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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Georgetown County Court of General Sessions
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2022-000671

The State of South Carolina.....Respondent

v.

Terron G. Dizzley.....Appellant

**RECORD ON APPEAL
VOLUME II**

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1 courtroom. The State may calls its next witness. Ms. Bailey.

2 MS. BAILEY: Thank you, Your Honor. The State calls
3 Willie Stanley.

4 THE COURT: Come forward, sir, to my left, and be sworn
5 in.

6 THE CLERK: Sir, please state your full name for the
7 jury.

8 MR. STANLEY: Willie Stanley.

9 THE CLERK: And please spell your name for the Court.

10 MR. STANLEY: W-I-L-L-I-E, S-T-A-N-L-E-Y.

11 THE CLERK: Thank you.

12 Whereupon, Willie Stanley was called to the stand, duly
13 sworn by the clerk and testified as follows:

14 THE CLERK: Thank you. Please be seated.

15 THE COURT: All right, counsel, your witness.

16 MS. BAILEY: Thank you, Your Honor.

17 THE COURT: Yes, ma'am.

18 DIRECT EXAMINATION

19 BY MS. BAILEY:

20 Q Mr. Stanley, do you have a nickname?

21 A Yes.

22 Q What's that?

23 A Dash.

24 Q Did you know Aundry Evans, Jr.?

25 A Yes.

- 1 Q And in what capacity did you know him?
- 2 A A friend.
- 3 Q How long had you known him?
- 4 A Probably about three or four years.
- 5 Q Do you know Terron Dizzley?
- 6 A No.
- 7 Q Have you, have you ever met him before?
- 8 A No.
- 9 Q Where were you on December 1st, 2008?
- 10 A At the Paradise Club.
- 11 Q Did anything remarkable happen that night?
- 12 A Yes. Aundry Evans got shot.
- 13 Q Okay. And tell us about that.
- 14 A It was oyster night where they cook oyster or whatever,
- 15 and we was watching the game playing pool and the door kept
- 16 opening and closing. Open like probably two or three times.
- 17 Then the last time it opened someone came in with a gun with a
- 18 mask on and went to Aundry and shot Aundry.
- 19 Q The person that came in with the gun and the mask, can
- 20 you describe them in more detail?
- 21 A I'd say about medium height, a little -- I mean, this was
- 22 a couple of years ago. So maybe, you know, smaller than me.
- 23 Q Okay. So he was shorter than you?
- 24 A Yeah.
- 25 Q Was he smaller in weight than you or bigger?

1 A He was smaller in weight.

2 Q Was he white, black or Hispanic?

3 A All I could see was through the mask or whatever. He was
4 black.

5 Q Did he have a real dark complexion, real light
6 complexion, medium? Can you just kind of generally describe
7 his complexion to the best you can?

8 A I guess a medium -- it wasn't like a medium complexion.

9 Q When that person came in the door what did he do?

10 A Went straight to Aundry.

11 Q He went straight to Aundry. Did you see the gun in his
12 hand, in the shooter's hand?

13 A Yeah.

14 Q Was it a rifle?

15 A No. It was a handgun.

16 Q It was a handgun. Was it a shotgun?

17 A No.

18 Q Okay. Could you see if it had a revolver on it?

19 A I really couldn't tell. It was a handgun.

20 Q Did you hear the shooter say anything as he approached
21 Aundry?

22 A He was like, "You think it's a game? I ain't forgot
23 about my money or whatever."

24 Q Did you see --

25 MR. BARR: Your Honor, we object and move to strike.

1 THE COURT: Objection is noted. The Court would make the
2 same ruling. You may proceed.

3 MS. BAILEY: Thank you, Your Honor.

4 BY MS. BAILEY:

5 Q Did you see the gun go off?

6 A Yeah. I heard it.

7 Q You heard the gun go off. How many shots did you hear?

8 A Probably from three to five, range from three to five
9 shots.

10 Q Did you hear any shots outside?

11 A Yeah.

12 Q How many shots outside did you hear?

13 A I really can't remember how many shots I heard outside.
14 Probably --

15 Q Okay. But you did hear gunfire outside the club?

16 A Yeah.

17 Q Did you see anyone else inside the club who had a gun
18 except for the shooter?

19 A No. Just one.

20 Q When you heard the first shot, what did you do?

21 A I got under the pool table.

22 Q Okay. And when did you come out from under the pool
23 table?

24 A Maybe I'd say about five minutes after the shooting.

25 Q What did you do when you got out from under the pool

1 table?

2 A Called 911.

3 Q Did you -- when that door that the shooter entered flew
4 open, did you see anything going on outside?

5 A No. I couldn't see nothing going on outside.

6 Q Okay. Did you ever go outside?

7 A After, after, after the 911 call.

8 Q All right. So after the 911 call you went outside. I'm
9 going to show you what's been previously marked as State's
10 Exhibit 12 for identification only. Have you had an
11 opportunity to review the contents of this?

12 A Yes.

13 Q Can you tell the jury what it is?

14 A My 911 call.

15 Q Okay. What state of mind were you in when you called
16 911?

17 A Really just in shock or just like excited, I mean.

18 Q Were you calm, cool and collected?

19 A No.

20 Q Okay. Did you use some foul language?

21 A I might did. Yeah.

22 MS. BAILEY: Your Honor, at this time the State would
23 seek to introduce State's Exhibit Seven [sic] into evidence
24 and publish for the jury.

25 THE COURT: Any objections?

1 MR. BARR: No, sir.

2 THE COURT: Without objections it'll be admitted. You
3 may publish the recording.

4 (State's Exhibit Number 12 [CD-911 Call] admitted into
5 evidence and appropriately marked.)

6 (State's Exhibit Number 12 played in open court.)

7 BY MS. BAILEY:

8 Q At that point did you talk anymore to 911?

9 A No.

10 Q Now, to clarify, on that recording you said there was two
11 or three people. How many people did you actually see?

12 A I saw one person. Somebody was telling me in the
13 background that there was some more people outside.

14 Q Okay. After you called 911 what did you do next?

15 A Attended Aundry.

16 Q You attended to Aundry. Who else was attending to
17 Aundry?

18 A Maurice.

19 Q Was anybody else around?

20 A I really can't remember like who all was around after the
21 fact.

22 Q Okay. Did you hear Aundry make any statements?

23 A Yes.

24 Q Okay. Before we go into what those were, did Aundry seem
25 to be clear headed?

1 A I mean, he been, you know, in shock.

2 Q So did he seem in his right mind though?

3 A Yeah.

4 Q Okay. And what -- how did he seem to you?

5 A Like he been about to die. I mean, he, he was in his
6 right mind. He was talking.

7 Q All right. And what statements did he make?

8 A Say, "Little D got me."

9 Q Can you repeat that?

10 A "Little D got me."

11 Q Did you know who he was talking about?

12 A No, ma'am.

13 MR. BARR: Your Honor, our objection is still noted for
14 the record; right?

15 THE COURT: Objection is noted. You may proceed.

16 MS. BAILEY: Thank you, Your Honor.

17 BY MS. BAILEY:

18 Q I'm going to show the jury what's been previously marked
19 as State's Exhibit Number Eight and entered into evidence, and
20 it's tough to see on that screen you've got up there. So I'm
21 going to hand you a copy of the actual picture. Do you
22 recognize that?

23 A Yeah. Yes.

24 Q What is that?

25 A Paradise.

1 Q That's the Paradise Club?

2 A Yes, ma'am.

3 Q All right. Where were you standing when this all

4 happened?

5 A At this pool -- at the pool table to the right.

6 Q Okay. As we look at it today, it's the pool table on the

7 right?

8 A Uh-huh. Yes.

9 Q Okay. Who was standing near you? Do you remember?

10 A It was me, Maurice and -- just me and Maurice at this

11 pool table over here and the guy who was playing pool.

12 Q Okay. Do you know his name?

13 A I don't -- really don't know his name.

14 Q All right. Where was Aundry Evans, Jr., standing?

15 A He was at this table, at the table to the left like in

16 front of the table.

17 Q Where did the shooter come from?

18 A From the door, the back door.

19 Q When you say the back door where is that in relation to

20 this photograph?

21 A Behind all of this.

22 Q Okay.

23 A Going this way.

24 Q Would it -- would the person taking the photograph be

25 standing near the door?

1 A Yes.

2 Q All right. Can you describe the path that the shooter
3 would have taken from the time they entered the club until
4 they shot Aundry?

5 A Came through the door and went around the, the, the
6 corner.

7 Q When you say the corner --

8 A The corner of this post.

9 Q The wooden post? Okay. Thank you. And did the shooter
10 leave through the same door --

11 A Yes.

12 Q -- that he came in? Which pool table did you hide under?

13 A Table to the right.

14 Q Do you know how many people Aundry Evans, Jr., knew that
15 he referred to as D or Little D?

16 A No.

17 Q You don't know?

18 A No, ma'am.

19 Q Okay.

20 MS. BAILEY: Beg the Court's indulgence.

21 THE COURT: Yes, ma'am.

22 MS. BAILEY: No further questions for this witness at
23 this time, Your Honor.

24 THE COURT: Mr. Barr, your witness.

25 MR. BARR: Thank you, Judge.

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. BARR:

4 Q Mr. Stanley, on the day that the shooting took place, I
5 believe you would have been probably the first person that got
6 to Aundry after he was shot?

7 A I wasn't the first person.

8 Q Who was the first person to get to him?

9 A Maurice.

10 Q Maurice. Did you see when he was shot?

11 A I didn't see when he got shot. I heard shots. I didn't
12 know he was shot.

13 Q Now, you gave the police a statement on the 11th of
14 December of 2008. Do you recall that statement?

15 A Yes. True. Well, yeah.

16 Q Now, didn't you tell the officers that the shooter came
17 in, stood up over Aundry and shot him?

18 A I don't recall that.

19 Q Well --

20 A I mean, I might have said it. It was years ago. I don't
21 -- I said I don't recall. If it's on there I said it.

22 Q But this is your statement though, and you did say that?

23 A If that's my statement.

24 Q (As read), "He stood up over him and he shot him." Now,
25 what was Aundry doing on the floor for the man to stand up

1 over and shoot him?

2 A Excuse me?

3 Q Was Aundry on the floor? You said the shooter came in,
4 stood up over him and shot him. How did he get on the floor?

5 A I guess when he got shot.

6 Q Well, I thought you said here that he stood up over him
7 and shot him.

8 A I mean, it was years ago. I don't recall saying that,
9 but if you say that's my statement I said that. That he --

10 Q You recall listening to the 911 tape a few minutes ago?
11 You, you remember that; right?

12 A Yes.

13 Q Now, after Aundry was shot and the gunman left, did you
14 go check on him?

15 A After I talked to 911.

16 Q So who's the first person that got to Aundry?

17 A Maurice.

18 Q Maurice, and Maurice told you to call 911?

19 A Yes.

20 Q And how did you call 911?

21 A My cell phone.

22 Q So you had not checked on Aundry when you called 911?

23 A I checked on him after I called 911.

24 Q You indicated that you only saw one person with the
25 shooter, or what did you -- how many, how many fellows were

1 there?

2 A I saw one person.

3 Q You saw one, but now, you, you've now found out that
4 there were several of them.

5 MS. BAILEY: Objection, Your Honor. Calls for hearsay.
6 He's testified as to his personal knowledge already.

7 Q You, you saw one?

8 A Yes.

9 Q Did you see any with a shotgun?

10 A No.

11 Q Pardon me?

12 A No.

13 Q How many shots you heard?

14 A Inside approximately from three to five.

15 Q How many outside you heard?

16 A I really can't remember how much I heard outside.

17 Q But you heard some outside?

18 A Yes.

19 Q All right. Now, of course, you don't know who's doing
20 the shooting outside; do you?

21 A No.

22 Q But you heard the shots?

23 A Yes.

24 Q Did it sound like a rifle, pistol, shotgun or what?

25 A I really can't tell what kind of gun it was.

1 Q From the sound of the shooting outside, you couldn't tell
2 what was being shot?

3 A No.

4 MS. BAILEY: Objection, Your Honor. He's already
5 answered he's doesn't know.

6 THE COURT: Beg your pardon?

7 MR. BARR: What's, what's the objection?

8 MS. BAILEY: The objection is --

9 THE COURT: Address the Court, Mr. Barr. What's your
10 objection?

11 MS. BAILEY: The witness has already indicated he doesn't
12 know the answer to that question.

13 THE COURT: So your objection is it was asked and
14 answered already?

15 MS. BAILEY: Yes.

16 THE COURT: All right. Mr. Barr, I'll allow you to ask
17 it one more time.

18 MR. BARR: Judge, I'll move on.

19 BY MR. BARR:

20 Q You don't have a gun; do you?

21 A No.

22 Q Have you ever fired one?

23 A Yes.

24 Q And have you ever fired a shotgun?

25 A Yes.

1 Q And do you know what it sounds like when you hear a
2 shotgun fired?

3 A Yeah.

4 Q And you ever fired a pistol?

5 A Yes.

6 Q Have you ever fired a rifle?

7 A Yes.

8 Q You know what a rifle sounds like when you shoot it?

9 A Yes.

10 Q Know what a pistol sounds like. Now, you do admit that
11 there was shooting going on outside?

12 A Yes.

13 Q And you could hear it?

14 A Yes.

15 Q But you couldn't tell whether it was a rifle being shot,
16 a shotgun or a pistol?

17 A No. I could not tell what was it.

18 Q Can you tell us how many shots you heard outside?

19 A I can't remember.

20 Q You can't remember. Were you a friend of Aundry's?

21 A Yes.

22 Q Now, on direct examination just a few minutes ago when
23 you were testifying in response to a question that you were
24 asked by the Prosecutor, you said something about the gunman
25 coming in and saying something about money. Do you remember

1 saying that?

2 A Yes.

3 Q Now, you, you, you, you -- in the statement that you gave
4 the police on the 11th, you didn't tell them anything about
5 any gunman coming in asking about money; did you?

6 A I don't know. It was years ago. I don't know.

7 Q Sir?

8 A I don't know. It was years ago. I don't know what I --
9 I remember what I said, but I can't remember if I told them
10 about it or not.

11 Q Well, was that the truth?

12 A It was the truth.

13 Q Well, they asked you for your statement. The only thing
14 you told them was that he was saying, "He shot me," something
15 about Little D. That's your statement?

16 A Yes.

17 Q Is that the truth?

18 A Yes.

19 Q Now, I believe you said yesterday when I asked you you
20 hadn't cut a, you hadn't cut a deal with the Solicitor's
21 Office regarding your testimony.

22 A No. We didn't cut a deal.

23 Q And you hadn't made a promise to testify for them in this
24 case?

25 A It wasn't a promise, an agreement.

1 Q No agreement?

2 A It was an agreement.

3 Q Oh, there is an agreement. What's the agreement for?

4 A If I testify truthfully that he could talk to the Judge
5 to be lenient on my case.

6 Q Call the Judge to be truthfully -- testify truthfully
7 call the Judge to be lenient on your case?

8 A No. Not cause the Judge -- thinking -- ask the Judge.

9 Q To be lenient on your case? What kind of case?

10 A It's a burglary.

11 Q Burglary. You mean like breaking in somebody's house?

12 A Yes.

13 Q A little bit more to it; right?

14 A Huh?

15 Q There's some more to it other than just breaking in
16 people's houses. Stealing too; isn't it?

17 A Burglary second degree.

18 Q Pardon me?

19 A Burglary second degree.

20 Q No. It was some grand larceny, too; right? You went in,
21 broke in and stole something?

22 MS. BAILEY: Objection, Your Honor.

23 A I was accused.

24 MS. BAILEY: The witness has a Fifth Amendment Right not
25 to testify about his own charges. Those, he's not been

1 convicted of those. They're pending at this time.

2 THE COURT: Mr. Barr?

3 MR. BARR: Well, Your Honor, the Prosecution has, as they
4 should have done and as the law requires, provided me with a
5 copy of the proffer, and that's what the proffer says.

6 MS. BAILEY: The proffer doesn't go into the --

7 THE COURT: Well, I understand that, but the question, I
8 believe, is whether or not what he's charged with, and you're
9 starting to ask him about the facts of the case, and the
10 witness does have a Fifth Amendment Right not to offer
11 testimony against himself.

12 MR. BARR: Well, Judge --

13 THE COURT: I'll be glad to advise him of that right if
14 you'd like to --

15 MR. BARR: No, sir. I, Your Honor, I --

16 THE COURT: -- but if the, if the point is -- let me
17 finish talking, Mr. Barr. The point -- if the point is that
18 you want to establish the fact that he's been charged, I think
19 you've established that fact or the Court can take judicial
20 notice of it if you have copies of the charges. I'll be glad
21 to do that.

22 MR. BARR: Your Honor, I think I've gone as far as I need
23 to go with this.

24 BY MR. BARR:

25 Q You do -- you are testifying with an expectation of

1 leniency; right?

2 A Yes.

3 Q And does that mean to you that you indicated that you're
4 supposed to testify truthfully?

5 A Truthfully.

6 Q Now, a few minutes ago when I asked you about your
7 earlier statement and I asked you why you ain't had nothing in
8 the statement about nobody saying anything about money, now,
9 do you consider this now a part of your obligation to testify
10 truthfully?

11 A I don't understand what you're saying.

12 Q Well, you left the money out the first time when you gave
13 the statement, but today you're talking about money that you
14 heard the man say something about some money, and there's
15 absolutely nothing in your statement about money.

16 A I, I gave that statement years ago about the money.

17 Q Well, now, if you gave the statement years ago and you
18 ain't said one word about no money, where in the world did you
19 come up with and you get the money now? Where you get that
20 from?

21 A I heard it.

22 Q Oh, you heard it. Who did you hear say it?

23 A The shooter.

24 Q Well, why didn't you write it in the statement? Sir?

25 A Maybe I didn't remember it at the time.

1 Q Now, are you telling the ladies and gentlemen of this
2 jury that just because of bad memory or either now you've got
3 good memory you now remember about the money?

4 A Yeah. I remember it.

5 Q And you -- and that's why you say you remember now?

6 A I mean, that's in my statement.

7 Q Nothing about money in the statement.

8 MS. BAILEY: Objection, Your Honor. This is
9 argumentative. It's been asked and answered at this point.

10 MR. BARR: I just have a few more questions, Judge.

11 THE COURT: Thank you, sir.

12 MR. BARR: Your Honor, I have no further questions.

13 THE COURT: Redirect?

14 MS. BAILEY: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. BAILEY:

17 Q Mr. Stanley, why are you testifying here today?

18 A I was a witness.

19 Q Okay. Do you have pending charges?

20 A Yes.

21 Q Who's your Prosecutor?

22 A Erin Bailey, you.

23 Q Would be me. Have I discussed reducing your charges with
24 you?

25 A No.

1 Q Have I discussed giving you any particular sentence in
2 exchange for your testimony today?

3 A No.

4 Q What have I agreed to do in exchange for your testimony
5 today?

6 A Ask the Judge if he could be lenient.

7 Q When you and I met to prepare for this case, did I or any
8 other Prosecutor or any law enforcement tell you what to say?

9 A No.

10 Q But you did sign a proffer agreement with the State; is
11 that correct?

12 A Yes.

13 Q What do you understand to be your obligations under that
14 proffer agreement?

15 A That you -- if I testify truthfully that you ask the
16 Judge to be lenient.

17 Q You talked to Mr. Barr about giving a statement on
18 December 11th of 2008; is that correct?

19 A Yes.

20 Q If I showed you some notes that were taken during that
21 statement, would it help refresh your recollection as to the
22 contents of that statement?

23 A Yes.

24 Q I'm going to give you a moment, first show this to Mr.
25 Barr.

1 MR. BARR: Your Honor, I'm going to object to refreshing
2 his recollection with somebody else's notes.

3 MS. BAILEY: Your Honor, Mr. Barr didn't lay the
4 foundation for whatever he showed Mr. Stanley either.

5 THE COURT: Well, it doesn't mean that we're not relieved
6 of that objection.

7 MS. BAILEY: Yes, Your Honor. Mr. Stanley has laid the
8 foundation for it by saying this would refresh his
9 recollection.

10 THE COURT: Well, I understand that, but I think he's
11 required to refresh his recollection from his own notes, not
12 someone else's recollection.

13 MS. BAILEY: Okay.

14 THE COURT: So I'll sustain the objection in that regard.
15 BY MS. BAILEY:

16 Q Mr. Stanley, if you heard your prior statement, would
17 that help refresh your recollection?

18 A Yes.

19 Q Okay. Did you give a statement to Investigator Dustin
20 Morris on December 11th, 2008?

21 A Yes.

22 Q Okay. And during that statement did you advise Mr.
23 Morris, Detective Morris, that the shooter who came into the
24 Paradise Club made a statement?

25 A Yes.

1 Q And what statement did you tell Investigator Morris that
2 the shooter said when he came into the club?

3 A "You think I forgot about my money. I ain't forgot about
4 my money."

5 Q Now, just a few moments ago Mr. Barr made it seem like
6 you didn't say that to Investigator Morris. Did you say that
7 or did you not say that in 2008?

8 A I write it -- I wrote it down. I said it.

9 Q You wrote it down and you said it.

10 MS. BAILEY: I have no further questions for this witness
11 at this time.

12 THE COURT: Recross.

13 RECROSS EXAMINATION

14 BY MR. BARR:

15 Q It's a copy of your statement prepared by the court
16 reporter. Show me where you said something about money.

17 MS. BAILEY: Your Honor, I'm not sure what that statement
18 is he keeps waiving around.

19 MR. BARR: Well, do you want to see?

20 THE COURT: Yes. Why don't you show it to her. She has
21 -- you have an obligation to do so.

22 MS. BAILEY: Your Honor, I don't believe a foundation has
23 been laid for this. I don't know what court reporter it was
24 prepared by.

25 MR. BARR: Andrea Kelly.

1 MS. BAILEY: Or what it was based on. I've not been
2 provided with it.

3 THE COURT: I'm going to ask the jury to step out to the
4 jury room. Don't begin any discussions until such time as
5 I've asked you to, to do so. You may retire at this time.

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

8 THE COURT: Mr. Barr, maybe you can inform the Court as
9 to the nature of the document you've been presenting. Mr.
10 Barr?

11 MR. BARR: Sir?

12 THE COURT: The document that you've been using, can
13 you tell me what it is?

14 MR. BARR: The document that I used is a transcription of
15 the audio recording that was provided by the Solicitor's
16 Office.

17 THE COURT: So there was an audio recording of an
18 interview of this witness provided to you?

19 MR. BARR: Yes, sir.

20 THE COURT: And that was transcribed by someone at your
21 request?

22 MR. BARR: It was transcribed by a certified court
23 reporter, Ms. Andrea Kelly.

24 THE COURT: Okay. Ma'am?

25 MS. BAILEY: Your Honor, the State would request that if

1 any portion of this be entered it be done under the best
2 evidence rule as the actual recording, which we have.

3 THE COURT: Well, nobody's offered it into evidence at
4 this point in time.

5 MS. BAILEY: Yes.

6 THE COURT: Apparently what it's being used for, as near
7 as I can tell, is in an effort to try to impeach this witness.
8 Now, there's a procedure that we're supposed to follow when we
9 try to impeach someone with a prior statement, and the first
10 thing is you have to inform them as to the time and place and
11 the date of their previous statement. Then you have the duty
12 to ask them whether they made that statement or not. If they
13 admit it, then that's the end of the inquiry. If they deny
14 having made that previous statement, then you have the right
15 to enter extrinsic evidence to prove that they, in fact, did
16 make the statement. Now, we haven't been following that
17 procedure exactly. So I'm going to insist that we do follow
18 that procedure in this particular situation. So the witness
19 is entitled to be informed as to the time and place and the
20 circumstances under which the alleged statement was made and
21 when it was made. Then the witness is entitled to be asked
22 whether or not the witness acknowledges having made the
23 statement at that time. Depending on the answer, we'll go
24 from there, and it may or may not be admissible at that time.
25 We'll see. Any objection to that procedure, Mr. Barr?

1 MR. BARR: No, sir. Judge, I thought that's what I did.
2 What happened is on, on redirect she came back and, and he
3 changed his story again back to -- even though he had already
4 admitted that he did not include that in his initial
5 statement, he came back on redirect and, and, and added it
6 back and that's where the issue is.

7 MS. BAILEY: Your Honor, actually what happened is that
8 --

9 MR. BARR: But Your Honor ---

10 MS. BAILEY: -- Mr. Barr confused the witness. It was
11 Mr. Barr who said he didn't include it in his original
12 statement, which was a misstatement.

13 MR. BARR: Well, it's not in there.

14 MS. BAILEY: Well, yes, it is.

15 MR. BARR: Show it to me.

16 MS. BAILEY: And that's the issue, Your Honor. That's
17 why I believe we need to just, as much as I hate to do this
18 because of our time issues, I think at this point the jury is
19 very confused, and it would be good for them if we just played
20 the statement in its entirety because Mr. Barr keeps
21 misrepresenting what's in it.

22 THE COURT: Well, you want to point out where it is in
23 there? I think we're talking about the question about the
24 statement about money. Is it in there?

25 MS. BAILEY: I'm -- Your Honor, I've never seen. Again,

1 I don't know what page it would be on. It will take me a few
2 minutes because I've never seen this transcript.

3 MR. BARR: That's, that's --

4 THE COURT: Well, why don't we adjourn for the afternoon
5 and I'll give you a chance to review it and we'll determine
6 whether it's in there or not.

7 MS. BAILEY: Thank you, Your Honor.

8 THE COURT: All right.

9 MR. BARR: And that, that statement was actually taken by
10 Officer Morris, I believe.

11 MS. BAILEY: Yes.

12 MR. BARR: Uh-huh, you said Garrett earlier.

13 MS. BAILEY: No. I said Morris when I tried to refresh
14 his recollection, but you wouldn't let me do it.

15 THE COURT: She actually pointed at this gentleman. I
16 don't know his name. She pointed at that gentleman right
17 there when she asked the question. Anyway, let's bring the
18 jury in. Have a seat, Mr. Barr. Let me excuse them for the
19 evening.

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

22 THE COURT: All right. The record will reflect that the
23 jury has returned to the courtroom. During my discussions
24 with the attorneys on the issue that's before the Court, it
25 became apparent to me that perhaps we're going to have to

1 review a recorded interview with this particular witness,
2 along with a transcript of an interview. That's going to take
3 a few minutes, a few more minutes than we have this afternoon
4 with you, and so I'm going to excuse you for the rest of the
5 day. It's almost 5:00 o'clock anyway. That'll give us a
6 chance to review those documents and go through those
7 recordings so that a proper ruling can be made in this matter.
8 So you're going to be leaving the courthouse again, and you
9 probably already know what I'm going to tell you, but I'll
10 tell you again, don't listen to, watch or read media reports,
11 don't try to gather any information on your own, don't discuss
12 the case with anyone, don't allow them to discuss it with you
13 and should anyone try to contact you concerning your service
14 on the jury, please report that to the Court as soon as
15 possible. We intend to start in the morning -- since I may
16 have to go over this issue with the attorneys in the morning,
17 I'll ask you to be here at 9:30. We'll be here at 9:00
18 o'clock taking care of this particular matter. So at this
19 point in time you're free to go. You can be back at 9:30 in
20 the morning. Thank you. Hope you have a good evening.
21 You're free to go. Everyone remain seated while the jury
22 retires.

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

25 THE COURT: All right. I'm going to caution the witness,

1 sir, you're -- during our break you should not discuss your
2 testimony with anyone, any aspect of it. Do you understand
3 that, sir?

4 MR. STANLEY: Yes, sir.

5 THE COURT: All right. Now, as far as the Defendant has
6 been on bond up to this point in time. Does the State have an
7 objection to him remaining on bond during the trial?

8 MS. BAILEY: Your Honor, at this point --

9 THE COURT: The trial has now begun.

10 MS. BAILEY: Yes. At this point, his bond -- I believe
11 the bondsman has fulfilled his duties.

12 THE COURT: I think he has.

13 MS. BAILEY: And so, if the Defendant were to not come
14 back there would be nobody looking for him.

15 THE COURT: All right. Then I'll ask that the Defendant
16 be held in custody during the trial. Thank you very much.
17 Yes, sir, Mr. Barr.

18 MR. BARR: Judge, this case has taken from 2008, and
19 every time this man was supposed to be in court, he showed up,
20 from 2008. Your Honor, quite frankly, depending upon where
21 the State is in terms of their presentation of their case, I
22 really need him, and I don't need to have to go to jail to see
23 him. We've got other witnesses. Our witnesses are out of
24 town.

25 THE COURT: Well, how was it handled during the first

1 trial? Was he allowed to remain on bond?

2 MR. BARR: Yes, sir.

3 MS. BAILEY: I don't -- I didn't try the first one. I'm
4 not sure.

5 MR. BARR: He was allowed to remain on bond.

6 THE COURT: Well, I normally in this situation take
7 people into custody during these types of trials.

8 MR. BARR: Yes, sir.

9 THE COURT: This is a little bit of an unusual situation.
10 So I'll allow your client to remain out with the admonition
11 that if he doesn't appear in the morning a bench warrant will
12 be immediately issued for his arrest and the case will
13 continue in his absence. Do you understand that, sir?

14 MR. DIZZLEY: Yes, sir.

15 THE COURT: All right. 9:00 o'clock in the morning is
16 when we resume. Thank you very much. You're free to go.

17 MS. BAILEY: Thank you, Your Honor.

18 MR. BARR: Thank you, Judge.

19 (Adjourned for April 1, 2014.)
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1 (On the record, April 2, 2014, State v. Terron Gerhard
2 Dizzley. The following takes place outside the presence of
3 the jury.)

4 THE COURT: All right. We're back on the record in the
5 case of the State of South Carolina versus Terron Dizzley.
6 Yesterday afternoon we had some concern about a statement that
7 Mr. -- that the witness, I can't recall his last name, may
8 have given to a police officer, and the question arose as to
9 whether or not during that statement he may have mentioned
10 something about money being owed or something to that effect.
11 Have we had a chance to review the statements?

12 MS. BAILEY: Yes, Your Honor.

13 THE COURT: And there's a recorded version, and
14 apparently the Defense had a transcript prepared of the
15 recorded version.

16 MS. BAILEY: Yes, Your Honor.

17 THE COURT: Okay. Can you tell us what the result of our
18 search might have indicated?

19 MS. BAILEY: Sure. Actually my colleague, Richard Todd,
20 went through line by line and compared the transcript last
21 night, and there are some omissions, but at this point, the
22 State, and I would note that there is no certification from a
23 court reporter attached to the transcript, but that said, the
24 State at this point is willing to not contest the accuracy of,
25 of, of it because the witness in two different places mentions

1 the statements of the shooter. What the State would request
2 since Mr. Barr --

3 THE COURT: Well, the real issue is whether or not his
4 prior statement may have included a statement that the shooter
5 mentioned something about money owed or money -- I think
6 that's -- is that right, Mr. Barr? That's what --

7 MR. BARR: That's right, Judge.

8 THE COURT: All right.

9 MS. BAILEY: Well, to be clear, page --

10 THE COURT: So what did we find when we through both the
11 recorded version and the transcript concerning that statement?

12 MS. BAILEY: Thank you, Your Honor. On page five, line
13 five, the witness says, quote, (as read), "He was like, 'Boy,
14 you think I forgot about this. You think it's a game. I
15 ain't forgot like that,'" attributing those statements to the
16 shooter. On page 39, line 7, the witness says in his
17 statement to law enforcement -- well, law enforcement asked
18 the question, (as read), "So what about the slang, was he just
19 a matter of fact or how did he talk?" And the witness says,
20 (as read), "Like, oh, man, you think I forgot about this, man.
21 You think it's a game," and he also goes on to mention that
22 the shooter used the N word several times. So here's, here's
23 what the State would request, because Mr. Barr didn't provide
24 us with this transcript, he didn't even show it to me before
25 he showed it to the witness, so the State would just request

1 the opportunity, since we've had the night to review the
2 transcript now, to fully redirect the witness on specifically
3 the issue of his prior statement.

4 THE COURT: Well, you'll get an opportunity to redirect
5 once he completes his cross examination, and so and I will
6 call counsel's attention to Rule 613, and we're going to begin
7 to try to follow Rule 613 as closely as we can, and I'll just
8 go over that with us, with everyone so that we have an
9 understanding. Rule 613(A) has to do with prior statements
10 made by witnesses. First of all, in examining a witness
11 concerning a prior statement made by the witness, whether
12 written or not, the statement need not be shown or its
13 contents disclosed to the witness at that time, but on request
14 the same shall be shown or disclosed to opposing counsel. As
15 far as this statement is concerned, I think you had a recorded
16 version, the State did, and you've now been shown the
17 transcript, and what that has to -- the first part of the rule
18 has to do with if you're questioning a witness about a prior
19 statement and you do not intend then to introduce any
20 extrinsic evidence to prove that a different statement was
21 made, then you do not have to show the witness the contents of
22 the statement prior to asking him about it. However,
23 subparagraph B under the rule has to do when you try to
24 introduce extrinsic evidence, that's other evidence to show
25 that a witness made a different statement. The rule says

1 extrinsic evidence of a prior inconsistent statement by a
2 witness is not admissible unless the witness is advised of the
3 substance of the statement, the time and place that it was
4 allegedly made, and the person to whom it was made and is then
5 given an opportunity to explain or deny the statement. If a
6 witness does not admit that he has made the prior inconsistent
7 statement, extrinsic evidence of such statement then is
8 admissible. However, if a witness admits making the prior
9 statement, extrinsic evidence of the prior statement, that the
10 prior statement was made is not admissible. So if a -- an
11 attorney in this case wishes to use extrinsic evidence to show
12 that a prior inconsistent statement was made, we must follow
13 Section B of the rule, which means the witness must be advised
14 before any extrinsic evidence can be placed into the record of
15 the substance of the statement, the time and place it was
16 allegedly made, and the person to whom it was made and then be
17 given an opportunity to admit or deny. So we're going to
18 follow that rule as best we can from this point forward.

19 Any questions from the State?

20 MS. BAILEY: No, Your Honor.

21 THE COURT: Any from the Defense?

22 MR. BARR: Nothing, Judge.

23 THE COURT: Okay. All right. I've asked -- anything
24 else we need to take up? I don't have the jury coming in
25 until a few minutes. We'll start as soon as they have all

1 arrived, but anything further from the State that we need to
2 take up before we proceed?

3 MS. BAILEY: Only that there's somebody new in the
4 courtroom. I don't know if she's a Defense witness or not.

5 THE COURT: I don't know either who that -- the public is
6 welcome.

7 MS. BAILEY: Yes. Absolutely. I just don't know what
8 the Defense witnesses look like.

9 THE COURT: Anything else from the Defense before we
10 begin?

11 MR. BARR: No, sir.

12 THE COURT: All right. We'll be in recess then until the
13 jury has arrived. Thank you very much.

14 OFF THE RECORD

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

17 THE COURT: And is the witness present?

18 MS. BAILEY: He is, Your Honor.

19 THE COURT: Invite -- he needs to be.

20 MS. BAILEY: His attorney is, his attorney is going to
21 get him. Thank you.

22 THE COURT: Thank you.

23 MR. BARR: Judge, can, can we approach the bench?

24 (Whereupon, a bench conference is held.)

25 THE COURT: I want to put on the record that at a sidebar

1 Mr. Barr indicated to me that he would want to preserve his
2 objections to Ms. Alston's testimony that he raised in our
3 pretrial motion period, and I advised him that the Court would
4 note the objections and put those on the record. State's
5 counsel was present. Does that correctly state our sidebar?

6 MR. BARR: Yes, sir.

7 THE COURT: Ms. Bailey, Mr. Barr?

8 MR. BARR: Yes, sir.

9 MS. BAILEY: Yes, Your Honor.

10 THE COURT: All right. So that objection was preserved
11 during Ms. Alston's testimony.

12 Sir, have a seat. I'm going to remind you that you were
13 placed under oath yesterday and that you're still under oath.
14 Do you acknowledge that fact?

15 MR. STANLEY: Yes, sir.

16 THE COURT: Okay. The State ready for the jury?

17 MS. BAILEY: Yes, Your Honor. Just to refresh my memory,
18 at what point were we procedurally with this witness?

19 MR. BARR: Well, Mr. Barr was in cross examination, and
20 he was attempting to ask questions about his statement to the
21 police officer, the differences between what he told the
22 police officer the shooter said and what he said during this
23 testimony. We came into some disagreement as to whether or
24 not that had been said or not, and that's the reason we -- I
25 gave you an opportunity to review the transcript. So I'm

1 going to allow Mr. Barr to continue his examination. As long
2 as he follows the rule I've cited, he's going to be allowed to
3 ask him questions about that prior statement. I assume Mr.
4 Barr will do that.

5 MS. BAILEY: Thank you, Your Honor. The -- I believe the
6 court reporter was just indicating that we were -- he was
7 actually in recross.

8 THE COURT: That may be the case. I know it was cross
9 examination.

10 MS. BAILEY: All right. Thank you, Your Honor.

11 THE COURT: That's fine. All right. Ready for the jury,
12 State?

13 MS. BAILEY: Yes, Your Honor.

14 THE COURT: The Defense ready?

15 MR. BARR: Yes, sir. Bring the jury in.

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

18 THE COURT: All right. Good morning. I hope everyone
19 had a good evening, and again, I will inquire if any of you
20 had any difficulty in following my instructions concerning
21 your behavior during your absence from the courthouse, please
22 stand.

23 (No response.)

24 THE COURT: It appears that all jurors have been able to
25 comply with my instructions. When we broke yesterday, Mr.

1 Barr was in recross examination of this witness, and he may
2 proceed at this point in time, and I have overruled the
3 State's objections.

4 MR. BARR: Thank you, Judge.

5 THE COURT: Yes, sir. You may proceed.

6 RECROSS EXAMINATION

7 BY MR. BARR:

8 Q Mr. Stanley, on December 11th of 2008, you gave a
9 statement to Investigator Morris and Investigator Garrett. Do
10 you deny that in that statement you never mentioned anything
11 about the gunman saying anything about money when he came to
12 the building?

13 A You're saying that I'm denying it?

14 Q Do you deny that you, in that statement you didn't say
15 anything about the gunman asking about any money?

16 A I didn't deny it.

17 Q You don't deny it?

18 A I said, I said I said it.

19 Q You said it?

20 A I believe so.

21 Q In the statement?

22 A Yes.

23 Q Well, show me in the statement where you said it.

24 A Let me find it.

25 THE COURT: Mr. Barr, I believe in our discussions of

1 that statement we pointed out two locations where that was
2 mentioned. Could you help him find those locations, please?

3 MR. BARR: Well, Judge, it's our contention that it
4 wasn't mentioned.

5 THE COURT: I understand that, but it was --

6 MR. BARR: If, if, if Ms. --

7 THE COURT: -- the -- I'm saying that that issue was
8 mentioned.

9 MR. BARR: If Ms. -- you want to help him?

10 THE COURT: Can you give him the pages on which that was
11 so we can speed the process up, please?

12 MS. BAILEY: Yes, Your Honor. Page five, line five.

13 THE COURT: Sir, if you'll go to page, line five, line
14 five, that's where a discussion of what the shooter said
15 occurs.

16 MS. BAILEY: Also, page 39, line 7.

17 THE COURT: I'm sorry, thirty --

18 MS. BAILEY: 39, line 7.

19 THE COURT: And if you'll go to that page and line as
20 well. Those are the two locations I am informed that that
21 issue was discussed.

22 BY MR. BARR:

23 Q No mention about any money, is it?

24 A Didn't say it at that time.

25 Q You've checked both places?

1 A And where else? Where else?

2 MR. BARR: What's the other?

3 THE COURT: All right. Thirty-nine, page 39 and page 5.

4 A I don't see it on 39.

5 Q No mention of money, is there? Now, you, you, you, you
6 understand that when these officers were questioning you they
7 wanted the truth from you?

8 A That was the truth.

9 Q And inasmuch as there's no reference in here in your
10 statement about the gunman asking for any money, where'd you
11 get that from?

12 A It was said.

13 Q But you just didn't put it in the statement?

14 A I thought I did.

15 Q Did you hear somebody else say that --

16 A Maybe didn't, maybe I didn't ---

17 Q -- about the money?

18 A No. I heard it.

19 Q I have nothing further.

20 THE COURT: State, anything further?

21 MS. BAILEY: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. BAILEY:

24 Q Mr. Stanley, if you were able to reference your prior
25 statement, would that help to refresh your recollection as to

1 exactly what you said?

2 A Yes.

3 Q Okay. Do you have a copy of it in front of you?

4 A No.

5 Q We're going to start with what you said regarding the
6 shooter's statements. Okay? So let's start just to point you
7 in the right direction, page five, line five. If you could
8 just review that for a moment. Let me know when you're done.

9 A I'm finished.

10 Q Okay. After reviewing that, the transcript of your prior
11 statement, does that help to refresh your recollection as to
12 exactly what you said?

13 A Yes.

14 Q Okay. And exactly what, what did you tell investigators
15 the shooter said?

16 MR. BARR: Your Honor, I'm going to object. The issue on
17 cross examination was about the money. What the Solicitor's
18 doing now is having this witness go back through his testimony
19 regarding whatever it was he testified to, and quite frankly,
20 I'm not even sure he testified regarding this issue in his
21 direct presentation. She's beyond the scope.

22 THE COURT: Well, I'm going to allow her to explore what
23 he, what his testimony might be concerning what the shooter
24 said. That's an issue. You've raised the point that he may
25 have made a prior inconsistent statement.

1 MR. BARR: Only about the money.

2 THE COURT: And I'll -- and well, about what the shooter
3 said, and so I'm going to let her get into that. You may
4 proceed. Overruled.

5 MS. BAILEY: Thank you.

6 BY MS. BAILEY:

7 Q So can you inform the jury, now that your recollection is
8 refreshed, as to exactly what you did tell law enforcement the
9 shooter said?

10 A Excuse me?

11 Q What, what exactly did you tell law enforcement the
12 shooter said?

13 THE COURT: Mr. Barr, you need to be seated, sir.
14 She's on examination.

15 MR. BARR: Well, Judge, I, I couldn't --

16 A Like I said on --

17 THE COURT: Just one second. What's the problem, Mr.
18 Barr?

19 MR. BARR: I couldn't see the witness.

20 THE COURT: Well, then you can move to another location,
21 but you can't approach the witness.

22 A Like I said, whatever I said on this statement I --
23 that's what was said. Maybe I forgot about it at the first
24 statement, but I, you know, recollect or remember some of it
25 after the time.

1 Q Okay. So I appreciate that explanation, but just so
2 there's no confusion, now that you have refreshed your memory,
3 can you tell us exactly what it is that you did tell law
4 enforcement in 2008 the shooter said?

5 A He was like, "Boy, you think I forgot about this. This
6 ain't a game and I ain't forgot about my money."

7 JUROR: What? I'm sorry. I didn't hear what he said.

8 Q Can you speak into the microphone?

9 A "It's not a game. You think I forgot about my money."

10 Q Okay. Now, I'm also going to point you to page 39
11 starting with line five. If you were to review this portion
12 of the transcript, would it help to refresh your memory as to
13 what you may have told law enforcement?

14 A Yes.

15 Q Okay. You take a look at that and let me know when
16 you're done.

17 A Yes.

18 Q Is your memory refreshed now? Okay. And can you tell us
19 exactly what you told law enforcement regarding the shooter's
20 statement in that portion?

21 A "You think it's a game, man."

22 Q Okay. Now, do you recall what you told law enforcement
23 regarding the shooter's stance in relation to the victim?

24 A I, I just remember him running up to him shooting him.

25 Q Okay. That's what you remember. Do you remember what

1 you told law enforcement in 2008?

2 A I really can't remember.

3 Q Okay. If you were to review the transcript of your 2008
4 statement would that help to refresh your recollection?

5 A Yes.

6 Q Okay. Again, I'm going to direct to page five, lines
7 five through 11. If you could review that, and when you're
8 finished let me know.

9 A All right.

10 Q All right. So in 2008, I think that's December 11th,
11 2008, can you tell us exactly what you did tell law
12 enforcement regarding the shooter's stance in relation to the
13 victim?

14 A After he -- after, after I saw him the first shot I
15 didn't know if he was shot or what, but he ran over to him and
16 shot him some more times.

17 Q Okay. And who was on the ground and who was standing?

18 A Aundry was on the ground.

19 Q Okay. Now, was Aundry on the ground before or after he
20 was shot the first time?

21 A After the first shot.

22 Q Okay. And after the first shot, how did the shooter
23 stand?

24 A He was standing over him just like --

25 Q He was standing over him after the first shot? Okay.

1 Now, do you remember exactly what you told law enforcement
2 regarding the shooter's complexion in 2008?

3 A Medium, not dark.

4 Q Okay. And that's what you told law enforcement in 2008?

5 A I believe so.

6 Q Okay.

7 MS. BAILEY: I have no further questions for this
8 witness, Your Honor.

9 THE COURT: Recross?

10 RE CROSS EXAMINATION

11 BY MR. BARR:

12 Q Is it your contention that when you refreshed your memory
13 from that transcript you saw money in the transcript, the word
14 money?

15 A No.

16 Q That's not in there; is it?

17 A No. It isn't.

18 Q And that's a transcript of your statement.

19 MS. BAILEY: Your Honor, is there a question?

20 MR. BARR: I have nothing further, Judge.

21 THE COURT: All right. You may step down. Thank you,
22 sir.

23 MS. BAILEY: Your Honor, the State would request that Mr.
24 Stanley be released from his subpoena.

25 THE COURT: Any objections?

1 MR. BARR: No, sir.

2 THE COURT: Sir, you're free to go. Thank you very much.
3 The State may call its next witness.

4 MS. BAILEY: Thank you, Your Honor. The State calls
5 Larry Cooper.

6 THE COURT: Come forward and be sworn, Mr. Cooper, right
7 over here to my left. Thank you, sir, to this gentleman
8 standing right over here.

9 THE CLERK: Sir, please state your full name for the
10 Court.

11 MR. COOPER: Larry I. Cooper.

12 THE CLERK: Can you spell your last name for us, please?

13 MR. COOPER: C-O, double O, P-E-R.

14 THE CLERK: Thank you.

15 Whereupon, Larry Cooper was called to the stand, duly
16 sworn by the clerk and testified as follows:

17 THE CLERK: Thank you. Please have a seat.

18 THE COURT: All right. If you'll speak as close to the
19 microphone as possible. Thank you, sir. Ms. Bailey, your
20 witness.

21 MS. BAILEY: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. BAILEY:

24 Q Good morning, Mr. Cooper. Did you know Aundry Evans,
25 Jr.?

1 A I knew him, but I never knew him like that. I just had
2 met him.

3 Q Okay. Would you call him a friend?

4 A Around that time when I first met him, yeah.

5 Q Around December 1st of 2008 what was the nature of your
6 relationship with Aundry Evans, Jr.?

7 A I can't remember the date, but it was, it was at
8 Paradise, and most -- my home boy said he need help. So I
9 went up there to go give him some help.

10 Q Who, who was that that said he needed help?

11 A Maurice Giles, my homeboy.

12 Q Okay. What happened next?

13 A I left earlier that day after Mo told me he --

14 Q Don't, don't say what Mo told you. That'd be hearsay,
15 but tell us what happened.

16 A Well, now, it ain't no he say, she say stuff. It's just
17 like I left and I came back later on that night. I caught a
18 ride up there, came back there later on that night. While I
19 was chilling, a couple of guys came through. One came in,
20 asked for where Dre was at, walked over towards Dre. I ran.
21 My homeboy ran. So I ran behind him. When I got outside, I
22 heard shots. That was that.

23 Q Okay. So when somebody came in the club and went up to
24 Dre, were you in the club when that happened?

25 A I, I was in the club when they came in, but everybody was

1 masked up.

2 Q Okay. So the man that entered the club was wearing a
3 mask?

4 A Yeah. I don't know if it was a man or a woman, whoever
5 came in. He was masked up.

6 Q Okay. Whoever came in was wearing a mask?

7 A Yeah.

8 Q How tall was the person that came in?

9 A Man, I can't remember. It happened so fast. So I don't
10 -- I really don't know.

11 Q Okay.

12 A You know what I'm saying?

13 Q Do you recall making a statement to law enforcement in --
14 on December 2nd of 2008?

15 A Yeah. Because that like it had to happen right after
16 that. So whatever I told them that was, that was that. Like
17 right now, it's 2014. I don't remember that, all that.

18 Q And in your statement to law enforcement in -- on
19 December 2nd of 2008 do you recall saying that the person who
20 came in the club who was masked up was shorter than you, five
21 four to five five?

22 MR. BARR: Your Honor, objection. It's improper
23 impeachment from a statement and it's leading.

24 THE COURT: Well, I don't, I don't think it's
25 impeachment.

1 MR. BARR: Well --

2 THE COURT: It's what is -- she's attempting to do, I
3 think, is have him refresh his memory from his statement.

4 MS. BAILEY: Your Honor, I'm attempting to follow Rule
5 613.

6 THE COURT: Okay.

7 MS. BAILEY: Inform him of the contents of the statement,
8 the time and date, give him the opportunity to admit or deny.

9 MR. BARR: Well, Judge, I think she's leading the
10 witness. This is her witness.

11 THE COURT: I understand that that's your position, but
12 she is following Rule 613(B). You may proceed.

13 MS. BAILEY: Thank you, Your Honor.

14 BY MS. BAILEY:

15 Q So do you recall on December 2nd, 2008, telling law
16 enforcement that the person who was masked up who came in the
17 club was shorter than you and five four or five five?

18 A Yeah. He could be shorter than me, but I never gave a
19 height.

20 Q Okay.

21 A He could be, you know what I'm saying? He, she, whoever.

22 Q All right. What color was the mask?

23 A Man, I don't know. I couldn't really tell you, man.

24 Q Okay. And the person who came into the club wearing a
25 mask, was there one person who actually entered the club

1 wearing a mask?

2 A One was at a door with a mask, and one came in. When I
3 ran out it was a couple outside. So that's really it, you
4 know.

5 Q Okay. And were they all wearing a mask?

6 A Everybody was masked up. Like I say, I don't know if it
7 was a she, he or who.

8 Q Okay.

9 JUROR: Sir, I'm sorry. I can't understand what he's
10 saying.

11 THE COURT: Sir, you have to move close to the microphone
12 as I indicated. Thank you and speak up.

13 JUROR: Thank you.

14 THE COURT: Can you repeat your last answer?

15 A I don't know who, he, she, I don't know who they were.

16 Q Okay.

17 A It could be man or female. Everybody was masked up.

18 Q Correct.

19 THE COURT: Thank you, sir.

20 Q We've established that. Thank you. And the person who
21 entered the club, what did they say to you when they entered
22 the club or did they say anything to you?

23 A Like, it was like, "Where Dre at?" I looked to the side.
24 Dre, Dre was like -- Dre was right there. They walked towards
25 Dre. One of my homeboys ran. I ran. He must have saw the

1 gun, too. I was in shock, you know what I'm saying? He ran.
2 So I ran behind him.

3 Q So you ran out of the club?

4 A Yeah.

5 Q Okay. And when you ran out of the club, what did you see
6 outside?

7 A The same guys standing outside with guns. I don't know,
8 well, who, I don't know.

9 Q You don't know who they were. We've established that.

10 A Yeah.

11 Q But can you describe the guns that the guys outside the
12 club had? Were they short guns, longs guns?

13 A I just seen one dude with a short gun. I don't know what
14 the rest of them, the rest of these people had.

15 Q Do you recall on December 2nd of 2008 giving a statement
16 to law enforcement?

17 A 2000, do what, do what now?

18 Q December 2nd, 2008, do you recall giving a statement to
19 law enforcement?

20 A About what? You got to explain.

21 Q About this incident.

22 A Yeah. They came. They, they called me and I had to go
23 down there.

24 Q Okay. And when -- during that statement do you recall
25 saying that one of the men outside had a pump shotgun pointed

1 at somebody?

2 A Yeah. A shotgun.

3 Q Okay. Were you -- where were you in relation to the bar?

4 A Do what? Do what now?

5 Q The bar in the club, where were you in relation to the

6 bar?

7 A Like right behind or like on the side of it.

8 Q When you were outside, did you hear shots?

9 A Yeah. I heard shots because I was outside.

10 Q Okay. You heard shots outside?

11 A Yeah. I was outside.

12 Q Any idea how many?

13 A Not really.

14 Q Okay. Did you see a car outside that any of the shooters

15 got into?

16 A Man, I just saw when the car drove off after, after

17 everything had quite. I don't -- I can't remember what, what

18 kind it was, probably black, gray. I can't remember, yo.

19 Q But you saw a car drive off?

20 A Yeah.

21 Q Did all of the people with the masks on get into the one

22 car that was dark that drove off?

23 A Probably so. I don't -- I can't -- I, I don't know.

24 Q Did you notice that any of the vehicles that were parked

25 in the parking lot had gunshot bullets in them, gunshot holes?

1 A The vehicles outside? I can't remember how much car was
2 outside.

3 Q Okay. Do you recall making a statement to law
4 enforcement on December 2nd of 2008?

5 A About what?

6 Q About this incident.

7 A Yeah. They came -- I had to go down there because I was
8 at, I was at Paradise.

9 Q And during that statement, do you recall telling law
10 enforcement that some of the cars outside in the parking lot
11 had been shot?

12 A That's what they say. So, you know what I'm saying, so I
13 have to say what they said. They say some of the cars got
14 shot so.

15 Q So your contention that's what law enforcement said?

16 A No. The people who was there.

17 Q When you went outside, where did you go? Did you just go
18 outside to the parking lot and stand there?

19 A Nah. I ran. I ran behind the building and hid.

20 Q Okay. And how long did you hide?

21 A Till, till everything got silence.

22 Q And then what did you do?

23 A I walked back in the club after I heard the car,
24 whatever, went down the road. Really after I heard
25 everything, I went back in the club.

1 Q And who was in there at that point? What'd you find?

2 A My homeboys and the dude who got shot. That was it.

3 Q Okay. How long did you stay?

4 A I was going to leave, but my homeboy was like, don't
5 leave. Chill with him till someone comes. So I stayed there,
6 and we rode to the hospital with the person who got shot. We
7 stayed there till they took him off, and we went to the
8 hospital.

9 Q How close were you to the person who got shot?

10 A I wasn't really that close to him. I just met him.

11 Q No. I mean, physically. When you went back in the club,
12 how close were you standing to the person who got shot?

13 A When I went back in there and I saw him, I backed up
14 because I really was going to run, and he was like, "Nah,
15 chill, stay," because he was about to call 911. So I stayed
16 there. I wasn't going to leave him because that was like my
17 partner, you know what I'm saying. So I stayed there with
18 him.

19 Q Were there other people tending to him?

20 A I don't, I don't know. I stayed back.

21 Q Okay. So you stayed back in --

22 A I was, I was, I was in shock. So I was back. I wasn't
23 really paying attention to nothing.

24 Q Were you able to overhear any conversation that happened
25 between the guy who had been shot and the people around him?

1 A Nah.

2 Q Who do you remember being in the club that night?

3 A How you mean like?

4 Q Who else was there that you remember?

5 A You just tell me a while ago don't call names. So I get
6 to call names now? Me, Mo, Dash and the dude who got shot is
7 like I don't know if it was his little cousin, little brother.
8 Me and him was behind the, the bar, and it was something --
9 some older cat. It was a couple of his people there. I don't
10 know if them is -- I don't, I don't know if it was his uncle.
11 I don't know. I don't really know dude like that.

12 Q Now, to clarify, the person who came into the bar who
13 was, as you describe, all masked up, was shorter than you?

14 A Probably was. I can't remember. We probably was the
15 same height.

16 Q Did you -- again, do you recall making a statement to law
17 enforcement in 2008?

18 A If I recall?

19 Q Yeah. Do you recall talking to law enforcement?

20 A I made a, I made a statement, but I can't remember what I
21 said.

22 Q Okay. Do you admit or deny that in that statement you
23 said that that -- that the person who came in the club with a
24 mask on was shorter than you?

25 A Yeah. He probably was shorter than me.

1 Q So do you admit that he was shorter than -- that you
2 stated he was shorter than you?

3 A If the -- if that what the statement say. I can't
4 remember right now.

5 Q Okay. And do you admit or deny that in that statement
6 you said that the person who came in with a mask was five-four
7 to five-five?

8 A See, I can't give no exact height because I don't really
9 know what it was -- what height -- what, what it was. If he
10 was shorter than me, I'm not going to give no, no height like
11 that because I don't really -- I can't remember.

12 Q You said you saw somebody outside with a pump shotgun.

13 A I don't know who it was. He was -- they -- he or she was
14 masked up. I don't know who it was, but they had a shotgun.

15 Q What were they doing with the shotgun?

16 A Holding it to one of my homeboys.

17 Q And who was that?

18 A They call him T.I. I don't really know his real name.

19 Q Okay. Was that near the door to the club?

20 A Yeah. The same door I exited out.

21 Q Do you recall how many shots you heard fired outside?

22 A I can't recall.

23 MS. BAILEY: I have no further questions for this
24 witness, Your Honor.

25 THE COURT: Mr. Barr, your witness.

1 CROSS EXAMINATION

2 BY MR. BARR:

3 Q You don't -- do you -- as far as the statement that the
4 Solicitor just asked you about that you gave on December 2nd,
5 didn't you tell the police officer that you heard about seven
6 shots?

7 A I don't know how much shots I heard. I heard shots. Two
8 could mean more than -- two could mean five. I just heard
9 shots. I don't know how much shots I heard. I just heard
10 shots. I don't know how much I heard. I was in shock.

11 Q Well, didn't you tell them then that you heard seven?

12 A I don't know how much I told them. This '14, that's
13 2008. I can't remember what I told them.

14 Q All right. All right. You don't, you don't know. Let
15 me, let me ask you something that you might know. Now, when
16 the person that did the shooting -- incidentally, have you
17 ever heard the name Little D?

18 A Nah.

19 Q Now, didn't, didn't on the, on the, on December 2nd of
20 2008, when you were interviewed by Investigator Garrett and
21 Flowers --

22 A Yeah.

23 Q -- didn't you tell them that, that you'd never heard
24 anybody speak of the name Little D that night?

25 A I just told you, you asked me, I said, "Nah."

1 Q Ask you what now?

2 A You just asked me if I've ever heard of the name Little
3 D. I told you nah. I, I told -- if they asked me, I told
4 them nah.

5 Q And didn't you tell them that you'd never even heard the
6 name speak of that night?

7 A I never heard that name. I don't know who that is. I
8 don't know that name. I never heard that name. I just came
9 back round there. I just moved back around there. They
10 wanted me to help at the bar. That's what I went to do. So I
11 don't really know who was, who was who around there. I just
12 move back around there.

13 Q Where were you when Aundry was placed in the EMS vehicle?

14 A Where were I, where were I'm at?

15 Q Were you still at the club?

16 A I was, I was in the car sitting down. Not at the -- in
17 the car sitting down. I was standing by a car waiting for the
18 ambulance to ride off because my homeboy didn't wanted me to
19 leave him. So I stayed out there.

20 Q All right. Now, do you know, you know Gary Gibson?

21 A That's some related to the dude who got shot.

22 Q Was Gary Gibson out at the club the night that you were
23 there when Aundry got shot?

24 A Yeah.

25 Q And when the gunman came in where was Gary? Do you know?

1 A Nah.

2 Q Well, when the gunman came in where -- exactly where were
3 you?

4 A I was behind the bar or standing right to the edge. I
5 can't remember. I was -- I know I was close to the bar.
6 That's where I was supposed to be. That's where I was at.

7 Q So you saw him when he came into the -- entered, entered
8 into the door?

9 A Yeah. I saw when he came in.

10 Q When he came in, entered the door, what's the first thing
11 he did?

12 A I can't remember. I know I was standing to the bar.
13 They told me I was watching a game or whatever. I can't even
14 remember what I was doing at the time, but when they came in
15 they was like, "Where's Dre?" I told --

16 Q And where was Dre?

17 A He was over by the pool table.

18 Q Standing right by the pool table?

19 A They was playing pool. I wasn't over there. I know they
20 was over there playing pool.

21 Q How far was he away from you?

22 A Man, I ain't been, I ain't been inside that place. So I
23 really can't recall how far.

24 Q About as, about as far as I am from you now?

25 A Yeah. Far.

1 MS. BAILEY: Your Honor, he's already said he can't
2 recall.

3 THE COURT: Well, he's on cross examination. He may be
4 he can't recall the number of feet, but he may be able to
5 relate it to something in the courtroom. I'll allow that
6 question.

7 Q Was he further than the distance I am from you now?

8 A Yeah. He was further than.

9 Q How about now?

10 A Man, you know, he probably -- I don't know how far that
11 bar was from the pool table, but he was further from me to
12 you. I can't recall how far it was, but it was farther.

13 Q I see.

14 A I don't know what was going on over there. All I know
15 they was shooting pool, whatever they was doing. I was doing
16 what I was supposed to been doing. I was chilling at the bar.

17 Q But you could see Aundry from where you were standing?

18 A I couldn't really see. I just know they was over there.
19 I don't, I don't know who all was over there. I know he was
20 behind the pool table. I don't know.

21 Q Well, when you saw the gunman, what was the gunman doing
22 then initially? The first time you put your eyes on the
23 gunman, what was he doing?

24 A He was walking towards over there, and I -- my home --
25 one of my homeboys ran, and I ran behind them.

1 Q All right. Now, that fellow you said was all masked up.
2 I put -- that's how you put it. Approximately how many other
3 people did you see all masked up?

4 A Five or four of them.

5 Q Four or five. Now, in addition to being masked up, did
6 they all have weapons?

7 A I don't know. I only saw two weapons. I only saw the
8 dude outside and the dude who came in. I don't know who all
9 had weapons. I ran.

10 Q And you ran outside the building?

11 A I ran outside.

12 Q Now, the man that had the pump shotgun, bear, bear with
13 us a little while. The man that had the pump shotgun, where
14 was he -- was he standing or running or what was he doing?

15 A He was standing.

16 Q And where was he standing?

17 A Like right outside where the door open at.

18 Q Now, was he threatening anybody with the shotgun or what?

19 A I don't know, man. I ran.

20 Q You said earlier in response to questions you was asked
21 on direct, you said something about him pointing the shotgun
22 at somebody.

23 A That's pointing. You say saying.

24 Q Pardon me?

25 A You said pointing. I said pointing. You said saying. I

1 didn't heard nothing. I ran. All I saw was a gun pointing.
2 Q Oh, well, then was he pointing the shotgun at somebody?
3 A Yo, yeah.
4 Q Sir?
5 A Yeah. Yeah. He was pointing the gun. I didn't heard --
6 Q Was it at Aundry?
7 A This was outside.
8 Q Well, who was he pointing the gun at outside?
9 A I just told you. I just -- you heard me told her T.I.
10 Oh, boy.
11 Q All right. You heard about six or seven shots. How many
12 shots did you hear inside the building?
13 A I can't remember, man. I just heard shots. I was
14 outside. I was scared, dude. I ran. I can't recall none of
15 them stuff, dog. I ain't mean to say it like that. I can't
16 recall none of the stuff, sir.
17 Q All right. And so then you can't recall how many shots
18 you may have heard outside the building if you heard some out
19 there? You can't recall?
20 A I heard shots. I don't know how much shots I heard.
21 Q Did you see the gunman when the gunman came back outside?
22 A Yo.
23 Q You did?
24 A Yo, my bad, my bad. I ain't mean to say yo. The gunman,
25 I don't know who was the gunman. The dude was outside. There

1 was a dude inside. I don't know who shot --

2 Q All right. The one that --

3 A -- or he, he, she, I don't know who did the shooting.

4 Q The one that went inside, did you see that one when he
5 came outside?

6 A I ain't see nobody. I told you I was in hiding.

7 Q Did you see any of them when they left?

8 A I ain't see nobody when they left. I just, I just --
9 when I, when I walked out, when I came from -- if they --

10 Q What you hit the woods or something?

11 MS. BAILEY: Your Honor, he was attempting to finish his
12 answer. I think he gets to complete his answer.

13 THE COURT: He does have an opportunity to complete his
14 answers. Have you finished your answer, Mr. Cooper?

15 A I was in hiding. I heard silence. When I came out a car
16 left. I don't -- I ain't seen when nobody left. I don't know
17 who got in the car.

