

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

BRIAN FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000724

APPENDIX

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

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Brian Cornelius Foster,) 2018-GS-42-2086-2090
6 Defendant.) April 8 - 11, 2019
7) Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13

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23 Circuit Court Reporter
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1 (Proceedings April 8, 2019)

2 THE COURT: Are there any matters that need to be
3 addressed regarding jury selection before they come in?

4 MR. SMITH: You excused 82. No, Your Honor.

5 MS. JONES: None from the defense, Your Honor.

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

8 we'll be at ease while the jury is coming around.

9 (Whereupon, a recess was taken.)

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

12 THE COURT: Ladies and gentlemen, we are ready to
13 begin with jury selection in the first case that's going to
14 require some of your participation.

15 The title of that case is the State vs. Brian
16 Cornelius Foster. Mr. Foster has been charged with nine
17 separate and distinct criminal offenses, although they are
18 alleged to have arisen out of one event or a course of
19 events which the state alleges occurred back on February
20 the 18th of 2018. But they're separate and distinct
21 charges for which a jury will be called upon to consider
22 the evidence relating to each separately and render
23 separate verdicts or decisions as to the separate charges.
24 But they're all contained in these five indictments.

25 Indictment 2018-2086 charges Mr. Foster with having

14 Jury qualification

1 committed the crime of murder.

2 The state alleges on February the 18th of 2018
3 Mr. Foster did here in Spartanburg County with malice
4 aforethought kill one Eric Morris by shooting him with a
5 firearm and that he died as a proximate result of that
6 gunshot wound.

7 Count two of the indictment alleges that Mr. Foster
8 did unlawfully possess a firearm during the commission of a
9 violent crime, that violent crime being the murder alleged
10 in count one.

11 Indictment 2018-2087 charges with Mr. Foster with the
12 crimes of attempted murder and possession of a firearm
13 during the commission of a violent crime, the state
14 alleging again on February the 18th of 2018 Mr. Foster did
15 with malice aforethought attempt to kill Thomas Koepke by
16 shooting him with the intent to kill him and that he
17 possessed a firearm during the commission of that violent
18 crime of attempted murder.

19 Indictment 2018-2088 charges Mr. Foster with attempted
20 murder and possession of a firearm during the commission of
21 that crime. Again, the state alleging on February the
22 18th of 2018 Mr. Foster did with malice aforethought
23 attempt to kill one Darryl Lewis by shooting at Mr. Lewis
24 and that he possessed a firearm during the commission of
25 that attempted crime, attempted murder charge.

1 Indictment 2018-2089 charges Mr. Foster also with
2 attempted murder and possession of a firearm during the
3 commission of a violent crime, the state alleging again on
4 February the 18th of 2018 Mr. Foster did with malice
5 aforethought attempt to kill Joel Campbell by shooting at
6 Mr. Campbell and that he possessed a firearm during the
7 commission of that violent crime of attempted murder.

8 And the remaining indictment charges Mr. Foster with
9 the unlawful possession of a firearm or ammunition, the
10 state alleging that he did unlawfully possess a handgun in
11 violation of a particular code section on February the
12 18th of 2018.

13 Now, as to each of those charges and as to the
14 allegations setting forth those charges that are contained
15 in these indictments Mr. Foster has entered a plea of not
16 guilty.

17 A plea of not guilty places upon the state the burden
18 of proving the allegations that they have made by way of
19 each of these indictments, the burden of proving each of
20 the essential elements of the crimes that the state has
21 alleged against Mr. Foster; and therefore the burden is
22 upon the state to establish his guilt to the satisfaction
23 of 12 jurors beyond a reasonable doubt before any verdict
24 of guilty could be returned as to any of the separate
25 charges contained in these indictments. And therefore

16 Jury qualification

1 we're going to be selecting 12 of you to serve as the
2 primary jurors. There will be two additional jurors
3 selected to serve as alternate jurors.

4 By of your selection the jury will simply be called
5 upon to listen to testimony elicited during the course of
6 the trial, to consider other evidence introduced during the
7 course of the trial.

8 At the trial's conclusion the jury is going to be
9 called upon to decide the facts as they relate to the
10 allegations made against Mr. Foster. Upon deciding the
11 facts the jury will apply the law that I will provide you
12 that relates to each of the separate charges, and then the
13 jury will determine whether or not Mr. Foster's guilt as to
14 a charge has been proven beyond a reasonable doubt.

15 If it has the verdict would be guilty as to that
16 charge. And if it has not, then the verdict would be not
17 guilty as to that charge.

18 Now, before we begin with jury selection I've got some
19 folks to introduce to you. That includes the defendant,
20 the persons purported to be the victims, as well as perhaps
21 the victim's family members.

22 I'll also recite a list of those persons who have been
23 identified as potential witnesses that might be called
24 during the trial. I'll also introduce the lawyers to you.
25 The purpose of the introduction of all of the participants

1 in this case is to find out if any juror has any connection
2 with anybody involved in the case. In other words, are you
3 related by blood or by marriage to any person, do you
4 attend church with any person, do you go to school with any
5 person, are you employed at the same place as any person,
6 have you met any of these folks, do you have any connection
7 or contact with them whatsoever is.

8 If you do have any connection of any kind, then you'll
9 be asked to tell me what that connection is, and then I
10 will inquire as to whether or not that connection would
11 have any bearing in your decision. In other words, would
12 it affect your judgment in any way.

13 After I make those introductions, then I'll have some
14 additional questions to ask you in order to determine if
15 you have any reason whatsoever why you think you could be
16 not be fair and impartial if you were selected as a juror
17 in this particular case.

18 Now, this particular event that the state alleges
19 occurred back on February the 18th of 2018 is alleged to
20 have occurred at 121 Old Canaan Road here in Spartanburg
21 County. That's located out off Highway 295 in Spartanburg
22 County.

23 And as I've read the allegations to you, Mr. Foster is
24 accused of having shot and killed Mr. Morris, and he shot
25 at Mr. Campbell and Mr. Lewis and Mr. Koepke, striking

18 Jury qualification

1 Mr. Koepke.

2 Does any juror think you might have heard, seen or
3 read something that might relate to this particular case?
4 In other words, do you have any information about this case
5 from any source whatsoever? If so, please stand.

6 All right. I have one. Now, I'm going to ask you
7 some information. Please be specific about responding to
8 my question. Don't provide additional information other
9 than what I'm looking for.

10 Your juror number is what, sir?

11 JUROR NO. 149: 149.

12 THE COURT: 149. And you have heard something, seen
13 something or read something about the case.

14 JUROR NO. 149: Yes, sir.

15 THE COURT: Which is it?

16 JUROR NO. 149: I mostly heard.

17 THE COURT: Heard.

18 JUROR NO. 149: Yes, sir.

19 THE COURT: And from what source did you hear
20 information?

21 JUROR NO. 149: His brother-in-law, Sean Lowe. We
22 work together.

23 THE COURT: Okay. So you know Mr. Lowe who is a
24 brother-in-law of which person?

25 JUROR NO. 149: Mr. Morris. I also know his father.

1 THE COURT: Mr. Morris. And what?

2 JUROR NO. 149: I always work with his father.

3 THE COURT: Okay. So you have a connection with some
4 of the folks in the case and you've heard information about
5 the case.

6 JUROR NO. 149: Yes, sir.

7 THE COURT: Is there anything about what you've heard
8 or anything about that connection that would have any
9 impact upon your decision?

10 JUROR NO. 149: Probably so.

11 THE COURT: All right. Juror 149 is going to be
12 excused based upon that information and that connection.

13 But don't leave yet. Just have a seat where you are.
14 But don't talk about anything you know with anybody else.
15 Anyone else?

16 (No response.)

17 THE COURT: All right. Now, Juror 149 has been
18 excused. So you won't have to answer any other further
19 questions, but I'm going to be asking some more.

20 In this case, as I've stated, the defendant is Brian
21 Cornelius Foster.

22 Mr. Foster, if you will, please stand and face the
23 jury panel.

24 (Whereupon, the Ms. Jones and the defendant stood.)

25 THE COURT: Standing next to Mr. Foster is Beverly

Jury qualification

1 Jones. She is an assistant public defender in the Seventh
2 Judicial Public Defender's Office. And she'll be
3 representing Mr. Foster during the trial of this case.

4 Thank you. Be seated.

5 Mr. Joel Campbell, if you will, please stand and face
6 the jury panel. Mr. Darryl Lewis, if you will, please
7 stand and face the jury panel. Mr. Thomas Koepke.

8 MR. SMITH: He's not here, Your Honor.

9 THE COURT: He's not present -- Thomas Koepke.

10 And who is -- what family member is here that's
11 related to Eric Morris?

12 MR. SMITH: The remaining four individuals here.

13 THE COURT: Okay. And if y'all will, please stand and
14 face the jury panel. And I'll start with the gentleman on
15 my right. That is on the aisle side. Tell us your name
16 please, sir.

17 SEAN LOWE: Sean Lowe.

18 THE COURT: All right. Next.

19 PRESSLEY LOWE: Pressley Lowe.

20 THE COURT: Next.

21 JOHN MORRIS: John Morris.

22 THE COURT: Next.

23 LINDA MORRIS: Linda Morris.

24 THE COURT: All right. Thank you. Each of you may be
25 seated.

1 Presenting the case on behalf of the state are Spenser
2 Smith and Candice Clark, and they are both assistant
3 circuit solicitors for the Seventh Judicial Circuit.

4 (Whereupon, Mr. Smith and Ms. Clark stood.)

5 THE COURT: Potential witnesses to be called during
6 the trial -- I'm going to recite an entire list. All of
7 these may not be called, but they are potential witnesses.
8 They have some information that might need to be presented.
9 So I'll list all of the potential witnesses. All of these
10 right now that I'm going to be calling out are employed or
11 formerly were employed as deputy sheriffs in the
12 Spartanburg County Sheriff's Department.

13 They include Christopher Nepper; Robert Cheeks;
14 Clifford Junkins; Jason Moore; Megan Rick; Coby Stepp;
15 Jason Lawson, now with the coroner's office; Sara Kruger,
16 now with the coroner's office; Sean Nix; Mark Gaddy;
17 William Gary; Brandon Letterman; Jon Guest; Ashley
18 Arrowood; Anthony Hawkins; Steve Henderson; Nathan Sorata;
19 Chris Terry; Travis Wood; Andrew Daniel; Sammy Rivera;
20 Andrew Lawson; John Schafer; Robert Rosenberg; and Mike
21 Jones.

22 In addition to those, potential witnesses include John
23 David Wren, pathologist, medical doctor; Joel Campbell
24 who's been introduced; Darryl Joe Lewis who's been
25 introduced; Thomas Koepke who's been introduced; Amber

22 Jury qualification

1 Powell. Who is introduced? No. Excuse me. Amber Powell;
2 Jim Moore; Kristina Johnson; Kalia Johnson; Timothy Guy;
3 Destinee Sawyer; Noah Weathers; James Hunter; Alysia
4 Garcia.

5 The remaining witnesses from this particular list are
6 employed by the state law enforcement division -- SLED.
7 They include Jasmine Ruiz-Yi; Donna Money; James Green;
8 Jennifer Nates.

9 And also we have someone from the clerk's office --
10 Gail Moffitt.

11 Are there any other potential witnesses to be called
12 on behalf of the state?

13 MR. SMITH: No, Your Honor.

14 THE COURT: The defendant?

15 MS. JONES: No, sir.

16 THE COURT: All right. That's everybody I'm going to
17 introduce. So they have been introduced.

18 In addition to those that have been introduced I also
19 need to know if any juror knows or has any connection with
20 any other person employed in the Seventh Judicial Circuit
21 Solicitor's Office, as well as the Seventh Judicial Circuit
22 Public Defender's Office.

23 So not only do you know those here, but do you know
24 anybody else that's employed in either of those offices?

25 All right. So if you have any connection with anybody

1 I've introduced or anybody else in those two offices, I
2 would ask that you please stand.

3 (No response.)

4 THE COURT: No response.

5 Is there any member of the jury panel who is connected
6 by blood or marriage to any type of law enforcement
7 officer, as well as whether or not you yourself have ever
8 been employed as any type of law enforcement officer. So
9 have you ever been employed as a law enforcement officer
10 and/or are you connected or related to anyone employed as a
11 law enforcement officer from any department whatsoever? If
12 so, please stand.

13 All right. I have two.

14 Yes, ma'am. Your name and number, please.

15 JUROR NO. 46: Brea Duval, No. 46.

16 THE COURT: Forty-six.

17 JUROR NO. 46: Yeah.

18 THE COURT: How does that question relate to you?

19 JUROR NO. 46: My cousin is a sheriff's deputy in
20 Orange County, Florida. I didn't know if that matters.

21 THE COURT: well, it doesn't matter to me at all.

22 JUROR NO. 46: Okay. well, you say --

23 THE COURT: But -- no, yeah. You're supposed to
24 answer the question. But what I need to find out from you
25 is would that have any affect upon your decision in the

24 Jury qualification

1 case or have any bearing in your decision.

2 JUROR NO. 46: I don't know. I'd have to, I guess --

3 THE COURT: Ma'am?

4 JUROR NO. 46: I mean, I don't know. I would have to
5 look at the facts. I don't know.

6 THE COURT: You don't know?

7 JUROR NO. 46: No. I mean, I'd have to look at the
8 facts of the case, I guess.

9 THE COURT: All right. Well, of course you do.
10 That's what all jurors are going to be required to do under
11 your obligation as a juror, to look at the facts of the
12 case, and the evidence, and decide the facts and apply the
13 law. But my question is, is that the fact that you happen
14 to be related or connected with a cousin who works as a
15 deputy sheriff in Orange County, Florida, is that going to
16 influence your decision in this case.

17 JUROR NO. 46: No, no.

18 THE COURT: Is that question or an answer?

19 JUROR NO. 46: No. I mean -- I mean no. I guess not.

20 THE COURT: You guess not?

21 JUROR NO. 46: No.

22 THE COURT: Well, are you reasonably certain it would
23 not?

24 JUROR NO. 46: Yes.

25 THE COURT: Okay. Thank you. You may be seated.

1 Yes, ma'am.

2 JUROR NO. 158: Carol Rogers, No. 158.

3 THE COURT: All right. How does that question relate
4 to you?

5 JUROR NO. 158: I was employed with the City of
6 Spartanburg 25 years ago as an officer for a short period
7 of time.

8 THE COURT: All right. And would that have any
9 bearing in your decision in this case if you were selected
10 as a juror?

11 JUROR NO. 158: No, sir.

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

14 Now, the next couple of questions is going to relate
15 to you or a family member, and I'm going to refer to an
16 immediate family member, and an immediate family member for
17 purposes of this question is defined as a parent, a spouse,
18 a child or a sibling -- a parent, spouse, a child or a
19 sibling.

20 I need to know if you or any members of your immediate
21 family as I just defined it have ever been the victim of
22 any type of crime that might be characterized or described
23 as a violent crime.

24 That would include murder, manslaughter, burglary,
25 armed robbery, attempted murder, criminal sexual conduct in

Jury qualification

1 any degree, domestic violence of a high and aggravated
2 nature, assault and battery of a high and aggravated nature
3 or any similar type of an offense that could be
4 characterized or described as a violent offense.

5 That would also include any crime that involved the
6 use of any type of weapon, firearm or otherwise.

7 So I need to know if you or a family member have ever
8 been the victim of such. I also need to know if you or a
9 family member, as I described it, have ever been accused of
10 having committed any of those offenses that I described or
11 anything similar to those.

12 So if you or a family member has ever been the victim
13 of or you or the family member has ever been accused of any
14 type of crime that might be characterized or described as a
15 violent crime. That includes any type of crime committed
16 with a deadly weapon, firearm or otherwise.

17 If so, please stand.

18 All right. I've got six. Do I have any more?

19 All right. I'm going to start to my right and work to
20 my left. And just listen to my questions before you
21 respond.

22 All right. Your name and number, please, ma'am.

23 JUROR NO. 78: Jasmine Houer, Juror 78.

24 THE COURT: Seventy-eight. And was it you or a family
25 member?

1 JUROR NO. 78: My brother.

2 THE COURT: It was your brother.

3 JUROR NO. 78: Yes.

4 THE COURT: And was he a victim or an accused?

5 JUROR NO. 78: Victim.

6 THE COURT: He was a victim. And what was the nature
7 of the crime? What kind of crime was it?

8 JUROR NO. 78: He was murdered.

9 THE COURT: He was murdered. And was that here in
10 Spartanburg or somewhere else?

11 JUROR NO. 78: Atlanta, Georgia.

12 THE COURT: Atlanta, Georgia. How long ago?

13 JUROR NO. 78: January of '17.

14 THE COURT: Okay. Now, is there anything about that
15 experience that you've had with a family member that would
16 have any bearing upon your decision in this case if you
17 were selected?

18 JUROR NO. 78: No. It would not.

19 THE COURT: You could put that aside and not allow it
20 to influence your decision?

21 JUROR NO. 78: Yes, sir.

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

24 All right. Next. Your name and number, please, sir.

25 JUROR NO. 187: Clayton Turner, 187.

1 THE COURT: 187. Was it you or a family member?

2 JUROR NO. 187: It was a family member.

3 THE COURT: What connection?

4 JUROR NO. 187: She's my mother.

5 THE COURT: All right. And was she the victim or an
6 accused?

7 JUROR NO. 187: She was the victim.

8 THE COURT: And let me say this too. If you don't
9 want to answer the question where you are, feel free to
10 come down here. Otherwise, I'll just let you answer it
11 from where you were.

12 And what was the nature of the crime?

13 JUROR NO. 187: She was robbed at gunpoint.

14 THE COURT: All right. And how long was that?

15 JUROR NO. 187: Probably about 25 or 30 years ago.

16 THE COURT: Was that here or somewhere else?

17 JUROR NO. 187: It was here in Spartanburg.

18 THE COURT: All right. And was someone charged?

19 JUROR NO. 187: As far as I know. I do not know.

20 THE COURT: Okay. Is there anything about that
21 experience that your family member's had that would affect
22 your judgment in this case?

23 JUROR NO. 187: No, sir.

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

25 Yes, ma'am.

1 JUROR NO. 36: Edith Culler, Juror No. 36.

2 THE COURT: You or a family member?

3 JUROR NO. 36: A family member.

4 THE COURT: What connection?

5 JUROR NO. 36: He was -- he was the accused.

6 THE COURT: But what connection was he with you?

7 JUROR NO. 36: Cousin.

8 THE COURT: Cousin. And he was accused of what?

9 JUROR NO. 36: Murder.

10 THE COURT: Okay. And was he convicted or not?

11 JUROR NO. 36: He was.

12 THE COURT: He was. Is there anything about -- was
13 that here or somewhere else?

14 JUROR NO. 36: Here.

15 THE COURT: Here. Is there anything about that
16 experience that would affect your judgment in this case?

17 JUROR NO. 36: No.

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

20 All right. Next, ma'am.

21 JUROR NO. 47: Jennifer Elliott, 47.

22 THE COURT: Forty-seven. Was it you or a family
23 member?

24 JUROR NO. 47: Family member.

25 THE COURT: What connection?

Jury qualification

1 JUROR NO. 47: Husband.

2 THE COURT: Was he a victim or accused?

3 JUROR NO. 47: Victim.

4 THE COURT: And what was the nature of the offense?

5 JUROR NO. 47: Murder.

6 THE COURT: And was someone charged?

7 JUROR NO. 47: No.

8 THE COURT: Okay. And was that here or somewhere
9 else?

10 JUROR NO. 47: Here.

11 THE COURT: How long ago?

12 JUROR NO. 47: Ten years ago.

13 THE COURT: Would that have any bearing in your
14 decision in this case if you were selected?

15 JUROR NO. 47: No.

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

18 Next.

19 JUROR NO. 106: Nicholas Mandella, Juror 106.

20 THE COURT: You or a family member?

21 JUROR NO. 106: Family member.

22 THE COURT: What connection?

23 JUROR NO. 106: My sister.

24 THE COURT: Victim or accused?

25 JUROR NO. 106: Victim.

1 THE COURT: What type of crime?

2 JUROR NO. 106: About three years ago her carport was
3 broken into, a couple of things taken, as well as her
4 firearm.

5 THE COURT: All right. Burglary and larceny. Is
6 there anything about that experience that would affect your
7 judgment in this case?

8 JUROR NO. 106: No, sir.

9 THE COURT: Thank you. Be seated.

10 Yes, sir.

11 JUROR NO. 27: Juror 27, Adrianus Claessens.

12 THE COURT: You or a family member?

13 JUROR NO. 27: Family members.

14 THE COURT: What connection?

15 JUROR NO. 27: One grandson picked up for -- for
16 murder. I don't know if he's accused yet. He's still
17 waiting for proceedings.

18 Another grandson has been picked up for attempted
19 murder.

20 THE COURT: Okay.

21 JUROR NO. 27: He's out. He's out on bail now. I
22 don't know what -- out of Pickens County. I don't know
23 what --

24 THE COURT: It's not here in Spartanburg?

25 JUROR NO. 27: Neither is here in Spartanburg.

Jury qualification

1 THE COURT: Neither is in Spartanburg.

2 JUROR NO. 27: Correct.

3 THE COURT: Okay. And is there anything -- but
4 they're both accused.

5 JUROR NO. 27: Yes.

6 THE COURT: All right. Is there anything about that
7 fact or that experience that would affect your judgment in
8 this case if you were selected?

9 JUROR NO. 27: I'm afraid it could, yes, sir.

10 THE COURT: All right. We'll excuse Juror No. 27 from
11 service in this case.

12 But don't leave yet.

13 Anyone else need to respond to that question?

14 (No response.)

15 THE COURT: Does any member of the jury panel belong
16 to, or do you contribute time or money to, any type of
17 organization that might be characterized as law enforcement
18 support or victims advocacy groups?

19 In other words -- or a description of some of those
20 might include Mothers Against Drunk Drivers, Citizens
21 Against Violent Crime, rape crisis, safe homes, fraternal
22 order of police, police benevolence society, honorary
23 sheriffs' association, troopers' association, any type of
24 those organizations that promote law enforcement and/or the
25 victims rights as advocates.

1 Does any juror belong to any of those types of groups
2 and/or do you contribute time or money to any of those
3 types of groups? If so, please stand.

4 All right. Yes, ma'am.

5 JUROR NO. 193: 193.

6 THE COURT: And how does that question relate to you?

7 JUROR NO. 193: I sit on the board of South Carolina
8 A.C.L.U.

9 THE COURT: All right. Does that have any bearing in
10 your decision in this case?

11 JUROR NO. 193: No. It would not.

12 THE COURT: Thank you. Be seated.

13 Anybody else?

14 (No response.)

15 THE COURT: Has any member of the jury panel already
16 formed or expressed an opinion as to what you think the
17 ultimate decision ought to be in this case based upon what
18 you've heard up this point or based upon any other
19 consideration?

20 In other words, have you already formed an opinion or
21 made up your mind as to how you think the case ought to be
22 decided? If so, please stand.

23 All right. Your juror number is what?

24 JUROR NO. 13: Thirteen.

25 THE COURT: Thirteen.

34 Jury qualification

1 JUROR NO. 13: May I approach?

2 THE COURT: And you've already made up your mind as to
3 the outcome or the verdict in the case?

4 JUROR NO. 13: Yeah. May I approach?

5 THE COURT: Yes, ma'am.

6 (Bench conference held off the record with Juror No. 13
7 with counsel present.)

8 THE COURT: Juror 13 is excused.

9 Anybody else already formed an opinion or made up your
10 mind?

11 (No response.)

12 THE COURT: All right. Does any juror know of any
13 reason whatsoever why you think you could not be fair and
14 impartial if you were called upon to serve as a juror in
15 this particular case? If you have any reason whatsoever
16 why you think you could not be fair and impartial, I would
17 ask that you please stand.

18 (No response.)

19 THE COURT: All right. None responding.

20 Any other questions requested by the state?

21 MR. SMITH: No, Your Honor.

22 THE COURT: By the defendant?

23 MS. JONES: No, sir, Your Honor.

24 THE COURT: All right. Now, the way the trial --
25 excuse me -- the way the jury is selected, the computer has

1 all of your names, and they'll select them randomly and put
2 them in an order on a list.

3 As -- in the order that your name appears on the list,
4 you're going to be called to come forward. You'll have a
5 stance out here in the middle of the floor next to the
6 bailiffs who'll be there shortly.

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

10 If either side asks that you be excused from serving
11 in the case, just go back and have a seat where you are
12 now.

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

16 So please come forward when your name is called, and
17 you'll be informed as to whether or not you have been
18 accepted for service in the case or excused from serving in
19 the case.

20 THE CLERK: Juror No. 56, Wright Furman.
21 What say the state?

22 MR. SMITH: Please present the juror.

23 THE CLERK: What say the defense?

24 MS. JONES: Excuse the juror, please.

25 THE CLERK: Juror No. 93, Steven Kimling.

1 what say the state?

2 MR. SMITH: Please present the juror.

3 THE CLERK: What say the defense?

4 MS. JONES: Excuse the juror.

5 THE CLERK: Juror No. 158, Carol Rogers.

6 what say the state?

7 MR. SMITH: Please present the juror.

8 THE CLERK: What say the defense?

9 MS. JONES: Swear the juror, please.

10 THE CLERK: Juror No. 78, Jasmine Houser.

11 what say the state?

12 MR. SMITH: Please present the juror.

13 THE CLERK: What say the defense?

14 MS. JONES: Excuse the juror.

15 THE CLERK: Juror No. 4, Michael Bajor.

16 MS. JONES: I'm sorry. What number?

17 THE CLERK: Four.

18 what say the state?

19 MR. SMITH: Please present the juror.

20 THE CLERK: What say the defense?

21 MS. JONES: Swear the juror.

22 THE CLERK: Juror No. 89, James Kellam.

23 what say the state?

24 MR. SMITH: Please present the juror.

25 THE CLERK: What say the defense?

1 MS. JONES: Swear the juror.

2 THE CLERK: Juror No. 181, Pamela Thornal.

3 what say the state?

4 MR. SMITH: Please present the juror.

5 THE CLERK: what say the defense?

6 MS. JONES: Swear the juror.

7 THE CLERK: Juror No. 138, Michael Painter.

8 what say the state?

9 MR. SMITH: Please present the juror.

10 THE CLERK: what say the defense?

11 MS. JONES: Swear the juror.

12 THE CLERK: Juror No. 154, John Reed.

13 what say the state?

14 MR. SMITH: Please present the juror.

15 THE CLERK: what say the defense?

16 MS. JONES: Excuse the juror, please.

17 THE CLERK: Juror No. 153, Oran Ratterree.

18 what say the state?

19 MR. SMITH: Please excuse this juror.

20 THE CLERK: Juror No. 52, Tiffany Fishtorn.

21 what say the state?

22 MR. SMITH: Please present the juror.

23 THE CLERK: what say the defense?

24 MS. JONES: Swear the juror.

25 THE CLERK: Juror No. 36, Edith Culler.

1 THE COURT: Ms. Culler, just stand right there. You
2 won't need to walk down here until y'all decide what you
3 want to do.

4 THE CLERK: What say the state?

5 MR. SMITH: Please excuse this juror.

6 THE COURT: Thank you, ma'am.

7 THE CLERK: Juror No. 113, Amanda McAbee.

8 What say the state?

9 MR. SMITH: Please present the juror.

10 THE CLERK: What say the defense?

11 MS. JONES: Swear the juror.

12 THE CLERK: Juror No. 98, Billy Ledbetter.

13 What say the state?

14 MR. SMITH: Please present the juror.

15 THE CLERK: What say the defense?

16 MS. JONES: Excuse the juror, please.

17 THE CLERK: Juror No. 11, Amber Bishop.

18 What say the state?

19 MR. SMITH: Please present the juror.

20 THE CLERK: What say the defense?

21 MS. JONES: Swear the juror.

22 THE CLERK: Juror No. 116, Gregory McCaslin.

23 What say the state?

24 MR. SMITH: Please present the juror.

25 THE CLERK: What say the defense?

1 MS. JONES: Excuse the juror, please.

2 THE CLERK: Juror No. 163, Diane Scruggs.

3 what say the state?

4 MR. SMITH: Please present the juror.

5 THE CLERK: what say the defense?

6 MS. JONES: Swear the juror.

7 THE CLERK: Juror No. 123, Walter Moore.

8 what say the state?

9 MR. SMITH: Please present the juror.

10 THE CLERK: what say the defense?

11 MS. JONES: Swear the juror, please.

12 THE CLERK: Juror No. 35, James Crisp.

13 what say the state?

14 MR. SMITH: Please present the juror.

15 THE CLERK: what say the defense?

16 MS. JONES: Excuse the juror, please.

17 THE CLERK: Juror No. 140, Steven Parks.

18 what say the state?

19 MR. SMITH: Please present the juror.

20 THE CLERK: what say the defense?

21 MS. JONES: Excuse the juror.

22 THE CLERK: Juror No. 155, Deirdre Reid.

23 what say the state?

24 MR. SMITH: Please present the juror.

25 THE CLERK: what say the defense?

Jury qualification

1 MS. JONES: Swear the juror.

2 THE CLERK: Juror No. 132, William Oakley.

3 What say the state?

4 MR. SMITH: Please present the juror.

5 THE CLERK: What say the defense?

6 MS. JONES: Swear the juror.

7 THE COURT: This will be for the first alternate.

8 THE CLERK: Juror No. 160, Erin Rollins.

9 What say the state?

10 MR. SMITH: Please present the juror.

11 THE CLERK: What say the defense?

12 MS. JONES: Swear the juror.

13 THE COURT: Second alternate.

14 THE CLERK: Juror No. 183, Aaron Trella.

15 What say the state?

16 MR. SMITH: Please present the juror.

17 THE CLERK: What say the defense?

18 MS. JONES: Excuse the juror.

19 THE CLERK: Juror No. 166, Dustin Shiel.

20 What say the state?

21 MR. SMITH: Please present the juror.

22 THE CLERK: What say the defense?

23 MS. JONES: Swear the juror.

24 THE COURT: Those who have been selected, I'll ask you
25 to please go with the bailiff to a jury room, and I'll

1 bring you back shortly.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are there any matters that need to be
5 addressed regarding jury selection by the state?

6 MR. SMITH: No, Your Honor.

7 THE COURT: The defendant?

8 MS. JONES: None from the defendant.

9 (Whereupon, the remaining members of the jury venire
10 were excused.)

11 THE COURT: Any matters to address before we begin?

12 MS. JONES: Yes, sir. I have a couple of issues.

13 First, as to some discovery issues, I do need to get
14 the raps of the witnesses. I don't have --

15 THE COURT: Let me let the jury go to lunch, and we'll
16 talk about that.

17 MS. JONES: Okay.

18 THE COURT: All right. Bring the jury back, please.
19 She's referring to the criminal histories.

20 MR. SMITH: Yes, sir.

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

23 THE COURT: Ladies and gentlemen, we're going to break
24 for lunch. We'll start with the trial this afternoon at
25 2:30.

1 Now that you have been selected you are not permitted
2 to discuss this case in any fashion whatsoever with any
3 person whatsoever. That includes family, friends. It also
4 includes your fellow jurors.

5 So when you go home you might have a spouse or a child
6 or a friend that wants to know what you're doing down at
7 the courthouse because you have jury duty. Tell them
8 you've been selected as a juror in a case.

9 That's as far as you can go. You can't tell them
10 who's involved in the case; you can't tell them what the
11 case is about; you can't discuss anything about it.

12 Your decision in this case and any in any case has to
13 be based upon what you see and hear during the course of
14 the trial. You're not permitted to have your decision
15 influenced by any outside or extraneous information. So
16 you can't have any discussions with anybody about the case
17 and only with your fellow jurors when you go back at the
18 trial's conclusion to begin deliberations.

19 Also, you're not permitted to conduct your own
20 investigation or to do any research on any issue that
21 relates to the case. So no internet search, no media
22 exposure -- television, radio or newspaper.

23 Again, you've got to base your decision upon what you
24 see and hear during the trial. You can't supplement your
25 wealth of knowledge by doing outside research or trying to

1 find out additional information.

2 So during the lunch recess and any other time until
3 deliberations no discussions, no research, no
4 investigation, no media exposure -- television, radio or
5 newspaper. Turn it off, put it down, don't listen.

6 with that, do have a good lunch. Please report to
7 your jury room this afternoon. They may have you going to
8 the jury assembly room. I'm not sure. They'll tell you
9 when you go. But, anyway, be back here at 2:30 this
10 afternoon, and we'll begin with the trial of the case.

11 Okay. Have a good lunch. We'll see you at 2:30.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Okay. Ms. Jones.

15 MS. JONES: Thank you, Your Honor.

16 Pretrial, I have a couple of issues. As I stated, I
17 need to have the criminal histories of the witnesses, the
18 lay witnesses.

19 Also, as a discovery issue, I have in this case never
20 received a written statement of the victim, Michael Koepke.
21 It could be that that does not exist, and I would inquire
22 of the state if that is, in fact, true.

23 MR. SMITH: I don't have one. I don't believe it
24 exists.

25 MS. JONES: Okay. And that ties into the next

1 request. It doesn't go just to Koepke.

2 However, Your Honor, I'm requesting under Kyles that
3 the state be required to provide me any exculpatory
4 information, and specifically, but not included to,
5 statements that through the course of their preparation in
6 this case they have received from witnesses that are
7 inconsistent with statements they have made before, whether
8 they're written or oral in the investigation.

9 I think I'm entitled to that, specifically as it goes
10 to Koepke since he has not given a written statement. It's
11 especially important if in any of his oral accounts he has
12 subsequently changed any parts of those. That would --
13 that is exculpatory, and I think I'm entitled to it.

14 MR. SMITH: I don't have any such statements, any
15 inconsistent statements in terms of any of my victims about
16 what happened. And I haven't taken --

17 THE COURT: Any other type of evidence that could be
18 used to impeach a witness?

19 MR. SMITH: Not that I'm aware of.

20 THE COURT: Okay. Ms. Jones.

21 MS. JONES: Okay. Your Honor, and, specifically, this
22 next -- there are two possible witnesses or two witnesses
23 on the list that have specific issues that will need an
24 inquiry hearing prior to their testimony. I would have no
25 way of knowing what order he's going to go in. There are

1 more than that that may require that, but these particular
2 ones.

3 Mr. James Hunter was an alleged cellmate of my client
4 who had pending charges at the time of his involvement in
5 the case at which time he purports to indicate that
6 Mr. Foster said certain things to him incriminating.

7 Your Honor, I would need a -- some kind of statement
8 or understanding as to what the plea deal was with regard
9 to Mr. Hunter, because there is an exchange on the audio
10 tape when he's being proffered and interviewed that he has
11 with his own attorney who indicates that they are working
12 on the charges, which is contrary to what Mr. Smith had
13 told me before, there was no offer to him. But Mr. Schultz
14 tells him on the audio I'm still working on your case and
15 I'll be able to let you know, which made it sound at that
16 point in time they had not struck a deal with the
17 government.

18 I need to know what that was, what the consideration
19 is, if any, from Mr. Hunter's testimony if we get to the
20 point that he is, in fact, a witness.

21 Mr. Smith has told me before he wasn't sure if he was
22 going to use him. But I am just alerting the court. In
23 the event that he does, we will need to inquire ahead of
24 time about this deal.

25 THE COURT: well, is there one?

1 MR. SMITH: Mr. Schultz and I had started to work out
2 the case prior to him contacting me about his involvement
3 with Mr. Foster.

4 So there was not a deal made specifically as a result
5 of that but I can -- I think I already told Ms. Jones what
6 he was charged with and what we ended up pleading to. But
7 I can do that again.

8 MS. JONES: Well, Your Honor, he also in and around
9 the same time was arrested for a home-detention violation,
10 and I need to know if their -- what their position -- if
11 their position on re-releasing him to home detention
12 changed. He ended up receiving a time-served sentence, and
13 several charges were dismissed, all after he was
14 cooperating.

15 MR. SMITH: The home-detention violation he, I think,
16 had smoked marijuana, and I just let Ms. Vinson speak about
17 that at the hearing. I'd have to get the sentencing sheets
18 to see if time served was recommended. I don't think so.
19 I believe it was a reduction of charges and dismissal of
20 other charges with no recommendation from the state.

21 THE COURT: All right. Well, look at it and provide
22 Ms. Jones any additional information that's necessary.

23 MS. JONES: Your Honor, also as to another potential
24 witness, the individual listed at No. 14 on the list,
25 Ashley Arrowood, she is employed at the detention facility

1 as a victims assistance worker. And the state has provided
2 me with a two-and-a-half-page document, which she recounts
3 an alleged conversation she had with my client. It is very
4 incriminatory being in the nature of a partial confession.

5 And, Your Honor, as an employee of law enforcement I
6 think there will need to be a Jackson vs. Denno type
7 hearing held before that, because at the time she had a
8 conversation my client had already invoked his right to
9 counsel and had declined to be interviewed by detectives of
10 the sheriff's office, yet other employee of the sheriff's
11 department goes and speaks to him under unusual
12 circumstances and thereafter retrieves a statement.

13 So if she is, in fact, going to be called, then we're
14 going to need to have some in-camera review of that whole
15 situation.

16 THE COURT: What's the witness' name?

17 MS. JONES: Ashley Arrowood.

18 THE COURT: Okay. What about that, Mr. Smith?

19 MR. SMITH: I think that would be better handled at a
20 different time than now. I don't necessarily plan to use
21 her statement as a part of the case in chief.

22 THE COURT: All right. Well, if you intend to call
23 her, we'll address it.

24 MS. JONES: Okay. Your Honor, also with regard to
25 other potential witnesses, there are three people who I'm

1 sure the state will present in their testimony, their --
2 the utilization of lineups in which they identified my
3 client.

4 I'd like to have hearings about those prior to their
5 testimony.

6 There was a fourth person that was presented a lineup,
7 and he could not make an identification. I don't know that
8 a hearing is necessarily needed on that one.

9 I also would ask in conjunction with those three --
10 the fourth one who couldn't pick him out -- Mr. Koepke --
11 and other individuals, anyone they intend to do an in-court
12 I.D. on. I think we need to do some in-camera review about
13 that ahead of time with Neil vs. Biggers and --

14 THE COURT: Do you think they'll -- do you think they
15 employed some impermissibly suggestive procedure that
16 resulted in --

17 MS. JONES: Your Honor, I think we need to explore
18 that to see if it is, if it was impermissible, such as the
19 circumstances under which the lineups were used in
20 proximity with other people.

21 THE COURT: Okay. So you're not suggesting that the
22 lineup itself is --

23 MS. JONES: Well, Your Honor, I'm not at this point
24 willing to say I'm not suggesting that either.

25 THE COURT: Well, you've seen them, haven't you?

1 MS. JONES: Yes, sir. I have.

2 THE COURT: Well, are they?

3 MS. JONES: I think there could have been a better
4 lineup done.

5 THE COURT: Well, we can always do better, I'm
6 guessing.

7 MS. JONES: I think the matter warrants some in-camera
8 review of how it was prepared.

9 THE COURT: Okay. Who is going to make an in-court
10 identification?

11 MR. SMITH: Joel Campbell, Darryl Lewis and Jim Moore.
12 And Mr. Koepke based on my conversation with him last week
13 is not going to identify him in court.

14 MS. JONES: Okay.

15 THE COURT: All right. Campbell, Lewis and Moore
16 identified the defendant in a lineup?

17 MR. SMITH: Yes, sir. And we anticipate Investigator
18 Guest being here to address that issue, though are you
19 talking about the -- you were making it, like, some of the
20 lineups were done in totally different locations where two
21 of them were --

22 MS. JONES: Well, that's part of it.

23 MR. SMITH: Okay.

24 MS. JONES: So those are the only three people you
25 intend to elicit in-court I.D. from. She has got the other

1 people on here that you might do that with --

2 MR. SMITH: well, for purposes of the next -- I mean,
3 James Hunter knows who he is. But as far as people that I
4 have to point out in court, those are the three that I'm
5 planning on.

6 MS. JONES: Okay. Also, Your Honor, and this is a
7 purely factual thing but if -- I think it bears some
8 discussion now so as to preclude what might even be a
9 problem, an objectionable matter. And I'll have to give
10 the Court a little bit of factual basis to explain it.

11 But in the course of the case after the alleged
12 shootings a neighbor reports to the police he sees someone
13 running through his yard shortly after that. Police
14 officers discover a -- some item -- articles of clothing --
15 excuse me -- and a backpack pushed up under a storage
16 building at yet another neighbor's yard.

17 Contained within the backpack, among other items, is a
18 telephone without a sim card and a red gun. Both of them
19 are mentioned and described and identified within the
20 police report as being stolen items from other cases in
21 Spartanburg County.

22 I am asking at this point that the state be precluded
23 from identifying those items as stolen property. Clearly,
24 at least one of the items -- the gun itself -- was probably
25 relevant for a lot of other discussion in the case through

1 other witnesses. But to identify them and thereafter say
2 they believe my client left them there puts him in
3 possession of stolen property, which are crimes he is not
4 charged with. And I think under the rules we ought to be
5 precluded from identifying them as stolen property.

6 MR. SMITH: I don't have a problem with that.

7 MS. JONES: Okay. Your Honor, at this point I think
8 that is all of the matters I can think of. That doesn't
9 preclude me of course from thinking of others, but right
10 now that's it. Thank you.

11 THE COURT: State have any?

12 MR. SMITH: No, Your Honor.

13 THE COURT: All right. Court is in recess until 2:30.

14 (Whereupon, a recess was taken.)

15 THE COURT: Any matters that need to be addressed
16 before the jury comes in?

17 MR. SMITH: None from the state, Your Honor.

18 MS. JONES: Your Honor, I wasn't sure what order we
19 were going to do the in-cameras in, or if we're going to
20 start -- he has indicated to me his first witness is one of
21 the ones who is going to tender an in-court identification
22 and pick Mr. Foster out of a lineup.

23 THE COURT: Is that true?

24 MR. SMITH: Yes, Your Honor. I have the officers
25 ready to talk about how the lineup was generated and how

Mark Gaddy (In-camera)
Direct examination by Mr. Smith

1 they were presented, as well as the people that are -- that
2 picked him out. well, two of the people who picked him
3 out.

4 THE COURT: Okay. The defendant is present. Let's do
5 it.

6 MR. SMITH: The state calls Mark Gaddy.

7 MARK GADDY, having been first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. SMITH

10 Q will you please state your name?

11 A Investigator Mark Gaddy with the Spartanburg County
12 Sheriff's Office.

13 Q All right. Investigator Gaddy, did you respond out to
14 a call on Old Canaan Road on February 18th of 2018?

15 A I did.

16 Q what was the nature of that call?

17 A It was a shooting that while en route was determined
18 to be a homicide.

19 Q All right. what did you do when you arrived on the
20 scene?

21 A When I arrived on scene I was helping Investigator
22 Guest kind of try to bring a little bit of order to the
23 scene. It was quite chaotic.

24 Q All right. And then what happened?

25 A At a certain point we had a name given to us possibly

1 responsible, and based on some descriptions that had been
2 given the name fit the description generally. So we were
3 generating a lineup.

4 Q And who was the person that you were putting in that
5 lineup as the possible suspect?

6 A Brian Foster.

7 Q All right. And can you explain how one generates a
8 lineup?

9 A In our computer system once you put the name in that
10 you want to generate a lineup around, it will give you
11 people with the same physical characteristics. And you can
12 go in and look at the picture so that you can make a lineup
13 that doesn't single a person out as it were.

14 Q Okay. So you're looking for six people that look --

15 A Fit the same general description, yes, sir.

16 Q All right. And how did you make or who made the
17 lineup in this case?

18 A I believe Investigator Guest. I was standing beside
19 Investigator Guest while he was doing the -- the lineup in
20 the computer.

21 Q So you participated, I guess, in the making of the
22 lineup.

23 A It's kind of one of those, hey, man, what do you think
24 about this picture, kinda getting the opinion so we can get
25 the best photo lineup possible.

Mark Gaddy (In-camera)
Direct examination by Mr. Smith

1 Q And at the time that you were doing this work, how did
2 it relate to when the crime had happened? Is this fresh or
3 is this --

4 A It's -- yes. I would say fresh. I mean, you can't
5 say minutes, but it's probably an hour or so after the
6 crime occurred.

7 Q Okay. And you -- where were you when you were
8 generating the lineup?

9 A In the driveway of the scene.

10 Q Okay. And you have, I'm assuming, a laptop or
11 something that --

12 A We -- we were in the vehicle of Officer Nepper with
13 the sheriff's office using his laptop computer, his -- yes
14 his laptop computer.

15 Q All right. And you -- I believe you showed one lineup
16 in this case.

17 A I did.

18 Q Do you know if others were shown?

19 A There were.

20 Q Did y'all use the same lineup for every individual
21 that you showed it to?

22 A Yes.

23 Q All right. Who did you end up showing your lineup to?

24 A A Mr. Moore at [REDACTED] Bayberry Drive, which is right down
25 the street.

1 Q And why did you go show him a lineup?

2 A Because a call, another -- a separate 9-1-1 call had
3 come in from that residence.

4 Q Okay. And you believed that that 9-1-1 call was
5 connected to the murder?

6 A Yes. After getting to talk to Mr. Moore, yes. We do.

7 Q Do you have a standard procedure for how you show a
8 lineup to a person?

9 A There is an affidavit form that goes along with a
10 lineup that advises them of certain things about the
11 lineup. You note the date and the time and where you are
12 when you're showing the lineup and stuff.

13 MR. SMITH: Court's Exhibit.

14 (Affidavit marked Court's Exhibit No. 1.)

15 Q Let me show you what's been marked as Court's
16 Exhibit 1 and ask if you can identify what that is, the
17 first page.

18 A It is an affidavit of presenting a photo lineup.

19 Q Is that the one you presented to Mr. Moore?

20 A Yes.

21 Q How do you know that?

22 A His name is on there -- his address, the case number,
23 the date and my signature and his signature.

24 Q Okay. And what is page two of that? What's page two
25 of Court's Exhibit 1?

1 A Page two is the actual lineup itself.

2 Q And has it been completed?

3 A Yes.

4 Q How do you know that?

5 A A picture has been circled. Mr. Moore put his
6 initials and the date beside it.

7 Q And is that what you told him to do if he --

8 A Yes.

9 Q Okay. And you give instructions basically that are on
10 that first page of Court's Exhibit 1? You go over that
11 with the person?

12 A Yes. And I can tell that because my initials are
13 there, and I have people sign it or initial out beside
14 mine.

15 Q And is it understood or do you explain to the person
16 that the person may or may not be in the lineup?

17 A Yes.

18 Q Do you explain to them that appearances could have
19 changed and to focus on things that don't change?

20 A Yes.

21 Q All right. So although it looks like everybody has a
22 similar high hair style in that, you want the focus to be
23 more on the face than in particular the hair?

24 A Yes.

25 Q And then the third page of Court's Exhibit 1, what is

1 that?

2 A That is a page that the position of the photograph, it
3 correlates and corresponds with the name of the person.

4 Q Okay. And is that something that Mr. Moore would have
5 ever seen?

6 A No.

7 Q Okay. That's for your own internal purposes once the
8 lineup --

9 A Right. That stays. What I usually do is when I show
10 one, I don't even take that out of the file. So the only
11 thing there that the person is seeing are these two pages
12 right here.

13 Q Did you have an understanding of how long Mr. Moore
14 had had an opportunity to be with Mr. Foster?

15 A The way he -- the way I remember he -- he had been
16 there for -- he was there for some time, at least time
17 enough to make several phone calls on his house phone.

18 Q Mr. Foster or the man he was saying had been in his
19 yard had made phone calls from Mr. Moore's phone?

20 A Yes, yes.

21 Q Oh, is this close to -- well, is this within seeing
22 distance of 121 Old Canaan Road?

23 A I would say yes, but the way the terrain is, no. Does
24 that make sense? It's certainly close to -- certainly
25 within walking distance.

1 Q But was there anybody that you knew of that was
2 actually at the scene at 121 Old Canaan that had made it
3 down to Bayberry Drive? Had Mr. Moore talked to anybody
4 that had been there?

5 A I don't know. I mean, another officer had come up
6 while there were -- while they were talking. And at the
7 sight of that officer the person that was wanting to use
8 the phone had taken -- had taken and fled on foot.

9 Q But to your knowledge Mr. Moore hadn't been told by
10 anybody --

11 A No.

12 Q -- who that individual was or anything like that.

13 A No.

14 Q Please answer any questions Ms. Jones has.

15 CROSS-EXAMINATION

16 BY MS. JONES

17 Q Detective, you indicated that early -- well, in the
18 beginning of this process to create this lineup and then
19 utilize it, someone gave you a name.

20 A Yes. That name was given to Investigator Cheeks.

21 Q Okay.

22 A And Cheeks had given it to us and --

23 Q Do you have any knowledge of who the person was that
24 gave the name?

25 A I -- I do not.

1 Q Okay. So you do not have any basis to understand why
2 this person believed that Mr. Foster may have had something
3 to do with this case.

4 A No, ma'am. You would have to ask Investigator Cheeks.

5 Q You have no knowledge whether there was some
6 preexisting beef or hardship or conflict between these two
7 people as to why the name was given. You were given the
8 name and ran with the name and found a picture and then
9 tried to create a lineup using -- based on one name.

10 A That fit the general description, yes, ma'am.

11 Q Okay. Well, good.

12 Let's talk about the general description and where that
13 came from.

14 A Okay.

15 Q Who -- who is responsible for providing the general
16 description and what was that general description?

17 A Mr. Joel Campbell described him as 5'6" to 5'8",
18 skinny with no facial hair, close on the sides with a
19 mop-top haircut, dark skin with a hoodie, possibly blue and
20 white. And the physical description closely matched
21 Foster.

22 And then Mr. Moore described the suspect as 5'7" to
23 5'8", skinny with hair close on the sides with a mop top.
24 He said that the suspect had on a black t-shirt with a
25 white hand on it, white hand and finger on it, and black

1 sweatpants.

2 Q Okay. And 5'6" to 5'7" -- and where's the lineup?

3 Okay. Mop top.

4 A Okay.

5 Q Close on the sides, no facial hair. Look at your
6 lineup that you generated. Who has a mop top with close
7 cut on the sides in this picture?

8 A I mean, all of them have some semblance of that
9 haircut to me.

10 Q You consider that close on the sides? Those are
11 little braids, aren't they?

12 A No, ma'am.

13 Q No. 3?

14 A I consider it close on the sides.

15 Q Okay. What about No. 6 that truly is close on the
16 top, on the sides?

17 A I consider that close on the side.

18 Q Okay. No facial hair. How many of the people in
19 that -- that lineup have no facial hair?

20 A One, two, three.

21 Q No facial hair. You're up to three?

22 A I would say, I mean.

23 Q This is a mustache, is it not? No. 1.

24 A It's a light mustache, yes, ma'am.

25 Q With a little goatee. This a light mustache too,

1 maybe a goatee. Can't tell from your picture. This is a
2 mustache, is it not? There is a goatee.

3 A I do see the mustache.

4 Q Okay. That's a mustache. No. 5 has no mustache, no
5 goatee; No. 6 has a mustache. So everybody in this picture
6 has a mustache but Mr. Foster, is that not true?

7 A I --

8 MS. JONES: Your Honor, after he answers, I'll hand it
9 up.

10 Q You said no facial hair, correct?

11 A Yes, ma'am. I did.

12 Q Is that the same lineup you used or that someone used
13 with Mr. Moore?

14 A That's the same one I used with Mr. Moore.

15 Q Okay. Is it the one that was used with Joel Campbell?

16 A I didn't show it, so I don't know.

17 Q Okay. Was it the same one used for Darryl Joe-Joe
18 Lewis?

19 A I didn't show that one, so I don't know.

20 Q Okay. Were you involved in attempting to have
21 Mr. Koepke identify Mr. Foster from that lineup?

22 A On that date I -- I don't -- let me put it to you this
23 way. It's not in my writeup, so I don't know if I did or
24 not, but if I had of, I would have wrote in my writeup.

25 Q Okay. But you are responsible for showing that

Mark Gaddy (In-camera)
Redirect examination by Mr. Smith

1 lineup --

2 A Yes.

3 Q -- to Mr. Moore.

4 A Yes.

5 Q You made the comment in response to a question by
6 Mr. Smith that your focus was on the face, not the hair.

7 Do you remember saying that?

8 A I mean, that's what the -- that's what the affidavit
9 says as far as, you know, hair styles can change. Face
10 usually doesn't. So that's what would have been meant by
11 that statement.

12 Q But the description you were working off of was no
13 facial hair.

14 A Yes, ma'am.

15 MS. JONES: Your Honor, that's all I have.

16 REDIRECT EXAMINATION

17 BY MR. SMITH

18 Q The pictures in the lineup were not taken on the day
19 of the crime of these six individuals.

20 A No. They were in the system.

21 MR. SMITH: I don't have any further questions.

22 THE COURT: Step down.

23 MR. SMITH: Your Honor, the state calls Investigator
24 Jon Guest.

25

1 JON GUEST, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. SMITH

4 Q Please state your name and where you work.

5 A Investigator Jon Guest, Spartanburg County Sheriff's
6 Office.

7 Q All right. What do you do at the sheriff's office?

8 A I'm an investigator with the violent crimes division.

9 Q Did you respond to an incident on Old Canaan Road on
10 February 18th of 2018?

11 A I did.

12 Q What was the nature of that call?

13 A Initially, I believe a shooting. I arrived on scene.
14 We were told by deputies that now being investigated as a
15 homicide.

16 Q All right. And what was your role in the
17 investigation of this incident?

18 A I was an investigator on the scene, first investigator
19 there.

20 Q Okay. Did you end up --

21 A Ended up being the case agent.

22 Q -- being in charge of this?

23 A Yes, sir.

24 Q All right. What happened when you got to the scene?

25 A When I got to the scene I contacted another

Jon Guest (In-camera)
Direct examination by Mr. Smith

1 investigator about getting a search warrant for the
2 property and the residence so that it can be processed
3 forensically. Sent him a description of the home, the
4 address, kind of a brief synopsis of what we knew happened
5 at that time so he could begin that search warrant.

6 Q All right. And then what happened?

7 A I was told by uniform patrol deputies on the scene
8 that there were two victims that had seen the suspect and
9 could likely identify him. That would be Joel Campbell and
10 Darryl Lewis who were both on scene. I spoke with both of
11 them.

12 Q All right. And had they been injured in this?

13 A No, not physically.

14 Q All right. But might have been in an emotional state
15 at the time.

16 A Right.

17 Q Okay. And we don't have to get into detail. We'll do
18 that later. But did they roughly tell you what had
19 happened, what had transpired?

20 A They did.

21 Q Did you have an understanding about what type of
22 opportunity they had to see the individual that had fled
23 the house?

24 A Yes.

25 Q What? Brief --

1 A Based on what they told me the individual who was at
2 the house was out back with them and the victim and another
3 subject, another victim, a Mr. Koepke, hanging out for
4 several minutes standing around in conversation talking
5 with them. They were around him for 15 or 20 or 30
6 minutes.

7 Q Okay. Did they -- did either one of them tell you
8 that they -- they knew who this individual was, like they
9 knew their name?

10 A No.

11 Q Did they say that they thought that they would be able
12 to recognize him if they saw him?

13 A I asked them if would they recognize him if they saw
14 him again, and they said they probably would.

15 Q How did you come about making a lineup that's the
16 issue of this hearing?

17 A While I was speaking with Mr. Campbell and Mr. Lewis,
18 Investigator Robert Cheeks came to me and said that he had
19 spoken with a resident of a house down the street, I
20 believe, and she had told him that she thought Brian Foster
21 may be involved in this because he was at her house earlier
22 that day and is friends with her daughter and she knew that
23 he was coming to the victim, Eric Morris', house that day.

24 Q So she's not necessarily an eye witness but just was
25 throwing potential name --

Jon Guest (In-camera)
Direct examination by Mr. Smith

1 A Throwing a potential name out saying that she knew he
2 was coming there and she thought maybe he'd done it.

3 Q And at that point you did not know who committed this
4 crime and were looking for any information that you could
5 find?

6 A Right.

7 Q All right. What was the description that Darryl
8 and/or Joe and Joel were able to give you?

9 A I want to make sure I get it right here. 5'3" to
10 5'5", clean shaven, close hair on the sides, longer on top,
11 and then a clothing description of a blue, white or gray
12 sweatshirt with the hood pulled up.

13 Q All right. That was for Mr. Campbell.

14 A Yes.

15 Q His description. All right. And did that fit -- were
16 you able to find a picture of Brian Foster?

17 A Using Deputy Nepper's computer, I did search for Brian
18 Fosters in our internal system. I located one that matched
19 the height, approximate age of the range they were given
20 and the black-male hair style.

21 Q All right. And then what did you do at that point?

22 A We then generate lineups out of our system. You
23 basically pull the potential suspect's photo. The system
24 generates an array of various photographs that the system
25 thinks match physical characteristics of that individual

1 based on height, skin tone, hair color, things of that
2 nature. And then we manually add the photos in that we
3 feel best match the other photos so that there's nothing in
4 the lineup that would be suggestive as to who the suspect
5 may be.

6 Q All right. And so you're saying that once you pulled
7 Fosters, the system pulls people that look similar, I
8 guess, to that picture?

9 A Right.

10 Q Do you remember if you made any changes to the lineup
11 that was generated? Did you pull any pictures out or
12 anything like that?

13 A I don't recall, but generally we do. It's usually
14 based on the distance from the face when the -- when
15 photographs are taken. They're either very close up or
16 very far off. The background shade can be lighter or
17 darker. We oftentimes have to change a few photos here and
18 there.

19 Q Okay. And the reason for you doing that is what?

20 A Don't want anything to be suggestive about that
21 lineup.

22 The goal is to make -- you want every picture to try
23 to look basically the same. You want the hair style to be
24 similar; you want the facial structure to be similar; the
25 eyes and nose to be similar. Nothing to stick out either

Jon Guest (In-camera)
Direct examination by Mr. Smith

1 way.

2 Q All right. And what did you end up doing after you
3 had generated this lineup?

4 A I printed it off on Deputy Nepper's printer, spoke
5 with Mr. Campbell. We --

6 Q Where was Darryl Lewis when you're talking to
7 Mr. Campbell?

8 A He was standing over in the yard. I brought Mr.
9 Campbell over to the trunk of a vehicle --

10 Q Okay.

11 A -- away from him.

12 Q Are you in -- are you in the front yard and --

13 A Front-yard driveway.

14 Q And then where is Darryl and --

15 A He's probably 30 or 40 feet away from me over on the
16 side. He's not standing there with us.

17 Q Okay. Is there some instructions, or do you have your
18 own personal instructions in addition to what's on the
19 affidavit of how you administer a photo lineup?

20 A We have a photo-lineup affidavit that we go by. There
21 are certain instructions that are listed on there such as
22 pay attention to the -- the suspect may or may not be in
23 this lineup, quality of photograph, things like that.

24 Whenever I show a lineup, I do it the exact same way
25 every single time. I read them that affidavit. I then

1 present the lineup face down to them. I slide it to them
2 and tell them that whenever they're ready to turn the page,
3 look at all six photographs carefully and tell me if they
4 recognize the person.

5 Q Do you tell them they need pick somebody out --

6 A No.

7 Q -- or that the person that committed the crime is in
8 here?

9 A I tell if they're not one hundred percent sure, then
10 they're not one hundred percent sure.

11 Q All right. And do you recall how it went with Joel as
12 far as once he turned over the lineup?

13 A He immediately identified Mr. Foster as the person who
14 was at the house that he saw.

15 Q All right. And did -- they're not provided with the
16 names that go with the faces, is that right?

17 A Right. Name sheet's printed off secondary to the
18 lineup, but we keep that either in the vehicle or in file.
19 They don't see it.

20 Q And once you were done with Joel, what did you do?

21 A Sent him back over to where Darryl was standing.
22 Brought him over to me. I went through the same exact
23 process again. I explained to him an affidavit, read him
24 the same instructions, presented him the same exact lineup,
25 to him the same exact way. He turned the lineup over and

Jon Guest (In-camera)
Direct examination by Mr. Smith

1 identified Mr. Foster as being the individual who was there
2 as well.

3 Q Did you go with him? I mean, was there an opportunity
4 for him to say who -- who he had picked out?

5 A No. Multiple deputies standing around. I believe
6 somebody even walked with him over to the side. And then
7 Darryl walked over to me. They didn't interact in any way.

8 Q And I know you said you do the same procedure. The
9 same procedure you just did with Mr. Campbell you did with
10 Mr. Lewis?

11 A Yes.

12 Q And what about his picking out of the lineup?

13 A He -- he had very quickly identified Mr. Foster as the
14 individual that was there. Maybe took a couple of seconds
15 but very quickly.

16 Q You did not present the lineup to Thomas Koepke in
17 this case, did you?

18 A No. I did not.

19 Q Do you know what -- if he was able to pick anybody
20 out?

21 A I don't believe so, but I wasn't present for it.

22 Q Okay. I mean, do you know if he --

23 A No.

24 Q Do you think he was not able to pick anybody out?

25 A From my knowledge, Mr. Campbell, Mr. Moore and

1 Mr. Lewis were the only three. And Mr. Koepke could not.

2 (Affidavit marked Court's Exhibit No. 2; affidavit

3 marked Court's Exhibit No. 3.)

4 Q I'm going to hand you Court's Exhibit 2 and ask you if
5 you can identify what that is.

6 A This is the affidavit page for the lineup presented to
7 Joel Campbell.

8 Q What's the second page?

9 A The second page is the actual lineup that I presented
10 to Joel Campbell.

11 Q What's the third page?

12 A The third page is the name sheet that's generated for
13 the lineup itself.

14 Q I'm going to hand you Court's Exhibit 3 and ask if you
15 can identify what these are.

16 A This is the photo-lineup affidavit presented or
17 completed by myself and Darryl Lewis; and the second page
18 is the actual lineup shown to Mr. Lewis; and then the third
19 page is the name sheet that accompanies that lineup.

20 MR. SMITH: Your Honor, at this time I don't know if
21 we need to move them into evidence, but we'd like to move
22 Court's Exhibits 1 through 3 in for the purpose of this
23 hearing.

24 THE COURT: Okay. They're admitted.

25 MS. JONES: Are they admitted only for the purpose of

Jon Guest (In-camera)
Cross-examination by Ms. Jones

1 the hearing?

2 THE COURT: Yes, ma'am.

3 MS. JONES: Okay. Thank you, Your Honor.

4 Q Please answer any questions Ms. Jones has.

5 CROSS-EXAMINATION

6 BY MS. JONES

7 Q You generated a written report. I believe you've got
8 a copy of it.

9 A Uh-huh.

10 Q Let's see. Within your report you have got the
11 description from Joel Campbell of the person he observed,
12 correct?

