RECEIVED
Aug 15 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
General Sessions Court
The Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2019—001570

State of South Carolina……Respondent,

vs.

Devin Zachary Elijah Ruttle……Appellant.

RECORD ON APPEAL

Volume I (pp. 1–500)

Christopher T. Brumback
531 South Main Street, Suite 307
Greenville, SC 29601
Attorney for Appellant Devin Zachary Elijah Ruttle

Julianna E. Battenfield
Assistant Deputy Attorney General
South Carolina Office of the Attorney General
1000 Assembly Street, Suite 500
Post Office Box 11549
Columbia, SC 29211-1549
Attorney for Respondent

INDEX

Volume I (pp. 1–500)

ORDERS

September 5, 2018 Order Denying Immunity……. 1

September 16, 2019 Order Denying Motion to Reconsider Sentence…….. 5

April 7, 2022 Order Denying Motion for New Trial……. 6

PRETRIAL MATTERS

Immunity Hearing Transcript (Tr. 1, 2, 4-86), August 29, 2018, for *State of South Carolina v. Lorenzo Guillermo Daniel Calderon and Devin Zachary Elijah Ruttle*, Indictment Nos. 2017GS425449 and 2018GS424411, In the Court of General Sessions of Spartanburg County, South Carolina

Opening Statements on Motion for Immunity ……. 16

Kevin Stiens
Direct by Monier Abusaft…… 16
Cross -examination by Derrick Bulsa…… 19
Redirect by Monier Abusaft……. 22

Devin Zachary Elijah Ruttle
Direct by Richard Vieth……. 23
Cross-examination by Monier Abusaft…….. 39
Cross-examination by Derrick Bulsa ……. 41

Harvey Owens
Direct by Derrick Bulsa…… 62
Cross-examination by Monier Abusaft…… 71

Argument on Motion for Immunity…… 77

TRIAL

Trial Transcript (Tr. 1, 4, 8, 13-85, 99-110, 118, 120-156; 160-169; 183-188; 190-191; 201-227, 230-232; 243-252; 259-260; 267-274; 280; 289-330; 334-362; 376-455; 458-462; 467; 471; 474-475; 491-625), Transcript of Record, September 10-13, 2018, *State of South Carolina v. Lorenzo Guillermo Daniel Calderon and Devin Zachary Elijah Ruttle*, Indictment Nos. 2017GS425449 and 2018GS424411, In the Court of General Sessions of Spartanburg County, South Carolina

Pretrial Conference and Motions……. 101

Voir Dire…… 117

Jury Sworn…… 159

Opening Statements
- By State…… 168
- By Appellant's Counsel……. 172

Testimony

James Owens
- Direct by State……..……. 174
- Cross -examination by Appellant's Counsel……. 184
- Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 184
- Redirect by State…….. 185

Jeannie Burnett
- Direct by State……..……. 186
- Cross -examination by Appellant's Counsel……. 188

Justin Kyle Rector
- Direct by State……..……. 189

Jeffery McCallister
- Direct by State……..……. 194

Tammy McCallister
- Direct by State……..……. 202
- Cross -examination by Appellant's Counsel……. 206
- Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 206

Donald Greene
Direct by State……..……. 207

Debbie Greene
Direct by State……..……. 209
Cross -examination by Appellant's Counsel……. 211

Stephanie Brewster
Direct by State……..……. 212
Cross -examination by Appellant's Counsel……. 221
Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 223

Jerry Taylor
Direct by State……..……. 224
Cross -examination by Appellant's Counsel……. 229
Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 231

James Rush
Direct by State……..……. 234
Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 240

Hunter Sizemore
Direct by State……..……. 242
Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 260
Redirect by State…….. 262
Recross by Monier Abusaft (Co-Defendant's Counsel)…… 265
Redirect by State…….. 267
Recross by Monier Abusaft (Co-Defendant's Counsel)…… 268

Kukila Wallace
Direct by State……..……. 272

Harvey Owens
Direct by State……..……. 282
Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 292

Maria Calderon
Direct by State……..……. 293
Cross -examination by Appellant's Counsel……. 299
Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 300
Redirect by State…….. 303

Brittni Gossett
Direct by State……..……. 305
Cross -examination by Appellant's Counsel……. 307

Thomas Edward Darnell
Direct by State……..……. 309

Chad Smith
Direct by State……..……. 313
Cross -examination by Appellant's Counsel……. 326
Redirect by State…….. 327

Catherine Leisy
Direct by State……..……. 329

Dr. John David Wren
Direct by State……..……. 335
Cross -examination by Appellant's Counsel……. 341
Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 349
Redirect by State…….. 357
Recross by Appellant's Counsel…… 362
Recross by Monier Abusaft (Co-Defendant's Counsel)…… 362
Redirect by State…….. 363

Brittni Gossett
Direct by Appellant's Counsel…….. 364

Devin Ruttle
Direct by Appellant's Counsel…….. 366
Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 390
Cross-examination by State…….. 396
Recross by Monier Abusaft (Co-Defendant's Counsel)…… 437
Recross-examination by State…….. 441

Brianna Ivester
Direct by Appellant's Counsel…….. 444
Cross -examination by Monier Abusaft (Co-Defendant's Counsel)……. 446
Cross-examination by State…….. 448

Erica Scruggs
Direct by Appellant's Counsel…….. 451

Maria Calderon
Direct by Appellant's Counsel…….. 458

Jury Charges
Request to Charge……. 454
Trial Court's Ruling…….. 471
Charge to Jury…… 522

Closing Arguments
by Derrick Bulsa for the State…… 473
by Monier Abusaft for Co-Defendant……..……. 487

Volume II (pp. 501–879)

by Richard Vieth for Appellant……. 503
Reply by Derrick Bulsa for the State……. 519

Verdict & Sentencing
Verdict of the Jury..……. 557
Sentencing…….. 573

TRIAL EXHIBITS & OTHER MATERIALS OR DOCUMENTS

State's Exhibit 1…….. 588

State's Exhibit 3…….. 589

State's Exhibit 6-7…….. 590

State's Exhibit 12-17…….. 592

State's Exhibit 19-39…….. 598

State's Exhibit 41-48…….. 619

Indictment Nos. 2017GS425449 and 2018GS424411…….. 627

Sentencing Sheets for Devin Zachary Elijah Ruttle…… 631

POST TRIAL MOTIONS

Motion for New Trial on Grounds of Juror Disqualification…….. 633

Memorandum in Support of Motion for New Trial on Grounds of Juror Disqualification…. 635

New Trial Hearing Transcript (Tr. 1-127), May 12, 2021, *State of South Carolina v. Lorenzo Guillermo Daniel Calderon and Devin Zachary Elijah Ruttle*, Indictment Nos. 2017GS425449 and 2018GS424411, In the Court of General Sessions of Spartanburg County, South Carolina

Opening Statements on Motion for New Trial ……. 655

Testimony

Rick Vieth
Direct by Appellant's Counsel…..……. 657
Cross -examination by State…….…… 668
Redirect by Appellant's Counsel…… 679
Recross by State……. 683

Bunty Desor
Direct by Appellant's Counsel…..……. 684
Cross -examination by State…….…… 703
Redirect by Appellant's Counsel…… 710

Travis Mimms
Direct by Appellant's Counsel…..……. 713
Cross -examination by State…….…… 722
Redirect by Appellant's Counsel…… 732

Devin Zachary Elijah Ruttle
Direct by Appellant's Counsel…..……. 740
Cross -examination by State…….…… 752
Redirect by Appellant's Counsel…… 755

Argument on Motion for New Trial……. 757

POST-TRIAL EXHIBITS & OTHER MATERIALS OR DOCUMENTS

Affidavit of Rick Vieth…..……. 777

Affidavit of Travis Mimms……. 781

Form 235 Juror Information Section for Nysha Jefferies…….. 784

Spartanburg Circuit Court Form 235 Juror Information Response Packet for September 10, 2018 term of General Sessions Court……. 785

Spartanburg County Clerk of Court's Juror Venire/Worksheet for September 10, 2018….. 819

Emails between Appellant's Counsel, Trial Counsel for the State, and Judge Cole on July 21, 2020, May 4, 5, and 7, 2021, May 11 and 12, 2021, and May 25, 2021……..…. 849

Photograph from Facebook account of Nysha Jefferies with inscription wishing Janie Jefferies, her mother, a happy birthday on February 17……. 873

Photograph posted on September 23, 2011 to Facebook account of "Janieindependent Jefferies" with inscription indicating photograph is of her "oldest daughter"……. 874

Photograph posted on May 10, 2020 to Facebook account of Janie Jefferies with inscription wishing a happy Mother's Day to "my beautiful daughter Nysha Jefferies"…….. 875

Photograph posted on Facebook account of Nysha Jefferies on December 10, 2020, the anniversary of Charles Rosemond, Sr.'s death……. 876

Appellant's Exhibit No. 1 to Motion for New Trial, USB with File of Nysha Jeffries On Stage 12-2-2010 Video File to be filed separately pursuant to Rule 210(f), SCACR

Appellant's Exhibit No. 1(a) to Motion for New Trial, USB with File of 1-14-2011 Nysha Jeffries Video File to be filed separately pursuant to Rule 210(f), SCACR

APPELLATE MATTERS

Notice of Appeal served September 12, 2019…… 877

Certificate of Counsel……..…. 879

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF **SPARTANBURG**	)	
The **STATE** of South Carolina,	)	
	)	**ORDER**
Prosecutor,	)	
-vs-	)	Warrant/Indictment Number(s)
	)	
	)	
Devin **RUTTLE**,	)	**2017-GS-42-05449**
	)	
Defendant.	)	

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 SEP -5 PM 2:47
M. HOPE BLACKLEY

This matter was before this Court on the defendant's motion to dismiss, by and through his attorney **Richard W. Vieth**, Esq. claiming immunity from prosecution pursuant to S. *Code Ann. Section 16-11-140, et. seq.* At the hearing held in this matter the State was represented by **Derrick B. Bulsa**, Assistant Circuit Solicitor for the Seventh Judicial Circuit and **Russell D. Ghent**, Assistant Circuit Solicitor for the Seventh Judicial Circuit.

The defendant is charged with the crime of Murder. The State alleges that on May 5, 2017 he murdered Dalton Moore. The defendant asserts that he is immune from prosecution under the provisions of the "Protection of Persons and Property Act" and therefore cannot be prosecuted and seeks to have the indictment dismissed.

Applicable Law

"A person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from prosecution ... for the use of deadly force, ..." S. C. Code Section 16-11-450 (A) "A claim of immunity under the Act requires a pre-trial determination using a preponderance of the evidence standard ..." State v. Duncan, 392 SC 404 (2011)

"A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be ... has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself ..." S. C. Code Section 16-11-420 (C) "Consistent with ... the text of the Act, a valid case of self-defense must exist ... in determining a defendant's entitlement to the Act's immunity." "... [S]uch immunity is predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court by a preponderance of the evidence." State v. Curry, 406 SC 364 (2013)

In order to establish a case of self-defense, the defendant must demonstrate the following elements:

First, the defendant must be without fault in bringing on the difficulty.

#1

Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.

Fourth, the defendant had no other probable means of avoiding the danger of losing his life or sustaining serious bodily injury than to act as he did in the particular instance." State v. Curry, 406 S.C. at 371 n. 4 (quoting State v. Davis, 282 S.C. 45, 46 (1984) This element does not include the requirement that the defendant retreat before the employment of deadly force as this requirement is excluded under the Act.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 SEP -5 PM 12:47
HOPE BLACKMON

Discussion and Analysis

Ruttle testified that on May 5, 2017 he ran out of gas while driving his vehicle in Cowpens, a rural town ten miles east of the city of Spartanburg, South Carolina. He called his friend Lorenzo Calderon, who he had met through his father's church, for assistance. Calderon agreed to assist Ruttle and arrived at his location accompanied by his friend Hunter Sizemore. After obtaining gasoline, Ruttle was headed to see his girlfriend Brianna when he passed Dalton Moore walking along the roadway. Calderon with Sizemore as his passenger was driving his own vehicle following Ruttle.

According to Ruttle there was animosity existing between Calderon and Moore. Approximately one month prior to this event, during the Easter holiday, while Ruttle and Calderon were together, they came into contact with Moore. After an exchange of words, Calderon threatened Moore with a gun in the presence of Ruttle.

Ruttle testified that on the date of this event upon seeing Moore walking along the roadway his intention was to stop and speak with Moore to let him know that he was not involved in any differences or rancor that existed between Moore and Calderon. Having traveled past Moore, Ruttle pulled into a schoolyard parking lot in order to turn around to go back and speak with Moore. As he did so, Calderon, who was following, stopped his vehicle in the roadway jumping out along with Sizemore. Calderon had a gun and according to Ruttle's testimony was angry with Moore. Upon seeing Calderon stop his vehicle, Ruttle approached Calderon and, although Ruttle had two firearms of his own in his vehicle, took a handgun given to him by Calderon. Placing the handgun in his front waistband, Ruttle jumped a ditch and proceeded to approach Moore. As he approached, Ruttle observed Moore pulling a knife from his backside upon which Ruttle pulled the handgun from his front waistband firing it at Moore

#2

and killing him. Ruttle then ran to the passenger side of Calderon's vehicle, leaving the scene, and disposing of his shoes and the firearm used to kill Moore.

Immunity under the Act is "predicated on an accused demonstrating the elements of self-defense to the satisfaction of the trial court ..." Curry In order to establish self-defense the accused must demonstrate an absence of aggression or fault on his part in bringing on the difficulty which necessitated the use of deadly force. State v. Grantham, 224 SC 41 (1953)

The defendant argues that his testimony is not contradicted and is undisputed and therefore must be accepted by the Court as the facts relevant to the determination as to whether he is entitled to immunity under the Act. He argues that the facts as established by his testimony prove that he was acting reasonably and in self-defense at the time he shot and killed Dalton Moore. The presumptions created by S. C. Code Section 16-11-440(A), (D), and (E) are not applicable to the circumstances of this event and therefore the elements necessary to establish self-defense must be proven by the evidence presented in the case and any reasonable inferences that might be drawn from therefrom.

"The fact that testimony is not contradicted directly does not render it undisputed". Black v. Hodge, 306 SC 196 (Ct. App. 1991) "There remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation. If there is anything tending to create distrust in his truthfulness, the question must be left to the jury." Terwilliger v. Marion, 222 SC 185 (1952)

Ruttle asserts that he was approaching Moore with a gun in his waistband when Moore pulled a knife from his backside. He claims that he feared for his life or suffering serious bodily harm at the time he fired the fatal shot. Giving objective consideration to the evidence presented, it might reasonably be inferred that Moore, who was minding his own business while walking down a public roadway at the time he was confronted by a man with a gun, himself believed he was in danger of losing his life or sustaining serious bodily harm at the time he armed himself with a knife to protect himself from attack. This is especially convincing given the fact that there are three men, two of whom were armed with firearms, and the man approaching him with a gun in his waistband was in the company of Calderon less than a month prior when Calderon threatened him while brandishing a gun. It would be reasonable under such circumstances to conclude that Ruttle was at fault in bringing on the difficulty which resulted in the necessity of taking the life of Moore. One cannot through his own fault provoke an attack and then claim self-defense in responding to an attack caused by that provocation. State v. Jackson, 227 SC 271 (1955) Further, there is the question as to the reasonableness of Ruttle's conduct as well as to the reasonableness of any belief that he may have entertained regarding the need to employ deadly force under the attendant circumstances.

#3

Conclusion

Given the actual testimony presented as well as reasonable interpretations or inferences to be drawn therefrom, it appears that the defendant's "claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution." Curry. This Court therefore finds that the defendant has failed to establish by a preponderance of the evidence that he is entitled to immunity pursuant to S. C. Code Section 16-11-440(C) and his **MOTION** to **DISMISS** should be and **IS** therefore **DENIED**.

Because this Court has found the defendant has failed in his burden to establish his entitlement to immunity under the ACT, this Court declines to give further thought or consideration to the persuasive argument succinctly and ably presented by Mr. Ghent as to the Act and its constitutionality, or the lack thereof.

IT IS SO ORDERED!

J. DERHAM COLE, RESIDENT JUDGE
The SEVENTH JUDICIAL CIRCUIT COURT

September 5, 2018

FILED
CLERK OF COURT
BARNWELL COUNTY
2018 SEP -5 PM 3:47
M. HOPE BLACKLEY

#4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF **SPARTANBURG**	)	
The **STATE** of South Carolina,	)	**ORDER**
Prosecutor,	)	
-vs-	)	Indictment(s) No(s): 2017-GS-42-[illegible] 2018-GS-42-0411
Devin Zachary Elijah **RUTTLE**,	)	
Defendant.	)	

RECEIVED
SEP 16 2019
SC Court of Appeals

This matter came before this Court on motion of the defendant by and through his trial counsel, **Richard W. Vieth**, *Esq.* pursuant to Rule 29, SCRCrimP seeking reconsideration of the sentence imposed by the Court.

FILED
2019 SEP 10 P 5:15
CLERK OF COURT
SPARTANBURG COUNTY
SC

Salient Facts

The defendant appeared before this Court on September 13, 2018 for trial on the above-referenced indictments charging him with Murder and Unlawful Carrying of a Pistol. The State was represented by **Derrick B. Bulsa** of the Circuit Solicitor's office. The defendant was convicted by a jury and sentenced to life imprisonment for murder and one year concurrent for the unlawful carry charge.

The defendant is now seeking a reconsideration and imposition of a lesser sentence than that imposed by the Court. At a hearing held in this matter the defendant appeared with counsel and the State was represented by Mr. Bulsa. Mr. Vieth argued mitigation on behalf of the defendant as he had ably done at the time sentence was imposed. The State argued for a denial of the motion.

Applicable Law

Rule 29, SCRCrimP, provides that "... post-trial motions shall be made within ten (10) days after the imposition of sentence."

Conclusion

The defendant's motion is timely made. This Court carefully considered the matter and all relevant material in aggravation and in mitigation of punishment at the time the sentence was imposed. No reason has been given or is apparent that would justify an alteration of it.

The defendant's Rule 29 **MOTION** should be and **IS** therefore **DENIED**.

September 10, 2019

J. DERHAM COLE, Presiding Judge
The Seventh Judicial Circuit Court

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF **SPARTANBURG**	)	
The **STATE** of South Carolina,	)	
	)	**ORDER**
Prosecutor,	)	
-vs-	)	
	)	
	)	
Devin Zachary Elijah **RUTTLE**,	)	Indictment Nos.: **2017-GS-42-05449**
	)	**2018-GS-42-04411**
Defendant.	)	

This matter was before the Court for hearing on the defendant's motion, by and through Christopher T. Brumback, *Esq.*, for a new trial on the grounds of juror disqualification. At a hearing held on the motion, the State was represented by Deputy Circuit Solicitor Derrick Bulsa.

The defendant was tried for the crimes of murder and unlawful possession of a handgun resulting in his conviction by a jury and sentence by the court. He appealed his conviction and sentence, which is presently pending before the South Carolina Court of Appeals. The Court of Appeals, upon motion by the defendant, has suspended the appeal and granted leave for the defendant to make this motion now before this Court for a new trial.

MOTION FOR A NEW TRIAL

The defendant moves this Court to grant him a new trial on the ground of juror disqualification "due to a juror's intentional concealment of material information plainly and specifically requested during *voir dire*". The defendant claims that a juror, assigned the number 92, intentionally failed "to respond to multiple clear and unambiguous questions regarding school and church connections" that the juror had with the defendant during the court's pre-trial *voir dire* of the panel. The defendant asserts that the juror's intentional failure to disclose "material" information during *voir dire* relating to those "connections" "denied the trial court the ability to determine whether a 'for cause' ground existed to strike Juror 92" and the defendant to intelligently exercise his right to peremptory challenges, thereby depriving him of his Constitutional right to a trial by an impartial jury.

At the hearing on the motion, the defendant presented testimony from four witnesses; himself, his trial counsel, his father, and a former youth pastor at the New Life Deliverance Worship Center. The juror complained of was not subpoenaed nor was the Court asked to have the juror appear in order to provide testimony regarding the subject matter of the inquiry as to her disqualification.

#1

APPLICABLE LAW

It is a fundamental principle of law that every defendant in the trial of a criminal case has the right to be tried by a fair and impartial jury. *U.S. CONST. amends. VI and XIV; S.C. CONST. art. I, Section 14.* As part of the process for determination of juror impartiality, the Court must conduct *voir dire* for discovery of the existence of any bias, prejudice, or interest that a potential juror might have in the case or against a party. *State v. Kelly*, 331 S.C. 132 (1998). Not only is the process designed to determine whether a potential juror should be excused for cause due to bias, prejudice, or interest but to also afford the parties a reasonable opportunity and ability to intelligently exercise peremptory challenges based upon reasonable and constitutional grounds. *State v. Gulledge*, 277 S.C. 368 (1982).

A motion for a new trial based upon the ground of juror disqualification must be made within a reasonable time after discovery of any ground for disqualification or within a reasonable time after such ground for disqualification could have been discovered in the exercise of reasonable and due diligence.

A party seeking a new trial based upon the disqualification of a juror must establish: (1) the fact of disqualification; (2) the grounds for disqualification were unknown prior to the verdict; and (3) the movant was not negligent in failing to learn of the disqualification before the verdict. *Long v. Norris and Associates, LTD., 342 S.C. 561 (Ct.App. 2000).*

"When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." *State v. Woods, 345 S.C. 583 (2001).* "The inquiry must focus on the character of the concealed information, not on the mere fact that a concealment occurred." *Thompson v. O'Rourke, 288 S.C. 13 (1986).* "Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn." *Woods, at 588.*

In *Woods* the Court held that "intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs when the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." *Woods, 345 S.C. at 588.* "If the court finds no intentional concealment occurred, the inquiry ends there. *Carolina Self Storage Ctrs., Inc., 409 S.C. 491 (2014).*

#2

"If a juror intentionally withholds material information requested on *voir dire*, bias and prejudice are inferred from the concealment." "Only where a juror's intentional nondisclosure does not involve a material issue, or where the nondisclosure is unintentional, should the trial judge inquire into prejudice." *Woods, 345 S.C. at 589.*

"Whether a juror's failure to respond is intentional is a fact-intensive determination that must be made on a case-by-case basis." *State v. Sparkman, 358 S.C. 491 (2004).*

DISCUSSION

The subject juror was not summoned to appear at the hearing, nor was the Court requested to have her appear to provide testimony at the hearing, nor did any affidavit by the juror accompany the motion. In order to establish that there was a relationship or a connection with the defendant, he has to establish that the juror who served in the trial was the person he claims to have a connection. The defendant attempted to establish the identity of a young black female as the same young black female that was designated as Juror 92 and seated on the jury which rendered the verdict in Ruttle's trial. From the evidence presented by way of Facebook photos of a young black female, videos from the New Life Deliverance Worship Center, depicting people including a young black female, and the testimony of Travis Mims, who identified a young black female in a video as having the name "Nysha", the Court is unable to determine with any degree of conviction whether the two females are the same person, however, the Court will nevertheless address the issue presented as if the juror had been correctly identified so as to resolve the issue presented for purposes of appeal.

VOIR DIRE

Prior to jury selection, the Court conducted standard and case-specific *voir dire* of the jury panel. The first inquiry of the panel was knowledge of or connection with any of the participants or those which might be related or otherwise connected. Wherein the court stated:

> "Now, before we begin with jury selection I've got some folks that I'm going to be introducing to you, and the purpose of the introductions is to find out if you have any connection whatsoever with anybody that's involved in the trial of this case or any members of their respective offices or any members of their respective families. I need to know ... any connection by blood or marriage ... work, school or church, have you met them, do you socialize with them, or do you know them in any fashion whatsoever ...".

#3

After each of the defendants, lawyers, and potential witnesses had been introduced or identified by the recitation of a potential witness list, several jurors stood to announce a connection or knowledge they had with someone introduced or identified. No juror, including Juror 92, responded to the question of having knowledge of or a connection with Ruttle.

Counsel argues that the juror intentionally, unjustifiably, and unreasonably failed "to disclose her various connections to Devin and his family through both school and church," and as it relates to school attendance, he asserts that her failure to respond was unreasonable in that "... [she] had only just finished high school, having graduated from Spartanburg High School in 2016, only one year after Devin graduated therefrom, and only two years prior to the trial of this case."

The Court was not asked to inquire of the venire as to whether any juror had attended or graduated from Spartanburg High School, nor was the venire informed that Ruttle had attended and graduated from that school in 2015. There was no inquiry of the panel as to any connection with Spartanburg High School, and there was no reason for a juror to think a connection with the school was in any way significant, so as to provide that information to the Court, unless the juror had a specific recollection as to knowledge of or a relationship with Ruttle, or any other person identified in court, was known to that juror arising from attendance at the same school.

Ruttle testified at the hearing on the motion that he was unaware of any interaction he could have ever had with the juror and did not have any personal knowledge of her from church or school. He was unaware of the existence of any type of relationship, whether casual or otherwise, between him and the juror arising out of attendance at Spartanburg High School. He simply asserts that she should have known him from the time they both were in attendance at the school, although he testified that he did not know her from school or recognize her at the time of her selection and throughout the trial of the case. He states he only took notice and thought her face looked "familiar" upon the post-verdict polling of the jury regarding their affirmation of the verdict.

It is a simple truth that a person may have an actual relationship or some connection with another and be completely unaware of it, as is not uncommon when determining familial relationships in certain contexts. It is axiomatic that the ability of a person to disclose a relationship or connection with another is dependent upon that person having knowledge or awareness of the relationship or connection. The defendant's assertion that the juror must have had knowledge of Ruttle from school is nothing more than mere speculation. The mere fact that they may have attended the same school, but in different class years, does not reasonably establish the juror's knowledge of the defendant or a "connection" with him arising from that attendance. It would be just as reasonable to assume, in the absence of evidence to the contrary, that the juror did not respond to the question regarding any school connection with Ruttle

#4

because, just like he has stated in regards to her, she had no personal knowledge of Ruttle or his attendance at the school and therefore was not aware of any school connection to disclose.

The defendant has failed to establish that even if there was a failure by the juror to disclose the information complained of, the failure to disclose was knowing or intentional on the part of the juror or that any such connection would have supported a challenge for cause or been a material factor in the intelligent exercise of a peremptory challenge, nor does he or his trial counsel even make the claim that a peremptory challenge would have been exercised to excuse the juror from service in the trial had the information been known to them.

Counsel further requested, and the Court asked the panel the following question to which no juror, including Juror 92, responded.

> "Do you or any members of your immediate family – and for purposes of all of my questions an immediate family member refers to a parent or a spouse or a child or a sibling – parent, spouse, child, or sibling. Do you or any members of your immediate family attend or have you ever attended the New Life Deliverance Worship Center ...?"

After each of the defendants, lawyers, and potential witnesses had been introduced or identified for the benefit of the jury, counsel requested that the Court ask a number of other people in the courtroom seated directly behind the prosecution and defense tables, which included the defendant's father Bunty Desor, to stand and for the venire members to announce any connection or knowledge any juror may have with any of those additional persons. No juror, including Juror 92, responded to the question of having knowledge of or a connection with any of those additional persons standing for the purpose of the question.

Counsel argues that the juror intentionally, unjustifiably, and unreasonably failed to disclose a connection he claims she had with Devin and his father Bunty Desor through the New Life Deliverance Worship Center.

In his testimony, Ruttle stated that he did not know the juror from church or school, as previously discussed, but that her face seemed "familiar" to him at the time of the post-verdict polling of the jury panel. He stated that he was unaware of her name or of ever having had any type of interaction with the juror at any time or at any event held at the Center.

Bunty Desor testified that he was the father of Ruttle and the pastor at the New Life Deliverance Worship Center. He stated that he had no knowledge of or any relationship with the juror through the New Life Deliverance Worship Center or otherwise. He testified that the Center periodically sponsored community youth events where inner-city youth were transported to the Center to be entertained with Hip-Hop music. He testified that some of these events were video and audio recorded and that Ruttle served as a videographer for such events. He further stated

that no record of attendees was generated or maintained by the Center. He testified that he did not lead or participate in the events and that a youth leader organized and took charge of the events. He stated that there was no particularized discussion of the juror until a post-trial expression by Ruttle to him that the juror looked "familiar," after which he reviewed videos of the community youth events at the Center to see if any video might depict attendance by the juror. After review of the videos, Travis Mims informed Desor that he recognized a young black female in the videos as a person he knew as Nysha. Neither video depicts any interaction between Desor or Ruttle and the juror and Desor does not claim any personal knowledge of or relationship with the juror.

Travis Mims testified that he was a youth pastor at the New Life Deliverance Worship Center between 2012 and 2015. He stated that he organized and presided over youth-oriented community events at the Center on Friday nights. He stated that between ten and fifty youth would often be gathered from the surrounding community and transported to the Center to be provided food and musical entertainment for the evening and then returned to their respective homes. Mims identified one of many young black females in the video as one he knew as "Nysha" but did not know her age or last name. He further testified that he knew a lot of the other kids that attended the Friday night Center events but could not recall the names of any of the other youth depicted in the video or the name of any friends of "Nysha" that were present at an event or depicted in the videos.

Ruttle's trial counsel Rick Vieth, testified that he reviewed the jury list and shared it with the family of his client for any information anyone might have about a particular potential juror. He stated that he was unaware of any connection that Juror 92 had with Ruttle or his father or the New Life Deliverance Worship Center. He further testified that he would "probably" want a member of the Center's congregation on the jury had he known of such unless there was a particular reason why the juror might be determined to be unfavorable to the defendant.

The question posed by the court, "do you ... attend or have you ever attended the New Life Deliverance Worship Center ..." could easily be described as ambiguous as having two or more possible meanings or interpretations. "Intentional nondisclosure occurs ... where there exists no reasonable inability to comprehend the information solicited by the question asked ..." "Unintentional nondisclosure" may be shown to exist where a juror could "reasonably misunderstand the question posed." *Woods, 345 S.C. at 588.* When asked to pose the question, the Court understood the request of counsel to be made for the purpose of seeking to determine if any juror was or ever had been a member of the congregation or regularly attended the Center as a worshiper at normal religious services and therefore likely to have been exposed to or had contact with Ruttle or his father or both. This same understanding could have easily been that of the juror, and therefore she did not feel compelled to respond to the question. If a juror was asked, "do you attend or have you ever attended Spartanburg High School", it could be easily

#6

understood by a juror that the inquiry was directed toward whether or not the juror was or had ever been a student at the school, not whether the juror had attended a football game or some other event held at the school where he or she was not a student.

The defendant contends that the juror attended one or more events held at the Center for the entertainment of groups of community youth at various times over some period of time where the evidence shows that Hip Hop music, dancing, and food was provided for entertainment of the youth. The defendant asserts simply that the juror should have had knowledge of him, his father, or both as a result of her attendance at one or more of these community youth events, although neither the defendant or his father claims any personal relationship with the juror arising from the Center. Neither claims to have ever met the juror, even if just to exchange pleasantries, nor does either claim to have any personal knowledge of the juror ever attending an event at the Center. Neither claims to have ever taken notice of the juror during a four-day trial until the defendant asserts he thought her face might look "familiar" after the post-trial polling of the jury regarding the verdict.

Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. The evidence presented does not reasonably establish any relationship or connection the juror had with the defendant, his father, or the Center. The Court cannot reasonably infer from the evidence that the juror was partial in the case and the juror was not summoned to be examined on the question of her failure to respond to the questions posed, and any justification, or lack thereof, able to be determined. The question relating to attending the Center was not one central or significant to the case. The purpose of the question was to determine any connection a juror might have with the defendant or his father. The lack of any such connection with the defendant and his father has been established by the defendant's own presentation of evidence at the hearing.

Even if a persuasive argument could be made, and the Court finds it has not, that the juror should have responded to the question regarding whether she had "ever attended the New Life Deliverance Worship Center", there has been presented no testimony or any other evidence, direct or circumstantial, which reasonably tends to establish that the juror had any knowledge of or any connection with the defendant or his father arising from any attendance at an event held at the Center.

The defendant has failed to establish that, even if there was a failure by the juror to disclose the information complained of by the defendant, the failure to disclose was knowing or intentional on the part of the juror, or that any such connection would have supported a challenge for cause or been a material factor in the intelligent exercise of a peremptory challenge. Nor does the defendant or his trial counsel claim that a peremptory challenge would have been exercised to excuse the juror from service in the trial had the information been known to them.

#7

CONCLUSION

"When a juror conceals information inquired into during *voir dire,* a new trial is required only when the court finds the juror intentionally concealed the information, and the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." *Woods, 345 S.C. at 587.* After consideration of the presentation made in support of the motion and the applicable law, this Court finds that the defendant has failed to establish his entitlement to a new trial. The Court finds that he has failed to establish that: (1) Juror 92 is the young black female he has identified as the trial juror from photos, videos, and testimony presented at the hearing; (2) the juror "intentionally" failed to disclose information of which inquiry was made during *voir dire*; (3) the juror actually had any relationship or connection with Ruttle; (4) the juror actually had any relationship or connection with Ruttle's father; (5) the juror actually "attended" or "ever attended" the New Life Deliverance Worship Center within a reasonable interpretation of the term; (6) any information not provided by the juror was central or significant to the case; (7) had the juror made a disclosure of the information claimed by the defendant to have been concealed, such fact would have reasonably supported a challenge for cause; (8) had the juror made a disclosure of the information claimed by the defendant to have been concealed, that such fact would have been a material factor in the exercise of a peremptory challenge, as trial counsel testified he would have considered it desirable for a juror who was a congregant at the Center to be seated for service in the trial; and (9) that under any scenario there exists a reasonable belief that the defendant was prejudiced by the nondisclosure of the information.

The defendant's **MOTION** for a **NEW TRIAL** on the ground of juror disqualification should be and **IS** therefore **DENIED**.

J. DERHAM COLE, RESIDENT JUDGE
The Seventh Judicial Circuit Court

April 7, 2022

#8

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

The State,)
) TRANSCRIPT OF RECORD
-vs-) 2017-GS-42-5423
) 2017-GS-42-5449
Lorenzo Guillermo Daniel)
Calderon and Devin Zachary)
Elijah Ruttle,)
) August 29, 2018
Defendants.) Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

DERRICK B. BULSA, ESQUIRE
JESSE MICHAEL WILLIAMS, ESQUIRE
RUSSELL D. GHENT, ESQUIRE
Attorneys for the State

MONIER MUFID ABUSAFT, ESQUIRE
Attorney for Defendant Calderon

RICHARD W. VIETH, ESQUIRE
Attorney for Defendant Ruttle

Linda D. Moffitt
Circuit Court Reporter

INDEX

WITNESSES	PAGE
KEVIN STIENS (DW)	
Direct examination by Mr. Abusaft	5
Cross-examination by Mr. Bulsa	7
Redirect examination by Mr. Abusaft	10
DEVIN ZACHARY ELIJAH RUTTLE (DW)	
Direct examination by Mr. Vieth	11
Cross-examination by Mr. Abusaft	27
Cross-examination by Mr. Bulsa	29
HARVEY OWENS (SW)	
Direct examination by Mr. Bulsa	50
Cross-examination by Mr. Abusaft	59

(Proceedings August 29, 2018)

THE COURT: All right. What do we have here?

MR. ABUSAFT: Your Honor, we have a joint defense motion to invoke -- invoke immunity under the Protection of Persons and Property Act, 16-11-440(C).

THE COURT: Okay.

MR. ABUSAFT: Your Honor, I'm going to go grab a witness, our first witness.

MR. BULSA: For the record, Your Honor, the caption of this is State vs. Devin Zachary Elijah Ruttle, Indictment 2017-GS-42-5449, and codefendant, Lorenzo Guillermo Daniel Calderon, 17-GS-42-5423.

THE COURT: Can you hand those indictments up?

MR. BULSA: Yes, sir.

THE COURT: Thank you.

All right. Call your first witness.

MR. ABUSAFT: Defense calls Kevin Stiens.

THE COURT: Spell it.

MR. ABUSAFT: S-T-E-E-N-S.

THE WITNESS: It's I-E-N-S.

KEVIN STIENS, having been first duly sworn, testified as follows:

MR. ABUSAFT: May it please the Court.

THE COURT: Mr. Abusaft.

DIRECT EXAMINATION BY MR. ABUSAFT

Q Mr. Stiens, where are you employed?

A I work for Spartanburg County for the parks department.

Q How long have you been doing that?

A I started in January of 2016.

Q And what are your duties with the parks and recs?

A I'm the director, so I oversee all operations in all facilities.

Q Are you -- so that means you're aware of the policies for the various community centers under the county?

A Yes. The centers that Spartanburg County manages.

Q Are you aware of a center called the Timken Activity Center?

A Yes.

Q Where is that located?

A It's in Cowpens.

Q And what occurs at that facility?

A The facility is owned by the Town of Cowpens, and the county operates that facility in a partnership with them. And it is operated as a traditional community center. We have summer camp programs and senior programs, weekly

rentals, neighborhood events and a fitness center.
Q Okay. And can you describe that facility?
A There's a parking lot; there's a building; there's multipurpose rooms; there's an office. We have staff that work there. There's a gym area as in like fitness equipment.
Q Okay. Is there -- is the parking lot enclosed or are there barricades or fencing? Is there anything that encloses the parking lot?
A No.
Q And what are the hours for the center?
A The hours vary. We typically have staff there between the hours, Monday through Friday, at 8:00 a.m., and then the hours vary in the p.m.

And on the weekends, depending on programs and rentals, typically our staff leave anywhere between 6:00 p.m. and 9:00 p.m. in the evening depending on programs.

And then the fitness center at the facility is open 24 hours a day for members who have -- if they sign up to be a member they get a key fob, and that gives them access from the perimeter directly into the fitness center. But only that part of the center.
Q Have you had a chance to look around those facilities recently?
A I've probably been there within the last month or so.

Q Okay. And was -- is there any no-trespassing signs on that -- on that property?
A No, not that I've seen.
Q Okay. And so 24 hours a day there is open access to the parking lot.
A Yeah. The parking lot is open. There's no barrier enclosure to close that.
Q Okay. And then part of the facility is open 24 hours also.
A Yes, the fitness center is open, yes.
Q I have no more questions. Answer any questions the solicitor may have, or the Court.
MR. VIETH: No questions.

CROSS-EXAMINATION

BY MR. BULSA

Q Mr. Stein, are you aware of the shooting that happened there back in May of last year?
A Yes.
Q How did you learn about it?
A We -- our staff received a phone call from someone with either the police or sheriff's department, and so we did not have staff there at the time that they responded so.
Q Okay. So it's your understanding when this happened the facility was closed but for the 24-hour physical --
A We did not have staff there, correct.

Q So it would have been open to people using the gym but no staff.

Okay. Did anybody respond to help look at the possible video from that building?

A We had, I believe, two employees reported. The actual employee who manages the center and then our recreation manager both responded to try to assist and see what was able to be found.

Q So you did nothing yourself.

A I was not personally. I was -- I believe I was out of town that week.

Q Do you recall the name of the street that this community center is?

A I believe it's Foster.

Q Foster Street. Okay. And what is it next to? Is there a school next to it?

A I believe there is a school, yes.

Q Do you know what the name of it is?

A Cowpens Elementary.

Q Cowpens Middle.

A Middle, okay.

Q And across the street are there houses?

A Yes, I believe there are.

Q So this is basically in a residential community.

A Yes.

Q Okay. All right. Now, is there a sidewalk going down in front of it?
A I believe so.
Q Okay. Which side of the street is the sidewalk?
A I don't think I could tell you one way or the other off the top of my head.
Q Would it be -- would you agree that the sidewalk is on the same side of the street as the center?
A I don't recall. I know that you can walk on a sidewalk from the center to the downtown of Cowpens, to the Cowpens area.
Q So there's, basically, a sidewalk running adjacent to the parking area down the hill. This kind of sets up on a hill, doesn't it?
A Yes.
Q Okay. Down the hill into another part of the residential area, is that right?
A Yes.
Q And then it also leads back into the town of Cowpens.
A Yes.
Q And would it be safe to say that there's a -- the sidewalk connects to another sidewalk leading to the front door?
A There is a sidewalk that goes to the front.
Q You can to the facility via sidewalk or car.

A Yes.
Q Okay. That's all I have. Thank you.
MR. ABUSAFT: Just one or two questions, Your Honor.
REDIRECT EXAMINATION
BY MR. ABUSAFT
Q I just want to want make sure. The parking lot is always open.
A Correct.
Q And you -- you or no one from the center, or to the best of your knowledge, may have called the police as far as trespassing on that day?
A Not that I'm aware of, no.
Q Okay.
MR. ABUSAFT: No more questions, Your Honor. Thank you.
MR. BULSA: None.
THE COURT: Step down.
MR. VIETH: May it please the Court. Call Devin Ruttle.

DEVIN ZACHARY ELIJAH RUTTLE,
having been first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. VIETH
Q Kevin, I know, like anybody in a courtroom, you're nervous, is that right?
A Yeah.
Q Okay. Just take your time, and we're going to just go through this slowly and get you calmed down a little bit. There's no jury here, so we're just talking to the Court and the judge in this case.
How about just giving him your full name.
A My name is Devin Zachary Elijah Ruttle.
Q Okay. And how old are you?
A I'm 21.
Q Okay. And back in May of 2017 when this incident took place, how old were you?
A I was 19 years old.
Q So you've had a birthday or so while you've been in jail.
A Yes, sir. Two.
Q Two birthdays since you've been in jail.
And what was your highest level education?
A I have a high school diploma.
Q Where did you go to high school?
A Spartanburg High School.

Q Okay. And do you know what year you graduated from there?
A 2015.
Q Okay. And then I believe you worked with a scrap iron place or something for a little while, is that right?
A Yes, sir.
Q And you've always lived in Spartanburg County?
A Yes, sir.
Q Okay. And are you married?
A No, sir.
Q Do you have a -- may not be a real fiancée but a girlfriend?
A Yes.
Q And does that girlfriend and you have a child together?
A Yes, sir, we do.
Q And what's the name of the girlfriend?
A Her name is Brianna.
Q Okay. And what's the name of your child?
A His name is Elijah.
Q And how old is Elijah?
A He is one and a half.
Q Okay. And were you planning on enrolling or going anywhere right at the time this incident took place?
A Yes, sir. I was enrolled to go to college for mechatronics at Spartanburg Community College.

Q Okay. And are your parents still living in South Carolina, in Spartanburg?
A Yes, sir.
Q And I believe at least one is here in the courtroom. Both of them are here in the courtroom, is that right?
A Yes, sir.
Q And is the mother of your child -- I can't remember. Is it Brianna?
A Yes, sir.
Q Is she with the child or is she here today?
A Yes, sir. Both.
Q The child?
A Oh, she's here. She's here today.
Q Okay. All right. Now, this case involves a death of Dalton Moore. And do you know or did you know Dalton Moore intimately as a -- as a person that you're friends with, or barely at all, or what -- how would you describe your relationship with Mr. Moore?
A I believe that we may have crossed paths before, but I didn't know him.
Q Okay. And do you know the codefendant in this case -- Lorenzo?
A Yes, sir, I do.
Q Okay. And how do you know Lorenzo?
A I met him at my father's church.

Q Okay. Now, when you say your father's church, what does that mean? Is he the pastor of the church?
A Yes, sir, he is.
Q And what's the name of the church?
A New Life Deliverance Worship Center.
Q So you met him at the church.
A Yes, sir.
Q Okay. And about how long would you say that friendship has been, just ballpark?
A A couple of years.
Q Okay. Now, was the -- was there a different relationship in your opinion between Lorenzo and Dalton as opposed to you and Dalton?
A Yes, sir. I do.
Q And just what are your observations about that?
A Well, me and -- me and Dalton didn't have a relationship, and, I mean, I -- I suppose that Lorenzo and Dalton knew each other because they had some sort of conflict with each other.
Q Some sort of what?
A Conflict.
Q Okay. And do you know what the conflict was about at all?
A No, sir, not really, but, I mean, I've heard that it may have stemmed from a female.

Q Okay. And so as a result of that relationship between Lorenzo and Dalton was there any ever threats by you to Dalton at all?
A No, sir.
Q Okay. So directing your attention now to the date we're talking about, May the 5th of 2017, I want you to tell the Court without me just going question and answer. Just give a summary of the facts leading up to what took place if you would.
A All right. Starting out, I ended up sleeping most of the day away. I woke up kinda late. Me and my girlfriend, Brianna, was supposed to go on a date later on that night. It was a Friday night. And my gas gauge is messed up on my car, so as I was backing outta my grandmother's driveway I ran out of gas and ended up in the ditch because the car locked up.
Q All right. Let me stop you there. Where was that? What --
A This is in Cowpens.
Q Okay. So your grandmother lived in Cowpens.
A Yes.
Q Okay. So go ahead. I didn't mean to interrupt you.
A Okay. So I -- I ended up in the ditch, and, you know, Lorenzo is my friend. I called him to ask for help. So he was with another individual who had a truck who gave me a

ride to the gas station to get gas, so.

Q Do you know those people's names, the people that had the truck?

A I just knew one of -- one of the people in the truck. His name is Hunter Sizemore.

Q Okay. You knew him prior to the day.

A Yes, sir. I met him before.

Q And the other person?

A I had no -- it was -- the only person I -- I knew was in there was Lorenzo with him at the time.

Q With Hunter Sizemore.

A Yes.

Q Okay. Go ahead.

A So after I got my car back started I -- I went towards Cowpens, downtown Cowpens. I was going to go by, you know, a specific gas station that I frequent. And then I was going to see my girl, because I had to get more gas for my car because I didn't get but a little bit.

So on my way there I had passed Dalton Moore. He was walking along the left side of the road. And I originally didn't have any intention on stopping and saying anything to him, but he waved me down. And I felt like maybe there was a way that I could reconcile with him to know that I didn't -- to tell him, to let him know, that I didn't have any issues with them, because there was another incident that I

kinda got involved in between him and Lorenzo where I felt like my life may have been in danger. So I wanted to let him know that I didn't have any problems with him, so.

Q Was this on Foster Street that we're talking about?

A Yes, sir, it was on Foster Street.

Q So you're -- you've gotten gas. And when you left Mr. Sizemore and Lorenzo they were in the truck, right?

A Yes.

Q And did you anticipate or have any reason to know that they were going to be behind you?

A No, sir. I did not know.

Q You were just going to go pick up your girlfriend.

A Yes, sir.

Q All right. So it wasn't a concerted effort to have you driving and them driving behind you for any particular reason. You didn't even know it was happening.

A No, sir. I didn't know.

Q Okay. And so Dalton is walking down the pavement away from downtown Cowpens. Would that be correct?

A Yes, sir.

Q And for the Court that may probably not be aware of this, the lay of the land if you're coming from downtown Cowpens on Foster Street, the first thing on your right is going to be Cowpens school, is that right?

A Yes, sir.

Q And then you go down several more yards, and then that's where the Timken Center is, is that correct?
A Yes, sir.
Q All right. And there's a -- obviously, parking that you can park in the Cowpens school parking lot. And then there's an area where there's grass and what not. Then you start the Timken Center. And there's a parking lot up there, right?
A Yes.
Q And when I say up there, I mean from the road there's just a little elevation --
A Yes. There is.
Q -- to get there, right?
A Uh-huh.
Q All right. So when you're driving with your car, you're driving toward Cowpens, which would be where the Timken is on your left and then the school is on your left.
A Yes.
Q And go on to the stop sight, right?
A Yes, uh-huh.
Q Okay. And so at that point in time you saw Dalton walking --
A The opposite direction.
Q -- the opposite direction.
A Yes.

Q And when you say he waved, was it an animosity type wave or just trying to wave? How would you describe it?
A I would describe it as, you know, the wave that you see people doing on a stranded island, over your head with both your arms.
Q Okay. So he was trying to get your attention.
A Yes.
Q Okay. All right. And so tell us at that point what took place.
A So I drove a little more ways, and I came to the drive, the drive-in, where the middle school is. And I turned into the middle school to turn around to go back to, like I said, you know, talk to Dalton about everything that was going on between him and Lorenzo so that I wouldn't get in the cross -- cross fire or whatever they had going on.

So as I'm turning around Lorenzo jumps outta the truck with Hunter Sizemore, and he was in the road. So as I'm backing out of Cowpens I -- Cowpens Middle School, I see him in the road. And I stopped and let him get in the car with me.

And so I go back towards the community center. And, you know, Lorenzo when he had jumped out of the truck, he had -- I had seen that he originally had had one gun in his hand. But, anyways, he was -- he was, you know, kinda -- kinda -- well, not kinda. He's -- he was really mad at

Dalton. And so, I mean, I was aware of this anyways, and I would've stopped and, you know, spoke to Dalton maybe from my vehicle. But, you know, with -- with Lorenzo now in the car with me I felt like he might have done something violent towards Dalton.

So I pulled over on the road off to the side, and I got out of the vehicle, and I didn't see Dalton anywhere. I actually didn't even know where he could have been.

But I told Lorenzo, you know, to sit in the car, I was going to go -- I was going to go speak with Dalton. And he -- then he had pulled out a different gun than the one that I had seen him originally have in his hand. He had pulled out a different gun, and he told me to take it just in case. So I felt like that would have pacified him enough to leave him in the vehicle, for him to stay there without coming with me that, you know, I would take that.

So I took the gun from him and I put in my waistband, in the front of my waistband. And I walked across the street. I jumped the ditch that was there between Timken Community Center.

And I seen Dalton standing there in the parking lot. And when I seen him, you know, I tried to approach him as not aggressively as I could, you know, not -- I had my hands out in the open. And, you know, I -- I addressed him. I said, "Hey, man. I really don't know what you and Lorenzo

have got going on but I don't have anything to do with any of that."

And around that time he -- he was probably from about here to that table.

Q That table?

A Our table over there, yes. And around that time he reached -- he reached behind his back, and I was -- I was scared. I mean, he pulled out a knife. I told him to stop. I pulled out a gun and I told him to stop.

I went -- I went for a warning shot because he seemed like he was going to come towards me. I went for a warning shot first. The -- the bullet didn't go off.

When I lowered the gun to cock it to -- to cock it to unchamber the bullet while I was walking backwards trying to -- I didn't really think I could outrun him if I was to turn around and run. I was kind of paralyzed by the fact that he had pulled out the knife.

So as I lowered the gun I cocked it back. I let it go. I let it go and looked up and he -- he had done moved from probably to about where you are. And I didn't really -- I just raised the gun and just pulled the trigger.

And I was -- I kinda froze there for a minute. I was trying to fathom what was going on everything happened so quickly.

I mean, I looked back, and Lorenzo had done hopped into

the driver's seat of my car and had done pulled around and was sitting in the road.

And I was scared. I didn't know what to do. So I ran and I got into my car in the passenger seat and we drove away. Well, you know, we rode away.

And we ended up switching out drivers up the road, and at that point I was -- you know, I didn't know what to do.

I went to see, still went to see, my girlfriend. I gave her all of the money that I had on me because, you know, I had planned on after consoling one of my parents, I did plan on coming to authorities. And, you know, I was scared. I -- I just -- I didn't know what to do.

Q All right. So the actual -- you've seen evidence that the solicitor has provided, all of the what y'all typically call discovery material, right?

A Yes, sir.

Q And so I'm going to show you this picture that they gave us that shows a knife on the ground.

A Yes, sir.

Q Right? And if you can, I think you've told me you can't positively identify because it was so fast.

A Yes, sir.

Q But it was there.

A Yes.

Q All right.

MR. VIETH: I'd like to introduce this at this time.

MR. BULSA: No objection.

(Photographs marked Defendant's Exhibit No. 1.)

Q I've got one other document. Does this resemble to your mind the Timken Center?

A Yes, sir.

Q Okay.

MR. VIETH: Without objection, I'm going to introduce that as well. It's Defendant's Exhibit 2.

(Photographs marked Defendant's Exhibit No. 2.)

Q So the -- also in the material that we received from the solicitor's office over the course of the last several months there was a positive D.N.A. on one of those shells.

A Yes, sir.

Q So I don't know if there's going to be an argument where Lorenzo was saying you had the gun. I know you're saying Lorenzo gave you the gun.

A Uh-huh.

Q But what -- why would D.N.A. in your opinion be on that shell?

A Well, I had handled the gun previously, and I know Lorenzo had got some new ammunition that he was showing me. And there was a different bullet in the top of the clip that I removed to look at the bullets underneath it, and because they were different. And I didn't want my fingerprints on

the bullet, so I spit into a shirt and I wiped the bullet and gave it all back to him.

Q Okay. But you're maintaining that he gave you the weapon.

A Yes, sir.

Q But he didn't give it to you -- at least what you're testifying to -- to go shoot somebody. It was to protect you if needed.

A Yes, sir.

Q Okay. And you didn't take a gun up there that was your own.

A No, sir.

Q Okay. There's different ways to approach trying to settle a dispute.

When you went up there to meet Dalton were you antagonistic, angry? How did you approach him when you got to the top of the hill?

A I didn't -- I didn't curse at him; I didn't approach him quickly. I kept my hands out in the open.

Q When you say out in the open, tell me what you mean.

A About like you're doing right now.

Q Just stand up and show us what --

A I have these chains. I can't really --

Q I know you can't do what I asked, but you just had your hands out.

A I mean, I had my hands out about like you're doing, talking with my hands, you know, not aggressively though.
Q Okay. And then when he put his hand behind his back, that's when you got concerned.
A Yes, sir.
Q Okay. And did he say anything to you at all? Do you recall anything?
A No, sir. Once -- once he put his hands behind his back I -- I got really scared. So I don't know if he said anything or not.
Q Okay. And you -- and so was it the first attempt to fire a warning shot, the one that didn't go off or did go off?
A It -- it did not go off.
Q Okay. So that's the shell that was found that was not discharged.
A Yes, sir.
Q Then you fired another one which was the warning shot.
A No, sir. As -- as I loaded the gun to rechamber another round into the gun, that's when he -- he charged towards me.
Q Okay.
A I raised the gun quickly, and I didn't -- I didn't aim. I just pulled the trigger.
Q Okay. All right. And when you -- did you have any --

did you call your mom?
A Yes, sir, I did.
Q Okay. And did you tell her? Do you recall what you told her?
A I mean, I told that someone was trying to kill me, that I had to shoot them. And she said she couldn't understand nothing I was saying. And I was trying to see my son.
Q Okay. And did you indicate you wanted to see your son before you turned yourself in?
A Yes, sir.
Q Were you on your way to your mother's when the -- when your car got stopped?
A Yes, sir, I was.
Q So the officers from -- the residents across the street had called 9-1-1 and identified the vehicle. It didn't take too long, I guess, for them to be able to stop you and Lorenzo, is that right?
A Yes, sir.
Q And had you gotten rid of the gun, done anything like that before they stopped you?
A Yes, sir.
Q And you did that out of fear and scared and just getting rid of it, didn't know what you were doing.
A Yes, sir.
Q Okay. What did you do with it?

A I threw it in the trash can.
Q All right. And you're apologetic today for all of this that's happened.
A Yes, sir, most definitely. If I could change anything, I would change it all. And it was never my intentions for -- for Dalton to die, but I was scared. And I want to say that I'm sorry to his mom.
MR. VIETH: Give me one second.
(Pause.)
Q I'm through asking questions. Answer any questions cocounsel or prosecutor may have.
MR. ABUSAFT: May it please the Court.
CROSS-EXAMINATION
BY MR. ABUSAFT
Q So when you first made contact with Devin -- excuse me -- when you first made contact with Dalton he was already in the Timken parking lot?
A Yes, sir.
Q Did you -- did you chase him up there?
A No, sir, I did not.
Q Did you do anything to cause him to be there?
A No, sir.
Q He was just there.
A Yes, sir.
Q And that's where you went to go talk to him.

A Yes, sir.
Q Okay. You didn't -- it's your testimony that you didn't have -- you didn't have a beef with Dalton before.
A That's true.
Q Okay. When Dalton pulled out the knife did you think he was going to hurt you?
A Yes, sir.
Q Did you think he was going to hurt you? Did you think he was going to create great harm to you, great bodily harm?
A The way that he held the knife, I felt like he was going to stab either me in the upper chest, face, somewhere, yeah.
Q You thought he was possibly going to kill you.
A Yes, sir.
Q Okay. Do you have any -- is there any reason why you can't possess a gun?
A No, sir.
Q And you didn't bring out -- you didn't bring out your gun until after you felt threatened, is that right?
A Yes, sir.
Q So you didn't have it out when you walked up to him?
A No, sir. I did not.
Q It was only after he pulled the knife from behind his back.
A Yes, sir.

Q And the knife was already opened?
A Yes, sir.
Q And that is the first time that you pulled the gun out.
A At that point, yeah, I presented my weapon.
Q Where -- where had it been previously?
A It was in the -- in the front of my waistband.
Q All right. I have no further questions. Answer any questions of the state.

