally kill the victim, Aundry Evans, with malice aforethought, either express or implied, by means of multiple gunshot wounds to the body, and the victim did die as a proximate result thereof on or about December 2nd of 2008 in Georgetown County in violation of Section 16-310 of the Code of Laws of South Carolina, 1976, as amended, against the peace and dignity of the State and contrary to the statute in such case made and provided.

Now, sir, did you understand the indictment that I just read?

MR. DIZZLEY: Yes, sir.

THE COURT: You have the right to plead either guilty or not guilty to the indictment. How do you choose to plead?

MR. DIZZLEY: Not guilty.

THE COURT: And how do you wish to be tried, sir?

MR. BARR: Man, God and country.

THE COURT: All right. Sir, may God grant you a speedy delivery. Thank you very much. You can be seated.

MR. BARR: Thank you, Judge.

THE COURT: All right. Anything from the State before I bring the jury in and we begin jury selection?

MS. BAILEY: Your Honor, I have some comments on the voir dire that was just handed to me.

THE COURT: Yes, sir. Yes, ma'am. Excuse me.

MS. BAILEY: First of all, the question number three as to whether or not any juror has ever participated in pretrial intervention as either a participant or a victim, that's going to exclude a very large number of people, and I'm not sure of the relevance as to whether or not a juror would be qualified just because they have participated or been the victim of --

THE COURT: Oh, I'm not sure I would exclude them if they had or they hadn't. That may be a question -- well, the relevance of that is, counsel?

MR. BARR: Judge, over the years I've had, and especially in some of the smaller counties, I've had situations where people have applied for PTI and they've developed relationships with the, with the Solicitor's Office through their PTI program either as a victim or as a, as an applicant themselves, but of course, our position would be that in terms

of the involvement that the PTI applicants have with the Solicitor's Office, Judge, we're not saying that, that, that they should be excused, but we would certainly want to know if those relationships exist.

MS. BAILEY: Your Honor, I would also submit that that's actually statutorily confidential as to whether or not someone has participated in PTI.

THE COURT: Counsel?

MR. BARR: Your Honor, we would, we would take the position that it's, that it's not confidential.

THE COURT: Well, you got -- she says it's in the statutes. If we're going to argue the statutes, I'm going to have to have a statute.

MS. BAILEY: Thank you, Your Honor. While we pull that, I would also like to bring the Court's attention to the proposed voir dire number six, whether a relative, close personal friend or the juror has worked as a security guard at a federal, state correctional institution or detention facility.

THE COURT: Uh-huh.

MS. BAILEY: Some of that has already been covered by qualification, and the part that has not I would, I would ask --

THE COURT: It's covered, it's covered in qualification, but it's one of those things where people can claim an

exemption. They don't have to answer whether they were employed there or not. They just have -- if they do wish to claim the exemption, they have to identify themselves.

MS. BAILEY: The State would just request that the Court limit it more specifically to this case where they would have come into contact with any particular witness or Defendant.

THE COURT: I'll ask that question. Of course then I'll ask them if it would affect their ability to be fair and impartial in the case, and if it doesn't, then that doesn't disqualify them, but he has a right to know that in whether or not he chooses to exercise his strikes.

MS. BAILEY: Thank you, Your Honor. As to number seven, the State doesn't have an objection to Your Honor asking number seven so long as the State would request that you ask whether any member of the jury panel or relative by blood or marriage has ever been the victim, and this is where we would ask that you add or Defendant of a violent crime, including murder, manslaughter, assault and battery of a high and aggravated nature, etcetera.

THE COURT: I'll add that.

MS. BAILEY: Thank you, Your Honor. As to number nine, I just would argue that at the point that a juror takes an oath that it would, it would suffice and eliminate the need to ask ---

THE COURT: I'm sorry. I didn't get which number you're

on, my fault.

MS. BAILEY: Number nine.

THE COURT: Yes.

MS. BAILEY: Would any member of the jury panel have a problem following the law, we ask all of our jurors to take an oath anyway, and I would submit that that would be covered by any oath that would be taken.

THE COURT: And I, and I normally in my charge charge them that their personal beliefs or feelings about the law should be put aside and they should take the law exactly as given to them by the Judge. I'm not sure that question is appropriate given my charge on the law. I assume most jurors do an excellent job in trying to follow the Court's instructions.

MS. BAILEY: Thank you, Your Honor. And as to numbers 10 and 11, the State would just submit that it's going to be already covered by your standard voir dire that the Court would do in every case.

MR. BARR: Judge, I think, I think number 11 is actually just a duplication of number ten.

THE COURT: It is. I've already noticed that.

MR. BARR: But I do believe that that's a fair question for voir dire. We've had --

THE COURT: I'll ask a standard question that I think will cover that, and I always ask if there's any reason

whatsoever why a juror could not serve as an impartial juror in the case. So I think that's going to be covered.

MS. BAILEY: Thank you, Your Honor. As to number 12, again, whether any member of the jury or member of their family by blood or marriage has worked for the State of South Carolina is very all encompassing, would eliminate our ability to select a jury.

THE COURT: Well, again, that doesn't eliminate them. It's simply information from which someone might exercise strikes. I don't intend to exclude any former state employee from the jury just because of that fact. So that would not happen.

MS. BAILEY: Thank you.

THE COURT: There would have to be more of a reason to do that, to exclude them.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

MS. BAILEY: As to number 13, the State doesn't have an objection to that but would request an addition. During jury qualification ---

THE COURT: Yes.

MS. BAILEY: --- there was a civil attorney who was in the room during jury qualification who was speaking with other civil attorneys about what was happening in criminal court this week, and I was able to hear him say, "It's a retrial of

a case that resulted in a hung jury." I don't know if any jurors heard it. I immediately chastised him and asked him to quit talking about my case, and he did, but I do have some concerns that some of the jurors sitting in the front row may have heard that and --

THE COURT: I'll add, I'll add or from any other source. Would that do the --

MS. BAILEY: That would do. Thank you, Your Honor.

THE COURT: I'll be glad.

MR. BARR: Judge, am I to get the impression that somehow the Solicitor thinks that she's going to be able to try this case without information being divulged which might lead a juror to conclude that there has been a trial?

MS. BAILEY: Your Honor, that's a pretrial motion we intended to take up after the selection of the jury.

THE COURT: Maybe I missed what the point is. What's the point?

MS. BAILEY: The point is that it's the State's position that the jury should not know that this case has resulted, has had a previous trial or resulted in a hung jury, that if we want to impeach a witness, either side, the proper way to do that would be to ask the witness if there has -- if they have ever testified in this matter under oath, without letting the jury know that another 12 people have deliberated on the exact same facts.

THE COURT: Well, it's, it's the -- that's not -- whether or not it's been tried and a jury was unable to reach a verdict is -- it's not evidence in the case, can't be used by either side in any fashion in my opinion. That's how I would intend to rule on that question.

MS. BAILEY: Thank you, Your Honor.

THE COURT: All right. Any other matters that we need to take up before we bring the jury in from the State's perspective?

MS. BAILEY: No, Your Honor.

THE COURT: Any from the Defense's perspective?

MR. BARR: No, sir, Judge.

THE COURT: All right. Let's bring the jury in.

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

MS. BAILEY: Your Honor, may Mr. Barr and I approach briefly?

THE COURT: You may.

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

THE COURT: All right. Good afternoon, ladies and gentlemen. My name is Roger Couch. I am a Circuit Court Judge. I'm a Resident Judge in the 7th Judicial Circuit in South Carolina. The 7th Judicial Circuit is made up of Spartanburg and Cherokee Counties. It's my pleasure to be

serving this week in General Sessions Court here in Georgetown County, South Carolina, along with you. You're also serving in the one-week term of General Sessions Court. General Sessions Court is the division of the Circuit Court in which criminal cases are handled. So the cases that will be coming in front of me this week involve situations where citizens have been accused of the commission of a crime.

Before I begin jury selection in our first case, I'm going to go over with you a document that's been handed to me. This document is an indictment. An indictment is a document that brings the case before this Court. It instructs this Court or informs this Court of the charges that have been lodged in this case. It also informs the Defendant of the charges that have been lodged against him. Again, it's simply the document, however, that brings the case into this court. An indictment cannot be used by a jury in any fashion in determining the guilt or the innocence of a Defendant in a case. I'm going to go over it with you at this point in time, however, so that you will have some information concerning what has been alleged in this case so that perhaps later on as I ask you some questions that pertain to this case, you'll be in a position to more fully and completely answer the questions that I'm about to ask.

The indictment in this case is in case number 2009-GS-22-778. The indictment is in the case of the State of South

Carolina versus Terron Gerhard Dizzley. The charge in this case is the charge of murder. The indictment states that the Defendant Terron Gerhard Dizzley did in Georgetown County on or about December 1 of 2008 willfully, feloniously and intentionally kill the victim, Aundry Evans, with malice aforethought, either express or implied, by means of multiple gunshot wounds to the body, and the victim did die as a proximate result thereof on or about December 2nd of 2008 in Georgetown County in violation of Section 16-310 of the Code of Laws of South Carolina, 1976 as amended, against the peace and dignity of the State and contrary to the statute in such case made and provided. Now, again, I've gone over that indictment with you so that you'll know a little bit about the people that are alleged to have been involved in this matter and what the charge is about and that should give you an opportunity to more fully answer some questions that I'm about to ask you. Again, the indictment is not evidence in the case and cannot be used by a jury in any fashion in determining the guilt or the innocence of the person charged therein.

Now, I'm going to ask you a series of questions in just a few minutes. It is important that the information that you provide in response to my questions is truthful, accurate and complete information, and for that reason, it is necessary that you be sworn concerning the responses that you're about to give. So at this time I'll ask the clerk to please swear

the potential jury panel in this case. Madam Clerk.

(The jury panel is sworn by the clerk.)

THE COURT: Now, if any member of the jury panel either failed or refused to take the oath that was just administered by the clerk, I'd ask that you now please stand.

(No response.)

THE COURT: The record will reflect that all potential jurors have been sworn concerning the responses that you're about to give.

Now, before I begin to question you, I'm going to ask that the attorneys who are involved in the trial of this case introduce themselves to you, and in the case of the Defense, I'll ask that the Defendant be introduced to you as well.

First of all, for the State.

MS. BAILEY: Thank you, Your Honor. My name is Erin Bailey. I'm a Senior Assistant Solicitor here in Georgetown County.

THE COURT: Thank you, ma'am. And for the Defense.

MR. BARR: Good morning, ladies and gentlemen. My name is Charles David Barr, and I practice law in Kingstree. I represent the person that His Honor has referred to as the Defendant, Mr. Terron Dizzley.

THE COURT: Sir, if you'll stand so the jury can put a face with that name.

(Complies with request.)

THE COURT: Thank you, sir. You can be seated. Now, ladies and gentlemen, I'm going to go over with you some information. I'll be asking questions of you, and I'll be asking that you stand if you have a response to my questions. Now, when I call on you, it is necessary that I get your name and your juror number before I discuss any response that you might have to the questions that I'm asking. The reason for that is it's important that anyone who later reads the transcript of these proceedings be able to identify exactly who I'm talking to in response to the questions that I'm asking. So if you would, let's follow that procedure. I'll be asking that you stand. I'll need your name and number before we discuss any response that you might have to the questions that are before, that have been proposed by the Court.

My first question is is there any member of the jury panel who has ever been related by marriage or are you related by blood to either the Defendant, Terron Gerhard Dizzley, or the alleged victim, Aundry Evans. If that's true, please stand. Stand, please, if you have a response. Your name is?

MR. LAWRENCE: My name is Alfred J. Lawrence, Sr.

THE COURT: And your number?

MR. LAWRENCE: Juror 211.

THE COURT: Yes, sir.

MR. LAWRENCE: I'm not related to either the Defendant

nor the victim, but I do know Aundry Evans.

THE COURT: Well, that's my next question. So why don't you have a seat, and then we'll get to that in just a moment. My first question had to do with people who have ever been related by marriage or if they've been related by blood to please stand, and I take it there are none. Anyone want to respond to that question?

(No response.)

THE COURT: All right. My next question, is there any member of the jury panel who has ever had a close social or a personal relationship with either the Defendant, Mr. Dizzley, or the alleged victim, Aundry Evans? If that's true, please stand.

Yes, sir. Now, you were going to tell me about that situation.

MR. LAWRENCE: Yes, Aundry -- well, Alfred J. Lawrence, Sr., Juror 211.

THE COURT: Yes, sir.

MR. LAWRENCE: Aundry Evans and I were schoolmates.

THE COURT: All right. I don't know, well, that's been several years ago I suppose. Is that correct?

MR. LAWRENCE: Yes, sir.

THE COURT: All right. Let's assume then that you have been selected as a member of the jury in this case. Would the fact that you knew him back in school, would that affect your

ability to be fair and impartial to both the State and the Defense?

MR. LAWRENCE: No, sir, it won't.

THE COURT: All right. Sir, you can be seated. Thank you very much.

Ma'am, name and number?

MS. WARD: Juror 374, Ruth Ward.

THE COURT: Yes, ma'am.

MS. WARD: My husband worked with the father of Aundry Evans.

THE COURT: With the father of Mr. Evans?

MS. WARD: The father of Mr. Evans and they're our neighbor.

THE COURT: All right. Now, would the fact you had that relationship with the alleged victim in the case, would that affect your ability to be fair and impartial to both sides in the case if you were selected on the jury?

MS. WARD: Yes, sir. It would.

THE COURT: All right. Ma'am, I'm going to excuse you from the trial of this case. Be seated, and when I excuse someone from the trial, you no longer have to respond to my questions.

Yes, sir, your name and number?

MR. DRAYTON: My name is Russell Drayton.

THE COURT: Yes, sir.

MR. DRAYTON: And Juror Number 95. I know the father of Mr. Aundry Evans.

THE COURT: All right. Can you tell me in what respect you know him?

MR. DRAYTON: I work at the same work location.

THE COURT: All right. Now, would the fact that you have that work relationship with the victim's father, would that affect your ability to be fair and impartial if you were selected as a juror in this case?

MR. DRAYTON: No. It wouldn't affect me.

THE COURT: All right. Okay. Sir, thank you. You can be seated.

Anyone else?

(No response.)

THE COURT: All right. I've been asked by Judge Hyman if there's a Michael Barnes in the proposed jury panel. Mr. Barnes, you're a little -- you're in the wrong pew. They're going to take you over next door, escort you.

BAILIFF: Thank you, sir.

THE COURT: You're welcome. There we go. All right. That's quite all right.

Now, I'm going to go over a list of people who have been identified to me as people who might be possible witnesses in this case. Now, the list that I'm going over with you is fairly lengthy, and they may involve some repetition of names.

I'll do the best I can to try to eliminate the repetition, but if you would listen carefully to these names because when I finish I'll have some questions about these people as well.

First of all, Dustin Morris, who's with the Georgetown Sheriff's Department; Michael Nelson, also with the Georgetown County Sheriff's Office; Melvyn Garrett, also with the Sheriff's Office; Mike Thacker with the Georgetown County Sheriff's Office; excuse me, Jared Bardon, formerly with the Georgetown County Sheriff's Office; Jennifer Flowers, also formerly with the Georgetown County Sheriff's Office; Dan DeFreese with the State Law Enforcement Division; Dr. Cynthia Schandl with the Medical University of South Carolina; Naomi Alston; Jerliether Jones; Rigdon Ford; Marvin Riley; Edward Mack; Maurice Giles; Douglas Morris; Willie Stanley; Gary Gibson; Larry Cooper; Jameson Wright; Aundry Evans, Sr.; Iteka Brown; Sonia Jones; James Dozier; Jay Russell Brown; Nicholas Evans; Investigator Steven Brown; Investigator Stone Smith; Dustin Morris; Laquesha Felder; Daniel Robinson; Stephon Jamison; Levon Devaughn Dizzley, Jr.; Willie Stanley; Edward Mack; Larry Cooper; Andre Richards; Gary Gibson; Jameson Wright; Sonia James; Toni James; Terretha James; Iteka Brown; James Dozier; Jeremy Wright; James Wright; Nicholas Evans; Rigdon Ford or Marvin Riley. Now, as to those individuals that I have named as possible witnesses in this case, has any member of the jury panel ever been related by marriage or are

you related by blood to any of those individuals? If that's true, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who has ever had a close social or a personal relationship with any of the individuals that I just named as potential witnesses in the case? If that's true, please stand.

Sir, your name and number?

MR. WASHINGTON: Stefon Washington, Juror Number 377.

THE COURT: Yes, sir. And can you tell me who you might know?

MR. WASHINGTON: About half of that list I went to school with.

THE COURT: Oh, you went to school with about half of the list.

MR. WASHINGTON: Yes, sir.

THE COURT: All right. Now, let's assume that all of those people were witnesses in the case. If they were to testify in this case on various issues, would that affect your ability to be fair and impartial to both the State and the Defense in this matter?

MR. WASHINGTON: No, sir.

THE COURT: All right. Thank you, sir. You can be seated.

Sir, your name and number?

MR. DRAYTON: Russell Drayton, Juror Number 95.

THE COURT: Yes, sir.

MR. DRAYTON: And I, I went to school with Rigdon Ford if that's the same Rigdon Ford.

THE COURT: All right. Would, would -- if those people were witnesses in the case, would that affect your ability to be fair and impartial in this matter?

MR. DRAYTON: No. It wouldn't.

THE COURT: Thank you, sir. Anyone else?

Yes, ma'am.

MS. HEWITT: Whitney Hewitt, Juror Number 160.

THE COURT: Yes, ma'am.

MS. HEWITT: I do know Steven Brown socially.

THE COURT: All right. Would that affect your impartiality if that person testified and you were on the jury?

MS. HEWITT: No. It wouldn't.

THE COURT: Thank you, ma'am. Anyone else?

(No response.)

THE COURT: Now, as to the attorneys that are involved in this case, has any member of the jury panel ever been represented by either of the attorneys involved in this case or have they ever appeared on the other side of some legal matter from you? If that's true, please stand.

(No response.)

THE COURT: Now, I'm going to ask the Solicitor's Office to identify those people who are employed in the Solicitor's Office. It's a fairly lengthy list. Again, listen to it carefully because I'm going to ask some questions about that in just a moment.

All right. If you would please identify those people for me, ma'am.

MS. BAILEY: Thank you, Your Honor. Jimmy Richardson is our Solicitor; Alicia Richardson is our Deputy Solicitor; Richard Todd is an Assistant Solicitor; Nadia Black is an Assistant Solicitor; Jacqueline Smith, Assistant Solicitor; our staff members are Sharon Bullock, Margie Cooper, Steven Brown, Jennifer Todd, Magdalena Salemno, Vanessa Bell, Marge Duke, Joy Morin, Marsha Connor, Candy DeBusk and Jason Strue.

THE COURT: All right. Thank you, ma'am. Now, as to the attorneys that are in the courtroom, as well as the people that are on the Solicitor's staff, has any member of the jury panel ever been related by marriage or are you related by blood or have you ever had a close social or a personal or business relationship with any of the individuals that have been identified as attorneys on the Solicitor's staff or persons on the Solicitor's staff or the attorneys involved in this case? If that's true, please stand.

Name and number, ma'am?

MS. CLEARY: Lisa Cleary, Juror Number 55. I know Jimmy

Richardson through political.

THE COURT: I see. Now, ma'am, would the fact that he serves as the Solicitor in this circuit, if you were selected to serve on the jury, would that affect your ability to be fair and impartial in this matter?

MS. CLEARY: No, sir.

THE COURT: Thank you. You can be seated.

Ma'am, name and number?

MS. HEWITT: Whitney Hewitt, Juror 160. I know Steven Brown socially.

THE COURT: All right. Would that affect your impartiality if he worked with the Solicitor's Office and you were a juror in this case?

MR. HEWITT: Would not.

THE COURT: Thank you, ma'am.

Sir, your name and number?

MR. LEBHERZ: Brendon Lebherz, Number 214.

THE COURT: Yes, sir.

MR. LEBHERZ: I know Ms. Margie Cooper. I went to school with her son. I know her socially.

THE COURT: I see. Now, would the fact that you know her, would that affect your ability to be fair and impartial if you were selected as a juror in this matter?

MR. LEBHERZ: No, sir.

THE COURT: Thank you. You can be seated. I'll start

with the lady on my right. Yes, ma'am. That's you. Yes, ma'am. Name and number?

MS. ABRUNTILLA: Juror Number 2, Lois Abruntilla. I know Marge Duke for the past 30 years.

THE COURT: All right. Now, would the fact that you're acquainted with her for that length of time, and she, I assume, is employed with the Solicitor's Office, would that affect your impartiality though if you were selected as a juror on this case?

MS. ABRUNTILLA: No, sir.

THE COURT: Thank you, ma'am. Name and number, please, ma'am?

MS. GROVER: Jessica Grover, 146.

THE COURT: Yes, ma'am.

MS. GROVER: And I know Richard Todd through -- he's a former board member of an organization and now we're friends.

THE COURT: I see. Now, ma'am, the fact that you have some business or social relation, I'm not sure exactly what that is, but would that affect your ability to be fair and impartial if you were a juror in this matter?

MS. GROVER: No, sir.

THE COURT: Thank you.

Sir, your name and number?

MR. DECENZO: David Decenzo, Juror Number 85.

THE COURT: Yes, sir.

MR. DECENZO: I've known several of the individuals from the Solicitor's Office as president of Coastal Carolina University. We've had a number of dealings with the Solicitor's Office.

THE COURT: All right. Though would that affect your ability to be fair and impartial if you were selected as a juror in this matter?

MR. DECENZO: No, sir.

THE COURT: Thank you, sir. You can be seated. Anyone else?

(No response.)

THE COURT: All right. Is there any member of the jury panel who has a relative or who themselves has within the past five years had a relative by blood or marriage who has served as any type of law enforcement officer, that includes federal, state, local, probation offices or military police. If that's true, please stand.

Your name and number, please, ma'am?

MS. BROWN: 32, Sharon Brown.

THE COURT: Yes, ma'am.

MS. BROWN: My son is a South Carolina State Trooper.

THE COURT: All right. Would that fact affect your ability to be fair and impartial if you were selected on the jury?

MS. BROWN: It would not.

THE COURT: Thank you, ma'am. Name and number?

MS. SURATT: Bertha Suratt. I'm 354.

THE COURT: Yes, ma'am.

MS. SURATT: And my husband is a State, South Carolina State Trooper.

THE COURT: Okay. Ma'am, would that fact affect your impartiality to serve as a juror in this case?

MS. SURATT: No, sir.

THE COURT: Thank you. Sir, name and number?

MR. MATTHEWS: Richard Matthews, 235.

THE COURT: Yes, sir.

MR. MATTHEWS: My nephew is a -- let's see if I can get his title right. He's the District Attorney in Jackson, Mississippi.

THE COURT: I see. Now, would that fact affect your impartiality if you were to be a juror in the case?

MR. MATTHEWS: No, sir.

THE COURT: Thank you, sir. Behind him. Yes, sir, name and number?

MR. FOXWORTH: Dustin Foxworth, Juror 118.

THE COURT: Yes, sir.

MR. FOXWORTH: Deputy Sheriff Mike Wilson and Deputy Joe Wilson.

THE COURT: Now, are they related to you in some fashion?

MR. FOXWORTH: Related, not really close.

THE COURT: All right. Now, would that fact affect your impartiality in this case?

MR. FOXWORTH: No, sir.

THE COURT: Thank you, sir. Behind him. Yes, sir, name and number?

MR. SIRMON: Alfred Sirmon, 331. My daughter-in-law is a former probation officer.

THE COURT: Would that affect your impartiality if you were to serve in this case as a juror?

MR. SIRMON: No, sir.

THE COURT: Thank you. Ma'am, name and number?

MS. POPE: Danielle Pope, Number 282. My brother-in-law is a state trooper.

THE COURT: Would that affect your impartiality if you were to be a juror in this matter?

MS. POPE: No, sir.

THE COURT: Thank you. Sir, name and number?

MR. DRAYTON: Russell Drayton, Number 95.

THE COURT: Yes, sir.

MR. DRAYTON: My nephew is a deputy sheriff right here in Georgetown.

THE COURT: All right. Would that affect your impartiality if you were to serve in the jury?

MR. DRAYTON: No, sir.

THE COURT: Thank you. Sir, name and number?

MR. LAWRENCE: Alfred J. Lawrence, Sr., Number 211.

THE COURT: Yes, sir.

MR. LAWRENCE: My brother-in-law he's a deputy, deputy with Georgetown County, and I'm also a former correction officer Georgetown County.

THE COURT: I see. Sir, would the fact that you served in the position or you had a family member serve in such a position, would that affect your impartiality if you were selected on the jury?

MR. LAWRENCE: No, sir. It won't.

THE COURT: Thank you. You can be seated. Anyone else?

(No response.)

THE COURT: Is there any member of the jury panel or a member of your immediate family who has within the past five years served at or worked at a -- as a security guard at a federal, state or state correctional institution or detention facility? If that's true, please stand.

(No response.)

THE COURT: Is there any member of the jury panel or a member of your immediate family or a close personal friend of yours ever been the victim of a violent crime or has any of those people ever been the Defendant in a case involving a violent crime such as murder, manslaughter, assault and battery of a high and aggravated nature, assault and battery with intent to kill, aggravated criminal domestic violence or

attempted murder? So, if you or a member of your immediate family has ever been the victim of such an event or if you or a member of your immediate family or close personal friend of yours ever been a Defendant in such a case please stand.

Yes, sir, name and number, please.

MR. MOORE: My name is John Moore, Number 259.

THE COURT: Yes, sir, your situation?

MR. MOORE: My wife has been the victim of a criminal domestic violence.

THE COURT: All right. Sir, now, would that fact affect your ability to be fair and impartial in this case?

MR. MOORE: No, sir.

THE COURT: Thank you, sir. Name and number?

MR. SALLEY: Timothy Salley, Number 306. My daughter has been assaulted.

THE COURT: All right. Now, would that fact affect your ability to be fair and impartial in this trial?

MR. SALLEY: No, sir.

THE COURT: Thank you, sir.

Sir, name and number?

MR. PONTIERE: Yeah. Dominic Pontiere, Number 280.

THE COURT: Yes, sir.

MR. PONTIERE: My son was a victim.

THE COURT: All right. Would that affect your impartiality in this matter?

MR. PONTIERE: Yes. It would.

THE COURT: All right. Sir, then I'm going to excuse you from the trial of the case. You no longer have to respond to my questions. Ma'am, name and number?

MS. ROYSTER: Laura Royster, Number 304.

THE COURT: Yes, ma'am.

MS. ROYSTER: My son was killed six years ago last week.

THE COURT: All right. Would that affect your impartiality in the case?

MS. ROYSTSER: I don't know about impartiality, but I think I'd have some problems.

THE COURT: All right. Ma'am, then have a seat. I'll excuse you from the case.

Yes, sir, name and number?

MR. LEBHERZ: Brendon Lebherz, Number 214.

THE COURT: Yes, sir.

MR. LEBHERZ: I've had one of my best friends murdered.

THE COURT: I'm sorry?

MR. LEBHERZ: One of my best friends has been murdered.

THE COURT: I see. Now, would that fact affect your ability to be fair and impartial in this case?

MR. LEBHERZ: Yes, it would. Yes, sir.

THE COURT: All right. I'll excuse you. You can be seated. You no longer have to respond to my questions. Anyone else? Sir, your -- sir, gentleman, if you'll stand in

the blue shirt. Your number, we didn't get it.

MR. LEBHERZ: 214.

THE COURT: 214. Thank you, sir.

MR. LEBHERZ: Yes, sir. You're welcome.

THE COURT: Has any member of the jury panel or a member of your immediate family or a close personal friend of yours ever been employed by the -- in the State of South -- by the State of South Carolina, excuse me. If that's true, please stand.

Sir, your name and number?

MR. MOORE: John Moore, 259.

THE COURT: All right. Just one second. Your name and number, sir?

MR. MATTHEWS: Richard Matthews, 235.

THE COURT: Thank you. Sir, your name and number?

MR. SIRMON: Alfred Sirmon, 331.

THE COURT: Sir, your name and number?

MR. DRAYTON: Russell Drayton, Number 95.

THE COURT: Ma'am, your name and number?

MS. ROWE: Lisa Rowe, Number 303.

THE COURT: And behind him, ma'am?

MS. TUCKER: Mary Tucker, 361.

MR. DECENZO: David Decenzo, 85.

THE COURT: Thank you.

MS. CLEARY: Lisa Cleary, 55, my husband is a senate.

THE COURT: All right. I'm, I'm going to ask all of you as a group. Be -- stand up, please, ma'am.

MS. CLEARY: Sorry.

THE COURT: Thank you. All right. Now, the fact that you were employed by the State of South Carolina or someone in your family was employed by the State of South Carolina, if that in any way would affect your ability to be fair and impartial in this matter I'll ask you to remain standing, otherwise, you can be seated.

And, ma'am, I didn't get your name and number.

MS. LOEB: I'm sorry. I forgot. I was a nurse at Coastal Carolina College and it was part of South Carolina.

THE COURT: That's all right. Did I get your name and number?

MS. LOEB: Yes. I'm sorry. 227.

THE COURT: All right. Thank you. Ma'am, would the fact that you worked there affect your impartiality?

MS. LOEB: No, sir.

THE COURT: Thank you. Behind you, your name and number, please, ma'am?

MS. HODGE: Anna Hodge, 164.

THE COURT: Would it affect your impartiality, ma'am?

MS. HODGE: No. It wouldn't.

THE COURT: Thank you.

Sir?

MR. HANSON: Richard Hanson, 149. No.

THE COURT: Thank you. Now, has any member of this jury panel heard of anything about this case from another individual, newspaper, television or any other form of news media, including social media or from any other source such that it would have caused you to either form or express an opinion about any matter that might be involved in this case. If that's true, please stand.

(No response.)

THE COURT: Is there any member of this jury panel who is aware of any bias or prejudice that you might have either for or against the State or the Defense in this matter? If that's true, please stand.

(No response.)

THE COURT: Is there any member of this jury panel who may have been a member of the Grand Jury that issued the indictment in this case -- let me find that document. Excuse me. I've got it right there. That indictment was issued on July 8th of 2009. If that's true, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is a member of or a contributor to any group which has as its primary concern the enforcement of -- the promotion of law enforcement or victims' rights. These groups would include, but not be limited to, Mothers Against Drunk Driving, Students

Against Drunk Driving, Citizens Against Violent Crime, the South Carolina Sheriffs' Association or the South Carolina Troopers' Association or other similarly oriented organizations? If that's true, please stand.

(No response.)

THE COURT: Does any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case with particular emphasis being placed upon your ability to be both fair and impartial to both the State and the Defense? If that's true, please stand.

(No response.)

THE COURT: Any further questions from the State?

MS. BAILEY: No, Your Honor.

THE COURT: Any further from the Defense?

MR. BARR: No, sir, Judge.

THE COURT: Thank you. All right. Then I'll declare that those who are remaining on the jury panel are qualified to serve in this case.

Now, ladies and gentlemen, at this point in time I'll be asking the clerk to call your names in the order in which those names have been selected from a random search program on our computers. When your name is called, I'm going to ask that you come forward down front right here in front of the two counsel tables, turn and face the back door of the courtroom, and at that point in time the attorneys in this

matter will have the right to exercise their strikes. We're going to pick 12 jurors with two alternates. The State will have five strikes. The Defense will have ten. We will pick two alternates with the State having one strike, the Defense having two for each alternate.

Madam Clerk, you can begin the jury selection process.

THE CLERK: Juror Number 268, Hannah Norton-Russell.

THE COURT: Come down, ma'am, down in front of counsel table here and then if you'll turn and face that back door back there. Thank you, ma'am. You may proceed.

THE CLERK: What says the State?

MS. BAILEY: Please excuse Ms. Norton-Russell.

THE CLERK: You may return to your seat. Thank you.

THE COURT: You can have a seat. Thank you, ma'am.

THE CLERK: Juror Number 164, Anna Hodge.

What says the State?

THE COURT: Come on, turn around. There we go. That's good.

THE CLERK: What says the State?

MS. BAILEY: Beg the Court's indulgence for one moment.

THE COURT: Yes, ma'am.

MS. BAILEY: Please present Ms. Hodge.

THE CLERK: What says the Defense?

MR. BARR: Seat the juror, please.

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

Juror Number 132, Jessica Goude.
What says the State?
MS. BAILEY: Please present Ms. Goude.
THE CLERK: What says the Defense?
MR. BARR: Please excuse the juror from the trial of this case only.
THE CLERK: You may return to your seat.
Juror Number 354, Bertha Suratt.
What says the State?
MS. BAILEY: Please present Ms. Suratt.
THE COURT: What says the Defense?
MR. BARR: Please excuse the juror from the trial of this case only.
THE CLERK: You may return to your seat.
Juror Number 332, Tanya Sisk.
What says the State?
MS. BAILEY: Please present Ms. Sisk.
THE CLERK: What says the Defense?
MR. BARR: Swear the juror, please, ma'am.
THE CLERK: Please take a seat in the jury box.
Juror Number 37, Emily Buchanan.
What says the State?
MS. BAILEY: Please present Ms. Buchanan.
THE CLERK: What says the Defense?
MR. BARR: Seat the juror, please.

THE CLERK: Please take a seat in the jury box.
Juror Number 98, Caroline Durant.
What says the State?
MS. BAILEY: Please present Ms. Durant.
THE CLERK: What says the Defense?
MR. BARR: Swear the juror, please.
THE CLERK: Take a seat in the jury box.
Juror Number 88, Qulex Dickerson, Jr.
THE COURT: Right there'll be fine. Just face the back door of the courtroom. Thank you, sir.
THE CLERK: What says the State?
MS. BAILEY: Please present Mr. Dickerson.
THE CLERK: What says the Defense?
MR. BARR: What's that number again, Madam Clerk?
THE CLERK: 88.
MR. BARR: Swear the juror, please.
THE CLERK: Please take a seat ---
MR. BARR: Seat him, please.
THE CLERK: Seat the juror.
THE COURT: Sir, have a seat in the jury box, right over here. Thank you, sir.
THE CLERK: Juror Number 222, Mary Linen.
What says the State?
MS. BAILEY: Please excuse Ms. Linen.
THE CLERK: You may return to your seat.

Juror Number 200, Patricia Kolesa.
What says the State?
MS. BAILEY: Please present Ms. Kolesa.
THE CLERK: What says the Defense?
MR. BARR: Please excuse the juror from the trial of this case only.
THE CLERK: You may return to your seat.
Juror Number 377, Stefon Washington.
What says the State?
MS. BAILEY: Please excuse Mr. Washington.
THE CLERK: You may return to your seat.
Juror Number 32, Sharon Brown.
What says the State?
MS. BAILEY: Please present Ms. Brown.
THE CLERK: What says the Defense?
MR. BARR: Please excuse the juror from the trial of this case.
THE CLERK: You may return to your seat.
Juror Number 337, Garry Smalls.
What says the State?
MS. BAILEY: Please present Mr. Smalls.
THE CLERK: What says the Defense?
MR. BARR: Seat the juror, please.
THE CLERK: Please take a seat in the jury box.
Juror Number 34, Richard Bruce, III.

What says the State?

MS. BAILEY: Please present Mr. Bruce.

THE CLERK: What says the Defense?

MR. BARR: Please excuse the juror from the trial of this case.

THE CLERK: You may return to your seat.

Juror Number 149, Richard Hanson.

What says the State?

MS. BAILEY: Madam Clerk, just to clarify, I have Mr. Hanson as Number 149. Is that what --

THE CLERK: Yes. Yeah. Is that what I not stated? I said the wrong number?

MS. BAILEY: Just wanted to make sure we all had the same number.

THE CLERK: Yeah, 149.

MS. BAILEY: Please present Mr. Hanson.

THE CLERK: What says the Defense?

MR. BARR: Excuse the juror from the trial of this case, please.

THE CLERK: All right. You may return to your seat.

MR. BARR: Madam Clerk, what's the strikes?

THE CLERK: Six.

MR. BARR: With that strike?

THE CLERK: Yes, sir.

Juror Number 146, Jessica Grover.

What says the State?

MS. BAILEY: Please present Ms. Grover.

THE CLERK: What says the Defense?

MR. BARR: Seat the juror, please.

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

Juror Number 259, John Moore, III.

What says the State?

MS. BAILEY: Please present Mr. Moore.

THE CLERK: What says the Defense?

MR. BARR: Excuse the juror from the trial of this case, please.

THE CLERK: You may return to your seat.

Juror Number 293, Dennis Reimer.

THE COURT: And bring with you any personal belongings that you have because -- I should have said that to begin with.

THE CLERK: What says the State?

MS. BAILEY: Please present Mr. Reimer.

THE CLERK: What says the Defense?

MR. BARR: Swear the juror, please.

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

Juror Number 198, Renardita Knox.

What says the State?

MS. BAILEY: Please present Ms. Knox.

THE CLERK: What says the Defense?

MR. BARR: Seat the juror, please.
THE CLERK: Please take a seat in the jury box.
Juror Number 216, Karen Lee.
What says the State?
MS. BAILEY: Please present Ms. Lee.
THE CLERK: What says the Defense?
MR. BARR: Please excuse the juror from the trial of this case only.
THE CLERK: You may return to your seat.
Juror Number 97, Michael Dumont.
What says the State?
MS. BAILEY: Please excuse Mr. Dumont.
THE CLERK: You may return to your seat.
Juror Number 276, Joyce Paul.
What says the State?
MS. BAILEY: Madam Clerk, could you repeat her number?
THE CLERK: 276.
MS. BAILEY: Please present Ms. Paul.
THE CLERK: What says the Defense?
MR. BARR: Seat the juror, please.
THE CLERK: Please take a seat in the jury box.
Juror Number 95, Russell Drayton.
What says the State?
MS. BAILEY: Please present Mr. Drayton.
THE CLERK: What says the Defense?

MR. BARR: Please excuse the juror from the trial of this case.

THE CLERK: You may return to your seat.

Juror Number 231, Helen Manning.

MR. BARR: Madam Clerk, eight or nine, is that eight or nine?

THE CLERK: Nine.

What says the State?

MS. BAILEY: Please present Ms. Manning.

THE CLERK: What says the Defense?

MR. BARR: Seat the juror, please.

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

Juror Number 211, Alfred Lawrence, Sr.

What says the State?

MS. BAILEY: Please present Mr. Lawrence.

THE CLERK: What says the Defense?

MR. BARR: Excuse the juror from the trial of this case, please.

THE CLERK: You may return to your seat.

THE COURT: That's the tenth strike for the Defense. Any other claims must be for cause.

THE CLERK: Juror Number 183, Michael Jacobs.

What says the State?

MS. BAILEY: Please present Mr. Jacobs.

THE CLERK: Any challenges from the Defense?

MR. BARR: No, ma'am.
THE CLERK: Please take a seat in the jury box.
THE COURT: We're selecting the first alternate.
THE CLERK: Juror Number 189, Desjuana Johnson.
What says the State?
MS. BAILEY: Please present Ms. Johnson.
THE CLERK: What says the Defense?
MR. BARR: What's that number again, Madam Clerk?
THE CLERK: 189.
MR. BARR: Seat the juror, please.
THE CLERK: Please take a seat in the jury box.
THE COURT: Selecting the second alternate.
THE CLERK: Juror Number 66, Tyler Cooper.
What says the State?
MS. BAILEY: Please present Mr. Cooper.
THE CLERK: What says the Defense?
MR. BARR: Please excuse the juror from the trial of this case.
THE CLERK: You may return to your seat.
Juror Number 155, Ursula Hedgespeth-McCray.
What says the State?
MS. BAILEY: Please excuse Ms. McCray.
THE CLERK: You may return to your seat.
Juror Number 316, Vivian Segelken.
MS. SEGELKEN: Segelken.

THE CLERK: Okay.

What says the State?

MS. BAILEY: Please present the juror.

THE CLERK: What says the Defense?

MR. BARR: Please excuse the juror from the trial of this case. Please excuse the juror from the trial of this case.

THE CLERK: You may return to your seat.

Juror Number 171, Michael Holzworth.

Any challenges from the State?

MS. BAILEY: No, Madam Clerk.

THE CLERK: Any challenges from the Defense?

MR. BARR: Seat the juror, please.

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

THE COURT: Thank you, Madam Clerk. Objections to the jury selection process from the State?

MS. BAILEY: No, Your Honor.

THE COURT: From the Defense?

MR. BARR: No, sir, Judge.

THE COURT: All right. Ladies and gentlemen, those of you who have not been selected in this case -- counselor, please have a seat for me. Thank you, sir. Those of you who have not been selected as jurors in this case I'm going to excuse you for the remainder of the afternoon. The Clerk has asked that you call into the juror call-in number that you have in your possession after six p.m. this evening. You'll

receive additional instructions concerning your jury service for the future of the rest of the week. I want to thank you very much for your cooperation with us this afternoon in selecting this jury, and at this point in time, you're free to go. You may step out. The bailiffs will check you out. Thank you very much.

(Jury panel exits courtroom.)

THE COURT: All right. Ladies and gentlemen, you've been selected as jurors in this case, and there are some matters that I have to take up with the attorneys before we proceed with actually starting the trial of the case, and rather have -- rather than have you sit around this afternoon with the chance that we might get started before five o'clock, I doubt that we would, I'm going to release you for the remainder of the day with some instructions as you leave. When you return to the courthouse in the morning, we will be starting the case shortly thereafter. You will be asked to take an oath concerning your responsibilities as jurors in this case. You will find that part of that oath is that you will be stating to the Court that you will be deciding this case based upon the law and the evidence presented during the trial.

Now, the only place that you're going to hear any evidence in this case is in this courtroom during the trial because evidence in a case is made up by the testimony of witnesses sworn to tell the truth, will testify from the

witness stand right over here in this case, and whatever documents or other evidence comes into the record of the case, either through that testimony or by agreement of the attorneys. So the only place you can find or gather any information or any evidence in this case is in this courtroom during the trial. For that reason, it would be a violation of your oath as jurors for you to try to gather any information about this case from any source outside of the courtroom, and I realize that we live in an age where you can with a few strokes of a keypad get information about anything in the world. I understand that, but it would be, again, a violation of your oath for you to attempt to try to gather such information because I will tell you that there is false information on the internet. There is information that a juror should not consider in reaching a verdict in a case. There's information out there that would not be admissible in evidence under the rules that govern the admission of information in a courtroom that's available to people on such sources. Also, it would be highly improper for you to listen to, watch, read any media reports concerning this case. Now, I don't govern or I don't control what the media puts out either by way of the news on television or in the newspapers, but again, you should not, at this point in time, should not listen to, watch or read any of that information. So if you happen to hear something about this case, turn it off, turn it

down, walk out of the room, don't listen to it, don't, don't pay any attention to those things because, again, your oath is to, at this point in time, will be to decide this case based upon the law and evidence in this matter.

Now, you've watched the process this afternoon, and we've gone to a great deal of trouble to gather a jury that has no preconceived notions about this case, in other words, you have an open mind concerning this matter. I hope that you appreciate that if you were to go home and start a conversation about this case or about the issues that might be involved in this case, that discussion with another person, whether it be your spouse or a friend or whoever it might be, might begin to color your ultimate decision in this case, and you haven't heard the first word of testimony yet in this matter. So I'm going to instruct you as well not to discuss the case with anyone, don't allow anyone to discuss the case with you. It's perfectly okay for you to tell a family member or a friend that you've been selected on a jury and then the next statement will be, "But I'll discuss that with you when it's over," and then start talking about the weather, talk about sports, got some beautiful weather to talk about out there. So talk about something else. Don't talk about this case and don't allow anyone to discuss it with you.

One other point I want to make to you is that in South Carolina jury tampering is a crime. If someone were to try to

contact you about your service on the jury and try to influence your decision in this case, I want you to report that to the Court as soon as you can. I can assure you this Judge takes those matters seriously, and I would see that the appropriate investigations were conducted, and if prosecution were necessary, I'd see that it was done. So don't allow anyone to discuss the case with you. Don't allow anyone to approach you about it. Don't listen to, watch or read any media reports about the case, don't attempt to gather any information on your own. I can assure you, once the case starts, you'll get plenty of information about this case as we go forward. You'll learn about it as we proceed, and again, be cautious about not talking about the case with anyone. I want you to keep that open mind that you have about this case until such time as I ask you to begin your deliberations and that'll be at the end of the trial. It won't be at the beginning.

Now, I'm going to release you for the rest of the afternoon. I'll ask you that you be back in the jury room in the morning 9:00 o'clock in the morning. We should be in a position to start shortly thereafter. The bailiffs are going to show you out. They'll show you where to come back to, but you notice the one gentleman that was out there in the crowd earlier that I had to send out, he should have been somewhere else. So be sure you know where to report back to. If you

have any difficulty when you come back to the courthouse, find a bailiff, they'll get you in the right position so that you'll be in the right place to start. Again, we'll start at 9:00 o'clock in the morning.

Now, in the morning, under oath, I'm going to ask you if you've been able to follow my instructions. I hope every one of you'll be able to say that you have because I am ordering you to follow those instructions.

All right. At this point in time the bailiffs will show you out. Have a good evening.

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

THE COURT: All right. Any pretrial matters that the State wishes for me to consider before we begin?

MS. BAILEY: Yes, Your Honor. There's going to be several pretrial matters, some of which require testimony.

THE COURT: All right.

MS. BAILEY: To start with, I believe Your Honor has already indicated which way you'll rule, but I feel like I do want to put on the record the State is moving that the jury not hear any information relating to the fact that this case has once before been tried in full and sent to a jury and resulted in a hung jury and a mistrial.

THE COURT: All right. Any objection to that motion from the Defense?

MR. BARR: Yes, sir.

THE COURT: All right, sir. Be happy to hear from you.

MR. BARR: Your Honor, I can hardly imagine that we'd be able to try this case, particularly inasmuch as I do anticipate quite a bit of impeachment activity.

THE COURT: Yes, sir. But can't that be done without referring to a prior trial in this case?

MR. BARR: Your Honor, I think it can be done without referring to what the outcome of the trial was, and certainly I, I would not go into what the outcome of the trial was, but the fact that there has been an earlier trial, we don't see how, how that evidence would have any bearing on the State being able to prosecute this case.

THE COURT: Well, if you wanted to impeach a witness, counsel, I'll allow you to refer to the fact there's been prior sworn testimony given in this case, but we're not going to refer to the fact that a trial occurred. So I'll grant the State's motion to that extent. However, I won't limit you from impeaching anyone using their prior testimony. If it's been given under oath before a Court, you certainly have a right to use that in impeachment. I think to -- in order to impeach you have to identify the date and the time in which the statement was made, and I think the rule allows you to do that. You certainly would have the right to say that, "On such and such a date at such and such a time did you not give

testimony under oath in this matter," whatever effect it is, and I'll certainly fully allow you to do that under the rule. In other words, you can do exactly what the rule says you can do. Yes, ma'am.

MS. BAILEY: Thank you, Your Honor. There will be two excited utterances that I would like Your Honor to consider outside the presence of the jury. I have my witnesses here this afternoon who could testify to those excited utterances. For the Court's information, they are the utterances of the deceased victim shortly after he was shot. There are several people who will testify that he identified his assailant. So before we proceed with openings, I feel like that's something that we should know whether or not -- which way the Court would be inclined to rule on that.

There's also, the other ---

THE COURT: So, you're, you're concerned that those may be considered to be hearsay?

MS. BAILEY: Well, Your Honor, we, we believe they fall within the hearsay exceptions.

THE COURT: I see.

MS. BAILEY: Yes.

THE COURT: Okay.

MS. BAILEY: Your Honor, the other matter that I would request a pretrial ruling on is that two of our witnesses picked Mr. Dizzley out of a lineup. I've, I've -- in candor

to the Court, they didn't recognize him from the crime scene. They recognized him from being associated with the victim, and they knew Mr. Dizzley only by his various street names and nicknames. So the lineups were presented to them not necessarily for, "Is this the person who killed the victim," but, "Is this the person that you know as Little D, Diz, Dizzley," his various nicknames, and given that those witnesses do have prior knowledge of the Defendant, I'm not a hundred percent sure that a Neil v. Biggers hearing is necessary. I think there -- I think under the law under Neil v. Biggers their in-court identification is appropriate, that they do know him as the person, as Little D or Diz or whatever nicknames, but given that those photo lineups were presented to them, and I intend to introduce them into evidence as part of the investigation, present them to the jury as part of what was done during the investigation, if Your Honor is so inclined, I have witnesses here who can testify as to those photo lineups.

THE COURT: Well, I guess, first of all, I need to find out from the Defense is there an objection to the statements made by the decedent as to his assailant?

MR. BARR: Yes, sir.

THE COURT: All right. Then let's take those -- let's take these things one at a time. You wish to present evidence on that and, and the objection is, counsel?

MR. BARR: The objection, Judge, is that it's hearsay.

THE COURT: Okay. Sir, any other objections other than the hearsay issue?

MR. BARR: No, sir.

THE COURT: Okay. Let's -- I'll be happy to hear testimony on the subject. You may call your first witness.

MS. BAILEY: Thank you, Your Honor. The State calls Douglas Morris.

THE COURT: Mr. Morris, come forward to testify, please. Is he outside?

MS. BAILEY: He is.

THE COURT: All right.

MS. BAILEY: Out of precaution, I've gone ahead and sent my witnesses --

THE COURT: That's quite all right.

MS. BAILEY: Your Honor, I believe my witness stepped out to the restroom.

THE COURT: Okay.

MS. BAILEY: We can start with a different one, Maurice Giles -- Willie Stanley?

THE COURT: Sir, if you'll come forward. Where do you normally swear people in the courtroom, over here? All right.

THE CLERK: Please state your full name for the Court.

MR. STANLEY: Willie Stanley.

THE CLERK: Thank you. Mr. Stanley, please raise your

right hand and repeat after me.

Whereupon, Willie Stanley is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you.

THE COURT: Have a seat, sir.

Your witness, counselor.

MS. BAILEY: Thank you, Your Honor.

EXAMINATION

BY MS. BAILEY:

Q Mr. Stanley, where were you on December 1st of 2008?

A At Paradise Club.

Q Okay. And did something extraordinary happen that night?

A Yes.

Q And can you briefly describe the events that you remember from that night?

A We was in there playing pool, and the door kept opening and closing, and about two or three times, and once the door open the last time, somebody came in and shot Aundry Evans.

Q When you say somebody came in, were you able to recognize that person?

A No.

Q Why not?

A It was a mask and, mask -- he was masked up.

Q Okay. And after Mr. Evans was shot, was, was there one person who came into the club that did the shooting to be

clear?
A One.
Q Okay. And after Mr. Evans was shot, what did you do when you heard, when, when the shooting happened?
A I was under the pool table.
Q Okay. And when you -- when did you come out from under the pool table?
A After he left.
Q Okay. What did you do next?
A Called 911.
Q All right. And after you called 911, what did you do?
A Well, attended Aundry.
Q You attended to Aundry Evans. Okay. How did he seem at that point?
A He was in shock. He was shot.
Q How did you know he was in shock or was shot?
A He been laying on the ground.
Q Okay. Was he bleeding?
A Yeah.
Q Was he breathing fast or slow?
A I guess fast, slow, I mean.
Q Okay. How long, how long were you on the phone with 911 before you attended to Mr. Evans?
A Maybe about two to three minutes.
Q Two or three minutes. Okay, and so when you got to Mr.

Evans what was his condition? Was he conscious?
A Yeah. He was conscious.
Q Okay. Did he seem to be in his right mind?
A Yeah.
Q Okay. And did he make any statements?
A He was like -- he was saying like, "Little D did this to me," or whatever.
Q Okay. Can you speak up and repeat that again?
A He repeat -- he said, "Little D got me."
Q Okay. Do you know Little D?
A No.
Q Okay.

MS. BAILEY: Your Honor, as to the excited utterance that's the -- for this witness, that's the information that I have to proffer.

THE COURT: All right. You may cross examine.

MR. BARR: Thank you, Judge.

EXAMINATION

BY MR. BARR:

Q Now, Mr. Stanley, you -- well, let me make sure that I've got you, you -- are you currently -- did you, did you, did you make a deal with the Solicitor's Office regarding your testimony?
A No.
Q Pardon me?

A No, sir.
Q You see the, the black gentleman that's seated in the blue suit?
A Yes.
Q Is he your lawyer?
A Yes.
Q And what is he representing you for?
A Excuse me?
Q What is he representing you for?
A For I think it's -- I don't really know the -- I can't remember what the case is, but it's for a burglary.
Q So as far as you know, you are telling the Court now that you're not aware of having made any deals with the Solicitor's Office through your lawyer to testify in this case?
A It really wasn't a deal. It was -- it's not a deal.
Q Well, what do you call it?
A An agreement.
Q And what's the agreement?
A Excuse me?
Q What is the nature of the agreement?
A If I were to testify that I would -- they would talk about lesser charges.
Q Lesser charges. All right. Now, you, you, you, you, you do agree that you would prefer some lesser charges; wouldn't you?

A Yes. I would. You would, too.
Q And of course, but I'm not charged. I assume that you're hopeful that you're able to take advantage of this deal that you've worked out?
A Yeah.
Q Now, as I understand it, you were standing in the Paradise Club and you were standing near Aundry Evans when the alleged gunman came in?
A I was at the pool table.
Q And what were you doing, playing pool?
A Playing pool.
Q Now, who is the fellow that you were playing pool with?
A I really don't know his name.
Q And where was Aundry Evans in relation to you?
A What is he relation to me?
Q Yeah. Where was he? Where was he positioned?
A Oh, by the counter.
Q By the counter. When you heard what you thought was the first shot, where were you?
A When I heard the first shot?
Q Yes, sir.
A At the pool table.
Q And did you know where the first shot came from?
MS. BAILEY: Objection, Your Honor. At this point, I think this hearing is limited to whether or not he heard an

excited utterance, not the details of the rest of the event.

MR. BARR: Your Honor, I think that they have to lay a foundation, and what I'm questioning him on concerns the foundation that is to -- in terms of what he's going to claim that the, that the declarant described. So I think we're entitled to do that.

THE COURT: Well, I think you're entitled to go into what made up the res gestae.

MR. BARR: Yes, sir.

THE COURT: In other words, what this witness may have witnessed as well as what the decedent may have been exposed to.

MR. BARR: Yes, sir.

THE COURT: So I'll let you ask if he's aware of where the shot came from.

MR. BARR: Thank you, Judge.

BY MR. BARR:

Q Now, when you heard the first shot, do you know where it came from?

A It came from the person who came in.

Q Well, as far as you know, was the first shot directed at Aundry?

A The person went straight to him.

Q So, did -- when the person -- well, you did see the person fire the gun?

A Yes.
Q And the first shot that you heard that you saw the person fire was that shot fired toward Aundry?
A Yes.
Q Do you know whether or not it hit him?
A I don't know.
Q So, now, after you heard the first shot, you jumped under the pool table; didn't you?
A Yeah.
Q And Aundry was not under the pool table with you; was he?
A No.
Q So, now, if and when Aundry got shot, you didn't see him shot; did you?
A I don't know whether he was shot or not till after I got up.
Q All right. Now, as I understand it, didn't you give a statement wherein -- well, hold on a second. When the gunman got through firing his weapon, do you know how many times he shot?
A I think it was about three or four times. I don't know.
Q Now, while he was doing this shooting three or four times, you were under the pool table?
A Yes.
Q So the truth is when Aundry got shot you were under the pool table and you don't know how he got shot; do you?

A I mean, I saw the first shot. After the first shot, I was under the table.
Q Well, you said earlier that you saw the first shot or you heard the first shot.
A And I was under the table.
Q And you jumped under the table. Do you know whether or not Aundry was shot by the first shot?
A I don't know whether he was shot by the first shot.
Q Now, in fact, I believe you indicated that the man shooting the gun ran after somebody else upstairs; didn't he?
A This was after, after whoever got shot the first time. I didn't say upstairs. I said in another room. I didn't say upstairs.
Q Now, you don't deny that the alleged gunman ran in another room after somebody else, and there were shots fired in there?
A Yes.
Q So inasmuch as you didn't see Aundry shot, you're not -- you don't know who shot him?
A No.
MS. BAILEY: Objection, Your Honor. That's been asked and answered several times.
THE COURT: It has been, counselor.
MR. BARR: Your Honor, I, I, I ---
THE COURT: And he -- I don't believe he's --

MR. BARR: I'll move on.

THE COURT: Please do.

BY MR. BARR:

Q Now, when -- how much time elapsed between the first shots you heard and the time that you went to look at Aundry?

A I really don't know, sir.

Q You don't know who shot him, you don't know how much time elapsed between the time he was shot, if he was shot and the time that you went to him that you claim he said something to you?

A I really don't know the time limit. I wasn't counting time.

Q All right, sir.

MR. BARR: The Court's indulgence, Judge.

THE COURT: Yes, sir.

BY MR. BARR:

Q Did Aundry tell you when he got shot?

A Excuse me?

Q Did he tell you when he got shot?

A When he got shot?

Q Yes, sir.

A How you mean, how you mean he told?

Q Did Aundry tell you when he got shot?

A I was there.

Q The question was did he tell you when he got shot?

A No, he didn't tell me when he got shot.
Q All right. Thank you.
THE COURT: Anything further from the State?
MS. BAILEY: Briefly, Your Honor.
THE COURT: Yes, ma'am.

REEXAMINATION

BY MS. BAILEY:
Q Mr. Stanley, before we came in this courtroom today did you have an opportunity to review the 911 call?
A Yes.
Q Okay. And how long was that 911 -- how long was the portion --
MR. BARR: Your Honor, I'm going to, I'm going to have to object. Even though this is a -- it's a hearing on a motion, I don't, I don't recall having asked the Defendant anything about a 911 call.
THE COURT: No. But you did ask the length of time between the time he went under the pool table and the time that he checked on Aundry. I suspect that this has relevance as to what he did since his prior testimony was that when he got out from the under the pool table he called 911 and then he went and checked on Aundry. So I'm going to overrule the objection. I'm going to allow him [sic] to ask the question.
MS. BAILEY: Thank you, Your Honor.
THE COURT: You may proceed, ma'am.

BY MS. BAILEY:
Q And how long, not the entire 911 dispatch and all that, but the amount of time that you were on the phone with the 911 operator approximately how long was that?
A Like I said, maybe two or three minutes at the most.
Q Now, as -- was Aundry Evans shot while you were all -- while you all were standing around playing pool, was he bleeding?
A While we was playing pool?
Q Right.
A No.
Q Okay. So he wasn't bleeding or injured before someone with a mask and a gun came into the club; is that correct?
A No. He wasn't.
Q Okay. And how long, if you were to guess, between or if based on your best recollection from the first shot until you felt like it was safe to come out from under the table?
A Probably about, maybe about five minutes, five, six minutes.
Q Okay. So it was five or six minutes that you were under the table, and during that time, there was still active shooting happening?
A Outside.
Q So there were more shots happening outside. Okay. And then, then you called 911; is that your testimony today?

A Yes.
Q Okay. And how long were you on the phone with 911?
A Probably I'd say about two or three minutes.
Q Okay. And after you hung up with 911, did you go straight to attend to Mr. Evans or did you do anything else?
A They say to apply pressure.
Q Okay. So did you speak with anybody else? Did you leave the club and come back? Is there anything else that you did after you hung up with 911 other than go to Mr. Evans?
A No.
Q Okay.

MS. BAILEY: I have no further questions, Your Honor.

THE COURT: Mr. Barr?

REEXAMINATION

BY MR. BARR:
Q Do you recall giving a statement to Investigator Garrett on the 11th of December of 2011 or 2008?
A Yeah.
Q And do you deny that in that statement you told him that, "After he started shooting, we ran. Dre uncle ran in the other part, and the dude ran in there after him and was shooting him, shooting at him." Do you deny that you said that?
A No. I didn't deny I say that.
Q Was that the truth when you said that?

A Yes.
Q And did not you also said that, "When he was leaving out, I was under the table, under the pool table, but I could still hear him shooting?"
A Yes.
Q Now, Mr., Mr. Stanley, isn't it true that at that same time you told Officer Garrett that Dre told you something about, "Little D got me?" Did you say that?
A Yeah.
MS. BAILEY: Your Honor, I'm going to object as being inappropriate for recross. The only thing that I crossed -- that I redirected on was the timeline, was to clarify the timeline.
THE COURT: I'll give you a little bit of latitude, but she's correct, counselor. That's about all she went into.
MR. BARR: Your Honor, I think at the time, of course, based on what he said earlier, he gave the impression that, he was specific about what he thought the man had said.
THE COURT: Again, she did not redirect on what he said, and this is recross. Recross is limited to what was gone into on redirect. That's what my ruling is.
MR. BARR: All right, sir.
THE COURT: Anything further of this witness, Mr. Barr?
MR. BARR: No, sir.
THE COURT: Sir, you may step down. Thank you very much.

The State may call its next witness.

MS. BAILEY: Thank you, Your Honor. Your Honor, the State has just learned that Douglas Morris, who is on the witness list for the afternoon, had a family emergency. His grandmother had a medical emergency.

THE COURT: Uh-huh.

MS. BAILEY: He had to run back to Andrews so that she could have the car. He's now stuck in Andrews. We can either go get him now, which will be about an hour until he gets here which --

THE COURT: We'll take him first thing in the morning.

MS. BAILEY: Okay. Thank you, Your Honor. The State calls Maurice Giles.

MR. BARR: Your Honor.

THE COURT: Yes, sir.

MR. BARR: Is it the State's position that, that they're now calling Maurice Giles on a separate statement made by the decedent or is it the same statement that, that they're trying to get in that was supposedly made to --

THE COURT: I don't know. I don't know who these people are or what they've got to do. What's this gentleman supposed to be testifying to?

MS. BAILEY: Well, Your Honor, let's see what, what he -- how testimony unfolds.

THE COURT: Wait one second right there, sir. Thank you.

MS. BAILEY: I would like to see how testimony unfolds before I take a position on whether it's the exact same utterance.

THE COURT: Well, this, this all has to do with statements that they are claiming that the decedent made; is that correct?

MS. BAILEY: Yes.

THE COURT: Okay. Well, I'll accept his testimony.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Come forward, sir, and be sworn.

THE CLERK: Mr. Giles, please state your full name for the Court.

MR. GILES: Maurice Giles.

THE CLERK: Please repeat after me or answer when I'm finished.

Whereupon, Maurice Giles was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you.

THE COURT: Have a seat, sir.

MR. GILES: All right.

THE COURT: Get as close to that microphone as you can so we can hear you. Thank you, sir. All right. Counselor, your witness.

MS. BAILEY: Thank you, Your Honor.

EXAMINATION

BY MS. BAILEY:

Q Mr. Giles, where were you December 1st, 2008?

A At the Paradise Club.

Q And did anything extraordinary happen that night?

A A masked man came in and started shooting.

Q Okay. Where were you when that happened?

A Probably about 10 feet away from Aundry.

Q Okay. And did you -- were you able to identify the person that came in?

A No, ma'am.

Q Okay. And you say he was masked. Were you able to see any part of him?

A Just the eyes.

Q Okay. And did he shoot at everybody in the club or did he go to one specific person? How did he enter? When he entered what -- where did he go?

A When the person entered they came around and went straight to Aundry, started shooting Aundry, and after that, after Aundry dropped, a couple of guys ran into the open part of the building. The gunman ran into the doorway, shot off about two shots and ran back out.

Q Okay. When the gun, gunfire began where did you go?

A Under the pool table.

Q You went under the pool table.

A Yes.

Q Okay. How many shots total did you hear?
A Probably between six and seven.
Q Okay. Did you hear any gunshots outside?
A No, ma'am.
Q Okay. From the time when the shooting began until you felt safe to come out, how long do you think transpired there?
A I'm not sure because after I came up from under the pool table I went straight to helping Aundry.
Q Okay. So when you came out from the pool table, what did you do next?
A Went and got on the floor and stop, try to stop the bleeding from Aundry.
Q And what did you do to try to stop the bleeding?
A Putting pressure on the wounds.
Q What was his condition like when you went straight to him?
A When I went straight to him, he was in shock.
Q Okay. And how did you know he was in shock?
A Just by body, body reactions.
MR. BARR: Your Honor, Your Honor, I object. Move to strike. The witness is not competent to make a medical diagnosis regarding the medical or the condition of the person that was supposedly shot.
MS. BAILEY: Your Honor --
THE COURT: I'll allow the witness to state his

impression of what he saw. I've not qualified him as an expert and won't allow him to give an opinion, but he can describe conditions he observed and what conclusion he might have drawn from those, those conditions.

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q When you say he was in shock, what do you mean?

A He started -- I mean, he was just over-excited like anybody. I mean, if you got shot, you'll just start talking and, you know, trying to figure out exactly what's going on.

Q Okay. Did he -- was he conscious?

A Yes.

Q And was he speaking?

A Yes.

Q And was he making sense?

A Yes.

Q Okay. And what did you hear him say?

A The only thing he said was, "I can't believe that's Little D."

MR. BARR: Objection, Your Honor. She's leading the witness.

THE COURT: Overruled. You may respond to the question.

A He said, "I can't believe that's Little D. Little D shot me."

Q Okay. And when he said that to you, was anybody else

around?
A Just a couple of guys that was still inside the club.
Q Okay. Do you remember who they are?
A Not exactly.
Q Okay. And how long did you stay there with him and attend to him?
A Until the ambulance came.
Q Till the ambulance came.
A Uh-huh.
Q Okay. Did he make those statements again at any point to other people?
A He made it to some other people I guess getting inside the ambulance.
Q Okay. Do you know Willie Stanley?
A Yes.
Q At some point did Willie Stanley come over to where you all were?
A Willie Stanley was the guy I told to make the 911 call.
Q Okay. Was Willie Stanley standing close enough that he would have heard anything that Mr. Evans said?
A He was standing close. I'm not sure if he heard it or not.
Q Okay. How about Douglas Morris, do you know Douglas Morris?
A Yes.

Q Okay. And at some point from when Mr. Evans was shot until the ambulance came, was Douglas Morris standing close enough to Mr. Evans to hear what Mr. Evans may have had to say?
A Yes.
Q Okay. Do you know Naomi Alston?
A Yes.
Q Did Naomi Alston arrive before the ambulance to the best of your memory?
A Yes.
Q Okay. Did she get to speak with Mr. Evans before law enforcement and the ambulance arrived?
A I'm not sure about that.
MS. BAILEY: No further questions, Your Honor.
THE COURT: Counselor, your witness, Mr. Barr.

EXAMINATION

BY MR. BARR:
Q Mr. Giles.
A Yes, sir.
Q Tell me something, I believe as a part of this investigation you were approached by law enforcement, and you gave them a statement which was taken at the Paradise Club on the 2nd of December, and tell me whether or not that's a copy of that statement.
MS. BAILEY: Objection, Your Honor. I believe in order

to impeach a witness with a prior statement first he needs to ask whether or not the witness made the statement. He's not given the witness the opportunity to do that.

MR. BARR: Well ---

THE COURT: I don't know if he's -- I would ask you to identify the time and the place and see if he recalls having made the witness --

MR. BARR: All right, sir, Judge. I, I didn't --

THE COURT: -- the statement.

MR. BARR: -- but I, I can do it that way.

BY MR. BARR:

Q You do recall making a statement to law enforcement?

A Yes. But not at the club.

Q And was that statement made on the 2nd of December of 2008?

A The 2nd of December was actually about 12, after 12 o'clock, which was at the police station.

Q Now, you didn't sign the statement that you gave the law enforcement?

A I don't remember.

MR. BARR: For purposes of this hearing, Defense Number One.

MS. BAILEY: Your Honor, I'm not sure he's laid a foundation to enter that.

THE COURT: I haven't admitted it. He can have it marked

for identification purposes though.

MS. BAILEY: Thank you.

THE COURT: It'll be marked for ID purposes.

(Defense Exhibit Number One [Statement of Maurice Giles dated 12-2-08] marked for identification.)

BY MR. BARR:

Q I'm going to show you now what's been marked for identification purposes as Defense Number One for this hearing and tell me whether or not you identify it, if you can identify it.

A Yeah. That's my handwriting.

Q Is it your statement? Is it your statement?

A Yes.

Q And is it in your handwriting?

A Yes. I already told you that.

Q And it's signed by you?

A Yes, sir.

Q Did you give the police that statement?

A Yeah. At the police station.

Q Now, you don't deny in that statement you make absolutely no mention about Mr. Evans saying anything to you; do you?

A No. That was the first statement that they asked me just to write.

Q All right.

MR. BARR: Number Two for identification.

(Defense Exhibit Number Two [Statement of Maurice Giles dated 12-2-08] marked for identification.)

BY MR. BARR:

Q So you wrote another statement, sir?

A If you say so. I'm listening.

Q Well, did you give the police another statement?

A I gave the police about three or four statements.

Q Well, take a look at what's been marked as Defense Number Two. Did you write that one?

A Yes.

Q Now, according to this first statement, didn't you indicate that --

MS. BAILEY: Objection, Your Honor. In order to enter the contents of the first statement, I believe it needs to be put into evidence.

THE COURT: Do you wish to admit the two statements in the record?

MR. BARR: No, sir, Judge. I'll, I'll just go about it by impeachment as opposed to putting them into evidence.

BY MR. BARR:

Q Now, did not you indicate in the first statement that when Aundry fell ---

MS. BAILEY: Again, same objection, Your Honor.

Q --- you ran under the pool table?

THE COURT: He has the right to admit or deny whether he

made the statement. He can, he can ask him if he made the statement. If he admits it then there's no further evidence on the point. If he denies having made the statement, then he could introduce evidence to show that that's not the case.

MS. BAILEY: Thank you, Your Honor.

THE COURT: So he can ask him whether he made the statement or not. You may proceed, Mr. Barr.

MR. BARR: Thank you, Judge.

BY MR. BARR:

Q Didn't you state in the statement that you -- that when Aundry fell to the floor you ran under the pool table?

A Let me see the statement, please.

Q (Complies with request.)

A Yeah.

Q Now, as far as any conversation between you and Aundry, was the police or had the police arrived at the time that you spoke to Aundry when you claim he made the statement that you heard him make?

A No. The police haven't gotten there yet. I had that conversation with him when I left from under the pool table to go to his aid. The point you missing is, yeah, when he fell, I went under the pool table. The gunman still was inside the building. When the gunman left out of the room, I went to his aid of Aundry.

Q Did not you say in the second statement, listen to me,

"After the police arrived, Dre told me someone named Little D shot him."

A The police is outside.

Q Now, was that your statement?

A I don't know. Let me see that one, too.

Q (Complies with request.)

A That's not in the statement.

Q What does that say?

A Okay. Right there.

Q Doesn't it say that after the police arrived Dre made a statement to you?

A Oh, that right there. Yes. It does.

Q Now, were you lying or were you telling the truth or what, what was --

A Well, actually, I'm as in shock as anybody else.

Q Well, were you telling the truth when you gave the police this statement?

A I gave that police statement three or four times. I still can remember more different stuff.

Q Well --

A I mean, what part do you want to know?

Q When you gave, when, when, when you, when, when Dre supposedly made the statement to you, the police had already gotten there; hadn't they?

A Dre made the comment, that's all to it. Regardless if

the police was there or not, he made the comment.
Q Well, now, if the police was there as you said, you don't deny that some time transpired, some time went off the clock between the time that he was supposedly shot and the time that he made the statement to you?
A Well, want -- you want me to tell you exactly what happened that night now since I can remember?
Q I want you to tell the truth.
A When I got out from under the pool table and went to Aundry, Aundry made the comment. Regardless if the police was there or not, when he came he made the comment.
Q Well, now, Mr. Miles ---
A Giles.
Q --- Giles, you told the police that the police was there when Aundry made the statement. Ain't no denying that. You just, you just said that you did.
A What's the point?
Q The point is if the police was there tell us how long it took the police to get there.
A I can't tell you how long it took the police to get there. I'm as in shock as everybody else in there that would be in a gunfight.
Q So you don't deny that the police didn't come before the 911 call was made; what, did they?
A I don't think no police going to come before 911 call is

made. You got to call 911.
Q So they came, so they came after the 911 phone call?
A Okay. What's your point?
Q Now, who made the 911 phone call?
A Mr. Stanley.
Q And do you know how, how much time went off the clock between the time Aundry supposedly got shot or he found he had gotten shot and the time he made the 911 call?
A You have to ask Mr. Stanley that. I was on the floor assisting Aundry. I didn't make the call.
Q Do you know how much time went by between the time that Aundry got shot and he made the statement to you?
A No. I wasn't looking at a watch clocking nothing. I went to the man's aid, and after he was talking to me that's what he said. The time don't have -- don't matter.
THE COURT: Any other questions, Mr. Barr?
Q He certainly didn't make the statement to you at the time he got shot; did he?
A Who'd be making a statement getting shot at the time?
Q All right, sir.
A Okay.
Q Thank you.
THE COURT: Questions from the State?
MS. BAILEY: None, Your Honor.
THE COURT: Let me ask the witness.

EXAMINATION

BY THE COURT:

Q Maybe I misunderstood, did you indicate that he made the statement on two occasions, once when you came to his aid and then later before he got into the ambulance?

A Before he got into the ambulance he made it to some more witness.

Q The same statement?

A Same statement.

Q Or similar statement?

A Same statement.

Q Same statement. So there was one statement made --

A To me.

Q -- when you approached him to begin with?

A Uh-huh.

Q And it's your testimony he made another statement as he was getting into the ambulance?

A To the ambulance, yes.

Q Okay. I just wanted to be sure I was -- thought I heard you testify to that.

THE COURT: Anything to follow up on my questions from the State?

MS. BAILEY: No, Your Honor.

THE COURT: Anything from the Defense?

MR. BARR: Yes, sir. Just one thing.

THE COURT: Yes, sir.

REEXAMINATION

BY MR. BARR:

Q When did you tell or did you tell the police that Aundry made the statement to you or made a statement to you twice?

A What you getting at?

Q Don't worry about what I'm getting at. You just answer the question.

A I'm trying to answer. I'm trying to figure out the question.

Q Did you, did --

A Maybe you might need to come a little closer because I can't hear you.

Q You can't hear me?

A No.

Q Did you tell the police, I'm talking about the investigators, any one of them that Aundry made a statement to you twice?

A He made a statement to me and he made a statement loud enough when he was getting inside the ambulance.

Q Did you tell the police that you heard Aundry make two different statements?

A I don't know. You might need to check one of my written statements because I wrote about three or four of them. You only have --

Q Do you have a recollection --
A --- you only have two of them.
Q -- about telling the police that?
A Yes.
Q When did you tell them?
A I told them the same, the next night, the next day when the same, after I wrote the first two or three statement and I had to go back down to the police station again and write another three or four statements, that's when I told them.
Q Why are you writing so many statements?
A I don't know. That's part of the investigation; isn't it?

MR. BARR: Judge, I have nothing further.

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

A No problem.

THE COURT: Yes, sir. Thank you. We do need those things that have been marked, been marked for identification purposes for the court reporter.

MR. BARR: I need to make some -- can I get copies? I'm going to need them.

(Court reporter and Mr. Barr confer concerning copies.)

THE COURT: The State may call its next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Naomi Alston.

THE COURT: Come forward, ma'am, please, right over here

to my left and be sworn. Thank you. Right over here, thank you, ma'am.

THE CLERK: Would you please state your full name for the record?

MS. ALSTON: Naomi Shana [spelled phonetically] Alston.

THE CLERK: Would you spell your last name for us, please?

MS. ALSTON: A-L-S-T-O-N.

Whereupon, Naomi Alston was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you.

THE COURT: Have a seat, please. Thank you.

A Uh-huh.

THE COURT: All right. Counselor, your witness.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

EXAMINATION

BY MS. BAILEY:

Q Ms. Alston.

A Yes, ma'am.

Q What is your relationship with Mr. Evans?

A I was his fiancée.

Q On December 1st of 2008 did you learn anything of importance that night?

A That he was shot and later pronounced dead.

Q And who did -- how did you hear that he was shot?
A Well, I got a call around 9:15, nine-ish, stating that Aundry got shot by Dash is his nickname.
Q That Aundry got -- you just said that Aundry got shot by Dash.
A No.
Q Okay.
A That Dash called to tell me that he got shot.
Q Okay. Just wanted to clarify that for the record.
A Yes, ma'am.
Q Okay. So and who is Dash? Do you know his real name?
A I don't know his real name.
Q Okay. And what did you do when you learned that Mr. Evans had been shot?
A At that time I was staying in Dunbar, and my two kids, my sister, her two kids were there. I got up and told her that I have to go, Dre got shot, watch the kids, and I got in my car and that's when I went to Oatland.
Q Okay. Now, you say you were in Dunbar and you went to Oatland, this Judge here is from Spartanburg. So can you tell us how long it takes to get from Dunbar to Oatland?
A It's not even five minutes.
Q Okay.
A From Dunbar to Oatland.
Q And did you -- before you left the house did you change

clothes?
A No, ma'am. All I had on was my night clothes.
Q Did you brush your hair?
A I didn't do anything.
Q Okay. Brush your teeth?
A Nothing.
Q Put on makeup?
A Nothing.
Q Okay. And so from the time that you received that call --
A Uh-huh.
Q -- until you arrived at the club, approximately how much time transpired?
A Probably five minutes, maybe seven.
Q Did you arrive before or after law enforcement?
A They were behind me. So I arrived before.
Q Okay. So were you able to get into the club before law enforcement got there?
A Yes, ma'am. I was.
Q Okay. And what did you do when you walked into the club?
A Soon as I ran in the club, I looked around to see where Aundry was, and he was laying down and Mo, Maurice Giles, was down by him, and that's when I ran up to him and I was like, "What happened?"
Q How did -- before you go any further, tell me how did

Aundry seem when you saw him?
A He was upset.
Q And how did you know he was upset?
A Because he was shaking his head, he said, "I can't believe he shot me."
Q Okay. Were there any other indications as to how he seemed at the time?
A Well, I know he got upset with me because where he had the wound he had Maurice to push down on it, and I told him, "No, don't do that, you may cause more damage," and he was like, "Just go outside, call my dad."
Q Okay. And you, you were his fiancée. Did you, did you know Mr. Evans fairly well?
A Yes, ma'am. I did.
Q Okay. Did his voice seem like it normally would be?
A Yeah. It was. He was just -- he just couldn't believe that he was shot.
Q Okay. Was he conscious?
A Yes, ma'am. He was.
Q And was he making sense?
A Yes, ma'am. He was.
Q Okay. Was his breathing faster or slower or normal?
A It was normal, but you can tell that something was wrong.
Q Okay. And after you -- did you go outside and call his father?

A Yeah. Right after that. At first I didn't, but he said, "Go call my dad," because I was trying to move Maurice hands so that he won't put the pressure, but he was saying, "Apply pressure," because it was hurting. So that's when I got up and went out to call his dad. By the time I told his dad what happened and he asked me what hospital he was going to go to, I turnt around to go back in, but law enforcement already had it taped off, and my car was also taped off. So I couldn't go back in.

Q Okay. From the time that you left your house --

A Uh-huh.

Q -- until you finished that conversation with Mr. Evans, how long do you estimate transpired?

A From the time the ambulance transported him to Georgetown Memorial Hospital?

Q No. Before, before he went to the hospital --

A Uh-huh.

Q -- from the time you got the call and left your house --

A Uh-huh.

Q -- until you walked outside to call his father.

A How many time went past?

Q How, how long was that?

A I would say maybe six, five, six minutes.

Q Five, six minutes total?

A Yeah.

Q From when you left until -- when you left your house until --
A Oh, when I left my house --
Q Uh-huh.
A -- till the time that I got to where he got shot?
Q Uh-huh. How much time was that?
A I'll say five, seven minutes.
Q Okay. And then from the time that you went into the club --
A Uh-huh.
Q -- spoke with Aundry until you left to call his father, how long was that?
A Probably three, four minutes.
Q Okay. Are you aware of how long Aundry had been in the club before somebody called you, had been shot in the club before someone called you?
A I'm not sure.
Q Okay.

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

THE COURT: Mr. Barr, your witness.

MR. BARR: Thank you, Judge.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARR:

Q Now, Ms., Ms. Alston.
A Yes, sir.
Q You, I think you indicated that ordinarily, and on this particular night you had already put your children to bed after you got the first call from Maurice Giles.
A You say I put my kids to bed after I got the call?
Q Before you got the call.
A Yes.
Q So the children were in the bed, so it was at least 9:00 o'clock.
A Yes.
Q And then you got the call after you put the children to bed?
A Yes. We were already in bed when I got the call because the phone rung and it woke me up out of my sleep.
Q And, and, and when you got the call, you got the call from Maurice Giles?
A No, sir. I did not.
Q Who'd you get the call from?
A I got the call from a gentleman named Diz.
Q Named what?
A Dash. I'm sorry. Dash.
Q Dash?
A Yes.
Q Now, who do you all call Dash?

A I don't know his, his name, but I've known him from the first time I met him as Dash.
Q That's where you got the call from?
A Yes, sir.
Q That's D-H -- D-A-S-H?
A Yes, sir.
Q And he told you that Maurice had been shot. How long did you stay on the phone?
A It was not even a minute because after he told me that I dropped the phone, told my sister, grabbed, I was grabbing my keys, told my sister, "Watch the kids, Dre was shot," and I ran out the door in my car, to my car.
Q Now, you said you told your sister. Where was your sister living?
A Dunbar.
Q Did you call her?
A Did I call her?
Q Yes, ma'am.
A We stayed in the same home. I didn't have to call her. I yelled at her.
Q And you wanted her to take care of your kids?
A I just told her, "Just watch the kids, Dre got shot."
Q And then you left in your vehicle?
A Yes, sir.
Q Now, where do you live in Dunbar?

A Where?
Q Yes, ma'am. What's your street address?
A I believe it was 2701 Dunbar Road.
Q And approximately how far is it from Dunbar Road to where the Paradise Club is?
A About five minutes.
Q In, in miles?
A I'm not sure in miles, but it won't take you no longer than five minutes to get there.
Q No question in your mind though when you got there there were police officers behind you?
A Yes, sir.
Q And when you got there was EMS there already?
A No, sir.
Q Were there police officers there when you got there?
A No, sir.
Q When you got there was Aundry in the club or was he outside?
A He was in the club.
Q Now, at the time that you claim that he made this statement to you, was there anybody else present with you at the time?
A Yes, sir.
Q Who was it?
A Maurice Giles.

Q Now, do you know -- you, you just saw Maurice Giles in here. Is that -- or did you see him in here?
A Yes, sir.
Q And I know you all have talked about this case Lord knows how many times since it happened. You've talked about it; haven't you?
A Not to my knowledge. When I see him we talk about how's the kids, how's everything. That's it.
Q You never talk about you hearing Mr. Evans say that D shot him? You've never talked to Maurice about that? Ma'am?
A No, sir.
Q From the time you got the phone call that he had been shot, I believe you said it may have taken you five to seven minutes to get to the location where he was; is that correct?
A Yes, sir.
Q Could it have taken you more than seven minutes?
A Could it have?
Q Yes, ma'am.
A No, sir.
Q Now, of course, from the time he got shot until the time you got there, you don't know what time he got shot; do you?
A You said --
Q You know what time you got a phone call.
A Yeah. I know around -- I don't, I don't know the exact time, but I know that my kids' bedtime is at eight.

Q Yes, ma'am.
A And that's when about -- I'm not sure of the time.
Q But you were trying to call him; weren't you?
A Yes. I was trying to call him several times.
Q All right. But now, from the time he got shot until you got word of it, you don't know how much time transpired between -- during that time; do you?
A I know it was after, after 8:45.
Q Listen, listen at my question. Do you know how much time ran off the clock from the time he got shot --
A Uh-huh.
Q -- until the time somebody told you about it?
A No, sir. I don't.
Q And of course, and this is my last question, you don't deny that you certainly don't know what his condition may or may not have been prior to the time you got there or what he may or may not have already said?
A When I got there the way that you're talking to me now he was talking to me, but he was upset.
Q What, listen to my question, and it's just one last question --
A Uh-huh.
Q -- you don't deny that you don't know what condition he may have experienced from the time he got shot until the time you got there? Now, isn't that true?

