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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI- COA
APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge
Deadra L. Jefferson, Trial Judge

Appellate Case No. 2023-001847

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX
VOLUME I

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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**CERTIORARI TO CHARLESTON COUNTY
Court of Common Pleas
William H. Seals, Jr., Circuit Court Judge**

**Appellate Case № 2018-000464
Lower Case No. 2014-CP-10-3019**

Jerome Campbell, # 349454, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX VOLUME I

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 2009-GS-10-6730
) CASE NO. 2009-GS-10-6731
) CASE NO. 2009-GS-10-6732
) CASE NO. 2009-GS-10-6733

THE STATE OF SOUTH CAROLINA,)
)
Plaintiff,)

-vs-

) TRANSCRIPT OF RECORD
) (DAY 1 of 5)
)

JEROME CAMPBELL,)
A/K/A JEROME COAXUM,)
)
Defendant.)
)

January 23-27, 2012
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA JEFFERSON, Judge, and a jury

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

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ELIZABETH B. RIDDLE, Assistant Solicitor
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KRYSTAL J. SMITH
Official Court Reporter

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1 JANUARY 23, 2012

2 (WHEREAS, this matter was scheduled for trial, the
3 defendant appears along with his counsel of record. The
4 trial begins at 11:31 a.m. The jury panel is not yet
5 present and a bench conference is held regarding an offer
6 to plea.)

7 MR. VOIGT: May I approach, Your Honor?

8 THE COURT: Mm-hmm.

9 MR. VOIGT: I just wanted to let the Court know that I
10 had made an offer that will expire once the jury is selected
11 and if there's some part of that that you'd like to put on the
12 record ---

13 THE COURT: What's the offer?

14 MR. VOIGT: The offer would be of voluntary manslaughter
15 with a cap of twenty years.

16 THE COURT: How old is he?

17 MR. VOIGT: 35.

18 THE COURT: 35?

19 MR. HARRIS: 35. I think he just turned 36.

20 THE COURT: Is he a walk-in?

21 MR. VOIGT: He is a walk-in.

22 MR. HARRIS: Yes.

23 THE COURT: Is he here?

24 MR. HARRIS: He's out in the hallway. I didn't want to
25 bring him in during the pleas.

1 THE COURT: Yeah, go ahead and bring him in.
2 MR. HARRIS: Okay.
3 THE COURT: Because they're going to be bringing the jury
4 up in that hallway now.
5 MR. HARRIS: Okay.
6 (Whereupon, the bench conference ends and Mr. Harris
7 leaves the courtroom to retrieve the defendant.)
8 THE COURT: Mr. Mikell, you helping Mr. Harris?
9 MR. MIKELL: I am, Your Honor.
10 THE COURT: Mr. Voigt, who will be assisting you?
11 MR. VOIGT: This will be Elizabeth Riddle, Your Honor.
12 THE COURT: Elizabeth?
13 MR. VOIGT: Riddle.
14 THE COURT: Related to any of the Riddles in Lexington
15 County?
16 MS. RIDDLE: No, Your Honor. It's my husband's name.
17 THE COURT: Your husband is a Riddle?
18 MS. RIDDLE: From North Carolina.
19 THE COURT: Oh, that's an unusual name. That's why I
20 asked. Is he going to want a formal arraignment? Do you
21 know, Mr. Mikell?
22 MR. MIKELL: No, I don't know the answer, Your Honor.
23 THE COURT: Okay. I'll ask Mr. Harris.
24 (Whereupon, Mr. Harris and the defendant enter the
25 courtroom at 11:31 a.m.)

1 THE COURT: Okay, Mr. Harris, does your client wish to
2 have a formal arraignment?

3 MR. HARRIS: No, Your Honor.

4 THE COURT: Mr. Harris, have you explained to your client
5 and fully gone over with him the State's offer of a plea to
6 voluntary manslaughter with a cap of twenty years?

7 MR. HARRIS: I have, Your Honor.

8 THE COURT: And to your knowledge does your client wish
9 to accept or reject that offer?

10 MR. HARRIS: He wishes to reject that offer, Your Honor..

11 THE COURT: And is that with or against your advice?

12 MR. HARRIS: That is with my advice.

13 THE COURT: Okay. Sir, raise your right hand to be
14 sworn. That's with -- You -- You have -- You have advised him
15 to reject it, that you think that's in -- Do you -- I want to
16 make sure you understood my question.

17 MR. HARRIS: I guess what I'm trying to say, Judge, is I
18 have not advised him against it or to take the offer. No, but
19 I haven't said -- I basically left it up to him.

20 THE COURT: Okay.

21 MR. HARRIS: I have not -- I guess I didn't promote the
22 offer as something I thought was a good -- was a good offer.

23 THE COURT: Okay. I just wanted to --

24 MR. HARRIS: Based on ---

25 THE COURT: I'm only asking this for PCR purposes because

1 ---
2 MR. HARRIS: Right.
3 THE COURT: --- it's better to have a contemporaneous
4 record of what actually happened now instead of later ---
5 MR. HARRIS: Okay.
6 THE COURT: --- if that becomes an issue, worst case
7 scenario. Sir, do you swear or affirm the testimony you give
8 will be the truth?
9 MR. CAMPBELL: Yes.
10 THE COURT: You can put your right hand down, sir. State
11 your full name for the record.
12 MR. CAMPBELL: Jerome Renaldo Campbell.
13 THE COURT: Is that R-E-N-A-L-D-O?
14 MR. CAMPBELL: Yes, ma'am.
15 THE COURT: Sir, how old are you?
16 MR. CAMPBELL: Thirty-seven.
17 THE COURT: How far have you gone in school?
18 MR. CAMPBELL: I have a bachelor's degree.
19 THE COURT: And where did you get your bachelor's degree?
20 MR. CAMPBELL: The University of South Alabama in Mobile,
21 Alabama. I'm sorry. I'm 36 about to turn ---
22 THE COURT: That's all right.
23 MR. CAMPBELL: --- later this year.
24 THE COURT: And sir, are you suffering from any mental
25 disabilities or under the influence of any drugs or alcohol?

1 MR. CAMPBELL: No, ma'am.

2 THE COURT: Has your lawyer fully explained to you the
3 State's offer of voluntary manslaughter with a cap of twenty
4 years?

5 MR. CAMPBELL: Yes, ma'am.

6 THE COURT: And have you -- Do you have any further
7 questions with -- of Mr. Harris or Mr. Mikell regarding that
8 offer?

9 MR. CAMPBELL: No, ma'am.

10 THE COURT: And you are -- Do you wish to accept or
11 reject that offer?

12 MR. CAMPBELL: Reject it.

13 THE COURT: Okay and you understand that the offer
14 expires once we bring -- The jury should be up here shortly if
15 they're not upstairs already.

16 MR. CAMPBELL: Yes, ma'am.

17 THE COURT: Once we bring them into the courtroom that
18 that offer will expire.

19 MR. CAMPBELL: Yes, ma'am.

20 THE COURT: Do you understand that?

21 MR. CAMPBELL: Yes, ma'am.

22 THE COURT: And are you rejecting this offer freely and
23 voluntarily and of your own will?

24 MR. CAMPBELL: Yes, ma'am.

25 THE COURT: Okay. Do you have any additional questions,

1 Mr. Harris?

2 MR. HARRIS: None, Your Honor.

3 THE COURT: Mr. Mikell?

4 MR. MIKELL: No, Your Honor.

5 THE COURT: Okay. You all can take your seats. You can
6 go ahead and bring the panel in. We're only going forward on
7 one indictment, correct? 2009-6731?

8 MR. VOIGT: I believe we're going forward on the AWIKs as
9 well, Your Honor.

10 THE COURT: Was that your understanding, Mr. Harris?

11 MR. HARRIS: It is, Your Honor. I didn't -- At first it
12 was not and whatever.

13 THE COURT: Because I had several indictments on here. I
14 just didn't know which ones you were going forward on.

15 MR. VOIGT: They all arise out of the same set of
16 operative facts, Your Honor.

17 MR. HARRIS: So you're going forward on all three of
18 them?

19 MR. VOIGT: All the AWIKs.

20 THE COURT: That is 2009-GS-10 -- I need y'all to
21 approach because I have more than what you just told me.

22 (Whereupon, a bench conference is held.)

23 THE COURT: Which ones are we going forward on? All
24 three of them?

25 MR. VOIGT: All three.

1 term meaning that I am going to ask you some questions so that
2 the attorneys can more effectively exercise their preemptory
3 challenges in jury selection. If a question applies to you,
4 please stand and in a loud and clear voice give us your name
5 and your juror number and an answer to the question if
6 applicable and remain standing until the Court has completed
7 questioning you.

8 And we are going to select a jury for the following
9 indictments. 2009-GS-10-6730, which is an indictment for
10 assault with intent to kill and that indictment alleges as
11 follows: That in Charleston County, South Carolina, on or
12 about January 19th, [sic.] 2009, the defendant, Jerome Renaldo
13 Campbell, with malice aforethought accompanied by a present
14 ability to complete the act did attempt to commit an unlawful
15 act of violent injury to Frank Haigler, to wit: the defendant
16 did shoot at the victim several times alleging a violation of
17 the common law of South Carolina.

18 And indictment 2009-GS-10-6731, an indictment for murder
19 and that indictment alleges that in Charleston County on or
20 about January 9th, 2009, with malice aforethought Jerome
21 Renaldo Campbell did kill and murder Michael German by means
22 of shooting the victim and that Michael German did die in
23 Charleston County as a proximate result thereof on January 9th,
24 2009, alleging a violation of Code Section 16-3-10 of the
25 South Carolina Code of Laws as amended.

1 THE COURT: Okay.

2 MR. VOIGT: Thank you, Your Honor, and one of those
3 indictments is A/K/A Coaxum. I think I'm going to refer to
4 him consistently as Mr. Campbell. He has previously gone by
5 Coaxum.

6 THE COURT: Jerome Renaldo Coaxum. I don't think I to
7 need to say that.

8 MR. VOIGT: No. I just wanted to let you know I'm going
9 refer to him ---

10 THE COURT: But he goes by Jerome Renaldo Campbell for
11 our purposes?

12 MR. VOIGT: Yes, Your Honor, Jerome Renaldo Campbell.
13 (Whereupon, the bench conference ends and there is a
14 brief pause in the proceedings while the jury panel
15 enters the courtroom and counsel returned to their
16 tables.)

17 THE COURT: Could counsel approach for me, please?
18 (Whereupon, a bench conference is held off the record in
19 the presence of the jury panel, but out of the hearing of
20 the jury panel.)

21 THE COURT: Ladies and gentlemen, we are going to select
22 a jury for the case of the State of South Carolina versus
23 Jerome Renaldo Campbell. Before we begin that process --
24 Well, as part of that process we're going to go through
25 something that is called voir dire, which is simply a legal

1 And indictment 2009-GS-10-6732, an indictment for assault
2 with intent to kill and that indictment alleges that in
3 Charleston County, South Carolina, on or about January 9th,
4 2009, the defendant, Jerome Renaldo Campbell, with malice
5 aforethought accompanied by a present ability to complete the
6 act did attempt to commit an unlawful act of violent injury to
7 Anthony German, to wit: the defendant did shoot at the victim
8 alleging a violation of the common law of South Carolina.

9 And indictment 2009-GS-10-6733, an indictment for assault
10 with intent to kill and that indictment alleges that in
11 Charleston County, South Carolina, on or about January 9th,
12 2009, the defendant, Jerome Renaldo Campbell, with malice
13 aforethought accompanied by a present ability to complete the
14 act did -- did attempt to commit an unlawful act of violent
15 injury to Michael Allen, to wit: the defendant did shoot at
16 the victim alleging a violation of the common law of South
17 Carolina and alleging all of these actions to be against the
18 peace and dignity of this state.

19 Before we begin the process of voir dire, I'm going to
20 ask counsel for the State to introduce himself, anyone who
21 will be assisting him in the trial of this case and also the
22 names of the members of his office -- of the lawyers in his
23 office and I'm going to ask counsel for the defense to provide
24 us with the same information and also have his client stand
25 and face the panel. You may proceed.

1 MR. VOIGT: Thank you very much, Your Honor.

2 THE COURT: You're welcome.

3 MR. VOIGT: My name is Greg Voigt. I'm the Assistant
4 Solicitor here in Charleston County. Assisting me today will
5 be Elizabeth Riddle. You may also see Joanne Gould, who is a
6 paralegal in our office. In and out of the courtroom you may
7 see my investigator, Ryan Kelly.

8 Some of the attorneys in our office include: the
9 Solicitor, Scarlett Wilson; the chief deputy, Bruce DuRant;
10 Spencer Compton; Stephanie Linder; Rutledge DuRant; Michael
11 Nelson; Culver Kidd; Chad Simpson; Amy Harrell; Julie
12 Cardillo; Jennifer Shealy; Shannon Elliott; Natasha Chisholm;
13 Timmy Finch; Marian Askins; Meg Haley; Jim Stack; Lindsey
14 McClain; Tyler Whitaker; Adam Young; Jessica Baldwin; Jennifer
15 McCoy; Debbie Herring-Lash; Elizabeth Gordon; Burns Wetmore;
16 and Jennifer Kinzeler. I think I got them all.

17 THE COURT: Mr. Harris?

18 MR. HARRIS: I am Stephen Harris and I'm with the law
19 firm Harris & Huge consisting of myself and my partner, Ted
20 Huge. Jason Mikell will be as co-counsel on this case. He'll
21 introduce himself in a moment and Jerome Campbell is my
22 client. Other people that would be working on this case would
23 be Avery Kepple (sp.), Jessie Cabot (sp.) and Crystal
24 Robinson.

25 MR. MIKELL: My name is Jason Mikell. I'm a solo

1 practitioner from Mount Pleasant, South Carolina. My
2 paralegal is named Sonya Blessing (sp.).

3 THE COURT: Thank you. Again, ladies and gentlemen, if a
4 question applies to you, please stand and in a loud and clear
5 voice tell us your name, your juror number, and an answer to
6 the question if applicable and remain standing until the Court
7 has completed questioning you.

8 Is there any member of the panel related by blood or
9 marriage to Jerome Renaldo Campbell, Michael Allen, Anthony
10 German, Frank Haigler, or anyone who is related to or a member
11 of -- or have any connection with Michael German? If so,
12 please stand at this time?

13 (Whereupon, no one stands.)

14 THE COURT: Does any member of the panel have a close --
15 close personal or social relationship with Jerome Renaldo
16 Campbell, Michael Allen, Anthony German, Frank Haigler or
17 anyone who is related to Michael German? If so, please stand
18 at this time.

19 (Whereupon, no one stands.)

20 THE COURT: The following are a list of potential
21 witnesses in this case. I would ask that you listen very
22 carefully. Jerome Renaldo Campbell, Charise Coaxum,
23 Christopher Robinson, Aaron Burnham, Sandra Campbell, Jordan
24 Richardson, John Tisdale, Mary Phillips, Anita Moore, Mike
25 Sherman, Richard Wiersman -- Wiersma, W-I-E-R-S-M-A, Richard

1 Burckhardt, Sergeant Scott Ray, Rene Charles, all of the
2 Charleston Police Department, Ryan Kelly, Anthony German,
3 Michael Allen, Timothy McCarthy, James Tawney, Frank Haigler,
4 Kenneth Whitler, John Roberts, all of the South Carolina Law
5 Enforcement Division, Erin Presnell, Medical University of
6 South Carolina, Joshua Briar-Ridgeway, and Joy Glover.

7 Is there any member of the panel related by blood or
8 marriage to any of the people that I have just listed or does
9 anyone have a close personal or social relationship with any
10 of these individuals? If so, please stand at this time.

11 (Whereupon, no one stands.)

12 THE COURT: Has any member of the panel ever been
13 represented by any of the attorneys involved in this case or
14 anyone with whom they practice law? If so, please stand at
15 this time.

16 (Whereupon, no one stands.)

17 THE COURT: Is there any member of the panel related by
18 blood or marriage to or have a close personal or social
19 relationship with any of the attorneys involved in this case
20 or anyone with whom they practice law? If so, please stand at
21 this time.

22 (Whereupon, no one stands.)

23 THE COURT: Is there any member of the panel related by
24 blood or marriage to or have a close personal or social
25 relationship with anyone who is employed in the Solicitor's

1 Office or anyone who is employed in the offices of Mr. Harris
2 or Mr. Mikell? If so, please stand at this time.
3 (Whereupon, one panel member stands.)
4 THE COURT: Yes, sir. Tell me your name and your juror
5 number.
6 JUROR RICHARDSON: Joseph Richardson, 215.
7 THE COURT: And who are you related to, sir?
8 JUROR RICHARDSON: Tasha Lafayette.
9 THE COURT: And where is she employed?
10 JUROR RICHARDSON: The Solicitor's Office.
11 THE COURT: And in what capacity? Do you know?
12 JUROR RICHARDSON: I do not.
13 THE COURT: Okay. Sir, as a result of this experience,
14 do you feel that you can remain fair and impartial and render
15 a fair and impartial decision in this case based solely on the
16 evidence as it will be presented and on the law as the Court
17 will instruct?
18 JUROR RICHARDSON: I do not.
19 THE COURT: Okay. Sir, you will be excused from the
20 trial of this case only. You may take your seat.
21 Has any member of the panel formed or expressed an
22 opinion about any issue or matter involved in this case? If
23 so, please stand at this time.
24 (Whereupon, no one stands.)
25 THE COURT: Is there any member of the panel aware of any

1 bias or prejudice toward either the State or the defense in
2 this case? If so, please stand at this time.

3 (Whereupon, no one stands.)

4 THE COURT: Is there any member of the panel who was a
5 member of the grand jury which issued the indictments in this
6 case? If so, please stand at this time.

7 (Whereupon, no one stands.)

8 THE COURT: Is there any member of the panel who is a
9 member of or contributor to any group which has as its primary
10 concern the promotion of law enforcement or victim's rights?
11 These groups would include but are not limited to Mothers
12 Against Drunk Driving, Students Against Drunk Driving,
13 Citizens Against Violent Crime, People Against Rape, Citizens
14 Advocating a Return to Decency in Ethics, Parents in Power to
15 Save Teens, or any other type community watch organization or
16 the Fully Informed Juror Organization. If so, please stand at
17 this time.

18 (Whereupon, no one stands.)

19 THE COURT: Is there any member of the panel who has a
20 family member who is employed with -- in any capacity with law
21 enforcement? If so, please stand at this time.

22 (Whereupon, several panel members stand.)

23 THE COURT: Yes, sir? Tell me your name and your juror
24 number.

25 JUROR JORDAN: Silvester Jordan, 122.

1 THE COURT: And which family member is it?
2 JUROR JORDAN: I have two cousins working for Charleston
3 City Police Department.
4 THE COURT: If you would, remain standing. Yes, ma'am?
5 JUROR PATTERSON: I have a cousin. I'm Juror 188. She's
6 a lawyer. Tiffany Spain (sp.) and she's a judge.
7 THE COURT: Okay, what is your name, ma'am?
8 JUROR PATTERSON: Roberta Patterson.
9 THE COURT: Okay and behind you, yes, ma'am?
10 JUROR GIVENS: I have a first cousin that's a state
11 trooper in North Charleston Police Department. Her name is
12 Charlene Gadsden.
13 THE COURT: And your name, ma'am?
14 JUROR GIVENS: Robin Givens.
15 THE COURT: And your juror number?
16 JUROR GIVENS: 70.
17 THE COURT: And yes, ma'am?
18 JUROR GADSDEN: My name is Erica Gadsden and I have a
19 cousin in the police department, Charleston Police Department,
20 Charleston police.
21 THE COURT: Charleston Police Department?
22 JUROR GADSDEN: Uh-huh.
23 THE COURT: And your name and your juror number?
24 JUROR GADSDEN: 63, Erica.
25 THE COURT: Erica?

1 JUROR GADSDEN: Gadsden.

2 THE COURT: Okay, thank you. Yes, sir?

3 JUROR SULLIVAN: I have a brother who in the Secret
4 Service.

5 THE COURT: And your name and juror number?

6 JUROR SULLIVAN: Matt Sullivan, number 259.

7 THE COURT: And I need everyone to remain standing who --
8 Thank you. As a result -- Yes, sir?

9 JUROR PORTER: Paul Porter, 205. I got a niece and
10 nephew working Charleston Police.

11 THE COURT: City or county?

12 JUROR PORTER: City.

13 THE COURT: As a result of these experiences, do you all
14 feel that you can remain fair and impartial and render a fair
15 and impartial decision in this case based solely on the
16 evidence as it will be presented and on the law as the Court
17 will instruct? If your answer is yes, please take your seat.

18 (Whereupon, all those standing are seated and then one
19 person stands again.)

20 THE COURT: Let the record reflect -- If you're -- Are
21 you standing up because you're telling me you can't be
22 impartial or did you -- Are you ---

23 JUROR: I could.

24 THE COURT: Okay. Let me repeat. Let me say if you
25 could be fair and impartial, you can take your seat. If you

1 do not feel you can be fair and impartial, you would remain
2 standing.

3 (Whereupon, the juror is seated.)

4 THE COURT: Let the record reflect that all indicated
5 they could be fair and impartial. Is there any member of the
6 panel who has any religious, philosophical or moral beliefs
7 that would prevent them from sitting in judgment of a fellow
8 human being? If so, please stand at this time.

9 (Whereupon, no one stands.)

10 THE COURT: Is there any member of the panel who has ever
11 had what they would characterize as an unpleasant experience
12 with law enforcement that would affect your ability to be fair
13 and impartial? If so, please stand at this time.

14 (Whereupon, no one stands.)

15 THE COURT: Does any member of the panel know of any
16 reason whatsoever why he or she should not serve as a juror in
17 this case with particular emphasis being placed on your
18 ability to be fair and impartial to both the State and the
19 defense? If so, please stand at this time.

20 (Whereupon, no one stands.)

21 THE COURT: Are there any additional questions from the
22 State?

23 MR. VOIGT: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. HARRIS: None, Your Honor.

1 THE COURT: Strikes will be ten and five. Who is going
2 to demonstrate for me? Mr. Robinson or Mr. Major? Ladies and
3 gentlemen, if your name is called, please come forward as Mr.
4 Major is doing and stand where he is standing, turn back
5 facing your -- your fellow panel members until either we seat
6 or excuse you as a juror. If you would, give the clerk your
7 undivided attention. Give us a few moments.

8 (Whereupon, there is a brief pause in the proceedings
9 while the jury list is generated, printed and
10 distributed.)

11 THE CLERK: Juror number 82, Kelly Grobmeyer, juror
12 number 82.

13 (Whereupon, a white female comes forward.)

14 THE CLERK: What say you for the State?

15 MR. VOIGT: The State would thank but excuse this juror.

16 THE CLERK: Ms. Grobmeyer, please have a seat back in the
17 audience. You've been excused from the trial of this case.
18 Juror number 42, Keith Culbreath, 42.

19 (Whereupon, a white male comes forward.)

20 THE CLERK: What say you for the State?

21 MR. VOIGT: Please present this juror.

22 THE CLERK: What say you for the defendant?

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

24 THE COURT: Mm-hmm.

25 MR. HARRIS: Please seat the juror.

1 THE CLERK: Mr. Culbreath, please have a seat in the jury
2 box. You've been selected as a juror in this case. Juror
3 number 14, Danielle Bowles, number 14.
4 (Whereupon, a black female comes forward.)
5 THE CLERK: What say you for the State?
6 MR. VOIGT: The State would thank but excuse this juror.
7 THE CLERK: Ms. Bowles, please have a seat back in the
8 audience. You've been excused from the trial of this case.
9 Juror number 107, Lorilee Hoyle, 107.
10 (Whereupon, a white female comes forward.)
11 THE CLERK: What say you for the State?
12 MR. VOIGT: Please present this juror.
13 THE CLERK: What say you for the defendant?
14 MR. HARRIS: Please seat the juror.
15 THE CLERK: Ms. Hoyle, please have a seat in the jury
16 box. You've been selected as a juror in this case. Juror
17 number 16, Alicia Brown, number 16.
18 (Whereupon, a black female comes forward.)
19 THE CLERK: What say you for the State?
20 MR. VOIGT: Please present this juror.
21 THE CLERK: What say you for the defendant?
22 MR. HARRIS: Please seat the juror.
23 THE CLERK: Ms. Brown, please have a seat in the jury
24 box. You've been selected as a juror in this case. Juror
25 number 275, Jessica Walters, 275.

1 (Whereupon, a white female comes forward.)
2 THE CLERK: What say you for the State?
3 MR. VOIGT: Please present this juror.
4 THE CLERK: What say you for the defendant?
5 MR. HARRIS: Please excuse this juror.
6 THE CLERK: Ms. Walters, please have a seat back in the
7 audience. You've been excused from the trial of this case.
8 Juror number 286, Cynthia Wilcher, 286.
9 (Whereupon, a black female comes forward.)
10 THE CLERK: What say you for the State?
11 MR. VOIGT: The State would thank but excuse this juror.
12 THE CLERK: Ms. Wilcher, please have a seat back in the
13 audience. You've been excused from the trial of this case.
14 Three strikes for the State. Juror number 63, Erica Gadsden,
15 63.
16 (Whereupon, a black female comes forward.)
17 THE CLERK: What say you for the State?
18 MR. VOIGT: Please present this juror.
19 THE CLERK: What say you for the defendant?
20 MR. HARRIS: Please seat this juror.
21 THE CLERK: Ms. Gadsden, please have a seat in the jury
22 box. You've been selected as a juror in this case. Juror
23 number 193, Alex Pearson, 193.
24 (Whereupon, a black male comes forward.)
25 THE CLERK: What say you for the State?

1 MR. VOIGT: Please present this juror.
2 THE CLERK: What say you for the defendant?
3 MR. HARRIS: Please seat the juror.
4 THE CLERK: Mr. Pearson, please have a seat in the jury
5 box. You've been selected as a juror in this case. Juror
6 number 33, Henry Cheves, 33.
7 (Whereupon, a white male comes forward.)
8 THE CLERK: What say you for the State?
9 MR. VOIGT: Please present this juror.
10 THE CLERK: What say you for the defendant?
11 MR. HARRIS: Please seat the juror.
12 THE CLERK: Mr. Cheves, please have a seat in the jury
13 box. You've been selected as a juror in this case. Juror
14 number 205, Paul Porter, 205.
15 (Whereupon, a black male comes forward.)
16 THE CLERK: What say you for the State?
17 MR. VOIGT: Please present this juror.
18 THE CLERK: What say you for the defendant?
19 MR. HARRIS: Please seat the juror.
20 THE CLERK: Mr. Porter, please have a seat in the jury
21 box. You've been selected as a juror in this case. Juror
22 number 251, Helen Spann, 251.
23 (Whereupon, a black female comes forward.)
24 THE CLERK: What say you for the State?
25 MR. VOIGT: Please present this juror.

1 THE CLERK: What say you for the defendant?
2 MR. HARRIS: Please present the juror.
3 THE CLERK: Ms. Spann, please have a seat in the jury
4 box. You've been selected as a juror in this case. Juror
5 number 52, Glenda Elayda, juror number 52.
6 (Whereupon, an Asian female comes forward.)
7 THE CLERK: What say you for the State?
8 MR. VOIGT: Please present this juror.
9 THE CLERK: What say you for the defendant?
10 MR. HARRIS: Please excuse this juror.
11 THE CLERK: Ms. Elayda, please have a seat back in the
12 audience. You have been excused from the trial of this case.
13 Juror number 115, Christina Janke, 115.
14 (Whereupon, an Asian female comes forward.)
15 THE CLERK: What say you for the State?
16 MR. VOIGT: The State would thank but excuse this juror.
17 THE CLERK: Ms. Janke, please have a seat back in the
18 audience. You have been excused from the trial of this case.
19 Four strikes for the State. Juror number 255, Stacy Stewart,
20 255.
21 (Whereupon, a white female comes forward.)
22 THE CLERK: What say you for the State?
23 MR. VOIGT: Please present this juror.
24 THE CLERK: What say you for the defendant?
25 MR. HARRIS: I beg the Court's indulgence, Your Honor.

1 THE COURT: Mm-hmm.

2 MR. HARRIS: Please seat the juror.

3 THE CLERK: Ms. Stewart, please have a seat in the jury
4 box. You've been selected as a juror in this case. Juror
5 number 259, Matthew Sullivan, 259.

6 (Whereupon, a white male comes forward.)

7 THE CLERK: What say you for the State?

8 MR. VOIGT: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MR. HARRIS: I beg the Court's indulgence for a moment.

11 THE COURT: Mm-hmm.

12 MR. HARRIS: Please seat the juror.

13 THE CLERK: Mr. Sullivan, please have a seat in the jury
14 box. You've been selected as a juror in this case. Juror
15 number 131, William Kufner, 131.

16 (Whereupon, a white male comes forward.)

17 THE CLERK: What say you for the State?

18 MR. VOIGT: The State would thank but excuse this juror.

19 THE CLERK: Mr. Kufner, please have a seat back in the
20 audience. You have been excused from the trial of this case.

21 THE COURT: The State has exhausted its strikes.

22 THE CLERK: Juror number 262, Cathy Thomas, 262.

23 (Whereupon, a white female comes forward.)

24 THE CLERK: Any challenge from the State?

25 MR. VOIGT: No challenge.

1 THE CLERK: What say you for the defendant?
2 MR. HARRIS: Please excuse this juror.
3 THE CLERK: Ms. Thomas, please have a seat back in the
4 audience. You have been excused from the trial of this case.
5 Juror number 70, Robin Givens, 70.
6 (Whereupon, a black female comes forward.)
7 THE CLERK: Any challenge from the State?
8 MR. VOIGT: No challenge.
9 THE CLERK: What say you for the defendant?
10 MR. HARRIS: Please seat the juror.
11 THE CLERK: Ms. Givens, please have a seat in the jury
12 box. You've been selected as a juror in this case. Juror
13 number 143, Julie Lowman, 143.
14 (Whereupon, a white female comes forward.)
15 THE CLERK: Any challenge from the State?
16 MR. VOIGT: No challenge.
17 THE CLERK: What say you for the defendant?
18 MR. HARRIS: Please seat the juror.
19 THE CLERK: Ms. Lowman, please have a seat in the jury
20 box. You've been selected as a juror in this case. Your
21 Honor, how many alternates?
22 THE COURT: Two, strikes are one and two.
23 THE CLERK: Picking for the first alternate. Juror
24 number 187, Laura Patrick, 187.
25 (Whereupon, a white female comes forward.)

1 THE CLERK: What say you for the State?
2 MR. VOIGT: Please present this juror.
3 THE CLERK: What say you for the defendant?
4 MR. HARRIS: Please present the juror.
5 THE CLERK: Ms. Patrick, please have a seat in the jury
6 box. You've been selected as a juror in this case. Now
7 picking for the second alternate. Strikes are one and two.
8 Juror number 184, Laura Owings, 184.
9 (Whereupon, a white female comes forward.)
10 THE CLERK: What say you for the State?
11 MR. VOIGT: Please present this juror.
12 THE CLERK: What say you for the defendant?
13 MR. HARRIS: Please excuse this juror.
14 THE CLERK: Ms. Owings, please have a seat back in the
15 audience. You have been excused from the trial of this case.
16 Juror number 132, Walter Latimer, 132.
17 (Whereupon, a white male comes forward.)
18 THE CLERK: What say you for the State?
19 MR. VOIGT: Please present this juror.
20 THE CLERK: What say you for the defendant?
21 MR. HARRIS: Please seat the juror.
22 THE CLERK: Mr. Latimer, please have a seat in the jury
23 box. You have been selected as a juror in this case. Your
24 Honor, the jury has been selected and are seated.
25 THE COURT: Any objections? Any motions regarding

1 selection of the jury from the State?

2 MR. VOIGT: None from the State, Your Honor.

3 THE COURT: From the defense?

4 MR. HARRIS: None from the defense, Your Honor.

5 THE COURT: Okay. Ladies and gentlemen, we appreciate
6 your patience. Again, I know that this is a long day for you,
7 but hopefully we'll get as much done today as possible so that
8 you will know what to expect of your week. Please know that
9 we do not take your time for granted. The bailiffs can take
10 the remaining panel up to Judge Harrington, courtroom 4C. Is
11 that correct, Mike?

12 THE CLERK: Yes, ma'am.

13 THE COURT: Thank you all. Have a great day.

14 (Whereupon, the remaining jury panel members leave the
15 courtroom at 12:05 p.m.)

16 THE COURT: Ladies and gentlemen, you have been selected
17 for the State of South Carolina versus Jerome Renaldo
18 Campbell. I need to talk with the lawyers about some
19 scheduling. If you would bear with me for a few moments, I
20 suspect we may break for lunch and then get an early start on
21 the afternoon. It's been a long morning for you all.

22 During this break, please do not discuss the case among
23 yourselves. Please don't speculate about what you think it
24 may or could be about. We appreciate your patience. If you
25 would, go with the bailiffs.

1 · (Whereupon, the jury exits the courtroom at 12:07 p.m.)
2 THE COURT: You may be seated. Are there any pretrial
3 motions?
4 MR. VOIGT: None from the State, Your Honor.
5 MR. HARRIS: Your Honor, just that the witnesses in the
6 case that are non-law enforcement -- I mean Burckhardt would
7 be and ---
8 THE COURT: The case agent and the victims.
9 MR. HARRIS: The case agent and the victims.
10 THE COURT: Are you asking that the witnesses be
11 sequestered?
12 MR. HARRIS: Yes, Your Honor.
13 THE COURT: Any exception from the State?
14 MR. VOIGT: Your Honor, I'm going to call my investigator
15 first and I would ask that after he be called that he be
16 released from sequestration just to be ---
17 THE COURT: That's the case agent. We've already
18 exempted him.
19 MR. VOIGT: No, no, no, no. Ryan Kelly, my investigator
20 took some pictures, so I'm going to call him.
21 THE COURT: Oh, your investigator.
22 MR. VOIGT: So I'm going to put him up first and ---
23 THE COURT: That's Mr. ---
24 MR. VOIGT: It's just ---
25 THE COURT: That's Mr. Kelly?

1 MR. VOIGT: That's Mr. Kelly.

2 THE COURT: Okay. Any exceptions?

3 MR. HARRIS: No exceptions, Judge, except one question I
4 do have is the three victims are also three witnesses, if they
5 ---

6 THE COURT: We can't exclude them by the statute. The
7 statute gives them the absolute right to be present at all
8 proceedings.

9 MR. HARRIS: Okay.

10 THE COURT: All right, any other pretrial motions? Any
11 Jackson v. Denno? Any Biggers? Anything that I need to be
12 aware of?

13 MR. HARRIS: None, Your Honor.

14 THE COURT: Okay. That's unusual. All righty. Do y'all
15 want to break for lunch and start back like say at -- Well,
16 I'll be doing some other stuff. Two o'clock? Is that
17 acceptable? Because I've got to do some more guilty pleas. I
18 just thought about that. I was going to say 1:30, but I think
19 I'd be pushing it tight for myself.

20 MR. VOIGT: That's fine.

21 THE COURT: Is that good for y'all?

22 MR. HARRIS: That's fine.

23 THE COURT: Okay. (To bailiff) Please bring in the jury
24 for me. You ready to swear them, Mike?

25 THE CLERK: Yes.

1 (Whereupon, the jury comes into open court at 12:11 p.m.
2 after a brief discussion between the Court and other
3 counsel regarding guilty pleas to be done.)
4 THE COURT: Ladies, if you would, remain standing.
5 Ladies and gentlemen, remain standing. Raise your right hand
6 so that the Clerk can administer the oath.
7 THE CLERK: Ladies and gentlemen of the jury, once I have
8 given you this oath if you accept it, please respond by saying
9 "I do." Do you swear or affirm that you shall well and truly
10 try and a true deliverance make between the State of South
11 Carolina and the defendant at the bar whom shall have a charge
12 and a true verdict render according to the evidence and the
13 law, so help you God?
14 (Whereupon, all jury members respond with "I do.")
15 THE CLERK: If you have accepted this oath, please have a
16 seat.
17 (Whereupon, all jury members are seated.)
18 THE COURT: You may be seated.. Ladies and gentlemen, as
19 I've indicated, you have been selected for the cases of the
20 State of South Carolina versus Jerome Renaldo Campbell. I'm
21 going to go ahead and give you your lunch break. We're going
22 to resume at 2:00. I know that seems like a long time, but
23 actually we're still going to be working for another thirty to
24 forty minutes before we can go to lunch and so I need to be
25 able to give adequate time to the remainder of the staff to go

1 to lunch as well and it doesn't make any sense to have you all
2 waiting during that time frame.

3 During the break, please do not discuss the case among
4 yourselves or with anyone else. Please don't speculate about
5 what you think it may or could be about. Please don't do any
6 independent research. That includes anything that could be
7 found on the internet or any other alternate source. As the
8 fact finders in this case, you are bound to decide this case
9 according to the evidence that you hear from the lips of the
10 sworn witnesses and the other evidence that will be
11 introduced.

12 Also, please do not have any contact with anyone in or
13 about the courthouse. There are a lot of witnesses in this
14 case and again, we would not want an innocent conversation to
15 be observed and misinterpreted. I hope that you all have a
16 great lunch. You will return directly to your jury room at
17 2:00. The bailiffs will show you how to do that and we will
18 see you at 2:00 at which time we will resume with opening
19 argument and instruction. Have a great lunch.

20 (Whereupon, the jury leaves the courtroom at 12:13 p.m.)

21 THE COURT: You may be seated. All right, I'll see you
22 all at 2:00.

23 MR. HARRIS: Thank you, Your Honor.

24 THE COURT: Thank you and Mr. Campbell will be taken into
25 custody as the case has been sworn and his bond has been

1 called.

2 MR. VOIGT: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 (Whereupon, there is a break in the proceedings from

5 12:13 p.m. until 2:19 p.m. When the proceedings resume

6 at 2:19 p.m., the defendant and all counsel are present,

7 but the jury is not yet present in the courtroom.)

8 THE COURT: Is the State ready to proceed?

9 MR. VOIGT: Yes, Your Honor.

10 THE COURT: Is the defense ready to proceed?

11 MR. HARRIS: Yes, Your Honor.

12 THE COURT: We apologize for the delay. We did not get

13 done with court until 1:35 and so I had to give staff adequate

14 time to collect themselves before we resumed session. I

15 understand that there is something about a juror that the

16 State wanted to bring to the Court's attention.

17 MR. VOIGT: May it please the Court, Your Honor.

18 THE COURT: Mm-hmm.

19 MR. VOIGT: My -- Member's of my client -- of my victim's

20 family were in the snack bar downstairs and saw members of the

21 jury conversing with family members and friends of the

22 defendant's. Perhaps I should wait for Mr. Campbell.

23 THE COURT: Oh, I apologize. I didn't realize he wasn't

24 up yet.

25 MR. VOIGT: Your Honor, they witnessed two members of the

1 jury conversing with a family member or friend of the Campbell
2 group that was also down there in the snack bar as well. One
3 person in that group was overheard to say, "They're on our
4 side," after she had conversed with these jurors and I -- and
5 that's all I know about it, but I'd like to bring it to the
6 Court's attention.

7 THE COURT: How are they certain they were jurors? It's
8 my understanding all the jurors left the building. They were
9 coming back in when I was leaving, just getting done with the
10 hearing.

11 MR. VOIGT: One of the jurors had a jury sticker on, Your
12 Honor.

13 THE COURT: And we're certain it was this jury and not
14 the other jury ---

15 MR. VOIGT: That was what I was ---

16 THE COURT: --- for Judge Harrington or Judge McDonald?

17 MR. VOIGT: That's what I was led to believe. It was
18 someone who was serving on this jury.

19 THE COURT: Well, I need something more specific than
20 that. That's nebulous. That doesn't tell me who it is.

21 MR. VOIGT: I believe that juror 63, Erica Gadsden, is
22 wearing a yellow shirt. The description I have is someone
23 wearing a yellow shirt and an older woman wearing a dark
24 jacket. That fits the description of Ms. Givens as best as I
25 can recollect. I believe she's juror 70. And, Your Honor,

1 the family member that overheard this -- overheard the person
2 who is present in the courtroom right now that made that
3 statement. So I can identify the person having made the
4 statement.

5 THE COURT: I understand that, but I'm not going get into
6 tit for tat between these families.

7 MR. VOIGT: I understand.

8 THE COURT: Because, you know, what is actually said and
9 what is perceived as being said can be a totally different
10 thing. I'm going to handle it the way the law prescribes it
11 should be handled.

12 MR. VOIGT: Thank you, Your Honor. I was just trying to
13 ---

14 THE COURT: But I'm not going to get into all that.

15 MR. VOIGT: Trying to give you as much information as I
16 have been provided.

17 THE COURT: Yeah. I'm certain that that is the
18 perception, but I'm a little hesitant about that. But I'm
19 going to deal with it ---

20 MR. VOIGT: Thank you.

21 THE COURT: --- pursuant to case law very shortly. Is
22 there anything from the defense?

23 MR. HARRIS: On that issue, Your Honor?

24 THE COURT: Yes.

25 MR. HARRIS: Fair enough. I mean we don't know which

1 jurors these are or anything. Like you said, we don't know if
2 it's jurors from another jury. No one in the family came in
3 here during jury selection. So to say it was randomly
4 somebody picking and they never saw our jury, A, and there's
5 three juries. There's three hundred jurors in the building,
6 three juries were selected, but to say it may be two -- these
7 two people and select two people based on what they were
8 wearing.

9 I don't think -- I don't -- I don't believe that -- Maybe
10 these two jurors were talked to by somebody and maybe they
11 were on this jury. I mean it's a very broad accusation and I
12 mean it just happens to be two African American jurors on my
13 jury. I mean that is -- You know, it just -- I would ask that
14 if we're going to get -- If you're going to remedy this by
15 excusing jurors that we would ---

16 THE COURT: No, I'm going to do a voir dire.

17 MR. HARRIS: Okay.

18 THE COURT: Of the entire panel.

19 MR. HARRIS: Okay.

20 THE COURT: And if they answer me that they have not done
21 it, that's the end of it.

22 MR. HARRIS: Okay.

23 THE COURT: Unless there's something more specific
24 regarding the identity of these individuals. They're under
25 oath and they're under a criminal -- the -- They can be

1 criminally sanctioned for failing to follow the Court's
2 instructions and I'm going to be very adamant and I'm going to
3 make them aware that somebody -- precisely what I told you not
4 to do happened.

5 They might have been talking about the weather. I don't
6 know. Southerners tend to be very animated and have very --
7 conversations that look more intimate than they -- than they
8 actually are and for example -- I'll use myself for an
9 example. I'm very careful when I leave the secure area of the
10 building because I'm naturally a very congenial person. If I
11 see parties in the lobby and I'm on my way to the post office,
12 I'm not going to be rude. I'm going to smile.

13 MR. HARRIS: Right.

14 THE COURT: Now would that person perceive that I'm on
15 their side? Yeah, probably. They're in probably one of the
16 most stressful situations of their life, especially if it's a
17 criminal defendant and I'll like nod and hello and smile and
18 keep moving. They're going to think, ooh, the judge is on my
19 side. Not so.

20 MR. HARRIS: Okay.

21 THE COURT: Or the -- Or the victims may be congregated.
22 I'm not going to just walk by people and not say hello and be
23 congenial, but it's funny what people do versus how it is
24 perceived.

25 MR. HARRIS: Right.

1 THE COURT: And so I think it may well be that it is
2 perceived that that is what happened, but I'm not certain that
3 that is what actually happened and I'm not going to go into
4 any extensive voir dire of a jury without more than that. Now
5 I'm going to do a voir dire, however, of the panel because
6 they're required to follow my instructions and if they
7 haven't, then I'm going to -- I'll deal with that.

8 MR. HARRIS: Your Honor ---

9 THE COURT: We'll take it as it comes, but I am -- I
10 think it is appropriate that I voir dire them and make sure
11 that they followed my instructions and that nobody had any
12 inappropriate conduct -- contact with anyone in or about the
13 courthouse. Any exception from the State?

14 MR. VOIGT: None, Your Honor.

15 THE COURT: From the defense?

16 MR. HARRIS: None, Your Honor.

17 THE COURT: Please bring in the jury.

18 BAILIFF: Yes, ma'am.

19 (Whereupon, the jury enters open court at 2:26 p.m.)

20 BAILIFF: They jury is present, Your Honor.

21 THE COURT: You may be seated. Ladies and gentlemen, we
22 appreciate your patience. As I indicated to you, we were
23 going to take a brief break and actually -- Yeah, the
24 alternates -- And actually while we're doing that, why don't
25 we also do this. Number 107 is the foreperson. So why don't

1 we -- And I apologize. I meant to tell you that as you were
2 bringing them down the hallway. If we could, have her take
3 the foreperson seat. I need the two of you to switch for me,
4 switch seats.

5 Ladies and gentlemen, as I indicated prior to the lunch
6 recess, we had some other matters that we needed to take up in
7 cases unrelated to this case and as circumstances would have
8 it, we did not finish that until 1:30, 1:35, and so I had to
9 give my staff adequate time to refresh themselves and get
10 something to eat and just get a second wind. So we appreciate
11 you all being so very patient with us as we are delayed in
12 restarting the trial, but please know that we were actively
13 involved in the Court's business and we do not take your time
14 for granted.

15 Before we begin that process of opening instruction and
16 opening argument, I gave the jury strict instructions that
17 they were not to have any contact with anyone in or about the
18 courthouse who did not have a juror sticker on because, again,
19 very innocent conversations could be very easily
20 misinterpreted and misconstrued. I need to ask you all did
21 any of you during the lunch and recess have any contact with
22 anyone in or about the courthouse who did not have a juror
23 sticker on? If so, if you did, I need you to raise your right
24 hand for me.

25 (Whereupon, one juror raises her right hand.)

1 THE COURT: Okay. Yes, ma'am? Tell me your name and
2 your ---
3 JUROR STEWART: When I was at lunch. Stacy Stewart. I
4 was at lunch.
5 THE COURT: And who did you speak with?
6 JUROR STEWART: I don't -- Some gentlemen was having
7 lunch. I mean I didn't speak about this.
8 THE COURT: You were at lunch in the courthouse or
9 outside the courthouse?
10 JUROR STEWART: Outside.
11 THE COURT: Okay, but you do not know it to be someone
12 involved in this case?
13 JUROR STEWART: No.
14 THE COURT: Okay. Is there anyone else who had any
15 contact with anyone in or about the courthouse, either in the
16 snack bar or any other parts of the building that did not have
17 a juror sticker on and you had any interaction with them?
18 (Whereupon, there is no further response from any of the
19 jury members.)
20 THE COURT: Okay. Let the record reflect that the
21 response was negative. I need to reinforce the Court's
22 instruction. Again, very innocent conversations can be
23 misinterpreted and misconstrued. There are many parties. As
24 you can see, the gallery is full with members of the victim's
25 family, as well as victim's -- I mean as members of the

1 defendant's family who are here to watch these proceedings, as
2 well as other individuals who are just interested in the court
3 process.

4 I need for you all to be aware that reports have been
5 made to the Court that conversations took place in the snack
6 bar otherwise with members of -- with differing parts of
7 members of the family and that there was a perception that the
8 jury might be inclined or already predisposed regarding this
9 case. Again, I don't have any independent information that
10 that is accurate. However, I will reinforce that even an
11 innocent conversation can be easily misinterpreted.

12 Emotions run very high during a trial. As you are well
13 aware, the allegations in this case are significant and
14 perception becomes reality. So I would ask that you very
15 stringently follow my instructions and have no conversation
16 with anyone in or about the courthouse who does not have a
17 blue juror sticker on. Again, I would not want an innocent
18 conversation to be observed by a third party and misinterpret
19 it. And again, just having a friendly conversation about
20 nothing related to the case could be very easily
21 misinterpreted. A smile, a handshake, a laughter or otherwise
22 can be very easily misinterpreted.

23 So I would ask that you strictly abide by those
24 instructions. Otherwise if you don't, I would have to do what
25 is called an individual voir dire of each juror. That's very

1 time consuming and can also result in a mistrial, which as you
2 could all imagine would be a gross waste of your time as well
3 as the Court's resources.

4 So if necessary, every morning I will voir dire the panel
5 regarding whether you followed the Court's instructions, that
6 being not only about contact but also about information
7 outside of the proceedings whether it be on the internet,
8 newspaper or any other media outlet because it is very
9 important. It is essential that your impartiality as twelve
10 individual citizens sitting as the fact finders in this case
11 never be questioned because the integrity of the process is
12 paramount and it must be maintained. Okay? So I hope that
13 each of you and I have no doubt that each of you will follow
14 the Court's instructions accordingly. Any exceptions from the
15 State?

16 MR. VOIGT: None from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. HARRIS: None, Your Honor.

19 THE COURT: Ladies and gentlemen, we're about to try the
20 case of the State of South Carolina versus Jerome Renaldo
21 Campbell. What I will now say is intended to serve as an
22 introduction to the trial of this case. These remarks are not
23 a charge on the law of this case and just so that you know,
24 charge and instructions are interchangeable terms. Charge is
25 a legal term of ours which means instructions. So when you

1 hear me use the term charge, that simply means instructions.

2 These remarks are not a charge on the law. I will
3 instruct you on the law applicable to this case at the end of
4 the trial before you retire to consider your verdict. This is
5 merely an explanation of the procedure that we will follow in
6 the trial of this case so that you may better understand what
7 may be happening.

8 During the course of this trial, you will be given the
9 opportunity to take notes and the bailiffs are going to pass
10 out the notebooks to you and the pens. There is a white
11 sticker on the front of each notepad. Please write your juror
12 number on that sticker so that you will be able to identify
13 very easily which notepad belongs to you. I will give you
14 some additional instructions regarding note taking near the
15 end of this instruction.

16 The defendant is charged by four separate indictments
17 filed in this court with the crimes of assault with intent to
18 kill; three counts, and murder, one count, the elements of
19 which I will explain to you later. The indictments, ladies
20 and gentlemen, are simply the formal charge or charges by
21 which the case is brought into court and it is not in any
22 sense evidence of any of the allegations they may contain.

23 The defendant has pled not guilty to the indictments.
24 The State therefore has the burden of proving each of the
25 elements of the indictments beyond a reasonable doubt and it

1 will be your duty, ladies and gentlemen, to decide whether the
2 State has met that burden or not.

3 Your purpose as jurors is to find and determine the
4 facts. You are the sole judges of the facts. If at any time
5 I make any comment regarding the facts, you must disregard it.
6 You are to determine the facts from the testimony you hear and
7 the other evidence introduced in court. It is up to you to
8 determine the inferences which you feel may be properly drawn
9 from the evidence. It is especially important that you
10 perform your duty of determining the facts diligently and
11 conscientiously because ordinarily there is no way to correct
12 an erroneous determination of facts made by a trial jury.

13 On the other hand and with equal emphasis, the same law
14 that makes you the judges of the facts makes me the judge of
15 the law. The law as given by the Court is the only law you
16 may consider. You must accept and follow it even though you
17 may disagree with it. I cannot tell you what the facts are
18 and you cannot disagree with the Court about what the law is
19 or what the law should be.

20 Your responsibility, ladies and gentlemen, is to take the
21 law as I instruct it and apply it to the facts as you find
22 them from the testimony of the witnesses and the other
23 evidence that will be introduced during the course of this
24 trial. After doing that, you will render your verdict, a true
25 and just verdict, under the solemn oath that you have taken as

1 jurors in this case.

2 Until I advise you to begin your deliberations, you must
3 not discuss this case with anyone. That includes your fellow
4 jurors, your friends, your family members or anyone involved
5 in the case. After the case is submitted to you, you must
6 discuss it only in the jury room with your fellow jurors.

7 The attorneys and the parties in this case have been
8 advised that they should not speak with you at all. So if you
9 see anyone involved in the case around the courthouse, in a
10 local restaurant or even in the garage or on the street and
11 they don't speak with you, please don't think they're being
12 unfriendly. They are simply following the Court's
13 instructions. Again, we would not want an innocent
14 conversation to be misinterpreted or misconstrued.

15 During the trial, you're not to read, listen to or watch
16 any news reports about this case. That includes anything that
17 could be in the newspaper, on radio, television or internet
18 and you're not to do any independent research regarding any
19 fact or issue in this case on the internet.

20 You must not consider anything that you may have read or
21 heard about this case outside the courtroom, whether before or
22 during the trial. It is important and essential that you
23 maintain an open mind and not decide any issue in this case
24 until all of the evidence has been presented, the parties have
25 made their closing arguments and I have instructed you on the

1 law. It is your solemn responsibility to determine the guilt
2 or innocence of the defendant and your verdict must be based
3 solely on the evidence as it is presented to you in this trial
4 and on the law as I will instruct you during and at the close
5 of this trial.

6 In just a moment, the solicitor will make an opening
7 statement in which he will present to you what he believes the
8 issues to be in this case or in other words what he believes
9 the evidence will show in this case. The attorney for the
10 defendant may make -- may also make an opening statement
11 although he is not required to do so. Keep in mind, ladies
12 and gentlemen, that what the attorneys tell you during their
13 opening statements is not evidence in this case. It is only
14 their contention as to what they believe the evidence will
15 show in this case. The evidence in this case will be
16 presented to you by the testimony of sworn witnesses from the
17 witness stand and by exhibits that may be introduced into
18 evidence.

19 From time to time during the trial, you may hear one of
20 the attorneys say, "Your Honor, I object," and then you will
21 hear me ask them to state the basis for that objection. Just
22 as in sports, business or any other structured activity, there
23 are certain rules that we must obey in the presentation of
24 evidence. These rules ensure that you receive the most
25 trustworthy and reliable evidence available. An objection is

1 the procedure that an attorney uses to call a possible
2 violation of these rules to my attention as the judge of this
3 court and for that reason you should never hold an attorney's
4 objection against them nor should you conclude from the Court
5 overruling or sustaining an objection that I favor one side or
6 the other.

7 Also from time to time, you may hear one of the attorneys
8 say, "Your Honor, we have a matter of law or a question of law
9 to discuss with you." Or they may ask to approach the bench
10 or I may ask them to approach the bench or sometimes it might
11 be necessary for us to exclude you from the courtroom for a
12 short while while we discuss matters of law. The reason we do
13 this is because you are the finders of the facts.

14 The Constitution does not allow me to have an opinion
15 about the facts of the case and for this reason we exclude you
16 from the courtroom because sometimes when I am discussing
17 matters of law with the attorneys, it might be necessary for
18 me to make some comment about the facts in connection with
19 ruling whether a procedural rule applies or an evidentiary
20 rule or a statute and so again, we exclude you from the
21 courtroom so that in no way will you be influenced by anything
22 that we may say or do in connection with the facts of the case
23 and when we're having bench conferences, you will hear this
24 noise.

25 (Whereupon, the static noise from the bench is sounded

1 briefly.)

2 THE COURT: It is directly over your heads. It is
3 designed to interfere with your hearing so you will not be
4 able to hear us and we do that so that as you all have
5 probably experienced at this point, that hallway is long. It
6 really runs the length of Meeting Street, I guess, and it's
7 deceptively -- It's longer than it looks and so to save time
8 it's more efficient sometimes for us to deal with matters of
9 law at the bench so that we don't have to send you in and out
10 of the courtroom.

11 In determining what the true facts are in this case, you
12 must decide whether or not the testimony of a witness or
13 witnesses is believable. It is my responsibility to rule as a
14 matter of law as to whether certain testimony is admissible at
15 all or not, but once it is admitted whether or not you believe
16 it is solely a matter for you to determine.

17 In deciding whether to believe a witness, you have the
18 right to consider the interest of any witness, the bias of any
19 witness, the prejudice of any witness, the opportunity for the
20 witness to have seen the matters and things about which the
21 witness may testify, and the way the witness acts on the
22 witness stand, something we commonly refer to as demeanor.
23 You have a right to consider anything that is in the record
24 that will help you evaluate the testimony of the witnesses.

25 That means, ladies and gentlemen, that it is your duty to

1 pay close attention to the witnesses, to observe them, to
2 listen to them, and to pay close attention to the attorneys
3 and the Court. Although I know that it is very difficult
4 sometimes, please do not allow your thoughts to wander, but
5 give strict attention to the testimony so that at the end of
6 all of the testimony, after the arguments of counsel and the
7 charge on the law given by the Court, you will then be in a
8 position to determine what the true facts are and apply the
9 law to those facts and render a true and just verdict in this
10 case.

11 During the course of this trial, you will be given the
12 opportunity to take notes. Note taking is a privilege that
13 you may choose to exercise or choose not to exercise. Please
14 don't feel that you are required to take notes. Not everyone
15 finds note taking helpful to them.

16 If you should decide to take notes, please don't try to
17 record everything that is said. One, it's physically
18 impossible. The older I get I think the faster I talk. It
19 probably drives my court reporters crazy. I probably need to
20 slow down a little bit, but the average talker probably speaks
21 at about two hundred words a minute. So as you could well
22 imagine, it's physically impossible to take down verbatim what
23 is being said and the only reason the court reporter can do it
24 is because they're trained to do it and as good a note taker
25 as I am and as many years as I've been doing it, even when you

1 think you're taking down something accurately sometimes you'll
2 put the end of a sentence at the beginning of the sentence.
3 It's funny how the mind interprets information and how it then
4 translates into you writing it down.

5 So please don't try to record everything that is said.
6 It's physically impossible and in addition to that, you are
7 the fact finders, which means you must rely on your powers of
8 observation. So please do not allow note taking to become a
9 distraction to you. You may want to keep an outline of the
10 main points that are being made so that when you retire to
11 deliberate, you can allow that outline to refresh your memory
12 of the testimony and the arguments of counsel.

13 Please be reminded that your notes are for your specific
14 and your individual purposes. They're only to be used to
15 refresh your own memory. They're not to be shared with anyone
16 else. During breaks and recesses, your notes will be left in
17 your seats. So we do that so there is no premature temptation
18 to discuss something that you may have heard, testimony or
19 otherwise that you've heard in the courtroom.

20 Again, ladies and gentlemen, please be reminded that your
21 notes are for your specific and your individual purposes.
22 They're only to be used to refresh your own memory and also be
23 reminded that your notes should not be considered any more
24 reliable than someone's memory. Someone else's memory should
25 be considered just as reliable as notes that may have been

1 taken by a fellow juror.

2 Madam Forelady, it is your responsibility to fill out the
3 verdict form and to write out any questions that the jury may
4 have during deliberations, but I'll give you additional
5 instructions regarding that at the conclusion of the case.

6 Ladies and gentlemen, the selection of a foreperson is a
7 completely random process. I wish there was a formula. It
8 would make it a lot easier, but it is a completely random
9 process that the Court employs to make sure that a random
10 cross section of the community is represented.

11 I need to emphasize that the foreperson does not have any
12 greater vote or voice than you do. It is purely an
13 administrative -- serves an administrative purpose. That
14 person fills out the verdict form and writes any notes that
15 you may have during jury deliberations. Again, I emphasize
16 that person has no greater vote or voice than you do.

17 In order to preserve everyone's rights, I will give the
18 parties an opportunity to object to anything that the Court
19 has said by way of opening instruction. Any exceptions from
20 the State?

21 MR. VOIGT: None from the State, Your Honor.

22 THE COURT: From the defense?

23 MR. HARRIS: None, Your Honor.

24 THE COURT: I would ask that you give the lawyers your
25 undivided attention. You may proceed. The State may proceed.

1 MR. VOIGHT: Thank you very much, Your Honor.

2 THE COURT: You're welcome.

3 OPENING STATEMENTS

4 MR. VOIGHT: Good morning, ladies and gentlemen. I'm
5 going to do something that I haven't done in twenty years of
6 trying cases. I will actually attempt to do a PowerPoint
7 presentation. So forgive me if it's a little rocky.

8 One of the things that I want to stress early is that as
9 much as I think my job is important and I like standing in
10 front of a room full of people and talking and as skillful as
11 Mr. Harris is going to be in arguing and presenting whatever
12 he feels is necessary, what the attorneys say really in this
13 kind of a show is what they make TV dramas out of, but it's
14 not the meat and potatoes of the case. It's not really what
15 you have to consider.