18 Q Were you hiding behind the building or in the woods?

19 A Behind the building where woods was at.

20 MR. BARR: The Court's indulgence just for a second,
21 Judge.

22 THE COURT: Yes, sir.

23 A What's going on now?

24 THE COURT: He's checking his notes, I believe. He may
25 have some more questions for you. If you'll just wait

1 patiently. He'll be back, I'm sure. Thank you.

2 MR. BARR: I have nothing further from this witness,
3 Judge. Thank you.

4 THE COURT: Anything further from the State with this
5 witness?

6 MS. BAILEY: Very brief, Your Honor.

7 THE COURT: Yes, ma'am.

8 REDIRECT EXAMINATION

9 BY MS. BAILEY:

10 Q So the person outside had a pump shotgun. Is that right?
11 And you saw one other gun that night?

12 A It was two guns.

13 Q Okay. Describe each -- what, what does the other gun
14 look like?

15 A I don't know what size gun it was. I know it was a
16 chrome gun. I don't know what size it was. It was a chrome
17 gun and then was, was a shotgun.

18 Q Okay. So you saw a chrome gun, and was that on the
19 person who was inside the club or one of the people outside?

20 A That was on the person who walked in the club or in his
21 hands. I don't know.

22 Q You saw a chrome gun in the hand of the person who walked
23 inside the club. Okay.

24 A After all that, my homebody ran and I ran. I went in
25 hiding, heard shots. That was that.

1 Q The chrome gun that you saw on the person inside the
2 club, was it a long gun or a short gun?

3 A I can't remember, man. I can't remember, Miss.

4 Q Okay. And did you see a revolver or was it a
5 semiautomatic? Do you remember?

6 A I can't remember, man.

7 Q Thank you.

8 MS. BAILEY: No further questions, Your Honor.

9 THE COURT: Anything further, Mr. Barr?

10 RE CROSS EXAMINATION

11 BY MR. BARR:

12 Q The men that were outside, how were they dressed?

13 A Man, excuse me, sir. I don't remember. I don't
14 remember. Everybody was masked up I saw. I don't know what
15 color they had on. I just --

16 Q But they all had masks on?

17 A Everybody had masks, like I tell, I don't know man,
18 woman, I don't know who they were.

19 Q You're just getting out of their way?

20 A What you was going to do? You was going to ran -- you
21 was going to run, too?

22 Q Thank you, sir. I have nothing further.

23 THE COURT: All right. Sir, you may step down. Thank
24 you for coming today. Wish to excuse the witness?

25 MS. BAILEY: Yes, Your Honor.

1 THE COURT: Any objections?

2 MR. BARR: No, sir.

3 THE COURT: You're free to go, Mr. Cooper.

4 The State may call its next witness.

5 MS. BAILEY: Thank you, Your Honor. The State calls
6 Edward Mack.

7 THE COURT: Sir, come forward if you would over to this
8 gentleman on my left to be sworn in. Thank you.

9 THE CLERK: Sir, please state your full name for the
10 Court.

11 MR. MACK: Edward Mack.

12 THE CLERK: Can you please spell your last name for us?

13 MR. MACK: M-A-C-K.

14 THE CLERK: Thank you.

15 Whereupon, Edward Mack was called to the stand, duly
16 sworn by the clerk and testified as follows:

17 THE CLERK: Thank you. Please have a seat.

18 THE COURT: All right. Mr. Mack, if you'll speak as
19 close to that microphone as you can. Thank you, sir. Ms.
20 Bailey, your witness.

21 MS. BAILEY: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. BAILEY:

24 Q Hello, Mr. Mack.

25 A How you doing?

1 Q Good. Where were you on December 1st of 2008?

2 A Browns Ferry, like they call it, or I forget the name of
3 the club because that's the first time I been there.

4 Q Okay. Be sure to speak into the microphone and speak
5 real clear so we can all hear you and understand you. Okay?

6 A Okay.

7 Q So it's the first time you'd been to that club in Browns
8 Ferry?

9 A Yeah.

10 Q Do you remember the name of the road it was on?

11 A I sure don't. I really went there to take somebody.

12 Q You went there to what?

13 A Take someone there.

14 Q Oh, who were you taking there?

15 A A friend of mine, Gibson, Gary Gibson.

16 Q You were taking Gary Gibson there?

17 A Yeah.

18 Q Okay. So how long had you been there?

19 A Okay. When I went to drop him off I, I wasn't going to
20 come in, but they had a oyster roast. So I went to eat some
21 oysters, and I started watching the football game. So I might
22 have been there for -- the game still was going on. So I
23 might have been there for an hour.

24 Q It's hard to turn down an oyster roast; isn't it?

25 A Yeah.

1 Q All right. So you'd been there for about an hour, and
2 then did something extraordinary happen?

3 A Yes.

4 Q Can you describe what happened?

5 A I was watching the game, and some guys was shooting pool,
6 and I heard some loud bang, and after that I jumped up.

7 Which, okay, I have bad feet. So when I jumped up I fell on
8 the floor, and I crawled to there some stairs, and I went
9 upstairs.

10 Q Okay. Did you see the person who came in the door?

11 A Never saw no one.

12 Q Okay. You just heard gunshots?

13 A I heard some gunshots. I thought it was a joke, really,
14 because, well, I mean, because it happened so fast, but I kept
15 moving.

16 Q Okay. Where were you sitting at the time in the bar?

17 A I -- my back was -- okay, it was like a corner and it had
18 another part to the, to the club, and I was facing that door
19 like --

20 Q All right.

21 A -- counterclockwise, and the table like sitting this way,
22 and the doorway was like that, and the stairway was on the
23 right.

24 Q Okay. We're going to pull up on the screen -- your
25 screen's a little fuzzy, so I'm going to hand you the actual

1 picture, what's already been entered into evidence as State's
2 Exhibit Number Eight. Take a moment to look at that and
3 orient yourself with it. Does that picture make any sense to
4 you?

5 A Yeah. I'm trying to find out the front from the back.

6 Q Okay. And how many times had you been in that club?

7 A That's the first time.

8 Q Is that the only time?

9 A Yeah. Okay. Well, this -- I guess this the back; right?

10 Q Just let me know if you're able to orient yourself. If,
11 if you're not, that's okay. Just let me know if you can.

12 A Yeah.

13 Q All right. So where were you sitting?

14 A Like -- there's a place I can show?

15 Q If you can just describe the best you can. Use words to
16 describe it. Everybody's looking at a copy of it.

17 A Okay. Well, well, my back, my back was turned to the
18 door. So, I, I was like sitting up in this area right in
19 here.

20 Q Okay. And is that on the other side of the bar?

21 A Yeah. I know there were pool tables -- a pool -- I was
22 watching a pool table and a TV was on this side over there
23 somewhere, too.

24 Q Okay. What color's the wall near where you were sitting?
25 Do you see -- can you see that?

1 A Oh, I mean, well, that what I'm saying, I mean, well,
2 because I know I was near a bar.

3 Q Okay. So you knew you were near the bar.

4 A Yeah.

5 Q And your -- was your back to the door that the shooter
6 came in?

7 A Yes.

8 Q Okay. And when you fell to the floor, were you up on
9 that platform where the bar is?

10 A I -- it was a high chair somewhere -- well, right up in
11 there. It's coming to me now, yeah.

12 Q Okay.

13 A A high chair -- I, I was sitting like right up in there.

14 Q And when you say right up in there, is that next, next to
15 the bar?

16 A Yeah.

17 Q Okay.

18 A I was right on the -- I mean, I, I, I was -- because,
19 yeah, okay, it coming to me now. Right here, I was sitting
20 right here because that's the door right there that I remember
21 I fell up in there.

22 Q Okay.

23 A And I crawled and I went that way.

24 Q Now, the jury can't see what you're pointing to.

25 A Okay.

1 Q So do your best to describe it in words. Now, they're
2 looking at the picture, but describe in words where -- now,
3 that you're oriented, where it is exactly you were sitting.

4 A Right where these -- at the bar my back was like right up
5 in this area right here near the --

6 Q Was your back to that wooden lattice work?

7 A Wooden lattice thing, yeah.

8 Q Okay. All right. And so after you fell to the floor,
9 where did you go?

10 A I crawled to this room right here, and there was --

11 Q That would be the room on the far left side of the
12 picture; is that right?

13 A This what, left or right? Well, well, I know I went
14 right.

15 Q You went to your right when you were in there?

16 A To my right, yeah.

17 Q Okay. All right. And where did you hide?

18 A There's a stairway somewhere on the right, and I hop up
19 those stairs, and I was in the corner of that upstairs room.

20 Q And when you say to the right, that's when you're facing
21 the bar with that lattice work behind you?

22 A Yeah.

23 Q Okay. And how long did you say -- thank you very much.

24 I'll take that picture back. How long did you stay hidden?

25 A I was there until I saw some blue lights.

1 Q Okay.

2 A I didn't move. I didn't even answer nobody.

3 Q Smart man. How many gunshots did you hear?

4 A I really couldn't remember. All I know is I heard
5 gunshots. I wasn't -- my idea was to move.

6 Q Were you able to discern whether there were gunshots
7 inside or outside or both or unable to discern?

8 A It was real loud. So I know it had to been right at me.

9 Q Okay. Did you hear any other gunshots that sounded like
10 they might have come from outside?

11 A I -- no.

12 Q Okay. And so after you saw blue lights, what did you do
13 next?

14 A I heard the talking downstairs, and so I said, well, I
15 was saying in my mind the police got to be here now. So I'm
16 going to go down and see what happened, and when I got
17 downstairs and the police were -- well, they was -- like they
18 were doing what they were doing, and I went on the outside,
19 but, well, you know, like with something like that I got --
20 well, I was a little upset. So I jumped in my car, and I did
21 not know my car was shot up.

22 Q So when you went out to your car to leave the premises,
23 what, what state did you find your car in?

24 A I mean, well, I just got in my car and drove off.

25 Q Uh-huh.

1 A When I got down the road, I had a flat tire. I drove on
2 the side of the road home.

3 Q Okay. So you drove home even though you had a flat tire?

4 A Yeah. I made a -- it could have been after me. I don't
5 know. I didn't know what because, I mean, because I was
6 driving my car, a Honda, and there was another Honda out
7 there. So I don't know what happened.

8 Q Okay. I'm going to show you what has -- what needs to be
9 marked. Hold on just a moment. Let me get these numbered.
10 While she's doing that, did you -- did you ever tell anybody
11 that your car had been shot up?

12 THE COURT: Let her mark it. She's got to take down
13 what's being said.

14 A Yeah.

15 Q Okay. Thank you.

16 THE COURT: Let her mark it, and then you can start
17 again.

18 BY MS. BAILEY:

19 Q All right. Now, did you ever let anybody know that your
20 car had been shot up?

21 A Yeah.

22 Q And who did you tell?

23 A Well, the next day when -- well, at first I just parked
24 the car, and the next day I was in Andrews, and I was
25 approached by two investigators, and they said they were

1 looking for me. So and I told them, I said, "Well," and I
2 told them my name and everything, and I took them to my house
3 and showed them the car.

4 Q And did they come out in your presence and do anything to
5 your car?

6 A Take pictures.

7 Q Okay. I'm going to show you what has now been marked as
8 State's Exhibit 13, 14, 15, 16 and 17 for identification only.
9 Can you take a look at those pictures? Just take a moment and
10 look at those, and let me know when you're done.

11 A (Complies with request.)

12 Q Okay. What, what is depicted in those photographs?

13 A Excuse me?

14 Q What's in the pictures? What are these pictures of?

15 A My car.

16 Q Are these a fair and accurate representation of how your
17 car looked the day after the shooting?

18 A Right.

19 Q Okay. Now, when you went into the club that night, was
20 there any bullet holes in your car?

21 A No.

22 Q When you went into the club that night, did you have a
23 flat tire?

24 A No.

25 Q So any bullet holes or flat tires on this car happened

1 while you were in that club?

2 A The bullet holes happened while I was in it, but I drove
3 it, and that's how the tire got flat.

4 Q Okay.

5 MS. BAILEY: At this time the State would seek to move
6 State's Exhibits 13 through 17 into evidence.

7 THE COURT: No objection I see from Mr. Barr. So they'd
8 be admitted as marked.

9 (State's Exhibits 13 through 17 [Photographs] admitted
10 into evidence and appropriately marked.)

11 BY MS. BAILEY:

12 Q All right. Pull up slide 107. All right. Everybody in
13 the courtroom now can see State's Exhibit 13. Can you
14 describe for the jury what that is?

15 A That's my car.

16 Q Okay. That's the car you were driving that night?

17 A Right.

18 Q All right. 108. Now we're looking at State's Exhibit
19 14.

20 A That's the tire -- rim of my car.

21 Q Okay. That's after you drove all the way home on a flat
22 tire?

23 A Right.

24 Q 109. Can you tell the jury what we're looking at there?

25 A That's the opposite side of my car.

- 1 Q All right. And is there any damage there that wasn't
2 present when you went into the club that night?
- 3 A Yeah. There's a bullet hole in the back.
- 4 Q Okay. Is that -- what part of the car is that on?
- 5 A The passenger side.
- 6 Q Okay. Is it on the door or the fender?
- 7 A The, the door.
- 8 Q Okay. 110.
- 9 A And that's another bullet hole.
- 10 Q We're looking at State's Exhibit 16 for the record.
11 Okay. That's another bullet hole?
- 12 A Yeah.
- 13 Q And was that present before you went into the club?
- 14 A No.
- 15 Q And slide 111. We're looking at State's Exhibit 17. Can
16 you describe what that is?
- 17 A A bullet hole.
- 18 Q Okay. And was that present when you went into the club?
- 19 A No.
- 20 Q Okay. Who else do you remember being there that night?
21 You took -- you said you took Gary Gibson?
- 22 A Yeah. I don't know none of those guys there. I just met
23 them.
- 24 Q Okay.
- 25 A Besides the guy that got shot. I just met him, too, but

1 I, I had knew him, was in two weeks time.

2 Q So Aundry Evans, Jr., did you know him?

3 A I know Andy, but I don't --

4 Q You knew him by Andy?

5 A Yeah.

6 Q And how long had you known him?

7 A It was like two weeks.

8 Q Okay. Would you have called him a friend or just
9 somebody you knew or --

10 A Well, when I -- but he said something about a club, and I
11 said, "Well, one day I might just stop by there." So since I
12 did take someone there, I just -- well, I wasn't going to go
13 in, but they had oysters. So I decided to go in to get some
14 oysters.

15 Q All right. Thank you, Mr. Mack. Answer any questions
16 that the Defense attorney may have.

17 THE COURT: Mr. Barr, your witness.

18 MR. BARR: Thank you, Judge.

19 THE COURT: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. BARR:

22 Q Now, Mr. Mack, you said you, you, you, you went to the
23 club to take Gary Gibson?

24 A Yeah.

25 Q Now, Gary lives near you?

- 1 A No. No.
- 2 Q You and he are friends?
- 3 A Yeah.
- 4 Q In fact, you all left the club together?
- 5 A No.
- 6 Q You didn't leave with Gary?
- 7 A No. I did not.
- 8 Q You left alone?
- 9 A I left -- yeah.
- 10 Q Now, I think I realized that you indicated that you
- 11 didn't actually see any -- the shooter or a shooter come into
- 12 the club; is that correct?
- 13 A Sure didn't.
- 14 Q But now, for whatever reason, something caused you to
- 15 seek a place of hiding. Did you hear a shot fired and decided
- 16 to look for cover or --
- 17 A I heard several shots.
- 18 Q In the club?
- 19 A It was loud. So I -- it had to have been in the club.
- 20 It was loud. I couldn't tell you where it were, but it was,
- 21 very, very loud and it was behind me.
- 22 Q How was the, how was the lighting in the club?
- 23 A I'll say something like this.
- 24 Q Like, like in this room now?
- 25 A It was, yeah, it was bright.

1 Q It was bright?

2 A Not bright, I mean, but you know, it wasn't that -- it
3 wasn't dim, you know.

4 Q And so the first shot you heard that's when you, you
5 decided to, to seek the cover?

6 A Yeah.

7 Q Was it rapid fire or were the shots spaced out or do you
8 recall?

9 A From my knowledge I think it was rapid. I'm not -- I
10 mean, I'm not -- because it was a while, but I know when I
11 heard the loud bang and mostly everybody was moving. So and I
12 know to start with I'm going to move, too.

13 Q I see. So now, from the first time you, you say you
14 heard the first bang until, until everything cleared up, about
15 how much time you think went off the clock?

16 A It, it was like -- it wasn't that -- to me it was -- it,
17 it came rapid.

18 Q Okay. Well, you, you described -- I think you said
19 everything happened so fast.

20 A Yeah.

21 Q When did you learn that somebody had been injured?

22 A When I came from downstairs.

23 Q And how did you, how did you learn this, and, and the
24 person that you learned that had been injured, was that
25 Aundry?

1 A Yeah.

2 Q And how did you learn he, he had been injured?

3 A He was laying on the floor.

4 Q Did you see anybody attending him as he was laying on the
5 floor?

6 A Well, when I came down, I know he was laying on the
7 floor, and from my knowledge, I think he asked someone to sit
8 him up, but as that was going on, I was trying to make my way
9 out there. When I -- because the police was -- well, the
10 police was on the outside coming in.

11 Q And if I'm not mistaken, I think the police secured the
12 crime scene.

13 A Yeah.

14 Q And moved everybody out?

15 A Right.

16 Q So you were not there when Mr. Evans was placed in the
17 ambulance?

18 A No. I wasn't there.

19 Q But you were there when you saw somebody trying to prop
20 him up?

21 A When I came down I'd, I'd heard when he said, "Somebody
22 help me up," but if anybody help him, I mean, I'm not sure
23 about that, but I heard when he said, "Somebody help set me
24 up," but I was -- because he was talking when I was there.

25 Q Did you hear anybody say that Aundry had said who he

1 thought shot him? You don't have to tell me what they said,
2 but just tell me whether you heard that.

3 A No. I did not.

4 Q I don't, I don't need to know. Do you -- have you ever
5 shot a rifle?

6 A Yeah.

7 Q You military?

8 A No.

9 Q Shot a handgun?

10 A Yeah.

11 Q Shotgun?

12 A Yeah.

13 Q Now, you looked at the -- what I think State's Exhibit --
14 I don't remember what exhibit number they are. Thank you,
15 ma'am. Exhibit Number 13, 15, 16 and, and 17. Would you say
16 that you're familiar enough with weapons?

17 A I'm not that familiar with weapons, but I have shot them.

18 Q Those, those -- the holes that are in your vehicle, does
19 it appear to you that they were made by a high-powered rifle?

20 MS. BAILEY: Objection, Your Honor. I don't think this
21 witness is qualified to testify as to what kind of bullet
22 holes different guns make.

23 THE COURT: It does require some expertise. So if you
24 want to try to qualify him in that fashion.

25 MR. BARR: No, Judge. I don't want to qualify him.

1 That's why I asked him whether he was familiar with --

2 THE COURT: Well, he said he was -- has fired the guns
3 before.

4 MR. BARR: Yeah.

5 THE COURT: I'm not sure he's familiar with ballistics,
6 which is a different field when you start analyzing, as you're
7 probably aware --

8 MR. BARR: Yes, sir.

9 THE COURT: -- gunshots and gunshot, you know, shells and
10 bullets and things of that nature that requires some
11 expertise. I'll allow you to ask him if he's qualified in the
12 field.

13 BY MR. BARR:

14 Q You don't have any areas on your vehicle with gunshot
15 damage that's not depicted in these photographs; do you?

16 A Excuse me?

17 Q I said you don't have any areas on your car that's --
18 with gunshot damage that's not depicted in these photographs?
19 The photographs show all the damage to your vehicle that was
20 caused --

21 A All the, all the holes came from a gunshot.

22 Q Yeah. All right.

23 A But now I have -- I do have dents on them, but they don't
24 -- they are not entered.

25 Q I'm talking about just the gunshot.

1 A Gunshots made the holes.

2 Q Take a look at Exhibit Number 15. It's difficult to tell
3 exactly about what size that hole is. Can you tell us or do
4 you know or you've looked at it a couple of times. Well, you
5 showed it to police. About what size is that hole in
6 circumference or diameter?

7 A That's hard for me to tell you that now.

8 Q All right. Well, if you can't that's fine, and I suppose
9 as it relates to the shots that you heard, you're not familiar
10 enough with shooting a weapon that you could distinguish
11 between --

12 A I might have shot one shotgun by someone getting a new
13 one, and I said, "Let me shoot it," one time, boom. I never
14 owned one.

15 Q You don't hunt?

16 A I don't do no hunting.

17 Q All right. Thank you, sir.

18 MR. BARR: I have nothing further, Judge.

19 THE COURT: Redirect?

20 MS. BAILEY: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. BAILEY:

23 Q When the police came to your house and processed your
24 vehicle, did they do anything to the inside of it?

25 A They went inside and they checked where the bullet have

1 traveled. I don't -- I think they took pictures. I'm not
2 sure.

3 Q Okay. Was there some damage to the inside of it that
4 wasn't in the photographs?

5 A The one of the seat were brushed, and you know, like and
6 we -- I guess the bullet went in one door and come out the
7 other.

8 Q So the bullet did cause some damage to the inside of the
9 vehicle, too?

10 A It brushed the seat.

11 Q Okay.

12 MS. BAILEY: No further questions, Your Honor.

13 MR. BARR: No, sir.

14 THE COURT: All right, sir. You may step down. Do you
15 wish to excuse the witness, Ms. Bailey?

16 MS. BAILEY: Yes, Your Honor.

17 THE COURT: Any objections?

18 MR. BARR: No, sir.

19 THE COURT: Sir, you're free to go at this time. Thank
20 you for coming today.

21 A All right.

22 THE COURT: Take your time getting up. Thank you, sir.
23 You may call your next witness.

24 MS. BAILEY: Thank you, Your Honor. The State calls Gary
25 Gibson.

1 THE COURT: Sir, come forward over to my left here to be
2 sworn in, gentleman in the maroon jacket there.

3 THE CLERK: Sir, please state your full name for the
4 Court and spell your last name.

5 MR. GIBSON: Gary Wendell Gibson, G-I-B-S-O-N.

6 THE CLERK: Thank you.

7 Whereupon, Gary Gibson was called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: Thank you. Please have a seat and speak in
10 the mike.

11 THE COURT: Ms. Bailey, your witness.

12 MS. BAILEY: Thank you, Your Honor.

13 THE COURT: Yes, ma'am.

14 DIRECT EXAMINATION

15 BY MS. BAILEY:

16 Q Good morning, Mr. Gibson.

17 A Good morning.

18 Q What was your relationship with Aundry Evans, Jr.?

19 A We were good friends.

20 Q Some people have described you as his uncle. Were you
21 all related?

22 A No, ma'am.

23 Q Okay. Are you a Vereen?

24 A No. I'm a Gibson.

25 Q You're a Gibson. Are you related to Vereens?

1 A My wife was a Vereen. My two oldest sons are Vereens.
2 We never changed their name over to Gibson.

3 Q So if somebody called the name Gary Vereen as being in
4 the club, were they talking about you probably?

5 A No.

6 Q No?

7 A That's my oldest son. He's deceased.

8 Q Okay. So that's your oldest son?

9 A Uh-huh.

10 Q Now, let's talk about December 1st, 2008. Where were you
11 that night?

12 A I was at home at first, and Andy came back, Aundry came
13 by. He asked me to come to the club, was I coming to the club
14 with him at that moment. I told him no. I had to finish my
15 daughter's car because I had put a timing belt on it because
16 she had to go back to school in Columbia. So he left, and
17 that's when -- when I finished her car, me and Edward Mack, we
18 went to the club. I usually cook the oysters for them on
19 Monday nights and fry the chicken wings and stuff in the
20 kitchen. So --

21 Q So you had told Andy that you weren't sure if you were
22 going to make it; is that right?

23 A Well, I told him I'd be late.

24 Q You'd be late.

25 A Right.

1 Q Okay. But you usually were the cook?

2 A Yes.

3 Q Or at least ran the fryer?

4 A Yeah. I did the cooking, too.

5 Q Okay.

6 A Most of the cooking.

7 Q Was your son, Gary Vereen, there that night?

8 A No, ma'am.

9 Q Okay. Now, did something remarkable happen that night?

10 A We were -- well, Andy was sitting with me, Aundry was
11 sitting the side door like where you're standing, if it's a
12 door right there and then the bar runs down. It's a walkway
13 and it's a bar here and you can go behind the bar right there
14 where he's sitting, and Andy was sitting about that, about --
15 well, about where he was sitting at in front of the door, and
16 we're all on this end of the bar, which the end of the bar it
17 comes down, it goes like in an L shape, but it's like a U.

18 Q Why don't we do this, since, since you want to talk real
19 specifics at this point, we're going to pull up a picture for
20 you to look at. Okay? We're going to look at State's Exhibit
21 Eight, which has already been entered into evidence. This is
22 slide five. Now, the jury's looking at this picture, but they
23 can't see you pointing to it.

24 A Right.

25 Q So you use the words to best describe what it is they're

1 looking at. So where were you sitting?

2 A Okay. This is the view coming from the door.

3 Q Okay.

4 A It's, like I said, the back door facing towards me, and I
5 was -- Andy was sitting further back this way.

6 Q Was Andy sitting at the bar?

7 A He was like behind the bar like a bartender. He was
8 sitting back there playing PlayStation or whatever, and they
9 just started sitting there, and I asked him, I said, "Why
10 don't you come down here," where this pitcher is at, the end
11 of the bar.

12 Q Uh-huh.

13 A Because we were all shooting pool. He was the only one
14 down there by himself. I said, "Man, come on down here." You
15 know, we were all laughing and joking. He got up, came down
16 there.

17 Q Did he start shooting pool?

18 A No. Because we were all like betting over shots, you
19 know. Different guys were playing, and we were betting this
20 guy a dollar he can't make that shot, or you know, this and
21 that. Then all of a sudden we heard a wham.

22 Q Now, at this point had Andy moved over to here?

23 A Yes. He was at the -- right here at the corner here at
24 the end of the bar.

25 Q Near the pool tables?

1 A Hold on. Hold on. Hold on. This picture here -- I
2 don't remember that rail in there.

3 Q Was he nearer to the pool tables or nearer to the bar?

4 A His back was turned towards the bar. His back was like
5 -- this is the bar --

6 Q Uh-huh.

7 A -- he was sitting here. Edward Mack was sitting here,
8 and I was sitting on the far end towards the other corner of
9 the bar.

10 Q Okay. Was he up on that platform that the bar is on or
11 was he down on the ground floor near the pool tables, to the
12 best of your memory?

13 A That's something I can't really remember.

14 Q Okay.

15 A We were sitting in stools.

16 Q Okay.

17 A Bar stools, I believe, and I believe it was against that
18 railing.

19 Q But now when everybody got up and started betting on
20 certain shots, did Andy get up and go over near the pool table
21 or was he still sitting up at the bar?

22 A No. He was sitting at the bar with his back turned to
23 the door.

24 Q Okay. Back turned to the --

25 A To the door.

1 Q The door where this picture was taken?

2 A Yeah. All of our backs were turned to the door.

3 Q Okay. All right. So you, you said you heard something?

4 A The door open, wham.

5 Q So did the door open hard?

6 A Yeah.

7 Q All right.

8 A And that's what drew everybody's attention.

9 Q Okay.

10 A And I looked back, and I heard a pow, and I see a ski
11 mask, a hoody, and I dove behind the back side of the bar and
12 low crawled up in the corner. Well, low crawling is for
13 veterans. I'm a veteran, and I tried to play dead, and when I
14 got up in the corner, I was breathing hard. I said, "Oh, my
15 God, I'm still breathing," and then I heard the statement
16 that, "You think you going to do this and get -- do this to me
17 and get away with it."

18 Q All right. Now, let's stop for a second.

19 MR. BARR: Objection.

20 THE COURT: Yes, sir.

21 MR. BARR: Your Honor, we -- that's hearsay.

22 THE COURT: You're raising your prior objection?

23 MR. BARR: Yes, sir.

24 THE COURT: All right. I'd make the same ruling. You
25 may proceed.

1 MS. BAILEY: Thank you, Your Honor.

2 BY MS. BAILEY:

3 Q All right. Tell us again that statement that you heard.

4 A "You think you going to do this to me and get away with
5 it."

6 Q All right. Now, did you know Andy's voice pretty well?

7 A Aundry's voice?

8 Q Yes.

9 A Yeah.

10 Q All right. Did Aundry say that?

11 A No.

12 Q Okay. So you heard that statement, and what did you hear
13 next?

14 A All I could hear was three gunshots, pow, pow, pow, and I
15 laid there.

16 Q Did you see anything?

17 A No, ma'am. I didn't raise my head for nothing.

18 Q Okay. What happened next?

19 A D.J. came over to the -- like I said, I didn't raise my
20 head for nothing. It took D.J. about 10 minutes to get me to
21 look up. He was calling my name, and when I looked up,
22 whoever the intruder was was gone. I got up, looking around,
23 see what was wrong with Andy, and Andy was calling for Mo, and
24 then I looked for things trying to get him comfortable till
25 the ambulance because they had called 911, and then I noticed

1 Edward Mack, which who I was riding with to the shop, wasn't
2 around. I was like, "Where is, where is, where is, where is
3 Bush? Where's Bush," and --

4 Q What, what, what did you just call him?

5 A Bush.

6 Q And is -- whose nickname is that?

7 A Edward Mack.

8 Q Okay.

9 A And you all see how he, he walked out of there. He went
10 up two flight of steps on the other side of the bar. We
11 didn't know where he was, and I was like -- he said, "I'm up
12 here. I'm up here," and I'm like, "How did you get up there,"
13 and you know, and then the sheriff's department and the EMS
14 came.

15 Q All right. Now, did you -- in the time between when D.J.
16 talked you into coming out from, from behind the bar and when
17 the sheriff's department came, what were you doing in that
18 time period?

19 A I, I pretty much was trying to see if Andy was
20 comfortable and he was asking for Mo. He looked at me, and
21 then he laid back down. He kept moving his leg. I kept
22 telling him to be still, be still because if he keep moving a
23 bullet'll travel, and you know, Andy's kind of stubborn. So,
24 you know, he just kept moving. So I got a bag of ice from in
25 the back and put up under his head to prop his head up at

1 least so he could see what was going on, going on, and then,
2 you know, the sheriff came. Oh, and Bush gave me a bullet off
3 the ground. I told him, I said, "Man, you ain't supposed to
4 pick that up," and stupid me, I grabbed it from him. The
5 bullet had -- I think he said it ricocheted off his toe and
6 then hit me in the ankle when I was low crawling towards the
7 back of the bar because I felt something hit my ankle. I
8 thought I was shot in the ankle, but I wasn't. It was this
9 bullet, and that we gave the sheriff the bullet.

10 Q Okay. Did you have any injuries from that?

11 A No, ma'am. Just a sore ankle.

12 Q All right. Now, what did you do with that bullet?

13 A We gave it to the deputy sheriff.

14 Q Directly?

15 A Yes.

16 Q Okay.

17 A No one else, and I explained to him, I told him we -- I
18 know we wasn't supposed to pick it up, but he happened to pick
19 it up so.

20 Q Do you remember which sheriff you gave it to?

21 A No, ma'am.

22 Q All right. Now, while you were there, did you overhear
23 anything that, that Andy may have said to Mo or to Naomi or to
24 anybody around?

25 A Naomi didn't come till -- Naomi wasn't there at the time

1 the incident happened. She was there fast, but she wasn't
2 there time the incident happened. Whatever he said to Mo, no,
3 I did not hear it.

4 Q And but did Naomi get there before law enforcement? Do
5 you remember?

6 A I believe she did. Yeah. Because I didn't even have her
7 number. I don't even know who called her.

8 Q Do you know Mr. Dizzley?

9 A No. I do not.

10 Q Can you -- I know it happened fast, but the person who
11 came into that club with a mask, can you give us any further
12 description of that person?

13 A Not really. I mean, all I can -- I mean, somebody comes
14 in a club shooting and they got a ski mask and a hoody on,
15 what is, what is your reactions? To hide for cover, and
16 that's what I did.

17 Q Could you tell if that person was white, black or
18 Hispanic?

19 A You really couldn't tell because, I mean, you got a hoody
20 on with a ski mask and the eye and the mouth, I mean, and
21 they're shooting you ain't going to sit there, look to try to
22 see, you know, if they're white, black, Puerto-Rican or what,
23 Indian or what. You're going to try get out the way.

24 Q All right. Were you able to tell how tall that person
25 was?

1 A To my reactions in that picture you showed me, and I say
 2 -- I said this is in my statement, I'm not sure -- I seen Mr.
 3 Dizzley in the club one or two times --
 4 Q Now, hold on. I'm not asking for your opinion.
 5 A No. But I'm just saying the height, with the height of
 6 the bar if you look at the picture --
 7 Q Hold on now. We're going based on your personal
 8 knowledge, not your opinion. You're not an expert.
 9 A To, to me they, they had to be taller than five, my --
 10 about my height or taller to shoot over the bar.
 11 Q Okay. How tall are you?
 12 A Huh?
 13 Q How tall are you?
 14 A Five-six.
 15 Q Okay. Now, so based on your very brief viewing of that
 16 person, you thought they were your height?
 17 A Or taller.
 18 Q Or taller, okay. Now, it's -- you testified earlier you
 19 did not actually see the shooting happen; is that correct?
 20 A No, ma'am.
 21 Q Okay.
 22 MS. BAILEY: Beg the Court's indulgence.
 23 THE COURT: Yes, ma'am.
 24 MS. BAILEY: No further questions for this witness.
 25 Thank you, Mr. Gibson.

1 THE COURT: Mr. Barr, your witness.

2 CROSS EXAMINATION

3 BY MR. BARR:

4 Q Stand up. Didn't you tell the police officers that the
5 man you saw came into the club, the shooter, was taller than
6 Terron Dizzley?

7 MS. BAILEY: Objection, Your Honor. He didn't -- there's
8 no information. That's -- that would be a misstatement of the
9 facts is my objection.

10 THE COURT: Well, again, if you could, you need to
11 identify the time and the place of the statement. Let's
12 follow the rule concerning out-of-court statements.

13 BY MR. BARR:

14 Q On August 20th of 2012, you spoke with -- you spoke with
15 the investigators with the Georgetown County Sheriff
16 Department. Do you have a recollection of that?

17 A Yes.

18 Q Did not you tell them at that time that you thought the
19 man that you saw come in the club, the shooter, was too tall
20 to be Terron Dizzley?

21 A I said five-six, five-seven. How tall is Mr. Dizzley?

22 Q Well, didn't you tell them that you looked at Mr. Dizzley
23 or you thought about it and that you believed that he was too
24 short to shoot over the bar?

25 A I just said he was five-six or five-seven. That's taller

1 than Mr. Dizzley.

2 Q You can sit back down.

3 A I mean, how many times can I say it?

4 Q And in fact, you told them that you thought that a man
5 Mr. Dizzley's height would have had to reach up to shoot over
6 the bar?

7 A It just said five-six or five-seven, that's taller than
8 Mr. Dizzley. They would, they -- somebody shorter -- his
9 height. You can look at the picture. I mean, from my
10 recollection --

11 Q Yes, sir.

12 A -- and like I told her, I don't even remember the back
13 part having a platform back there. I thought our backs were
14 against the bar. It's been so long. I thought he just ran
15 across the front of the bar, but then I remember I did -- no,
16 that picture, that picture there is not right. I'm going to
17 tell you that. That's got to be the side I -- that back side
18 I crawled up on is where that picture was taken from. It had
19 to be.

20 Q Well, do you deny telling the officer that Dizzley is too
21 short to shoot over the bar without reaching up. (As read),
22 "He doesn't recall the shooter reaching up." Did you tell him
23 that?

24 A I told him -- yes. I did tell him the person was taller,
25 five-six, five-seven, like I was saying.

1 Q Now, you also told them or did you not tell the officers
2 that the person, the shooter, appeared to you to walk with a
3 limp?

4 A When he came through the door -- can I stand up, Your
5 Honor?

6 THE COURT: Yes, sir. You certainly can.

7 A -- and took that one shot that I did see across the bar,
8 like I said, where Andy was sitting at at first --

9 Q Yes, sir.

10 A -- pow, and when he did that, I dove behind the bar.
11 Now, wasn't that a limp?

12 Q Well, my question was you -- did not you tell the police
13 --

14 A I told them exact same thing I'm telling you.

15 Q -- that, that you saw him walk with a limp? You thought
16 he walked with a limp?

17 A I can't -- I don't -- I don't "recollize" what he wrote
18 down there. I told you exactly what I just told you -- told
19 him.

20 Q All right.

21 A I told you.

22 Q Now, Aundry Evans was your friend?

23 A Yes.

24 Q And of course, you know his father, Mr. Evans?

25 A I know of him, yes.

1 Q Did you know that's him sitting in the back of the
2 courtroom over there?

3 A Yes, sir. I recognize his face.

4 Q And of course -- all right. Now, I've just got a few
5 more questions. You -- were you -- were you at the -- were
6 you still at the club when EMS retrieved or when EMS picked
7 Aundry up?

8 A Yes. I was. I was the last one to leave.

9 Q The last one to leave the club?

10 A Yes. I was.

11 Q Now, did you hear anybody at the club say that Aundry
12 said who he thought shot him?

13 MS. BAILEY: Objection, Your Honor. That would call for
14 hearsay.

15 Q You don't have to tell me what he said, just whether you
16 --

17 MS. BAILEY: He just asked for hearsay.

18 THE COURT: He -- I think that calls for a hearsay
19 response. I'll sustain the objection.

20 Q Well, did you hear anybody tell you? Did anybody tell
21 you?

22 MS. BAILEY: Objection, Your Honor. Again, that asks for
23 hearsay.

24 THE COURT: Well, he hasn't finished the question yet.

25 Q Did anybody tell you who they thought had shot Aundry?

1 A No.

2 MS. BAILEY: Your Honor, that would ask for hearsay.

3 THE COURT: He didn't ask for what they said. He asked
4 did anybody tell him that. I'm going to allow that question.
5 He can't ask for a quotation from somebody.

6 A No. Because I wasn't around. I was sitting in a truck
7 with someone at the time.

8 Q Because you wasn't around. You were sitting in the
9 truck?

10 A I was sitting outside the club. I was so upset. I was
11 sitting outside in the truck with a fellow named Grease, a
12 friend of me and Andy's, because he heard about it. He lived
13 up the street, and he drove down there, and me and him was
14 sitting in the truck till everybody -- because I just wanted
15 to get out the way of everything.

16 Q Thank you, sir.

17 MR. BARR: I have nothing further.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MS. BAILEY:

21 Q What's Grease's nickname, I mean, Grease's --

22 A Yeah. His nickname, but I forget. They own Browns Ferry
23 Logging or something like that. They right up there at the
24 end of the road when you first turn into Oatland on the right-
25 hand side. I don't know his government name.

1 Q So you heard the door open?

2 A Yes, ma'am.

3 Q Did you see the door open or did you hear the door open?

4 A You couldn't see it because it was a cooler at the door.
5 We was just talking about that that night about moving that
6 cooler, that way we could see who was coming in and out the
7 club.

8 Q At what point did you hide? Did you hide when that door
9 opened?

10 A Right after I heard that first shot.

11 Q When you heard the first shot.

12 A I ran for cover. I'm from the north, and I'm from --
13 I've a veteran. I'm not standing around, look to see where no
14 bullets coming from.

15 Q Did you hear the first shot or did you see the first
16 shots?

17 A I heard it, and I looked -- when, when the shot went off,
18 pow, you know, it could have been anything. Anybody -- first
19 response is going to be look back because it could have been a
20 firecracker. We -- I looked back and seen like this and it
21 came like this (indicating), and I -- that's the last -- all I
22 can hear was --

23 Q So you looked back when you -- after you heard the shots.

24 A After I heard -- no. After I heard the door open and
25 shots, about the same time it counteracted each other.

1 Q Okay. I have no further questions. Thank you -- no, I'm
2 sorry. How many shots did you say you heard total?

3 A After the first shot, I believe I heard four more. It
4 was so -- I was trying to run for cover, and I mean, I know at
5 the end I heard pow, pow, pow, three shots.

6 Q Okay. Did you hear any shots outside?

7 A You couldn't hear it. I mean, my mind was -- I couldn't
8 hear nothing outside. My mind wasn't even on outside.

9 Q Okay.

10 MS. BAILEY: No further questions.

11 THE COURT: Mr. Barr.

12 RECROSS EXAMINATION

13 BY MR. BARR:

14 Q You didn't hear any shots outside, and did you see
15 anybody else with any other weapons?

16 A Sir, like I said, I was inside. I can't see through
17 walls. I mean, we was in there. I'm not being smart. We was
18 in there playing pool. You got the pool going on. You got
19 Monday night football, TVs loud and everything else.

20 Q Yes, sir. Thank you.

21 A You know.

22 THE COURT: All right, sir. You may step down. Thank
23 you very much.

24 A All right.

25 THE COURT: Do you wish to excuse the witness?

1 MS. BAILEY: Yes, Your Honor, please excuse him from his
2 subpoena.

3 THE COURT: Any objection?

4 MR. BARR: No, sir.

5 THE COURT: Sir, you're free to go.

6 A Thank you.

7 THE COURT: Thank you, sir. All right. The Court's
8 going to take about a five to 10-minute break. As always,
9 members of the jury are cautioned not to discuss any aspect of
10 the case until such time as I ask you to begin those
11 discussions. You may retire to the jury room at this time.
12 Everyone remain seated while the jury retires.

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

15 THE COURT: Court'll be in recess for about five to 10
16 minutes. Thank you.

17 MS. BAILEY: Thank you, Your Honor.

18 OFF THE RECORD

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

21 THE COURT: The State ready to proceed?

22 MS. BAILEY: Yes, Your Honor. For scheduling purposes
23 I just want to go ahead and inform the Court I have one more
24 witness.

25 THE COURT: Uh-huh.

1 MS. BAILEY: And then my next witness after that is the
2 forensic pathologist, who's coming at 1:00 o'clock.

3 THE COURT: All right. The Defense ready?

4 MR. BARR: Yes, sir.

5 THE COURT: All right. Bring the jury in.

6 MS. BAILEY: I'm sorry. To be clear, I may have
7 communicated the wrong thing there. I have one more witness
8 who's here and ready.

9 THE COURT: Uh-huh.

10 MS. BAILEY: And then the forensic pathologist at one,
11 and then more witnesses this afternoon and tomorrow morning.
12 I'm not trying to get everybody's hopes up.

13 THE COURT: Well, are we going to finish this week?

14 MS. BAILEY: Yes, Your Honor.

15 THE COURT: All right.

16 MS. BAILEY: I anticipate --

17 THE COURT: Is the Defense going to have time to put up a
18 case?

19 MS. BAILEY: Yes, Your Honor. I anticipate resting
20 tomorrow around lunchtime.

21 THE COURT: All right. Let's bring the jury in.

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

24 THE COURT: All right. The jury has returned to the
25 courtroom, and at this time the State may call its next

1 witness.

2 MS. BAILEY: Thank you, Your Honor. The State calls
3 Jameson Wright.

4 THE COURT: Come forward, sir. If you'll step over here
5 to my left to the gentleman.

6 THE CLERK: Sir, please state your full name for the
7 Court.

8 MR. WRIGHT: Jameson Tyrece Wright.

9 THE CLERK: Could you please spell your name for the
10 court?

11 MR. WRIGHT: J-A-M-E-S-O-N.

12 THE CLERK: And your last name?

13 MR. WRIGHT: W-R-I-G-H-T.

14 THE CLERK: Thank you.

15 Whereupon, Jameson Wright was called to the stand, duly
16 sworn by the clerk and testified as follows:

17 THE CLERK: Thank you. Please have a seat and speak in
18 the mike.

19 THE COURT: Sir, you have a very soft voice, which is
20 fine, but if we -- the last lady over in the jury box needs to
21 be able to hear you. So keep as close to that microphone as
22 you can.

23 MR. WRIGHT: Yes, sir.

24 THE COURT: But and speak as loud as possible.

25 MR. WRIGHT: All right.

1 THE COURT: You may proceed.

2 MS. BAILEY: Thank you.

3 THE COURT: Ms. Bailey.

4 DIRECT EXAMINATION

5 BY MS. BAILEY:

6 Q Mr. Wright, do you have a nickname?

7 A Yes, ma'am.

8 Q Speak into that microphone.

9 A Yes, ma'am.

10 Q What's your nickname?

11 A Tip, Tip.

12 Q Tip?

13 A Yes, ma'am.

14 Q People call you anything else?

15 A No, ma'am.

16 Q Anybody ever call you T.I.?

17 A Yeah. People who really don't know my -- call me by Tip.

18 Q Okay. On December 1st, 2008, where were you?

19 A At Paradise trying to catch a ride home.

20 Q Okay. And you said you were trying to catch a ride home.

21 Were you inside or outside the club?

22 A I'm in the outside, cold. I been outside.

23 Q Okay. And did anything extraordinary happen while you
24 were waiting on a ride?

25 A No. Not really. I was standing outside, and then a car

1 crank up. Well, it was in the woods. It wasn't nothing new
2 because cars always be in the woods over there because they
3 got a bunch of people that down there that smoke rock or
4 whatever, and they be in the woods or whatever. So I thought
5 it was somebody from around the area, and so I just walked to
6 the road and catch a ride home. I didn't --

7 Q What happened next?

8 A What happened next? I went to the car. Thought it was
9 somebody from around home side. The back, the back driver
10 window rolled down. The person had a gun, told me not to
11 move. So I ain't move.

12 Q How many people were in that car?

13 A Four.

14 Q Okay. What color was the car?

15 A A black Ford Taurus.

16 Q There were four people in the car. What were they
17 wearing?

18 A Gloves and masks.

19 Q They were all wearing gloves?

20 A Yeah. And masks.

21 Q And masks. Could you see any of their faces?

22 A Nah.

23 Q How many guns did you see?

24 A Two.

25 Q Can you describe the guns?

1 A It was long.
2 Q One was long?
3 A Yeah.
4 Q What about the other one?
5 A I ain't see the other one.
6 Q You didn't see the other one?
7 A Huh-uh, huh-uh.
8 Q Okay. What happened next? Anybody get out of the car?
9 A Yeah.
10 Q Who got out of the car?
11 A A tall fellow.
12 Q Okay. Was that out of the back seat or the front seat?
13 A The front seat.
14 Q Front driver or passenger?
15 A Passenger side.
16 Q And what did that person do who got out of the passenger
17 side?
18 A Go on inside the club.
19 Q He went inside the club?
20 A Yeah.
21 Q And did anybody get out of the back of the car?
22 A No, ma'am.
23 Q Did anybody point a gun at you?
24 A Yes, ma'am.
25 Q I'm sorry?

1 A Yes, ma'am.

2 Q Who pointed a gun at you?

3 A It was in the back seat.

4 Q Okay. So it wasn't the passenger who went inside the

5 club. It was somebody else?

6 A The passenger got out the car and went in the club.

7 Somebody was in the back seat holding a shotgun.

8 Q Okay. I'm going to need you to speak up. Okay?

9 A Yes, ma'am. Somebody was in the back of the car holding

10 a shotgun when I walked to the car, when I was walking to the

11 car.

12 Q Okay.

13 A The person that jump out the front seat ran inside the

14 club.

15 Q All right. And that person who was holding the shotgun

16 what were they doing with it?

17 A Just holding it like that right there (indicating.)

18 Q Holding you like that?

19 A They just -- they was holding it out the window like that

20 right there (indicating).

21 Q They were pointing it at you or at something else?

22 A They was just holding it out the window like that right

23 there (indicating.) They wasn't pointing it at me.

24 Q Okay. Did anybody point a gun at you?

25 A No, ma'am. If it did I can't remember because that was

1 like six, seven years ago, and to tell you the truth, I smoke
2 weed. I can't remember.

3 Q So the person who got out of the front seat, were they
4 carrying a shotgun or a handgun?

5 A I couldn't tell.

6 Q Okay. Do you recall talking to Investigator Steve Brown
7 on August 20th of 2012?

8 A Yeah. If that's the same one who keep calling my phone.

9 Q Okay. Did you give a statement to him?

10 A Yeah.

11 Q In that statement, do you recall indicating that the
12 front seat passenger got out of the car and walked into the
13 club brandishing a handgun?

14 A He was -- I couldn't recall.

15 Q So you don't recall whether you made that statement or
16 not?

17 A No. I don't recall seeing him with a gun.

18 Q Okay. You don't recall that today.

19 A Yeah.

20 Q Do you admit or deny making that statement?

21 A Well, I ain't, I ain't denying making that statement.

22 Q Did you hear shots?

23 A Yeah. I heard one shot, and then that's when I started
24 running.

25 Q Where did you run?

1 A Behind the club in the woods.

2 Q Do you recall when you spoke with Investigator Brown on
3 August 20th of 2012, do you recall telling him that you heard
4 shots coming from inside the club?

5 A It was shots. I heard one shots and then I ran behind
6 the club. That's when I started hearing more shots, didn't
7 know if it was coming out the club or outside -- in the club
8 or outside the club.

9 Q So you couldn't tell where the --

10 A I couldn't tell because outside was so quiet it was
11 echoing. I didn't know if it was coming out the club or
12 inside.

13 Q Was anybody else shot at that you're aware of?

14 A Yeah. My cousin.

15 Q Who's your cousin?

16 A Andre Richards.

17 Q Was he hit?

18 A Nah.

19 Q As the vehicle -- did you see the vehicle leave?

20 A No. Because I was still in the woods.

21 Q Do you recall telling Investigator Steven Brown that you
22 heard more shots as the vehicle was leaving?

23 A That I -- no, ma'am.

24 Q You don't recall telling him that?

25 A Huh-uh.

1 Q Do you admit or deny that you would have made that
2 statement to him?

3 A Excuse me?

4 Q Do you admit or deny making the statement to Investigator
5 --

6 A I did not, man.

7 Q -- Brown?

8 A I did not, I mean. I can't recall. I ain't even heard
9 no more shots after the club -- car left because I ain't even
10 saw the -- when the car left. I was in the woods trying to
11 find my way out the woods.

12 Q Can you describe the front seat passenger who got out of
13 the car?

14 A It was taller than -- a little bit taller than me --
15 short -- well, shorter than me.

16 Q Shorter than you or taller than you?

17 A Yeah. A little bit shorter than me. A little bit
18 shorter.

19 Q Do you have an amount that -- approximate height?

20 A Nah. I'm about six. I'm a little bit, little, little
21 bit close to six foot, but he was a little bit shorter than
22 me.

23 Q Do you recall telling Investigator Steve Brown on August
24 20th of 2012 that that front seat passenger was five six?

25 A If I did, I can't remember.

1 Q Okay. Do you admit or deny that you would have made that
2 statement to him?

3 A I, I admitting.

4 Q Do you recall telling Investigator Steve Brown that the
5 front seat passenger was 180 pounds?

6 A I can't remember.

7 Q Do you admit or deny that you would have made that
8 statement?

9 A I deny.

10 Q I'm sorry?

11 A I denied.

12 MS. BAILEY: I have no further questions for this
13 witness.

14 THE COURT: Mr. Barr, your witness.

15 MR. BARR: I have no questions, Judge.

16 THE COURT: All right, sir. You may step down. Thank
17 you very much. You wish to excuse the witness?

18 MS. BAILEY: Yes, Your Honor.

19 THE COURT: Any objections?

20 MR. BARR: No, sir.

21 THE COURT: You're free to go, sir.

22 All right. Counsel, it's my understanding the next
23 witness will arrive at 1:00 o'clock. Is that correct?

24 MS. BAILEY: Yes, Your Honor.

25 THE COURT: All right. So ladies and gentlemen, we're

1 going to take our lunch break at this point in time. As you
2 leave the courthouse, the instructions will be the same.
3 Don't listen to, watch or read any media reports. Don't
4 attempt to gather information on your own. Don't discuss the
5 case with anyone. Don't allow anyone to discuss it with you
6 and report any contact you might have concerning this case
7 should that occur. We expect the next witness to be here at
8 1:00 o'clock. So it gives you a little extra time to run an
9 errand if you need to, but we'll resume at that time. Please
10 be in the jury room at that time so we can begin promptly.
11 Thank you very much. You're free to go to lunch. The
12 bailiffs will show you out. Remain seated while the jury
13 retires.

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

16 THE COURT: Court's in recess until 1:00 o'clock. We'll
17 resume at that time in this courtroom. Thank you very much.

18 MS. BAILEY: Thank you, Your Honor.

19 OFF THE RECORD

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

22 THE COURT: All right. The State ready to proceed?

23 MS. BAILEY: Yes, Your Honor.

24 THE COURT: All right. Defense ready?

25 MR. BARR: Yes, sir.

1 THE COURT: Bring the jury in.

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

4 THE COURT: All right. The record will reflect the jury
5 has returned to the courtroom. I hope everyone had a good
6 lunch break, and as always, I will ask if any of you had any
7 difficulty in following my directions while you're away from
8 the courthouse please stand.

9 (No response.)

10 THE COURT: And it appears all jurors have been able to
11 comply with my instructions thus far.

12 When we took our break the State was still in the
13 presentation of its case, and you may call your next witness.

14 MS. BAILEY: Thank you, Your Honor. The State calls Dr.
15 Schandl.

16 THE COURT: Come forward, ma'am, to my right, I mean, to
17 my left, excuse me, and be sworn, your right.

18 THE CLERK: Please state and spell your full name for the
19 Court.

20 MS. SCHANDL: Cynthia Anna Schandl, C-Y-N-T-H-I-A, A-N-N-
21 A, S-C-H-A-N-D-L.

22 THE CLERK: Thank you.

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

25 THE CLERK: Thank you. Please have a seat.

1 THE COURT: Ms. Bailey, your witness.

2 MS. BAILEY: Thank you, Your Honor.

3 THE COURT: Yes, ma'am.

4 DIRECT EXAMINATION

5 BY MS. BAILEY:

6 Q Good afternoon, Dr. Schandl.

7 A Hi.

8 Q Where do you work?

9 A I work at the Medical University of South Carolina in
10 Charleston, South Carolina, in the Department of Pathology and
11 Laboratory Medicine and in the autopsy section.

12 Q And what is your role there?

13 A I am a forensic pathologist and associate professor.

14 Q Now, for those folks who may have never heard the term
15 forensic pathologist, what do you do?

16 A A forensic pathologist is a doctor who is then trained in
17 first pathology, anatomic and clinical pathology, so the study
18 of disease, and then further trained in the field of forensic
19 pathology by way of an additional year of training, which is a
20 fellowship training period. Forensic pathology, the way that
21 -- what we're usually tasked to do is to determine the cause
22 of death and the manner of death in cases where people die and
23 there's some legal aspect to their death, whether it's because
24 of a homicide or maybe a suicide or even accidents and
25 sometimes even natural causes may have some sort of legal

1 aspect with their death; and so, that's when we're asked to
2 step in and see if we can determine the cause of death and the
3 manner of death, usually by performing an autopsy.

4 Q Can you tell us a little bit about your education?

5 A Yes. So as I mentioned, I'm a physician or a doctor. So
6 after my bachelor's degree, I went to medical school at the
7 Medical University of South Carolina. During that time, I
8 also went to graduate school and graduated in '99 with an MD
9 and a PhD degree, and following that training, began my formal
10 training in pathology. So anatomic and clinical pathology
11 residency training is four years, and then the fellowship is
12 an additional year, and following that training, there's a
13 board certification by the American Board of Pathology, which
14 is a national organization that certifies pathologists, and
15 I'm board certified in my three areas, which is anatomic
16 pathology, clinical pathology and forensic pathology.

17 Q Do you have to do any continuing education?

18 A Yes. There are requirements in the State of South
19 Carolina to maintain your medical license that you do
20 continuing medical education. I do quite a bit more than they
21 require because I like to.

22 Q Can you tell us a little bit about your experience?

23 A Sure. So I've been performing autopsies since I began my
24 residency training in 1999, and starting in 2000, I worked as
25 an assistant medical examiner in our system, when we had a

1 medical examiner system in Charleston. So I started doing
2 forensic pathology cases, and then I began on faculty at MUSC
3 in 2004, and I've been there since then doing cases, and I'm
4 -- I -- as far as numbers, the quality is more important than
5 numbers. I'm somewhere over 2000 cases.

6 Q So that's -- is that 2000 autopsies performed?

7 A That is correct.

8 Q Okay. Have you ever been qualified in the courts of this
9 state?

10 A Yes, ma'am.

11 Q Have you been qualified in any other courts as an expert?

12 A Yes. In federal and in military courts.

13 Q Approximately how many times have you been qualified as
14 an expert in the state courts in South Carolina?

15 A Somewhere between 50 and a hundred.

16 MS. BAILEY: At this time the State would seek to move
17 Dr. Schandl -- to qualify her as an expert in forensic
18 pathology.

19 THE COURT: Any objections?

20 MR. BARR: No, sir.

21 THE COURT: All right. Ladies and gentlemen of the jury,
22 let me explain to you a little bit about the procedure we're
23 going through right now. Ordinarily, under the rules of
24 evidence that govern the testimony of witnesses in a trial,
25 witnesses are not allowed to state opinions about matters.

1 Lay witnesses are required to testify concerning facts that
2 were -- are within their knowledge. An exception to that
3 general rule is for -- is made for witnesses who are qualified
4 as experts either because of their education or professional
5 standing or things of that nature, and for those that are
6 qualified as an expert by the Court, they're allowed to state
7 their opinions within their area of expertise, and they're
8 also allowed to state the reasons why they hold those
9 opinions. So they're, they're allowed to give opinions within
10 that field or calling or profession. In this case, this
11 witness is being qualified as an expert as a forensic
12 pathologist, and as such, she'll be allowed to state her
13 opinions within that area of expertise and also the reasons
14 for them. Now, later on when I charge you concerning the law
15 in this case, I'll go over these matters with you in, in
16 relationship to your responsibilities, but we'll cover that
17 during the charge. So at this time, I am qualifying the
18 witness as an expert within that field. You may proceed, Ms.
19 Bailey.

20 MS. BAILEY: Thank you, Your Honor.

21 THE COURT: Yes, ma'am.

22 BY MS. BAILEY:

23 Q Did you have occasion to perform an autopsy on Aundry
24 Evans, Jr.?

25 A Yes, ma'am.

1 Q And how did that case come to you?

2 A So in this state, we have what's called a coroner system,
3 and so each county has an elected official, the coroner, who
4 is responsible for determining the cause and manner of death
5 for those people who die in their county. When they determine
6 that an autopsy will assist them in that determination, they
7 may refer their case to a forensic pathologist, and in this
8 case, that's what happened. The Georgetown County Coroner
9 referred the case to our office at the Medical University of
10 South Carolina.

11 Q So how long -- when did you perform the autopsy?

12 A If I may refer to my notes?

13 Q Okay.

14 MS. BAILEY: Any objection?

15 A I performed the autopsy on December 3rd of 2008.

16 Q And did you make any preliminary findings?

17 A Yes. So if I may describe my process. An autopsy begins
18 when the person, the dead person arrives at our facility and
19 is brought up to the autopsy suite where I will perform my
20 procedure. It begins with an external examination where I'm
21 looking for things that might be identifying features such as
22 height and weight, tattoos, those sorts of things, and then it
23 continues with an examination of clothing, if it's being worn
24 or not, as well as is there any evidence of injury. So the
25 external examination showed me that there were a number of

1 defects in Mr., Mr. Evans' body that were consistent with
2 gunshot wounds.

3 At that point, the next step in a gunshot wound case or a
4 probable gunshot wound case is to get a series of x-rays. The
5 reason we get a series of x-rays is to see if there are
6 bullets in the body that we need to recover. So we want to
7 first know where they are. So the x-ray helps us figure out
8 where they are, and second, not damage them trying to get them
9 out. So we want to have a very good idea of, of where they
10 are and if they're in there. That also helps us when we're
11 trying to figure out the pathway of the bullet because some of
12 the bullets will go all the way through the body and some of
13 them will stop in the body, and those are the ones we need to
14 recover. So putting the picture back together, the x-ray can
15 be very helpful.

16 So after the, the x-rays and the external examination and
17 the examination of clothing, then we move to the internal
18 examination, which is what people think of when you think of
19 an autopsy where you make the Y-incision and you look at the
20 organs inside the body.

21 Q And when you performed -- let's start with the x-ray.
22 When you had the x-ray done on Mr. Evans, what did you find in
23 the x-ray?

24 A In the x-ray, it was apparent that there were some
25 radiopaque objects, so things that the x-ray couldn't pass

1 through, in this case metal objects in the region of his left
2 hip. In addition, you could tell that the femur, so that
3 thigh bone and right up near the hip, was broken, quite badly
4 broken in several different places, so a compound fracture,
5 multiple different fractures of that femur and hip region.

6 Q So how many -- what did you call them, radiopaque items
7 were you able to see on the x-ray?

8 A Well, on the x-ray, it's somewhat difficult to determine
9 exactly how many because they tend to come apart, but it
10 looked like four different things that we would want to
11 recover that did not look like bone but that looked like
12 metal. Bone is a little bit less dense with the x-ray than is
13 metal. So metal will look very white on an x-ray, and bone
14 will look a little bit more gray. Air is black, for example.
15 So there were -- there was -- there was some metal in there
16 that we knew that we needed to recover.

17 Q So when you performed the Y-incision and examined the
18 organs, did you make any findings?

19 A Yes. So as far as looking at the organs, his organs
20 generally looked pretty good. His heart was a little bit big.
21 Otherwise, his organs looked all fine. However, in his belly
22 the -- there was a bullet that had -- or let me -- I presume
23 that there was a bullet that had gone through his iliac artery
24 on the left-hand side, and the iliac artery is a very large
25 artery that comes off of your main artery, the aorta, which is

1 about the size of a garden hose, and the iliac artery is about
2 the size of my pinky. So that artery had been -- had a hole
3 in it, and in the belly itself, there was -- we measured 1,800
4 milliliters of blood. So that's almost two liters of blood,
5 if you think of it in terms of containers a two-liter bottle
6 of coke or something like that, shy of, of that amount of
7 blood in his belly. Also, there was a hole in his colon or
8 his large intestine, and there was bleeding off along a
9 pathway that would be consistent with a bullet going through
10 his body from the belly and through the pelvis and then out
11 the right leg from the left to the right.