13 A Uh-huh.

14 Q And does he not describe him as a younger looking
15 clean-shaven 5'3" to 5'5" with close hair on sides and
16 longer on top -- on top?

17 A Right.

18 Q Okay. And did you -- and so you specifically
19 generated this. The computer didn't generate it. You did.
20 The computer merely suggested.

21 A It provides a list of names and photos, and then we
22 manually input them, yes.

23 Q And can you observe that the only clean-shaven person
24 in the lineup -- and I'm referring to the lineup you
25 utilized with -- that was utilized with Mr. Moore, and in

1 each case?

2 A Uh-huh.

3 Q No. 5 is the only one who's clean shaven. Do you
4 concede that point?

5 A No. 2 is close, but he may be, yeah. We kind of have
6 to work with the photos we have in the system too.

7 Q So you're telling me you can't find five -- find five more
8 young black males that are clean shaven and you had to pick
9 five with mustaches, some with goatees, just to get a
10 six-pack?

11 A Well, some of the photos I'm looking at, I'm looking
12 at eyes, the brow, the hair style, the nose, not
13 necessarily the --

14 Q But he didn't describe the eyebrows, the nose. He
15 described clean shaven, younger looking, close hair on the
16 sides and longer on the top.

17 A Uh-huh.

18 Q If you'd wanted to know about the eyes, you could have
19 asked them to describe the eyes. But this is what you had,
20 is it not?

21 A Uh-huh.

22 Q Isn't that what you testified you were using to make
23 this?

24 A Right.

25 Q And you did say the goal as you're making a lineup is

1 to make sure that nothing sticks out.

2 A Well, you don't want someone that has a yellow t-shirt
3 on and nobody else does or something like that.

4 Q And you didn't want one person with no factual hair
5 and five that do.

6 A Right.

7 Q Correct? Now, as to the affidavits, once you've shown
8 these to someone you -- your indication was Mr. Campbell
9 immediately picked out the picture. You were a little less
10 emphatic when talking about Mr. Lewis. He, in fact, took a
11 little bit longer than that, didn't he?

12 A Uh-huh.

13 Q Because you said he took several seconds. I assume he
14 was studying it.

15 Now, another part of this is the affidavit that is
16 completed, and it is signed as an affirmation by the person
17 doing the lineup. They are affirming what when they sign
18 that form?

19 A They are affirming that the individual that they've
20 identified is the individual who they recognize to be
21 present or be doing whatever the subject may be.

22 Q Okay. And that's the -- the next question is
23 oftentimes these affidavits will bear in the bottom part,
24 lower middle, a description of what they are identifying
25 the person as having done, correct?

1 A Uh-huh.

2 Q what does Mr. Campbell's say?

3 MS. JONES: Court's Exhibit 2, Your Honor.

4 A "Shot Eric Morris, his roommate, and who shot at me
5 and Darryl Lewis."

6 Q Okay. His words or your words?

7 A His words.

8 Q Did you write them in for him?

9 A I wrote them.

10 Q Okay.

11 A But that's what he told me.

12 Q How do you do that? Do you say, okay, you've picked
13 him out as what? After he picks it out, you say what are
14 you identifying him as doing?

15 A well, I read it. If you read it to him, you say,
16 okay, if you go through it, I'm the Spartanburg County
17 Sheriff's Office as the person who --

18 Q who -- and then you let them fill that out.

19 A Then I write down what they tell me.

20 Q Okay. You did the exact same things, Court's Exhibit
21 No. 3, Darryl Lewis.

22 A Yes.

23 Q And what did you fill in for Darryl Lewis?

24 A "Shot my cousin Eric Morris."

25 Q Period.

1 A Uh-huh.

2 Q So he only identifies him as the person who shot Eric
3 Morris inside the house.

4 A Uh-huh.

5 Q And nothing else.

6 A There's only one person there that did it. So who
7 else would it be?

8 Q That's not the question I asked. The question was,
9 "He only identified him as shooting my cousin Eric Morris,"
10 period.

11 A Right.

12 Q Now, in questioning by the solicitor you took pains to
13 talk about at the time these lineups were being shown there
14 was no interaction between Mr. Campbell and Mr. Lewis.

15 A Right.

16 Q Okay. So you're certain that once Campbell was shown
17 the lineup at 1730 -- which is military time for?

18 A 5:30.

19 Q Okay. And 1742, Mr. Lewis completed his. There was
20 no interaction with them so that one could tell the other
21 go pick No. 5.

22 A No.

23 Q Okay. Now, did you personally ever get a description
24 of the suspect from Darryl Lewis?

25 A I don't believe so.

1 Q Okay.

2 A If it's not in my writeup, I didn't. I have to refer
3 to it.

4 Q So the preparation of these lineups or this lineup you
5 utilized many times was based solely on that one
6 description from Joel Campbell.

7 A I believe that's what my writeup reflects, yes.

8 Q And after you all were given the name by some other
9 female from the neighborhood.

10 A Yes.

11 Q Okay. Do you have any idea what that person's
12 motivation was for providing the name?

13 A No.

14 Q Okay. And you never took a statement from Darryl
15 Lewis.

16 A No. He provided one to uniform patrol deputies, I
17 believe.

18 Q Okay. Had you reviewed it before you did the lineup?

19 A Yes.

20 Q Okay. Do you recollect the description he gave with
21 regard to hair?

22 A Are you asking did I review it before I presented it
23 or built it?

24 Q Built it.

25 A No.

Jon Guest (In-camera)
Cross-examination by Ms. Jones

1 Q Okay. If you had known that he described him as
2 someone with short hair would that have been important to
3 you in building the lineup?

4 A Well, I would have asked him what his opinion of short
5 hair was. That's kind of subjective. So depends on what
6 your opinion of short hair is.

7 Q Okay. Just like young. Younger looking is kind of
8 suggestive too, correct?

9 A Uh-huh.

10 Q But nobody asked Mr. Campbell to clarify that, did
11 they? And Mr. Campbell described Mr. Foster as 5'3" to
12 5'5". How does that factor into building a lineup, or does
13 it?

14 A Basically, that kind of factors. I guess it would
15 factor in in the photos that the system would provide you.
16 But as far as the photographs, it doesn't, because you
17 can't tell how tall a person is in a facial picture. So,
18 say, you only get five or six photos to pick from, you may
19 have to adjust the height and entry or two to get more
20 photos to show to be able to pull from that would match.

21 Q Okay. Were you involved in actually apprehending
22 Mr. Foster?

23 A No. I wasn't.

24 Q Okay. Did you have any -- any exchange with him at
25 the county jail after he was arrested?

1 A No. I didn't.

2 Q Okay.

3 MS. JONES: That's all, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. SMITH

6 Q The lineup was built off of people who looked similar
7 to Brian Foster, right?

8 A Right.

9 Q Not trying to find six people that matched the
10 physical description given by witnesses, right?

11 A Right.

12 Q If you had looked up Brian Foster and he had dreads
13 down to his mid back and a full beard and that was the only
14 picture that you had of him, what would the people in the
15 lineup have looked like? would you have picked out --

16 A Dreads down their backs with long beards.

17 Q Right.

18 A So all look basically the same.

19 Q So it's the face that we're looking at, not the facial
20 hair and the hairline.

21 A Right.

22 Q You're trying to find people that look similar to the
23 person that was named as a possibility.

24 A Well, the --

25 Q You had no idea who had done it.

Jon Guest (In-camera)
Redirect examination by Mr. Smith

1 A Right. To find six identical twins in our system
2 would be difficult. So you find people who look similar
3 and who have similar features and similar skin tones.

4 Q But it just so happens that the picture in this
5 lineup, the picture you had of Mr. Foster, does match the
6 description that was given by these people. But it could
7 have been something different.

8 A Right.

9 Q And you would have been -- used that and get people
10 that look similar to that picture.

11 A Right.

12 MR. SMITH: I don't have any further questions.

13 THE COURT: Step down.

14 Are you intending to call Mr. Campbell and Mr. Lewis?
15 Because I'm going to have to let this jury go. I can't
16 have them sit there any more.

17 MR. SMITH: Well, if it's necessary, then I guess we
18 will.

19 THE COURT: I'll leave that up to you.

20 MR. SMITH: We can call them briefly.

21 THE COURT: Okay. Bring the jury in, please.

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

24 THE COURT: Ladies and gentlemen, I apologize for the
25 delay, but I had some matters scheduled for this afternoon

1 that have taken longer than I anticipated that they would.
2 And I still have some other matters I need to address, and
3 I'm not sure how long it's going to take.

4 So rather than have you sit back there and wait on us,
5 I'm going to excuse you for the afternoon and ask you to
6 come back in the morning at 9:30, at 9:30 in the morning.

7 Keep in mind the instruction I gave you before lunch.
8 Don't talk about the case with anybody; don't conduct any
9 research; don't do your own investigation; don't read any
10 newspaper articles; don't listen to anything on radio about
11 it; don't look at any item that might appear on the
12 television about it.

13 Okay. Do have a good evening. I'll see you at
14 9:30 in the morning. Have a good afternoon.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: All right. Mr. Smith.

18 MR. SMITH: Your Honor, the state calls Joel Campbell.

19 JOEL ANTHONY CAMPBELL, JR.,
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. SMITH

22 Q Get close to that mic. State your name.

23 A I'm Joel Anthony Campbell, Jr.

24 Q And, Mr. Campbell, were you involved in an incident on
25 February 18th of 2018 at Old Canaan Road?

1 A Yes. I was.

2 Q whose house was that?

3 A Eric Morris.

4 Q what's your relation to Eric Morris?

5 A He's my best friend's brother, also a friend.

6 Q Okay. Did you know the defendant at all?

7 A No, sir.

8 Q All right. And what brought you over there to Mr.
9 Morris' house that day?

10 A I -- I went to help him work on his 4-wheeler and a
11 moped.

12 Q Do you remember when you arrived at the house?

13 A Yeah. It was some -- it was after lunch. I would say
14 maybe 1:00 o'clock, maybe.

15 Q All right. And who was present when you arrived?

16 A It was just Eric Morris, and there was a gray car in
17 the driveway, which I assumed maybe was his roommate's.

18 Q Okay. Do you know Eric's roommate?

19 A I had -- I had met him -- I'd only been over to Eric's
20 once before that, and that was a couple of weeks prior to
21 that. That's when I'd seen the moped and the 4-wheeler
22 needing worked. And he told me to stop by and help him
23 with it one day if I could, and it took me two weeks, but I
24 didn't have nothing to do that day. So I decided to go by
25 there and help him with it that day.

1 Q All right. And did anybody else end up arriving there
2 that day?

3 A Yes. Later on. Joe Lewis.

4 Q Do you know Joe Lewis?

5 A Yes.

6 Q How do you know him?

7 A He's family of Eric and friend of mine too.

8 Q Okay. And what were y'all doing out there in the back
9 yard?

10 A Me and Eric was out there for a while. We were just
11 working on the -- the 4-wheeler and the moped, what me and
12 Eric was doing.

13 Q Okay. Just general hanging out?

14 A Yeah.

15 Q Did another person end up coming out there?

16 A Yes, yeah. I was work -- I was bent down working on
17 the moped, and I wasn't really paying much attention. But
18 I looked up and behind the gray car that was in the
19 driveway, there was a guy standing there with a hoodie on
20 with his back to me.

21 well, as soon as I started looking at him for a minute
22 he turned around and made eye contact with me, and then he
23 turned like he was going to turn and walk away. And at
24 that point I told Eric. I said, "Hey, man. There's
25 somebody in your driveway." And that's about the time Eric

1 hollered for him. And he turned around and started walking
2 towards the garage.

3 Q And were you able to tell at that point any sort of
4 description of the man?

5 A He took his hoodie -- he took his hood off. But Eric
6 described him as a buddy of his.

7 Q Okay.

8 A So I --

9 Q Black guy, white guy?

10 A He was a black guy.

11 Q Young, old?

12 A Young.

13 Q And what happened then?

14 A They just got to talking and --

15 Q Let me know. I know you've got the written statement
16 if you need it.

17 A I mean, do I need to go, tell it like it is?

18 Q Yeah. Sure.

19 A Eric said this is a buddy of mine. At the time -- I'm
20 bad with names. I have to repeat somebody's name five or
21 six times before I remember names. But he said it's a
22 buddy of mine, if you ever need a robbery done, here's your
23 guy for you.

24 And at about that point they got to talking about guns
25 and stuff, which Mr. Foster here, he pulls out a red 9mm

1 pistol. And Eric's, like, oh, man, that's nice, I'd like
2 to shoot it and was trying to get Mr. Foster to let him
3 shoot the gun.

4 And at that point he let Eric know that he didn't have
5 any bullets in the gun. Well, Eric said he'd got a new
6 gun. And, well, Mr. Foster goes on to tell him -- telling
7 us what happened with him the night before -- drinking and
8 how he was hungry and everything like this.

9 Well, Eric had a box of pizza. He had just offered me
10 a slice before Mr. Foster showed up, and there was four
11 slices in there. And Eric Morris offered him some pizza,
12 and they sat there and ate a slice of pizza. And after
13 that one was done Eric offered him another piece of pizza.
14 They sat there and ate that. And I continued to work on
15 the moped.

16 Q So you had -- guesstimate how long you were
17 interacting, or maybe you weren't interacting with him
18 but --

19 A Forty-five minutes to an hour.

20 Q Okay. So you had a substantial period of time to look
21 at him.

22 A Yes, sir.

23 Q All right. And did they end up eventually going
24 inside the house?

25 A Well, Joe-Joe showed up and the roommate come from

1 outside, and we continued to set out there and talk for
2 another -- another while. And everything was just -- I
3 mean, they were talking, and everybody was jumping in on
4 their part of the conversation. And I was messing with the
5 moped and laughing at some of the stuff.

6 And I looked over, and I caught Mr. Foster just
7 staring at me blank -- blankly for -- you know, usually
8 when somebody's staring at you, you look, and then you --
9 you both kind of mutually look away.

10 well, he wouldn't stop staring, so kind of seemed
11 kinda odd to me.

12 Q All right.

13 A And we sat out there and talked for a little while,
14 and that's when Eric said, hey, man, do you want to go see
15 my new gun. And that's when they walked in the house.

16 Q And is it set up in the back yard of this house where
17 y'all can do target practice?

18 A Yeah. Eric had a -- a barrel and an air conditioner
19 setting behind it so he could shoot into it. I didn't have
20 anything though. He had it set up that way, not y'all.

21 Q Right, right. So they end up going inside the house.
22 What happens next?

23 A Well, it was me, Joe-Joe and Michael and we were -- we
24 were sitting out there talking and just -- just like we
25 were when they walked up. And I guess it was -- it wasn't

1 even a minute, maybe, maybe a minute. I don't know.

2 After it's all said and done, I kinda got shook up.
3 But just a couple of minutes later we hear a shot. And as
4 soon as we hear the shot we hear a thud hit the ground.
5 There was no rambling or argument, or you couldn't hear
6 pitter patter of feet, somebody trying to run from anybody
7 or anything like that. It was just a cold silence. A
8 gunshot goes off and you hear a thud of a human body
9 hitting the floor.

10 At that point Michael -- he -- we all get on alert.
11 We all jump up from where we were -- I was over bent down
12 beside a moped and they -- they were -- they were sitting
13 on an old garage door right there beside the garage. And
14 instantly everybody jumped to an attention.

15 And at that point Michael was going to try to go into
16 the house, and I asked him not to. I's like wait, wait.
17 Let's just see, let's see what -- who comes out first, you
18 know. I don't know. I don't know the situation. I didn't
19 want anybody else getting hurt. Let's call the law, let's
20 back up from it and try to see what's going on.

21 And at that point he -- he insisted on going inside.
22 And I stayed at the bottom of the steps. And no longer
23 than he probably could get in the kitchen shots rang out
24 again.

25 And Joe-Joe -- I -- I'm close -- closer to the house

1 from where Joe-Joe is, and I look and Joe-Joe, he's getting
2 up. He was already standing up, but he's turning to go
3 around the garage door that's laying on the ground there.

4 And when I turn around Michael's coming down the steps
5 begging for his life. And Mr. Foster comes out on the
6 porch wielding the gun and looks over at us. And me and
7 Joe-Joe just flat out started running. And shots rang out,
8 and we just -- I just -- I turned and run and never looked
9 back after that point.

10 Q And did you end up coming back to the scene as law
11 enforcement --

12 A Once I -- yes, yes, sir.

13 I run through the backyards of a neighboring road, and
14 I got this lady to call 9-1-1. And I wasn't -- I was
15 scared to leave and walk down just a wide open road because
16 I didn't know which way he had run. I didn't want to run
17 back into him for sure. And I didn't even know if he
18 wasn't still chasing me.

19 But once I seen the cops going back and forth, I
20 knowed he wasn't going to be in plain sight no more. So I
21 felt safe enough to walk back down the road and meet with
22 the officers.

23 Q Did you end up telling them what you just told me?

24 A Yes, sir.

25 Q Did you tell them that you would have been -- you

1 thought you could potentially recognize the person?

2 A Yes. I -- I definitely could.

3 Q All right. Did they ultimate give you an opportunity
4 to attempt to identify him?

5 A Yes, sir. They did.

6 Q All right. Let me show you Court's Exhibit 2. Was
7 this shown to you and part of it have your handwriting on
8 it? This is an affidavit.

9 A Yes, sir.

10 Q Was it explained to you that hairstyles and facial
11 hair can change?

12 A Yes, sir. It was.

13 Q Did you feel compelled to pick anybody out of the
14 lineup based off what law enforcement had said?

15 A No, sir. Not at all.

16 Q Did you ultimately view the six pictures, Court's
17 Exhibit 2?

18 A Yes, sir.

19 Q Do you remember how quickly you picked him out?

20 A As soon as I seen his eyes.

21 Q Okay. So the eyes was --

22 A As soon as seen his eyes, I pointed that picture right
23 outta there.

24 Q All right. Is that from the moment that he stared at
25 you or --

1 A Because his hair -- his hair was different from what
2 it was in that picture even.

3 Q What was different about it?

4 A The -- the hair? His hair was shorter than that in --
5 when he was there, I believe. But the eyes is what struck
6 me overall.

7 Q So you immediately recognized this person.

8 A Yeah.

9 Q And is this your initials?

10 A Yes, sir.

11 Q And dated? But at that time you didn't know who that
12 person was.

13 A No, sir. Not -- not at all.

14 Q You did a photo lineup prior to Joe Lewis, right?

15 A Yes, sir. I did.

16 Q So you hadn't talked with him about --

17 A They had -- they had told us it was strict after we --
18 when the lineup process started they kept us separate --
19 separated until it was all said and done.

20 Q And after you did your lineup, you didn't say anything
21 to Joe or --

22 A No, sir. He was --

23 Q -- the --

24 A I come around this way, and he was took a different
25 way, and he did his lineup. And when he got back I -- you

1 know, I was allowed to sit -- be -- because it was me, him
2 and his father sitting there talking. That was the only
3 people I knew there at the time, so we just continued back.

4 Q Please --

5 A Staying where we were at.

6 Q All right. Please answer any questions Ms. Jones has.

7 A All right.

8 CROSS-EXAMINATION

9 BY MS. JONES

10 Q Mr. Campbell --

11 A Yes, ma'am.

12 Q -- you heard the detectives talk about how they built
13 a lineup based on the general description.

14 A Yes.

15 Q Okay.

16 A Yes, ma'am.

17 Q Officer Gaddy said you described the person as 5'6" to
18 5'8", skinny with no facial hair, close on the sides, mop
19 top hair, dark skin with a hoodie, possibly blue and white.

20 Did you make any attempt to describe the eyes to them?
21 Because you say that's the kicker, that's what caused you to
22 pick picture No. 5.

23 A That was.

24 Q Well, did you explain that to them, try to describe
25 the eyes?

1 A It wouldn't have been the color of eyes that I could
2 have described. It's just when you see it you -- the only
3 way I can describe it is if -- when I seen it, I knowed
4 what it was, you know.

5 Q Okay. You explained in your examination that at one
6 point you caught this individual staring at you.

7 A Yes, ma'am.

8 Q Y'all locked eyes and you stared.

9 A Uh-huh.

10 Q Did you ever tell the police about that?

11 A I've been asked a thousand times what happened, and
12 I've usually said something about the eyes. I don't know
13 if I wrote it in my statement or not.

14 Q Okay. Here is your statement. It's three pages. If
15 you would, look at that. Tell me if you told them about
16 that.

17 (Pause.)

18 A I don't see nothing about the eyes in here.

19 Q Okay. So you did not tell them.

20 A No. I guess not. It's not in my report.

21 Q It's your statement.

22 A Yeah. My statement.

23 Q And you also spoke to Deputy -- I believe it was
24 Deputy -- excuse me -- Deputy Nepper. Most of these people
25 except for maybe the detectives -- these patrol guys are

1 walking around wearing cameras. So everything you're
2 telling them, whether you realize it or not, is being
3 recorded.

4 A Good.

5 Q Do you remember telling Nepper about the eyes and how
6 distinctive the eyes were cause you caught him staring at
7 you?

8 A It took -- I'm still in shock over it.

9 Q Well, that's not exactly the answer to the question.

10 A But, I mean, you know, yeah. It's just at the time
11 there's -- what's going on is unbelievable and it was --
12 I did the best I could in the moment I had with it, you
13 know.

14 Q Okay.

15 A But that's what I'm telling you now is --

16 Q Did you also neglect to tell them the statement that
17 you -- you say Eric Morris made in describing that
18 individual as basically a robber. If you want a robbery
19 done, this is your man. Did you tell them about that?
20 It's pretty significant, isn't it?

21 A I just thought it was a joke.

22 Q Okay. So you didn't take it seriously enough to even
23 tell them about it.

24 A I guess not.

25 Q Did you see that when you reviewed this 3-page

1 statement?

2 A You just told me to look for the eye statement in
3 there.

4 Q Okay. well, we'll do it again.

5 MR. SMITH: Your Honor, I'm not sure what this has to
6 do with an identification hearing. But he's going to
7 testify in the trial.

8 (Pause.)

9 A Yeah. I didn't -- I -- they told me to write down
10 what I seen, not -- not what I'd heard about the character
11 of the witness before or the sub --

12 Q So it's not in this statement.

13 A Yeah, yeah. I didn't see it in there, ma'am. I'm
14 sorry.

15 Q During the time -- this 45 minutes to an hour -- that
16 you're in this individual's presence, you are working, are
17 you not?

18 A Not per se working.

19 Q well, you were doing something.

20 A I was -- yes, ma'am. I had a battery charger hooked
21 up to a scooter letting the battery charge so I could
22 attempt to work on it.

23 Q Okay. were you paying attention to what you were
24 doing?

25 A And my surroundings at the same time, yes, ma'am.

1 Q what was your purpose in being there that day?

2 A To hang out with Eric and work on the moped and his
3 4-wheeler with him.

4 Q Okay. You were working. Let's back up and talk about
5 this, now. You were working on moped, a scooter. And you
6 just said you were charging the battery to what?

7 A To the moped. The 4-wheeler -- the 4-wheeler -- in
8 the first ten minutes I arrived at Eric's house, it caught
9 on fire. So he didn't want to mess with it no more. So we
10 pulled it in the shed.

11 He said do you want to try to mess with the moped. I
12 said, well, the only way I can try to figure out what's
13 going on with the moped is to have power to it. He said I
14 just bought a brand new battery charger. So I plugged it
15 into the wall and plugged a battery up to the -- to the
16 battery on the moped, which it was found that way after the
17 whole incident was said and done.

18 Q Okay. So that's what you're doing. While it's
19 charging, what are you doing?

20 A Talking and --

21 Q Eating pizza?

22 A I didn't -- he offered, but I didn't accept. Thank
23 you.

24 Q Okay. And all of that was happening where?

25 A At the front of his garage.

1 Q In the garage or outside of the garage?

2 A It's right at the -- it was -- they were actually
3 sitting inside of it. They were inside of it. I was a
4 step out.

5 Q Okay. They were inside of the building. You were how
6 many feet away from them?

7 A Well, the garage door is gone so it's -- oh, I
8 could -- from me to that desk right there.

9 Q Okay. Were they all sitting together in one spot?

10 A Well, Eric was moving around messing with his shop
11 some. And he was sitting in one spot. When Joe-Joe and
12 Mike got out there, they were sitting right outside the
13 opening this way.

14 Q Had you been there earlier to shoot the guns in the
15 back yard?

16 A No.

17 Q Okay.

18 A Had I been there earlier to shoot them?

19 Q Or had you shot them earlier?

20 A Yeah. I had shot them when I first arrived. I shot
21 one gun when I first arrived there.

22 Q Okay.

23 A Eric said it was his new gun.

24 Q Okay.

25 A And he insisted, and he insisted, and I shot it

1 through the barrel and instantly told Eric to take it back
2 in the house, because I don't like guns.

3 Q Did the others shoot while you were shooting?

4 A There was no others. It was just me and Eric at the
5 time.

6 Q Okay. Did Eric shoot?

7 A No, no, ma'am.

8 Q You indicated that at some point while you were
9 working and you saw the individual in the driveway, and you
10 told Eric somebody's here.

11 A Somebody's in his driveway, yeah.

12 Q And Eric yelled what toward this person.

13 A Hey.

14 Q Is that all he said?

15 A And they started -- as soon as he got a few more steps
16 closer, they started talking like they knew each other.

17 Q Okay.

18 A So I didn't -- I lost any suspicion that I had at the
19 time of anything being wrong.

20 Q At that point as the person's walking up, you have no
21 idea who this is.

22 A Not at all.

23 Q Eric's acknowledging him as someone he knows, we're
24 friends.

25 A Yes, yes, ma'am.

1 Q And you go back to what you're doing.

2 A Yes.

3 Q Okay. How long was the person there before you said
4 the hood was taken off?

5 A When I first -- oh, when the hood was taken off? As
6 he was -- as Eric acknowledged him and he acknowledge Eric,
7 is when the hood come off his head.

8 Q Okay. Do you remember the weather that day? It's
9 February 18th.

10 A I'd imagine it's probably cold.

11 Q Okay.

12 MS. JONES: That's all.

13 MR. SMITH: I don't have anything further.

14 THE COURT: Let me ask one thing for the clarity for
15 the record.

16 who is Michael?

17 THE WITNESS: Koepke or the...

18 THE COURT: That's Thomas Koepke?

19 THE WITNESS: Yeah. I -- I don't -- I'm not too
20 familiar. That was the first --

21 THE COURT: Thomas Michael Koepke.

22 THE WITNESS: Yeah. Thomas Michael.

23 THE COURT: Okay. Thank you. You may step down.

24 MR. SMITH: State calls Darryl Lewis.

25 THE COURT: And Darryl Lewis is also known as Joe

1 Lewis?

2 MR. SMITH: He does go by Joe Lewis.

3 DARRYL JOE LEWIS, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. SMITH

6 Q will you state your name?

7 A Darryl Joe Lewis.

8 Q I'm going to call you Joe.

9 A Yes, sir.

10 Q Joe, were you at Old Canaan Road on February 18th of
11 2018 -- 121?

12 A I was.

13 Q whose house is that?

14 A My cousin Eric's.

15 Q what brought you over to the house that day?

16 A I lived there. I -- I was with my friend earlier that
17 day, and I came home, and they was out at the garage.

18 Q Okay. When you said you lived there, you mean in the
19 past you'd lived with Eric, or were you currently living
20 there?

21 A I was currently living there, yes.

22 Q Okay. Do you know the defendant? Had you ever seen
23 him before?

24 A Yes. He had -- he had stayed there for about a week
25 or so. I never really talked to him. I was in and out. I

100 Darryl Joe Lewis (In-camera)
Direct examination by Mr. Smith

1 stayed gone most of the time, but when I would come home I
2 seen him. He would -- he was there with a girl, and they
3 would go to the room Eric was letting them stay in.

4 Q Did you know his name?

5 A No. I didn't. No.

6 Q So you would have interacted with him very, very
7 little?

8 A Yeah. I mean, Eric probably mentioned it, but I don't
9 never pay attention to -- it takes a while for me to learn
10 names.

11 Q But when you saw him on February 18th, that was not
12 the first time that you seen that person.

13 A No.

14 Q But you probably didn't know his name.

15 A Yeah. I didn't.

16 Q And who was present when you got to Eric's house?

17 A It was Eric, Michael Koepke, Brian Foster and Joel
18 Campbell.

19 Q And describe whatever interaction you had with
20 Mr. Foster, how long you had to observe him before.

21 A I didn't really have interaction with him. I just --
22 he was in the doorway of the garage kind of near Eric. And
23 he was quiet most of the time. And I don't normally speak
24 to people. I mean, I'm a shy person. I don't talk to
25 people I don't know much.

1 Q Did you recognize him as the person that had
2 previously stayed at Eric's house?

3 A Yeah.

4 Q And then did Eric and that individual ultimately go
5 inside --

6 A Yes.

7 Q -- the house?

8 A They did.

9 Q What happened after that point?

10 A We hear a gunshot and a thud. And everything's just
11 quiet. And me and Joel and Michael just stopped, and it's
12 like everything is quiet. And Michael starts to walk
13 inside, and me and Joel's, like, no, you shouldn't do that.

14 Q And then what happened?

15 A I just remember Michael coming out the back door
16 saying -- with his hands up saying, no, man, you don't
17 gotta do that. And I take off running -- everything.

18 Q All right. And were you -- did you ultimately make it
19 back to 121 Old Canaan?

20 A I did.

21 Q All right. And did you speak with law enforcement?

22 A I did. I made sure they was there before I went back.

23 Q All right. Well, describe, if you can, what your
24 emotions were like at that time. Were you --

25 A I couldn't breathe, basically. Everything's just a

102 Darryl Joe Lewis (In-camera)
Direct examination by Mr. Smith

1 blur pretty much.

2 Q Do you remember asking for oxygen?

3 A Yeah. I did. The paramedic was with me for a while
4 to make sure I was okay.

5 Q So you were under a lot of stress, I guess, at that
6 time.

7 A Yeah.

8 Q All right. Did you -- you tell law enforcement what
9 you recalled of the events?

10 A Yes.

11 Q Did you tell them that you thought that you'd maybe
12 recognize the person?

13 A Yes, sir.

14 Q And I want to show you Court's Exhibit 3. Is this a
15 photo-lineup affidavit that police went over with you --

16 A Yes, sir.

17 Q -- before you picked him out of a lineup? Did you
18 understand that you didn't have to pick anybody out of it?

19 A I did.

20 Q And that you needed to be a hundred percent certain
21 before you picked the person?

22 A Yes, sir.

23 Q All right. Did you ultimately look at this photo
24 lineup?

25 A I did, and I recognized him.

1 Q All right. And he is No. 5 on that lineup, is that
2 right?

3 A Yes, sir.

4 Q All right. And you initialed and dated it.

5 A Yeah.

6 Q Did you have any opportunity -- you were -- you and
7 Joel both viewed the lineup at similar times. But you were
8 the second person to look, is that right?

9 A Yeah, yes, I mean.

10 Q Or do you even know what they were -- did you even
11 know what they were doing with Joel?

12 A I didn't know, no. I haven't spoke to Joel even -- I
13 wasn't speaking to anybody. I wasn't paying any attention
14 to anybody else at that time.

15 Q Other than law enforcement, you mean?

16 A Yeah. The paramedic and all.

17 Q So you -- Joel didn't send you any signals or say
18 anything about who he picked?

19 A He did not.

20 Q How long when you arrived there would you say that
21 you -- before Eric and that individual went inside the
22 house?

23 A Twenty minutes or so. I'm not sure.

24 Q Please answer any questions Ms. Jones has.

25 A Okay.

1 CROSS-EXAMINATION

2 BY MS. JONES

3 Q Mr. Lewis, you gave a brief written statement that
4 day.

5 A That's all I could do is make it brief.

6 Q Did you -- do you remember whether you told them that
7 you had seen this person before?

8 A Yeah.

9 Q Did you write it in your statement?

10 A No. I couldn't think to write. I mean, I tried to
11 make it as short as I could. I couldn't --

12 Q why did you think --

13 A -- describe everything.

14 Q -- making it as short as could you could was a good
15 idea?

16 A Because I couldn't -- I was shaking and I couldn't
17 breathe. Just took me a while to calm down and...

18 Q Did you ask law enforcement to let you just settle
19 down that day and maybe come back up to the sheriff's
20 office the next day when you were calmer and could give a
21 much more complete statement?

22 A No. I didn't.

23 Q Okay. You agree if you would look at it --

24 A Uh-huh.

25 Q -- that there's nothing in there about you knowing who

1 this individual -- or excuse me -- having seen this
2 individual before, correct?

3 A Say that again.

4 Q Doesn't say in there that you had seen this person
5 before, does it?

6 A It don't say that.

7 Q It doesn't say that the person had even lived in the
8 house with you for a while, does it?

9 A No, ma'am. I thought I was just describing what had
10 happened.

11 Q Okay. Did you prior to today tell them that you --
12 the person had actually lived in the house with Eric and
13 you?

14 A Yeah. I'm pretty sure I told someone.

15 Q Do you remember who that was?

16 A No.

17 Q Okay. You had been gone. Had you been there the
18 night before --

19 A The night before, yeah.

20 Q -- this? You spent the night there the night before?

21 A Yeah.

22 Q You got up and you left to go somewhere.

23 A Uh-huh.

24 Q You came back 15 or 20 minutes before this event
25 you've described.

1 A Yeah.

2 Q Okay. Did you ever go in the house after you came
3 back?

4 A No. I didn't.

5 Q You just walked over to the garage where everybody
6 was.

7 A Yes. I got out, and everybody was there right when I
8 got home. So I got -- I got outta my car and started
9 talking to Joel and Michael, because I haven't seen Joel in
10 a while. And that's when they went in.

11 Q Okay. Now, did you ever give them any description
12 other than that that's written in your statement? You see
13 the last line?

14 A I'm not sure if I did or not.

15 Q The guy was skinny, medium build, black guy, had a
16 hoodie and had short hair.

17 A Uh-huh.

18 Q They asked you to look at a lineup around the time you
19 were talking to the paramedics or afterwards.

20 A It was afterwards.

21 Q Okay. Were you better by the time you looked at this
22 lineup?

23 A Yeah. I mean, I wasn't better but I was...

24 Q You were breathing.

25 A Yeah.

1 Q Okay. And you picked No. 5 out.

2 A Uh-huh.

3 Q And you told the detective that this is the person who
4 shot my cousin Eric Morris.

5 A Yes, ma'am.

6 Q Okay. You said you saw Michael come out of the house
7 after the shots, with a shot in the house, he'd gone into
8 the home. He came back out saying don't, don't, and you
9 took off running.

10 A Uh-huh.

11 Q And didn't look back.

12 A Yes, ma'am.

13 Q So you don't know from the point you turned around and
14 took off running what else was happening there.

15 A I don't.

16 Q Okay. So you have no idea if that individual even
17 shot at you, do you?

18 A I don't.

19 Q Okay. You came back when it was safe because you saw
20 the law enforcement.

21 A Yes.

22 MS. JONES: Your Honor, that's all I've got.

23 THE COURT: Anything else?

24 MR. SMITH: No, Your Honor.

25 THE COURT: Okay. Step down.

1 Any other witnesses from the state?

2 MR. SMITH: No, Your Honor.

3 THE COURT: All right. Ms. Jones, you got any?

4 MS. JONES: No, sir, Your Honor.

5 THE COURT: Is there anything y'all need to tell me?

6 MS. JONES: Your Honor, no, sir, not unless you're

7 asking for argument.

8 THE COURT: Well, that's what I'm asking for.

9 MS. JONES: Your Honor, I would -- as I pointed out
10 with the officers, the -- the lineup itself is inherently
11 suggestive based on the description they said they were
12 using to build it, the no facial hair. And every
13 individual except Mr. Foster in the lineup has facial hair.

14 THE COURT: All right. Mr. Smith.

15 MR. SMITH: Your Honor, we also heard the procedures
16 about how lineups are generated and they have to work with
17 what pictures they have whether -- also point out to the
18 Court that another individual who is present with them and
19 was possibly closer to these individuals was not able to
20 pick him out of the lineup. So we don't believe that the
21 lineup's unduly suggestive.

22 The admonishment before they ever presented with the
23 lineup says to not pay attention to the facial hair and
24 hair length and things like that.

25 Joel Campbell even stated that the hair wasn't the

1 same as what he saw that day.

2 And, Your Honor, I don't think that the defense --
3 it's the defense's burden in this case. I don't think that
4 they've shown that if it is suggestive that it gives rise
5 to a substantial likelihood of irreparable
6 misidentification given the totality of the circumstances.

7 THE COURT: All right. Well, as we all know, the
8 purpose of a lineup is to put individuals with similar
9 characteristics based upon descriptions given by witnesses
10 at a crime scene to see if they can pick out someone as
11 being the perpetrator of some crime they claim was
12 committed.

13 In this instance that was done, and the police had a
14 description. A lot of times hair wouldn't make any
15 difference unless the witnesses provided a description of
16 hair.

17 In other words, it might be that the witness didn't
18 notice hair, and so then it wouldn't matter what kind of
19 hair you put in a lineup because that's not a distinctive
20 characteristic that was provided by way of a description.

21 In this case it apparently -- the police were well
22 aware that the description of the suspect was clean shaven,
23 short hair, clean shaven, younger, hair crooked close on
24 the side, longer on top.

25 All of these photos in this particular lineup

1 probably -- it's fair enough to meet that description.
2 Hair shorter on the side, longer on top.

3 But what is concerning about this lineup is that you
4 have six folks, younger black males. A specific
5 description was that he was clean shaven. And out of six
6 pictures one in this instance was clean shaven. And his
7 photo appears right in the middle of the lineup, and it
8 just so happens that he was the defendant.

9 So clearly the lineup is suggestive because an
10 important part of the description was that the perpetrator
11 was clean shaven. This is the only person that's clean
12 shaven in this lineup, is the defendant himself. So
13 clearly that is reasonably argued that that's suggestive.

14 So then the question becomes whether or not,
15 notwithstanding the fact that the lineup is suggestive,
16 whether or not it was unduly suggestive. And there's a
17 likelihood, a substantial likelihood, of an irreparable
18 misidentification as a result of the procedure.

19 So we have to look at the various factors, and I've
20 considered the factors as it relates to the testimony of
21 Mr. Campbell and Mr. Lewis.

22 The difference of course between Mr. Campbell and
23 Mr. Lewis' testimony that's critical in this particular
24 case, or that's different, is the fact that Mr. Lewis said
25 he knows the defendant. He knew him before the day of this

1 event, that the defendant had lived with Mr. Morris at the
2 house with his girlfriend. And so he knew who he was.
3 When he saw him that day, he recognized him. He knew who
4 he was.

5 So any suggestiveness of this lineup is likely
6 negligible so far as Mr. Lewis' identification is
7 concerned, because he knew who the defendant was.

8 But, in any event, I've considered the testimony as it
9 relates to the various factors including each of the
10 witnesses' opportunity to view the person they've
11 identified as being the perpetrator, their degree of
12 attention at the time that the crime was committed, any
13 accuracy or inaccuracy of a prior description given by
14 either, the level of each witness' certainty of the time of
15 the confrontation.

16 That's important in the case of Mr. Campbell because
17 Mr. Campbell says he picked him out immediately based upon
18 his eyes, the way his eyes looked. They were just
19 distinctive to him. That's what he recognized right off
20 the bat.

21 And the officer testified. Mr. Gaddy testified that
22 Mr. Campbell -- excuse me -- Mr. Guest testified that
23 Mr. Campbell immediately picked out Mr. Foster's photo from
24 a lineup. And this is a lineup, I'm told, that was used.
25 And, you know, everybody's purple in it and -- and the

1 facial hair is faint in the photos, at least, and so you'd
2 have to look at it some period of time, I think, to even
3 distinguish the fact that only one has no facial hair.

4 So I think Mr. Campbell's testimony is compelling that
5 he recognized the eyes and that's what immediately caused
6 him to pick out the photograph of Mr. Foster. And his
7 level of certainty was -- was -- appeared to be quite
8 certain as to who the perpetrator was.

9 Also, I considered the -- and with respect to
10 Mr. Lewis he -- as I say, he knew who the defendant was.
11 So most of the factors are not that important.

12 I've also considered the testimony of the lapse of
13 time between the crime and confrontation, which was short.
14 In fact, the lineup was conducted at the scene of the event
15 itself, the crime itself, within an hour of the event
16 occurring and that there was no misidentification or
17 failure to identify the defendant by either of the
18 witnesses who are to provide an in-court identification.

19 I find that there is no real corrupting influence
20 based upon the testimony and the other factors, that there
21 is no real corrupting influence of the suggestive lineup in
22 the witnesses' identification of the defendant as the
23 perpetrator of the crime; and therefore the in-court
24 identification of the defendant by the two witnesses, while
25 the procedure might have been somewhat suggestive, I find

1 that their testimony is, nevertheless, credible and that
2 their identification of the defendant was not based upon
3 any suggestive lineup but based upon their own certainty
4 and recollection as to the events, the circumstances,
5 relating to that event and their ability to identify the
6 defendant as the perpetrator of the offense; and therefore
7 the in-court identification shall be permitted.

8 All right. Now, what else do we have? I know we have
9 a statement that I understood was -- we needed a Jackson
10 vs. Denno hearing.

11 MS. JONES: I wasn't given a clear indication they
12 were going to use it, but we can go ahead and do it.

13 THE COURT: Well, if we're not, then that would be as
14 waste of time basically.

15 MS. JONES: Yes, sir.

16 MR. SMITH: Your Honor, I -- I kind of view it as if
17 it becomes appropriate, it would become appropriate at a
18 later time in the trial. I'm not -- I'm not planning on
19 using it as my case in chief.

20 THE COURT: Oh, okay. All right.

21 MR. SMITH: But it's out there potentially if he
22 testifies.

23 THE COURT: I see.

24 MR. SMITH: And we -- we do have Mr. Moore. I can
25 have him here in the morning to talk about his lineup as

1 well -- Mr. Jim Moore. Have him here earlier.

2 THE COURT: Okay. Anything else this afternoon?

3 MR. SMITH: Nothing from the state, Your Honor.

4 MS. JONES: Nothing, Your Honor.

5 THE COURT: Okay. Court is in recess until 9:30 in
6 the morning.

7 END OF PROCEEDINGS APRIL 8, 2019

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1 (Proceedings April 9, 2019)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are there any matters to address before
5 the jury is brought in?

6 MR. SMITH: None from the state, Your Honor.

7 MS. JONES: Your Honor, I was under the impression
8 when we broke last we were going to continue with the issue
9 of the identification with Mr. Moore.

10 MR. SMITH: I have him scheduled to come in later in
11 the morning.

12 THE COURT: When that time comes, we will.

13 MR. SMITH: He's supposed to come in at 11:00, Your
14 Honor.

15 THE COURT: All right. Bring the jury in, and ask
16 Mr. Kellam to take the foreperson's seat.

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

19 THE COURT: Good morning, ladies and gentlemen.

20 We are ready to begin with the trial of the case for
21 which each of you have been selected.

22 And, Mr. Kellam, I'm going to ask you to serve as the
23 foreperson of the jury. As the foreperson you'll have
24 three specific duties that none of the other jurors will
25 have.

1 First of all, you'll be asked to serve as the
2 spokesperson for the jury, and that just means if something
3 arises during the course of the trial that needs to be
4 brought to my attention or you have difficulty, problem or
5 question, you'll be the person to let me know of that fact.
6 You'll do it through the bailiff if you're outside of the
7 courtroom. You can do it directly if you're in the
8 courtroom.

9 Secondly, you'll be called upon to preside over jury
10 deliberations when that time comes at the trial's
11 conclusion after all of the evidence has been received and
12 after I've instructed you on the law that's applicable.

13 When you and your fellow jurors go back to begin
14 deliberations, you will be tasked with the responsibility
15 of presiding over that process in the jury room simply to
16 ensure that those deliberations are carried out in some
17 orderly fashion.

18 And, thirdly, you'll be asked to actually write the
19 verdicts or the decisions of the jury. You'll indicate
20 those on a verdict form that I'll provide you at the
21 trial's conclusion on which you will indicate the jury's
22 unanimous decision as it relates to each of the separate
23 charges.

24 The foreperson has those specific duties that I've
25 just indicated. That does not however mean that he is any

1 more important than of you other jurors, and that's because
2 the decision of a jury is the unanimous and consensus
3 opinion of all 12 jurors. And so all of you and each of
4 you will have an equal say and equal vote in what the
5 ultimate decisions will be in this case.

6 Someone simply has to be delegated those
7 responsibilities that I've just indicated, and I have
8 delegated those to Mr. Kellam in appointing him as the
9 foreperson. But all of you jurors are equally important so
10 far as the ultimate decisions in this case are concerned
11 because, as I've stated, the verdicts have to be unanimous.
12 All of you must be in agreement.

13 Now, Ms. Rollins and Ms. Shiel, each of you have been
14 selected as alternate jurors, and the function of an
15 alternate juror is to take the place of one of the original
16 12 jurors if during the trial one of these 12 cannot
17 continue to serve for some reason.

18 If because of an emergency or an illness or some other
19 unforeseen circumstance one of the original 12 cannot
20 continue to participate, then one or both of you would be
21 called upon to take that juror's place, and in that event
22 you would become the 12th juror. In that event you
23 participate throughout the trial including the jury
24 deliberations at the trial's conclusion.

25 If however when the time does come for jury

1 deliberations, if the original 12 are able to participate
2 in that function, then service by the alternates would end
3 and you would not participate any further. And that's
4 because the decision of a jury is that of 12. But no more
5 than 12 are permitted to engage in that deliberation
6 process.

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

13 So we do appreciate your participation as alternate
14 jurors, just as we appreciate the participation of each of
15 you jurors who have been selected for the purpose of
16 deciding the verdicts in this particular case.

17 You may swear the panel.

18 (Whereupon, the jury was duly sworn.)

19 THE COURT: All right. Ladies and gentlemen, as you
20 know, you have been selected to decide the verdicts in the
21 case of the State vs. Brian Cornelius Foster.

22 As you also know, Mr. Foster has been accused by the
23 prosecutor by way of these indictments. I read from the
24 indictments before you were selected.

25 The indictments are the charging paper. They're not

1 evidence of anything. They don't prove anything; they
2 don't establish anything. They simply are the means by
3 which any person who is accused of a crime where the
4 jurisdiction lies in this court is brought to this court to
5 stand trial on those charges. It also serves to put the
6 defendant on notice as to what the state claims they did by
7 way of the commission of some criminal offense.

8 So in this case, as I told you, we have five separate
9 indictments, but they set forth nine separate charges. All
10 of the charges are alleged to have arisen out of one event
11 or a course of events which the state alleges occurred back
12 on February the 18th of 2018.

13 But the indictments allege separate charges, and they
14 are to be treated separately. In other words, you'll
15 consider the allegations in an indictment not as proof of
16 the allegation but simply what the charge is. And then
17 you'll determine the facts from the evidence presented
18 during the trial as it relates to those allegations. And
19 where you're able to determine those facts, you then would
20 apply the law that I will have provided you, and you will
21 determine whether or not the defendant has been proven
22 guilty of that charge beyond a reasonable doubt.

23 Mr. Foster, as you know, has been charged with the
24 crime of murder as it relates to the death of Eric Norris.

25 He's charged with possession of a firearm during the

1 commission of that violent crime -- that violent crime
2 being murder.

3 He's also charged with attempted murder as it relates
4 to three separate individuals, those being Joel Campbell,
5 Darryl Joe Lewis and Thomas Michael Koepke.

6 As to each of those charges of attempted murder
7 there's also a separate charge in that same indictment,
8 relative indictments, for possession of a firearm during
9 the commission of that violent crime, the violent crime
10 being attempted murder.

11 And then the remaining indictment charges the
12 defendant with the unlawful possession of a firearm.

13 Now, as to those charges and as to those allegations,
14 as you know, the defendant has entered a plea of not
15 guilty.

16 As I told you, that plea of not guilty places upon the
17 state the burden of proving the allegations that they have
18 made by way of each of these indictments, the burden of
19 proving each of the essential elements of the crimes
20 alleged -- murder, attempted murder, possession of a
21 firearm during the commission of a violent crime and
22 unlawful possession of a firearm -- and therefore the
23 burden is upon the state to establish the defendant's guilt
24 to the satisfaction of you 12 jurors beyond a reasonable
25 doubt before a verdict of guilty could be returned as to

1 any of the charges brought against the defendant.

2 Every person accused of a crime is always presumed to
3 be innocent. That presumption of innocence remains with
4 every defendant, as it does with this defendant, from the
5 time that he is placed under arrest and throughout the
6 course of the criminal process and even throughout the
7 course of the actual trial in the case.

8 That presumption of innocence will be with Mr. Foster
9 even at the end of the trial as you go back into your jury
10 room to begin with your deliberations at the end of the
11 case.

12 That presumption of innocence will be with him in that
13 jury room, and it'll be with him forever unless you 12
14 jurors determine that he is no longer entitled to the
15 presumption of innocence as it relates to a particular
16 charge.

17 In other words, after you have carefully considered
18 all of the evidence presented during the trial and after
19 you have determined what the facts are as they relate to
20 the allegations made based upon that evidence presented,
21 and after you decide the facts and then you apply the law
22 that I will have provided you, if you 12 jurors unanimously
23 determine that his guilt as to a particular charge has been
24 proven beyond a reasonable doubt, then he would no longer
25 be entitled to the presumption of innocence as it relates

1 to that particular charge. But it is only if, unless and
2 until you are satisfied of his guilt beyond a reasonable
3 doubt that the presumption of innocence would no longer be
4 applicable.

5 Now, the way the trial will proceed is that in a
6 moment the lawyers are going to address you in what are
7 called opening statements.

8 There are two occasions during the trial of a case
9 where lawyers are permitted to address the jury directly,
10 and that is at the beginning of the trial before any
11 evidence has been introduced, then again at the conclusion
12 of the trial after all of the evidence has been received.

13 But keep in mind, as I've just indicated, the evidence
14 upon which you will base your decision comes in during the
15 trial between the opening and the closing statements of the
16 lawyers. And so what the lawyers tell you in those
17 statements is not to be considered by you nor construed by
18 you as being any evidence upon which you will base your
19 decision, and that's because the lawyers don't know
20 anything about this case of their own personal knowledge or
21 perception like witnesses will be testifying to when they
22 take the witness stand and testify before you.

23 The lawyers aren't going to take the witness stand.
24 They're not going to be placed under oath and they're not
25 going to be subjected to direct and cross-examination like

1 witnesses will be when they're called to trial to provide
2 information to the jury.

3 So what the lawyers tell you is not to be considered
4 by you as any evidence upon which you will base your
5 decision. But you should listen to what the lawyers have
6 to say because those statements do serve a purpose.

7 The opening statements will provide the lawyers an
8 opportunity to give you their perspective on the case so
9 that you'll have some context in which to place the
10 evidence that we will be receiving shortly thereafter.

11 The closing statements afford the lawyers an
12 opportunity to discuss with you the evidence that you have
13 seen and heard during the trial of the case. And through
14 that discussion each will have an opportunity to try to
15 persuade or to convince you that the evidence in the case
16 does or does not support a particular decision.

17 The state goes forward first in their presentation of
18 evidence because they have the burden of proof. They've
19 got to prove the defendant guilty beyond a reasonable
20 doubt, and therefore they must go forward first with their
21 evidence in order to convince you of that fact.

22 After the state has presented their evidence in the
23 case any defendant or person accused of a crime also has
24 the same opportunity to take the witness stand and to
25 testify or to call a witness or to introduce evidence. But

1 understand that while the state does have a burden -- they
2 have the burden of proving the defendant guilty beyond a
3 reasonable doubt.

4 A person charged with a crime never has any burden,
5 and a person charged with a crime, as I said, is presumed
6 to be innocent; and therefore a defendant charged in a
7 criminal case doesn't have to take the witness stand,
8 doesn't have to call any witnesses, doesn't have to produce
9 any evidence.

10 The burden is not on a defendant to prove anything,
11 and certainly not on -- the burden is not upon a defendant
12 to prove that he is not guilty or to provide that he is
13 innocent because in some cases that might not be possible.

14 However, a person charged with a crime is always
15 afforded an opportunity to present evidence in the event he
16 or she wished to do so.

17 So after the evidence has been received and after you
18 hear the final summations of the lawyers, I will then
19 instruct you fully on the law as it relates to the criminal
20 law generally and as it relates to these particular crimes
21 specifically. And then you'll be asked to go back and to
22 begin with your deliberations in the case.

23 Through that process you're simply going to be called
24 upon through the exercise of good judgment and common sense
25 conscientiously applied to the testimony and evidence in

1 the case to determine if you can what the facts are as they
2 relate to these allegations. And once you decide the
3 facts, you then apply the law that I will have provided
4 you, and you determine whether or not the defendant has
5 been proven guilty of a particular charge beyond a
6 reasonable doubt.

7 If he has, then the verdict is guilty as to that
8 charge. If he has not, then the verdict would be not
9 guilty as to that particular charge.

10 So all that we ask for you to do is to pay careful
11 attention through the course of the trial, because there
12 are a number of witnesses which are going to be called.

13 Sometimes there is a conflict in testimony provided by
14 witnesses, and sometimes those conflicts don't make any
15 difference, but sometimes they do. And where the conflicts
16 make a difference because they relate to a material fact
17 that has to be decided by the jury in order to reach a
18 decision, you are the persons who decide the conflicts.

19 You are the persons who decide the credibility and the
20 believability of each witness that has testified during the
21 trial, and it's your prerogative in deciding the facts to
22 evaluate that credibility. And in doing so you have the
23 prerogative to believe everything that a witness testified
24 to. You may choose to believe none of it.

25 You may believe some portion of a witness' testimony

1 and reject some other portion of that same witness'
2 testimony. You could believe one witness as opposed to
3 several, or several as opposed to one. But whatever your
4 good judgment and common sense tells you is the most
5 believable and credible testimony is the testimony you
6 should accept, and you should reject any testimony or other
7 evidence that you find not to be credible or believable.

8 Again, your sole objective is to render a fair and
9 impartial decision based upon the information provided and
10 the law that's applicable as it will be provided to you.

11 It's also important that you keep an open mind through
12 the course of the trial. That just simply means that you
13 are not to begin making up your minds or formulating your
14 opinions as to what you think the ultimate decisions in
15 this case ought to be until all of the witnesses have
16 testified, until you have heard the final summations of the
17 lawyers and until I have instructed you on the law that's
18 applicable.

19 That is the process that has been designed over the
20 last 240 some odd years in order to ensure that you can
21 arrive at a fair and impartial decision in any case that
22 you're called upon to participate in.

23 So I do want to thank you in advance for your
24 participation, as well as for your careful attention. I
25 would ask that you please give the lawyers your attention

1 now as they give you their opening statements.

2 Ms. Clark.

3 MS. CLARK: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, ma'am.

6 MS. CLARK: February 18th of 2018 changed everything.
7 A 29-year-old man named Eric Morris was shot and killed in
8 his own home here in Spartanburg County.

9 It was supposed to be just a normal day. Eric was
10 hanging out in the back yard with friends. His roommates
11 were coming and going. They were working on things in the
12 garage, eating pizza. Eric did not have a care in the
13 world.

14 But then a man walked up the driveway at Eric's home.
15 He was invited to join that group of friends, and
16 everything changed.

17 Fast forward to 3:30 that afternoon and Eric would be
18 found lying on the living room floor of his home with a
19 single gunshot to the back of his head.

20 His friend's life would never be the same either. One
21 of his friends would be found with a significant injury.
22 He had a gunshot wound to his hip.

23 Ladies and gentlemen, this man right here, his name is
24 Brian Foster. He is the defendant in this case, meaning
25 that he has been charged with a multitude of crimes

1 including the murder of Eric Morris and the attempted
2 murder of three of Eric's friends.

3 Now, we as the State of South Carolina have the burden
4 of proof in this case. That means that at the end of this
5 trial we must leave you firmly convinced that Brian Foster
6 is guilty. So let me tell you how we're going to do it.

7 First of all, we're going to bring people up here to
8 talk to you. This box right here is called the witness
9 stand, and that's where we're going to call people up, and
10 they're going to sit there and they're going to talk to
11 you.

12 They're going to tell you what they heard, they saw,
13 what they felt. They're going to include law enforcement
14 officers, eye witnesses and even neighbors. And those
15 people are certainly going to include the three victims of
16 the attempted murder charges. These are three of Eric's
17 friends, the ones that were there when all of this
18 happened, the ones that were there in the back yard.

19 Their names are Michael Koepke, Joel Campbell and Joe
20 Lewis. Listen carefully to what they tell you. They're
21 going to get up here and tell you that they had to quite
22 literally run for their lives that day.

23 You're also going to have photographs. We're going to
24 show you a number of photographs so that you can have a
25 better idea of what the scene looked like. There's going

1 to be outside of the house, the inside of the house, the
2 garage area.

3 You're also going to have items, things. We're going
4 to show you pieces of evidence that came from the scene.
5 These are going to include shell casings, firearms,
6 clothing with D.N.A. on them. We're going to have people
7 come up here and explain everything you need to know about
8 them.

9 Listen carefully to how those items of evidence match
10 up to what the people in this box tell you.

11 You're also going to have feed from a video
12 surveillance system. Eric had a video surveillance system
13 set up inside his house, and on the outside. You'll have
14 an image from the inside and an image from the outside.
15 It's going to kind of help you understand what happened.
16 It's going to help you establish a timeline in your heads.
17 And you're going to get to see it.

18 And after you have all of this, after you have the
19 evidence, the testimony, the result will be clear. The
20 evidence will show that Brian Foster is guilty. The
21 evidence will show that Brian Foster is the one that walked
22 up that driveway. He's the one that joined that group of
23 friends.

24 The evidence will show that after a while Brian Foster
25 and Eric went inside Eric's house together. Everybody else

1 stayed outside. They were just hanging out. And the
2 evidence will show that within just a couple of minutes of
3 being inside Brian Foster used Eric's own gun to kill him.
4 Eric was found lying beside his pool table in his living
5 room.

6 The evidence will show that Brian Foster still wasn't
7 done. It will show that at that point he turned on Eric's
8 friends shooting at them, even chasing them down in the
9 yard. Brian Foster changed everything.

10 Ladies and gentlemen, the next couple of days are
11 going to be difficult. There's going to be a lot of
12 information. It's going to be emotional. You're going to
13 be sitting in these chairs for a long time. But I urge you
14 to stay in the moment, because it's important. Every piece
15 of evidence, every person matters.

16 At the end of this trial based on all of the evidence
17 presented, all of the evidence we give to you, we're going
18 to come back up here and we're going to ask that you return
19 a verdict of guilty. Thank you.

20 THE COURT: Ms. Jones.

21 MS. JONES: Thank you, Your Honor.

22 Good morning, Mr. Foreman, ladies and gentlemen of the
23 jury. Again, I'll introduce myself. I'm Beverly Jones. I
24 am a local attorney who's practiced here much longer than I
25 want to tell you. It's in excess of 25 years.

1 Today it is my pleasure to be here with you
2 representing Brian Foster. Mr. Foster is the young man, 19
3 years old. Well, exactly 19 and four months old. Behind
4 him is his grandmother and a family friend. There were
5 others here yesterday and will be more here through the
6 course of the trial. They're here supporting him.

7 As the judge has told you, our openings are only a way
8 for us to attract your attention and preview topics and
9 ideas that we think are important to guide you as you begin
10 to listen to the evidence in this case.

11 Now, one thing that Ms. Clark said in her opening
12 repeatedly is the evidence will show you -- the evidence
13 will show you -- which is not exactly the right way to
14 phrase that.

15 They are going to present witnesses and items of
16 evidence but the -- what the evidence shows is for you to
17 determine, as Judge Cole has already told you.

18 This is -- this system has Mr. Foster in here charged
19 with several crimes. He's become a part of the criminal
20 justice system. People have accused him of crimes. The
21 police arrested him, put him in jail. The solicitor
22 decides to prosecute and indicts him. And he's now in the
23 courtroom, and he has told the Court and you I'm not
24 guilty.

25 Now, this is where you come in. And some people say

1 that you as a body, the 14 of you collectively, are the
2 most important part of the system because you are the
3 ultimate decider of a lot of things in this case. You
4 decide what the evidence is. They don't decide it. You
5 decide it.

6 The judge has also told you probably the most
7 important principal that guides the system and should guide
8 the way you listen to the evidence, the way you critique
9 the evidence, the way you discuss it later and guide your
10 deliberation and decision-making.

11 The state has the burden of proof. As the judge has
12 said, Mr. Foster sits there an innocent man and has nothing
13 to prove to you. They brought the charges. They have to
14 prove it, and they have to prove it beyond a reasonable
15 doubt.

16 So you'll hear a series of witnesses, see some
17 testimony. It's your job to scrutinize it, analyze it,
18 compare it, contrast it to other things, to other people.
19 Listen. Does one witness say it's gray and another one
20 says it's black? Does one witness say two? Does another
21 person say three?

22 You've got to decide those inconsistencies because you
23 are also held to a duty that when you cannot resolve doubts
24 you have to give the benefit of that to Mr. Foster.

25 You're not here to approve their actions; you're not

1 here to reward them. You are here as a jury to judge and
2 critique their case, their evidence, their witnesses and
3 their charging decisions. So you need to make them do
4 their jobs. Hold them to their burden.

5 Now, Mr. Foster and I sat over there yesterday, and we
6 chose and picked you to decide this case. Now Mr. Foster
7 and I only ask that you listen carefully to the evidence,
8 resolve any doubts in his favor and hold the state to their
9 burden of proof. Thank you.

10 MR. SMITH: The state calls Joel Campbell.

11 JOEL ANTHONY CAMPBELL, JR.,
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. SMITH

14 Q will you please state your name for the jury?

15 A Joel Anthony Campbell, Jr.

16 Q And where do you live, Mr. Campbell?

17 A I live at [REDACTED] South Avenue in Spartanburg.

18 Q All right. How do you know Eric Morris?

19 A I grew up with him, basically. Me and his bother was
20 really good friends growing up.

21 Q All right. So would you have known him basically your
22 entire life?

23 A Yes, yes, sir.

24 Q All right. And where was Mr. Morris living at the
25 time of this incident?

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Direct examination by Mr. Smith

1 A Old Canaan Road.

2 Q Is that in Spartanburg County?

3 A Yes, sir.

4 Q All right. Did you have occasion to go over to his
5 house on February the 18th of 2018?

6 A Yes. I did.

7 Q And how did that happen? Why did you go over there?

8 A I'd come back into town, I guess, November, the
9 previous November. And I hadn't seen him since I'd been
10 back in town.

