

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTHONY HACKSHAW,

APPELLANT

Appellate Case No. 2010-177006

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT #69 (RECORDED STATEMENT OF TORRIAN GLEATON)

1 house on May the 20th of '09?"

2 A. "No."

3 Q. "Have you been telling me the truth as you know it?"

4 A. "Yes, sir."

5 Q. Investigator Mahoney, for clarification, at points
6 during the tape-recorded conversation of which we've gone
7 over the transcript, there are points where you read back
8 information into the record?

9 A. Yes, ma'am.

10 Q. And what was that information you were reading back into
11 the record? I mean, generally where you'd gotten it from.

12 A. I got it from what Mr. Gleaton was saying.

13 Q. And that was from the notes you made?

14 A. Yes, ma'am, from the notes I made.

15 Q. And specifically what Mr. Gleaton told you actually
16 before the actual tape-recorded statement.

17 A. Yes, ma'am.

18 Q. Prior to the conversation, the record conversation which
19 we've gone over the transcript some and this written one, had
20 y'all been talking to him for a period of time?

21 A. Yes, ma'am.

22 Q. Both with and without his parents present?

23 A. Yes, ma'am.

24 Q. And during parts of those conversations, he had admitted
25 some or all of what he told you in this final report.

1 A. Yes, ma'am.

2 Ms. Campbell: That's all I have, Your Honor.

3 The Court: All right. Ms. Shurling?

4 Cross-Examination

5 By Ms. Shurling:

6 Q. Officer Mahoney, this last interview lasted
7 approximately 36 minutes. Correct?

8 A. About that, yes, ma'am.

9 Q. Okay. But you'd already been hammering on Gleaton
10 before -- about two hours and ten minutes before this one
11 started, hadn't you?

12 A. We were asking him questions; yes, ma'am.

13 Q. He had been interrogated for two hours and eight
14 minutes, to be exact, before this even started. Right?

15 A. Yes, ma'am.

16 Q. And will you agree with me that at several junctures
17 during this, this young man tried to tell you that he was
18 getting confused because he had also been talking to E. And
19 he couldn't get clear in his mind what he'd heard from E. And
20 what he'd heard from Bump?

21 A. He said that a couple of times; yes, ma'am.

22 Q. He did, didn't he?

23 A. Yes, ma'am.

24 Q. And y'all kept telling him he did know and that he
25 better tell, didn't you?

1 A. No, ma'am. I won't say it was like that. He was asking
2 -- we were asking questions. Investigator Reese was trying
3 to get to the truth, ma'am.

4 Q. Well, you were present during the whole interview,
5 weren't you?

6 A. Yes, ma'am, I was.

7 Q. And you agree that Investigator Reese was saying G.D.
8 and the F. Word and yelling and at one point slamming his
9 fist down on the table in this young man's face.

10 A. That happened.

11 Q. That did happen, didn't it?

12 A. Yes, ma'am.

13 Q. And all the while he's trying to tell you: I don't
14 know. I don't want to say stuff I don't know. I can't
15 remember what I heard from Bump and what I heard from E. He
16 kept trying to tell you that, didn't he?

17 A. He said that a few times; yes, ma'am.

18 Q. One of the last portions you just went over and you
19 said -- you read a portion of where he was saying after I put
20 it all together. Do you remember that?

21 A. Yes, ma'am.

22 Q. He put it all together? After y'all had been pushing
23 him for about two and a half hours to put it all together;
24 right?

25 A. We were talking to him, ma'am. He was being -- he was

1 being -- Investigator Reese was asking him questions, ma'am.

2 Q. And Investigator Reese threatened to prosecute him if he
3 didn't talk, didn't he?

4 A. I don't remember that.

5 Q. You're denying that some portions of the interrogation
6 that are not before this jury---

7 Ms. Campbell: Objection, Your Honor.

8 The Witness: I don't remember that as far as him saying
9 he's going to prosecute him.

10 Ms. Shurling: A moment's indulgence, Your Honor.

11 By Ms. Shurling:

12 Q. Let me rephrase the question. What he actually says is,
13 "You realize you're making yourself an accessory to a
14 murder." That's what he said, isn't it?

15 A. Yes, ma'am.

16 Q. That's a pretty scary possibility for a young man, isn't
17 it?

18 A. Yes, ma'am.

19 Q. And when he finally says that my client said something
20 about this event, he says, "He said he sprayed," didn't he?

21 A. Yes, ma'am.

22 Q. Of course, at the same time saying: I'm not sure what I
23 heard from E. And what I heard from Bump. Right?

24 A. Yes, ma'am.

25 Q. So if somebody who had been there like maybe E. Said

1 they came in spraying, they came in firing all over the
2 place, that could be where spraying came from, couldn't it?

3 A. You want to repeat that question again, ma'am?

4 Q. The young man said he'd been talking to E. About what
5 happened.

6 A. Yes, ma'am, I understand that.

7 Q. And if E. Says that two people came up firing shots like
8 crazy all over the place, that could be where the "they came
9 up spraying" came from, couldn't it?

10 A. Could be.

11 Q. That young man talked to you for two hours and roughly
12 45 minutes trying to tell you that he knew E., that he'd been
13 talking to E., that he couldn't tell what he'd heard from
14 who. He told you repeatedly my client didn't ask him whether
15 E. Got shot, but you just kept asking him, didn't you, over
16 and over again?

17 A. Yes, ma'am.

18 Q. And he finally gives a statement after saying
19 repeatedly: I don't want to get this wrong. I don't want to
20 tell you some -- I'm going to say B.S. instead of the way he
21 said it. That it isn't right because I know I'm confused,
22 and he got him to give a statement anyway; right?

23 A. He gave a statement; yes, ma'am.

24 Q. And you brought him into court and he refused to get on
25 that stand and testify; right?

1 A. I don't know about that---

2 Ms. Campbell: Objection, Your Honor.

3 The Witness: I wasn't here.

4 Ms. Shurling: I didn't say why. I said he refused to
5 testify.

6 The Court: He says he doesn't know.

7 The Witness: I wasn't there.

8 The Court: He wasn't here.

9 By Ms. Shurling:

10 Q. I beg your pardon. I'm sorry. I was thinking you were
11 with the officers in the courtroom. I'll address that with
12 someone else.

13 A. Okay.

14 Q. A moment's indulgence. Officer Mahoney?

15 A. Yes, ma'am.

16 Q. Isn't it true that Investigator Reese told this young
17 man: You understand I've got no qualms about putting you in
18 jail, if he didn't keep talking.

19 A. Yes, ma'am.

20 Ms. Shurling: No further questions.

21 Redirect Examination

22 By Ms. Campbell:

23 Q. What was the relationship between Bump and this young
24 man---

25 Ms. Shurling: Objection, Your Honor.

1 By Ms. Campbell:

2 Q. ---as far as -- were they friends?

3 A. Yes, ma'am.

4 Q. Close friends?

5 A. Yes, ma'am.

6 Q. Talked frequently?

7 A. Yes, ma'am.

8 Q. And is it uncommon in your experience as an investigator
9 for someone to be reluctant to implicate their friend?

10 A. Oh, without a doubt. Absolutely.

11 Q. And in this---

12 **Ms. Shurling:** Your Honor, I object. He just said he
13 wasn't aware of what their relationship was, as I understood
14 him.

15 **The Court:** No, he said that they were friends.

16 By Ms. Campbell:

17 Q. They were friends?

18 A. Yes, ma'am.

19 Q. Talked on a daily basis?

20 A. Yes, ma'am. That's what he said.

21 Q. And he also knew E.

22 A. Yes, ma'am. That's what he told us.

23 Q. But he was in constant contact with Bump. Correct?

24 A. Yes, ma'am.

25 Q. It is unusual in your investigative history for someone

1 to be reluctant to implicate their friend?

2 A. Absolutely. Yes, ma'am.

3 Q. In this case you talked about how he warmed up -- his
4 parents were there, weren't they?

5 A. Yes, ma'am.

6 Q. And, in fact, he's the one that requested they not be in
7 the room.

8 A. He requested they leave.

9 Q. And specifically Investigator Reese went over the
10 questions over and over to make sure he wasn't confused about
11 who said what. Is that correct?

12 A. Yes, ma'am.

13 Q. Is that an unusual thing to do to make sure you're
14 getting accurate information?

15 A. No.

16 Q. And in this case were y'all very specific to narrow it
17 down to what he knew Bump had said to him?

18 A. Yes, ma'am.

19 Q. And, in fact, in that case it was reduced into the
20 written statement, which I've lost, talking about how he
21 sprayed?

22 A. Yes, ma'am.

23 Q. And that he knew Bump told him.

24 A. Yes, ma'am.

25 Q. Nobody else.

1 A. Yes, ma'am. That's correct.

2 The Court: Anything, Ms. Shurling?

3 Ms. Shurling: A moment's indulgence, Your Honor.

4 Recross Examination

5 By Ms. Shurling:

6 Q. You don't deny that at one point this young man told
7 you, "I'm just trying to put it together, for real."

8 A. He said that; yes, ma'am.

9 Q. And the prosecutor has asked you about him being
10 friendly with my client. He was also friends with E., wasn't
11 he?

12 A. That's what he stated, ma'am.

13 Ms. Shurling: Thank you.

14 The Court: All right.

15 Ms. Shurling: No further questions.

16 The Court: You may step down. Call your next witness.

17 Ms. Campbell: Thank you, Your Honor. The State calls
18 Investigator Kevin Reese.

19 Kevin Reese, after being duly sworn, testified as
20 follows:

21 The Clerk: Please have a seat and state your full name
22 for the record.

23 The Witness: My name is Kevin Reese.
24
25

Direct Examination

1 By Ms. Campbell:

2 Q. Investigator Reese, where are you employed?

3 A. Columbia Police Department.

4 Q. How long have you been working there, sir?

5 A. This is my second tour now. I started back in '91.

6 Q. In 1991?

7 A. Uh-huh.

8 Q. And are you assigned to the homicide unit?

9 A. Yes, ma'am.

10 Q. What do your duties include?

11 A. I'm sorry.

12 C Q. I know it's hard to hear in here. What do your duties
13 include?

14 A. I investigate violent crimes and homicides for the City
15 of Columbia.

16 Q. I want to turn your attention back to May 20th of 2009.
17 Were you called out to a crime scene at [REDACTED]

18 A. I was.

19 Q. Is that here in Richland County?

20 A. Yes, ma'am.

21 Q. And when you got there, what did you observe?

22 A. First of all, I was tied up on something else, and I
23 heard the call over the radio. I was in my car.

24 Q. You're going to have to talk -- speak a little louder.
25

Kevin Reese - direct exam by Ms. Campbell

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1 A. I heard the call over the radio. I was in my car. I
2 was tied up on something else, so I didn't arrive at the
3 scene until about 1 -- 1:45. When I got there, the place was
4 pretty crowded. I had a number of police officers on the
5 scene: Police cars, helicopters everywhere in the sky,
6 commanders of the region, commanders of the police
7 department. I believe the police chief was out there.
8 Television cameras. Onlookers from the community. The area
9 was already taped off with crime scene -- crime scene tape.

10 Q. So the area had been secured, the actual scene of the
11 actual crime?

12 A. Yes, ma'am.

13 Q. And once an area is secured such as that, are only
14 certain people allowed in and out on a scene?

15 A. That's right.

16 Q. And that's to preserve any possible evidence such as
17 shell casings and things of that nature?

18 A. Right.

19 Q. And was the crime scene unit called out and took
20 photographs actually that day?

21 A. Actually the crime scene unit was already there when I
22 arrived, but, yes, they were called.

23 Q. Were you aware of whether or not E.M.S. had already
24 responded when you got there?

25 A. They had already been there and gone.

1 Q. And what was the condition of the victim?

2 A. The victim was deceased.

3 Q. And was she still in the back yard when you got there?

4 A. Yes, she was.

5 Q. Where was she in the back yard, sir?

6 A. She was -- are you asking me what was she near?

7 Q. Yes, sir.

8 A. There's a -- there was a table. I believe it was a
9 metal table. It was overturned and it was next to a shed,
10 next to a tree, a large tree, probably about - I don't know -
11 roughly 15, 20 feet away from the back of the house itself.

12 Q. And were you aware when you got there that anyone else
13 -- any possible witnesses were there on the scene?

14 A. I was informed by a couple of the uniformed officers
15 that there were two young men who were possibly witnesses
16 that they had in the back of their police cars.