16 What you have to consider comes from two different
17 places. It's going to come from this chair right here, this
18 witness stand. There will be several witnesses who will sit
19 here and pull this microphone up close and hopefully talk
20 loudly enough that you can hear them and they will tell you
21 what happened in this particular case, what they did, what
22 they saw, what they heard, what they perceived. And then at
23 the end, the judge is going to tell you the law and how to
24 apply the law to those facts that you heard, the ones that you
25 believed and the ones you might not, and y'all get together

1 and decide what all that means. And outside of that is
2 whatever the attorneys say.

3 But the law does give me an opportunity to tell you what
4 I think the case is about, the evidence that I think you're
5 going to hear, as well as the prism, the lens, of the law by
6 which I would ask you to look for because some of these facts
7 on their surface don't seem important, but I think they are
8 and I want you to think they are.

9 This is not an -- This is not a -- This case is unusual
10 in many respects. We are -- I am representing the State of
11 South Carolina and I'm going to be prosecuting Jerome Renaldo
12 Campbell for the crime of murder, also for AWIK, which is
13 Assault with Intent to Kill. There are a few counts of that
14 that are all part of the same unfortunate evening, January 9th
15 of 2009.

16 It's my job and it's the State's job to present you with
17 evidence beyond a reasonable doubt as to each and every
18 element of the crime charged and that's what I've got to do.
19 Murder -- By the way, the defense doesn't have to do anything.
20 They can sit there the entire time. It's really all on me at
21 this point.

22 (Whereupon, a PowerPoint presentation is shown on the
23 screen behind the witness stand.)

24 Murder and our statute really codifies what hundreds of
25 years of common law and that is that the killing of any person

1 with malice aforethought, nice old fashioned phrase that,
2 either express or implied. So express means outwardly. I'm
3 going to kill you. Or implied, everything I did in my actions
4 implied that I mean to kill you.

5 Malice aforethought, that's the -- that's the key mental
6 -- the requisite mental state. All right? This is a bunch of
7 lawyer talk specific in general intent. Really for murder
8 malice aforethought what it means also you have to intend the
9 consequences of your actions. You have to mean to kill the
10 person or inflict grievous bodily harm, really hurt them bad,
11 or your actions are taken with such extremely reckless
12 indifference to the value of the human life. In other words,
13 what you're doing it doesn't -- by your actions, it doesn't
14 seem like you care what the consequences are. Or the intent
15 to commit a felony.

16 Assault with the intent to kill is a similar crime.
17 Really you may ask why based on the facts here why this isn't
18 an attempted murder. Well, back in 2009, we didn't have an
19 attempted murder statute and when you shot at somebody and you
20 missed them, but you meant to hit and you meant to kill them,
21 this is what we charged you with and this was a common law
22 crime. So it fits for our time frame.

23 It's an unlawful attempt to commit a violent injury.
24 Again, shooting somebody qualifies, shooting at somebody with
25 the same malicious intent that we just discussed. It has to

1 be accompanied by the present ability to complete the act. In
2 other words, mere words aren't going to do it. I'm going to
3 kill you and then I go away and drive to work doesn't work
4 because I wasn't there to actually have done anything to you.

5 This is where it starts. This is where I'm going to ask
6 you to think about all of this, every fact that I put on this
7 witness stand right here. This is the prism by which I want
8 you to look at this case because unlike many murder cases, I
9 don't know if you will ever see from that witness stand
10 evidence that Jerome Coaxum took a gun and fired it at anyone.
11 I don't know that I can show you that. I don't know that that
12 happened, don't know. The facts of this case aren't going to
13 go down -- aren't going to go down that street. We're going
14 to go somewhere else.

15 What happens when you set something up and you set all
16 the players in place and all the actions and -- and what if
17 you cause the actions and the pins start falling? What are
18 you guilty of? What if you are the one who acts with other
19 people who do terrible things and you've set the whole thing
20 up and it's your actions ultimately that bring about the death
21 of another human being? We call that the hand of one is the
22 hand of all and that's again kind of an archaic phrase, but
23 it's what we call accomplice liability.

24 The very common way of explaining this, well, what if
25 someone -- what if two people want to go drive and rob a bank

1 and one guy goes in with a mask and the other guy stays out in
2 the car and something horrible happens inside the bank. He
3 goes in and he gets nervous and he fires and he kills
4 somebody. The guy sitting in the car never meant to kill
5 anybody. He was hoping to get a bagful of -- bank bag full of
6 twenty dollar bills, drive off and pay the mortgage. He would
7 never -- he never wanted to kill anybody.

8 He intends to commit a felony. That's what malice
9 aforethought covers in here and what it also covers in here,
10 when you act and adjoin with another person to commit a
11 felony, when you aid, encourage, and abet that person in the
12 perpetration of a crime, that constitutes guilt as a
13 principle. In other words, you're just as guilty as the
14 person who fired.

15 Now I had to go to my dictionary, the same dictionary I
16 used in college a hundred years ago, because lawyers like to
17 use three words when one will do. Everybody knows what aid
18 means, everybody knows what encourage means, but my guess is
19 since the 1920's people have had to look up abet and I think
20 that one really kind of is going to apply to what you hear
21 here. Encourage, instigate, assist in the achievement, to
22 incite.

23 I'm alleging and the State is going to prove to you that
24 Jerome Campbell abetted other persons in taking the life of
25 Michael, that he encouraged, that he incited it, that he aided

1 and that he is just as guilty as the person pulling the
2 trigger. When two or more persons act together in the
3 commission of the offense, it's as though they both had their
4 hands on it. As long as I prove to you that same intent, that
5 same malice aforethought and I prove to you that he was there
6 and that he aided and abetted and assisted and encouraged and
7 incited other people to do his bidding, then he is just as
8 guilty and that makes this a little bit more difficult for you
9 as jurors. I'm asking you to do something of a higher degree
10 of difficulty than I've asked other juries to do and I know
11 that.

12 On January 9th, 2009, just after eleven, right around
13 eleven o'clock, a young man named Michael German was shot once
14 in the head from far away. The bullet by the time it reached
15 Michael German's head had split into two pieces. I don't know
16 what kind of bullet it was. I don't know what caliber it was.
17 It split in two pieces, one part came to lodge -- came to rest
18 in the outer skin right behind his ear, the other part
19 traveled through his skull and really kind of through his
20 entire brain and Michael German never had a chance.

21 Michael German was standing by the side of a gas station.
22 I don't think the person who shot and killed Michael German
23 was aiming at Michael German. I don't think that -- The law
24 also has this little thing called if I go to shoot one of you
25 and you duck and I hit the person behind you, you don't get to

1 say well, I never meant to hit that person. You don't get out
2 that way. If you intended to do a shooting, you intended to
3 do a shooting and your consequences fall where they may.

4 Jerome Campbell at the time was 34, 35 years old. He
5 lived in Charlotte, North Carolina, for the most part. He had
6 a good job, a college educated man. He had two sisters. They
7 may be in the courtroom. They may come testify. I don't
8 know. They had -- He had two sisters and apparently from all
9 I can tell, they are a very close knit family, a very
10 supportive family from the outside.

11 Candace German has a daughter -- or Candace Ladson has a
12 daughter named Vasha. Okay? She now goes by Vasha German.
13 Her husband is a fellow by the name of Anthony German. Now on
14 January 9th, Vasha had had a child approximately a week earlier
15 or so with Anthony. They have since had another and the
16 family was not really happy about that, probably still isn't
17 happy about that. Vasha was very young. I believe she was 16
18 years old. Anthony wasn't much older.

19 Jerome Campbell was upset about that and you're going to
20 hear that he told Anthony German that he was going to come
21 down from Charlotte and take care of that situation. Anthony
22 German is the twin brother of Michael German. Anthony German
23 was standing right next to Michael German when Michael German
24 was shot.

25 To make it even more complicated, Jerome has another

1 sister, Charise Coaxum, and Charise has a husband, Michael
2 Allen. Michael and Charise and Anthony at the time all worked
3 in the same place. Michael's husband was standing next to --
4 Michael Allen, Charise's husband, was standing next to Michael
5 German when Michael German was shot.

6 Earlier that day on January 9th, Michael Allen talked to
7 Jerome and Michael and his wife had been having some marital
8 difficulty, some problems, and there was some question whether
9 Michael was allowed to be in the marital home at all, which
10 was an apartment, Plantation Apartments over in West Ashley,
11 and there was an argument earlier in the day and Michael left.
12 When Michael left, he got a call from Jerome from Charlotte.
13 I'm going to come down and take care of you.

14 Now these three people with one other were with Michael
15 German when he died. As far as I can tell, I don't have any
16 evidence and I don't believe I am going to introduce any
17 evidence, I don't know if anybody else is either, that anybody
18 had a beef with Michael German. Michael German, his
19 connection to this case, to this argument, to this feud is
20 through his brother and his brother's co-worker, who worked
21 with Charise. And then there's this fellow, Frank Haigler.
22 You're going to hear from him as well.

23 Jerome Coaxum is charged with assault with the intent to
24 kill Anthony German, Michael Allen and Frank Haigler. Frank
25 Haigler is Michael Allen's brother. Okay? And during this

1 whole argument between Michael and Jerome and his wife, Frank
2 fancied himself a peacemaker. He was going to -- You're going
3 to get to meet him. He's going to sit right there at that
4 chair and you're going to get to hear him tell what happened,
5 how earlier in the day he was with Michael and the family and
6 he tried to be a peacemaker between his brother and his
7 sister-in-law.

8 And for his trouble, later in the day the three of them
9 or the four of them, Michael, Michael, Frank and Anthony, were
10 at the apartment complex where Michael and Anthony lived a
11 short distance away and Jerome rolls up in a white Impala with
12 North Carolina tags and Jerome is not happy and Frank, who
13 knows Jerome, only not as well as Michael does having met him
14 a couple times, decides to intercede. He sees that Jerome's
15 unhappy and he's shouting from his car and that he's going to
16 approach Jerome and see if there's a way to not have this
17 argument. For his trouble, a gun comes out of the back of the
18 car, but nobody shoots and then the car drives off.

19 Flash forward a few hours. These four people are trying
20 to figure out if Michael can go home to his apartment or not
21 and they go to the Kangaroo station right there on Old Towne
22 Carriage Lane with the little triangle there, just a little
23 ways off 61, and they go into the station, they buy a beer and
24 Frank says, "You know what? I'm kind of concerned by all the
25 words that have been said going on here. I'm going to go to

1 the apartment, which is ~~333~~, and I'm just going to make sure
2 everything is cool. You guys wait here at the gas station."

3 So Frank walks through the parking lot of the complex.
4 The apartment complex is right across the street from the gas
5 station. They stand on the corner of the gas station right
6 under the surveillance camera and Frank goes to see what's
7 happening with the apartment.

8 When Frank gets to the apartment, Jerome is there and
9 some other people that Frank doesn't know are there as well
10 and again, I think and you'll hear from Frank, Frank is trying
11 to be a peacemaker and he approaches Jerome and for his
12 trouble, Jerome takes a swing at him and punches him and then
13 the guns come out and shots get fired at Frank from the
14 apartment, from the breezeway near the apartment. The people
15 who are there with Jerome are shooting at Frank.

16 Luckily, no one hits Frank and Frank runs back to the gas
17 station just in time to hear the squealing wheels of Jerome's
18 car come out of the parking lot of the apartment complex. The
19 squealing wheels are also heard by Michael Allen and Anthony
20 German and the only one here who won't get to tell you what
21 happened is poor Michael.

22 There are patrons at the gas station pumping gas like
23 you'd expect. Well lit, it's in a fairly crowded part of
24 town, a lot of apartments, a lot of people. There are people
25 pumping gas who see the three guys on the side of the building

1 and they hear the squealing wheels and they hear the shots and
2 three guys jump to the ground and two guys get up.

3 Frank hasn't made it all the way back by this point to
4 where the other three are standing. He's across the street.
5 He sees the car. He hears the shots. He hits the ground.
6 Michael Allen hits the ground. Anthony German hits the ground
7 and Michael German never gets up.

8 Michael German is struck by a distant shot, far away, in
9 the back of the head and it looks like it's a ricochet off the
10 side of the building. The unluckiest person out there that
11 night, the one they weren't aiming at or at least I don't
12 think they were, I don't have evidence that they were, was
13 Michael German.

14 Now Mr. Campbell's car was later found. There's --
15 You'll get to hear there's some evidence of the crime in
16 there. Mr. Campbell turns himself in several hours later.
17 They know almost immediately whose car it is because Frank has
18 seen Jerome. They've all talked to Jerome. Two of them have
19 been threatened by Jerome. Three of them have been threatened
20 by Jerome. They know what he drives. Very soon after that,
21 they're looking for the car and they find it parked nearby the
22 next day, distant from where Mr. Campbell turned himself in.
23 Well, anyway.

24 So -- So what if he didn't shoot at somebody? Well, I'd
25 like you to think back on the hand of one as you process this

1 case, as you process the evidence. Thank you. I'd like you
2 to listen to all of the little bits that connect Jerome
3 Campbell to the death of Michael German. They're not
4 insignificant, they're not tenuous and they're not small.
5 They're all -- and listen to the evidence of malice, the
6 evidence of criminal intent, which Jerome obviously had.
7 That's what I'd like you to look for. Please give Mr. Harris
8 your attention.

9 THE COURT: Defense may proceed.

10 MR. HARRIS: Thank you, Your Honor. May it please the
11 Court.

12 THE COURT: Yes, sir. The Court's pleased.

13 MR. HARRIS: Good afternoon, ladies and gentlemen. Let
14 me move this back a bit. . I want to thank y'all for being
15 here. You've heard the judge, you've heard the prosecutor and
16 now you're going to hear me tell you that when y'all stepped
17 into this box today, all twelve of you became judges. You
18 were a potential juror before. When we selected you as
19 jurors, you became judges. You are individual judges.

20 Judge Jefferson is the judge of the law. She's the one
21 that keeps us on the right track, makes sure we don't slip up
22 and say something we're not supposed to, ask a question we're
23 not supposed to, try to bring in evidence we're not supposed
24 to. She doesn't judge the facts. You judge the facts.

25 It's not a team that you're on. There's twelve of you.

1 There's actually fourteen of you. You're not on a team
2 together. This isn't something where you get together and try
3 to accomplish a goal together. This is your individual
4 decisions. Okay? I wanted to say that first and, again,
5 thank you for being here. It's an important part of our
6 system. This is what makes our system what we love about the
7 United States.

8 Secondly, I want to remind you of a few things that I
9 want you to do today. I want you to use a couple gifts that
10 you were given from our creator. I want you to use your ears.
11 I want you to use your eyes. I want you to listen to
12 everything. This is an important case.

13 I want you to listen. I want you to listen to the facts.
14 I want you to listen to the witnesses. I want you to think
15 about what each witness says. I want you to hear the way they
16 say it. There's going to be video and audio in this case. I
17 want you to listen to the sounds. I want you to listen to
18 witnesses and think about the situation that Mr. Voigt tried
19 to explain. Listen to them and I want you to utilize that.
20 That's one of the most important parts of this case right now.

21 And your eyes, I want you to watch, watch the way the
22 witnesses act. I want you to watch the evidence. I want you
23 to watch the physical evidence. I want you to watch the
24 scientific evidence. We're going to have both in this case.
25 Watch. There's going to be videos we've got to watch. You

1 know, there are seconds that pass by that you're going to see
2 it's bam, bam, bam, bam. It's seconds that pass by. There
3 are certain things that you're going to see that you may sit
4 there and it's going to come to you.

5 The third thing I want you to do, use common sense. I
6 want you to look at it and I want you to analyze it and in
7 your brain I want you to use your common sense. Just look at
8 it and say that doesn't look right, that doesn't look like
9 what they said, you know, they're trying to say happened. It
10 looks like this happened. What makes more sense? You know,
11 some people call it the smell test. Does it pass the smell
12 test? Does this thing that they're saying make sense when I
13 look at all this hard physical evidence?

14 That's an important thing I want you to understand is
15 that and then when you look at it and use the common sense,
16 when you go and deliberate in a few days -- You know, we won't
17 keep you here very long, but it may be a few days from now,
18 when you go deliberate, use common sense, use logic. Logic,
19 you know, you hear logic and voice of reason a lot of times.

20 I want you to understand that you're going to be seeing a
21 lot of testimony, a lot of evidence that's going to be
22 conflicting sometimes and there's going to be people asking
23 you to interpret this evidence this way or interpret this that
24 way or this is possible, this is probable, this is a maybe,
25 this is evidence, this is beyond a reasonable doubt. That's a

1 standard we have in our court. The judge is going to go
2 through that before she charges. She's going to explain to
3 you what beyond a reasonable doubt is. Like the State said,
4 we don't even have to put up a case. The State has to put
5 beyond a reasonable doubt. We're going to put up a case, but
6 I'm saying we don't have to.

7 They have to prove beyond a reasonable doubt without
8 hesitation to act that my client, Jerome Campbell, through the
9 hand of one is the hand of all theory, murdered someone and
10 attempted to murder three other people. That's what they're
11 going to ask you to go from, from where we are today to there
12 beyond a reasonable doubt and what I'm going to ask you is
13 listen and watch the evidence, watch the physical evidence and
14 the scientific evidence. I want you to see what makes sense,
15 that common sense part is, because a few days from now when
16 you're sitting in there and if you're saying maybe, maybe is
17 not good enough. Maybe is not beyond a reasonable doubt. If
18 this was Superman, maybe is kryptonite to beyond a reasonable
19 doubt. Okay?

20 So remember those are the things I'm asking you. I'm not
21 going to sit here and get into our case right now or get into
22 his case or tell you where I think his case is wrong. We're
23 going to do that later one. What we're going to do now is I'm
24 just going to tell you listen and watch because it's fast,
25 it's quick, but there's a lot of scientific and physical
26

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 evidence that's important for you to see. Thank you.

2 THE COURT: The State may proceed.

3 MR. VOIGT: Thank you very much.

4 THE COURT: Yes, sir.

5 MR. VOIGT: The State calls Ryan Kelly.

6 THE CLERK: Put your left hand on the Bible and raise
7 your right hand. Do you swear or affirm your testimony to be
8 the truth, the whole truth and nothing but the truth, so help
9 you God?

10 MR. KELLY: So help me God.

11 THE CLERK: Please be seated. Please state your full
12 name and spell your last name for the record.

13 MR. KELLY: Ryan Earl Kelly, last name K-E-L-L-Y.

14 RYAN KELLY, being first duly sworn,
15 testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. VOIGT:

18 Q: Mr. Kelly, where are you employed?

19 A: I'm employed with the Ninth Circuit Solicitor's Office.

20 Q: And what capacity are you employed in?

21 A: As a special investigator.

22 Q: And to which attorneys are you assigned?

23 A: Greg Voigt, Marian Askins, Natasha Chisholm and Kelly
24 Flynn.

25 Q: And how long have you been with the Ninth Circuit --

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 Ninth Circuit Solicitor's Office?

2 A: Approximately four years.

3 Q: And where were you before that?

4 A: I was employed by the Town of Mount Pleasant with the
5 Mount Pleasant Police Department.

6 Q: And have you received police training?

7 A: Yes. I've been a police officer for approximately eleven
8 years. I attended The Citadel. I graduated from the South
9 Carolina Criminal Justice Academy and I've had approximately,
10 you know, the training that goes with eleven years of law
11 enforcement.

12 Q: And during the course of your training and in preparation
13 for this case, were you able to review the evidence that the
14 Solicitor's Office has in its files and in the CPD evidence
15 locker?

16 A: Yes, sir, I was.

17 Q: And with everything that you viewed, were you able to go
18 to the scene of the shooting in this particular case?

19 A: Yes, I was.

20 Q: And where was that?

21 A: It's the BP -- correction, the gas station located at
22 Carriage Lane.

23 Q: I'm going to show you what's been previously marked as
24 State's Exhibits 1 through 25 and ask you to take a look at
25 those.

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 MR. VOIGT: May I approach the witness, Your Honor? I'm
2 sorry I forgot to ask.

3 THE COURT: You may.

4 (Whereupon, there is a brief pause in the proceedings to
5 allow the witness to review the exhibits.)

6 Q: Are those pictures that you took at the Plantation
7 Apartments as well as Carriage Lane?

8 A: Yes, sir.

9 Q: I'm referring to the gas station at Carriage Lane over on
10 Old Towne Road. Were the locations -- Why were the locations
11 where you took those photographs significant? Why did you
12 take those particular photographs?

13 A: The locations are located literally across the street
14 from each other.

15 Q: In reviewing the evidence, was your attention directed to
16 any particular wall or area in the gas station?

17 A: Yes, sir. During the initial photographs, as well as
18 obviously later, the incident happened in the evening hours.
19 So it was dark out. When we went out there during the daytime
20 hours, we noticed there was some evidence left from the
21 shooting on a side wall of the gas station -- gas station
22 structure, the building.

23 Q: And what specifically was that that you observed?

24 A: There is a large crevasse approximately two inches by two
25 inches located approximately eight and a half feet up the

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 brick wall that -- that -- that stood out. It was -- it was
2 like a crater inside the brick.

3 Q: Were you able also while you were out there to take
4 measurements?

5 A: Yes, I was.

6 Q: And what was the purpose of taking measurements out
7 there?

8 A: Just to put in context with -- When you look at -- When
9 you look at a crime scene and you review evidence, you can
10 understand the numbers of it, but to put -- to truly put it in
11 perspective, when you're given a distance, it's easier when
12 you can actually look at for yourself. You know, to say 60
13 feet, one may think one thing and another person may think
14 another, but when you actually go out there and measure 60
15 feet and look back, it helps to put everything into context.

16 MR. VOIGT: Your Honor, at this time I would offer, file
17 and introduce State's 1 through 25.

18 THE COURT: Any objections?

19 MR. HARRIS: No objection, Your Honor.

20 THE COURT: Marked and admitted without objection.

21 MR. VOIGT: Thank you.

22 THE COURT: You may proceed. That was 1 through what?

23 MR. VOIGT: Excuse me, Your Honor?

24 THE COURT: One through 25?

25 MR. VOIGT: One through 25, Your Honor.

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 (Whereupon, Plaintiff's Exhibits 1 through 25 are
2 admitted into evidence. All 25 exhibits are large color
3 photographs. The photographs are shown on the large
4 scree via overhead projector as they are discussed with
5 the witness.)

6 Q: I'm going to show you right here. This is what's been
7 marked as State's 1 and that's something you identified as a
8 photograph that you took?

9 A: Yes, sir.

10 Q: If you can, let me see if I can ---

11 MR. VOIGT: May I approach, Your Honor?

12 THE COURT: You may.

13 Q: Approximately where based on your review of the evidence
14 would the body of Michael German have been resting?

15 A: Down here along the sidewalk in front of these egg crate
16 cartons.

17 Q: Those pictures -- This was taken years after the actual
18 events. Is that correct?

19 A: Yes, sir. Yes, sir. These were taken within the past
20 few weeks.

21 Q: Did you take measurements from the center line of the
22 street there and what street is that?

23 A: Old Carolina -- Carriage Lane.

24 Q: That's Carriage Lane?

25 A: Carriage Lane, yes, sir.

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 Q: From the yellow lines there, did you make a measurement
2 of approximately how far that would have been?
3 A: Yes, sir. From this yellow line back to where Mr.
4 German's body was located, I used a wheel measuring device.
5 Q: Do you have that with you?
6 A: Yes, sir, I do.
7 Q: Is that the device that you used?
8 A: Yes, sir, it's the device we used.
9 Q: And what does that device do?
10 A: Basically it is -- it's basically called a road runner,
11 where you, you know, reset the scale to zero and you wheel and
12 as you walk, it takes measurements in feet.
13 Q: Okay. Approximately how far from that center yellow line
14 to the wall of the gas station did you measure?
15 A: It is approximately -- From the center yellow line to the
16 gas station, it's approximately 59 feet.
17 Q: Now before court started today, did you have the occasion
18 to walk off this courtroom?
19 A: Yes, sir, I did.
20 Q: And did you make a measurement from that back wall to
21 these doors right here?
22 A: Yes, sir, I did.
23 Q: And what would that measurement be?
24 A: It's approximately 59 -- or correction, 50 feet.
25 Q: So approximately nine feet shorter than the -- the

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

- 1 distance?
- 2 A: Yes, sir. From this back wall where the screen is
- 3 located to those two doors, it's approximately 50 feet.
- 4 Q: And did you use that same device to make that
- 5 measurement?
- 6 A: Yes, sir.
- 7 Q: I'm going to show you what's been previously marked as
- 8 State's 9. What does this photo depict?
- 9 A: This photo depicts -- This is a concrete barrier in the
- 10 parking lot. The side of the building is shown to be right
- 11 here along this side of the picture and this is where the gas
- 12 pumps are located.
- 13 Q: Okay and did you make a measurement from those gas pumps
- 14 to the corner of the building?
- 15 A: Yes, sir.
- 16 Q: And this is State's Exhibit 10 showing from approximately
- 17 where that -- What does this picture show?
- 18 A: This pictures shows -- In the previous image, there is a
- 19 vehicle that was parked getting gas. I was standing at the
- 20 gas pump measuring or taking a photograph of the opposite
- 21 direction. This is where I was standing previously during the
- 22 previous photograph. This is the side of the building. At
- 23 the time of the incident, Mr. German's body would have been
- 24 located right here.
- 25 Q: Did you make a measurement of that distance?

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

- 1 A: Yes, sir, I did.
- 2 Q: And approximately how far was that?
- 3 A: Sixty feet.
- 4 Q: So that would have been approximately ten feet past those
- 5 doors there?
- 6 A: Yes, sir.
- 7 Q: Now you may not be able to see it, but I'll take a crack
- 8 at it. I'm going to show you what's been previously marked as
- 9 Exhibit 4. Were you asked to go out to that scene and find
- 10 anything that could be -- that could have resulted from a
- 11 bullet striking that wall?
- 12 A: Yes, sir, I was.
- 13 Q: Did you find anything that fit that description?
- 14 A: Yes, sir, I did. These are the egg crates or the milk
- 15 cartons that were there previously in the other photographs.
- 16 If you look up approximately two-thirds of the way up, there's
- 17 a -- there's a marking on the wall. Using the -- utilizing
- 18 the same measuring device, it was eight and a half feet up
- 19 from the sidewalk.
- 20 Q: And I'm going to show you what's been marked as State's
- 21 Exhibit 5. Do you see that divot in the wall in that picture
- 22 as well?
- 23 A: Yes, sir. It's right here, midway up, approximately
- 24 right there.
- 25 Q: And is that a security camera up there?

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 A: Yes, sir. This is a -- a operational camera that was
2 recording the night of the incident as well.

3 Q: I'm going to show you what's been previously marked as
4 State's Exhibit 7 and what does this depict?

5 A: This is a picture of the crater on the side of the brick
6 wall. It's a close-up.

7 Q: And approximately how large is that?

8 A: It's approximately two inches by I'd say almost two
9 inches. It's almost a -- a complete circle.

10 Q: And approximately how deep is it?

11 A: I'd say about an inch, inch and a quarter.

12 Q: Now did you have the occasion to go to the apartment
13 building across the street, the apartment complex across the
14 street from the gas station?

15 A: Yes, sir, I did.

16 Q: And did you take pictures there as well?

17 A: Yes, sir.

18 Q: And I'm going to show you two pictures, State's 12 and
19 15. What does that depict?

20 A: That's Apartment .

21 Q: Okay.

22 A: It's the apartment where Mr. Haigler responded to and --
23 and was met by Mr. Campbell.

24 Q: And I'm going to show you what's been marked as State's
25 13. Is that just a different angle of the same?

DIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 A: Yes. It's a different angle. As you come out, there's a
2 parking area would be located just out of -- out of the
3 picture view. This is where Mr. Campbell and Mr. Haigler were
4 standing at the time that they came in contact with each
5 other. This is Mr. Haigler's view of -- of the door.

6 Q: I'm going to show you State's 14. That's another farther
7 angle out?

8 A: Correct. Yes, sir. This is actually a mechanical box
9 and it's directly on the other side of this. The mechanical
10 box is here and there's a parking area and this is what he
11 saw.

12 Q: Okay and were you actually able to go out there with Mr.
13 Haigler at some point?

14 A: Yes, sir, I was.

15 Q: Was he able to walk you through? Was he able to describe
16 to you his path of travel from the apartment back to the gas
17 station?

18 A: Yes, sir, he was.

19 Q: Did you take pictures of that?

20 A: Yes, sir, I did.

21 Q: Let me ask you something else. Were you able to review
22 the documents -- Strike that. One more thing. All the scenes
23 of the photographs that you took, are they in Charleston
24 County?

25 A: Yes, sir, they were.

26

CROSS EXAMINATION OF RYAN KELLY BY MR. HARRIS

1 Q: Please answer any questions that Mr. Harris may have for
2 you.

3 A: Yes, sir. Thank you.

4 THE COURT: You may proceed.

5 MR. HARRIS: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR HARRIS:

8 Q: I have just a couple questions for you. This is the one
9 where you -- All right, this is -- I'm assuming this is the
10 street near -- this is the driveway the apartments were in
11 right here? We're not in -- We're out of the street. You
12 said it's right across the street. So this would be the
13 driveway?

14 A: Yes, sir. There's several entrances along Carriage Lane.
15 There's two, no, three entrances.

16 Q: Okay. How far -- If you use this, how far back from that
17 street is Charise Coaxum and Michael Allen's apartment?

18 A: I didn't measure that.

19 Q: Okay. Can you estimate how far back that was? I mean
20 you walked it a few times, right?

21 A: I walked it a few times. It's probably -- Like I said,
22 we measured from this point only. I didn't use the device.
23 I'm guessing 500 yards.

24 Q: Okay.

25 A: Four hundred yards.

CROSS EXAMINATION OF RYAN KELLY BY MR. HARRIS

1 Q: So it's not -- it's not like we're standing -- If I'm in
2 this picture, it's not like we're standing here and I'm
3 looking at the apartment right there. I couldn't like -- I
4 couldn't throw a rock into the apartment. It's about five
5 hundred yards. I mean it's a good walk?

6 A: Correct.

7 Q: Okay. So it's not like someone could walk right across
8 here, walk right to the door in a matter of few seconds? I
9 mean it would take them about a minute or two to walk that?

10 A: Walking, yes, but it's not an issue of -- You could run
11 it. It's a clear shot. There's no obstructions from the --
12 As you enter the road or driveway here ---

13 Q: Mm-hmm.

14 A: --- it is a straight shot back. It's not ---

15 Q: Okay. So there's nothing in the way. It's just a road
16 that goes straight. So you could -- From their apartment,
17 could you see the gas station?

18 A: Yes.

19 Q: Okay. So if someone was running, they could see the gas
20 station? They could see things going on?

21 A: You can see the back part of this versus -- Yes, you can
22 see the gas station itself. Part of it would be obscured by
23 some of the building.

24 Q: Okay.

25 A: I'm not trying to be confusing, but it's just ---

CROSS EXAMINATION OF RYAN KELLY BY MR. HARRIS

1 Q: I understand what you mean. The hole in the wall?

2 A: Yes, sir.

3 Q: There were other holes in that wall, too, right?

4 A: Yes, sir.

5 Q: Okay. There was the one that is eight and a half feet
6 up?

7 A: Correct.

8 Q: Which I'm six feet tall. I mean I've been out there and
9 I've tried to reach that and I cannot reach that hole.

10 A: Yes, sir.

11 Q: Eight and a half feet tall, but then there's other holes.
12 There's one that's about this low that's right below the
13 camera, too.

14 (Whereupon, Mr. Harris uses his hand to indicate an area
15 level with his ear.)

16 A: I looked. I went to that particular location the first
17 time ---

18 Q: Uh-huh.

19 A: --- and noticed the obviously the -- the measurement that
20 I took and the hole that I took. I was also made aware of
21 possible -- other possible holes.

22 Q: Mm-hmm.

23 A: I've been a police officer for eleven years. I've been
24 trained in firearms and ballistics. I was on the SWAT team
25 for four years with Mount Pleasant. I'm familiar with at

CROSS EXAMINATION OF RYAN KELLY BY MR. HARRIS

1 least, you know, the impact point of a projectile from a
2 bullet on masonry, I mean just from having shot at them myself
3 and I didn't see anything that, you know, in layman's -- in my
4 limited police training that came across looking like an
5 additional bullet hole.

6 Q: Okay, but -- but there's other holes. But you just
7 haven't -- but this is the only one that looks like a bullet
8 hole?

9 A: Yes, sir. With the -- with the size of the -- of the
10 crater itself versus -- It's a brick wall. I don't know how
11 long the building has been there. There have been -- On the
12 back corner, there's actually a spot where it looks like
13 somebody actually hit it with a vehicle. There's small holes
14 in the mortar. There's small holes and cracks in some of the
15 brick, but nothing stood out like this. As soon as -- When
16 you look across the wall ---

17 Q: Mm-hmm.

18 A: --- it -- this stands out immediately.

19 Q: Okay.

20 A: And then based on the fact that the camera is sitting
21 right above it and -- and during additional evidence that will
22 be introduced, you will get the idea that where the point of
23 impact for a ballistic causes ---

24 Q: Right.

25 A: --- some material to be recorded by the camera.

CROSS EXAMINATION OF RYAN KELLY BY MR. HARRIS

1 Q: Yeah.

2 A: So that was the starting point because you see the whole
3 wall and you see -- From the camera angle, you see a large
4 portion of -- of the wall and there was nothing down here that
5 appeared to me to be a bullet hole. It was only this one
6 right here that appeared to be a bullet hole causing debris to
7 fly up and be recorded.

8 Q: Okay, but -- but you're not saying beyond doubt there's
9 no way that other hole is a bullet hole? Because with your --
10 in your opinion, there's no way it is? The other smaller
11 hole?

12 A: Correct. In my opinion, it's not. It's not a second
13 bullet hole.

14 Q: Okay. So in your opinion, there's only one bullet hole
15 in this wall?

16 A: Yes, sir.

17 Q: Okay. Not five?

18 A: No, sir.

19 Q: Okay. Were you originally -- When you investigated this,
20 you weren't one of the original people on the original scene?
21 That was the police officers, right?

22 A: Correct. I -- We -- I am a police officer employed by
23 the Ninth Circuit Solicitor's Office. I was not employed by
24 the Charleston -- I have never been employed by the Charleston
25 Police Department.

CROSS EXAMINATION OF RYAN KELLY BY MR. HARRIS

1 Q: Okay, I understand, but I'm saying you weren't there the
2 night this happened?

3 A: Correct.

4 Q: And this picture is from how long ago?

5 A: Three -- within the past -- the past two weeks.

6 Q: Past two weeks?

7 A: Yes, sir.

8 Q: But that's not -- This is not what you'd call an accurate
9 representation of the scene three years ago?

10 A: I wasn't there, sir.

11 Q: Okay.

12 A: The thing that led me to identify that particular hole is
13 that in the surveillance video there is evidence of something
14 striking the building ---

15 Q: Right.

16 A: --- and the debris flying up and it's in approximate --
17 you know, you see the camera. You see the camera view and
18 you're able to view the wall ---

19 Q: Mm-hmm.

20 A: --- and you see something within a couple feet strike it.

21 Q: Okay.

22 A: So I wasn't looking for a bullet hole on the other side
23 of the building because the camera view is picking up mainly
24 on this part. Something strikes that causing ---

25 Q: So according to you looking at that wall, again, that's

CROSS EXAMINATION OF RYAN KELLY BY MR. HARRIS

1 the only bullet hole you saw in that wall?

2 A: Yes, sir.

3 Q: Okay. Now this photograph here you took, that's some --

4 MR. HARRIS: I apologize. I beg the Court's indulgence,

5 Your Honor ---

6 THE COURT: Mm-hmm.

7 MR. HARRIS: --- while I find my photographs.

8 Q: Okay, we'll start with Exhibit 10, which was shown to you
9 earlier. You said this was the view about 60 feet away and
10 you're standing next to the gas pump?

11 A: Yes, sir. This is actually -- Well, it's kind of hard to
12 tell because the pictures are from where I was, so it seems
13 like there's something else over here.

14 Q: Okay.

15 A: All you see is the corner of the picture right here next
16 to the red evidence marker. This is actually a hose from the
17 gas pump.

18 Q: Okay. So that's if you were standing at the gas pump?

19 A: Yes.

20 Q: That's what you'd see?

21 A: That's what I would see, yes. Then you have the -- the
22 closest gas pump to where this incident happened.

23 Q: Now did you take a photograph standing about six or eight
24 feet this way? Do you have one with that? Like you'd be
25 standing on the other side of a car?

CROSS EXAMINATION OF RYAN KELLY BY MR. HARRIS

- 1 A: No, sir, I didn't.
- 2 Q: Okay.
- 3 A: I stood from an area where if the gas pump was here,
4 someone would be pumping gas.
- 5 Q: They'd have to be standing at the gas pump pumping gas
6 from this picture?
- 7 A: Yes.
- 8 Q: Okay, but again, you didn't take one -- You saw where the
9 car was parked there. You didn't take one from the other side
10 of the car where somebody would be standing in the driver's
11 door?
- 12 A: No, sir.
- 13 Q: Okay. So this is a photo from the gas pump?
- 14 A: Yes, sir, that's it.
- 15 Q: Okay. So Exhibit 9, you see where the car is parked. So
16 this is looking at the car and you would have been standing --
17 Can I use that ---
- 18 A: Yes.
- 19 Q: --- for a second?
- 20 (Whereupon, Mr. Harris obtains a laser pointer from the
21 witness.)
- 22 A: Top button.
- 23 Q: Okay. You would have been standing right here?
- 24 A: Back a bit and it was probably ---
- 25 Q: Right here?

CROSS EXAMINATION OF RYAN KELLY BY MR. HARRIS

1 A: Yes, sir, in this -- in this area.

2 Q: The reason I don't like using these things is because I

3 have a tremor in my hands and it makes me look like I'm ---

4 A: I'm sorry.

5 Q: So you didn't take one from right here beside the car?

6 A: No, sir, I didn't.

7 Q: Okay and okay, this is Exhibit 1. This is the one I

8 showed you earlier. Now this -- to the right of this is a

9 physical therapy building behind this building right here.

10 Right?

11 A: I believe so, yes, sir.

12 Q: Okay. Did you take a photo from over there?

13 A: Earlier on, I took -- Not from the building. I took a

14 photograph from this area right here.

15 Q: Uh-huh.

16 A: Going down this way.

17 Q: So you didn't take one from on down the street? Let's

18 say if I'm in the picture, I'd be about here. You didn't take

19 one from over here?

20 A: No, sir.

21 Q: Okay and you took these a couple weeks ago? Two weeks

22 ago probably?

23 A: Actually probably within the past ten days.

24 Q: Past ten days?

25 A: Yes, sir.

REDIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 Q: Okay.

2 A: But we've been out there several times over the past few
3 weeks.

4 Q: I understand.

5 MR. HARRIS: I beg the Court's indulgence, Your Honor.

6 THE COURT: Yes, sir.

7 MR. HARRIS: Let me get the evidence straightened out. I
8 have no further questions.

9 THE COURT: Any redirect of the witness?

10 MR. VOIGT: Just one, Your Honor.

11 THE COURT: You may proceed.

12 REDIRECT EXAMINATION

13 BY MR. VOIGT:

14 Q: I'm showing you what's marked as State's Exhibit 1 and I
15 believe you talked about this camera?

16 A: Yes, sir.

17 Q: It looks like there's another camera on the other side.

18 A: There is a -- there is another camera, a second camera
19 here.

20 (Whereupon, the witness indicates the camera located on
21 the wall on the right side of the picture.)

22 Q: Was that camera there on January 9th, 2009, to the best of
23 your knowledge?

24 A: No, sir. In speaking to management of this particular
25 gas station, that camera was installed within a week due to

REDIRECT EXAMINATION OF RYAN KELLY BY MR. VOIGT

1 this incident occurring. So this camera was working and
2 operational the night of the incident. This camera was
3 installed within a few days after the incident.

4 MR. VOIGT: Thank you. That's all I have.

5 THE COURT: Any objection to the witness being excused
6 from the State?

7 MR. VOIGT: None from the State, Your Honor.

8 THE COURT: From the defense?

9 MR. HARRIS: None, Your Honor.

10 THE COURT: Could counsel approach for me, please?

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

13 THE COURT: Who is the next witness?

14 MR. VOIGT: The first officer on the scene. That will be
15 very short.

16 THE COURT: All right. Let's do that and then take a
17 break.

18 MR. VOIGT: Okay.

19 (Whereupon, the bench conference ends.)

20 THE COURT: You may proceed. The State may call its next
21 witness.

22 MR. VOIGT: Thank you very much, Your Honor. The State
23 calls John Tisdale.

24 THE CLERK: This way, Officer. Raise your right hand.
25 Do you swear or affirm your testimony will be the truth, the

DIRECT EXAMINATION OF WILLIAM JONATHAN TISDALE BY MR. VOIGT

1 whole truth and nothing but the truth, so help you God?

2 MR. TISDALE: I do.

3 THE CLERK: Be seated. If you would, please state your
4 full name and then spell your last name for the record.

5 MR. TISDALE: William Jonathan Tisdale, T-I-S-D-A-L-E.

6 THE COURT: You may proceed.

7 MR. VOIGT: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 WILLIAM JONATHAN TISDALE, being first duly
10 sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. VOIGT:

13 Q: Officer Tisdale, where are you employed right now?

14 A: Goose Creek Police Department.

15 Q: And how long have you been there?

16 A: About 14 months.

17 Q: Okay and in January of 2009, where were you employed?

18 A: City of Charleston Police Department.

19 Q: And how long did you -- When did you start at the City of
20 Charleston?

21 A: August of 2009 -- 2008.

22 Q: So you were -- In January of 2009, you had been on the
23 job approximately five months?

24 A: Yes, sir.

25 Q: And in January of 2009, how were you assigned?

DIRECT EXAMINATION OF WILLIAM JONATHAN TISDALE BY MR. VOIGT

1 A: I was assigned to patrol division and Team 4, which is
2 West Ashley.

3 Q: Okay. Did you have occasion to respond to the BP gas
4 station, the Kangaroo station, at 1141 Old Towne Road in
5 Charleston?

6 A: Yes, I did.

7 Q: On January 9th?

8 A: Yes, sir.

9 Q: At approximately what time did you get there?

10 A: I arrived on scene at 2256 hours, so 10:56 p.m.

11 Q: Shortly before 11 o'clock?

12 A: Yes, sir.

13 Q: And that was in response to a dispatch call that you had
14 received?

15 A: Yes, sir.

16 Q: And were you the first officer on the scene?

17 A: I believe myself and another officer arrived at the same
18 time.

19 Q: Okay and what did you see when you first got there?

20 A: When I arrived on scene, I saw a black male laying on the
21 -- in the parking lot and several other people around --
22 around the victim.

23 Q: Were there people upset out there?

24 A: Yes, sir.

25 Q: Was it a chaotic scene?

DIRECT EXAMINATION OF WILLIAM JONATHAN TISDALE BY MR. VOIGT

- 1 A: Yes, sir, it was very chaotic.
- 2 Q: And what is your job as the initial officer on the scene?
- 3 What are you to do?
- 4 A: What I did was I determined what was going on. We saw
- 5 there was a victim with a gunshot wound to the head. We began
- 6 separating the -- the people who were around the victim and
- 7 pulling those to the side to see if they saw anything and we
- 8 collect evidence and witness -- witnesses.
- 9 Q: Okay. Now detectives get called out to that scene. Is
- 10 that correct?
- 11 A: Yes, sir.
- 12 Q: Does Crime Scene get called out to that scene?
- 13 A: Yes, sir.
- 14 Q: Now as the initial investigating officer, is it your job
- 15 to physically collect evidence out there?
- 16 A: No, sir.
- 17 Q: Is it your job to take witness statements out there?
- 18 A: No, sir.
- 19 Q: What is the primary focus of the first guy there?
- 20 A: The first guy starts separating people on the scene so we
- 21 can tell the responding investigators who is where and what
- 22 they saw.
- 23 Q: Okay and that's what you did in this particular case?
- 24 A: Yes, sir.
- 25 Q: Please answer any questions that Mr. Harris may have.

CROSS EXAMINATION OF WILLIAM JONATHAN TISDALE BY MR. MIKELL

1 THE COURT: You may proceed.

2 MR. VOIGT: Or Mr. Mikell, sorry.

3 CROSS EXAMINATION

4 BY MR. MIKELL:

5 Q: Officer Tisdale, when you first arrived at the scene, how
6 did you go about securing the -- the perimeter?

7 A: I believe we -- I began to remove the people who were
8 around the victim, pulling them to the side and waiting for
9 more responding officers to set up the crime scene tape and go
10 from there. I believe that's how I handled the incident. I
11 was just pulling the people away and -- and determining who
12 saw what and who was who.

13 Q: Did you have a chance to see anything around the victim
14 or pay attention to any evidence around the victim?

15 A: I saw the victim laying on the ground with a gunshot
16 wound to the head.

17 Q: Okay and that was the extent of what you saw?

18 A: Yes, sir.

19 Q: Okay. Then you went ahead and you started to separate
20 everyone? Is that correct?

21 A: Right, yes, sir.

22 Q: Okay and tell me how do you separate everyone?

23 A: I don't remember who it was, but one -- one female was
24 wanting to hold onto the body, onto the victim. We had to
25 forcibly remove her from the scene. Everybody else we just

CROSS EXAMINATION OF WILLIAM JONATHAN TISDALE BY MR. MIKELL

1 kind of pushed aside and had them retained in the area until
2 more responding officers arrived and the investigators
3 arrived.

4 Q: Okay. Tell me about the female that was holding onto the
5 body. Was -- was she wrapping it up off of the ground or tell
6 me about that?

7 A: I don't remember.

8 Q: Okay. The only thing you can remember is that she was
9 holding onto the body?

10 A: She didn't want to leave. She didn't want to leave by
11 its side.

12 Q: Okay, okay. Did you ever get her name?

13 A: I believe I did, but I don't remember who it was.

14 Q: Okay, okay. You would have left that for the
15 investigating officer to take that information?

16 A: Yes, sir.

17 Q: Okay. Other than that, did you have to do anything
18 extraordinary to separate witnesses from the crime scene or
19 from the victim?

20 A: No, sir.

21 Q: Okay. Officer Tisdale, I want to ask you were you --
22 were you responding to the call because of a -- were you
23 responding to a 9-1-1 call?

24 A: I believe the call came out as shots fired or a person
25 was shot. I was in the -- the general vicinity on 61 probably

CROSS EXAMINATION OF WILLIAM JONATHAN TISDALE BY MR. MIKELL

1 less than a block from Carriage Lane.

2 Q: Okay, okay. So the only thing is you were really
3 responding to I guess the -- the information that was put out
4 by dispatch. Is that correct?

5 A: Yes, sir.

6 Q: Okay.

7 MR. MIKELL: Thank you. That's all I have.

8 THE COURT: Any redirect of the witness?

9 MR. VOIGT: No redirect, Your Honor.

10 THE COURT: Any objection to the witness being excused
11 from the State?

12 MR. VOIGT: Not from the State, Your Honor.

13 THE COURT: From the defense?

14 MR. MIKELL: That's all, Your Honor.

15 THE COURT: Sir, you're excused.

16 (Whereupon, the witness leaves the stand at 3:43 p.m.)

17 THE COURT: Madam Forelady, ladies and gentlemen, we're
18 going to take advantage of this break in testimony to take a
19 short rest room break. During the break, please do not
20 discuss the case among yourselves and please leave your
21 notepads on your seats. We'll probably be out about ten
22 minutes. We appreciate your patience. If you would, go with
23 the bailiffs.

24 (Whereupon, the jury leaves the courtroom at 3:43 p.m.)

25 THE COURT: You may take your seats. We'll be out about

1 ten minutes.

2 MR. VOIGT: Thank you very much.

3 THE COURT: Which will be 3:53.

4 (Whereupon, there is a break in the proceedings from 3:44

5 p.m. until 4:02 p.m. When the proceedings resume, the

6 jury is not yet present.)

7 MR. VOIGT: May we approach, Your Honor?

8 THE COURT: Mm-hmm.

9 (Whereupon, a bench conference is held.)

10 MR. VOIGT: We have -- I've pre-marked the next 16 -- no,

11 14 exhibits.

12 THE COURT: Mm-hmm.

13 MR. VOIGT: There's a question about two of them. I have

14 two photographs I'd like to introduce, 41, 42 as a backup

15 plan. I believe that Mr. Harris objects to 41, but not 42.

16 MR. HARRIS: Right. I don't -- Well, I just don't think

17 both of them need to come in.

18 MR. VOIGT: Right.

19 MR. HARRIS: I don't think both of them need to come in.

20 We're going to see autopsy pictures anyway.

21 MR. VOIGT: Well, I wasn't going to show autopsy

22 pictures. No one's going to show autopsy pictures.

23 MR. HARRIS: With the -- Are you calling a witness to the

24 -- witness to the ---

25 MR. VOIGT: I'm calling a forensic pathologist.

1 MR. HARRIS: Okay.

2 MR. VOIGT: I almost never do autopsy pictures because
3 there's always something that will offend a jury in autopsy
4 pictures.

5 MR. HARRIS: Yeah. Well, I just think that other one
6 works just fine. It shows the position ---

7 MR. VOIGT: Well, I think this one though -- that one
8 unfortunately -- I'll show the judge.

9 MR. HARRIS: Unfortunately it doesn't show blood?

10 MR. VOIGT: Well, no, no. It does.

11 MR. HARRIS: Right.

12 MR. VOIGT: It just -- it doesn't -- it kind of is --
13 it's not a great shot.

14 MR. HARRIS: It shows where he's laying though better I
15 think.

16 MR. VOIGT: I would argue that they both -- they both
17 work. Anyway, Your Honor, these are the two photos that we're
18 -- we've been discussing.

19 THE COURT: And what are those other photos?

20 MR. VOIGT: These are the other photos. I -- There's no
21 controversy with these and -- You might be able to see why I
22 actually had to have somebody go back and do more photographs.
23 If I were relying on Crime Scene, I wouldn't know much of
24 anything.

25 THE COURT: Why would you be seeking to introduce this?

1 MR. VOIGT: That shows the depiction of Mr. German as he
2 lie.

3 THE COURT: Mm-hmm.

4 MR. VOIGT: I mean I believe it -- it shows the act.

5 THE COURT: You mean for forensics when the pathologist
6 testifies the manner of death which will show malice? And
7 these are duplicates.

8 MR. VOIGT: Well, I would only -- I would be seeking to
9 introduce 41 and if you didn't allow me to introduce 41, I
10 would be seeking to introduce 42. I wouldn't ---

11 THE COURT: So for what purpose would you be seeking
12 that?

13 MR. VOIGT: It shows the placement of the body on the
14 side. It shows where -- how they found the body when they
15 came upon it. It shows the crime scene. I mean I think in a
16 murder I get to show at least some of it.

17 THE COURT: You get to show malice. You get to show some
18 things, but it has to -- I can't -- its probative value can't
19 be outweighed by the potential for prejudice, in other words
20 somebody making a decision based on, you know, some emotion or
21 something ---

22 MR. VOIGT: But I don't -- I don't think that those are
23 -- In all the murder cases I've tried, I think I've gotten in
24 much worse ones.

25 THE COURT: Do you have any diagrams?

1 MR. HARRIS: I think they got a picture of the body
2 covered up, too.

3 THE COURT: Yeah, but that doesn't show how it was found.
4 Those are -- those are cumulative, 41 and 42. Do you have a
5 black and white of this one?

6 MR. VOIGT: I don't, Your Honor. I can get a black and
7 white one.

8 THE COURT: Or a black and white of this one?

9 MR. VOIGT: I can. The only reason why I've shown both
10 of them to you is because I was only planning on introducing
11 one of them. I wasn't going to plan on using both of them.

12 THE COURT: I don't see any problem with 42. It shows
13 less blood if you can do it in black and white.

14 MR. VOIGT: Okay.

15 THE COURT: Do you have an objection to 42 in black and
16 white?

17 MR. VOIGT: With the stipulation -- Well ---

18 MR. HARRIS: No.

19 THE COURT: He'll agree to 42 in black and white.

20 MR. VOIGT: Now one thing it does show and this is one
21 problem I would have with color is there is video of both.
22 This man is a twin and the coloration on his jacket is
23 different than the coloration on his brother's jacket. We're
24 going to be showing videos as to which was which and where.

25 MR. HARRIS: I'm not opposed to that.

1 THE COURT: You can explain that.

2 MR. HARRIS: I'm not opposed to a -- a color photo on
3 this one.

4 THE COURT: You don't have any objection to that one?

5 MR. HARRIS: No, not to that one.

6 THE COURT: Okay. Number 42 will come in.

7 MR. VOIGT: All right. Then I will take ---

8 THE COURT: So for the court reporter's benefit, 26, 27,
9 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and what
10 number is that one?

11 MR. VOIGT: 42.

12 THE COURT: And 42 will come in without objection.

13 MR. VOIGT: 42.

14 THE COURT: Is that correct, Mr. Harris?

15 MR. HARRIS: That's correct, Your Honor. Thank you.

16 (Whereupon, the bench conference ends.)

17 THE COURT: (To bailiff) You need to go get number 205
18 and have him stand out in the hall until I ask for him.

19 (Whereupon, there is a brief pause in the proceedings to
20 wait for arrival of the juror.)

21 THE COURT: Is he in the hallway?

22 BAILIFF: Yes.

23 THE COURT: Okay, we've got a note from one of the
24 jurors, number 205, that simply says "knows the brothers", so
25 I need to inquire of him exactly what that means. So I've had

1 the bailiffs bring him down so that I can voir dire him. Any
2 exception from the State?

3 MR. VOIGT: None from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. HARRIS: No, Your Honor.

6 THE COURT: And the note will be marked as a Court's
7 Exhibit. Please bring him in for us. Number 205 is Paul D.
8 Porter.

9 (Whereupon, the juror note is marked as Court's Exhibit
10 Number 1 and juror number 205 is brought into the
11 courtroom by the bailiffs at 4:12 p.m.)

12 THE COURT: Sir, we got the note that indicates "knows
13 the brothers." Can you elaborate for us and tell me what that
14 means?

15 JUROR: Yes. Me and the brothers used to play basketball
16 together.

17 THE COURT: When you say brothers, tell me who you are
18 referring to?

19 JUROR: The -- the Campbell brothers.

20 THE COURT: Say that one more time? I can't hear you.

21 JUROR: I said the Campbell brothers.

22 THE COURT: The Campbell brothers? How long ago was
23 that, sir?

24 JUROR: We've been knowing these guys for years.

25 THE COURT: When was the last time you played basketball

1 with them?

2 JUROR: Probably seven, eight years ago.

3 THE COURT: Okay. Do you see them on any regular basis?

4 JUROR: Yeah, I see them three or four times.

5 THE COURT: Three or four times a year?

6 JUROR: Yeah, mm-hmm.

7 THE COURT: But do they frequent your house or anything

8 like that?

9 JUROR: No, uh-uh, but we -- we -- It's like we been

10 knowing each other.

11 THE COURT: Since children?

12 JUROR: Yeah.

13 THE COURT: But you wouldn't say that you see them every

14 day or you socialize with them every day?

15 JUROR: Well, whenever I see them I socialize with them,

16 but not every day.

17 THE COURT: But you would say you estimate you see them

18 about three to four times per year?

19 JUROR: Or more.

20 THE COURT: Or more?

21 JUROR: Yes.

22 THE COURT: Do they live near you?

23 JUROR: No, not exactly.

24 THE COURT: What do you mean not exactly?

25 JUROR: They live like -- They might live like twenty,

1 thirty miles away.

2 THE COURT: Okay. When you say Campbell brothers, tell
3 me the names that you are referring to?

4 JUROR: I can't remember his name, but he knows me and I
5 know him.

6 THE COURT: You don't remember the gentleman's name?

7 JUROR: No, I can't remember.

8 THE COURT: Okay, so you don't know if it's one of the
9 witnesses that's coming to testify or not?

10 JUROR: No.

11 THE COURT: Okay. How old a gentleman is this person
12 that we're talking about?

13 JUROR: He should be around -- I guess around 50
14 something.

15 THE COURT: In his 50's?

16 JUROR: Yes, ma'am.

17 THE COURT: The Jerome Campbell that is coming to
18 testify. Is he in his 50's?

19 MR. HARRIS: Here he is.

20 THE COURT: Oh, I'm sorry. I apologize.

21 MR. HARRIS: He's 36.

22 THE COURT: Sir, do you know this Mr. Campbell?

23 JUROR: No.

24 THE COURT: And are you certain the Campbell's that
25 you're affiliated with are related to him?

1 JUROR: Well, I'm pretty sure. I'm not too sure.
2 THE COURT: You're not too sure? What area of town do
3 they live in?
4 JUROR: They used to live in James Island.
5 THE COURT: Where does your client live and where's he
6 from, Mr. Harris?
7 MR. HARRIS: Judge, he lives in Charlotte, North
8 Carolina, and he doesn't have a brother.
9 THE COURT: He doesn't have a brother? Does he have any
10 male relatives, uncles that would be in their 50's that live
11 on James Island?
12 MR. HARRIS: Possibly.
13 THE COURT: Okay, but, sir, you do not know the
14 defendant, Mr. Jerome Campbell?
15 JUROR: No.
16 THE COURT: And you're not certain whether the Campbell
17 you know is related to him or not?
18 JUROR: No, I don't.
19 THE COURT: And the only Campbell male that we have
20 listed as a -- as a witness is the defendant. There is a
21 Sandra Campbell. I assume she's related to the defendant in
22 some way?
23 MR. HARRIS: That's his mother, Your Honor.
24 THE COURT: Okay and where does she live?
25 MR. HARRIS: James Island.

1 THE COURT: Sir, as a result of what you've disclosed to
2 the Court, do you feel that you can remain fair and impartial?

3 JUROR: No.

4 THE COURT: Okay, tell me why you don't think you can be
5 fair and impartial?

6 JUROR: Well, just like I said, I don't think -- I just
7 ---

8 THE COURT: Let me ask the question a different way. If
9 they're not related to this gentleman, why wouldn't you be
10 able to be fair and impartial?

11 JUROR: Well, I think -- I don't know if he is or not.

12 THE COURT: I'm going to make some inquiry and find out.
13 So I need you to listen to my -- my question carefully and I
14 need you to answer the question that I'm asking. Okay? I
15 don't want you to think through it too hard. If the people
16 that you are talking about are not related to the defendant,
17 do you feel you could be fair and impartial?

18 JUROR: Yes.

19 THE COURT: Okay and do you feel you can render a
20 decision based solely on the evidence as it will be presented
21 and on the law as the Court will instruct?

22 JUROR: Yes.

23 THE COURT: I need to make further inquiry because I'm
24 not certain that the people that you're talking about are
25 related to this gentleman. Okay? So if you would, stand in

1 the hall for me with the bailiff and please do not have any
2 discussion about what we've discussed and I'll be back with
3 you in a moment.

4 JUROR: Thank you, ma'am.

5 THE COURT: You're welcome, sir.

6 (Whereupon, the juror leaves the courtroom at 4:16 p.m.
7 with the bailiff.)

8 THE COURT: Based on what he's disclosed, is there any
9 indication that he's related -- that the people he's talking
10 about are related to the defendant?

11 MR. HARRIS: Are you asking me or him?

12 THE COURT: Both.

13 MR. HARRIS: I don't ---

14 THE COURT: Because I would have no clue. I would not
15 know. I would have to get guidance from you all. He seems
16 very vague about who these individuals are. He doesn't see
17 them regularly, at least not for the last seven years.
18 They're from James Island, but you've indicated that the
19 defendant doesn't have any brothers.

20 MR. HARRIS: He's also 20 plus years younger.

21 THE COURT: And he's been really, really vague about
22 whether the -- I mean I'm just trying to determine whether in
23 fact -- He says if they're not related to him, then he can be
24 fair and impartial, but I would assume the converse of that is
25 if he is related, he can't be fair and impartial. So what I

1 need to determine is is he in fact related -- the people that
2 he's talking about, are they related to the defendant?