11 So I stopped a couple of weeks earlier before
12 February 18th, and I noticed he had some -- a moped in his
13 shop that needed some fixing and working on and stuff.

14 So I -- I went over there to see him, and I seen that.
15 And I talked to him, and he was, like, well, one day why
16 don't you come over and help me fix it and work on it and
17 stuff. And, well, it took me about two weeks. And that's
18 when I went back, February 18th. That was the second time
19 I'd been back over there.

20 Q All right. Do you remember about when you got there?

21 A I would say it was maybe 1:00 o'clock.

22 Q All right. And what did you do when you got there and
23 who was there?

24 A It was just -- just Eric in the garage --

25 Q Okay.

1 A -- when I pulled up.

2 Q And what did y'all do?

3 A He was -- he had his 4-wheeler seat took off, and he
4 was messing with his 4-wheeler. So I -- I started to help
5 him tinker with the 4-wheeler, and he ended up spraying
6 some carburetor spray in the carburetor, and it caught
7 fire. And he decided not to work on it no more for today
8 after that.

9 Q And then what did y'all do?

10 A We -- I pulled the moped that he had in the back of
11 the barn out that I originally had talked to about working
12 on, and we pulled. I pulled it out to -- right outside
13 where the garage door would be. It was missing. So I
14 pulled the moped right outside the door of the place, and I
15 hooked a battery charger to it so I could get power and
16 start working on the moped.

17 Q Bear with me one second.

18 (Pause.)

19 Q Are you familiar with Eric's house and the
20 surroundings and the yard and everything like that?

21 A Yes, sir. I am.

22 Q I'm going to hand you seven pictures that are marked,
23 previously been marked, State's Exhibits 13, 14 and 15 and
24 16, 18, 20 and 21. I ask if you can tell me what these are
25 pictures of or where they are pictures of.

1 A State's Exhibit 13 is a picture of pretty much the end
2 of his driveway leading to the garage and his back-porch
3 steps.

4 Q All right.

5 A There's a burn barrel, a burn pit, air conditioner
6 unit, well house.

7 Q All right. You don't got to describe too much.

8 A Okay.

9 Q I'm going to show to the jury. But I just need you to
10 keep going through those.

11 A Oh, yeah.

12 Q And describe what they are, what location that is.

13 A This is Eric's driveway, his garage, his house, the
14 front of the house. This side, his side yard, the side
15 pen, a view from directly in the back, a view from the side
16 in the back. This is back --

17 Q Do those fairly and accurately represent Eric's
18 Morris' house at 1212 Canaan --

19 A Yes, sir.

20 Q -- the yard?

21 A Yes, sir.

22 MR. SMITH: Your Honor, at this time we'd move State's
23 Exhibits 13 through 16, 18, 20 and 21 into evidence.

24 MS. JONES: No objection.

25 MR. SMITH: With permission to publish to the jury.

1 THE COURT: They're admitted. You may publish them.

2 (Photographs marked State's Exhibits Nos. 13, 14, 15,
3 16, 18, 20 and 21.)

4 Q That is State's Exhibit 14. Is this the garage that
5 you're referring to where y'all were working on the moped?

6 A Yes, sir.

7 Q All right. What side of his house? Orient yourself
8 from the front of the house. What side of the house would
9 this be on?

10 A If you're looking at directly the front door of the
11 house, that's the right side in the back.

12 Q All right. This is State's Exhibit 13. What --

13 A This is the right-side back but it's -- you're not
14 getting a view of the garage at that point.

15 Q Right.

16 A It's aimed towards the back steps.

17 Q All right. And what's this?

18 A That's a burn barrel.

19 Q All right. What about this here?

20 A That's the air conditioner unit he had set, set in his
21 yard. I think he shot at it and stuff like that.

22 Q Did you ever shoot with Eric?

23 A I'd shot, yes, sir. I'd shot his pistol earlier that
24 day.

25 Q Okay. Do you know what type of pistol that was or

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1 anything about it?

2 A It's -- he -- when I first arrived he had it in the
3 garage, and it said S-Y-Y-P or sky or I couldn't -- I never
4 really looked at it. I don't like 'em. So as soon as
5 he -- he always wanted somebody to shoot his new gun, and I
6 told him to put it in the house directly afterwards.

7 Q All right. But you had shot a gun that day --

8 A Yes, sir.

9 Q -- that belonged to Eric.

10 A Yes, sir.

11 Q What color was that gun?

12 A It was black.

13 Q State's Exhibit 15. What is that?

14 A That's the front shot of his house.

15 Q All right. State's Exhibit 16.

16 A That's kind of his pen off to the side, the left side
17 of his house.

18 Q State's Exhibit 18.

19 A That's the same pen, just from a different angle.

20 Q All right. So is that the garage that we started off
21 looking at?

22 A Yes, sir, yes, sir.

23 Q State's Exhibit 20.

24 A A direct shot from the rear of the house.

25 Q All right. State's Exhibit 21.

1 A And that's pretty much where you'd be standing if you
2 were at the garage door aimed towards the house.

3 Q All right. So you said that the first vehicle you
4 were working on caught on fire and you started working on
5 the moped. What happened then?

6 A Well, we were -- I have -- like I said, I hooked a
7 battery charger to the moped, and we were tinkering around
8 and, you know, trying to find tools. And I took a couple
9 of fenders off of it. And, well, I -- I don't know exactly
10 what I was doing at the moment when I seen someone behind
11 his roommate's car. His roommate --

12 Q Where would the roommate's car have been maybe from
13 this picture?

14 A Ten feet towards the road, ten feet towards the front
15 of --

16 Q Is this the driveway that goes to Old Canaan?

17 A Yes, sir.

18 Q All right.

19 A And I just happened to glance up, and I noticed
20 someone behind the gray car. I didn't know whose -- I
21 figured it was Eric's roommate or something, but I'd never
22 really had an encounter with him either. But there was a
23 gray parked in the driveway when I got there that day. And
24 there was an individual standing. I just noticed an
25 individual standing behind it with a hoodie on and his back

1 turned.

2 well, it -- it took a couple of seconds, and the
3 individual turned around to me. And I let Eric know there
4 was somebody in his driveway. And at that point Eric
5 hollered for the individual, which ended up being Brian
6 Foster. And once Eric acknowledged that he was there he --
7 he come down the driveway to the -- to the shop there, and
8 him and Eric was talking. And to me it seemed like they
9 had knew each other. So I didn't really have no reason to
10 have my guard up.

11 Q And so it appeared that it was a friendly interaction.

12 A Yes, sir.

13 Q All right. What happened once he got there?

14 A Well, Eric -- you know, like he did with me, he's
15 like, well, I got a new gun and stuff like that.

16 well, Mr. Foster -- he pulls out a red 9mm, and of
17 course Eric wanted to shoot his gun. But he said there was
18 no bullets in his gun.

19 Q What do you mean by a red 9mm?

20 A It was like manufactured red color, I mean.

21 Q Are you certain it was a 9mm or...

22 A That's -- that's what he told us.

23 Q Okay. But an unusual looking gun?

24 A Yes, yes. It would stand out.

25 Q All right. And what happened as that discussion went

1 on?

2 A It just -- I mean, everything seemed fine. Mr. Foster
3 talked about what he would -- what -- what he had done the
4 night before. He was partying and drinking and lost his
5 cell phone in a trash can. And just they were -- I really
6 wasn't too much, me talking, but I was listening to what
7 they were saying, some of it. And I was continuing to work
8 on the moped.

9 Q Okay. Did you have an opportunity to look at this
10 individual in the driveway?

11 A Yes, sir. I mean, we had, I would say, 45 minutes to
12 an hour together side by side, you know.

13 Q All right.

14 A I was working on the moped right there and we -- he
15 was right where the 4-wheeler's sitting.

16 Q Okay.

17 A In that picture.

18 Q All right. At any point did -- was he offered food or
19 anything like that?

20 A Yeah. Eric had some -- he had -- Mr. Foster had said
21 something about he hadn't ate in days, he was hungry.

22 well, a few minutes before that Eric had offered me.
23 If I was hungry, he had some pizza and it was laying right
24 there at the shop behind -- he had a little shelf behind
25 where that dog house is on there, on the inside. And he'd

1 offered me some pizza and I -- I gracefully declined.

2 But when Mr. Foster said something about being hungry,
3 Eric offered him a piece of pizza. And he ate a piece of
4 pizza with him. And there was four pieces total, and they
5 got done with eating that piece of pizza, and Eric said you
6 want one more, there's two left, I'll eat one and you want
7 -- you know, you can have one. And he ate. He got the
8 other piece of pizza. And, I mean, it was just like he was
9 just sitting there hanging out, you know, just one of the
10 guys or something.

11 Q All right. Did you have any specific opportunities to
12 look at his face? I know you were working on the moped and
13 stuff.

14 A Yeah. I -- I was bent over one time messing with the
15 battery wires on the moped, and I kinda -- I kinda felt --
16 I kinda felt somebody staring at me. You ever get that
17 feeling when you kinda can see them out of your peripheral?
18 I could kinda feel like somebody was staring at me, and I
19 turned. I turned and looked at Mr. Foster and he -- he had
20 this blank stare.

21 well, I didn't think nothing of it at the time. And a
22 lot of times when you look at somebody and they're staring
23 at you, both of you tend to kind of look away from each
24 other.

25 But so I looked away, and I gave it about five

1 seconds. And I looked back over and he's still staring at
2 me. And I just thought it was odd at the time, but I
3 didn't think it was anything to, you know, be afraid of or
4 anything like that. It was just I found it odd that he
5 stared at me for that amount of time.

6 Q Okay. Did anybody else end up showing up at the
7 house?

8 A Yeah. Joe Lewis. He ended up pulling up. And the
9 roommate from inside, he -- he ended up waking up and
10 coming out and sitting and talking.

11 Q Do you know Joe Lewis?

12 A Yes, sir. I do.

13 Q How do you know him?

14 A From knowing the whole family -- Eric. And he's
15 related to Eric.

16 Q Okay. And what about Eric's roommate, the other
17 roommate?

18 A The first time I was there the two weeks previous that
19 I'd spoke about, I had just seen him one time, and that was
20 it. I really never.

21 Q And had you ever seen the individual that -- the black
22 male that came down the driveway?

23 A No, sir. That was the first time I've ever seen him.

24 Q All right. What happened then after -- after
25 everybody, all four of y'all were out there, what happened

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1 then?

2 A Well, we were all out there, and Joe-Joe hadn't seen
3 me in years, and he used to work with my sister at the
4 waffle House. So he was -- and he was -- you know, we were
5 getting reacquainted. He's like what have you been doing,
6 you know, all this time, it's good to see you and sorry
7 about your sister, because she passed away in the time that
8 I hadn't seen Joe-Joe. So we were talking about that.

9 And Eric and Mr. Foster were talking about stuff. I
10 don't know. Everybody was just kinda having their own
11 little conversations. And it got to the point Eric said --
12 Eric's, like, man come inside and check out my new gun.
13 You know, he being -- he was -- he was super excited about
14 it. He wanted to show it to everybody that was willing to
15 look at it.

16 And him and Mr. Foster proceeded to go into the house
17 to -- to look at his new gun, and me, Joe-Joe and Thomas
18 stayed out.

19 Q Did any other people -- did any other people ever walk
20 up to the house other than --

21 A No, sir.

22 Q -- the people that you said?

23 A No, sir.

24 Q Was there any animosity or anything between Eric and
25 Mr. Foster at that time?

1 A If there was, I couldn't see it.

2 Q All right. And what happened after they walked inside
3 the house?

4 A We sat out and talked a few, a couple, of minutes, and
5 the next thing we know a gunshot goes off and we hear a
6 loud thud. And then it's silent. I mean, it was -- then
7 it was silence.

8 Q Okay. Did anything draw your attention to the house
9 prior to the gunshot?

10 A No, no, sir. It was --

11 Q No raised voices?

12 A No raised voices, no pitter patter feet, any kind
13 of --

14 Q Running?

15 A -- struggle.

16 Q All right. What -- what were you thinking based off
17 of what you had heard, those two noises that you heard?

18 A Someone got shot and someone's probably in very bad
19 shape at the time.

20 Q All right. Was it clear to you that that shot had
21 occurred inside of the house?

22 A Yes.

23 Q All right. What did -- what did you do?

24 A We all as soon as the gunshot went off and the thud,
25 we all stood straight up in our skin and stood straight up.

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1 That's when Thomas proceeded to go. The roommate proceeded
2 to go in the back steps there and I was -- I was close
3 behind him and I -- me and Joe-Joe was asking him not to go
4 in there, let's wait, let's see, let's see what's going on,
5 you know.

6 Q Did -- did anybody of the three of you out there have
7 any weapons or anything?

8 A No, sir. Not at all.

9 Q All right. And did he end up going inside the house?

10 A Yes, sir. And no more than he could get -- there's a
11 porch door and then a kitchen door. And no more than he
12 could get into the kitchen shots rang out again, and I
13 heard him begging the shrillest, squealest, the noise I
14 never want to hear again, begging for his life, begging Mr.
15 Foster not to shoot him.

16 Q Okay. And where are you standing --

17 A Not to kill him.

18 Q -- when you're seeing this?

19 A I'm in between -- at this point I'm in between the
20 porch and the garage.

21 Q Okay. Somewhere in --

22 A Yes.

23 Q So are you able to see up partially into the house?

24 A Well, I couldn't see.

25 Q Porch?

1 A I could see kind of into the porch. And when Thomas
2 come out of the porch I started looping around the garage,
3 and that's when Thomas was coming down the steps there and
4 Mr. Foster behind him welding a gun and...

5 Q All right. What did -- what did you do at that point?

6 A I ran as fast as I could. I went -- I went around to
7 the right side of that building there and --

8 Q This way?

9 A Yes. And, like I said, the 4-wheeler caught on fire.
10 So he had a hose pipe that was continuously running. And I
11 slipped -- I slipped and fell in the mud on the right side
12 of that garage there.

13 Q So were you trying to get cover, or what was the
14 purpose of the running?

15 A Yeah. When he come out on the porch, he's -- he
16 looked to me and Joe-Joe and started welding his gun
17 towards our direction. So Joe-Joe took off. He had,
18 Joe-Joe had, a good ten yards on me by the time I got
19 around there, so.

20 Q Is he a little faster than you?

21 A Yes. And the fall didn't help.

22 Q One second.

23 A Okay.

24 (Pause.)

25 Q A little better context. I'm going to show you 22 and

1 23 and ask if you can tell me what these two picture are.

2 A That's the bottom of Eric's steps in the back and
3 that's Thomas' cell phone and hat where he was running from
4 his life it looks like.

5 Q Do those fairly and accurately represent --

6 A Yes.

7 Q -- the back porch of Eric's house?

8 A Yes. It is.

9 MR. SMITH: Your Honor, at this time we'd move State's
10 Exhibits 22 and 23 into evidence.

11 MS. JONES: Your Honor, I do have an objection to --
12 if I can look at them again -- I think it's 23. I don't
13 think that accurately reflects what -- in the second one of
14 the way it was at the time he was describing.

15 MR. SMITH: It's just a picture.

16 THE COURT: well, I thought that's what he said.

17 MR. SMITH: It's a picture of the back porch. It's
18 just the back porch.

19 THE COURT: Let me see it.

20 (Bench conference held off the record in the presence
21 of the jury but out of the hearing of the jury.)

22 Q Was the door propped open when you were -- was the
23 door normally propped open, I guess?

24 A A lot of times that door. It's -- like I said, that
25 was my second time there. I couldn't say for certain on

1 the door propping.

2 Q Okay. But as far as, does that represent --

3 A Again, this represents the back porch too. The rug, I
4 can remember the rug there, the -- his patio furniture.

5 Q But you wouldn't be certain about whether the door was
6 propped open or not?

7 A I couldn't say on that for a hundred percent.

8 MR. SMITH: Your Honor, at this time we'd move State's
9 Exhibit 23 into evidence.

10 THE COURT: Okay. Any objection?

11 MS. JONES: Yes, sir, as to that, the last one,
12 because he can't establish the door was propped open.

13 THE COURT: Okay. Each of those exhibits are admitted
14 over objection.

15 MR. SMITH: Thank you, Your Honor.

16 (Photographs marked State's Exhibits Nos. 22 and 23.)

17 Q State's Exhibit 22. Is that the hat that you were
18 referring to?

19 A Yes, sir.

20 Q All right. State's Exhibit 23. Is that what you call
21 the porch room -- or porch room, mud room or whatever?

22 A Yes, yes, sir.

23 Q All right. And that red item, what is that?

24 A That's Thomas' cell phone.

25 Q And if you go in through this room, what room is that?

1 A That's the kitchen.

2 Q All right. So you weren't able to see fully into the
3 kitchen, but you saw him enter the house.

4 A Yes, sir.

5 Q All right. So I guess we were at the point where you
6 run around the side of the building and you're running.

7 what else do you see or perceive at that point?

8 A I see Mr. Foster come out on the back porch.

9 Q All right.

10 A He -- he spins towards me and Joe-Joe, and it looked
11 like he was going to wield towards us but he -- he spun and
12 looked in our direction. I looked him dead in his eyes
13 when he come on the back porch. But I didn't give a chance
14 to look down the barrel of the gun. And as soon as we took
15 and run two shots went off.

16 Q All right. Did you perceive then those were in
17 your --

18 A Yes. And I just -- I just I run for my life.

19 Q All right. And where did you end up getting to?

20 A I would say maybe a quarter mile, a quarter mile or a
21 little better up the road.

22 I'd tried to get under somebody's house. I didn't
23 know if he was chasing, still chasing, me. I was scared to
24 look back because I didn't want to -- I didn't want to look
25 at it. And so I just weaved in and out. I was trying to

1 not get shot by any homeowners, but I was trying to find a
2 way to get help. And I ended up on this lady's carport,
3 and she had her carport door open. So I -- I rang the
4 doorbell, and I was breathing real heavy, and I didn't want
5 to scare her. So I stood way back and asked her to call
6 9-1-1, that my buddy Eric had been shot.

7 Q Were you able to see if anybody else got shot at this
8 time?

9 A Well, I knew -- I knew Thomas had.

10 Q How did you know that?

11 A By his voice and begging him not to shoot him again
12 and please don't kill him and...

13 Q Did -- did you see where Thomas went?

14 A He come down the porch, and he started. He started to
15 hook left, and that's all I seen, when he come down those
16 steps.

17 Q Toward the fence that we saw earlier?

18 A Yeah, towards the pen on the opposite side of the
19 house, is the way.

20 Q And then you don't know?

21 A Then I was around the garage and gone at that point.

22 Q All right. Did you end up coming back to the scene
23 speaking with law enforcement?

24 A Yes.

25 Q How did that happen?

1 A I waited until I seen sheriff's office scrambling.
2 And once I knew they were buzzing up and down the road, I
3 knew it was probably safe enough for me to walk down the
4 street to get back to the house. So I walked back down the
5 street and worked my way back into Eric's yard and let them
6 know who I was and what I was doing there.

7 Q All right. Did law enforcement ask you to tell them
8 what had happened?

9 A Yes, sir.

10 Q You told them what you told us here today?

11 A Yes, sir.

12 Q All right. Did you tell them that you thought that
13 you could potentially recognize the individual if you saw
14 them again?

15 A Yes, sir.

16 Q Were you given an opportunity to attempt to do that?

17 A Yes, sir. I was.

18 Q How was that done?

19 A They made me fill out a piece of paper. He went over
20 it with me. And they separated me and Joe-Joe from one
21 another -- Joe Lewis. And I went over, and he said he was
22 going to show me a lineup and went through a whole routine
23 of he may be in here, he may not be in here, he may -- some
24 features may look different. Went over a whole spell with
25 me about the lineup procedure. And that was the first time

1 I've ever seen -- ever looked at a lineup before. But as
2 soon as he showed me the paper I -- I picked him out from
3 his eyes.

4 Q And at that time you didn't know the name of the
5 person.

6 A No, sir. I --

7 Q Do you remember which number of the six you picked
8 out?

9 A I think it was No. 5.

10 Q All right. But to you that was an unknown individual,
11 you're just going based off --

12 A I never knew his name until they arrested him just
13 about, I believe, is when I found out his name.

14 Q And what -- you said the eyes stood out. What stood
15 about -- out about the eyes?

16 A It's just the way they looked. I don't know if it's
17 the distance between or the blank stare that he tends to
18 have in what I seen at the moped and what I seen in the --
19 the mug shot. Just it's the same person.

20 Q All right. Did -- did law enforcement hint to you in
21 any way who you should pick?

22 A No, sir, not --

23 Q Tell you who the person that had been shot at you was
24 even in that?

25 A No, sir. They -- they -- they -- I mean, they went --

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Cross-examination by Ms. Jones

1 I don't know what you -- they didn't -- did it by the book
2 as far as, you know, I wasn't allowed to talk to Joe-Joe or
3 be around his daddy or anything. They segregated me and
4 said when you're done. They walked me around a different
5 way and wouldn't even let me pass by Joe-Joe or his daddy
6 or anything.

7 Q All right. And did -- did you know if -- I mean, you
8 might have known you picked the right person, but did they
9 tell you good job or anything like that?

10 A No, no.

11 Q No indication of -- because it's possible at that time
12 they didn't know.

13 A Yeah. They didn't -- yeah, yes, sir.

14 Q Is the person you picked out of the lineup in here?

15 A Yes, yes, he is.

16 Q Point him out for the jury.

17 A He's Mr. Foster.

18 Q I don't have any further questions. Please answer any
19 Ms. Jones has.

20 A All right.

21 CROSS-EXAMINATION

22 BY MS. JONES

23 Q Mr. Campbell, you testified this was only your second
24 time at this home?

25 A Yeah. My sister used to own the house previously.

1 Q And you didn't ever visit your sister?

2 A Yeah, but it was only the second time I'd been there
3 when -- since Eric's had the place.

4 Q Okay. So that's an entirely different thing. It's
5 not your second time of being there, like you stated.
6 Probably been there dozens of times.

7 A Yes.

8 Q Okay. With regard to the back door, you indicated you
9 do not recollect on this afternoon when all of this
10 happened if that door was propped open.

11 A To tell you the truth that was --

12 Q Of course you'll tell us the truth.

13 A The -- that was the last thing that I was -- was --
14 would think about right now. What -- what went on at that
15 house, I wasn't thinking about was the screen door open,
16 was it closed, was the mop knocked over or anything like
17 that.

18 Q But you would have us believe that you remember
19 exactly what happened up on the porch, but you can't
20 remember if the screen door was propped open.

21 A I don't -- I just don't remember the screen, if the
22 screen door was propped open.

23 Q Okay. There is a blue item standing in the open
24 doorway. Was that there that day? Pretty recognizable
25 because of its color. Do you know if that was there?

1 A I don't believe it was.

2 Q Okay. You can remember that but not whether the door
3 was open.

4 A I just don't remember if the door was open.

5 Q Okay. Let's back up and talk about earlier that day.
6 You shot a gun yourself, did you not?

7 A Yes, ma'am.

8 Q And how did you describe the gun to us, again?

9 A It had some kind of S word on it. S-Y-Y-P, sky. I --
10 when the -- when the officers asked me on the scene, I told
11 them it was some kind of sky -- sky or skype or S-K-K-Y-P,
12 or it was something that it started with an S, I believe.
13 That's what I told the officers.

14 Q Okay. And you have testified today that you hear --
15 that you don't like guns.

16 A Yes, ma'am. I don't like guns.

17 Q So and you choose to not associate with guns much. Do
18 you?

19 A No, ma'am. I don't.

20 Q You had made the point that -- I believe that you shot
21 it, you didn't want to and you told them to --

22 A well --

23 Q -- put it directly back into the house when you were
24 done.

25 A Yes, ma'am.

1 Q Okay. Now, later on before the other gentlemen get
2 there you see someone walking up the driveway. And you
3 described that person as wearing a hoodie.

4 A Yes, ma'am.

5 Q Is that the only description you can give us of that
6 individual?

7 A He had his back to me at the time when -- the first
8 description I got of him was the back of a hoodie. The
9 other -- he was behind a vehicle, so all I could see was
10 the top half of the hoodie.

11 Q Okay. But that's not where he stayed through the
12 entirety of this event, is it?

13 A No.

14 Q As a matter of fact, you said he walked closer to you
15 and you were able to see him better.

16 A When he came down and sat with Eric, yeah, and started
17 talking to Eric, of course I did get a good look at him
18 then.

19 Q Okay. Did you ever describe him differently to the
20 police other than the hoodie?

21 A Yeah. I described him, what I could. I mean, yes.

22 Q And how did you describe him?

23 A Short hair on the sides, black male, younger in age.

24 Q Do you remember describing his height?

25 A Yeah. I believe I did describe his height.

1 Q How did you describe his height?

2 A Probably 5'6" to 5'8".

3 Q Okay. Did you ever change as to the garment he was
4 wearing?

5 A I don't recall being asked really any, any more about
6 what he was wearing too much.

7 Q Okay. After this event -- you talked about a lineup
8 procedure. But there was also a time around that same time
9 where you talked to officers, and then they offered you the
10 opportunity to give a statement, did they not? They gave
11 you some forms and told you to write down what you'd seen.

12 A Yes.

13 Q Okay. And when you did that did anybody suggest what
14 you write in that statement?

15 A They put me in the back of a car solely by myself, I
16 believe, when that came along.

17 Q Okay. And did -- so then you --

18 A He just said fill out to the best -- you know, the
19 best of your knowledge, I know you're upset right now and
20 everything's distraught. He was, like, just try to say
21 what you seen happen here today.

22 Q Okay. With regard to your statement did nobody ever
23 ask you anything more specific about what the person was
24 wearing? You weren't confined or you weren't told only
25 write these things in this report. They told you do it and

1 gave you some paper.

2 A Yes.

3 Q So what you chose to put on your statement are
4 what you -- the words you chose to tell them.

5 A Yes, in a panic situation.

6 Q Did you ask any of them, hey, I'm a little roude right
7 now, could I do this tomorrow?

8 A It's kind of tough when you're panicked. You don't
9 think about it at the time. You just -- you just do the
10 best that you can at the time you've got and you give them
11 all the information that you can give them at the time.

12 Q Okay. And this individual that you describe as having
13 a hoodie on comes up, joins the conversation and you said
14 at some point pulled out a weapon to show Eric that you
15 said was a red gun that looked like a 9mm.

16 A He said it was a 9mm.

17 Q Okay. You don't like guns.

18 A Yeah.

19 Q You didn't take the gun.

20 A why would I take it? It's --

21 Q Do you know what brand it was?

22 A No. It was just red.

23 Q Okay. Do you know other than seeing the gun that it
24 was red? That's all you knew about it.

25 A And what he had spoke about it.

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Cross-examination by Ms. Jones

1 Q Okay. At the point the red gun was produced were
2 Joe-Joe and Mr. Koepke there?

3 A No, ma'am.

4 Q Okay. So we see the red gun. The red gun goes where?

5 A Back in his hoodie.

6 Q Okay. And that's when everybody commences to eating
7 pizza, is that right?

8 A I don't --

9 Q Roughly?

10 A I mean, yeah, had, yes, I guess, it was. Yeah. I
11 seen the gun before I seen the pizza.

12 Q Okay. Then was Joe-Joe and Thomas Koepke there when
13 the pizza was eaten?

14 A No, ma'am.

15 Q Okay.

16 A Or Eric would have offered everybody a piece instead
17 of --

18 Q Do you remember telling the police about the pizza in
19 your 3-page statement? Do you want to refer to it?

20 A I can refer to it.

21 MS. JONES: Your Honor, could we mark this?

22 (Voluntary statement of Joel Campbell marked
23 Defendant's Exhibit No. 1 for Identification.)

24 Q Mr. Campbell, take a few minutes and look at that.

25 (Pause.)

1 THE COURT: Ms. Jones has provided you with that
2 document --

3 THE WITNESS: Yes, sir.

4 THE COURT: -- so that you can refresh your memory if
5 you need to because she's going to ask you some
6 questions --

7 THE WITNESS: Yes, sir.

8 THE COURT: -- about things that are in it. The
9 document itself is not in evidence but it's just -- she
10 contends that's the a statement you made. And so if you
11 need to refresh your memory, you can. If you don't, you
12 don't have to.

13 (Pause.)

14 THE COURT: You're not introducing it, are you?

15 MS. JONES: No, sir.

16 A Yeah. There is --

17 THE COURT: Just read it over. She's going to ask you
18 questions.

19 Q Have you reviewed it? I mean, I know it's two and a
20 half pages.

21 A Yeah.

22 Q So take what you need.

23 A All right.

24 Q Are you telling me all right you're ready?

25 A Yes, ma'am.

1 Q Okay. Now, do you see anything in there where you
2 told the police about Mr. Morris and the other person
3 having pizza?

4 A They ate a piece of pizza, and Eric and the black male
5 walked inside.

6 Q Okay. That answered that question.

7 Now, do you see anything in there where you asked --
8 where you told them that the individual told them what he'd
9 done the night before -- partying and losing his cell phone?

10 A No, no, ma'am.

11 Q Okay. Did you say anything in there about the point
12 that you -- you seem to emphasize here where at some point
13 you looked up and this person was looking at you and that
14 disturbed you. Did you tell them about that?

15 A No. This statement's more to the point of everything
16 that happened, not details of, like, some of the
17 conversation and stuff. It was more of what --

18 Q Okay. Let's -- go ahead. I didn't mean to cut you
19 off.

20 A It was just more of what happened that day. And I
21 don't -- you know, I didn't put in my statement about
22 talking to Joe-Joe about my dead sister either, but I
23 didn't know I was supposed to put all of that, but next
24 time I'll know.

25 Q Did you put in there about first seeing the individual

1 part of the way down the driveway from behind and telling
2 Eric, hey, you got somebody coming to see you?

3 (Pause.)

4 A I don't think it's where -- I didn't put it in my
5 statement, no, ma'am.

6 Q Okay.

7 A It says he walked, he walks up here and Eric talks to
8 him and he shows Eric a red gun.

9 Q You indicated that at the point Mr. Morris and the
10 other individual went inside the house that was done at
11 Morris' suggestion, correct?

12 A Yes.

13 Q The gun he wanted everybody to see.

14 A Yes. He asked Mr. Foster do you want to come and look
15 at my gun, and Mr. Foster said, yeah, man. And they walked
16 in the house together.

17 Q Okay. You continue to work at that point.

18 A I'm more talking to Joe-Joe and Thomas at the time.

19 Q Talking you indicate it's --

20 A That's -- that's really --

21 Q Approximately one minute later you hear the sound from
22 inside that makes all of you stand up.

23 A Yes, ma'am.

24 Q And your reaction at that point, other than standing,
25 was to follow Thomas Koepke to the bottom of the stairs.

1 A I was actually trying to stop him from going in the
2 house.

3 Q But you indicated you were right behind him in your
4 direct testimony.

5 A Yes. I was behind him at the bottom of the -- I was
6 still on the pavement.

7 Q Okay. And when did your direction of travel change
8 and have you turn around and run off?

9 A When he walked -- when he walked in the house I -- I
10 was begging him not to go in there, and Joe-Joe said
11 Mr. Lewis said it to ask him, don't go in there, man, and
12 we kinda -- I took a step back. Joe-Joe was behind me. He
13 was closer to the garage. And I took a step back. And as
14 soon as he entered -- well, as soon as -- all the -- all I
15 can say on that is he had time to enter the kitchen when
16 gunshots started ringing out and him begging for his life
17 and mercy and not for him to shoot him again.

18 Q My question is what did you see happen.

19 A When did I see happen? Thomas run off the back steps
20 begging for his life.

21 Q I'm talking about --

22 A That's all I seen.

23 Q -- when he went up the stairs what -- to the house --
24 what did you see happen?

25 A Thomas go disappear into the house.

1 Q Okay. You don't remember if he had to open the door.

2 A That was -- yeah. That's exactly what I said. I'm
3 not a hundred percent sure of what was --

4 Q And where are you standing when you saw that?

5 A When I saw what?

6 Q Saw him go into the house.

7 A If you're looking at the back steps, I was a little to
8 the left of it.

9 Q You were not at the bottom of the steps.

10 A I was at it when he first started going up. I was
11 directly behind him. But as soon as he wouldn't listen to
12 me about not going in, I stepped -- I stepped back to the
13 side a couple of steps.

14 Q You retreated from the back door.

15 A Yes, yes.

16 Q Okay. So, and you -- when he comes out of the back
17 door, do you see him come out of the back door?

18 A Yes.

19 Q When did you turn --

20 A Well, I --

21 Q -- and run away?

22 A Excuse me. I didn't see him come out of the back
23 door. I see him come out onto the porch and down the
24 steps. I don't know if he opened the door, knocked into it
25 or what but --

1 Q Did you see him walk down the steps?

2 A No. He was running for his life down the steps.

3 Q Or did you see him fall down the steps?

4 A He was running for his life down the steps.

5 Q You saw him run down the steps?

6 A He was -- I'll never forget his voice.

7 Q I'm not asking you about his voice, Mr. Campbell. I'm
8 asking you about whether he went, walked down the steps or
9 not. You did not see that.

10 A It's -- it's -- it's hard to say when somebody's
11 getting shot. I don't -- walking, jogging, running,
12 falling. All I know, it was bloody murder and he was
13 coming down the steps.

14 Q Did you see him coming down the steps --

15 A Yes, I see him --

16 Q -- or hear him coming?

17 A Mr. Foster?

18 Q Koepke.

19 A Or are you talking about Koepke? Yeah. I seen Koepke
20 come down the steps, yes, ma'am. I did.

21 Q Did you see him fall down the steps? Yes or no, or I
22 don't know.

23 A I guess it was a controlled fall-run type situation.
24 I don't know if it was what you would call tripping and
25 falling down the steps and rolling or running and missing a

1 step and falling and getting back to your feet and getting
2 shot at and begging for mercy. I don't know what you call
3 that. It's a run.

4 Q In which direction were you running at this point?

5 A I turned and went around the garage on the side I had
6 pointed out earlier, the right --

7 Q Left or right?

8 A If you're looking at the garage, I run around the
9 right side of the garage.

10 Q Okay. And you ran straight up the back yard. Well,
11 it's a deep back yard, is it not?

12 A Yeah. I would say.

13 Q Some distance there.

14 A Maybe, yeah, 75 or a hundred yards maybe.

15 Q And you weren't looking back.

16 A No. I was -- no.

17 Q So any subsequent shots you heard, you have no way of
18 knowing if they were aimed at you.

19 A I didn't see the barrel of the gun, but when I turned
20 and run there was two shots come off. I seen when he come
21 out. I seen him come out on the porch after he -- Thomas
22 was running down the steps and I seen -- I made direct eye
23 contact with him, and he started whipping towards me. And
24 when he did, I didn't -- he didn't -- I didn't look no
25 more. That's -- that's the part.

1 Q So you do not -- do not know if he shot at you.

2 A I think he did.

3 Q Yes, no, or I don't know.

4 A I -- I don't know.

5 Q Okay.

6 A I think so.

7 MS. JONES: Your Honor, that's all.

8 REDIRECT EXAMINATION

9 BY MR. SMITH

10 Q You said when you gave your written statement that
11 they just put you in the back of a car and told you to say
12 what happened.

13 A Yes, sir.

14 Q Did they explain to you that if you didn't write down
15 something then it didn't happen like you would be held to
16 the standard that this is --

17 A They didn't say that to me, no, sir.

18 Q Okay. Did they ask any follow-up questions to you, or
19 did you just write it on your own?

20 A I just kind of wrote it on my own.

21 Q All right.

22 A I was just trying -- trying to get something down to
23 where maybe they, you know, could get something.

24 Q Do you remember in your statement -- do you have your
25 statement --

1 A Yeah.

2 Q -- when you said that Eric and Mr. Foster went into
3 the house?

4 A Did I say on the statement?

5 Q Yes. I'm looking at page two half way down.

6 A Okay. Around 3:20.

7 Q And do you see when you wrote this written statement?

8 A Uh.

9 Q Look at page --

10 A One.

11 Q It's got a --

12 A It says I got there at 1:08 or --

13 Q No, no, no. When the statement was signed and
14 completed.

15 A Oh, 4:50 p.m., February the 18th.

16 Q About an hour and a half after your friend was
17 presumably murdered and another person was shot in front of
18 you.

19 A Yes.

20 Q What -- how long did it take you to not be under the
21 influence of the shock of this incident?

22 A It still goes on to this day really.

23 Q Is it fair to say that you remember critical details
24 but maybe not what the temperature was and other things
25 like that?

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Redirect examination by Mr. Smith

1 A Yeah, stuff like that and just like the conversation.
2 I didn't know. There was things I didn't know, like, what
3 we were talking about was going to influence anything in
4 any of it.

5 Q Is it also true that when you're out there at the
6 moped you have no idea what's about to occur?

7 A No, sir.

8 Q About to be?

9 MS. JONES: Your Honor, he's leading.

10 Q Did -- did you understand that the memories that were
11 being formulated when you were out there at the moped would
12 turn out to be as important as they were?

13 A No, sir, not at all.

14 Q And you did your best that day. You did your best
15 here today.

16 A Yes, yes, sir.

17 MS. JONES: Again, he's leading, Your Honor.

18 THE COURT: Don't lead him.

19 MR. SMITH: I don't have any further questions.

20 THE COURT: Okay. You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Campbell, if you will, give that
23 document to this lady right here.

24 We're going to take a short break. I'll ask the jury
25 to please go to your jury room. Don't discuss the case in

1 any fashion. I'll bring you back after that break.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: We'll be in recess for 15 minutes.

5 (Whereupon, a recess was taken.)

6 THE COURT: All right. We ready for the jury?

7 MR. SMITH: The state's ready, Your Honor.

8 THE COURT: Okay. Bring them in.

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

11 THE COURT: All right. The jury is present. You may
12 proceed.

13 MS. CLARK: The state calls Darryl Lewis to the stand.

14 DARRYL JOE LEWIS, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. CLARK

17 Q Please state your full name for the record.

18 A Darryl Joe Lewis.

19 Q Do they call you Darryl, or what do you go by?

20 A I go by Joe.

21 Q Joe, let's start with the basics. Did you know Eric
22 Morris?

23 A Yes. He was my cousin.

24 Q Did you -- how often would you see him? How well did
25 you know him?

Darryl Joe Lewis
Direct examination by Ms. Clark

1 A Almost every day. We grew up together. He was like a
2 brother to me, you know.

3 Q And back in February of 2018 did you live with Eric?

4 A Yes.

5 Q Where did you live?

6 A Old Canaan Road.

7 Q Is that here in Spartanburg County?

8 A Yes.

9 Q Tell us about -- what community is it? Kind of where
10 is it?

11 A It's kinda in Roebuck off of 295.

12 Q Who else lived in that house?

13 A It was just me and him and Michael Koepke. He was
14 there at the moment. He had been there for about a week or
15 so.

16 Q Let's talk about February 18th of 2018. Do you
17 remember that day?

18 A Yeah. I do.

19 Q What did you do early that afternoon?

20 A I had went to my friend's house to take her somewhere.
21 Then I'd came back home.

22 Q When you say home, you mean the place where you and
23 Eric lived together?

24 A Yeah.

25 Q And roughly what time did you go back to Eric's house?

1 A I'm not sure what time it was. It was --

2 Q Was it still daylight or was it night or --

3 A Yeah. It was still daylight. It was still pretty
4 early. I mean, it was maybe 1:00, I think.

5 Q And when you got back to Eric's house, who all was
6 there?

7 A Michael Koepke, Joel Campbell and Brian Foster.

8 Q And when you say Brian Foster, did you know him before
9 that day, or was that the first day you'd seen him?

10 A He had stayed at our house for a week or so, I think.
11 I -- I seen him. My cousin let him stay there. And I
12 didn't really speak to him. He'd just come through with
13 his girlfriend and go to the room, the room to the side.
14 And that was pretty much it. I never...

15 Q And based on that previous experience knowing him,
16 when you saw who you call Brian Foster, did you instantly
17 recognize him? Did you know who he was that day on
18 February 18th?

19 A Yeah. I mean, I knew who he was but I just didn't --
20 I didn't know his name.

21 Q And when you got back to the house, what was everybody
22 doing?

23 A They was outside at the garage. Joel was at the moped
24 messing with it. He said he was fixing it. And -- and
25 Michael and Eric and -- they were just -- everybody was

174 Darryl Joe Lewis
Direct examination by Ms. Clark

1 talking. And I just remember pretty much having a
2 conversation with Joel and every --

3 Q Before -- excuse me.

4 A Yeah.

5 Q Before February 18th did you know who Joel Campbell
6 was? Did you know him?

7 A Yeah. He was a friend of mine.

8 Q Did you --

9 A I knew him since I was little.

10 Q And you said they were all standing outside talking.
11 I'm going to show you what has been previously entered into
12 evidence as State's Exhibit No. 14. Is this where everyone
13 was standing?

14 A Yes.

15 Q Tell me. Were people inside the garage or outside the
16 garage or what was -- what was going on?

17 A I -- I think they was kinda at the garage door where
18 it's open pretty much. Joel was right there near the dog
19 house and -- and Eric and Brian was kinda beside him.

20 Q How long were you outside? How long were y'all
21 hanging out?

22 A Thirty or forty minutes maybe. It wasn't long.

23 Q And do you remember what everybody was talking about?

24 A Not exactly.

25 Q Tell me this. What was the mood like? How were

1 people treating each other?

2 A Everybody was happy, and just everybody seemed like
3 they was in a good mood.

4 Q Was anybody made or angry at each other?

5 A No.

6 Q Did anybody exchange words or anything like that?

7 A Not at all.

8 Q And at some point during that afternoon did anyone go
9 inside the house?

10 A Yeah. Eric and Brian had went in. Eric told him to
11 come inside with him and show his gun.

12 Q And when they went inside, what door did they go in?

13 A They went through the -- the little glass screen door
14 from the back and through the house to the next door.

15 Q And you stayed outside when they went inside?

16 A I did.

17 Q And what happened next?

18 A We hear gunshot and a thud, and there was just
19 silence. And you just feel like you -- you knew what
20 happened. It just sounded like a body hit the floor.

21 Q And what about before the gunshot? Did you hear any
22 noise coming from the house before the gunshot?

23 A No. Everything was quiet before and after.

24 Q And you said that you heard the gunshot, you heard the
25 thud. What happened next?

1 A Everybody just stood up just like it was -- everything
2 was still. And Michael starts to go inside, and me and
3 Joel say, no, man, you don't need to do that, because we
4 didn't -- it just didn't feel right.

5 Q Do you remember where you were standing when all of
6 this was happening?

7 A I was standing kind of near the -- let's see.

8 Q When this was happening?

9 A Yes, or right there.

10 Q Right there.

11 A About or at, or a little over toward the building
12 maybe more, the other side, the other side of the building.
13 I'm sorry.

14 Q Do you want me to give it to you? Would that help?

15 A Yeah.

16 Q Okay. There you go. Hopefully this'll be easier.

17 A Probably around there if I can -- yeah.

18 Q And so you said that Michael went inside but you
19 begged him not to. What happened next?

20 A I just remember him going in and us telling -- saying,
21 no, you don't need to do that. And all I remember is
22 seeing him coming, like, off the porch kinda, saying, no,
23 man, you don't got to do that. And I think his hands were
24 maybe up or something. And all I hear is, no, man, you
25 don't have to do that. And I take off running and --

1 Q what direction did you run in?

2 A I run beside of the building.

3 Q When you say ran, are we -- how fast were you going?

4 who was it like?

5 A It was -- everything was fast. It was a blur. I

6 don't remember.

7 Q Do you remember hearing any additional gunshots when

8 you were running? Just tell me what you remember.

9 A I don't remember. I was just thinking of getting

10 away.

11 Q And did you see anybody else running away?

12 A Joel. I remember seeing him slipping up while we was

13 running. And I kept going and I jumped a fence and ended

14 up at a neighbor's house.

15 Q And what happened next when you ended up at that

16 neighbor's house?

17 A I tell my neighbor something happened, somebody got

18 shot. And she was asking me what was going on. And I just

19 told her I -- I couldn't think, that I just know somebody

20 got shot. I couldn't explain anything to her. She was,

21 like, what's going on, what's going on and she -- she said

22 do I need to call the cops. I said yeah.

23 Q At any point did you end up going back to 121 Old

24 Canaan?

25 A Yes. She walked me back, and the police were already

1 there.

2 Q Did you end up speaking with those police officers?

3 A I did.

4 Q Did you tell them what happened?

5 A I did. I -- I told them that somebody got shot, there
6 was a gunshot and -- and I didn't know what was going on.

7 I didn't know who it was that got shot.

8 Q Did you provide a written statement to police?

9 A Yeah.

10 Q Did you also tell the officers that you could possibly
11 identify the person that did this?

12 A Yeah.

13 Q Did the officers give you an opportunity to look at
14 some photographs and pick one out?

15 A They did.

16 Q And did you pick one out?

17 A Yeah.

18 Q How quickly did you do that?

19 A It was fast. I recognized him as soon as I seen it.
20 I just --

21 Q And the person that you picked out --

22 A -- knew who it was.

23 Q The person that you picked out of that lineup, is that
24 the same person you said that stayed at the house with you
25 before?

1 A Yes. It was.

2 Q And when you were reviewing those photographs, were
3 you by yourself, or kind of how did they do that?

4 A I was by myself. When I had got back I was with
5 the -- the paramedics for a while. And then they showed me
6 a lineup. I was by myself pretty much the whole time, I
7 felt like.

8 Q Tell me what you were feeling like. Were you -- were
9 you having a hard time breathing? Tell the jury what it
10 was like.

11 A Yeah. I couldn't breathe. I was --

12 MS. JONES: Your Honor, I'm going to object on the
13 grounds of relevance. It's just more impact testimony.

14 THE COURT: Sustained.

15 Q After you spoke with the police officers and provided
16 that lineup, what else happened?

17 A I don't remember.

18 Q Tell me this. The person that you're speaking of that
19 you call Brian Foster, is he in the courtroom here today?

20 A Yes.

21 Q Please point to him and describe what he's wearing.

22 A What he's wearing?

23 Q Yes.

24 A He's wearing a suit and a tie.

25 Q Thank you.

Darryl Joe Lewis
Cross-examination by Ms. Jones

1 Let me ask you this. Did you know anything about Eric
2 having a new gun?

3 A Yeah. I did.

4 Q What did you know about it?

5 A He just told me it was a 9mm. He liked his guns. I
6 didn't know. I just listened to him. I didn't really -- I
7 don't know much about guns. It was black.

8 Q Did you ever get to see it?

9 A Yeah.

10 Q Do you remember what it was called or anything like
11 that?

12 A Not at all.

13 Q I have no further questions for you at this time, but
14 please answer any questions defense counsel may have.

15 CROSS-EXAMINATION

16 BY MS. JONES

17 Q Mr. Lewis, isn't it true, not only did you see the
18 gun, the new gun that Eric had, you had shot it yourself
19 that day?

20 A I did.

21 Q What time was that?

22 A I'm not sure.

23 Q Okay. Was it before you helped your friend, or after?

24 A It was before.

25 Q Okay. Now, when you -- when you came back from

1 helping your friend, you actually drove up, did you not --

2 A Yeah.

3 Q -- in your own car? What kind of car do you have?

4 A A Toyota Corolla.

5 THE COURT: Let me ask you to please get closer to
6 that microphone and use it.

7 A A Toyota Corolla.

8 Q Okay. Did you park in the driveway that's depicted in
9 the photograph up on the screen?

10 A Yeah. I parked. It's kinda in front of the building,
11 to the right of it.

12 Q Okay. Would the location of your car possibly have
13 been about where this red sticker is in the driveway?

14 A I think so.

15 Q Okay. Or slightly back from it. That's why it's not
16 in the photograph.

17 A Uh-huh.

18 Q Was there another vehicle in the driveway when you
19 pulled in?

20 A Yeah.

21 Q What kind of car?

22 A It was Infiniti.

23 Q Whose car?

24 A Michael Koepke's.

25 THE COURT: Be sure you use the microphone.

1 A Michael Koepke's.

2 Q Okay.

3 THE COURT: Try to maintain one position --

4 THE WITNESS: Okay.

5 THE COURT: -- so that the microphone works
6 appropriately.

7 Q And neither of the -- neither of those vehicles are in
8 that picture, correct?

9 A They're not in the picture.

10 Q Okay. You indicated that you got back. And you said
11 it was 30 to 45 minutes before the incident involving the
12 shot in the house happened?

13 A I'm not sure how long it was.

14 Q Okay. So you --

15 A It just felt like everything was --

16 Q You really can't say that.

17 A No. I just know we had time to talk for a minute.

18 Q Mr. Lewis, exactly where were you when you heard a
19 shot in the home?

20 A Where I pointed to at the bottom of the porch kind of
21 in front of the building.

22 Q Do you remember giving a statement in this case?

23 A Yeah.

24 Q You wrote the statement yourself, didn't you?

25 A I did.

1 Q Okay.

2 (Voluntary statement of Darryl Joe Lewis marked
3 Defendant's Exhibit No. 2 for Identification.)

4 Q Mr. Lewis, I'm going to hand you a document that's
5 marked Defendant's 2 for Identification at this point.
6 Just briefly look over that.

7 (Pause.)

8 Q Have you had time? Oh, I'm sorry. You're still
9 reading.

10 A Yeah, yeah.

11 Q Did you tell the officers that you were in the
12 driveway near the hose, where you've indicated now, when
13 you heard the shot go off?

14 A Yeah.

15 Q Read where it says that. Does it say that at all?

16 A I can't even read my -- walking, hose, gun go off.

17 Q Okay. You read, "Eric and guy walk in hose." You
18 meant house. "And heard gun go off."

19 A Oh, okay. Yeah.

20 Q Okay. Now, when you heard the gun go off, what did
21 you do?

22 A I -- I was -- I sat still. I couldn't think.

23 Q So you did not --

24 A I froze.

25 Q -- go to the steps with Joel Campbell to see what was

1 going on.

2 A I did not.

3 Q Okay.

4 A I --

5 Q And when you heard Mr. Koepke say something, where
6 were you at that point? Look at the statement if you need
7 to refresh your memory, what you told --

8 A I was in the same area.

9 Q Okay.

10 A And I was turning around to run, I'm pretty sure.

11 Q Okay. Look at the statement.

12 A Uh-huh.

13 Q It says, "And Mike was begging him not to shoot him.
14 I was beside of my car. And then I ran to the next door."
15 Do you see that in the statement? Mr. Lewis, do you see
16 that in your statement?

17 A Yeah.

18 Q Okay. So you told the officers when you heard
19 Mr. Koepke you were over at your car that we -- that we
20 have indicated is out --

21 A Yeah.

22 Q -- where that sticker is or even further back.

23 A Yeah.

24 Q Then you started running.

25 A Uh-huh.

1 Q Correct?

2 A I mean, I'm -- I was somewhere around the area. I
3 thought I was beside the area. I don't --

4 Q You thought -- you told them you were beside the
5 car -- or excuse me -- in your statement. You wrote that
6 yourself, didn't you?

7 A Yeah. I did.

8 Q And you ran.

9 A I did run.

10 Q Okay. And there -- also not shown on the photograph
11 to the far right is a wood line and a fence, right?

12 A Yeah. The fence I jumped.

13 Q Okay. When you ran away from your car --

14 A Uh-huh.

15 Q -- to the fence and to the neighbor's, did you look
16 back?

17 A Uh-uh, no.

18 Q You don't know if anybody shot at you, do you?

19 A I don't.

20 Q Mr. Lewis, I'm going to show you what's been marked as
21 Court's Exhibit No. 3.

22 A Yes, ma'am.

23 Q Do you recognize that?

24 A Yes, ma'am.

25 Q I'll get out of your way.

1 The second page of this document is what?

2 A Mug shots.

3 Q Did someone tell you those were mug shots?

4 A Is this the second set?

5 Q The second page.

6 THE COURT: Excuse me -- excuse me. Be careful of the
7 microphone, please.

8 THE WITNESS: Oh.

9 Q What -- what's -- what is this page?

10 A It's a lineup.

11 THE COURT: Ms. Jones, can you come around here so
12 that he can use that microphone?

13 MS. JONES: Yes, sir. I'll do that.

14 Q The -- and does this lineup bear your signature? I
15 mean, sorry. Your initials.

16 A Yes, ma'am.

17 Q Okay. Is this the lineup that you used on this day,
18 on the 18th?

19 A Yes, ma'am.

20 Q Officers gave you page one, which is an affidavit,
21 presentation instructions of identification of photograph.

22 A Yes, ma'am.

23 Q They asked you to look at it and asked you to pick out
24 someone. And then you indicated No. 5. Then after that
25 you said -- you filled out a form. "I, Darryl Lewis, have

1 viewed a group of six photographs this 18 day of two --
2 2018, from which I positively identified photograph No. 5
3 displayed to me by John Guest of the sheriff's office as
4 the person who," and read that out loud.

5 A "Shot my cousin, Eric Morris."

6 Q So that's what you identified this person as, because
7 you signed it attesting that that was your affidavit,
8 correct?

9 A Yeah.

10 MS. JONES: That's all, Your Honor.

11 MS. CLARK: No further questions for this witness.

12 THE COURT: You may step down.

13 MR. SMITH: State calls Michael Koepke.

14 THOMAS MICHAEL KOEPKE, having
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. SMITH

17 Q will you please state your name? will you state your
18 name?

19 A Thomas Michael Koepke.

20 Q And how old are you?

21 A Twenty-nine.

22 Q How did you know Eric Morris?

23 A He was a childhood friend, went pretty much all the
24 way through school together.

25 Q All right. Where were you living at on

1 February 18th of 2018?

2 A I had been living with Eric for probably a week, maybe
3 two weeks, somewhere around there.

4 Q All right. Do you know the defendant? Had you ever
5 seen him before?

6 A No, sir.

7 Q All right. What about Joel Campbell? How do you know
8 him?

9 A I met Joe, I think, once or twice before that day.

10 Q Joel or Joe?

11 A Joel. I've known Joe pretty much about the same time
12 as Eric, about my whole life.

13 Q All right. What had you been doing that day, say,
14 like before noon?

15 A Well, I worked all weekend. It was a Sunday. So I
16 slept until about lunchtime and got up and took a shower
17 and went outside probably around 2:00 o'clock. And I was
18 about to go get my daughter, and I seen them working on the
19 4-wheeler. So I walked over there and kinda hung out with
20 them for a minute and --

21 Q When you're saying them, who are you talking about was
22 out there when you went outside?

23 A Eric Morris, Joel, Joe and Brian Foster.

24 Q So everybody was out there. You're the last person to
25 enter.

1 A Yes, sir. I was asleep and woke up and came out
2 there. I was the last one to walk up.

3 Q And do you remember what the -- this man was wearing
4 or what the individual that you didn't know was wearing or
5 anything like that?

6 A I -- it's kind of fuzzy, but I think a black hoodie, a
7 dark hoodie, dark clothes.

8 Q All right. What type of conversations were y'all
9 having or what was the atmosphere there outside the garage?

10 A It was not really a specific conversation. It was
11 just the normal everyday conversation, me and Eric laughing
12 and joking, talking about the 4-wheeler, getting it
13 running. It was just a normal, nothing out of the
14 ordinary.

15 Q Did -- did Eric and the black male end up going inside
16 of -- of the house?

17 A Yes, sir.

18 Q What prompted that or do you know what prompted that?

19 A Well, Eric -- he's always liked guns and stuff, and
20 he'd just got a new gun. And him and Brian started talking
21 about the gun, and he asked Brian if he'd seen it, and
22 Brian said no. Eric said, well, come on in and I'll show
23 it to you and let you check it out.

24 well, they walked in the house. I'm sitting -- if you
25 go back to the other picture...

1 Q Garage picture?

2 A I can tell you exactly where everybody --

3 Q State's 14.

4 A I'm sitting in that black chair on the right side of
5 the 4-wheeler. Brian is sitting inside the door right
6 behind the 4-wheeler. Brian's sitting about right there.
7 I'm sitting here beside him. Joel is over in this area,
8 and I think Joe is somewhere around in here.

9 But they walk in. They go in. And a couple of
10 minutes later I heard a gun go off. And I've had a lot of,
11 like, hunter education classes and stuff, did a lot of gun
12 safety. So I figured the gun had went off by accident. So
13 I went in. The only thing I was thinking about is getting
14 in and checking on them and making sure everybody was okay.

15 And as soon as I got in the back door I realized that
16 it was quiet, there was nobody laughing, joking, freaking
17 out or nothing. It was just completely quiet. But by the
18 time I realized that it was too late, and Brian was coming
19 around the corner with a gun in my face with just a blank,
20 the same blank, stare Joel was talking about. Had no
21 expression. Never said a word to me, just speed walking to
22 me with a gun in my face. And I'm trying to keep my head
23 out from in front of the barrel, begging and pleading not
24 to shoot me and --

25 Q Let me -- let me stop you there. I'll get some

1 pictures and maybe we can have a little bit better context.
2 Let me show you State's Exhibits 26, 27, 28, 29 and 30 --
3 27 through 30.

4 A Okay.

5 Q Ask if you can tell me what these are pictures of or
6 what room these are pictures of.

7 A This is right where -- this is about as far as I made
8 it into the house. This is right at the back door coming
9 in the back door.

10 THE COURT: Tell us what number you're referring to.

11 THE WITNESS: This is 26.

12 A Okay. And then 27, standing in the kitchen, about in
13 the middle of the kitchen; 28 looks like a bloody shoe
14 print in the kitchen, same floor; 29 is the doorway going
15 from the kitchen to the living room area; 30 would be
16 Brian's point of view when he's coming at me with the gun.
17 Coming out of the living room into the kitchen, this would
18 be Brian's view.

19 Q All right. Do those fairly and accurately represent
20 the kitchen area of 121 Old Canaan?

21 A Yes, sir.

22 MR. SMITH: Your Honor, at this time we'd move State's
23 Exhibits 26 through 30 into evidence.

24 MS. JONES: Your Honor, may I look at them again
25 briefly for a minute?

1 (Pause.)

2 MS. JONES: Your Honor, I'm going to object to the
3 entry of 28 at this point. I don't know that there's any
4 foundation been laid if that is blood or a footprint. And
5 I don't think he is qualified to make that
6 characterization. But as to the others, I'm fine.

7 MR. SMITH: We can put it in through somebody else.
8 So 26, 27, 29 and 30?

9 THE COURT: They're admitted without objection.

10 (Photographs marked State's Exhibits Nos. 26, 27, 29
11 and 30.)

12 Q This is State's Exhibit 26. What's the orientation of
13 this picture? Where is this looking from?

14 A This would be my point of view coming into the -- in
15 the back door going into the kitchen.

16 Q Okay. So would behind you be --

17 A The back porch and the back yard.

18 Q The back-porch area?

19 A Yes, sir.

20 Q And what's -- what this around here to the left?

21 A That's Joe's room.

22 Q State's Exhibit 29. What does this show? What's that
23 door behind the stove?

24 A That's the kitchen area and that -- that's the doorway
25 going into the living room area.

1 Q Okay. What about State's 29? Can you tell what that
2 is?

3 A Yes, sir. That's coming outta the kitchen going into
4 the living room area, I believe.

5 Q And State's Exhibit 30. How did you refer to this
6 picture earlier?

7 A That would have been Brian Foster's view coming at me
8 with the gun from the living room into the kitchen.

9 Q Okay. And off this picture, how far are you saying
10 that you got into --

11 A Maybe one foot in that back door.

12 Q All right. And where was he standing?

13 A Well, when I came in, he was coming around the corner.
14 So he wasn't standing. He was speed walking to me.

15 Q Okay. And what was your reaction when you saw him
16 with the gun?

17 A I started asking him, please, don't do it. I told him
18 I had a baby girl. She's three years old. And ended up
19 backing out of the back door, tripped over something and
20 laying on the back porch.

21 He had the gun in my face, and then one minute he took
22 the gun off of me, pointed it down at Joe and Joel. That's
23 when I got up and took off running. I remember a shot
24 going off. I got hit in the hip. I fell, got up, kept
25 running about another 50 yards and fell again.

1 Q which direction did you run once you got off the back
2 porch? State's Exhibit 13.

3 A Yes, sir. When I got to the bottom of the steps, I
4 went to the left.

5 Q All right. Towards -- this is State's Exhibit 18.

6 A Yes, sir.

7 Q Towards this side of the house?

8 A Yes, sir. I ran along the back side of this fence
9 right up -- right up through where the picture is taken
10 from.

11 Q All right. Do you know where you were when you got
12 hit exactly?

13 A I think I was at the top of the steps going down the
14 steps, and I think I kinda slid down the steps, kinda fell
15 down the steps a little bit.

16 Q So by the time you're running over here you're already
17 hit?

18 A Yes, sir. I lost a lot of blood.

19 Q All right. Where did you get shot?

20 A In the hip, my right hip.

21 Q All right. Were you wearing a hat or anything when
22 this interaction had happened?

23 A Yes, sir. I believe so.

24 Q All right. This is State's Exhibit 12. Can you
25 identify any of the items in this picture? And if you need

1 to see it closer, I'll give it to you. But are any of the
2 items in this picture yours?

3 A Yes, sir. That's -- that's my hat on the ground.
4 It's a Carolina hat.

5 Q All right.

6 A And then if you look closely that's my car keys
7 hanging on that little gate to the right of the hat. You
8 can barely see them. It may or may not be in that picture,
9 but that's where they said they found them. Yeah. You can
10 see my key chain right there hanging.

11 Q Okay.

12 A That was pretty much just trying to get to anything,
13 just freaking out, running for my life.

14 Q Is this what you just showed me, this black lanyard?

15 A Yes, sir. That's my car keys.

16 Q All right. What about that at the top of that second
17 step? Can you tell what that is?

18 A Maybe a pack of cigarettes.

19 Q Are you a smoker?

20 A Every -- occasionally.

21 Q May have had a pack of cigarettes on you?

22 A Yes, sir. Possibly.

23 Q All right. What color of phone did you have at that
24 time?

25 A A red -- red-case phone. It was a phone that had a

1 red case on it.

2 Q All right. Did you have that with you whenever you
3 ended up wherever you ended up? Is that -- is that the
4 phone?

5 A Yes, sir.

6 Q All right. So, basically, you lost everything except
7 the clothes that were attached to your body?

8 A Yes, sir.

9 Q Fair to say you were running for your life at that
10 point?

11 MS. JONES: Your Honor, he's leading.

12 A Yes, sir.

13 MS. JONES: Object.

14 THE COURT: Don't lead him.

15 A Definitely.

16 Q Prior to hearing the gunshot, and which prompted you
17 to go inside the house, did you hear any noises from inside
18 that house?