17 Q. Okay. Did you actually go into the crime scene yourself
18 and look at---

19 A. I did.

20 Q. ---the crime scene?

21 A. I did.

22 Q. I show you what's been marked as State's exhibit number
23 10. Isn't that the crime scene that actually marked where
24 the shell casings were? But other than the numbers that are
25 noted on that, is that how the crime scene appeared when you

Kevin Reese - direct exam by Ms. Campbell

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1 got there?

2 A. Yes, ma'am.

3 Q. And did you actually go and look at the victim yourself?

4 A. I did. Let me clarify this. I misspoke. The table was
5 not overturned. There was a chair overturned.

6 Q. The chair was overturned.

7 A. Yes.

8 Q. And State's exhibit number 10 actually shows that. Is
9 that correct?

10 A. That's right.

11 Q. And that's how it appeared when you got out there that
12 day other than the numbers that were put down to show where
13 the shell casings were.

14 A. Yes, ma'am.

15 Q. And as far as collecting evidence, that was left to the
16 crime scene unit. Is that correct?

17 A. That's correct.

18 Q. Were you aware that other officers were also trying to
19 make contact with any possible other witnesses in the
20 neighborhood?

21 A. I was aware of that.

22 Q. And that day did they also make contact with Ms. Rosa
23 Williams?

24 A. Yes, they did.

25 Q. And was Ms. Rosa Williams able to give you some

1 information just about an automobile she had seen?

2 A. Yeah. When I got there, I assumed the role as the lead
3 investigator. So as lead investigator, you assign officers
4 and other investigators to do different tasks. I sent
5 investigators out, along with officers, to canvass the area
6 for a possible witness and suspects and other evidence, and
7 Rosa Williams was one of the people that one of the
8 investigators came in contact with. That's right.

9 Q. Okay. And she has since passed away?

10 A. Yes, she has.

11 Q. And what was her condition at the time when y'all made
12 contact with her?

13 A. I think at the time the investigator made contact with
14 her she was suffering from cancer I believe it was.

15 Q. After your observations of the back yard, the crime
16 scene and everything -- and let me back up a minute. As far
17 as the victim, were you able to tell when you were there at
18 the scene exactly how many times she had been shot?

19 A. I couldn't tell exactly how many times, but it was plain
20 to see that she had been shot several times.

21 Q. Okay. And the nature of the crime itself, I'll get back
22 to that. Did you make contact with Cleveland Joyner that day
23 and Ellison Hudson?

24 A. I did.

25 Q. And did you do a preliminary interview there at the

1 scene?

2 A. Yes.

3 Q. And who did you talk to first, sir?

4 A. I talked with Ellison Hudson first, I believe.

5 Q. And without going into what he said to you, did he give
6 you some information?

7 A. He did.

8 Q. Did you then follow up with an interview of Cleveland
9 Joyner?

10 A. I did.

11 Q. And based on the information he gave you, did you go
12 back and confront Ellison Hudson about certain things?

13 A. Yeah, and that's what I normally do. If you've got two
14 people out there or three or four or five hundred, whatever
15 amount, you talk to them preliminarily and then you compare
16 their stories and you come up with whatever they gave you and
17 I did that.

18 Q. Okay. And when you went back and talked to Mr. Hudson
19 the second time, specifically what were you asking him about?

20 A. About a gun.

21 Q. About a gun?

22 A. Yes.

23 Q. And that was information you got from Mr. Joyner?

24 A. Right.

25 Q. And when you went back and asked him about that gun, did

1 he show you anything?

2 A. Yes, ma'am. He took us into his house. This homicide
3 happened at his house, the house where he lives with his
4 parents. He took us into the house. You know, I think he
5 walked us down a hall into a bedroom that he said was his
6 mother and father's bedroom. He pointed to the bed. He said
7 the gun is behind the headboard of that bed.

8 Q. Did you actually look behind the headboard yourself?

9 A. No. Myself and a couple of other investigators went
10 inside with me. At that time I instructed everybody,
11 including Mr. Hudson, to go out of the house. The house --
12 the inside of the house now is part of the crime scene. We
13 secured the house and I secured the search warrant.

14 Q. And is that proper police procedure prior to you
15 searching someone's house?

16 A. That's right.

17 Q. Even if Mr. Hudson is the one that took you in there.

18 A. Even if he is.

19 Q. And that day were you aware that the gun was actually
20 recovered from the place he showed you?

21 A. Yes, ma'am.

22 Q. And in addition to that, did you also become aware of
23 some shell casings that were recovered?

24 A. He told one of the investigators that there were some
25 shell -- I believe he told them or either the investigator

1 who overturned pillows looking for other things, but they did
2 find shell casings on the couch underneath the pillow.

3 Q. At your instruction that day, did crime scene
4 investigators also collect gunshot residue kits from both
5 Cleveland Joyner and Ellison Hudson there at the scene?

6 A. That's right.

7 Q. And why would you do that, sir?

8 A. It is procedure and it's done to help assist
9 investigators into detecting if or and who may have fired any
10 weapons.

11 Q. Okay. That day at the scene was Ellison Hudson
12 completely forthcoming to you about what happened?

13 A. No, absolutely not.

14 Q. Specifically, what part was he trying to cover up?

15 A. At the scene he was trying to cover up the fact that
16 there was another -- that there was a gun involved that was
17 in his possession.

18 Q. And is that unusual in cases such as this?

19 A. No, that's not unusual.

20 Q. Why is that, sir?

21 A. Normally when you're involved in a crime that's -- well,
22 at least when you think you're about to go to jail, the last
23 thing you want to do is tell the police -- give the police
24 reasons to take you to jail. I would imagine that was the
25 reason that he withheld that information.

1 Q. He wasn't supposed to have a gun out there that day.

2 A. No, he wasn't supposed to have a gun.

3 Bailiff: They need a break.

4 The Court: Sir?

5 Bailiff: Need a break.

6 The Court: All right. We'll take a break. Step back
7 to the jury room. Don't discuss the case while you're back
8 there, and we'll bring you back in a few minutes.

9 (Whereupon, the jury was excused from open court at
10 12:07 p.m.)

11 The Court: All right. We'll take about five minutes or
12 so.

13 (Whereupon, a short break was taken.)

14 The Court: All right. Let's bring the jury in if we
15 could. We won't finish this witness 'til after lunch?

16 Ms. Campbell: I should. I mean...

17 The Court: Well, I know, but it's...

18 Ms. Campbell: Probably.

19 Bailiff: May I approach the bench, Your Honor?

20 The Court: They told me the jury was ready.

21 (Pause in proceedings. The jury was brought into open
22 court at 12:18 p.m.)

23 The Court: All right. Proceed, please.

24 Ms. Campbell: Thank you, Your Honor.

25 By Ms. Campbell:

1 Q. Just for the record, [REDACTED] that back yard,
2 is that here in Richland County?

3 A. Yes, ma'am.

4 Q. You're aware that a search warrant was done and I
5 believe you had testified that the gun was recovered as well
6 as some shell casings?

7 A. At [REDACTED]

8 Q. Yes, sir, at [REDACTED]

9 A. Yes.

10 Q. And did you also become aware at a later time that some
11 counterfeit money was recovered?

12 A. Yes, ma'am.

13 Q. Did you ever charge Ellison Hudson with possession of
14 counterfeit money?

15 A. No, I didn't.

16 Q. And why not?

17 A. Well, that doesn't mean at some point in time I wasn't
18 going to go back and charge him with that or anything else.
19 I could have, but at that point my focus was on the homicide
20 case, not counterfeit money.

21 Q. And that was your assignment was to solve the murder.

22 A. That's right.

23 Q. Later that evening did you have an opportunity to
24 interview Cleveland Joyner downtown?

25 A. Yes, ma'am.

1 Q. And that would be at police headquarters when I say
2 downtown?

3 A. Yes, ma'am.

4 Q. And did you also interview Ellison Hudson?

5 A. I did.

6 Q. And during that time were they able to give you
7 information about what happened and what they saw?

8 A. Yeah, they did.

9 Q. About that day.

10 A. About that day.

11 Q. And was their information about what happened that day
12 consistent with each other?

13 A. It was consistent on the point that they both saw a
14 silver car drive around the house a couple of different
15 times. They became suspicious. A couple of black males ran
16 through the back yard and shooting as they entered the yard.

17 Q. And was their information consistent with what y'all had
18 been able to get from the neighbors as far as what they had
19 seen?

20 A. Yes, it was.

21 Q. As far as that goes.

22 A. That's right.

23 Q. Did Mr. Joyner admit to shooting back at the people
24 that---

25 A. Mr. Joyner.

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1 Q. Mr. Joyner did?

2 A. Yes.

3 Q. Did Mr. Ellison ever admit to shooting or was there any
4 indication he did?

5 A. No, we never said he shot and there was never any
6 indication he---

7 **Court Reporter:** I'm sorry. Can you repeat that? Can
8 you speak up, please?

9 **The Witness:** I'm sorry. He never said he fired any
10 shots, and there was no indication that Ellison Hudson fired
11 any shots.

12 By Ms. Campbell:

13 Q. Based on the information that you got from Ellison
14 Hudson that night, did he identify the person -- a person
15 that was one of the shooters?

16 A. He identified a person. Right.

17 Q. Who was that?

18 A. Jonathan Bailey.

19 Q. And at that point did you feel basically on the -- were
20 you able to determine from your investigation at that point
21 that, in fact, he was likely the intended victim? It was his
22 yard?

23 A. Ellison Hudson was---

24 Q. Yes?

25 A. Yes, I was.

1 Q. And based on the information that you got from Cleveland
2 Joyner and specifically from Ellison Hudson, did you secure
3 an arrest warrant?

4 A. For Jonathan Bailey. Based on the information that
5 Ellison Hudson gave me, I secured an arrest warrant for
6 Jonathan Bailey.

7 Q. And at that point, in your estimation and your
8 investigation, was it important that Jonathan Bailey was a
9 murderer, to go ahead and get an arrest warrant and get him
10 off the street?

11 A. Absolutely.

12 Q. Your investigation did not stop, however, with your
13 interview of Ellison Hudson and Cleveland Joyner, did it?

14 A. No. Of course not.

15 Q. And whenever you're investigating a crime, you go a step
16 further, regardless of whether you have probable cause or
17 not, and -- to confirm or disprove any allegations that
18 anyone may have made. Is that correct?

19 A. That's right. It actually does not stop there just with
20 an arrest, no.

21 Q. During the course of the next day, moving on to the
22 21st, you all continued to interview different people. Is
23 that correct?

24 A. That's correct.

25 Q. And during the course of that time, did you make contact

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1 with a Captain Stan Smith at the Richland County Sheriff's
2 Department?

3 A. Yes, I did.

4 Q. And did you become aware that there was also an
5 outstanding armed robbery warrant in addition to your murder
6 warrant at that point?

7 A. Yes, I did.

8 Q. Did you also get information and pursue information that
9 Jonathan Bailey had made contact with the sheriff's
10 department and was going to turn himself in?

11 A. I did.

12 Q. Was that important to your investigation at that point?

13 A. Absolutely. It was. It gave me a chance to interview
14 him.

15 Q. Did you proceed to the Richland County Sheriff's
16 Department?

17 A. Myself and my partner, Thomas, we went over there. When
18 we got there, Bailey was there at the sheriff's department.

19 Q. At the sheriff's department?

20 A. At the sheriff's department.

21 Q. Okay. And did y'all actually take him into custody at
22 that point?

23 A. Yes, we did.

24 Q. Did you become aware that he had met with a lawyer who
25 had given him some advice?

1 A. I did.

2 Q. And despite that advice, did he go ahead and talk to
3 y'all that day?

4 A. Yeah. He was adamant. We didn't even announce anything
5 to him in the beginning. He was adamant when we got there:
6 I don't want to talk about this. I don't have anything to do
7 with it. He was emphatic about it.

8 Q. And prior to talking or prior to you asking him any
9 questions, as it should be, did you advise him of his rights?

10 A. We did.

11 Q. And just for the record, when you asked to talk to
12 Cleveland Joyner and Ellison Hudson the night before, had you
13 also advised them of their rights?