3 MR. HARRIS: Your Honor, I can ask my client if he's got
4 two basketball playing uncles.

5 THE COURT: I think that would be prudent and do you have
6 any indication of anybody you can ask?

7 MR. VOIGT: I don't have enough intelligence on the
8 Campbell's of James Island to know.

9 THE COURT: Yeah, I wouldn't either.

10 MR. HARRIS: He indicates that -- When the guy first said
11 it, he indicated he doesn't have two uncles that live on James
12 Island. His father doesn't live on James Island.

13 THE COURT: So his mother lives on James Island, but he
14 doesn't have any other relatives on James Island?

15 MR. HARRIS: Not that would fit the 50 plus year old
16 basketball players.

17 THE COURT: So it is possible that this gentleman is
18 recalling someone that is unrelated to the defendant?

19 MR. HARRIS: Exactly.

20 THE COURT: Is there any exception from the State? He's
21 indicated that if he's not related to him, he can be fair and
22 impartial. So I think we just need to put him at ease that
23 the people that he's thinking about are not related to the
24 defendant. It's -- it's commendable that he would disclose it
25 because ---

1 MR. VOIGT: There's no way to know, Judge.

2 THE COURT: Yeah, there's so many common names in
3 Charleston, Campbell being one of them. I'm trying to think
4 of some other ones on James Island, Jenkins, Richardson.
5 There are a lot of common names on the -- a lot of them but
6 not necessarily related to one another. Is there any
7 exception from the State from keeping -- for keeping this
8 juror?

9 MR. VOIGT: Not at this time, Your Honor.

10 THE COURT: From the defense?

11 MR. HARRIS: None, Your Honor.

12 THE COURT: And if it comes out some more information
13 develops, y'all make me aware of it if we -- if somehow we
14 erred in thinking that he's not related to them.

15 MR. HARRIS: Your Honor, I'll look into it today. I'll
16 speak with his family and find out if there's anybody that
17 fits that description.

18 THE COURT: Okay.

19 MR. HARRIS: He says there's not and like I said, when he
20 said 20 or 30 miles away from him. I mean Charlotte is three
21 hours. So he doesn't live 20, 30 miles away.

22 THE COURT: Yeah, do a little -- y'all -- if you find out
23 something contrary to what we're assuming, please let me know.
24 Please bring in the juror.

25 (Whereupon, juror number 205 is brought back into the

1 courtroom at 4:19 p.m.)

2 THE COURT: Sir, we -- You all can be seated. We've done
3 some preliminary research and the gentlemen that you're
4 talking about are not related in any way to the defendant. He
5 does not have any uncles in that age range.

6 JUROR: Okay.

7 THE COURT: And only his mother lives on James Island.
8 So I think that while they may have a common last name, he is
9 not related to the individuals that you're saying you played
10 basketball with. With that in mind, do you feel you can
11 remain fair and impartial?

12 JUROR: Yeah.

13 THE COURT: Do you feel you can render a fair and
14 impartial decision in this case?

15 JUROR: Yes, ma'am.

16 THE COURT: And do you feel you can render a decision
17 based solely on the evidence and on the law as the Court will
18 instruct?

19 JUROR: Yes, ma'am.

20 THE COURT: And if something changes, if our information
21 turns out to be faulty, we will make you aware of that, okay?
22 But at this point, what we've been able to discern is that
23 they're not related to one another.

24 JUROR: Okay. Thank you.

25 THE COURT: We appreciate your candor, sir. If you would

1 not discuss this, however, in any manner whatsoever with your
2 fellow jurors.
3 JUROR: Thank you very much.
4 THE COURT: You're welcome, sir, and you can keep him in
5 the hall and just go ahead and get the other jurors and bring
6 them down the hall with him. Is there any exception from the
7 State?
8 (Whereupon, the juror leaves the courtroom at 4:20 p.m.
9 with the bailiff.)
10 MR. VOIGT: No, Your Honor.
11 THE COURT: From the defense?
12 MR. HARRIS: None, Your Honor.
13 THE COURT: Who is the State's next witness going to be?
14 MR. VOIGT: Rene Charles, Your Honor.
15 THE COURT: Is she already in the courtroom?
16 MR. VOIGT: He.
17 THE COURT: He?
18 MR. VOIGT: He is not.
19 THE COURT: Where is he?
20 MR. VOIGT: He's right out in the hall.
21 THE COURT: Yeah, go ahead and get him.
22 MR. VOIGT: Okay.
23 (Whereupon, there is a brief pause in the proceedings.)
24 BAILIFF: Are you ready to bring them in, Judge?
25 THE COURT: Yes, sir.
26

DIRECT EXAMINATION OF RENE CHARLES BY MR. VOIGT

(Whereupon, the jury enters the courtroom at 4:21 p.m.)

BAILIFF: The jury is present, Your Honor.

THE COURT: Thank you. You may be seated. Ladies and gentlemen, we appreciate your patience. We'll now resume the trial testimony. The State may proceed.

MR. VOIGT: The State calls Rene Charles.

THE COURT: If the witness would come forward to be sworn.

THE CLERK: Put your left hand on the Bible and raise your right hand. Do you swear or affirm that your testimony will be the truth, the whole truth and nothing but the truth, so help you God?

MR. CHARLES: Yes, sir.

THE CLERK: Be seated. Speak into the mic and state your full name and spell your last name for the record.

MR. CHARLES: Rene Charles, C-H-A-R-L-E-S.

THE COURT: You may proceed.

MR. VOIGT: Thank you, Your Honor.

THE COURT: You're welcome.

RENE CHARLES, being first duly sworn,
testifies as follows:

DIRECT EXAMINATION

BY MR. VOIGT:

Q: Mr. Charles, where are you employed?

A: With the City of Charleston Police Department.

DIRECT EXAMINATION OF RENE CHARLES BY MR. VOIGT

1 Q: And in what capacity are you employed there?

2 A: I am the -- the crime scene investigator, Crime Scene.

3 Q: And how long have you been a crime scene investigator for
4 the City of Charleston Police Department?

5 A: Yes, sir, 14 years, yes.

6 Q: And what are some of the duties of a crime scene
7 investigator?

8 A: As a crime scene investigator, your job is to reconstruct
9 the crime -- crime scene, document the crime scene, process
10 the crime scene.

11 Q: Okay and is one of the roles in processing the crime
12 scene to take photographs of that scene?

13 A: Yes, sir.

14 Q: And -- and did you take photographs of a homicide that
15 occurred on January 9th, 2009, at 1141 Old Towne Road at the
16 Kangaroo Express, the BP gas station?

17 A: Yes, sir, I did.

18 Q: I'm going to show you what's been marked as 26 through 40
19 and 42.

20 MR. HARRIS: Without objection.

21 THE COURT: Marked and admitted without objection.

22 MR. VOIGT: Thank you. May I approach the witness, Your
23 Honor?

24 THE COURT: You may.

25 (Whereupon, State's Exhibits 26 through 40 and 42 are

DIRECT EXAMINATION OF RENE CHARLES BY MR. VOIGT

1 admitted into evidence.)

2 Q: Can you take a look at those and -- and tell me if you

3 recognize them?

4 A: Yes, sir. These are photographs I took.

5 Q: So these are photographs that you took on the scene?

6 A: Yes, sir.

7 Q: And when you first got to the scene, how did you know

8 what to take a picture of?

9 A: First, on my arrival at the scene I met with the first

10 responding officer, that's Officer Tisdale, and he -- he

11 briefed me about the shooting incident and from there he

12 showed me all the different locations and different things for

13 crime scene to be collected and processed.

14 Q: All right and you took -- you took pictures of the

15 perimeter of the building, didn't you?

16 A: Yes, sir, I did.

17 Q: I'm going to show you what's been marked as State's

18 Exhibit 30. Is that the building next door to the gas

19 station?

20 A: Yes, sir, it is.

21 Q: And 29?

22 A: That's the -- the -- the rear behind the BP Kangaroo

23 Express.

24 Q: And here's some other photographs of the rear. That's

25 State's 27. What are those little yellow things right there

DIRECT EXAMINATION OF RENE CHARLES BY MR. VOIGT

1 in the middle?

2 A: That's evidence markers. We use that to identify
3 evidence on the ground.

4 Q: Okay and State's Exhibit 28, that's a closer view of what
5 those evidence markers depict?

6 A: Yes, sir.

7 Q: And can you recall what those evidence markers -- Now is
8 that behind the gas station in that little alleyway between
9 those two buildings?

10 A: That's behind the BP Kangaroo Express, behind the -- the
11 building.

12 Q: And can you -- Do you recall what those, I believe that's
13 five, four, three and two ---

14 A: Those are the -- the bullets located in the rear of the
15 building.

16 Q: Okay. So there were bullets?

17 A: There were bullets.

18 Q: In the rear of the building?

19 A: Yes, sir.

20 Q: And did you collect those into evidence?

21 A: Yes, sir, I did.

22 Q: Now at the time, did you know what purpose those may have
23 had in the homicide?

24 A: I was advised that there were bullets that was located in
25 the rear and the officer advised me that they were probably

DIRECT EXAMINATION OF RENE CHARLES BY MR. VOIGT

- 1 from the -- the shooting, from the suspect.
- 2 Q: You thought that they have been from the suspect?
- 3 A: Yes, sir.
- 4 Q: Now those were unfired bullets?
- 5 A: Unfired bullets, yes, sir.
- 6 Q: So they -- they had their casings?
- 7 A: They were only unfired bullets, but I did recover one
- 8 fired shell casing ---
- 9 Q: Okay.
- 10 A: --- later on.
- 11 Q: And where did you recover that from?
- 12 A: The fired shell casing was located on Carriage Lane in
- 13 front of the building, this building, the physical therapy
- 14 building ---
- 15 Q: Okay.
- 16 A: --- on Carriage Lane.
- 17 Q: And that, would that be what is depicted in State's
- 18 Exhibit 31?
- 19 A: Yes, that is the fired shell casing.
- 20 Q: And a close up of that would have been what you have
- 21 marked as 7?
- 22 A: Yes, that's evidence marker number 7. Yes, sir.
- 23 Q: Okay and that's from the roadway of Carriage Lane?
- 24 A: That is correct, yes sir.
- 25 Q: You took these pictures at night?

DIRECT EXAMINATION OF RENE CHARLES BY MR. VOIGT

- 1 A: Nighttime, yes, sir. It was around 11 o'clock, 2300.
- 2 Q: And this has been marked as -- as number 6. What is
- 3 that?
- 4 A: Give me a second. Number 6, it's a cigarette lighter.
- 5 Q: Okay. Do you know what significance that may have had in
- 6 the shooting?
- 7 A: It's ---
- 8 Q: That's kind of an unfair question.
- 9 A: Yes, sir.
- 10 Q: When -- when you go out there, do you know what's
- 11 important and what's not important?
- 12 A: My job is to recover -- recover evidence items at the
- 13 scene. So first the evidence was identified by the responding
- 14 officer and my job is to photograph and collect the -- the
- 15 evidence.
- 16 Q: So on the scene, there's a green cigarette lighter and
- 17 your job is to collect it?
- 18 A: Collect it and then ---
- 19 Q: If it's significant, it's significant. If it's not, it's
- 20 a cigarette lighter on the parking lot?
- 21 A: That is correct. Yes, sir.
- 22 Q: This is another -- It's State's 35. That shows a
- 23 cigarette lighter where the -- where number 6 was placed?
- 24 A: That is correct. Yes, sir.
- 25 Q: And you place those markers down and then you take

DIRECT EXAMINATION OF RENE CHARLES BY MR. VOIGT

1 pictures?

2 A: Pictures to identify the items.

3 Q: Okay. Is there any reason why you -- why you would take
4 one close-up picture and then one farther back?

5 A: The farther back is to get pictures of the overall
6 overview and the close-up pictures is to photograph the items,
7 a close-up of the items.

8 Q: So did you take this picture, for example, to show its
9 relation to the front of the store?

10 A: Yes, sir, I did.

11 Q: Okay and to the corner of the little side concrete there
12 that runs along the side?

13 A: Yes, sir.

14 Q: Okay. Here I'm going to show you what's been marked as
15 State's Exhibit 40. That's a car -- that's a truck that was
16 parked in the front of the store?

17 A: Front of the store, yes.

18 Q: All right and do the detectives or the investigating
19 officers direct you to items, cars, things laying around that
20 they think might be important?

21 A: That was for like documentation purposes, if an angle is
22 shown, that the areas that the car was parked in front of the
23 store.

24 Q: Okay. Did you ever go back during the daylight hours and
25 take pictures of any of these items or any of these places?

DIRECT EXAMINATION OF RENE CHARLES BY MR. VOIGT

- 1 A: I don't -- I don't recall going back in daylight.
- 2 Q: If I had -- if I daylight pictures, that would be some
- 3 indication that you had taken pictures during the daylight?
- 4 A: Yes, sir.
- 5 Q: As far as we know based on the report that you submitted
- 6 as well as the pictures that you took, we have nighttime
- 7 pictures from that evening?
- 8 A: That's only nighttime pictures.
- 9 Q: Is the policy of the Charleston Police Department
- 10 different now?
- 11 A: Yes, sir. Now we go back daylight for follow-up.
- 12 Q: And this is -- that's the corner there going around the
- 13 side. Now one thing that you did see when you went out there,
- 14 what is State's Exhibit 36?
- 15 A: The evidence marker number 1 showed the -- the victim's
- 16 body on the ground.
- 17 Q: And is that the same curb of concrete there that we saw
- 18 in the previous picture going around towards the front of the
- 19 store?
- 20 A: That is correct, sir. That's the curb.
- 21 Q: So he's on the corner?
- 22 A: He's on the corner just near the sidewalk.
- 23 Q: Was that -- And I'm just -- Is -- What is the
- 24 significance of the number 1?
- 25 A: Number 1 is -- is just to identify that evidence number 1

DIRECT EXAMINATION OF RENE CHARLES BY MR. VOIGT

1 is the -- the body.

2 Q: And this is the most important evidence that you ---

3 A: That's the most important and so I just chose number 1,
4 but there's no requirement as far as like evidence marker. It
5 could be number 2, number 3, but I used number 1 because it
6 was the important information and evidence.

7 Q: Was that covering on Michael German when you arrived on
8 the scene?

9 A: Yes, sir, it was as I recall.

10 Q: Did you take -- Did you uncover ---

11 A: Yes, sir, I did.

12 Q: --- Michael German's body and take pictures?

13 A: Yes, sir, I did.

14 Q: I'm going to show you what's been marked as State's 38.
15 What does that depict?

16 A: That is a cell phone. Yes, sir, that's the cell phone
17 next to the -- next to the body.

18 Q: Okay. Now you've testified that you collected at the
19 scene some bullets, some live rounds?

20 A: I did, yes, sir.

21 Q: And you collected a spent shell casing from the road?

22 A: Yes, sir. I collected one fired shell casing and also
23 four live rounds, bullets, yes.

24 Q: On the night when you were there, did you collect any
25 firearms from or around the person of Michael German

CROSS EXAMINATION OF RENE CHARLES BY MR. HARRIS

1 A: I did not, no, sir.

2 Q: I'm going to show you what's been marked as State's 42.
3 Underneath the tarp, is that a picture of Michael German as
4 you saw him on January 9th, 2009?

5 A: Yes, sir.

6 Q: Please answer any questions that Mr. Harris may have for
7 you.

8 THE COURT: You may proceed.

9 MR. HARRIS: Thank you, Your Honor. May it please the
10 Court.

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. HARRIS:

14 Q: Your job you said is to process the scene. You're a CSI.
15 Correct?

16 A: Yes, sir.

17 Q: Do you just take pictures?

18 A: No, sir. I do more than take pictures.

19 Q: Okay. Do you take fingerprints? Do you dust for
20 fingerprints?

21 A: That night I did not process for fingerprints. My job
22 that night I videotaped the scene, I photographed the scene
23 and also collected evidence.

24 Q: Okay. This is State's Exhibit 30 here. What am I
25 looking at?

CROSS EXAMINATION OF RENE CHARLES BY MR. HARRIS

- 1 A: You're looking at the building.
- 2 Q: Uh-huh.
- 3 A: The corner of the building.
- 4 Q: That's the physical therapy building next door?
- 5 A: Yes, sir.
- 6 Q: Okay and you found the bullet behind -- kind of behind
- 7 this bush over here?
- 8 A: Yeah, in the back.
- 9 Q: Okay. So those dumpsters there, that's the wall behind
- 10 the building, right?
- 11 A: Yes, sir.
- 12 Q: Where that fire truck is?
- 13 A: Yes, sir.
- 14 Q: Okay. Back there is where you found those four shot --
- 15 four unfired bullets?
- 16 A: Unfired bullets.
- 17 Q: So they were in the alley behind the gas station?
- 18 A: They were behind the gas station, yes, sir.
- 19 Q: Okay.
- 20 A: The bullets -- the unfired bullets were behind the gas
- 21 station.
- 22 Q: Okay. So let's see here. Now this is where they found
- 23 -- this is behind the gas station?
- 24 A: Yes, sir.
- 25 Q: So if I'm standing here at this car, there's those

CROSS EXAMINATION OF RENE CHARLES BY MR. HARRIS

1 dumpsters I talked about, to the left of that is that bush and
2 that's where you found the spent shell casing, right?

3 A: Yes, on Carriage Lane.

4 MR. HARRIS: May I approach, Your Honor?

5 THE COURT: You may.

6 Q: Back here?

7 A: Yes.

8 Q: The spent shell was back here?

9 A: The unfired bullets were down in that area, yes, sir, and
10 the fired shell casing back here, sir.

11 Q: Okay and this -- the victim is you go here, take a right,
12 go down to the other end of the building and he's down there?

13 A: Yes, the victim was -- was here on the side of the
14 building in the parking lot.

15 Q: Okay. So you were investigating this and you were told
16 that these unspent shell casings may be related to the
17 suspect?

18 A: That is correct, yes, sir.

19 Q: Okay and according to your crime scene investigation,
20 were you told that it was alleged that a car drove past and
21 fired? Were you investigating it that way?

22 A: I wasn't -- I wasn't told that the car drove by. I was
23 advised that there were four -- there were four unfired shell
24 -- four unfired bullets ---

25 Q: Okay.

CROSS EXAMINATION OF RENE CHARLES BY MR. HARRIS

1 A: --- and one fired shell casing ---
2 Q: Okay.
3 A: --- on Carriage Lane.
4 Q: And those were -- the ones here are from what's called a
5 .38 caliber?
6 A: The -- the unfired -- unfired bullets were .38 caliber.
7 Q: Okay.
8 A: And the -- the fired shell casing was a 9 millimeter -- a
9 9 for the fired shell casing.
10 Q: Okay.
11 A: And a .38 for the unfired bullets.
12 Q: Okay. So for people like me that don't know ballistics
13 and guns, a 9 millimeter and a .38, they don't go to the same
14 gun?
15 A: I'm not a gun expert.
16 Q: Okay.
17 A: So I won't be able to answer that question, sir.
18 Q: Okay, but they have different numbers next to them, one's
19 a .38 and one's a 9?
20 A: One's a .38 and one's a 9.
21 Q: Okay. The bullet -- Let me ask you this. Did you find a
22 -- on the wall -- on the opposite wall -- I don't see a
23 picture of the opposite wall where the -- where the victim was
24 found. Do you have a picture of that wall?
25 A: I don't have all the pictures with me, sir. I won't be

CROSS EXAMINATION OF RENE CHARLES BY MR. HARRIS

- 1 able to answer that question.
- 2 Q: Okay. Okay. So, for instance, where this is, okay?
- 3 There's a sidewalk there. Is the building back here, the
- 4 wall, is it right behind him? Right here?
- 5 A: The victim was located on the -- on the ground. That's
- 6 the building. It was near the BP gas station somewhere around
- 7 here.
- 8 Q: Right, okay. Now did you look on this wall above? Did
- 9 you take photographs of this wall above the victim?
- 10 A: I did, yes, sir, I did.
- 11 Q: You did?
- 12 A: I don't have the pictures with me, so it's hard for me to
- 13 answer that question. I would have to look at all the
- 14 photographs.
- 15 Q: Okay. Do you recall taking a photograph of a hole in the
- 16 wall?
- 17 A: I don't recall, sir.
- 18 Q: Okay. Let me ask you this. Would you have taken -- Did
- 19 you take any swabs from anything and test?
- 20 A: I didn't, no, sir. I did not.
- 21 Q: You just took photographs at this time?
- 22 A: I just took photographs.
- 23 Q: Okay.
- 24 A: And also collected the evidence.
- 25 Q: Okay. So you didn't -- The evidence you collected were

CROSS EXAMINATION OF RENE CHARLES BY MR. HARRIS

1 the bullets?

2 A: Bullets.

3 Q: The bullet casing?

4 A: Bullet casing, yes, sir. Cigarette lighter.

5 Q: Cigarette lighter, cell phone?

6 A: Cell phone.

7 Q: And the victim?

8 A: And the victim. No, that's the victim, that's the

9 coroner.

10 Q: Right, but that's the only pieces of evidence you

11 photographed and took from the scene?

12 A: That is correct, yes, sir.

13 Q: No fingerprints or no ---

14 A: No fingerprints, no, sir. I did not.

15 Q: Okay and you didn't dust anything for gunshot residue or

16 anything like that?

17 A: I didn't do that, no, sir.

18 Q: Okay.

19 MR. HARRIS: I beg the Court's indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 MR. HARRIS: I've got nothing further.

22 THE COURT: Any redirect of the witness?

23 MR. VOIGT: No redirect, Your Honor.

24 THE COURT: Any objection to the witness being excused

25 from the State?

DIRECT EXAMINATION OF ANITA MOORE BY MR. VOIGT

1 MR. VOIGT: None from the State, Your Honor.

2 THE COURT: From the defense?

3 MR. HARRIS: None from the defense, Your Honor.

4 THE COURT: Sir, you're excused. If counsel could
5 approach for me, please?

6 MR. CHARLES: Thank you, Judge.

7 THE COURT: You're welcome, sir.

8 (Whereupon, the witness leaves the stand at 4:40 p.m. and
9 a bench conference is held regarding scheduling off the
10 record in the presence of the jury but out of the hearing
11 of the jury.)

12 THE COURT: You may call your next witness.

13 MR. VOIGT: Anita Moore.

14 THE CLERK: Please put your left hand on the Bible and
15 raise your right hand. Do you swear or affirm that your
16 testimony will be the truth, the whole truth and nothing but
17 the truth, so help you God?

18 MS. MOORE: I do.

19 THE CLERK: Be seated. Please speak into the mic and
20 state your full name and then spell your last name for the
21 record.

22 MS. MOORE: Anita Marie Moore, M-O-O-R-E.

23 THE COURT: You may proceed.

24 MR. VOIGT: Thank you very much.

25 ANITA MOORE, being first duly

DIRECT EXAMINATION OF ANITA MOORE BY MR. VOIGT

1 sworn, testifies as follows:

2 DIRECT EXAMINATION

3 BY MR. VOIGT:

4 Q: Ms. Moore, where do you work?

5 A: Charleston Police Department.

6 Q: And how long have you worked there?

7 A: It's been a little over 11 years.

8 Q: In what capacity do you work there?

9 A: I'm a crime scene investigator.

10 Q: And did you have occasion to participate in the
11 investigation of a crime that occurred on January 9th, 2009?

12 A: Yes, I did.

13 Q: And what was your role in that investigation?

14 A: The next day after the incident occurred, I attended the
15 autopsy of the victim.

16 Q: And why does -- why does the Charleston Police Department
17 send someone to the autopsy?

18 A: We normally go to take photos of the victim, of any
19 injuries. We also collect personal effects or any other
20 evidence that may be with the victim.

21 Q: Is that why you went to the autopsy of Michael German?

22 A: Yes.

23 Q: Is one of the things that you are tasked to do when you
24 go to an autopsy is to take a GSR kit or swab from the
25 decedent -- from the deceased?

DIRECT EXAMINATION OF ANITA MOORE BY MR. VOIGT

1 A: If it's been a -- a shooting incident, we try to. Yes,
2 we do.

3 Q: Did you take -- And GSR for -- for the uninitiated,
4 refers to what?

5 A: It's a gunshot residue kit.

6 Q: And you're not qualified to -- to analyze gunshot
7 residue, are you?

8 A: No, sir, I'm not.

9 Q: Your job is to take a swab or a lift from someone to then
10 send it to the place where it will be processed. Is that
11 right?

12 A: Correct.

13 Q: Okay. Is that what you did in this particular case?

14 A: I -- Honestly, I can't remember. It would be on my
15 evidence sheet.

16 Q: I'm going to show you what I'll mark for identification
17 purposes only as State's 43.

18 (Whereupon, the autopsy report was marked for
19 identification only as State's Exhibit 43A.)

20 MR. VOIGT: May I approach, Your Honor?

21 THE COURT: You may.

22 A: I'm sorry.

23 Q: That's okay. Can you take a look at that? Do you
24 recognize what that is?

25 A: This is our checklist that we use for the autopsy.

DIRECT EXAMINATION OF ANITA MOORE BY MR. VOIGT

1 Q: Okay and is that a report that you did during the
2 autopsy?

3 A: Yes, it is.

4 Q: Okay and does that report indicate -- does that report
5 refresh your recollection?

6 A: Yes, it does. It lists certain things that we do at an
7 autopsy and it does state on here that a gunshot residue kit
8 was not collected.

9 Q: It wasn't collected?

10 A: It was not. It says N/A.

11 Q: So you did not collect one?

12 A: No, sir.

13 Q: At some point, do you think that a gunshot residue was
14 collected from the victim?

15 A: There are several instances where it could have been
16 collected. On scene, they'll try to generally do fingerprints
17 to identify the victim and before they'll do fingerprints
18 they'll do a GSR kit.

19 Q: Okay and one of the things that you recovered from the
20 autopsy was the spent projectile?

21 A: I believe so. There was several fragments that were
22 collected.

23 Q: Okay and the purpose of collecting those would be
24 ultimately to submit them to someone to see what they were?

25 A: Yes, sir. If there's any -- if it's possible, yes, sir.

CROSS EXAMINATION OF ANITA MOORE BY MR. HARRIS

1 Q: Okay, all right. What else did you collect from the
2 autopsy?

3 A: We -- The autopsy completes fingernail clippings, hair
4 samples, blood. So I collected those. I also collected the
5 two projectiles. It states a gold color or gold colored
6 earring, change and the clothing, which was a pair of tennis
7 shoes, a pair of jeans, a red short sleeved shirt and a red
8 jacket.

9 Q: Please answer any questions that Mr. Harris may have.

10 A: Yes, sir.

11 THE COURT: Mr. Harris or Mr. Mikell?

12 MR. HARRIS: Thank you, Your Honor. May it please the
13 Court.

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

15 CROSS EXAMINATION

16 BY MR. HARRIS:

17 Q: Now your name -- you were Myestas (sp.) at the time?

18 A: Yes, sir.

19 Q: Okay. So when I'm reading the report from Myestas,
20 that's you?

21 A: Yes, sir, it is, yes.

22 Q: Okay. I'm just making sure because I -- I was reading
23 this report and I saw the name and it said Officer Anita
24 Myestas.

25 A: Yes, I legally changed my name.

CROSS EXAMINATION OF ANITA MOORE BY MR. HARRIS

1 Q: Okay. I was just double checking, just making sure I was
2 talking to the right person.

3 A: Yes, sir.

4 Q: Okay. The part of the report that says evidence
5 transfer?

6 A: Mm-hmm.

7 Q: This says the following items were transferred to Officer
8 Anita Myestas, who attended the autopsy. So they transfer you
9 those?

10 A: At the autopsy, the -- the technicians that work the
11 autopsy ---

12 Q: Uh-huh.

13 A: --- actually record all the items that are taken from the
14 victim and then they fill out their sheet, I sign it and they
15 give them to me.

16 Q: Okay. Now so the blue jeans, jacket and shirt were given
17 to you?

18 A: Yes.

19 Q: Are they just given to you like I'd have my hands right
20 here, they'd grab them and just hand them to you?

21 A: No. They generally will package them in a paper bag and
22 then they'll put all everything that they've collected in
23 separate bags, put them in another bag -- plastic bag to give
24 to me so I could transport it. Then I take them back to the
25 crime scene office.

CROSS EXAMINATION OF ANITA MOORE BY MR. HARRIS

1 Q: Okay and that bag, is that bag sealed when you get it?

2 A: It depends. Usually the outside bag is not sealed. It's
3 the inside bags, the brown paper bags, and they will usually
4 staple them or put a sticker on them to -- to seal them. But
5 we're generally there at the time ---

6 Q: Mm-hmm.

7 A: --- as well that they're collected.

8 Q: And to your knowledge, what happens to those things,
9 those pieces of evidence?

10 A: Once I collect them, I'll take them back to the crime
11 scene office. We will generally put them in a drying closet
12 just to make sure that the clothing is dried before they're
13 properly packaged and turned in to evidence.

14 Q: Did you run any tests on those clothes?

15 A: No, sir, I do not.

16 Q: Okay, but you dry them and then -- So nothing's done
17 after that?

18 A: What, if anything, is done afterwards, that's up to the
19 detectives to request it and then it would go to the
20 appropriate personnel to process. Once I collect it, it just
21 gets dried and packaged properly and turned into evidence.

22 Q: Okay. So you dry it, package it, turn it in?

23 A: Yes, sir.

24 Q: Unless one of the detectives on the case says, hey, can
25 you run this test on it?

CROSS EXAMINATION OF ANITA MOORE BY MR. HARRIS

1 A: Yes, sir.

2 Q: Like a gunshot residue test on it?

3 A: If that needs to be done, they'll send a request and then
4 it can be sent to ---

5 Q: Okay.

6 A: --- be processed.

7 Q: Or a trace evidence? Can you explain that? It says N/A
8 next to trace evidence on your report here.

9 A: Mm-hmm.

10 Q: Which is not applicable, right?

11 A: Yes, sir.

12 Q: What is trace evidence and why was it not applicable?

13 A: Trace evidence is hairs, fibers, very small pieces of
14 evidence. A lot of times that is generally for sexual
15 assaults.

16 Q: Mm-hmm.

17 A: This type of incident where it wasn't a close contact
18 incident ---

19 Q: Mm-hmm.

20 A: --- that we don't -- there's no need to do a trace
21 evidence kit on the subject. The incident occurred from a
22 distance.

23 Q: Okay. So again, you were told this incident happened at
24 a distance. So that was what you -- you would investigate it
25 based on it happening from a distance?

REDIRECT EXAMINATION OF ANITA MOORE BY MR. VOIGT

1 A: All I know is a shooting. I go to the autopsy and
2 collect what is generally requested or collected from the
3 autopsy.

4 Q: Okay, but you did not collect gunshot residue on his
5 hands, body, clothes?

6 A: No, I did not.

7 Q: Okay.

8 MR. HARRIS: I beg the Court's indulgence, Your Honor.

9 THE COURT: Mm-hmm.

10 MR. HARRIS: I have nothing further, Your Honor. Thank
11 you.

12 THE COURT: Any redirect?

13 MR. VOIGT: Just a couple of questions, Your Honor.

14 THE COURT: You may proceed.

15 REDIRECT EXAMINATION

16 BY MR. VOIGT:

17 Q: A GSR, gunshot residue test, that you would collect --
18 You testified earlier that those were the things -- What you
19 collected from the autopsy were those things that were
20 normally requested. Would tests of body or clothing be one of
21 those things that would be normally requested?

22 A: I'm sorry, what?

23 Q: I'm sorry.

24 A: That's okay.

25 Q: Long meandering question.

REDIRECT EXAMINATION OF ANITA MOORE BY MR. VOIGT

1 A: Okay.

2 Q: You testified that sometimes you take gunshot residue
3 from ---

4 A: Yes, sir.

5 Q: This is easy questions. Does that test normally include
6 -- Is that normally bagging the hands essentially and taking
7 the evidence from the hands?

8 A: Yes, sir. We're -- If we are going to be doing any
9 gunshot residue kit, usually they will bag the hands on scene.
10 That way when we get to the autopsy, we can do it. I don't
11 recall for this particular instance the reasoning or why I
12 didn't particularly collect one. It was either already done
13 or sometimes there's things that interfere with a gunshot
14 residue kit. If the subject was transported to the hospital,
15 I don't know the familiarities of that part of the case, then
16 a gunshot residue kit wouldn't be applicable.

17 Q: And ordinarily you wouldn't be taking gunshot residue
18 kits from other parts of the body?

19 A: No, sir. Generally, if it's somebody that we feel was
20 involved in the shooting that might have -- for any particular
21 reason, we would do it just basically on the hands.

22 MR. VOIGT: Thank you.

23 THE COURT: Any objection to the witness being excused
24 from the State?

25 MR. VOIGT: None from the State, Your Honor.

1 THE COURT: From the defense?

2 MR. HARRIS: None, Your Honor.

3 THE COURT: Ma'am, you're excused.

4 MS. MOORE: Thank you.

5 THE COURT: You're welcome.

6 (Whereupon, the witness leaves the stand at 4:53 p.m.)

7 THE COURT: Madam Forelady, ladies and gentlemen, we're
8 going to take advantage of this break in testimony to take our
9 evening recess. During the break, please do not discuss this
10 case among yourselves or with anyone else. Please do not have
11 any contact with anyone in or about the courthouse when you
12 return in the morning and you will return directly to your
13 jury room at 10 o'clock, at which time we will resume
14 testimony.

15 I have another hearing in the morning that will probably
16 take 15 or 20 minutes and I'd rather you all not have to wait
17 on me and -- and I think it would give us a good little window
18 and we'll be able to start promptly at 10.

19 Please do not read, watch or listen to any media accounts
20 about this case. That includes anything that could be on
21 radio, television, newspaper and also the internet and please
22 don't do any independent research of any type on the internet.
23 Again, you will return directly to your jury room at 10 in the
24 morning. If you would leave your notepads in your seats,
25 we'll secure those during the recess and please know that your

1 privacy will be protected.

2 Mondays are always a little bumpy. We're used to this
3 process, you all are not. So I wanted to tell you that we
4 really appreciate your patience. I hope that you all have a
5 great evening and we'll see you in the morning at 10.

6 (Whereupon, the jury leaves the courtroom at 4:54 p.m.)

7 THE COURT: You may be seated. Anything before we
8 adjourn for the evening from the State?

9 MR. VOIGT: No, Your Honor.

10 THE COURT: From the defense?

11 MR. HARRIS: Nothing, Your Honor.

12 THE COURT: Okay. I'll see you all at 10. You can leave
13 your stuff. The jury -- the room will be uninterrupted, but
14 also I did want to say that if you all have clothing, what
15 time do they need to bring that for him?

16 DEPUTY: We explained to his attorney that they need to
17 have that here before 8:30.

18 THE COURT: As long as y'all have taken care of it. Also
19 to those who are seated in the gallery, I know that this is an
20 emotionally charged trial, but I'm going to have to ask that
21 you all exercise restraint and there be no emotional outbursts
22 during the course of the proceedings. It is essential that
23 the jury remain impartial and we cannot run the risk of them
24 being influenced by any emotion being exhibited in the
25 gallery.

1 So if you feel that there is something that may upset you
2 or you cannot handle it, I would ask that you excuse
3 yourselves prior to that and if you would, let them know.
4 Give them some advance notice because I know it might be
5 upsetting, but I can't have the jury distracted.

6 MR. VOIGT: I marked this for ID.

7 THE COURT: Yes, sir?

8 MR. VOIGT: I marked this for ID. I just wanted to leave
9 it here.

10 THE COURT: Pardon me? I didn't hear you.

11 MR. VOIGT: I marked this for ID only.

12 THE COURT: Did you ask Mr. Harris if he had any
13 objection to it?

14 MR. VOIGT: He just -- I don't really plan on admitting
15 it. I just ---

16 THE COURT: Oh, it was used demonstratively?

17 MR. VOIGT: It was used by the witness.

18 THE COURT: Okay.

19 MR. VOIGT: I just wanted to let you know.

20 THE COURT: ID only without objection I assume, Mr.
21 Harris?

22 MR. HARRIS: Without objection, Your Honor.

23 THE COURT: Y'all have a good evening. I'll see you at
24 10.

25 MR. VOIGT: Thank you.

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MR. HARRIS: Thank you, Your Honor.

--- END DAY ONE OF TRIAL ---

(CONTINUED IN VOLUME 2)

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 2009-GS-10-6730
) CASE NO. 2009-GS-10-6731
) CASE NO. 2009-GS-10-6732
) CASE NO. 2009-GS-10-6733

THE STATE OF SOUTH CAROLINA,)
)
Plaintiff,)

-vs-

TRANSCRIPT OF RECORD
(DAY 2 of 5)

JEROME CAMPBELL,)
A/K/A JEROME COAXUM,)
)
Defendant.)
)

January 23-27, 2012
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA JEFFERSON, Judge, and a jury

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

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Official Court Reporter

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1 JANUARY 24, 2012

2 (Whereupon, the proceedings continue beginning at 10:40

3 a.m. The defendant and all counsel are present, but the

4 jury is not yet present in the courtroom.)

5 THE COURT: What are the names of the -- of the

6 defendant's family members, their surnames?

7 MR. HARRIS: Their surnames, Your Honor?

8 THE COURT: Mm-hmm.

9 MR. HARRIS: There's Coaxum.

10 MR. CAMPBELL: Coaxum.

11 MR. HARRIS: Campbell and Ladson.

12 THE COURT: And what are the surnames of the victim's

13 family?

14 MR. VOIGT: German, Your Honor. We also as a part of my

15 motion would like to submit the ---

16 THE COURT: I didn't ask that question. I asked a very

17 direct question and I'm seeking a direct answer.

18 MR. VOIGT: Yes, Your Honor.

19 THE COURT: What are the last names of the victim's

20 family?

21 MR. VOIGT: German, Your Honor.

22 THE COURT: And that is the only surname?

23 MR. VOIGT: March and Bobo, Your Honor.

24 THE COURT: M-A-R-C-H?

25 MR. VOIGT: Yes.

1 THE COURT: And Bobo, B-O-B-O?
2 MR. VOIGT: Yes.
3 THE COURT: So their surnames then are German, March and
4 Bobo?
5 MR. VOIGT: Yes, Your Honor.
6 THE COURT: Who are the other individual surnames that
7 you mentioned in your opening argument, Mr. Voigt?
8 MR. VOIGT: Frank Haigler, Your Honor, and Michael Allen.
9 THE COURT: Those are the only additional names that you
10 mentioned?
11 MR. VOIGT: Of the lay witnesses, yes, ma'am.
12 THE COURT: You didn't mention German?
13 MR. VOIGT: I did mention German, Your Honor. I would
14 have thought that that would have -- would have occurred.
15 THE COURT: So the only names you mentioned in your
16 opening argument were Haigler, Allen and German?
17 MR. VOIGT: Yes. I also -- I highlighted Coaxum and
18 Ladson as well as part of my presentation to demonstrate the
19 defendant's relationship to several witnesses.
20 THE COURT: And those are all the last names that you
21 used in your opening argument?
22 MR. VOIGT: Including ---
23 THE COURT: Haigler, Allen, German, Coaxum and Ladson?
24 MR. VOIGT: As well as Campbell.
25 THE COURT: Campbell. I knew there was one that I

1 couldn't remember. And what is the last name of the
2 defendant's sister?

3 MR. HARRIS: One is Coaxum and one is Ladson.

4 THE COURT: Okay. The State may proceed with its motion.

5 MR. VOIGT: May it please the Court, Your Honor.

6 THE COURT: Let me ask another preliminary question. I
7 apologize. Mr. Harris, have you had an opportunity to watch
8 the video that was procured from the snack bar?

9 MR. HARRIS: I have not, Your Honor.

10 THE COURT: Is there a reason Mr. Harris has not been
11 provided with a copy of the video?

12 MR. VOIGT: I called Mr. Harris as I detailed your clerk,
13 Your Honor, at approximately 8:45 to 9 o'clock this morning
14 and offered him the opportunity to view the video before we
15 went to court. Mr. Harris informed me that he would rather
16 take it up once we got to court.

17 THE COURT: When did you procure a copy of the tape?

18 MR. VOIGT: I believe that a copy was procured by someone
19 in my office yesterday afternoon.

20 THE COURT: Was there a reason you didn't turn it over
21 then?

22 MR. VOIGT: I hadn't viewed it. I was unaware of the
23 contents then. When I left the office at 5:30, it was not
24 available to me.

25 THE COURT: Say that one more time?

1 MR. VOIGT: When I left the office at 5:30 yesterday, it
2 was not available to me. I did not see it ---

3 THE COURT: So you did not. When did you watch it?

4 MR. VOIGT: I watched it when I came to the office this
5 morning at approximately 8:30.

6 THE COURT: Okay. Is there a reason you have not watched
7 the video yet, Mr. Harris?

8 MR. HARRIS: Your Honor, I was going to come here and
9 watch it today. I assumed we would watch it. I didn't find
10 out about it until this morning. I didn't get the motion
11 until I walked in here at court. I got here at 9:30 in order
12 to get a shirt and tie to my client because they told my
13 client's wife at 8:30 that the attorney has to give it to
14 them.

15 THE COURT: That's correct.

16 MR. HARRIS: So I came down -- I left my home. I had to
17 take my mother to the airport and I apologize that delayed me
18 this morning. I got here at 9:30 as soon as I could. You
19 know, we were told we were starting at 10. I was hoping to --
20 I thought we could either go to chambers to watch the video
21 because I'm assuming it's only 25 seconds long.

22 THE COURT: No, it's a lot longer than that. The
23 operative portion is fairly short, but the entire video is
24 much longer than that.

25 MR. HARRIS: Okay, but I didn't have -- I mean I got a

1 motion while I was -- I was asked while in court if I got a
2 motion. Because I was here, I didn't have the accessability
3 to print it or to respond to it. So that's what I'm -- You
4 know, it was -- it happened between 8:45 and 9:30 this
5 morning. You know, that's a 45 minute window.

6 I didn't have time to get from North Charleston to here
7 and watch the video in time and again, I thought we were
8 starting at 10 o'clock, which would have been 30 -- it would
9 only have given me 30 minutes when I got here. I didn't have
10 time to write a motion or a response or anything like that
11 because like I said, Your Honor, this is something that came
12 up this morning.

13 THE COURT: And what time did you file your motion, Mr.
14 Voigt?

15 MR. VOIGT: It was officially filed, Your Honor. I sent
16 my legal assistant down to the Clerk of Court's office and the
17 date -- the time stamp is 9:54. I believe that I sent a copy
18 to your clerk approximately 20 to 25 minutes earlier than that
19 and that would have been the same copy that Mr. Harris would
20 have received. I also sent an amended copy a couple minutes
21 later because I realized I had the wrong indictment numbers on
22 my motion.

23 (Whereupon, the Court has a brief conference with the law
24 clerk regarding the time of the transmission of the
25 motion.)

1 MR. VOIGT: And I sent the amended copy to Mr. Harris,
2 too, and when I walked into the courtroom this morning, I
3 placed a written copy on counsel's table and informed Mr.
4 Harris that I had filed a motion.

5 THE COURT: Do you have the ability to let Mr. Harris
6 watch? Do you want to watch the video now?

7 MR. HARRIS: I'd like to. I would like to before we -- I
8 mean you just ---

9 THE COURT: Could you all give Mr. Harris the opportunity
10 to watch the video?

11 MR. VOIGT: I believe that you have the video. May I
12 approach?

13 (Whereupon, there is a break in the proceedings while
14 defense reviews the snack bar surveillance video.)

15 MR. VOIGT: Your Honor, Mr. Harris has reviewed ---

16 (Whereupon, the Court makes a gesture to stop Mr. Voigt
17 from speaking further at that time.)

18 MR. VOIGT: Thank you very much.

19 THE COURT: I'll inquire of him when I'm ready.

20 (Whereupon, there is a brief break in the proceedings.)

21 THE COURT: Mr. Harris, have you had an opportunity to
22 review the video?

23 MR. HARRIS: I have, Your Honor.

24 THE COURT: And Mr. Voigt, you were going to say
25 something more than that?

1 MR. VOIGT: Yes, Your Honor, and I apologize.

2 THE COURT: Certainly.

3 MR. VOIGT: In furtherance of the State's motion, Your
4 Honor, the State would offer two statements that were
5 collected by my office from Tiffany Peacock and Trenell
6 German, the contents of which were what I relayed to the Court
7 yesterday which got this started about the observations of the
8 family members in the snack bar and I've -- Mr. Harris has
9 reviewed those and I would offer those as -- in addition with
10 the video as Court's 1, 2 and 3.

11 THE COURT: Any exception?

12 MR. HARRIS: No exception, Your Honor.

13 THE COURT: You may proceed.

14 COURT REPORTER: It would be 2, 3 and 4. We already have
15 a 1.

16 MR. VOIGT: As a Court's exhibit?

17 COURT REPORTER: Yes.

18 MR. VOIGT: Okay.

19 (Whereupon, the DVD video is marked as Court's Exhibit
20 Number 2 and the two affidavits are marked as Court's
21 Exhibits Number 3 and 4.)

22 MR. VOIGT: For the record, Your Honor, there will be 2
23 as the video, 3 as the statement of Trenell German and 4 as
24 the statement of Tiffany Peacock.

25 Your Honor, as I set out in my motion, I believe that the

1 procedure employed by the Court yesterday to determine the
2 truthfulness of whether or not such contact had occurred
3 involved voir dire to the general jury panel. One of our
4 jurors volunteered that she had had a conversation at a
5 sandwich shop, although the contents of that conversation were
6 innocent and I believe we all -- we all believed that. The
7 two ladies though that I had brought to the Court's attention
8 ---

9 THE COURT: Actually you were very vague about who it was
10 and your motion is a bit misleading because you identify two
11 jurors, but you did not -- by their number, but you did not do
12 that on yesterday.

13 MR. VOIGT: Yesterday, Your Honor ---

14 THE COURT: You indicated someone in a yellow shirt,
15 which I -- I knew who that juror was, but you indicated
16 another juror who you really could not identify and you had a
17 very vague description of her.

18 MR. VOIGT: And ---

19 THE COURT: So to the extent that it is stated in the
20 motion that you actually brought with specificity those jurors
21 to the Court's attention is a bit misleading. So that needs
22 to be corrected for the record.

23 MR. VOIGT: And I would be happy, Your Honor, to go back
24 in the transcript of all of my remarks yesterday.

25 THE COURT: You don't need to because I've already

1 reviewed it. You may proceed.

2 MR. VOIGT: Thank you, Your Honor. I believe I named
3 Miss Gadsden by name and I believe, as I have done in my
4 motion, to the best extent possible I believe that the other
5 juror's name is Robin Givens, a name that I supplied in open
6 court to you, Your Honor. I did that because I know she's a
7 juror. I can recognize her as a juror, but in my notes
8 sometimes I -- I don't know which one of these people is
9 which. Miss Gadsden I could clearly identify because of the
10 bright yellow shirt and I -- I did give you that name
11 yesterday to the best extent I could.

12 Neither one of those ladies raised their hands to
13 indicate a conversation. I watched the ladies from where my
14 vantage point was. I observed nothing unusual about the juror
15 that I would call Ms. Givens for lack of a better term or
16 juror number 70, but Miss Gadsden clearly looked out into the
17 audience into the ---

18 THE COURT: I watched her the entire time and frankly,
19 she was avoiding my eyes and she looked toward the bailiffs.
20 So I would have to tell you that I don't find particular
21 veracity in that statement because I deliberately watched
22 both. I watched her specifically because you identified her
23 as having a yellow shirt on.

24 MR. VOIGT: Thank you, Your Honor. Nevertheless, I sat
25 on this chair and I believe that for a brief period of time,

1 not during the entire time that the Court was addressing those
2 jurors, I observed Miss Gadsden look out in that general
3 vicinity and that's -- that's -- and I'm not going to go any
4 further than that, but ---

5 (Whereupon, counsel for the State indicates the gallery
6 behind the defense table when pointing and stating
7 "general vicinity.")

8 THE COURT: I would caution you not to.

9 MR. VOIGT: Thank you, Your Honor, but that was an
10 observation which I will stand by. Nevertheless, neither one
11 of the ladies raised their hands. I believe that the Court
12 gave them the opportunity to give an innocent explanation were
13 there one for any of that, for any of the conversation. The
14 conversation is clearly captured on the video. It is not a --
15 the kind of innocent thing that the Court went to at length
16 and described to the jury about, you know, a congenial
17 greeting of sorts. I think that the conversation was more
18 than that.

19 It belies the fact -- you know, it belies their
20 indication to the Court that no conversation took place.
21 Ordinarily, had there been an innocent explanation and an
22 admission to such, there would be no way of asserting that
23 they were anything other than impartial and I believe the case
24 law indicates that where there has been -- where a juror has
25 deliberately misled the Court, and I believe the actions of

1 those two jurors indicate that they have, that they are not to
2 be given the same presumption of impartiality.

3 I think that the conduct of jurors should be free from
4 all extraneous and improper influences. I believe that they
5 should be impartial. I believe that the case law is clear on
6 that and I believe that they have demonstrated to the Court
7 that they cannot be that way and I would ask that you remove
8 them from the case in this matter.

9 THE COURT: Mr. Harris, would you like to respond?

10 MR. HARRIS: Thank you, Your Honor. May it please the
11 Court.

12 THE COURT: Yes, sir, you may proceed.

13 MR. HARRIS: Your Honor, I -- This was brought to our
14 attention, as it was, Your Honor, right after lunch. I -- And
15 I'm not -- I did the same thing you're talking about because I
16 knew exactly which one they were talking about. I knew one
17 they said was in a yellow shirt, one person, and the person
18 that was in that video was not in the courtroom after lunch
19 because when I brought that -- when it was brought to my
20 attention, I asked what ---

21 THE COURT: What person are you referring to?

22 MR. HARRIS: They say it's his sister, but it's not.
23 It's a cousin and I don't think she's in the courtroom today.

24 THE COURT: I need you to be more specific for the
25 record. When you say you're referring to "that person was not

1 in the courtroom", what do you mean?

2 MR. HARRIS: The person on the video. Let me get her.

3 THE COURT: You're saying the person depicted on the
4 video ---

5 MR. HARRIS: On the video.

6 THE COURT: --- was not in the courtroom after lunch?

7 MR. HARRIS: Right.

8 THE COURT: Okay. Now I'm clear what you're saying.

9 MR. HARRIS: Okay.

10 THE COURT: You may continue.

11 MR. HARRIS: And, Your Honor, two things. One, if this
12 was more than -- you know, there is no audio on this video. I
13 argue this was no more than a passing I know you, hey, what's
14 going on, because no one had seen this jury pool and I'm not
15 saying that excuses any of the jurors of saying I didn't have
16 a conversation. No one had seen this jury pool. We picked
17 the jury and then they went to lunch.

18 If someone in the family had said -- had walked up and
19 said there's some jurors that's on this jury, let me walk up
20 and talk to them, what my explanation from their family was
21 when the person they said they walked up, they recognized
22 them, they waved their hand, they said I'm not supposed to
23 talk to jurors. They didn't -- they said they didn't have a
24 word to speak with the person in the yellow shirt.

25 So therefore, I can understand how you -- On the video,

1 you don't see -- you see the person leaning in and talking to
2 the person on the right. There's nothing that's been shown to
3 us that shows that these two jurors know each other in such an
4 intimate way that they're going to know the same group of
5 friends or anything to that aspect.

6 You know, like I said, it would be something that we need
7 to talk to the jurors individually I believe because I think
8 the one in the yellow shirt, Ms. Gadsden, would say I'm
9 sitting at a table having lunch with a fellow juror because I
10 can't talk to anybody else and this person walks up and talks
11 to the person sitting here.

12 Like I said, there's no audio on this video, so you can't
13 tell if she's talking to the person in the yellow shirt. Just
14 from the -- me watching it a few minutes ago, it doesn't look
15 like she's talking to the person in the yellow shirt, but I
16 also say that I -- we don't know that this is anything more
17 than a innocent hey, I know you from somewhere. They didn't
18 know this person was on this jury. I mean that's what I'm
19 saying. No one had seen this jury before the afternoon
20 session because we sent them directly to lunch and nobody came
21 in the courtroom.

22 So I'd ask Your Honor -- and also to try to -- you know,
23 we have a juror that's already trying to get off the jury
24 once. We don't know if he's going to get off tomorrow if he
25 happens to know somebody that we talk about or that we bring

1 in here. If we excuse two jurors today and one tomorrow,
2 we've got a mistrial built in already at eleven jurors. So we
3 don't know because the gentleman said he could not be
4 impartial if he knew the family. So if we come in tomorrow
5 and he says, oh, yeah, I played basketball with this witness
6 and I can't be impartial, then we've got eleven jurors.

7 So if -- if Your Honor is going to grant a motion to
8 excuse jurors, the only person that shows on that video
9 clearly that is talking to a person, a relative of my family,
10 would be Ms. Givens, juror 70, and again, she comes in with a
11 jacket on and we don't know if it's clear that she had a juror
12 badge on or not. So the only person we see a juror badge on
13 is Miss Gadsden, who has on a yellow shirt.

14 So I'd ask that if Your Honor is going to excuse one that
15 you excuse Ms. Givens based on that you can see somebody
16 talking to her, but we don't know what that conversation
17 entails. Thank you.

18 THE COURT: You're welcome. I've had the opportunity to
19 watch the video. I've watched it several times and the
20 operative portions several times, which spans a fairly short
21 period. It appears from the video that some members and I
22 don't know whether they are members of the defendant's family,
23 I take that for granted based on what has been represented to
24 the Court, walk into the snack bar and make contact with a
25 juror who is -- they're sitting at a round table.

1 Her back is facing the camera. You really cannot see
2 her. The only way you would be able to identify her is the
3 fact that she walked in -- into the snack bar and you see
4 where she is seated with the young lady with the yellow shirt
5 who is facing toward the camera.

6 A person walks in and a comment it looks like is made and
7 she stands back and does a gesture with her hands almost like
8 -- almost like surprised to see the person. They interact,
9 which you cannot really see that interaction except for one
10 perspective on camera. There's been a representation that
11 hugging took place. There is absolutely no indication of any
12 hugging on the video and based on my perspective, there is no
13 interaction with the young woman in the yellow shirt with
14 anyone. If anything, she -- she is quiet. She goes -- You
15 see her get up as everyone is leaving, put her stuff in the
16 garbage can and then exit with a group of people.

17 And I looked very carefully to see if anyone could
18 observe anyone making statements. It's just really -- It sort
19 of -- It befuddles me a little because I'm a -- I'm trying to
20 figure out and I looked at it objectively to see when a
21 statement could have been made. There is a large group of
22 people, clearly all known to one another, who are leaving the
23 snack bar at the same time -- point in time. Other than that,
24 there's no interaction with them and they're so far away you
25 would not be able to hear what they're saying even though

1 there's no audio on the -- on the video itself.

2 But what's troubling to me, however, is that once the
3 Court gave the instruction that you're not to have any
4 interaction with anybody that doesn't have a juror sticker on,
5 there's clearly interaction with -- I don't know the juror's
6 number and I'm going to have to conduct some additional
7 inquiry of them, is that clearly there is some interaction
8 with a member of the defendant's family and a juror and that
9 was clearly prohibited and should not have taken place.

10 Now I asked the question about the -- the surnames
11 because I wanted to see if we had mentioned them during voir
12 dire and if there had been some deliberate concealment on the
13 part of any of the jurors during that process and when I
14 looked back through the witness lists that were propounded to
15 the Court, let me see, there was a Charise Coaxum that was
16 listed as a witness, a Sandra Campbell. Sandra Campbell.
17 Aaron Burnham.

18 Of the last names that were surnames, there was a Coaxum
19 and there was a Ladson. No, I'm sorry. There was Coaxum,
20 Campbell. There was no mention of a Ladson and then on the
21 State's list -- There was on the defendant's list a -- a
22 Robinson, but that's the GSR person, I assume some expert that
23 they have retained. There was a Burnham and there was a
24 Richardson. However, there was no mention of those names to
25 me by counsel when I asked.

1 On the State's list, again the surnames German, Allen,
2 McCarthy, Tawney, Haigler, Glover, but not -- but certainly
3 German and Ladson were mentioned and Campbell were listed as
4 potential surnames and while those -- while the particular
5 individuals may not have been listed and I believe that I
6 asked what the defendant's sisters' last names were, they said
7 Coaxum and Ladson. While their first names may not have been
8 mentioned, I don't know that there would have been any
9 indication without a mention of first names of a juror
10 listening to that information.

11 It is possible that they did not recognize -- because the
12 whole family was not in here during jury selection, it is
13 possible that they may have recognized one another later, but
14 certainly it should have been disclosed in voir dire when the
15 Court asked did you have any interaction with anyone during
16 the lunch and recess. Certainly you should have disclosed
17 that we saw -- Just out of an abundance of caution, you should
18 have disclosed we saw some people in the -- in the break room
19 and it is possible that I know them and I need to disclose
20 that. And I find it troubling that that was not disclosed
21 because it is not only the actual propriety that we must all
22 exercise, it is the appearance because perception is reality
23 and -- and I said that on yesterday that I was not going to
24 get into sort of a tit for tat because --

25 I'll give you a short story from Seinfeld. As George

1 Costanza would say, if I believe it, it's not a lie. So in
2 other words, if I perceive it, it's real to me. So I don't --
3 I believe that the people who say they overheard that
4 perceived that they heard that, although the video does not
5 support it because there's no way you can tell what is being
6 said or not being said and maybe I'm just naïve, but I can't
7 imagine I would say something that inculpatory when people I
8 know are walking through me where they can hear it.

9 But then, you know, stranger things have happened. But I
10 have no way of independently judging that because there is no
11 audio on the video and I don't know what was said. I just
12 know the logistics. I've been in that snack bar. The --
13 Although I go down there, I've been in there very rare times,
14 it's a large, vacuous area. I don't -- You know, there are --
15 I was surprised at how many people were down there having
16 lunch, how much court staff has lunch down there. I was
17 really shocked.

18 But I don't know that from where they were sitting, which
19 is way on the end by these windows, if you could hear what
20 somebody is saying way at the end of the door. Now there was
21 some people sitting at what I guess you could consider a lunch
22 counter of sorts, but where the talking would have been taking
23 place is when you see members of the victim's family walking
24 through members of the defendant's family and there does not
25 appear to be any discussion going on at that time.

1 Do I believe that's the perception? Yeah, absolutely, I
2 believe that's the perception and that is why I strictly gave
3 the instruction not to have any interaction with anyone and I
4 may have to instruct the jury not to have lunch in the snack
5 bar at all because there's too many people milling around the
6 courthouse and people do look very different in the courthouse
7 than they look in a courtroom.

8 But I'm going to voir dire the individual jurors and then
9 we'll see where we go from there because I need some answers
10 and I don't need somebody else's perception. I need their
11 answers about what actually took place and who they interacted
12 with and it is correct that -- and I don't know. I'll have to
13 take Mr. Harris' word for it that these individuals that may
14 have had interaction were not in the courtroom after lunch,
15 which may well have signaled this particular juror's memory or
16 not signaled it. In her mind, I don't know, she may have
17 interacted with somebody that she didn't know was involved in
18 the case, somebody she may have seen after a number of years,
19 an acquaintance or otherwise.

20 But since I knew of the specific juror that was
21 identified, the young lady in the yellow, I specifically
22 looked at her while I was talking and at no time did I see her
23 avert her eyes. If anything, she was trying not to look at
24 me. She was looking down at the floor. She looked over at
25 the bailiffs, but I was observing her specifically because I

1 wanted to know and make an independent judgment about whether
2 she was being misleading or not or whether in fact she had
3 some contact.

4 But the video very clearly shows her not really -- She's
5 more of a -- She's just in -- She's there because she's eating
6 lunch with this other lady, but I don't really see her having
7 anything other than ordinary social hospi -- I mean if the
8 person that I guess you could say liberally waved at her, it
9 would have been really rude for her not to have waved back or
10 to have acknowledged it in some way.