19 A No, sir. It was just the gunshot. That's it.

20 Q Were you -- were you present when they were -- did you
21 ever see a red gun or anything like that, any discussion of
22 a red gun?

23 A No, sir. I came out after, I believe, after all of
24 that.

25 Q All right. Now, you think you get shot on the steps

1 and then proceed to the left side of the house by the
2 fence.

3 A Yes, sir.

4 Q Where did you go from there?

5 A I ran through the front yard, and then I turned
6 around. I thought I had got away. Turned around and
7 looked, and he was chasing me with the gun on me.

8 Q All right.

9 A So I fell again after losing so much blood I couldn't
10 run any more.

11 Q Are you left handed or are you saying he had his left
12 hand out when he --

13 A I'm not a hundred percent.

14 Q What?

15 A I'm not a hundred percent sure what hand he had the
16 gun in.

17 Q You're using your left hand. Are you left handed?

18 A Yes, sir.

19 Q Okay. So you're going out to the right beyond where
20 this picture is to the front yard, you're saying?

21 A Yes, sir.

22 Q All right. And where did -- where did he come from
23 when he confronted you the second time?

24 A He come from around the back, pretty much chased me
25 the same route that I ran.

1 Q Okay. So you think he came around this way.

2 A Yes.

3 Q Same as you. All right. Did he -- did you ever hear
4 any more gunshots after that?

5 A The only gunshots I heard was the one that killed Eric
6 and the one that hit me. I'm not sure of any others.

7 Q All right. You talked about where he's standing over
8 you with a gun looking at you and you're begging.

9 A Yes, sir.

10 Q Did you see if he attempted to pull the trigger or
11 anything like that?

12 A Absolutely.

13 Q Okay.

14 A Quite a few times. I told him. I begged him, told
15 him I had a little girl, and he still proceeded to cock the
16 gun. And it would jam. Cocked it again. It jammed again.
17 And by the grace of God the gun didn't go off.

18 Q How many guns did you see him with?

19 A Just one.

20 Q All right. Now, what happened when you get to the
21 front yard and he confronts you there?

22 A The gun jammed probably two or three times, and then
23 he took off running. I got up and ran probably --

24 Q Which direction did you see him running?

25 A He ran back toward the house.

1 Q Okay.

2 A Back toward the back yard, I guess, to go after them
3 again -- Joe and Joel.

4 Q All right. Is that the last you ever saw of him until
5 today?

6 A Yes, sir.

7 Q All right. Where did you go at that point?

8 A After he took off running I managed to get back up and
9 run about another 50 yards to the neighbors across the
10 street. It's also a family friend. I seen them outside.
11 I hollered for them and told them help. Just pretty much
12 it was panic, just all panic.

13 Q All right. And did they help you?

14 A Yes, sir.

15 Q What did they do for you?

16 A They took me in the house. I lay in the hallway and
17 made sure I wasn't away from -- made sure I was away from
18 all windows because they said they still seen him over
19 there in the yard area.

20 MS. JONES: Objection, Your Honor. This is hearsay.

21 THE COURT: Sustained.

22 A And also laid in the hallway. A girl held a towel on
23 my hip until the ambulance got there.

24 Q All right. Were you able to see if you were losing
25 blood or anything during this time?

1 A Yes, definitely.

2 Q Were you conscious?

3 A I was soaking wet.

4 Q All right. You were conscious at this time though?

5 A Yes, sir.

6 Q In pain?

7 A Yes, sir. There right before the ambulance got there
8 I did feel a little dizzy from losing so much blood, I
9 guess.

10 Q Did you -- did you end up getting transported to the
11 hospital --

12 A Yes, sir.

13 Q -- in an ambulance?

14 A Yes, sir.

15 Q All right. Do you know if they gave you any pain
16 medication or anything like that?

17 A I think as soon as I got there, not long after I got
18 there, they did give me something. I'm not sure what it
19 was.

20 Q Is there the hospital?

21 A In the hospital, yes, sir.

22 Q All right. Did -- what ended up happening with the
23 bullet that was in your hip?

24 A It's still there.

25 Q Why did they leave it in?

1 A They told me that where the bullet had stopped, it
2 wasn't hurting anything. And they said to go in and remove
3 it would be too much of a risk.

4 Q Let me show you State's Exhibits 24 and 25 and ask if
5 you can tell me what these are.

6 A Twenty-four. That's me in the hospital in the
7 hospital bed covered in blood. Twenty-five is my gunshot
8 wound.

9 MR. SMITH: Your Honor, at this time we'd move State's
10 Exhibits 24 and 25 into evidence.

11 MS. JONES: No objection. I'm sorry.

12 THE COURT: They're admitted.

13 (Photographs marked State's Exhibits Nos. 24 and 25.)

14 Q State's Exhibit 24; State's Exhibit 25. Do you
15 remember officers coming and attempting to show you a
16 series of pictures to see if you could identify who had
17 shot you?

18 A Yes, sir, very briefly. It was very brief. I was in
19 shock. I had lost a lot of blood and on medication. So it
20 was -- I don't think I was able to pick anyone out at the
21 time, but I can definitely pick him out today.

22 MS. JONES: Your Honor, I have an objection if we're
23 going to undertake that process.

24 THE COURT: well, let me see y'all just a minute.

25 (Bench conference held off the record in the presence

1 of the jury but out of the hearing of the jury.)

2 THE COURT: Overrule the objection.

3 Q Please answer any questions Ms. Jones has.

4 A Yes, sir.

5 Q Here is the laser pointer.

6 A Okay.

7 CROSS-EXAMINATION

8 BY MS. JONES

9 Q Pronounce your last name for me.

10 A Koepke.

11 Q Koepke. I've been saying it wrong two days.

12 A Yes, ma'am.

13 Q I apologize. Maybe it'll be easier. What name do you
14 go by?

15 A Michael.

16 Q May I call you Michael?

17 A Yes, ma'am.

18 Q It might be easier.

19 You indicated that you spoke to the police while you
20 were in the hospital, and you believe you were medicated.

21 A Yes, ma'am.

22 Q Were they aware of that?

23 A I'm not sure. He -- he kind of acted like he didn't
24 want to bother me too much. So it was real brief. He was
25 only there for just a minute, and I was in shock and a lot

1 of pain -- lot of pain.

2 Q So a sheriff's deputy undertook a process to have you
3 identify somebody from a lineup, and you were medicated and
4 in shock.

5 A I'm not sure. I'm not a hundred percent, ma'am, if I
6 had been medicated yet or not. But I know I was in a lot
7 of just -- I was in pure shock. They may, or they may
8 have, gave me medication. I'm not sure.

9 Q But you were presented a lineup that contained a
10 photograph of Mr. Foster, and you could not pick him out as
11 the individual responsible for what had happened to you
12 that day.

13 A At the time after losing so much blood and going
14 through that situation, no, ma'am, I wasn't.

15 Q Okay. They even interviewed you and talked to you in
16 an ambulance. Do you remember that? An officer named Wood
17 actually climbed into the ambulance with you and talked to
18 you about what happened. Do you remember that?

19 A Very briefly.

20 Q Did you realize that when that officer talked to you
21 he was wearing a body camera that was recording what you
22 were saying?

23 A No, ma'am. I wasn't paying any attention.

24 Q Okay. But you talked about what had happened. Do you
25 remember ever telling him that this individual had on dark

1 clothing, black or dark clothing?

2 A I don't recall.

3 Q Okay. You also talked to the same detective, William
4 Gary, that tried to show you the lineup or showed it to
5 you, and you couldn't pick him out. Also, talked to you
6 about what had happened to you. Do you remember that?

7 A In the hospital?

8 Q Yes.

9 A Very briefly.

10 Q Okay.

11 A I don't -- I don't remember.

12 Q Did you tell him that this person was wearing black or
13 dark clothing?

14 A I'm not sure exactly what I told him, ma'am.

15 Q Okay. So you credit your inability to identify Mr.
16 Foster from a lineup to maybe medication -- you don't
17 know -- maybe shock -- you don't know? But we do know you
18 could not pick him out of that lineup, correct?

19 A At the time, no, ma'am, I couldn't.

20 Q Okay.

21 A But today I can a hundred percent.

22 Q And you've been in here today and watched other people
23 identify him, have you not?

24 A Yes, ma'am.

25 Q Mr. Koepke -- sorry -- Mike, I knew I couldn't

1 pronounce it. You heard one shot, went into the house.

2 And how many shots did you hear after that?

3 A To my knowledge, just one, the one that hit me. I'm
4 not sure if there was any other shots. Maybe there were.
5 I was just running pretty much, just tunnel vision.

6 Everything was --

7 Q And you ran out, fell down the stairs, ran in the
8 direction of the left side of the house.

9 A Yes, ma'am.

10 Q Okay. Immediately off of the steps there's a --
11 there's some kind of a fence there, isn't there?

12 A Yes, ma'am. That's a dog gate --

13 Q Okay.

14 A -- for Eric's dog.

15 Q Did you fall over that too?

16 A I think so. That's how my keys ended up hanging on
17 the gate.

18 Q And do you have any recollection at that point where
19 Mr. Lewis and Mr. Campbell were?

20 A No, ma'am. As far as I know they took off running
21 when they see me coming out of the house.

22 Q Okay. It was kind of everybody for themselves at that
23 point.

24 A Yes, ma'am. But I did see him point the weapon toward
25 both of them directly.

1 Q well, how do you know --

2 A Because he was in my face.

3 Q -- he was pointing?

4 A Ma'am?

5 Q How do you know if he was pointing at them if you did

6 not know where they were? How can you draw that

7 conclusion?

8 A well, that's another time. When I'm laying on my back

9 on the back porch with a gun in my face, he took the gun

10 off of me and pointed it directly at them. That's when I

11 got up.

12 Q You're laying flat on your back on the porch.

13 A Yes, ma'am.

14 Q Where were they?

15 A Still down by the 4-wheeler in front of the building,

16 in that area. I'm not exactly sure where exactly they were

17 standing, but I know they were in that area.

18 Q Flat on your back on this day you can see them --

19 A I seen him point the weapon --

20 Q -- at the garage.

21 A -- in their direction.

22 Q So you don't -- you did not see them.

23 A No.

24 Q Okay. And you said you saw one gun.

25 A Yes, ma'am.

1 MS. JONES: That's all.

2 MR. SMITH: I don't have any further questions.

3 THE COURT: You may step down.

4 MR. SMITH: Your Honor, we'd have an issue before this
5 next witness that we need to take up outside the presence
6 of the jury.

7 THE COURT: Okay. Let me ask the jury to please go to
8 your jury room.

9 Don't discuss the case. I'll bring you back as soon
10 as we address the issue.

11 (The following takes place outside the presence of the
12 jury.)

13 MS. CLARK: Your Honor, we were going to do a
14 continuation of the Neil vs. Biggers hearing from
15 yesterday. We have one additional individual.

16 THE COURT: Okay. Call him.

17 MS. CLARK: The state calls Jim Moore to the stand.

18 JIM MOORE, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. CLARK

21 Q Please state your full name for the record.

22 A Jim Moore -- James Moore.

23 Q Mr. Moore, where do you live?

24 A [REDACTED] Bayberry Drive.

25 Q And where is that in comparison to Old Canaan Road?

Jim Moore (In-camera)
Direct examination by Ms. Clark

1 A Old Canaan Road intersects Bayberry.

2 Q And how long have you lived at that address?

3 A Forty years.

4 Q Do you remember the afternoon of February the 18th of
5 2018?

6 A Yes, ma'am.

7 Q Tell us what happened.

8 A I was on my back deck. I was out there with my dogs,
9 and I heard a crashing. My neighbor across the fence has a
10 big patch of bamboo, and I heard this crashing sound. I
11 thought the neighbor was cutting the bamboo down.

12 But the next thing I know he rolls out into my back
13 yard. I was kind of astounded, but I started walking
14 towards him. And he, you know, threw his hands up -- I
15 won't hurt you, I won't hurt you, I don't mean no harm.

16 And so as we got closer he says they've raped my mama,
17 they've raped my mama, they've killed her, they've killed
18 her, she's dead. And I said what. And he repeated it
19 again. And I says, well, did you call 9-1-1, and he said
20 no, the guy was chasing me, he's chasing me right now.

21 I said okay, well, let's go up to the house and we'll
22 call 9-1-1. And so we got up to the house. I told him to
23 wait on the back deck while I went in and got the phone.

24 Q Is it a cell phone that you went to get?

25 A No. A house phone. It was cordless.

1 So I -- as I was walking back out, before I got to the
2 door they had answered, and I told them my name and
3 address.

4 Okay. Well, from the time I told them my address I
5 was out the back door. He grabbed the phone from me and
6 took off around the corner of the house.

7 And so I followed him around, and as I was getting to
8 him he says come pick me up, come pick me up, hurry, come
9 pick me up, you know. And that's when I jerked the phone
10 back from him and I said --

11 Q why did you jerk it back? What were you thinking?

12 A Well, you know, we were supposed to be talking to
13 9-1-1, and that wasn't 9-1-1.

14 So I jerked the phone back from him and started back
15 towards the back of the house. And we walked back around
16 there and stood there a few minutes.

17 By then you could see the police going across the
18 street at the back, and I said, well, there they go now,
19 you need to go back up there.

20 And he says nah, you know, it's too far to walk. And
21 I said okay. So we stood there a minute. I said, well, I
22 tell you what. I'll go in the house and get my keys and
23 we'll get in my car and I'll take you back up there.

24 Q What did he say to that?

25 A Okay. So I went in the house and got the keys, come

210 Jim Moore (In-camera)
Direct examination by Ms. Clark

1 back out. And just as we were coming around the house -- I
2 have a gate that goes -- a privacy gate that goes out to
3 where the cars are. I reached up to open the gate and one
4 of the police cars come in the driveway. And just as soon
5 as that happened I turned around and said here they are
6 now, and he was headed out around the other --

7 Q What direction did he run in?

8 A Back towards Old Canaan, that end of the house. He
9 went through another gate, went in the front yard, and I
10 lost sight of him.

11 The police come up the driveway. I told them, you
12 know, there he goes, there he goes. And so they took off
13 through the front of the house, jumped the fence. And, you
14 know, by then they had lost him.

15 Q Did you see that man again?

16 A No.

17 Q Tell me. What did he look like? What was he wearing?

18 A Black sweat type pants, a black hoodie with a large
19 white hand on it.

20 Q And do you remember any descriptions about what he as
21 a person looked like?

22 A Young, large hair.

23 Q Was he black, white?

24 A Black.

25 Q How long was this interaction from the time that he

1 came into your back yard until the time that he ran?

2 A I'm guessing 20 minutes.

3 Q And how close to him were you? Were you a few feet
4 away or very close or --

5 A A few feet away.

6 Q And after you spoke with the police did they give you
7 an opportunity to say whether you could probably pick him
8 out of a -- of a lineup of photographs?

9 A Yes.

10 Q And did you say that you probably could pick him out?

11 A Yeah.

12 Q Did they also show you an affidavit, kind of explain
13 the instructions to you?

14 A Yeah.

15 Q And were you by yourself during this --

16 A Yes.

17 Q -- or kind of what was happening?

18 A I was by myself.

19 Q And did you have any interaction with any of the other
20 people at Old Canaan?

21 A Not until after.

22 Q And I'm going to show you what's been marked as
23 Court's Exhibit No. 1. Do you recognize this affidavit?

24 A Yes, ma'am.

25 Q And were you indeed shown a series of photographs of

212 Jim Moore (In-camera)
Cross-examination by Ms. Jones

1 individuals and their faces?

2 A I did.

3 Q Did you pick one of those individuals out?

4 A I did.

5 Q What number did you pick out?

6 A No. 5. It has my initials on it.

7 THE COURT: Please use the microphone.

8 THE WITNESS: Oh, I'm sorry.

9 A No. 5.

10 Q Are your initials beside that No. 5?

11 A Yes. It is.

12 Q And how quickly did you pick out that photograph?

13 A Seconds.

14 Q Did you give the police a description of his facial
15 hair and what his face looked like?

16 A I may have, but, honestly, I couldn't tell you if I
17 did or not.

18 MS. CLARK: Judge, no further questions at this time.

19 Q Please answer any questions defense counsel may have.

20 CROSS-EXAMINATION

21 BY MS. JONES

22 Q Mr. Moore, you gave a written statement to the police
23 also, didn't you?

24 A Yes, ma'am.

25 Q And in there did you describe anything about this

1 individual's build, clothing, hair, facial hair?

2 A Yeah.

3 Q You did?

4 A Yeah.

5 Q Okay. Let -- I'm sorry.

6 MS. JONES: Mark this for I.D.

7 (Voluntary statement of Jim Moore marked Defendant's
8 Exhibit No. 3 for Identification.)

9 Q Please, if you would, Mr. Moore, review Defense
10 Exhibit 3 for Identification.

11 A Okay.

12 Q Review it.

13 A Okay.

14 Q Where in there do you describe what he's wearing?

15 A In the -- in this statement, I did not but I --

16 Q Didn't you just say you did in your statement?

17 A Well, I told them. I thought it was in my statement,
18 but I told them.

19 Q You were responsible one hundred percent for what was
20 written in this statement.

21 A Yeah, and this is --

22 Q Are you not?

23 A It is, and this is true.

24 Q Okay. There's nothing in there about clothing, hair
25 type, facial hair. You don't even identify the race of

214 Jim Moore (In-camera)
Cross-examination by Ms. Jones

1 this person.

2 A Correct.

3 Q In fact, you call him this person.

4 A Yeah, correct.

5 Q Okay. Your statement concentrates on the back and
6 forth of the telephone, doesn't it?

7 A Uh-huh.

8 Q And his physical location on your back deck --

9 A Yeah.

10 Q -- over at the fence, the front fence, the side fence.
11 Doesn't talk at all about descriptions.

12 A No, ma'am.

13 Q Do you recollect however telling one of the
14 officers -- I believe it was Junkins -- about the black
15 sweatpants and the shirt?

16 A I do.

17 Q But did you not describe it as a t-shirt, not as a
18 hoodie?

19 A I said -- you know, what I said, shirt, hoodie,
20 whatever. I don't know. I described it --

21 Q There's a large difference --

22 A Okay.

23 Q -- between a t-shirt and a hoodie, is there not?

24 A There is.

25 Q And you're going to acknowledge that.

1 A Yes, ma'am.

2 Q Now, can we agree that you said it was black?

3 A Uh-huh.

4 Q And it had a big white hand on it.

5 A Yes, ma'am.

6 Q Okay. You've acknowledged you have no recollection of
7 the description you gave about facial hair.

8 A No. At this time, I don't.

9 Q Okay. Yet you were able to pick the individual out of
10 a lineup. You said very quickly.

11 A Uh-huh.

12 MS. JONES: That's all I have.

13 MS. CLARK: Nothing further from this witness, Your
14 Honor?

15 THE COURT: Step down.

16 Anything else?

17 MS. CLARK: Nothing further, Judge.

18 THE COURT: Ms. Jones, anything?

19 MS. JONES: No, sir.

20 THE COURT: All right. Well, as we addressed
21 yesterday, the lineup is arguably suggestive. However, I
22 find that the identification by the defendant [sic] is,
23 nevertheless, reliable after considering the testimony
24 provided by the witness as it relates to his opportunity to
25 view Mr. Foster, his degree of attention, the accuracy or

1 inaccuracy of any prior description, his level of
2 certainty, the lapse of time between the offense and the
3 time he identified him.

4 There was no failure of him to identify this defendant
5 on any prior occasion. And I find that there is no
6 corrupting influence of the lineup itself even if you were
7 to find it to be unnecessarily suggestive. And therefore
8 the witness' in-court identification is permitted. All
9 right.

10 MR. SMITH: Are we going to take a lunch break after
11 this witness?

12 THE COURT: You can.

13 MR. SMITH: I didn't know -- I have several officers
14 here. I was just going to let them -- if that was this
15 plan, just to let them head out.

16 THE COURT: Yeah. That's fine.

17 Bring the jury in.

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

20 THE COURT: Okay. Mr. Smith or Ms. Clark.

21 MS. CLARK: The state calls Jim Moore to the stand.

22

23

24

25

1 JIM MOORE, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. CLARK

4 Q Please state your full name for the record.

5 A James Moore.

6 Q Mr. Moore, where do you live?

7 A [REDACTED] Bayberry Drive.

8 Q And is that here in Spartanburg County?

9 A Yes, ma'am. Roebuck.

10 Q Is that close to Old Canaan Road?

11 A Yeah. Very close.

12 Q How -- tell us about the connection between Bayberry
13 and Old Canaan.

14 A Bayberry intersects Old Canaan Road in a "T".

15 (Photographs marked State's Exhibits Nos. 31 and 32 for
16 Identification.)

17 Q Mr. Moore, I'm going to show you two photographs.
18 They have been premarked as State's Exhibits 31 and 32. Do
19 you mind taking a look at those for me? And briefly
20 describe what each one is based on the number. Look at the
21 number and then say what they are.

22 A Thirty-one, I believe it is. I don't have my
23 glasses -- is a picture my house, an aerial picture of my
24 house and the road in front of it.

25 Thirty-two is a picture of Bayberry Drive and Old

Jim Moore

Direct examination by Ms. Clark

1 Canaan, my house being at the very top left of Bayberry.

2 Q And is this -- are these images something that you're
3 familiar with?

4 A Yes.

5 Q And are they -- do they fairly and accurately
6 represent the way that your house looks and the way that
7 the intersection between Bayberry and Old Canaan looks?

8 A Yes, ma'am.

9 Q And how long, again, have you lived at this residence?

10 A Forty years.

11 MS. CLARK: Judge, at this time we would move to
12 introduce the exhibits into evidence.

13 MS. JONES: May I have them again, please?

14 (Pause.)

15 MS. JONES: No objection, Your Honor.

16 THE COURT: They're admitted.

17 (Photographs marked State's Exhibits Nos. 31 and 32.)

18 Q Sometimes I think it's kind of helpful to look at
19 these from above.

20 Mr. Moore, can you describe what we're looking at?

21 This is State's Exhibit No. 31.

22 A You could see the road there in front of my house.

23 You can see the house. To the left of the house would be a
24 white carport. To the right of the trees is my neighbor's
25 yard with no trees in it. He's got a camper there, and a

1 white building.

2 Q Is this your house right here?

3 A Yes, ma'am.

4 Q And I'm also going to show you what's been marked as
5 State's Exhibit No. 32. I'm going to hand you this laser
6 pointer. It may be easier for you to point it out.

7 A Okay.

8 Q Where is your house?

9 A Right there.

10 Q And where -- show me Bayberry Road and how that runs.

11 A I'd say right there.

12 Q And where is Old Canaan?

13 A Here.

14 Q Mr. Moore, do you recall the day of February 18th of
15 2018?

16 A Yes, ma'am.

17 Q What happened that afternoon?

18 A I was standing out on my back deck. There was a
19 crashing sound in my neighbor's bamboo. It borders my
20 yard. There's a fence, and then he's got a big patch of
21 bamboo.

22 Next thing I know this guy comes rolling out in my
23 yard, and kinda shocked me. I started walking towards him,
24 and he threw his hands up in the air and says I don't mean
25 you no harm, I don't mean you no harm, I won't hurt you.

1 And so as we got closer, you know, I could tell he was
2 upset. He says they've raped my mother, they've raped my
3 mother, they've killed her, she's dead.

4 And he said that a couple of times, and I said, well,
5 did you call 9-1-1, and he says, no, the guy's chasing me,
6 I didn't have time to call him, he's chasing me right now.
7 And I said, okay, well, let's go up to the house, I'll get
8 the phone and we'll call 9-1-1.

9 So I told him to stay on the deck, I'd go in the house
10 and get the telephone. I did. And as I was walking back
11 out I called 9-1-1. They answered. I gave them my --

12 Q What happened next?

13 A Huh?

14 Q After you called 9-1-1, what happened next?

15 A As I was getting to the back door, I just gave them my
16 name and phone number. As soon as I went out the door he
17 snatched the phone away from me and took off around the
18 side of the house.

19 Q Could you hear what he was saying?

20 A Well, as he was going, no. Once I got up to him on
21 the side of the house, he was telling somebody to come and
22 pick him up, hurry, come and pick him up, come pick me up.

23 And so when I heard that I jerked the phone back from
24 him and I told him, you know, you're supposed to be talking
25 to 9-1-1.

1 So I walked backed around with the phone and was
2 standing on the deck. He walks back around with me, and
3 we're standing there a few minutes. By that time you could
4 hear the police going by on the road behind us. And, you
5 know, I told him he needs to go back up there. It
6 supposedly was too far, so.

7 Q So what did you do? What did you do then?

8 A I volunteered to go in the house and get my keys and
9 take him back up there or take him home or go wherever he
10 needed to go. And I went in the house and got the keys,
11 come back out.

12 And my house has a privacy fence that separates the
13 cars from the house. I reached up to grab the gate and
14 open it, and he was behind me. A police car pulled in the
15 driveway. When it pulled in the driveway, I said here they
16 are now. I turned around, and he'd taken off running to
17 the other side of the house and went through the front
18 gate. And I motioned for the police that he had -- you
19 know, he was running that way.

20 Q And then what happened?

21 A So the police jumped out and jumped over the fence
22 and, you know, they never could find him.

23 Q Did you ever see that man again?

24 A No.

25 Q Tell me. How long was this interaction from when he

1 jumped over the fence all the way up to when he left your
2 house?

3 A Roughly 20 minutes.

4 Q How close to him were you during this?

5 A 2-foot, 3 feet.

6 Q And what -- what was he wearing?

7 A A black jumpsuit, black top with a big white hand on
8 the front of it.

9 Q And did he have any sort of bag with him or any sort
10 of items?

11 A No, no.

12 Q What did he look like as a person? Would you describe
13 him?

14 A Black male, young, high hair, slender.

15 Q And after, kind of, things started to calm down, did
16 you have a chance to talk to police about your encounter
17 with this man?

18 A Yes.

19 Q And did you tell them everything that happened?

20 A Yeah.

21 Q Did you also provide them a written statement?

22 A Yeah.

23 Q And when you were talking to the police did you tell
24 them that you could possibly pick this person out of what
25 we like to call a lineup?

1 A Yes.

2 Q And did you have the opportunity to view lineups and
3 photographs and pick a person?

4 A Yes, I did.

5 Q Did you pick a photograph?

6 A Yes, ma'am.

7 Q How quickly did you pick that photograph?

8 A Seconds.

9 Q Did you feel pressured or tricked in any way?

10 A No.

11 Q And the person that you picked out of the photograph
12 and the person that you met in your yard that day, is he
13 here in the courtroom?

14 A Yes.

15 Q Will you please point to him?

16 A Here.

17 Q Mr. Moore, you said that law enforcement was called.
18 Do you have a phone that can log calls where you can go
19 back and see what phone calls are made?

20 A Well, this was a home phone, a cordless home phone.
21 It does show the numbers that have been dialed and
22 everything. But that being so long ago, I don't.

23 Q Did you share that information with police?

24 A Yeah.

25 Q So did they take a look at that phone?

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Cross-examination by Ms. Jones

1 A No.

2 Q But you did share with them that you could go back and
3 look at the calls made.

4 A Uh-huh, because they had called back. whoever he
5 called had called back several times, and I didn't answer.

6 Q Mr. Moore, just to clarify. I just want to make sure
7 we're on the same page. You said that the police didn't
8 look at the phone. But did you provide the numbers? Did
9 they ever get the numbers?

10 A I did provide the numbers to them. You know, what
11 they did with them, I don't know.

12 Q So you permitted them to physically look at the phone,
13 but you didn't give them --

14 A Yeah, yeah, because I told them, you know, this --
15 they had been calling back. And they asked me to recall
16 the numbers. And then I'm assuming they wrote them down.

17 Q I don't have any further questions for you at this
18 time, but please answer any questions that defense counsel
19 may have.

20 CROSS-EXAMINATION

21 BY MS. JONES

22 Q Mr. Moore, is there a difference to you between a
23 black jumpsuit and sweatpants and a hoodie? Are those
24 different things?

25 A Well, a jumpsuit would be one piece. I mean, that's

1 my personal --

2 Q Okay. You just described that individual as wearing a
3 black jumpsuit.

4 A Okay. It was not a black jumpsuit. It was --

5 Q So you were incorrect about that.

6 A Yeah. It was black sweatpants.

7 Q Black sweatpants.

8 A Yeah.

9 Q And what kind of top?

10 A A black top with a white hand. All I remember is that
11 huge white hand on the front of it.

12 Q You have indicated this encounter lasted 20 minutes --

13 A Roughly.

14 Q -- at various parts of your back yard.

15 A Uh-huh.

16 Q When you have described it you have said, "I heard a
17 crashing noise and I was shocked because there was this
18 person in my yard."

19 A Uh-huh. Well, I didn't expect anybody to come falling
20 out of the bamboo. I mean, you know, I have a 4-foot fence
21 and the bamboo is 20-foot tall.

22 Q It looked -- you've done a pretty good job of
23 having -- kind of isolating yourself from everybody else
24 there, if that was your purpose. You've got shrubs and
25 plants and fences kinda built up all the way around your

Jim Moore
Cross-examination by Ms. Jones

1 house, haven't you?

2 A Uh-huh.

3 Q To, what, kind of give you a little enclave or a
4 privacy area?

5 A I like gardening.

6 Q Okay.

7 THE COURT: Let me ask you to use that microphone,
8 please.

9 THE WITNESS: Okay.

10 Q You were not expecting someone to come into your yard,
11 because it's grown up all around, isn't it?

12 A Well, it has something around, yeah.

13 Q Okay. You have a lot of fences. You called them
14 privacy fences. Did it shock you equally or more so that
15 this was a black man that came into your back yard?

16 A I've lived there 40 years, and this is the first man,
17 white or black, that has ever fell in my yard out of a
18 tree. It just -- you know, it shocked me.

19 Q You said he fell -- he came through the bamboo. He
20 didn't fall out of a tree.

21 A Well, the bamboo is so thick you can't walk through
22 it. So you -- he was basically climbing through it and he
23 hit --

24 Q Mr. Moore, do you recollect asking one of the officers
25 where did he come from, we don't have many blacks that live

1 around here?

2 A I don't recollect that, no.

3 Q Okay. You've got a rebel flag in your front yard too,
4 don't you, Mr. Moore?

5 A Yes, ma'am.

6 Q That's all.

7 MS. CLARK: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. CLARK

10 Q There's one thing I wanted to clarify, Mr. Moore. You
11 said that when he ran away he ran towards a certain
12 direction. Do you mind using this picture to explain where
13 he ran to?

14 A We were standing here on the back of the house. He
15 ran this way. There's a gate here. And then, you know,
16 once he came around this corner, I lost visual of him. I
17 don't know where he went from there.

18 Q Is there some sort of gate between your house and
19 these two white kind of shed looking things at the bottom?

20 A Yeah. There's a chain-link fence right there. Yeah.

21 Q Is it a high link fence though or --

22 A 4-foot.

23 Q And other than that, did you see where he went after
24 that or just that general direction?

25 A No. Because once he came around that corner of the

Jim Moore
Recross-examination by Ms. Jones

1 house and went through the gate, you know, I didn't have no
2 visual of him.

3 Q So there is a gate to that fence?

4 A Yeah. The gate is locked, but yes.

5 MS. CLARK: No further questions.

6 MS. JONES: A couple to clarify.

7 RECROSS-EXAMINATION

8 BY MS. JONES

9 Q The fence, the chain-link fence that is in between
10 your yard and these buildings, does not have a gate.

11 A It does have a gate.

12 Q Not in this stretch.

13 A Right there it does, but it's locked.

14 Q Okay. Now, the privacy fence you're talking about the
15 individual going through is on the front.

16 A It's on the back, back corner of each side.

17 Q When you pass through that fence you are in the front
18 yard.

19 A Yes, ma'am.

20 Q Okay. With access anywhere.

21 A Well.

22 Q The street, across to the woods, anywhere.

23 A Yeah. But the front yard is fenced also with a
24 chain --

25 Q 4-foot chain-link fence.

1 A Well, no. It's a split-rail fence in the front yard.

2 Q Okay. The direction you saw the individual go in was
3 through the fence that goes into the front yard.

4 A Yes, ma'am.

5 Q You did not see the individual go into the neighbor's
6 yard.

7 A No, no.

8 Q That's all.

9 MS. CLARK: Nothing further from this witness.

10 THE COURT: You may step down.

11 We'll break for lunch. I'll ask the jury to remember
12 my previous instruction. No discussion, no research, no
13 investigation, no media exposure.

14 Do have a good lunch. Please report to the jury
15 assembly room this afternoon at 2:30, 2:30 this afternoon.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: Court is in recess until 2:30.

19 (Whereupon, a recess was taken.)

20 THE COURT: All right. Are we ready for the jury?

21 MR. SMITH: Your Honor, I anticipate admitting or
22 trying to admit several weapons in evidence. I didn't know
23 if you wanted to look at those right now or just do it at
24 the time.

25 THE COURT: Yeah. Let me look at them while you've

230 Clifford Frank Junkins
Direct examination by Ms. Clark

1 got them.

2 Give them to Officer Bishop so he can see if they're
3 secure.

4 (Pause.)

5 THE COURT: Okay. They're secure.

6 MR. SMITH: Thank you, Your Honor. The state's ready,
7 Your Honor.

8 THE COURT: Bring them in.

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

11 THE COURT: Good afternoon, ladies and gentlemen.

12 As you know, when we recessed for lunch the state was
13 in the midst of their presentation of evidence. So we will
14 continue with that presentation this afternoon.

15 Ms. Clark.

16 MS. CLARK: Thank you, Judge. The state calls
17 Clifford Junkins.

18 CLIFFORD FRANK JUNKINS, having
19 been first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. CLARK

21 Q Good afternoon.

22 A Good afternoon.

23 Q Please state your full name for the record.

24 A Clifford Frank Junkins.

25 Q And where do you work?

1 A Spartanburg County Sheriff's Office.

2 Q How long have you worked there?

3 A Almost seven years.

4 Q And what do you do? What's your title?

5 A Uniform patrol deputy.

6 Q And were you working in that same capacity and that
7 same role back in February of 2018?

8 A Yes, ma'am.

9 Q And were you on call that day, on February 18th?

10 A Yes, ma'am.

11 Q Did you respond to Old Canaan Road on that date?

12 A Yes, ma'am.

13 Q And what location were you originally dispatched to?
14 where were you going?

15 A It was 106 Old Canaan, was the original call.

16 Q And is that where you ended up?

17 A No, ma'am. I got diverted.

18 Q Where did you get diverted to?

19 A It was on Bayberry -- 246 Bayberry.

20 Q And is that far away from Old Canaan?

21 A They actually intersect.

22 Q And once you arrived on Bayberry, what did you do
23 then?

24 A I made contact with the complainant at that address.

25 It was a Mr. Moore. And he was waving to me. And as I

1 approached up the driveway he proceed to say -- I heard him
2 say he's running, he's running, at which point I kind of
3 ran up towards the house. And then I ran back around to
4 the front yard.

5 Q And what did you see?

6 A I didn't see anything, ma'am. By the time I cut in
7 the front of the house I had -- I didn't see anybody.

8 Q So you were able or unable to locate a suspect at that
9 time?

10 A I did not see the suspect at that time.

11 Q Did you go back and talk to Mr. Moore?

12 A Yes, ma'am. I did.

13 Q Was that his house? Why was he there?

14 A That was his residence.

15 Q And when you talked to Mr. Moore, did you take a
16 voluntary statement from him at that time?

17 A Yes, ma'am. I did.

18 Q And while you were on scene did any other deputies
19 arrive, or was it just you?

20 A I was there for a short while, and then Deputy Moore
21 and also First Sergeant Hawkins arrived on scene.

22 Q Why did they arrive on scene? What was their job?

23 A Deputy Moore is a canine officer and Sergeant Hawkins
24 was going with him. They were putting the dog on the
25 ground.

1 Q And to the best of your knowledge they did arrive with
2 the canine on scene.

3 A That's affirmative.

4 Q And did they then begin to attempt to track?

5 A Yes, ma'am.

6 Q And to your knowledge were any items found during that
7 track?

8 A Yes, ma'am. I was -- I stayed on the station at Mr.
9 Moore's house, and then while they were on the track I got
10 a radio call from Deputy Moore, I believe it was. It might
11 have been First Sergeant Hawkins. But they called me over
12 to the neighbor's house, at which point I stood by a shed.

13 Q And when you stood by the shed, what was the purpose
14 of that? Why were you doing that?

15 A They had told me that the dog -- that something had
16 been located underneath and they wanted me to stand by.

17 Q And when you stood by eventually did someone else
18 arrive, or how did that work?

19 A Yes, ma'am. I was standing by for one of the I.D.
20 officers.

21 Q Did an I.D. officer arrive?

22 A Yes, ma'am. I.D. Officer Lawson responded.

23 Q And apart from standing by and talking to Mr. Moore,
24 did you have any other involvement in this case?

25 A No, ma'am. That was -- that was my total involvement.

1 Q Initially, when you responded to Bayberry did you know
2 the nature of the call, why you were going there?

3 A Initially, it was called out as a suspicious person.
4 And there was radio traffic going around, so it could be
5 the possible suspect. So at that point, that's what I was
6 going there for.

7 Q If you will, bear with me for just a moment.

8 (Pause.)

9 Q I'm going to show you what's been previously entered
10 into evidence as State's Exhibit 31. Are you able to
11 recognize what this is?

12 A Mr. Moore's house.

13 Q And can you explain based on this photograph kind of
14 what your line of sight was when you pulled up to Bayberry?
15 what did you see when you pulled up?

16 A When I pulled up --

17 Q And here's a laser pointer.

18 A So I pulled up and Mr. -- Mr. Moore was over here
19 waving to me when I pulled up. And then as I walked up he
20 said he's running, at which point I kind of ran up this
21 way, stopped and turned back around and tried to cut to the
22 front of the house.

23 Q But at no point did you see anyone else.

24 A Negative. I did not see anybody.

25 Q I don't believe I have any further questions for you

1 at this time, but please answer any questions defense
2 counsel may have.

3 A Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MS. JONES

6 Q Officer Junkins, you have a body camera, don't you?

7 A Yes, ma'am.

8 Q Did you review the recording of your exchange and your
9 time there at Mr. Moore's house before your testimony?

10 A No, ma'am. I did not.

11 Q Okay. Do you recollect when talking to Mr. Moore
12 trying to get a description the -- someone suggested to you
13 on the radio that the person might have had long hair on
14 the top and shaved on the sides and you suggested that to
15 Mr. Moore and he said, yeah, that's right, that's how the
16 hair was?

17 A I don't remember, ma'am.

18 Q Okay. But if you watched your video and it was there
19 that might help you to recollect, because part of your job
20 was to get a description, was it not?

21 A Yes, ma'am.

22 Q Did you, in fact, when you first arrived know exactly
23 why you were there?

24 A No, ma'am. It was coming out as a suspicious person.

25 Q Do you also remember questioning whether what you were

Murray Brandon Letterman
Direct examination by Mr. Smith

1 looking for was a victim? Mr. Moore had called in about a
2 person telling him his mother had been killed.

3 A It was a possibility, yes, ma'am.

4 Q Okay. Do you recollect the way that Mr. Moore
5 described the person's clothing?

6 A Yes, ma'am. He -- he was telling me it was a -- it
7 was black sweatpants with a black t-shirt with a white
8 handprint emblem.

9 Q Okay. You never -- you never saw the person.

10 A No, ma'am. I -- he never -- I never saw him in my
11 line at all.

12 Q Okay. Once the officers track and someone finds items
13 in the next yard, you're basically just told to stay there
14 and stay with them, is that right?

15 A Yes, ma'am. I was told to stay with what they found.

16 Q Yes.

17 MS. JONES: That's all.

18 MS. CLARK: Nothing further from this witness.

19 THE COURT: Step down.

20 MR. SMITH: State calls Investigator Brandon
21 Letterman.

22 MURRAY BRANDON LETTERMAN,
23 having been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. SMITH

25 Q will you please state your name for the record?

1 A It's Murray Brandon Letterman.

2 Q where are you employed?

3 A Spartanburg County Sheriff's Office.

4 Q what do you do there?

5 A I am the digital forensics, computer forensics
6 investigator.

7 Q were you in that role in February 18th of 2018?

8 A I was.

9 Q what do you do as a part of that role?

10 A Part of my role is to analyze any digital media, cell
11 phones, computers, anything along those lines looking for
12 evidence of a crime that's under investigation.

13 Q All right. were you called to assist on an incident
14 that occurred on 121 Old Canaan on February 18th of 2018?

15 A I was.

16 Q what -- what was the request? what were you needed
17 for?

18 A I was requested. An investigator on scene had located
19 a camera that was inside the bedroom of the residence, and
20 the camera was operating. And he requested my assistance
21 because it contained a micro S.D. card, to view that micro
22 S.D. card to see if there's any evidence or if the video
23 was recording during the time of the incident.

24 Q were you -- did you respond out to the residence?

25 A I did.

1 Q what did you do when you got there?

2 A When I got there I was advised and shown the camera
3 that was set up in the room. I observed there was a micro
4 S.D. card in it. I retrieved the micro S.D. card out of
5 the camera, then responded back to the sheriff's office.

6 Q what did you do at the sheriff's office?

7 A At the sheriff's office I viewed the files on the
8 micro S.D. card and observed there were some video files
9 saved on the micro S.D. card. Upon viewing those I was
10 able to determine that it was recording at the time of the
11 incident.

12 Q All right. Did you begin attempting to look for
13 things that may assist you in the investigation of the
14 case?

15 A Correct. Upon viewing the files that were saved on
16 the micro S.D. card, it appeared that they were saved based
17 off of a timestamp of the videos. So I ascertained what
18 time the 9-1-1 call came in in order to find the correct
19 file to view previously before the 9-1-1 call at which
20 point I did locate a file on the micro S.D. card that was
21 titled 151901, which would have been the 3:19 timeframe, at
22 which point I opened up that file and was able to see the
23 recording on the file.

24 Q When did you understand the 9-1-1 call to come in?

25 A I believe I was told the 9-1-1 call came in around

1 3:27.

2 Q So am I to understand that the S.D. card has
3 additional videos on it but this is what you honed in on as
4 part this investigation?

5 A Correct, yes.

6 Q Did you make a separate copy of that video that you
7 pulled that started whatever?

8 A Correct. I made an initial copy of all files and then
9 made another copy of just that -- of just that video file.

10 Q Did you watch additional files other than the 3:19
11 ones?

12 A I did.

13 Q Did you see anything that you thought was of note on
14 any of those other videos?

15 A No. I did not.

16 Q I'm going to hand you what's been marked as State's
17 Exhibit 12 and ask if you can identify what that is.

18 A Yeah. This is a D.V.D.

19 Q A D.V.D. of what?

20 A D.V.D. of the video from the bedroom.

21 Q How do you know that?

22 A My initials are on the -- the envelope.

23 Q All right. Did you watch it before court?

24 A I did.

25 Q All right. And that's a fair and accurate copy of

1 what you saw on the original S.D. card?

2 A It is.

3 MR. SMITH: Your Honor, at this time we'd move State's
4 Exhibit 12 into evidence.

5 MS. JONES: No objection.

6 THE COURT: It's admitted.

7 (Bedroom video marked State's Exhibit No. 12.)

8 Q Did you have an understanding of whose bedroom this
9 video was taken from?

10 A I was advised that it was possibly the victim's
11 bedroom.

12 Q Do you know which victim?

13 A I do not.

14 Q I think we're about to watch this. Does it appear to
15 you that the video's running maybe not in real-life speed?

16 A Correct, yes.

17 Q Like, do you remember?

18 A I don't remember what speed it was running in.

19 (Pause.)

20 (Whereupon, the video was played for the jury.)

21 Q At this time did you see, did you ever see, those two
22 individuals again on this video?

23 A No. I believe the next clip I saw was actually a
24 deputy entering the room.

25 Q And I don't think that's on this video, but you

1 watched it until you saw a police officer focus in in this
2 room?

3 A Correct.

4 Q All right. And the times that you're going off, is
5 that upper left-hand corner there?

6 A Yeah. The time is in the upper left-hand corner, the
7 timestamp showing 3:25.

8 Q Did you have an understanding of some of the
9 background of this case when you were looking? I mean, did
10 you know what potentially you were looking for?

11 A Correct. I did.

12 Q What -- what do you see on this video given your
13 understanding of the case?

14 MS. JONES: Your Honor, I'm going to object. The jury
15 can observe it. They don't need somebody to -- to narrate
16 it.

17 THE COURT: Sustained.

18 Q Did you have any further involvement in this case
19 other than employing this video?

20 A No. That concluded my involvement.

21 Q Please answer any questions Ms. Jones has.

22 CROSS-EXAMINATION

23 BY MS. JONES

24 Q Detective Letterman, you indicated you watched other
25 files from which you retrieved this one. Do you recollect?

1 Did this recording device have a mechanism -- or I guess a
2 setting may be a better way to put it -- a time period
3 after which it dumped and started over because of storage?

4 A I can't speak specifically without make and model of
5 the camera.

6 Q That's usual however with cameras, because there's
7 only so much storage space in the mechanism, correct?

8 A That's correct, yeah. Certain cameras can -- yes.
9 Once they're full, they go back and start back at the
10 beginning of the memory, yes, ma'am.

11 Q Okay. And how many other segments did you watch?

12 A I can't recollect in my current -- if I had to
13 estimate, I would say ten or so probably.

14 Q Okay. Did you see any other segments involving the
15 handgun where that same one of those individuals came and
16 got the gun and put it back? That gun was used -- one of
17 those guns was used a lot that day.

18 A I do not recollect seeing --

19 Q You don't recollect --

20 A No, ma'am.

21 Q -- seeing that?

22 A No, ma'am.

23 Q Are you sure you watched -- did you watch the whole
24 day --

25 A No, ma'am.

1 Q -- or just kind of zero in on the target time somebody
2 had provided you?

3 A I just zeroed in on the target time.

4 Q Okay. That's it. Thank you.

5 A You're welcome.

6 REDIRECT EXAMINATION

7 BY MR. SMITH

8 Q You collected the entire disc and placed it into
9 evidence?

10 A Correct, yes, the entire contents of that micro S.D.

11 MR. SMITH: I don't have any further questions.

12 THE COURT: You may step down.

13 MR. SMITH: Your Honor, can I step outside?

14 (Pause.)

15 MR. SMITH: State calls Lieutenant William Gary.

16 WILLIAM ROBERT GARY, having
17 been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. SMITH

19 Q will you state your name for the jury?

20 A William Robert Gary.

21 Q where are you employed?

22 A The Spartanburg County Sheriff's Office.

23 Q what's your role there?

24 A I'm a lieutenant over investigations.

25 Q Does that involve supervision of violent crime

1 investigations?

2 A It does.

3 Q Do you ever get involved in cases, or just do
4 management type work?

5 A I -- mostly management now in that role, but I do
6 still assist on investigations.

7 Q How long have you been in law enforcement?

8 A A little bit over 24 years.

9 Q Did you participate in the investigation of a shooting
10 that occurred at 121 Old Canaan on February 18th of 2018?

11 A Yes. I did.

12 Q And what did you do at the beginning of that role?

13 A When I first got there, I got briefed about what
14 was -- what had happened, what we knew at that point.

15 I assisted basically making sure there's enough
16 manpower, everybody has what they need to do as part of the
17 management role in my job and then went to the hospital to
18 talk to one of the witnesses, one of the victims there.
19 And then I came back out to the scene.

20 We at that point determined there were some cameras
21 recording. One of the jobs when I was working cases day to
22 day, I did a lot of robbery investigations. So that led me
23 to work a lot of D.V.R. systems. So I was asked to try to
24 get the video off the D.V.R. system that was recording at
25 the house.

1 Q Did you understand where this -- whose bedroom or what
2 bedroom this was recording from at that time?

3 A Yes. The -- the bedroom you just saw is the same
4 bedroom with the D.V.R. system, had the outside cameras in
5 it. It was hooked to either a T.V. or monitor -- I don't
6 remember right now which it was -- where the D.V.R., you
7 could view it live there in the bedroom. And it had an
8 outside camera on it, is all it had on it. That camera was
9 a separate individual stand-alone camera there.

10 Q Do you know whose bedroom that was?

11 A The deceased victim's bedroom.

12 Q That's Eric Morris?

13 A Yes.

14 Q All right. I know you'd mentioned going to the
15 hospital. Was the purpose of that visit -- you had a
16 lineup at that point that had been generated, is that
17 right?

18 A I did.

19 Q And Mr. -- the Mr. Koepke was at the hospital. Was he
20 able to pick anybody out of that lineup?

21 A I forgot my glasses. I did go to the hospital just to
22 get his name off here. Koepke, I believe.

23 Q Yes.

24 A Mr. Koepke was at the hospital. I did take a lineup
25 that had been generated on a possible suspect that we had

1 in this. He was unable to identify anyone from the lineup.

2 Q Okay. Now, once you find this D.V.R. system, what did
3 you do to attempt to access it?

4 A We tried what can be some standard factory codes, some
5 generic codes that are put into these systems. Four, five,
6 zero, ones, nines, things like that -- one, two, three,
7 four, five -- five, four, three, two, one. None of that
8 worked. Speaking with -- trying to use birthdate, that
9 sort of thing. Nothing worked.

10 So what I did, it's a Night Owl vision. And there's
11 so many different brands of D.V.R. systems it can be hit or
12 miss but I -- on a whim I tried to call, and I did make
13 contact with someone from Night Owl while I was there, told
14 them what was going on, and they provided me with a code
15 that allowed us to access the D.V.R. system in order to
16 view and retrieve the video off of it.

17 Q And so then did you watch the -- once you had gained
18 access, did you begin watching?

19 A We did. We had a general time based on the 9-1-1 call
20 and what people -- what the witnesses had said. We knew
21 about what time we were looking to start, which is good
22 because on a D.V.R. system there can be a lot of time on
23 it. So if you can start narrowing your focus down, a lot
24 of times you might work backwards from that and find what
25 looks like a beginning point and then go forward from

1 there.

2 So we were able to view it, saw the suspect or a
3 person walk up the road to the house. Person approaches
4 the front door, then goes around the side of the house
5 where the camera's actually located.

6 MS. JONES: Your Honor, again, we have a narration.
7 If he's going to present the D.V.R., let's just do it, and
8 let the jury watch it, not have him say what he sees.

9 THE COURT: Is that an objection?

10 MS. JONES: Yes, sir. It is.

11 THE COURT: Sustained.

12 Q Did you ultimately burn whatever contents you found
13 off of that D.V.R. onto a disc?

14 A We did. We didn't get the whole thing because D.V.R.
15 systems can have a huge hard drive on it. So grabbed a
16 block of time off of it that showed what appeared to be the
17 suspect from the beginning of the video when he comes on to
18 when he leaves the video, the last time you see him on the
19 video.

20 (Photograph marked State's Exhibit No. 47 for
21 Identification.)

22 Q I hand you State's Exhibit 47 and ask if you can
23 identify what that is.

24 A Yes. This is the table that's in the bedroom where
25 the D.V.R. system is and connect to the T.V.

William Robert Gary
Direct examination by Mr. Smith

1 Q And this is what you saw in Eric Morris' bedroom that
2 day?

3 A Yes. The D.V.R. is what's in the bottom. It's a
4 X-box above it, on top of it.

5 MR. SMITH: Your Honor, at this time I'd move State's
6 Exhibit 47 into evidence.

7 MS. JONES: Your Honor, if we could see it briefly.
8 (Pause.)

9 THE COURT: Any objection?

10 MS. JONES: No, sir, Your Honor.

11 THE COURT: Admitted.

12 (Photograph marked State's Exhibit No. 47.)

13 Q I know you said you didn't catch all of the equipment,
14 but you do capture what, from your understanding of the
15 case, was the relevant portion of the video.

16 A Right. We're -- certainly a little bit before you
17 seeing the person believed to be the suspect walking up the
18 street, and then the last segment, last time spot, is right
19 around the time or a little bit after you see the person
20 running off the camera, so beginning to the end of that
21 incident.

22 Q I'm going to hand you what's been marked as State's
23 Exhibit 8 and ask if you can identify what this is.

24 A Yes. This is a D.V.D. that has the segment of the
25 video that was taken off of the D.V.R. system on it. It

1 has my initial on it where I reviewed it to -- it is the
2 video that I pulled off.

3 MR. SMITH: Your Honor, at this time I move State's
4 Exhibit 8 into evidence.

5 MS. JONES: May I?

6 THE COURT: Any objection?

7 MS. JONES: No, sir.

8 THE COURT: It's admitted.

9 (Outdoor surveillance marked State's Exhibit No. 8.)

10 MR. SMITH: Your Honor, at this time I request to
11 publish it.

12 THE COURT: You may.

13 Q Is the video on one solid thing, or is it multiple
14 video recordings?

15 A No. This particular D.V.R. system -- you can tell it
16 the timeframe that you want the file to be, but it doesn't
17 generate it in one file. It breaks it up into individual
18 files, and they're not all consistent as far as how big the
19 files are. Some are longer than others.

20 Q Did you take notes on -- on when you saw relevant
21 things in your --

22 A Some. I know one the -- of the biggest things is the
23 time. This, the video time, on here is not accurate at the
24 top. Let me find that in my notes here.

25 (Pause.)

William Robert Gary
Direct examination by Mr. Smith

1 A It's approximately 12 hours behind the actual time.
2 So basically there you see a.m. It should be p.m. And
3 that's -- that's not going to be exact.

4 In looking at that -- when you look at the D.V.R.
5 system on a live view it shows you the date and time. The
6 best way for us to try to get the actual time is using the
7 cell phone, because it connects to a tower, connects to a
8 world clock. So it gives you the -- the actual time as
9 long you've got that setting set on your phone. And that
10 was approximately 12 hours behind actual time. That's why
11 it's 2:00 a.m. and it's sunlight instead of dark.

12 Q And this is -- do you know when the original 9-1-1
13 call came in?

14 A Not right offhand, I don't.

15 Q Fast forward here. I'm going to pause this for one
16 second to look at something.

17 (Pause.)

18 Q Can you tell me based off being at the scene which
19 side of the house this -- which side this camera is on?

20 A Yes. The roadway here is Old Canaan Road. So looking
21 from Old Canaan Road towards the house, the driveway is on
22 the right side, is where this camera is located.

23 So straight down the driveway is where the garage
24 is -- behind the house. Then what would be behind you to
25 the right if you're looking, like this camera is where the

1 back porch and all is. Of course there's a front door
2 right around the corner about midways of the house.

3 There was another camera on the back porch that was
4 not recording. We didn't even think it was hooked up.

5 (Whereupon, the video was played for the jury.)

6 Q Is there -- what happens after this? Is there a break
7 in time or --

8 A Unfortunately, this system, it's not based on strictly
9 motion. So it's pretty well recording the entire time. So
10 while these clips are lengthy with really nothing on it,
11 occasional traffic on the road.

12 Q So the direction that individual was running would be
13 the left side of the house?

14 A Looking at it from the road, it'd be the left side of
15 the house.

16 Q I know you said these times aren't accurate, but
17 they're accurate as to the camera? Would that be correct?

18 A Well -- that's what time the system has set in it
19 to -- to be kind of like your power flashes in your
20 microwave and your stove resets. If you don't change it,
21 it's just going to start at 12:00 and go from there. So at
22 some point it may have been a power flick or something
23 happened on that system. I don't know. But at the time
24 this was not programmed into it to be accurate.

25 Q But does the time appear to be not accurate in terms

1 of the true time of day but --

2 A It's approximately 12 hours behind.

3 Q Is that what you -- the last time you see --

4 A Yes.

5 Q -- that individual?

6 A Yes. It is.

7 Q The person wearing that clothes?

8 A Right.

9 Q Did you have any further involvement in the case after
10 that?

11 A I was out there most of the night while we were there
12 just looking at the processing, that sort of thing.

13 Q Is 121 Old Canaan in Spartanburg County?

14 A It is.

15 Q Please answer any questions Ms. Jones may have.

16 CROSS-EXAMINATION

17 BY MS. JONES

18 Q The segments contained on the video that have now been
19 introduced as No. 8, item No. 8, it also contains a segment
20 near 025656 where another vehicle pulls up into the
21 driveway.

22 A I believe that's right.

23 Q Okay. Part of the way through this whole thing we
24 just -- the solicitor didn't play that for you, right?

25 A I didn't see it on here, so.

1 Q Okay. But you're comfortable that's on the disc.

2 A I mean, I know a vehicle pulls in during the segment
3 that's here. I believe is one of the witnesses that were
4 there.

5 Q Okay. Do you know who that was?

6 A I don't remember his name right off. I just -- I know
7 where the car was parked over -- if you look in the
8 driveway on the dirt part to the right, it's obviously been
9 traveled quite a bit with vehicles. It was parked over on
10 that side.

11 Q Slightly up from the vehicle we see in the video.

12 A Yes.

13 Q But up to the right.

14 A Yes.

15 Q Okay. You indicated you went to the hospital.

16 A Yes, ma'am.

17 Q To speak to Mr. Koepke -- Kepkee?

18 A He told me that day how to pronounce his name, and I'm
19 not sure. I think it is Kopkee or Koepke.

20 Q Koepke. And your purpose --

21 THE COURT: It's Koepke.

22 THE WITNESS: Thank you.

23 Q Your purpose to see him was twofold, to get a
24 statement, present a lineup, correct?

25 A Yes.

1 Q And you -- did you get a written statement?

2 A Pardon me, ma'am?

3 Q Did you get a written statement?

4 A I think I did. I may not have, because he was in the
5 hospital.

6 Q Well, you've been doing this a long time and I --

7 A I know, and I don't have my reading glasses with me.
8 So I apologize.

9 Q There have been many instances where you've taken a
10 written statement from somebody at the hospital, isn't that
11 true?

12 A It all depends on their condition.

13 Q Okay. Well, let's get to that point. If he's in a
14 condition enough to talk to you and document that in your
15 report as accurate, is he in a good enough position to try
16 to do a lineup?

17 A Well, my thought on that if I have a -- a lot of times
18 at the hospital if I have a digital recorder, a lot of
19 times that may be what I do with that, especially if it's a
20 fresh incident that occurred. If they had blood on their
21 hands and things, I don't want them using my pen. I don't
22 know them. I don't want the blood all over the paper if
23 they're going to write it.

24 At times we'll write it for them, and then you run
25 into a problem still at that point signing it. And at this

1 point I don't remember. So I don't always get a written
2 statement, but I may makes notes in my interview with the
3 person.

4 Q Okay. And in this particular case you took with you a
5 lineup that had been prepared.

6 A Yes, ma'am.

7 Q I'm going to show you a copy of it. Do you recognize
8 it?

9 A This looks like it's probably the one I took.

10 Q Okay. Perhaps if I show you this page it'll help.
11 The affidavit or --

12 A Sure.

13 Q Okay. Do you recognize it now?

14 A I recognize the affidavit a hundred percent. That's
15 my writing.

16 Q Okay.

17 A But I believe this is the lineup.

18 Q Okay. And I'm going to give you one last page,
19 although I know you've been doing this a long time. That's
20 the list of the names of the people contained in the six
21 pictures. But that's never used with the lineup, with the
22 person you're seeking the identification from, correct?

23 A Correct. We never showed this. This is -- it's
24 generated by the system. That way you can -- because the
25 pictures are just numbered one through six. This way the

1 system prints the name of the corresponding photo. So if
2 there's ever a question, if you have very similar looking
3 people, you know it's not the same person, because, as
4 their name, corresponding with each photograph.

5 Q But from the photo lineup itself and the affidavit
6 form I provided to you, you recollect attempting to have
7 the individual identify from the lineup, is that correct?

8 A Well, not necessarily attempting to identify but see
9 if he recognize anyone, specifically the person they're
10 saying did something. It is up to them if they recognize
11 the person.

12 So I did show a lineup to see if he recognized someone
13 in there that was the person that led for him to be in the
14 hospital, which he said he did not -- didn't recognize the
15 person.

16 Q Okay. He was unable to pick anyone out of the lineup.

17 A He did not identify anybody, correct.

18 Q Okay.

19 MS. JONES: Your Honor, I'd offer those two pages into
20 evidence at this point.

21 MR. SMITH: No objection.

22 (Pages from statement marked Defendant's Exhibit No.
23 4.)

24 Q As to the video, one final question. The -- all of
25 the segments have a marker in one corner that says channel

1 two.

2 A Uh-huh, yes, ma'am.

3 Q Is that an indication that at one point there was more
4 than one camera feeding into the system?

5 A On a D.V.R. system, depending on the system, you might
6 have one camera. You might have it to 32. Each camera has
7 a port on the plug on the back you can plug it into.

8 Depending on which plug it's plugged into is what
9 number it'll number that channel on there. So that one was
10 plugged into channel two.

11 I couldn't tell you if there was more plugged in.
12 Like I said previously, there was the camera on the back
13 porch, and I don't recollect there being a plug-in there.
14 We just know it wasn't recording. That was the only
15 channel that showed on that D.V.R. system.

16 Q So you're saying there was only -- in the plugs in the
17 back, only two was plugged in to be recording.

18 A That camera from the side of the house was plugged
19 into camera No. 2.

20 Q Right.

21 A That's why it's designated channel two on the system.

22 Q That's all. Thank you.

23 MR. SMITH: Your Honor, can I play the portion that
24 was referred to in her cross-examination?

25 (Pause.)

1 REDIRECT EXAMINATION

2 BY MR. SMITH

3 Q Do you know based off the time -- I know you don't
4 have them written down. Is this before or after that
5 initial individual walked up from the left?

6 A That is after the person walks up the road to the
7 house and then to the back yard but before the person comes
8 back around the house. And then you see him again going up
9 the road. It's in between those two parts.

10 Q Okay. Did you also observe this individual walk
11 around the house?

12 A I believe that's a second segment that you see him.
13 Let me see what he does here. I'll tell you. If he just
14 walks by the car, it's the second segment.

15 Q Do you know who this individual is?

16 A Roommate. Some more. This is the second time he's on
17 here.

18 Q Do you know which roommate?

19 A I don't remember his name right offhand, actually
20 might have been Mr. Koepke, I think.

21 Q Do you know?

22 A Let me think. Pretty sure that's who that is was --
23 yes, because when I talked to him he said he'd been in the
24 shower and gone out to his car previously. That's the
25 previous segment you see on there, but after the subject

1 walks up. And then he goes back to the front of the house.
2 And then later on you see that segment where he comes out
3 and walks to the back yard, so that's Mr. Koepke.

4 Q where you believe everybody else was?

5 A Yes.

6 Q I don't have any further questions. Thank you.

7 THE COURT: You may step down.

8 MR. SMITH: Your Honor, can we approach for a second?

9 THE COURT: Yes, sir.

10 (Bench conference held off the record in the presence
11 of the jury but out of the hearing of the jury.)