CROSS-EXAMINATION

BY MR. BULSA

Q Where does your grandmother live?
A She lives on 1350 Bud Arthur Bridge Road.
Q What bridge? Bud Arthur Bridge?
A Bud Arthur Bridge Road.
Q Thirteen what?
A Fifty.
Q So that's where you started your day.
A Yes, sir.
Q And that's where you backed out of the driveway into the ditch.
A Yes, sir. It is.
Q And that's where you asked Lorenzo to come help you get out of the ditch.
A Yes, sir.
Q So that's where Hunter Sizemore drove you to the Hot

Spot to get gas.
A Yes, sir. It is.
Q Okay. So you rode to the Hot Spot with Hunter Sizemore, Lorenzo Calderon. And was there a third person in the car?
A At the time I didn't -- no, sir. I didn't know that.
Q Where did you ride in the truck?
A I rode in the truck bed.
Q You rode in the bed.
A Uh-huh.
Q And you were wearing a lime green hoody.
A Yes, sir.
Q Is that right?
A Yes, sir.
Q So y'all go to the Hot Spot, and you get out and go get some -- how do you get gas? What kind of container do you have?
A I bought a gallon water jug, and I poured the water out.
Q So you filled the -- filled the gallon jug up with gas.
A Yes, sir. Two of them.
Q And they drove you back to Bud Arthur Bridge Road.
A Yes, sir.
Q You filled your car up with gas.
A I put -- yes, sir. I put gas in the car.

Q You put the gas in the car. How did you get the car out of the ditch?
A At that point I cranked up the vehicle, and it started. So I drove forward and it leveled out.
Q So you're telling me Hunter didn't have to pull you out of the ditch?
A He originally tried to, but it didn't -- it didn't have to come to that.
Q What do you mean, he originally tried to?
A He originally tried to pull me out with a cable, but the cable broke. At that point that was -- after that, that's when we decided to go get gas.
Q Okay. You got gas.
A Yes, sir.
Q And the car cranked up and you were able to drive it out of the ditch. Is that what you're telling me?
A Yes, sir.
Q Okay. And where did you go from there?
A I was on my way to a gas station to get more gas.
Q What route did you take, sir?
A I went down Bud Arthur Bridge Road. There's a road there on the right I'm not sure of the name of. I come to a 4-way. I go straight through the 4-way.
Q Is the 4-way on Bud Arthur Bridge?
A No, sir. I'm not sure of the name of the road.

Q You took --
A I take a right off of Bud Arthur Bridge to this road. And there's a 4-way at the end of that road.
Q Okay. And then what did you do?
A After I go through the stop sign, I guess that would be Foster -- Foster Road.
Q Okay. So you took a right off Bud Arthur Bridge Road, came to a 4-way stop, went straight through. And that turns into Foster Street.
A Foster, yes, sir.
Q Is that right?
A Yes, sir.
Q And that carries you into Cowpens?
A Yes, sir.
Q And which gas station were you going to?
A There is a -- a Li'L Cricket down there beside the Rite -- Rite-Aid.
Q Okay. And did you get to the Li'L Cricket?
A No, sir. I never made it there.
Q How far up did you go? How far up Foster Street did you get?
A I made it to Cowpens Middle School.
Q You made it to Cowpens Middle School.
A Yes, sir.
Q You go past the middle school?

A No, sir.
Q Are you sure about that?
A Yes, sir.
Q So your testimony to this judge is you did not go past the Cowpens Middle School.
A Yes, sir.
Q Okay. And what happened at Cowpens Middle School?
A That was where I turned around.
Q You turned around. In what lot?
A In the Cowpens Middle School.
Q Which one, which entrance?
A I'm not really sure which one it is, but I know that it's on the left.
Q Okay. Is it the lower entrance or the upper entrance?
A I'm not sure.
Q You've not seen pictures?
A No, sir.
Q Okay. All right. So when you say you turned around, did you drive into the parking lot?
A No, sir.
Q What did you do?
A I did a 3-point turn.
Q 3-point turn. Okay. In the Cowpens Middle School lot. That's your testimony.
A Yes, sir.

Q Okay. And when did you pick up Lorenzo?
A As soon as I got done turning around he was there in the road, so.
Q As soon as you --
A In the mid turnaround, I would say.
Q Mid turnaround he was there.
A Yes, sir.
Q And what does he do?
A He was -- he was getting outta the truck, but they weren't quite stopped. He had a gun in his hand. He had a black hoody on. He was standing there in the road, and he was walking towards my car as I was turning around.
Q Okay. And then he gets into your passenger seat.
A Yes, sir.
Q Then y'all drive back down Foster Street the same way you had come.
A Yes, sir.
Q And you're telling this judge the only reason you were turning around is because you saw Dalton waving you down.
A And I was -- yes, sir.
Q Okay. And your relationship with Dalton was what?
A I didn't really have a relationship with Dalton.
Q Okay. You didn't. You didn't really cross paths with him, did you?
A I -- I think I had once.

Q Once. Okay. And when was that?
A I believe it was a birthday party, but I was only like 12 or 13.
Q Okay. And you're 19 when this happens, and your only contact with the victim was six years before?
A Yes, sir.
Q And you're telling us that he waved you down.
A Yes, sir. He did.
Q Okay. What -- what is it about your car that he would have known?
A I -- I guess giving rides to Lorenzo.
Q What?
A I -- I guess that it would have been giving Lorenzo a ride in my vehicle.
Q You think he would have been spying on you giving Lorenzo rides?
A No, sir.
Q So how would he know your car?
A Because there was an incident where he had seen me and Lorenzo together in that car.
Q All right. Now, tell us about that incident. Where was that?
A It was on Easter of 2017.
Q Just a few weeks before this happened.
A Yes, sir.

Q Okay. And where was your car on Easter that he would have seen you and Lorenzo?
A I was taking Lorenzo to get some money from a guy he knows over there and Dalton -- I guess he seen Dalton Moore, or Dalton Moore seen him one. And on the way outta the neighborhood my car cut off because it has a bad fuel pump. So the car cut off, and Dalton Moore was running up the street towards my vehicle. And Lorenzo got out with a gun and pointed it at him.
Q So you're saying that Easter Lorenzo pulled a gun out on Dalton. Was Dalton armed at that time?
A He made it seem that he was but I -- he had his hand behind his back. So I felt like he -- he was armed. And that was an incident that I felt like my life was in jeopardy by being with Lorenzo. That's why I felt like I should talk to Dalton, because if he would have had a gun I would have gotten shot up.
Q All right. So you're telling this Court that there was a previous incident where a gun was drawn, at least by Lorenzo, pointed at Dalton.
A Yes, sir.
Q Okay. And you didn't see Dalton with a weapon on that occasion.
A He insinuated that he had a weapon, but I did not see a weapon.

Q You -- he insinuated by having his hand behind his back?
A Yes.
Q Was he yelling anything?
A No.
Q Okay.
A I don't think.
Q How close did he get to you?
A That's hard to say.
Q And you're telling this Court that you were threatened, felt threatened, at that point.
A Yes, sir.
Q All right. Did you see him any more in the time between the Easter incident and his death?
A No, sir, I did not.
Q Okay. So the very next time you see him after you felt threatened by him, you want this Court to believe that you then turned around to go talk to him.
A Yes, sir.
Q Okay. And you just so happened to have picked up Lorenzo who had another gun. Was it the same gun he had at the Easter incident?
A No, sir, it was not.
Q How many guns does he have?
A I'm not sure.

Q How many do you have?
A Two.
Q Two. Were they in your car?
A Yes, sir, they was.
Q When this happened they were in your car.
A Yes, sir, they was.
Q So the gun you used wasn't one of your guns?
A No, sir.
Q But we've got a bullet that had your D.N.A. on it from that gun.
A I --
Q Your explanation is, is you spit into a shirt to wipe off possible fingerprints?
A Yes, sir. It was.
Q Okay. Okay. So your testimony is that Dalton basically waited on you in the Timken parking lot.
A Yes, sir.
Q Right? He was over there when he was waving you down. He was already in the parking lot?
A Yes, sir. He -- he didn't -- he was on the sidewalk when he waved me down.
Q On the sidewalk. What part of the sidewalk? Was he still at the middle school? Was he in front of the Timken Center? What --
A He was -- he was, I would say, behind -- behind the

entrance of the Timken Center, half way between but closer towards the Timken Center right before you get to the entrance.

Q Okay. All right. So you're telling us because of this prior incident you decide to turn around and try to talk to him.

A Yes, sir.

Q Okay. All right. And then just so happened that Lorenzo happened to be there.

A Yes, sir.

Q Happened to have a gun and happened to give you a gun.

A Yes, sir.

Q Right?

A Yes, sir.

Q And where did you park the car?

A I parked it outta the road. I'm not sure of the name of the street. But I parked it -- it's a side road on the left if the Timken Center is on the right.

Q You actually parked it?

A Yes, sir.

Q You sure?

A Yes, sir.

Q Which direction was it headed?

A It was facing -- it was facing like it was going out if you were pulling off the road.

Q Well, so you're telling this Court that you would have somehow went into that side street and turned the car around --
A It was a --
Q -- and be facing Foster Street?
A It was a cul-de-sac.
Q Yeah. So you would have been -- you would have been facing Foster Street?
A Yes, sir, and -- and the community center.
Q Okay. And you said Lorenzo actually moved over to the driver's seat?
A Yes, sir.
Q And he cranked the car up when he saw you running back?
A No, sir. I -- I didn't run. The car was -- he had already hopped in the passenger seat and pulled the car out into the road. And I guess he did that as the shots were fired.
Q You mean he was in the driver's seat and pulled it out. Could he see you?
A He was originally in the passenger seat.
Q I know. Then you said he got into the driver's seat and pulled the car out.
A Yes, sir.
Q So where was the car when you hopped back into it?
A It was in the middle of the street.

Q Heading which direction?
A The Timken Community Center would still be on the right.
Q Be on the right. So he was facing away?
A Opposite direction.
Q He was facing away from the Timken Center?
A No, sir, not away. The Timken Community Center would have been directly on your right-hand inside.
(Photograph marked State's Exhibit 1.)
Q I'm going to show you what's been marked for this hearing State's Exhibit No. 1. Now, this isn't a picture of how it was on the date in question. That is an aerial picture from the computer. Okay?
A Okay.
Q This would be the Timken Center.
A Yes, sir.
Q Right?
A Yes, sir.
Q This is actually the Folks Landscape. You got all of the dirt, right? Is Marion Court the street that you're saying that you would have -- the car would have been at?
A No, sir.
Q No?
A This road.
Q Way up here? The middle school would be over here.

You would have driven this way. Where would you have stopped?
A Marion Court seems too far away. This -- this seems like this is the road right here -- right here.
Q So you're telling me --
A I'm not sure.
Q -- that you would have pulled in the street directly opposite the --
A Yes, sir.
Q -- parking lot --
A Yes, sir.
Q -- of the Timken Center.
A Yes, sir.
Q And where was the car when you went to get back in it?
A It was about right here.
Q This right here?
A This is --
Q This is the center.
A Maybe this is the road, yeah, because it looks different above, because I came this way.
Q Yeah. This is the hill, goes up the hill to the Timken Center.
A Yes, sir.
Q So it would have been down here at Marion?
A Yes, sir.

Q And you're telling me that -- where was the car when you got into it?
A It was over -- it was over here, so yeah.
Q Okay. So you're telling the judge that the car would have been right in here.
A Yes, sir.
Q Okay. Headed which direction?
A The opposite direction.
Q This way?
A Yes, sir.
Q And you ran and jumped in the passenger seat?
A Yes.
Q And where did y'all go?
A We went to the end of that road. The car was driving backwards when it came off of Marion Court. So I think Lorenzo turned to go that way and put the car in reverse. The car was going backwards. I heard the tires screeching. I turned around and got in the car. We went to the end of the road. We switched out drivers.
Q The end of this road?
A No, sir.
Q The end of this road?
A Yes.
Q Car was going backwards?
A Yes.

Q I don't understand that. What do you mean going backwards? You were backing down Foster Street?
A No, sir. It was turned -- I'm not sure. I know the car was facing that direction going that way. I'm not sure. I was facing the other direction. I just know I looked back and my car was there facing that direction, and it was moving backwards this way in reverse.
Q So where did you go after the shooting?
A I went to my father's house.
Q Your father lived where?
A In Rosecrest Road.
Q Rosecrest. 129 Rosecrest?
A Yes, sir.
Q Was Lorenzo with you?
A Yes, sir.
Q Okay. What happened at Rosecrest Road?
A I got there. We got there. I pulled into the yard. I didn't stop in the driveway. I pulled into the yard on the other side of the back porch.

Me and Lorenzo got out. We went inside. I went into the living room to talk to my girlfriend. Lorenzo came with me. I was telling her about everything that had happened.

I told her, you know, I didn't really know what to do, that I was going to give her the money that I did have on me for Elijah and asked her where he was. She said that he was

either with my mom or her mom. I really didn't understand, I guess, what she was saying because I just knew that he was with either one of our moms.

And, you know, I was -- I -- after I gave her my money I took off my hoody and I took the gun and I went towards the kitchen and I went outside and threw it in the green trash can outside and took my shoes off, and I put them in the bag off the window and put them in the trash can. And I had an extra pair of shoes in my trunk.

Q You said the bag off the car window?

A Yes, sir.

Q That was the -- so you took -- your back driver's-passenger had a bag over it, correct?

A Yes, sir.

Q And that was unique to your car.

A Yes, sir.

Q So you tore it off to hide your car?

A Yes, sir.

Q Threw it away. And what else did you do?

A I -- I changed my shoes.

Q Changed your shoes.

A Yes, sir.

Q Okay. And what did you do?

A After that I told my girlfriend, you know, that I love her and that I was going to go see Elijah.

Q So is that where you were going when the police stopped you?
A Yes, sir.
Q Why didn't Lorenzo stay with you?
A In that -- in the movement and everything he was -- he was just there. I didn't have anywhere to take him, and I didn't plan on taking him anywhere. I had that one agenda on my mind, was seeing -- seeing my son.
Q Did y'all talk about what happened?
A Yes, sir. I told him, you know, that Dalton had a knife and that he came towards me. And, you know, I told him I didn't know what to do and, you know, that I was scared. And he really didn't say much of anything. And then he -- I think he was shocked too as well.
Q He didn't say that's why I gave you the gun?
A No, sir.
Q All right. Now, you told Mr. Vieth about trying to shoot one round and it didn't go off.
A Yes, sir.
Q Ejected it.
A I tried for a warning shot.
Q That just happened to be the bullet that had your D.N.A. on it?
A Yeah.
Q And you shot. You shot twice more, right?

A I was only aware that I pulled the trigger one -- once in the moment of things.
Q You saw the discovery. There was two shell casings.
A Yes, sir. I seen that there was two shell casings.
Q And you shot twice.
A Yes, sir.
Q Okay. Now, do you remember seeing anybody else outside that area?
A Yes, sir, I do.
Q Who?
A There was a woman. She was across the street. If you're in the Timken Community Center towards the left across the road in her yard.
Q What was she doing?
A She was looking towards our -- my direction.
Q Safe to say she probably saw you leave?
A Yes, sir.
Q Getting into your car?
A Yes, sir.
Q Is that why you had to take the bag off?
A I was just really scared. I didn't know -- I didn't know what -- I just -- I was panicking.
Q Is that why you had to get rid of the hoody?
A Yes, sir.
Q Somebody saw you, right?

A Yes, sir.
Q Do you remember what you told the officer when he went to question you?
A I told him that I did not know if I was on Foster Street because I did not know the name of the road at the time.
Q You told him that you weren't on Foster Street.
A Yes.
Q Now, just to finalize this. I know none of this is just for the judge. He understands what's going on. But let's make sure we understand. You and -- you're telling us you had no beef with Dalton yourself.
A Exactly.
Q And the only other time before this you'd seen him was an incident where you felt threatened by him.
A And a birthday party.
Q Well, that's six years ago. Okay. And then the very next time you see him he's waving you down and you decide to go approach a man who you felt threatened by before.
A Yes, sir.
Q Of course he's not here to tell his side of the story, is he?
A No, sir, he's not.
Q And your relationship with Lorenzo goes back two years before this shooting?

A About, yeah.
Q And y'all were close friends?
A Yeah.
Q And you both carried multiple weapons?
A Yes.
Q Okay. And, now, Mr. Abusaft asked you if there's some reason you can't possess a weapon. You said no, right?
A Right.
Q Is there some reason why you can possess a weapon while you're outside of a car walking up a hill?
A Repeat that.
Q Are you allowed to possess a weapon? Do you have a concealed weapons permit?
A No, sir, I do not.
Q Okay. So unless you're in certain areas you can't possess a weapon, like you can't walk on the street with a gun, right?
A Yes.
Q But you were doing that this day, right?
A Yes, sir.
Q Thank you.
MR. VIETH: I have no other questions, Your Honor.
THE COURT: Step down.
MR. VIETH: That's all I have, Your Honor. Thank you.
MR. ABUSAFT: At this point, Your Honor, the defense

has no more witnesses.

MR. BULSA: Mr. Calderon is not going to testify?

MR. ABUSAFT: No.

THE COURT: Mr. Who?

MR. BULSA: Mr. Calderon.

THE COURT: Oh, Calderon.

MR. BULSA: The moving party in this.

THE COURT: Well, he says he doesn't want to testify. He doesn't have to.

Have you got anybody you want to call?

MR. BULSA: Yes, sir. I am going to call the case agent just to get some -- the state calls Harvey Owens.

HARVEY OWENS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Please tell us your name.

A Harvey Owens.

Q Who are you employed with?

A South Carolina Law Enforcement Division, commonly known as SLED.

Q In what capacity?

A I'm a special agent.

Q Were you called in to assist in the homicide investigation in Cowpens on May the 5th of 2017?

A Yes, sir, I was.

Q And did you go to the Timken Center on Foster Street?
A Yes, sir, I did.
Q About what time you did arrive?
A It would have been approximately a little after 9:00, 9:00-ish.
Q So the scene, there were Cowpens officers on the scene. They had secured it for you and other agents?
A Yes, sir.
Q Do you know if the defendant had been stopped by the time you had arrived?
A Upon my arrival at the scene the vehicle description that was obtained by the witnesses and the residences close by had been given out through the Spartanburg County law enforcement channels, but at the time I arrived they had not been stopped. They were stopped shortly after my arrival.
Q And your investigation involved interviewing the neighbors across the street, is that right?
A Yes, sir.
Q Can you summarize what information you gave to them?
A Essentially, a -- a married couple recalled seeing a silver Ford Ranger traveling on Foster Street toward Cowpens. They saw a white male occupant jump out of the vehicle and then jump into a gold 4-door sedan, which was traveling in the opposite direction, which would have been Timken Center. That white male would have gotten into the

passenger side.

Another white female resident who lived directly across from the Timken Center heard gunfire and went to her front porch.

When she arrived on her front porch she gave a similar description of a gold 4-door sedan with a black trash bag over one of the windows sitting in the roadway.

She saw a white male wearing what she described as a teal green hoody get into the sedan and flee the scene. She was very specific in the color of the hoody.

She even retrieved a box of Crayola markers from her residence while we were interviewing her and pulled one out and said this is the color of the hoody that I saw the individual fleeing the Timken Center wearing.

Q Okay. Did you attempt to obtain video of any of the residences or buildings in the area?

A Once we identified the -- the owner of the silver Ford Ranger that was seen on Foster Street that the white male was jumping out of the passenger side, it belonged to a Hunter Sizemore. We located Mr. Sizemore. We interviewed him.

He identified the party that jumped out of his truck as being Lorenzo Calderon. He identified the gold colored sedan that Mr. Calderon got into as belonging to an individual he knew as Dev. He explained to us that he had

been with Mr. Calderon. They'd been to McDonald's and got some food.

Mr. Calderon had received a phone call from Dev saying that he was having some mechanical difficulties. They picked up Dev. His vehicle was in a ditch. They took him to the Hot Spot where he obtained some gas, and they took it back to the vehicle.

Based on that statement we did pull video from the Hot Spot. That video once it was obtained and reviewed, we identified Mr. Ruttle in Hot Spot wearing a teal hoody, which was the same color that the witness described.

He purchased a couple of waters. The video also shows him walk across the parking lot dumping the waters out and then filling those water jugs with gasoline.

Q So that video corroborated Mr. Sizemore's version, correct?

A Correct.

Q And then you had a good suspect in the guy in the green hoody.

A Correct.

Q Did you attempt to obtain a video from the Timken Center or Cowpens Middle School?

A We did.

Q Did you get it?

A The Timken Center was not equipped with exterior

cameras, so there was nothing of evidentiary value obtained from the Timken Center.

However, the middle school did have an exterior camera that showed the roadway that passed in front of the school, which would have been Foster Street.

Q Okay. What else did it show?

A On that video you can actually see Hunter Sizemore's silver Ford Ranger. It appears to stop just past the upper entrance, what I would refer to the upper entrance at the middle school.

You see an individual get out of the passenger side, and you see a gold 4-door sedan pull up beside it. The individual that got out of the silver truck gets in the passenger side, and they leave in opposite directions. The silver Ford Ranger leaves going towards Cowpens. The gold colored sedan leaves going toward the Timken Center.

Q Where did the gold colored sedan appear to come from?

A It appeared to come from the Main Street direction of Cowpens.

Q It does not show any turning around of that vehicle, does it?

A On that video you do not see the sedan turn into the parking lot and do any type of turning around maneuver, no.

Q And once the suspects were stopped was their vehicle searched?

A It was?
Q What kind of weapons were found in it?
A There was a .40 caliber Smith and Wesson. There was also a 9mm handgun and a 9mm handgun configured as a rifle.
Q What kind of weapon was used to kill Devin -- excuse me -- Dalton?
A .40 caliber.
Q Okay. Was the .40 caliber recovered from the vehicle?
A It was not.
Q Was not?
A The .40 caliber that was recovered from the vehicle did not match the ballistic evidence recovered from the scene.
Q Did you make attempts to locate either the gun or the clothing?
A We did.
Q What did you do?
A We actually executed a search warrant on the Rosecrest address belonging to Mr. Ruttle's father. Upon a search of that residence we did not locate shoes, clothing or the handgun.
Q How long after the incident was the search warrant?
A I would have to refer to the date on the search warrant, but it was within a few days of the incident.
Q So it wasn't the same evening.
A No, sir.

Q Did you attempt to speak to Mr. Ruttle?
A I did.
Q What did he tell you?
A Mr. Ruttle stated that he had not been on Foster Street, and then he invoked his right to counsel.
Q Did you speak to Mr. Calderon?
A On a couple of occasions.
Q Can you summarize for us what he said?
A Mr. Calderon states that while he was with Hunter Sizemore that would have been the first time he encountered Dalton Moore on the date of the incident.

He sees him walking down the sidewalk. They're actually going away from Main Street at this point. They're going to a young man named Jacob Quinn's residence who lives past the Timken Center. He acknowledges that he yells out the window, makes some obscene remarks and some threatening remarks.

MR. ABUSAFT: Excuse me, Your Honor.

I understand this is a pretrial hearing, but I don't think it's proper for him just to summarize someone else's testimony.

THE COURT: The defendant's?

MR. ABUSAFT: He's just completely -- it's just a summarization. He's not saying -- he's not saying the exact -- what was actually said to him, just he's giving a

summary, Your Honor.

THE COURT: I'll let you examine him about it.

MR. ABUSAFT: Thank you, Your Honor.

Q Continue.

A He said something to the effect of don't get caught slipping. He tells me that he may have referred to him as a pussy.

They go to Jacob Quinn's house. As they're heading back up Foster Street after leaving Quinn's house they're then heading toward Main Street, Cowpens.

He sees Dalton Moore a second time. He said at that point that he jumps out of the truck. He states he jumps out of the truck because he sees Devin Ruttle's car coming that direction. He knows that Devin is upset with Dalton, and that he jumps in Mr. Ruttle's car with the intent to calm him down.

From that point he says that Mr. Ruttle drives past the Timken Center, parks the car, gets out armed with a handgun.

He sees him walk up the incline or the hill in front of the Timken Center and walk out of sight. He hears a couple of gunshots before seeing Mr. Ruttle running back towards the vehicle.

When he gets to the vehicle Mr. Ruttle tells him, "He had a knife. I shot him."

Q So based on your collection of information and

witnesses did it appear that the victim would have known these -- that the two defendants were in the area?

A Yes.

Q And it was from your information gathered, was it clear that the victim most likely would have heard Calderon yelling at him?

A Yes.

Q Okay. And the video shows Mr. Moore, Dalton Moore, walking on the sidewalk going past the middle school, right?

A Correct.

Q And it was soon after that that you see the two vehicles then switch.

A Correct.

Q And based on the neighbors' statements, after that switch wasn't it a pretty quick incident when the shots were fired and then the car fled?

A Yes. They were actually turning in their driveway when they see the -- the individual switch from the truck to the sedan.

They have time to pull their car in the driveway, get out of the car just before hearing the shots.

Q Okay. Thank you. Answer any questions defense counsel has.

MR. ABUSAFT: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q Officer, I just want to make sure I understand correctly.

You said that the victim would have most likely heard Mr. Calderon yell at him. Is that what you said?

A Yes.

Q Not Mr. Ruttle. Mr. Ruttle -- there's no -- there's no allegation Mr. Ruttle yelled at him.

A No.

Q Okay. And now I'd like to ask you a couple of questions. You're -- you are the case agent, right?

A Yes, sir.

Q You're responsible for this case.

A Yes, sir.

Q Okay. Did you -- did you ultimately decide to arrest Mr. Ruttle for murder?

A Ultimately, that decision was made by the solicitor's office after I consulted with them over the evidence obtained during the investigation.

Q Okay. And then were you also a part of the decision to arrest Mr. Calderon for accessory after the fact?

A Again, after the evidence obtained during the course of the investigation was presented to the solicitor's office, it was a decision of the solicitor's office to make those

charges.
Q Okay. You're a part of that process?
A I am the investigating agent, yes, sir.
Q Okay. So talk to me about what happened after -- after Dalton was shot. What went into your decision? What did you find out about Mr. Calderon and his -- and his actions after the shooting?
A I'm not sure I follow. Could you be more specific as to what you're referring to?
Q No, no. I want you to just tell me. What did your investigation lead to after -- what -- what, if anything, did Lorenzo do after Dalton was shot?
A What did Mr. Calderon do after Dalton was shot?
Q Yes.
A My understanding is he was the passenger in the sedan that fled the scene.
Q And what else happened?
A Again, I don't know where you're going, sir. If you'll be more specific, I'll be more than happy --
Q No. I just want to know. You're the case agent. You have -- well, let me back up. As the case agent you're responsible for this case.
A Yes, sir.
Q All right. You consulted with the solicitor's office about making these charges.

A The evidence obtained during the course of the investigation was presented to the solicitor's office, yes, sir.
Q You were a part of presenting that evidence.
A Yes, sir.
Q You know all of the evidence in this case?
A Yes, sir.
Q Okay. So after Devin -- excuse me -- after Dalton was shot what, if anything, did Mr. Calderon do in this case besides ride in the car?
A Again, I'm not sure what you're referring to.
Q I'm asking anything. You -- anything. Did he hide any evidence? Did he hide Mr. Ruttle? What did he do --
A To my --
Q -- to your knowledge?
A Are you asking did Mr. Calderon hide evidence?
Q Yes.
A To my knowledge he was present with Mr. Ruttle when Mr. Ruttle disposed of the clothing, footwear and handgun.
Q Okay. He was present. To your -- is that correct?
A Yes, sir.
Q Is that your testimony?
A Yes, sir.
Q To your -- to your knowledge did he do any disclosing himself?

A To my knowledge --
Q Yes.
A -- he was present with Mr. Ruttle when Mr. Ruttle disposed of the firearm, clothing and footwear.
Q Yes, Officer. I heard your answer previously. I'm asking a different question.
A Okay.
Q So forgive me because I may be asking the question unclearly.
A Yeah. I've got you. I'm not following you. I'm sorry.
Q Right. That's my fault.
A That may be me.
Q No. It's probably me. I understand.
Did Mr. Calderon himself dispose of Mr. Ruttle's shoes? Did he take Mr. Ruttle's shoes off his feet and put in the trash can to the best of your knowledge?
A According to the information I obtained from Mr. Calderon, Mr. Calderon was present while Mr. Ruttle disposed of the firearm, clothing and footwear.
Q Right. No. I want you to listen to my question.
A Okay.
Q Okay. Once you answer it, then I'll move on.
A Okay.
Q We'll move on with this hearing.

Did Mr. Ruttle --
A I don't mean to upset you.
Q Oh, no.
A I'm just trying to give you a good answer.
Q No, no. Absolutely.
A And make sure it's accurate.
Q No. Absolutely. And I want -- I want you to do that because I want it to be perfectly accurate.
Did Mr. Calderon take off Mr. Ruttle's shoes and did he take them off of his feet? Let's start with question. To the best of your knowledge.
A To my knowledge I did not ask Mr. Calderon did you remove the shoes from Devin Ruttle's feet.
Q Did your investigation lead you to evidence that he removed the shoes from Mr. Ruttle's feet?
A No.
Q Okay. Wonderful.
Did your investigation lead you to any information that he took off any article of clothing from Mr. Ruttle, just took it off his body?
A Did Mr. Calderon physically remove the clothing from Mr. Ruttle?
Q Yes.
A There is no evidence that says that took place, no.
Q Do you have any -- did any information from your

investigation lead to your belief that he disposed of any clothing from Mr. Ruttle? He himself with his hands.
A With his hands?
Q Yes.
A Specifically, referring to --
Q Or any other body part.
A Being specific to did he physically with his hands or any other body part, no.
Q Okay. Did your investigation lead you to believe that he at any time tried to hide Mr. Ruttle?
A No, sir.
Q Did your investigation lead you to any knowledge that he gave Mr. Ruttle any money to leave the locale?
A Locale? You mean --
Q This is Spartanburg community, state of South Carolina, the United States of America.
A I'm not familiar with the language.
Q Okay.
A I didn't know what locale meant.
Q Okay. That's my fault. I shouldn't have used that word. It's not plain language. But do you understand the question or do I need to repeat it?
A Yes, yes, no.
Q No. Has your investigation led you to believe that there was any other aid rendered from Mr. Calderon to

Mr. Ruttle after he shot Dalton?

A No.

Q I just want to be clear one more time.

Any -- you at this point right now know of all of the information, all of the evidence that came from this investigation.

A Yes, sir.

MR. ABUSAFT: I have no more questions, Your Honor.

MR. VIETH: I have none, Your Honor.

MR. BULSA: Nothing more, Your Honor.

THE COURT: You may step down.

MR. BULSA: Your Honor, that's the state's showing in this hearing.

THE COURT: Okay. Anything else?

MR. ABUSAFT: Yes, Your Honor. Well, no more testimony, Your Honor, but I do have a motion.

THE COURT: All right.

MR. ABUSAFT: At this, Your Honor -- at this time, Your Honor, we'd ask that the Court would -- we ask the Court to invoke immunity for Mr. Ruttle under the Protections of Properties Act 16-11-440(C) of the South Carolina Code Annotated, Your Honor, if I may.

Your Honor, the stand-your-ground, which is what it's ultimately called, Your Honor, has four elements.

Your Honor, the person invoking that immunity has to

have the right to be there, Your Honor. They have to be acting lawfully. They have to be in reasonable fear, and they have to be without fault, Your Honor.

I believe that's laid out in State vs. Curry. State vs. Duncan says that we only have to show this by the preponderance of the evidence to invoke this immunity. And, obviously, there is no duty to retreat.

Your Honor, as far as the right to be where he was, we brought -- it is uncontroverted. We brought in Kevin Stiens who is with the Spartanburg Parks and Recreation.

He testified, which was uncontroverted, that he runs all of the community centers that are under the control of Spartanburg County and that this is a -- this is a public facility. It's run by Spartanburg -- it is owned by this Town of Cowpens, managed by Spartanburg County.

Your Honor, and he said that the facility parking lot, which is where this happened, is open 24 hours. He said that there are no-trespassing signs, and he said that nobody called law enforcement saying that there was a trespass that happened on this day.

He also said that that facility is open 24 hours because there is a fitness facility there.

Now, of course there are people that -- you have to have a fob to get into the facility, but because of that they leave the parking lot open 24 hours. It is a public

building. It's paid by the same taxpayer dollars that the sidewalk is, Your Honor. It is effectively the same as a sidewalk or any other public space, Your Honor. So we believe that it is -- that he had -- Mr. Ruttle did have the right to be there where he was acting lawfully, Your Honor.

Mr. Ruttle is not prohibited from owning a firearm. Now, he did not have a concealed weapons permit, but, Your Honor, it is well-settled case law in this state that someone can arm themselves in self-defense and that be -- and be acting lawfully even if they can't -- if they're not possessing the gun legally if they're doing it in self-defense.

The testimony uncontroverted was that the alleged victim in this case pulled out a knife on him and that was the first time that he pulled out his firearm. And he also testified that he believed that he was going to harm him with that knife, Your Honor. It wasn't until that point that he pulls out the knife. There is no -- there is no video; there's no live testimony. There is nothing to contradict him on that point, Your Honor, that until -- that he had that gun and he had it in self-defense.

He testified quite clearly, Your Honor, about reasonable fear. He believed that the knife which you have a picture of was there at the scene near the alleged

victim's body, that he pulled it out, that he believed that he was going to be stabbed either in the face or in the chest or be killed, Your Honor, which he has to be in reasonable fear of at least great bodily harm, Your Honor. And so there is nothing contradicting him.

Your Honor, there has been no evidence presented that that's not the way that it happened or that's what his perceptions were, Your Honor. That has to be reasonable, but I think that is a reasonable belief that if somebody pulls out a knife on you that they are going to try to at least cause you great bodily harm.

Your Honor, and then he has to be without fault in bringing on the difficulty, Your Honor. Testimony of uncon -- I mean, there -- there's been -- the state has presented some testimony there was a video of Dalton walking.

That really has nothing to do -- nothing to do with this, Your Honor, because at the point at which these two engaged with each other they're in the parking lot at the Timken Center where, ultimately, the alleged victim's body is found. Uncontroverted -- uncontradicted testimony, Your Honor, was that he went over there to make sure there was no problem: "I want to talk to you. I want to make sure that we're good."

There is testimony -- there is -- his testimony was he

didn't have a preceding beef with Mr. Dalton. There was this one situation that he believed was a result of his affiliation with somebody else and he wanted to go in -- in that -- in that potential misunderstanding between those people.

And so when he went up there he just wanted to talk with Dalton. So he didn't have anything. He didn't run. There's no evidence that he ran Dalton up into the parking lot, that Dalton was scared of him.

There was some testimony about some yelling. That yelling, even from the state, the only witness presented by the state that yelling heard -- was heard from a different party. So he was not the one yelling at Dalton.

There's no testimony that he was aggressive with Dalton before the shot was -- before the shot. The only testimony is that he went over there to talk to him and squash any problem, Your Honor.

And so we don't believe he was with -- had any fault on bringing on the difficulty. Seems that Dalton potentially -- it seems that Dalton overreacted, brought out the knife to try to do some harm to him. That's when he defended himself.

Your Honor, for those reasons we ask you to invoke immunity under the Protects of Persons and Property Act.

THE COURT: Mr. Vieth.

MR. VIETH: Your Honor, I would, obviously, concur with that argument. I don't have a lot to add to it.

There was a case that just came out today on that issue from the Supreme Court, and it basically referenced the same argument.

Section 16-11-440(C) provides that, "A person who is not engaged in unlawful activity and who is attacked in another place where he has a right to be, including but not limited to his place of business, has no duty to retreat and has a right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily harm to himself or others."

The circuit court did apply that and found that this individual should be immune. And they said we agree.

He was in a -- not engaged in unlawful activity. He was -- he was in another place where he had a right to be and reasonably believed the use of deadly force was necessary to prevent death or great bodily injury to himself.

Therefore, Subsection 16-11-440(C) clearly provides that he had no duty to retreat and he had the right to stand his ground and meet force with force.

That's State vs. Shannon Scott, just filed August 29th of 2018, to date, by the Supreme Court by

coincidence of this hearing coming up today.

THE COURT: You're quite current on your advance sheets, aren't you?

MR. VIETH: It just happened to be the right case at the right time, Judge.

But that -- the -- and even in that scenario he said he tried to not turn around and run. He was saying he was backing up and then knew he couldn't out -- he couldn't back up and outrun him and he fired the warning shot, or I think -- that's somewhat confusing to me on that because there was an empty shell and other people heard two shots. And I'm sure he was just scared to death. But one was a warning shot and one was just firing and it hit him under the right -- under the right side, under here.

And so that's -- I concur with the argument, Your Honor, that he had a right to be there, and it's unfortunate, as he said on the stand. He regrets it very much and certainly apologizes for all of the tragedy this has caused for a bunch of families. Thank you, sir.

THE COURT: Mr. Bulsa.

MR. BULSA: Your Honor, the state would like to argue this in two veins, first argue directly against the motion made by counsel.

I brought Russell Ghent. We would like to argue that this statute itself is unconstitutional. We'd like to

place that on the record.

I'll first argue against the facts of this case.

Your Honor, it's easy for the defendant to get up and state a story that disparages the victim. We only have one side of the story here because Dalton Moore was walking home and was killed in the Timken Community Center parking lot.

We can only infer from what was going on with him -- and I implore the Court to consider that inference and find that immunity is not appropriate in this case, go to a jury trial to determine the credibility of the defendant. Your Honor also has to determine his credibility, and we feel that it is beyond -- beyond belief.

The evidence we have from the video shows the victim walking down the street on the sidewalk passing the middle school toward the direction of the Timken Center.

Then we next have neighbors seeing the car -- or excuse me -- the truck with Calderon hanging out of the truck. Calderon gets out and gets into Devin Ruttles' car.

Witnesses see the car stopped. Actually, they see the car after, after the shots. They see it in the roadway leaving.

Witnesses hear two shoots. They run out to see what's going on. There's nobody there to see, nobody there to tell Dalton's side of this story.

We have Dalton in a parking lot, Dalton dead with a shot under his right arm.

We can't dispute that there was an open knife, but you can easily infer that he was the one acting in self-defense. He was the one that was trying to stand his ground because a man had stopped the vehicle and jumped out of the vehicle and ran up the hill upon him. It had to be that quick because we know from the neighbors in their recitation of the facts to the detective.

This happened quick. Dalton was surprised, he reacted and he got killed. And then the man who killed him realized he'd been seen by the neighbor across the street, so he fled the scene, sped out of sight and took the bag off the car window, collected his hoody and his shoes and the gun and disposed of them.

So, clearly, that's an incredible story, self-serving story, for him, and we feel the inferences drawn from the other facts can certainly raise a jury question.

As to, first off, the first element as to whether the defendant was at fault for any claim of self-defense, Your Honor, we don't believe that he passes the first question that is raised in 16-11-440(C) in that was he engaged in a lawful activity.

We'd argue that he wasn't because he was possessing a pistol as he went up the -- up the bank into the welcome

center, into the Timken Center. He had no reason to possess that weapon at that point. He was breaking the law. He was engaged in unlawful activity. Therefore he -- 16-11-440 should be excluded based on that alone.

We're not going to argue it's not a public place. It is a public place. We don't believe he had reason to use force because he had no reason to be in the area in the first place.

He's testified about the prior incident where he claims he felt threatened by the victim earlier, yet on this same -- yet on the very next occasion he sees him he goes to talk it out with him and carries a pistol with him.

So he's clearly not without fault. He's engaging in unlawful activity. We feel that the motion should be denied.

At this time I would turn over the constitutionality of this statute to Mr. Ghent.

THE COURT: Mr. Ghent.

MR. GHENT: I'm sure Your Honor is trilled --

MR. ABUSAFT: Your Honor, excuse me. If I may correct and obviously sit down, I believe that the -- the attorney general has to be put on notice to -- when you challenge a statute so that somebody can be here to argue for the -- against their constitutionality argument. I don't -- I think you have to give notice to the A.G.'s office when

you're challenging a statute.

THE COURT: Well, I'm going to hear from him, and then I'll hear -- you can put that argument on the record if you'd like.

MR. GHENT: Your Honor, the first thing just for clarification with respect to standing, Mr. Calderon has filed a motion, but he's given no testimony in support of his motion.

Mr. Vieth has not filed a motion, but he has called a witness in support of the motion he didn't file. So I would submit there's no standing on this.

May it please the Court. Again, Russell Ghent for the state very briefly.

We would ask that the Court hold the provisions of the Persons and Property Protection Act unconstitutional on their face as they apply to matters covering immunity from criminal prosecution.

Your Honor, Mr. Bulsa asked me yesterday if I would be prepared to argue this, and so they -- the statute does not do -- first of all, it purports to do, is a matter of stated intention.

If Your Honor looks carefully at the case that came down today, August 29th, and looks at the citations the Court is pointing out that while the statute says that it's the intent of the legislature to codify the case law

regarding stand your ground, they repeatedly in their opinion seem to be pointing out that it does not codify stand your ground as it existed before the statute.

Stand your ground as it existed did not create an immunity from prosecution. It created an immunity from having to prove the fourth element, a duty to retreat.

And they cite numerous cases that have been cited recently in a South Carolina lawyer article that make it clear that stand your ground has to do with an immunity from proving an element, not from prosecution.

The new court case, State vs. Scott, suggests at least with respect to Justice Kittredge and Justice Hearn in dissent that the Court is losing patience with exactly what the legislature did dump into their laps. It's a statute that didn't have a burden of proof. The Court had to create it, and it's a statute that up until recently the Court was somewhat reluctant to point out. It does not do what it says it is intended to do.

The problem is one of constitutional dimensions here for the simple reason that historically -- and I could ask Your Honor. Your Honor has been a prosecutor, as well as a judge now, for decades.

Your Honor during the entire time Your Honor was a prosecutor certainly had the power to grant immunity from prosecution prior to stand your ground.

And I asked this of any number of judges, how many times before stand your ground did Your Honor grant immunity from prosecution. Answer every time: None.

Research shows Fourth Circuit, Supreme Court, South Carolina, state, none. Why? Because under the South Carolina Constitution this is a separation-of-powers issue.

Courts do not have the authority generally to grant immunity from prosecution, nor did they have it historically. This statute does something that has never been done before. The legislature, which does not have the power to do it, gives to the courts a power that they do not have to grant immunity from prosecution. That is solely historically a power within the executive branch.

Two cases from our own Supreme Court, very recent origin, that are cited in that article, State vs. Tootle. The judge, an administrative judge --

THE COURT: Did you say Tootle?

MR. GHENT: Yes, sir. That's the name.

THE COURT: Spell that for the benefit of the court reporter.

MR. GHENT: T-O-O-T-L-E.

THE COURT: Just like it sounds. Okay.

MR. GHENT: Yes, sir.

The judge was the administrative law judge -- oh, excuse me -- was the administrative circuit judge. And

under the P.T.I. statute the judge could make a recommendation as to the P.T.I., but a judge could not order it.

In this case the judge ordered it. It was taken up to the Supreme Court. That order was reversed. Why? Because while it granted preliminary approval by the C.A.J., it ignored the fact that preliminary approval is contingent. And this is from the statute. "Upon a determination of statutory language governing eligibility." The statute, best final approval in the circuit solicitor.

Based upon that our Supreme Court found that the statute -- the judge, rather, in what he had done had issued an order which ran afoul of Article I, Section 8, of our constitution.

In Langford you had the mirror image of that case where the power is by statute granted to the solicitors to control the docket, which for years people went along with. Langford -- it was challenged.

It went up to the South Carolina Supreme Court. The South Carolina Supreme Court said no, the solicitors do not have that power, it is the power of the circuit court judges to run the docket.

Again, the statute involved and run afoul of Article 1, Section 8, of the South Carolina Constitution.

For that reason, Your Honor, I would submit this

statute, the stand-your-ground statute, only insofar as it relates to criminal immunity, immunity from criminal proceedings, can grant civil immunity all at once. But the power to grant immunity in a criminal proceeding has historically been a power within the executive branch under the solicitors and the attorney general. Thank you, Your Honor.

MR. BULSA: Your Honor, I'd like to put one more thing on the record for Your Honor to consider.

I've read all of the stand-your-ground cases, and I don't believe there's another case similar to this where you only have the testimony of the defendant. You actually have other eye witnesses that can tell the stories.

In this case we just have the defendant. And the victim of course is deceased. No other witnesses to this, so we're left with inferences.

The Court in State vs. Curry and State vs. Oates stated that the Court is not required to accept the accused's version of the facts, and we ask the Court not to do that. They're not credible. And we ask the Court to let this case go forward.

MR. VIETH: Judge, let me quickly address the standing issue, and I'll let cocounsel talk about the constitutionality issue and all of that.

On standing I just -- we didn't file a motion because

we joined in the motion. So I don't want whatever ruling is, is to say there was no standing issue here. But summarily we would have filed the motion but everybody -- solicitor and everybody -- knew we were going to be joining in this motion. So I'll bring it up for the record.

MR. ABUSAFT: Your Honor, I wanted this to be brief, but I think somebody has to -- somebody has to retort to the constitutional issues.

First I will say as far as standing goes, Your Honor, I would say there's an independent standing here.

Mr. Ghent spoke about testimony. Well, we know that it's not required for you to have a motion, for you -- for you to put your client up to testify. That's -- that's not the requirement of having standing in front of the Court.

Your Honor, clearly, this -- my client, Mr. Calderon, has been charged with accessory after the fact. Accessory after the fact requires proof that there was a felony committed. It doesn't always require a conviction, but it does require at least proof of a felony being committed.

And so his -- the charges against him are derivative to Mr. Ruttle's charges. And I think that's enough to confer standing in the same way that under a Fourth Amendment argument you might not own the car but if you're the passenger and the search puts you in jeopardy, then you can challenge the search even though it's not your car,

Your Honor.

So I believe we have independent standing. Obviously, Mr. Vieth did notify the solicitor. They were well aware that he was joining in our motion. So I do not believe there's any standing issues.

First, let me take what I think is a more pressing issue, Your Honor, is regarding kind of the factual contentions here.

I would remind the Court that this is by a preponderance-of-the-evidence standard, Your Honor, and so it only has to be more likely than not.

And while Your Honor -- while Your Honor does test the credibility of witnesses the state has -- hasn't even -- hasn't moved much in -- in to contradict anything that he said. Most of what I -- most that I pointed out was uncontroverted testimony, Your Honor. They have nothing on this, these issues.

As far as unlawful activity, Your Honor, I would again -- I can -- I can cite to the state, I mean, to the Court that the cases that stand for the proposition that someone can be in possession of -- the illegal possession of a firearm but still be acting lawfully to doing it in self-defense. But I know the Court is well aware of where -- well, aware of those cases. And that's not a proposition that's really up to debate any more in this

state. It is clear. It's been clearly stated in multiple cases, Your Honor.

If he was acting in self-defense, as we believe we've met our burden to demonstrate, if he was -- if he armed himself in self-defense, which is different than acting in self-defense -- if he armed himself in self-defense, then he could still be acting lawfully, Your Honor.

Your Honor, I would -- and then addressing the constitutional argument I kind of like that the shoe is on the other foot because the last thing you can do when you're -- when you're down, the tips are down, is that you make the constitutional argument and ask the judge to overrule the legislature.

There are -- there have been legal experts across the country that have challenged stand-your-ground, that have said stand-your-ground is not the best policy, we think there's better ways, it is unique among other laws -- across the country, Your Honor. Nonetheless, those -- those people did not win the day in the South Carolina Legislature. They did not win the day in the legislatures across the South, Your Honor.

This is the law, and it is a recent law. It has been interpreted by our Supreme Court recently, Your Honor. State vs. Curry. The Supreme Court not only interpreted this type of hearing, the standard, I mean, they created --

they did create all themselves, Your Honor, and so that is our Supreme Court in the less than the last ten years saying this is what stand your ground means and this is constitutional. And so, Your Honor, I don't believe that they have --

THE COURT: Well, they didn't say it was constitutional, did they? Was it challenged?

MR. ABUSAFT: Your Honor, well, they interpreted it, Your Honor, and they could have certainly -- they could have certainly sua sponte, Your Honor.

I was -- I was at the Court at that time, Your Honor, and it's not the first time that -- it wouldn't have been the first time that the Court on its own like Langford decided to bring up an issue that had not been presented to it all the way up.

So, yes, Your Honor. I do find by implication they did find it constitutional. They certainly -- they played a large role in creating the framework for it, Your Honor.

THE COURT: I understand they did that. They're interpreting the legislature's actions. But usually if they're going to declare something unconstitutional they hear arguments on it.

MR. ABUSAFT: Well, yes, Your Honor, usually. But, like, in Langford they -- they did declare something unconstitutional. The only thing --

THE COURT: They heard arguments on that.

MR. ABUSAFT: Well, they did hear arguments, Your Honor, and they heard arguments on State vs. Duncan and State vs. Curry. But it was not -- that issue wasn't presented at the lower court.

They got a brief, I believe, from the Public Defender's Association, and it's kind of on its own at the Supreme Court level decided that they were going to address a longstanding problem with the way we ran our docket.

So I do -- I do disagree that the Court does not rule things unconstitutional without there being the traditional preservation all the way up, Your Honor. But if Your Honor is satisfied, I'll move on to my next point.

THE COURT: Well, I'm satisfied.

MR. ABUSAFT: Thank you, Your Honor.

And, Your Honor -- Your Honor, those -- again, I would -- I would focus Your Honor's attention on the facts that were presented.

And I will say there is one case. There is a case out there. It's a Florida case where the victim -- where the victim -- it is the case most synonomous with standing your ground, the Trayvon Martin case where Trayvon Martin was dead and George Zimmerman was the person testifying.

I mean, this is -- what the state is bringing up it not new or novel. People have long said if one party in a

stand-your-ground hearing, and one party's dead, they're not here to give the story, that doesn't invalidate that we were the people presenting testimony and all we have to do is meet our burden by the preponderance of the evidence, Your Honor.

I'd ask you to give full -- the full intent of the legislature and grant immunity in this particular case.

THE COURT: All right. Well, I will say this. I'm quite impressed that the lawyers before me have read the advanced sheets for August 29th, today being August the 29th. And I'm embarrassed to say that I've not read the Scott case yet. But, however, I do have it before me, and to the extent that it's applicable and instructive I will read it before I issue my decision.

So I'll take it under advisement and have you a decision by Friday of this week.

MR. VIETH: Thank you, Your Honor.

MR. ABUSAFT: Thank you, Your Honor.

MR. BULSA: Your Honor, there's one other matter with regards to Mr. Ruttle.

Your Honor, the state's directly indicted him for unlawful possession of a firearm. We'd like him arraigned on that indictment. We intend to proceed on that charge, along with the murder case, on September the 10th.

(Pause.)

MR. VIETH: Your Honor, we'll waive reading of the indictment, kind of like what we do in federal court.

He understands what the charges are against him. He's in jail. He's not on bond, so we don't have to address the bond issue.

THE COURT: All right. Arraignment is waived.

MR. VIETH: That's all I have, Your Honor.

THE COURT: I will issue an order.

END OF REQUESTED TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

The State,)
) TRANSCRIPT OF RECORD
-vs-) 2017-GS-42-5423;5446-5448
) 2017-GS-42-5446-5449
Lorenzo Guillermo Daniel) 2018-GS-42-4411
Calderon and Devin Zachary)
Elijah Ruttle,)
) September 10 - 13, 2018
Defendants.) Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

DERRICK B. BULSA, ESQUIRE
JESSE MICHAEL WILLIAMS, ESQUIRE
Attorneys for the State

MONIER MUFID ABUSAFT, ESQUIRE
Attorney for Defendant Calderon

RICHARD W. VIETH, ESQUIRE
Attorney for Defendant Ruttle

Linda D. Moffitt
Circuit Court Reporter

1	Jury qualification	29
2	Jury sworn	71
3	Opening statements	80
4	Closing arguments	511
5	Jury charge	560
6	Verdict	595
7	Sentence and guilty plea	600
8	Sentence	605
9	Sentence and guilty plea	613
10	Certificate	626
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
C-1	Voir dire		29
C-2	Notice of motion to reconsider		29
C-3	SLED report		287
C-4	Defendant Calderon's requests to charge		494

(Proceedings September 10, 2018)

THE COURT: All right. State vs. Ruttle and State vs. Calderon.

Any pretrial motions?

MR. BULSA: Yes, sir. The state has a couple.

We have a motion in limine to exclude any reference to the victim's character regarding any prior record.

He was on probation, I believe, for an incident out of Cherokee County. We would argue it doesn't have any relevance to this case.

THE COURT: Okay.

MR. BULSA: I raise that issue because of discussions with myself and Mr. Vieth. He brought up the fact that the victim had that record and he was going to attempt to introduce it, so.

THE COURT: All right. Mr. Vieth.

MR. VIETH: Your Honor, I reviewed the case law on this and unless -- my understanding of the case law, unless the violent behavior was targeted to my client it's really inadmissible. And I think that's the case law.

THE COURT: So you're in agreement?

MR. VIETH: I am in agreement --

THE COURT: Okay.

MR. VIETH: -- unless they open the door for it, it will not be brought up.

THE COURT: Sure. I'm guessing it's not applicable to Mr. Calderon because he's charged with something occurring after any crime was committed.

MR. BULSA: That would be my understanding, yes, sir. He's not -- he's not mentioned in any attempt to use it.

THE COURT: Okay. Well, do you perceive any relevance there, Mr. Abusaft?

MR. ABUSAFT: No, Your Honor, not at this time.

THE COURT: Okay. All right. Next.

MR. BULSA: Okay. Also, in regards to Mr. Ruttle, the state would move in limine to exclude any comments or reference to Mr. Ruttle's father being a pastor, somehow trying to use that to influence the jury.

I've tried a case with Mr. Vieth before where he's tried to send subtle hints to a jury, but I don't think Mr. Desor's occupation has any relevance to this case.

MR. VIETH: I definitely object to that. I mean, whether he's a truck driver or a pastor, if I say that his family is in the courtroom and introduce them to the jury, I don't see how that's prejudicial.

I mean, the fact that he's a pastor, I guess, is saying that that's -- if he was a truck driver, they'd probably say that's fine, but I don't see --

THE COURT: Well, I don't know what they'd say about that, but the point being what's the relevance of it. Is

there some relevance?

MR. VIETH: Well, I wouldn't -- I mean, there's not -- it's not relevant to say therefore he's not guilty or guilty, no. It's just, I mean --

THE COURT: What is the relevance then?

MR. VIETH: I can keep it out.

THE COURT: Okay.

MR. VIETH: But I just don't see the point.

THE COURT: We're in agreement on that too then. I don't see the relevance of it.

I mean, it may become relevant, but just the fact that he's a pastor and he's the defendant's father doesn't make anything -- doesn't make his occupation relevant to anything.

MR. VIETH: No. I can't remember a trial that I was subtle like that in, but I'll accept that.

MR. BULSA: I'll refresh your memory at the break.

THE COURT: Which one was it?

MR. BULSA: It was many, many years ago. He brought in the father with the badge to influence the jury.

Those are the two state's motions.

THE COURT: Okay. All right. What about defendant Ruttle?

MR. VIETH: Judge, we had filed a motion for a continuance when we were in here for the stand-your-ground

motion.

We were also handed a new indictment by the grand jury of about August 24th, and we waived arraignment.

My client got in touch with his family and asked for me to ask for a continuance for discovery, and I did file that motion, just abundance of caution, but the reality of it is there's no new discovery that comes from the set of facts that we have. So I'm withdrawing that motion. The Court would have denied it anyway.

THE COURT: The indictment was for unlawful possession of a pistol?

MR. VIETH: That's correct.

THE COURT: And you and your client have known all along that this case involved his use of a pistol. And I assume that based upon that all of the relevant discovery has been provided.

MR. VIETH: That's right.

THE COURT: Is there any additional discovery to provide?

MR. BULSA: No, sir.

THE COURT: Okay.

MR. VIETH: So I don't oppose -- I don't mind withdrawing that motion.

THE COURT: Okay.

MR. VIETH: The other thing when we're talking about

in limine, we had discussed -- the solicitor and I -- when Devin Lorenzo did get stopped from this incident there were drugs found in their car.

We've talked about that that could be prejudicial to a jury on the main issue of murder, because there's no evidence that either one was on drugs or anything. And they've agreed that we're not going to address any drugs were in the car at the part of the murder trial.

Ultimately, that will be a guilty plea, regardless of the outcome of this trial, but it's not something that is going to be brought up, when they get stopped by the officers.

MR. BULSA: Your Honor, the state agrees. We didn't intend to bring that up. However, I'm told by Mr. Vieth that he may have some character witness. At that point it may become relevant.

THE COURT: Mr. Abusaft, do you have a position on that point?

MR. ABUSAFT: I do not, Your Honor. Well, yes, I do, Your Honor. Obviously, I think it's irrelevant, especially to my client.

THE COURT: Well, you're in agreement to keep it out.

MR. ABUSAFT: Yes.

THE COURT: Okay.

MR. VIETH: I have no other motions, Your Honor.

THE COURT: All right. Mr. Abusaft, do you have any?

MR. ABUSAFT: Yes, Your Honor.

If you'll look at my motion in limine -- I think I gave it to the court reporter to make a court's exhibit. Of course motion to determine the state has complied with Rule 5 and Brady.

THE COURT: Has the state complied?

MR. BULSA: Yes, Your Honor. We feel we have complied.

THE COURT: Okay.

MR. ABUSAFT: Your Honor, I did send an email to the state requesting some contact information for some witnesses.

I don't think -- I don't think that's going to be a problem at this point, but I don't believe I received anything back, but that's --

MR. BULSA: What was that? You sent an email about what?