12 Q Did you on your examination find any, any other entry and
13 exit wounds that were from a bullet?

14 A Yes, ma'am. The -- so as far as that left hip and those
15 fractures that we saw and those radiopaque things, those metal
16 things that we found on the x-ray, there were two gunshot
17 wounds that entered him at his hip, at his right leg and hip,
18 and both of those appeared to strike that bone, that femur,
19 the thigh bone. So those -- we did recover two bullets from
20 that site at the region of the top of the femur near the hip.
21 So those were two that went in and didn't go out, and bullets,
22 we got bullets out from those. In addition to that, there was
23 another bullet, apparent bullet wound track that went through
24 his -- the back of his left thigh, and then looked like it
25 went into the inside of his right thigh and out the right side

1 of his leg, so through both of his legs, but without hitting
2 any bones. So those were the gunshot wounds. There was the
3 one to the, the abdomen that struck the iliac artery and the
4 bowel or the colon, the two that went into the left hip area
5 and struck the femur and caused fractures there, and then the
6 one that went through the fleshy parts of both of his legs.

7 Q And in addition to that examination, do you rely on --
8 like do you order toxicology reports or rely on any other
9 reports when you form your medical opinions?

10 A Yes. It will depend on the case, but in forensic cases,
11 such as this is, it is routine to send fluids, usually blood
12 if we can get it, for toxicology testing, and that was done in
13 this case. In, in this case, Mr. Evans had survived for a
14 period of time after being shot, and so our best sample is the
15 first sample drawn when he gets to the hospital before he's
16 received blood and before he's received medications and that
17 sort of thing, and so in this case, we were able to get the
18 best possible sample, the admission blood sample, and send
19 that for a toxicology studies.

20 Q And did you rely on that toxicology result when forming
21 your opinion?

22 A Yes, ma'am. I do incorporate any toxicology findings if
23 they're pertinent.

24 Q Okay. And what was in his system according to that
25 toxicology report?

1 A Give me one moment. In his blood was caffeine, and
2 that's all.

3 Q In that toxicology report, would you have tested for
4 alcohol?

5 A Yes, ma'am.

6 Q Would you have tested for marijuana?

7 A Yes, ma'am.

8 Q Would you have tested for cocaine?

9 A Yes, ma'am.

10 Q And would you have tested for heroin?

11 A Yes, ma'am.

12 Q And were any of those present?

13 A No, ma'am.

14 Q Would you have tested for other types of prescription
15 drugs?

16 A Yes. The -- what we do is called a comprehensive
17 analysis, what, what we order from the lab, and that's about
18 300 different drugs and medications. So, yeah, it's -- it
19 covers a wide net.

20 Q As part of your lab's procedure, do you inventory what is
21 on the victim when they're brought into the lab?

22 A We do.

23 Q Okay. I'm going to show you what's been marked for
24 identification only as State's Exhibits 18 and 19, if you
25 could just take a look at those and see if you recognize them.

1 A Yes, ma'am. These are items that we found in his
2 personal effects, in his belongings, which included his
3 clothes that were in the custody of Jennifer Flowers of
4 Georgetown County, but she allowed us to examine them.

5 Q Okay. And how do you know these are the pictures that
6 were taken at your laboratory?

7 A They, they have -- well, they have our -- we call it a
8 chuck. It's a thing you put down on the table to keep stuff
9 from getting on the table. So it has our chuck and then it
10 has our number. We have a little -- we have one of those --
11 well, we used to have one of those DYMO label makers. So we
12 have our little DYMO label maker with our little case number
13 on there. So those are the reasons.

14 Q Okay. And are these photos a fair and accurate
15 representation of the items that were on the victim when he
16 came to your lab?

17 A Well, they, they were in his belongings --

18 Q In his belongings.

19 A -- which I received to, to review from a representative
20 of the sheriff's office.

21 Q Okay. But are these photos a fair and accurate
22 representation?

23 A Yes, ma'am.

24 Q Okay.

25 MS. BAILEY: At this time the State would seek to

1 publish State's Exhibits 18 and 19 and enter them into
2 evidence.

3 THE COURT: Any objection?

4 MR. BARR: No objection, Judge.

5 THE COURT: Without objection they'll be admitted into
6 the record as marked.

7 MS. BAILEY: Thank you, Your Honor.

8 (State's Exhibit Numbers 18 [Photograph] and State's
9 Exhibit Number 19 [Photograph] admitted into evidence and
10 appropriately marked.)

11 THE COURT: You may publish if you'd like.

12 BY MS. BAILEY:

13 Q All right. We are looking at State's Exhibit 18, which
14 has now been entered into evidence. If you could, just
15 describe for the jury what's in that photo.

16 A In this photo are two business cards, looks like a
17 driver's license and some money, including five \$20 bills, two
18 quarters, two nickels and four pennies.

19 Q Okay. Slide 13, please. I'm going to show you what has
20 been now entered into evidence as State's Exhibit 19. Could
21 you describe for the jury what they're looking at?

22 A Yes. And they could probably describe it for me, too.
23 It's a -- there's a Wal-Mart receipt, and then there's some
24 change, including a quarter, two dimes and two pennies, and
25 then what looks like a piece of a business card and a crumpled

1 up maybe candy wrapper or something.

2 Q Okay. Thank you. I'm going to show you what have been
3 marked as State's Exhibits 23 and 22 for ID only. Would these
4 assist you in your testimony today?

5 A I could certainly do everything I would need to show
6 where the bullet wounds were with 22.

7 Q Okay. With 22 only?

8 A Yeah.

9 Q Excellent. All right.

10 MS. BAILEY: Your Honor, at this time I request
11 permission for the witness to come down to use 22 to speak
12 with the jury.

13 THE COURT: Ma'am, you may step down for demonstrative
14 purposes.

15 A Thank you, sir.

16 Q Put it right here and facing this way and near this
17 microphone so our court reporter can hear. Now, Doctor, if
18 you could, could you indicate for the jury -- I'm going to
19 hand you a red pen -- could you indicate for the jury where
20 the bullet wounds were on the victim when you examined him?
21 Can everybody see? Everybody can see now. All right.

22 A Yes. Absolutely. I'll be happy to do that. So, again,
23 there was one that was kind of to his left side right about
24 here (indicating), and that's the one that went through the
25 iliac artery and bled the blood into his belly and then went

1 through the colon, and then it came out over on the leg,
2 something like this (indicating.) So that was one.

3 Another one was to the leg and went and hit that bone
4 right there, the femur, the big, the biggest bone in your
5 body. Another one did the same thing, but from the more of
6 the, of the back, just went and hit that hip and leg area and
7 broke that bone, and then the one that went through both legs
8 started about over here and went out here and then went back
9 in here and then came out over here (indicating), so going
10 across the body like that. Let's see. I've got one, two,
11 three, four. Now, keep in mind, I can't tell you with 100
12 percent certainty that this connects with that because, I
13 mean, you can move your legs, right? So you could move one up
14 and then there's no way it would hit the second one, but these
15 two holes, this exit and this entrance, were very close to
16 each other. So that is my opinion is that that's how it
17 happened, but the other possibility is that he was shot twice,
18 one through one leg and one through the other leg, just to be
19 clear.

20 Q Now, can you tell us the difference between a bullet
21 wound that has an abrasion and one that doesn't have an
22 abrasion?

23 A So when a bullet is entering a body, it's got a spin on
24 it, generally speaking, and it will abrade the skin around the
25 defect or hole that it makes. So we call that an abrasion.

1 It's just scraping the skin off. So those are frequently
2 encountered with the entrance wound because of that action of
3 the bullet as its spinning, but you can also encounter an
4 abrasion at an exit wound if the skin is up against something,
5 whether it's tighter clothing or a belt or a wall or a floor,
6 because, again, you're going to -- when you're -- when the
7 bullet is coming out it'll be scraping the skin against
8 whatever that thing is. So you can get an abrasion on either
9 side. It's more characteristic of an entrance wound.

10 Q And in the bullet holes that you found in the victim, did
11 you find that some had abrasions and some did not?

12 A Yes. That, that is the case.

13 Q And can you tell us which ones had abrasions?

14 A Yes. But I will need to refer to my notes.

15 Q Go ahead.

16 A All right. There is an abrasion for this one coming in
17 to the belly. There is also an abrasion for this one coming
18 out at the leg. So this, this one -- there's abrasions on
19 both sides. There is an abrasion on this one going in, this
20 one here, the entrance. No abrasion on this one where it
21 comes out. There is an abrasion on that one where it seems to
22 go back in, none at this one going out. This one here at the
23 back that hits the, the, the hip has an abrasion, yes, this
24 one, and then I think we have one more, the other one that
25 hits the hip also has an abrasion.

1 Q Is the presence or absence of abrasions in this case
2 cause you to form whether those were entrance or exit wounds
3 in your opinion?

4 A It does assist me. Yes. Absolutely.

5 Q Can you -- I think that's all we'll need off of that, if
6 you could take your seat again. Thank you.

7 A (Complies with request.)

8 Q Could you explain to the jury what soot or stippling is
9 on a gunshot wound?

10 A Yes. So when we're looking at gunshot wounds, one of the
11 things that we try to tell, if we are able to, is how far away
12 the muzzle or the end of the gun was from the victim, and what
13 we can look at is whatever's left on the skin. So what we
14 look for is either soot, which is the, the powder stuff coming
15 out of the muzzle of the gun that -- and you have to be very
16 close. So that's a contact gunshot wound, just by our
17 definitions. If you see soot, we can call it a contact
18 gunshot wound because it has to be very close, and/or
19 stippling and those are particulates or little pieces of junk
20 coming out of the end of the muzzle, so pieces of metal or
21 debris, things that are also in the barrel, they're coming out
22 of the muzzle. They can fly a little further than soot
23 because they have some weight to them, and then what we call
24 stippling is when those things actually get to the skin and
25 scrape the skin or make an abrasion. So soot you can wipe

1 off. It means -- to us it means a contact gunshot wound.
2 Stippling you can't because it's scraped the skin and that
3 means a close range gunshot wound. Any time you get behind
4 where those little particulate things can travel that far, and
5 they're going to fall onto the ground, we would call distant
6 or indeterminate, and basically it means that we don't see
7 anything on the skin.

8 Q And what is that distance where you wouldn't be able to
9 determine whether it was close range or not?

10 A Well, the only way to know for sure is if you take the
11 same gun and the same ammunition that was used and test fire
12 it at different distances from a target. So you can actually
13 test that and see how far back you need to go before
14 everything goes away. As far as if you take all comers and
15 you make an average, they usually say about three feet is, is
16 when you can expect that you won't see anything on the, on the
17 target. So if you're past three feet, chances are you're not
18 going to see anything on the target.

19 Q So would you be able to tell the difference between three
20 feet one -- a shooter who was standing three feet one inches
21 away or ten feet away as far as the gunshot wound?

22 A No, ma'am. So, again, if it's past that, I don't see
23 anything, and so that to me is distant or indeterminate
24 because I'm not having any evidence on the victim or the
25 target that -- of, of distance. I only get distance if --

1 evidence if they're quite close.

2 Q Does it ever happen or is it possible that a shooter
3 could be closer than three feet and there's not soot or
4 stippling present?

5 A Yes, ma'am. That can happen as well, and again, that's
6 why you can give you an estimate, but you can't be certain
7 unless you have that gun and that ammunition because the --
8 those are the two factors that are going into how far things
9 are flying out of the muzzle of the gun. For example, one
10 simple example is that you might have a flake or a ball
11 powder. So if flake powder is traveling through the air, it's
12 not going to get as far as ball powder. So just those two
13 variables in the ammunition can make a difference for how far
14 you're going to get those things on the skin. So I can't tell
15 you -- yeah, between, you know. Could it be two feet? Yeah.
16 But again, I can only give you some guidelines to go by.

17 Q And in this case, did you find any soot or stippling
18 present on any of these bullet wounds?

19 A No. I did not.

20 Q Okay. Based on all of the information that you reviewed,
21 the toxicology report, your autopsy, did you -- were you able
22 to form an opinion to a reasonable degree of medical certainty
23 as to what the cause and manner of death was?

24 A Yes, ma'am.

25 Q And what was that opinion?

1 A The cause of death is left iliac artery and colon
2 perforations due to a distant perforating gunshot wound to the
3 abdomen. I call contributory, multiple gunshot wounds to the
4 legs, and I call the manner of death homicide.

5 Q I'm going to show you -- just one moment. I'm going to
6 show you what has been marked as State's Exhibits 20 and 21
7 for identification only. If you could, just take a look at
8 those. Let me know when you --

9 A Yes, ma'am.

10 Q Okay. Do you recognize those?

11 A Yes, ma'am.

12 Q And are -- first of all, what are they?

13 A So these are photographs of the -- those bullet parts
14 that we retrieved from Mr. Evans' leg and hip area. One is --
15 we have one says State's 20 is the bullet that we're calling
16 number one, and State's Exhibit Number 21 is the bullet that
17 we're calling number two. Again, they're both in that area of
18 the hip. So I'm not certain -- well, I can't assign number
19 one and number two to either the one that went in from sort of
20 the side or the one that went in from sort of the back, but
21 those are the two that were from that hip area.

22 Q Okay. And are these photos a fair and accurate
23 representation of those bullets?

24 A Yes, ma'am.

25 Q And are they a fair and accurate representation of the

1 condition of those bullets as they were pulled from the
2 victim?

3 A Yes, ma'am.

4 Q Okay.

5 MS. BAILEY: At this time the State would seek to
6 introduce State's Exhibits 20 and 21 into evidence.

7 MR. BARR: Without objection, Judge.

8 THE COURT: Without objection they'll be admitted as they
9 have been marked.

10 (State's Exhibit Number 20 [Photograph] and State's
11 Exhibit Number 21 [Photograph] admitted into evidence and
12 appropriately marked.)

13 THE COURT: You may proceed.

14 MS. BAILEY: Thank you, Your Honor.

15 BY MS. BAILEY:

16 Q Slide 14, please.

17 A We are looking at State's Exhibit 20 on the monitor. So
18 if you could -- here's a question that I think is a little
19 bit unclear. You've numbered these one and two. Is that
20 based on the order that you think they went in or any
21 particular order?

22 A Usually just when I find them. So the first one I find
23 gets the -- gets to be number one, and the second one I find
24 gets to be number two.

25 Q Okay. So State's Exhibit 20 that the jury is now looking

1 at, can you describe for them what it is that they're looking
2 at.

3 A Yeah. So that -- you see the -- our little DYMO label
4 thingy FA08813, that's our number thing, and then you see the
5 little number one. So that's how we remember which bullet we
6 called one and which one we called two, and then above the
7 DYMO label thing you see a copper color metal piece, and so
8 that is a portion of the jacket of the bullet, and then next
9 to that, the grey metal thing, that's the, the heavy part of
10 the bullet that's inside the jacket. So together they make up
11 a bullet.

12 Q Were they close to each other inside the victim?

13 A Yes. Again, all those fragments were in that area of the
14 hip.

15 Q Okay. Slide 15, please. I'm going to show you State's
16 Exhibit 21, and could you describe what the jury is looking
17 at?

18 A This is very similar to the last one you saw, although
19 maybe prettier. Again, you see the case number, and here we
20 have a number two on this one. So this is the second one I
21 found, and again, I have the copper colored jacket on the
22 left-hand side on the top, and then the grey metal part of the
23 bullet on the right-hand side of the picture.

24 Q Thank you. After you collected this evidence, what did
25 you do with it?

1 A The evidence in this case was transferred to Jennifer
2 Flowers of the Georgetown County Sheriff's Office.

3 Q All right. I'm going to show you what's been previously
4 marked as State's Exhibit 75 for identification only. If you
5 could, take a look at that, and let me know when you've had a
6 chance to review it.

7 A Okey-doke.

8 Q All right. Do you recognize that item?

9 A Yes, I do.

10 Q And what is that?

11 A So in this bag we have a container, and this is the
12 container that I put the bullet in for transfer. It has our,
13 our case label on it, and it says bullet one, and then in this
14 extra baggy that has a different agency case number on it are
15 those two pieces that you saw in the picture of bullet one,
16 and they're in here now.

17 Q Okay. And so after you pulled that item from the victim,
18 you testified earlier you transferred it to Jennifer Flowers;
19 is that correct?

20 A Yes. That's correct.

21 Q Did you tamper, alter it in any way while it was in your
22 possession?

23 A Sometimes I will rinse the blood off.

24 Q Okay. Other than --

25 A No, ma'am.

1 Q -- that, any other alterations?

2 A That's all.

3 Q Would that affect anything having to do with any imprint
4 on the bullet or, or any metal impressions that would be left
5 on the bullet?

6 A No, ma'am.

7 Q I'm going to show you what's been previously marked as
8 State's Exhibit 76. Take a moment to review that.

9 A Okay.

10 Q Do you recognize that item?

11 A Yes, ma'am.

12 Q And what is that?

13 A Again, we have our container that I put the bullet into
14 for transfer, and then in this extra bag from a different
15 agency are the two portions of bullet number two, the one that
16 I thought was prettier, and there he is here.

17 Q Okay. And this -- did you alter or tamper with that item
18 in any way?

19 A No, ma'am. Except perhaps to rinse it.

20 Q Okay. And what did you do with it after you pulled it
21 from the victim?

22 A So what we do is we measure it. So I measure the, the
23 base of the jacket, and I measure the base of the metal part,
24 the grey metal part, and then I measure the length, and then I
25 take its picture, which you saw, and then he goes into this

1 container.

2 Q Okay. And then did you transfer it to Jennifer Flowers?

3 A That is correct. Yes.

4 MS. BAILEY: Beg the Court's indulgence one moment.

5 THE COURT: Yes, ma'am.

6 BY MS. BAILEY:

7 Q Thank you for your time and attention. Please answer any
8 questions that Mr. Barr may have.

9 A Yes, ma'am.

10 MR. BARR: I don't have any questions.

11 THE COURT: Thank you. Ma'am, you may step down.

12 A Thank you, sir.

13 MS. BAILEY: Thank you, Your Honor. At this time the
14 State would request that Dr. Schandl be released from her
15 subpoena.

16 THE COURT: Any objections?

17 MR. BARR: No objection.

18 THE COURT: Ma'am, you're free to go at this time. Thank
19 you very much. The State may call its next witness.

20 MS. BAILEY: Thank you, Your Honor. The State calls
21 Steven Brown.

22 Whereupon, Steven Brown was called to the stand, duly
23 sworn by the clerk and testified as follows:

24 THE CLERK: Thank you. Please have a seat.

25 THE COURT: All right. Ms. Bailey, your witness.

1 MS. BAILEY: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. BAILEY:

4 Q Investigator Brown, where are you employed?

5 A I'm an investigator with the Fifteenth Circuit
6 Solicitor's Office.

7 Q On August 20th of 2012, did you interview Jameson Wright?

8 A I did.

9 Q Did he indicate to you that he had a nickname or a street
10 name that he went by?

11 A I, I do know his street name. Yes. I don't know that he
12 indicated it to me during that interview, but yes, I know his
13 street name.

14 Q And what do you know that street name to be?

15 A T.I.

16 Q During that interview, did he indicate to you anything
17 about the front seat passenger of the vehicle that he saw pull
18 up to Club Paradise?

19 A He did. He, he, he described his height and then
20 described what, what he did.

21 Q Okay. And can you describe that for us?

22 A Sure. What he told me was that the front seat passenger
23 was about five six or five seven and that he got out of the,
24 got out of the vehicle, brandished a handgun and walked into
25 the club.

1 Q Did he indicate anything about the other people who were
2 in the car?

3 A Yes. He indicated to me that everybody had on all black
4 and had on ski masks and gloves and that a passenger in the
5 rear of the car was holding him, was holding him at gunpoint
6 with a shotgun and had actually told him, "Don't move or, or
7 you're going to get shot."

8 Q Did he indicate to you whether or not he heard gunshots
9 coming from inside the club?

10 A He did.

11 Q And what did he indicate about that?

12 A I think just that he heard a gunshot come from inside the
13 club and that -- that's all, that's all I recall. Can I refer
14 to my report?

15 Q Would it help to refresh your recollection?

16 A It would.

17 Q Yes.

18 A Yeah. He just said that he heard shots coming from
19 inside the club and that someone came running out of the club.

20 Q Okay. Did he indicate to you whether he heard any
21 additional gunshots as the vehicle was leaving?

22 A He did. He just heard, again, that he heard, heard, I
23 believe he said multiple shots. Again, I'd like to refer to
24 this real quick. Just that he heard more shots while the
25 vehicle was leaving.

1 Q Okay. And did he give a detailed description or can you
2 give the detailed description that he gave that day of the
3 person who ran into the club, the front seat passenger as he
4 described him?

5 A Just what I said earlier.

6 MR. BARR: Judge, objection. It, it would seem to me,
7 and I'm not sure whether or not this witness is for -- to the
8 extent that he's testifying to what this witness -- other
9 witness has already testified to, it's hearsay, and I'm not
10 sure what -- whether he's trying to impeach what the witness
11 said or --

12 THE COURT: I think that's exactly what they're
13 attempting to do.

14 MS. BAILEY: Yes, Your Honor.

15 THE COURT: Under, under --

16 MS. BAILEY: It's being offered as extrinsic evidence.

17 THE COURT: -- as extrinsic evidence of a prior
18 inconsistent statement is allowed by the rule.

19 MR. BARR: All right, sir.

20 THE COURT: If, if, if there is a -- if there's a prior
21 inconsistent statement that's been made. So these, these are
22 statements apparently that the witness denied or did not admit
23 and that allows the admission of extrinsic evidence to prove
24 the statement was, in fact, made. So it's not being offered
25 for the truth of the matter asserted, simply that the

1 statement was, in fact, made. Under the rule I'll allow it.

2 MS. BAILEY: Thank you, Your Honor.

3 BY MS. BAILEY:

4 Q Can you give the description that, that Mr. Wright gave
5 of the person who got out of the front seat passenger side of
6 the car?

7 A Yes. Just that he was five six or five seven, about 180
8 pounds, a little bit shorter than himself, and I believe he
9 said he was wearing all black as well.

10 MS. BAILEY: No further questions.

11 THE COURT: You may cross examine, Mr. Barr.

12 CROSS EXAMINATION

13 BY MR. BARR:

14 Q Were you in the courtroom earlier when Jameson Wright
15 testified?

16 A No, sir. I wasn't.

17 Q All right. So as far as the testimony you just gave, are
18 you contending that you're testifying based on your
19 recollection or you're refreshing your memory from this
20 document?

21 A I'm refreshing my memory from the document. I reviewed
22 the document before I came in here. He gave me the statement
23 in 2012.

24 Q Okay. So then this is your recollection of what he told
25 you?

1 A Yes, sir. When I talked to him in 2012, obviously, I
2 took notes of our conversation, and I typed it up into a
3 report, and I'm reflecting on my report that I wrote in 2012.

4 Q So then this is not his statement but yours?

5 A These are -- this is my typed words of what he told me.

6 Q Well, it's your representation that that's what he said?

7 A Absolutely.

8 Q And you said you, you said you were not in the courtroom
9 or you were -- you were not in the courtroom when he
10 testified?

11 A No, sir. I was not.

12 Q So if I understand it correctly, you don't know whether
13 or not what you're testifying to now is inconsistent with what
14 he has already testified to?

15 A That's correct, counselor. I wasn't in here when he,
16 when he testified. I have no idea what he testified to
17 earlier.

18 Q But you're now in the witness stand testifying to what
19 you claim that he told you?

20 A This is what he told me.

21 Q Now, of course, you work for, you work for Georgetown
22 County Solicitor's Office?

23 A Yes, sir.

24 Q And you make deliveries for them, you, you -- whatever
25 they assign for you to do --

1 A Yeah. I work --
2 Q -- you do that?
3 A Yes, sir. I work at the leisure of the Solicitor.
4 Q Did the Solicitor tell you to -- "Jameson Wright
5 disappointed us"?
6 A No, sir.
7 Q "We think you need to come in and try to clean up where
8 he went wrong"?
9 A No, sir. She told me she may call me this afternoon to
10 impeach a witness.
11 Q I see. Can I see that statement a second?
12 A Yes, sir.
13 Q Did you go out the same day and take a statement from
14 Gary Gibson?
15 A I don't know if it was the same day. I've spoke to Gary
16 Gibson.
17 Q He's, according to you, he indicated to you he was six
18 one on his driver's license.
19 A That is what T.I. or I believe it was Jameson, is that
20 his name?
21 Q Yes, sir.
22 A That is, that is what Jameson indicated to me that's how
23 tall Jameson is.
24 Q Pardon me?
25 A Six one is the height that Jameson indicated to me that's

1 how tall Jameson was.

2 Q That's his height. Yeah. Uh-huh.

3 A Yeah. I, I would add that he had to -- when I asked him
4 how tall he was he referred --

5 Q Had to check his driver's license.

6 A -- he referred to his driver's license.

7 Q And -- all right. Thank you, sir.

8 A Thank you, counselor.

9 MR. BARR: I have no further questions.

10 THE COURT: Anything further from the witness?

11 MS. BAILEY: No, Your Honor.

12 THE COURT: All right, sir. You may step down.

13 The State may call its next witness.

14 MS. BAILEY: Thank you, Your Honor. The State calls
15 Jared Bardon.

16 THE COURT: Come forward, sir, to my left and be sworn.
17 This lady over here is going to swear you. There you go, sir.
18 Left hand on the Bible, raise your right. There we go. Thank
19 you, sir.

20 THE CLERK: Please state your full name for the Court.

21 MR. BARDON: Jared Thomas Bardon.

22 THE CLERK: Can you spell your last name for us, please?

23 MR. BARDON: B-A-R-D-O-N.

24 THE CLERK: Thank you.

25 Whereupon, Jared Thomas Bardon was called to the stand,

1 duly sworn by the clerk and testified as follows:

2 THE CLERK: Thank you. Please have a seat.

3 THE COURT: Your witness.

4 MS. BAILEY: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. BAILEY:

7 Q What do you do now?

8 A I'm a warehouse manager for a company called Mingo
9 Industries based out of Hemingway, South Carolina.

10 Q What did you do for a profession in 2008?

11 A I was a deputy sheriff at Georgetown County Sheriff's
12 Office.

13 Q How long were you with the Georgetown County Sheriff's
14 Office?

15 A Nine years.

16 Q When did you leave their employment?

17 A April of 2013.

18 Q Did you do so voluntarily?

19 A I did.

20 Q Did you do so because there was any kind of scandal we
21 need to know about or why did you leave?

22 A It was a money issue.

23 Q And on December 1st of 2008, were you involved in the
24 investigation of the murder of Aundry Evans?

25 A I was. I was one of the first deputies on scene.

1 Q Okay. And when you say you were one of the first
2 deputies on the scene, when you got there had the crime scene
3 been secured yet?

4 A I was, I was one of the first. I believe there's another
5 deputy that was right in front of me, and the crime scene had
6 not been secured by the time I had got there. I was -- like I
7 say, I was one of the first ones there. So I could -- I kind
8 of saw first and foremost, you know, what was going on.

9 Q Okay. And when you walked into the scene, what did you
10 observe?

11 A I saw the victim laying on the floor of the nightclub,
12 and I remember him having a jacket behind his head. I
13 remember seeing blood on the floor and on his body, and there
14 was a bunch of people were outside, you know, prior to me
15 entering, and there was just a few people inside the
16 nightclub.

17 Q The people who were inside the nightclub, were they being
18 attentive to the person who had been shot or --

19 A There was two people that was -- that, that were, and
20 those were really the only people I remember that were --
21 really were helping out. Most of the people that were there
22 were outside. So it was myself, another deputy and a couple
23 of other, I guess, you know, patrons inside whenever I got
24 there.

25 Q And so what did you do next in, in the line of, of your

1 duties?

2 A Well, the main thing is, you know, providing care to the
3 victim because, obviously, you know, the, the call came out as
4 a shooting. So I go straight to him. I try to assess what's
5 going on. I remember getting on the radio and asking for the
6 time that the ambulance would take to get there because he
7 wasn't looking too good. That, that was the main focus, after
8 which I remember telling a couple -- there was two other
9 deputies that showed up, just telling them to keep everybody
10 outside so we could kind of maintain a little bit of a crime
11 scene, and I was trying to ask the victim, you know, just,
12 just trying to keep him conscious and talk to him until maybe
13 EMS got there.

14 Q Okay. Did he -- how did he seem to you, the victim?

15 A To be honest, you know, he seemed like he was, he was
16 more calm than I would have been. I mean, he was still
17 conscious. I mean, I thought he was alert, but as I talked to
18 him, I'm just trying to get his status, you know, "How are you
19 feeling?" It seemed like he was getting weaker and weaker and
20 that kind of troubled me. So I kept calling and asking for,
21 you know, how much longer, how much longer till the ambulance
22 gets there because it seemed like he was going out of
23 consciousness, you know, a little quicker than I would have
24 liked to have seen, and then I think it went from being alert
25 to he was maybe being nervous. I could see that change

1 because I stayed by him pretty much the whole time until EMS
2 got there. So I was pretty concerned.

3 Q Did he ask for anybody in particular or anything in
4 particular?

5 A He -- the only person that he did ask for was somebody by
6 the name of Mo. He kept saying, "Where is Mo? Where is Mo,"
7 and I said, "I don't know who you're talking about," and there
8 was nobody by that name, you know, if he was calling for
9 anybody that I remembered walking over. There was a female
10 that was right beside him when I was beside him the whole
11 time, some kind of, some kind of acquaintance, but I don't
12 know who she was and I never got her name.

13 Q How long from when you arrived until EMS arrived?

14 A It's hard to remember. Like I said, you know, in a
15 situation like that, time, it's, it's, like I said, goes so
16 fast, but I want to say it was maybe ten minutes. It seemed
17 like an eternity, but maybe ten minutes at the most.

18 Q And once EMS arrived, what, what was your role then on
19 scene?

20 A Crime scene preservation. At that time we call our
21 criminal investigators. They'll come out and, you know, start
22 working the crime scene, and obviously, we want no one else to
23 come inside the nightclub. You know, we preserve what we have
24 and also crowd control because by this time even though a lot
25 of people left, there was still a bunch of people outside. So

1 you want to make sure they stay outside, everybody's calm, you
2 know, obviously something happened inside that was real bad,
3 so crowd control, you know, scene preservation, and, you know,
4 assist EMS if they need help, too.

5 Q So was it your role to investigate who did this --

6 A No.

7 Q -- that are on scene?

8 A No. Like I said, primary first responder is my role,
9 just getting there and taking care of it until the
10 investigators can show up.

11 Q Okay. Did you release the victim to EMS at that, at some
12 point? How does that work?

13 A Yeah. When EMS came in, like I said, I was still beside
14 the victim, and I kind of gave them the quick, the quick,
15 "Hey, here's what's going on," and they didn't waste any time
16 on -- putting him onto a back board and putting him into the
17 ambulance.

18 Q What did you do next?

19 A Me and the other deputies on scene made sure everybody
20 was outside, made sure -- we started kind of asking if anybody
21 saw anything, are there any witnesses, at which point we
22 wouldn't speak to them, we would just refer them to the
23 investigator who showed up to get an official statement, and
24 like I said, we just kept everybody outside so nobody could
25 tamper with any evidence or step in anything or on anything

1 or, you know, touch anything, and that was the basic role.

2 Q Okay. And do you remember what investigator showed up
3 that night?

4 A There was -- I want to say there was two. I can't
5 remember who -- exactly who it was.

6 Q Okay. And do you remember how long it took them to get
7 there?

8 A Once again, time flies, but I want to say it took a
9 little while. I mean, this, this nightclub that we were at,
10 if you're coming from Georgetown, it's, it's a long way. So
11 and that's most crime scenes you had to wait a little while.
12 So I can't really tell you how long, but I can say that, you
13 know, we were able to maintain a good crime scene, keep
14 everyone outside. We didn't have any problems from the crowd
15 like I might have -- like I thought we might, and so, you
16 know, we -- I believe we did good in trying to hold what we
17 had till they did show up.

18 Q Okay.

19 MS. BAILEY: Beg the Court's indulgence.

20 THE COURT: Yes, ma'am.

21 BY MS. BAILEY:

22 Q I have no further questions. Please answer any questions
23 Mr. Barr may have.

24 THE COURT: Mr. Barr, your witness.

25 MR. BARR: Thank you, sir.

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. BARR:

4 Q The victim kept asking for Mo?

5 A Yes. Mo.

6 Q Did Mo show up during the time that you were attending
7 the victim?

8 A I, I, I don't remember meeting a Mo. There was nobody in
9 there by that name that I could recall.

10 Q Did you have on officer, did you have on, did you have on
11 a police uniform or were you dressed in street clothes at that
12 time?

13 A Police uniform.

14 Q You got a police uniform on?

15 A Yes.

16 Q Badge and gun and everything?

17 A Everything.

18 Q Yeah. Did the victim make any statements to you
19 regarding who he thought shot him?

20 A He did not.

21 Q Just kept asking for Mo?

22 A Yes.

23 Q Now, did you assist in setting up the crime scene?

24 A As far as keeping everyone out of the crime scene, yes.

25 Q And you put up tape?

1 A We put up -- we, we had somebody at the door -- I don't
2 think we put up tape -- to make sure no one could come inside.

3 Q I see. So there was somebody, a law enforcement officer
4 with the victim from that point until EMS came?

5 A Yes. I was.

6 Q Are you aware of any individual having conversations with
7 the victim while you were there waiting for the EMS vehicle?

8 A No.

9 Q In fact, that's probably one of the things that you were
10 specifically making sure that you prevented, people having
11 contact with him.

12 A Well, I didn't want anybody to touch him. That's for
13 sure. I mean, he looked like he was in bad shape.

14 Q Thank you, sir. I have nothing further.

15 THE COURT: Redirect?

16 MS. BAILEY: No, Your Honor.

17 THE COURT: Sir, you may step down. Thank you very much.

18 A Thank you.

19 THE COURT: Wish to release this witness?

20 MS. BAILEY: Yes, Your Honor. I request that he be
21 released from his subpoena.

22 THE COURT: Any objection?

23 MR. BARR: No, sir.

24 THE COURT: Sir, you're free to go. Thank you for coming
25 today.

1 MR. BARR: Thank you.

2 THE COURT: The State may call its next witness.

3 MS. BAILEY: Thank you, Your Honor. The State calls Mike
4 Nelson.

5 THE COURT: Come forward to be sworn, please. Over here
6 to my left, this gentleman will take care of you.

7 MR. NELSON: Yes, sir.

8 THE CLERK: Please state your full name for the Court.

9 MR. NELSON: Michael Nelson.

10 THE CLERK: Thank you.

11 Whereupon, Michael Nelson was called to stand, duly sworn
12 by the clerk and testified as follows:

13 THE CLERK: Thank you. Please have a seat.

14 MR. NELSON: Thank you.

15 THE COURT: Ms. Bailey, your witness.

16 MS. BAILEY: Thank you, Your Honor.

17 THE COURT: Yes, ma'am.

18 MS. BAILEY: Beg the Court's indulgence.

19 THE COURT: Yes, ma'am.

20 DIRECT EXAMINATION

21 BY MS. BAILEY:

22 Q Can you tell us where you work?

23 A Georgetown County Sheriff's Office.

24 Q What's your job there?

25 A Lieutenant of Criminal Investigations.

1 Q What does that mean?

2 A I delegate the jobs of the investigators and assign cases
3 on a daily basis.

4 Q In 2008, what was your role?

5 A I was an investigator.

6 Q And you were still -- were you still with the Sheriff's
7 Department?

8 A Yes, ma'am.

9 Q Okay. And in -- on December 1st of 2008, did you respond
10 to the Paradise Club?

11 A Yes, ma'am.

12 Q And what was your role on scene that night?

13 A I was the initial responding investigator, that was to
14 process the crime scene and determine what had actually
15 occurred at the location.

16 Q Okay. Can you -- were you able to determine how long
17 from when 911 called till you got there approximately?

18 A No. I mean, I don't recollect what the timeframe was
19 between when the initial call came in and when I responded.
20 No.

21 Q Okay. Do you know if it was more than an hour?

22 A I wouldn't believe so. Normally what would happen is the
23 deputies would respond. They'd secure the scene. Then they'd
24 contact me.

25 Q Okay. Can you walk us through what you would do when you

1 arrived on scene?

2 A When I arrive on scene, I speak with the initial deputies
3 to find out what exactly they had. Then I'd peruse the crime
4 scene and speak to any potential individuals and then I'd
5 process the crime scene.

6 Q Did you take statements from individuals that night?

7 A I do not recall. I'd have to look at my supplement.

8 Q Okay. If I handed you your supplement would it help to
9 refresh your recollection?

10 A Yes. It would.

11 Q Okay. Let me know when you've had a moment to review
12 that.

13 A Okay.

14 Q So were you able to speak with any individuals who were
15 witnesses that night?

16 A According to this, no. I don't believe there was anyone
17 there that was a witness.

18 Q Okay. And what did you do in the course of your
19 investigation that night on scene?

20 A I would go inside, view the area where the event
21 occurred, mark items photographically, record the items, then
22 subsequently collect the items. Then I'd go to the hospital
23 and speak with the victim.

24 Q Okay.

25 MS. BAILEY: Does Your Honor wish to see these before I

1 show him?

2 THE COURT: That's all right. You can show them to him.

3 BY MS. BAILEY:

4 Q I'm going to show you what's been marked for State's
5 Exhibit only as State's Exhibit 24 through 35.

6 A Okay.

7 Q If you could flip through these. Let me know when you've
8 completed that.

9 A Okay.

10 Q Do you recognize those photographs?

11 A Yes, ma'am.

12 Q And what are they? You don't have to say specifically
13 each one, but generally, what are they photographs of?

14 A This would be the crime scene as it appeared when I
15 arrived.

16 Q Okay. And are those photos a fair and accurate
17 representation of the crime scene as you -- as it was when you
18 arrived?

19 A Yes, ma'am.

20 Q Okay.

21 MS. BAILEY: At this time, the State would seek to
22 introduce State's Exhibits 24 through 35 into evidence.

23 THE COURT: Any objections?

24 MR. BARR: No, sir.

25 THE COURT: Without objections they'll be admitted into

1 the record as marked.

2 MS. BAILEY: Thank you, Your Honor.

3 (State's Exhibits Numbers 24 through 35 [Photographs]
4 admitted into evidence and appropriately marked.)

5 THE COURT: You may publish.

6 MS. BAILEY: Thank you.

7 BY MS. BAILEY:

8 Q I'm going to show you what have been marked previously as
9 State's Exhibits 36 through 74. Get you to flip through
10 these. Generally, what are those photos of?

11 A Those would also be of the crime scene.

12 Q And are they fair and accurate depictions of how the
13 crime scene was that evening?

14 A Yes, ma'am.

15 Q Okay. Slide nine, please. State's Exhibit 24, it's
16 going to come up on your screen. This one's real fuzzy that
17 you have to look at. So I'm going to give you the actual
18 photograph, too.

19 A Okay.

20 Q And the jury and Court can see that now. Can you
21 describe for them what we're looking at?

22 A That's the door entering into the establishment I
23 responded to.

24 Q Okay. And that seemed to be the door most people were
25 using to go -- that people would have used to go in or out or

1 how did you pick that door?

2 A I believe so. It was probably the closest one to the
3 parking lot and it was open.

4 Q Okay. Slide Ten. Showing you State's Exhibit 25. Can
5 you describe for us what that is a picture of?

6 A That's the inside of the club, the bar area.

7 Q Okay. And is the lighting in State's Exhibit 25 an
8 accurate representation of how it seemed to you in there that
9 night?

10 A It is.

11 Q Okay. And to be clear, you were there while it was still
12 dark; is that right?

13 A That's correct.

14 Q Okay. Slide 11. I'm showing you State's Exhibit 26.
15 Can you describe for the jury what they're looking at now?

16 A That's a closer angle from the other side of the bar it
17 appears of the scene of the event.

18 Q Okay. And is that -- where were you standing when you
19 took that picture?

20 A It appears to the left of the bar, the right of the bar
21 --

22 Q Okay.

23 A -- on the other side.

24 Q Was, was there another entrance or exit near you?

25 A I don't recall the actual layout of the building.

1 Q All right. All right. I'm going to show you State's
2 Exhibit 27. Slide 16, please. Can you describe what that is?

3 A That's a spent shell casing located on the floor, looks
4 right next to the foot of the pool table.

5 Q So that was near the pool table you said?

6 A It appears to be based on this photo.

7 Q Okay. And is that something that you collected?

8 A Yes.

9 Q And what evidence marker did you put next to that?

10 A Number one.

11 Q Slide 17. Can you describe for the jury what they're
12 looking at?

13 A That's also a -- what appears to be a spent shell casing
14 also on the floor.

15 Q And what evidence marker did you put next to that?

16 A Tent marker number two.

17 Q Okay. I'm going to hand you State's Exhibit 29. Slide
18 18. Can you describe to the jury what they're looking at?

19 A That's actually a projectile sitting on the pool table.

20 Q When you say projectile, would some people call that a
21 bullet?

22 A Yes, ma'am. It's the bullet.

23 Q Okay. And that was on the pool table?

24 A Yes. According to this photograph.

25 Q Okay. And is that where you found it?

1 A Yes, ma'am.

2 Q Did you collect that?

3 A Yes, ma'am.

4 Q And what evidence marker did you put with that?

5 A Tent marker number three.

6 Q I'm going to hand you State's Exhibit 30, which has been
7 entered into evidence. Slide 19, please. Can you describe
8 for the jury what we are looking at?

9 A That is also a spent shell casing on the pool table.

10 Q Okay. And what evidence marker did you put next to that?

11 A That's tent marker number four.

12 Q Did you collect that?

13 A Yes, ma'am.

14 Q Okay. I'm going to show you State's Exhibit 31. Slide
15 20, please. Can you describe for the jury what that is?

16 A That's a red substance located on the floor that appeared
17 to be blood.

18 Q And where was that located in the -- on the crime scene?

19 A That'd be on the floor, but according to this photograph
20 I couldn't tell you. It appears to be the same floor next to
21 the pool table though.

22 Q Okay. I'm going to show you State's Exhibit 32. Slide
23 21, please. Can you describe for the jury what we're looking
24 at?

25 A That's a spent shell casing.

1 Q And is that before you would have dropped the evidence
2 marker?

3 A Yes, ma'am.

4 Q So have we already seen a picture of this?

5 A Yes, ma'am.

6 Q Okay. It's just a little clearer?

7 A Yes.

8 Q All right. I'm going to hand you State's Exhibit 33.
9 That's slide 22.

10 A That would also be a spent shell casing.

11 Q And where was that located?

12 A According to the photograph appears to be on the pool
13 table as well.

14 Q Okay. I'm going to hand you State's Exhibit 34, which is
15 slide 23. Can you describe for the jury what we're looking
16 at?

17 A That would be a spent shell casing as well and that would
18 be on the floor.

19 Q Okay. And is it near anything of significance?

20 A Scuff marks.

21 Q Okay. So that's not --

22 A Or what appear to be scuff marks. No, doesn't appear to
23 be blood.

24 Q Okay. Finally, I'm going to hand you State's Exhibit 35,
25 which is slide 24. Could you describe for the jury what we're

1 looking at?

2 A That is an overall perspective of the area where it
3 appears the event occurred to include all pieces of evidence
4 collected while I was there.

5 Q So those photos we saw just a moment ago that had
6 evidence markers next to them, one through five, are they all,
7 all depicted in this photograph?

8 A They are.

9 Q As to where their location was --

10 A Yes, ma'am.

11 Q -- when you found them and collected them?

12 A Yes. Yes, ma'am.

13 Q Okay.

14 MS. BAILEY: Your Honor, I'm not sure that I did this
15 earlier, but State's Exhibits 36 through 74, the State would
16 seek to move into evidence.

17 THE COURT: You shown those to Mr. Barr?

18 MS. BAILEY: Yes.

19 MR. BARR: I have no objection, Judge.

20 THE COURT: All right. Without objection they'll be
21 admitted into the record as marked. You may publish.

22 MS. BAILEY: Thank you, Your Honor.

23 THE COURT: Yes, ma'am.

24 (Whereupon, State's Exhibits 36 through 74 [Photographs]
25 entered into evidence and appropriately marked.)

1 BY MS. BAILEY:

2 Q Can you describe your evidence collection procedures?

3 A In respect to?

4 Q Do you wear gloves?

5 A Yes. Gloves are worn. Each item is packaged
6 individually. It's photographed initially without the marker,
7 with marker. It's collected, sealed, identified in a
8 container and deposited into evidence.

9 Q Okay. And after you collect evidence and you're, you're
10 done for the night, what do you do with your evidence?

11 A Place it in a secure location at the Sheriff's Office.

12 Q When you say a secure location, what do you mean by that?

13 A The evidence custodian is given the -- there's a
14 depository area where it's secure, only one person or the
15 evidence custodian is the only one that has access to it, and
16 it's placed in there so he can file it for storage purposes.

17 Q Okay. So let's say you put something into evidence and
18 you locked it up for the night, could you go back and get it
19 back out?

20 A If I dropped it into evidence, no.

21 Q Okay.

22 A No.

23 Q So once it's in there, the only person who can take it
24 out is the evidence custodian?

25 A That's correct.

1 Q And who is the evidence custodian right now?

2 A Right now it's Michael Thacker.

3 Q Okay. I'm going to hand you what's been marked as
4 State's Exhibit 77. I'm going to show it to Defense counsel
5 first. Okay. Here's the packaging. If you could look at
6 State's Exhibit 77 and for ID only and tell me -- first of
7 all, do you recognize anything on the outside of that
8 envelope?

9 A My handwriting as well as my signature.

10 Q And what does your handwriting indicate on that envelope?

11 A That I collected this item on a specific date at a
12 specific time and placed it into evidence at a specific date
13 and specific time.

14 Q So what is that item?

15 A This is one spent bullet.

16 Q And where did you collect it from?

17 A This would be collected from the Georgetown emergency
18 room from the victim's pants when they were removed by the
19 medical staff.

20 Q Okay. And we'll, we'll get to that in just a moment,
21 but at some point, you did end up at the emergency room?

22 A Correct.

23 Q And from medical staff you collected that bullet?

24 A That's correct.

25 Q And where did they collect it from?

1 A From -- it was laying on top of the victim's pants when
2 they removed his clothing.

3 Q Okay. And can you open that envelope and see what's
4 inside, also has an evidence sticker on it. Do you recognize
5 that item?

6 A Yes, ma'am.

7 Q And what, what is that?

8 A That is a spent projectile, bullet.

9 Q Okay. I'm going to show you what's been marked as
10 State's Exhibit 78 for identification. If you could take a
11 look at that evidence envelope and what's inside and tell me
12 what that is.

13 A Okay. This evidence envelope contains one shell casing
14 that's marked with a 40 Smith and Wesson CBC on the bottom,
15 also indicated it was item number one.

16 Q When you say item number one, if you could look at the
17 picture that's up on everyone's screen right now. Is it
18 depicted in that photograph?

19 A Yes, ma'am.

20 Q So that's the item that you collected that has the item
21 marker number one in that photograph; is that right?

22 A Yes, ma'am.

23 Q Okay. And have you opened that to see what's inside of
24 it?

25 A I can. Yes, ma'am.

1 Q And is that the item that you collected?

2 A Yes, ma'am.

3 Q That evening?

4 A Yes, ma'am.

5 Q I'm going to show you what's been marked as State's
6 Exhibit 79. If you could take a look at that and look and see
7 what's inside of it as well.

8 A Okay. This is also an evidence bag containing one shell
9 casing marked with a 40 S and W CBC. It corresponds to item
10 number two, and it's also the shell casing.

11 Q Okay. And is that the actual item that you collected
12 from that crime scene that night?

13 A Yes, ma'am.

14 Q Okay. I'm going to show you what's been marked as
15 State's Exhibit 80 for identification only. If you could look
16 at the envelope and what's inside of it.

17 A It's an evidence bag with one spent bullet indicated by
18 item number three, and that's one spent projectile or bullet.

19 Q And is that an item that you collected from the crime
20 scene that night?

21 A Yes, ma'am.

22 Q And which item is that?

23 A That would be item number three.

24 Q Number three. I'm going to show you what's been marked
25 as State's Exhibit Number 81 for identification only. Would

1 you take a look at that, see what's inside of it and let me
2 know.

3 A That's one shell casing marked with a 40 S and W RP
4 indicated by item number four, and it represents one spent
5 shell casing.

6 Q Okay. And is the actual shell casing that you collected
7 from the crime scene depicted in that photograph?

8 A Yes, ma'am.

9 Q Okay. And is it marked with number four in that
10 photograph?

11 A Yes, ma'am.

12 Q Okay. And to be clear, did you collect some evidence
13 from item number five?

14 A Item number five would have been the blood. I would have
15 taken swabs from those, yes.

16 Q And would you have put those into evidence?

17 A Yes, ma'am.

18 Q Now, it is your role as the on-scene investigator to
19 order any kind of lab reports or make any calls like that or
20 do you just collect the evidence and put it in? How does that
21 work?

22 A At that point in time, no, the evidence would be
23 collected and deposited into evidence. Lab requests and such
24 would, would happen at a later time.

25 Q Now, after you processed the crime scene, did you go to a

1 second location?

2 A Yes, ma'am.

3 Q And where did you go?

4 A Georgetown Memorial Hospital Emergency Room.

5 Q Okay. And when you were there at the Georgetown Memorial
6 Hospital Emergency Room, was the victim still there?

7 A Yes, ma'am.

8 Q So this was before he was transported to MUSC; is that
9 right?

10 A Yes, ma'am.

11 Q All right. While you were on scene at the emergency
12 room, did one -- did anyone approach you to speak with you
13 about any information relating to the case?

14 A As I was leaving, I believe the victim's father did.

15 Q Okay. Did you have occasion to speak with Naomi Alston
16 that night?

17 A Naomi Alston. Yes, briefly.

18 Q Okay. And without telling us what she said exactly, Ms.
19 Alston approached you; is that right?

20 A Yes. Yes, ma'am.

21 Q Okay. And did Ms. Alston provide you with some
22 information that, that was useful?

23 A She did.

24 Q Okay. And you spoke with the victim's father that
25 evening as well?

- 1 A Yes, ma'am.
- 2 Q Okay. Did you attempt to speak with the victim?
- 3 A On two separate occasions I believe. Yes, ma'am.
- 4 Q Okay. Did that work out for you?
- 5 A No.
- 6 Q Okay. And in -- I think we already covered this, but did
7 you collect any other evidence from the hospital while you
8 were there?
- 9 A Yes. I would have collected the shell casing or the
10 spent bullet. I'm sorry.
- 11 Q From the victim's clothing?
- 12 A Yes, ma'am.
- 13 Q And placed that into evidence?
- 14 A Yes, ma'am.
- 15 Q All right. The items that you collected from the crime
16 scene and placed into evidence, did you tamper or alter them
17 in any way?
- 18 A No, ma'am.
- 19 Q Did you do anything other than pick them up, put them in
20 an envelope, document them and put them into evidence?
- 21 A That's all. Yes.
- 22 Q Okay. And they were secure while they were in your
23 custody and control?
- 24 A Yes, ma'am.
- 25 Q Okay. At this time, the State has no further questions.

1 Please answer any questions Mr. Barr may have.

2 THE COURT: Mr. Barr, your witness.

3 MR. BARR: Thank you, Judge.

4 CROSS EXAMINATION

5 BY MR. BARR:

6 Q I've, I've just got a few questions. You, you've
7 indicated that when you went to Georgetown Memorial Hospital
8 you saw the victim at the hospital. Is that your additional
9 narrative notes that you've got in front of you?

10 A That I spoke with the victim?

11 Q Yes, sir.

12 A That's in my notes. Yes, sir.

13 Q All right. Now, you also described the victim, the --
14 what appeared to you or how the victim's -- how he appeared to
15 you, and I believe you described it as being -- how did you
16 describe his condition?

17 A According to my narrative, it was lucid and able to
18 speak.

19 Q Lucid and able to speak. Yes, sir. Sure did. Now, did
20 you ask him who shot him?

21 A I did.

22 Q And did you get any information from him?

23 A Not from him. No, sir.

24 Q You asked him more than once; didn't you?

25 A Two times.

1 Q And did you also ask his father, this gentleman?

2 A I did.

3 Q And did you get any information from him?

4 A No.

5 Q All right. Thank you, sir.

6 MR. BARR: I have nothing further.

7 THE COURT: Redirect?

8 MS. BAILEY: No.

9 THE COURT: Sir, you may step down.

10 A Thank you, Your Honor.

11 THE COURT: Yes, sir. Thank you. You wish to excuse the
12 witness?

13 MS. BAILEY: Yes, Your Honor.

14 THE COURT: Any objections?

15 MR. BARR: No, sir.

16 THE COURT: Sir, you're free to go today. Thank you very
17 much.

18 A Thank you, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, we'll take
20 about a five to 10-minute break at this point in time. As
21 always, when you leave the courtroom, my instructions are that
22 you not discuss any aspect of this case even among yourselves
23 until I advise you to do so. You may retire to the jury room.
24 Everyone remain seated while the jury retires.

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right. Court's in recess for about five
3 to 10 minutes.

4 MS. BAILEY: Thank you, Your Honor.

5 OFF THE RECORD

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

8 THE COURT: Is the State ready to go forward?

9 MS. BAILEY: Your Honor, as to scheduling, this morning
10 has gone much quicker than I anticipated.

11 THE COURT: Good.

12 MS. BAILEY: I have two witnesses who are currently on
13 the way.

14 THE COURT: Uh-huh.

15 MS. BAILEY: Literally in route here from somewhere in
16 town. So they will not be long.

17 THE COURT: All right. So you don't have somebody right
18 at the moment?

19 MS. BAILEY: No. But within 10 minutes I expect them.

20 THE COURT: Okay. Well, I'll just stay on the bench.
21 Let me know when they get here, we'll get started.

22 MS. BAILEY: Thank you, Your Honor.

23 Your Honor, as a result of that, one of my officers who's
24 coming in is wearing, I believe is wearing a polo shirt and
25 khakis that is a uniform, but he is concerned because some

1 judges have gotten frustrated in the past when our officers
2 come in in that. I'll say it is my fault because I told him
3 we wouldn't need him till tomorrow.

4 THE COURT: Well, I don't require that officers -- as
5 long he's dressed appropriately to come in a courtroom, I
6 mean, I don't have a problem not wearing a uniform if that's
7 the concern.

8 MS. BAILEY: Okay. Thank you, Your Honor.

9 THE COURT: In fact, some Defendants would prefer that
10 they don't.

11 MS. BAILEY: The witness is here. We're ready to
12 proceed.

13 THE COURT: Okay. All right. The Defense ready to
14 proceed?

15 MR. BARR: Yes, sir.

16 THE COURT: All right. Bring the jury in.

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

19 THE COURT: All right. The record will reflect the jury
20 has returned to the courtroom. The State may call its next
21 witness.

22 MS. BAILEY: Thank you, Your Honor. The State calls Mike
23 Thacker.

24 THE COURT: Sir, come forward to my left and be sworn,
25 please.

1 THE CLERK: Please state your full name for the Court.

2 MR. THACKER: Michael Thacker.

3 THE CLERK: Please spell your last name.

4 MR. THACKER: T-H-A-C-K-E-R.

5 THE CLERK: Thank you.

6 Whereupon, Michael Thacker was called to the stand, duly
7 sworn by the Court and testified as follows:

8 THE CLERK: Thank you. Please have a seat.

9 THE COURT: Ms. Bailey, your witness.

10 MS. BAILEY: Thank you, Your Honor.

11 THE COURT: Yes, ma'am.

12 DIRECT EXAMINATION

13 BY MS. BAILEY:

14 Q Mr. Thacker, what's your job?

15 A I work in the forensics division of the Georgetown County
16 Sheriff's Office.

17 Q And what does that mean?

18 A I process crime scenes, evidence from crime scenes,
19 handle the evidence that's submitted for storage.

20 Q So when you say you process crime scenes, what does that
21 mean?

22 A I'm called to mostly major crime scenes is what I handle,
23 called to go to the scene and process the items, process the
24 scene, collect evidence from the scene.

25 Q And I mean, do we have a CSI department at the Georgetown

1 County Sheriff's Office?

2 A Well, I'm, I'm it, I guess as close as it could be.

3 Q Okay. On December 1st of 2008, were you called out, or
4 shortly after December 1st of 2008, were you called out to the
5 Paradise Club?

6 A I, I went there on the 2nd, I believe it was, the next
7 morning.

8 Q Okay. When you went there, was it daylight?

9 A It was.

10 Q Can you describe for us what you found when you arrived
11 on scene?

12 A I went there that morning to do a search warrant for the
13 building itself, and once I got there, I observed some damage
14 to the door, initially, that appeared to be from bullet holes,
15 and from that point, I processed it from the door inside, and
16 which was encompassing the entire interior of the building.

17 Q Okay. Now, when you say you had a search warrant, why
18 would you have gotten a search warrant?

19 A It was collected to go back into the main part of the
20 building and also to go back into the initial area where the
21 incident occurred since it was dark that night just to make
22 sure there wasn't anything that was not seen at the time.

23 Q So you -- were you the first person from the Sheriff's
24 Department to go out to the crime scene in the light of day?

25 A During the daylight. Yes.

1 Q Okay. And so your first clue that there was going to be
2 something more to collect was, was that bullet hole you
3 described?

4 A Yes. On the exterior of the door, of the front door.

5 Q Okay. Can you just describe what else you found in the
6 daylight?

7 A From the interior, well, going in the -- there was some
8 entrance holes going into the building from there, and once
9 inside the building, there's a wall immediately inside of
10 that, and those, those holes that were coming from the door
11 corresponded with the holes in the next wall into another
12 room, and from there there was some fragments of bullets and
13 found in a room opposite of that interior wall, as well as
14 into the main building.

15 Q Okay.

16 A And then on -- oh, sorry, excuse me.

17 Q How about outside, what did you find outside?

18 A On the exterior. The exterior there was shell casings
19 that were found by the roadside, which would be parallel to
20 the building itself.

21 Q And when you say shell casings, do you know what kind of
22 shell casings?

23 A They were rifle casings, 7.62, I believe.

24 Q Okay. Do you know how many?

25 A If I remember it was numbers eight through 33, I believe,

1 and that included a few that were live rounds.

2 Q Okay. Did you at some point have an opportunity to speak
3 with the owner of the club, Ms. Alston?

4 A I believe, I believe so. Not at the time. She did --
5 she was supposed to show up to allow us access, but she didn't
6 show up. So we were able to unhinge, take the hinges off from
7 the outside to gain entry, didn't cause any damage to it from
8 that.

9 Q Okay. Now, but it's, it's your understanding from that
10 crime scene that, that all those shells outside and all the
11 damage to the building that you observed was not there prior
12 to this crime; is that correct?

13 A That they were not? It's hard to say. I mean, it --
14 they -- with -- the thing with the metal on the door
15 especially is that once there's damage to it and, and there's
16 a coating on the metal, once it's exposed over a period of
17 time it'll rust as well as get a coating on it, excuse me,
18 where the metal kind of from the sun and such kind of puts a
19 powdery surface on it, and that didn't appear on that one. So
20 that -- you know, I would say it hasn't been an extended
21 period of time. I couldn't tell you if it was the day of or
22 day before, but within a reasonable amount of time.

23 Q So forensically, there was nothing that gave you clues as
24 to exactly when all these rifle shells and all these bullet
25 holes happened?

1 A No, ma'am.

2 Q Did you take some picture?

3 A I did.

4 Q Did you take a lot of pictures?

5 A A few. Yes.

6 Q In your role as a crime scene investigator, is it your
7 job to interview witnesses?

8 A Not generally, no.

9 Q So were you the investigator who was assigned to this
10 case necessarily?

11 A No. I was not.

12 Q Okay. So other than processing this crime scene in the
13 light of day, did you do anything -- what else would you have
14 done to assist in this investigation?

15 A I also went -- Investigator Morris asked me to go with
16 him to a residence in Williamsburg County. There was a
17 vehicle apparently that as I was told was at the club at some
18 point and he had reported he had -- shots had been fired at
19 his vehicle. So I went over there with him to assist him with
20 processing that vehicle.

21 Q Okay. So you went with another investigator to the home
22 of an individual who said that their car had been shot up?

23 A Yes.

24 Q Do you remember that person's name?

25 A I do not. I remember it was in Williamsburg County.

1 It's kind of hard to find.

2 Q Could that have been Edward Mack? If you don't remember,
3 you don't remember.

4 A That's, that's most likely. Yes.

5 Q Okay. I'm going to show you what has already been
6 entered into evidence, State's Exhibit 13 through 17. Do you
7 recognize those?

8 A Yes.

9 Q Did you take those photographs?

10 A I did.

11 Q Put up 107. On your screen there, although that one's a
12 little fuzzy, so I'm going to hand you the real picture.
13 We're looking at State's Exhibit 13. Can you describe what
14 that is?

15 A This is a blue Honda four-door.

16 Q Is that the car that you processed in Williamsburg
17 County?

18 A Yes.

19 Q I'm going to show you State's Exhibit Number 14, Number
20 108. Can you describe what that is?

21 A That is the rim of the vehicle where the tire is gone for
22 the most part.

23 Q Okay. 109. This is going to be State's Exhibit 15, and
24 can you describe what that is?

25 A Yes. That's the passenger side of the same vehicle.

1 Q Okay. State's Exhibit 16, Number 110, can you describe
2 what that is?

3 A That's the back door on the driver's side of the same
4 vehicle.

5 Q State's Exhibit 17, which is number slide 111, can you
6 describe what that is?

7 A That's a closer view of the passenger side back door,
8 same vehicle.

9 Q And these are all pictures that you personally took?

10 A Yes.

11 Q And that's when you processed this crime scene or this
12 vehicle in Williamsburg County?

13 A Yes, ma'am.

14 Q Okay. I'm going to give our court reporter just a moment
15 to catch up. She's doing a great job. All right. Thank you
16 for your patience. I'm glad we've got such a seasoned court
17 reporter who can handle that amount of exhibits. All right.
18 I'm going to hand you --

19 THE COURT: Any objections, Mr. Barr?

20 MR. BARR: No, sir. No, sir.

21 THE COURT: All right. You are -- you're moving their
22 admission?

23 MS. BAILEY: Yes, Your Honor.

24 THE COURT: All right. And their numbers, what through
25 what?

1 MS. BAILEY: These are State's Exhibits 85 through 165.

2 THE COURT: All right. They'll be admitted without
3 objection.

4 (State's Exhibits 85 through 165 [Photographs] admitted
5 into evidence and appropriately marked.)

6 THE COURT: You may proceed.

7 MS. BAILEY: Thank you.

8 THE COURT: Yes, ma'am.

9 BY MS. BAILEY:

10 Q Investigator Thacker, I'm going to hand you State's
11 Exhibit 85 through 165. If you could flip through those and
12 see if you recognize those photographs.

13 A Okay.

14 Q Thank you. Did you take these?

15 A Yes.

16 Q And what are -- generally, what are they photos of?

17 A They're photographs of the main building, the exterior of
18 the front and the roadway parallel to the building.

19 Q Okay. When you say the main building, is that the part
20 of the building that was not the sports bar?

21 A Correct.

22 Q Okay. And are these photos, Exhibits Number 85 through
23 165, fair and accurate representations?

24 A Yes.

25 Q Okay.

1 MS. BAILEY: I can't remember if we've done this. The
2 State would, the State would seek to introduce Exhibits 85
3 through 165.