11 Which is the same observation I made on yesterday which
12 is why I avoid the public areas of this courthouse because I'm
13 a social -- I'm not going to be rude to somebody if they say
14 hi to me. I'm not going to not speak to them, but I also am
15 cognizant enough to know that if I see a criminal defendant or
16 if I see a victim's family and I exercise ordinary social
17 hospitality, they're going to misinterpret that. They're
18 going to be like, the judge smiled at me, the judge waved at
19 me and -- and frankly, I'm not going to remember who I waved
20 at or smiled at because my mind is 20 miles away doing
21 something else. It's on to the next thing, but I'm not going
22 to be rude to somebody as I'm walking through the courthouse
23 and I don't think anybody else would be either, but could that
24 be very easily misinterpreted? Absolutely.

25 Mr. Robinson, I need you to get -- I need you to get

1 juror number 63 for me, Miss Gadsden, and juror number 70,
2 Miss Givens, and have them stand outside in that hallway for
3 me, please.

4 (Whereupon, there is a brief pause in the proceedings
5 during which the Court views a portion of the video
6 again.)

7 THE COURT: Okay, could you bring in Miss Givens first?

8 BAILIFF: Miss Givens?

9 THE COURT: Pardon me?

10 BAILIFF: Miss Givens?

11 THE COURT: Yeah, number 70, Miss Givens.

12 (Whereupon, juror number 70, Miss Givens, is brought into
13 the courtroom.)

14 BAILIFF: Number 70, Miss Givens.

15 THE COURT: Hi, Miss Givens, how are you?

16 JUROR: Fine.

17 THE COURT: If you would, state your name for the record,
18 please.

19 JUROR: Robin Givens.

20 THE COURT: Miss Givens, I want to ask a question. Were
21 you in the snack bar on yesterday having lunch downstairs in
22 the courthouse?

23 JUROR: Mm-hmm.

24 THE COURT: And who did you have lunch with?

25 JUROR: Number 63, I can't remember her name.

1 THE COURT: Okay and while y'all were having lunch, did
2 some people come into the snack bar that you recognized?
3 JUROR: Yeah, a girl.
4 THE COURT: And who was that?
5 JUROR: I can't remember her name.
6 THE COURT: Where do you know her from?
7 JUROR: James Island.
8 THE COURT: Okay and when you say you know her from James
9 Island, what do you know of her from James Island?
10 JUROR: We -- I know her through another friend of mine
11 that lives on James Island.
12 THE COURT: Okay. When you say you know her through
13 another friend of yours, what -- how would you characterize
14 that?
15 JUROR: We've hung out together a few times.
16 THE COURT: You mean with the person you said hello to?
17 JUROR: Mm-hmm.
18 THE COURT: Okay. When you say you hung out, what do you
19 mean?
20 JUROR: We went to birthday parties together, like that.
21 THE COURT: Okay. Have you seen -- How long ago was
22 that?
23 JUROR: Last year in like June or July or something like
24 that.
25 THE COURT: Have you seen her since then?

1 JUROR: No, not since then before yesterday, no.

2 THE COURT: Okay and would you consider her a close
3 friend of yours?

4 JUROR: No.

5 THE COURT: Do y'all talk on the phone or have any
6 interaction other than the birthday party and when you saw her
7 yesterday?

8 JUROR: No.

9 THE COURT: And do you know her name?

10 JUROR: I can't recall her name. She named after a
11 champagne or a wine or something. Oh, I can't recall her
12 name.

13 THE COURT: Okay. What -- Tell me in your own words what
14 happened when she -- when you were sitting in the snack bar on
15 yesterday?

16 JUROR: We hailed each other.

17 THE COURT: When you say you hailed each other, tell me
18 what that means?

19 JUROR: Hi, how you doing, I ain't seen you in a long
20 time.

21 THE COURT: Mm-hmm.

22 JUROR: Stuff like that.

23 THE COURT: Were you surprised to see her?

24 JUROR: Yeah, mm-hmm.

25 THE COURT: To your knowledge, is she involved in this

1 case at all?

2 JUROR: Not to my knowledge.

3 THE COURT: Okay. Did you all have any discussion about
4 this case?

5 JUROR: No.

6 THE COURT: Did you all -- What did you all -- Other than
7 what you said, what else did you say?

8 JUROR: Then we just started talking about the friend I
9 told you about.

10 THE COURT: The friend in common that you have?

11 JUROR: Yeah, mm-hmm.

12 THE COURT: And then what else did you talk about?

13 JUROR: And she spoke about her -- that she moved in with
14 her grandmother.

15 THE COURT: Okay.

16 JUROR: That was it.

17 THE COURT: And again I ask did you in any way have any
18 interaction or discussion about this case?

19 JUROR: No.

20 THE COURT: Did you talk about the facts and
21 circumstances of this case?

22 JUROR: Oh, no, uh-uh.

23 THE COURT: To your knowledge, was she -- is she related
24 in any way to the defendant?

25 JUROR: Not to my knowledge.

1 THE COURT: Is she in any way related to the victims in
2 this case?

3 JUROR: Not to my knowledge.

4 THE COURT: Okay and did you hear the Court's
5 instructions not to speak to anyone that did not have a juror
6 sticker on?

7 JUROR: Yes, I did.

8 THE COURT: Okay and you just -- you forgot, is that what
9 you're saying?

10 JUROR: Yes.

11 THE COURT: Okay, because you saw what you considered to
12 be an old acquaintance? Is that an accurate statement?

13 JUROR: Just somebody to see from my neighborhood was
14 just ---

15 THE COURT: It was just that?

16 JUROR: Yeah, that was just that.

17 THE COURT: Okay and if you would, stand back in the
18 hallway -- Well, actually I need to ask this question. As a
19 result of that interaction, do you feel that you can remain
20 fair and impartial in this case?

21 JUROR: Yes.

22 THE COURT: Do you feel that you can render a fair and
23 impartial verdict in this case?

24 JUROR: Yes.

25 THE COURT: Do you feel that you can render a fair and

1 impartial verdict based solely on the evidence as it will be
2 presented and on the law as the Court will instruct?

3 JUROR: Yes.

4 THE COURT: Okay. Ma'am, if you would stand out in the
5 hallway please and do not discuss what we have discussed in
6 any manner whatsoever.

7 JUROR: Okay, thank you.

8 THE COURT: You're welcome.

9 (Whereupon, the juror leaves the courtroom with the
10 bailiff.)

11 THE COURT: Are there any additional questions in voir
12 dire for the juror from the State?

13 MR. VOIGT: No, Your Honor.

14 THE COURT: From the defense?

15 MR. HARRIS: None, Your Honor.

16 THE COURT: Is there any statements regarding whether
17 this juror should be excused or whether the juror should be
18 retained from the State?

19 MR. VOIGT: I would just reaffirm my motion.

20 THE COURT: Well, you need to be more specific than that.
21 You've heard voir dire now. I need to know if there is any
22 indication because you have the burden of proof to prove to me
23 that she can't be fair and impartial and that somehow she's
24 violated the Court's instructions.

25 MR. VOIGT: I believe Your Honor was very clear in voir

1 dire yesterday and in fact in today's voir dire she clarified
2 that, but it does not change in any way the fact that she
3 misled the Court yesterday.

4 THE COURT: Well, how did she mislead me yesterday?

5 MR. VOIGT: You asked that same sort of question about
6 contact with somebody other than someone with a juror badge
7 yesterday ---

8 THE COURT: Mm-hmm.

9 MR. VOIGT: --- and you had a different answer from her
10 yesterday ---

11 THE COURT: Mm-hmm.

12 MR. VOIGT: --- or a non-answer, which is I believe the
13 way the Court structured the voir dire would have been an
14 answer in the affirmative that she had not had such a
15 discussion. I don't believe that today's answer in any way
16 changes the fact that she was not entirely forthright with the
17 Court yesterday and because of yesterday's answer, she's not
18 entitled to any presumption of impartiality.

19 THE COURT: Mr. Harris?

20 MR. HARRIS: Your Honor, I don't believe that it was an
21 intentional omission on her part. I think it's like -- just
22 like she said. If a person says no name, it's an acquaintance
23 from a while back, like you said, it looked like somebody
24 waves their hands up like, oh my God, I haven't seen you in a
25 long time. It's been years.

1 I think she cleared it up today. We didn't say -- It's
2 not like we came to her and said we've got you on video, why
3 are you lying? You asked her clearly today were you in the
4 snack bar yesterday? Yes. Did you talk to someone yesterday?
5 Oh, yeah, I did.

6 It's kind of like it wasn't -- I don't think it was an
7 intentional omission on her part. I don't think she was
8 trying to mislead or deceive the Court. I think she didn't
9 think I saw a good friend of mine and I didn't realize that --
10 you know, she hadn't seen anybody in this courtroom at that
11 time.

12 So I'd ask that she remain on the panel. She told you
13 clearly she can be fair and impartial. She doesn't even know
14 the person's name. She said it might be after a wine or a
15 champagne. It's a passing acquaintance that she hasn't seen
16 in a year.

17 THE COURT: Bring in Miss -- Miss Gadsden for me, please.

18 BAILIFF: Miss Gadsden?

19 (Whereupon, juror number 63 is brought into the courtroom
20 by the bailiff.)

21 THE COURT: Tell me your name, ma'am, for the record?

22 JUROR: Erica Gadsden.

23 THE COURT: How are you doing this morning?

24 JUROR: Fine.

25 THE COURT: Miss Gadsden, did you have lunch with Miss

1 Givens yesterday in the lunch bar?

2 JUROR: No.

3 THE COURT: In the snack bar? Do you know who Miss

4 Givens is?

5 JUROR: No.

6 THE COURT: Okay. She's the lady that you came down the

7 hallway with. Did you have lunch with her yesterday?

8 JUROR: With her?

9 THE COURT: Yes, ma'am.

10 JUROR: Yeah.

11 THE COURT: So you don't know her name?

12 JUROR: No.

13 THE COURT: Okay. Y'all just sat in the snack bar

14 yesterday and had lunch?

15 JUROR: Yes, ma'am.

16 THE COURT: Okay and during lunch did anybody come up to

17 your table or did you interact with anybody during lunch while

18 you all were having lunch?

19 JUROR: Uh-uh.

20 THE COURT: Okay. Did anybody come up and speak to Miss

21 Gavins -- I mean Miss Givens?

22 (Whereupon, the juror nodded her head.)

23 THE COURT: I need you to tell me yes or no.

24 JUROR: Yes.

25 THE COURT: Okay and did you have any part in that

1 conversation?

2 JUROR: I might have just asked her if I know her from

3 someplace and stuff.

4 THE COURT: I'm sorry? Say that one more time.

5 JUROR: I asked her if I know her from someplace. That's

6 it.

7 THE COURT: And what was her response?

8 JUROR: No.

9 THE COURT: Okay and did you have any further contact

10 with anybody else in the snack bar during lunch?

11 JUROR: No, ma'am.

12 THE COURT: Other than Miss Givens?

13 JUROR: No, ma'am.

14 THE COURT: Okay. Is there a reason you didn't indicate

15 yesterday after lunch when I asked if you'd had any

16 interaction with anyone in or about the courthouse who didn't

17 have a juror sticker on?

18 JUROR: No.

19 THE COURT: I can't hear you.

20 JUROR: No.

21 THE COURT: Okay. Do you know any members of the

22 victim's family in that -- in this case, that being anyone who

23 is a member of Michael German's family?

24 JUROR: No, ma'am.

25 THE COURT: Do you know anyone that is a member of Mr.

1 Campbell's family?

2 JUROR: No, ma'am.

3 THE COURT: Okay. Ma'am, is there -- after the
4 interaction that you had in the snack bar, that being someone
5 asking if you knew them or not, do you feel that you can
6 remain fair and impartial?

7 JUROR: Fair.

8 THE COURT: I can't hear you.

9 JUROR: Fair.

10 THE COURT: Okay. Do you think you can render a fair and
11 impartial decision in this case?

12 JUROR: Yes.

13 THE COURT: I can't hear you.

14 JUROR: Yes.

15 THE COURT: Do you feel you can render a decision based
16 solely on the evidence as it will be presented and on the law
17 as the Court will instruct?

18 JUROR: Yes.

19 THE COURT: You tell me ---

20 JUROR: Yes.

21 THE COURT: Okay. If you would, step out into the
22 hallway for me and please do not discuss anything that we've
23 discussed with anyone.

24 JUROR: Okay.

25 THE COURT: Thank you.

1 (Whereupon, the juror leaves the courtroom.)
2 THE COURT: Any additional questions from the State?
3 MR. VOIGT: No, Your Honor.
4 THE COURT: From the defense?
5 MR. HARRIS: None, Your Honor.
6 THE COURT: Any argument from the State regarding the
7 witness?
8 MR. VOIGT: Your Honor, based on the witness' comments to
9 the Court today, as well as the difference in the video
10 evidence between this juror and the juror we previously
11 discussed, the State would withdraw its motion as to this
12 juror.
13 THE COURT: Any exception from the defense?
14 MR. HARRIS: No exception, Your Honor.
15 THE COURT: Okay. I am going to -- and I -- I watched
16 the video. As a matter of fact, I was going to watch it again
17 in light of what's been disclosed because I wanted to make
18 sure I was accurate, but the video does really -- it really
19 shows the same affect that the juror exercised today as
20 yesterday. She has a pretty flat affect, like I don't know.
21 She's young, I guess. I don't want to cast any aspersions on
22 her character, but she's a typical young person. She's just
23 sort of like I'm sort of here and that's pretty much how she
24 was acting on the video, almost like I'm just sort of a
25 peripheral part of this situation, just trying to get through

1 it basically and she doesn't really have any interaction with
2 anyone.

3 Now I really don't have any concerns about Miss Givens'
4 impartiality. She's indicated she can be fair and impartial
5 and she can render a fair and impartial decision. But I am
6 troubled I guess and I use that word very lightly because I'm
7 really not troubled by the fact that she didn't disclose when
8 I asked the question because she's a typical juror. They just
9 don't -- The things we think are important they don't think
10 are important and I really don't think she had any intention
11 to mislead the Court and there would have been no reason for
12 her to have disclosed the individuals in voir dire because
13 they weren't in the courtroom and their names specifically
14 were not mentioned and in addition to that, she indicated I
15 really don't even know this person's name. I just know she
16 has the name of a wine or champagne or something.

17 I do think that the interaction was innocent. I really
18 don't think it amounts to anything, but out of an abundance of
19 caution I'm going to excuse her just because I don't want
20 there to be any perception that whatever verdict is rendered
21 that it was not fair and impartial. But I really think that
22 anything she did was innocent. I don't even think she really
23 knows the woman. I think it's one of those things because you
24 can tell on the video the lady is very shocked that she sees
25 her. She's like -- It's almost like, oh, that's you, I

1 haven't seen you in a long time. There is no indication that
2 they discussed anything about this case.

3 I have no reason to question that she would mislead the
4 Court about it, but perception as I've indicated is often
5 reality for people and I'm going to dismiss her just out of --
6 And we still have two alternates, so I don't think we're in
7 any jeopardy of losing -- Well, you never know. Stranger
8 things have happened. People get sick and other things. I
9 hope I didn't just speak something horrible over my case --
10 over the case. Stranger things have happened, but we'll -- we
11 should be able to get through the rest of this trial hopefully
12 still having twelve jurors remaining and being able to
13 continue to try the case.

14 If you could bring out Miss -- let's see here, I can't
15 remember this lady's number, number 70, Miss Givens for me,
16 please.

17 BAILIFF: Miss Givens?

18 (Whereupon, juror number 70, Robin Givens, is brought
19 into the courtroom.)

20 THE COURT: Miss Givens, out of an abundance of caution,
21 I do not believe you have misled the Court in any way. I
22 believe you have been candid and I believe the person you
23 interacted with in the snack bar was an innocent interaction
24 with somebody you hadn't seen in a while. But out of an
25 abundance of caution, I'm going to excuse you as a juror in

1 this case so that there can never be any question regarding
2 the impartiality of the verdict. We appreciate your candor
3 and your time.

4 JUROR: Yes, ma'am.

5 THE COURT: And I know you're probably happy to go. You
6 can go on back to work.

7 JUROR: I am.

8 THE COURT: You have a good day. I would ask that you
9 not discuss this, however, with anyone.

10 JUROR: Okay.

11 THE COURT: And you're free, of course, to discuss your
12 experience as a juror at the conclusion of the week when
13 everyone is excused, but I would just ask that you call the
14 jury information line after 6 o'clock this evening for further
15 instructions and you have a wonderful day.

16 JUROR: You, too. Thank you.

17 THE COURT: You're welcome, ma'am.

18 JUROR: Woooo.

19 THE COURT: She's ready to go.

20 (Whereupon, juror number 70 is excused from the jury and
21 leaves the courtroom.)

22 BAILIFF: Judge, do you want the second juror?

23 THE COURT: Actually, you can leave her in the hall and
24 you can bring the rest of the panel down the hall for me. Ms.
25 Shealy, did they figure out -- Ms. Shealy left? She probably

1 got tired.

2 MR. HARRIS: Your Honor?

3 THE COURT: Mm-hmm.

4 MR. HARRIS: For the record, can I just -- I mean object
5 to the ---

6 THE COURT: You've noted your exception.

7 MR. HARRIS: Okay.

8 THE COURT: Yeah.

9 MR. HARRIS: I just wanted to note my exception for the
10 record.

11 THE COURT: You've already noted your exception for the
12 record when you made your argument.

13 MR. HARRIS: Thank you.

14 THE COURT: You're welcome.

15 (Whereupon, Ms. Shealy enters the courtroom and has a
16 brief discussion with the Court regarding another
17 matter.)

18 THE COURT: You can give that to the court reporter.

19 THE LAW CLERK: What about the statements?

20 THE COURT: Oh, no, she can have those as well.

21 (Whereupon, Court's Exhibits 2, 3 and 4 are passed to the
22 court reporter.)

23 THE COURT: Who is the State's next witness?

24 MR. VOIGT: Dr. Presnell, Your Honor.

25 THE COURT: Is she here?

1 MR. VOIGT: Yes, she is.

2 THE COURT: Could you get her so that we don't have to
3 hunt for her?

4 MR. VOIGT: My investigator has gone to get her.

5 THE COURT: Thank you, sir, appreciate it.

6 (Whereupon, the bailiff returns to the courtroom to
7 indicate the jury is present in the hall.)

8 THE COURT: Ready? Wait a minute, wait, wait, wait.
9 Where is Dr. Presnell?

10 (Whereupon, the witness enters the courtroom.)

11 THE COURT: Dr. Presnell, if you could, come on up front
12 for me, please, so that you'll be ready to be sworn when the
13 jury comes in. I appreciate you being so patient with us.
14 You can bring in the jury, Mr. Robinson.

15 (Whereupon, the jury enters open court at 11:41 a.m.)

16 THE COURT: Oh, we're supposed to do it by lot. I just
17 realized that. Approach for me, please. I completely forgot
18 about that.

19 BAILIFF: The jury is present, Your Honor.

20 THE COURT: You may be seated.

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

23 THE COURT: I completely forgot about that.

24 MR. VOIGT: About what?

25 THE COURT: According to statute, you're supposed to seat

1 the alternates by lot. So I'm going to get them to put the
2 two names in a box. We need to juggle them up and have
3 somebody pick one. Where did Mike go?

4 MR. VOIGT: I can get somebody to do it.

5 THE COURT: I forgot to do something. I'm sorry. You
6 know we're supposed to pick the alternate by lot. Do you have
7 like two slips of paper we can just ---

8 THE CLERK: I can make one.

9 THE COURT: Would you do that for me real quick? And
10 then y'all can stand back. Do you want the numbers?

11 THE CLERK: No, no.

12 THE COURT: Okay.

13 (Whereupon, the bench conference ends and a tissue box
14 with two slips of paper is prepared for drawing the
15 alternate juror and the drawing is made by the clerk.)

16 THE COURT: Number 132 will be seated. If you could --
17 if y'all could slide -- from this way slide down for me one
18 and then have -- Mr. Latimer, if you would come be seated
19 right in this first chair for me? Thank you so much.

20 Ladies and gentlemen, I hope that you all had a pleasant
21 and restful evening. We appreciate your patience. We have
22 had to deal with some matters of law this morning that took us
23 a little bit longer than we anticipated. As you all are now
24 aware, Mr. Latimer has now been seated as a member of the
25 panel and he is no longer an alternate but a member of your

DIRECT EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. VOIGT

1 twelve. We have for legal reasons sufficient to the Court had
2 to remove number 70, one of your fellow jurors, and I will get
3 into some further instructions regarding that before we retire
4 for the luncheon recess.

5 I will -- We will now resume the testimony and I would
6 ask that you give the attorneys your undivided attention. You
7 may proceed.

8 THE CLERK: Do you swear or affirm that your testimony
9 will be the truth, the whole truth and nothing but the truth,
10 so help you God?

11 DR. PRESNELL: Yes, sir.

12 THE CLERK: Be seated. If you would, please state your
13 full name and spell your last name for the record.

14 DR. PRESNELL: My name is Susan Erin Presnell, P-R-E-S-N-
15 E-L-L and I do apologize I have a cold, so I'll try to not
16 cough too much.

17 THE COURT: You may proceed.

18 MS. RIDDLE: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 DR. ERIN PRESNELL, being first duly sworn,
21 testifies as follows:

22 DIRECT EXAMINATION

23 BY MS. RIDDLE:

24 Q: Dr. Presnell, please tell us about your current job
25 title?

DIRECT EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. VOIGT

1 A: I am a forensic pathologist and I work right down the
2 street at the Medical University of South Carolina. I am a
3 professor of pathology and board certified to perform forensic
4 autopsies within the State of South Carolina.

5 Q: You're a South Carolina licensed physician?

6 A: Yes. I'm licensed in South Carolina. I have a medical
7 license in South Carolina.

8 Q: And do you specialize in a particular branch?

9 A: Yes and I'll just -- I'll go through my -- the background
10 real quickly. I'm a M.D. So the way that you get to be a
11 forensic pathologist and most everyone is kind of familiar
12 with what forensic pathologists are now -- do now with all the
13 TV shows and all, but I went to Clemson for college. After
14 graduating Clemson, I went to MUSC, that's the Medical
15 University, for my M.D.

16 After graduating with my M.D., I chose pathology as my
17 specialty. That's a five year training program, which I
18 completed in general pathology and then I chose forensic
19 pathology as a sub-specialty of general pathology, which I did
20 and I finished that all up in 1999, took my boards. I'm board
21 certified in that, National American Board of Pathology
22 national certification, and then was hired on as faculty at
23 MUSC in 1999, where I have been doing forensic autopsies as
24 faculty ever since.

25 Q: Thank you and you mentioned forensic pathology. Will you

DIRECT EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. VOIGT

1 please explain what that term means?

2 A: Well, like I was saying, most people are kind of more
3 familiar with what forensic pathology does. I'll just back up
4 one step and -- and say that most pathologists don't really do
5 a lot of autopsies. The field of pathology itself is the
6 study of disease and so when I think of pathologists, I
7 usually think of someone that receives any tissues from
8 somebody for to look out for a diagnosis. So if you go to
9 your family doctor and they do a skin biopsy or a breast
10 biopsy, that tissue goes to the pathologist. They look under
11 the microscope. They diagnose it as a cancer or not cancer,
12 as an infection or not infection.

13 I trained in that -- in that field, that's the general
14 pathology field, but my sub-specialty forensics, we're not
15 just looking at a piece of tissue or something removed by a
16 clinician, but we're looking at, of course, the whole
17 individual that's passed, so a deceased individual, and we are
18 looking for any diseases, anything that could contribute or
19 cause death. But we're also looking at traumas and evaluating
20 traumas and ultimately we do that whole process and it's
21 called the autopsy and then after we've done the whole
22 autopsy, we develop our opinion on the cause and manner of
23 death for each case.

24 Q: All right. So your work involves the performance of
25 autopsies?

DIRECT EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. VOIGT

1 A: Right. That's what my work is.

2 Q: And approximately -- approximately how many autopsies
3 have you performed?

4 A: I would have to kind of make an estimate, but around
5 2,000 since 1999.

6 Q: Have you ever been qualified as an expert in the field of
7 pathology before?

8 A: Yes, I have.

9 Q: Approximately how many times?

10 A: Another estimate, around 80 or 90 maybe.

11 Q: And did that occur in South Carolina?

12 A: Yes, yes.

13 Q: Have you ever not been qualified as an expert in the
14 field of pathology?

15 A: No.

16 MS. RIDDLE: Your Honor, the State would like to offer a
17 stipulation that Dr. Erin Presnell is qualified as an expert
18 in the field of forensic pathology?

19 THE COURT: Any questions or objections?

20 MR. HARRIS: Without objection, Your Honor.

21 THE COURT: Pardon me?

22 MR. HARRIS: Without objection.

23 THE COURT: So admitted without objection.

24 Q: Dr. Presnell, did you have an occasion to perform an
25 autopsy on January 10th, 2009, on the body of Michael German?

DIRECT EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. VOIGT

1 A: Yes, we did. We did a complete autopsy on that day
2 after Mr. German was referred to us by the Charleston County
3 coroner.

4 Q: And what did you find?

5 A: Well, he has one major injury and some minor injuries and
6 I guess I'll just go through those. He has -- His minor
7 injuries include an abrasion or kind of a big scratch type
8 lesion on his head that's kind of swollen up like a goose egg,
9 so kind of like a bump, a scratched bump. He has some
10 scratches on the side of his face and those are his minor
11 injuries.

12 His major injury and actually his cause of death is a
13 gunshot wound that enters into -- in the left side of his
14 head. It's like right above the ear and a little bit behind
15 the left ear. The bullet actually goes in through the -- the
16 scalp, the soft tissues right here, and part of the bullet
17 actually deposits in the soft tissues right here before it
18 goes into the skull.

19 (Whereupon, the witness points to her head at a spot
20 above and behind her left ear.)

21 A: The rest of the bullet goes in through the skull and
22 through the brain, through the left side of the brain, up
23 towards the front and over to the right side of the brain up
24 near the front, where we recovered the rest of the bullet
25 inside the brain. Along -- Of course, along the bullet track

DIRECT EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. VOIGT

1 there is a lot of hemorrhage associated with that in the
2 brain, as well as we also have bleeding over the brain from
3 the gunshot wound and skull fractures as well.

4 Q: And so how did Mr. German die?

5 A: Well, so -- I apologize. So the cause of death for Mr.
6 German was the single gunshot wound to the head.

7 Q: And what, if any, foreign material did you recover from
8 Mr. German's head?

9 A: Well, we recovered the -- the bullet, the projectile,
10 which had actually split. Half of -- Part of it was deposited
11 on the outside of the skull and the rest of it was inside the
12 -- inside the brain.

13 Q: Did you make any other conclusions about the gunshot
14 wound?

15 A: You mean like the range of fire?

16 Q: Yes.

17 A: Okay. Well, yes. One of the other things and I kind of
18 refer to -- I mean you can see that it's a gunshot wound, but
19 evaluating it, one of the things that we'll try to do is
20 estimate in -- in our classification what is the range of
21 fire, how far away is the gun from the victim, and so as a
22 forensic pathologist, we just have the three pretty clear cut
23 descriptions.

24 And one is a contact gunshot wound, where the gun would
25 be up against the skin, and in those instances we would see

DIRECT EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. VOIGT

1 like a deposit of soot, sooty substance, on the skin around
2 the entrance wound and I don't mean to oversimplify, but when
3 a gun is shot, not only is the bullet coming out the end, but
4 you get this sooty material, as well as little pieces of
5 gunpowder particles that are what's -- that's what's ignited
6 that propels the bullet down the gun barrel. So that's up
7 against -- So contact has got the soot around it.

8 As a gun is pulled away from the target, not only --
9 Well, the soot may or may not make it there because it's kind
10 of poofy, gaseous like, but the gunpowder particles will make
11 it to the skin and actually cause scratches. You can wipe the
12 soot off a lot of times, but you can't wipe the scratches off.
13 They're real scratches and they look like little punctures
14 around the entrance of a gunshot wound. That's something we
15 call to -- refer to as stippling, but that indicates to us a
16 close range.

17 We have contact, close range and then when the bullet --
18 the gun gets far enough away, that soot definitely doesn't
19 make it to the skin and those gunpowder particles don't make
20 it to the skin. All right, so all we have is a simple hole.
21 There is no soot or no stippling around it and in this case,
22 there's no soot nor stippling around it.

23 Now as far as what are those distances, it all really
24 depends on the gun itself and other issues like ricochets and
25 whatnot. Contact obviously is right up against the skin and

CROSS EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. HARRIS

1 then if you want to include most handguns, without test firing
2 them and all, somewhere within a yard, a yard 36 to 42 inches,
3 somewhere within a yard would be a close range and then beyond
4 that anything back -- all the way back is -- would be a
5 distant gunshot wound. Again in this case, there was no soot
6 or stippling around the entrance wound.

7 Q: And because there was no stippling around the entrance
8 wound, you determined that it was a distant gunshot wound?

9 A: Yes.

10 Q: And Dr. Presnell, have you formed an expert opinion
11 concerning the manner of death?

12 A: The manner of death -- Well, the forensic pathologist
13 will classify four manners of death: natural, suicide,
14 accident and homicide, meaning death at the hands of another
15 and this one was classified as homicide.

16 Q: Thank you, Dr. Presnell. Please answer any questions Mr.
17 Harris may have.

18 THE COURT: You may proceed.

19 MR. HARRIS: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 CROSS EXAMINATION

22 BY MR. HARRIS:

23 Q: Dr. Presnell, you said anything outside of a yard or
24 anything outside of three feet is considered a distant
25 gunshot?

CROSS EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. HARRIS

- 1 A: Well, 36 to 42 inches from most handguns. Once you reach
2 that far away, the soot and stippling are -- excuse me, soot
3 and gunpowder typically does not reach the skin. Now a lot of
4 times it could be closer.
- 5 Q: Right.
- 6 A: It just depends on the actual gun and that would have to
7 be test fired. So those are just general -- general
8 estimates.
- 9 Q: Okay. So if a person was standing right behind this
10 person and within 12 or 10 inches, you're saying there would
11 be stippling and soot, like gunshot, you know gunpowder, stuff
12 like that?
- 13 A: Yes, typically if the -- if the -- and again, I kind of
14 brought up the ricochet and the reason that I did is because
15 of the bullet kind of splitting into two pieces. But if
16 someone -- If there's a target or a person here and the gun is
17 10 to 12 inches away from them ---
- 18 Q: Mm-hmm.
- 19 A: --- and pointed directly at them, you would expect some
20 stippling to appear.
- 21 Q: Okay, but if -- Like you said, if -- there's no stippling
22 on this case?
- 23 A: There's no stippling.
- 24 Q: There's no evidence of gunpowder on his head?
- 25 A: Right. Well, there's no -- Right, there's no evidence

CROSS EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. HARRIS

1 that I can see of any gunpowder, which is -- which is what
2 causes the stippling.

3 Q: Right. Stippling is little scratches that -- you know,
4 the the gunpowder comes out of the barrel, like would almost
5 pepper somebody with?

6 A: . Correct, yes.

7 Q: Okay. So there's no evidence on -- And the entrance
8 wound is here?

9 (Whereupon, counsel indicates with his hand an area on
10 his head near the bottom of his left ear.)

11 A: It's -- it's on the left side of the head, but it's above
12 -- it's a little bit above the ear and a little bit behind the
13 ear.

14 Q: Okay.

15 A: So right here.

16 (Whereupon, the witness indicates with her pointed finger
17 an area on the left side of her head above and behind her
18 ear.)

19 Q: And it then went up towards the front temple?

20 A: Slightly. It went slightly up like -- I can't put my
21 finger down lower.

22 Q: I know. It's hard.

23 A: Slightly up, but forward. So maybe like that. I could
24 probably show you on an x-ray better, but it's -- The pathway
25 through the body is what we call 40 degrees forward. So going

CROSS EXAMINATION OF DR. SUSAN ERIN PRESNELL BY MR. HARRIS

1 this direction.

2 (Whereupon, the witness points from behind her left ear
3 toward the front of her head.)

4 Q: Okay.

5 A: It's slightly up and then, of course, from left to right.

6 Q: Okay. So, but it -- it goes slightly up? It doesn't go
7 down?

8 A: Correct, right.

9 Q: Okay and you said distant. You wouldn't see stippling
10 from 60 feet away?

11 A: No, you would not.

12 Q: And that's because that gunpowder doesn't hit the person?

13 A: Right. There's no way that gunpowder could reach the
14 person.

15 MR. HARRIS: Okay. I've got nothing further.

16 THE COURT: Any redirect of the witness?

17 MS. RIDDLE: No redirect, Your Honor.

18 THE COURT: Any objection to the witness being excused
19 from the State?

20 MS. RIDDLE: No objection, Your Honor.

21 THE COURT: From the defense?

22 MR. HARRIS: Please excuse the witness, Your Honor.

23 THE COURT: Doctor, you're excused.

24 DR. PRESNELL: Thank you.

25 THE COURT: You're welcome.

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

(Whereupon, the witness leaves the stand at 11:55 a.m.)

THE COURT: The State may proceed.

MR. VOIGT: The State calls Mary Phillips.

THE CLERK: This way, please. I need to swear you in.

MS. PHILLIPS: Okay.

THE CLERK: Put your left hand on the Bible and raise your right hand. Do you swear or affirm that your testimony will be the truth, the whole truth and nothing but the truth, so help you God?

MS. PHILLIPS: I do.

THE CLERK: Be seated. Please state your full name and spell your last name for the record.

MS. PHILLIPS: Mary Catherine Phillips, P-H-I-L-L-I-P-S.

THE COURT: You may proceed.

MR. VOIGT: Thank you very much.

THE COURT: You're welcome.

MARY CATHERINE PHILLIPS, being first duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. VOIGT:

Q: Ms. Phillips, how are you employed?

A: I am a crime scene investigator of the City of Charleston Police Department.

Q: And how long have you been employed with the City of Charleston?

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

1 A: Approximately five years.

2 Q: Okay and what are some of your duties as a crime scene
3 investigator?

4 A: Basically, we respond to all different types of crime
5 scenes for the purpose of documenting the scene as we find it
6 when we respond to it and to document any physical evidence we
7 find on the scene, as well as collect and preserve the
8 evidence that we collect.

9 Q: And did you have occasion to become involved in an
10 investigation involving the death of a Michael German?

11 A: I did.

12 Q: And what was your first encounter with this particular
13 case? What were you originally tasked to do?

14 A: On January 10th, I processed a vehicle at the crime scene
15 office advised to be a suspect vehicle from the homicide and
16 then the following day I responded to an apartment complex in
17 West Ashley to collect a bullet out of a vehicle.

18 Q: Okay. So when you processed the car at the crime scene
19 office, the car was already there?

20 A: Yes, sir.

21 Q: Okay and I'm going to show you what's been marked as
22 State's 48 through 63.

23 MR. HARRIS: Without objection.

24 THE COURT: Marked and admitted without objection.

25 MR. VOIGT: Offered for filing and introduction.

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

1 (Whereupon, State's Exhibits Number 48 through 63 are
2 admitted into evidence. State's Exhibits Number 61, 62
3 and 63 are later designated as 61A, 62A and 63A when a
4 second 61, 62 and 63 are introduced into evidence.)
5 Q: Can you take a look at those?
6 A: I can.
7 Q: Do you recognize those?
8 A: I do.
9 Q: What are those?
10 A: They are the pictures of the vehicle that I processed in
11 our crime scene bay.
12 Q: May I have those back?
13 A: Yes, sir.
14 MR. VOIGT: May I approach the witness, Your Honor?
15 THE COURT: You may.
16 MR. VOIGT: Thank you very much.
17 Q: You were talking about the crime scene bay. Is that this
18 lovely place as depicted in State's 48?
19 A: Yes, sir.
20 Q: And why did you bring it to the crime scene bay?
21 A: It's the best place for us to search a vehicle. We do --
22 Whenever we bring a car in from a case such as this, we search
23 the entire vehicle to document everything inside of it. It
24 would be very hard to do that out on the street where things
25 may fly out of the vehicle. It's very time consuming.

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

1 Q: And is that a picture of the car that was there in the
2 bay when you were called out?

3 A: Yes, sir.

4 Q: And this is State's 49. Is this another picture of the
5 car?

6 A: Yes, sir.

7 Q: I have to actually adjust something here. Let me see if
8 that works. At any rate, I'm hoping that it stops that. Is
9 that a North Carolina license plate that's on the vehicle?

10 (Whereupon, there is no response from the witness.)

11 Q: Is that a North Carolina license plate?

12 A: Yes, sir.

13 Q: State's 50. Why do you take the VIN number?

14 A: It's another identifier shot for the vehicle. VIN
15 numbers are distinct for each vehicle. So we take a
16 photograph of the license plate as well as the VIN.

17 Q: Okay and that's to determine who owns the car or where
18 that car comes from?

19 A: Yes and you also determine to make sure that the plate
20 matches the VIN as registered through the DMV.

21 Q: And then when you process the car, what -- Tell the --
22 tell the ladies and gentlemen of the jury what exactly you do
23 when processing a car?

24 A: For this specific case, we always take overall
25 photographs of the vehicle on the outside and the interior

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

1 before we start processing the vehicle. It's to show how we
2 find it. We -- So we photograph the entire vehicle. We
3 process it for fingerprints using a combination of either silk
4 or magnetic powders and we usually process the outside and
5 then start with the inside. We process the vehicle, the
6 windows and then any surfaces on the inside that could be
7 processed for fingerprints, CD cases for example. Those are
8 found a lot of times in vehicles.

9 And then a lot of times we take contact swabs from door
10 handles, places that people would commonly touch, to try and
11 determine who may have been in the vehicle. Occasionally, we
12 do a gunshot residue powder on items that people may have
13 handled as well and we search the entire inventory of the
14 vehicle to include the trunk.

15 Q: Okay. So State's 51 here, is this an example of the type
16 of photograph, the general photograph that you would be
17 taking?

18 A: Yes, sir.

19 Q: Again, State's 52, that would be a surface that you would
20 be interested in?

21 A: Yes, sir.

22 Q: Another wider picture of that, State's 53?

23 A: Yes, sir.

24 Q: State's Exhibit 54. Why do you go in the glove
25 compartment?

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

- 1 A: Again, it's to inventory everything that's in the
2 vehicle.
- 3 Q: State's Exhibit 55 is again inside the console of the
4 vehicle?
- 5 A: Yes, sir.
- 6 Q: State's 56. A lot of paperwork in that vehicle, wasn't
7 it?
- 8 A: Yes, sir.
- 9 Q: State's Exhibit 57. Is that the back seat?
- 10 A: Yes, sir.
- 11 Q: State's Exhibit 58. Did you inventory the contents of
12 the trunk?
- 13 A: Yes, sir.
- 14 Q: What was in the trunk? Not everything, but just
15 generally what was in the trunk?
- 16 A: I remember a lot of clothing being in there. Clothing,
17 there was a calendar, several pairs of shoes it appears, a
18 color ---
- 19 Q: Was there a suitcase at all?
- 20 A: Yes. It was a black piece of luggage with clothing
21 within.
- 22 Q: Okay. So there was clothing in the suitcase?
- 23 A: Yes, sir.
- 24 Q: Okay. Again, State's 59 is another shot of that same
25 back seat?

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

- 1 A: Yes, sir.
- 2 Q: What's this in 60? What's in -- what's -- what are you
3 taking a picture of there?
- 4 A: It appears to be a CD case, a drinking glass, a cell
5 phone and I'm not sure what else.
- 6 Q: Okay. Why -- why would any of those items be important?
7 What was drawing your attention to those items?
- 8 A: The cell phone. A lot of times when we process vehicles,
9 we do find cell phones. We collect those to see what kind of
10 information is inside of them.
- 11 Q: Okay. Let me show you what's been marked as State's 61.
12 Is that an item that was taken from inside the car?
- 13 A: Yes, sir.
- 14 Q: And what does that depict?
- 15 A: It was a receipt, I believe. It's a receipt. I believe
16 it was dated for January 9th from a business in Charlotte,
17 Westport Big and Tall, dated for January 9th of 2009 from
18 Charlotte, North Carolina.
- 19 Q: Okay and is this -- it appears to be stapled there,
20 right?
- 21 A: Yes, sir. There was two receipts.
- 22 Q: And this is the other part of that? Is that 62?
- 23 A: Yes.
- 24 Q: And whose name is on that?
- 25 A: Jerome Campbell.

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

- 1 Q: Okay and at least that receipt appears to have been in
2 Charlotte January 9th at 10:30 in the morning -- 10:34 in the
3 morning?
- 4 A: Yes, sir.
- 5 Q: I'm going to show you what's been marked as State's 63.
6 I wish I could show you better. All right and this -- this
7 kind of goes to the process which you were describing to the
8 jury earlier. Is that the outside of the car there?
- 9 A: Yes, sir.
- 10 Q: And has that been processed in some way?
- 11 A: It appears that it has been.
- 12 Q: And how do we know that?
- 13 A: Well, the -- it looks a little bit dirtier, which is
14 common with our fingerprint powder. It kind of turns
15 everything dirty, but it also appears that that is a
16 fingerprint tape on the rear door.
- 17 Q: And I'm going to approach ---
- 18 MR. VOIGT: May I approach, Your Honor?
- 19 THE COURT: You may.
- 20 Q: And because it's so much more clear, I'd like you to
21 actually take a look at it.
- 22 A: Yes, sir. Yes, it is a fingerprint that I have marked
23 with tape. We do also document everywhere where our
24 fingerprints come from.
- 25 Q: Okay. So you took finger -- Did you take fingerprint

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

1 lifts from this particular vehicle?

2 A: Yes, sir.

3 Q: Okay and describe to the jury what a lift it?

4 A: A lift is when we process a vehicle or any item with
5 fingerprint powder, basically the powder adheres to the oils
6 in your skin. The powder brings that to the light so that we
7 can see it and then we use a clear tape over it and we
8 photograph it before we lift it off of the vehicle or the item
9 where we have collected it from and then we place it on a
10 clear card before it's turned in for examination.

11 Q: And you're not the person who does the examination?

12 A: No, sir.

13 Q: You're just the person who tries to pull the fingerprints
14 off whatever item you're trying to?

15 A: Yes, sir.

16 Q: And in this case, you take a lift from the outside of the
17 vehicle?

18 A: Yes, sir.

19 Q: And all that shows is that somebody left a fingerprint on
20 the outside of the vehicle?

21 A: Yes, sir.

22 Q: That's as far as that goes. Now did you take any other
23 lifts from inside that particular vehicle?

24 A: Let's see. I know I -- I did.

25 Q: And what kind of lifts did you take?

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

- 1 A: I have the one from the exterior of the rear driver's
2 side door. I got one from the trunk door.
- 3 Q: Apart from fingerprints, is there any other kind of lift
4 that you took from this particular car?
- 5 A: A lift? We took -- we collected swabs and we ---
- 6 Q: All right.
- 7 A: --- did a gunshot residue test.
- 8 Q: Okay. So what's a swab?
- 9 A: A swab is any time someone touches something ---
- 10 Q: Mm-hmm.
- 11 A: --- there's a possibility to have contact DNA on that and
12 so what we do is we take just a moistened cotton swab and we
13 swab the area that contact was most likely made with.
- 14 Q: Did you make -- take any swabs for gunshot residue?
- 15 A: For gunshot residue, yes, I did.
- 16 Q: And from where did you take those swabs?
- 17 A: We collected those from -- I'm sorry I have to check in
18 the report, but we collected those from the driver's door, the
19 interior door panel of the rear driver's side and from the
20 steering wheel.
- 21 Q: Okay. Did you take any swabs from gunshot residue from
22 the passenger side of the car?
- 23 A: No, sir.
- 24 Q: Just on the driver's side?
- 25 A: Yes, sir.

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

1 Q: And those have been submitted to somebody to analyze
2 later?

3 A: Yes, sir.

4 Q: Okay. So when you're taking those swabs, you have no
5 indication whether or not anything is actually being picked up
6 by the swabs?

7 A: Correct.

8 Q: And you seal those in evidence packets and send those on
9 their way or place them in evidence?

10 A: Yes, sir.

11 Q: I want to ask you also about the other time that you got
12 involved in this case. I'm going to show you what's been
13 previously marked as State's 43, 44, 45, 46 and 47.

14 MR. HARRIS: Without objection.

15 THE COURT: Marked and admitted without objection.

16 (Whereupon, State's Exhibits Number 43 through 47 are
17 admitted into evidence. State's Exhibit Number 43 is
18 later designated as Number 43B.)

19 MR. VOIGT: May I approach? I'm sorry.

20 THE COURT: You may.

21 Q: Do you recognize those photos?

22 A: I do.

23 Q: And what are those photos of?

24 A: They are of a vehicle that I responded to photograph at a
25 location of the Plantation Apartments on Carriage Lane in West

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

- 1 Ashley.
- 2 Q: Okay. May I have those back?
- 3 A: Yes, sir.
- 4 Q: Thank you and what were you called out to look at?
- 5 A: The owner of the vehicle had located a large hole in the
- 6 exterior rear quarter panel of his vehicle.
- 7 Q: And do you recall where in the Plantation Apartments was
- 8 this particular car located that you took a picture of?
- 9 A: It was forward of Building D.
- 10 Q: Is that the car that you took a picture of?
- 11 A: Yes, sir.
- 12 Q: And I'm guessing this was a nighttime shot?
- 13 A: I believe it was dusk.
- 14 Q: I'm going to show you what's been marked as State's 44.
- 15 What is that?
- 16 A: It was what we believed to be a projectile hole, but was
- 17 observed to be a hole.
- 18 Q: Is that a hole that goes all the way through the metal of
- 19 the car?
- 20 A: Yes, sir.
- 21 Q: Is this another picture? State's 45, is this another
- 22 picture?
- 23 A: Yes, sir.
- 24 Q: And is that your hand holding that up there?
- 25 A: Yes, sir.

DIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

1 Q: And what are you holding up there?

2 A: It's a ruler.

3 Q: And what's the purpose of holding the ruler up there?

4 A: The ruler is just to give it size so that if we have a
5 ballistics expert that looks at it, they can determine much
6 more accurately the size of the hole to determine if it came
7 from a projectile.

8 Q: Let me show what is State's 46 and I apologize for the
9 early 90's technology. Is that another picture of the hole
10 from a different angle?

11 A: I believe so.

12 Q: Okay. I'll show it to you in person.

13 MR. VOIGT: May I approach, Your Honor?

14 THE COURT: You may.

15 Q: Is that from inside of the trunk?

16 A: Yes, it is.

17 Q: Let me show you what is State's 47. Is that your hand?

18 A: Yes, sir.

19 Q: And what is that in your hand?

20 A: It was a hard projectile that was located within the
21 trunk of the vehicle.

22 Q: Okay and you recovered that?

23 A: Yes, sir.

24 Q: Okay. Had that car been moved to the best of your
25 knowledge from the time the person noticed the hole and the

CROSS EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. HARRIS

1 time you collected it?

2 A: From the time that they noticed the hole in the trunk,
3 no. They notified police and we responded and they had not
4 moved it.

5 Q: Please answer any questions that Mr. Harris may have of
6 you.

7 THE COURT: You may proceed.

8 MR. HARRIS: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. HARRIS:

11 Q: Now you said these are pictures from the interior of the
12 white Impala?

13 A: Yes, sir.

14 Q: And that one's got papers and it looks like some trash
15 and a cell phone and a cup?

16 A: Yes, sir.

17 Q: This one's got clothing. You said a couple pairs of
18 sneakers?

19 A: There were several shoes in the vehicle, yes, sir.

20 Q: Okay, several shoes. This one again shows -- I mean
21 you'll see there it looks like trash down here, little bits of
22 something?

23 A: Yes, sir.

24 Q: Did you inventory that? Wrong one. I'm sorry. Did you
25 inventory that down there?

CROSS EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. HARRIS

- 1 A: I would have to check my inventory. There was several
2 items within the vehicle.
- 3 Q: Okay.
- 4 A: I have several items in the rear floorboard, to include
5 white napkins, a drinking glass, a CD case with two CDs
6 within, a Simply Lemonade container, a Food Lion plastic bag,
7 a McDonald's bag, a CVS receipt, and a drinking straw in the
8 wrapper.
- 9 Q: No bullets though, right?
- 10 A: Not from the rear floorboard of that vehicle, sir.
- 11 Q: Okay. In this vehicle, did you find bullets?
- 12 A: No, sir, I did not.
- 13 Q: Did you find what they call shell casings, which are, you
14 know, what they call spent bullets, bullets that have been
15 fired?
- 16 A: No, sir, I did not.
- 17 Q: Okay. You did a swab for gunshot residue on the steering
18 wheel?
- 19 A: Yes, sir.
- 20 Q: Any other areas in the front of the car?
- 21 A: The steering wheel, the interior driver door handle ---
- 22 Q: Mm-hmm.
- 23 A: --- and the rear interior driver's side door handle.
- 24 Q: Okay and did you test the results of those or did you
25 just hand those over?

CROSS EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. HARRIS

- 1 A: We turn those into evidence. Those are sent to our state
2 lab.
- 3 Q: Okay. So the company -- the group called SLED is who
4 tests those later?
- 5 A: Yes, sir.
- 6 Q: Okay. So you take these swabs from the steering wheel,
7 the inside of the driver door?
- 8 A: Yes, sir.
- 9 Q: Did you take any from the outside of the driver door?
- 10 A: No, sir.
- 11 Q: Okay. The rear driver door, did you take a swab from
12 that?
- 13 A: Yes, sir.
- 14 Q: Okay, but again, there's no bullets in the car?
- 15 A: No, sir.
- 16 Q: No shell casings?
- 17 A: No, sir.
- 18 Q: Okay and that car -- When you bring a car in, that car
19 has not been detailed and cleaned. I mean it's got garbage in
20 it?
- 21 A: Yes, sir.
- 22 Q: Okay. I mean this isn't a car that you come in, it looks
23 like it comes off the lot?
- 24 A: Correct.
- 25 Q: Okay. So did it appear that someone had just washed this

CROSS EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. HARRIS

1 car?

2 A: No, sir.

3 Q: Okay. Did it appear that anybody had wiped anything, any
4 kind of cleaners on it?

5 A: Not that I could see.

6 Q: Okay and this receipt, it does show us -- It is a Jerome
7 Campbell receipt, but under that there's three words, open
8 Italian wool?

9 A: Yes, sir.

10 Q: That's a receipt from what they call a big and tall shop?

11 A: Okay.

12 Q: That's a clothing -- at the top, that's what it says on
13 the receipt?

14 A: Yes.

15 Q: Okay. Okay, now let's talk about -- Oh, one more, I'm
16 sorry. This beer can in there?

17 A: Yes, sir.

18 Q: The glass that's in the back?

19 A: Yes, sir.

20 Q: Did you swab those for DNA?

21 A: No, sir.

22 Q: Did you swab them for fingerprints?

23 A: They would have been processed for fingerprints.

24 Q: Okay. So fingerprints, if they're on that can or on that
25 glass in the back, glass picks up fingerprints pretty good?

CROSS EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. HARRIS

1 A: Usually, yes.

2 Q: Okay, but if that drinking glass in the back or this can,

3 you would process those for fingerprints?

4 A: Yes, sir.

5 Q: But not DNA to see who was drinking it?

6 A: No.

7 Q: Okay. What about that cell phone? Whose cell phone is

8 that?

9 A: I do not know. I simply collect them ---

10 Q: Okay.

11 A: --- and place them into evidence.

12 Q: And you took prints off the cell phone?

13 A: I would have processed it. I don't believe I got any

14 prints off of it.

15 Q: Okay. So, but you can see on there if there's prints?

16 You could test it, put that powder on it and put a sticker on

17 it?

18 A: Yes, sir.

19 Q: So that would have -- you would have done that on the

20 cell phone?

21 A: Yes, sir.

22 Q: Okay. Now this car at Plantation Apartments, this is the

23 one I want to see. Now this bullet hole, do you know -- I

24 mean this bullet hole is going -- it goes down like this and

25 the bullet is down here in the base of the trunk?

CROSS EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. HARRIS

- 1 A: It was in the spare wheel well.
- 2 Q: Spare ---
- 3 A: In the interior of the trunk.
- 4 Q: Okay. So the bullet, that's the hole it went in from,
- 5 right?
- 6 A: Yes, sir.
- 7 Q: Okay and you took the picture to show how wide it was?
- 8 A: Yes, sir.
- 9 Q: And it's going in that way?
- 10 A: It appears to be.
- 11 Q: Okay and this is parked in front of D?
- 12 A: Yes, sir.
- 13 Q: Where was building B? Do you know?
- 14 A: I don't know. I'm not familiar with the Plantation
- 15 Apartments.
- 16 Q: Okay. When you drove up to the crime scene, did you
- 17 drive from Carriage Lane?
- 18 A: I believe so.
- 19 Q: Okay. Which side of the street was this car on?
- 20 A: I believe it was on the left side. It's been quite some
- 21 time.
- 22 Q: Okay. So it was in front of Building D?
- 23 A: Yes, sir.
- 24 Q: It was at the end? Do you remember that?
- 25 A: I don't. I believe it was near a breezeway.

CROSS EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. HARRIS

1 Q: Okay. Now when was the call made on this car on when the
2 -- this bullet hole occurred?
3 A: They called us on January 11th.
4 Q: January 11th?
5 A: Yes, sir.
6 Q: Okay and they called you and said there's a bullet hole
7 in my car?
8 A: Yes.
9 Q: Did they say when the bullet hole got there?
10 A: They were not sure. They had just noticed it on January
11 11th.
12 Q: Okay. Did you ask them if they had driven their car
13 between January 9th and January 11th?
14 A: They had driven it, but they advised that the vehicle was
15 parked where it had been on January 9th.
16 Q: Okay. So they did move the car from January 9th to
17 January 11th?
18 A: Yes.
19 Q: But they pulled it back in the same spot?
20 A: According to that victim, yes.
21 Q: Okay. So before this was processed, this car had been
22 somewhere else?
23 A: According to the driver of that vehicle, yes.
24 Q: Okay. So according to the driver, this bullet that was
25 found in his car -- That's a bullet. Do you know what caliber

CROSS EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. HARRIS

1 bullet that was?

2 A: I do not.

3 Q: Okay. Would SLED be able to tell me what caliber bullet
4 that was?

5 A: Yes, they would.

6 Q: That went to SLED also?

7 A: I collected it. I don't know if it was sent to SLED.

8 Q: Okay. When you collected it, you -- like you said with
9 the other evidence, you collected that and ---

10 A: We collect it.

11 Q: Then you send it on to SLED?

12 A: Well, we send it to our evidence for storage and when a
13 case goes up, detectives and everyone makes determinations on
14 what would be sent up to SLED for examination.

15 Q: Okay. So you don't -- you don't just send this to SLED
16 directly. You send it to the detective ---

17 A: To our evidence.

18 Q: And the detective makes the call?

19 A: Yes, sir.

20 Q: On what gets sent up to be processed?

21 A: Yes, sir.

22 Q: Okay. So that's not your call?

23 A: No, sir.

24 MR. HARRIS: All right. I have nothing further of this
25 witness, Your Honor.

REDIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

1 THE COURT: Any redirect of the witness?

2 MR. VOIGT: Just a couple things, Your Honor.

3 THE COURT: You may proceed.

4 MR. VOIGT: Thank you, Your Honor. May I approach, Your
5 Honor?

6 THE COURT: You may.

7 REDIRECT EXAMINATION

8 BY MR. VOIGT:

9 Q: I'm going to show you what's been marked as State's
10 Exhibit 61 and 62. Can you take a look at those two items?

11 A: I can.

12 Q: What would State's 61 be? Do you recognize that?

13 A: 61? They are swabs that I collected from the interior
14 door handles of the vehicle.

15 Q: Okay. Would those have been the GSR swabs?

16 A: They would have been the contact swabs.

17 Q: And 62, what would those be?

18 A: 62 is the Motorola cell phone and the two batteries.

19 Q: Okay.

20 MR. VOIGT: At this time, the State would offer, file and
21 introduce those items.

22 THE COURT: Any objection?

23 MR. HARRIS: No objection, Your Honor.

24 THE COURT: Marked and admitted without objection.

25 (Whereupon, State's Exhibits Number 61 and 62 are

REDIRECT EXAMINATION OF MARY CATHERINE PHILLIPS BY MR. VOIGT

1 admitted into evidence. The exhibits are relabeled as
2 61B and 62B as there are already Exhibits 61 and 62 in
3 evidence.)

4 MR. VOIGT: The State has no further questions of this
5 witness at this time.

6 THE COURT: Any objection to the witness being excused
7 from the State?

8 MR. VOIGT: Your Honor, I would like to keep her under
9 subpoena and under sequestration and would ask that she be
10 kept on notice in case I need to recall her for anything.

11 THE COURT: Ma'am, you're excused subject to being
12 recalled.

13 MS. PHILLIPS: Okay.

14 (Whereupon, the witness leaves the stand at 12:21 p.m.)

15 THE COURT: The State may call its next witness.

16 MR. VOIGT: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 MR. VOIGT: The State calls Detective Richard Burckhardt.

19 MR. HARRIS: Your Honor, may we approach?

20 THE COURT: You may.

21 (Whereupon, a bench conference is held off the record in
22 the presence of the jury, but out of the hearing of the
23 jury.)

24 THE COURT: You may swear the witness.

25 THE CLERK: Do you swear or affirm that your testimony

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 will be the truth, the whole truth and nothing but the truth,
2 so help you God?

3 MR. BURCKHARDT: Yes, I do.

4 THE CLERK: Be seated. Please state your full name and
5 spell your last name for the record.

6 MR. BURCKHARDT: Richard Burckhardt. That's B-U-R-C-K-H-
7 A-R-D-T.

8 THE COURT: You may proceed.

9 MR. VOIGT: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 RICHARD BURCKHARDT, being first duly
12 sworn, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. VOIGT:

15 Q: Detective Burckhardt, where do you work?

16 A: City of Charleston Police Department.

17 Q: How long have you been with the City of Charleston?

18 A: Just over 23 years.

19 Q: And what do you do for the City of Charleston now?

20 A: I'm a detective with inside the violent crime unit.

21 Q: And how long have you been a detective in violent crime?

22 A: Approximately 12 years.

23 Q: And what are some of the duties of a detective in the
24 violent crime unit?

25 A: We -- we respond to crimes that are classified in violent

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 crime areas, such as homicides. We virtually handle all death
2 investigations to include suicides. The very reason we
3 respond to those is because there's no determination made
4 until they're investigated. We handle homicides, your
5 shootings, stabbings. We also respond to calls of -- of a
6 violent crime nature that have surviving victims, not all
7 homicides.

8 Q: Did you have the occasion to investigate the homicide of
9 a Michael German?

10 A: Yes, I did.

11 Q: And when did you -- when did you first get the call to
12 respond to that particular homicide?

13 A: It would have been moments after the actual incident was
14 sent through dispatch. It was dispatched out. The responding
15 officers identified the -- the incident at the location and it
16 was from there they requested detectives and the crime scene
17 unit, which is protocol.

18 Q: Did you go to the gas station at 1141 Old Towne Road in
19 Charleston?

20 A: I did.

21 Q: About what time did you get out there do you think?

22 A: I would say approximately reasonably about 10 minutes, 10
23 to 15 minutes after the actual call for assistance went out.

24 Q: How many officers were out there when you arrived?

25 A: There were probably a handful of uniformed officers.

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 Myself and three other detectives responded that evening,
2 Detective Tim Dasher, Detective Larry Byrne and Detective Jim
3 Davis, as well as crime scene officers responded.

4 Q: And when did you become the primary on this particular
5 investigation?

6 A: On the scene.

7 Q: What was the first thing that you did when you arrived on
8 the scene? What was your first order of business?

9 A: I had to get a handle as to what actually took place. I
10 met with the first responding officers. It was understandably
11 somewhat chaotic. We had several victims, surviving victims.
12 We had several witnesses to corral, if you can use that word,
13 to identify. There were some family members had arrived and I
14 was able to ascertain from the responding officers that what
15 was relayed to me is we had an incident what we would have
16 called a drive-by shooting that had taken place on the west
17 side wall of the convenience store. It was a BP I believe at
18 that time.

19 And after that, I got with my detectives that were with
20 me. I took the lead on it and I told them that we needed to
21 start collecting our witnesses, anybody that had any
22 observations, which is standard procedure, and we worked. We
23 were able to identify several witnesses on the scene.
24 Personally myself, I spent a good -- a great deal of my time
25 conducting an interview with Anthony German, who is the twin

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 surviving brother of the deceased, Michael German.