MR. ABUSAFT: About contact information, redacted from the -- information.

THE COURT: Of a witness?

MR. ABUSAFT: It's not a big -- it's not a big deal, Your Honor.

THE COURT: Okay.

MR. ABUSAFT: I believe I got in contact with

everybody that's relevant.

MR. BULSA: Okay.

MR. ABUSAFT: Motion to determine any prior record the state intends to introduce against Mr. Calderon.

MR. BULSA: I don't believe he has anything that's admissible, Your Honor.

THE COURT: Okay.

MR. ABUSAFT: I received the state's witnesses. I have not received any criminal histories.

MR. BULSA: I have criminal histories that the defendant is welcome to review after this hearing.

MR. ABUSAFT: If I could just be provided some copies.

MR. BULSA: Your Honor, we just -- we typically don't hand out rap sheets for just witnesses. We can review it together, and if he feels he needs a copy, I'll give it to him.

THE COURT: Okay.

MR. ABUSAFT: In this particular case, Your Honor, I'll skip No. 4. I don't think there's any need for it.

And then motion to terminate existence and admissibility of any prior bad acts the state intends to introduce under Lyle, Your Honor.

MR. BULSA: Your Honor heard briefly about one during the pretrial hearing which it was just about -- I think it was about three weeks prior to this involving both

defendants being in the area of the victim's house and a gun being pulled out on the victim.

We would argue that that is evidence of motive and intent. We were going to seek testimony from the -- regarding that incident.

Then there's also another witness who recalls an incident at a convenience store near Cowpens, 24-7 store, that would have been around, I think, Valentine's Day. That involved Mr. Calderon making a comment that he had two pistols, one for Dalton and one for another boy by the name of Josh Hyatt. I think that'd also go towards motive and intent.

THE COURT: All right. Mr. Abusaft.

MR. ABUSAFT: Your Honor, accessory after the fact, specifically, excludes the ability for the defendant to be a coconspirator or be an accessory before the fact. So that would render his position about motive just inapplicable, Your Honor. And so these -- not only would they be irrelevant, but they'd also be highly prejudicial.

If the state believed that he's an accessory before the fact, they cannot charge him with being an accessory after the fact.

So if this was a -- if this was a common scheme for which he had some motive to -- they simply cannot charge him with a crime under which he's been indicted.

MR. BULSA: Your Honor, we actually believe he is an accessory before the fact, but, unfortunately, we don't have the witnesses to show that he was acting at that time to encourage the defendant to commit this crime, which we believe we -- we believe it happened. Unfortunately, we don't have the proof.

Or we can clearly show that he acted after the fact to help ferret the shooter away from the scene and help him dispose of evidence.

And motive and intent would go towards that he wanted something to happen to Dalton. Whether he initially caused it, encouraged it on that day in question, he certainly was in agreement with what happened.

We believe that would be an inference the jury could make based on his prior conduct.

THE COURT: All right. Well, I certainly see the relevance of the event which has been previously testified to happening around the Easter holiday, because both defendants were present then. And that goes to the state of mind of each, as well as the -- Mr. Dalton Moore himself.

The -- it's a little more problematic with the event occurring on Valentine's Day. As I understand it, that's the only -- that only involves Mr. Calderon.

MR. BULSA: Yes, sir.

THE COURT: And Mr. Ruttle was not present and there's no -- no testimony about Mr. Moore being present either. It's just a comment made by Mr. Calderon?

MR. BULSA: To a friend of Mr. Moore.

THE COURT: And Mr. Calderon is not charged as an accessory before.

MR. BULSA: No, sir.

THE COURT: All right. Well, I'm likely going to have to limit that or exclude it, but when the time comes if you perceive the relevance of it in the context of the case, we'll take that testimony outside the presence of the jury.

MR. BULSA: Yes, sir.

MR. ABUSAFT: Your Honor, then I would ask -- I would ask on the previous point -- I would ask that it be limited, that the Easter scenario be limited, to just Dalton Moore -- excuse me -- Devin Ruttle's participation in that.

There's no -- there's no -- there's no relevancy to whatever Mr. Calderon -- obviously, Mr. Ruttle is going to testify that that situation precipitated -- at least he previously did -- precipitated his need to go and talk to Dalton Moore. And for that reason it has relevancy.

But Lorenzo being a part of that situation has no relevancy. He can just say I was a part of a situation where I thought Dalton may have got -- may have

misunderstood me and thought we had a problem. But there's no relevancy to my client unless he's charged as a coconspirator to his role in that scenario.

THE COURT: Well, I think it's relevant to the state of mind of Mr. Moore at the time that it's claimed that Mr. Ruttle was acting in self-defense of Mr. Moore in -- from the attack by Mr. Moore. And I think that prior incident wherein Mr. Calderon and Mr. Moore were together could very well have created the issue or create the inference in the mind of the jury that it was Mr. Moore who was acting in self-defense, not Mr. Ruttle. So it's relevant on that point, at least the way I see it.

MR. ABUSAFT: Your Honor, give me one moment, please.

(Pause.)

MR. ABUSAFT: Yes, Your Honor.

I think there's also -- I think the state intends to introduce evidence that Mr. Calderon got out of a car before the shooting, Mr. Calderon got out of the car and had a firearm on him when he got out of the car. I think that's irrelevant. And if it was relevant, it would be highly prejudicial.

Your Honor, and also I would ask that you -- I don't think you explicitly did a 403 analysis on the previous claim, just did a relevancy analysis.

THE COURT: Well, I'll do that when you object to it

if you object.

MR. ABUSAFT: Okay.

THE COURT: The last issue was what?

MR. ABUSAFT: From my understanding the state intends to introduce some evidence that when Lorenzo Calderon got outta the car before he got into Mr. Ruttle's vehicle that he had a gun on him.

Your Honor, I believe that it's irrelevant and that it's also -- if it was relevancy, it's minor relevancy, would be substantially outweighed -- outweighed by its probativeness -- excuse me -- it's probative value is substantially outweighed by the prejudice to the defendant, Your Honor.

THE COURT: Mr. Bulsa.

MR. BULSA: Your Honor, that's part and parcel of this crime. It goes to res gestae of the situation at the time that Calderon was hanging out the window yelling threats at the victim. Then he got out of the vehicle with a pistol.

Law enforcement initially thought he was the shooter, but when he spoke with law enforcement, and law enforcement did some other work on the case, they realized that it was Mr. Ruttle that did the shooting.

Mr. Calderon readily admitted in a statement that we won't use because we're trying them together, but he readily admitted that he had the pistol. I don't think --

I don't how you can separate it, Your Honor. It's just he was making threats. He got out of the vehicle with the pistol and then he got into a car with the shooter.

THE COURT: I think it's relevant to how and when he came into the possession of the pistol that he used, he claims he's using in self-defense. So I think it is certainly relevant. And as your last two arguments, because they're both matters of relevancy and that information or testimony is relevant, I do find that the probative value is not substantially outweighed by the danger of unfair prejudice.

All right. What else?

MR. ABUSAFT: That's it, Your Honor.

I just want -- and I guess I'll rehighlight this. It seems that the state's theory is to try to -- is to try to try him on both an accessory before the fact using facts from accessory before the fact to try to convict him for accessory after the fact.

I think this may become more and more relevant as the case goes on. I just want to put the Court on notice.

THE COURT: Well, I mean, he was present. I mean, he's not charged with accessory before the fact. I understand that. He's only charged with accessory after the fact. But he's present. He's a material witnesses. He's there when the event occurs. So that's certainly

relevant as to his knowledge if nothing else.

All right. Any other motions or matters to address?

MR. ABUSAFT: No, Your Honor.

MR. BULSA: No, sir.

THE COURT: All right. Court is in recess until 2:00 o'clock.

MR. VIETH: Oh, Your Honor, let me ask you something if I can.

The father -- and my -- my client's been in jail since May of last year, and communication's just been by phone.

He asked is there any way I can talk to my dad before the jury is selected. I don't know. I know it's a safety issue, but is there any way that the dad could have any communication with his son?

THE COURT: Well, here's my position on that. I don't have any issue with it, but he's not in my custody.

MR. VIETH: I understand.

THE COURT: And so, you know, security addresses safety issues. And if they -- if they believe that they can accommodate that, then they usually do. If they feel it's not appropriate, then they may refuse. And I do not ordinarily order that unless there's some unusual circumstance.

MR. VIETH: That's fine. I'd just like to -- he wants to discuss options, and so it's important to talk.

THE COURT: Well, they often make those arrangements, and they'll do that perhaps with you.

MR. VIETH: I'll be glad to be part of it.

THE COURT: But I don't know the logistics of that or what -- where -- where they have a place that accommodates that sort of contact. So that's why I leave it up to the security, but they often do it.

MR. VIETH: Okay. I appreciate that. Thanks.

THE COURT: All right. Court is in recess until 2:00 o'clock.

(Whereupon, a recess was taken.)

THE COURT: All right. Any further any matters to address before the jury panel is brought around?

MR. ABUSAFT: Your Honor, the defense only wants to present you with a motion to reconsider on your previous order granting immunity.

Obviously, we don't ask for any type of hearing on that, but for appellate purposes we will present you that motion.

THE COURT: Okay.

MR. VIETH: Your Honor, just for the record, we join in on that motion.

THE COURT: All right. That motion is denied.

All right. What else?

MR. BULSA: Nothing from the state, Your Honor.

MR. VIETH: Nothing from Mr. Ruttle, Your Honor.

MR. ABUSAFT: Nothing from Mr. Calderon, Your Honor.

THE COURT: All right. Bring the jury panel around, please.

MR. ABUSAFT: Your Honor, am I correct that we have -- is it your position that we have fifteen strikes, ten for Mr. Ruttle and five for Mr. Calderon?

THE COURT: True. The state has ten.

MR. ABUSAFT: Your Honor, I also make that motion a court's exhibit.

THE COURT: Okay.

(Voir dire marked Court's Exhibit No. 1; notice of motion to reconsider marked Court's Exhibit No. 2.)

(The following takes place in the presence of the jury venire.)

THE COURT: Good afternoon, ladies and gentlemen.

We are ready to begin with jury selection in the first case that's going to require some of your participation.

The title of the case or cases -- actually two persons being tried together. The state alleges that these offenses arose out of one event or a course of events which the state alleges occurred back on May the 5th of 2017.

There are three separate indictments. Two of those indictments have been brought against Devin Zachary Elijah Ruttle and the third indictment has been brought against

Lorenzo Guillermo Daniel Calderon.

One indictment charges Mr. Ruttle with the crime of murder. The state alleges that on or about May the 5th of 2017 Mr. Ruttle did here in Spartanburg County wilfully and with malice aforethought kill one Dalton Dywer Moore by shooting him and that he died as a proximate result of that gunshot wound.

The second indictment brought against Mr. Ruttle is that of unlawfully possessing a firearm occurring on the same day.

And the remaining indictment is against Lorenzo Guillermo Daniel Calderon, and it alleges that he has committed the crime of accessory after the fact to murder, the state alleging on May the 5th of 2017 that Mr. Calderon knowing that a felony crime -- in this case it's alleged to have been murder -- was committed by Mr. Ruttle, and he did aid, harbor and assist Mr. Ruttle to escape detection, arrest or punishment or otherwise avoid the consequences of the crime they claim Mr. Ruttle committed.

Now, as to those allegations and as to each of the charges contained therein each of the defendants have entered a plea of not guilty.

A plea of not guilty places upon the state the burden of proving the allegations that they have made by way of these indictments, the burden of proving each of the

essential elements of the crimes alleged against each of these defendants; and therefore the burden is upon the state to establish a defendant's guilt to the satisfaction of 12 jurors beyond a reasonable doubt before any verdict of guilty could be returned as to any of the separate charges.

And therefore we're going to be selecting actually 14 jurors. There'll be 12 primary jurors and two alternate jurors.

The function of the jury is to listen to the testimony and consider the evidence presented during the trial of the case.

At the trial's conclusion after all of the evidence has been received the jury is going to be instructed on the law. You'll go back to deliberate. You'll examine the evidence. From that evidence you'll determine the facts where you can as they relate to the allegations. Once the facts are determined, the jury applies the law, and the jury determines whether or not a defendant's guilt has been proven beyond a reasonable doubt.

Now, before we begin with jury selection I've got some folks that I'm going to be introducing to you, and the purpose of the introductions is to find out if you have any connection whatsoever with anybody that's involved in the trial of this case or any members of their respective

offices or any members of their respective families.

I need to know if you have any connection by blood or by marriage, do you have any connection through work, school or church, have you met them, do you socialize with them, or do you know them in any fashion whatsoever, whether personally or through a family member.

So as the witnesses are identified I'll, of course, have the -- each of the defendants introduced. I'll have the lawyers who will be introduced. Each of the witnesses to testify in the case will be introduced in order to find out if you have any connection with any of them so that we can make that determination and determine whether or not any connection that you may have would have any bearing upon your decision or whether or not, despite the fact that you have a connection, you could still be fair and impartial if selected as a juror.

After those introductions take place I will then have some additional questions to ask you in order to determine your ability to be fair and impartial if selected as a juror in this particular case.

Now, first of all, as I told you, the defendants are Devin Zachary Elijah Ruttle and Lorenzo Guillermo Daniel Calderon.

I'm going to ask first for Mr. Ruttle to stand and face the jury panel so that you may see who he is.

(Whereupon, Defendant Ruttle stood.)

THE COURT: Mr. Ruttle is represented by Rick Vieth seated next to him at the counsel table.

The second defendant is Lorenzo Guillermo Daniel Calderon. I'll ask him to stand and face the jury panel.

(Whereupon, Defendant Calderon stood.)

THE COURT: You've got to stand a little bit longer so they can see who you are.

All right. Mr. Calderon is represented by Monier Abusaft who is an assistant public defender in the Seventh Judicial Circuit Public Defender's Office.

(Whereupon, Mr. Abusaft stood.)

THE COURT: Presenting the case on behalf of the state are Derrick Bulsa and Jesse Williams. They are each assistant circuit solicitors for the Seventh Judicial Circuit.

(Whereupon, Mr. Bulsa and Mr. Williams stood.)

THE COURT: Potential witnesses to be called during the trial of the case include Stephanie Brewster; Maria Calderon; Brooke Carter; Sky Desor; Erica Fortenberry; Bobby Goode; Pamela Goode; Brittni Gossett; Debbie Greene; Donald Greene; McKenzie Inman; Brianna Ivester; Jeffery McCallister; Tammy McCallister; Christen Mills; Maddison Moore; Austin Moore; Stephen Mullinax; Jacob Quinn; Justin Kyle Rector; Jeffrey Hunter Sizemore; Jennifer Taylor;

Jerry Taylor; James Owens with the Duncan Police Department, formerly with the Cowpens Police Department; Trevor Sherbet now with U.S.C. Upstate Security, formerly with the Pacolet Police Department; Steve Calhoun, Spartanburg County Sheriff's Office; Curtis Norwood, Spartanburg County Sheriff's Office; James Rush, Spartanburg County Sheriff's Office; Wendy Thomas, Spartanburg County Sheriff's Office; Kerry Cooper, state law enforcement division; Thomas Darnell, state law enforcement division; Jamie Johnson, Lexington County Sheriff's Office, formerly with the state law enforcement division; Catherine Leisy, state law enforcement division; Harvey Owens, state law enforcement division; Todd Ruffner, state law enforcement division; Chad Smith, state law enforcement division; Kukila Wallace, state law enforcement division; David Wren, pathologist, Spartanburg Regional Medical Center; Jeannie Burnett, Spartanburg County Coroner's Office; Jenny Smathers and; Hazel Tucker.

Now, some of those people are not in the courtroom. But if any juror knows someone that has a name that I called out, if you will let me know of that fact, then we'll try to narrow down the identification of that person so that you can determine whether or not the person that's name was called is the same person that you happen to know with that same name.

So does any juror know any potential witness that's been recited?

All right. If you will, please, in response to a question, please stand and give me your name and your juror number, and then tell me what person it is that you know.

JUROR NO. 1: Catilyn Adams, Juror No. 1. Jacob Quinn.

THE COURT: Jacob Quinn.

JUROR NO. 1: Yes.

THE COURT: Okay. And the Jacob Quinn that you know, can you tell me something about him?

JUROR NO. 1: Just from --

THE COURT: Where does he live?

JUROR NO. 1: He's from Woodruff.

THE COURT: He's from Woodruff.

JUROR NO. 1: Uh-huh.

THE COURT: And about what age?

JUROR NO. 1: Not too much younger than me. He's probably like 19 or 20.

THE COURT: Okay. Solicitor, can we narrow down Jacob Quinn's I.D.?

MR. BULSA: Your Honor, the Jacob Quinn in our case lives in Cowpens on Crystal Drive.

THE COURT: All right.

MR. BULSA: He's approximately that age.

THE COURT: Okay. Do you know where Mr. Quinn lives now? Does he still live in Woodruff as far as you know?

JUROR NO. 1: I don't know. I haven't --

THE COURT: Let's just assume for the moment that this is the same person. How do you know Mr. Quinn?

JUROR NO. 1: I -- he's been previously involved in criminal activity from the people that I am close to.

THE COURT: So you would know him through other people?

JUROR NO. 1: I've met him several times.

THE COURT: You've met him. But, I mean, you didn't -- you weren't actually friends. You knew him through other people?

JUROR NO. 1: Yeah.

THE COURT: Okay. Is there anything about your connection and what you know about it that would interfere with your ability to be fair in this case?

JUROR NO. 1: Yeah.

THE COURT: Okay.

MR. BULSA: The Jacob Quinn in the case does not have a criminal history, Your Honor.

THE COURT: Does not?

MR. BULSA: No, sir.

THE COURT: All right. Well, this -- well, let me see y'all just a minute.

(Bench conference held off the record with Juror No. 1 with counsel present.)

THE COURT: All right. Tell me what your number was again, please, ma'am.

JUROR NO. 1: One.

THE COURT: No. 1. Okay. All right. We'll excuse you from service in the trial of this case, but don't leave yet. Just have a seat for right now.

All right. Yes, ma'am.

JUROR NO. 192: My number is 192, Cheryl Williams. And I recognize the name Kyle Rector and Brooke Carter.

THE COURT: Kyle Rector and Brooke Carter?

JUROR NO. 192: Yes, sir.

THE COURT: And how is it that you are acquainted with Kyle Rector and Brooke Carter?

JUROR NO. 192: Kyle Rector, if I am not mistaken, is my granddaughter's boyfriend.

THE COURT: All right. And what about Brooke Carter?

JUROR NO. 192: She is a -- used to be a friend of my son's.

THE COURT: Okay. Is there anything about those connections that would interfere in any way with your ability to be fair and impartial if you were selected as a juror in this case?

JUROR NO. 192: No, sir.

THE COURT: All right. Thank you, ma'am. You may be seated.

Anyone else?

Yes, ma'am.

JUROR NO. 181: David Wren. I work in phlebotomy at Spartanburg Regional.

THE COURT: All right. And your number was what?

JUROR NO. 181: 181.

THE COURT: Is there anything about that connection that would interfere with your ability to be fair in the case?

JUROR NO. 181: No, sir.

THE COURT: Thank you. Be seated.

Yes, ma'am.

JUROR NO. 42: Forty-two.

MR. ABUSAFT: Your Honor, can we get what the -- we didn't catch the previous connection.

THE COURT: 181. She knows Dr. Wren. She works at the phlebotomy at the hospital.

JUROR NO. 42: Forty-two. Harvey Owens is my husband's lieutenant through the state law enforcement division.

THE COURT: Okay. Is there anything about that fact that would impair your ability to be fair in this case?

JUROR NO. 42: Yes.

THE COURT: All right. Juror 42 is also excused from service in the trial of this case.

Anyone else?

(No response.)

THE COURT: All right. Does any juror know any of the lawyers involved in the case? Have you ever been involved in a matter with any of these lawyers, personally or professionally?

JUROR NO. 168: Just through the office of Mr. Vieth, and I worked with his mother years ago.

THE COURT: All right. And your name and number, please, ma'am.

JUROR NO. 168: 168, Mary Stephens.

THE COURT: All right. And you know Mr. Vieth?

JUROR NO. 168: I don't know him, but I knew his mother.

THE COURT: You knew his family.

All right. Is there anything about that connection that would have any bearing upon your decision in this case?

JUROR NO. 168: No, sir.

THE COURT: Thank you. Be seated.

Anyone else?

(No response.)

THE COURT: Does any member of the jury panel know any

other person who's not been identified, but any other person who is employed in the Seventh Judicial Circuit Solicitor's Office, the Seventh Judicial Circuit Public Defender's Office or the law office of Henderson, Brandt and Vieth? If so, please stand.

(No response.)

THE COURT: All right. Now, these allegations arise out of events which the state alleges occurred back on May the 5th of 2017 in the community of Cowpens located in Spartanburg, about ten miles from here to the east.

The state alleges, as I read from the indictments, that Mr. Ruttle shot and killed Mr. Dalton Moore, that that killing was accompanied by malice aforethought, expressed or implied, that at the same time he was in unlawful possession of a pistol, and that subsequent to that event Lorenzo Guillermo Daniel Calderon assisted, aided, harbored or otherwise helped Mr. Ruttle escape detection, arrest or punishment or the consequences of his crime. And, as I say, those are allegations that have been denied.

But I need to find out if any member of the jury panel believes that you might have heard, seen or read something that relates to this particular case.

In other words, I need to know if you have any information that relates to this case that you have received from any source whatsoever, whether it be

television, radio, newspaper, conversations or discussions at work, church or school, or just personal conversations with friends.

Do you believe that you have any information about this particular case that you have received from any source whatsoever? If so, please stand.

Yes, ma'am. And you are Juror 181?

JUROR NO. 192: 192.

THE COURT: Excuse me. 192. And, ma'am, don't tell me anything that you heard, saw or read, but tell me what source you received information.

JUROR NO. 192: My granddaughter.

THE COURT: All right. And is there anything about that information that you received from her that would in any way impair your ability to be fair and impartial in this case if you were called upon to serve as a juror?

JUROR NO. 192: Possibility, yes.

THE COURT: Well, do you think there's a reasonable probability?

JUROR NO. 192: She gave me some information.

THE COURT: Well, I'm not asking --

JUROR NO. 192: I don't know if it is true so --

THE COURT: What I'm asking you is if based upon the information you have do you believe that you would be unable to render a fair and impartial decision in this

case.

JUROR NO. 192: No, sir.

THE COURT: Let me ask you this. Do you understand that the evidence that the jury must rely upon under their oath as jurors, the evidence that the jury must rely upon in determining their decision and arriving at a verdict, has to be based solely upon the testimony and the evidence received during the course of the trial?

In other words, you're not permitted to allow yourself to be influenced by any outside or extraneous information.

JUROR NO. 192: Yes, Your Honor.

THE COURT: And, for instance, sometimes people read things in the newspaper or see something on television, and that's not a big deal because we're always exposed to things often, but it is important if you can't put it aside and base a decision upon solely what happens in the courtroom, because that information might be false. It may be inaccurate, and that's why you can't rely upon it for anything. You have to decide the verdict from the evidence presented during the trial.

JUROR NO. 192: I understand.

THE COURT: So my question to you is whatever you heard from whatever person, could you put it aside and not allow it to influence your decision in this case.

JUROR NO. 192: Yes, sir.

THE COURT: All right. That's Juror 192.

Thank you, ma'am. You may be seated.

Does any member of the jury panel or any members of your immediate family -- and for the purpose of all of my questions an immediate family member refers to a parent or a spouse or a child or a sibling -- parent, spouse, child or sibling. Do you or any members of your immediate family attend or have you ever attended the New Life Deliverance Worship Center, which I think is also included in the -- is in Cowpens. Is that true?

MR. BULSA: I'm not sure. That's close.

THE COURT: Is it?

MR. VIETH: No, sir.

THE COURT: Nobody knows?

MR. VIETH: It's not.

THE COURT: It's not.

Okay. Has any member of the jury panel or any members of your immediate family ever been the victim of, or have you or that family member ever been accused of, having committed any type of criminal offense that might be characterized or described as a violent offense? You or a family member has been the victim of such or you or a family member has been accused of such.

And violent offenses might include the crimes of murder, manslaughter, armed robbery, burglary, criminal

sexual conduct, domestic violence of a high and aggravated nature, common-law robbery, aggravated assault and battery or any other similar type of an offense.

Have you or that family member ever been the victim of such or ever been accused of having committed such? If so, please stand.

All right. I have got three. I'll start to my right and I'll work to my left.

Give me your name and your number, please, sir.

JUROR NO. 119: Richard McCluney, 119.

THE COURT: Was it you or a family member?

JUROR NO. 119: Me.

THE COURT: You?

JUROR NO. 119: Yes, sir.

THE COURT: All right. Do you mind answering the question where you are, or would you prefer to step down here to respond to it?

JUROR NO. 119: Either one.

THE COURT: Either one?

JUROR NO. 119: Yes, sir.

THE COURT: All right. Were you a victim or were you an accused?

JUROR NO. 119: Accused.

THE COURT: All right. And what was the nature of the crime for which you were accused?

JUROR NO. 119: C.D.V.
THE COURT: And is there anything about that experience that would have any bearing upon your decision in this case?
JUROR NO. 119: No, sir.
THE COURT: All right. Thank you. Be seated.
Yes, ma'am. Your name and number.
JUROR NO. 57: My name Pamela Ellison, and my number is 57.
THE COURT: And was it you or a family member?
JUROR NO. 57: Family member.
THE COURT: And was it a -- were they a victim or an accused?
JUROR NO. 57: Accused.
THE COURT: And do you mind telling me from where you are, or would you rather step down here?
JUROR NO. 57: May I step down?
THE COURT: You may. Just come out in the aisle there. It will be easier if you come this way. They've got too much equipment over there.
(Bench conference held off the record with Juror No. 57 with counsel present.)
THE COURT: Juror 57 is excused from service in the case.
Yes, sir.

JUROR NO. 136: 136, Johnny Parton. My mom is a victim of domestic violence.

THE COURT: I'm sorry? I didn't hear that. Your number was?

JUROR NO. 136: 136, Johnny Parton. And my mother was a victim of domestic violence.

THE COURT: All right. And is there anything about that fact that would interfere with your ability to be fair and impartial in this case?

JUROR NO. 136: No, sir.

THE COURT: Thank you. Be seated.

Anyone else?

Okay. Yes, sir.

JUROR NO. 24: Juror No. 24. I had a nephew who was murdered. He was shot.

THE COURT: A nephew is a victim of murder?

JUROR NO. 24: Yes.

THE COURT: And what did you say after that?

JUROR NO. 24: He was shot.

THE COURT: Okay. Is -- did that happen in Spartanburg County?

JUROR NO. 24: No. It's happened down in --

THE COURT: Is there anything about that fact that would affect your judgment in this case?

JUROR NO. 24: I don't think so.

THE COURT: Well, you know, I don't like to press people. I don't want y'all to think I'm pressing you, but, you know, when you say I don't think so, it's important that you know so, one way or another. So I'm just asking you if you think there's any reasonable probability that that personal experience that you've had with a family member would have any bearing upon your decision in this case.

JUROR NO. 24: There's always been a question about the testimony of the individuals who were accused.

THE COURT: Well, is that -- is that yes or no?

JUROR NO. 24: Yes.

THE COURT: Okay. We'll excuse Juror 24 from service in this case.

But don't leave yet.

JUROR NO. 58: Fifty-eight, Odell Ferguson.

THE COURT: Fifty-eight? Okay. You can step down here, sure.

(Bench conference held off the record with Juror No. 58 with counsel present.)

THE COURT: Juror 58 is excused from service in the trial.

Anyone else need to respond to that question?

Yes, ma'am.

JUROR NO. 125: I'm not sure. It was 20 years ago,

lewd act on a minor. It was a family member, and I'm good with it.

THE COURT: Okay. What's your number?

JUROR NO. 125: 125, Donna Miller.

THE COURT: You had a family member who was accused of something?

JUROR NO. 125: No. She was a victim.

THE COURT: She was a victim of something.

JUROR NO. 125: Yes.

THE COURT: And your position is you don't think that would affect your judgment in the case?

JUROR NO. 125: No, sir.

THE COURT: That is your position, or it's not your position?

JUROR NO. 125: Excuse me?

THE COURT: I'm trying to find out what your position is. Would it affect your judgment in this case or not?

JUROR NO. 125: No. It will not.

THE COURT: Okay. Thank you, ma'am. You may be seated.

I hesitate to ask, but anyone else?

(No response.)

THE COURT: Okay. Has any member of the jury panel or any members of your immediate family ever been at any time employed as any type of law enforcement officer -- a

sheriff's department, city police department, town or municipal law enforcement agency, the state law enforcement division, federal bureau of investigation, civilian or military police, any type of law enforcement agency? That includes the detention facilities, department of corrections, probation and parole.

I have several standing. I'm going to start on my right, row my row. And I'll work -- then I'll jump the aisle and go to my left.

I'll start with you, ma'am. If you will, give me your name and your number, and then tell how that question relates to you.

JUROR NO. 48: Leslie Delozier, 48. My brother-in-law was probation and parole. It will not effect.

THE COURT: Wouldn't have any bearing in your decision?

JUROR NO. 48: No, sir.

THE COURT: Thank you.

JUROR NO. 146: Calvin Praytor. Cousin was a highway patrolman.

THE COURT: Tell me your number, please.

JUROR NO. 146: 146.

THE COURT: Your cousin was a highway patrolman?

JUROR NO. 146: Yes, sir.

THE COURT: Now or previously?

JUROR NO. 146: Former.
THE COURT: Would that have any bearing?
JUROR NO. 146: No, sir.
THE COURT: Thank you. Be seated.
Yes, ma'am.
JUROR NO. 42: Forty-two. Husband has had 15 years law enforcement.
THE COURT: All right. I've already excused you, so you won't need to answer any more questions. Thank you.
Yes, sir.
JUROR NO. 165: Yes, Your Honor. Sheriff's department on security teams.
THE COURT: I need your name and number.
JUROR NO. 165: 165, Simonds.
THE COURT: Would that have any bearing in your decision?
JUROR NO. 165: It would.
THE COURT: Sir?
JUROR NO. 165: It would.
THE COURT: All right. We'll excuse Juror 165 from service in the case.
Yes, sir.
JUROR NO. 128: Robert Mitchell, 128. I worked for Spartanburg County Detention Center and Greenville County Sheriff's Department. I'm supposed to start on the

24th for work with S.C.D.C.

THE COURT: Okay. Would that have any bearing in your decision?

JUROR NO. 128: I think it would.

THE COURT: You think it would?

JUROR NO. 128: It would.

THE COURT: All right. We'll excuse Juror 128 from service in the case.

All right. Yes, ma'am, front row.

JUROR NO. 156: Anita Salinas. My number is 156. My son-in-law is a detective for Lexington County.

THE COURT: Would that have any bearing in your decision?

JUROR NO. 156: No.

THE COURT: Thank you. Be seated.

Yes, ma'am.

JUROR NO. 125: Donna Miller, 125. My daughter and daughter-in-law are both detectives for Greenville City.

THE COURT: Would that have any bearing in your decision?

JUROR NO. 125: No, sir.

THE COURT: Thank you. Be seated.

Yes, ma'am.

JUROR NO. 168: Mary Stephens, 168. My son was a corrections officer with Spartanburg County.

THE COURT: Would that have any bearing in your decision?

JUROR NO. 168: No, sir.

THE COURT: Thank you. Be seated.

Yes, ma'am.

JUROR NO. 83: Eighty-three. My uncle is -- works for the Henderson County Sheriff's in North Carolina, and my brother works for the fire department in Landrum.

THE COURT: And would that have any bearing in your decision?

JUROR NO. 83: No, sir.

THE COURT: Thank you. Be seated.

Yes, ma'am.

JUROR NO. 118: Juror 118 -- 118. And my son is a corrections officer at Tyger River and my boyfriend is no longer employed at Spartanburg County Detention Center.

THE COURT: Would either of those facts have any bearing in your decision?

JUROR NO. 118: No, sir.

THE COURT: Thank you. Be seated.

Yes, sir.

JUROR NO. 110: Michael Leiter, 110. My brother works for SLED.

THE COURT: Would that have any bearing in your decision?

JUROR NO. 110: Not at all.
THE COURT: Thank you. Be seated.
Yes, ma'am.
JUROR NO. 16: No. 16. I have a nephew that's a sheriff.
THE COURT: In Spartanburg?
JUROR NO. 16: No. California.
THE COURT: Okay. Would that have any bearing?
JUROR NO. 16: No.
THE COURT: Thank you. Be seated.
And, Juror 58, I've already excused you, so you won't need to answer any more questions. Thank you.
Does any member of the jury panel contribute time or money to any type of organizations that might be characterized as law enforcement support organizations or victims advocacy groups?
Do you contribute time or money to any organization like that? Some of those might include Mothers Against Drunk Drivers, Citizens Against Violent Crime, rape crisis, Safe Homes, neighborhood watch, sheriffs' association, troopers' association, fraternal order of police, police benevolence society, any type of organization that might be characterized as law enforcement support or victims advocacy groups. If so, please stand.
All right. Give me your number again, please.

JUROR NO. 48: Forty-eight, Leslie Delozier. Mothers Against Drunk Driving and Safe Homes.
THE COURT: All right. Would that have a bearing on your decision?
JUROR NO. 48: No, sir.
THE COURT: Thank you.
JUROR NO. 185: 185. I'm an American Family therapist and I accept clients from Safe Homes.
THE COURT: Okay. Would that have any bearing in your decision?
JUROR NO. 185: No, sir.
THE COURT: Thank you. Be seated.
Yes, ma'am.
MR. ABUSAFT: What was that number, Your Honor?
THE COURT: 185.
JUROR NO. 70: No. 70, Anne L. Gowan. I was your neighbor. I missed the question to stand up for that, but I was your neighbor awhile back.
THE COURT: Right.
JUROR NO. 70: Do you remember it?
THE COURT: I do.
JUROR NO. 70: The South Carolina Sheriff's Association.
THE COURT: Okay. Thank you.
Anybody else?

(No response.)

THE COURT: All right. I've introduced everybody to you and I've asked you some additional questions in order to try to determine if you have a reason why you cannot be fair and impartial if selected, but I may have missed a question that I needed to ask and I didn't. But, so I'll ask you.

Does any juror know of any reason whatsoever why you believe you could not be fair and impartial if you were called upon to serve as a juror in this particular case? If you have any reason whatsoever why you feel you could not be fair and impartial, if so, please stand.

(No response.)

THE COURT: All right. None responding.

Any other questions requested by the state?

MR. BULSA: None other than what's on our list.

THE COURT: Well, do you have a specific one you like? Give me a number.

MR. BULSA: May we approach?

THE COURT: Yeah.

(Bench conference held off the record.)

THE COURT: All right. One other question I missed.

In addition to whether you contribute time or money to the organizations I referred to earlier, I also need to know if you contribute -- are a member of or contribute to

or a supporter through social media or any other public forum of any law enforcement agency -- Blue Lives Matter organizations or any other organization or group or forum, either formal or informal, which has as its principal purpose the promotion of law enforcement. If so, please stand.

(No response.)

THE COURT: None responding.

Any other questions requested by defendant Ruttle?

MR. VIETH: No, Your Honor.

THE COURT: Defendant Calderon?

MR. ABUSAFT: No, Your Honor.

THE COURT: All right. Now, we're going to select a jury.

MR. ABUSAFT: Your Honor, may we approach for one second?

THE COURT: Okay.

(Bench conference held off the record.)

THE COURT: Solicitor, let me see you and Mr. Abusaft.

(Bench conference held off the record.)

THE COURT: Ladies and gentlemen, there are some folks in the courtroom that were not necessarily identified as a witness, but they're here because they have some connection with folks in the case.

So I'm going to ask the folks seated behind the

solicitor to please stand and face the jury panel.

And I'm asking them to do this to see if any juror knows these folks or you believe you've seen somewhere or have some connection with them. They're either witnesses or related family members.

(Whereupon, people seated in the courtroom stood.)

(No response.)

THE COURT: All right. Thank you. Be seated.

And I also ask these folks behind defense-counsel table to stand and face the jury panel and see if any juror thinks you have any connection or know any of those folks.

(Whereupon, people seated in the courtroom stood.)

(No response.)

THE COURT: Okay. Be seated. Thank you.

Anyone else recognize any of those folks?

(No response.)

THE COURT: All right. Draw us a jury, please, ma'am.

The way the jury is selected is the computer will randomly draw your names. You'll be asked to come forward when your name is called. You'll just come towards me. Just stand in the middle of the room here towards -- close to me. Face your fellow jurors.

Each side has an opportunity to have you excused from serving in the case or to have you seated for service in the case.

If either side asks that you be excused from serving, just go back and have a seat where you are.

If all agree to have you seated for service in the case, you'll be having a seat in that jury box to your right and to my left.

So when your name is called, please come forward, and you'll be informed as to whether you have been accepted for service in the case or excused from service in the case.

What order does the defense wish to go?

MR. VIETH: I'll go first, Your Honor.

THE CLERK: Juror No. 192, Cheryl Williams.

What say the state?

MR. BULSA: Please present the juror.

MR. VIETH: Excuse the juror from this trial, Your Honor.

THE CLERK: Juror No. 5, Crystal Amble.

What say the state?

MR. BULSA: Please present the juror.

THE CLERK: What say the defense?

MR. VIETH: Excuse the juror from this trial.

THE CLERK: Juror No. 48, Leslie Delozier.

What say the state?

MR. BULSA: Please present the juror.

THE CLERK: What say the defense?

MR. VIETH: Swear the juror, please, ma'am.

THE CLERK: What say the defense?
MR. ABUSAFT: Do not seat this juror.
THE CLERK: Juror No. 35, Lynn Sisk Cooke.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial.
THE CLERK: Juror No. 54, Travis Drummond.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror.
MR. ABUSAFT: Please swear this juror.
THE CLERK: Juror No. 169, Mark Stewart.
What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 184, Kourtney Waddell.
What say the state?
MR. BULSA: Please present the juror in this case.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror for this trial.
MR. ABUSAFT: Please swear Ms. Waddell.
THE CLERK: Juror No. 109, Erin Lawrence.
What say the state?
MR. BULSA: Please present the juror.

THE CLERK: What say the defense?
MR. VIETH: Swear the juror.
MR. ABUSAFT: Please swear Ms. Lawrence.
THE CLERK: Juror No. 168, Mary Stephens.
What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 108, Alaina Laplant.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror.
MR. ABUSAFT: Please seat this juror.
THE CLERK: Juror No. 133, Gregory Neely.
What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 143, Michaela Pittman.
What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 92, Nysha Jefferies.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror.
MR. ABUSAFT: Please seat Ms. Jefferies.
THE CLERK: Juror No. 38, Sherlonda Copeland.

What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror, please.
MR. ABUSAFT: Please seat Ms. Copeland.
THE CLERK: Juror No. 159, Savanny Savath.
What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 114, Frank Logan.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial, please.
THE CLERK: Juror No. 12, Kayla Bishop.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial.
THE CLERK: Juror No. 44, Joseph Davis.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror.
MR. ABUSAFT: Please seat Mr. Davis.
THE CLERK: Juror No. 156, Anita Salinas.

What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Present -- swear the juror.
MR. ABUSAFT: Please do not seat this juror.
THE CLERK: Juror No. 63, Tincy Galloway.
MR. ABUSAFT: I'm sorry. What was that number?
THE CLERK: I'm sorry. Sixty-three.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror, please.
MR. ABUSAFT: Please seat Ms. Galloway.
THE CLERK: Juror No. 46, Jerauld Debiase.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial, please.
THE CLERK: Juror No. 28, Casey Cole.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Twenty-eight?
THE CLERK: Twenty-eight, yes, sir.
MR. VIETH: Swear the juror.

MR. ABUSAFT: Please seat Mr. Cole.
THE CLERK: Juror No. 160, Barbara Saxon-Holmes.
What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 18, Allen Bridwell.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial, please.
THE CLERK: Juror No. 96, Michael Kelley.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror.
MR. ABUSAFT: Please do not seat this juror.
THE CLERK: Juror No. 193, Nathan Williams.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial, please.
THE CLERK: Juror No. 136, Johnny Parton.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror, please.

MR. ABUSAFT: Please seat Mr. Parton.
THE CLERK: Juror No. 178, Todd Trawick.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial, please.
THE CLERK: Juror No. 171, Crystal Stoudemire.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror.
MR. ABUSAFT: Please -- please seat Ms. Stoudemire.
THE CLERK: Juror No. 146, Calvin Praytor.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial, please.
THE CLERK: Juror No. 7, Derrick Andrews.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror for this trial.
MR. ABUSAFT: Please seat Mr. Andrews.
THE CLERK: Juror No. 125, Donna Miller.
THE COURT: This is for the first alternate.

THE CLERK: What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial.
THE CLERK: Juror No. 183, Paul Vickers.
What say the state?
MR. BULSA: 183?
THE CLERK: 183. What say the state?
MR. BULSA: Please excuse the juror in this case.
THE CLERK: Juror No. 79, Whitney Hardin.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror, please.
MR. ABUSAFT: Do not seat this juror.
THE CLERK: Juror No. 118, Cristy McCauley.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Excuse the juror from this trial, please.
THE CLERK: Juror No. 186, Benjamin Wall.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror, please.

MR. ABUSAFT: What was the number again, ma'am?
THE CLERK: 186.
MR. ABUSAFT: Please do not seat this juror.
THE CLERK: Juror No. 60, Bryan Freeman.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror.
MR. ABUSAFT: Please swear the juror.
THE COURT: Second alternate.
THE CLERK: Juror No. 16, Kathryn Brady.
What say the state?
MR. BULSA: Please present the juror.
THE CLERK: What say the defense?
MR. VIETH: Swear the juror.
MR. ABUSAFT: Please swear this juror.
(Whereupon, a jury was impaneled.)
THE COURT: Those who have been selected, I'll ask you to please go with the bailiff to your jury room, and I'll bring you back shortly to begin.
(The following takes place outside the presence of the jury.)
THE COURT: Are there any matters to be addressed regarding jury selection by the state?
MR. BULSA: No, Your Honor.

THE COURT: By defendant Ruttle?
MR. VIETH: No, Your Honor.
THE COURT: Defendant Calderon?
MR. ABUSAFT: No, Your Honor.
(Whereupon, the remaining members of the jury venire were excused.)
THE COURT: We will take ten minutes.
(Whereupon, a recess was taken.)
THE COURT: Do you want to discuss this?
MR. BULSA: Yes, sir. Your Honor, the state feels that --
THE COURT: Just bring it up here and let me look at it.
MR. BULSA: I'm sorry?
(Bench conference held off the record.)
THE COURT: All right. Any matters to address before the jury is brought in and sworn?
MR. BULSA: Just the state's objection to the defense's PowerPoint in his opening.
THE COURT: Okay. Now, we have a lot of folks in the courtroom that apparently have some interest in this case, and that's fine.
However, you need to understand that the jury has to base their decision upon what they see and hear presented during the trial.

They're not to be influenced by any outside or extraneous information, and they're not to be distracted by what's going on in the back of the courtroom as opposed to what's going on in the front of the courtroom.

So there will be no conversations while this court is in session; there will be no face-making, no reactions to testimony, no emotional outbursts or reflections or emotion when people are testifying or people are talking.

If you can't be quiet and you can't control your emotions, then you need to leave now, because if you fail to comply with any rule that's imposed there will be a sanction for it.

Everybody understand?

All right. Bring the jury in. Ask Mr. Cole to take the foreperson's seat.

(The following takes place in the presence of the jury.)

THE COURT: Ladies and gentlemen, we are ready to begin with the trial of the case for which each of you have been selected.

Mr. Cole, I'm going to ask you to serve as the foreperson of the jury. As the foreperson you have three specific duties that the other jurors do not have.

Number one, you will ask -- be asked to serve as the spokesperson for the jury. And that just means if

something arises during the trial that needs to be brought to my attention -- you or a fellow juror has some difficulty, problem or question -- you're going to be the person to let me know of that fact. You'll do that directly if you're in the courtroom or through the bailiff if you're outside of the courtroom.

Secondly, you'll be called upon to preside over jury deliberations when that time comes. That of course won't be until the end of the trial after all of the evidence has been received, I have instructed you on the law that's applicable and you have then been requested to go back to begin deliberations.

But when that time does come you will preside over that process in the jury room simply to ensure that those deliberations are carried out in some orderly fashion.

Thirdly, you will be called upon to actually write the verdicts or the decisions of the jury. You'll do that on verdict forms that I'll provide you at the trial's conclusion on which you will indicate the jury's unanimous decision.

The foreperson has those specific duties that I've just indicated. That doesn't mean that he's any more important than you other jurors, because the decision of a jury is the unanimous consensus opinion of all 12 jurors and so all of you and each of you will have an equal say

and an equal vote in what the ultimate decisions will be in this case.

Someone simply has to be delegated those responsibilities, and I have delegated those to Mr. Cole in appointing him as the foreperson. But all of you jurors are equally important so far as the ultimate decisions in the case are concerned, because, as I've stated, the verdict has to be unanimous. All of you jurors must be in agreement before any decision may be returned to the Court.

Now, Mr. Freeman and Ms. Brady, each of you have been selected as alternate jurors, and the function of an alternate is to take the place of one of the original 12 if during the trial one of these 12 cannot continue to serve for some reason.

If a juror is called away, then one or both of you would be called upon to take that juror's place. If you are called upon to take an original juror's place, then you become the twelfth juror. And that means that you participate throughout the trial including jury deliberations at the trial's conclusion.

If however when the time does come for jury deliberations the original 12 are able to participate in those deliberations, then your service as alternate jurors ends and you don't participate any further. And that's because the decision of a jury is that of 12, and no more

than 12 are permitted to engage in that deliberation process.

But it is important that you pay just as careful attention as we ask of all of the jurors in the case, because it does occur from time to time for one reason or another one of these 12 may be unable to continue. In that event one or both of you would be called upon to become the twelfth.

So we do appreciate your participation as alternate jurors, just as we appreciate the participation of each of you jurors who have been selected for the purpose of deciding the verdicts in these particular cases.

You may swear the panel.

(Whereupon, the jury was duly sworn.)

THE COURT: All right. Ladies and gentlemen, as you know, you have been selected as jurors to decide the verdicts in the case of the State vs. Devin Zachary Elijah Ruttle and the case of Lorenzo Guillermo Daniel Calderon.

As you also know from my previous instruction to you or providing information to you, Mr. Ruttle is charged with the crimes of murder and the unlawful possession of a pistol, the state alleging on May the 5th of 2017 that he did wilfully and unlawfully and with malice aforethought kill one Dalton Moore by shooting him and that Mr. Moore did die as a proximate result of that gunshot wound.

He's also alleged to have unlawfully possessed a pistol on that same date and time in conjunction with the charge of murder.

Lorenzo Guillermo Daniel Calderon is charged with accessory after the fact to a felony, that felony being alleged to be the murder committed by Mr. Ruttle.

The state alleges by way of this indictment that Mr. Calderon did on May the 5th of 2017, knowing that the commission and completion of a felony had been committed, that being the felony of murder, did aid, harbor and assist Mr. Ruttle to escape detection, arrest or punishment or otherwise avoid the consequences of that crime.

Now, as you know, as to these allegations and as to each of the charges brought against each of the separate defendants, each of those defendants have entered a plea of not guilty.

A plea of not guilty places upon the state the burden of proving the allegations that they have made, the burden of proving each of the essential elements that they allege against each defendant separately; and therefore the burden is upon the state to establish the defendant's guilt to the satisfaction of you 12 jurors beyond a reasonable doubt before any verdict of guilty could be returned.

Now, there are three separate indictments. Mr. Ruttle has two charging him with those offenses that I've read,

and Mr. Calderon has one.

As you know, as I've said, the state has the burden of proving the allegations made and proving the guilt of each defendant.

The verdicts may be the same; they may be different. That of course will depend upon your determination of fact from the evidence presented as it relates to the allegations in a particular indictment and then your application of the law to those facts as you determine them to be from your view of the evidence in arriving at your decision.

The indictments themselves are not evidence of anything. They don't prove anything; they don't establish anything.

Indictments are a charging paper. They're like an arrest warrant. But every person who is accused of a crime in this court has to be brought here by way of an indictment. And in this case we have those two indictments against Mr. Ruttle and one indictment against Mr. Calderon.

The indictments will be in the jury room at the trial's conclusion, but they are there solely to serve as the verdict forms for each of the separate charges. Otherwise, they serve no purpose so far as you jurors are concerned.

Every person accused of a crime -- and it doesn't

matter how serious the offense might be for which that person stands charged -- is always to be presumed innocent of the charge. And that presumption of innocence remains with any defendant, as it does with these defendants, from the time that they are placed under arrest and throughout the course of the criminal process and even throughout the course of the actual trial in the case.

That presumption of innocence will be with Mr. Ruttle and Mr. Calderon even as you go back at this trial's conclusion to begin with your deliberations in the case, and that presumption of innocence will be with them in that jury room, and it'll be with them forever unless you determine that they are -- one or both -- are no longer entitled to that presumption of innocence.

In other words, after you have considered the evidence as it relates to a particular charge and a particular defendant and you have been able to determine the facts as they relate to those allegations, and then you apply the law that I will have provided you before you go back to deliberate, if you 12 jurors unanimously determine that a particular defendant has been proven guilty of a particular crime, then that defendant would no longer be entitled to that presumption of innocence as it relates to this particular charge. But it is only if, unless and until you are satisfied of a defendant's guilt beyond a reasonable

doubt that the presumption of innocence would no longer be applicable.

Now, the way the trial will proceed is that in a moment the lawyers are going to address you in what are referred to as opening statements.

There are two occasions in the trial of a case where lawyers are permitted to address the jury directly, and that is at the beginning of the trial before any evidence has been introduced, then again at the conclusion of the trial after all of the evidence has been received.

But please keep in mind, as I've just indicated, the evidence comes in between the opening and the closing statements. It comes in the form of testimony and the introduction of exhibits.

The lawyers' statements are not evidence, and you can't rely upon a lawyer's statement as establishing any fact, because the lawyers aren't witnesses to anything. They don't know anything about this case of their own personal knowledge or perception like witnesses will be testifying to when they testify from the witness stand.

The lawyers aren't going to take the witness stand. They're not going to be placed under oath, and they're not going to be subjected to direct and cross-examination like each of the witness will be. And so what they tell you is not to be considered as evidence. But you should listen to

what they have to say. Those statements do serve a purpose.

The opening statements serve to provide you with a basic understanding as to what the case is about from both the perspective of the state, as well as each of the defendants, so that you'll have some context in which to place the evidence that we will be receiving shortly thereafter.

The closing statements occur after all of the evidence has been received. Again, as I say, those statements are not evidence, but it does afford the lawyers an opportunity to discuss with you the evidence that you have seen and heard during the trial of the case. And each will then have an opportunity to try to persuade you or to convince you that the evidence in the case does or does not support a particular decision.

It's in between the statements by the lawyers that we actually receive the evidence upon which you will base your decision.

As I've told you, the state has the burden of proof. They brought the charge. They've got to prove it beyond a reasonable doubt. So they go forward first in their presentation of evidence.

Once the state has concluded in that presentation of evidence a defendant has an opportunity to testify or to

call a witness or to introduce evidence. But please understand that the burden is never a person -- never upon a person accused of a crime to prove that they are not guilty or to prove that they are innocent because in some cases that might not be possible. And therefore there is no burden or requirement that a defendant take the witness stand and testify during the trial of a case.

Should a defendant not take the witness stand and testify during the trial, that's not a fact or circumstance that the jury may allow to weigh in the slightest degree against that defendant.

The jury cannot consider that fact in any way during your deliberations or in your determination as to whether or not that defendant's guilty has been proven beyond a reasonable doubt, because, as I say, the defendant does not bear any burden in the trial. However, every person accused of a crime when they come to trial, they are always afforded an opportunity to testify or to call witnesses or to introduce evidence should he or she wish to do so.

So after the evidence has been received I will then -- and you've heard the final summations of the lawyers -- I will then instruct you fully on the law as it relates to the criminal law generally and as it relates to the crimes of murder and unlawful possession of a firearm and accessory after the fact to the commission of a felony,

particularly, and then you'll be asked to go back and to begin with your deliberations.

Through that process you'll simply through the exercise of good judgment and common sense conscientiously applied to the testimony and evidence received during the trial to determine, if you can, what the facts are as they relate to the allegations. And after you decide the facts, you then apply the law that I will have provided you, and you determine whether or not a defendant's guilt has been proven beyond a reasonable doubt.

If it has, then the verdict would be guilty as to that particular defendant and that particular charge. And if it has not, then the verdict would be not guilty as to that particular defendant and that particular charge.

So all that we're going to ask for you to do is to pay careful attention throughout the course of the trial. There will be a number of witnesses called to testify.

You are the judges of the facts, and therefore you are also the judges of the credibility or the believability of each witness that testifies.

In that regard you can believe everything that a witness testified to; you may choose to believe none of it. You may believe some portion of it and reject some other portion of it. But in order to be in a proper position to be able to fairly assess each witness' credibility and

their reliability, then you have to give each witness the same degree of attention as they testify so that when you do go back to begin deliberations you'll be in a position to fairly evaluate the witness' testimony in light of not just that witness' testimony but in light of all of the testimony and all of the evidence received during the course of the trial.

It's also important that you keep an open mind throughout the course of the trial. You are not to begin making up your minds or formulating your opinions as to what you think the ultimate decisions in this case ought to be until all of the evidence has been received, until you have been instructed by me as to the law and until you've been asked to go back and to begin with your deliberations in the case.

That is the process that has been designed over the last 240 odd years in order to ensure that you can arrive at a fair and just decision.

So I do want to thank you in advance for your participation, as well for your careful attention. I would ask that you please give the lawyers your attention now as they give you their opening statements.

MR. WILLIAMS: May it please the Court.

THE COURT: Mr. Williams.

MR. WILLIAMS: Opposing counsel, Your Honor.

Ladies and gentlemen of the jury, my name is Jesse Williams, and Derrick Bulsa and I represent the state in this case. And it's our job to prove to you that Devin Ruttle committed murder and that Lorenzo Calderon helped him avoid justice after he committed murder.

So how did we all arrive here in this courtroom today? The 12 of you -- 14 counting the alternates -- all went through, I'm sure, that very pleasant experience of being qualified and selected as jurors.

We've got a court reporter, a judge, attorneys on the prosecution and the defense. And you're going to be hearing from a number of witnesses.

How did we get to this point? We're here today because a young man is dead, a young man named Dalton Moore who had a mother, a sister and a brother that loved him dearly, a young man that was walking home when he was shot and killed, a young man that died less than half a mile from his house.

This trial is important because a young life has been lost and it didn't need to happen. It was a senseless tragedy.

It happened on May the 5th of 2017. It was just after 7:00 p.m. Eighteen-year-old Dalton Moore was walking on Foster Street in Cowpens. He was coming from the downtown Cowpens area. He was walking on the right-hand side of the

street on a sidewalk.

To his right would have been Cowpens Middle School, and then just beyond Cowpens Middle School would have been the Timken Community Center. Across the street from where he was walking was a residential neighborhood.

Now, had he continued down that Foster Street on that sidewalk it would have been just about a quarter mile until he would have taken a left on a side street and he would have made his way to his house. But he never got to that point.

At some point he moved away from the sidewalk and he moved to his right into the Timken Center parking lot, near the entrance to the parking lot, near the entrance to the community center. And he was shot and killed there.

There were numerous residents across the street in the neighborhood there that heard gunshots, and they looked over, and what they saw was Dalton fall to his knees before falling all the way to the ground.

Several of them ran across the street to help. Several of them called 9-1-1. One man, a Vietnam veteran, who knows -- who's experienced with bullet wounds, he was able to locate an entrance wound on Dalton Moore. It was right under his right armpit right here. And he tried to plug the hole, tried to stop the bleeding, but it did not take him very long to realize this was going to be a fatal

wound.

The woman whose house was directly across the street from the Timken Center, she cradled Dalton's head in her lap as he took his final breath. That same woman, after she saw Dalton fall, also saw another young man running from the parking lot and get in a car and speed away from the scene.

In fact, there were other residents in that neighborhood that either heard or saw that car fleeing the scene in a hurry.

Well, law enforcement arrived shortly after, and they began their investigation. They got a description of the vehicle. They put that out to other police officers in the area. And later that same night a car was pulled over matching the description from witnesses. Inside that car was Devin Ruttle and Lorenzo Calderon.

And you'll be hearing from law enforcement as they walk through their investigation the steps they took and the facts that they uncovered to lead them to the conclusion that Devin Ruttle was the person who pulled the trigger and killed Dalton Moore and that Lorenzo is the one that helped him get away.

Now, at the conclusion of this case you're going to have a very important responsibility. You're going to have to go in that deliberation room and talk it out amongst

yourselves and come to a conclusion did the state prove its case beyond a reasonable doubt. And that is the state's burden.

The defendant doesn't have to prove anything. We have the burden of proof beyond a reasonable doubt, and we accept that burden in full.

But let me just say that beyond a reasonable doubt is not beyond any doubt. Let's make that clear from the outset.