A That's true.
Q And you don't know what or who he may have talked to before you got there?
A I don't.
Q All right. Thank you, ma'am.
THE COURT: Anything further?
MS. BAILEY: Yes, Your Honor.

REEXAMINATION

BY MS. BAILEY:
Q What exactly did Aundry say to you in the club?
A I asked him what happened, and he said, he was shaking his head, he said, "I can't believe he shot me," and I was like, "Who? Who shot you?" He said, "D." I said, "Who?" He said, "D", and I said, "Where did you get shot," because I didn't see that much blood, and that's when I saw Maurice was -- had his hand on it. At that time he wasn't applying pressure, but then that's when I was like, "What happened?" He was like, "I just can't believe it. He shot me." So that's when he said, "Put pressure on it," and that's when I told Maurice, "No, don't do it," and then that's when he said, "Babe, go call my dad," and so I wouldn't leave and that's when he said, "Put pressure on it more," and I was like, "No, don't do it," He said, "Go call my dad." So I stepped out to call his father.
Q And do you know who Aundry was calling D?

A Yes, ma'am. I did.
Q And how did you know that person?
A I've seen him, I met him through Dre, I'm sorry, and they were friends.
Q And do you see that person in the courtroom today?
A Yes, ma'am. I do.
Q Okay. And we'll, we'll go into that identification later for -- in a different hearing.

MS. BAILEY: But Your Honor, as to the excited utterance portion of this, that's all I have.

THE COURT: Anything further from this witness, Mr. Barr?

MR. BARR: No, sir.

THE COURT: You may step down, ma'am. Thank you for coming. All right. Any other witnesses on this point except the one that has not appeared?

MS. BAILEY: Beg the Court's indulgence one moment.

THE COURT: Yes, ma'am.

MS. BAILEY: Your Honor, other than the one witness who had the family emergency, that's all I have on the excited utterance.

THE COURT: All right. Does the Defense wish to call any witnesses on this subject?

MR. BARR: No, sir.

THE COURT: All right. I'll reserve my decision until I've heard the one in the morning. We'll hear that one first

thing.

MS. BAILEY: Thank you, Your Honor. Just for the sake of us all having time to pull some cases, the State intends to refer to State v. Burdette, which is a case from 1999 in the Supreme Court. That's 335 S.C. 34, 515 S.E.2d 525. The State intends to rely heavily on that case.

THE COURT: All right.

MR. BARR: What's the cite again? I'm sorry?

MS. BAILEY: 515 S.E.2d 525 and 335 S.C. 34 in the Supreme Court in 1999.

MR. BARR: 335 S.E.?

MS. BAILEY: 335 S.C.

MR. BARR: South Carolina?

MS. BAILEY: Yes.

MR. BARR: 24?

MS. BAILEY: 34.

THE COURT: All right. The State indicated that there was some identification witnesses that may be in question. I want to be sure I understand the situation. I think I do. My understanding is that these witnesses viewed lineups for the purposes of identifying someone that they knew, too, was referred to as D or some nickname; is that correct?

MS. BAILEY: Yes, Your Honor.

THE COURT: All right. And but they're not witnesses as to the crime, and they are not being offered as witnesses as

to who committed the crime the evening that it occurred other than to say who D is.

MS. BAILEY: Yes, Your Honor. Except Ms. Alston who also is a witness to this excited utterance that you just heard.

THE COURT: I understand. Okay. Now, is the State [sic] challenging the identification as being overly suggestive in some fashion? I'm trying to find out exactly what the issue is concerning the identification witnesses that the State indicated they had.

MR. BARR: Judge, as far as the identification witnesses, I just learned that today. Now, I noted there is reference in, in at least one witness or prospective witness's statement referring to a lineup, a show-up lineup that was actually done by the investigators, but thus far we have been provided in response to our discovery motion -- we have not been provided with a copy of any show-up or any lineup, and of course, it would be my position that the Solicitor's Office would not be entitled to use that in any way.

MS. BAILEY: Thank you, Your Honor. Mr. Barr was provided -- each of the lineups actually happened, were recorded. They happened during the process of interviews that were recorded, and he was provided with those recordings. Specifically, Ms. Alston and Ms. Jones picked this Defendant out of a lineup as being the one who was referred to by nickname. Mr. Barr was also provided with a copy of the

outside of these evidence envelopes right here which indicate that they contain a photo lineup which was done by each of these witnesses. These envelopes haven't been opened. I haven't seen what's inside of them either, but the process of identification happened on video or on audio recordings, and those were provided to the Defense.

THE COURT: Is that correct, Mr. Barr?

MR. BARR: Judge, what we were provided for -- what we were provided was a recorded statement that described the lineup, but we were not provided as far as the photographs that were in the lineup it's difficult to tell whether or not the person that looked, that's looking at the lineup was looking at one photograph or whether or not they're -- whether or not they're just looking at a photograph of the Defendant or whether or not there's a six people show-up lineup.

THE COURT: Well, they're, they're here. Do you wish for the Court to open the envelopes and let you look at them before trial? I'll be glad to let you see them.

MR. BARR: Judge, I certainly would want to see them before -- if, if, if the Prosecution intends to use them. I know -- I don't see how they can expect to use them and, and not let us see them.

THE COURT: Well, I agree. So if you'd like to see them they're available I believe. I'll make them available if they're not.

MS. BAILEY: Yes, Your Honor, they are.

THE COURT: Well, let's give them to the court reporter. Let's mark them for identification purposes for this hearing, and then we'll allow you to open them up. We can make copies of them if we need to.

MS. BAILEY: Your Honor, should we go ahead and open them?

THE COURT: On the record, yes. I'm directing that they be opened.

(State's Exhibit Number One [Photo Lineup completed by Jerliether Jones] and State's Exhibit Number Two [Photo Lineup completed by Naomi Alston] marked for identification.)

THE COURT: They've been marked as?

MS. BAILEY: State's Exhibits -- State's Exhibit One is the photo lineup completed by Jerliether Jones.

THE COURT: All right.

MS. BAILEY: And State's Exhibit Two, both of these for ID only, is the photo lineup completed by Naomi Alston.

THE COURT: All right. And the record will reflect that I directed the opening of the evidence envelopes in court. Mr. Barr, you can come forward and take a look at them. Make a copy for Mr. Barr, please.

MR. BARR: Thank you, ma'am.

THE COURT: That one goes over there in that envelope.

MR. BARR: Thank you.

THE COURT: Mr. Barr, I'll give you -- of course, in the morning if you have any objections to the, to those documents, we'll be happy to hear from you.

MR. BARR: All right, sir.

THE COURT: Anything further we need to take up this afternoon?

MS. BAILEY: No, Your Honor. Only this ID situation is a little bit unusual.

THE COURT: It is.

MS. BAILEY: So I don't think that a Neil v. Biggers hearing is necessarily appropriate, but it also seems inappropriate to admit a photo ID lineup without a Neil v. Biggers hearing. So I'm just trying to cover our bases here.

THE COURT: Well, it's a little bit of a different situation, and I'll certainly look at it overnight, and we'll give Mr. Barr the opportunity to do so. I know you indicate that the process was videoed.

MS. BAILEY: Yes.

THE COURT: And I'm sure the Defense was aware that it occurred, but they have a right to look at those things, and if they wish to go into it further, we'll certainly consider that.

All right. We'll resume at 9:00 o'clock in the morning then. Court will be in recess until that time. Now, let me ask a question, the Defendant is on bond; is that correct?

MS. BAILEY: He is, Your Honor.

MR. BARR: Yes, sir.

THE COURT: All right. Let me, let me just talk briefly with the Defendant.

Sir, I'm going to caution you that you are on bond. We have not yet started the trial of your case. We will resume the trial of this case at 9:00 o'clock in the morning in this courtroom. Should you fail to appear at that time, the trial will proceed in your absence. I will advise you of that, and of course, your failure to appear would be considered a violation of your bond, and I would issue a bench warrant for your arrest. Do you understand that, sir?

MR. DIZZLEY: Yes, sir.

THE COURT: All right. We're in recess till 9:00 o'clock. Thank you very much.

MS. BAILEY: Thank you, Your Honor.

(Adjourned for March 31, 2014.)

(On the record, April 1, 2014, State v. Terron Gerhard Dizzley. The following takes place outside the presence of the jury.)

THE COURT: All right. We're back on the record in the State versus Dizzley. I believe the State had an additional witness to call this morning?

MS. BAILEY: Yes, Your Honor. The State calls Douglas Morris.

THE COURT: All right. Mr. Morris, come forward to be sworn over here to my left.

THE CLERK: Mr. Morris, please state your name for the record.

MR. MORRIS: Douglas Morris.

THE CLERK: Please spell your name.

MR. MORRIS: D-O-U-G-L-A-S, J-E-R-R-O-L-D, M-O-R-R-I-S.

THE CLERK: Thank you.

Whereupon, Douglas Morris was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please be seated.

THE COURT: All right. Counselor, your witness.

MS. BAILEY: Thank you, Your Honor.

EXAMINATION

BY MS. BAILEY:

Q Mr. Morris, do you have a nickname?

A D.J.

Q D.J.?
A Yes, ma'am.
Q Can you speak into the microphone for me so we can all hear you? Thank you. Where were you on December 1st of 2008?
A Club Paradise.
Q Okay. What were you doing there?
A I was there as a fryer.
Q And did you know Aundry Evans?
A Yes, ma'am. I did.
Q And how did you know him?
A He was practically a brother to me. He stayed at our house maybe three or four nights out the week.
Q Okay. And who lives in your house with you?
A My mother, my sister Jerliether, Tiarra, Deshonay [spelled phonetically] and my stepfather and Aundry did, too.
Q Okay. And did your sister, Jerliether, did she have a relationship with Mr. Evans?
A Yes, ma'am.
Q Okay. Now, on December 1st of 2008 did something remarkable happen that night?
A Yes, ma'am.
Q Can you describe briefly what happened?
A Aundry Evans was shot down.
Q Okay. And where were you when the incident happened?
A I was at the Club Paradise.

Q Okay. Specifically in Club Paradise what were you doing when you first noticed something was wrong?
A I was, I was coming out the kitchen when I noticed something was going wrong.
Q And what did you notice?
A I noticed that a man in a black, black bandana, black hoody, blue jeans came in. The door flew open. When it flew open, he walked straight to Aundry saying, "I told you I would get you; right?"
Q Okay. And what happened next?
MR. BARR: Your Honor, I'm going to move to strike.
THE COURT: Strike what?
MR. BARR: What he, what he, what he said the man said.
MS. BAILEY: Your Honor, first of all, I don't think it's hearsay because it --
MR. BARR: I think it's hearsay.
MS. BAILEY: Well, I can argue why it's not hearsay because it's -- doesn't go to the truth of the matter asserted, goes to motive. Second of all, I think it's a res gestae statement of the, of the assailant, and third, as you'll hear Mr. Douglas testify, there's a reason that we need to know that the assailant actually spoke words.
MR. BARR: Your Honor, from what I understand, they don't even know -- the issue is the identity of the assailant. We don't, we don't even know who the assailant is, and, and, and,

and here he is testifying as to what the assailant said. Your Honor, that's, that's hearsay.

THE COURT: Well, what I'm going to allow him to testify to at this point in time, although it more than likely is something that was said within the res gestae, we haven't gotten to that point yet, I will allow him to testify that he heard the assailant say words, he doesn't quote them. So I'll allow him to make that statement.

MS. BAILEY: Thank you, Your Honor.

THE COURT: So please don't quote what was said, but you can state whether or not the person who came into the location, I think you described him in a black hoody with a black bandana, you can indicate whether that person did speak or did not speak.

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q Did, did that person say words?

A Yes, ma'am.

Q Okay. And what did that person do next?

A That person proceeded to shoot at Aundry Evans.

Q Okay. When he walked in, did he go towards anybody else or did he seem to be after one particular person?

A He seemed to be after one particular person.

Q Okay. And, and who was that?

A Aundry Evans.

Q All right. How many shots did you hear?
A Five through seven.
Q Okay. And did you see the actual shooting?
A No, ma'am.
Q Okay. What did you do when you first started to hear gunshots?
A Ducked down behind the bar.
Q Okay. And did -- so, did you see any of the actual shooting?
A No, ma'am.
Q Okay. Did you see a gun?
A Yeah. I did see the gun.
Q And how many guns did you see?
A Just one.
Q And in whose hand was that gun?
A It was in the -- I don't know how to explain it. It's -- it was in the suspect's hand.
Q Okay. And how long from when you ducked behind the bar until you felt safe to come out?
A About a minute.
Q About one minute?
A Yes, ma'am.
Q Okay. At that point what did you do next?
A Went to see if Aundry Evans was okay.
Q Okay. And what did you find when you got to him?

A I found that he was shot numerous times in his stomach.
Q Okay. What did you do at that point?
A At that point everybody was around him trying to help him up because he was saying stand him up, and I was still telling them to let him lay down, just put, apply pressure to it.
Q Okay. Who was standing around him at that point?
A The only people I can remember is me, Maurice and Gary.
Q Okay. How did Mr. Evans seem right after he had been shot?
A He seemed shocked like he couldn't believe it was actually done.
Q Okay. And what makes you say that he seemed shocked?
A Just the expressions in his face.
Q Okay. And did he make a statement?
A Yes, ma'am. He did.
Q What did he say?
A "I can't believe Little D did this to me."
Q Okay.
A "I recognize his voice."
Q All right. At -- how, how long until police arrived?
A It was about ten minutes.
Q Ten minutes until police arrived?
A Nah. That's about the medics' time. I'll say about six minutes, somewhere up in there.
Q Okay.

MS. BAILEY: I think for the purposes of this hearing that's -- the State has no further questions. Thank you.

THE COURT: You may cross examine, Mr. Barr.

MR. BARR: Thank you, Judge.

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARR:

Q Mr. Morris, had you ever met Terron Dizzley?

A I've seen him four or five times before, not personally talked to him.

Q So on the night of December 1st --

A Can you speak faster? I can't recognize it if you're talking slow.

Q Pardon me?

A I can't understand it if you're talking slow.

Q Talk --

THE COURT: He asked you to speak a little faster.

Q Now, you, you said you were in the club the night that this shooting occurred?

A Yes, sir.

Q And what were you doing?

A I was there as a fryer.

Q You were doing what now?

A I was frying chicken wings.

Q Frying chicken wings. Now, you mentioned earlier I think

you're, you are related to the young lady that's your sister. What's her name?

A Jerliether.

Q Jerliether. And she's got a relationship with --

A May I ask what does this have to do with the --

THE COURT: Sir, I'm going to ask you to respond to the questions unless you have some reason why you should not answer the questions, so please respond.

Q Do they have a relationship?

A Yes, sir.

Q They have children together?

A No, sir.

Q Now, when, when, when Aundry supposedly said that, "I can't believe he did that," and he said that Little D shot him, did he say that?

A "I can't believe Little D done this to me."

Q Now, did you know at that time who he was referring to as Little D?

A Yes, sir. I did.

Q And how do you know?

A Because I've seen him four or five times prior to this event.

Q Now, had you ever talked with Terron Dizzley before this event?

A No, ma'am -- no, sir.

Q You never talked to him. So he, he never identified himself to you as Little D?
A No, sir.
Q Do you know how many Little Ds, if any, Aundry knew?
A I know one Little D that he knew.
Q The question was do you know how many he knew?
A No, sir.
Q So then would it be fair to say, Mr. Morris, that when you heard him say Little D you don't know what Little D he was referring to?
A But I did know.
Q How do you know?
A Because I've heard him talk about this man numerous times prior to this event.
Q Well --
A I've seen him, I've seen him four or five times. Just because me and him haven't had a conversation doesn't mean Aundry hasn't said, "Hey, that's Little D."
Q Well, you said earlier that you don't know or did not know that that was the only Little D that he knew. Didn't you say that?
A Yes, sir. I did.

MR. BARR: I have nothing further.

THE COURT: Anything further from the witness, counselor?

MS. BAILEY: No, Your Honor.

THE COURT: All right. Sir, you may step down at this time. Thank you very much. All right. Any other witnesses from the State concerning the question of the out-of-court statements made by the decedent?

MS. BAILEY: No, Your Honor.

THE COURT: All right. Defense wish to call any witnesses as to that subject?

MR. BARR: No, sir.

THE COURT: All right. I'll hear argument concerning the matter. I believe it is the Defense's position that the statements made by the decedent concerning who may have perpetrated the act are inadmissible as hearsay. So I'll hear from you concerning that issue, Mr. Barr.

MR. BARR: Well, Judge, in addition to as it relates to the grounds that we'd want to state on the record, we would, we would also include the confrontation clause grounds from a constitutional perspective.

Your Honor, I've, I've looked at the cases, and of course, I looked at the case that the Solicitor presented yesterday, and it seems to me, of course, first of all, this issue of whether or not a so-call excited utterance is admissible is an issue that's addressed to the Court's discretion.

THE COURT: Yes, sir.

MR. BARR: And all the cases that I've been able to find,

Your Honor, dealt with a situation where in order to qualify as res gestae or in order to qualify as an excited utterance, these statements were made to police officers. Now, in this case, there is no indication whatsoever or no evidence to indicate that, that the decedent, even though it appears that there were an abundance of police officers all around, that the decedent made any statements to the police. It just happened that somehow it seems that the statements that he supposedly made were all made to partisans.

THE COURT: Well, they're not, they're not parties. I guess they're independent witnesses or, or laymen.

MR. BARR: No, I said parties. Yes, sir. Partisans, yeah. They were made to the people that supposedly, people that -- with an interest. Your Honor, it would be our position that, and of course, as it relates to the confrontation clause issue, the Supreme Court has pointed out that one of the things that might be considered would be whether or not the statement itself has some indicia of reliability, and, and Your Honor, again, when you take all of this together, even though it appeared that there was ample opportunity for the decedent to say to the police, "Well, look here's who shot me," that, that was never done. It would also be the Defense's position that even if the, the Court finds that, that the statements do qualify, taking everything together, Your Honor, and doing an analysis, a further

analysis under Rule 403, clearly this evidence should be excluded because the probative value is substantially outweighed by the danger in this case of unfair prejudice to the Defendant. Your Honor, we're not able to in any way to cross examine the declarant of the statement, that the statements are highly prejudicial, and there's simply nothing we can do but other than just sit here and wait for the ax to fall. Your Honor, taking everything together, as I said, particularly inasmuch as these cases seem to deal with from a credibility standpoint statements that are made to police officers, and, and, and, and here we've got just the opposite. We've got the so-called, the girlfriend and some of the other friends, and I just find it almost amazing that or it would seem to me that even within the area of res gestae, if somebody shot me and I saw somebody and the first thing I'd want to do is tell the police, but that wasn't done here. In fact, we don't know what was done. All we know is, and it seemed that at some point some people that are friends of the decedent now come along and say, "Well, he" -- and Your Honor, I would further emphasize that this witness could give no basis and none of the others could give no basis to be able to say that this gentleman, that is the Defendant, was the person being referred to if he said what he said as Little D.

THE COURT: Well, now, that's getting into another issue. Let's deal with the statements first of all as to whether or

not they do constitute hearsay, and you've raised the additional issue of violation of the confrontation clause, and the other question concerning whether or not the probative value is outweighed by the prejudicial effect. Counselor, I'll hear from the State.

MS. BAILEY: Thank you, Your Honor. As I indicated yesterday, the State relies on State v. Burdette which is a case from 1999. Burdette provides an excellent restatement of the law on excited utterances. Specifically it relies on Blackburn, which is a 1979 case, wherein the Court outlines very specifically what's necessary to lay a foundation for excited utterance. The Court indicates that it's a totality of the circumstances test, that they must be res gestae statements. The Court indicates that there is no timeframe for such res gestate statements. In fact, the Court has held that there can be excited utterances anywhere from one hour to 11 hours after the incident that have been held to be admissible. In this case, the testimony indicates that all of these statements happen within, at most, 20 minutes of the incident. What's essential under the totality of the circumstances is that Your Honor find from the factual presentation that the person who uttered the words was still under the stress of the event, that there was no time for cool reflection. That's the underlying basis for the excited utterance exception. In this case, all of the witnesses have

indicated in their testimony that the victim was in a state of shock, not in a medical way, but in a way that a layperson would describe in a state of shock. They all indicate that he was still under the stress of the event and that the utterances were made within a very short timeframe from when the shooting actually happened. In fact, all the utterances were made before police arrived, which under the excited utterance logic as to why it's admissible in court actually makes it a little bit more reliable than after police would arrive.

Additionally, Mr. Barr is correct that most of the case law talks about excited utterances to police, but the foundation for the excited utterance exception has nothing to do with statements to law enforcement.

THE COURT: I didn't find any requirement that the statement had to be made to anybody in particular.

MS. BAILEY: Thank you, Your Honor.

Now, as to the confrontation clause issue, there's a couple of points that I would like to make. First of all, under Crawford v. Washington, which is the most controlling case law by the United States Supreme Court regarding the confrontation clause, Crawford makes a distinction between testimonial and non-testimonial evidence, testimonial evidence being such evidence that in the future may be contemplated for use in court, whereas non-testimonial are utterances or

statements that are made with no idea that they might ever be used, but simply because they need to be made at the time, and it's the State's position that this is, in fact, a non-testimonial statement because it wasn't made to law enforcement. It was made to the people who were immediately providing him aid, which makes it more reliable, and it doesn't fall under Crawford v. Washington to make it testimonial and a violation of the confrontation clause.

In addition, State v. Burdette, the case that I raised earlier, also addresses the specific confrontation clause issue. In State v. Burdette, they found that a statement that was made to law enforcement over an hour later was admissible and was not a violation of the confrontation clause. It was specifically addressed.

Finally, as to the 403 analysis, the prejudicial versus probative analysis, it's certainly prejudicial otherwise we wouldn't be seeking to admit it. The question is is it unfairly prejudicial, and the State would submit to Your Honor that there is nothing more probative than who the victim, immediately after the shooting, who the victim identified as his assailant, and that it would be a gross miscarriage of justice for the jury not to know that.

THE COURT: All right. I do find that the statements that were made do fall within what is commonly referred to as the res gestae, particularly the first statements were made

immediately after the shooting to people who came directly to his aid, the victim's aid. There's no doubt that they were all still within the excited time after the shooting. The second statements were made apparently according to one witness when he was being loaded onto the gurney or being aided by EMS personnel. I find that all the statements though that were made within the res gestae, they fit within the definition of that as I determine it to be. I do find that it does not violate the confrontational clause because it was non-testimonial evidence. It was not given to police for the purpose of any investigation or preparation for trial. So I do not find that that would, that is violated, and I do find that the probative value of the evidence does outweigh its prejudicial effect, and I will allow it in for that reason as well. So I will allow the testimony to be presented.

Now, as to the question concerning the identification matters, has Defense had an opportunity to review the lineup photographs?

MR. BARR: Yes, sir, Judge.

THE COURT: All right. Your position in regard to identification evidence?

MR. BARR: Your Honor, as it relates to the photographs, I'm just not sure exactly what the purpose, what purpose the Prosecution would be seeking to have the photographs entered into evidence.

THE COURT: I don't know that they intend to introduce the photographs. They were apparently, from what I learned yesterday, were used in a process whereby the State tried to determine who might be referred to as Little D and were presented to people who perhaps knew who that, knew people who went by that, that, that nickname. Is that correct?

MS. BAILEY: Yes, Your Honor.

THE COURT: These were not people who witnessed the crime or who were trying to identify the person who perpetrated the crime?

MS. BAILEY: Correct, Your Honor.

THE COURT: Okay.

MS. BAILEY: The State would seek to introduce them, or at the very least, if Mr. Barr is seeking to exclude them, then prevent Mr. Barr then from saying that there was some fault in the investigation for not doing a lineup. So the State is seeking to introduce them to prove that it was a full and fair investigation, that these witnesses who identified Mr. Dizzley as the person that they knew as Little D were presented with a fair and objective lineup that was without any taint.

THE COURT: All right. I think that's the purpose, Mr. Barr --

MR. BARR: Well --

THE COURT: -- if they're introduced at all. I'm not

controlling their case so.

MR. BARR: Yes, sir.

THE COURT: But I just wanted to know if -- you, you said you had not had an opportunity to view them.

MR. BARR: I've, I've now, I've now seen them. Yes, sir.

THE COURT: And my question is though is there some objections? Is there some reason why you think this Court should conduct a hearing pursuant to Neil versus Biggers or not?

MR. BARR: Judge, I don't, I don't see a reason for or the necessity of conducting that hearing.

THE COURT: All right. Then we'll deal with those issues as they come up at trial. Now, I was presented with a matter this morning that I think we need to deal with before we begin. One of the people from the clerk's office, an employee of the clerk's office indicated that on her way in a juror spoke with her. Ma'am, I'm going to have to put that testimony on record. So if you don't mind coming forward and being sworn.

THE CLERK: Please state your full name for the record.

THE COURT: Your name, please?

THE CLERK: Please state your full name for the record.

MS. RAGG: Cynthia Ragg.

Whereupon, Cynthia Ragg is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Please have a seat.

THE COURT: Have a seat, please, ma'am.

EXAMINATION

BY THE COURT:

Q This morning, you and the clerk came into my office and indicated that a juror had spoken to you on your way into work this morning?

A Yes, sir.

Q Can you tell me what happened, please?

A As I was getting out of my car a juror drove up and he asked me if I thought you would get upset if he didn't want to be on this particular case because he knew the family for such a long time.

Q When he was talking about the family, could you tell who he was referring to, which family?

A Yes, sir. The Defendant's family.

Q The Defendant's family?

A Yes, sir.

Q All right. Now, who, who -- which juror was it that you spoke to?

A Qulex Dickerson.

Q All right. Do you know his number? Have you looked it up?

A 88.

Q 88?

A Yes, sir.
Q All right. Did you have any further conversation with him other than that?
A I just told him that he should have told you that yesterday.
Q Okay. So that was your only conversation?
A Yes, sir.
Q And that's the extent of the conversation?
A Yes, sir.
Q All right.
THE COURT: Does the State wish to ask any questions of the witness?
MS. BAILEY: No, Your Honor.
THE COURT: Defense wish to ask any questions of the witness?

EXAMINATION

BY MR. BARR:
Q How'd you get the juror's number?
A From the list yesterday of the selected jurors.
Q So after you talked to this juror you went and consulted -- what's your, what's your, what ---
A I'm a jury clerk.
Q Jury clerk?
A Yes, sir.
MR. BARR: I have nothing further.

THE COURT: All right. Ma'am, you may step down. Thank you very much. All right. It's my intention to bring Juror Number 88 into the courtroom. I will inquire of him as to whether or not he was -- answered my questions fully concerning knowledge or prior association with the Defendant's family, and then we'll make a determination as to whether he should continue as a juror. Could you bring Juror Number 88 into the courtroom, please?

(Juror Number 88 enters courtroom.)

THE COURT: Sir, come forward. If you'll come all the way around and have a seat over here in the witness stand, please.

All right. Please swear the juror for me, Madam Clerk.

THE CLERK: Please state your full name for the Court.

MR. DICKERSON: Qulex Dickerson, Jr.

THE CLERK: Could you spell your name, please?

MR. DICKERSON: Q-U-L-E-X, D-I-C-K-E-R-S-O-N.

THE CLERK: Thank you.

Whereupon, Qulex Dickerson, Jr., was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you.

THE COURT: Sir, have a seat in the witness stand for me.

EXAMINATION

BY THE COURT:

Q This morning the clerk and one of the deputy clerks came

into my office and indicated that on their way into work that you had had a conversation with one of them in which you stated, the testimony I received or the information I received, you stated that you wondered whether there would be a problem if you did not serve on the jury because of a prior relationship you may have had with the Defendant's family.

A Right. True.

Q Now, did you have a conversation with the clerk about that this morning?

A I just asked her, that's what I just -- yeah, I just -- the same thing that you said just now.

Q So you asked her if there would be a problem if you did not serve.

A No. Actually if, if you think it'd be a problem if I had spoke to you about it. Yeah.

Q Okay. So, let me ask you this then, do you have some prior association with the parties' families?

A Well, we, we are related and --

Q You're related to who?

A To his stepfather.

Q Mr. Dizzley?

A No, no.

Q The decedent, the person who was killed, the victim?

A No. The Defendant I think that's his stepfather. We -- I'm related to him.

Q All right. So you're related somehow to the stepfather of Mr. Dizzley?
A Yeah. I guess that's his name.
Q Okay. Well, that's the Defendant in this case, the gentleman seated over here at the table ---
A Yeah. Yeah. Right.
Q --- to my right?
A Right. Uh-huh.
Q So you're related to his stepfather?
A Stepfather.
Q All right. So you feel like that that would perhaps affect your ability to be fair and impartial in this case?
A Yeah. In, you know, I know both families --
Q Uh-huh.
A -- because we are from the same community, and I don't think -- I don't feel I should be on this if there's any way -- I think --
Q So do you feel that would affect your, your ability to be fair and impartial?
A I really do believe so.
Q Okay. So you're asking not to serve on the jury?
A Right.
Q All right, sir.
THE COURT: Does the State wish to ask any questions of the, of the juror?

MS. BAILEY: No, Your Honor.

THE COURT: Defense wish to ask any questions of the juror?

MR. BARR: Yes, sir.

EXAMINATION

BY MR. BARR:

Q Were you in the courtroom yesterday when the Judge asked ---

A Yes, sir.

Q --- whether or not --

A Yes.

Q -- there were any members of the jury panel that were, for any reason thought that they could not discharge their duties and responsibilities as an impartial juror?

A Right. I was in here. Yeah.

Q And you did not make your concern known to the Court at that time?

A No.

Q What has changed from yesterday until now?

A Well, I really thought about it, and I, I was saying to myself, "You know, I should have made it known at that time," but then when I, when I got up there yesterday and I really started thinking about it when I got over there, and, and I felt that it was too late, and then it really, really kind of bothered me after I went home and, you know.

Q Thank you, sir.

THE COURT: All right. Sir, I'm going to find that you, you should not serve on the jury if it would affect your ability to be fair and impartial. I appreciate your honesty and candor with the Court at this point in time. I'm going to release you from any further service in this case. I'm not releasing you from the jury panel, however.

A Right.

THE COURT: The Clerk will instruct you as to what you need to do next concerning any other cases that'll be tried this week.

A Okay.

THE COURT: But I'm releasing you from this jury at this time. If you'll step down and see the Clerk. Thank you very much.

A All right.

THE COURT: All right. Madam Clerk, in order to select the alternate to fill the position on the jury it's necessary that we do that by ballot. That means we'll need to get two pieces of paper, two slips of paper and write the juror numbers of the alternates on those pieces of paper, please. They need to be identical pieces of paper size-wise.

All right. Shake them up for me, Madam Clerk.

THE CLERK: Juror Number 189, Desjuana Johnson.

THE COURT: All right. Ms. Johnson will be appointed to

serve on the jury panel in place of the removed juror. All right. Any other matters that the State would like to take up before we begin with the jury?

MS. BAILEY: Yes, Your Honor. The State would request that all witnesses be sequestered.

THE COURT: All right. Then I will grant the sequestration request. Is there anyone in particular that you want to have --

MS. BAILEY: Yes.

THE COURT: -- assist you in the trial?

MS. BAILEY: This is Dustin Morris. He's my lead investigator.

THE COURT: All right.

MS. BAILEY: Mr. Aundry Evans, Sr., here is the victim in the case. He's also on the witness list.

THE COURT: All right. Well, the victims are allowed to remain.

MS. BAILEY: Thank you.

THE COURT: He's considered the victim.

MS. BAILEY: And Steven Brown, who is not in the courtroom at the moment, was put on the Defense witness list. He works for the Solicitor's Office and often runs my computer.

THE COURT: I see. Well, we'll see if the Defense has a problem with him being present. All witnesses in the case are

-- will be required to step outside of the courtroom. All witnesses are direct -- not -- directed during the trial not to discuss their testimony either past, present or future with themselves or with each other, that includes after they've testified. My order will continue until the case has been ended. So anyone who intends to be a witness in the case should leave the courtroom with the exception of the lead investigator, the -- and the victim, and do you have any objection to her computer operator staying since it's one of your witnesses?

MR. BARR: No, sir.

THE COURT: Okay. He's allowed to stay as well.

MS. BAILEY: Thank you, Your Honor.

THE COURT: All right. Any other matters the State wishes for me to take up pretrial?

MS. BAILEY: No, Your Honor.

THE COURT: Defense, any matters that you'd like for me to take up?

MR. BARR: No, sir, Judge.

THE COURT: All right. We'll take about a five-minute break and then we'll begin, give everybody a chance to clear their heads and get ready to get started. The Court will be in recess. I'll stay on the bench briefly.

MS. BAILEY: Thank you.

***** OFF THE RECORD *****

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

THE COURT: Thank you very much. You can be seated. All right. The State ready to proceed?

MS. BAILEY: Yes, Your Honor.

THE COURT: The Defense ready?

MR. BARR: Yes, sir, Judge.

THE COURT: All right. Let's bring the jury in.

MS. BAILEY: Oh, I apologize. Your Honor, I do have one matter to bring to the Court's attention.

THE COURT: Yes, ma'am.

MS. BAILEY: Iteka Brown is here in the courtroom. She's the young lady in teal back here. She is Aundry Evans, Jr.'s, ex-wife. She's technically on the witness list because she was interviewed by police, but she didn't have any personal knowledge of the events. So the State does not intend to call her. I believe she's also on the Defense witness list, but the State would request that she get to stay in the courtroom.

THE COURT: Well, if she -- if you're not going to use her as a witness then that won't be a problem. Do you intend to use her as a witness?

MR. BARR: I don't object to her being here, Judge.

THE COURT: All right. Thank you very much. We'll allow her to stay.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Anything further?

(No response.)

THE COURT: Bring the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. Ladies and gentlemen, during your absence this morning, I have dismissed one member from the jury panel, and in replacement, I have selected by ballot Ms. Desjuana Johnson. You are now a member of the jury. You're no longer an alternate. So I have replaced one member of the jury with you. Do you understand that, ma'am?

MS. JOHNSON: Yes, sir.

THE COURT: All right. Now, ladies and gentlemen, when you left the courthouse yesterday I gave you instructions concerning your, your activities, things that you should do and shouldn't do, and I will inquire this morning if there was any member of the jury panel who was unable to follow my instructions in regard to your activities, please stand.

(No response.)

THE COURT: And it appears that all jurors have been able to comply with the Court's instructions thus far. So I want to thank you very much. I told you that upon your return to the courthouse that you would be taking an oath concerning your responsibilities as jurors in this court, and at this

point in time, I'll ask the Clerk to please swear you concerning those duties. Madam Clerk.

(Whereupon, the jury is sworn by the Clerk.)

THE COURT: If there was any member of the jury panel who either failed or refused to take the oath just administered by the Clerk, I'd ask that that person please stand.

(No response.)

THE COURT: It appears that all jurors have now been sworn concerning your responsibilities in this case.

Now, before we begin the trial of the case, there's some matters that I would like to go over with you. I'm doing this primarily because for some of you this would be your first experience in actually serving on a jury during the trial of a case, and for those of you who have never been in this position before, I would expect that most of what you might know about what goes on on juries or goes on during trials you might have learned from some such sources as books that you've read or television shows you've watched or perhaps movies that you've seen, might have learned something about it from school, but they don't teach much about jury dynamics in school these days. So for those of you who -- is your -- for whom your primary information came from television or from movies, I hope you understand that those particular forms of information are intended for entertainment purposes. They always have interesting plots and twists, and they do things

to keep your attention. In television, they can have an event occur and a case tried, and it'll all be ended in an hour. They still have time to stop about five times for commercials in that length of time. That might tell you that the people who write those scripts or write those stories take what they call literary license with what goes on in the courtroom, in other words, they change the procedure of the court in order to fit the story line and to make it interesting, to keep your attention so you'll watch those commercials and that's what that's all about.

I hope you realize that what you're engaged in at this point in time is intended for anything but your entertainment. What you're engaged in at this time is a fundamental part of our republic, a fundamental part of our democracy. I hope you realize that in most countries around this world if you were to go look at their judicial systems you would find that those systems do not allow the direct participation of citizens in the decision-making process that goes on in the courts. Our system is different. Our system is based upon a document called the Magna Carta, and it's interesting to note that the Magna Carta was signed in England, the first time that a trial by jury was guaranteed to citizens, and that was signed in the year 1215. That means next year that document will have its 800th birthday. You know, there's very few things that go on in human society that lasts for 800 years. So it's a tried

and true method of deciding disputes and that we have come up with. It's a system that I am proud of. It's an effort to see that justice is done between the parties that are before this Court, and it allows for the direct participation of citizens in the decision-making process that goes in our system. I want to thank you very much for your willingness to serve on a jury this week. I know you got a subpoena. You didn't have much choice but to be here, but I want to thank you for your participation in our process in this matter.

You see, this courtroom is a place of honor. This courtroom is dedicated to the preservation of citizens' rights through both the constitution of this state and of the United States. The attorneys appearing before you during this trial are here to represent their clients' interests in this matter, in this case the State of South Carolina and one of our citizens who's been charged with a commission of a crime, but first and foremost, those attorneys are also officers of this court. You see at some point in time they appeared before this Court or some other Court. They took an oath as prescribed under the rules of the court. It's referred to as the attorney's oath. Part of that oath is that they will assist you in your search for the truth in this case. For that reason you can expect the attorneys will act in a reasonable and a professional and an ethical manner in the presentation of their clients' cases before you during this

trial, and I'm going to remind each of you you've also come before this Court now and you've taken an oath to decide this case based upon the law and the evidence presented to you during this trial. You, too, are now expected to act in a reasonable and a professional and an ethical manner in the discharge of your duties as jurors in this case, and again, I want to thank you for your willingness to accept that responsibility.

Now, what I'm telling you now is not intended to serve as a charge concerning the law on this case. At the close of the trial, once you've heard all the evidence, the arguments by the lawyers, at that time, I will give you the law that you're to apply in this case.

I am going to go over with you some of the things that we are responsible for, you and I in this case, some of the things you might look for as we go through the trial so that you'll better understand the process and the procedure and your role in that process.

I went over with you yesterday an indictment. I still have the indictment. That's the document that brings the case into this court. The indictment is for the charge of murder. I'm not going to go back over with you the indictment again at this time. I'll discuss it with you when I charge you concerning the law at the end of the trial, but I will tell you that it is simply the document that notifies us of the

charge to be tried, it notifies the Defendant of the charge that has been lodged against him.

Now, the Defendant has pled not guilty to that indictment, and under the law and the constitution of this state and of the United States that plea places the burden of proof solely upon the State. The State has the responsibility in this case of proving the allegations contained in the indictment by proof beyond a reasonable doubt, and at the close of the trial, I'll explain all of those concepts to you in greater detail concerning the level of proof and what has to be shown.

It'll be your duty at the close of this trial, ladies and gentlemen, to determine whether or not the State has met its burden of proof in regard to the allegations that have been made in the indictment. So your purpose as jurors is to find and determine the facts in this case. Under our system of justice, the jury is always the sole and exclusive judge of the facts in this case. You are to determine the facts of this case from the testimony presented from the witness stand and any other evidence that comes into the record through that testimony, and it's your job, it's up to you to determine the inferences which you feel can be properly drawn from the evidence that's presented during the trial. It's especially important that you as jurors do your jobs diligently and conscientiously in determining the facts because ordinarily

under our system of justice there's no means by which an erroneous determination of fact made by a jury can ever be changed.

Now, the same law that makes you the sole judges of the facts makes me the sole judge of the law in this case. The law as I give it to you at the close of the trial is the only law that you can use in determining this case. If you came into the courtroom with some idea as to what the law is or you have an opinion as to what the law ought to be, you should leave those notions outside of the jury room before you begin deliberations. Under your oath it's your responsibility to take the law exactly as I give it to you and apply it to the facts as you determine those facts to be. Just as I'm not allowed to disagree with you concerning your determination of the facts, you're not allowed to disagree with me concerning my presentation of the law to you in this case.

Now, until I advise you to begin deliberations, you will hear me and you'll probably get tired of hearing me tell you not to begin any discussions even among yourselves about this case because as you come and go from the courtroom if you begin any discussion about what you've heard in the case, during the case up to that point in time those discussions would be based upon partial information. I don't want you to begin any discussion about any factor or any issue in this case until you've heard all of the evidence, you've heard all

of the arguments by the lawyers and you've heard all of my charge on the law. Only then will you have the tools necessary to begin to formulate opinions or to state opinions about what's going on in the case. So, again, I'll instruct you every time you leave the courtroom not to begin discussions about any aspect of the case until I ask you to do that. Also, my instructions concerning the personal gathering of information outside of the courtroom or listening to, watching or reading media reports, all of those instructions will continue throughout the trial.

It's important that you keep an open mind and not decide any issue in this case until you have all of the tools necessary to do that because it's your solemn responsibility at the close of this trial to determine the guilt or the innocence of the Defendant, and your verdict must be based solely upon the evidence as it's presented to you in this trial during this case and based upon the law as I instruct you at the close of the trial.

Now, under our system we will begin the case allowing the attorneys to make opening statements to you. The attorneys are allowed to directly address the jury only on two occasions during the trial, once at the beginning of the trial in opening statements, and then they're allowed to directly discuss the case with you at the close of the trial in what's called a closing argument or a closing statement. I just want

to mention to you that the statements made by lawyers to the jury, those statements are not evidence in the case. The only evidence in the case is the testimony of witnesses sworn to tell the truth and whatever documents or other physical evidence comes into the record through that testimony.

Now, the statements of the attorneys will serve to explain to you what the case is about at the beginning of the case, and they'll sum up the evidence that you've heard during the trial at the close of the case, but those statements themselves are not evidence and can't be used directly by you in determining the guilt or the innocence of a Defendant in this case.

Now, from time to time, ladies and gentlemen, during the trial, it'll be my responsibility to rule on questions of the appropriateness of questions that have been asked or the admissibility of evidence under the rules of evidence that govern admissibility of those things. If it's my belief that my discussion with the lawyers about those issues might lead into a discussion about some matter that's not admissible under the Rules of Evidence or something that should not be discussed in front of you until we've determined its admissibility, if I believe the discussion is going in that direction, I may ask you to leave the courtroom while I discuss those matters with the lawyers. Don't think that in doing so I'm trying to influence your decisions concerning the

facts. It's simply me doing my job, and one of my jobs is to see that you decide the case based upon evidence that has been properly admitted under the rules that govern the admission of evidence in a courtroom, and those rules have been established for a long period of time in our court system. There's a formal set of Rules of Evidence that we're required to go by. So I'll have those discussions out of your presence. I'll ask you to return once I've made a ruling on that issue, but again, don't take from the fact that I've asked you to step outside the courtroom somehow to indicate that I have a preference as to how you determine the facts in this case. I don't have a preference as to how you determine the facts in this case. So don't take from anything that I say or do in the discharge of my duties to indicate that I have such an opinion. The law doesn't allow me an opinion on that subject. I can assure you I have no opinion as to how you determine the facts in this case. You are the sole judges of the facts in this matter.

Now, in doing your job as the determiner of the facts, it'll be necessary for you to determine the credibility or the believability of the testimony that you hear. That's the job of the finder of fact is to determine the credibility, the believability of the evidence that's presented. I'll ask you to use your good common sense in making those decisions. Every single day of your life you make commonsensical

decisions as to what you choose to believe and what you choose not to believe. These days in this courtroom will be no different than those other days. Use your common sense in determining credibility. For that reason, it's important that you pay attention to what the witnesses say, how they speak, the way they deliver their testimony. Try not to let your thoughts wander during the trial. Try to pay attention to what goes on in the courtroom. We'll take breaks from time to time to allow you to stretch your legs and clear your head and refresh yourself. So we'll try to do that, but again, it'll be up to you to determine those questions of credibility.

Now, as the sole judges of the facts, you have the right to believe all of what a witness might tell you, part of what a witness might tell you or none of what a witness might tell you. You have the right to believe one of the witnesses who might testify against all the others. You could believe all the others against one. You're the sole judges of the facts. You also will determine the effect, the value and the weight that you choose to assign to the testimony that you hear. So, again, listen carefully to the testimony as it goes forward, making decisions concerning its credibility or the weight that the testimony has with you during the trial.

I will tell you you have the right to consider such factors as whether or not a witness might exhibit some bias or prejudice one way or the other, whether or not a witness might

have a stake in the outcome of the trial, whether or not you find that the witness actually had the ability to know the facts about which the witness testified, and some people believe most importantly of all and I've been in a lot of courtrooms. I've been doing this almost 40 years. The witness stand is always right in front of the jury box. That's so that you can observe the witnesses as they testify, how they speak. So you have the right to consider any of those factors again in such manner as you choose to use them and make a decision as to the credibility of the testimony that you hear during the case.

Now, ladies and gentlemen, I don't appoint a foreperson of the jury until I'm -- make my charge on the law. I know on television I think they appoint forepeople at the beginning of the trial. I do that for a reason. The foreperson will be the person who will preside over your deliberations. That person would be asked to write any questions that the jury might have of the Judge during your deliberations. That person then would be required to record your verdict once your verdict has been reached. So all of those functions occur at the end of the trial, and I want to point out to you at the close of the trial in order for you to reach a verdict it would have to be unanimous. Each and every one of you will have to agree upon the verdict. So, therefore, no juror is more important than any other juror. So I don't want to give

the impression that because I've appointed a foreperson at this time that anybody has a greater say in the outcome of the case than each of you does. I want each of you to think that you might be that foreperson and you might have to lead those discussions. So you'll pay attention in that fashion I would hope. So I'll appoint the person to be the foreperson at the close of the trial, and I haven't forgotten that. So don't think I've forgotten to do that. I'll do that at the close of the trial, and we'll appoint that person at that time, but I want you to understand that each of you has an equal say in the case, so each of you has an equal responsibility to be in a position to discuss this case with your fellow jurors once deliberations begin.

Now, I want to be sure I haven't violated anyone's rights in my opening comments to you. Does the State have an objection to my opening comments?

MS. BAILEY: No, Your Honor.

THE COURT: Defense have any objection?

MR. BARR: No, sir, Judge.

THE COURT: All right. Now, ladies and gentlemen, I've indicated to you that the Defendant's plea of not guilty places the burden of proof on the State. So that means the State will be going first in the arguments followed by the Defense. The State then during the presentation of evidence will be allowed to go first, followed by any evidence the

Defendant chooses to place up. Then we'll have closing arguments once all of the evidence has been presented. After the closing arguments I'll charge you on the law to be applied. Then the case will be turned over to you for your deliberations and ultimately your verdict. So that's the procedure that we'll follow, opening statements, presentation of evidence, closing statements, charge on the law and your deliberations. So that's what we're going -- that's the process we'll go through.

So the State will be going first. You can begin with your opening statement.

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

THE COURT: Yes, ma'am.

MS. BAILEY: "I can't believe he did it. Little D shot me. I can't believe he did it. Little D shot me. I can't believe he did it. Little D shot me." Those were some of the last words that Aundry Evans, Jr., the victim in this case, uttered in his time on this earth. December 1st, 2008, the Paradise Sports Club in Oatland, for those of you from Pawleys Island or Murrells Inlet, Oatland is a little community down Highway 51. On Oatland Road stands a building. It's made of metal on the outside. In the front of that building is a small area. Aundry Evans had rented this small area and turned it into his dream. It was his dream to be a

restaurateur. He loved to cook. He liked to entertain, and by December 1st of 2008, he'd made his dream a reality. It wasn't much, but it was his dream. It was a little sports bar where he hosted parties for Monday night football. On December 1st of 2008, that was a Monday night, one of the best nights for business. The men from the community in Oatland came down to the Paradise Club to watch football, eat chicken wings and oysters and drink a little beer.

December 1st of 2008, later in the evening, there were several men in the bar when the side door flew open. A man with his face completely covered, with his head covered wearing black busts into the club. That man had a gun, and he went straight for Aundry Evans, Jr. He shot Aundry Evans, Jr., four or five times. Aundry Evans, Jr., however, didn't die right away. He fell to the floor, and the masked gunman left the club. He walked right in there. He shot Aundry Evans, Jr., and he immediately left.

All of Aundry's friends who were in the bar, all of his patrons had hid as any person in their right mind would when they hear gunshots. They hid under the pool table. They hid behind the bar. One person went upstairs. Some people just ran out the door, but when the shooting was over, people felt safe, they began to come out. They began to assess Mr. Evans' wounds. They tended to him. Somebody called 911. Somebody called Aundry's fiancée, and as they tended to Mr. Evans, as

they applied pressure to his wounds to keep him from bleeding out, Aundry Evans told his friends, "I can't believe he did it. Little D shot me."

Mr. Evans was taken to Georgetown Hospital. Georgetown Hospital assessed him and determined that he needed to be transported to Charleston. Unfortunately, he didn't make it to Charleston. He died in flight.

Now, you've been selected for one of the highest honors in our country. You have been selected in one of the most serious cases you could possibly hear. That is a responsibility that I hope you take very seriously, and I thank you for your service.

Over the next few days, you will hear from people who were inside the club. You will hear from people who were outside the club. You will hear about the investigation that was done by the Georgetown County Sheriff's Department. You will hear about the forensic evidence that was collected from the crime lab at the State Law Enforcement Division, and ultimately, you will hear evidence that convinces you beyond a reasonable doubt that Terron Dizzley, Little D, did exactly what Aundry Evans said he did, "I can't believe he did it. Little D shot me." Thank you for your attention.

THE COURT: Mr. Barr, for the Defense, you may proceed.

MR. BARR: Thank you, Judge.

Ladies and gentlemen, I wish I could be as, as dramatic

as the Prosecutor, but I don't think I've got her skills. When she started, I was -- really somewhat gotten enthralled because I thought that she wasn't going to get around to saying that Terron Dizzley killed somebody, but then at the end there she, she kind of slid it in.

Let me just, first of all, His Honor has given you some very excellent preliminary instructions regarding your duties and responsibilities as jurors. I've never had -- I've been doing this a long time, and I've never heard a better presentation of preliminary instructions, and there was one thing that he said that caught my attention. Over the years, I've noticed that from time to time, depending upon who the Prosecutor is, when people are charged with criminal offenses, Prosecutors have a thing about dropping everything into the jury's lap and saying, "Well, you figure out whodunit," and, and, and as I said, when the Prosecutor started, I thought that -- I was sitting there thinking, I said, "I guess this is a whodunit story," but now, ladies and gentlemen, let me just tell you, the thing about his preliminary instructions that struck me so was His Honor said that at the end of the day when you've heard all the evidence in this case, as jurors you'll be called upon to come back with a verdict and a unanimous verdict, and here's what he said, he said, "You'll have to decide whether or not the Prosecution," that's this table right here, "whether or not they've met their burden."

He didn't say you're going to have to decide whodunit because, ladies and gentlemen, as most of you you've lived, you've -- a lot of times we look for answers, and sometimes we don't ever find them. Sometimes we do, but in any many instances, and especially in criminal cases, we're left with more questions than we have answers. It is not your duty and your responsibility to decide who killed Aundry Evans. As His Honor has instructed you, it's your duty and responsibility to decide whether or not the Prosecution has presented you with proof, proof that convinces you beyond a reasonable doubt that Terron Dizzley did it, and I say that because I want to make sure that I emphasize something. Identification in a murder trial is one of the things that His Honor is going to tell you that the Prosecution has to prove in this case, along with the elements of murder, of course, the unlawful killing of a person with malice aforethought, that's not, we don't -- in this case, I think the evidence that you will hear, there won't be any question in your mind that the young man got killed and under circumstances which would probably categorize the killing as a murder, but the issue is whether or not this man did it, Terron Dizzley, and I say to you and His Honor is going to charge you that right now, as you sit here and as I stand here, with respect to this procedure -- now, you know a lot of times you can -- I get, I get different things, and I'm just not a good person when it comes to reading instructions.

When I get something in a box, I'm eager to see what it'll do, and if it's in -- and I hate these things that you get now that they have them in parts. You've got to put them together after you buy the box. I hate that because when I get the box I want to take whatever it is in the box out and use it. I don't want to read the instructions on how to put it together because usually whenever -- I wind up with some extra parts, I just, I tell you, but that's what happens when you don't read the instructions.

Now, why am I telling you this? I'm telling you this because irrespective of what is presented to you in terms of evidence, you're not going to be able to put this together and discharge your duties and responsibilities in an adequate way until His Honor tells you what the law is. He's the lawgiver. He's going to tell you what law applies in this case. Based on whatever you find the facts to be, he's going to tell you how to apply the law. One of the things he's going to tell you is that right now at this stage in this litigation that Terron Dizzley is presumed innocent. He's presumed innocent.

Now, if you notice, if you notice when, when we were doing jury selection, if you, if you looked at the Prosecution table and you looked at this table over here, we were all scoring. The Clerk had you get up, stand up, tell us something about yourself, tell us, tell us who you're married to. We're, we're, we're not just trying to pry in your

business. We're trying to find people to put on a jury that have got no ax to grind, that can come to a situation with an open mind and come back with a verdict at the end of the day which speaks the truth based on the law and the evidence. Know I said law and evidence. So in other words, whatever you find the evidence to be, that is the facts, you're going to have to apply the law as His Honor gives it to you, and ladies and gentlemen, I've found over the years that many of us we don't, we don't want to be told what to do. Moreover, we have our own way of doing things, but the judicial system is not that way. His Honor will instruct you as to the rules of the road that you must go by in making a determination as to whether or not this table over here has met their burden. He's going to say that Terron guilty -- Terron Dizzley is, is presumed innocent until proven guilty. He's going to say that the burden of proof is on the Prosecution to prove him guilty. He doesn't have to prove anything. He's going to say that at the end of the day, at the end of the day, if you're not convinced collectively, if you're not convinced beyond a reasonable doubt that the Prosecution has met that burden, in other words, if you're not firmly convinced, and notice I said firmly convinced, that the Prosecution has met their burden, in other words, you think that there's a real possibility that they hadn't met the burden, your charge is to find the Defendant not guilty. I don't know how to say it any simpler.

We, we, we sympathize with the family of the young man that, that got killed, December 2008. The issue here today is the trial of the person that's accused of doing the killing. His Honor told you that this issue comes before you by way of an indictment, which is the charging paper. There's no other way other -- to bring this issue before a jury other than with an indictment. It has no evidentiary significance. It's the method by which you get to hear this case.

I'm going to tell you one other thing, and I'm going to, I'm going to, I'm going to sit down, let the Prosecution present their case. I was reading something this week, and you know, over the years I've always complimented a jury on their willingness and their obedience to discharge their duties and responsibilities. It's a serious responsibility as jurors. I read something the other day said, "Don't ever do that because jurors are subpoenaed, and most times they're not necessarily too interested in being on a jury, but they're subpoenaed to be on a jury. Therefore, don't, don't tell them that you appreciate the fact that, that they are good civil servants." Well, I guess now that I've said that, I've somewhat contradicted myself, but I assure you, I assure you that with respect to this court system, with respect to the Prosecution, as well as the Defense, that we do appreciate your service because this thing just, as His Honor has already indicated to you, you've got people getting drowned trying to

get over here to live in a country such as what we have where when a person is charged with a criminal offense or when a person has been wronged, they can come to a courtroom and expect justice from the judicial system, no other place like it, wouldn't want to be anywhere else, but I do thank you.

THE COURT: The State may call its first witness.

MS. BAILEY: Thank you, Your Honor. For my first witness I'm going to have several pieces of evidence to present that will involve the use of a computer. If I might have a five-minute break to set that up.

THE COURT: All right. Well, ladies and gentlemen of the jury, let's let them set up that technical things, and we'll let you stretch your legs and clear your head. As every time you leave the courtroom, I'll tell you not to begin any discussions about any aspect of the case until I've asked you to do so.

You may retire to the jury room at this time. Thank you. Please remain seated while the jury retires. Thank you very much.

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

THE COURT: All right. Court will be in recess for about five minutes.

MS. BAILEY: Thank you, Your Honor.

***** OFF THE RECORD *****

(On the record. Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right. Is the State ready to proceed at this time?

MS. BAILEY: Yes, Your Honor.

THE COURT: Defense ready?

MR. BARR: Yes, sir.

THE COURT: All right. Let's bring the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. At this time the State may proceed with its first witness.

MS. BAILEY: Thank you, Your Honor. The State calls Naomi Alston.

THE COURT: Come forward, please, to be sworn. Ma'am, please come forward to my left to be sworn in.

THE CLERK: Please state your full name for the Court.

MS. ALSTON: Naomi Shana [spelled phonetically] Alston.

THE CLERK: Can you spell your last name, please?

MS. ALSTON: A-L-S-T-O-N.

Whereupon, Naomi Alston was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: All right. Thank you, ma'am. Your witness,

counselor.

MS. BAILEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Good morning, Ms. Alston.

A Good morning.

Q How did you know Aundry Evans, Jr.?

A He was my fiancé.

Q Do you all have any children?

A Yes. We have two girls.

Q How old are they now?

A Seven and five.

Q What do you do for a living?

A I'm a customer service rep at TD Bank here in Georgetown.

Q And where did you work in 2008?

A 2008 I was working at Lowe's.

Q What was your relationship to the Paradise Club?

A Basically the lease, the license, beverage license was in my name.

Q And who, who was behind the Paradise Club?

A Aundry.

Q Okay. And what did you call Aundry?

A Dre.

Q Dre. So whose idea was it for you all to own the club together?

A It was his because he loved to cook, and he wanted to open up a restaurant. So he know it took money. So he saw that the idea of doing the club would be a good way for him to build it up and then open up a restaurant.

Q How long had you all owned the Paradise Club before December 1st, 2008?

A It's been probably about a couple of months, October of 2008.

Q And tell us a little bit about what kind of club the Paradise Club was, what was the theme?

A Well, basically he didn't want it to be more of a nightclub. It was more as a sports bar where it was a section where you could if you wanted, there was a dance floor, but the part that he used the most was where he had the pool tables, TVs, PlayStation, and there was a bar there, and he did seafood night, dollar beer night, you watched the games, you know, play pool.

Q And what road was the Paradise Club on?

A It was on Oatland.

Q Do you know what county that's in?

A Georgetown County.

Q And did Mr. Evans and you have any other partners in the Paradise Club?

A No, ma'am.

Q Okay. Was there anybody who wanted to be a partner in

the Paradise Club?
A Yes, ma'am.
Q And who was that?
A Diz.
Q When you say Diz who do you mean?
A Terron.
Q Okay. And what names do you know him by?
A D and Diz.
Q Okay. Any other names?
A Sometime when he'll say Little D when he's talking to his kids.
Q All right. And did you -- how many times before December 8th, I mean, December 1st, 2008, how many times did you come in contact with this person that you know as D, Diz, Little D?
A You mean contact as far as speaking with him?
Q Either speaking with him or seeing him.
A I would say about several times if it's just Dre and him just talking and I'm in the vehicle or me actually talking to him or overhearing them talking on the phone. So it's been several times.
Q And as Aundry's fiancée did you have personal knowledge of the relationship between Aundry Evans and Little D, Diz?
A Yes, ma'am.
Q Okay. And what was the nature of their relationship?
A At first when -- they were real close. They spoke every

day. Then they had a falling out and then they didn't speak for a while and then that's when one day we was in Florence and they saw each other in the mall. Me and the kids went back to the hotel room, and later on he came back and got us and said that we were going out to eat.

MR. BARR: Objection to hearsay, Your Honor.

THE COURT: Ask the witness not to quote what someone may have said.

MS. BAILEY: Okay.

BY MS. BAILEY:

Q Just speak as to your personal knowledge, not what Aundry told you.

A Okay.

Q Okay.

A Okay. He came back. We went to Outback Steakhouse, and D was there, and after that they were cool, and then they had another falling out behind Paradise.

Q Okay. And how long had Aundry Evans, Jr., known this person that you're calling D, Little D, Diz?

A Well, I know they -- I don't want to say grew up together. I'm not sure, but it was before me and Aundry.

Q Okay. And how long had you and Aundry been together as of December 1st, 2008?

A We've been together since 2002.

Q At the time of leading up to December 1st of 2008, what

was the nature of the relationship between Aundry Evans, Jr., and the person that you're calling D, Little D or Diz?

A Could you say it again?

Q At the time leading up to December 1st of 2008 ---

A Uh-huh.

Q --- what was the nature of the relationship? What was the relationship like between Aundry Evans and D?

A They, they were upset with each other. They -- there's been time me and Aundry's in a car and he's cursing and upset, and you can hear D on the other side, and they're exchanging words, and I knew that things wasn't right.

Q Okay. Let's go to -- do you remember November 29th of 2008?

A Was that the night that I called the sheriff office? Yes, ma'am.

Q And on November 29th of 2008, can you tell us what happened? Did anything remarkable happen?

A Well, I got off from work from Lowe's. Aundry called me, asked me to go open up the bar because he wasn't going to be there to do it, and I believe that night he was doing some type of seafood. I told him, "Yeah, I'll do that." Went down there, open up. The DJ, I was waiting on the DJ. It was raining, and I told him, "Well, I don't want to be in the club, have the door open, I'm there alone. So I'll just wait in the car." I waited in the car, and that's when I saw D

pulled up, and he pulled on the door, and Aundry called me. He said, "Whatever you do do not let him in the club." I said, "Okay," and he came to my car. He knocked on the door.

Q When you say he, who came to your car?

A D.

Q Okay.

A He came to the car, knocked on the door. He said he wanted to get in, he wanted to get something out the club. I told him, no, I wasn't because I didn't know as far as what he could be getting. So that's when he went back to his vehicle and then he came back. So I was on the phone with Aundry, and I told him, "If he doesn't leave, I'll call the police." He said, "Well, if he don't leave, you tell him to leave, and if he doesn't leave, then you're going to call the police," and I had Aundry on the phone, and I said, "Well, if you don't leave, I'll call the police."

Q You said that to who?

A D.

Q Okay. And were you in or out of the car at this point?

A I was in the car. I had my window cracked enough so that he can hear what I was saying and that's when he was standing, my car was here, he was about there, and he told me -- he was yelling at Dre, and he said, "Stop being a pussy ass nigger having your girlfriend do your dirty work."

Q That's exactly what he said?

A That's exactly what he said.
Q Okay.
A And so at that time he got in his vehicle, and then he came back, and that's when I called the sheriff department.
Q So after he said those words he got in his vehicle. Did he leave the premises?
A He left.
Q Okay. And how much longer till he came back?
A It was just a -- I guess he went down, turned around. It was not even a minute later then he came back, and that's when I told him, I said, "I'm calling the police," and I hung up with Aundry, and I called the cops. Before they came he was already gone, but --
Q Okay. When you say you called the police or called the cops how did you do that?
A I called on my cell phone.
Q Okay. And what number did you call?
A 911.
Q Okay. I'm going to show you what has been previously marked as State's Exhibit Number Three for identification only. Do you recognize this disk?
A Yes, ma'am.
Q And can you tell us what this is?
A It's the recording of when I called the police that night.

Q Have you had in the past an opportunity to review the contents of this disk?
A Yes, ma'am.
Q And is what's on here a fair and accurate recording of your phone call with 911?
A Yes, ma'am. It is.
Q Okay.
MS. BAILEY: At this time State would seek to move State's Exhibit Three into evidence.
THE COURT: Any objection?
MR. BARR: No objection, Judge.
THE COURT: Without objections it'll be admitted as it's been marked.
(Whereupon, State's Exhibit Number Three [CD - 911 Call] admitted into evidence and appropriately marked.)
MS. BAILEY: Thank you, Your Honor. Permission to publish to the jury?
THE COURT: You may publish.
Ladies and gentlemen of the jury, let me explain to you, when I authorize publication that means it can be either shown to you or played to you during the trial. So that'll allow the counselor to play the recording. You may proceed.
MS. BAILEY: Thank you, Your Honor.
(Whereupon, State's Exhibit Number Three played in open court.)

BY MS. BAILEY:

Q Now, Ms. Alston, November 29th of 2008, what day of the week was that?

A I can't -- I don't know what day of the week it was.

Q Okay. Do you remember what day of the week December 1st, 2008, was?

A I want to say a Monday.

Q Okay. So let's flash forward to December 1st, 2008. Tell me what happened that evening.

A I was -- I got home. I was staying in Dunbar, and I was putting the kids, getting the kids together for bed. Aundry know that 8:00 o'clock is the time that they're in their beds. He normally will call saying that -- to say his prayers with the girls. If he's not there, he'll call. If he's there, he'll say with the oldest, she was two at the time, and I called, didn't get an answer. I called, didn't get an answer. So I dozed off to sleep, and my mom's house phone rung, and someone came on the line and said, "Chevon." I said, "It's not Chevon. This is Naomi." He said, "Omi," that's what they call me, "Dre was shot," and I don't remember hanging up the phone. I know I dropped the phone. I grabbed my keys, yelled to my sister, "Chevon, watch the kids. Dre just got shot." I got into my car. I drove to the stop sign. I made a left. Got to Oatland Road, I made a left. As I'm driving, I saw blue lights in the distance behind, not too close. I pulled

up at the bar. I threw the car in park. I left the doors open. I ran in. I saw about maybe three, a couple of people. It was about five outside. As I ran in, there was a couple there, but I looked, and that's when I saw at the pool table Aundry was on the floor. I ran up to him, and I dropped to my knees, and Mo, which is Maurice Giles, was down by him, and I was like, "What happened?" He said, "I can't believe he shot me." I said, "Who, who shot you?" He said, "D." I said, "Where," because there wasn't any blood, and when Mo moved his hand I saw that he had a hole in his side. So that's when I was like, "What happened?" He was like, "He shot me." I said, "D, D shot you?" He was like, "Yeah, babe, he shot me," and that's when he was like, he told Mo, asked Mo to put pressure on it. He started putting pressure on it. I told him, "No, don't do that. You may hurt." He was like, "Babe, go call my dad." I said, "Okay,", and then he said, "Put more pressure on it." So Mo applied more pressure. He was -- and I said, "No, don't do it," and that's when he said, "Babe, go call my dad."

I got up, went to my car, got my cell phone, and I was walking off because you don't have good service there, and I was trying to kept -- catch -- get some reception, and that's when I called his dad. I told his dad what happened, and he asked me, "What hospital are you going to?" I told him Georgetown Memorial. He said, "Good, I'll meet you there."

I tried to go back in, but at this time they had the yellow tape around, and my car also was within the yellow tape. I believe it was like five, six minutes they pulled him out on a stretcher, and I ran up to his side and he said, "Oh, he shot me," and that's when they got him in an ambulance, two in the back, and I tried to go in. They said no. They sat there for a while, and I banged on back of the ambulance door to ask them, "Why aren't you moving? What's taking so long?" He -- they said that they had to get him stable, get him together before they pulled off.

At this time, my mom was there, and I asked her could she take me to the hospital because they would not let me get my car. She said, "Yes. I'll take you." So the ambulance drove off. My mom and I was behind.

By the time we got to the hospital --

Q All right.

MR. BARR: Your Honor, may we approach the bench? May we approach the bench?

THE COURT: Beg your pardon?

MR. BARR: May we approach the bench?

THE COURT: Yes, sir.

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

BY MS. BAILEY:

Q All right. We'll come back to what happened next in just

a moment. Okay?
A Okay.
Q Now, there's some other matters we need to attend to. I'm going to hand you what have been marked as State's Exhibits Four through 11 in just a moment.
MS. BAILEY: Thank you.
THE COURT: Thank you.
BY MS. BAILEY:
Q And again, these are State's Exhibits Four through 11 which have been marked for identification only. If you could just take a look at those, let me know when you're finished.
A (Complies with request.)
Q Do you recognize those?
A Yes, ma'am.
Q And what do they depict?
A It shows the building, the club, the front door, the side door entrance, the pool tables. It shows the side door, and it also show the dance area.
Q Okay. And are these photos a fair and accurate representation of the Paradise Club as it was in December of 2008?
A Yes, ma'am.
Q Okay.
MS. BAILEY: At this time the State would seek to enter into evidence State's Exhibits Four through 11.

MR. BARR: No objection, Judge.

THE COURT: Without objection they'll be admitted as they've been marked. You may proceed and publish if you wish.

MS. BAILEY: Thank you, Your Honor.

(Whereupon, State's Exhibits Four through 11 [Photographs] admitted into evidence and appropriately marked.)

MS. BAILEY: Let's pull up Number Four, please. I apologize. That would be your Number One, slide one. Okay. Have you all found your monitors?

BY MS. BAILEY:

Q All right. We are looking at State's Exhibit Four, which has now been entered into evidence. Can you describe for the jury what this is, what we're looking at?

A That's the sports bar, the building, the front as you're driving in.

Q Okay. And which part of this structure was the sports bar?

A This part right here?

Q Which part of the -- was the whole building the bar?

A No. This -- if you go through that front door and that side door, you'll walk into the actual dance floor area.

Q Okay.

MS. BAILEY: Slide two, please.

BY MS. BAILEY:

Q We're now showing the jury what's been admitted into evidence as State's Exhibit Five. Can you describe for the jury what this is?
A That's the front door.
Q Okay. So that's the one that you're calling the front door?
A Yes.
Q Okay.
MS. BAILEY: Slide three, please.
BY MS. BAILEY:
Q We're now going to look at what's been entered into evidence as State's Exhibit Number Six. Can you describe for the jury what we're looking at?
A That's the side door. When you walk through that door you're walking into the actual bar area.
Q Okay.
MS. BAILEY: Slide four, please.
BY MS. BAILEY:
Q We're going to look at what's been entered into evidence as State's Exhibit Number Seven. Could you describe for the jury what we're looking at?
A That's the pool table, TV, inside of the bar area.
Q Okay. And when you walked into the club, is this the pool table where you found Aundry near?
A He was between two.

Q He was between the two pool tables?
A Uh-huh. Yes, ma'am.
Q Okay.
MS. BAILEY: Slide five, please.
BY MS. BAILEY:
Q We're looking at State's Exhibit Eight that's been entered into evidence. Can you describe what is in this photograph for the jury?
A The pool table to your left Aundry was there between the two.
Q Okay. And do you see what you've called the side door and the front door in this picture?
A You said the side door?
Q Yes. When we -- in the first couple of pictures you identified a front door and a side door. Do you see those in this picture or are they -- where are they?
A They're not in this picture.
Q Okay. Are they behind the person who took this photo?
A Yes, ma'am. The side door.
Q The side door is behind the taker of the photo?
A Yes, ma'am.
Q Okay. And what is in the far left portion of this picture?
A The door, you see there is the restroom.
Q Okay.

A To the -- there's a window there, and there's a door, but you can't see it, and that's the entrance into the dance floor area.

Q And do you see the bar in this picture?

A Yes.

Q And where is it located?

A Where the chairs are located you have to walk up and right there the brown table is the bar.

Q Okay.

MS. BAILEY: Slide six, please. Try slide seven.

BY MS. BAILEY:

Q Okay. We're looking what's been previously marked as State's Exhibit Ten and entered into evidence. Could you describe what we're looking at?

A The door that swing open there you enter into the kitchen. Right there is where you get served drinks. You have to step up right there where the trashcan is. There are steps there, and you step up, and you can order drinks there and also seat.

MS. BAILEY: Slide eight, please.

BY MS. BAILEY:

Q All right. We're looking at slide eight, which is what has previously marked as State's Exhibit Number Nine and entered into evidence. Can you describe what we're looking at in this photo?

A Again, you're still in the bar area. To your left is where you order drinks. To your right, there's a cooler there with wine. Then you have your seats and table to the right, and then behind that is your -- is the pool tables.
Q And again, from the perspective of this photograph, where is the side door?
A The side door is right behind to your right.
Q Behind the person who took the photograph?
A Yes, ma'am.
Q Okay.
MS. BAILEY: Let's try slide nine.
BY MS. BAILEY:
Q Now, at some point several days after, did you speak with investigators after the shooting?
A Yes.
Q Okay. And did you have an occasion where the investigators showed you a photo lineup?
A Yes.
Q And at that time what had you told investigators about the identity of the person that you knew as -- what were the nicknames you knew him as?
A D, Diz, Little D.
Q Okay. What had you told investigators about his identity?
A You mean like how short he was, short, kind of stocky.

Q And did you know how to spell his name exactly?
A No, ma'am. I didn't.
Q Okay. Did you know where he lived?
A I know it was in Orangeburg, but not exactly. No, ma'am.
Q All right. And when investigators showed you a photo lineup, did they suggest to you who you should pick?
A No, ma'am. They did not.
Q Okay. What exactly did they tell you when they showed you that photo lineup?
A They asked me if I see the person that is D, Diz, Little D, and I told them, yes, I did see him.
Q All right. I'm going to show you what has been previously marked as State's Exhibit Two for identification only at this point, and do you recognize that?
A Yes, ma'am.
Q What is that?
A It's the photo lineup that they showed me.
Q And were you able to identify anyone in that photo lineup?
A Yes, ma'am.
Q And who did you identify?
A D.
Q And what number was he?
A Number five.
Q How do you know that's the one that you identified?

A Because I believe they got my signature, and I circled it.
Q Okay. I'm going to have you flip that over and take a look at the back. Do you see your signature on the back of that?
A Yes, ma'am.
Q Okay. And what is next to your signature?
A The number five circled.
Q Okay. Let's get back to December 1st, 2008. Did you go to the hospital?
A Yes, ma'am.
Q Okay. And at this -- from this point on, it would be improper to say what anyone said to you, but at the hospital were you able to go back and visit with Aundry Evans?
A Yes. I did, not at first.
Q Not -- they wouldn't let you back at first?
A No, ma'am.
Q Okay. How long was it till they let you back?
A I want to say maybe 10 minutes.
Q But they did let you come speak with him?
A Yes, ma'am.
Q All right. And what did they -- where did he go after that?
A After he left Georgetown?
Q Uh-huh.

A MUSC.
Q All right. And how long was he at Georgetown before they made the decision to move him to MUSC?
A Maybe 20, between 20 and 30 minutes. I'm not sure.
Q Before we go any further let's go back and work on the timeline here. You testified earlier you got a phone call.
A Uh-huh.
Q At your home while you were asleep.
A Yes, ma'am.
Q When you got that phone call, how much time was it till you were on the road driving towards the club?
A To me it was like in seconds.
Q Okay. Did you brush your teeth?
A I didn't do anything.
Q Brush your hair?
A No, ma'am.
Q Put on clothes?
A No, ma'am.
Q Okay. And how long -- where, where did you live at the time?
A Dunbar Road.
Q Okay. And how far is it from Dunbar Road to the club on Oatland Road?
A Five, six minutes.
Q Would it be -- did you drive fast or slow?

A I drove fast.
Q And so how long did it take you that night to get from your home to the club?
A Probably three minutes.
Q And did you arrive before police?
A Yes, ma'am. I did.
Q Did you arrive before EMS?
A Yes, ma'am. I did.
Q Okay. How long were you at the club before you got in the car to head to the hospital?
A Probably ten minutes.
Q Okay. Once you got to the hospital, how long until you got back in the car to head to Charleston?
A Probably 20.
Q Okay. So when they transported Aundry to Charleston, were you able to ride in the helicopter?
A No, ma'am. I wasn't.
Q And so how did you get to Charleston?
A I drove my car.
Q Did you go by yourself?
A Yes, ma'am. I did.
Q Okay. You say you drove your car. How did you end up with your car at the hospital?
A Well, my sister and the kids she brought my car, and my mom and the kids went back home.

Q Okay.
A My mom, my sister and the kids went back home.
Q When -- what was the scene like when you arrived at MUSC? What did you find?
A I went in the emergency room. There wasn't anyone there. There was a lady sitting at the desk. I told her that I'm here for Aundry Evans, Jr., if she could let them know that I'm here, he was in a helicopter coming from Georgetown. She said, "Okay." I told her I'd be in the restroom to put some suitable clothes on.

By the time I got out of the restroom, a nurse came out, and she asked was there a relative there. I said, "No, I'm his fiancée." She said, "Do you have his parents' number, his mom, his dad? Where are they? Are they coming?" His dad said -- told me before I left Georgetown that he'll be there first thing in the morning because he, I believe, with his job, on call. His mom said the same. His sister, the nurse asked me to give numbers. I gave him, the nurse his father, Aundry, number, also the sister, and about a couple of minutes later she came back. She said she couldn't get in contact, if I had another number. I said those were the only numbers I had, and I asked her, "How's he doing? Can I go see him?" She said --

MR. BARR: Your Honor, I'm going to have to object now. She, she, she -- this is all hearsay.

THE COURT: Well, I will caution the witness not to quote what people may have said to you. There's a rule that you're not allowed to offer hearsay evidence except under certain circumstances. The attorney for the State will ask you if she feels that those certain circumstances are met, but I'll sustain the objection. You may proceed.

BY MS. BAILEY:

Q What did you learn after speaking with the medical professionals, without, without saying exactly what they said. What, what did you learn about Aundry's condition?

A He passed away.

Q When you were driving to Charleston, is that the news that you expected to hear?

A No, ma'am.

Q Now, to be clear, did you know all of the ins and outs of Aundry's business and life as his fiancée?

A Yes, ma'am.

Q Was there anybody else in his life that he referred to as Little D or Diz or D?

A No, ma'am.

MS. BAILEY: I have no further questions for this witness.

THE COURT: You may cross examine.

MR. BARR: Thank you, Judge.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. BARR:

Q Now, you say that you know the ins and outs of his life.

A Yes, sir.

Q Now, wasn't he living with another woman?

A Well, I found out about another woman. Yes, sir.

Q Found out about her. So apparently, the ins and outs that you think you knew, you obviously didn't know a whole lot about the ins and outs if he was living with another woman and you didn't know that.

MS. BAILEY: Objection, Your Honor. There was no question. That was a statement.

THE COURT: I'll ask that you frame a question, counselor.

MR. BARR: All right.

BY MR. BARR:

Q Now, how long you say you been knowing Aundry?

A Since 2002.

Q 2002. So prior to 2002 how old was he?

A I'm not sure.

Q You don't know his age?

A Yes, sir.

Q Do you not agree the truth of the matter is you don't know if he knew somebody else other than Terron Dizzley that he referred to as D; do you?

A Well, when we were together, I knew the only person that he called D was Terron.

Q Now, Ms. Alston, you only knew him about seven years you say, and apparently, he didn't live with you all the time.

MS. BAILEY: Objection, Your Honor. Again, counsel is testifying without asking questions.

MR. BARR: I'll rephrase the question, Judge.

THE COURT: All right. Thank you.

BY MR. BARR:

Q You didn't know all the man's business; did you?

A Yes. I did.

Q Oh, you did?

A Uh-huh.

Q Well, do you remember telling me in August of 2012 that he was hustling?

A Yes.

MS. BAILEY: Objection, Your Honor. We have a matter to take up outside the jury.

THE COURT: All right. Ladies and gentlemen of the jury, at this point in time I'll ask you to step back to the jury room. As always, when you leave the courtroom, I'll instruct you not to discuss anything about the case until I've asked you to do so. You may retire.

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

THE COURT: The State's objection?

MS. BAILEY: Thank you, Your Honor. The State objects under State v. Lyles. That's 379 S.C. 328. That's a case from 2008. That case says that drug use and sales by the victim is specifically, it should be excluded from trial as unfairly prejudicial because it's misleading, irrelevant and highly speculative as to who may have committed the offense. The State would also rely on State v. Burgess. That's 391 S.C. 15. That indicates that if the Defendant is to point to third-party guilt, some other party that's not here in the courtroom as the person that's responsible for the murder, that it has to be more than just conjecture or speculation, that indicating that the victim may have dealt drugs or been a drug dealer is not enough, that that specifically should be excluded unless there's a specific person that the Defense is able to point to. I was able to determine which, which direction Mr. Barr was going with this based on the transcript from the previous trial, and his question was, "Did you know that Aundry was a hustler," and his follow-up questions from the previous trial had to do with Aundry at some point in his life dealing some marijuana. It's the State's contention that these two specific cases give the Court guidance, that that should be excluded unless Mr. Barr has a specific third person with more than just conjecture or speculation, but a specific third person with some evidence to support it that may have

committed this murder.

THE COURT: Mr. Barr?

MR. BARR: Your Honor, I don't know what the Prosecution's theory is as far as, but I'm attempting to impeach the witness if she denies that she made the statement to me, and we're offering or asked the question for impeachment purposes.

THE COURT: As to what particular issue?

MR. BARR: Your Honor --

THE COURT: Has she testified differently from her prior testimony at this point in time?

MR. BARR: Your Honor, what, what I could do, I could rephrase the question, but she testified -- Your Honor, she, she, she, she testified in the first trial and said, the question was asked, "And do you know of any other activities that Aundry was involved in that generated money for him," and she said, "Yes, sir." "Tell us what -- about what -- about it." She said, "Well, he used to, he used to hustle." I said, "Used to hustle?" She said, "Yes, sir." Then the question was asked, "You said he used to hustle. What, what does that mean?" "He used to sell drugs." That's what -- that was her response.

THE COURT: Well, what the State apparently is saying though is that -- I don't know -- that -- was that objected to at the prior trial? I haven't had the transcript. I don't

know what the ruling was at the prior trial.

MR. BARR: Your Honor, that, that, that was -- that came in as evidence.

MS. BAILEY: Your Honor, the prior trial unfolded much differently than this trial, and it was Trial Court's contention that the previous Prosecutor opened the door to some of that evidence coming in, but in the trial strategy of this case, it's my contention the way this case has unfolded that it would be improper for the jury to hear any of that evidence.

THE COURT: She's objecting to the evidence being brought in at all. Now, I understand what you're saying is that you want to impeach her on that.

MR. BARR: Yes, sir.

THE COURT: Now, if the evidence is ruled to be inadmissible in this trial, wouldn't that be impeachment on a collateral matter?

MR. BARR: Your Honor, I don't see where, where, where it would be inadmissible inasmuch as she testified to it. If she were to deny it, and of course, the objection came before she -- if she admits it then fine, but as far as the objection, that is the evidence not being admissible, I disagree with the, with the Prosecution's position that it is.

THE COURT: Well, I understand that, but if the -- again, let's get back to my question.

MR. BARR: Yes, sir.

THE COURT: My question was that I don't know that I'm necessarily bound by evidentiary rulings made at the previous trial since the -- if the previous Court ruled that there had been a door opened for that particular -- let me finish, Mr., Mr. Barr.

MR. BARR: Yes, sir.

THE COURT: Had been -- a door had been opened for that particular evidence to come in, then it was in and it was fair game in that trial. The fact that a door was opened in that trial doesn't mean the door has been opened in this trial. Now, the question is whether you have -- you certainly have the right to impeach a witness with prior statements. However, if the prior statements were to be ruled inadmissible in this case, that evidence, in other words the prejudicial effect outweighs their probative value, or if there's some other reason why they should be excluded, then it would seem to me that you might be trying to impeach someone on a collateral matter. That's a matter that's really not an issue in this case. Do you follow me?

MR. BARR: Judge, first of all, there was no ruling by the prior Court that a door was opened. I don't know where the Prosecutor got that from.

THE COURT: It doesn't matter. Whatever happened in the prior trial, I don't know that I'm bound by that at this point

in time. We're, we're -- this is, this is a new trial.

MR. BARR: Your Honor, I understand that.

THE COURT: And I realize that when someone gives a statement under oath you have the right generally to, to impeach them based on that statement. However, if that involves bringing in information into the trial that would not be admissible in this trial, then, again, I'm back to my question does that involve impeachment on a collateral matter in this case?

MR. BARR: Your Honor, she testified that --

THE COURT: I mean, the fact that someone's made a prior inconsistent statement --

MR. BARR: I --

THE COURT: -- doesn't automatically mean you can impeach them in this case.

MR. BARR: I understand that.

THE COURT: Okay.

MR. BARR: It has to be relevant.

THE COURT: Yes, sir. It does have to be relevant.

MR. BARR: And she testified that she knows all the man's business.

THE COURT: Uh-huh. She did state that.

MR. BARR: And the only thing that I'm, I'm asking him about his business. She just open -- she just said she knows all his business, and she's testified under oath at an earlier

trial that this was his business.

THE COURT: Or had been his business I think was the testimony.

MR. BARR: Well --

THE COURT: Didn't I hear you -- you read it to me. I think she said that he ---

MR. BARR: Yes, sir.