14 A. Yes, ma'am.

15 Q. As precaution?

16 A. Right.

17 Q. Did y'all interview Jonathan Bailey on the 21st of May?

18 A. Yes, we did.

19 Q. And was he able to give you information about his
20 whereabouts the day before around 1:00?

21 A. Yes, he did.

22 Q. That day did y'all try to corroborate any of the
23 information he gave you?

24 A. We set out and done that, all the information that he
25 gave us.

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1 Q. Did you make contact with a Deputy Norman Jenkins?

2 A. Yes, we did.

3 Q. And the information that was -- was he able to confirm
4 the information that Jonathan Bailey said about where he was
5 or who he was talking to the day before?

6 A. Yeah, he did.

7 Q. Did you also make contact with Jonathan Bailey's mother?

8 A. I did.

9 Q. And was she able to confirm the information that
10 Jonathan Bailey related?

11 A. She confirmed it as well as gave me a copy of the
12 telephone record.

13 Q. And at this point Jonathan Bailey had been arrested for
14 both murder and the unrelated armed robbery. Is that
15 correct?

16 A. That's right.

17 Q. The next day on the 22nd, did you follow up further on
18 the information Jonathan Bailey had given you?

19 A. I did.

20 Q. And at this point why are you following up on what
21 Jonathan Bailey said to you?

22 A. You really don't have much other choice, you know. If
23 he's giving me information that would exonerate him, then we
24 would be remiss not to follow it up.

25 Q. And in this case you immediately followed up as soon as

1 -- because you interviewed him the night before?

2 A. Right.

3 Q. The next day you went to a Ms.---

4 A. Ms. Kevae Dolphin's house.

5 Q. Kevae Dolphin's house?

6 A. Right.

7 Q. And where does she live?

8 A. She lives at [REDACTED] in Columbia.

9 Q. And what part of Columbia is that in, sir?

10 A. To be honest with you, I don't really remember how we
11 got out there.

12 Q. Was it the northeast?

13 A. Yeah, it's the northeast area.

14 Q. I'm going to show you State's exhibit number 78 which
15 shows both the incident location at [REDACTED] and
16 Ms. Dolphin's residence up here at the top -- bottom are the
17 green pointers there. Does that show those two locations?

18 A. That's right.

19 Ms. Campbell: Your Honor, at this time we'd offer it
20 into evidence.

21 The Court: Any objection?

22 Ms. Shurling: No objection, Your Honor.

23 The Court: So admitted.

24 (State's exhibit 78 was received in evidence.)

25 By Ms. Campbell:

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1 Q. Did you speak to Ms. Kevae Dolphin at that point the
2 next day?

3 A. We did.

4 Q. On the 22nd?

5 A. Yes.

6 Q. And was she able to give you information pertinent to
7 Jonathan Bailey's whereabouts sometime in the middle part of
8 the day when this occurred?

9 A. Yes, she did.

10 Q. And for the record, this event -- I think the incident
11 report indicates it happened at 12:52 or thereabouts?

12 A. That's right.

13 Q. The actual shooting.

14 A. Right.

15 Q. Did you document in your notes the information she gave
16 you?

17 A. Yes, ma'am.

18 Q. Did she also indicate that there was a second person
19 that had actually seen Mr. Bailey during this time period you
20 were interested in?

21 A. Yes, ma'am.

22 Q. And she gave you a name?

23 A. Yes, she did.

24 Q. And did you immediately follow up on that or was that
25 something that you were going to do later?

1 A. We were going to get around to it.

2 Q. Were you aware that this Stephanie had gone on vacation
3 at bike week or something?

4 A. Yeah, she told us that she was out of town.

5 Q. But you noted that. Did you take a written statement
6 from Ms. Dolphin?

7 A. I always -- you don't always have to take a written
8 statement from people.

9 Q. And just for the record, each agency has different
10 policies and things. Like the F.B.I. doesn't take any
11 written statements, do they?

12 A. No, not to my knowledge. No.

13 Q. And it just depends on what is prudent at the time.

14 A. Right.

15 Q. The information she's given you was limited to just her
16 knowledge of what Jonathan Bailey was doing.

17 A. That's right.

18 Q. That day was there a search warrant that was secured for
19 the back yard of Ellison Hudson's house again?

20 A. Yes, it was.

21 Q. And why were you getting a search warrant to go search
22 that back yard again?

23 A. There were some bullet slugs that it was imperative that
24 we find.

25 Q. And where were those bullet slugs actually located in

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1 that back yard that you were looking for?

2 A. They were found in the ground.

3 Q. In the ground?

4 A. Uh-huh.

5 Q. In the ground? In what part of the yard?

6 A. They were found in the ground at exactly -- where
7 Ebony's body would have been, that's where the slugs were
8 found, underneath her body.

9 Q. State's exhibit 10, that would be underneath where she
10 was laying at or in that approximate area?

11 A. That's right.

12 Q. Near or underneath her body? Why was that significant
13 to you in your investigation?

14 A. That was significant for one reason because of the
15 amount of time -- the several times that I observed that she
16 had been shot. Another reason is we needed -- if we ever
17 came up with a gun, we could use those bullets to analyze
18 this whole thing.

19 Q. That day did you also secure an arrest warrant for
20 Ellison Hudson in this case?

21 A. Yes, we did.

22 Q. What was the charge?

23 A. The charge was obstruction of justice.

24 Q. The next day on May the 23rd did you make contact with
25 the victim's mother?

1 A. Ms. Barbara Taylor, yes, we did.

2 Q. And that day also was Ellison Hudson arrested on the
3 obstruction of justice warrant?

4 A. Yes, he was.

5 Q. And on May the 23rd did you again advise him of his
6 rights and talk to him again?

7 A. Yes, we did.

8 Q. And I believe that was a recorded interview?

9 A. Yes, it was.

10 Q. You and Investigator Thomas?

11 A. Right.

12 Q. At that point did he provide you with a name that you
13 would follow up on?

14 A. That was the point where he gave us the name of Bump.

15 Q. Bump?

16 A. Bump.

17 Q. And at this point had you been able to have a follow-up
18 conversation with Cleveland Joyner yet?

19 A. At that point, no.

20 Q. Okay. And he gave you the name of Bump. Was he able to
21 give you Bump's real name at that point?

22 A. No, he didn't.

23 Q. Was he booked into the jail that day?

24 A. Ellison? Yes, ma'am.

25 Q. Turning your attention to the pertinent parts, June the

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1 1st, did you go to [REDACTED]

2 A. Yes, I did.

3 Q. And why did you go to [REDACTED]

4 A. Thomas and I went there. Ellison Hudson had escorted us
5 there, advising us about a shootout that -- I think at the
6 time he didn't say anything about it being a shootout. He
7 said that Bump had fired shots at him at those apartments.
8 That's the place where Hackshaw lived.

9 Q. Okay. At the time you didn't know Hackshaw's name
10 though?

11 A. Never knew Hackshaw before this case came up. Never
12 even heard of him.

13 Q. And at the time that Ellison escorted you to that
14 apartment complex on Brighton Hill Road, you didn't know
15 Hackshaw's name, real name, other than Bump.

16 A. That's all I knew.

17 Q. When you went there on June the 1st to Brighton Hill
18 Road -- and where is that located?

19 A. That is off of 277 and Parklane.

20 Q. Right near that exit off 277 where Parklane crosses?

21 A. Right.

22 Q. When you got there, did you make contact with
23 management?

24 A. I did.

25 Q. Were you able to get the identity of the person that was

1 Bump?

2 A. I did. Yes.

3 Q. How did you get that?

4 A. When we spoke -- I spoke with management and they were
5 well aware of the incident, the shootout incident that had
6 occurred, and they were already familiar with Hackshaw and
7 his wife, Rosa. So getting the information at that point was
8 relatively easy.

9 Q. So when you went there and indicated what you were
10 looking for, they immediately identified Anthony Hackshaw and
11 his wife, Rosa?

12 A. Right.

13 Q. Did they also give you any information about a car that
14 was driven by the defendant as far as they knew?

15 A. They told us about a black Honda. The people in the
16 management office mentioned a black Honda.

17 Q. Okay. Did you also become aware, after talking to
18 management, whether or not the case was being -- the shooting
19 was being investigated by the Richland County Sheriff's
20 Department?

21 A. Yes. They advised us that an Investigator Gonzalez with
22 the sheriff's department was investigating that incident.

23 Q. That day did you also make contact with one of the
24 residents that lived close by to where the Hackshaws lived?

25 A. I did or we did.

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1 Q. Was she able to give you information about -- without
2 saying what she said, was she able to give you information
3 about the shooting?

4 A. Yes, ma'am.

5 Q. Was she also able to give you information about the car?

6 A. Yes, ma'am.

7 Q. And, specifically, what car was she able to give you
8 information about? Management had told you about a black
9 Honda. What car did she tell you about?

10 A. She told us about actually two cars: A green Honda as
11 well as a silver Honda.

12 Q. The silver Honda?

13 A. Yes.

14 Q. Was that significant, based on your interview with the
15 witnesses and Mr. Ellison Hudson and Cleveland Joyner---

16 A. Yes, it was.

17 Q. ---in your investigation?

18 A. It was.

19 Q. And, in fact, had that information been put out I
20 believe when this first happened over -- on the T.V. as
21 something y'all were interested in finding?

22 A. In respect to the homicide?

23 Q. With respect to the silver Honda only.

24 A. Yes, ma'am.

25 Q. That day did you also make contact with Joann Pickett?

1 A. I did.

2 Q. The next day did you become aware of some shell casing
3 and projectile that had been collected by a member of the
4 Richland County Sheriff's Department from the shooting that
5 occurred at his apartment complex?

6 A. Yeah, the ones recovered by Kerry Johnson, Deputy
7 Johnson.

8 Q. Deputy Johnson?

9 A. Right.

10 Q. Who testified earlier?

11 A. Right.

12 Q. And did you also get briefed that day by Investigator
13 Gonzalez on the status of his case?

14 A. We did.

15 Q. During the briefing, did you become aware of whether or
16 not Hackshaw had been interviewed about whether or not he
17 knew anything about that shooting that day?

18 A. Yes, we did.

19 Q. The next day, June 3rd, did you make arrangements to
20 talk to Cleveland Joyner again?

21 A. Yes, ma'am.

22 Q. And, specifically, was he able to go over what had
23 happened that day again?

24 A. Yes.

25 Q. What had happened on the 20th?

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1 A. Yes.

2 Q. And were his statements about what had happened that day
3 consistent with what he told you to begin with?

4 A. Pretty much but he added some other things.

5 Q. Did he also add some information about his knowledge as
6 far as an ongoing situation between Anthony Hackshaw and
7 Ellison Hudson?

8 A. Yes, ma'am.

9 Q. That statement was also recorded?

10 A. It was.

11 Q. On June the 4th of 2009 did you again attempt to
12 interview Ellison Hudson?

13 A. Yes, we did.

14 Q. And was he there with his lawyer at that point? Had he
15 been charged with obstruction of justice?

16 A. Yes, ma'am.

17 Q. And at that point what information are you trying to get
18 from him?

19 A. On the 4th we were trying to get enough information to
20 correlate the two events and also the identity of the --
21 excuse me. We were actually at this point trying to
22 ascertain that he had lied about the identity of the shooter
23 and that he, in fact, knew who the shooter was.

24 Q. And at that point did he admit to you that he had not
25 told you the truth about it being Jonathan Bailey?

1 A. Right. He did.

2 Q. During the course of that conversation, his lawyer --
3 are you aware -- was there going to be any -- as far as you
4 knew, he was not going to be prosecuted for the robbery?

5 A. I didn't know anything about that, no.

6 Q. But as far as -- well, at that point as far as Mr.
7 Hackshaw went, was he even willing to come forward and give
8 information about the robbery as far as you knew?

9 A. At this point?

10 Q. Uh-huh. Mr. Hackshaw was not willing to come.

11 A. Oh, Mr. Hackshaw, no.

12 Q. Bump.

13 A. No.

14 Q. And Bump had never reported the robbery or the shooting.

15 A. No, he didn't. That was my understanding.

16 Q. On the 4th, in the presence of his lawyer, was he able
17 to give you additional information about -- was Ellison
18 Hudson able to give you additional information about the
19 robbery?

20 A. Yes, ma'am, he did.

21 Q. And the identity of who was there.

22 A. Yes.

23 Q. On June the 5th did you go to Home Depot?

24 A. We did.

25 Q. And who did you make contact with there, sir?

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1 A. On June 5th we made contact with Chris Lowe.