2 Q: Were you able to -- were you able to obtain video
3 surveillance from the gas station that night?

4 A: Yes, I was.

5 Q: And where did you get that from? From whom? Did you get
6 that from the management?

7 A: I did. After going through the store and reviewing the
8 location, it was obvious -- Well, it was -- it was clear to us
9 that we had -- the store had video, internal and external
10 video, that would be of great interest to us. I put a request
11 in while I was at the scene to the store employees that we
12 need to have that and they complied. I was there probably a
13 couple hours and before I left the scene a disk was provided
14 to me.

15 Q: I'm going ---

16 MR. VOIGT: May I approach, Your Honor?

17 THE COURT: You may.

18 Q: I'm going to show you what's been marked as State's 63.
19 Do you recognize that particular item?

20 A: Yes, sir.

21 Q: And what is that?

22 A: That would be the video from the store.

23 MR. VOIGT: Okay and at this time we would offer, file
24 and introduce this particular video.

25 MR. HARRIS: No objection.

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 THE COURT: What number is that?

2 MR. VOIGT: That would be 63.

3 THE COURT: Marked and admitted without objection.

4 (Whereupon, State's Exhibit Number 63 is admitted into
5 evidence. It is later referenced as 63B, as Exhibit 63
6 already exists.)

7 MR. VOIGT: And we'll -- we'll look at that later I
8 think.

9 Q: Were you able to look at the video on scene?

10 A: Not on scene.

11 Q: Okay. Was that something you did when you went back to
12 the station?

13 A: Yes, it was.

14 Q: Okay.

15 A: I was pretty well preoccupied with witnesses and some
16 other areas of responsibility, but the video is actually
17 several hours later when I was able to sit at my desk and put
18 it into my computer and watch it.

19 Q: The witnesses on the scene, were they interviewed
20 together in a group or were they separated?

21 A: No, we separated all of them.

22 Q: And why would you separate your witnesses?

23 A: Again, that's standard procedure. We -- we wanted the --
24 When you have an incident with multiple witnesses and multiple
25 victims, it's customary. It's procedure to separate them if.

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1. you can to get their own version of what took place. We don't
2 want anything -- we don't want it coached or rehearsed or
3 anything like that. So you do your best to separate people.

4 Q: And under your direction, was a statement taken from
5 Anthony German?

6 A: Yes.

7 Q: Was a statement taken from Frank Haigler?

8 A: Yes.

9 Q: Was a statement taken from Michael Allen?

10 A: Yes.

11 Q: Were statements taken from the store clerk that night?

12 A: Yes.

13 Q: Were statements taken from other witnesses who would have
14 been around and stayed around the scene after the shooting?

15 A: Yes, to include a couple people that were just
16 bystanders, one of which actually attempted to render some
17 type of first aid to the victim.

18 Q: And where did you interview these people? Where did you
19 take them to separate them from everybody else?

20 A: We don't have the luxury of an office obviously in an
21 area like that and typically we utilize our -- our city
22 vehicles as our -- our office.

23 Q: And let me see if I understand the scene as it was that
24 night. While you were out there, was -- were -- was fire out
25 there, the fire department?

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 A: Fire I believe was still there and had left shortly after
2 my arrival.

3 Q: So was EMS out there?

4 A: I'm not exactly sure. Again, they -- they -- they
5 probably had left after, unfortunately, there was no more need
6 for their services.

7 Q: How many different police units responded, if you know or
8 can make a rough guess?

9 A: From our -- from the City Police Department, again the
10 answer earlier, we -- I would say a handful of uniformed
11 division cars from West Ashley, five or six vehicles is a safe
12 guess, I guess. I saw some Mustangs, cars which are traffic
13 division, had also responded. The crime scene unit had
14 several investigators respond and from my office there would
15 have been myself -- there was five, five investigators.

16 Q: Did you -- When you came on scene, did you basically take
17 control of the scene?

18 A: Again, yes. It's customary that when we have this type
19 of event, one detective will take charge and we split that
20 responsibility as time goes on. Over the course of a year,
21 everybody rotates and that particular night I was actually the
22 only investigator that worked within the violent crime unit.
23 The other individual detectives are in my office working
24 various areas. Davis and -- and Byrne were auto theft. Now
25 on evening shift, the way it works is we all have to handle

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 the night call for the whole city. So everybody responds to
2 whatever takes place.

3 Q: Okay. Were you able that night to -- After talking to
4 the victims, did you look for any bullet holes or anything in
5 the side of the structure, in the side of the gas station?

6 A: I did.

7 Q: Were you able to locate any that night?

8 A: I did.

9 Q: And you've been in court because you're the chief
10 investigating officer and you have seen some of the
11 photographs I have placed up on the board. Is what's been
12 marked in State's Exhibit 7 behind you, did you find that mark
13 that evening?

14 A: This isn't real clear, Mr. Voigt, but if we're talking
15 here ---

16 Q: Let me -- let me see if I can make it more clear. I
17 apologize. I'll bring this to you where it's not just a brown
18 smudge on the wall.

19 A: Yes, I identified this mark that -- that evening when I
20 was there.

21 Q: I'm going to show you another picture of it, which I
22 won't put up, but that's State's Exhibit 4. Do you recognize
23 that as well?

24 A: I do.

25 Q: And is that the same mark on the wall?

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

- 1 A: It is.
- 2 Q: And was that mark in -- in that place, in the same place
- 3 when you were out there on January 9th or ---
- 4 A: It is.
- 5 Q: --- January 10th?
- 6 A: It is the same mark.
- 7 Q: Were there any other significant marks on that wall that
- 8 night that you might have thought of as bullet holes?
- 9 A: No, that's the only one.
- 10 Q: Can I ask you why we don't have any Charleston City
- 11 Police Department photos of that hole that night, if you know?
- 12 A: The crime scene supervisor at the time, Sergeant Sherman,
- 13 had responded that evening. We both identified that hole, the
- 14 hole that we're talking about, and I was instructed by him
- 15 that his unit would return the following day during daylight,
- 16 which is also customary after a dark crime scene that happens
- 17 at nighttime.
- 18 You try and go back or the crime scene unit tries to
- 19 respond to collect and document. I was told that that's what
- 20 they were going to do the next day and to answer your
- 21 question, Mr. Voigt, I don't know.
- 22 Q: Okay. Now when you were out on the scene, did you know
- 23 of a suspect in this homicide?
- 24 A: We did.
- 25 Q: And who was that?

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1 A: Jerome Campbell.

2 Q: And do you see Mr. Campbell in the courtroom?

3 A: He's seated in the middle between counsel.

4 Q: Was he on scene that night?

5 A: No, he was not.

6 Q: And where were you looking for him?

7 A: The -- When we interviewed our witnesses victims, they
8 all knew Mr. Campbell by name and sight and identified him as
9 being in the vehicle where the shots came from and also
10 provided historical information as to a motive as to why this
11 occurred. Having that information, we were also given vehicle
12 information on Mr. Campbell and a description of his vehicle
13 with North Carolina tags.

14 I notified my central intelligence officer, who was on
15 call that evening, and gave him as much information as we had
16 and -- and information on the name of the defendant. A
17 central computer check basically revealed that he had a
18 residence on Grimble Road in James Island. Having that
19 information, a BOLO or be on the lookout for his vehicle was
20 then aired for all law enforcement agencies and a pickup was
21 also a BOLO for him as well.

22 It was probably an hour or two, between an hour and two
23 hours into it that I was notified by a street sergeant Edwards
24 on James island, the supervisor, that they were -- he had
25 positioned himself and a couple of officers had positioned

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1 their vehicles in the area of I believe it's Mr. Campbell's
2 mother's residence on Grimble Road and this particular officer
3 I believe was in the parking lot of the Food Lion, which is
4 just out from Grimble and out from the residence, and it was
5 with that that the defendant had waked up to Sergeant Edwards
6 and told him that the police were looking for him.
7 Q: Okay. Was he questioned at that time out in the Food
8 Lion parking lot?
9 A: No, he was not.
10 Q: Was he brought back to the station?
11 A: Under my direction, he was, yes.
12 Q: Did you find the car then?
13 A: No, we did not.
14 Q: And to be clear, the car we're talking about is the white
15 Chevrolet Impala?
16 A: It is.
17 Q: Where was that car found?
18 A: The car was located at approximately 1:30 the following
19 afternoon in an apartment complex identified as Moss Creek
20 Apartments off Highway 61, West Ashley.
21 Q: Is that near Grimble Road in James Island?
22 A: No, it's not.
23 Q: Did you direct a search warrant of that car to be
24 conducted?
25 A: I did. Sergeant Ambrose took care of that task.

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- 1 Q: And pursuant to that search warrant was that car searched
2 at -- at the impound lot at the Evans lot?
- 3 A: Yes. It would have been towed first and then it was
4 towed to our crime scene unit where it was searched in our
5 actual crime scene lab.
- 6 Q: Did you make any -- Did you give the persons who searched
7 the vehicle any special instructions regarding gunshot
8 residue?
- 9 A: I did.
- 10 Q: And can you tell the jury why you did that?
- 11 A: Based on information revealed from our preliminary
12 investigation is that we had a drive-by shooting. My request
13 was put forth to crime scene that they do a GSR examination on
14 I believe headliner was what I had requested and any interior
15 components of the car that might have some type of gunshot
16 residue presence on it.
- 17 Q: Was that a usual request in a homicide investigation
18 including drive-by shootings?
- 19 A: In a drive-by, I would -- I would think, you know, it's
20 -- this is actually -- it's the first time that I had
21 requested it.
- 22 Q: What?
- 23 A: It's the first time I had requested a GSR be done on a
24 headliner.
- 25 Q: And as the case agent, you're -- you're familiar with

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1 what the results of that would have been without telling us
2 what they would have been? Are you familiar with what the
3 results of that would have been without telling us what the
4 results would have been?

5 A: Yes.

6 Q: Okay. Do all of these reports from the various experts
7 and -- and technicians come back to you in some way?

8 A: Some of them do and sometimes they don't.

9 Q: Okay. In a perfect world, would they all come back to
10 you?

11 A: Perfect, yes, but it's not always the case.

12 Q: Based on evidence taken at the autopsy or any other --
13 any other evidence collected, were you able -- ever able to
14 determine what caliber of gun you were looking for as a murder
15 weapon?

16 A: No and it's unfortunate and as testified earlier by the
17 pathologist Dr. Presnell, we were dealing with an obliterated
18 projectile that had split in two and not only split in two,
19 but there was also other damage to that projectile and when
20 that happens, it's quite difficult most of the time to
21 identify what caliber bullet was fired.

22 Q: So no, you never had a lead on what kind of -- what kind
23 of gun you were looking for?

24 A: No. The only -- based -- If we go back to the crater on
25 the wall and I -- Again, I am not a weapons expert and I will

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1 not sit here and say that I am, but it was -- the damage to
2 that wall in discussions with people who have had experience
3 with that and crime scene, it looked like a high powered
4 round.

5 Q: Now there was a spent shell casing taken from the scene,
6 wasn't there?

7 A: Yes.

8 Q: Was that a high powered round?

9 A: It was a 9 millimeter.

10 Q: Would you consider that a high powered round?

11 A: Not to cause the type of hole, basing it on the hole that
12 hit the wall.

13 Q: Okay. There were bullets, unfired bullets, on the crime
14 scene taken as well, were there not?

15 A: Yes, there were.

16 Q: Did you -- and where were those seized from? Do you
17 recall? Do you recall where they were seized from?

18 A: Yes.

19 Q: Where was that?

20 A: There was four unspent .38 caliber round bullets, actual
21 unfired bullets, that were located in the rear. In the rear
22 of the store, there's a drive through, a alleyway if you will,
23 and midway through that drive it was my estimation were four
24 of these rounds that were collected, located and collected.

25 Q: Did you know what the significance of those rounds were

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1 the night -- the first night you were out there?

2 A: I had concern. I didn't know the exact significance
3 until I was able to do some further investigating.

4 Q: You were concerned and you had a shooting and you had
5 bullets found ---

6 A: Yes.

7 Q: --- not too far away from the body? I mean kind of
8 around the corner?

9 A: It was around the corner. It obviously was related we
10 believed to be to the -- to the incident, but peculiar in the
11 -- in the fact that from all information presented to us and
12 the investigators on scene, we had a drive-by shooting, all --
13 all rounds and everything came from within a vehicle in a
14 motion, in a moving motion. I'm scratching my head because
15 I'm now behind the store and finding a cluster of four unspent
16 bullets that just simply doesn't fit to what we have.

17 Q: Did you have any indication at that point in your
18 investigation if shots had been fired from around the gas
19 station area?

20 A: No.

21 Q: Did you order or under your supervision was a GSR kit
22 taken from the deceased, Michael German?

23 A: Yes.

24 Q: And why was that?

25 A: Again, it's standard. Pretty much standing orders is on

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1 these type of events, we try and take a GSR kit from victims,
2 from suspects, from anybody who may have had a hand on a
3 weapon and that's an elimination process now, Mr. Voigt.

4 Q: Did you take a GSR kit from Anthony German?

5 A: Yes.

6 Q: Did you take one from Michael Allen?

7 A: Yes.

8 Q: Did you take one from Frank Haigler?

9 A: I directed it and found out later there was none
10 performed on him.

11 Q: Okay. So we don't have a GSR test on Mr. Haigler?

12 A: No.

13 Q: Getting back to those bullets in that alley.

14 A: Yes, sir.

15 Q: During the course of your investigation, were you ever
16 able to figure out where they came from?

17 A: I did.

18 Q: How did you do that?

19 A: Later that same evening -- I testified earlier that I had
20 the video from the store. I watched the video a number of
21 times, a lot of times, and it's clear -- it became clear in
22 the video that Anthony German, the victim's twin brother,
23 surviving brother, at some point in the video goes behind the
24 store and I believe on two occasions he actually runs behind
25 the store and it's immediately after his brother is shot and I

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1 -- I had real concerns at that point that I believed that
2 those bullets found were his property that belonged to him.

3 It was I want to say the next night or two nights later,
4 it was very soon, I went to a family's -- the victim's family
5 up in North Charleston residence and there was somewhat of a
6 -- there was a family, the victim's family was all together
7 there and I needed to explain to them that I had an issue with
8 what I had found and what I believed we had located at the
9 scene and I needed an explanation for these four bullets and
10 it was at that house that Anthony German admitted to me that
11 those rounds belonged to him and I asked him where the gun
12 that goes with those rounds was and he stated that he had
13 thrown the gun on a neighboring building.

14 He admitted that to me that night. I asked him did he
15 fire that gun at anybody that night and it was in the presence
16 of many of his family members. He stated no. I asked him did
17 he point the gun at anybody that night, threaten anybody in
18 any way with that weapon and he stated no.

19 MR. VOIGT: May I approach, Your Honor?

20 THE COURT: Me?

21 MR. VOIGT: May I approach the witness?

22 THE COURT: Yes, sir.

23 Q: I'm going to show you what's been marked as State's
24 Exhibit 64. Do you recognize that?

25 A: I do.

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1 Q: And -- and what is State's Exhibit 64?

2 A: That is the weapon that we are referring to right now..

3 Q: Okay.

4 MR. VOIGT: I would offer, file and introduce State's
5 Exhibit 64.

6 THE COURT: Any objection?

7 MR. HARRIS: Without objection.

8 THE COURT: Marked and admitted without objection.

9 (Whereupon, State's Exhibit Number 64 is admitted into
10 evidence.)

11 Q: So did he tell you where the gun where?

12 A: Yes. He stated that he had thrown it on the roof and
13 obviously it should have still been there. I -- I told him
14 that, you know, this issue would still need to be addressed,
15 but my main concern then was getting back and collecting more
16 evidence.

17 So I left that house that night and having learned that
18 information I notified the Charleston Fire Department and --
19 for their ladder and they arrived back at the scene and we
20 went up the ladder and located this weapon that you see here
21 in the -- in the slide. It is the weapon that's actually in
22 this picture. It's seated on the -- on the metal roof, which
23 we identified as number 12 Carriage Lane.

24 The gun was collected by our crime scene officers, taken
25 back and after it was -- after it was examined Sergeant

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1 Sherman advised me that the gun was kind of an antiquity.

2 It's a very old, old weapon, rusted out. I don't think the
3 hammer went back. I'm not sure. The bottom line is he said
4 it was inoperable. It would not fire.

5 Q: I'm going to show you what I'm marking as State's 65.

6 MR. VOIGT: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 Q: Can you identify -- can you identify State's 65?

9 A: This is the weapon that was recovered that evening, yes,
10 sir.

11 Q: Did it have that level of rust on it when you first
12 recovered it?

13 A: It did. It actually looked worse, but I -- yes.

14 Q: Did crime scene clean it up to try to get a serial number
15 or something like that from it?

16 A: I couldn't tell you that. I don't know.

17 Q: All right. Did you have any indication at all in your
18 investigation that that weapon had ever been fired?

19 A: No.

20 MR. VOIGT: I would offer, file and introduce State's 65
21 at this time, Your Honor.

22 MR. HARRIS: Without objection, Your Honor.

23 THE COURT: Marked and admitted without objection.

24 (Whereupon, State's Exhibit Number 65 is admitted into
25 evidence. The item of evidence, the gun, is contained

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1 within a cardboard box.)

2 Q: When you learned -- Please bear with me for just a

3 moment. This video that you seized from -- Strike that. I

4 have so many different places to go at once. I'm trying to

5 figure out which one I am going to go to first. Were you ever

6 able -- Did you ever go to Apartment [REDACTED] where the shots had

7 initially been fired?

8 A: [REDACTED]?

9 Q: I'm sorry, [REDACTED]. I apologize.

10 A: When we'd -- That evening after interviewing the

11 witnesses and obtaining all the information, my other

12 investigators spoke to the other victims. It was our

13 estimation that our assailants were all inside of one vehicle

14 and had fled the area. That particular night, no. I did go

15 back on a second occasion on a report of a -- of a gunshot

16 that was located.

17 Q: So you were -- was that the -- The gunshot that was

18 taken, was that near the apartment where Frank Haigler was

19 said -- where Jerome Coaxum was said to have been before the

20 shooting?

21 A: Yes.

22 Q: And approximately how far away from the apartment was the

23 vehicle where the -- the gunshot was, if you know?

24 A: The vehicle from the apartment?

25 Q: Yes.

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1 A: Twenty yards and that's just a rough guess.

2 Q: Was it on the same side of the parking lot as Apartmnet
3 or on the opposite side of the parking lot?

4 A: On the same side.

5 Q: Okay. That night after you had taken statements, after
6 you had obtained a description of the vehicle and a name of
7 somebody, what was your primary focus in this investigation?
8 An hour or an hour and a half into this investigation, what
9 was your primary focus?

10 A: We had switched. At that point we were -- At the scene
11 we were on an investigative level. After learning that we had
12 had a suspect identified, we had now switched to what I would
13 call an apprehension mode. We obviously believed that we had
14 one or more shooters from one vehicle, so the focus had
15 switched to that point.

16 MR. VOIGT: Can we approach for just a moment, Your
17 Honor?

18 THE COURT: Mm-hmm.

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

21 MR. VOIGT: I would like -- At this point we've put the
22 video in, but at this point in his testimony I would like to
23 show them the video or show the video to the jury with this
24 witness on the stand. That may take me farther than you want
25 to go this morning.

1 THE COURT: How long is the video?

2 MR. VOIGT: There is three or four and there's -- The
3 part I would show is about -- it's about 15 to 20 minutes of
4 video.

5 (Whereupon, the Court invites Ms. Shealy into the bench
6 conference to discuss the scheduling of another matter
7 and the bench conference then ends.)

8 THE COURT: Madam Forelady, ladies and gentlemen, we're
9 going to take advantage of this break in testimony to take our
10 lunch recess. During the break, please do not discuss the
11 case among yourselves or with anyone else. Please don't have
12 any contact with anyone in or about the courthouse.

13 Specifically, I'm going to instruct you that you're not
14 to go in the break room of the courthouse at all. If you want
15 to stay in the courthouse during lunch, I would ask that you
16 stay in your jury room and if you're not going to stay in your
17 jury room that you leave the courthouse altogether.

18 But if you -- and I know it's a beautiful spot, but I
19 cannot control how many people are in and out of that space or
20 who you may inadvertently have contact with and again, I would
21 not want an innocent conversation to be misconstrued or
22 misinterpreted by a third party -- third person or party
23 observing that conversation. In addition to that, I would not
24 want you to have any inadvertent contact with the lawyers in
25 this case or any other potential witnesses or members of the

1 victim's family or the defendant's family in this case.

2 So if you're going to stay in the courthouse, we actually
3 have not only your jury room, but probably another multi-
4 purpose room that we can make available to you. I know it's
5 difficult being down here. I know it is expensive to eat
6 lunch downtown. I have actually started bringing my own lunch
7 because it gets very expensive to eat down here, not to
8 mention that it has a lot of calories.

9 So I understand that it might be a budget buster to have
10 to eat lunch down here. So I understand that some of you may
11 have brought your lunch or you just may want some quiet time.
12 So if being in the jury room is a little too confining, I will
13 make that multi-purpose room available to you as well and I'm
14 not certain whether it has a better view or not.

15 Just so that you know, when the courthouse was designed,
16 it was designed so that all the public areas have the best
17 view. So in the back of the building all you really get to
18 see is you get some sunlight, but you basically see the backs
19 of other buildings and that is by design so that the public,
20 who paid for the building, would have the better view of Broad
21 Street, Meeting Street and other public areas of the -- the
22 vicinity of the courthouse.

23 But if you're going to remain, again, please stay in your
24 jury room or if you need to go downstairs and get some air,
25 certainly that's understandable as well, but just be cognizant

1 of your surroundings and again, we will make that multi-
2 purpose room available to you as well if you need that.

3 I have another hearing that I have to attend to prior to
4 us going to lunch that probably will take 30 minutes. So we
5 will resume at 2:30. That gives you an hour and a half give
6 or take for lunch and you will return directly to your jury
7 room at 2:30 at which time I anticipate we'll promptly resume
8 testimony.

9 Again, please don't allow yourselves to be exposed to any
10 media coverage about this case. I'm not aware of any, but
11 potentially if there's an article in the newspaper or
12 something being reported on television or radio or on the
13 internet, please make sure that you insulate yourself from
14 that and I know that inadvertently you can see things, but
15 certainly please do not read any articles, listen to or watch
16 any media accounts or do any independent research of any kind
17 on the internet regarding any issue or matter involved in this
18 case.

19 Again, you will return directly to your jury rooms at
20 2:30. If any of you want to stay in the courthouse and again,
21 if the jury room gets too confining, let the bailiffs know.
22 There's always one out there and we'll open up the multi-
23 purpose room for you. If you would, leave your notepads in
24 your seats and have a good lunch. We'll see you at 2:30.

25 (Whereupon, the jury leaves the courtroom at 12:55 p.m.)

1 THE COURT: Okay, we'll break for lunch until 2:30. The
2 court reporter indicates that there are two Number 43's, so if
3 y'all could reconcile that for her please.

4 (To witness) Sir, you're excused for lunch, but please do
5 not discuss your testimony with anyone.

6 MR. BURCKHARDT: Thank you.

7 (Whereupon, the witness leaves the stand at 12:56 p.m.)

8 THE COURT: You're welcome.

9 (Whereupon, there is a break in the proceedings from
10 12:57 p.m. until 2:45 p.m.)

11 THE COURT: Is the State ready to proceed?

12 MR. VOIGT: Yes, Your Honor.

13 THE COURT: Is the defense ready to proceed?

14 MR. HARRIS: Yes, Your Honor.

15 THE COURT: Can the witness please retake the stand?
16 Have you already queued up the audio or video that you wish to
17 show the jury?

18 MR. VOIGT: Yes, Your Honor.

19 THE COURT: As soon as they get there, Mr. Robinson,
20 bring them in.

21 MR. HARRIS: Your Honor?

22 THE COURT: Yes?

23 MR. HARRIS: Before the jury gets in, is it okay if I
24 position myself where I can see the screen?

25 THE COURT: Absolutely.

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1 MR. HARRIS: Okay. I just didn't want to ask the
2 question when the jury came in.

3 THE COURT: Not a problem.

4 (Whereupon, the jury enters the courtroom at 2:46 p.m.)

5 BAILIFF: The jury is present, Your Honor.

6 THE COURT: You may be seated. Ladies and gentlemen, I
7 hope that you all had a pleasant and restful lunch. We'll now
8 resume the trial testimony. The State may proceed when it's
9 ready.

10 MR. VOIGT: Thank you very much, Your Honor.

11 THE COURT: You're welcome.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. VOIGT:

14 Q: Detective, before we -- before we left, we talked a
15 little bit about some videos that you had from the gas station
16 and when did you first view those videos?

17 A: Approximately a couple hours after the actual incident
18 happened in my office.

19 Q: All right and I'm referring now -- Approximately how many
20 camera angles did the store have during that time?

21 A: I recall a -- a camera angle that the -- that's on the
22 side wall where the actual shooting took place. I recall an
23 angle which would be behind the teller in the store as he's
24 serving customers. I also recall some external footage which
25 would cover the parking lot going out towards the gas pumps.

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1 Q: Okay and what we're referring to is we're referring to
2 State's Exhibit 63B when we're talking about the video.

3 MR. VOIGT: Joann, can you start the video?

4 (Whereupon, the store surveillance video, State's Exhibit
5 Number 63B, is shown on the screen in the courtroom with
6 questions and answers during the video and pauses between
7 some questions and answers.)

8 MR. VOIGT: Can you stop it right there for a second?

9 Q: What is it that we're looking at here, Detective?

10 A: This would be the -- what was referred to would be the
11 west wall of the convenience store. This is actually the wall
12 where the shooting -- shooting takes place coming from the
13 road, which would be to my right here identified as Carriage
14 Lane. This is the small parking lot. The camera is up in
15 this corner and what's captured here is several of the victims
16 actually come into -- come into camera angle.

17 Q: That would -- This number down here, this 19:57 and the
18 blue line that's on our computer here, this indicates, does it
19 not, that we're not viewing the first 19 minutes and 50
20 seconds of this particular video. Did you request video --
21 What block of time did you request video -- surveillance video
22 from?

23 A: What I did was identify the calls from when the -- when
24 the actual calls, the 9-1-1 calls came in and whatever time
25 that was would have been the time that I asked from the store

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1 manager throughout that incident.

2 Q: Okay.

3 A: Exact time I don't recall.

4 Q: All right. So did you ask for a range of times?

5 A: Yes.

6 Q: That just ---

7 A: And we had the assistance of store employees that were
8 working at the time when the actual shooting occurred.

9 Q: Okay.

10 MR. VOIGT: All right, can you restart that?

11 (Whereupon, there is a brief pause in the questioning as
12 the video plays.)

13 MR. VOIGT: Can you stop the video please, Joann?

14 Q: Detective, who is that individual right there that just
15 walked into the screen?

16 A: That's the victim, Michael German.

17 Q: Okay.

18 MR. VOIGT: Will you please restart it?

19 (Whereupon, there is a brief pause in the questioning as
20 the video plays.)

21 MR. VOIGT: Can you stop the video, Joann?

22 Q: Detective, there seems to be -- What seems to be
23 happening here on the screen right now?

24 A: Yes. So if you focus in this corner here, what you're
25 starting to see is a cloud of debris from the wall. It will

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 get more concentrated as the video progresses.

2 MR. VOIGT: Start it again.

3 A: You'll actually see pieces.

4 MR. VOIGT: Stop it there.

5 Q: Are these the pieces that we're talking about?

6 MR. VOIGT: Keep going, Joann.

7 A: Yes.

8 MR. VOIGT: Stop the video for me, please.

9 Q: Do you know who that is, Detective Burckhardt?

10 A: Anthony German.

11 Q: Is that -- is that what you confronted Mr. German about

12 the next day?

13 A: I did.

14 MR. VOIGT: Start it again.

15 Q: Detective, this video seems a little choppy. Do you know

16 the reason for that?

17 A: It's probably the time lag. I -- I'm not a technical

18 person. I don't know for sure and it's dated, too. The

19 quality could be the disk.

20 Q: And who is that running back into the street, Detective?

21 A: That's Anthony German again.

22 Q: Approximately where was Michael German located in this --

23 to this particular view?

24 A: He is -- The camera is situated on the top corner wall of

25 this store. Michael German would be, if you can follow my

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 pointer here, out of camera view and as I was there that night

2 he was actually below the camera ---

3 MR. VOIGT: Stop it.

4 A: --- directly below, but the camera is focusing further

5 out. But he falls right in this vicinity here. He's

6 positioned halfway on the curb I believe and halfway in the

7 parking lot.

8 Q: I think I'll let this play out a little bit further.

9 A: It's not as clear as we've seen.

10 (Whereupon, there is an extended break in the questioning

11 as the video is played further.)

12 Q: To the best of your knowledge, Detective, was there any

13 sound on this particular camera angle?

14 A: Not on this angle.

15 Q: Was there any sound on any of the exterior cameras at all

16 that you know of?

17 A: Not on the exterior.

18 Q: Okay. Did any of the camera angles capture the Chevrolet

19 Impala at all?

20 A: No.

21 (Whereupon, there is another extended break in the

22 questioning as the video is played further.)

23 Q: Detective, do you know whose car that is?

24 A: That's family members of the victim Michael German's

25 arriving after being telephoned I believe by Anthony about

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 what had happened.

2 Q: So am I correct in saying that the family actually
3 arrived before the police got there?

4 A: Yes and certainly before I did.

5 Q: Who is that on the ground?

6 A: Frank Haigler.

7 Q: Did you have the opportunity to interact with Mr. Haigler
8 that night?

9 A: I did.

10 (Whereupon, there is another extended break in the
11 questioning as the video is shown further.)

12 Q: Is that -- Am I correct in assuming that's the initial
13 police officer on the scene?

14 A: Yes.

15 Q: Okay.

16 MR. VOIGT: Joann, you can stop it there and get the
17 other video ready to go.

18 Q: Let me ask you about a couple things while we queue up
19 another video. Just -- In another part of your investigation,
20 crime scene dusted down the white Impala for fingerprints.
21 Did those fingerprints reveal any leads to you?

22 A: No.

23 Q: Did they identify -- Was anybody identified from those
24 particular fingerprints?

25 A: We did identify one. We had a hit, a positive hit on a

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 fingerprint that was recovered from the rear trunk area of the
2 suspect vehicle.

3 Q: And did you go interview that person?

4 A: I did.

5 Q: And what was that person's name?

6 A: Aaron Burnham.

7 Q: And was Mr. Burnham cooperative with you?

8 A: In my estimations, no.

9 Q: And how is Mr. Burnham employed?

10 A: He's a public safety officer at the College of
11 Charleston.

12 Q: Did he tell you how his print came to be on that car?

13 A: In an interview conducted at his workplace, myself and
14 Detective Fleming were there, he stated that he had been with
15 the defendant earlier in the day drinking with him and hanging
16 out on his car and that was his explanation for his
17 fingerprint being on that car.

18 Q: On the trunk of the car?

19 A: He didn't specify where really.

20 Q: Okay.

21 A: I didn't want to let him know initially.

22 Q: So you knew where the fingerprint was.

23 A: I did.

24 Q: But he didn't.

25 A: Yeah.

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 MR. VOIGT: Are you ready, Joann?

2 MS. GOULD: Yes.

3 Q: I'm going to show you another video. What does this
4 depict, Detective?

5 A: This would be the front of the convenience store. This
6 gentleman is just a customer coming in to the store with the
7 red sweatshirt on. So this would be moments actually before
8 things happen I believe.

9 Q: Now this gentleman, where is he running to?

10 A: He's running in the direction of where Michael German
11 would have fallen, to that corner of the store which is out of
12 the camera's view.

13 Q: So that gentleman who ran towards the corner of the
14 store, Mr. McCarthy, did you all have the opportunity to
15 interview him?

16 A: He was. He was interviewed.

17 Q: Did he stay on the scene?

18 A: He did.

19 Q: If you could look at this video again, whoever that is up
20 in the top right corner?

21 A: I believe it's Frank Haigler.

22 Q: Okay.

23 A: I'm going by the sleeves of the jacket.

24 Q: Now at this point we're starting to have a whole crowd,
25 aren't we, Detective?

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 A: Yes.

2 Q: Are those people in the neighborhood, people in the
3 store?

4 A: I think you have a combination of the two. From another
5 angle we haven't seen, you can clearly see, clearly hear the
6 gunshots, but the store was having its normal day to day
7 business. You have customers in and you have a clerk working
8 and the shots are heard. It's with that I think that draws
9 the attention of these other people.

10 MR. VOIGT: That's fine. Get to where a blue car
11 arrived. That'll be good, Joann. Can we switch over?

12 MR. HARRIS: What?

13 MR. VOIGT: Can we switch over to have the sound now?

14 Q: Detective, we're going to use the defendant's video
15 because the sound works. If you could, turn your attention to
16 again this part and who is that, Detective?

17 A: That would be the store clerk.

18 Q: And he was around to be interviewed, was he not?

19 A: Yes.

20 Q: And did he call 9-1-1?

21 A: He did.

22 MR. VOIGT: We're going to try to get this so that we can
23 hear what's going on in the background. I apologize.

24 Q: Now, Detective, in addition to this particular angle, is
25 there not also an angle coming from the other way looking at

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 the clerk's area as well?

2 A: Yes, sir.

3 Q: And there's an interior shot or at least a couple
4 interior shots inside the store. I'm presuming those are for
5 security anti-theft purposes?

6 A: Yes.

7 MR. HARRIS: Your Honor, may my technical person come up
8 here?

9 THE COURT: Mm-hmm.

10 Q: Now, Detective, on the version of this that you've
11 watched, obviously it's the version that you got from the
12 store, were you able to listen to it as well as watch it in
13 silence like -- like we're doing now?

14 A: Yes.

15 Q: And as a matter of fact, you and several other officers
16 listened to that recording intently, did you not?

17 A: I reviewed it countless times. If we can get going, you
18 can hear the clerk talking to a customer, hearing the
19 gunshots, telling the customer he needs to call the police.
20 You can clearly see him on his cell phone calling the police
21 and you can hear what I estimate I think four gunshots.

22 (Whereupon, the video begins playing with sound.)

23 Q: Okay, here we go. So this particular camera has a -- has
24 a microphone?

25 A: Yes, sir.

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 MR. VOIGT: That's good. That's good.

2 Q: And again this has to do with you requested more time
3 before the incident, as well as more time after the incident?

4 A: Yes.

5 Q: Just to see everything that you could possibly see?

6 A: Right.

7 Q: Does this particular store have a video camera that shows
8 you who is actually buying something? Do you recall?

9 A: I don't recall that angle, no.

10 (Whereupon, there is an extended break in the questioning
11 while the surveillance video from inside the store is
12 played for several minutes through the time of the
13 shooting. This portion of video with sound is not
14 transcribed herein. The video is stopped and then
15 questioning resumes.)

16 Q: So he keeps actually conducting business even through a
17 9-1-1 call?

18 A: We see that quite often actually.

19 Q: You were able to talk to that clerk as well? He remained
20 on the scene and was available to be interviewed?

21 A: Yes. There was a Detective Davis I believe who was
22 actually the person who spoke with him.

23 Q: Now have you had the opportunity -- During the course of
24 your investigation, you were privy to the statements, accounts
25 of Frank Haigler and of Michael Allen and of Anthony German.

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 Did you seek any cell phone records ---

2 A: We did.

3 Q: --- during the course of your investigation? And for
4 what purpose did you seek those cell phone records?

5 A: Well, it was during the course of the investigation in my
6 initial interview with -- with Anthony German that we tried to
7 establish motive obviously and it was through that that
8 Anthony German revealed to us that he had been receiving
9 threatening calls of a threatening nature from the defendant.

10 During my statement and interview in my vehicle and after
11 taking a written statement, Anthony German had showed me on
12 his phone the numbers where that he had called from and
13 revealed that specific telephone number and I did -- I
14 conducted a search warrant on that -- that number. It came
15 back billing information and subscriber information to -- to
16 the defendant to validate, so to speak, what -- what we were
17 being told. So we did that. We did -- and also did search
18 warrants on Anthony German's phone in addition to that.

19 Q: And did that corroborate Mr. German's statement?

20 A: It did.

21 Q: This cell phone that was seized from the car, previously
22 marked and now we are going to refer to it as 62B, the black
23 Motorola cell phone. During the course of your investigation,
24 were you able to tell whose cell phone that was?

25 A: I did. It belongs to the defendant.

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 Q: Did you have that forensically examined?

2 A: We did.

3 Q: Let me return to where we left off on James Island. Mr.
4 Coaxum was brought back to the police headquarters, was he
5 not? Or to the station?

6 A: Yes. He was brought to headquarters under my
7 instructions.

8 Q: And did you have an opportunity to meet with him there?

9 A: I did.

10 Q: At the time you met with him, was he -- was he suspected
11 of the crime?

12 A: Yes.

13 Q: Did you tell him that?

14 A: Yes.

15 Q: Did you read him his Miranda rights?

16 A: I did.

17 Q: And what rights are those, Detective? Do you recall?

18 A: I don't keep them in my head, but I read them from a
19 standard Miranda card.

20 Q: Okay. Do you have that card with you?

21 A: I do.

22 Q: Is that the very same card you used that night?

23 A: It more than likely is. I've had this for quite a while.

24 Q: Okay. What rights did you inform Mr. Campbell that he
25 had?

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 A: This is a standard issued Miranda card listing all of the
2 constitutional rights that we read to anybody who is involved
3 in a crime or going to be questioned by law enforcement. So
4 I'll read those to you.

5 You have the right to remain silent is item one. Number
6 two is anything you say can and will be used against you in a
7 court of law. You have the right to talk to an attorney and
8 to have him or her present while -- with you while you are
9 being questioned. If you cannot afford to hire an attorney,
10 one will be appointed to represent you before any questioning
11 if you so wish. You can decide to answer. You can decide at
12 any time to exercise these rights and not answer any questions
13 or make any statements. Do you understand each of these
14 rights as I have explained them to you? Having these rights
15 in mind, do you wish to talk to us now?

16 This is my verbal card. We also have a paper card that
17 is signed by the person issuing the rights, which would have
18 been me. Detective Dasher was my -- participated in the
19 interview as well and witnessed it and the defendant also
20 acknowledged that he understood his rights and wished to talk
21 to us by signing his card.

22 Q: Now in 2009, did the Charleston Police Department
23 videotape statements like they do today?

24 A: No, it was later that year.

25 Q: Now Mr. Campbell didn't give you a formal statement, did

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 he?

2 A: He participated in an interview actually for a few
3 minutes.

4 Q: What did he -- Did he say anything of note to you before
5 he terminated that interview?

6 A: He did and I'd like to refer to my actual ---

7 Q: Was that what ---

8 A: --- report from that interview, if I can.

9 Q: Let it refresh your recollection.

10 A: It's brief. Do you want me to read it?

11 Q: Just ---

12 A: As is?

13 Q: As you can -- as -- as recollected in your report.

14 A: Okay. It states here and I'm referring to the actual
15 report that was written -- that I constructed in reference to
16 our interview. It says on January 9th, '09, while I.O., that's
17 me, investigating officer, was on scene at the incident
18 location, I learned that the suspect had surrendered himself
19 to Team 3, which is James Island officers, near the residence
20 of his mother on Grimble Road. I instructed Sergeant Edwards
21 to transport the suspect to CPD headquarters and detain the
22 suspect until I could arrive at headquarters and conduct a
23 formal interview.

24 I arrived at CPD and I instructed crime scene technician
25 Wiersma to conduct a GSR exam of the defendant's hands while

DIRECT EXAMINATION OF RICHARD BURCKHARDT BY MR. VOIGT

1 the suspect was in the booking area. An exam was conducted
2 before any formal interview was started with the suspect. I
3 then had the suspect moved from the central investigations --
4 moved from the booking area to central investigations
5 interview room by the transporting officers.

6 Myself, along with Investigator Dasher, met with the
7 suspect in the interview room at approximately 0150 hours in
8 the morning. I stated to -- I stated that myself -- I was
9 making the statement to the defendant that myself and
10 Investigator Dasher would need to speak with the suspect. It
11 says here Coaxum and -- and the reason for that is he provided
12 two last names upon his initial meeting with us, Coaxum and
13 Campbell.

14 I needed to speak to him in regards to this incident, but
15 before the interview would begin I would need to read the
16 suspect his standard Miranda warnings from the supplied
17 Miranda card, which I just read to you. The suspect was
18 issued his Miranda warning by myself and witnessed by
19 Investigator Dasher. The suspect stated that he understood
20 his rights and signed the Miranda warning card. The suspect
21 also agreed to be interviewed without an attorney present.

22 I began questioning the suspect by asking the suspect why
23 he surrendered to the police. The suspect replied that a
24 friend of him told him to do so. I asked the suspect who the
25 friend was and the suspect replied he couldn't remember. I

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 then asked the suspect how he arrived on James Island and the
2 suspect replied he couldn't remember. I also asked the
3 suspect where his vehicle could be located and the suspect
4 replied he didn't know. While facing me, this is the
5 observation I made, the suspect then dropped his head and made
6 the comment, "Yesterday I was a working -- I was working at a
7 bank and today I'm in real trouble."

8 Q: Detective, when -- when Mr. Campbell was processed, did
9 he have his car keys on him?

10 A: I don't recall that. No, he did not.

11 Q: Please answer any questions that Mr. Harris may have for
12 you.

13 THE COURT: You may proceed.

14 MR. HARRIS: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 MR. HARRIS: May it please the Court.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. HARRIS:

20 Q: Good afternoon, Mr. Burckhardt. Is it Detective
21 Burckhardt?

22 A: Yes, sir.

23 Q: Okay.

24 A: Good afternoon.

25 Q: You've testified to a lot today, so I apologize. I'm

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 going to go back and kind of start where we began.

2 A: That's fine.

3 Q: But I would like to kind of go back to when you were

4 talking about my client turned himself in that night. That

5 was a couple hours after the incident?

6 A: The surrender took place on James Island.

7 Q: Mm-hmm.

8 A: Grimble Road. There is a report by Sergeant Edwards, who

9 received the defendant in the parking lot. That may reflect

10 the time, if you want to look at that.

11 Q: Okay, but this was a -- I mean you interviewed him that

12 night?

13 A: I did. Yeah, it was a while after that.

14 Q: It wasn't two days later?

15 A: No, no, no, no.

16 Q: Okay. So he turned himself in that night and you had

17 gotten there and interviewed him?

18 A: When I was able to clear the scene and finally get back

19 to headquarters, that's where I spoke to him, yes.

20 Q: Okay and he knew you were bringing him in for a murder,

21 right, or a serious crime ---

22 A: Yes, a serious crime.

23 Q: --- that you were looking for him, right?

24 A: I don't think I advised him that it had been a murder

25 investigation at that point.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

- 1 Q: Okay, but somebody advised him people were looking for
2 him?
- 3 A: Yes.
- 4 Q: Obviously to a point where some of his friends said, hey,
5 the police are looking for you, you need to go to the cops.
- 6 A: According to him, somebody told him that he needed to
7 surrender.
- 8 Q: Okay. I'm assuming he didn't just walk up to a police
9 officer in James Island and say, hey, officer, just in case
10 you're looking for me. He -- he knew somebody was looking for
11 him, right?
- 12 A: That would be a guess, but yeah.
- 13 Q: Okay.
- 14 A: That's the -- that's the way it happened.
- 15 Q: Okay and you put on there that he said, "Yesterday I was
16 working in the -- in the bank and today I'm in real trouble."
- 17 A: Yes.
- 18 Q: Because you're clearly looking for him for a crime?
- 19 A: Mm-hmm.
- 20 Q: He didn't say, "Yesterday I was working in a bank and
21 today I murdered somebody."
- 22 A: No, he didn't say that.
- 23 Q: Okay. He said, "Today I'm in trouble."
- 24 A: Yes.
- 25 Q: Okay, all right. Let's go back to the crime scene. When

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 you arrived, you said you got there about 10 or 15 minutes
2 after it happened, after the first call came in?

3 A: I would have been responding from headquarters and that's
4 about that time frame.

5 Q: Okay and by the time you got there the EMS and the fire
6 trucks were leaving?

7 A: I believe they were still there, but in the process of
8 leaving. There was no more assistance that they could
9 actually offer at that point.

10 Q: Okay. So we watched that video and obviously the first
11 people that arrived on the scene were his family. We didn't
12 see police officers arrive first?

13 A: No, no.

14 Q: Okay and you said you corralled the witnesses, meaning
15 you tried to get everybody that was in there, panic scene,
16 right?

17 A: It was pretty chaotic.

18 Q: You tried to get everybody corralled so we can see who is
19 involved in this thing?

20 A: Right. We try not to let -- If there's people that are
21 there that might slip away that have information, it's a task
22 that we try and do all the time.

23 Q: Okay and you said originally that you spent most of your
24 initial time there interviewing Anthony German?

25 A: Pretty much.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 Q: You said you spent a great amount of time I believe were
2 your exact words in interviewing Anthony German.

3 A: Yes.

4 Q: Did -- did he say anything about the gun while you were
5 talking to him?

6 A: Anthony?

7 Q: Yes.

8 A: On a couple occasions, he did.

9 Q: About himself having a gun?

10 A: No, not that night.

11 Q: Okay. Did he explain to you why he's seen on the video
12 running?

13 A: Not that night. Well, I hadn't -- When I was speaking to
14 him that night, I hadn't seen the video.

15 Q: Okay.

16 A: This was after he was interviewed and released is when I
17 -- I had the opportunity myself to see the video at my office.

18 Q: Right.

19 A: So I didn't -- I wasn't aware that he had run back behind
20 the store.

21 Q: Okay. So the video, you didn't see the video on the
22 scene?

23 A: No.

24 Q: Okay and you said it was about 12 to 15 -- I mean earlier
25 you had said -- When I say earlier, I mean before we went to

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 lunch today, that you had five cops there. There was about
2 five, maybe five or six cars that were like the Mustangs and
3 the, you know, what we call patrol.

4 A: Mm-hmm.

5 Q: And then there were some other officers. So there were
6 about 12 to 15 cops on the scene?

7 A: There, yeah, and then there was command staff that would
8 have showed up later and I think the -- the crime scene log
9 also reflects that. There was a number of law enforcement
10 there.

11 Q: Okay.

12 A: The exact number, unless I counted them off the sheet, I
13 couldn't tell you.

14 Q: Okay. Let's talk about that hole that we keep talking
15 about on the side of this building, the crater is what I
16 believe you referred to it as.

17 A: Yes, sir.

18 Q: I don't have the picture right here in front of me, but
19 you know the one I'm talking about.

20 A: Yes.

21 Q: The hole is about eight and a half feet up in the air?

22 A: Yes.

23 Q: Okay. You identified that hole and you said Officer
24 Davis identified the hole?

25 A: No.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

- 1 Q: Who was the other one?
- 2 A: Sergeant Sherman was the crime scene supervisor that
- 3 responded. He was the supervisor of the -- of the crime scene
- 4 unit that came out that night.
- 5 Q: Okay and then ---
- 6 A: Uh ---
- 7 Q: Oh, go ahead.
- 8 A: After reviewing the scene behind that, the hole was
- 9 identified. It was also later confirmed when I had the
- 10 opportunity to watch the video. I know it was unclear here
- 11 today, but you can clearly see debris coming off that wall.
- 12 Q: Okay and ---
- 13 A: And it was through that when I said to Mike Sherman that,
- 14 you know, we've got that hole and this video show I believe
- 15 what we've got is a gunshot coming off that wall.
- 16 Q: Okay and you decided -- You said we decided to go back
- 17 the next day to get pictures of it?
- 18 A: I was informed by Sergeant Sherman he was going to the
- 19 scene the next day in daylight to take photos.
- 20 Q: Did he take pictures of the wall?
- 21 A: I don't know.
- 22 Q: Let me ask you did they -- To your knowledge, was there
- 23 ever a swab taken of this hole for lead or ---
- 24 A: Not to my knowledge.
- 25 Q: --- anything that would ---

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 A: I wouldn't have been present if they had gone back.
2 Q: Okay. So you ---
3 A: I was told they were going back.
4 Q: Okay.
5 A: But that was the end of it.
6 Q: So they told you they were going back the next day ---
7 A: Yep.
8 Q: --- to investigate this hole?
9 A: Yep.
10 Q: Okay. How large a crime scene are we talking about? How
11 far did you go -- your people go out?
12 A: The scene itself in my memory would have been the station
13 itself. That was taped off. I'm pretty sure they went back
14 across the street where Carriage Lane itself was blocked.
15 Q: Right.
16 A: And I'm just going off memory here and understand that my
17 focus during being on scene was dealing with interviews and
18 obtaining information. Crime scene technicians often is the
19 case where they may have conducted a -- a search ---
20 Q: Mm-hmm.
21 A: --- if you will, for evidence and they may have utilized
22 other CPD personnel at that. That's possible, but it's not
23 known to me. I was more interested in the results of ---
24 Q: Right.
25 A: --- any search that may have come up.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 Q: So you don't know if they searched the buildings across
2 the street?
3 A: No. I did -- No. The apartment buildings?
4 Q: Yes.
5 A: No, I do not know that.
6 Q: Or the trees in front of them?
7 A: No, no.
8 Q: Okay and did they search Old Towne Road? The ditch over
9 there by Old Towne Road, the bushes, you know, the street that
10 cars were driving on?
11 A: They walked. There is a ditch and I used to live there.
12 Q: Mm-hmm.
13 A: And I know where they -- they walked. There's a --
14 there's a drainage easement type ---
15 Q: Mm-hmm.
16 A: --- thing. They went up and down with flashlights. We
17 -- It was clear to us and clear to them that they had a drive-
18 by incident.
19 Q: Okay.
20 A: And when you have that, you have a moving shooter.
21 Therefore, you may have evidence that could be down the road,
22 up the road. It could kicked by a car. It could be moved by
23 another car. So they walked. They walked a good bit.
24 Q: Okay. That's ---
25 A: Exactly how far would be a question for -- for them. I

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 don't know.

2 Q: Okay.

3 A: I'm not for sure.

4 Q: Okay. So you don't know how far they might have went
5 down?

6 A: And I didn't participate.

7 Q: You know they went down Carriage Lane, but you don't know
8 how far up Old Towne Road they went?

9 A: Right. I don't know. I don't know the distance for you.

10 Q: Okay. When you're interviewing your witnesses and
11 talking to people at the scene, you're trying to find out
12 what's going on. Did anyone of any witness say anyone fired a
13 shot from the Kangaroo?

14 A: No. From the store?

15 Q: From this side of the store?

16 A: No.

17 Q: Okay.

18 A: That never came out.

19 Q: So no one, including any of the three victims or -- yeah,
20 the victims of the AWIKs, said they ever fired a gun?

21 A: Correct, no.

22 Q: Okay and you mentioned earlier you did gunshot residue --
23 you ordered gunshot residue on their hands?

24 A: I did.

25 Q: On Michael German, on Anthony German, on Frank Haigler

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 and on Michael Allen?

2 A: That's correct.

3 Q: But they didn't do one on Frank Haigler?

4 A: That's correct.

5 Q: Okay and you wrote a police report on that and do you

6 have your report up there?

7 A: I'll have to see which one you're referring to.

8 MR. HARRIS: Your Honor, may I approach the witness?

9 THE COURT: You may.

10 A: This page? You're referring to the underlined?

11 Q: No, this -- this sentence.

12 A: And all parties.

13 Q: Okay.

14 A: To include ---

15 Q: Okay.

16 A: --- Mr. Haigler, yes.

17 Q: So, but you list out ---

18 A: Right.

19 Q: On here you list out German, German and I'm assuming you

20 meant Michael Allen on the next one?

21 A: Yes.

22 Q: Because you had Michael German twice. So you ordered --

23 you told them to bring to -- who to bring to the office so

24 that you all could take swabs?

25 A: Yes.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 Q: And he just -- he did it on three but not on the other
2 one?

3 A: Apparently so. Apparently he didn't do it on the other
4 one.

5 Q: He didn't take Frank Haigler's?

6 A: I don't believe so. There's no report of that.

7 Q: Okay, but Frank Haigler was on the scene?

8 A: He was.

9 Q: Okay and we saw him on the video. He's the one that ran
10 back across the front of the ---

11 A: That's him.

12 Q: Okay.

13 A: Yep.

14 Q: Now in this same report -- Let me approach again. In
15 this same report, this -- If you could, read that underlined
16 part. That's your report.

17 A: Okay.

18 Q: Okay. So this says that all four went across the street
19 at the apartments?

20 A: Yes. I understand what your question is and what I
21 stated there is they were -- What was described to me during
22 the course of the interviews of all the victims was that Frank
23 Haigler went to the apartment. The remaining individuals
24 remained on the side of the street. Okay? When they fled was
25 when Frank was fleeing. They fled across the street. Frank

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 never made it across the street when the -- when the suspect
2 vehicle come out was my understanding.

3 Q: Okay. So ---

4 A: He had -- he had been shot at at the apartment.

5 Q: Okay.

6 A: Okay? He took off running. At the point, the remaining
7 guys were near that ditch, to the best of my estimation the
8 way it was explained to me, by the convenience store. They --
9 and they had retreated back towards the store.

10 Q: Okay.

11 A: The car had come out. Frank hadn't made it all the way
12 across the street yet.

13 Q: Okay. So Frank's coming from -- You've been sitting here
14 the whole time. Their investigator said it was about 500
15 yards to the house down there?

16 A: Yeah, I guess.

17 Q: Okay. So he's -- They're walking -- He's walking 500
18 yards down the way and they're standing there watching him in
19 the street or are they -- That's what I'm trying to figure
20 out. Are they standing ---

21 A: I don't know if they can eyeball him. I mean I don't
22 know if they can actually see him from that -- their location
23 and having been over there, it's a fairly dark avenue ---

24 Q: Right.

25 A: --- the parking lot ---

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 Q: Okay.

2 A: --- from the street to -- to [REDACTED]

3 Q: Okay.

4 A: I'm pretty confident they heard the gunshot go off
5 because that was relatively close from -- from [REDACTED] to the
6 street, to Carriage Lane where they were positioned. It was
7 my estimation that they -- they were not at [REDACTED]. They weren't
8 right up against the store.

9 Q: Okay.

10 A: Frank had told them to stay back.

11 Q: Okay. So the gunshot happened closer to Carriage Lane
12 than [REDACTED]?

13 A: The gunshot referring to?

14 Q: The first gunshot you're talking about.

15 A: Towards Frank?

16 Q: Right.

17 A: No, no. We believe that happened actually in the
18 breezeway or right there and that's based on what we found not
19 only from his statement, but the next day when the resident
20 called in the gunshot to the car.

21 Q: Okay. Now -- So you're saying -- I guess what I'm trying
22 to understand is you're saying they're standing in the street
23 and they can hear the shot from -- Well, you said it was close
24 to the street, but you're talking four or 500 yards from the
25 street. It's only 60 feet from the street to the store.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

- 1 A: You mean the apartment?
- 2 Q: No, across the street.
- 3 A: I'm a little confused. I'm sorry.
- 4 Q: From the street to the Kangaroo corner is about 60 feet.
- 5 We've seen that measured out with a little roller.
- 6 A: I agree with that.
- 7 Q: Okay. They also estimated it was about 500 yards to [REDACTED]?
- 8 A: From the street to the apartment.
- 9 Q: Right.
- 10 A: Okay.
- 11 Q: But you're saying they would -- they heard that because
- 12 it was close. I mean could they see it?
- 13 A: Possibly you could see it.
- 14 Q: Okay.
- 15 A: You know, I can't say myself.
- 16 Q: Okay, but it's your understanding that they were across
- 17 the street. They were not standing on the corner of the gas
- 18 station the entire time?
- 19 A: Yeah, it's my understanding they had moved slightly
- 20 across the street. Frank went all the way up to the
- 21 apartment.
- 22 Q: Okay.
- 23 A: And then when the gunshot came, they all started
- 24 retreating.
- 25 Q: Okay, all right. Now let's go to this car. You said you

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 ordered GSR on the headliner and the interior components of
2 the Impala?

3 A: Yeah, I asked that crime scene perform that exam.

4 Q: Okay and they did to your knowledge?

5 A: They did.

6 Q: Okay. On everywhere, the headliner, the steering wheel,
7 the interior? Okay and we will obviously -- You didn't
8 personally do those results. Those are going to come through
9 SLED later on?

10 A: I have those results with me.

11 Q: Okay, but the SLED -- we'll have the SLED analysis later
12 on.

13 A: Okay.

14 Q: Now you said this hole -- Let's go back to that hole
15 again. You said it's a high caliber round?

16 A: The hole to the wall, sir?

17 Q: Mm-hmm.

18 A: Yes. I conferred with some of my SWAT members.

19 Q: Okay.

20 A: I am not a weapons person. Okay?

21 Q: Okay and they said high caliber round?

22 A: That's what it appeared to be.

23 Q: But it wasn't caused by a 9 millimeter bullet?

24 A: They didn't believe so.

25 Q: Okay. Did they say what type of high caliber round they

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 believed would cause that?

2 A: I don't think they went into an actual caliber.

3 Q: Okay.

4 A: Just high powered.

5 Q: Okay, okay. So let's get back to when we see Anthony

6 German. This is -- this is seconds after the shooting

7 according to the video. I mean you can see the rubble hit and

8 then you see him sprint around. Okay and that's when he says

9 he threw the gun. Okay. He told -- You asked him, "Did you

10 fire a gun?" He said, "No." You said, "Did you point a gun

11 in a threatening manner?" He said, "No."

12 A: Yes.

13 Q: Why would it be significant if he pointed a gun in a

14 threatening manner?

15 A: I was interested to see if there was some type of

16 retaliation shooting going on.

17 Q: Okay. So if he pointed a gun in a -- in a threatening

18 manner and somebody fired back, that would be considered

19 retaliatory?

20 A: I would say so.

21 Q: Okay. He also says when he's talking to you, "When my

22 brother got shot, I dropped the gun that was in my hand." So

23 it was in his hand when his brother got shot?

24 A: I can't say for sure whether it was in his hand when his

25 brother got shot or whether it was in his pocket. He says he

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

- 1 drops it at which point, Mr. Harris, I ---
- 2 Q: He said it ---
- 3 A: Yeah, it was somewhere in that area.
- 4 Q: In his statement that he gave to you though, he said ---
- 5 A: Okay.
- 6 Q: --- it was in my hand and I dropped it ---
- 7 A: Right.
- 8 Q: --- and dropped the bullets and bent down to pick them
- 9 up.
- 10 A: Right.
- 11 Q: Okay. He said it was in his hand in his statement
- 12 though?
- 13 A: Yes.
- 14 Q: That's his words?
- 15 A: Yes.
- 16 Q: Okay, because when you're a police officer and you're
- 17 taking a report, you give them the report afterwards and you
- 18 say is this an accurate description?
- 19 A: We read it back to them.
- 20 Q: Right.
- 21 A: We make sure that, you know, we've got this thing as
- 22 accurate as possible.
- 23 Q: Okay and then they sign it at the bottom?
- 24 A: They do.
- 25 Q: And you witness that signature?

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 A: Yes.

2 Q: Okay. Now you've got this video that shows him running
3 around the building that night?

4 A: Yes.

5 Q: He ran around where you found four bullets earlier. You
6 had seen those bullets earlier?

7 A: Yes.

8 Q: The live rounds?

9 A: Yes.

10 Q: But you didn't talk to him that night?

11 A: No. It was the following evening after I had the
12 opportunity to review the video and actually see him go behind
13 the building. I was looking for an explanation as to why
14 those bullets were on the ground.

15 Q: But you watched it the night of the incident and saw him
16 go in there?

17 A: Much later, yeah, and actually ---

18 Q: Okay.

19 A: And probably into the next day. We watched it a bunch of
20 times.

21 Q: Okay. I have, too. That's why I'm asking did you see
22 it.

23 A: Right.

24 Q: But you didn't call him in. You went to his house you
25 said I think two days later?

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 A: Yeah, I did.