12 THE COURT: Okay. All right. Ladies and gentlemen,
13 we need to take a short break. So I will ask you to please
14 go to your jury room. Do not discuss the case. I'll bring
15 you back after that break.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: We will be at ease 15 minutes.

19 (Whereupon, a recess was taken.)

20 (Photographs marked State's Exhibits Nos. 48 through 67
21 for Identification.)

22 THE COURT: Are we ready for the jury?

23 MR. SMITH: Yes, sir.

24 MS. JONES: Yes, sir.

25 THE COURT: Bring them in.

Robert Cheeks
Direct examination by Mr. Smith

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

3 THE COURT: The jury is present. You may continue.

4 MR. SMITH: The state calls Investigator Robert
5 Cheeks.

6 ROBERT CHEEKS, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. SMITH

9 Q Please state your name and rank for the jury.

10 A Robert Cheeks. I'm a sergeant at the Spartanburg
11 County Sheriff's Office.

12 Q What do you do at the sheriff's office?

13 A I'm currently assigned to the uniform patrol division.

14 Q What were you doing on February 18th of 2018?

15 A On that day I was assigned to the investigations
16 division.

17 Q All right. Did you have occasion to respond to a call
18 on Old Canaan Road that day?

19 A I did.

20 Q What was the nature of that call?

21 A The nature of that call was a shooting.

22 Q Do you remember when you received notification of that
23 call?

24 A I was leaving. I was leaving at, I believe, a dance
25 show at the auditorium. It was given out over the radio

1 for uniform patrol working that day.

2 Q All right. Why did you respond if you were not
3 uniform patrol?

4 A The deputies that were responding were a little
5 further away. I was probably the closest person to the
6 scene.

7 Q All right. Do you know how quickly you got there
8 after you got the initial call?

9 A No more than five to seven minutes.

10 Q All right. Were there any -- what was present on the
11 scene when you arrived?

12 A As far as people?

13 Q People.

14 A When I initially arrived on the scene, about the time
15 I got there I was advised that there was a second scene
16 pretty much across the street from there. And myself and
17 Deputy Nepper went the house where we found the decedent.

18 Q Is that 121 Old Canaan?

19 A It is 121 Old Canaan.

20 Q What was the location that you were initially
21 responding to?

22 A I don't remember the exact address, but it is also on
23 Old Canaan Road, at the corner of Old Canaan and -- I can't
24 remember the roads. It's just up from Bayberry.

25 Q I mean, could you see? Can you see?

Robert Cheeks
Direct examination by Mr. Smith

1 A It's literally right across the street, pretty much
2 right across the street, from 121 Old Canaan.

3 Q So what made you end up going over to 121?

4 A That's where I was informed where an additional victim
5 was.

6 Q And were there any other law enforcement officers
7 there at that time?

8 A Myself and Deputy Nepper.

9 Q What did y'all do as far as going over to 121?

10 A When I pulled in the driveway I was told that there
11 was a second victim inside the house, and we were ushered
12 towards the back of the house up the steps to go in the
13 back door of the residence.

14 Q Somebody was leading you on where to go?

15 A There was -- there was -- I don't remember exactly who
16 it was, but they were telling us to go through the back
17 door, that's where the second victim was.

18 Q Did -- did you enter?

19 A We did. We went up the steps to the back porch. You
20 go onto the back deck, and there's a -- like an enclosed
21 porch.

22 Once you go in that door you go into a kitchen. I
23 entered through the kitchen, and the kitchen kind of makes
24 an "L" shape to the right. There's a den or a bedroom off
25 to the right of the kitchen, and then you go straight and

1 forward into the living room.

2 Q All right. What did you find in the living room?

3 A When I exited the living room, in the kitchen to the
4 living room, there's a pool table that sits right in the
5 center of the living room.

6 As I came across into the hardwood floors I observed a
7 white male laying face down on my side of the pool table,
8 and I -- I stepped over him to make sure there was no more
9 victims in the house and then just secured the residence.

10 Q Was -- what did you notice about that victim?

11 A When I come back out the -- the -- the biggest thing
12 that I seen that was most apparent to me, there was a shell
13 casing laying between his feet. He appeared to be laying
14 face down. I believe he was wearing like basketball shorts
15 and some Under Armour style pants.

16 Q Did you attempt to see if he was alive or...

17 A From working several similar cases in the past, it was
18 very apparent that he had no signs of life.

19 Q Did you notice any weapons around him or anything like
20 that?

21 A No. Like I said, the biggest thing that stood out to
22 me was the -- the single shell casing that was kind of
23 sitting between his feet.

24 Q All right. Nothing else of note in that poolroom?

25 A No, sir.

1 Q what about, did anything look like it had been
2 disturbed or anything? How was the house?

3 A I mean, the house, it -- it appeared pretty clean. It
4 was a pretty well-kept house.

5 Q No signs of a struggle or anything?

6 A No, sir.

7 Q What did you do? Did you clear the rest of the
8 remaining rooms?

9 A Yes, sir. We -- we pretty much went through the rest
10 of the house to make sure that there were no -- there was
11 no one, nobody else, that may be injured, nobody else that
12 may be hiding, no suspects, no one that -- sometimes in
13 traumatic incidents people instead of running, they'll hide
14 in a closet or such. We just wanted to make sure there was
15 nobody else that was hurt in the house, nobody else in the
16 house, period.

17 Q And you found nothing?

18 A No, sir.

19 Q What did you do after you had cleared 121 Old Canaan?

20 A Just come back out and -- and set up, like, crime
21 scene tape and such just to secure the scene and make sure
22 nobody else was allowed to enter the residence.

23 Q All right. Were you later approached by a female?

24 A I was.

25 Q I don't want you to say what she said, but did she

1 give you information?

2 A She did. She gave me a name of who she believed was
3 responsible for the incident.

4 MS. JONES: Objection. He's repeating what she's
5 saying.

6 THE COURT: Don't say what somebody else said.

7 A But...

8 Q Did she give you information about --

9 A She gave me information, yes, sir.

10 Q Did you pass that information on to the investigators
11 that were in charge of the case?

12 A Yes, sir.

13 Q Upon your arrival -- when you arrived there did you
14 see anybody running or anything out of the ordinary on
15 your -- your way into 121 Old Canaan?

16 A No, no, sir. I did not.

17 Q Please answer any questions Ms. Jones has.

18 CROSS-EXAMINATION

19 BY MS. JONES

20 Q Who were the individuals that were leading you in the
21 back door?

22 A I -- I couldn't say for sure.

23 Q Did they go upstairs with you into the kitchen?

24 A No, ma'am.

25 Q Okay. So where were they leading you?

1 A They were pointing to, like, the back deck of the
2 house.

3 Q And you did not determine who they were?

4 A No, ma'am. Not at the time.

5 Q Do you think that would have been important since they
6 seemed to have some knowledge about this?

7 A My primary reason for being there is to sustain life.
8 So that was the importance of me being there.

9 Q Okay.

10 A If there was somebody injured, then my job was to be
11 there to help that person.

12 Q You were in the company of Officer McJunkins, right?
13 I'm sorry. Junkins -- not McJunkins.

14 A Deputy Nepper.

15 Q Okay. Is he equipped with a body camera?

16 A Being part of the uniform patrol, he should be.

17 Q And are you aware that that was activated and working
18 that day?

19 A It probably should be, yes, ma'am.

20 Q Did you by chance review it before your testimony
21 today?

22 A No, ma'am.

23 Q Okay. Do you recollect if you were the one that
24 checked the victim or if it was, in fact, Nepper?

25 A I didn't actually physically touch the victim.

1 Q Do you know if he did?

2 A I can't tell you. No, ma'am.

3 Q But you were in his company within proximity and you
4 don't know that?

5 A We were in the same house, yes, ma'am.

6 Q Okay. You indicated that the most important thing to
7 you -- I'm sorry. It was important to you that you saw a
8 shell casing in the living room.

9 A Yes, ma'am.

10 Q When you came into the house through the back door and
11 the kitchen did you see anything else of evidentiary value
12 that was important to you?

13 A No, ma'am. When I first entered the house my main
14 thing was to find a victim that was in the house.

15 Q So if you walked over, kicked, moved or stepped on a
16 casing in the kitchen, you're not aware of that.

17 A No, ma'am.

18 Q That's all. Thank you.

19 REDIRECT EXAMINATION

20 BY MR. SMITH

21 Q You're not aware of it, or what does that mean? Did
22 you -- do you recall kicking anything?

23 A I don't -- I don't recall kicking any of evidence.

24 Typically -- typically, most shell casings are made of
25 metal. If -- if you would have kicked the shell casing or

Robert Cheeks
Recross-examination by Ms. Jones

1 such it would have made a noise, and that's -- I guess you
2 don't -- you can't fully explain -- you can't fully explain
3 your law enforcement experience, but over my ten or so
4 years there are certain things that you hear and smell and
5 remember in these types of incidents. And I don't
6 remember, that no.

7 Q I don't have any further questions.

8 RECROSS-EXAMINATION

9 BY MS. JONES

10 Q Do you remember seeing a shell casing in the kitchen?

11 A No, ma'am.

12 Q Do you remember seeing blood smears in the kitchen?

13 A I remember when I come back out of the front right
14 bedroom and I looked at the victim again it was -- it was
15 more so of a second look just to, I guess, reaffirm my
16 thought that he was inceased -- indeed deceased. In
17 looking at his person, the one thing that's sitting there
18 between his legs is a shell casing.

19 Q well, I appreciate that answer. The question was did
20 you see any blood in the kitchen.

21 A I don't remember any blood in the kitchen, no, ma'am.

22 Q Okay. Thank you.

23 MR. SMITH: May he be excused, Your Honor?

24 THE COURT: Step down.

25 (Whereupon, the witness was excused.)

1 MR. SMITH: State calls Investigator Coby Stepp.
2 (Gun case marked State's Exhibit No. 19 for
3 Identification.)

4 JAMES COBY STEPP, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. SMITH

7 Q Investigator Stepp, will you please state your rank
8 and name for the jury?

9 A James Coby Stepp, Master Deputy, Forensics
10 Investigator, Spartanburg County Sheriff's Office.

11 Q And how long have you been with the sheriff's office?

12 A Over 20 years.

13 Q And what is your role at the sheriff's office?

14 A Crime scene investigator.

15 Q What does that entail?

16 A Entails processing crime scenes and looking for
17 evidentiary value on the scenes, various crimes.

18 Q Did you respond to Old Canaan Road on February 18th of
19 2018?

20 A Yes, sir.

21 Q And was that in the duty of --

22 A Being called out.

23 Q -- crime scene investigations?

24 A Yes, sir.

25 Q Where did you initially respond to?

James Coby Stepp
Direct examination by Mr. Smith

1 A I initially responded to the scene at 121. And while
2 we were at 121 I was advised by Sergeant Lawson at the time
3 to go over to 106 Old Canaan Road, one of the victims was
4 over there.

5 Q So did you enter the residence at that -- at 121 or
6 were you --

7 A No, I did not enter the residence at 121. I was on
8 scene at 21 [sic] but did not go inside at the time.

9 Q All right. So you were -- you were diverted ahead of
10 time. What did you do at 106 Old Canaan?

11 A I photographed my way inside the home to -- at the
12 request of Sergeant Lawson to get a blood sample from
13 inside -- blood swabs.

14 Q All right. Who was present when you were inside
15 there?

16 A Basically, it was just myself at the time. There was
17 deputies outside maintaining the crime scene, and the scene
18 was secured.

19 Q Was there anybody there that was bleeding or anything
20 to match up to where that --

21 A At the time no one was there bleeding. They'd already
22 been transported well before I had gotten there.

23 Q Did you end up going back to 121 Old Canaan?

24 A Yes. After I finished there I responded back to 121
25 Old Canaan Road.

1 Q All right. And what -- what did you do at 121 Old
2 Canaan?

3 A At the request of Sergeant Lawson I collected the
4 items that had already been photographed and marked.

5 Q And, specifically, what was Item 11 that you
6 collected?

7 A Item 11 was a shell casing. It was A 9mm Luger Plus
8 P, and it was collected between the decedent's feet.

9 Q Show you State's Exhibit 64 and ask if you can tell me
10 what that is.

11 A That's a photograph of the shell casing laying in
12 between the decedent's feet.

13 Q All right. And when you collected it, you said there
14 was already a placard there.

15 A Everything before it's collected is marked and
16 placarded and photographed to scale.

17 Q Is that the location that you --

18 A That's the location, yes, that I collected it.

19 MR. SMITH: Your Honor, at this time I'd move State's
20 Exhibit 64 into evidence.

21 MS. JONES: Just the photograph?

22 MR. SMITH: Yes, just the photograph.

23 MS. JONES: No objection.

24 THE COURT: It's admitted.

25 (Photograph marked State's Exhibit No. 64.)

1 Q I'm going to hand you State's Exhibit 11 and ask you
2 if you can identify what that is.

3 A That's the evidence envelope that I had prepared and
4 sealed and signed and dated.

5 Q All right. What type of information is contained on
6 an evidence envelope?

7 A It's the object that's collected, the location it's
8 collected from, the date and time, and the type of case
9 you're working. And you seal it and you're --

10 Q And you filled out all of that information on there?

11 A Yes.

12 Q All right. And then seal it with -- is that
13 tamper-evident tape?

14 A Yes.

15 Q And what do you do after you've collected items? What
16 happens with items that are collected on the scene?

17 A Taken and secured into the evidence department at the
18 sheriff's office.

19 Q And is that a secure location?

20 A Yes. It's a very secure location.

21 Q All right. Is that the shell casing that you -- that
22 is depicted in State's Exhibit 64?

23 A Well, it -- it is due to the fact I -- I don't see my
24 evidence tape disturbed.

25 Q And does it say where it was collected on the outside?

1 A Yes, it does say where it was collected. 121 Old
2 Canaan Road.

3 MR. SMITH: Your Honor, at this time we'd move State's
4 Exhibit 11 into evidence.

5 MS. JONES: Your Honor, may I see the envelope again
6 briefly? I'm sorry.

7 Q Did you see this tape on the bottom here?

8 A I did see that tape on the bottom. I did not do the
9 tape on the bottom.

10 Q All right. When you turned it into evidence was that
11 on there?

12 A No. That was done by SLED.

13 Q Was that dated? Is there a date on there?

14 A 10/30/18. The tape you're talking about?

15 Q Yes, sir.

16 A Yes.

17 Q The yellow tape.

18 A Yes. The yellow tape is dated 10/30/18, but I did not
19 do this.

20 MR. SMITH: Your Honor, at this time we move State's
21 Exhibit 11 into evidence.

22 MS. JONES: No objection.

23 THE COURT: It's admitted.

24 (Shell casing marked State's Exhibit No. 11.)

25 Q Did you also collect evidence Item 17 in this case?

274 James Coby Stepp
Direct examination by Mr. Smith

1 A Yes, sir. It was a shell casing, a Barnes Luger Plus
2 P 9mm, located on the kitchen floor inside.

3 Q I'm going to show you what's previously been admitted
4 into evidence as State's Exhibit 30. Is that evidence Item
5 17?

6 A Placard 17. That's where that was collected.

7 Q I'm going to show you what's been marked as State's
8 Exhibit 17 and ask if you can identify what that is.

9 A That's item No. 17, the shell casing collected from
10 the kitchen floor at -- on 2/18/18, 2000 p.m.

11 Q All right. That's collected in the same manner as you
12 collected the previous --

13 A The same manner as I collected the previous one, put
14 it in envelope, sealed it and took it to our evidence
15 department to be secured.

16 MR. SMITH: Your Honor, at this time I'd move State's
17 Exhibit 17 into evidence.

18 MS. JONES: No objection.

19 THE COURT: It's admitted.

20 (9mm shell casing marked State's Exhibit No. 17.)

21 Q Did you also collect State's Exhibit -- excuse me --
22 evidence Item No. 19?

23 A Yes, sir. It's a SCCY gun box with an empty magazine
24 inside of it that was at the right front bedroom area of
25 the residence.

1 Q I'm going to hand you State's Exhibits 65 and 66 and
2 ask if you can identify what that is.

3 A That's the gun box that was collected from the bed on
4 the front right bedroom of the residence.

5 Q All right. Does one have the brand name on it?

6 A Yeah. It has the SCCY Industries.

7 Q And those are accurate depictions of what you saw --

8 A Those are accurate depictions of what -- yes, sir.

9 Q -- that day?

10 MR. SMITH: At this time we'd move State's Exhibits 65
11 and 66 into evidence.

12 MS. JONES: No objection, Your Honor.

13 THE COURT: Sixty-five and sixty-six?

14 MR. SMITH: Yes, Your Honor.

15 (Photographs marked State's Exhibits 65 and 66.)

16 Q This is State's Exhibit 66 and State's Exhibit 65.

17 And you collected this as well?

18 A Yes. The gun box. Yes, sir.

19 Q I'm going to show you what's been marked as State's
20 Exhibit 19 and ask if you can identify that.

21 A Yes. That's what I collected, and it's sealed and
22 filled out the proper information on the evidence envelope.
23 And they took it and secured it in evidence at the
24 sheriff's department.

25 MR. SMITH: Your Honor, at this time we'd move State's

1 Exhibit 19 into evidence.

2 MS. JONES: No objection.

3 THE COURT: Admitted.

4 (Gun case previously marked State's Exhibit No. 19.)

5 Q I believe you said you didn't place the evidence
6 placards in this case.

7 A No. Nor did I photograph.

8 Q Did you -- were there other evidence items that you
9 collected in this case that I didn't just --

10 A Yes. There was other evidence items I did collect on
11 the scene.

12 Q What were those primarily?

13 A Blood swabs -- the bulk of them -- a ball cap and a --
14 a cell phone.

15 Q And what type of ball cap was it?

16 A It was a teal/black Panthers ball cap.

17 Q When you collect a blood swab, what's the process for
18 collecting a blood swab?

19 A Process is photographing it, placarding it, scaling
20 it, and also doing a presumptive quick check test on it for
21 blood to make sure it tests positive.

22 Q Do you collect anything that doesn't presumptively
23 test positive for blood?

24 A In general, no.

25 Q So you did collect blood swabs from this --

1 A I did collect blood swabs from the areas, various
2 areas, inside.

3 Q And where were those areas?

4 A Item No. 13 -- excuse me -- Item No. 14 were two blood
5 swabs from the pool -- pool-table room floor area,
6 1953 p.m.; evidence Item No. 15 were blood swabs from
7 living room floor area, 1956 p.m.; Item No. 16, two blood
8 swabs from the kitchen floor area, 1958 p.m.; evidence Item
9 No. 18 was two blood swabs from the kitchen floor area,
10 again, at 2:03 p.m.

11 Q And those all presumptively tested positive for blood.

12 A Yes.

13 Q Please answer any questions Ms. Jones has.

14 CROSS-EXAMINATION

15 BY MS. JONES

16 Q With the collection of blood swabs --

17 A Yes, ma'am.

18 Q -- what's the vehicle or kit that you use to do that?

19 A Usually a quick check and you -- you -- what you do is
20 you bust the capsules inside and you place the item, the
21 liquid inside, on a sterile swab that's also located inside
22 the package. And you swab the area and if nothing -- if
23 there's no reaction to the swab there's -- it's not --
24 blood is not present there is the action, then blood is
25 present.

1 Q Okay. If the -- there is an area of some size, how do
2 you determine what part of it to swab?

3 A You just swab in general area. Like I say, if
4 there's a -- whether it's a big puddle, you know, you scale
5 the area to size. Or there's something, a small spatter on
6 the wall, you scale it to size. And you just get a Q --
7 you take you two swabs and you rub them and collect that
8 area. It's, basically, you know, it's a small collection
9 of the area that you're -- you're testing because there's
10 two swabs involved.

11 Q Are -- are -- so you're not swabbing the same place
12 twice.

13 A Not swabbing --

14 Q You're collecting it --

15 A As one area, that item area of evidence, yes.

16 Q Okay. If you have a -- a smear that's, like, 3 inches
17 wide --

18 A Uh-huh.

19 Q -- how do you approach it?

20 A Scale it, photograph it.

21 Q Okay. Scaling just means you're laying a ruler down.

22 A Right.

23 Q Okay.

24 A But you -- you're given an idea of how long --

25 Q Of the length of it.

1 A Of the length.

2 Q I'm saying of that length, once you got your scale
3 down and you see there's --

4 A what I do --

5 Q -- 3 inches long --

6 A what I do is I rub the whole area, front and back,
7 with a swab.

8 Q Okay. with one swab. what do you do with the second
9 swab?

10 A with -- with both swabs.

11 Q Okay.

12 A Okay. I -- I use both swabs.

13 Q Are you --

14 A -- because --

15 Q -- repeating with the second swab top -- on top of
16 where you rubbed for the first swab?

17 A I go across and cut you -- now usually turn it over
18 and rotate it and go back over it.

19 Q Same spot.

20 A Yes, ma'am, same spot, yes, ma'am.

21 Q Okay.

22 MS. JONES: That's all I have.

23 MR. SMITH: No further questions, Your Honor.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you.

Jason Moore
Direct examination by Ms. Clark

1 MR. SMITH: Your Honor, may he be excused?

2 THE COURT: He may be.

3 (Whereupon, the witness was excused.)

4 MS. CLARK: The state calls Jason Moore to the stand.

5 JASON MOORE, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. CLARK

8 Q Please state your name for the record.

9 A Jason Moore.

10 Q Where do you work?

11 A Spartanburg County Sheriff's Office.

12 Q What do you do there?

13 A I am currently assigned to the canine division.

14 Q And is that the same capacity you were working in back
15 in February of 2018?

16 A Yes, ma'am.

17 Q Tell us a little about what that means. What does
18 your job entail?

19 A I run a -- what is considered a patrol dog, which
20 means that we have the duties for tracking, narcotics
21 detection, article searches. Anything that an individual
22 may drop that would contain that human odor, we can detect
23 it with our dogs.

24 Q And what is your canine's name?

25 A Boss.

1 Q Were you on call on February 18th of 2018?

2 A Yes, ma'am.

3 Q And did you respond to an incident on Old Canaan Drive
4 that day -- Old Canaan road?

5 A Yes, ma'am. I did.

6 Q And at some point did you get redirected to another
7 location?

8 A I -- I did. Originally, I responded to the incident
9 location, and then we were directed to another location. I
10 believe it was Bayberry, which was just around the corner.
11 It was in reference to a possible suspect in the back yard
12 that had been confronted by a homeowner.

13 Q And tell the jury what happened when you arrived at
14 that residence on Bayberry.

15 A A uniform patrol was dispatched to it first. They
16 arrived on scene, and they made contact with the homeowner.
17 When they made contact with the homeowner they were advised
18 that the suspect ran from the back yard and ran in the
19 direction of a neighbor's yard.

20 When we got there we confirmed the suspect
21 description. We confirmed that it was going to be a
22 suspect in the incident. And at that point in time we
23 deployed my canine for a track.

24 Q And I'm going to show you what's been previously
25 entered into evidence as State's Exhibit No. 31. This may

Jason Moore
Direct examination by Ms. Clark

1 help you kind of describe to the jury what all you did.

2 Somebody -- there's a laser pointer over there too if you'd
3 like to use it.

4 Please describe. You just said what happened when you
5 first arrived on scene. But what happened next? Tell me
6 your next steps.

7 A We went to the back yard.

8 THE COURT: Be careful of the microphone, please.

9 THE WITNESS: I'm sorry.

10 A We went to the back yard of this residence, Mr.
11 Moore's residence. And from there -- the last known
12 location was here on this back deck area.

13 We deployed my dog, Canine Boss, at which point in
14 time we began tracking to a fence line. We crossed over a
15 fence line and made it to the neighbors' yard, which had
16 these outbuildings. We went through the neighbor's yard
17 and immediately towards these outbuildings.

18 When we started tracking towards the outbuildings
19 we -- we started noticing what looked like the clothing
20 items up underneath. Weren't sure if it was somebody
21 laying there or if -- or what it was.

22 Q And you mean up underneath one of those -- show me.
23 Underneath what?

24 A I believe it was the shed. Can't really tell from
25 this -- this angle.

1 Q That's okay. So tell me. Tell me what happened next.

2 A The officers that were tracking with me, they went up,
3 and we tracked up to the building. The officers that were
4 with me went up, and we removed the items from underneath
5 the building.

6 At that point in time I believe it was a book bag, was
7 opened, and the items that were found inside was a handgun.
8 At that point in time uniform patrol officers stood by with
9 it, and we continued trying to track the suspect.

10 Q Were you able to actually track the suspect?

11 A No. He lost the track on the roadway. My dog
12 actually fatigued after checking the back yard areas and
13 along the roadway.

14 We brought another patrol dog out and tried to regain
15 the track, but we were never able to regain the track.

16 Q And sometimes when you lose a track -- or I guess when
17 you do lose a track -- is that normal, abnormal kinda?
18 What does that mean exactly?

19 A It -- it could mean that the suspect has just run out
20 of the area or the suspect's been picked up or whoever
21 we're tracking has been picked up.

22 Q I'm going to show you what's been premarked for
23 identification as State's No. 38. Will you take a look at
24 that for me?

25 A Yes, ma'am.

Jason Moore
Direct examination by Ms. Clark

1 Q Do you recognize that photo or what the contents of
2 that photo are?

3 A I do. It's the outbuilding with the bike.

4 Q And is that a fair and accurate representation of how
5 those sheds and those contents looked on February 18th when
6 you saw them?

7 A Yes, ma'am.

8 MS. CLARK: Your Honor, at this time I'd move to
9 introduce State's Exhibit No. 38 into evidence.

10 MS. JONES: No objection.

11 THE COURT: It's admitted.

12 (Photograph marked State's Exhibit No. 38.)

13 MS. CLARK: Permission to publish, Your Honor.

14 THE COURT: You may.

15 Q Do you mind describing to the jury what we're looking
16 at?

17 A On the far -- on my far right that's a pull-behind
18 camper. And the gray building on the left, that's going to
19 be the storage shed.

20 The blue bag laying right there at the corner of the
21 storage, that's where the bag was up underneath. Dog came
22 around and gave an indication on the corner that she had at
23 which point in time the support officers were able to get
24 up under and pull that bag out.

25 Q So that is where your canine track led you, is that

1 correct?

2 A Yes, ma'am.

3 Q And correct me if I'm wrong, but this is right next to
4 the address on Bayberry where you responded to that
5 homeowner?

6 A Yes, ma'am.

7 Q I don't have any further questions for you at this
8 time. Please answer any questions the defense may have.

9 A Yes, ma'am.

10 CROSS-EXAMINATION

11 BY MS. JONES

12 Q As is depicted in the photograph No. 38, that's not
13 how it was when your officers actually located it, correct?

14 A No, ma'am.

15 Q It was up under?

16 A Yes, ma'am.

17 Q Do you remember who pulled it out?

18 A No, ma'am. I don't.

19 Q One of your support officers, was it not?

20 A Yes, ma'am.

21 Q Now, let's talk about the track itself. You were
22 there with Officer Junkins, is that correct?

23 A Officer -- Officer Junkins responded --

24 Q Right.

25 A -- to the residence first.

1 Q And when you got there you had a conference with him,
2 and you were concerned about contamination of the back
3 yard, were you not?

4 A Yes, ma'am.

5 Q Explain what that means.

6 A I asked Officer Junkins to contain the homeowner and
7 to keep him from walking around any further in his back
8 yard.

9 The homeowner was wanting to be very -- in his mind he
10 wanted to be very helpful, and, you know, hey, he went this
11 way, hey, he went over here. And my -- my comments to
12 Officer Junkins was I need you to get him and I need you to
13 get him over to the house. That way we don't have any
14 further contamination as far as starting the dog track
15 goes.

16 Q Isn't it also true that there were at least two small
17 dogs back there on that deck wondering around too?

18 A Yes, ma'am. I believe there was.

19 Q And you, as I recollect from the body camera, you've
20 got to tell Mr. Moore to put the dogs up.

21 A Yes, ma'am.

22 Q Is that also a contaminating issue -- the dogs?

23 A No, ma'am. It's more of a distraction, and I didn't
24 want the dog -- his dogs coming up to mine.

25 Q Okay. Where did you actually say you started track

1 from?

2 A We started off the -- if you're looking out the back
3 of the residence, it would be off to the right, off the
4 back.

5 He had, like, a little walkway, and we actually pushed
6 past where Officer Junkins and Mr. Moore were last
7 standing. So that way we could pick up the -- the human
8 odor and be out of where Officer Junkins and the homeowner
9 were standing.

10 Q So you didn't -- you didn't actually track on the back
11 deck.

12 A No.

13 Q But beyond that last gate that this person went
14 through, correct, into the front yard?

15 A I believe so.

16 Q Okay. The bag when it was found to your knowledge was
17 not opened, was it?

18 A No, ma'am.

19 Q Were the articles of clothing in the bag?

20 A I don't remember.

21 Q Thanks. That's all I have.

22 MS. CLARK: No further questions.

23 THE COURT: Step down.

24 MS. CLARK: Your Honor, may this witness be released?

25 THE COURT: He may be.

Jonathan Lawson
Direct examination by Mr. Smith

1 (Whereupon, the witness was excused.)

2 MR. SMITH: Your Honor, could we approach just
3 briefly?

4 THE COURT: Okay.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 MR. SMITH: State calls Investigator Jonathan Lawson.

8 JONATHAN LAWSON, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. SMITH

11 Q Will you please state your name and where you're
12 employed for the jury?

13 A My name is Jonathan Lawson. I'm employed with the
14 Spartanburg County Coroner's Office at this time.

15 Q Were you previously employed with Spartanburg
16 Sheriff's Office?

17 A I was during the time of this incident. I was
18 actually the sergeant of the crime scene division.

19 Q What does the sergeant of the crime scene division
20 mean?

21 A The sergeant for crime scene investigation is the one
22 that usually handles all of the homicide-related incidents
23 or any violent-crime incidents.

24 My job in this is to schedule team members to be,
25 basically, lead investigators out on a crime scene itself,

1 make sure that they're out there collecting, processing and
2 following protocol per the sheriff's office policy.

3 Q All right. But do you also get involved in the cases
4 as well?

5 A Yes. I was always out there working with those guys.

6 Q All right. Do you have any -- how long have you been
7 in law enforcement?

8 A A little over 18 years.

9 Q Do you have any special training in order to be an
10 I.D. officer, crime scene investigator?

11 A I've been through tons and tons of school, different
12 fingerprint comparison recognition school, wooden pattern
13 analysis type schools, crime scene investigation schools,
14 numerous death investigation schools, just numerous
15 advanced law enforcement classes.

16 Q Where did you initially respond to in this case?

17 A I responded to the initial scene incident location,
18 which was the 121 Old Canaan Road.

19 Q All right. What did you do when you arrived there?

20 A When I arrived on scene I met with another one of the
21 crime scene investigators that was already on the scene
22 which was actually working the street that day or working
23 the road -- Investigator Nix. He advised that there was
24 definitely one person had been found deceased inside the
25 residence. Another victim had made it across the street,

1 was transported to the hospital. And at that point we were
2 awaiting a search warrant for the residence.

3 Q All right. And what happened while y'all were waiting
4 for that search warrant?

5 A During that time I was informed that there was an
6 officer, which would be Officer Junkins, over -- over at
7 Bayberry with some items they believed that were involved
8 with the incident.

9 Q Had they been found as part of the canine track?

10 A That's what I was informed, yes, sir.

11 Q All right. And did you respond to that location?

12 A I did.

13 Q What did you do when you got there?

14 A When I got there initially I walked out to locate
15 where Officer Junkins was.

16 Once I found him I went back, obtained a camera and
17 took overall photographs of the front, rear and sides, 360
18 photographs of the entire area of that residence at
19 Bayberry. And then I focused on items that were deemed to
20 be items of interest, which was a bag and some items of
21 clothing in between a building and a camper.

22 Q All right. Did you have to get up underneath the
23 building in order to see some of them? Or I know we've got
24 this picture up here. Is that all of the items you
25 collected?

1 A No. That is not. There were other loose items up
2 underneath the side of that -- that building there.

3 Q would they have been visible by just walking by?

4 A No. The building set kind of low to the ground. So
5 you had to get down, like, actually lay on your stomach
6 and -- and look to see that.

7 Q I'm going to show you -- I'm going to start by showing
8 you State's Exhibits 35 through 37 and ask if you can
9 identify what these are.

10 A State's Exhibit 35 is actually the front, and I'm
11 referring back to my notes for the actual address for
12 Bayberry. 246 Bayberry Drive, Spartanburg. To the left of
13 the front of the residence there's the outbuilding that's
14 pictured here.

15 State's Exhibit No. 36 is actually the front of the
16 outbuilding that's in this picture here to your left.

17 And State's Exhibit No. 37 is the area between the
18 residence and the -- the outbuilding.

19 Q You took those pictures that day?

20 A I did.

21 MR. SMITH: Your Honor, at this time we'd move State's
22 Exhibits 35 through 37 into evidence.

23 MS. JONES: If I can look. No objection as to those.

24 THE COURT: They're admitted.

25 (Photographs marked State's Exhibits Nos. 35 through

1 37.)

2 Q State's Exhibit 35. Is this the residence that
3 contains the building where items were found? Is that the
4 residence where you found the items?

5 A Yes, sir. It is.

6 Q State's Exhibit 36.

7 A That would be the building next to the left of the
8 front of the residence.

9 Q And State's Exhibit 37.

10 A And this is the area between the house and the
11 building.

12 Q All right. And when you -- when you arrived did the
13 items look like they do in State's Exhibit 38? Is that
14 what you found when you arrived?

15 A That is correct.

16 Q But I know you said -- did you say that you found
17 other items up further underneath?

18 A I did. I actually climbed on the ground and looked
19 underneath the camper and that area just to make sure I
20 didn't miss anything.

21 Q Okay. So there were some items that had been moved
22 and some items that were still -- I don't know if you know
23 if they'd been moved.

24 A I don't know. As far as I know that's how they were
25 located.

1 Q And when you arrived there Deputy Junkins was standing
2 by?

3 A That's correct. He was actually standing at the back
4 of the camper and the side of that building.

5 Q Show you 42, 43, 44, 45, 46, 47 and 48 and ask if you
6 can identify what these are.

7 A State's Exhibit No. 42 is where I have put an evidence
8 placard out beside some items, which is the backpack. The
9 backpack is opened up, and inside the backpack you can see
10 a firearm that is upside down with the magazine area facing
11 upward.

12 State's Exhibit No. 43 is items that I have marked
13 with evidence placards, which will be -- it appears to be a
14 pair of blue jeans, a pair of boxer type underwear, a
15 firearm, the book bag and possibly a shirt.

16 State's Exhibit No. 44. Photo that I took with an
17 evidence marker with No. 3 outside a firearm, book bag and
18 what appears to be a pair of blue jeans.

19 State's Exhibit No. 45 is, again, more evidence
20 placard numbers inside of a book bag along with other items
21 that are going to be collected.

22 State's Exhibit No. 46 is, again, some other items.
23 It was cell phone, a shirt, a firearm, a pair of blue
24 jeans.

25 State's Exhibit No. 47 is a picture of the firearm,

Jonathan Lawson
Direct examination by Mr. Smith

1 one of the firearms that was found inside the bag where
2 it's been made safe, which basically it's been unloaded.
3 The magazine, the unfired bullet that was in the chamber,
4 all of that had been removed and was being photographed.

5 State's Exhibit 48 is another firearm that is being
6 photographed as well.

7 Q So all of those are pictures of the items that you
8 found at the shed on Bayberry?

9 A Yes, sir.

10 Q And you collected all of these items ultimately?

11 A I did.

12 MR. SMITH: Your Honor, at this time...

13 Q And these pictures fairly and accurately represent
14 what you collected?

15 A Yes, sir.

16 MR. SMITH: At this time I'd move 42 through 47 in.

17 MS. JONES: No objection.

18 THE COURT: They're admitted.

19 (Photographs marked State's Exhibits Nos. 42 through
20 46. State's Exhibit No. 47 was previously introduced.)

21 MR. SMITH: Permission to publish them, Your Honor.

22 THE COURT: You may.

23 Q State's Exhibit 42. What's this?

24 A That's a -- a red firearm handgun.

25 Q State's 43.

1 A That's just clothing with the book bag laying on the
2 ground with a number of placards out beside the items that
3 are going to be marked for evidence.

4 Q I see. There's an evidence placard here. Does that
5 note anything?

6 A No.

7 Q I want you to look at it closer. Explain to the jury
8 what that is.

9 A No. I had sat my evidence placards down in that area.
10 And as you can see in the picture, they've been accidentally
11 knocked over, but those did not have anything to do with
12 the -- the numbers that are corresponding here.

13 Q Essentially potentially waiting to be used.

14 A Correct. That was extra-evidence placards.

15 Q All right. Exhibit 43.

16 State's 44.

17 A Forty-four is an evidence placard beside a red
18 firearm, a book bag that is in -- also in this picture and
19 what appears to be the leg of a blue jean.

20 Q State's 45.

21 A This is more evidence placards inside the book bag and
22 outside of the book bag for items to be collected.

23 Q State's 46.

24 A This one, the only difference in this photograph is
25 evidence placards five and eight have been added to this.

1 Q All right. And State's Exhibit 47.

2 A This is one of the firearms that was inside the
3 backpack. This is after I had taken the weapon out of the
4 backpack, made it safe, which basically means unloading it
5 from anything being inside the chamber so it'd be safe if
6 the trigger accidentally was to be pulled.

7 Q So can you describe the condition that you found this
8 gun in?

9 A Yes. When I found this firearm -- and if it's okay,
10 I'm going to refer back to my -- my notes.

11 Q Please.

12 A When I found the firearm it was a -- it's a SAR Arms
13 9mm handgun, and it has a weapon-like obtained to the front
14 of the weapon there.

15 The -- the weapon had one magazine inside of it, and
16 it had an unfired winchester 9mm Luger round inside the --
17 the actual chamber itself, which is the portion of the
18 weapon that you slide inside where it's fired.

19 As I was trying to make the firearm safe I noticed
20 that every time that I would try to eject the -- the fired
21 or the bullet from inside of the weapon it would not come
22 out.

23 At that point I took and manually held the weapon back
24 and manually pushed an item inside of the barrel to push
25 that bullet out and recover that item. And then I

1 photographed the items.

2 Q Does that tell you anything about the item?

3 A From my -- my prior experience in law enforcement and
4 prior experience of being on firearm ranges usually that's
5 a malfunction to a weapon. If the weapon will not eject
6 the fired -- or the bullet that's usually an indication of
7 a malfunction.

8 Q State's Exhibit 48. What is this?

9 A This is also another firearm that was found on the
10 scene. This is a SCCY CPX-1 9mm handgun with magazine.
11 And this -- this item was -- was secured as well and
12 photographed.

13 Q Did it have any bullets in it?

14 A No. This one did not have any bullets.

15 Q Let me show you State's Exhibits 39, 40 and 41 and ask
16 if you can identify what those are.

17 A State's Exhibit No. 39 is a photograph of a backpack,
18 a pair of blue jeans, it looks like, and some items kinda
19 underneath a -- the edge of the -- the barn or building.

20 State's Exhibit No. 40 is another picture of the
21 backpack and the -- appears to be a pair of blue jeans.

22 And State's Exhibit No. 41 is a photograph to show how
23 low to the ground the building was setting and some items
24 that were pushed back up underneath the building.

25 Q And were those items where -- when -- you took those

Jonathan Lawson
Direct examination by Mr. Smith

1 pictures, correct?

2 A That's correct. They were -- they were there. Nobody
3 had touched those from what I understand -- stood.

4 MR. SMITH: Your Honor, at this time I'd move State's
5 Exhibits 39 through 41 into evidence.

6 MS. JONES: Your Honor, I have an objection to that.
7 I think the pre -- I don't think he can establish they've
8 not been moved. He's not the first one who found them.
9 The previous officer said he didn't know if the clothing
10 was originally in the book bag.

11 THE COURT: Let me see the photos.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 THE COURT: Okay. Overrule the objection.
15 Thirty-nine, forty and forty-one.

16 (Photographs marked State's Exhibits Nos. 39, 40 and
17 41.)

18 MR. SMITH: Your Honor, permission to publish.

19 THE COURT: Thirty-nine, forty and forty-one?

20 MR. SMITH: Yes, sir.

21 Q State's Exhibit 40 and State's Exhibit 41. Is that --
22 are you basically on the ground where you take that
23 picture?

24 A I am.

25 Q And did you ultimately pull these items out?

1 A I did.

2 Q Okay. And did you collect everything that was found
3 at that location underneath the shed or that was already
4 slightly out from underneath the shed?

5 A I did.

6 Q What was the first item that you collected?

7 A The first item I collected was a pair of Corbin jean
8 pants. Collected those at 5:39 p.m.

9 Q I'm going to hand you what's been marked as State's
10 Exhibit 1 and ask if you can identify what that is.

11 A This is the evidence bag that I sealed and had placed
12 the pair of Carbon jean pants inside of. And on the -- on
13 the front of the evidence bag it shows an inventory number,
14 which is the same number that's assigned to the evidence
15 placard. It stays with this piece of evidence throughout
16 the duration of the entire case. It has the case number
17 for the incident, date and time, location from where it was
18 recovered, which is 246 Bayberry Drive, and type of offense
19 and victim of --

20 Q Do you wear gloves when you're collecting these kind
21 of items?

22 A Sometimes three pair at a time.

23 MR. SMITH: Your Honor, at this time we'd move State's
24 Exhibit 1 into evidence.

25 MS. JONES: Subject to my previous objection.

Jonathan Lawson
Direct examination by Mr. Smith

1 THE COURT: It's admitted.

2 (Carbon jeans pants marked State's Exhibit No. 1.)

3 Q And once you collect all these items, what's your
4 procedure once you've left the scene?

5 A Once they are photographed, collected, placed into
6 the -- the evidence bags, they're transported back to the
7 sheriff's office where they're sealed, initialed. And then
8 they're turned into the evidence department.

9 Q Hand you State's Exhibit 2 and ask if you can identify
10 what that is.

11 A State's Exhibit 2 is a black and gray Under Armour
12 backpack. It was collected at 5:41 p.m. and marked as
13 evidence item No. 2, which is also State's Exhibit Item
14 No. 2. And it has been sealed and initialed.

15 Q Okay.

16 MR. SMITH: Your Honor, at this time we'd move State's
17 Exhibit 2 into evidence.

18 MS. JONES: No objection.

19 THE COURT: It's admitted.

20 (Backpack marked State's Exhibit No. 2.)

21 Q I hand you what's been marked as State's Exhibit 3 and
22 ask if you can identify what that is.

23 A State's Exhibit No. 3 is also my evidence item No. 3,
24 which is a Glock Model 42 .380 caliber auto -- auto with
25 magazine and serial numbers applied, location of recovery,

1 date and the time. And inside the box is actually the --
2 the red Glock firearm.

3 MR. SMITH: Your Honor, at this time we move State's
4 Exhibit 3 into evidence.

5 MS. JONES: Your Honor, I have an objection to that
6 item that is different and may need discussion out of the
7 presence of the jury.

8 THE COURT: Okay. Let me see it.

9 (Bench conference held off the record in the presence
10 of the jury but out of the hearing of the jury.)

11 THE COURT: Ladies and gentlemen, I've got some issues
12 I'm going to address, and it's a good time for us to recess
13 for the afternoon, so we will.

14 So keep in mind my instruction. No discussion, no
15 investigation, no media exposure.

16 Do have a good evening. Please report to your jury
17 room at 9:30 in the morning, at 9:30 in the morning. Have
18 a good afternoon.

19 (The following takes place outside the presence of the
20 jury.)

21 THE COURT: Let me see State's Exhibit 3, please.

22 Okay. State's offering State's Exhibit 3.

23 Ms. Jones, do you have an objection?

24 MS. JONES: Yes, sir. I do.

25 THE COURT: All right.

1 MS. JONES: Your Honor, at this point I don't think
2 they have proven the relevance of it and I don't think they
3 can identify it other than a red gun.

4 There was no definite testimony so far as to the exact
5 type of gun. There was a mention of a red 9mm. This is
6 not a 9mm gun, Your Honor.

7 There was no attempt with the witnesses or witness
8 that talked about the red gun to show them that red gun and
9 see if they said, yes, it looks like it. Now we've got a
10 gun somewhere that's found, and they're not going to at
11 this point be able to tie it back. That's our objection.

12 THE COURT: Okay.

13 MR. SMITH: The relevancy bar is pretty low, but all
14 of the other items that are connected, are connected to
15 this crime, there's a blue and gray jacket that is seen on
16 the surveillance video. There's a pair of blue jeans;
17 there's a pair of brown moccasins; there's two guns, one of
18 which the gun box is taken from the incident location where
19 all of those clothes are being worn. There's a red gun.
20 It's certainly relevant if that's what the objection is.

21 We don't have to prove that his D.N.A. is on it or
22 something. That's for the jury to determine if we've made
23 a sufficient showing, but it's certainly relevant.

24 THE COURT: Well, maybe I'm confused. What is the
25 relevance of the red handgun?

1 MR. SMITH: It matches up with witness testimony that
2 the individual who we're saying had that book bag that had
3 just left Jim Moore's house and dumped it off has --
4 happens to have a red gun, which is a fairly unique gun.

5 THE COURT: Okay.

6 MR. SMITH: Just to tie in together the bag to Brian
7 Foster.

8 THE COURT: The gun was in the bag, which you intend
9 to show has the defendant's D.N.A. on it?

10 MR. SMITH: There are two clothing items that have the
11 defendant's D.N.A. on them inside of that bag as well.

12 THE COURT: Along with the red --

13 MR. SMITH: With the red gun and the SCCY, which, once
14 again, if we wanted to develop it, the serial number is
15 available for the -- it matches the serial number on the
16 gun box that's taken from the incident location.

17 THE COURT: Okay. Well, they're connecting the gun to
18 Mr. Foster. That's the relevance.

19 MS. JONES: Well, Your Honor, we haven't established
20 yet that the items that were -- they will -- proved some
21 D.N.A. testimony to were inside the bag with the gun.

22 As Your Honor recollects, that was my objection. The
23 D.N.A., I mean the dog officer, couldn't say whether the
24 bag was -- what was in the bag, what wasn't in the bag.
25 That's why I was objecting at that point.

1 THE COURT: Well, I understand that the solicitor, at
2 least said at the bench, that that -- that he will. He
3 does have witnesses to make that connection. Is that what
4 I understood correctly?

5 MR. SMITH: Yeah. We plan to call D.N.A. people, but
6 I think the connection is clear just through witness
7 testimony.

8 I mean, for the bar of relevancy, I mean, she can make
9 arguments about you can't connect it. The bar of relevancy
10 just doesn't tend to show without undue prejudice. And it
11 certainly does. It matches up with witness testimony.
12 It's found in close proximity, that's found off of a dog
13 track following this location where you find proceeds from
14 the crime and clothing that dead-on matches the description
15 both of the incident location and that Jim Moore gives of
16 the black shirt. We didn't get to it, but the black shirt
17 with the white hand.

18 THE COURT: I understand. But, well, maybe I'm
19 assuming too much, but you're not contending this was the
20 murder weapon.

21 MR. SMITH: No. I have a SLED expert that's going to
22 say who the murder -- what the murder weapon was. He --

23 THE COURT: Right.

24 MR. SMITH: There's testimony that he didn't have
25 bullets for his gun.

1 THE COURT: I understand and -- and Mr. Foster is
2 charged with unlawful possession of a weapon. So it's
3 certainly relevant on that charge. He is charged with --

4 MS. JONES: Yes, sir. I understand that.

5 THE COURT: He's charged with unlawfully possessing a
6 weapon by a person convicted of a violent crime, which is a
7 felony.

8 MS. JONES: Your Honor, if I may. Again, I don't want
9 to test anybody's patience, but trying to tie the gun to
10 the D.N.A. articles requires us to know where the D.N.A.
11 articles were found, and we still don't know that. We
12 don't know if they were in the bag, not in the bag. So if
13 that's the -- the reason for allowing it, we're missing
14 that information.

15 THE COURT: Right. Well, Mr. Smith says he's going to
16 connect that.

17 MR. SMITH: I will call the other canine officer to
18 pull it out.

19 THE COURT: That's fine.

20 Okay. You can step down. Don't discuss your
21 testimony during the overnight recess, but be back in the
22 morning by 9:30.

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. Any other matters we need to
25 address?

1 MR. SMITH: None from the state.

2 MS. JONES: No, sir, Your Honor.

3 THE COURT: Court is in recess until 9:30 in the
4 morning.

5 END OF PROCEEDINGS APRIL 9, 2019

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1 (Proceedings April 10, 2019)

2 (The following takes place outside the presence of the
3 jury.)

4 (C.D. marked Court's Exhibit No. 4 for Identification.)

5 THE COURT: Ms. Jones --

6 MS. JONES: Yes, sir.

7 THE COURT: -- Officer Henderson since he's in the
8 chain, as I understand it, the solicitor has indicated he'd
9 like to call him first or, I mean, well, call him now, and
10 that'll interrupt Mr. Lawson's testimony. But Henderson's
11 testimony will be received, and then we'll resume with Mr.
12 Lawson's testimony.

13 Is there any objection to that?

14 MS. JONES: No sir.

15 THE COURT: Okay. All right. Bring the jury in,
16 please.

17 I'll explain to the jury that Mr. Henderson has a
18 scheduling issue so he's going to be taken out of order --

19 MR. SMITH: Thank you, Your Honor.

20 THE COURT: -- if there is an order.

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

23 THE COURT: Good morning, ladies and gentlemen.

24 Thank you for your patience. I had some matters to
25 address, and those have been accomplished now.

Steve Henderson
Direct examination by Mr. Smith

1 As you know, when we recessed yesterday Jason [sic]
2 Lawson was on the witness stand testifying, and we broke
3 his testimony up.

4 In order to accommodate the schedule of another
5 witness that's going to be called, we're going to call that
6 witness first. So we are going to interrupt Mr. Lawson's
7 testimony. He'll finish testifying after the next witness
8 testifies which is -- is that Steve Henderson?

9 MR. SMITH: Yes, Your Honor.

10 THE COURT: All right. So Steve Henderson is going to
11 testify, and then he'll be excused, and then Mr. Lawson
12 will come back to complete his testimony.

13 Okay. I hope that's not confusing, but I just wanted
14 to be sure you understood that -- why we're doing it.

15 Okay. All right.

16 MR. SMITH: The state calls Deputy Steve Henderson.

17 STEVE HENDERSON, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. SMITH

20 Q Will you please state your name and where you're
21 employed?

22 A Steve Henderson, Spartanburg County Sheriff's Office.

23 Q What do you do for the sheriff's office?

24 A I am the unit supervisor of the canine division.

25 Q How long have you been with the sheriff's office?

1 A Seventeen years.

2 Q Did you have an occasion to respond out to the Old
3 Canaan area on February 18th of 2018?

4 A Yes, sir. I did.

5 Q Did you end up responding to another address after you
6 arrived at Old Canaan?

7 A Yes, sir.

8 Q Where did you respond to?

9 A I -- I don't remember the exact numerics. I was right
10 across the street.

11 Q Was it on the same street or was it --

12 A I believe it was the cross street from where the
13 house -- it's close enough that I didn't even drive. I
14 just -- I ran over there.

15 Q Okay. Who was present when you got there?

16 A To the best of my knowledge, there was First Sergeant
17 Hawkins and Master Deputy Jason Moore.

18 Q Okay. And what was Jason Moore doing?

19 A There at the house one of them -- and I cannot
20 remember which one it was -- they had observed a -- a
21 victim in the floor off the house.

22 Our initial response as canine was to try to track the
23 suspect while we were gathering information from we found
24 out turned out to be a shooting.

25 Q Okay. What -- what was Moore doing at that -- that

1 other location that you went to when you arrived there?

2 what was -- what was going on?

3 A Well, the first location we went to there was -- there
4 was a huge disturbance there. It was a lot -- we were
5 trying -- it was chaos. We were trying to figure out what
6 was going on. They was trying to separate some --
7 basically, who ran over, who was saying who was shot.

8 From --

9 Q I'm talking about when you get to the other
10 location --

11 A Okay. Across the street.

12 Q -- across the street and Hawkins is there and Jason
13 Moore is there. What is happening there? What's the
14 purpose of being there? What are you doing?

15 A Well, if there's any aid to be rendered, we're going
16 to try to do that, and then we're going to clear the house
17 and try to find information on where the suspect is --

18 Q Okay. Did you --

19 A -- so we can track.

20 Q The second you respond, are you looking for a suspect
21 inside of a house?

22 A Yes. We cleared the house. Yes.

23 Q Okay. And then what did you do?

24 A I believe Jason, if I remember, went back to his car
25 or either they brought his truck over there. He -- I

1 instructed him to utilize his canine to attempt to track,
2 and then I provided support or cover for it.

3 Q Okay. What is support or cover when another officer
4 is doing a canine track?

5 A In canine whoever the handler is, who's got the dog,
6 has obviously got his hands full with the leash. His job
7 is to watch the dog, watch the dog's behavior.

8 Dealing with what we were dealing with, possibly
9 someone armed, we're another set of eyeballs. We're going
10 to watch places he's not watching. We're providing cover
11 for him.

12 Q Did Deputy Hawkins assist in this as well?

13 A Yes. He did.

14 Q All right. And tell me how the -- the track went.

15 A We began tracking through the neighborhood. A lot of
16 houses there. Very early into the track someone broadcast
17 over the radio that they had saw what they believed the
18 suspect running a couple of houses up, maybe one street
19 over or so.

20 We tried to set up a perimeter around that area to try
21 to lock the suspect down. We then relocated to where the
22 sighting was.

23 I believe Deputy Moore talked to the homeowner. He
24 said this is the location I saw him run. He showed the
25 position of the house -- the corner of the house. We then

1 deployed, and I provided cover, and he took his canine to
2 that corner of the house and attempted a track there from
3 there.

4 Q And what happened at that point?

5 A We tracked by, I believe it was, Deputy Junkins, Cliff
6 Junkins, who was there helping us out.

7 We then crossed a small fence at the house,
8 approached, I believe, what was an outbuilding and maybe a
9 camper, like an older camper.

10 The dog went under the building, showed what we call a
11 behavior change. We looked under the building, and I
12 believe what we saw looked to be clothing and/or a bag,
13 book bag, something like that.

14 Q All right. And what did you do once you noticed that?

15 A Well, we -- not knowing, not being able to see who was
16 under there, obviously, stuck our guns there, you know, to
17 make sure there's nobody there trying to harm us, pulled
18 the book bag. I cannot remember if it was already unzipped
19 or if it was partly unzipped. We noticed or I noticed a
20 firearm and/or firearms in there.

21 Q How did you notice a gun if it was zipped?

22 A I said partially.

23 Q Okay.

24 A Notice what we knew as a firearm there. We weren't
25 going to leave unsecured. We had Junkins who was already

1 assisting us -- Deputy Junkins. I believe I instructed him
2 to stand by with that and we were going to continue with
3 the canine track.

4 Q Okay. Did -- did you pull the bag out from
5 underneath?

6 A Yes. It was -- it was partial. It wasn't all the way
7 under there. You know, it was just an outbuilding like you
8 would have to put your lawn mower in in your house or in
9 the back -- your back yard. It was partially under there.
10 So, yes, I just pulled it out to be able to get a good --
11 and to be able to get a better view from up under the
12 outbuilding.

13 Q I'm going to show you State's Exhibit 38. Is this the
14 location that we're talking about?

15 A Yes, sir. That's exactly it.

16 Q All right. Can you explain to the jury how the bag
17 was positioned when you got there?

18 A Probably --

19 Q There's a laser pointer in front of you --

20 A Yes.

21 Q -- if you want it.

22 A We -- let's see. We approached from this fence area
23 here, ended up making in between the camper and the
24 outbuilding. The bag and that article there, they were
25 just partially up -- they were not all the way up under the

1 outbuilding. They were just partially there enough that --
2 so I could see it.

3 Q Okay. And is this how you left what -- after you
4 pulled it out, is this how it appeared?

5 A Yes, sir. That's exactly the way I left it. And,
6 again, I -- which I instructed Deputy Junkins to secure
7 that and have I.D. collect it.

8 Q You said you saw a gun. Was there any distinctive --
9 anything distinctive about the gun that you saw?

10 A To my knowledge it -- there was a different color in
11 it, but I don't believe I -- I believe saying that there
12 was a -- it was a different color pistol in there. And by
13 different color, it wasn't your standard black or gunmetal
14 color.

15 Q Let me show you State's Exhibit 46 and ask if -- is
16 that the gun?

17 A Yes, sir. That's what would have caught my attention.

18 Q What color is that gun?

19 A It's a reddish, maybe a pinkish, color.

20 Q All right.

21 A Not your standard Glock that you would normally see.

22 Q Did you open the bag any further after you pulled it
23 out?

24 A No, sir. Once I saw that, as far as digging, pulling
25 any items out or doing any of that stuff, I left it there.

1 I probably was not in contact with that bag 15 or 30
2 seconds maybe.

3 Q Did you look further up underneath and see if there
4 was anything else?

5 A The only thing we were looking for was a body, was a
6 human.

7 Q Okay. So once you had realized that there wasn't a
8 suspect under there your -- continued on --

9 A Yes, sir.

10 Q -- with your role.

11 A Yes, sir.

12 Q Please answer any questions Ms. Jones has.

13 A Yes, sir.

14 CROSS-EXAMINATION

15 BY MS. JONES

16 Q You've indicated you crossed the fence from the
17 neighbor's yard. What -- what actually attracted your
18 attention to those items?

19 A I -- I'm -- so to put a perspective, you've got the
20 dog out front attached to a 20-or-a-30-foot line with a
21 handler. We're going wherever they go. This is the
22 direction the dog -- I'm sorry. That was the direction in
23 between the camper and the outbuilding that the dog took
24 us. Obviously, we're looking for places that people hide.
25 I mean, that's what they do when -- when we're looking for

1 them. So we're looking for a place that people hide.
2 Under outbuildings is one of the most -- a common place
3 that we'll look. It's not every day you see a book bag
4 just stuffed there.

5 Q Okay. Well, my question was what attracted your
6 attention to it. Was it behavior of the dog or a glimpse
7 of the items themselves?

8 A From -- from myself, it would have been both. Being a
9 supervisor I'm constantly watching a dog's behavior and
10 watching everything else. So there was a behavior change
11 on the dog.

12 Q And what -- what, again, was that behavior change?

13 A That -- that's -- usually I -- you'll have to ask
14 Jason Moore who is the handler of that dog, but as someone
15 who trained that dog, he's normally a change in his tail
16 pace and his breathing. If there's someone under there,
17 he'll start barking.

18 Q Okay. So the dog had a behavior change, and that was
19 communicated to you. You didn't actually physically see
20 the dog sit down or any of those other --

21 A No.

22 Q -- patterns.

23 A He won't sit on -- on an article. All he's going to
24 do is have an article -- all he's going to do is have a
25 behavior change.

1 Q Well, my -- I'm trying, just trying, to get to this.

2 Did the other -- did the dog handler communicate to
3 you, hey, he just changed behavior, or it's a hit or --

4 A I --

5 Q -- a strike or what?

6 A I can't remember if he -- I can't remember if he said
7 anything.

8 Q But based on that and then a glimpse of something you
9 actually looked under it, did you not?

10 A Yes, ma'am.

11 Q Do you -- do you recollect whether you literally got
12 down on the ground and looked?

13 A For the bag?

14 Q Yeah, underneath --

15 A No. I was on one knee.

16 Q -- it was --

17 A I was on one knee.

18 Q Okay.

19 A Deputy Hawkins -- so from where the bag is positioned,
20 I was on one knee, pulled it out, and Deputy Hawkins was to
21 my right. And I can't remember if he was on one knee all
22 the way down. He had a rifle. He actually cleared the
23 rest -- the rest of the under of that building for me.

24 Q Okay. And all of this time while this is happening
25 Junkins is across the fence --

1 A Yes, ma'am.

2 Q -- watching you, and, as it is, his body camera is
3 shooting everything, is it not?

4 A I believe so.

5 Q So if you had reviewed that y'all would have been able
6 to see that pattern, correct?

7 A I did look at the body camera, but I don't think from
8 his view you're going to sit -- you're talking about the
9 dog, our pattern?

10 Q I'm talking about the person who gets down, flat down,
11 to look under that and then the retrieve --

12 A I believe from his body camera you see me on the knee
13 over the book bag.

14 Q Okay. Well, I guess the body camera speaks to that.
15 Thank you.

16 A Yes, ma'am.

17 MR. SMITH: I don't have any further.

18 THE COURT: You may step down. You may also be
19 excused.

20 THE WITNESS: Thank you.

21 (Whereupon, the witness was excused.)

22 MR. SMITH: The state calls Investigator Lawson.

23

24

25

1 JONATHAN LAWSON, having been
2 previously duly sworn, testified as follows:

3 THE COURT: Mr. Lawson, you've previously been placed
4 under oath, and so you're still under oath for the purpose
5 of these questions.

6 THE WITNESS: Yes, sir.

7 CONTINUED DIRECT EXAMINATION BY MR. SMITH

8 Q Investigator Lawson, just to be clear about where we
9 ended up yesterday, is this the condition that you found
10 the items on Bayberry when you arrived on the scene?

11 A Yes, sir. It is.

12 Q All right. And then -- and then this is State's
13 Exhibit 38. So all of the items that were pulled out and
14 the placards that we saw on the other exhibits, you pulled
15 all of those items out.

16 A That's correct. So I could photograph them
17 individually.

18 Q Okay. All right. And we did -- they're on State's
19 Exhibit 3. And did you collect that item?

20 A Yes, sir. I did.

21 Q And what is that item?

22 A State's Exhibit 3, which is Spartanburg County
23 Sheriff's Office Item No. 3, was the red Glock Model 42,
24 .380 caliber auto with magazine and serial number. And
25 there was no ammunition in that weapon.

Jason Lawson
Direct examination by Mr. Smith

1 MR. SMITH: Your Honor, at this time we'd offer
2 State's Exhibit 3 into evidence.

3 MS. JONES: Your Honor, may I see it?

4 (Pause.)

5 MS. JONES: No objection.

6 THE COURT: It's admitted.

7 (Glock Model 42 with magazine marked State's Exhibit
8 No. 3.)

9 Q Did you also find articles of clothing inside of the
10 book bag?

11 A Yes, sir. I did.

12 Q What was sheriff's office Item No. 4?

13 A Item No. 4 was a green plaid boxer underwear.

14 Q Did you collect those?

15 A I did. I collected everything that was in that bag or
16 with that bag at the time.

17 Q I hand you State's Exhibit 4 and ask if you can
18 identify what this is. And get the evidence envelope. Is
19 this -- is this in the condition that you packaged it in?