2 Q. And were you trying to -- what were you trying to get
3 information about?

4 A. We were trying to locate Rosa Hackshaw.

5 Q. Rosa Hackshaw?

6 A. Right.

7 Q. While you were there, did you get information about a
8 car she had been driving?

9 A. Yes, we did.

10 Q. And what car was that?

11 A. It was a silver Honda.

12 Q. Also on June the 5th did you make contact with people
13 where the defendant, Bump, was supposed to work?

14 A. I'm sorry?

15 Q. Where Bump worked?

16 A. Yes.

17 Q. And where was that, sir?

18 A. The Department of Mental Health.

19 Q. Department of Mental Health?

20 A. Uh-huh.

21 Q. Where is that located here in Richland County?

22 A. That's on Farrow Road and I-20.

23 Q. Farrow Road and I-20?

24 A. Yes.

25 Q. And I show you what's been marked as State's exhibit

1 number 67. Do you recognize that map?

2 A. I do.

3 Q. And where is I-20 on that? I don't think it actually
4 has I-20 on it.

5 A. It would be up in here. This is probably I-20 here.

6 Q. And Farrow Road, is that shown going here and then
7 across I-20?

8 A. Right there.

9 Q. There you go. That's 20?

10 A. Uh-huh. Yes.

11 Q. And Bryan's Hospital, is it located on this other side
12 near Morris Village?

13 A. Yes, it's located near Morris Village.

14 Q. And this is where Morris Village is shown on here?

15 A. Right.

16 Q. So it would be right in the same center?

17 A. Right.

18 Q. And in order to get to the victim where the shooting
19 occurred, you would get straight on Farrow Road going
20 straight.

21 A. You could.

22 Q. From there to there.

23 A. Right.

24 Q. You spoke to Officer Littlejohn?

25 A. I did.

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1 Q. And he was also able to give you information. Is that
2 correct?

3 A. Yes, ma'am.

4 Q. On June the 5th did you also speak to his supervisor
5 there, Ms. Lorraine Tracey?

6 A. Yes, ma'am.

7 Q. Moving on to June the 8th, did you speak to Shaquenda
8 Evans who was actually a friend of whom?

9 A. She's a friend of Rosa Hackshaw.

10 Q. Was she able to give you information?

11 A. Yes, she did.

12 Q. On June the 8th did you become aware that Investigator
13 Gonzalez had served a search warrant at the Hackshaw
14 residence at the apartment complex on Brighton Hill?

15 A. Yes, I was informed of that.

16 Q. And during that were you aware that they obtained a
17 photograph of Ellison Hudson in Mr. Hackshaw's bedroom?

18 A. Yes, I'm aware of that information as well.

19 Q. The next day, June the 9th, the day after the search
20 warrant was served, did you attempt to find Rosa Hackshaw?

21 A. Yes, we did.

22 Q. Or Rosa Grenald I believe is her name?

23 A. Yes.

24 Q. And who did you contact to try to find her?

25 A. We went over to Home Depot.

1 Q. And had she shown up for work that day?

2 A. No. We were informed she didn't show up and didn't call
3 and advise that she would not be coming in.

4 Q. She didn't show up?

5 A. Didn't show up.

6 Q. And did you also attempt to contact the defendant's
7 place of employment?

8 A. Yeah. By this time we were well on the hunt for the two
9 of them.

10 Q. And you're trying to make contact with either of them to
11 interview them about this situation.

12 A. That's correct.

13 Q. Were you able to find him?

14 A. No. We were informed there as well as at his employment
15 that he didn't show up and he didn't call in.

16 Q. That same day did you also request assistance from the
17 South Carolina Law Enforcement Division about trying to
18 recover projectiles from Juniper Street?

19 A. Yes, I did.

20 Q. And the next day I believe the search warrant with the
21 help of S.L.E.D. was actually served and some projectiles
22 were recovered?

23 A. That's right.

24 Q. On that same day did you also get cell phone records
25 from a phone number that you could associate with the

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1 defendant as well as from Ms. Rosa Grenald?

2 A. Yes, ma'am.

3 Q. And that cell phone was later returned?

4 A. You say it was later returned? Yes, ma'am.

5 Q. Okay. On June the 12th of 2009 did you also receive --
6 did management at the apartment complex where the Hackshaws
7 had been living up until June the 9th -- did you receive
8 information from them?

9 A. Yes, I did.

10 Q. But were you able to find either Rosa Grenald or Anthony
11 Hackshaw?

12 A. No.

13 Q. On June the 14th of 2009 did Rosa Grenald make contact
14 with you or your office?

15 A. By telephone, right.

16 Q. Based on the information or the conversation you had
17 with her, was she supposed to make contact with you that
18 following Monday?

19 A. We set -- I set up an appointment for her to come in
20 that Monday. She assured me that she would. She never
21 showed up, never called again.

22 Q. June the 16th and June the 17th did you receive the
23 actual phone records, specifically the Sprint records, from
24 the defendant's cell phone and turn those over to S.L.E.D.
25 for some analysis?

1 A. Yes, ma'am.

2 Q. June the 26th, did you make contact with a Ms. Nina
3 Gordon?

4 A. I did.

5 Q. And did you follow up on that on June the -- or July the
6 6th?

7 A. Yes, ma'am.

8 Q. And when she first spoke to you, there's been some
9 thought -- was she confused or what was the situation?

10 A. I'm not sure whether confusion would be the right word.
11 I just think she couldn't remember and she didn't want to say
12 anything that was not correct.

13 Ms. Shurling: Objection, Your Honor. Calls for
14 speculation.

15 The Court: Sustained.

16 By Ms. Campbell:

17 Q. Then back on July the 6th did you also make contact with
18 a Karen Moore to confirm what Ms. Gordon told you?

19 A. Yes, ma'am.

20 Q. And she did?

21 A. Yes, ma'am.

22 Q. July the 7th, did you make contact with Joseph Smith or
23 Joe Smith?

24 A. Yes, ma'am.

25 Q. What was his relationship with the defendant?

1 A. They knew one another according to him.

2 Q. And was he able to give you some information that was
3 pertinent?

4 A. Yes, ma'am.

5 Q. On July the 10th of 2009 -- up until this point of July
6 the 10th, had you made attempts to contact Anthony Hackshaw
7 and/or his wife, Rosa Grenald, to talk to them?

8 A. Yes, ma'am.

9 Q. Could you find them?

10 A. No.

11 Q. And, in fact, Ms. Grenald made contact with you back on,
12 excuse me, June the 14th.

13 A. Yes.

14 Q. We're now at July the 10th.

15 A. Right.

16 Q. Is that correct?

17 A. Right.

18 Q. And you had not made -- been able to find her.

19 A. No.

20 Q. She had never shown up for her appointment.

21 A. No.

22 Q. July the 10th did you secure arrest warrants through a
23 magistrate for the arrest of Rosa Grenald and Anthony
24 Hackshaw?

25 A. Yes, I did.

1 Q. What were the charges?

2 A. Murder for Hackshaw and two counts of assault and
3 battery with intent to kill, and one count of obstruction of
4 justice for Rosa Hackshaw.

5 Q. On July the 23rd of 2009, at this point you've secured
6 the murder warrant and the accompanying warrants for Mr.
7 Hackshaw. Have you been able to find him at this point?

8 A. No.

9 Q. That day did you get contacted by an investigator from
10 the solicitor's office about possible information?

11 A. Yes, I did.

12 Q. And I believe it was Investigator Tabor?

13 A. Tabor. Right.

14 Q. And based on what he told, where did you proceed in
15 order to follow up in this investigation?

16 A. Information he gave me led me to U.C.I. Medical
17 Affiliates.

18 Q. That's their official name. It's a doctor's -- it's a
19 physical therapy?

20 A. That's -- Yeah, that's their official name, but I think
21 it's Doctors Wellness. It's a physical therapist
22 organization.

23 Q. Where is that located?

24 A. It's located on Trenholm Road in Forest Acres.

25 Q. Okay. Near the Publix there on Trenholm?

1 A. That's right.

2 Q. And, well, it actually faces Forest... At that point
3 what information are you looking for to either confirm or --
4 information about Anthony Hackshaw's whereabouts on June,
5 excuse me, May the 20th of 2009?

6 A. I'm looking for any documents that show me whether he
7 was there or what time he was there, a sign-in -- a sign-in
8 register.

9 Q. Did you actually get a search warrant for those records,
10 a lawful search warrant, prior to obtaining those records?

11 A. Yes. Yes, I did.

12 Q. And were you provided with a patient sign-in sheet as a
13 result of your search warrant being executed?

14 A. That's correct.

15 Q. I'm going to show you what's been marked as State's
16 exhibit number 70. Is this a copy only of a sheet that was
17 provided to you?

18 A. Yeah, this is it.

19 Q. They actually gave you a copy of the actual sheet?

20 A. Yes, ma'am.

21 Ms. Campbell: Your Honor, at this time we offer State's
22 exhibit 70.

23 Ms. Shurling: Oh, without objection.

24 The Court: So admitted.

25 (State's exhibit 70 was received in evidence.)

1 By Ms. Campbell:

2 Q. Specifically, the time period you were looking at, this
3 occurred around 12:52?

4 A. That's right.

5 Q. Did you also confirm that day what time his actual
6 appointment was?

7 A. I think they told me around 1:00.

8 Q. 1:30?

9 A. 1:30.

10 Q. And on the sign-in sheet, significant, there are some
11 highlighted things. Is that -- what is that?

12 A. This is the patient sign-in sheet that I have.

13 Q. And in that do you see Anthony Hackshaw's name?

14 A. Yes, I do.

15 Q. And the number, the time -- the name and the time the
16 person that checked in right before him, what does it show?

17 A. The name is Annie Thompson, and it shows she signed in
18 at 1:09.

19 Q. 1:09?

20 A. That's right.

21 Q. And on these sign-in sheets, this is information that's
22 put down by the patient themselves. Is that correct?

23 A. That's my understanding.

24 Q. And then the next one after 1:09 -- the ones up in the
25 day, do they run chronologically as far as time elapsing?

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1 A. Yes.

2 Q. There's no blip back on any of the other ones.

3 A. No.

4 Q. After Ms. Thompson signed in at 1:09, what's the next
5 entry?

6 A. The next entry is Anthony Hackshaw and---

7 Q. What time did he write in?

8 A. Wrote in 1:00.

9 Q. 1:00?

10 A. That's right.

11 Q. And then the next entry after Mr. Hackshaw is what time?

12 A. It's 1:25.

13 Q. 1:25?

14 A. Yes, ma'am.

15 Q. And that's with a different name?

16 A. Darlene Townsend Bradley.

17 Q. And all those would be before the 1:30 appointment.

18 A. Absolutely.

19 Q. And, again, the time that was written on there next to
20 Mr. Hackshaw's name would have been written by him?

21 A. Yes, ma'am.

22 Q. On June the 27th did you make contact with a Monica
23 Goodwin who worked at the physical therapy place?

24 A. Yes, I did.

25 Q. Was she able to give you specific information about

1 observing Mr. Hackshaw on the 20th and his behavior?

2 A. Yes, she did.

3 Q. On June the 29th of 2009 did Anthony Hackshaw turn
4 himself in?

5 A. Yes, he did.

6 Q. Where did that take place?

7 A. He turned himself in to my office.

8 Q. To your office?

9 A. At the Columbia Police Department.

10 Q. Columbia Police Department?

11 A. Yes.

12 Q. Was he accompanied by anyone?

13 A. He was accompanied by an attorney.

14 Q. And was he booked in that day?

15 A. Yes, ma'am.

16 Q. On June -- excuse me. On July the 30th did you also
17 receive work records from Bryan's Hospital---

18 A. Yes.

19 Q. ---as far as his going?

20 A. Yes, I did.

21 Q. The next day on July the 31st, did Rosa Grenald turn
22 herself in?

23 A. Yes, she did.

24 Q. And was she also accompanied by her attorney?

25 A. Yes, she was.

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1 Q. Did she give you a statement -- without going into what
2 she said, did she give you a brief statement?

3 A. She did.

4 Q. And at this point you've arrested Mr. Hackshaw and
5 you've arrested Ms. Grenald. Is that right?

6 A. That's right.

7 Q. Had you been able to find the silver Honda?

8 A. No.

9 Q. To this day have you seen the silver Honda?

10 A. No.

11 Q. Do you know where it is?

12 A. I have no idea.

13 Q. Over the course of the Fall, October into November, did
14 you request some information about some phone numbers you had
15 found on the defendant's cell phone records?