4 THE COURT: They've been admitted without objection.

5 MS. BAILEY: Okay. Thank you.

6 THE COURT: You may proceed.

7 BY MS. BAILEY:

8 Q Pull slide 26, please. Can you describe for the jury
9 what we're looking at?

10 A That's a photograph inside of the building itself.

11 Q Okay. Slide 27, and this is State's Exhibit 86. Can you
12 describe what we're looking at?

13 A It's another photograph of the interior of the building.

14 Q And are -- can you tell us what, what are those rooms
15 that we're looking at?

16 A A few of them appeared to be like a private room set up
17 maybe for, I don't know.

18 Q Okay. But they were not part of the sports bar?

19 A No. This was in the main area.

20 Q Okay. I'm going to hand you State's Exhibit 87, slide
21 28.

22 A This is a photograph of another area in the building.
23 This is -- I'm standing on what would be the opposite of the
24 front of the building inside, and it's going into the main
25 area. So this was a little, little half wall encasing some

1 chairs and couches.

2 Q And again, is this part of the sports bar area?

3 A No. It's in the main area.

4 Q Okay. I'm going to show you State's Exhibit 88. That's
5 slide 29. Can you describe what we're looking at?

6 A It's a couch that's in the same area as the previous
7 photo.

8 Q Uh-huh.

9 A That's some, some of the stuffing, I guess you could
10 call, from the inside of the couch where there was a, a bullet
11 that had went through that couch.

12 Q Okay. State's Exhibit 89, which is Slide 30.

13 A Okay. It's a photograph, the same, same area as we were
14 before. It's over a little bit to the right of the photograph
15 that was two before this one. On the bottom area there
16 underneath a chair on the right there's some white stuffing,
17 same type of stuffing that's, that was scattered on the floor
18 that came from the couch it appeared.

19 Q State's Exhibit 90. It's slide 31.

20 A This is a photograph of two fragments that were found
21 there.

22 Q Okay. State's Exhibit 91, that's slide 32.

23 A And this is a photograph of another bullet that was found
24 inside.

25 Q Okay. Now, to be clear, these bullets and fragments and

1 damage, were they found in the sports bar area?

2 A This was found in that main area.

3 Q In the main area.

4 A Yes.

5 Q Okay. State's Exhibit 92, that is Slide 33.

6 A This is a photograph of, of the bullet from the previous
7 shot in the same, the main area.

8 Q Okay. State's Exhibit 93, that's slide 34.

9 A This is a photograph, again, in the, be the main area of
10 the building.

11 Q Okay. And is there anything, any reason you would have
12 taken that photograph in particular?

13 A For the -- there was some, some damage to the wall that
14 we were looking at.

15 Q Were you able to determine if the damage to the wall was
16 from a bullet hole or just something you wanted to note?

17 A Well, what I was doing is looking through because when we
18 had the ones initially that came through the door and those
19 came through the interior walls and just making sure that any
20 bullets or fragments that was recovered inside I could follow
21 the path of the damage through the walls.

22 Q Okay. State's Exhibit 94, that's slide 35.

23 A And that's a photograph, again, the main area. It's a
24 fragment of a bullet.

25 Q Okay. State's Exhibit 95, that's slide 36.

1 A And this is a photograph on the main area and its damage
2 to the wall that was consistent with some of the other holes
3 consistent with it, parallel to that same room.

4 Q State's Exhibit 96, which is slide 37.

5 A That's a photograph, it's the main area. This is that
6 half wall from a few photos ago, and it's another path of a
7 bullet, damage from that.

8 Q State's Exhibit 97, which is slide 38.

9 A Again, the main room. It's an area of the half wall and
10 it's damage from a bullet.

11 Q State's Exhibit 98, which is slide 39.

12 A And this is another angle of the half wall to show the
13 damage to the wall from the bullets that came through the main
14 area.

15 Q State's Exhibit 99, this is slide 40.

16 A This is the wall that's just inside of the front door,
17 and this is some of the damage that corresponded with the
18 damage to the door itself going through this wall.

19 Q State's Exhibit 100, which is slide 41.

20 A This is the framing to the door. It's another area where
21 a bullet round had went through it.

22 Q State's Exhibit 101, which is slide 42.

23 A This is the exterior front door.

24 Q And is there any remarkable damage to that?

25 A There's damage from a bullet passing through it. Yes.

1 Q Earlier you were telling us about some -- whether you
2 could tell how old damage is based on corrosion of metal. Is
3 -- do you see any corrosion in that photograph?

4 A No. The metal is exposed, and I'm sorry, I told you -- I
5 missed -- told you wrong. This one is the, the interior side
6 of the door.

7 Q The interior. Okay.

8 A Of the front door.

9 Q Okay.

10 A Yeah.

11 Q Thank you.

12 A And that's the exposed metal from where it opened up as
13 the bullet traveled through.

14 Q State's Exhibit 102, which is slide 43.

15 A This, this is the exterior door.

16 Q Okay.

17 A And there's damage from a bullet passing through.

18 Q State's Exhibit 103, which is slide 44.

19 A And these are numbers identifying the bullets and
20 fragments from some of the previous pictures that we had
21 before, and this is photographs documenting as they're given a
22 number.

23 Q Okay.

24 A In the main room.

25 Q State's Exhibit 104, which is slide 45.

1 A And this is a photograph of the front door. It's the
2 interior side showing damage --

3 Q And it's --

4 A -- damage. There's some scales to show where these
5 bullet holes are that's coming through.

6 Q State's 105, which is slide 46.

7 A This is a close-up of one of the holes on the interior
8 side of the door.

9 Q May I see that? Just to be clear, I said that was
10 State's Exhibit 105, which is slide 46. Now we're going to
11 look at State's Exhibit 106, which is slide 47.

12 A And this is a close-up photograph of damage to the
13 framing of the -- inside the front door.

14 Q State's Exhibit 107, which is slide 48.

15 A This is a close-up photograph of the wall that's just
16 inside the interior opposite the front door showing damage to
17 the wall with a bullet path.

18 Q State's Exhibit 108, which is slide 49.

19 A This is a photograph of the bullet damage on the same
20 wall.

21 Q State's Exhibit 109, which is slide 50.

22 A This is a photograph showing the damage on the -- from
23 the front as it -- the bullet holes passed through from the
24 interior.

25 Q State's Exhibit 110, which is slide 51.

1 A This is a photograph of the half wall again on the inside
2 of the main area. For reference point for the crime scene
3 number, it's at the bottom.

4 Q State's Exhibit 111, which is slide 52.

5 A It's a photograph of the -- an unfinished room that's
6 opposite of the wall that was just inside of the front door.
7 So I'm standing where that wall is back towards the main area,
8 and these are numbers that were placed down for bullet and
9 fragments.

10 Q And those were collected?

11 A Yes.

12 Q State's Exhibit 112, which is slide 53. First of all, is
13 that a six or a nine?

14 A That's a six.

15 Q Okay. And can you tell us what that is?

16 A That is a close-up of a bullet fragment from the same as
17 the previous photograph that had five and six, this is number
18 six.

19 Q State's Exhibit 113, which is slide 54.

20 A This is an area of the -- just inside from the sheetrock
21 in the same room, the unfinished room where there was some
22 fragments that were into the wall, through the sheetrock and
23 into the wood.

24 Q State's Exhibit 114, which is slide 55.

25 A This is the opposite wall from the wall that's just

1 inside the front door, inside the unfinished room showing the
2 damage to the wall that's lined up and consistent with the
3 damage to the opposite side of it as well as the front door.

4 Q State's Exhibit 115, which is slide 56.

5 A Now, this, this is a photo of looking at towards the
6 bottom. That's some damage to the wall, the interior.

7 Q State's Exhibit 116, which is slide 57.

8 A It's a photo of the exterior documenting some of the
9 other areas where I found evidence that there was some shots
10 fired at it at some point. So there was several across the
11 front of it, of the building.

12 Q State's Exhibit 117, which is slide 58.

13 A Another photograph documenting the same as the prior
14 photograph showing some of the bullet holes.

15 Q State's Exhibit 118, which is slide 59.

16 A It's a closer photograph of the same, from the exterior
17 just documenting the two holes that were located there.

18 Q State's Exhibit 119, which is slide 60.

19 A This is on the exterior as well. There were some more
20 holes that were found that was consistent with a firearm.

21 Q State's Exhibit 120, which is slide 61.

22 A And this is a close-up photograph of damage to the wall
23 from a firearm.

24 Q State's Exhibit 121, which is slide 62.

25 A And this is a photograph showing damage to the wall as

1 well inside.

2 Q State's Exhibit 122, which is slide 63.

3 A Photograph of the interior from damage of the bullet
4 coming through the wall and the paneling.

5 Q State's Exhibit 123, which is slide 64.

6 A The interior again showing damage to the wall.

7 Q State's Exhibit 124, which is slide 65.

8 A This is on the interior. This was to document some more
9 of the wall. It was a dark wall. It was dark inside. So I
10 was trying to use an angle on it so we could be able to
11 identify some of the holes as they, hopefully, some light come
12 through.

13 Q Okay. State's Exhibit 125, which is slide 66.

14 A Close-up of one of the bullet holes, damage to the wall.

15 Q State's Exhibit 126, which is slide 67.

16 A This is a photograph, close-up of the damage to the
17 wooden part of the exterior beside the door.

18 Q State's Exhibit 127, which is slide 68.

19 A This is from a casing that was found beside the road
20 parallel to the building on -- just on the other side of a
21 ditch from where the building is.

22 Q And what's the evidence marker in that?

23 A Number eight.

24 Q Did you collect that?

25 A Yes.

1 Q Okay. State's Exhibit 128, which is slide 69.

2 A That is another casing that was in line in the same area,
3 on the side, on the roadside.

4 Q Okay. And what's the evidence marker next to that?

5 A Nine.

6 Q State's Exhibit 129, which is slide 70.

7 A It's marker 10, again on the roadside parallel to the
8 building. It's a casing.

9 Q State's Exhibit 130, which is slide 71.

10 A Marker number 11, the roadside parallel to the building,
11 it's a casing as well.

12 Q State's Exhibit 131, which is slide 72.

13 A It's marker 12 on the roadside parallel to the building,
14 a casing.

15 Q State's Exhibit 132, which is slide 13 -- I apologize.
16 State's Exhibit 132, which is going to be slide 73.

17 A That is marker number 13. I would have to refer to my
18 notes to tell you accurately if it's a bullet or a casing.
19 There was a couple of bullets, live bullets that were there,
20 and since the photograph's taken as they sit, they're not
21 touched till after I actually collect it so.

22 Q When you look at the actual evidence, will you be able to
23 tell us that?

24 A Yes. Uh-huh.

25 Q Okay. State's Exhibit 133, which is slide 74.

1 A That's marker 14. That's of a live round, rifle round,
2 parallel to the building on the roadway side.

3 Q State's Exhibit 134, which is slide 75.

4 A Marker 15. It's a casing, roadside, parallel to the
5 building.

6 Q State's Exhibit 135, which is slide 76.

7 A It's marker 16. It's a casing on the side of the
8 roadside parallel to the building.

9 Q To be clear on that one, there's a one and a six. Is
10 that 16 or is that two separate?

11 A Yeah. That's, that's 16.

12 Q Okay.

13 A And I apologize.

14 Q State's Exhibit 136, which is slide 77.

15 A It's marker 17. This is from the -- beside the roadway
16 parallel to the building, and I would have to refer to my
17 report to tell you accurately if it's a casing or a bullet.

18 Q Okay. State's Exhibit 137, which is slide 78.

19 A It's marker 18. It's a casing from a rifle, roadside,
20 parallel to the building.

21 Q State's Exhibit 138, which is slide 79.

22 A It's a rifle casing, marker 19, beside the roadway,
23 parallel to the building.

24 Q State's Exhibit 139, which is slide 80.

25 A It's marker number 20, rifle casing, beside the roadway,

1 parallel to the building.

2 Q State's Exhibit 140, which is slide 81.

3 A This is marker number 21. It's of a rifle casing. It's,
4 again, the roadway, parallel to the building.

5 Q State's Exhibit 141, which is slide 82.

6 A It's a rifle casing it appears, marker number 22, beside
7 the roadway, parallel to the building.

8 Q State's Exhibit 142, which is slide 83.

9 A This is a live rifle round, marker number 23, and that's,
10 again, beside the roadway, parallel to the building.

11 Q State's Exhibit 143, which is slide 84.

12 A It's marker 24, rifle casing, beside the roadway,
13 parallel to the building.

14 Q State's Exhibit 144, which is slide 85.

15 A It's a rifle casing, marker number 25, edge of the
16 roadway, parallel to the building.

17 Q State's Exhibit 145, which is slide 86.

18 A Marker number 26, a rifle casing beside the roadway,
19 parallel to the building.

20 Q State's Exhibit 146, which is slide 87.

21 A This appears to be a bullet, marker number 27. It's on
22 the edge of the roadway, parallel to the building.

23 Q State's Exhibit 147, which is slide 88.

24 A It's a casing, marker number 28, again, beside the
25 roadway, parallel to the building.

1 Q State's Exhibit 148, which is slide 89.

2 A A rifle casing, marker number 29, it's the edge of the
3 roadway, parallel to the building.

4 Q State's Exhibit 149, which is slide 90.

5 A It's a rifle casing, marker number 30, the edge of the
6 roadway, parallel to the building.

7 Q State's Exhibit 150, which is slide 91.

8 A Marker number 31, rifle casing, beside the roadway,
9 parallel to the building.

10 Q State's Exhibit 151, which is slide 92.

11 A It's a rifle casing, marker number 32, beside the
12 roadway, parallel to the building.

13 Q State's Exhibit 152, which is slide 93.

14 A That, I believe that's a casing, but I would, again, have
15 to look at my report to verify that to give you accurate.
16 That's marker number 33, and that's on the opposite side of
17 the road from the building.

18 Q Okay. State's Exhibit 153, which is slide 94.

19 A That's a photograph of the markers. Those would be --

20 Q And can you tell which numbers?

21 A Yeah. Well, this is eight, and it'll go to 32, but you
22 can't see all of them. You can see that there's yellow
23 markers there, but they'd be eight, nine, ten, so on, so
24 forth.

25 Q State's Exhibit 154, which is slide 95.

1 A That is a -- about in the middle of this first section,
2 which goes from 11 back to eight.

3 Q State's Exhibit 155, which is slide 96.

4 A Again, it's the -- showing some of the markers. This
5 goes from, as you can see number-wise, 11 through 15.

6 Q State's Exhibit 156, which is slide 97.

7 A And this is just a little bit going the same way. It
8 just shows some of the other markers as there was a couple
9 that was located during this secondary search.

10 Q Okay. State's Exhibit 157, which is slide 98.

11 A This is a marker showing some of the labeled casings and
12 rounds that were found on the roadside.

13 Q State's Exhibit 158, which is slide 99.

14 A This is from 20 going back to where we were originally.

15 Q State's Exhibit 159, which is slide 100.

16 A This is showing some more of the markers and where the
17 casings and rounds were located.

18 Q State's Exhibit 160, which is slide 101.

19 A Again, it's the evidence numbers showing where the
20 casings and rounds were located.

21 Q State's Exhibit 161, which is slide 102.

22 A This is some of the other casings from the second --
23 between -- there was two entranceways going into the building,
24 and this is just on the other side of where the initial ones
25 were found. So it's 30 and 31 is what we have here.

1 Q State's Exhibit 162, which is slide 103.

2 A This is another photograph of 30 and 31 standing in the
3 driveway.

4 Q State's Exhibit 163, which is slide 104.

5 A Item number 33, that's the item that was located on the
6 opposite side of the roadway.

7 Q State's Exhibit 164, which is slide 105.

8 A This is showing most of the markers, how they -- how the
9 casings and/or the rounds were located in relation to each
10 other.

11 Q State's Exhibit 165, which is slide 106.

12 A This is another photograph of the same, and I have --
13 there's an individual there on the other end just to be able
14 to judge my distance to his by the photograph size.

15 Q Now, in addition to the photographs that I showed you
16 from when you processed Edward Mack's vehicle, were there some
17 other photographs that you took that day in addition to the
18 couple that I showed you?

19 A At the scene, I did take some photographs inside of the,
20 the bar area, I guess we call that, where the incident had
21 occurred.

22 Q Okay. Let's -- I'm sorry. I'm switching gears on you
23 here. Let's switch over to the car in Williamsburg County.

24 A Okay.

25 Q All right. In addition to the pictures that we have

1 already seen, did you take some other photographs?

2 A Yeah. There's also should be photographs of the
3 interior.

4 Q Okay. All right. I'm handing up to you State's Exhibit
5 82, 83, 84 and 166 through 193 that have been marked for ID
6 only. If you'd just take a look at those. I promise we won't
7 have to go through all those. I just want to get them into
8 evidence. All right. Are those photos a fair and accurate
9 representation of what that vehicle in Williamsburg County
10 looked like the day that you processed it?

11 A Yes.

12 Q And did you take these pictures?

13 A I did.

14 Q Okay.

15 MS. BAILEY: At this time, the State would seek to move
16 State's Exhibits 82, 83, 84 and 166 through 193 into evidence.

17 MR. BARR: No objections, Judge.

18 THE COURT: Without objections they'll be admitted as
19 marked.

20 MS. BAILEY: Thank you, Your Honor.

21 (State's Exhibits 82, 83, 84 and 166 through 193
22 [Photographs] admitted into evidence and appropriately
23 marked.)

24 BY MS. BAILEY:

25 Q Slide 114, please. I'm showing you State's Exhibit 84.

1 Can you just describe for the jury what that is?

2 A That's a photograph on the interior of some damage to it
3 that appeared to be consistent with a bullet traveling across
4 the path.

5 Q Okay. And State's Exhibit 166, which is slide 115.

6 A That's a photograph of the same vehicle, the interior,
7 the back passenger door with some damage to the interior side
8 of the door.

9 Q State's Exhibit 167, which is slide 116.

10 A And this is a photograph of -- on the same side taking
11 the panel off, the -- of the passenger door.

12 Q Okay. Can you tell us about your education to become a
13 crime scene investigator?

14 A Yeah. Well, I have certification through the
15 International Association for Identification as a certified
16 crime scene analyst, as well as reconstruction for crime scene
17 and shooting incidents with Henry Lee, PhD, 800 plus hours of
18 extended training that involves homicide classes, crime scene
19 processing, reconstruction, blood stain reconstruction and
20 analysis.

21 Q How many crime scenes do you think you've been to?

22 A I couldn't tell you exactly, a lot, many.

23 Q Hundreds, thousands?

24 A Yes. Yes. I've been doing this for -- in -- with the
25 crime scene and investigations for 12 years.

1 Q Okay. And did you attend the police academy as well?

2 A I did, as well as an internship with the SLED crime
3 scene.

4 Q Okay. Have you been qualified as an expert by the courts
5 of this state in this past regarding crime scene analysis?

6 A With the crime scene, I don't think the last time it ever
7 came to fruition. I think it was dealt with first.

8 Q Think the Defense consented?

9 A Yes.

10 Q Okay. But at least once before you have been qualified
11 as an expert in the courts of this state?

12 A Yes.

13 Q Okay.

14 MS. BAILEY: At this time the State would seek to move
15 Investigator Thacker, qualify him as an expert in the field of
16 crime scene processing and crime scene analysis.

17 THE COURT: Any objections to that designation?

18 MR. BARR: No, sir.

19 THE COURT: All right. He'll be qualified as an expert
20 within those areas. You may proceed.

21 MS. BAILEY: Thank you.

22 MR. BARR: Anybody did all this work, he --

23 BY MS. BAILEY:

24 Q As a result of all that evidence you collected, and
25 we'll, we'll still have to go through that and get it in, but

1 as a result of all that, did you draw -- did you produce some
2 documents that helped you to remember where you collected all
3 this stuff from?

4 A Yes. With a -- the -- some sketching of the damage to
5 the walls, the overall exterior and my notes and, you know,
6 with those there, you know, we used the numbers, crime scene
7 numbers to identify a particular item and that, that item
8 becomes what that is at that point, one, two, three, four or
9 five, and so when I have my, my report that I do, it serves as
10 well as like a legend of sort for everything that I collect at
11 the scene.

12 Q Okay. I'm going to show you what have been previously
13 marked as State's Exhibits 308, 309 and 310 for identification
14 only. Take a look at those. Tell us if you recognize them.

15 A Sorry.

16 Q Okay. Do you recognize these?

17 A Yes.

18 Q And what are they?

19 A They are a blown-up version of the sketches that I
20 developed.

21 Q So you actually generated these?

22 A Yes.

23 Q Okay. Are they to scale?

24 A No.

25 Q Okay. But they are a legend for all the evidence that

1 you collected; is that correct?

2 A Yes.

3 Q Did you also use these, along with the evidence that you
4 collected, to form an opinion about how a lot of this damage
5 got -- how it happened?

6 A Yes. Based on the items that we looked at in the
7 photographs, those correspond -- with the first picture that
8 we have of the door has some bullet damage, and that
9 corresponds itself to the interior wall which goes through to
10 the next room, and the paths of, the paths of these bullets
11 and the fragments are consistent from room to room. Some of
12 them hit a frame in one room and wedged into the wall. Some
13 hit other items and fall, and some went into the main area,
14 and I think there may have been maybe two that I remember
15 that, that went through and through because there was two
16 other holes, and some of these were on the damage that we
17 spoke about previously as well in other areas of the building.

18 Q Okay. Would it assist your testimony if you were able to
19 come down here and show the jury what these crime scene
20 drawings mean?

21 A Sure. Yes.

22 MS. BAILEY: Your Honor, permission for the witness to
23 come down?

24 THE COURT: He may.

25 BY MS. BAILEY:

1 Q Investigator Thacker, if you could stand over here.

2 There's a microphone here so the court reporter can hear you
3 and tilt this way so she can see your lips move as well.

4 A Okay.

5 Q Here. I'll hold this.

6 A Okay. Let me get here. How about that?

7 Q Make sure everybody can see? All right. Can you tell us
8 what we're looking at? This is State's Exhibit 309, which
9 while we're at it --

10 MS. BAILEY: State's Exhibits 309, 310 -- I'm sorry.
11 308, 309 and 310, if I haven't moved those into evidence, the
12 State would seek to move those in now.

13 THE COURT: Any objection?

14 MR. BARR: Judge, I don't have an objection to her using
15 them for demonstrative purposes, but if they're not drawn to
16 scale, I would object to them coming into evidence.

17 MS. BAILEY: Your Honor, he's -- the expert has indicated
18 that he relied on these in forming his opinion, which makes
19 them admissible. Also, he also indicated that he generated
20 these, which makes them admissible as an expert report, and
21 the State is -- I would say that the fact that they're not to
22 scale would go to the weight, not the admissibility.

23 THE COURT: Mr. Barr?

24 MR. BARR: I withdraw the objection.

25 THE COURT: All right. Objection is withdrawn. They'll

1 be admitted as marked. You may proceed.

2 (State's Exhibits 308, 309 and 310 [Crime Scene Sketches]
3 admitted into evidence and appropriately marked.)

4 MS. BAILEY: Thank you, Your Honor.

5 BY MS. BAILEY:

6 Q Can you tell us what we're looking at?

7 A This is a sketch of the exterior of the front door of the
8 building, and these lines go to some holes I've drawn here to
9 represent the damage to the, to the front door.

10 Q Okay. And those lines, what do you believe that -- what
11 do those lines represent in your opinion, in your expert
12 opinion?

13 A Well, these, these are, these are used for me to, to draw
14 them to a particular point to identify something. So in this
15 case, all of these are the same type of damage. So they're
16 identified as the bullet holes, single source to go out to
17 identify each one.

18 Q For the record, we're now looking at State's Exhibit 308.
19 Can you explain what we're looking for, what we're looking at?

20 A This is the interior wall that's just as soon as you walk
21 in the front door. This wall is right there on the other side
22 of it, and again, damage to that wall as identified here, and
23 they're all the same type of damage. So they're identified as
24 the holes, bullet holes.

25 Q State's Exhibit 310.

1 A And this is an overall of the exterior. This would be
2 the building. The door is in this area. The building, here's
3 one of the entrance points, the other entrance point, the
4 ditch. This is side of the road, on Oatland Road. This is a
5 roadway, and these are the items that were identified number
6 eight through 32 here and then 33 on the opposite side of the
7 road.

8 Q In your opinion as an expert, the way that these items,
9 eight through 31, were dropped on the side of the roadway, can
10 you describe how that incident, how, how they may have got
11 there based on crime -- your expert opinion in crime scene?

12 A They all were fairly consistently in the same pattern for
13 the most part. So for me, that, that would tell me that
14 someone would have to be walking fairly fast or in a moving
15 vehicle as the gun was fired, and the casings would come out
16 of the firearm, and if it's in an open area, there's nothing
17 to obstruct the casing to be -- the direction to change, so
18 they would fall naturally as gravity helps them, and they will
19 all line up fairly consistently.

20 Q And again, all of these items, eight through 31 --

21 A 32.

22 Q -- 32, would they be handgun casings or rifle casings or
23 shotgun casings? Can you tell me?

24 A These were all 7.62, which is a high-powered rifle.

25 Q Okay. If you could have a seat.

1 A Okay.

2 Q Let me do this. I'm going to hand you what have been
3 previously marked as State's Exhibits 194 through 307. I'm
4 going to hand you just -- just have you flip through these.

5 A Okay.

6 Q All right. Do you recognize what's in those photographs?

7 A Yes.

8 Q Did you take those photographs?

9 A Yes.

10 Q Are they fair and accurate representations of what the
11 crime scene looked like?

12 A Yes.

13 Q Okay. Are many of these various angles of the
14 photographs we've already looked at?

15 A Yes. For the interior, some of the exterior of the
16 building as well.

17 Q Okay.

18 MS. BAILEY: At this time the State would seek to move
19 State's Exhibits 194 through 307 into evidence.

20 MR. BARR: Without objection, Judge.

21 THE COURT: Without objection they'll be admitted as
22 marked.

23 MS. BAILEY: Thank you, Your Honor.

24 (State's Exhibits 194 through 307 [Photographs] admitted
25 into evidence and appropriately marked.)

1 BY MS. BAILEY:

2 Q I'm going to hand you State's Exhibits 311 through 317.
3 If you could take a look at those. We'll start with 311, and
4 can you tell us what that is?

5 A This is an envelope I prepared for my item number one,
6 which is a bullet fragment that was found in the main room on
7 the floor.

8 Q And can you tell us what's in that envelope?

9 A It's a bullet fragment.

10 Q That you collected from inside?

11 A Yes.

12 Q Okay. State's Exhibit 312.

13 A This is my item number two, and it was a bullet fragment,
14 once again, on the floor inside the main room.

15 Q Okay. And is that the actual bullet fragment in there?

16 A Yes. It is.

17 Q Okay. State's Exhibit 313?

18 A And I could open them if you needed to.

19 Q Okay.

20 A This is my item number three, bullet fragment that was,
21 again, on, on the floor and this one was actually beside that
22 half wall that was inside the main room.

23 Q Okay. State's Exhibit 314.

24 A That's my item number four. It's a bullet fragment that
25 was on the floor, as well, inside the main area.

1 Q Okay. State's Exhibit 315.

2 A It's my item number five, a bullet fragment, and that was
3 on the floor, as well, inside. This was near a door that went
4 into that unfinished room.

5 Q Okay. State's Exhibit 316.

6 A It's my item number six, bullet fragment. That was in
7 the wall frame inside the unfinished room.

8 Q And State's Exhibit 317.

9 A And this is my item number seven, bullet fragment, and
10 that was in the wall, sheet rock wall, kind of in the closet
11 in that unfinished room.

12 Q Okay. And you collected all these items and you put them
13 into evidence yourself?

14 A Yes.

15 Q And when -- can you tell -- have they -- after you put
16 them into evidence, did anyone else take them out of evidence?

17 A Just, just me. I'm the only one. I repackaged them for
18 court.

19 Q Okay. Have any of these items been sent off for any kind
20 of analysis or further testing?

21 A Not to my knowledge. No.

22 Q Okay.

23 MS. BAILEY: At this time the State would seek to move
24 State's Exhibits 311 through 317 into evidence.

25 THE COURT: Any objections?

1 MR. BARR: No, sir.

2 THE COURT: Without objections they'll be admitted as
3 marked.

4 (State's Exhibits 311 through 317 [Bullet Fragments]
5 admitted into evidence and appropriately marked.)

6 BY MS. BAILEY:

7 Q I'm going to hand you State's Exhibits 318 through 330.
8 All right. We'll start with item 318. Can you describe what
9 item 318 yes?

10 A This is my item number 21. It's a shell casing that was
11 found beside the roadway.

12 Q Okay. 319?

13 A My item number 22, a shell casing from the roadway,
14 beside the roadway.

15 Q Okay. 320?

16 A It's my item number 23. This is a live round, 7.62
17 bullet that was outside beside the roadway.

18 Q 321?

19 A This is my item number 24, a shell casing from beside the
20 roadway.

21 Q 322?

22 A It's my item number 25, a shell casing outside beside the
23 roadway.

24 Q Are we on 323?

25 A Yes.

1 Q Okay. 323?

2 A My item number 26, a shell casing outside beside the
3 roadway.

4 Q 324?

5 A My item number 27, shell casing outside beside the
6 roadway.

7 Q 325?

8 A That's my item number 28, a shell casing from the
9 exterior beside the roadway.

10 Q 326?

11 A My item number 29, a shell casing exterior beside the
12 roadway.

13 Q 327?

14 A It's my item number 30, a shell casing outside beside the
15 roadway.

16 Q 328?

17 A And by the way, I didn't tell you. I didn't want to
18 confuse anybody. I'm saying my item because I'm -- that was
19 my numbers. They were other numbers that were previous to me.
20 So, all right. This is my item number 31, a shell casing
21 exterior beside the roadway.

22 Q 329?

23 A That's my item number 32, shell casing exterior beside
24 the roadway.

25 Q And 330?

1 A That's my item number 33. It's a shell casing that was
2 exterior on the opposite side of the roadway.

3 Q And you collected all these items?

4 A Yes.

5 Q And you put them into evidence?

6 A Yes.

7 Q Have they been sent off for further testing or analysis?

8 A Not to my knowledge. No.

9 Q Have they been tampered with in any way?

10 A The only thing I, I packaged them for court.

11 Q You package them for court for us?

12 A Yes.

13 Q Otherwise, have they been tampered with or has the items
14 themselves been changed in any way?

15 A No. The seals were intact.

16 Q All right.

17 A Uh-huh.

18 Q All right.

19 MS. BAILEY: At this time the State would seek to move
20 State's Exhibits -- I believe this is going to be 318 through
21 330 into evidence.

22 THE COURT: Any objections?

23 MR. BARR: No objection, Judge.

24 THE COURT: Without objections, they'll be admitted as
25 they've been marked.

1 MS. BAILEY: Thank you, Your Honor.

2 THE COURT: Yes, ma'am.

3 (State's Exhibits 318 and 319 [Shell Casings], State's
4 Exhibit 320 [Live Round] and State's Exhibits 321 through 330
5 [Shell Casings] admitted into evidence and appropriately
6 marked.)

7 BY MS. BAILEY:

8 Q All right. Investigator Thacker, one more set. I'm
9 going to start with State's Exhibit 331. Can you describe
10 what that is?

11 A That's my item number eight. It's a shell casing that --
12 exterior beside the roadway.

13 Q 332?

14 A That's my item number nine, a shell casing exterior
15 beside the roadway.

16 Q 333?

17 A That's my item number 10, shell casing beside the roadway
18 on the exterior.

19 Q 334?

20 A That's my item number 11, shell casing exterior beside
21 the roadway.

22 Q 335?

23 A My item number 13, shell casing exterior beside the
24 roadway.

25 Q 336?

1 A That's my item number 14. This is a live bullet that was
2 found exterior beside the roadway.

3 Q 337?

4 A That's my item number 19, shell casing exterior beside
5 the roadway.

6 Q 338?

7 A That's my item number 20, shell casing exterior beside
8 the roadway.

9 Q 339?

10 A That's my item number 15, shell casing exterior beside
11 the roadway.

12 Q 340?

13 A That's my item number 12, shell casing exterior beside
14 the roadway.

15 Q 341?

16 A That's my item number 16, shell casing exterior beside
17 the roadway.

18 Q 342?

19 A My item 17, shell casing exterior beside the roadway.

20 Q 343?

21 A That's my item number 18, shell casing exterior beside
22 the roadway.

23 MS. BAILEY: At this time, the State would seek to move
24 items 331 through 343 -- actually, before I do that.

25 BY MS. BAILEY:

1 Q Did you collect all these pieces of evidence?

2 A Yes.

3 Q Okay. And did you put them into evidence yourself?

4 A I did.

5 Q Have they been tampered with or altered in any way?

6 A Just packaged them for court.

7 Q Okay.

8 MS. BAILEY: At this time, the State would seek to move
9 items 331 through 343 into evidence.

10 THE COURT: Any objections?

11 MR. BARR: No objections, Judge.

12 THE COURT: Without objections, they're admitted as
13 marked.

14 MS. BAILEY: Thank you, Your Honor.

15 (State's Exhibits 331 through 335 [Shell Casings],
16 State's Exhibit 336 [Live Bullet] and State's Exhibits 337
17 through 343 [Shell Casings] admitted into evidence and
18 appropriately marked.)

19 BY MS. BAILEY:

20 Q All right. Investigator Thacker, thank you for your
21 diligence and patience while we got all that in.

22 THE COURT: Mr. Barr, your witness --

23 MS. BAILEY: I have one --

24 THE COURT: -- or you have some more questions?

25 MS. BAILEY: -- one more point, Your Honor.

1 THE COURT: Oh, okay. Yes ma'am.

2 BY MS. BAILEY:

3 Q In your experience as a crime scene investigator, have
4 you had any luck with collecting any -- well, first of all,
5 can you describe for us the two different kinds of DNA
6 evidence?

7 A Well, there's actually, I mean, several by definition.
8 You have blood evidence that's blood typing DNA. We have
9 saliva, other biological fluids, semen, touch DNA. We have
10 known DNA, which is -- would be a known standard from a known
11 individual.

12 Q Okay. Now, you mentioned -- first of all, did you see
13 any fluids on scene that you could, that you could collect any
14 DNA from?

15 A No. Not in the area that I was. No.

16 Q Okay. Now, tell us what touch DNA is?

17 A It's basically how it's listed. It's when, when someone
18 makes contact with an item, an object. You actually have skin
19 cells that, that come off as you make contact with something,
20 everything you do, and those are the things we're looking for,
21 to collect those, and hopefully, have enough to be able to
22 develop a profile with the DNA much like that most people
23 would be familiar with with blood maybe, but the difference in
24 that is that the, the processing for that right now is not as
25 specific as it is for the blood. So it takes a lot more of

1 that, that sample to be able to develop a profile with the
2 touch DNA. It's hard for the item itself, kind of determined
3 on what it is, surface area, how well the person makes contact
4 with it, how they hold it. A good example I always use would
5 be a flashlight. So if you have a flashlight that's, that's
6 your flashlight, there's a great chance that it would have
7 your, your DNA on it, but if it's someone else's flashlight
8 and you just move it from one section to another, there's a
9 real low likelihood that it's going to be enough contact and
10 surface with, with your hand to leave any DNA that we would be
11 able to recover.

12 Q Okay. So just because somebody touches something they
13 may or they may not leave DNA behind? Is that a fair
14 assumption?

15 A That's correct, that we can find. There's always, you
16 know, there's always an exchange, but whether or not -- it may
17 be minute, you know, so small that you can't, can't do
18 anything with it.

19 Q How about on shell casings? It would seem like somebody
20 would have to touch shell casings to load them in a gun?

21 A I have had success only with bullets for fingerprinting
22 and DNA on the unfired rounds, and there's a very low -- I've
23 never had anybody that I know, and I haven't myself, and I try
24 a lot of things, finding DNA off of a spent casing because one
25 thing that, that defeats it from the, from the start is the

1 heat from the gun. So a gun is like a controlled explosion.
2 So you have gases and heat that, that expel from it, and most
3 of your -- even your fingerprints, the majority of that is
4 water. It's moisture. So it's going to pretty much
5 dissipate. It's just going to be gone based on the heat of
6 that.

7 Q So the process of firing a gun does that help preserve or
8 help destroy any evidence that may be on bullets or shell
9 casings?

10 A Yeah. It definitely would, would be more on the
11 destruction of it because even with the bullets on the brass
12 if you -- if anyone's familiar with gun bluing, people used to
13 do that with the metals, you can do some things like that with
14 the brass, and what it does if there's a lot of contact with
15 the, with the oils in your skin on the brass you can actually
16 do -- burn that brass, and it will, it'll turn color and leave
17 behind a fingerprint, but that, again, is determined on how
18 the person has handled it, and heat would have a big factor in
19 that as well.

20 Q And if someone wears a glove, wears gloves, would you
21 expect that you would or would not be more likely to find
22 fingerprints and DNA on the evidence?

23 A No. You would not be likely to. Yeah.

24 Q Investigator Thacker, I thank you so much for your
25 diligence and your patience while we got all that stuff into

1 evidence.

2 THE COURT: Mr. Barr, your witness.

3 MR. BARR: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. BARR:

6 Q Of course, what your job is is to collect samples to be
7 analyzed for evidentiary value. You don't conduct the
8 analyzing?

9 A Not on everything. There's some, there's some items that
10 I do presumptive tests on. There's chemicals we can do that
11 with.

12 Q Well, I mean, if I wanted to take any one of these say
13 for instance a cartridge, the spent cartridges, and determine
14 whether or not DNA is present, I'd have to send it to the SLED
15 lab; wouldn't I?

16 A I would process it and then send the swabs.

17 Q Well, you may process it, but you don't make the
18 determination as to whether or not DNA is present?

19 A No.

20 Q All right. That's done at the SLED lab?

21 A That's correct.

22 Q In other words, as a law enforcement officer, whoever you
23 turn all of this evidence over to in your office, whoever is
24 your evidence custodian, that person gets it to the SLED lab
25 and then it's analyzed and then you get the results back from

1 the trace department, DNA and serology and all of those people
2 depending on what they find?

3 A Yes. And I'm actually the one that does that as well.

4 Q All right. Now, so, now, of course, do you actually --
5 you don't transport this material to SLED? Does your evidence
6 custodian do that here in Georgetown?

7 A I, I do that as well.

8 Q Take it to Columbia?

9 A I maintain custody of all evidence.

10 Q All right. Now, tell us in this, in this case with
11 respect to all of the items that you collected to be analyzed
12 for forensic evidentiary value, were they all sent to SLED?

13 A No. The items that, that I collected were not because it
14 was determined, after I spoke with the officer that's assigned
15 the case, the wounds that the, that the victim had occurred
16 from, from that, and the bullets that were recovered and the
17 casings as well were not, not at all in the same neighborhood
18 as the ones I collected. So those were from a handgun, and
19 the ones I collected were from a rifle.

20 Q The ones that were collected, the spent cartridges that
21 were collected inside the building, were you able to determine
22 what caliber or whether or not somebody fired more than one
23 caliber weapon?

24 A I did not collect any casings inside when I did my
25 processing.

1 Q Would that have been Officer Daniels?

2 A There was officers there the night before that processed
3 the initial scene, and I'm aware that they collected, I
4 believe, three casings from inside of the crime scene after I
5 reviewed that myself, and I believe there was a bullet that
6 was recovered in maybe a pool table or something, and I'm just
7 going by the review that I did, and two, I believe, from the
8 victim and maybe one from his clothing maybe. I'm just --
9 again, that's on a review.

10 Q So, so you didn't collect, you didn't collect the, the
11 bullets that were not fired, the bullet fragments, no other
12 spent shell cartridges from inside the building? You didn't
13 collect any of those?

14 A From which area?

15 Q Inside the club.

16 A Okay. I collected the casings. The casings were
17 collected on the exterior. There was some live rounds
18 collected on the exterior, and there were fragments collected
19 on the interior.

20 Q How about the live rounds and the casings from the
21 interior, the head stamp, what -- were they the same caliber?

22 A There were no casings that I located on the interior.

23 Q No casings?

24 A No.

25 Q Then somebody else collected the casings?

1 A Well, there was two, there was two, two processing times.
2 One was the night of the incident. I was not there.

3 Q Yes, sir.

4 A And I was there the next day, and I processed the
5 exterior and the main area of the building.

6 Q Well, maybe it was Officer Daniels that testified that he
7 found spent shell casings. Maybe he was the one that
8 collected the casings, but now, as far as the casings that you
9 collected along, along the roadway, I think you indicated
10 that, that in your opinion those casings were shot from a
11 high-powered rifle?

12 A That's correct.

13 Q Automatic or semiautomatic, probably one of the two?

14 A Yes, sir.

15 Q I mean, to kick them out the way that they -- you
16 explained that they kicked along the road?

17 A Uh-huh.

18 Q All right. Now, of course, an automatic weapon would
19 have been pa, pa, pa, pa, pa, pa, pa, pa, pa, going off like
20 that. Everybody ought to be able to hear that, especially a
21 high-powered rifle; wouldn't you say so?

22 A I really couldn't -- I couldn't give you an accurate
23 answer. I've, I've interviewed people at homicides before
24 that, that heard three shots if there were 10 fired, people
25 that didn't hear anything, people that were -- had tunnel-

1 vision and didn't see anything except for what was in front of
2 them. So I really couldn't give you that example, and plus,
3 I, I, I wasn't there, so.

4 Q All right. Well, but you've given us your opinion?

5 A Yes, sir.

6 Q Yeah. And the shell casings, they're not -- they wasn't
7 there like -- they didn't collect rust or whatnot in the
8 weather, exposed. They were fresh, I assume they were fresh
9 shell casings, otherwise, you probably wouldn't have collected
10 them?

11 A Well, I couldn't give you a determination on exactly how
12 long they had been there.

13 Q Well, maybe not precisely, but they didn't look like they
14 had been there two weeks; did they?

15 A Well, again, it just -- it's determined on the
16 environment and, and what happens. Some of these casings were
17 beat up, and that could be as simple as they could've been in
18 the roadway a little further or run over by a car, and
19 that'll, that'll change them dramatically.

20 Q But now, if you didn't think that they had some
21 evidentiary value, you wouldn't have waste your time
22 collecting them; wouldn't, wouldn't that be --

23 A Well, no. Again, I couldn't, I couldn't agree with you
24 there because I don't know what could or could not be
25 important at the time. If I -- if there's evidence there of

1 something that's potential, and I even teach this to the
2 people that I train, we don't leave it behind.

3 Q Yes, sir.

4 A You collect it. If you, if you don't need it, you don't
5 need it, but it may or may not be important.

6 Q It, it, it could be of significance?

7 A Could be.

8 Q And that's why you collected everything you saw?

9 A Exactly.

10 Q All right. Now, all the spent shell cartridges you
11 collected from outside you said came from the same caliber
12 weapon.

13 A Yeah. As far as I can recall, yes.

14 Q No shotgun shells?

15 A No, no shotgun shells.

16 Q There was a lot of bullet holes inside, inside the club;
17 weren't they?

18 A I'm sorry. I couldn't --

19 Q There were quite a few bullet holes inside that club?

20 A Oh, there was, there was several on the exterior going
21 into the building. Yes, sir.

22 Q And of course, if, if there were bullet fragments that
23 were found by the pathologist, in all likelihood, those bullet
24 fragments were probably fired directly into the decedent's
25 body? Wouldn't you agree with that?

1 A If, if he -- if they were found inside of --
2 Q Yes, sir.
3 A -- the victim's body?
4 Q Yeah.
5 A I would, I would -- yeah, I would believe that it, that
6 it was fired. You mean towards the person or --
7 Q Yes, sir.
8 A Yeah. I could agree with that. Yes, sir.
9 Q All right. And then, of course, they wouldn't have been
10 -- they -- you wouldn't have shot, bullet hit the wall,
11 ricocheted all around and then hits him and then went?
12 A Well, if you don't mind me asking, which, which area are
13 we talking about because I wasn't, I wasn't present at the
14 initial scene.
15 Q Well, I tell you what, the -- you, you've, you've shown
16 us some photographs you took bullet holes at the door, right
17 in the molding that -- well, near, right near the molding that
18 goes around the door.
19 A Okay.
20 Q Exterior shot from the interior or from the exterior?
21 A The, the hole, the damage I found?
22 Q Yes, sir.
23 A Were coming from the exterior.
24 Q They were coming from outside shooting inside the
25 building?

1 A That's correct.

2 Q Now, would you not agree that that was probably the high-
3 powered rifle?

4 A The ones, the ones that I testified to?

5 Q Yes, sir.

6 A I would say that's consistent with it. Yes, sir.

7 Q Now, you, you didn't get any of the cartridges from the
8 inside. So you wouldn't know whether or not there was more
9 than one gun used in the inside. You wouldn't be able to
10 answer that; would you?

11 A I could not. I, I could, I could review the evidence and
12 --

13 Q Make a determination?

14 A -- give you a determination based on that. Yes.

15 Q All right. You, you would agree that there was quite a
16 bit of shooting going on at this place; wouldn't you?

17 A There was evidence that there had been --

18 Q Quite a bit of shooting?

19 A -- shots fired at, at the building, in and around the
20 building. Yes, sir. At some point.

21 Q Inside the building?

22 A At some point there was shots fired that went through the
23 building and into walls and everything else. Yes, sir.

24 Q I don't think I've got any other questions. I don't want
25 you to think because the Solicitor took so long and I took

1 such little time. Thank you.

2 A Thank you.

3 THE COURT: We won't hold that against you, Mr. Barr.
4 Wish to redirect?

5 MS. BAILEY: No, Your Honor.

6 THE COURT: All right. Sir, you may step down. Thank
7 you very much.

8 A Thank you.

9 THE COURT: Wish to excuse the witness?

10 MS. BAILEY: Yes, please.

11 THE COURT: Any objection?

12 MR. BARR: No, sir.

13 THE COURT: All right. Sir, you're free to go. Thank
14 you.

15 A Thank you, Your Honor.

16 THE COURT: The State may call its next witness.

17 MS. BAILEY: Thank you, Your Honor. The State calls
18 Melvyn Garrett.

19 THE COURT: All right. Sir, come forward to my left to
20 be sworn.

21 MR. GARRETT: Certainly, Judge.

22 THE COURT: This gentleman over here will take care of
23 you.

24 MR. GARRETT: Thank you, Judge.

25 THE COURT: Yes, sir.

1 MR. GARRETT: Good morning.

2 THE CLERK: Sir, please state your full name for the
3 record.

4 MR. GARRETT: Melvyn Merrill Garrett, Jr.

5 THE CLERK: Please spell your last name for us.

6 MR. GARRETT: G-A-R-R-E-T-T.

7 THE CLERK: Thank you.

8 Whereupon, Melvyn Garrett, Jr., was called to the stand,
9 duly sworn by the clerk and testified as follows:

10 THE CLERK: Thank you. Please have a seat.

11 MR. GARRETT: Thank you.

12 THE COURT: Ms. Bailey, your witness.

13 MS. BAILEY: Thank you, Your Honor.

14 THE COURT: Yes, ma'am.

15 DIRECT EXAMINATION

16 BY MS. BAILEY:

17 Q What's your job?

18 A I'm an investigator with Georgetown County Sheriff's
19 Office.

20 Q And in fairness to you, did I tell you that we would get
21 to you this afternoon?

22 A No. You didn't.

23 Q What did you tell me when I said -- when I called you
24 yesterday and said we wouldn't be getting to you today? What,
25 what'd, what'd you say to me?

1 A I said, "Well, I look forward to seeing you on Thursday."
2 Q All right. And did you confirm your clothing with me?
3 A Well, yeah. I did, but not for today.
4 Q All right. It's my fault you didn't get to put on a
5 shirt and tie. I apologize.
6 A That's all right, no problem.
7 Q How long have you been with the Sheriff's Department?
8 A Since September 2002.
9 Q And how long have you been in law-enforcement?
10 A Twelve years.
11 Q Okay. And at some point have you taken a break from law
12 enforcement?
13 A Yes. I've took two. I went to Iraq once and Afghanistan
14 the next time.
15 Q Okay. On December 1st of 2008, were you -- did you go to
16 the -- I'm sorry, on December -- let me back up. Were you
17 assigned to work on a case that involved a shooting that
18 happened on December 1st of 2008?
19 A Yes. I was.
20 Q Okay. And what was your role in that investigation?
21 A I was doing the follow-up to that.
22 Q So were you on scene the night that it happened?
23 A No.
24 Q And did you help process the scene at all?
25 A No. I didn't.

1 Q Okay. So what was your role then?

2 A Just the -- do the follow-up investigation, find out what
3 happened, anything else that was needed.

4 Q Did you help track down all these witnesses?

5 A Yes. I did.

6 Q Did you take statements from these witnesses?

7 A Yes. I did.

8 Q Can you walk us through -- what day did you get assigned
9 to work on the case?

10 A I got contacted about four hours after the incident
11 happened. So it would have been the following day about 3:30
12 a.m.

13 Q Okay. And what did you do?

14 A I came out and met with the investigators that did go to
15 the scene, and they kind of brought me up to speed about what
16 happened, the information that they had so far.

17 Q What was your next step?

18 A The next step was to begin contacting witnesses.

19 Q And without telling us what those witnesses said, what
20 all witnesses did you interview in this case?

21 A Well, without having my notes with me, I wouldn't -- I, I
22 can't tell you, but --

23 Q If you reviewed your notes, would that help to refresh
24 your recollection?

25 A It most certainly would. Thank you. It looks like I

1 spoke with Maurice Giles, Larry Cooper, Willie Stanley, Sonia
2 Jones, Jerliether Jones, Douglas Morris, J. Russell Brown,
3 James Dozier, Gary Gibson, and there may be a few others
4 that's not in my notes.

5 Q And some of those people that you spoke with had
6 information; is that true?

7 A Yes.

8 Q That assisted in the investigation?

9 A Yes.

10 Q And did some of them actually have no information that
11 assisted in the investigation?

12 A Absolutely.

13 Q Okay. And as part of your investigation, you said you
14 spoke with Jerliether Jones?

15 A Yes.

16 Q During that interview, did you have a chance to present
17 her with a photo lineup?

18 A I did.

19 Q Did you suggest to her in any way who she should pick out
20 of that photo lineup?

21 A Absolutely not.

22 Q Okay. I'm going to show you what's already been marked
23 as State's Exhibit One, and it's for ID only. It's not been
24 entered into evidence. If you could open that up. Do you
25 recognize that?

1 A Yes, I do.

2 Q Okay. And what is it?

3 A This is a photo lineup.

4 Q Is it the one that you showed Jerliether Jones?

5 A Absolutely.

6 Q Okay. And who did she pick out of that photo lineup?

7 A She picked the Defendant, Mr. Dizzley.

8 Q Okay.

9 MS. BAILEY: At this time, the State would seek to move
10 State's Exhibit One into evidence.

11 THE COURT: Any objections?

12 MR. BARR: Yes, sir. Your Honor, I, I -- she may --
13 what, what my objection is at this point is really
14 foundational because she, she's -- he indicated who, who she
15 picked out, out of the lineup, but she didn't indicate for
16 what purpose.

17 MS. BAILEY: Your Honor, in Jerliether Jones' testimony
18 she indicated for what purpose. It's just follow-up to that.

19 MR. BARR: Well, Judge, I think that he would in order --
20 if she's going to put it into evidence, and, and he's the one
21 that conducted the lineup, then he needs to, to tell us why he
22 had her, why he did the show-up lineup to begin with.

23 THE COURT: You, you certainly can ask those questions.

24 MS. BAILEY: Thank you, Your Honor.

25 THE COURT: I think it'd probably resolve the issue. So

1 I'll ask you to do so.

2 MS. BAILEY: All right. Thank you, Your Honor.

3 BY MS. BAILEY:

4 Q Now, was Jerliether Jones, to the best of your knowledge,
5 was Jerliether Jones present during the shooting?

6 A No. She wasn't.

7 Q Okay. So when you showed her this lineup, what did you
8 -- had she given you a nickname of someone? Let me start with
9 that. Was there a lead involving a nickname that you were
10 following up on?

11 A Yes. There was.

12 Q And what was the nickname?

13 A D, Little D, or Diz or and Diz.

14 Q Okay. And so when you showed her this photo lineup, was
15 the purpose to determine which person in this photo lineup she
16 knew as Little D, Diz, D?

17 A Yes. That was the purpose.

18 Q Okay. And who did she pick out?

19 A She picked the Defendant.

20 Q Okay.

21 MS. BAILEY: At this time, the State would seek to move
22 State's Exhibit One into evidence.

23 MR. BARR: No objection.

24 THE COURT: Without objection, it'll be admitted as
25 marked.

1 MS. BAILEY: Thank you, Your Honor.

2 (State's Exhibit Number One [Photo Line-up] admitted into
3 evidence and appropriately marked.)

4 BY MS. BAILEY:

5 Q Now, you didn't conduct an interview of Naomi Alston, but
6 did you come in during the interview of Naomi Alston?

7 A Yes. I did.

8 Q And when you came in during the interview of Naomi
9 Alston, did you present her with a photo lineup?

10 A Yes. I did.

11 Q Did Ms. Alston witness the shooting?

12 A No. She didn't.

13 Q Okay. Did Ms. Alston have a lead that involved a
14 nickname of someone that may have been involved in the
15 shooting?

16 A I'm not sure if she had a nickname or she had a, a name
17 period. I don't have it here my notes, but the purpose that I
18 showed her the line-up was the same, to see who she knew as
19 Little D or Diz, or --

20 Q Okay. I'm going to show you what's been previously
21 marked as State's Exhibit Two for identification only. Can
22 you tell what that is and feel free to open the envelope.

23 A This is also a photo lineup.

24 Q And is that the photo lineup that you showed Naomi
25 Alston?

1 A Yes. It is.

2 Q And who did she pick out of that lineup as the person who
3 was -- who she knew as D, Little D, Diz, etcetera?

4 A She chose the Defendant.

5 Q Okay.

6 MS. BAILEY: At this time, the State would seek to move
7 State's Exhibit Two into evidence.

8 MR. BARR: No objection, Judge.

9 THE COURT: Without objection, it'll be received as
10 marked.

11 MS. BAILEY: Thank you, Your Honor.

12 (State's Exhibit Number Two [Photo Line-up] admitted into
13 evidence and appropriately marked.)

14 BY MS. BAILEY:

15 Q Now, once you had a name, what did you do next as part of
16 your investigation?

17 A Well, if I can back up, I had a name from, from a person
18 that I interviewed earlier before I met with the two ladies.
19 That's where I got the initial line-up. After identifying who
20 we thought was Little D, of course, we went to try to track
21 him down and speak with him.

22 Q Okay. Were you initially able to find him?

23 A No. No. We weren't.

24 Q And did that investigation take you out of county?

25 A Yes. It did.

1 Q Okay. How long did -- once you began to look for Terron
2 Dizzley, how long did it take you to locate him?

3 A Again, I don't have that in my notes, but to the best of
4 my recollection, it was at least a week.

5 Q Okay. He certainly -- was, was he at the first place
6 that you went looking for him?

7 A No.

8 Q Okay. At some point in the course of your investigation,
9 did you go to Williamsburg County to look at a car that was
10 owned by Edward Mack?

11 A Yes. I did.

12 Q And did somebody go with you?

13 A Yes. Investigators Thacker and Morris.

14 Q Okay. But you were present on scene for the processing
15 of that car?

16 A Yes. I was.

17 Q Okay. Now, to be clear, were you the lead investigator
18 assigned on this case?

19 A Initially, I was.

20 Q Okay.

21 A But after about a day or so, Investigator Morris was
22 contacted. I was just getting back from Iraq. So they
23 decided to make him the lead.

24 Q Okay. So you were the assistant to the lead investigator
25 on the case?

1 A Yes.

2 Q All right. And in that capacity, then, what was your
3 role in the investigation?

4 A Anything that needed to be followed up on I did, and I
5 also traveled with Investigator Morris to several locations to
6 speak with witnesses.

7 Q Okay.

8 MS. BAILEY: Beg the Court's indulgence one moment.

9 THE COURT: Yes, ma'am.

10 MS. BAILEY: I have no further questions for this
11 witness. Thank you, Your Honor.

12 THE COURT: Mr. Barr, your witness.

13 CROSS EXAMINATION

14 BY MR. BARR:

15 Q You said you went to -- out of town to look for Terron
16 Dizzley?

17 A That's correct.

18 Q You had a warrant for him?

19 A I don't recall if we had a warrant at that time.

20 Q Now, there did come to be a time when, when you, you
21 found him; is that correct?

22 A If I'm not mistaken, he turned himself in.

23 Q Turned himself in. And he -- who he turned himself into?
24 Was it you or Officer Morris or do you remember?

25 A I don't. I don't remember.

1 Q But he did turn himself in?

2 A As far as I know, he did.

3 Q Yeah. All right. Now, you indicated that you were not
4 -- you were lead investigator for approximately from December
5 2nd until how long?

6 A It wasn't more than a day or so.

7 Q A day or so?

8 A Uh-huh.

9 Q And then Officer Morris became the lead investigator.
10 What, what -- basically, what does the lead investigator do?

11 A Well, the lead investigator is assigned to the case, and
12 anybody else would just be assisting.

13 Q So with respect to authority and decision-making, would
14 the lead investigator then be the person that would make most
15 of the decisions concerning the direction that the
16 investigation ought to go in?

17 A Certainly.

18 Q And but he's assisted by the other investigators?

19 A Yes.

20 Q Now, as an assistant investigator to the lead
21 investigator, who maintains the investigatory case file?

22 A The lead investigator does.

23 Q He maintains that file?

24 A That's correct.

25 Q Did you have access to it?

1 A I'm sure I could've seen it any time I got ready.

2 Q Well, but did you, did you, did you study the case file
3 on a day-to-day basis, or in terms of the development of the
4 investigation, were you on top of that?

5 A Oh, well, yes. I would have been with him pretty much
6 everywhere he went so.

7 Q I see. All right. Let's, let's look at the -- would you
8 agree that as far as investigation from a methodology
9 standpoint you initiate the investigation by trying to develop
10 leads?

11 A Yes.

12 Q And of course, you, you've been an investigator for 12
13 years you said; right?

14 A No. I've been in law enforcement for 12 years.

15 Q But not an investigator?

16 A No.

17 Q Now, of course, you, you just identified, or you took a
18 photo lineup to Ms. Alston, and she identified Terron Dizzley
19 as the person that she knew as Little D?

20 A That's correct.

21 Q And who's the other person you took it to?

22 A Jerliether Jones.

23 Q Jerliether Jones. Now, wasn't, wasn't she Aundry's --
24 was she Aundry's girlfriend?

25 A Yes. She was. She identified herself as Aundry's

1 girlfriend. Yes.

2 Q All right. So you took, you took it to the two
3 girlfriends, and, of course, you knew that he had a
4 relationship with both of the women?

5 A Yes.

6 Q And in terms of why, you were, you were trying to find
7 Terron Dizzley. You had, you had already heard, at least,
8 that Naomi Alston claimed that Terron Dizzley, that he
9 identified Terron Dizzley as the person that shot him? You
10 knew that; right?

11 A No. What I heard was that he identified a person by the
12 name of Little D that shot him.

13 Q Well, Little D, but then you said that Little D you
14 wanted somebody to confirm that Little D was Terron Dizzley?

15 A That's correct.

16 Q All right. Now, you, you, you were aware of the
17 statement that had been given by Gary Gibson?

18 A Yes.

19 Q And --

20 MS. BAILEY: Your Honor, just to clarify, Gary Gibson
21 gave several statements. Which one are we referring to?

22 MR. BARR: I'm talking about the statement that he gave
23 dated the 20th of August of 2012 that he gave Steven Brown.

24 A No. I'm not aware of that statement.

25 Q You were not aware of that statement? So as far as you

1 know, the statement that Gary Gibson gave to Steven Brown on
2 the 20th of August was not a part of your investigative file?

3 A No. Not if you gave it to Steve Brown it's not.

4 Q Now, Steven Brown then is an investigator for just the
5 Solicitor's Office?

6 A Yes.

7 Q And there was no coordination as far as information
8 shared between the Sheriff's Office and the Solicitor's
9 Office?

10 A I don't know, and that was August 20th of what year?

11 Q 2012.

12 A Okay. I don't know anything about it.

13 Q I believe he also at the same, on the same day, and maybe
14 you probably -- you may not know about that one either, took
15 one from a fellow whose nickname is T.I. You know anybody by
16 that name involved in this?

17 A I am -- I believe that we did during the investigation
18 identify a person by the name of T.I., but I don't know, I
19 don't know the name.

20 Q So then you're not familiar enough with it to know
21 whether or not his statement was a part of your investigative
22 file that you were privy to?

23 A It could have been. I don't know. I don't have it in my
24 notes.

25 Q But you don't know. Now, as far as the direction of your

1 investigation, was the direction of your investigation pretty
2 much being determined by Investigator Morris?

3 A Yes.

4 Q Did you, did you know about, did you know about the
5 allegations concerning the number of people that were involved
6 in this shooting at the Paradise Club?

7 A The allegation of the number of people --

8 Q Yes, sir.

9 Q -- that was involved at the shooting?

10 Q Yes, sir.

11 A From what I understand there was one.

12 Q Just one?

13 A Yes, sir.

14 Q You didn't know that information had been gathered to
15 indicate that it was four or five of them?

16 A Inside the club, no.

17 Q No, no, outside the club, too?

18 A Okay. So you're talking about the other shooting. Yes.
19 I've heard that. Absolutely.

20 Q Inside and outside, were you aware of that?

21 A Yes.

22 Q And were you aware that they were all wearing masks and
23 dressed up in dark clothing, I believe, had several guns, had
24 shot into the building?

25 A In one of the statements, I hear about at least one other

1 person that may have had a shotgun, and we collected some
2 shell casings, but that's, that's the information that I have,
3 three or four people were outside, and they all fled together.

4 Q Now, you said you spoke to Naomi Alston. Were you privy
5 to the statement that she gave? Were you privy to the sworn
6 statement that she made in August of 2012?

7 A No.

8 Q You're not privy to that statement?

9 A I haven't seen it.

10 Q Have you been active in the investigation of this case
11 since August of 2012?

12 A No. No. I have not.

13 Q You hadn't, you hadn't been involved since August 2012?

14 A No. I have not.

15 Q So the investigation then has been being directed by
16 Investigator Morris?

17 A That is correct.

18 Q Since August of 2012.

19 A I have to assume so.

20 (Static comes on through sound system in courtroom.)

21 THE COURT: All right. Does that take care of it?

22 REPORTER: Yes, sir. I'm sorry, Judge.

23 THE COURT: I'm sorry. I didn't know what that button
24 did, not being from around here.

25 MR. BARR: Judge, you were getting ready to do some low

1 running?

2 THE COURT: I, I, I may blast off in a minute. You may
3 proceed, Mr. Barr.

4 MR. BARR: Thank you, sir.

5 BY MR. BARR:

6 Q You, you would agree then that at least until August of
7 2012 your office had primarily focused on Mr. Dizzley as being
8 the gunman, and you all were conducting an investigation that
9 centered around him?