20 A No, sir. I did not put the white butcher paper around
21 it.

22 Q Is there a date on there?

23 A There is. There's a date of 5/31/2018. There's also
24 a lab number, which is commonly usually assigned by SLED.
25 That L18 number is usually a --

1 Q Did you --

2 A -- SLED --

3 Q -- package it in the evidence envelope?

4 A Yes. I just placed it in the yellow envelope here,
5 and that was how it was packaged and sealed.

6 Q And then you would secure that at the sheriff's
7 office?

8 A Correct. Initial, put it into evidence --

9 Q And what --

10 A -- at the sheriff's office.

11 Q And what was the date that you collected this item?

12 A February 18th of 2018.

13 Q And what -- what's the date on that butcher paper?

14 A May 31st of 2018.

15 Q Is it common for items to get sent to SLED and then be
16 repackaged when they're returned to the agency?

17 A Yes. We don't have -- the sheriff's office does not
18 have a -- a lab to process things in this nature.

19 Q But that is the item that you collected?

20 A That is correct.

21 MR. SMITH: Your Honor, at this time we'd move State's
22 Exhibit 4 into evidence.

23 MS. JONES: I don't object to the shorts themselves.
24 There's another item wrapped up in there that we don't know
25 what it is.

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 THE COURT: It's admitted.

4 (Green plaid boxers marked State's Exhibit No. 4.)

5 Q Did you find other firearms inside there as well?

6 A Yes, sir. I did. I found, I believe, two more
7 firearms.

8 Q All right. I'm going to show you what's been marked
9 as State's Exhibit 6 and ask you if you can identify what
10 this is.

11 A This is, once again, one of the gun boxes that the
12 sheriff's office provides that I actually placed the
13 firearm in that.

14 Inside the box is SAR arms 9mm handgun with serial
15 number that contains a weapon light on it, one unfired
16 Winchester 9mm Ruger or Luger round that was in the
17 chamber, and one magazine that contained 9mm Luger rounds
18 and Barnes 9mm Luger rounds that were unfired rounds.

19 Q Is this the gun that you had referred to that had been
20 locked back and --

21 A Correct?

22 Q -- you thought possibly malfunctioned?

23 A Right. I attempted to physically dechamber or extract
24 the bullet or the cartridge that was in the chamber and
25 couldn't. I had to manually poke an item through the

1 barrel and push it out.

2 Q And this is the item that you collected?

3 A Yes, sir.

4 MR. SMITH: Your Honor, at this time we'd offer
5 State's Exhibit 6 into evidence.

6 MS. JONES: No objection.

7 THE COURT: It's admitted.

8 (SAR 9mm handgun marked State's Exhibit No. 6.)

9 Q Does this gun have a light attached to it?

10 A Yes, sir. It does.

11 MR. SMITH: Permission to publish, Your Honor.

12 THE COURT: You may.

13 Q Did you collect a third firearm?

14 A Yes. I did.

15 MS. JONES: No objection.

16 Q Let me show you what's been marked as State's
17 Exhibit 7 and ask if you can identify what that is.

18 A This is the -- another one of the gun boxes provided
19 by the sheriff's office that I wrote the description of the
20 item on the front of it. Inside of it is a S-C-C-Y. I
21 believe it's a 9mm handgun. It didn't have any ammunition
22 with it. And appropriate serial number.

23 Q What is the serial number on that?

24 A Serial number on it is 195179.

25 Q I've got State's Exhibit 65 up on the projector. You

Jason Lawson
Direct examination by Mr. Smith

1 went to the -- to the crime scene at 121 Old Canaan,
2 correct?

3 A I did. I photographed the scene.

4 Q Did you take this picture?

5 A Yes, sir. I did.

6 Q All right. And do you remember what -- where this
7 item was located?

8 A I believe that was inside the victim's bedroom on the
9 bed.

10 Q And the serial number on this item?

11 A That was -- that would be consistent with the same
12 firearm that was found in the bag, the S-C-C-I Industries
13 firearm, serial No. 195179.

14 MR. SMITH: Your Honor, at this time we'd move State's
15 Exhibit 7 into evidence.

16 MS. JONES: No objection.

17 THE COURT: It's admitted.

18 (SCCY 9mm marked State's Exhibit No. 7.)

19 MR. SMITH: Permission to publish.

20 THE COURT: You may.

21 Q I'm going to show you what's been marked as State's
22 Exhibit 5, and I believe Sheriff's Office No. 5, and ask if
23 you can identify what this is.

24 A This is a black t-shirt, size medium, that was located
25 with the bag that I placed in the paper bag sealed.

1 Q All right. Is this a similar situation to the green
2 plaid boxers but this isn't how you packaged it but it
3 appears that it was --

4 A That's correct.

5 Q -- sent to SLED?

6 A This is -- this is more than likely the way that SLED
7 is repackaging after it's been sent for testing.

8 Q All right. And what was this item?

9 A A black t-shirt, size medium.

10 Q And was this inside of the backpack? You pulled this
11 out?

12 A I believe it was, yes, sir.

13 MR. SMITH: Your Honor, at this time we'd offer
14 State's Exhibit 5 into evidence.

15 MS. JONES: No objection.

16 THE COURT: It's admitted.

17 (Black t-shirt marked State's Exhibit No. 5.)

18 MR. SMITH: Permission to publish it.

19 THE COURT: You may.

20 Q I'm going to hand you State's Exhibit 9 and ask if you
21 can identify what this is.

22 A State's Exhibit 9, yeah, is also a sheriff's office
23 inventory Item No. 9, is a pair of brown shoes, size seven,
24 slash, eight.

25 Q I'm going to put State's Exhibit 41 up. Is this where

Jason Lawson
Direct examination by Mr. Smith

1 you located that pair of shoes, or is that the same pair of
2 shoes?

3 A Yes, sir. It is.

4 Q All right.

5 MR. SMITH: Your Honor, at this time we'd offer
6 State's Exhibit 9 into evidence.

7 MS. JONES: No objection.

8 THE COURT: It's admitted.

9 (Brown shoes marked State's Exhibit No. 9.)

10 MR. SMITH: With permission to publish.

11 THE COURT: You may.

12 Q Let me show you what's been marked as State's
13 Exhibit 10 and ask if you can identify what it is.

14 A State's Exhibit No. 10 is also sheriff's office Item
15 No. 10. It's a Nike hooked jacket, gray in color, size
16 medium.

17 Q Okay. Is that also the item that's depicted on 41
18 there?

19 A That would be correct.

20 MR. SMITH: Your Honor, at this time we'd move State's
21 Exhibit 41 into evidence.

22 MS. JONES: He talking about --

23 MR. SMITH: Not 41. Ten, Your Honor. Sorry.
24 Forty-one's already in evidence.

25 MS. JONES: No objection.

1 THE COURT: It's admitted.

2 (Nike jacket marked State's Exhibit No. 10.)

3 Q All right. Did that conclude your involvement as far
4 as the Bayberry address?

5 A It -- it did.

6 Q And where did you go after that?

7 A I went back to the original location on Old Canaan
8 Road.

9 Q All right. And would that be 121 or 106?

10 A 121.

11 Q All right. What did you do when you got there?

12 A Once I arrived back to the residence I met with
13 Investigator Gaddy and Investigator Nix.

14 They advised at that point that a search warrant was
15 on scene. At that point myself and Investigator Gaddy, I
16 believe, and Investigator Nix entered the residence,
17 conducted a walk-through to see what we had to kinda
18 prepare for what type of equipment or things we may need to
19 take into the residence.

20 Q Okay. Did you go into the -- ultimately go in?

21 A I did. Yes, sir.

22 Q Can you just begin describing how you entered and what
23 you witnessed on your way inside?

24 A Correct. Once we got to the -- the back portion of
25 the driveway of the home where the small garage area was,

Jason Lawson
Direct examination by Mr. Smith

1 went up through the back steps. The door to the back deck,
2 there was a screened, little screened-in, area. Then you
3 go through an open door there into another open door which
4 was into the kitchen area.

5 One of the big things is being in a crime scene
6 unit we're -- we're very partial to making sure we don't
7 destroy any evidence or -- or step on anything, touch
8 anything, obviously, until it's completely documented with
9 photographs.

10 Once we were inside of the -- the kitchen area there
11 were some items that we observed in the -- the floor of the
12 kitchen.

13 There was a red substance in the floor believed to be
14 blood at that time that did have a -- what appeared to be a
15 shoe impression in the middle of that. Also, there was
16 a -- what appeared to be a fired cartridge casing or a
17 fired shell casing from a firearm laying in the floor.

18 Merely from that room into a little dining type room
19 that opened --

20 Q Let me stop you right there.

21 A Yes, sir.

22 Q I'm going to show you what's been marked as State's
23 Exhibit 28. What is that a picture of?

24 A State's Exhibit No. 28 is a photograph I took of what
25 appears to be a shoe impression which was in the kitchen

1 floor. A partial shoe impression.

2 MR. SMITH: Your Honor -- Your Honor, at this time we
3 move State's Exhibit 28 into evidence.

4 MS. JONES: Your Honor, I'm going to object if he's
5 going to continue to call it a shoe impression. He's not
6 been qualified with the requisite expertise to make that
7 determination.

8 THE COURT: All right. Do you have any objection to
9 the exhibit?

10 MS. JONES: No, sir. Not the photo.

11 THE COURT: All right. It's admitted.

12 (Photograph marked State's Exhibit No. 28.)

13 Q Backing up. Did you notice anything on your way up
14 the back porch? Were there any items?

15 A Yes. There was a cell phone in a red case that was
16 laying on the back steps or back-porch area. There was a
17 hat laying at the base of the steps and some keys or a
18 lanyard of some type that was hanging over the gate area
19 there.

20 Q Let me show you what's been marked as State's
21 Exhibit 67 and ask if you can identify what that is.

22 A State's Exhibit No. 67 is a photograph I took of -- it
23 shows the red cell phone sitting on the back deck and it
24 shows a [sic] open pack of Marlboro Light cigarettes.

25 Q Did you end up collecting these items?

Jason Lawson
Direct examination by Mr. Smith

1 A I did.

2 Q Okay. Do you know what happened with them or who they
3 belonged to?

4 A Well, actually, physically, I did not collect these,
5 but these items were collected. Now, I don't know what
6 happened to them after that point.

7 Q All right. But that -- is that a fair and accurate
8 copy of -- of what -- of how the scene appeared when you
9 arrived there?

10 A That's exactly how it looked when I arrived.

11 MR. SMITH: Your Honor, at this time we'd move State's
12 Exhibit 67 into evidence.

13 MS. JONES: No objection to the photograph.

14 THE COURT: It's admitted.

15 (Photograph marked State's Exhibit No. 67.)

16 Q Okay. Did you end up going to the deceased's bedroom,
17 or did go to -- throughout the house?

18 A I did. I -- I went through every -- every part of
19 that residence with Investigator Nix and Investigator
20 Horton and Stepp.

21 Q Did you go into the deceased's bedroom?

22 A I did.

23 Q I'm going to hand you a series of pictures, State's 48
24 through 54 and State's 62 and 63. I'm going to hand you
25 these. You can start looking at them. Don't say what they

1 are.

2 (Pause.)

3 Q Are those pictures that you took of the deceased's
4 bedroom --

5 A It is.

6 Q -- after you did a search warrant on the house?

7 A It is.

8 MR. SMITH: Your Honor, at this time we'd move
9 State's 62 and 63, as well as State's 48 through 54, into
10 evidence.

11 MS. JONES: Forty-eight through fifty-four inclusive,
12 right? Fifty-four.

13 MR. SMITH: Yes. Forty-eight through --

14 MS. JONES: No, no objection.

15 THE COURT: Forty-eight through fifty-four and six-two
16 and sixty-three?

17 MR. SMITH: Yes, Your Honor.

18 THE COURT: Any objection?

19 MS. JONES: No, sir.

20 THE COURT: They're admitted.

21 (Photographs marked State's Exhibits Nos. 48 through
22 54; photographs marked State's Exhibits Nos. 62 and 63.)

23 Q State's 62. What's this item on the bed?

24 A The items there on the bed is -- it's the box to the
25 SCCY firearm.

1 Q The one we looked at earlier in your testimony?

2 A Correct.

3 Q This is State's 63, State's 48, 49, State's 50,
4 State's 51. What were you taking a picture of in this, or
5 is anything wrong noted in this picture?

6 A Well, there's several things. When we go into a
7 residence or even a new room we take overall photographs
8 just to show the layout from basically the ceiling to the
9 floor, 360 from different directions.

10 In this case I had already done that and I observed
11 what appeared to be a D.V.R. box or a recording box for a
12 camera system and then a camera at the top left of the
13 scene there, what appeared to be just a camera that was
14 facing back into that room. So they're all starting to
15 take pictures to show basically a 3-panel picture from out
16 in, and then all the way up close.

17 Q This is State's 52, close-up of that camera?

18 A Yes, sir. It is.

19 Q And State's 53, State's 54. Did you notice any signs
20 of a struggle, or how was the room generally in your
21 opinion?

22 A The room, I mean, it was -- it was a fairly clean
23 room, fairly organized.

24 The only thing that was out of place that looked to me
25 was the drawers were open on the nightstand when I entered

1 into the room.

2 Q All right. Okay. Did you -- did you go to anywhere
3 else in the house and photograph?

4 A I did. I photographed the entire interior of that
5 residence, and the exterior.

6 Q All right. Do you know how the -- how this room is
7 situated relative to the living room?

8 A Yes, sir.

9 Q Can you explain that?

10 A If you exit out of the bedroom, this room which is
11 the -- the room that belonged to the deceased victim -- you
12 exit through the door and you kinda go into like a little
13 open area where there's a bathroom to the right. And then
14 there's a little laundry room area in the middle.

15 Once you cross through that laundry room you open up
16 into what is -- appeared to be like a big living room area
17 that had a pool table in there.

18 That's -- that's the -- the path that you can get to
19 that. And then it goes back around to a little dining area
20 and then into the kitchen area.

21 Q Let me show you State's Exhibit 61 and ask if you can
22 tell me what that is.

23 A This is looking -- a picture that I took that's
24 looking from the living-room area where the pool table is
25 located back towards where that laundry room area is. And

Jason Lawson
Direct examination by Mr. Smith

1 the bathroom's right in front. To the right of the
2 bathroom is where the -- the victim's bedroom was.

3 MR. SMITH: Your Honor, at this time we'd move State's
4 Exhibit 61 into evidence.

5 MS. JONES: To objection.

6 THE COURT: It's admitted.

7 (Photograph marked State's Exhibit No. 61.)

8 Q So now the jury can see it, to the right of this
9 picture would be the bedroom that we were just looking at?

10 A Yes, sir. It would be over towards this direction.
11 This is actually the wall that kinda separates it.

12 Q Okay. And then you're taking this picture from the
13 perspective of a living room?

14 A That is correct.

15 Q What did you notice in the living room?

16 A When I was in -- when I went into the living room,
17 obviously, I observed the victim lying in the floor in the
18 living room to -- if you're facing from -- if you're facing
19 from this direction here back into the living room, the
20 pool table would be almost directly in front of you. The
21 victim was laying to the right of the pool table on the --
22 on the floor face down.

23 Also, located at the victim between his legs was what
24 appeared to be a fired cartridge casing laying on the
25 ground.

1 Q Show you 58 and 59 and 60 and ask if you can identify
2 what they are.

3 A State's Exhibit No. 58 is a photograph I took of -- a
4 picture of the right side of the -- or the closer to the
5 front of the residence from inside the living-room area.
6 You'd have the -- this -- this picture that's up here is --
7 is kinda seen off in the distance from the doorway.

8 State's Exhibit No. 59 is also another picture in this
9 room, just a different perspective of the pool table in it.

10 State's Exhibit No. 60 is another photograph that was
11 taken in a different perspective to kind of show what it
12 looks like if you're looking back from this area here to
13 the living room area where the pool table is at.

14 Q I'm going to show you 57 as well. Is -- what is that
15 a picture of?

16 A This is just another photo showing the -- another
17 aspect angle of the room in the living room area with the
18 pool table in it.

19 Q All of these are pictures of the living room at 121
20 Old Canaan?

21 A That is correct.

22 MR. SMITH: Your Honor, at this time we'd State's
23 Exhibit 57 through 60 into evidence.

24 MS. JONES: No objection.

25 THE COURT: They're admitted.

1 (Photographs marked State's Exhibits No. 57 through
2 60.)

3 Q This is State's Exhibit 60. What is this in the
4 bottom right-hand corner of the picture?

5 A In the bottom right corner in this area here, this is
6 the victim's left foot, and that's the victim's right foot.

7 Q All right. So the picture we're looking at of the
8 bathroom would be looking backwards from where those feet
9 are?

10 A Yes, sir. It would be.

11 Q This is State's Exhibit 59. Is this looking back
12 towards the area we were just talking about?

13 A It is. That's actually the laundry room area there
14 that I photographed earlier. This would just be another
15 angle of the -- the photograph of the residence.

16 Q State's Exhibit 58.

17 A Once again, this is just another -- appears to be a
18 laundry-room area. This is the front door of the home.
19 This is just the other side of the pool-table area.

20 Q And State's Exhibit 57.

21 A This is also another angle of the living-room area
22 with the pool table here to your left, some desk there in
23 front.

24 Q Was anything disturbed in this room?

25 A That was nothing that appeared to be knocked over or

1 anything.

2 Q Can you describe what you were able to observe about
3 the deceased?

4 A When I was looking at the deceased I observed him,
5 like I say, laying on his -- his stomach area. He was
6 lying in a -- a prone position face down. Underneath the
7 decedent's head there was a large puddle of what appeared
8 to be blood there.

9 As I continued to look closer at the decedent I
10 noticed a -- what appeared to be a mark on the back
11 buttocks of his shorts that he had on, shorts with a pair
12 of underpants underneath that. And then on the back of the
13 t-shirt, the small of the back, what looked like to be a
14 print of a shoe. Then also I observed the fired cartridge
15 casing located at his feet.

16 Q Could you tell -- are there any obvious wounds, or
17 could you tell if there was any?

18 A Well, after photographing him in detail and
19 photographing the residence in detail, items that were
20 collected around him so they wouldn't be disturbed,
21 observed that he had what appeared to a hole to the -- to
22 the back portion of his head. And there also appeared to
23 be what -- a small hole to the right cheek area. It was an
24 extremely small hole there.

25 Q Did you find a projectile?

Jason Lawson
Direct examination by Mr. Smith

1 A No, sir. I did not find a projectile on the scene at
2 all.

3 Q And I believe you said that to the living room
4 attached is a dining room back --

5 A Correct. There's a dining room and there's another
6 little bedroom that's kind of straight off from that.

7 Q Let me show you 55 and 56 and ask if you can describe
8 what part of the house this is.

9 A This is State's Exhibit No. 55, is a picture of the
10 little dining-room area that's just right off of the
11 kitchen area.

12 State's Exhibit No. 56 is also the same type of photo
13 of the dining-room area that's facing back towards the
14 kitchen area.

15 MR. SMITH: Your Honor, at this time we move State's
16 Exhibits 55 and 56 into evidence.

17 MS. JONES: No objection, Your Honor.

18 THE COURT: They're admitted.

19 (Photographs marked State's Exhibits Nos. 55 and 56.)

20 Q This is State's Exhibit 55. So would be standing in
21 the living room when you're taking this picture?

22 A I would be. And if you look to the -- this is -- this
23 area right here is where the -- same room where the pool
24 table's at.

25 Q would the victim's head -- would be lying somewhere to

1 the right?

2 A Right. It's very close proximity to this area.

3 Q And State's Exhibit 56.

4 A That's just another picture taken from a different
5 angle in that -- that room that's facing back towards
6 the -- the kitchen area.

7 Q And the kitchen goes out to the back.

8 A Correct. It goes out to the left side here to the
9 back door, and then there's a little room right off of the
10 kitchen.

11 Q Okay. Did you ultimately leave the crime scene that
12 day? Did you leave?

13 A Yes. I did.

14 Q Did you -- did you attend an autopsy of Eric Morris?

15 A I did. I attended an autopsy.

16 Q When and where did that occur?

17 A That occurred at the Spartanburg Medical Center
18 Forensic Morgue. That was performed by Dr. Wren.

19 Q Do you participate in that autopsy, or what's your
20 role of being there?

21 A No. My -- my role there is to photograph and document
22 anything that the pathologist sees or deems to be as
23 sufficient and/or collect any items that needed to be
24 collected for evidence.

25 Q Did you collect any items at the autopsy of Eric

Jason Lawson
Direct examination by Mr. Smith

1 Morris?

2 A I did. I collected all of the clothing that he had on
3 and I also collected a -- a fired bullet that was provided
4 to me by Dr. Wren.

5 Q Do you know where that was recovered from?

6 A The -- what I observed was inside the right-cheek area
7 of Mr. Morris.

8 Q Did you photograph that bullet after it was removed?

9 A I did.

10 Q I'm going to hand you State's Exhibit 34 and ask if
11 you can identify what that is.

12 A State's Exhibit No. 34 is the bullet that was
13 extracted from the deceased victim.

14 MR. SMITH: Your Honor, at this time we'd move State's
15 Exhibit 34 into evidence.

16 MS. JONES: No objection.

17 THE COURT: It's admitted.

18 (Photograph marked State's Exhibit No. 34.)

19 Q And you collected this item?

20 A Yes, sir. I did.

21 Q And how do you collect an item like this?

22 A What I'll do is I'll -- I'll obtain it from Dr. Wren
23 where I take it to the -- the sheriff's office, place it
24 into an evidence bag. It's sealed. And at that point in
25 time the primary lead investigator will determine whether

1 this item is deemed to be necessary to be sent for testing,
2 if it's in good enough condition. And, if so, then it's
3 usually sent to the state law enforcement division.

4 Q would that decision -- would have to be transported
5 still while it's sealed as you would have collected it?

6 A That is correct.

7 Q Let me show you what's been marked as State's
8 Exhibit 33 and ask if you can identify what this is.

9 A This is the evidence envelope that I completed.
10 Obviously, I put a biohazard sticker on it because it does
11 have substance on there. And this is the container that I
12 put it inside of, along with packaging material to keep the
13 fired bullet from moving around.

14 MR. SMITH: Your Honor, at this time I'd move State's
15 Exhibit 33 into evidence.

16 MS. JONES: No objection.

17 THE COURT: It's admitted.

18 (Fired bullet marked State's Exhibit No. 33.)

19 Q Please answer any questions Ms. Jones has.

20 A Yes, sir.

21 CROSS-EXAMINATION

22 BY MS. JONES

23 Q Start in -- backwards maybe.

24 The item that's actually depicted in the photograph,
25 No. 34 on the overhead --

1 A Uh-huh.

2 Q -- you received it from whom?

3 A Dr. Wren, the pathologist.

4 Q Does he do anything distinctive to it before he gives
5 it to you to identify it in any way?

6 A Sometimes or most of the time he takes and measures
7 the -- the actual bullet itself. But I can't speak for
8 what he does on -- on his --

9 Q Okay.

10 A -- stuff.

11 Q So you don't know if he marks it in some way so later
12 he can identify it.

13 A He possibly does.

14 Q Okay. You indicated that you went throughout the
15 entire home and also did an examination or processed the
16 outside of the home. Did you process any of the
17 outbuildings?

18 A I photographed. I didn't process anything other than
19 a front door of the residence for latent prints, but I
20 photographed everything.

21 Q Okay. Now, with regard to the garage itself, did
22 anybody -- you photographed it, correct?

23 A Correct.

24 Q Did anybody draw your attention to anything they
25 thought that you should particularly photograph there?

1 A Not that I recall.

2 MR. SMITH: Your Honor, I'm going to object.

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 Q With regard to photographing the garage, you did take
6 some photographs of the garage, didn't you?

7 A Yes, ma'am.

8 Q There were a variety of recreational type vehicles
9 inside the garage and outside the garage, correct?

10 A I believe so.

11 Q Okay. Also, you -- how much of the grounds, if I can
12 use that term, of this home did you walk around and
13 photograph?

14 A As far as?

15 Q I mean, did you take any photographs of the -- any
16 particular items outside of the immediate back door of the
17 house?

18 A Yes. I took pictures of the hat, cigarettes, cell
19 phone, some --

20 Q I mean beyond those.

21 A Yes, ma'am. I believe I took overall photos of the
22 yard and everything.

23 Q Okay. Do you -- did you walk the perimeter of the
24 yard?

25 A I believe I did.

1 Q Okay. Do you have an estimate of how wide the lot is
2 or the dimensions of the lot?

3 A No, ma'am. I do not.

4 Q Do you have an estimate of the distance from the end
5 of the -- or the bottom of the step from the deck off the
6 kitchen to the back fence of the yard?

7 A No, ma'am. I -- I don't know. I'm not going to --

8 Q You can't estimate with something in this room or
9 something in the building?

10 A I wouldn't want to guess at something, no, ma'am.

11 Q Okay. Was it a close distance or would you
12 characterize it as a far distance?

13 A I -- I can't tell you by just looking at the
14 photograph or something. I'd have to see it again in
15 person.

16 Q Well, you did see it. Do you not recollect, generally
17 speaking, whether you would consider this a shallow yard or
18 a deep yard? How about that? Can I get that?

19 A I don't want to tell you that it's shallow or deep. I
20 don't know how you would take that into perspective. I
21 don't know.

22 Q Do you recollect what the yard looked like? Let's
23 start there.

24 A I just know it was a back yard.

25 Q Okay. That had a garage in it. Did it have other

1 structures in the back yard?

2 A Not that I recall right off. I don't recall unless I
3 look back at a photograph.

4 Q Okay. Now, with regard to the area around the garage,
5 do you recollect if you collected shells from in front of
6 the garage?

7 A I don't know. I don't believe I collected any items
8 other than from other at Bayberry if I'm not mistaken.

9 Q Okay. So you only collected them from inside the
10 house and on the back deck.

11 A No, ma'am. I didn't collect anything from inside that
12 residence.

13 Q Okay.

14 A I photographed and documented, yes, ma'am.

15 Q Okay. You photographed the area outside the garage,
16 didn't you?

17 A I believe so.

18 Q Okay.

19 A If there's a picture of it, I photographed it.

20 Q Okay. Do you recollect how many cars were there when
21 you were doing your photographing?

22 A Not without looking at a photograph, I can't say.

23 Q Okay. You went through the house. How many bedrooms
24 did you say there were?

25 A I think there was three bedrooms in the house.

1 Q Did you photograph all three bedrooms?

2 A I --

3 Q So far we've only seen the decedent's bedroom.

4 A I believe that all of the residence -- the entire
5 inside of the residence was photographed.

6 Q Okay. In a couple of the photographs there are open
7 drawers in the decedent's room. Are you responsible for
8 that, or were they that way when you got there?

9 A No, ma'am. I testified earlier those were observed to
10 be like that whenever I got inside the residence.

11 Q You testified as to the nightstand. There's also a
12 dresser drawer that's opened.

13 A Right. Those items were all open when I went in
14 there.

15 Q Was there a point later on in your agency's
16 involvement with the house where other things were, in
17 fact, opened?

18 A Correct.

19 Q Okay. That would be after a search warrant is
20 brought. Then they -- they thereafter -- after you're
21 finished getting how it looked when you got there, they go
22 and they look at everything -- under cushions, in all
23 drawers, take the clothes outta the dryer, stuff like that.

24 A Correct.

25 Q Did you photograph that part?

1 A I don't know if I did or not. If I did, it would be
2 in the photographs that I believe you were provided.

3 Q Okay. And when you photographed the back deck and the
4 stairs and the concrete just below it if there were blood
5 stains there, your photographs would show that, correct?

6 A They should have if they were anything there that I
7 could photograph.

8 Q Probably there would have been little markers and
9 scale things put there too at some point.

10 Is the same true if there had been fired casings on
11 either the back deck, the stairs or the concrete around the
12 deck? Those would have been photographed.

13 A Yes, ma'am.

14 Q Do you recollect that there was a television on in one
15 of the bedrooms of this house?

16 A No, ma'am. I can't remember that.

17 Q But if there was it'd be in one of your pictures,
18 wouldn't it?

19 A Possibly.

20 Q Okay. The open dryer door, that would have been the
21 way you found it as well.

22 A Yes, ma'am.

23 Q You saw that in the photo.

24 A Yes, ma'am. It was in --

25 Q It's not that one.

James Green
Direct examination by Mr. Smith

1 A Right.

2 Q Okay. That's all.

3 MR. SMITH: I don't have any questions.

4 THE COURT: You may step down.

5 We're going to take a short break. I'll ask the jury

6 to please go to your jury room. Don't discuss the case.

7 I'll bring you back after that break.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: We'll be in recess for 15 minutes.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Are we ready for the jury?

13 MR. SMITH: The state's ready, Your Honor.

14 MS. JONES: Yes, sir.

15 THE COURT: Okay. Bring them in.

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

18 THE COURT: All right. Mr. Smith.

19 MR. SMITH: The state calls James Green.

20 JAMES GREEN, having been first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. SMITH

23 Q Will you please state your name for the jury?

24 A James Green.

25 Q Where are you employed?

1 A I'm employed by the South Carolina Law Enforcement
2 Division, commonly referred to as SLED.

3 Q What do you do for SLED?

4 A I'm a forensic firearms examiner in the firearm and
5 toolmark section of the forensic services laboratory.

6 Q Do you have any special training or education in order
7 to have that job role?

8 A After being hired at SLED I started and completed the
9 SLED firearm and toolmark course of instruction. It's
10 approximately three-to-three-and-a-half-year course of
11 instruction in an apprentice type fashion studying under
12 court-qualified firearms examiners learning to do what I do
13 now.

14 Q Do you have to do undergo ongoing training as a part
15 of that?

16 A Yes, sir, as time and the money allows.

17 Q And how long have you been doing this job that you're
18 in?

19 A I started this job on June 2nd of 2005, so not quite
20 14 years.

21 Q Have you ever been previously qualified as an expert
22 in South Carolina?

23 A Yes, sir.

24 Q How many times?

25 A I believe it's 76; 74 times in state court and twice

James Green
Direct examination by Mr. Smith

1 federal.

2 Q All right. And what type of things are you able to do
3 or what type of analysis are you able to do as a part of
4 the training and experience you have?

5 A The majority of what I do is firearms identification,
6 is where in a case like this we get some fired ammunition
7 components, cartridge cases or bullets and we try to
8 determine if they were fired by the same firearm or not.

9 And if there's a firearm, or firearm submitted, we try
10 to determine which one of those two could have fired them.
11 And if neither one of them could have or the firearms did
12 not, then we can sometimes give a list of firearms that
13 could have fired it based on some characteristics we see.

14 MR. SMITH: Your Honor, at this time we would offer
15 Agent Green as an expert in firearm identification.

16 MS. JONES: I don't have any objection to that.

17 THE COURT: He is so qualified.

18 Q Did you complete -- do you have -- did you work on a
19 case that your lab identifies as L1804041?

20 A Yes, sir.

21 Q What items did you receive as a part of that case?

22 A I received two 9mm Luger caliber pistols; two 9mm
23 Luger caliber cartridges cases that were fired; and a fired
24 bullet.

25 Q Are these the firearms that you analyzed?

1 A Ladies and gentlemen of the jury, this firearm is
2 unloaded. It's safe to handle.

3 what I'm doing is I'm looking for my markings on these
4 items, as well as the make, model, caliber and serial
5 number that match what I have in my notes and on my report.

6 And also when we receive evidence such as firearms, we
7 mark them with an electric pencil with our lab number, item
8 number and initials. So if a case we work goes to court
9 we're able to identify that this is what we looked at.

10 Yes, sir. State's Exhibit 6 is the SLED Item 4 pistol
11 that was received in this case.

12 State's Exhibit 7 is the SLED Item 5 pistol received
13 in this case.

14 Q All right. So what do you do when you get two
15 firearms, or firearms in this case? How do you begin your
16 analysis?

17 A What I do is I begin taking photographs as evidence as
18 I received it so I know how everything was packaged,
19 because that's one of the areas we have to fill out on our
20 departmental worksheets.

21 The next thing I'll do is I'll make sure they're safe
22 to fire. I like my fingers. I've read stories of people,
23 you know, pulling a trigger and the gun malfunctioning and
24 something happening.

25 So once I make sure the gun is safe to fire and taking

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Direct examination by Mr. Smith

1 all of the departmental -- taking the pictures, filled out
2 the information on the departmental worksheets, I will test
3 fire them myself to compare. The test fires I note came
4 from that gun because I shot it myself.

5 We have a comparison microscope. It's two microscopes
6 connected by a single optical bridge that lets us look at
7 different objects simultaneously. So I'll test fire the
8 firearm.

9 We have a vertical water tank. It's two stories tall,
10 about 3 feet diameter, stainless steel. It's funneled at
11 the bottom. Really high tech. We've got a chain with a
12 colander at the bottom.

13 We shoot into the water. The water slows the bullets
14 down without adding any markings to it. They slow down,
15 fall down into the colander. We pull up the chain, and
16 there's our fired bullets.

17 The cartridge cases, really technical. We use a paper
18 bag to catch them when they shoot.

19 So once I do that I'll go back to my microscope and
20 I'll look and see if the gun is marked inconsistently. If
21 it is, in which case State's Exhibit 6 did, I'll examine
22 State's Exhibit 7.

23 Same thing. I'll make sure it's safe to fire. I'll
24 go test fire it, obtain test specimens fired by the gun,
25 because I fired it myself. I'll look at those

1 microscopically to see if they were fired by the, you know,
2 same gun marking consistently. And then I will examine the
3 test fires I created against any evidence item submitted in
4 the case to see if they were fired by either one of these
5 two pistols.

6 Q What can you tell me about these two pistols as far as
7 the caliber or anything that stands out to you?

8 A They're both 9mm Luger caliber pistols, so they have
9 that in common. They're different manufacturers.

10 State's Exhibit 6 is SA arm -- S-A-R arms. And
11 State's Exhibit 7 is a SCCY Industries or S-C-C-Y
12 Industries pistol. That's where the similarities cease.

13 I'm -- they're both semiautomatic pistols. They both
14 use magazines. However, the rifling pattern on State's
15 Exhibit 6, it has six grooves with a right-hand twist.

16 Now, when they're creating firearms in barrels --

17 THE COURT: She needs you to slow down just a little
18 bit.

19 THE WITNESS: Yes, sir.

20 THE COURT: And if you will, kinda direct yourself
21 more towards that microphone.

22 THE WITNESS: Okay. I'm sorry. Is that better?
23 Okay.

24 A When firearms are created and the manufacturer is
25 determining what they're going to use for their rifling

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Direct examination by Mr. Smith

1 patterns and they say, okay, we're going to have six lands
2 and grooves, they'll go through and remove metal from the
3 barrel to create the grooves.

4 So State's Exhibit 6 has six grooves; State's
5 Exhibit 7 has seven grooves.

6 So if I were to get, you know, two bullets on the
7 ground at any particular scene and one was a 6-groove
8 bullet and one was a 7-groove bullet and I received both
9 State's Exhibit 6 and 7, I would know that the 7-groove
10 bullet could not have come from State's Exhibit 6 based on
11 those differences. And the 6-groove bullet could not have
12 come from State's Exhibit 7 because of those differences.

13 Q All right. In this case did you have other items
14 other than the firearms to analyze?

15 A Yes, sir. I was -- two fired cartridge cases and a
16 fired bullet were also submitted.

17 Q I'm going to hand you State's Exhibits 11, 17 and 33
18 and ask if you can identify what these are.

19 A State's Exhibit 33 is the SLED Item No. 11 fired
20 bullet that was received in this case.

21 MS. JONES: I'm sorry. Which one is your 11?

22 THE WITNESS: State's Exhibit 33.

23 MS. JONES: Okay. Thank you.

24 A State's Exhibit 17 is the SLED Item 9 fired cartridge
25 case received in this case.

1 State's Exhibit 11 is the SLED Item 8 fired cartridge
2 case received in this case.

3 Q And what do you do with -- what did you do with these
4 three items to attempt to compare them to the two weapons
5 you had?

6 A First, like I did with the pistols, I photographed the
7 packaging as received, filled out the departmental
8 worksheets.

9 And then what I did was I looked microscopically at
10 State's Exhibits 11 and 17, the two fired cartridge cases,
11 to see if they were fired by the same firearm. I concluded
12 that they had been fired by the same firearm.

13 And then I microscopically examined State's
14 Exhibits 11 and 17 versus test cartridge cases fired by
15 State's Exhibits 6 and 7. And I was able to conclude that
16 State's Exhibits 11 and 17 were fired by the item -- excuse
17 me -- the State's Exhibit 7 pistol.

18 Q Would that be the SCCY?

19 A Yes, sir.

20 Q How about the SCCY?

21 A Yes, sir. State's Exhibit 7 is the SCCY, and I
22 concluded that State's Exhibit 7 fired State's Exhibits 11
23 and 17, the two cartridge cases.

24 Q What about the bullet? How do you analyze that with
25 the fired bullet?

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Direct examination by Mr. Smith

1 A What I did with the fired bullet, which was State's
2 Exhibit 33, is after I took photographs of it I weighed it
3 and I measured it, and based on the weight and the
4 measurement I was able to determine that it was consistent
5 with 9mm Luger caliber bullets. So we're in the right
6 ballpark and same caliber for State's Exhibit 6 and State's
7 Exhibit 7, the two pistols.

8 Then I counted the number of lands and grooves, and as
9 seven. And remember a minute ago I said one has six and
10 one has seven. So since State's Exhibit 33 had seven
11 grooves, automatically I knew it was not fired by State's
12 Exhibit 6, which would be the S-A-R -- S-A-R Arms pistol.

13 So then I microscopically compared State's Exhibit 33
14 with test bullets fired by State's Exhibit 7, the SCCY
15 pistol, and I determined that State's Exhibit 33 was fired
16 by the State's Exhibit 7 pistol.

17 Q So the three items that you had shell casings and
18 bullets came out of the SCCY.

19 A Yes, sir.

20 Q Do you prepare reports as part of your job duties?

21 A Yes, sir.

22 Q I'm handing you what's been marked as State's
23 Exhibit 70 and ask if you can identify what this is.

24 A Yes, sir. State's Exhibit 70 is the report that I
25 prepared and -- and published in this case.

1 MR. SMITH: Your Honor, at this time I'd move State's
2 Exhibit 70 into evidence.

3 MS. JONES: Your Honor, I don't have any objection.

4 THE COURT: It's admitted.

5 (SLED report marked State's Exhibit No. 70.)

6 Q Please answer any questions Ms. Jones has.

7 CROSS-EXAMINATION

8 BY MS. JONES

9 Q Each of these weapons which are R-6 and 7, the SAR
10 Arms and the S-C-C-Y, they're both semiautomatic, is that
11 correct?

12 A Yes, ma'am.

13 Q Okay. And as such after a -- the gun is fired the
14 casing portion of a round is not kept within the gun, is
15 it?

16 A No, ma'am. When a semiautomatic pistol fires if the
17 firearm is functioning properly the extractor will hold
18 onto the cartridge case. And as the slide moves to the
19 rear with inertia from being fired the ejector -- excuse
20 me -- the extractor will extract the cartridge case and the
21 ejector will hit the cartridge case expelling that fired
22 cartridge case from the firearm.

23 Q Could you take either one of them out of the box? It
24 doesn't matter to me. Just tell us which one you're doing
25 it with.

1 A State's Exhibit 7.

2 Q Okay. What you just indicated it went a -- when the
3 trigger is pulled, explain the action of the gun itself to
4 fire and then recoil.

5 A Okay. Let me -- I'll start at the very beginning.

6 Q Okay.

7 A What we'll do -- what you do is this is the magazine
8 for State's Exhibit 7. You'll load cartridges into the
9 magazine. You'll insert the magazine into the magazine
10 well. It'll -- you'll hear it click, and sometimes you can
11 feel it click.

12 What you then do is you grab the slide serration, is
13 you pull to the rear and you let it go. There's a spring
14 inside here that will make the firearm slide, move forward.

15 When the firearm slide moves forward, it strips the
16 cartridge case -- excuse me -- the cartridge off the
17 magazine loads it into the chamber. As part of that when
18 the cartridge comes outta the magazine the extractor slides
19 up under the extractor groove.

20 So when you pull the trigger -- and in this case the
21 hammer hits the firing pin. The firing pin hits the
22 primer. A whole bunch of stuff goes on. It's really
23 technical. I won't get into that. But the bullet goes
24 down the barrel. And Newtonian physics, equal and opposite
25 reactions, as the bullet goes one way the cartridge case

1 goes the other. It hits the breech face of the firearm,
2 and the breech face is nothing more than the vertical wall
3 that supports the cartridge case. And the firing pin goes
4 through the breech face. And when it does that it takes on
5 the markings of the gun.

6 As the slide moves to the rear with all that recoil,
7 that's when the cartridge case is extracted from the
8 chamber. And you can't see it, but there's a fixed ejector
9 on the left side of this pistol. The cartridge case will
10 come back and hit that ejector and be expelled from the
11 firearm. The slide will then move forward and you're ready
12 to fire it again.

13 Q You just said the -- let me see if I caught the
14 term -- the ejector pin?

15 A It's an ejector.

16 Q Is on the left side of that gun. So which way --
17 after the gun is shot the spent casing is going to come out
18 of the gun.

19 A Yes, ma'am.

20 Q And what determines which direction it flies?

21 A Chance.

22 Q Okay.

23 A You would think that within an ejector on the left
24 side and the extractor being on the right side, when it
25 comes out you would think it would go to the right.

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Cross-examination by Ms. Jones

1 However, my Glock I carry every day is the same way. And
2 when I shot it last week everything went to the left. I
3 can't explain that.

4 what you're asking about is ejection patterns. So
5 normally with this gun you would think if I shot it like
6 this everything would go back and to the right based on the
7 moving portions with a fixed ejector and the slide moving.
8 However, there are so many factors involved -- I mean,
9 temperature can affect things -- the wind, the ground,
10 carpet. Concrete can affect where they land.

11 When someone asks us about ejection pattern, our
12 answer is very generally usually back and to the right,
13 but, as I stated just now, you can't always determine why
14 that is. Sometimes it'll go to the left. I just don't
15 why.

16 Q Okay. So you said there are a number of other factors
17 that might determine which way it would go, and that would
18 even include obstacles within the path as it is expelled
19 from the gun, correct?

20 A Yes, ma'am.

21 Q Like furniture or other items. Also, would it
22 include, like you said, the surface on which it is landing?
23 If it's a smooth surface, clean surface, it might bounce,
24 slide, so that the position or the place where a casing is
25 found is not an indicator of where the gun was fired.

1 A That is correct in my opinion.

2 Q Now, one other issue. You used -- I'm sorry -- you
3 didn't use. You examined the SAR Arms gun, the one with
4 the light on it, and then successfully fired it to get
5 rounds against which to compare the casings that were sent,
6 correct?

7 A Yes, ma'am.

8 Q You concluded in your report that the -- that the
9 weapon was operable, correct?

10 A Yes, ma'am.

11 Q The -- you describe the slide and the action of the
12 semiautomatic just because a weapon jams once does not mean
13 it doesn't work, is that correct?

14 A In my opinion, yes, ma'am. When I have a firearm
15 if -- in my report I say it was test fired using smat --
16 excuse me -- using the submitted magazine found to be in
17 working order. That means that at the time I had it the
18 gun functioned like it was supposed to. It doesn't mean
19 that if we all went out to the range right now and shot
20 either one of these it might not malfunction. It meant
21 when I had it at that time it worked.

22 Q Okay. And do you have -- what are some of the factors
23 that might go into why a gun would jam?

24 A In recoil-operated firearms like these if you don't
25 give the gun a good stable platform for the gun to recoil

1 against that could affect the extraction and ejection
2 process.

3 That ammunition could affect it. Sometimes when
4 they're mass producing ammunition they don't put powder in
5 one cartridge case, so bullets loaded in there. So when
6 you pull the trigger, there's nothing to make it go leave
7 the barrel.

8 Sometimes you have broke or weak springs in a firearm
9 that could cause a firearm to malfunction, or sometimes if
10 you just let the slide go and you don't let it go all the
11 way like you're kind of babying it closed that extractor
12 may not snap over the extractor groove. So when you go to
13 unload the gun it's not going to pull that cartridge out of
14 the chamber because the extractor never got a chance to
15 hold onto the cartridge.

16 Q Okay. The first explanation you gave dealt with
17 basically the operator's or potential operator's handling
18 of the gun.

19 A Yes, ma'am.

20 Q A weak grip, an inexperienced grip, just not holding
21 it the right way.

22 A Yes, ma'am.

23 Q Okay. That's all. Thank you.

24

25

1 REDIRECT EXAMINATION

2 BY MR. SMITH

3 Q what could you tell me about a gun, say the SAR Arms?
4 If it had the hammer back in a cocked-back position and the
5 safety off and while you're attempting to unload it with
6 the unfired round and the chamber would not eject, is that
7 gun in a position where it can shoot?

8 A Possibly. If the extractor doesn't snap over the
9 cartridge onto the extractor groove the gun may not be able
10 to go completely in the battery. The battery means it's
11 ready to fire. If the gun's not all the way in the
12 battery, some guns will fire, some guns will not.

13 When I had State's Exhibit 6 I didn't experience that,
14 so I don't know. Or excuse me. I don't know the exact
15 reason why that would happen, but it may fire and it may
16 not fire.

17 Q But would it be that the -- the ejection is just not
18 working in that situation?

19 A What you described sounds like the extractor never got
20 ahold of the cartridge, so it wasn't able to extract it
21 from the -- from the chamber.

22 Q And then if that's the case can you -- can you
23 continue to fire the gun, or is that what you're saying you
24 don't know?

25 A You would have to remove -- somehow that cartridge

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Direct examination by Mr. Smith

1 would have to be removed from the chamber. Either you
2 physically have to get it out or if the gun was able to go
3 into battery, you could try to pull the trigger and see if
4 it would fire, and that would extract and eject.

5 Q That's all I have.

6 MS. JONES: Nothing else, Your Honor.

7 THE COURT: You may step down.

8 MR. SMITH: May he be excused, Your Honor?

9 (Whereupon, the witness was excused.)

10 MR. SMITH: The state calls Dr. Wren, David Wren.

11 DR. JOHN DAVID WREN, having
12 been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. SMITH

14 Q will you please state your name for the jury?

15 A John David Wren.

16 Q where are you employed, Dr. Wren?

17 A I work for Carolinas Pathology Group. I'm the
18 laboratory medical director at Spartanburg Regional Medical
19 Center and Spartanburg Hospital for Restorative Care
20 presently.

21 Q All right. And what do you do in that role, your job
22 duties?

23 A I basically function now as a clinical pathologist,
24 although I do some surgical pathology. And I'm the person
25 that mans the autopsy, forensic and hospital autopsies.

1 Q what is a pathologist, you're saying?

2 A Pathology is defined as study of disease processes.

3 As such, it's divided into two general parts in medicine.

4 One is anatomic pathology; the other is clinical pathology.

5 Anatomic pathology is basically involved with tissues.

6 It's subdivided into surgical pathology, which is tissues

7 that are removed during surgery in either an operating room

8 or in a physician's office, sent to pathology for

9 examination, sampling of tissues that are based on

10 pathologist gross experience for identifying whatever

11 disease processes may be present, whether it's infectious,

12 autoimmune or any type of process and to produce a

13 pathology report that helps the physician decide what

14 additional treatment is -- is done.

15 Another portion is autopsy pathology, which is divided

16 into either hospital autopsies, which are autopsies that

17 are done for a patient who's been in the hospital for a

18 determination of whether disease processes may have led to

19 the person's death, identification of those that are

20 significant and to determine results of various treatments.

21 All of that is correlated with the hospital course and

22 provided to the physician for his edification and for

23 quality control and to determine the processes surrounding

24 death.

25 The other part is forensic pathology, which is

1 medical-legal autopsies either for the coroner or some
2 other entity to determine the manner and cause of death.

3 The other part of pathology is laboratory pathology or
4 clinical pathology, it's called, which is mainly fluids,
5 and chemical pathology, which is examination of various
6 components of the blood and tissues to determine what may
7 be abnormal in the blood; for instance, whether a person
8 has an evidence of infection or leukemia or something like
9 that in blood; working with tissues that are removed or
10 specimens that are removed either by swabs or aspiration to
11 determine in that case what microscopic organisms may be
12 present. That part is microbiology or special chemistry
13 which is specialized portions of tissues -- not tissues but
14 fluids -- that are removed.

15 Then there's urinalysis, examination of the urine for
16 what disease process may be present or whether there's
17 infection. Those are the two main portions of pathology.

18 Q Do you have any special training or education in
19 forensic pathology?

20 A Yes. As when I did my residency in pathology I did --

21 MS. JONES: Your Honor, I'll stipulate to his
22 qualifications. I'm well familiar with Dr. Wren.

23 THE COURT: All right. He is qualified as a forensic
24 pathologist.

25 Q Do you know how many times you testified in court

1 before as a --

2 A I don't have an exact number, but it's well over 200.
3 I've done over 6,000 in my -- autopsies either at the
4 hospital or forensic in my career.

5 Q Did you have an opportunity to do an autopsy on Eric
6 Morris on February 19th of 2018?

7 A Yes. I did an autopsy on Eric Shane Morris in the
8 S.M.C. Autopsy Room. I began at 10:15 a.m. on February the
9 19th of 2018.

10 Q All right. And what do you -- how does an autopsy
11 begin?

12 A Well, the general protocol for doing an autopsy that
13 is a medical-legal autopsy is we get a history, which may
14 or may not be correct, to help refresh our memory and
15 direct us into where we need to start.

16 In this case I got a history from coroner's
17 investigator that told me that he was shot by a known
18 assailant. Actually, the assailant had gone to the
19 decedent's home where he and some others were working on a
20 motorcycle. And another individual was shot in the hip at
21 that time and was able to identify the assailant. And that
22 was all they could tell me. So I recorded that.

23 Then I take the body. They're supposed to be
24 delivered as they find them, nothing removed. So I
25 examined the clothing and any medical devices that may be

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Direct examination by Mr. Smith

1 on the body, any identifying characteristics. I describe
2 that.

3 Then I do an external description of the body if it
4 has to be. If it has blood or anything else on it, I wash
5 it off or take evidence that may be present and then
6 describe the external features from top to bottom.

7 Then after that's done we do a complete autopsy, which
8 is examination of the head and the internal organs, to
9 determine if there any contributing disease processes or
10 the results of what -- what may have happened to the
11 patient.

12 And then -- then I do the -- of course the organs.
13 And I stop until I get -- in some cases I stop until I get
14 the results of any toxicology that is done.

15 In this case the manner of death or the cause of death
16 was rather straightforward. So I went ahead and dictated
17 the remainder of the case. And I signed the final summary
18 on February the 25th of 2018.

19 Q Did you notice any defects in Mr. Morris' clothing?

20 A No. I said there were no defects, but it did have
21 blood over, considerably over, the garments that he had on,
22 which consisted of an Under Armour insulated hoodie, pair
23 of black and white synthetic knee length shorts, subsequent
24 underlying pair of Nike Pro Tights and a pair of gray and
25 black Nike low-cut athletic shoes with the right shoe

1 accompanying the body, and a pair of gray socks. There
2 were no defects.

3 Q Okay. What defects were you able to see or --

4 A External?

5 Q -- on the face, I guess?

6 A On his face he had --

7 Q Or head, the head.

8 A Right. He had a palpable defect in the midline of the
9 posterior occiput area, which is the back of the head.
10 I'll describe that later. I could not feel any fractures
11 of the skull.

12 He had a horizontal scar in the forehead that was
13 healed. He had some abrasions and contusions over the
14 right eye, and he had periorbital hemorrhage, meaning
15 around the eye on the right side. And he had a punctate
16 wound at the posterior right mandible, which is the
17 jawbone, with no palpable bullet. But I was able to get --
18 find one eventually. And he had a hemorrhage and
19 superficial laceration of the left lower lip, which I
20 considered those were probably a result of him collapsing
21 after he was shot. And unless I'm mistaken, I didn't see
22 any other injuries.

23 Q Okay. And then for the rest of his body did you
24 notice any other injuries?

25 A Well, he had a small area of minor hemorrhaging to the

1 right of the suprasternal notch, which is the -- the little
2 curvilinear area at the top of the -- at the bottom of your
3 neck. That's called the suprasternal notch. And that was
4 all I saw.

5 Q All right. I guess we can start with the wound in the
6 back of the head. What can you tell me about that wound?

7 A That wound was a gunshot wound. It was in the right
8 medial occipital area, meaning that medial is of course
9 toward the midline. It was on the right side. It appeared
10 5 inches from the top of his head. And he was actually
11 6' tall, 72 inches in length, which may vary one -- 1 or 2
12 inches, depending on how well a person relaxes after they
13 have -- it can vary. The length with a standing height can
14 vary somewhat. And it was less than half an inch to the
15 right of midline.

16 It was in his hair, and I could not find any evidence
17 of powder stippling or tattooing within the hair but it
18 had -- had a considerable amount of blood with it. And
19 it's not possible -- it's possible it was either washed
20 out. If it was close contact, I did not see any evidence
21 of singeing of the hair. So I assumed it was more distant
22 than intermediate or close range. And that was the wound
23 he had.

24 Q When you say distant what -- what do you mean by that?
25 I know people probably have a different --

1 A well, generally speaking, gunshot wounds are described
2 as distant, meaning that you can see no evidence of -- on
3 the body or on a surface that was close by when a weapon
4 was fired, because when a weapon is fired smoke or soot,
5 powder, burning powder and fire comes from the barrel after
6 the bullet leaves the barrel. And if it's close enough,
7 you can see evidence that there's -- there -- how close it
8 was.

9 But, generally speaking, a contact gunshot wound you
10 can see considerable -- depending on whether it was tight
11 contact or loose contact, meaning that if you pushed the
12 barrel up against the person and/or whatever and it fires,
13 the burning gasses and soot will come out of the barrel,
14 and actually it bores a hole in the skin but it -- but
15 the -- but the expanding gasses will tear back out of it.
16 So you'll get a stellate wound.

17 Now, if it's loose contact you might not see anything
18 except some maybe charring around the entrance, but in that
19 case you will see that how close it was.

20 And then depending on how far back the powder and soot
21 will come out, you can see how -- you can describe the --
22 the distance of deposition of the -- or the dimensions of
23 the deposition of the powder and soot coming out, and you
24 can compare that with a weapon that might have fired it
25 ballistically, and you can tell about how far it was.

1 Those are called intermediate gunshot wounds.

2 So in -- in handguns the distance can usually --
3 doesn't show up past 8 to 10 inches, but it can be even
4 closer than that. It depends on as the -- as the powder
5 and the soot comes out or the smoke comes out, it will
6 expand as the -- as the particles disperse. So one can
7 measure -- if you have a flat surface one can measure
8 the -- the circumference of it and compare it with the
9 weapon and tell whether -- how far away it might have been.

10 In this case because his hair was in the way one can't
11 tell. It could have been real close or it could have been
12 a distant wound. So if it had been on his skin we could
13 have told a little bit more about it, but not with clothing
14 on.

15 Q So even though you say it's distant, you're saying
16 even like 2 feet could be considered a distant --

17 A That's a distant wound with a -- with a handgun, yes.

18 Q All right. Were you able or did you attempt to try to
19 determine the path of the bullet after it had entered the
20 back of the head?

21 A Yes. That's part of the -- the description. This --
22 this gunshot wound went into the base of his skull.

23 The base of the skull is actually divided into little
24 depressions where the brain fits in. That's called the
25 anterior fossae fossa -- F-O-S-S-A-E if it's plural -- and

1 the middle fossa on -- one of each side -- and the
2 posterior fossa where the cerebellum the part in the
3 brainstem fits in the -- the posterior fossa.

4 In that case it went into the base of the posterior
5 fossa and was actually traveling from the decedent's left
6 to his right. And it passed through the base of the
7 cerebellum, which is the part that -- of the brain that
8 controls movements and other -- other functions, not the
9 thinking part but the actual fine and course motor control.

10 It went through the base of the cerebellum. There's a
11 part of the brain -- the brain drains blood out the --
12 everyone knows about the internal jugular vein. But the
13 brain actually -- the blood is collected along the top of
14 the head and from the middle of the head into what are
15 called sinuses. The one at the top's called the superior
16 sagittal sinus, meaning it's in the middle. And the one in
17 the middle of the brain is called the straight sinus.

18 They come together almost at the notch that you can
19 feel at the back of one's head. And when that happens they
20 come together and they divide and go around the side of the
21 base of the skull and go through the internal jugular
22 foramen and form the internal jugular vein.

23 In this case the bullet went through the -- the --
24 that drainage part and exited into the soft tissues and
25 came out near the angle of the mandible where I recovered

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Direct examination by Mr. Smith

1 a -- a full copper jacketed lead bullet, meaning that the
2 whole bullet was encased in copper. And it was distorted
3 and crimped a little bit at the nose because it had hit the
4 bone.

5 It measured .59 inches in length, which is 59
6 one-hundredths of an inch in length, and .352 inches in
7 diameter at the base, meaning there's essentially a nine
8 caliber -- a 9mm bullet.

9 And -- and I labeled the base of that bullet with the
10 Arabic number one, the Greek letter delta. And I gave it
11 to evidence office -- Officer Jonathan Lawson of the
12 Spartanburg County Police Sheriff's Department.

13 Q All right. What would happen to a person in your
14 opinion that suffers this wound? Would they have any
15 ability to move or --

16 A They would -- they could move, I think, but they could
17 lose consciousness right away.

18 Q What about falling?

19 A Yeah. They would, of course, fall when you lose
20 consciousness, right.

21 Q What would -- you talked about going through the
22 cerebellum, and you said I believe that controls motor
23 function.

24 A Well, if -- if you destroy the portions of the
25 cerebellum you can still function grossly.

1 A favorite saying in pathology is if you lose certain
2 functions in the cerebellum you can be a piano mover but
3 not a piano tuner because portions of the cerebellum
4 control fine motor movements. If you destroy that area you
5 can still move your hands or fingers but you can't do the
6 fine -- fine -- the precise things you need to do to tune
7 pianos.

8 Q And you referred to the punctate wound on his -- in
9 the mandible area?

10 A That's where the bullet tried to come out, yes.

11 Q So that's just associated with it.

12 A Yeah, yeah. It was associated with the gunshot wound.

13 Q Okay. And I believe you described he had some
14 scarring but then some other wounds that were --

15 A Yeah.

16 Q -- more recent, I guess.

17 A Yeah. He had a scar there I talked about, but then he
18 had these -- some abrasions and the contusion around his --
19 his skull there.

20 Q In your opinion what was those?

21 A I thought -- I thought that happened when he -- when
22 he collapsed.

23 Q Do you know how quickly somebody would die from this
24 type of injury?

25 A Well, most of those people probably -- when you hit

1 the sagittal sinus that means all of the blood -- and he
2 had a fracture at the base of the skull there. That means
3 that all of the blood that's coming down into the brain or
4 coming out of the brain and getting ready to go down the --
5 into the internal jugular vein on that side it -- he's
6 bleeding from that, and it'll bleed not like arterial
7 blood, because arterial blood has a lot more pressure with
8 it, but it'll bleed a while. And the fact that his
9 clothing was all soaked with blood, he would have lived
10 probably 15 or 20 minutes more than likely, although
11 concussions can cause sudden death.

12 As everybody knows, people can be hit in the chest
13 with a baseball. It -- it will -- and so in certain cases,
14 depending on when the heart is -- is -- the portion of
15 the -- the contraction that it's in, it can be depolarize
16 the heart, and the heart can stop.

17 Same thing can happen if you're hit in the temporal
18 area or anywhere you have a concussion to the brain. The
19 brain can actually depolarize and stop all functions. And
20 it just depends on what is going on when that -- when that
21 occurs.

22 Q So would it be surprising to you that somebody shot
23 with this gunshot would immediately fall?

24 A No. It wouldn't -- it wouldn't surprise me at all.

25 Q What did you ultimately rule to be the manner of death

1 in this case?

2 A Well, I assigned the cause of death as traumatic brain
3 injury, because he had hemorrhage and laceration along that
4 gunshot wound track, which although it was at the base of
5 the cerebellum it still would cause brain injury. And he
6 had external hemorrhage also. And I call that secondary to
7 gunshot wound to the posterior head. All of that occurred
8 as a result of the gunshot wound.

9 Q I didn't -- you said that the bullet -- can you tell
10 the path of the bullet? Did it go in up or down?

11 A Well, the bullet actually -- it passed slightly
12 downward, meaning that when it went in at the -- almost at
13 the base of the skull it was going slightly downward to the
14 decedent's right because it was found over in the -- at the
15 mandible. So it was going down, slightly downward, left to
16 right. And that's based on the person in dimensions. And
17 it was going from back to front.

18 So you can't tell how he was standing when that
19 happened because the head can move back a little bit or can
20 move down, of course, and right to left. So I can't tell
21 exactly how his head was except that the bullet travels in
22 a straight line unless it's deflected with -- but it still
23 would be in a straight line after it was deflected.

24 The bullet was going down and to his right and from
25 the back to the front. And it would depend on how he

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1 was -- if he had his head back, it could have been straight
2 in as far as the barrel was. But if his head was back it
3 would be going down in his head. If it was forward the
4 person would have had to have been above him or the barrel
5 would have had to have been above him to go down like that
6 that.

7 Q Please answer any questions Ms. Jones has.

8 CROSS-EXAMINATION

9 BY MS. JONES

10 Q Dr. Wren, I just want to go back and clarify with
11 regard to stippling and tattooing.

12 A Yes, ma'am.

13 Q That is a mark or a burn from the gasses and material,
14 hot material, expelled from a -- the end of a firearm,
15 correct?

16 A Right.

17 Q And the significance of that is with regard to whether
18 it was a contact or a very close wound.

19 A Yes, how close it might have been, yes.

20 Q And in this particular case at first you said -- you
21 talked about 8 to 10 inches away being what you called a
22 distant wound where there was no evidence of singeing or
23 burning.

24 A Right.

25 Q But then you backed that distance -- or I don't know

1 if you back it forward or back it up -- to a distant wound
2 could be only 2 inches away at the time of infliction. Is
3 that accurate?

4 A Well, it depends on the weapon itself. If one wanted
5 to be exact about something like that what -- what they do
6 in ballistics is they take a piece of flat paper and
7 they'll fire the weapon right up against it, and then
8 they'll move back until they don't see any evidence of soot
9 coming out, burning smoke coming out or the -- the
10 stippling, which is the burning powder hitting the little
11 pieces of paper, and you can see -- since you're coming
12 perpendicular to the -- to the piece of paper it spreads
13 circumferentially, and so you can measure how far that
14 go -- how far the weapon will go back.