THE COURT: --- had been a hustler, not was currently a hustler, I think is what I heard. That may be splitting hairs. I don't know. All right. He makes a point, counselor, that your client did indicate to the jury that she was aware of all of his business, Ms. Bailey, and the question is what was his business.

MS. BAILEY: Thank you, Your Honor. It is true that she said that he was aware of his business. It would still be the State's contention that it's inappropriate for Mr. Barr to go, specifically to go into the drug dealing because it's highly speculative, and State v. Burgess, in fact, it was much more specific. Burgess offered the testimony of five witnesses who would have testified that the victim had even been threatened over drug debts, and that's way more specific than anything we have in this case, which would be general testimony that he may at some point in his life have dealt drugs, and in the Burgess court, which by the way was in 2012, it was Judge Few at the Court of Appeals held that that was just too

speculative and would be unfairly prejudicial for the jury to hear.

MR. BARR: Now, Judge, I tell you what, it's amazing how the Prosecution is standing for undue -- unfair prejudice when it comes to swings only one way and, well, justice swings both ways and certainly I --

THE COURT: Most certainly justice considers both ways. Let's put it that way, and I'm certainly considering it.

MR. BARR: Yes, sir.

THE COURT: Now, since I didn't realize the importance of the point, I don't know exactly where in the, in the questioning we were. We were at the point where you asked her if she had -- aware that he was a hustler?

MR. BARR: I asked her did she recall telling me ---

THE COURT: And her answer was?

MS. BAILEY: She didn't.

MR. BARR: She hadn't answered it.

THE COURT: She didn't answer. Okay. Well, now, if she admits that she did, then that bars you from bringing in any extrinsic evidence to prove anything otherwise. Then the issue becomes whether you have the right to go into it any further. I don't know what her answer is going to be. We'll find out.

MR. BARR: All right, sir.

THE COURT: But I guess we need to address whether you

can go into it any further at this point in time. I'm assuming she admits having said that at the previous trial.

MR. BARR: Yes, sir.

THE COURT: Do you want to discuss that now?

MS. BAILEY: Yes, Your Honor.

THE COURT: While we've got the jury out I, I ---

MR. BARR: Judge, I, I, I -- Judge, I think I can --

THE COURT: --- I think that's where we're going, Mr. Barr.

MR. BARR: -- at least ask her what she means by that.

MS. BAILEY: Well, Your Honor, it's actually Mr. Barr who used the word hustler, and I believe that this idea of somehow impeaching her when she's not testified at all about prior drug use, about prior drug dealing, about hustling, it was him who brought it up. So this idea that he's somehow impeaching her on those prior statements is just simply a way for him to backdoor this information in and taint my jury.

THE COURT: Well, I'm going to take a moment and look over State versus Burgess and then we'll talk about it. Court will be in short recess.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Ma'am, during the recess don't discuss your testimony with anyone. You can get up and move around the courtroom though. Do you understand that?

MS. ALSTON: Yes, sir.

THE COURT: Thank you, ma'am.

***** OFF THE RECORD *****

(On the record. Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right. In talking -- I talked with the court reporter briefly during my break. Apparently her record indicates the Defendant, I mean, the witness did respond, yes, that she had made that statement previously. So that is in the record. That statement by her then would prevent any further impeachment. She didn't -- she's not testified differently at this point in time. So that would be my ruling. It also prevents the Defense from introducing any further extrinsic evidence on that point if she acknowledges having made that statement in the past.

Now the question becomes -- I don't know how much further you want to go down this line of questioning concerning drug involvement. I'll allow you to make a proffer at this time through this witness if you'd like, and then I can make a determination concerning whether, number one, or it is the probative, whether it's relevant in this case. Number two, if it is relevant, whether or not the probative value outweighs the prejudicial effect. I can also weigh the question of whether or not this evidence provides any third-party guilt evidence that would be admissible under the rules. So at this time, I'll allow you to make a proffer, if you wish to go

further into this particular issue, Mr. Barr. Then I can make a ruling based on knowledge of where -- what this witness may know and what evidence might be available.

PROFFER

BY MR. BARR:

Q Did not you tell me in August of 2012 that hustling meant selling drugs?

A Yes, sir.

MR. BARR: That's it, Judge.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Do you wish to cross examine on the point?

MS. BAILEY: I do.

THE COURT: All right.

MS. BAILEY: For the purposes of this hearing.

THE COURT: Yes. This is proffer.

PROFFER

BY MS. BAILEY:

Q In time, how long before December 1st of 2008, how long before that was Aundry selling drugs?

A It wasn't long. It's -- when I found out about it, I told him, "If you continue to do this then I -- we can't be together."

Q Okay.

A And that's when he said he wasn't doing it.

Q And when did you all have that conversation?

A This was when I got pregnant with my oldest, so.
Q And how old was your oldest at the time of the murder?
A She was, she was two.
Q So to the best of your knowledge, in the two years prior to the murder, had Aundry been -- had any dealings with dealing marijuana?
A No, ma'am.
Q Okay. Was there any specific person or drug deal that you are aware of that would -- that Aundry felt was a threat to him?
A No, ma'am.
Q Okay.

MS. BAILEY: No further questions.

THE COURT: Anything further, Mr. Barr?

MR. BARR: No, sir.

THE COURT: All right. I'll hear from you, Mr. Barr.

MR. BARR: Your Honor, of course, first of all, I think the case that she cited is, is not on point. It deals with the issue of third-party guilt. That's not what this evidence --

THE COURT: Actually, we went back and looked at Judge Cole's ruling, and the ruling was relevance. Wasn't that what the ruling said? I mean, Lyles, uh-huh, that it was a Lyles issue.

MR. BARR: Uh-huh. So where are we now? I mean, I'm not

--

THE COURT: What do you mean where, where are we in now?

MR. BARR: No, I mean, I'm -- as far as the proffer we've completed the proffer.

THE COURT: Yes, sir. Where we are is she just said that she was aware that he had sold drugs.

MR. BARR: Yes, sir.

THE COURT: What -- for what purpose are you attempting to introduce it?

MR. BARR: Your Honor, she said that she knew all of his business.

THE COURT: Yes, sir.

MR. BARR: And inasmuch as her knowing all of his business, was selling drugs a part of his business.

THE COURT: Well, she's indicated not for the two, two years prior to that time.

MR. BARR: Well, Judge, if she testifies to that, that's fine with me.

THE COURT: Well, that's, that's what the proffer was. Now, the --

MR. BARR: All right, sir. I, I --

THE COURT: Do you wish to try to put that in front of the jury?

MR. BARR: Yes, sir.

THE COURT: All right. And I'm asking you for what

purpose.

MR. BARR: Your Honor, I think it's relevant because she knew -- because it deals with his business, which is what she said that, that --

THE COURT: Well, the issue before the Court is who committed this crime.

MR. BARR: Yes, sir.

THE COURT: I'm not sure whether he sold drugs two years prior has anything to do with this crime. I haven't connected those two dots yet.

MR. BARR: Uh-huh.

THE COURT: And I'm asking you if there's some evidence that connects those two dots.

MR. BARR: Well, well, let, let me, let me, let me --

PROFFER

BY MR. BARR:

Q Ms., Ms. Alston, now, are you telling this Court under oath that, that -- I think you indicated that your fiancé didn't bring the drugs home. Didn't you say that?

A Yes.

Q I mean, that's what you testified to in August of 2012, that he didn't bring them home with you and the children; isn't that correct?

A Yes.

Q So if he didn't bring them home when he was selling them,

he wasn't selling them at home, would you not agree, or out of the house?
A Yes.
Q So if he wasn't selling them out of the house, and he was selling them all along, you don't know whether or not he stopped selling them or not; do you?
A Yes. I do.
Q How do you know that?
A Because of conversation that me and Aundry had.
Q So in other words, you, you said you, you knew it because you took his word; is that, is that it? Ma'am?
A Yes. And I believed him.
Q The word of a drug dealer?
A You didn't know Aundry.
Q No, ma'am. I sure didn't. I know a lot of drug dealers.
THE COURT: Is that a question or an argument?
MR. BARR: I'll rephrase the question, Judge.
THE COURT: Thank you.
BY MR. BARR:
Q Aundry represented to you that he stopped selling drugs, is that -- that's what you're telling us now?
A Yes.
Q Now, you don't deny that with respect to confirming the truth of what he told you, you don't have any way of doing that and did not have any way of doing it other than to either

to take his word or disbelieve it?
A You ask me if I believed him?
Q I asked you whether or not you have any other way of confirming whether he was telling the truth or telling a lie other than to take his word?
A Well, we were together most of the time, and he didn't do it when --
Q My question was, you don't deny that you don't have any other way of confirming whether he was lying or telling you the truth other than to just take his word?
A Well, I didn't see him do it.
Q Did you understand my question?
MS. BAILEY: Objection, Your Honor. It's been asked and answered.
MR. BARR: Your Honor, she didn't answer the question. She's not being responsive to the question.
THE COURT: Well, I -- let me make this observation and ruling, the issue here is are we attempting to attack his character?
MR. BARR: No, sir.
THE COURT: What are we attempting to do by this evidence then?
MR. BARR: Your Honor, the witness testified that she knew all of his business. She even --
THE COURT: Yes, sir. And she's not testified thus far

as I know inconsistently from her prior testimony. We started off with an impeachment argument.

MR. BARR: Yes, sir.

THE COURT: And she has testified consistently. So my ruling is there's nothing to impeach her on thus far.

MR. BARR: Well, Judge, I'm not -- at this point I'm not attempting to impeach her. What I'm attempting to do is explore. Now, she got on the witness stand on direct.

THE COURT: Uh-huh.

MR. BARR: And she testified all how the, the victim decided to invest in a club and start a little restaurant and all, all these grand, grandiose things of a business nature, and she said she knows his business and, Judge, I think we're entitled to cross examine her on that.

THE COURT: Well, up to a point.

MR. BARR: Yes, sir.

THE COURT: But if you're going to bring in evidence of prior bad acts as to the victim, there has to be some relevance that overcomes the prejudicial effect of that testimony, some probative value, and I'm searching for the probative value.

MR. BARR: Well, Judge, I don't -- who is it prejudicial to? He's deceased.

THE COURT: It's prejudicial to the State's case. That's who made the objection.

MR. BARR: Well, Your Honor, I think the State was premature in their objection.

THE COURT: You're not answering my question, Mr. Barr.

MR. BARR: Yes, sir.

THE COURT: Now, let's get back to the point. What is the probative value of it? Let's, let's just discuss that. What does it prove?

MR. BARR: Judge, it proves that she obviously does not know his business, and of course, if we continued --

THE COURT: Well, no, she's acknowledged she knew he was a drug -- she's, she's acknowledged she knew he was a drug dealer. She and there's been no ---

MR. BARR: Well, Judge, that's as far --

THE COURT: Let me finish talking. Don't interrupt me, Mr. Barr, please.

MR. BARR: Yes, sir.

THE COURT: There has been no evidence from any source that indicates that he didn't stop selling drugs two years ago before this incident happened, and if that's her knowledge and belief, that's her testimony, but again, what probative value does the fact that he had sold drugs in the past have in this case? I'm trying to connect those dots, still. There is, there is a dot that a murder took place.

MR. BARR: Yes, sir.

THE COURT: There is a dot that he had, at least through

this witness, established that at some point in time he was a hustler or sold drugs. She says that he stopped two years before this incident occurred. Let's assume that he did or he didn't, okay. The case -- Burgess case talked about four or five witnesses who were willing to say the victim was selling drugs up until the time that he was murdered and that there were four or five people who had even threatened him, but the question, those -- the Judge in that case ruled that that was not relevant unless it could be connected to this murder somehow.

MR. BARR: Your Honor --

THE COURT: And I'm still not hearing from this witness any evidence that would connect this information to this particular crime.

MR. BARR: In, in the Burgess case, Judge, it's, it's my considered opinion that the Judge ruled on the issue of third-party guilt because -- but in this case, we've, we've not offered any evidence of any third-party guilt. This is the --

THE COURT: Just one second.

MR. BARR: -- Defendant's business that, that we're talking about. We're not offering in any evidence of third-party guilt, and that case dealt with third-party guilt.

THE COURT: Well, it says the State objected. The trial judge conducted an inquiry to determine the relevance of the testimony. Defense counsel argued testimony established drugs

were being sold out of Spears' apartment and bolstered the credibility of Lyles and Jeter. Excuse me. I was looking at the wrong case. Let me get to Burgess.

All right, sir. You may proceed.

MR. BARR: Your Honor, I don't -- I think I'm done. I mean, in terms of where we wanted to go with the issue once she explains what she meant by hustling that's as far as I intend to go.

THE COURT: Well, then we, we don't have any problem with this witness.

MR. BARR: All right, sir.

THE COURT: And she's acknowledged she did testify to that.

MR. BARR: I understand that, but then my next question would be then what is hustling.

THE COURT: Well, again, I'm --

MR. BARR: And, and, and, and, and she said that it's dealing drugs, and that's as far as I'd want to go.

THE COURT: Well, at this point in time, I'm not sure that that's -- that would be admissible in this case, again. So I'll allow you to recall the witness later if you get -- if we can establish some nexus between prior drug activity and this particular incident.

MR. BARR: Well, Your Honor, it's unfortunate that he was involved in drugs, but the mere fact that drugs, that in and

of itself was his business, and she's testifying regarding how he made his money, whether it was through the nightclub or, or --

THE COURT: Well, now, she said he was not making his money at this. Her testimony doesn't say that she was making money from drugs at this time. That's not what her -- that's not what the proffer has been so far.

MR. BARR: Well --

THE COURT: I know you, you would like to say that's what he was doing, but that's not what she said.

MR. BARR: "And you don't know of any other kind of activity that Aundry was involved in that generated money for him; do you?" Her response was yes. "Tell us about it." "Well, he used to, used to hustle." "Used to hustle?" And Your Honor, that's -- so in terms of, of, of her explaining to us where he was -- well, clearly she said that's where he was getting the -- getting his money.

THE COURT: Used to, that's what you just read to me.

MR. BARR: Yes, sir. Well, I mean, before that she said he's still doing a little bit of electric work, doing a little seafood work. Your Honor, I can't see how that's -- could not be relevant when she --

THE COURT: Well, I'm again, we're, we're -- from this witness --

MR. BARR: Yes, sir.

THE COURT: -- her testimony is thus far that he in the past had been involved in hustling, drug activity, that he had stopped two years, at least two years before that, I think she said when she was pregnant with her oldest child, which the child was two when this happened. So while she was pregnant, it would have been more than two years ago is her testimony thus far, that he stopped, and then you questioned whether she actually understood that or not and he -- she did say she was with him 24-7 and that he, you know, I understand those things, but there's been no admission or statement from this witness that would indicate that at the time that this occurred or any time immediately prior to that time that he was involved in drug selling activity. In fact, this witness testifies to the opposite of that. Now, if you, if you later on are able to show through other witnesses, then we'll -- I'll reconsider it. I'm not saying that you can't get there, but this witness is not going to get you there because she said it's been stopped for more than two years.

MR. BARR: Well, Judge, I think that taking her testimony as a whole, that, again, that would be an issue for the jury to decide whether or not to the extent that they found that, that it had some weight regarding what she testified to. It would be a jury issue.

THE COURT: Well, it'd be speculation at this point in time because there is no evidence upon which to, to make that

argument to the jury that I'm hearing thus far. I'm not foreclosing it throughout the trial, but at this point in time, I'm going to stop it as far as this witness is concerned. You made the proffer. She will be subject to recall at a later time if you think she has information she hasn't provided.

MR. BARR: Well, see, what happens, Judge, that would be under the theory -- I mean, that would be fine if we intended to pursue a theory of third-party guilt.

THE COURT: I don't know if you do or not.

MR. BARR: Well --

THE COURT: I have not tried this case before.

MR. BARR: No, sir.

THE COURT: So I don't know the answer to that question.

MR. BARR: No. I mean, I don't, you know, I don't -- so I mean, as far as, you know, having that opportunity in the future, but I do think that with respect to where we are --

THE COURT: That goes back to my question as to what is the purpose for which this line of questioning is being pursued, and it sounds like it's to attack the character of the victim. That's what it sounds like, since there's no third-party guilt being pursued.

MR. BARR: Well, it would seem to me that in terms of probative value just, just as she testified ---

THE COURT: Excuse me, if it's, if it's to attack the

character of the, of the victim, then we go into a Lyles analysis. If it's a third-party guilt theory --

MR. BARR: No, sir.

THE COURT: -- then there's a different analysis.

MR. BARR: Yes, sir. Uh-huh. I understand exactly what you're saying, but I just don't think that in terms of this being a, a Lyle kind of situation, I don't know that that would be applicable here, but it would certainly seem to me that if she testifies concerning his earnings for business purposes, and at the same time she's testified under oath and admitted that here is where -- this is how -- the fact that he made his earnings from, from -- by, by illegal drugs, I mean, that's, that's, that to me is, is not -- I mean, it just happened that that's what he did, I mean.

THE COURT: But, but her testimony has consistently been that he used to do that. I haven't heard any -- if there's an inconsistent statement there, I haven't heard it yet.

MR. BARR: Judge, her, her testimony -- she might, you know, and I've said, of course, subject to cross-examination. Now, Ms. Alston, do you know for a fact that he stopped selling drugs? I know you can't say.

MS. BAILEY: Your Honor, objection. I would have to object.

THE COURT: You've, you've asked it, you've asked that question already. Her testimony was as far as she knew, yes,

and of course, then you pointed out through your examine, which you have the right to, that she wasn't with him 24-7 and that he didn't keep the drugs at home when he sold it before. I'm aware of those things, but all that establishes is she may not know, but that's not an inconsistent statements. My ruling is that we won't go any further at this point in time. If later on that some relevance is established, then we can. There's not -- I've been told a third-party guilt theory is not being pursued. Therefore, it would have to be for some purpose of attacking character of the victim, and I don't find it relevant on that point, and since it's -- nothing's been established to show that he was doing that at the time or in a time close to this particular incident, and its probative -- prejudicial effect would outweigh its probative value. All right.

MS. BAILEY: Thank you, Your Honor. The only additional point that the State would have on that is with any future witnesses that before the jury hears any information regarding drug use or drug dealing by the victim that Mr. Barr --

THE COURT: I would ask that the Court be informed that we're going there, and allow a proffer on those as well. I certainly be willing to consider it, Mr. Barr, but I think that should be done outside the hearing of the jury before we decide whether we'll allow it in or not.

MR. BARR: All right, Judge.

THE COURT: All right. Do you wish to continue cross examination of the witness? I think we interrupted your cross examination. So you certainly have a right to, and I want you to.

MR. BARR: Well, are we back with the jury now?

THE COURT: I'm getting ready to bring them back in.

MR. BARR: Yes, sir. I'm ready.

THE COURT: Okay. Okay. Bring the jury in.

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

THE COURT: There he is. I thought we had missed someone. Ladies and gentlemen, I have made a ruling concerning an issue in favor of the State. It's one of those occasions where I told you I'd ask you to leave and I was making a ruling outside of your hearing. At this time, the Defense may continue its cross examination. Mr. Barr.

MR. BARR: Thank you, Judge.

CROSS EXAMINATION

BY MR. BARR:

Q Now, Ms. Alston, we're going to switch over. You said that you were at least familiar with several misunderstandings that Terron Dizzley had had with, with Dre?

A Yes.

Q Now, of course, you don't know how they were resolved or how they resolved their differences; do you?

A No, sir. I don't.

MR. BARR: The Court's indulgence, Judge.

BY MR. BARR:

Q Now, as far as the reason for coming onto this property where this club was, did, did, did Mr. Dizzley -- did you know why Mr. Dizzley came on, onto the property when you called the police to have him ejected?

A Well, he told me he wanted to get something out of the club.

Q And in fact, he told you and he told the police specifically what he wanted out of the club; didn't he?

A I'm not sure if he did.

Q Well, didn't you tell me in August of 2012 that he wanted his TV from the club?

A Yes. I believe I did.

Q Ma'am?

A Yes, sir.

Q So, he wanted a TV out of the club. Now, he was still there when the police was -- arrived; wasn't he?

A He was not.

Q Ma'am?

A He was not. He drove -- when HE drove past was when I pointed the vehicle out to the officers.

Q Do you remember me asking you in August of 2012, "Did I hear you say earlier that he asked about the TV," and your

response was, "He told the officer, once they came, he told the officer that he wanted, that he wanted his TV out of the club"?

A Well, I believe the officer came to me and told me that's what he wanted and the officer asked me what TV.

Q So the officer did - he, he did speak with the officer before he left the club?

A Yes. He did.

Q And that was the end of it? Ma'am?

A I believe so, that night.

Q Well, now, you know what I noticed? You keep referring to --

MS. BAILEY: Objection, Your Honor. He's testifying.

MS. BARR: I'll rephrase the question Judge.

THE COURT: Well, he -- let him, let him finish whatever he's doing. He does need to get to a question. I'm sure he will. Mr. Barr.

BY MR. BARR:

Q When you were on the 911 tape --

A Uh-huh.

Q -- you listened to it a few minutes ago; didn't you?

A Yes, sir.

Q And now, you recall the testimony that you have given in this courtroom today? You have some recollection of it; right?

A Yes.
Q Now do you not agree that every time the Solicitor asked you a question about Terron Dizzley you referred to him as D? Now, didn't you do that?
A Yes.
Q And do you know when the police asked you, "Who was it at the club," it struck me. Do you remember what you told the police?
A I told them Terron Dizzley.
Q You told them Terron Dizzley? So you knew the man's name all along; didn't you?
A I asked Aundry what was his name because he told me to call the police if he did not leave. I knew him as D, but I know they would ask me what's his first and last name.
Q And you told them what his first and last name was, Terron Dizzley?
A Yes, sir.
Q You didn't tell them D; did you?
A No, sir.
Q Now, according to you, when you came to the club it was after you learned that your boyfriend had been shot.
A Yes.
Q And you claim that he told you twice that D shot him.
A Yes.
Q Now you don't deny that you could see then that a

terrible crime had been committed. Your boyfriend was, according to you, bleeding on the floor.

A I didn't see him bleeding.

Q Oh, you didn't?

A No. I didn't.

Q Well, I thought you -- but you didn't -- you realized he had been shot?

A Yes.

Q And injured?

A Yes.

Q Now, of course, you stuck around until the police came; didn't you?

A Yes. I was there.

Q Now, tell the ladies and gentlemen of this jury, when the officers came, which officer that you went to and say, "Officer, my boyfriend just told me that D shot him"?

A Well, when the officer -- when they came, I was, I was outside on the phone speaking with his father.

Q Well, did you tell them before they leave that D told you or that your boyfriend told you that D shot him?

A I told them at the hospital.

Q At what hospital?

A Georgetown Memorial.

Q So you didn't, you didn't tell them at the club --

A No.

Q -- that you knew the identity of the person that shot your boyfriend?
A No. Because I was concerned about Dre.
Q Concerned about Dre. And your concern about Dre caused you to ignore -- now, wasn't the police asking questions about who did the shooting?
A When I got to the hospital.
Q They didn't ask -- they wasn't asking questions. They were there taking notes and taking statements from everybody to try and find out who did the shooting; weren't they?
A Yes. But at the time I wasn't -- I'm assuming the people that was inside of the club, they questioned -- the officers questioned them. I wasn't in the club when the officer came. I was outside at the road speaking with his father on the phone.
Q Now, Ms. Alston --
A Yes, sir.
Q -- you're going to tell us that you didn't know that the police was trying to find out the identity of the shooter?
A I'm not saying they wasn't.
Q And you know they were trying to find out; weren't you? Didn't you?
A Well, of course, you're going to find who shot somebody.
Q And but you didn't tell that, and the reason that you didn't tell them that because the man didn't tell you that.

A He did tell me, and I told them at the hospital what he told me.
Q Now, I want you to tell me which, which officer you told at the hospital because we're going to come back to that.
A I don't remember what officer I told that to.
Q You don't remember?
A No, sir.
Q Now, the misunderstanding that, that you claim that you were aware of that exists between Mr. Dizzley and, and Dre, it did not concern the nightclub; did it?
A Could you repeat what you said?
Q The misunderstanding that you claim at the time that Dre was shot, the misunderstanding that you claim that existed between him and Mr. Dizzley, it did not concern the nightclub; did it?
A It did.
Q Do you remember in August of 2012 I asked you the question, "Isn't it true that not one time did you ever hear Aundry and Terron Dizzley arguing about anything having to do with the nightclub?" That's the question I asked you.
A Uh-huh.
Q Take a look and see what your response was. Read it, please, ma'am.
A (As read), "I didn't hear them argue, argue about the nightclub."

Q "I didn't hear them argue about the nightclub." Now, either you misunderstood my question or you just told a lie in front of this jury a few minutes ago.
A No, sir. I believe that you asked me could I hear what Terron was saying on the phone.
Q No, ma'am. I asked you -- well, everybody heard what I asked you. I asked you whether or not you ever heard them arguing about the club, and you told me no, but -- and then you just told me a few minutes ago that you, that you did hear them arguing about it.
MS. BAILEY: Your Honor, there's no question here. He's just arguing with her.
THE COURT: I'll ask you to frame a question, Mr. Barr.
BY MR. BARR:
Q Now, about this D or Little D or Diz, do you know any other name that you, that you attribute to Terron Dizzley other than those three?
A No, sir.
Q Do you know the names of all of Aundry's acquaintance and associates?
A Not all. I don't know they first and last name, nicknames.
Q You don't know everybody that man knew; do you?
A No, sir. I don't.
Q Now, would you not agree that as far as D you don't know

whether or not he knew another D other than the one that you claim that is Terron Dizzley; do you?

A Well, that's the only D that I know that he knew of.

Q The only one that you know, but you do admit there could have been others; couldn't they?

A I'm not --

Q You just, you just not going to admit that you don't know?

MS. BAILEY: Objection Your Honor. Again, that's not a question. This is arguing.

MR. BARR: Your Honor, I have nothing further. I, I have nothing further of this witness.

THE COURT: All right. It's withdrawn. Redirect?

MS. BAILEY: Briefly, Your Honor.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. BAILEY:

Q Based on your personal knowledge of the relationship between Aundry Evans, Jr., and the man sitting over there at counsel table in between Mr. Barr and the young lady, based on your personal knowledge --

A Uh-huh.

Q -- what was the, what was the nature of their relationship? Were they getting along? Were they not getting along? Were they arguing?

A They weren't getting along. They were arguing.
Q Okay. Are you aware of the subject matter with which they were arguing about?
A Yes, ma'am.
Q And what were they arguing about?
A Diz wanted to become partners in the club.
Q Now, did you hear the exact words that came out of Diz, as you say, Diz's mouth regarding that argument?
A Yes.
Q And so what did you hear?
A He told --

MR. BARR: Your Honor, objection. At this point we've gone beyond the scope of cross-examination. Now, I would submit that we dealt with the issue of arguing. She's now going into specifics of a statement that she's getting ready to attribute to the Defendant.

MS. BAILEY: Your Honor, that was the subject of his cross. So I get to --

THE COURT: Overruled.

MS. BAILEY: -- go into it.

BY MS. BAILEY:
Q What words did you hear come out of Diz's mouth regarding that specific argument?
A He said, "Why you have your woman out here, pussy ass nigger. You come here and got your woman handling your

business."
Q Now when you testified in 2012 about this matter, were you lying? What -- why, why was your answer a little different than the answer that you've given today?
A Because I don't remember the exact words, but I remember them arguing.
Q Okay. Are you lying here today?
A No, ma'am. I'm not.
Q Were you lying then?
A No, ma'am. I'm not.
Q Are you giving testimony to the best of your recollection?
A Yes, ma'am. I am.
Q Did the TVs in the club belong to Diz?
A No, ma'am.
Q Who did they belong to?
A Aundry.
Q And how do you know that?
A Because we went to Sam and purchased the TV ourselves.
MS. BAILEY: I have no further questions.
THE COURT: Recross?

RECROSS EXAMINATION

BY MR. BARR:
Q How many TVs did you have in the club?
A There should have been one, two, three TVs.

Q Now, you, you don't deny that you just got through testifying that Mr. Dizzley came to the club, you even saw him at the door, asking and inquiring about one television. Isn't that correct?
A Well, when he came up to the door he didn't say he wanted a TV. He said he had to get something out of the club.
Q But now, you also just testified that, that he told the police and you were standing right there that he just wanted his TV. Didn't you just do that?
A He told the officer that, but when he first came to the club he pulled on the door saying that he needed to get in the club, he wanted to get something out of the club. He did not tell me before I called the officers that he wanted a TV.
Q What else did he tell you he wanted to get out of the club other than a television set?
A He didn't say it to me. He told the officers.
Q Well, do you know of anything else he wanted out there other than the TV?
A I don't know why he would want a TV out of the club.
Q Did you buy any TV set and put in the club?
A Me and Aundry went together to Sam's, and we bought three televisions for the club.
Q Do you know whether Terron bought a TV and put in the club?
A No. He did not buy a TV and put in the club because I

was there when the TVs got installed in the club.

Q Well, now, Ms. Alston, are you telling the ladies and gentlemen of this jury that this man just show up at the club and start asking about a TV that he doesn't even know is in the club?

A I don't know why he would want to do that.

Q Yes, ma'am. Thank you.

MR. BARR: I have nothing further, Judge.

THE COURT: All right. Ma'am, you may step down. Thank you very much.

MS. BAILEY: Your Honor, this witness has requested that she be released from her subpoena. I'm not sure where we stand on that.

THE COURT: I'm going to leave her subject to the call of the Court. She can leave at this point in time, subject to my sequestration order.

MS. BAILEY: Okay. Thank you, Your Honor.

THE COURT: You may call your next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Marvin Riley.

THE COURT: Sir, come forward to my left and be sworn.

THE CLERK: Please state your full name for the Court.

MR. RILEY: Marvin Riley.

THE CLERK: And can you spell your last name for us, please?

MR. RILEY: R-I-L-E-Y.

THE CLERK: Thank you.

Whereupon, Marvin Riley was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Please have a seat.

THE COURT: Ms. Bailey, your witness.

MS BAILEY: Thank you, Your Honor.

DIRECT EXAMINATION:

BY MS. BAILEY:

Q Please speak into the microphone, Mr. Riley.

A Yes.

Q What do you do for a living?

A I work at Amazon Fulfillment. I do temporary for SMX.

Q What did you do in 2008?

A DJ.

Q You were a DJ?

A Yes, ma'am.

Q Okay. Did you know Audrey Evans, Jr.?

A Met him briefly. Yes.

Q You met him briefly you said? If you could speak up a little bit so we can all hear you.

A Okay.

Q Did you meet him once or twice or how many times?

A Twice.

Q Okay. And did you know the man sitting over there at

counsel table in between Mr. Barr and the young lady?
A Yes. I did meet him briefly before I met Aundry. Yes.
Q Okay. And what's -- what -- how did you know this man?
A He came into a small club that I was DJ'ing at and saw me playing in there. Had a friend of his to get in contact with me and tell me he wanted, he wanted me to come in and play at his club down here in Georgetown.
Q And where did you come into contact with him? Was it here in Georgetown?
A No, ma'am. It was in Orangeburg.
Q Okay. And by what name did you know that man?
A By Dizzley. That's all.
Q Okay. And did you know his full name at that point?
A Not quite. I knew Shard and Diz. That's all.
Q And at some point did you provide DJ services for this man?
A Yes. I did.
Q And where was that?
A At Club Paradise here in Georgetown.
Q Okay. What was your understanding of this man's involvement in Club Paradise?
A He was a co-owner of this particular club is what I was told and got the understanding of. When I met Aundry, I got the same understanding from him.
Q And who actually hired you to perform DJ services at

Club Paradise?
A Mr. Dizzley did.
Q Did -- at some point, were you made aware of an argument between Mr. Evans and Mr. Dizzley?
A Yes. I was.
Q And what was your understanding -- first of all, how were you aware of that argument?
A I received a phone call from Mr. Dizzley that particular Saturday before the incident in question happened. He called --
Q And so, let's, let's make sure we're all talking about the same incident. You received a phone call on Saturday. Do you know -- when you say before the incident in question, which incident are you talking about?
A Before the murder happened so.
Q Okay. So the Saturday before the murder you received a phone call?
A Yes.
Q And it was from?
A Mr. Dizzley. Yes.
Q Mr. Dizzley. What did he tell you?
A He told me that he was at the club, and he was trying to get in the club. They wouldn't let him get in. He argued with some of the folks that were at the door, and he said that they -- the people at the door were informed not to let him

into the club, and he said he was trying to get my DJ equipment out, but they wouldn't let him touch that either. So that's when I got in my car and came down to Georgetown that night.

Q Okay. Had you been hired to perform any other DJ services at that point at the Club Paradise?

A Just the weekend before this -- before I got the phone call from him, was it that weekend? That weekend before I got the phone call from him I was supposed to be down here. Well, I did come down here. I was supposed to come that Friday. Didn't come that Friday. Then I got the phone call from him that Saturday and then I was scheduled to come back that next Friday.

Q And did you come back that next Friday?

A No. I did not.

Q Do you have any personal relationship with either or did you have any personal relationship with Aundry Evans, Jr.?

A No.

Q I mean, would you have called him a friend?

A No. We didn't -- we were just acquaintances. That's it.

Q Okay. And the extent of your knowledge of him -- was there anything beyond you providing DJ services in his club twice?

A No. There was not.

Q Okay. Now, as to your relationship with the man sitting over there, Mr. Dizzley, would you have called him a friend?
A We were just acquaintances, also.
Q Okay. And other than him seeing you in the club, perform at a club and hiring you for DJ services at Club Paradise, did you have any other relationship with him?
A Maybe see him in passing, you know, out in public, something like that, passing cars, maybe gas stations, things like that, but nothing, nothing really personal, no.
Q Okay.

MS. BAILEY: I have no further questions for this witness.

THE COURT: Mr. Barr, your witness.

CROSS EXAMINATION

BY MR. BARR:

Q Did he -- did, did Mr. Dizzley ever tell you that his name was Little D?
A I've heard that, but not from him I don't, I don't remember.
Q In other words, you've heard the name? Yes?
A Yes, sir.
Q That's what I'm talking about. Uh-huh.
A Yes, sir. I've heard the name. Yes.
Q Thank you, sir.

MR. BARR: I have nothing further.

THE COURT: Any redirect?

MS. BAILEY: Briefly.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. BAILEY:

Q You say you've heard the name Little D?

A I've heard the name Little D in like down this area, but I'm from Orangeburg. Very few times have I ever heard it like in, like in a -- in the club at the atmosphere itself that's where I've heard it but never in Orangeburg, anything like that.

Q Okay. And when you heard the name Little D, what was your understanding as to who was being referred to?

A I really just got an assumption it was being referred to as Mr. Dizzley.

Q So from your personal experience in the context of the club situation you were in, when someone referred to Little D, who were they referring to?

A They were referring to Mr. Dizzley's.

MS. BAILEY: I have no further questions.

THE COURT: Recross?

MR. BARR: No, sir.

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

A Thank you.

THE COURT: Do you wish to excuse the witness?

MS. BAILEY: Yes, Your Honor, the State would request

that he be excused from his subpoena.

THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: All right. Sir, you're free to go if you'd like. Thank you very much. All right. Ladies and gentlemen of the jury, at this time we're going to take our lunch break. As usual, when you leave the courthouse, I give you the same instructions every time you leave. Don't discuss the case with anyone, don't allow anyone to discuss it with you, don't listen to, watch or read media reports concerning the case, don't attempt to gather any information on your own, and should anyone attempt to contact you concerning your service, please report that upon your return. I have an official duty I've got to take care of. I'm going to be swearing in a new magistrate at 2:00 o'clock. So we'll start about 2:15. So I'll ask you to be back in the jury room at 2:15. We should be in a position to start the case again at that time. Hope you have a good lunch. You're free to go. Everyone remain seated while the jury retires.

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

THE COURT: All right. We're in recess until 2:15. Court will resume at that time. Thank you very much.

MS. BAILEY: Thank you, Your Honor.

***** OFF THE RECORD *****

(On the record. Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right. The State ready to proceed?

MS. BAILEY: Your Honor, my next witness is coming up the elevator as we speak.

THE COURT: All right. We'll start as soon as she gets here then. The Defense ready?

MR. BARR: Yes, sir.

THE COURT: All right. All right. We can call the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. If any of you had any difficulty in complying with my instructions during your absence from the courthouse, please stand.

(No response.)

THE COURT: It appears that all jurors have been able to comply with the Court's instructions. The State is in the presentation of its evidence. You may call your next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Jerliether Jones.

THE COURT: Come forward, ma'am, to be sworn, please. Come to the witness stand to my left right over here, please. Thank you. There we go.

THE CLERK: Please state your full name for the Court.
MS. JONES: Jerliether Antoinette Jones.
THE CLERK: And would you please spell it for us?
MS. JONES: J-E-R-L-I-E-T-H-E-R and Jones, J-O-N-E-S.
Whereupon, Jerliether Jones was called to the stand, duly sworn by the clerk and testified as follows:
THE CLERK: Thank you, please have a seat.
THE COURT: Ms. Bailey, your witness.
MS. BAILEY: Thank you, Your Honor.
THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Ms. Jones, do you have a nickname?
A Yes.
Q What, what name do you go by?
A Tony.
Q And where do you work?
A I work at Fast Point, which is a convenience store, right now.
Q Did you work all night last night?
A Yes.
Q What was your relationship with Aundry Evans, Jr.?
A I was his girlfriend.
Q And do you know who Naomi Alston is?
A Yes.

Q And what was his relationship with her to the best of your knowledge?
A I'm guessing his other girlfriend now. Yes.
Q At the time leading up to December 1st of 2008, did you all know about each other?
A No.
Q Okay. Do you recognize anybody sitting over at the Defense table over there?
A Yes.
Q Who do you recognize?
A D, which I guess is Mr. Dizzley.
Q Okay.
A And that's pretty much it.
Q And how do you know -- what did you call him?
A D.
Q Okay. Can you speak into the microphone a little more?
A Yes.
Q Thank you, ma'am.
A Okay.
Q What other names did you know him by?
A Little D and just D.
Q And how do you know him?
A Him and Aundry were friends, and they were going into business together.
Q And did you have personal knowledge of the nature of

their relationship?
A I have seen them together and went to -- we went to go visit him a couple of times at Orangeburg. Yes.
Q So you said "We went to go visit him"?
A Me and Aundry.
Q All right. So you went to Orangeburg to visit Mr. Dizzley?
A Yes.
Q And what names did Aundry call Mr. Dizzley?
A D and Little D, also.
Q Did you ever hear Aundry call anybody else in his life Little D?
A No.
Q To the best of your knowledge, did he know anyone else in his life or on TV or out there in the world that he would have referred to as Little D?
A No, ma'am.
Q Okay. Do you know whether Aundry Evans, Jr., and Little D or Mr. Dizzley were they getting along or were they not getting along at the time of December 1st, 2008?
A At that point, no, they were not getting along.
Q And how do you know that?
A Because they had had an argument about a couple of days previous to that in regards to, I guess, the club and money, wanting money, wanting money back, however else.

Q Okay. What was your understanding of that disagreement?
A That Dizzley, well, I guess was supposed to get his money back.
MR. BARR: Your Honor, object to hearsay.
MS. BAILEY: I didn't ask for hearsay, Your Honor. I asked for her personal knowledge and understanding.
MR. BARR: Objection to hearsay.
THE COURT: Well, if the question called for hearsay then it would be proper -- rephrase the question.
MS. BAILEY: Thank you, Your Honor.
BY MS. BAILEY:
Q What was your understanding of the disagreement between Aundry Evans, Jr., and Mr. Dizzley?
A My understanding.
MR. BARR: Objection. No foundation, Judge.
THE COURT: Well, I'll ask her to set a better foundation.
MR. BARR: All right, sir.
THE COURT: Set a better foundation, please, ma'am.
MS. BAILEY: Thank you, Your Honor.
BY MS. BAILEY:
Q Was it your understanding that they were disagreeing?
A Yes.
Q And how long had they been disagreeing?
A For about a couple of days.

Q And how did you know that they were disagreeing?
A From hearing them two argue back and forth on the phone.
Q Okay.
A And also knowing that he was taken out the club recently.
Q Okay. What was your understanding, based on your personal knowledge from being around both of them, as to what that disagreement was about?
A Money, something to do with money pretty much.
Q Did you know all the details of that disagreement?
A No.
Q Okay. Was there an occasion where there was a phone call -- did -- well, did they ever argue on the phone in your presence?
A Yes.
Q And can you describe, before you go into the contents of that, can you describe how that conversation happened? Who, whose phone was on?
A It was on Aundry's phone. Me and him was together. He had it on speakerphone. Dizzley decided to call, and in the beginning all I heard was, from being on speakerphone, that, you know, he wanted his money. Aundry stated that he would give it to him whenever he get it, and from there on he took it off of speakerphone.
Q Okay. So based on that, it was your understanding that

Mr. Dizzley expected some money from Mr. Evans?
A Yes.
Q Do you know what the money was owed for?
A No. I'm not exactly sure.
Q Okay. Now, did Mr. Evans spend any time with you before December 1st, 2008?
A Yes.
Q And can you describe that for us?
A Pretty much the whole weekend he stayed around the house or close to home, and --
Q When you say close to home, you mean your house?
A Well, at my house. Yes. The house that I was staying at with my parents, yes.
Q For how many days before December 1st, 2008, did he stay with you?
A I'll say about two days.
Q And what was your understanding of why he was staying there?
A Because he didn't just want to go to the club or either have to deal with the whole Dizzley situation or having to run into him.
Q During those days leading up to December 1st, 2008, while you were with Mr. Evans, to your knowledge, did he receive any phone calls or text messages from Mr. Dizzley?
A I'm not exactly sure.

Q Okay. Did you, after the shooting, did you have reason to meet with investigators?
A They -- yes. They came to the house to talk and pretty much get a statement as far as to what was going on.
Q Okay.
A Yes.
Q And in the course of that, did you share with them what you knew?
A Yes.
Q Okay. And did you know Terron Dizzley's name then?
A I didn't know his full name then.
Q What did you know him by?
A Little D and D also.
Q And did those investigators show you a photo lineup?
A Yes.
Q And did they suggest to you which picture to pick out or which one might be the answer they were looking for?
A No.
Q Okay. So did they explain to you that you could pick anybody or nobody at all?
A Yes. Pretty much. As they stated, he may be on this lineup or he may not be. So just look at the lineup, pick a picture.
Q Okay. I'm going to show you what has been previously marked for ID only.

A Uh-huh.
Q As State's Exhibit One.
MR. BARR: Your Honor, I will stipulate that she has identified Terron Dizzley as the person that she referred to as D.
THE COURT: Do you accept the stipulation or do you wish for her to testify concerning this?
MS. BAILEY: I wish for her to testify concerning this matter.
THE COURT: All right.
MS. BAILEY: Thank you.
THE COURT: The State does not stipulate.
BY MS. BAILEY:
Q If you could, just take a look at the front and back of that. This is State's Exhibit One for ID only.
A Okay. Yes, ma'am.
Q Okay. Do you recognize that?
A Uh-huh.
Q And what is that?
A My signature is on the back with the number five, and this is the number that I circled at the time.
Q Okay. So what does that mean? When you looked at that what did you pick out?
A Dizzley's picture stating that that, that was D, Little D.

Q Okay. So when you looked at that, they were asking you to identify who you knew as D or Little D; is that right?
A Yes. As Dizzley, pretty much.
Q And, and who did you pick out of there?
A Number five.
Q Okay. And do you see him in the courtroom today?
A Yes.
Q And where is he?
A Sitting at the table right there.
Q Okay. Did you have any independent relationship with Mr. Dizzley other than through Mr. Evans?
A No.
Q Did you know Mr. Dizzley before you knew Mr. Evans?
A No.
Q All right.

MS. BAILEY: I have no further questions for this witness at this time, Your Honor.

THE COURT: Mr. Barr, your witness.

CROSS EXAMINATION

BY MR. BARR:

Q So Mr. -- how, how long was it that you -- when did you meet the decedent?
A You say where?
Q When?
A I met him about five years prior to the incident, I

mean, back in 2002.

Q You all don't have any children?

A No.

Q So, on the night of December 1st when he was shot --

A Uh-huh.

Q -- he spent the previous night at your house?

A Yes.

Q Now, how did you learn he was shot?

A My brother called me and informed me that Andy, which is Aundry, was shot and that I need to come to the club.

Q What's your brother's name?

A Douglas Morris.

Q Douglas Morris?

A Uh-huh.

Q Now, think about this. Did Douglas Morris ever tell you that Dre told him who shot him?

A No. Not to --

Q Never told you that?

A Not till after the whole incident once we got back from the hospital he informed me exactly what happened.

Q When the word was circulating all over the place?

A Well, everyone already had known.

Q Pardon me?

A I say, well, it was pretty much already circulating then. I didn't see Douglas until after I got from the

hospital. I didn't talk to him none then.
Q You never talked to him?
A Douglas called me and told me what happened. He said come here. I came. By the time I got there, Aundry was already at the hospital.
Q So, you mean, Douglas, your brother, who was a good friend of Dre, called you to let you know that Dre have been shot and didn't tell you who shot him?
A He's pretty much scared. He's trying to tell me to come so I can come see what's going on with my, my spouse at the time, my boyfriend.
Q So you can do what now?
A I say he's pretty much was scared. He's calling me to tell me to come see what's going on with my boyfriend.
Q Now, who, who told you he was scared?
A You can hear it in his voice.
Q I see.
A It's not my first time hearing him scared before. That is my brother.
Q Well, yes. He -- I suppose he is your brother. You say he is, and --
A Do you need me to get records?
Q Pardon me?
A I say you need records for that? Yes. He is my brother.

Q No, ma'am. I don't need any records.
A Okay then.
Q No. I sure don't.
A All right.
Q But he was your brother. You all had a pretty good relationship. You cared about him. He cared about you.
A That's correct.
Q Now, of course, he was your brother?
A Uh-huh.
Q Still is?
A Till the day I die.
Q And he calls you and tells you that your boyfriend, the man that stayed at the house last night with you?
A Correct.
Q Probably slept in the same bed with him; right?
A Of course.
MS. BAILEY: Objection, Your Honor. I'm not sure of the relevance of that particular comment.
THE COURT: I'll sustain the objection.
Q Did you love him?
A Of course.
Q Now, you loved him, and your brother cared enough to call you even though he was scared and tell you that your boyfriend, who just was at your house last night, has gotten shot, and are you telling the ladies and gentlemen of this

jury that you didn't say who shot him?
A My first reaction is to ask --
Q No. Just answer my question, please.
A No. I did not ask that. Why would I ask who shot him if I'm trying to worry about what's going on?
A All right. Did you ask him how he got shot?
A No. I did not ask him how he got shot.
Q What did you do?
A I grabbed my coat, my shoes and I left and went to the hospital. That's what you do when someone get shot.
Q How did you know to go to the hospital?
A Because I'm going to assume that they're not going to leave him there at the club.
Q What hospital did you go to?
A Georgetown Memorial.
Q So nobody told you he was being taken to Georgetown Memorial Hospital?
A They --
Q You grab your shoes and you just haul off and going to Georgetown Memorial Hospital?
A No one told me he was being taken to Georgetown Memorial till I got to the club in which he was supposed to be at. When I got there, the ambulance was leaving, and they told me to follow them to Georgetown Memorial and which he would be at.

Q I see. So you didn't go to the hospital. You went to the club?
A That's what they say he got shot at the club. So I went to the club.
Q When you got to the club was he in the ambulance?
A Yes. He was.
Q He was in the ambulance?
A Yes. He was.
Q Did you see Ms. Alston?
A No. I did not.
Q You didn't see her anywhere around?
A No. I do not, not at that time.
Q Did you see your brother?
A I did not see him.
Q Did you see anybody you knew?
A Yes. I spoke with Gary, which happens to be there, which was one of the guys who when I pull up.
Q Who is Gary?
A His name is Gary I think Vereen. He was one of the guys when I pull up he was standing outside.
Q Gary Vereen?
A Yes.
Q Did you see any law enforcement people there?
A Yes. Of course, law enforcement is going to be there.
Q But you saw nobody else that you knew?

A I didn't care to see anybody else I knew. I was focused on getting to Aundry.
Q I know you didn't care. I just asked you --
A Yes. I see people I knew. Of course, you're going to see people you knew.
Q Tell me who you knew?
A I knew Douglas was going to be there. I seen Maurice, but I didn't talk to any of them.
Q You saw Douglas Giles?
A I saw Douglas Morris.
Q You all saw Douglas Morris.
A I saw Maurice.
REPORTER: You all are talking all over each other, please, sir.
THE COURT: You're going to have to let her answer before you ask the next question.
MR. BARR: I'm sorry, Madam Court Reporter. I'm going to slow down.
BY MR. BARR:
Q You saw Douglas Morris, your brother?
A Correct.
Q And you still didn't ask him then how did your boyfriend get shot?
A No. No. I did not.
Q And he didn't tell you; did he?

A All he cared to tell me is every, like everyone has said, go to the hospital.
Q Did he tell you how he got shot?
A No. He did not.
Q I see. You saw Maurice Giles. Didn't you see -- did you say you saw him, too?
A Outside. Yes. Standing up outside.
Q He didn't tell you how he got shot either; did he?
A I didn't speak to any of them. No.
Q But he -- I'm sure he -- did he see you?
A I'm not sure if he saw me. I can't see what he see.
Q But you saw him; right?
A I saw him.
Q And you know he was your boyfriend's ace --
A No. I did not know that.
Q Call him Mo; right?
A Yes.
Q And in fact, I believe it was Mo that, well, was the first person to call; wasn't it?
A How I'm supposed to know who called?
Q Well, you know he didn't talk to you?
A I didn't talk to him.
Q And he didn't tell you anything about how your boyfriend had got shot?
A As I stated previous, I received a call from Douglas to

come there.
Q Did Mo tell you --
A No. He did not.
MS. BAILEY: Objection, Your Honor. She needs to finish her answer.
THE COURT: Sir, just one second, one second. Let her finish her answer, Mr. Barr.
MR. BARR: Judge --
THE COURT: Then I'll, then I'll ask you to ask another question, and I'll see she answers that next one. Ma'am, you may finish your first answer.
A As I was stating to him, Douglas called me and told me, "Aundry has been shot. Come to the club." He didn't have to say anymore. I came. He did not tell me who shot him, where they shot him or why they shot him, just come.
Q Now, ordinarily, I think some of us --
A Uh-huh.
Q -- in a situation where we've got a boyfriend, very close friend that just got shot, some of us would probably almost spontaneously say, "How did he get shot or who" -- that's what some of us would do, but you didn't -- that thought never crossed your mind?
A Didn't you say some? That means not everybody is going to do that.
Q Yes, ma'am.

A So I did not do that.
Q Tell me do you agree with this. You don't know for what reason Maurice Giles, if he knew, didn't tell you how your boyfriend got shot.
MS. BAILEY: Objection, Your Honor. This has been asked and answered and --
A I'm about to say.
THE COURT: Ma'am, just a second.
MS. BAILEY: -- it asks for speculation. She's already said she didn't even speak with Maurice Giles. She wouldn't know what's in his mind.
A Thank you.
THE COURT: I'll sustain the objection. It's been asked and answered.
MR. BARR: Judge, I think I asked her whether she would knew, whether she knew.
THE COURT: I sustain the objection, asked and answered.
BY MR. BARR:
Q Well, inasmuch as -- you would agree that if neither one of these men mentioned anything to you about the method by which your boyfriend got shot it could have been because they didn't know or nobody had told them.
MS. BAILEY: Objection, Your Honor.
A Say what?
MS. BAILEY: Again, that calls for what someone else

knew. She would have no way to know that.

A Thank you.

THE COURT: I think there'd have to be a better foundation laid before we could get to that question. So I'll sustain the objection.

MR. BARR: Judge, I'll, I'll -- I'm going --

THE COURT: All right.

MR. BARR: We'll, we'll talk about it later. Thank you. I have nothing further for her.

THE COURT: Thank you, sir. Any redirect from this witness?

MS. BAILEY: No, Your Honor.

THE COURT: All right. Ma'am, you may step down. Thank you very much.

MS. BAILEY: Your Honor, may she be released from her subpoena?

THE COURT: Any objection to her being released?

MR. BARR: No, sir.

THE COURT: All right. Ma'am, you're free to go if you'd like. Thank you very much.

A Thank you.

THE COURT: The State may call its next witness.

MS. BAILEY: The State calls Douglas Morris.

THE COURT: Thank you.

MS. BAILEY: Your Honor, since she's been released from

her subpoena may she stay if she wishes?

THE COURT: If she stays she cannot be used later in the trial.

MS. BAILEY: State has no intent of introducing.

THE COURT: She can stay.

MS. BAILEY: I don't know. I believe she's on Defense witness list as well.

THE COURT: He's indicated he agreed to her release. Any objection to her staying, sir, to watch?

MR BARR: No sir.

THE COURT: Thank you. Sir, come forward to my left and be sworn. Right over here, sir. Thank you.

THE CLERK: Please state your full name for the Court.

MR. MORRIS: Douglas Morris.

Whereupon, Douglas Morris was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: Counselor, your witness.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Good afternoon, Mr. Morris.

A Good afternoon.

Q Do you have a nickname?

A D.J.
Q Okay. Can you speak into the microphone for me?
A D.J.
Q Thank you. How old are you now?
A I'm 20.
Q How old were you in 2008?
A 15.
Q How did you know Aundry Evans, Jr.?
A I knew him as a brother. Him and my sister had a relationship going.
A Okay. What's your sister's name?
A Jerliether Jones.
Q And did you know Mr. Terron Dizzley at the time?
A I've seen him four or five times before prior to the event, but I didn't actually have a conversation with him as knowing him.
Q Okay. In what context did you see Mr. Dizzley?
A Ma'am?
Q What occasion would you have had to have seen Mr. Dizzley?
A If Aundry brought him around the house just every now and then.
Q Okay. What was your understanding, based on your personal knowledge, of the relationship between Aundry Evans, Jr., and Mr. Terron Dizzley?

A He never talked about that with me.
Q Okay. Were you -- where were you on December 1st of 2008?
A I was at Club Paradise.
Q And why were you there that night?
A I was there to be a fryer.
Q Were you normally a cook there?
A No, ma'am. It's just --
Q How, how did that come about?
A -- it just happened. It happened to be a one-time thing. His cook called out short before he actually went in. So he asked me if I wanted to, and after I say yeah, he went and asked my mother.
Q And you say he. Who were you talking about?
A Aundry Evans.
Q Okay. And who all do you remember being in the club that night to the best of your recollection?
A I remember me, Aundry, Big Mo, Gary, a man they call Fro. There's -- that's all that I remember.
Q Okay. Did you know everybody in the club that night?
A No, ma'am.
Q Okay. Were these people in your peer group, people you would have gone to school with?
A No, ma'am.
Q All right. Did anything remarkable happen that night?
A Yes, ma'am.

Q Can you describe for us what that was?
A Aundry Evans got shot.
Q And can you tell us specifically what you remember about that event?
A What I remember about that event is I remember I was coming out to bring out an order of wings and I heard the door fly open, and when I heard it fly open, you know, it caught everyone's attention, everyone turned to look, and they seen a man come in with a black bandanna, black hoody, blue jeans on, and he came in an anger type fashion like he was going straight for a specific somebody.
Q And, and was he going for somebody in particular or was he looking around the club? What was he doing when he came in?
A He went straight to Aundry Evans.
A Okay. Did this man who came into the club did he have a gun on him that you saw?
A Yes, ma'am. He pulled out a nine millimeter like soon as he first got in.
Q You say it's a nine millimeter. Do you --
A Well, I didn't -- it looked more of a nine millimeter, but I know it was a black handgun.
Q Black handgun. So was it a long gun or a short gun?
A A pistol.
Q A pistol?

A Yes, ma'am.
Q Did it have a revolver chamber on it --
A No, ma'am.
Q -- that you could see? No, okay. Do you know what a shotgun looks like?
A Yes, ma'am.
Q Okay. Was it a shotgun?
A No, ma'am.
Q Okay. Did you see any other guns inside the club that night?
A No, ma'am. Soon as I saw him pull out his gun, I ducked down behind the bar.
Q Okay. Do you -- can you describe any further what that man who was masked looked like? Were you able to see his face?
A No, ma'am.
Q Were you able to see his skin tone at all?
A I, I was able to tell he was a little bit lighter than my complexion at the time.
Q Lighter than your complexion?
A Yes, ma'am.
Q Okay. Could you tell if he was white, Hispanic, black?
A Well, I knew he wasn't white or Hispanic.
Q Okay. How about height and weight to the best that you can remember?

A He, he was somewhere between five four to five six, probably anywhere between 140 to 155.
Q And how do you know that? How tall are you?
A I'm six one.
Q Okay. So when you come up with that height and weight, is that kind of based on where you were or other people you saw? What's that based on?
A That's, that's based on where I was.
Q Okay. When the man came into the club and went straight to Aundry, did he say anything?
A "I told you I would get you; right."
MR. BARR: Objection, Your Honor. Move to strike.
MS. BAILEY: Your Honor, I believe it's a res gestae statement of the crime. It goes to motive.
MR. BARR: Your Honor.
THE COURT: You wish to argue that, I'll ask the jury to step out and we'll discuss it. I'll be glad to let you have argument, Mr. Barr.
MR. BARR: Yes, sir.
THE COURT: I'll ask you to step to the jury room while we discuss the matter. As always, I'll ask you not to discuss the case until I've asked you to do so. You may retire.
(Whereupon, the following takes place outside the presence of the jury.)
THE COURT: Your objection, Mr. Barr? Be happy to hear

from you.

MR. BARR: Your Honor, not only is it hearsay, but it's a hearsay statement that's attributable to some person that we don't even know the person's identity.

THE COURT: Anything else you want to argue on that? I mean, I want you to state your objection fully. Then I'll hear from the State.

MR. BARR: Well, well, and of course, as to this statement, which is not -- which is, I think, first of all, the confrontation clause issue would, would certainly apply again to this statement, and the statement here is being alleged and the statement is actually coming from somebody that, that we don't even know who he is. So in addition to that, we would also make an objection under 403, under the 403 analysis, but clearly, Your Honor, the statements should not come in.

THE COURT: I'll hear from the State.

MS. BAILEY: Thank you, Your Honor. My first argument is this is not hearsay. It's not being offered for the truth of the matter asserted. The matter asserted is quote, "I told you I would get you." The truth of that statement is not an issue. That's why it's not being offered as hearsay. It's being offered as a res gestae statement that was an essential part of the crime. This is a murder trial. One of the elements of murder is malice. If the shooter, whoever the

shooter was, came into that club and said, "I told -- I was afraid of you," or "put down your gun," that would be essential as to whether or not it's murder or voluntary manslaughter or self defense.

THE COURT: Well, then it is, it is being offered for the truth of the information contained in the statement; isn't it?

MS. BAILEY: No, Your Honor. It's not being offered for whether or not he had previous -- the shooter had previously told, that's the statement, "I told you I would -- that this wasn't over." It's not -- the truth of that statement would be that he had previously told Aundry Evans, Jr., that this wasn't over.

THE COURT: Well, malice aforethought is an element of murder, and so it would show -- indicate that whoever said that may have thought about this ahead of time.

MS. BAILEY: Yes, Your Honor, it certainly does. It certainly does.

THE COURT: Okay.

MS. BAILEY: But regardless of whether or not it's hearsay I think it comes in. It's the State's position that it comes in as a res gestae statement as part of the, of the commission of the crime and that it goes to the motive of the crime, which is an essential element and something that the jury needs to know. Further, in Mr. Douglas's proffered testimony, Your Honor heard that in just a few moments Mr.

Douglas is going to testify that the victim was able to recognize the Defendant's voice. Now, as to the confrontation clause issue, I have two arguments. One is we've already covered the -- Your Honor has already ruled on the confrontation clause issue regarding the victim's statements. Confrontation clause regarding the shooter's statements, the shooter certainly -- that, that is a very circular argument because it would be the shooter identifying himself. There's no confrontation clause issue there.

THE COURT: It was not testimonial either and non-testimonial in nature.

MS. BAILEY: Yes, Your Honor. Yes, Your Honor. Thank you. Finally, Mr. Barr raises 403, that it's more prejudicial than probative. What a murderer says in the commission of said murder is most probative and, and the jury has a right to know that.

THE COURT: Okay. Anything further, Mr. Barr, you want me to consider?

MR. BARR: Judge, of course, when, when the statement is being attributed to the Defendant, and in addition to the objection that we've already made, the Defendant is, in essence, being forced to take the witness stand or forced to testify and at least take the witness stand and say, "Look, I didn't make such a statement," but in this kind of situation, he has a -- he, he certainly has a right not to take the --

but it's almost -- he's almost being compelled in order to, to contravene this statement to get up and say, "I didn't say it," and quite frankly, Judge ---

THE COURT: Well, certainly the Court would never place on a Defendant a requirement that they offer any evidence or any testimony at all. That's not --

MR. BARR: Yes, sir. Your Honor, I understand the Court would not do it. The jury may very well feel it, well, you know, why he didn't -- they may feel that, well, you know, he, he had an obligation to and he, and he should have got up and at least say that he didn't make the statement, but Your Honor, clearly, we certainly do believe that because it's so prejudicial. Moreover, for the State to suggest that the confrontation clause does not apply, I don't see why it wouldn't because in this case somebody is testifying against the Defendant and, and that person we don't know who he is.

MS. BAILEY: Your Honor, I just have a few brief points to add. First of all, the person who's testifying against the Defendant right now is Douglas Morris, and he's available for cross examination. Second of all, I would, I would think that an appropriate analogy would be in an armed robbery. In the commission of an armed robbery the Defendant or the robber, whoever they are, would make some statements such as, "Give me your money," that would go to motive and it would prove an essential element of the crime. So just as that statement

would always be admissible in an armed robbery, a statement of motive at the time of the killing as the trigger is being pulled is going to be an essential element for the jury to know in a murder.

THE COURT: All right. Just give me a moment. All right. It's going to be my ruling that the, that a statement made in such circumstances by someone who is in the process of committing a crime such as firing a weapon at another person in a somewhat crowded bar or sports club would qualify as a statement relating to or a -- to a startling event or condition made while the declarant was under the stress or excitement caused by the event or condition. Therefore, it would qualify as an excited utterance and would constitute an exception to the hearsay rule if it were hearsay, and in this case it may very well be hearsay since I think it does relate to one of the elements of the crime that's alleged, but I do find that it is an excited utterance and would qualify as a hearsay exception. Also, I find that the probative value is not outweighed by the prejudicial effect in the case, and so therefore, I will allow the testimony.

Anything further before we call the jury back?

MS. BAILEY: Nothing from the State, Your Honor.

THE COURT: All right. Bring the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. I have overruled the objection. You may proceed with your examination, Ms. Bailey.

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q Mr. Morris, to remind the jury where we were, can you tell them if the shooter said anything when he came into the club and approached Mr. Evans?

A "I told you I would get you; right? I told you this wasn't over."

Q Can you speak into the microphone?

JUROR: We can't hear you.

A "I told you this wasn't over."

Q And what happened after he said that?

A After he said that he proceeded to fire five to seven shots.

Q What did you do at that point?

A At that point I was already down behind the bar.

Q And how long from when you went down behind the bar until you felt like it was safe to come out?

A About a minute.

Q When you came out what did you do?

A I went straight to Aundry.

Q Did you hear any other shooting?

A No, ma'am.

Q Did you hear anything happening outside?
A No, ma'am. I wasn't focused on outside.
Q Okay. Did you see anything happening outside?
A No, ma'am.
Q Okay. And when you went to Aundry, what was his condition?
A He was on the floor holding his stomach.
Q Was he conscious?
A He was, he was conscious, but you could tell he was going out very fast.
Q Did he seem to you to be clear headed?
A Yes, ma'am.
Q If you had to describe his manner what would you describe it as?
A He was shocked.
Q And what makes you say that he was shocked?
A You could see it in his face like he, he was shocked at the fact that he was shot.
Q Who else was -- did, did anybody else tend to Aundry with you?
A Mr. Maurice, another man named Gary, and those are the only two that I know, that I knew myself. There were more around, but those are the only two that I knew.
Q Okay. Did you hear Aundry Evans say anything?
A He said, "I can't believe Little D did this to me. I

recognize his voice."
Q Did you call anybody?
A After the ambulance got there I did go outside and call my mother.
Q Call who?
A My mother.
Q Did you ever contact your sister regarding this event?
A She was living at my mother's house. So when I talked to my mother, it was basically like talking to her.
Q Okay. What did you do next? What did you do after you helped tend to Aundry?
A There wasn't much I could do because when the police got there they starting clearing out the scene.
Q Okay. Did you speak with police that night?
A No, ma'am. I didn't.
Q Did they ask to speak to you?
A No, ma'am. I, I didn't even want to be out there. Like soon as my mother came, I left.
Q Okay. Did you ever speak to police concerning this incident?
A I spoke to them the next day.
Q And when police -- was that at the station or at your house or where was that?
A That was at my house.
Q At your house?

A Yes, ma'am.
Q Did you cooperate in the investigation?
A Yes, ma'am.
Q Did you tell them the truth?
A Yes, ma'am.
Q Did you ever hear Aundry Evans, Jr., who you call a brother, refer to anybody else as Little D or D?
A No, ma'am.
Q Okay. So if he says Little D or D, who do you think he's referring to?
A He was referring to as Terron.
MS. BAILEY: Beg the Court's indulgence for one moment.
THE COURT: Yes, ma'am.
BY MS. BAILEY:
Q Did you walk with Aundry to the ambulance or did you stay inside the club while he was being taken to the ambulance?
A I stayed inside the club.
Q Did you hear Aundry make a statement to anyone else regarding who had done this to him?
A Just to people that was around at the time when he first got shot and he fell.
Q Okay. Do you know who Naomi Alston is?
A Yes, ma'am.
Q Did you see her there that night?
A Yes, ma'am. She did come out there that night.

Q And did she get an opportunity to speak with Aundry?
A Yes, ma'am. She did.
Q Were you close enough to them that you could hear what was happening between them?
A No, ma'am.
Q Okay. All right. I'm going to show you what's been previously entered into evidence as State's Exhibit Number Eight. It's been brought to my attention that your monitor is real fuzzy. So I'm going to have you look at the actual picture. Okay. It's on everybody else's monitor. First of all, does that look familiar to you?
A Yes, ma'am.
Q And can you tell us what that is?
A That's the pool area where they were playing, I mean, playing pool at when Aundry got shot.
Q All right. Now, looking at that, can you tell us -- you said you were coming out of the kitchen when this all started to happen. Where in relation to that picture is the kitchen?
A Well, it would be behind the cameraman.
Q Behind the camera, the person taking the picture?
A Yes, ma'am.
Q Okay. And where is the side -- would you -- what, what -- which door was it that the gunman came in?
A He would be coming in where the cameraman is at right now.

Q Right where the cameraman is standing?
A Yes, ma'am.
Q Okay. And where was Aundry standing?
A He was standing the, the corner closest to us on the second pool table on the left.
Q Okay. Was he between the two pool tables?
A Yes, ma'am.
Q Okay. So can you describe based on looking at this picture the path that the gunman took to get to Aundry?
A It is a straight path. If you -- if the camera was turnt around you'd be looking directly at the kitchen and then you'd have the front door right here.
Q Okay. So when the, when the gunman came in the door right where that cameraman is standing, which path did he take to get to Aundry?
A He made the right and he came along the outside of the bar.
Q Okay. All right. I'll take that back now.
MS. BAILEY: I have no further questions for this witness at this time.
THE COURT: Mr. Barr, your witness.

CROSS EXAMINATION

BY MR. BARR:
Q Mr. Morris, now, as I understand it, when the --
THE COURT: Mr. Barr, I think we should note that your,

your cross examine is subject -- examination is subject to your previous objections; is that correct?

MR. BARR: Sir?

THE COURT: Your cross examination is subject to your previous objections; is that correct?

MR. BARR: Yes, sir. Yes, sir.

THE COURT: All right. That's noted on the record. You may proceed.

BY MR. BARR:

Q When the gunman came in and you heard the first shot, did you actually see that shot being fired?

A I was down behind the bar.

Q So did you stay down behind the bar until the firing stopped?

A Yes, sir.

Q Now, the gunman that came in, was that gunman the only person firing shots?

A I can't tell you because I was down behind the bar. He was the only person pulled the gun out. When I seen the gun, I ducked down.

Q So you didn't see anybody else that was involved in this shooting other than just that single gunman?

A Yes, sir. That was the only one -- the only person I've seen.

Q So then when Aundry got shot you were down behind the

bar?
A Yes, sir.
Q I thought you said a few minutes ago that Aundry said that, "I told you I would get you; right?" Now, you, you said Aundry said that; right?
A Aundry didn't say that.
Q Pardon me?
A Aundry did not say that.
Q That's what the gunman said, I mean.
A Yes, sir.
Q And you said the gunman said something else. I mean, that's what you just said on the witness stand.
A He said, "I told you I would get you."
Q Now, you were on the witness stand just a few minutes ago. You don't recall making another statement that you said the gunman said?
A I can't remember clearly exactly what he said. It happened in 2008, and this is 2014. Can you tell me what you did five years ago?
Q You can't remember what you just said on the witness stand, but you can remember what the gunman said in 2008. Sir?
THE COURT: Is that a question?
MR. BARR: Yes, sir.
A I can remember.

MS. BAILEY: Your Honor, I'm not sure what the question was.

THE COURT: I'm going to ask you to frame it in the form of a question, please. You made a statement that he couldn't remember --

MR. BARR: Well, I, I, I just simply --

THE COURT: -- what he just said.

MR. BARR: --- asked him you can remember what happened in 2008, but you can't remember what you just said a few minutes ago in this courtroom, and his response is --

THE COURT: That's -- that, that really wasn't a question. That's a statement, but I'm going to ask you to ask questions, Mr. Barr.

MR. BARR: Well, Judge, I think he could have said yes or no.

THE COURT: Well then frame it in the form of a question, Mr. Barr.

BY MR. BARR:

Q Have you ever had problems with your memory? Have you ever had problems with your memory?

A Yes, sir.

Q Oh, you have?

A I can watch TV right now. You can ask me 20 minutes later what I just watched and I won't be able to tell you. In other words, if I just did it I won't be able to tell you

right then, but it'll eventually all come back to me.
Q How long you been like that?
A All of my life that I know.
Q When did you tell one of the police officers that you overheard the gunman make a statement?
A The day after this, the day after the shooting went down.
Q Now, do you recall which police officer you told?
A No, sir. I don't.
Q When did you tell the police, if you did, that you heard Aundry make a statement?
A December 2nd, 2008.
Q That you heard Aundry make a statement?
A Yes, sir.
Q And do you know who you told that to?
A I don't know which police officer.
Q Where were you at the time that you told them?
A I was at my mother's house.
Q When did you tell your sister, and when I say tell your sister, when did you tell your sister that Aundry had told you who shot him?
A The same night, the night everything happened.
Q The same night.
A After I got home, December 1st, the same night.
Q You sure?
A The same night Aundry got shot is the same night I told

them everything that happened, everything Aundry said. I'm pretty sure. I am -- I'm mostly sure.

Q What your sister's name?

A If, if, if it ---

Q What's your sister's name?

A If it wasn't that same night, it was the day after when I was talking to the sheriff.

Q What's your sister's name?

A Jerliether.

Q Thank you, sir. I have nothing further.

THE COURT: Redirect?

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. BAILEY:

Q Would you like some water, D.J.? Tell us again how old you were when this happened.

A 15.

Q You ever been through anything like this?

A No, ma'am.

Q You ever been around a shooting?

A No, ma'am.

Q You ever been around somebody that got killed?

A No, ma'am.

Q Do you remember to the word, to the article, to the a and

the the exactly what the shooter said when he, when the shooter shot Aundry?
A No, ma'am. I don't remember exactly what he said.
Q Do you remember the spirit and the gist of what, what he said?
A Can you explain to me what you mean by that?
Q Do you remember -- what is your memory of what the shooter said?
A My memory is, "I told you this wasn't over; right?"
Q Could a few of those words be a little different maybe?
A It, it could be.
Q Did it definitely come from the shooter?
A It definitely came from the shooter.
Q The police officer that you told this to at your mother's home the next day, do you remember if he was white or black?
A He was black.
Q I have no further questions.
THE COURT: Recross?
MR. BARR: No, sir.
THE COURT: All right. Sir, you may step down.
You wish to excuse the witness?
MS. BAILEY: Yes, Your Honor. I request that he be released from his subpoena.
THE COURT: Any objections?
MR. BARR: Yes, sir.

THE COURT: You want him --

MR. BARR: We may recall him, Judge.

THE COURT: All right. He's subject to recall by the Court. Sir, if you'll step outside. Thank you very much.

MS. BAILEY: Your Honor, it's my understanding Mr. Morris has plans for the afternoon. Could he -- if we have good --

THE COURT: He's subject to recall by the Court.

MS. BAILEY: Okay. Can he go for the afternoon if he comes back at a later date?

THE COURT: Yes.

MS. BAILEY: Thank you.

A Thank you.

THE COURT: I'm just want him to be aware he's subject to being recalled by the Court. He's aware of that.

MS. BAILEY: Thank you. Thank you.

THE COURT: You may call your next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Maurice Giles.

THE COURT: Come forward, sir, to my left and be sworn.

THE CLERK: Sir, please state your full name for the Court.

MR. GILES: Maurice Giles.

THE CLERK: Please spell it for the Court.

MR. MILES: M-A-U-R-I-C-E, G-I-L-E-S.

THE CLERK: Thank you.

Whereupon, Maurice Giles was called to the stand, duly sworn by the Clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: All right. Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Do you have a nickname?

A Mo.

Q Anybody call you Big Mo?

A Yes, ma'am.

Q Who calls you that?

A Just about everybody.

Q Did you know Aundry Evans, Jr.?

A I knew him for about two, three weeks.

Q And how did you know him?

A The club that he had got I used to run before him and then he asked me to come back out to help him get the crowd out for him.

Q Did you have any other relationship with him?

A No, ma'am.

Q How about do you know Terron Dizzley?

A No, ma'am.

Q Never seen him before?

A Never met him.
Q Were you at the club on December 1st, 2008?
A Yes, ma'am.
Q Did anything extraordinary happen that night?
A Yes, ma'am.
Q Can you describe for the jury what happened?
A That night at the club was in there shooting pool, watching football, eating oysters. A gunman came through the door waving a gun, ran past me, started shooting Aundry. After Aundry fell to the ground, I dropped down under a pool table.
Q All right. Let's, let's back up and get some more detail. Okay? You said a gunman came into the club?
A Yes, ma'am.
Q Can you describe that gunman?
A Gunman was a short black male, had a mask on.
Q When you say short, how tall do you mean?
A Probably about five five.
Q How about weight? Was he overweight? Was he real skinny?
A A little stocky, I mean, that five years ago, you know. I was a little skinnier so. I guess they was probably about 165 pounds, 70 pounds at the time.
Q That's what the gunman was?
A Yes.

Q Could you tell whether the gunman was white, black, Hispanic?
A Black.
Q Okay. And how could you tell that?
A Because he had a mask over his face. He had a scarf over his face and a hat on, and the only thing I could see is up in the eyes area.
Q When the gunman came in, did he roam around the club? Did he talk to anybody? What did he do? What were his actions when he came in the club?
A Like I said, his actions were when -- after he pushed the guys that was going out of the club out of the way and came through, I was the next person that they met. He ran right by me and said a couple of things to Aundry and started shooting Aundry.
Q Did you hear what he said to Aundry?
A That, "I told you that it wasn't over with."
Q And did you see the gun?
A It was a -- I think it was a 45, 40-cal, I mean.
Q Okay. Was it a big gun or a little gun?
A Small gun.
Q Is it a handgun?
A Handgun.
Q Okay. Was it a shotgun?
A No. Handgun.

Q Okay. Was it a rifle?
A No. Handgun.
Q All right. Do you know if it had a revolver on it?
A No revolver, automatic.
Q All right. Did you witness the gunman pull the trigger?
A Yes.
Q Did you witness the gunman pull the trigger how many times?
A About four or five times. Like I say, now, I was in shock at the time, too. I was just standing there trying to figure out what was going on.
Q Did you hide at any point?
A After Aundry hit the floor, and then I realized that the gunman wasn't playing, and then after that, I jumped on the floor.
Q Okay. What did you see the gunman do next?
A After the -- after Aundry dropped on the floor some other guys that was hiding behind the, the bar ran out into another part of the club. The gunman went behind them. He didn't go all the way in. He let off another two shots and then turned around and ran back out the club.
Q Did you hear any gunfire outside of the club?
A No, ma'am.
Q Did you see anything happening outside of the club?
A I was in the club the whole time.

Q Okay. Did -- after the gunmen left the club what did you do next?
A I got up off the floor from under the pool table, and I went over there to assist Aundry.
Q When you say assist him, what did you do?
A I went and actually was holding pressure to the bullet wounds that he had and just keeping him conscious and stuff.
Q Okay. Was he conscious?
A Yes.
Q Was he clearheaded?
A Yes.
Q Could you describe his demeanor?
A He was most, mostly in shock as in excited about what just happened to him.
Q Did he make any statements to you?
A The only thing he said was, "I can't believe that that was Little D. Little D shot me."
Q Who else was around you then at that point?
A During that point D.J. He was over there screaming and stuff and I told him to go get me some towels and stuff and Willie Stanley. That's the guy who I told to call 911.
Q Does Willie Stanley have a nickname?
A Oh, man, I'm not sure of his nickname.
Q That's all right. We'll ask him. Did -- what else did you do?

A I sat right there with him the whole time until the ambulance came.
Q Did you call anybody?
A I didn't call anyone.
Q All right. At some point did Naomi Alston come?
A Yes. She came.
Q And do you know Naomi?
A Yes, ma'am.
Q All right. Did she get there before or after police?
A I think she got there before the police came.
Q And did she have an opportunity to speak with Aundry?
A Going inside the ambulance.
Q Okay. And were you close enough to overhear that conversation between Naomi and Aundry?
A Yes, ma'am.
Q Did you -- what, what did you hear him say to her?
A He was basically, he was basically saying the same thing he told me on the floor, that it was Little D. Little D shot him. He could tell by the voice.
Q What did you do next?
A After that I left and went on about my business.
Q All right. Did you interact with law enforcement that night?
A A couple of hours later they was looking for me, and it was probably a little bit after 12:00 o'clock when I went back

down to the police station to write a statement.
Q Did you make other statements to law enforcement?
A Yes, ma'am. I made a statement that night a little bit after 12. I made another statement probably 2:00 o'clock that day, another statement, it was a couple of statements.
Q Did you remember to include every little detail in every one of your statements that were made at 3 a.m.?
A No, ma'am.
Q. Okay. At this point have you told us everything that you recollect from that night?
A Yes, ma'am.
Q Did you tell police at some point everything that you remembered from that night?
A By the time we got through with all the statements. Yes.
Q All right. All right. The Court and jury is looking at what's been previously entered into evidence as State's Exhibit Number Eight. It's real fuzzy on your screen. So I'm going to hand you the actual picture to look at.
A Okay.
Q Do you recognize that?
A Yes, ma'am.
Q Okay. What's -- what is that a picture of?
A That's a picture inside the Paradise Club.
Q All right. What door did you see the shooter come in?
A The door that the shooter came in is not even in this

picture.
Q All right. Where, where is it in relation to the picture?
A It's actually back this way to the right -- well --
Q Okay. So the person who took the picture, would they be standing near that doorway?
A Yeah. Whoever is taking the picture is standing where the doorway is that.
Q All right. Where were you standing?
A I was standing by the first pool table.
Q Okay. When you say the first one, is that on the left or the right?
A The right.
Q Okay. As we're looking at it right now, it's the pool table on the right?
A Yes, ma'am.
Q All right. Where was Aundry standing?
A Aundry was standing next to the other pool table by that black pole right there.
Q Okay. Can you describe the path that the shooter took from the moment that they entered?
A They came in. They came straight down, which way the, the picture is taken they made a left by that pole right there. Aundry was standing right there by the black pole and he just started shooting.

Q Okay. Thank you.

MS. BAILEY: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

BY MS. BAILEY:

Q Had you ever known Terron Dizzley to be up at the club, at Club Paradise?

A I've heard it, but I never seen him.

Q And were you friends -- you were friends with Aundry Evans you testified?

A Like I saying, for the first two or three weeks since I'd known him.

Q Did you ever hear Aundry Evans refer to anyone else as Little D or D?

A No. Like I said, he had mentioned the name, but I never saw a person, never saw him.

Q Okay. Well, when Aundry Evans talked about someone named D or Little D, did he know more than one person by that name?

A No. He was just talking about the same person.

Q He was talking about one person?

A Yes.

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

THE COURT: Mr. Barr, your witness.

CROSS EXAMINATION

BY MR. BARR:

Q Now, you said Aundry Evans did not know anybody by the name of Little D other than Terron Dizzley?
A That's what I just stated.
Q No, you -- that's what you said; right?
A That's what I said.
Q How do you know that?
A She just asked me a question, which the question was, did I understand that he knew anybody else besides that one. That's the only one that he was talking to about me.
Q So, so then you don't know whether or not he actually knows somebody else by that same name?
A Nope. Don't know, and I have never met that man before so.
Q When the shooter left the club, did you see the shooter when he left the club?
A You talking about as they exiting the door?
Q Yes, sir.
A Yeah. I was looking at him.
Q Where did he go?
A He went back outside.
Q What did he do when he got outside?
A I don't know. I didn't go outside.
Q So you didn't see him when he -- he left the club at some point, but you didn't see him leave?
A Yeah. He went out the door. The door he entered is the

same door he went out.
Q Well, I mean, when he went out of the door he must've gone somewhere. Nobody checked to see where he went?
A We got a man dying on the floor. I'm supposed to go run and see where the gunman going at. I wanted to go help that man.
Q The question was --
A And I answered your question.
Q -- did you or anyone else check to see where the shooter went?
A Somebody else probably did. I didn't. You asked me what I did. I went to assist the guy that was on the floor. I didn't check no time, no watch, nothing. I didn't go looking for somebody to get -- to be shooting at me.
THE COURT: Sir, I'm going to ask you just be responsive to the questions. Don't, don't ramble on. Thank you, sir. You may ask your next question, Mr. Barr.
Q Now, when you just a few minutes ago and in response to a question that the Solicitor asked you, she asked you whether you -- when you gave your statements did you remember every little detail. Those were the words that she used. Do you recall that?
A Yes. I recall that.
Q Now, when you were asked to give the first statement did the police officers tell you that they needed the truth from

you?
A I'm listening. What you need?
Q I'm asking you a question. Did they tell you they needed the truth?
A Okay. They need the truth, but we all know that anybody that's in shock at the time ain't going to remember every little detail. Now, if you wake up tomorrow morning, yeah, I'm going to remember a little bit more that happened.
Q Now, take a look at what's been marked as Defense Exhibit Number One.
MS. BAILEY: Objection, Your Honor. If he shows that to the witness I believe he needs to lay a foundation.
Q You did give them -- give the police a statement dated December 2nd, 2008; didn't you?
A Yes.
Q In your own handwriting?
A Uh-huh.
Q Is this it?
MS. BAILEY: Your Honor, I'm going to have to object again. I'm not sure if he's trying to refresh his recollection or impeach him with that statement, but he's not laid --
THE COURT: I don't either. He's asking if he can identify the statement, and that's all he's asked him thus far. I don't know where that's going after that. So I'll

overrule the objection, and he has identified the statement.
Q Is this your statement?
A Yes, sir. That's one of them.
Q Yes.
A I gave two or three that same day.
Q Is this the first one you gave?
A That's the first one after the shooting. Yes.
Q Now, in terms of every little detail, as the Solicitor indicated, don't you agree that everything, little details that you claim you heard Mr. Dizzley say, and everything that you claim that you heard Aundry say, you didn't write a word of it in this statement; did you?
A Well, I didn't know Mr. Dizzley, and I did say that. So I can't say Mr. Dizzley said that. I told you what the gunman said.
Q Well, I mean, doesn't it strike you so as unusual that as far as the little details, my goodness, the things that you came to court today and say you heard Mr. Dizzley say, you didn't write any of that down, and you didn't write down a word that you claim that you heard Aundry say, another little detail.
MS. BAILEY: Objection, Your Honor. There's no question here. It seems to be more testimony from Mr. Barr.
THE COURT: He may have finished it with a question, but you all were talking at the same time. So I'll ask you to

rephrase the question, Mr. Barr, so I can follow it.
Q Now, Mr. Miles --
A Giles.
Q Giles. You, you, you would agree that if Aundry told you who he believed shot him that would be something important; wouldn't it?
A You're right.
Q I mean, it wouldn't just be a little detail; would it?
A You're absolutely right.
Q And if you heard the gunman come in and say, made a statement as to why he's shooting, that wouldn't be just a little detail; would it? That'd be something important; wouldn't it?
A You're right.
Q So you don't deny that the two most important things that you could have told the police you left both of them out of your statement.
A Well, actually, I put it in my statement. It just wasn't in the first one. You, for some reason you got the first little statement. I think I told you I talked to them three or four times, and every time you keep on remembering a little bit every time. So let's see the other statements.
Q Well, that's in your own handwriting; isn't it?
A All of them in my own handwriting.
Q Who did you talk to between the time you gave the first

statement and the time that you gave the other statement that you claim?