10 A Well, we -- he was identified at some point during the
11 investigation. Yes.

12 Q Now, even in 2012 when you found out that he had been or
13 it had been alleged that he was involved, and simultaneously,
14 there was a lot of shooting going on with four or five other
15 people, all of them dressed up together in black, did it occur
16 to you that this is something a little bit bigger than one
17 man?

18 MS. BAILEY: Objection, Your Honor. That was a
19 misstatement of the facts, and Mr. Barr is testifying as to
20 facts that are not in evidence.

21 THE COURT: All right. Ladies and gentlemen of the jury,
22 I'm going to have to ask you to step back to the jury room
23 while I discuss a matter with the attorneys. As always, I'll
24 ask you not to begin any discussions and not until I've told
25 you to do so.

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

3 THE COURT: State your objection fully, Ms. Bailey.

4 MS. BAILEY: Thank you, Your Honor. Mr. Barr just
5 predicated his question on whether or not the fact that there
6 was five or six people involved in this shooting would have
7 then formed the direction that the investigation took and
8 whether or not they focused on Mr. Dizzley.

9 THE COURT: I think his question was did it occur to you
10 back in 2012 when there was evidence or allegations that there
11 were people outside all dressed in black with masks, etcetera,
12 that this matter was bigger than one man, I think was his
13 question.

14 MS. BAILEY: Okay. I, I --

15 THE COURT: I think that paraphrases the question anyway.
16 It's not exactly what he said but pretty close.

17 MS. BAILEY: I, I agree with your paraphrasing. What I
18 disagree with were the specifics that he stated. My
19 understanding is from all of the testimony, we're talking
20 about four people, at most, and the idea that there was
21 somehow six or more people I think is a misstatement of the
22 facts.

23 THE COURT: I don't know if he went as far as saying six,
24 but he did say -- what I've heard in the testimony thus far
25 was there was a car of people, four perhaps outside. Have you

1 heard any more than that in the evidence, Mr. Barr?

2 MR. BARR: No, sir. I, I said five. That's what I said.

3 THE COURT: Okay. So and, and that apparently arose in a
4 statement that was given in 2012?

5 MS. BAILEY: To the Solicitor's Office investigator.

6 THE COURT: Right.

7 MS. BAILEY: Well, it actually had arisen before that,
8 but it's -- that's neither here nor there.

9 THE COURT: Okay. All right. Well, you find that, you
10 just find his characterization of the number of people
11 involved to be incorrect?

12 MS. BAILEY: Yes.

13 THE COURT: Okay.

14 MS. BAILEY: Six people couldn't have ridden in one car
15 which is why it's, it's important.

16 THE COURT: Okay. Well, I think, Mr. Barr, you have any
17 problem with rephrasing your question to --

18 MR. BARR: No, sir. I'll be more than happy to.

19 THE COURT: -- include the number of five? Is that what
20 we had?

21 MR. BARR: Yes, sir.

22 THE COURT: Is that what the --

23 MR. BARR: I thought I said five.

24 THE COURT: I haven't read the statement. So does it say
25 five? I don't know.

1 MS. BAILEY: My understanding was three or four based on
2 this witness's testimony.

3 THE COURT: Okay. Well, I'm not talking about that.
4 He's talking about statements that were made by other
5 witnesses.

6 MR. BARR: Yes, sir. There were several witnesses, I
7 mean, one in particular said four was in the car and one was
8 --

9 MS. BAILEY: I think four is the total number that
10 anybody says.

11 THE COURT: Well, we can go back and look at the
12 statement if we need to.

13 MR. BARR: I'll reduce it to four.

14 THE COURT: Okay. He says he'll, he'll hold it down to
15 four, and I've heard four. I've heard that, and I'll go along
16 with that.

17 MS. BAILEY: Thank you, Your Honor.

18 THE COURT: All right. Other than that, that satisfies
19 your objection?

20 MS. BAILEY: Yes, Your Honor.

21 THE COURT: Okay. Let's bring the jury back in.

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

24 THE COURT: All right. The record will reflect the jury
25 has returned to the courtroom. Mr. Barr has agreed to

1 rephrase the question. The Court is satisfied with that
2 rephrasing. You may proceed, Mr. Barr.

3 BY MR. BARR:

4 Q Based on your case file, did you have information in that
5 file to indicate that there were at least as many as four
6 people involved in the shooting?

7 A I have information that there were three or four people
8 outside, but only one was involved in the shooting.

9 Q Well, had you, had you checked -- who, who, who -- the
10 officer that, that just testified before you, that he does the
11 crime scene analysis, you don't, you don't look at the shell
12 casings and spent shells?

13 A Certainly.

14 Q Pardon me?

15 A Certainly.

16 Q You weren't aware of all of these shell casings that he
17 had and spent shells? You were aware of that?

18 A Yes. I was.

19 Q And I'm sure you, you, you had a discussion with him
20 about how those things got out there.

21 A Well, during the investigation, at least the part that I
22 was involved in, I didn't get any information that anybody
23 actually shot outside.

24 Q Well, were you aware that there were a number of holes,
25 gunshot holes in the building, inside the building, there were

1 gunshot holes from what the investigator said looks like a
2 high-powered rifle into the building? You were aware of that?

3 A I may have heard that, but I'm not sure whether that
4 happened the same night. So I don't know.

5 Q You're not sure whether it happened the same night?

6 A Yes. I don't have any information that says that it
7 happened the same night as the shooting.

8 Q So then you had all the information or at least had
9 access to the information that all the other investigators in
10 your office had, but it's your testimony now that you, you
11 weren't sure that all of this was connected to the same night?

12 A No. I'm telling you that now, but no, I'm not sure
13 whether that -- there -- nobody told me that they heard any
14 gunshots outside from the best of my recollection.

15 Q None of the witnesses or none of the people you
16 interviewed told you that there gunshots fired outside?

17 A Not to the best of my recollection, that there was one
18 gunman outside that had a shotgun, but nobody ever said he
19 fired the shotgun.

20 Q Well, at least, if he had a shotgun, that's at least two
21 because one would've been inside shooting the pistol and at
22 least another one was outside with a shotgun, and you said
23 that you did understand that there were some more outside all
24 connected to this same event.

25 A Yes.

1 Q Now, knowing that, I'm sure that the thought occurred to
2 you that there's more than one person involved in this
3 shooting.

4 A Well, that's the information that we received, that there
5 were some people outside.

6 Q I see. And you then at least directed some effort to
7 trying to find the other people involved?

8 A Well, we really didn't have much to go on. You know, you
9 had three masked men outside. That's the -- that's all the
10 information that we had. Now, I wasn't involved with trying
11 to track down who these other three people were, only the
12 shooter.

13 Q They were driving a car; right?

14 A Yes.

15 Q I see. And of course, the car would have probably had
16 license plate or something. I think you may have checked
17 that, and of course, I noted -- from time to time you all, you
18 all tap telephones, too; don't you?

19 A I've never tapped anybody's telephone.

20 Q You don't do that?

21 A No.

22 Q Because, I mean, I'm, I'm sure that inasmuch as you had
23 focused some attention on Terron Dizzley and then you found
24 out -- you did find out he was living in Orangeburg?

25 A Yes.

1 Q You went to Orangeburg and got some investigators to try
2 to see who he was involved with up there?

3 A I'm not sure if that's why we went. We went to look for
4 him and speak with him, but there was somebody else that we
5 needed to speak with in Orangeburg as well.

6 Q Did you ever go or try to connect or see whether or not
7 he had connections to people like where he could get three or
8 four buddies or whatever to dress up in black and come down
9 here and shoot and carry on?

10 A You're asking me if --

11 Q Yes, sir.

12 A -- if I think he knows other people that would come out
13 dressed in black with him?

14 Q I'm asking you did you, did you try to investigate it to
15 find out?

16 A Well, I'm sure that we did. I'm sure that we did.

17 Q Oh, you did?

18 A I'm sure we did. I didn't do it, but I'm sure we tried
19 to find out who his buddies were.

20 Q Well, if you didn't do it, how you know it was done?

21 A Well, because I wasn't involved in that portion of the
22 investigation, I was assisting Investigator Morris.

23 Q Well, if you wasn't involved in that portion of it, the
24 truth of the matter is, you don't know that it was done?

25 A I have no idea.

1 Q As an investigator, you think it should've been done?

2 A Do I think we should have tried to locate and see who his
3 buddies are? Sure, sure.

4 Q Now, as far as you know, he, he must -- Terron Dizzley
5 must at least have some friends in Orangeburg or somewhere
6 that he could either pick up the telephone and call and put
7 them together and come help him out, do this thing. I mean,
8 did that thought occur to you that if it was him then this
9 could possibly be a lead because he'd have to have somebody to
10 help him? That thought occur to you?

11 A Well, I wasn't the lead investigator on the case, but I'm
12 assuming that he does have buddies he can call and come help
13 him out with something like this.

14 Q And as a good investigator, especially led by Officer
15 Morris, you all could find that out probably pretty easy;
16 couldn't you?

17 A Well, that depends on what we're trying to find out. At
18 this point we're trying to find out who shot the victim.

19 Q Well, maybe in terms of a lead if you find the car, find
20 the fellow that had the shotgun, one obviously had a high-
21 powered rifle, some pretty tough fellows, but you all didn't
22 look for them too hard; did you?

23 A Well, nobody testified to anybody having a high-powered
24 rifle. I don't --

25 Q Well, I, I think your investigator --

1 A He collected some shells, but nobody said they saw
2 anybody with a high-powered rifle.

3 Q Well, so a high-powered rifle never appeared on your
4 radar screen to even try to look for one to connect to this
5 shooting at the Paradise Club?

6 A No. The victim was shot with a 40-caliber handgun.

7 Q And you would -- you limited your, your -- the scope of
8 your investigation to trying to find the 40-caliber hand --
9 you didn't find that either; did you?

10 A No. Not to my knowledge, we didn't.

11 Q Now, I believe you, you indicated that he's got a
12 girlfriend in Orangeburg; hadn't he?

13 A I have no idea.

14 Q Did you try to find out? You know, a lot of times women
15 will tell you things. You know that; don't you?

16 A Well, I have a wife.

17 Q Pardon m?

18 A She tells me some things.

19 Q Sir?

20 A I have a wife. She tells me some things.

21 Q All right. So, so in terms of trying to find out about
22 Dizzley, you went and talked with his girlfriend? They got a
23 child, too. Did you -- you went and talked to the girlfriend?

24 A I talked with his father and his stepfather.

25 Q Well, the stepfather is here in Georgetown?

1 A Yes.

2 Q The father is in Orangeburg?

3 A That's correct.

4 Q And the father, I believe, probably told you he hadn't
5 seen him since he don't know when. That's probably what he
6 told you; right?

7 A I don't recall.

8 MS. BAILEY: Objection, Your Honor. That would call for
9 hearsay.

10 THE COURT: I'll --

11 MR. BARR: I'll withdraw. I'll withdraw the question.

12 THE COURT: Thank you, sir.

13 BY MR. BARR:

14 Q Now, did you go talk to the girlfriend?

15 A I don't know anything about a girlfriend.

16 Q Did you try to find out? Most men, depending upon the
17 circumstances, they try to have somebody close to them.

18 A Well, I wouldn't try to speculate that. I don't know
19 whether he had a girlfriend or not.

20 Q You don't even know whether he got a girlfriend or not;
21 do you?

22 A No. I don't.

23 Q And you didn't try to find out?

24 A I didn't try to find out whether he had a girlfriend.

25 Q In fact, you didn't make any effort to find out whether

1 he had a girlfriend or whether he was connected with any men
2 that could pull off this job; did you?

3 A I don't know whether he did or not. I mean, I don't
4 know. I went to Orangeburg to look for him, speak with him
5 concerning the incident.

6 Q You went to Orangeburg to look for him?

7 A Yes.

8 Q But after he turned himself in, and you realized that you
9 had to try to make a case against him, surely you put yourself
10 in the investigative mode, antennas went up and you started --
11 went out there and start searching trying to find evidence?

12 A If I'm not mistaken, after he was arrested, I was no
13 longer involved in the investigation.

14 Q Oh, I see. All right. So then that would have been in,
15 that would have been in 2008. So you've been out of this a
16 long time?

17 A Yes. I went to Afghanistan --

18 Q Oh, I see. All right.

19 A -- shortly thereafter.

20 Q Well, I see. Thank you. I have -- I have no further
21 questions.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MS BAILEY:

25 Q Did you at any point disagree with the direction in which

1 this investigation was going?

2 A Absolutely not.

3 Q To the best of your knowledge were all leads followed up?

4 A Absolutely.

5 Q Did any lead ever point to any other person?

6 A No. It did not.

7 Q Did any lead ever point towards who the other people were
8 outside the club?

9 A No. It did not.

10 Q Did you or anybody else to the best of your knowledge
11 ever run -- ever have possession of a license plate number on
12 a black Ford Taurus to run it?

13 A No. I'm, I'm not aware of anything like that.

14 Q Okay. Is there any possible way that information from
15 2012 could have informed your investigation in 2008?

16 A No.

17 Q Have you heard any information, to this day, as you sit
18 here this moment, have you heard any information that was new
19 to you that would have changed the course of your
20 investigation from 2008?

21 A Absolutely not.

22 MS. BAILEY: I have no further questions, Your Honor.

23 RE CROSS EXAMINATION

24 BY MR. BARR:

25 Q Well, now, didn't you just tell me that you got out of

1 this case in 2008?

2 A Yes.

3 Q And of course, even before 2008, in terms of what you may
4 have heard, you're an investigator. You don't wait for people
5 to come and call you and solve your cases for you; do you?

6 A No. We don't.

7 Q You go out and aggressively pursue an investigation and
8 gather evidence; don't you?

9 A As was done here. Yes, sir.

10 Q Up until 2008 as far as you know. All right, sir.

11 THE COURT: All right, sir. You may step down. Thank
12 you very much.

13 A Thank you, Judge.

14 THE COURT: Wish to excuse the witness?

15 MS. BAILEY: Yes, Your Honor.

16 THE COURT: Any objection?

17 MR. BARR: No, sir.

18 THE COURT: All right, sir. You're free to go.

19 A Thank you, Judge.

20 THE COURT: Thank you. All right. Ladies and gentlemen
21 of the jury, at this point in time we're going to break for
22 the evening. You know my instructions, but I'll go over them
23 with you again, that is not to discuss the case with anyone,
24 don't try to gather any information on your own. Don't listen
25 to, watch or read media reports about the case, and if anyone

1 tries to contact you about your service, please report that to
2 us.

3 We're going to start again in the morning at 9:00
4 o'clock. We'll be able to get started with you first thing.
5 So if you'll be here at 9:00 o'clock, we'll start shortly
6 thereafter. You're free to go at this time. Thank you very
7 much. Please remain seated while the jury retires.

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

10 THE COURT: All right. For planning purposes, where are
11 we, Ms. Bailey?

12 MS. BAILEY: Thank you, Your Honor. For planning
13 purposes, I have one brief chain witness tomorrow, and then
14 Investigator Morris, who's the lead investigator.

15 THE COURT: Uh-huh.

16 MS. BAILEY: Followed by Dan DeFreese who is a firearms
17 expert from SLED.

18 THE COURT: And that'll be it?

19 MS. BAILEY: And that's it.

20 THE COURT: Okay. All right. So that'll give the
21 Defense some idea of where we'll be tomorrow.

22 MS. BAILEY: And --

23 MR. BARR: After lunch would be?

24 THE COURT: I don't know how long --

25 MS. BAILEY: Today went much --

1 THE COURT: I would imagine the lead investigator will
2 take a while. I don't, I don't know about -- I would suspect
3 that'll be the case, but it could -- we might get to discuss
4 some matters with you before lunch. It depends on how it
5 goes. You have something else you wanted to report, Ms.
6 Bailey? I'm sorry.

7 MS. BAILEY: Just something I want to bring to the
8 Court's attention. We can address it more tomorrow, but the
9 firearms analyst is going to testify that he was able to
10 narrow down the gun that was used inside the club to a
11 specific make and model. We don't have the gun. Okay.

12 THE COURT: I understand.

13 MS. BAILEY: But at SLED they do have one of every gun I
14 believe that's ever been made, and so he took pictures of it,
15 of, of the one. Now, this is not going to be the gun, but I
16 would like to use it as -- I have pictures of it. I would
17 like to show the jury as a demonstrative aid as what the gun
18 would have looked like.

19 THE COURT: Well, you want to share those with the
20 Defense? Have they seen those?

21 MS. BAILEY: They have.

22 MR. BARR: I've seen them, Judge.

23 THE COURT: All right.

24 MS. BAILEY: I just wanted to bring that to everyone's
25 attention so they can think on it if they need to.

1 THE COURT: Well, if you don't want to introduce it,
2 that, that probably makes it a little easier question. All
3 right. We'll be starting at 9:00 o'clock in the morning.
4 Everyone have a good evening.

5 MS. BAILEY: Thank you, Your Honor.

6 MR. BARR: So, so, now, you, you think you will be at
7 least until lunchtime.

8 (Adjourned for April 2, 2014.)

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(On the record, April 3, 2014, State v. Terron Gerhard Dizzley. The following takes place outside the presence of the jury.)

THE COURT: All right. Is the State ready to proceed?

MS. BAILEY: Yes, Your Honor. We have a matter to bring to the Court's attention that I believe is going to require testimony from Mr. Morris regarding a juror issue.

THE COURT: Oh, sure. The Defense ready?

MR. BARR: Yes, sir.

THE COURT: All right. Sir, could you help out with swearing him in? I'm going to need him sworn.

THE CLERK: Please state your name for the record.

MR. MORRIS: Dustin Morris.

THE CLERK: Thank you.

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

THE CLERK: Thank you. Please have a seat.

THE COURT: Have a seat, please. Your witness.

MS. BAILEY: Thank you, Your Honor.

EXAMINATION

BY MS. BAILEY:

Q Investigator Morris, did one of our sitting jurors approach you this morning?

A Yes, ma'am. In the parking lot.

Q And can you, can you describe that encounter?

1 A Excuse me. As I was coming in for court this morning,
2 one of the jurors, a white lady with glasses, approached me
3 about the Defendant. She asked me if -- that I knew he was
4 out, basically, that he was -- he had driven to court. She
5 was concerned about him not being in jail, and I indicated he
6 was out on bond and that was a stipulation of the Court.

7 Q Okay. Can you give a better description of which juror
8 it was?

9 A I believe she's been seated on the first row, the fifth
10 chair from the end here, if I'm not mistaken.

11 Q Okay. Did you all discuss the substance of the case at
12 all?

13 A No, ma'am. I just asked her if she -- if he made any
14 kind of threats or looked at her or said anything to her, and
15 she said, no, he did not.

16 Q Okay. And as a law enforcement officer, did you feel
17 like it was your duty to make sure she felt like -- to
18 determine if she felt like she was in any danger?

19 A Yes, ma'am. In fact, I walked with her to the front
20 door. We spoke about the weather.

21 Q I have no further questions.

22 THE COURT: Mr. Barr, wish to ask questions?

23 MR. BARR: Yes.

24 EXAMINATION

25 BY MR. BARR:

1 Q You said the juror approached you and, and asked you what
2 now?

3 A Basically she asked if I knew that he was walking around,
4 like he wasn't in jail, and I indicated to her that he was out
5 on bond and that was basically his right, and she indicated he
6 drove to court today, and I, again, said he was out on bond.

7 Q She told you that he had driven to court today?

8 A Yes, sir.

9 Q Thank you, sir.

10 THE COURT: You may step down.

11 A Thank you.

12 THE COURT: I'm not sure exactly how to identify this
13 juror by name or number. Can you -- let me ask you a
14 question. Her clothing, what's she wearing today?

15 A I believe she was wearing a black-and-white color. I
16 really didn't pay a whole lot of attention to it, maybe a
17 dress. I'm not sure.

18 THE COURT: And her hair color is?

19 A I believe it was black, a little bit of gray, and she was
20 wearing glasses.

21 THE COURT: Okay. When you say seated, is it the lady
22 next to the last one down here?

23 A I believe she has been seated somewhere in this area.

24 THE COURT: Okay.

25 A I'm not quite sure.

1 THE COURT: I don't know how to identify her other than
2 bring the jury in and have you identify who she is and I'll
3 ask that she stay while I inquire of her because I do want to
4 inquire of her about this. I think that's probably the only
5 way that I can identify her so we don't disturb other jurors.
6 So at this point in time, I'll ask that you bring the jury
7 panel in.

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

10 THE COURT: All right. The record will reflect that the
11 jury has returned to the courthouse. Prior to your entry into
12 the courtroom, I received a statement from a police officer
13 that he had spoken to one of your number. Officer, could you
14 identify the individual that you spoke to this morning?

15 A Yes, sir, Your Honor. It's the lady right there.

16 THE COURT: All right. I'll ask that the other members
17 of the jury panel return to the jury room. Ma'am, if you'll
18 remain seated. Thank you very much.

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

21 THE COURT: All right. Your name is, ma'am?

22 MS. SISK: Tayna Sisk.

23 THE COURT: All right. Thank you. Ms. Sisk, luckily
24 there is a microphone right there in front of you on the rail
25 so you don't need to move, and I'll remind you that you remain

1 under oath --

2 MS. SISK: Yes, sir.

3 THE COURT: -- to respond accurately to the Court's
4 inquiries. Do you understand that?

5 MS. SISK: Yes, sir.

6 THE COURT: The officer explained to us this morning that
7 you had a conversation with him. Could you tell me what you
8 spoke about, please?

9 MS. SISK: I asked him -- I told him that I was a little
10 surprised to see the Defendant in the parking lot and, and was
11 that normal, and he said yes, and he asked if I felt the least
12 bit threatened or concerned and I said absolutely not.

13 THE COURT: All right.

14 MS. SISK: I just was surprised to see him drive himself
15 to court.

16 THE COURT: I see, and did, did he explain it to you any
17 further than that?

18 MS. SISK: He just said he was -- he could do that, that
19 he -- everything was fine.

20 THE COURT: All right. Now, ma'am, did those -- would
21 those factors in any way affect your ability to be fair and
22 impartial in judging this case?

23 MS. SISK: No, sir.

24 THE COURT: Did you in any way feel threatened by the
25 Defendant's presence?

1 MS. SISK: No, sir.

2 THE COURT: And I assume the Defendant made no effort to
3 contact you or talk to you about the case?

4 MS. SISK: No, sir. I don't think he even saw me.

5 THE COURT: All right. And did you feel that the officer
6 made any effort to try to influence your decision in this
7 matter in any way?

8 MS. SISK: No, sir.

9 THE COURT: All right. If the State would like to ask
10 any questions of the juror, I'll be happy for you to do so.
11 Do you wish to?

12 MS BAILEY: No. No, Your Honor.

13 THE COURT: All right. Mr. Barr, do you wish to ask any
14 questions of the juror?

15 MR. BARR: Judge, I just, I'd like to know whether or not
16 there was any particular reason why she felt that he should be
17 -- shouldn't be driving.

18 THE COURT: All right. Ma'am, was there any particular
19 reason why you felt that the Defendant should not be in, in
20 the parking lot?

21 MS. SISK: No. I just, you know, I mean, this is a
22 serious case, and my background is simply watching, you know,
23 television and so forth. I was just a little surprised to
24 see, you know, a Defendant in a trial like this drive himself
25 to court, you know. I guess I assumed that he would have --

1 be accompanied by a court officer or something but --

2 THE COURT: I see. So you were just surprised by that
3 situation, is that what you're saying?

4 MS. SISK: Yes.

5 THE COURT: For no particular reason other than your
6 belief that --

7 MS. SISK: Well, I just was kind of surprised that he was
8 there and --

9 THE COURT: I understand. All right. Well, ma'am, let
10 me ask you just -- I'm going to follow up a little bit on that
11 particular line of inquiry.

12 Under our system of justice, Defendants are always
13 presumed to be innocent of the crime for which they've been
14 charged, and that presumption remains with the Defendant in
15 any case until such time as a jury finds guilt beyond a
16 reasonable doubt. Do you understand that?

17 MS. SISK: I do.

18 THE COURT: And do you understand that our Constitution
19 allows all Defendants the right to have reasonable bond during
20 the pendency of their charges. Do you understand that?

21 MS. SISK: I do.

22 THE COURT: Do you agree with those concepts?

23 MS. SISK: I do.

24 THE COURT: So you don't have any difficulty with the
25 fact that that is the way our system operates?

1 MS. SISK: Not at all.

2 THE COURT: Okay. Any further matters the State would
3 like to take up with the juror?

4 MS. BAILEY: No, Your Honor.

5 THE COURT: Defense?

6 MR. BARR: No, sir, Judge.

7 THE COURT: Okay. Ma'am, you may return to the jury
8 room. Thank you very much.

9 MS. SISK: Uh-huh, certainly.

10 THE COURT: And ma'am, please don't discuss this or
11 anything else with other jurors. Thank you, ma'am.

12 (Whereupon, Juror Number 332 exits courtroom.)

13 THE COURT: Does the State wish to take any position in
14 regard to the juror?

15 MS. BAILEY: No, Your Honor. I just felt like as an
16 officer of the court I should bring this situation to your
17 attention.

18 THE COURT: All right. I think you should have. And
19 Defense wish to take any position in regard to this juror?

20 MR. BARR: No, sir, Judge.

21 THE COURT: All right. Now, is the State ready to
22 proceed?

23 MS. BAILEY: Yes, Your Honor.

24 THE COURT: The Defense ready to proceed?

25 MR. BARR: Yes, sir.

1 THE COURT: All right. It would be my finding that while
2 the juror did have a conversation with the officer, that it
3 did not affect her ability to continue on the jury, and I do
4 not find that she has been prejudiced by that discussion at
5 this point in time. So I will allow her to remain on the jury
6 panel. Let's bring the jury in.

7 MS. BAILEY: Your Honor, may I grab my water bottle I
8 left up here.

9 THE COURT: Yes, ma'am.

10 MS. BAILEY: Thank you. It was a little warm in here
11 yesterday.

12 THE COURT: All right. Bring the jury in. Thank you.

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

15 THE COURT: All right. The record will reflect that the
16 jury has returned to the courtroom. Other than my discussion
17 with Ms. Sisk, has any juror had any difficulty in complying
18 with my instructions to you concerning your activities while
19 you're away from the courthouse? If that's true, please
20 stand.

21 (No response.)

22 THE COURT: It appears the jurors have been able to
23 comply with my instructions, and at this point in time, the
24 State is still in the process of calling its witnesses and you
25 may call your next witness.

1 MS. BAILEY: Thank you Your Honor. The State calls
2 Jennifer Flowers.

3 THE COURT: Come forward, please, to be sworn. Right
4 over here to my left, please, ma'am.

5 THE CLERK: Please state your full name and spell it for
6 the Court.

7 MS. FLOWERS: Jennifer Lynn Flowers, J-E-N-N-I-F-E-R, L-
8 Y-N-N, F-L-O-W-E-R-S.

9 THE CLERK: Thank you.

10 Whereupon, Jennifer Lynn Flowers was called to the stand,
11 duly sworn by the clerk and testified as follows:

12 THE CLERK: Thank you. Please have a seat.

13 THE COURT: Ms. Bailey, your witness.

14 MS. BAILEY: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. BAILEY:

17 Q Good morning.

18 A Good morning.

19 Q In 2008, where were you employed?

20 A Georgetown County Sheriff's Office.

21 Q Are you still employed there?

22 A I'm not.

23 Q Okay. And in 2008, did you have any involvement in the
24 case where the victim was Aundry Evans, Jr.?

25 A I was. I did. I was sent to the autopsy at MUSC in

1 Charleston, South Carolina.

2 Q And what, what did you do there at the autopsy?

3 A I retrieved all the evidence that -- from the doctor that
4 performed the autopsy.

5 Q And when you took possession of that evidence, what did
6 you do with it next?

7 A It was secured, packaged and secured in my trunk, and I
8 drove straight to the Georgetown County Sheriff's Office, and
9 it was put into evidence.

10 Q While it was in your possession, did you tamper with it
11 or alter it in any way?

12 A No, ma'am.

13 Q Let me show you what has been previously marked as
14 State's Exhibits 75 and 76. Feel free to open those bags and
15 pull what's inside if you need to. Take a moment to just
16 review that. Okay. Do you recognize those items?

17 A I do.

18 Q And did you take possession of those at MUSC?

19 A I did.

20 Q From the doctor?

21 A Yes, ma'am.

22 Q Okay. And did you put those items directly into an
23 evidence locker?

24 A Yes, ma'am.

25 Q Okay.

1 MS. BAILEY: I have no further questions for this witness
2 at this time. Thank you.

3 THE COURT: Mr. Barr, your witness.

4 MR. BARR: Judge, I have no questions.

5 THE COURT: All right. Ma'am, you may step down.

6 A Thank you, Your Honor.

7 THE COURT: Wish to excuse the witness?

8 MS. BAILEY: Yes, Your Honor.

9 THE COURT: Any objections?

10 MR. BARR: No, sir.

11 THE COURT: Ma'am, you're free to go at this time.

12 A Thank you.

13 THE COURT: Thank you. Ms. Bailey, the State may call
14 its next witness.

15 MS. BAILEY: Thank you, Your Honor. The State calls
16 Investigator Dustin Morris.

17 THE COURT: Sir, come forward to my left and be sworn,
18 please.

19 Whereupon, Dustin Morris was called to the stand, sworn
20 by the clerk and testified as follows:

21 THE CLERK: Thank you. Please have a seat.

22 THE COURT: Ms. Bailey, your witness.

23 MS. BAILEY: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. BAILEY:

1 Q Good morning, Investigator Morris.

2 A Good morning, counsel.

3 Q How long have you been in law enforcement?

4 A Been in law enforcement almost 19 years now.

5 A And what's your current title?

6 Q I'm senior investigator for the Georgetown County
7 Sheriff's Office.

8 Q How long have you been in investigations?

9 A Approximately 15 to 16 years I've been doing
10 investigations work.

11 Q How did you get involved in this case where the victim is
12 Aundry Evans, Jr.?

13 A Basically, after the incident occurred in -- on December
14 the 8th I was notified by my lieutenant at the time that I
15 would be the lead investigator in the case and that several
16 investigators had already been working and developed some
17 leads and information. Basically, I was assigned to oversee
18 the investigation, make sure that everything was done
19 correctly.

20 Q So if there were judgment calls to be made in this case,
21 would you have made those or would other investigators have
22 made them?

23 A Obviously, when you have something like this, you all sit
24 down and you brainstorm and go over information, but
25 ultimately, the end result would be through me. I would make

1 the final determination what we would do.

2 Q So because you were assigned on December 8th, did you
3 actually process any evidence or crime scenes?

4 A I did not.

5 Q Okay. And were you actually on scene that night or the
6 morning after?

7 A No. I was not.

8 Q Okay. From the time you were assigned on December 8th,
9 can you tell us what steps you took in furtherance of the
10 investigation?

11 A The first thing I did was review reports from generated
12 evidence from the autopsy, of course, any statements that were
13 taken at that time I reviewed, got with the investigators that
14 had been working on the case and kind of compared their notes
15 to determine where they were at, and then I basically put
16 everything together and took that information, and based on
17 that, did follow ups from that information.

18 Q Did you personally interview anyone in this case?

19 A Yes. I did.

20 Q And without telling us what they said, who did you
21 interview in this case?

22 A If I may refer to my notes.

23 Q If it would help refresh your recollection.

24 A It would. Ralph Frazier was interviewed.

25 Q And what was his relationship to the case?

1 A He was the stepfather of Mr. Dizzley.

2 Q Okay.

3 A Edward Mack, conducted an interview with him, spoke with
4 Gary Gibson, Marvin Riley, and any calls that may have been
5 forwarded within the Sheriff's Office, such as anonymous
6 information.

7 Q Okay. Based on the interviews that you did, what leads
8 did you follow up on, what, what steps did you take next?

9 A At the time I became involved, it was seven days after
10 the incident occurred, six, seven days. In reviewing all
11 reports, talking to all investigators, the only name that came
12 forward was this Little D person or D, and at that point we
13 had to establish who Little D was, and that was established at
14 a later time through witness statements.

15 Q At any point, did any witness or any lead take you
16 anywhere other than someone named Little D?

17 A No. It did not.

18 Q Was there any lead that you decided was not relevant or
19 made a judgment call not to pursue?

20 A No.

21 Q So every lead that you developed you were able to develop
22 to its logical end?

23 A Yes, ma'am.

24 Q Okay. As lead investigator, would you have made the
25 decisions about which forensic evidence to submit for further

1 testing?

2 A Well, at the beginning of the investigation, the proper
3 course of action would be basically the investigators had
4 collected -- they would automatically submit a SLED lab
5 request saying that basically whatever items are needed to be
6 analyzed would be, you know, put in by that investigator. It
7 would be my job afterwards to make sure that stuff went to
8 SLED, to make sure that it was analyzed and we got the proper
9 reports back.

10 Q Does it ever happen that there's evidence collected on a
11 crime scene that you don't submit to SLED for some reason?

12 A Yes, ma'am.

13 Q In this case, was there some blood collected off the
14 floor in the club?

15 A Yes. There was.

16 Q And did that get submitted to SLED?

17 A No. It did not.

18 Q Why not?

19 A We already knew who the deceased was at the time. There
20 was no one else that was identified as being injured at the
21 club. No one came forward that had any marks or abrasions
22 that would indicate that they bled at the scene. Therefore,
23 it was decided from a basically a standpoint of we knew who
24 the person was inside that we did not need to analyze that.

25 Q Was -- without telling us the results, was some evidence

1 submitted to SLED for further processing?

2 A Yes, ma'am.

3 Q And what evidence was that?

4 A Shell casings located from the crime scene inside the
5 club, as well as the projectiles recovered from Mr. Evans at
6 autopsy were sent to SLED for analysis.

7 Q And to the best of your knowledge, were they analyzed?

8 A Yes, ma'am.

9 Q Okay. What type of analysis did you direct that, that be
10 performed on that evidence?

11 A First, it would have been ballistics to determine if the
12 shell casings at the scene did, in fact, match the projectiles
13 removed from Mr. Evans. The second analysis would've been
14 latent prints processed from the shell casings that were
15 submitted, and then a request for touch DNA was requested for
16 these shell casings, you know, recovered inside the scene.

17 Q At some point, did you receive the results and further
18 follow up from the State Law Enforcement Division or SLED
19 regarding that analysis?

20 A Yes, ma'am.

21 Q Okay. And did you receive a report from the ballistics
22 expert?

23 A Yes, ma'am.

24 Q Okay. Did you receive a report from the latent
25 fingerprint expert?

1 A Yes, ma'am.

2 Q Did that report provide you any further leads or usable
3 evidence?

4 A No, ma'am.

5 Q Okay. Did you receive any further information from the
6 touch DNA lab?

7 A Eventually, we received a letter from the State Law
8 Enforcement Division that the shell casings had not been
9 processed for DNA evidence.

10 Q And at that point was a decision made about, about what
11 to do about that?

12 A Nothing was done. They were not sent back. Basically,
13 the decision was made that we had no latent prints recovered
14 from the casings. At that time we had a viable suspect from
15 the scene, and a decision was made not to send them back.

16 Q In your experience as an investigator, what is the
17 backlog like at the DNA lab at the State Law Enforcement
18 Division?

19 A Personally speaking, I have evidence that's been sitting
20 there for over two years now that has not been analyzed, and
21 that's of no fault of SLED. It's just every agency in the
22 state sends their evidence to SLED for processing, and there's
23 a whole lot of agencies in the state so.

24 Q So as a result of that, is it common in your experience
25 that SLED returns evidence to you untested?

1 A Yes, ma'am.

2 Q Okay. Now, once you developed Mr. Dizzley as a suspect
3 through your witness interviews, what steps did you take next
4 to attempt to further the investigation?

5 A Excuse me. At that time his name was run through a
6 computer database that we utilize through ROCIC, which
7 basically you enter information such as the name and date of
8 birth which we had obtained some from DMV, and that report
9 will indicate any addresses he's lived at, possible relatives,
10 phone numbers, acquaintances, neighbors, anything of that
11 nature. The -- that's what led us to Mr. Frazier being on
12 Pennyroyal Road was the initial address for Mr. Dizzley. We
13 did not locate him at that address, and at that point, we
14 utilized several addresses that we obtained from ROCIC that
15 were from the Orangeburg area and decided at that point we
16 needed to broaden our search to the Orangeburg area to look
17 for Mr. Dizzley.

18 Q And as part of your investigation, did you ever consider
19 executing a search warrant on any of Mr. Dizzley's property?

20 A No, ma'am.

21 Q And why not?

22 A We were unable to determine exactly where he lived. When
23 we went to Orangeburg, we spoke with his father. That was his
24 last known address, and he indicated he does not live there.
25 Through cooperation with the Orangeburg County Sheriff's

1 Office, they could not further our assistance in identifying
2 an address where he may be living at the time. So we weren't
3 able to find an address to execute a search warrant.

4 Q How many, how many times did you go to Orangeburg in
5 furtherance of this investigation?

6 A One time.

7 Q Okay. And did you enlist any other agencies for help?

8 A Yes, ma'am.

9 Q And which agencies were that?

10 A It was the Orangeburg County Sheriff's Office.

11 Q Okay. And for how long did you attempt to locate Mr.
12 Dizzley?

13 A Basically an entire day. Through one witness, we found
14 that he was living in that area. Through another -- well,
15 through his father, we found out he had lived there, but was
16 still somewhere in the area, that couldn't quite tell us
17 where, and basically, the Orangeburg County Sheriff's Office
18 enlisted an informant to try to help us find Mr. Dizzley.

19 Q Okay. And at some point, did you actually put out any
20 kind of press release or more information to the general
21 public looking for Mr. Dizzley?

22 A Yes, ma'am.

23 Q Can you describe that a little bit more?

24 A The -- I believe it was the 11th of December, after
25 obtaining an arrest warrant for Mr. Dizzley, the local media

1 outlets in the Orangeburg, Charleston, Georgetown areas were
2 notified that we were currently looking for Mr. Dizzley for
3 the offense of murder. I did verify that it did appear on the
4 evening news. So it was put out there.

5 Q And at some point, did Mr. Dizzley turn himself in?

6 A Yes, ma'am. He did.

7 Q And where did he turn himself in?

8 A The Richland County Sheriff's Office through the
9 assistance of an attorney.

10 Q And the Richland County Sheriff's Office, where's that?

11 A It's in the Columbia area.

12 Q Okay. Now, early on, from your review of witness'
13 statements, were you aware that there may have been more than
14 one person involved in this crime?

15 A Yes, ma'am. I was, in reading reports and speaking with
16 the deputies and reviewing witness interviews, there,
17 indicated there may have been four total, three outside and
18 one inside.

19 Q And were you ever able to develop any suspects or useful
20 information as to who the other folks were?

21 A No, ma'am.

22 Q Did you try?

23 A We tried every avenue we had.

24 Q Okay. Were you able to develop any leads as to who those
25 folks were?

1 A No, ma'am.

2 MS. BAILEY: Beg the Court's indulgence?

3 THE COURT: Yes, ma'am.

4 A Excuse me.

5 MS. BAILEY: No further questions for this witness, Your
6 Honor.

7 THE COURT: Mr. Barr, your witness.

8 CROSS EXAMINATION

9 BY MR. BARR:

10 Q You indicated, I believe, Officer Morris, that you
11 obtained an arrest warrant for Mr. Dizzley around, I believe,
12 December 11th?

13 A Yes, sir.

14 Q And when did you actually execute the arrest warrant?

15 A That would have been December the 12th.

16 Q So you, you, you, you got a warrant for Mr. Dizzley on
17 the 11th, and on the very next day he turned himself in?

18 A Yes, sir. He did.

19 Q Now, you also indicated that you went to Orangeburg one
20 time --

21 A Yes, sir.

22 Q -- to look for Mr. Dizzley?

23 A That's correct.

24 Q So, now, when you went to Orangeburg to look for Mr.
25 Dizzley, you didn't have a search warrant, you didn't have an

1 arrest warrant?

2 A No, sir. We didn't.

3 Q Now, you would agree that Mr. Dizzley was under no
4 obligation, legally or otherwise, to turn himself into you
5 when he turned himself in?

6 A Absolutely.

7 Q Now, you indicated that you found out during the course
8 of your investigation that there were at least four people
9 involved in this incident?

10 A Yes, sir.

11 Q And I believe you would agree that ordinarily as a lead
12 investigator you would have been responsible for coordinating
13 the investigation as well as being familiar with what's in the
14 case file?

15 A Correct.

16 Q You indicated that or did you know that there was
17 information to indicate that at least one of the other
18 participants in the incident had a shotgun?

19 A Yes, sir.

20 Q And of course, at least one had a high-powered rifle.

21 A I was never informed of that.

22 Q The investigator that testified yesterday that concluded
23 that the bullet holes in the building, the bullet holes in Mr.
24 Mack's car, you sat here yesterday, and I believe you said you
25 or I believe you probably heard him say that those holes were

1 probably made by a high-powered rifle.

2 A The reference to the car, I don't believe he said that.
3 The building, yes, I believe he said that they probably came
4 from a rifle.

5 Q High-powered rifle?

6 A Yes, sir.

7 Q Now, are you telling us that you didn't know that?

8 A Yes, sir. I knew that.

9 Q You knew that?

10 A Uh-huh.

11 Q All right. So then you did at least know that there must
12 have been a high-powered rifle involved as well?

13 A Couldn't determine when the rifle was used. It could
14 have been after we cleared the scene. There was no testimony
15 or witnesses found at the scene that night that said those
16 bullet holes were even in the building. Those, those were
17 found the next day.

18 Q Now, you were in charge of the investigation?

19 A Yeah. On December the 8th.

20 Q And are you telling the ladies and gentlemen of this jury
21 that as a person in charge of the investigation you made no
22 effort to find out from the owner of the building how long the
23 holes, bullet holes had been in the building?

24 A Ms. Alston was contacted to meet with Investigator
25 Thacker to allow access into the club. She did not show up

1 that evening, but to answer your question, there was no one to
2 speak to that could tell me that.

3 Q Now, Officer Morris --

4 A Sure.

5 Q -- it would have been your responsibility, would it, to
6 at least determine whether or not the bullet holes that you
7 found, that we must have seen I don't know how many pictures
8 of, to determine whether or not those bullet holes were
9 connected to this incident?

10 A Well, after reviewing all the witness statements, the
11 only thing I heard from a witness or read at that point was
12 there had only been a couple of shots outside the club as
13 these masked gunmen were leaving, not 24 to indicate the
14 amount of shell casings found at the scene.

15 Q So you're telling the ladies and gentlemen of this jury
16 that in spite of what the physical evidence might seem to
17 suggest, as the person coordinating an investigation, in your
18 judgment, you made the decision to limit it to the statements
19 of witnesses?

20 A Well, based on that, plus the SLED lab results we
21 obtained at a later time.

22 Q Of course, the SLED lab results that you obtained did not
23 reveal anything; did they?

24 A The ballistics did.

25 Q Well, what did the ballistics reveal?

1 A Would you like me to get into that?

2 MS. BAILEY: Objection, Your Honor. That would call for
3 hearsay.

4 THE COURT: I'll sustain the objection.

5 MR. BARR: I'll, I'll rephrase the question.

6 BY MR. BARR:

7 Q The materials that were sent to SLED at your request, you
8 said they were sent back unanalyzed.

9 A No, sir. I didn't say that.

10 Q Well, tell me what you said.

11 A I said that they were analyzed for ballistics.

12 Q Yes, sir.

13 A And for latent prints, but not DNA.

14 Q And of course, you know or knew that they weren't
15 analyzed for DNA?

16 A I didn't know at the time, no. I didn't find out till
17 2011. That's when the SLED lab report came back that they
18 were, you know, or they weren't even tested for DNA. That's
19 when that report was received by the Sheriff's Office.

20 Q So there was never a test for DNA and, and you were
21 satisfied with that?

22 A Yes, sir. I was.

23 Q Now, you did know or have good reason to believe that
24 there were at least four people involved?

25 A Yes. There was one inside the club and three on the

1 outside.

2 Q And you did have, at least, Gary Gibson's statement
3 indicating that he thought that Terron Dizzley was too short
4 to be the shooter. You had that statement; didn't you?

5 A Yeah. There --

6 MS. BAILEY: Objection, Your Honor. That's a
7 misstatement of facts.

8 MR. BARR: Your Honor, I -- I mean, I'll redirect it back
9 if she wants to.

10 MS. BAILEY: Your Honor, the statement was taken in 2012.

11 THE COURT: Are you referring to a statement that was
12 taken in 2012 in that question?

13 MR. BARR: Yes, sir.

14 THE COURT: Okay. Then if you don't mind, indicate that
15 because apparently you indicated that he had it at the time
16 that he was investigating initially. So I'm going to ask you
17 to rephrase the question.

18 MR. BARR: I'll rephrase the question, Judge.

19 THE COURT: All right. Thank you, sir.

20 BY MR. BARR:

21 Q Now, you, you testified under oath a few minutes ago that
22 it was your responsibility to familiarize yourself with all
23 the statements that were given by witnesses in this
24 investigation.

25 A In 2008. Yes, sir.

1 Q Are you telling us that after 2008 you stopped
2 investigating?

3 A Once the investigation led us to a Defendant in this case
4 and no other leads were developed, there was nothing else to
5 follow up on.

6 Q Well, whose responsibility would it have been to develop
7 leads?

8 A Well, that would be from witnesses and that just -- it
9 wasn't forthcoming.

10 Q They didn't volunteer, and you didn't go out and look for
11 them?

12 A Well, there was nobody to look for.

13 Q Well, now, you don't deny that you knew as of August of
14 2012 that you had at least four people who swore that Terron
15 Dizzley was in Orangeburg at the time of this shooting?

16 A I don't know where you're going with this. I, I had no
17 witnesses that told me he was in Orangeburg.

18 Q Pardon me?

19 A I had no witnesses that told me he was in Orangeburg at
20 the time.

21 Q I said you don't deny that you knew that there were at
22 least four people who had given sworn statements that Terron
23 Dizzley was in Orangeburg at the time of the shooting?

24 A That was never provided to me. I did not take those
25 statements. I -- this is news to me.

1 MR. BARR: Your Honor, may we approach the bench?

2 THE COURT: Yes, sir. Counselor.

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

5 THE COURT: All right. Ladies and gentlemen of the jury,
6 this is one of the occasions that I will ask you to step back
7 to the jury room while I discuss some matters with the
8 attorneys. As always, I'll instruct you not to discuss any
9 aspect of the case until I've told you to do so. You may
10 retire.

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

13 THE COURT: I've asked the jury to step out of the
14 courtroom to afford Mr. Barr an opportunity to inquire of this
15 witness as to his knowledge concerning testimony that might
16 have been offered at the previous trial in this matter. You
17 may proceed, Mr. Barr.

18 MR. BARR: May I approach the witness, Judge?

19 THE COURT: Yes, sir.

20 EXAMINATION

21 BY MR. BARR:

22 Q Now, Officer Morris, I'm going to hand you a copy --

23 MS. BAILEY: Your Honor, I'm going to have to object.

24 The purpose of sending the jury out was not to show Mr. Morris
25 the statements. It was to ask him if he was present for the

1 prior statements.

2 THE COURT: Well, it's a proffer. I'm not going to limit
3 Mr. Barr at this point in time. He hadn't -- really hadn't --
4 I don't know what he intends to do with the piece of paper
5 he's about to hand the witness, and it's a proffer. There's
6 -- we give a little more latitude in proffers. The jury's not
7 present.

8 MS. BAILEY: Thank you, Your Honor.

9 THE COURT: You may proceed, Mr. Barr.

10 MR. BARR: Thank you, Judge.

11 BY MR. BARR:

12 Q A copy of the transcript --

13 A Yes, sir.

14 Q -- from the trial in August of 2012, and of course, in
15 that you don't deny that you were the State's witness who
16 stayed in the courtroom with Mr. Hixson sitting directly next
17 to him during the whole trial?

18 A I was here the whole time.

19 Q Yes, sir.

20 A However, I'd like to clarify something. Your previous
21 question indicated did I receive any information during the
22 investigation after that gave an alibi. You didn't indicate
23 during the courtroom testimony because that was never provided
24 to me before trial. That was the first time I heard it; and
25 furthermore, these witnesses were never made available to me

1 through exculpatory or any other way for me to interview them.

2 Q My question was whether or not you were aware of sworn
3 statements by at least four people who stated that Terron
4 Dizzley was in Orangeburg at the time that this incident
5 occurred, and you were sitting right there in the courtroom.
6 In fact, I called you as a witness.

7 A Right. And I'll answer your question. I was here for
8 that trial, and I heard two witnesses give statements that
9 they -- he was with them at the same time in Orangeburg.

10 Q Well, you didn't hear three, four witnesses testify? He
11 had four alibi witnesses.

12 A I don't, I don't recall four. I recall two. I'll give
13 you that. Yes, sir.

14 Q Take a look at the transcript and maybe it'll refresh
15 your memory.

16 A I'm sure it's a lot to read. Would you like to point out
17 where?

18 Q Well, there's an index that gives the names of --

19 A Okay.

20 Q -- everybody that testified. You first, you were first.

21 A Sure.

22 Q And then the other four witnesses.

23 A Okay. Okay. I've read them.

24 Q Pardon me?

25 A I've read them.

1 Q Now, do you still deny that you were not aware that there
2 were at least four people that said he was somewhere else
3 other than here in, in Georgetown County at the time this
4 incident occurred?

5 A As I said earlier, I recall two witnesses saying that
6 they were with him, that he was with them at the time. Now,
7 obviously, it was said. I mean, it was a long time ago. It
8 was a lot of trial information. It could have been said. I'm
9 not denying that.

10 MR. BARR: Well, then if you're not denying it, then,
11 then, Judge, I'm not going to, I'm not going to ask the Court
12 to allow me to impeach him by entering my questioning on the
13 prior trial.

14 THE COURT: Well, he, he -- I don't know that there is an
15 impeachment. He hasn't made a statement concerning the prior
16 trial. So there's no prior inconsistent statement.

17 MR. BARR: Well, I asked him --

18 THE COURT: But you can ask him about it. You can ask
19 him about -- again, I'm not going to allow you to refer. My
20 ruling's been consistent throughout the trial. I'm not going
21 to allow you to refer to another trial. If you want to say he
22 was -- was he aware that people had given sworn statements in
23 the past, as late as 2012, I'll let you ask him that.

24 MR. BARR: Judge, that's specifically what I asked him,
25 and the reason I asked him that is to avoid mentioning the

1 other trial.

2 THE COURT: I haven't stopped you.

3 MR. BARR: Yes, sir.

4 THE COURT: An objection was made by the State, and we're
5 now doing a proffer to see where that's going to go. So if
6 you're finished with your proffer ---

7 MR. BARR: Yes, sir.

8 THE COURT: -- I'll let the, let the State get into it if
9 they'd like.

10 MS. BAILEY: Thank you, Your Honor. My concern is that
11 Mr. Barr is attempting to backdoor in some hearsay without
12 having to actually call those witnesses regarding any alibi
13 that Mr. Dizzley may or may not have.

14 THE COURT: Well, I'm not going to allow him to get into
15 the statements. I think the witness has acknowledged he heard
16 at least -- he recalls two. If he doesn't recall them,
17 witnesses do forget. I mean, that's, that's an answer. "I
18 don't know" is an answer. So he's responded to the questions.
19 I don't know if the number is as important as the fact that
20 there were statements made and that the -- then, of course,
21 you can ask whether he followed up on them after that or not.
22 That would be fair game.

23 MR. BARR: Judge, it would seem to me that if he does not
24 recall -- if he recalls only two, and he was sitting here in
25 the courtroom the entire time when the four people testified,

1 then I ought to be able to, to go into the fact that he was
2 sitting in the courtroom during the first trial when they,
3 when they all testified.

4 THE COURT: You can -- I'll allow you. I'm not going to
5 let you get into whether it's a trial or not, Mr., Mr. Barr.
6 That's not going to change. What I will allow you to do is
7 say, "Were you not present when four sworn statements were
8 given?" You can ask that question, and if he denies that --

9 MR. BARR: All right.

10 THE COURT: -- then, then you have the right to -- during
11 your case in chief, if you choose to. I'm not placing the
12 burden of proof on you.

13 MR. BARR: Yes, sir.

14 THE COURT: It's your choice as to whether you want to
15 bring in the evidence or not to show that that -- his
16 recollection may be flawed.

17 MR. BARR: Well, Judge, it would seem to me then that
18 inasmuch as the transcript from, from the prior trial would be
19 the only method by which I could contradict him or impeach
20 him, then we should be able to use that.

21 THE COURT: I'm not going to let you do that, sir.

22 MR. BARR: But, Judge, and --

23 THE COURT: He did -- he has not made a statement
24 concerning those facts.

25 MR. BARR: Judge, but he's denied that he heard.

1 THE COURT: No. He's denying he remembers it. That's
2 what his testimony was, Mr. Barr. He only remembers two. Mr.
3 Barr, you're sitting on a microphone there. There we go.
4 Excuse me. They're everywhere.

5 MR. BARR: I'm sorry. All right.

6 THE COURT: So I'll allow you to ask him if he was not
7 present when four sworn statements were given concerning Mr.
8 Dizzley's presence on the night of the incident.

9 MR. BARR: Thank you, Judge.

10 THE COURT: And now that you've refreshed his memory, I'm
11 not sure what that answer's going to be.

12 MR. BARR: All right, sir.

13 THE COURT: We'll see, but we're not going to get into
14 mentioning the trial. All right. Ready for the jury?

15 MR. BARR: Yes, sir.

16 THE COURT: The State ready?

17 MS. BAILEY: Yes, Your Honor.

18 THE COURT: All right. Let's bring the jury in.

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

21 THE COURT: All right. The record will reflect the jury
22 has returned to the courtroom. I have overruled the State's
23 objections. You may proceed.

24 MR. BARR: Thank you, Judge.

25 BY MR. BARR:

1 Q Officer Morris, weren't you present when four sworn
2 statements were given indicating that Mr. Dizzley --

3 MS. BAILEY: Objection, Your Honor. Again, he's going
4 into the contents of the statements.

5 THE COURT: I overrule that objection. He's got to be
6 able to describe them somehow, and he's not quoting from the
7 statements. He's describing them.

8 MS. BAILEY: Thank you.

9 THE COURT: You may proceed.

10 Q Indicating that he was somewhere else other than here in
11 Georgetown County when this incident occurred?

12 A Yes, sir.

13 Q Now, weren't you also present when the identity of the
14 people that made the statements were given?

15 A Yes, sir.

16 Q So, now, as a law enforcement officer, you would agree
17 that that would be somewhat of an alibi?

18 A Yes, sir. It'd be considered alibi if they were
19 consistent statements.

20 Q And of course, the only way to determine if they were
21 consistent would be for you to evaluate them?

22 A They were sworn statements according to you, and both the
23 interviews I recall put him in two different locations at the
24 time of the crime.

25 Q Well, suppose as an investigator genuinely interested in

1 seeking the truth and genuinely interested in determining
2 whether or not the alibi is any good, do you think a
3 conscientious investigator would at least make an effort to
4 determine whether or not the witness's account or the
5 statement is accurate?

6 A Well, basically, as you indicated, if it was a sworn
7 statement in my presence, then that, that right there
8 indicates it's, you know, the truth of whoever's telling the
9 statement, and based on the facts of the witnesses that we
10 interviewed from the club the night, that night, compared to
11 the witnesses that came up that said he was with them at the
12 same time in two different locations, no, I don't.

13 Q Are you telling the ladies and gentlemen of this jury
14 even though at least four people swore that he wasn't here,
15 you made no effort to determine the validity or the accuracy
16 of those statements?

17 A I did not. It had already been determined for me through
18 sworn testimony.

19 Q So as it relates to the methodology of your method of
20 investigation, your decisions are made not following up on
21 potential leads, but based on your assessment of sworn
22 testimony?

23 A Everything is taken into context, sworn testimony
24 compared to evidence found, compared to statements already
25 obtained from other witnesses. The, the witnesses that you're

1 referring to, of course, I had never spoke with them before
2 2012. They never came forward, never gave me any kind of
3 information that he was with them at the time. Certainly, had
4 they contacted me, I would have been more than happy to talk
5 to them.

6 Q Now, they had no obligation to come forward to you; did
7 they?

8 A Did not.

9 Q And once you determined that they said that he was
10 someplace else, don't you think that you had an obligation as
11 the chief investigator in a murder case to at least go and
12 find out whether or not there was anybody else that knew any
13 one of these people or that had been associated with them that
14 would have told you, "Well, look, they're not telling the
15 truth because Mr. Dizzley was not where they say he was"?

16 A I had already determined they weren't telling the truth.

17 Q Well, how'd you know? You didn't leave, you didn't leave
18 Georgetown County?

19 A Well, sir, they both gave conflicting statements that he
20 was with them at the same exact time in two different
21 locations.

22 Q Now, Mr. -- Officer Morris, your characterization of
23 their statements as conflicting, you don't deny that that's
24 just your opinion; isn't it?

25 A No, sir. It's what I heard. I believe it's in a record

1 somewhere, too.

2 Q Oh, yes. It is. It certainly is. Now, the three people
3 that got away in the car with the alleged, with the assailant,
4 the man that did the shooting, that -- and, of course, you,
5 you knew from reading your reports that this fellow that
6 testified yesterday, T.I., had also said that the man that was
7 doing the shooting was a tall man. You knew he said that;
8 didn't you?

9 A Which statement are you referring to? I believe he gave
10 a couple.

11 Q I'm talking about the one that he, he gave to Mr. --
12 Investigator Brown.

13 A I don't know about that statement. If you have a copy,
14 I'd be more than happy to look at it, but I've never looked at
15 that statement.

16 Q Well, you're the chief investigator.

17 A Yes, sir.

18 Q Seem to me it was within your job to make sure that at
19 least you look at all the evidence. I mean, that's how you
20 determine where to go; isn't it?

21 A Well, to explain that a little bit, once the case leaves
22 the Sheriff's Office and goes to the Solicitor's Office, they
23 have an assigned investigator that basically tracks down
24 witnesses and kind of gets a brief statement before trial or
25 whatever. I don't know if that's what you're referring to or

1 not, but that's not made part of our case file.

2 Q Well, let me ask you this then. Of course, even today,
3 as it relates to this incident, you got one fellow that held a
4 shotgun. You still looking for him?

5 A If we got information of who he was, we'd be more than
6 happy to arrest him.

7 Q My question is are you still looking for him?

8 A No, sir.

9 Q You stopped looking for him?

10 A We have no more leads to identify him.

11 Q You got at least one man that drove the getaway car that
12 the assailant was in. Are you still looking for him?

13 A No, sir.

14 Q Stopped looking for him. Now, you got at least another
15 fellow that sat in the vehicle with a rifle, probably a high-
16 powered rifle and pointed at somebody. Are you looking for
17 him?

18 A No, sir.

19 Q In your opinion -- of course, you saw and you've seen the
20 photographs.

21 A Yes, sir.

22 Q Somebody shot the place up; didn't they?

23 A Yes, sir.

24 Q Malicious injury to real property, isn't that a crime?

25 A Sure.

1 Q It's a crime; isn't it?

2 A Yes, sir.

3 Q Pointing a firearm at somebody?

4 A Absolutely.

5 Q Is another crime?

6 A Yes, sir.

7 Q These fellows all committed crimes. Now, you would agree
8 that they didn't just vanish?

9 A I hope not.

10 Q All right. And the vehicle that they were riding in that
11 they got away in, that didn't vanish. It went somewhere.
12 Now, tell me what, if anything, you or any of your other
13 officers did to try to find the vehicle.

14 A Well, based on the vehicle description, a dark color car,
15 maybe a Ford Taurus, maybe, there's, there's, there's got to
16 be thousands. It could be from here to California. It could
17 be anywhere. I just had no general information to identify
18 the vehicle. There was no tag number. There was no bumper
19 stickers described. There was nothing to lead us to a
20 vehicle.

21 Q Nothing objective that would assist you in being able to
22 find that vehicle.

23 A That's right.

24 Q Would you not agree then that with respect to possible
25 leads, if Terron Dizzley was the person that did the shooting

1 along with all of these other fellows, he must be connected to
2 them in some way. Would you not agree with that?

3 A He could be. Yes, sir.

4 Q If he could be, in fact, if Terron Dizzley was the
5 shooter, he got in the vehicle with them and took off.
6 So they would have to be associates; wouldn't they?

7 A Sure.

8 Q Now, and if they were associates, they must have known
9 Terron Dizzley.

10 A You, you would think so. Yes, sir.

11 Q All right. Now, there's a lead. As an investigator, do
12 you think that maybe you should have inquired of some of
13 Terron Dizzley's associates, and I know you all do this all
14 the time, do you know any of his buddies that he could have
15 gotten to pull a deal like that off with? Now, you've gotten
16 information that way; haven't you? I know you have.

17 A The information you speak of is four, four years later,
18 and it could have been one of these individuals that was in
19 the car with him. I don't know. I have no idea. They could
20 be covering for him. I can't answer that, but there was no
21 lead that gave us a name to look for.

22 Q But now, you didn't try to find out anybody that he was
23 involved with or anybody that was involved with him at the
24 time that could have been one of these other three people; did
25 you?

1 A There was no information that lead to anybody else.

2 Q Well, did you go out and look for it?

3 A Well, we spoke to witnesses about who his associates were
4 or who may be his friends, and nobody had any information on
5 him.

6 Q Well, he lived in Orangeburg. Who did you go to in
7 Orangeburg?

8 A We couldn't find him in Orangeburg.

9 Q Well, but he lived there, and you knew he lived there.

10 A Went to his father. We tried to talk to his girlfriend.

11 Q You went to his girlfriend and to his father.

12 A That's right. That's the two most logical places.

13 Q Have you ever heard of snitches?

14 A I don't have any snitches in Orangeburg. I'm sorry. I
15 don't work that area.

16 Q Well, but you've got law enforcement people in Orangeburg
17 that you work with from time to time. I know you have.

18 A Sure. Uh-huh.

19 Q You put money on the street, you put bread on the water
20 --

21 A I don't pay anybody for information.

22 Q -- it'll come back to you.

23 MS. BAILEY: Objection, Your Honor. He needs to let the
24 witness finish his answers.

25 THE COURT: I -- it's becoming argumentative at this

1 time. So I'll ask that you ask questions. I'll see that he
2 answers them.

3 Q Well, haven't you used people with criminal charges to
4 help you in investigation and help get information that you
5 otherwise couldn't get?

6 A Sure.

7 Q You used one yesterday; didn't you?

8 A What are you talking about?

9 Q What's -- Willie Stanley?

10 A He's not an informant of mine.

11 Q I wrote it down. You said you went to Orangeburg one
12 time.

13 A That's correct.

14 Q How long did you stay?

15 A All day.

16 Q What in the world -- what were you doing in Orangeburg
17 all day one day?

18 A Well, we interviewed witnesses and attempted to locate
19 your client.

20 Q What witnesses were you interviewing?

21 A Marvin Riley was one witness.

22 Q How long did it take to interview him?

23 A A while.

24 Q How long?

25 A A while.

1 Q How long would a while be? All day?

2 A I don't have the interview. I don't know how long it
3 took. I know we had to find him, had to interview him and
4 that took a good long time.