16 A. Yes, I did.

17 Q. And specifically some of those -- let me ask you this:
18 The cell phone numbers, as time passes, do the person who
19 actually may have the phone at the time, does that change?
20 Can that change?

21 A. Yes, it can change.

22 Q. And is that unusual in your investigation for it to
23 belong to someone and then be turned back in and the number
24 reissued?

25 A. No, that's not unusual at all.

1 Q. Did you attempt to follow up on some of those numbers
2 that you saw on Mr. Hackshaw's records?

3 A. Yes, we did.

4 Q. And did one of those phone numbers that you wanted to
5 follow up on lead you to a Torrian Gleaton?

6 A. Well, that -- that number came from Investigator
7 Gonzalez.

8 Q. From Investigator Gonzalez?

9 A. That's right.

10 Q. And he was able to get that during the course of his
11 search warrant?

12 A. Yes, ma'am.

13 Q. Were you able to determine what the relationship was
14 between Torrian Gleaton and the defendant?

15 A. I was able to, yes.

16 Q. And what was relation -- were they friends?

17 A. They were friends.

18 Q. In November, specifically on November 18th of 2009, were
19 you contacted by Mr. Hackshaw's attorney at the time?

20 A. Yes, I was.

21 Q. Who was that?

22 A. The attorney at the time?

23 Q. The attorney.

24 A. It was Charlie Johnson.

25 Q. Charlie Johnson?

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1 A. Yes, ma'am.

2 Q. And did you make arrangements to interview him that day?

3 A. Yes, I did.

4 Q. And where did that interview take place?

5 A. The Columbia Police Department.

6 Q. Did you advise him of his rights that day?

7 A. Yes, we did.

8 Q. Even though his lawyer was present?

9 A. Even though.

10 Q. And was his lawyer present during the interview?

11 A. Yes, he was.

12 Q. And tell this jury how the interview went.

13 A. It actually didn't go too well as far as I was concerned
14 during the -- all the duration, how ever long it lasted, Mr.
15 Hackshaw was confrontational. The information he did give
16 me, all the times contradicted what I had already found out
17 in the investigation, and he was evasive about a lot of it,
18 giving me a lot of the answers to the questions that we were
19 asking of him..

20 Q. Actually, for the record, let me back up. When he was
21 originally booked in to -- when he turned himself in with his
22 lawyer that day---

23 A. Right.

24 Q. And just answer these questions specifically. You never
25 attempted to talk to him that day?

1 A. No.

2 Q. And you never advised him of his rights that day?

3 A. No.

4 Q. But after his lawyer made contact indicating he wanted
5 to talk, that's when you advised him of his rights.

6 A. That's right.

7 Q. You mentioned that he told things that contradicted
8 things you already knew from other people, including his
9 wife. Is that correct?

10 A. Yes, ma'am.

11 Q. Specifically, did you ask him about any kind of
12 automobile?

13 A. I asked him about the silver Honda.

14 Q. What did he indicate to you?

15 A. He told me that he didn't know anything about a silver
16 Honda and that his wife had -- did not have access to a
17 silver-colored Honda.

18 Q. Did you ask him specifically about the robbery that
19 preceded this or the cause of this whole incident?

20 A. He told me that he was never robbed and he was never
21 involved in a shootout at his apartment complex. That's what
22 I was asking him about.

23 Q. Did you also ask him about the physical therapist's
24 office?

25 A. Yeah, I did. I asked him about the physical therapist's

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1 office, and his remark, as I have noted in my notes, was that
2 you already been there. "You should know. You already been
3 there talking to people."

4 Q. And as you continued to try to answer -- ask him
5 questions, was he responsive?

6 A. For the most part, no.

7 Q. And in your -- did you actually terminate the
8 conversation?

9 A. Yes. Yes, I did.

10 Q. Why?

11 A. It was clear that we weren't going to get anywhere. It
12 was a waste of time trying to interview with him.

13 Q. So at that point he denied about the robbery, the
14 shootout, the silver Honda, the physical therapist. Nothing
15 he was providing information on.

16 A. No, nothing.

17 Q. Did y'all make an attempt to record that conversation?

18 A. Yes, we did.

19 Q. And were you able to actually record it?

20 A. Well, yeah, we recorded the conversation, but I think at
21 some point something happened to it.

22 Q. As was explained?

23 A. Excuse me?

24 Q. It malfunctioned?

25 A. Yeah, it malfunctioned.

1 Q. I want to move your attention on to March the 11th of
2 2010. Were you contacted by a person in the solicitor's
3 office about a Travis Golston?

4 A. I was contacted by Heather Weiss.

5 Q. By Heather Weiss?

6 A. Yes.

7 Q. And was she the person actually prosecuting Mr. Golston
8 at the time?

9 A. Yes, ma'am.

10 Q. Did you then take a statement from Travis Golston?

11 A. I didn't take the statement from---

12 Q. Who actually took the statement---

13 A. ---Mr. Golston.

14 Q. ---for you?

15 A. I asked Investigator Thomas and Reeves to interview.

16 Q. And did they actually interview Mr. Golston along with
17 his lawyer?

18 A. They did.

19 Q. And was he able to give you information that was
20 pertinent to your information?

21 A. Yes, he did.

22 Q. You've had people in jail who claim to have knowledge of
23 other peoples' crimes before, haven't you?

24 A. Yes, ma'am.

25 Q. And interviewed them?

1 A. Yeah. That's not uncommon.

2 Q. It's not uncommon?

3 A. Huh-huh.

4 Q. But when you're interviewing them, are you looking for
5 what's been published in the paper or details that they
6 couldn't know any other way? Is that significant to you?

7 A. Any information that you give me as an interviewee that
8 was not published and any information that only the
9 perpetrator would have known is always significant to us.

10 Q. And there's been questions back and forth about
11 discovery. When we're talking about discovery, what are we
12 talking about?

13 A. When we talk about -- speak of discovery, we're talking
14 about information that I as an investigator have in my files
15 that the defense attorney would be privy to.

16 Q. And defense attorneys could turn over to their clients.

17 A. Right.

18 Q. In this case were there significant details that were
19 given by Mr. Golston - and I'll later get to Mr. Hughey -
20 that weren't in your discovery or on the paper?

21 A. Yes, there was.

22 Q. And what were some of those -- that information?

23 A. I didn't have anything in the files about Congressman
24 Clyburn living in the Greenview area.

25 Q. And does he live there?

1 A. To my knowledge, he does, and that pretty much was a
2 known fact. I've never been to his house. To my knowledge,
3 he does, as well as his family. I never had any information
4 in the files about Ellison's father working at Best Buy. I
5 knew that he did work there, but I didn't have any of that
6 information in the file. I never had any information about
7 Hudson's family owning -- owning a black Honda. I knew about
8 it, but it wasn't in my information.

9 I never had any information in my file about Luck
10 Campbell working on this case. Of course, I knew about that
11 as well. I never had anything in my file about Hackshaw
12 being from New York. I knew about that. And never had
13 anything in my file about a girl giving Hackshaw information
14 on how to locate Ellison Hudson or Hudson's house, and we did
15 receive that information, but that wasn't in the file as
16 well.

17 **The Court:** Ms. Campbell, we need to break for lunch. I
18 don't -- you've got about a minute or so to find us a good
19 spot.

20 **Ms. Campbell:** I think I'm about there, Judge.

21 **The Court:** Well, you've got about a minute or so to
22 finish.

23 **Ms. Campbell:** Yes, sir.

24 **By Ms. Campbell:**

25 Q. Moving on to April 14th, did you submit some shell

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1 casings and some projectiles for analysis by the Richland
2 County Sheriff's Department?

3 A. I did.

4 Q. Moving on to April the 26th, did you meet with a Terran
5 Hughey and his attorney, Jim Maye?

6 A. Yes, I did.

7 Q. And, again, he was able to give you details and you've
8 gone over some of that.

9 A. Right.

10 Q. And then finally as to a Mr. Gleaton, you indicated
11 earlier that you'd gotten information from Investigator
12 Gonzalez about Mr. Gleaton's phone number being associated
13 with him?

14 A. Excuse me. After the robbery and the shooting at
15 Hackshaw's apartment, the telephone records show that
16 Gleaton -- Gleaton's cell phone was one of the first
17 telephone numbers that Hackshaw called. So that's why it was
18 very important that we interview him. And while trying to
19 determine exactly who Gleaton was, we also found out that
20 Gleaton's grandparents lived a couple of streets over from
21 where Ellison Hudson's family live. They live in the
22 Greenview community, in the same area.

23 Q. And did you conduct an interview with Torrian Gleaton on
24 June the 2nd?

25 A. Yes, I did.

1 Q. There was some reference to that and in that -- as far
2 as interviewing him, you made contact with him. Is that
3 correct? He didn't come to you.

4 A. No. We made contact with his grandparents and then his
5 parents. They put him in touch with me. He called me and he
6 came on down to my office.

7 Q. And this interview occurred over several hours; is that
8 correct?

9 A. It occurred over several hours, but, you know, two or
10 three hours, that's nothing compared to what an interview can
11 take.

12 Q. And during that time, I mean, there's been some
13 reference to you cussing and things of that nature?

14 A. Yes.

15 Q. And you being mad at him or yelling at him at one point?

16 A. Yes.

17 Q. And why was that? Let me back up. As far as when you
18 were not happy with him when he was telling you, why was
19 that?

20 A. I'm not sure if I can answer that except to say---

21 Ms. Shurling: Your Honor, could I ask that she repeat
22 the question? I couldn't hear.

23 The Court: Repeat the question.

24 Ms. Campbell: Yes, sir.

25 By Ms. Campbell:

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1 Q. As far as you ever raising your voice, what was that in
2 response to the information that was being given to you? Why
3 was that?

4 A. Because it was plain to see that he was lying and being
5 evasive.

6 Q. Is that unusual when you're interviewing a defendant's
7 friend?

8 A. Lying and being evasive.

9 Q. Got it.

10 A. No, that's not unusual.

11 Q. And during the course of the interview, were his parents
12 present for some or all of the interview?

13 A. They were present at -- there were three different times
14 I interviewed him on the same day. The first interview -- I
15 give them -- if the parents come with them, I give the person
16 I'm interviewing the opportunity and the choice to have the
17 parents in the interview room with them. He chose not to.
18 The interview didn't go too smoothly, the first one. The
19 second one I asked him, "Do you want your parents here now?"
20 "Yes." The third one, the parents weren't in there.

21 Q. At whose request?

22 A. At his request on the third one.

23 Q. And in that interview he actually -- you were
24 specifically asking him about the telephone call the
25 afternoon after the shooting; right?

1 A. Yes.

2 Q. And was he able to give you any information as far as
3 Bump and what he said?

4 A. Yes, he did.

5 Q. And the defense has asked the question about whether or
6 not he was confused. As far as what he said about what Bump
7 told him specifically that he had done that day, was he
8 confused?

9 A. In my opinion, he was not confused, but I took it 15
10 steps further to make sure that he was not confused, and
11 that's probably why the interview -- that third interview
12 went that long. He was telling the truth, but I wanted to
13 make sure anybody that hear this tape know exactly what went
14 on in that interview room. He was not confused.

15 Q. You also heard there's some curse words that are used in
16 that and some references. In talking to people, sometimes
17 you use slang words like that?

18 A. You have to. Can't get around it.

19 Ms. Campbell: Beg the Court's indulgence. This might
20 be a good point to break.

21 The Court: All right. Ladies and gentlemen, we're
22 going to take a little break for lunch. I'm going to ask --
23 it's five after 1. I'm going to ask that you be back here at
24 20 minutes after 2. That'll give you an hour and 15 minutes.
25 Please don't discuss the case while you're gone. Have a nice

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1 lunch, and we'll see you in an hour and 15 minutes.

2 (Whereupon, the jury was excused from open court to go
3 to lunch at 1:06 p.m.)

4 The Court: All right. Investigator, you can step down.
5 Don't discuss your testimony at all with either the State or
6 with anybody while we're on the lunch break. Okay?