A Nobody else but the police. I been down there all day, all night.

Q Aundry was your friend; wasn't he?

A He was an associate. I only known him two, three weeks.

Q Now, I want to make sure I got this straight. The gunman came in, had a mask on, or did he have on a black cap?

A He had a scarf over his face and a black cap.

Q Was his mouth covered?

A Yes.

Q Now, when he supposedly made this statement that you claim you heard, did you see him take the mask off of his mouth?

A No, sir. He never did.

Q So the statement that you claim he made would have had to have been made with the mask on the mouth.

A You're right.

Q In addition to the mask over the face or mask over the mouth, what kind of mask was it? Was it like a bandana type thing?

A More like a black scarf.

Q Black scarf over his mouth. Was it tied off on the back behind his head?

A I don't know what it was. Could have been tied. Could

have been pinned. I don't know.
Q But it covered his mouth?
A Yes.
Q Could you see the top of his head?
A The only thing I saw was the face up in here, the eyes and the bridge of the nose, right up in here.
Q I see. Now, you said he had on jeans. What color were the jeans?
A I never said that.
Q You didn't say he had on jeans. What kind of, what kind of trousers did he have on?
A I didn't say that. I don't know. I was looking up here.
Q So you don't know what kind of trousers he had on on the lower part of this body?
A That was five years ago. No. I don't.
Q You don't know what kind of shoes he had on?
A Nope. Like I told you, I had my eyes up here and on the gun. I ain't got time looking at his shoes or his pants.
Q Did he have on gloves?
A Not sure.
Q Pardon me?
A I said I'm not sure.
Q You looked at the gun in his hand --
A Yeah. I'm looking at the gun.
Q -- but you couldn't see whether he had a glove?

A Yeah. I mean, he's a dark-skinned fellow.
Q Dark skinned.
A It could have been a glove, could have been just your hands. Don't know, but I saw a gun.
Q Now, the gun you said was black?
A Yes.
Q And his skin was so dark you couldn't distinguish between the gun and the hand?
A I'm not saying that. I'm watching the gun.
Q He's a pretty dark fellow; isn't he? A whole lot darker than, that --
A Well, no, actually the club was a little dark. The club was dim. How about that?
Q The club was dark, and since the club was dark it made his skin look dark? Sir?
A A little shadow. Yes.
Q Now, the truth of the matter is you realized a few minutes ago that you'd gotten yourself in trouble; didn't you?
A No.
Q Because you had told the color of the man's skin, and you look up and realize that he was darker than Terron Dizzley, and you'd already said it.
A No. I didn't. You said it.
Q All right. What color was the glove then? The glove or did he -- you said he -- you couldn't see whether he had on

gloves.
A I told you I didn't know if he had on gloves or not.
Q But he had a black gun in his hand?
A Yeah.
Q And you couldn't distinguish, distinguish between the hand and the gun?
A Well, I'll put it to you like this right here, I got eight years of military experience.
Q Yeah.
A I can watch guns pretty good. That stuff that you was talking about with the talking in the mask and all that stuff on, I have a mask on my face when I been in the military, and I could talk and give commands pretty good through them. So whatever you trying to do ain't working.
Q Ain't working, huh? And I'm not trying to do anything. I'm trying to solicit the truth.
A Well, I'm giving you, I'm giving you the truth.
MS. BAILEY: Objection, Your Honor. I'm not sure there's any question at this point. It's argumentative.
THE COURT: I'm going to sustain the objection. We've gotten into an argumentative situation, and I'll ask counsel to ask questions.
Q You've discussed your testimony a number of times before you came to court today; haven't you?
A On and off.

Q On and off. And who did you discuss it with on and off?
A Family members.
Q Your family members?
A Yeah. My family members.
Q Now, you have never talked about this situation with Ms. Naomi Alston; have you?
A Later years down the road.
Q Sir?
A Years down the road.
Q How, how long down the road?
A I'm not sure.
Q You're not sure. Did you have one discussion with her or two?
A I'm not sure. She went on about her life. I went on about my life.
Q But you discussed it with her?
A Years ago.
Q How about Mr. Morris, you talk to him about it?
A No. I haven't seen him.
Q You know him?
A Only from just that night.
Q You, you've only seen Mr. Morris one time and that was the night of the shooting?
A The night and the shooting, and I guess the last time we been to court. That was about it. I don't live where these

guys live at.
Q Pardon me?
A I do not live where they live at.
Q Oh, you know where he lives?
A No. I say I don't live where they live at. I know where I live at, and they ain't around there.
Q Stand, stand up a second. The gunman that you saw are you contending that he was about the height of this gentleman?
A Yes.
Q About the same weight, too?
A I can't say that, five years ago. We all gain weight.
Q Was he as big as this gentleman is now?
A Nope.
Q You can have a seat. Now, when he got through shooting you said he, he got out of the place.
A Yes.
Q How many shots did you hear?
A Altogether, since I remember before the first statement, altogether probably about five or six.
Q Now, I believe you've testified that he -- that when the gunman stopped shooting at Aundry he ran off behind somebody else?
A Yes.
Q Who did he run off behind?
A It was some other guys that ran into the other part of

the club.
Q Was that Mr. Gibson?
A I'm not sure.
Q Now, he didn't go upstairs you said, but he ran into another part of the club?
A No. He stopped at the doorway, bust off two more shots and ran back out the other door.
Q But he did follow them some distance and shot at him?
A Just far enough as the door. That's it. And as you can see on that same picture, the door only about two or three feet away.
Q Uh-huh. How many times did he shot at the other fellow that you don't know who it was?
A Probably once or twice.
Q And when he turned around did he run out or walk out or --
A He ran out.
Q Now, you say you don't -- you didn't know Mr. Morris. You all call him D.J.; don't you?
A That's his name.
Q How did you know that?
A I know that from coming to court, D.J. I don't know his name. Don't know his government name at all. D.J., that's all I know.
Q Well, didn't you, didn't you tell the police on December

2nd that you got up and went over to check on Dre after he got up, after he was shot, and his brother-in-law, D.J., passed you some rags?

A Yep. I said that.

Q Didn't you tell them that?

A Yes. I did.

Q So, so, so you knew, you knew D.J. somehow?

A I knew D.J. from that night, the night of the shooting, and all I told him was, "Go get me some rags." I found out later on his name was D.J., which that's when I gave the statement.

Q Well, you, you found -- you, you gave the statement before you knew his name was D.J.?

A You're not listening.

Q Well, I'm listening now.

A Okay. When I told him to go get the rags, he went and got the rags. When he came back, he gave me the rags. Later on that night when the officer was asking me who it was and I told him I really didn't know the guy's name, he told me was his name -- that was D.J. or whatever, say, yeah, okay, that's Dre brother-in-law, whoever he was hanging with. So his name was D.J. and that's all I know.

Q So even though you told the police officer that D.J., Dre's brother-in-law, passed you the rags, you got that information from somebody else later on and then you told it

to the police and added it in?
A No. I didn't added it in. You see that's on my first statement.
Q Yeah. Well, I --
A How did I did add, how did I add it in? I didn't know the guy. All this happened that same night. I just met him. So now I know he's -- his name is D.J. He's D.J. I told you that.
Q Well, how did you know he's the brother-in-law?
A He was hanging with the man. What you -- I mean, what you want me to do?
Q Well, I mean, just, I mean, just from hanging with him you know he was his brother-in-law?
A What that have to do with the case?
Q Now, Mr., Mr. -- you know all of these people and all of you all are friends; aren't you?
A No. I don't know them, and we all are not friends.
Q Thank you, sir. I have nothing further.
THE COURT: Redirect?
MS. BAILEY: None, Your Honor.
THE COURT: All right. You may step down, sir. Do you wish to excuse the witness?
MS. BAILEY: Yes, Your Honor. I request that he be released from his subpoena.
THE COURT: Any objection?

MR. BARR: No, sir.

THE COURT: Sir, you're free to go. Thank you very much.

All right, ladies and gentlemen, the courtroom personnel probably need a little break at this point in time. So we're going to take a short recess, five to 10 minutes. You can step back to the jury room, and as always, I'll ask you not to discuss any aspect of the case until I've asked you to do so. You may retire to the jury room. Everyone remain seated while the jury retires. Thank you.

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

THE COURT: All right. Court'll be in recess for about five to 10 minutes.

MS. BAILEY: Thank you, Your Honor.

***** OFF THE RECORD *****

(On the record. Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right. Is the State ready to proceed?

MS. BAILEY: Yes, Your Honor.

THE COURT: The Defense ready?

MR. BARR: Yes, sir.

THE COURT: All right. Let's bring the jury in.

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

THE COURT: All right. The jury has returned to the

courtroom. The State may calls its next witness. Ms. Bailey.

MS. BAILEY: Thank you, Your Honor. The State calls Willie Stanley.

THE COURT: Come forward, sir, to my left, and be sworn in.

THE CLERK: Sir, please state your full name for the jury.

MR. STANLEY: Willie Stanley.

THE CLERK: And please spell your name for the Court.

MR. STANLEY: W-I-L-L-I-E, S-T-A-N-L-E-Y.

THE CLERK: Thank you.

Whereupon, Willie Stanley was called to the stand, duly sworn by the clerk and testified as follows:

THE CLREK: Thank you. Please be seated.

THE COURT: All right, counsel, your witness.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Mr. Stanley, do you have a nickname?

A Yes.

Q What's that?

A Dash.

Q Did you know Aundry Evans, Jr.?

A Yes.

Q And in what capacity did you know him?
A A friend.
Q How long had you known him?
A Probably about three or four years.
Q Do you know Terron Dizzley?
A No.
Q Have you, have you ever met him before?
A No.
Q Where were you on December 1st, 2008?
A At the Paradise Club.
Q Did anything remarkable happen that night?
A Yes. Aundry Evans got shot.
Q Okay. And tell us about that.
A It was oyster night where they cook oyster or whatever, and we was watching the game playing pool and the door kept opening and closing. Open like probably two or three times. Then the last time it opened someone came in with a gun with a mask on and went to Aundry and shot Aundry.
Q The person that came in with the gun and the mask, can you describe them in more detail?
A I'd say about medium height, a little -- I mean, this was a couple of years ago. So maybe, you know, smaller than me.
Q Okay. So he was shorter than you?
A Yeah.
Q Was he smaller in weight than you or bigger?

A He was smaller in weight.
Q Was he white, black or Hispanic?
A All I could see was through the mask or whatever. He was black.
Q Did he have a real dark complexion, real light complexion, medium? Can you just kind of generally describe his complexion to the best you can?
A I guess a medium -- it wasn't like a medium complexion.
Q When that person came in the door what did he do?
A Went straight to Aundry.
Q He went straight to Aundry. Did you see the gun in his hand, in the shooter's hand?
A Yeah.
Q Was it a rifle?
A No. It was a handgun.
Q It was a handgun. Was it a shotgun?
A No.
Q Okay. Could you see if it had a revolver on it?
A I really couldn't tell. It was a handgun.
Q Did you hear the shooter say anything as he approached Aundry?
A He was like, "You think it's a game? I ain't forgot about my money or whatever."
Q Did you see --
MR. BARR: Your Honor, we object and move to strike.

THE COURT: Objection is noted. The Court would make the same ruling. You may proceed.

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q Did you see the gun go off?

A Yeah. I heard it.

Q You heard the gun go off. How many shots did you hear?

A Probably from three to five, range from three to five shots.

Q Did you hear any shots outside?

A Yeah.

Q How many shots outside did you hear?

A I really can't remember how many shots I heard outside. Probably --

Q Okay. But you did hear gunfire outside the club?

A Yeah.

Q Did you see anyone else inside the club who had a gun except for the shooter?

A No. Just one.

Q When you heard the first shot, what did you do?

A I got under the pool table.

Q Okay. And when did you come out from under the pool table?

A Maybe I'd say about five minutes after the shooting.

Q What did you do when you got out from under the pool

table?
A Called 911.
Q Did you -- when that door that the shooter entered flew open, did you see anything going on outside?
A No. I couldn't see nothing going on outside.
Q Okay. Did you ever go outside?
A After, after, after the 911 call.
Q All right. So after the 911 call you went outside. I'm going to show you what's been previously marked as State's Exhibit 12 for identification only. Have you had an opportunity to review the contents of this?
A Yes.
Q Can you tell the jury what it is?
A My 911 call.
Q Okay. What state of mind were you in when you called 911?
A Really just in shock or just like excited, I mean.
Q Were you calm, cool and collected?
A No.
Q Okay. Did you use some foul language?
A I might did. Yeah.
MS. BAILEY: Your Honor, at this time the State would seek to introduce State's Exhibit Seven [sic] into evidence and publish for the jury.
THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: Without objections it'll be admitted. You may publish the recording.

(State's Exhibit Number 12 [CD-911 Call] admitted into evidence and appropriately marked.)

(State's Exhibit Number 12 played in open court.)

BY MS. BAILEY:

Q At that point did you talk anymore to 911?

A No.

Q Now, to clarify, on that recording you said there was two or three people. How many people did you actually see?

A I saw one person. Somebody was tolding me in the background that there was some more people outside.

Q Okay. After you called 911 what did you do next?

A Attended Aundry.

Q You attended to Aundry. Who else was attending to Aundry?

A Maurice.

Q Was anybody else around?

A I really can't remember like who all was around after the fact.

Q Okay. Did you hear Aundry make any statements?

A Yes.

Q Okay. Before we go into what those were, did Aundry seem to be clear headed?

A I mean, he been, you know, in shock.
Q So did he seem in his right mind though?
A Yeah.
Q Okay. And what -- how did he seem to you?
A Like he been about to die. I mean, he, he was in his right mind. He was talking.
Q All right. And what statements did he make?
A Say, "Little D got me."
Q Can you repeat that?
A "Little D got me."
Q Did you know who he was talking about?
A No, ma'am.
MR. BARR: Your Honor, our objection is still noted for the record; right?
THE COURT: Objection is noted. You may proceed.
MS. BAILEY: Thank you, Your Honor.
BY MS. BAILEY:
Q I'm going to show the jury what's been previously marked as State's Exhibit Number Eight and entered into evidence, and it's tough to see on that screen you've got up there. So I'm going to hand you a copy of the actual picture. Do you recognize that?
A Yeah. Yes.
Q What is that?
A Paradise.

Q That's the Paradise Club?
A Yes, ma'am.
Q All right. Where were you standing when this all happened?
A At this pool -- at the pool table to the right.
Q Okay. As we look at it today, it's the pool table on the right?
A Uh-huh. Yes.
Q Okay. Who was standing near you? Do you remember?
A It was me, Maurice and -- just me and Maurice at this pool table over here and the guy who was playing pool.
Q Okay. Do you know his name?
A I don't -- really don't know his name.
Q All right. Where was Aundry Evans, Jr., standing?
A He was at this table, at the table to the left like in front of the table.
Q Where did the shooter come from?
A From the door, the back door.
Q When you say the back door where is that in relation to this photograph?
A Behind all of this.
Q Okay.
A Going this way.
Q Would it -- would the person taking the photograph be standing near the door?

A Yes.
Q All right. Can you describe the path that the shooter would have taken from the time they entered the club until they shot Aundry?
A Came through the door and went around the, the, the corner.
Q When you say the corner --
A The corner of this post.
Q The wooden post? Okay. Thank you. And did the shooter leave through the same door --
A Yes.
Q -- that he came in? Which pool table did you hide under?
A Table to the right.
Q Do you know how many people Aundry Evans, Jr., knew that he referred to as D or Little D?
A No.
Q You don't know?
A No, ma'am.
Q Okay.
MS. BAILEY: Beg the Court's indulgence.
THE COURT: Yes, ma'am.
MS. BAILEY: No further questions for this witness at this time, Your Honor.
THE COURT: Mr. Barr, your witness.
MR. BARR: Thank you, Judge.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. BARR:

Q Mr. Stanley, on the day that the shooting took place, I believe you would have been probably the first person that got to Aundry after he was shot?

A I wasn't the first person.

Q Who was the first person to get to him?

A Maurice.

Q Maurice. Did you see when he was shot?

A I didn't see when he got shot. I heard shots. I didn't know he was shot.

Q Now, you gave the police a statement on the 11th of December of 2008. Do you recall that statement?

A Yes. True. Well, yeah.

Q Now, didn't you tell the officers that the shooter came in, stood up over Aundry and shot him?

A I don't recall that.

Q Well --

A I mean, I might have said it. It was years ago. I don't -- I said I don't recall. If it's on there I said it.

Q But this is your statement though, and you did say that?

A If that's my statement.

Q (As read), "He stood up over him and he shot him." Now, what was Aundry doing on the floor for the man to stand up

over and shoot him?
A Excuse me?
Q Was Aundry on the floor? You said the shooter came in, stood up over him and shot him. How did he get on the floor?
A I guess when he got shot.
Q Well, I thought you said here that he stood up over him and shot him.
A I mean, it was years ago. I don't recall saying that, but if you say that's my statement I said that. That he --
Q You recall listening to the 911 tape a few minutes ago? You, you remember that; right?
A Yes.
Q Now, after Aundry was shot and the gunman left, did you go check on him?
A After I talked to 911.
Q So who's the first person that got to Aundry?
A Maurice.
Q Maurice, and Maurice told you to call 911?
A Yes.
Q And how did you call 911?
A My cell phone.
Q So you had not checked on Aundry when you called 911?
A I checked on him after I called 911.
Q You indicated that you only saw one person with the shooter, or what did you -- how many, how many fellows were

there?
A I saw one person.
Q You saw one, but now, you, you've now found out that there were several of them.
MS. BAILEY: Objection, Your Honor. Calls for hearsay. He's testified as to his personal knowledge already.
Q You, you saw one?
A Yes.
Q Did you see any with a shotgun?
A No.
Q Pardon me?
A No.
Q How many shots you heard?
A Inside approximately from three to five.
Q How many outside you heard?
A I really can't remember how much I heard outside.
Q But you heard some outside?
A Yes.
Q All right. Now, of course, you don't know who's doing the shooting outside; do you?
A No.
Q But you heard the shots?
A Yes.
Q Did it sound like a rifle, pistol, shotgun or what?
A I really can't tell what kind of gun it was.

Q From the sound of the shooting outside, you couldn't tell what was being shot?
A No.
MS. BAILEY: Objection, Your Honor. He's already answered he's doesn't know.
THE COURT: Beg your pardon?
MR. BARR: What's, what's the objection?
MS. BAILEY: The objection is --
THE COURT: Address the Court, Mr. Barr. What's your objection?
MS. BAILEY: The witness has already indicated he doesn't know the answer to that question.
THE COURT: So your objection is it was asked and answered already?
MS. BAILEY: Yes.
THE COURT: All right. Mr. Barr, I'll allow you to ask it one more time.
MR. BARR: Judge, I'll move on.
BY MR. BARR:
Q You don't have a gun; do you?
A No.
Q Have you ever fired one?
A Yes.
Q And have you ever fired a shotgun?
A Yes.

Q And do you know what it sounds like when you hear a shotgun fired?
A Yeah.
Q And you ever fired a pistol?
A Yes.
Q Have you ever fired a rifle?
A Yes.
Q You know what a rifle sounds like when you shoot it?
A Yes.
Q Know what a pistol sounds like. Now, you do admit that there was shooting going on outside?
A Yes.
Q And you could hear it?
A Yes.
Q But you couldn't tell whether it was a rifle being shot, a shotgun or a pistol?
A No. I could not tell what was it.
Q Can you tell us how many shots you heard outside?
A I can't remember.
Q You can't remember. Were you a friend of Aundry's?
A Yes.
Q Now, on direct examination just a few minutes ago when you were testifying in response to a question that you were asked by the Prosecutor, you said something about the gunman coming in and saying something about money. Do you remember

saying that?
A Yes.
Q Now, you, you, you, you -- in the statement that you gave the police on the 11th , you didn't tell them anything about any gunman coming in asking about money; did you?
A I don't know. It was years ago. I don't know.
Q Sir?
A I don't know. It was years ago. I don't know what I -- I remember what I said, but I can't remember if I told them about it or not.
Q Well, was that the truth?
A It was the truth.
Q Well, they asked you for your statement. The only thing you told them was that he was saying, "He shot me," something about Little D. That's your statement?
A Yes.
Q Is that the truth?
A Yes.
Q Now, I believe you said yesterday when I asked you you hadn't cut a, you hadn't cut a deal with the Solicitor's Office regarding your testimony.
A No. We didn't cut a deal.
Q And you hadn't made a promise to testify for them in this case?
A It wasn't a promise, an agreement.

Q No agreement?
A It was an agreement.
Q Oh, there is an agreement. What's the agreement for?
A If I testify truthfully that he could talk to the Judge to be lenient on my case.
Q Call the Judge to be truthfully -- testify truthfully call the Judge to be lenient on your case?
A No. Not cause the Judge -- thinking -- ask the Judge.
Q To be lenient on your case? What kind of case?
A It's a burglary.
Q Burglary. You mean like breaking in somebody's house?
A Yes.
Q A little bit more to it; right?
A Huh?
Q There's some more to it other than just breaking in people's houses. Stealing too; isn't it?
A Burglary second degree.
Q Pardon me?
A Burglary second degree.
Q No. It was some grand larceny, too; right? You went in, breaked in and stole something?
MS. BAILEY: Objection, Your Honor.
A I was accused.
MS. BAILEY: The witness has a Fifth Amendment Right not to testify about his own charges. Those, he's not been

convicted of those. They're pending at this time.

THE COURT: Mr. Barr?

MR. BARR: Well, Your Honor, the Prosecution has, as they should have done and as the law requires, provided me with a copy of the proffer, and that's what the proffer says.

MS. BAILEY: The proffer doesn't go into the --

THE COURT: Well, I understand that, but the question, I believe, is whether or not what he's charged with, and you're starting to ask him about the facts of the case, and the witness does have a Fifth Amendment Right not to offer testimony against himself.

MR. BARR: Well, Judge --

THE COURT: I'll be glad to advise him of that right if you'd like to --

MR. BARR: No, sir. I, Your Honor, I --

THE COURT: -- but if the, if the point is -- let me finish talking, Mr. Barr. The point -- if the point is that you want to establish the fact that he's been charged, I think you've established that fact or the Court can take judicial notice of it if you have copies of the charges. I'll be glad to do that.

MR. BARR: Your Honor, I think I've gone as far as I need to go with this.

BY MR. BARR:

Q You do -- you are testifying with an expectation of

leniency; right?
A Yes.
Q And does that mean to you that you indicated that you're supposed to testify truthfully?
A Truthfully.
Q Now, a few minutes ago when I asked you about your earlier statement and I asked you why you ain't had nothing in the statement about nobody saying anything about money, now, do you consider this now a part of your obligation to testify truthfully?
A I don't understand what you're saying.
Q Well, you left the money out the first time when you gave the statement, but today you're talking about money that you heard the man say something about some money, and there's absolutely nothing in your statement about money.
A I, I gave that statement years ago about the money.
Q Well, now, if you gave the statement years ago and you ain't said one word about no money, where in the world did you come up with and you get the money now? Where you get that from?
A I heard it.
Q Oh, you heard it. Who did you hear say it?
A The shooter.
Q Well, why didn't you write it in the statement? Sir?
A Maybe I didn't remember it at the time.

Q Now, are you telling the ladies and gentlemen of this jury that just because of bad memory or either now you've got good memory you now remember about the money?
A Yeah. I remember it.
Q And you -- and that's why you say you remember now?
A I mean, that's in my statement.
Q Nothing about money in the statement.
MS. BAILEY: Objection, Your Honor. This is argumentative. It's been asked and answered at this point.
MR. BARR: I just have a few more questions, Judge.
THE COURT: Thank you, sir.
MR. BARR: Your Honor, I have no further questions.
THE COURT: Redirect?
MS. BAILEY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. BAILEY:
Q Mr. Stanley, why are you testifying here today?
A I was a witness.
Q Okay. Do you have pending charges?
A Yes.
Q Who's your Prosecutor?
A Erin Bailey, you.
Q Would be me. Have I discussed reducing your charges with you?
A No.

Q Have I discussed giving you any particular sentence in exchange for your testimony today?
A No.
Q What have I agreed to do in exchange for your testimony today?
A Ask the Judge if he could be lenient.
Q When you and I met to prepare for this case, did I or any other Prosecutor or any law enforcement tell you what to say?
A No.
Q But you did sign a proffer agreement with the State; is that correct?
A Yes.
Q What do you understand to be your obligations under that proffer agreement?
A That you -- if I testify truthfully that you ask the Judge to be lenient.
Q You talked to Mr. Barr about giving a statement on December 11th of 2008; is that correct?
A Yes.
Q If I showed you some notes that were taken during that statement, would it help refresh your recollection as to the contents of that statement?
A Yes.
Q I'm going to give you a moment, first show this to Mr. Barr.

MR. BARR: Your Honor, I'm going to object to refreshing his recollection with somebody else's notes.

MS. BAILEY: Your Honor, Mr. Barr didn't lay the foundation for whatever he showed Mr. Stanley either.

THE COURT: Well, it doesn't mean that we're not relieved of that objection.

MS. BAILEY: Yes, Your Honor. Mr. Stanley has laid the foundation for it by saying this would refresh his recollection.

THE COURT: Well, I understand that, but I think he's required to refresh his recollection from his own notes, not someone else's recollection.

MS. BAILEY: Okay.

THE COURT: So I'll sustain the objection in that regard.

BY MS. BAILEY:

Q Mr. Stanley, if you heard your prior statement, would that help refresh your recollection?

A Yes.

Q Okay. Did you give a statement to Investigator Dustin Morris on December 11th, 2008?

A Yes.

Q Okay. And during that statement did you advise Mr. Morris, Detective Morris, that the shooter who came into the Paradise Club made a statement?

A Yes.

Q And what statement did you tell Investigator Morris that the shooter said when he came into the club?
A "You think I forgot about my money. I ain't forgot about my money."
Q Now, just a few moments ago Mr. Barr made it seem like you didn't say that to Investigator Morris. Did you say that or did you not say that in 2008?
A I write it -- I wrote it down. I said it.
Q You wrote it down and you said it.
MS. BAILEY: I have no further questions for this witness at this time.
THE COURT: Recross.

RECROSS EXAMINATION

BY MR. BARR:
Q It's a copy of your statement prepared by the court reporter. Show me where you said something about money.
MS. BAILEY: Your Honor, I'm not sure what that statement is he keeps waiving around.
MR. BARR: Well, do you want to see?
THE COURT: Yes. Why don't you show it to her. She has -- you have an obligation to do so.
MS. BAILEY: Your Honor, I don't believe a foundation has been laid for this. I don't know what court reporter it was prepared by.
MR. BARR: Andrea Kelly.

MS. BAILEY: Or what it was based on. I've not been provided with it.

THE COURT: I'm going to ask the jury to step out to the jury room. Don't begin any discussions until such time as I've asked you to, to do so. You may retire at this time.

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

THE COURT: Mr. Barr, maybe you can inform the Court as to the nature of the document you've been presenting. Mr. Barr?

MR. BARR: Sir?

THE COURT: The document that you've been using, can you tell me what it is?

MR. BARR: The document that I used is a transcription of the audio recording that was provided by the Solicitor's Office.

THE COURT: So there was an audio recording of an interview of this witness provided to you?

MR. BARR: Yes, sir.

THE COURT: And that was transcribed by someone at your request?

MR. BARR: It was transcribed by a certified court reporter, Ms. Andrea Kelly.

THE COURT: Okay. Ma'am?

MS. BAILEY: Your Honor, the State would request that if

any portion of this be entered it be done under the best evidence rule as the actual recording, which we have.

THE COURT: Well, nobody's offered it into evidence at this point in time.

MS. BAILEY: Yes.

THE COURT: Apparently what it's being used for, as near as I can tell, is in an effort to try to impeach this witness. Now, there's a procedure that we're supposed to follow when we try to impeach someone with a prior statement, and the first thing is you have to inform them as to the time and place and the date of their previous statement. Then you have the duty to ask them whether they made that statement or not. If they admit it, then that's the end of the inquiry. If they deny having made that previous statement, then you have the right to enter extrinsic evidence to prove that they, in fact, did make the statement. Now, we haven't been following that procedure exactly. So I'm going to insist that we do follow that procedure in this particular situation. So the witness is entitled to be informed as to the time and place and the circumstances under which the alleged statement was made and when it was made. Then the witness is entitled to be asked whether or not the witness acknowledges having made the statement at that time. Depending on the answer, we'll go from there, and it may or may not be admissible at that time. We'll see. Any objection to that procedure, Mr. Barr?

MR. BARR: No, sir. Judge, I thought that's what I did. What happened is on, on redirect she came back and, and he changed his story again back to -- even though he had already admitted that he did not include that in his initial statement, he came back on redirect and, and, and added it back and that's where the issue is.

MS. BAILEY: Your Honor, actually what happened is that --

MR. BARR: But Your Honor ---

MS. BAILEY: -- Mr. Barr confused the witness. It was Mr. Barr who said he didn't include it in his original statement, which was a misstatement.

MR. BARR: Well, it's not in there.

MS. BAILEY: Well, yes, it is.

MR. BARR: Show it to me.

MS. BAILEY: And that's the issue, Your Honor. That's why I believe we need to just, as much as I hate to do this because of our time issues, I think at this point the jury is very confused, and it would be good for them if we just played the statement in its entirety because Mr. Barr keeps misrepresenting what's in it.

THE COURT: Well, you want to point out where it is in there? I think we're talking about the question about the statement about money. Is it in there?

MS. BAILEY: I'm -- Your Honor, I've never seen. Again,

I don't know what page it would be on. It will take me a few minutes because I've never seen this transcript.

MR. BARR: That's, that's --

THE COURT: Well, why don't we adjourn for the afternoon and I'll give you a chance to review it and we'll determine whether it's in there or not.

MS. BAILEY: Thank you, Your Honor.

THE COURT: All right.

MR. BARR: And that, that statement was actually taken by Officer Morris, I believe.

MS. BAILEY: Yes.

MR. BARR: Uh-huh, you said Garrett earlier.

MS. BAILEY: No. I said Morris when I tried to refresh his recollection, but you wouldn't let me do it.

THE COURT: She actually pointed at this gentleman. I don't know his name. She pointed at that gentleman right there when she asked the question. Anyway, let's bring the jury in. Have a seat, Mr. Barr. Let me excuse them for the evening.

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

THE COURT: All right. The record will reflect that the jury has returned to the courtroom. During my discussions with the attorneys on the issue that's before the Court, it became apparent to me that perhaps we're going to have to

review a recorded interview with this particular witness, along with a transcript of an interview. That's going to take a few minutes, a few more minutes than we have this afternoon with you, and so I'm going to excuse you for the rest of the day. It's almost 5:00 o'clock anyway. That'll give us a chance to review those documents and go through those recordings so that a proper ruling can be made in this matter. So you're going to be leaving the courthouse again, and you probably already know what I'm going to tell you, but I'll tell you again, don't listen to, watch or read media reports, don't try to gather any information on your own, don't discuss the case with anyone, don't allow them to discuss it with you and should anyone try to contact you concerning your service on the jury, please report that to the Court as soon as possible. We intend to start in the morning -- since I may have to go over this issue with the attorneys in the morning, I'll ask you to be here at 9:30. We'll be here at 9:00 o'clock taking care of this particular matter. So at this point in time you're free to go. You can be back at 9:30 in the morning. Thank you. Hope you have a good evening. You're free to go. Everyone remain seated while the jury retires.

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

THE COURT: All right. I'm going to caution the witness,

sir, you're -- during our break you should not discuss your testimony with anyone, any aspect of it. Do you understand that, sir?

MR. STANLEY: Yes, sir.

THE COURT: All right. Now, as far as the Defendant has been on bond up to this point in time. Does the State have an objection to him remaining on bond during the trial?

MS. BAILEY: Your Honor, at this point --

THE COURT: The trial has now begun.

MS. BAILEY: Yes. At this point, his bond -- I believe the bondsman has fulfilled his duties.

THE COURT: I think he has.

MS. BAILEY: And so, if the Defendant were to not come back there would be nobody looking for him.

THE COURT: All right. Then I'll ask that the Defendant be held in custody during the trial. Thank you very much. Yes, sir, Mr. Barr.

MR. BARR: Judge, this case has taken from 2008, and every time this man was supposed to be in court, he showed up, from 2008. Your Honor, quite frankly, depending upon where the State is in terms of their presentation of their case, I really need him, and I don't need to have to go to jail to see him. We've got other witnesses. Our witnesses are out of town.

THE COURT: Well, how was it handled during the first

trial? Was he allowed to remain on bond?

MR. BARR: Yes, sir.

MS. BAILEY: I don't -- I didn't try the first one. I'm not sure.

MR. BARR: He was allowed to remain on bond.

THE COURT: Well, I normally in this situation take people into custody during these types of trials.

MR. BARR: Yes, sir.

THE COURT: This is a little bit of an unusual situation. So I'll allow your client to remain out with the admonition that if he doesn't appear in the morning a bench warrant will be immediately issued for his arrest and the case will continue in his absence. Do you understand that, sir?

MR. DIZZLEY: Yes, sir.

THE COURT: All right. 9:00 o'clock in the morning is when we resume. Thank you very much. You're free to go.

MS. BAILEY: Thank you, Your Honor.

MR. BARR: Thank you, Judge.

(Adjourned for April 1, 2014.)

(On the record, April 2, 2014, State v. Terron Gerhard Dizzley. The following takes place outside the presence of the jury.)

THE COURT: All right. We're back on the record in the case of the State of South Carolina versus Terron Dizzley. Yesterday afternoon we had some concern about a statement that Mr. -- that the witness, I can't recall his last name, may have given to a police officer, and the question arose as to whether or not during that statement he may have mentioned something about money being owed or something to that effect. Have we had a chance to review the statements?

MS. BAILEY: Yes, Your Honor.

THE COURT: And there's a recorded version, and apparently the Defense had a transcript prepared of the recorded version.

MS. BAILEY: Yes, Your Honor.

THE COURT: Okay. Can you tell us what the result of our search might have indicated?

MS. BAILEY: Sure. Actually my colleague, Richard Todd, went through line by line and compared the transcript last night, and there are some omissions, but at this point, the State, and I would note that there is no certification from a court reporter attached to the transcript, but that said, the State at this point is willing to not contest the accuracy of, of, of it because the witness in two different places mentions

the statements of the shooter. What the State would request since Mr. Barr --

THE COURT: Well, the real issue is whether or not his prior statement may have included a statement that the shooter mentioned something about money owed or money -- I think that's -- is that right, Mr. Barr? That's what --

MR. BARR: That's right, Judge.

THE COURT: All right.

MS. BAILEY: Well, to be clear, page --

THE COURT: So what did we find when we through both the recorded version and the transcript concerning that statement?

MS. BAILEY: Thank you, Your Honor. On page five, line five, the witness says, quote, (as read), "He was like, 'Boy, you think I forgot about this. You think it's a game. I ain't forgot like that,'" attributing those statements to the shooter. On page 39, line 7, the witness says in his statement to law enforcement -- well, law enforcement asked the question, (as read), "So what about the slang, was he just a matter of fact or how did he talk?" And the witness says, (as read), "Like, oh, man, you think I forgot about this, man. You think it's a game," and he also goes on to mention that the shooter used the N word several times. So here's, here's what the State would request, because Mr. Barr didn't provide us with this transcript, he didn't even show it to me before he showed it to the witness, so the State would just request

the opportunity, since we've had the night to review the transcript now, to fully redirect the witness on specifically the issue of his prior statement.

THE COURT: Well, you'll get an opportunity to redirect once he completes his cross examination, and so and I will call counsel's attention to Rule 613, and we're going to begin to try to follow Rule 613 as closely as we can, and I'll just go over that with us, with everyone so that we have an understanding. Rule 613(A) has to do with prior statements made by witnesses. First of all, in examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown or its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel. As far as this statement is concerned, I think you had a recorded version, the State did, and you've now been shown the transcript, and what that has to -- the first part of the rule has to do with if you're questioning a witness about a prior statement and you do not intend then to introduce any extrinsic evidence to prove that a different statement was made, then you do not have to show the witness the contents of the statement prior to asking him about it. However, subparagraph B under the rule has to do when you try to introduce extrinsic evidence, that's other evidence to show that a witness made a different statement. The rule says

extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place that it was allegedly made, and the person to whom it was made and is then given an opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement then is admissible. However, if a witness admits making the prior statement, extrinsic evidence of the prior statement, that the prior statement was made is not admissible. So if a -- an attorney in this case wishes to use extrinsic evidence to show that a prior inconsistent statement was made, we must follow Section B of the rule, which means the witness must be advised before any extrinsic evidence can be placed into the record of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made and then be given an opportunity to admit or deny. So we're going to follow that rule as best we can from this point forward.

Any questions from the State?

MS. BAILEY: No, Your Honor.

THE COURT: Any from the Defense?

MR. BARR: Nothing, Judge.

THE COURT: Okay. All right. I've asked -- anything else we need to take up? I don't have the jury coming in until a few minutes. We'll start as soon as they have all

arrived, but anything further from the State that we need to take up before we proceed?

MS. BAILEY: Only that there's somebody new in the courtroom. I don't know if she's a Defense witness or not.

THE COURT: I don't know either who that -- the public is welcome.

MS. BAILEY: Yes. Absolutely. I just don't know what the Defense witnesses look like.

THE COURT: Anything else from the Defense before we begin?

MR. BARR: No, sir.

THE COURT: All right. We'll be in recess then until the jury has arrived. Thank you very much.

OFF THE RECORD

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

THE COURT: And is the witness present?

MS. BAILEY: He is, Your Honor.

THE COURT: Invite -- he needs to be.

MS. BAILEY: His attorney is, his attorney is going to get him. Thank you.

THE COURT: Thank you.

MR. BARR: Judge, can, can we approach the bench?

(Whereupon, a bench conference is held.)

THE COURT: I want to put on the record that at a sidebar

Mr. Barr indicated to me that he would want to preserve his objections to Ms. Alston's testimony that he raised in our pretrial motion period, and I advised him that the Court would note the objections and put those on the record. State's counsel was present. Does that correctly state our sidebar?

MR. BARR: Yes, sir.

THE COURT: Ms. Bailey, Mr. Barr?

MR. BARR: Yes, sir.

MS. BAILEY: Yes, Your Honor.

THE COURT: All right. So that objection was preserved during Ms. Alston's testimony.

Sir, have a seat. I'm going to remind you that you were placed under oath yesterday and that you're still under oath. Do you acknowledge that fact?

MR. STANLEY: Yes, sir.

THE COURT: Okay. The State ready for the jury?

MS. BAILEY: Yes, Your Honor. Just to refresh my memory, at what point were we procedurally with this witness?

MR. BARR: Well, Mr. Barr was in cross examination, and he was attempting to ask questions about his statement to the police officer, the differences between what he told the police officer the shooter said and what he said during this testimony. We came into some disagreement as to whether or not that had been said or not, and that's the reason we -- I gave you an opportunity to review the transcript. So I'm

going to allow Mr. Barr to continue his examination. As long as he follows the rule I've cited, he's going to be allowed to ask him questions about that prior statement. I assume Mr. Barr will do that.

MS. BAILEY: Thank you, Your Honor. The -- I believe the court reporter was just indicating that we were -- he was actually in recross.

THE COURT: That may be the case. I know it was cross examination.

MS. BAILEY: All right. Thank you, Your Honor.

THE COURT: That's fine. All right. Ready for the jury, State?

MS. BAILEY: Yes, Your Honor.

THE COURT: The Defense ready?

MR. BARR: Yes, sir. Bring the jury in.

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

THE COURT: All right. Good morning. I hope everyone had a good evening, and again, I will inquire if any of you had any difficulty in following my instructions concerning your behavior during your absence from the courthouse, please stand.

(No response.)

THE COURT: It appears that all jurors have been able to comply with my instructions. When we broke yesterday, Mr.

Barr was in recross examination of this witness, and he may proceed at this point in time, and I have overruled the State's objections.

MR. BARR: Thank you, Judge.

THE COURT: Yes, sir. You may proceed.

RECROSS EXAMINATION

BY MR. BARR:

Q Mr. Stanley, on December 11th of 2008, you gave a statement to Investigator Morris and Investigator Garrett. Do you deny that in that statement you never mentioned anything about the gunman saying anything about money when he came to the building?

A You're saying that I'm denying it?

Q Do you deny that you, in that statement you didn't say anything about the gunman asking about any money?

A I didn't deny it.

Q You don't deny it?

A I said, I said I said it.

Q You said it?

A I believe so.

Q In the statement?

A Yes.

Q Well, show me in the statement where you said it.

A Let me find it.

THE COURT: Mr. Barr, I believe in our discussions of

that statement we pointed out two locations where that was mentioned. Could you help him find those locations, please?

MR. BARR: Well, Judge, it's our contention that it wasn't mentioned.

THE COURT: I understand that, but it was --

MR. BARR: If, if, if Ms. --

THE COURT: -- the -- I'm saying that that issue was mentioned.

MR. BARR: If Ms. -- you want to help him?

THE COURT: Can you give him the pages on which that was so we can speed the process up, please?

MS. BAILEY: Yes, Your Honor. Page five, line five.

THE COURT: Sir, if you'll go to page, line five, line five, that's where a discussion of what the shooter said occurs.

MS. BAILEY: Also, page 39, line 7.

THE COURT: I'm sorry, thirty --

MS. BAILEY: 39, line 7.

THE COURT: And if you'll go to that page and line as well. Those are the two locations I am informed that that issue was discussed.

BY MR. BARR:

Q No mention about any money, is it?

A Didn't say it at that time.

Q You've checked both places?

A And where else? Where else?

MR. BARR: What's the other?

THE COURT: All right. Thirty-nine, page 39 and page 5.

A I don't see it on 39.

Q No mention of money, is there? Now, you, you, you, you understand that when these officers were questioning you they wanted the truth from you?

A That was the truth.

Q And inasmuch as there's no reference in here in your statement about the gunman asking for any money, where'd you get that from?

A It was said.

Q But you just didn't put it in the statement?

A I thought I did.

Q Did you hear somebody else say that --

A Maybe didn't, maybe I didn't ---

Q -- about the money?

A No. I heard it.

Q I have nothing further.

THE COURT: State, anything further?

MS. BAILEY: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. BAILEY:

Q Mr. Stanley, if you were able to reference your prior statement, would that help to refresh your recollection as to

exactly what you said?
A Yes.
Q Okay. Do you have a copy of it in front of you?
A No.
Q We're going to start with what you said regarding the shooter's statements. Okay? So let's start just to point you in the right direction, page five, line five. If you could just review that for a moment. Let me know when you're done.
A I'm finished.
Q Okay. After reviewing that, the transcript of your prior statement, does that help to refresh your recollection as to exactly what you said?
A Yes.
Q Okay. And exactly what, what did you tell investigators the shooter said?
MR. BARR: Your Honor, I'm going to object. The issue on cross examination was about the money. What the Solicitor's doing now is having this witness go back through his testimony regarding whatever it was he testified to, and quite frankly, I'm not even sure he testified regarding this issue in his direct presentation. She's beyond the scope.
THE COURT: Well, I'm going to allow her to explore what he, what his testimony might be concerning what the shooter said. That's an issue. You've raised the point that he may have made a prior inconsistent statement.

MR. BARR: Only about the money.

THE COURT: And I'll -- and well, about what the shooter said, and so I'm going to let her get into that. You may proceed. Overruled.

MS. BAILEY: Thank you.

BY MS. BAILEY:

Q So can you inform the jury, now that your recollection is refreshed, as to exactly what you did tell law enforcement the shooter said?

A Excuse me?

Q What, what exactly did you tell law enforcement the shooter said?

THE COURT: Mr. Barr, you need to be seated, sir. She's on examination.

MR. BARR: Well, Judge, I, I couldn't --

A Like I said on --

THE COURT: Just one second. What's the problem, Mr. Barr?

MR. BARR: I couldn't see the witness.

THE COURT: Well, then you can move to another location, but you can't approach the witness.

A Like I said, whatever I said on this statement I -- that's what was said. Maybe I forgot about it at the first statement, but I, you know, recollect or remember some of it after the time.

Q Okay. So I appreciate that explanation, but just so there's no confusion, now that you have refreshed your memory, can you tell us exactly what it is that you did tell law enforcement in 2008 the shooter said?
A He was like, "Boy, you think I forgot about this. This ain't a game and I ain't forgot about my money."
JUROR: What? I'm sorry. I didn't hear what he said.
Q Can you speak into the microphone?
A "It's not a game. You think I forgot about my money."
Q Okay. Now, I'm also going to point you to page 39 starting with line five. If you were to review this portion of the transcript, would it help to refresh your memory as to what you may have told law enforcement?
A Yes.
Q Okay. You take a look at that and let me know when you're done.
A Yes.
Q Is your memory refreshed now? Okay. And can you tell us exactly what you told law enforcement regarding the shooter's statement in that portion?
A "You think it's a game, man."
Q Okay. Now, do you recall what you told law enforcement regarding the shooter's stance in relation to the victim?
A I, I just remember him running up to him shooting him.
Q Okay. That's what you remember. Do you remember what

you told law enforcement in 2008?
A I really can't remember.
Q Okay. If you were to review the transcript of your 2008 statement would that help to refresh your recollection?
A Yes.
Q Okay. Again, I'm going to direct to page five, lines five through 11. If you could review that, and when you're finished let me know.
A All right.
Q All right. So in 2008, I think that's December 11th, 2008, can you tell us exactly what you did tell law enforcement regarding the shooter's stance in relation to the victim?
A After he -- after, after I saw him the first shot I didn't know if he was shot or what, but he ran over to him and shot him some more times.
Q Okay. And who was on the ground and who was standing?
A Aundry was on the ground.
Q Okay. Now, was Aundry on the ground before or after he was shot the first time?
A After the first shot.
Q Okay. And after the first shot, how did the shooter stand?
A He was standing over him just like --
Q He was standing over him after the first shot? Okay.

Now, do you remember exactly what you told law enforcement regarding the shooter's complexion in 2008?

A Medium, not dark.

Q Okay. And that's what you told law enforcement in 2008?

A I believe so.

Q Okay.

MS. BAILEY: I have no further questions for this witness, Your Honor.

THE COURT: Recross?

RECROSS EXAMINATION

BY MR. BARR:

Q Is it your contention that when you refreshed your memory from that transcript you saw money in the transcript, the word money?

A No.

Q That's not in there; is it?

A No. It isn't.

Q And that's a transcript of your statement.

MS. BAILEY: Your Honor, is there a question?

MR. BARR: I have nothing further, Judge.

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

MS. BAILEY: Your Honor, the State would request that Mr. Stanley be released from his subpoena.

THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: Sir, you're free to go. Thank you very much. The State may call its next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Larry Cooper.

THE COURT: Come forward and be sworn, Mr. Cooper, right over here to my left. Thank you, sir, to this gentleman standing right over here.

THE CLERK: Sir, please state your full name for the Court.

MR. COOPER: Larry I. Cooper.

THE CLERK: Can you spell your last name for us, please?

MR. COOPER: C-O, double O, P-E-R.

THE CLERK: Thank you.

Whereupon, Larry Cooper was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: All right. If you'll speak as close to the microphone as possible. Thank you, sir. Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

DIRECT EXAMIANTION

BY MS. BAILEY:

Q Good morning, Mr. Cooper. Did you know Aundry Evans, Jr.?

A I knew him, but I never knew him like that. I just had met him.
Q Okay. Would you call him a friend?
A Around that time when I first met him, yeah.
Q Around December 1st of 2008 what was the nature of your relationship with Aundry Evans, Jr.?
A I can't remember the date, but it was, it was at Paradise, and most -- my home boy said he need help. So I went up there to go give him some help.
Q Who, who was that that said he needed help?
A Maurice Giles, my homeboy.
Q Okay. What happened next?
A I left earlier that day after Mo told me he --
Q Don't, don't say what Mo told you. That'd be hearsay, but tell us what happened.
A Well, now, it ain't no he say, she say stuff. It's just like I left and I came back later on that night. I caught a ride up there, came back there later on that night. While I was chilling, a couple of guys came through. One came in, asked for where Dre was at, walked over towards Dre. I ran. My homeboy ran. So I ran behind him. When I got outside, I heard shots. That was that.
Q Okay. So when somebody came in the club and went up to Dre, were you in the club when that happened?
A I, I was in the club when they came in, but everybody was

masked up.
Q Okay. So the man that entered the club was wearing a mask?
A Yeah. I don't know if it was a man or a woman, whoever came in. He was masked up.
Q Okay. Whoever came in was wearing a mask?
A Yeah.
Q How tall was the person that came in?
A Man, I can't remember. It happened so fast. So I don't -- I really don't know.
Q Okay.
A You know what I'm saying?
Q Do you recall making a statement to law enforcement in -- on December 2nd of 2008?
A Yeah. Because that like it had to happen right after that. So whatever I told them that was, that was that. Like right now, it's 2014. I don't remember that, all that.
Q And in your statement to law enforcement in -- on December 2nd of 2008 do you recall saying that the person who came in the club who was masked up was shorter than you, five four to five five?
MR. BARR: Your Honor, objection. It's improper impeachment from a statement and it's leading.
THE COURT: Well, I don't, I don't think it's impeachment.

MR. BARR: Well --

THE COURT: It's what is -- she's attempting to do, I think, is have him refresh him memory from his statement.

MS. BAILEY: Your Honor, I'm attempting to follow Rule 613.

THE COURT: Okay.

MS. BAILEY: Inform him of the contents of the statement, the time and date, give him the opportunity to admit or deny.

MR. BARR: Well, Judge, I think she's leading the witness. This is her witness.

THE COURT: I understand that that's your position, but she is following Rule 613(B). You may proceed.

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q So do you recall on December 2nd, 2008, telling law enforcement that the person who was masked up who came in the club was shorter than you and five four or five five?

A Yeah. He could be shorter than me, but I never gave a height.

Q Okay.

A He could be, you know what I'm saying? He, she, whoever.

Q All right. What color was the mask?

A Man, I don't know. I couldn't really tell you, man.

Q Okay. And the person who came into the club wearing a mask, was there one person who actually entered the club

wearing a mask?
A One was at a door with a mask, and one came in. When I ran out it was a couple outside. So that's really it, you know.
Q Okay. And were they all wearing a mask?
A Everybody was masked up. Like I say, I don't know if it was a she, he or who.
Q Okay.
JUROR: Sir, I'm sorry. I can't understand what he's saying.
THE COURT: Sir, you have to move close to the microphone as I indicated. Thank you and speak up.
JUROR: Thank you.
THE COURT: Can you repeat your last answer?
A I don't know who, he, she, I don't know who they were.
Q Okay.
A It could be man or female. Everybody was masked up.
Q Correct.
THE COURT: Thank you, sir.
Q We've established that. Thank you. And the person who entered the club, what did they say to you when they entered the club or did they say anything to you?
A Like, it was like, "Where Dre at?" I looked to the side. Dre, Dre was like -- Dre was right there. They walked towards Dre. One of my homeboys ran. I ran. He must have saw the

gun, too. I was in shock, you know what I'm saying? He ran. So I ran behind him.
Q So you ran out of the club?
A Yeah.
Q Okay. And when you ran out of the club, what did you see outside?
A The same guys standing outside with guns. I don't know, well, who, I don't know.
Q You don't know who they were. We've established that.
A Yeah.
Q But can you describe the guns that the guys outside the club had? Were they short guns, longs guns?
A I just seen one dude with a short gun. I don't know what the rest of them, the rest of these people had.
Q Do you recall on December 2nd of 2008 giving a statement to law enforcement?
A 2000, do what, do what now?
Q December 2nd, 2008, do you recall giving a statement to law enforcement?
A About what? You got to explain.
Q About this incident.
A Yeah. They came. They, they called me and I had to go down there.
Q Okay. And when -- during that statement do you recall saying that one of the men outside had a pump shotgun pointed

at somebody?
A Yeah. A shotgun.
Q Okay. Were you -- where were you in relation to the bar?
A Do what? Do what now?
Q The bar in the club, where were you in relation to the bar?
A Like right behind or like on the side of it.
Q When you were outside, did you hear shots?
A Yeah. I heard shots because I was outside.
Q Okay. You heard shots outside?
A Yeah. I was outside.
Q Any idea how many?
A Not really.
Q Okay. Did you see a car outside that any of the shooters got into?
A Man, I just saw when the car drove off after, after everything had quite. I don't -- I can't remember what, what kind it was, probably black, gray. I can't remember, yo.
Q But you saw a car drive off?
A Yeah.
Q Did all of the people with the masks on get into the one car that was dark that drove off?
A Probably so. I don't -- I can't -- I, I don't know.
Q Did you notice that any of the vehicles that were parked in the parking lot had gunshot bullets in them, gunshot holes?

A The vehicles outside? I can't remember how much car was outside.
Q Okay. Do you recall making a statement to law enforcement on December 2nd of 2008?
A About what?
Q About this incident.
A Yeah. They came -- I had to go down there because I was at, I was at Paradise.
Q And during that statement, do you recall telling law enforcement that some of the cars outside in the parking lot had been shot?
A That's what they say. So, you know what I'm saying, so I have to say what they said. They say some of the cars got shot so.
Q So your contention that's what law enforcement said?
A No. The people who was there.
Q When you went outside, where did you go? Did you just go outside to the parking lot and stand there?
A Nah. I ran. I ran behind the building and hid.
Q Okay. And how long did you hide?
A Till, till everything got silence.
Q And then what did you do?
A I walked back in the club after I heard the car, whatever, went down the road. Really after I heard everything, I went back in the club.

Q And who was in there at that point? What'd you find?
A My homeboys and the dude who got shot. That was it.
Q Okay. How long did you stay?
A I was going to leave, but my homeboy was like, don't leave. Chill with him till someone comes. So I stayed there, and we rode to the hospital with the person who got shot. We stayed there till they took him off, and we went to the hospital.
Q How close were you to the person who got shot?
A I wasn't really that close to him. I just met him.
Q No. I mean, physically. When you went back in the club, how close were you standing to the person who got shot?
A When I went back in there and I saw him, I backed up because I really was going to run, and he was like, "Nah, chill, stay," because he was about to call 911. So I stayed there. I wasn't going to leave him because that was like my partner, you know what I'm saying. So I stayed there with him.
Q Were there other people tending to him?
A I don't, I don't know. I stayed back.
Q Okay. So you stayed back in --
A I was, I was, I was in shock. So I was back. I wasn't really paying attention to nothing.
Q Were you able to overhear any conversation that happened between the guy who had been shot and the people around him?

A Nah.
Q Who do you remember being in the club that night?
A How you mean like?
Q Who else was there that you remember?
A You just tell me a while ago don't call names. So I get to call names now? Me, Mo, Dash and the dude who got shot is like I don't know if it was his little cousin, little brother. Me and him was behind the, the bar, and it was something -- some older cat. It was a couple of his people there. I don't know if them is -- I don't, I don't know if it was his uncle. I don't know. I don't really know dude like that.
Q Now, to clarify, the person who came into the bar who was, as you describe, all masked up, was shorter than you?
A Probably was. I can't remember. We probably was the same height.
Q Did you -- again, do you recall making a statement to law enforcement in 2008?
A If I recall?
Q Yeah. Do you recall talking to law enforcement?
A I made a, I made a statement, but I can't remember what I said.
Q Okay. Do you admit or deny that in that statement you said that that -- that the person who came in the club with a mask on was shorter than you?
A Yeah. He probably was shorter than me.

Q So do you admit that he was shorter than -- that you stated he was shorter than you?
A If the -- if that what the statement say. I can't remember right now.
Q Okay. And do you admit or deny that in that statement you said that the person who came in with a mask was five-four to five-five?
A See, I can't give no exact height because I don't really know what it was -- what height -- what, what it was. If he was shorter than me, I'm not going to give no, no height like that because I don't really -- I can't remember.
Q You said you saw somebody outside with a pump shotgun.
A I don't know who it was. He was -- they -- he or she was masked up. I don't know who it was, but they had a shotgun.
Q What were they doing with the shotgun?
A Holding it to one of my homeboys.
Q And who was that?
A They call him T.I. I don't really know his real name.
Q Okay. Was that near the door to the club?
A Yeah. The same door I exited out.
Q Do you recall how many shots you heard fired outside?
A I can't recall.

MS. BAILEY: I have no further questions for this witness, Your Honor.

THE COURT: Mr. Barr, your witness.

CROSS EXAMINATION

BY MR. BARR:

Q You don't -- do you -- as far as the statement that the Solicitor just asked you about that you gave on December 2nd, didn't you tell the police officer that you heard about seven shots?

A I don't know how much shots I heard. I heard shots. Two could mean more than -- two could mean five. I just heard shots. I don't know how much shots I heard. I just heard shots. I don't know how much I heard. I was in shock.

Q Well, didn't you tell them then that you heard seven?

A I don't know how much I told them. This '14, that's 2008. I can't remember what I told them.

Q All right. All right. You don't, you don't know. Let me, let me ask you something that you might know. Now, when the person that did the shooting -- incidentally, have you ever heard the name Little D?

A Nah.

Q Now, didn't, didn't on the, on the, on December 2nd of 2008, when you were interviewed by Investigator Garrett and Flowers --

A Yeah.

Q -- didn't you tell them that, that you'd never heard anybody speak of the name Little D that night?

A I just told you, you asked me, I said, "Nah."

Q Ask you what now?
A You just asked me if I've ever heard of the name Little D. I told you nah. I, I told -- if they asked me, I told them nah.
Q And didn't you tell them that you'd never even heard the name speak of that night?
A I never heard that name. I don't know who that is. I don't know that name. I never heard that name. I just came back round there. I just moved back around there. They wanted me to help at the bar. That's what I went to do. So I don't really know who was, who was who around there. I just move back around there.
Q Where were you when Aundry was placed in the EMS vehicle?
A Where were I, where were I'm at?
Q Were you still at the club?
A I was, I was in the car sitting down. Not at the -- in the car sitting down. I was standing by a car waiting for the ambulance to ride off because my homeboy didn't wanted me to leave him. So I stayed out there.
Q All right. Now, do you know, you know Gary Gibson?
A That's some related to the dude who got shot.
Q Was Gary Gibson out at the club the night that you were there when Aundry got shot?
A Yeah.
Q And when the gunman came in where was Gary? Do you know?

A Nah.
Q Well, when the gunman came in where -- exactly where were you?
A I was behind the bar or standing right to the edge. I can't remember. I was -- I know I was close to the bar. That's where I was supposed to be. That's where I was at.
Q So you saw him when he came into the -- entered, entered into the door?
A Yeah. I saw when he came in.
Q When he came in, entered the door, what's the first thing he did?
A I can't remember. I know I was standing to the bar. They told me I was watching a game or whatever. I can't even remember what I was doing at the time, but when they came in they was like, "Where's Dre?" I told --
Q And where was Dre?
A He was over by the pool table.
Q Standing right by the pool table?
A They was playing pool. I wasn't over there. I know they was over there playing pool.
Q How far was he away from you?
A Man, I ain't been, I ain't been inside that place. So I really can't recall how far.
Q About as, about as far as I am from you now?
A Yeah. Far.

MS. BAILEY: Your Honor, he's already said he can't recall.

THE COURT: Well, he's on cross examination. He may be he can't recall the number of feet, but he may be able to relate it to something in the courtroom. I'll allow that question.

Q Was he further than the distance I am from you now?

A Yeah. He was further than.

Q How about now?

A Man, you know, he probably -- I don't know how far that bar was from the pool table, but he was further from me to you. I can't recall how far it was, but it was farther.

Q I see.

A I don't know what was going on over there. All I know they was shooting pool, whatever they was doing. I was doing what I was supposed to been doing. I was chilling at the bar.

Q But you could see Aundry from where you were standing?

A I couldn't really see. I just know they was over there. I don't, I don't know who all was over there. I know he was behind the pool table. I don't know.

Q Well, when you saw the gunman, what was the gunman doing then initially? The first time you put your eyes on the gunman, what was he doing?

A He was walking towards over there, and I -- my home -- one of my homeboys ran, and I ran behind them.

Q All right. Now, that fellow you said was all masked up. I put -- that's how you put it. Approximately how many other people did you see all masked up?
A Five or four of them.
Q Four or five. Now, in addition to being masked up, did they all have weapons?
A I don't know. I only saw two weapons. I only saw the dude outside and the dude who came in. I don't know who all had weapons. I ran.
Q And you ran outside the building?
A I ran outside.
Q Now, the man that had the pump shotgun, bear, bear with us a little while. The man that had the pump shotgun, where was he -- was he standing or running or what was he doing?
A He was standing.
Q And where was he standing?
A Like right outside where the door open at.
Q Now, was he threatening anybody with the shotgun or what?
A I don't know, man. I ran.
Q You said earlier in response to questions you was asked on direct, you said something about him pointing the shotgun at somebody.
A That's pointing. You say saying.
Q Pardon me?
A You said pointing. I said pointing. You said saying. I

didn't heard nothing. I ran. All I saw was a gun pointing.
Q Oh, well, then was he pointing the shotgun at somebody?
A Yo, yeah.
Q Sir?
A Yeah. Yeah. He was pointing the gun. I didn't heard --
Q Was it at Aundry?
A This was outside.
Q Well, who was he pointing the gun at outside?
A I just told you. I just -- you heard me told her T.I. Oh, boy.
Q All right. You heard about six or seven shots. How many shots did you hear inside the building?
A I can't remember, man. I just heard shots. I was outside. I was scared, dude. I ran. I can't recall none of them stuff, dog. I ain't mean to say it like that. I can't recall none of the stuff, sir.
Q All right. And so then you can't recall how many shots you may have heard outside the building if you heard some out there? You can't recall?
A I heard shots. I don't know how much shots I heard.
Q Did you see the gunman when the gunman came back outside?
A Yo.
Q You did?
A Yo, my bad, my bad. I ain't mean to say yo. The gunman, I don't know who was the gunman. The dude was outside. There

was a dude inside. I don't know who shot --
Q All right. The one that --
A -- or he, he, she, I don't know who did the shooting.
Q The one that went inside, did you see that one when he came outside?
A I ain't see nobody. I told you I was in hiding.
Q Did you see any of them when they left?
A I ain't see nobody when they left. I just, I just -- when I, when I walked out, when I came from -- if they --
Q What you hit the woods or something?
MS. BAILEY: Your Honor, he was attempting to finish his answer. I think he gets to complete his answer.
THE COURT: He does have an opportunity to complete his answers. Have you finished your answer, Mr. Cooper?
A I was in hiding. I heard silence. When I came out a car left. I don't -- I ain't seen when nobody left. I don't know who got in the car.
Q Were you hiding behind the building or in the woods?
A Behind the building where woods was at.
MR. BARR: The Court's indulgence just for a second, Judge.
THE COURT: Yes, sir.
A What's going on now?
THE COURT: He's checking his notes, I believe. He may have some more questions for you. If you'll just wait

patiently. He'll be back, I'm sure. Thank you.

MR. BARR: I have nothing further from this witness, Judge. Thank you.

THE COURT: Anything further from the State with this witness?

MS. BAILEY: Very brief, Your Honor.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. BAILEY:

Q So the person outside had a pump shotgun. Is that right? And you saw one other gun that night?

A It was two guns.

Q Okay. Describe each -- what, what does the other gun look like?

A I don't know what size gun it was. I know it was a chrome gun. I don't know what size it was. It was a chrome gun and then was, was a shotgun.

Q Okay. So you saw a chrome gun, and was that on the person who was inside the club or one of the people outside?

A That was on the person who walked in the club or in his hands. I don't know.

Q You saw a chrome gun in the hand of the person who walked inside the club. Okay.

A After all that, my homebody ran and I ran. I went in hiding, heard shots. That was that.

Q The chrome gun that you saw on the person inside the club, was it a long gun or a short gun?
A I can't remember, man. I can't remember, Miss.
Q Okay. And did you see a revolver or was it a semiautomatic? Do you remember?
A I can't remember, man.
Q Thank you.
MS. BAILEY: No further questions, Your Honor.
THE COURT: Anything further, Mr. Barr?

RECROSS EXAMINATION

BY MR. BARR:
Q The men that were outside, how were they dressed?
A Man, excuse me, sir. I don't remember. I don't remember. Everybody was masked up I saw. I don't know what color they had on. I just --
Q But they all had masks on?
A Everybody had masks, like I tell, I don't know man, woman, I don't know who they were.
Q You're just getting out of their way?
A What you was going to do? You was going to ran -- you was going to run, too?
Q Thank you, sir. I have nothing further.
THE COURT: All right. Sir, you may step down. Thank you for coming today. Wish to excuse the witness?
MS. BAILEY: Yes, Your Honor.

THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: You're free to go, Mr. Cooper.

The State may call its next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Edward Mack.

THE COURT: Sir, come forward if you would over to this gentleman on my left to be sworn in. Thank you.

THE CLERK: Sir, please state your full name for the Court.

MR. MACK: Edward Mack.

THE CLERK: Can you please spell your last name for us?

MR. MACK: M-A-C-K.

THE CLERK: Thank you.

Whereupon, Edward Mack was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: All right. Mr. Mack, if you'll speak as close to that microphone as you can. Thank you, sir. Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Hello, Mr. Mack.

A How you doing?

Q Good. Where were you on December 1st of 2008?
A Browns Ferry, like they call it, or I forget the name of the club because that's the first time I been there.
Q Okay. Be sure to speak into the microphone and speak real clear so we can all hear you and understand you. Okay?
A Okay.
Q So it's the first time you'd been to that club in Browns Ferry?
A Yeah.
Q Do you remember the name of the road it was on?
A I sure don't. I really went there to take somebody.
Q You went there to what?
A Take someone there.
Q Oh, who were you taking there?
A A friend of mine, Gibson, Gary Gibson.
Q You were taking Gary Gibson there?
A Yeah.
Q Okay. So how long had you been there?
A Okay. When I went to drop him off I, I wasn't going to come in, but they had a oyster roast. So I went to eat some oysters, and I started watching the football game. So I might have been there for -- the game still was going on. So I might have been there for an hour.
Q It's hard to turn down an oyster roast; isn't it?
A Yeah.

Q All right. So you'd been there for about an hour, and then did something extraordinary happen?
A Yes.
Q Can you describe what happened?
A I was watching the game, and some guys was shooting pool, and I heard some loud bang, and after that I jumped up. Which, okay, I have bad feet. So when I jumped up I fell on the floor, and I crawled to there some stairs, and I went upstairs.
Q Okay. Did you see the person who came in the door?
A Never saw no one.
Q Okay. You just heard gunshots?
A I heard some gunshots. I thought it was a joke, really, because, well, I mean, because it happened so fast, but I kept moving.
Q Okay. Where were you sitting at the time in the bar?
A I -- my back was -- okay, it was like a corner and it had another part to the, to the club, and I was facing that door like --
Q All right.
A -- counterclockwise, and the table like sitting this way, and the doorway was like that, and the stairway was on the right.
Q Okay. We're going to pull up on the screen -- your screen's a little fuzzy, so I'm going to hand you the actual

picture, what's already been entered into evidence as State's Exhibit Number Eight. Take a moment to look at that and orient yourself with it. Does that picture make any sense to you?

A Yeah. I'm trying to find out the front from the back.

Q Okay. And how many times had you been in that club?

A That's the first time.

Q Is that the only time?

A Yeah. Okay. Well, this -- I guess this the back; right?

Q Just let me know if you're able to orient yourself. If, if you're not, that's okay. Just let me know if you can.

A Yeah.

Q All right. So where were you sitting?

A Like -- there's a place I can show?

Q If you can just describe the best you can. Use words to describe it. Everybody's looking at a copy of it.

A Okay. Well, well, my back, my back was turned to the door. So, I, I was like sitting up in this area right in here.

Q Okay. And is that on the other side of the bar?

A Yeah. I know there were pool tables -- a pool -- I was watching a pool table and a TV was on this side over there somewhere, too.

Q Okay. What color's the wall near where you were sitting? Do you see -- can you see that?

A Oh, I mean, well, that what I'm saying, I mean, well, because I know I was near a bar.
Q Okay. So you knew you were near the bar.
A Yeah.
Q And your -- was your back to the door that the shooter came in?
A Yes.
Q Okay. And when you fell to the floor, were you up on that platform where the bar is?
A I -- it was a high chair somewhere -- well, right up in there. It's coming to me now, yeah.
Q Okay.
A A high chair -- I, I was sitting like right up in there.
Q And when you say right up in there, is that next, next to the bar?
A Yeah.
Q Okay.
A I was right on the -- I mean, I, I, I was -- because, yeah, okay, it coming to me now. Right here, I was sitting right here because that's the door right there that I remember I fell up in there.
Q Okay.
A And I crawled and I went that way.
Q Now, the jury can't see what you're pointing to.
A Okay.

Q So do your best to describe it in words. Now, they're looking at the picture, but describe in words where -- now, that you're oriented, where it is exactly you were sitting.
A Right where these -- at the bar my back was like right up in this area right here near the --
Q Was your back to that wooden lattice work?
A Wooden lattice thing, yeah.
Q Okay. All right. And so after you fell to the floor, where did you go?
A I crawled to this room right here, and there was --
Q That would be the room on the far left side of the picture; is that right?
A This what, left or right? Well, well, I know I went right.
Q You went to your right when you were in there?
A To my right, yeah.
Q Okay. All right. And where did you hide?
A There's a stairway somewhere on the right, and I hop up those stairs, and I was in the corner of that upstairs room.
Q And when you say to the right, that's when you're facing the bar with that lattice work behind you?
A Yeah.
Q Okay. And how long did you say -- thank you very much. I'll take that picture back. How long did you stay hidden?
A I was there until I saw some blue lights.

Q Okay.
A I didn't move. I didn't even answer nobody.
Q Smart man. How many gunshots did you hear?
A I really couldn't remember. All I know is I heard gunshots. I wasn't -- my idea was to move.
Q Were you able to discern whether there were gunshots inside or outside or both or unable to discern?
A It was real loud. So I know it had to been right at me.
Q Okay. Did you hear any other gunshots that sounded like they might have come from outside?
A I -- no.
Q Okay. And so after you saw blue lights, what did you do next?
A I heard the talking downstairs, and so I said, well, I was saying in my mind the police got to be here now. So I'm going to go down and see what happened, and when I got downstairs and the police were -- well, they was -- like they were doing what they were doing, and I went on the outside, but, well, you know, like with something like that I got -- well, I was a little upset. So I jumped in my car, and I did not know my car was shot up.
Q So when you went out to your car to leave the premises, what, what state did you find your car in?
A I mean, well, I just got in my car and drove off.
Q Uh-huh.

A When I got down the road, I had a flat tire. I drove on the side of the road home.
Q Okay. So you drove home even though you had a flat tire?
A Yeah. I made a -- it could have been after me. I don't know. I didn't know what because, I mean, because I was driving my car, a Honda, and there was another Honda out there. So I don't know what happened.
Q Okay. I'm going to show you what has -- what needs to be marked. Hold on just a moment. Let me get these numbered. While she's doing that, did you -- did you ever tell anybody that your car had been shot up?
THE COURT: Let her mark it. She's got to take down what's being said.
A Yeah.
Q Okay. Thank you.
THE COURT: Let her mark it, and then you can start again.
BY MS. BAILEY:
Q All right. Now, did you ever let anybody know that your car had been shot up?
A Yeah.
Q And who did you tell?
A Well, the next day when -- well, at first I just parked the car, and the next day I was in Andrews, and I was approached by two investigators, and they said they were

looking for me. So and I told them, I said, "Well," and I told them my name and everything, and I took them to my house and showed them the car.

Q And did they come out in your presence and do anything to your car?

A Take pictures.

Q Okay. I'm going to show you what has now been marked as State's Exhibit 13, 14, 15, 16 and 17 for identification only. Can you take a look at those pictures? Just take a moment and look at those, and let me know when you're done.

A (Complies with request.)

Q Okay. What, what is depicted in those photographs?

A Excuse me?

Q What's in the pictures? What are these pictures of?

A My car.

Q Are these a fair and accurate representation of how your car looked the day after the shooting?

A Right.

Q Okay. Now, when you went into the club that night, was there any bullet holes in your car?

A No.

Q When you went into the club that night, did you have a flat tire?

A No.

Q So any bullet holes or flat tires on this car happened

while you were in that club?
A The bullet holes happened while I was in it, but I drove it, and that's how the tire got flat.
Q Okay.
MS. BAILEY: At this time the State would seek to move State's Exhibits 13 through 17 into evidence.
THE COURT: No objection I see from Mr. Barr. So they'd be admitted as marked.
(State's Exhibits 13 through 17 [Photographs] admitted into evidence and appropriately marked.)
BY MS. BAILEY:
Q All right. Pull up slide 107. All right. Everybody in the courtroom now can see State's Exhibit 13. Can you describe for the jury what that is?
A That's my car.
Q Okay. That's the car you were driving that night?
A Right.
Q All right. 108. Now we're looking at State's Exhibit 14.
A That's the tire -- rim of my car.
Q Okay. That's after you drove all the way home on a flat tire?
A Right.
Q 109. Can you tell the jury what we're looking at there?
A That's the opposite side of my car.

Q All right. And is there any damage there that wasn't present when you went into the club that night?
A Yeah. There's a bullet hole in the back.
Q Okay. Is that -- what part of the car is that on?
A The passenger side.
Q Okay. Is it on the door or the fender?
A The, the door.
Q Okay. 110.
A And that's another bullet hole.
Q We're looking at State's Exhibit 16 for the record. Okay. That's another bullet hole?
A Yeah.
Q And was that present before you went into the club?
A No.
Q And slide 111. We're looking at State's Exhibit 17. Can you describe what that is?
A A bullet hole.
Q Okay. And was that present when you went into the club?
A No.
Q Okay. Who else do you remember being there that night? You took -- you said you took Gary Gibson?
A Yeah. I don't know none of those guys there. I just met them.
Q Okay.
A Besides the guy that got shot. I just met him, too, but

I, I had knew him, was in two weeks time.
Q So Aundry Evans, Jr., did you know him?
A I know Andy, but I don't --
Q You knew him by Andy?
A Yeah.
Q And how long had you known him?
A It was like two weeks.
Q Okay. Would you have called him a friend or just somebody you knew or --
A Well, when I -- but he said something about a club, and I said, "Well, one day I might just stop by there." So since I did take someone there, I just -- well, I wasn't going to go in, but they had oysters. So I decided to go in to get some oysters.
Q All right. Thank you, Mr. Mack. Answer any questions that the Defense attorney may have.
THE COURT: Mr. Barr, your witness.
MR. BARR: Thank you, Judge.
THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. BARR:
Q Now, Mr. Mack, you said you, you, you, you went to the club to take Gary Gibson?
A Yeah.
Q Now, Gary lives near you?

A No. No.
Q You and he are friends?
A Yeah.
Q In fact, you all left the club together?
A No.
Q You didn't leave with Gary?
A No. I did not.
Q You left alone?
A I left -- yeah.
Q Now, I think I realized that you indicated that you didn't actually see any -- the shooter or a shooter come into the club; is that correct?
A Sure didn't.
Q But now, for whatever reason, something caused you to seek a place of hiding. Did you hear a shot fired and decided to look for cover or --
A I heard several shots.
Q In the club?
A It was loud. So I -- it had to have been in the club. It was loud. I couldn't tell you where it were, but it was, very, very loud and it was behind me.
Q How was the, how was the lighting in the club?
A I'll say something like this.
Q Like, like in this room now?
A It was, yeah, it was bright.

Q It was bright?
A Not bright, I mean, but you know, it wasn't that -- it wasn't dim, you know.
Q And so the first shot you heard that's when you, you decided to, to seek the cover?
A Yeah.
Q Was it rapid fire or were the shots spaced out or do you recall?
A From my knowledge I think it was rapid. I'm not -- I mean, I'm not -- because it was a while, but I know when I heard the loud bang and mostly everybody was moving. So and I know to start with I'm going to move, too.
Q I see. So now, from the first time you, you say you heard the first bang until, until everything cleared up, about how much time you think went off the clock?
A It, it was like -- it wasn't that -- to me it was -- it, it came rapid.
Q Okay. Well, you, you described -- I think you said everything happened so fast.
A Yeah.
Q When did you learn that somebody had been injured?
A When I came from downstairs.
Q And how did you, how did you learn this, and, and the person that you learned that had been injured, was that Aundry?

A Yeah.
Q And how did you learn he, he had been injured?
A He was laying on the floor.
Q Did you see anybody attending him as he was laying on the floor?
A Well, when I came down, I know he was laying on the floor, and from my knowledge, I think he asked someone to sit him up, but as that was going on, I was trying to make my way out there. When I -- because the police was -- well, the police was on the outside coming in.
Q And if I'm not mistaken, I think the police secured the crime scene.
A Yeah.
Q And moved everybody out?
A Right.
Q So you were not there when Mr. Evans was placed in the ambulance?
A No. I wasn't there.
Q But you were there when you saw somebody trying to prop him up?
A When I came down I'd, I'd heard when he said, "Somebody help me up," but if anybody help him, I mean, I'm not sure about that, but I heard when he said, "Somebody help set me up," but I was -- because he was talking when I was there.
Q Did you hear anybody say that Aundry had said who he

thought shot him? You don't have to tell me what they said, but just tell me whether you heard that.

A No. I did not.

Q I don't, I don't need to know. Do you -- have you ever shot a rifle?

A Yeah.

Q You military?

A No.

Q Shot a handgun?

A Yeah.

Q Shotgun?

A Yeah.

Q Now, you looked at the -- what I think State's Exhibit -- I don't remember what exhibit number they are. Thank you, ma'am. Exhibit Number 13, 15, 16 and, and 17. Would you say that you're familiar enough with weapons?

A I'm not that familiar with weapons, but I have shot them.

Q Those, those -- the holes that are in your vehicle, does it appear to you that they were made by a high-powered rifle?

MS. BAILEY: Objection, Your Honor. I don't think this witness is qualified to testify as to what kind of bullet holes different guns make.

THE COURT: It does require some expertise. So if you want to try to qualify him in that fashion.

MR. BARR: No, Judge. I don't want to qualify him.

That's why I asked him whether he was familiar with --

THE COURT: Well, he said he was -- has fired the guns before.

MR. BARR: Yeah.

THE COURT: I'm not sure he's familiar with ballistics, which is a different field when you start analyzing, as you're probably aware --

MR. BARR: Yes, sir.

THE COURT: -- gunshots and gunshot, you know, shells and bullets and things of that nature that requires some expertise. I'll allow you to ask him if he's qualified in the field.

BY MR. BARR:

Q You don't have any areas on your vehicle with gunshot damage that's not depicted in these photographs; do you?

A Excuse me?

Q I said you don't have any areas on your car that's -- with gunshot damage that's not depicted in these photographs? The photographs show all the damage to your vehicle that was caused --

A All the, all the holes came from a gunshot.

Q Yeah. All right.

A But now I have -- I do have dents on them, but they don't -- they are not entered.

Q I'm talking about just the gunshot.

A Gunshots made the holes.
Q Take a look at Exhibit Number 15. It's difficult to tell exactly about what size that hole is. Can you tell us or do you know or you've looked at it a couple of times. Well, you showed it to police. About what size is that hole in circumference or diameter?
A That's hard for me to tell you that now.
Q All right. Well, if you can't that's fine, and I suppose as it relates to the shots that you heard, you're not familiar enough with shooting a weapon that you could distinguish between --
A I might have shot one shotgun by someone getting a new one, and I said, "Let me shoot it," one time, boom. I never owned one.
Q You don't hunt?
A I don't do no hunting.
Q All right. Thank you, sir.
MR. BARR: I have nothing further, Judge.
THE COURT: Redirect?
MS. BAILEY: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. BAILEY:
Q When the police came to your house and processed your vehicle, did they do anything to the inside of it?
A They went inside and they checked where the bullet have

traveled. I don't -- I think they took pictures. I'm not sure.

Q Okay. Was there some damage to the inside of it that wasn't in the photographs?

A The one of the seat were brushed, and you know, like and we -- I guess the bullet went in one door and come out the other.

Q So the bullet did cause some damage to the inside of the vehicle, too?

A It brushed the seat.

Q Okay.

MS. BAILEY: No further questions, Your Honor.

MR. BARR: No, sir.

THE COURT: All right, sir. You may step down. Do you wish to excuse the witness, Ms. Bailey?

MS. BAILEY: Yes, Your Honor.

THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: Sir, you're free to go at this time. Thank you for coming today.

A All right.

THE COURT: Take your time getting up. Thank you, sir. You may call your next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Gary Gibson.

THE COURT: Sir, come forward over to my left here to be sworn in, gentleman in the maroon jacket there.

THE CLERK: Sir, please state your full name for the Court and spell your last name.

MR. GIBSON: Gary Wendell Gibson, G-I-B-S-O-N.

THE CLERK: Thank you.

Whereupon, Gary Gibson was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat and speak in the mike.

THE COURT: Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Good morning, Mr. Gibson.

A Good morning.

Q What was your relationship with Aundry Evans, Jr.?

A We were good friends.

Q Some people have described you as his uncle. Were you all related?

A No, ma'am.

Q Okay. Are you a Vereen?

A No. I'm a Gibson.

Q You're a Gibson. Are you related to Vereens?

A My wife was a Vereen. My two oldest sons are Vereens. We never changed their name over to Gibson.
Q So if somebody called the name Gary Vereen as being in the club, were they talking about you probably?
A No.
Q No?
A That's my oldest son. He's deceased.
Q Okay. So that's your oldest son?
A Uh-huh.
Q Now, let's talk about December 1st, 2008. Where were you that night?
A I was at home at first, and Andy came back, Aundry came by. He asked me to come to the club, was I coming to the club with him at that moment. I told him no. I had to finish my daughter's car because I had put a timing belt on it because she had to go back to school in Columbia. So he left, and that's when -- when I finished her car, me and Edward Mack, we went to the club. I usually cook the oysters for them on Monday nights and fry the chicken wings and stuff in the kitchen. So --
Q So you had told Andy that you weren't sure if you were going to make it; is that right?
A Well, I told him I'd be late.
Q You'd be late.
A Right.