5 Q And because it took so long finding Marvin Riley you
6 couldn't get around to anybody else?

7 A Oh, we got around to trying to find your client, yes,
8 sir.

9 Q Well, trying to find him, you didn't have a warrant for
10 him.

11 A We wanted to talk to him as part of the investigation,
12 following a lead.

13 Q I've just got about two questions. Inasmuch as, inasmuch
14 as you, you would admit that with respect to trying to find an
15 associate of Terron Dizzley that might give you some
16 information regarding people he hang out with, you didn't make
17 an effort to do that; did you?

18 A We did make an effort.

19 Q Pardon me?

20 A We did make an effort.

21 Q To find one of his associates?

22 A Sure.

23 Q In Orangeburg?

24 A Yes.

25 Q You did that?

1 A Sure. Yes, sir.

2 Q Who did you talk to?

3 A Well, I'm not sure of the Orangeburg Sheriff's
4 investigator's informant's name, but that's who contacted his
5 girlfriend at the time.

6 Q And your effort was limited to the girlfriend; right?

7 A Well, our information was that he was possibly staying
8 with her.

9 Q All right.

10 A So we thought that'd be the best way to get to Mr.
11 Dizzley and maybe anybody else that could tell us where he was
12 at or information on him, but nothing came to fruition.

13 Q So, so your, your investigation along those lines with
14 that lead led you to the girlfriend, and that's as far as you
15 went?

16 A We didn't even talk to the girlfriend.

17 Q All right.

18 A We tried.

19 Q All right. So, so you did not talk to anybody else, any
20 associates. So --

21 A Well, we talked to Marvin Riley. He was an associate.

22 Q Marvin Riley, how long did he tell you that he knew --

23 MS. BAILEY: Objection, Your Honor. That calls for
24 hearsay.

25 THE COURT: I sustain the objection.

1 Q Well, did you --

2 MS. BAILEY: It calls for hearsay. He wanted to know
3 what information --

4 MR. BARR: I'll rephrase the question.

5 THE COURT: Thank you.

6 BY MR. BARR:

7 Q Did you determine, determine how long he knew him?

8 A It wasn't a year. It wasn't two years. It was probably
9 within a month or so.

10 Q Two months, wasn't it?

11 A Yeah. Somewhere in that area, without looking at his
12 statement.

13 Q So he couldn't know a whole lot about him in two months?

14 A Just what he was able to tell us about some background
15 information involving Mr. Dizzley.

16 Q And as far as the substantiating the accuracy of the
17 people who said that he was not here, you didn't pursue
18 questioning anybody in Orangeburg because you had already
19 determined from the statements that you had that that was a
20 dead end; is that right?

21 A I'm not saying it was a dead end. What I'm saying is
22 based on statements that we already had, based on the crime
23 scene, witnesses from there, people we interviewed, there was
24 enough information to obtain a warrant on Mr. Dizzley. There
25 was no information on the other side to indicate anything

1 else, anything for us to follow up on that he was anywhere but
2 the Club Paradise on that night.

3 Q All right. So, so, now, are you telling the ladies and
4 gentlemen of this jury today that what you've just described
5 to me as far as how you conduct your investigation, that's
6 typical of how you conduct a criminal investigation in a
7 murder case in Georgetown County?

8 A Until there's evidence or statements that come in that
9 provide any information that may exonerate a Defendant, that's
10 the way we go. That's the information that we've got, you
11 know. When it's there you just -- you act on it. You don't
12 let it get away. You don't not make an arrest and let
13 somebody stay on the street that you suspect of being involved
14 in a murder. At the end, if there's information that comes
15 out, that will be addressed, but there was none in this case.

16 Q Well, let me ask you this, this last question, if you
17 were charged with murder --

18 MS. BAILEY: Objection, Your Honor. That's a
19 hypothetical, which is improper for a laywitness.

20 MR. BARR: Your Honor, he's a --

21 THE COURT: It seems it's going in that direction.

22 BY MR. BARR:

23 Q -- would, would you be satisfied with your effort?

24 THE COURT: Sustain the objection.

25 MS. BAILEY: Same objection. Yes, Your Honor. The State

1 objects to the hypothetical question, which is improper for a
2 laywitness.

3 Q Well, let me ask you another way. You think you've done
4 a good job in this case?

5 A Absolutely. I followed every lead to the end that I had.

6 Q All right.

7 MR. BARR: Thank you. I have nothing further.

8 THE COURT: Redirect?

9 MS. BAILEY: Thank you, Your Honor.

10 THE COURT: Yes, ma'am.

11 REDIRECT EXAMINATION

12 BY MS. BAILEY:

13 Q You've seen the physical evidence and you've heard some
14 testimony about some high-powered rifle fire; is that correct?

15 A Yes, ma'am.

16 Q In the course of your investigation, were you able to
17 determine the timing of when that high-powered rifle fire
18 happened?

19 A No, ma'am. Based on the evidence that we recovered and
20 statements, it would indicate that they didn't occur at the
21 same time. I refer back to Mr. Gibson who indicated that he
22 heard six to seven shots, all witnesses. Nobody heard over
23 ten shots, but there were in excess of 20 rifle shell casings
24 located. There would be no way to indicate when those
25 occurred. It could have been after the fact. It could have

1 been the night before, but there was nobody to indicate when
2 that actually occurs. So we do know that it was no rifle
3 casings located inside the club that night.

4 Q When you say inside the club, there's two interior
5 portions of that structure, is that --

6 A Yes.

7 Q Okay. So when you say inside the club, which one of
8 those are you referring to?

9 A I'm referring to whole, the whole entire club, the, the
10 sports bar and the, I guess it would be described as the dance
11 area.

12 Q Now, Mr. Barr wanted to talk about the use of snitches as
13 he terms them. Did you, did you actually use an informant in
14 Orangeburg?

15 A Yes. The investigator there contacted one of his
16 snitches to try to find the Defendant for us.

17 Q And that person was aware of Mr. Dizzley?

18 A I'm sorry?

19 Q That -- the, the informant in Orangeburg was aware of Mr.
20 Dizzley?

21 A Yes.

22 Q Was that person able to make contact with Mr. Dizzley?

23 A That person made contact with his girlfriend at the time
24 --

25 Q Did that --

1 A -- and facilitated a meet that did not happen.

2 Q Okay. When you say facilitated a meeting that did not
3 happen, what do you mean by that?

4 A Well, this, this informant, I assume, was close with
5 Laquesha Felder, who was supposed to meet this informant with
6 the Defendant, and we were going to be there at that time to
7 try to talk to him.

8 Q And why didn't that happen? Why didn't that work out?

9 A Well, it could have been for a number of reasons. We'd
10 already spoken to one witness, Mr. Riley. We had spoken to
11 his father. I'm sure at that point it was out that Georgetown
12 County was in Orangeburg County looking for him.

13 Q But did you go to the meeting location?

14 A No. We were contacted through the Orangeburg
15 investigator that the informant indicated they didn't show up.

16 Q Okay. Were there any other informants that you utilized
17 in this case?

18 A No.

19 Q Now, in two -- between 2008 and 2012, did anyone ever
20 make a statement or make you aware of the fact that they were
21 claiming Mr. Dizzley was somewhere other than Club Paradise on
22 December 1st, 2008?

23 A No. They did not.

24 Q Did you come into any information in those five years,
25 four years that he would have been somewhere other than in the

1 Oatland Community on December 1st, 2008?

2 A No.

3 Q And just to clarify, this was on the evening news; is
4 that correct?

5 A Yes.

6 Q And in 2012 when you were present for the sworn testimony
7 of these four folks that Mr. Barr is calling alibi witnesses,
8 did you find as an investigator those witnesses to be
9 consistent with each other?

10 A No. Not at all.

11 Q And what, what do you mean by that?

12 A I mean that one individual --

13 MR. BARR: Judge, I'm going to object. I think his
14 opinion regarding an issue for the jury is irrelevant.

15 MS. BAILEY: Your Honor, Mr. Barr opened the door. He
16 asked ---

17 MR. BARR: Your Honor --

18 THE COURT: You've asked about his opinions concerning
19 that testimony. So that issue's been put in front of the
20 jury, and that was done on cross examination. I will allow
21 her to ask the question. However, at this point in time, I'm
22 going to ask the jury to step out to the jury room. Don't
23 begin any discussions about the case until I've discussed a
24 matter with the attorneys. You may retire to the jury room.

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 A May I have a glass of water, counselor? Thank you.

3 THE COURT: All right. I want to point out to counsel
4 that I have consistently ruled that the fact that this case
5 was previously tried is not a matter for consideration by this
6 jury. I think you're about to ask him as to the nature of the
7 inconsistencies in his statement, in the statements. If you
8 do, that may open the door to the entire statements coming
9 into the record in this case, and I want to make you aware
10 that that's where we're headed.

11 MS. BAILEY: Thank you, Your Honor. It's not my intent
12 to go into the contents.

13 THE COURT: Well, you were asking him about the
14 inconsistencies and what the nature of the inconsistencies
15 were, and that sounds like the contents of the statements to
16 this Court.

17 MS. BAILEY: Thank you, Your Honor.

18 THE COURT: And wanted to make you aware of that before
19 we go there. That may change the consistency of my rulings.

20 MS. BAILEY: Thank you, Your Honor.

21 THE COURT: Bring the jury back.

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

24 THE COURT: The record will reflect that the jury has
25 returned to the courtroom. You may proceed, Ms. Bailey.

1 MS. BAILEY: Thank you, Your Honor.

2 BY MS. BAILEY:

3 Q As an investigator with all those years of experience,
4 generally, did you find those sworn statements to be worthy of
5 follow-up?

6 A No, ma'am.

7 Q Okay. In what ways would you verify that someone is
8 where they claim to be? I mean, in your experience as an
9 investigator, if somebody says, "I was at Wal-Mart on
10 Tuesday," in what ways would you verify that someone was at
11 Wal-Mart on Tuesday?

12 A I'd go to Wal-Mart and see if I could pull video
13 surveillance footage for one thing.

14 Q In your experience as an investigator, how long is video
15 surveillance footage available?

16 A It depends on the locations. Some places are a week,
17 some places are 30 days, some places are longer. It just
18 depends on the location.

19 Q In your experience as an investigator, is it available
20 four years after the fact?

21 A Probably not.

22 Q Are there any other ways that you might verify that
23 someone was where they were supposed to be?

24 A Yes. If I was provided information that somebody said
25 they were with someone else, I would speak to that person, and

1 then based on that person's statement, if somebody else could
2 confirm that that person was with the person, I would confirm
3 it through that way.

4 Q In order for all of those things to happen, though, that
5 person has to actually speak to you; is that correct?

6 A That's right.

7 Q Now, let's just say someone who's not been charged with a
8 crime but may be a witness to an actual crime or may be a
9 witness to another issue in a crime, like where someone might
10 be, does that person have to talk to you if you want to talk
11 to them?

12 A No. They don't have to talk to me, but generally, in my
13 experience, if you're a witness as an alibi ---

14 MR. BARR: Judge, I'm going to object. This is
15 irrelevant.

16 MS. BAILEY: Your Honor, Mr. Barr spent a long time
17 talking about why Mr. Morris didn't follow up on leads.

18 THE COURT: There was -- that, that issue was raised on
19 cross examination as to the methods of following up and the
20 methods used by the -- this -- particularly this investigator
21 in following up on leads.

22 MR. BARR: I withdraw the objection.

23 THE COURT: Okay.

24 MS. BAILEY: Thank you, Your Honor.

25 THE COURT: You may proceed, Ms. Bailey.

1 BY MS. BAILEY:

2 Q So, if you knocked on someone's door and asked them a
3 question about where any particular person might have been on
4 any particular night, can they tell you to go away?

5 A Sure.

6 Q Do you know if anyone from the State attempted to talk
7 with these what Mr. Barr is calling alibi witnesses?

8 A No one from the Sheriff's Office did.

9 Q Okay. And did those people come forward to the Sheriff's
10 Office and attempt to speak with you all?

11 A No, ma'am.

12 Q Did they before 2012?

13 A No.

14 Q Have they from 2012 to present?

15 A No.

16 MS. BAILEY: I have no further questions.

17 THE COURT: Mr. Barr.

18 RE CROSS EXAMINATION

19 BY MR. BARR:

20 Q Did you, did you know you were coming to trial this week?

21 A Yes, sir.

22 Q And you knew what those statements were from August of
23 2012; didn't you?

24 A Yes, sir.

25 Q Now, as far as you finding Mr. Dizzley, who claimed --

1 who you claim that you wanted to talk to to follow up your
2 lead, you don't deny that before you even questioned that man
3 at that time the first thing you'd had to tell him is he had a
4 right to remain silent; wouldn't you?

5 A Sure.

6 Q That anything he said could be used in a court of law
7 against him?

8 A He's afforded that right. Yes, sir.

9 Q That he'd have a right to have a lawyer present during
10 questioning?

11 A Sure.

12 Q That if he wanted to stop it, he can stop it?

13 A Yes, sir.

14 Q That if he can't afford one, one will be appointed for
15 him?

16 A Yes, sir.

17 Q Now, having told him that and knowing that you believed
18 that he had committed a crime, did you really expect him to
19 talk to you?

20 A I was following up on the leads. If he had something to
21 share that would have let us know a different direction, that
22 would have been explored. At that time, there was no arrest
23 warrant.

24 Q You were following up on a lead?

25 A Yes.

1 Q And are you telling us that you realistically expected
2 following up on that lead to produce anything?

3 A I don't know where it would have went. I have no idea.
4 It never happened.

5 Q Thank you, sir. I have nothing further.

6 THE COURT: You may step down. Thank you very much.

7 The State may call its next witness.

8 MS. BAILEY: Thank you, Your Honor. The State calls Dan
9 DeFreese.

10 THE COURT: Is Mr. DeFreese outside the courtroom? Mr.
11 Bailiff, check and see if Mr. DeFreese is outside the
12 courtroom, please. Thank you.

13 Sir, if you would come forward, please, to my left to be
14 sworn.

15 THE CLERK: Please state your name for the record.

16 MR. DEFREESE: It's Frank Dan DeFreese.

17 THE CLERK: Would you please spell your last name for the
18 Court?

19 MR. DEFREESE: Last name is capital D-E, capital F-R-E-E-
20 S-E.

21 THE CLERK: Thank you.

22 Whereupon, Frank Dan DeFreese is called to the stand,
23 duly sworn by the clerk and testified as follows:

24 THE CLERK: Thank you. Please have a seat.

25 THE COURT: Thank you, sir. Ms. Bailey, your witness.

1 MS. BAILEY: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. BAILEY:

4 Q Mr. DeFreese, where are you employed?

5 A I work for the South Carolina Law Enforcement Division in
6 the forensic services laboratory in Columbia.

7 Q What is your role there?

8 A I'm assigned to the department within the forensic
9 services laboratory where we do the analysis of firearm and
10 toolmark evidence. I'm an examiner of firearms and toolmarks.

11 Q How does one get that job?

12 A Well --

13 Q What kind of education and experience do you need to do
14 that?

15 A I have a bachelor's degree from the University of South
16 Carolina in Columbia, and after I was employed with SLED,
17 which occurred in 1967, I was assigned to the, to the firearms
18 laboratory, and I began a course of instruction that lasted
19 about two and a half years. It was given to me by, excuse me,
20 Lieutenant Millard Kate who established a SLED laboratory when
21 SLED itself was established in 1947, and by Lieutenant Carl
22 Stokes, who was also an examiner at the time, and after
23 studying the techniques of firearm and toolmark identification
24 for about two and a half years, I began accepting cases on my
25 own and testifying as to my results, which I've been doing

1 since 1969.

2 Q Have you had any additional continuing education over the
3 years?

4 A Yes. I'm also a member of the Association of Firearm and
5 Toolmark Examiners, and from time to time, as finances permit,
6 I attend their annual training conference. I'm also a
7 graduate of the FBI National Academy in Quantico, Virginia,
8 and I've taken other courses of instruction by both commercial
9 companies and by the South Carolina Criminal Justice Academy.

10 Q And over the years since 1960 -- what year did you say
11 you began?

12 A I began my employment in 1967, and I began testifying
13 late in 1969.

14 Q Since 1969, how many examinations have you performed?

15 A Well, thousands of examinations, and I really don't know
16 how many times I've testified for certain because we didn't
17 keep track of it for so many years, but I estimate it between
18 600 and 700 times.

19 Q And every time you've testified have you been qualified
20 as an expert?

21 A So far.

22 MS. BAILEY: At this time, the State would seek to
23 qualify Mr. DeFreese as an expert in firearms and ballistics
24 evidence.

25 THE COURT: Any objection?

1 MR. BARR: No, sir.

2 THE COURT: All right. This gentleman then will be
3 qualified within that field, and I've explained to you earlier
4 that will allow him to offer his opinions within that area of
5 expertise and the reasons for them. You may proceed.

6 MS. BAILEY: Thank you, Your Honor.

7 BY MS. BAILEY:

8 Q Mr. DeFreese, I'm going to show you a couple of pieces of
9 evidence, see if you recognize them.

10 I'm showing you what has been previously marked as
11 State's Exhibits 75 and 76. If you could take a look at the
12 packaging and pull those out, take a moment to review those.

13 A Yes, ma'am.

14 Q Do you recognize those items?

15 A I do.

16 Q And can you tell us how you recognize those?

17 A I recognize them by the marks which I placed on both the
18 containers and on the individual bullet fragments within the
19 container. They bear my, my case number, my item number and
20 my initials.

21 Q Okay. And when those containers came to you, were they
22 in sealed packaging?

23 A They were.

24 Q And did you break that seal?

25 A I did.

1 Q Okay. And once you broke that seal, and we'll get into
2 the details of it later, but did you perform some analysis on
3 these items?

4 A I did. I did.

5 Q Okay. And for the purposes of your report, what item
6 numbers did you assign to those?

7 A These were assigned my item numbers 11 and 12.

8 Q All right. I'll take those back, if you could put them
9 back in their packaging.

10 A Item 12 is State's Exhibit 76, and my item 11 is State's
11 Exhibit 75.

12 Q Thank you.

13 MS. BAILEY: At this time, the State would seek to move
14 State's Exhibit 75 and 76 into evidence.

15 THE COURT: Any objections?

16 MR. BARR: No, sir.

17 THE COURT: Without objections, they'll be admitted as
18 marked. You may proceed.

19 MS. BAILEY: Thank you, Your Honor.

20 (State's Exhibits 75 and 76 [Bullet Fragments] entered
21 into evidence and appropriately marked.)

22 MR. BARR: Go right ahead.

23 BY MS. BAILEY:

24 Q Now I'm going to hand you what have been previously
25 marked as State's Exhibits 77, 78, 79, 80 and 81. If you

1 could take a moment to review these, including the packaging.

2 A Yes, ma'am.

3 Q All right. As to those items, do you recognize them?

4 A I do.

5 Q And how do you recognize them?

6 A In the same manner they -- the, the items bear my case
7 number, my item number and my initials on every one of them,
8 and I recognize the packaging in which they were received and
9 returned.

10 Q And when you received these items, were they in sealed
11 packaging?

12 A They were.

13 Q And did you break that seal to perform your analysis?

14 A I did.

15 Q Okay. Did you alter the items in any way while they were
16 in your possession?

17 A I did engrave upon them. I put my marks on them, but I
18 didn't, I didn't alter or deteriorate the marks.

19 Q And did you put those marks on them after you performed
20 your analysis?

21 A No. I actually put the marks on them shortly after I
22 opened the package to make sure we didn't confuse any item
23 with any other item.

24 Q That makes sense.

25 A Yeah.

1 Q Did you -- would it have changed your analysis in any way
2 the fact that you put those marks on them?

3 A No. The location where I place my identifying marks is,
4 is not anywhere close to where marks of value for
5 identification are located on the specimens.

6 Q Okay. And so that's part of your process?

7 A Yes. It is.

8 Q Okay.

9 MS. BAILEY: At this time the State would seek to move
10 State's Exhibits 70 --

11 A This is State's Exhibit 77 is my item number five.

12 Q Okay.

13 A State's Exhibit 78 is my item number one. State's
14 Exhibit 79 is my item number two. State's Exhibit 80 is my
15 item number four on the report, and State's Exhibit 81 is my
16 item number three.

17 MS. BAILEY: At this time the State would seek to move
18 each of these exhibits into evidence.

19 THE COURT: Any objections?

20 MR. BARR: No, sir.

21 THE COURT: Without objections they'll be received into
22 evidence as marked. You may proceed.

23 MS. BAILEY: Thank you, Your Honor.

24 (State's Exhibit 77 [Spent Bullet], State's Exhibit 78
25 [Shell Casing], State's Exhibit 79 [Shell Casing], State's

1 Exhibit 80 [Spent Bullet] and State's Exhibit 81 [Shell
2 Casing] admitted into evidence and appropriately marked.)

3 BY MS. BAILEY:

4 Q Mr. DeFreese, can you describe for us your process of
5 analyzing this evidence?

6 A Well, after receiving the evidence, opening the packaging
7 and documenting the packaging, I then place my identifying
8 marks, my case number, my item number and my initials on the
9 individual items of evidence. After that time, I took, where
10 appropriate, the items and compared them with each other. For
11 instance, I compared the fired cartridge cases in State's
12 Exhibits 81, 78 and 79 with each other to see if the, the same
13 identifying markings left there on the gun in which they were
14 fired were present on all three cartridge cases. I should
15 perhaps back up and explain that when a cartridge is fired in
16 a specific firearm, the pressure inside the cartridge case
17 that's used to drive the bullet out of, out of the gun, down
18 the barrel and out of the gun creates a real high pressure
19 area within the cartridge case that makes the cartridge case
20 contact some interior surfaces of the gun. In this case it
21 made it contact the breech face, which is the part of the, of
22 the gun that holds the cartridge case in the barrel. Those
23 markings will be transferred each and every time the gun is
24 fired, and I, in this case, I was looking for a combination of
25 markings that might be there, but I found matching breech face

1 impressions on the three fired cartridge cases that are in
2 State's Exhibits 78, 79 and 81.

3 Q Were you made aware where those cartridge cases were
4 collected from?

5 A Well, they were marked on a container as, as to where the
6 -- I, I didn't know of my own knowledge where they were, but
7 they, they were labeled on a container from the -- their
8 locations, where they were recovered.

9 Q Okay. And can you tell us what type of -- first of all,
10 for some folks who may have no familiarity with guns, what is
11 the difference between a cartridge case and a bullet or a
12 projectile?

13 A Well, the -- a, a given unfired cartridge is composed of
14 a cartridge case, and in the rear of the cartridge case is
15 located a primer. The primer is that, that portion that's
16 struck by the firing pin to initiate firing. On the inside of
17 the cartridge case, because the cartridge case is sort of a
18 cup-like structure, propellant powder would have been placed.
19 The propellant powder, of course, is now burned, and then to
20 cap off the end of the cartridge case and form a complete
21 cartridge, the bullet is placed in it so that a complete
22 cartridge consists of the bullet, the cartridge case, a primer
23 assembly and then a propellant powder. When the cartridge is
24 fired, particularly in the case of a cartridge fired in a
25 semiautomatic firearm, the bullet is propelled out of the

1 cartridge and down the barrel and out of the gun, and a short
2 time later the cartridge case is extracted and ejected from
3 the firearm to permit a fresh cartridge to be inserted within
4 the chamber so the gun can be fired the next time. So for
5 instance, State's Exhibit 81, is a fired cartridge case. It
6 has no bullet, no propellant powder and it has nothing but a
7 fired primer and a cartridge case. State's Exhibit 80 is a
8 fired bullet by itself. It is nothing but the projectile that
9 was propelled down the barrel and out of the gun.

10 Q How many cartridge cases did you analyze in this case?

11 A Three.

12 Q And can you describe your analysis -- first of all, do
13 you identify those as being with a specific type of firearm or
14 how do you go about identifying those?

15 A Well, by caliber all three of the fired cartridge cases
16 in State's Exhibit 78, 79 and 81 are all 40 Smith and Wesson
17 caliber cartridge cases. So they're all the same caliber.
18 Two of the three cartridge cases, State's Exhibit 78 and 79,
19 are by one manufacturer, and the third one, State's Exhibit
20 81, is a different manufacturer but the same caliber. The --
21 my analysis consisted essentially of, of comparing the
22 markings present on those three cartridge cases since no
23 firearm -- well, no question firearm was submitted for
24 examination to see whether the three of them were fired by one
25 gun, two guns or three guns, and, of course, as I may have

1 said from, from my analysis, I concluded that they were fired
2 by one firearm, and it -- they appear to be normally fired,
3 that is they were fired in a chamber that was correctly sized
4 for that cartridge. There's no bulging to indicate they were
5 fired in an incorrectly -- in an incorrect caliber gun, which
6 does happen from time to time.

7 Q So all three cartridges collected were 40 caliber?

8 A Yes.

9 Q Two were Smith & Wesson and one was a different brand; is
10 that correct?

11 A Two were actually a brand known as CBC Magtech, and one
12 was a Remington brand cartridge case.

13 Q Okay. But based on the unique impressions, is that --
14 can you go into that a little bit more? You were able to
15 determine they were all fired by the same gun; is that right?

16 A Right. I found matching breech face impressions which
17 would have been placed on the cartridge cases at the time they
18 were fired by the gun in which they were fired, and that was
19 what I used to make my conclusion that all three of them were
20 fired in the same firearm.

21 Q And to be clear that in your opinion as an expert based
22 on your experience, education and analysis, what is your
23 expert opinion as to those three cartridges?

24 A In my opinion, they were fired by the same firearm.

25 Q Thank you. What other items did you analyze in this

1 case?

2 A Well, there were also some fired bullet specimens.
3 State's Exhibit 80 and State's Exhibit 77 were fired bullets,
4 and there were other fired bullets, jacket fragments and cores
5 that you also showed to me earlier.

6 Q We'll get to those in just a moment.

7 A Yeah.

8 Q Let's start with the, the ones that you have in front of
9 you, and was it indicated to you where those were collected
10 from?

11 A They were written on the, on the container their
12 location.

13 Q And can you just for identification purposes tell us.

14 A Yeah, State's -- the container in which State's Exhibit
15 80 was contained says under place evidence found it says left
16 side pool looks like tabletop between corner and center pocket
17 at 899 Oatland Road.

18 Q Okay. And what type of analysis did you perform on that
19 item?

20 A Well, I compared the bullet in State's -- that I received
21 in State's Exhibit 80 with all the other fired bullet and
22 bullet jacket fragment specimens that I had, also to determine
23 whether they were, whether they -- this bullet was fired by
24 the same gun or by different guns.

25 Q And what was your analysis as to that bullet?

1 A Well, the bullet in State's Exhibit 80, while it's not
2 badly distorted, did not bear very many surviving marks of
3 value for identification. I was not able to identify this
4 bullet positively with any of the other bullet specimens.
5 Now, it's -- it is the same caliber, that is to say the bullet
6 is consistent with being a 40-caliber Smith & Wesson or it
7 could have been a 10 mm automatic caliber bullet, which is the
8 40 Smith & Wesson and the 10 mm auto use essentially the same
9 diameter bullet. The type of bullet used in State's Exhibit
10 80 is the same as the type of bullet that's used in State's
11 Exhibit 77, that is that both of those were full metal
12 jacketed bullets, and the number of land and groove
13 impressions and the dimensions of the lands and grooves, that
14 is the rifling specifications, were the same, but when it came
15 down to the individual identifying marks, the bullet in
16 State's Exhibit 80 was just too badly damaged to be positively
17 identified with any of the other bullet specimens, and even if
18 I had recovered or a gun had -- the correct gun had been
19 submitted, it's probably too badly damaged to be identified
20 with the gun that fired it.

21 Q And can you explain for the jury what land and groove
22 impressions are?

23 A Sure. On the inside surface of a gun barrel there are a
24 series of spiraling grooves that are put there to grip the
25 bullet and to impart a spin on the bullet. The bullet is a

1 very tight fit within the bore of a gun, and as, as the bullet
2 is being gripped by the lands and grooves, the lands being the
3 portion of the barrel that actually project into the bullet,
4 and the groove being a portion of the barrel in which the
5 bullet actually sort of expands to fit, but as, as the bullet
6 is passing down the barrel and out of the gun, the, the
7 imperfections that are present within the gun bore cause
8 scratches or striations to be imparted on the, on the bullet.
9 They represent the signature of that gun barrel on that
10 bullet, and when the bullet is recovered in sufficiently
11 undamaged condition, bearing in mind that those bullets are
12 traveling at high speeds, and when they run into things, a lot
13 of times they damage themselves, but when they're sufficiently
14 undamaged and when the gun barrel itself is repeatable in its
15 markings, we can identify a specific bullet back to the gun
16 barrel in which it was fired or back to the particular firearm
17 in which it was fired. That was what I was attempting to do,
18 and this is also done in a side-by-side microscopic comparison
19 fashion.

20 Q Now, in addition to identifying the specific weapon from
21 which a bullet was fired, are you able to take a bullet and
22 tell what type of gun would have fired that?

23 A Frequently, we can based on the specifications that the
24 rifling, the specifications of the rifling used in a
25 particular gun. Under our what we refer to as general rifling

1 characteristics, a bullet could be classified according to its
2 caliber, which in this case is like 40-caliber or 10 mm. Then
3 the number of land and groove impressions on it, in this case
4 five, the direction of twists because the, the -- in order for
5 it to spin it has to twist either left or right, in this case
6 it was right, and then according to the width of the land and
7 groove impressions that remain on the bullet. So by using an
8 index or a database that catalogs these general rifling
9 characteristics, many times we can suggest to the investigator
10 the type of gun, and in some cases, the brands of guns, and in
11 rare cases, we can -- we find out that only one gun has these
12 particular rifling specifications used.

13 Q Now, in this case, did you look at all of the spent
14 bullets that were submitted to you and, and make that type of
15 determination?

16 A I did.

17 Q And what, what was your expert opinion on that?

18 A Well, in this case we -- there was only one manufacturer
19 that we knew of that rifles firearms in this manner, the 40-
20 caliber five right specification, and that was Smith and
21 Wesson, and in fact, we only had one particular model number
22 of Smith and Wesson listed, although it could be that Smith
23 and Wesson has made other model numbers since that time.

24 Q And there at SLED do you keep a large inventory of
25 weapons?

1 A We, we do keep a reference collection. It's sort of our
2 reference library of known firearms, and we, we do have a
3 number of different kind of firearms for comparison purposes.

4 Q And did you have one of that type of weapon that you
5 narrowed this down to?

6 A I did.

7 MS. BAILEY: Your Honor, at this time the State would
8 seek to use a demonstrative, and I'm happy to show the Court.
9 It's my understanding that Mr. Barr is going to possibly
10 object.

11 THE COURT: Any objection to those photos being used as a
12 demonstrative aid?

13 MR. BARR: Yes, sir, Judge. Relevance and materiality.

14 THE COURT: Well, they're not being introduced into
15 evidence. They're being used to demonstrate.

16 MR. BARR: Oh, I thought, I thought she was offering them
17 into evidence.

18 THE COURT: Do you have any objection to their being used
19 as a demonstrative aid?

20 MR. BARR: No, sir.

21 THE COURT: All right. Let's mark them for ID purposes
22 so they can be identified.

23 MS. BAILEY: Thank you, Your Honor.

24 (State's Exhibit Numbers 344 and 345 [Photographs] marked
25 for identification.)

1 BY MS. BAILEY:

2 Q For the record, I'm looking at State's 344 and 345 which
3 are being offered for demonstrative purposes. So they're
4 marked as ID only.

5 MR. BARR: I've seen them.

6 MS. BAILEY: Okay.

7 THE COURT: All right. You may proceed.

8 MS. BAILEY: Thank you.

9 BY MS. BAILEY:

10 Q Please pull up 119. Mr. DeFreese, your screen is going
11 to be a little fuzzy. I've discovered that during this trial.
12 So I'm going to hand you the actual photo, and the jury is
13 looking at that as well and the Court. Can you describe for
14 us what we are looking at?

15 A Yes, ma'am. You're looking at the right-hand side of a
16 Smith and Wesson model SW40VE, 40 Smith and Wesson caliber
17 semi-automatic pistol, and this is a picture which I took.

18 Q Okay. And what can you tell -- is this the type of
19 weapon that was used to fire the bullets that you analyzed in
20 this case?

21 A Well, this is the only weapon that we have, the only make
22 and model number in our database that has rifling
23 specifications like the rifling specifications on the bullets
24 submitted in this case.

25 Q Okay. Pull up slide 120. I'm going to hand you State's

1 Exhibit 345, which is marked for identification only. Can you
2 tell the jury and Court what we are looking at now?

3 A This is the left side of the Smith and Wesson model
4 SW40VE 40 S and W caliber pistol that I took a picture of and
5 with essentially the same results.

6 Q All right. I think that we got through the analysis on
7 the spent bullet that was on the pool table. Can we move on
8 to -- did you analyze your item number five?

9 A I did.

10 Q Can you give us the State's Exhibit Number on that?

11 A The State's Exhibit of my item five is item -- State's
12 Exhibit 77.

13 Q Okay. And do -- does your information indicate where
14 that was collected from for identification?

15 A According to the packaging it -- under place evidence
16 found, it was Georgetown emergency room from victim's pants
17 upon removal by med staff.

18 Q Okay. Thank you. And can you tell us the results of
19 your examination on that bullet?

20 A Yeah. This bullets was, was also -- it's a 40 Smith and
21 Wesson or a 10 mm auto caliber bullet. The remaining rifling
22 impressions on it are consistent with five grooves and right-
23 hand twist. So it, it has the same rifling specifications as
24 that on the item 80 bullet, and I compared this bullet and
25 State's Exhibit 77 with State's Exhibit 80, and my results

1 were inconclusive due to the damaged condition of State's
2 Exhibit 80. I couldn't say that they were both for sure fired
3 by the same firearm, but they could have been.

4 Q Okay. They were certainly fired by the same type of
5 firearm, is that your --

6 A They were certainly fired by the same caliber and the
7 same -- what -- they were fired by a firearm with the same
8 rifling specifications, if not by the same firearm, but
9 certainly by a firearm with identical rifling specifications.

10 Q And to the best of your research and database, it would
11 have to be one that looks just like the one that's up on our
12 screen?

13 A It would be a Smith and -- the only one I could find was
14 the Smith and Wesson SW40VE, and I also hasten to add they --
15 the specimen I had has the, the bright colored slide, the --
16 like the stainless steel slide. They also make this gun with
17 a black slide so the entire pistol is black, but they're both
18 the same model number.

19 Q I'm going to hand you what's been admitted into evidence
20 already as State's Exhibits 75 and 76. First, can you tell us
21 what your item numbers, your item numbers were on those?

22 A My item number on State's Exhibit 75 was 11. State's
23 Exhibit 76 is my item 12.

24 Q Okay. And did you have some indication from their
25 submission as to where they were collected from?

1 A These were received in containers which appear to be the
2 containers used by the Medical University for autopsy
3 specimens immediately, and then under place evidence found it
4 says autopsy at MUSC, removed from victim.

5 Q And can you describe for us the analysis that you
6 performed on items 11 and 12?

7 A Well, my item 11, State's Exhibit 75, and my item 12,
8 State's Exhibit 76, when I received them the, the specimens
9 had broken into their respective jacket and core portions.
10 These are jacketed bullets. These are portions of what's
11 known as a jacketed hollow point bullet. These are both
12 jacketed hollow points. The, the dark gray colored part of it
13 is the bullet core, which is made of lead, and it's on the
14 inside of the, of the bullet, and the copper colored portion
15 is the bullet jacket. It makes up the outside. The bullet
16 jacket is actually the only part of the bullet that comes into
17 contact with the rifling. So in both cases the bullet cores
18 couldn't be identified to the gun in which they were fired or
19 with another specimen. When I looked at the bullet jacket
20 portions of State's Exhibit 75 and 76 and compared them with
21 each other and also with the fired bullet in State's Exhibit
22 77 and, of course, I also compared it with the fired bullet,
23 the damaged one in State's Exhibit 80, from these comparisons
24 I found the same, the same rifling specifications present on
25 all of the bullet jackets or bullets, and I found matching

1 individual striated marks peculiar to the gun in which they
2 were fired on State's Exhibit 75, 76 and 77 from which I
3 concluded that State's Exhibit 75, 76 and 77 were all fired by
4 the same gun barrel, by the same firearm, and, of course, that
5 State's Exhibit 80 could have been fired by the same gun, but
6 I can't tell for sure.

7 Q And how about is it possible to compare these spent
8 bullets to the cartridges that were found on scene, is that --
9 is there a reliable method for that?

10 A It's not, it's not a method that we do. In some cases,
11 associations may be made, but they weren't done in this case,
12 and it's not, it's not a test that our laboratory has
13 validated.

14 Q So is it -- has SLED found that to be a scientifically
15 reliable enough method that you would testify about it in
16 court?

17 A Not at this time. You know, it, it may be, but it's just
18 it's, it's not something that we do at this time.

19 Q Now, all of the items that you analyzed, is there
20 anything to indicate to you that they could have been fired by
21 two different guns? Is there anything that tells you that
22 they are -- that there's inconsistencies with each other that
23 they would have been fired by two different guns?

24 A There's, there's no reason why one gun could not have
25 fired them all.

1 Q And that includes the cartridges and the spent bullets?

2 A Yes. They, they all could have been. You know, it --
3 it's, it's like you would have to believe that one gun fired
4 three cartridge cases and, and not the bullets, and then one
5 fired, you know, three or four bullets, and all the cartridge
6 cases resulting from that firing are gone. So it's, it's
7 certainly consistent with bullets and cartridge cases found
8 adjacent to each other with having been fired by the same gun,
9 but I can't tell you that from looking at the bullet and
10 cartridge case under the microscope.

11 Q Now, in your experience in these thousands of cases that
12 you've analyzed, is it common that we have a or is it common
13 or uncommon that there's a mismatched number of bullets versus
14 cartridges?

15 A It's not uncommon for, you know, for you to have more of
16 one than you do the other. They can, they can simply not be
17 recovered for any number of reasons.

18 Q Can you explain to us what IBIS is?

19 A IBIS is -- it's -- it's an acronym that's short for the
20 Integrated Ballistics Identification System, and it's a
21 computer imaging system in which we scan cartridge cases, and
22 I don't know how the computer does it, but the computer has
23 what they call an algorithm that it applies to the image so it
24 gives it a numerical index that can be searched against all
25 the other cartridge cases that are present in the system, and

1 what it will do is when it finds a high degree of similarity
2 between two cartridge cases it'll suggest to us that we, we
3 might want to look at this cartridge case versus that
4 cartridge case to see if they were both fired by the same gun.

5 Q And so it's a data -- would you describe it as a
6 database?

7 A It is. It's a --

8 Q And is it a nationally maintained database?

9 A It is. It's, it's maintained both regionally and
10 nationally.

11 Q And so it compares cartridge cases across crime scenes
12 across states; is that a fair?

13 A Yeah. Generally, our first search is among fired
14 cartridge cases within South Carolina, and then after that,
15 fired cartridge cases regionally.

16 Q Is there a benchmark for the quality of item that you
17 have to have in order to put it into IBIS?

18 A We generally try not to put damaged or poorly marked
19 specimens. It is, after all, a computer system, and if you,
20 you put bad data in you'll get bad results out. So we
21 generally try to put worthwhile specimens, and in most cases,
22 cartridge cases are not severely damaged unless they're run
23 over by automobiles, and we have had really good success with
24 cartridge cases.

25 Q In this case, were any of the items of sufficient quality

1 for analysis that you were able to put them into the IBIS
2 database?

3 A Oh, yes. They were.

4 Q And which items were those?

5 A I think I put my, what I call my item two, would have
6 been State's Exhibit 79. Since all three of them matched each
7 other, it was -- we only put one specimen from a given case if
8 they all match, and that's the one I selected.

9 Q And when you put it into IBIS did you return any results?

10 A No. So far it has not, not indicated a correlation or a
11 high probability correlation.

12 Q So to be clear, when you put it into IBIS back when you
13 did your report, what, what date did you do your report? Was
14 it in 2008?

15 A Yes. It was in 2008.

16 Q It would have matched in 2008 historical data; is that,
17 is that right? It would have, it would have tried to match
18 this data against historical data that had already been put
19 in?

20 A It would have, and since it is a computer, it's also
21 program to check itself against anything new incoming, that it
22 would have checked anything that was in the database at the
23 time it was entered, and then it from time to time checks
24 newly entered stuff from, from other jurisdictions, other
25 areas.

1 Q So in 2008 it didn't match anything that at that point
2 had been entered into the database?

3 A Correct.

4 Q And since 2008 you've not been notified that it matches
5 anything that's been entered since; is that fair?

6 A That's correct.

7 Q Okay. Now, I have what may seem like a silly question to
8 an expert such as yourself. Could any of the items that you
9 analyzed have been fired by a high-powered rifle?

10 A No. These are all pistol caliber specimens. There's
11 nothing here consistent with what we would think of or what's
12 commonly referred to as a high-powered rifle.

13 Q And does a high-powered rifle cause a different type of
14 damage than a handgun or a pistol like this?

15 A Well, it can. It can in the sense that most high-powered
16 rifle ammunition travels at a higher velocity. It may use a
17 bullet that's as heavy or even heavier than what this is. So
18 it, it transfers more energy to its target. It -- not to say
19 that it always does, but it can.

20 MS. BAILEY: I have no further questions for this witness
21 at this time. May I approach the bench briefly?

22 THE COURT: Yes. You may.

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

25 THE COURT: All right, ladies and gentlemen, at this

1 point in time, we're going to take a short break for the
2 courtroom personnel, and, and I will ask you not to discuss
3 anything about the case during the break. You may retire.
4 We'll let them get out. Then we'll do it.

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

7 THE COURT: All right, as you were stepping back, Ms.
8 Bailey, Mr. Barr informed me he did not wish to ask any
9 questions of the witness; is that correct, Mr. Barr?

10 MR. BARR: Yes, sir, Judge.

11 THE COURT: All right. So is there any objection to him
12 being released at this time, Mr. Barr?

13 MR. BARR: No, sir.

14 THE COURT: And State wish for him to be released?

15 MS. BAILEY: Yes, Your Honor.

16 THE COURT: All right, sir. You can step down and we'll
17 excuse you at this time.

18 A Thank you. Appreciate it.

19 THE COURT: Thank you very much.

20 A Good to see you.

21 THE COURT: All right. We'll be in recess for about 10
22 to 15 minutes. Thank you very much.

23 MS. BAILEY: Thank you, Your Honor.

24 OFF THE RECORD

25 (On the record. The following takes place outside the

1 presence of the jury.)

2 THE COURT: All right. Is the State ready to proceed?

3 MS. BAILEY: Thank you, Your Honor. At this time the
4 State rests.

5 THE COURT: Oh, okay. Well, let's take up some matters
6 then while the jury is out, and we'll take that up before the
7 jury shortly. Mr. Barr, any motions at this time?

8 MR. BARR: Yes, sir.

9 Your Honor, at this time we would respectfully move for a
10 directed verdict of not guilty. It would be the Defense's
11 position that the State has not presented any evidence from
12 which this jury might find that there are facts sufficient to
13 establish or any inferences that would be sufficient along
14 with those facts to determine that the Defendant, first of
15 all, has been sufficiently identified as the perpetrator,
16 keeping in mind that in this case identity would be an issue,
17 would be an element of the offense, that the murder itself,
18 that is that the Defendant did with malice aforethought shoot
19 and did kill the Defendant or that the Plaintiff, that the
20 Defendant shot and killed the alleged victim, that there
21 wouldn't be sufficient evidence of that either. So we would
22 respectfully move for a directed verdict of not guilty.

23 THE COURT: I'll hear from the State.

24 MS. BAILEY: Thank you, Your Honor. The standard on a
25 directed verdict in a criminal case is that there's any

1 evidence that a jury could find the Defendant guilty. In this
2 case there's more than enough evidence. There is evidence of
3 difficulty between the two parties, between the victim and the
4 Defendant, with the Defendant being clearly identified as the
5 person that was involved in those difficulties leading up to
6 the event of the crime. There is multiple witnesses who
7 indicate that the victim named his own assailant before his
8 death. There are two people who have picked Mr. Dizzley out
9 of a lineup as being the one that the victim called Little D
10 or D or Diz, and the physical evidence corroborates all of the
11 stories and is consistent with all of that evidence. It's the
12 State's contention that there is some evidence from which a
13 jury could find the Defendant guilty.

14 THE COURT: All right. I am going to find that there is
15 some evidence from which a jury could find the Defendant
16 guilty in this case, and therefore, I will deny the motion,
17 allow the case to proceed.

18 Now, I do want to inquire of your client concerning his
19 right to testify in this matter, Mr. Barr, and --

20 MR. BARR: Yes, sir. And I would ask that the Court
21 examine the Defendant concerning that right.

22 THE COURT: All right. We will do that. Before I do
23 that, I will ask the State if there is any, if there are any
24 convictions which the State might use. Sir, you can stand
25 right there. Thank you. Any convictions that the State might

1 use in an effort to try to attack the credibility of the
2 Defendant should he testify?

3 MS. BAILEY: Thank you, Your Honor. In 2011, the
4 Defendant was convicted of assault and battery first degree.
5 I understand that naming that offense would -- the State
6 concedes that would be more prejudicial than probative, but
7 the State would seek to be able to examine Mr. Dizzley on the
8 fact that he was convicted of a felony in 2011.

9 THE COURT: All right. Well, I won't make a ruling on
10 that at this time, but the Defendant is aware that there is a
11 conviction the State may attempt to use in order to attack his
12 credibility. I'd ask the Clerk please swear the Defendant at
13 this time. You just stand right there, sir. You're fine.
14 Thank you.

15 (Defendant is sworn by the Clerk.)

16 THE COURT: All right. Mr. Dizzley, at this time I'm
17 going to explain certain of your rights to you, and I will
18 tell you that if you do not understand my explanation, when I
19 finish, I'll give you an opportunity to ask questions, and
20 I'll be happy to offer additional explanation should that be
21 necessary. Do you understand what I'm doing now?

22 MR. DIZZLEY: Yes.

23 THE COURT: All right. We've reached the stage of this
24 trial where you have the right to present your defense. In
25 doing so, you have the right to testify in this case, but you

1 also have the right to claim the protections that are given to
2 you by the Fifth Amendment to the United States Constitution.
3 That amendment reads in part that no person shall be compelled
4 in any criminal case to be a witness against himself. Now,
5 what that means is that while you have the right to testify,
6 no one can require you to do that in this case. The -- you
7 have the right to testify on your behalf, but no one can make
8 you testify. The right to remain silent is a personal right.
9 No one can waive or give up that right except yourself.

10 Now, if you decide to testify in this case, you will be
11 subject to the same rules that govern the testimony of any
12 other witness. That means that you would be examined by your
13 lawyer, and you would be cross-examined by the State's
14 attorneys, and I will tell you that should you have any
15 convictions on your record involving dishonesty or false
16 statements or for crimes punishable by imprisonment for more
17 than one year and then this Court makes a determination that
18 that -- the probative value of that evidence would outweigh
19 its prejudicial effect, if that ruling were made, then the
20 Solicitor would be able to introduce that record to attack
21 your credibility.

22 Now, I will tell you that if you decide to testify the
23 decision on your part must be made freely, voluntarily and
24 intelligently, with knowledge of these protections and also
25 the possible consequences of a decision to testify. Now, if

1 you decide not to testify, I will tell you that I will
2 instruct the jury that they cannot give the fact that you did
3 not testify any consideration whatsoever in their
4 deliberations and that there should be no prejudice to you
5 because you did not testify. In fact, my instructions would
6 be that they could not even discuss that fact during their
7 deliberations.

8 Now, the decision as to whether or not to testify is left
9 entirely up to you. You have the right to consult with your
10 attorney, family, friends or anyone else you'd like to consult
11 with, but the final decision is yours and yours alone.

12 So I'll ask you now, do you understand the right that
13 I've explained?

14 MR. DIZZLEY: Yes, sir.

15 THE COURT: Do you have any questions about what I've
16 explained to you thus far?

17 MR. DIZZLEY: No, sir.

18 THE COURT: Now, have you had an opportunity to discuss
19 this decision with your family, friends or your attorney?

20 MR. DIZZLEY: I probably need to discuss it with them
21 again.

22 THE COURT: Okay. Well, I'll give you an opportunity to
23 do that. You have the right to discuss it with them at this
24 time, and so what I'll do is I'll ask you to step back to
25 counsel table. I'll give you an opportunity to have that

1 discussion, let me know when you're ready to proceed.

2 MR. DIZZLEY: Okay.

3 THE COURT: Yes, sir. Have you had an opportunity to
4 discuss this matter with your lawyer?

5 MR. DIZZLEY: Yes, sir.

6 THE COURT: Do you wish to discuss it with anyone else?

7 MR. DIZZLEY: No, sir.

8 THE COURT: Have you made a decision as to whether or not
9 to testify?

10 MR. DIZZLEY: What I want to do is I want to reserve my
11 right to testify.

12 THE COURT: Okay, sir.

13 MR. DIZZLEY: And I'll let you know whether I'm
14 testifying or not --

15 THE COURT: You have the right to do that as well.

16 MR. DIZZLEY: -- before the end of the trial is over.

17 THE COURT: All right. We'll ask for that -- I'll ask
18 for you to announce your decision once that decision has been
19 made.

20 MR. DIZZLEY: Okay.

21 THE COURT: Thank you. You can have a seat.

22 Now, are there any other matters that the State wishes to
23 take up before we bring the jury back in?

24 MS. BAILEY: Yes, Your Honor. It's concerning a
25 discovery issue. On March 30 -- let's see when. Okay. On

1 March 31st, that'd be this Monday, the Defense presented us
2 with a potential witness list. On August 17th of 2012, it's
3 the only time that the Defense has provided the State under
4 reciprocal Rule 5 a list of potential alibi witnesses. In
5 comparing the two lists, it appears that there are some
6 witnesses on the Defense's witness list for today that were
7 not provided as potential alibi witnesses back in 2012 or at
8 any time subsequent to that. So if these folks intend to -- I
9 don't know what they're -- they will testify to, but if they
10 intend to testify as to some sort of alibi, it would be the
11 State's contention that they should not be allowed because
12 they were not provided to the State within ten days of trial
13 per South Carolina Rule of Criminal Procedure, Rule 5, Section
14 E, Number 1.

15 THE COURT: Mr. Barr, any comment on that? You're not
16 required to, to inform anyone as to what the witnesses are
17 testifying about, but if they are alibi witnesses, there,
18 there is a special rule involved with those witnesses so. I
19 guess the inquiry is are they alibi witnesses or are they not
20 alibi witnesses, and she didn't name who she's talking about.
21 So I don't know exactly who we're talking about.

22 MR. BARR: Your Honor, we did give the State a list of
23 potential witnesses. Of course, those witnesses were not or
24 they did not -- we did not distinguish between whether or not
25 they would be alibi witnesses or just general witnesses.

1 However, we don't contemplate calling any alibi witnesses
2 other than the ones we used at the first trial.

3 THE COURT: All right. That, that take care of that
4 problem, Ms. Bailey?

5 MS. BAILEY: Yes, Your Honor.

6 THE COURT: All right.

7 MS. BAILEY: Second of all, the State would request that
8 we be given -- all we have are names. We would request
9 birthdays and socials so that we can run criminal background
10 checks on these individuals.

11 THE COURT: I understand. Can you provide that
12 information?

13 MR. BARR: Yes, sir.

14 THE COURT: Please do.

15 MR. BARR: Ms. Laquesha Felder, L-A-Q-U or L-A-Q-E-S-H-A,
16 Felder; Mr. Daniel Robinson; Stephon Jamison; Leon Devaughn
17 Dizzley, Jr. As to the date and birth and Social Security
18 number, Judge, I can provide her with that information, but I
19 don't have it at the present.

20 THE COURT: All right.

21 MR. BARR: These people are here.

22 THE COURT: Before they testify, we're going to break for
23 lunch shortly it looks like; and so, during lunch if you could
24 get that information and provide it to the State.

25 MR. BARR: All right, sir.

1 MS. BAILEY: Thank you, Your Honor.

2 THE COURT: All right. In looking at the time, we're 15
3 minutes to 12. I may go ahead and just get us rested, get the
4 State rested in front of the jury, go ahead and take our lunch
5 break and let the State start back. I don't think we'd get
6 very far with the first witness if we started one at this
7 point in time. Any objection to that, Mr. Barr?

8 MR. BARR: No, sir.

9 THE COURT: All right.

10 MR. BARR: No, sir.

11 THE COURT: The State okay with that?

12 MS. BAILEY: Yes, Your Honor. Thank you.

13 THE COURT: All right. Let's bring the jury in.

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

16 THE COURT: All right. The record will reflect that the
17 jury has come back to the courtroom. When we broke earlier,
18 we had a witness, Mr. DeFreese was in the witness stand, and
19 as you were leaving, Mr. Barr informed the Court that he had
20 no questions of that witness. So I have released him and
21 allowed him to go on his way. So that's the reason he's no
22 longer in the witness stand. We've completed his testimony.
23 At this time, the State has the right to call additional
24 witnesses. Does the State wish to call additional witnesses?

25 MS. BAILEY: No, Your Honor. At this time the State

1 rests.

2 THE COURT: All right. Ladies and gentlemen of the jury,
3 that completes the presentation of evidence in this case by
4 the State. Now, at this point in time the Defense has the
5 right to present evidence should the Defense choose to do
6 that, and what we're going to do is I notice that we're about
7 ten minutes from noon, and if we started with the first
8 witness right now, we wouldn't get very far I don't think. So
9 we're going to go ahead and break for lunch at this point in
10 time. During your absence from the courthouse, you know my
11 instructions. Don't discuss the case with anyone, don't allow
12 anyone to discuss it with you. Don't listen to, watch or read
13 media reports. Don't try to gather information on your own,
14 and please report any contact that you might have with anyone
15 about the case upon your return to the courthouse. I would
16 ask that you be back in the jury room at 1:00 o'clock. We
17 should be able to start shortly thereafter. So hope you have
18 a good lunch and you're free to go. Everyone remained seated
19 while the jury retires.

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

22 THE COURT: All right. Court'll be in recess until 1:00
23 o'clock. Thank you very much.

24 MS. BAILEY: Thank you, Your Honor.

25 *****OFF THE RECORD*****

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

3 THE COURT: All right. The State ready to proceed?

4 MR. BARR: Yes, sir.

5 MS. BAILEY: Yes, Your Honor.

6 THE COURT: The Defense ready?

7 Yes, ma'am.

8 MS. BAILEY: I just wanted to, to note that in the
9 courtroom we have Ms. Jones, who was one of the witnesses
10 during the State's presentation. I think she's been released
11 from her subpoena, but she was on the Defense witness list,
12 and I just wanted to verify that he wasn't going to --

13 MR. BARR: I don't.

14 MS. BAILEY: -- call her.

15 THE COURT: You intend to call the witness?

16 MR. BARR: No, sir.

17 THE COURT: Okay. Very good.

18 MS. BAILEY: Thank you, Your Honor.

19 THE COURT: Bring the jury in.

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

22 THE COURT: All right. The record will reflect the jury
23 has returned to the courtroom. If any juror had any
24 difficulty in complying with my instructions during your
25 absence from the courthouse, please stand.

1 (No response.)

2 THE COURT: And it appears that all jurors have been able
3 to comply with the Court's instructions. At this time, the
4 Defense has the right to call witnesses. The Defendant may
5 call its first witness.

6 MR. BARR: Thank you, Your Honor. May it please the
7 Court, Judge. We call Mr. Daniel Robinson.

8 THE COURT: All right, sir. Daniel, last name, sir?

9 MR. BARR: Robinson.

10 THE COURT: Robinson. Could you step outside and call
11 Mr. Robinson for me? Thank you.

12 Sir, if you'll come forward to my left, this gentleman
13 over here will assist you.

14 THE CLERK: Sir, please state and spell your name for the
15 Court.

16 MR. ROBINSON: Daniel Robinson, D-A-N-I-E-L, R-O-B-I-N-S-
17 O-N.

18 THE CLERK: Thank you.

19 Whereupon, Daniel Robinson was called to the stand, duly
20 sworn by the clerk and testified as follows:

21 THE CLERK: Thank you. Please have a seat.

22 THE COURT: Mr. Barr, your witness.

23 MR. BARR: Thank you, Judge.

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

1 BY MR. BARR:
2 Q Mr. Robinson, how you today?
3 A How you doing?
4 Q Tell me if you would, where do you live?
5 A I stay at Orangeburg, 833 Adam Drive.
6 Q And how long have you lived in Orangeburg?
7 A All my life.
8 Q Are you employed?
9 A Yes.
10 Q Where do you work?
11 A I work at a car wash called C's Car Wash, and I also do
12 lawn service.
13 Q And how long have you worked at that car wash?
14 A Now about three years.
15 Q And you also do lawn service?
16 A Yes.
17 Q Is that your own business?
18 A No. It's a friend of mine's.
19 Q Now, you married, single, you have children?
20 A Single. Yeah. I have a daughter.
21 Q How old is your daughter?
22 A She'll be 21 in August.
23 Q Now, Mr. Robinson, do you know Terron Dizzley?
24 A Yes. I met him.
25 Q And when did you first meet him?

1 A Years ago.

2 Q How many years ago, 10, 20?

3 A At least now it's over 10, over 10 years.

4 Q Ten years ago?

5 A Yes.

6 Q Did you know Aundry Evans?

7 A Yes. I know him.

8 Q And when did you -- when -- how long have you known him?

9 A Not long, maybe a couple of months, wasn't long at all.

10 Q And where did you meet Aundry Evans?

11 A In Orangeburg, South Carolina.

12 Q Now, Mr., Mr. Robinson.

13 A Yes.

14 Q Let me take you back and I want -- I know it's -- I want

15 to take you back to, to December of, of, of 19 -- let's see,

16 December of 19 -- 2008.

17 A Yes, sir.

18 Q Specifically December 1st of 2008. Do you recall where

19 you were on December 1st of 2008?

20 A At my house all day.

21 Q And did you have an occasion to see Terron Dizzley that

22 day?

23 A Yes.

24 Q Now, how do you -- how, how is it that you can recollect

25 that you were at your house on that particular day and saw

1 Terron Dizzley?

2 A Oh, because that was the last time I saw him at the --
3 they were saying about an incident happening and that was
4 December 1st, yes.

5 Q All right. Now, what time did you meet him that day?

6 A He came by I think at least about 12, maybe 10 or 12,
7 between 10 and 12. He came to the house early that morning.
8 Then he came back again later on that night.

9 Q Now, he came by about 10 or 12 the morning of December?

10 A Between 10 and 12. It was in the morning the first time
11 he came by.

12 Q And do you recall what the purpose was that he came for?

13 A Oh, he came by just to talk like we always do, just talk
14 and conversate, politic about things, about the world, every
15 -- all that good stuff, you know.

16 Q Was he living in Orangeburg?

17 A No. Huh-uh.

18 Q Do you know where he was living?

19 A He was staying in the country.

20 Q Now, when you say the country, that's not in -- I'm not
21 -- that's not the City of Orangeburg, but he was staying out
22 in, out in the community somewhere?

23 A Yeah.

24 Q Now, you don't know the name of the little town or the
25 name of the town he was living in?

1 A No. Huh-uh.

2 Q But it's right on the -- is it near Orangeburg?

3 A Yeah. It's not too far away from it.

4 Q Now, if you would, please, you said he came by your house
5 about 12 o'clock that morning.

6 A Right.

7 Q And he came by later on. What time was it when he came
8 by the next time?

9 A About 8:45, 9:00 o'clock.

10 Q And that was on the -- that would have been the night
11 then of December 1st of 2008?

12 A Yes.

13 Q Now, when he came back, what did he come back for?

14 A Came back there because his brother came in town, and he,
15 before his brother was leaving, they was coming by to -- I
16 want to see his brother to talk, politic like we always do,
17 and he brought his brother back by the house and they was --

18 Q And which brother was that?

19 A Devaughn.

20 Q That, that was Devaughn?

21 A Yes.

22 Q So when he came back by your house, he brought Devaughn
23 With him?

24 A Yes, sir.

25 Q And what time you said that was?

- 1 A About 8:45, 9:00 o'clock.
- 2 Q And how long did he and Devaughn stay at your house?
- 3 A Oh, at least 30 minutes, 45 minutes.
- 4 Q And what did they do after that?
- 5 A They left.
- 6 Q Do you know where they were going?
- 7 A No. But they left, yeah.
- 8 Q Now, they left your house?
- 9 A Yes, sir.
- 10 Q So, do you have any idea about what time it would have
- 11 been when they left?
- 12 A At least about nine, between 9:30, 9:45.
- 13 Q And they left your house?
- 14 A Yes, sir.
- 15 Q Were they driving?
- 16 A Yes, sir.
- 17 Q Who was driving, Terron Dizzley or his brother?
- 18 A Terron.
- 19 Q And what was he driving?
- 20 A I don't recall. The van. I think it was the van.
- 21 Q Now, you don't know where they were going from your
- 22 house; do they?
- 23 A No, sir.
- 24 Q Or do you?
- 25 A No, sir.

1 Q Now, after you saw him at that time, did you see -- you
2 didn't see -- you didn't see him anymore that night?

3 A No, sir.

4 Q When did you next -- when did you see him the next time?

5 A When -- it was a while because he was incarcerated.

6 Q All right. But he left your house as, as you -- as best
7 you could recall --

8 A Yes.

9 Q -- that night and what time did you say it was?

10 A Between 9:30 and 9:45.

11 Q Between 9:30 and 9:45?

12 A Yeah. Somewhere up in there.

13 Q And you didn't see him anymore that night?

14 A No. I didn't.

15 Q And you didn't hear from him anymore that night?

16 A No. I didn't.

17 Q All right. Thank you, sir. I have no further questions.
18 Would you answer any questions that the Prosecutor might have
19 for you?

20 THE COURT: Ms. Bailey, your witness.

21 CROSS EXAMINATION

22 BY MS. BAILEY:

23 Q Mr. Robinson, were you convicted of a drug offense in
24 2005?

25 A Yes. I was.

1 Q Were you convicted of a drug offense out of Georgia in
2 2008?

3 A Yes.

4 Q Did -- you saw Terron Dizzley with his brother? Can you
5 give me his name again?

6 A Devaughn.

7 Q That was the evening of December 1st?

8 A Yes.

9 Q And you saw him with his -- did you see him with anybody
10 else that night?

11 A No. Just those two when they left my house.

12 Q And they left your house somewhere between 9:30 and 9:45?

13 A Yeah. Right before ten, yes. Between 9:30, 9:45.

14 Q I have no further questions.

15 THE COURT: Redirect?

16 MR. BARR: No, sir.

17 THE COURT: Sir, you may step down. Thank you very much.

18 A Okay.

19 THE COURT: You wish to excuse the witness?

20 MR. BARR: Yes, sir. He can be excused.

21 THE COURT: Any objections?

22 MS. BAILEY: No, Your Honor.

23 THE COURT: You're free to go, sir. Thank you.

24 You may call your next witness.

25 MR. BARR: The Defense calls Mr. Leon Devaughn Dizzley,

1 Jr.

2 THE COURT: Come forward, sir, to my left, and be sworn
3 where this gentleman is standing.

4 THE CLERK: Please state and spell your name for the
5 Court.

6 MR. DIZZLEY: Leon Dizzley, Jr., L-E-O-N, D-I-Z-Z-L-E-Y,
7 J-R.

8 THE CLERK: Thank you.

9 Whereupon, Leon Dizzley, Jr., was called to the stand,
10 duly sworn by the clerk and testified as follows:

11 THE CLERK: Thank you. Please have a seat.

12 MR. BARR: Now --

13 THE COURT: Mr. Barr, your witness.

14 MR. BARR: Thank you, sir.

15 DIRECT EXAMINATION

16 BY MR. BARR:

17 Q Mr. Dizzley, if you would, please, tell us where you
18 live.

19 A Charleston, South Carolina.

20 Q And how long have you lived in Charleston?

21 A Several years, over 10 years.

22 Q And do you work in Charleston?

23 A No. I go to school.

24 Q All right. What, what are you -- what kind of school are
25 you in?

1 A Adult education.

2 Q And if you would, please, do you know Terron Dizzley?

3 A Yes. I do.

4 Q Are you related to him?

5 A Yes. I am.

6 Q And what's the relationship?

7 A My brother.

8 Q Now, did you have an occasion to see Terron on the 1st of

9 December of 2008?

10 A Yes.

11 Q And where did you see him?

12 A Orangeburg, South Carolina.

13 Q And if you would, was there any particular occasion for

14 seeing him?