15 And I'm not sure I said 2 inches. I just said that I
16 didn't see any evidence that there was any -- I could not
17 see any evidence that it was in his hair because there was
18 so much blood there, but I likewise couldn't see any
19 evidence that his hair was burned. So I had to assume that
20 it was further, far enough, away to where it didn't show
21 that.

22 Q Okay.

23 A Now, it could have been 2 inches or it could have been
24 6 inches. I don't know how far that particular weapon
25 would spray out powder and soot.

1 Q Okay. Thank you.

2 MS. JONES: That's all.

3 MR. SMITH: Nothing further.

4 THE COURT: You may step down.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 THE COURT: We're going to break for lunch. Keep in
8 mind no discussions, no investigation, no research, no
9 media exposure.

10 Have a good lunch. Please report to your jury room at
11 2:30, 2:30 this afternoon.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Court is in recess until 2:30.

15 (Whereupon, a recess was taken.)

16 THE COURT: All right. Are we ready for the jury?

17 MR. SMITH: One second, Your Honor.

18 (Pause.)

19 MR. SMITH: We're ready, Your Honor.

20 THE COURT: All right. Bring them in.

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

23 THE COURT: Good afternoon, ladies and gentlemen.
24 We're going to continue with the state's presentation.

25 MR. SMITH: State calls Investigator Mark Gaddy.

1 MARK CHRISTOPHER GADDY, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. SMITH

4 Q Will you please state your name and where you're
5 employed to the jury?

6 A Mark Christopher Gaddy. I work with the Spartanburg
7 County Sheriff's Office.

8 Q And what do you do for the sheriff's office?

9 A I am currently the gang unit supervisor. But at the
10 time of the incident I was working in violent crimes as an
11 investigator.

12 Q Okay. How much experience do you have in law
13 enforcement?

14 A Twenty -- over 25 years.

15 Q How about in violent crimes?

16 A Probably five.

17 Q Did you have occasion to respond out to 121 or in the
18 Old Canaan Road area on February 18th of 2018?

19 A I did.

20 Q When did you respond out there?

21 A Would have been around 1643, is what I have noted on
22 my report.

23 Q Is that 4:43 for --

24 A 4:43 in the afternoon, yes, sir.

25 Q And what did you do when you arrived there?

1 A I got with the lead investigator, Investigator Guest.
2 And shortly after I arrived we had received some
3 information who a possible suspect might be, and a lineup
4 was developed, and I took a copy of that lineup to -- over
5 to Bayberry Drive and spoke with a Mr. Jim Moore.

6 Q who -- who gave you that information? who passed that
7 information along to you?

8 A That information was passed to us from Investigator
9 Cheeks.

10 Q And what did you do as a result of the information
11 that he passed on to you?

12 A Investigator Guest and I developed a lineup, and from
13 that lineup I then went to Bayberry Drive to talk to Jim
14 Moore.

15 Q And was there a person that you thought was the
16 potential suspect in the lineup?

17 A There was.

18 Q And who was that?

19 A Brian Foster was the name we were given.

20 Q All right. were -- how many lineups did you show to
21 people?

22 A One.

23 Q Do you know if other investigators showed lineups?

24 A They did.

25 Q Did y'all use the same lineup on -- for all witnesses

1 that were shown?

2 A Yes, sir.

3 Q All right. And you went over to Bayberry to show Mr.
4 Moore the lineup.

5 A Yes, sir.

6 Q All right. And did you speak with Mr. Moore first?

7 A I did.

8 Q Did he tell you what had happened?

9 A He told me about hearing somebody in his back yard and
10 then somebody come crashing over the fence. In the midst
11 of the conversation he -- he talked about the individual
12 using his phone calling, you know, telling him the story
13 that somebody --

14 MS. JONES: Your Honor, I object -- object to hearsay.

15 Q Yeah. Just did he tell you what happened.

16 A He did.

17 Q All right.

18 A And then --

19 Q Did you show him a copy of the lineup?

20 A I did.

21 Q Did you watch him as he looked at it to see how
22 quickly he identified?

23 A I did.

24 Q Did he identify anybody in the lineup?

25 A He identified the person No. 5 in the lineup, which

1 was Brian Foster.

2 Q Did you hint to him or give him any sort of indication
3 that he needed to pick out somebody --

4 A No.

5 Q -- or who the person that you were looking for was?

6 A With the affidavit that is given it -- it expressly
7 talks about that you don't have to pick anybody out of the
8 lineup.

9 Q All right. And there's a defense exhibit in for
10 Mr. Koepke that has his -- is that the same affidavit
11 you're referring to? That's a standard form --

12 A Yes.

13 Q -- that you read with any lineup presentation? And so
14 he -- you said he quickly picked out No. 5.

15 A Yes.

16 Q Okay. Did he give you any other information?

17 A He did. At that point he gave me seven telephone
18 numbers that the individual that had -- that he picked
19 outta the lineup had used his telephone to call.

20 Q And at that time did you do anything with those
21 numbers or just collect them?

22 A Well, at that point it's all information collection so
23 that's -- I just noted them in my -- in my writeup and --
24 and went back to the scene at that point.

25 Q All right. What did you do when you went back to the

1 scene?

2 A When I went back to the scene I -- I turned the lineup
3 back over to Investigator Guest and then went with our I.D.
4 people as they opened the search warrant and started doing
5 the walk-through of the residence.

6 Q All right. So were you basically just observing?
7 You're not collecting evidence or anything like that?

8 A Right. Just at that point -- when a -- when a scene
9 is processed, it's processed from the outside in. They
10 start off by taking overall photos of the outside. And
11 certainly that would have been done. That's something that
12 can be done while you're waiting for the search warrant to
13 arrive. Before you go into the scene the search warrant is
14 actually on the scene.

15 Q All right. Did you watch the videos and some of
16 the -- some of the information as it came in?

17 A I did, sir.

18 Q All right. What happened next?

19 A At -- at that point when we started doing the
20 walk-through I noted a -- a red phone was found on the back
21 deck.

22 There was a bullet hole found in the back door.

23 A shell casing was found in the floor in the kitchen
24 along with two smudges that appeared to be blood on the
25 floor. One appeared to be -- have some type of pattern to

1 it.

2 Other blood smudges were found in the living room.

3 The decedent was found lying face down next to the
4 pool table in the front room.

5 And I also noted a gun box was found in the front
6 bedroom of the house.

7 Also, of note is that there were actually two video
8 systems, one for the outside camera system and then one
9 that was in that bedroom that we were in of the decedent.

10 Q Okay. And what happened next?

11 A At that point Lieutenant Gary had arrived and he
12 was -- where he used to do robberies and stuff, he's pretty
13 savvy with manipulating the systems as far as being able to
14 get in and review the material that was recorded. And at
15 that point he made contact with the company and was able to
16 get us to where we could view the material, the recordings
17 that was on the system from the outside that were -- that
18 was viewing the cameras of the outside.

19 Q Okay. And were you able to get a general description
20 of who you viewed to be the suspect off of those
21 surveillance videos?

22 A Yes.

23 Q What do you remember about the individual's hair?

24 A The hair at the time -- you know, some -- sometimes he
25 had a hood up. And when he took his hood off it was -- it

1 was what I would consider bushy, mop top on the top and
2 kinda close on the sides, is what you could see.

3 Q All right. Was there a point later where you were
4 diverted away from that scene?

5 A Yes. We were -- as we were actually processing the
6 scene we had a disturbance that -- that you could not only
7 hear, but you knew something was going on right down the
8 street, which turned out to be 142 Old Canaan Road.

9 Q Okay. And who was -- who were the people that were
10 involved in this or some of the people that were involved
11 in this disturbance?

12 A There were several people -- the owner of the house,
13 Ms. Johnson, her daughter Kalia. Three of her friends
14 were -- were actually involved. And then another woman and
15 I don't -- I can't call her name. I don't know.

16 Q Okay. Was it all female --

17 A Yes.

18 Q -- participants? All right. And was that -- was that
19 dealt with by you or did you just assist --

20 A It was dealt with by several people. Not only me but
21 Investigator Letterman. I think Investigator Guest came
22 down there, several uniform patrol people. I mean, it
23 was -- it was a -- a scene that needed some immediate
24 attention.

25 Q Can you tell the jury relative to the 121 where this

1 142 address is in relation to Mr. Moore's residence?

2 A There -- there's an -- I -- there's an overall photo
3 that you had put up that shows it quite well.

4 Q State's Exhibit 32.

5 A This is 121. 142 would be right here. And then Mr.
6 Moore's residence would be over in this area.

7 Q So it's between them?

8 A Yes, sir.

9 Q At that point did you get information about a
10 potential other suspect or something like that? Was it --
11 did you end up interviewing somebody else in relation to
12 this case?

13 A I talked to Kalia Johnson while we were there.

14 Q No, not -- not at this. This is another. Did you
15 receive information about -- at this point you haven't
16 signed warrants or don't know exactly. Did you go to the
17 sheriff's office and interview another person?

18 A Oh, at that point we left. Investigator Guest and I
19 did. And we had had information that somebody by the name
20 of Chavis Miller may be involved with this. And
21 Investigator Guest and I went to the sheriff's office,
22 interviewed him.

23 Immediately when we came into the room with him, his
24 entire arm, dang near, was in a cast. And, obviously,
25 there was no cast on the individual that was in the -- the

1 video. And we were able to ascertain through several
2 people that he gave us. We were able to confirm his alibi
3 that he was not involved.

4 Q Okay. So even though that you had multiple people
5 that positively identified him out of a lineup, you still
6 had not concluded the investigation, I guess. You were
7 still --

8 A No. We were still in the midst of the information
9 gathering.

10 Q All right. Did you have an opportunity eventually to
11 follow up on those phone numbers that were given to you by
12 Mr. Moore?

13 A I did. I ran them through -- I ran them through,
14 like, T.L.O. or the way we would identify phone numbers.
15 That really didn't give me any results. I ran them through
16 facebook and was able to identify three of the telephone
17 numbers through facebook and -- and also through Spillman
18 but --

19 Q What was the first number that Mr. Moore gave you?

20 A The first number he gave me was (864)606-9568.

21 Q And who did you determine that that phone number
22 belonged to?

23 A It came back to Kaliana Johnson who -- who lived at
24 142 Old Canaan.

25 Q The person that the disturbance --

1 A Yes.

2 Q -- was involved with? What was the second number that
3 you were able to identify or the second number that was made from Mr.
4 Moore's phone?

5 A It was (864)357-2264.

6 Q And who did that come back to?

7 A It came back to a Colt Tunstall from Chesnee.

8 Q All right. And was there a third number that you were
9 able to identify?

10 A There was.

11 Q And whose number was that?

12 A It came back to Barbara Moore. As soon as I saw the
13 last name I -- I checked with Mr. Moore, and he confirmed
14 that it was his wife's number.

15 Q Okay. Do you know when warrants were signed in this
16 case?

17 A I believe Investigator Guest signed them the same day.

18 Q That would be February 18th.

19 A Yes.

20 Q Sometime later --

21 A Yes.

22 Q -- in the evening?

23 A Yes.

24 Q All right. Do you know when Mr. Foster was arrested
25 on these charges?

1 A He was arrested on February the 20th of 2018 sometime
2 around 1:00, 1:30-ish, somewhere in there.

3 Q All right. And were you notified of his arrest?

4 A Yes.

5 Q Did you go speak with him?

6 A I did.

7 Q Did you ask him to take a sample of a cheek swab for
8 potential D.N.A. comparison?

9 A I did.

10 Q Did he agree to give you a sample?

11 A He did.

12 Q And was -- is there a document that's generated that
13 reflects that?

14 A A consent form, yes, sir.

15 (Permission to search marked State's Exhibit 75 for
16 Identification.)

17 Q Show you what's been marked as State's Exhibit 75 and
18 ask if you can identify what that is.

19 A Yes, sir. That is a permission-to-search-person form
20 used by the sheriff's office.

21 Q And who is it signed by?

22 A It's signed by Brian Foster.

23 MR. SMITH: Your Honor, at this time we'd offer
24 State's Exhibit 75 into evidence.

25 MS. JONES: I have no objection, Your Honor.

1 THE COURT: It's admitted.

2 (Permission to search marked State's Exhibit 75.)

3 MR. SMITH: Permission to publish.

4 THE COURT: You may.

5 Q Did you then take a sample from him?

6 A I did.

7 Q Can you explain how that is done?

8 A We bring two swabs that are in a package. We have a
9 box that they go into.

10 I put gloves on. I'll explain the process to the --
11 to the person after all of the paperwork is filled out. I
12 will advise him that I'm going to open the packs, I want
13 him to take one swab, do the right cheek almost like
14 brushing your teeth inside the cheek.

15 And then we'll place that tip down in the box. Then
16 you'll take the other swab, do the left side or the other
17 side from what you just did. Do it and then place it tip
18 down in the box.

19 Q And did you do that to Mr. Foster?

20 A Yes.

21 Q I'm going to hand you State's 68 and ask if you can
22 identify what this is.

23 A Yes. That's an evidence envelope from the Spartanburg
24 County Sheriff's Office with the D.N.A. known standard of
25 Brian Foster.

1 Q All right. Is the outer packaging something that you
2 did, or is that done by another agency?

3 A The -- the outer packaging as far as the envelope or
4 the outer packaging as far as --

5 Q The plastic.

6 A -- the plastic? The plastic is from SLED.

7 Q Okay. So what you packaged was inside of that.

8 A Yes.

9 Q The whatever, be Manila envelope.

10 A Right.

11 Q And then what do you do with that once you've
12 collected the sample?

13 A I put this into evidence, and it is then handled by
14 our evidence people as far as putting the appropriate
15 numbers. And then I.D. gets with the lead investigator and
16 sends everything that needs to be sent down to SLED.

17 Q And is this Mr. Foster's sample that you collected
18 from him?

19 A Yes.

20 MR. SMITH: Your Honor, at this time we'd offer
21 State's Exhibit 68 into evidence.

22 MS. JONES: No objection, Your Honor.

23 THE COURT: It's admitted.

24 (Buccal swabs marked State's Exhibit No. 68.)

25 Q Did you have an opportunity to obviously see

1 Mr. Foster when you were talking with him?

2 A I did.

3 Q Did you notice anything about his experience of note?

4 A The first thing I noticed was that he had a toboggan
5 on when I first encountered him. And then as I was leaving
6 his -- his toboggan was taken off and he was actually bald.

7 Q Let me show you State's Exhibit 73 and ask if you can
8 tell me what that is.

9 A That's Brian Foster on the day in question.

10 MR. SMITH: Your Honor, at this time we move State's
11 Exhibit 73 into evidence.

12 MS. JONES: No objection, Your Honor.

13 THE COURT: It's admitted.

14 (Photograph marked State's Exhibit No. 73.)

15 Q Do you know if there was any media or attempts to
16 apprehend Mr. Foster prior to him being caught?

17 A It had been two days, and standard procedure is that
18 when we have something like that we get a BOLO at least out
19 to the sheriff's office and ask that -- that it go out to
20 the media. So I would assume so, but definite, I can't
21 tell you.

22 Q Mr. Foster -- did he turn himself in or was he --

23 A No. He was apprehended.

24 Q Later that day did you have an opportunity to listen
25 to some phone calls made by Mr. Foster?

1 A I did.

2 Q All right. What was the phone number for the first
3 phone call he made or successful phone call that he made
4 from jail?

5 A The first phone call he made was to the
6 number 606-9568, which was the first number that was given
7 by Mr. Moore.

8 Q All right. And what about the second phone call that
9 he made?

10 A In -- in that call he had gotten the number 357-2264,
11 which was the second number that was made from Mr. Moore's
12 phone.

13 Q Okay. So his first two calls from jail are the same,
14 first two calls from Mr. Moore's phone.

15 A Yes.

16 Q Please answer any questions Ms. Jones has.

17 CROSS-EXAMINATION

18 BY MS. JONES

19 Q With regard to the list of numbers from Mr. Moore's
20 phone, let's go back and talk about Mr. Moore's phone.

21 Was it a cell phone?

22 A No, ma'am. It was a house phone.

23 Q I hate to say this. I'm aging myself. The
24 old-fashioned home phone.

25 A Yeah. Not a rotary dial but a --

1 Q No. I'm not talking about --

2 A But a --

3 Q -- ancient history but home phone --

4 A Yes, ma'am.

5 Q -- that's like a portable. You can walk outside if
6 you want.

7 A Yes, ma'am.

8 Q And that phone is different from a cell phone because
9 with a cell phone you can look in it and see all calls --
10 in, out, missed, so forth, right?

11 A Okay.

12 Q How did you retrieve the numbers you retrieved from
13 Mr. Moore's phone?

14 A I didn't retrieve them. Mr. Moore did.

15 Q Well, did you watch him? You were there. Did you
16 verify who --

17 A I was standing there watching him push the buttons --

18 Q Okay.

19 A -- and those are the numbers that he gave me.

20 Q Well, then tell me how he pushed the buttons and gave
21 you the numbers. Is this -- is this like a --

22 A He pushed the buttons. I can't tell you what series
23 or what sequence that he pushed the numbers in. He pushed
24 the numbers and then he gave me the list of numbers that he
25 gave me.

1 Q Okay. So he was accessing some kind of a call log.

2 A I would assume so, yes, ma'am.

3 Q Okay.

4 A The call -- the numbers called.

5 Q When you retrieved those numbers did you ask him if he
6 could retrieve the time those calls were made?

7 A No, ma'am.

8 Q Did you think that might be important?

9 A Not -- I didn't because he's telling me that he's
10 giving me the numbers that the person that was in his yard
11 that he identified as Brian Foster had called.

12 The last number that was his wife's was the one after
13 the incident that he called checking on her. That's why
14 when that number came up, that's why when it said Moore, I
15 was able to go back to him.

16 Q You didn't think it was important to know exactly what
17 time the individual had been using his phone?

18 A Ma'am, it was -- it was right then. I didn't think to
19 write the times down.

20 Q Okay.

21 A Not that it wasn't important.

22 Q Okay.

23 A But I didn't right them down.

24 Q As long as you'll give me that concession. You
25 were -- you were more concerned about the numbers than the

1 timing aspect of this event.

2 Now, you talked about your involvement in the
3 preparation of the lineups. That process was undertaken
4 after you had spoken to Joel Campbell and gotten a general
5 description of the individual he had indicated had been at
6 the home that day.

7 A Right. Remember he had -- as the lead investigator I
8 came up after, and I'm not the lead, but I was there after
9 Investigator Guest was.

10 Q Okay.

11 A So Investigator Guest had already talked to him once,
12 and then I talked to him again.

13 Q Okay. Well, I appreciate that, but in your report you
14 indicate that you spoke to Joel Campbell.

15 A I did.

16 Q He described the individual as 5'6", skinny, with no
17 facial hair.

18 A Right.

19 Q And you participated with Investigator Guest in the
20 preparation of lineups, did you not?

21 A Yes, yes, ma'am.

22 Q Now, this is...

23 MS. JONES: Your Honor, I'd like to mark this defense
24 exhibit.

25 (Court's Exhibit No. 1 marked Defendant's Exhibit No. 5

1 for Identification.)

2 Q I'm going to hand you what's been marked as
3 Defendant's No. 5. It is a group of three documents.

4 A Okay.

5 Q I'm going to direct your attention to the middle
6 document, which is the lineup itself.

7 A Okay.

8 Q Now, I -- you -- I can see that you assisted another
9 individual in this process, but based on Mr. Campbell's
10 description -- 5'6", skinny, with no facial hair -- that
11 lineup was prepared in a process involving yourself and
12 adopted for use in this case with four different people,
13 correct?

14 A Four different people?

15 Q The lineup was used with four individuals.

16 A Yes.

17 Q Okay. Including the individual that you showed it to,
18 the one that I've handed you.

19 A Yes.

20 Q Now, will you agree that of the six pictures in the
21 lineup only one of the individuals has no facial hair?

22 A Ma'am, I -- I can't -- they are so -- he actually
23 looks like he may have some facial hair on his top lip.
24 It's -- it's not -- I don't see. I don't see that.

25 Q Okay.

Mark Christopher Gaddy
Redirect examination by Mr. Smith

1 A I see that the picture that was generated by the
2 computer was the picture of Brian Foster that we used.

3 Q Correct. But the process of generating a lineup, one
4 of the goals is to make sure that nothing stands out.

5 A Okay.

6 Q And if five of the six individuals have facial hair
7 and only one doesn't, that stands out, doesn't it, and can
8 be suggestive?

9 A Okay.

10 Q So you agree with that statement.

11 A I agree with your statement, but I don't agree that
12 that does.

13 Q Okay. We'll let some other folks decide if they think
14 it's suggestive.

15 A Yes, ma'am.

16 Q Were you personally involved in the arrest of Brian
17 Foster?

18 A No.

19 Q Okay. That's all.

20 REDIRECT EXAMINATION

21 BY MR. SMITH

22 Q Did Jim Moore give you a facial-hair description?

23 A No. Well, he -- no, not facial hair.

24 Q Okay. So that was not something that stood out for
25 Mr. Moore.

1 A I guess you'd have to ask Mr. Moore that.

2 Q Let me show you Defense Exhibit 5. This is an
3 affidavit that you would have gone over with him prior to.

4 A Yes, sir.

5 Q Is there any way this paragraph -- is this something
6 that you always go over?

7 A Yes, sir, and did in that case, noted by my initials
8 and that I read it to him because Mr. Moore initialed
9 beside mine.

10 Q And the jury can read. But some of what this is
11 saying is that you should focus on the face and not things
12 like hair style and facial hair because that could change,
13 correct?

14 A Yes, sir.

15 Q Because the six pictures that are used in a photo
16 lineup were not taken on February 18th of 2018, I assume.

17 A That is correct.

18 MS. JONES: Your Honor -- I'm sorry. Are you
19 finished?

20 MR. SMITH: Yeah. I am. I was going to check with
21 her.

22 MS. JONES: Publish the rest of the document.

23 THE COURT: Are y'all intending that exhibit be
24 introduced?

25 MS. JONES: Yes, sir.

1 THE COURT: well, who's going to do that?

2 MS. JONES: I -- I offered it.

3 THE COURT: well, you haven't yet.

4 MS. JONES: well, at this point I'd like to offer
5 this.

6 MR. SMITH: No objection.

7 THE COURT: It's admitted.

8 (Court's Exhibit No. 1 marked Defendant's Exhibit No.
9 5.)

10 RECROSS-EXAMINATION

11 BY MS. JONES

12 Q Is this the lineup that I referred to as being -- that
13 I contend is suggestive because only one photo has no
14 facial hair?

15 A That's -- that is the lineup you're referring to.

16 Q Okay. Thank you.

17 MS. JONES: That's all, Your Honor.

18 THE COURT: Step down.

19 MS. CLARK: The state calls Ms. Jasmine Ruiz-Yi to the
20 stand.

21 JASMINE RUIZ-YI, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. CLARK

24 Q Good afternoon.

25 A Good afternoon.

1 Q Please state your name for the record.

2 A My name is Jasmine Ruiz-Yi.

3 Q Where do you work?

4 A I work at the South Carolina Law Enforcement Division,
5 commonly referred to as SLED.

6 Q And how long have you worked there?

7 A Approximately three and a half years.

8 Q What do you do there? What is your job title?

9 A I'm a forensic serologist.

10 Q And this may be silly, but for those of us who don't
11 know, what does that mean?

12 A Forensic serology is body fluid identification such as
13 blood, semen, saliva in criminal court cases.

14 Q Do you mind telling the jury a little about your
15 educational history and then your work history?

16 A I graduated from Clemson University with a bachelor of
17 science in genetics and a minor in biochemistry.

18 Upon my employment at SLED I took part in their
19 in-house training where I shadowed a court-qualified
20 forensic serologist and learned laboratory procedure from
21 her and was given training samples to practice and test
22 laboratory procedures.

23 After a time of doing supervised casework under her, I
24 was then given a competency test which comprised of all
25 aspects of being a forensic serologist. And upon passing

1 that I was then allowed to work on independent casework.

2 Q And currently do you participate in any sort of
3 proficiency testing or testing to keep you up to date?

4 A Yes. We have proficiency testing that we have to take
5 every year to make sure our skills are up to date.

6 Q And do you mind kind of briefly explaining? How do
7 you actually conduct this analysis or this examination?

8 A It depends on the types of items that we get. We do
9 body fluid identification and we also process items for
10 possible D.N.A.

11 Q And do you use the same methodology every time you
12 test an item, or do you change it up? Is it random or is
13 it always the same?

14 A It's typically the same barring any special
15 circumstances.

16 Q And is that methodology widely accepted within the
17 scientific community?

18 A It is.

19 Q And as just a rough estimate, how many items per year
20 do you test? Do you have any way of guessing that number?

21 A Rough estimate, I'd say hundreds.

22 Q And have you ever testified in court before?

23 A I have.

24 Q And were you qualified as an expert witness during
25 that testimony?

1 A Yes.

2 MS. CLARK: Your Honor, at this time with the state
3 would move to qualify this witness as an expert in the
4 field of forensic serology.

5 MS. JONES: No objection, Your Honor.

6 THE COURT: She is so qualified.

7 Q And just kinda explain this idea to the jury. Is
8 there some sort of form that -- that your law enforcement
9 organization uses to track pieces of evidence and track who
10 handles them and when they handle them?

11 A It's my understanding that outside agencies fill out
12 what's called a submission receipt that they submit to
13 our -- the computer program that tracks our cases.

14 Q And how do you track your cases internally?

15 A Internally there is a chain of custody that is
16 electronic. It shows where the evidence has been within
17 the laboratory.

18 Q And does every case have a chain of custody?

19 A It should, yes.

20 Q And would you have any reason to think that this case
21 would be any different or abnormal to any other case?

22 A No.

23 Q And did you indeed conduct a serology analysis of
24 certain items in this case?

25 A I did.

1 Q And let's specifically talk about Item 2. We'll start
2 with Item 2. What is that item? What is it labeled as?

3 A One moment.

4 Q Sure.

5 (Pause.)

6 A Item 2 is the green plaid boxers.

7 Q And how did that item get to you? I hope that makes
8 sense. How did this item come to be in your presence?

9 A So I request items of evidence from the evidence
10 control technicians. They will go into their contained
11 storage and take the item into their custody, and then
12 they'll then give it over to my custody.

13 Q And when you received Item 2 was it enclosed and
14 sealed?

15 A Yes. It was.

16 Q Was there any indication that that package had been
17 tampered with or altered in any way?

18 A No.

19 MS. CLARK: Beg the Court's indulgence just one
20 moment.

21 (Pause.)

22 Q I'm going to show you what has been previously entered
23 into evidence as State's Exhibit 4. Do you recognize that
24 item?

25 A I do.

1 Q what is that?

2 A This is Item 2, green plaid boxers.

3 Q And are those the boxers that you conducted your
4 analysis on?

5 A For an outer packaging, yes.

6 Q And so please tell the jury how you went about
7 conducting an analysis. What did you do with this item?

8 A Okay. Once I open up the item I take what is called a
9 scrapper. It's a plastic utensil that I use to scrape the
10 interior waistband of the green plaid boxers. It's in
11 order to free any potential skin cells -- skin cells that
12 are resting in the fabric of the boxers and any potential
13 hairs that might also be within the fabric of the boxers.

14 Q And what happened next?

15 A From there I take a sterile swab. I wet it, and then
16 I rub it onto the areas that I scrapped. I rub the
17 scrapper that I scrapped with and the paper that the item
18 was scrapped over.

19 Q And did you end up taking a swab from Item 2?

20 A I did.

21 Q And what did you label that swab as?

22 A It was the swab from scrapping interior waistband of
23 green plaid boxers.

24 Q And was there a numeric associated with that?

25 A It -- it was a -- created as a subitem off of the main

1 item, Item 2.1.

2 Q And after you took that swab, what did you do then
3 with the swab and with that packaging?

4 A With the -- the packaging of the boxers, you mean?

5 Q Yeah. Sorry. The original boxers.

6 A So I placed -- I put the swab in an envelope that's
7 then enabled -- labeled, initialed and then put into a
8 heat-sealed pouch for when it's given back to evidence
9 control so that D.N.A. analysts can work on it.

10 The green plaid boxers were wrapped up and put back
11 into the packaging that they were previously in and would
12 then be returned to the agency.

13 Q I'm going to show you what's been marked as State's
14 Exhibit 69. Can you take a look that for me?

15 A Yes, ma'am.

16 Q Do you recognize that -- that series of items?

17 A I do.

18 Q And does that include the swab that you took from Item
19 2?

20 A It does.

21 Q And explain again where that swab does. Is it in a
22 controlled environment, or what type of environment is this
23 stored and kept in?

24 A It is stored in the evidence control area. It's
25 regulated, and only authorized personnel can enter that

1 area.

2 Q And from then would it be -- go to a different
3 department within SLED, or where does it go from there?

4 A From there a D.N.A. analyst can request it from the
5 evidence control technicians.

6 Q And did you also analyze other items in this case?

7 A I did.

8 Q Did you analyze what is labeled as Item 3?

9 A Yes.

10 Q And what is Item 3?

11 A Item 3 is a black t-shirt.

12 Q I'm going to show you what's been marked as State's
13 Exhibit No. 5. Put that up there. Do you recognize that?

14 A From the outer packaging, yes.

15 Q Is that the item that you tested that was labeled as
16 Item 3?

17 A Yes.

18 Q And, again, what -- what type of clothing item is it?

19 A It is a black t-shirt.

20 Q And how did that item originally come to you?

21 A It was placed inside this bag, which was sealed, which
22 was placed in a cardboard box -- cardboard box if I recall
23 correctly.

24 Q And when you received that item was there any
25 indication that it had been tampered with or altered in any

1 sort of way?

2 A There was not.

3 Q And did you end up conducting an analysis on that
4 item?

5 A I did.

6 Q And tell me about that. How did that analysis go?

7 A Similar to the boxers. I took a plastic
8 utensil-scraper to scrape areas that the skin commonly
9 comes in contact with.

10 In this case it was the interior collar and the
11 underarms of the black t-shirt. I then swabbed those
12 areas, swabbed the scraper and then swabbed the paper it
13 was scrapped over.

14 Q And what did you do with that swab that you took from
15 that item?

16 A That swab was placed into an envelope that was
17 initialed and dated.

18 Q And looking at State's Exhibit No. 69, is that swab
19 also contained in 69?

20 A Yes.

21 Q And where did that go after -- after you conducted
22 your analysis and packaged it? Did it go to the same place
23 as Item 2?

24 A That is correct. Item 2.1. Yes.

25 Q I'm going to show you what's been marked as State's

1 Exhibit 71. I'm sorry. I'm giving you a lot of items. Do
2 you mind taking a look at that for me?

3 A One moment while I review it.

4 Q Sure.

5 A All right.

6 Q Do you recognize that -- that document?

7 A I do.

8 Q What is it?

9 A It is a report based off the items of evidence I
10 worked for this case.

11 Q And is that report generated by you?

12 A That is correct.

13 Q And it's based on what you did for this case.

14 A Yes.

15 MS. CLARK: Your Honor, at this time the state would
16 move to introduce State's Exhibit 71 into evidence.

17 MS. JONES: No objection as to the report.

18 THE COURT: It's admitted.

19 (SLED report marked State's Exhibit No. 71.)

20 Q In looking again at the swabs, the swabs that you said
21 that you sent back to the evidence room, tell me again.
22 State's Exhibit 69. Are those swabs contained within
23 State's Exhibit 69?

24 A From what I can tell, they are.

25 MS. CLARK: Your Honor, at this time the state would

1 move to introduce State's 69 into evidence.

2 MS. JONES: No objection.

3 THE COURT: It's admitted.

4 (DNA swabs marked State's Exhibit No. 69.)

5 Q And did you also take additional swabs other than from
6 Items 2 and 3?

7 A I did.

8 Q And did you do a similar thing with those in the way
9 that you generated them and where you took them afterwards?

10 A Yes.

11 Q And did that conclude your involvement in this case?

12 A Yes.

13 Q No further questions at this time. Please answer any
14 questions defense counsel may have.

15 CROSS-EXAMINATION

16 BY MS. JONES

17 Q Agent, the -- your agency develops or administers
18 through a computer program a chain of custody. That's what
19 she had mentioned to you before, correct?

20 A Yes.

21 Q Detailed breakdown from the time it gets to you as to
22 who handles each item and subitem, correct?

23 A While it's in the agency, yes.

24 Q Okay. And who is Charlotte Pitts?

25 A Charlotte Pitts is an evidence control technician.

1 Q And does she do what you've just described as doing
2 yourself, or is she there in some other capacity?

3 A She works as an evidence control technician.

4 Q And what does that mean?

5 A They intake evidence from submitting agencies, give
6 the cases unique numbers and each item within that case
7 identifiers.

8 They do not open any packaging. They simply give it
9 the numbers so that it can be placed into the storage.

10 Q And is she physically located in a different area than
11 you are at SLED?

12 A Yes.

13 Q She's kind of in an intake area. At one time it was
14 on the first floor right near the front door, correct?

15 A That is correct.

16 Q And so are you -- are you indicating any time that her
17 name appears in the chain, it's because she accepts that
18 item from the agency and heat seals it to send to you or
19 any other subpart?

20 A Yes.

21 Q Okay. Now, when you had the green plaid boxers there
22 were several other subparts developed other than the --
23 just the one you've been asked about, 2.1, is that correct?

24 A Yes.

25 Q Can you describe what those subparts are?

1 A Yes. There is Item 2.2, which is hair from green
2 plaid boxers, and from that there is 2.2.1, which is a hair
3 which was forwarded to the D.N.A. section, and then 2.2.2
4 which was also hair that was forwarded to the D.N.A.
5 section.

6 Q Okay. And was there likewise additional subparts of
7 the t-shirt that we have not referred to since I think we
8 only talked about 3.1?

9 A Yes.

10 Q What were those?

11 A Similarly to the boxers. There was 3.2, was hair from
12 the black shirt. From that was 3.2.1, which was hair that
13 was forwarded to the D.N.A. section. And then 3.2.2, which
14 was another hair that was forwarded to the D.N.A. section.

15 Q Okay. And additionally items that you've not even
16 been handed to identify here, you also processed several
17 other items, did you not?

18 A Yes.

19 Q Would you identify those generally?

20 A Yes. There was Item 1, which was blue jeans from
21 which a swab from the front button and scrapping interior
22 waistband for blue jeans was taken, which was 1.1.

23 There is Item 6, brown shoes. From that was 6.1,
24 swabs from interior brown shoes.

25 Item 7, gray hooded jacket. 7.1 was a swap from the

1 zipper and scrapping -- and scrapping the drawstrings and
2 interior collar and cuffs of the gray hooded jacket. And
3 then similarly to the other item, 7.2 was hair from that
4 gray hooded jacket. 7.2.1 was hair that was forwarded to
5 the D.N.A. section. And 7.2.2 was hair that was forwarded
6 to the D.N.A. section.

7 Q Okay. Thank you. That's all I have.

8 MS. CLARK: Nothing further from this witness, Your
9 Honor.

10 THE COURT: You may step down.

11 MS. CLARK: State calls Donna Money to the stand.

12 DONNA MONEY, having been first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MS. CLARK

15 Q Let me clean off some of your area. Will you please
16 state your name for the jury?

17 A Donna Money.

18 Q And where do you work?

19 A I'm employed at the South Carolina Law Enforcement
20 Division, also known as SLED.

21 Q And what do you do there?

22 A I am a forensic D.N.A. analyst in the D.N.A. casework
23 department.

24 THE COURT: Adjust that black microphone as you need
25 it -- the black one.

Donna Money
Direct examination by Ms. Clark

1 Q And what are some of your general duties and
2 responsibilities in that role?

3 A I perform forensic D.N.A. analysis on submitted
4 evidence items, known standards. I generate reports and
5 testify in court.

6 Q Do you mind telling the jury a little about your
7 educational and work history?

8 A I received a bachelor's of science degree in forensic
9 science from the Pennsylvania State University. And upon
10 my employment at SLED, which has been about six years, I
11 underwent an in-house training program under a
12 court-qualified D.N.A. analyst. This program included
13 performing, practice, training and confidency samples,
14 report writing, oral and written exams and a mock
15 courtroom.

16 Q And do you still to this date do continuing
17 educational programs?

18 A Yes. It is a requirement by the F.B.I. that we do a
19 minimum of eight hours of continuing education every year.
20 This includes attending professional conferences, reading
21 professional peer review journals and various types of
22 training.

23 Q And when you analyze an item for the presence of human
24 D.N.A., is there a set way that you handle that evidence
25 and test that evidence?

1 A We have standard operating procedures in order to do
2 so.

3 Q Is it fair to say that the methods you use are based
4 on scientific procedures that are widely accepted within
5 the scientific community?

6 A Yes.

7 Q And how many items -- again, I think you might have
8 already told us, but around how many items per year do you
9 test?

10 A A couple of hundred.

11 Q And have you ever testified in court before?

12 A Yes.

13 Q Have you ever been qualified as an expert witness?

14 A Yes.

15 MS. CLARK: Your Honor, at this time the state would
16 move to qualify this witness as an expert in the field of
17 forensic D.N.A. analysis.

18 MS. JONES: Can I ask a couple of qualifying
19 questions?

20 VOIR DIRE

21 BY MS. JONES

22 Q The in-house training program that you attended in
23 D.N.A. after graduation from Penn State was how long?

24 A Approximately a year and a half.

25 Q Okay. And how often do you undergo proficiency

Donna Money
Direct examination by Ms. Clark

1 reviews?

2 A We're required to be proficiency tested twice a year.

3 Q And who does that review with you? How is that
4 conducted at SLED?

5 A We receive an external proficiency test from a
6 contracted company, and those results are sent back to
7 them, and they will report whether or not we passed.

8 Q Okay. And do you employ a system whereby your results
9 are reviewed by another analyst --

10 A Yes.

11 Q -- before they render a final report?

12 A Yes. Prior to the approval of a report for a case it
13 will go under two rounds of peer review.

14 MS. JONES: That's all, and I agree to her expertise.

15 THE COURT: All right. She is so qualified.

16 CONTINUED DIRECT EXAMINATION BY MS. CLARK

17 Q Perhaps we should start from the beginning. What is
18 D.N.A.?

19 A D.N.A. is a chemical found in the human body. You
20 receive half from your biological mother and half from your
21 biological father.

22 Q And do we have -- do we all have the same D.N.A.?

23 A Except for identical twins, everybody has a unique
24 D.N.A.

25 Q And do we contain D.N.A. in our hair?

1 A Yes.

2 Q What about our fluids like blood, sweat or saliva?

3 A Yes.

4 Q And what about if we wear an article of clothing? Is
5 it possible to leave our D.N.A. behind on that article of
6 clothing?

7 A Yes. Skin cells contain D.N.A.

8 Q And what about when you analyzed one of those items of
9 clothing for the presence of D.N.A.? Is it common or
10 uncommon for when you test that item for there to be
11 multiple D.N.A. profiles?

12 A It's pretty common to see mixtures.

13 Q Let's talk about your specific involvement in this
14 case. Did you test an item labeled as 2.1?

15 A Yes.

16 Q And what was that item?

17 A That item was swabbed from scrapping interior
18 waistband of green plaid boxers.

19 Q And I'm going to let you take a look at what has been
20 previously entered as State's Exhibit No. 69. Does this
21 contain the swab that you tested?

22 A Yes.

23 Q And how did you get that item? Where did it come
24 from?

25 A I contacted the evidence control department at SLED,

1 and the individual that was down there retrieved the item
2 off of the intake shelf and then transferred it to me in
3 person.

4 Q And when you received that item before you tested it,
5 what kind of state was it in? Was it packaged? Was it
6 sealed?

7 A It was packaged in one of our heat-seal pouches, and
8 the seals were intact.

9 Q And when it comes to packaging and storing items at
10 SLED, is there a certain protocol that is in place to
11 protect the integrity of evidence?

12 A Depending on the type of item, say, for instance,
13 envelopes in this case, they'll be placed in one of these
14 plastic heat-sealed pouches, and which is usually open up
15 here, but they will be sealed, initialed and dated by the
16 individual that seals it, and then they will be stored.
17 Other items may be sealed in cardboard boxes or paper bags.

18 Q And when you received that item was there any evidence
19 of tampering or that it had been altered with in any sort
20 of way?

21 A No.

22 Q And looking at that item, 2.1, that swab, what did you
23 do during your testing? How did you conduct it?

24 A As far as what the process is?

25 Q I guess so. Yeah. I guess that's the best way to

1 ask, is that was the process of your testing.

2 A So for an item of evidence, it will go through our
3 forensic D.N.A. process, which is a 4-step process.

4 First, the item will be cut. So, for instance, with a
5 swab, a piece of the swab will be cut. We will extract the
6 D.N.A. from that piece of swab. After that we will
7 quantify or determine how much D.N.A. is present.

8 After that that sample will be amplified, or more
9 copies are made to have more to work with. And then that
10 will be run through an instrument that will separate the
11 D.N.A. based on size. And the end result is a visual or a
12 profile.

13 Q And did you have any comparison standards in this
14 case?

15 A Yes.

16 Q What is a comparison standard? What does that mean?

17 A A comparison standard or a known standard is one that
18 is collected directly from an individual so we know who is
19 the identity of this profile.

20 Q I'm going to show you what's been marked and entered
21 as State's Exhibit 68. Do you recognize that?

22 A Yes.

23 Q And what is that?

24 A This is SLED Item No. 15, which was the buccal swabs
25 from Brian Foster.

1 Q And is that what you used for a comparison standard in
2 this case?

3 A Yes.

4 Q And is that the -- what you used to compare the --
5 that D.N.A. to any D.N.A. that was found on Item 2.1?

6 A Yes.

7 Q And along with any other items that you tested in this
8 case?

9 A Yes.

10 Q And what were your findings for Item 2.1?

11 A May I read my report?

12 Q Absolutely.

13 A "The D.N.A. profile developed from Item 2.1 is a
14 mixture of at least three individuals. The partial D.N.A.
15 profile of the major contributor matches the D.N.A. profile
16 of Brian Foster."

17 Q And once you completed that test and got that match
18 for Brian Foster, what did you do with Item 2.1?

19 A Once we identify an association between evidence
20 profile and known standard, we then have to calculate a
21 statistic to apply a weight to that match.

22 Q And did you do that for this case?

23 A Yes.

24 Q And what was the result?

25 A The probability of randomly selecting an unrelated

1 individual having a D.N.A. profile matching the major
2 contributor to this mixture is approximately 1 in 690
3 quintillion.

4 Q what does that mean?

5 A A quintillion contains 18 zeros to give some
6 perspective. Another perspective is there's approximately
7 7 billion people in the world. So in order to identify an
8 individual unrelated you would have to see and go to
9 multiple births.

10 Q Let's turn our attention to another item that you
11 tested in this case. Did you test an item labeled as 3.1?

12 A Yes.

13 Q And what was 3.1?

14 A 3.1 was a swab from the scrapping interior collar and
15 underarms of a black Tupac t-shirt.

16 Q And this may be repetitive, but I want to be sure
17 we're clear. Where did you get that item from? How did
18 that item come to you?

19 A That item was packaged in the same container as Item
20 2.1. So as mentioned before, I went down to evidence
21 control. The evidence control technician received the item
22 from the intake shelf and then transferred it to me in
23 person.

24 Q And, again, was there any kind of tampering or had it
25 been altered with in any sort of way?

1 A No.

2 Q And did you indeed conduct an analysis on Item 3.1?

3 A Yes.

4 Q What were your results?

5 A The D.N.A. profile developed from Item 3.1 is a
6 mixture of at least three individuals. The partial D.N.A.
7 profile of the major contributor matched the D.N.A. profile
8 of Brian Foster.

9 Q And what does that mean as far as -- do we have the
10 same number, that large number, or what were your results
11 when it came to the possibility of randomly selecting
12 another unrelated individual with that same D.N.A.?

13 A The statistic for this was that the probability of
14 randomly selecting an unrelated individual having a D.N.A.
15 profile matching the major contributor to this mixture is
16 approximately one in 2.7 octillion.

17 Q What is an octillion?

18 A An octillion has 27 zeros. So it is larger than a
19 quintillion.

20 Q And did you also test other items in this case?

21 A Yes.

22 Q And the other items that you tested, some of them, is
23 it true or untrue that there was no human D.N.A. found on
24 them?

25 A Some of the hairs that were tested in this case did

1 not have any human D.N.A. detected.

2 Q And is it true or untrue that other items had more
3 than four or more than three mixtures of D.N.A.?

4 A Yes. There were other items that were tested that had
5 mixtures of three, four or five people.

6 Q And did that conclude your involvement in this case
7 after you tested all of the items that were sent to your
8 department?

9 A Yes.

10 Q And once you test those items, remind the jury where
11 they went from there.

12 A Once analysis is completed for all items in a case it
13 will then be placed in our D.N.A. return, and then those
14 items were then transferred down back to evidence control
15 so the submitting agency can come and pick them up.

16 Q And I'm going to show you what's been previously
17 marked for identification as State's Exhibit 72. Do you
18 mind taking a look at that and seeing if you recognize it?

19 (Pause.)

20 A Yes. This is a copy of my report.

21 Q Is that a report that you personally generated based
22 upon your findings and results in this case?

23 A Yes.

24 MS. CLARK: Your Honor, at this time I would move to
25 introduce State's Exhibit 72 into evidence.

Donna Money
Cross-examination by Ms. Jones

1 MS. JONES: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (SLED report marked State's Exhibit No. 72.)

4 MS. CLARK: I have no further questions for this
5 witness at this time.

6 Q But please answer any questions defense counsel may
7 have.

8 CROSS-EXAMINATION

9 BY MS. JONES

10 Q Agent Money, in this particular case, Lab No. 1804041,
11 how many standards did you get -- known swabs?

12 A There were two standards submitted.

13 Q That was -- who were they? who were the standards
14 from that you received?

15 A Item 15 was buccal swabs from Brian Foster, and then
16 Item 16 was a blood standard from Eric Morris.

17 Q Okay. Is the testing of blood for D.N.A. different
18 than what you've just described from the swabs, using
19 swabs?

20 A No.

21 Q Okay. And in both of the particular items in which
22 you did a statistical interpretation those are mixture
23 items, correct?

24 A The profiles developed from those items were mixtures.

25 Q And if you had had additional known samples you

1 possibly could have identified who the other individuals
2 were, is that true?

3 A The profiles that were discussed earlier mentioned
4 that the association was made with a major contributor. In
5 this case that means that the other individuals were minor
6 contributors.

7 Based on the data that was developed, those minor
8 contributor profiles were not suitable for comparison
9 because they were not suitable for statistical analysis.

10 Q But you had no standards to conduct that anyway, did
11 you?

12 A I'm a little unclear what you're asking.

13 Q Okay. You -- explain when you utilized the technology
14 you used to develop a D.N.A. standard, I mean, do a D.N.A.
15 analysis, there are going to be certain parts in the D.N.A.
16 chain that are identified, correct?

17 A We generate a profile.

18 Q Okay. And describe what a profile is.

19 A It is a collection of numerical values that are
20 assigned for what is detected by the instrument.

21 Q Okay. And those numerical values represent what?

22 A A D.N.A. type at a specific location.

23 Q Okay. That's what I was getting at.

24 So in the two items tested there were D.N.A. There was
25 D.N.A. present from other individuals, and if you had had

1 additional known samples would it have made your ability to
2 identify whose D.N.A. those were easier?

3 A Again, as stated, the minor contributor profiles, you
4 could submit hundreds more standards. You wouldn't be able
5 to make any comparisons.

6 Q If you could develop a complete D.N.A. profile on
7 another person you would not be able to tell -- from
8 another known, you would not be able to tell whether that
9 was detectable in the mixture.

10 A Based on the practices at the time, that is correct.
11 would not be able to make a comparison.

12 Q Okay. You just said based on the practices at the
13 time. Explain what you mean by that.

14 A At the time this report was generated we were using
15 what is known as combined or C.P.I.C.P.A. mixture such as
16 sic analysis or R.M.P.

17 Currently we are actually using a software called
18 STRmix which is a different approach, and it is utilized in
19 the interpretation of mixtures.

20 Q Okay. And do you believe there could have been a
21 different outcome if you were using the current
22 methodology?

23 A It's possible. The profiles would have to be
24 evaluated and run through the software.

25 Q Thank you. That's all.

1 MS. CLARK: No further questions for this witness.

2 THE COURT: You may step down.

3 (Booking card marked State's Exhibit No. 76 for
4 Identification.)

5 MIKE JONES, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. SMITH

8 Q Since I didn't call, will you please state your name
9 for the jury?

10 A Lieutenant Mike Jones.

11 Q Where are you employed?

12 A Spartanburg County Detention Center.

13 Q How long have you been with Spartanburg County?

14 A Since 1984.

15 Q What do you do currently with the jail?

16 A I'm a logistical lieutenant, and one my duties is
17 watching -- keeping the records for the inmate phone calls.

18 Q Have you always worked at the jail during your time?

19 A Yes.

20 Q Have you ever worked in booking?

21 A Yes.

22 Q Probably done every job in the jail?

23 A Just about.

24 Q Can you explain to me the procedure -- and I don't
25 know if it's changed since February 18th of 2018 or

1 February 20th of 2018 -- but how the jail -- how the phone
2 systems for inmates works roughly.

3 A Okay. When somebody comes to jail they're given a PIN
4 number through the system. When they use the phone they
5 have to use that PIN number to use the phone.

6 Q Okay. And what happens when you type in that PIN
7 number? Does it create a record of --

8 A Yes. It does.

9 Q All right. And what -- what type of information is
10 contained in it?

11 A It will show where the call was sent, what time it was
12 sent, the date, the phone number.

13 Q And who it went to?

14 A Yes.

15 Q Duration of call?

16 A Yes.

17 Q Is there a file that's generated --

18 A Yes.

19 Q -- for each specific call?

20 A Yes.

21 Q And that's the unique file number for each specific
22 call.

23 A Yes.

24 Q And do you have a system where you can print out, say,
25 all calls from an inmate that the sheriff's office has

1 possession of?

2 A Yes.

3 Q And is this something that's kept for every single
4 inmate regardless of how long they're there, how short
5 they're there, anything like that?

6 A Yes.

7 Q Did you have occasion to pull phone calls from Brian
8 Foster?

9 A Yes.

10 Q I'm going to show you State's Exhibit 74 and ask if
11 you can identify what that is.

12 A That's a -- it shows how many times he's called, the
13 numbers he called, the duration and what date it was, and
14 the numbers.

15 Q All right. And is that for Brian Foster?

16 A Yes.

17 Q When does it begin -- the first phone call?

18 A At the top right here it started in --

19 Q I think it might start on the bottom but --

20 A March 30th of -- no. It's February 20th of '18.

21 Q Okay. And you provided these calls to the solicitor's
22 office?

23 A Sir?

24 Q You provided the calls --

25 A Yes. I did.

Mike Jones

Direct examination by Mr. Smith

1 Q -- that's listed on here to the solicitor's office?

2 A Yes. I did.

3 Q Is that an accurate copy of the phone calls that are
4 logged by the sheriff's office?

5 A Yes, sir.

6 MR. SMITH: At this time we'd move State's Exhibit 74
7 into evidence.

8 MS. JONES: No objection to the list.

9 THE COURT: It's admitted.

10 (List of jail phone calls marked State's Exhibit No.
11 74.)

12 MR. SMITH: Permission to publish.

13 Q I'm just going to go over this roughly with you so
14 that the jury can understand what we're looking at. This
15 information is what? What's that name?

16 A That's the inmate's name that made the phone call.

17 Q All right. And what about this?

18 A That's the time it started and ended.

19 Q All right. And then the number here would be?

20 A The date.

21 Q Well.

22 A The time -- the time he was --

23 Q The duration of the call?

24 A The duration -- the duration, yes.

25 Q Okay. So something that says zeros across the board,

1 what does that mean about that call?

2 A That means nobody picked up on the line.

3 Q All right. What about this number here?

4 A Yes.

5 Q What is that?

6 A That's the number he called.

7 Q Okay.

8 THE COURT: Excuse me just a minute.

9 Let me ask you. Lieutenant, when you respond, please
10 use the microphone.

11 THE WITNESS: Okay.

12 Q Okay. So what -- let me see if I can zoom it in here
13 for you close enough -- too close.

14 What is this first number? This is the first completed
15 call, is that right?

16 A Yes.

17 Q What -- what is that number?

18 A (864)606-9568. That's the call he -- that's the call
19 he put into that number --

20 Q All right.

21 A -- from the booking desk.

22 Q Okay. So this means he's just been booked
23 essentially, right?

24 A Yes.

25 Q Later on if you continued to stay there is it -- would

Mike Jones

Direct examination by Mr. Smith

1 it say something different in this?

2 A Yes, it -- yes, it would.

3 Q So this indicates where the phone call is made from in
4 the jail?

5 A Correct.

6 Q All right. And the second number here, can you read
7 that?

8 A (864)357-2264.

9 Q So those would represent the first two phone calls
10 that Mr. Foster completed from the Spartanburg County
11 Detention Center.

12 A Correct.

13 Q Okay. I'm going to go -- I'm going to talk about that
14 other, this highlighted one up here. I'm going to hand you
15 a document or a disc and ask if you can identify what that
16 is.

17 A That's the disc that's got the phone calls on it.

18 Q This phone call that we're talking to that's got this
19 2K0210GC?

20 A Yes, sir.

21 Q All right. And how do you know that?

22 A Because I heard it this morning.

23 Q All right. And have you initialed the --

24 A Yes. I have.

25 Q -- the sleeve? All right.

1 MR. SMITH: Your Honor, at this time we're going to
2 introduce this as a court's exhibit with permission to play
3 it to the jury.

4 MS. JONES: Yes, sir. We are -- I'm trying to
5 decipher the phone number at the top.

6 MR. SMITH: 205-3708.

7 MS. JONES: Okay.

8 THE COURT: You may. Yes.

9 (C.D. marked Court's Exhibit No. 4.)

10 (Pause.)

11 MS. JONES: Apologize, Your Honor.

12 Q Is there an admonishment at the beginning that phone
13 calls can be recorded?

14 A Yes.

15 (Whereupon, the C.D. was played for the jury.)

16 Q Is that the standard prompt that you get at the
17 beginning?

18 A Yes.

19 Q And whose voice would that have been or is that the
20 person that --

21 A That would have been Mr. Foster's voice.

22 (Whereupon, the C.D. was played for the jury.)

23 Q Does the sheriff's office also maintain booking
24 cards --

25 A Yes.

1 Q -- for individuals?

2 A Yes.

3 Q What type of information is contained on a booking
4 card?

5 A The complete date of birth, social security number,
6 the charges, where they were -- what he's been charged
7 with, the location where the -- where his house is -- or
8 where he's found or the address.

9 Q All right. And are -- these are maintained for
10 everybody that's booked in?

11 A Yes.

12 Q No matter how serious or minor the offense --

13 A Yes.

14 Q -- anybody that comes into the jail?

15 A Yes. For everybody.

16 Q All right. Let me show you what's been marked as
17 State's Exhibit 76 and ask if you can identify what this
18 is.

19 A Yes. That's a booking card.

20 Q For who?

21 A For Brian Foster.

22 Q And what are the charges?

23 A Murder, possession of a weapon, four counts.

24 Q All right. And that is an accurate copy of his
25 booking card?

1 A Yes. It is.

2 MR. SMITH: Your Honor, at this time I'd move State's
3 Exhibit 76 into evidence.

4 MS. JONES: No objection.

5 THE COURT: It's admitted.

6 (Booking card marked State's Exhibit No. 76.)

7 Q Can you make out what he has listed for his address?

8 A Yes, sir. It's Old Canaan -- Old Canaan Campground
9 Road.

10 Q Cannons Campground or Old Canaan? Those are --

11 A Canaan -- Canaan.

12 Q All right. Can you see the number?

13 A It is 120 -- 142.

14 Q All right. What about this? What is this line?

15 A That's a number for that next of kin.

16 Q Okay. And what's the name on that?

17 A Ms. Johnson. It's (864)606-9568 or six zero.

18 Q All right. What was the number for the first call
19 that was made from the jail?

20 A (864)606-9568.

21 Q So it appears that his first call from the jail is
22 also his next of kin he lists as his godsister.

23 A Yes.

24 Q Kalia Johnson?

25 A Yes.

Mike Jones
Cross-examination by Ms. Jones

1 Q And that he put his address as 142 Old Canaan Road?

2 A Yes, sir.

3 Q Please answer any questions Ms. Jones has.

4 CROSS-EXAMINATION

5 BY MS. JONES

6 Q Lieutenant Jones, with regard to the PIN number that's
7 given an inmate, does it also -- well, by having a PIN
8 number it allows them to make a call, but it allows that
9 call to be identified back to them, correct?

10 A Yes, yes.

11 Q Does it also -- is it also connected to a payment
12 vendor or payment process? Because they are charged for
13 those --

14 A Yes.

15 Q -- calls, are they not?

16 A Yes, to whoever they're calling charge -- that's who
17 pays for it.

18 Q Okay. And with regard to calling, this says it took
19 place in booking. There are phones available at various
20 places within the detention center for the purpose of
21 allowing inmates to keep in touch with people.

22 A Well, in the booking area there's only three.

23 Q Okay. And within the pods there -- there's a station.
24 The pods are the housing areas that contain multiple cells.

25 A Yes.

1 Q They're divided up into -- the main jail's divided up
2 into six pods, and each pod has a number of cells in them.

3 A Yes.

4 Q Not every cell's got a phone, right? They have to
5 come out to a center console thing where there's multiple
6 phones around a little circular deal.

7 A Yes.

8 Q Correct?

9 A Yes.

10 Q Have you ever heard of anybody using anybody else's
11 PIN?

12 A Not in booking, but, yes, I have.

13 Q Okay. Thank you. That's all.

14 REDIRECT EXAMINATION

15 BY MR. SMITH

16 Q Are calls free in booking?

17 A The first phone call is free.

18 Q Why would you say that you've not heard of anybody
19 doing that in booking?

20 A Because there's just too many -- there's too many
21 officers standing there to let that happen.

22 MS. JONES: No further questions.

23 THE COURT: You may step down.

24 MR. SMITH: Can we approach for one second?

25 (Bench conference held off the record in the presence

1 of the jury but out of the hearing of the jury.)

2 MR. SMITH: Your Honor -- ladies and gentlemen of the
3 jury, the defense and I have agreed, and it's agreed and
4 stipulated, that without any additional proof of the fact
5 being necessary to the defendant, Brian Cornelius Foster,
6 has been previously been found guilty and convicted of a
7 criminal offense which is classified as a violent crime
8 pursuant to South Carolina Code of Laws, Section 16-1-60,
9 and classified as a felony offense pursuant to South
10 Carolina Code of Laws, Section 16-11-312.

11 Your Honor, at this time the state would rest.

12 THE COURT: All right. That is all of the testimony
13 or other evidence to be offered by the state, at least in
14 their case in chief.

15 Before we go further I've got some legal matters I'll
16 need to address with the lawyers. It should take only a
17 few minutes, and then we'll bring you back to continue.

18 So please retire to your jury room right now, but do
19 not begin any discussions of the case.

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

22 THE COURT: All right. Motions or other matters?

23 MS. JONES: Yes, sir, Your Honor.

24 On behalf of Mr. Foster at this point I make motions
25 to -- for directed verdict with regard to Indictment

1 No. 18-2087, the indictment for attempted murder, and it's
2 count two with victim of Thomas Koepke; 18-2088, attempted
3 murder of Darryl Lewis, and in second count; Joel Campbell,
4 Indictment No. 18-2089, and its second count.

5 with the attempted-murder statute the law -- the state
6 is required to present evidence of the specific intent to
7 kill. I think we are lacking in that in this particular
8 case.

9 And I also make a directed-verdict motion as to count
10 one -- I'm sorry -- as to Indictment 18-2086, the -- the
11 murder indictment for the lack of sufficiency of the
12 evidence, as well as count two.

13 MR. SMITH: Your Honor, as to the charge of murder
14 there is surveillance video that resembles Mr. Foster. Two
15 people have identified him as going inside the house with
16 Mr. Morris, hearing a gunshot and then a thud.

17 There are the clothing items that match are seen on
18 that surveillance video that are caught later by -- in the
19 neighboring yard of Jim Moore who also identified Mr.
20 Foster. Inside of that bag was found three weapons, a red
21 gun that is attached and mentioned by Joel Campbell as
22 being seen at the -- the 121 Old Canaan Road location.

23 Also, the murder weapon is inside of there, as well as
24 another weapon that matches the serial number from the gun
25 case that was taken off -- that was left on Mr. Morris'

1 bed.

2 I do believe there's certainly sufficient evidence for
3 the charge of murder to go forward.

4 As to the crime of attempted murder, while it is
5 sometimes difficult to get the specific intent of a
6 defendant, in this case he had just shot a man in the back
7 of the head, shot another man in the hip. And in the light
8 most favorable to the state, had stood over that second
9 individual and attempted to fire. And while the gun may
10 have not worked, his intent plus his actions would allow a
11 jury to find him guilty of attempted murder.

12 In the light most favorable to the state as well,
13 Mr. Koepke states that he pointed the gun towards the
14 direction where he knew that the other two were standing.

15 Joel Campbell indicates that he heard other shots
16 fired, at that point believed that they were coming in his
17 direction, though he ultimately wasn't totally sure about
18 that. But there -- we believe that there's sufficient
19 evidence to present it as an attempted murder charge, Your
20 Honor, all three individuals.

21 THE COURT: All right. Well, there is more than
22 sufficient evidence, both direct and substantial
23 circumstantial evidence, if found to be credible by the
24 jury from which they could reasonably find each of the
25 essential elements of each of the crimes that have been

1 alleged against the defendant, and could be; and therefore
2 he could be found guilty beyond a reasonable doubt; and
3 therefore your motion for a directed verdict as to each
4 indictment and as to each charge contained therein is
5 denied.

6 All right. What else?

7 MS. JONES: Does Your Honor want to proceed while the
8 jury is out with the colloquy with Mr. Foster?

9 THE COURT: I do.

10 Ms. Jones, have you discussed with Mr. Foster his
11 right to testify, as well as not testify?

12 MS. JONES: Yes, sir. We have had that conversation
13 many times.

14 THE COURT: And aside from Mr. Foster, do you have any
15 other witness to be called?

16 MS. JONES: No, sir. I do not.

17 THE COURT: All right. Mr. Foster, you've heard
18 Ms. Jones tell me that you and she have discussed your
19 right to testify, as well as not testify. Is that true?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: And you understand that any time you're
22 charged with a criminal offense, as you are today, you have
23 an absolute right to remain silent. And that means that
24 nobody can make you testify. Nobody can make you provide
25 any statement. Nobody can require that you answer any

1 questions as they relate to the charges that have been
2 brought against you, certainly not anything that might tend
3 to implicate you or to prove you guilty of any crime the
4 state claims that you have committed. So you have an
5 absolute right to remain silent.