7 The Witness: Yes, sir, Your Honor. Thank you.

8 Ms. Shurling: Your Honor, may I inquire: Is the State
9 through with Officer Reese?

10 Ms. Campbell: Just a few more questions.

11 The Court: All right. Y'all have a good lunch.

12 (Whereupon, a lunch break was taken.)

13 The Court: All right. Y'all ready to go?

14 Ms. Campbell: We're ready, Your Honor.

15 The Court: All right. Bring the jury in.

16 (Whereupon, the jury was brought into open court at 2:20
17 p.m.)

18 The Court: All right. Madam Solicitor, if you would.

19 Ms. Campbell: Thank you, Your Honor.

20 By Ms. Campbell:

21 Q. Just a few more questions. I want to show you what's
22 been marked as State's exhibit 32. The neighborhood we've
23 been talking about, [REDACTED], this being Juniper Street,
24 that being Moses, does that show the residence and the
25 surrounding area in that Greenview neighborhood?

1 A. Yes, it does.

2 Ms. Campbell: Your Honor, at this time we'd offer
3 State's exhibit number 32 into evidence.

4 Ms. Shurling: Without objection, Your Honor.

5 The Court: So admitted.

6 (State's exhibit 32 was received in evidence.)

7 By Ms. Campbell:

8 Q. Investigator Reese, as part of your investigation did
9 you also -- you're aware that Mr. Travis Golston, Terran
10 Hughey, and Hackshaw were all allegedly in the same dorm?

11 A. Yes.

12 Q. At the Hotel dorm?

13 A. Yes.

14 Q. At the county jail?

15 A. That's right.

16 Q. Were you able to confirm that they were all housed
17 together for a period of time?

18 A. Yes, I was.

19 Q. And as part of your investigation you were also aware
20 that a statement was taken from a Sheldon McDowell. Is that
21 a copy of that statement?

22 A. Yes, it is.

23 Q. And what address does it indicate where Mr. McDowell
24 lives?

25 A. Where he lives?

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1 Q. Uh-huh.

2 A. [REDACTED], Columbia.

3 Q. I'm going to show you what's been marked as State's
4 exhibit number 83. Is that a Google map showing Country Mill
5 Road?

6 A. Yes, it is.

7 Q. And specifically [REDACTED]?

8 A. Yes.

9 Ms. Campbell: Your Honor, at this time we'd offer it
10 into evidence.

11 Ms. Shurling: No objection, Your Honor.

12 The Court: So admitted.

13 (State's exhibit 83 was received in evidence.)

14 By Ms. Campbell:

15 Q. And in this some of the information that was provided to
16 you by one of the people that was allegedly housed with him,
17 does this show Country Mill Road in relation to Clemson Road?

18 A. Yes, it does.

19 Q. And one of the nearby streets in this area, is that
20 called Chimney Ridge?

21 A. Yes, it is.

22 Q. There's been some testimony about this defendant having
23 tattoos?

24 A. Yes.

25 Q. In fact, in opening he has lot of tattoos. Is that

1 correct?

2 A. Right.

3 Q. I show you State's exhibits 79 through 82. First look
4 through those and see if you recognize them.

5 A. Yeah. I recognize the photo as Anthony Hackshaw.

6 Q. And are those photographs that were taken of Mr.
7 Hackshaw after he'd been arrested on this charge?

8 A. Yes.

9 Ms. Campbell: Your Honor, at this time we'd offer
10 State's exhibits 79 through 82 into evidence.

11 Ms. Shurling: Without objection, Your Honor.

12 The Court: So admitted.

13 Ms. Campbell: Thank you, Your Honor.

14 (State's exhibits 79 through 82 were received in
15 evidence.)

16 By Ms. Campbell:

17 Q. Specifically, there's been some testimony of his neck.
18 In State's exhibit number 79, does that show an angle of his
19 neck?

20 A. Yes, it does.

21 Q. And then in State's exhibit 82, does this show his head
22 and neck from the front?

23 A. Yes, it does.

24 Q. And is that how he appeared -- I believe this was the
25 day he was arrested?

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1 A. Yes, ma'am.

2 Q. These were taken?

3 A. Yes.

4 Q. And as far as tattoos that were visible just from the
5 clothing he had on that day in State's exhibit 80 and 81---

6 A. Yes.

7 Q. ---what does that show?

8 A. Tattoos on his arms.

9 Q. And is that how he appeared on the date that he was
10 arrested?

11 A. Yes, ma'am. Yes, ma'am.

12 Q. You mentioned earlier in your testimony that the search
13 warrant in this case of Mr. Hackshaw's residence at the
14 Chimney Ridge, excuse me, not Chimney Ridge Apartments, at
15 the Brighton Hill apartment complex---

16 A. Right.

17 Q. ---was executed on June the 8th. Is that correct?

18 A. Yeah. That's correct.

19 Q. And from June the 8th all the way up until the time that
20 he turned himself in on July the 29th, were you looking for
21 him?

22 A. Yes, ma'am.

23 Q. And were you able to locate him at his job?

24 A. No.

25 Q. Did you check with his job?

1 A. Yes.

2 Q. Were you able to locate him at his home?

3 A. No.

4 Q. And did you have information that he had, in fact, left
5 the state?

6 A. I did have that information, yes.

7 Q. And your -- your investigation proceeded over a year.
8 Is that correct?

9 A. That's right.

10 Q. As far as gathering evidence in this case?

11 A. Yes.

12 Q. And just for the record, like with Terran Hughey and
13 Travis Golston, that information, they made contact with you
14 via their attorney or however or through our office or
15 however. Is that correct?

16 A. Right.

17 Q. And you then just went and recorded the information they
18 had?

19 A. Correct.

20 Q. From the point where you cleared Jonathan Bailey, since
21 that day back, the end of May, early June---

22 A. Uh-huh.

23 Q. ---has any of the evidence that you've collected in this
24 case -- or who does all the evidence since that time -- well,
25 actually all the credible evidence in this case, who does it

1 point to?

2 A. There's only one person: Anthony Hackshaw.

3 Q. The person that you arrested for this murder, Anthony
4 Hackshaw, do you see him here in the courtroom?

5 A. He's sitting between counsel in the gray suit at the
6 defense table.

7 The Court: He's identified the defendant.

8 Ms. Campbell: Thank you, Your Honor.

9 The Court: All right. Ms. Shurling?

10 Cross-Examination

11 By Ms. Shurling:

12 Q. Good afternoon.

13 A. Hey.

14 Q. Let's start at the beginning, shall we? What time did
15 you arrive at [REDACTED] [REDACTED]

16 A. 1:45 p.m.

17 Q. Pardon?

18 A. 1:45 p.m.

19 Q. Okay. And the first person you interviewed at the scene
20 was whom?

21 A. Are you talking interview or spoke to? What are you
22 asking me?

23 Q. Who did you talk to at the scene first?

24 A. I believe it would have been one of the officers that
25 approached me. I'm not sure who it was.

1 Q. Who did you interview at the scene first?

2 A. That would have been Ellison Hudson.

3 Q. Ellison Hudson. And just so we're clear, when you
4 interviewed Mr. Hudson shortly after 1:45 p.m., he told you
5 he didn't know who the shooters were. Correct?

6 A. He gave a description but no names or anything, no.

7 Q. Okay. Generally speaking, if someone gives you a
8 description and no names, you take from that that they don't
9 know who it is, don't you?

10 A. Not necessarily.

11 Q. Did he say anything to you to indicate in any shape,
12 form, or fashion that he recognized who it was?

13 A. No, not at that present time. No.

14 Q. Okay. And he lied to you about having had a weapon
15 himself at the scene. Correct?

16 A. He never mentioned that he had one. He didn't say that,
17 "I didn't have one." He just never said, "I had one."

18 Q. Okay. He didn't even tell you anything about a gun.

19 A. Not until I confronted him with it.

20 Q. Okay. And before you confronted him with it, you
21 interviewed Cleveland Joyner.

22 A. Yes.

23 Q. And Mr. Joyner is the one that told you about the .38
24 caliber revolver being present at the scene when the
25 perpetrators came up. Correct?

1 A. Correct.

2 Q. You testified earlier that when you talked to Cleveland
3 Joyner he never denied having a weapon?

4 A. That Cleveland Joyner never denied it?

5 Q. Right.

6 A. I don't recall if I -- if I said that, but let me set
7 you straight. He told me that there was a weapon there.
8 That's when he told me about Hudson telling him to get the
9 tool. So he brought up the weapon first.

10 Q. Okay. Let me rephrase my question because I think
11 you're right; I was a little less than articulate. Cleveland
12 Joyner told you about there being a .38 present.

13 A. That's correct.

14 Q. At the scene.

15 A. That's right.

16 Q. And about Hudson telling him to get the tool.

17 A. That's right.

18 Q. But he did not admit firing the gun when you first
19 interviewed him, did he?

20 A. That's right.

21 Q. Okay. Now, both men relayed to you that they had
22 already smoked one blunt and that Hudson had asked Joyner to
23 prepare another one right before this happened. Correct?

24 A. Right.

25 Q. So when you got to the scene and you were told this, did

1 you ask them where the marijuana was?

2 A. No.

3 Q. Well, you searched. You subsequently -- pardon me. You
4 searched the apartment, didn't you? The house, rather?

5 A. No. Other investigators searched the apartment for me.

6 Q. Other -- you obtained a search warrant for [REDACTED]

7 [REDACTED]. Correct?

8 A. Right.

9 Q. And when you searched, you didn't find any marijuana,
10 did you?

11 A. I did not search the house. So if you're talking about
12 me specifically, I did not---

13 Q. When law---

14 A. ---search it.

15 Q. Pardon me. When law enforcement searched the house at
16 [REDACTED] you did not find any marijuana. No
17 marijuana was found by law enforcement, was it?

18 A. Probably not. I'd have to look at the return of the
19 search warrant itself. If you'd show me the return, I could
20 tell you exactly what was found in there and what wasn't
21 found.

22 Q. Do you have any recollection on anyone telling you they
23 found marijuana at [REDACTED]

24 A. No, I don't have a recollection of that.

25 Q. And did you inquire when Mr. Hudson told you that they

1 had smoked a blunt and that Cleveland was getting ready to
2 fix another one up to smoke when the shooters came in? Did
3 you ask him where the marijuana was?

4 A. No.

5 Q. And he wasn't ever charged with anything to do with
6 marijuana either, was he?

7 A. No.

8 Q. And when you searched, you being law enforcement - I'm
9 sorry - the generic you -- when law enforcement searched the
10 residence, you found counterfeit money as well. Correct?

11 A. They found counterfeit money; that's right.

12 Q. And Mr. Ellison Hudson's never been charged with
13 possessing counterfeit money either, has he?

14 A. No.

15 Q. Now, when the crime scene people arrived in the area of
16 the yard where this -- the back yard where this happened was
17 being searched, were those officers acting under your
18 supervision as lead investigator?

19 A. You mean when they arrived or when I got there? Because
20 they were there before me.

21 Q. Once you got there you assumed, according to your notes,
22 the position as lead investigator. Correct?

23 A. That would be right, yes.

24 Q. And so you would be supervising the officers that were
25 processing this crime scene. Correct?

1 A. I wouldn't call it supervising, but I had a say-so in
2 it, yeah.

3 Q. Well, you were going to be the lead investigator, so it
4 was going to be your responsibility to try to solve this
5 homicide. Right?

6 A. Look, you asked me the question and I just gave you an
7 answer. I wouldn't characterize it as being their
8 supervisor.

9 Q. Okay. Well, did you ask them to search the adjacent
10 yards for shell casings or weapons?

11 A. I believe I did.

12 Q. Did you hear the testimony from the crime scene tech
13 that they didn't look in adjacent yards for shell casings?

14 A. Yes, I heard that.

15 Q. At the time did you inquire as to whether they had
16 searched all the relevant areas for possible evidence?

17 A. I think I'm -- what you're referring to is when Hudson
18 was being - and correct me if I'm wrong - chased through
19 somebody else's yard. We didn't find that out. That wasn't
20 -- that information wasn't privy to us immediately. So there
21 wouldn't have been any reason for me to instruct any officers
22 to go to somebody else's yard or through any path looking for
23 anything. We concentrated on the back yard, the immediate
24 crime scene.

25 Q. Investigator Reese, isn't it true that in the very first

1 statement he gave you Ellison Hudson said he glanced over his
2 shoulder. He saw them coming. He yelled out an expletive,
3 shoved his girlfriend out of the way and ran and jumped over
4 fences. That was in the first interview, wasn't it?