I imagine you're going to see an interesting PowerPoint from the defense here in a few minutes. But keep in mind that regardless of what they say about reasonable doubt, it is a high standard, but it's not beyond all doubt. If it was beyond all doubt would ever -- probably no one would ever be convicted. It's very difficult to prove something without any possible doubt. One way of saying proving beyond a reasonable doubt is to say firmly convinced.

Now, at the end of the trial Judge Cole is going to instruct you on the law, and you'll take the facts that you have learned in this case and you'll apply it to the law as he gives it to you.

And how do you determine those facts? Well, it's by those witnesses that get in that chair. It's by the other information that comes in, whether it's photographs or

other tangible pieces of information. That's how you determine what the facts are in this case. That's up to you. That's why your role is so important. That's why you have to look at every bit of information that comes in.

Keep an open mind throughout. Don't make up your mind until the very end. But we believe that you'll be firmly convinced at the end of all of it that Devin Ruttle shot and killed Dalton Moore and that Lorenzo Calderon helped him avoid justice afterwards. Thank you.

THE COURT: Mr. Vieth.

MR. VIETH: May it please the Court.

Mr. Foreman, ladies and gentlemen of the jury, I've introduced myself earlier. My name is Rick Vieth. I've practiced law here for more years than I thought I would, but I am still at it.

And I want to let you know that I'm sure as a juror you're probably -- at least one of you on that jury panel right now is saying, good Lord, why have I been chosen to decide the fate of these two young men, I'd much rather be doing something else than having to decide the fate of a person who was 19 years old at the time, now 21, Devin, who I've been asked to represent by his family. And I'm honored to have that representation. He was 19 when this happened. The deceased was 18 when this happened.

What they didn't tell you about in the opening

statement -- of course an opening statement was what you went by to get -- you'd already come back with guilty -- what they didn't tell you is that -- is that the deceased had a knife at this location and Devin had a weapon.

And the question is not going to be did Devin fire a shot that, unfortunately, hit the deceased in the right side, not in the head, not in the heart, just on this side while that knife was out and it caused him to pass away. It's called self-defense. And you're going to hear that as our defense in this case.

There's a lot of facts that are not going to be disputed. I'm not going to be a lawyer that is jumping up here and yelling and cross-examining everybody and extending your time in this jury box until Friday. A lot of facts are not going to be disputed.

They're going to put up their case. They have the burden to put up their case. A lot of times I may say, Your Honor, no questions, because a lot of issues aren't going to be issues.

The burden of proof is on the state. And, as the judge told you, Devin does not have to testify. He does not have to get on that stand. But I can tell you if he has to be here charged with this crime, he's looking forward to testifying. He basically is not the star of the show, but he's an important part of it because credibility

JAMES OWENS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Sir, would you please introduce yourself to the jury and tell us who you work with?

A James Owens. I currently work for the Duncan Police Department.

Q And who did you formerly work with?

A I was a corporal at the Town of Cowpens Police Department.

Q How long were you with Cowpens?

A Over ten years.

Q And when did you move to Duncan?

A About eight months ago.

Q Were you on duty the night of May the 5th of 2017?

A Yes, sir, I was.

Q Did you respond to a location on Foster Street?

A Yes, sir.

Q Where did you go?

A 180 Foster Street, which is the Timken Center or the senior center.

Q Okay. Was that a new building at the time?

A Yes, sir, it was.

Q And what -- what does it serve?

A It's got a lot of activities there.

Q What is --
A There's a gym there. There's -- I know they do a lot of activities there.
Q Okay. What are the hours of that building, do you recall?
A Like 9:00 to 5:00. But I think there's a -- a back pass for the gym.
Q So the gym's open 24 hours a day?
A Yes, sir, as long as you have a key to get in it.
THE COURT: Let me ask you to pull that microphone down. That black one.
THE WITNESS: Sorry.
Q Now, approximately what time did you respond to that location?
A It was a little -- I think we received the call about 1911 or seven -- 11 after 7:00 that evening.
Q And across the street from this Timken Center are there a row of houses?
A Yes, sir. There is.
Q And just up the road is there a middle school?
A The middle school is to the right or the left-hand side of the Timken Center.
Q Okay. So if you're walking from Cowpens down Foster Street, you'd hit the middle school first?
A That's correct.

Q And then you pass by the Timken Center.
A That's correct.
Q Okay. Now, were you the first officer on the scene?
A Yes, sir.
Q What did you observe when you arrived?
A On my arrival there was a young man laying on his back, and there was several residents there with him trying to give him aid.
Q Residents. Do you know where they were from?
A I recognized a couple of them, yes.
Q Where did they come from?
A Across the street.
Q Across the street. Okay. So you arrived. You see the young man and the residents. And what do you do?
A I have to refer back to my report. Is that okay?
Q Yes, sir.
A I saw a young man lying on his back or supine, three individuals around him. One of the persons was performing chest compressions.

I notified dispatch that I was on scene, C.P.R. had been started. The bystanders helping the victim was later identified as Mr. Jeffery McCallister, Donnie Greene and Ms. Brewster.

Q Did you get any information about what might have happened?

A At first it was really sketchy. Officer Sherbert showed up right after I did. I had him try to get some statements while I was trying to help the young man.
Q Did you get enough information to be able to put out information for other officers to look for persons or vehicles?
A Actually, what took place was as soon as -- while I was dealing with the young man the sheriff's department showed up. Deputy Winny Thompson and Deputy Rush and them had showed up, and they had gotten some statements from some of the bystanders, along with his statement. And I think they had actually put it out to dispatch because I had my hands full.
Q Okay. So other officers gained information about a vehicle to be looking for, is that right?
A Yes, sir.
Q Okay. All right. Approximately how long were you yourself on the scene?
A From the time we got the call to the time we released the scene.
Q Okay. How long was that?
A It was late up in the night.
Q Late. Did Cowpens itself, the police department, did they work the scene, or did somebody else?
A No, sir. We had actually requested help from the

county, and they were tied up on another big case, and they had requested SLED to come and give us assistance.

Q Okay. SLED is who?

A State law enforcement division.

Q Okay. So the state law enforcement division had to send some officers. Did it take some time for them to arrive?

A Yes, sir, it did. They had to come from Anderson.

Q When you arrived at the scene, do you recall what the weather was like?

A It was -- I don't remember the, like, temperature or anything like that, but I know that it was -- it was clear outside. It wasn't raining.

Q It was still daylight.

A Yes, sir.

Q Okay. And when SLED got there it had already gotten dark?

A It was -- yes, sir. It had gotten dark by then.

Q Okay. Now, what -- what did you do to help secure the scene before the SLED agents got there?

A I assisted loading the -- the patient in the ambulance. As soon as they got him loaded up, there was some articles laying on the grounds.

I initially set the perimeter at where the young man was, and then I ended up broadening it out just a little

bit further. After I spoke with the supervisor from SLED, he had me go ahead and broaden it even further to include the whole parking lot.

Q Let me show you some pictures. I'll show you these three. Showing you what's been marked for exhibit -- for identification State's 1, 2 and 3. Do you recognize what those exhibits show?

A Yes, sir.

Q Okay. And are they essentially aerial photographs of the location in question?

A Yes, sir.

MR. BULSA: Your Honor, the state would offer 1, 2 and 3 into evidence.

MR. VIETH: Your Honor, I've seen the pictures. I have no objection.

MR. ABUSAFT: Without objection.

THE COURT: They're admitted.

(Photographs marked State's Exhibits Nos. 1, 2 and 3.)

Q Just to help the jury understand the perspective of what we're looking at, let's orient them to the area.

THE COURT: If you need to step down, you can. You can use this microphone hanging from the ceiling. That way you don't have to look back. Just be sure you direct your voice towards that microphone. Otherwise, we won't be able to hear you.

THE WITNESS: Yes, sir.
Q Some of this is repetitive because they're basically shots getting closer, but I'm going to help the jury understand this initial area.
Point out to the jury, if you would, to this aerial photograph, State's 1.
A Okay. This is Foster Street right here. This is going to be the elementary school here. This is going to be the Timken Center where we actually found the victim.
Q All right. And the downtown area, is it depicted on this map?
A Downtown area is going to be right here, sir.
Q Okay. So Foster intersects with Highway 29?
A That's correct.
Q Is that Main Street in Cowpens?
A Yes, sir.
Q Okay. Do you know approximately how far it is from the Timken Center to downtown?
A Less than a mile.
Q Okay. There's a little closer view, State's No. 2. Did you learn who the identity of the young man was that was on the ground?
A At first I was -- I didn't recognize him. He looked familiar, but I wasn't able to identify exactly who it was until later on.

Q And did you learn who he was?
A Yes, sir.
Q Who was he?
A Dalton. I don't remember.
Q You don't know his last name?
A I don't know it.
Q Do you know where Dalton lived?
A Yes, sir. He lived right here at the end of Crystal with his -- with his family.
Q About how far is that from the Timken Center?
A Less than a mile.
Q Now, State's Exhibit 3 is an even closer view showing the middle school and the Timken Center.
A That's correct.
Q And there's a series of houses marked with numbers.
A Yes, sir.
Q Are those some of the neighbors that were out there that day?
A Yes, sir.
Q Now, this map shows some dirt behind the Timken Center. So it looks a little bit older than the building is now, right?
A Yes, sir. That was new construction. This was -- this is all new construction. This is all landscaping and stuff they were doing.

Q And this map shows cars in the parking lot. Were there any cars in the parking lot?
A No, sir.
Q Is that parking lot barricaded in any way?
A No, sir. There's one way in and one way out.
Q And where is the entrance to the 24-hour?
A It's on the side of the building right here.
Q Okay. And as far as you know was anybody in there using the facility?
A Actually, there was. We learned that later on. It was one of the gentleman that rides a moped through town.
Q Okay. So he didn't have a car but had a moped.
A Right. It was parked over here on the side. Nobody seen it.
Q Okay. You can have a seat. I'm going to show you some more photographs.
(Whereupon, the witness returned to the stand.)
Q Showing you State's No. 7. I'm showing you for identification. Do you recognize that?
A Yes, sir.
Q What is it?
A That's the crime scene.
Q Okay.
MR. BULSA: Your Honor, the state would move seven into evidence.

MR. VIETH: Without objection, Your Honor.
MR. ABUSAFT: Without objection, Your Honor.
THE COURT: It's admitted.
(Photograph marked State's Exhibit No. 7.)
Q You might could just answer the questions while you're seated there. Just look up.
This is the parking lot?
A That's correct. It's the corner -- the corner parking lot next to the -- the building.
Q Okay. And it's dark because this picture was taken by SLED, is that right?
A To the best of my knowledge, yes.
Q And they got there, and it was already dark and they started processing the scene?
MR. ABUSAFT: Your Honor, leading.
THE COURT: Overruled.
Q Okay. Do you know why the placards are out there?
A Yes, sir. They were there to identify things that were on the ground.
Q Okay. We'll have other officers testify to what those are. But from you, I would ask you State's No. 4 or -- excuse me -- placard No. 4 and State's Exhibit 7. Would that be the approximate location of where Dalton was?
A Yes, sir. Four was actually showing blood on the ground right there.

Q Okay. All right. Did you yourself secure any specific items?
A I don't remember, sir. Nothing that -- that I can remember.
Q Okay. Thank you. That's all I have. Answer any questions defense may have.

CROSS-EXAMINATION

BY MR. VIETH

Q Officer, just very briefly.
Your time at Cowpens -- and I think the pictures will verify that. There's a litany of homes across the street from the Cowpens school and the Timken Center. I mean, there's a lot of people that's going to be testifying today and tomorrow maybe, but there's a lot of homes there, aren't there?
A Yes, sir.
Q And this was a parking area where people could go to use the facility if they wanted to. I mean, it's not a guarded gate or anything.
A No, sir. It's not guarded.
Q That's all the questions I have. Thank you.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q Officer, did I hear you testify that the person you saw in the parking lot looked familiar?

A He did look familiar, yes.
Q Is there a reason why he looked familiar to you?
MR. BULSA: Objection, Your Honor.
THE COURT: Sustained -- sustained.
MR. ABUSAFT: No further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. BULSA

Q Mr. Vieth asked you a little bit about the building itself and the neighborhood. Is there just one sidewalk in this neighborhood?
A Yes, sir. It's on the opposite side of the road.
Q From the houses.
A Correct.
Q And we can see it. It's the -- it's the tan area --
A It's right there.
Q -- parallelling the road? Okay. Thank you. That's all I have.
MR. VIETH: Nothing in reply, Your Honor.
THE COURT: You may step down.
MR. BULSA: Your Honor, we ask that Officer Owens be excused.
THE COURT: He may be.
MR. VIETH: Without objection.
(Whereupon, the witness was excused.)
MR. BULSA: The state calls Trevor Sherbert.

A Well, the nurse gave me a preliminary name, but until I spoke with the family and had him positively identified, I did not know who he was.
Q So who was the victim?
A Dalton Moore.
Q How old was he?
A Eighteen.
Q All right. And so you just knew you had a dead person at the hospital and you went to the scene to investigate it?
A Yes, sir.
Q And what was taking place when you arrived?
A When I arrived Corporal Owens was there, and a couple of his patrol officers were processing the scene.
I took photographs, and then I left and went back to the morgue, took photographs and met a SLED agent there. And then I left and went back to the scene.
Q Okay. Let me show you a couple of photographs, State's 8 and 9 for Identification.
A Yes, sir.
Q What are those?
A Those are the clothes that Dalton Moore had on.
Q Okay. At least the outer clothing.
A Yes.
MR. BULSA: Your Honor, the state would offer eight

Q Did you meet any of the neighbors that had worked on him?
A No, sir.
Q What was the weather like when you arrived at the scene?
A It was clear, about 60 or 65 degrees.
Q Okay. So visibility was good?
A Yes, sir.
Q A little cool for that time of year?
A That's what it appeared to be to me, I mean. We estimate our --
Q Okay. Was it windy?
A It was a little bit windy.
Q Did you see some things strewn across the parking lot?
A I did.
Q What did you see?
A Money.
Q Some money?
A Money. It was to the right side of the building where the dirt was. Over on the other side at the sidewalk there was money.
Q Is there a pointer up there?
A I think I've got it wrong. It was right here.
Q Okay. Do you know if that was associated with the victim?

A I took it that it was his.
Q Okay.
A Anything in the area, I processed as his.
Q Okay. All right. Thank you, ma'am. That's all I have. Answer anything the defense has.

CROSS-EXAMINATION

BY MR. VIETH

Q Of course, ma'am, that's your opinion.
A Yes, sir. I wasn't there. I don't know if it was --
Q Exactly. And Dr. Wren, who will be here I assume tomorrow, he'll be the one that actually says where the bullet wound was, correct?
A Yes, sir.
Q Okay. When you got there was the crime scene actually still -- were you in here when they showed pictures of a yellow --
A The tape.
Q Was that still that way when you got there?
A Yes, sir.
Q Okay.

MR. VIETH: That's all the questions I have, Your Honor. Thank you.

MR. ABUSAFT: No questions for this witness, Your Honor.

THE COURT: You may step down.

MR. BULSA: Your Honor, we ask that she be excused.
THE COURT: She may be.
(Whereupon, the witness was excused.)
MR. WILLIAMS: State calls Justin Kyle Rector.
JUSTIN KYLE RECTOR, having been first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. WILLIAMS
Q Would you please state your name for the jury?
A Justin Rector.
Q What name do you go by?
A Kyle.
Q How old are you?
A Twenty-one.
Q And where do you live?
A 3056 Benjamin Street.
Q And what city is that in?
A Spartanburg.
Q How long have you lived there?
A About a year.
Q How long have you lived in this area?
A All of my life.
Q Okay. Did you know Dalton Moore?
A I did.
Q How did you know him?
A My brother and his brother was friends. He dated my

sister. Just mutual friends.
Q How long did he date your sister?
A I really don't know -- months.
Q Okay. And about how long did you know him?
A Probably all the way through school, through middle school, high school.
Q So at least six years?
A Yeah, about five or six years.
Q Would you say you two were close?
A Yeah. Not close-close, but we spoke when we seen each other.
Q Okay. Did you see him on May the 5th of 2017?
A I did.
Q Okay. Well, let's back up just a little bit.
What were you doing that day?
A I was headed towards Gaffney to go to the races.
Q Okay. And about what time was this?
A I'm not sure.
Q Okay. Well, what had you been doing earlier that day?
A At my brother's cutting grass.
Q Okay. Where did you see Dalton?
A I seen him out there about passing the school.
Q Cowpens Middle School?
A Yes, sir.
Q Was this on Foster Street?

A It was.
Q What kind of vehicle were you in at the time?
A A silver Dodge Dakota.
Q Were you in the -- were you driving the vehicle?
A I was in the bed of the truck.
Q Okay. Why were you in the bed of the truck?
A It was crowded in the cab.
Q What direction were you traveling?
A The middle school would have been on my right.
Q So it's fair to say you were coming from the downtown Cowpens area?
A I was.
Q And I believe you said earlier that you saw Dalton just before you would have gotten to the middle school, is that right?
A Uh-huh.
Q Where was he at?
A There's an exit at the middle school for the car-ridder line. He was about to cross over there.
Q Okay. Was he walking on the sidewalk?
A He was.
Q Did he see you?
A He did.
Q Did you have any kind of interaction with him at all?
A I pointed down to the bed of the truck to see if he

needed a ride. He waved me off.
Q Would you kind of jester how -- how you pointed?
A Like.
Q What was his response? Did that -- did you think that was odd that he wouldn't want to get in a car?
A Yeah. He was almost home.
Q He was almost home.
A Yeah.
Q You knew where he lived?
A Yeah.
Q How close was this location to his house?
A Less than a mile.
Q Okay. So it wasn't strange for him to kind of wave you off.
A No.
Q Was there anything else you noticed about -- about him as far as -- did he -- was he carrying anything?
A I want to say he had a drink in his hand.
Q Okay. Anything else at all?
THE COURT: You've got to answer out loud, please, sir. He asked anything else, and you responded.
A No.
Q Just speak up.
A No.
Q You didn't notice anything else?

A No. I didn't.
Q State has -- okay. Can you use the pointer? And if you need to step down, that's fine too.
(Whereupon, the witness left the stand.)
Q Try to illustrate where exactly it was where you saw Dalton.
A I seen him right there.
THE COURT: You're going to have to speak up a lot louder than that because I can't hear a single word.
A About right there.
Q And that's -- is that right in front of the Cowpens Middle School?
A Yeah. It's about to pass it.
Q Okay. And just to clarify, you were coming -- you were traveling in which direction?
A Going this way.
Q Okay. Thank you. You can sit back down.
(Whereupon, the witness returned to the stand.)
MR. WILLIAMS: State has no further questions, Your Honor.
MR. VIETH: I have no questions. Thank you very much.
MR. ABUSAFT: No questions for this witness, Your Honor.
THE COURT: Step down.
MR. WILLIAMS: Your Honor, can the witness be excused?

THE COURT: He may be.

(Whereupon, the witness was excused.)

MR. BULSA: The state calls Jeffery McCallister.

JEFFERY McCALLISTER, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Good afternoon, Mr. McCallister. Please introduce yourself and tell us where you live.

A 157 Foster Street, Cowpens.

Q And Jeffery McCallister?

A I'm Jeffery McCallister, yes.

Q And how old are you, sir?

A Sixty-six.

Q How long had you lived on Foster Street?

A Forty-four years.

Q Forty-four years. You're at 157?

A Yes, sir.

Q That'd be this house right here?

A That's it.

Q Okay. You're pretty much right opposite of -- what is this right here?

A That's the entrance into the middle school.

Q Okay. That's one of the entrances that goes back in behind the building?

A Yes, sir.

Q Okay. And who do you live with, sir?
A My wife.
Q How long have you been married?
A We've been married 40 -- 42 years, I think.
Q Do you recall anything happening on May the 5th of 2017 in the evening hours?
A Around 7:00 o'clock we was coming, going west on Foster Street right in front of the middle school, and we noticed -- I thought it was my neighbor walking down the street and looked. Guy with a hoody on, and he looked -- he was walking and he had something in his hand. I don't know if it was a walkman, or something he was playing with. And we noticed that.

But when we came on down, I asked my wife, I said, "Who is that? Is that Chris?" And she said. "No. I don't know who that guy is but I see him a lot walking up and down the street." So I didn't actually know him.

But we started. And we turned in our driveway and got to the back of the house and got out and went inside. We was on the porch.

We heard two rapid gunshots, you know. And after that I kind of went all the way through the house to the front and made my way down to the town hall center, whatever it is, town center.

Q So when you first noticed this young man walking you

were in your vehicle?
A Yes, sir.
Q What kind of vehicle?
A It's a Ford Expedition.
Q Ford Expedition. You and your wife were together.
A Yes, sir.
Q Were you driving?
A She was driving.
Q She was driving.
A Uh-huh.
Q Okay. And he was walking on the sidewalk right there near the middle school?
A Yes, sir.
Q So you would have turned in.
A We turned left in our driveway.
Q Left in your driveway. And where do you park your vehicle?
A Right -- how does this thing come on?
Q Push that red button. Push that button right there.
A Right. We parked right back here, and that's the back entrance of our house right -- area right here.
Q Okay. So from the time you pulled past him into your driveway, actually down Pickens -- Pickens Street?
A No, sir, no, sir. It's -- I don't know why they got that there.

THE COURT: Please use the microphone, sir.
MR. BULSA: Okay. I'm sorry.
THE COURT: Sir, please use the microphone when you're responding to a question.
THE WITNESS: Okay. I'm sorry.
Q So Pickens Court is mislabeled. Pickens Court is the road that has a cul-de-sac.
A Yes. That's --
Q Okay. That's your driveway there that's Pickens Court?
A Yes, sir, yes, sir.
Q Okay. So you pulled into your driveway, pulled around to your house. And where were you when you heard these shots?
A We were going up the steps back to our house. Right about here when we heard the shot.
Q Could you tell where those shots came from?
A Just the front of the house. You could tell it was --
Q What did you do? What did you do when you heard those shots?
A Well, I noticed the guy walking down. And also there's another -- a little Ford Ranger truck coming up the road with two guys in it, and one of them jumped out right when they was -- right when our car was coming down Foster, he jumped out of his vehicle on the passenger side.

Q Okay.
A And then the driver took off, and we didn't see where he went.
Q All right. Let's back up and make sure the jury understands this.
A Okay.
Q You're in your vehicle with your wife driving, driving towards the Timken Center.
A Yes, sir.
Q Okay. And you see the gentleman walking on the sidewalk.
A Yes, sir.
Q And you see another vehicle coming your direction?
A Coming our direction, coming facing us.
Q Okay. And what happens?
A As soon as they got beside us and we -- we got down a little bit below them, he, the passenger, jumped out. And the car was still moving when he jumped out, so.
Q Was it a passenger of a truck?
A The passenger of the truck.
Q Small pickup truck?
A Small pickup truck, silver in color, kind of rough looking.
Q Okay. So you could see him jump out from where you were.

A Yes, sir. I turned around and looked as soon as she said that guy -- my wife noticed it first, and I flipped around watching him as we was coming down the driveway.
Q Okay. So you could see back up the road where he's jumping out of the car.
A Yes, sir.
Q And did you see what he did?
A No, uh-uh. By that time we'd already turned down beside my house and blocked it off.
Q Okay. Did you -- did that seem unusual to you?
A Yes, it did.
Q All right. And was that before or after you heard the shots?
A That was before, you know, less than a minute before we heard the shots.
Q Could you tell whether anybody in that vehicle was making any references to the gentleman walking down the street?
A No, sir. We couldn't tell.
Q Okay. You just knew that somebody was hanging out the door and jumped out.
A Yes, sir, uh-huh.
Q Okay. And then you heard the shots. What did you do when you heard the shots?
A When we heard the shots I -- I had my little chihuahua

in my arms and she was barking, but I handed her to my wife and I told her. I said, "I've got to go check on the boy," because, automatically, you know, I just thought something happened to the boy walking.

And I ran out front and I saw him on the ground. I saw my neighbor down there with him, and she was by herself. But I ran on down, and first thing I knew was check his condition. And then I started C.P.R.

Q Where was this young man when you --

A Laying right in the bottom end of the parking lot near the front entrance of the...

Q Showing you State's 4. Were you one of the gentlemen?

A Yes, sir.

Q Okay. Did you have any training for C.P.R.?

A Yes, sir. I have.

Q Where?

A Well, military, also I've been a job superintendent all of my life, and it was required.

Q What did you do to try to help him?

A Started C.P.R., chest compressions. And his family is in here. But blood was gushing out a bullet hole under his right arm. So I was kind of holding -- put one hand over that and still kept compressions until my other neighbor got down there, Donnie Greene. He -- he got -- came down there, and he also -- he helped me out a little bit with

it. And, you know, it was kind of rough.
Q About how long did you work on him before the ambulance arrived?
A Before anybody got there, 18 to 20 minutes and --
Q Was he able to make any -- was he able to speak at all?
A No, sir, no, sir, he couldn't. I asked him, you know, who did it to him and how was he and all of that, and we didn't get a response.
Q Were you -- were you paying attention to anything that was around?
A No, sir, I wasn't. My mind was on one thing and just trying to help him.
Q Okay. And when the ambulance arrived and the medical personnel took over, what did you do?
A I answered some questions to the local police, and then I went home. You know, it was pretty upsetting, the whole thing.
Q Did you know the young man?
A No, sir, I didn't, just knew he was one of the neighborhood boys.
Q Thank you, sir. Answer any questions either attorney has?
A Thank you.
MR. VIETH: Mr. McCallister, I have no questions. I

commend you for what you tried to do. I have no questions. I commend you for what you tried to do.

THE WITNESS: Thank you.

MR. ABUSAFT: No questions for this witness, Your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you, Your Honor.

MR. BULSA: State calls Tammy McCallister.

TAMMY McCALLISTER, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Please introduce yourself and tell us where you live.

A My name is Tammy McCallister, and I live at 157 Foster Street in Cowpens.

Q Are you the wife of Jeffery McCallister?

A Yes, sir.

Q So you've lived on that street a long time.

A Yes, sir.

Q Did you witness the events of that evening?

A Yes, sir.

Q What first do you recall happening?

A We were coming home in the Expedition. I was driving. And as we passed the middle school my husband made a comment was that our neighbor walking. We saw a young boy and I -- he had a hoody on. It was over his head. And I

said, "No. That's -- that's not him."

And then as we approached our driveway I noticed a gray looking small truck in front of me. And at the time it looked like somebody was hanging out of it, and that's what caught my attention. But I had my turn signal on to turn in my driveway.

So they went on by. I really didn't pay it much attention. But I looked in my rear-view mirror and I told my husband. I said, "They jumped back outta the car. Somebody on the passenger side has jumped back outta the car." And I could only see the back of them.

And he turned around and looked and saw them. Still, I just thought it was kids, you know, messing around.

And so we turned in the driveway, and as we parked in the back and we got out, my husband got -- unlocked the door and went in first. But right as we got on the porch we heard, pow-pow, two, sounded like, gunshots. I even made a comment those sound like gunshots.

And we went in, and as we went through the house he went on the porch and I followed behind him. And he looked kind of shocked and took off toward the community center.

Well, about that time I looked to the left and saw my neighbor on her porch with a phone, and so I figured she was calling 9-1-1, so I walked over to her house.

Q Were you telling her what you saw?

A Well, at that time she was talking -- 9-1-1 was asking her if anybody saw anything. And she handed me the phone, because, and so I told them that I had seen a truck and what I thought it looked like.
Q Were you looking over across the street with what your neighbor --
A Yes, sir, I did walk over too.
Q When your husband ran over across the street, did you see anything over there?
A No, I didn't at the time, because my neighbor has some trees, like cypress trees, in her front. So I really didn't see anything until I got over to her house.
Q And what did you see?
A The boy was laying on the ground, and my husband was there. And at the time the neighbor down below my neighbor was there holding his head. And my husband when I got there was performing C.P.R.
Q Did you see anybody else around outside?
A No, I didn't.
Q Did you ultimately see who the boy was? Did you recognize him?
A No. I never saw his face when he was walking on the street, but, now, when I went across I did see his face, but I didn't recognize him. I just knew he was a young man that had been walking up and down the road, you know,

different times.
Q Okay. Ma'am, when you told your story you make it sound like it was all happening pretty quick.
A It did.
Q Can you kind of estimate?
A Yeah. Well, we were -- we were in front of the middle school, and so I would say from the time we saw the boy till we pulled in the driveway, got out and went into the house was less than five minutes.
Q About where do you recall seeing the boy walking?
A The boy when we first saw him walking, he was about right here. I'm sorry. When we first saw him, he was about right here.
Q And that's near a tree?
A That's when my husband asked me. Yeah. There's a large tree there. Asked me if that was our neighbor.

And as we came on down the road -- this is my driveway. And as I'm sitting here, I'm coming down the road to turn. I noticed the gray looking truck right here, and it was going this way.

So by that time it passed us, and that's when I noticed somebody getting outta the truck or standing beside the truck. Looked like they were walking.

And then I -- we pulled in here and then we got out. There was no -- we didn't have to get anything, or you just

got out and went inside. So it was real quick.
Q And the shots occurred how long after?
A By the time we were on the back deck right here, that's when we heard pow-pow.
Q All right. Did you linger in your car at all any?
A No, sir. We had picked up takeout food, so we just jumped outta the car and went in to eat.
Q Okay. Thank you, ma'am. Answer any questions any attorney has.

CROSS-EXAMINATION

BY MR. VIETH

Q Did you see any other vehicles at all except the truck?
A No, sir. The truck was all I saw.
Q Thank you.

MR. VIETH: That's all the questions I have.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q As I understand your testimony, when you saw -- when you saw the young man getting out of the car, you said it kinda looked like kids messing around. Is that what you said?
A I just -- well, I guess I took it for granted it was just young kids messing around.
Q And this was over a year ago, is that correct?

A Yes, sir.
Q So when you say less than five minutes, if it was seven minutes, that wouldn't shock you, would it?
A I mean, I can't give you an exact time. I just know it doesn't take very long to turn in the driveway and get out and go in. So I would -- you know, I just estimated at five minutes.
Q Thank you.

MR. ABUSAFT: I have no further questions.

MR. BULSA: Nothing further. We ask that the McCallisters be excused if they wish.

THE COURT: She may be.

(Whereupon, the witness was excused.)

MR. WILLIAMS: The state calls Donald Greene to the stand.

DONALD GREENE, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WILLIAMS

Q Please state your name for the jury.
A My name is Donald Greene.
Q Where do you live, Mr. Greene?
A I live at 163 Foster Street, Cowpens.
Q How long have you lived there?
A I've lived there for about close to 30 years.
Q Have you seen this photo, State's Exhibit 3, that's

been talked about earlier?
A Yes.
Q Would you be able to use the pointer and locate your house on that map?
A Right there.
Q Okay. Do you have any kind of vantage point from your house to the Timken Center?
A Well, I was in my living room, and I can see across the street into the parking lot.
Q Okay. And this -- was this -- this is on the night of May 5th of 2017?
A Yes, sir.
Q And what were you doing that night?
A I was watching television and I heard the two shots.
Q Okay.
A And I jumped up and I looked down in the parking lot of the Timken Center and I saw Dalton. He was kind of staggering around. Then I saw him fall to his knees. So I told my wife to call 9-1-1.
Q And when you saw him fall to his knees and told your wife to call 9-1-1, what did you do at that point?
A I ran across the street.
Q What did you observe when you got over there?
A All I saw was Dalton laying in the parking lot there. I didn't see any cars or anything, just him laying there.

That's what I concentrated on.
Q Was there anything you were able to do to help?
A Yes. I took over for Jeff McCallister on the chest compressions while he was trying to stop the bleeding.
Q Were you able to talk to Dalton at all?
A No. We couldn't get anything out of him.
Q Showing the witness State's Exhibit 4. On this photograph can you point to where you're located at the scene?
A I'm right off to the side here, over to the side. You can't really see me.
Q Okay.
MR. WILLIAMS: No further questions, Your Honor.
MR. VIETH: No questions, Your Honor. Thank you.
MR. ABUSAFT: No questions for this witness, Your Honor.
THE COURT: You may step down.
MR. WILLIAMS: State calls Debbie Greene to the stand.
DEBBIE GREENE, having been first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. WILLIAMS
Q Would you please introduce yourself to the jury?
A I'm Debbie Greene. I live at 163 Foster Street in Cowpens.
Q How long have you lived there?

A Thirty years.
Q What were you doing on the night of May the 5th of 2017?
A We were watching T.V., me and my husband.
Q And just for clarification, your husband is Donald Greene?
A Donnie Greene, yes.
Q What time do you remember hearing shots? Do you remember what time that was?
A I think we were watching the news around 7:00 o'clock.
Q Okay. What -- what did you do at that point?
A I heard two shots, what I thought were shots. And my husband looked at me, and he got up and looked out the window. He told me to call 9-1-1, he thought someone had been shot. So I did. I called 9-1-1.
Q Okay. Did you speak with anyone else as you were on the phone with 9-1-1?
A No, sir.
Q Okay. Were you able at any point to look over to the Timken Center and see what was going on?
A I could see over there. I could see people trying to help him, yes.
Q Okay. Did you observe anything else --
A No, sir.
Q -- on the scene? Okay. Do you remember your neighbor

Tammy coming over?
A Yes, I do.
Q When did she come over?
A As soon as I stepped out on the porch and I called 9-1-1, she looked over, and she thought it was my son. And she ran over and talked to me and asked me what was going on. And so I was so upset I just handed her the phone. 9-1-1 was already on the phone.
Q Okay.
MR. WILLIAMS: No further questions, Your Honor.

CROSS-EXAMINATION

BY MR. VIETH

Q Ma'am, when the gunshots were fired and you were watching T.V., was it instant that you get up and look, or right away?
A No, sir. My husband got up first, and he looked.
Q Okay. Did you see any vehicles at all?
A No, sir, I did not.
Q Okay. I have no other questions. Thank you.
MR. ABUSAFT: No questions of this witness, Your Honor.
THE COURT: You may step down.
MR. WILLIAMS: Your Honor, may the Greenes be excused?
THE COURT: They may be.
(Whereupon, the witness was excused.)

MR. BULSA: Do you want us to keep going? State calls Stephanie Brewster.

STEPHANIE BREWSTER, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Ms. Brewster, would you introduce yourself to the jury and tell us where you live?

A Stephanie Brewster, 171 Foster Street, Cowpens.

Q Looking at State's No. 3. You're just down the hill from the Greenes?

A Yes.

Q Okay. Who is at 167?

A What, right beside me?

Q Yes, ma'am.

A That would be the Goodes.

Q The Goodes. Okay. Ma'am, who do you live with at 171?

A I live with my mom.

Q And how long have you lived there?

A For ten years.

Q And do you remember the evening of May the 5th of 2017?

A Yes.

Q What do you first remember about that evening?

A I remember sitting in the living room, and I heard

gunshots, and I went running on the front porch.
Q Okay. Now, your house is pretty much directly across the street from the Timken Center, is that right?
A Yes, it is.
Q I'll mark a couple of pictures and show them to you.
A Okay.
(Photographs marked State's Exhibits Nos. 10, 11 and 12 for Identification.)
Q Now, do you recall about what time it was in the evening you heard those shots?
A It was around 7:00, I guess.
Q Okay. Let me show you what's been marked State's Exhibits No. 10 and 11 for Identification.
A Okay.
Q Do you recognize those photographs?
A Yes.
Q Did you take those photographs?
A I did.
Q Okay.
MR. BULSA: Your Honor, the state would offer 10 and 11 into evidence.
MR. VIETH: Without objection, Your Honor.
MR. ABUSAFT: Without objection, Your Honor.
THE COURT: They're admitted.
(Photographs marked State's Exhibits Nos. 10 and 11.)

Q Did you take these because I asked you to?
A Yes, sir.
Q We wanted you to take picture of how the parking lot would have appeared when you first looked over there, is that right?
A Right.
Q Okay. And State's 10. Was that taken from your porch?
A Yes, sir.
Q Okay. And we actually see some white barriers down there at the bottom of the picture.
A Yes. That's the -- the rail, handicap rail, at my house.
Q Okay. So you're actually standing on your porch shooting a picture directly across the street.
A Right, right.
Q Okay. And you actually took this last night, right?
A I did.
Q About what time?
A It had to be around 7:00, because I had just got home and ate. Somewhere around in there.
Q Okay. So around the same time as this incident but a different date of the year.
A Right.
Q Because that was in May. This was around September,

so.
A Right.
MR. ABUSAFT: Objection, Your Honor. Leading.
THE COURT: Well, it's obvious. So overruled.
Q So is the lighting pretty similar?
A Well, it was actually in May. It was actually lighter --
Q Okay.
A -- in May. It was more light up there.
Q All right. And, in fact, it appears to be overcast in this picture, right?
A Right. It had just stormed.
Q Right. So nothing would have been blocking your view.
A Right.
Q Okay. That's the main thing we want to jury to understand. And you had a clear view. You walked out on the porch. And what did you see?
A I saw Dalton on his knees, and I asked him if he was okay, and he said he -- he was shot and needed help.
Q So you were actually yelling across the street towards him?
A Right.
Q All right. And did he respond? He said he was shot and needed help. And then what happened?
A And then I got on the phone with 9-1-1 and I ran

across the street, grabbed a couple of towels, and I ran across the street.

Q When you were -- when you saw him did you see anything else in the roadway or nearby?

A Yes. I saw a man standing in the middle of the road sideways and running towards a car sideways.

Q Does this picture show where you would have seen that gentleman?

A I saw the gentleman right in here, and then I saw the car in between the two bushes on the other picture.

Q Use this pointer. Push that red button.

A I saw the man about right in here, and he was standing like this, had his arm up like this. But he was sideways, so I didn't see his face or nothing.

Q Okay. Did you remember anything distinctly about his dress?

A He had on a green-lime hoody and a beige jacket, tan jacket.

Q So the color kind of stood out?

A Right.

Q And he was going towards the vehicle?

A He was.

Q Let me show you State's No. 11. You took this picture also.

A Yes, I did.

Q Is that -- can you point out where you would have seen the vehicle in this picture?
A I saw the vehicle right in here, and it was going backwards, rolling back.
Q When you say going backwards, it was facing which direction?
A It was facing towards the middle school.
Q Okay.
A Like facing towards that flag pole.
Q So the driver's side would have been on the side of the Timken Center.
A Right.
Q Okay. And you said it was rolling back?
A It was rolling back. That's a hill right there, going down, down hill.
Q And did you watch what the guy in the green jacket did? Did you actually see him get into the vehicle?
A No, I didn't.
Q But you saw him going towards that vehicle.
A I saw him going, running sideways towards the vehicle.
Q Okay. Is there anything distinct about that vehicle you remember?
A Just that it was an older 4-door, beige-tan car, one of the older, bigger ones.
Q Okay. So that was going on. And you saw the young

man across the street on his knees?
A Yes.
Q And did you turn your attention to him?
A Yes. I focused all on him, because by the time I got out there he had already collapsed on the floor. I mean, by the time I got out my side door to run he had already collapsed on the ground.
Q Did you see that vehicle again?
A No, I didn't.
Q Did you see anybody else out there?
A No, I didn't, not until after I was there with him for a few minutes. And then the neighbors came up.
Q So you were the first one to him?
A Right.
Q Let me show you another picture, State's No. 12 for Identification.
A Yes.
Q Do you recognize that object?
A I do. That's one of the dish rags I took.
Q Okay.
MR. BULSA: Your Honor, the state would move State's 12 into evidence.
MR. VIETH: Without objection.
MR. ABUSAFT: Without objection.
THE COURT: It's admitted.

(Photograph marked State's Exhibit No. 12.)
Q Now, so the jury sees what it is, that's what it is. Let me refer back to another picture, State's No. 7. Do you see? It's actually marked potential piece of evidence by placard No. 5, right?
A Right.
Q Is that about near the area where you would have been treating Dalton?
A Yes.
Q Did you know Dalton?
A I did not.
Q Did you recognize him?
A I did not.
Q Okay. So you didn't see him walking down the street. You just saw him in the parking lot.
A I just saw him in the parking lot.
Q State's No. 4. Is that you in the blue-green shirt?
A It is.
Q What are you doing to try to help Dalton?
A I'm holding his head and I'm praying and talking to him.
Q Was he able to respond and talk back?
A The only thing he said was bu, bu, bu, bu. That was all he could say, and then he stopped that.
Q Okay. And did you know the gentleman that came to

help?
A No. I've seen him around in the neighborhood, but I didn't, you know.
Q Okay. Were they -- were they conducting C.P.R. on him?
A They was. They was doing chest compressions.
Q And you were, obviously, there when the ambulance arrived and they took Dalton away. Did you remain on the scene?
A For a few minutes, and then I went back to my house and stayed outside.
Q Did you talk to the officers when they came around?
A Yes.
Q Did you describe the gentleman you saw in the green jacket?
A I did.
Q And did you describe the vehicle you saw to them?
A I did.
Q Did you ever look at any pictures of vehicles to try to identify?
A I did. A couple -- a day or two later they came and showed me a picture and -- well, they showed me several different pictures, and I picked out the vehicle.
Q At least the one you thought looked like the vehicle?
A Right.

Q You didn't get a -- did you get a good enough look of the man in the green jacket to identify him?
A No. I didn't see his face.
Q You just know what his clothing looked like.
A Right.
Q You called 9-1-1 yourself also, right?
A I did. I called it on my house phone and took the phone with me, but I don't remember what I said to them.
Q Okay. As the car was backing down the street and the other man was going towards it did he appear to be in a hurry?
A Yes.
Q Okay. And was he running?
A He was running sideways.
Q Towards that vehicle that was rolling backwards?
A Right.
Q Okay. And you didn't see any other vehicles around at that time.
A No. I didn't.
Q Okay. Thank you, Ms. Brewster. That's all I have right now. Answer any the defense attorneys have.

CROSS-EXAMINATION

BY MR. VIETH

Q Ms. Brewster, I'll be real brief. I'm just trying to get a conception of the running on the street.

When -- when a person comes down from the Timken Center onto the road, he'd be looking about at your house if he was just walking straight across?
A Yes, sir.
Q Is that fair to say?
A Yes, sir.
Q So you're saying instead of being this way he was -- I'm -- you tell me.
A He wasn't on the sidewalk. He was in the middle of the road.
Q Middle of the road.
A Middle of the road.
Q Right. And heading in the direction of the car that you saw moving, right?
A Right, right.
Q That's what you saw.
A Yes, sir.
Q Okay. And you never saw the car drive off, left or right?
A No. It was just rolling backwards.
Q Okay. And by the time you got out to the scene that car was gone, obviously.
A Yes, sir.
Q Okay. And did you see --
A Because I didn't even pay attention to that car. I

was focused on him.
Q I understand. I understand.
And the other items that the solicitor put up there that showed where No. 4 and 5 and those items, did you see those items too?
A The only thing I saw was some money laying around, and I didn't pay much attention to that.
Q Okay.
A I just knew there was money laying around.
Q Okay. So you didn't see the knife that will be identified later.
A No, sir. I don't remember seeing it.
Q Okay. Thank you very much. No other questions.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q I just want to make sure I understand. You say the car was rolling backwards?
A Uh-huh.
Q So it wasn't screeching off forward.
A No.
Q Just -- and it wasn't even driving backwards. It was just rolling backwards.
A Right.
MR. ABUSAFT: No further questions for this witness, Your Honor.

MR. BULSA: The state calls Jerry Taylor.

JERRY TAYLOR, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Mr. Taylor, would you please introduce yourself to the jury and tell them where you live?

A My name is Jerry Taylor. I live at 187 Foster Street.

Q How long have you lived there?

A Twenty-two years.

Q Who do you live with?

A My wife.

Q Are you still employed?

A Yes, sir.

Q What is your occupation?

A I'm a sales rep.

Q Sales rep?

A Yes, sir.

Q This makes some noise. Make sure you speak up.

A All right.

Q Were you at home at the time of May the 5th of 2017 around 7:00 o'clock in the evening?

A Yes, sir.

Q Is that a Friday evening?

A I don't remember.

Q Had you been working that day?

A I don't -- I don't recall if I was working or not.
Q What -- what drew your attention? What stands out about that evening to you?
A My wife and I were sitting back on our deck that evening by the pool and we heard two gunshots quick, pow-pow gunshots, and that obviously --
Q What did you do when you heard those?
A Well, my wife said that sounded like gunshots, and I said that's exactly what that was.

And right after we heard the gunshots -- I say right after -- it may have been 10 or 15 seconds after -- I heard a car engine speed up, and it was coming towards our house. And I told my wife. I said, "I bet you that's somebody's trying to get away. That's a -- that car is going fast." The engine was revved.

And then we heard the car turn onto Marion Court, which is just above our house, one -- one street above our house. And that's a dead-end. It's a cul-de-sac.

So at that point we looked up the hill. Our neighbor's house is up the hill from us. We looked up and saw the car through the slats in their fence speeding down Marion Court.

Q Do you see your house?
A Yes, sir. Right there.
Q Watch that microphone.

A Oh.
Q Which neighbor has a fence?
A This -- this neighbor right beside us has a fence that runs along the side, and it's -- it's right here actually. And we -- our house is actually down the hill from this house, kind of it slopes all down.

Our deck is here, and we can actually look up and see this fence, and it's a wooden fence and it has spaces in it. So we can see cars when they're driving down this road.

Q So you actually heard the car before you saw it.
A Yes.
Q Okay. And you heard their revving?
A Yes, sir.
Q Okay. And you heard it turn onto Marion Court.
A Yes, sir.
Q And that caused you to look towards Marion Court?
A Yes. We looked up, and I saw the car, and I told my wife they're going to be coming back out, because that's a dead-end. And they were going really fast down Marion Court.

So at that point we went around to the front of the house and stood in the driveway. The car -- it came back down Marion Court and came out and turned left and went right by us.

Q Would you trace it for the jury on the map?
A Yes, sir. They came. They turned here and came down. And I guess they -- I don't know where they turned around. We didn't see them turn around. But this is a cul-de-sac. Came back out and then went this way on Foster Street. And we were standing in our driveway right -- right here when he came -- when they came back this way.
Q They drove right past you?
A Right past us, yes, sir, at a high rate of speed.
Q Did you notice anything special about the car?
A Well, I noticed -- the first thing I noticed about the car was that the driver's-side rear window had a plastic bag over it like the glass was broken out of it. And it was covering the back driver's-side -- rear driver's-side window.
Q Could you tell what -- the approximate color?
A It was -- it was a goldish-colored, 4-door sedan. I think I told the SLED officer it looked kinda like a Crown Vic type car, a Ford Crown Victoria.
Q Could you tell how many people were inside of it?
A There were two people inside it.
Q Were they in the front seat or the back seat?
A They were, I think -- I think in the front seat. They had -- one of them had a hoody on, I think, and the other one, I don't think, did. But I didn't -- I didn't notice.

I noticed the window more than anything.
Q All right. And how close in time was this, all of this, with the car to the shots that you heard?
A I don't know exactly, but, you know, it was -- from the time the shots were fired till the time we heard the car speeding toward us, I don't know, maybe 30 seconds, a minute maybe. I don't -- I really don't know everything happened so quickly. It wasn't long.
Q Okay. All right. And did you speak with officers that evening?
A I did.
Q Did you give them the description of the car?
A I did.
Q And did you learn whether they had stopped the vehicle?
A Not at that -- not at that point in time. They -- I didn't know whether they had.
Q Did you later learn that they did?
A I later learned that they did. The SLED officer came back to my house later to show me a picture of the car.
Q Okay. Were you able to identify the car?
A Absolutely, yes, sir.
(Photograph marked State's Exhibit No. 13 for Identification.)
Q Show you what's been marked for identification State's

13. Does that look like a picture you would have seen?
A Yes, sir.
MR. BULSA: Your Honor the state would offer 13 into evidence.
MR. VIETH: Without objection, Your Honor.
MR. ABUSAFT: Without objection.
(Photograph marked State's Exhibit No. 13.)
Q So the officer came and showed you this vehicle. It's kind of dark, once again. Unfortunately, the lighting. It does not have a bag on the window, does it?
A It's hard to tell on that picture, but it definitely did when it went by us.
Q Okay. We'll have testimony by the officer regarding that, but, okay. There were clearly two people and speeding away.
A Yes, sir.
Q Thank you, sir. That's all I have. Answer anything defense counsel has.

CROSS-EXAMINATION

BY MR. VIETH

Q Mr. Taylor, you gave two different statements, I believe. One was the day after, May the 6th, and then one was May the 9th.
And the only reason I bring it up is that you admitted there were inconsistencies in the first one, the first one

I think you said that looked like there were two black males and the motor was revved up.

And then about three days later you come back and say, "I would like to revise my previous statement due to one inaccuracy. I did not actually see the vehicle turn onto Marion Court. I just heard it turn."

A Yes, sir.

Q So, I mean --

A The -- the officer wrote that for me at 2:00 o'clock in the morning.

Q Right.

A And so, yeah. And so I just took the copy and went back in the house. The next day I looked at it, and I said, "Well, he didn't write this down right." It was -- I didn't actually see the car turn on Marion Court. I heard it turn on Marion Court.

Q Got you.

A And then we saw it through the slats in the fence, and then we saw it turn back out. That was the -- that was the inconsistency.

Q Okay. And the -- and the occupants were -- you actually believe they were two black males?

A It looked like that at that time. It did. One of them had a hoody on and the other one had -- we know he had black hair. And, you know, my wife will -- she saw the --

more than I did with the occupants. But it looked like that at the time to me.

Q Okay. I appreciate it. No other questions.

A Thank you.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q You heard the car. You heard the engine of the vehicle.

A Yes, sir.

Q Well, let's just be clear. Obviously, originally you thought it was two black guys.

A I said it looked like two black guys, yes.

Q Okay. Do you still believe it was two black guys?

A I never said it was two black guys. I said it looked like two black guys.

At that time, that's what it looked like to me it happened -- it happened so quick. So I didn't ever tell them I knew it was two black guys. I said it looked like it.

One of them had a hoody on. The other one it looked -- my wife and I talked afterwards, and it looked like -- like an Afro, you know, black hair. So I thought it was two black guys, yes.

Q So you thought it was two black guys because of the articles of clothing they had on?

A No, sir. I said one of them had a hoody on. I didn't know. The face was darkened out because of the hoody, and the other guy had black hair. And my wife said to me, and we talked about it, and I said I know it looked like two black guys but I'm not sure. And that's what I told the SLED officer.
Q So because there was a hoody that -- because there was a hoody that blocked out their face that made you think it was a black guy?
A No. I think what it was was I thought the driver was a black guy. And I just assumed that his friend would have been a black guy too.
Q Okay.
A You know.
Q I see. And you assumed. Because it was the silhouette of the hoody that kind of blocked out the face that led you -- that led you to believe that it was somebody that was African-American.
A I guess.
Q Right.
A I don't know what my thought process was. That's just what popped into my head first.
Q Right. And because -- and because that person, that person who was the driver, appeared to you to be black, you thought his friend possibly was black.

A I guess that's what I thought.
Q Okay. I just want to be -- make sure.
The silhouette of the driver covered by his hoody made you appear --
A No. The driver didn't have a hoody on. From what I remember, it was the passenger that had the hoody on. I mean, this has been a year and a half ago, so I'm a little fuzzy on the details but...
Q Would it be clear to say that you have heard -- you are sure about the car?
A Positive about the car; not so positive about the occupants.
Q You're not very -- you're not positive at all about the occupants.
A No, no.
Q So for this jury, for this Court, you are absolutely not positive about anything, about the appearance of the occupants, whether the driver or in the passenger side.
A Not positive, not one hundred percent positive, no.
Q Well.
A Not positive.
Q Not positive. But since you have the race completely wrong, you're not very -- you're not sure to any degree of certainty.
A That's right, that's right, yes.

you know, I think speaking with any type of witnesses or anything.

Q What did -- you say Cowpens was running the show. What did the Cowpens police have you do once you got there?

A Just after everything was situated, I mean, usually that time you do have people trying to show up on the scene.

After all of that was situated it seemed like there wasn't anything productively that I could do on the scene. But during that stay they had put out what type of information they had at that time, possible suspect vehicles, that type of stuff.

Q What kind of information had you gathered as far as a possible suspect vehicle?

A There was talk of, I think, two vehicles, one being some type of Ford Ranger that was seen at the time and also an older possible Ford Crown Vic or that type of style, like a gray or silver color.

Q Were there any other descriptors for the Crown Vic style vehicle?

A It was, and that was one that stood out that possibly had a black paper or a black plastic on the rear driver window.

Q Okay. So what did you do at that point?

A Once I cleared that scene, which normally when you do

have any type of suspect or suspect vehicle information, just kind of stay in the area, just to try to, you know, see if you can run across anything. So I probably stayed within the town limits for the next 10 or 15 minutes.

Q When was it that you actually left the Timken Center to kind of go back on patrol and look for the vehicle?

A Just guessing maybe 7:30 or 7:45.

Q Okay. And then you said you left and started to look. What happened at that point once you left the Timken Center?

A I don't remember the whole route when I left, but at some point I ended up leaving the town limits, just out of the town limits, and turning left onto Cannon's Campground. I think just as I passed -- there's a Hot Spot at that intersection. Just as I passed the Hot Spot I did see a vehicle traveling, which appeared to be a high rate of speed, toward me on Cannon's Campground in my opposite direction heading toward 110.

Q Okay.

A As it passed me the -- one of the details they put out kind of arose.

Q What was that?

A It not having black plastic on the window, but you could easily see where there was tape marks going around the driver rear window. And there was no glass being

present, which to me, obviously, showed that it could have had plastic at one time and had a tape around it.

Q So just to make sure we've got this clear, even though the description given from witnesses was that there was some sort of black plastic on the driver's-side rear door covering that window, because maybe perhaps the glass was out, the vehicle you saw did not have any kind of plastic, but you could see that the window was out and that there had been tape, tape marks. Where there could have been plastic there before?

A That's correct.

Q Okay. So what did you do at that point?

A I turned around after the vehicle passed. I think I got behind the vehicle. It took a left onto Highway 110 toward Interstate 85. I think I caught up to the vehicle about the time it crossed over 85.

Q Okay.

A Being the circumstances of the call that possibly being a suspect vehicle, firearms were involved, I followed the vehicle as it turned onto Mayo Road waiting on another officer to get closer in the area before I stopped the vehicle.

Q Okay. And once another officer became available did you make a stop of the vehicle?

A Yes, sir, I did.

Q And why don't you tell us about that stop.
A Once I initiated a traffic stop, just as it turned off of Mayo Road, and just following policy and training, I conducted a felony car stop, which is the control movement of getting everybody out of the vehicle in a safe manner.
At that time once everybody was out they were detained and explained that they were detained, and the reason to be.
Q Who were the occupants of this vehicle?
A I don't remember the full names at this time.
Q Okay. Did -- do you remember the vehicle that you stopped?
A Yes, sir, yes, sir.
Q What kind of vehicle was that?
A It was a Mercury Marquis.
Q Okay. Do you remember the color?
A Yeah. It was a -- like a goldish-tan, I guess, but with it being metallic, you know.
Q As part of your procedure at that point you said you detained them. Did you -- did you secure the vehicle as well?
A Yes, sir. At that time -- I mean, nobody -- once both occupants were out of the vehicle nobody was in or out of that vehicle.
Q Okay. Did you take a picture?

A Yeah. Once -- shortly after they were detained, I think it was a Cowpens officer that came out to the scene from the Timken Center.

I also received a phone call from the SLED agent that I think had gotten on scene to take over the investigation. I basically told him the vehicle that I had, you know, occupants, what I had at the time.

Q Okay. Now, you mentioned just a few minutes ago that you can't recall the full names of the occupants in the vehicle. Did you do a police report in this case?

A Yes, sir, yes, sir.

Q Would it help to refresh your memory?

A Yes, sir.

Q Go ahead and take your time and locate that information.

(Pause.)

Q Mr. Rush, did that help you?

A Yes, sir.

Q What were -- who were the occupants in the vehicle?

A One being Devon Ruttle; the second being Lorenzo Calderon.

Q Okay. You mentioned that they were -- you said you did take a picture of the vehicle.

A Yes, sir.

Q Do you recognize that photo?

A That looks like the one I took the night of the stop.
Q And what did you do with that photo?
A That was sent to the SLED agent that I think was still on the scene in Cowpens.
Q Okay. I asked you a little bit about securing the vehicle. Was there any -- anything in the vehicle that you were able to locate that was important in this case?
A The -- yes, sir. I do remember there being firearms in a dash, or glove box rather.
Q Okay. Do you remember how many firearms?
A Being the time that's gone by, I think there was two firearms in the compartment area.
Q Did you -- were there any other items? Were there any bullets in the area or anything like that that you recall?
A There was also a loaded magazine in the floorboard of the driver's side also.
Q Okay. What did you do with the vehicle?
A Per SLED's request, it was sealed up with evidence tape, and our county rollback responded to pick that vehicle up and take it back to our county shop.
Q And what was the purpose of that?
A That was for their investigative purposes at the Timken Center.
Q Essentially trying to --
A Preserving the evidence, yes, sir.

something that's been there for some time, it kind of leaves the adhesive around that window.

Q Okay. This is State's Exhibit 16. Is this a better picture of what you're talking about?

A Yeah. That shows it a lot better.