15 A What you say?

16 Q Was there any particular occasion for seeing him? You

17 lived in -- he lived in Orangeburg and you lived in

18 Charleston?

19 A Yes.

20 Q What was the occasion for you seeing him?

21 A Well, I always come to Orangeburg to visit my family, and

22 I always see my brother before I leave Orangeburg.

23 Q Now, do you have a recollection of having seen your

24 brother on December 1st of 2008?

25 A Yes.

1 Q And where did you see him?

2 A On Jamison Avenue in Orangeburg.

3 Q Now, and, and how -- what is it about your seeing him --
4 how is it that you remember that you saw him on December 1st of
5 2008?

6 A Because it was close to Christmas and I remember the day
7 that -- the next day that all this happened, and I remember I
8 was with him that night.

9 Q You were with him the night of December 1st of 2008?

10 A Correct.

11 Q And when did you get -- initially get with him?

12 A 8:30 that night.

13 Q And, and where, where did you -- where -- how did you --
14 how is it that you came in contact with him?

15 A I went to Jamison Avenue.

16 Q And who was living on Jamison Avenue?

17 A Stephon Jamison.

18 Q And your brother was at his house?

19 A Yes.

20 Q So you then got -- you got with him -- with your brother,
21 Terron Dizzley, at that time?

22 A Yes.

23 Q Were you driving or was he driving or who was driving?

24 A I was driving.

25 Q And what were you driving?

1 A I think it was a Lincoln Town Car.

2 Q Now, after you saw him, after you saw your brother, did
3 you and he have an occasion to visit somebody -- anybody?

4 A Yes.

5 Q Who did you visit?

6 A Daniel Robinson.

7 Q And how long did you stay at Daniel Robinson's?

8 A Thirty minutes, 45 minutes.

9 Q And when you left Daniel Robinson where did you go?

10 A Back to Jamison Avenue.

11 Q And you were still with Terron Dizzley?

12 A Yes.

13 Q Now, you didn't stay with your brother at night; did you?

14 A No.

15 Q What time did you leave out of your brother's presence
16 that night?

17 A 10:00 o'clock.

18 Q And when you left your brother where was he?

19 A Jamison Avenue.

20 Q And what was he doing on Jamison Avenue then?

21 A He went with his girlfriend, Laquesha Felder.

22 Q You don't know where they went; do you?

23 A No. I don't know where they went after that.

24 Q So when was the last time you saw Terron Dizzley on the
25 night of December 1st of 2008?

1 A It was 10:00 o'clock when I left Orangeburg.
2 Q And at the time that you left him he was with his
3 girlfriend?
4 A Yes.
5 Q Was he driving?
6 A I'm not sure if he was driving or not.
7 Q When you left Jamison Avenue, did you leave him there?
8 A Yes.
9 Q And you left him with who?
10 A Laquesha Felder.
11 Q So Laquesha Felder was on Jamison Avenue?
12 A Yes. She was.
13 Q Does she live on Jamison Avenue?
14 A Her grandmother lives on Jamison Avenue.
15 Q And you say it was about 10:00 o'clock when you left
16 Jamison Avenue?
17 A Yes.
18 Q Who else was there with Terron and Laquesha when you
19 left, if anybody?
20 A Stephon, some older people, their grandmother.
21 Q Laquesha and Stephon, are they related?
22 A His sister and her are best friends.
23 Q Now, would you answer any questions that you might have
24 for, for the Solicitor?
25 A Yes.

1 Q The Solicitor might have for you?

2 CROSS EXAMINATION

3 BY MS. BAILEY:

4 Q Mr. Dizzley, are you and your brother close?

5 A Yes.

6 Q Did you all grow up together in the same household?

7 A Not in the same household.

8 Q Did you grow up together knowing each other as brothers?

9 A Yes.

10 Q You love your brother; don't you?

11 A Yes.

12 Q 2005 you were convicted of a drug offense; isn't that
13 right?

14 A I'm not sure of the date, but I was before.

15 Q How long ago did you remember that you were with your
16 brother the night he was accused of murder?

17 A Excuse me?

18 Q How long ago did you remember that you were with your
19 brother the night that he was accused of murder?

20 A Ever since they said this incident happened.

21 Q In 2008?

22 A Yes.

23 Q You, you remembered in 2008 that you were with him the
24 night --

25 A The night.

1 Q -- that they were accusing him of doing this?

2 A Yes.

3 Q Did you ever contact law enforcement?

4 A No.

5 Q Did you contact law enforcement at all in calendar year
6 2008?

7 A No.

8 Q Regarding this incident?

9 A No.

10 Q Did you contact then at all in calendar year 2009?

11 A No.

12 Q 2010?

13 A No.

14 Q 2011?

15 A No.

16 Q Did you have reason to provide some sworn statements
17 regarding this in 2012?

18 A I think so.

19 Q Were you ever contacted by Steven Brown of the
20 Solicitor's Office?

21 A He tried to contact me, but I never spoke with him.

22 Q I have no further questions.

23 REDIRECT EXAMINATION

24 BY MR. BARR:

25 Q Mr., Mr., Mr. Dizzley, did anybody from the Solicitor's

1 Office or Williamsburg or the Georgetown County Sheriff's
2 Office come to your house and ask you whether you were with
3 your brother on the night of December 1st , 2008?

4 A No one ever, no one ever came to my house.

5 Q Now, do you have a recollection of giving a statement in
6 July -- in December -- in August of 2012 where you indicated
7 the very same thing that you've testified to in this courtroom
8 today?

9 MS. BAILEY: Objection, Your Honor. Prior consistent
10 statements are not admissible.

11 THE COURT: Sustained.

12 MR. BARR: Your Honor, I'll rephrase the question.

13 BY MR. BARR:

14 Q Did you give a statement under oath earlier in June -- in
15 August of 2012 that you were with your brother on the night of
16 2000 --

17 MS. BAILEY: Objection, Your Honor. Prior consistent
18 statements are not admissible.

19 THE COURT: Sustained.

20 Q Nobody came and contact you about your brother?

21 A No.

22 Q I have no further questions.

23 THE COURT: Anything further?

24 MS. BAILEY: Briefly, Your Honor.

25 RE CROSS EXAMINATION

1 BY MS. BAILEY:

2 Q You just testified that Steven Brown tried to contact
3 you.

4 A Yes. He called on the phone. He never came to my house.
5 He called my mother's phone.

6 Q Uh-huh. Did you call him back?

7 A I called him back to see what he want, but I never --

8 Q Did you speak with him?

9 A No. I didn't.

10 Q No further questions.

11 THE COURT: You may step down, sir. Wish to excuse the
12 witness?

13 MR. BARR: Yes, sir.

14 THE COURT: Any objections?

15 MS. BAILEY: No, Your Honor.

16 THE COURT: You're free to go, sir. Thank you.
17 The Defense may call its next witness.

18 MR. BARR: The Defense calls Ms. Laquesha Felder.

19 THE COURT: Ms. Felder, please.

20 Come forward, ma'am, to my left and be sworn.

21 THE CLERK: Will you please state your full name and
22 spell it for the Court?

23 MS. FELDER: Laquesha Felder, L-A-Q-U-E-S-H-A, F-E-L-D-E-
24 R.

25 THE CLERK: Thank you.

1 Whereupon, Laquesha Felder was called to the stand, duly
2 sworn by the clerk and testified as follows:

3 THE CLERK: Thank you. Please have a seat.

4 THE COURT: Your witness.

5 MR. BARR: Thank you, Judge.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. BARR:

9 Q Now, Ms. Felder, if you would, I'm going to ask you to
10 speak up so the ladies and gentlemen of this jury can hear
11 your testimony. You are Ms. Laquesha Felder?

12 A Yes. Laquesha.

13 Q And where do you live, Ms. Felder?

14 A Greeleyville.

15 Q And ---

16 A South Carolina.

17 Q And how long have you lived in Greeleyville?

18 A About one or two years.

19 Q And that's Greeleyville, South Carolina?

20 A Yes.

21 Q And who do you live with in Greeleyville?

22 A Terron Dizzley.

23 Q And who else?

24 A And my three kids.

25 Q You've got three children?

1 A Yes.

2 Q And I believe you've got a young child. The youngest
3 child is how old?

4 A She just turned one December 27th.

5 Q And that child belongs to you and Terron?

6 A Yes.

7 Q Now, you said you've lived in Greeleyville about three
8 years?

9 A One or two years.

10 Q What do you do in Greeleyville?

11 A Right now I work at Orangeburg at Husqvarna. We build
12 the decks for the lawn mowers, and I'm a certified CNA,
13 licensed CNA.

14 Q And prior to living in Greeleyville, where did you live?

15 A We stayed in Orangeburg.

16 Q And what address did you stay at at Orangeburg?

17 A It was so long ago. We stayed in a little town called
18 Bolen Town outside of Orangeburg close near to Norway.

19 Q Now, Ms., Ms. Felder, in, in -- let me direct your
20 attention to December, specifically December 1st of 2008, did
21 you have an occasion to see Terron on that date?

22 A Yes. I did.

23 Q And how is it that you can recall having seen him on that
24 day?

25 A Because we lived together.

1 Q You were living together at that time?

2 A Yes.

3 Q Now, specifically as it relates to December 1st of 2008,
4 was that around that time Terron got accused of committing a
5 crime?

6 A Yes.

7 Q Do you remember the circumstances surrounding that?

8 A They saying he killed Aundry.

9 Q Do you remember -- when did you find out that these
10 allegations had been made against him?

11 A Well, we got a phone call December 2nd saying that Aundry
12 got shot early that morning. Then his mom called us saying
13 that people was saying that he was a suspect in the murder.

14 Q Now, you got the call on December 2nd.

15 A Yes.

16 Q Where were you on December 1st up through December 2nd?

17 A Well, we got up that morning. We was home that morning.
18 We got up --

19 Q Now, you said we. Who is we?

20 A Me and Terron and my kids and we went to my best friend
21 house. She stay in Orangeburg. It's in Jamison, on Jamison
22 Avenue. So we was there. I sat there for a while. He was
23 waiting around on his brother Devaughn to come. So Devaughn,
24 him and my best friend little brother they went and got, got
25 us something to eat and they came back. Devaughn he came.

1 Later on that night they went around to Daniel Robinson house
2 for a while. Then they came back and then everybody left and
3 went their ways. We went home.

4 Q And that was on December 1st?

5 A Yes.

6 Q Now, when you -- did you and Terron stay at home that
7 night?

8 A Yes. We did.

9 Q Did Terron leave home at any time that, that night?

10 A No. He didn't.

11 Q He was with you the entire night?

12 A Yes. He was.

13 Q And are you sure about that?

14 A I'm very sure.

15 Q Thank you, ma'am. I have no further questions.

16 THE COURT: You may cross examine, Ms. Bailey.

17 CROSS EXAMINATION

18 BY MS. BAILEY:

19 Q Just to be clear, you and Terron were at your house all
20 night?

21 A We got home around like 10:30. Yes. We were.

22 Q How do you know it was 10:30?

23 A Because we left my best friend house at 10:00 o'clock.

24 Q How you know that?

25 A It doesn't --

1 Q How do you know you left right at 10:00 o'clock?

2 A Because that's the time Terron and Devaughn they came
3 back from Jay Love house about 9:30, 9:45 and they -- we just
4 sat there till like 10:00 o'clock. Devaughn left. We left.
5 By the time we got home, it only take us like 30, 35 minutes
6 to get there. So we got home about 10:30.

7 Q But you, you didn't look at the clock; did you?

8 A I always check the clock in the car.

9 Q Well, you're giving estimates. So you said 9:30, 9:45,
10 "We were there for a little while."

11 A I said they came back from Daniel Robinson house 9:30,
12 9:45.

13 Q So you're not sure whether it was 9:30 or 9:45 that they
14 came back from Daniel Robinson's house?

15 A I'm sure.

16 Q So was it 9:30 or was it 9:45?

17 A It was around that time, 9:30.

18 Q You love Mr. Dizzley; don't you?

19 A Yes.

20 Q He's the father of your children, some of them?

21 A Yes.

22 Q Were you aware that he was accused of murder in 2008?

23 A Yes. Because his mother told us about it.

24 Q Did you ever give a statement to law enforcement in 2008
25 regarding where -- his whereabouts that night?

1 A I spoke to a Mr. Brown.

2 Q What year did you speak with Mr. Brown?

3 A That was --

4 Q You spoke with Mr. Brown in 2012; isn't that correct?

5 A Yes.

6 Q Did you speak with law enforcement in 2008 regarding Mr.
7 Dizzley's whereabouts?

8 A No. I never spoke to anybody.

9 Q In the year 2009 did you speak with law enforcement
10 regarding Mr. Dizzley's whereabouts?

11 A No.

12 Q 2010?

13 A No.

14 Q 2011?

15 A No.

16 Q On November 29th, 2008, were you with Mr. Dizzley that
17 night?

18 A Yes. Because my daughter birthday is November 28th.

19 Q Were you with Mr. Dizzley all night on December -- on
20 November 29th, 2008?

21 A Not unless he's with some of his friends. I don't -- we
22 don't be together. If he's -- if I'm with my best friend and
23 he's with his friends, I don't be with him when he's around
24 his friends, but other than that, yes, we be together.

25 Q And when you say around his friends, you mean his friends

1 in Orangeburg?

2 A Yes.

3 Q So you recall speaking with Investigator Brown in 2012?

4 A Yes.

5 Q And that happened to be a telephone; is that correct?

6 A Yes. He left a card at my old address and then he went
7 by my best friend's grandmother's house and left the card with
8 her father, and he gave me the card.

9 MS. BAILEY: Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 BY MS. BAILEY:

12 Q When Investigator Steven Brown asked you where you were
13 on December 1st of 2012, isn't it true that you spoke to
14 someone else who was in the background and said, "What night?
15 Is that the night?"

16 A No.

17 Q You didn't say that?

18 A No.

19 Q So you deny that statement?

20 A Yes.

21 Q Where were you on September 1st of 2008?

22 A I don't remember. I can't tell you that.

23 Q Did you and Dizzley, Mr. Dizzley discuss your testimony
24 here today?

25 A No.

1 Q You all live together; right?

2 A Yes.

3 Q Sleep in the same bed every night together?

4 A Yes.

5 Q And you have provided testimony regarding this issue once
6 before; is that correct?

7 A Yes.

8 Q But -- and that was in 2012; is that right?

9 A Yes.

10 Q So you live together day in and day out?

11 A Day in and day out.

12 Q You all share meals?

13 A No. I eat my own food.

14 Q You live with this man day in and day out and share a bed
15 with him day in and day out; is that correct?

16 A Yes.

17 Q But you all have never discussed your testimony --

18 A No.

19 Q -- as it would be today?

20 A No.

21 MS. BAILEY: I have no further questions for this
22 witness.

23 THE COURT: Redirect?

24 MR. BARR: No, sir, Judge.

25 THE COURT: You may step down. Thank you, ma'am.

1 Do you wish to excuse the witness, Mr. Barr?

2 MR. BARR: Yes, sir.

3 THE COURT: Any objections?

4 MS. BAILEY: No, Your Honor.

5 THE COURT: You're free to go, ma'am. Thank you. You
6 may stay if you like.

7 You may call your next witness, Mr. Barr.

8 MR. BARR: The Defense, the Defense rests, Your Honor.

9 THE COURT: Ladies and gentlemen of the jury, the Defense
10 has rested. Does the State intend to call any witnesses in
11 reply?

12 MS. BAILEY: No, Your Honor.

13 THE COURT: All right. Ladies and gentlemen of the jury,
14 I'm going to ask that you step back to the jury room at this
15 point in time. There's some matters I'll need to take up with
16 the attorneys, and again, as always, I'm going to instruct you
17 not to begin any discussions about this matter till I've asked
18 you to begin your deliberations. You may retire to the jury
19 room.

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

22 THE COURT: I assume, Mr. Barr, that you'd like to renew
23 your previous motions in the case?

24 MR. BARR: Yes, sir. We, for the record, we would renew
25 our previous motion for a directed verdict.

1 THE COURT: All right. Motions are noted. The Court
2 considers the evidence and will make the same ruling, deny the
3 motion for directed verdict.

4 Now, do you wish to require the -- let's see, the
5 State'll be going second. Do you wish to require that they
6 open on the law?

7 MR. BARR: Not necessarily, Judge.

8 THE COURT: Okay. The State wish to open on the law?

9 MS. BAILEY: No, Your Honor.

10 THE COURT: All right. Then Defense will be going first
11 with closing argument followed by the State. We'll take about
12 a five, ten minute break, give you a chance to gather your
13 thoughts before we get to that stage of the trial. Before I
14 do that, are there any specifics requests for charge from the
15 State?

16 MS. BAILEY: Your Honor, the State would request the
17 charge from the bench book regarding hand of one hand of all.

18 THE COURT: Interesting request. Let me think about that
19 one just a little bit, and the Defense, any specific requests
20 for charge?

21 MR. BARR: Specifically criminal intent.

22 THE COURT: Yes, sir.

23 MR. BARR: Alibi.

24 THE COURT: Uh-huh.

25 MR. BARR: Your Honor, I know you'll be charging the

1 things like presumption, and, and, and Defendant not taking
2 the stand and all that. I know, you, you --

3 THE COURT: Yes, sir. I will, standard charges.

4 MR. BARR: And, and, and identification.

5 THE COURT: Okay, sir. I'll, I'll -- I agree that's an
6 issue in the case.

7 MR. BARR: All right, sir.

8 THE COURT: I will charge that. Hand of one, hand of all
9 is an interesting request. Can you tell me what you base that
10 on?

11 MS. BAILEY: Yes, Your Honor. There's evidence in the
12 record to which the jury could infer that there was rifle
13 fire, and I am certain that Mr. Barr in his closing is going
14 to argue something to do with the rifle fire that may or may
15 not have happened during the incident. There's also evidence
16 in the record to suggest, not just to suggest, there is
17 evidence in the record that all of the assailants who came to
18 the bar that night who were masked arrived in one vehicle,
19 that they left in one vehicle, that one of those assailants
20 who we have evidence is Terron Dizzley went inside the club
21 and fired a handgun. Mr. Barr's theory of the case seems to
22 be that there may have been somebody else that came in the
23 vehicle that was firing rifle fire. At various points in this
24 trial he has tried to attribute that rifle fire to the death
25 of Mr. Evans. Well, I don't think the evidence supports that.

1 I think that a hand of one, hand of all charge is appropriate
2 because even if that rifle fire did have some contributing
3 factor to Mr. Evans' death, if we're able to identify Mr.
4 Dizzley as the one who actually entered the club and there is
5 evidence that all of the assailants arrived together and left
6 together, then we could argue under hand of one hand of all
7 that any fire from anybody in that group can be attributed to
8 the guilt of Mr. Dizzley so long as we can prove his ID.

9 THE COURT: Mr. Barr, do you wish to be heard on that?

10 MR. BARR: Judge, that's an interesting theory. Of
11 course, I don't -- ordinarily, I would not object to it, but
12 to the extent that it might create some confusion for the
13 jury, I don't think that there's anything in the record to
14 support a charge such as the hands of one is the hands of all.
15 As it relates to the death itself, I think the pathologist has
16 testified conclusively regarding the cause of death, and, and
17 certainly, I don't think that there's anything to suggest
18 that, that that was caused by a high-powered rifle. Moreover,
19 if -- in order to charge the hands of one is the hands of all,
20 I think you'd have to, to at least show some aiding and
21 abetting in the commission of the offense, and of course, I
22 don't know that there other -- that there's any testimony that
23 indicates that there was any aiding or abetting, there was
24 from, from what I understand that there was a number of people
25 outside.

1 THE COURT: Well, there was, there was testimony, Mr.
2 Barr, from the perspective that one car was driven, one car
3 got away. There was testimony that someone with a long gun
4 held someone at gunpoint in the parking lot while it occurred.
5 So there was, there was some evidence of that.

6 MR. BARR: I withdraw my objection to the charge.

7 THE COURT: Okay, sir. Thank you.

8 All right. I'll -- give me a moment. I'm going to step
9 down. We'll take about five to 10 minutes.

10 ***** OFF THE RECORD *****

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

13 THE COURT: The State ready to proceed?

14 MS. BAILEY: Yes, Your Honor.

15 THE COURT: The Defense ready?

16 MR. BARR: The Defense is ready, Judge.

17 THE COURT: Let's bring the jury in.

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

20 THE COURT: All right. The record will reflect the jury
21 has returned to the courtroom. We have completed the
22 presentation of evidence in this case, and I told you at the
23 beginning of the trial that upon completion of the
24 presentation of that evidence, the lawyers would be, again,
25 given an opportunity to directly address you in their closing

1 arguments or summation. In this case the Defense will be
2 going first, followed by the State. Mr. Barr, you may
3 proceed.

4 MR. BARR: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 MR. BARR: May it please the Court, ladies and gentlemen.
7 First of all, let me again reiterate my thanks on behalf of
8 the criminal justice system, on behalf of my client for your
9 participation in this trial. We realize that it has been with
10 some degree of sacrifice that you've had to make in order to
11 be here, and we thank you for that.

12 I want to tell you about just a couple of things
13 initially that I think that with respect to advocates, that is
14 myself as well as my colleague who have various jobs to do,
15 and of course, in this situation we have different jobs to do,
16 but we are advocates for our respective clients, and, and, and
17 certainly His Honor will instruct you that what we say to you
18 at this time is not evidence. We're arguing this part of the
19 trial we regard as the part where we try to persuade you to
20 take some particular view of the evidence.

21 Now, let me just say that under our system I will not get
22 the opportunity to speak to you again. There are a lot of
23 lawyers, a lot of Defense lawyers such as myself believe that
24 it's an advantage to get to talk to the jury the last time,
25 but under our system, I will not get another opportunity to

1 speak with you. In other words, after I do my closing
2 argument then the State will come and present a closing
3 argument, and I will not get another opportunity to speak with
4 you. So I certainly -- I know that there'll be some things
5 that, that I will have forgotten, some things that I won't
6 mention to you, but now, let me tell you something, I've
7 watched you during the course of this trial, and, and you've
8 paid very close attention to the trial, and you've paid very
9 close attention to the evidence. So there's no doubt in my
10 mind that with respect to those things that, that you'll need
11 to equip you with what you need to be able to decide the facts
12 in this case and ultimately decide what the verdict should be,
13 I'm convinced that you've now been aided with those things.

14 Now, His Honor will instruct you that as jurors, of
15 course, as it relates to the law, and I don't want to do a
16 whole lot of talking about the law, but I do want to talk
17 about something that's -- we started with initially, and
18 that's the presumption of innocence. Any time, and His Honor
19 is going to reiterate and charge you this, any time a person
20 is charged with a criminal offense in South Carolina, as in
21 most other states, the law says that person is presumed
22 innocent. His Honor will instruct you that that presumption
23 of innocence starts from the beginning of the trial. It
24 continues throughout the trial, and continues even until you
25 get in your jury room up until and not until and unless you're

1 convinced beyond a reasonable doubt that the Prosecution has
2 met their burden of proof and that you come back with a
3 unanimous verdict, that is you all must agree that the
4 Prosecution has met that burden of proof.

5 Now, the presumption of innocence is not just a
6 procedural right. As I said, His Honor will instruct you that
7 it is a substantive right that any person charged with a
8 criminal act, that is commission of a criminal offense, is
9 entitled to, and that presumption of innocence remains with
10 him throughout the course of the trial.

11 Now, with respect to the evidence in this case, there's
12 no question that we all understand that the State has alleged
13 that Terron Dizzley committed the offense of murder on
14 December 1st of 2008, the unlawful killing of a person with
15 malice aforethought. That's essentially the definition of
16 murder.

17 How do you prove it? Well, in this case the Prosecution
18 has presented documentary evidence, demonstrative evidence.
19 They've presented testimony from this witness stand, and I'm
20 going to start with, with the demonstrative evidence. Ladies
21 and gentlemen, I think when you go to your jury room and, and
22 you take a look at all of the pictures and everything that's
23 been presented, even the shell casings, the bullets, all of
24 that evidence, I think you'll probably find that from the
25 standpoint of intrinsic evidentiary value those things

1 probably won't be of a whole lot of assistance to you in this
2 case.

3 Now, I know that we've spent a lot of time with it, but
4 I'm simply suggesting to you that with respect to the guilt or
5 innocence of Terron Dizzley I just don't know that that
6 evidence will carry a whole lot of weight. You might say,
7 "Well, then let's consider the testimonial evidence."

8 His Honor will instruct you that with respect to
9 testimony, when a person takes the witness stand, they place
10 into issue their credibility, that is their believability, and
11 ladies and gentlemen, you've lived a long time. How do you
12 determine whether or not a person's credible? Do you look at
13 their demeanor? Do you look at their appearance on the
14 witness stand, their ability to recall things, the opportunity
15 that they have to observe things that they claim that they
16 saw, how well they can see, how well they can hear, because,
17 see, in this case that the one witness, the one witness that's
18 got Terron Dizzley sitting where he's sitting today didn't
19 even show up for court, and he couldn't show up for court
20 because he's deceased.

21 Now, if you remember with respect to Terron Dizzley and
22 this business of Little D, this whole thing got started
23 because there were some allegations made by several people,
24 starting with one of Aundry's friends called Mo. He claimed
25 that, "Well, Aundry made a statement to me and he said that

1 Little D shot him." There was some discussion concerning his
2 ability to make that identification based on his voice.

3 Now, what you've heard in this courtroom has been very
4 limited evidence concerning what the shooter supposedly said
5 to Aundry when he came into court -- when he came in, into the
6 club. Moreover, the testimony reveals that at the time that
7 the statements were supposedly made the man's mouth was
8 covered. Now, when I cover my mouth, and I do it that way,
9 I'm sure that you could hear that there is a difference in my
10 voice, but yet now and understand it would be nice if we were
11 able to cross examine the Defendant [sic] regarding how he was
12 able to make that identification or whether or not he did, in
13 fact, made the identification because, see, I've got some
14 problems, first of all, with whether or not that statement was
15 actually made.

16 Now, if you remember, the Prosecution's theory is somehow
17 Terron Dizzley and Aundry got into some kind of dispute about
18 the club, and they would have you believe that there lies the
19 motive for killing somebody.

20 Now, according to Ms. Alston's own testimony, and I asked
21 her specifically, "Have you ever heard Aundry and Terron
22 arguing about the club?" She said, "No." Moreover, she said
23 she was the owner of the club. Now, the thing that I find
24 rather remarkable is that it seems that the alleged statements
25 were never made to anybody except or claimed to be made except

1 to Aundry's friends. Now, if you remember, Officer Nelson
2 testified, he said -- look, keeping in mind that you didn't
3 hear any police officers testify even the first person that
4 arrived on the scene, and we asked it, "Did you hear or did --
5 well, did you get any statements from the decedent before he
6 died?" Not one word. Officer Nelson went to Georgetown
7 Memorial Hospital, and he spoke with Aundry. He spoke with
8 Aundry Evans, and he specifically asked him, "Who shot you?
9 Who shot you?" He said he asked him more than one time, and
10 Aundry appeared lucid to him. He did not get an answer. He
11 did not get Little D. He did not get Diz. He didn't get
12 anybody.

13 The father went in and talked to him before Officer
14 Nelson. Officer Nelson even went and asked the father, "Did
15 he tell you?" "No."

16 Now, it strikes me as rather odd if somebody is shot by
17 somebody and get off and take off and go, the first blue
18 uniform or green uniform that you see it would seem to me that
19 you'd take the opportunity to at least say, "Look, this is the
20 man that did it," to somebody that can do something about it,
21 but not one word.

22 Maurice Giles, he was on the witness stand, Lord knows,
23 he gave so many statements. There was one statement he said
24 -- in his first statements, and, and, and I'll get -- the
25 Prosecutor said, "Well, in terms of witness preparation and

1 sometime you forget details or little details." My Lord, how
2 can you forget a detail such as that? The problem is he was
3 over-prepped, and he just forgot what to say.

4 Now, ladies and gentlemen, as I indicated, His Honor will
5 instruct you that credibility of witness, that is the
6 believability of a witness, you can believe all of what a
7 witness say, none of what a witness say. You can give it
8 whatever weight, ladies and gentlemen, you decide to give that
9 testimony by a witness, but you have to use your own good
10 judgment. This business about Terron Dizzley murdering Aundry
11 Evans started with something that supposedly some of his
12 friends said that they heard him say, something that's
13 uncorroborated by any police officer who had all the
14 opportunity and who actually talked with him, and yet they
15 never got that information.

16 You know, it's amazing, and Investigator Brown got on the
17 witness stand when, when, when, when, when this gentleman T.I.
18 he was on the witness stand, and of course, he, he said,
19 "Well, the first thing," and you know what got me? I didn't
20 expect him to say that. He, he said, "Well, I, I smoke weed."
21 My Lord, but guess what, he -- and at the same time he -- but
22 he said -- the first thing he said was a tall man jumped out
23 of the car and went inside, a tall man, not a little short
24 fellow like Terron Dizzley, but he said a tall man, and then
25 Officer Brown tried to tie him down on whether or not he was

1 five six, five seven or whatever. He said, "A man a little
2 bit shorter than me, and I'm six one, and I've got it on my
3 driver's license." Ladies and gentlemen, that's too tall for
4 Terron Dizzley. Moreover, now, if you remember when Wesley
5 Gibson was on the witness stand, I asked him to look back
6 there at Mr. Aundry Evans, Sr., and I did that for a reason,
7 because Aundry Evans, Jr., was his friend. I wanted him to
8 look at Aundry's father and tell the truth. Do you remember
9 what he said? "The man that I saw that came into the club
10 that did the shooting was too short to be Terron Dizzley
11 because he would have had to get up over the bar, and Terron
12 Dizzley ain't tall enough." Moreover he said and he
13 demonstrated right here from this witness stand the man that
14 did the shooting had a limp, had a limp.

15 Now, you know, I understand how many times we get caught
16 up in things. Sometimes instead of looking for truth and
17 looking for justice, especially when it comes to a situation
18 dealing with death, we look for revenge. We look for revenge.
19 Sometimes we lose sight of what this system is based on when
20 the system, this very -- the thing that undergirds this system
21 that says, "Well, look, we rather a guilty man go free than an
22 innocent man to go to jail." Do you realize that the
23 presumption of evidence, proof beyond a reasonable doubt, that
24 the fact that a Defendant has not cut -- he doesn't have to
25 come to court and prove anything it's underlined and based on

1 that premises, proof beyond a -- and His Honor is going to
2 instruct, instruct you on what a reasonable doubt is, the kind
3 of doubt that would cause a person to hesitate to act. His
4 Honor will instruct you, I believe, and listen to me, I'm not
5 going to get a chance to speak to you again. So I'm not going
6 to get a chance to rebut what the Prosecutor tells you, but
7 now, she can't change the fact, she can't change nothing
8 that's happened, can't change one thing. The mule is out of
9 the stable and gone down the road, too late for that.

10 His Honor will instruct you, and at the end of the day,
11 unless you are firmly convinced that the Prosecution has met
12 its burden of proof in proving the Defendant guilty beyond a
13 reasonable doubt, in other words, if you're not firmly
14 convinced, if you're left with a real possibility, a real
15 possibility that the Prosecution hasn't met their burden of
16 proof, because, see, we're not -- if you remember at the
17 beginning of this case, I said, "Look, there's some things
18 sometimes we don't ever know the answer to." You will never
19 know in all likelihood who shot Aundry Evans, Jr. That
20 responsible person just ain't gonna' come and admit that.
21 Life is just not that way, but thank God, we have a system of
22 justice whereby to the extent that we can achieve the truth
23 and achieve justice we've got a jury system, but that jury
24 system doesn't say that you have to be able to guess who done
25 it, what it says, and we have a procedure and a system and

1 here what we'll do. It's an adversarial proceeding. We'll
2 present evidence, and you determine whether or not the
3 Prosecution has met that burden of proof that's necessary for
4 you to find somebody guilty, and in this case guilty of
5 murder.

6 I cannot, and, and I have nothing against Officer Morris.
7 I think he's been a little bit disingenuous to tell the truth,
8 and you can ask yourself because you're all grown people in
9 terms of the way that this investigation went. I thought he
10 was little bit reserved when it came to telling us the truth
11 about what could have been done because, see, ladies and
12 gentlemen, from the evidence we can see that a group of
13 fellows, well organized, well organized, went out to this club
14 and they shot the place up. Now, they didn't shoot it up for
15 no little rented night club or something that the Prosecution
16 would have you believe that Aundry Evans was trying to get his
17 TV out and he came back later on in a fit of revenge and
18 killed the man.

19 Now, of course, I do remember when Ms. Alston was on the
20 witness stand, and I asked her, I said, "Do you remember on
21 December and August of 2012 when you told me that Aundry was a
22 hustler," and we got an objection, and the objection came, I'm
23 sure, probably because the Prosecution didn't know what
24 questions I'd be asking next, but now, that's what she said.
25 Now, I don't know what was going on at the club, but let me

1 tell you something, four or five or three or four, whatever
2 the number might be, masked people armed with automatic
3 weapons, we know what that sounds like, and, and, and for the
4 life of me to suggest when the officer specifically said, I
5 said, "Officer, this hole in Mr. Mack's car, because see, was
6 going to look to me to -- this was done by a shotgun blast."
7 I said, "In all likelihood, would you agree that it was
8 probably by a high-powered rifle?" He said, "Yes." Now, if
9 he didn't say that, you recall it as you recall it.

10 Now, Officer Morris would have us believe that somehow
11 the high-powered rifle just disappeared and nobody had a high-
12 powered rifle. He said, "Well, we couldn't even tell, we
13 couldn't even tell whether or not the shot in the door was
14 done sometime earlier or was done that night." Well, they
15 should have been able to tell. All they had to do was call
16 somebody down there that owned the place, said, "Look, was
17 this here all the time?" "Well, no, it wasn't there all the
18 time. One of them -- some of them shot a hole in the, in the,
19 in the place." Now, I tell you what, when you asked Mr. Mack,
20 he made no bones about it, said, "Look, my car wasn't like
21 this when I took it there." I looked at the tire. The man
22 done drove the tire all the way down to the rim getting out of
23 there, and make no mistake about it, these guys ran. We call
24 it ducking, but that's what they did. When Aundry Evans was
25 shot, most of them was hiding someplace or under the pool

1 table. They didn't know what transpired between the shooter
2 and Aundry, could have been hiding, trying to get away, and I
3 don't, I don't necessarily blame them, but what I do and what
4 I do have a problem with and what I do know as it relates to
5 reasonable doubt, reasonable doubt is when, look, five or four
6 guys get together, somehow, get a car, get high-powered
7 weapons, come down here and shoot the place up, and we believe
8 one of them is Aundry Evans, my Lord, or Aundry -- Terron
9 Dizzley, go to Terron Dizzley's home. Police officers do that
10 all the time. They get out and investigate.

11 I couldn't believe -- I listened at these witnesses,
12 especially alibi witnesses. The Prosecutor said, "Well, look,
13 did you contact us in 2009? Did you contact us in 2010?" No.
14 They're under no obligation to contact. The investigator is
15 supposed to go out and that's what they get paid for to
16 investigate because they have to prove a case. His Honor will
17 instruct you that when a person raises the defense of alibi
18 they don't have to prove it. The burden of proof doesn't
19 shift. The burden of proof is on the Prosecution to prove
20 that the man was here on December 1st of 2008 and to prove that
21 he shot and killed somebody. The fact that he raised an
22 alibi, that doesn't mean that he has to prove his alibi. The
23 burden of proof never shifts. Now, tell me what is wrong with
24 going to Orangeburg, and the thing that gets me is rather than
25 admit that, "Look, I could have done something. I could have

1 checked out the alibis and made sure because there's no
2 question about it."

3 Now, if you remember when it first got started, I asked
4 Officer Morris. I said, "Look, you don't deny that at least
5 as of August of 2012 you knew of several people who had given
6 sworn statements regarding Aundry or regarding Terron Dizzley
7 being in Orangeburg at the thing -- time this thing happened.
8 You knew that," and initially he tried to resist it, but after
9 a little he finally admitted that he knew it. He knew we were
10 going to have a trial this week. He knew the State of South
11 Carolina is responsible for prosecuting people and providing
12 proof, proof beyond a reasonable doubt. It would seem to me
13 that in a case as serious as a murder case the least you could
14 do is go to Orangeburg, take a group of deputies. You don't
15 even have to take a group of deputies. Get the, get the
16 deputies in Orangeburg to put their head to the ground. They
17 do it every day. I'd find out every place Terron Dizzley has
18 been from every drink of water that he's got from then until
19 -- somebody would tell me about it, and because, see, somebody
20 would know. Somebody -- they got gas somewhere. They got
21 food to eat. You ought to be able to corroborate, but it
22 wasn't done. It wasn't done. It was not done. How do you
23 argue that not to do anything does not manufacture a situation
24 that creates doubt? How do you take hearsay, go off on
25 hearsay and say, "Look, the witness's statement indicated

1 this. Therefore, I never investigated the possibility of
2 this," when you still got three or four bandits out there
3 getting ready to shoot at somebody else probably, and they
4 still ain't got them. Well, they still out there, and they,
5 and they committed a crime. I don't know who they were, but
6 somebody should be able to find out. Aundry or Terron Dizzley
7 should not have to pay for what was not done in this case
8 that, clearly, if it had been done it would eliminate all
9 issues regarding whether or not he was in Orangeburg when this
10 incident happened. You just cannot tell me after 35 years of
11 doing -- this -- it's just too easy. I know that. It could
12 have been done, and if it had been done, that issue would have
13 been settled. It would have been settled.

14 Now, ladies and gentlemen, when, when you go to your jury
15 room and you start deliberating and start exchanging ideas,
16 exchanging views, I know that some of you may think about
17 things that you heard in this case that were impressive with
18 you and you'll share those things perhaps with some of your
19 fellow jurors, but please, Madam, please, Sir, keep in mind
20 the justice of this system is founded on principles which
21 require that we look into our hearts and do things sometimes
22 that we may not want to do, but they require us to make
23 decisions, even sometimes regarding things that other people
24 say to us. When I say what other people say to us, I'm
25 talking about the law that His Honor gives to you because His

1 Honor's going and I know he's going to tell you about the
2 Defendant's presumption of innocence. He's going to tell you
3 about guilt beyond a reasonable doubt. He's going to tell you
4 that identification is an element of the crime that the
5 Defendant is charged with in this case, and he's going to tell
6 you that that standard of proof, beyond a reasonable doubt,
7 applies equally to the standard of identification or to the
8 issue of identification as it does to everything else in this
9 case. In other words, the Prosecution has to prove to you
10 beyond a reasonable doubt that the man that went in and shot
11 Aundry Evans was Terron Dizzley, too short. Everybody agrees
12 that everything happened so fast. The man was in and out.

13 Now, I just -- his face was covered, and I can't remember
14 the gentleman's name that testified when, when I, when I asked
15 Terron Dizzley to stand up because he even got the man's
16 color, his complexion. He said, "Well, I couldn't tell, I
17 couldn't tell where the gun stopped and where his hands
18 stopped." Well, the gun was, was, was, was -- said it was a
19 black gun, "But I couldn't tell where his hand stopped and
20 where the gun stopped." I'd already asked him about the
21 gloves. Now, see, it stands to reason that as organized as
22 these fellows were there was testimony that all the others had
23 gloves on. He probably had on gloves, too. I can't imagine
24 the shooter not having on the gloves. He had on a mask. He
25 had something else tied up so you couldn't see him. Why would

1 he not have on gloves, too?

2 Ladies and gentlemen, I'm going to, I'm going to sit
3 down, and I want to leave you with this one thought. Revenge
4 sometimes, especially when it comes to family members, is easy
5 to reach out and grasp it, and I can see some family in this
6 situation who feels that they've got enough on Terron Dizzley
7 to believe that he ought to pay for this, but sometimes that's
8 not the way.

9 I'm going to share something personal with you then I'm
10 going to sit down. I knew a young man over 55 years ago that,
11 in fact, I knew him before I knew my mother, and his health
12 got bad and his health got bad and he got sick, and he got to
13 a point where his kidney functions, he lost functions of his
14 kidneys. He had to go on dialysis, and one day in a dialysis
15 center he was not being supervised properly, and he had a
16 heart attack, and they would -- by the time they got him to
17 the hospital, it was too late. I had an autopsy done, and I
18 know I can prove that had they not and had they been giving
19 the procedure their attention, he probably would have, would
20 have survived. Somebody came, said, "Look, what, what are you
21 going -- are you going to sue or whatever?" I said, "No. I'm
22 not going to do that." All the money and all the suing in the
23 world could not bring back my brother. I loved him with
24 everything in me. I don't want to even talk about nobody no
25 suing. We went to high school together. We were roommates in

1 college. We were roommates in law school, and he was my law
2 partner for over 30 years.

3 Now, why did I tell you that? As I indicated earlier,
4 it's easy sometimes to reach out and grasp the concept and the
5 idea of revenge. That's not what this system is based on.
6 This system is based on justice. It's based on truth, and the
7 truth of the matter is the proof in this case that His Honor
8 talked about earlier that is that the burden of proof is on
9 the Prosecution to prove the Defendant's guilt beyond a
10 reasonable doubt. In this case, that just has not been done,
11 and in spite of what the Prosecutor comes and tells you, I
12 want you to show her all the respect that she's entitled to.
13 I do that, but don't be persuaded because that doesn't change
14 anything. The truth of it is, when you apply the standard
15 that His Honor will lay down, it just doesn't meet that
16 standard, and we ask that you come back with a verdict in this
17 case based on the law and the evidence in this case, the lack
18 of evidence, and find the Defendant not guilty. Thank you.

19 THE COURT: Ms. Bailey, you may proceed for the State.

20 MS. BAILEY: Before I begin may I take a five-minute
21 break?

22 THE COURT: Yes. Ladies and gentlemen of the jury, we'll
23 ask you to step back to the jury room for just about five
24 minutes, and as always, I'll ask you not to begin any
25 discussions until I ask you to do so. You may retire to the

1 jury room.

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

4 THE COURT: The Court's in recess. I'll stay on the
5 bench.

6 MS. BAILEY: Thank you, Your Honor.

7 THE COURT: Let me know when you're ready.

8 ***** OFF THE RECORD *****

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

11 THE COURT: All right. Let's come to order, please.
12 Tell him I'm ready for the jury. Thank you. We're ready for
13 the jury, Mr. Bailiff.

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

16 THE COURT: All right. The record will reflect the jury
17 has returned to the courtroom. You may proceed, Ms. Bailey.

18 MS. BAILEY: Thank you, Your Honor. May it please the
19 Court?

20 THE COURT: Yes, ma'am.

21 MS. BAILEY: "I can't believe he did it. Little D shot
22 me." I hope that as you've listened to all the evidence in
23 this case those words have continued to ring with you.

24 Mr. Barr is right about one thing, this is not about
25 revenge. Mr. Barr gave a very powerful presentation. This

1 isn't about emotion. This isn't about revenge. This is about
2 justice. This is about justice for Aundry Evans, Jr.

3 Now, in the State of South Carolina, like in all common
4 law places here in, everywhere here in the United States, and
5 we've brought this all the way from England, Prosecutors such
6 as myself, I don't represent the Evans family. I don't
7 represent a victim. My client is the State of South Carolina.
8 That's how all criminal prosecutions work, and there's a
9 reason for that, because I'm not here seeking revenge. I'm
10 here seeking justice.

11 I have selected each and every one of you to sit on this
12 jury for this trial. I have done that because I believe each
13 of you has the common sense and the reason necessary to return
14 a true and a just verdict in this case.

15 Even in this day and age, not everything ends up on
16 video. You may feel like there's cameras everywhere, but
17 there's not. This murder happened in 2008 at a club on a
18 rural road. There's no closed-circuit television. There's no
19 cameras. People don't always leave behind DNA. They don't
20 always leave behind fingerprints. It's not like you see on
21 TV. There's no CSI. There's no criminal profiler. That's
22 just not the way it happens in the real world, but we can
23 still know what happened. If you're cooking dinner in the
24 kitchen, chopping up your onions, you hear your children
25 fighting over the TV in the next room. At some point, you've

1 got to put down the knife, you've got to wash your hands,
2 you've got to walk in there and you've got to deal with it,
3 and when you get in there and you get into the next room, you
4 talk to each of your children, you look around the room, you
5 see what everything looks like, and you make a decision, and
6 whoever's fault you decide it is, you punish them. You might
7 put them in time out. You might swipe them on the bottom,
8 whatever your punishment is, you punish your child. You
9 didn't see it on TV. You didn't take a DNA swab. You don't
10 have any fingerprints, but you use your reason and you use
11 your common sense to determine what happened, who's at fault
12 and what's the appropriate punishment. It is that same
13 instinct and that same common sense I want each of you to
14 review this evidence with.

15 Now, what is the evidence? Mr. Barr would have you
16 believe there's not much. I called every person that was
17 there that night, the good, the bad and the ugly. I wanted
18 each and every, every one of you to know what each and every
19 person who may have witnessed anything having to do with this
20 saw. Some of them saw a lot. Some of them can't remember.
21 Some of them aren't telling the truth. Clearly, I didn't tell
22 them what to say or they would have done better.

23 Now, to start with, you heard from folks who were aware
24 of the relationship between Aundry Evans, Jr., and Terron
25 Dizzley. See, Mr. Barr would have you believe we just plucked

1 Mr. Dizzley out of thin air and decided to pin this crime on
2 him for no good reason, but that's not the way it happened.
3 You heard from Naomi Alston. Naomi Alston told you that on
4 the Saturday before the murder, the murder happened on
5 December 1st, which is a Monday. Saturday evening, November
6 29th, she was at the Paradise Club. Aundry had asked her to go
7 there and open up the club. She's there for a little while
8 when somebody she knows as D or Diz or Dizzley shows up. She
9 even tries to tell the 911 operator that she calls his full
10 name, but she gets it a little bit wrong. She says, Dibbly or
11 Dudley, but it's clear she's trying to say Terron Dizzley,
12 Diz, Little D, D. She says, "He's here and he will not
13 leave." You heard that 911 call.

14 You also heard her testimony that as she is sitting there
15 in the rain in her car with the window cracked that Mr.
16 Dizzley, we know exactly who did this, Mr. Dizzley yelled
17 through to try to get to her boyfriend on the other end of the
18 phone and said, and excuse my language, it's a direct quote,
19 "Tell your pussy ass boyfriend to get down here and deal with
20 me himself." That wasn't some mysterious person named D.
21 That was Mr. Dizzley who said that, said it to the victim two
22 days before the murder on November 29th.

23 We learned from Marvin Riley, who didn't know a whole lot
24 about this. He's from Orangeburg. He's a DJ. He's not
25 friends with Mr. Dizzley. He's not friends with Mr. Evans.

1 He just happened to DJ a party that Mr. Dizzley threw at Mr.
2 Evans' club. Mr. Riley, Marvin Riley from Orangeburg, only
3 knows a little bit about this, but what he does know is that
4 even from Mr. Dizzley's own mouth Mr. Dizzley was excluded
5 from the club on November 29th and that he had an altercation
6 with Naomi Alston and that she called the police, and we know
7 from Aundry Evans' girlfriend, Toni, Jerliether, she goes --
8 her nickname is Toni. She said she heard Mr. Dizzley on
9 speaker phone with her boyfriend, and that they were arguing
10 and cursing at each other, something, she didn't know exactly
11 what they were arguing about, but they were not happy with
12 each other. Specifically, she heard Mr. Dizzley arguing and
13 fussing through that phone at her boyfriend in the days
14 leading up to the murder. She even told you that Mr. Evans
15 decided to come spend a couple of days with her and lay low,
16 that he spent the whole weekend with her to lay low because he
17 didn't want to go up to the club. He didn't want to deal with
18 the situation having to do with Mr. Dizzley. The day he came
19 out of hiding, the day, the first time he came out of hiding
20 at his girlfriend's house is when he was murdered.

21 As to that evening, you've heard from a lot of witnesses.
22 It's a lot to sort through. Some of them are different as to
23 some little details, but they're the same on a lot of stuff.
24 It was a long time ago. Everybody is standing in a different
25 place in the club. Everybody had a different reaction. Some

1 folks immediately went to Aundry's aid. Some folks hid, came
2 out when the shooting was over. Some folks ran out the club,
3 never came back. Everybody had a different reaction. So as a
4 result, everybody had a little bit different perspective, but
5 what are they consistent on? Ladies and gentlemen, what they
6 are consistent on, I would submit to you, are the things we do
7 know for sure. They are consistent on the fact that they're
8 all there watching Monday night football at a sports bar.
9 They are consistent on the fact that at some point in the
10 evening after eating chicken wings and oysters somebody busts
11 through the door of that club in a mask with a handgun.
12 They're all consistent, that one person came inside that club,
13 masked up and with a small gun. They're consistent that the
14 person who busts through the door all masked up with a small
15 gun went straight to Aundry Evans, Jr. They are consistent
16 that the person with the mask, with the small gun who went
17 straight to Aundry Evans, Jr., made a statement. The
18 statement may have been, "I told you this wasn't over." It
19 may have been, "This isn't a game. It's not over yet."
20 They're a little different on exactly what that statement was
21 because it's from 2008, but they're all consistent that the
22 person who came in the club and went straight for Aundry
23 Evans, Jr., spoke some words and told Mr. Evans, Jr., exactly
24 why he was there.

25 They are consistent that the person who came in that club

1 went straight to Aundry Evans, Jr., and made that statement,
2 then pulled the trigger more than one time. Some people say
3 three. Some people say five. Some people say, "I have no
4 idea. I was hiding, more than once." They are consistent
5 that the person then ran out of the club, maybe shot off one
6 or two more shots, and then ran out of the club. They are
7 consistent that Mr. Evans, Jr., was laying on the ground,
8 bleeding out and that he told everybody who would listen. He
9 told D.J. who, bless his heart, was 15 when he witnessed this
10 murder. He told D.J., "I can't believe he did it. Little D
11 shot me." He told Mo, Maurice Giles, who was tending to him,
12 who was applying pressure to the wound, "I can't believe he
13 did it. Little D shot me." He told Willie Stanley, "I can't
14 believe he did it. Little D shot me," and when Dash, who is
15 Willie Stanley, called Mr. Evans' fiancée, Naomi Alston, and
16 Naomi Alston jumps in the car, runs up to the club as fast as
17 she can. She beats EMS and law enforcement, and they are
18 consistent that when she says, "Aundry, what happened," Aundry
19 says, "I can't believe he did it. Little D shot me."

20 Folks, this isn't one person making up this statement.
21 It's not one person. They all used the same words. Even
22 those folks who didn't hear the statement all testified that
23 the man had the opportunity to make the statement. They all
24 testified they weren't in earshot or that they saw Naomi with
25 him. They all testified that he had the opportunity to make

1 the statement. It is all consistent.

2 Now, I'm sure this trial got real confusing for you all
3 when we started talking about what on earth happened outside
4 that club. I don't know what happened outside that club. I
5 can come up with three or four theories that, that could be
6 consistent with the evidence, but I don't know. There wasn't
7 any cameras. It is possible that that drive-by shooting
8 happened -- well, first of all, it looks from the evidence
9 that there was a drive-by shooting. You heard that from
10 Investigator Thacker, with a high-powered rifle. You can see
11 those shell casings spread along the road as if a car was
12 driving by kicking the shell casings out as they sprayed a
13 high-powered rifle into the club.

14 When did that happen? Nobody could determine that. They
15 tried. You heard from Investigator Thacker. You heard from
16 Investigator Morris. They attempted to determine a timeframe.
17 They were unable to determine a timeframe. They just were.
18 There wasn't somebody at that club 24 hours a day to tell you
19 exactly when that happened. It could have occurred before Mr.
20 Evans was killed. I'm sure he got there after dark to open
21 up. I mean, it was winter time, after dark when he would have
22 opened up for Monday night football. It could have been
23 contemporaneous. I mean, there is the damage to Edward Mack's
24 car. He says it wasn't there before. His tire certainly is
25 blown out, and he's got a bullet hole straight through his

1 car, and you heard Investigator Thacker say witnesses often
2 get the number of bullets and the number of, of gunshots off,
3 that that's a very common thing that people don't, don't quite
4 get that consistent. Could have been contemporaneous. Nobody
5 saw a high-powered rifle, but it could've have happened. It
6 could have happened afterwards while everybody's at the
7 hospital. We don't know, and the thing is, that's not part of
8 the charge. Mr. Dizzley's charged with the murder of Aundry
9 Evans. I don't need to prove to you beyond a reasonable doubt
10 how the high-powered rifle fire happened, when it happened,
11 who did it. That's not what this trial is about. This trial
12 is about who killed Aundry Evans, Jr., with malice
13 aforethought. That's what the trial is about, but again, I
14 believe in each and every one of you that you have the common
15 sense and the reason to sort through this. I wanted you to
16 have all the evidence as you made your decision.

17 Speaking of corroborating evidence, I want you to take a
18 look at your screen. You are looking at a picture that has
19 been admitted into evidence. That's State's Exhibit 35. The
20 last witness you heard from, Mr. Dan DeFreese from the State
21 Law Enforcement Division, now, that's a man that knows what
22 he's talking about, and he told you he analyzed all the
23 evidence that you're looking at right now. Now, keep in mind,
24 Number Five, I know the picture's a little blurry, it's the
25 best one we have, Number Five, on the floor all the way to the

1 left, that's going to be a pool of blood. Investigator Morris
2 told you he didn't analyze that because the victim was laying
3 in it. We know whose blood it is, no point in running that to
4 the DNA lab. Number one, you heard testimony from Mr.
5 DeFreese that number one is a shell casing. The shell casing
6 belongs to a 40-caliber Smith and Wesson. I showed you a
7 picture of what it would have looked like. Number two, on the
8 ground near the pool table, it's another shell casing. Mr.
9 DeFreese testified it came from the exact same gun that number
10 one came from. It was fired by the exact same Smith and
11 Wesson 40-caliber as number one. Number three is on the pool
12 table furthest away from the balls. It's another shell
13 casing. It also came from the same Smith and Wesson 40-
14 caliber handgun that the other two shell casings came from.
15 Folks, that evidence alone tells you these shots weren't fired
16 from outside. It tells you that the shots weren't fired from
17 behind the bar either. It tells you those shots were fired
18 from over near the pool table.

19 Number four, which is real fuzzy in this photograph, but
20 it's the flag that's over near the balls, that's the spent
21 bullet. We don't know if that spent bullet missed Aundry
22 Evans, Jr., or if it went through him and landed there. We
23 don't know. We'll never know. We do know it is consistent
24 with a 40-caliber Smith and Wesson, just like these shell
25 casings, and just like the two spent bullets that were found

1 inside of Aundry Evans, Jr., and just like the spent bullet
2 that was found on his clothing at the hospital. Do spent
3 bullets prove that Terron Dizzley committed this murder?
4 Absolutely not, and if all I had to show you was some spent
5 bullets and some ballistics with no gun, I would understand if
6 you returned a not guilty, but that's not all. Folks, this
7 physical evidence it corroborates the witness testimony. It
8 corroborates what the witnesses agreed on. It corroborates
9 what they have to say. The physical evidence is consistent
10 with someone who came in the bar, who ran straight up to Mr.
11 Evans, who's standing by the pool table by all accounts, and
12 pulled the trigger somewhere between three to five times. You
13 can infer that if they're telling the truth about that, the
14 witnesses are telling the truth about this, they're telling
15 the truth about everything. They're telling you exactly how
16 it happened. They've got no reason to lie. This trial isn't
17 about money. It's about justice.

18 Now, Mr. Barr is going to have you believe that Mr.
19 Dizzley was in Orangeburg for the night. Most of his
20 witnesses put Mr. Dizzley in Orangeburg till 9:30 or ten. You
21 heard from that 911 call that the murder happened at 11:30.
22 So I didn't spend much time with those witnesses because I
23 don't really care where Mr. Dizzley was at nine or 9:30. It's
24 not relevant to whether or not he committed this murder. You
25 heard one witness, one who told you that Mr. Dizzley was with

1 her at 11:30 at the time of the murder, and that was his
2 girlfriend, Ms. Felder. Bless her heart. She's got three
3 children to think about. She even gave him an alibi for the
4 night two days before when 911 was called on him. I asked her
5 if she was with him on November 29th, 2008. She said,
6 "Absolutely, I was with him all night. He didn't go anywhere.
7 He stayed in Orangeburg." We know he wasn't in Orangeburg on
8 November 29th by his own admission. He was down here in
9 Georgetown. I don't fault her. She don't want to -- she, she
10 wants to keep her, her boyfriend right there at home with the
11 children, but it's not credible. It's not believable.

12 Ladies and gentlemen, it's about time for you to go back
13 to that jury room through there, and I know I bored you all to
14 tears putting in all this evidence, and I apologize, but I
15 wanted you to have all of the information when you go back
16 there. I wanted you to have all of it, the good, the bad, the
17 ugly, the indifferent. I wanted you to know that in
18 Georgetown County we take this seriously. Somebody died. We
19 did a full and thorough investigation. We tracked down all
20 leads. Investigator Morris tracked down and exhausted every
21 single lead that was available to him. Some of it led
22 absolutely nowhere, just like some of those pictures that I
23 put into evidence that you are welcome to go through back
24 there in the jury room are fuzzy. They don't show anything of
25 any relevance, and they're duplicates, but you've got them if

1 you want to go through them. After a full and thorough
2 investigation, every lead was tracked down. Everything was
3 tracked down. There was only ever one suspect in this case,
4 one. Was there people who did it with him? Absolutely. He
5 didn't do it alone. We'll probably never know who did it with
6 him. We have no leads on that. We tried. People don't have
7 to talk to us, but all roads, all roads, all leads led to
8 Terron Dizzley. Both of the women in Aundry Evans, Jr.'s,
9 life had met Terron Dizzley in the past. They knew him. They
10 knew that Mr. Evans, Jr., had a relationship with him. They
11 knew him as D, Diz or Little D. Even Marvin Riley from
12 Orangeburg said, "You know, in Orangeburg I've never called --
13 heard him called Little D, but down here in Georgetown I have
14 heard people call Terron Dizzley Little D." Marvin Riley, who
15 doesn't have a dog in this hunt, said, "Yeah, I did hear that
16 when I was down here at that party. People were calling him
17 Little D," and as you go into that jury room and you review
18 all this evidence, I want you to carry this victim's words
19 with you. As Mr. Evans was playing pool somebody busted
20 through the door, went straight up to him. He heard his
21 assailant's voice when the assailant said to him either, "I
22 told you this wasn't over. This isn't a game. This isn't
23 over." Mr. Evans heard his assailant's voice, and he turned
24 as he got shot and it went down this way. He turned and he
25 looked and the person was wearing a mask, but he looked into

1 his shooter's eyes as he fell to the floor, and as soon as his
2 friends came to his side to aid him, he looked at them and he
3 told anybody who would listen, "I can't believe he did it.
4 Little D shot me." As you go into that jury room, I want you
5 to take those victim's words with you because that is a
6 verdict that rings of justice and truth. Thank you for your
7 time and attention this week.

8 THE COURT: Ladies and gentlemen of the jury, that
9 completes the closing arguments by counsel, and I told you at
10 the beginning of the trial, once we reached this stage of the
11 trial, it would be my responsibility to charge you concerning
12 the law to be applied in this case.

13 Now, we begin this case by my going over with the jury as
14 we were going through jury selection the indictment in this
15 matter. I'm going to go over that indictment with you again.
16 I will tell you that the indictment will be available to you
17 in the jury room for you to review during your deliberations,
18 and I'll remind you, the fact that a Defendant has been
19 arrested, charged and indicted in the case is not evidence in
20 the case. It can't be considered by you as evidence in this
21 case, nor does it create any presumption or inference of guilt
22 in this case. This is the document, the formal instrument
23 that contains the charges against the Defendant. It informs
24 us of the charge to be tried. It informs the Defendant of the
25 charge that's been lodged against him.

1 The indictment, again, is in case number 09-GS-22-778.
2 That indictment is for the offense of murder. The indictment
3 states that Terron Gerhard Dizzley did in Georgetown County on
4 or about December 1, 2008, willfully, feloniously and
5 intentionally kill the victim, Aundry Evans, with malice
6 aforethought, either express or implied, by means of multiple
7 gunshot wounds to the body, and the victim did die as a
8 proximate result thereof on or about December 2nd, 2008, in
9 Georgetown County in violation of Section 16-310 of the Code
10 of Laws, 1976 as amended, against the peace and dignity of the
11 state and contrary to the statute in such case made and
12 provided.

13 Now, this is the formal document that brings the case
14 into this court, and the Defendant has pled not guilty to that
15 indictment. That plea places the burden on the State to prove
16 the Defendant guilty. You see, a person charged with the
17 commission of a criminal offense is never required to prove
18 himself innocent, and I charge you that it's an important rule
19 of law that a Defendant in a criminal trial, no matter what
20 the seriousness of the charge might be, will always be
21 presumed to be innocent of the crime for which the indictment
22 has been issued until and unless guilt has been proven by
23 evidence satisfying you, the jury, of that guilt beyond a
24 reasonable doubt. The presumption of innocence doesn't end
25 when you begin your deliberations. It accompanies the

1 Defendant throughout the trial until such time as you might
2 reach a verdict of guilt based on evidence satisfying you of
3 that guilt beyond a reasonable doubt.

4 Many people describe the presumption of innocence that a
5 Defendant has in a courtroom somewhat like the robe that a
6 Judge wears into the courtroom. In other words, that
7 presumption of innocence or that robe is about the Defendant's
8 shoulders at the beginning of the trial. It remains about the
9 Defendant's shoulders throughout the trial. It accompanies
10 the Defendant into your deliberations. That robe remains upon
11 the Defendant's shoulders until such time as it might be
12 stripped from him by evidence that satisfies you of the
13 Defendant's guilt beyond a reasonable doubt.

14 Now, you've heard me refer to proof beyond a reasonable
15 doubt on about three occasions already, and you probably
16 realize that that's an important concept in our judicial
17 system, that is in criminal cases guilt must be proven beyond
18 a reasonable doubt, and so you may ask yourself, "Well, what's
19 the legal definition of a reasonable doubt? Just what is a
20 reasonable doubt?"

21 Now, I will tell you that under the law a reasonable
22 doubt has been defined as that kind of doubt that would cause
23 a reasonable person to hesitate to act, and the State has the
24 burden of proving the Defendant guilty beyond a reasonable
25 doubt.