2 Q: Okay. Let me ask you during that two days, was the --

3 How long do they keep a crime scene taped off?

4 A: It's necessitated on -- on every event is different. You

5 know, if -- I say every event is different. If it's

6 necessitated to keep it for a day or two days or three days

7 until it's cleared, we may have that.

8 Q: Well, do you know how long this was taped off?

9 A: I believe it was released that evening.

10 Q: Okay. So that evening they took the tape off?

11 A: Much later, yeah.

12 Q: Okay and people did business as usual after that?

13 A: Right.

14 Q: At the Kangaroo station?

15 A: Yes, sir.

16 Q: And you said that you went from your primary focus being

17 investigative to apprehension mode?

18 A: Yes.

19 Q: You mentioned that. So does that mean once you listened

20 to witness statements that you go from we're not investigating

21 this thing anymore, I'm not investigating this thing anymore,

22 I'm going to find the guy that they're saying did this?

23 A: Yeah, I wouldn't -- I wouldn't commit to saying we're not

24 investigating anymore. Maybe that was too short of an answer.

25 At the time when we had a suspect positively identified ---

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 Q: Mm-hmm.

2 A: --- and we knew we had -- obviously we had a very serious
3 situation. We had somebody murdered and shot. We knew we had
4 at least one person in the car, unknown if we had others.

5 Q: Mm-hmm.

6 A: The focus of law enforcement at that time is the
7 protection of other people as well.

8 Q: Right.

9 A: We knew we had a car on the run and we knew we had an
10 armed gunman in that car. That's what I meant when I said the
11 focus was shifting to an apprehension phase.

12 Q: Okay. Now let me ask you another question. When you
13 searched this wall and you had your crime scene investigator
14 search the wall and in the three years since this has
15 happened, there's only one hole in this wall that you're
16 saying is a bullet hole?

17 A: Yeah. The only hole that we had that was drawn to our
18 attention on that particular night when it happened was the
19 hole that we've -- we've all seen here.

20 Q: Okay. It's about yay big.

21 A: Yes.

22 Q: I mean about two inches wide?

23 A: It's large.

24 (Whereupon, the store surveillance video is played on the
25 screen again.)

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 MR. HARRIS: (To Joann) Will you bring that up? Yeah, go
2 back a few minutes and can you just pause it when I tell you
3 when? When he walks into the picture, will you pause it right
4 there?
5 Q: Okay. This is Carriage Lane out here, right?
6 A: That's correct.
7 Q: Okay. So right now he's walking off Carriage Lane?
8 A: Right.
9 Q: From where he was standing across -- You said he barely
10 crossed the street or they're saying they barely crossed the
11 street. Right?
12 A: Yes.
13 Q: But Frank Haigler was about three, 400 yards behind him
14 running?
15 A: Yeah. I don't know the distance.
16 Q: Okay.
17 A: All I can do is place him behind them.
18 Q: Okay, but he's walking in off the -- off Carriage Lane
19 right now?
20 A: Yes, he is.
21 Q: Okay, running from the gunshots he heard on -- at [REDACTED]
22 Plantation?
23 A: More than likely.
24 Q: Okay.
25 MR. HARRIS: If you can start it back up?

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 Q: And what's here? He reaches into his pocket and walks
2 under the camera and let's pause it here and this is the part
3 -- You're saying the bullet hits somewhere under the camera.
4 Okay, can we see the bullet hit or are you just talking about
5 the rubble that comes out?

6 A: You won't be able to see the bullet I don't think with
7 the human eye.

8 Q: Okay. So the guy is down here. Somebody is down here?

9 A: Yes.

10 Q: Okay.

11 MR. HARRIS: Now if you can play it.

12 A: It starts to get cloudy right in here.

13 Q: Right, but it gets ---

14 A: And here's your smoke.

15 Q: But it's smoke and then rubble.

16 A: And then debris.

17 Q: Okay and then he runs. Okay. So is it -- You're saying
18 that's smoke. Are you calling it a cloud of debris or is that
19 smoke?

20 A: I think it's a combination of brick. I think it's a
21 combination of brick and fragments from the bullet. It could
22 be anything.

23 Q: Okay. So it could be smoke?

24 A: As if -- if you shot into a masonry structure, you're
25 going to get a cloud.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

- 1 Q: Right.
- 2 A: And that's what I mean by it.
- 3 Q: So before the bullet hits, you're going to get a cloud,
- 4 before the masonry comes out?
- 5 A: When I say smoke, I'm referring to a cloud and maybe I
- 6 should've used that as a better term. That's -- that's what I
- 7 mean.
- 8 Q: Let me ask you -- You're -- But you're not an expert on
- 9 what ---
- 10 A: No, I'm not.
- 11 Q: Okay. So you can't say without a -- beyond a reasonable
- 12 doubt that that's not smoke, that it's a cloud of dust?
- 13 A: I'm just saying you have to -- I would have to associate
- 14 that with the impact that's -- It's -- It's happening at the
- 15 same time that the debris is flying off the wall.
- 16 Q: In the video it happens before the debris flies off the
- 17 wall. The smoke comes up and then the debris flies off the
- 18 wall. Wouldn't it ---
- 19 A: I can't -- You know, we're slowed down a little bit here,
- 20 too, on the video. It happens pretty fast. I mean it's ---
- 21 Q: So the smoke happens before the impact, but that's just
- 22 because of the video?
- 23 A: Yeah, I would have -- And honestly -- And I've seen this
- 24 video a bunch ---
- 25 Q: I have, too.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 A: --- and I've actually seen it clearer and I apologize to
2 the jury. We do -- There is a clearer angle shot of this.
3 It's all -- it's simultaneous is -- is the best word I could
4 -- I can say.
5 Q: Okay. So you see the smoke and then you see the rubble,
6 but ---
7 A: Right.
8 Q: Okay, but it's simultaneous, but not seconds apart?
9 A: No.
10 Q: Okay.
11 A: And ---
12 Q: And there are four gunshots you hear on that -- on that
13 camera?
14 A: I think it's four, yes.
15 Q: Okay and so you're saying one shot hit this wall,
16 ricocheted down, hit him and this -- this smoke and stuff came
17 up before the rubble did according to the video?
18 A: He's walking under the camera now.
19 Q: Mm-hmm.
20 A: As soon as he gets out of the view of the camera, you're
21 going to -- you can see it all start to come off the wall. So
22 it's -- it's that. It happens just like that.
23 Q: There's smoke coming up. There's rubble coming out.
24 A: There's your cloud first I believe.
25 Q: Okay.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 A: Which is what if you want to call it smoke, we can call
2 it smoke. I think it's a cloud of masonry dust and then
3 pieces of brick to follow.
4 Q: Okay, but the bullet hits up here, right?
5 A: Right.
6 Q: Not down there?
7 A: Yeah.
8 Q: I mean the smoke comes up from down there.
9 A: Yeah, but I -- You know, we don't have the advantage of
10 -- I believe that's coming from the same area.
11 Q: Okay. So ---
12 A: Yeah, I don't think that smoke is coming from an isolated
13 area other than where the bullet hits.
14 Q: Okay, but again, you're not -- you're not a gunshot ---
15 A: No.
16 Q: --- expert or anything like that?
17 A: No, I'm not.
18 Q: Okay. So in your opinion there's no way that that smoke
19 comes from a gun?
20 A: No. I do not believe that is smoke from a muzzle blast,
21 no.
22 Q: Okay. So, but not being an expert in masonry or
23 gunshots, that's just your opinion?
24 A: It is my opinion.
25 Q: Okay.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 A: Yep.

2 Q: Now this pistol found on the roof two days later?

3 A: Yes, sir.

4 Q: This is a .38, is that right?

5 A: That's what the -- When it was examined, it was
6 determined to be a very old model. I've never heard of it
7 myself, the brand.

8 Q: Okay and it's found -- Let me ask you -- You said when
9 you found those rounds, those live rounds, you knew it was
10 obviously related and significant again, but this was found
11 two days later, right? The gun?

12 A: Yeah, whatever night we went back to the store, yeah.

13 Q: Okay. So ---

14 MR. HARRIS: (To Joann) Can you put the video up one more
15 time to where the stuff hits.

16 Q: Okay. So now when this debris comes out -- We won't talk
17 about the cloud or the smoke and all.

18 A: Okay.

19 Q: When this debris comes out, this is -- they're saying
20 that right there is where the bullet hit that went down and
21 hit the guy in the back of the head, the side of the head, and
22 then right here that's his brother running?

23 A: Mm-hmm.

24 Q: So the bullet hits, goes down and he's running behind the
25 building, right?

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 A: Yes.

2 Q: Okay. Now when you got a call or when the 9-1-1 calls
3 came in, the report originally was there's somebody standing
4 over a body with a gun in their hand.

5 MR. VOIGT: Objection.

6 THE COURT: Basis?

7 MR. VOIGT: Hearsay.

8 THE COURT: Is there an exception?

9 MR. HARRIS: Your Honor, these are 9-1-1 calls that
10 they're responding to. I mean we can call the 9-1-1 operator.

11 THE COURT: Please approach.

12 (Whereupon, a bench conference is held off the record in
13 the presence of the jury, but out of the hearing of the
14 jury.)

15 THE COURT: Objection is withdrawn, rephrase.

16 MR. HARRIS: Okay.

17 Q: Dispatch calls out. You responded to dispatches of
18 shootings in the -- of a shooting in the area. Did you not --
19 Did they say a person in a red shirt is standing over the body
20 with a gun?

21 A: I never heard that information. When we were -- we were
22 actually called by -- not by the dispatcher, but by the
23 uniforms on the scene.

24 Q: Okay. So the uniforms called you?

25 A: Right.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 Q: And they responded to 9-1-1?

2 A: Yes.

3 Q: Okay.

4 MR. HARRIS: I beg the Court's indulgence, Your Honor.

5 THE COURT: Mm-hmm.

6 Q: On that night, who did you take statements from, written

7 statements from?

8 A: Personally I believe it was just Anthony, Anthony German.

9 Q: Okay. Now later on did you go take a statement from

10 Charise Coaxum?

11 A: I did.

12 Q: Okay. You took that statement at her home?

13 A: At her workplace.

14 Q: Workplace, okay. Now she lives and resides at [REDACTED]?

15 A: Yes.

16 Q: Do you recall that statement? Do you have a copy of that

17 statement?

18 A: I have one here, yes.

19 Q: Okay. Did she explain to you what had happened that

20 night?

21 MR. VOIGT: Objection.

22 THE COURT: Basis?

23 MR. VOIGT: Hearsay.

24 THE COURT: Please approach.

25 (Whereupon, a bench conference is held off the record in

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 the presence of the jury, but out of the hearing of the
2 jury.)

3 THE COURT: Proceed and rephrase. The objection is
4 withdrawn.

5 MR. VOIGT: Thank you.

6 THE COURT: You're welcome.

7 Q: You took her statement at her work?

8 A: Yes.

9 Q: And she showed you a text message from her husband?

10 A: I don't believe she showed me. She told me about it.

11 Q: Okay.

12 A: Okay.

13 Q: And what was the -- what was written down as the ---

14 A: Text?

15 Q: --- body of that text message?

16 A: She stated the text message was from her husband. Tell
17 my brother that he was on the way and that real people don't
18 -- real people do real things. Your mama called me a sissy
19 and tonight we see. Well, I text him back saying you tell him
20 anyway the kids and I are going to the house to pick up some
21 clothes because we're going to stay with mom for a couple
22 days.

23 Q: Okay and so he -- That's -- Her husband would be Michael
24 Allen?

25 A: That's correct.

CROSS EXAMINATION OF RICHARD BURCKHARDT BY MR. HARRIS

1 Q: Who is one of the people involved that we see in this
2 video?

3 A: Yes.

4 Q: Okay.

5 MR. HARRIS: I beg the Court's indulgence one more
6 moment, Your Honor.

7 THE COURT: Mm-hmm.

8 MR. HARRIS: I don't have any further questions.

9 THE COURT: Any redirect?

10 MR. VOIGT: No, Your Honor.

11 THE COURT: Any objection to the witness stepping down
12 subject to recall from the State?

13 MR. HARRIS: No, Your Honor.

14 THE COURT: From the defense?

15 MR. VOIGT: None, Your Honor.

16 THE COURT: Sir, you may step down.

17 MR. BURCKHARDT: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 (Whereupon, the witness leaves the stand at 3:50 p.m.)

20 THE COURT: Ladies and gentlemen, you all have been
21 sitting about an hour and 15 minutes. I'm going to give you a
22 brief recess to refresh yourselves and go to the rest room.
23 During this break, please do not discuss the case and please
24 leave your notepads in your seats.

25 (Whereupon, the jury leaves the courtroom at 3:51 p.m.)

1 THE COURT: You may be seated. Who is the State's next
2 witness?

3 MR. VOIGT: The next witness, Your Honor, is Kenneth
4 Whitler, the SLED witness.

5 THE COURT: Now are there any witnesses on the State's
6 list that you will not be calling?

7 MR. VOIGT: One moment.

8 THE COURT: And just give me the numbers.

9 MR. VOIGT: At this time, Your Honor, it looks like 17,
10 18, 5 and 6 would be -- I'm considering cutting those,
11 probably more than just considering.

12 THE COURT: So then that would leave 8, 9, 10, 11, 12,
13 13, 14, 16. Correct?

14 MR. VOIGT: Yes, Your Honor.

15 THE COURT: Are there any witnesses on the defense's list
16 that you will not be calling and you can refer to them by the
17 numbers that you utilized on the left hand side?

18 MR. HARRIS: Your Honor, the only one that I -- that we
19 are considering not calling -- Obviously, we're not calling
20 number five.

21 THE COURT: Mm-hmm, you already told me that.

22 MR. HARRIS: You can take that one off.

23 THE COURT: Mm-hmm.

24 MR. HARRIS: Number seven. Those are the two that we are
25 99 percent sure we're not calling.

1 THE COURT: Okay. I was just asking for scheduling
2 purposes. Okay, we'll take about a ten minute recess. I plan
3 to resume at 4:00 and I currently have 3:52.

4 MR. VOIGT: Thank you, Judge.

5 THE COURT: You're welcome.

6 (Whereupon, there is a break in the proceedings from 3:52
7 p.m. until 4:02 p.m.)

8 THE COURT: Is the State ready to proceed?

9 MR. VOIGT: Yes, Your Honor.

10 THE COURT: Is the defense ready to proceed?

11 MR. HARRIS: Yes, Your Honor.

12 THE COURT: Give me one second and then you can bring in
13 the jury.

14 MR. VOIGT: Do you want me to get the witness, Your
15 Honor?

16 THE COURT: Who is your next witness?

17 MR. VOIGT: Kenneth Whitler.

18 THE COURT: Yeah, go ahead and get him.

19 MR. VOIGT: Okay, Your Honor.

20 THE COURT: Mr. Whitler, you can go ahead and come up and
21 stand over by the witness stand for me, please. Okay, is the
22 defense ready?

23 MR. HARRIS: We're ready, yes.

24 THE COURT: Okay. You can go ahead and bring in the
25 jury.

DIRECT EXAMINATION OF KENNETH WHITLER BY MR. VOIGT

1 (Whereupon, the jury enters the courtroom at 4:04 p.m.)

2 BAILIFF: The jury is present, Your Honor.

3 THE COURT: Thank you. You may be seated. Ladies and
4 gentlemen, I hope you enjoyed your break. We'll now proceed
5 with the next State's witness. The State may proceed.

6 MR. VOIGT: Thank you, Your Honor. The State calls
7 Kenneth Whitler.

8 THE COURT: Please swear the witness.

9 THE CLERK: Do you swear or affirm that your testimony
10 will be the truth, the whole truth and nothing but the truth,
11 so help you God?

12 MR. WHITLER: I do.

13 THE CLERK: Be seated. Please state your full name and
14 then spell your last name for the record.

15 MR. WHITLER: My name is Kenneth H. Whitler and my last
16 name is spelled W-H-I-T-L-E-R.

17 THE COURT: You may proceed.

18 MR. VOIGT: Thank you very much, Your Honor.

19 THE COURT: You're welcome.

20 KENNETH WHITLER, being first duly
21 sworn, testifies as follows:

22 DIRECT EXAMINATION

23 BY MR. VOIGT:

24 Q: Mr. Whitler, where do you work?

25 A: I work for the South Carolina Law Enforcement Division

DIRECT EXAMINATION OF KENNETH WHITLER BY MR. VOIGT

1 that's also known as SLED.

2 Q: And how are you employed there?

3 A: I am in the forensics lab in the firearms department.

4 Q: And how long have you been in the firearms department?

5 A: At SLED, since 1997.

6 Q: Have you worked in any other forensic labs or firearms
7 departments before that?

8 A: Yes, sir. Previous to that, I was in the FBI laboratory.
9 I retired in 1997 from there.

10 Q: And what is your training and experience regarding
11 firearms? What -- what -- what's involved with your training?

12 A: The training is in the field called firearms
13 identification and that basically deals with the study of the
14 marks on ammunition components such as bullets or cartridge
15 casings to determine if they were fired by the same gun or
16 from a particular gun. We also do tool mark examinations if
17 you have a tool that might have made a mark, but the bulk of
18 our work is firearms related.

19 MR. VOIGT: At this time, I would offer the stipulation
20 that Mr. Whitler is an expert in the field of forensic firearm
21 examination.

22 THE COURT: Any objections or questions?

23 MR. HARRIS: Your Honor, if this is for the ---

24 THE COURT: It would be for firearms and tool marks.
25 That is what his education, training and experience is in.

DIRECT EXAMINATION OF KENNETH WHITLER BY MR. VOIGT

1 MR. HARRIS: No other questions, Your Honor, and no
2 objection.

3 THE COURT: So admitted without objection.

4 MR. VOIGT: Thank you very much, Your Honor.

5 THE COURT: You're welcome.

6 Q: Mr. Whitler, did you have the -- Were you able to examine
7 in this case two lead fragments that were submitted to you by
8 the Charleston Police Department?

9 A: Yes, I did.

10 Q: And when you examine bullets, bullet fragments,
11 projectile fragments, how -- what's the physical act? How do
12 you do that?

13 A: Well, first you -- you look at them just with your plain
14 eye to see what they look like and then you go to what we call
15 a stereoscope, which is a microscope that lets you go up
16 several powers to look for more detail. If you are trying to
17 do a comparison, then we have a comparison microscope, which
18 goes up into more magnification and enables you to look at two
19 objects at the same time to compare the marks on them to see
20 if they were made by the same firearm or -- or fired by the
21 same gun.

22 In this case, we didn't get any further than using the
23 stereoscope because these were basically two lead fragments.
24 The examination of them determined I couldn't -- I couldn't
25 see any bullet characteristics, no rifling characteristics.

DIRECT EXAMINATION OF KENNETH WHITLER BY MR. VOIGT

1 So basically at this point they are just lead fragments and
2 they could have been part of a lead bullet, part of a core
3 from a jacketed bullet or maybe even buckshot. There's no way
4 to tell. They're just so damaged and mutilated, I basically
5 called them lead fragments and that's as good as we can do.

6 Q: Okay and what are the types of things that would render
7 -- How would -- How would a fragment get so mutilated? What
8 are the types of things that would mutilate a fragment in that
9 way?

10 A: Well, if a -- if it hits an object or goes through
11 something, it can damage it to the point where the marks, the
12 rifling characteristics or bullet characteristics are
13 obliterated. If it's say a jacketed bullet, which is a bullet
14 that has a copper jacket over a lead core, if that jacket
15 peels off, that's the one that has the rifling characteristics
16 on it and the lead is very soft and very prone to damage. If
17 it breaks up, then you have absolutely no marks to work with
18 at all and in many cases, you -- there's no bullet
19 characteristics either because the lead breaks up.

20 Q: Now you mentioned rifling. Rifling -- What are rifling
21 -- What is rifling?

22 A: Well, rifling is put in the barrels of firearms to
23 stabilize the bullet. They're actually grooves cut in or
24 impressed in the barrel of the gun. When the bullet goes down
25 the bore, it picks up these marks that were left over from the

CROSS EXAMINATION OF KENNETH WHITLER BY MR. HARRIS

1 manufacturing process and by comparing bullets one to another
2 or test fired bullets from the gun if you're trying to
3 determine if a gun fired a particular bullet, you're looking
4 for those microscopic marks and those rifling impressions that
5 as the bullet goes down the bore it squeezes and puts those
6 marks into the surface of the bullet and if you have that,
7 then you have something to work with. In this case, we didn't
8 have anything like that.

9 Q: Okay. These two fragments, could you even tell if they
10 were from the same projectile?

11 A: No, sir. They're just two lead fragments.

12 Q: And from that you couldn't -- you couldn't tell if it was
13 a bullet, if it was a bullet what caliber it was or anything
14 like that?

15 A: No, sir.

16 Q: Thank you. Please answer any questions that Mr. Harris
17 may have of you.

18 THE COURT: You may proceed.

19 MR. HARRIS: Briefly. Thank you, Your Honor.

20 THE COURT: You're welcome.

21 CROSS EXAMINATION

22 BY MR. HARRIS:

23 Q: Could you -- As far as if you can't tell what it is, you
24 can't rule out certain types of guns?

25 A: No, sir.

CROSS EXAMINATION OF KENNETH WHITLER BY MR. HARRIS

- 1 Q: So you couldn't -- So you can't say without question it's
2 not a 9 millimeter?
- 3 A: No, I couldn't. The bullets weighed enough that --
4 Excuse me, the lead fragments weighed enough that they
5 couldn't be .22's.
- 6 Q: Okay.
- 7 A: Because they -- they weighed more than a .22 bullet would
8 be.
- 9 Q: Okay.
- 10 A: But they could be parts of say a 9 millimeter bullet or
11 parts of a .38 caliber bullet or even a .45 that's broken up.
- 12 Q: Okay.
- 13 A: So there's no way to tell other than I can tell you based
14 on weight alone they couldn't have been two .22's.
- 15 Q: Right, because those are small little bullets?
- 16 A: Right.
- 17 Q: Let me ask you this: You mentioned these jackets earlier.
18 Would a high powered -- I know that like say some have steel
19 jackets on them like an AK-47 would have a steel jacket on the
20 bullet. That's the jacket you're talking about, the outside?
- 21 A: Right.
- 22 Q: Okay, but this one didn't have steel in it?
- 23 A: No, this was just the lead. I mean it could have come
24 from a jacketed bullet.
- 25 Q: Okay.

CROSS EXAMINATION OF KENNETH WHITLER BY MR. HARRIS

1 A: You know, if the jacketed bullet breaks up, then the lead
2 is exposed and the jacket it can go one place and the bullet,
3 the core, can go somewhere else.
4 Q: Would you normally find the jacket somewhere in that
5 vicinity?
6 A: Sometimes you do and sometimes you don't.
7 Q: Okay.
8 A: It just depends on what they hit and how hard and the
9 angle and things like that.
10 Q: Okay. Thank you.
11 THE COURT: Any redirect?
12 MR. VOIGT: No redirect, Your Honor.
13 THE COURT: Any objection to the witness being excused
14 from the State?
15 MR. VOIGT: None from the State, Your Honor.
16 THE COURT: From the defense?
17 MR. HARRIS: None, Your Honor.
18 THE COURT: Sir, you're excused. The State may proceed.
19 (Whereupon, the witness leaves the stand at 4:12 p.m.)
20 MR. VOIGT: The State calls Frank Haigler to the stand.
21 THE CLERK: Stand here, please. Put your left hand on
22 the Bible and raise your right hand. Do you swear or affirm
23 that your testimony will be the truth, the whole truth and
24 nothing but the truth, so help you God?
25 MR. HAIGLER: I do.

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 THE CLERK: Be seated. Sir, if you would, speak into the
2 mic and state your full name and then spell your last name for
3 the record.

4 MR. HAIGLER: Frank Lamont Haigler, Jr. Haigler, H-A-I-
5 G-L-E-R.

6 THE COURT: You may proceed.

7 MR. VOIGT: Thank you very much, Your Honor.

8 THE COURT: You're welcome.

9 FRANK HAIGLER, being first duly
10 sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. VOIGT:

13 Q: Mr. Haigler, do you know Anthony German?

14 A: Yes, I do.

15 Q: And how do you know Anthony German?

16 A: Through my brother, Michael. He used to work at the job
17 with us.

18 Q: And what's your brother Michael's last name?

19 A: Allen.

20 Q: Do you know Jerome Campbell?

21 A: Briefly, not -- not -- not as well as I know Anthony and
22 I only met him like on three occasions through my brother.

23 Q: And how does -- how is your brother -- how does your
24 brother know Jerome, if you know?

25 A: Through his wife.

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 Q: And who is his wife?
2 A: Charise.
3 Q: And what is Charise's last name?
4 A: I'm not sure.
5 Q: Have you met Charise before?
6 A: Yeah.
7 Q: Do you know Michael German?
8 A: Yeah.
9 Q: Did you know Michael German?
10 A: Yes, I did.
11 Q: Were you with Anthony, Michael Allen and Michael German
12 on January 9th, 2009?
13 A: Yes, I was.
14 Q: Can you pull that microphone just a little bit closer
15 there?
16 A: Yes, I was.
17 Q: Okay. When did you first get -- When did you first get
18 together with Michael Allen and Michael German and Anthony
19 German that day?
20 A: I can't really recall the time, but I knew it was just
21 before dark.
22 Q: Okay.
23 A: I got a phone call from them to meet them at their house.
24 Q: On January 9th, 2009, did you see Jerome Campbell that
25 day?

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

- 1 A: Yes, I did.
- 2 Q: Where was the first time that you saw Mr. Campbell?
- 3 A: Where did the first time that I seen him?
- 4 Q: The first time that day that you saw Mr. Campbell?
- 5 A: In front of my sister's house -- I mean in front of my
- 6 sister-in-law's house, Charise's house.
- 7 Q: On January 9th, 2009, were you ever at Anthony German and
- 8 Michael German's apartment?
- 9 A: Yes, I was.
- 10 Q: And when was that?
- 11 A: I would say like a good maybe 35, 35 to 40 minutes before
- 12 we took my brother home.
- 13 Q: Okay. Did you see Mr. Campbell there at that apartment
- 14 during that time?
- 15 A: I didn't see him there. I heard him there.
- 16 Q: Okay. Did you see his car?
- 17 A: Yes, I did.
- 18 Q: What kind of car is it?
- 19 A: A white Impala with black tinted windows.
- 20 Q: Let me show you a picture. Look behind you, Mr. Haigler.
- 21 Is this the car we're talking about? It's going to come up in
- 22 a second.
- 23 A: Yes, it is. It looks like that.
- 24 Q: Okay and I'm going to show -- That was State's 48. This
- 25 is -- I'm going to ---

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 MR. VOIGT: May I approach, Your Honor?

2 THE COURT: You may.

3 Q: This is State's 49. Is this that same car?

4 A: It looks like the car.

5 Q: Okay and did you see that car that night?

6 A: I seen a white Impala with black tinted windows.

7 Q: Did it have North Carolina plates?

8 A: I ain't seen the license plates.

9 Q: Okay and you said you heard Mr. Campbell?

10 A: Yeah, I heard his voice.

11 Q: And where were -- where did that voice emanate from?

12 A: Out of the car.

13 Q: How far away from the car were you?

14 A: I would say about -- In fact, I was walking to the car

15 and I was told don't come towards the car, I don't want to

16 come towards the car.

17 Q: Who told you that?

18 A: He did.

19 Q: What words did he use?

20 A: He said, "Don't come next to this car. You don't know

21 what's in this car. Do not come next to this car." And I was

22 still walking to the car to try to talk to him and the window

23 went down about halfway and ---

24 Q: Which window?

25 A: The back side window.

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 Q: Okay.

2 A: And I seen a hole and that's when I told Anthony, I was
3 like, "Yo, everybody back up because he's got a gun." And we
4 backed up and at the same time, that's when Anthony's mother
5 and his sister pulled up and was like, "What's going on?" and
6 Anthony was like, "Get in the house, get in the house." And
7 they sped off.

8 Q: When you say they, you mean the people ---

9 A: In the car. The car sped off.

10 Q: You heard Jerome's voice?

11 A: Yes, I did.

12 Q: Did you recognize it immediately as Jerome's voice?

13 A: Yes, I did.

14 Q: After this meeting or this encounter, where did y'all go
15 next?

16 A: We went to the gas station and bought a beer. We didn't
17 go exactly there because his mother was so excited. She
18 didn't know what was going on and he was like, "Just get in
19 the house, just get in the house." And then at that time, my
20 brother was still getting phone calls telling him don't come
21 home, for him not to come home.

22 Q: And where was home to your brother? Where are we talking
23 about?

24 A: I call it Plantations.

25 Q: Okay. Now had you been to that apartment earlier that

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

- 1 day?
- 2 A: Yes, I was.
- 3 Q: When about earlier that day did you go?
- 4 A: Before we went to Anthony's house, before I went to
- 5 Anthony's house.
- 6 Q: Okay. So before you went to Anthony's house, you went to
- 7 your sister-in-law's apartment, the one that your brother
- 8 shares with her?
- 9 A: Right.
- 10 Q: And that's in the Plantation -- Plantations is what you
- 11 call it?
- 12 A: Yes.
- 13 Q: Did you go inside that apartment?
- 14 A: Yes, I did.
- 15 Q: Who was there inside the apartment?
- 16 A: I think was -- I know my brother was there, his wife was
- 17 there and her mother was there.
- 18 Q: Okay.
- 19 A: Right. I think there was a couple of kids in the house,
- 20 too.
- 21 Q: Okay. Were Anthony and Michael German there?
- 22 A: No.
- 23 Q: Inside?
- 24 A: No.
- 25 Q: Why were you there at that apartment earlier in the day?

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 A: To alleviate a dispute that went on that my brother and
2 his wife -- to try to get him back into the house because they
3 -- they'd been having arguments here and there. So I'm
4 basically there to be like a mediator like to resolve --
5 resolve the situation.

6 Q: Okay. I'm going to show you what's been previously
7 marked as State's 13, 14 and 15.

8 MR. VOIGT: May I approach, Your Honor?

9 THE COURT: You may.

10 Q: Do you recognize these?

11 A: That's my brother-in-law -- that's my brother's
12 apartment.

13 Q: Okay. So this is State's 13. That's the front door of
14 your brother and sister-in-law's apartment?

15 A: Yep.

16 Q: State's Exhibit 14, this is a little bit farther away and
17 then State's 15, a little bit farther than that. Is that
18 right?

19 A: Yes.

20 Q: Now you said you were there to alleviate the situation.
21 What were you doing there to alleviate the situation? What --
22 what did you think your role was?

23 A: To find out what was going on, you understand? Because
24 like I said, they'd been having arguments here and there. You
25 know, they had just got married and things wasn't going well.

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 So there was always some things, she throwing him out, stuff
2 like that, you know.

3 My thing was -- Because the mother was -- I stayed there
4 for like 45 minutes. Understand what I'm saying? My thing
5 was just he didn't -- he didn't -- he didn't have nowhere else
6 to go because my apartment was too small. So him -- her
7 throwing him out on the street, where is he going to go? You
8 understand what I'm saying?

9 Q: Right.

10 A: And while the mother was there, you know, there's two
11 sides to each story. I know that. Whatever he tells me, I'm
12 not going to believe him because I know my brother and when
13 she tells me -- but my thing is they're married, let them work
14 it out together. You understand what I'm saying? Let them
15 deal with it because if they don't communicate with each
16 other, how they going to get anything accomplished. You
17 understand what I'm saying here? So my thing was just to make
18 sure he has somewhere to lay his head.

19 Q: Okay. Was Jerome Campbell there when y'all were having
20 this discussion?

21 A: No, he wasn't.

22 Q: Now where did y'all go with Michael after you left that
23 apartment?

24 A: Where did we go?

25 Q: Yes. Where did you -- where did y'all relocate to?

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 A: We went back to Anthony's house.

2 Q: And we're talking about Anthony German?

3 A: Anthony and Michael German, yes.

4 Q: And that's where -- Is that where you saw -- you first

5 saw that white Impala?

6 A: Right.

7 Q: Okay.

8 A: And in fact, all of us left the house at the same time.

9 Me, my brother, the mother, Charise, we all left.

10 Q: Okay.

11 A: Everybody left at the same time. They was going to James

12 Island and we went back over there.

13 Q: Okay. When you say you went back over there, you went

14 back to Anthony and Michael's apartment?

15 A: We went back to Anthony's, right.

16 Q: Okay. Why did y'all decide to go back to this apartment

17 at night?

18 A: Because Jerome Campbell kept calling my brother

19 threatening him, telling him don't come home.

20 Q: And that's Michael's apartment?

21 A: And that's his home. So my brother was like how you

22 going to tell me I can't go home and I live there. I'm going

23 home and he told him -- My brother had him on speaker phone.

24 MR. HARRIS: Objection, Your Honor.

25 THE COURT: Basis?

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 MR. HARRIS: Oh, he had him on speaker phone. Okay.

2 THE COURT: Are you withdrawing your objection?

3 MR. HARRIS: Withdrawn.

4 THE COURT: Objection is withdrawn. You may proceed.

5 Q: Go ahead.

6 A: My brother had him on speaker phone. So we heard
7 everything he was saying. He told -- he was telling my
8 brother don't go home. My brother -- They were arguing back
9 and forth. So he -- Because his last words for him to say to
10 my brother, come home and see what happens.

11 Q: Did that concern you about what ---

12 A: Of course, it did.

13 Q: --- you heard him say?

14 A: Of course, it did. Mind you, I had to go to work that
15 night.

16 Q: Okay. Where did you work at the time?

17 A: I was working with Salisbury by Honeywell on Azalea
18 Drive.

19 Q: Did y'all go back to that apartment or did you go back to
20 that apartment later that night?

21 A: Man, you got to excuse me for a second.

22 (Whereupon, the witness gets some tissue to wipe his brow
23 and face.)

24 A: We went back to the apartment. The plan was we went to
25 the store and we didn't go straight to the apartment. We went

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 to the store and went in and had a beer. So our thing was
2 everybody was going to go home, but we was concerned about my
3 brother going home by hisself.

4 So the plan was you guys stay right here, I'm going to go
5 up to the apartment to talk to this guy because he must don't
6 know that we already talked to the mother and the sister. So
7 y'all start right here and let me go over there because like I
8 said, they both was arguing with each other and I didn't want
9 nothing to escalate that was already -- I didn't want the fire
10 to start burning again that had already been out, been put
11 out. You understand what I'm saying?

12 So I was saying y'all stay here and let me go talk to him
13 because I'm an innocent bystander. I don't have nothing to do
14 with nothing. I'm just here to alleviate a problem.

15 Q: Okay.

16 A: And when I went to the house, I seen him.

17 Q: This is the house we're talking about here?

18 A: I'm talking about this house right here.

19 Q: Okay.

20 A: Jerome was standing right here. It was -- You can't see
21 on this, but it's like there was a black SUV parked right here
22 with two other people. I'm coming from the gas station
23 walking up.

24 Q: About how far away is the gas station? Do you know?

25 A: It's a good ways. You'd have to look over there to see,

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 but it's a little ways.

2 Q: Okay.

3 A: You understand? It would take me like about a minute,

4 two minutes to walk up from ---

5 Q: Okay.

6 A: --- the gas station to there.

7 Q: Is it a straight shot through the parking lot?

8 A: Straight through.

9 Q: Or is there any obstruction between you and the gas

10 station?

11 A: No. If I'm coming from the gas station, I can come

12 straight through.

13 Q: Okay.

14 A: And once I got there, I didn't -- Because it was dark I

15 didn't know who was who at first. So I was like, "Jerome,

16 Jerome, and ---"

17 Q: Did you have a gun on you?

18 A: No.

19 Q: Okay.

20 A: I had a can of beer in my hand.

21 Q: Okay.

22 A: I say, "Jerome, Jerome," and he was like, "Who's that?"

23 And once he said who's that, I knew who he was. I'm like,

24 "Yo, this is Mike's brother." He was like, "What, what, what

25 you doing over here? What you doing over here?"

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 I'm like, "Yo, chill, man." I'm like, "Yo, what's going
2 on, yo." And he's like, "What, what, you don't know me, you
3 don't know me." I'm like, "Yo, all you got to do --" I said,
4 "Yo, what's all that for, man?" "You don't know me. What you
5 want? What you want?" I'm like, "Yo, what's going on?"

6 He was like, "Yo." I said, "Yo, just call your mom and
7 your sister. This thing has been alleviated." "What? What
8 you said?" He was so -- He was like heightened and I've known
9 him, but I've never seen him before heightened and he was
10 like, "Man, what? You ain't saying nothing."

11 Then he turned and said, "Go get that, go get that." And
12 when he said go get that, out of my corner eye I seen two
13 dudes with shotguns. I ain't -- They was no -- Shotguns was
14 coming out of my brother's house and Jerome hit me in the
15 face.

16 (Whereupon, the witness pounds his fist on the stand.)

17 Excuse me -- punched me in my face. When he punched me
18 in my face, I spinned around and ran on this side across from
19 there where there was a bunch of cars and started running
20 through the cars. Now I'm on the floor ---

21 Q: I'm going to show you what's been marked as State's 24.
22 Is this the area where you ran between the cars?

23 A: Yeah, it looks like it. That looks like the same side as
24 my brother's house, so I don't know, you know.

25 Q: It kind of all looks the same right there.

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 A: Right, because it's -- they -- they look the same. I'm
2 on this side of my brother's and I'm running across to that
3 side. You understand what I'm saying?

4 Q: I'm going to show you what's been marked as State's 18.
5 Does that look like the place where you would have run?

6 A: Yeah, because I was running behind the bushes and stuff
7 like that.

8 Q: Did -- Now these apartments over there, do they have
9 interior courtyards?

10 A: What do you mean?

11 Q: Are they like -- In the apartments themselves, there are
12 like -- are there like little lawn areas on the -- on the
13 inside?

14 A: It was concrete.

15 Q: Let me just -- let me show you State's 19. Do you
16 recognize that as a place where you would have run?

17 A: Yeah, I did run through a alley.

18 Q: Okay. Do you recognize that as a place where you would
19 have run?

20 A: Yeah, I was on like that way running straight down trying
21 to get back towards -- towards the gas station.

22 Q: Kind of like what I'm going to show you, State's 21. Is
23 that a place where you would have run?

24 A: In fact, that's it right there, running across the road,
25 go down to cut through the next -- the next opening.

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 Q: And the next -- and so if you're running, if we're going
2 away from where you're sitting right now, down on that side,
3 that's toward -- back towards the gas station?

4 A: Yeah.

5 Q: And you would have come out another opening?

6 A: Exactly.

7 Q: I'm going to show you what's State's 22. Does that kind
8 of look like the opening you're talking about?

9 A: I come up from around that way to come out this way and
10 then go back down ---

11 Q: Okay.

12 A: --- same as the pictures. You can come out from that
13 side and come this way and now you're back -- you're back like
14 if you was walking straight up the path and the gas station is
15 the other way.

16 Q: I'm going to show you what's been marked as State's 23.
17 Do you see the gas station in the background there? I may
18 need to show you another one.

19 A: I don't know.

20 Q: Let me show it to you another way.

21 A: I don't see no gas station.

22 MR. VOIGT: Hold on a second. May I approach, Your
23 Honor?

24 THE COURT: You may.

25 Q: Take a look at that shot. That's State's 23. Is that

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 the gas station there?

2 A: Across the street?

3 Q: Yes.

4 A: Yeah.

5 Q: Okay. In that picture?

6 A: Yeah.

7 Q: Okay and when you ran from Jerome ---

8 A: Right.

9 Q: --- did you hear any loud noises?

10 A: Yeah, two gunshots.

11 Q: What did you hear?

12 A: Two gunshots right after he hit me.

13 Q: Do you think somebody was aiming at you?

14 A: Wasn't nobody else there but us.

15 Q: I'm going to show you what I marked as State's Exhibit

16 25. It's up behind you there. Would you have traveled along

17 there, too?

18 A: I can't say, man.

19 Q: And I don't ---

20 A: You'd have to be in the area. I just -- To tell you the

21 truth, it was dark.

22 Q: It was dark.

23 A: I'm running for my life, man. I'm on the floor, like I'm

24 in the Army or something. You understand what I'm saying?

25 And it's a alley. I don't even really know how to get out the

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

- 1 complex. I'm seeing shadows and getting scared, thinking what
2 if one thug, two thugs -- I'm thinking they still behind me.
3 I don't know. I'm just running trying to get towards back
4 where my brother and them is at. You understand what I'm
5 saying?
- 6 Q: Yeah.
- 7 A: And once I do get there, I'm on one side of the street.
8 I see them on the other side of the street. You hear the car
9 coming around the corner and you just hear gunshots and
10 everybody hit the floor and Michael German, God rest the dead,
11 was the only one that didn't get up.
- 12 Q: I'm going to show you State's Exhibit 1. Do you
13 recognize that area?
- 14 A: Yeah, that's the gas station.
- 15 Q: Okay. Where -- Did you get that far?
- 16 A: No.
- 17 Q: Okay. This night, did you get across Carriage Lane
18 before you heard the car?
- 19 A: What do you mean?
- 20 Q: Did you get across this street before you heard the car?
- 21 A: Did I get to the side of the gas station?
- 22 Q: Did you get on the other side?
- 23 A: No, I jumped in the bushes on this side because I seen
24 the car coming.
- 25 Q: And what car ---

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

- 1 A: I hit the floor.
- 2 Q: --- did you see coming?
- 3 A: The same white Impala.
- 4 Q: Is that the same white Impala that you had seen earlier
- 5 in the day?
- 6 A: Yes, sir.
- 7 Q: Was that the same white Impala that you had heard
- 8 Jerome's voice from?
- 9 A: Yes, I did, yeah.
- 10 Q: What first ---
- 11 A: You got to understand we knew it was his car because we
- 12 know him. It's the only car he had. We knew that.
- 13 Q: Where was the car when you first saw it?
- 14 A: Where was the car when I -- You mean ---
- 15 Q: When you first ---
- 16 A: When I first seen the car?
- 17 Q: No, no, no. Right up here when you're coming back
- 18 towards the gas station.
- 19 A: It was coming from the other side of the Plantations,
- 20 coming around like -- You got to -- Like see I'm running
- 21 through the alleys. Now there's a alley here, right? You
- 22 have this side and then you've got another street of the
- 23 Plantations where you could come out and come around. It's
- 24 like if you're heading somebody off.
- 25 Q: Mm-hmm.

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

- 1 A: You understand what I'm saying?
- 2 Q: Mm-hmm.
- 3 A: And by the time I got to the end across the street, you
- 4 hear the skid. That's what made me look. Once I heard the
- 5 car skid marks and I seen it coming and they probably wasn't
- 6 aiming at me right there, but you understand, when I heard the
- 7 shots, it was bushes right there. I couldn't even make it
- 8 across the street to my brother and them. I just jumped in
- 9 the bushes. Everybody hit the floor.
- 10 Q: Do you know where about -- Can you show us or point in
- 11 that picture where the car would have been when you first
- 12 heard the shots? Did you see it?
- 13 A: When I seen the car coming, man, I just hit the floor. I
- 14 can't tell you ---
- 15 Q: Okay.
- 16 A: --- where I first heard the shots. I'm on the floor, I'm
- 17 not looking, I'm not trying to. I done got shot at already.
- 18 I'm not trying to get shot at now. Thank God I'm still here.
- 19 Q: Did you see your brother get up?
- 20 A: Yes, I did.
- 21 Q: Did you see Anthony get up?
- 22 A: Yes, I did.
- 23 Q: What did you do next?
- 24 A: Once we all got up, once the car passed after the shots
- 25 and the car passed, I got up, walked across the street, was

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 walking across the street to them. They was getting up.
2 Michael didn't get up. I don't think -- I don't think Anthony
3 realized it. My brother was the first one to realize it
4 because he went to shake him and then we seen the hole in his
5 head and that's when Mike just went ballistic. He just
6 couldn't believe it.

7 MR. VOIGT: One moment, Your Honor.

8 THE COURT: Mm-hmm.

9 MR. VOIGT: And I apologize. I'm switching to a -- to a
10 video here.

11 MR. HAIGLER: Oh, okay.

12 (Whereupon, a video from the interior of the store is
13 shown on the screen, a view not shown previously. There
14 is no sound on this video.)

15 Q: Do you recognize that, Frank?

16 A: That's the store, the gas station.

17 MR. VOIGT: Can you go back a little bit?

18 Q: Is that the store where y'all went?

19 A: Yeah, looks like it.

20 MR. VOIGT: Hold on just a second.

21 Q: Is this a fairly busy store, Frank?

22 A: It depends on the time.

23 Q: Okay. Why did y'all come to the store first?

24 A: That's the store we always go to. My brother lives, like
25 I said, right straight up. We came to the store to get a

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 beer. I came to the store to get a beer.

2 Q: Okay.

3 A: I had to drink a beer to calm my nerves.

4 Q: Okay and what was -- what was the plan for the other
5 guys? You were going to go up to the front door, but what
6 were the other guys going to do?

7 A: Just sit there and wait until I come back.

8 Q: For the ---

9 A: Like I say, I couldn't understand why he was there in the
10 first place after I done had a 45 minute conversation with my
11 -- my brother's wife and her mother and from -- from what I
12 gathered everything was supposed to have been okay, so.

13 That was my whole objective, to go to him and be like,
14 "Yo, talk to your mother, you know, because she should tell
15 you what's going on and everything is all right. That's the
16 reason you here."

17 Q: And for the record, we're watching a video of you on
18 State's Exhibit 63B, the interior camera view. Do you know
19 the cashier or the clerk who works here?

20 A: Yeah, Josh. His name is Josh. I just know him by Josh.

21 Q: Okay and that is just ---

22 A: The one that was working that night?

23 Q: Yeah.

24 A: Yeah.

25 Q: I want to ask you: After the shooting, did you stay in

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 one place or did you move around a bit?

2 A: After we -- after I realized that Michael was shot, the
3 first thing I went to do I seen a cop car like on the other
4 side and I tried to go over there and flag him down, but
5 ironically, he just -- when the light changed, he just kept
6 going and I couldn't believe that one and so we all was just
7 on our cell phones. The first thing my brother did was call
8 his wife to tell her what her brother did. Do you understand
9 what I'm saying here? So we all had our cell phones calling
10 9-1-1.

11 MR. VOIGT: I'm trying to make this go a little faster.
12 I apologize. Technology is not my strong suit. Let it play,
13 Joann.

14 Q: You and I have reviewed this tape, haven't we, Frank?

15 A: Yeah, once.

16 MR. VOIGT: Joann, let's switch to the other one. Let's
17 go to the front view.

18 Q: You reviewed that videotape inside the store, right,
19 Frank?

20 A: Not this one.

21 Q: And you and I have looked at this one, too, right?

22 A: Yeah, once.

23 Q: Okay.

24 MR. VOIGT: Can you make that full screen for us?

25 (Whereupon, the video showing is the view of the gas

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 pumps in front of the store.)

2 Q: Did anybody else come and assist Michael after he was
3 shot?

4 A: Yeah, one -- one -- one guy came running over there right
5 after the shots. I think that's this guy right here. Right
6 after the shots, he came running over there, you know, and he
7 also was calling 9-1-1, but once we -- once we seen the hole
8 in his head, nobody wanted to touch him to move him or
9 anything. You understand what I'm saying?

10 Q: Mm-hmm.

11 A: It was -- it was ---

12 MR. VOIGT: Stop it now, Joann.

13 A: Everything was going ---

14 MR. VOIGT: Can you back that up a little bit?

15 A: Everything was going so fast and I seen another guy
16 coming from across the street with a dog. You understand what
17 I'm saying? So it's like -- My object is when I seen that cop
18 car over there -- It should show me here. I seen a cop car
19 right over there by the light and I was trying my best to flag
20 him down and he just went on. That made me even madder and I
21 don't know.

22 MR. VOIGT: Let's just let this run a little bit, Joann.

23 Q: Do you see that guy in the bottom of the screen? Maybe
24 it went too fast.

25 A: Which one?

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 Q: Is that you, Frank?

2 A: Where at?

3 MR. VOIGT: I'm sorry. I was trying to -- I apologize.

4 Back up.

5 A: That's me right there.

6 Q: And what are you trying to do there?

7 A: I'm trying to flag the cop I seen over there at the

8 light.

9 Q: Is that the police car?

10 A: That's the police car right there going right by.

11 Q: Did you have a gun out there, Frank?

12 A: Nope.

13 Q: Did you fire at anybody? Did you fire a gun at anybody?

14 A: Nope.

15 Q: Did your brother, Michael Allen ---

16 A: Nope.

17 Q: --- have a gun out there that you knew?

18 A: No.

19 Q: Did Michael German have a gun?

20 A: No.

21 Q: Did Michael Allen or Michael German fire at anybody?

22 A: No.

23 Q: Did ---

24 A: Nobody fired at -- nobody fired. Anthony German didn't

25 even fire a weapon. He had one, but he never fired it.

DIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 Q: Did you know he had one before all this went down?

2 A: Yeah, I knew he had it. He told me he was going to get
3 it. Do you understand what I'm saying? Because this dude was
4 calling him making threats at him.

5 Q: Okay. What's that? Is that you?

6 A: That's me right there.

7 Q: What's that around your neck there?

8 A: That's my work badge.

9 Q: Who's that right there?

10 A: That's my brother, Michael.

11 Q: Okay.

12 A: At that time, he was on the phone with Charise letting
13 her know what her brother did and I don't know if you -- if
14 you noticed earlier when we was watching the tape, but Josh,
15 the cashier, when the person ran in the store and said, "Call
16 9-1-1, somebody got shot in the head," that was my brother's
17 voice that ran in the store and told him -- told him to call
18 9-1-1.

19 Q: All right.

20 MR. VOIGT: One moment, Your Honor.

21 THE COURT: Mm-hmm.

22 MR. VOIGT: At this time, Your Honor, the State would
23 tender this witness to the defense.

24 THE COURT: Any cross examination of the witness?

25 MR. VOIGT: Please answer any questions Mr. Harris would

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 have of you.

2 MR. HARRIS: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: You may proceed.

5 CROSS EXAMINATION

6 BY MR. HARRIS:

7 Q: Okay. You said earlier today you went over to -- I'm
8 just trying to put the timeline together. You got a phone
9 call to meet them at their house. Who is "they"?

10 A: Anthony and Michael.

11 Q: Okay. That was earlier in the day?

12 A: Yeah.

13 Q: That was just to go hang out?

14 A: Nuh-uh. He called me letting me know that this guy was
15 threatening him and for me to come over there.

16 Q: So Michael Allen?

17 A: Not Michael. You just said Anthony. Anthony German.

18 Q: Anthony German called you?

19 A: I went to both houses on two separate occasions. This
20 was a family thing.

21 Q: Okay.

22 A: You understand what I'm saying?

23 Q: So you got a phone call to come to their house first?

24 A: What?

25 Q: Anthony German's house?

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

- 1 A: Yeah.
- 2 Q: They called you to come over because Jerome was over
3 there?
- 4 A: No, because Jerome was threatening him, making phone
5 calls threatening him and telling him he's going to come over
6 there and do something to him.
- 7 Q: Okay. So he was calling Anthony German and threatening
8 him?
- 9 A: Yeah.
- 10 Q: Did he say why?
- 11 A: No, he never told me why.
- 12 Q: Okay. So did they call you in regularly for family
13 problems?
- 14 A: Yeah, because I'm usually -- I'm usually the one that
15 know how to talk, you know, when stuff happens. My voice is
16 like -- I like to alleviate things because it's like I told
17 you, this is a family incident.
- 18 Q: Mm-hmm.
- 19 A: You understand what I'm saying? Anthony and Vasha, Vasha
20 is Jerome's niece.
- 21 Q: Right.
- 22 A: You understand what I'm saying? So they had they own
23 little thing going on with Anthony -- Anthony, Vasha and
24 Candace, which is Jerome's sister.
- 25 Q: Well ---

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

- 1 A: Which is Vasha's mother.
- 2 Q: Well, were you called in to resolve that?
- 3 A: Excuse me?
- 4 Q: Were you called in to resolve that?
- 5 A: No.
- 6 Q: What was it that ---
- 7 A: I have done that before though.
- 8 Q: With those -- with ---
- 9 A: With all of them, yes.
- 10 Q: Okay. So you -- you get called in by the family to
- 11 resolve problems?
- 12 A: Yeah.
- 13 Q: Okay and you said you didn't have a gun?
- 14 A: No, I didn't.
- 15 Q: Okay, but you've been -- you've gotten weapons
- 16 convictions before, right?
- 17 A: Never.
- 18 Q: You've never had a weapons conviction?
- 19 A: Never.
- 20 Q: Not in New York?
- 21 A: Never. For a handgun?
- 22 Q: Criminal possession of weapons?
- 23 A: Is that a handgun, right?
- 24 Q: I'm just saying weapons.
- 25 MR. VOIGT: Objection.

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 THE COURT: Basis?

2 MR. VOIGT: May we approach for just a second?

3 THE COURT: Mm-hmm.

4 (Whereupon, a bench conference is held off the record in
5 the presence of the jury, but out of the hearing of the
6 jury.)

7 THE COURT: You may proceed.

8 Q: Okay. So let's get back to the timeline. You get called
9 to the Germans' house first?

10 A: Right.

11 Q: To resolve the problem between Anthony and Jerome?

12 A: I never said that.

13 Q: Okay.

14 A: I said I got a call to Michael German's house and Anthony
15 German's house. Anthony called me to ask me to come over
16 there, you understand what I'm saying, because Jerome keeps
17 threatening him.

18 Q: Okay.

19 A: Jerome was never there. You understand? He was getting
20 phone calls of him threatening.

21 Q: Okay, but Jerome was calling and threatening him. That's
22 what he told you?

23 A: Right.

24 Q: Okay. So he called you over there to talk to Jerome or
25 just to be with him?

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

- 1 A: To be with him.
- 2 Q: Okay.
- 3 A: Because he told him he's coming over there to do
- 4 something to him. That's what Anthony told me Jerome told
- 5 him.
- 6 Q: Okay. He said, "I'm coming over there to do something to
- 7 you."
- 8 A: Right.
- 9 Q: Okay and so you wanted to come over there to be with him
- 10 just to ---
- 11 A: Alleviate. It's a family thing. No one -- nobody needs
- 12 to be fighting. They just had -- As a matter of fact, I
- 13 believe -- I believe Vasha was pregnant. No, matter of fact,
- 14 they just had a brand new baby.
- 15 Q: Uh-huh.
- 16 A: So that's like if my brother was to call me and if he --
- 17 if I just had a brand new baby, all of a sudden the uncle is
- 18 mad, you want to come bring drama. Mind you, they were young
- 19 at the time.
- 20 Q: Mm-hmm.
- 21 A: Anthony I think was only 19, 18 at the time, 19 at the
- 22 time. They're young.
- 23 Q: How old was Vasha?
- 24 A: Vasha was like 16, 17.
- 25 Q: Okay, okay. So you come over there and then Jerome's car

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

- 1 comes up or the white Impala comes up?
- 2 A: Excuse me?
- 3 Q: Then the white Impala comes up?
- 4 A: No, the white Impala came up a little later on.
- 5 Q: Okay. So did the white Impala come up after you had gone
- 6 back to Michael Allen's house?
- 7 A: Yeah, after.
- 8 Q: Okay. So you are at the Germans' and then you and ---
- 9 A: We went -- and then I went to my brother's house.
- 10 Q: Okay, right and then you and Michael went to your
- 11 brother's house? Was Michael with you at the Germans' house?
- 12 Was Michael Allen with you at the Germans' house?
- 13 A: Yeah.
- 14 Q: Okay. So y'all are together at the Germans' house?
- 15 A: Right.
- 16 Q: Then you go back to Michael's house?
- 17 A: Right.
- 18 Q: And that ---
- 19 A: Me and Michael went back to Michael's house, me and my
- 20 brother. There's two Michaels there.
- 21 Q: Okay. Just you and Michael Allen went back to your
- 22 brother's house?
- 23 A: To my brother's house, right.
- 24 Q: Okay. Is that after Jerome had pulled up with ---
- 25 A: Jerome wasn't even there. Nobody never seen Jerome.

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

- 1 Q: Okay. So Jerome didn't pull up to you when you were at
2 the Germans' house?
- 3 A: Excuse me?
- 4 Q: He did not pull up to you when you were at the Germans'
5 house?
- 6 A: He did.
- 7 Q: The first time or did he ---
- 8 A: What do you mean the -- He -- He only did it one time.
- 9 Q: Okay. You're over there that afternoon?
- 10 A: Right.
- 11 Q: Or that night, whenever it was?
- 12 A: Right.
- 13 Q: You get called over because there's a dispute and you
14 want to wait because he says he's coming over and he's
15 threatening him?
- 16 A: Yeah, but he never came.
- 17 Q: Because he never came?
- 18 A: Yeah.
- 19 Q: So you leave ---
- 20 A: And go to my brother's house because he had a situation
21 over there.
- 22 Q: Okay. So and another situation with Jerome?
- 23 A: It wasn't with Jerome. It was with Charise and the
24 mother-in-law. I never mentioned Jerome's name.
- 25 Q: Okay. I'm just trying to get it straight.

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 A: All right.

2 Q: So you take your brother back over to his house with his

3 -- His wife's there?

4 A: His wife is there.

5 Q: His mother-in-law's there?

6 A: And there's a couple of kids in the house.

7 Q: And a couple of kids in the house?

8 A: Right.

9 Q: So y'all stayed there for 45 minutes?

10 A: About 45 minutes, roughly 45 minutes talking.

11 Q: Michael Allen or Michael German and Anthony German are

12 not there?

13 A: No.

14 Q: They're never there at that point?

15 A: No.

16 Q: Okay. Then you after 45 minutes leave and go where?

17 A: Me and my brother goes back to Anthony German's house.

18 Q: Okay. So you had been gone at this point about an hour?

19 A: Huh?

20 Q: You said 45 minutes ---

21 A: It don't take -- it don't take -- it don't take us an

22 hour to get from my brother's house to Anthony's house.

23 Q: But you'd been there 45 minutes?

24 A: Yeah. We had been at my brother's house for 45 minutes.

25 I don't understand what you -- you're asking.

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

- 1 Q: I'm asking you from the time you went to the Germans'
2 house, then back to your brother's house and then back to the
3 Germans' house, there is about an hour there, 45 minutes and
4 it takes about five minutes to get to their house, right?
5 A: Well, I don't know. As far as the time limit go, I'm not
6 saying. I wasn't focused on time.
7 Q: Okay.
8 A: So I couldn't even answer that ---
9 Q: Okay.
10 A: --- because I wasn't focused on time.
11 Q: Okay. You didn't see Jerome at ---
12 A: At all.
13 Q: That time either. Then you go back to the Germans' and
14 is that when Jerome comes up?
15 A: That's when he pulls up.
16 Q: Okay. Did he call before that?
17 A: I can't remember.
18 Q: Okay and he said to you, "Don't come up next to this
19 car." He didn't get out of the car?
20 A: Nope.
21 Q: He stayed in the car the whole time?
22 A: Yep.
23 Q: Okay and at that point nobody in -- at the whole house
24 had a gun or anything?
25 A: At who house?

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

- 1 Q: At the Germans' house?
- 2 A: At ---
- 3 Q: The people you were with?
- 4 A: Not that I know of, not at the time. I didn't realize --
- 5 I didn't know Anthony had the gun until we was on the way back
- 6 to my brother's house.
- 7 Q: Okay, but you did know when you were in the car with him
- 8 that he's got a gun in the car?
- 9 A: In what car? My brother's?
- 10 Q: When you were on the way back.
- 11 A: Yeah.
- 12 Q: Okay, okay. So you get in a confrontation with Jerome.
- 13 He never gets out of his car. He leaves and you ---
- 14 A: They -- All right there. Finish the question.
- 15 Q: I'm telling you your testimony. Then he leaves and goes
- 16 back to Michael Allen's house, your brother's house?
- 17 A: I believe that's what he did, but as far as getting in a
- 18 confrontation with him, I didn't have a confrontation with
- 19 him. He the one who was saying don't do this, don't do that.
- 20 I went up there to try to talk to him. I was walking towards
- 21 the car.
- 22 Q: Mm-hmm.
- 23 A: You understand what I'm saying? Asking him what was
- 24 going on and he was like, "Don't come next to this car. You
- 25 don't want to come next to this car." Mind you, while he's

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 saying that, I'm still walking towards the car.