Q Okay. The adhesive being on the left side. Is that on the right-hand side as well?

A Yeah. There was some that you can see on the glass here, some small markings down that edge also.

Q Did you see any glass there on -- on that window?

A No. I didn't see any glass.

Q Okay. But is there any plastic?

A No, there's no plastic at that time.

Q And this is also a photo of the vehicle from a different perspective, from the left-hand side.

A Correct.

MR. WILLIAMS: At this time no further questions, Your Honor.

MR. VIETH: Your Honor, I have no questions. Thank you.

MR. ABUSAFT: May it please the Court.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q Officer, when you stopped this vehicle who was driving?

A I believe it was Devin Ruttle. Again, it's been some time. I'd have to reference my report that I documented that night.
Q Would you like to do that?
A Yes, sir.
(Pause.)
A Yes, sir.
Q It was Devin. It was not Lorenzo Calderon that was driving.
A I documented that night, but driver later identified as Devin Ruttle and passenger later identified as Lorenzo Calderon.
MR. ABUSAFT: No further questions of this witness, Your Honor.
MR. WILLIAMS: No further questions, Your Honor.
THE COURT: You may step down.
MR. WILLIAMS: The state would request to have Sergeant Rush excused.
THE COURT: He may be.
(Whereupon, the witness was excused.)
MR. BULSA: State calls Steve Calhoun.

MR. VIETH: Thank you, sir. No questions.
MR. ABUSAFT: No questions for this witness, Your Honor.
THE COURT: You may step down.
MR. BULSA: Ask that he be excused.
THE COURT: He may be.
(Whereupon, the witness was excused.)
MR. BULSA: State calls Hunter Sizemore.
HUNTER SIZEMORE, having been first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. BULSA
Q Hunter, introduce yourself to us and tell us where you live.
A My name is Hunter Sizemore. I live in Pacolet.
THE COURT: You're going to need to pull that microphone down and speak into it loudly.
A My name is Hunter Sizemore. I live in Pacolet, South Carolina.
Q Okay. And how old are you, Hunter?
A Twenty.
Q Twenty. Do you work?
A Yes, sir.
Q Where do you work?
A Dale Harvey Construction.
Q What kind --

A Dale Harvey Construction.
Q Dale Harvey Construction. How long have you been doing that?
A About two years.
Q Okay. Do you own a truck?
A My mother does.
Q Your mother does. What kind of truck does she own?
A A Ford Ranger.
Q Ford Ranger. Would that have been your Ford Ranger that we saw on that video that just played?
A Yes, sir.
Q Okay. And you stopped or slowed your vehicle down for what reason?
A Because Lorenzo was going to jump out and I didn't want him to get hurt. I told him not to.
Q Okay. So you basically slowed down and let somebody get out.
A Uh-huh.
Q Let's back up and try to understand how you got to that point. Okay?
A Uh-huh.
Q Do you know the two defendants?
A Yes, sir.
Q Lorenzo and Devin.
A Yes, sir.

Q How well do you know them?
A I know Lorenzo pretty good and I met Devin through Lorenzo.
Q Okay. So you know Lorenzo the best.
A Yes, sir.
Q Did he happen to be with you on the night of May the 5th of 2017?
A Yes, sir.
Q How did he come to be with you?
A I'd got off work and I asked him if he wanted to go get something to eat with me and one of my people that was working with me.
Q Okay. And who was the person working with you?
A Jacob Quinn.
Q So were you and Jacob riding in your truck?
A Yes, sir.
Q And you contacted Lorenzo to see if he wanted to go with you.
A Yes, sir.
Q And did you get ahold of him?
A Yes, sir.
Q Okay. And did he join you?
A Yes, sir.
Q Do you remember about what time of the evening this was?

A Honestly, we had just got off work, so.
Q How late do you usually work?
A I think that day we got off like lunchtime maybe or a little later.
Q What is that?
A 12:30 or 1:00 o'clock.
Q So how long would he have been with you that day?
A For a while.
Q A while. Okay. At some point did y'all have to go help someone?
A Yes, sir.
Q Okay. Tell us about that.
A Devin had backed into a ditch and called Lorenzo, and Lorenzo asked me if I'd go help push him out of the ditch.
Q Was Jacob Quinn still with you?
A Yes, sir.
Q Okay. So the jury understands, you've got your Ford Ranger that you drive that your mother owned.
A Uh-huh.
Q You're driving it. And Jacob's where in this truck?
A In the back seats.
Q The back seats. It's a little jump seat?
A Yeah.
Q Okay. Not like -- it's not a full seat.
A Uh-uh.

Q Jacob's in the back and Lorenzo is up front?
A Uh-huh.
Q Lorenzo gets called to help Devin.
A Uh-huh.
Q And y'all go --
THE COURT: Please answer yes or no.
A Yes, sir.
Q Okay. And do you recall where Devin was in the ditch?
A Honestly, I don't remember what road it was, but I just know it was in front of a driveway.
Q In front of somebody's driveway?
A Yes, sir.
Q Okay. And you don't recall the road name.
A No, sir.
Q But y'all went over there to help him.
A Yes, sir.
Q And what happened? What took place when you went over there?
A First, we tried to pull him out with a strap, and it broke. And then his car ran out of gas. So he -- we all hopped in the truck and went to the Hot Spot and got some gas and came back, put it in his car. And then I pushed him out with my truck.
Q Let me show you State's No. 1. This is an aerial map. Would this be the Hot Spot --

A Uh-huh.
Q -- you're talking about? Yes?
A Yes, sir.
Q Okay. The Hot Spot would be up there in the top center, right?
A Yes, sir.
Q So y'all went there. Did you have a gas can?
A No, sir. I think he got a gallon of water or something and poured it out.
(Photographs marked State's Exhibits Nos. 19 and 20 for Identification.)
Q What kind of car did Devin have? What was he driving?
A I believe it was a Crown Vic.
Q Show you State's 17. Is that his car?
A Yes, sir.
Q That's the car that was in the ditch that you had to go help?
A Yes, sir.
THE COURT: Please use the microphone when responding to a question.
THE WITNESS: Yes, sir.
Q And you said you went to the Hot Spot. Did he ride over there with you?
A Yes, sir.
Q Where was he in the truck?

A In the very back.
Q In the bed?
A Yes, sir.
Q Show you these two pictures, State's 19 and 20. Do those appear to be from the Hot Spot?
A Yes, sir.
MR. BULSA: Your Honor, the state would offer 19 and 20 into evidence.
MR. VIETH: Without objection from me, Your Honor.
MR. ABUSAFT: Without objection, Your Honor.
THE COURT: They're admitted.
(Photographs marked State's Exhibits Nos. 19 and 20.)
Q State's 19. What does this show us?
A Me pulling up to the gas pump.
Q Who's in the back?
A Devin.
Q Okay. In the green hoody?
A Yes, sir.
Q All right. Show you State's 20. What does that show us?
A Devin.
Q Inside the Hot Spot?
A Yes, sir.
Q Wearing the green hoody?
A Yes, sir.

Q Okay. And that's how he was dressed that day?
A Yes, sir.
Q Okay. When y'all -- when he got the gas, what did y'all do?
A We went back to his car.
Q Went back to his car. And then what happened?
A Put the gas in his car, pushed him outta the ditch. And we left going towards Jacob Quinn's house because he had to drop some clothes off.
Q Okay. And where did Jacob Quinn live?
A Crystal Drive, I believe.
Q Crystal Drive. Is that off Foster Street?
A Yes, sir.
Q Okay. Look at this map up there, top left. Is that Crystal Drive?
A Yes, sir.
Q All right. So y'all left where you pulled Devin out of the ditch and you drove down Foster Street, right?
A Yes, sir.
Q And did you continue driving down Foster Street and go past the middle school?
A After we left Jacob Quinn's house.
Q Okay. But was Jacob still in the truck?
A Yes, sir.
Q All right. Where was -- where was Devin? Had he

driven off in his car?
A Yes, sir.
Q In that Crown Vic.
A Yes, sir.
Q Did he drive off in front of y'all?
A Yes, sir.
Q And which direction did he go?
A The same direction.
Q The same direction. So both of y'all were on Foster Street.
A Yes, sir.
Q All right. And what happened when y'all were driving down Foster Street after you left Crystal Drive?
A We seen Dalton, and Lorenzo said something, stop. And I said no. He goes stop, stop, stop, stop, stop. And I didn't stop. Well, he opened the door, so I slowed down. Then he jumped out, and I left.
Q Okay. Was anybody saying anything to Dalton?
A Lorenzo said something before then, hollered something out the window.
Q He hollered something out the window before he jumped out?
A Not before. It was previous, earlier that day, like when we was on the way to go push Devin outta the ditch.
Q Where did you see -- where did you see Dalton then?

A He was walking to the store, I believe.
Q So you drove down Foster Street to go --
A Yes, sir.
Q -- drive?
A We got the call, and we was at McDonald's. We went straight down 29 to Cowpens and turned left onto Foster Drive --
Q Okay.
A -- and went up to where he was.
Q So back to State's 1. Are you telling this jury that on the way to where Mr. Ruttle was in the ditch you would have come from the downtown area here?
A Yes, sir.
Q You drove down Foster Street.
A Yes, sir.
Q And at some point you passed Dalton walking?
A Yes, sir.
Q And Mr. Calderon yelled something at him?
A Yes, sir.
Q Do you remember what it was?
A Something like don't get caught lacking or something. It was something like don't get caught lacking or something.
Q What does that mean?
A Honestly, I don't have a clue.

MR. ABUSAFT: Objection, Your Honor. Speculation.
THE COURT: Well, I didn't hear what he said. What --
THE WITNESS: He yellowed out the window don't get caught lacking or something like that.
THE COURT: Don't get caught lacking?
THE WITNESS: Yeah, yes, sir.
Q Okay. Is that slang for something?
MR. ABUSAFT: Your Honor, objection. Speculation.
THE COURT: Well, if he knows what it means, he can testify to it. Overruled.
MR. ABUSAFT: Your Honor...
THE WITNESS: I honestly don't know what it means.
MR. ABUSAFT: Your Honor, can we take something out -- outside --
THE COURT: Overruled.
MR. ABUSAFT: -- the presence of the jury, Your Honor?
THE COURT: All right. Ladies and gentlemen, please go to your jury room. Don't discuss the case. I'll bring you back in just a minute.
(The following takes place outside the presence of the jury.)
THE COURT: Mr. Abusaft.
MR. ABUSAFT: Two points, Your Honor.
One is the speculation and one is relevance, Your Honor.

Mr. Sizemore just said, he said something like this or something. I don't know. That's what he just basically said.

So, one, it's not relevant if he doesn't remember actually what was said.

And then, two, Your Honor, you're taking something that is probably irrelevant, because he doesn't remember what was said, and then asking him to interpret what it means when he's not -- he's not the person saying it, Your Honor. And this is --

THE COURT: I'm not -- excuse me. I'm not asking him to interpret it. I'm -- the question was does he know what that means, not does he interpret what Mr. Calderon means.

MR. ABUSAFT: Your Honor, this is --

THE COURT: It's conversation between these two people. He may know what he said, may know what it means, or he may not. He can just answer the question.

MR. ABUSAFT: Your Honor, well, I guess that doesn't address the first point, is that it's not relevant if he doesn't remember what was actually said, which is what he said about three times, is, well, something like or I don't really -- he just kept saying these kind of half statements.

If he doesn't -- if he doesn't remember what was said, then it's not relevant at all. But, Your Honor, this isn't

-- whatever is being said isn't something that's widely accepted about what went on. It's not like me and you speaking right now. It's widely accepted, what the words we're saying. So he can say something that's widely divergent. He's speculating about what some phrase, lacking, catch you lacking, means.

THE COURT: Well, he's a friend who -- of Mr. Calderon's and they were -- he heard him say something. And since they're friends he may know what that means. I don't know if he does or not.

I don't know what it means. I can assure you of that. But I don't know if he does or not. That's the reason he was asked the question.

MR. ABUSAFT: Thank you, Your Honor.

THE COURT: So note your exception to it.

Bring the jury back.

(The following takes place in the presence of the jury.)

THE COURT: Mr. Bulsa.

BY MR. BULSA

Q Hunter, did you give a statement to the police?

A Yes, sir.

Q Did you write it in your own hand?

A One of them, I did; one of them, I didn't.

Q Let me show you the one dated May 9th of 2017. Is

that the one you wrote in your own hand?
A Yes, sir.
Q Okay. Direct your attention to the top of page two. Did you record what you heard Lorenzo yell at Dalton Moore?
A Yes, yes, sir.
Q And what did you record?
A Hollered at him, "Don't get caught slacking."
Q Okay. And do you know what that meant?
A No, sir.
Q How was he acting when he made that comment?
A He just hollered it out the window.
Q Was he upset?
A Not really.
Q Okay. What did you tell Lorenzo to do?
A Shut up and get in the window probably.
Q Okay. How did you record it?
A And told him to calm down and stop.
Q Okay. Told him to calm down. Lorenzo is a friend of yours, isn't he?
A Yes, sir.
Q And you've known him a long time?
A Since high school.
Q Okay. How well did you know Dalton?
A I knew him through school.
Q Was he a friend of yours?

A I mean, we talked a couple of times. I hung out with him outside of school once or twice.
Q Okay. So safe to say you're closer to Lorenzo.
A Yes, sir.
Q And how well did you know Devin?
A I knew him pretty well too. I mean, I knew him through Lorenzo. They hung out all the time.
Q So you knew Devin more than Dalton as well.
A Yes, sir.
Q Okay. So on this date you just -- well, you said as you were going to help Devin out of the ditch y'all passed Dalton.
A Yes, sir.
Q And Lorenzo yelled something out the window to Dalton.
A Yes, sir.
Q At that point Dalton was walking towards the downtown area.
A Yes, sir.
Q Okay. When you got him out of the ditch, you went by Jacob Quinn's house and you're driving back up Foster Street, Lorenzo's trying to get out of the truck, right?
A Yes, sir.
Q Why?
MR. ABUSAFT: Objection, Your Honor. Leading.
THE COURT: Don't lead him.

Q Why is he trying to get out of the truck?
A Honestly, I have no clue. I mean, I guess when we passed Dalton -- when we passed Dalton and he just started pulling on the handle.
Q All right. You passed Dalton and he's trying to get out of the truck.
A Yes, sir.
Q And you essentially have to slow down or he's going to jump out of a moving vehicle.
A Yes, sir.
Q And we saw that on the video, right?
A Yes, sir.
Q So whose car did he go get into?
A I'm -- Devin's.
Q It was Devin's?
A I'm assuming. I didn't see whose, where he got, where he went or nothing.
Q You didn't see Devin come driving back by?
A I mean, I seen him pass by me, but I didn't see him get in the car with him.
Q Okay. So you weren't still there when he was getting in?
A No, sir.
Q Okay. So just so the jury understands, y'all are driving down Foster Street. You see Dalton walking on the

sidewalk?
A Not before we turned into Jacob's house, we didn't.
Q I know. This is after Jacob's house.
A Well, yeah. After Jacob's house, we did, yes, sir.
Q Was Dalton in front of the middle school or close to the middle school when y'all passed him?
A Yes, sir. I'm pretty sure he was towards the end of it.
Q Okay. Towards the end closest to the center.
A Yes, sir.
Q All right. And then Lorenzo jumps out. And you don't know what happens after that, right?
A No.
Q Where do you go?
A I went to -- I was actually headed to my -- we left, and I think we was going down Pacolet-Cowpens. And I called my buddy, Dalton Harvey, to see if I could ride over. I knew him and Jacob didn't like each other, so I turned around to take Jacob home and went back to Dalton's.
Q How did you get back to Jacob's house?
A My truck.
Q Did you go back Foster Street?
A Yes, sir.
Q Did you go by the Timken Center?
A I had to to turn onto his road.

Q Well, did you see what was going on?
A I seen a lot of police out there and a lot of people standing around.
Q You didn't know what was going on?
A No, sir.
Q When did you learn what had happened?
A About 3:00 o'clock when SLED came and visited me.
Q 3:00 o'clock in the morning?
A Yes, sir.
Q Okay. All right. So they somehow learned that somebody had been with you that might be involved.
A Yes, sir.
Q The car that Devin was driving, did it have a black trash bag over the back window?
A Yes, sir.
Q It did?
A Yes, sir.
Q Okay. That night that you helped them out of the ditch it had that black trash bag?
A Yes, sir.
Q When Lorenzo got out of the car, out of your truck, did he take anything with him?
A No, sir. He left his phone in my truck.
Q Did he have anything in his hand when he got out?
A No, sir.

Q Do you know if he had a weapon on him?
A When he jumped out at the lot he had a pistol on him. I'm not sure what it was, but that's what it looked like, a black handle to a pistol --
Q Okay.
A -- in his waistband.
Q When he jumped out on Foster Street, it appeared that he had a pistol.
A Yes, sir.
Q Okay. And what he did with that pistol and where he went, you don't know.
A No, sir.
Q Okay. Thank you. That's all I have.
MR. VIETH: I have no questions, Your Honor.
MR. ABUSAFT: May it please the Court.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q You said that it appeared that Lorenzo had a pistol in his hand.
A No. His waistband.
Q Excuse me?
A His waistband. Like, when he jumped his shirt slid up and it looked like there was one in his waistband. I really --
Q Are you sure of that fact?

A No, sir. He just asked me if I saw a weapon, and I told him what I thought I saw.
Q You sure enough to bet money that that's what that was?
A No.
Q Sure you're -- basically, you're guessing in response to Mr. Bulsa's comments.
A I assume, yes, sir.
Q Okay. Could have been something else in his hand.
A His waistband?
Q Well, it could -- it could've been -- wherever it was, it could have been something else.
A Possibly, yes, sir.
Q When SLED came to talk to you, they came to talk to you about 3:00 o'clock in the morning. Is that what you said?
A I'm pretty sure, yes, sir.
THE COURT: Please use the microphone. Don't go past it. Speak in front of it.
Q That was a little startling for you?
A Yes, sir.
Q Frightened you?
A Yes, sir.
Q Upset that -- you were a little bit upset when you gave that statement?

A I was asleep, honestly.
Q So may be some things in that statement that weren't true?
A Yes, sir.
Q And you knew, and you testified you knew Lorenzo.
A Yes, sir.
Q But you knew Dalton also.
A Yes, sir.
MR. ABUSAFT: No further questions.

REDIRECT EXAMINATION

BY MR. BULSA

Q Mr. Sizemore, in this statement you wrote -- isn't it true you said you saw Lorenzo with a silver and black Smith and Wesson .40 caliber handgun?
A Earlier that day, yes, sir.
Q Earlier that day. Okay. And in the first statement you gave to the officer when he wrote it that you signed -- right?
A Uh-huh.
Q That would have been May the 6th at 4:00 a.m. You said, "I saw Lorenzo with a gun that had black grips." Is that right?
A That Smith and Wesson I saw earlier that day.
Q What?
A The Smith and Wesson I saw earlier that day.

Q Let's see. "He was hollering at Dalton," meaning Lorenzo.

MR. ABUSAFT: Your Honor, I object. This is improper impeachment.

THE COURT: Overruled.

Q I'm sure you wrote, "He was hollering at Dalton as he was sliding out. I saw Lorenzo with a gun that had black grips."

A I mean, I guess I could have said that, yes, sir.

Q What do you mean, you guess. You signed it.

A I mean, I said it. I signed it, yeah.

Q You signed it.

A Uh-huh.

Q Okay. And then you backed it up, at least by saying you saw him with a Smith and Wesson .40 caliber earlier that day.

A Earlier that day, yes, sir.

Q Okay. You actually -- well, you saw it well enough to describe it earlier in the day, but when you saw him sliding out, you just saw the grips and you knew it was a gun.

A That's what it was, yes, sir.

Q What?

A Yes, sir.

THE COURT: Use that microphone, please.

A Yes, sir.
Q Okay. So Lorenzo got out of your car with a pistol.
A I mean, like I -- it was in his waistband, and I saw it earlier that day, so I guess, I'm assuming, that's what it was.
Q And he left everything else in your car.
A Yes, sir.
Q Right?
A Yes, sir.
Q So he got out in such a hurry he left all of his other possessions.
A Yes, sir.
Q Okay. How -- what was his demeanor like? How was he acting?
A He was -- he was on his phone the whole time really after we had pushed him out -- Devin outta the ditch. He didn't really say nothing.
Q When he got out of your car, how was he acting?
MR. ABUSAFT: Asked and answered, Your Honor. This is the third time.
THE COURT: Overruled.
A He just jumped. I don't know how he was acting once when he got out. That's what you's asking.
Q He was in a hurry to get out, right?
A Yeah.

MR. ABUSAFT: Leading, Your Honor.
THE COURT: Don't lead him.
MR. ABUSAFT: The solicitor is testifying for him.
THE COURT: Don't argue.
Q Was he in a hurry to get out?
A Yes, sir.
MR. ABUSAFT: Asked and answered, Your Honor.
Q In fact, he was opening the door while you were driving, wasn't he?
A Yes, sir.
Q Thank you.

RECROSS-EXAMINATION

BY MR. ABUSAFT

Q Mr. Sizemore, I don't want to belabor. You obviously perceive enough of this already.
You saw Lorenzo with a firearm earlier in the day.
A Yes, sir.
Q Okay. That led you to assume when you saw something black on his person that it was a firearm.
A Yes, sir. That's what I was trying to get across.
Q That's what you were trying to get across to Mr. Bulsa.
A Yes, sir.
Q But now in this courtroom, having put your hand on the Bible, swearing in front of God, you're not sure what that

was.
A Honestly, no, sir. I mean, I -- like he said, it's in the statement, but it was also 3:00 o'clock in the morning when I wrote that statement.
Q And the police officer was a guy start of, kind of, like him, pushing you to say certain things in that statement?
MR. BULSA: Objection, Your Honor.
THE COURT: Overruled.
MR. BULSA: Characterization.
THE COURT: Overruled.
A No, sir. They was actually pretty nice, respectful.
Q Okay. Good. I'm glad somebody was to you.
MR. BULSA: Objection, Your Honor.
THE COURT: Mr. Abusaft, do not make editorial comments.
MR. ABUSAFT: Yes, Your Honor. I just want to be clear for this jury.
Q You saw Lorenzo with something earlier in the day. That led you to believe that -- that lead you to tell the police officer that you thought that.
A Yes, sir.
Q But now standing here in front of everybody you can't say with any degree of certainty.
MR. BULSA: Objection, Your Honor. That's asked and

answered.

THE COURT: Overruled.

Q You can't say with any degree of certainty whether he had a firearm on him or not.

A Yes, sir.

Q Okay. You previously testified the first time you were asked Lorenzo wasn't upset when he got out of that vehicle.

A Like I said, there wasn't no stopping him. He just opened the door and hopped out. He didn't seem like -- he was just on his phone.

Q So he was --

A Or --

Q I'm sorry. Excuse me.

A After we left Jacob's, he put his phone down, and he was just sitting there.

Q Okay.

MR. ABUSAFT: No further questions.

MR. BULSA: Your Honor, may I clear up one?

REDIRECT EXAMINATION

BY MR. BULSA

Q Mr. Sizemore, when you picked Mr. Calderon up was he with you the entire time until he got out of your car?

MR. ABUSAFT: Your Honor, that's outside the scope of my -- that's outside the scope of my recross, Your Honor.

THE COURT: Well, I've given y'all both great latitude, so don't worry. You'll get to cover it if you need to.

A Could you repeat that, please?

Q When you picked him up to go to McDonald's, was he with you until he got out of your car?

A Yes, sir.

Q And when you picked him up to go to McDonald's, that's when you saw the handgun, is that right?

A Actually, it was at his house before we left. It wasn't at McDonald's.

Q And did he take that into your car?

A I'm not positive. I'm not -- I'm not sure if he did or not.

Q Okay. But, nonetheless, he didn't leave a gun in your car.

A No, sir.

Q Okay.

MR. ABUSAFT: Briefly.

RECROSS-EXAMINATION

BY MR. ABUSAFT

Q So you saw -- the first time you saw the firearm was in the sanctuary of his home.

A Yes, sir.

MR. ABUSAFT: No further questions.

MR. BULSA: Yes, Your Honor. We have premarked several items for identification, subject to identification by the various witnesses.

Defense has indicated they have an objection to one piece of evidence, plus some photographs. I thought it would be best to take it up now.

THE COURT: Okay. Well, let me see the exhibits.

MR. BULSA: It's a rifle-looking gun in the trunk of the car.

THE COURT: These are the two exhibits that are objected to?

MR. BULSA: Plus the weapon itself.

MR. VIETH: Yes, sir.

Basically, Your Honor, the objection is the rifle just looks, you know, so prejudicial.

It's not -- wasn't used for anything. And we just think it's overkill on trying to convince the jury that someone with that kind of weapon probably is -- probably -- you know, it can just be more prejudicial than probative and we're -- and that's the only thing we're asking, is the rifle and the pictures of the rifle be left out.

Everything else -- there is a pistol in the car. We don't have any problem with that. But just the weapon itself to me looks so intimidating for someone that don't know what that may be or what it may be used for. I just

think it's just too prejudicial.

MR. ABUSAFT: And, Your Honor --

THE COURT: All right. Mr. Abusaft.

MR. ABUSAFT: Your Honor, we also join. Obviously, Mr. Lorenzo -- Mr. Calderon joins in that objection.

I'll also just bring one more point, Your Honor. That is actually a very small caliber firearm. It's actually a -- from what has been described in the discovery from law enforcement is that it's actually a pistol that's somehow been modified. So it's actually a 9mm pistol, which is a relatively smaller caliber firearm. But it just looks extremely intimidating, which is part of the reason why it's less -- it's probative value is substantially outweighed by its prejudice.

THE COURT: Well, is there any connection with this weapon with Mr. Calderon?

MR. BULSA: It was in the vehicle, trunk of the vehicle, that he was arrested from.

THE COURT: Well, I understand. Was it his vehicle?

MR. BULSA: It was Mr. Ruttle's vehicle.

THE COURT: Okay. Well, there's no connection with Mr. Calderon then as I see it. All right.

MR. BULSA: Your Honor, the state seeks to introduce this. It was recovered from the vehicle that the defendants were stopped in at the time of the shooting.

The police just knew that a small caliber weapon was used.

It was -- it was taken into evidence, along with two pistols from the glove compartment of the vehicle, and was sent down to SLED for comparison.

It did not result in being the weapon used in the crime. However, we're trying to tell the fullest and best story to the jury, the most clear story. To leave this out is to leave out a piece of what happened.

Also, we think it goes to the state of mind of the defendant. He claims -- expecting to claim and claimed in opening statement he went up there with no ill intentions. Ready access to two other pistols, plus a rifle of this nature, shows that he could have had other intent or motive when he approached the victim. So we feel it is relevant.

THE COURT: All right. Note your exception. The objection is overruled.

MR. VIETH: Thank you, Your Honor.

THE COURT: Are those the only objections to the evidence?

MR. VIETH: Yes, sir.

THE COURT: What are the other exhibits that have been marked?

MR. BULSA: We have additional photos taken from items at the crime scene. Those are State's Exhibits 21 through 32.

photographs of items of evidence that was at the scene.
Q And State's 22.
A State's 22 is an overall picture of the scene without photograph, I mean, without the markers being placed in the scene.
Q And State's 23.
A State's 23 is toward the rear of the building where items of evidence were marked and photographed.
Q State's 24.
A This is a midrange view of the items of evidence that I just spoke of, just gives you a closer perspective of the items.
Q Before we move to the next pictures, let's address what items of evidence you collected from this area. What are those?
A The evidence that was collected from this area was money that was said to have been blown away from where the incident allegedly occurred. It blew back to that area.
Q Okay. And State's 26, your diagram.
A The diagram depicts the area where the money was collected. So the building would have been -- would be here. And then this is the grassy area on the back corner of the building.
Q And the thought was that it blew from where -- the other?

A From this area to this area.
Q Okay. Just to complete the circle of that evidence, State's 54. Does that package contain the monies that would have been collected?
A Yes.
Q Okay. Now, you took -- introducing specific photos of certain pieces of evidence. I'll go through them. State's 27 shows the marker No. 1. What does that denote?
A This is marker one documenting a cartridge case.
Q And State's 28.
A Marker two, also documenting a cartridge case.
Q State's 29.
A This is marker three, documenting an unfired projectile or unfired cartridge.
Q And now we're referencing State's 26, back to your diagram.
A So in reference to the diagram, those items are found here. This is item one, item two, item three. So this is the cartridge case, cartridge case, and the unfired cartridge.
Q State's Item Exhibit No. 30. What does that show?
A This is an area of suspected blood found within the scene.
Q Another. Of course the victim was removed from the scene by the time you got there.

A Yes.
Q Did you note any other substance that might have been blood in the area?
A No, I did not.
Q State's No. 12.
A This is marker five, which documents a black and white in color cloth that was found within the scene.
Q Okay. Back to State's 26, the diagram. Were those two items found in close proximity to each other?
A So this is item four, the area of suspected blood; item five, the black and white cloth.
Q State's 31, marker No. 6.
A Marker six is a black lighter that was collected within the scene.
Q Okay. You have no idea who that belonged to.
A I do not.
Q Okay. State's 32.
A This is marker seven, which is a folding knife that was documented and collected from the scene.
Q Okay. Back to the diagram, State's 26.
A So in reference to the items that I just described, this is item six, the lighter, and item seven, the knife.
Q Do you recall how far apart those were from No. 4?
A I do not. If I may refer to my notes --
Q Sure.

A -- I may be able to give you an approximate. And what was the -- will you repeat the question?
Q How close was item seven to item four?
A The approximate distance between item seven and item four is approximately 12 feet.
Q Okay. Is that distance better represented by the photograph itself, State's No. 7?
A So here is item seven and there is item four.
Q Okay. Let's talk about the actual physical items. Item for the jury to look at and handle, but I'm not going to take them all out of the packaging. Start with State's 50. What would that be?
A State's 50 is the black and white cloth that was collected from marker five.
Q Okay. State's 51.
A Fifty-one is the lighter that was collected from marker six.
Q Fifty-two.
A Fifty-two is the knife that was collected from marker seven.
Q Fifty-five and fifty-six.
A Fifty-five and fifty-six are the cartridge cases that were collected from markers one and two.
Q And State's 57.
A State's 57 is the unfired cartridge that was collected

from marker three.
Q Can you give us an approximate distance, how far one and two were from four?
A Marker one was approximately 14 feet away from marker four, and marker two is approximately 11 feet away from marker four.
Q Okay. Once again, the photograph shows it in perspective.
Now, here's State's 53. I have a picture of it. What is State's 53?
A State's 53 is a .410 -- unfired .410 cartridge that was collected by a bystander, I believe, in the scene. But it was provided to me from an officer within the scene.
Q So you don't know the significance of that.
A I do not.
Q No evidence of any fired .410 cartridges?
A No.
Q Just -- just happened to be a .410 round at the scene.
A Yes, sir.
Q And you collected it because it's --
A It was within the scene. It was handled. So we wanted to weigh out all of our options.
Q Preserve it.
A Yes.
Q Okay. Have a seat. You can have a seat.

(Whereupon, the witness returned to the stand.)
Q Go over a few more questions before I bring you back down.
Now, that wasn't your only duty, was it, was the crime scene?
A No. It was not.
Q Were you asked to process anything else?
A We were requested to process a gold in color Grand Marquis that was recovered at the time that suspects were apprehended.
Q Okay. State's 14 through 17. Are those various views of that vehicle?
A Yes.
Q Okay. And State's 33 through 40. What do those photographs show?
A These photographs show handguns or various guns and ammunition and accessories that were collected from within the vehicle.
Q Okay. If you will, step down once again, and we'll go over these with the jury.
(Whereupon, the witness left the stand.)
Q They've seen the vehicle, previous testimony. But I'll just remind you which vehicle we're talking about. State's 14. Okay. That was the one that had the back driver's passenger window. Was that just down or was it

out?
A It was out.
Q Okay. So there is no glass there.
A No.
Q Okay. And the markings on the black part of the window?
A This area?
Q Yes, ma'am.
A So the vehicle was sealed when we received it. So once it was recovered at the time of the -- that the arrests were made, someone sealed the vehicle to preserve the evidence that's on the inside of it.
Q And the white-looking-like strip going vertically, what does that appear to be?
A It appears to be residue of an adhesive.
Q Okay. So you -- where was this -- where were these pictures taken from?
A I don't understand your question.
Q Where? Where is the vehicle?
A Oh, the vehicle is located at the Spartanburg maintenance shop.
Q So the vehicle was towed to this location for you to process?
A Yes.
Q Okay. Was this being done during the same evening you

were here?
A Yes.
Q All right. Now let's walk the jury through items you found and recovered. State's 33. What is that a picture of?
A That's a picture of a handgun within the glove box. Here's the handgun. That's the opening of the glove box there.
Q Does that actually show two handguns?
A Actually, yes. There's a handgun here, and then there's also a handgun there. And then you also see boxes of ammo within the glove box.
Q Okay. State's 34.
A This is one of the handguns that was recovered from out of the glove box.
Q And you displayed it there so you could take a better picture?
A Yes.
Q State's 35.
A This is another handgun that was removed for additional photographs that was recovered from the hand box, I mean, the glove box.
Q And State's 36.
A So this is a picture of the handguns removed from the glove box and giving you a clearer picture of the boxes of

ammunition that's -- that was under the guns.
Q State's 37.
A This is a photograph of additional documentation of the two boxes of ammunition that were collected from the glove box.
Q Do you know what caliber those ammunitions were?
A This one is 9mm. And if I can actually look at the picture, because I can't tell on this one.
Q I have a package. Those are contained within State's 59. Does that denote what they are?
A Yes. This -- this box is a box of .40 caliber ammunition.
Q Okay. And do those calibers match, or would they be useful in the weapons pulled from the glove box?
A Yes.
Q State's 38.
A So this is a picture of an unfired cartridge on the floorboard of the vehicle and a magazine containing cartridge cases, I mean, cartridges within the vehicle.
Q Back to these pistols. Do you know if they had magazines in them?
A They did not.
Q They did not. Okay. So this magazine in 38, will it fit one of those weapons?
A I can't say for certain, but I do believe that this

one fit one of the handguns that we collected.
Q Okay. State's 41. What does this show us?
A This is a book bag that was located in the rear passenger side of the vehicle.
Q State's 42.
A This is a magazine containing 9mm cartridges collected from within this book bag.
Q State's 39.
A This is the trunk of the vehicle. And within the trunk we found this, a 9mm, what appeared to be a rifle.
Q And this is a closer photograph. State's 40.
A This is an additional photograph of the item that I just described that we just moved some of the -- removed some of the items from around it to get a better picture.
Q State's 63. Would you take it out and display it? Describe it out of its box.
A This is a Smith and Wesson S.D., .40 caliber handgun that was collected from within the vehicle.
Q Inside the glove box.
A Inside the glove box, correct.
THE COURT: Did you say State's 43?
MR. BULSA: Sixty-three.
Q State's 64.
MR. ABUSAFT: Your Honor, at this time I just renew my previous objection to the picture that's now being

THE COURT: Have you got something else?
MR. BULSA: No, sir. Ask she be excused.
THE COURT: She may be.
(Whereupon, the witness was excused.)
MR. BULSA: State calls Harvey Owens.

HARVEY OWENS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Please introduce yourself and tell us who you work with.

A I'm Special Agent Harvey Owens. I work with the South Carolina Law Enforcement Division, commonly referred to as SLED.

Q How long have you been with SLED?

A Been in law enforcement a little over 20 years. I've spent the last seven of that with the state law enforcement division.

Q Now, why is SLED involved in a Cowpens case?

A We're an assisting agency. Typically, we respond to any request from a federal, state or local entity requesting assistance, whether it be technical support or manpower. That's how we got involved in this case.

Q Okay. Was the Spartanburg Sheriff's Office busy on another case?

A Yes, sir. It was my understanding that the

municipality of Cowpens had contacted the local sheriff's office. They were unable to provide assistance, so they then, in turn, called us.

Q Okay. And where did respond from?

A I'm based out of the Greenville office. I was already in the upstate on an unrelated matter. So I was at the scene shortly after 8:00 o'clock.

Q Okay. And what did you find happening at the scene when you arrived?

A When I arrived at the scene, the scene had already been secured by the local Cowpens officer. There was a variety of potential evidentiary items scattered across the parking lot.

I was advised by that responding officer that there had been a shooting. The victim was pronounced deceased -- and that he had located potential witnesses -- located potential witnesses across the street, which was essentially a residential area.

Q Okay. Had the vehicle been stopped by that time?

A No, sir, not when we first arrived.

Q Was the information already handed out to law enforcement to be looking for that vehicle?

A If that information hadn't have been handed out before my arrival, it was around the same time I arrived. Obviously, this case was unfolding quickly. They did

A It did.
Q Tell us about how that ties into this.
A So the McCallisters identify a small Ford Ranger type pickup truck. They see. You've heard testimony they observed some suspicious behavior.

We're able to take that information to the McCallisters, identify the operator of the vehicle, which was Hunter Sizemore. We identify Mr. Sizemore. We interview him.

He provides us with the information that he, along with Jacob Quinn and Lorenzo Calderon, had been together earlier that day. They met with Mr. Devin Ruttle. Mr. Ruttle had some mechanical problems with his car. I think he was out of gas. He was also stuck in a ditch.

They picked up Mr. Ruttle and they went to the Hot Spot. Based on the information provided to us by Mr. Sizemore, we then, in turn, went to the Hot Spot and pulled video around the time on the 5th that we felt that they should have been at that location.
Q Okay. And you were here. You saw us show two photographs to Mr. Sizemore.
A Yes, sir.
Q I want to first ask you this question. Did you recover the video from the Hot Spot?
A We actually sent Special Agent McCraw to the Hot Spot

once we obtained that information from Mr. Sizemore, and then he recovered the actual video footage that we reviewed.

Q And you reviewed that footage yourself?

A Yes, sir, correct.

Q Let me show you State's 19 and 20. Were those -- are these still photographs taken from portions of that video?

A They are.

Q Okay. Does that give you a general timeframe?

A It does. The timestamp on the video footage was approximately 6:40 p.m. on the evening of May 5th of 2017.

In this photograph you can see what was later identified to be Hunter Sizemore's silver Ford Ranger pulling in the parking lot. You can clearly see an individual seated in the bed of the truck wearing a teal-green hoody with the hoody pulled over his head.

Q Okay. The second photograph.

A Second photograph is at 6:45 on the same day, May 5th of 2017, so approximately five minutes later. You see an individual wearing the same teal-green hoody inside the store.

Q Who is that individual?

A We identified that individual as Mr. Devin Ruttle.

Q And is the color of the hoody he's wearing, is that -- does that appear to be the color that Ms. Brewster

described?
A That was significant because of Ms. Brewster was very descriptive in the teal-green hoody that the individual seen coming from the Timken Center toward the vehicle in the roadway on Foster Street was wearing. So that was -- that was significant when we located that footage.
Q Okay. Of course when the gold car was stopped, Mr. Ruttle and Mr. Calderon were in that vehicle.
A Correct.
Q Okay. So you connected all of these parties back together.
A Correct.
Q Now, did you interact with the two defendants?
A I did.
Q Let's talk specifically about -- what were their ages?
A They were both approximately 19-20 age range.
Q Did either one of them have a concealed weapons permit?
A No, sir. They did not.
Q Based on your continuing investigation did you attempt to locate this teal hoody?
A Yes, sir, we did.
Q What efforts did you make?
A What we did was based on the information obtained during the course of the investigation.

We executed a search warrant at the residence of Mr. Ruttle's father in an attempt to locate the clothing he was wearing the day of the shooting.

We, obviously, knew based on clothing he was wearing at the time the deputy sheriff stopped him was different than what he had on in the video footage. We felt it plausible that those clothing items could be located at the residence.

Q And when was that search warrant executed?

A It was executed -- I would have to refer to the actual search warrant itself to give you a specific date. It was within a few days of the shooting that we executed that search warrant.

Q So it was not the same day.

A No, sir.

Q Okay. What else were you looking for?

A We were also looking for a firearm.

Q Was anything located?

A No, sir. It was not.

Q What areas of the house did you search?

A We extensively searched the entire -- the interior of the residence, as well as trash bins, receptacles, anything that could have contained the items we were looking for outside the residence that was located on the curtilage.

Q So we know it wasn't recovered from the car; it wasn't

recovered from the house.
A Correct.
Q Whose house was it, again?
A It was the father of Mr. Ruttle.
Q Where did Mr. Ruttle live?
A That -- that's up for debate. We got varying degrees of where he actually resided.
Q So you didn't have any -- good enough information to get another search warrant for a different location?
A No, sir.
Q Nonetheless, you made what efforts you could to try to locate --
A Correct.
Q -- additional items.
A Correct.
Q And also in addition to the Hot Spot video that helped identify Mr. Ruttle, you also obtained video for the middle school?
A We did. Based on the information that was provided to us by the McCallister family, their testimony was they observed some activity involving an individual walking down the sidewalk on Foster Street and then a silver extended-cab pickup truck with an individual hanging out of the passenger side or getting out of the passenger side while it was moving. Based on their information we did go

to the middle school and attempt to locate video footage that potentially could have captured what they were telling us.

Q And we actually saw that footage yesterday.

A Correct. The footage that was shown yesterday was the footage that we obtained from the middle school.

Q It's a little difficult to see, but you can see it in the distance where the vehicle -- it appeared to be a truck stopped and an individual got out and then later got into another vehicle.

A What the video obtained from the middle school captured coincided with the statement and information that was provided to us by the McCallisters.

Q Okay. Did you attempt to obtain any 9-1-1 calls?

A We did.

Q What was the purpose of that?

A Obviously, any time we're conducting an investigation we want to try to obtain 9-1-1 calls. Could provide witness information, could provide information that we currently don't have.

So we did contact while on the scene the local 9-1-1 communication center and requested any and all 9-1-1 calls associated with the shooting incident on Foster Street.

Q Do you recall who actually made calls to 9-1-1?

A There were two significant calls. One was made by

Ms. Greene. She was very hysterical on the call. And the other would have been made by Ms. Cal -- correction -- Ms. Brewster who actually was on the phone as she went to render aid.

Q Were there any calls made by either Mr. Calderon or Mr. Ruttle?

A No, sir.

Q Now, in your interactions with Mr. Ruttle, specifically, did you read him his...

MR. BULSA: Your Honor, there was one other item of evidence that defense counsel had viewed and was admitting without objection. That would be State's 49. It's the waiver of rights of Mr. Ruttle.

MR. VIETH: Yes, sir. No objection, Your Honor.

(Waiver of rights marked State's Exhibit No. 49.)

Q Show you State's 49. Did you interact with Mr. Ruttle for a brief period?

A Yes, sir, I did. State's 49 is a SLED Miranda form, which is dated May 6th of 2017, where I advised Mr. Ruttle of his Miranda rights, which he documented or endorsed that he acknowledged and understood.

Q Okay. And did he make any statement about being on Foster Street that day?

A I explained to Mr. Ruttle that I was there to speak to him about a shooting incident that occurred on Foster

Street. The only statement he made was that he had not been on Foster Street.

Q Did you have additional interaction with him maybe a few days later to obtain a buccal swab from him?

A Yes, sir, I did.

Q Explain to the jury. Explain to the jury why you did that.

A Based on the evidence that was recovered at the scene we felt as though there was potential D.N.A. evidence that could tie Mr. Ruttle to the physical evidence that was recovered at the scene.

So subsequent to a search warrant, a couple of days later I did go and encounter Mr. Ruttle again. I took a buccal swab, which is nothing more than a big Q-tip, swabbed the inside of both of his cheeks for that specimen, put it in a cardboard sleeve, and then I sealed it in an envelope.

Q Okay. And State's 66. Does that contain a packaging --

A Yes, sir. This is the package that I sealed with Mr. Ruttle's D.N.A. specimen or buccal swab.

Q Would it have remained sealed? This was taken to SLED?

A Yes, sir, it would have remained sealed and would have then been transported to the lab for analysis.

A No, sir.
Q Okay. Did your investigation lead you to any information that Lorenzo tried to hide Devin?
A No, sir.
Q Did your investigation lead you to any information that Lorenzo tried to dispose of any of Devin's clothing?
A The investigation determined that Mr. Calderon was present with Mr. Ruttle when clothing was disposed of, yes, sir.
Q So I want you to listen to my question.
My question to you is did your investigation lead you to any information -- excuse me -- did your investigation lead you to evidence that Lorenzo disposed of himself Mr. Ruttle's clothing?
A No, sir.
Q What you were just speaking to is that your investigation led you to believe that he was around Mr. Ruttle when Mr. Ruttle potentially got rid of some clothing.
A To clarify, I took your question as was there information, and that's what I was testifying to. There was information.
Q That he was present.
A Yes, sir.
Q Okay. But not that he did any disposing himself.

All right. Are we ready?
MR. BULSA: Yes, sir.
THE COURT: All right. Bring them back.
(The following takes place in the presence of the jury.)
THE COURT: All right. We'll continue with the state's presentation.
Mr. Williams.
MR. WILLIAMS: Thank you, Your Honor. The state calls Maria Calderon to the stand.
MARIA CALDERON, having been first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. WILLIAMS
Q Hey, Maria.
A Hey.
Q Would you please introduce yourself to the jury?
A My name is Maria Calderon.
THE COURT: Let me ask you to slide that chair up close to that black microphone and speak directly into it so that we can be sure to hear your testimony.
A I am Maria Calderon.
Q How old are you?
A Nineteen.
Q Where do you live?
A Gaffney.

THE COURT: You've got to speak up.

A Gaffney.

Q And you said you were 19?

A Yes.

Q Have you lived in the area your whole life?

A I mean, close, yeah.

Q The Upstate of South Carolina?

A Yeah.

Q I noticed your name is Calderon. Are you related to Lorenzo Calderon?

A That is my uncle.

Q Would you say you two have a pretty close relationship?

A Yes.

Q How about Devin Ruttle? Do you know Devin Ruttle?

A Yes.

Q And how do you know him?

A We was talking.

Q Okay. Talking. Is that like a -- explain what talking means.

A Like we was always together, you know.

Q Would it be fair to say talking is kind of that stage before officially dating?

A Yes.

Q So you were more than friends.

A Yes.
Q But not quite officially a couple.
A No.
Q And how long was that that you guys had been?
A I guess it was like March.
Q Of 2017?
A 2017, yeah.
Q And the incident occurred on March or May the 5th, right?
A Yeah.
Q So for a couple of months you and Devin were talking.
A Yeah.
Q Now, let's back up a little bit.
How long had you known Devin?
A I had known him for a while.
Q A while?
A Like, I went to his dad's church, yeah.
Q Would it be for a period of years that you had known him?
A I mean, yeah. But we wasn't like hanging out all of the time.
Q But you knew him.
A Yeah, I knew him.
Q So since March of 2017 until May the 5th of 2017, while you guys were talking did you hang out a lot?

A Yeah.
Q Did you -- did you correspond through social media a good bit?
A Yeah.
Q Through snapchat?
A Through snapchat.
Q Okay. I'm showing you State's Exhibit 43. Can you tell me what that is a picture of?
A That is a picture of me and Devin.
Q Okay. What's -- what's it -- what is it taken from? Who took that picture?
A Devin.
Q Okay. Was it on snapchat?
A Yeah, it was on snapchat.
Q How did you know it was on snapchat?
A Look at it.
Q Okay. So is this Bubble's Maria, is that your --
A That's me.
Q Okay. And this down --
THE COURT: Lights.
MR. WILLIAMS: Thank you, Your Honor.
Q If you need to use this, feel free. So these lines down here at the bottom, what are those kind of indications of?
A Like the four means like how many people saw it. Zero

right beside it means nobody screenshoted it. There's a trash can. That means like delete it. And I guess the last one means save.

Q Okay. Now, can you explain a little bit about how snapchat works? Is it the kind of thing like an email where if you send it, it stays in someone's -- it stays saved until someone deletes it?

A No. Like if you send a snapchat, like, if you don't save it, it's gone.

Q How quickly is it gone?

A As soon as you open it and slide it back over.

Q Okay. So did someone save this snapchat?

A I did.

Q Okay. And do you notice the hoody that Devin is wearing there?

A Yeah.

Q Okay. Have you seen this photo that's been presented earlier?

A Yeah.

Q Do you recognize the person in that photo?

A It's Devin.

Q Is he wearing that same hoody?

A Yeah.

Q Okay. So you had been talking with Devin from March until May. Do you remember having any interaction with him

on the day of the shooting?
A I'm pretty sure we was together that morning, but he dropped me off at my mom's house.
Q Okay.
A Yeah.
Q So that was in the morning. Did you have any communication with him later in the day?
A Yeah.
Q What? What was the nature of that communication?
A He snapchatted me and told me he shot Dalton. And I asked did you kill him. And he said I just took care of some business.
Q Okay. Could you say that a little bit? Sorry to keep asking you to speak up. You're saying -- when did he -- when did he snapchat you later in the day? Do you remember about what time it was?
A I don't remember what time.
Q But it was sometime later in the day.
A Yeah. Before it was dark.
Q And what did he say?
A He said, "I shot Dalton."
Q He --
A I -- he said he shot Dalton, and I asked him did he kill him. He said, "I just took care of some business."
Q Okay. What did you take that to mean?

A Like, I wasn't sure if it was true or what was going on. But I kept trying to get in contact with him to find out, like, if -- what was going on. But he didn't answer.
Q Okay. Thank you. I've got no further questions. Answer any questions from the defense.

CROSS-EXAMINATION

BY MR. VIETH

Q Ma'am, briefly. The statement you gave the officers that had that in there was probably over a week of 5/11/17. So that was at least six days from the incident when they talked to you. And part of the conversation was apparently what you were saying, y'all didn't want to lose each other, is that right?
A Yeah.
Q So he -- when -- you can save a snapchat, right?
A Yeah. You can if you choose to.
Q And so any of this communication was on snapchat, not cell phone.
A It was on snapchat.
Q Yeah. And it wasn't saved.
A No.
Q Okay. And it's just your testimony about a week later as to what you recollect was said. 5/11 versus the day of.
A It was said.
Q Huh?

A It was said.
Q Okay. And that -- and when it goes into y'all not wanting to lose each other, y'all were just talking?
A Yeah. We was.
Q Is that a language of someone much younger than me meaning anything sexual?
A Huh?
Q I mean, I don't know what -- I'm not in your age bracket. So when you talk about talking, I don't know whether that means sex or not. You just saying you're chit-chatting like saying how have you been?
A I don't know, like.
Q You don't know.
A What are you asking?
Q I'll just get to the point. Did y'all ever have sexual relationships?
A Yeah, yeah, we did.
Q Okay. So that's talking.
A Yes.
Q All right. That's all I need. Thank you.
A Okay.
THE COURT: Wait just a minute.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q When Devin talked to you -- when Devin talked to you

he didn't tell you -- he told you that there had been -- that there had been a shooting.
A Yeah.
Q And then he said, he told you, that he had strong feelings for you.
A He did.
Q And then you said -- then he said that he shot Dalton.
A Yeah.
Q And then you asked him, "Did you kill him? Is he dead?"
A Yes.
Q Okay. And he didn't say, "I just took care of some business."
A He said --
Q He said, "I just took care of business," right?
A "I took care of some business." I mean, I --
Q Now, I want to be clear. You gave a statement to law enforcement. Let me -- let me be clear with you. Your testimony is today that Dalton that -- excuse me -- Devin said, "I just took care of some business"? I'm trying to just be sure what you said.
A Yes, yes.
Q So, "I just took care of some business"?
A Of some business, yes.
Q But you gave a statement to law enforcement

previously.
A Yes.
Q Okay. And in that statement you said that he just said, "I took care of business."
A Okay.
Q Is that correct?
A Yes. I mean, I don't have my statement, so I can't tell you, but it's kind of the same.
Q Well, one sounds different. Did he just say, "I just took care of business," in response to your question, or did he say, "I took care of some business"?
A It's been a while. I don't exactly remember, exactly, what he said, but he said it.
Q Okay. That's fair. That's fair enough. And you said, "I don't want to lose you."
A Yes.
Q Okay. At no time did he tell you that Lorenzo was going to get him out of the state.
A No. I didn't know Lorenzo was there.
Q You didn't know anything about Lorenzo.
A No.
Q He's communicating with you and you -- he doesn't say anything about Lorenzo.
A No.
Q Lorenzo helping him; Lorenzo doing anything for him.

A No.
Q Okay. One second.
(Pause.)
Q Maria, there has been some discussion about talking, right? So that means you were -- you weren't his girlfriend.
A I was not.
Q But y'all were having sex.
A Yes. We was.
Q And you had -- and you liked him.
A Yes.
Q But Devin had another woman in his life.
A Yeah.
Q I mean, he has a child.
A Yes. But they was not together from my -- from what I knew.
Q Okay. And you and Devin aren't together any more.
A No.
Q Okay. Thank you very much.
MR. ABUSAFT: I have no further questions.

REDIRECT EXAMINATION

BY MR. WILLIAMS

Q Briefly Maria. I just want to clarify a couple of things.
"I just took care of business," or "I just took care

of some business," response that you got from Devin, was an answer to your question, "Did you kill Dalton?"

A Yes.

Q Okay. And then whether you -- whether the snap was, "I just took care of some business," or "I took," or "I just took care of business," do those two statements mean anything different to you or are they --

A They mean the exact same thing.

Q Okay. Thank you.

MR. WILLIAMS: I've got no further questions, Your Honor.

THE COURT: You may step down.

MR. ABUSAFT: Your Honor, one if it's okay. Could I have just one minute, Your Honor?

THE COURT: All right.

(Pause.)

MR. ABUSAFT: No further questions, Your Honor.

THE COURT: You may step down.

MR. WILLIAMS: Your Honor, the state asks that this witness be excused.

THE COURT: She may be.

(Whereupon, the witness was excused.)

MR. WILLIAMS: The state calls Brittni Gossett to the stand.

BRITTNI GOSSETT, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WILLIAMS

Q Brittni, would you please introduce yourself to the jury?

A Hello. My name is Brittni Gossett, 19 years old.

THE COURT: Ms. Gossett, let me ask you to put your arm down --

THE WITNESS: Oh, I'm sorry.

THE COURT: -- and don't lay down on the witness chair, because the court reporter needs to see your face too. So speak into that black microphone.

THE WITNESS: Okay. I'm sorry.

Q Are you -- are you nervous, Brittni?

A Oh, I'm nervous, yeah.

Q Just answer our questions and do your best.

Did you know Lorenzo or Devin?

A I did. I considered Lorenzo one of my best friends, so.

Q Okay. How long had you been friends with him?

A I've known them since I was younger. We went to church together. But I was friends with them since about 2016 or 2015.

Q Okay. Did you -- did you also know Devin?

A I knew Devin through Lorenzo. I mean, hung out with

him a couple of times.
Q So it'd be fair to say you were much closer to Lorenzo.
A Oh, yeah, for sure.
Q Did you -- did you know Maria Calderon?
A That's my best friend, so yeah.
Q Okay. How long had you two been best friends?
A I mean, on and off for about three or four years -- three years.
Q So you two were very close.
A Yeah.
Q Okay. On the day of May 5th of 2017 were you with Maria?
A I was. She came to my house after she left Devin's and went to her mom's. Me and my mom went and picked her up.
Q Do you know about what time you went and picked her up?
A About 4:00, 4:00-ish, 4:30, 5:00 maybe.
Q Okay. What did you do after you picked her up?
A I was just going back to my house and hung out, chilled.
Q Were you with her when she received a snapchat?
A I was. We was laying in my bed just on our phones.
Q Did you see the snapchat?

A I did.
Q What? What did you see?
A Devin messaged Maria, and he was telling her that he loved her, just knowed he cared for her very strongly.
She asked him why are you saying this, is everything okay. He then replied and said, "I shot Dalton." She then asked is he dead, did you kill him. And he replied with, "I took care of business," so.
Q He replied with, "I took care of business"?
A Yeah.
Q How confident are you in what -- what you saw that night?
A I mean, I'm a hundred percent confident in what I read, so.
MR. WILLIAMS: State has no further questions, Your Honor.

CROSS-EXAMINATION

BY MR. VIETH

Q Ma'am, that conversation, did it appear to you that it was -- that Devin knew he was probably going to get arrested?
A Oh, I'm not sure. I mean, she asked, like she said she didn't want to lose him. And he replied, "Well, you haven't yet, Bab, so."
Q Haven't yet?

A I mean, it was possible, like, he knew it was possible he would get caught.
Q Right. And I'm not going to ask any detail, but did you know Dalton Moore?
A I did know Dalton. I talked to him on snapchat a couple of times, through other things also.
Q I didn't want to know the conversation. I just wanted to know if you knew him or not.
A Yeah.
Q I don't have any other questions. Thank you.
MR. ABUSAFT: No further questions -- I have no questions of this -- this witness, Your Honor.
MR. WILLIAMS: Your Honor, the state requests that this witness be excused.
THE COURT: You may step down. You may also be excused.
(Whereupon, the witness was excused.)
MR. ABUSAFT: Your Honor, I ask that Maria Calderon not be released.
THE COURT: All right. Where is Maria Calderon?
Ms. Calderon, you need to stay. They might need to recall you at some point. We're not sure. Okay. You're still under subpoena.
THE WITNESS: Okay.
MR. BULSA: Thomas Darnell. I believe he is outside.