1 Now, I want to clear up one thing for you so I'm sure we
2 don't have any confusion on a point. If you've ever been
3 involved in a civil matter, civil matters before the courts
4 are cases that involve the recovery of money. That can be
5 because somebody breached a contract or failed to pay a debt
6 or perhaps injured someone and owes them money for the
7 damages, things of that nature, and in civil cases, the
8 standard of proof is proof by the greater weight or the
9 preponderance of the evidence. It's been defined as the
10 scales of justice tilting just ever so slightly either in
11 favor of a Plaintiff or in favor of a Defendant, and that
12 would entitle that side to a verdict. That's the standard of
13 proof in a civil case, and that standard of proof doesn't
14 apply in a criminal case such as this one. Again, the
15 standard of proof in a criminal case is more powerful than
16 that. Proof beyond a reasonable doubt is that kind of proof
17 that would leave you firmly convinced of a Defendant's guilt.

18 I'm going to tell you, there's very few things that go on
19 in this world that can be proven beyond any doubt whatsoever,
20 and the State does not have the burden of proving its case by
21 proof that overcomes every possible doubt. What I will tell
22 you is that if after your consideration of the evidence if you
23 are firmly convinced of the Defendant's guilt beyond a
24 reasonable doubt, you must find the Defendant guilty, but by
25 the same token, if you think there's a real possibility that

1 the Defendant is not guilty, then you must give the Defendant
2 the benefit of the doubt and find the Defendant not guilty.

3 Now, I'll remind you during the trial, you and I have had
4 certain duties to perform. They're different duties. As the
5 trial judge, it's my responsibility to preside over the trial
6 of the case, and it's been my responsibility to rule on the
7 admissibility of certain evidence, to rule on the
8 appropriateness of questions that were being asked, and I will
9 tell you that you should consider only the competent evidence
10 that was placed into the record of this case in reaching a
11 verdict in this case. So if there was any testimony or any
12 matter that I ruled out of order or ordered stricken from the
13 record, you should not consider those matters at all in
14 reaching a verdict. You are to consider only the testimony
15 and the evidence presented from the witness stand and any
16 exhibits that went into the record through that testimony and
17 any stipulations or agreements by counsel as to the evidence
18 to be placed into the record.

19 I now have the additional duty of charging you concerning
20 the applicable law in this case, and I told you at the
21 beginning of the charge, the trial, just as you are the sole
22 judges of the facts in this case, I am the sole judge of the
23 law in this case. It's your duty under your oath to accept
24 and apply the law as I now state it to you. So if you have an
25 idea as to what the law is or what the law ought to be, I'll

1 tell you to leave those ideas outside of the jury room before
2 your deliberations. You're sworn to take the law as I give it
3 to you and apply that to the facts as you determine those
4 facts to be, and I've told you that you are the sole judges of
5 the facts. Please don't take from anything that I have said
6 or done in the exercise of my responsibilities in this trial,
7 either during the trial or even during this charge, to somehow
8 indicate to you that I have an opinion as to how you should
9 determine the facts in this case. You see, the law does not
10 allow me an opinion as to the facts. I have no opinion as to
11 how you determine the facts in this case. Since you are the
12 sole judges of the facts in this case, please don't take from
13 anything that I may have said or done to indicate that I have
14 an opinion concerning that matter because as jurors it's your
15 duty and it's your responsibility to determine the effect, the
16 value, the weight and the truth of the evidence that's been
17 presented during this trial.

18 Now, in carrying out your responsibilities, there's two
19 types of evidence that you have the right to consider, and let
20 me explain what I mean to you by two types of evidence that
21 you should consider. The law divides evidence into two
22 classifications. The first type we talk about is direct
23 evidence. Now, direct evidence is testimony given by a person
24 who claims to have actual knowledge of a fact, such as someone
25 who is an eyewitness or a participant in an event, and they

1 offer evidence which immediately attempts to establish the
2 fact that's sought to be proven. The other type of evidence
3 that you have the right as a jury to consider is what is
4 referred to as circumstantial evidence. Now, circumstantial
5 evidence is proof of a chain of facts or circumstances
6 indicating the existence of a fact. It's evidence which
7 immediately establishes what's called collateral facts from
8 which a main fact could be reasonably inferred. Now, that's a
9 lot of fancy lawyer language. I like to use a very simple
10 example of what we mean by proof of a fact by circumstantial
11 evidence. Let's say one night you, before you went to bed,
12 you walked to the window at your home, you looked outside.
13 The stars were shining, beautiful night outside. Went to bed
14 and you slept well all night, didn't wake up at all. The next
15 morning you got up and walked over to that same window, looked
16 outside and the sun was shining, but then as you looked a
17 little closer you noticed there was water dripping from all
18 the trees, grass in front of the house is wet. There's
19 puddles in the driveway or the road in front of the house.
20 You slept all night. So you didn't hear it rain. You didn't
21 see it rain, but from certain collateral facts that you know
22 to exist, know to be true, you could reasonably infer the
23 existence of another fact, that is at some time during the
24 night it rained. So that's what we mean of proof by -- of
25 collateral facts from which a reasonable fact might be

1 reasonable -- another fact might be reasonably inferred.
2 Circumstantial evidence, therefore, is based on inference.
3 It's not based on personal knowledge or observation, and the
4 law makes no distinction between the weight or the value that
5 you as a jury can give to either type of evidence, direct or
6 circumstantial. There's not a greater degree of certainty
7 required of circumstantial evidence than that of direct. I
8 will tell you as jurors you should weigh all of the evidence
9 in the case, direct and circumstantial, and after weighing all
10 of the evidence, if you're not convinced of the Defendant's
11 guilt beyond a reasonable doubt, you must find the Defendant
12 not guilty. On the other hand, if you're firmly convinced of
13 the Defendant's guilt beyond a reasonable doubt, you must find
14 the Defendant guilty.

15 Now, in doing your job as, as jurors, it's necessary that
16 you determine the credibility or the believability of the
17 witnesses who have testified during this trial, and that's
18 what credibility means. It means believability. I told you
19 earlier, it's your duty as jurors to analyze and evaluate the
20 evidence. You determine which evidence convinces you of its
21 truth.

22 In determining the believability of witnesses who have
23 testified during the trial, I'll tell you as the sole judges
24 of the facts you have the right to believe one witness against
25 all the others. You could believe all the others against one.

1 You have the right to believe all of, part of or none of what
2 a witness may have testified to during the trial. You may
3 consider whether a witness exhibited to you an interest, a
4 bias, a prejudice or any other motive in testifying in the
5 case. You have the right to consider the appearance and
6 manner in which the witness testified from the witness stand.
7 I told you at the beginning of the trial, and I'll reaffirm
8 now, you should use your good common sense in making
9 determinations as to the credibility and the believability of
10 witnesses who testified.

11 Now, during the trial, we received testimony from a
12 couple of witnesses who were qualified as experts, and I told
13 you I'd tell you a little bit more about that during my
14 charge, and I explained when those people testified that the
15 rules of evidence ordinarily do not allow witnesses to testify
16 about opinions or conclusions, and that there's an exception
17 to that general rule for witnesses who are called expert
18 witnesses. That's a witness, again, who because of their
19 education or their experience has become an expert in some
20 art, science, profession or calling, and as to those
21 witnesses, if they are so qualified, they're allowed to state
22 an opinion as to any relevant or material matter in which the
23 witness claims to be an expert and can state the reasons for
24 the opinion.

25 Now, as a jury, you should consider the testimony of an

1 expert received in this case just like any other evidence in
2 the case. You give it the weight you think it deserves. If
3 you decide that the opinion of an expert is not based on
4 sufficient education or experience or you conclude that the
5 reasons given in support of the opinion are not sound or that
6 the opinion has been outweighed by other testimony, you have
7 the right to disregard the opinion entirely. An expert
8 witness's testimony is to be given no greater weight than that
9 of any other witness simply because that person was an expert.
10 Further, you're not required to accept an expert's opinion
11 even though it may not be contradicted. You're the sole
12 judges of the facts. You give all of the testimony the weight
13 that you think it deserves, both lay testimony and expert
14 testimony.

15 Now, I'm going to explain a theory under the law or a
16 premise under the law to you. It's referred to as the hand of
17 one, and I will tell you that if a crime is committed by two
18 or more people who are acting together in committing a crime,
19 the act of one is the act of all. A person who joins with
20 another to commit an unlawful act is criminally responsible
21 for everything done by the other person which happens as a
22 probable or natural consequence of the acts done in carrying
23 out the common plan or purpose. For example, two people could
24 be responsible for a crime when only one of them actually had
25 the means to carry it out and only one of them actually

1 committed the act that was the commission of the crime, if
2 those people acted together. Acting together, assisting each
3 other in committing the offense, the act of one becomes the
4 act of all, and sometimes it's referred to under the law as
5 the hand of one becomes the hand of all or the hand of one is
6 the hand of all.

7 Now, prior knowledge that a crime is going to be
8 committed, without more, is not sufficient to make a person
9 guilty of a crime, and mere knowledge that another person is
10 going to commit a crime, even if the Defendant is present when
11 the crime is committed, is not sufficient to convict the
12 Defendant as a principal. Guilt as a principal is shown by
13 actual or constructive presence at the scene of a crime as a
14 result of a prior arrangement. Therefore, a finding of a
15 prior arranged plan or common scheme is necessary for a
16 finding of guilt as a principal, and the State must prove
17 beyond a reasonable doubt by competent evidence the theory of
18 the hand of one is the hand of all.

19 Now, when I talk about a principal in a crime that's
20 someone who either actually commits the crime or who is
21 present aiding, abetting or assisting in the commission of the
22 crime. When a person does the act -- an act in the presence
23 of another and with the assistance of another, the act is done
24 by both. Where two or more are acting with a common plan or
25 intent, the -- and are present at the commission of a crime,

1 it doesn't matter who actually commits the crime. All are
2 guilty. Again, the hand of one is the hand of all. Present,
3 being present at the commission of a crime means to be
4 sufficiently near so as to aid, abet or assist in the
5 commission of the crime. However, I will tell you merely
6 being present where a crime is committed, at the place a crime
7 is committed is not sufficient to convict one as a principal
8 on the theory of aiding and abetting, and intent is a
9 necessary element. There must have been a common design or
10 intent to commit the crime, and the crime must have been
11 committed pursuant thereto with all persons aiding and
12 abetting by some overt act. Intent means intending the result
13 which occurs, not accidentally or involuntary, and intent can
14 be shown by acts or conduct or other circumstances from which
15 you could reasonably infer intent, and all of the elements of
16 the hand of one must be proven by the State beyond a
17 reasonable doubt.

18 Another issue in this case has been identification,
19 excuse me, and that is the issue of identification of the
20 Defendant as the person who committed the crime charged. I
21 will tell you, the State has the burden of proving identity
22 beyond a reasonable doubt. You must be satisfied beyond a
23 reasonable doubt of the accuracy of the identification of the
24 Defendant before you can convict the Defendant.
25 Identification testimony is an expression or a belief or an

1 impression by the witness, and you must determine the accuracy
2 of the identification of the Defendant. You must consider the
3 believability of each identification witness in the same way
4 as any other witnesses. You may consider whether the witness
5 had an adequate opportunity to observe the offender at the
6 time of the offense. This can be affected by such things as
7 how long or short of time was available, how far or close was
8 the, was the witness to the event, the lighting conditions,
9 whether the witness had a chance to see or know the person in
10 the past. Once again, I instruct you the burden of proof is
11 upon the State, and it extends to every element of the crime
12 charged, and this specifically includes the burden of proving
13 beyond a reasonable doubt the identity of the Defendant as the
14 person who committed the crime. If, after examining the
15 testimony, you have a reasonable doubt as to the accuracy of
16 the identification, you must find the Defendant not guilty.

17 Now, later on I'm going to go over with you the actual
18 crime that was charged in this case, and that is the crime of
19 murder, and when we go over that crime, you will hear that
20 there are certain elements or factors that have to be proven
21 in order to establish that particular offense, and one of the
22 factors you'll hear will be an element requiring intent. So
23 I'm going to talk to you a little bit about what is meant
24 legally by intent.

25 In order to establish criminal liability, criminal intent

1 is required. For example, that's the mental state required to
2 be proven by the State for a particular crime, and that might
3 be purpose, intent, knowledge, recklessness or even criminal
4 negligence, and I'll define that intent to you when I talk to
5 you about the crime of murder. Criminal intent must be proven
6 by the State beyond a reasonable doubt, and criminal intent is
7 always a matter which must be determined by a jury from the
8 circumstances surrounding the event or the situation. You
9 see, there's no way that you could be present or anyone could
10 be present at the commission of a crime, open up someone's
11 head and look at their brain and see what they intended to do
12 at that moment. We can't do that. So there's no way medical
13 science or any science can prove what someone's intent was at
14 any given moment. So, therefore, intent may be inferred from
15 the circumstances that are shown to have existed. That's how
16 you make a determination as to whether or not the elements
17 requiring intent was present. So it's not necessary to
18 establish criminal intent by direct or positive evidence, but
19 intent may be established by inference in the same way as any
20 other fact, taking into consideration the acts of the parties
21 and all the facts and circumstances of the case. I will tell
22 you, however, criminal intent is a mental state, it's a
23 conscious wrongdoing. It's up to you to determine what the
24 Defendant intended to do in this -- at the time of this event
25 based upon the circumstances that have shown -- been shown to

1 have existed.

2 Now, I'm going to go over some things about the witnesses
3 so that we've got an understanding. There has been evidence
4 presented that some witnesses may have made prior statements
5 which are not consistent with their present testimony in this
6 case. You may use this evidence to decide whether to believe
7 the witness. You may also use this evidence of earlier
8 contradictory statements to determine the truth of those
9 statements. It's up to you, the jury, to decide whether to
10 believe the earlier statements or the testimony given at
11 trial.

12 If a witness is shown to have knowingly testified
13 untruthfully concerning any material matter, you may consider
14 this in determining whether to trust the testimony of the
15 witness as to other matters. You may reject all of the
16 testimony that a witness gave or part of the testimony. You
17 may give it the weight you think it deserves.

18 Also, persons testified in this case who had past
19 criminal records. A person who has a past criminal record is
20 competent to testify at a trial. A past record does not
21 affect the ability of the witness to testify. The past record
22 may only be considered by you, if at all, in determining the
23 believability of the witness. Remember, you're the sole
24 judges of the facts of the case. That makes you the sole
25 judges of the believability of any and all witnesses in this

1 matter.

2 Now, I'm going to instruct you, and I'm going to
3 emphasize to you that the fact that the Defendant did not
4 testify is not a factor to be considered by you in any manner
5 in your deliberations and your considerations on the question
6 of the guilt or the innocence of the Defendant. It must not
7 be considered by you in any manner whatsoever. Every
8 Defendant has a constitutional right to remain silent, and the
9 assertion of this right must not be considered by you in your
10 deliberations at all. I repeat, under your oath, you are to
11 draw no conclusions whatsoever from the fact that the
12 Defendant did not testify in this case. The fact that the
13 Defendant did not testify should not even be discussed by you
14 in the jury room. The burden of proof in this case is upon
15 the State, and I've stated to that, that to you, that the
16 State has the only burden of proof. The Defendant is not
17 required to prove his innocence in this matter. The burden of
18 proof remains upon the State to prove guilt beyond a
19 reasonable doubt throughout the trial.

20 I'm going to go over the offense of murder with you at
21 this point in time, and the Defendant has been charged in the
22 indictment as you will see with that offense. The State must
23 prove beyond a reasonable doubt that the Defendant killed
24 another person with malice aforethought.

25 Now, malice is hatred or ill will or hostility towards

1 another person. It is the intentional doing of a wrongful act
2 without just cause or excuse and with the intent to inflict an
3 injury or under circumstances that the law would infer such an
4 evil intent. Malice aforethought does not require that the
5 malice exists for any particular length of time before the act
6 is committed, but malice must exist in the mind of the
7 Defendant just before and at the time the act is committed.
8 Therefore, there has to be a combination of the evil intent,
9 that is the malice, and the act. Malice aforethought can
10 either be express or inferred. Now, these terms don't refer
11 to different types of malice. What it means is that there are
12 different ways in which malice may be shown to have existed,
13 that is either by direct evidence, as I've indicated earlier,
14 or by inference from the facts and circumstances that are
15 proven.

16 Express malice is shown when a person speaks words which
17 express hatred, ill will for another person or when the person
18 prepared beforehand to do the act which was later
19 accomplished; for example, lying in wait for a person or any
20 other acts of preparation going to show that the deed was
21 within the mind would be evidence of express malice, and you
22 could give it such weight as you choose to give it.

23 The Defendant has raised the defense of alibi, and in
24 order to establish an alibi, it must be shown that the
25 Defendant was at another specified place at the time of the

1 crime -- the time was -- excuse me, at the time the crime was
2 committed, and that it was, therefore, impossible for the
3 Defendant to have been at the scene of the crime. Mere denial
4 of presence at a scene does, does not constitute an alibi
5 defense. Now, there is no burden on the Defendant to prove an
6 alibi. However, the burden is on the State to prove beyond a
7 reasonable doubt the Defendant was actually present at the
8 scene of the crime, actually participated in it, and was not
9 somewhere else. In other words, the State has the burden of
10 disproving the Defendant's alibi defense.

11 I'm going to ask Ms. Helen Manning to raise her hand.
12 You're going to be the foreperson of the jury. That means you
13 will be the person who will be responsible to preside over the
14 deliberations of the jury. You will, should the jury have a
15 question during deliberations, it would be your job to write
16 the question on a piece of paper, knock on the door, pass it
17 to the bailiff, and the bailiff would bring that question to
18 me for my consideration.

19 Now, I can't answer any -- every question you may have
20 during your deliberations. I can't get into your decisions on
21 the facts in this case. So I can't get involved in your
22 discussions of the facts. I can answer questions that might
23 relate to the law that I've charged you or the procedure that
24 we followed, but don't edit any question the jury may have,
25 ma'am. If you would please just write down the question,

1 submit it, and I'll decide the appropriate response.

2 Also, once the jury has reached a verdict, it would be
3 your job to write that on the piece of paper I'm going to give
4 you for that purpose. Again, knock on the door and inform the
5 bailiff that a verdict has been reached, but as I told you
6 earlier, your verdict must be unanimous. So no one juror has
7 any greater say in the outcome of this case than any other
8 juror. In other words, the jury cannot reach a verdict until
9 all of you unanimously agree upon that verdict, then it
10 becomes the verdict of the jury. Then the foreperson should
11 record that verdict and submit it to the Court once that's
12 been reached.

13 Now, I've gone over a great deal of information with you.
14 I want to be sure I haven't misspoken about something that
15 I've told you. Also, there's a great deal of evidence that
16 you'll be allowed to take back into the jury with you. I want
17 to be sure that only the properly admitted evidence goes back
18 to you. So we'll go through that, that with the attorneys.
19 So I've got some housekeeping matters that I have to take care
20 of before I give you your final instructions to begin your
21 deliberations. So, Madam Forelady, I'm going to instruct you.
22 I'm going to send you back to the jury room one more time.
23 One more time I'll tell you don't begin any discussions about
24 this case until I call you back into the courtroom and give
25 you directions to begin deliberations. Do you understand

1 that, ma'am?

2 FOREPERSON: Yes, sir.

3 THE COURT: All right. You may retire to the jury room.
4 Thank you very much.

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

7 THE COURT: Exceptions to the charge from the State?

8 MS. BAILEY: None from the State, Your Honor.

9 THE COURT: Any from the Defense?

10 MR. BARR: No, sir, Judge.

11 THE COURT: All right. I'll ask you to come forward and
12 go through the evidence and see if we can reach an agreement
13 as to what goes back and let's move it separately. Then I
14 have a proposed verdict form. I'll ask you to step up and
15 take a look at that and see if you have any objection to the
16 verdict form.

17 I think you've got a couple of recordings? The 911?
18 There's no way to play those back there; is that right?

19 MS. BAILEY: No.

20 THE COURT: So I'll instruct them if they want to hear
21 them they'll have to come back out.

22 MS. BAILEY: Yes, Your Honor.

23 (Exhibits reviewed and approved by counsel for the State
24 and counsel for the Defense.)

25 THE COURT: All right. We have an agreement that the

1 exhibits have been separated on the table here; is that
2 correct?

3 MR. BARR: Yes, sir.

4 MS. BAILEY: Yes, Your Honor.

5 THE COURT: All right. Do you want to look at this
6 verdict form, counselors, see if there's any objection to that
7 form? That's the form.

8 (Counsel for State and Defense review verdict form.)

9 THE COURT: Any objections to the form, and any
10 objections to the indictment going back?

11 MR. BARR: No, sir.

12 MS. BAILEY: No.

13 THE COURT: All right. Let's bring the jury in.

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

16 THE COURT: All right. The record will reflect that the
17 jury has returned to the courtroom. Do you have the verdict
18 form I handed you, sir? Is it right there? You want to pass
19 the verdict form up to the forelady?

20 All right. Ms. Manning, that is the verdict form that
21 will be in use for this court, for this trial. I'll go over
22 with you the form briefly. At the top it indicates the state
23 and county that we're located in. It has the name of the
24 case, the State against Mr. Dizzley, of course. It has the
25 identifying numbers for the indictment. There's only one

1 question on the form, and that is as to the indictment for the
2 offense of murder there are two choices for the verdict,
3 either not guilty or guilty. Once the jury has reached a
4 unanimous verdict on that question, you would put an X or a
5 check on the blank line adjacent to the appropriate verdict.
6 Now, I'm going to tell you not to take any significance or
7 importance from the order in which I put those choices on the
8 form. I've been trying jury cases now for about ten years,
9 and every time I've done one they've always been in that same
10 order. So it's no preference on my part. That's the way it
11 is on my computer and that's the way I do every verdict form I
12 do. So don't think that that's some suggestion on the Court's
13 part because I have no opinion as to what verdict you reach in
14 this matter.

15 Once the verdict's reached, you'll check the appropriate
16 blank, then you'll sign that document and knock on the door
17 and inform the bailiff that a verdict's been reached. In the
18 exhibits there are two disks, the 911 recordings. There's no
19 way for you to play those in the jury room if you wish to
20 listen to those during your deliberations. So if you decide
21 you do wish to review those or listen to them, knock on the
22 door, let the bailiff know that, we'll bring you back into the
23 courtroom where we can play that on the devices here in the
24 courtroom. So if you do need to listen to any of that
25 information, please let us know. You have a right to. We'll

1 be glad to let you listen to it.

2 Now, at this point in time, Madam Forelady, we're going
3 to deliver the, the exhibits to you. There are blank pads
4 here if you'd like to get those, if you want to use those to
5 -- for, for deliberations you can pick those up as you go
6 back. There's one for each juror. If you want to have one of
7 those in deliberations to write down things, you certainly
8 have the right to do that. So you can pick those up and take
9 those in there with you if you would like. We'll deliver the
10 exhibits to you. So I will instruct you at this time for the
11 jury, not you, Mr. Alternate, but the jury to retire to the
12 jury room to begin your deliberations at this time. You may
13 retire. Pads are available over here if you'd like them.

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

16 THE COURT: Just remain seated. I'll talk to you in just
17 a second. All right, Mr. Foreman, you want to -- Mr. Bailiff,
18 you want to take those exhibits back to the jury panel for me?

19 (Complies with request and deliberations begin at 4:05
20 p.m.)

21 (Foreperson released by the Court.)

22 THE COURT: All right. Any objections to my final
23 instructions from the State?

24 MS. BAILEY: None from the State, Your Honor.

25 THE COURT: Any from the Defense?

1 MR. BARR: No, sir, Judge.

2 THE COURT: All right. We'll be in recess until such
3 time as a verdict has been reached, and I've asked that Mr.
4 Dizzley be taken into custody during deliberations.

5 MS. BAILEY: Thank you, Your Honor.

6 ***** OFF THE RECORD *****

7 (On the record. The following takes place outside the
8 presence of the jury. Question from jury at 4:50 p.m.)

9 THE COURT: All right. I've received a question from
10 the jury. I'll ask that the bailiffs bring the jury back in
11 so that I can respond to their request.

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

14 THE COURT: The foreperson will be sitting in that seat
15 right there. Thank you.

16 All right. The record will reflect that the jury has
17 returned to the courtroom. I received an inquiry from the
18 jury. It says, "When did the witnesses, Mo, Naomi, D.J. and
19 Willie Stanley report, 'I heard Dre say Little D, Diz, did
20 it'?" Madam Forelady, for me to answer that would require
21 that I comment concerning the facts in this case, and I --

22 FOREPERSON: I'm -- oh.

23 THE COURT: Be seated for just a moment. Thank you.

24 FOREPERSON: Okay. I was going to speak in there.

25 THE COURT: I'm not asking you to speak.

1 FOREPERSON: Okay.

2 THE COURT: Because we can't get into a discussion
3 concerning your deliberations in the courtroom. Those can
4 only be conducted by you in the jury room.

5 Now, I'm not allowed to answer the question or respond to
6 the question because it would constitute me commenting
7 concerning the facts in this case. Now, in certain
8 circumstances, if you request it, testimony of witnesses can
9 be replayed or gone back over with you in the, in the
10 courtroom if you request that specifically, but for me to
11 answer the question to you would require that the Court
12 comment concerning on the, concerning on the facts. I'm not
13 allowed to do that.

14 So I'm going to be asking you to go back in the jury room
15 to continue your deliberations at this point in time. Let me
16 point out just a couple of things to you. I note that it's
17 about 5:00 o'clock. If there's anyone that you would like for
18 the clerk to contact for you to let them know that you're here
19 at the courthouse doing your duty and may be here for some
20 time, if you would write the juror's name, the person to be
21 contacted and the phone number to be called, pass that out to
22 the bailiffs. I'll ask the clerk to call those people and let
23 them know where you are and what you're doing. So if you have
24 a concern in that regard, let us know. If you feel that you
25 need to order supper, we'll provide supper to you while you're

1 in deliberations. It takes about an hour for a meal to get
2 here. So if you would inform us as to whether you wish to do
3 that or do not wish to do that, then we can make arrangements
4 for you to have a meal here while you're in deliberations,
5 should you choose to do that. Just let us know how you'd like
6 us to handle that. I'm not telling you how long to deliberate
7 or how to deliberate. That's totally up to you. If at any
8 point during the, the afternoon or the evening you decide that
9 it would be best to take a break and come back, we can do
10 that. I would have to give specific instructions to you as to
11 how that would be handled, but again, you'd need to let me
12 know if that's your wishes. So it's your deliberations. You,
13 you will be controlling them at this point in time. Let us
14 know how you wish to proceed and we'll be glad to take care of
15 those issues for you.

16 Now, let me caution you, if any of these things require
17 that someone from the clerk's office or a bailiff enter the
18 jury room, I will ask you to stop your deliberations. Do not
19 discuss anything about the case while the person is in the
20 room taking a dinner order or receiving numbers to call. So
21 the case should not be discussed in front of anyone who is not
22 a member of the jury panel. So if someone, if someone from
23 the clerk's office or a bailiff is -- has the door open or is
24 in the, in the jury room, stop your deliberations until that
25 matter has been resolved.

1 FOREPERSON: May I?

2 THE COURT: Yes, ma'am.

3 FOREPERSON: My question to you is if we have to re-
4 listen or rehear testimony, would we read it? I mean, how
5 would that be because that question --

6 THE COURT: I'll have to talk. I don't know how the
7 court reporter can do that. I'll have to talk to her. She
8 has that, that information. So I can't answer that question
9 for you at this time. If you do wish to review any of the
10 testimony, you'd need to let me know and then I'd need to make
11 arrangements with the court reporter to take care of those
12 things. So I can't answer that question at this time either,
13 but if you feel that you do need to listen to portions of it,
14 obviously it will be -- there's a lot of testimony, and it may
15 take a while to locate that, but that doesn't mean we can't do
16 it. So let us know if you'd like for us to do that, and we'll
17 make arrangements.

18 FOREPERSON: Okay.

19 THE COURT: You may retire.

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

22 THE COURT: Any objections to my response from the State?

23 MS. BAILEY: None from the State, Your Honor.

24 THE COURT: Any from the Defense?

25 MR. BARR: No, sir.

1 THE COURT: All right. I'll have the, the question
2 marked as a Court's Exhibit, made a part of the record. We'll
3 be in recess until a verdict's reached. Thank you.

4 (Court's Exhibit Number One [Question from Jury]
5 appropriately marked.)

6 ***** OFF THE RECORD *****

7 (Note received from jury [Court's Exhibit Number Two] at
8 5:50 p.m. Note received from jury [Court's Exhibit Number
9 Three] received from jury at 5:56 p.m.)

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

12 THE COURT: All right. I wanted to put on the record
13 that I had received two communications from the jury through
14 the bailiffs. One communication was a request that they order
15 dinner. I've instructed the clerk to proceed with ordering
16 dinner and delivering it to the jury.

17 The other communication I received, they asked to take a
18 short break. I did allow them to take a break with the
19 bailiffs in the normal area where smokers are allowed to take
20 a break, and they have been returned to the jury room at this
21 point in time. I want those, both communications to be made
22 an exhibit in the trial.

23 (Court's Exhibit Number Two [Question from Jury Re:
24 Dinner] and Court's Exhibit Number Three [Question from Jury
25 Re: Break] appropriately marked.)

1 THE COURT: They have not asked any other questions about
2 the case other than those two things.

3 Any objections to my handling in those matters from the
4 state?

5 MS. BAILEY: None, Your Honor.

6 THE COURT: Any from the Defense?

7 MR. BARR: No, sir.

8 THE COURT: All right. We'll remain in recess then until
9 a verdict's been reached. Thank you very much.

10 MS. BAILEY: Thank you.

11 ***** OFF THE RECORD *****

12 (Note from jury at 6:15 p.m. The following takes place
13 outside the presence of the jury.)

14 THE COURT: All right. I've received a communication
15 from a juror through the bailiff. The communication was, "May
16 I have a deputy escort me to my home to get my prescription?"
17 When I asked the bailiff about it, I was informed that it was
18 some type of pain medication. I denied the request and
19 indicated that we would provide aspirin or other non-
20 prescription medication if necessary. The bailiff informed me
21 that the juror under those circumstances chose to proceed with
22 deliberations and did not ask that we pursue that request. Is
23 that correct, Mr. Bailiff?

24 BAILIFF: Yes, sir.

25 THE COURT: All right. I'll have this communication made

1 a part of the record as a Court's Exhibit and we'll remain in
2 recess until a verdict's reached.

3 (Court's Exhibit Number Four [Note from Jury Re:
4 Prescription] appropriately marked.)

5 ***** OFF THE RECORD *****

6 (On the record. Verdict reached at 7:42 p.m. The
7 following takes place outside the presence of the jury.)

8 THE COURT: All right. I've been informed by the
9 bailiffs that a verdict has been reached. Is the State ready
10 to receive the verdict?

11 MS. BAILEY: Yes, Your Honor.

12 THE COURT: Defense ready to receive the verdict?

13 MR. BARR: Yes, sir, Judge.

14 THE COURT: All right. Let's bring the jury in.

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

17 THE COURT: All right. The record will reflect the jury
18 has returned to the courtroom. Madam Forelady, the bailiffs
19 have informed me that a verdict's been reached. Is that true?

20 FOREPERSON: Yes, sir.

21 THE COURT: Pass the form to the bailiff, please.

22 (Complies with request.)

23 THE COURT: Thank you.

24 Madam Clerk, you may publish the verdict.

25 THE CLERK: State of South Carolina, Georgetown, County

1 of Georgetown versus Terron Gerhard Dizzley, we, the jury,
2 unanimously find the Defendant, Terron Gerhard Dizzley,
3 concerning the offense of murder, indictment number 2009-778,
4 guilty.

5 THE COURT: Madam Forelady and ladies and gentlemen of
6 the jury, if this is your verdict and still your verdict let
7 it be known by raising your right hand.

8 Ma'am, are you raising your right hand, the lady in the
9 back? Is this your verdict and still your verdict? If so,
10 please raise your right hand.

11 (Jurors raise right hand.)

12 THE COURT: All right. Anything further from the State?

13 MS. BAILEY: No, Your Honor.

14 THE COURT: Anything further from the Defense?

15 MR. BARR: No, sir.

16 THE COURT: All right. Ladies and gentlemen of the jury,
17 at this point in time this completes your service on this jury
18 panel. I want to thank you very much for your attention to
19 your responsibilities in this case. I will -- I've told you
20 throughout the trial that you should not discuss this case
21 with anyone. I will tell you now that you have the right to
22 do so. You also have the right not to do so. If anyone were
23 to harass you or bother you concerning your service on this
24 jury panel, please report that to the clerk's office. The
25 appropriate action will be taken.

1 Now, the bailiffs will check you out at this point in
2 time and I will tell you this will end your jury service for
3 the week. We're not starting another jury trial this week.
4 So this will complete your service. If you need any
5 assistance with excuses from work or any information about
6 your juror pay, the bailiffs and the clerks will be glad to
7 inform you of that. You're not required to be here for
8 sentencing. You have the right to attend. If you do wish to
9 attend sentencing, let the bailiffs know. They'll tell you
10 what arrangements can be made.

11 Again, thank you very much for your attention to the
12 case. Madam Forelady, you're going to need to stop and see
13 the clerk briefly. You'll need to sign something on the
14 indictment for us before you leave. At this time the jury may
15 retire. Thank you very much. Ma'am, if you'll wait right
16 there just a moment.

17 (Clerk and Court confer concerning retrieving indictment
18 from jury room.)

19 THE COURT: Madam Forelady, if you know where it is, you
20 can retrieve it and bring it back to us. All right. Thank
21 you, ma'am. Thank you very much.

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

24 THE COURT: I'll remain on the bench while we prepare
25 for sentencing.

1 MS. BAILEY: Thank you, Your Honor. The State is
2 prepared to make a brief sentencing presentation.

3 THE COURT: All right.

4 MS. BAILEY: There are some victims that may wish to
5 speak.

6 THE COURT: Mr. Barr, if you could stand at the counsel
7 table that'll be fine. Thank you. Let me know when you --
8 are you ready at this time?

9 MS. BAILEY: Yes, Your Honor. The State is ready to
10 begin its presentation.

11 THE COURT: All right. Has the sentencing sheet been
12 completed?

13 MS. BAILEY: Yes, Your Honor. It's my understanding that
14 it doesn't need a signature since it's a conviction?

15 THE COURT: Pass it up. I normally get them signed. So
16 if you'd present that to the Defendant and Defense counsel. I
17 will note that it's a verdict. It's not a plea.

18 (Complies with request.)

19 THE COURT: Thank you. All right. Mr. Dizzley, at this
20 point in time, I'd ask that you please stand.

21 (Complies with request.)

22 THE COURT: Mr. Dizzley, having been found guilty by a
23 jury of your peers of the offense of murder, I will consider
24 sentencing at this point in time. I will hear from your
25 attorney. Then I will give you an opportunity to speak, and

1 of course, if there's anyone who wants to speak on your
2 behalf, I'll be happy to hear from them as well.

3 At this time, Mr. Barr, I'll be happy to hear from you.

4 MR. BARR: Judge, I think you've pretty much heard the
5 facts of this case at least from the standpoint of where we
6 are, and we have nothing further.

7 THE COURT: All right. Mr. Dizzley, anything you'd like
8 to say to the Court at this time? Is that a no, sir? Did you
9 -- are you shaking -- you're shaking your head no, but I've
10 got to get a verbal response.

11 MR. DIZZLEY: Nothing I say going to matter anyway.

12 THE COURT: Thank you, sir. All right. I'll hear from
13 the State.

14 MS. BAILEY: Thank you, Your Honor. First, brief
15 recitation of Mr. Dizzley's criminal record, which is relevant
16 for the purposes of sentencing. In 1997 he was convicted of
17 pointing and presenting a firearm. In 2000 he was convicted
18 of unlawful carrying of a weapon, and in 2011 while on bond
19 for this crime he was convicted of assault and battery first
20 degree.

21 It is the State's contention that given that particular
22 record of carrying weapons, of pointing them at people and of
23 committing assault and battery, that that should enhance the
24 sentence. As Your Honor's aware, murder carries 30 to life.
25 The evidence in this case, and the jury did -- there was

1 really one question for the jury in this case and that was
2 identity. There's not been dispute as to how the crime
3 happened, and the evidence in this case is that it was
4 premeditated. It was calculated, that the killer wore a mask
5 and gloves, and it's the State's contention that in the range
6 of 30 to life, which is what murder carries, that Your Honor
7 should provide a substantial sentence given the facts in this
8 case.

9 THE COURT: Now, does the victim wish to be heard, the
10 victim's family?

11 MS. BAILEY: No, Your Honor. I want to note for the
12 record, can you all stand up?

13 (Complies with request.)

14 MS. BAILEY: Your Honor, in the courtroom today, we have
15 Aundry Evans, Sr., the father of the victim. We have Ms.
16 Iteka Brown, who is the victim's ex-wife. She brought with
17 her their two children. These are Aundry Evans, Jr.'s, 13
18 year old twins. Ma'am, can you tell me your name?

19 MS. FORD: Bernetha Ford.

20 MS. BAILEY: She's a family member and aunt of the
21 victim. In the courtroom earlier today was Naomi Alston, who
22 also has two very small children by the victim. He had four
23 children total.

24 THE COURT: All right, and counsel, would you go over
25 again with me the prior record that you'd like for me to

1 consider?

2 MS. BAILEY: Thank you, Your Honor. In 1997 a conviction
3 for pointing and presenting, in 2000 a conviction for unlawful
4 carry of a weapon, and in 2011, an assault and battery first
5 degree.

6 THE COURT: And those were all convictions?

7 MS. BAILEY: Yes, Your Honor, according to his NCIC.

8 MR. BARR: Judge, before we -- you pass sentence, I've
9 just been advised that the Defendant's mother wishes to
10 address the Court if Your Honor, please.

11 THE COURT: Well, I'll be happy to hear from her. So if
12 she'll step -- stand up, please.

13 Ma'am if you want to step aside, step out beside Mr. Barr
14 please. Thank you. Your name is?

15 MS. FRAZIER: My name is Gwendolyn Dizzley Frazier.

16 THE COURT: Yes, ma'am. I'll be happy to hear from you.

17 MS. FRAZIER: And I'd just like to say that I know my son
18 didn't do this. He and Aundry were friends. The jury has
19 spoken, but it seems to me that all of the friends again had
20 the same story, but the policeman, especially the, the one
21 that names Mo said that he was with him the whole time, and
22 Naomi said she was with him in the ambulance, the policeman
23 said that he was with him. He didn't see a Mo at all, and he
24 didn't see Naomi at the ambulance. So there were a lot of
25 consistencies [sic]. I notice when the -- you said was there

1 a unanimous verdict, there was one juror that was very
2 reluctant to raise her hand, and finally she did. So I feel
3 and I'm asking for mercy for the Court, but I feel that it
4 was, it was a hasty decision, and I just think a person's life
5 who is at stake I feel that the jury should have taken more
6 time in an effort to really assess a case and come up with a
7 true verdict.

8 We ask for mercy on the Court. He has a small baby
9 that's 15 months old. He has -- he would -- he, he doesn't
10 even fire a gun at home. He won't even hunt. My nephew is in
11 the Army, fires guns. He never touches them. So we just --
12 it's just a sad situation when you might say justice been
13 done, but I certainly doesn't feel it's been done. Thank you
14 so much for your indulgence.

15 THE COURT: Thank you ma'am.

16 MR. DIZZLEY: Your Honor, I do want to say something.

17 THE COURT: Yes, Mr. Dizzley.

18 MS. FRAZIER: And -- and the other fellow said maybe she,
19 she was coerced.

20 THE COURT: Ma'am, ma'am, you've had a chance to speak.
21 If you'll step back. Thank you.

22 MR. DIZZLEY: I just want to say that despite the verdict
23 I did not murder this man's son. Me and this, me and this
24 man's son was very good friends, and throughout this whole
25 trial, I never understood anybody give a motive for what I

1 did, supposedly what I supposed to had killed him over a TV?
2 We, we was partnership in a club. Naomi denies that we was
3 even a partnership in the club. It wasn't no big money
4 involved in it. The man only charged us \$750 a month. Aundry
5 can't -- Aundry used to come to Orangeburg. Aundry used to
6 hang out with me. Aundry was involved in some things that I
7 don't agree with that he used to do, and it's probably a
8 result of why he got murdered, but because of as you
9 understand Ms. Bailey just called my background record out, so
10 my attorney felt like it wouldn't be important for me to take
11 the stand on that, but I'm not a gangster. I don't, I don't
12 do stuff like that, and I don't have -- I have no reason to
13 kill, to kill Aundry. He was my friend. He helped me out a
14 lot in times when, when I was down. He helped me out, and I
15 have no reason to kill him despite of what any, anyone would
16 think. I loved him. I never got a chance to see him or
17 anything. I never got a -- everybody think that these people
18 when I moved to Orangeburg in 2004, and 2008 he asked me, I
19 haven't come back to Georgetown since then because he asked me
20 to come and help him run the club. The club -- I'm, I'm --
21 when I was living in Georgetown, I was living in Sampit. The
22 club was in Oatland. I don't even know nobody in Oatland.
23 All of these people that are testifying barely even seen me
24 twice so.

25 THE COURT: Mr. Dizzley, at this time I'm considering

1 sentencing. I'll be glad to ---

2 MR. DIZZLEY: So, I'm just -- I just wanted to let that
3 know. I just wanted to let, to let that be known to the
4 family. It doesn't matter. I'm going to get -- I'm going to
5 go to jail for it anyway, but the person who did it is still
6 out there. Nobody gave a reason why I did it. What was the
7 motive?

8 THE COURT: Mr. Dizzley, it is the sentence of this
9 Court that you be confined in the State Department of
10 Corrections for a period of 35 years. Good luck to you, sir.
11 Court's adjourned.

12 (Adjourned.)

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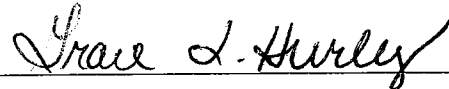
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State of South Carolina versus Terron Gerhard Dizzley, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on March 31, 2014 through April 3, 2014.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

November 17, 2014.

1 (Whereupon, the exhibits are checked by counsel.)

2 THE COURT: All right and ---

3 MR. HIXSON: It's okay, Your Honor.

4 THE COURT: All right. The evidence is in order and,
5 ladies and gentlemen, we're going to stand down now subject to
6 the arrival of lunch for the jury and then the jury's
7 deliberations. Counsel, if you leave this floor, please make
8 sure that my clerk or our county clerk has your cell number
9 and please don't go far because we may need you immediately in
10 the event of a question. This Court is now in recess.

11 MR. HIXSON: Thank you, Your Honor.

12 MR. BARR: Judge, I do have a Family Court matter. We've
13 got Family Court going on on the second floor.

14 THE COURT: Yes, they do. They have a busy court day.
15 Good luck to you, Mr. Barr. We'll be in recess now awaiting
16 the call of the jury.

17 (Whereupon, there is a break in the proceedings from
18 12:14 p.m. until 1:07 p.m. for lunch.)

19 (Whereupon, jury deliberations begin at 1:07 p.m. The
20 two alternate jurors are separated from the jury and held
21 in another room during deliberations.)

22 THE COURT: All right. We have a message from the jury.
23 We have a message from the jury that asks -- that requests --
24 it is a note that essentially asks audio transtape -- I think
25 is the word -- of all four. And so what I would intend to do

1 is to respond to them that this will take approximately an
2 hour and if they wish for it to be played, then we will bring
3 them in and play it. Is that satisfactory, Mr. Barr?

4 MR. BARR: Yes, sir.

5 THE COURT: All right. Here's the response back, Mr.
6 Bailiff, if you would take that in to them, please. Thank
7 you. And we'll just wait for a reply. I asked them if they
8 wished to hear all four and advised them of the collective
9 time it will take.

10 (Whereupon, there is a pause in the proceedings.)

11 THE BAILIFF: They want to hear it.

12 THE COURT: All right. Let's bring our two alternate
13 jurors in and have them seated in the alternate seats. We've
14 retained the alternates in sequestration while the jury has
15 been deliberating.

16 (Whereupon, there is a pause in the proceedings until the
17 alternate jurors enter the courtroom.)

18 THE COURT: All right. We now have our two alternates
19 back in the courtroom. Please come in and be seated. The
20 jury has asked that we replay some testimony. Thank you for
21 your courtesy and patience in waiting for us and we want to
22 bring you out first to let you know what it is we're going to
23 hear, and we'll bring the rest of the jury out and begin the
24 process. The jury has asked that we hear four defense
25 witnesses on the issue of alibi and we are going to bring the

1 jury out and play that testimony through the court reporter.

2 So welcome back to the courtroom and please bring in the jury.

3 (Whereupon, the jury enters the courtroom at 3:57 p.m.)

4 THE COURT: All right, ladies and gentlemen, welcome back
5 to the courtroom. While our court reporter is setting up, let
6 me explain the process that we use. In each of the courtrooms
7 in South Carolina where we have a court reporter, the court
8 reporter is manually taking down the testimony, but we also
9 run an actual tape in the event the jury wishes to hear some
10 testimony so that -- as opposed to someone reading it back and
11 using their own inflection or intonation or punctuation. We
12 actually just play back exactly what the witnesses said. So
13 the reason that we play the entire direct and cross of the
14 witnesses is we're not certain when the jury asks what
15 specifically you're looking for and it may be as we try to
16 pinpoint, we would miss something that a particular juror may
17 wish to have.

18 So we are set up now to play all four witnesses, one
19 after the other, direct and cross. We're going to have to
20 test the sound system to make sure that you're able to hear
21 from the tape and let's give that a try, please.

22 (Whereupon, a sound test is performed.)

23 THE COURT: Are you able to hear that, ladies and
24 gentlemen?

25 (Whereupon, the jurors indicate positively.)

1 THE COURT: Good.

2 (Whereupon, testimony is played from audiotape in open
3 court before the jury of the following four witnesses:
4 Laquesha Felder, Daniel Robinson, Stephon Jamison, and
5 Leon Devaughn Dizzley, Jr.)

6 THE COURT: All right, ladies and gentlemen, that
7 concludes the request of the four witnesses. We'll let you
8 return to your jury room. Let me ask, ladies and gentlemen,
9 is there anybody on the jury who needs to call someone because
10 it's five o'clock and they may be expecting you? All right.
11 Well, let's do this. We'll give you an opportunity to make a
12 call before the jury begins their deliberations. All right?
13 So if y'all will just make provisions for that. To our
14 alternates, we appreciate your longsuffering and patience and
15 please return to your area.

16 (Whereupon, the jury exits the courtroom at 4:52 p.m.)

17 THE COURT: Ladies and gentlemen, the rest of us will be
18 in recess subject to the call of the jury.

19 (Whereupon, there is a break in the proceedings from 4:53
20 p.m. until 5:23 p.m.)

21 THE COURT: Ladies and gentlemen, what we're going to do
22 is we're just going to make a blind draw among the two
23 alternates. It appears that our jury has not been able to
24 reach a verdict this afternoon according to a message that
25 they've sent us and thus we are going to send the jury home

1 and bring them back tomorrow morning to begin their
2 deliberations. Our two alternates were sequestered. We're
3 going to choose by random draw between the two and have one of
4 them return tomorrow in the event we lose one of our jurors
5 overnight to illness or emergency or whatever may happen. Is
6 there objection to drawing the name of a juror between the two
7 just at random from a cup in which we have those two names
8 from the State?

9 MR. HIXSON: No, Your Honor.

10 THE COURT: And from the defense?

11 MR. BARR: No, sir.

12 THE COURT: All right, very good. Now, what I'm asking
13 you to do, Madam Clerk, if you'll just draw without looking
14 from the two names in that cup. And you have drawn the name
15 of Ms. Morrison, who is Juror Number 95. And let's bring our
16 two alternates, if you will, and we'll seat them in the -- in
17 the box.

18 (Whereupon, the alternate jurors enter the courtroom at
19 5:26 p.m.)

20 THE COURT: And then while our alternates are coming in
21 we will bring the rest of the jury as well. All right,
22 ladies, please come join us, if you will, one more time to
23 your seats. We're going to bring the rest of the jury in to
24 sit with you as well.

25 (Whereupon, the jury enters the courtroom at 5:26 p.m.)

1 THE COURT: All right, Mr. Foreman, ladies and gentlemen
2 of the jury, welcome back to the courtroom. We have received
3 a message that you are unable to reach a verdict this
4 afternoon and what we're going to do is we're going to end
5 these proceedings for the day and we're just going to stop for
6 the day and let you come back tomorrow morning and overnight
7 have an opportunity to reflect upon your deliberations that
8 you've had and come back tomorrow morning and see where you
9 stand. What we will do is we will ask you to be back at nine
10 thirty tomorrow morning in the jury room.

11 Now, you probably have noticed that they have been very
12 gracious about it, that Ms. Port and Ms. Morrison, who are our
13 alternate jurors, have remained with us and what they've done
14 is they've been sequestered in a room up front in the event
15 that one of you should have the inability to go forward, have
16 an emergency, or something would happen, and we certainly hope
17 it would not. We were prepared in the event that it did.

18 I will tell you that we have now placed your two names
19 randomly in a cup and we have made a blind draw and, Ms.
20 Morrison, your name has been drawn and we would ask you to
21 return tomorrow morning as well and we're going to release Ms.
22 Port so that we will not have to bring both of you back
23 tomorrow morning. But, Ms. Morrison, if you would kindly
24 return tomorrow morning and come to the courtroom, then we'll
25 place you in the front room again. We'll try not to just

1 leave you there sitting there with nothing to do. If you wish
2 to bring a book to read or whatever you wish, please do.

3 Now, ladies and gentlemen of the jury, let me talk a
4 little bit more about tonight. Please, when you go home, do
5 not undertake any type of investigation or analysis on legal
6 points or factual points, whatever may have been occurring
7 with the jury room. Just have a good evening. Free your
8 mind. Take a break and come back tomorrow morning and begin
9 again. We're going to take up your notes and we're not going
10 to review them, but we're going to keep them secure and give
11 them back to you in the morning without reviewing them.

12 So if you want to close your book, feel free to. Please
13 write your name either on the first page or someplace that's
14 appropriate. If you would, put your juror tag on it as an
15 excellent way to do that so that tomorrow morning you will be
16 able to pick the book back up. Now, let me say the reason we
17 do that is to make sure we're all on the same wavelength.
18 Again, this is not for us to review your notes, your personal
19 comments or thoughts, whatever they may be, because we will
20 not do -- no one will do that, but this is to preserve the
21 confidentiality of jury proceedings and we will keep those
22 notes secure and give them to you in the morning.

23 Okay, Ms. Knox has -- with her years of experience here
24 has reminded me that it's best not to leave your badge on the
25 book because it will have to be scanned in in the morning when

1 you walk in the door. So if you would, just put your name on
2 the first page or somewhere on the front of the book if you
3 can so no one has to look into it even to identify whose it is
4 would be fine and we will look to see you tomorrow morning at
5 nine thirty.

6 Now, again please don't discuss this with your loved ones
7 at home what's happening because that would be inappropriate
8 because clearly you're a jury under deliberation at this time.
9 All right, any questions from our jury about scheduling?

10 Then, Ms. Port, as you leave, ma'am, I will come down and
11 shake your hand for my expression of gratitude for your
12 service and then we'll see the rest of our jurors tomorrow
13 morning. We'll remain where we are as you depart the
14 courtroom. Have a good day and someone will take up your
15 books as you're leaving -- leaving the jury box.

16 And I hate to tell you this again. It was raining when I
17 last looked outdoors. Hopefully, it stopped in the last
18 couple minutes.

19 (Whereupon, the jury exits the courtroom at 5:31 p.m.)

20 THE COURT: All right, ladies and gentlemen, we will be
21 in recess. The staff will be in -- please be in by nine and
22 -- because there will be other defendants -- other individuals
23 here who will have bonds, pleas and other matters. We'll pick
24 up with the jury at nine thirty. This Court is in recess for
25 the day.

1 (Whereupon, the proceedings end at 5:32 p.m. for the
2 day.)
3 (Whereupon, the jury notes are marked as Court's Exhibit
4 Number 1.)

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6 --- END REQUESTED TRANSCRIPT ---
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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF FLORENCE)

4
5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 General Sessions for Georgetown County, South Carolina, on the
12 29th day of August 2012.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15
16 Krystal J. Smith

17 Court Reporter

18
19 Florence, South Carolina

20 October 26, 2013

21

22

23

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25

1 MR. DIZZLEY: No, sir.

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

5 MR. DIZZLEY: Yes, sir.

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

9 MR. DIZZLEY: Yes, sir.

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

14 MR. DIZZLEY: No, sir.

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

18 MR. BARR: No, sir, Judge.

19 THE COURT: And Mr. Hixson?

20 MR. HIXSON: No, Your Honor.

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

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

9 MR. HIXSON: No, Your Honor.

10 THE COURT: And from Defense?

11 MR. BARR: No, sir, Judge.

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

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

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

1 to do is be - and by the way, there's no windows, so I don't
2 know if I'm sending you out to a monsoon again or not, but if
3 it is if you need one of our officers to help you get to your
4 car with an umbrella we'll do our best to provide that for you
5 and what I would ask that you do is be back in your jury room
6 again at 9:30 tomorrow morning. We will start at 9:30, and
7 again this evening please don't discuss this case with anyone
8 including your loved ones at home. Don't undertake any
9 investigations. Just get a good night's rest and be back at
10 9:30 tomorrow morning. Don't call the juror number. There's
11 no need to do that. Just be back at 9:30. Any questions now
12 from our jury panel about scheduling?

13 (No response.)

14 THE COURT: All right, well, then we will see you at
15 9:30 and as we do every day out of respect we will remain
16 where we are while you depart the courtroom first. Have a
17 good afternoon, ladies and gentlemen.

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

20 THE COURT: All right, anything further for our
21 record today?

22 MR. HIXSON: No, Your Honor.

23 THE COURT: Very good, gentlemen, if you would step
24 up we'll give you, again, this charge is not set in stone, but
25 if you would meet me in chambers tomorrow morning at nine

1 o'clock we'll be prepared to have a charge conference and if
2 you'd step forward and get the charge we are in recess now,
3 ladies and gentlemen, until 9:30 here in the courtroom
4 tomorrow morning.

5 OFF THE RECORD

6 (On the record, August 30, 2012. Jury deliberations continue
7 at 9:42 a.m.)

8 (Note from jury [Court's Exhibit Number Five] received at
9 10:03 a.m. Reply from Court sent back to jury at 10:21 a.m.)

10 (Note from jury at 11:12 a.m. The following takes place
11 outside the presence of the jury.)

12 THE COURT: Let's go back now on the record in the
13 case of the State versus Dizzley. We have a message from the
14 jury, ladies and gentlemen, or counsel, you want to step up
15 and look at it? Have you already seen it?

16 MR. BARR: I've seen it, Judge.

17 THE COURT: All right, very good. It would be the
18 State's intention at this time to bring the jury back,
19 including our alternates, and give an Allen charge and I'll be
20 glad to hear from either side as to whether you object or
21 concur with that procedure. What says the State?

22 MR. HIXSON: I concur, Your Honor.

23 THE COURT: All right, and Mr. Barr, you want to be
24 heard?

25 MR. BARR: Your Honor, I just need to consult with my

1 client for just a second.

2 THE COURT: Very good. We'll wait a moment.

3 MR. BARR: Nothing from the Defendant, Judge.

4 THE COURT: Very good. Madam court reporter, let's
5 mark this as a Court's Exhibit, please, this note, and would
6 you please bring our two alternate jurors from the back and
7 then would you please bring our jury panel from the jury room.

8 MR. BARR: And Judge, I think we've just got one now.

9 THE COURT: Are we down to one now, all right.

10 (Whereupon, the following takes place in the presence of
11 the jury at 11:25 a.m.)

12 THE COURT: Welcome. I don't think you're going to
13 need your pad. That's what some of the jurors are asking. I
14 can hear them in the back. So I think you're fine where you
15 are. That's fine. We'll wait a moment. We're fine. We're also
16 waiting on our alternate to join us. So we'll just be at ease
17 for a moment. Ladies and gentlemen, just while we are waiting
18 for our others to join us I want to thank you for coming back
19 today. I know that probably some of you, if you were like me,
20 were confronted by a flood on the way home yesterday and I
21 couldn't help but go notice as I drove by your business, Mr.
22 Thompson, I believe it flooded yesterday; did it not?

23 MR. THOMPSON: No, no.

24 THE COURT: It did not? All right, well, it had some
25 heavy standing water near it.

1 MR. THOMPSON: It was close.

2 THE COURT: Very good. Well, I, I appreciate your
3 willingness to be back today and when we had such adverse
4 weather conditions yesterday. We're going to wait just one
5 moment for our alternate and we have at least one of our
6 alternates is still remaining with us.

7 While we have our 12 though assembled in the courtroom
8 let me ask, ladies and gentlemen, when we were apart from one
9 another last night is there any member of the jury panel who
10 had a discussion with any third person concerning or any other
11 jury panel member for that matter during the evening break
12 concerning the facts of this case? If you did please raise
13 your hand.

14 (No response.)

15 THE COURT: And again, let's let the record reflect no
16 one has raised their hands. Thank you for complying with the
17 Court's request. Welcome back, and we still, we still have
18 Ms. Morrison with us this morning as well, is that correct?
19 All right, good. Here she comes. Good morning.

20 All right, and ladies and gentlemen, I'm going to ask you
21 if you would just secure the back door so that we won't have
22 people coming and going as we talk with the jury here.

23 Ladies and gentlemen, first of all, welcome back to the
24 courtroom and I have received your message that you've been
25 unable to reach a verdict in the case, and as I instructed you

1 earlier and as we're all aware the verdict in this case must
2 be unanimous. Now just thinking about this though at any time
3 there is a matter in dispute it isn't always easy for even two
4 people to agree who may be discussing it, much less 12, and so
5 when 12 are required to agree on something well it's even more
6 difficult and in most cases I think we would all agree that
7 absolute certainty can never be reached and that's not what is
8 expected. However, you have a duty to make every reasonable
9 effort to reach a unanimous verdict if you can. In doing this
10 you should consult with one another just as you have been
11 doing, express your own views, but listen openly to the
12 opinions of your fellow jurors, tell each other how you feel
13 and why you feel that way and discuss your differences with
14 open minds as opposed to closed minds, and although the
15 verdict of the jury must be unanimous every one of you has the
16 right to your own opinion and the verdict that you agree to
17 must be your own verdict, the result of your own convictions
18 and you should not give up a firmly held belief merely to be
19 in agreement with fellow jurors. The majority should consider
20 the minority's opinion and the minority should consider the
21 majority's opinion and each of you should consider the others
22 opinion. You should carefully consider and respect the
23 opinions of each other and reevaluate your position for its
24 reasonableness, correctness and impartiality. You must lay
25 aside all outside matters and reexamine the questions before

1 you based on the law as I gave you and the evidence as you
2 found it in the case.

3 Now, let's talk about what happens if you do not agree or
4 cannot agree on a verdict. If that happens and the Court
5 declares a mistrial and what that means is that nobody wins,
6 neither the State nor the Defendant. It just means that at
7 some future time this case will be tried again with some other
8 jury sitting where, where you sit today. The same
9 participants will come in, same witnesses, most likely give
10 the same testimony, the same lawyers will basically ask the
11 same questions and we'll go through the entire process of the
12 trial again.

13 Now, you were selected in the same manner and from the
14 same jury pool really, the community, as any future jury will
15 be and there's no reason for me to suppose or expect that the
16 case would ever be submitted to 12 more intelligent and
17 capable, that is capable, impartial and conscientious and
18 competent jurors than you are and that some greater evidence
19 or more or clear evidence will be adduced on one side or the
20 other.

21 So, ladies and gentlemen, I'm going to ask you to return
22 to your deliberations one more time. If you're unable to
23 reach a verdict please advise me of that, but I ask you in
24 compliance with the instructions that I've given you to go
25 back and try again and out of respect for you and your efforts

1 we're going to remain where we are while you return to the
2 jury room. Thank you, ladies and gentlemen.

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

5 THE COURT: That's fine. If they wish to take a smoke
6 break please give them that opportunity. Now, any objection
7 to the charge that's just been given by the Court from the
8 State?

9 MR. HIXSON: No, Your Honor.

10 MR. BARR: No, Judge.

11 THE COURT: And from Defense. Then hearing none then
12 we're ready to move into other business now, Mr. Hixson, and
13 please call your next case.

14 OFF THE RECORD

15 (On the record. Note from jury at 12:20 p.m. The following
16 takes place outside the presence of the jury.)

17 THE COURT: Let's go back in the record, on the record
18 in the case of the State versus Dizzley and while everyone is
19 coming back in let's go ahead and bring the jury in and let's
20 bring our alternate jurors. Ms. Owens, if you'd bring the
21 alternate jurors as well into the courtroom.

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

24 THE COURT: All right, ladies and gentlemen, welcome
25 back and Mr. Grate, Mr. Foreman, ladies and gentlemen of the

1 jury, I've received a message that tells me that the jury is
2 still deadlocked and unable to reach a decision in this case
3 and I wanted to, first of all, tell you one or two things that
4 I have on my mind and heart about this matter. First of all,
5 I don't want you to think in any way that your exercise as
6 jurors has been a failure on your part because you could not
7 reach a verdict. That's not a failure on your part. That's
8 really the strength of our system because we bring diverse
9 citizens from different backgrounds all from the same
10 community to hear a set of facts and make a decision as to
11 whether or not in criminal court a person is guilty or
12 innocent.

13 Now, what you've told us is that you can't reach a
14 unanimous decision, and I would say to you to that that's not
15 a failure on your part. That's actually a strong message to
16 the Prosecution that they are unable to meet the burden of
17 proof to the extent that they can bring back a unanimous
18 verdict.

19 Now, the way this process actually works is it is up to
20 the Solicitor as to whether they will dismiss the charge or
21 whether they will retry this case or perhaps redevelop the
22 charge in some way and bring a separate charge of some kind
23 and try that. It's a - the decision rests with the Solicitor.
24 It's not within the control of the Defendant, but what's going
25 to happen here is the Court is going to declare a mistrial,

1 but I don't want you to believe in any way, zero way that that
2 somehow you are responsible for that because you are not.
3 You're given a set of facts that were the best that the State
4 could adduce from what happened and what they were able to
5 determine, they put that up to you and you brought back a wise
6 and common sense decision that you simply could not agree upon
7 it. There's a message in that and so you've accomplished your
8 purpose.

9 (Instructions for juror payment given and jury
10 dismissed.)

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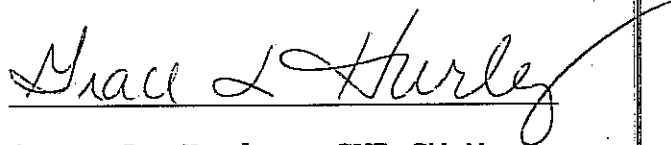
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Terron Gerhard Dizzley, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on August 27, 28 and 30th, 2012.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

September 14, 2013.

RULE 210(g) CERTIFICATE OF COUNSEL

Undersigned Counsel hereby certifies that the Record on Appeal contains all material proposed to be included by the parties and not any other material.

RECEIVED
Nov 06 2023
SC Court of Appeals

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