Q Okay. But you usually were the cook?
A Yes.
Q Or at least ran the fryer?
A Yeah. I did the cooking, too.
Q Okay.
A Most of the cooking.
Q Was your son, Gary Vereen, there that night?
A No, ma'am.
Q Okay. Now, did something remarkable happen that night?
A We were -- well, Andy was sitting with me, Aundry was sitting the side door like where you're standing, if it's a door right there and then the bar runs down. It's a walkway and it's a bar here and you can go behind the bar right there where he's sitting, and Andy was sitting about that, about -- well, about where he was sitting at in front of the door, and we're all on this end of the bar, which the end of the bar it comes down, it goes like in an L shape, but it's like a U.
Q Why don't we do this, since, since you want to talk real specifics at this point, we're going to pull up a picture for you to look at. Okay? We're going to look at State's Exhibit Eight, which has already been entered into evidence. This is slide five. Now, the jury's looking at this picture, but they can't see you pointing to it.
A Right.
Q So you use the words to best describe what it is they're

looking at. So where were you sitting?
A Okay. This is the view coming from the door.
Q Okay.
A It's, like I said, the back door facing towards me, and I was -- Andy was sitting further back this way.
Q Was Andy sitting at the bar?
A He was like behind the bar like a bartender. He was sitting back there playing PlayStation or whatever, and they just started sitting there, and I asked him, I said, "Why don't you come down here," where this pitcher is at, the end of the bar.
Q Uh-huh.
A Because we were all shooting pool. He was the only one down there by hisself. I said, "Man, come on down here." You know, we were all laughing and joking. He got up, came down there.
Q Did he start shooting pool?
A No. Because we were all like betting over shots, you know. Different guys were playing, and we were betting this guy a dollar he can't make that shot, or you know, this and that. Then all of a sudden we heard a wham.
Q Now, at this point had Andy moved over to here?
A Yes. He was at the -- right here at the corner here at the end of the bar.
Q Near the pool tables?

A Hold on. Hold on. Hold on. This picture here -- I don't remember that rail in there.
Q Was he nearer to the pool tables or nearer to the bar?
A His back was turned towards the bar. His back was like -- this is the bar --
Q Uh-huh.
A -- he was sitting here. Edward Mack was sitting here, and I was sitting on the far end towards the other corner of the bar.
Q Okay. Was he up on that platform that the bar is on or was he down on the ground floor near the pool tables, to the best of your memory?
A That's something I can't really remember.
Q Okay.
A We were sitting in stools.
Q Okay.
A Bar stools, I believe, and I believe it was against that railing.
Q But now when everybody got up and started betting on certain shots, did Andy get up and go over near the pool table or was he still sitting up at the bar?
A No. He was sitting at the bar with his back turned to the door.
Q Okay. Back turned to the --
A To the door.

Q The door where this picture was taken?
A Yeah. All of our backs were turned to the door.
Q Okay. All right. So you, you said you heard something?
A The door open, wham.
Q So did the door open hard?
A Yeah.
Q All right.
A And that's what drawed everybody's attention.
Q Okay.
A And I looked back, and I heard a pow, and I see a ski mask, a hoody, and I dove behind the back side of the bar and low crawled up in the corner. Well, low crawling is for veterans. I'm a veteran, and I tried to play dead, and when I got up in the corner, I was breathing hard. I said, "Oh, my God, I'm still breathing," and then I heard the statement that, "You think you going to do this and get -- do this to me and get away with it."
Q All right. Now, let's stop for a second.
MR. BARR: Objection.
THE COURT: Yes, sir.
MR. BARR: Your Honor, we -- that's hearsay.
THE COURT: You're raising your prior objection?
MR. BARR: Yes, sir.
THE COURT: All right. I'd make the same ruling. You may proceed.

MS. BAILEY: Thank you, Your Honor.
BY MS. BAILEY:
Q All right. Tell us again that statement that you heard.
A "You think you going to do this to me and get away with it."
Q All right. Now, did you know Andy's voice pretty well?
A Aundry's voice?
Q Yes.
A Yeah.
Q All right. Did Aundry say that?
A No.
Q Okay. So you heard that statement, and what did you hear next?
A All I could hear was three gunshots, pow, pow, pow, and I laid there.
Q Did you see anything?
A No, ma'am. I didn't raise my head for nothing.
Q Okay. What happened next?
A D.J. came over to the -- like I said, I didn't raise my head for nothing. It took D.J. about 10 minutes to get me to look up. He was calling my name, and when I looked up, whoever the intruder was was gone. I got up, looking around, see what was wrong with Andy, and Andy was calling for Mo, and then I looked for things trying to get him comfortable till the ambulance because they had called 911, and then I noticed

Edward Mack, which who I was riding with to the shop, wasn't around. I was like, "Where is, where is, where is, where is Bush? Where's Bush," and --

Q What, what, what did you just call him?

A Bush.

Q And is -- whose nickname is that?

A Edward Mack.

Q Okay.

A And you all see how he, he walked out of there. He went up two flight of steps on the other side of the bar. We didn't know where he was, and I was like -- he said, "I'm up here. I'm up here," and I'm like, "How did you get up there," and you know, and then the sheriff's department and the EMS came.

Q All right. Now, did you -- in the time between when D.J. talked you into coming out from, from behind the bar and when the sheriff's department came, what were you doing in that time period?

A I, I pretty much was trying to see if Andy was comfortable and he was asking for Mo. He looked at me, and then he laid back down. He kept moving his leg. I kept telling him to be still, be still because if he keep moving a bullet'll travel, and you know, Andy's kind of stubborn. So, you know, he just kept moving. So I got a bag of ice from in the back and put up under his head to prop his head up at

least so he could see what was going on, going on, and then, you know, the sheriff came. Oh, and Bush gave me a bullet off the ground. I told him, I said, "Man, you ain't supposed to pick that up," and stupid me, I grabbed it from him. The bullet had -- I think he said it ricocheted off his toe and then hit me in the ankle when I was low crawling towards the back of the bar because I felt something hit my ankle. I thought I was shot in the ankle, but I wasn't. It was this bullet, and that we gave the sheriff the bullet.

Q Okay. Did you have any injuries from that?

A No, ma'am. Just a sore ankle.

Q All right. Now, what did you do with that bullet?

A We gave it to the deputy sheriff.

Q Directly?

A Yes.

Q Okay.

A No one else, and I explained to him, I told him we -- I know we wasn't supposed to pick it up, but he happened to pick it up so.

Q Do you remember which sheriff you gave it to?

A No, ma'am.

Q All right. Now, while you were there, did you overhear anything that, that Andy may have said to Mo or to Naomi or to anybody around?

A Naomi didn't come till -- Naomi wasn't there at the time

the incident happened. She was there fast, but she wasn't there time the incident happened. Whatever he said to Mo, no, I did not hear it.

Q And but did Naomi get there before law enforcement? Do you remember?

A I believe she did. Yeah. Because I didn't even have her number. I don't even know who called her.

Q Do you know Mr. Dizzley?

A No. I do not.

Q Can you -- I know it happened fast, but the person who came into that club with a mask, can you give us any further description of that person?

A Not really. I mean, all I can -- I mean, somebody comes in a club shooting and they got a ski mask and a hoody on, what is, what is your reactions? To hide for cover, and that's what I did.

Q Could you tell if that person was white, black or Hispanic?

A You really couldn't tell because, I mean, you got a hoody on with a ski mask and the eye and the mouth, I mean, and they're shooting you ain't going to sit there, look to try to see, you know, if they're white, black, Puerto-Rican or what, Indian or what. You're going to try get out the way.

Q All right. Were you able to tell how tall that person was?

A To my reactions in that picture you showed me, and I say -- I said this is in my statement, I'm not sure -- I seen Mr. Dizzley in the club one or two times --
Q Now, hold on. I'm not asking for your opinion.
A No. But I'm just saying the height, with the height of the bar if you look at the picture --
Q Hold on now. We're going based on your personal knowledge, not your opinion. You're not an expert.
A To, to me they, they had to be taller than five, my -- about my height or taller to shoot over the bar.
Q Okay. How tall are you?
A Huh?
Q How tall are you?
A Five-six.
Q Okay. Now, so based on your very brief viewing of that person, you thought they were your height?
A Or taller.
Q Or taller, okay. Now, it's -- you testified earlier you did not actually see the shooting happen; is that correct?
A No, ma'am.
Q Okay.
MS. BAILEY: Beg the Court's indulgence.
THE COURT: Yes, ma'am.
MS. BAILEY: No further questions for this witness. Thank you, Mr. Gibson.

THE COURT: Mr. Barr, your witness.

CROSS EXAMINATION

BY MR. BARR:

Q Stand up. Didn't you tell the police officers that the man you saw came into the club, the shooter, was taller than Terron Dizzley?

MS. BAILEY: Objection, Your Honor. He didn't -- there's no information. That's -- that would be a misstatement of the facts is my objection.

THE COURT: Well, again, if you could, you need to identify the time and the place of the statement. Let's follow the rule concerning out-of-court statements.

BY MR. BARR:

Q On August 20th of 2012, you spoke with -- you spoke with the investigators with the Georgetown County Sheriff Department. Do you have a recollection of that?

A Yes.

Q Did not you tell them at that time that you thought the man that you saw come in the club, the shooter, was too tall to be Terron Dizzley?

A I said five-six, five-seven. How tall is Mr. Dizzley?

Q Well, didn't you tell them that you looked at Mr. Dizzley or you thought about it and that you believed that he was too short to shoot over the bar?

A I just said he was five-six or five-seven. That's taller

than Mr. Dizzley.
Q You can sit back down.
A I mean, how many times can I say it?
Q And in fact, you told them that you thought that a man Mr. Dizzley's height would have had to reach up to shoot over the bar?
A It just said five-six or five-seven, that's taller than Mr. Dizzley. They would, they -- somebody shorter -- his height. You can look at the picture. I mean, from my recollection --
Q Yes, sir.
A -- and like I told her, I don't even remember the back part having a platform back there. I thought our backs were against the bar. It's been so long. I thought he just ran across the front of the bar, but then I remember I did -- no, that picture, that picture there is not right. I'm going to tell you that. That's got to be the side I -- that back side I crawled up on is where that picture was taken from. It had to be.
Q Well, do you deny telling the officer that Dizzley is too short to shoot over the bar without reaching up. (As read), "He doesn't recall the shooter reaching up." Did you tell him that?
A I told him -- yes. I did tell him the person was taller, five-six, five-seven, like I was saying.

Q Now, you also told them or did you not tell the officers that the person, the shooter, appeared to you to walk with a limp?
A When he came through the door -- can I stand up, Your Honor?
THE COURT: Yes, sir. You certainly can.
A -- and took that one shot that I did see across the bar, like I said, where Andy was sitting at at first --
Q Yes, sir.
A -- pow, and when he did that, I dove behind the bar. Now, wasn't that a limp?
Q Well, my question was you -- did not you tell the police --
A I told them exact same thing I'm telling you.
Q -- that, that you saw him walk with a limp? You thought he walked with a limp?
A I can't -- I don't -- I don't "recollize" what he wrote down there. I told you exactly what I just told you -- told him.
Q All right.
A I told you.
Q Now, Aundry Evans was your friend?
A Yes.
Q And of course, you know his father, Mr. Evans?
A I know of him, yes.

Q Did you know that's him sitting in the back of the courtroom over there?
A Yes, sir. I recognize his face.
Q And of course -- all right. Now, I've just got a few more questions. You -- were you -- were you at the -- were you still at the club when EMS retrieved or when EMS picked Aundry up?
A Yes. I was. I was the last one to leave.
Q The last one to leave the club?
A Yes. I was.
Q Now, did you hear anybody at the club say that Aundry said who he thought shot him?
MS. BAILEY: Objection, Your Honor. That would call for hearsay.
Q You don't have to tell me what he said, just whether you --
MS. BAILEY: He just asked for hearsay.
THE COURT: He -- I think that calls for a hearsay response. I'll sustain the objection.
Q Well, did you hear anybody tell you? Did anybody tell you?
MS. BAILEY: Objection, Your Honor. Again, that asks for hearsay.
THE COURT: Well, he hasn't finished the question yet.
Q Did anybody tell you who they thought had shot Aundry?

A No.

MS. BAILEY: Your Honor, that would ask for hearsay.

THE COURT: He didn't ask for what they said. He asked did anybody tell him that. I'm going to allow that question. He can't ask for a quotation from somebody.

A No. Because I wasn't around. I was sitting in a truck with someone at the time.

Q Because you wasn't around. You were sitting in the truck?

A I was sitting outside the club. I was so upset. I was sitting outside in the truck with a fellow named Grease, a friend of me and Andy's, because he heard about it. He lived up the street, and he drove down there, and me and him was sitting in the truck till everybody -- because I just wanted to get out the way of everything.

Q Thank you, sir.

MR. BARR: I have nothing further.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. BAILEY:

Q What's Grease's nickname, I mean, Grease's --

A Yeah. His nickname, but I forget. They own Browns Ferry Logging or something like that. They right up there at the end of the road when you first turn into Oatland on the right-hand side. I don't know his government name.

Q So you heard the door open?
A Yes, ma'am.
Q Did you see the door open or did you hear the door open?
A You couldn't see it because it was a cooler at the door. We was just talking about that that night about moving that cooler, that way we could see who was coming in and out the club.
Q At what point did you hide? Did you hide when that door opened?
A Right after I heard that first shot.
Q When you heard the first shot.
A I ran for cover. I'm from the north, and I'm from -- I've a veteran. I'm not standing around, look to see where no bullets coming from.
Q Did you hear the first shot or did you see the first shots?
A I heard it, and I looked -- when, when the shot went off, pow, you know, it could have been anything. Anybody -- first response is going to be look back because it could have been a firecracker. We -- I looked back and seen like this and it came like this (indicating), and I -- that's the last -- all I can hear was --
Q So you looked back when you -- after you heard the shots.
A After I heard -- no. After I heard the door open and shots, about the same time it counteracted each other.

Q Okay. I have no further questions. Thank you -- no, I'm sorry. How many shots did you say you heard total?
A After the first shot, I believe I heard four more. It was so -- I was trying to run for cover, and I mean, I know at the end I heard pow, pow, pow, three shots.
Q Okay. Did you hear any shots outside?
A You couldn't hear it. I mean, my mind was -- I couldn't hear nothing outside. My mind wasn't even on outside.
Q Okay.
MS. BAILEY: No further questions.
THE COURT: Mr. Barr.

RECROSS EXAMINATION

BY MR. BARR:
Q You didn't hear any shots outside, and did you see anybody else with any other weapons?
A Sir, like I said, I was inside. I can't see through walls. I mean, we was in there. I'm not being smart. We was in there playing pool. You got the pool going on. You got Monday night football, TVs loud and everything else.
Q Yes, sir. Thank you.
A You know.
THE COURT: All right, sir. You may step down. Thank you very much.
A All right.
THE COURT: Do you wish to excuse the witness?

MS. BAILEY: Yes, Your Honor, please excuse him from his subpoena.

THE COURT: Any objection?

MR. BARR: No, sir.

THE COURT: Sir, you're free to go.

A Thank you.

THE COURT: Thank you, sir. All right. The Court's going to take about a five to 10-minute break. As always, members of the jury are cautioned not to discuss any aspect of the case until such time as I ask you to begin those discussions. You may retire to the jury room at this time. Everyone remain seated while the jury retires.

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

THE COURT: Court'll be in recess for about five to 10 minutes. Thank you.

MS. BAILEY: Thank you, Your Honor.

OFF THE RECORD

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

THE COURT: The State ready to proceed?

MS. BAILEY: Yes, Your Honor. For scheduling purposes I just want to go ahead and inform the Court I have one more witness.

THE COURT: Uh-huh.

MS. BAILEY: And then my next witness after that is the forensic pathologist, who's coming at 1:00 o'clock.

THE COURT: All right. The Defense ready?

MR. BARR: Yes, sir.

THE COURT: All right. Bring the jury in.

MS. BAILEY: I'm sorry. To be clear, I may have communicated the wrong thing there. I have one more witness who's here and ready.

THE COURT: Uh-huh.

MS. BAILEY: And then the forensic pathologist at one, and then more witnesses this afternoon and tomorrow morning. I'm not trying to get everybody's hopes up.

THE COURT: Well, are we going to finish this week?

MS. BAILEY: Yes, Your Honor.

THE COURT: All right.

MS. BAILEY: I anticipate --

THE COURT: Is the Defense going to have time to put up a case?

MS. BAILEY: Yes, Your Honor. I anticipate resting tomorrow around lunchtime.

THE COURT: All right. Let's bring the jury in.

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

THE COURT: All right. The jury has returned to the courtroom, and at this time the State may call its next

witness.

MS. BAILEY: Thank you, Your Honor. The State calls Jameson Wright.

THE COURT: Come forward, sir. If you'll step over here to my left to the gentleman.

THE CLERK: Sir, please state your full name for the Court.

MR. WRIGHT: Jameson Tyrece Wright.

THE CLERK: Could you please spell your name for the court?

MR. WRIGHT: J-A-M-E-S-O-N.

THE CLERK: And your last name?

MR. WRIGHT: W-R-I-G-H-T.

THE CLERK: Thank you.

Whereupon, Jameson Wright was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat and speak in the mike.

THE COURT: Sir, you have a very soft voice, which is fine, but if we -- the last lady over in the jury box needs to be able to hear you. So keep as close to that microphone as you can.

MR. WRIGHT: Yes, sir.

THE COURT: But and speak as loud as possible.

MR. WRIGHT: All right.

THE COURT: You may proceed.

MS. BAILEY: Thank you.

THE COURT: Ms. Bailey.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Mr. Wright, do you have a nickname?

A Yes, ma'am.

Q Speak into that microphone.

A Yes, ma'am.

Q What's your nickname?

A Tip, Tip.

Q Tip?

A Yes, ma'am.

Q People call you anything else?

A No, ma'am.

Q Anybody ever call you T.I.?

A Yeah. People who really don't know my -- call me by Tip.

Q Okay. On December 1st, 2008, where were you?

A At Paradise trying to catch a ride home.

Q Okay. And you said you were trying to catch a ride home. Were you inside or outside the club?

A I'm in the outside, cold. I been outside.

Q Okay. And did anything extraordinary happen while you were waiting on a ride?

A No. Not really. I was standing outside, and then a car

crank up. Well, it was in the woods. It wasn't nothing new because cars always be in the woods over there because they got a bunch of people that down there that smoke rock or whatever, and they be in the woods or whatever. So I thought it was somebody from around the area, and so I just walked to the road and catch a ride home. I didn't --

Q What happened next?

A What happened next? I went to the car. Thought it was somebody from around home side. The back, the back driver window rolled down. The person had a gun, told me not to move. So I ain't move.

Q How many people were in that car?

A Four.

Q Okay. What color was the car?

A A black Ford Taurus.

Q There were four people in the car. What were they wearing?

A Gloves and masks.

Q They were all wearing gloves?

A Yeah. And masks.

Q And masks. Could you see any of their faces?

A Nah.

Q How many guns did you see?

A Two.

Q Can you describe the guns?

A It was long.
Q One was long?
A Yeah.
Q What about the other one?
A I ain't see the other one.
Q You didn't see the other one?
A Huh-uh, huh-uh.
Q Okay. What happened next? Anybody get out of the car?
A Yeah.
Q Who got out of the car?
A A tall fellow.
Q Okay. Was that out of the back seat or the front seat?
A The front seat.
Q Front driver or passenger?
A Passenger side.
Q And what did that person do who got out of the passenger side?
A Go on inside the club.
Q He went inside the club?
A Yeah.
Q And did anybody get out of the back of the car?
A No, ma'am.
Q Did anybody point a gun at you?
A Yes, ma'am.
Q I'm sorry?

A Yes, ma'am.
Q Who pointed a gun at you?
A It was in the back seat.
Q Okay. So it wasn't the passenger who went inside the club. It was somebody else?
A The passenger got out the car and went in the club. Somebody was in the back seat holding a shotgun.
Q Okay. I'm going to need you to speak up. Okay?
A Yes, ma'am. Somebody was in the back of the car holding a shotgun when I walked to the car, when I was walking to the car.
Q Okay.
A The person that jump out the front seat ran inside the club.
Q All right. And that person who was holding the shotgun what were they doing with it?
A Just holding it like that right there (indicating.)
Q Holding you like that?
A They just -- they was holding it out the window like that right there (indicating).
Q They were pointing it at you or at something else?
A They was just holding it out the window like that right there (indicating.) They wasn't pointing it at me.
Q Okay. Did anybody point a gun at you?
A No, ma'am. If it did I can't remember because that was

like six, seven years ago, and to tell you the truth, I smoke weed. I can't remember.

Q So the person who got out of the front seat, were they carrying a shotgun or a handgun?

A I couldn't tell.

Q Okay. Do you recall talking to Investigator Steve Brown on August 20th of 2012?

A Yeah. If that's the same one who keep calling my phone.

Q Okay. Did you give a statement to him?

A Yeah.

Q In that statement, do you recall indicating that the front seat passenger got out of the car and walked into the club brandishing a handgun?

A He was -- I couldn't recall.

Q So you don't recall whether you made that statement or not?

A No. I don't recall seeing him with a gun.

Q Okay. You don't recall that today.

A Yeah.

Q Do you admit or deny making that statement?

A Well, I ain't, I ain't denying making that statement.

Q Did you hear shots?

A Yeah. I heard one shot, and then that's when I started running.

Q Where did you run?

A Behind the club in the woods.
Q Do you recall when you spoke with Investigator Brown on August 20th of 2012, do you recall telling him that you heard shots coming from inside the club?
A It was shots. I heard one shots and then I ran behind the club. That's when I started hearding more shots, didn't know if it was coming out the club or outside -- in the club or outside the club.
Q So you couldn't tell where the --
A I couldn't tell because outside was so quiet it was echoing. I didn't know if it was coming out the club or inside.
Q Was anybody else shot at that you're aware of?
A Yeah. My cousin.
Q Who's your cousin?
A Andre Richards.
Q Was he hit?
A Nah.
Q As the vehicle -- did you see the vehicle leave?
A No. Because I was still in the woods.
Q Do you recall telling Investigator Steven Brown that you heard more shots as the vehicle was leaving?
A That I -- no, ma'am.
Q You don't recall telling him that?
A Huh-uh.

Q Do you admit or deny that you would have made that statement to him?
A Excuse me?
Q Do you admit or deny making the statement to Investigator --
A I did not, man.
Q -- Brown?
A I did not, I mean. I can't recall. I ain't even heard no more shots after the club -- car left because I ain't even saw the -- when the car left. I was in the woods trying to find my way out the woods.
Q Can you describe the front seat passenger who got out of the car?
A It was taller than -- a little bit taller than me -- short -- well, shorter than me.
Q Shorter than you or taller than you?
A Yeah. A little bit shorter than me. A little bit shorter.
Q Do you have an amount that -- approximate height?
A Nah. I'm about six. I'm a little bit, little, little bit close to six foot, but he was a little bit shorter than me.
Q Do you recall telling Investigator Steve Brown on August 20th of 2012 that that front seat passenger was five six?
A If I did, I can't remember.

Q Okay. Do you admit or deny that you would have made that statement to him?
A I, I admitting.
Q Do you recall telling Investigator Steve Brown that the front seat passenger was 180 pounds?
A I can't remember.
Q Do you admit or deny that you would have made that statement?
A I deny.
Q I'm sorry?
A I denied.

MS. BAILEY: I have no further questions for this witness.

THE COURT: Mr. Barr, your witness.

MR. BARR: I have no questions, Judge.

THE COURT: All right, sir. You may step down. Thank you very much. You wish to excuse the witness?

MS. BAILEY: Yes, Your Honor.

THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: You're free to go, sir.

All right. Counsel, it's my understanding the next witness will arrive at 1:00 o'clock. Is that correct?

MS. BAILEY: Yes, Your Honor.

THE COURT: All right. So ladies and gentlemen, we're

going to take our lunch break at this point in time. As you leave the courthouse, the instructions will be the same. Don't listen to, watch or read any media reports. Don't attempt to gather information on your own. Don't discuss the case with anyone. Don't allow anyone to discuss it with you and report any contact you might have concerning this case should that occur. We expect the next witness to be here at 1:00 o'clock. So it gives you a little extra time to run an errand if you need to, but we'll resume at that time. Please be in the jury room at that time so we can begin promptly. Thank you very much. You're free to go to lunch. The bailiffs will show you out. Remain seated while the jury retires.

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

THE COURT: Court's in recess until 1:00 o'clock. We'll resume at that time in this courtroom. Thank you very much.

MS. BAILEY: Thank you, Your Honor.

OFF THE RECORD

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

THE COURT: All right. The State ready to proceed?

MS. BAILEY: Yes, Your Honor.

THE COURT: All right. Defense ready?

MR. BARR: Yes, sir.

THE COURT: Bring the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. I hope everyone had a good lunch break, and as always, I will ask if any of you had any difficulty in following my directions while you're away from the courthouse please stand.

(No response.)

THE COURT: And it appears all jurors have been able to comply with my instructions thus far.

When we took our break the State was still in the presentation of its case, and you may call your next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Dr. Schandl.

THE COURT: Come forward, ma'am, to my right, I mean, to my left, excuse me, and be sworn, your right.

THE CLERK: Please state and spell your full name for the Court.

MS. SCHANDL: Cynthia Anna Schandl, C-Y-N-T-H-I-A, A-N-N-A, S-C-H-A-N-D-L.

THE CLERK: Thank you.

Whereupon, Cynthia Anna Schandl was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Good afternoon, Dr. Schandl.

A Hi.

Q Where do you work?

A I work at the Medical University of South Carolina in Charleston, South Carolina, in the Department of Pathology and Laboratory Medicine and in the autopsy section.

Q And what is your role there?

A I am a forensic pathologist and associate professor.

Q Now, for those folks who may have never heard the term forensic pathologist, what do you do?

A A forensic pathologist is a doctor who is then trained in first pathology, anatomic and clinical pathology, so the study of disease, and then further trained in the field of forensic pathology by way of an additional year of training, which is a fellowship training period. Forensic pathology, the way that -- what we're usually tasked to do is to determine the cause of death and the manner of death in cases where people die and there's some legal aspect to their death, whether it's because of a homicide or maybe a suicide or even accidents and sometimes even natural causes may have some sort of legal

aspect with their death; and so, that's when we're asked to step in and see if we can determine the cause of death and the manner of death, usually by performing an autopsy.

Q Can you tell us a little bit about your education?

A Yes. So as I mentioned, I'm a physician or a doctor. So after my bachelor's degree, I went to medical school at the Medical University of South Carolina. During that time, I also went to graduate school and graduated in '99 with an MD and a PhD degree, and following that training, began my formal training in pathology. So anatomic and clinical pathology residency training is four years, and then the fellowship is an additional year, and following that training, there's a board certification by the American Board of Pathology, which is a national organization that certifies pathologists, and I'm board certified in my three areas, which is anatomic pathology, clinical pathology and forensic pathology.

Q Do you have to do any continuing education?

A Yes. There are requirements in the State of South Carolina to maintain your medical license that you do continuing medical education. I do quite a bit more than they require because I like to.

Q Can you tell us a little bit about your experience?

A Sure. So I've been performing autopsies since I began my residency training in 1999, and starting in 2000, I worked as an assistant medical examiner in our system, when we had a

medical examiner system in Charleston. So I started doing forensic pathology cases, and then I began on faculty at MUSC in 2004, and I've been there since then doing cases, and I'm -- I -- as far as numbers, the quality is more important than numbers. I'm somewhere over 2000 cases.

Q So that's -- is that 2000 autopsies performed?

A That is correct.

Q Okay. Have you ever been qualified in the courts of this state?

A Yes, ma'am.

Q Have you been qualified in any other courts as an expert?

A Yes. In federal and in military courts.

Q Approximately how many times have you been qualified as an expert in the state courts in South Carolina?

A Somewhere between 50 and a hundred.

MS. BAILEY: At this time the State would seek to move Dr. Schandl -- to qualify her as an expert in forensic pathology.

THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: All right. Ladies and gentlemen of the jury, let me explain to you a little bit about the procedure we're going through right now. Ordinarily, under the rules of evidence that govern the testimony of witnesses in a trial, witnesses are not allowed to state opinions about matters.

Lay witnesses are required to testify concerning facts that were -- are within their knowledge. An exception to that general rule is for -- is made for witnesses who are qualified as experts either because of their education or professional standing or things of that nature, and for those that are qualified as an expert by the Court, they're allowed to state their opinions within their area of expertise, and they're also allowed to state the reasons why they hold those opinions. So they're, they're allowed to give opinions within that field or calling or profession. In this case, this witness is being qualified as an expert as a forensic pathologist, and as such, she'll be allowed to state her opinions within that area of expertise and also the reasons for them. Now, later on when I charge you concerning the law in this case, I'll go over these matters with you in, in relationship to your responsibilities, but we'll cover that during the charge. So at this time, I am qualifying the witness as an expert within that field. You may proceed, Ms. Bailey.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

BY MS. BAILEY:

Q Did you have occasion to perform an autopsy on Aundry Evans, Jr.?

A Yes, ma'am.

Q And how did that case come to you?
A So in this state, we have what's called a coroner system, and so each county has an elected official, the coroner, who is responsible for determining the cause and manner of death for those people who die in their county. When they determine that an autopsy will assist them in that determination, they may refer their case to a forensic pathologist, and in this case, that's what happened. The Georgetown County Coroner referred the case to our office at the Medical University of South Carolina.
Q . So how long -- when did you perform the autopsy?
A If I may refer to my notes?
Q Okay.
MS. BAILEY: Any objection?
A I performed the autopsy on December 3rd of 2008.
Q And did you make any preliminary findings?
A Yes. So if I may describe my process. An autopsy begins when the person, the dead person arrives at our facility and is brought up to the autopsy suite where I will perform my procedure. It begins with an external examination where I'm looking for things that might be identifying features such as height and weight, tattoos, those sorts of things, and then it continues with an examination of clothing, if it's being worn or not, as well as is there any evidence of injury. So the external examination showed me that there were a number of

defects in Mr., Mr. Evans' body that were consistent with gunshot wounds.

At that point, the next step in a gunshot wound case or a probable gunshot wound case is to get a series of x-rays. The reason we get a series of x-rays is to see if there are bullets in the body that we need to recover. So we want to first know where they are. So the x-ray helps us figure out where they are, and second, not damage them trying to get them out. So we want to have a very good idea of, of where they are and if they're in there. That also helps us when we're trying to figure out the pathway of the bullet because some of the bullets will go all the way through the body and some of them will stop in the body, and those are the ones we need to recover. So putting the picture back together, the x-ray can be very helpful.

So after the, the x-rays and the external examination and the examination of clothing, then we move to the internal examination, which is what people think of when you think of an autopsy where you make the Y-incision and you look at the organs inside the body.

Q And when you performed -- let's start with the x-ray. When you had the x-ray done on Mr. Evans, what did you find in the x-ray?

A In the x-ray, it was apparent that there were some radiopaque objects, so things that the x-ray couldn't pass

through, in this case metal objects in the region of his left hip. In addition, you could tell that the femur, so that thigh bone and right up near the hip, was broken, quite badly broken in several different places, so a compound fracture, multiple different fractures of that femur and hip region.

Q So how many -- what did you call them, radiopaque items were you able to see on the x-ray?

A Well, on the x-ray, it's somewhat difficult to determine exactly how many because they tend to come apart, but it looked like four different things that we would want to recover that did not look like bone but that looked like metal. Bone is a little bit less dense with the x-ray than is metal. So metal will look very white on an x-ray, and bone will look a little bit more gray. Air is black, for example. So there were -- there was -- there was some metal in there that we knew that we needed to recover.

Q So when you performed the Y-incision and examined the organs, did you make any findings?

A Yes. So as far as looking at the organs, his organs generally looked pretty good. His heart was a little bit big. Otherwise, his organs looked all fine. However, in his belly the -- there was a bullet that had -- or let me -- I presume that there was a bullet that had gone through his iliac artery on the left-hand side, and the iliac artery is a very large artery that comes off of your main artery, the aorta, which is

about the size of a garden hose, and the iliac artery is about the size of my pinky. So that artery had been -- had a hole in it, and in the belly itself, there was -- we measured 1,800 milliliters of blood. So that's almost two liters of blood, if you think of it in terms of containers a two-liter bottle of coke or something like that, shy of, of that amount of blood in his belly. Also, there was a hole in his colon or his large intestine, and there was bleeding off along a pathway that would be consistent with a bullet going through his body from the belly and through the pelvis and then out the right leg from the left to the right.

Q Did you on your examination find any, any other entry and exit wounds that were from a bullet?

A Yes, ma'am. The -- so as far as that left hip and those fractures that we saw and those radiopaque things, those metal things that we found on the x-ray, there were two gunshot wounds that entered him at his hip, at his right leg and hip, and both of those appeared to strike that bone, that femur, the thigh bone. So those -- we did recover two bullets from that site at the region of the top of the femur near the hip. So those were two that went in and didn't go out, and bullets, we got bullets out from those. In addition to that, there was another bullet, apparent bullet wound track that went through his -- the back of his left thigh, and then looked like it went into the inside of his right thigh and out the right side

of his leg, so through both of his legs, but without hitting any bones. So those were the gunshot wounds. There was the one to the, the abdomen that struck the iliac artery and the bowel or the colon, the two that went into the left hip area and struck the femur and caused fractures there, and then the one that went through the fleshy parts of both of his legs.

Q And in addition to that examination, do you rely on -- like do you order toxicology reports or rely on any other reports when you form your medical opinions?

A Yes. It will depend on the case, but in forensic cases, such as this is, it is routine to send fluids, usually blood if we can get it, for toxicology testing, and that was done in this case. In, in this case, Mr. Evans had survived for a period of time after being shot, and so our best sample is the first sample drawn when he gets to the hospital before he's received blood and before he's received medications and that sort of thing, and so in this case, we were able to get the best possible sample, the admission blood sample, and send that for a toxicology studies.

Q And did you rely on that toxicology result when forming your opinion?

A Yes, ma'am. I do incorporate any toxicology findings if they're pertinent.

Q Okay. And what was in his system according to that toxicology report?

A Give me one moment. In his blood was caffeine, and that's all.
Q In that toxicology report, would you have tested for alcohol?
A Yes, ma'am.
Q Would you have tested for marijuana?
A Yes, ma'am.
Q Would you have tested for cocaine?
A Yes, ma'am.
Q And would you have tested for heroin?
A Yes, ma'am.
Q And were any of those present?
A No, ma'am.
Q Would you have tested for other types of prescription drugs?
A Yes. The -- what we do is called a comprehensive analysis, what, what we order from the lab, and that's about 300 different drugs and medications. So, yeah, it's -- it covers a wide net.
Q As part of your lab's procedure, do you inventory what is on the victim when they're brought into the lab?
A We do.
Q Okay. I'm going to show you what's been marked for identification only as State's Exhibits 18 and 19, if you could just take a look at those and see if you recognize them.

A Yes, ma'am. These are items that we found in his personal effects, in his belongings, which included his clothes that were in the custody of Jennifer Flowers of Georgetown County, but she allowed us to examine them.
Q Okay. And how do you know these are the pictures that were taken at your laboratory?
A They, they have -- well, they have our -- we call it a chuck. It's a thing you put down on the table to keep stuff from getting on the table. So it has our chuck and then it has our number. We have a little -- we have one of those -- well, we used to have one of those DYMO label makers. So we have our little DYMO label maker with our little case number on there. So those are the reasons.
Q Okay. And are these photos a fair and accurate representation of the items that were on the victim when he came to your lab?
A Well, they, they were in his belongings --
Q In his belongings.
A -- which I received to, to review from a representative of the sheriff's office.
Q Okay. But are these photos a fair and accurate representation?
A Yes, ma'am.
Q Okay.
MS. BAILEY: At this time the State would seek to

publish State's Exhibits 18 and 19 and enter them into evidence.

THE COURT: Any objection?

MR. BARR: No objection, Judge.

THE COURT: Without objection they'll be admitted into the record as marked.

MS. BAILEY: Thank you, Your Honor.

(State's Exhibit Numbers 18 [Photograph] and State's Exhibit Number 19 [Photograph] admitted into evidence and appropriately marked.)

THE COURT: You may publish if you'd like.

BY MS. BAILEY:

Q All right. We are looking at State's Exhibit 18, which has now been entered into evidence. If you could, just describe for the jury what's in that photo.

A In this photo are two business cards, looks like a driver's license and some money, including five $20 bills, two quarters, two nickels and four pennies.

Q Okay. Slide 13, please. I'm going to show you what has been now entered into evidence as State's Exhibit 19. Could you describe for the jury what they're looking at?

A Yes. And they could probably describe it for me, too. It's a -- there's a Wal-Mart receipt, and then there's some change, including a quarter, two dimes and two pennies, and then what looks like a piece of a business card and a crumpled

up maybe candy wrapper or something.
Q Okay. Thank you. I'm going to show you what have been marked as State's Exhibits 23 and 22 for ID only. Would these assist you in your testimony today?
A I could certainly do everything I would need to show where the bullet wounds were with 22.
Q Okay. With 22 only?
A Yeah.
Q Excellent. All right.
MS. BAILEY: Your Honor, at this time I request permission for the witness to come down to use 22 to speak with the jury.
THE COURT: Ma'am, you may step down for demonstrative purposes.
A Thank you, sir.
Q Put it right here and facing this way and near this microphone so our court reporter can hear. Now, Doctor, if you could, could you indicate for the jury -- I'm going to hand you a red pen -- could you indicate for the jury where the bullet wounds were on the victim when you examined him? Can everybody see? Everybody can see now. All right.
A Yes. Absolutely. I'll be happy to do that. So, again, there was one that was kind of to his left side right about here (indicating), and that's the one that went through the iliac artery and bled the blood into his belly and then went

through the colon, and then it came out over on the leg, something like this (indicating.) So that was one.

Another one was to the leg and went and hit that bone right there, the femur, the big, the biggest bone in your body. Another one did the same thing, but from the more of the, of the back, just went and hit that hip and leg area and broke that bone, and then the one that went through both legs started about over here and went out here and then went back in here and then came out over here (indicating), so going across the body like that. Let's see. I've got one, two, three, four. Now, keep in mind, I can't tell you with 100 percent certainty that this connects with that because, I mean, you can move your legs, right? So you could move one up and then there's no way it would hit the second one, but these two holes, this exit and this entrance, were very close to each other. So that is my opinion is that that's how it happened, but the other possibility is that he was shot twice, one through one leg and one through the other leg, just to be clear.

Q Now, can you tell us the difference between a bullet wound that has an abrasion and one that doesn't have an abrasion?

A So when a bullet is entering a body, it's got a spin on it, generally speaking, and it will abrade the skin around the defect or hole that it makes. So we call that an abrasion.

It's just scraping the skin off. So those are frequently encountered with the entrance wound because of that action of the bullet as its spinning, but you can also encounter an abrasion at an exit wound if the skin is up against something, whether it's tighter clothing or a belt or a wall or a floor, because, again, you're going to -- when you're -- when the bullet is coming out it'll be scraping the skin against whatever that thing is. So you can get an abrasion on either side. It's more characteristic of an entrance wound.

Q And in the bullet holes that you found in the victim, did you find that some had abrasions and some did not?

A Yes. That, that is the case.

Q And can you tell us which ones had abrasions?

A Yes. But I will need to refer to my notes.

Q Go ahead.

A All right. There is an abrasion for this one coming in to the belly. There is also an abrasion for this one coming out at the leg. So this, this one -- there's abrasions on both sides. There is an abrasion on this one going in, this one here, the entrance. No abrasion on this one where it comes out. There is an abrasion on that one where it seems to go back in, none at this one going out. This one here at the back that hits the, the, the hip has an abrasion, yes, this one, and then I think we have one more, the other one that hits the hip also has an abrasion.

Q Is the presence or absence of abrasions in this case cause you to form whether those were entrance or exit wounds in your opinion?
A It does assist me. Yes. Absolutely.
Q Can you -- I think that's all we'll need off of that, if you could take your seat again. Thank you.
A (Complies with request.)
Q Could you explain to the jury what soot or stippling is on a gunshot wound?
A Yes. So when we're looking at gunshot wounds, one of the things that we try to tell, if we are able to, is how far away the muzzle or the end of the gun was from the victim, and what we can look at is whatever's left on the skin. So what we look for is either soot, which is the, the powder stuff coming out of the muzzle of the gun that -- and you have to be very close. So that's a contact gunshot wound, just by our definitions. If you see soot, we can call it a contact gunshot wound because it has to be very close, and/or stippling and those are particulates or little pieces of junk coming out of the end of the muzzle, so pieces of metal or debris, things that are also in the barrel, they're coming out of the muzzle. They can fly a little further than soot because they have some weight to them, and then what we call stippling is when those things actually get to the skin and scrape the skin or make an abrasion. So soot you can wipe

off. It means -- to us it means a contact gunshot wound. Stippling you can't because it's scraped the skin and that means a close range gunshot wound. Any time you get behind where those little particulate things can travel that far, and they're going to fall onto the ground, we would call distant or indeterminate, and basically it means that we don't see anything on the skin.

Q And what is that distance where you wouldn't be able to determine whether it was close range or not?

A Well, the only way to know for sure is if you take the same gun and the same ammunition that was used and test fire it at different distances from a target. So you can actually test that and see how far back you need to go before everything goes away. As far as if you take all comers and you make an average, they usually say about three feet is, is when you can expect that you won't see anything on the, on the target. So if you're past three feet, chances are you're not going to see anything on the target.

Q So would you be able to tell the difference between three feet one -- a shooter who was standing three feet one inches away or ten feet away as far as the gunshot wound?

A No, ma'am. So, again, if it's past that, I don't see anything, and so that to me is distant or indeterminate because I'm not having any evidence on the victim or the target that -- of, of distance. I only get distance if --

evidence if they're quite close.
Q Does it ever happen or is it possible that a shooter could be closer than three feet and there's not soot or stippling present?
A Yes, ma'am. That can happen as well, and again, that's why you can give you an estimate, but you can't be certain unless you have that gun and that ammunition because the -- those are the two factors that are going into how far things are flying out of the muzzle of the gun. For example, one simple example is that you might have a flake or a ball powder. So if flake powder is traveling through the air, it's not going to get as far as ball powder. So just those two variables in the ammunition can make a difference for how far you're going to get those things on the skin. So I can't tell you -- yeah, between, you know. Could it be two feet? Yeah. But again, I can only give you some guidelines to go by.
Q And in this case, did you find any soot or stippling present on any of these bullet wounds?
A No. I did not.
Q Okay. Based on all of the information that you reviewed, the toxicology report, your autopsy, did you -- were you able to form an opinion to a reasonable degree of medical certainty as to what the cause and manner of death was?
A Yes, ma'am.
Q And what was that opinion?

A The cause of death is left iliac artery and colon perforations due to a distant perforating gunshot wound to the abdomen. I call contributory, multiple gunshot wounds to the legs, and I call the manner of death homicide.

Q I'm going to show you -- just one moment. I'm going to show you what has been marked as State's Exhibits 20 and 21 for identification only. If you could, just take a look at those. Let me know when you --

A Yes, ma'am.

Q Okay. Do you recognize those?

A Yes, ma'am.

Q And are -- first of all, what are they?

A So these are photographs of the -- those bullet parts that we retrieved from Mr. Evans' leg and hip area. One is -- we have one says State's 20 is the bullet that we're calling number one, and State's Exhibit Number 21 is the bullet that we're calling number two. Again, they're both in that area of the hip. So I'm not certain -- well, I can't assign number one and number two to either the one that went in from sort of the side or the one that went in from sort of the back, but those are the two that were from that hip area.

Q Okay. And are these photos a fair and accurate representation of those bullets?

A Yes, ma'am.

Q And are they a fair and accurate representation of the

condition of those bullets as they were pulled from the victim?

A Yes, ma'am.

Q Okay.

MS. BAILEY: At this time the State would seek to introduce State's Exhibits 20 and 21 into evidence.

MR. BARR: Without objection, Judge.

THE COURT: Without objection they'll be admitted as they have been marked.

(State's Exhibit Number 20 [Photograph] and State's Exhibit Number 21 [Photograph] admitted into evidence and appropriately marked.)

THE COURT: You may proceed.

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q Slide 14, please.

A We are looking at State's Exhibit 20 on the monitor. So if you could -- here's a question that I think is a little bit unclear. You've numbered these one and two. Is that based on the order that you think they went in or any particular order?

A Usually just when I find them. So the first one I find gets the -- gets to be number one, and the second one I find gets to be number two.

Q Okay. So State's Exhibit 20 that the jury is now looking

at, can you describe for them what it is that they're looking at.

A Yeah. So that -- you see the -- our little DYMO label thingy FA08813, that's our number thing, and then you see the little number one. So that's how we remember which bullet we called one and which one we called two, and then above the DYMO label thing you see a copper color metal piece, and so that is a portion of the jacket of the bullet, and then next to that, the grey metal thing, that's the, the heavy part of the bullet that's inside the jacket. So together they make up a bullet.

Q Were they close to each other inside the victim?

A Yes. Again, all those fragments were in that area of the hip.

Q Okay. Slide 15, please. I'm going to show you State's Exhibit 21, and could you describe what the jury is looking at?

A This is very similar to the last one you saw, although maybe prettier. Again, you see the case number, and here we have a number two on this one. So this is the second one I found, and again, I have the copper colored jacket on the left-hand side on the top, and then the grey metal part of the bullet on the right-hand side of the picture.

Q Thank you. After you collected this evidence, what did you do with it?

A The evidence in this case was transferred to Jennifer Flowers of the Georgetown County Sheriff's Office.
Q All right. I'm going to show you what's been previously marked as State's Exhibit 75 for identification only. If you could, take a look at that, and let me know when you've had a chance to review it.
A Okey-doke.
Q All right. Do you recognize that item?
A Yes, I do.
Q And what is that?
A So in this bag we have a container, and this is the container that I put the bullet in for transfer. It has our, our case label on it, and it says bullet one, and then in this extra baggy that has a different agency case number on it are those two pieces that you saw in the picture of bullet one, and they're in here now.
Q Okay. And so after you pulled that item from the victim, you testified earlier you transferred it to Jennifer Flowers; is that correct?
A Yes. That's correct.
Q Did you tamper, alter it in any way while it was in your possession?
A Sometimes I will rinse the blood off.
Q Okay. Other than --
A No, ma'am.

Q -- that, any other alterations?
A That's all.
Q Would that affect anything having to do with any imprint on the bullet or, or any metal impressions that would be left on the bullet?
A No, ma'am.
Q I'm going to show you what's been previously marked as State's Exhibit 76. Take a moment to review that.
A Okay.
Q Do you recognize that item?
A Yes, ma'am.
Q And what is that?
A Again, we have our container that I put the bullet into for transfer, and then in this extra bag from a different agency are the two portions of bullet number two, the one that I thought was prettier, and there he is here.
Q Okay. And this -- did you alter or tamper with that item in any way?
A No, ma'am. Except perhaps to rinse it.
Q Okay. And what did you do with it after you pulled it from the victim?
A So what we do is we measure it. So I measure the, the base of the jacket, and I measure the base of the metal part, the grey metal part, and then I measure the length, and then I take its picture, which you saw, and then he goes into this

container.
Q Okay. And then did you transfer it to Jennifer Flowers?
A That is correct. Yes.
MS. BAILEY: Beg the Court's indulgence one moment.
THE COURT: Yes, ma'am.
BY MS. BAILEY:
Q Thank you for your time and attention. Please answer any questions that Mr. Barr may have.
A Yes, ma'am.
MR. BARR: I don't have any questions.
THE COURT: Thank you. Ma'am, you may step down.
A Thank you, sir.
MS. BAILEY: Thank you, Your Honor. At this time the State would request that Dr. Schandl be released from her subpoena.
THE COURT: Any objections?
MR. BARR: No objection.
THE COURT: Ma'am, you're free to go at this time. Thank you very much. The State may calls its next witness.
MS. BAILEY: Thank you, Your Honor. The State calls Steven Brown.
Whereupon, Steven Brown was called to the stand, duly sworn by the clerk and testified as follows:
THE CLERK: Thank you. Please have a seat.
THE COURT: All right. Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Investigator Brown, where are you employed?

A I'm an investigator with the Fifteenth Circuit Solicitor's Office.

Q On August 20th of 2012, did you interview Jameson Wright?

A I did.

Q Did he indicate to you that he had a nickname or a street name that he went by?

A I, I do know his street name. Yes. I don't know that he indicated it to me during that interview, but yes, I know his street name.

Q And what do you know that street name to be?

A T.I.

Q During that interview, did he indicate to you anything about the front seat passenger of the vehicle that he saw pull up to Club Paradise?

A He did. He, he, he described his height and then described what, what he did.

Q Okay. And can you describe that for us?

A Sure. What he told me was that the front seat passenger was about five six or five seven and that he got out of the, got out of the vehicle, brandished a handgun and walked into the club.

Q Did he indicate anything about the other people who were in the car?
A Yes. He indicated to me that everybody had on all black and had on ski masks and gloves and that a passenger in the rear of the car was holding him, was holding him at gunpoint with a shotgun and had actually told him, "Don't move or, or you're going to get shot."
Q Did he indicate to you whether or not he heard gunshots coming from inside the club?
A He did.
Q And what did he indicate about that?
A I think just that he heard a gunshot come from inside the club and that -- that's all, that's all I recall. Can I refer to my report?
Q Would it help to refresh your recollection?
A It would.
Q Yes.
A Yeah. He just said that he heard shots coming from inside the club and that someone came running out of the club.
Q Okay. Did he indicate to you whether he heard any additional gunshots as the vehicle was leaving?
A He did. He just heard, again, that he heard, heard, I believe he said multiple shots. Again, I'd like to refer to this real quick. Just that he heard more shots while the vehicle was leaving.

Q Okay. And did he give a detailed description or can you give the detailed description that he gave that day of the person who ran into the club, the front seat passenger as he described him?

A Just what I said earlier.

MR. BARR: Judge, objection. It, it would seem to me, and I'm not sure whether or not this witness is for -- to the extent that he's testifying to what this witness -- other witness has already testified to, it's hearsay, and I'm not sure what -- whether he's trying to impeach what the witness said or --

THE COURT: I think that's exactly what they're attempting to do.

MS. BAILEY: Yes, Your Honor.

THE COURT: Under, under --

MS. BAILEY: It's being offered as extrinsic evidence.

THE COURT: -- as extrinsic evidence of a prior inconsistent statement is allowed by the rule.

MR. BARR: All right, sir.

THE COURT: If, if, if there is a -- if there's a prior inconsistent statement that's been made. So these, these are statements apparently that the witness denied or did not admit and that allows the admission of extrinsic evidence to prove the statement was, in fact, made. So it's not being offered for the truth of the matter asserted, simply that the

statement was, in fact, made. Under the rule I'll allow it.

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q Can you give the description that, that Mr. Wright gave of the person who got out of the front seat passenger side of the car?

A Yes. Just that he was five six or five seven, about 180 pounds, a little bit shorter than himself, and I believe he said he was wearing all black as well.

MS. BAILEY: No further questions.

THE COURT: You may cross examine, Mr. Barr.

CROSS EXAMINATION

BY MR. BARR:

Q Were you in the courtroom earlier when Jameson Wright testified?

A No, sir. I wasn't.

Q All right. So as far as the testimony you just gave, are you contending that you're testifying based on your recollection or you're refreshing your memory from this document?

A I'm refreshing my memory from the document. I reviewed the document before I came in here. He gave me the statement in 2012.

Q Okay. So then this is your recollection of what he told you?

A Yes, sir. When I talked to him in 2012, obviously, I took notes of our conversation, and I typed it up into a report, and I'm reflecting on my report that I wrote in 2012.
Q So then this is not his statement but yours?
A These are -- this is my typed words of what he told me.
Q Well, it's your representation that that's what he said?
A Absolutely.
Q And you said you, you said you were not in the courtroom or you were -- you were not in the courtroom when he testified?
A No, sir. I was not.
Q So if I understand it correctly, you don't know whether or not what you're testifying to now is inconsistent with what he has already testified to?
A That's correct, counselor. I wasn't in here when he, when he testified. I have no idea what he testified to earlier.
Q But you're now in the witness stand testifying to what you claim that he told you?
A This is what he told me.
Q Now, of course, you work for, you work for Georgetown County Solicitor's Office?
A Yes, sir.
Q And you make deliveries for them, you, you -- whatever they assign for you to do --

A Yeah. I work --
Q -- you do that?
A Yes, sir. I work at the leisure of the Solicitor.
Q Did the Solicitor tell you to -- "Jameson Wright disappointed us"?
A No, sir.
Q "We think you need to come in and try to clean up where he went wrong"?
A No, sir. She told me she may call me this afternoon to impeach a witness.
Q I see. Can I see that statement a second?
A Yes, sir.
Q Did you go out the same day and take a statement from Gary Gibson?
A I don't know if it was the same day. I've spoke to Gary Gibson.
Q He's, according to you, he indicated to you he was six one on his driver's license.
A That is what T.I. or I believe it was Jameson, is that his name?
Q Yes, sir.
A That is, that is what Jameson indicated to me that's how tall Jameson is.
Q Pardon me?
A Six one is the height that Jameson indicated to me that's

how tall Jameson was.

Q That's his height. Yeah. Uh-huh.

A Yeah. I, I would add that he had to -- when I asked him how tall he was he referred --

Q Had to check his driver's license.

A -- he referred to his driver's license.

Q And -- all right. Thank you, sir.

A Thank you, counselor.

MR. BARR: I have no further questions.

THE COURT: Anything further from the witness?

MS. BAILEY: No, Your Honor.

THE COURT: All right, sir. You may step down.

The State may call its next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Jared Bardon.

THE COURT: Come forward, sir, to my left and be sworn. This lady over here is going to swear you. There you go, sir. Left hand on the Bible, raise your right. There we go. Thank you, sir.

THE CLERK: Please state your full name for the Court.

MR. BARDON: Jared Thomas Bardon.

THE CLERK: Can you spell your last name for us, please?

MR. BARDON: B-A-R-D-O-N.

THE CLERK: Thank you.

Whereupon, Jared Thomas Bardon was called to the stand,

duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: Your witness.

MS. BAILEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. BAILEY:

Q What do you do now?

A I'm a warehouse manager for a company called Mingo Industries based out of Hemingway, South Carolina.

Q What did you do for a profession in 2008?

A I was a deputy sheriff at Georgetown County Sheriff's Office.

Q How long were you with the Georgetown County Sheriff's Office?

A Nine years.

Q When did you leave their employment?

A April of 2013.

Q Did you do so voluntarily?

A I did.

Q Did you do so because there was any kind of scandal we need to know about or why did you leave?

A It was a money issue.

Q And on December 1st of 2008, were you involved in the investigation of the murder of Aundry Evans?

A I was. I was one of the first deputies on scene.

Q Okay. And when you say you were one of the first deputies on the scene, when you got there had the crime scene been secured yet?
A I was, I was one of the first. I believe there's another deputy that was right in front of me, and the crime scene had not been secured by the time I had got there. I was -- like I say, I was one of the first ones there. So I could -- I kind of saw first and foremost, you know, what was going on.
Q Okay. And when you walked into the scene, what did you observe?
A I saw the victim laying on the floor of the nightclub, and I remember him having a jacket behind his head. I remember seeing blood on the floor and on his body, and there was a bunch of people were outside, you know, prior to me entering, and there was just a few people inside the nightclub.
Q The people who were inside the nightclub, were they being attentive to the person who had been shot or --
A There was two people that was -- that, that were, and those were really the only people I remember that were -- really were helping out. Most of the people that were there were outside. So it was myself, another deputy and a couple of other, I guess, you know, patrons inside whenever I got there.
Q And so what did you do next in, in the line of, of your

duties?
A Well, the main thing is, you know, providing care to the victim because, obviously, you know, the, the call came out as a shooting. So I go straight to him. I try to assess what's going on. I remember getting on the radio and asking for the time that the ambulance would take to get there because he wasn't looking too good. That, that was the main focus, after which I remember telling a couple -- there was two other deputies that showed up, just telling them to keep everybody outside so we could kind of maintain a little bit of a crime scene, and I was trying to ask the victim, you know, just, just trying to keep him conscious and talk to him until maybe EMS got there.
Q Okay. Did he -- how did he seem to you, the victim?
A To be honest, you know, he seemed like he was, he was more calm than I would have been. I mean, he was still conscious. I mean, I thought he was alert, but as I talked to him, I'm just trying to get his status, you know, "How are you feeling?" It seemed like he was getting weaker and weaker and that kind of troubled me. So I kept calling and asking for, you know, how much longer, how much longer till the ambulance gets there because it seemed like he was going out of consciousness, you know, a little quicker than I would have liked to have seen, and then I think it went from being alert to he was maybe being nervous. I could see that change

because I stayed by him pretty much the whole time until EMS got there. So I was pretty concerned.

Q Did he ask for anybody in particular or anything in particular?

A He -- the only person that he did ask for was somebody by the name of Mo. He kept saying, "Where is Mo? Where is Mo," and I said, "I don't know who you're talking about," and there was nobody by that name, you know, if he was calling for anybody that I remembered walking over. There was a female that was right beside him when I was beside him the whole time, some kind of, some kind of acquaintance, but I don't know who she was and I never got her name.

Q How long from when you arrived until EMS arrived?

A It's hard to remember. Like I said, you know, in a situation like that, time, it's, it's, like I said, goes so fast, but I want to say it was maybe ten minutes. It seemed like an eternity, but maybe ten minutes at the most.

Q And once EMS arrived, what, what was your role then on scene?

A Crime scene preservation. At that time we call our criminal investigators. They'll come out and, you know, start working the crime scene, and obviously, we want no one else to come inside the nightclub. You know, we preserve what we have and also crowd control because by this time even though a lot of people left, there was still a bunch of people outside. So

you want to make sure they stay outside, everybody's calm, you know, obviously something happened inside that was real bad, so crowd control, you know, scene preservation, and, you know, assist EMS if they need help, too.

Q So was it your role to investigate who did this --

A No.

Q -- that are on scene?

A No. Like I said, primary first responder is my role, just getting there and taking care of it until the investigators can show up.

Q Okay. Did you release the victim to EMS at that, at some point? How does that work?

A Yeah. When EMS came in, like I said, I was still beside the victim, and I kind of gave them the quick, the quick, "Hey, here's what's going on," and they didn't waste any time on -- putting him onto a back board and putting him into the ambulance.

Q What did you do next?

A Me and the other deputies on scene made sure everybody was outside, made sure -- we started kind of asking if anybody saw anything, are there any witnesses, at which point we wouldn't speak to them, we would just refer them to the investigator who showed up to get an official statement, and like I said, we just kept everybody outside so nobody could tamper with any evidence or step in anything or on anything

or, you know, touch anything, and that was the basic role.
Q Okay. And do you remember what investigator showed up that night?
A There was -- I want to say there was two. I can't remember who -- exactly who it was.
Q Okay. And do you remember how long it took them to get there?
A Once again, time flies, but I want to say it took a little while. I mean, this, this nightclub that we were at, if you're coming from Georgetown, it's, it's a long way. So and that's most crime scenes you had to wait a little while. So I can't really tell you how long, but I can say that, you know, we were able to maintain a good crime scene, keep everyone outside. We didn't have any problems from the crowd like I might have -- like I thought we might, and so, you know, we -- I believe we did good in trying to hold what we had till they did show up.
Q Okay.
MS. BAILEY: Beg the Court's indulgence.
THE COURT: Yes, ma'am.
BY MS. BAILEY:
Q I have no further questions. Please answer any questions Mr. Barr may have.
THE COURT: Mr. Barr, your witness.
MR. BARR: Thank you, sir.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. BARR:

Q The victim kept asking for Mo?

A Yes. Mo.

Q Did Mo show up during the time that you were attending the victim?

A I, I, I don't remember meeting a Mo. There was nobody in there by that name that I could recall.

Q Did you have on officer, did you have on, did you have on a police uniform or were you dressed in street clothes at that time?

A Police uniform.

Q You got a police uniform on?

A Yes.

Q Badge and gun and everything?

A Everything.

Q Yeah. Did the victim make any statements to you regarding who he thought shot him?

A He did not.

Q Just kept asking for Mo?

A Yes.

Q Now, did you assist in setting up the crime scene?

A As far as keeping everyone out of the crime scene, yes.

Q And you put up tape?

A We put up -- we, we had somebody at the door -- I don't think we put up tape -- to make sure no one could come inside.
Q I see. So there was somebody, a law enforcement officer with the victim from that point until EMS came?
A Yes. I was.
Q Are you aware of any individual having conversations with the victim while you were there waiting for the EMS vehicle?
A No.
Q In fact, that's probably one of the things that you were specifically making sure that you prevented, people having contact with him.
A Well, I didn't want anybody to touch him. That's for sure. I mean, he looked like he was in bad shape.
Q Thank you, sir. I have nothing further.
THE COURT: Redirect?
MS. BAILEY: No, Your Honor.
THE COURT: Sir, you may step down. Thank you very much.
A Thank you.
THE COURT: Wish to release this witness?
MS. BAILEY: Yes, Your Honor. I request that he be released from his subpoena.
THE COURT: Any objection?
MR. BARR: No, sir.
THE COURT: Sir, you're free to go. Thank you for coming today.

MR. BARR: Thank you.

THE COURT: The State may call its next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Mike Nelson.

THE COURT: Come forward to be sworn, please. Over here to my left, this gentleman will take care of you.

MR. NELSON: Yes, sir.

THE CLERK: Please state your full name for the Court.

MR. NELSON: Michael Nelson.

THE CLERK: Thank you.

Whereupon, Michael Nelson was called to stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

MR. NELSON: Thank you.

THE COURT: Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

MS. BAILEY: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Can you tell us where you work?

A Georgetown County Sheriff's Office.

Q What's your job there?

A Lieutenant of Criminal Investigations.

Q What does that mean?
A I delegate the jobs of the investigators and assign cases on a daily basis.
Q In 2008, what was your role?
A I was an investigator.
Q And you were still -- were you still with the Sheriff's Department?
A Yes, ma'am.
Q Okay. And in -- on December 1st of 2008, did you respond to the Paradise Club?
A Yes, ma'am.
Q And what was your role on scene that night?
A I was the initial responding investigator, that was to process the crime scene and determine what had actually occurred at the location.
Q Okay. Can you -- were you able to determine how long from when 911 called till you got there approximately?
A No. I mean, I don't recollect what the timeframe was between when the initial call came in and when I responded. No.
Q Okay. Do you know if it was more than an hour?
A I wouldn't believe so. Normally what would happen is the deputies would respond. They'd secure the scene. Then they'd contact me.
Q Okay. Can you walk us through what you would do when you

arrived on scene?
A When I arrive on scene, I speak with the initial deputies to find out what exactly they had. Then I'd peruse the crime scene and speak to any potential individuals and then I'd process the crime scene.
Q Did you take statements from individuals that night?
A I do not recall. I'd have to look at my supplement.
Q Okay. If I handed you your supplement would it help to refresh your recollection?
A Yes. It would.
Q Okay. Let me know when you've had a moment to review that.
A Okay.
Q So were you able to speak with any individuals who were witnesses that night?
A According to this, no. I don't believe there was anyone there that was a witness.
Q Okay. And what did you do in the course of your investigation that night on scene?
A I would go inside, view the area where the event occurred, mark items photographically, record the items, then subsequently collect the items. Then I'd go to the hospital and speak with the victim.
Q Okay.
MS. BAILEY: Does Your Honor wish to see these before I

show him?

THE COURT: That's all right. You can show them to him.

BY MS. BAILEY:

Q I'm going to show you what's been marked for State's Exhibit only as State's Exhibit 24 through 35.

A Okay.

Q If you could flip through these. Let me know when you've completed that.

A Okay.

Q Do you recognize those photographs?

A Yes, ma'am.

Q And what are they? You don't have to say specifically each one, but generally, what are they photographs of?

A This would be the crime scene as it appeared when I arrived.

Q Okay. And are those photos a fair and accurate representation of the crime scene as you -- as it was when you arrived?

A Yes, ma'am.

Q Okay.

MS. BAILEY: At this time, the State would seek to introduce State's Exhibits 24 through 35 into evidence.

THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: Without objections they'll be admitted into

the record as marked.

MS. BAILEY: Thank you, Your Honor.

(State's Exhibits Numbers 24 through 35 [Photographs] admitted into evidence and appropriately marked.)

THE COURT: You may publish.

MS. BAILEY: Thank you.

BY MS. BAILEY:

Q I'm going to show you what have been marked previously as State's Exhibits 36 through 74. Get you to flip through these. Generally, what are those photos of?

A Those would also be of the crime scene.

Q And are they fair and accurate depictions of how the crime scene was that evening?

A Yes, ma'am.

Q Okay. Slide nine, please. State's Exhibit 24, it's going to come up on your screen. This one's real fuzzy that you have to look at. So I'm going to give you the actual photograph, too.

A Okay.

Q And the jury and Court can see that now. Can you describe for them what we're looking at?

A That's the door entering into the establishment I responded to.

Q Okay. And that seemed to be the door most people were using to go -- that people would have used to go in or out or

how did you pick that door?
A I believe so. It was probably the closest one to the parking lot and it was open.
Q Okay. Slide Ten. Showing you State's Exhibit 25. Can you describe for us what that is a picture of?
A That's the inside of the club, the bar area.
Q Okay. And is the lighting in State's Exhibit 25 an accurate representation of how it seemed to you in there that night?
A It is.
Q Okay. And to be clear, you were there while it was still dark; is that right?
A That's correct.
Q Okay. Slide 11. I'm showing you State's Exhibit 26. Can you describe for the jury what they're looking at now?
A That's a closer angle from the other side of the bar it appears of the scene of the event.
Q Okay. And is that -- where were you standing when you took that picture?
A It appears to the left of the bar, the right of the bar --
Q Okay.
A -- on the other side.
Q Was, was there another entrance or exit near you?
A I don't recall the actual layout of the building.

Q All right. All right. I'm going to show you State's Exhibit 27. Slide 16, please. Can you describe what that is?
A That's a spent shell casing located on the floor, looks right next to the foot of the pool table.
Q So that was near the pool table you said?
A It appears to be based on this photo.
Q Okay. And is that something that you collected?
A Yes.
Q And what evidence marker did you put next to that?
A Number one.
Q Slide 17. Can you describe for the jury what they're looking at?
A That's also a -- what appears to be a spent shell casing also on the floor.
Q And what evidence marker did you put next to that?
A Tent marker number two.
Q Okay. I'm going to hand you State's Exhibit 29. Slide 18. Can you describe to the jury what they're looking at?
A That's actually a projectile sitting on the pool table.
Q When you say projectile, would some people call that a bullet?
A Yes, ma'am. It's the bullet.
Q Okay. And that was on the pool table?
A Yes. According to this photograph.
Q Okay. And is that where you found it?

A Yes, ma'am.
Q Did you collect that?
A Yes, ma'am.
Q And what evidence marker did you put with that?
A Tent marker number three.
Q I'm going to hand you State's Exhibit 30, which has been entered into evidence. Slide 19, please. Can you describe for the jury what we are looking at?
A That is also a spent shell casing on the pool table.
Q Okay. And what evidence marker did you put next to that?
A That's tent marker number four.
Q Did you collect that?
A Yes, ma'am.
Q Okay. I'm going to show you State's Exhibit 31. Slide 20, please. Can you describe for the jury what that is?
A That's a red substance located on the floor that appeared to be blood.
Q And where was that located in the -- on the crime scene?
A That'd be on the floor, but according to this photograph I couldn't tell you. It appears to be the same floor next to the pool table though.
Q Okay. I'm going to show you State's Exhibit 32. Slide 21, please. Can you describe for the jury what we're looking at?
A That's a spent shell casing.

Q And is that before you would have dropped the evidence marker?
A Yes, ma'am.
Q So have we already seen a picture of this?
A Yes, ma'am.
Q Okay. It's just a little clearer?
A Yes.
Q All right. I'm going to hand you State's Exhibit 33. That's slide 22.
A That would also be a spent shell casing.
Q And where was that located?
A According to the photograph appears to be on the pool table as well.
Q Okay. I'm going to hand you State's Exhibit 34, which is slide 23. Can you describe for the jury what we're looking at?
A That would be a spent shell casing as well and that would be on the floor.
Q Okay. And is it near anything of significance?
A Scuff marks.
Q Okay. So that's not --
A Or what appear to be scuff marks. No, doesn't appear to be blood.
Q Okay. Finally, I'm going to hand you State's Exhibit 35, which is slide 24. Could you describe for the jury what we're

looking at?
A That is an overall perspective of the area where it appears the event occurred to include all pieces of evidence collected while I was there.
Q So those photos we saw just a moment ago that had evidence markers next to them, one through five, are they all, all depicted in this photograph?
A They are.
Q As to where their location was --
A Yes, ma'am.
Q -- when you found them and collected them?
A Yes. Yes, ma'am.
Q Okay.
MS. BAILEY: Your Honor, I'm not sure that I did this earlier, but State's Exhibits 36 through 74, the State would seek to move into evidence.
THE COURT: You shown those to Mr. Barr?
MS. BAILEY: Yes.
MR. BARR: I have no objection, Judge.
THE COURT: All right. Without objection they'll be admitted into the record as marked. You may publish.
MS. BAILEY: Thank you, Your Honor.
THE COURT: Yes, ma'am.
(Whereupon, State's Exhibits 36 through 74 [Photographs] entered into evidence and appropriately marked.)

BY MS. BAILEY:
Q Can you describe your evidence collection procedures?
A In respect to?
Q Do you wear gloves?
A Yes. Gloves are worn. Each item is packaged individually. It's photographed initially without the marker, with marker. It's collected, sealed, identified in a container and deposited into evidence.
Q Okay. And after you collect evidence and you're, you're done for the night, what do you do with your evidence?
A Place it in a secure location at the Sheriff's Office.
Q When you say a secure location, what do you mean by that?
A The evidence custodian is given the -- there's a depository area where it's secure, only one person or the evidence custodian is the only one that has access to it, and it's placed in there so he can file it for storage purposes.
Q Okay. So let's say you put something into evidence and you locked it up for the night, could you go back and get it back out?
A If I dropped it into evidence, no.
Q Okay.
A No.
Q So once it's in there, the only person who can take it out is the evidence custodian?
A That's correct.

Q And who is the evidence custodian right now?
A Right now it's Michael Thacker.
Q Okay. I'm going to hand you what's been marked as State's Exhibit 77. I'm going to show it to Defense counsel first. Okay. Here's the packaging. If you could look at State's Exhibit 77 and for ID only and tell me -- first of all, do you recognize anything on the outside of that envelope?
A My handwriting as well as my signature.
Q And what does your handwriting indicate on that envelope?
A That I collected this item on a specific date at a specific time and placed it into evidence at a specific date and specific time.
Q So what is that item?
A This is one spent bullet.
Q And where did you collect it from?
A This would be collected from the Georgetown emergency room from the victim's pants when they were removed by the medical staff.
Q Okay. And we'll, we'll get to that in just a moment, but at some point, you did end up at the emergency room?
A Correct.
Q And from medical staff you collected that bullet?
A That's correct.
Q And where did they collect it from?

A From -- it was laying on top of the victim's pants when they removed his clothing.
Q Okay. And can you open that envelope and see what's inside, also has an evidence sticker on it. Do you recognize that item?
A Yes, ma'am.
Q And what, what is that?
A That is a spent projectile, bullet.
Q Okay. I'm going to show you what's been marked as State's Exhibit 78 for identification. If you could take a look at that evidence envelope and what's inside and tell me what that is.
A Okay. This evidence envelope contains one shell casing that's marked with a 40 Smith and Wesson CBC on the bottom, also indicated it was item number one.
Q When you say item number one, if you could look at the picture that's up on everyone's screen right now. Is it depicted in that photograph?
A Yes, ma'am.
Q So that's the item that you collected that has the item marker number one in that photograph; is that right?
A Yes, ma'am.
Q Okay. And have you opened that to see what's inside of it?
A I can. Yes, ma'am.

Q And is that the item that you collected?
A Yes, ma'am.
Q That evening?
A Yes, ma'am.
Q I'm going to show you what's been marked as State's Exhibit 79. If you could take a look at that and look and see what's inside of it as well.
A Okay. This is also an evidence bag containing one shell casing marked with a 40 S and W CBC. It corresponds to item number two, and it's also the shell casing.
Q Okay. And is that the actual item that you collected from that crime scene that night?
A Yes, ma'am.
Q Okay. I'm going to show you what's been marked as State's Exhibit 80 for identification only. If you could look at the envelope and what's inside of it.
A It's an evidence bag with one spent bullet indicated by item number three, and that's one spent projectile or bullet.
Q And is that an item that you collected from the crime scene that night?
A Yes, ma'am.
Q And which item is that?
A That would be item number three.
Q Number three. I'm going to show you what's been marked as State's Exhibit Number 81 for identification only. Would

you take a look at that, see what's inside of it and let me know.

A That's one shell casing marked with a 40 S and W RP indicated by item number four, and it represents one spent shell casing.

Q Okay. And is the actual shell casing that you collected from the crime scene depicted in that photograph?

A Yes, ma'am.

Q Okay. And is it marked with number four in that photograph?

A Yes, ma'am.

Q Okay. And to be clear, did you collect some evidence from item number five?

A Item number five would have been the blood. I would have taken swabs from those, yes.

Q And would you have put those into evidence?

A Yes, ma'am.

Q Now, it is your role as the on-scene investigator to order any kind of lab reports or make any calls like that or do you just collect the evidence and put it in? How does that work?

A At that point in time, no, the evidence would be collected and deposited into evidence. Lab requests and such would, would happen at a later time.

Q Now, after you processed the crime scene, did you go to a

second location?
A Yes, ma'am.
Q And where did you go?
A Georgetown Memorial Hospital Emergency Room.
Q Okay. And when you were there at the Georgetown Memorial Hospital Emergency Room, was the victim still there?
A Yes, ma'am.
Q So this was before he was transported to MUSC; is that right?
A Yes, ma'am.
Q All right. While you were on scene at the emergency room, did one -- did anyone approach you to speak with you about any information relating to the case?
A As I was leaving, I believe the victim's father did.
Q Okay. Did you have occasion to speak with Naomi Alston that night?
A Naomi Alston. Yes, briefly.
Q Okay. And without telling us what she said exactly, Ms. Alston approached you; is that right?
A Yes. Yes, ma'am.
Q Okay. And did Ms. Alston provide you with some information that, that was useful?
A She did.
Q Okay. And you spoke with the victim's father that evening as well?

A Yes, ma'am.
Q Okay. Did you attempt to speak with the victim?
A On two separate occasions I believe. Yes, ma'am.
Q Okay. Did that work out for you?
A No.
Q Okay. And in -- I think we already covered this, but did you collect any other evidence from the hospital while you were there?
A Yes. I would have collected the shell casing or the spent bullet. I'm sorry.
Q From the victim's clothing?
A Yes, ma'am.
Q And placed that into evidence?
A Yes, ma'am.
Q All right. The items that you collected from the crime scene and placed into evidence, did you tamper or alter them in any way?
A No, ma'am.
Q Did you do anything other than pick them up, put them in an envelope, document them and put them into evidence?
A That's all. Yes.
Q Okay. And they were secure while they were in your custody and control?
A Yes, ma'am.
Q Okay. At this time, the State has no further questions.

Please answer any questions Mr. Barr may have.

THE COURT: Mr. Barr, your witness.

MR. BARR: Thank you, Judge.

CROSS EXAMINATION

BY MR. BARR:

Q I've, I've just got a few questions. You, you've indicated that when you went to Georgetown Memorial Hospital you saw the victim at the hospital. Is that your additional narrative notes that you've got in front of you?

A That I spoke with the victim?

Q Yes, sir.

A That's in my notes. Yes, sir.

Q All right. Now, you also described the victim, the -- what appeared to you or how the victim's -- how he appeared to you, and I believe you described it as being -- how did you describe his condition?

A According to my narrative, it was lucid and able to speak.

Q Lucid and able to speak. Yes, sir. Sure did. Now, did you ask him who shot him?

A I did.

Q And did you get any information from him?

A Not from him. No, sir.

Q You asked him more than once; didn't you?

A Two times.

Q And did you also ask his father, this gentleman?
A I did.
Q And did you get any information from him?
A No.
Q All right. Thank you, sir.
MR. BARR: I have nothing further.
THE COURT: Redirect?
MS. BAILEY: No.
THE COURT: Sir, you may step down.
A Thank you, Your Honor.
THE COURT: Yes, sir. Thank you. You wish to excuse the witness?
MS. BAILEY: Yes, Your Honor.
THE COURT: Any objections?
MR. BARR: No, sir.
THE COURT: Sir, you're free to go today. Thank you very much.
A Thank you, Your Honor.
THE COURT: All right. Ladies and gentlemen, we'll take about a five to 10-minute break at this point in time. As always, when you leave the courtroom, my instructions are that you not discuss any aspect of this case even among yourselves until I advise you to do so. You may retire to the jury room. Everyone remain seated while the jury retires.
(Whereupon, the following takes place outside the

presence of the jury.)

THE COURT: All right. Court's in recess for about five to 10 minutes.

MS. BAILEY: Thank you, Your Honor.

OFF THE RECORD

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

THE COURT: Is the State ready to go forward?

MS. BAILEY: Your Honor, as to scheduling, this morning has gone much quicker than I anticipated.

THE COURT: Good.

MS. BAILEY: I have two witnesses who are currently on the way.

THE COURT: Uh-huh.

MS. BAILEY: Literally in route here from somewhere in town. So they will not be long.

THE COURT: All right. So you don't have somebody right at the moment?

MS. BAILEY: No. But within 10 minutes I expect them.

THE COURT: Okay. Well, I'll just stay on the bench. Let me know when they get here, we'll get started.

MS. BAILEY: Thank you, Your Honor.

Your Honor, as a result of that, one of my officers who's coming in is wearing, I believe is wearing a polo shirt and khakis that is a uniform, but he is concerned because some

judges have gotten frustrated in the past when our officers come in in that. I'll say it is my fault because I told him we wouldn't need him till tomorrow.

THE COURT: Well, I don't require that officers -- as long he's dressed appropriately to come in a courtroom, I mean, I don't have a problem not wearing a uniform if that's the concern.

MS. BAILEY: Okay. Thank you, Your Honor.

THE COURT: In fact, some Defendants would prefer that they don't.

MS. BAILEY: The witness is here. We're ready to proceed.

THE COURT: Okay. All right. The Defense ready to proceed?

MR. BARR: Yes, sir.

THE COURT: All right. Bring the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. The State may call its next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Mike Thacker.

THE COURT: Sir, come forward to my left and be sworn, please.

THE CLERK: Please state your full name for the Court.
MR. THACKER: Michael Thacker.
THE CLERK: Please spell your last name.
MR. THACKER: T-H-A-C-K-E-R.
THE CLERK: Thank you.
Whereupon, Michael Thacker was called to the stand, duly sworn by the Court and testified as follows:
THE CLERK: Thank you. Please have a seat.
THE COURT: Ms. Bailey, your witness.
MS. BAILEY: Thank you, Your Honor.
THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. BAILEY:
Q Mr. Thacker, what's your job?
A I work in the forensics division of the Georgetown County Sheriff's Office.
Q And what does that mean?
A I process crime scenes, evidence from crime scenes, handle the evidence that's submitted for storage.
Q So when you say you process crime scenes, what does that mean?
A I'm called to mostly major crime scenes is what I handle, called to go to the scene and process the items, process the scene, collect evidence from the scene.
Q And I mean, do we have a CSI department at the Georgetown

County Sheriff's Office?
A Well, I'm, I'm it, I guess as close as it could be.
Q Okay. On December 1st of 2008, were you called out, or shortly after December 1st of 2008, were you called out to the Paradise Club?
A I, I went there on the 2nd, I believe it was, the next morning.
Q Okay. When you went there, was it daylight?
A It was.
Q Can you describe for us what you found when you arrived on scene?
A I went there that morning to do a search warrant for the building itself, and once I got there, I observed some damage to the door, initially, that appeared to be from bullet holes, and from that point, I processed it from the door inside, and which was encompassing the entire interior of the building.
Q Okay. Now, when you say you had a search warrant, why would you have gotten a search warrant?
A It was collected to go back into the main part of the building and also to go back into the initial area where the incident occurred since it was dark that night just to make sure there wasn't anything that was not seen at the time.
Q So you -- were you the first person from the Sheriff's Department to go out to the crime scene in the light of day?
A During the daylight. Yes.

Q Okay. And so your first clue that there was going to be something more to collect was, was that bullet hole you described?
A Yes. On the exterior of the door, of the front door.
Q Okay. Can you just describe what else you found in the daylight?
A From the interior, well, going in the -- there was some entrance holes going into the building from there, and once inside the building, there's a wall immediately inside of that, and those, those holes that were coming from the door corresponded with the holes in the next wall into another room, and from there there was some fragments of bullets and found in a room opposite of that interior wall, as well as into the main building.
Q Okay.
A And then on -- oh, sorry, excuse me.
Q How about outside, what did you find outside?
A On the exterior. The exterior there was shell casings that were found by the roadside, which would be parallel to the building itself.
Q And when you say shell casings, do you know what kind of shell casings?
A They were rifle casings, 7.62, I believe.
Q Okay. Do you know how many?
A If I remember it was numbers eight through 33, I believe,

and that included a few that were live rounds.
Q Okay. Did you at some point have an opportunity to speak with the owner of the club, Ms. Alston?
A I believe, I believe so. Not at the time. She did -- she was supposed to show up to allow us access, but she didn't show up. So we were able to unhinge, take the hinges off from the outside to gain entry, didn't cause any damage to it from that.
Q Okay. Now, but it's, it's your understanding from that crime scene that, that all those shells outside and all the damage to the building that you observed was not there prior to this crime; is that correct?
A That they were not? It's hard to say. I mean, it -- they -- with -- the thing with the metal on the door especially is that once there's damage to it and, and there's a coating on the metal, once it's exposed over a period of time it'll rust as well as get a coating on it, excuse me, where the metal kind of from the sun and such kind of puts a powdery surface on it, and that didn't appear on that one. So that -- you know, I would say it hasn't been an extended period of time. I couldn't tell you if it was the day of or day before, but within a reasonable amount of time.
Q So forensically, there was nothing that gave you clues as to exactly when all these rifle shells and all these bullet holes happened?

A No, ma'am.
Q Did you take some picture?
A I did.
Q Did you take a lot of pictures?
A A few. Yes.
Q In your role as a crime scene investigator, is it your job to interview witnesses?
A Not generally, no.
Q So were you the investigator who was assigned to this case necessarily?
A No. I was not.
Q Okay. So other than processing this crime scene in the light of day, did you do anything -- what else would you have done to assist in this investigation?
A I also went -- Investigator Morris asked me to go with him to a residence in Williamsburg County. There was a vehicle apparently that as I was told was at the club at some point and he had reported he had -- shots had been fired at his vehicle. So I went over there with him to assist him with processing that vehicle.
Q Okay. So you went with another investigator to the home of an individual who said that their car had been shot up?
A Yes.
Q Do you remember that person's name?
A I do not. I remember it was in Williamsburg County.

It's kind of hard to find.
Q Could that have been Edward Mack? If you don't remember, you don't remember.
A That's, that's most likely. Yes.
Q Okay. I'm going to show you what has already been entered into evidence, State's Exhibit 13 through 17. Do you recognize those?
A Yes.
Q Did you take those photographs?
A I did.
Q Put up 107. On your screen there, although that one's a little fuzzy, so I'm going to hand you the real picture. We're looking at State's Exhibit 13. Can you describe what that is?
A This is a blue Honda four-door.
Q Is that the car that you processed in Williamsburg County?
A Yes.
Q I'm going to show you State's Exhibit Number 14, Number 108. Can you describe what that is?
A That is the rim of the vehicle where the tire is gone for the most part.
Q Okay. 109. This is going to be State's Exhibit 15, and can you describe what that is?
A Yes. That's the passenger side of the same vehicle.

Q Okay. State's Exhibit 16, Number 110, can you describe what that is?
A That's the back door on the driver's side of the same vehicle.
Q State's Exhibit 17, which is number slide 111, can you describe what that is?
A That's a closer view of the passenger side back door, same vehicle.
Q And these are all pictures that you personally took?
A Yes.
Q And that's when you processed this crime scene or this vehicle in Williamsburg County?
A Yes, ma'am.
Q Okay. I'm going to give our court reporter just a moment to catch up. She's doing a great job. All right. Thank you for your patience. I'm glad we've got such a seasoned court reporter who can handle that amount of exhibits. All right. I'm going to hand you --
THE COURT: Any objections, Mr. Barr?
MR. BARR: No, sir. No, sir.
THE COURT: All right. You are -- you're moving their admission?
MS. BAILEY: Yes, Your Honor.
THE COURT: All right. And their numbers, what through what?