(Pause.)

THOMAS EDWARD DARNELL, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Please introduce yourself to the jury and tell us where you work.

A My name is Thomas Edward Darnell -- D-A-R.

THE COURT: Excuse me a minute. That microphone that's making all of that noise, would you use that?

THE WITNESS: Yes, sir.

A My name is Thomas Edward Darnell, D-A-R-N-E-L-L. I am a latent print analyst in the -- at the state law enforcement division at SLED -- or SLED -- in the main forensics laboratory in Columbia.

Q How long have you been with SLED?

A I started working there in 1990.

Q Okay. What are some of your duties there?

A I currently, I process evidence that's brought into the laboratory by outside law enforcement agencies.

I am primarily focused on trying to develop latent prints or fingerprints on evidence.

Additionally, I am responsible for collecting any D.N.A. samples off of the evidence to be transferred to a D.N.A. department. And I also do case reviews for other examiners as well.

Q Do you have a certain expertise? Have you been qualified as an expert in any of those areas?
A Yes, sir. I've qualified a number of times throughout my career in the latent print area, latent print field.
Q Did you receive items of evidence involving a case where the deceased was Dalton Moore?
A Yes, I did.
Q Were you asked to try to identify any latent prints or fingerprints off those items?
A Yes, sir. I was asked to process a number of items to determine if there were any fingerprints present.
Q Were you successful in identifying anything?
A I was not. I was able to develop a couple of areas of prints but they just -- it wasn't enough clarity. It wasn't enough detail to be able to compare to anyone.
Q In addition to that did you take any swabs off any of the items?
A Yes, I did.
Q For what purpose?
A I was asked to collect what we refer to as touch D.N.A. samples off of the evidence. And I don't analyze the D.N.A. I just collect it. We have proper ways, techniques, we have to do to do that. And then once it's collected and properly packaged, then it's transferred to the D.N.A. department for analysis.

Q The items that you examine in this fashion, are they sealed when they come to you?
A Yes, sir, absolutely.
They -- the -- the -- in fact, when the evidence comes into the laboratory it has to be in a sealed container. If it's not, we won't even take it. So it has to be sealed with a certain kind of tape, has to have someone's initials on it. But, yes, it has to be in a sealed container of some sort whenever it comes into the laboratory.
Q Okay. Now, specifically, did you take any swabs off of a -- what I call bullet? Show you State's 57. This item, No. 10, SLED item No. 10.
A Yes, sir. State's 57, my item ten, is a -- one -- one cartridge or bullet, or basically it's an unfired -- an unfired bullet.
I was asked to print this, and I was also asked to swab it for any -- for any potential touch D.N.A.
Q So you've already testified you were unable to retrieve any prints. There are no prints on this.
A That's correct.
Q But you swabbed it, and then that would have been sent to the D.N.A. lab.
A Yes, sir. I -- I use a sterile swab, cotton swab, with a saline solution. I moisten it, and then I swab the head stamp or the end -- not the -- not the projectile end

but the end of the base of the cartridge. I swab that and then allowed it to air dry and then sealed it up in that container, and transferred it to the D.N.A. laboratory.

Q Okay. Did you do the same thing with what's been marked State's Exhibit 52?

A Yes, I did.

Q Did you try to fingerprint it first?

A Yes, I did.

I -- actually prior to processing any evidence for fingerprints I have to collect any potential D.N.A. first. So that has -- it has to be done in that order because -- because when I start to print things or process for prints I'm using different techniques and it could -- it could contaminate or damage or it could just -- it could cause the D.N.A. not to be there.

So in this -- with this particular item, State's 52, I swabbed portions of the handle to attempt to get touch D.N.A. And then I -- once I did that, then I processed the remainder of the knife for prints.

Q Did you seal the swab in a secure packaging?

A Yes, sir. All of the swabs -- whenever I swab any -- any items of evidence, I always put those in their own -- their own envelope. I don't mix them up. I don't put the swabs from the knife in the same package with the swabs from the cartridge. So they would have been in their own

separate container.
Q Okay. Those are the two items I'm specifically interested in. Thank you for testimony. Answer any questions the defense may have.
MR. VIETH: No questions, Your Honor.
MR. ABUSAFT: No questions, Your Honor.
THE COURT: You may step down.
MR. BULSA: We ask that Agent Darnell be excused.
THE COURT: He may be.
(Whereupon, the witness was excused.)
MR. BULSA: We call Chad Smith.
CHAD SMITH, having been first duly sworn, testified as follows:
DIRECT EXAMINATION BY MR. BULSA
Q Good afternoon. Would you introduce yourself and identify who you work with?
A My name is Chad Smith. I work at the South Carolina Law Enforcement Division. It's commonly known as SLED. Specifically, I work at SLED's forensic services laboratory in Columbia.
Q In what capacity?
A I'm an examiner in the firearms department.
Q How long have you been with the firearms department?
A Ten years now.
Q What kind of training do you have in that department?

A I received a bachelor's of science degree from Clemson University in biological sciences.

Then when I started at SLED I began my training as a firearms examiner. This training program lasts between five -- or three to five years. It is supervised by the court-qualified examiners of the firearms department. It involves extensive reading and studying through multiple examinations and practical tests given during this time.

I also attended various classes and seminars and was able to tour several firearm manufacturing facilities.

Towards the end of my training I was able to help the other examiners prepare their own casework.

At the end of my training I received a comprehensive multi-part final examination, which I successfully passed, and then I began to receive my own casework.

Q Have you testified as an expert in court before?

A Yes, sir.

Q In what? What is your expertise?

A Firearms identification.

MR. BULSA: Your Honor, the state would offer Agent Smith as an expert in firearms identification.

MR. VIETH: Your Honor, we have no objection to him being qualified.

MR. ABUSAFT: Without objection, Your Honor.

THE COURT: He is so qualified.

Q Agent Smith, did you work on a case involving the deceased Dalton Moore?
A Yes, sir, I did.
Q Did you receive numerous pieces of evidence to analyze?
A I did.
Q Specifically, I'll go over it. You received three weapons, I believe.
A Yes, sir, yep, three firearms.
Q Start with State's 64. Would you look at that and identify it for us?
A Ladies and gentlemen, this gun is safe to handle. It has a cable lock running through the barrel, so it cannot be fired.

Yes, sir. This is one of the firearms that I received for examination.

Q Okay. State's 63. What caliber weapon is that?
A This is a 9mm Luger caliber semiautomatic pistol.
Q What kind of clip does it hold?
A It has a detachable box magazine which is inserted into the magazine well. It's a separate piece that it actually holds the cartridges and is inserted into this for the firearm to function.
Q So that's a 9mm.
A Yes, sir.

Q State's 63.
A Yes, sir. This is another firearm that I received for examination. It is a Smith and Wesson semiautomatic pistol, and .40 Smith and Wesson is the caliber. Again, it's -- uses a separate detachable box, magazine which is inserted into the magwell area. And it holds the cartridges for firing.
Q Let me make some space. Let me set these aside.
Did either of these items come with clips or magazines?
A The magazines were submitted as a separate item for examination. They weren't submitted as the same item as the firearm. So they weren't submitted in the same box as the firearms. They were submitted separately.
Q Let's go over these before I get the other box up here. State's 60 -- State's 60. What is this?
A This is the detachable box magazine that was submitted, and this one is actually correct for use in the Smith and Wesson .40 caliber semiautomatic pistol. It was also submitted with some unfired .40 Smith and Wesson caliber cartridges.
Q Would the cartridges have been in the magazine when they were submitted?
A Let me check my notes, please.
(Pause.)

A I believe the unfired cartridges had been removed prior to me receiving the gun with the magazine.
Q So that would have been done by evidence processing.
A Yes, sir, if it was submitted to evidence processing first, or it could have been submitted to another analyst in a different department who could have removed them.
Q Nonetheless, they were submitted as if they were in the magazine.
A They were submitted with the gun or with the magazine. And actually on the packaging itself it says one magazine containing rounds. So I'm assuming that the magazine or the cartridges would have been in the magazine as recovered.
Q Thank you.
State's 61. What is this?
A This is a detachable box magazine submitted with some unfired 9mm Luger caliber cartridges. This magazine was correct for use in the 9mm pistol that -- I forget the state's exhibit item. It was the one that I just looked at.
Q State's 64?
A Yes, sir. So State's Exhibit 61 would have been the correct magazine for use in State's Exhibit 64.
Q Now, another magazine, State's 62.
A This is another magazine, detachable box type with

submitted unfired ammunition, 9mm Luger caliber.

This magazine is actually made for a Glock type pistol. However, there are other firearms that could use this type of magazine. And there was another firearm that was submitted which this magazine was correct for.

Q And would that be what's inside this long box, State's 65?

A Yes, sir. This item here is a Palmetto State Armory 9mm Luger caliber. Although it may look like a rifle in this configuration, this is not actually a butt stock as a rifle would have.

This is known as a pistol brace or a pistol stabilizer. So in this current configuration, as odd as it may look, this is actually considered a pistol. So the magazine, State's Exhibit 62, is correct for use in this firearm.

Q This firearm also contained some other items with it. What is this in the package?

A This was the only -- there's a magazine in here somewhere. There's a magazine, as well as unfired 9mm Luger caliber cartridges.

This was the only firearm that was actually submitted with a magazine in the box, and unfired ammunition. All of the other ones had their magazine and cartridges submitted separately.

Q This is a 9mm as well?
A Yes, sir.
Q Could this State's 62 have been fired in this smaller 9mm pistol?
A The magazine, no. The cartridges could be fired.
Q Okay. This isn't open. I hand you what's been marked State's 59. Do you mind opening those for us?
A Yes, sir. These are -- appear to be unfired ammunition containers, boxes, factory boxes, in two different calibers. There's a 9mm Luger caliber and a .40 Smith and Wesson caliber.
Q Those are proper calibers for the weapons that you testified to?
A Yes, sir.
Q Put that back.
THE COURT: What number is that exhibit?
MR. BULSA: That is Exhibit 59.
THE COURT: Thank you.
Q So you received all of this evidence to analyze and compare.
Did you also receive some spent shell casings, items 55 -- State's Exhibits 55 and 56?
A Yes, sir. These are two fired .40 Smith and Wesson caliber cartridge cases that I received for examination.
Q Okay. And what were you asked to do with those?

A Well, typically when we're submitted cartridge cases, what we would do is compare them with each other using a -- what's known as comparison microscope.

What that is is basically there's two separate microscopes that's connected by an optical system. So you can look into this optical system and compare two samples simultaneously. And what we're looking for, the microscopic marks. They are created on the cartridge cages during firing from a firearm.

So what we can do is look for similarities of those markings and try to determine if they're fired by a specific firearm or if they're fired by the same firearm. If we have a firearm to compare them to we can compare these with test fires from the firearm itself, again, looking for those microscopic marks to try to determine if they were fired by a specific firearm.

So in this instance I would compare these two with each other and then compare them with test fires with -- of the submitted guns if they were in the proper caliber.

Q And what were your results when you compared those with each other?

A My examination is to determine that both items 55 and 56 were fired by the same firearm.

Q Okay. And what were your results when you compared 56 and 57 to the firearms that were previously testified to?

A Our conclusions were that these two cartridge cases were not fired by any of the firearms that were submitted.
Q Okay. State's 57. Did you receive that to analyze?
A Yes, sir. This is an unfired .40 Smith and Wesson caliber cartridge. So, again, this would be -- this would differ from these. Whereas, this is a fired cartridge case, this is an unfired round of ammunition.
Q Did that have any markings on it that would suggest that it tried to have been fired?
A Yes. What we can do is -- when asked to do so we can look at markings on an unfired round to see if possibly it has been loaded into and cycled through a firearm and compare those markings with markings created by -- from the firing, again, cycling. It's a cycling action of the firearm. Compare those markings to see if possibly the unfired round was loaded into and extracted from the same firearm that fired other cartridge cases.
Q What were your results?
A My conclusions were it was inconclusive as to State's Exhibit 57. The unfired cartridge was loaded into and extracted from the same gun that fired State's Exhibits 55 and 56.
Q They were the same caliber.
A They were the same caliber, correct.
Q Did it appear that 57 had attempted to have been

fired? Could it have been -- what I call -- misfired?
A It did have a light, a firing pin impression. I don't believe it was actually a misfire. A misfire really means that a cartridge had had adequate -- had been adequately struck by a firing pin and then if the fire -- the cartridge does not fire, then that's really a misfire.

In this case I just don't think there was enough energy of the firing pin to actually -- to hit the primer hard enough for it to fire.

So, but it did have a little bit of an indentation, which is probably a light firing pin strike.

I can also look at that firing-pin strike, the light firing-pin strike, compared to the full strike, which is evidenced on the fired cartridge cases, and try to determine if they made the same marks.

And, again, those conclusions were inconclusive as to whether the firing pin that made the light firing pin hit is the one that actually fired the two cartridge cases.
Q In your expertise can you offer an opinion as to what happened with Item 57?
A I don't know. Obviously, it had been in a firearm at some point. For some reason -- the firearm could have jammed during firing, because it looks like there was an attempt to be fired. But as to what actually caused it, again, I cannot say without actually having a firearm to

examine and see if there was an issue with the firearm that could cause, you know, some sort of malfunction.

Q And you did not have the firearm that matched this.

A Correct.

Q Okay. But those were the same or the proper caliber for -- that could have been fired but was not by State's 63.

A Correct. It was the same caliber. So if these were loaded into -- the unfired rounds were loaded into the magazine for that gun, they could have been fired by that gun because they were the proper caliber.

However, they were not fired by that gun just based on differences in the firing pin aperture shooter. And what that means is on the firearm itself there's a hole, a little hole, where the firing pin protrudes for it to fire.

And so the shape of that firing pin hole can differ in different firearms. So there was a difference in the shape of that aperture from the fired cartridge cases to the test fires from -- from that .40 Smith and Wesson gun.

MR. ABUSAFT: Your Honor, at the appropriate time I'd like to put something on the record.

THE COURT: Okay.

Q Now, State's 58 seems to be a spent -- well, you tell them. You tell the jury how you describe State's 58.

A State's Exhibit 58 is a fired bullet that I received

for examination.

So, whereas, these are fired cartridge cases, this is a fired bullet. So really you have a -- again, going back to State's Exhibit 57, which is an unfired round of ammunition -- a lot of people just call this a bullet, which is technically incorrect. This is a cartridge or a round of ammunition.

So you've got the cartridge case, again, which is here, which is basically the container for all of the other parts of the cartridge.

So inside the cartridge case would hold the gunpowder, and then at the top, on top of the gunpowder, is actually the bullet. So this is the bullet. This is actually a projectile that travels down the barrel of the gun. So this is a fired bullet.

Q Were you -- did you make any -- run any tests on that fired bullet?

A Yes, sir. I was able to determine that this fired bullet was most consistent with being either a .40 caliber or 10mm auto caliber.

Really, I can't determine if it's one or the other because they share the same bullet diameter and other characteristics. So it's either consistent with being .40 Smith and Wesson or 10mm auto.

And I can also tell from the impressions that are left

on the bullet as it travels down the barrel. The barrel of the firearm has what's known as rifling. And what rifling does is it imparts a spin on the projectile as it travels down the barrel, basically, to give it gyroscopic stability.

So if you think of a football player, of a quarterback throwing a football, he wants that nice type spiral on that football so that he can hit his target. So that gyroscopic stability gives the projectile more accuracy and enable to travel farther.

But also at the same time the rifling engages the bullet and marks the bullet. So we can also tell from -- from a fired bullet how many lands and grooves, which is what makes up the rifling -- the lands is basically the raised portion and the grooves is basically the depressed portion that engages that bullet.

So we can tell how many lands and grooves it has, the direction of twist, because some barrels can go right-hand twist or left-hand twist. So we can tell from different characteristics of a bullet. We can put those characteristics into a database and come up with a list of possible manufacturers.

Now, when I compared this fired bullet -- the force, again, being most consistent with .40 Smith and Wesson or 10mm auto, with the .40 Smith and Wesson caliber pistol

that I received, those results were inconclusive.

Basically, this bullet just didn't have enough markings on it for me to determine if it was fired by that gun or not. But I could also determine a possible list of some firearms that could have fired it.

Again, it could not have been fired by the other two firearms, the 9mm Luger caliber firearms. But it was inconclusive with the .40 Smith and Wesson.

Q Okay. Thank you. That's what I needed to ask you. Thank you. Answer any questions defense counsel may have.

CROSS-EXAMINATION

BY MR. VIETH

Q I just have one. That's way over my head a little bit.

On the ammunition that -- on the spent shells that you examined and the one that didn't go off --

A Right.

Q -- were they the same brand as the one, the .40 caliber ammunition you looked at here?

A The -- the fired cartridge cases, were they the same brand as the unfired cartridge that had the light firing pin impression?

Q No, no, no. Those three. Set those aside, the two that was fired and the one that was not fired. Is that the -- are those three the same brand as the shells that

were in the .40 millimeter here?
A The .40 Smith and Wesson caliber pistol?
Q Okay. The --
A The magazine that was submitted with the .40 Smith and Wesson -- let me just check my notes. The two fired cartridge cases did have the same head stamp, which is the manufacturer. In this case Barnes is the manufacturer. And the ammunition that was submitted with the magazine that was correct for the .40 Smith and Wesson caliber was also Barnes.
Q Okay. All right.
A But the -- the unfired rounds was a -- was a different brand. It was a Hornady brand of ammunition.
Q The one that wasn't actually fired.
A Correct.
Q Give me one second.
(Pause.)
Q No other questions. Thank you.
MR. ABUSAFT: No questions for this witness, Your Honor.
MR. BULSA: I do have a couple on followup.

REDIRECT EXAMINATION

BY MR. BULSA

Q Just so the jury understands, 55 and 56, the two casings, spent casings, were the same brand.

A Yes, sir.
Q And 57, the round.
A Right. It was unfired.
Q Unfired round was a different brand.
A That's correct.
Q Is this .40 caliber?
A Yes, sir, it is.
Q Would you open that up? What kind of rounds are those?
A There's a couple of different brands in here, but they all appear to be .40 Smith and Wesson caliber. And there are several Hornady brands of ammunition --
Q Which would match the --
A -- which is consistent in appearance with the -- the unfired cartridge.
Q Okay. How about -- how about the others?
A The remainder of the cartridges in there are different brands than either of these.
Q Okay. Thank you. That's all I have.
THE COURT: Anything else?
MR. VIETH: No, sir.
THE COURT: All right. You may step down.
THE WITNESS: Thank you, Your Honor.
MR. BULSA: We ask he be excused.
(Whereupon, the witness was excused.)

THE COURT: Let me see y'all just a minute, please.

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

MR. BULSA: Catherine Leisy.

CATHERINE LEISY, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Please introduce yourself and tell us where you work.

A Catherine Leisy. I work for the South Carolina Law Enforcement Division, more commonly referred to as SLED.

Q In what capacity?

A I am a forensic scientist assigned to the D.N.A. casework department.

Q How long have you been with D.N.A.?

A Twelve years.

Q Have you been declared an expert in court before?

A Yes, sir.

Q In what field?

A In forensic D.N.A. identification testing.

MR. BULSA: Your Honor, the state would offer Agent Leisy as an expert in that field.

MR. VIETH: Yes, sir. I know she is. No objection.

MR. ABUSAFT: Without objection, Your Honor.

THE COURT: She is so qualified.

Q Now, did you receive some items to analyze in the case

where the deceased was Dalton Moore?
A Yes, sir, I did.
Q Okay. Specifically, you received a number of swabs taken from the various items, is that correct?
A That's correct.
Q Most of those swabs, there was no analysis performed. Can you explain why?
A Typically when we have cases where there are numerous items submitted, we ask the submitting agency to kind of narrow it down and decide for us what they believe to be the most probative items. By probative we mean what items are most likely to provide us with an informative link between a person and a location, between individuals. We start with those particular items. We can then go back and perform more analysis if necessary.

In this case I started with the items that were requested, and there were no additional requests on the remaining items.
Q Okay. And let's go through the items that were requested if you would.
A Yes, sir.
Q Identify those for us.
A Shall I start with the standards or just evidentiary items that were tested?
Q You can start with the standards.

A When we perform D.N.A. identification testing we often receive what are referred to as known standards from individuals. Typically, those would be buccal swabs, which are just cotton swabs rubbed against the inside of someone's cheek to collect D.N.A., or a blood standard.

From those items we can generate a D.N.A. profile that is then used as a standard for that individual so that if profiles are developed from items of evidence we can compare the profile of the known individual to the evidence to determine whether or not those individuals contributed.

In this particular case I received three known standards, SLED item No. 3, buccal swabs from Devin Ruttle; SLED item No. 4, buccal swabs from Lorenzo Calderon; and SLED item 41, which was then dried down to SLED item 41.1 as a dried blood standard from Dalton Moore.

Q Okay. And what items were you comparing those with?

A I compared those to several sets of swabs, the first being SLED item 6.1, which were swabs from the trigger of a Smith and Wesson .40 caliber.

Would you like me to go through the result of each or just list?

Q If you would, please.

A For that particular item the D.N.A. profile developed is a mixture of at least three individuals. And due to the inability to calculate a statistic no further

interpretation will be offered.

The next item compared to was SLED item 6.2, which were swabs from the pistol grip and slide of that same Smith and Wesson pistol. A partial D.N.A. profile was developed from this item, but due to the limited information obtained the item or the profile was not suitable for further interpretation.

Q Would you explain that a little further?

A Basically, all that means is that there was such a limited amount of D.N.A. that the D.N.A. profile was not of sufficient quality for me to make a comparison.

We do have to have a certain amount of information to be able to compare the evidence profile to the known standards that have been submitted. And for this particular item I just didn't have enough information to competently make a comparison.

Q Okay. So you didn't want to make a guess or anything.

A That's correct. It was just too limited. I wasn't comfortable making a comparison.

Q Thank you.

A The next item. The next item of evidence was SLED item 8.1 identified as swabs from the cartridge head stamp. No D.N.A. profile was developed from this item.

Next was SLED item 9.1, also swabs taken from a cartridge head stamp. And, again, no D.N.A. profile was

developed.
Q Let me stop you right there.
A Yes, sir.
Q Just so the jury gets a good understanding, would those two items you just referenced conform with State's Exhibits 55 and 56?
A These would appear to be the actual cartridges themselves. What I received were swabs taken from cartridges. They would have been collected by another agent within SLED.
Q So those are SLED items eight and nine?
A Yes, they are.
Q Okay. And you would have gotten 8.1 and 9.1.
A Correct.
Q Okay. And what's the next one?
A The next item was identified as SLED item 10.1, which were, again, swabs from a cartridge head stamp. A partial D.N.A. profile was developed from this item, and that partial profile matches the D.N.A. profile of Devin Ruttle. And the probability of randomly selecting an unrelated individual having a D.N.A. profile matching this item is approximately one in 1.2 septillion.
Q What is a septillion?
A One septillion would be a one with 24 zeros behind it. It's significantly larger than the current population of

the earth.
Q That's pretty specific.
A It is a very large stat, yes, sir.
Q Okay. And so the jury understands, your item 10.1, was that a swab taken from State's 57, which is SLED item ten?
A That's correct. I would have received a swab that was identified as having come from SLED item ten.
Q Okay. So we understand, your testimony would be that D.N.A. profile from Devin Ruttle would come from this round.
A Well, the profile developed from SLED item ten does match that of Mr. Ruttle, yes, sir.
Q Okay. And the swab came from this round. Means it came from him?
A It means it matches him, yes, sir.
Q Okay. Thank you.
And what was the next item?
A The next item would be SLED item 14.1, which were identified as swabs from a knife handle. The partial D.N.A. profile developed from this item is a mixture of at least two individuals. And due to the inability to calculate a statistic, no further interpretation could be offered for this profile.
Q Okay. Just so the jury understands, this is

Q Thank you. That's all I have.

MR. VIETH: No questions, Your Honor.

MR. ABUSAFT: No questions, Your Honor.

THE COURT: You may step down.

MR. BULSA: The state calls Dr. Wren.

DR. JOHN DAVID WREN, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BULSA

Q Dr. Wren, would you introduce yourself to the jury and tell us your profession?

A My name is John David Wren. I'm a medical doctor with a specialty in pathology.

Q Have you been declared an expert in forensic pathology in court before?

A Yes, well over probably 200 times by now.

MR. BULSA: In lieu of his qualifications, I would offer him as an expert based on his previous.

MR. VIETH: Your Honor, I certainly know Dr. Wren. I have no problems with his qualifications.

MR. ABUSAFT: No objection, Your Honor.

THE COURT: Okay.

BY MR. BULSA

Q Dr. Wren, as a pathologist did you perform an autopsy on Dalton Dywer Moore?

A Yes, I did. I did an autopsy on an individual

identified as Dalton Dywer Moore in the S.M.C. Autopsy Room on May the 6th of 2017. I began the autopsy at approximately 1:30 p.m.

Q His listed age was 18?

A Pardon?

Q His listed age was 18?

A Yes, yes, it was.

Q Okay. Now, let me first ask you about the clothing that he was wearing. We've previously introduced State's Exhibit No. 8, a photograph of a jacket.

A Yes.

Q Did you describe that in your report?

A Yes. I described the individual as having a speckled gray hooded zip-up jacket. He had an underlying blue long-sleeve, pullover shirt with an underlying mint green tank-top t-shirt with gray trimming.

He had a pair of navy dress slacks with a brown leather belt through the loops and an underlying pair of navy knit Hanes brand boxer shorts with black and blue waistband, a pair of high-top black and white athletic shoes and a pair of black and gray footy type socks. I just --

Q Let me ask you specifically about this hoody. Did you notice some defects in it?

A Yes. I described -- I described the jacket as having

a set of four linear defects in the right flank with the pullover shirt and the tank-shop t-shirt that were underneath it, had only one defect each, which was near the axillary line area, which is the -- the axilla is what is commonly known as the armpit. It's described, divided into three imaginary vertical lines if you're talking about the axilla. One where the anterior crease of the arm is is called can anterior axillary line. Then in the midportion it's the midaxillary line. Posterior of course is the posterior axillary line.

He had the defects in that approximate area. But depending on how the clothing is arranged, it can be slightly off center. But what one does is looks for defects in the skin that correspond to that.

Now, the fact that there were four linear defects in the jacket means, basically, that the jacket was somewhat folded as the bullet passed through. So it passed through, and then in and out and back into the jacket. So that's why we had four. But they were linear oriented when you stretched them out, indicating probably only one bullet going through that area.

Q Okay. Now, where was the wound to Mr. Moore?

A That wound was in the lower right axillary chest. It was near the midaxillary line. It was 15 and three-quarter inches from the top of the individual's head, and it was

six inches to the right of midline, basically in the midportion of the underarm, below the underarm but it was --

Q Could you step out here and demonstrate that?

(Whereupon, the witness left the stand.)

A The wound was -- the wound was -- if you held your arm up straight out, of course, it would be in the midaxillary line approximately in this location.

Now, the bullet passed in there. And the fact that an individual is not a 2-dimensional person, it has curves, and the body has curves that's 3-dimensional.

What one looks for then is with whether the bullet was passing straight in. If a bullet passes straight in to the body there's no abrasion around it. It just makes a nice, round hole.

If it's passing at an angle one -- the portion of the skin or whatever is in that direction, as the bullet passes in there's a leading edge and it will cause an abrasion border like a little skinned area. And one can -- can tell an indication of where the bullet is coming from if you see an abrasion border.

This person did have an abrasion border. It was from 6:00 to 11:00 o'clock. What one does is then imagines the -- the defect as a clock with 12:00 o'clock being straight up. From 6:00 o'clock, which is the bottom

portion, around to about 11:00 o'clock toward his back was an abrasion border, meaning that the bullet passed in there first.

It was a tenth of an inch wide at its maximum point. So that means it was going in at an angle. Of course the body is somewhat curved there, so it doesn't actually mean that it was coming away from the back. It just means it started in there first.

It passed into the skin. It passed through the right lung. It passed through the posterior portion of the aorta. It hit the vertebral column at T -- I mean, yeah, T3, thoracic vertebra No. 3.

It passed through the left lung and passed out where I recovered a -- posterior left axillary area over on the other side. I found a copper jacketed lead bullet that I recovered from the body.

Q So the path of the bullet was where?

A The path of the bullet was going in slightly backwards. It was going slightly upward and passed. Basically, the person would have had to have been leaned over like that for it to do like that.

Q Thank you.

(Whereupon, the witness returned to the stand.)

A Now, the bullet I recovered was a copper-jacketed lead bullet. It had visible lands and grooves. It measured 41

hundredths of an inch diameter at the base, meaning it was a .40 caliber, and up to 69-hundredths inch in length.

The nose was slightly flattened, consistent with a hollow-point bullet. And the copper there was spread to 66-hundredths of an inch in maximum width.

Q I show you what's been marked State's Exhibit 58. Does that appear to be the bullet? Do you need to open it?

A This bullet is -- I mean, this container is labeled with the decedent's name, Dalton Moore, date of birth 6/29/1998.

The date was 5/6/17. I labeled it. This is my writing. FA17084, which is autopsy No. 84 in 2017. The date recovered was 5/6/17 from the left axilla. I signed it.

This is the bullet that was recovered. I always, if possible, label bullets on the base, and I usually use the last number of the autopsy, which is a four. And if I only recover one I only -- I don't label it as A, B, C or D. This one is labeled with a four and a Greek letter delta, which is basically an equilateral triangle, the capital Greek letter for delta. And it's flattened. As one can see, it's flattened out and it's dark copper-lead bullet. This is the bullet I recovered.

Q Okay. And you sealed it and passed it on to --

A Pardon?

Q You sealed it up and passed it on to an officer for testing.
A Yeah. I passed it to SLED agent J-A-N-I, Janie Johnson [sic] with, along with, two tubes of blood and some -- the clothing.
Q And what was the ultimate cause?
A Pardon?
Q What was the ultimate cause of Dalton Moore's death?
A He had bilateral hemothoraxes, which is blood bleeding into the plural cavities. Actually what happens is it compresses the lungs where the lungs -- once blood gets out in there, it compresses the lungs where the lungs can't expand.

He lost -- I recovered 1050 ccs of blood in the left plural cavity, 750 ccs on the right. So that's 1800 ccs, which is four and a half units of whole blood.

I attributed the cause of death in this individual as internal hemorrhage, which is medically called exsanguination secondary to a gunshot wound to the chest.
Q Thank you, Dr. Wren. Answer any questions defense counsel has.

CROSS-EXAMINATION

BY MR. VIETH

Q Dr. Wren, how are you today?
A I'm fine. Hope you are.

Q Yes, sir.

Just so I can make sure on the report, the path of the bullet was slightly upward.

A Yes, sir.

Q And slightly backward.

A Yes, sir.

Q All right. So in your experience would that mean that the bullet -- I mean, I'm just trying to get an idea. The bullet entered --

A Well, it.

Q -- from front going up?

A Yeah. It entered -- of course the person, if he was standing straight up when this happened, the person that shot him would have had to have been either holding the gun down low or any way you can imagine that person being. But the bullet was passing slightly upward for it to go from -- from below his axilla to come up behind his -- his back and pass through the third cervical vertebra which is -- I mean, the third thoracic vertebra, which is just about, oh, probably six -- five or six inches below the -- where the neck -- where the cervical spine passes to the thoracic spine right behind the suprasternal notch in the -- in the neck. That would be -- that would be between T1 and C -- C7 and T1, which is the lowest cervical vertebra. It sets on top of the first thoracic vertebra where the first rib

attaches. Then they're about two to three inches high, each vertebra, with a little bit of cartilage between them -- the discs.

So it passed through the anterior portion of the third vertebral body. T3 it's called. And it also -- since it had ballooned out it tore the aorta posteriorly also.

So it -- if you imagine any -- if you imagine anyone, the spine sets behind the -- almost behind the entire axilla. So it had to have been going backwords, had to be going upward to pass the way it did, and then of course right to left.

Q And do you have in your autopsy how the height of the decedent -- do you have that in there?

A Yes. His length, which is not the height necessarily, was 70 inches.

Q All right. And just since I'm not in your capacity, what's the difference in the length and height? What are we talking about?

A Well, when I was growing up I was 6'3". I'm about 6'1" now because I'm stooped over a little bit. My dad always said if you don't stand up straight you're going to be stooped back, which he was right. So I'm about 6'1" now, but so if I laid down I wouldn't measure 6'3" unless you did that curve-in.

So, basically speaking, a person is about an inch

either longer or shorter than what's measured. We just measure them lying there on the -- on the table.

Q And that'd be 70 inches.

A 5'10".

Q 5'10". Thank you.

A Yes, sir.

Q That's all the questions I have. Thank you.

(Pause.)

Q There were -- in your final autopsy diagnosis, Doctor, you listed the final autopsy diagnosis of a single bullet, severely contracted parts secondary to blood loss, hemorrhage along gunshot wound, minor abrasions. And then No. 5 is blood toxicology pending. What does that mean?

A Well, often -- oftentimes in traumatic deaths one can tell regardless of what the toxicology findings were what killed the person.

For instance, if you found a person that was deceased and you found a lot of hemorrhage in the body, a lot of blood in the body, it would not matter what the toxicology was. The cause of death would have been hemorrhage, which in this case it was.

So in the interest of getting the results out I usually say -- I think I said probably, or I usually do -- yeah. Toxicology results are pending, but the cause of death is unequivocal. There was no doubt that he died as a

result of the gunshot wound.

Now, when they send me the toxicology whenever it's done -- sometimes it's done relatively quickly. Sometimes it's done, takes months. It has taken years in the past. So we send a lot of toxicology out now too because there's so many done over the state. We send some out to private laboratories. But I assume this one was done at SLED. And I can look at it and tell you my impression -- my impression of what they found.

Q All right.

A I don't have a copy of it.

MR. BULSA: Your Honor, we've already had this discussion at the bar. It's not relevant to this case. He's already testified to what the cause of death is.

THE COURT: Ladies and gentlemen, I've got one matter I'll need to address outside of your presence. So I'll ask you to please go to your jury room.

Do not discuss the case. I'll bring you back in just a few minutes.

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

THE COURT: All right. Mr. Vieth, do you want to proffer some testimony?

MR. VIETH: Yes. I will just proffer it if I could, Your Honor. Thank you.

CROSS-EXAMINATION (IN-CAMERA)

BY MR. VIETH

Q Dr. Wren, I'm going to hand you a document and ask if you can identify that document.

A Yes. This is a toxicology report from SLED on deceased Dalton Dywer Moore.

Q All right.

A From -- says incident date, 5/5/17. But the -- it doesn't identify when it was taken. I see it. It just says, labeled, Dalton Moore.

Q And was it filed with the coroner's office there?

A I -- I'm --

Q Well, you don't have that form.

A I'm not sure where it was sent. Like I said, previously in the -- in the dictation -- I gave SLED Agent Jamie Johnson two tubes of blood. So I'm not sure whether it was submitted by the SLED or by the coroner.

Q All right, sir. And you may or may not know this. We -- we're -- addressed it before you came, and it's already an exhibit, this document.

A Okay.

Q So I'm just asking. Do you have any medical knowledge -- and if you do or don't, either way -- on the -- do you see the analysis by Jennifer Brown at the very last?

A Uh-huh. What about it?
Q All right. Tell -- what does that say to you?
A Well, tetra -- there was 13 micrograms per liter of Tetrahydrocannabinol, which is the -- it's Delta 9. Tetrahydrocannabinol is what's commonly known as marijuana. The inactive metabolite was 5.8 micrograms per liter, 11-hydroxy-Tetrahydrocannabinol, which is the metabolite -- an active metabolite of marijuana. And then the 11 carboxy THC or Tetrahydrocannabinol was greater than 50 micrograms per milliliter. That's an inactive metabolite, which indicates that some of it's been metabolized to an inactive form.

Now, generally speaking, therapeutic or nontoxic levels of T.H.C. is 50 to 270. His was 13, so. And then the 11 hydroxy-Tetrahydrocannabinol could basically be added to it if you wanted to add to it, which was 5.8. That would make it 18.8, which it would be slightly less than 18.8 active form if you combined the two together, which is still below the therapeutic level.

So he did have evidence that he had smoked marijuana or actually inhaled marijuana -- I don't know -- or ingested marijuana, is the best word, I guess, prior to his death. But I can't tell you exactly how long. It goes down relatively quick.

In fact, I've never seen but two that had a level over

50 once they -- we did an autopsy.
Q And --
A So -- so he probably wasn't under the influence. It was probably wearing off. And the 11-carboxy indicates he had probably ingested some in the past also.
Q Okay. So you would not feel comfortable saying that at the time of death he could have been impaired by marijuana. You can't say that with any degree of certainty.
A I doubt if he was. No.
Q Okay. And that's because of the numbers?
A At that level I doubt if anybody would but...
Q Okay. I'm not talking about it being a cause of death --
A Right.
Q -- just talking about it from an impairment standpoint. If you were testifying one way or the other your -- your inclination would be to say it would not have an impairment on the --
A I don't think it would have much impairment on -- on his actions at all.
Q All right, sir.
MR. VIETH: Your Honor, thank you very much for letting me proffer that. Based on that I will not try to introduce it.

THE COURT: Okay.

MR. ABUSAFT: Your Honor, I would have had the same issue if I can go ahead and make the proffer.

MR. VIETH: Yes, sir.

CROSS-EXAMINATION (IN-CAMERA)

BY MR. ABUSAFT

Q I just want to be clear. There was -- active ingredient was in his system?

A Yes.

Q Okay. So it was affecting him at the time.

A Now, I guess it's like smoking a cigarette. There's a little bit left once you've smoked, but it's wearing off, so wouldn't have much effect.

Q It's wearing off, but it is still affecting him.

A Yeah. That -- well, if -- therapeutic means that it does give you the effect. It's -- it gives you the effect that you are looking for.

It's sort of like alcohol. If you want to talk about some -- a therapeutic level of alcohol, it's basically zero. But intoxicated is above a level of .08, which is in medical terms, it's 80 milligrams per deciliter. So 80 and below is not intoxicated, but there is some effect.

In fact, 25 is .025, which is one beer. It's well known that one beer will affect some coordination but not very much. So if you want to say that the person is under

the influence of alcohol, they are slightly but not -- doesn't affect most people at all.

Q So, like -- so, like alcohol -- well, first, to your medical understanding is there something -- is there a point at which there is a marijuana intoxication? Is there something --

A Yes, yes. It's much higher than 270.

Q Okay. And when you mean -- and what you mean by intoxication, you mean what?

A That you're under -- that you have toxic effects.

Q Toxic effects.

A Yes.

Q That means it'll do -- it'll do harm to your body.

A Well, short term, yeah.

Q Okay.

A I mean, it's like -- it's like drinking alcohol. I was -- it's equivalent to drinking alcohol. I've done an autopsy on a person that never drank before that died as a result of alcohol intake, which was 270 or .27. But, on the other hand, I have witnessed a guy that came to the emergency room with a 690 and he survived.

Q Uh-huh.

A So both of them were intoxicated.

Q Fair enough.

A One of them died and one of them didn't.

Q Fair enough, Doctor.
Let me ask you. The effects of marijuana, is one of them hallucinations?
A I don't think they have hallucinations. I don't think they think they see different things, no.
Q Okay. Is one of those effects impairment of judgment?
A Well, I don't know all of the effects of marijuana. I was under the impression that it made you a little more mellow in your outlook and more relaxed but not seeing things, no.
Q Well, Dr. Wren, I'm assuming you're -- you know that it's illegal.
A Pardon?
Q You know that marijuana is illegal. It has -- must have some bad effects for it to be an illegal substance, isn't that right?
A It's not illegal in Cal -- in Colorado now, is it?
Q Are you living in Colorado?
A No.
Q All right. So back to my original question, and I can sit down.
He was experiencing some effects from his marijuana use.
A Yes. It would be effect -- having some effects, and it'd probably be minor, just like alcohol two -- 25 is not

intoxicated either.
Q Okay.
A But it does have some effects.
Q It does have some effects. Some of the marijuana had been metabolized but some of it had not been metabolized.
A Yeah. That's correct.
Q And not to beat a dead horse, but just metabolizing means it wouldn't have an effect, it's not -- metabolizing, still actively affecting you.
A The active forms do. There are several active forms of a meta -- metabolism of marijuana. There are several active forms, but in this case he only had the 11-hydroxy. He had an inactive form also, which -- which stays around, by the way, a good while, up to several months.
Q Okay. Thank you.
MR. ABUSAFT: Your Honor, at this point I would ask that it be admitted. Your Honor, he has -- he just testified that it was affecting him. It doesn't have to be an intoxication level. It just has to -- it's an illegal substance affecting -- affecting Mr. Moore, Your Honor.
THE COURT: You're saying that this witness said that this consumption of marijuana affected Mr. Moore? Is that what you said he said?
MR. ABUSAFT: Yes. I think --
THE COURT: Is that what you said, Doctor?

THE WITNESS: Pardon?

THE COURT: Did you say that the consumption of this marijuana was affecting Mr. Moore?

THE WITNESS: I said it was not a therapeutic level and it was not -- it was nontoxic, meaning that most affect of marijuana is seen at a level of 50 to 270. His at the most was 18.

So it -- depending on how much a person smokes and how often they are -- or ingest it, how often they take it, it affects, just like alcohol, different people different amounts.

I mean, if I smoked it I probably -- I've never ever smoked any. But if I did, I'd be more effected than somebody that smoked three or four times a day.

THE COURT: Well, I think the question they're asking you is can you say to a reasonable degree of medical certainty, or do you have an opinion, as to whether or not Mr. Moore was affected by any consumption of marijuana on May the 5th of 2017.

THE WITNESS: I said that at the most he would be minimally effected.

MR. ABUSAFT: Your Honor, I mean, at this point that's a question for the jury.

We have allowed the state very completely detailed why they needed to tell the whole story. The whole story needs

to be told, and they wanted to put in this bazooka-size firearm. We have an expert here that says that he would have been -- he could have at least been minimally effected by illicit narcotic at the time. It could have directly affected his conduct when he was engaged with Mr. Ruttle. And we ask that you leave that question up to the jury.

THE COURT: All right. Does the state have a position?

MR. BULSA: Your Honor, we certainly object. Your Honor, this is merely victim badgering.

THE COURT: All right. Does the -- are there any other questions of this witness?

MR. BULSA: I have a few followup.

THE COURT: Okay. All right. Note your exception. It's overruled.

Bring the jury in.

MR. VIETH: Your Honor, certainly we join in that too.

THE COURT: I thought you said you weren't going to introduce it.

MR. VIETH: Well, when he said it could be --

THE COURT: Okay.

MR. VIETH: -- subject to the individual changes the alcohol complexion. That's a jury question.

THE COURT: All right. But he hasn't said -- he hasn't said this individual was effected. That's the

point.

MR. BULSA: That's correct.

THE COURT: I mean, I guess I could have testified to that, and I'm not an expert.

MR. ABUSAFT: I just say that. He did say there was an active ingredient in the body, Your Honor.

THE COURT: I understand. And he also said that he was not under the influence of it and nobody would be. So, I mean, that's the testimony. He hasn't rendered an opinion to a reasonable degree of medical certainty.

And I noted your exception.

MR. ABUSAFT: Yes, sir.

THE COURT: Don't look at me, like, with that face. Are -- if you want to challenge -- hold that jury up, please. Mr. Bailiff, would you hold the jury up, please?

THE BAILIFF: Sure.

THE COURT: Mr. Abusaft, you can take exception to my ruling if you wish to, but don't make those faces at me again. Do you understand?

MR. ABUSAFT: Your Honor, humbly and respectfully. I've respectfully noted my objection on the record. I didn't say anything else.

THE COURT: No. You made those faces at me.

MR. ABUSAFT: Your Honor -- Your Honor --

THE COURT: Like, what are you thinking, Judge.

That's what I took it as.

MR. ABUSAFT: No, Your Honor. I was looking up at you, Your Honor, and I don't like being addressed in this forum, Your Honor.

THE COURT: Excuse me? What did you say?

MR. ABUSAFT: Your Honor, I believe that we all have to be civil to each other, and I don't like being addressed like that in this forum.

THE COURT: Okay. And I don't like you when I make a ruling, you make faces at me like I don't know what I'm doing. So I'm saying don't do that again. Are we clear?

I've let you have your say. I've not interrupted you in your comments or in your objections. You've had plenty of time to state your position. Don't make those faces at me when I rule against you. Do you understand? Mr. Abusaft, do you understand?

MR. ABUSAFT: Your Honor, I've -- I've heard you.

THE COURT: I said do you understand it.

MR. ABUSAFT: Do I understand what you're saying. Your Honor?

THE COURT: Yes, sir.

MR. ABUSAFT: I -- I believe I understand what you're saying.

THE COURT: You believe you do?

MR. ABUSAFT: Yes, Your Honor. I certainly don't --

THE COURT: You're not certain that you do?

MR. ABUSAFT: Your Honor, I don't believe I make any faces at you. I believe you're --

THE COURT: Well, Mr. Abusaft, you did, so you and I can -- you can argue. You can put that on the record if you want to, but you did. There is no question about that.

Bring the jury in, please.

MR. VIETH: Judge, will you send the jury back out after the state finishes?

THE COURT: I will.

(The following takes place in the presence of the jury.)

THE COURT: All right. Anything further on behalf of the defendant?

MR. VIETH: Nothing further from me, Your Honor. Thank you.

MR. ABUSAFT: Nothing further from this defendant.

REDIRECT EXAMINATION

BY MR. BULSA

Q Briefly, Dr. Wren.

Mr. Vieth asked you about your description of the wound. He said single fatal large-caliber gunshot wound. But he left out the word distant. What does mean -- distant?

A Gunshot wounds are generally classified as contact,

intermediate range and distant.

Starting with contact gunshot wounds, there's evidence left on the skin that can indicate it was contact. As a contact gunshot wounds it means that the barrel of the gun or whatever weapon was discharged was up against the skin.

If it's tight contact it means it was pressed hard into it. And when that happens the burning gasses and powder that comes out of the barrel actually has to have a place to escape.

And so what it does is as it comes out it blows back around the barrel, and it actually can burn the skin. The barrel itself gets hot very quickly, and it tears the skin away so you will get what's various degrees of stellate wounds. They can be extremely large and gaping if there's a lot of powder and gas discharged with a larger caliber gunshot or it can be a small amount with something like a .22.

Then there's loose contact where it's just barely against it, and one sees similar effects, although not as pronounced.

So that's sort of a judgment call and also depends on where it's pressed. If it's pressed up against the head and it's tight contact, there's bone there. Whereas, if it's tight up against the skin of the abdomen, there's not a lot of bone around. So it'll have a slightly different

effect.

So those are the two types of contact. And one will see -- if you take tissues underneath that you'll see soot that's deposited in the tissues. You can see it under the microscope. You can see the powder that was not completely burned. You can see that under the microscope too.

Now, if you go back to intermediate range, it means it wasn't against the skin but it was foreign -- close enough to where it leaves an effect.

If you were firing against a light-colored object the powder and the -- the burning powder and the soot that comes out, and the smoke, expands concentrically.

So if you have a flat, perpendicular object to where the gun is fired, it'll have a concentric circle around it. And one can ballistically take similar ammunition with the gun that's fired and one can put it up against a piece of paper that's white and start firing it and moving it back, and it'll eventually reach a point where, depending on the caliber of the weapon and what kind of weapon it is, there'll be no evidence left on the -- on the -- the paper that they fire against that it was anywhere close. So anywhere from there on back to as far as the bullet will travel is called distant.

Now, in this case part of the problem was that he had on a gray-colored shirt, I mean, coat. And one would have

to look at that under a scanning microscope to see if there was any evidence of powder or soot there, which is not something that I can do at an autopsy. So that clothing would have had to have been examined if there was a question as to whether it was.

So I did not see any effect that it was intermediate range and I did not see any effect that it was contact. So in that case you call it distant. So it could have been anywhere with a .40 caliber, maybe somewhere from eight inches back to as far as the bullet would travel.

Q Okay. Now, also Mr. Vieth was asking you about the direction and all of the bullet. You showed on my body that it was under the armpit.

A Yes.

Q And going downward and backward?

A Well, if he -- if the person had -- had the gun up high, then he would have had to have been leaned over slightly for the bullet to pass in that.

If he was down low it could have passed up like that and you could have been -- like, if I were on my knees shooting up, then I wouldn't have had to have been -- I mean, you wouldn't have had to lean over for it that way unless you were leaning toward me.

Q But, nonetheless, Mr. Moore's body would have had to have been perpendicular to the gun.

A Just about perpendicular, yes.
Q Okay. Is that consistent with him possibly turning away and raising his arm?
MR. VIETH: Your Honor, I object to that question.
A Well, anywhere. His hand could have been out.
THE COURT: Just a minute.
A But it -- but it was not down where --
THE COURT: Wait just a minute -- just a minute. I've got an objection.
MR. VIETH: It's just a hypothetical for him to be turning away. He could be raising a knife. I mean, you can ask any kind of question.
THE COURT: You'll be able to.
MR. VIETH: All right.
THE COURT: You may proceed.
Q In your expert opinion, Doctor, the autopsy you performed, could it -- could he have been moving, basically cowering away from a weapon?
A He could have, yes, but the -- any -- any way that his arm could have been away from his body higher than where the bullet went in, yes.
Q Higher than where the bullet. The bullet went in here.
A That's correct.
Q So it was at least up this high.

A Yes.
Q Almost straight out.
A Yes.
Q At the least.
A Yes.
Q Thank you.

RECROSS-EXAMINATION

BY MR. VIETH

Q So, Doctor, I think you're also concluding that -- let's see here. If he had this knife in his hand and had it raised, it could be the same thing. Cuts both ways, don't it?
A Yes. If he were -- if he were turned towards -- away from -- to the side of the guy.
Q Sure. That's all.

RECROSS-EXAMINATION

BY MR. ABUSAFT

Q Dr. Wren, it could also be a combination of both parties moving, right?
A Any way those two people could have been positioned to where it would have been a straight line through his body, and the bullet actually travels in a straight line unless it hits something in between. So any scenario you could think of.
He could have been lying on the ground with his head

like -- hand up like this, and they could have shot him standing over him. They could have done that -- could have. But I'm -- I can't tell you how he was -- how he was standing for sure.

Q He could have been moving. The other party could have been moving back towards, dropping elevation, bending their knees. All these combinations could have -- would have been at play to get what you have described the passage of the bullet, right?

A That's correct.

MR. ABUSAFT: No further questions.

REDIRECT EXAMINATION

BY MR. BULSA

Q The only thing that's certain is that his body was not -- it was not facing him directly on.

A That's correct. There's absolutely no way he could have been facing it.

Q Certainly he would have turned away from the gun.

A Yes.

Q Whether his arm was out, up, whatever.

A Right. Well, it couldn't be down.

Q Couldn't be down, right.

A Couldn't have been down. It could have been like this or it could have been like this, but it could not have been like this.

MR. VIETH: Nothing, Your Honor.
MR. BULSA: Nothing further.
THE COURT: All right. You may step down.
MR. VIETH: Ms. Gossett. Is she still here? Come around, please.
THE COURT: Mr. Abusaft, are you through calling witnesses?
MR. VIETH: We were just taking it out of turn, Judge, to get these witnesses done.
THE COURT: Okay. This is related to the --
MR. VIETH: Yeah. What we are talking about, yes, sir.

BRITTNI GOSSETT, having been previously duly sworn, testified as follows:

THE COURT: You've also been previously placed under oath. You're still under oath for the purpose of these questions.

DIRECT EXAMINATION BY MR. VIETH

Q Ms. Gossett, I haven't talked to you since you testified, have I? I haven't met you in the hall or anything.
A No, sir.
Q Tried to tell you to say something or not say something. But when -- you recall giving a statement on 5/11.

A Oh, yes. I remember writing the statement.
Q And I just simply failed to bring it up. Did you say that -- well, I'll let you talk about the first. Well, just -- just read your statement briefly. I know --
THE COURT: Read it to yourself.
Q Yeah. Read it to yourself and just refresh your memory.
(Pause.)
Q Okay.
A Yes, sir.
Q And is part of that statement saying that when Devin was talking to you all on snapchat or whatever he said, "I messed up"?
A He did.
Q That's all I have. Thank you.
A Okay.
THE COURT: Mr. Abusaft.
MR. ABUSAFT: No questions for this witness, Your Honor.
THE COURT: Mr. Williams.

CROSS-EXAMINATION

BY MR. WILLIAMS

Q I've got another copy of your statement.
A Okay.
Q Correct me if I'm wrong, but after you say that he

said he had messed up, "Brittni asked him what do you mean, and he confessed saying he had shot Dalton."
A Yes, sir.
Q All right. And as you continued to follow up with him about that, and she asked, "Did he kill him?"
A Yes.
Q And his response was, "I just took care of some business."
A That's correct.
Q Thank you. No further questions.
MR. VIETH: No questions.
THE COURT: You may step down.
MR. VIETH: Your Honor, call Devin Ruttle to the stand.

DEVIN RUTTLE, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. VIETH

Q Devin, I know you're nervous.
A Yes, sir.
Q Pour you some water and take your time. I want to just get you a little comfortable before we go into any detail. So just for the jury, tell -- tell the jury your full name.
A My name is Devin Ruttle.
Q And how old are you, Devin?

A I'm 21 years old.
Q Okay. Now, on May 5th of 2017, how old were you?
A I was 19 years old.
Q Okay. And what's your highest level of education?
A I have a high school diploma.
Q Where did you go to high school?
A I went to Spartanburg High School.
Q Okay. And when did you graduate from there?
A I graduated in 2015.
Q Okay. Do you live in Spartanburg County?
A Yes, sir, I do.
Q All right. Now, I know we have you in a coat and tie, but for the last -- since May of 2017 where have you been living?
A I've been living in Spartanburg County Detention Facility.
Q You've been in jail on this case since you got arrested.
A Yes, sir, I have.
Q All right. Prior to then where were you living?
A I had my own house, but I ended up staying with my grandma because I couldn't afford to pay the bills.
Q Okay. And we've discussed not going into what your mom and dad do or anything, so we're not going to do that. But do both your mother and father still live in

Spartanburg County?
A Yes, sir. They are.
Q And they've been in the courtroom this whole week, have they not?
A Yes, sir.
Q Do you have any brothers or sisters?
A Yes, sir, I do.
Q Okay. And do they live in Spartanburg or somewhere else?
A Yes. They -- they do live here in Spartanburg.
Q Okay. So how many brothers and sisters do you have?
A I have two sisters -- three sisters and two brothers.
Q Okay. Now, your mom and dad are not married with each other.
A No, sir. They are not.
Q Okay. Do you -- I mean, do you have any children of your own?
A Yes, sir, I do.
Q Okay. And who is the mother of that child?
A Her name is Brianna Ivester.
Q Has she been in the courtroom too?
A Yes, sir.
Q And how old is your child?
A He is one-and-a-half years old.
Q Okay. Just before this happened, what were your

plans? What were you planning on doing with your life?
A Well, I had -- I visited Spartanburg Community College and they showed me around the school. And I decided that I was going to take up mechatronics there at Spartanburg Community College.
Q All right. Was there any consideration about going into the military?
A Previously before that, yes, sir. I did consider joining the military, the Marines.
Q And after high school -- I know it was a very short time after high school -- did you work at all?
A Yes, sir.
Q And what did you do?
A I worked for my uncle at a scrap yard.
Q Okay. And does your child still live in Spartanburg County?
A Yes, sir, he does.
Q He lives with Brianna?
A Yes, sir.
Q Okay. All right. Now, kind of directing your attention back to this unfortunate time in your life, May 5, 2017, we can't go into a lot of detail, but was there anything prior to this date that you think led up to whatever happened that day?
A Yes, sir.

Q And very briefly, what was that?
A On -- on Easter me and my friend, Lorenzo, you know, we went by to see someone that he had knew in the neighborhood.
Q He knew?
A Yes, sir, in the neighborhood there where Dalton Moore also lived.

He was -- he was meeting with a guy, and the guy was supposed to come out to the road to give him some money that he owed his niece or something. I'm not sure who he was.

So as we was waiting, you know, he told me to, you know, keep driving. And so I drove down through the neighborhood, and there's a turn-around, and was coming back out of the neighborhood I seen -- I see Dalton Moore standing there at the edge of his driveway with his -- with his hand behind his back.

I didn't pay him much attention because I really didn't know who he was. But as I was leaving the neighborhood -- as I was leaving the neighborhood I was going up a hill, and my car has -- it had a bad gas tank on it. And as I was going up the hill, I guess the level of the gas in the car was uneven. So the car had cut off there on the hill.

And Dalton Moore had left from his yard with his arm

behind his back still running towards my -- towards my car. I could see him in my mirror. At that time, you know, I -- I was kind of panicking and I was telling Lorenzo what's he doing, he's running at the car. And, you know, Lorenzo presented a weapon towards Dalton Moore, and he turned around and ran the other way. I managed to get my car started back, and I drove away.

Q All right. Prior to that day did you have any relationship with Dalton?

A No, sir, I did not.

Q Did -- you were, and I guess still are, friends with Lorenzo, is that right?

A Yes, sir.

Q And what was the relationship, as best you can describe it, between Lorenzo and Dalton?