5 A. I believe so. I'd have to look at it again.

6 Q. And he indicated that he was being pursued by this
7 person trying to kill him. Right?

8 A. No, I'm not sure if he indicated that at that point or
9 not. I think that came out when -- at some later point.

10 Q. Let's move on. When Ellison Hudson changed his story
11 and said it wasn't Bailey - it was my client, Anthony
12 Hackshaw - he didn't admit he had lied about it being Bailey,
13 did he?

14 A. No, he didn't say, "I lied. It wasn't Bailey." No, if
15 that's what you're asking me.

16 Q. Well, in testimony on direct you were asked whether or
17 not he subsequently admitted to you he had lied about it
18 being Bailey and told you it was Bump, and you answered
19 affirmatively.

20 A. Well, I'm correcting it now. He never said, "I lied."
21 He never used the word lie.

22 Q. He didn't come close to using the word lie, did he?

23 A. Say -- what? Say that again.

24 Q. Investigator Reese, that interview was audio-recorded,
25 was it not?

1 A. Which interview are you referring to, Counselor?

2 Q. The interview in which he names Anthony Hackshaw for the
3 first time and you question him about why he didn't name
4 Anthony Hackshaw, Bump, sooner, that's recorded, isn't it?

5 A. Yeah, it's recorded.

6 Q. And you sat right here in this courtroom and listened to
7 me play a portion of it for the jury where you confronted
8 Hudson: Why didn't you tell us it was Bump to begin with?
9 And what did he say?

10 A. I don't remember. Tell me what he said because
11 you're---

12 Q. I didn't think---

13 A. You're -- I don't recall him saying, "I lied," and I
14 don't know whether you're asking me did he specifically use
15 that word or the significance of him using that word. I
16 don't recall him using the words "I lied."

17 Q. I'll break it down into smaller pieces. He never once
18 acknowledged to you, said to you in any way: When I told you
19 it was Bailey, I wasn't being truthful with you. When I told
20 you it was Bailey, I already knew it wasn't Bailey. When I
21 told you it was Bailey, it was because I didn't want to tell
22 you who it really was. He didn't say anything like that, did
23 he?

24 A. I believe he did. Perhaps if you, you know, show me in
25 the document exactly what you're talking about, I could

1 answer this a lot better for you.

2 Q. Investigator Reese, I'm not trying to be difficult, but
3 in this courtroom we played back a portion of the recorded
4 interview where when you questioned him about why he didn't
5 say it was my client sooner, he responded and I quote, "I
6 ain't think it was. I didn't -- I ain't think it was no
7 Bump." Remember that?

8 A. Well, you only played - I don't know - 10 seconds of a
9 lengthy conversation. And, again, if you're asking me did he
10 use the words "I lied," I'm telling you, no, he did not use
11 those words.

12 Q. No, sir.

13 A. At least I don't recall it.

14 Q. That's not all I asked you. And I -- Your Honor, I'm
15 trying -- I'll try to move on as fast as I can, but he did
16 not in any shape, form, or fashion ever indicate to you that
17 he had deliberately given you the wrong name, did he?

18 A. Which interview are you talking about now? Because
19 there was a point when he indicated, yeah, it was not
20 Jonathan Bailey.

21 Q. Sir, I know he said it wasn't Jonathan Bailey and gave
22 you my client's name. We wouldn't be here today if he hadn't
23 done that. What I'm saying is when he said, "It wasn't
24 Jonathan Bailey; it was Bump," he never in any way in any
25 words you want to use said, "It wasn't Bailey and I knew it

1 wasn't Bailey when I told you it was Bailey," did he?

2 A. Repeat that for me, please.

3 Q. Did he ever admit to you in any shape, form, or fashion
4 that when he implicated Jonathan Bailey in the murder he knew
5 at that time that it wasn't Jonathan Bailey?

6 A. Yeah. Yes, he did.

7 Q. He did?

8 A. Yeah.

9 Q. Where and when?

10 A. I'd have to look through it, if you'd give me a few
11 moments.

12 Ms. Campbell: Your Honor, if you'd like, I've got the
13 statement. She can have it.

14 The Witness: Thank you. Are you referring to when he
15 was interviewed at the sheriff's department or...

16 By Ms. Shurling:

17 Q. Sir, I said any time. Any time in the oral interview,
18 in the written interview, anywhere before the other day in
19 court for the first time, did he ever say---

20 A. Give me a minute, Counselor. Okay? Let me find it for
21 you. All right. You were asking me at any time did he ever
22 indicate to me that your client was the shooter. Is that
23 what you're asking me?

24 Q. No, sir. I don't know how to make this question any
25 simpler. When Ellison Hudson told you that my client was the

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1 perpetrator, did he in any way admit to you that when he said
2 it was Jonathan Bailey he knew he was lying then? Did he
3 ever say: I lied when I said it was Jonathan Bailey. It was
4 really Bump. Or I deliberately misled you and told you it
5 was Jonathan Bailey. I already knew it was Bump. Did he say
6 anything like that?

7 A. No.

8 Q. He did not, did he?

9 A. No.

10 Q. And, in fact, when you jumped him about why he didn't
11 tell you it was Bump sooner, he said, "Because I didn't think
12 it was no Bump, but y'all told me it couldn't be Bailey."
13 Isn't that true?

14 A. Well, I don't recall ever telling him it couldn't be
15 Bailey. See, that's what you're saying.

16 Q. Well, we'll find that for you in just a moment.

17 A. And if you do, I'll stand corrected. Right now I don't
18 recall that.

19 Q. And we'll give you that opportunity, but until then
20 let's move on for a minute. Now, you have said -- just on a
21 side point, you were asked this morning whether it was
22 necessary for you to take the Lord's name in vain and say the
23 F. Word and all kinds of profanity in these interviews with
24 these inmates, and you said it was very necessary. Why?

25 A. If I'm in a minister's office talking to him about

1 religion, I talk about religion. Let me tell you this,
2 Counselor: Whenever I go to work, I step into a different
3 world. I deal with thieves, rapists, liars, robbers, and
4 murderers on a daily basis. This is how we communicate. I
5 communicate with them the way that they communicate with me.
6 It is not uncommon.

7 Q. So as the voice of law enforcement, you find it
8 necessary to get down in the gutter on their level and talk
9 like them?

10 A. As long as I am not violating their constitutional
11 rights or breaking the law, I'll do what it takes to get the
12 crime solved, Counselor. There's a woman whose child is
13 dead.

14 Q. I agree---

15 A. And the measures called for whatever it took to get this
16 case solved as long as it was not done illegally and
17 unconstitutionally.

18 Q. Well, let's talk about the - since it's the only one we
19 really heard a lot of - the interview with Gleaton that was
20 discussed this morning. Was Mr. Gleaton saying G.D. and F.
21 This and using really bad profanity with you?

22 A. Yes, he was.

23 Q. He was?

24 A. Yes, he was.

25 Q. Moving along, let's go back to before Hudson changed his

1 story the second time. After he's admitted that he does know
2 who it is and he has said it's Jonathan Bailey, he didn't
3 just say it was Jonathan Bailey. He supplied you with a
4 motive, didn't he?

5 A. For Jonathan Bailey?

6 Q. Yes.

7 A. Yes, he did.

8 Q. And what was that motive, sir?

9 A. He said that he had told the police officers one of
10 Bailey's gang associates shot up his mother's car or their
11 house and he felt -- he said he'd never had any kind of
12 qualms or beef with Bailey, but he felt it was Bailey because
13 when you deal with one Tree Top gang member, you deal with
14 them all.

15 Q. And you, in fact, as a seasoned law enforcement officer
16 know that to be true about these gangs, don't you?

17 A. Not necessarily, not in every case. I don't -- I don't
18 know whether that was true or not.

19 Q. All right, Officer Reese. He had, in fact, told you
20 that this fellow gang member shot up I think it was his
21 mother's car, but he was coincidentally standing right by the
22 car when the shots were fired. Correct?

23 A. Yes, I believe that's what he said. Uh-huh.

24 Q. So what he's telling you is that this member of this
25 gang is trying to kill him.

1 A. He's telling me they shot up the car.

2 Q. Okay. Did you interview the person that he ratted out
3 in connection with this crime?

4 A. No, I didn't.

5 Q. And you were aware, were you not, or at least according
6 to your case notes you were, that the Hudson house had been
7 shot up not once but twice in the fairly recent past? Right?

8 A. It's what I was told by his parents, at least once.

9 Q. So when Hudson tells you that he thinks Bailey would
10 have done it as revenge for him ratting on this fellow gang
11 member, you didn't think it was a relevant lead to pursue to
12 at least that one gang member interview?

13 A. Well, we had to catch up with Bailey first, and once we
14 caught up with Bailey, the investigation went into another
15 direction.

16 Q. Because he had such an iron-clad alibi; right?

17 A. He had alibis for us to go and seek out and interview.

18 Q. Okay. We'll move on to that one. He told you he was at
19 the home of Kevae Dolphin and that he had been dropped off
20 there by his girlfriend. Correct?

21 A. Correct.

22 Q. And that he had been there 'til late in the afternoon.

23 A. Correct.

24 Q. And that he couldn't possibly have done this because he
25 was on a telephone three-way conference with his mama and

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1 Investigator Jenkins from the Richland County Sheriff's
2 Department for over a half an hour, close to an hour, at that
3 exact time this killing was happening. That's what he told
4 you; right?

5 A. No, that's wrong.

6 Q. That's not what he said.

7 A. That's wrong.

8 Q. We'll get to that one in a minute, too. When you went
9 to Kevae Dolphin -- oh, and he also said you could confirm it
10 because Kevae had a recording device on her security camera
11 and you'd be able to get a recording to prove he wasn't
12 lying, didn't he?

13 A. I recall him saying he did not remember how long he had
14 been on the telephone with the deputy. Quite frankly, I
15 couldn't see him being on the telephone with the deputy for
16 an hour and 15 minutes or even an hour for that matter. I
17 just couldn't see that, but the records show that it was not
18 anywhere near an hour. I don't recall him saying anything
19 about an hour.

20 Q. We'll demonstrate it in a moment. But you subsequently
21 got cell phone records for Mr. Bailey's mother; correct?

22 A. She brought me copies of her records, yes.

23 Q. Okay. Now, to be clear about this, Mr. Bailey claimed
24 that he'd gotten word that Investigator Jenkins was looking
25 for him, so he made a three-way phone call on his mother's

1 cell phone and was talking, the three of them, and I'll have
2 to demonstrate for you that he said almost an hour. But
3 that's what he said, right, that he made the phone call?

4 A. I believe he said his mother made the phone call and she
5 contacted him, and then they made the three way phone call,
6 something like that. I believe mom made the call.

7 Q. Once his mother brought the -- her cell phone records in
8 for the operative day of May 20th, 2009, it indeed showed a
9 three-way call with a phone number that you could have
10 verified was associated with Investigator Jenkins. Right?

11 A. Right.

12 Q. And the mother's cell phone, which is what these records
13 were on, and a third cell phone, number 803-768-2210 --
14 correct?

15 A. Correct.

16 Q. And those would be Mr. Bailey's cell phone records.

17 A. I think so, yes.

18 Q. Or the phone he was using.

19 A. Yes.

20 Q. Did you get his cell phone records?

21 A. No.

22 Q. You didn't?

23 A. No.

24 Q. Well, you've been attributing all kinds of significance
25 to who all my client called, when and where, surrounding this

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1 time near this shooting, and Mr. Bailey was the first person
2 named as the shooter in this case. You didn't think it would
3 be pertinent to get his cell phone records?

4 A. No, I didn't think it would be pertinent.

5 Q. Okay. So you go to Kevae Dolphin's house to interview
6 her; correct?

7 A. Right.

8 Q. And you see the little security camera over the garage
9 door.

10 A. Yes, ma'am.

11 Q. And then you go in the house and she shows you what's
12 been depicted on, I believe, one of the state's exhibits, a
13 little monitor in the den. Right?

14 A. Right.

15 Q. Did you ask her to demonstrate how it worked?

16 A. No.

17 Q. Did you even ask her to turn it on?

18 A. It was already on.

19 Q. It was on. Did you ask her to demonstrate that it could
20 record or that it had recorded anything?

21 A. No. I was only interested in the 20th, that day. She
22 said it was not recording that day.

23 Q. She said it wasn't recorded.

24 A. That's what she said. Right.

25 Q. When you went to my client's apartment, you took his

1 computer, didn't you? Well, the officers conducting the
2 search took his computer.