6 You do not have to testify during the trial of this
7 case. You can still call another witness or other
8 witnesses and you still not take the witness stand and
9 testify, because you have an absolute right to remain
10 silent.

11 At the same time, if you wish to provide this jury
12 with any additional information either from yourself or
13 from any other witness, now is the only opportunity that
14 you're going to have to do that.

15 So you've got to make a decision whether or not you
16 will testify, whether or not you will call any other
17 witness or whether you prefer to remain silent and not
18 present any additional evidence that's already been
19 presented.

20 Do you understand that you have a right to remain
21 silent?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: Do you understand that you have a right to
24 take the witness stand and testify?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Do you understand have a right to call
2 witnesses or not call witnesses?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Do you understand that if you choose to
5 take the witness stand that you will have to answer not
6 only your lawyer's questions but you would have to answer
7 the prosecutor's questions to the extent that they're
8 relevant even if the responses to those questions might
9 tend to prove you guilty of some crime the state claims you
10 committed? Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you also understand that if you choose
13 not to testify that I will instruct the jury, as I believe
14 I already have, but I will do it again, that they can't
15 hold that against you? They can't consider it in any way,
16 because they'll be told that you don't have any burden to
17 prove anything, and therefore you don't have to testify,
18 and they can't hold that against you.

19 So do you understand that fact also?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: And have you and Ms. Jones discussed the
22 advantages and disadvantages of your testifying, as well as
23 your not testifying?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: And do you appreciate what those

1 advantages and disadvantages are?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: And have you had time to reflect upon your
4 decision as to whether or not you will testify?

5 MR. SMITH: Yes, sir, Your Honor.

6 THE COURT: And have you made that decision?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: Do you need discuss it with your lawyer
9 any further?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you have any questions you need to ask
12 me about it?

13 THE DEFENDANT: No, sir.

14 THE COURT: And what is your decision?

15 THE DEFENDANT: My decision is that I will not testify
16 because I feel like I don't get the best representation by
17 my attorney.

18 THE COURT: You've made a decision that you do not
19 wish to testify?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. And is that a decision that you've
22 made of your own free will and accord?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And are you satisfied with that decision?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has anybody forced you into it?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anybody pressured you into it?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anyone even suggested that that's the
6 decision that you ought to make?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you made that decision on your own?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: After having plenty of time to reflect
11 upon it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you're satisfied with it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Thank you.

16 And you don't have any other witness you wish to call?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. Let me see y'all just a minute.

19 (Bench conference held off the record.)

20 THE COURT: All right. Bring the jury back.

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

23 THE COURT: Ladies and gentlemen, as you know, the
24 state has rested in their presentation. So we'll now
25 proceed with any evidence that might be introduced in

1 addition by the defense.

2 Ms. Jones.

3 MS. JONES: Your Honor, at this point the defense
4 rests.

5 THE COURT: All right. So that is all of the
6 testimony and the other evidence received during the trial
7 of the case.

8 The last document that the prosecutor read from was
9 simply a stipulation of fact, and that document that I hold
10 in my hand is an exhibit. It will be in evidence, and so
11 you can read it when you go back to begin deliberations.

12 What remains to be done are the lawyers' final
13 summations, after which I'll instruct you on the law that's
14 applicable. And then you'll begin deliberations.

15 We can't get all of that done this afternoon. So
16 we're going to recess for the afternoon. We will resume
17 with the lawyers' summations, my instruction on the law and
18 your deliberations beginning at 9:30 in the morning.

19 So, again, keep in mind no discussions, no research,
20 no investigation, no media exposure.

21 Do have a good evening. Please report to your jury
22 room at 9:30 in the morning, 9:30 in the morning. Have a
23 good afternoon.

24 (The following takes place outside the presence of the
25 jury.)

1 (Stipulation marked State's Exhibit No. 77.)

2 THE COURT: All right. Anything else?

3 MR. SMITH: No, Your Honor.

4 THE COURT: Court in recess until 9:30 in the morning.

5 I need to see lawyers in chambers for a charge

6 discussion.

7 (Question from the jury marked Court's Exhibit No. 5.)

8 END OF PROCEEDINGS APRIL 10, 2019

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1 (Proceedings April 11, 2019)

2 (Transcript of jail call marked State's Exhibit No.
3 78.)

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Any matters to address before the jury is
7 brought in?

8 MS. JONES: Briefly, Your Honor.

9 At the close of the state's case yesterday in putting
10 the directed-verdict motions on the record I neglected to
11 mention the Indictment No. 18-2090, the possession of a
12 firearm or ammunition by a person convicted of a violent
13 crime.

14 At this point I'd make a motion for a directed verdict
15 on that. There's not been sufficient evidence of that
16 offense presented to submit it to the jury.

17 THE COURT: There appears to be. I'm satisfied there
18 is, so I'm going to deny that motion also.

19 Now, with regard to jury instructions, as to
20 Indictment 2086 -- that's the murder indictment -- I'll be
21 charging murder and possession of a firearm during the
22 commission.

23 As to Indictment 2087 -- that's attempted murder and
24 possession of a firearm -- that relates to Mr. Koepke. And
25 as to that indictment I'll be charging attempted murder and

1 assault and battery of a high and aggravated nature as a
2 lesser included offense.

3 Count two is possession of a firearm. The jury could
4 find the defendant guilty of that if the jury finds the
5 defendant to be either guilty of attempted murder or
6 assault and battery of a high and aggravated nature.

7 And Indictments 2088 and 89, those involve Mr. Lewis
8 and Mr. Campbell. As to those I'll be charging attempted
9 murder and assault and battery in the first degree as a
10 lesser included offense.

11 And then the remaining indictment is, as it is stated,
12 possession of a firearm by a person convicted of a violent
13 crime and a crime designated as a felony.

14 Any other requests for instruction?

15 MR. SMITH: None from the state, Your Honor.

16 MS. JONES: No, sir, Your Honor.

17 THE COURT: All right. Are we ready to proceed?

18 MS. JONES: Yes, sir.

19 MR. SMITH: Yes, sir.

20 THE COURT: All right. Bring them in, please.

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

23 THE COURT: Good morning, ladies and gentlemen.

24 As you know, when we recessed yesterday all of the
25 evidence has been received, and therefore what remained to

1 be done were the lawyers' final summations, after which
2 I'll instruct you on the law, and then you'll begin
3 deliberations.

4 The way that's accomplished, the state has the burden
5 of proof, so they go forward first in their final
6 summation, followed by defense counsel who gets to respond.
7 And then the state is permitted to make a brief reply
8 statement to the defense's statement.

9 So the state goes first, followed by the defense, and
10 then the state gets to provide a brief reply. Then I'll
11 instruct you on the law and then you'll begin
12 deliberations.

13 So please give the lawyers your attention now as they
14 give you their final summations.

15 Mr. Smith.

16 MR. SMITH: Thank you, Your Honor.

17 Good morning. I want to start where we left off
18 yesterday. It looked like some of y'all were struggling to
19 hear the jail call. I've got good news. We've got State's
20 Exhibit 78, which is going to be back there with you in the
21 jury room. I'm going to go over the parts that I think are
22 important as they are admissions of guilt in this case.

23 Absent all of the other information that we're going
24 to go over in closing arguments, this alone is his
25 admission of Brian Foster's guilt in this case.

1 I'll start. This phone call was made. This is
2 State's Exhibit 74 Mr. Jones talked about. This phone call
3 was made on 2/20 of 2018, February the 20th of 2018.

4 That's when Investigator Gaddy said that Brian Foster
5 was arrested on the charges that he is in court here today.
6 At 4:50 in the afternoon Investigator Gaddy said he got
7 notice that he'd been arrested about 1:30. He had his
8 interaction with the buccal swab.

9 Obviously, you can see Mr. Foster starts making calls
10 at about 3:30. So he's been able to make calls in the
11 booking area for about an hour when he makes the phone call
12 that we introduced to you.

13 He should have no knowledge assuming he's innocent of
14 what happened at the scene on Old Canaan Road. He
15 shouldn't know the kind of guns were involved; he shouldn't
16 know how severe people were injured; he shouldn't know the
17 proximity of Joe and Joel to the crime. That should be
18 information that he does not know.

19 Doesn't have the incident reports from the police.
20 Doesn't have any of that information, yet this is what he
21 said, this nine twenty part.

22 First off, I'm trying to figure out how the hell, God
23 damn, I got, damn, I got, I'm trying to figure out how, how
24 the hell I got what's her name, for what's her name, for
25 four counts of possession on a violent crime.

1 He's asking why he's charged with four counts of
2 possession of a weapon during a violent crime if only two
3 weapons was got. He is admitting that there's two weapons.
4 I think the weapons he's referring to are the ones that
5 were taken from Eric Morris' house, the SAR and the SCCY,
6 the SAR that has the light attached to it and the SCCY that
7 killed Eric Morris and shot Mr. Koepke.

8 He should not know that information if he is not
9 guilty of this crime. He is guilty of this crime.

10 I don't, I don't know, cuss, I don't really, I can't
11 really talk. He knows he's already said too much, trying
12 to back it up, but he can't help himself. well, cuss, I
13 don't know, cuss. They just on some other shit cause it's
14 not added up right just like if they saying they got now.
15 Okay. One person is dead and one person got hit. One
16 person is dead and the other person is hit. But the injury
17 is not severe. And okay. Okay. That's a murder and,
18 okay, that's attempted murder.

19 He is acknowledging that what happened to Eric Morris
20 is a murder and he's acknowledging what happened to Mr.
21 Koepke is a murder -- is an attempted murder. He's
22 acknowledging that.

23 But how can the other two be attempted murders if they
24 ain't even shot? You feel it. He is expressing first-hand
25 knowledge of this crime that he should not have unless he

1 was there, which he was.

2 Other caller says, yeah, you feel me. If they're not
3 shot at all, you feel me, if they, ain't none of them got
4 hit, you feel me, or was in the area, no nothing, you feel
5 me. How can that be attempted murder?

6 Mr. Foster the day he was arrested knew he was guilty
7 of murder and attempted murder. And I am going to ask that
8 you find him guilty of those charges for sure.

9 I'm going to explain to you why he doesn't know the
10 law and he is, in fact, guilty of attempted murder as to
11 Mr. Lewis and Mr. Campbell despite the fact that they were
12 not shot.

13 But these are terrible admissions if you're
14 Mr. Foster. There's no way he could know this information
15 outside of being present at the scene of Old Canaan. And
16 from the outdoor surveillance video you know there's only
17 one black male that walks up that -- that individual is
18 Mr. Foster that walks up that driveway. These are his
19 words, not being asked by the police, just talking to a
20 friend.

21 Now, one of the weird things about trials is you get
22 all of this information but you didn't even know what the
23 law is, what we have to prove in order to find him guilty.
24 So you actually have all of the information to know, but
25 you don't know how to apply it.

1 He's charged with murder. That's actually the easiest
2 one of the charges. Murder is simply the killing of
3 another person with malice aforethought, either expressed
4 or implied. Obviously, the killing goes without saying.

5 Malice aforethought. The judge will instruct you on
6 what malice means. Malice means a wicked heart set on
7 wrongdoing, evil intent, things like that, just like what
8 you would think, a common use of the word. Malicious, evil
9 intent, either expressed or implied.

10 One thing I want to clear up. There doesn't have to
11 be a plan that was drawn up months in advance or the night
12 before or anything like that.

13 Malice aforethought can simply be the act of raising a
14 gun and shooting somebody in the back of the head. At that
15 point you have a malicious intent when you're shooting that
16 person. Before you shot them, you had a wicked intent,
17 expressed or implied.

18 In this situation he's using a handgun to shoot
19 somebody in the back of the head. It goes without saying
20 that it's murder and he had a malicious intent.

21 Attempted murder is a little bit different. You have
22 three people -- Mr. Koepke, Mr. Campbell and Mr. Lewis --
23 that there's attempted murder charges with. And I'm going
24 to ask that you find him guilty of this charge. But you're
25 going to have other options on these charges as well.

1 But it's a person who, with intent to kill. So it
2 requires a specific intent to kill, meaning that they're
3 actually intending to kill. That's not even an element of
4 murder. Murder just requires that you act maliciously and
5 the death results.

6 So with intent to kill, attempts to kill another
7 person. Same thing. Malice aforethought, expressed or
8 implied. So it's very similar but with a slightly
9 different element.

10 One thing I think is important given the facts and
11 what we have in this case is it doesn't -- it's an attempt.
12 So when Mr. Koepke is talking about Mr. Foster standing
13 over him and pulling the trigger and the gun is not firing,
14 that is still an intent to kill him, whether the gun
15 cooperated, was out of ammo, jammed or whatever. That is
16 not a concern. It's his intentions combined with his
17 action, is what an attempted murder would be.

18 And I think in this case his intentions are very clear
19 given that Eric Morris is already dead inside of the house
20 shot in the back of the head prior to ever interacting with
21 the other three people. He already has murdered somebody.
22 So we know that he has an intention to kill at that point.

23 Now, as for Mr. Koepke, you're going to have another
24 option back in the jury to convict him of another charge if
25 you don't believe that we've sufficiently proven attempted

1 murder.

2 That charge is assault and battery of a high and
3 aggravated nature. What that requires is that a person
4 unlawfully injures another. In this case Mr. Koepke's
5 testified. You saw a picture. He was shot in the hip and
6 still has a bullet in his hip as he sits in the courtroom.

7 So we have an injury and then great bodily injury to
8 another person results. The judge is going to give you the
9 definition of great bodily injury, but I would think a
10 gunshot wound will fit it when you hear that. Or the act
11 is accomplished by means likely to produce death or great
12 bodily injury.

13 Handguns shoot people, they kill people, they cause
14 great bodily injury. That's what they do. He was shot
15 with a handgun. We know that.

16 So if you do have an issue about whether Mr. Foster
17 specifically intended to kill Mr. Koepke when he shot him
18 in the hip starring him down in the kitchen and then when
19 he attempted to shoot him out on the porch in the head
20 several times, I would ask you to find him guilty of this.
21 But I believe Mr. Koepke is clear that it was attempted
22 murder.

23 Now, for Mr. Campbell and Mr. Lewis, because they
24 weren't hit, you won't have the option of assault and
25 battery high and aggravated because they weren't injured,

1 and they admitted that on the stand. Nobody's contesting
2 otherwise.

3 So for those two you'll have the option of attempted
4 murder or assault and battery of a -- in the first degree.
5 And the way that we would prove that is that Mr. Foster
6 offered or attempted to injure another person with the
7 present ability to do so. It's an offer or attempt.
8 Doesn't have to be that he did it. It means that he could
9 have done it.

10 He had a gun out there. He was trying to or he
11 offered to do it. And that is accomplished by means likely
12 to produce death or great bodily injury.

13 In this case it's all -- everything is the use of a
14 handgun. That fits that.

15 Or occurred during the commission of a robbery.
16 Kidnapping and burglary don't apply, or theft, but the
17 motive in this case -- and I don't know if you've gathered
18 yet -- was to steal Mr. Morris' guns. The two guns that
19 are found in that backpack, the black guns that match the
20 serial number off of the bed that you've seen, the SCCY and
21 the SAR, the flashlight that you saw on the surveillance
22 video that we'll look again. Those were not found at the
23 scene. They were found in the book bag with Mr. Foster's
24 D.N.A.

25 So, again, that would be another way that he offered

1 or attempted to injure them. And he was in the process of
2 committing the robbery or kidnapping.

3 For possession of a weapon during a violent crime,
4 it's four counts of that attached to the murder and the
5 three attempted murders.

6 You can find him guilty of all of those. It doesn't
7 matter how many guns he possesses, like he says in the jail
8 call admitting he only had two. He really had three. What
9 he means is he attempted to use two during the commission,
10 because, as we know, the red gun didn't have bullets. It's
11 a .380. He didn't have any bullets for it. That's kinda
12 how the discussion gets into the house.

13 But each crime if it's committed with a gun, each
14 violent crime, if you find him guilty, you have to find him
15 guilty of the violent crime first. And then if you believe
16 he used a gun, then you simply find him guilty of
17 possession of a weapon during the commission of a violent
18 crime.

19 The judge will instruct you that murder, attempted
20 murder and assault and battery of a high and aggravated
21 nature are violent crimes. Assault and battery in the
22 first degree is not. So if you find him guilty of assault
23 and battery in the first degree you would not find him
24 guilty on the weapon charge, but you would on the other
25 three charges.

1 Finally, it's unlawful for a person who has been
2 convicted of a violent crime as defined by Section 16-1-60
3 that is classified as a felony offense to possess a firearm
4 or ammunition within the state.

5 I know we had the goofy thing at the end after we
6 called all the witnesses and I got up and read the thing
7 that y'all probably didn't understand what it was, what
8 that means is that the state and the defense have agreed,
9 which it's okay. We agree on some things. That he has
10 previously been convicted of a violent crime. The second
11 element of this crime is agreed to by the parties.

12 So in order to find him guilty of this charge you
13 would simply believe that Brian Foster possessed a weapon
14 on February 18th of 2018. The part about being previously
15 convicted has been agreed to. That's all that stipulation
16 meant. It will be back there in the jury room with you.

17 So now that you know the law I want to explain why
18 everything that happened inside that house, which we know
19 the event happened. Physical -- you know, Eric Morris'
20 body is found. The event no doubt happened.

21 As for the murder, we'll go over the surveillance
22 video inside the bedroom in little bit, but Jonathan Lawson
23 testified about the layout of the house.

24 This is State's Exhibit 61. He said that to the
25 right, where those clothes are hanging to the right, is

1 Mr. Morris' bedroom where we'll see the surveillance video.

2 This picture's taken from the perspective of the
3 living room where the pool table is. This is a -- you can
4 tell it's a small room just by the vent on the bottom.
5 Obviously, that wouldn't take up a gigantic amount of
6 space.

7 This is State's Exhibit 60. That's Eric Morris' feet
8 at the pool table. The picture would basically be taken
9 right behind where his feet are. So we're talking about
10 the video that you saw where two guys are smoking something
11 together, look like they're chit-chatting, looking at guns,
12 not a care in the world, looks like a friendly interaction.

13 He's -- Eric Morris is dead in less than 15 feet after
14 he leaves that room. Something like that. Shot in the
15 back of the head.

16 Remember what the -- what the vic -- what the living
17 people said. They heard no commotion beforehand. They
18 heard a gunshot and a thud.

19 It's consistent with what Dr. Wren said what happened.
20 Somebody suffered an injury like this, there is no doubt
21 that there was malice -- there was malice in this. There's
22 nothing more malicious.

23 Eric handed him his own murder weapon, the weapon that
24 would kill him. He loaded it and gave it to the man that
25 would murder him seconds later.

1 Obviously, there was nothing going on. This is --
2 this is a cold-blooded murder. There's nothing, nothing to
3 it other than murder.

4 As to the attempted murder, as I said, Mr. Koepke,
5 pulling the trigger, that, the gunshot alone should be
6 enough.

7 I'm sure the defense is -- based off their questions,
8 I think they're going to question Mr. Lewis and Mr.
9 Campbell's charges.

10 Mr. Foster was only challenging those charges on
11 February 20th. He already was fine with the murder and the
12 attempted murder, but he wasn't so sure because he didn't
13 maybe shoot at them or they weren't close enough or -- and
14 they certainly didn't get hit. So how can that be
15 attempted murder.

16 If you take Mr. Koepke's testimony -- and I understand
17 that their testimonies are not carbon copies of each other.
18 They're standing in different locations. Some of them are
19 a little bit maybe more prone to run into trouble than
20 others that were prone to run away, turn their backs,
21 things like that. They all have different perspectives.
22 And let's be honest. This is a very, very stressful
23 situation. They're talking about it a year later, and you
24 can see it. I mean, it -- it's real.

25 Mr. Koepke talks about that Brian Foster is standing

1 over him. He uses a left hand. Mr. Foster's right handed
2 based off some videos. And that he's pulling the trigger
3 and it's not working.

4 But we know that the SCCY is the gun that killed Mr.
5 Morris, and we know that it's the shell casing in the
6 kitchen, which is where Mr. Koepke says he starts getting
7 shot at, and we also know that when the SCCY is found in
8 the book bag that it's empty.

9 So what I think happened is that he shoots Eric Morris
10 in the back of the head like this and then he goes in and
11 he shoots Mr. Koepke. And when he's out on the porch, he's
12 out of ammo. He's dry firing the weapon.

13 And Mr. Koepke says he has an opportunity to run, and
14 he sees Mr. Foster turn over towards the other individual
15 as well.

16 Based off the fact that SCCY and the SAR are found
17 there, and the outdoor surveillance video I'll show you, he
18 has the -- the weapon with the light on as well. And at
19 some point he switched to that gun, and I believe he tried
20 to fire that gun at Darryl Lewis and Joel Campbell.

21 And we know that that gun was found in the condition
22 that Jonathan Lawson thought would be inoperable where it
23 couldn't continue to fire. He wasn't able to eject a round
24 out of it.

25 But when we look at the outdoor surveillance video

1 keep in mind the disparities. And I'll show you the guns.
2 But keep in mind the disparities with that light on the
3 bottom. It's a much larger gun than the murder weapon.
4 And you'll be able to see that when he runs around the side
5 of the house towards where Mr. Koepke is running to 106
6 that it's that larger gun.

7 But Darryl -- or excuse me -- Joel Campbell describes
8 that he sees Mr. Foster turn the gun on him. He runs away
9 and he hear gunshots. He was honest. He said I don't know
10 if he shot them at me.

11 But based off of what Mr. Koepke says and what Mr.
12 Campbell says I'd ask you to infer that he was attempting
13 to murder those two individuals, as well as despite the
14 fact that he, number one, he might not even have gotten the
15 shots off, but that doesn't change the fact that he was
16 trying to kill them but also if you believe he did get the
17 shots off that he -- he was trying to kill them or at the
18 very least that you find him guilty of the assault and
19 battery in the first degree if you think that he was trying
20 to scare them away or something like that.

21 Now, the important part of this case, given that we
22 know that the crime occurred, is how do we know that it's
23 Brian Foster that committed the crime. And that's what I'm
24 going to spend the rest of my time talking about, is how do
25 we know that it's Brian Foster.

1 Proximity to the house and familiarity with the
2 victim. The -- one of the last pieces of evidence that we
3 put in was his jail booking card in which he said he lived
4 at -- this is State's Exhibit 76 -- which he said he lived
5 at 142 Old Canaan. Mark Gaddy described 142 Old Canaan, I
6 believe, as this house. It's within sight of 121 Old
7 Canaan. I'm going to put the outdoor surveillance video in
8 here and show you some clips.

9 The outdoor surveillance video is consistent with
10 somebody who knows these people. The individual that shows
11 up at this house is unannounced, and I'll show you that
12 based off of this video, which is State's Exhibit 8.

13 You'll remember Joel Campbell said that Mr. Foster
14 said he'd been partying last night and had lost his cell
15 phone, didn't have an ability, didn't have the cell phone
16 communication.

17 We know that Mr. Foster lived at 121 Old Canaan with
18 Eric Morris and with Joe Lewis, Darryl Lewis. So we know
19 he knows how to get there. We know he knows who lives
20 there. And it would be safe to assume he's allowed to come
21 back. There wasn't any mention that they ended on bad
22 terms or anything like that.

23 Also of note -- get my times -- to the left of the
24 screen is down the street of Old Canaan going towards
25 Bayberry where Mr. Moore's residence is. It's also towards

1 142 Old Canaan. So he's coming from the direction where he
2 says he lives. He's walking. This is Roebuck. This is
3 not exactly walk to other people's, you know, neighborhoods
4 if you're not in the same neighborhood.

5 We know that this individual doesn't have a car in the
6 area because he doesn't jump into a car and leave. He ends
7 up running into Mr. Moore's yard asking him to call 9-1-1,
8 asking for that person that he called to give him a ride
9 out and ultimately he was going to get a ride with Mr.
10 Moore until the cops arrive.

11 Okay. We can see he goes to the front of the house
12 here. All right. We know that from the other testimony
13 that Eric's in the back of the house, and Joel. Eric and
14 Joel are in the back of the house working on the moped.

15 If he was announced, if they knew he was coming and
16 they communicated, he would have just dome -- come to the
17 back of the house. They're obviously sitting back out
18 there.

19 He goes to the front door. At this point I think he's
20 knocking on the door seeing if anybody's home. We know
21 Mr. Koepke's asleep. He doesn't hear it. And Mr. Foster
22 almost leaves -- almost leaves. I wish he had, because we
23 wouldn't be here today.

24 But as Joel Campbell tells you, he ended up seeing a
25 man in the driveway. And he said, hey, Eric, there's

1 somebody in the driveway, and then Eric called him over and
2 he came. That's exactly what happened that's on the
3 surveillance video.

4 And move forward a little bit. Something gets his
5 attention, and he comes back, consistent with what Joel
6 said about how he ended up in the back yard.

7 Second clip shows him walking in where you can see the
8 moccasins and the jeans that were found at Bayberry.

9 (Whereupon, the video was played for the jury.)

10 MR. SMITH: See where the moccasins, wearing socks
11 with them, blue jeans. walks to the back. Look at the
12 time, 2:30. We know that the 9-1-1 call came in at 3:27.
13 Robert Cheeks said that.

14 Joel interact -- Joel said he interacted around, I
15 think, 45 minutes, is what he said on the stand. Pretty
16 close, very, very close to what he's saying.

17 Show some other consistencies with the living victims'
18 stories. On clip four here Mr. Koepke said he'd been
19 asleep. He comes out of his -- of the house right there.

20 You can see the lanyard that he described after he
21 ran. You can see the Carolina hat that he described that's
22 found on the back porch where he was running for his life
23 trying to not be murdered.

24 He gets a pair of shoes. Looks like he gets a pair of
25 shoes out of his car and goes back inside the residence.

1 Looks like he might have looked back and seen that there
2 was people out there and going to handle whatever he's
3 doing and then come back out. 2:56:04, he makes his way
4 down the driveway and joins Joel, Eric and Mr. Foster. Joe
5 Lewis isn't here yet.

6 Clip six. Joe Lewis arrives, and the car that ends up
7 being parked out of the scene. You can tell by the
8 property that it goes quite a way to that hedge. Looks
9 like one of the officers testified about that as well, worn
10 there like they used this as a -- as a parking lot. He's
11 going in fast there. Looks like he's probably going
12 further deeper in towards the shed.

13 That's Mr. Lewis arriving. 2:57, so we're about 30
14 minutes away from the 9-1-1 call. I think that's about the
15 time that Mr. Lewis said he had interact with him. All of
16 these times roughly add up. Under the circumstances
17 they're very close.

18 Clip eight. The incident has happened. Eric Morris
19 is dead or dying. Mr. Koepke is shot, and he is running
20 towards 106 Old Canaan, which is to the right.

21 I want you to watch where Mr. Foster runs and compare
22 the determination that he runs at this moment to when he's
23 running away from the scene and maybe you can infer what he
24 was trying to do.

25 All right. Right here. See the gun? This is the one

1 with the light. You can look at the thickness of it. And
2 he runs directly to the area where Mr. Koepke is.
3 Mr. Koepke says he ran around the dog pen on the left side
4 of the house, and he ran to 106 Old Canaan, which is off to
5 right of this. That is exactly the direction that
6 Mr. Foster runs in a dead sprint. See right there? You
7 see that little bottom piece?

8 This is State's Exhibit 6. You can tell that bottom
9 piece is that gun. The SCCY is empty. He's done what he
10 could do to it. He's moved on to the next gun trying to
11 finish the job.

12 If they were just going out to target shoot they
13 didn't load 15 rounds or whatever the magazines hold. They
14 were just going to shoot.

15 He was trying -- Eric's trying to show off his new
16 gun. That's the gun he's carrying. You can see it with
17 the shadow there.

18 I'll show you the other one. It's not that gun. It's
19 not the red gun either. We know that. Doesn't have
20 bullets and it's not red. This gun is empty. He's using
21 that gun to try to kill Mr. Koepke. Thankfully, it didn't
22 function, but it doesn't change his intent. He runs off.
23 Don't see him again on this video. See him again on the
24 last video. This is the last you see him on the
25 surveillance.

1 He's going to come from the right side. Actually,
2 he's across the street. He's actually over on the side of
3 the road that 106 would be on. So, I mean, he went very
4 close to where Mr. Koepke ended up.

5 He's running. Now he starts walking. Okay. 142 Old
6 Canaan is like three houses down, which is where we think
7 he went.

8 It's the backpack issue. He's not wearing a backpack
9 in this. Right. You can see the surveillance video. He
10 doesn't arrive with a backpack; he doesn't leave this house
11 with a backpack.

12 So the backpack is not part of it at 121 Old Canaan.
13 I think he went to 142 Old Canaan, change his outfit. The
14 jacket that we have that's found over there is not the
15 jacket that he's wearing on this. It's a different jacket.
16 Loses the jacket. Probably down at the black Tupac shirt
17 that has the white hands on it, the black shirt with the
18 white hands, which is what Mr. Moore describes seeing him.

19 Change his appearance. He can't stay at 142 Old
20 Canaan. It's within eyesight of the location. It's also
21 his address.

22 He becomes a suspect in this case because somebody
23 giving his name. If he'd stayed at 142 Old Canaan he would
24 have been captured. He's gotta get out of there. So he
25 grabs the bag, throws the proceeds from the murder and the

1 robbery basically into the bag, along with the red gun,
2 whatever else was in there, and he sets off towards
3 Bayberry. We'll get to that later.

4 The thing -- the thing that's interesting about this
5 video is if this was a stranger, why would they have
6 treated him like this? why would we have shown up
7 unannounced, knocked on the front door, come around and
8 then been signaled to come over that he's familiar to them.
9 And the person that's familiar with them is Brian Foster
10 who had just lived with them, who knows him, knows him well
11 enough to invite him into his bedroom, knows him well
12 enough to hand him a loaded gun and walk out in front of
13 him. walks outta the room first and gets shot in the back
14 of the head. It's somebody he knows. It is not a random
15 stranger. This is Brian Foster.

16 Next you have the identification from the victims.
17 Shown out of a lineup, police explained the lineup to them.
18 Six-pack. You have the lineup that was done on two of the
19 individuals back here. Mr. Investigator Gaddy says it's
20 the same lineup done on all individuals.

21 Joe Lewis knows him beforehand. So whether Ms. Jones
22 wants to say the lineup is suggestive or not, this is a
23 person that's known to him. It's not even important to
24 pick him out of a lineup. He didn't know his name, but
25 he'd seen him before.

1 And then you've got Joel Campbell. He focuses on the
2 eyes, which I say makes sense if you look at Mr. Foster's
3 eyes and you look at his mug shot. He does have
4 distinctive eyes. But that's what Joel said, and Joel said
5 he picked it out immediately and didn't know who it was but
6 knew the man had pointed gun at him and had tried to kill
7 him.

8 Their identifications to me should be convincing.
9 The -- the lineup. Ms. Jones, I'm sure, is going to attack
10 it based on her questioning. It was made within an hour of
11 the crime out at the crime scene on the hood of a car on
12 the laptop. Wasn't done in a laboratory; wasn't done with
13 a days -- days to work on it. It was done fresh at the
14 crime scene.

15 They got a name of a potential suspect, and they were
16 trying to find him. They were trying to get that image in
17 front of the people while it was fresh in their minds.
18 They had just seen him within an hour. Look at the
19 affidavits and think of the testimony. And they pick him
20 out.

21 And also she's going to say it's suggested, Mr. Koepke
22 can't pick him out. So I don't know how you can have it
23 both ways where it's so suggestive that everybody would
24 know but one of them isn't able to pick it out. That's
25 real -- that's how real stories work. They're inconsistent

1 in some ways. That's just how it works.

2 I talked about the clothing on the video, the jeans
3 and the moccasins.

4 Let's go to the indoor surveillance video. It set up.
5 Only got to watch it once. I'm sure you have a total
6 recollection of everything on it with all of the details,
7 but I'm going to go over it with it just in case you
8 didn't.

9 Look at just how the two interact. Stranger or maybe
10 somebody who was his roommate weeks ago, somebody that he'd
11 just given pizza because he hadn't eaten in several days.

12 Everybody says that Eric liked to show his gun off and
13 wanted everybody to shoot it. He wanted Joel to shoot it
14 even though Joe doesn't want to shoot it. So it's
15 reasonable to infer that what they're doing is going out to
16 test fire his new gun. Wanted to look at the new gun with
17 the cool light on it.

18 All right. Look at that side profile, I mean, right
19 there. Pause if you need time. Looks like Brian Foster.
20 I mean, we're going to talk later about how this must have
21 been the worst day ever, all the coincidences that occurred
22 in this case -- the phone numbers and the face. It looks
23 like him, the D.N.A., the guns and the familiarity, the
24 proximity to the location. Everything matches. He's a
25 dark-skinned individual. You can tell that from -- from

1 this, similar to the complexion you can see he has here in
2 court.

3 Look at the -- the side profile there. Smoking.
4 Eric's going into the drawers, which we -- there was noted
5 that they were open. He pulls the -- the SAR and the SCCY
6 out of these drawers. There's the gun box that you find,
7 the state's exhibit.

8 All right. He's put a glove on. Y'all see that.
9 He's putting a glove on his right hand. Maybe he already
10 knows at this point that he's about to have the opportunity
11 to kill Eric Morris. I don't know exactly what. Very
12 suspicious I would say.

13 At this point maybe he's decided he's going to --
14 maybe he's decided he's going to do what he ends up doing.
15 Puts a glove on his hand.

16 Eric and him are passing back, talking. Right there
17 Eric's got the murder weapon in his hand, the little one.
18 Brian's looking at it.

19 Then he pulls out the -- the big one with the light.
20 Both of these came out of his drawers. They -- they are
21 his weapons.

22 There you can see the hair. Goes and looks out the
23 window. Don't know what that's about. Might already have
24 his plan in mind. Looks like a very, very friendly
25 conversation. Just looking at guns.

1 Now they're loading them. Didn't look like they put a
2 ton of rounds in there.

3 All right. Do you see which gun Brian has? It's the
4 little gun. That's the murder weapon. When they walk
5 outta this room Brian has the SCCY, Eric has the SAR, the
6 one with the light. There they go.

7 See if I can back it up and get a little shot of his
8 face here. You can see the profile and the skin
9 complexion. It looks like Mr. Foster. And Eric Morris
10 dies or gets shot in the back of the head, five or ten
11 seconds.

12 Look at the time. That's 3:25 in the afternoon. The
13 9-1-1 call comes in at 3:27 in the afternoon. He gets
14 shot. It all starts right after this. Friends going out
15 to shoot guns except one of them is not a friend. He's a
16 predator and he shoots Eric and kills him in his own house,
17 in his own living room, with his own gun.

18 All right. Now we move to Mr. Moore. On Bayberry,
19 Mr. Moore is sitting out back with his dogs smoking a
20 cigarette, because he doesn't smoke inside the house, when
21 a man comes crashing through his bamboo, the bamboo that's
22 his neighbor's bamboo on his property line that he talked
23 about up here. He actually talked about the back of the
24 yard, that area.

25 What does Mr. Moore do? He tries to help the guy.

1 Some sort of indication here that he made up seven. He
2 randomly guessed two 7-digit phone numbers correct that
3 Brian Foster just happens to call from jail like Mr. Moore
4 just pulled those outta thin air. I guess he should, you
5 know, play the lottery more often.

6 Mr. Moore tries to help everybody in this situation.
7 Mr. Foster comes up over the fence. He's out of breath;
8 he's scared. He says someone has shot and raped my mom, I
9 need help. What does Mr. Moore do? He goes inside. He
10 calls 9-1-1. He comes back out there with him.

11 Mr. Foster grabs the phone and takes it off. He
12 doesn't realize until he goes -- he follows around the
13 house and he hears him asking somebody to come pick him up
14 outta the neighborhood.

15 You can draw the implication that the person who
16 committed the crime at 121 is the person in Mr. Moore's
17 back yard. The reason you can do that, number one, is he
18 picks him out of a photo lineup.

19 Number two, there is no report of that incident. The
20 police didn't talk about they responded to another rape,
21 shooting in the area.

22 And then when Mr. Moore, after he realized that he's
23 not calling 9-1-1 and is asking for a ride out, he hears
24 police. And he says, okay, I'll drive you over there and
25 you can tell them what's happened and they can help you.

1 I'll give you a ride, because he said it was too far to
2 walk. And they go over to the upper side of his property
3 on this picture here, State's 32.

4 But then Clifford Junkins is pulling into the
5 driveway, and that person doesn't really want to see the
6 police. He's trying to get outta there. He doesn't want
7 the police. It's a made-up story. He's just trying to get
8 away.

9 what he does -- oh, and another thing that's important
10 to remember. He said he didn't have a backpack at that
11 time. I believe the backpack has actually already been
12 dumped. This is State's 38. It's been dumped here.

13 Mr. Foster could have seen Mr. Moore in back out yard
14 outside smoking a cigarette and saw him, because we know he
15 doesn't have a phone. He would have called Kalia Johnson
16 from his own phone. He would have texted Eric Morris, hey,
17 man, I'm at the front door, will you let me in. He would
18 have done any number of those things, but we know he
19 doesn't have a phone, or a working phone at the very least,
20 or he would have used it.

21 Maybe he sees Mr. Moore. He goes around the property
22 and plops in there and tells the story about his mom being
23 raped and shot.

24 But when he sees Clifford Junkins he takes off, and he
25 takes off in the direction of this shed. At that point Mr.

1 Moore realizes, okay, this is totally not on the up and up.
2 And then he helps police. He picks him out of a photo
3 lineup. He doesn't say anything about his facial hair,
4 which is what they're going to say is suggestive about the
5 lineup. He doesn't mention anything about that.

6 He mentions a young black male, that he had hair
7 consistent with what we see on the surveillance video and
8 that he had a black shirt with a hand on it. There's more
9 than a hand on it.

10 But, again, I want you consider the evidence as a
11 whole, not each individual thing. And maybe you could make
12 an argument against it, but the whole including the jail
13 phone call which started off in closing.

14 It's a black t-shirt with white writing or white
15 coloring and hands on it and it has Brian Foster's D.N.A.
16 on it.

17 So they get the canine out there. You heard Deputy
18 Moore talk about the canine leads them to there. They see
19 it under the outbuilding. It's pulled out. Clifford
20 Junkins stands by with it. Jonathan Lawson ends up
21 collecting it.

22 You'll have all of the items back there. Those items
23 were sent off for D.N.A. testing. The black Tupac shirt
24 has Brian Foster's D.N.A. in it, the major contributor, the
25 only person that she said that she would have been able to

1 run a profile on. And the green plaid boxers also have his
2 D.N.A. on them.

3 Also inside that are all three of the firearms.
4 They're in evidence. The red gun, which is mentioned by
5 Joel Campbell, has a prompt to start the entire sequence of
6 events that led to Eric Morris' murder.

7 All three of those in there with clothes with his
8 D.N.A. next door to the place where somebody picks him out
9 of a photo lineup, describes the t-shirt.

10 My contention is that he ran back to the backpack that
11 he'd already stored. He didn't want to have that with him.
12 It connects him to the crime. So if he's trying to get a
13 ride out he could leave that there, come back for it later.

14 But once Mr. Moore has see him in the black Tupac
15 shirt, once he has seen what outfit he's wearing and knows
16 that there's a police officer there and he's going to give
17 a description of him, he runs back there, strips the Tupac
18 shirt off and makes his way and is able to avoid the police
19 until the 20th. But that's why the black Tupac shirt is in
20 there, because Mr. Moore would be able to link him to that.
21 He needed to ditch that as well, because at that point he
22 would have figured out something was up.

23 You also find the blue jeans and the moccasins that
24 are shoved further up underneath the -- the outbuilding.

25 Mr. Foster cuts his hair prior to being apprehended.

1 Mr. Gaddy or Investigator Gaddy -- Investigator Gaddy says
2 that once warrants were signed on the 18th it would have
3 been publicized.

4 And actually I'm going to go back to State's Exhibit
5 78. Mr. Foster was aware that he was being sought. This
6 first paragraph here, the 3:08, he's talking about all of
7 the efforts that were made to find him and that the police
8 were surveilling him and his friends and his girls and
9 everything like that. That's -- that's what this paragraph
10 is about. You'll have it back there with you. I don't
11 want to read it to you because it -- I just don't want to.

12 But he knew, and so he cuts his hair off.
13 Investigator Gaddy says it's different. And then you look
14 at this line, yeah, but really I cut all my hair off for no
15 reason, looking crazy as hell. The reason he cut his hair
16 off is to not get caught. He got caught, and therefore he
17 cut off his hair for no reason because he's now in custody.
18 Couldn't be clearer.

19 He's -- it's timelessness of guilt. It's awareness
20 that he's being sought by the authorities and he's fleeing
21 in order to not get caught, to not be doing what we're
22 doing here today where he has to stand and answer for what
23 he did.

24 There's a final link I'd like to draw that I think you
25 should be firmly convinced of his guilt off a number of

1 these pieces individually, but that ties it all home, is
2 the phone numbers that Investigator Gaddy recovers off of
3 Jim Moore's phone.

4 Ms. Jones wanted to grill Investigator Gaddy on what
5 sequence of numbers were pressed. I -- I don't know what
6 the implication was other than Jim Moore pulled these out
7 of thin air, is the only thing I could think.

8 But he didn't. He even gave them his wife's number on
9 the list of -- of numbers that he called. He was just
10 trying to be helpful. He gave them the numbers that were
11 called. And the numbers that were called, Investigator
12 Gaddy testified to, were the first two phone calls that are
13 made by Brian Foster, 606-9568 and 357-2264.

14 It is a remarkable, remarkable coincidence that Brian
15 Foster is not the person on Jim Moore's porch who is the
16 person that killed Eric Morris and shot the others at Old
17 Canaan that that individual would happen to dial the two
18 numbers that Mr. Foster called as soon as he gets into the
19 jail.

20 It's also of note on his booking card, State's 76,
21 that he mentions as his next of kin Kalia Johnson whose
22 number is 606-9568. I don't know how that could be
23 possible if Brian Foster is not the individual on Mr.
24 Morris' back porch. It's -- I can't even fathom as a way
25 to explain that other than it is Brian Foster.

1 Eric Morris treated Brian Foster as a friend. He let
2 him stay with him when he was on hard times. He said he
3 didn't have a place to stay. He let him stay for a week.
4 He let him come over.

5 Apparently they were friends enough that he could come
6 over unannounced to his house, uninvited. He's invited
7 back to the back yard. He explains he hasn't eaten in
8 several days. He's provided pizza. They're just hanging
9 out.

10 All of the witnesses that testified about the
11 interaction said there was nothing out of the ordinary
12 other than Joel in hindsight that Mr. Foster had stared at
13 him, but nothing, nothing to put them on notice that this
14 was about to happen, because even Joel said it. Once he
15 saw Eric see him, he knew that he knew him and that it was
16 okay, there was nothing to be alarmed about, nothing outta
17 the ordinary.

18 Eric treated him as a friend, invited him into his
19 bedroom, invited him to hold his guns, look at his guns.
20 They loaded guns. He hands him one of his guns, trusting
21 enough to walk out in front of a man with a loaded gun.
22 And instead of being treated as a friend, he was treated as
23 prey or a predator -- Brian Foster who killed a man and
24 shot another man and shot at two other men so he could
25 steal two guns, guns that Eric Morris was willing to let

1 him shoot, guns that he could have come over and stolen or
2 whatever.

3 There's no reason for Eric Morris to be dead other
4 than Brian Foster wanted to kill him. He shot him in the
5 back of the head. You can't be more committed to killing
6 somebody than shooting them in the back of the head. It is
7 as cold as you can possibly be. He's a cold killer. He
8 stole the guns, and you should find him guilty of every
9 single crime that he's charged with because that is what he
10 did. Thank you.

11 THE COURT: Does any juror need a break before we
12 continue?

13 (No response.)

14 THE COURT: Okay. Ms. Jones.

15 MS. JONES: Thank you, Your Honor.

16 I think you've probably all picked up by now that I'm
17 not adept with the machine. I do it the old-fashioned way.
18 As a matter of fact, I'd actually prefer the screen light
19 be turned off and shut it down a little bit so I can make
20 eye contact with some of these folks.

21 (Pause.)

22 MS. JONES: Investigator Gaddy was the last sheriff's
23 deputy involved directly in the investigation in this case
24 that testified, and I talked to him about the lineup, about
25 the telephone, about various things.

1 The impression that I believe he left was a very
2 cocksure, confident person. He was talking about events
3 that occurred at those points within less than two hours of
4 this crime -- less than two hours. Yet with definition he
5 was saying, well, we had been given a name, he was our
6 suspect. And by dark that same day, a few hours later,
7 they had already signed arrest warrants on Brian Foster.

8 We know from other officers, several of them, that 121
9 Old Canaan when they arrived was chaos. I think it was
10 Robert Cheeks who arrived with Nepper. They were the first
11 ones to go into the home. They talked about chaos. They
12 talked about people being there giving them directions and
13 leading them up.

14 There's later discussion about chaos in the whole
15 neighborhood. They had to call out a whole bunch of people
16 at another address to settle down a disturbance.

17 There's an expression called the streets are talking.
18 Please remember that expression. When an event happens in
19 a neighborhood people know about it. People talk about it.
20 The details become public.

21 Now, in this particular case, as with any case, you
22 have an individual that's been charged with crimes. The
23 very first thing that you need to do is determine if
24 there's enough evidence, credible evidence, that's been
25 presented to you of who did that crime or if there's any

1 evidence that's inconsistent makes you question whether
2 that person did the crime.

3 Now, in this particular case you're going to have a
4 lineup, because I offered it into evidence. The state
5 didn't do that. It comes in as my exhibit.

6 That's an interesting factor all by itself. If
7 they're so happy and confident with this lineup, why didn't
8 even they show it to you? Had to be my exhibit. I put it
9 up here after Gaddy refused to admit that only having one
10 person with no facial hair makes it suggestive and
11 problematic. But he just couldn't admit.

12 Now, we know from the evidence Michael Koepke could
13 not pick anybody out. That is significant given the way
14 the evidence indicates he's probably the closest one to the
15 assailant during the event -- survival victim.

16 Mr. Lewis who never on direct or cross even attempted
17 to describe the clothing this person was wearing
18 describes -- he identifies on his affidavit. He identifies
19 the person he has chosen as the person who shot Eric
20 Morris. He doesn't identify that person as the person who
21 has shot Michael Koepke, or shot at he and Joel in the yard
22 as they were running away.

23 Now, also I -- remember as you go through this the
24 rest of the argument and, more importantly, your
25 deliberation with the almost 80 exhibits you're going to

1 have. If there is no credible -- which I'll explain what
2 that means -- evidence of something in the record, then it
3 doesn't exist or it didn't happen.

4 In considering this case and the charges against Brian
5 Foster in your jury room, you get back there and start
6 trying to speculate and answer questions about things that
7 are not there or were not said you -- your -- you have
8 deviated from your duty as a juror, and you've actually
9 stepped over to the state's side of this and you're trying
10 to do their job.

11 If there is something that is missing, something that
12 doesn't fit together, things that are inconsistent and
13 cause you concerns, you are talking about questions and
14 holes in the case, that's the point at which you have to
15 question whether the state has met their burden of proof
16 and have proved it beyond a reasonable doubt.

17 The clothing, the description of hair, facial, or head
18 hair, that -- that's important, and it goes to credibility.
19 And I referenced that word earlier.

20 The judge is going to charge you about what
21 credibility is. It means believability and it -- it talks
22 about or it is a term explaining whether all or part of a
23 witness who testifies can be believed.

24 If you for one reason or another -- whether the
25 ability to proceed, the emotional state at the time, a

1 motive or a bias or a prejudice -- you can factor all of
2 that in when you decide what part or portion of the eye
3 witnesses and other witnesses' testimonies you believe.

4 The judge is going to tell you that. That is
5 credibility. You have to make that determination. Is
6 something that a witness has said, does it ring true to you
7 or is there some reason that you don't think it's
8 believable or credible and you want to cast it aside.

9 Now, let's talk about the clothing. Mr. Campbell said
10 it was a gray hoodie. We know Mr. Lewis -- or you may
11 remember -- says nothing. Michael Koepke says it's a black
12 or a dark hoodie.

13 Well, you know from the video. You can see what it
14 is. It's a 2-tone jacket, it looks like, and there's a
15 hood.

16 The state has developed a theory they've advanced to
17 you in their argument, and they did it several times, but
18 this -- this is one point in which they did it, because
19 they've got to fix the problem with their evidence.

20 They know nobody describes that coat the right way,
21 and we know as soon as we saw it they weren't describing it
22 the right way. So now we've got to inject in a trip to the
23 stash house to correct the problem that was obvious,
24 because they have the gray hoodie that was found under the
25 outbuilding. They could have held it up to each one of

1 these people and said is this what you saw him wear. of
2 course they're not going to do that because they know their
3 descriptions were inaccurate. They know that's not what he
4 was wearing. So they develop a trip to the stash house.
5 And they did it again when they were talking about Mr.
6 Moore.

7 For the life of me I cannot figure out why if the
8 solicitor -- I don't know if I can dig it out. We've
9 already seen it once. If the solicitor really thinks this
10 black Tupac shirt is what Mr. Moore saw, why didn't he just
11 show it to him? It has been here the whole time.

12 They know how to do that. You walk up to a witness
13 and say, sir, look at this gun, do you recognize this gun.
14 why didn't they show it to him? They didn't show it to him
15 because they don't think he can identify it.

16 Mr. Moore told you the person in his back yard was
17 wearing a black t-shirt with a large white hand on it. Mr.
18 Moore seems very benevolent. He doesn't seem like he would
19 have problems distinguishing two t-shirts.

20 Every time I heard it described it kind of remind me
21 of the old Rolling Stones album that had the big mouth on
22 it with the tongue stuck out, just a big white hand on a
23 shirt.

24 But we're having to speculate. why do we have to
25 speculate about this when we could have shown him? They

1 could have proven whether that was the right shirt, and
 2 they didn't do it. So, but now because we didn't do that,
 3 either because they don't -- didn't think of it or they
 4 know he wouldn't identify the shirt, now we've -- we've got
 5 to invent another side trip.

6 And if I followed this right, because there was an
 7 awful lot of movement going on during this part of the
 8 argument allegedly by Brian Foster, he comes through the
 9 bamboo, according to Mr. Smith. They have all of this
 10 conversation, remembering that Mr. Moore said he was in the
 11 back yard for 20 minutes. Then, oh, no. The police are
 12 there. Oh, I'm sorry. I forgot my part.

13 Before he goes in the back yard way over here where he
 14 comes in through the bamboo, he's already been over here
 15 and stashed everything. He runs around to -- to the back
 16 yard on the other side, talks to Mr. Moore, tries to
 17 convince Mr. Moore to take him somewhere.

18 Then he hears the police, so he bolts over there,
 19 takes his t-shirt off. And what? Runs around the
 20 neighborhood with no shirt on? Why didn't they just show
 21 him the shirt?

22 And about the 20 minutes in the yard with Mr. Moore,
 23 my exchange with Officer Gaddy at some point in which it
 24 seemed like he was mugging to the audience -- at least to
 25 me in the way he was responding -- I asked him about the

1 telephone. The impression I got from the testimony was
2 this was -- or I know he said it's his home phone. We're
3 talking about a cordless portable like you walk outside,
4 like he said.

5 He was describing that Mr. Moore presented these phone
6 numbers to him as if they were calls that had been made on
7 that phone.

8 And I asked him a question about how -- how is that
9 phone different from a cell phone and got nowhere with that
10 with the witness. An old-fashioned -- not old-fashioned --
11 but the cordless phones, you get the last number redialed
12 but all the calls in.

13 We're not even really sure about this whole phone-call
14 business. That's how those phones work. They're not like
15 cell phones where you got in and out. But Officer Gaddy
16 knew he was right. He wasn't going to answer the question,
17 wouldn't consider anything other than his own position.

18 Now, with regard to the alleged side trip by
19 Mr. Foster to the building once or twice to drop the
20 clothes, we don't have any information that tells us one
21 way or the other, no pictures from the time or testimony
22 from Mr. Moore as to whether he could have even seen that.

23 This is the winter. We don't know if he was walking
24 the deck with his dogs, just enjoying the outside, smoking,
25 because he couldn't in the house.

1 Do you believe a man who is that aware of his
2 surroundings is going to have somebody running to and fro
3 on his fence line, back and forth, and back and forth, and
4 he doesn't know it?

5 But let's talk about the clothing. What does the
6 clothing presence under the outbuilding prove?

7 Number one, nobody saw who put it there. Okay.
8 There's an implication that because someone is identified
9 as being there close by, okay, they did it. But there's no
10 fingerprints on it. Remember that comment. We should ask
11 that question a lot more about a lot of things. We haven't
12 heard about fingerprints at all.

13 And the two items they can even say Mr. Foster has
14 ever worn before, one of which we -- up until they were
15 talked about and discovered, there was never a single word
16 by any of these witnesses or officers about even seeing it.

17 A pair of boxer shorts and, again, the Tupac shirt,
18 the shirt we could have nailed down with one simple
19 question. We don't know that that's the shirt he had on,
20 so, because we never asked him. So what is the
21 significance of a pair of boxers and a shirt we don't even
22 know when he last wore it being in the outbuilding?

23 Now, let's talk about the stash house or what I call
24 the stash house, their answer for their problems. If they
25 think he's running to and fro changing clothes, picking up

1 items, you know, I gotta go do this and I got -- I can't --
2 I don't have the back -- we know he don't have the pack
3 back at the house because the pictures show, I mean, the
4 video shows no back pack. So I gotta run and get a back
5 pack, the stash house, take this off, put this on.

6 well, if that's their theory, ladies and gentlemen --
7 and we heard them talk about it because they did it with
8 Mr. Morris' house, just go get a search warrant. Why
9 didn't we ever go to the stash house? Maybe that's where
10 the gray and blue or black coat is. But we don't know that
11 because we didn't do it.

12 The two items that the D.N.A. analyst says have D.N.A.
13 on it she -- she didn't testify how long it'd been there.
14 Does the presence of those two items prove a murder? If
15 Brian Foster is leaving items at other houses -- he's
16 partying the night before. You don't know how many people
17 are at the stash house. We have no idea how the bag gets
18 under the outbuilding or who put it there.

19 Now, in argument as attorneys we get to talk about the
20 presence of evidence, what we think it means, we also
21 should talk about the absence of evidence. Now, that's
22 something I'm going to do. I don't think they did it.

23 But we never heard anything at all about fingerprints,
24 not on the guns, the casings. It's simple, a simple
25 process.

1 we heard a lot about red -- got -- certainly had a lot
2 of pictures of them -- red substances on the floor, some of
3 which were not even tested, all of which never went to
4 the -- to the lab where the blood ladies that came in, the
5 serologists and D.N.A. They didn't tell you anything about
6 those.

7 So remember if there's no evidence of it, it doesn't
8 exist. But on these points you're not speculating what the
9 test would show, but you certainly can ask. With all the
10 resources that the sheriff's department and the solicitor's
11 office and SLED has, why didn't they nail some of that down
12 before warrants were signed on Brian Foster that night?

13 Now, you have heard the charges against Mr. Foster,
14 and correctly so. Mr. Smith told you about the concept of
15 the specific intent to kill.

16 The charges here are attempted murders that require a
17 specific intent to kill. In those three cases the judge is
18 going to offer you alternative, what we call, lesser
19 offenses, other crimes that after you do your -- if you do
20 your number one thing and get the answer that you believe
21 Brian Foster's responsible for all of this, then the next
22 thing you have to do is determine what it is he's
23 responsible for.

24 With the attempted murder cases -- Mr. Koepke --
25 you're going to have an option of assault and battery high

1 and aggravated, where if you believe that Mr. Foster
2 committed -- excuse me -- inflicted a great bodily injury
3 on a person or/and committed an assault, then you can
4 convict him of the lesser charge of assault and battery of
5 a high and aggravated nature.

6 with regard to the other two gentlemen, the
7 alternative would be assault and battery in the first
8 degree if you believe Mr. Foster offered or attempted to
9 injure another person with the present ability to do so.

10 Now, that particular point takes me to the issue of
11 the guns and the shooting on the deck, specifically. If
12 you will remember three people are outside. Two have gone
13 inside. They hear a sound. Two sounds actually. Shot and
14 another sound. And they are consistent in saying the three
15 people in the back yard or the garage or the deck,
16 depending on who they are, how they describe it, that they
17 all reacted.

18 Mr. Smith made a comment that reminded me of a thought
19 I had had as well. At that point in time this group, this
20 cluster of people, kind of divided into two. You had the
21 fight-and-flight group or you had the aid-and-retreat
22 group. And that's significant as to the perception they
23 have, the ability to know what happened from that point on.

24 Mr. Koepke says he goes up and goes in. First,
25 Mr. Campbell says, well, I was going to go there, but we

1 know ultimately he didn't. He actually ran and fell in the
2 mud.

3 Mr. Lewis says as soon as he hears the shot he's over
4 beside his car. He's moving away. That, again, is
5 important as to their perception, their ability to see and
6 be aware of anything that happens on the deck.

7 Now, we know in this case we have two shell casings
8 and one recovered bullet -- two shell casings. Now, let me
9 preface with this comment. If we don't have it and there's
10 not testimony about it, it's not there. That means two
11 shots. There's no indication of any casings being ejected
12 and discovered, recovered, tagged and scaled and all of
13 that from on the deck. The only two, one's by the pool
14 table, one's in the kitchen floor.

15 I asked the SLED agent, the gun guy, these guns are
16 automatics, semiautomatics. They eject their casings.
17 These are not revolvers that carry them through and leave
18 them in there until you take them out. The presence of the
19 casings tells you where a shot is fired. There is no
20 casing on the back deck.

21 Now, Mr. Koepke is not really certain from listening
22 to his testimony. We know he got shot, but I'm not sure he
23 even knows where he got shot. The evidence points to him
24 being shot in the kitchen because that's where the casing
25 is. And we know how it works. At some point he falls onto

1 the deck. Does he fall when he's coming through the
2 doorway as he gets hit or does he fall over the doorway?
3 Some doorways are raised.

4 And/but he falls down. But at that point he indicates
5 the assailant continues trying to shoot at him, and then he
6 sees the assailant turn and shoot at Mr. Campbell and
7 Mr. Lewis who are retreating and not looking back.

8 Well, you're going to have this picture, a courtesy of
9 the state, but I'm going to use it to make a point.

10 Mr. Koepke cannot know where Darryl Lewis are or Joe
11 Campbell when he's down on the deck, contrary to what he
12 thinks, because he cannot see them from the deck.

13 If he is down on the deck his ability to view where
14 they are is completely obstructed. He had no idea where
15 they were.

16 He might have known where they were right before he
17 went down, but that doesn't mean he knew where they were.
18 As he says, Mr. Foster's waving the gun around, going to
19 shoot at them. He does not ever say that he shoots in that
20 direction. He says he lifts the gun up and points. But he
21 does not know where they are.

22 Mr. Koepke also was very definite in his recollection
23 that he only heard two shots and he only saw one gun.

24 Mr. Smith has mentioned many times how distinctively
25 different these two guns are. Mr. Koepke told you he was a

1 hunter and he had had courses in hunter safety and gun
2 safety. That's why he thought -- somebody had been hurt,
3 and he was going to go help. But he only saw one gun.

4 At the beginning of the case I asked you to compare
5 and contrast the witnesses and the evidence, and I told you
6 then, and I remind you now, that your duty is not to solve
7 the problems.

8 If in your deliberation you get to a point where you
9 are stuck and you cannot determine on a fact an issue or an
10 element or a charge here, you've got to resolve that doubt
11 in favor of Mr. Foster.

12 During the trial when the veteran video was up
13 starting to play we had Investigator Letterman, the
14 computer guy, up here. As it started to play Mr. Smith
15 started asking questions as though he wanted him to narrate
16 like he did in here today. You probably might -- you might
17 not remember this, but I stood up and I told the judge I
18 object, Your Honor. The jury has the video. They don't
19 need a narrator. They can judge it themselves.

20 At this point in time after the judge's charge you're
21 going to have the videos. In Mr. Smith's argument, because
22 it is not evidence, he is permitted to give his opinion
23 about what he's seeing. He's only suggesting things to
24 you.

25 The Court didn't let Letterman do that. You should

1 not be guided by the solicitor. You're going to have the
2 videos. You watch the videos and you draw your
3 conclusions, remembering the state has the burden of proof
4 on every charge, every part of every charge. And any
5 problems you have and inconsistencies and matters you
6 cannot resolve, you have to resolve those in favor of
7 Mr. Foster.

8 You've been attentive, and if you will abide by your
9 oath you will have satisfied your duty to Mr. Foster. And
10 he thanks you.

11 THE COURT: Mr. Smith.

12 MR. SMITH: I have no problem with y'all looking at
13 all of the exhibits. I want you to look at them and make
14 whatever conclusions you want. I'm simply saying what I've
15 seen after reviewing the case and watching them a number of
16 times.

17 I'm not going to respond individually to some of her
18 points because I'm going to give y'all enough credit and
19 common sense that you can work with your way through
20 something.

21 I want to talk about what the judge is going to tell
22 you about reasonable doubt. One of the things that he will
23 describe, one of the ways to describe it, is the type that
24 leaves you firmly convinced, firmly convinced of his guilt,
25 not beyond all possible doubt or that a hundred percent but

1 firmly convinced.

2 I think that when you look at the evidence in its
3 totality -- I want you to look at evidence in its totality.
4 She goes through. She has a lot to explain -- lineup. Got
5 an explanation for that. D.N.A. evidence. Explains that.
6 Guns. Got an explanation for that. Tons to explain.

7 One of the solicitors across the hall from me that's
8 kinda raised me as a solicitor has told me about the
9 worst-day-ever defense.

10 You would have to believe that Brian Foster is the
11 single most unlucky person in the history of the world to
12 believe that he's not guilty of this crime.

13 You'd have to believe that two individuals picked him
14 out of a lineup. One of them who knows him, has known him,
15 has seen him before picks him out of a lineup an hour after
16 the crime.

17 The lineup is so suggestive that Mr. Koepke can't pick
18 him out. So it's like having your cake and eat it too. If
19 it's so suggestive that he should throw out their lineups
20 but, oh, yeah, Koepke couldn't identify him, so it's
21 clearly not Foster. You'd have to believe that they're all
22 mistaken and that the police somehow convinced them to pick
23 out Brian Foster.

24 You then have to believe that there's an individual on
25 video camera that looks like Brian Foster on the