A As best as I can describe I just -- I had -- you know, I knew that they had some sort of difficulties with each other.

Q Okay. And, you know, just a guesstimate. How long had this disagreement been going on between them?

A Me and Lorenzo had only been friends for maybe two years at the most. So it was before that.

Q Okay. And so when you and Lorenzo talked -- and you can't go into what people say -- but you were -- you knew Lorenzo and Dalton had some issues with each other.

A Yes, sir.
Q But there's no issue that you had with Dalton.
A No, sir. I did not.
Q Okay. And when this incident took place did Dalton know who was with you on -- in Easter?
A I -- I think that is why, yes, he did what he done, because other than Lorenzo being with me, I don't think it was directed directly toward me, but by me being with him, I was just -- you know, it was also directed towards me as well.
Q So you were there, and that day, and you said that -- if I made a mistake, I thought you said Lorenzo may have pulled the gun or something?
A Yes, sir.
Q So tell us. Tell us about that.
A Well, he just -- he just opened the car door, and he stepped out with a -- with a black gun. He pointed it at Dalton, and Dalton turned around and ran back to his yard.
Q So Dalton in your view come at y'all while your car was stalled.
A Yes, sir.
Q Lorenzo gets out and just brandishes a gun, don't -- maybe not point it or anything. Just has it. And then Dalton turns.
A Yes, sir.

Q And you drive off.
A Well, no. I -- I had to continue to try to start my car, and it started, and, yes, sir, we drove off.
Q Okay. Did that altercation at all concern you?
A Yes, sir, it did.
Q In what way?
A Well, I didn't want for Dalton to lash out at me because of something that he had going on with someone that I knew.
Q Okay. All right. So what were your thoughts about how to quail that situation?
A I don't understand.
Q Well, you didn't want that to happen in the future. I mean, what -- what were your thoughts about hooking up with Dalton or whatever?
A Well, really after the incident, you know, I had put some thought into everything that had occurred that day, and I really didn't know how to handle the situation. But on May 5th I seen him walking, and he -- he flagged me down.
Q All right. Let's stop there and go back on May the 5th.

You've heard -- you've been in this courtroom all week, so you heard some testimony about your car being in a ditch and what not. So I'm going to let you tell the story

without me interrupting with question and answer.

Just kind of start us off with your car being in trouble that day.

A Yes, sir.

Q What your plans were for that evening.

A Okay. And before I start I'd just like to say that it's been a long time ago, so I don't really remember a lot of the little things, but I can't -- I won't ever forget being as scared as I was when that had happened. But a lot of the minor things, I don't remember that well.

Q Well, let's just start with your car being in trouble.

A Okay. So I don't remember having that earlier in the day.

I took a nap and woke up. It was around 5:00 o'clock. I had a date with my girlfriend, or I was planning to take her out that night, so.

Q That's Brianna?

A Yes, sir, Brianna.

Q And y'all are not married.

A No, sir. We're not.

Q You're not living together. So you were going to have to go and get her to go out to eat.

A Yes, sir, I was.

Q Got you.

A So I get ready, you know, and I go out to my car. You

know, I start my car. I couldn't leave the driveway. And, like I said, my car was having a lot of mechanical issues. So it stalled out there in the driveway because it's on a hill as well.

And so as it stalled out the car was rolling backwards out into the road. And I put it into the ditch to keep it out of the road so that people can get by.

At that point I called Lorenzo for help, and him and Hunter came, and they helped me by giving me a ride to go get some gas from the Hot Spot.

Q And that's where they got the pictures from with you there and with the green outfit and hoody and all of that, right?

A Yes, sir.

Q Okay. And take us from there. What happened next?

A Okay. I get my car out of the ditch. I'm not sure if Hunter pushed me out with his truck or if I drove out of the ditch, but I got outta the ditch.

So I was going to head to the gas station in downtown Cowpens and I'm not really familiar with the names of the roads that I took, but I ended up on Foster Street headed towards downtown Cowpens.

So as I'm driving down that road Dalton Moore was walking on the left-hand side of the road there by the middle -- between the middle school and the community

center. And I didn't notice that it was even him until I got closer. I mean, I could see somebody was walking from a distance, but I didn't realize it was him until I got closer to where, and he was pretty close at that point. And he started to wave his hands like this.

So at that instant I didn't decide to stop because, like I said, the last time, I mean, I really didn't know how to handle that situation where he had did that on Easter.

But, you know, I was thinking about my son and, you know, I would hate to have had my son with me. And he lashed out at -- at my vehicle because of he believes Lorenzo to be in my vehicle. And it'd just be me and my girlfriend and my son.

And so I go on up the road. I was thinking about everything that had happened. You know, I figured it wouldn't hurt to try to talk to Dalton about what happened and let him know that I didn't have any problems with him.

So I turned my -- I went to turn my car around. I know I said that I turned around in the Cowpens Middle School, but I'm not really sure where I turned around.

I believe it was shortly thereafter, the middle school though, but I'm not -- I'm not really sure where that was that I did turn around.

So I turned around, and I was heading. You know, as I

turned around I seen that the truck had -- Lorenzo had gotten out of the truck with Hunter.

Q All right. Let me stop you there. Were there any plans for you and Hunter and Lorenzo to hook up on Foster Street or anywhere else that evening?

A No, sir. There was no arrangements.

Q You were heading to your girlfriend's, the mother of your child?

A Well, first to the gas station, and then, yes, sir, to -- to my girlfriend's.

Q Okay. So it wasn't any concerted effort to be on the same road at the same time.

A No, sir.

Q Go ahead.

A Okay. So I turn around, and, you know, I seen Lorenzo there on the road.

I don't know why he got out of the truck or what was going on, but I assumed it was because, you know, Dalton was walking and how everything had occurred previously on Easter.

But I -- I didn't leave Lorenzo there stranded. I did stop my car and let him get in the car with me, because he is my friend.

So I go back towards the community center and I passing the middle school on the right. I'm not sure which

road it is that I went down that I parked on, but I -- I parked my car, and I'm not really certain if I cut the car off or left it running, because I didn't plan on being gone very long to talk to Dalton. I just wanted to let him know that I didn't have a problem with him and hoped that he was -- would've told me the same.

So I parked the car, and Lorenzo is in the passenger seat. You know, he may or may not have made a comment or two about Dalton. I don't really remember it.

I told him to sit in the car and that I was going to go talk to Dalton and that I would be right back. And he told me he wanted to come. I said, no, I'd rather just chill. I'll go talk to him and, you know, just to sit tight until I come back.

And he handed me a brown and black gun. I'm not sure if he loaded it or if it was already loaded. He handed me the gun. I tucked it into my waistband in the front of my pants.

Q Any kind communication about why he handed you the gun?

A Yes, sir. He told me to take it just in case.

So I walked across the street. I climbed a hill. There's like a short little hill there. I go up into -- after I get up the hill I see Dalton standing there in the Timken Community Center parking lot.

I go just start heading towards his direction. I -- I tried to tell him, you know, I was trying as I was approaching him to come to where he wouldn't feel like he would be afraid of me or that I wanted to -- any problems with him.

Q Did you have your arms folded or out, or how? Any -- any certain way?

A I had them, you know, just to my sides as I was walking, but as I was talking to him I was talking so that he could see my hands.

You know, I was just like, you know, hey, man, I don't really know what's going on with you and Lorenzo but I don't have a problem with you. And I didn't even finish saying, you know, problem with you before he reached behind his back. And at that point when he reached behind his back I got instantly -- I mean, instant panic, because I didn't know why he was reaching behind his back.

So he reaches behind his back, and I'm like, no, stop, you know, I just want to talk, I just want to talk, I just want to talk. And he pulls from behind his back. He pulls out a knife. I see -- I see the shininess of the knife.

At that point I pull -- I pulled the gun out from the front of the pants, my pants, and I pointed in his direction and I tell him to stop.

He -- he was just looking at me. I don't really

remember him saying nothing.

So he took a step still, and I pointed it upwards, the gun, to go for a warning shot. I pulled the trigger twice for the warning shot. The bullet did not go off.

So I'm still feeling panicky. I don't -- I'm still worried because he has this knife.

So at that point I lower the gun to -- to cock the gun, and I'm -- I'm walking backwards, and as I'm walking backwards I look up and Dalton was charging towards me. And I just raised the gun. I didn't aim. I just let the slide go, and I pulled the trigger, and he fell forwards, and I's -- I didn't know. I didn't know how to -- I was still processing everything that was going on because it happened so quickly.

So I looked back, and I'm looking at him. He's laying there, and I don't know whether to help him or -- I don't know what to do.

So I look back towards the direction of my car, and as I was looking back towards the direction of my car I seen that Lorenzo had done started my car and was there in the road.

So I -- I ran. I ran and I got in my car and we left. We rode there to the end of the road, and that's when we switched drivers.

Q You got in the car. You drove at the end of Forrest

Street?
A At the end -- at the end of Foster Road.
Q Foster, I mean.
A We switched drivers.
Q All right. And where did you -- did you call anybody? I mean, you've been in this courtroom, about Maria, you calling. Is there anyone else you called or snapchatted about this situation?
A I know that I called. I tried to call my mother, and then I called my girlfriend.
Q What did you tell them?
A I told them, you know, that I was scared and that somebody tried to kill me. That's what it felt like. I was coming and I wanted to see my son.
Q Okay. And where did you go first?
A After we switched there at Foster Street, I went to my dad's house because that's where my girlfriend was. And when I got there I went in.

I'm not sure if at that point I threw away the clothes and the gun and I took the trash bag off the window while I was still outside or if I went in first and gave her all of my money that I had to me. I told her to take that for my son. And, you know, I -- I didn't know what to do. I wanted to see my son. I wanted to talk to my parents. And then I was going to go talk to the police after, you know,

I spoke with everybody and seen my son first.
Q So when you went to where the mother of the child was -- that was who you were taking out for dinner though, right?
A Repeat that.
Q Well, you were taking Brianna out to eat that night, was the game plan initially.
A Yes, sir.
Q So the child wasn't there when you went there.
A No, sir. He was not.
Q Okay. And did you learn where the child was?
A Yes, sir. When I got there, you know, I was asking where he was, and she told me he was with my mom.
Q Okay. And is that the final destination you were trying to get to?
A Yes, sir. On my way to my mom's house I got pulled over by the police.
Q All right. Let me put this on here and let you see that.
(Pause.)
Q I'm going to let you come around over here.
(Whereupon, the witness left the stand.)
Q I have -- when -- State's Exhibit 26, which shows these numbers one, two, three and identified them as, one, being the cartridges, and two is one of the cartridges, and

three was the one that didn't discharge.
A Yes, sir.
Q One, two and three; and then four is purportedly about where Dalton was, and the knife somewhere right in here. So does any of that look familiar where you can share what happened and how it discharged the bullet that didn't discharge, go off and so forth?
A Yes. I was facing --
Q Cut the lights back on.
A We was kind of -- he was kind over in this area where the jury is, jurors are, and I was standing here and I was, you know, I was talking with him, and he pulls out the knife.

I pull out the gun. I pointed it at him. I told him to stop. I go through the warning shot. It doesn't shoot.

At that point I lowered the gun. I'm walking backwards back, because my car was in this direction. So I'm walking backwards towards my car.

I -- I lower the gun. I let the -- the bullet didn't fire outta the -- out of the gun. And as I was walking backwards I looked up, and he was coming towards me. So I just raised the gun and I shot like that real quick like. And I didn't take the time to aim or anything like that.
Q Okay. All right.

(Whereupon, the witness returned to the stand.)

Q The discharge -- the weapon -- the bullet that didn't go off is the closest to him because you were backing up?
A Yes, sir.
Q Okay. Now, there was some, probably some, issues going to be about what, with D.N.A. on the -- on the one bullet. Why would that not have come from your gun?
A Well, thereafter after, you know, Easter had happened, and it was maybe a few weeks after Lorenzo had showed me that he had some new kind of bullets, so when he was showing me, you know, he gave me the clip for the gun.

I took the top bullet out because it was a different kind of bullet than the ones in the rest of the clip. So I took the bullet out to look at the bullets that he had and was showing me.

And, you know, I just seen on T.V. about fingerprints and stuff. I -- I spit into my shirt a little bit, and I wiped that bullet off that I touched. And I gave everything back to him.

Q Okay. I'll cut this off. I thought I had. Maybe I haven't.

(Pause.)

Q So did you feel that you were the aggressor in this? Were you charging to make a confrontation with him?
A No, sir, I was not, and I feel like I -- I wasn't cussing towards him. I wasn't -- I wasn't moving too fast.

I wasn't running towards him. I really just don't understand why this happened.

Q Okay. Was there -- is it, in essence, almost a coincidence that Lorenzo and Sizemore were behind you? I mean, is that kind of what I'm hearing, you wouldn't even have known they were behind you?

A Yes, sir.

Q Okay. It wasn't an intent to pick up somebody and take somebody out or anything.

A No, sir.

Q All right. When -- when -- when you saw the knife that'll be introduced into evidence -- can be taken out of the case -- but when you saw it did you feel like you were in imminent danger?

A Yes, sir. The way that Dalton was holding the knife, it was in a downward position. The blade was downwards, and he had the knife up.

Q Well, I'm not going to take out but just to kind of show you what you recollect. I know it's been a while. You can stand down.

(Whereupon, the witness left the stand.)

A He had it behind his back like this and --

THE COURT: You have to speak up louder. The court reporter is behind you.

A He had the knife behind his back like this, and as I

was telling him to stop, you know, stop, you know, presented the weapon. And as I -- as I was telling him, you know, I was just wanted to talk to him, and I seen that he had the knife, I went for the warning shot. And he took a step toward me. I could see that he had turned the knife like this and had raised it. So and I looked up, and he was like this running towards me.

Q Okay. And at that point you felt the action you took was reasonable.

A Yes, sir.

Q And were you trying -- did you ever think about just turning and running?

A Yes, sir, I did. I was trying to think of what to do. I didn't feel like I could -- you know, I didn't feel like I should turn my back on him because he had a knife and I could outrun him.

Q All right. Now, for the family that's in here I know -- anything you want to say?

A Yes.

MR. BULSA: Objection, Your Honor.

THE COURT: Sustained.

Q All right. I want to go into some of this other evidence that they brought in, obviously, showing that you had guns and bullets and what not in the car. I mean, is any of this stuff used in that incident at all?

A No, sir.
Q Is it stuff you had purchased and bought, owned?
A Yes, sir, it is.
Q Okay. And, obviously, when you got home from your dad's house, is that when you got rid of any evidence that you felt could have hurt you until you saw your child?
A Yes, sir, I did. I -- I got rid of that. Like I said, I threw the -- I threw the hoody, I threw my shoes and I threw the gun all into the trash bag off my window. And I put them in the trash can outside.
Q Okay. And what was Lorenzo doing at this time?
A He was inside the house in the living room with my girlfriend.
Q Okay. And did you call your mother from that house, or do you recall when you talked to Erica?
A I believe I called her on the way to her house.
Q Okay. To let her know. And you told her what?
A I told her that I wanted to see my son. I was asking her where she was, if she was home. I wanted to see my son. Someone tried to kill me and I shot him.
Q Do you recall what she may have said, if anything?
A She told me to slow down.
MR. BULSA: Objection.
THE COURT: Sustained.
Q Okay. Don't go into what she said. Was there any

quick conversation at all?
A Repeat that.
Q Well, you can't go into -- she can testify tomorrow, but do you remember any -- if y'all had any brief conversation at all? Just say yes or no.
A Yes.
Q And-but before you got there, you got stopped.
A Yes, sir.
Q Okay. And you've been incarcerated roughly since then, is that right?
A Yes, sir.
Q Okay. And you -- you heard earlier when Mr. Sizemore testified, probably yesterday, about Lorenzo being in the car and getting out of the car and you felt like he had a gun with him. Is that the gun you believe you got? Mr. Sizemore said that he was in the truck with Lorenzo.
A Yes, sir.
Q And you said Lorenzo gave you the gun in the case.
A Yes, sir.
Q What you said. Okay. I guess my question is why didn't you use one of yours.
A I never intended to use a gun. I just wanted to talk to him.
Q And Lorenzo was in the front seat with you?
A Yes, sir, he was in the passenger seat, yes, sir.

Q And he just said to take it just in case.
A Yes, sir.
Q Okay. Did you have any ill-will toward Dalton Moore at all?
A No, sir, I did not.
MR. VIETH: Give me just one second, Judge.
(Pause.)
Q You -- the ones you talked to, I guess, were Maria and Mr. -- and your mom and -- and Brianna Ivester, right? You called those people.
A Yes, sir, I did. I spoke with them.
Q Yeah. And it's been well over a year. Do you remember any of that conversation about saying I-took-care-of-business type conversation?
A No, sir, I do not remember saying that because that's never how I seen it.
I feel like there might be a misinterpretation of what I said, because, you know, I did plan on going to talk to the police. And I feel like -- she asked me when. And my -- you know, when am I going to jail or am I going to talk to the police. And I said after I take care of some business, which was going to see my son.
Q All right. Devin, I appreciate your testimony. I'm going to let whoever is going to cross-examine you next take over at this point.

A Okay.

THE COURT: Mr. Abusaft.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q Devin, I want to be clear. When you went to go talk to Dalton it was -- it was just -- your testimony is it was to bring peace.

A Yes, sir. It was.

Q Okay. Now, Lorenzo was in the car.

A He was.

Q He never got out of the car.

A No, sir.

Q Okay. And you say he gave you a gun, but he gave you the gun to protect yourself.

A Yes, sir.

Q Just in -- just in case.

A Yes, sir.

Q But you did have many other guns in your vehicle.

A Yes, sir, I did.

Q Would you consider yourself a gun enthusiast?

A Yes, sir.

Q Okay. So you have these guns. You just like -- is it a hobby?

A Yes, sir.

Q Okay. And it's your testimony even though you had all

of these guns, though Lorenzo felt the need to give you a gun.

A Yes, sir.

Q Okay. You gave -- you gave Lorenzo -- you didn't -- you gave Lorenzo no indication that you wanted -- you were going to do anything aggressive to Dalton before you went over there.

A No, sir. I did not.

Q If you did have that plan, he wouldn't have known about it.

A I did not have that plan.

Q Right. But he wouldn't have known about it. He didn't know anything about anything. He just knew you were going to go over there to talk to him.

A That's what I told him, yes, sir.

Q Right. I'm not going to ask you about what happened in that parking lot because that doesn't pertain to Lorenzo, but when you got back to the car what did you tell Lorenzo?

A At first I was in shock of what had happened. Once we had switched out at the end of the road I was driving, and I told him that Dalton had a knife and that he came towards me.

Q Okay. So when you first got back to the car you were running. You had -- were you -- did you run back to the

car?
A Yes, sir.
Q Okay. Were you -- were you scared at that point?
A Yes, sir.
Q Were you upset at that point?
A I was shocked and scared. I wouldn't say that I was upset, like. What do you mean by upset?
Q I'm not asking if you were angry. I'm asking though were you nervous, frightened.
A Yes, sir, yes, sir.
Q Those type of things.
A Yes, sir.
Q Lorenzo would have been able to see that.
A Yes.
Q He would have been able to tell that you were up -- that you were upset in this way.
A Yes, sir.
Q Okay. And -- and it's your testimony that it is then that you -- that Lorenzo drove off in your vehicle, that he was driving at this point.
A Yes, sir.
Q Okay. Then -- and then you told him or he asked you what happened?
A I don't really remember.
Q But at -- but at some point -- at that point in a very

short time he said -- you told him.
A What occurred, yes, sir. I did.
Q Okay. And then -- and then you got -- and then he stopped driving.
A Either before or after that, yes, sir.
Q And how much time elapsed between you getting back in this vehicle and him driving and then you driving?
A I'm not sure of the time range. I just know that there at the end of Foster Street, however long it took to get there, was how long it took.
Q Could have been less than a minute?
A Possibly.
Q Could it have been 30 seconds?
A I'm not sure. Possibly though.
Q Okay. So either way, regardless of the exact period, this is a very short period of time.
A Yes, sir.
Q Okay. And then you're driving.
A Yes, sir.
Q And then for the rest of the night Lorenzo is just there.
A Yes, sir.
Q And he didn't have -- he didn't have another car, did he? I mean, he didn't have a car.
A No, sir. He did not have a car.

Q So he was just with you.
A Yes, sir, he was.
Q When you changed your clothing he wasn't -- as you just testified, he was in the house.
A Yes, sir.
Q When you disposed of the gun, he was in the house.
A Yes, sir.
Q When you altered the back window of your vehicle, he was in the house.
A I believe we were going -- in the house or, yes, sir, and that he was already in the house.
Q Okay. At any point during that night were you -- were you trying to get away from law enforcement?
A No, sir.
Q You were trying to get to your son.
A Yes, sir. I wanted to see him.
Q And you were trying to get -- and you went to your girlfriend and gave her some money, is that right?
A Yes, sir.
Q So you were tying up loose ends.
A Yes, sir.
Q Because you knew that you -- regardless of the reason why you killed Dalton. You knew that this day was coming, that you were going to have to stand in front of 12 people and tell them that happened.

A Well, I knew that I was planning on talking to the police about what had happened, so.
Q And you have been away from your kids for 15 or 16 months.
A Sixteen months, yes, sir.
Q So you were correct that you needed to try to see them one more time.
A Yes, sir.
Q Because whether -- whether this jury finds that you committed self-defense or not, you have lost 15 or 16 months of your life.
A Yes, sir. I have.
Q Okay. So that was the -- that was the reason for your driving, not to flee from law enforcement.
A No, sir.
Q Okay. And regardless of what your reasons were, you never -- Lorenzo never said to you, hey, guy, let me help you get out of Spartanburg.
A No, sir.
Q Let me get -- let me help you get out of South Carolina.
A No, sir.
Q Let me hide you.
A No, sir.
Q He was just with you.

A Yes, sir.
Q Okay. When you went to see Dalton had you made any -- did you -- did you and Lorenzo have any plans, plan for him to drive you away?
A No, sir.
Q Okay. It was only after gunshots that you saw -- that you saw your vehicle move.
A Yes, yes, sir. I was standing there for probably a brief moment before I looked back and seen that my car was in the road.
Q Okay.
MR. ABUSAFT: I have no further questions, Your Honor.

CROSS-EXAMINATION

BY MR. BULSA

Q Let me get this straight. You were going to go talk to the police.
A Yes, sir. I was.
Q And you were going to tell them everything that happened.
A Eventually, yes, sir.
Q What?
A Yes, sir, eventually.
Q And you were going to take them to where you threw everything away.
A I mean, I really hadn't thought about all of those

aspects.
Q You said you were going to go to the police. What were you going to do when you got to the police?
A I had no idea. I wanted to speak to my parents first.
Q Well, the police got you first, right?
A Yes, sir.
Q And when they sat you down to talk to them, you tell them that you weren't even on Foster Street that day, right?
A Yes, sir. I did.
Q Yet you were going to go tell the police what happened.
A I mean, at that point I didn't know that Dalton was dead. And when they had came at me telling me that he was dead, I was scared.
Q How well did you know Dalton?
A I did not know Dalton.
Q You didn't know him at all?
A No, sir.
Q Had you ever met him before?
A No, sir.
Q Had you been to a birthday party with him?
A I was at a birthday party at his house, but I do not remember actually meeting him.
Q So you got invited to a birthday party at his house

and you never met him?
A Well, I was hanging out with somebody else who was going there, and they invited me to come there with them. And I was -- I was 12 or 13 around this time.
Q Okay. So previous testimony, you said you met him at a birthday party.
A I said I felt like we may have crossed paths possibly there at that birthday party.
Q Okay. And that was six years before 2017.
A Give or take, yes, sir.
Q Okay. And are you telling this jury the only other time you saw Dalton Moore before you shot and killed him was on Easter of 2017?
A Yes, sir.
Q And you saw him because you happened to be driving through his neighborhood, is that right?
A Yes, sir.
Q Okay. And you had already -- you had let Lorenzo out, and Lorenzo was going to get some money from somebody.
A No, sir. Lorenzo was still in the car with me.
Q All right. I must have misunderstood that, because I thought you said you let Lorenzo out and you went driving down the road and that left you by yourself in the car.
A No, sir. Lorenzo was still in the car with me.
Q He was in the car the whole time?

A Yes, sir.
Q Okay. So you just happened to go down the street. What street did Dalton live on?
A I'm not sure. I know that it's at the bottom of the hill. It's like a 3-way there, and he stays there.
Q Okay.
A At the bottom of that 3-way.
Q So you're telling us that that was the only other time you saw him.
A Yes, sir.
Q And you're telling us that the time you saw him, he ran towards your car with his hand behind his back.
A Yes, sir. He did.
Q And that caused -- was -- your car was stalled, you said, right, at that point?
A Yes, sir. It was.
Q And that caused Lorenzo to get out and point a gun at him.
A Yes, sir.
Q And when Dalton saw the gun, he turned around and hightailed it back to his house, right?
A Yes, sir. He did.
Q You never even saw a weapon, did you?
A No, sir. I didn't.
Q Okay. You had not had any contact with Dalton. He

didn't even know who you were either, did he?
A I'm not sure what he knew.
Q You'd never had any contact with him. How would he know who you are?
A I mean, possibly social media or anything, but I'm not sure if he knew me, but I did not know him.
Q Okay. And so he had no conflict with you, I guess, right?
A No, sir.
Q I believe you told this jury that the conflict he had was with Lorenzo.
A Yes, sir.
Q And Lorenzo got out of the car with the gun and pointed it at him and he turned and ran.
A Yes, sir.
Q So he had no problem with you.
A No, sir.
Q Okay. So now you want this jury to believe that when he's just walking down the street going home, he recognizes your car.
A Yes, sir.
Q And you want this jury to believe that he then waves you down.
A Yes, sir.
Q Waving you down.

A Yes, sir.
Q He's still on the sidewalk when he's doing that?
A Yes, sir. He was.
Q Okay. And whereabouts on the sidewalk was he?
A He was just below the entrance on the Timken Community Center between the middle school and Timken Community Center, there before the entrance.
Q Okay. He had the two I was looking for. These are the closeups of the center and middle school. So let's look at State's Exhibit 3. Point to me whereabouts he was when you first saw him.
A About in here.
Q He was already all the way past the school?
A Yes, sir, yes, sir, he was.
Q Okay. So you passed him, and he was flagging you down.
A Yes, sir.
Q And you just kept on driving.
A Yes, sir, I did.
Q And where on this map did you turn around?
A I'm not sure.
Q Not sure.
A No, sir. I don't really remember.
Q You seem pretty certain in previous testimony that you turned around in that middle school parking lot.

A I didn't.
Q That's because you -- now you say you didn't because you saw the video and you realized it was wrong.
A Yes, sir.
Q Before you were certain you did, right?
A Yes, sir.
Q And you want this jury to believe that you had some thoughts as you drove by and said let me stop and go see what he wants. Is that what it was?
A Yes, sir. I did. I did think that.
Q And I think you said you were afraid that he might do something to you if you had your wife and baby in the car at some other point?
A I was afraid that would have been a possibility, yes, sir.
Q So all of this is because you were in a car on Easter that you say he had a problem with Lorenzo.
A Yes, sir.
Q Did you and Lorenzo talk about what you might need to do to Dalton?
A No, sir.
Q That Easter incident?
A No, sir.
Q Y'all didn't maybe talk about if you saw him again out by himself maybe you would go rough him up or something?

A No, sir.
Q So you want this jury to believe that all of this just kind of came together.
A It did.
Q And it's just mere coincidence that you drove by and he's flagging you down, and then Lorenzo drives by and jumps out of the car he is in. And you just happened to be -- had made that decision to turn around and come back, oh, there's Lorenzo, let me let him in the car because I don't want him to be stranded. Is that what you're telling this jury?
A Yes, sir.
Q You saw him get out of the car he was in, right?
A Lorenzo?
Q Yes, sir.
MR. ABUSAFT: Objection, Your Honor. Take something up outside the presence of the jury?
THE COURT: Okay. Let me ask the jury to go to your jury room. Don't talk about the case.
I'll bring you back in a few minutes.
(The following takes place outside the presence of the jury.)
MR. BULSA: Your Honor, how can he object? It's not his witness.
THE COURT: Well, any lawyer can object to a witness'

testimony. I don't know what the objection is.

MR. BULSA: Okay. I know we don't do this often, but okay.

MR. ABUSAFT: Your Honor, I know that you have previously ruled that he can bring up what Lorenzo was doing, where he was, but at this point he is making the implication that there's a scheme or something, it's -- it's just a coincidence.

He's asking the jury to -- he cannot -- he is not charged -- Lorenzo -- with an accessory before the fact, Your Honor. He's only charged with accessory after the fact. If Lorenzo is an accessory before the fact, he cannot be charged with this crime.

So it's one thing -- it's one thing to just say his place, he was there, he got in your car. It's another thing to try to draw the jury to make an inference that this was a scheme.

MR. BULSA: It's cross-examination, Your Honor. I want to get to the veracity of this witness and what -- what was going on that night.

THE COURT: All right. Overrule the objection.

We're going to take five minutes.

(Whereupon, a recess was taken.)

MR. ABUSAFT: Your Honor --

THE COURT: Sir?

MR. ABUSAFT: -- before the jury -- before the jury is brought in I just want to cite to the case State vs. Blakely. That's 402 S.C. 650 -- 657 just for the proposition that I've been -- I've stated a couple of times about not being able to -- this not being able to try him as a principal and an accessory after the fact. And at this point I'd ask for a mistrial.

THE COURT: They're not trying him for -- as a principal and accessory after the fact. They're trying as an accessory after the fact.

MR. ABUSAFT: Yes, Your Honor.

THE COURT: They have to prove knowledge on his part.

MR. ABUSAFT: Your Honor, humbly and respectfully, if he has knowledge before the crime that a crime is going to be committed, he cannot be an accessory after the fact.

To elicit to -- to elicit fact -- to elicit or to try to get the implication to the jury, I believe, is in violation of State vs. Blakely and elements of accessory after the fact, Your Honor. So thank you for letting me be heard.

THE COURT: All right. Bring the jury back.

(The following takes place in the presence of the jury.)

THE COURT: Mr. Bulsa.

BY MR. BULSA

Q Mr. Ruttle, how well do you know Mr. Calderon?

A Pretty good.

Q Okay. He's a good friend?

A Yes, sir.

Q Okay. Do a lot of things together?

A Yes, sir.

Q What kind of things?

A All kinds of things. We played video games. We'd go to the river, have cookouts.

Q And on the Easter incident, what were y'all doing?

A I really don't remember everything that happened that day, but I remember him asking me for a ride.

Q And if he wanted a ride, you'd give it to him?

A Yes, sir.

Q And if you got stuck in a ditch, you'd call him for help?

A Yes, sir.

Q So that's how y'all happened to be together that day?

A Which day?

Q The day of the incident.

A Yes, sir, but he --

Q Y'all -- did you have plans to go to the race with him?

A A race?

Q Yeah.
A No, sir.
Q You're telling this jury that night you had plans to go out with your girlfriend.
A Yes, sir.
Q Where did she live?
A She lived with my father.
Q She lived with your father, but you didn't live with your father.
A No, sir.
Q You lived with your grandmother.
A Yes, sir. I -- I was staying there.
Q And she lived with your father with your baby.
A Yes, sir.
Q That was on Rosecrest Drive?
A Yes, sir.
Q And you lived with your grandmother where?
A It was in Cowpens.
Q Bud Arthur Bridge Road?
A Yes, sir.
Q Okay. How long had you been seeing her?
A My girlfriend?
Q Yes, sir.
A We been together for a few years.
Q A few years.

A Yes, sir.
Q Were you also seeing Maria Calderon?
A We was having a little difficulties, and, yes, sir, I was talking with Maria.
Q Who was having difficulties?
A Me and my girlfriend.
Q You and your girlfriend were having difficulties and you were talking with Maria.
A Yes, sir.
Q And Mr. Vieth brought up the sexual nature of the talking, is that correct?
A Yes, sir. He did.
Q So you had a baby with Brianna. She was living with your father with the baby, right?
A Yes, sir.
Q And you were seeing or talking to Maria Calderon.
A Yes, sir.
Q All during this same time.
A Yes, sir.
Q Right? Okay. On the day of the question you were telling us that on that date you were going to go have a date with Brianna.
A Well, we was, you know, working things through.
Q Now, this is you and Maria.
A Yes, sir. It is.

Q Okay. Is that something you sent her?
A I believe so.
Q Okay. Is that your words, "Miss you lots"?
A No, sir. Those are not my words.
Q How did they get on the snapchat then?
A I believe you could save the picture, and then you can put whatever words you'd like on there.
Q Okay. All right. I can't find it right now, but do you remember the picture of you in the Hot Spot?
A In the parking lot or in the store?
Q In the store. It's a better picture of you, right?
A Yes, sir.
Q You wearing that same hoody?
A Yes, sir, I was.
Q Is that one of your favorite hoodies?
A I would say yes, sir. I had just got it.
Q You'd just got it?
A Yeah. I haven't had -- I hadn't had it that long.
Q Okay. Did it hurt to throw it away?
A I didn't really think of it that way.
Q Okay. Now, let's go back to Foster Street, back to where you said you were waved down.
A Yes, sir.
Q And you drove past him. You went past the middle school. And then you tell this jury that you decided to

turn around.
A Yes, sir.
Q And Lorenzo was in a truck behind you, right?
A I did not know that he was behind me, and I seen the vehicle. There was a few cars in between us.
Q You could pick your car out of that?
A I did.
Q You did? Did you see Lorenzo hanging out the door of the truck?
A In the video shown?
Q No. When you were driving.
A Oh, no, sir. I did not.
Q You sure you didn't see him out the rear-view mirror?
A No, sir. Like I said, there was cars in -- in between us.
Q You sure that's not the reason you turned around, was to go pick him up?
A Yes, sir.
Q Good friends of yours?
A He is, yes.
Q Yeah. You sure you didn't see him hanging out --
A Yes, sir.
Q -- the door. Okay. And, nonetheless, you're trying to tell this jury just happened to be coincidence that you turned around and, pop, poof, there's Lorenzo. Let me stop

and give him a ride so he's not stranded.
A Yes, sir.
Q Okay. But when you left Lorenzo, he was with Hunter, right?
A Yes, sir. He was.
Q In Hunter's truck.
A Yes, sir.
Q And then when he got in the car did you say, hey, Lorenzo, Dalton's up there, he waved me down, let's go talk to him?
A No, sir. He was already aware that he, Dalton, was there. I didn't say anything about him waving me down at the time.
Q You didn't?
A No, sir.
Q Did he say something about Dalton?
A I'm not certain. I think he may have.
Q What may -- what might he have said?
A May have said some derogatory --
MR. ABUSAFT: Objection, Your Honor. Speculation.
THE COURT: Overruled.
Q What might he have said?
A I'm not certain, but out of respect I wouldn't repeat them.
Q What kind of derogatory statements was he saying?

A I'm not certain.
Q What?
A I'm not really certain what he said, the things that he could have said.
Q Okay. All right. But you think he said something though, right?
A Yes, sir. He was aggravated.
Q He was what?
A Seemed aggravated.
Q He seemed aggravated. Okay. So we've got you and aggravated Lorenzo in the car.
A Yes, sir.
Q With you driving back to see Dalton.
A Yes, sir.
Q And was Dalton still walking on the sidewalk?
A No, sir. I -- I didn't see him walking on the sidewalk after I turned around.
Q You did not see him.
A No, sir.
Q Where did you see him again?
A After I got outta the car.
Q Well, where did you know to stop the car?
A Well, that was the last place I seen him where he waved me down.
Q Wait a minute. You said he was walking on the

sidewalk when he waved you down.
A He was.
Q Okay. And you drove back by and you didn't see him.
A Well, I figured, like I said, he wanted to speak with me. So that's why I assumed he was there still at the -- the community center.
Q Well, why didn't you go pull in the community center parking lot?
A Like I said, you know, the incident that had happened on Easter. I didn't want Lorenzo to be involved, because I didn't know how that would escalate into maybe being something else. So that's why I parked away, and then I walked over there by myself.
Q This isn't making sense. It's not adding up. So you, essentially, got lucky finding him in the parking lot.
A Well, I assumed that that was where he was because he waved me down. So when I went up there, I did see him from a distance standing there in the parking lot.
Q All right. Explain that. Say that again.
A I said that that was where that he had waved me down, there close to the Timken Community Center, close to the entrance. So, I mean, I assumed that he wanted to speak with me, so that's why I assumed that he was. And as I went across the street and I climbed that hill, short hill, I seen him there in the distance.

Q And didn't you drive down past the community center and then turn around and come back and park on the side of the street?
A Yes, sir, I did, but I'm not sure which one.
Q What do you mean, which one? You parked on the side of Foster Street, didn't you?
A No, sir. I -- I pulled off of Foster Street and parked on the side road.
Q You didn't park your vehicle near Ms. Brewster's house, the house directly across from the Timken Center?
A I'm not certain where Ms. Brewster's house is.
Q Okay. It was the lady's house. You saw her in the yard, didn't you, when you were fleeing?
A I did see a woman in the yard, yes, sir.
Q Well, that's Ms. Brewster. She testified.
A Okay.
Q She saw you leaving the area.
A Okay.
Q Right?
A Yes, sir.
Q In fact, she's the reason why you wanted to get rid of the clothing, right?
A No, sir, not essentially.
Q Because you'd been seen, right?
A She did see me, but that wasn't -- I wasn't thinking

about that when I got rid of the things.
Q Well, what kind of shoes were you wearing?
A I was wearing a bright red pair of New Balance.
Q Okay. Explain to this jury why in the world you threw your shoes away.
A I mean, like I said, I seen -- seen on T.V.
Q So what? Did you think they might get some footprints?
A I'm not sure.
Q Well, what was going through your head when you took your shoes off, your bright red shoes, and stuck them in the trash bag that you took off your car because that was readily seen by witnesses at the scene? Right?
A Yes, sir.
Q What were you thinking? Why am I throwing these nice shoes away? What were you thinking, sir?
A I mean, I was thinking about going to jail.
Q You'd seen them on T.V. They might get my footprints, right?
A Yes, sir.
Q Because you knew you'd done something wrong. You knew you'd just killed somebody, right?
A I did not know that Dalton was dead. And, like I said, I was scared.
Q Okay. You saw him fall.

A Yes, sir.
Q Okay. So you knew you hit him with one of the two shots that you fired, right?
A Yes, sir.
Q Okay. So you must have been a pretty decent shot, right?
Let's go -- when you get out of the car, you're going up there to talk to him because of this Easter incident, right?
A Yes, sir.
Q Okay. And this Easter incident was nothing but trouble, right?
A Yes, sir.
Q So you go out, and you're going to go up there. And you're telling this jury that you didn't take one of your own guns that was in your car. You accepted a gun that Lorenzo Calderon gave to you, is that right?
A Yes, sir.
Q Okay. And knowing and anticipating some problem from Dalton, you went up there with a weapon?
A No, sir. I -- I took it, like, Lorenzo had told me just in case, you know, he would sit in the car, just to take the gun. And I did.
Q Just in case means that somebody suspected there might be some trouble.

A Yes, sir.
Q Okay. And you were the somebody that went up the hill, right?
A Yes, sir.
Q So you expected some trouble.
A No, sir. I did not, but so that my friend would sit in the car, I knew he had a tendency to do things like that with the gun, you know, he pulled out on Easter. Told me to take the gun.
Q Well, now, let's back up.
The way you describe the Easter incident, y'all were just minding your own business in your car and Dalton was coming towards y'all.
A He was.
Q Right?
A Yes, sir.
Q Okay. And y'all felt threatened by Dalton running towards y'all, right?
A Yes, sir.
Q And then Lorenzo just got out of the car to diffuse the situation and pointed a gun at Dalton, right?
A I wouldn't necessarily say that would have defused it, but, yes, sir, that's --
Q Tried to scare him away, right?
A Yes, sir.

Q Okay. And it worked.
A It did.
Q Okay. So on the Easter occasion y'all were minding your own business.
A Yes, sir.
Q You were without fault.
A Yes, sir.
Q Okay. And you're telling us that a man was running up with his arm behind his back and y'all felt threatened.
A Yes, sir.
Q And in order to diffuse that threat, instead of driving away, you pulled a gun.
A My car wouldn't start.
Q Couldn't leave. So you pulled the gun, and it caused the man to leave.
A Yes, sir.
Q Right?
A Yes, sir.
Q Okay. But on this occasion you're telling this jury that the man that came running at your car with his hand behind his back, waved you down, and you decided to go see what he wanted.
A Yes, sir. I did.
Q And when you parked the car, you got out. A friend of yours gave you a gun. And you went to this situation,

right?
A Yes, sir.
Q You went looking for Dalton, right?
A Yes, sir.
Q You went looking to Dalton while armed with a weapon, right?
A Yes, sir.
Q And you didn't have a right to carry that weapon outside of that car, did you?
A No, sir. I did not.
Q Okay. So you were breaking the law as you went up the hill with this weapon, right?
A Yes, sir.
Q Okay. And when you got to the parking lot, you're telling this jury that Dalton was waiting up there for you.
A Yes, sir.
Q With his hand behind his back.
A At first he did not have his hand behind his back.
Q He didn't? What was he doing?
A He was -- he was standing there against the building.
Q Standing there against the building.
A Yes, sir.
Q Okay.
A That's where I seen him.
Q You're telling us he was leaning up against the

building like he was waiting on you?
A He was there on the sidewalk close to the building, standing there close to the building.
Q Okay. And did he say, hey, how are you doing, thanks for coming up to see me?
A No, sir.
Q He didn't do that?
A No, sir.
Q Well, what did he do?
A He didn't -- I don't think he seen me there until I got kind of close and started to speak to him.
Q So you snuck up on him?
A No, sir. I did not.
Q Okay. At one point when you were making your way up the hill, at what point did you see Dalton?
A I was past -- I had seen him once I came up that hill. I feel like he -- he seen me right once I got close to the side in front of the Timken Community Center.
Q Did you say, hey, Dalton, I'm here, I'm just here to talk?
A Yes, sir.
Q Okay. And his immediate response was to put his hand behind his back?
A Yes, sir.
Q Okay. So there's some distance away, between you,

right?
A At this time there is a little bit of a distance, yes, sir.
Q Okay. And you see the gesture that you say caused you to fear for your life at Easter, right?
A Yes, sir.
Q And instead of turning around and running back down the hill in those bright red shoes, you continue going forward?
A Well, I was too far to turn around and run back to my car, and I thought that he may have had a gun. So I said, you know, no, no, no, stop, I just want to talk, I just want to talk.
Q Okay.
A And he was probably from --
Q So you were afraid you were going to get shot in the back if you ran away?
A I mean, yes, sir.
Q You're processing all of this information?
A Yes, sir.
Q Okay. So he -- well, how long does he have his arm behind his back?
A Not -- not too long.
Q Not too long. Okay. All of this happened kind of quick, right?

A Yes, sir. It did.
Q You heard all of the neighbors. You heard all of the neighbors explain how much -- I mean, got the one couple coming down the street, and she sees the hanging out of the car and switching the cars. And then they just basically drive in their driveway and they hear shoots. I mean, this -- this is happening fast.
A Yes, sir.
Q Did you run up that hill towards him?
A No, sir. I did not.
Q Oh, you just went up at a leisurely pace?
A Yes, sir.
Q And you just happened to go up there and you see him and you're trying to get him to stop. And what do you do, do a quick-draw?
A Yes, sir.
Q Yes. Okay. And then when you realize he has a knife, instead of turning around and leaving you try to shoot a round?
A Well, at that point the -- the distance between us was closed a little bit, because he was coming forwards still. And I went for the warning shot hoping that it would give me the chance to run and, you know, that he would not progress with the weapon that he had.
Q You're familiar with guns? I think you said it was

your hobby when Mr. Abusaft cross-examined you. Do you have a hobby with guns?

A I had a hobby.

Q Okay. What in the world is this gun? Whose gun is this?

A That is my gun.

Q That's your gun?

A Yes, sir.

Q State's 65. What do you call that?

A That is a Palmetto State Armory 9mm AR15 pistol.

Q AR15 pistol?

A Yes, sir.

Q What do you use something like that for?

A My own defense.

Q Own defense?

A Yes, sir.

Q Okay. But you had in your trunk.

A Yes, sir.

Q How do you defend your home when it's in your trunk?

A Well, I was worried it would get stolen.

Q Okay. Which of these pistols is yours?

A The black 9mm Scott.

Q The black 9mm is yours?

A Yes, sir.

Q State's 64. So you're claiming the two nines.

A Yes, sir.
Q Okay. So are you telling this jury that you favor nines and Lorenzo favors .40 calibers?
A Yes, sir.
Q Okay. Because the only other gun in the car was a .40 caliber, right?
A Yes, sir.
Q And the gun that Dalton was shot with was a .40 caliber.
A Yes, sir.
Q Okay. And you just happened to ride around with extra shells to match both calibers in your glove box?
A I had the 9mm shells, yes, sir, in the glove box.
Q Yeah.
A Yes, sir.
Q And you also have the .40 caliber in the glove box, right?
A I wasn't aware of that until I got my motion of discovery, that those were there as well.
Q Oh, so now you're telling us that Lorenzo must have put them in there?
A Yes, sir.
Q Okay. So he gets in your car. He opens the glove box. He tosses this .40 caliber pistol and he tosses in a box of rounds to go with it.

A Yes, sir.
Q Is that right?
A Yes, sir.
Q Okay. And you, going to approach somebody who had previously caused you fear, instead of taking one of your own weapons, you're telling us you took one of Lorenzo's weapons.
A Like I said, I -- I never intended on taking a weapon with me because that wasn't why I was going up there.
Q Okay. And it's kind of ironic that the one weapon that he gave you -- I call it an act of providence -- but/and the round that misfired has your D.N.A. on it, right?
A Yes, sir.
Q Because if you'd gotten away with this, if there had not been any witnesses out there that heard the shots, this would have been what put you at the scene, right?
A (No response.)
Q Right?
A Yes, sir.
Q Okay. If Ms. Brewster had not happened to be out there if you didn't -- she didn't see you running way in that nice, bright green hoody, you could have gotten away with this, but for the miracle of science. And how is it that you're -- if this is Lorenzo's gun, how is it that

your D.N.A. got on this?
A He was showing me the new ammunition that he had, and he took the clip outta the gun and gave it to me. I took that top bullet off there and looked at the bullets underneath. You know, I seen on T.V. about fingerprints. I -- I spit into the bottom edge of my shirt. I wiped off the bullet. I gave him back the clip and the bullet.
Q Did that happen on this day?
A No, sir.
Q How long ago? How long before was it?
A It was a couple of weeks before. It was after Easter, but it was before this incident. I'm not sure of the day.
Q Explain to this jury why it matters whether your fingerprint was on a round of a gun of a friend of yours.
A Just in case he did something that was illegal with it.
Q Just in case he did something that was illegal with it?
A Yes, sir.
Q And, once again, you learned from television how to get rid of fingerprints?
A Yes, sir.
Q And how do you get rid of fingerprints?
A You wipe them away.
Q Okay. Well, why do you have to spit on it?

A It was just something that I done. I don't really know why. I mean, that was the way that I chose to do that. It's just what I had done.
Q Okay. So when you got up the hill, and you are armed anticipating a problem, right?
A Repeat that.
Q You go up the hill. You accept a weapon in case something might happen, right?
A Yes, sir.
Q Okay. So and then when you see the man and you realize he's not being friendly, instead of turning away to leave, you pull the gun. This is your story.
A Yes, sir.
Q Okay. And you're claiming that Dalton pulled his weapon first.
A Yes, sir. He did.
Q And I think you demonstrated to the jury when Mr. Vieth was questioning you that you're claiming he was coming at you like this with the knife.
A Yes, sir. He was.
Q And you just had to shoot. Where was your gun?
A It was in my hand.
Q Where was it in your hand?
A In my right hand.
Q Okay. And how did you shoot it?

A I had the gun lowered because of the -- the round that wasn't spent.

As I pulled the slide back on the gun that bullet ejected. As I let the slide go back down as I'm walking backwards I see that -- as I'm looking down at the gun I see the slide is dropping down.

I'm looking up. That's when I see Dalton there, standing there, in that same position you was just doing. And I -- I just raised the gun barely in his direction from where I had lowered it to chamber the next round, and I just pulled the trigger.

Q Was the gun at your waist?

A It was probably about waist level, yeah.

Q Waist level.

A Yes, sir.

Q This Timken parking lot appears to be fairly level. Wasn't it?

A Yes, sir.

Q Okay. So you and he would have been similar, on a similar plane.

A Yes, sir.

Q Even with each there. How tall are you?

A I'm not sure.

Q You're not sure how tall you are?

A No, sir, 5'8".

Q 5'8". Okay. Was he taller than you?
A I never stood side by side.
Q Okay. Because you never knew him.
A Yes, sir. I never knew.
Q Okay. All right. So you're saying he was coming at you like this and you shot the gun at your waist.
A Yes, sir.
Q And he would have been facing you when you shot him?
A No, sir. I -- like I said, I was walking backwards. He was coming towards me, yes.
Q Okay.
A But I was walking back towards my car at an angle like this while he was coming towards me.
Q But he was face on frontal to you --
A Yes.
Q -- as you were walking way, right?
A Yes.
Q Right?
A Yes.
Q So you're walking back and he's -- okay. I think you told the jury that he charged at you.
A Yes, sir.
Q Right?
A Yes, sir.
Q When did you realize you hit him?

A When he fell.
Q He fell. How did he fall?
A Forwards.
Q Okay. Explain. Describe that a little bit more.
A I mean, he kind of made a jerking motion with his left arm, and he fell forwards. He just dropped.
Q So he pretty much dropped where you shot him?
A No, sir. He -- he was dropped in motion.
Q He was dropped in motion?
A Yes, sir.
Q So where his blood was on the -- or where blood was on the parking lot, he would have started further back than that.
A Yes, sir.
Q Okay. And he would have fell where his blood was. You saw the pictures that we put up there with the neighbors trying to help him.
A Yes, sir.
Q Is that about where he was when you saw him fall?
A Well, one witness said that he had seen him stumbling around. So I don't know if he might have got back up.
Q Were you still out there when Ms. Brewster hollered over there and said, honey, do you need some help?
A No, sir. I was not.
Q And you didn't hear Dalton respond I've been shot?

A No, sir.
Q You'd already gotten away by then?
A Yes, sir.
Q And it's clear that Lorenzo picked you up, basically, as you came down the hill, right?
A Yes, sir.
Q Because Lorenzo was clearly driving your vehicle --
A Yes, sir.
Q -- after you shot Dalton, right?
A Yes, sir.
Q And Lorenzo would have driven down that side street and turned around in the cul-de-sac, right?
A I don't remember how we turned around.
Q You don't remember going down this cul-de-sac and realizing, uh, oh, this isn't a through street, we better turn around? You don't remember that?
A No, sir.
Q You don't?
A No, sir. I do not.
Q And you did that and turned around and then took a left away from the scene instead of back, right?
A Yes, sir, we did going the opposite direction.
Q Okay. And then you went down, speeding down, Foster Street, right?
A Yes, sir.

Q In fact, you were -- were the wheels squealing?
A I do not remember.
Q You don't remember saying that in prior testimony?
A I don't remember if they were screeching or not.
Q Was the car rolling backwards when you were walking towards it?
A Yes, sir.
Q Okay. Page 37, previous testimony. "The car was driving backwards when it came off of Marion Court. Car was going backwards. I heard the tires screeching." Right?
A Yes, sir.
Q Okay.
A But I -- I really don't recall that.
Q Were y'all screeching to go call 9-1-1?
A No, sir.
Q Were you screeching to go to the police department?
A No, sir.
Q There's a police department in Cowpens, isn't there?
A I'm not --
Q You don't know?
A I suppose.
Q Weren't you staying in Cowpens with your grandma?
A Yes, sir, but I'm not really too familiar with the area.

Q Don't you go up and down Main Street in Cowpens?
A Yes, sir.
Q Okay. Isn't there a police department right on Main Street?
A I'm not sure.
Q Isn't it right near the end of Foster Street where Foster Street runs into Highway 29, Main Street?
A I'm not -- I'm not sure.
Q Okay. So you didn't go anywhere to call to get some help. I just shot somebody. I'm sorry that I had to do it. He was coming at me with a knife. None of that.
A No, sir.
Q Your mind is thinking about T.V. shows, what do I need to do to get rid of this stuff that connects me to this crime, right? That's what you're doing.
A Yes, sir.
Q Yes. Okay. And you're telling this jury that Lorenzo just drove you to the end of Foster Street.
A Yes, sir.
Q What was all of that about?
A We just drove to the end of the road. I asked him, you know, hey, let me drive.
Q Did he not know where your house was?
A He does, yeah, yes, sir.
Q Did he not know how to get to Rosecrest from where

y'all were?
A I'm not sure if he knows or how to get there.
Q Okay. So you're telling us you told him to let you drive.
A Yes, sir.
Q Okay. So while he picked you up and drove you away from the scene to the end of Foster Street, then you switched out.
A Yes, sir.
Q Okay. And instead of taking him somewhere, you kept him in your car and you drove to your father's house.
A Yes, sir. I did.
Q Are y'all talking about what just happened?
A I told him what happened, but there was a long silence in the car.
Q What do you mean, there was a long silence?
A When I told him what happened, you know, he was kind of shocked. And, you know, I was still in shock from what had happened.
Q Are you sure y'all didn't talk about what you needed to do to cover this up?
A No, sir. We didn't.
Q Sure you didn't talk about you needed to get rid of that bag on your car because that's a pretty telling sign of what vehicle might be involved?

A No, sir. I didn't -- I didn't think about any of that at the time until I got to my dad's.
Q Yeah. And you didn't talk about any of those T.V. shows that reminded you of how to get rid of your fingerprints and maybe I need to get rid of my shoes and this jacket? Y'all didn't talk about that kind of stuff?
A No, sir.
Q No. How far is it from Foster Street to Rosecrest?
A Twenty minutes, fifteen minutes.
Q Twenty minutes. Fifteen or twenty minutes, and you're telling me y'all didn't have a conversation about any of that stuff.
A No, sir.
Q Stay with you and get to your house, and you do all of this on your own.
A Yes, sir.
Q And you threw it away in the trash can there at the house?
A Well, there's a trash can outside.
Q Outside?
A Yes, sir.
Q Okay. Well, have you ever watched any T.V. shows where the police officers go and search trash cans at houses?
A Not that I remember.

Q No. Okay. You didn't think maybe they might do that?
A I didn't -- I don't know.
Q Okay. You sure you didn't take those items and dispose of them somewhere else as you and Lorenzo drove away?
A Yes, sir, I'm sure that I did not do that.
Q So the items that you used would not be at your dad's house?
A I don't understand your question.
Q You knew enough to get rid of them.
A Yes, sir.
Q But you got rid of them at the house where your father lived. Is that you're telling us?
A I threw them in the trash can, yes, sir.
Q Yeah. What I'm asking you, are you sure it wasn't a trash can somewhere else that the police would not know to look in.
A Yes, sir. I'm sure.
MR. BULSA: That's all I have, Your Honor.
THE COURT: Mr. Vieth.
MR. VIETH: Your Honor, I don't have anything in reply.
THE COURT: Okay.
MR. BULSA: May we approach, Your Honor?
THE COURT: Yes, sir.

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

RECROSS-EXAMINATION

BY MR. ABUSAFT

Q Devin, that was a long set of questions. I just want to refocus on a few issues.

Let's start back. Let's start at the end and work backwards.

You got up on the stand and you told the truth that you got rid of some clothes.

A Yes, sir.

Q You did that by yourself.

A Yes, sir.

Q You got rid of a hoody.

A Yes, sir.

Q You got rid of some shoes.

A Yes, sir.

Q You were scared.

A Yes, sir. I was.

Q You did that all by yourself.

A Yes, sir.

Q There was a plastic bag on the back of your car.

A Yes, sir.

Q And you got rid of that.

A Yes, sir.

Q And you did it all by yourself.
A Yes, sir.
Q After whatever happened with Dalton, the car was in the middle of the road.
A Yes, sir.
Q It was rolling -- it was rolling backwards.
A Yes, sir. It appeared to be that way.
Q So it wasn't -- nobody dashed over and picked you up while you were running. You just -- you came back to a car that was rolling backwards.
A Yes, sir.
Q Away from you.
A It was.
Q Okay. It's your testimony that Lorenzo was driving at that point, that Lorenzo was in the driver's seat.
A Yes, sir.
Q And you got in.
A Yes, sir.
Q You were agitated, not -- you were upset from what had just happened.
A Yes, sir. I was.
Q You were frightened.
A Yes, sir.
Q And that was -- Lorenzo would have been able to see that.

A Yes, sir.
Q He would have been able to see the fright on your face.
A Yes, sir.
Q Okay. And then you guys drove off.
A Yes, sir.
Q And less than 30 seconds later, Lorenzo is not driving any more.
A Yes, sir.
Q When you originally -- now, I'm going slightly out of order here. When you originally parked the car -- you parked the car. You were the driver before you went to -- before you went to talk to Dalton.
A Yes, sir.
Q And you didn't -- you parked it on a side street.
A Yes, sir.
Q You didn't -- you couldn't see Dalton until you moved away from the vehicle a little bit.
A Yes, sir.
Q You had to get a ways away because of the elevation difference.
A Yes, sir.
Q Okay. So from the car, as best you know, you couldn't see what was happening with you and Dalton.
A No, sir.