2 Q: Right.

3 A: The only thing that made me stop, the window came halfway
4 down. When I seen the hole, the first thing that came to my
5 mind was gun, back up, retreat.

6 Q: Okay. So you were walking up, again just helping resolve
7 a family issue, the window rolls down and you at that point
8 see a gun?

9 A: I don't know what you -- The way you just said that I'm
10 walking up again to help a family issue, the window rolls
11 down, that's not what happened.

12 Q: Okay.

13 A: We was over there already. He came up to Anthony's
14 house.

15 Q: Okay.

16 A: He didn't come -- he didn't come into the driveway, he
17 came -- he stood up on the -- on the side of the road of the
18 Georgetown Apartments.

19 Q: Okay. So he never came in the driveway?

20 A: He never came in front of his door.

21 Q: Okay.

22 A: He was on the side on the driveway and once we knowed it
23 was him, we were like, "There he go, right there." We were
24 surprised because he didn't even know where Anthony live at.

25 Q: He didn't know where Anthony lived?

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

- 1 A: Not that we knew of, not to our knowledge.
- 2 Q: Okay. How long had you known Jerome at this point?
- 3 A: I'd seen him. I'd been -- I met him one time I think. I
- 4 only seen him three times.
- 5 Q: Okay.
- 6 A: Each occasion -- The first occasion was my brother and
- 7 them had a little cookout at their house.
- 8 Q: Mm-hmm.
- 9 A: I met him and we sat down and played cards and stuff,
- 10 drank a few beers and stuff like that. Another occasion I
- 11 bought a pair of sneakers from him.
- 12 Q: Okay.
- 13 A: The third occasion is when he hit me in my face ---
- 14 Q: Okay.
- 15 A: --- and had me shot at.
- 16 Q: So you bought -- you bought sneakers from him?
- 17 A: Yeah.
- 18 Q: Out of the -- out of the back of his car?
- 19 A: No. He gave them to my brother and my brother gave them
- 20 to me. My -- I gave my brother the money.
- 21 Q: Okay, but you bought them. You had given the money to
- 22 your brother ---
- 23 A: I know they came from him.
- 24 Q: Yeah, but you had told him earlier I want some sneakers
- 25 or did you physically buy them from him?

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 A: Excuse me?

2 Q: You said I gave my brother the money. He got the
3 sneakers and then he gave them to me. Did you physically go
4 up to Jerome and buy sneakers?

5 A: No.

6 Q: Okay, all right. So you went over there -- And so now he
7 comes back over and then you're saying he calls almost
8 immediately afterwards back to the Germans, back to your
9 brother and says, "Don't come home or see what happens."

10 A: Once that car pulled off in front of Anthony German's
11 house ---

12 Q: Mm-hmm.

13 A: --- my brother started getting phone calls.

14 Q: Okay.

15 A: Once the Impala pulled off, after he was telling me don't
16 come to the car, don't come to the car.

17 Q: Okay.

18 A: You understand what I'm saying? Then when I -- Like I
19 said, the window came down, I seen what appeared to be a hole,
20 gun.

21 Q: Mm-hmm.

22 A: We retreat. That's when the mother and them pulled up
23 and he rushed to told them to get in the house, get in the
24 house. You understand what I'm saying? They didn't know what
25 was going on. Then the next thing you know my brother started

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 getting phone calls telling him don't come home.
2 Q: Okay and they were coming from?
3 A: Jerome.
4 Q: From his phone?
5 A: I don't know if it was from his phone. My brother had
6 him on speaker phone.
7 Q: Okay.
8 A: I can't say whose phone it was coming from.
9 Q: So he had him on speaker phone. How many times did he
10 call?
11 A: Several times, like about four or five times.
12 Q: Four or five times?
13 A: Yeah.
14 Q: Okay and that was how long before y'all left to go back
15 over to his house, to go home?
16 A: I'd say about -- I'm not good with time, but I would say
17 about -- because we was talking about -- Like I said, I had to
18 go to work that night.
19 Q: Mm-hmm.
20 A: But we didn't want to leave my brother out there like
21 that, so we was like let's go home with him to make sure he
22 getting out. Mind you, the reason that we went to that house
23 from what we're -- from what I know nobody was supposed to be
24 in the house because when I had the argument, when I -- I
25 wasn't -- When I had the confrontation with the mother ---

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 Q: Mm-hmm.

2 A: --- the sister and my brother, we all left the house
3 together.

4 Q: Okay.

5 A: My brother said, "Leave me a key." "No, I only got one
6 key. You got to wait until I get back. We're going to James
7 Island." So as far as we know, nobody is in my brother's
8 house.

9 Q: Okay. So how was he going to get in if he didn't have a
10 key?

11 A: Excuse me?

12 Q: How was he going to get in if he didn't have a key?

13 A: He lives there.

14 Q: You said he didn't have a key.

15 A: You need to ask him that. I don't know.

16 Q: Okay, but you were taking him back to go home?

17 A: Right.

18 Q: Okay and you were going to check to make sure no one was
19 at the door? So you walked up there by yourself?

20 A: Yeah. Basically, we was just going to make sure he got
21 to his house safe.

22 Q: Okay. So you -- He's threatening -- According to you,
23 he's threatened to shoot you now over at the Allen's?

24 A: Excuse me?

25 Q: He's threatened to kill you? Threatened ---

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 A: I never said he threatened ---
2 Q: He pointed a gun at you at the Germans' or somebody
3 pointed a gun at you at the Germans'?
4 A: Somebody did in that car.
5 Q: Okay. Then you -- he's calling you four -- your brother
6 four or five times on the speaker phone and saying ---
7 A: Telling him don't come home.
8 Q: Or see what happens?
9 A: You'll see what happens. You come home. My brother
10 says, "I'm coming home. I live there. How you going to tell
11 me don't come to my own house."
12 Q: Okay. So -- But you took that as a threat?
13 A: Of course.
14 Q: Serious enough to go in your car with a gun in the car?
15 A: Who?
16 Q: There was a gun.
17 A: Yeah.
18 Q: Yeah.
19 A: If that's what you want to say, yeah.
20 Q: Okay. So ---
21 A: We took it as a threat.
22 Q: Okay.
23 A: He took it as a threat.
24 Q: So you're saying that now there's been a threat of a
25 shotgun and now you go back over there knowing according to

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 you that there ---

2 A: No, we didn't know if they was going to be there. We
3 knew nobody is supposed to be there.

4 Q: Okay. So you -- But they said -- You're saying that he
5 said, "Don't come home or see what happens."

6 A: Right.

7 Q: But you went over there?

8 A: He lives there.

9 Q: Okay, but you -- but I'm saying -- but you drove over
10 there with somebody in the car with a gun?

11 A: No, we didn't drove over there. We drove to the gas
12 station. I walked over there.

13 Q: Okay, okay. Now ---

14 A: And told them to stay back.

15 Q: Okay. Now the next thing that happened -- So you did not
16 see anybody shoot anybody? You heard ---

17 A: Say that again?

18 Q: You heard. You didn't see anybody shoot anybody, right?

19 A: Which -- which shooting are you talking about?

20 Q: I'm talking about the one where the white Impala drives
21 by and Michael German ends up dead.

22 A: Yeah, I didn't see -- I didn't see -- I seen where -- I
23 didn't see nobody shoot.

24 Q: Okay.

25 A: No.

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 Q: And you made a point of saying the only car on that road
2 was a white Impala. There wasn't ---
3 A: That was the only car on that road at that time.
4 Q: Okay. No other car in front of it?
5 A: No other car.
6 Q: And you were standing right by the road?
7 A: No, I wasn't standing by the road. I was coming running.
8 Q: Okay.
9 A: Remember, once I seen the car, I jumped in the bushes.
10 Once I heard the shots, everybody fell.
11 Q: Okay, but you didn't -- There was no other car in front
12 of you?
13 A: No other car.
14 Q: Okay and you saw two black males with guns. Is that
15 right?
16 A: Come out of my brother's apartment.
17 Q: Right. One with a shotgun and was light skinned?
18 A: Two of them had shotguns.
19 Q: Okay.
20 A: Automatic weapons.
21 Q: That night you saw a revolver and a shotgun?
22 A: I never said a revolver.
23 Q: Okay.
24 MR. HARRIS: Your Honor, may I approach?
25 THE COURT: You may.

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

1 Q: Do you remember giving a statement to the police?

2 A: Yeah.

3 Q: Now it says you saw a black male with guns, one with
4 light skin, a shotgun, the other black male, skin, a revolver.

5 A: Okay.

6 Q: "The black male with the revolver, do you know who he is?
7 No." So, but there was -- So you're saying there was somebody
8 with a revolver?

9 A: They were two shotguns.

10 Q: Okay. So there were two shotguns?

11 A: Yeah.

12 Q: Okay. So when you signed this for the police saying this
13 is your complete -- your complete statement ---

14 A: I understand that.

15 Q: It's different today though?

16 A: Yeah.

17 Q: Okay.

18 MR. HARRIS: I beg the Court's indulgence, Your Honor.

19 THE COURT: Mm-hmm.

20 Q: So when you're in there talking to Jerome's sister, who
21 is Charise, who is your brother's ---

22 A: Wife.

23 Q: --- wife ---

24 A: Right.

25 Q: --- and his mother ---

CROSS EXAMINATION OF FRANK HAIGLER BY MR. HARRIS

- 1 A: Right.
- 2 Q: Okay. You're talking to them for 45 minutes?
- 3 A: Roughly around that time. I would estimate about that
- 4 time.
- 5 Q: And that's trying to get Michael back in the house?
- 6 A: Right.
- 7 Q: Okay. Was anything ever said about either one of the
- 8 German guys?
- 9 A: You mean about Anthony and Vasha, the niece?
- 10 Q: Who ---
- 11 A: I'm not sure. My concern was getting my brother to stay
- 12 home.
- 13 Q: Okay. So your testimony is that neither one of the --
- 14 Anthony or Michael German came to that door?
- 15 A: They didn't.
- 16 Q: They never came in?
- 17 A: Not that I remember.
- 18 Q: Okay.
- 19 A: They wasn't even over there. Me and my brother went to
- 20 the house.
- 21 Q: Okay.
- 22 MR. HARRIS: Nothing further, Your Honor.
- 23 THE COURT: Any redirect of the witness?
- 24 MR. VOIGT: Yes.
- 25 THE COURT: You may proceed.

REDIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT
REDIRECT EXAMINATION

1 BY MR. VOIGT:

2 Q: Frank, you testified that y'all went back to your
3 brother's apartment.

4 A: Mm-hmm.

5 Q: Whose car did you go in?

6 A: We went in -- As a matter of fact, we was in my brother's
7 car.

8 Q: And what kind of car did your brother have?

9 A: He had a white Expedition.

10 Q: Okay, this is the right one. I'm going to show you
11 what's been marked as State's Exhibit 40. Is that your
12 brother's white Expedition?

13 A: Yeah, that's it.

14 Q: Did you allow the police to search that car?

15 A: Yes, we did.

16 Q: Did they seize anything from that car that you know of?

17 A: No.

18 Q: Do you see the man in the courtroom that punched you?
19 Stand up if you have to.

20 (Whereupon, the witness stands.)

21 A: He's sitting right over there.

22 (Whereupon, the witness sits.)

23 Q: Just before he punched you, what did he say?

24 A: He was like, "You don't know me. You don't know me."
25

REDIRECT EXAMINATION OF FRANK HAIGLER BY MR. VOIGT

1 And telling whoever -- He was like, "Yo, they're trying to set
2 -- Go get that, go get that." Then you see the two dudes come
3 out the house with the guns and as soon as he hit me, I
4 spinned off of reflex and hit the floor and ran.

5 Q: And when -- when did you hear a gunshot?

6 A: I want to say a couple seconds after I -- I hit the walk.
7 More than one gunshot, it was two gunshots.

8 Q: Thank you, Frank. I have no further questions.

9 THE COURT: Any objection to the witness being excused
10 from the State?

11 MR. VOIGT: None from the State, Your Honor.

12 THE COURT: From the defense?

13 MR. HARRIS: No, Your Honor.

14 THE COURT: Sir, you're excused.

15 MR. HAIGLER: All right, thank you.

16 (Whereupon, the witness leaves the stand at 5:05 p.m.)

17 THE COURT: Madam Forelady, ladies and gentlemen, we're
18 going to take advantage of this break in testimony to take our
19 evening recess. During the break, please do not discuss this
20 case among yourselves or with -- with anyone else. Please do
21 not watch, read or listen to any media accounts about this
22 case. That includes anything that could be on radio,
23 television, newspaper or internet and please don't do any
24 independent research on the internet.

25 We'll resume in the morning at 9:30. You'll come

1 directly to your jury room. Please leave your notepads in
2 your seats and again, please don't have any interaction with
3 anyone in or about the courthouse, on your way to the garage
4 or in the garage. Again, we would not want an innocent
5 conversation to be observed and misinterpreted.

6 I know it's getting dark a little bit earlier. If any of
7 you want us to have one of the deputies escort you to the
8 garage, please let us know and -- Actually, I think that'll be
9 prudent. If you all could walk as a group and if we could
10 have -- arrange to have a deputy escort them to the garage,
11 that would be greatly appreciated by the Court. I think it
12 will eliminate a whole host of issues.

13 Have a great evening. We'll see you in the morning at
14 9:30. If you would, leave your notepads in your seats. We'll
15 secure them during the recess.

16 (Whereupon, the jury leaves the courtroom at 5:07 p.m.)

17 THE COURT: You may be seated. Is there anything before
18 we adjourn for the evening from the State?

19 MR. VOIGT: Not from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. HARRIS: Nothing, Your Honor.

22 THE COURT: Have a good evening and you all need to get
23 here early enough to take his clothes down for him to dress
24 out in the morning.

25 MR. HARRIS: Okay.

1 THE COURT: Because his family won't be able to give them
2 to him.
3 MR. HARRIS: Judge, what time are we starting?
4 THE COURT: 9:30.
5 MR. HARRIS: 9:30, okay.
6 (Whereupon, there is a break in the proceedings from 5:08
7 p.m. on January 24, 2012, until 9:46 a.m. on January 25,
8 2012.)
9 --- END DAY TWO OF TRIAL ---
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11 (CONTINUED IN VOLUME 3)
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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE NO. 2009-GS-10-6730
) CASE NO. 2009-GS-10-6731
) CASE NO. 2009-GS-10-6732
) CASE NO. 2009-GS-10-6733

THE STATE OF SOUTH CAROLINA,)
)
Plaintiff,)

-vs-)

TRANSCRIPT OF RECORD
(DAY 3 of 5)

JEROME CAMPBELL,)
A/K/A JEROME COAXUM,)
)
Defendant.)

January 23-27, 2012
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA JEFFERSON, Judge, and a jury

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

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KRYSTAL J. SMITH
Official Court Reporter

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1 JANUARY 25, 2012

2 (Whereupon, the proceedings resume at 9:46 a.m. on

3 Wednesday, January 25, 2012. The defendant is present in

4 the courtroom, as well as all counsel. The jury is not

5 yet present.)

6 THE COURT: Is the State ready to proceed?

7 MR. VOIGT: Yes, Your Honor.

8 THE COURT: Is the defense ready to proceed?

9 MR. HARRIS: Yes, Your Honor.

10 THE COURT: The jury is on the way down the hall.

11 MR. VOIGT: Should I position the witness, Your Honor.

12 THE COURT: Yes.

13 THE CLERK: This way, please.

14 (Whereupon, there is a brief pause in the proceedings and

15 the witness is brought into the courtroom.)

16 THE COURT: They should be down the hall by now. Can you

17 look out there and see?

18 (Whereupon, the jury enters the courtroom at 9:49 a.m.)

19 BAILIFF: The jury is present, Your Honor.

20 THE COURT: Thank you. You may be seated. Ladies and

21 gentlemen, I hope that you all had a pleasant evening. We'll

22 now resume with the State's case. The State may call its next

23 witness.

24 MR. VOIGT: Thank you, Judge. The State calls Timothy

25 Jeremiah McCarthy.

DIRECT EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. VOIGT

1 THE CLERK: Raise your right hand. Do you swear or
2 affirm that your testimony will be the truth, the whole truth
3 and nothing but the truth, so help you God?

4 MR. MCCARTHY: I do.

5 THE CLERK: Be seated. Sir, please speak into the mic
6 and state your full name and then spell your last name for the
7 record.

8 MR. MCCARTHY: My full name is Jeremiah Timothy McCarthy,
9 last name M-C-C-A-R-T-H-Y.

10 THE COURT: You may proceed.

11 MR. VOIGT: Thank you very much, Your Honor.

12 THE COURT: You're welcome.

13 JEREMIAH TIMOTHY MCCARTHY, being first
14 duly sworn, testifies as follows:

15 DIRECT EXAMINATION

16 BY MR. VOIGT:

17 Q: And what do you go -- go by, Mr. McCarthy?

18 A: Jerry.

19 Q: What do you do for a living, Mr. McCarthy?

20 A: I'm a yacht captain.

21 Q: And did you have occasion on the 9th of January of 2009 to
22 go to a gas station in West Ashley?

23 A: I did.

24 Q: And is that the Kangaroo station at 1141 Old Towne Road
25 in West Ashley?

DIRECT EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. VOIGT

- 1 A: Yes, it is.
- 2 Q: Why did you go to that gas station?
- 3 A: To pick up some cigarettes.
- 4 Q: Do you remember what time approximately at night you
5 went?
- 6 A: Not -- I don't really. It was probably around one, two
7 o'clock, if I recollect, but I'm not sure.
- 8 Q: Did you have the opportunity to talk to police officers
9 on that date?
- 10 A: I did.
- 11 Q: And did you have the opportunity to tell them about
12 things you had seen while you were at the gas station?
- 13 A: I did.
- 14 Q: What kind of car do you drive?
- 15 A: A Mercedes Benz wagon, green.
- 16 Q: And when you went to the gas station, where did you pull
17 that car up?
- 18 A: I pulled up to one of the pumps in front of the gas
19 station door.
- 20 Q: Did you get out of your car?
- 21 A: I did.
- 22 Q: What did you see or hear when you got out of your car?
- 23 A: As soon as I stepped out, I heard three gun shots and it
24 probably took a couple of seconds for me to realize they were
25 gunshots and so I ducked.

DIRECT EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. VOIGT

1 Q: And what did you see when you stood up?

2 A: I looked in front of me to the right and I saw a guy
3 lying on the floor and three other guys standing around and I
4 realized that this man had been shot.

5 Q: Okay. What did you do?

6 A: I ran over to the guy to see if I could help to do
7 anything and realized I saw a wound in his left side of his
8 skull and, you know, just tried to make him comfortable and
9 see if I could do anything.

10 Q: When you heard the shots, where did you hear the shots
11 come from?

12 A: They were in front of me to the right, but it was -- it
13 was -- it was like they were, you know, off to my right hand
14 side, but I didn't know where they were coming from.

15 Q: Did you hear any shots come from the area where the man
16 was, where the man was on the ground?

17 A: No.

18 Q: Did you see any muzzle flashes or any bright lights,
19 explosions of any sort or ---

20 A: No.

21 Q: From where he was?

22 A: No.

23 Q: When you got over to him, what did you -- what did you
24 do?

25 A: The first thing I did was I -- I laid him more

DIRECT EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. VOIGT

1 comfortably on the floor. I put my hand, my fingers, on his
2 pulse. He was -- he was still alive, but he was -- there was
3 no -- there was nothing from him. There was no words. There
4 was no -- You know, his -- his eyes were closed and he was
5 still breathing, but, you know, I kind of like realized that
6 he was fading fast and then James Tawney turned up.

7 Q: Do you know Mr. Tawney?

8 A: I do.

9 Q: And how long have you known Mr. Tawney?

10 A: Probably five, six years.

11 Q: And how do you know Mr. Tawney?

12 A: We're in the same kind of business. We both deliver --
13 deliver boats.

14 Q: When Mr. Tawney arrived, what did you do next?

15 A: I turned around to -- to look at the guys that were with
16 him. James proceeded to give him mouth to mouth and I told
17 the guys that, you know, you might want to see your brother.
18 I realized that it was a brother because they were saying
19 that, you know, my brother and this, that and the other and I
20 told them that you might want to say good-bye to your brother
21 because I think he's dying.

22 Q: And what did -- what did he do with that information?
23 What did you observe?

24 A: He -- he got -- he knelt down to his brother and he was
25 crying a little bit and he held his hand, you know, as he

DIRECT EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. VOIGT

- 1 realized that he was losing his brother.
- 2 Q: Were there other people on the scene at that point?
- 3 A: Yeah, a few people started to turn up slowly. I think
- 4 the, you know, the word got around somehow that -- to his
- 5 family that, you know, that this guy had been shot.
- 6 Q: About how long before the police got there?
- 7 A: Maybe ten, five, ten minutes. I mean it all -- it was
- 8 really, really all -- it all went very slow.
- 9 Q: Were you timing any part of this ---
- 10 A: No.
- 11 Q: --- on your watch or anything?
- 12 A: No.
- 13 Q: Was it chaotic out there?
- 14 A: Well, you know, I'm from a place where you don't see
- 15 this, so it's kind of weird. For me, it was a completely
- 16 different scene, but yeah, for me it was chaotic.
- 17 Q: And did you stay around and talk to the police
- 18 ultimately?
- 19 A: I did, yeah.
- 20 Q: And did you tell them to the best of your recollection
- 21 what happened?
- 22 A: I did, yeah.
- 23 MR. VOIGT: All right. Can we get that?
- 24 Q: I'm going to show you something behind you.
- 25 A: Okay.

DIRECT EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. VOIGT

1 (Whereupon, the store surveillance video showing the gas
2 pump area is shown on the screen.)

3 Q: Can you turn around and take a look at that? Can you
4 turn so that you're actually facing the jury, kind of look the
5 other way?

6 A: Oh, yeah, yeah.

7 Q: Now do you recognize that?

8 A: Yes, that's the gas station.

9 Q: Is that your car?

10 A: That is.

11 Q: Is that you?

12 A: That is.

13 Q: Why are you walking that way?

14 MR. VOIGT: Stop it.

15 Q: At this point had you heard any shots, if you know?

16 A: I'm not sure because I remember that I heard the shots
17 and I ducked.

18 MR. VOIGT: Can you keep playing, Joann?

19 A: And I -- Well.

20 Q: Is that you ducking?

21 A: Yeah.

22 Q: So at this point you've heard the shots?

23 A: Yeah. I wasn't sure what was going on and that --
24 because I'd never -- I don't -- I haven't heard gunshots
25 before, so.

CROSS EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. HARRIS

1 Q: And what are you looking at there?

2 A: I was trying to see what was going on, where it was
3 coming from because I didn't want to be anywhere, you know,
4 near any shots and then I realized that there was a guy on the
5 floor.

6 Q: And you ran? Is that --

7 A: Over there.

8 Q: Did you run directly to him?

9 A: Yeah.

10 MR. VOIGT: Will you pause it?

11 Q: All right. Thank you. Mr. McCarthy, please answer any
12 questions that the defense may have for you.

13 A: Sure.

14 THE COURT: You may proceed.

15 MR. HARRIS: Thank you, Your Honor. May it please the
16 Court.

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. HARRIS:

20 Q: Good morning, Mr. McCarthy.

21 A: Good morning.

22 Q: Now do you recall giving a statement to police that
23 night?

24 A: I do.

25 Q: Okay and that was about how long after this happened?

CROSS EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. HARRIS

- 1 A: I'm not sure, five, ten minutes.
- 2 Q: Okay. So about five, ten minutes, so it's fresh in your
3 mind?
- 4 A: I mean it was a long time ago. I didn't expect it to go
5 to court, so it wasn't something that I kept in my mind.
- 6 Q: I mean five or ten minutes after it happened, it was
7 fresh in your mind still?
- 8 A: Oh, yeah, yeah, yeah, yeah.
- 9 Q: Okay. Do you remember -- I'm going to walk up..
- 10 MR. HARRIS: Your Honor, may I?
- 11 THE COURT: You may.
- 12 MR. HARRIS: (To Mr. Voigt) I'm going to show him this,
13 okay?
- 14 MR. VOIGT: Oh, sure.
- 15 Q: Is that your signature down there?
- 16 A: That is.
- 17 Q: Okay. Did you write this or did the police write that
18 for you?
- 19 A: No, the police wrote that.
- 20 Q: Okay. I'm going to ask you: Can you -- What does that
21 first line say, the first subparagraph?
- 22 A: On January 9th, 2009, about 10:30 p.m., I pulled up at the
23 BP station, Carriage Lane. I was getting out of my car and I
24 heard two cracks and saw smoke.
- 25 Q: Okay. Now so you -- Where does -- Where was this smoke?

CROSS EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. HARRIS

1 A: It was off to -- The gas station is sitting here and off
2 to the right I could see smoke.

3 Q: Okay. So you said earlier off to the right is where you
4 saw the person laying down also?

5 A: Yeah, he was right next to the gas station.

6 Q: Okay.

7 A: Yeah.

8 Q: And is that where the smoke was at?

9 A: And in that area was lingering smoke.

10 Q: Okay. So there was lingering smoke in that area and you
11 heard what you thought sounded like two pops?

12 A: I can't -- I recollect three.

13 Q: Okay. Well, two or three, so that means ---

14 A: Yeah.

15 Q: You looked over -- You heard two pops, you looked over
16 and I believe you told police you thought there was five black
17 males hanging on the corner of the building. "I heard cracks,
18 then saw smoke. I saw a guy on the ground."

19 A: Yeah.

20 Q: "I thought they were messing around with fireworks."

21 A: Right.

22 Q: And was that because you saw smoke lingering?

23 A: Smoke.

24 Q: And you heard the pops coming?

25 A: Yeah.

CROSS EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. HARRIS

1 Q: Okay. So when you said to your right, you're standing
2 ---
3 MR. HARRIS: (To Joann) Is that on?
4 MS. GOULD: No.
5 MR. HARRIS: Put it on wherever you want it, please?
6 (Whereupon, the store surveillance video showing the view
7 of the gas pumps is shown on the screen.)
8 Q: Okay. This is you pulling up?
9 A: Yeah.
10 Q: And you parked about four or five feet from the gas pump.
11 You don't ever go to that gas pump, do you? Because you
12 weren't there for gas?
13 A: No, but I live around the corner.
14 Q: Right.
15 A: I always go there.
16 Q: Okay. So you looked over and you walked this way?
17 A: Right.
18 Q: Now you come back?
19 A: Because I heard the cracks.
20 Q: Right. So you heard the cracks when you were over here
21 by this van or in between the van and the car?
22 A: That's right, yeah.
23 Q: You walked over, you hear the cracks and you walked back
24 to your car and you're getting down?
25 A: Yeah.

CROSS EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. HARRIS

1 Q: Okay. So let me ask you: You're to the right or if
2 you're standing facing the store, you're to the left of your
3 car ---

4 A: Mm-hmm.

5 Q: --- when you hear those cracks about eight or nine feet?

6 A: Yeah.

7 Q: Okay and then you look over what you're saying is to your
8 right because from there that is to your right?

9 A: Yeah.

10 Q: And you see the corner of the building?

11 A: Yeah.

12 Q: And then you see smoke after the cracks?

13 A: Yeah.

14 Q: And you see somebody laying down?

15 A: Yeah.

16 Q: And then you also say you see two cars going by?

17 A: Yeah. I saw a couple of cars going by, but they were --
18 it was after the noise.

19 Q: Okay. So the cars drove by after the noise?

20 A: Yeah.

21 Q: Okay and you -- what -- Do you remember how you described
22 those cars?

23 A: I don't, no.

24 MR. HARRIS: Your Honor, may I approach?

25 THE COURT: You may.

CROSS EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. HARRIS

1 A: Do you want me to read it?

2 Q: Yes, please.

3 A: Okay. "It was a dark blue Toyota or something similar.
4 The second one I can't describe."

5 Q: Okay. So there was a dark blue Toyota. You saw a dark
6 blue Toyota racing away there and there was another car behind
7 it?

8 A: Yes.

9 Q: Do you recall?

10 A: If I recall.

11 Q: Okay.

12 A: Yeah. I don't know if it was racing away though.

13 Q: Okay.

14 A: I don't -- I don't recall that.

15 Q: Okay. So you -- you don't recall whether the car was
16 racing away or not?

17 A: Yeah, I don't recall.

18 Q: Okay. So again, in this video you are out in the middle
19 of this I guess what they call a bay when you hear fire --
20 what you thought were fireworks at first and then you realized
21 they were gunshots?

22 A: Yeah and I was looking.

23 Q: Okay. You were looking and did you see muzzle flare
24 coming out of that blue car?

25 A: No.

REDIRECT EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. VOIGT

1 Q: Or the car behind it?

2 A: No.

3 Q: So you never saw a flash coming out of those either?

4 A: No.

5 Q: When you heard the pops, did you look at the cars or did
6 you look at the corner?

7 A: I looked at the corner.

8 Q: Okay. You looked at the corner when you heard pops?

9 A: Yeah, because the smoke ---

10 Q: Mm-hmm.

11 A: --- the cracks, I mean I was trying to put -- I was
12 trying to see where this was going.

13 Q: Okay. So you immediately looked at the corner of the
14 building?

15 A: Mm-hmm.

16 Q: Okay.

17 MR. HARRIS: I beg the Court's indulgence, Your Honor.

18 THE COURT: Yes, sir.

19 MR. HARRIS: I have nothing further, Your Honor.

20 THE COURT: Any redirect of the witness?

21 MR. VOIGT: Yes, Your Honor. Thank you.

22 REDIRECT EXAMINATION

23 BY MR. VOIGT:

24 Q: Did the cracks or the gunshots come from the corner?

25 A: I don't know.

REDIRECT EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. VOIGT

1 Q: Did they come from the area where the man was laying
2 down?

3 A: I could not tell you. I mean it was -- it was a noise
4 and, you know, the first thing I see off to my right is
5 people, so I'm immediately looking in that -- to them and I
6 see the smoke, but I have no idea where the shots came from.

7 Q: Did you see any guns when you ran over there? That's you
8 running. Did you see any guns over there?

9 A: No.

10 Q: Did you see the guy on the ground with a gun?

11 A: No.

12 Q: Did you see any of the other individuals around the store
13 with guns?

14 A: No, but I do remember I think the guy had his hands -- at
15 least one hand in his pocket that was shot.

16 Q: Okay.

17 A: So you know.

18 Q: The cars that Mr. Harris had you describe, did you see
19 those before or after you heard the noises?

20 A: After.

21 Q: Now the smoke that you described, did you smell smoke
22 like something burning?

23 A: No.

24 Q: When you went over to where the poor man was laying on
25 the ground, did you smell anything that had burnt, that had a

REDIRECT EXAMINATION OF JEREMIAH TIMOTHY MCCARTHY BY MR. VOIGT

1 burnt smell?

2 MR. HARRIS: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. HARRIS: Leading.

5 THE COURT: Sustained, leading. Rephrase.

6 Q: Did you smell anything unusual at the corner when you
7 went over there?

8 A: No. I -- I wasn't registering any smell. I was looking
9 at this guy.

10 Q: Okay. Did anyone try to perform CPR on the man who was
11 on the ground?

12 A: Yeah, James Tawney.

13 Q: Thank you, Mr. McCarthy. I have nothing further.

14 THE COURT: Any objection to the witness being excused
15 from the State?

16 MR. VOIGT: Not from the State.

17 THE COURT: From the defense?

18 MR. HARRIS: None, Your Honor.

19 THE COURT: Sir, you're excused.

20 MR. MCCARTHY: Thank you.

21 (Whereupon, the witness leaves the stand at 10:05 a.m.)

22 THE COURT: You're welcome. You may call your next
23 witness.

24 MR. VOIGT: The State calls Joshua Ridgeway.

25 THE CLERK: This way, sir. Stand here, please, so I can

DIRECT EXAMINATION OF JOSHUA RIDGEWAY BY MR. VOIGT

1 swear you in. Please put your left hand on the Bible and
2 raise your right hand. Do you swear or affirm that your
3 testimony will be the truth, the whole truth and nothing but
4 the truth, so help you God?

5 MR. RIDGEWAY: Yes, sir.

6 THE CLERK: Be seated. Please speak into this mic and
7 state your full name and then spell your last name for the
8 record.

9 MR. RIDGEWAY: Joshua Morgan Ridgeway, R-I-D-G-E-W-A-Y.

10 THE COURT: You may proceed.

11 MR. VOIGT: Thank you very much, Your Honor.

12 THE COURT: You're welcome.

13 JOSHUA RIDGEWAY, being first duly
14 sworn, testifies as follows:

15 DIRECT EXAMINATION

16 BY MR. VOIGT:

17 Q: Mr. Ridgeway, where do you work?

18 A: I work at a Kangaroo, which is owned by the Pantry. It's
19 a gas station in West Ashley.

20 Q: Is that the one at 1141 Old Towne Road in West Ashley?

21 A: Yes, sir.

22 Q: Did you work there on January 9th, 2009?

23 A: Yes, sir, I did.

24 Q: Were you working that evening?

25 A: Mm-hmm.

DIRECT EXAMINATION OF JOSHUA RIDGEWAY BY MR. VOIGT

1 Q: Do you recall at some point having to make a 9-1-1 call
2 that night?

3 A: Yes, sir, I do.

4 Q: And what caused you to make that 9-1-1 call?

5 A: I heard some gunshots go off on the side of the store.

6 Q: What did you do after you heard those gunshots?

7 A: I was bound, you know, at work. I had to get the people
8 out of my store. I couldn't just abandon my responsibilities,
9 but as soon as I could get everybody out, I closed up the
10 store and tried to handle things as best as I could, which,
11 you know, first thing was calling 9-1-1. I did that while I
12 was still inside and then there were the other
13 responsibilities like calling my manager and things like that.

14 Q: Okay and when was your shift set to end that night?

15 A: I believe it was six o'clock.

16 Q: Did you ---

17 A: Like the shift has changed a few times over the last
18 three years, but I'm pretty sure it was six.

19 Q: Okay. So you were going to be working the -- kind of the
20 overnight midnight shift?

21 A: Yes, sir.

22 Q: Okay. When -- Did you at some point go outside the
23 store?

24 A: I did as soon as I could get everybody out because I -- I
25 wanted to know what was going on. I was trying to appraise

CROSS EXAMINATION OF JOSHUA RIDGEWAY BY MR. HARRIS

1 the situation to figure out if there was anything I should be
2 doing that I hadn't already.

3 Q: What did you see when you went outside?

4 A: I saw a group of people around -- Well, I couldn't see it
5 immediately, but I saw a group of people. Some of them were
6 panicking. I heard screaming and things like, "Oh, my God."
7 And I -- I had already heard the gunshots, so, you know, logic
8 pretty much pointed it out from there and I made my way over
9 to see it for myself.

10 Q: Okay. When you were inside, was there any way that you
11 could have witnessed any of the shooting?

12 A: I couldn't -- I couldn't see anything. There was a brick
13 wall in between me and the incident.

14 Q: Please answer any questions that Mr. Harris may have of
15 you.

16 THE COURT: You may proceed.

17 MR. HARRIS: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. HARRIS:

20 Q: You have a -- There's plenty of videos inside that store,
21 right?

22 A: Mm-hmm.

23 Q: There's a microphone that's right inside that records the
24 sounds that go on behind the register?

25 A: Yes, sir. It should be directly above like dead center

CROSS EXAMINATION OF JOSHUA RIDGEWAY BY MR. HARRIS

1 the -- the countertop area. I'm sorry.

2 Q: Do you know the purpose of that microphone?

3 A: The purpose is to pick up anything, you know, that might
4 be within earshot of that microphone. You know, I'm assuming
5 it's there for things like if somebody comes in and robs the
6 store or they threaten the place that they want to be able to
7 have it on -- on record, you know, exactly what was said.

8 Q: Okay and that microphone is by the cash register?

9 A: It's -- it's directly above the cash registers.

10 Q: Okay.

11 A: Yeah, there's like two cash registers and it's dead
12 center right above both of them.

13 Q: Okay and that picks up?

14 A: Honestly, I'm not sure exactly what it picks up because I
15 haven't watched too much of the security footage myself.

16 Q: All right and when Mr. Voigt asked you a minute ago what
17 you heard, you said you heard two gunshots by the side of the
18 store?

19 A: I -- I heard five gunshots.

20 Q: Five gunshots.

21 A: I'm sorry. I might not have answered his question
22 clearly enough.

23 Q: Okay.

24 A: I heard three gunshots, then there was a small pause and
25 then another two.

CROSS EXAMINATION OF JOSHUA RIDGEWAY BY MR. HARRIS

1 Q: Okay. So there was three gunshots, pause and then two
2 more?

3 A: Yeah. It was like bang, bang, bang. (Witness pauses.)
4 Bang, bang.

5 Q: Okay.

6 MR. HARRIS: I beg the Court's indulgence, Your Honor.

7 THE COURT: Yes, sir.

8 MR. HARRIS: I have no further questions.

9 THE COURT: Any redirect of the witness?

10 MR. VOIGT: No redirect, Your Honor.

11 THE COURT: Any objection to the witness being excused
12 from the State?

13 MR. VOIGT: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. HARRIS: None, Your Honor.

16 THE COURT: Sir, you're excused.

17 (Whereupon, the witness leaves the stand at 10:11 a.m.)

18 THE COURT: The State may proceed.

19 MR. VOIGT: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 MR. VOIGT: The State calls John Roberts.

22 THE CLERK: Do you swear or affirm your testimony will be
23 the truth, the whole truth and nothing but the truth, so help
24 you God?

25 MR. ROBERTS: Yes, I do.

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 THE CLERK: Be seated. Please state your full name and
2 spell your last name for the record.

3 MR. ROBERTS: John Roberts, R-O-B-E-R-T-S.

4 THE COURT: You may proceed.

5 MR. VOIGT: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 JOHN ROBERTS, being first duly sworn,
8 testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. VOIGT:

11 Q: Good morning, Mr. Roberts. Where do you work?

12 A: I work for the South Carolina Law Enforcement Division,
13 more commonly called SLED.

14 Q: And -- and where do you work in -- in SLED?

15 A: I work in the forensic services unit in the trace
16 evidence department.

17 Q: And what do you do for the trace evidence department of
18 the forensic services unit?

19 A: Mainly what I do is analyze gunshot residue, but in the
20 trace department we do several other things. My main duties
21 right now are gunshot residue.

22 Q: Okay and how long have you been testing gunshot residue
23 for SLED?

24 A: Since 2006.

25 Q: And what training or educational background do you have

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 for gunshot residue testing?

2 A: I have a bachelor's of science degree in chemistry from
3 Texas A&M Corpus Christi. In 2005, I got the job at SLED and
4 I went through our in-house training program in gunshot
5 residue, which consisted of me studying underneath my
6 lieutenant, who started our gunshot residue program at SLED
7 back in the early 90's I believe.

8 I worked with him, worked his cases with him, learned how
9 to run the instrumentation, learned how to set up the kits to
10 be processed, learned how to pull the data off the
11 instrumentation, make conclusions, write reports. After about
12 four or five months, I was given a test and had to pass it and
13 had to testify in a courtroom setting with my peers grilling
14 me like lawyers do. When I passed that, I was given my own
15 cases to run and I've been running gunshot residue since 2006.

16 Q: As a part of your job, do you continue to keep abreast of
17 the latest scientific developments related to gunshot residue
18 and the testing of gunshot residue?

19 A: Yes, sir. We have subscriptions to a couple different
20 scientific publications that are put out and we peruse those
21 for articles on gunshot residue or for anything else that we
22 happen to be doing in the trace lab. We're required to take
23 proficiency -- Excuse me, proficiency tests yearly and to pass
24 those to continue to be qualified to do gunshot residue.

25 Q: Have you ever been qualified as an expert in the field of

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 the testing of gunshot residue?

2 A: Yes, sir.

3 Q: And approximately how many times have you been qualified
4 as an expert in this field?

5 A: Approximately 50.

6 Q: And have you ever been failed -- Have you ever failed to
7 qualify in any court of law?

8 A: No, sir.

9 MR. VOIGT: At this time, the State would offer a
10 stipulation to the defense that Mr. Roberts is qualified as an
11 expert in the field of trace evidence, specifically gunshot
12 residue.

13 THE COURT: Any objections or questions?

14 MR. HARRIS: Without objection, Your Honor.

15 THE COURT: So admitted without objection.

16 Q: Now, Mr. Roberts, certain items were submitted to SLED
17 for the testing of gunshot residue in this particular case,
18 were there not?

19 A: Yes, sir.

20 Q: And pursuant to your testing you actually issued two
21 reports, did you not?

22 A: Yes, sir, that's correct.

23 Q: And I'm going to refer you first to the report dated
24 April 30th, 2009.

25 A: All right. Give me a second and let me dig that out of

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 my pile of papers here. April 30th, 2009?

2 Q: Right and before we get started, if you could, tell the
3 jury what is gunshot residue?

4 A: Sure. Gunshot residue is the term that we give to the
5 particles and metals and chemicals that are ejected out of a
6 firearm when it's fired. If you've ever seen somebody shoot a
7 gun in the dark, you'll notice that there's fire shooting out
8 of it and that comes out of -- out of the firearm in a couple
9 different places. If it's a semi-automatic, you know, like a
10 1911 .45, which you saw in World War II, or a Beretta like
11 they use now in the Army, there's a couple different places.

12 It comes out of the muzzle. That's the biggest opening,
13 so the most of it comes out of there. There's also an ejector
14 port that's along the right hand side of the barrel. That's
15 where the spent cartridge case ejects out. Gunshot residue
16 also exits out of that area. It can also come out of the
17 trigger. If you shoot enough, 200 hundred rounds or so,
18 you'll notice that your trigger finger gets black right about
19 where it comes out underneath the trigger bar. Those are the
20 places it comes out on a semi-automatic.

21 On a revolver, there's a couple different places.
22 There's a gap in between the cylinder. That's the thing that
23 spins and loads the rounds into the barrel. It comes out of
24 that. It also comes out of the muzzle. Those are the two
25 biggest places on a revolver.

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 But what we look for are the chemicals that are contained
2 in the primer and the primer is the silver disc on the back of
3 a cartridge. It's usually silver. It could be gold if the
4 cartridge casing is silver. It's just an opposite color of
5 the cartridge case. What we look for are chemicals that are
6 in that primer.

7 We look for lead, barium and antimony. Those chemicals
8 in a combination are the explosive charge used to set off the
9 powder in the cartridge case and propel the projectile down
10 the barrel. Lead, barium and antimony is what we check for
11 when we run gunshot residue kits that are submitted by
12 different agencies around the state.

13 Q: What typically in gunshot residue is the shape of, for
14 example, the lead that you would find?

15 A: We look for round particles of lead. We also look for
16 round particles that contain any combination of lead, barium
17 and antimony. We look for non-round particles that contain
18 lead, barium and antimony and we look for round particles that
19 contain all three elements at the same time. The round
20 particle that has all three, the lead, barium and antimony, is
21 unique to gunshot residue. It has -- The round particle has
22 not been found anywhere else other than from the primer of a
23 firearm.

24 Q: The non-round particles, have they been found elsewhere?

25 A: They've been found one other place.

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 Q: And where is that?

2 A: Off of the brake pads, of high-end Italian sports cars.

3 Q: So if you were to see the non-round particles, you might
4 be led in one of two directions as to the source of that
5 particular particle?

6 A: That's correct.

7 Q: But as to the round particles?

8 A: The round three-component particles only come from one
9 place.

10 Q: Now when you test for gunshot residue, do you test for
11 different levels, different strengths, if you will, of
12 different amounts of gunshot residue?

13 A: Yes, sir. What we do is there are two different types of
14 sampling done on someone's hands for gunshot residue. There
15 are particle lifts, which are aluminum dabbers with carbon
16 sticky tape on one side and you dab them like you would dab a
17 bingo dotter. You just pop it on their hands until it loses
18 all its stickiness and then you seal it up and you put it in
19 the envelope and then you repeat that for the other side of
20 their hand.

21 So when we get samples, we usually get four particle
22 lifts. We get a right palm, a right back, a left palm and a
23 left back and when I say right back and left back, I mean the
24 back of the hand, not the back of somebody's back.

25 After the particle lifts are taken, swabs are used and

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- 1 it's just a cotton swab like you would go to Walmart and buy
2 Q-Tips. They are treated with dilute nitric acid, which
3 dissolves any metals from the primer that may be present on
4 the hand and that's where we look for the levels of metals.
5 We use acid to extract those metals out of that solution and
6 run it through an instrument that tells us how much of any
7 specific metal we're looking for and in the case of gunshot
8 residue we're looking for lead, barium and antimony.
- 9 Q: Okay. Now when you test the lifts that you receive or
10 the kits that you receive in your lab, do you in any way
11 choose what evidence comes to you?
- 12 A: No, sir.
- 13 Q: And who does that?
- 14 A: Whoever sends it to us.
- 15 Q: Okay and that would be normally law enforcement?
- 16 A: Yes, sir.
- 17 Q: Okay. Now referring back to your April 30th, 2009,
18 report, what was sent to you to test for that particular
19 report?
- 20 A: I got three particle lifts from a 2002 white Chevy
21 Impala.
- 22 Q: Okay and did you test those for the presence of gunshot
23 residue?
- 24 A: I did.
- 25 Q: And what was your conclusion?

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 A: What I found on those particle lifts were round lead
2 particles, which are a component of gunshot residue, and I
3 found non-round particles that contained lead, barium and
4 antimony. As I discussed before, non-round particles that
5 have all three components are associated with gunshot residue,
6 but they are not unique to gunshot residue.

7 Q: Now I'm going to refer you to your March 29th, 2009,
8 report.

9 A: Yes, sir.

10 Q: And this is -- These are different. These are different
11 than what's contained in your April 30th, isn't it? A
12 different sort of kit that was sent to you?

13 A: For most of these, what all we did was swabs and that's
14 -- that's mainly what we do is we test the swabs first because
15 we get so much of this evidence in. The particle lifts take
16 up to eight or nine hours to run a particle lift, a single
17 particle lift. If I had to run four, I wouldn't have time to
18 come and testify.

19 That's four off of every kit. We'll give a round number
20 and say that I get 2,500 kits a year. You can see where that
21 would take me forever and nobody would ever get anything done
22 other than me sitting in front of a microscope trying to find
23 these particles.

24 So what we do is we test the swabs first. The swabs can
25 be run 150 to 200 at a time and we use the information that we

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 get from those swabs to either analyze the particle lifts or
2 to stop and just go with the information off the swabs. So
3 for some of the GSR kits that I did in this case from the
4 March 24th report, there are results from swabs and for at
5 least one of them there are results for particle lifts.
6 Q: Let me refer you to the four items that you tested.
7 Let's start in reverse order with item number 4. What was
8 item number 4?
9 A: Item number 4 was a gunshot residue kit from what I have
10 listed as Jerome Renaldo Campbell.
11 Q: Okay. Did you find any evidence of gunshot residue on
12 the samples that you looked at?
13 A: No, sir, I did not.
14 Q: Let me refer you now to item number 1, which is a -- Tell
15 me about item number 1?
16 A: Item number 1 was a gunshot residue kit from Anthony
17 German.
18 Q: Okay. Did you find the presence of any gunshot residue
19 on the samples taken from Anthony German?
20 A: No, sir, I did not.
21 Q: All right. Now how long does gunshot residue stay on
22 your hands?
23 A: On a living person, it stays on your hands for about six
24 hours.
25 Q: Is there any way to take gunshot residue off of your

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 hands before that six hour time frame?

2 A: Yes, sir.

3 Q: And how -- and how would -- how would that happen? How
4 would a person rid themselves of gunshot residue?

5 A: Gunshot residue is very fragile. It's much like flour.
6 You dust your hands to bake and you run your hands under
7 running -- or you put your hands under running water or you
8 wipe your hands off on a towel. You can see that a lot of
9 that flour is going to disappear, more if you run it under
10 water and you rub your hands together.

11 Gunshot residue is a lot like that. The sooner that the
12 test is done after the shooting, the more information we're
13 going to get from that kit. The longer that it -- that it is
14 between the time of the shooting and the time of collection,
15 the possibility of finding it goes down dramatically simply
16 because these metals are absorbed into your skin.

17 People shoot with their hands. So they shoot, they put
18 the gun down, they go to the refrigerator, they get a drink.
19 The drink gets wet, their hands get wet, they wipe their hands
20 together, they wipe their hands on their pants. They go
21 outside, they touch anything and they're transferring this
22 material little by little off of their hands. So the longer
23 that you have between the time of the shooting and the time of
24 collection, the less information you'll get.

25 Q: Is it possible to take gunshot residue off your hands

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 immediately after firing a weapon by one of the methods that
2 you described?

3 A: Yes, sir.

4 Q: Such that you wouldn't be able to discover it?

5 A: Yes, sir.

6 Q: You as the forensic scientist?

7 A: Yes, that's correct.

8 Q: And if you do nothing at all, would it come off naturally
9 by itself?

10 A: It would be absorbed into the body.

11 Q: All right. Now did you ever -- And you've got four
12 samples here. Did you ever receive a sample for a Frank
13 Haigler?

14 A: No, sir.

15 Q: And you weren't asked to test any gunshot residue tests
16 for a Frank Haigler?

17 A: No, sir.

18 Q: You were, however -- however, asked to -- Well, what's
19 item number 2?

20 A: Item number 2 is a gunshot residue kit from Michael
21 Allen.

22 Q: All right. In the test of Michael Allen, did you detect
23 the presence of gunshot residue?

24 A: What I detected on the right palm, right back and the
25 left palm were round lead particles.

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 Q: Did you find any of the irregular -- irregularly shaped
2 particles?

3 A: No, sir, just the round lead.

4 Q: In what amounts did you find those?

5 A: If you'll give me a second to check my notes, I can tell
6 you exactly how many I found. Between the three different
7 areas, I found ten round lead particles.

8 Q: Is that a large amount of round particles to find or is
9 that a -- I don't ---

10 A: It ---

11 Q: How would you quantify that?

12 A: It's -- Basically it's just ten. We don't -- I don't
13 really give numbers to finding round lead particles, but we --
14 What we like to look at is the combination of information from
15 the swabs and the round lead particles. If there's a --
16 (Whereupon, the witness coughs.) Excuse me.

17 If there's a high level of elemental lead that we find on
18 the hands and then run those particle lifts and we find three
19 or four round lead particles, that just means that there was a
20 lot of lead on that person's -- the area of that person's
21 hand. So finding five round lead particles versus two round
22 lead particles, there's not much difference between the two
23 other than the number. It just means that there was round
24 lead particles there.

25 Q: Okay. Now item number 3, what was item number 3?

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 A: Item number 3 was a gunshot residue kit from Michael
2 German.

3 Q: Okay. You tested four items from Michael German?

4 A: Yes, sir, right palm, right back, left palm, left back.

5 Q: Was there any difference in the testing of the kit from
6 Michael German than there would have been from Anthony German,
7 Jerome Campbell or Michael Allen?

8 A: With the exception of running the particle lifts from Mr.
9 Allen's hands, there was no difference in the testing.

10 Q: And why did you run the lifts from Mr. Allen's hands and
11 not run the lifts from Mr. German's hands?

12 A: Let me refer to my notes and I can give you the exact
13 reason. The lifts from Mr. Allen's hands or the swabs from
14 Mr. Allen's hands, what I found when I ran the swabs was that
15 there was high levels of lead, but not corresponding high
16 levels of antimony or barium and to make a call just off the
17 swabs, we have to have a combination of two of the metals,
18 lead and antimony.

19 In Mr. Allen's case, I just had high levels of lead, high
20 enough where I couldn't say that there was nothing on those
21 swabs, so I had to run the particle lifts just for those three
22 areas, for the right palm, right back and left palm.

23 Q: Okay. Did the fact that Michael German was deceased
24 change the way that SLED approached the gunshot residue tests
25 versus the living persons from which kits were taken?

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 A: In the testing, the analysis of the gunshot residue kit,
2 no. The only thing that would have altered it was if his kit
3 had been taken longer than six hours after the shooting. On a
4 deceased person, they're not moving, they're not breathing, so
5 none of this -- none of this material is being absorbed into
6 their body. So it stays there until it's physically removed
7 either by somebody washing the body or by somebody using a GSR
8 kit and removing the material from their hands. So that would
9 have been the only difference between Michael German's kit and
10 any of the other ones.

11 Q: And what did you find when you reviewed Michael German's
12 kit?

13 A: On the right back and the left palm, I found that the
14 quantities of metals on those two areas may be associated with
15 gunshot residue. On the left back, I found that the
16 quantities of metals were consistent with gunshot residue.
17 The right palm was negative.

18 Let me explain the differences between those two results.
19 Metals associated with gunshot residue is simply just a little
20 bit lower level of metals. It -- There was a lot there, but
21 not enough to say that we consider it consistent with being
22 around a gun, firing a gun or being near a gun when it goes
23 off. Metals consist -- Yeah, those are the differences.

24 Q: Okay. Now what is the most common way to get metals
25 associated with gunshot residue or gunshot residue on your

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 hands?

2 A: To shoot a firearm.

3 Q: Based on your expertise, is there any other possible way
4 of getting gunshot residue on your hands?

5 A: There's three general ways that we have to get gunshot
6 residue on your hands. You can fire a gun. When I go out to
7 the range and I shoot, I get gunshot residue on my hands.

8 If I go out to the range and I shoot, put the gun up in
9 my holster, wash my hands, take all the gunshot residue off,
10 go home, take the gun out of the holster and put it in the
11 safe, I can get gunshot residue simply by handling that
12 firearm that's been recently fired. It's got gunshot residue
13 on it because I went and I shot and I don't shoot two or three
14 rounds at the range, I shoot 40, 50, 80, 100. The more you
15 shoot, the more that gets on the gun and the more you'll get
16 on your hands.

17 The other way to get it is to be near somebody when it
18 goes off. If I'm standing there and I'm helping my wife shoot
19 and she's shooting and I'm off to the side, depending on how I
20 have my hands positioned, I can get gunshot residue on my
21 hands just from being near her when she's shooting.

22 In general, those are the three ways. There's a couple
23 other scenarios where you can get it, but in general those are
24 the three main ways.

25 Q: I'm going to pose a hypothetical to you. What if you

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 don't handle a gun, you're not near someone who fires a gun
2 and you don't fire a gun, how would you -- how could somebody
3 get gunshot residue on their hands then?

4 A: I would need to ---

5 Q: Hypothetically.

6 A: I would need to hear the specific hypothetical for that.

7 Q: Were you able to review during the preparation for your
8 testimony today videotape taken from the gas station on Old
9 Towne Road in Charleston, South Carolina?

10 A: Yes, sir.

11 Q: And that would have been videotape that I supplied to
12 you?

13 A: Yes, sir.

14 Q: If a projectile struck a hard surface, like a brick wall
15 ---

16 MR. HARRIS: Objection, Your Honor.

17 THE COURT: Basis?

18 MR. HARRIS: Leading.

19 THE COURT: You have to structure the hypothetical
20 without leading.

21 MR. VOIGT: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 Q: Can a projectile containing lead, barium and antimony
24 striking a surface, can that release any of the trace evidence
25 ---

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 MR. HARRIS: Objection, Your Honor.

2 THE COURT: Basis?

3 MR. HARRIS: It's still leading.

4 THE COURT: You have to put it in the form of a
5 hypothetical, Mr. Voigt.

6 MR. VOIGT: Thank you, Your Honor.

7 THE COURT: Mm-hmm.

8 Q: If one were to fire a weapon at a solid surface, would
9 one expect or would you rather expect that there may be trace
10 levels of metals associated with gunshot residue at or near
11 the point of impact?

12 A: Yes, sir. What we've seen and this is usually post-
13 incident and post-analysis talking to investigators, we've
14 seen people who have had gunshot residue kits taken off of
15 them from a vehicle that they've been shot in and the vehicle
16 has been shot through. Regardless of what you might think,
17 the metal on your car door is not going to stop a bullet.
18 Most bullets will just go through it not quite like cheese,
19 but pretty close.

20 What happens when that bullet goes through the metal,
21 it's metal striking metal. It's two hard surfaces striking
22 each other. The lead in the bullet will vaporize as it comes
23 through the door. Some of the lead in the bullet will
24 vaporize. Some of it will stay intact and strike whatever it
25 happens to strike depending on what angle it's been shot at

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 and all that ballistics stuff. But the lead will -- some of
2 the lead will vaporize and it will get on anything that it's
3 in that car near where it vaporizes and we've seen people who
4 have just been sitting in the car and have tremendous amounts
5 of these materials on their body, on their hands, just because
6 the bullets went through a solid object and vaporized.

7 Q: Would the impact that you reviewed in preparation for
8 your testimony today, if it were in fact a projectile, would
9 that have struck with sufficient force to vaporize the metals
10 contained therein?

11 A: Yes, sir.

12 Q: Would that have created a cloud of metals?

13 MR. HARRIS: Objection, Your Honor.

14 THE COURT: Basis?

15 MR. HARRIS: Leading.

16 THE COURT: Rephrase in the form of a hypothetical.

17 MR. VOIGT: Thank you.

18 Q: Hypothetically, if this round had struck a solid object,
19 would those vaporized metals form some sort of cloud or some
20 sort of other -- Would it have interacted with the gases in
21 the air immediately around it?

22 A: What you can think about is -- (The witness coughs.)
23 Excuse me. Throwing a water balloon at a wall, you fill up a
24 big water balloon full of water and you throw it at the wall,
25 that water balloon is going to burst hopefully and it

DIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 splashes. That's what a lead projectile from a firearm
2 hitting a brick wall could look like, a big splash of lead,
3 barium, antimony, copper, whatever is contained in that bullet
4 puffing out in a cloud and then settling down since it's
5 heavier than air on things that are near it when it hits.

6 Q: When you said things that are near it, you would have to
7 be fairly close to that point of impact for this scenario that
8 you've described to be detected in any way?

9 A: Yes, sir.

10 Q: So if you were at some -- If you were at some distance
11 from the point of impact, no matter how large a round, no
12 matter how much it vaporized, you wouldn't -- you couldn't
13 come in contact with those elements?

14 A: Depending on the round and the distance, yes, sir, that's
15 right.

16 Q: And without knowing the round and without knowing the
17 distance, you would have no way of -- even with your expertise
18 having any way of knowing how far such vaporized metals could
19 travel?

20 A: No, sir, I do not.

21 Q: And just so that we're clear, the most common way to get
22 gunshot residue on your hands is to either handle or fire a
23 firearm, right?

24 A: Yes, sir, or be near it when it goes off.

25 Q: Thank you. Please answer any questions that Mr. Harris

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

1 may have.