MS. BAILEY: These are State's Exhibits 85 through 165.

THE COURT: All right. They'll be admitted without objection.

(State's Exhibits 85 through 165 [Photographs] admitted into evidence and appropriately marked.)

THE COURT: You may proceed.

MS. BAILEY: Thank you.

THE COURT: Yes, ma'am.

BY MS. BAILEY:

Q Investigator Thacker, I'm going to hand you State's Exhibit 85 through 165. If you could flip through those and see if you recognize those photographs.

A Okay.

Q Thank you. Did you take these?

A Yes.

Q And what are -- generally, what are they photos of?

A They're photographs of the main building, the exterior of the front and the roadway parallel to the building.

Q Okay. When you say the main building, is that the part of the building that was not the sports bar?

A Correct.

Q Okay. And are these photos, Exhibits Number 85 through 165, fair and accurate representations?

A Yes.

Q Okay.

MS. BAILEY: I can't remember if we've done this. The State would, the State would seek to introduce Exhibits 85 through 165.

THE COURT: They've been admitted without objection.

MS. BAILEY: Okay. Thank you.

THE COURT: You may proceed.

BY MS. BAILEY:

Q Pull slide 26, please. Can you describe for the jury what we're looking at?

A That's a photograph inside of the building itself.

Q Okay. Slide 27, and this is State's Exhibit 86. Can you describe what we're looking at?

A It's another photograph of the interior of the building.

Q And are -- can you tell us what, what are those rooms that we're looking at?

A A few of them appeared to be like a private room set up maybe for, I don't know.

Q Okay. But they were not part of the sports bar?

A No. This was in the main area.

Q Okay. I'm going to hand you State's Exhibit 87, slide 28.

A This is a photograph of another area in the building. This is -- I'm standing on what would be the opposite of the front of the building inside, and it's going into the main area. So this was a little, little half wall encasing some

chairs and couches.
Q And again, is this part of the sports bar area?
A No. It's in the main area.
Q Okay. I'm going to show you State's Exhibit 88. That's slide 29. Can you describe what we're looking at?
A It's a couch that's in the same area as the previous photo.
Q Uh-huh.
A That's some, some of the stuffing, I guess you could call, from the inside of the couch where there was a, a bullet that had went through that couch.
Q Okay. State's Exhibit 89, which is Slide 30.
A Okay. It's a photograph, the same, same area as we were before. It's over a little bit to the right of the photograph that was two before this one. On the bottom area there underneath a chair on the right there's some white stuffing, same type of stuffing that's, that was scattered on the floor that came from the couch it appeared.
Q State's Exhibit 90. It's slide 31.
A This is a photograph of two fragments that were found there.
Q Okay. State's Exhibit 91, that's slide 32.
A And this is a photograph of another bullet that was found inside.
Q Okay. Now, to be clear, these bullets and fragments and

damage, were they found in the sports bar area?
A This was found in that main area.
Q In the main area.
A Yes.
Q Okay. State's Exhibit 92, that is Slide 33.
A This is a photograph of, of the bullet from the previous shot in the same, the main area.
Q Okay. State's Exhibit 93, that's slide 34.
A This is a photograph, again, in the, be the main area of the building.
Q Okay. And is there anything, any reason you would have taken that photograph in particular?
A For the -- there was some, some damage to the wall that we were looking at.
Q Were you able to determine if the damage to the wall was from a bullet hole or just something you wanted to note?
A Well, what I was doing is looking through because when we had the ones initially that came through the door and those came through the interior walls and just making sure that any bullets or fragments that was recovered inside I could follow the path of the damage through the walls.
Q Okay. State's Exhibit 94, that's slide 35.
A And that's a photograph, again, the main area. It's a fragment of a bullet.
Q Okay. State's Exhibit 95, that's slide 36.

A And this is a photograph on the main area and its damage to the wall that was consistent with some of the other holes consistent with it, parallel to that same room.
Q State's Exhibit 96, which is slide 37.
A That's a photograph, it's the main area. This is that half wall from a few photos ago, and it's another path of a bullet, damage from that.
Q State's Exhibit 97, which is slide 38.
A Again, the main room. It's an area of the half wall and it's damage from a bullet.
Q State's Exhibit 98, which is slide 39.
A And this is another angle of the half wall to show the damage to the wall from the bullets that came through the main area.
Q State's Exhibit 99, this is slide 40.
A This is the wall that's just inside of the front door, and this is some of the damage that corresponded with the damage to the door itself going through this wall.
Q State's Exhibit 100, which is slide 41.
A This is the framing to the door. It's another area where a bullet round had went through it.
Q State's Exhibit 101, which is slide 42.
A This is the exterior front door.
Q And is there any remarkable damage to that?
A There's damage from a bullet passing through it. Yes.

Q Earlier you were telling us about some -- whether you could tell how old damage is based on corrosion of metal. Is -- do you see any corrosion in that photograph?
A No. The metal is exposed, and I'm sorry, I told you -- I missed -- told you wrong. This one is the, the interior side of the door.
Q The interior. Okay.
A Of the front door.
Q Okay.
A Yeah.
Q Thank you.
A And that's the exposed metal from where it opened up as the bullet traveled through.
Q State's Exhibit 102, which is slide 43.
A This, this is the exterior door.
Q Okay.
A And there's damage from a bullet passing through.
Q State's Exhibit 103, which is slide 44.
A And these are numbers identifying the bullets and fragments from some of the previous pictures that we had before, and this is photographs documenting as they're given a number.
Q Okay.
A In the main room.
Q State's Exhibit 104, which is slide 45.

A And this is a photograph of the front door. It's the interior side showing damage --

Q And it's --

A -- damage. There's some scales to show where these bullet holes are that's coming through.

Q State's 105, which is slide 46.

A This is a close-up of one of the holes on the interior side of the door.

Q May I see that? Just to be clear, I said that was State's Exhibit 105, which is slide 46. Now we're going to look at State's Exhibit 106, which is slide 47.

A And this is a close-up photograph of damage to the framing of the -- inside the front door.

Q State's Exhibit 107, which is slide 48.

A This is a close-up photograph of the wall that's just inside the interior opposite the front door showing damage to the wall with a bullet path.

Q State's Exhibit 108, which is slide 49.

A This is a photograph of the bullet damage on the same wall.

Q State's Exhibit 109, which is slide 50.

A This is a photograph showing the damage on the -- from the front as it -- the bullet holes passed through from the interior.

Q State's Exhibit 110, which is slide 51.

A This is a photograph of the half wall again on the inside of the main area. For reference point for the crime scene number, it's at the bottom.
Q State's Exhibit 111, which is slide 52.
A It's a photograph of the -- an unfinished room that's opposite of the wall that was just inside of the front door. So I'm standing where that wall is back towards the main area, and these are numbers that were placed down for bullet and fragments.
Q And those were collected?
A Yes.
Q State's Exhibit 112, which is slide 53. First of all, is that a six or a nine?
A That's a six.
Q Okay. And can you tell us what that is?
A That is a close-up of a bullet fragment from the same as the previous photograph that had five and six, this is number six.
Q State's Exhibit 113, which is slide 54.
A This is an area of the -- just inside from the sheetrock in the same room, the unfinished room where there was some fragments that were into the wall, through the sheetrock and into the wood.
Q State's Exhibit 114, which is slide 55.
A This is the opposite wall from the wall that's just

inside the front door, inside the unfinished room showing the damage to the wall that's lined up and consistent with the damage to the opposite side of it as well as the front door.

Q State's Exhibit 115, which is slide 56.

A Now, this, this is a photo of looking at towards the bottom. That's some damage to the wall, the interior.

Q State's Exhibit 116, which is slide 57.

A It's a photo of the exterior documenting some of the other areas where I found evidence that there was some shots fired at it at some point. So there was several across the front of it, of the building.

Q State's Exhibit 117, which is slide 58.

A Another photograph documenting the same as the prior photograph showing some of the bullet holes.

Q State's Exhibit 118, which is slide 59.

A It's a closer photograph of the same, from the exterior just documenting the two holes that were located there.

Q State's Exhibit 119, which is slide 60.

A This is on the exterior as well. There were some more holes that were found that was consistent with a firearm.

Q State's Exhibit 120, which is slide 61.

A And this is a close-up photograph of damage to the wall from a firearm.

Q State's Exhibit 121, which is slide 62.

A And this is a photograph showing damage to the wall as

well inside.
Q State's Exhibit 122, which is slide 63.
A Photograph of the interior from damage of the bullet coming through the wall and the paneling.
Q State's Exhibit 123, which is slide 64.
A The interior again showing damage to the wall.
Q State's Exhibit 124, which is slide 65.
A This is on the interior. This was to document some more of the wall. It was a dark wall. It was dark inside. So I was trying to use an angle on it so we could be able to identify some of the holes as they, hopefully, some light come through.
Q Okay. State's Exhibit 125, which is slide 66.
A Close-up of one of the bullet holes, damage to the wall.
Q State's Exhibit 126, which is slide 67.
A This is a photograph, close-up of the damage to the wooden part of the exterior beside the door.
Q State's Exhibit 127, which is slide 68.
A This is from a casing that was found beside the road parallel to the building on -- just on the other side of a ditch from where the building is.
Q And what's the evidence marker in that?
A Number eight.
Q Did you collect that?
A Yes.

Q Okay. State's Exhibit 128, which is slide 69.
A That is another casing that was in line in the same area, on the side, on the roadside.
Q Okay. And what's the evidence marker next to that?
A Nine.
Q State's Exhibit 129, which is slide 70.
A It's marker 10, again on the roadside parallel to the building. It's a casing.
Q State's Exhibit 130, which is slide 71.
A Marker number 11, the roadside parallel to the building, it's a casing as well.
Q State's Exhibit 131, which is slide 72.
A It's marker 12 on the roadside parallel to the building, a casing.
Q State's Exhibit 132, which is slide 13 -- I apologize. State's Exhibit 132, which is going to be slide 73.
A That is marker number 13. I would have to refer to my notes to tell you accurately if it's a bullet or a casing. There was a couple of bullets, live bullets that were there, and since the photograph's taken as they sit, they're not touched till after I actually collect it so.
Q When you look at the actual evidence, will you be able to tell us that?
A Yes. Uh-huh.
Q Okay. State's Exhibit 133, which is slide 74.

A That's marker 14. That's of a live round, rifle round, parallel to the building on the roadway side.
Q State's Exhibit 134, which is slide 75.
A Marker 15. It's a casing, roadside, parallel to the building.
Q State's Exhibit 135, which is slide 76.
A It's marker 16. It's a casing on the side of the roadside parallel to the building.
Q To be clear on that one, there's a one and a six. Is that 16 or is that two separate?
A Yeah. That's, that's 16.
Q Okay.
A And I apologize.
Q State's Exhibit 136, which is slide 77.
A It's marker 17. This is from the -- beside the roadway parallel to the building, and I would have to refer to my report to tell you accurately if it's a casing or a bullet.
Q Okay. State's Exhibit 137, which is slide 78.
A It's marker 18. It's a casing from a rifle, roadside, parallel to the building.
Q State's Exhibit 138, which is slide 79.
A It's a rifle casing, marker 19, beside the roadway, parallel to the building.
Q State's Exhibit 139, which is slide 80.
A It's marker number 20, rifle casing, beside the roadway,

parallel to the building.
Q State's Exhibit 140, which is slide 81.
A This is marker number 21. It's of a rifle casing. It's, again, the roadway, parallel to the building.
Q State's Exhibit 141, which is slide 82.
A It's a rifle casing it appears, marker number 22, beside the roadway, parallel to the building.
Q State's Exhibit 142, which is slide 83.
A This is a live rifle round, marker number 23, and that's, again, beside the roadway, parallel to the building.
Q State's Exhibit 143, which is slide 84.
A It's marker 24, rifle casing, beside the roadway, parallel to the building.
Q State's Exhibit 144, which is slide 85.
A It's a rifle casing, marker number 25, edge of the roadway, parallel to the building.
Q State's Exhibit 145, which is slide 86.
A Marker number 26, a rifle casing beside the roadway, parallel to the building.
Q State's Exhibit 146, which is slide 87.
A This appears to be a bullet, marker number 27. It's on the edge of the roadway, parallel to the building.
Q State's Exhibit 147, which is slide 88.
A It's a casing, marker number 28, again, beside the roadway, parallel to the building.

Q State's Exhibit 148, which is slide 89.
A A rifle casing, marker number 29, it's the edge of the roadway, parallel to the building.
Q State's Exhibit 149, which is slide 90.
A It's a rifle casing, marker number 30, the edge of the roadway, parallel to the building.
Q State's Exhibit 150, which is slide 91.
A Marker number 31, rifle casing, beside the roadway, parallel to the building.
Q State's Exhibit 151, which is slide 92.
A It's a rifle casing, marker number 32, beside the roadway, parallel to the building.
Q State's Exhibit 152, which is slide 93.
A That, I believe that's a casing, but I would, again, have to look at my report to verify that to give you accurate. That's marker number 33, and that's on the opposite side of the road from the building.
Q Okay. State's Exhibit 153, which is slide 94.
A That's a photograph of the markers. Those would be --
Q And can you tell which numbers?
A Yeah. Well, this is eight, and it'll go to 32, but you can't see all of them. You can see that there's yellow markers there, but they'd be eight, nine, ten, so on, so forth.
Q State's Exhibit 154, which is slide 95.

A That is a -- about in the middle of this first section, which goes from 11 back to eight.
Q State's Exhibit 155, which is slide 96.
A Again, it's the -- showing some of the markers. This goes from, as you can see number-wise, 11 through 15.
Q State's Exhibit 156, which is slide 97.
A And this is just a little bit going the same way. It just shows some of the other markers as there was a couple that was located during this secondary search.
Q Okay. State's Exhibit 157, which is slide 98.
A This is a marker showing some of the labeled casings and rounds that were found on the roadside.
Q State's Exhibit 158, which is slide 99.
A This is from 20 going back to where we were originally.
Q State's Exhibit 159, which is slide 100.
A This is showing some more of the markers and where the casings and rounds were located.
Q State's Exhibit 160, which is slide 101.
A Again, it's the evidence numbers showing where the casings and rounds were located.
Q State's Exhibit 161, which is slide 102.
A This is some of the other casings from the second -- between -- there was two entranceways going into the building, and this is just on the other side of where the initial ones were found. So it's 30 and 31 is what we have here.

Q State's Exhibit 162, which is slide 103.
A This is another photograph of 30 and 31 standing in the driveway.
Q State's Exhibit 163, which is slide 104.
A Item number 33, that's the item that was located on the opposite side of the roadway.
Q State's Exhibit 164, which is slide 105.
A This is showing most of the markers, how they -- how the casings and/or the rounds were located in relation to each other.
Q State's Exhibit 165, which is slide 106.
A This is another photograph of the same, and I have -- there's an individual there on the other end just to be able to judge my distance to his by the photograph size.
Q Now, in addition to the photographs that I showed you from when you processed Edward Mack's vehicle, were there some other photographs that you took that day in addition to the couple that I showed you?
A At the scene, I did take some photographs inside of the, the bar area, I guess we call that, where the incident had occurred.
Q Okay. Let's -- I'm sorry. I'm switching gears on you here. Let's switch over to the car in Williamsburg County.
A Okay.
Q All right. In addition to the pictures that we have

already seen, did you take some other photographs?
A Yeah. There's also should be photographs of the interior.
Q Okay. All right. I'm handing up to you State's Exhibit 82, 83, 84 and 166 through 193 that have been marked for ID only. If you'd just take a look at those. I promise we won't have to go through all those. I just want to get them into evidence. All right. Are those photos a fair and accurate representation of what that vehicle in Williamsburg County looked like the day that you processed it?
A Yes.
Q And did you take these pictures?
A I did.
Q Okay.
MS. BAILEY: At this time, the State would seek to move State's Exhibits 82, 83, 84 and 166 through 193 into evidence.
MR. BARR: No objections, Judge.
THE COURT: Without objections they'll be admitted as marked.
MS. BAILEY: Thank you, Your Honor.
(State's Exhibits 82, 83, 84 and 166 through 193 [Photographs] admitted into evidence and appropriately marked.)
BY MS. BAILEY:
Q Slide 114, please. I'm showing you State's Exhibit 84.

Can you just describe for the jury what that is?
A That's a photograph on the interior of some damage to it that appeared to be consistent with a bullet traveling across the path.
Q Okay. And State's Exhibit 166, which is slide 115.
A That's a photograph of the same vehicle, the interior, the back passenger door with some damage to the interior side of the door.
Q State's Exhibit 167, which is slide 116.
A And this is a photograph of -- on the same side taking the panel off, the -- of the passenger door.
Q Okay. Can you tell us about your education to become a crime scene investigator?
A Yeah. Well, I have certification through the International Association for Identification as a certified crime scene analyst, as well as reconstruction for crime scene and shooting incidents with Henry Lee, PhD, 800 plus hours of extended training that involves homicide classes, crime scene processing, reconstruction, blood stain reconstruction and analysis.
Q How many crime scenes do you think you've been to?
A I couldn't tell you exactly, a lot, many.
Q Hundreds, thousands?
A Yes. Yes. I've been doing this for -- in -- with the crime scene and investigations for 12 years.

Q Okay. And did you attend the police academy as well?
A I did, as well as an internship with the SLED crime scene.
Q Okay. Have you been qualified as an expert by the courts of this state in this past regarding crime scene analysis?
A With the crime scene, I don't think the last time it ever came to fruition. I think it was dealt with first.
Q Think the Defense consented?
A Yes.
Q Okay. But at least once before you have been qualified as an expert in the courts of this state?
A Yes.
Q Okay.

MS. BAILEY: At this time the State would seek to move Investigator Thacker, qualify him as an expert in the field of crime scene processing and crime scene analysis.

THE COURT: Any objections to that designation?

MR. BARR: No, sir.

THE COURT: All right. He'll be qualified as an expert within those areas. You may proceed.

MS. BAILEY: Thank you.

MR. BARR: Anybody did all this work, he --

BY MS. BAILEY:

Q As a result of all that evidence you collected, and we'll, we'll still have to go through that and get it in, but

as a result of all that, did you draw -- did you produce some documents that helped you to remember where you collected all this stuff from?

A Yes. With a -- the -- some sketching of the damage to the walls, the overall exterior and my notes and, you know, with those there, you know, we used the numbers, crime scene numbers to identify a particular item and that, that item becomes what that is at that point, one, two, three, four or five, and so when I have my, my report that I do, it serves as well as like a legend of sort for everything that I collect at the scene.

Q Okay. I'm going to show you what have been previously marked as State's Exhibits 308, 309 and 310 for identification only. Take a look at those. Tell us if you recognize them.

A Sorry.

Q Okay. Do you recognize these?

A Yes.

Q And what are they?

A They are a blown-up version of the sketches that I developed.

Q So you actually generated these?

A Yes.

Q Okay. Are they to scale?

A No.

Q Okay. But they are a legend for all the evidence that

you collected; is that correct?
A Yes.
Q Did you also use these, along with the evidence that you collected, to form an opinion about how a lot of this damage got -- how it happened?
A Yes. Based on the items that we looked at in the photographs, those correspond -- with the first picture that we have of the door has some bullet damage, and that corresponds itself to the interior wall which goes through to the next room, and the paths of, the paths of these bullets and the fragments are consistent from room to room. Some of them hit a frame in one room and wedged into the wall. Some hit other items and fall, and some went into the main area, and I think there may have been maybe two that I remember that, that went through and through because there was two other holes, and some of these were on the damage that we spoke about previously as well in other areas of the building.
Q Okay. Would it assist your testimony if you were able to come down here and show the jury what these crime scene drawings mean?
A Sure. Yes.
MS. BAILEY: Your Honor, permission for the witness to come down?
THE COURT: He may.
BY MS. BAILEY:

Q Investigator Thacker, if you could stand over here. There's a microphone here so the court reporter can hear you and tilt this way so she can see your lips move as well.
A Okay.
Q Here. I'll hold this.
A Okay. Let me get here. How about that?
Q Make sure everybody can see? All right. Can you tell us what we're looking at? This is State's Exhibit 309, which while we're at it --

MS. BAILEY: State's Exhibits 309, 310 -- I'm sorry. 308, 309 and 310, if I haven't moved those into evidence, the State would seek to move those in now.

THE COURT: Any objection?

MR. BARR: Judge, I don't have an objection to her using them for demonstrative purposes, but if they're not drawn to scale, I would object to them coming into evidence.

MS. BAILEY: Your Honor, he's -- the expert has indicated that he relied on these in forming his opinion, which makes them admissible. Also, he also indicated that he generated these, which makes them admissible as an expert report, and the State is -- I would say that the fact that they're not to scale would go to the weight, not the admissibility.

THE COURT: Mr. Barr?

MR. BARR: I withdraw the objection.

THE COURT: All right. Objection is withdrawn. They'll

be admitted as marked. You may proceed.

(State's Exhibits 308, 309 and 310 [Crime Scene Sketches] admitted into evidence and appropriately marked.)

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q Can you tell us what we're looking at?

A This is a sketch of the exterior of the front door of the building, and these lines go to some holes I've drawn here to represent the damage to the, to the front door.

Q Okay. And those lines, what do you believe that -- what do those lines represent in your opinion, in your expert opinion?

A Well, these, these are, these are used for me to, to draw them to a particular point to identify something. So in this case, all of these are the same type of damage. So they're identified as the bullet holes, single source to go out to identify each one.

Q For the record, we're now looking at State's Exhibit 308. Can you explain what we're looking for, what we're looking at?

A This is the interior wall that's just as soon as you walk in the front door. This wall is right there on the other side of it, and again, damage to that wall as identified here, and they're all the same type of damage. So they're identified as the holes, bullet holes.

Q State's Exhibit 310.

A And this is an overall of the exterior. This would be the building. The door is in this area. The building, here's one of the entrance points, the other entrance point, the ditch. This is side of the road, on Oatland Road. This is a roadway, and these are the items that were identified number eight through 32 here and then 33 on the opposite side of the road.

Q In your opinion as an expert, the way that these items, eight through 31, were dropped on the side of the roadway, can you describe how that incident, how, how they may have got there based on crime -- your expert opinion in crime scene?

A They all were fairly consistently in the same pattern for the most part. So for me, that, that would tell me that someone would have to be walking fairly fast or in a moving vehicle as the gun was fired, and the casings would come out of the firearm, and if it's in an open area, there's nothing to obstruct the casing to be -- the direction to change, so they would fall naturally as gravity helps them, and they will all line up fairly consistently.

Q And again, all of these items, eight through 31 --

A 32.

Q -- 32, would they be handgun casings or rifle casings or shotgun casings? Can you tell me?

A These were all 7.62, which is a high-powered rifle.

Q Okay. If you could have a seat.

A Okay.
Q Let me do this. I'm going to hand you what have been previously marked as State's Exhibits 194 through 307. I'm going to hand you just -- just have you flip through these.
A Okay.
Q All right. Do you recognize what's in those photographs?
A Yes.
Q Did you take those photographs?
A Yes.
Q Are they fair and accurate representations of what the crime scene looked like?
A Yes.
Q Okay. Are many of these various angles of the photographs we've already looked at?
A Yes. For the interior, some of the exterior of the building as well.
Q Okay.
MS. BAILEY: At this time the State would seek to move State's Exhibits 194 through 307 into evidence.
MR. BARR: Without objection, Judge.
THE COURT: Without objection they'll be admitted as marked.
MS. BAILEY: Thank you, Your Honor.
(State's Exhibits 194 through 307 [Photographs] admitted into evidence and appropriately marked.)

BY MS. BAILEY:
Q I'm going to hand you State's Exhibits 311 through 317. If you could take a look at those. We'll start with 311, and can you tell us what that is?
A This is an envelope I prepared for my item number one, which is a bullet fragment that was found in the main room on the floor.
Q And can you tell us what's in that envelope?
A It's a bullet fragment.
Q That you collected from inside?
A Yes.
Q Okay. State's Exhibit 312.
A This is my item number two, and it was a bullet fragment, once again, on the floor inside the main room.
Q Okay. And is that the actual bullet fragment in there?
A Yes. It is.
Q Okay. State's Exhibit 313?
A And I could open them if you needed to.
Q Okay.
A This is my item number three, bullet fragment that was, again, on, on the floor and this one was actually beside that half wall that was inside the main room.
Q Okay. State's Exhibit 314.
A That's my item number four. It's a bullet fragment that was on the floor, as well, inside the main area.

Q Okay. State's Exhibit 315.
A It's my item number five, a bullet fragment, and that was on the floor, as well, inside. This was near a door that went into that unfinished room.
Q Okay. State's Exhibit 316.
A It's my item number six, bullet fragment. That was in the wall frame inside the unfinished room.
Q And State's Exhibit 317.
A And this is my item number seven, bullet fragment, and that was in the wall, sheet rock wall, kind of in the closet in that unfinished room.
Q Okay. And you collected all these items and you put them into evidence yourself?
A Yes.
Q And when -- can you tell -- have they -- after you put them into evidence, did anyone else take them out of evidence?
A Just, just me. I'm the only one. I repackaged them for court.
Q Okay. Have any of these items been sent off for any kind of analysis or further testing?
A Not to my knowledge. No.
Q Okay.
MS. BAILEY: At this time the State would seek to move State's Exhibits 311 through 317 into evidence.
THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: Without objections they'll be admitted as marked.

(State's Exhibits 311 through 317 [Bullet Fragments] admitted into evidence and appropriately marked.)

BY MS. BAILEY:

Q I'm going to hand you State's Exhibits 318 through 330. All right. We'll start with item 318. Can you describe what item 318 yes?

A This is my item number 21. It's a shell casing that was found beside the roadway.

Q Okay. 319?

A My item number 22, a shell casing from the roadway, beside the roadway.

Q Okay. 320?

A It's my item number 23. This is a live round, 7.62 bullet that was outside beside the roadway.

Q 321?

A This is my item number 24, a shell casing from beside the roadway.

Q 322?

A It's my item number 25, a shell casing outside beside the roadway.

Q Are we on 323?

A Yes.

Q Okay. 323?
A My item number 26, a shell casing outside beside the roadway.
Q 324?
A My item number 27, shell casing outside beside the roadway.
Q 325?
A That's my item number 28, a shell casing from the exterior beside the roadway.
Q 326?
A My item number 29, a shell casing exterior beside the roadway.
Q 327?
A It's my item number 30, a shell casing outside beside the roadway.
Q 328?
A And by the way, I didn't tell you. I didn't want to confuse anybody. I'm saying my item because I'm -- that was my numbers. They were other numbers that were previous to me. So, all right. This is my item number 31, a shell casing exterior beside the roadway.
Q 329?
A That's my item number 32, shell casing exterior beside the roadway.
Q And 330?

A That's my item number 33. It's a shell casing that was exterior on the opposite side of the roadway.
Q And you collected all these items?
A Yes.
Q And you put them into evidence?
A Yes.
Q Have they been sent off for further testing or analysis?
A Not to my knowledge. No.
Q Have they been tampered with in any way?
A The only thing I, I packaged them for court.
Q You package them for court for us?
A Yes.
Q Otherwise, have they been tampered with or has the items themselves been changed in any way?
A No. The seals were intact.
Q All right.
A Uh-huh.
Q All right.

MS. BAILEY: At this time the State would seek to move State's Exhibits -- I believe this is going to be 318 through 330 into evidence.

THE COURT: Any objections?

MR. BARR: No objection, Judge.

THE COURT: Without objections, they'll be admitted as they've been marked.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

(State's Exhibits 318 and 319 [Shell Casings], State's Exhibit 320 [Live Round] and State's Exhibits 321 through 330 [Shell Casings] admitted into evidence and appropriately marked.)

BY MS. BAILEY:

Q All right. Investigator Thacker, one more set. I'm going to start with State's Exhibit 331. Can you describe what that is?

A That's my item number eight. It's a shell casing that -- exterior beside the roadway.

Q 332?

A That's my item number nine, a shell casing exterior beside the roadway.

Q 333?

A That's my item number 10, shell casing beside the roadway on the exterior.

Q 334?

A That's my item number 11, shell casing exterior beside the roadway.

Q 335?

A My item number 13, shell casing exterior beside the roadway.

Q 336?

A That's my item number 14. This is a live bullet that was found exterior beside the roadway.
Q 337?
A That's my item number 19, shell casing exterior beside the roadway.
Q 338?
A That's my item number 20, shell casing exterior beside the roadway.
Q 339?
A That's my item number 15, shell casing exterior beside the roadway.
Q 340?
A That's my item number 12, shell casing exterior beside the roadway.
Q 341?
A That's my item number 16, shell casing exterior beside the roadway.
Q 342?
A My item 17, shell casing exterior beside the roadway.
Q 343?
A That's my item number 18, shell casing exterior beside the roadway.
MS. BAILEY: At this time, the State would seek to move items 331 through 343 -- actually, before I do that.
BY MS. BAILEY:

Q Did you collect all these pieces of evidence?
A Yes.
Q Okay. And did you put them into evidence yourself?
A I did.
Q Have they been tampered with or altered in any way?
A Just packaged them for court.
Q Okay.
MS. BAILEY: At this time, the State would seek to move items 331 through 343 into evidence.
THE COURT: Any objections?
MR. BARR: No objections, Judge.
THE COURT: Without objections, they're admitted as marked.
MS. BAILEY: Thank you, Your Honor.
(State's Exhibits 331 through 335 [Shell Casings], State's Exhibit 336 [Live Bullet] and State's Exhibits 337 through 343 [Shell Casings] admitted into evidence and appropriately marked.)
BY MS. BAILEY:
Q All right. Investigator Thacker, thank you for your diligence and patience while we got all that in.
THE COURT: Mr. Barr, your witness --
MS. BAILEY: I have one --
THE COURT: -- or you have some more questions?
MS. BAILEY: -- one more point, Your Honor.

THE COURT: Oh, okay. Yes ma'am.
BY MS. BAILEY:
Q In your experience as a crime scene investigator, have you had any luck with collecting any -- well, first of all, can you describe for us the two different kinds of DNA evidence?
A Well, there's actually, I mean, several by definition. You have blood evidence that's blood typing DNA. We have saliva, other biological fluids, semen, touch DNA. We have known DNA, which is -- would be a known standard from a known individual.
Q Okay. Now, you mentioned -- first of all, did you see any fluids on scene that you could, that you could collect any DNA from?
A No. Not in the area that I was. No.
Q Okay. Now, tell us what touch DNA is?
A It's basically how it's listed. It's when, when someone makes contact with an item, an object. You actually have skin cells that, that come off as you make contact with something, everything you do, and those are the things we're looking for, to collect those, and hopefully, have enough to be able to develop a profile with the DNA much like that most people would be familiar with with blood maybe, but the difference in that is that the, the processing for that right now is not as specific as it is for the blood. So it takes a lot more of

that, that sample to be able to develop a profile with the touch DNA. It's hard for the item itself, kind of determined on what it is, surface area, how well the person makes contact with it, how they hold it. A good example I always use would be a flashlight. So if you have a flashlight that's, that's your flashlight, there's a great chance that it would have your, your DNA on it, but if it's someone else's flashlight and you just move it from one section to another, there's a real low likelihood that it's going to be enough contact and surface with, with your hand to leave any DNA that we would be able to recover.

Q Okay. So just because somebody touches something they may or they may not leave DNA behind? Is that a fair assumption?

A That's correct, that we can find. There's always, you know, there's always an exchange, but whether or not -- it may be minute, you know, so small that you can't, can't do anything with it.

Q How about on shell casings? It would seem like somebody would have to touch shell casings to load them in a gun?

A I have had success only with bullets for fingerprinting and DNA on the unfired rounds, and there's a very low -- I've never had anybody that I know, and I haven't myself, and I try a lot of things, finding DNA off of a spent casing because one thing that, that defeats it from the, from the start is the

heat from the gun. So a gun is like a controlled explosion. So you have gases and heat that, that expel from it, and most of your -- even your fingerprints, the majority of that is water. It's moisture. So it's going to pretty much dissipate. It's just going to be gone based on the heat of that.

Q So the process of firing a gun does that help preserve or help destroy any evidence that may be on bullets or shell casings?

A Yeah. It definitely would, would be more on the destruction of it because even with the bullets on the brass if you -- if anyone's familiar with gun bluing, people used to do that with the metals, you can do some things like that with the brass, and what it does if there's a lot of contact with the, with the oils in your skin on the brass you can actually do -- burn that brass, and it will, it'll turn color and leave behind a fingerprint, but that, again, is determined on how the person has handled it, and heat would have a big factor in that as well.

Q And if someone wears a glove, wears gloves, would you expect that you would or would not be more likely to find fingerprints and DNA on the evidence?

A No. You would not be likely to. Yeah.

Q Investigator Thacker, I thank you so much for your diligence and your patience while we got all that stuff into

evidence.

THE COURT: Mr. Barr, your witness.

MR. BARR: Yes, sir.

CROSS EXAMINATION

BY MR. BARR:

Q Of course, what your job is is to collect samples to be analyzed for evidentiary value. You don't conduct the analyzing?

A Not on everything. There's some, there's some items that I do presumptive tests on. There's chemicals we can do that with.

Q Well, I mean, if I wanted to take any one of these say for instance a cartridge, the spent cartridges, and determine whether or not DNA is present, I'd have to send it to the SLED lab; wouldn't I?

A I would process it and then send the swabs.

Q Well, you may process it, but you don't make the determination as to whether or not DNA is present?

A No.

Q All right. That's done at the SLED lab?

A That's correct.

Q In other words, as a law enforcement officer, whoever you turn all of this evidence over to in your office, whoever is your evidence custodian, that person gets it to the SLED lab and then it's analyzed and then you get the results back from

the trace department, DNA and serology and all of those people depending on what they find?

A Yes. And I'm actually the one that does that as well.

Q All right. Now, so, now, of course, do you actually -- you don't transport this material to SLED? Does your evidence custodian do that here in Georgetown?

A I, I do that as well.

Q Take it to Columbia?

A I maintain custody of all evidence.

Q All right. Now, tell us in this, in this case with respect to all of the items that you collected to be analyzed for forensic evidentiary value, were they all sent to SLED?

A No. The items that, that I collected were not because it was determined, after I spoke with the officer that's assigned the case, the wounds that the, that the victim had occurred from, from that, and the bullets that were recovered and the casings as well were not, not at all in the same neighborhood as the ones I collected. So those were from a handgun, and the ones I collected were from a rifle.

Q The ones that were collected, the spent cartridges that were collected inside the building, were you able to determine what caliber or whether or not somebody fired more than one caliber weapon?

A I did not collect any casings inside when I did my processing.

Q Would that have been Officer Daniels?
A There was officers there the night before that processed the initial scene, and I'm aware that they collected, I believe, three casings from inside of the crime scene after I reviewed that myself, and I believe there was a bullet that was recovered in maybe a pool table or something, and I'm just going by the review that I did, and two, I believe, from the victim and maybe one from his clothing maybe. I'm just -- again, that's on a review.
Q So, so you didn't collect, you didn't collect the, the bullets that were not fired, the bullet fragments, no other spent shell cartridges from inside the building? You didn't collect any of those?
A From which area?
Q Inside the club.
A Okay. I collected the casings. The casings were collected on the exterior. There was some live rounds collected on the exterior, and there were fragments collected on the interior.
Q How about the live rounds and the casings from the interior, the head stamp, what -- were they the same caliber?
A There were no casings that I located on the interior.
Q No casings?
A No.
Q Then somebody else collected the casings?

A Well, there was two, there was two, two processing times. One was the night of the incident. I was not there.
Q Yes, sir.
A And I was there the next day, and I processed the exterior and the main area of the building.
Q Well, maybe it was Officer Daniels that testified that he found spent shell casings. Maybe he was the one that collected the casings, but now, as far as the casings that you collected along, along the roadway, I think you indicated that, that in your opinion those casings were shot from a high-powered rifle?
A That's correct.
Q Automatic or semiautomatic, probably one of the two?
A Yes, sir.
Q I mean, to kick them out the way that they -- you explained that they kicked along the road?
A Uh-huh.
Q All right. Now, of course, an automatic weapon would have been pa, pa, pa, pa, pa, pa, pa, pa, pa, going off like that. Everybody ought to be able to hear that, especially a high-powered rifle; wouldn't you say so?
A I really couldn't -- I couldn't give you an accurate answer. I've, I've interviewed people at homicides before that, that heard three shots if there were 10 fired, people that didn't hear anything, people that were -- had tunnel-

vision and didn't see anything except for what was in front of them. So I really couldn't give you that example, and plus, I, I, I wasn't there, so.

Q All right. Well, but you've given us your opinion?

A Yes, sir.

Q Yeah. And the shell casings, they're not -- they wasn't there like -- they didn't collect rust or whatnot in the weather, exposed. They were fresh, I assume they were fresh shell casings, otherwise, you probably wouldn't have collected them?

A Well, I couldn't give you a determination on exactly how long they had been there.

Q Well, maybe not precisely, but they didn't look like they had been there two weeks; did they?

A Well, again, it just -- it's determined on the environment and, and what happens. Some of these casings were beat up, and that could be as simple as they could've been in the roadway a little further or run over by a car, and that'll, that'll change them dramatically.

Q But now, if you didn't think that they had some evidentiary value, you wouldn't have waste your time collecting them; wouldn't, wouldn't that be --

A Well, no. Again, I couldn't, I couldn't agree with you there because I don't know what could or could not be important at the time. If I -- if there's evidence there of

something that's potential, and I even teach this to the people that I train, we don't leave it behind.
Q Yes, sir.
A You collect it. If you, if you don't need it, you don't need it, but it may or may not be important.
Q It, it, it could be of significance?
A Could be.
Q And that's why you collected everything you saw?
A Exactly.
Q All right. Now, all the spent shell cartridges you collected from outside you said came from the same caliber weapon.
A Yeah. As far as I can recall, yes.
Q No shotgun shells?
A No, no shotgun shells.
Q There was a lot of bullet holes inside, inside the club; weren't they?
A I'm sorry. I couldn't --
Q There were quite a few bullet holes inside that club?
A Oh, there was, there was several on the exterior going into the building. Yes, sir.
Q And of course, if, if there were bullet fragments that were found by the pathologist, in all likelihood, those bullet fragments were probably fired directly into the decedent's body? Wouldn't you agree with that?

A If, if he -- if they were found inside of --
Q Yes, sir.
A -- the victim's body?
Q Yeah.
A I would, I would -- yeah, I would believe that it, that it was fired. You mean towards the person or --
Q Yes, sir.
A Yeah. I could agree with that. Yes, sir.
Q All right. And then, of course, they wouldn't have been -- they -- you wouldn't have shot, bullet hit the wall, ricocheted all around and then hits him and then went?
A Well, if you don't mind me asking, which, which area are we talking about because I wasn't, I wasn't present at the initial scene.
Q Well, I tell you what, the -- you, you've, you've shown us some photographs you took bullet holes at the door, right in the molding that -- well, near, right near the molding that goes around the door.
A Okay.
Q Exterior shot from the interior or from the exterior?
A The, the hole, the damage I found?
Q Yes, sir.
A Were coming from the exterior.
Q They were coming from outside shooting inside the building?

A That's correct.
Q Now, would you not agree that that was probably the high-powered rifle?
A The ones, the ones that I testified to?
Q Yes, sir.
A I would say that's consistent with it. Yes, sir.
Q Now, you, you didn't get any of the cartridges from the inside. So you wouldn't know whether or not there was more than one gun used in the inside. You wouldn't be able to answer that; would you?
A I could not. I, I could, I could review the evidence and --
Q Make a determination?
A -- give you a determination based on that. Yes.
Q All right. You, you would agree that there was quite a bit of shooting going on at this place; wouldn't you?
A There was evidence that there had been --
Q Quite a bit of shooting?
A -- shots fired at, at the building, in and around the building. Yes, sir. At some point.
Q Inside the building?
A At some point there was shots fired that went through the building and into walls and everything else. Yes, sir.
Q I don't think I've got any other questions. I don't want you to think because the Solicitor took so long and I took

such little time. Thank you.
A Thank you.
THE COURT: We won't hold that against you, Mr. Barr. Wish to redirect?
MS. BAILEY: No, Your Honor.
THE COURT: All right. Sir, you may step down. Thank you very much.
A Thank you.
THE COURT: Wish to excuse the witness?
MS. BAILEY: Yes, please.
THE COURT: Any objection?
MR. BARR: No, sir.
THE COURT: All right. Sir, you're free to go. Thank you.
A Thank you, Your Honor.
THE COURT: The State may call its next witness.
MS. BAILEY: Thank you, Your Honor. The State calls Melvyn Garrett.
THE COURT: All right. Sir, come forward to my left to be sworn.
MR. GARRETT: Certainly, Judge.
THE COURT: This gentleman over here will take care of you.
MR. GARRETT: Thank you, Judge.
THE COURT: Yes, sir.

MR. GARRETT: Good morning.

THE CLERK: Sir, please state your full name for the record.

MR. GARRETT: Melvyn Merrill Garrett, Jr.

THE CLERK: Please spell your last name for us.

MR. GARRETT: G-A-R-R-E-T-T.

THE CLERK: Thank you.

Whereupon, Melvyn Garrett, Jr., was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

MR. GARRETT: Thank you.

THE COURT: Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. BAILEY:

Q What's your job?

A I'm an investigator with Georgetown County Sheriff's Office.

Q And in fairness to you, did I tell you that we would get to you this afternoon?

A No. You didn't.

Q What did you tell me when I said -- when I called you yesterday and said we wouldn't be getting to you today? What, what'd, what'd you say to me?

A I said, "Well, I look forward to seeing you on Thursday."
Q All right. And did you confirm your clothing with me?
A Well, yeah. I did, but not for today.
Q All right. It's my fault you didn't get to put on a shirt and tie. I apologize.
A That's all right, no problem.
Q How long have you been with the Sheriff's Department?
A Since September 2002.
Q And how long have you been in law-enforcement?
A Twelve years.
Q Okay. And at some point have you taken a break from law enforcement?
A Yes. I've took two. I went to Iraq once and Afghanistan the next time.
Q Okay. On December 1st of 2008, were you -- did you go to the -- I'm sorry, on December -- let me back up. Were you assigned to work on a case that involved a shooting that happened on December 1st of 2008?
A Yes. I was.
Q Okay. And what was your role in that investigation?
A I was doing the follow-up to that.
Q So were you on scene the night that it happened?
A No.
Q And did you help process the scene at all?
A No. I didn't.

Q Okay. So what was your role then?
A Just the -- do the follow-up investigation, find out what happened, anything else that was needed.
Q Did you help track down all these witnesses?
A Yes. I did.
Q Did you take statements from these witnesses?
A Yes. I did.
Q Can you walk us through -- what day did you get assigned to work on the case?
A I got contacted about four hours after the incident happened. So it would have been the following day about 3:30 a.m.
Q Okay. And what did you do?
A I came out and met with the investigators that did go to the scene, and they kind of brought me up to speed about what happened, the information that they had so far.
Q What was your next step?
A The next step was to begin contacting witnesses.
Q And without telling us what those witnesses said, what all witnesses did you interview in this case?
A Well, without having my notes with me, I wouldn't -- I, I can't tell you, but --
Q If you reviewed your notes, would that help to refresh your recollection?
A It most certainly would. Thank you. It looks like I

spoke with Maurice Giles, Larry Cooper, Willie Stanley, Sonia Jones, Jerliether Jones, Douglas Morris, J. Russell Brown, James Dozier, Gary Gibson, and there may be a few others that's not in my notes.

Q And some of those people that you spoke with had information; is that true?

A Yes.

Q That assisted in the investigation?

A Yes.

Q And did some of them actually have no information that assisted in the investigation?

A Absolutely.

Q Okay. And as part of your investigation, you said you spoke with Jerliether Jones?

A Yes.

Q During that interview, did you have a chance to present her with a photo lineup?

A I did.

Q Did you suggest to her in any way who she should pick out of that photo lineup?

A Absolutely not.

Q Okay. I'm going to show you what's already been marked as State's Exhibit One, and it's for ID only. It's not been entered into evidence. If you could open that up. Do you recognize that?

A Yes, I do.
Q Okay. And what is it?
A This is a photo lineup.
Q Is it the one that you showed Jerliether Jones?
A Absolutely.
Q Okay. And who did she pick out of that photo lineup?
A She picked the Defendant, Mr. Dizzley.
Q Okay.

MS. BAILEY: At this time, the State would seek to move State's Exhibit One into evidence.

THE COURT: Any objections?

MR. BARR: Yes, sir. Your Honor, I, I -- she may -- what, what my objection is at this point is really foundational because she, she's -- he indicated who, who she picked out, out of the lineup, but she didn't indicate for what purpose.

MS. BAILEY: Your Honor, in Jerliether Jones' testimony she indicated for what purpose. It's just follow-up to that.

MR. BARR: Well, Judge, I think that he would in order -- if she's going to put it into evidence, and, and he's the one that conducted the lineup, then he needs to, to tell us why he had her, why he did the show-up lineup to begin with.

THE COURT: You, you certainly can ask those questions.

MS. BAILEY: Thank you, Your Honor.

THE COURT: I think it'd probably resolve the issue. So

I'll ask you to do so.

MS. BAILEY: All right. Thank you, Your Honor.

BY MS. BAILEY:

Q Now, was Jerliether Jones, to the best of your knowledge, was Jerliether Jones present during the shooting?

A No. She wasn't.

Q Okay. So when you showed her this lineup, what did you -- had she given you a nickname of someone? Let me start with that. Was there a lead involving a nickname that you were following up on?

A Yes. There was.

Q And what was the nickname?

A D, Little D, or Diz or and Diz.

Q Okay. And so when you showed her this photo lineup, was the purpose to determine which person in this photo lineup she knew as Little D, Diz, D?

A Yes. That was the purpose.

Q Okay. And who did she pick out?

A She picked the Defendant.

Q Okay.

MS. BAILEY: At this time, the State would seek to move State's Exhibit One into evidence.

MR. BARR: No objection.

THE COURT: Without objection, it'll be admitted as marked.

MS. BAILEY: Thank you, Your Honor.

(State's Exhibit Number One [Photo Line-up] admitted into evidence and appropriately marked.)

BY MS. BAILEY:

Q Now, you didn't conduct an interview of Naomi Alston, but did you come in during the interview of Naomi Alston?

A Yes. I did.

Q And when you came in during the interview of Naomi Alston, did you present her with a photo lineup?

A Yes. I did.

Q Did Ms. Alston witness the shooting?

A No. She didn't.

Q Okay. Did Ms. Alston have a lead that involved a nickname of someone that may have been involved in the shooting?

A I'm not sure if she had a nickname or she had a, a name period. I don't have it here my notes, but the purpose that I showed her the line-up was the same, to see who she knew as Little D or Diz, or --

Q Okay. I'm going to show you what's been previously marked as State's Exhibit Two for identification only. Can you tell what that is and feel free to open the envelope.

A This is also a photo lineup.

Q And is that the photo lineup that you showed Naomi Alston?

A Yes. It is.
Q And who did she pick out of that lineup as the person who was -- who she knew as D, Little D, Diz, etcetera?
A She chose the Defendant.
Q Okay.
MS. BAILEY: At this time, the State would seek to move State's Exhibit Two into evidence.
MR. BARR: No objection, Judge.
THE COURT: Without objection, it'll be received as marked.
MS. BAILEY: Thank you, Your Honor.
(State's Exhibit Number Two [Photo Line-up] admitted into evidence and appropriately marked.)
BY MS. BAILEY:
Q Now, once you had a name, what did you do next as part of your investigation?
A Well, if I can back up, I had a name from, from a person that I interviewed earlier before I met with the two ladies. That's where I got the initial line-up. After identifying who we thought was Little D, of course, we went to try to track him down and speak with him.
Q Okay. Were you initially able to find him?
A No. No. We weren't.
Q And did that investigation take you out of county?
A Yes. It did.

Q Okay. How long did -- once you began to look for Terron Dizzley, how long did it take you to locate him?
A Again, I don't have that in my notes, but to the best of my recollection, it was at least a week.
Q Okay. He certainly -- was, was he at the first place that you went looking for him?
A No.
Q Okay. At some point in the course of your investigation, did you go to Williamsburg County to look at a car that was owned by Edward Mack?
A Yes. I did.
Q And did somebody go with you?
A Yes. Investigators Thacker and Morris.
Q Okay. But you were present on scene for the processing of that car?
A Yes. I was.
Q Okay. Now, to be clear, were you the lead investigator assigned on this case?
A Initially, I was.
Q Okay.
A But after about a day or so, Investigator Morris was contacted. I was just getting back from Iraq. So they decided to make him the lead.
Q Okay. So you were the assistant to the lead investigator on the case?

A Yes.
Q All right. And in that capacity, then, what was your role in the investigation?
A Anything that needed to be followed up on I did, and I also traveled with Investigator Morris to several locations to speak with witnesses.
Q Okay.
MS. BAILEY: Beg the Court's indulgence one moment.
THE COURT: Yes, ma'am.
MS. BAILEY: I have no further questions for this witness. Thank you, Your Honor.
THE COURT: Mr. Barr, your witness.

CROSS EXAMINATION

BY MR. BARR:
Q You said you went to -- out of town to look for Terron Dizzley?
A That's correct.
Q You had a warrant for him?
A I don't recall if we had a warrant at that time.
Q Now, there did come to be a time when, when you, you found him; is that correct?
A If I'm not mistaken, he turned himself in.
Q Turned himself in. And he -- who he turned himself into? Was it you or Officer Morris or do you remember?
A I don't. I don't remember.

Q But he did turn himself in?
A As far as I know, he did.
Q Yeah. All right. Now, you indicated that you were not -- you were lead investigator for approximately from December 2nd until how long?
A It wasn't more than a day or so.
Q A day or so?
A Uh-huh.
Q And then Officer Morris became the lead investigator. What, what -- basically, what does the lead investigator do?
A Well, the lead investigator is assigned to the case, and anybody else would just be assisting.
Q So with respect to authority and decision-making, would the lead investigator then be the person that would make most of the decisions concerning the direction that the investigation ought to go in?
A Certainly.
Q And but he's assisted by the other investigators?
A Yes.
Q Now, as an assistant investigator to the lead investigator, who maintains the investigatory case file?
A The lead investigator does.
Q He maintains that file?
A That's correct.
Q Did you have access to it?

A I'm sure I could've seen it any time I got ready.
Q Well, but did you, did you, did you study the case file on a day-to-day basis, or in terms of the development of the investigation, were you on top of that?
A Oh, well, yes. I would have been with him pretty much everywhere he went so.
Q I see. All right. Let's, let's look at the -- would you agree that as far as investigation from a methodology standpoint you initiate the investigation by trying to develop leads?
A Yes.
Q And of course, you, you've been an investigator for 12 years you said; right?
A No. I've been in law enforcement for 12 years.
Q But not an investigator?
A No.
Q Now, of course, you, you just identified, or you took a photo lineup to Ms. Alston, and she identified Terron Dizzley as the person that she knew as Little D?
A That's correct.
Q And who's the other person you took it to?
A Jerliether Jones.
Q Jerliether Jones. Now, wasn't, wasn't she Aundry's -- was she Aundry's girlfriend?
A Yes. She was. She identified herself as Aundry's

girlfriend. Yes.
Q All right. So you took, you took it to the two girlfriends, and, of course, you knew that he had a relationship with both of the women?
A Yes.
Q And in terms of why, you were, you were trying to find Terron Dizzley. You had, you had already heard, at least, that Naomi Alston claimed that Terron Dizzley, that he identified Terron Dizzley as the person that shot him? You knew that; right?
A No. What I heard was that he identified a person by the name of Little D that shot him.
Q Well, Little D, but then you said that Little D you wanted somebody to confirm that Little D was Terron Dizzley?
A That's correct.
Q All right. Now, you, you, you were aware of the statement that had been given by Gary Gibson?
A Yes.
Q And --
MS. BAILEY: Your Honor, just to clarify, Gary Gibson gave several statements. Which one are we referring to?
MR. BARR: I'm talking about the statement that he gave dated the 20th of August of 2012 that he gave Steven Brown.
A No. I'm not aware of that statement.
Q You were not aware of that statement? So as far as you

know, the statement that Gary Gibson gave to Steven Brown on the 20th of August was not a part of your investigative file?
A No. Not if you gave it to Steve Brown it's not.
Q Now, Steven Brown then is an investigator for just the Solicitor's Office?
A Yes.
Q And there was no coordination as far as information shared between the Sheriff's Office and the Solicitor's Office?
A I don't know, and that was August 20th of what year?
Q 2012.
A Okay. I don't know anything about it.
Q I believe he also at the same, on the same day, and maybe you probably -- you may not know about that one either, took one from a fellow whose nickname is T.I. You know anybody by that name involved in this?
A I am -- I believe that we did during the investigation identify a person by the name of T.I., but I don't know, I don't know the name.
Q So then you're not familiar enough with it to know whether or not his statement was a part of your investigative file that you were privy to?
A It could have been. I don't know. I don't have it in my notes.
Q But you don't know. Now, as far as the direction of your

investigation, was the direction of your investigation pretty much being determined by Investigator Morris?

A Yes.

Q Did you, did you know about, did you know about the allegations concerning the number of people that were involved in this shooting at the Paradise Club?

A The allegation of the number of people --

Q Yes, sir.

Q -- that was involved at the shooting?

Q Yes, sir.

A From what I understand there was one.

Q Just one?

A Yes, sir.

Q You didn't know that information had been gathered to indicate that it was four or five of them?

A Inside the club, no.

Q No, no, outside the club, too?

A Okay. So you're talking about the other shooting. Yes. I've heard that. Absolutely.

Q Inside and outside, were you aware of that?

A Yes.

Q And were you aware that they were all wearing masks and dressed up in dark clothing, I believe, had several guns, had shot into the building?

A In one of the statements, I hear about at least one other

person that may have had a shotgun, and we collected some shell casings, but that's, that's the information that I have, three or four people were outside, and they all fled together.

Q Now, you said you spoke to Naomi Alston. Were you privy to the statement that she gave? Were you privy to the sworn statement that she made in August of 2012?

A No.

Q You're not privy to that statement?

A I haven't seen it.

Q Have you been active in the investigation of this case since August of 2012?

A No. No. I have not.

Q You hadn't, you hadn't been involved since August 2012?

A No. I have not.

Q So the investigation then has been being directed by Investigator Morris?

A That is correct.

Q Since August of 2012.

A I have to assume so.

(Static comes on through sound system in courtroom.)

THE COURT: All right. Does that take care of it?

REPORTER: Yes, sir. I'm sorry, Judge.

THE COURT: I'm sorry. I didn't know what that button did, not being from around here.

MR. BARR: Judge, you were getting ready to do some low

running?

THE COURT: I, I, I may blast off in a minute. You may proceed, Mr. Barr.

MR. BARR: Thank you, sir.

BY MR. BARR:

Q You, you would agree then that at least until August of 2012 your office had primarily focused on Mr. Dizzley as being the gunman, and you all were conducting an investigation that centered around him?

A Well, we -- he was identified at some point during the investigation. Yes.

Q Now, even in 2012 when you found out that he had been or it had been alleged that he was involved, and simultaneously, there was a lot of shooting going on with four or five other people, all of them dressed up together in black, did it occur to you that this is something a little bit bigger than one man?

MS. BAILEY: Objection, Your Honor. That was a misstatement of the facts, and Mr. Barr is testifying as to facts that are not in evidence.

THE COURT: All right. Ladies and gentlemen of the jury, I'm going to have to ask you to step back to the jury room while I discuss a matter with the attorneys. As always, I'll ask you not to begin any discussions and not until I've told you to do so.

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

THE COURT: State your objection fully, Ms. Bailey.

MS. BAILEY: Thank you, Your Honor. Mr. Barr just predicated his question on whether or not the fact that there was five or six people involved in this shooting would have then formed the direction that the investigation took and whether or not they focused on Mr. Dizzley.

THE COURT: I think his question was did it occur to you back in 2012 when there was evidence or allegations that there were people outside all dressed in black with masks, etcetera, that this matter was bigger than one man, I think was his question.

MS. BAILEY: Okay. I, I --

THE COURT: I think that paraphrases the question anyway. It's not exactly what he said but pretty close.

MS. BAILEY: I, I agree with your paraphrasing. What I disagree with were the specifics that he stated. My understanding is from all of the testimony, we're talking about four people, at most, and the idea that there was somehow six or more people I think is a misstatement of the facts.

THE COURT: I don't know if he went as far as saying six, but he did say -- what I've heard in the testimony thus far was there was a car of people, four perhaps outside. Have you

heard any more than that in the evidence, Mr. Barr?

MR. BARR: No, sir. I, I said five. That's what I said.

THE COURT: Okay. So and, and that apparently arose in a statement that was given in 2012?

MS. BAILEY: To the Solicitor's Office investigator.

THE COURT: Right.

MS. BAILEY: Well, it actually had arisen before that, but it's -- that's neither here nor there.

THE COURT: Okay. All right. Well, you find that, you just find his characterization of the number of people involved to be incorrect?

MS. BAILEY: Yes.

THE COURT: Okay.

MS. BAILEY: Six people couldn't have ridden in one car which is why it's, it's important.

THE COURT: Okay. Well, I think, Mr. Barr, you have any problem with rephrasing your question to --

MR. BARR: No, sir. I'll be more than happy to.

THE COURT: -- include the number of five? Is that what we had?

MR. BARR: Yes, sir.

THE COURT: Is that what the --

MR. BARR: I thought I said five.

THE COURT: I haven't read the statement. So does it say five? I don't know.

MS. BAILEY: My understanding was three or four based on this witness's testimony.

THE COURT: Okay. Well, I'm not talking about that. He's talking about statements that were made by other witnesses.

MR. BARR: Yes, sir. There were several witnesses, I mean, one in particular said four was in the car and one was --

MS. BAILEY: I think four is the total number that anybody says.

THE COURT: Well, we can go back and look at the statement if we need to.

MR. BARR: I'll reduce it to four.

THE COURT: Okay. He says he'll, he'll hold it down to four, and I've heard four. I've heard that, and I'll go along with that.

MS. BAILEY: Thank you, Your Honor.

THE COURT: All right. Other than that, that satisfies your objection?

MS. BAILEY: Yes, Your Honor.

THE COURT: Okay. Let's bring the jury back in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. Mr. Barr has agreed to

rephrase the question. The Court is satisfied with that rephrasing. You may proceed, Mr. Barr.

BY MR. BARR:

Q Based on your case file, did you have information in that file to indicate that there were at least as many as four people involved in the shooting?

A I have information that there were three or four people outside, but only one was involved in the shooting.

Q Well, had you, had you checked -- who, who, who -- the officer that, that just testified before you, that he does the crime scene analysis, you don't, you don't look at the shell casings and spent shells?

A Certainly.

Q Pardon me?

A Certainly.

Q You weren't aware of all of these shell casings that he had and spent shells? You were aware of that?

A Yes. I was.

Q And I'm sure you, you, you had a discussion with him about how those things got out there.

A Well, during the investigation, at least the part that I was involved in, I didn't get any information that anybody actually shot outside.

Q Well, were you aware that there were a number of holes, gunshot holes in the building, inside the building, there were

gunshot holes from what the investigator said looks like a high-powered rifle into the building? You were aware of that?
A I may have heard that, but I'm not sure whether that happened the same night. So I don't know.
Q You're not sure whether it happened the same night?
A Yes. I don't have any information that says that it happened the same night as the shooting.
Q So then you had all the information or at least had access to the information that all the other investigators in your office had, but it's your testimony now that you, you weren't sure that all of this was connected to the same night?
A No. I'm telling you that now, but no, I'm not sure whether that -- there -- nobody told me that they heard any gunshots outside from the best of my recollection.
Q None of the witnesses or none of the people you interviewed told you that there gunshots fired outside?
A Not to the best of my recollection, that there was one gunman outside that had a shotgun, but nobody ever said he fired the shotgun.
Q Well, at least, if he had a shotgun, that's at least two because one would've been inside shooting the pistol and at least another one was outside with a shotgun, and you said that you did understand that there were some more outside all connected to this same event.
A Yes.

Q Now, knowing that, I'm sure that the thought occurred to you that there's more than one person involved in this shooting.
A Well, that's the information that we received, that there were some people outside.
Q I see. And you then at least directed some effort to trying to find the other people involved?
A Well, we really didn't have much to go on. You know, you had three masked men outside. That's the -- that's all the information that we had. Now, I wasn't involved with trying to track down who these other three people were, only the shooter.
Q They were driving a car; right?
A Yes.
Q I see. And of course, the car would have probably had license plate or something. I think you may have checked that, and of course, I noted -- from time to time you all, you all tap telephones, too; don't you?
A I've never tapped anybody's telephone.
Q You don't do that?
A No.
Q Because, I mean, I'm, I'm sure that inasmuch as you had focused some attention on Terron Dizzley and then you found out -- you did find out he was living in Orangeburg?
A Yes.

Q You went to Orangeburg and got some investigators to try to see who he was involved with up there?
A I'm not sure if that's why we went. We went to look for him and speak with him, but there was somebody else that we needed to speak with in Orangeburg as well.
Q Did you ever go or try to connect or see whether or not he had connections to people like where he could get three or four buddies or whatever to dress up in black and come down here and shoot and carry on?
A You're asking me if --
Q Yes, sir.
A -- if I think he knows other people that would come out dressed in black with him?
Q I'm asking you did you, did you try to investigate it to find out?
A Well, I'm sure that we did. I'm sure that we did.
Q Oh, you did?
A I'm sure we did. I didn't do it, but I'm sure we tried to find out who his buddies were.
Q Well, if you didn't do it, how you know it was done?
A Well, because I wasn't involved in that portion of the investigation, I was assisting Investigator Morris.
Q Well, if you wasn't involved in that portion of it, the truth of the matter is, you don't know that it was done?
A I have no idea.

Q As an investigator, you think it should've been done?
A Do I think we should have tried to locate and see who his buddies are? Sure, sure.
Q Now, as far as you know, he, he must -- Terron Dizzley must at least have some friends in Orangeburg or somewhere that he could either pick up the telephone and call and put them together and come help him out, do this thing. I mean, did that thought occur to you that if it was him then this could possibly be a lead because he'd have to have somebody to help him? That thought occur to you?
A Well, I wasn't the lead investigator on the case, but I'm assuming that he does have buddies he can call and come help him out with something like this.
Q And as a good investigator, especially led by Officer Morris, you all could find that out probably pretty easy; couldn't you?
A Well, that depends on what we're trying to find out. At this point we're trying to find out who shot the victim.
Q Well, maybe in terms of a lead if you find the car, find the fellow that had the shotgun, one obviously had a high-powered rifle, some pretty tough fellows, but you all didn't look for them too hard; did you?
A Well, nobody testified to anybody having a high-powered rifle. I don't --
Q Well, I, I think your investigator --

A He collected some shells, but nobody said they saw anybody with a high-powered rifle.
Q Well, so a high-powered rifle never appeared on your radar screen to even try to look for one to connect to this shooting at the Paradise Club?
A No. The victim was shot with a 40-caliber handgun.
Q And you would -- you limited your, your -- the scope of your investigation to trying to find the 40-caliber hand -- you didn't find that either; did you?
A No. Not to my knowledge, we didn't.
Q Now, I believe you, you indicated that he's got a girlfriend in Orangeburg; hadn't he?
A I have no idea.
Q Did you try to find out? You know, a lot of times women will tell you things. You know that; don't you?
A Well, I have a wife.
Q Pardon m?
A She tells me some things.
Q Sir?
A I have a wife. She tells me some things.
Q All right. So, so in terms of trying to find out about Dizzley, you went and talked with his girlfriend? They got a child, too. Did you -- you went and talked to the girlfriend?
A I talked with his father and his stepfather.
Q Well, the stepfather is here in Georgetown?

A Yes.
Q The father is in Orangeburg?
A That's correct.
Q And the father, I believe, probably told you he hadn't seen him since he don't know when. That's probably what he told you; right?
A I don't recall.
MS. BAILEY: Objection, Your Honor. That would call for hearsay.
THE COURT: I'll --
MR. BARR: I'll withdraw. I'll withdraw the question.
THE COURT: Thank you, sir.
BY MR. BARR:
Q Now, did you go talk to the girlfriend?
A I don't know anything about a girlfriend.
Q Did you try to find out? Most men, depending upon the circumstances, they try to have somebody close to them.
A Well, I wouldn't try to speculate that. I don't know whether he had a girlfriend or not.
Q You don't even know whether he got a girlfriend or not; do you?
A No. I don't.
Q And you didn't try to find out?
A I didn't try to find out whether he had a girlfriend.
Q In fact, you didn't make any effort to find out whether

he had a girlfriend or whether he was connected with any men that could pull off this job; did you?
A I don't know whether he did or not. I mean, I don't know. I went to Orangeburg to look for him, speak with him concerning the incident.
Q You went to Orangeburg to look for him?
A Yes.
Q But after he turned himself in, and you realized that you had to try to make a case against him, surely you put yourself in the investigative mode, antennas went up and you started -- went out there and start searching trying to find evidence?
A If I'm not mistaken, after he was arrested, I was no longer involved in the investigation.
Q Oh, I see. All right. So then that would have been in, that would have been in 2008. So you've been out of this a long time?
A Yes. I went to Afghanistan --
Q Oh, I see. All right.
A -- shortly thereafter.
Q Well, I see. Thank you. I have -- I have no further questions.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS BAILEY:
Q Did you at any point disagree with the direction in which

this investigation was going?
A Absolutely not.
Q To the best of your knowledge were all leads followed up?
A Absolutely.
Q Did any lead ever point to any other person?
A No. It did not.
Q Did any lead ever point towards who the other people were outside the club?
A No. It did not.
Q Did you or anybody else to the best of your knowledge ever run -- ever have possession of a license plate number on a black Ford Taurus to run it?
A No. I'm, I'm not aware of anything like that.
Q Okay. Is there any possible way that information from 2012 could have informed your investigation in 2008?
A No.
Q Have you heard any information, to this day, as you sit here this moment, have you heard any information that was new to you that would have changed the course of your investigation from 2008?
A Absolutely not.

MS. BAILEY: I have no further questions, Your Honor.

RECROSS EXAMINATION

BY MR. BARR:
Q Well, now, didn't you just tell me that you got out of

this case in 2008?
A Yes.
Q And of course, even before 2008, in terms of what you may have heard, you're an investigator. You don't wait for people to come and call you and solve your cases for you; do you?
A No. We don't.
Q You go out and aggressively pursue an investigation and gather evidence; don't you?
A As was done here. Yes, sir.
Q Up until 2008 as far as you know. All right, sir.
THE COURT: All right, sir. You may step down. Thank you very much.
A Thank you, Judge.
THE COURT: Wish to excuse the witness?
MS. BAILEY: Yes, Your Honor.
THE COURT: Any objection?
MR. BARR: No, sir.
THE COURT: All right, sir. You're free to go.
A Thank you, Judge.
THE COURT: Thank you. All right. Ladies and gentlemen of the jury, at this point in time we're going to break for the evening. You know my instructions, but I'll go over them with you again, that is not to discuss the case with anyone, don't try to gather any information on your own. Don't listen to, watch or read media reports about the case, and if anyone

tries to contact you about your service, please report that to us.

We're going to start again in the morning at 9:00 o'clock. We'll be able to get started with you first thing. So if you'll be here at 9:00 o'clock, we'll start shortly thereafter. You're free to go at this time. Thank you very much. Please remain seated while the jury retires.

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

THE COURT: All right. For planning purposes, where are we, Ms. Bailey?

MS. BAILEY: Thank you, Your Honor. For planning purposes, I have one brief chain witness tomorrow, and then Investigator Morris, who's the lead investigator.

THE COURT: Uh-huh.

MS. BAILEY: Followed by Dan DeFreese who is a firearms expert from SLED.

THE COURT: And that'll be it?

MS. BAILEY: And that's it.

THE COURT: Okay. All right. So that'll give the Defense some idea of where we'll be tomorrow.

MS. BAILEY: And --

MR. BARR: After lunch would be?

THE COURT: I don't know how long --

MS. BAILEY: Today went much --

THE COURT: I would imagine the lead investigator will take a while. I don't, I don't know about -- I would suspect that'll be the case, but it could -- we might get to discuss some matters with you before lunch. It depends on how it goes. You have something else you wanted to report, Ms. Bailey? I'm sorry.

MS. BAILEY: Just something I want to bring to the Court's attention. We can address it more tomorrow, but the firearms analyst is going to testify that he was able to narrow down the gun that was used inside the club to a specific make and model. We don't have the gun. Okay.

THE COURT: I understand.

MS. BAILEY: But at SLED they do have one of every gun I believe that's ever been made, and so he took pictures of it, of, of the one. Now, this is not going to be the gun, but I would like to use it as -- I have pictures of it. I would like to show the jury as a demonstrative aid as what the gun would have looked like.

THE COURT: Well, you want to share those with the Defense? Have they seen those?

MS. BAILEY: They have.

MR. BARR: I've seen them, Judge.

THE COURT: All right.

MS. BAILEY: I just wanted to bring that to everyone's attention so they can think on it if they need to.

THE COURT: Well, if you don't want to introduce it, that, that probably makes it a little easier question. All right. We'll be starting at 9:00 o'clock in the morning. Everyone have a good evening.

MS. BAILEY: Thank you, Your Honor.

MR. BARR: So, so, now, you, you think you will be at least until lunchtime.

(Adjourned for April 2, 2014.)

(On the record, April 3, 2014, State v. Terron Gerhard Dizzley. The following takes place outside the presence of the jury.)

THE COURT: All right. Is the State ready to proceed?

MS. BAILEY: Yes, Your Honor. We have a matter to bring to the Court's attention that I believe is going to require testimony from Mr. Morris regarding a juror issue.

THE COURT: Oh, sure. The Defense ready?

MR. BARR: Yes, sir.

THE COURT: All right. Sir, could you help out with swearing him in? I'm going to need him sworn.

THE CLERK: Please state your name for the record.

MR. MORRIS: Dustin Morris.

THE CLERK: Thank you.

Whereupon, Dustin Morris is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: Have a seat, please. Your witness.

MS. BAILEY: Thank you, Your Honor.

EXAMINATION

BY MS. BAILEY:

Q Investigator Morris, did one of our sitting jurors approach you this morning?

A Yes, ma'am. In the parking lot.

Q And can you, can you describe that encounter?

A Excuse me. As I was coming in for court this morning, one of the jurors, a white lady with glasses, approached me about the Defendant. She asked me if -- that I knew he was out, basically, that he was -- he had driven to court. She was concerned about him not being in jail, and I indicated he was out on bond and that was a stipulation of the Court.

Q Okay. Can you give a better description of which juror it was?

A I believe she's been seated on the first row, the fifth chair from the end here, if I'm not mistaken.

Q Okay. Did you all discuss the substance of the case at all?

A No, ma'am. I just asked her if she -- if he made any kind of threats or looked at her or said anything to her, and she said, no, he did not.

Q Okay. And as a law enforcement officer, did you feel like it was your duty to make sure she felt like -- to determine if she felt like she was in any danger?

A Yes, ma'am. In fact, I walked with her to the front door. We spoke about the weather.

Q I have no further questions.

THE COURT: Mr. Barr, wish to ask questions?

MR. BARR: Yes.

EXAMINATION

BY MR. BARR:

Q You said the juror approached you and, and asked you what now?
A Basically she asked if I knew that he was walking around, like he wasn't in jail, and I indicated to her that he was out on bond and that was basically his right, and she indicated he drove to court today, and I, again, said he was out on bond.
Q She told you that he had driven to court today?
A Yes, sir.
Q Thank you, sir.
THE COURT: You may step down.
A Thank you.
THE COURT: I'm not sure exactly how to identify this juror by name or number. Can you -- let me ask you a question. Her clothing, what's she wearing today?
A I believe she was wearing a black-and-white color. I really didn't pay a whole lot of attention to it, maybe a dress. I'm not sure.
THE COURT: And her hair color is?
A I believe it was black, a little bit of gray, and she was wearing glasses.
THE COURT: Okay. When you say seated, is it the lady next to the last one down here?
A I believe she has been seated somewhere in this area.
THE COURT: Okay.
A I'm not quite sure.

THE COURT: I don't know how to identify her other than bring the jury in and have you identify who she is and I'll ask that she stay while I inquire of her because I do want to inquire of her about this. I think that's probably the only way that I can identify her so we don't disturb other jurors. So at this point in time, I'll ask that you bring the jury panel in.

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

THE COURT: All right. The record will reflect that the jury has returned to the courthouse. Prior to your entry into the courtroom, I received a statement from a police officer that he had spoken to one of your number. Officer, could you identify the individual that you spoke to this morning?

A Yes, sir, Your Honor. It's the lady right there.

THE COURT: All right. I'll ask that the other members of the jury panel return to the jury room. Ma'am, if you'll remain seated. Thank you very much.

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

THE COURT: All right. Your name is, ma'am?

MS. SISK: Tayna Sisk.

THE COURT: All right. Thank you. Ms. Sisk, luckily there is a microphone right there in front of you on the rail so you don't need to move, and I'll remind you that you remain

under oath --

MS. SISK: Yes, sir.

THE COURT: -- to respond accurately to the Court's inquiries. Do you understand that?

MS. SISK: Yes, sir.

THE COURT: The officer explained to us this morning that you had a conversation with him. Could you tell me what you spoke about, please?

MS. SISK: I asked him -- I told him that I was a little surprised to see the Defendant in the parking lot and, and was that normal, and he said yes, and he asked if I felt the least bit threatened or concerned and I said absolutely not.

THE COURT: All right.

MS. SISK: I just was surprised to see him drive himself to court.

THE COURT: I see, and did, did he explain it to you any further than that?

MS. SISK: He just said he was -- he could do that, that he -- everything was fine.

THE COURT: All right. Now, ma'am, did those -- would those factors in any way affect your ability to be fair and impartial in judging this case?

MS. SISK: No, sir.

THE COURT: Did you in any way feel threatened by the Defendant's presence?

MS. SISK: No, sir.

THE COURT: And I assume the Defendant made no effort to contact you or talk to you about the case?

MS. SISK: No, sir. I don't think he even saw me.

THE COURT: All right. And did you feel that the officer made any effort to try to influence your decision in this matter in any way?

MS. SISK: No, sir.

THE COURT: All right. If the State would like to ask any questions of the juror, I'll be happy for you to do so. Do you wish to?

MS BAILEY: No. No, Your Honor.

THE COURT: All right. Mr. Barr, do you wish to ask any questions of the juror?

MR. BARR: Judge, I just, I'd like to know whether or not there was any particular reason why she felt that he should be -- shouldn't be driving.

THE COURT: All right. Ma'am, was there any particular reason why you felt that the Defendant should not be in, in the parking lot?

MS. SISK: No. I just, you know, I mean, this is a serious case, and my background is simply watching, you know, television and so forth. I was just a little surprised to see, you know, a Defendant in a trial like this drive himself to court, you know. I guess I assumed that he would have --

be accompanied by a court officer or something but --

THE COURT: I see. So you were just surprised by that situation, is that what you're saying?

MS. SISK: Yes.

THE COURT: For no particular reason other than your belief that --

MS. SISK: Well, I just was kind of surprised that he was there and --

THE COURT: I understand. All right. Well, ma'am, let me ask you just -- I'm going to follow up a little bit on that particular line of inquiry.

Under our system of justice, Defendants are always presumed to be innocent of the crime for which they've been charged, and that presumption remains with the Defendant in any case until such time as a jury finds guilt beyond a reasonable doubt. Do you understand that?

MS. SISK: I do.

THE COURT: And do you understand that our Constitution allows all Defendants the right to have reasonable bond during the pendency of their charges. Do you understand that?

MS. SISK: I do.

THE COURT: Do you agree with those concepts?

MS. SISK: I do.

THE COURT: So you don't have any difficulty with the fact that that is the way our system operates?

MS. SISK: Not at all.

THE COURT: Okay. Any further matters the State would like to take up with the juror?

MS. BAILEY: No, Your Honor.

THE COURT: Defense?

MR. BARR: No, sir, Judge.

THE COURT: Okay. Ma'am, you may return to the jury room. Thank you very much.

MS. SISK: Uh-huh, certainly.

THE COURT: And ma'am, please don't discuss this or anything else with other jurors. Thank you, ma'am.

(Whereupon, Juror Number 332 exits courtroom.)

THE COURT: Does the State wish to take any position in regard to the juror?

MS. BAILEY: No, Your Honor. I just felt like as an officer of the court I should bring this situation to your attention.

THE COURT: All right. I think you should have. And Defense wish to take any position in regard to this juror?

MR. BARR: No, sir, Judge.

THE COURT: All right. Now, is the State ready to proceed?

MS. BAILEY: Yes, Your Honor.

THE COURT: The Defense ready to proceed?

MR. BARR: Yes, sir.

THE COURT: All right. It would be my finding that while the juror did have a conversation with the officer, that it did not affect her ability to continue on the jury, and I do not find that she has been prejudiced by that discussion at this point in time. So I will allow her to remain on the jury panel. Let's bring the jury in.

MS. BAILEY: Your Honor, may I grab my water bottle I left up here.

THE COURT: Yes, ma'am.

MS. BAILEY: Thank you. It was a little warm in here yesterday.

THE COURT: All right. Bring the jury in. Thank you.

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

THE COURT: All right. The record will reflect that the jury has returned to the courtroom. Other than my discussion with Ms. Sisk, has any juror had any difficulty in complying with my instructions to you concerning your activities while you're away from the courthouse? If that's true, please stand.

(No response.)

THE COURT: It appears the jurors have been able to comply with my instructions, and at this point in time, the State is still in the process of calling its witnesses and you may call your next witness.

MS. BAILEY: Thank you Your Honor. The State calls Jennifer Flowers.

THE COURT: Come forward, please, to be sworn. Right over here to my left, please, ma'am.

THE CLERK: Please state your full name and spell it for the Court.

MS. FLOWERS: Jennifer Lynn Flowers, J-E-N-N-I-F-E-R, L-Y-N-N, F-L-O-W-E-R-S.

THE CLERK: Thank you.

Whereupon, Jennifer Lynn Flowers was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Good morning.

A Good morning.

Q In 2008, where were you employed?

A Georgetown County Sheriff's Office.

Q Are you still employed there?

A I'm not.

Q Okay. And in 2008, did you have any involvement in the case where the victim was Aundry Evans, Jr.?

A I was. I did. I was sent to the autopsy at MUSC in

Charleston, South Carolina.
Q And what, what did you do there at the autopsy?
A I retrieved all the evidence that -- from the doctor that performed the autopsy.
Q And when you took possession of that evidence, what did you do with it next?
A It was secured, packaged and secured in my trunk, and I drove straight to the Georgetown County Sheriff's Office, and it was put into evidence.
Q While it was in your possession, did you tamper with it or alter it in any way?
A No, ma'am.
Q Let me show you what has been previously marked as State's Exhibits 75 and 76. Feel free to open those bags and pull what's inside if you need to. Take a moment to just review that. Okay. Do you recognize those items?
A I do.
Q And did you take possession of those at MUSC?
A I did.
Q From the doctor?
A Yes, ma'am.
Q Okay. And did you put those items directly into an evidence locker?
A Yes, ma'am.
Q Okay.

MS. BAILEY: I have no further questions for this witness at this time. Thank you.

THE COURT: Mr. Barr, your witness.

MR. BARR: Judge, I have no questions.

THE COURT: All right. Ma'am, you may step down.

A Thank you, Your Honor.

THE COURT: Wish to excuse the witness?

MS. BAILEY: Yes, Your Honor.

THE COURT: Any objections?

MR. BARR: No, sir.

THE COURT: Ma'am, you're free to go at this time.

A Thank you.

THE COURT: Thank you. Ms. Bailey, the State may call its next witness.

MS. BAILEY: Thank you, Your Honor. The State calls Investigator Dustin Morris.

THE COURT: Sir, come forward to my left and be sworn, please.

Whereupon, Dustin Morris was called to the stand, sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Good morning, Investigator Morris.
A Good morning, counsel.
Q How long have you been in law enforcement?
A Been in law enforcement almost 19 years now.
A And what's your current title?
Q I'm senior investigator for the Georgetown County Sheriff's Office.
Q How long have you been in investigations?
A Approximately 15 to 16 years I've been doing investigations work.
Q How did you get involved in this case where the victim is Aundry Evans, Jr.?
A Basically, after the incident occurred in -- on December the 8th I was notified by my lieutenant at the time that I would be the lead investigator in the case and that several investigators had already been working and developed some leads and information. Basically, I was assigned to oversee the investigation, make sure that everything was done correctly.
Q So if there were judgment calls to be made in this case, would you have made those or would other investigators have made them?
A Obviously, when you have something like this, you all sit down and you brainstorm and go over information, but ultimately, the end result would be through me. I would make

the final determination what we would do.
Q So because you were assigned on December 8th, did you actually process any evidence or crime scenes?
A I did not.
Q Okay. And were you actually on scene that night or the morning after?
A No. I was not.
Q Okay. From the time you were assigned on December 8th, can you tell us what steps you took in furtherance of the investigation?
A The first thing I did was review reports from generated evidence from the autopsy, of course, any statements that were taken at that time I reviewed, got with the investigators that had been working on the case and kind of compared their notes to determine where they were at, and then I basically put everything together and took that information, and based on that, did follow ups from that information.
Q Did you personally interview anyone in this case?
A Yes. I did.
Q And without telling us what they said, who did you interview in this case?
A If I may refer to my notes.
Q If it would help refresh your recollection.
A It would. Ralph Frazier was interviewed.
Q And what was his relationship to the case?

A He was the stepfather of Mr. Dizzley.
Q Okay.
A Edward Mack, conducted an interview with him, spoke with Gary Gibson, Marvin Riley, and any calls that may have been forwarded within the Sheriff's Office, such as anonymous information.
Q Okay. Based on the interviews that you did, what leads did you follow up on, what, what steps did you take next?
A At the time I became involved, it was seven days after the incident occurred, six, seven days. In reviewing all reports, talking to all investigators, the only name that came forward was this Little D person or D, and at that point we had to establish who Little D was, and that was established at a later time through witness statements.
Q At any point, did any witness or any lead take you anywhere other than someone named Little D?
A No. It did not.
Q Was there any lead that you decided was not relevant or made a judgment call not to pursue?
A No.
Q So every lead that you developed you were able to develop to its logical end?
A Yes, ma'am.
Q Okay. As lead investigator, would you have made the decisions about which forensic evidence to submit for further

testing?
A Well, at the beginning of the investigation, the proper course of action would be basically the investigators had collected -- they would automatically submit a SLED lab request saying that basically whatever items are needed to be analyzed would be, you know, put in by that investigator. It would be my job afterwards to make sure that stuff went to SLED, to make sure that it was analyzed and we got the proper reports back.
Q Does it ever happen that there's evidence collected on a crime scene that you don't submit to SLED for some reason?
A Yes, ma'am.
Q In this case, was there some blood collected off the floor in the club?
A Yes. There was.
Q And did that get submitted to SLED?
A No. It did not.
Q Why not?
A We already knew who the deceased was at the time. There was no one else that was identified as being injured at the club. No one came forward that had any marks or abrasions that would indicate that they bled at the scene. Therefore, it was decided from a basically a standpoint of we knew who the person was inside that we did not need to analyze that.
Q Was -- without telling us the results, was some evidence

submitted to SLED for further processing?
A Yes, ma'am.
Q And what evidence was that?
A Shell casings located from the crime scene inside the club, as well as the projectiles recovered from Mr. Evans at autopsy were sent to SLED for analysis.
Q And to the best of your knowledge, were they analyzed?
A Yes, ma'am.
Q Okay. What type of analysis did you direct that, that be performed on that evidence?
A First, it would have been ballistics to determine if the shell casings at the scene did, in fact, match the projectiles removed from Mr. Evans. The second analysis would've been latent prints processed from the shell casings that were submitted, and then a request for touch DNA was requested for these shell casings, you know, recovered inside the scene.
Q At some point, did you receive the results and further follow up from the State Law Enforcement Division or SLED regarding that analysis?
A Yes, ma'am.
Q Okay. And did you receive a report from the ballistics expert?
A Yes, ma'am.
Q Okay. Did you receive a report from the latent fingerprint expert?