Q When you get back, again, you're frantic. Lorenzo sees that.
A Yes, sir.
Q Approximately 30 seconds of driving. During that time you've told him you've been attacked.
A Yes, sir.
Q He'd have had no other way to judge whether your story was true or not.
MR. BULSA: Objection, Your Honor. Calls for speculation.
THE COURT: Rephrase it.
Q To the best of your knowledge he would have had no other way to judge.
MR. BULSA: Objection, Your Honor. That's --
THE COURT: Sustained.
Q Again, when you got back to the car, that's what you told him.
A Yes, sir.
Q And from your experience, walking away from the car, he couldn't have seen the incident for himself.
A No, sir.
Q And within 30 seconds, he's not driving.
A Yes, sir.
Q For the rest of the time he's with you, he's just with you.

A Right.
Q And you -- and you at this time -- what you had on your mind was to go see your kids.
A Yes, sir. It was.
Q To see your girlfriend.
A Yes, sir.
Q You weren't going to take the time to take Lorenzo some place else at that point.
A No, sir.
Q Thirty seconds. Sounds like something for nothing.

MR. ABUSAFT: No more questions, Your Honor.

MR. BULSA: Objection, Your Honor, to that last comment by defense counsel.

THE COURT: Mr. Abusaft, I've asked you --

MR. ABUSAFT: Withdrawn, Your Honor.

THE COURT: -- before not make -- you've already said it. I've asked you not to make those editorial comments already yesterday.

MR. ABUSAFT: That was -- that was a question, Your Honor. But I won't do it again. Forgive me.

THE COURT: That was a question?

Okay. Mr. Bulsa, do you have anything else?

RECROSS-EXAMINATION

BY MR. BULSA

Q It just hit me, realize. The gun you say you used was

Lorenzo's gun?
A Yes, sir.
Q And you get rid of Lorenzo's gun?
A Yes, sir.
Q Didn't you talk to Lorenzo about that?
A No, sir.
Q You didn't talk to Lorenzo about getting rid of his gun.
A No, sir.
Q The gun that you had looked at previously and had looked at the bullets.
A Yes, sir.
Q That you had wiped away because you thought Lorenzo might use it for something criminal?
A Yes.
Q And you had actually used it for something criminal?
A Yes, sir.
Q You're telling us, this jury, that you didn't talk to him about we need to get rid of this, your gun?
A No, sir.
Q And he didn't agree with you, say, yeah, you need to get rid of my gun?
A No, sir.
Q Because not only does it -- you got rid of that fingerprint on that first shell, maybe my fingerprints are

on the rest of those shells.
A Didn't, no, sir.
Q Y'all didn't talk about that?
A No, sir.
Q Okay. Thank you.
THE COURT: Mr. Vieth.
MR. VIETH: Nothing.
THE COURT: You may step down.
We'll recess for the evening. Remember my caution. No discussions; no media exposure; no research; no investigation.
Do have a good evening. Please report to your jury room at 9:30 in the morning, 9:30 in the morning.
(The following takes place outside the presence of the jury.)
THE COURT: Court is in recess until 9:30 in the morning.
END OF PROCEEDINGS SEPTEMBER 12, 2018

can kind of look at the jury.

State your name for the jury, please.

A My name is Brianna Ivester.

Q And, Brianna, are you the mother of Devin's child?

A Yes.

Q And do you live in Spartanburg County?

A Yes.

Q And how -- are you employed in Spartanburg or --

A Yes.

Q What do you do in Spartanburg?

A I work at a drug store, a cashier.

Q Okay. And how old is y'all's child now?

A He is one and a half.

Q Okay. I'm -- instead of going into a lot of detail, just to be very specific, back on May 5th of 2017, did you and he have plans that evening?

A Yes.

Q And what were those plans?

A We were going to go out to eat.

Q Okay. And were you the primary -- are you the primary caretaker of your child?

A Yes.

Q So what was going to be the -- who was going to be the babysitter or whatever for the child that night?

A His dad.

Q Okay. And you were -- prior to him picking you up, about what time was the plan for you to pick -- he to pick you up as best you can remember?
A Probably like 6:00 or 7:00, because he had just woke up.
Q Okay. And did you -- without going into any communication, did you receive a phone call before he came to the house?
A Yes.
Q Okay. And after that phone call did he come to the house?
A Yes.
Q Okay. I want you just to tell this jury what your -- what his demeanor was like, what his conversation was with you and what he did that evening.
A He looked really scared, and he said that somebody was trying to kill him and that they had a knife.
Q Just take us through. I know he -- he got rid of a bunch of stuff and what not. Just kind of tell the jury what happened.
A He came in. I don't really remember what he did, but I know he came into the living room and Zo was with him. Lorenzo was with him. And Lorenzo sat on the couch. And Devin was telling me what happened, that somebody was trying to kill him and that they had a knife. And he gave

me money for our son and told me he loved me and left.
Q Okay. Did you see him change clothes and all -- any of that?
A No.
Q Okay. Is that house fairly big that you live in?
A Yes.
Q Okay. And where -- do you know where he was heading after he left you?
A To find Elijah.
Q Find the child?
A Uh-huh.
Q Because the child was not at the dad's house.
A No.
Q Right? Okay. All right. Answer any questions either defense attorney or prosecutor may have. Thank you.

CROSS-EXAMINATION

BY MR. ABUSAFT

Q When Devin and Lorenzo were at your house did you see Lorenzo throw anything away?
A No.
Q Did you see, did you ever see, Lorenzo throw, get rid of, any clothing?
A No.
Q Did you see him get rid of a gun?
A No.

Q Did you see him make any alterations to a vehicle?
A No.
Q And Lorenzo was around Devin when Devin said that he was attacked.
A Yes.
Q He heard Devin say that.
A Yes.
Q At any time at your house did Devin give you any -- did Devin in the hearing of Lorenzo, or to you, give any indication that this was anything but him defending himself from an attack?
A No.
Q Did at any point at your house, did Devin say -- did Devin say Lorenzo is going to help me get out of here?
A No.
Q Get out of the county, get out of the state?
A No.
Q Did Lorenzo ever ask you to hide Devin?
A No.
Q Devin's focus at this time was seeing his son after he saw you.
A Yes.
Q That was -- that was his singular focus.
A Yes.
Q Would it be -- would it be correct to say that Lorenzo

was just there?
A Yes.
Q Thank you. No further questions.
CROSS-EXAMINATION
BY MR. BULSA
Q Ms. Ivester, where did this take place?
A I'm sorry. What?
Q Where did this take place?
A 129 Rosecrest Road.
Q 129 Rosecrest Road?
A Drive, road.
Q Whose house is that?
A It was his dad's old house.
Q His dad's old house, meaning Mr. Ruttle's father's old house.
A Yes.
Q Were you living at that house at the time?
A Yes.
Q You were? Where was your child?
A He was with Devin's dad.
Q He was with Devin's dad. Okay. And what time did Mr. Ruttle come over?
A Around 7:30.
Q 7:30. And that was around the time he was supposed to take you out, right?

something. My point is is the specifics of that you wrote.
A I don't remember. I don't remember what he was wearing.
Q Okay. What I'm trying to get out of you, ma'am, is whether -- you're telling this jury you were threatened.
A Yes.
Q This officer threatened you and tell you to write that he was wearing a black shirt and blue jeans.
A No. I don't remember what he was wearing.
Q He didn't threaten you to say that he was -- you better say he was wearing this green lime jacket when he came by?
A No. I don't remember what he was wearing.
Q Okay. Do you remember that your boyfriend, the father of your child, was having a relationship with Maria Calderon?
A Yes.
Q And he just happened to be wearing the same outfit?
A Yep.
Q Okay. Mr. Ruttle did more than just talk to you when he came home, didn't he?
A He gave me money for our son.
Q Okay. And was he carrying a cloth black bag that was zipped up?
A Yes.

Q How long would you say he was there before he left?
A I don't remember.
Q Can you give us an approximation?
A Not long.
Q Not long?
A Like, ten, probably not even ten minutes.
Q Okay. And Mr. Calderon was with him during this whole time?
A Yes.
Q And stayed with him during this whole time?
A Yes.
Q In the same living room with you?
A Yes.
Q Okay. And heard whatever conversation y'all had.
A Yes.
Q And they left together.
A Yes.
Q Okay. And did you see him again that evening?
A No.
Q Did you hear from him again that evening?
A No.
Q Where are you living now?
A In Boiling Springs, South Carolina.
Q With whom?
A With Devin's father.

think it was around 6:00 o'clock. But I didn't get in touch with him.

And then he called me back around -- I want to say it was 8:00 o'clock -- but I missed the phone call. And I was -- I thought at the time it was him calling me back from where I had called him earlier.

And then after that missed phone call he repeatedly, I mean, like back to back called me again. So I answered the phone. I was just getting out of the shower, I remember.

And so I was talking and he said -- he said -- hey, hey, where you at. And I said I'm at Cole's, who was my boyfriend at the time who is now my husband. I said I'm at Cole's, why. And he was, like, because I'm trying to see Elijah. And I said what are you talking about Elijah. I don't have Elijah, why would I have Elijah.

And then I could tell in his voice that something was wrong, like he was scared. I could tell from the fact that he didn't know where his child was and we had previously made prior arrangements that he knew that Elijah wasn't with me. And so -- and that's the gist of the conversation, me trying to figure out why he didn't know where Elijah was.

And I started getting panicky. And then he said -- I was, like, what is going on, Devin, what is -- what's going on. He said somebody tried to kill me, they came after me

with a knife. I said what.

So I was trying to make heads or tails of what he was trying to tell me, and at the same time, like, the phone service was not great. It was in and out, in and out, in and out. So I asked him where are you at now, and he said Cowpens. And that was it.

Q Okay. Did he give any indication he was coming to see you? Did you have any thoughts that he was coming?

A Well, no. I -- the whole conversation was odd. I guess I just started panicking the minute that he told me he didn't know where Elijah was, and then the fact that he was terrified, like, I couldn't -- it wasn't registering in my brain exactly what he was trying to convey to me, like, somebody, where's Elijah, somebody's tried to kill me, they came after me with a knife, they attacked me, like, what are -- what are you talking about, Devin.

Q All right. What did -- what did you as a mother do after that phone call?

A After that phone call I hung up the phone. I tried to get in touch with his father. I couldn't get in touch with his father. I tried to call Brianna. I couldn't get in touch with Brianna.

MR. BULSA: Your Honor, we object to this. I don't see how this is relevant to the rest of this case, what her actions were.

the state's case, against Mr. Ruttle. That particular piece of evidence has not been offered in the state's case against Mr. Calderon.

There is no connection with Exhibit 65 and Mr. Calderon, and so you're not to consider that piece of evidence in any way in your determination as to the verdict in his particular case.

Okay. Now, if you will, please go to your jury room. And I'll discuss those matters with the lawyers and I'll bring you back to conclude. Still do not discuss the case.

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

THE COURT: All right. Motions by defendant Ruttle?

MR. VIETH: Your Honor, just renew our motion for a directed verdict. And that's it. As far as starting up with whatever, I need a few minutes if I could to talk --

THE COURT: We're going to take a break.

MR. VIETH: Okay. And that's one of the things I need to take a break about, to discuss whether or not I want to consider, have the Court consider, whether voluntary manslaughter should be charged.

THE COURT: We'll discuss charges afterwards.

Mr. Abusaft.

MR. ABUSAFT: At this point, Your Honor, I renew all of my objections including the ones pretrial.

I renew my request for a directed verdict. I don't believe the state has met its burden to go forward to the jury.

I renew my motion for recusal and I renew my motion for a mistrial.

THE COURT: Those are each denied.

You did talk to Mr. Calderon about testifying?

MR. ABUSAFT: Absolutely, Your Honor.

THE COURT: Mr. Calderon, you made the decision not to?

THE DEFENDANT: Yes, sir.

THE COURT: And you're satisfied with that decision?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right. We'll take a break.

Y'all discuss your charge requests and read those cases that I submitted to you and we'll discuss it.

(Whereupon, a recess was taken.)

THE COURT: All right. Does the state have any instruction requests?

MR. BULSA: Yes, Your Honor.

Based on the State vs. Oates case the state feels that voluntary manslaughter is a lesser included offense based on the facts, at least allegedly put forth by the defendant himself. And the state would ask the Court to give the legal definitions of various steps that the -- Mr. Abusaft

took the jury through in his opening. He intends to go back through them in his closing. That's reasonable suspicion, probable cause for --

THE COURT: What's -- what's your question about that?

MR. BULSA: I would like Your Honor to give the jury the legal definition of each of those because he's just -- what he's questioning.

THE COURT: Give legal definition of reasonable doubt.

MR. BULSA: Okay.

THE COURT: All right. Any other requests?

MR. BULSA: Charge on expert testimony.

THE COURT: Okay. Mr. Vieth.

MR. VIETH: Your Honor, we certainly want a charge on self-defense.

With the voluntary-manslaughter proposal, I just, for the record, want it to be on that record that I discussed this thoroughly with my -- Devin Ruttle and his family, and they -- if they have a choice, they would not want the voluntary-manslaughter charge.

I have discussed that Oates case and just want the record to reflect that that's my client's position, and I've got to live with what my client is asking.

THE COURT: All right. Any other requests?

MR. VIETH: Well, not about closing, but I will say this, Judge. During the recess apparently Maria Calderon

told --

THE COURT: We'll do that. I'm talking about instruction. No. I'm just talking about instruction requests right now.

MR. VIETH: No. No further instruction.

THE COURT: Mr. Abusaft, instruction requests?

MR. ABUSAFT: Yes, Your Honor. At the appropriate time I would like to discuss it with counsel.

Yes. As far as charge, I put up on your bench two requests to charge; mere presence, Your Honor, and then an accessory charge, Your Honor.

I don't think -- I think you probably already have an accessory charge that's similar to that. There's not anything special about that issue being charged, but mere presence, I think, must. I think we're entitled to have a mere presence charge.

THE COURT: Okay. Mr. Bulsa.

MR. BULSA: Your Honor, I misplaced the copies Mr. Abusaft gave me, but I believe Your Honor has standard charges for each of those and we would --

THE COURT: Okay.

MR. ABUSAFT: I have asked that these be made into a court exhibit.

(Defendant Calderon's requests to charge marked Court's Exhibit No. 4.)

THE COURT: All right. Mr. Vieth, what else do you have to address?

MR. VIETH: Yes, Your Honor.

As I mentioned, Maria Calderon who is seated still in the courtroom, she was a witness yesterday.

Once the issue surfaced with the mother, with Brianna, and the saying that the officer threatened her, and the officer testified he's never done that before, never would do that, that's his demeanor and the way he lives his life, Maria apparently has told some people in the audience that he threatened her and made her say things. And so I would like to call her for the record to put that testimony before the jury.

THE COURT: All right. Mr. Bulsa.

MR. BULSA: Your Honor, Ms. Calderon testified both for the state and then was recalled by the defense.

We don't think we need to do a proffer, but I don't think it's appropriate at this time, the verdict, closed the record and the testimony is in.

MR. VIETH: Apparently, there's two of them. I'm being told there is Ms. Gossett as well.

THE COURT: All right. I'm not going to permit it, but I'll allow you to proffer it.

MR. VIETH: All right. Do it now?

THE COURT: Yes, sir.

Ms. Calderon, you're still under oath.

MARIA CALDERON, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. VIETH

Q Ms. Owens, as the Court said, you are still under oath. And you were in the courtroom earlier when Officer Harvey Owens testified that he had never threatened or tried to coerce anyone during an investigation. Is that right?

A Yes.

Q Okay.

A It was not that he threatened me. He said that he didn't lie. He told me that, like, if I talked to him that he wouldn't take my phone, and then he did. And he said that he didn't lie. But, I mean, he did lie, but it was unintentionally, but so.

Q So go ahead. I'm not sure I understand what you're saying. Someone told me that you were threatened or coerced.

A Not threatened.

Q So just tell the record so the judge knows whether he will allow any of the evidence or not.

A Not really threatened, just that he lied.

Q What did he lie about?

A He said that if I talked to him he wouldn't take my

phone, and then he came out, and I talked to him and he took my phone.

THE COURT: Is that it?

A And that he said he lied, but it was unintentional.

THE WITNESS: Yeah. That's it.

THE COURT: Okay. You may step down.

MR. VIETH: You can step down.

Your Honor, the other witness I would call would say the same testimony, was he lied but it was unintentional. So I'm not going to call her.

THE COURT: All right. Anything else?

MR. VIETH: No, sir.

THE COURT: All right. Mr. Abusaft.

MR. ABUSAFT: Your Honor, as far as closing -- I do have one other issue -- but as far as issues related to closing, I generally try not to object to the other side in their closing as much as possible but I want to -- I would like the Court to inquire if it is the plan of the solicitor to try to make any type of arguments around that this -- that somehow Lorenzo was a getaway driver or that this was some kind of plan to kill -- to kill Dalton, Your Honor, because I believe that would be grounds for a mistrial in violation of the case law.

THE COURT: Mr. Bulsa.

MR. BULSA: I certainly think the jury might infer

from the evidence that Mr. Calderon was much more involved as a mere accessory after the fact.

I was going to infer that they could possibly have that, but we don't have clear evidence of that, and that's why it hasn't been charged. They can clearly take in his actions before the fact which would aid in their decision as to whether he knew what was going on and what took place.

THE COURT: The state does have to prove knowledge, but, as I understand it, you're not intending to argue that he was an accessory before the fact.

MR. BULSA: No, sir.

THE COURT: Or a principal in the commission.

MR. BULSA: No, sir.

THE COURT: Okay.

MR. ABUSAFT: Your Honor, what the state just said has been -- has been my problem with the way -- and I think they have just put on the record this is how they tried their case.

They -- this is not -- they cannot infer that. Your Honor, I just want to be fully heard on this particular issue.

I'll go back to in 1998, State vs. Collins, 329 S.C. 23, previous to -- previous to 1998 if a -- if a person was at the scene of a crime it was an element that they had to

not be at the scene of a crime to be convicted of accessory.

After 1998 -- in State vs. Collins going forward the Supreme Court said you could be at the scene but you had to be only merely present. Any knowledge about the -- any knowledge of the crime made it impossible. It was an element. You could not be an accessory, because then you were a principal or an accessory before the fact, Your Honor.

So the case law in our state is you can be merely present with no knowledge of the crime and then going forward learn of the crime, and then you can be an accessory after the fact.

So, Your Honor, them trying their case, trying to make these inferences, drawing these inferences at all to the jury, is in -- is basically as a matter of law giving up an element of this, of the crime, a necessary element, which is that you don't have knowledge before the fact, Your Honor. And he just said that's what he's been trying to do.

Now, that -- that's a comment about before the trial, and at this point I'll ask -- I mean, that's a comment about what he has done previous to this moment in the trial going back. And for that reason I ask for a mistrial.

Going forward, Your Honor, I would -- if -- if -- if

type any of inferences are -- if the jury -- excuse me -- if the solicitor tries to make any type of implication of this, I will again -- I will -- I will object and ask for a mistrial during his closing.

I only bring this up because I've generally been taught it's unsporting to -- to stop another attorney in his closing. So that's what I will do if he tries to make that implication.

THE COURT: Well, now, Mr. Abusaft, you're not suggesting that either Collins one or Collins two stood for the proposition that if you had knowledge that the crime was being committed that you're guilty as an accessory if you're present if you're otherwise not aiding, abetting, assisting or participating in that crime.

MR. ABUSAFT: No, Your Honor, but what I am -- what I am saying is that if you have knowledge, plus you do anything to aid before or after the fact and you had knowledge before the fact, you are an accessory before the fact, right.

So if you knew that a crime was going to be committed, the crime is committed and then you aid, that would be the quintessential getaway driver, right?

You have knowledge me -- me and somebody else say we're going to commit a crime, you commit the crime, I bring the car for you to go get picked up, you are an

accessory before the fact.

So any type of knowledge beforehand -- and clearly the state has been trying to -- trying to have the jury draw that implication -- means they have to try him as an accessory before the fact. That is -- that is the proposition that those cases stand for, or at least that I'm arguing here, Your Honor, respectfully and humbly.

THE COURT: All right. Mr. Bulsa.

MR. BULSA: Your Honor, I think that is a key part of this crime, this case, the fact that Mr. Calderon was in the area and his actions support the police's investigation of him as part of this crime. Clearly, use that evidence for identity, as well as knowledge that his buddy just did something.

THE COURT: All right. I understand y'all's position.

Mr. Abusaft, if you feel the solicitor is going out of bounds, you'll have to object, and I'll address it should that occur.

MR. ABUSAFT: Your Honor, would you also make a ruling on my request for a mistrial after the state said on the record that this is what they have been doing throughout this case?

MR. BULSA: I take objection to that, Your Honor.

THE COURT: You're asking for a mistrial based upon what the solicitor said his strategy is?

MR. ABUSAFT: Well, yes. That's a part of it, Your Honor.

I have objected along the way to what I thought was bringing out testimony -- bringing out testimony and drawing, not just the fact -- Your Honor, I separately objected to you -- to being -- him being -- excuse me -- Mr. Calderon being included in some events leading up to this.

I think the Court's position was that either narrative integrity for some other reason that was not what the state just said that -- that it could be used.

The state has now said -- since that point the state then asked questions like it's just a coincidence that this happened trying to draw the implication that this was a conspiracy.

So I think that's a separate point. And, Your Honor, now that the state has just said that they -- they think that the jury can draw those implications, which the case law clearly says they cannot, I believe that now there's grounds for a mistrial, and I'm asking for you to grant that.

THE COURT: Okay. I understand your position.

I'm going to deny your motion for a mistrial.

Anything else?

MR. ABUSAFT: Your Honor, if you would permit me I --

in hindsight, my directed verdict -- at the time of my directed verdict I believe that it might be confusing on the -- confusing to the appellate courts to review exactly what I was meaning on each point if I could put just some things on the record to clarify it.

THE COURT: Sure.

MR. ABUSAFT: Okay. Your Honor, obviously, I moved for a directed verdict because I don't think the state has met -- met its burden.

I moved for a mistrial, Your Honor, and then I removed -- and I moved for a recusal.

Taking the recusal first, Your Honor, my position is that that -- that there may be animus between the Court and myself, Your Honor, and that that animus may affect my -- my client throughout the trial and -- and potentially could affect him during the sentencing, Your Honor.

I believe the reason -- the reasons for that animus, I believe the -- I believe that at one point starting with -- at one point you believed -- I think you believed that my phone had went off. At that point --

THE COURT: When did I say anything about a phone?

MR. ABUSAFT: No, Your Honor, but you did -- I -- that's why I said I believe, Your Honor. You stared at me and your face got very red. This is followup to two weeks ago when you did take my phone from me. At that point I

think --

THE COURT: Why did I take the phone?

MR. ABUSAFT: I don't know why you took my phone before, Your Honor.

THE COURT: Was it in the courtroom?

MR. ABUSAFT: Your Honor, it was in my pocket, and it did not go off.

THE COURT: Was it in the courtroom?

MR. ABUSAFT: Yes, it was, Your Honor.

THE COURT: All right. Mr. Abusaft, are you telling me that you were not aware that you couldn't have a telephone in the courtroom?

MR. ABUSAFT: I am, yes, Your Honor. I am -- I am saying that now because law enforcement that was not a part of your staff had phones on them. Other attorneys had phones on them -- on them. Their -- their -- it is a regular course that attorneys bring phones in that do not ring. I brought that to your attention at that point.

THE COURT: They're not supposed to be.

MR. ABUSAFT: Your Honor, I did bring that to your attention at that point. I did point out someone who had a phone on their -- on their -- on their belt, and at that point you didn't address them. But I don't want to talk about something that happened two weeks ago.

THE COURT: I thought you were talking about that.

MR. ABUSAFT: Well, I was -- I was talking about that, followed up on that. I didn't want to get into the details further, but that's that.

Then, Your Honor, I believe that you thought that my phone went off this time.

THE COURT: Mr. Abusaft, that's just not so. I don't know what you're talking about.

MR. ABUSAFT: Fair enough, Your Honor.

THE COURT: I think it was Mr. Bulsa's computer that went off.

MR. ABUSAFT: Yes, I think once you saw that --

THE COURT: Maybe you were -- maybe you were concerned about your having a phone. I don't know. But I didn't say anything or do anything about or suggest that you had a phone in the courtroom.

I assumed after last week or two weeks ago that you knew not to have one.

MR. ABUSAFT: Thank you, Your Honor.

THE COURT: I was confident that you didn't.

MR. ABUSAFT: Thank you, Your Honor.

So there -- there is that point.

Then at some point during -- during the course of this case, Your Honor, you what I would -- what I would describe respectfully as an outburst toward me regarding faces, Your Honor. I'm an officer of the Court. I'm dealing -- I

don't know what -- what some people experience at trial, but these are very stressful. These are very stressful things.

I'm thinking about a lot of things going on, especially as motions are going. I'm oftentimes looking up at the Court wondering if you're going to allow me to respond to something or if you're going to say I can't respond to something, if you're going to go ahead and make a ruling. And so for that -- for that -- for that outburst, it was humiliating, it was intimidating.

It has put me in a position where I don't want to go back into chambers, which is something that attorneys often have to do during the course of these cases. I have not been back in your chambers since that outburst.

I think that those things potentially could influence my -- the result to my client, especially if this gets to a sentencing phase. And I ask you humbly and respectfully to recuse your -- that was my grounds, for the recusal previously. I'm not asking it again, Your Honor. You've ruled on that motion.

THE COURT: Okay. Are you suggesting to me that at some point I refused to allow you to respond when you had an opportunity to or should have had an opportunity to?

MR. ABUSAFT: Your Honor, what I'm saying -- what I'm saying right now is that often during the course of

objections, sometimes if I'm -- if I'm the one eliciting something and the state objects, you do not give me an opportunity to respond. You just rule, which is not -- I'm not saying there's anything, that that's unusual. But what I am saying is that sometimes you do, and so I'm looking up at you trying to see. And then sometimes you'll say -- you'll just rule.

And so if my face is caught, I'm just saying it is an unreasonable position for you to have had an outburst to me about face-making instead of at least giving me an opportunity to explain as I -- as I had to later and say I was not doing that.

I'm in -- I'm in trial. I don't know what the Court's previous experiences with being a trial attorney not -- these are stressful situations.

I am a young attorney. I'm still learning things. I did not deserve that outburst, but this isn't about me. I believe your animus could -- could influence with -- has influenced this trial and could influence sentencing for my client. I think -- I think that that's all I have on this topic.

THE COURT: Okay. Well, Mr. Abusaft, let me make it perfectly clear.

I've been doing this for a long time. I can always distinguish conduct committed by an attorney and conduct

committed by a litigant or a defendant, and I have never, nor will I ever, allow the conduct of a lawyer to affect my decisions as it relates to a litigant or a defendant, because a defendant and a litigant have a right to have a fair trial, and I'm going to ensure that they have one. And I do not attach responsibility or attribute responsibility to your client for things that you might do that are inappropriate or even offensive.

So that will not have any affect on my decisions that I make during the course of this trial as it relates to your client.

All right. Anything else you'd like to put on the record?

MR. ABUSAFT: No, Your Honor, just that also had a motion for mistrial.

THE COURT: I think I denied that.

MR. ABUSAFT: Yes.

THE COURT: All right. Anything else?

MR. BULSA: May we approach?

(Bench conference held off the record.)

THE COURT: Bring the jury back, please.

(The following takes place in the presence of the jury.)

THE COURT: Ladies and gentlemen, thank you for your patience. Some things have arisen not related to this case

necessarily but that I had to address, and that's why it's been delayed in coming back.

Because of the time, I think it's more appropriate that you be excused for lunch. You'll go to lunch on your own.

I know we took your lunch orders, but we're not going to order it because of the hour.

So we'll recess for lunch now. We'll resume this afternoon at 1:15 -- at 1:15 -- at which time we'll conclude with the lawyers' final summations, the instruction on the law and then your deliberations.

Okay. So keep in mind you still can't talk about the case. No media exposure, no research, no investigation.

Have a good lunch. Report to your jury room at 1:15 this afternoon. Thank you.

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

THE COURT: Mr. Vieth, as to the state's request for an instruction on voluntary manslaughter, I have read other cases, but also most recently the case of State vs. Oates. And it does appear that under the evidence and the facts presented here and any reasonable inferences that might be derived from the evidence presented that the voluntary manslaughter instruction is appropriate.

The Oates case states that the warrant -- the Court

eliminating the charge of manslaughter, there must be no evidence whatsoever tending to reduce the crime from murder to manslaughter.

If there is any evidence from which it could be inferred, the lesser rather than the greater, then the defendant should -- then the Court should charge the lesser offense.

Based upon the evidence presented here and primarily based upon the testimony of the defendant himself, I think he's established testimony and facts that can be reasonably inferred from that testimony and this jury could find that he did act in sudden heat of passion based upon what was a sufficient legal provocation.

That being the case, then a voluntary manslaughter instruction would be appropriate; and therefore I will be charging the lesser included offense of voluntary manslaughter in addition to the greater offense of murder and in addition to the defense of self-defense.

All right. Court is in recess until 1:15.

(Whereupon, a recess was taken.)

THE COURT: All right. Are we ready for the jury?

MR. BULSA: Yes, sir.

MR. VIETH: Yes, sir, Your Honor.

THE COURT: Mr. Abusaft?

MR. ABUSAFT: Yes, Your Honor.

THE COURT: All right. Bring them in.

(The following takes place in the presence of the jury.)

THE COURT: Good afternoon. As I promised, we're now going to conclude with the final summations accomplished by the lawyers, after which I'll instruct you on the law, and then you can begin with your deliberations.

The order of the final summations, the state goes forward first, followed by Mr. Vieth, followed by Mr. Abusaft, and then the state is permitted to make a brief reply argument.

MR. ABUSAFT: Your Honor, may we approach just for a second? I'm sorry.

(Bench conference held off the record in the presence of the jury but out of the hearing of the jury.)

THE COURT: Mr. Bulsa.

MR. BULSA: Okay. Good afternoon, ladies and gentlemen.

As my cocounsel told you at the beginning of this case, we're here because Dalton Moore, an 18-year-old young man, was shot at the Timken Center in the community of Cowpens on May the 5th of 2017.

We're here because he died as a result of that gunshot wound; we're here because a man was seen fleeing from the area where he was shot; we're here because a man drove him

away from that area at a high rate of speed.

Ladies and gentlemen, the key element of this case is the relationship of these two men. We've heard that they're friends, known each other a while, and we know that at least one of them had some animosity towards Dalton Moore. It's not important the extent of that. We just know there was some bad blood for some reason.

And we know that this man knew that Dalton Moore was in the area. We heard testimony that he yelled something out the window. There's some dispute as to what exactly that was, but he clearly saw Dalton Moore and yelled at him. And he was trying to jump out of a moving vehicle presumably to get at Dalton. And we know that he got into a vehicle driven by Mr. Ruttle in that same area.

So both men are aware that Dalton is there. We don't know if Dalton knew they were there, do we? Because he's dead. We can infer that he probably did.

But what was Dalton doing when he saw these men?

MR. ABUSAFT: Objection, Your Honor. Can we bring something up out of the presence of the jury?

THE COURT: Overruled. I'll let you tell me up here if you'd like.

MR. BULSA: This will probably happen a lot, ladies and gentlemen.

(Bench conference held off the record in the presence

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

MR. BULSA: That's enough of that. I'll sit here and wait on them to decide.

(Pause.)

THE COURT: You may proceed.

MR. BULSA: Thank you, Your Honor.

We know that they both knew Dalton was there. And what was Dalton doing? His friends saw him walking down the sidewalk towards his house. He lived not probably less than half a mile away. I think the testimony was less than a mile away. All he had to do was go down a couple more streets and cut over to the left. Dalton was minding his own business walking down the sidewalk.

But we have a defendant that wants you to believe that Dalton waved him down and he didn't stop, he kept driving, and then he decided to turn around.

Did he turn around because of such a wave or did he turn around because he saw this man jumping out of a truck? We know Mr. McCallister was -- remember when he testified? He said he was looking back. And his wife actually said she looked in the rearview mirror and she could see him coming out of the truck. It's easy to infer that the defendant saw just the same thing, that the defendant Ruttle saw just the same thing.

But we have a dead Dalton Moore and nobody there to

tell us what happened. So the police start their investigation based on 9-1-1 calls from the neighbors. The neighbors are important, because what do they do? They run over and give assistance, what assistance they can.

They didn't -- just don't have anything to do with it. They tried to help him. They told the police what they saw, they heard. And the police took that information and put out information to other officers to try to locate the suspects.

And I don't want to necessarily take you through every single piece of evidence. Hopefully, it was clear to you that the initial thing we were putting out to you was who did this, who was the guy that shot Dalton Moore.

I know Mr. Vieth told you in his opening statement they weren't contesting that, but it's still the jobs, job, of the state to prove the identity of the person involved. That's why we went through those steps. But, more importantly, it was to show that that person had a consciousness of guilt knowing he had committed a crime to try to avoid capture and that his friend knew and assisted him in doing that. That's why we went through all of those steps.

Okay. If Ms. Brewster had not walked out and saw him in his lime green jacket -- it was almost like a -- a lime green hoody -- it was almost like a calling card -- drawing

her eyes to it -- yet if she hadn't done that he might have gotten away with it.

The police checked the cameras. You saw the Cowpens Middle School camera. It showed the activity from a distance if you could see it. You'll have it in the jury room if you want to look at it again. It doesn't identify anybody. It just shows Dalton walking and the guy jumping out of the truck and get into a car. That's, of course, what Hunter Sizemore said happened.

Timken Center. They've got a lot of cameras. They're all inside, not pointing out in the parking lot. So there's no evidence who did this except -- and I called into my cross-examination of Mr. Ruttle this bullet. This bullet would have led to the investigation of Mr. Ruttle because it had his D.N.A. on it. Okay. That's a key.

So I submit to you I'm sure you understand who committed this crime, who committed this shooting.

Now we go to what happened. The defense wants you to believe that this was self-defense. Who do you have to hear -- who do you have to hear? You've got one side of the story. Can't hide from that. Hope you don't go back in the jury room and say, well, that's the only side we have got to hear, how can we decide what really happened. I'm going to help you understand that.

Number one, you look at what Dalton was doing, minding

his own business, just going home. I suggest to you that he went into that parking lot to avoid some kind of confrontation, to get away from the man that was hanging out the door yelling at him.

Remember when Mr. Ruttle testified? When he turned around and drove back he said he was going to go find him? He didn't even see Dalton in the parking lot. Was that because Dalton was hiding and didn't want to be seen?

If Dalton really waved him down and wanted to talk to him don't you think he would have stayed at the sidewalk and say, hey, come in here and let's talk? No. He was trying to get away.

You look at the items that were strewn about on the ground. They did touch D.N.A. and all trying to find out who touched this and who these things might belong to.

One of the things we were concerned with was the cloth, because if you remember the picture of the neighbors helping didn't show a black cloth. I said what has happened, how in the world did that get there.

Well, we learned Ms. Brewster took it over there when she ran over to try to give that aid. So we know that was hers.

We're all presuming that the No. 7 and No. 6 lighter and this knife were Dalton's. D.N.A. doesn't show either one of those. They tried D.N.A. on the handle; they tried

fingerprints on the knife. It doesn't show.

We're presuming that because this man said it was his, says it was Dalton's, and this is what he pulled on him. It's in the area. Take it for what it is.

But we have the money that was blown across the parking lot. All of that stuff suggests that Dalton was the one that was reacting quickly trying to get something, if the knife was his, trying to defend his own self.

So you ask what the evidence shows. If he would have calmly pulled his knife and was holding it down in his back, how in the world did everything else get out of his pockets? Remember I asked the coroner. He had nothing in his pockets. He just had jewelry on. That's all he had.

Then we have the actual wound itself. The defense tried to get Dr. Wren to say this and that, and maybe could have charged at him. Use your common sense. Is he going to charge at him like this? The wound was under his arm in an upward angle back towards his back. That is consistent with trying to get away. That's the most telling piece of evidence, I submit to you, ladies and gentlemen. Dalton Moore was not attacking this man when he was shot. He was not.

You heard from him about this Easter incident. Whether it was true or not, whether part of it was true or not, his description is, is that Dalton was afraid when he

saw a weapon, when he saw a pistol.

Ruttle says Calderon pulled it out. What was Dalton's response? He turned and ran. I suggest to you that that's what he was doing on this occasion. He might have pulled it to try to defend himself. He turned around and run when he realized he was shooting.

We know that at least three shots were attempted to be fired when the man leaves the scene, gets into the car that -- wherever it was parked. We know that it was on Foster Street and rolling backwards, someone in control of that car and Mr. Ruttle got into it.

We know that Mr. Calderon was the one behind the wheel, and we know that that car sped down Marion Court, realized it was a dead-end and turned around and sped back away from the Timken Center, because we have eye witnesses to that, the Taylors. Whether they stopped at Foster Street and they switched people, I don't know that it happened. It doesn't really matter that it happened, because Mr. Calderon drove him away.

I suggest to you that there's a high probability that if that did happen, they probably ripped the plastic off of the window when they were doing it because they were trying to hide the identity of the car.

Then what do they do? The police followed up with acquaintances and learned that he went to Rosecrest. The

police talked to Brianna. We didn't call her, because you saw how she treated us. She's the baby's mother of this. We left her alone. They called her.

She didn't want to admit what she wrote in her statement, but she says he wasn't wearing the lime green jacket. He'd already started changing his identity, removing something that could put him at the scene.

She says he had a bag when he came in. Probably had the jacket, probably had the shoes, probably had the gun, probably had the trash bag. And he only stayed in that living room. He did not go anywhere else. Stayed for a few minutes, said his good-byes to her, gave her some money and left with the bag. That is nowhere near consistent what the defendant testified to.

This is his own baby's mother. I'm not going to call her his girlfriend because he was seeing Marie Calderon on the side.

What did he do? He went. He went and he -- I guess he was over there looking for his baby, because his baby was living at that house. I don't know why he went there. But he sees Brianna, and then at some point he snapchats Maria. It's important. What does he tell her? I shot Dalton. Did you kill him? Just took care of business.

What is that piece of telling evidence? By his own mouth to his own girlfriend, I just took care of business.

That's not self-defense.

I submit to you he went up there with whatever intention. He went up there illegally armed with a firearm. When he stepped out of that vehicle and put that gun in his waist, if it weren't even in his waist. He might have had it in his hand. He's guilty of unlawful possession of a pistol. There are reasons for that. There are reasons for concealed weapons laws. You can't just go walking around with a gun.

So he went up the hill looking for Dalton. Whether he was put up to it or not, we don't know. We don't have clear evidence of that. That's why Mr. Calderon is not charged with principal in this crime, because there's no clear evidence of it. But there is certainly clear evidence that he drove him away and he stayed with him continuously until he was caught with him.

It's certainly reasonable to believe based on their relationship that they were conspiring and talking about how they can get away with this, what they needed to get rid of. Might have even been talking about what kind of T.V. shows they'd watched to get some ideas from. Mr. Calderon is guilty as an accessory after the fact.

So he calls Maria, and then they continue down the street. He says he's going to go see, try to find his mother. I thought he was testifying that he wanted to see

his baby and he thought his mama had the baby, but she testified that she didn't have the baby. I don't know where all of that's going.

But he said he was going to go to the police and tell them what happened. What did he tell them? I wasn't on Foster Street, another piece of telling evidence by his own mouth. Not that I had to shoot him, I was afraid for my life, I wasn't even around. Probably didn't think the police could hook him with it because he gotten rid of everything.

Knew the neighbor didn't get a good look at his face. He saw her, so he said, oh, I've been seen, I better get rid of this stuff that helps identify me. So he did. He tells the police I wasn't even there.

Now he wants to come into court and say that Dalton did all of this, Dalton's charged with this.

The judge will charge you on the law, the law of murder. It's an unlawful killing of a human being with malice aforethought. The judge will define the elements of that and define the legal terms malice and the legal terms of aforethought.

I submit to you that based on these circumstances and the shooting and the number of shots that you can infer malice. Malice is basically an evil mind and heart bent on mischief.

If you carry a gun somewhere to hurt somebody, I submit you're going there with malice. Aforethought means that malice existed at the time you pulled the trigger. Not premeditation like Mr. Vieth told you in his opening statement. He said it wasn't a premeditated crime. That's not the -- that's not an element that the state -- that's not something the state has to prove. So you take the law that the judge gives you. That's what you swore an oath to do. This is a serious oath, a serious matter.

So it just had to exist when he pulled the trigger.

Now, the judge will also charge you on what's called a lesser included offense of murder. If you believe -- and this is a big if -- if you believe the defendant Ruttle's version of this that he was truly being attacked by Dalton Moore, that Dalton provoked his own death, caused himself to be shot by his own actions, that act put him in fear, then you can find him guilty of merely voluntary manslaughter. The judge will explain the differences to you.

The judge will go over the elements of self-defense. This gets confusing sometimes to juries. In order for self-defense to excuse a killing four things have to exist, all four. If just one of those don't exist, then self-defense cannot be used as an excuse. You cannot find him not-guilty on self-defense.

First of those is that he was without fault, was that Mr. Ruttle was without fault in bringing on this difficulty.

He stopped his car; he got out of his car with a gun; he went up the hill to confront Dalton. Was he without fault? I submit to you that he caused the incident. He is the direct cause of this incident.

His claim that he was afraid Dalton might come after him, Dalton didn't even know him, it sounds like. He only associated him with Lorenzo. His beef was with Lorenzo. What's he got -- what's Dalton got to do with Mr. Ruttle?

He thinks Mr. Moore is going to chase his car down again with another knife, if that's what he was doing. I submit to you that's not what happened.

You have got to look at the truthfulness of these people. Are they believable? Is it credible? Use your common sense.

Somebody went over a lot of those points with him, discussed, talking about T.V. shows. This is crazy.

The second element that must exist is that he either was in danger or believed to be, himself to be in danger of great bodily injury or death. Did he believe Mr. Moore was really coming at him with a knife? I submit to you that's not what happened. Mr. Moore was running away from him.

The third element that must exist is that a reasonable

person in that same set of circumstance would have the same type of fear. It's called a reasonable -- he could have been misinterpreted representing things that a reasonable person such as a juror might say that would have put me in fear.

And, lastly, the thing that must exist is that there was no other probable way to avoid this danger, meaning he had a duty to retreat. He was in a public place, in a neighborhood armed with a pistol.

He says -- you saw the picture. He wants you to believe that Dalton was charging at him and when he was at No. 4 is when he actually got a round off that struck him, because that's where Dalton fell. It's some distance away from where the shells were back in the corner of the parking lot.

He wants you to believe that he couldn't have just turned around and ran back down the hill to his car. He clearly could have merely just left the area if Dalton was acting in that fashion.

I submit to you self-defense does not exist. If anybody was acting in self-defense, it was Dalton Moore.

I've talked to you a while. I'm about to finish.

Now, we just had the anniversary of 9-1-1 just this week while y'all were in here. I don't know if y'all thought about it, what happened 18 years ago, actually 17,

2011. To me it reminds us of how we came together as a country and we helped each other.

When I was listening to the neighbors testify, Vietnam vet, Mr. McCallister, Mr. Brewster holding the young man's head in his arms -- in her arms -- it's an example of how we come together as a community. They didn't stay with hands off, did want to -- not get involved. They did their duty. They told the police what they saw and wanted to see justice done for Dalton Moore.

Reminds me of how we are a society of law and order, ladies and gentlemen. We're not a society that just takes care of business like he told Maria. Thank you.

(Pause.)

MR. ABUSAFT: May it please the Court.

THE COURT: Mr. Abusaft.

MR. ABUSAFT: Solicitors, ladies and gentlemen of the jury, three days ago I stood before you. I talked about black Friday, talked about buy one, get one. I talked about getting something for nothing.

Three days later what I said remains true. Friday, May 5th of 2017, was a black Friday. It wasn't the type of Friday that I like, but it was a black Friday. It was a tragic day, one way or another. Either Dalton Moore tried to attack Devin Ruttle, or Devin Ruttle tried to attack Dalton Moore, two young people that should have been doing

something a little better.

I talked about buy one, get one free. Three days later it remains true. Now, I'm a little bit more active than Mr. Vieth, but the truth is that the evidence presented, whether it's relevant to the ultimate -- whether you find it relevant to the ultimate decision or not, the testimony given was largely and mostly about Devin Ruttle. Lorenzo is just a tag-along. There's very little information presented about him, very little evidence.

I talked about getting something for nothing. What does this case come down to? The state is claiming that Lorenzo drove the car for 30 seconds to a minute.

If I gave him the benefit of the doubt and doubled it, two minutes, and that makes him an accessory to murder.

Now, ladies and gentlemen, we're going to talk about that evidence. We're going to talk about the lack of that evidence in just a second.

But first I want to talk about those principles of law that are so vitally important. The reason why they're so vitally important in this case is more than most. They're important because of what you just saw from Mr. Bulsa. It's a tough case for him because he's got to get up there and tell you. He's got to fill in the stories.

Now, Mr. Bulsa will admit. Now, he's a passionate man. He's a decent story-teller, but he wasn't there. And

since they are missing so much evidence in this case, he's got to supply you with what he thinks happened.

So what does he tell you? Well, I think Dalton was running away from it. Not a lick of evidence came in this case about -- from this stand -- not one testimony of anybody seeing Dalton running away. But he needs to fill in the story because they don't have that evidence. So he tells you what he thinks.

So the reason why we have these principles, because in cases where they can't supply evidence, we have rules for you to make the decision. So he's -- both of these young men are presumed innocent, presumed.

So in the absence of the proper evidence, you send them home to their families. That's the rules of what we're doing here.

So when Mr. Bulsa supplies his story and tells you, well, you ought to think, you may be sitting, in your head saying, well, it is possible. But the rules that we live by in this room, these hallowed halls, mean that you have to presume him innocent. And they have to take the innocence away. They have to rip it from him.

And so when he tells you, oh, well, you could think this, no, no, no. Did they give you evidence to be able to find that beyond a reasonable doubt? Was Dalton running away beyond a reasonable doubt? Have they presented you

that evidence? Of course not. They haven't presented you anything on that issue.

Mr. Bulsa wants you to -- Mr. Bulsa hopes, because he's a nice guy, he's standing up in a suit, he's a figure of authority that you will accept what he says as what happened. He didn't present you evidence. He's not living by the rules.

The defendant is presumed to be innocent unless and until the state has established guilt. The burden of proof, same thing. Goes hand in hand. I'm not going to belabor every point. But in the absence of bringing things in, again, you send those young men home.

We -- and I said this like I said earlier -- humbly say this to you. We have to present you nothing. Any person who sits in that seat and is judged by 12 of their peers has to present nothing.

Every time the solicitor asks you to make a conclusion, just because he says so, you remember he's got to bring everything.

Now, my client did not testify in this case. That is something you cannot consider at all, something you can't talk about. It's something that you can't hold against him in his heart. It's one of the few absolute rights we have in this country. Most rights that we have in this country are subject to some type of limitation. This is the only

one that is not. Well, I'm sure I could find something else. But it's one of the few.

Absolute right not to testify, because, again, he has to bring you nothing and they must bring you everything.

Reasonable doubt, a hesitation, a reasonable hesitation that after -- at the end of this case after deliberating you have a reasonable hesitation, this could have -- reasonably this could have happened a different way, then you have to send these young men home.

Levels of proof. Remember how far up the ladder, up the stair step you have to get to reasonable doubt. A police officer way down here can put his hands on your body, search you, invade your bodily integrity, way down here. He can put you in jail for the night, make an arrest right here. You can take money out of somebody's pocket for injuring you right here. You can even take away somebody's children here. But you must get way up here before you can take someone's freedom. It's not just their right. That's everyone's right in this country.

Another version of the same thing. You saw this earlier. Even once guilt is highly likely, you haven't made it. You haven't made it to the place where you can take somebody, you can take another human being and put them in a cage. You must be here, beyond a reasonable doubt.

Now, this is vitally important. Lorenzo Calderon is charged with accessory after the fact.

Mr. Bulsa has played an interesting game most likely because of his lack of evidence. He has tried to make it seem like. He has tried to make you draw conclusions that somehow Lorenzo knew what was going on beforehand. But that's not what he's charged with. I want to be clear. And if Mr. Bulsa disagrees, then he ought to get up here and tell you when he gets his second chance to speak.

The state is not attempting to establish that Lorenzo was some kind of getaway driver or that Lorenzo put Devin up to anything or that he knew what was going to happen. That is not what he's charged with, and the state is not moving forth on those grounds.

So when you're considering this case you have to start at the crime and go forward -- excuse me -- if you find that it was a crime. From the incident forward to determine the guilt or innocence of Lorenzo Calderon.

This is not one of those cases where somebody is doing something, they go rob a bank and they have a getaway driver. That is a different case. That is not before you.

The state -- when Mr. Bulsa -- he kind of snuck it in there for a second. He said he's not a principal. He's not -- he didn't know before the fact. He said it real quick, and then he moved on.

That's exactly what that means. It means that Lorenzo didn't know, and they're not trying to proceed on the theory that Lorenzo knew what was going to happen and then helped afterwards.

That is not what that case is about. This case is about whether Lorenzo knew after a crime happened, if a crime happened, and then tried to aid. It starts with the word after. Please, please do not get that mistaken.

A felony had to be committed. That's everything about Mr. Ruttle. All right. Felony had to be committed. If you find that Mr. Ruttle was acting in self-defense, then Lorenzo didn't do anything wrong. You have to send him home. Lorenzo knew -- had to then know that that felony was committed. He had to know. He himself had to know. Even if it happened, he had to have knowledge of it after the fact.

He had to then give aid. He had to do something to help him, and the help, he had to intend for that help to get Mr. Ruttle away from law enforcement.

These are the elements of accessory after the fact. All of them must be proved beyond a reasonable doubt, each and every one of these elements. So let's talk about those elements.

Let's talk about the evidence finally. A felony was committed. Was Devin Ruttle defending himself? Let's talk

about some of that.

Note there is no testimony that Devin himself had a beef with Dalton. But the state wants you to think that he went over there and murdered him. Doesn't make a lot of sense.

The state suddenly wants you to believe that that knife wasn't Mr. Moore's. So now they want you to believe that Devin had a gun and he pulled out a knife. Doesn't make a lot of sense.

More to the point, they don't have an ounce of evidence. They don't have an ounce of evidence about what happened in that parking love. They don't have anything. Not a video, not a witness, nothing. They have nothing to contradict what Mr. Ruttle said.

That's why Mr. Bulsa is up here supplying his thoughts, because they don't have an ounce of evidence. In the absence of evidence those young men go home. That's partly why it's so important that you see this big gun, right? That gun wasn't -- it wasn't in the parking lot. Didn't know. That gun -- there's no -- there's been no testimony, there's been no accusation that gun was used, but he needs to paint -- the state needs to paint Devin as a -- as nasty. They need to make him look bad to you.

That's why Mr. Bulsa wants to talk about that he had a girlfriend and a baby mama. Right? There's no other point

to talk about that. He needs Devin to be not pleasant to you, because he doesn't have the evidence to supply you that Devin wasn't acting in self-defense.

There's a knife on the ground. It's completely reasonable that what Devin said is what happened. Do I know for sure it did happen that way? No. But that's not the point, because the defense has to prove nothing. Now, I'll let Devin's attorney deal with Devin.

Did Lorenzo know a felony was committed? No matter what actually did happen, did he know. The only testimony from this stand is that he couldn't -- he couldn't see the incident from the parking lot. He could not see it.

When Devin got back, when Devin got back to that car, he said I shot him in self-defense. He stabbed me. He was coming at me. What did Devin tell you? When he came back to the car he was upset, he was scared, he was frightened.

Lorenzo could tell something was wrong, and then Devin told him that he had been attacked. What would have gave Lorenzo any other indication that that's what happened? What would he have known from the circumstances, especially, since the state is not claiming that he knew some crime was about to be committed before he came there. So what would from those circumstances, your friend leaves the car, you hear a gunshot, he comes back to the car upset and says he just got attacked, what would have told him if

a felony was committed that that -- that it actually had? What would have told him to disbelieve Devin at that point?

Right now gunshots go off. Anywhere around reasonable people, people get away from that, whether you're sitting in the car, whether you're in a crowd. It is your intention to get away. And if you've got some people that you came with or that you're friends with, you try -- you'll try to grab them, which y'all are hightailing it out of there. You find out what happened later.

He is in the car. How did he -- to him, how did he know Dalton didn't shoot? How did he know that somehow Dalton didn't get the drop on Devin and start shooting? How did he know there's not somebody out there that got the drop somehow on both of them? He's just trying to get out of there. What could he see? Couldn't see the scene. Didn't know. Had to take somebody else's word for it.

Now, I think this is vital and clear. After all of these words are said -- I know you're getting tired of hearing from us even now -- you're going to go in the back, 12 grown men and women, and you are going to deliberate.

You're going to have all of this. You're going to have your memories from all of this testimony. And I bet you it's going to take you hours to come back with a decision.

You're going to talk back and forth. You're going to

use your common sense, your life experience. You're going to have a give-and-take; you're going to have a back-and-forth. And then you're going to come up with decision about what happened between Devin Ruttle and Dalton Moore.

How long did that 17-year-old boy have to figure out what happened in that parking lot? Split seconds. How many people did he have with him to help make that decision about what happened? Nobody. He didn't get a deliberation. He had to act right then, and his friend told him I been attacked, let's get outta here.

Throughout the rest of that night he would continue to hear that Dalton attacked Devin. That's what he heard. You may choose to believe that, or disbelieve, but that's what he heard the entire night. He heard it at Devin's girlfriend's house; he heard it when Devin called his mama. Over and over again I am being -- I have been attacked, I have been attacked. What would have made him believe anything different?

Now, let's talk about the heart of an accessory. Did he give any aid? Now, I think it's unclear. I think it's unclear from the testimony what happened in that, what kind of driving happened, did he go down that cul-de-sac or not.

Let's be clear what a cul-de-sac is. You drive down a cul-de-sac, that means you've got to turn around and come

back to point A. Right. You didn't create any distance from -- you didn't move anywhere. If I send you down a cul-de-sac and come back, you're right back in the place that you start.

Now, the only testimony about the length of time that he was in the car was Devin Ruttle. Thirty seconds to a minute.

Now, I'm sure the state is going to let you believe, is going to say, oh, they're friends. Well, they are. They are friends. But guess what. Devin could have not put him in the car. If Devin didn't put Lorenzo -- if Devin wasn't testifying that Lorenzo was the driver for this short period of time, the only people they would have to say that he was the driver at all was two people who couldn't tell the difference -- who claimed that it was somebody, was black when they clearly were not.

But Devin's just saying. This is what he's just saying. This is what happened. He was in the car for a couple of -- he was driving. He drove for a couple of seconds, and then I asked the drive.

They're going to ask you to disbelieve part of the story but believe the other part. Now, why would he put him in the car? Why would he put his friend in the car at all -- at all if he was going to lie about this? He's the only person really putting him in the driver's seat. And

what did he say? Thirty seconds to a minute.

So Lorenzo finds out from Devin that he had been attacked, and then 30 seconds to a minute later he's not even driving any more.

And this is the whole case for them. This is the whole case for an accessory. This is what they say the aid is, 30 seconds to a minute, they can get an accessory to a murder? Sounds like something for nothing.

Lead Investigator Owens. What did he say? Under my -- under my examination he said he had talked to all of the witnesses, saw all of the physical evidence, and he had nothing, nothing, nothing for Lorenzo.

Now, Mr. Bulsa -- and what we saw was a common theme -- was then -- came back and said, well, there was this other thing, right? And then of course he said, well, yeah, there was thing, there was this statement. But he knew about that statement before. He knew everything in the case. And he testified we really didn't have anything on him as far as an accessory.

That's their witness. That's their lead investigator. He's not new to the courtroom. I couldn't push him where he -- that's just the truth. His investigation led to basically him saying he was there. If Lorenzo was there, he was in the car while Devin did things.

I want to talk a little bit about guns. Now, there

was some testimony about Lorenzo supposedly giving -- giving Devin a firearm.

I don't think -- I think under the questioning -- I think -- I don't know why is Devin saying this. It doesn't seem plausible to me. With the bullet having Devin's D.N.A. on it, it doesn't seem plausible to me with the multiple guns in the car. No need for Lorenzo to give anybody a gun. I don't know if this is just confusion from -- this just doesn't seem plausible to me. But it's also irrelevant to Lorenzo because, again, that's before, not after. That's before the crime.

Maybe the state one day will choose to charge Lorenzo as accessory before the fact. That's for another jury, another day to see if the state can make that charge. They have chosen today to not proceed under that theory.

But I also want to talk something a little bit about guns, period. This is South Carolina. It's not Massachusetts, not New York. Guns don't have -- having a gun doesn't make you a bad person.

There are more N.R.A. chapters in this -- in this state than there are counties. Doesn't make you bad. These are not the type of boys who could not own guns. Let's be clear about that. These are not somebody that has a conviction and a Court has said, sir, you no longer can own a gun.