2 THE COURT: You may proceed.

3 MR. HARRIS: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 CROSS EXAMINATION

6 BY MR. HARRIS:

7 Q: Okay. So just a little background on you, you work for
8 SLED here in South Carolina?

9 A: Yes, sir.

10 Q: You process these kits?

11 A: Yes, sir.

12 Q: Okay and you're testifying today for the prosecution?

13 A: Yes, sir, the prosecution subpoenaed me.

14 Q: How often have you testified as an expert?

15 A: At least 50 times.

16 Q: At least 50?

17 A: Yes, sir.

18 Q: Okay and how many of these cases with these vaporized
19 bullets have you worked on?

20 A: There have been a couple, I'd say five.

21 Q: Five cases, but those -- those were going through a car
22 door?

23 A: Yes, sir.

24 Q: Okay. Have you had one -- you ever worked on one where
25 it hits a brick wall?

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

- 1 A: Not to my knowledge, I have not.
- 2 Q: Okay. Let me ask you: You did gunshot residue tests on
- 3 samples taken from my client, Jerome Campbell?
- 4 A: Yes, sir.
- 5 Q: That was taken to your knowledge the night of the
- 6 incident?
- 7 A: I can tell you if you'll give me two ---
- 8 Q: Okay.
- 9 A: If you let me check my notes, I can tell you. A gunshot
- 10 residue kit was collected January 10th, 2009, at 1:40 a.m.
- 11 Q: Okay. So if the incident happened right around midnight,
- 12 it was within six hours you're talking about?
- 13 A: Yes, sir.
- 14 Q: Okay. You also did tests on Anthony German?
- 15 A: Yes, sir, that's correct.
- 16 Q: Michael Allen?
- 17 A: Yes, sir.
- 18 Q: Michael German?
- 19 A: Yes, sir.
- 20 Q: And we do not have one on Frank Haigler?
- 21 A: No, sir.
- 22 Q: Okay. You mentioned that Michael Allen had round lead
- 23 particles on his hands?
- 24 A: Yes, sir.
- 25 Q: And you said -- Well, how does one get round lead

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

- 1 particles? I believe you said Italian sports cars brakes is
2 another way to get it?
- 3 A: No, sir. That's the three component irregular shaped
4 particles.
- 5 Q: Okay, that's when you have three together?
- 6 A: Yes, sir.
- 7 Q: Okay. How does one get round lead particles on -- I mean
8 do you get round lead particles on your hand when you fire a
9 gun?
- 10 A: Yes, sir.
- 11 Q: Okay. You can get it other ways?
- 12 A: Yes, sir.
- 13 Q: But other ways happen in nature if you're a welder, if
14 you're a ---
- 15 A: If you're a welder, you can get it.
- 16 Q: Mm-hmm.
- 17 A: Usually they're kind of big and chunky.
- 18 Q: Okay.
- 19 A: What we're looking for when we do round lead is a little
20 smaller.
- 21 Q: Okay.
- 22 A: But they are round lead.
- 23 Q: Okay.
- 24 A: So your -- that scenario is a valid scenario.
- 25 Q: Okay. In your opinion from the round lead you saw in

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

- 1 this case, was it from welding?
- 2 A: No, sir.
- 3 Q: Okay and that's Michael Allen. That's -- that was on the
- 4 I believe you said back of his hand?
- 5 A: I'm sorry I keep having to check this.
- 6 Q: I apologize.
- 7 A: The right palm, the right back and the left palm.
- 8 Q: Okay. So here, here and here?
- 9 (Whereupon, counsel points to his right palm, back of
- 10 right hand and left palm.)
- 11 A: Yes, sir.
- 12 Q: Okay. Is that normally where you find gunshot residue on
- 13 someone?
- 14 A: If they were shooting a gun two handed, yes, sir.
- 15 Q: Okay.
- 16 A: I can see it.
- 17 Q: So if they were firing a gun?
- 18 A: Yes, sir.
- 19 Q: Okay and you said it's on his palm. In this exploding
- 20 bullet scenario we're talking about, would the person be
- 21 standing like this to get that on the palms?
- 22 A: They could be standing any way that exposes the area that
- 23 it gets on to the material.
- 24 Q: Okay. So if they're close to this vapor cloud and their
- 25 hands are here, would it be all over their back and head and

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

1 everything?

2 A: Yes, sir, it could be.

3 Q: But ---

4 A: If they're -- if they're straight back to it and it ---

5 Q: Okay.

6 A: This is -- I mean if you -- if you picture again a water
7 balloon, it gets everywhere and just depending on how the
8 person has their hands, it can get wherever the hands are
9 exposed to.

10 Q: Okay, but in your opinion, if this cloud happens behind
11 them, it's going to mainly get on their back. I mean what I'm
12 saying is it's on both of their palms. That means it comes
13 over them, goes down and then comes around and gets on their
14 palms?

15 MR. VOIGT: Objection.

16 THE COURT: Basis?

17 MR. VOIGT: Facts not in evidence.

18 THE COURT: He can ask a hypothetical. He's an expert.
19 He just needs to put it in the form of a hypothetical.

20 Sustained, rephrase.

21 MR. HARRIS: Okay.

22 Q: Hypothetically, the person is standing there and has
23 their palms down. Is that gunshot residue going to come
24 around and get on their palms?

25 A: It could. However, when the body is shielding it, the

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

- 1 likelihood is less.
- 2 Q: Okay. So that's Michael Allen. He's got gunshot -- what
- 3 is consistent with gunshot or ---
- 4 A: Round lead particles.
- 5 Q: Round lead particles. Okay and you said that you used
- 6 the term consistent on one and you used the term ---
- 7 A: Associated.
- 8 Q: Associated with?
- 9 A: Yes.
- 10 Q: That's what round lead particles are?
- 11 A: Round lead particles are a component of gunshot residue.
- 12 Q: A component of?
- 13 A: Yes, sir.
- 14 Q: Okay. Are they associated with gunshot residue or
- 15 consistent with it?
- 16 A: Both.
- 17 Q: Okay, okay. I don't understand. I was reading your
- 18 report and I saw the terminology.
- 19 A: The -- the consistent with and associated with ---
- 20 Q: Mm-hmm.
- 21 A: --- is the results for the swabs from Michael German.
- 22 Q: Michael Allen, right? This is Michael Allen we're
- 23 talking about.
- 24 A: Michael Allen had round lead particles ---
- 25 Q: Right.

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

1 A: --- that are components of gunshot residue.
2 Q: Right.
3 A: There's no mention of consistent with or associated with
4 ---
5 Q: Okay.
6 A: --- with his.
7 Q: Okay. Now let's go to Michael German.
8 A: Yes, sir.
9 Q: You found what is consistent with gunshot residue?
10 A: I found levels, quantities of metals consistent with
11 gunshot residue on the left back of the hand.
12 Q: Left back?
13 A: Yes, sir.
14 Q: Okay, but you also found it on the right hand ---
15 A: I found it ---
16 Q: --- but not at the same levels?
17 A: Not at the same levels, not quite the same.
18 Q: Okay. The difference in finding what is consistent with
19 gunshot residue on the left and right hands, what makes this
20 left hand different?
21 A: The amount.
22 Q: Okay. So the amount, you didn't say that is gunshot
23 residue?
24 A: No, I cannot say that it is gunshot residue. I can say
25 that I found levels of metals that are consistent with gunshot

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

1 residue.

2 Q: Okay. Do those levels of metals happen other than like
3 you said? Did they happen anywhere other than Italian sports
4 car brakes?

5 A: Yes, sir.

6 Q: Where is that?

7 A: If you rub your hands all over fishing weights, I can
8 find enough lead on your hands to call it consistent with
9 gunshot residue. The difference between the two reports ---

10 Q: Mm-hmm.

11 A: --- or the two -- the three different results that we're
12 discussing ---

13 Q: Right.

14 A: --- is there are particle lifts that we did not run for
15 Michael German.

16 Q: Okay.

17 A: All right. If I had run his particle lifts and I had
18 found round lead, barium and antimony particles ---

19 Q: Mm-hmm.

20 A: --- I would have said gunshot residue found, the end.

21 Q: Okay.

22 A: All right? In his case, we did not run his particle
23 lifts.

24 Q: Okay.

25 A: He was deceased.

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

1 Q: Okay.

2 A: We just ran his swabs. So the results are metals
3 consistent with gunshot residue and metals associated with
4 gunshot residue.

5 Q: Okay.

6 A: I can't say whether those metals are actually gunshot
7 residue, but they have lead, they have barium and they have
8 antimony, all three of the metals that we look for in gunshot
9 residue.

10 Q: Okay. So you're saying -- So he has on his hands all
11 three levels associated with gunshot residue, that is in
12 gunshot residue?

13 A: All three metals that I would look for in gunshot
14 residue, yes, sir, he had.

15 Q: Okay. So you didn't run the test. You were just told
16 not to run this test?

17 A: No, sir. Our protocol in the trace evidence department
18 is when we find a positive result on a deceased person for the
19 swabs, which are run first, that's where we stop.

20 Q: Okay. So in your expert opinion, it's possible he fired
21 a gun that day?

22 A: It is possible.

23 Q: Okay. Now you said there's three ways to get the levels
24 we're talking about, right?

25 A: In general, there are three ways.

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

- 1 Q: In general there are three ways?
- 2 A: Yes, sir.
- 3 Q: As an expert in this field, as someone that studies this
- 4 all the time, the most common ways are like you said: firing a
- 5 gun, handling a gun or being in the vicinity of someone firing
- 6 a gun?
- 7 A: Yes, sir, that's correct.
- 8 Q: Okay. Just as if this exploding bullet or vaporizing
- 9 bullet off a wall theory, also it's possible that someone is
- 10 standing right there and a gun goes off right in front of them
- 11 and they have their hands out in front of them, that would put
- 12 the same gunshot residue on their hands, right?
- 13 A: Yes, sir, it would.
- 14 Q: Okay, because what comes out of the barrel is also
- 15 consistent with gunshot residue?
- 16 A: The majority of gunshot residue that we find comes out of
- 17 a barrel.
- 18 Q: Okay.
- 19 A: Or what we look for comes out of a barrel.
- 20 Q: Okay, because that puff, that smoke that comes out of the
- 21 barrel and the sides, that's what has this round lead
- 22 particles, antimony, barium, all these things in it?
- 23 A: Yes, sir.
- 24 Q: Right?
- 25 A: That's correct.

CROSS EXAMINATION OF JOHN ROBERTS BY MR. HARRIS

1 Q: Okay. So that's where most of it comes from is right
2 there?

3 A: Yes, sir.

4 Q: That's why when someone fires a gun in a room with people
5 standing around them, they also get that on them, right?

6 A: That's right.

7 Q: Okay.

8 MR. HARRIS: I beg the Court's indulgence for just a
9 minute, Your Honor.

10 THE COURT: Yes, sir.

11 Q: You did not find metals matching any of this on or
12 related to any gunshot residue on Jerome Campbell?

13 A: That's correct.

14 Q: Now another question: When this gunshot spray comes down
15 on somebody or on somebody, it's like flour. Does it stay on
16 their clothes?

17 A: Yes, sir.

18 Q: Does it stay on their clothes longer than it would on
19 their hands?

20 A: Until their clothes were washed.

21 Q: Okay. So if you had the clothes of a person that shot,
22 you could test that today for gunshot residue?

23 A: The shooter? Is that ---

24 Q: Anybody that had fired a gun or weapon?

25 A: Yes, sir.

REDIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 Q: Okay and you might find it on the sleeve of their shirt
2 because it's fired right there?
3 A: I can shorten your answer.
4 Q: Okay.
5 A: Shorten your question for you. What we would do is check
6 the sleeves.
7 Q: Okay.
8 A: Since those are what is closest to the gun when it goes
9 off are the sleeves, we would check the sleeves for gunshot
10 residue.
11 Q: Okay. Did you check the sleeves on anybody in this case?
12 A: No, sir.
13 Q: Did you get the clothes from anybody in this case?
14 A: Not in this case, I did not.
15 Q: But if those clothes were still available and had not
16 been washed, would it still have gunshot residue on them?
17 A: They could, yes, sir.
18 MR. HARRIS: I've got nothing further, Your Honor.
19 THE COURT: Any redirect of the witness?
20 MR. VOIGT: Briefly, Your Honor.
21 THE COURT: You may proceed.
22 REDIRECT EXAMINATION
23 BY MR. VOIGT:
24 Q: In the scenario Mr. Harris described where a bullet is
25 vaporized, would any of that vapor be visible to the naked

REDIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 eye?

2 A: The elements themselves, no, but the cloud of dust and
3 brick that is generated by the projectile hitting the wall,
4 that would be visible.

5 Q: You only test what you're asked to test, right?

6 A: That's correct.

7 Q: And if you were to have received a clothing sample
8 without any further instruction from law enforcement, is it
9 your testimony that you would have tested the sleeves as you
10 described to Mr. Harris?

11 A: If it was a jacket or a shirt, yes, sir.

12 Q: And now in the scenario that Mr. Harris and I described
13 about a vaporizing projectile above a person's head, would a
14 larger projectile produce a larger amount of lead vapor and --
15 and debris cloud?

16 A: Yes, sir.

17 Q: And would a larger projectile propel this cloud farther
18 than a smaller caliber?

19 A: Yes, sir.

20 Q: All right and objects that would be within that cloud,
21 could they acquire the elements that we've talked about within
22 that cloud, lead and antimony and barium, no matter what their
23 positioning might be?

24 A: Like the brick debris, clods of dirt, stuff like that,
25 yes, sir, they could have gunshot residue on them.

REDIRECT EXAMINATION OF JOHN ROBERTS BY MR. VOIGT

1 Q: But just like somebody washing their hands, would rain or
2 dew affect that if you came back later to test for it?

3 A: Rain would definitely wash it away.

4 Q: Now when you tested the gunshot residue from inside of
5 the Chevy Impala, was there any indication that this was like
6 the scenario you described elsewhere where a bullet had gone
7 into that car?

8 A: I didn't -- I didn't do any follow-up with -- with this
9 one and we ---

10 Q: That -- Is that information that you wouldn't have had
11 access to?

12 A: I don't think so. I have an incident report in here, but
13 I -- Sometimes, I read them, sometimes I don't. It just
14 depends on the time. This one I think we -- we believed that
15 it was the vehicle that was shot out of rather than shot
16 through.

17 Q: And in this -- in this -- in this cloud that we have
18 here, in order to acquire any of the contents of the cloud on
19 your hands, would it be enough to have your hands out and in
20 some sort of position where they would be in the open?

21 A: Yes, sir. You couldn't have them in your pockets.

22 MR. VOIGT: Thank you.

23 THE COURT: Any objection to the witness being excused
24 from the State?

25 MR. VOIGT: None from the State, Your Honor.

1 THE COURT: From the defense?
2 MR. HARRIS: None, Your Honor.
3 THE COURT: Sir, you're excused.
4 MR. ROBERTS: Thank you.
5 (Whereupon, the witness leaves the stand at 10:54 a.m.)
6 THE COURT: You're welcome. Madam Forelady, ladies and
7 gentlemen, you all have been sitting a little over an hour.
8 I'm going to give you a brief rest room break. During the
9 break, please do not discuss the case and please leave your
10 notepads in your seats. If you would, go with your
11 caretakers, please.
12 (Whereupon, the jury leaves the courtroom at 10:55 a.m.)
13 THE COURT: You may be seated. We'll be at ease for
14 about ten minutes. Who is the State's next witness?
15 MR. VOIGT: If I might put something on the record, Your
16 Honor?
17 THE COURT: Mm-hmm. Wait, the defendant was taken out.
18 MR. HARRIS: (To deputies) Can you bring him back in to
19 put something on the record?
20 (Whereupon, there is a brief pause in the proceedings to
21 bring the defendant back into the courtroom.)
22 MR. VOIGT: And this is very brief. I was just informed
23 as we were -- as this witness was coming off the stand. I had
24 planned to call James Tawney as a witness this morning, Your
25 Honor. He currently lives in Beaufort, South Carolina, and

1 when we talked to him this morning, he was on his way up. I
2 just learned apparently his sister has had some sort of
3 complication with her cancer treatment and he redirected
4 himself to the hospital ---

5 THE COURT: Mm-hmm.

6 MR. VOIGT: --- to be with her and I may not call him for
7 that reason. I just didn't want to make it appear like I was
8 trying to sandbag anyone. I really did think I was going to
9 call him this morning.

10 THE COURT: Okay. So that would leave then Mr. German
11 and Mr. Allen?

12 MR. VOIGT: That's correct.

13 THE COURT: And then the State would be resting?

14 MR. VOIGT: I believe that to be the case.

15 THE COURT: And then the defense would be ready to
16 proceed with its witnesses?

17 MR. HARRIS: Yes, Your Honor. All I need is my -- my
18 expert is in -- He's five hours from here in a place in
19 Atlanta and I just got to ---

20 THE COURT: Well, that's not exactly five hours, is it?

21 MR. HARRIS: Do what?

22 THE COURT: Is it five hours from here?

23 MR. HARRIS: Well, he's not in Atlanta.

24 THE COURT: Maybe outside of Atlanta?

25 MR. HARRIS: Yeah, this side, the Charleston side of

1 Atlanta. So he's a 770, but he's not in the heart of Atlanta.
2 So he's five, five and a half hours, but he's -- All I got to
3 do is call him right now and he's going to be on the road.
4 THE COURT: You might -- You might want to.
5 MR. HARRIS: Okay. I just ---
6 THE COURT: Because how long will Mr. German and Mr. -- I
7 assume that will take us through lunch? How long will Mr. --
8 Mr. Anthony German be?
9 MR. VOIGT: I believe, Your Honor, that ---
10 THE COURT: Just give me a rough estimate.
11 MR. VOIGT: Thirty minutes with me.
12 THE COURT: How long was Mr. Haigler? Well, actually Mr.
13 Haigler testified from 4:11 to 5:04. So how long is that?
14 MR. HARRIS: Forty-five minutes.
15 THE COURT: Do you think that Mr. German and Mr. Allen
16 will be about the same?
17 MR. VOIGT: I do. They will.
18 THE COURT: So then that would be 45 minutes, which would
19 take us to 11:45 and then 45 minutes. Depending on how the
20 jury is looking I might give them another little break to
21 stretch. So that would take us to 12:45 and then so that's
22 one and then you have lunch. So you might want to tell him to
23 go ahead.
24 MR. HARRIS: I've got other witnesses than can go before
25 him.

1 THE COURT: Yeah, you might -- Well, or unless you have
2 -- Or unless you want to use the afternoon to call your other
3 witnesses, have your client examined about whether he wants to
4 testify and deal with that and then have your expert first
5 thing in the morning. That's up to you.

6 MR. HARRIS: We could. I mean ---

7 THE COURT: What's today? Today is Wednesday?

8 MR. VOIGT: Yes, Your Honor.

9 MR. HARRIS: Okay. Let me ---

10 THE COURT: You all can figure out the logistics.

11 MR. HARRIS: Let me find out how long it would take him
12 to get here. If he can get here by 3:30 or if he's like ---

13 THE COURT: It might be easier to knock it out.

14 MR. HARRIS: Okay.

15 THE COURT: But I'll leave that up to y'all.

16 MR. HARRIS: Thank you, Your Honor.

17 THE COURT: Thank you.

18 (Whereupon, there is a break in the proceedings from
19 10:58 a.m. until 11:16 a.m.)

20 THE COURT: Is the State ready to proceed?

21 MR. VOIGT: Yes, Your Honor.

22 THE COURT: Is the defense ready to proceed?

23 MR. HARRIS: Yes, Your Honor.

24 THE COURT: Call your next witness. The jury is about to
25 come in.

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 MR. VOIGT: Mr. Allen? Mr. Allen?

2 THE CLERK: This way, sir. When the jury comes in,
3 you'll need to be sworn.

4 (Whereupon, the jury enters the courtroom at 11:16 a.m.)

5 BAILIFF: Your Honor, the jury is present.

6 THE COURT: Thank you. You may be seated. The State may
7 call its next witness.

8 MR. VOIGT: Thank you, Your Honor.

9 THE COURT: Mm-hmm.

10 MR. VOIGT: The State calls Michael Allen.

11 THE COURT: The witness will be sworn.

12 THE CLERK: Please raise your right hand. Do you swear
13 or affirm that your testimony will be the truth, the whole
14 truth and nothing but the truth, so help you God?

15 MR. ALLEN: I do.

16 THE CLERK: Be seated. Mr. Allen, if you'll please speak
17 into this microphone and state your full name and then spell
18 your last name?

19 MR. ALLEN: Michael Travis Allen, Allen is the last name,
20 A-double L-E-N.

21 THE COURT: You may proceed.

22 MR. VOIGT: Thank you very much, Your Honor.

23 THE COURT: You're welcome.

24 MICHAEL ALLEN, being first duly
25 sworn, testifies as follows:

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

DIRECT EXAMINATION

1
2 BY MR. VOIGT:

3 Q: Mr. Allen, try to, if you can, pull that microphone as
4 close to you as possible.

5 A: Okay.

6 Q: Speak into it. We need to -- We need everybody in the
7 whole courtroom to be able to hear you. Okay?

8 A: All right.

9 Q: Mr. Allen, are you married?

10 A: Yes, I am.

11 Q: And who are you married to?

12 A: Charise Coaxum.

13 Q: Does Charise Coaxum have a brother?

14 A: Yes, she does.

15 Q: Does she have a sister?

16 A: Yes, she has a few of them.

17 Q: Okay, what are her sisters named?

18 A: One of them I believe name is Candace, another one is
19 Ronnie, Veronica, and then there's Tina.

20 Q: Okay. What is -- What's your brother-in-law's name?

21 A: Jerome.

22 Q: What's his last name?

23 A: I believe it's Campbell.

24 Q: Do you know Frank Haigler?

25 A: Yes, I do.

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

- 1 Q: Okay. Why do you know Frank Haigler?
- 2 A: That's my brother.
- 3 Q: Is he your older or younger brother?
- 4 A: Younger.
- 5 Q: Do you know Anthony German?
- 6 A: Yes, I do.
- 7 Q: How do you know Anthony German?
- 8 A: I know Anthony German from work. When he first started
- 9 working, I was the one that trained him into the job.
- 10 Q: Did you know his brother, Michael?
- 11 A: Yes, I do.
- 12 Q: And how did you know Michael?
- 13 A: The same way. I trained both of them.
- 14 Q: Okay.
- 15 A: At work.
- 16 Q: And where was that job? Where was that work?
- 17 A: That was on Azalea Road in the North Charleston area.
- 18 Q: In January -- On January 9th, 2009, did you have an
- 19 argument with your wife that day?
- 20 A: Yes.
- 21 Q: Where was that at? Where did that argument take place?
- 22 A: In our home in West Ashley.
- 23 Q: I'm going to show you what's been previously marked as
- 24 State's 13. Is that a picture of your apartment door?
- 25 A: Yes, that appears to be our apartment door there.

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

- 1 Q: Do you remember what number it was?
- 2 A: ~~XXXXXX~~
- 3 Q: Okay and the D, does that stand for building D?
- 4 A: Yes, it does.
- 5 Q: Before January 9th, 2009, approximately how many times had
- 6 you been in contact or met Jerome Campbell, your brother-in-
- 7 law?
- 8 A: Well, I've -- We've -- We've hung out or we've talked
- 9 quite a few times.
- 10 Q: Okay. Did you know where he lived?
- 11 A: Yes.
- 12 Q: Did you know his telephone number?
- 13 A: No. I may have had it logged in my phone, but I don't
- 14 know it off the top of my head.
- 15 Q: Okay. In 2009, did there come a time when Frank came to
- 16 your apartment with you and your wife?
- 17 A: Excuse me?
- 18 Q: Did there come a time when your brother, Frank Haigler,
- 19 came to that apartment with you and your wife?
- 20 A: Yes, he -- he came there quite a few times to that
- 21 apartment.
- 22 Q: On January 9th, did he come to that apartment?
- 23 A: Yes, he did.
- 24 Q: And why did he go there?
- 25 A: Well, I called him because I was ready to leave because

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 of a argument I was having, you know, and I needed to stay
2 with him, you know, so I called him up.
3 Q: Were you getting put out of the house?
4 A: Yes, one of the few times.
5 Q: Okay. After y'all left here -- Did y'all leave here at
6 some point?
7 A: Yes, everyone left after -- After the situation was
8 resolved, we all left after we spoke for a while.
9 Q: Okay.
10 A: You know and which we thought was leaving on good terms.
11 We all left.
12 Q: Where did you go?
13 A: We then went to Michael and Anthony's apartment.
14 Q: And do you recall where that was?
15 A: Yes. That's not too far from where I lived at at the
16 time and that was -- It's called Georgetown Apartments.
17 Q: Okay. Do you know what kind of car Jerome Campbell
18 drives?
19 A: Impala, Chevy.
20 Q: What color? Do you recall?
21 A: Yes, it's white with a black strip on the side.
22 Q: And this is -- I'm going to show you what's been marked
23 as State's 48. Is that the car?
24 A: Yes, it is. That the same one he has, yes..
25 Q: And did you know that was Jerome's car on January 9th,

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 2009?

2 A: Yes, I did..

3 Q: Where was the first time on January 9th, 2009, that you
4 saw that car?

5 A: Well, on this day I was expecting to see the car because
6 he called my phone several times that day.

7 Q: Did you talk to him that day?

8 A: I believe so because, you know, me and his sister was
9 arguing. His mom was also there present at the time and at
10 one point during the argument his mom -- his mom became loud
11 and boisterous with me and I thought was disrespectful. So I
12 kind of like was getting disrespectful also, you know, and she
13 called him on the phone while we were arguing and he must have
14 overheard me disrespecting his mom.

15 Q: Okay.

16 A: You know, so then he threatened me, "Yo, why you talk to
17 my mother like that? I'm coming over there." You know, I
18 didn't know where he was at at the time, but he said he'll be
19 over there soon. So I waited around for him, you know, in the
20 house and he never -- he never came, so I left. You know?

21 Q: Is that when you went to Michael and Anthony's house?

22 A: Exactly.

23 Q: Now did you know where Jerome lived?

24 A: I just know it's in North Carolina. I wouldn't know how
25 to get there or anything like that, no.

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 Q: In these conversations that you had with Jerome on the
2 phone, did you feel threatened by him in any way?

3 A: Well, the threats was made, but I didn't think it was
4 that serious because of the history that we have, you know, me
5 and his sister. So, but we -- Like I said, this was one of
6 our many fights and he came one time before probably to
7 alleviate it, you know, the differences that we had and at
8 that particular time I came home to get my clothes so I could
9 leave to my brother's house and when I knocked on the door, he
10 answered the door, you know, like, "What you doing here?",
11 aggressively. I said, "I come to get my clothes." You know,
12 because that's why I came. So I got my clothes and I left and
13 that was just one time he was there probably to resolve me and
14 his sister's spat.

15 Q: And that was -- that was before January of 2009?

16 A: That was before that, right.

17 Q: Okay. Did you see this car at the Georgetown Apartments,
18 which is where Michael ---

19 A: Yes, I did.

20 Q: --- and Anthony German live?

21 A: Yes, I did.

22 Q: Where did you see it?

23 A: Well, while me, Michael, Anthony and my brother was
24 standing by Michael and Anthony's apartment, Jerome came
25 driving by. First he went past, you know, and I believe my

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 brother seen him at that time, but we -- I didn't notice him,
2 but then he came back yelling out the car, "I know where you
3 live at now. I know where you live at now." You know?

4 Q: Did you recognize that voice as Jerome's voice?

5 A: Yes, I know his voice.

6 Q: Okay.

7 A: I then told him once he said that, I said, "So what? You
8 know where he live." And that's when I guess he noticed me
9 and he told me, "Well, you, you better not come home, you
10 know. You better not come home. I'll be there soon." You
11 know and next time I haven't seen him anymore since the
12 Georgetown Apartments.

13 Q: Okay. Now when y'all drove to the Georgetown Apartments,
14 was it already night by the time ---

15 A: Yes, it was.

16 Q: --- you were there? While that car was at the Georgetown
17 Apartments, did you see Jerome or anybody else with a gun in
18 that car?

19 A: I didn't see any gun. I just seen Jerome and heard his
20 voice.

21 Q: Okay.

22 A: There was other people in the car because I heard, you
23 know, talking, commotion and whatever.

24 Q: Were you able then -- Do you know who else may have been
25 in the car?

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 A: No, but I know they ain't know where he lived at until
2 that night, you know, so someone that was familiar with
3 Anthony or Michael had to, you know, escort them over there or
4 you know.

5 Q: And that's your guess?

6 A: That's my guess.

7 Q: All right.

8 A: That's all that is.

9 Q: All right. After this car left the Georgetown Apartments
10 and Jerome left the Georgetown Apartments ---

11 A: Right.

12 Q: --- what did you and your brother and Anthony and his
13 brother do?

14 A: After we left Georgetown Apartments?

15 Q: Yes.

16 A: Well, it was starting to get late and they was concerned
17 about, you know what I'm saying, about me going home. So they
18 said, "Well, we going to ride with you over there to make sure
19 everything is all right." You know?

20 Q: What car did you all go over in?

21 A: I believe this night we had the truck I had -- I had at
22 the time.

23 Q: Okay.

24 A: And yes, we went over there in the truck I believe.

25 Q: Okay. From the time you saw Jerome in his car at the

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 Georgetown Apartments to the time that you took the truck and
2 left, did you talk to Jerome on the phone anymore?

3 A: I'm not sure.

4 Q: Okay. What did you do? Where did you go? Did you go
5 directly to your apartment, ~~was~~?

6 A: No. What happened was when we got to the gas station,
7 the convenience store that was there not too far from the
8 apartment, my brother said for us to stay there while he go
9 down there and if -- if somebody should be there, he would
10 talk to them because I was threatened already, you know, to
11 alleviate the problem.

12 Q: Okay.

13 A: And that's what he did.

14 Q: Okay.

15 A: You know, he went down there and when he went down there,
16 me, Anthony and Michael just stayed by the convenience store,
17 you know. We heard gunshots. We were concerned, so we
18 started running towards the apartment, but we didn't run in
19 the immediate -- immediate entrance. We went around.

20 Q: Michael, let me stop you just there for a second. I want
21 to get back to the convenience store. Can you turn your head
22 around? Is this the inside of that convenience store?

23 A: Yes, it is.

24 MR. VOIGT: Can you play that for us?

25 (Whereupon, the store surveillance video view of the

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 inside of the store showing the entrance door is shown on
2 the screen.)
3 Q: Who is that?
4 A: That's my brother. Then it's Anthony behind him and
5 there's Michael.
6 Q: And that's you?
7 A: And that's me.
8 Q: That night, did you wear that -- that vest with the --
9 Did you wear that all night?
10 A: Yes, yes, I did.
11 Q: Okay and why were y'all in the store that night?
12 A: Well, like I said, we had just left the Georgetown
13 Apartments and we stopped at the store to grab a beer.
14 Q: Did you get a beer?
15 A: I believe so.
16 Q: Is that you off to the side there?
17 A: Yes, that's me. I think I'm on line. That's the line
18 there.
19 Q: That's one of the German brothers?
20 A: Yes, it is.
21 Q: Approximately how long did y'all stay in the store? Do
22 you remember?
23 A: It may have been about three minutes.
24 MR. VOIGT: Joann, please switch camera angles. If you
25 can, bear with me for just a moment.

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 Q: Now after you left the store, where did -- where did you
2 -- Where did Frank go?

3 A: Frank went to my apartment.

4 Q: And where was your apartment located in relationship to
5 the Kangaroo station?

6 A: Okay. Well, it's a straight walk. It's a straight walk
7 about -- I'd say it's about a football and a half a field. If
8 I was estimating, I would use that.

9 Q: Okay. So maybe 400 feet or so from ---

10 A: About, yeah, about.

11 Q: And you've never walked it off, have you?

12 A: Excuse me?

13 Q: You've never walked it off, have you? I mean walked off
14 to know how many feet it is or anything?

15 A: No. That's why I estimated about -- about 120 yards.

16 Q: Now ---

17 MR. VOIGT: Would you switch over for a just a second?

18 (Whereupon, the store surveillance video of the outside
19 of the gas station is shown on the screen.)

20 Q: Is that the side of the gas station where y'all were?

21 A: Yes, it is.

22 Q: When Frank went to your apartment, where did you and
23 Michael and Anthony go? Can you -- And if you have to stand,
24 go ahead and stand up. Where did y'all go?

25 A: Well, coming out the store, we came there. This was

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 where me, Michael and Anthony was standing and my brother,
2 Frank, had went like see where this truck at?

3 Q: Mm-hmm.

4 A: Straight from the truck and that's where you go. We walk
5 straight to the apartments from there.

6 Q: Okay. So it's a straight shot from across here?

7 A: Right, straight back.

8 Q: And this way to your apartment?

9 A: Right.

10 Q: Okay and then after Frank walked down there ---

11 A: Right.

12 Q: --- did y'all stay there by the side or did y'all go
13 somewhere else? You were trying to describe that to me before
14 I stopped you.

15 A: Well, we stood -- we stood right here. We stood right
16 here while he was walking and we must have been there for a
17 minute. I probably was drinking my beer and we heard
18 gunshots. We then ran ---

19 Q: Where were you ---

20 A: --- this way ---

21 Q: Okay.

22 A: --- because there's another entrance inside the
23 apartments, you know. So as we was running, you could look
24 through the breezeway and I see my brother coming back
25 running.

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 Q: Did you -- Is this Carriage Lane right here?
2 A: Yes.
3 Q: Did you cross Carriage Lane?
4 A: Yes, I did.
5 Q: And did Michael and Anthony cross with you?
6 A: Yes.
7 Q: When you saw your brother coming back running, what did
8 you do?
9 A: We then turned around and came back also, but we never --
10 he never seen us. We seen him through the breezeway, you
11 know.
12 Q: Okay.
13 A: He never seen us, but we -- Once we seen that he was
14 coming back, that he was okay, we then came back also.
15 Q: Okay and where did you come back to?
16 A: Well, me, Michael and Anthony came back across Carriage
17 Lane, the street there, came back walking back towards the gas
18 station where we all left from because that's where he left us
19 at. So we came back over there and not long before we reached
20 there, we heard the screeching sound of a automobile.
21 Q: Now let me back you up just for a second. When you --
22 when you first heard the gunshots, how many gunshots did you
23 hear initially?
24 A: I believe it was two.
25 Q: Okay. Did that concern you?

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 A: Yes, it did.

2 Q: What direction did those gunshots come from?

3 A: It came from the apartments.

4 Q: When you heard the tires screeching, approximately where

5 would you have been, if you can remember?

6 A: Well, at the time of the screeching, I may have been over

7 here, right like in front of this pickup.

8 Q: Okay.

9 MR. VOIGT: Can we switch?

10 (Whereupon, the store surveillance video by the outside

11 wall is shown on the screen.)

12 Q: Do you recognize that? That's been previously marked as

13 State's 63B.

14 A: Do I recognize it?

15 Q: Yeah.

16 MR. VOIGT: Can you back that up a little bit to where

17 the first person comes into the scene, Joann? Hold on just a

18 second.

19 Q: Michael, is that the gas station where y'all were?

20 A: Yes.

21 Q: And who is that?

22 A: That's Michael. I believe that's Michael.

23 Q: All right and who is that?

24 A: That was Anthony.

25 Q: Was that Anthony?

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 A: Yes, it is.

2 MR. VOIGT: I'm going to -- Let's pause that for a

3 second.

4 Q: When you heard the tires squealing, what did you do?

5 A: I automatically dropped to the floor because it seemed to

6 be -- It wasn't a normal squeal. It seemed to be like

7 something was about to happen.

8 Q: Did you see a car?

9 A: Yes, I did.

10 Q: What car did you see?

11 A: I seen a white Impala.

12 Q: Is that -- Did you think that was Jerome's Impala?

13 A: Yes, I knew it was his Impala.

14 Q: When you were out there on the ground, did you hear

15 anybody say anything?

16 A: Repeat that, please?

17 Q: When you were there outside of this ---

18 A: Right.

19 Q: --- Kangaroo station, did you hear anybody at or around

20 the Impala say anything?

21 A: Yes, I believe so. Yes, I did.

22 Q: What did you hear?

23 A: I heard someone say, "There they go. There they go."

24 Q: What did you take that to mean?

25 A: A threat something was about to happen and I say that

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 because of what happened earlier that day, the threats and
2 everything, you know.

3 Q: Okay. Did you recognize the voice of the person who said
4 that?

5 A: Yes.

6 Q: Who was it?

7 A: Jerome Campbell.

8 Q: You said you heard the tires squealing?

9 A: Mm-hmm.

10 Q: What happened next?

11 A: Well, like I said, after the tires squealing, screeching,
12 whatever, I became alert. I knew something was about to
13 happen. So I dropped to the floor and I believe I had told
14 Anthony and Michael something, look, you know, not normal or
15 anything, drop to the floor. I believe I told them that.

16 Q: So you think you gave them a warning beforehand?

17 A: Yes, I did.

18 Q: What happened next?

19 A: Well, that's when the shots rang out and me, Anthony and
20 Michael dropped to the floor, but me and Anthony's the only
21 ones that got back up.

22 Q: Okay. You saw on this video Anthony immediately runs to
23 the back.

24 A: Right.

25 Q: Why does Anthony immediately run to the back?

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

- 1 A: Excuse me?
- 2 Q: Why did Anthony immediately run to the back?
- 3 A: Well, while we was checking out his brother, you know,
- 4 because his brother's been shot and I knows Anthony had the
- 5 gun.
- 6 Q: When you went there that night, did y'all travel in the
- 7 same car, that car that you described?
- 8 A: When we ---
- 9 Q: You, Anthony, Frank and Michael?
- 10 A: I believe they had their own vehicle.
- 11 Q: Okay. Did you know Anthony had a weapon? Did you know
- 12 Anthony German had a weapon?
- 13 A: No, I didn't.
- 14 Q: When you saw that weapon ---
- 15 A: Right.
- 16 Q: --- right there after his brother had been shot ---
- 17 A: Right.
- 18 Q: --- what did you do?
- 19 A: Well, when I seen the weapon, I knew the police was on
- 20 its way. I told Anthony because he was really messed up in
- 21 the head, I said, "Anthony, you have to get rid of the
- 22 weapon." You know, because the police was on their way, the
- 23 cops was coming.
- 24 Q: All right.
- 25 A: And that's when he then ran around the bend here I guess

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

- 1 to get rid of the weapon.
- 2 Q: What did you do? What was the next thing you did?
- 3 A: Well, oh, I got on my phone to call my wife and -- and
- 4 told her what had just happened.
- 5 Q: Did you call 9-1-1?
- 6 A: No. I believe I went in the store and asked the clerk to
- 7 call 9-1-1.
- 8 Q: Okay. On January 9th, at any time during the entire day
- 9 of January 9th from the time you woke up in the morning ---
- 10 A: Right.
- 11 Q: --- till here, did you fire a gun?
- 12 A: Nope. I didn't even handle a gun.
- 13 Q: Do you know how gunshot residue got on your hands?
- 14 A: I haven't any idea. I have no idea.
- 15 Q: How many gunshots did you hear?
- 16 A: I think it would probably be three to four shots.
- 17 Q: During that day, all January 9th, did you ever see Michael
- 18 German with a gun?
- 19 A: Never.
- 20 Q: Did you ever see Michael German fire a gun?
- 21 A: Never.
- 22 Q: Did you see Anthony German with a gun?
- 23 A: Just -- just on the incident.
- 24 Q: Okay. Just after ---
- 25 A: After.

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 Q: --- his brother had been shot?

2 A: Right.

3 Q: Did you see -- Did that gun ever get fired?

4 A: No, it haven't.

5 Q: Not that day?

6 A: No, it wasn't.

7 Q: Okay.

8 A: Not that day.

9 Q: Did any one of you there on the corner fire a weapon
10 towards the white car?

11 A: No. I never seen any one of them guys with weapons, my
12 brother, Anthony or Michael.

13 Q: Did Frank have a weapon?

14 A: No, he didn't.

15 Q: How close to Michael German were you when you hit the
16 ground?

17 A: We was standing side by side I believe, not too far
18 apart, which is why, you know, I called my wife letting her
19 now, wow, I mean, you know, is this this deep? You know? We
20 standing out there and your brother come in a drive-by
21 shooting at us because of one of our many arguments, you know.

22 So I was really surprised and I tried to let my wife know
23 how I was feeling at the time, you know, but, "Oh, he wouldn't
24 do that. That's my brother." I was like, "All right, cool."
25 You know, but yeah, I called my wife and tried to explain to

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 her how I was feeling about the situation.

2 Q: Did you think that those shots were meant for you?

3 A: Yeah, I think so.

4 Q: Okay.

5 A: I believe so because of the threats that came earlier,
6 you know. I didn't take it that serious, but I mean ---

7 Q: You mean earlier you didn't take it that serious?

8 A: Earlier I didn't take it that serious, you know.

9 Q: Now when -- when Michael German was dying on the
10 sidewalk, did you take that seriously?

11 A: Yes, I did because I know when going there, you know,
12 like I said earlier, we had settled the difference, me and my
13 wife had. Me, my wife, her mama and my brother, we talked and
14 everything was good, you know. So I told her I'd be back home
15 later and she was like, "All right. Well, I have the key.
16 You have to wait." Whatever, you know. So I'm like okay and
17 I was good with that and when I did go home, I knew I would
18 have to wait or either go through the window because there's a
19 window in one of the kid's bedroom that we would use if no one
20 had a key. So that's what -- that was my intentions, you
21 know, but somebody else was already in my house.

22 Q: And you didn't go back to that house, right?

23 A: No. I'm glad I didn't.

24 Q: Now when you -- After the shooting, did you stay on the
25 scene right there by the gas station?

DIRECT EXAMINATION OF MICHAEL ALLEN BY MR. VOIGT

1 A: Yes.

2 Q: Did you give an interview to -- to the police?

3 A: I gave an interview to the police. I was swabbed and

4 that's about it.

5 Q: Okay. Now you gave a statement to the police, right?

6 A: Yes, I did.

7 Q: Do you recall telling the police that you stopped at the

8 store and no longer than five seconds later the white Impala

9 come by?

10 A: Did I tell them -- You said I told them that I stopped at

11 the store and five seconds later the car came?

12 Q: Yes.

13 A: That don't -- I mean the timing don't sound right, but I

14 may have said that.

15 Q: Okay. Now we -- You've seen the video of you walking

16 into the store, right?

17 A: Right.

18 Q: Did that seem to take longer than five seconds?

19 A: Yes.

20 Q: Did you allow the police to search your vehicle?

21 A: Yes.

22 Q: Did you ever reconcile with your wife after this

23 incident?

24 A: Well, I think three times, two or three times after the

25 incident. I mean we tried to, you know, work it out, but it

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 couldn't happen.

2 Q: Okay.

3 MR. VOIGT: One moment, Your Honor.

4 THE COURT: Mm-hmm.

5 MR. VOIGT: Please answer any questions that Mr. Harris
6 may have for you.

7 THE COURT: Any cross examination of the witness?

8 MR. MIKELL: Yes, Your Honor.

9 THE COURT: Mr. Mikell, you may proceed when you're
10 ready.

11 MR. MIKELL: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 CROSS EXAMINATION

14 BY MR. MIKELL:

15 Q: Good morning, Mr. Allen.

16 A: Good morning.

17 Q: Mr. Allen, Let me start off by asking you: You -- Did you
18 grow up here in Charleston?

19 A: No, I didn't.

20 Q: Where did you grow up?

21 A: I'm from New York.

22 Q: Okay and how long have you lived here in Charleston?

23 A: I came down to Charleston I believe it was April of 2007.

24 Q: Okay. Why did you come to Charleston?

25 A: Well, I just wanted, you know, I wanted to better myself

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 from -- from New York.

2 Q: Okay.

3 A: You know, I wanted to try to get ahead somehow.

4 Q: Okay. What about your family? Where does your family

5 live?

6 A: Well, my family is in New York.

7 Q: Okay. So what was your connection to move down here to

8 Charleston?

9 A: Well, my brother was here already.

10 Q: Okay and who is that?

11 A: Frank Haigler.

12 Q: Okay and do you all have the same mother or tell me how?

13 A: No, no. I've grown up with Frank since we was like

14 twelve, so.

15 Q: So you all met when you were twelve?

16 A: Yeah, about twelve.

17 Q: Where did y'all meet?

18 A: In New York.

19 Q: What part of New York? Where?

20 A: The Bronx, if that's what you mean.

21 Q: Okay and so you and Frank aren't connected by Blood?

22 A: Not biological, no.

23 Q: Okay and you said you moved down here in 2007?

24 A: Yeah.

25 Q: When -- Was Frank living here then or ---

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

- 1 A: Yes. Frank came not too long before me.
- 2 Q: Okay. So would you say maybe about a year before?
- 3 A: Not even, but give or take.
- 4 Q: Okay. So you come to Charleston for bettering yourself
- 5 and opportunity?
- 6 A: Right.
- 7 Q: When you got here, tell me what you did?
- 8 A: Well, I got down here and my brother and his wife met me
- 9 at the bus -- bus station. Then went to his house, you know,
- 10 go shopping, you know.
- 11 Q: I didn't mean that day. Where -- where did you work?
- 12 A: Oh, I worked at -- I started out as a temp where my
- 13 brother was already working.
- 14 Q: Okay.
- 15 A: So he said, well, he going to see what he could do to get
- 16 me in to start working.
- 17 Q: Okay.
- 18 A: So I started working out as a temp, you know, and three
- 19 months later they put me on as a permanent worker.
- 20 Q: Okay and so were you working with Frank?
- 21 A: Yes.
- 22 Q: And where were y'all working?
- 23 A: We was working at Salisbury Electrical.
- 24 Q: Okay and tell me around when did you meet Charise?
- 25 A: I met Charise at work also.

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 Q: Okay and did you meet her at that company?
2 A: Yes, I did.
3 Q: Okay. Did you meet Michael and Anthony there as well?
4 A: Well, they came after me.
5 Q: Okay and ---
6 A: Yes.
7 Q: And came after you where? At that same company?
8 A: At the same company.
9 Q: Okay and how long did you all work together?
10 A: I'd say me, Anthony and Michael worked together for about
11 a year.
12 Q: Okay. Was Frank there, too?
13 A: Frank was there, too. Frank trained me.
14 Q: Okay, okay. What was your -- What did you do there?
15 A: Well, we started out on the assembly line and then
16 there's promotions as you go. You know, you can move further
17 along in the company.
18 Q: Okay and, Michael, when did you leave that job?
19 A: When or why?
20 Q: When? Well, first when?
21 A: Well, I left there April of 2008.
22 Q: Okay and why did you leave?
23 A: Because of my attendance.
24 Q: Okay. So they ended up having to dismiss you from that
25 position?

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 A: Yes.

2 MR. VOIGT: Objection.

3 THE COURT: Basis?

4 MR. VOIGT: Relevance.

5 THE COURT: Overruled.

6 Q: Michael, at that time did you continue your friendship
7 with Michael and Anthony?

8 A: Yes, I did.

9 Q: Okay and that was I guess around in 2010 and after that,
10 did you ---

11 A: 2010?

12 Q: When did you leave the job?

13 A: 2008.

14 Q: 2008 you left the job. So after that, you continued your
15 -- your friendship with Michael and Anthony?

16 A: Yes.

17 Q: Correct? Okay and then you and Charise got married when?

18 A: August 26th, 2008.

19 Q: Okay.

20 A: No, I'm wrong, 2007. Not long after I moved down, me and
21 Charise got married.

22 Q: Okay and -- Okay. It was -- it was through work that you
23 met Charise?

24 A: Right.

25 Q: And then you all got married shortly after?

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

- 1 A: Right.
- 2 Q: So it was maybe about six months?
- 3 A: Approximately.
- 4 Q: Okay, okay and when you and Charise got married, did you
- 5 all live at the Plantation Apartments the entire time?
- 6 A: Well, I moved in with Charise before marriage.
- 7 Q: Okay.
- 8 A: You know, not long after we got married.
- 9 Q: Okay and after you moved in with her, then you all got
- 10 married?
- 11 A: Right.
- 12 Q: And did you all live in that same apartment the entire
- 13 time?
- 14 A: Yes, we did.
- 15 Q: Okay. Now, Michael, I want to take you back to the
- 16 January 9th, 2009, and ask you that day, what was the first
- 17 time -- When was the first time you met Michael and Anthony
- 18 that day?
- 19 A: Well, it may have been late in the afternoon.
- 20 Q: Okay and -- and what was the reason for getting together
- 21 with -- with them, Michael and Anthony, at that point?
- 22 A: Well, well, he was getting threatening phone calls.
- 23 Q: Okay and who ---
- 24 A: That's what he said.
- 25 Q: Who's that?

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 A: Anthony.

2 Q: Okay.

3 A: And but, I mean we worked together, we hung out together.
4 You know, so we was really cool, close guys.

5 Q: Okay.

6 A: So this night we always was together. It's not like we
7 came together for this particular day.

8 Q: Okay. Did -- did Anthony explain anything to you about
9 what those phone calls were about?

10 A: Well, just that he was getting threatening phone calls
11 from Jerome. I believe he said it was about his newborn, at
12 the time it was a newborn.

13 Q: Okay and that was Anthony's newborn?

14 A: Right.

15 Q: Okay and did he -- Did Anthony let you know anything else
16 about what was going on?

17 A: No. I mean it was just a surface thing, you know, this
18 guy calling me, threatening me because I believe they wanted
19 to see the baby or something like that, something to that
20 effect. But he didn't get deep into details, just that he was
21 getting threatening phone calls.

22 Q: Okay. At that point, did you have any conversations with
23 Jerome?

24 A: Yes. I had been getting threatening phone calls from him
25 also.

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 Q: Okay. Were -- You all were talking about this at the
2 Georgetown Apartments. Is that correct?

3 A: Yes.

4 Q: Okay and at that point, you said that you were getting
5 threatening phone calls, but that you didn't really think that
6 that was any serious threat. Is that right?

7 A: I say that because -- I mean to my knowledge he has a
8 good family, you know, and he seemed to be a good, stand-up --
9 a good, stand-up guy. So I didn't really take it seriously.
10 I just figured he'd come down and he'd want to talk about what
11 went down, you know, even though he gave me the threats and he
12 was in North Carolina while we was talking.

13 Q: Okay and then as far -- You've never been to Charlotte to
14 visit Jerome, correct?

15 A: No, that ain't correct. I've been there.

16 Q: You have?

17 A: Yes, I have.

18 Q: How many times have you been there?

19 A: I think I was there once on -- It was a holiday and me
20 and my family had spent the weekend in a -- in a motel and,
21 you know, we was back and forth at his house because it was a
22 -- a family get-together.

23 Q: Okay. So you all have spent time together as a family?

24 A: Yes.

25 Q: In Charlotte?

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

- 1 A: Yes.
- 2 Q: So you would say that you've got a good relationship with
3 Jerome?
- 4 A: Yes, I thought it was.
- 5 Q: Okay. Then at the Georgetown Apartments as you all are
6 talking about what was going on with Jerome, did you -- At
7 what point is it that you said that you saw Jerome?
- 8 A: Can you repeat that question?
- 9 Q: You and Anthony were at the Georgetown Apartments,
10 correct?
- 11 A: Right.
- 12 Q: Okay and then you said that Jerome came over to the
13 apartments. Is that correct?
- 14 A: That's correct.
- 15 Q: Okay. Do you remember around when that happened, around
16 what time?
- 17 A: I couldn't give you a time, but if I had to give you, I'd
18 probably say it was about nine ---
- 19 Q: Okay.
- 20 A: --- 9:30.
- 21 Q: Okay.
- 22 A: I'm not sure.
- 23 Q: And at that point, did you have a chance to speak with
24 Jerome?
- 25 A: No, not pleasantly, no. Like I said, he drove by, made

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1 his threats. I then said, "Well, I'll be home anyway." You
2 know, that's the only time we spoke.
3 Q: Okay. Did you see any gun?
4 A: No, I didn't see any gun.
5 Q: Okay and you didn't see anyone in the car with shotguns,
6 did you?
7 A: No, I didn't. I -- It was people in the car. I didn't
8 see any guns. I seen Jerome.
9 Q: Did Jerome talk with anyone, anyone besides you at the
10 Georgetown Apartments?
11 A: Yes. He spoke to Anthony.
12 Q: Okay.
13 A: Well, if you call it speaking. That's -- He yelled at
14 him. "I know where you live at. I know where you live at."
15 Q: Okay and to your knowledge how did -- how did Jerome find
16 you at the Georgetown Apartments?
17 A: How did he find me there?
18 Q: Right.
19 A: He didn't know I was going to be there.
20 Q: Okay.
21 A: You know, he came I guess to see Anthony.
22 Q: Okay.
23 A: You know or I guess to see where he live at. I don't
24 know, but I know when he came there, we was already together,
25 me, Anthony, Michael and Frank.

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 Q: Okay. Do you -- Did he get the directions to Anthony's
2 house or how did he find out where Anthony lives?

3 A: Well, I don't know how he got directions. I know there's
4 only one other person that could have showed them or gave them
5 the address or whatever.

6 Q: And who's that?

7 A: That's his sister, Candace.

8 Q: Okay. So after he -- after you see him there, then he
9 leaves. Is that right?

10 A: Yes.

11 Q: And how long was he there?

12 A: Who, Jerome?

13 Q: Correct.

14 A: Well, he drove by us. He drove past us, turned around,
15 came back, yelled out, you know, "I see you. I see you. I
16 know where you live at." My brother then tried to walk up to
17 the vehicle to, you know, to talk, whatever, to talk and he
18 backed my brother up. "Yo, you don't want to come over here.
19 You don't want to come over here." You know, that's when my
20 brother said he seen the gun and he backed off and the way he
21 moved back I knew he seen something frightening.

22 Q: Okay. At that point, did you all make any phone calls to
23 law enforcement or the police?

24 A: No, we didn't.

25 Q: Okay. Although your brother reported to you that there

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

- 1 was the possibility that there was a gun in the car?
- 2 A: Yes.
- 3 Q: Okay. Instead, Jerome leaves the Georgetown Apartments,
- 4 correct?
- 5 A: Right.
- 6 Q: And then the next thing is that you all head over to ---
- 7 A: Right.
- 8 Q: --- the Plantation Apartments, right?
- 9 A: Right.
- 10 Q: Okay. Now tell me about that. You said there were two
- 11 vehicles. Tell me about how Jerome -- Excuse me. Tell me
- 12 about how Michael, Anthony and Frank got to the Plantation
- 13 Apartments?
- 14 A: Well, I believe Frank was in my vehicle and Anthony and
- 15 Michael was in their vehicles.
- 16 Q: Okay and then how did you end up over in the Little
- 17 Cricket parking lot or at the Little Cricket?
- 18 A: We drove inside the Little Cricket parking lot, Kangaroo,
- 19 whatever it was.
- 20 Q: Were you all all there together at the same time?
- 21 A: Yes.
- 22 Q: Did you all go over there together at the same time?
- 23 A: Yes.
- 24 Q: Okay. You all were just in separate vehicles?
- 25 A: I believe so.

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

- 1 Q: Okay. What -- what kind of vehicle does Frank own?
- 2 A: At that time, Frank had a -- a Firenza, I believe.
- 3 Q: Okay and what kind of vehicle did you own?
- 4 A: I had a Ford Expedition.
- 5 Q: Okay. Now once you got over to the gas station, you were
- 6 still intending on going home. Is that right?
- 7 A: Yes.
- 8 Q: Okay. Now tell me about the key and what was going on.
- 9 You didn't have a key to get into the apartment, correct?
- 10 A: I didn't have a key. Like I said, this isn't the first
- 11 time me and my wife had went through this and whenever I leave
- 12 the house I would give her the key, you know. Whenever we
- 13 would argue, I would leave the key with her, you know, and I'd
- 14 go stay with my brother. So she may have had my key that day.
- 15 I might have given her my key that day, you know, so there was
- 16 only one key.
- 17 Q: Mm-hmm.
- 18 A: You know and she had it.
- 19 Q: Okay. So then how did you plan on getting into the
- 20 apartment?
- 21 A: Well, it was two ways because I done did it before.
- 22 Either I could go through one of the kid's window, bedroom
- 23 window, that's around the back area or I could just simply
- 24 wait in my truck and wait till she come home.
- 25 Q: Okay and when did she tell you it was okay for you to

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 come back to the apartment?

2 A: She didn't say. I just said I was coming home and she
3 said all right, well, you're going to have to wait because --
4 I believe she said she was going to her mom's house.

5 Q: Okay. So she didn't really give you permission to go
6 back to the apartment?

7 A: I didn't think I needed permission.

8 Q: Okay, but earlier in the day or was it the day before
9 that you all had an argument?

10 A: Right.

11 Q: And you thought it was in your best interest to leave?

12 A: Right.

13 Q: Okay and so based on the -- the cooling off period, you
14 thought that ---

15 A: Mm-hmm.

16 Q: --- now around ten o'clock it was okay to go back,
17 correct?

18 A: Yeah.

19 Q: Okay. Then when you got back over to the gas station,
20 you obviously stopped, right?

21 A: Yes.

22 Q: And why didn't you go back to the apartment then?

23 A: Well, like I said, we got to the gas station, we stopped
24 to get a beer. It was like one of our routines. Then my
25 brother went before me to see if it was all right, just in

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1 case because of the threats. Just in case he is there, let me
2 try and talk to him.

3 Q: Okay.

4 A: My brother then went to try and talk to him and there
5 were gunshots.

6 Q: Okay. Now the -- Are you saying that you remember after
7 -- Did you hear any gunshots at the -- at the apartment from
8 where you were?

9 A: Yes.

10 Q: Okay. Did you say that to the police, report that?

11 A: No. I don't think so. I don't think I did. I don't
12 think I said that.

13 Q: Why -- why didn't you talk about those gunshots?

14 A: Because I just wanted to give them the immediate
15 information with where Michael, you know, right there. I
16 didn't give them the whole scenario from what happened earlier
17 that day. I just gave them that incident that happened right
18 there with the -- with the murder of Michael.

19 Q: Okay. Now when was the last time you had any
20 conversation with your wife before you got to the apartments
21 at the Plantation?

22 A: I think -- I believe it was after the shooting. It could
23 have been before that,

24 Q: Mm-hmm.

25 A: But like I said, this was one of our many arguments and

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 the course of time while I was staying with my brother, we
2 would talk and we would text, you know, trying to work our
3 things out. So it could have been. I could have talked to
4 her before that.

5 Q: Did you -- did you send her a text message saying that
6 real people do real things?

7 A: I don't believe so.

8 Q: Okay. Is it possible that you did say that?

9 A: That may be possible.

10 Q: Okay. What were you referring to when you said that?

11 MR. VOIGT: Objection.

12 THE COURT: Basis of the objection?

13 MR. VOIGT: I don't believe he's confirmed that he said
14 that.

15 THE COURT: No speaking objections. What is the basis of
16 the objection? Is it facts not in evidence?

17 MR. VOIGT: Facts not in evidence and form of the
18 question.

19 THE COURT: Overruled. I'll give him some latitude.
20 Rephrase the question. Sir, do you need the question
21 repeated?

22 MR. ALLEN: Yes.

23 THE COURT: Or do you remember the question?

24 MR. ALLEN: Yes, I would.

25 THE COURT: Please repeat the question.

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

- 1 Q: Did you send your -- your -- your wife, Charise, a text
2 message that said real people do real things?
- 3 A: Like I said, I'm not sure, but I could have.
- 4 Q: Okay. If you did send that message, can you tell me what
5 you meant by that?
- 6 A: Well, considering what we was going through and her first
7 thing is, yeah, you know, so that's why I may have said that,
8 made that comment real people do real things. I mean me and
9 my wife every time we're going through something, it's, "Get
10 out, get out, get out with you." You know, so that's why I
11 made that comment.
- 12 Q: Okay. Michael, you spoke with police right after this
13 incident, correct?
- 14 A: Yes.
- 15 Q: Okay and you had a chance to write a statement and review
16 that statement, correct?
- 17 A: Yes.
- 18 Q: Okay and the importance of that statement is to try to
19 give enough detail so that law enforcement understands how to
20 investigate it, correct?
- 21 A: I mean yeah, that's the purpose of it, right.
- 22 Q: You understand that?
- 23 A: I understand that's the purpose of -- That's why they
24 asked me to make a statement, write a statement, yes.
- 25 Q: Okay. So when you were giving that statement, you wanted

CROSS EXAMINATION OF MICHAEL ALLEN BY MR. MIKELL

1 to be accurate, correct?

2 A: I wanted to, but -- but knowing the situation, everything
3 was kind of chaotic up here, so.

4 Q: So you -- you basically weren't being ---

5 A: I -- Basically I tried to give like the heart of what was
6 happening, you know.

7 Q: Okay and you told -- you told Detective Dasher that you
8 went to the Little Cricket with Michael, with Anthony and with
9 Frank. Is that right?

10 A: I'm not sure and I don't know if that was Detective
11 Dasher.

12 Q: Can I -- Can I show you the statement to refresh your
13 recollection?

14 A: Sure.

15 MR. MIKELL: Your Honor, may I approach?

16 THE COURT: You may approach the witness.

17 (Whereupon, there is a brief pause in the questioning as
18 the witness reviews the statement.)

19 Q: Okay. So now that your recollection has been refreshed a
20 little bit of the statement, you see where you told the
21 detective that you, Michael, Frank and Anthony went to the
22 store?

23 A: Yeah.

24 Q: Okay and you also told the detective that as soon as you
25 got to the store, within five seconds ---