A Yes, ma'am.
Q Did that report provide you any further leads or usable evidence?
A No, ma'am.
Q Okay. Did you receive any further information from the touch DNA lab?
A Eventually, we received a letter from the State Law Enforcement Division that the shell casings had not been processed for DNA evidence.
Q And at that point was a decision made about, about what to do about that?
A Nothing was done. They were not sent back. Basically, the decision was made that we had no latent prints recovered from the casings. At that time we had a viable suspect from the scene, and a decision was made not to send them back.
Q In your experience as an investigator, what is the backlog like at the DNA lab at the State Law Enforcement Division?
A Personally speaking, I have evidence that's been sitting there for over two years now that has not been analyzed, and that's of no fault of SLED. It's just every agency in the state sends their evidence to SLED for processing, and there's a whole lot of agencies in the state so.
Q So as a result of that, is it common in your experience that SLED returns evidence to you untested?

A Yes, ma'am.
Q Okay. Now, once you developed Mr. Dizzley as a suspect through your witness interviews, what steps did you take next to attempt to further the investigation?
A Excuse me. At that time his name was run through a computer database that we utilize through ROCIC, which basically you enter information such as the name and date of birth which we had obtained some from DMV, and that report will indicate any addresses he's lived at, possible relatives, phone numbers, acquaintances, neighbors, anything of that nature. The -- that's what led us to Mr. Frazier being on Pennyroyal Road was the initial address for Mr. Dizzley. We did not locate him at that address, and at that point, we utilized several addresses that we obtained from ROCIC that were from the Orangeburg area and decided at that point we needed to broaden our search to the Orangeburg area to look for Mr. Dizzley.
Q And as part of your investigation, did you ever consider executing a search warrant on any of Mr. Dizzley's property?
A No, ma'am.
Q And why not?
A We were unable to determine exactly where he lived. When we went to Orangeburg, we spoke with his father. That was his last known address, and he indicated he does not live there. Through cooperation with the Orangeburg County Sheriff's

Office, they could not further our assistance in identifying an address where he may be living at the time. So we weren't able to find an address to execute a search warrant.

Q How many, how many times did you go to Orangeburg in furtherance of this investigation?

A One time.

Q Okay. And did you enlist any other agencies for help?

A Yes, ma'am.

Q And which agencies were that?

A It was the Orangeburg County Sheriff's Office.

Q Okay. And for how long did you attempt to locate Mr. Dizzley?

A Basically an entire day. Through one witness, we found that he was living in that area. Through another -- well, through his father, we found out he had lived there, but was still somewhere in the area, that couldn't quite tell us where, and basically, the Orangeburg County Sheriff's Office enlisted an informant to try to help us find Mr. Dizzley.

Q Okay. And at some point, did you actually put out any kind of press release or more information to the general public looking for Mr. Dizzley?

A Yes, ma'am.

Q Can you describe that a little bit more?

A The -- I believe it was the 11th of December, after obtaining an arrest warrant for Mr. Dizzley, the local media

outlets in the Orangeburg, Charleston, Georgetown areas were notified that we were currently looking for Mr. Dizzley for the offense of murder. I did verify that it did appear on the evening news. So it was put out there.

Q And at some point, did Mr. Dizzley turn himself in?

A Yes, ma'am. He did.

Q And where did he turn himself in?

A The Richland County Sheriff's Office through the assistance of an attorney.

Q And the Richland County Sheriff's Office, where's that?

A It's in the Columbia area.

Q Okay. Now, early on, from your review of witness' statements, were you aware that there may have been more than one person involved in this crime?

A Yes, ma'am. I was, in reading reports and speaking with the deputies and reviewing witness interviews, there, indicated there may have been four total, three outside and one inside.

Q And were you ever able to develop any suspects or useful information as to who the other folks were?

A No, ma'am.

Q Did you try?

A We tried every avenue we had.

Q Okay. Were you able to develop any leads as to who those folks were?

A No, ma'am.

MS. BAILEY: Beg the Court's indulgence?

THE COURT: Yes, ma'am.

A Excuse me.

MS. BAILEY: No further questions for this witness, Your Honor.

THE COURT: Mr. Barr, your witness.

CROSS EXAMINATION

BY MR. BARR:

Q You indicated, I believe, Officer Morris, that you obtained an arrest warrant for Mr. Dizzley around, I believe, December 11th?

A Yes, sir.

Q And when did you actually execute the arrest warrant?

A That would have been December the 12th.

Q So you, you, you, you got a warrant for Mr. Dizzley on the 11th, and on the very next day he turned himself in?

A Yes, sir. He did.

Q Now, you also indicated that you went to Orangeburg one time --

A Yes, sir.

Q -- to look for Mr. Dizzley?

A That's correct.

Q So, now, when you went to Orangeburg to look for Mr. Dizzley, you didn't have a search warrant, you didn't have an

arrest warrant?
A No, sir. We didn't.
Q Now, you would agree that Mr. Dizzley was under no obligation, legally or otherwise, to turn himself into you when he turned himself in?
A Absolutely.
Q Now, you indicated that you found out during the course of your investigation that there were at least four people involved in this incident?
A Yes, sir.
Q And I believe you would agree that ordinarily as a lead investigator you would have been responsible for coordinating the investigation as well as being familiar with what's in the case file?
A Correct.
Q You indicated that or did you know that there was information to indicate that at least one of the other participants in the incident had a shotgun?
A Yes, sir.
Q And of course, at least one had a high-powered rifle.
A I was never informed of that.
Q The investigator that testified yesterday that concluded that the bullet holes in the building, the bullet holes in Mr. Mack's car, you sat here yesterday, and I believe you said you or I believe you probably heard him say that those holes were

probably made by a high-powered rifle.
A The reference to the car, I don't believe he said that. The building, yes, I believe he said that they probably came from a rifle.
Q High-powered rifle?
A Yes, sir.
Q Now, are you telling us that you didn't know that?
A Yes, sir. I knew that.
Q You knew that?
A Uh-huh.
Q All right. So then you did at least know that there must have been a high-powered rifle involved as well?
A Couldn't determine when the rifle was used. It could have been after we cleared the scene. There was no testimony or witnesses found at the scene that night that said those bullet holes were even in the building. Those, those were found the next day.
Q Now, you were in charge of the investigation?
A Yeah. On December the 8th.
Q And are you telling the ladies and gentlemen of this jury that as a person in charge of the investigation you made no effort to find out from the owner of the building how long the holes, bullet holes had been in the building?
A Ms. Alston was contacted to meet with Investigator Thacker to allow access into the club. She did not show up

that evening, but to answer your question, there was no one to speak to that could tell me that.

Q Now, Officer Morris --

A Sure.

Q -- it would have been your responsibility, would it, to at least determine whether or not the bullet holes that you found, that we must have seen I don't know how many pictures of, to determine whether or not those bullet holes were connected to this incident?

A Well, after reviewing all the witness statements, the only thing I heard from a witness or read at that point was there had only been a couple of shots outside the club as these masked gunmen were leaving, not 24 to indicate the amount of shell casings found at the scene.

Q So you're telling the ladies and gentlemen of this jury that in spite of what the physical evidence might seem to suggest, as the person coordinating an investigation, in your judgment, you made the decision to limit it to the statements of witnesses?

A Well, based on that, plus the SLED lab results we obtained at a later time.

Q Of course, the SLED lab results that you obtained did not reveal anything; did they?

A The ballistics did.

Q Well, what did the ballistics reveal?

A Would you like me to get into that?

MS. BAILEY: Objection, Your Honor. That would call for hearsay.

THE COURT: I'll sustain the objection.

MR. BARR: I'll, I'll rephrase the question.

BY MR. BARR:

Q The materials that were sent to SLED at your request, you said they were sent back unanalyzed.

A No, sir. I didn't say that.

Q Well, tell me what you said.

A I said that they were analyzed for ballistics.

Q Yes, sir.

A And for latent prints, but not DNA.

Q And of course, you know or knew that they weren't analyzed for DNA?

A I didn't know at the time, no. I didn't find out till 2011. That's when the SLED lab report came back that they were, you know, or they weren't even tested for DNA. That's when that report was received by the Sheriff's Office.

Q So there was never a test for DNA and, and you were satisfied with that?

A Yes, sir. I was.

Q Now, you did know or have good reason to believe that there were at least four people involved?

A Yes. There was one inside the club and three on the

outside.
Q And you did have, at least, Gary Gibson's statement indicating that he thought that Terron Dizzley was too short to be the shooter. You had that statement; didn't you?
A Yeah. There --
MS. BAILEY: Objection, Your Honor. That's a misstatement of facts.
MR. BARR: Your Honor, I -- I mean, I'll redirect it back if she wants to.
MS. BAILEY: Your Honor, the statement was taken in 2012.
THE COURT: Are you referring to a statement that was taken in 2012 in that question?
MR. BARR: Yes, sir.
THE COURT: Okay. Then if you don't mind, indicate that because apparently you indicated that he had it at the time that he was investigating initially. So I'm going to ask you to rephrase the question.
MR. BARR: I'll rephrase the question, Judge.
THE COURT: All right. Thank you, sir.
BY MR. BARR:
Q Now, you, you testified under oath a few minutes ago that it was your responsibility to familiarize yourself with all the statements that were given by witnesses in this investigation.
A In 2008. Yes, sir.

Q Are you telling us that after 2008 you stopped investigating?
A Once the investigation led us to a Defendant in this case and no other leads were developed, there was nothing else to follow up on.
Q Well, whose responsibility would it have been to develop leads?
A Well, that would be from witnesses and that just -- it wasn't forthcoming.
Q They didn't volunteer, and you didn't go out and look for them?
A Well, there was nobody to look for.
Q Well, now, you don't deny that you knew as of August of 2012 that you had at least four people who swore that Terron Dizzley was in Orangeburg at the time of this shooting?
A I don't know where you're going with this. I, I had no witnesses that told me he was in Orangeburg.
Q Pardon me?
A I had no witnesses that told me he was in Orangeburg at the time.
Q I said you don't deny that you knew that there were at least four people who had given sworn statements that Terron Dizzley was in Orangeburg at the time of the shooting?
A That was never provided to me. I did not take those statements. I -- this is news to me.

MR. BARR: Your Honor, may we approach the bench?

THE COURT: Yes, sir. Counselor.

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

THE COURT: All right. Ladies and gentlemen of the jury, this is one of the occasions that I will ask you to step back to the jury room while I discuss some matters with the attorneys. As always, I'll instruct you not to discuss any aspect of the case until I've told you to do so. You may retire.

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

THE COURT: I've asked the jury to step out of the courtroom to afford Mr. Barr an opportunity to inquire of this witness as to his knowledge concerning testimony that might have been offered at the previous trial in this matter. You may proceed, Mr. Barr.

MR. BARR: May I approach the witness, Judge?

THE COURT: Yes, sir.

EXAMINATION

BY MR. BARR:

Q Now, Officer Morris, I'm going to hand you a copy --

MS. BAILEY: Your Honor, I'm going to have to object. The purpose of sending the jury out was not to show Mr. Morris the statements. It was to ask him if he was present for the

prior statements.

THE COURT: Well, it's a proffer. I'm not going to limit Mr. Barr at this point in time. He hadn't -- really hadn't -- I don't know what he intends to do with the piece of paper he's about to hand the witness, and it's a proffer. There's -- we give a little more latitude in proffers. The jury's not present.

MS. BAILEY: Thank you, Your Honor.

THE COURT: You may proceed, Mr. Barr.

MR. BARR: Thank you, Judge.

BY MR. BARR:

Q A copy of the transcript --

A Yes, sir.

Q -- from the trial in August of 2012, and of course, in that you don't deny that you were the State's witness who stayed in the courtroom with Mr. Hixson sitting directly next to him during the whole trial?

A I was here the whole time.

Q Yes, sir.

A However, I'd like to clarify something. Your previous question indicated did I receive any information during the investigation after that gave an alibi. You didn't indicate during the courtroom testimony because that was never provided to me before trial. That was the first time I heard it; and furthermore, these witnesses were never made available to me

through exculpatory or any other way for me to interview them.
Q My question was whether or not you were aware of sworn statements by at least four people who stated that Terron Dizzley was in Orangeburg at the time that this incident occurred, and you were sitting right there in the courtroom. In fact, I called you as a witness.
A Right. And I'll answer your question. I was here for that trial, and I heard two witnesses give statements that they -- he was with them at the same time in Orangeburg.
Q Well, you didn't hear three, four witnesses testify? He had four alibi witnesses.
A I don't, I don't recall four. I recall two. I'll give you that. Yes, sir.
Q Take a look at the transcript and maybe it'll refresh your memory.
A I'm sure it's a lot to read. Would you like to point out where?
Q Well, there's an index that gives the names of --
A Okay.
Q -- everybody that testified. You first, you were first.
A Sure.
Q And then the other four witnesses.
A Okay. Okay. I've read them.
Q Pardon me?
A I've read them.

Q Now, do you still deny that you were not aware that there were at least four people that said he was somewhere else other than here in, in Georgetown County at the time this incident occurred?

A As I said earlier, I recall two witnesses saying that they were with him, that he was with them at the time. Now, obviously, it was said. I mean, it was a long time ago. It was a lot of trial information. It could have been said. I'm not denying that.

MR. BARR: Well, then if you're not denying it, then, then, Judge, I'm not going to, I'm not going to ask the Court to allow me to impeach him by entering my questioning on the prior trial.

THE COURT: Well, he, he -- I don't know that there is an impeachment. He hasn't made a statement concerning the prior trial. So there's no prior inconsistent statement.

MR. BARR: Well, I asked him --

THE COURT: But you can ask him about it. You can ask him about -- again, I'm not going to allow you to refer. My ruling's been consistent throughout the trial. I'm not going to allow you to refer to another trial. If you want to say he was -- was he aware that people had given sworn statements in the past, as late as 2012, I'll let you ask him that.

MR. BARR: Judge, that's specifically what I asked him, and the reason I asked him that is to avoid mentioning the

other trial.

THE COURT: I haven't stopped you.

MR. BARR: Yes, sir.

THE COURT: An objection was made by the State, and we're now doing a proffer to see where that's going to go. So if you're finished with your proffer ---

MR. BARR: Yes, sir.

THE COURT: -- I'll let the, let the State get into it if they'd like.

MS. BAILEY: Thank you, Your Honor. My concern is that Mr. Barr is attempting to backdoor in some hearsay without having to actually call those witnesses regarding any alibi that Mr. Dizzley may or may not have.

THE COURT: Well, I'm not going to allow him to get into the statements. I think the witness has acknowledged he heard at least -- he recalls two. If he doesn't recall them, witnesses do forget. I mean, that's, that's an answer. "I don't know" is an answer. So he's responded to the questions. I don't know if the number is as important as the fact that there were statements made and that the -- then, of course, you can ask whether he followed up on them after that or not. That would be fair game.

MR. BARR: Judge, it would seem to me that if he does not recall -- if he recalls only two, and he was sitting here in the courtroom the entire time when the four people testified,

then I ought to be able to, to go into the fact that he was sitting in the courtroom during the first trial when they, when they all testified.

THE COURT: You can -- I'll allow you. I'm not going to let you get into whether it's a trial or not, Mr., Mr. Barr. That's not going to change. What I will allow you to do is say, "Were you not present when four sworn statements were given?" You can ask that question, and if he denies that --

MR. BARR: All right.

THE COURT: -- then, then you have the right to -- during your case in chief, if you choose to. I'm not placing the burden of proof on you.

MR. BARR: Yes, sir.

THE COURT: It's your choice as to whether you want to bring in the evidence or not to show that that -- his recollection may be flawed.

MR. BARR: Well, Judge, it would seem to me then that inasmuch as the transcript from, from the prior trial would be the only method by which I could contradict him or impeach him, then we should be able to use that.

THE COURT: I'm not going to let you do that, sir.

MR. BARR: But, Judge, and --

THE COURT: He did -- he has not made a statement concerning those facts.

MR. BARR: Judge, but he's denied that he heard.

THE COURT: No. He's denying he remembers it. That's what his testimony was, Mr. Barr. He only remembers two. Mr. Barr, you're sitting on a microphone there. There we go. Excuse me. They're everywhere.

MR. BARR: I'm sorry. All right.

THE COURT: So I'll allow you to ask him if he was not present when four sworn statements were given concerning Mr. Dizzley's presence on the night of the incident.

MR. BARR: Thank you, Judge.

THE COURT: And now that you've refreshed his memory, I'm not sure what that answer's going to be.

MR. BARR: All right, sir.

THE COURT: We'll see, but we're not going to get into mentioning the trial. All right. Ready for the jury?

MR. BARR: Yes, sir.

THE COURT: The State ready?

MS. BAILEY: Yes, Your Honor.

THE COURT: All right. Let's bring the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. I have overruled the State's objections. You may proceed.

MR. BARR: Thank you, Judge.

BY MR. BARR:

Q Officer Morris, weren't you present when four sworn statements were given indicating that Mr. Dizzley --

MS. BAILEY: Objection, Your Honor. Again, he's going into the contents of the statements.

THE COURT: I overrule that objection. He's got to be able to describe them somehow, and he's not quoting from the statements. He's describing them.

MS. BAILEY: Thank you.

THE COURT: You may proceed.

Q Indicating that he was somewhere else other than here in Georgetown County when this incident occurred?

A Yes, sir.

Q Now, weren't you also present when the identity of the people that made the statements were given?

A Yes, sir.

Q So, now, as a law enforcement officer, you would agree that that would be somewhat of an alibi?

A Yes, sir. It'd be considered alibi if they were consistent statements.

Q And of course, the only way to determine if they were consistent would be for you to evaluate them?

A They were sworn statements according to you, and both the interviews I recall put him in two different locations at the time of the crime.

Q Well, suppose as an investigator genuinely interested in

seeking the truth and genuinely interested in determining whether or not the alibi is any good, do you think a conscientious investigator would at least make an effort to determine whether or not the witness's account or the statement is accurate?

A Well, basically, as you indicated, if it was a sworn statement in my presence, then that, that right there indicates it's, you know, the truth of whoever's telling the statement, and based on the facts of the witnesses that we interviewed from the club the night, that night, compared to the witnesses that came up that said he was with them at the same time in two different locations, no, I don't.

Q Are you telling the ladies and gentlemen of this jury even though at least four people swore that he wasn't here, you made no effort to determine the validity or the accuracy of those statements?

A I did not. It had already been determined for me through sworn testimony.

Q So as it relates to the methodology of your method of investigation, your decisions are made not following up on potential leads, but based on your assessment of sworn testimony?

A Everything is taken into context, sworn testimony compared to evidence found, compared to statements already obtained from other witnesses. The, the witnesses that you're

referring to, of course, I had never spoke with them before 2012. They never came forward, never gave me any kind of information that he was with them at the time. Certainly, had they contacted me, I would have been more than happy to talk to them.

Q Now, they had no obligation to come forward to you; did they?

A Did not.

Q And once you determined that they said that he was someplace else, don't you think that you had an obligation as the chief investigator in a murder case to at least go and find out whether or not there was anybody else that knew any one of these people or that had been associated with them that would have told you, "Well, look, they're not telling the truth because Mr. Dizzley was not where they say he was"?

A I had already determined they weren't telling the truth.

Q Well, how'd you know? You didn't leave, you didn't leave Georgetown County?

A Well, sir, they both gave conflicting statements that he was with them at the same exact time in two different locations.

Q Now, Mr. -- Officer Morris, your characterization of their statements as conflicting, you don't deny that that's just your opinion; isn't it?

A No, sir. It's what I heard. I believe it's in a record

somewhere, too.
Q Oh, yes. It is. It certainly is. Now, the three people that got away in the car with the alleged, with the assailant, the man that did the shooting, that -- and, of course, you, you knew from reading your reports that this fellow that testified yesterday, T.I., had also said that the man that was doing the shooting was a tall man. You knew he said that; didn't you?
A Which statement are you referring to? I believe he gave a couple.
Q I'm talking about the one that he, he gave to Mr. -- Investigator Brown.
A I don't know about that statement. If you have a copy, I'd be more than happy to look at it, but I've never looked at that statement.
Q Well, you're the chief investigator.
A Yes, sir.
Q Seem to me it was within your job to make sure that at least you look at all the evidence. I mean, that's how you determine where to go; isn't it?
A Well, to explain that a little bit, once the case leaves the Sheriff's Office and goes to the Solicitor's Office, they have an assigned investigator that basically tracks down witnesses and kind of gets a brief statement before trial or whatever. I don't know if that's what you're referring to or

not, but that's not made part of our case file.
Q Well, let me ask you this then. Of course, even today, as it relates to this incident, you got one fellow that held a shotgun. You still looking for him?
A If we got information of who he was, we'd be more than happy to arrest him.
Q My question is are you still looking for him?
A No, sir.
Q You stopped looking for him?
A We have no more leads to identify him.
Q You got at least one man that drove the getaway car that the assailant was in. Are you still looking for him?
A No, sir.
Q Stopped looking for him. Now, you got at least another fellow that sat in the vehicle with a rifle, probably a high-powered rifle and pointed at somebody. Are you looking for him?
A No, sir.
Q In your opinion -- of course, you saw and you've seen the photographs.
A Yes, sir.
Q Somebody shot the place up; didn't they?
A Yes, sir.
Q Malicious injury to real property, isn't that a crime?
A Sure.

Q It's a crime; isn't it?
A Yes, sir.
Q Pointing a firearm at somebody?
A Absolutely.
Q Is another crime?
A Yes, sir.
Q These fellows all committed crimes. Now, you would agree that they didn't just vanish?
A I hope not.
Q All right. And the vehicle that they were riding in that they got away in, that didn't vanish. It went somewhere. Now, tell me what, if anything, you or any of your other officers did to try to find the vehicle.
A Well, based on the vehicle description, a dark color car, maybe a Ford Taurus, maybe, there's, there's, there's got to be thousands. It could be from here to California. It could be anywhere. I just had no general information to identify the vehicle. There was no tag number. There was no bumper stickers described. There was nothing to lead us to a vehicle.
Q Nothing objective that would assist you in being able to find that vehicle.
A That's right.
Q Would you not agree then that with respect to possible leads, if Terron Dizzley was the person that did the shooting

along with all of these other fellows, he must be connected to them in some way. Would you not agree with that?

A He could be. Yes, sir.

Q If he could be, in fact, if Terron Dizzley was the shooter, he got in the vehicle with them and took off. So they would have to be associates; wouldn't they?

A Sure.

Q Now, and if they were associates, they must have known Terron Dizzley.

A You, you would think so. Yes, sir.

Q All right. Now, there's a lead. As an investigator, do you think that maybe you should have inquired of some of Terron Dizzley's associates, and I know you all do this all the time, do you know any of his buddies that he could have gotten to pull a deal like that off with? Now, you've gotten information that way; haven't you? I know you have.

A The information you speak of is four, four years later, and it could have been one of these individuals that was in the car with him. I don't know. I have no idea. They could be covering for him. I can't answer that, but there was no lead that gave us a name to look for.

Q But now, you didn't try to find out anybody that he was involved with or anybody that was involved with him at the time that could have been one of these other three people; did you?

A There was no information that lead to anybody else.
Q Well, did you go out and look for it?
A Well, we spoke to witnesses about who his associates were or who may be his friends, and nobody had any information on him.
Q Well, he lived in Orangeburg. Who did you go to in Orangeburg?
A We couldn't find him in Orangeburg.
Q Well, but he lived there, and you knew he lived there.
A Went to his father. We tried to talk to his girlfriend.
Q You went to his girlfriend and to his father.
A That's right. That's the two most logical places.
Q Have you ever heard of snitches?
A I don't have any snitches in Orangeburg. I'm sorry. I don't work that area.
Q Well, but you've got law enforcement people in Orangeburg that you work with from time to time. I know you have.
A Sure. Uh-huh.
Q You put money on the street, you put bread on the water --
A I don't pay anybody for information.
Q -- it'll come back to you.
MS. BAILEY: Objection, Your Honor. He needs to let the witness finish his answers.
THE COURT: I -- it's becoming argumentative at this

time. So I'll ask that you ask questions. I'll see that he answers them.

Q Well, haven't you used people with criminal charges to help you in investigation and help get information that you otherwise couldn't get?

A Sure.

Q You used one yesterday; didn't you?

A What are you talking about?

Q What's -- Willie Stanley?

A He's not an informant of mine.

Q. I wrote it down. You said you went to Orangeburg one time.

A That's correct.

Q How long did you stay?

A All day.

Q What in the world -- what were you doing in Orangeburg all day one day?

A Well, we interviewed witnesses and attempted to locate your client.

Q What witnesses were you interviewing?

A Marvin Riley was one witness.

Q How long did it take to interview him?

A A while.

Q How long?

A A while.

Q How long would a while be? All day?
A I don't have the interview. I don't know how long it took. I know we had to find him, had to interview him and that took a good long time.
Q And because it took so long finding Marvin Riley you couldn't get around to anybody else?
A Oh, we got around to trying to find your client, yes, sir.
Q Well, trying to find him, you didn't have a warrant for him.
A We wanted to talk to him as part of the investigation, following a lead.
Q I've just got about two questions. Inasmuch as, inasmuch as you, you would admit that with respect to trying to find an associate of Terron Dizzley that might give you some information regarding people he hang out with, you didn't make an effort to do that; did you?
A We did make an effort.
Q Pardon me?
A We did make an effort.
Q To find one of his associates?
A Sure.
Q In Orangeburg?
A Yes.
Q You did that?

A Sure. Yes, sir.
Q Who did you talk to?
A Well, I'm not sure of the Orangeburg Sheriff's investigator's informant's name, but that's who contacted his girlfriend at the time.
Q And your effort was limited to the girlfriend; right?
A Well, our information was that he was possibly staying with her.
Q All right.
A So we thought that'd be the best way to get to Mr. Dizzley and maybe anybody else that could tell us where he was at or information on him, but nothing came to fruition.
Q So, so your, your investigation along those lines with that lead led you to the girlfriend, and that's as far as you went?
A We didn't even talk to the girlfriend.
Q All right.
A We tried.
Q All right. So, so you did not talk to anybody else, any associates. So --
A Well, we talked to Marvin Riley. He was an associate.
Q Marvin Riley, how long did he tell you that he knew --
MS. BAILEY: Objection, Your Honor. That calls for hearsay.
THE COURT: I sustain the objection.

Q Well, did you --

MS. BAILEY: It calls for hearsay. He wanted to know what information --

MR. BARR: I'll rephrase the question.

THE COURT: Thank you.

BY MR. BARR:

Q Did you determine, determine how long he knew him?

A It wasn't a year. It wasn't two years. It was probably within a month or so.

Q Two months, wasn't it?

A Yeah. Somewhere in that area, without looking at his statement.

Q So he couldn't know a whole lot about him in two months?

A Just what he was able to tell us about some background information involving Mr. Dizzley.

Q And as far as the substantiating the accuracy of the people who said that he was not here, you didn't pursue questioning anybody in Orangeburg because you had already determined from the statements that you had that that was a dead end; is that right?

A I'm not saying it was a dead end. What I'm saying is based on statements that we already had, based on the crime scene, witnesses from there, people we interviewed, there was enough information to obtain a warrant on Mr. Dizzley. There was no information on the other side to indicate anything

else, anything for us to follow up on that he was anywhere but the Club Paradise on that night.

Q All right. So, so, now, are you telling the ladies and gentlemen of this jury today that what you've just described to me as far as how you conduct your investigation, that's typical of how you conduct a criminal investigation in a murder case in Georgetown County?

A Until there's evidence or statements that come in that provide any information that may exonerate a Defendant, that's the way we go. That's the information that we've got, you know. When it's there you just -- you act on it. You don't let it get away. You don't not make an arrest and let somebody stay on the street that you suspect of being involved in a murder. At the end, if there's information that comes out, that will be addressed, but there was none in this case.

Q Well, let me ask you this, this last question, if you were charged with murder --

MS. BAILEY: Objection, Your Honor. That's a hypothetical, which is improper for a laywitness.

MR. BARR: Your Honor, he's a --

THE COURT: It seems it's going in that direction.

BY MR. BARR:

Q -- would, would you be satisfied with your effort?

THE COURT: Sustain the objection.

MS. BAILEY: Same objection. Yes, Your Honor. The State

objects to the hypothetical question, which is improper for a laywitness.

Q Well, let me ask you another way. You think you've done a good job in this case?

A Absolutely. I followed every lead to the end that I had.

Q All right.

MR. BARR: Thank you. I have nothing further.

THE COURT: Redirect?

MS. BAILEY: Thank you, Your Honor.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. BAILEY:

Q You've seen the physical evidence and you've heard some testimony about some high-powered rifle fire; is that correct?

A Yes, ma'am.

Q In the course of your investigation, were you able to determine the timing of when that high-powered rifle fire happened?

A No, ma'am. Based on the evidence that we recovered and statements, it would indicate that they didn't occur at the same time. I refer back to Mr. Gibson who indicated that he heard six to seven shots, all witnesses. Nobody heard over ten shots, but there were in excess of 20 rifle shell casings located. There would be no way to indicate when those occurred. It could have been after the fact. It could have

been the night before, but there was nobody to indicate when that actually occurs. So we do know that it was no rifle casings located inside the club that night.

Q When you say inside the club, there's two interior portions of that structure, is that --

A Yes.

Q Okay. So when you say inside the club, which one of those are you referring to?

A I'm referring to whole, the whole entire club, the, the sports bar and the, I guess it would be described as the dance area. .

Q Now, Mr. Barr wanted to talk about the use of snitches as he terms them. Did you, did you actually use an informant in Orangeburg?

A Yes. The investigator there contacted one of his snitches to try to find the Defendant for us.

Q And that person was aware of Mr. Dizzley?

A I'm sorry?

Q That -- the, the informant in Orangeburg was aware of Mr. Dizzley?

A Yes.

Q Was that person able to make contact with Mr. Dizzley?

A That person made contact with his girlfriend at the time --

Q Did that --

A -- and facilitated a meet that did not happen.
Q Okay. When you say facilitated a meeting that did not happen, what do you mean by that?
A Well, this, this informant, I assume, was close with Laquesha Felder, who was supposed to meet this informant with the Defendant, and we were going to be there at that time to try to talk to him.
Q And why didn't that happen? Why didn't that work out?
A Well, it could have been for a number of reasons. We'd already spoken to one witness, Mr. Riley. We had spoken to his father. I'm sure at that point it was out that Georgetown County was in Orangeburg County looking for him.
Q But did you go to the meeting location?
A No. We were contacted through the Orangeburg investigator that the informant indicated they didn't show up.
Q Okay. Were there any other informants that you utilized in this case?
A No.
Q Now, in two -- between 2008 and 2012, did anyone ever make a statement or make you aware of the fact that they were claiming Mr. Dizzley was somewhere other than Club Paradise on December 1st, 2008?
A No. They did not.
Q Did you come into any information in those five years, four years that he would have been somewhere other than in the

Oatland Community on December 1st, 2008?

A No.

Q And just to clarify, this was on the evening news; is that correct?

A Yes.

Q And in 2012 when you were present for the sworn testimony of these four folks that Mr. Barr is calling alibi witnesses, did you find as an investigator those witnesses to be consistent with each other?

A No. Not at all.

Q And what, what do you mean by that?

A I mean that one individual --

MR. BARR: Judge, I'm going to object. I think his opinion regarding an issue for the jury is irrelevant.

MS. BAILEY: Your Honor, Mr. Barr opened the door. He asked ---

MR. BARR: Your Honor --

THE COURT: You've asked about his opinions concerning that testimony. So that issue's been put in front of the jury, and that was done on cross examination. I will allow her to ask the question. However, at this point in time, I'm going to ask the jury to step out to the jury room. Don't begin any discussions about the case until I've discussed a matter with the attorneys. You may retire to the jury room.

(Whereupon, the following takes place outside the

presence of the jury.)

A May I have a glass of water, counselor? Thank you.

THE COURT: All right. I want to point out to counsel that I have consistently ruled that the fact that this case was previously tried is not a matter for consideration by this jury. I think you're about to ask him as to the nature of the inconsistencies in his statement, in the statements. If you do, that may open the door to the entire statements coming into the record in this case, and I want to make you aware that that's where we're headed.

MS. BAILEY: Thank you, Your Honor. It's not my intent to go into the contents.

THE COURT: Well, you were asking him about the inconsistencies and what the nature of the inconsistencies were, and that sounds like the contents of the statements to this Court.

MS. BAILEY: Thank you, Your Honor.

THE COURT: And wanted to make you aware of that before we go there. That may change the consistency of my rulings.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Bring the jury back.

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

THE COURT: The record will reflect that the jury has returned to the courtroom. You may proceed, Ms. Bailey.

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q As an investigator with all those years of experience, generally, did you find those sworn statements to be worthy of follow-up?

A No, ma'am.

Q Okay. In what ways would you verify that someone is where they claim to be? I mean, in your experience as an investigator, if somebody says, "I was at Wal-Mart on Tuesday," in what ways would you verify that someone was at Wal-Mart on Tuesday?

A I'd go to Wal-Mart and see if I could pull video surveillance footage for one thing.

Q In your experience as an investigator, how long is video surveillance footage available?

A It depends on the locations. Some places are a week, some places are 30 days, some places are longer. It just depends on the location.

Q In your experience as an investigator, is it available four years after the fact?

A Probably not.

Q Are there any other ways that you might verify that someone was where they were supposed to be?

A Yes. If I was provided information that somebody said they were with someone else, I would speak to that person, and

then based on that person's statement, if somebody else could confirm that that person was with the person, I would confirm it through that way.

Q In order for all of those things to happen, though, that person has to actually speak to you; is that correct?

A That's right.

Q Now, let's just say someone who's not been charged with a crime but may be a witness to an actual crime or may be a witness to another issue in a crime, like where someone might be, does that person have to talk to you if you want to talk to them?

A No. They don't have to talk to me, but generally, in my experience, if you're a witness as an alibi ---

MR. BARR: Judge, I'm going to object. This is irrelevant.

MS. BAILEY: Your Honor, Mr. Barr spent a long time talking about why Mr. Morris didn't follow up on leads.

THE COURT: There was -- that, that issue was raised on cross examination as to the methods of following up and the methods used by the -- this -- particularly this investigator in following up on leads.

MR. BARR: I withdraw the objection.

THE COURT: Okay.

MS. BAILEY: Thank you, Your Honor.

THE COURT: You may proceed, Ms. Bailey.

BY MS. BAILEY:

Q So, if you knocked on someone's door and asked them a question about where any particular person might have been on any particular night, can they tell you to go away?

A Sure.

Q Do you know if anyone from the State attempted to talk with these what Mr. Barr is calling alibi witnesses?

A No one from the Sheriff's Office did.

Q Okay. And did those people come forward to the Sheriff's Office and attempt to speak with you all?

A No, ma'am.

Q Did they before 2012?

A No.

Q Have they from 2012 to present?

A No.

MS. BAILEY: I have no further questions.

THE COURT: Mr. Barr.

RECROSS EXAMINATION

BY MR. BARR:

Q Did you, did you know you were coming to trial this week?

A Yes, sir.

Q And you knew what those statements were from August of 2012; didn't you?

A Yes, sir.

Q Now, as far as you finding Mr. Dizzley, who claimed --

who you claim that you wanted to talk to to follow up your lead, you don't deny that before you even questioned that man at that time the first thing you'd had to tell him is he had a right to remain silent; wouldn't you?

A Sure.

Q That anything he said could be used in a court of law against him?

A He's afforded that right. Yes, sir.

Q That he'd have a right to have a lawyer present during questioning?

A Sure.

Q That if he wanted to stop it, he can stop it?

A Yes, sir.

Q That if he can't afford one, one will be appointed for him?

A Yes, sir.

Q Now, having told him that and knowing that you believed that he had committed a crime, did you really expect him to talk to you?

A I was following up on the leads. If he had something to share that would have let us know a different direction, that would have been explored. At that time, there was no arrest warrant.

Q You were following up on a lead?

A Yes.

Q And are you telling us that you realistically expected following up on that lead to produce anything?
A I don't know where it would have went. I have no idea. It never happened.
Q Thank you, sir. I have nothing further.
THE COURT: You may step down. Thank you very much.
The State may call its next witness.
MS. BAILEY: Thank you, Your Honor. The State calls Dan DeFreese.
THE COURT: Is Mr. DeFreese outside the courtroom? Mr. Bailiff, check and see if Mr. DeFreese is outside the courtroom, please. Thank you.
Sir, if you would come forward, please, to my left to be sworn.
THE CLERK: Please state your name for the record.
MR. DEFREESE: It's Frank Dan DeFreese.
THE CLERK: Would you please spell your last name for the Court?
MR. DEFREESE: Last name is capital D-E, capital F-R-E-E-S-E.
THE CLERK: Thank you.
Whereupon, Frank Dan DeFreese is called to the stand, duly sworn by the clerk and testified as follows:
THE CLERK: Thank you. Please have a seat.
THE COURT: Thank you, sir. Ms. Bailey, your witness.

MS. BAILEY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. BAILEY:

Q Mr. DeFreese, where are you employed?

A I work for the South Carolina Law Enforcement Division in the forensic services laboratory in Columbia.

Q What is your role there?

A I'm assigned to the department within the forensic services laboratory where we do the analysis of firearm and toolmark evidence. I'm an examiner of firearms and toolmarks.

Q How does one get that job?

A Well --

Q What kind of education and experience do you need to do that?

A I have a bachelor's degree from the University of South Carolina in Columbia, and after I was employed with SLED, which occurred in 1967, I was assigned to the, to the firearms laboratory, and I began a course of instruction that lasted about two and a half years. It was given to me by, excuse me, Lieutenant Millard Kate who established a SLED laboratory when SLED itself was established in 1947, and by Lieutenant Carl Stokes, who was also an examiner at the time, and after studying the techniques of firearm and toolmark identification for about two and a half years, I began accepting cases on my own and testifying as to my results, which I've been doing

since 1969.
Q Have you had any additional continuing education over the years?
A Yes. I'm also a member of the Association of Firearm and Toolmark Examiners, and from time to time, as finances permit, I attend their annual training conference. I'm also a graduate of the FBI National Academy in Quantico, Virginia, and I've taken other courses of instruction by both commercial companies and by the South Carolina Criminal Justice Academy.
Q And over the years since 1960 -- what year did you say you began?
A I began my employment in 1967, and I began testifying late in 1969.
Q Since 1969, how many examinations have you performed?
A Well, thousands of examinations, and I really don't know how many times I've testified for certain because we didn't keep track of it for so many years, but I estimate it between 600 and 700 times.
Q And every time you've testified have you been qualified as an expert?
A So far.
MS. BAILEY: At this time, the State would seek to qualify Mr. DeFreese as an expert in firearms and ballistics evidence.
THE COURT: Any objection?

MR. BARR: No, sir.

THE COURT: All right. This gentleman then will be qualified within that field, and I've explained to you earlier that will allow him to offer his opinions within that area of expertise and the reasons for them. You may proceed.

MS. BAILEY: Thank you, Your Honor.

BY MS. BAILEY:

Q Mr. DeFreese, I'm going to show you a couple of pieces of evidence, see if you recognize them.

I'm showing you what has been previously marked as State's Exhibits 75 and 76. If you could take a look at the packaging and pull those out, take a moment to review those.

A Yes, ma'am.

Q Do you recognize those items?

A I do.

Q And can you tell us how you recognize those?

A I recognize them by the marks which I placed on both the containers and on the individual bullet fragments within the container. They bear my, my case number, my item number and my initials.

Q Okay. And when those containers came to you, were they in sealed packaging?

A They were.

Q And did you break that seal?

A I did.

Q Okay. And once you broke that seal, and we'll get into the details of it later, but did you perform some analysis on these items?
A I did. I did.
Q Okay. And for the purposes of your report, what item numbers did you assign to those?
A These were assigned my item numbers 11 and 12.
Q All right. I'll take those back, if you could put them back in their packaging.
A Item 12 is State's Exhibit 76, and my item 11 is State's Exhibit 75.
Q Thank you.
MS. BAILEY: At this time, the State would seek to move State's Exhibit 75 and 76 into evidence.
THE COURT: Any objections?
MR. BARR: No, sir.
THE COURT: Without objections, they'll be admitted as marked. You may proceed.
MS. BAILEY: Thank you, Your Honor.
(State's Exhibits 75 and 76 [Bullet Fragments] entered into evidence and appropriately marked.)
MR. BARR: Go right ahead.
BY MS. BAILEY:
Q Now I'm going to hand you what have been previously marked as State's Exhibits 77, 78, 79, 80 and 81. If you

could take a moment to review these, including the packaging.
A Yes, ma'am.
Q All right. As to those items, do you recognize them?
A I do.
Q And how do you recognize them?
A In the same manner they -- the, the items bear my case number, my item number and my initials on every one of them, and I recognize the packaging in which they were received and returned.
Q And when you received these items, were they in sealed packaging?
A They were.
Q And did you break that seal to perform your analysis?
A I did.
Q Okay. Did you alter the items in any way while they were in your possession?
A I did engrave upon them. I put my marks on them, but I didn't, I didn't alter or deteriorate the marks.
Q And did you put those marks on them after you performed your analysis?
A No. I actually put the marks on them shortly after I opened the package to make sure we didn't confuse any item with any other item.
Q That makes sense.
A Yeah.

Q Did you -- would it have changed your analysis in any way the fact that you put those marks on them?
A No. The location where I place my identifying marks is, is not anywhere close to where marks of value for identification are located on the specimens.
Q Okay. And so that's part of your process?
A Yes. It is.
Q Okay.
MS. BAILEY: At this time the State would seek to move State's Exhibits 70 --
A This is State's Exhibit 77 is my item number five.
Q Okay.
A State's Exhibit 78 is my item number one. State's Exhibit 79 is my item number two. State's Exhibit 80 is my item number four on the report, and State's Exhibit 81 is my item number three.
MS. BAILEY: At this time the State would seek to move each of these exhibits into evidence.
THE COURT: Any objections?
MR. BARR: No, sir.
THE COURT: Without objections they'll be received into evidence as marked. You may proceed.
MS. BAILEY: Thank you, Your Honor.
(State's Exhibit 77 [Spent Bullet], State's Exhibit 78 [Shell Casing], State's Exhibit 79 [Shell Casing], State's

Exhibit 80 [Spent Bullet] and State's Exhibit 81 [Shell Casing] admitted into evidence and appropriately marked.)

BY MS. BAILEY:

Q Mr. DeFreese, can you describe for us your process of analyzing this evidence?

A Well, after receiving the evidence, opening the packaging and documenting the packaging, I then place my identifying marks, my case number, my item number and my initials on the individual items of evidence. After that time, I took, where appropriate, the items and compared them with each other. For instance, I compared the fired cartridge cases in State's Exhibits 81, 78 and 79 with each other to see if the, the same identifying markings left there on the gun in which they were fired were present on all three cartridge cases. I should perhaps back up and explain that when a cartridge is fired in a specific firearm, the pressure inside the cartridge case that's used to drive the bullet out of, out of the gun, down the barrel and out of the gun creates a real high pressure area within the cartridge case that makes the cartridge case contact some interior surfaces of the gun. In this case it made it contact the breech face, which is the part of the, of the gun that holds the cartridge case in the barrel. Those markings will be transferred each and every time the gun is fired, and I, in this case, I was looking for a combination of markings that might be there, but I found matching breech face

impressions on the three fired cartridge cases that are in State's Exhibits 78, 79 and 81.

Q Were you made aware where those cartridge cases were collected from?

A Well, they were marked on a container as, as to where the -- I, I didn't know of my own knowledge where they were, but they, they were labeled on a container from the -- their locations, where they were recovered.

Q Okay. And can you tell us what type of -- first of all, for some folks who may have no familiarity with guns, what is the difference between a cartridge case and a bullet or a projectile?

A Well, the -- a, a given unfired cartridge is composed of a cartridge case, and in the rear of the cartridge case is located a primer. The primer is that, that portion that's struck by the firing pin to initiate firing. On the inside of the cartridge case, because the cartridge case is sort of a cup-like structure, propellant powder would have been placed. The propellant powder, of course, is now burned, and then to cap off the end of the cartridge case and form a complete cartridge, the bullet is placed in it so that a complete cartridge consists of the bullet, the cartridge case, a primer assembly and then a propellant powder. When the cartridge is fired, particularly in the case of a cartridge fired in a semiautomatic firearm, the bullet is propelled out of the

cartridge and down the barrel and out of the gun, and a short time later the cartridge case is extracted and ejected from the firearm to permit a fresh cartridge to be inserted within the chamber so the gun can be fired the next time. So for instance, State's Exhibit 81, is a fired cartridge case. It has no bullet, no propellant powder and it has nothing but a fired primer and a cartridge case. State's Exhibit 80 is a fired bullet by itself. It is nothing but the projectile that was propelled down the barrel and out of the gun.

Q How many cartridge cases did you analyze in this case?

A Three.

Q And can you describe your analysis -- first of all, do you identify those as being with a specific type of firearm or how do you go about identifying those?

A Well, by caliber all three of the fired cartridge cases in State's Exhibit 78, 79 and 81 are all 40 Smith and Wesson caliber cartridge cases. So they're all the same caliber. Two of the three cartridge cases, State's Exhibit 78 and 79, are by one manufacturer, and the third one, State's Exhibit 81, is a different manufacturer but the same caliber. The -- my analysis consisted essentially of, of comparing the markings present on those three cartridge cases since no firearm -- well, no question firearm was submitted for examination to see whether the three of them were fired by one gun, two guns or three guns, and, of course, as I may have

said from, from my analysis, I concluded that they were fired by one firearm, and it -- they appear to be normally fired, that is they were fired in a chamber that was correctly sized for that cartridge. There's no bulging to indicate they were fired in an incorrectly -- in an incorrect caliber gun, which does happen from time to time.

Q So all three cartridges collected were 40 caliber?

A Yes.

Q Two were Smith & Wesson and one was a different brand; is that correct?

A Two were actually a brand known as CBC Magtech, and one was a Remington brand cartridge case.

Q Okay. But based on the unique impressions, is that -- can you go into that a little bit more? You were able to determine they were all fired by the same gun; is that right?

A Right. I found matching breech face impressions which would have been placed on the cartridge cases at the time they were fired by the gun in which they were fired, and that was what I used to make my conclusion that all three of them were fired in the same firearm.

Q And to be clear that in your opinion as an expert based on your experience, education and analysis, what is your expert opinion as to those three cartridges?

A In my opinion, they were fired by the same firearm.

Q Thank you. What other items did you analyze in this

case?
A Well, there were also some fired bullet specimens. State's Exhibit 80 and State's Exhibit 77 were fired bullets, and there were other fired bullets, jacket fragments and cores that you also showed to me earlier.
Q We'll get to those in just a moment.
A Yeah.
Q Let's start with the, the ones that you have in front of you, and was it indicated to you where those were collected from?
A They were written on the, on the container their location.
Q And can you just for identification purposes tell us.
A Yeah, State's -- the container in which State's Exhibit 80 was contained says under place evidence found it says left side pool looks like tabletop between corner and center pocket at 899 Oatland Road.
Q Okay. And what type of analysis did you perform on that item?
A Well, I compared the bullet in State's -- that I received in State's Exhibit 80 with all the other fired bullet and bullet jacket fragment specimens that I had, also to determine whether they were, whether they -- this bullet was fired by the same gun or by different guns.
Q And what was your analysis as to that bullet?

A Well, the bullet in State's Exhibit 80, while it's not badly distorted, did not bear very many surviving marks of value for identification. I was not able to identify this bullet positively with any of the other bullet specimens. Now, it's -- it is the same caliber, that is to say the bullet is consistent with being a 40-caliber Smith & Wesson or it could have been a 10 mm automatic caliber bullet, which is the 40 Smith & Wesson and the 10 mm auto use essentially the same diameter bullet. The type of bullet used in State's Exhibit 80 is the same as the type of bullet that's used in State's Exhibit 77, that is that both of those were full metal jacketed bullets, and the number of land and groove impressions and the dimensions of the lands and grooves, that is the rifling specifications, were the same, but when it came down to the individual identifying marks, the bullet in State's Exhibit 80 was just too badly damaged to be positively identified with any of the other bullet specimens, and even if I had recovered or a gun had -- the correct gun had been submitted, it's probably too badly damaged to be identified with the gun that fired it.

Q And can you explain for the jury what land and groove impressions are?

A Sure. On the inside surface of a gun barrel there are a series of spiraling grooves that are put there to grip the bullet and to impart a spin on the bullet. The bullet is a

very tight fit within the bore of a gun, and as, as the bullet is being gripped by the lands and grooves, the lands being the portion of the barrel that actually project into the bullet, and the groove being a portion of the barrel in which the bullet actually sort of expands to fit, but as, as the bullet is passing down the barrel and out of the gun, the, the imperfections that are present within the gun bore cause scratches or striations to be imparted on the, on the bullet. They represent the signature of that gun barrel on that bullet, and when the bullet is recovered in sufficiently undamaged condition, bearing in mind that those bullets are traveling at high speeds, and when they run into things, a lot of times they damage themselves, but when they're sufficiently undamaged and when the gun barrel itself is repeatable in its markings, we can identify a specific bullet back to the gun barrel in which it was fired or back to the particular firearm in which it was fired. That was what I was attempting to do, and this is also done in a side-by-side microscopic comparison fashion.

Q Now, in addition to identifying the specific weapon from which a bullet was fired, are you able to take a bullet and tell what type of gun would have fired that?

A Frequently, we can based on the specifications that the rifling, the specifications of the rifling used in a particular gun. Under our what we refer to as general rifling

characteristics, a bullet could be classified according to its caliber, which in this case is like 40-caliber or 10 mm. Then the number of land and groove impressions on it, in this case five, the direction of twists because the, the -- in order for it to spin it has to twist either left or right, in this case it was right, and then according to the width of the land and groove impressions that remain on the bullet. So by using an index or a database that catalogs these general rifling characteristics, many times we can suggest to the investigator the type of gun, and in some cases, the brands of guns, and in rare cases, we can -- we find out that only one gun has these particular rifling specifications used.

Q Now, in this case, did you look at all of the spent bullets that were submitted to you and, and make that type of determination?

A I did.

Q And what, what was your expert opinion on that?

A Well, in this case we -- there was only one manufacturer that we knew of that rifles firearms in this manner, the 40-caliber five right specification, and that was Smith and Wesson, and in fact, we only had one particular model number of Smith and Wesson listed, although it could be that Smith and Wesson has made other model numbers since that time.

Q And there at SLED do you keep a large inventory of weapons?

A We, we do keep a reference collection. It's sort of our reference library of known firearms, and we, we do have a number of different kind of firearms for comparison purposes.
Q And did you have one of that type of weapon that you narrowed this down to?
A I did.
MS. BAILEY: Your Honor, at this time the State would seek to use a demonstrative, and I'm happy to show the Court. It's my understanding that Mr. Barr is going to possibly object.
THE COURT: Any objection to those photos being used as a demonstrative aid?
MR. BARR: Yes, sir, Judge. Relevance and materiality.
THE COURT: Well, they're not being introduced into evidence. They're being used to demonstrate.
MR. BARR: Oh, I thought, I thought she was offering them into evidence.
THE COURT: Do you have any objection to their being used as a demonstrative aid?
MR. BARR: No, sir.
THE COURT: All right. Let's mark them for ID purposes so they can be identified.
MS. BAILEY: Thank you, Your Honor.
(State's Exhibit Numbers 344 and 345 [Photographs] marked for identification.)

BY MS. BAILEY:
Q For the record, I'm looking at State's 344 and 345 which are being offered for demonstrative purposes. So they're marked as ID only.
MR. BARR: I've seen them.
MS. BAILEY: Okay.
THE COURT: All right. You may proceed.
MS. BAILEY: Thank you.
BY MS. BAILEY:
Q Please pull up 119. Mr. DeFreese, your screen is going to be a little fuzzy. I've discovered that during this trial. So I'm going to hand you the actual photo, and the jury is looking at that as well and the Court. Can you describe for us what we are looking at?
A Yes, ma'am. You're looking at the right-hand side of a Smith and Wesson model SW40VE, 40 Smith and Wesson caliber semi-automatic pistol, and this is a picture which I took.
Q Okay. And what can you tell -- is this the type of weapon that was used to fire the bullets that you analyzed in this case?
A Well, this is the only weapon that we have, the only make and model number in our database that has rifling specifications like the rifling specifications on the bullets submitted in this case.
Q Okay. Pull up slide 120. I'm going to hand you State's

Exhibit 345, which is marked for identification only. Can you tell the jury and Court what we are looking at now?

A This is the left side of the Smith and Wesson model SW40VE 40 S and W caliber pistol that I took a picture of and with essentially the same results.

Q All right. I think that we got through the analysis on the spent bullet that was on the pool table. Can we move on to -- did you analyze your item number five?

A I did.

Q Can you give us the State's Exhibit Number on that?

A The State's Exhibit of my item five is item -- State's Exhibit 77.

Q Okay. And do -- does your information indicate where that was collected from for identification?

A According to the packaging it -- under place evidence found, it was Georgetown emergency room from victim's pants upon removal by med staff.

Q Okay. Thank you. And can you tell us the results of your examination on that bullet?

A Yeah. This bullets was, was also -- it's a 40 Smith and Wesson or a 10 mm auto caliber bullet. The remaining rifling impressions on it are consistent with five grooves and right-hand twist. So it, it has the same rifling specifications as that on the item 80 bullet, and I compared this bullet and State's Exhibit 77 with State's Exhibit 80, and my results

were inconclusive due to the damaged condition of State's Exhibit 80. I couldn't say that they were both for sure fired by the same firearm, but they could have been.

Q Okay. They were certainly fired by the same type of firearm, is that your --

A They were certainly fired by the same caliber and the same -- what -- they were fired by a firearm with the same rifling specifications, if not by the same firearm, but certainly by a firearm with identical rifling specifications.

Q And to the best of your research and database, it would have to be one that looks just like the one that's up on our screen?

A It would be a Smith and -- the only one I could find was the Smith and Wesson SW40VE, and I also hasten to add they -- the specimen I had has the, the bright colored slide, the -- like the stainless steel slide. They also make this gun with a black slide so the entire pistol is black, but they're both the same model number.

Q I'm going to hand you what's been admitted into evidence already as State's Exhibits 75 and 76. First, can you tell us what your item numbers, your item numbers were on those?

A My item number on State's Exhibit 75 was 11. State's Exhibit 76 is my item 12.

Q Okay. And did you have some indication from their submission as to where they were collected from?

A These were received in containers which appear to be the containers used by the Medical University for autopsy specimens immediately, and then under place evidence found it says autopsy at MUSC, removed from victim.

Q And can you describe for us the analysis that you performed on items 11 and 12?

A Well, my item 11, State's Exhibit 75, and my item 12, State's Exhibit 76, when I received them the, the specimens had broken into their respective jacket and core portions. These are jacketed bullets. These are portions of what's known as a jacketed hollow point bullet. These are both jacketed hollow points. The, the dark gray colored part of it is the bullet core, which is made of lead, and it's on the inside of the, of the bullet, and the copper colored portion is the bullet jacket. It makes up the outside. The bullet jacket is actually the only part of the bullet that comes into contact with the rifling. So in both cases the bullet cores couldn't be identified to the gun in which they were fired or with another specimen. When I looked at the bullet jacket portions of State's Exhibit 75 and 76 and compared them with each other and also with the fired bullet in State's Exhibit 77 and, of course, I also compared it with the fired bullet, the damaged one in State's Exhibit 80, from these comparisons I found the same, the same rifling specifications present on all of the bullet jackets or bullets, and I found matching

individual striated marks peculiar to the gun in which they were fired on State's Exhibit 75, 76 and 77 from which I concluded that State's Exhibit 75, 76 and 77 were all fired by the same gun barrel, by the same firearm, and, of course, that State's Exhibit 80 could have been fired by the same gun, but I can't tell for sure.

Q And how about is it possible to compare these spent bullets to the cartridges that were found on scene, is that -- is there a reliable method for that?

A It's not, it's not a method that we do. In some cases, associations may be made, but they weren't done in this case, and it's not, it's not a test that our laboratory has validated.

Q So is it -- has SLED found that to be a scientifically reliable enough method that you would testify about it in court?

A Not at this time. You know, it, it may be, but it's just it's, it's not something that we do at this time.

Q Now, all of the items that you analyzed, is there anything to indicate to you that they could have been fired by two different guns? Is there anything that tells you that they are -- that there's inconsistencies with each other that they would have been fired by two different guns?

A There's, there's no reason why one gun could not have fired them all.

Q And that includes the cartridges and the spent bullets?
A Yes. They, they all could have been. You know, it -- it's, it's like you would have to believe that one gun fired three cartridge cases and, and not the bullets, and then one fired, you know, three or four bullets, and all the cartridge cases resulting from that firing are gone. So it's, it's certainly consistent with bullets and cartridge cases found adjacent to each other with having been fired by the same gun, but I can't tell you that from looking at the bullet and cartridge case under the microscope.
Q Now, in your experience in these thousands of cases that you've analyzed, is it common that we have a or is it common or uncommon that there's a mismatched number of bullets versus cartridges?
A It's not uncommon for, you know, for you to have more of one than you do the other. They can, they can simply not be recovered for any number of reasons.
Q Can you explain to us what IBIS is?
A IBIS is -- it's -- it's an acronym that's short for the Integrated Ballistics Identification System, and it's a computer imaging system in which we scan cartridge cases, and I don't know how the computer does it, but the computer has what they call an algorithm that it applies to the image so it gives it a numerical index that can be searched against all the other cartridge cases that are present in the system, and

what it will do is when it finds a high degree of similarity between two cartridge cases it'll suggest to us that we, we might want to look at this cartridge case versus that cartridge case to see if they were both fired by the same gun.

Q And so it's a data -- would you describe it as a database?

A It is. It's a --

Q And is it a nationally maintained database?

A It is. It's, it's maintained both regionally and nationally.

Q And so it compares cartridge cases across crime scenes across states; is that a fair?

A Yeah. Generally, our first search is among fired cartridge cases within South Carolina, and then after that, fired cartridge cases regionally.

Q Is there a benchmark for the quality of item that you have to have in order to put it into IBIS?

A We generally try not to put damaged or poorly marked specimens. It is, after all, a computer system, and if you, you put bad data in you'll get bad results out. So we generally try to put worthwhile specimens, and in most cases, cartridge cases are not severely damaged unless they're run over by automobiles, and we have had really good success with cartridge cases.

Q In this case, were any of the items of sufficient quality

for analysis that you were able to put them into the IBIS database?

A Oh, yes. They were.

Q And which items were those?

A I think I put my, what I call my item two, would have been State's Exhibit 79. Since all three of them matched each other, it was -- we only put one specimen from a given case if they all match, and that's the one I selected.

Q And when you put it into IBIS did you return any results?

A No. So far it has not, not indicated a correlation or a high probability correlation.

Q So to be clear, when you put it into IBIS back when you did your report, what, what date did you do your report? Was it in 2008?

A Yes. It was in 2008.

Q It would have matched in 2008 historical data; is that, is that right? It would have, it would have tried to match this data against historical data that had already been put in?

A It would have, and since it is a computer, it's also program to check itself against anything new incoming, that it would have checked anything that was in the database at the time it was entered, and then it from time to time checks newly entered stuff from, from other jurisdictions, other areas.

Q So in 2008 it didn't match anything that at that point had been entered into the database?
A Correct.
Q And since 2008 you've not been notified that it matches anything that's been entered since; is that fair?
A That's correct.
Q Okay. Now, I have what may seem like a silly question to an expert such as yourself. Could any of the items that you analyzed have been fired by a high-powered rifle?
A No. These are all pistol caliber specimens. There's nothing here consistent with what we would think of or what's commonly referred to as a high-powered rifle.
Q And does a high-powered rifle cause a different type of damage than a handgun or a pistol like this?
A Well, it can. It can in the sense that most high-powered rifle ammunition travels at a higher velocity. It may use a bullet that's as heavy or even heavier than what this is. So it, it transfers more energy to its target. It -- not to say that it always does, but it can.
MS. BAILEY: I have no further questions for this witness at this time. May I approach the bench briefly?
THE COURT: Yes. You may.
(Whereupon, a bench conference is held in the presence but out of the hearing of the jury.)
THE COURT: All right, ladies and gentlemen, at this

point in time, we're going to take a short break for the courtroom personnel, and, and I will ask you not to discuss anything about the case during the break. You may retire. We'll let them get out. Then we'll do it.

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

THE COURT: All right, as you were stepping back, Ms. Bailey, Mr. Barr informed me he did not wish to ask any questions of the witness; is that correct, Mr. Barr?

MR. BARR: Yes, sir, Judge.

THE COURT: All right. So is there any objection to him being released at this time, Mr. Barr?

MR. BARR: No, sir.

THE COURT: And State wish for him to be released?

MS. BAILEY: Yes, Your Honor.

THE COURT: All right, sir. You can step down and we'll excuse you at this time.

A Thank you. Appreciate it.

THE COURT: Thank you very much.

A Good to see you.

THE COURT: All right. We'll be in recess for about 10 to 15 minutes. Thank you very much.

MS. BAILEY: Thank you, Your Honor.

OFF THE RECORD

(On the record. The following takes place outside the

presence of the jury.)

THE COURT: All right. Is the State ready to proceed?

MS. BAILEY: Thank you, Your Honor. At this time the State rests.

THE COURT: Oh, okay. Well, let's take up some matters then while the jury is out, and we'll take that up before the jury shortly. Mr. Barr, any motions at this time?

MR. BARR: Yes, sir.

Your Honor, at this time we would respectfully move for a directed verdict of not guilty. It would be the Defense's position that the State has not presented any evidence from which this jury might find that there are facts sufficient to establish or any inferences that would be sufficient along with those facts to determine that the Defendant, first of all, has been sufficiently identified as the perpetrator, keeping in mind that in this case identity would be an issue, would be an element of the offense, that the murder itself, that is that the Defendant did with malice aforethought shoot and did kill the Defendant or that the Plaintiff, that the Defendant shot and killed the alleged victim, that there wouldn't be sufficient evidence of that either. So we would respectfully move for a directed verdict of not guilty.

THE COURT: I'll hear from the State.

MS. BAILEY: Thank you, Your Honor. The standard on a directed verdict in a criminal case is that there's any

evidence that a jury could find the Defendant guilty. In this case there's more than enough evidence. There is evidence of difficulty between the two parties, between the victim and the Defendant, with the Defendant being clearly identified as the person that was involved in those difficulties leading up to the event of the crime. There is multiple witnesses who indicate that the victim named his own assailant before his death. There are two people who have picked Mr. Dizzley out of a lineup as being the one that the victim called Little D or D or Diz, and the physical evidence corroborates all of the stories and is consistent with all of that evidence. It's the State's contention that there is some evidence from which a jury could find the Defendant guilty.

THE COURT: All right. I am going to find that there is some evidence from which a jury could find the Defendant guilty in this case, and therefore, I will deny the motion, allow the case to proceed.

Now, I do want to inquire of your client concerning his right to testify in this matter, Mr. Barr, and --

MR. BARR: Yes, sir. And I would ask that the Court examine the Defendant concerning that right.

THE COURT: All right. We will do that. Before I do that, I will ask the State if there is any, if there are any convictions which the State might use. Sir, you can stand right there. Thank you. Any convictions that the State might

use in an effort to try to attack the credibility of the Defendant should he testify?

MS. BAILEY: Thank you, Your Honor. In 2011, the Defendant was convicted of assault and battery first degree. I understand that naming that offense would -- the State concedes that would be more prejudicial than probative, but the State would seek to be able to examine Mr. Dizzley on the fact that he was convicted of a felony in 2011.

THE COURT: All right. Well, I won't make a ruling on that at this time, but the Defendant is aware that there is a conviction the State may attempt to use in order to attack his credibility. I'd ask the Clerk please swear the Defendant at this time. You just stand right there, sir. You're fine. Thank you.

(Defendant is sworn by the Clerk.)

THE COURT: All right. Mr. Dizzley, at this time I'm going to explain certain of your rights to you, and I will tell you that if you do not understand my explanation, when I finish, I'll give you an opportunity to ask questions, and I'll be happy to offer additional explanation should that be necessary. Do you understand what I'm doing now?

MR. DIZZLEY: Yes.

THE COURT: All right. We've reached the stage of this trial where you have the right to present your defense. In doing so, you have the right to testify in this case, but you

also have the right to claim the protections that are given to you by the Fifth Amendment to the United States Constitution. That amendment reads in part that no person shall be compelled in any criminal case to be a witness against himself. Now, what that means is that while you have the right to testify, no one can require you to do that in this case. The -- you have the right to testify on your behalf, but no one can make you testify. The right to remain silent is a personal right. No one can waive or give up that right except yourself.

Now, if you decide to testify in this case, you will be subject to the same rules that govern the testimony of any other witness. That means that you would be examined by your lawyer, and you would be cross-examined by the State's attorneys, and I will tell you that should you have any convictions on your record involving dishonesty or false statements or for crimes punishable by imprisonment for more than one year and then this Court makes a determination that that -- the probative value of that evidence would outweigh its prejudicial effect, if that ruling were made, then the Solicitor would be able to introduce that record to attack your credibility.

Now, I will tell you that if you decide to testify the decision on your part must be made freely, voluntarily and intelligently, with knowledge of these protections and also the possible consequences of a decision to testify. Now, if

you decide not to testify, I will tell you that I will instruct the jury that they cannot give the fact that you did not testify any consideration whatsoever in their deliberations and that there should be no prejudice to you because you did not testify. In fact, my instructions would be that they could not even discuss that fact during their deliberations.

Now, the decision as to whether or not to testify is left entirely up to you. You have the right to consult with your attorney, family, friends or anyone else you'd like to consult with, but the final decision is yours and yours alone.

So I'll ask you now, do you understand the right that I've explained?

MR. DIZZLEY: Yes, sir.

THE COURT: Do you have any questions about what I've explained to you thus far?

MR. DIZZLEY: No, sir.

THE COURT: Now, have you had an opportunity to discuss this decision with your family, friends or your attorney?

MR. DIZZLEY: I probably need to discuss it with them again.

THE COURT: Okay. Well, I'll give you an opportunity to do that. You have the right to discuss it with them at this time, and so what I'll do is I'll ask you to step back to counsel table. I'll give you an opportunity to have that

discussion, let me know when you're ready to proceed.

MR. DIZZLEY: Okay.

THE COURT: Yes, sir. Have you had an opportunity to discuss this matter with your lawyer?

MR. DIZZLEY: Yes, sir.

THE COURT: Do you wish to discuss it with anyone else?

MR. DIZZLEY: No, sir.

THE COURT: Have you made a decision as to whether or not to testify?

MR. DIZZLEY: What I want to do is I want to reserve my right to testify.

THE COURT: Okay, sir.

MR. DIZZLEY: And I'll let you know whether I'm testifying or not --

THE COURT: You have the right to do that as well.

MR. DIZZLEY: -- before the end of the trial is over.

THE COURT: All right. We'll ask for that -- I'll ask for you to announce your decision once that decision has been made.

MR. DIZZLEY: Okay.

THE COURT: Thank you. You can have a seat.

Now, are there any other matters that the State wishes to take up before we bring the jury back in?

MS. BAILEY: Yes, Your Honor. It's concerning a discovery issue. On March 30 -- let's see when. Okay. On

March 31st, that'd be this Monday, the Defense presented us with a potential witness list. On August 17th of 2012, it's the only time that the Defense has provided the State under reciprocal Rule 5 a list of potential alibi witnesses. In comparing the two lists, it appears that there are some witnesses on the Defense's witness list for today that were not provided as potential alibi witnesses back in 2012 or at any time subsequent to that. So if these folks intend to -- I don't know what they're -- they will testify to, but if they intend to testify as to some sort of alibi, it would be the State's contention that they should not be allowed because they were not provided to the State within ten days of trial per South Carolina Rule of Criminal Procedure, Rule 5, Section E, Number 1.

THE COURT: Mr. Barr, any comment on that? You're not required to, to inform anyone as to what the witnesses are testifying about, but if they are alibi witnesses, there, there is a special rule involved with those witnesses so. I guess the inquiry is are they alibi witnesses or are they not alibi witnesses, and she didn't name who she's talking about. So I don't know exactly who we're talking about.

MR. BARR: Your Honor, we did give the State a list of potential witnesses. Of course, those witnesses were not or they did not -- we did not distinguish between whether or not they would be alibi witnesses or just general witnesses.

However, we don't contemplate calling any alibi witnesses other than the ones we used at the first trial.

THE COURT: All right. That, that take care of that problem, Ms. Bailey?

MS. BAILEY: Yes, Your Honor.

THE COURT: All right.

MS. BAILEY: Second of all, the State would request that we be given -- all we have are names. We would request birthdays and socials so that we can run criminal background checks on these individuals.

THE COURT: I understand. Can you provide that information?

MR. BARR: Yes, sir.

THE COURT: Please do.

MR. BARR: Ms. Laquesha Felder, L-A-Q-U or L-A-Q-E-S-H-A, Felder; Mr. Daniel Robinson; Stephon Jamison; Leon Devaughn Dizzley, Jr. As to the date and birth and Social Security number, Judge, I can provide her with that information, but I don't have it at the present.

THE COURT: All right.

MR. BARR: These people are here.

THE COURT: Before they testify, we're going to break for lunch shortly it looks like; and so, during lunch if you could get that information and provide it to the State.

MR. BARR: All right, sir.

MS. BAILEY: Thank you, Your Honor.

THE COURT: All right. In looking at the time, we're 15 minutes to 12. I may go ahead and just get us rested, get the State rested in front of the jury, go ahead and take our lunch break and let the State start back. I don't think we'd get very far with the first witness if we started one at this point in time. Any objection to that, Mr. Barr?

MR. BARR: No, sir.

THE COURT: All right.

MR. BARR: No, sir.

THE COURT: The State okay with that?

MS. BAILEY: Yes, Your Honor. Thank you.

THE COURT: All right. Let's bring the jury in.

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

THE COURT: All right. The record will reflect that the jury has come back to the courtroom. When we broke earlier, we had a witness, Mr. DeFreese was in the witness stand, and as you were leaving, Mr. Barr informed the Court that he had no questions of that witness. So I have released him and allowed him to go on his way. So that's the reason he's no longer in the witness stand. We've completed his testimony. At this time, the State has the right to call additional witnesses. Does the State wish to call additional witnesses?

MS. BAILEY: No, Your Honor. At this time the State

rests.

THE COURT: All right. Ladies and gentlemen of the jury, that completes the presentation of evidence in this case by the State. Now, at this point in time the Defense has the right to present evidence should the Defense choose to do that, and what we're going to do is I notice that we're about ten minutes from noon, and if we started with the first witness right now, we wouldn't get very far I don't think. So we're going to go ahead and break for lunch at this point in time. During your absence from the courthouse, you know my instructions. Don't discuss the case with anyone, don't allow anyone to discuss it with you. Don't listen to, watch or read media reports. Don't try to gather information on your own, and please report any contact that you might have with anyone about the case upon your return to the courthouse. I would ask that you be back in the jury room at 1:00 o'clock. We should be able to start shortly thereafter. So hope you have a good lunch and you're free to go. Everyone remained seated while the jury retires.

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

THE COURT: All right. Court'll be in recess until 1:00 o'clock. Thank you very much.

MS. BAILEY: Thank you, Your Honor.

*****OFF THE RECORD*****

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

THE COURT: All right. The State ready to proceed?

MR. BARR: Yes, sir.

MS. BAILEY: Yes, Your Honor.

THE COURT: The Defense ready?

Yes, ma'am.

MS. BAILEY: I just wanted to, to note that in the courtroom we have Ms. Jones, who was one of the witnesses during the State's presentation. I think she's been released from her subpoena, but she was on the Defense witness list, and I just wanted to verify that he wasn't going to --

MR. BARR: I don't.

MS. BAILEY: -- call her.

THE COURT: You intend to call the witness?

MR. BARR: No, sir.

THE COURT: Okay. Very good.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Bring the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. If any juror had any difficulty in complying with my instructions during your absence from the courthouse, please stand.

(No response.)

THE COURT: And it appears that all jurors have been able to comply with the Court's instructions. At this time, the Defense has the right to call witnesses. The Defendant may call its first witness.

MR. BARR: Thank you, Your Honor. May it please the Court, Judge. We call Mr. Daniel Robinson.

THE COURT: All right, sir. Daniel, last name, sir?

MR. BARR: Robinson.

THE COURT: Robinson. Could you step outside and call Mr. Robinson for me? Thank you.

Sir, if you'll come forward to my left, this gentleman over here will assist you.

THE CLERK: Sir, please state and spell your name for the Court.

MR. ROBINSON: Daniel Robinson, D-A-N-I-E-L, R-O-B-I-N-S-O-N.

THE CLERK: Thank you.

Whereupon, Daniel Robinson was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: Mr. Barr, your witness.

MR. BARR: Thank you, Judge.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. BARR:

Q Mr. Robinson, how you today?

A How you doing?

Q Tell me if you would, where do you live?

A I stay at Orangeburg, 833 Adam Drive.

Q And how long have you lived in Orangeburg?

A All my life.

Q Are you employed?

A Yes.

Q Where do you work?

A I work at a car wash called C's Car Wash, and I also do lawn service.

Q And how long have you worked at that car wash?

A Now about three years.

Q And you also do lawn service?

A Yes.

Q Is that your own business?

A No. It's a friend of mine's.

Q Now, you married, single, you have children?

A Single. Yeah. I have a daughter.

Q How old is your daughter?

A She'll be 21 in August.

Q Now, Mr. Robinson, do you know Terron Dizzley?

A Yes. I met him.

Q And when did you first meet him?

A Years ago.
Q How many years ago, 10, 20?
A At least now it's over 10, over 10 years.
Q Ten years ago?
A Yes.
Q Did you know Aundry Evans?
A Yes. I know him.
Q And when did you -- when -- how long have you known him?
A Not long, maybe a couple of months, wasn't long at all.
Q And where did you meet Aundry Evans?
A In Orangeburg, South Carolina.
Q Now, Mr., Mr. Robinson.
A Yes.
Q Let me take you back and I want -- I know it's -- I want to take you back to, to December of, of, of 19 -- let's see, December of 19 -- 2008.
A Yes, sir.
Q Specifically December 1st of 2008. Do you recall where you were on December 1st of 2008?
A At my house all day.
Q And did you have an occasion to see Terron Dizzley that day?
A Yes.
Q Now, how do you -- how, how is it that you can recollect that you were at your house on that particular day and saw

Terron Dizzley?
A Oh, because that was the last time I saw him at the -- they were saying about an incident happening and that was December 1st, yes.
Q All right. Now, what time did you meet him that day?
A He came by I think at least about 12, maybe 10 or 12, between 10 and 12. He came to the house early that morning. Then he came back again later on that night.
Q Now, he came by about 10 or 12 the morning of December?
A Between 10 and 12. It was in the morning the first time he came by.
Q And do you recall what the purpose was that he came for?
A Oh, he came by just to talk like we always do, just talk and conversate, politic about things, about the world, every -- all that good stuff, you know.
Q Was he living in Orangeburg?
A No. Huh-uh.
Q Do you know where he was living?
A He was staying in the country.
Q Now, when you say the country, that's not in -- I'm not -- that's not the City of Orangeburg, but he was staying out in, out in the community somewhere?
A Yeah.
Q Now, you don't know the name of the little town or the name of the town he was living in?

A No. Huh-uh.
Q But it's right on the -- is it near Orangeburg?
A Yeah. It's not too far away from it.
Q Now, if you would, please, you said he came by your house about 12 o'clock that morning.
A Right.
Q And he came by later on. What time was it when he came by the next time?
A About 8:45, 9:00 o'clock.
Q And that was on the -- that would have been the night then of December 1st of 2008?
A Yes.
Q Now, when he came back, what did he come back for?
A Came back there because his brother came in town, and he, before his brother was leaving, they was coming by to -- I want to see his brother to talk, politic like we always do, and he brought his brother back by the house and they was --
Q And which brother was that?
A Devaughn.
Q That, that was Devaughn?
A Yes.
Q So when he came back by your house, he brought Devaughn With him?
A Yes, sir.
Q And what time you said that was?

A About 8:45, 9:00 o'clock.
Q And how long did he and Devaughn stay at your house?
A Oh, at least 30 minutes, 45 minutes.
Q And what did they do after that?
A They left.
Q Do you know where they were going?
A No. But they left, yeah.
Q Now, they left your house?
A Yes, sir.
Q So, do you have any idea about what time it would have been when they left?
A At least about nine, between 9:30, 9:45.
Q And they left your house?
A Yes, sir.
Q Were they driving?
A Yes, sir.
Q Who was driving, Terron Dizzley or his brother?
A Terron.
Q And what was he driving?
A I don't recall. The van. I think it was the van.
Q Now, you don't know where they were going from your house; do they?
A No, sir.
Q Or do you?
A No, sir.

Q Now, after you saw him at that time, did you see -- you didn't see -- you didn't see him anymore that night?
A No, sir.
Q When did you next -- when did you see him the next time?
A When -- it was a while because he was incarcerated.
Q All right. But he left your house as, as you -- as best you could recall --
A Yes.
Q -- that night and what time did you say it was?
A Between 9:30 and 9:45.
Q Between 9:30 and 9:45?
A Yeah. Somewhere up in there.
Q And you didn't see him anymore that night?
A No. I didn't.
Q And you didn't hear from him anymore that night?
A No. I didn't.
Q All right. Thank you, sir. I have no further questions. Would you answer any questions that the Prosecutor might have for you?
THE COURT: Ms. Bailey, your witness.

CROSS EXAMINATION

BY MS. BAILEY:
Q Mr. Robinson, were you convicted of a drug offense in 2005?
A Yes. I was.

Q Were you convicted of a drug offense out of Georgia in 2008?
A Yes.
Q Did -- you saw Terron Dizzley with his brother? Can you give me his name again?
A Devaughn.
Q That was the evening of December 1st?
A Yes.
Q And you saw him with his -- did you see him with anybody else that night?
A No. Just those two when they left my house.
Q And they left your house somewhere between 9:30 and 9:45?
A Yeah. Right before ten, yes. Between 9:30, 9:45.
Q I have no further questions.
THE COURT: Redirect?
MR. BARR: No, sir.
THE COURT: Sir, you may step down. Thank you very much.
A Okay.
THE COURT: You wish to excuse the witness?
MR. BARR: Yes, sir. He can be excused.
THE COURT: Any objections?
MS. BAILEY: No, Your Honor.
THE COURT: You're free to go, sir. Thank you.
You may call your next witness.
MR. BARR: The Defense calls Mr. Leon Devaughn Dizzley,

Jr.

THE COURT: Come forward, sir, to my left, and be sworn where this gentleman is standing.

THE CLERK: Please state and spell your name for the Court.

MR. DIZZLEY: Leon Dizzley, Jr., L-E-O-N, D-I-Z-Z-L-E-Y, J-R.

THE CLERK: Thank you.

Whereupon, Leon Dizzley, Jr., was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

MR. BARR: Now --

THE COURT: Mr. Barr, your witness.

MR. BARR: Thank you, sir.

DIRECT EXAMINATION

BY MR. BARR:

Q Mr. Dizzley, if you would, please, tell us where you live.

A Charleston, South Carolina.

Q And how long have you lived in Charleston?

A Several years, over 10 years.

Q And do you work in Charleston?

A No. I go to school.

Q All right. What, what are you -- what kind of school are you in?

A Adult education.
Q And if you would, please, do you know Terron Dizzley?
A Yes. I do.
Q Are you related to him?
A Yes. I am.
Q And what's the relationship?
A My brother.
Q Now, did you have an occasion to see Terron on the 1st of December of 2008?
A Yes.
Q And where did you see him?
A Orangeburg, South Carolina.
Q And if you would, was there any particular occasion for seeing him?
A What you say?
Q Was there any particular occasion for seeing him? You lived in -- he lived in Orangeburg and you lived in Charleston?
A Yes.
Q What was the occasion for you seeing him?
A Well, I always come to Orangeburg to visit my family, and I always see my brother before I leave Orangeburg.
Q Now, do you have a recollection of having seen your brother on December 1st of 2008?
A Yes.

Q And where did you see him?
A On Jamison Avenue in Orangeburg.
Q Now, and, and how -- what is it about your seeing him -- how is it that you remember that you saw him on December 1st of 2008?
A Because it was close to Christmas and I remember the day that -- the next day that all this happened, and I remember I was with him that night.
Q You were with him the night of December 1st of 2008?
A Correct.
Q And when did you get -- initially get with him?
A 8:30 that night.
Q And, and where, where did you -- where -- how did you -- how is it that you came in contact with him?
A I went to Jamison Avenue.
Q And who was living on Jamison Avenue?
A Stephon Jamison.
Q And your brother was at his house?
A Yes.
Q So you then got -- you got with him -- with your brother, Terron Dizzley, at that time?
A Yes.
Q Were you driving or was he driving or who was driving?
A I was driving.
Q And what were you driving?

A I think it was a Lincoln Town Car.
Q Now, after you saw him, after you saw your brother, did you and he have an occasion to visit somebody -- anybody?
A Yes.
Q Who did you visit?
A Daniel Robinson.
Q And how long did you stay at Daniel Robinson's?
A Thirty minutes, 45 minutes.
Q And when you left Daniel Robinson where did you go?
A Back to Jamison Avenue.
Q And you were still with Terron Dizzley?
A Yes.
Q Now, you didn't stay with your brother at night; did you?
A No.
Q What time did you leave out of your brother's presence that night?
A 10:00 o'clock.
Q And when you left your brother where was he?
A Jamison Avenue.
Q And what was he doing on Jamison Avenue then?
A He went with his girlfriend, Laquesha Felder.
Q You don't know where they went; do you?
A No. I don't know where they went after that.
Q So when was the last time you saw Terron Dizzley on the night of December 1st of 2008?

A It was 10:00 o'clock when I left Orangeburg.
Q And at the time that you left him he was with his girlfriend?
A Yes.
Q Was he driving?
A I'm not sure if he was driving or not.
Q When you left Jamison Avenue, did you leave him there?
A Yes.
Q And you left him with who?
A Laquesha Felder.
Q So Laquesha Felder was on Jamison Avenue?
A Yes. She was.
Q Does she live on Jamison Avenue?
A Her grandmother lives on Jamison Avenue.
Q And you say it was about 10:00 o'clock when you left Jamison Avenue?
A Yes.
Q Who else was there with Terron and Laquesha when you left, if anybody?
A Stephon, some older people, their grandmother.
Q Laquesha and Stephon, are they related?
A His sister and her are best friends.
Q Now, would you answer any questions that you might have for, for the Solicitor?
A Yes.

Q The Solicitor might have for you?

CROSS EXAMINATION

BY MS. BAILEY:

Q Mr. Dizzley, are you and your brother close?

A Yes.

Q Did you all grow up together in the same household?

A Not in the same household.

Q Did you grow up together knowing each other as brothers?

A Yes.

Q You love your brother; don't you?

A Yes.

Q 2005 you were convicted of a drug offense; isn't that right?

A I'm not sure of the date, but I was before.

Q How long ago did you remember that you were with your brother the night he was accused of murder?

A Excuse me?

Q How long ago did you remember that you were with your brother the night that he was accused of murder?

A Ever since they said this incident happened.

Q In 2008?

A Yes.

Q You, you remembered in 2008 that you were with him the night --

A The night.

Q -- that they were accusing him of doing this?
A Yes.
Q Did you ever contact law enforcement?
A No.
Q Did you contact law enforcement at all in calendar year 2008?
A No.
Q Regarding this incident?
A No.
Q Did you contact then at all in calendar year 2009?
A No.
Q 2010?
A No.
Q 2011?
A No.
Q Did you have reason to provide some sworn statements regarding this in 2012?
A I think so.
Q Were you ever contacted by Steven Brown of the Solicitor's Office?
A He tried to contact me, but I never spoke with him.
Q I have no further questions.

REDIRECT EXAMINATION

BY MR. BARR:

Q Mr., Mr., Mr. Dizzley, did anybody from the Solicitor's

Office or Williamsburg or the Georgetown County Sheriff's Office come to your house and ask you whether you were with your brother on the night of December 1st , 2008?

A No one ever, no one ever came to my house.

Q Now, do you have a recollection of giving a statement in July -- in December -- in August of 2012 where you indicated the very same thing that you've testified to in this courtroom today?

MS. BAILEY: Objection, Your Honor. Prior consistent statements are not admissible.

THE COURT: Sustained.

MR. BARR: Your Honor, I'll rephrase the question.

BY MR. BARR:

Q Did you give a statement under oath earlier in June -- in August of 2012 that you were with your brother on the night of 2000 --

MS. BAILEY: Objection, Your Honor. Prior consistent statements are not admissible.

THE COURT: Sustained.

Q Nobody came and contact you about your brother?

A No.

Q I have no further questions.

THE COURT: Anything further?

MS. BAILEY: Briefly, Your Honor.

RECROSS EXAMINATION

BY MS. BAILEY:

Q You just testified that Steven Brown tried to contact you.

A Yes. He called on the phone. He never came to my house. He called my mother's phone.

Q Uh-huh. Did you call him back?

A I called him back to see what he want, but I never --

Q Did you speak with him?

A No. I didn't.

Q No further questions.

THE COURT: You may step down, sir. Wish to excuse the witness?

MR. BARR: Yes, sir.

THE COURT: Any objections?

MS. BAILEY: No, Your Honor.

THE COURT: You're free to go, sir. Thank you.

The Defense may call its next witness.

MR. BARR: The Defense calls Ms. Laquesha Felder.

THE COURT: Ms. Felder, please.

Come forward, ma'am, to my left and be sworn.

THE CLERK: Will you please state your full name and spell it for the Court?

MS. FELDER: Laquesha Felder, L-A-Q-U-E-S-H-A, F-E-L-D-E-R.

THE CLERK: Thank you.

Whereupon, Laquesha Felder was called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Thank you. Please have a seat.

THE COURT: Your witness.

MR. BARR: Thank you, Judge.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. BARR:

Q Now, Ms. Felder, if you would, I'm going to ask you to speak up so the ladies and gentlemen of this jury can hear your testimony. You are Ms. Laquesha Felder?

A Yes. Laquesha.

Q And where do you live, Ms. Felder?

A Greeleyville.

Q And ---

A South Carolina.

Q And how long have you lived in Greeleyville?

A About one or two years.

Q And that's Greeleyville, South Carolina?

A Yes.

Q And who do you live with in Greeleyville?

A Terron Dizzley.

Q And who else?

A And my three kids.

Q You've got three children?

A Yes.
Q And I believe you've got a young child. The youngest child is how old?
A She just turned one December 27th.
Q And that child belongs to you and Terron?
A Yes.
Q Now, you said you've lived in Greeleyville about three years?
A One or two years.
Q What do you do in Greeleyville?
A Right now I work at Orangeburg at Husqvarna. We build the decks for the lawn mowers, and I'm a certified CNA, licensed CNA.
Q And prior to living in Greeleyville, where did you live?
A We stayed in Orangeburg.
Q And what address did you stay at at Orangeburg?
A It was so long ago. We stayed in a little town called Bolen Town outside of Orangeburg close near to Norway.
Q Now, Ms., Ms. Felder, in, in -- let me direct your attention to December, specifically December 1st of 2008, did you have an occasion to see Terron on that date?
A Yes. I did.
Q And how is it that you can recall having seen him on that day?
A Because we lived together.

Q You were living together at that time?
A Yes.
Q Now, specifically as it relates to December 1st of 2008, was that around that time Terron got accused of committing a crime?
A Yes.
Q Do you remember the circumstances surrounding that?
A They saying he killed Aundry.
Q Do you remember -- when did you find out that these allegations had been made against him?
A Well, we got a phone call December 2nd saying that Aundry got shot early that morning. Then his mom called us saying that people was saying that he was a suspect in the murder.
Q Now, you got the call on December 2nd.
A Yes.
Q Where were you on December 1st up through December 2nd?
A Well, we got up that morning. We was home that morning. We got up --
Q Now, you said we. Who is we?
A Me and Terron and my kids and we went to my best friend house. She stay in Orangeburg. It's in Jamison, on Jamison Avenue. So we was there. I sat there for a while. He was waiting around on his brother Devaughn to come. So Devaughn, him and my best friend little brother they went and got, got us something to eat and they came back. Devaughn he came.

Later on that night they went around to Daniel Robinson house for a while. Then they came back and then everybody left and went their ways. We went home.

Q And that was on December 1st?

A Yes.

Q Now, when you -- did you and Terron stay at home that night?

A Yes. We did.

Q Did Terron leave home at any time that, that night?

A No. He didn't.

Q He was with you the entire night?

A Yes. He was.

Q And are you sure about that?

A I'm very sure.

Q Thank you, ma'am. I have no further questions.

THE COURT: You may cross examine, Ms. Bailey.

CROSS EXAMINATION

BY MS. BAILEY:

Q Just to be clear, you and Terron were at your house all night?

A We got home around like 10:30. Yes. We were.

Q How do you know it was 10:30?

A Because we left my best friend house at 10:00 o'clock.

Q How you know that?

A It doesn't --

Q How do you know you left right at 10:00 o'clock?
A Because that's the time Terron and Devaughn they came back from Jay Love house about 9:30, 9:45 and they -- we just sat there till like 10:00 o'clock. Devaughn left. We left. By the time we got home, it only take us like 30, 35 minutes to get there. So we got home about 10:30.
Q But you, you didn't look at the clock; did you?
A I always check the clock in the car.
Q Well, you're giving estimates. So you said 9:30, 9:45, "We were there for a little while."
A I said they came back from Daniel Robinson house 9:30, 9:45.
Q So you're not sure whether it was 9:30 or 9:45 that they came back from Daniel Robinson's house?
A I'm sure.
Q So was it 9:30 or was it 9:45?
A It was around that time, 9:30.
Q You love Mr. Dizzley; don't you?
A Yes.
Q He's the father of your children, some of them?
A Yes.
Q Were you aware that he was accused of murder in 2008?
A Yes. Because his mother told us about it.
Q Did you ever give a statement to law enforcement in 2008 regarding where -- his whereabouts that night?

A I spoke to a Mr. Brown.
Q What year did you speak with Mr. Brown?
A That was --
Q You spoke with Mr. Brown in 2012; isn't that correct?
A Yes.
Q Did you speak with law enforcement in 2008 regarding Mr. Dizzley's whereabouts?
A No. I never spoke to anybody.
Q In the year 2009 did you speak with law enforcement regarding Mr. Dizzley's whereabouts?
A No.
Q 2010?
A No.
Q 2011?
A No.
Q On November 29th, 2008, were you with Mr. Dizzley that night?
A Yes. Because my daughter birthday is November 28th.
Q Were you with Mr. Dizzley all night on December -- on November 29th, 2008?
A Not unless he's with some of his friends. I don't -- we don't be together. If he's -- if I'm with my best friend and he's with his friends, I don't be with him when he's around his friends, but other than that, yes, we be together.
Q And when you say around his friends, you mean his friends

in Orangeburg?
A Yes.
Q So you recall speaking with Investigator Brown in 2012?
A Yes.
Q And that happened to be a telephone; is that correct?
A Yes. He left a card at my old address and then he went by my best friend's grandmother's house and left the card with her father, and he gave me the card.
MS. BAILEY: Beg the Court's indulgence.
THE COURT: Yes, ma'am.
BY MS. BAILEY:
Q When Investigator Steven Brown asked you where you were on December 1st of 2012, isn't it true that you spoke to someone else who was in the background and said, "What night? Is that the night?"
A No.
Q You didn't say that?
A No.
Q So you deny that statement?
A Yes.
Q Where were you on September 1st of 2008?
A I don't remember. I can't tell you that.
Q Did you and Dizzley, Mr. Dizzley discuss your testimony here today?
A No.

Q You all live together; right?
A Yes.
Q Sleep in the same bed every night together?
A Yes.
Q And you have provided testimony regarding this issue once before; is that correct?
A Yes.
Q But -- and that was in 2012; is that right?
A Yes.
Q So you live together day in and day out?
A Day in and day out.
Q You all share meals?
A No. I eat my own food.
Q You live with this man day in and day out and share a bed with him day in and day out; is that correct?
A Yes.
Q But you all have never discussed your testimony --
A No.
Q -- as it would be today?
A No.

MS. BAILEY: I have no further questions for this witness.

THE COURT: Redirect?

MR. BARR: No, sir, Judge.

THE COURT: You may step down. Thank you, ma'am.

Do you wish to excuse the witness, Mr. Barr?

MR. BARR: Yes, sir.

THE COURT: Any objections?

MS. BAILEY: No, Your Honor.

THE COURT: You're free to go, ma'am. Thank you. You may stay if you like.

You may call your next witness, Mr. Barr.

MR. BARR: The Defense, the Defense rests, Your Honor.

THE COURT: Ladies and gentlemen of the jury, the Defense has rested. Does the State intend to call any witnesses in reply?

MS. BAILEY: No, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, I'm going to ask that you step back to the jury room at this point in time. There's some matters I'll need to take up with the attorneys, and again, as always, I'm going to instruct you not to begin any discussions about this matter till I've asked you to begin your deliberations. You may retire to the jury room.

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

THE COURT: I assume, Mr. Barr, that you'd like to renew your previous motions in the case?

MR. BARR: Yes, sir. We, for the record, we would renew our previous motion for a directed verdict.

THE COURT: All right. Motions are noted. The Court considers the evidence and will make the same ruling, deny the motion for directed verdict.

Now, do you wish to require the -- let's see, the State'll be going second. Do you wish to require that they open on the law?

MR. BARR: Not necessarily, Judge.

THE COURT: Okay. The State wish to open on the law?

MS. BAILEY: No, Your Honor.

THE COURT: All right. Then Defense will be going first with closing argument followed by the State. We'll take about a five, ten minute break, give you a chance to gather your thoughts before we get to that stage of the trial. Before I do that, are there any specifics requests for charge from the State?

MS. BAILEY: Your Honor, the State would request the charge from the bench book regarding hand of one hand of all.

THE COURT: Interesting request. Let me think about that one just a little bit, and the Defense, any specific requests for charge?

MR. BARR: Specifically criminal intent.

THE COURT: Yes, sir.

MR. BARR: Alibi.

THE COURT: Uh-huh.

MR. BARR: Your Honor, I know you'll be charging the

things like presumption, and, and, and Defendant not taking the stand and all that. I know, you, you --

THE COURT: Yes, sir. I will, standard charges.

MR. BARR: And, and, and identification.

THE COURT: Okay, sir. I'll, I'll -- I agree that's an issue in the case.

MR. BARR: All right, sir.

THE COURT: I will charge that. Hand of one, hand of all is an interesting request. Can you tell me what you base that on?

MS. BAILEY: Yes, Your Honor. There's evidence in the record to which the jury could infer that there was rifle fire, and I am certain that Mr. Barr in his closing is going to argue something to do with the rifle fire that may or may not have happened during the incident. There's also evidence in the record to suggest, not just to suggest, there is evidence in the record that all of the assailants who came to the bar that night who were masked arrived in one vehicle, that they left in one vehicle, that one of those assailants who we have evidence is Terron Dizzley went inside the club and fired a handgun. Mr. Barr's theory of the case seems to be that there may have been somebody else that came in the vehicle that was firing rifle fire. At various points in this trial he has tried to attribute that rifle fire to the death of Mr. Evans. Well, I don't think the evidence supports that.

I think that a hand of one, hand of all charge is appropriate because even if that rifle fire did have some contributing factor to Mr. Evans' death, if we're able to identify Mr. Dizzley as the one who actually entered the club and there is evidence that all of the assailants arrived together and left together, then we could argue under hand of one hand of all that any fire from anybody in that group can be attributed to the guilt of Mr. Dizzley so long as we can prove his ID.

THE COURT: Mr. Barr, do you wish to be heard on that?

MR. BARR: Judge, that's an interesting theory. Of course, I don't -- ordinarily, I would not object to it, but to the extent that it might create some confusion for the jury, I don't think that there's anything in the record to support a charge such as the hands of one is the hands of all. As it relates to the death itself, I think the pathologist has testified conclusively regarding the cause of death, and, and certainly, I don't think that there's anything to suggest that, that that was caused by a high-powered rifle. Moreover, if -- in order to charge the hands of one is the hands of all, I think you'd have to, to at least show some aiding and abetting in the commission of the offense, and of course, I don't know that there other -- that there's any testimony that indicates that there was any aiding or abetting, there was from, from what I understand that there was a number of people outside.

THE COURT: Well, there was, there was testimony, Mr. Barr, from the perspective that one car was driven, one car got away. There was testimony that someone with a long gun held someone at gunpoint in the parking lot while it occurred. So there was, there was some evidence of that.

MR. BARR: I withdraw my objection to the charge.

THE COURT: Okay, sir. Thank you.

All right. I'll -- give me a moment. I'm going to step down. We'll take about five to 10 minutes.

***** OFF THE RECORD *****

(On the record. Whereupon, the following takes place outside the presence of the jury.)

THE COURT: The State ready to proceed?

MS. BAILEY: Yes, Your Honor.

THE COURT: The Defense ready?

MR. BARR: The Defense is ready, Judge.

THE COURT: Let's bring the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. We have completed the presentation of evidence in this case, and I told you at the beginning of the trial that upon completion of the presentation of that evidence, the lawyers would be, again, given an opportunity to directly address you in their closing

arguments or summation. In this case the Defense will be going first, followed by the State. Mr. Barr, you may proceed.

MR. BARR: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. BARR: May it please the Court, ladies and gentlemen. First of all, let me again reiterate my thanks on behalf of the criminal justice system, on behalf of my client for your participation in this trial. We realize that it has been with some degree of sacrifice that you've had to make in order to be here, and we thank you for that.

I want to tell you about just a couple of things initially that I think that with respect to advocates, that is myself as well as my colleague who have various jobs to do, and of course, in this situation we have different jobs to do, but we are advocates for our respective clients, and, and, and certainly His Honor will instruct you that what we say to you at this time is not evidence. We're arguing this part of the trial we regard as the part where we try to persuade you to take some particular view of the evidence.

Now, let me just say that under our system I will not get the opportunity to speak to you again. There are a lot of lawyers, a lot of Defense lawyers such as myself believe that it's an advantage to get to talk to the jury the last time, but under our system, I will not get another opportunity to

speak with you. In other words, after I do my closing argument then the State will come and present a closing argument, and I will not get another opportunity to speak with you. So I certainly -- I know that there'll be some things that, that I will have forgotten, some things that I won't mention to you, but now, let me tell you something, I've watched you during the course of this trial, and, and you've paid very close attention to the trial, and you've paid very close attention to the evidence. So there's no doubt in my mind that with respect to those things that, that you'll need to equip you with what you need to be able to decide the facts in this case and ultimately decide what the verdict should be, I'm convinced that you've now been aided with those things.

Now, His Honor will instruct you that as jurors, of course, as it relates to the law, and I don't want to do a whole lot of talking about the law, but I do want to talk about something that's -- we started with initially, and that's the presumption of innocence. Any time, and His Honor is going to reiterate and charge you this, any time a person is charged with a criminal offense in South Carolina, as in most other states, the law says that person is presumed innocent. His Honor will instruct you that that presumption of innocence starts from the beginning of the trial. It continues throughout the trial, and continues even until you get in your jury room up until and not until and unless you're

convinced beyond a reasonable doubt that the Prosecution has met their burden of proof and that you come back with a unanimous verdict, that is you all must agree that the Prosecution has met that burden of proof.

Now, the presumption of innocence is not just a procedural right. As I said, His Honor will instruct you that it is a substantive right that any person charged with a criminal act, that is commission of a criminal offense, is entitled to, and that presumption of innocence remains with him throughout the course of the trial.

Now, with respect to the evidence in this case, there's no question that we all understand that the State has alleged that Terron Dizzley committed the offense of murder on December 1st of 2008, the unlawful killing of a person with malice aforethought. That's essentially the definition of murder.

How do you prove it? Well, in this case the Prosecution has presented documentary evidence, demonstrative evidence. They've presented testimony from this witness stand, and I'm going to start with, with the demonstrative evidence. Ladies and gentlemen, I think when you go to your jury room and, and you take a look at all of the pictures and everything that's been presented, even the shell casings, the bullets, all of that evidence, I think you'll probably find that from the standpoint of intrinsic evidentiary value those things

probably won't be of a whole lot of assistance to you in this case.

Now, I know that we've spent a lot of time with it, but I'm simply suggesting to you that with respect to the guilt or innocence of Terron Dizzley I just don't know that that evidence will carry a whole lot of weight. You might say, "Well, then let's consider the testimonial evidence."

His Honor will instruct you that with respect to testimony, when a person takes the witness stand, they place into issue their credibility, that is their believability, and ladies and gentlemen, you've lived a long time. How do you determine whether or not a person's credible? Do you look at their demeanor? Do you look at their appearance on the witness stand, their ability to recall things, the opportunity that they have to observe things that they claim that they saw, how well they can see, how well they can hear, because, see, in this case that the one witness, the one witness that's got Terron Dizzley sitting where he's sitting today didn't even show up for court, and he couldn't show up for court because he's deceased.

Now, if you remember with respect to Terron Dizzley and this business of Little D, this whole thing got started because there were some allegations made by several people, starting with one of Aundry's friends called Mo. He claimed that, "Well, Aundry made a statement to me and he said that

Little D shot him." There was some discussion concerning his ability to make that identification based on his voice.

Now, what you've heard in this courtroom has been very limited evidence concerning what the shooter supposedly said to Aundry when he came into court -- when he came in, into the club. Moreover, the testimony reveals that at the time that the statements were supposedly made the man's mouth was covered. Now, when I cover my mouth, and I do it that way, I'm sure that you could hear that there is a difference in my voice, but yet now and understand it would be nice if we were able to cross examine the Defendant [sic] regarding how he was able to make that identification or whether or not he did, in fact, made the identification because, see, I've got some problems, first of all, with whether or not that statement was actually made.

Now, if you remember, the Prosecution's theory is somehow Terron Dizzley and Aundry got into some kind of dispute about the club, and they would have you believe that there lies the motive for killing somebody.

Now, according to Ms. Alston's own testimony, and I asked her specifically, "Have you ever heard Aundry and Terron arguing about the club?" She said, "No." Moreover, she said she was the owner of the club. Now, the thing that I find rather remarkable is that it seems that the alleged statements were never made to anybody except or claimed to be made except

to Aundry's friends. Now, if you remember, Officer Nelson testified, he said -- look, keeping in mind that you didn't hear any police officers testify even the first person that arrived on the scene, and we asked it, "Did you hear or did -- well, did you get any statements from the decedent before he died?" Not one word. Officer Nelson went to Georgetown Memorial Hospital, and he spoke with Aundry. He spoke with Aundry Evans, and he specifically asked him, "Who shot you? Who shot you?" He said he asked him more than one time, and Aundry appeared lucid to him. He did not get an answer. He did not get Little D. He did not get Diz. He didn't get anybody.

The father went in and talked to him before Officer Nelson. Officer Nelson even went and asked the father, "Did he tell you?" "No."

Now, it strikes me as rather odd if somebody is shot by somebody and get off and take off and go, the first blue uniform or green uniform that you see it would seem to me that you'd take the opportunity to at least say, "Look, this is the man that did it," to somebody that can do something about it, but not one word.

Maurice Giles, he was on the witness stand, Lord knows, he gave so many statements. There was one statement he said -- in his first statements, and, and, and I'll get -- the Prosecutor said, "Well, in terms of witness preparation and

sometime you forget details or little details." My Lord, how can you forget a detail such as that? The problem is he was over-prepped, and he just forgot what to say.

Now, ladies and gentlemen, as I indicated, His Honor will instruct you that credibility of witness, that is the believability of a witness, you can believe all of what a witness say, none of what a witness say. You can give it whatever weight, ladies and gentlemen, you decide to give that testimony by a witness, but you have to use your own good judgment. This business about Terron Dizzley murdering Aundry Evans started with something that supposedly some of his friends said that they heard him say, something that's uncorroborated by any police officer who had all the opportunity and who actually talked with him, and yet they never got that information.

You know, it's amazing, and Investigator Brown got on the witness stand when, when, when, when, when this gentleman T.I. he was on the witness stand, and of course, he, he said, "Well, the first thing," and you know what got me? I didn't expect him to say that. He, he said, "Well, I, I smoke weed." My Lord, but guess what, he -- and at the same time he -- but he said -- the first thing he said was a tall man jumped out of the car and went inside, a tall man, not a little short fellow like Terron Dizzley, but he said a tall man, and then Officer Brown tried to tie him down on whether or not he was

five six, five seven or whatever. He said, "A man a little bit shorter than me, and I'm six one, and I've got it on my driver's license." Ladies and gentlemen, that's too tall for Terron Dizzley. Moreover, now, if you remember when Wesley Gibson was on the witness stand, I asked him to look back there at Mr. Aundry Evans, Sr., and I did that for a reason, because Aundry Evans, Jr., was his friend. I wanted him to look at Aundry's father and tell the truth. Do you remember what he said? "The man that I saw that came into the club that did the shooting was too short to be Terron Dizzley because he would have had to get up over the bar, and Terron Dizzley ain't tall enough." Moreover he said and he demonstrated right here from this witness stand the man that did the shooting had a limp, had a limp.

Now, you know, I understand how many times we get caught up in things. Sometimes instead of looking for truth and looking for justice, especially when it comes to a situation dealing with death, we look for revenge. We look for revenge. Sometimes we lose sight of what this system is based on when the system, this very -- the thing that undergirds this system that says, "Well, look, we rather a guilty man go free than an innocent man to go to jail." Do you realize that the presumption of evidence, proof beyond a reasonable doubt, that the fact that a Defendant has not cut -- he doesn't have to come to court and prove anything it's underlined and based on

that premises, proof beyond a -- and His Honor is going to instruct, instruct you on what a reasonable doubt is, the kind of doubt that would cause a person to hesitate to act. His Honor will instruct you, I believe, and listen to me, I'm not going to get a chance to speak to you again. So I'm not going to get a chance to rebut what the Prosecutor tells you, but now, she can't change the fact, she can't change nothing that's happened, can't change one thing. The mule is out of the stable and gone down the road, too late for that.

His Honor will instruct you, and at the end of the day, unless you are firmly convinced that the Prosecution has met its burden of proof in proving the Defendant guilty beyond a reasonable doubt, in other words, if you're not firmly convinced, if you're left with a real possibility, a real possibility that the Prosecution hasn't met their burden of proof, because, see, we're not -- if you remember at the beginning of this case, I said, "Look, there's some things sometimes we don't ever know the answer to." You will never know in all likelihood who shot Aundry Evans, Jr. That responsible person just ain't gonna' come and admit that. Life is just not that way, but thank God, we have a system of justice whereby to the extent that we can achieve the truth and achieve justice we've got a jury system, but that jury system doesn't say that you have to be able to guess who done it, what it says, and we have a procedure and a system and

here what we'll do. It's an adversarial proceeding. We'll present evidence, and you determine whether or not the Prosecution has met that burden of proof that's necessary for you to find somebody guilty, and in this case guilty of murder.

I cannot, and, and I have nothing against Officer Morris. I think he's been a little bit disingenuous to tell the truth, and you can ask yourself because you're all grown people in terms of the way that this investigation went. I thought he was little bit reserved when it came to telling us the truth about what could have been done because, see, ladies and gentlemen, from the evidence we can see that a group of fellows, well organized, well organized, went out to this club and they shot the place up. Now, they didn't shoot it up for no little rented night club or something that the Prosecution would have you believe that Aundry Evans was trying to get his TV out and he came back later on in a fit of revenge and killed the man.

Now, of course, I do remember when Ms. Alston was on the witness stand, and I asked her, I said, "Do you remember on December and August of 2012 when you told me that Aundry was a hustler," and we got an objection, and the objection came, I'm sure, probably because the Prosecution didn't know what questions I'd be asking next, but now, that's what she said. Now, I don't know what was going on at the club, but let me

tell you something, four or five or three or four, whatever the number might be, masked people armed with automatic weapons, we know what that sounds like, and, and, and for the life of me to suggest when the officer specifically said, I said, "Officer, this hole in Mr. Mack's car, because see, was going to look to me to -- this was done by a shotgun blast." I said, "In all likelihood, would you agree that it was probably by a high-powered rifle?" He said, "Yes." Now, if he didn't say that, you recall it as you recall it.

Now, Officer Morris would have us believe that somehow the high-powered rifle just disappeared and nobody had a high-powered rifle. He said, "Well, we couldn't even tell, we couldn't even tell whether or not the shot in the door was done sometime earlier or was done that night." Well, they should have been able to tell. All they had to do was call somebody down there that owned the place, said, "Look, was this here all the time?" "Well, no, it wasn't there all the time. One of them -- some of them shot a hole in the, in the, in the place." Now, I tell you what, when you asked Mr. Mack, he made no bones about it, said, "Look, my car wasn't like this when I took it there." I looked at the tire. The man done drove the tire all the way down to the rim getting out of there, and make no mistake about it, these guys ran. We call it ducking, but that's what they did. When Aundry Evans was shot, most of them was hiding someplace or under the pool

table. They didn't know what transpired between the shooter and Aundry, could have been hiding, trying to get away, and I don't, I don't necessarily blame them, but what I do and what I do have a problem with and what I do know as it relates to reasonable doubt, reasonable doubt is when, look, five or four guys get together, somehow, get a car, get high-powered weapons, come down here and shoot the place up, and we believe one of them is Aundry Evans, my Lord, or Aundry -- Terron Dizzley, go to Terron Dizzley's home. Police officers do that all the time. They get out and investigate.

I couldn't believe -- I listened at these witnesses, especially alibi witnesses. The Prosecutor said, "Well, look, did you contact us in 2009? Did you contact us in 2010?" No. They're under no obligation to contact. The investigator is supposed to go out and that's what they get paid for to investigate because they have to prove a case. His Honor will instruct you that when a person raises the defense of alibi they don't have to prove it. The burden of proof doesn't shift. The burden of proof is on the Prosecution to prove that the man was here on December 1st of 2008 and to prove that he shot and killed somebody. The fact that he raised an alibi, that doesn't mean that he has to prove his alibi. The burden of proof never shifts. Now, tell me what is wrong with going to Orangeburg, and the thing that gets me is rather than admit that, "Look, I could have done something. I could have

checked out the alibis and made sure because there's no question about it."

Now, if you remember when it first got started, I asked Officer Morris. I said, "Look, you don't deny that at least as of August of 2012 you knew of several people who had given sworn statements regarding Aundry or regarding Terron Dizzley being in Orangeburg at the thing -- time this thing happened. You knew that," and initially he tried to resist it, but after a little he finally admitted that he knew it. He knew we were going to have a trial this week. He knew the State of South Carolina is responsible for prosecuting people and providing proof, proof beyond a reasonable doubt. It would seem to me that in a case as serious as a murder case the least you could do is go to Orangeburg, take a group of deputies. You don't even have to take a group of deputies. Get the, get the deputies in Orangeburg to put their head to the ground. They do it every day. I'd find out every place Terron Dizzley has been from every drink of water that he's got from then until -- somebody would tell me about it, and because, see, somebody would know. Somebody -- they got gas somewhere. They got food to eat. You ought to be able to corroborate, but it wasn't done. It wasn't done. It was not done. How do you argue that not to do anything does not manufacture a situation that creates doubt? How do you take hearsay, go off on hearsay and say, "Look, the witness's statement indicated

this. Therefore, I never investigated the possibility of this," when you still got three or four bandits out there getting ready to shoot at somebody else probably, and they still ain't got them. Well, they still out there, and they, and they committed a crime. I don't know who they were, but somebody should be able to find out. Aundry or Terron Dizzley should not have to pay for what was not done in this case that, clearly, if it had been done it would eliminate all issues regarding whether or not he was in Orangeburg when this incident happened. You just cannot tell me after 35 years of doing -- this -- it's just too easy. I know that. It could have been done, and if it had been done, that issue would have been settled. It would have been settled.

Now, ladies and gentlemen, when, when you go to your jury room and you start deliberating and start exchanging ideas, exchanging views, I know that some of you may think about things that you heard in this case that were impressive with you and you'll share those things perhaps with some of your fellow jurors, but please, Madam, please, Sir, keep in mind the justice of this system is founded on principles which require that we look into our hearts and do things sometimes that we may not want to do, but they require us to make decisions, even sometimes regarding things that other people say to us. When I say what other people say to us, I'm talking about the law that His Honor gives to you because His

Honor's going and I know he's going to tell you about the Defendant's presumption of innocence. He's going to tell you about guilt beyond a reasonable doubt. He's going to tell you that identification is an element of the crime that the Defendant is charged with in this case, and he's going to tell you that that standard of proof, beyond a reasonable doubt, applies equally to the standard of identification or to the issue of identification as it does to everything else in this case. In other words, the Prosecution has to prove to you beyond a reasonable doubt that the man that went in and shot Aundry Evans was Terron Dizzley, too short. Everybody agrees that everything happened so fast. The man was in and out.

Now, I just -- his face was covered, and I can't remember the gentleman's name that testified when, when I, when I asked Terron Dizzley to stand up because he even got the man's color, his complexion. He said, "Well, I couldn't tell, I couldn't tell where the gun stopped and where his hands stopped." Well, the gun was, was, was, was -- said it was a black gun, "But I couldn't tell where his hand stopped and where the gun stopped." I'd already asked him about the gloves. Now, see, it stands to reason that as organized as these fellows were there was testimony that all the others had gloves on. He probably had on gloves, too. I can't imagine the shooter not having on the gloves. He had on a mask. He had something else tied up so you couldn't see him. Why would

he not have on gloves, too?

Ladies and gentlemen, I'm going to, I'm going to sit down, and I want to leave you with this one thought. Revenge sometimes, especially when it comes to family members, is easy to reach out and grasp it, and I can see some family in this situation who feels that they've got enough on Terron Dizzley to believe that he ought to pay for this, but sometimes that's not the way.

I'm going to share something personal with you then I'm going to sit down. I knew a young man over 55 years ago that, in fact, I knew him before I knew my mother, and his health got bad and his health got bad and he got sick, and he got to a point where his kidney functions, he lost functions of his kidneys. He had to go on dialysis, and one day in a dialysis center he was not being supervised properly, and he had a heart attack, and they would -- by the time they got him to the hospital, it was too late. I had an autopsy done, and I know I can prove that had they not and had they been giving the procedure their attention, he probably would have, would have survived. Somebody came, said, "Look, what, what are you going -- are you going to sue or whatever?" I said, "No. I'm not going to do that." All the money and all the suing in the world could not bring back my brother. I loved him with everything in me. I don't want to even talk about nobody no suing. We went to high school together. We were roommates in

college. We were roommates in law school, and he was my law partner for over 30 years.

Now, why did I tell you that? As I indicated earlier, it's easy sometimes to reach out and grasp the concept and the idea of revenge. That's not what this system is based on. This system is based on justice. It's based on truth, and the truth of the matter is the proof in this case that His Honor talked about earlier that is that the burden of proof is on the Prosecution to prove the Defendant's guilt beyond a reasonable doubt. In this case, that just has not been done, and in spite of what the Prosecutor comes and tells you, I want you to show her all the respect that she's entitled to. I do that, but don't be persuaded because that doesn't change anything. The truth of it is, when you apply the standard that His Honor will lay down, it just doesn't meet that standard, and we ask that you come back with a verdict in this case based on the law and the evidence in this case, the lack of evidence, and find the Defendant not guilty. Thank you.

THE COURT: Ms. Bailey, you may proceed for the State.

MS. BAILEY: Before I begin may I take a five-minute break?

THE COURT: Yes. Ladies and gentlemen of the jury, we'll ask you to step back to the jury room for just about five minutes, and as always, I'll ask you not to begin any discussions until I ask you to do so. You may retire to the

jury room.

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

THE COURT: The Court's in recess. I'll stay on the bench.

MS. BAILEY: Thank you, Your Honor.

THE COURT: Let me know when you're ready.

***** OFF THE RECORD *****

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

THE COURT: All right. Let's come to order, please. Tell him I'm ready for the jury. Thank you. We're ready for the jury, Mr. Bailiff.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. You may proceed, Ms. Bailey.

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

THE COURT: Yes, ma'am.

MS. BAILEY: "I can't believe he did it. Little D shot me." I hope that as you've listened to all the evidence in this case those words have continued to ring with you.

Mr. Barr is right about one thing, this is not about revenge. Mr. Barr gave a very powerful presentation. This

isn't about emotion. This isn't about revenge. This is about justice. This is about justice for Aundry Evans, Jr.

Now, in the State of South Carolina, like in all common law places here in, everywhere here in the United States, and we've brought this all the way from England, Prosecutors such as myself, I don't represent the Evans family. I don't represent a victim. My client is the State of South Carolina. That's how all criminal prosecutions work, and there's a reason for that, because I'm not here seeking revenge. I'm here seeking justice.

I have selected each and every one of you to sit on this jury for this trial. I have done that because I believe each of you has the common sense and the reason necessary to return a true and a just verdict in this case.

Even in this day and age, not everything ends up on video. You may feel like there's cameras everywhere, but there's not. This murder happened in 2008 at a club on a rural road. There's no closed-circuit television. There's no cameras. People don't always leave behind DNA. They don't always leave behind fingerprints. It's not like you see on TV. There's no CSI. There's no criminal profiler. That's just not the way it happens in the real world, but we can still know what happened. If you're cooking dinner in the kitchen, chopping up your onions, you hear your children fighting over the TV in the next room. At some point, you've

got to put down the knife, you've got to wash your hands, you've got to walk in there and you've got to deal with it, and when you get in there and you get into the next room, you talk to each of your children, you look around the room, you see what everything looks like, and you make a decision, and whoever's fault you decide it is, you punish them. You might put them in time out. You might swipe them on the bottom, whatever your punishment is, you punish your child. You didn't see it on TV. You didn't take a DNA swab. You don't have any fingerprints, but you use your reason and you use your common sense to determine what happened, who's at fault and what's the appropriate punishment. It is that same instinct and that same common sense I want each of you to review this evidence with.

Now, what is the evidence? Mr. Barr would have you believe there's not much. I called every person that was there that night, the good, the bad and the ugly. I wanted each and every, every one of you to know what each and every person who may have witnessed anything having to do with this saw. Some of them saw a lot. Some of them can't remember. Some of them aren't telling the truth. Clearly, I didn't tell them what to say or they would have done better.

Now, to start with, you heard from folks who were aware of the relationship between Aundry Evans, Jr., and Terron Dizzley. See, Mr. Barr would have you believe we just plucked

Mr. Dizzley out of thin air and decided to pin this crime on him for no good reason, but that's not the way it happened. You heard from Naomi Alston. Naomi Alston told you that on the Saturday before the murder, the murder happened on December 1st, which is a Monday. Saturday evening, November 29th, she was at the Paradise Club. Aundry had asked her to go there and open up the club. She's there for a little while when somebody she knows as D or Diz or Dizzley shows up. She even tries to tell the 911 operator that she calls his full name, but she gets it a little bit wrong. She says, Dibbly or Dudley, but it's clear she's trying to say Terron Dizzley, Diz, Little D, D. She says, "He's here and he will not leave." You heard that 911 call.

You also heard her testimony that as she is sitting there in the rain in her car with the window cracked that Mr. Dizzley, we know exactly who did this, Mr. Dizzley yelled through to try to get to her boyfriend on the other end of the phone and said, and excuse my language, it's a direct quote, "Tell your pussy ass boyfriend to get down here and deal with me himself." That wasn't some mysterious person named D. That was Mr. Dizzley who said that, said it to the victim two days before the murder on November 29th.

We learned from Marvin Riley, who didn't know a whole lot about this. He's from Orangeburg. He's a DJ. He's not friends with Mr. Dizzley. He's not friends with Mr. Evans.

He just happened to DJ a party that Mr. Dizzley threw at Mr. Evans' club. Mr. Riley, Marvin Riley from Orangeburg, only knows a little bit about this, but what he does know is that even from Mr. Dizzley's own mouth Mr. Dizzley was excluded from the club on November 29th and that he had an altercation with Naomi Alston and that she called the police, and we know from Aundry Evans' girlfriend, Toni, Jerliether, she goes -- her nickname is Toni. She said she heard Mr. Dizzley on speaker phone with her boyfriend, and that they were arguing and cursing at each other, something, she didn't know exactly what they were arguing about, but they were not happy with each other. Specifically, she heard Mr. Dizzley arguing and fussing through that phone at her boyfriend in the days leading up to the murder. She even told you that Mr. Evans decided to come spend a couple of days with her and lay low, that he spent the whole weekend with her to lay low because he didn't want to go up to the club. He didn't want to deal with the situation having to do with Mr. Dizzley. The day he came out of hiding, the day, the first time he came out of hiding at his girlfriend's house is when he was murdered.

As to that evening, you've heard from a lot of witnesses. It's a lot to sort through. Some of them are different as to some little details, but they're the same on a lot of stuff. It was a long time ago. Everybody is standing in a different place in the club. Everybody had a different reaction. Some

folks immediately went to Aundry's aid. Some folks hid, came out when the shooting was over. Some folks ran out the club, never came back. Everybody had a different reaction. So as a result, everybody had a little bit different perspective, but what are they consistent on? Ladies and gentlemen, what they are consistent on, I would submit to you, are the things we do know for sure. They are consistent on the fact that they're all there watching Monday night football at a sports bar. They are consistent on the fact that at some point in the evening after eating chicken wings and oysters somebody busts through the door of that club in a mask with a handgun. They're all consistent, that one person came inside that club, masked up and with a small gun. They're consistent that the person who busts through the door all masked up with a small gun went straight to Aundry Evans, Jr. They are consistent that the person with the mask, with the small gun who went straight to Aundry Evans, Jr., made a statement. The statement may have been, "I told you this wasn't over." It may have been, "This isn't a game. It's not over yet." They're a little different on exactly what that statement was because it's from 2008, but they're all consistent that the person who came in the club and went straight for Aundry Evans, Jr., spoke some words and told Mr. Evans, Jr., exactly why he was there.

They are consistent that the person who came in that club

went straight to Aundry Evans, Jr., and made that statement, then pulled the trigger more than one time. Some people say three. Some people say five. Some people say, "I have no idea. I was hiding, more than once." They are consistent that the person then ran out of the club, maybe shot off one or two more shots, and then ran out of the club. They are consistent that Mr. Evans, Jr., was laying on the ground, bleeding out and that he told everybody who would listen. He told D.J. who, bless his heart, was 15 when he witnessed this murder. He told D.J., "I can't believe he did it. Little D shot me." He told Mo, Maurice Giles, who was tending to him, who was applying pressure to the wound, "I can't believe he did it. Little D shot me." He told Willie Stanley, "I can't believe he did it. Little D shot me," and when Dash, who is Willie Stanley, called Mr. Evans' fiancée, Naomi Alston, and Naomi Alston jumps in the car, runs up to the club as fast as she can. She beats EMS and law enforcement, and they are consistent that when she says, "Aundry, what happened," Aundry says, "I can't believe he did it. Little D shot me."

Folks, this isn't one person making up this statement. It's not one person. They all used the same words. Even those folks who didn't hear the statement all testified that the man had the opportunity to make the statement. They all testified they weren't in earshot or that they saw Naomi with him. They all testified that he had the opportunity to make

the statement. It is all consistent.

Now, I'm sure this trial got real confusing for you all when we started talking about what on earth happened outside that club. I don't know what happened outside that club. I can come up with three or four theories that, that could be consistent with the evidence, but I don't know. There wasn't any cameras. It is possible that that drive-by shooting happened -- well, first of all, it looks from the evidence that there was a drive-by shooting. You heard that from Investigator Thacker, with a high-powered rifle. You can see those shell casings spread along the road as if a car was driving by kicking the shell casings out as they sprayed a high-powered rifle into the club.

When did that happen? Nobody could determine that. They tried. You heard from Investigator Thacker. You heard from Investigator Morris. They attempted to determine a timeframe. They were unable to determine a timeframe. They just were. There wasn't somebody at that club 24 hours a day to tell you exactly when that happened. It could have occurred before Mr. Evans was killed. I'm sure he got there after dark to open up. I mean, it was winter time, after dark when he would have opened up for Monday night football. It could have been contemporaneous. I mean, there is the damage to Edward Mack's car. He says it wasn't there before. His tire certainly is blown out, and he's got a bullet hole straight through his

car, and you heard Investigator Thacker say witnesses often get the number of bullets and the number of, of gunshots off, that that's a very common thing that people don't, don't quite get that consistent. Could have been contemporaneous. Nobody saw a high-powered rifle, but it could've have happened. It could have happened afterwards while everybody's at the hospital. We don't know, and the thing is, that's not part of the charge. Mr. Dizzley's charged with the murder of Aundry Evans. I don't need to prove to you beyond a reasonable doubt how the high-powered rifle fire happened, when it happened, who did it. That's not what this trial is about. This trial is about who killed Aundry Evans, Jr., with malice aforethought. That's what the trial is about, but again, I believe in each and every one of you that you have the common sense and the reason to sort through this. I wanted you to have all the evidence as you made your decision.

Speaking of corroborating evidence, I want you to take a look at your screen. You are looking at a picture that has been admitted into evidence. That's State's Exhibit 35. The last witness you heard from, Mr. Dan DeFreese from the State Law Enforcement Division, now, that's a man that knows what he's talking about, and he told you he analyzed all the evidence that you're looking at right now. Now, keep in mind, Number Five, I know the picture's a little blurry, it's the best one we have, Number Five, on the floor all the way to the

left, that's going to be a pool of blood. Investigator Morris told you he didn't analyze that because the victim was laying in it. We know whose blood it is, no point in running that to the DNA lab. Number one, you heard testimony from Mr. DeFreese that number one is a shell casing. The shell casing belongs to a 40-caliber Smith and Wesson. I showed you a picture of what it would have looked like. Number two, on the ground near the pool table, it's another shell casing. Mr. DeFreese testified it came from the exact same gun that number one came from. It was fired by the exact same Smith and Wesson 40-caliber as number one. Number three is on the pool table furthest away from the balls. It's another shell casing. It also came from the same Smith and Wesson 40-caliber handgun that the other two shell casings came from. Folks, that evidence alone tells you these shots weren't fired from outside. It tells you that the shots weren't fired from behind the bar either. It tells you those shots were fired from over near the pool table.

Number four, which is real fuzzy in this photograph, but it's the flag that's over near the balls, that's the spent bullet. We don't know if that spent bullet missed Aundry Evans, Jr., or if it went through him and landed there. We don't know. We'll never know. We do know it is consistent with a 40-caliber Smith and Wesson, just like these shell casings, and just like the two spent bullets that were found

inside of Aundry Evans, Jr., and just like the spent bullet that was found on his clothing at the hospital. Do spent bullets prove that Terron Dizzley committed this murder? Absolutely not, and if all I had to show you was some spent bullets and some ballistics with no gun, I would understand if you returned a not guilty, but that's not all. Folks, this physical evidence it corroborates the witness testimony. It corroborates what the witnesses agreed on. It corroborates what they have to say. The physical evidence is consistent with someone who came in the bar, who ran straight up to Mr. Evans, who's standing by the pool table by all accounts, and pulled the trigger somewhere between three to five times. You can infer that if they're telling the truth about that, the witnesses are telling the truth about this, they're telling the truth about everything. They're telling you exactly how it happened. They've got no reason to lie. This trial isn't about money. It's about justice.

Now, Mr. Barr is going to have you believe that Mr. Dizzley was in Orangeburg for the night. Most of his witnesses put Mr. Dizzley in Orangeburg till 9:30 or ten. You heard from that 911 call that the murder happened at 11:30. So I didn't spend much time with those witnesses because I don't really care where Mr. Dizzley was at nine or 9:30. It's not relevant to whether or not he committed this murder. You heard one witness, one who told you that Mr. Dizzley was with

her at 11:30 at the time of the murder, and that was his girlfriend, Ms. Felder. Bless her heart. She's got three children to think about. She even gave him an alibi for the night two days before when 911 was called on him. I asked her if she was with him on November 29th, 2008. She said, "Absolutely, I was with him all night. He didn't go anywhere. He stayed in Orangeburg." We know he wasn't in Orangeburg on November 29th by his own admission. He was down here in Georgetown. I don't fault her. She don't want to -- she, she wants to keep her, her boyfriend right there at home with the children, but it's not credible. It's not believable.

Ladies and gentlemen, it's about time for you to go back to that jury room through there, and I know I bored you all to tears putting in all this evidence, and I apologize, but I wanted you to have all of the information when you go back there. I wanted you to have all of it, the good, the bad, the ugly, the indifferent. I wanted you to know that in Georgetown County we take this seriously. Somebody died. We did a full and thorough investigation. We tracked down all leads. Investigator Morris tracked down and exhausted every single lead that was available to him. Some of it led absolutely nowhere, just like some of those pictures that I put into evidence that you are welcome to go through back there in the jury room are fuzzy. They don't show anything of any relevance, and they're duplicates, but you've got them if

you want to go through them. After a full and thorough investigation, every lead was tracked down. Everything was tracked down. There was only ever one suspect in this case, one. Was there people who did it with him? Absolutely. He didn't do it alone. We'll probably never know who did it with him. We have no leads on that. We tried. People don't have to talk to us, but all roads, all roads, all leads led to Terron Dizzley. Both of the women in Aundry Evans, Jr.'s, life had met Terron Dizzley in the past. They knew him. They knew that Mr. Evans, Jr., had a relationship with him. They knew him as D, Diz or Little D. Even Marvin Riley from Orangeburg said, "You know, in Orangeburg I've never called -- heard him called Little D, but down here in Georgetown I have heard people call Terron Dizzley Little D." Marvin Riley, who doesn't have a dog in this hunt, said, "Yeah, I did hear that when I was down here at that party. People were calling him Little D," and as you go into that jury room and you review all this evidence, I want you to carry this victim's words with you. As Mr. Evans was playing pool somebody busted through the door, went straight up to him. He heard his assailant's voice when the assailant said to him either, "I told you this wasn't over. This isn't a game. This isn't over." Mr. Evans heard his assailant's voice, and he turned as he got shot and it went down this way. He turned and he looked and the person was wearing a mask, but he looked into

his shooter's eyes as he fell to the floor, and as soon as his friends came to his side to aid him, he looked at them and he told anybody who would listen, "I can't believe he did it. Little D shot me." As you go into that jury room, I want you to take those victim's words with you because that is a verdict that rings of justice and truth. Thank you for your time and attention this week.

THE COURT: Ladies and gentlemen of the jury, that completes the closing arguments by counsel, and I told you at the beginning of the trial, once we reached this stage of the trial, it would be my responsibility to charge you concerning the law to be applied in this case.

Now, we begin this case by my going over with the jury as we were going through jury selection the indictment in this matter. I'm going to go over that indictment with you again. I will tell you that the indictment will be available to you in the jury room for you to review during your deliberations, and I'll remind you, the fact that a Defendant has been arrested, charged and indicted in the case is not evidence in the case. It can't be considered by you as evidence in this case, nor does it create any presumption or inference of guilt in this case. This is the document, the formal instrument that contains the charges against the Defendant. It informs us of the charge to be tried. It informs the Defendant of the charge that's been lodged against him.

The indictment, again, is in case number 09-GS-22-778. That indictment is for the offense of murder. The indictment states that Terron Gerhard Dizzley did in Georgetown County on or about December 1, 2008, willfully, feloniously and intentionally kill the victim, Aundry Evans, with malice aforethought, either express or implied, by means of multiple gunshot wounds to the body, and the victim did die as a proximate result thereof on or about December 2nd, 2008, in Georgetown County in violation of Section 16-310 of the Code of Laws, 1976 as amended, against the peace and dignity of the state and contrary to the statute in such case made and provided.

Now, this is the formal document that brings the case into this court, and the Defendant has pled not guilty to that indictment. That plea places the burden on the State to prove the Defendant guilty. You see, a person charged with the commission of a criminal offense is never required to prove himself innocent, and I charge you that it's an important rule of law that a Defendant in a criminal trial, no matter what the seriousness of the charge might be, will always be presumed to be innocent of the crime for which the indictment has been issued until and unless guilt has been proven by evidence satisfying you, the jury, of that guilt beyond a reasonable doubt. The presumption of innocence doesn't end when you begin your deliberations. It accompanies the

Defendant throughout the trial until such time as you might reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

Many people describe the presumption of innocence that a Defendant has in a courtroom somewhat like the robe that a Judge wears into the courtroom. In other words, that presumption of innocence or that robe is about the Defendant's shoulders at the beginning of the trial. It remains about the Defendant's shoulders throughout the trial. It accompanies the Defendant into your deliberations. That robe remains upon the Defendant's shoulders until such time as it might be stripped from him by evidence that satisfies you of the Defendant's guilt beyond a reasonable doubt.

Now, you've heard me refer to proof beyond a reasonable doubt on about three occasions already, and you probably realize that that's an important concept in our judicial system, that is in criminal cases guilt must be proven beyond a reasonable doubt, and so you may ask yourself, "Well, what's the legal definition of a reasonable doubt? Just what is a reasonable doubt?"

Now, I will tell you that under the law a reasonable doubt has been defined as that kind of doubt that would cause a reasonable person to hesitate to act, and the State has the burden of proving the Defendant guilty beyond a reasonable doubt.

Now, I want to clear up one thing for you so I'm sure we don't have any confusion on a point. If you've ever been involved in a civil matter, civil matters before the courts are cases that involve the recovery of money. That can be because somebody breached a contract or failed to pay a debt or perhaps injured someone and owes them money for the damages, things of that nature, and in civil cases, the standard of proof is proof by the greater weight or the preponderance of the evidence. It's been defined as the scales of justice tilting just ever so slightly either in favor of a Plaintiff or in favor of a Defendant, and that would entitle that side to a verdict. That's the standard of proof in a civil case, and that standard of proof doesn't apply in a criminal case such as this one. Again, the standard of proof in a criminal case is more powerful than that. Proof beyond a reasonable doubt is that kind of proof that would leave you firmly convinced of a Defendant's guilt.

I'm going to tell you, there's very few things that go on in this world that can be proven beyond any doubt whatsoever, and the State does not have the burden of proving its case by proof that overcomes every possible doubt. What I will tell you is that if after your consideration of the evidence if you are firmly convinced of the Defendant's guilt beyond a reasonable doubt, you must find the Defendant guilty, but by the same token, if you think there's a real possibility that

the Defendant is not guilty, then you must give the Defendant the benefit of the doubt and find the Defendant not guilty.

Now, I'll remind you during the trial, you and I have had certain duties to perform. They're different duties. As the trial judge, it's my responsibility to preside over the trial of the case, and it's been my responsibility to rule on the admissibility of certain evidence, to rule on the appropriateness of questions that were being asked, and I will tell you that you should consider only the competent evidence that was placed into the record of this case in reaching a verdict in this case. So if there was any testimony or any matter that I ruled out of order or ordered stricken from the record, you should not consider those matters at all in reaching a verdict. You are to consider only the testimony and the evidence presented from the witness stand and any exhibits that went into the record through that testimony and any stipulations or agreements by counsel as to the evidence to be placed into the record.

I now have the additional duty of charging you concerning the applicable law in this case, and I told you at the beginning of the charge, the trial, just as you are the sole judges of the facts in this case, I am the sole judge of the law in this case. It's your duty under your oath to accept and apply the law as I now state it to you. So if you have an idea as to what the law is or what the law ought to be, I'll

tell you to leave those ideas outside of the jury room before your deliberations. You're sworn to take the law as I give it to you and apply that to the facts as you determine those facts to be, and I've told you that you are the sole judges of the facts. Please don't take from anything that I have said or done in the exercise of my responsibilities in this trial, either during the trial or even during this charge, to somehow indicate to you that I have an opinion as to how you should determine the facts in this case. You see, the law does not allow me an opinion as to the facts. I have no opinion as to how you determine the facts in this case. Since you are the sole judges of the facts in this case, please don't take from anything that I may have said or done to indicate that I have an opinion concerning that matter because as jurors it's your duty and it's your responsibility to determine the effect, the value, the weight and the truth of the evidence that's been presented during this trial.

Now, in carrying out your responsibilities, there's two types of evidence that you have the right to consider, and let me explain what I mean to you by two types of evidence that you should consider. The law divides evidence into two classifications. The first type we talk about is direct evidence. Now, direct evidence is testimony given by a person who claims to have actual knowledge of a fact, such as someone who is an eyewitness or a participant in an event, and they

offer evidence which immediately attempts to establish the fact that's sought to be proven. The other type of evidence that you have the right as a jury to consider is what is referred to as circumstantial evidence. Now, circumstantial evidence is proof of a chain of facts or circumstances indicating the existence of a fact. It's evidence which immediately establishes what's called collateral facts from which a main fact could be reasonably inferred. Now, that's a lot of fancy lawyer language. I like to use a very simple example of what we mean by proof of a fact by circumstantial evidence. Let's say one night you, before you went to bed, you walked to the window at your home, you looked outside. The stars were shining, beautiful night outside. Went to bed and you slept well all night, didn't wake up at all. The next morning you got up and walked over to that same window, looked outside and the sun was shining, but then as you looked a little closer you noticed there was water dripping from all the trees, grass in front of the house is wet. There's puddles in the driveway or the road in front of the house. You slept all night. So you didn't hear it rain. You didn't see it rain, but from certain collateral facts that you know to exist, know to be true, you could reasonably infer the existence of another fact, that is at some time during the night it rained. So that's what we mean of proof by -- of collateral facts from which a reasonable fact might be

reasonable -- another fact might be reasonably inferred. Circumstantial evidence, therefore, is based on inference. It's not based on personal knowledge or observation, and the law makes no distinction between the weight or the value that you as a jury can give to either type of evidence, direct or circumstantial. There's not a greater degree of certainty required of circumstantial evidence than that of direct. I will tell you as jurors you should weigh all of the evidence in the case, direct and circumstantial, and after weighing all of the evidence, if you're not convinced of the Defendant's guilt beyond a reasonable doubt, you must find the Defendant not guilty. On the other hand, if you're firmly convinced of the Defendant's guilt beyond a reasonable doubt, you must find the Defendant guilty.

Now, in doing your job as, as jurors, it's necessary that you determine the credibility or the believability of the witnesses who have testified during this trial, and that's what credibility means. It means believability. I told you earlier, it's your duty as jurors to analyze and evaluate the evidence. You determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified during the trial, I'll tell you as the sole judges of the facts you have the right to believe one witness against all the others. You could believe all the others against one.

You have the right to believe all of, part of or none of what a witness may have testified to during the trial. You may consider whether a witness exhibited to you an interest, a bias, a prejudice or any other motive in testifying in the case. You have the right to consider the appearance and manner in which the witness testified from the witness stand. I told you at the beginning of the trial, and I'll reaffirm now, you should use your good common sense in making determinations as to the credibility and the believability of witnesses who testified.

Now, during the trial, we received testimony from a couple of witnesses who were qualified as experts, and I told you I'd tell you a little bit more about that during my charge, and I explained when those people testified that the rules of evidence ordinarily do not allow witnesses to testify about opinions or conclusions, and that there's an exception to that general rule for witnesses who are called expert witnesses. That's a witness, again, who because of their education or their experience has become an expert in some art, science, profession or calling, and as to those witnesses, if they are so qualified, they're allowed to state an opinion as to any relevant or material matter in which the witness claims to be an expert and can state the reasons for the opinion.

Now, as a jury, you should consider the testimony of an

expert received in this case just like any other evidence in the case. You give it the weight you think it deserves. If you decide that the opinion of an expert is not based on sufficient education or experience or you conclude that the reasons given in support of the opinion are not sound or that the opinion has been outweighed by other testimony, you have the right to disregard the opinion entirely. An expert witness's testimony is to be given no greater weight than that of any other witness simply because that person was an expert. Further, you're not required to accept an expert's opinion even though it may not be contradicted. You're the sole judges of the facts. You give all of the testimony the weight that you think it deserves, both lay testimony and expert testimony.

Now, I'm going to explain a theory under the law or a premise under the law to you. It's referred to as the hand of one, and I will tell you that if a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan or purpose. For example, two people could be responsible for a crime when only one of them actually had the means to carry it out and only one of them actually

committed the act that was the commission of the crime, if those people acted together. Acting together, assisting each other in committing the offense, the act of one becomes the act of all, and sometimes it's referred to under the law as the hand of one becomes the hand of all or the hand of one is the hand of all.

Now, prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of a crime, and mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, is not sufficient to convict the Defendant as a principal. Guilt as a principal is shown by actual or constructive presence at the scene of a crime as a result of a prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal, and the State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

Now, when I talk about a principal in a crime that's someone who either actually commits the crime or who is present aiding, abetting or assisting in the commission of the crime. When a person does the act -- an act in the presence of another and with the assistance of another, the act is done by both. Where two or more are acting with a common plan or intent, the -- and are present at the commission of a crime,

it doesn't matter who actually commits the crime. All are guilty. Again, the hand of one is the hand of all. Present, being present at the commission of a crime means to be sufficiently near so as to aid, abet or assist in the commission of the crime. However, I will tell you merely being present where a crime is committed, at the place a crime is committed is not sufficient to convict one as a principal on the theory of aiding and abetting, and intent is a necessary element. There must have been a common design or intent to commit the crime, and the crime must have been committed pursuant thereto with all persons aiding and abetting by some overt act. Intent means intending the result which occurs, not accidentally or involuntary, and intent can be shown by acts or conduct or other circumstances from which you could reasonably infer intent, and all of the elements of the hand of one must be proven by the State beyond a reasonable doubt.

Another issue in this case has been identification, excuse me, and that is the issue of identification of the Defendant as the person who committed the crime charged. I will tell you, the State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you can convict the Defendant. Identification testimony is an expression or a belief or an

impression by the witness, and you must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as any other witnesses. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This can be affected by such things as how long or short of time was available, how far or close was the, was the witness to the event, the lighting conditions, whether the witness had a chance to see or know the person in the past. Once again, I instruct you the burden of proof is upon the State, and it extends to every element of the crime charged, and this specifically includes the burden of proving beyond a reasonable doubt the identity of the Defendant as the person who committed the crime. If, after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty.

Now, later on I'm going to go over with you the actual crime that was charged in this case, and that is the crime of murder, and when we go over that crime, you will hear that there are certain elements or factors that have to be proven in order to establish that particular offense, and one of the factors you'll hear will be an element requiring intent. So I'm going to talk to you a little bit about what is meant legally by intent.

In order to establish criminal liability, criminal intent

is required. For example, that's the mental state required to be proven by the State for a particular crime, and that might be purpose, intent, knowledge, recklessness or even criminal negligence, and I'll define that intent to you when I talk to you about the crime of murder. Criminal intent must be proven by the State beyond a reasonable doubt, and criminal intent is always a matter which must be determined by a jury from the circumstances surrounding the event or the situation. You see, there's no way that you could be present or anyone could be present at the commission of a crime, open up someone's head and look at their brain and see what they intended to do at that moment. We can't do that. So there's no way medical science or any science can prove what someone's intent was at any given moment. So, therefore, intent may be inferred from the circumstances that are shown to have existed. That's how you make a determination as to whether or not the elements requiring intent was present. So it's not necessary to establish criminal intent by direct or positive evidence, but intent may be established by inference in the same way as any other fact, taking into consideration the acts of the parties and all the facts and circumstances of the case. I will tell you, however, criminal intent is a mental state, it's a conscious wrongdoing. It's up to you to determine what the Defendant intended to do in this -- at the time of this event based upon the circumstances that have shown -- been shown to

have existed.

Now, I'm going to go over some things about the witnesses so that we've got an understanding. There has been evidence presented that some witnesses may have made prior statements which are not consistent with their present testimony in this case. You may use this evidence to decide whether to believe the witness. You may also use this evidence of earlier contradictory statements to determine the truth of those statements. It's up to you, the jury, to decide whether to believe the earlier statements or the testimony given at trial.

If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the testimony of the witness as to other matters. You may reject all of the testimony that a witness gave or part of the testimony. You may give it the weight you think it deserves.

Also, persons testified in this case who had past criminal records. A person who has a past criminal record is competent to testify at a trial. A past record does not affect the ability of the witness to testify. The past record may only be considered by you, if at all, in determining the believability of the witness. Remember, you're the sole judges of the facts of the case. That makes you the sole judges of the believability of any and all witnesses in this

matter.

Now, I'm going to instruct you, and I'm going to emphasize to you that the fact that the Defendant did not testify is not a factor to be considered by you in any manner in your deliberations and your considerations on the question of the guilt or the innocence of the Defendant. It must not be considered by you in any manner whatsoever. Every Defendant has a constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations at all. I repeat, under your oath, you are to draw no conclusions whatsoever from the fact that the Defendant did not testify in this case. The fact that the Defendant did not testify should not even be discussed by you in the jury room. The burden of proof in this case is upon the State, and I've stated to that, that to you, that the State has the only burden of proof. The Defendant is not required to prove his innocence in this matter. The burden of proof remains upon the State to prove guilt beyond a reasonable doubt throughout the trial.

I'm going to go over the offense of murder with you at this point in time, and the Defendant has been charged in the indictment as you will see with that offense. The State must prove beyond a reasonable doubt that the Defendant killed another person with malice aforethought.

Now, malice is hatred or ill will or hostility towards

another person. It is the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict an injury or under circumstances that the law would infer such an evil intent. Malice aforethought does not require that the malice exists for any particular length of time before the act is committed, but malice must exist in the mind of the Defendant just before and at the time the act is committed. Therefore, there has to be a combination of the evil intent, that is the malice, and the act. Malice aforethought can either be express or inferred. Now, these terms don't refer to different types of malice. What it means is that there are different ways in which malice may be shown to have existed, that is either by direct evidence, as I've indicated earlier, or by inference from the facts and circumstances that are proven.

Express malice is shown when a person speaks words which express hatred, ill will for another person or when the person prepared beforehand to do the act which was later accomplished; for example, lying in wait for a person or any other acts of preparation going to show that the deed was within the mind would be evidence of express malice, and you could give it such weight as you choose to give it.

The Defendant has raised the defense of alibi, and in order to establish an alibi, it must be shown that the Defendant was at another specified place at the time of the

crime -- the time was -- excuse me, at the time the crime was committed, and that it was, therefore, impossible for the Defendant to have been at the scene of the crime. Mere denial of presence at a scene does, does not constitute an alibi defense. Now, there is no burden on the Defendant to prove an alibi. However, the burden is on the State to prove beyond a reasonable doubt the Defendant was actually present at the scene of the crime, actually participated in it, and was not somewhere else. In other words, the State has the burden of disproving the Defendant's alibi defense.

I'm going to ask Ms. Helen Manning to raise her hand. You're going to be the foreperson of the jury. That means you will be the person who will be responsible to preside over the deliberations of the jury. You will, should the jury have a question during deliberations, it would be your job to write the question on a piece of paper, knock on the door, pass it to the bailiff, and the bailiff would bring that question to me for my consideration.

Now, I can't answer any -- every question you may have during your deliberations. I can't get into your decisions on the facts in this case. So I can't get involved in your discussions of the facts. I can answer questions that might relate to the law that I've charged you or the procedure that we followed, but don't edit any question the jury may have, ma'am. If you would please just write down the question,

submit it, and I'll decide the appropriate response.

Also, once the jury has reached a verdict, it would be your job to write that on the piece of paper I'm going to give you for that purpose. Again, knock on the door and inform the bailiff that a verdict has been reached, but as I told you earlier, your verdict must be unanimous. So no one juror has any greater say in the outcome of this case than any other juror. In other words, the jury cannot reach a verdict until all of you unanimously agree upon that verdict, then it becomes the verdict of the jury. Then the foreperson should record that verdict and submit it to the Court once that's been reached.

Now, I've gone over a great deal of information with you. I want to be sure I haven't misspoken about something that I've told you. Also, there's a great deal of evidence that you'll be allowed to take back into the jury with you. I want to be sure that only the properly admitted evidence goes back to you. So we'll go through that, that with the attorneys. So I've got some housekeeping matters that I have to take care of before I give you your final instructions to begin your deliberations. So, Madam Forelady, I'm going to instruct you. I'm going to send you back to the jury room one more time. One more time I'll tell you don't begin any discussions about this case until I call you back into the courtroom and give you directions to begin deliberations. Do you understand

that, ma'am?

FOREPERSON: Yes, sir.

THE COURT: All right. You may retire to the jury room. Thank you very much.

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

THE COURT: Exceptions to the charge from the State?

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

THE COURT: Any from the Defense?

MR. BARR: No, sir, Judge.

THE COURT: All right. I'll ask you to come forward and go through the evidence and see if we can reach an agreement as to what goes back and let's move it separately. Then I have a proposed verdict form. I'll ask you to step up and take a look at that and see if you have any objection to the verdict form.

I think you've got a couple of recordings? The 911? There's no way to play those back there; is that right?

MS. BAILEY: No.

THE COURT: So I'll instruct them if they want to hear them they'll have to come back out.

MS. BAILEY: Yes, Your Honor.

(Exhibits reviewed and approved by counsel for the State and counsel for the Defense.)

THE COURT: All right. We have an agreement that the

exhibits have been separated on the table here; is that correct?

MR. BARR: Yes, sir.

MS. BAILEY: Yes, Your Honor.

THE COURT: All right. Do you want to look at this verdict form, counselors, see if there's any objection to that form? That's the form.

(Counsel for State and Defense review verdict form.)

THE COURT: Any objections to the form, and any objections to the indictment going back?

MR. BARR: No, sir.

MS. BAILEY: No.

THE COURT: All right. Let's bring the jury in.

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

THE COURT: All right. The record will reflect that the jury has returned to the courtroom. Do you have the verdict form I handed you, sir? Is it right there? You want to pass the verdict form up to the forelady?

All right. Ms. Manning, that is the verdict form that will be in use for this court, for this trial. I'll go over with you the form briefly. At the top it indicates the state and county that we're located in. It has the name of the case, the State against Mr. Dizzley, of course. It has the identifying numbers for the indictment. There's only one

question on the form, and that is as to the indictment for the offense of murder there are two choices for the verdict, either not guilty or guilty. Once the jury has reached a unanimous verdict on that question, you would put an X or a check on the blank line adjacent to the appropriate verdict. Now, I'm going to tell you not to take any significance or importance from the order in which I put those choices on the form. I've been trying jury cases now for about ten years, and every time I've done one they've always been in that same order. So it's no preference on my part. That's the way it is on my computer and that's the way I do every verdict form I do. So don't think that that's some suggestion on the Court's part because I have no opinion as to what verdict you reach in this matter.

Once the verdict's reached, you'll check the appropriate blank, then you'll sign that document and knock on the door and inform the bailiff that a verdict's been reached. In the exhibits there are two disks, the 911 recordings. There's no way for you to play those in the jury room if you wish to listen to those during your deliberations. So if you decide you do wish to review those or listen to them, knock on the door, let the bailiff know that, we'll bring you back into the courtroom where we can play that on the devices here in the courtroom. So if you do need to listen to any of that information, please let us know. You have a right to. We'll

be glad to let you listen to it.

Now, at this point in time, Madam Forelady, we're going to deliver the, the exhibits to you. There are blank pads here if you'd like to get those, if you want to use those to -- for, for deliberations you can pick those up as you go back. There's one for each juror. If you want to have one of those in deliberations to write down things, you certainly have the right to do that. So you can pick those up and take those in there with you if you would like. We'll deliver the exhibits to you. So I will instruct you at this time for the jury, not you, Mr. Alternate, but the jury to retire to the jury room to begin your deliberations at this time. You may retire. Pads are available over here if you'd like them.

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

THE COURT: Just remain seated. I'll talk to you in just a second. All right, Mr. Foreman, you want to -- Mr. Bailiff, you want to take those exhibits back to the jury panel for me?

(Complies with request and deliberations begin at 4:05 p.m.)

(Foreperson released by the Court.)

THE COURT: All right. Any objections to my final instructions from the State?

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

THE COURT: Any from the Defense?

MR. BARR: No, sir, Judge.

THE COURT: All right. We'll be in recess until such time as a verdict has been reached, and I've asked that Mr. Dizzley be taken into custody during deliberations.

MS. BAILEY: Thank you, Your Honor.

***** OFF THE RECORD *****

(On the record. The following takes place outside the presence of the jury. Question from jury at 4:50 p.m.)

THE COURT: All right. I've received a question from the jury. I'll ask that the bailiffs bring the jury back in so that I can respond to their request.

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

THE COURT: The foreperson will be sitting in that seat right there. Thank you.

All right. The record will reflect that the jury has returned to the courtroom. I received an inquiry from the jury. It says, "When did the witnesses, Mo, Naomi, D.J. and Willie Stanley report, 'I heard Dre say Little D, Diz, did it'?" Madam Forelady, for me to answer that would require that I comment concerning the facts in this case, and I --

FOREPERSON: I'm -- oh.

THE COURT: Be seated for just a moment. Thank you.

FOREPERSON: Okay. I was going to speak in there.

THE COURT: I'm not asking you to speak.

FOREPERSON: Okay.

THE COURT: Because we can't get into a discussion concerning your deliberations in the courtroom. Those can only be conducted by you in the jury room.

Now, I'm not allowed to answer the question or respond to the question because it would constitute me commenting concerning the facts in this case. Now, in certain circumstances, if you request it, testimony of witnesses can be replayed or gone back over with you in the, in the courtroom if you request that specifically, but for me to answer the question to you would require that the Court comment concerning on the, concerning on the facts. I'm not allowed to do that.

So I'm going to be asking you to go back in the jury room to continue your deliberations at this point in time. Let me point out just a couple of things to you. I note that it's about 5:00 o'clock. If there's anyone that you would like for the clerk to contact for you to let them know that you're here at the courthouse doing your duty and may be here for some time, if you would write the juror's name, the person to be contacted and the phone number to be called, pass that out to the bailiffs. I'll ask the clerk to call those people and let them know where you are and what you're doing. So if you have a concern in that regard, let us know. If you feel that you need to order supper, we'll provide supper to you while you're

in deliberations. It takes about an hour for a meal to get here. So if you would inform us as to whether you wish to do that or do not wish to do that, then we can make arrangements for you to have a meal here while you're in deliberations, should you choose to do that. Just let us know how you'd like us to handle that. I'm not telling you how long to deliberate or how to deliberate. That's totally up to you. If at any point during the, the afternoon or the evening you decide that it would be best to take a break and come back, we can do that. I would have to give specific instructions to you as to how that would be handled, but again, you'd need to let me know if that's your wishes. So it's your deliberations. You, you will be controlling them at this point in time. Let us know how you wish to proceed and we'll be glad to take care of those issues for you.

Now, let me caution you, if any of these things require that someone from the clerk's office or a bailiff enter the jury room, I will ask you to stop your deliberations. Do not discuss anything about the case while the person is in the room taking a dinner order or receiving numbers to call. So the case should not be discussed in front of anyone who is not a member of the jury panel. So if someone, if someone from the clerk's office or a bailiff is -- has the door open or is in the, in the jury room, stop your deliberations until that matter has been resolved.

FOREPERSON: May I?

THE COURT: Yes, ma'am.

FOREPERSON: My question to you is if we have to re-listen or rehear testimony, would we read it? I mean, how would that be because that question --

THE COURT: I'll have to talk. I don't know how the court reporter can do that. I'll have to talk to her. She has that, that information. So I can't answer that question for you at this time. If you do wish to review any of the testimony, you'd need to let me know and then I'd need to make arrangements with the court reporter to take care of those things. So I can't answer that question at this time either, but if you feel that you do need to listen to portions of it, obviously it will be -- there's a lot of testimony, and it may take a while to locate that, but that doesn't mean we can't do it. So let us know if you'd like for us to do that, and we'll make arrangements.

FOREPERSON: Okay.

THE COURT: You may retire.

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

THE COURT: Any objections to my response from the State?

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

THE COURT: Any from the Defense?

MR. BARR: No, sir.

THE COURT: All right. I'll have the, the question marked as a Court's Exhibit, made a part of the record. We'll be in recess until a verdict's reached. Thank you.

(Court's Exhibit Number One [Question from Jury] appropriately marked.)

***** OFF THE RECORD *****

(Note received from jury [Court's Exhibit Number Two] at 5:50 p.m. Note received from jury [Court's Exhibit Number Three] received from jury at 5:56 p.m.)

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

THE COURT: All right. I wanted to put on the record that I had received two communications from the jury through the bailiffs. One communication was a request that they order dinner. I've instructed the clerk to proceed with ordering dinner and delivering it to the jury.

The other communication I received, they asked to take a short break. I did allow them to take a break with the bailiffs in the normal area where smokers are allowed to take a break, and they have been returned to the jury room at this point in time. I want those, both communications to be made an exhibit in the trial.

(Court's Exhibit Number Two [Question from Jury Re: Dinner] and Court's Exhibit Number Three [Question from Jury Re: Break] appropriately marked.)

THE COURT: They have not asked any other questions about the case other than those two things.

Any objections to my handling in those matters from the state?

MS. BAILEY: None, Your Honor.

THE COURT: Any from the Defense?

MR. BARR: No, sir.

THE COURT: All right. We'll remain in recess then until a verdict's been reached. Thank you very much.

MS. BAILEY: Thank you.

***** OFF THE RECORD *****

(Note from jury at 6:15 p.m. The following takes place outside the presence of the jury.)

THE COURT: All right. I've received a communication from a juror through the bailiff. The communication was, "May I have a deputy escort me to my home to get my prescription?" When I asked the bailiff about it, I was informed that it was some type of pain medication. I denied the request and indicated that we would provide aspirin or other non-prescription medication if necessary. The bailiff informed me that the juror under those circumstances chose to proceed with deliberations and did not ask that we pursue that request. Is that correct, Mr. Bailiff?

BAILIFF: Yes, sir.

THE COURT: All right. I'll have this communication made

a part of the record as a Court's Exhibit and we'll remain in recess until a verdict's reached.

(Court's Exhibit Number Four [Note from Jury Re: Prescription] appropriately marked.)

***** OFF THE RECORD *****

(On the record. Verdict reached at 7:42 p.m. The following takes place outside the presence of the jury.)

THE COURT: All right. I've been informed by the bailiffs that a verdict has been reached. Is the State ready to receive the verdict?

MS. BAILEY: Yes, Your Honor.

THE COURT: Defense ready to receive the verdict?

MR. BARR: Yes, sir, Judge.

THE COURT: All right. Let's bring the jury in.

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

THE COURT: All right. The record will reflect the jury has returned to the courtroom. Madam Forelady, the bailiffs have informed me that a verdict's been reached. Is that true?

FOREPERSON: Yes, sir.

THE COURT: Pass the form to the bailiff, please.

(Complies with request.)

THE COURT: Thank you.

Madam Clerk, you may publish the verdict.

THE CLERK: State of South Carolina, Georgetown, County

of Georgetown versus Terron Gerhard Dizzley, we, the jury, unanimously find the Defendant, Terron Gerhard Dizzley, concerning the offense of murder, indictment number 2009-778, guilty.

THE COURT: Madam Forelady and ladies and gentlemen of the jury, if this is your verdict and still your verdict let it be known by raising your right hand.

Ma'am, are you raising your right hand, the lady in the back? Is this your verdict and still your verdict? If so, please raise your right hand.

(Jurors raise right hand.)

THE COURT: All right. Anything further from the State?

MS. BAILEY: No, Your Honor.

THE COURT: Anything further from the Defense?

MR. BARR: No, sir.

THE COURT: All right. Ladies and gentlemen of the jury, at this point in time this completes your service on this jury panel. I want to thank you very much for your attention to your responsibilities in this case. I will -- I've told you throughout the trial that you should not discuss this case with anyone. I will tell you now that you have the right to do so. You also have the right not to do so. If anyone were to harass you or bother you concerning your service on this jury panel, please report that to the clerk's office. The appropriate action will be taken.

Now, the bailiffs will check you out at this point in time and I will tell you this will end your jury service for the week. We're not starting another jury trial this week. So this will complete your service. If you need any assistance with excuses from work or any information about your juror pay, the bailiffs and the clerks will be glad to inform you of that. You're not required to be here for sentencing. You have the right to attend. If you do wish to attend sentencing, let the bailiffs know. They'll tell you what arrangements can be made.

Again, thank you very much for your attention to the case. Madam Forelady, you're going to need to stop and see the clerk briefly. You'll need to sign something on the indictment for us before you leave. At this time the jury may retire. Thank you very much. Ma'am, if you'll wait right there just a moment.

(Clerk and Court confer concerning retrieving indictment from jury room.)

THE COURT: Madam Forelady, if you know where it is, you can retrieve it and bring it back to us. All right. Thank you, ma'am. Thank you very much.

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

THE COURT: I'll remain on the bench while we prepare for sentencing.

MS. BAILEY: Thank you, Your Honor. The State is prepared to make a brief sentencing presentation.

THE COURT: All right.

MS. BAILEY: There are some victims that may wish to speak.

THE COURT: Mr. Barr, if you could stand at the counsel table that'll be fine. Thank you. Let me know when you -- are you ready at this time?

MS. BAILEY: Yes, Your Honor. The State is ready to begin its presentation.

THE COURT: All right. Has the sentencing sheet been completed?

MS. BAILEY: Yes, Your Honor. It's my understanding that it doesn't need a signature since it's a conviction?

THE COURT: Pass it up. I normally get them signed. So if you'd present that to the Defendant and Defense counsel. I will note that it's a verdict. It's not a plea.

(Complies with request.)

THE COURT: Thank you. All right. Mr. Dizzley, at this point in time, I'd ask that you please stand.

(Complies with request.)

THE COURT: Mr. Dizzley, having been found guilty by a jury of your peers of the offense of murder, I will consider sentencing at this point in time. I will hear from your attorney. Then I will give you an opportunity to speak, and

of course, if there's anyone who wants to speak on your behalf, I'll be happy to hear from them as well.

At this time, Mr. Barr, I'll be happy to hear from you.

MR. BARR: Judge, I think you've pretty much heard the facts of this case at least from the standpoint of where we are, and we have nothing further.

THE COURT: All right. Mr. Dizzley, anything you'd like to say to the Court at this time? Is that a no, sir? Did you -- are you shaking -- you're shaking your head no, but I've got to get a verbal response.

MR. DIZZLEY: Nothing I say going to matter anyway.

THE COURT: Thank you, sir. All right. I'll hear from the State.

MS. BAILEY: Thank you, Your Honor. First, brief recitation of Mr. Dizzley's criminal record, which is relevant for the purposes of sentencing. In 1997 he was convicted of pointing and presenting a firearm. In 2000 he was convicted of unlawful carrying of a weapon, and in 2011 while on bond for this crime he was convicted of assault and battery first degree.

It is the State's contention that given that particular record of carrying weapons, of pointing them at people and of committing assault and battery, that that should enhance the sentence. As Your Honor's aware, murder carries 30 to life. The evidence in this case, and the jury did -- there was

really one question for the jury in this case and that was identity. There's not been dispute as to how the crime happened, and the evidence in this case is that it was premeditated. It was calculated, that the killer wore a mask and gloves, and it's the State's contention that in the range of 30 to life, which is what murder carries, that Your Honor should provide a substantial sentence given the facts in this case.

THE COURT: Now, does the victim wish to be heard, the victim's family?

MS. BAILEY: No, Your Honor. I want to note for the record, can you all stand up?

(Complies with request.)

MS. BAILEY: Your Honor, in the courtroom today, we have Aundry Evans, Sr., the father of the victim. We have Ms. Iteka Brown, who is the victim's ex-wife. She brought with her their two children. These are Aundry Evans, Jr.'s, 13 year old twins. Ma'am, can you tell me your name?

MS. FORD: Bernetha Ford.

MS. BAILEY: She's a family member and aunt of the victim. In the courtroom earlier today was Naomi Alston, who also has two very small children by the victim. He had four children total.

THE COURT: All right, and counsel, would you go over again with me the prior record that you'd like for me to

consider?

MS. BAILEY: Thank you, Your Honor. In 1997 a conviction for pointing and presenting, in 2000 a conviction for unlawful carry of a weapon, and in 2011, an assault and battery first degree.

THE COURT: And those were all convictions?

MS. BAILEY: Yes, Your Honor, according to his NCIC.

MR. BARR: Judge, before we -- you pass sentence, I've just been advised that the Defendant's mother wishes to address the Court if Your Honor, please.

THE COURT: Well, I'll be happy to hear from her. So if she'll step -- stand up, please.

Ma'am if you want to step aside, step out beside Mr. Barr please. Thank you. Your name is?

MS. FRAZIER: My name is Gwendolyn Dizzley Frazier.

THE COURT: Yes, ma'am. I'll be happy to hear from you.

MS. FRAZIER: And I'd just like to say that I know my son didn't do this. He and Aundry were friends. The jury has spoken, but it seems to me that all of the friends again had the same story, but the policeman, especially the, the one that names Mo said that he was with him the whole time, and Naomi said she was with him in the ambulance, the policeman said that he was with him. He didn't see a Mo at all, and he didn't see Naomi at the ambulance. So there were a lot of consistencies [sic]. I notice when the -- you said was there

a unanimous verdict, there was one juror that was very reluctant to raise her hand, and finally she did. So I feel and I'm asking for mercy for the Court, but I feel that it was, it was a hasty decision, and I just think a person's life who is at stake I feel that the jury should have taken more time in an effort to really assess a case and come up with a true verdict.

We ask for mercy on the Court. He has a small baby that's 15 months old. He has -- he would -- he, he doesn't even fire a gun at home. He won't even hunt. My nephew is in the Army, fires guns. He never touches them. So we just -- it's just a sad situation when you might say justice been done, but I certainly doesn't feel it's been done. Thank you so much for your indulgence.

THE COURT: Thank you ma'am.

MR. DIZZLEY: Your Honor, I do want to say something.

THE COURT: Yes, Mr. Dizzley.

MS. FRAZIER: And -- and the other fellow said maybe she, she was coerced.

THE COURT: Ma'am, ma'am, you've had a chance to speak. If you'll step back. Thank you.

MR. DIZZLEY: I just want to say that despite the verdict I did not murder this man's son. Me and this, me and this man's son was very good friends, and throughout this whole trial, I never understood anybody give a motive for what I

did, supposedly what I supposed to had killed him over a TV? We, we was partnership in a club. Naomi denies that we was even a partnership in the club. It wasn't no big money involved in it. The man only charged us $750 a month. Aundry can't -- Aundry used to come to Orangeburg. Aundry used to hang out with me. Aundry was involved in some things that I don't agree with that he used to do, and it's probably a result of why he got murdered, but because of as you understand Ms. Bailey just called my background record out, so my attorney felt like it wouldn't be important for me to take the stand on that, but I'm not a gangster. I don't, I don't do stuff like that, and I don't have -- I have no reason to kill, to kill Aundry. He was my friend. He helped me out a lot in times when, when I was down. He helped me out, and I have no reason to kill him despite of what any, anyone would think. I loved him. I never got a chance to see him or anything. I never got a -- everybody think that these people when I moved to Orangeburg in 2004, and 2008 he asked me, I haven't come back to Georgetown since then because he asked me to come and help him run the club. The club -- I'm, I'm -- when I was living in Georgetown, I was living in Sampit. The club was in Oatland. I don't even know nobody in Oatland. All of these people that are testifying barely even seen me twice so.

THE COURT: Mr. Dizzley, at this time I'm considering

sentencing. I'll be glad to ---

MR. DIZZLEY: So, I'm just -- I just wanted to let that know. I just wanted to let, to let that be known to the family. It doesn't matter. I'm going to get -- I'm going to go to jail for it anyway, but the person who did it is still out there. Nobody gave a reason why I did it. What was the motive?

THE COURT: Mr. Dizzley, it is the sentence of this Court that you be confined in the State Department of Corrections for a period of 35 years. Good luck to you, sir. Court's adjourned.

(Adjourned.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State of South Carolina versus Terron Gerhard Dizzley, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on March 31, 2014 through April 3, 2014.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley

Grace L. Hurley, CVR-CM-M
Official Reporter

November 17, 2014.