3 A. I didn't have anything to do with the search warrant at
4 his house or taking his computer.

5 Q. My question, sir, was that when my -- when a---

6 A. I think you said, "When you went to my client's house,
7 you took his computer." I told you I didn't have anything to
8 do with that.

9 Q. When law enforcement went to my client's house and
10 conducted a search, you -- law enforcement took his computer
11 so they could take it and take their own time with it, seeing
12 if there was anything on it that might be of interest to law
13 enforcement. Right?

14 A. I suppose they could have.

15 Q. Did you look at this security camera to determine what
16 kind of memory it had?

17 A. No, I didn't.

18 Q. Did you look at this security unit to determine whether
19 it had anything stored on it for the 20th?

20 A. No.

21 Q. Did you determine how easily it would be for someone to
22 erase something on that if they wanted to?

23 A. It does not matter, Counselor. She said it was not
24 recorded which means there was nothing to show that he had
25 come to her house during that time period. I can't go into

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1 the lady's house, or anybody else's house for that matter,
2 and just take over the place.

3 Q. You got a search warrant for her house, didn't you?

4 A. For whose house?

5 Q. Kevae Dolphin's.

6 A. No.

7 Q. You didn't at some point?

8 A. No.

9 Q. You could have, couldn't you?

10 A. I don't see any need -- any reason for me to have done
11 such a thing.

12 Q. Okay. So backing up, you just took her word for the
13 fact that that security camera wasn't recording anything that
14 day.

15 A. I absolutely did.

16 Q. Okay.

17 A. And from there we followed up the rest of the leads
18 concerning his alibis.

19 Q. I'm going to get there, sir, but let's don't leave Kevae
20 Dolphin yet. Who did she tell you was at the house on
21 May 20th when Jonathan Bailey was supposedly there all day
22 long?

23 A. One of her friends named Stephanie.

24 Q. Did you ascertain what Stephanie's last name was?

25 A. No.

1 Q. You didn't even bother to ask what Stephanie's last name
2 was?

3 A. I got her first name.

4 Q. Stephanie.

5 A. Stephanie.

6 Q. So this woman who could supposedly confirm what Kevae
7 Dolphin was telling you, you didn't find out what her last
8 name was or any locating information for her, did you?

9 A. No. Yeah, we found out that she was out of town but
10 the---

11 Q. Your Honor---

12 A. The truth of the matter is you asked -- can I answer it?

13 The truth of the matter is just like as many times as we
14 interviewed Hudson and Joyner, if we found the need at some
15 point later on to go back and interview Kevae and Stephanie,
16 we would have done that.

17 Q. Well, that's the whole point, isn't it, Investigator
18 Reese?

19 A. I don't know. Tell me, please, what is the point that
20 you're trying to make.

21 Q. I'm going to get there. How long had you known Kevae
22 Dolphin on the day that you went and interviewed her?

23 A. I don't know her.

24 Q. So what basis did you have for believing her to be a
25 reliable, credible person?

1 A. It does not matter whether I believed her or not. At
2 that point there was nothing I could do about what she was
3 telling me except accept the information. If there came a
4 time at some point later on where I had to go back and
5 question her about anything she had told me or had not told
6 me at that time, rest assured it would have been done.

7 Q. Did you ask her where Stephanie was?

8 A. She said out of town. I think she said Florida.

9 Q. You think she said Florida.

10 A. She either said she was out of town in Florida or she
11 lives in Florida. At whatever the case, she was not in
12 Columbia.

13 Q. Did you ask when she was coming back?

14 A. I don't recall whether I did or not.

15 Q. Did you ask for her phone number?

16 A. I think we did.

17 Q. And you didn't get her last name.

18 A. I think that's already been established.

19 Q. Okay.

20 A. We did not get her last name.

21 Q. All right. Now, let's talk about the layout of the
22 Dolphin house. There's only one security camera. Isn't that
23 right?

24 A. That's all I saw.

25 Q. You've heard testimony -- you've been sitting here the

1 whole trial. You heard testimony from Kevae Dolphin that the
2 only camera was on the front over that garage door pointing
3 toward the front yard and where someone would walk up to the
4 front door. You heard that, didn't you?

5 A. Yes.

6 Ms. Campbell: Objection, Your Honor. He can't testify
7 about what other people testified to.

8 Ms. Shurling: I asked him if he heard it.

9 The Court: Overruled. Let's move.

10 By Ms. Shurling:

11 Q. When you looked at the house, did you determine that
12 there was a back door?

13 A. No, I didn't look to see whether there was a back door.
14 I just assumed that, like every other house, you would have
15 had a back door. The back door was not of interest to me.

16 Q. The back door was not of interest to you?

17 A. No, it was not.

18 Q. Investigator Reese, haven't you ever worked on a crime
19 investigation where someone was claiming an alibi for an
20 extended period of time and you had to go about proving the
21 case by establishing that they could have dipped out for a
22 little while and come back?

23 A. Quite frankly, no.

24 Q. No?

25 A. No.

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1 Q. Well, did you even consider in this case the
2 possibility?

3 A. No.

4 Q. You didn't even consider it, did you?

5 A. There was no need to consider something like that.

6 Q. You memorialized in your own case notes that Kevae
7 Dolphin had provided information that Jonathan Bailey was
8 coming over there to her house to see another female and that
9 it appeared that the girlfriend who dropped him off there
10 didn't know he was coming to see another female friend.
11 Isn't that correct?

12 A. I think that's what you're reading in the notes because
13 you know a little about it, but go ahead on. I'll play along
14 with this.

15 Q. Sir, it's your case summary; you wrote it.

16 A. That's what I put in there, but I didn't put it quite
17 like what you're trying to portray this.

18 Q. A moment's indulgence. She states he came there to see
19 one of her girlfriends and did spend time with her. Parents
20 note: The girlfriend, Stephanie -- pardon me.

21 Ms. Campbell: No, Your Honor. Can she finish the
22 sentence?

23 By Ms. Shurling:

24 Q. I'm getting to it. "The girlfriend, Stephanie, was out
25 of town when Investigator Thomas and I interviewed Dolphin."

1 Correct?

2 A. That's correct.

3 Q. Okay. And then in your handwritten notes -- a moment's
4 indulgence, Your Honor. I got it. I'll come back to that in
5 a moment. But in any event, you didn't do anything to
6 investigate what kind of relationship Stephanie might have
7 had with Jonathan Bailey, did you?

8 Ms. Campbell: Objection, Your Honor, to relevance.

9 Ms. Shurling: It would go to whether or not
10 Stephanie---

11 The Court: Hey. Overruled.

12 The Witness: No.

13 By Ms. Shurling:

14 Q. So you don't know what, if any, motive Stephanie might
15 have had to lie to you.

16 A. No, I don't know, and I didn't see any reason to believe
17 that she was lying.

18 Q. And how long had you known Stephanie?

19 A. I'm sorry. Kevae.

20 Q. Okay. That's right. You talked to Kevae and you had
21 just met her; right?

22 A. Right.

23 Q. And you didn't even talk to Stephanie.

24 The Court: Look, we have been over that and over that
25 and over that.

1 **Ms. Shurling:** I'll move on. In the course of your
2 investigation, did you discover evidence that the deceased
3 had had a heated---

4 **Ms. Campbell:** Objection, Your Honor, subject to your
5 earlier rulings.

6 **The Court:** I don't have any idea what this is all
7 about.

8 **Ms. Campbell:** May we approach?

9 (Whereupon, a bench conference was held.)

10 By Ms. Shurling:

11 Q. How far was it from Kevae Dolphin's house to the crime
12 scene?

13 A. I don't know. I can't -- I didn't measure or anything
14 like that.

15 Q. A moment's indulgence, Your Honor. What was Ms.
16 Dolphin's address?

17 A. It was [REDACTED]

18 Q. I hand you State's exhibit number 78. How far does it
19 say it is between Kevae Dolphin's house and the scene of this
20 shooting?

21 A. Looks like 6.4 miles and another place it says 6.9
22 miles.

23 Q. Not very far, was it? Not very far?

24 A. Depends on what your interpretation of what's far---

25 **The Court:** 6.4 to 6.9.

1 By Ms. Shurling:

2 Q. Okay. The phone records brought to you by Mr. Bailey's
3 mother indicated, did they not, that Mr. Bailey was off the
4 phone by 12:34?

5 A. I'd have to see the records that you're referring to.

6 Q. I'll be happy to give them to you. This is the cover so
7 you can know I've got the right thing.

8 A. Thank you.

9 Q. If you would look at that call. The record of the phone
10 call on 5/20 says it began at what time?

11 A. 12:20.

12 Q. And it says it was how many minutes long?

13 A. Fourteen minutes.

14 Q. So that would make the call terminate at 12:34.

15 Correct?

16 A. That's right. Right.

17 Q. Did you consider the fact that that would have allowed
18 time for Mr. Bailey to get from where he was making this
19 phone call to the crime scene?

20 A. I absolutely did. I considered a lot of things.

21 Q. But you still cleared him.

22 A. Yes, I did.

23 Q. We talked about Rosa Williams a little while ago, and
24 you indicated that Rosa Williams had cancer, you believed, at
25 the time she was interviewed? Is that correct?

Kevin Reese - cross-exam by Ms. Shurling

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1 A. I believe that's what it was told to me by one of the
2 investigators, yes.

3 Q. Okay. And I believe you had another officer interview
4 her?

5 A. Another investigator.

6 Q. Sir?

7 A. Another investigator.

8 Q. Yes, sir. His name is Investigator Menendez? Is that
9 correct?

10 A. Right.

11 Q. And when you delegate interviewing witnesses to another
12 officer, they turn their reports in to you as lead; right?

13 A. Right.

14 Q. And when you do your master case summary, you include
15 any pertinent information from their reports in your case
16 summary. Right?

17 A. Right, but that's not the summary that you're looking
18 at.

19 Q. Well, it says, "Case Summary."

20 A. It's the case notes---

21 Q. Okay.

22 A. A different document is the summary.

23 Q. In the case notes you include anything relevant in the
24 officers' reports that's given to you, don't you?

25 A. That's right.

1 Q. If there was something in one of their interviews that
2 was inconsistent with information you had been given by
3 others in the case, that would be important, wouldn't it?

4 A. Yes, it would be.

5 Q. Why would you then leave that out of your case notes?

6 A. What did I leave out? What are you referring to?

7 Q. In the report submitted to you by the officer concerning
8 his interview with Ms. Williams, how did she describe the
9 four-door silver Honda -- I mean the Honda?

10 A. Are you referring to what you've got circled here?

11 Q. Yes, sir.

12 A. A four-door small gray or a silver car, four-door.

13 Q. Thank you. And on the front page of your case summary
14 when you say what Officer Menendez's interview gleaned, what
15 do you say?

16 A. Silver or gray small sedan or a silver or gray car.

17 Q. You don't say a thing about her saying a four-door
18 Honda, do you? Do you?

19 A. No, because she submitted me two different -- in one of
20 her documents she got it differently.

21 Q. One of her documents?

22 A. Yeah.

23 Q. She gave a written statement.

24 A. She gave -- are you talking about the investigator?

25 Q. No. Okay. Investigator Menendez---

Kevin Reese - cross-exam by Ms. Shurling

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1 A. Yes.

2 Q. ---you're saying gave two different reports on what Rosa
3 Williams said?

4 A. She gave me her case notes like this, and she gave me
5 her handwritten case notes.

6 Q. Well, I'd like to see those handwritten case notes.
7 I've never had the chance to see them. Do you have them with
8 you?

9 A. I have them.

10 Q. Are they in your file?

11 A. Yes, they are.

12 Q. If an officer's handwritten notes say one thing and the
13 typed report to you says something different, wouldn't you as
14 lead investigator go to them and straighten out the
15 inconsistency before you put it in the case notes for the
16 case?

17 A. Well, I think the way I recall it, she does not remember
18 why it's like that, inadvertently on her part. I'm not sure.
19 I have in my case notes what she gave me in her case notes,
20 in her typed case notes.

21 Q. If law enforcement had taken written statements from
22 these witnesses contemporary with the time of the first
23 response to the crime scene, been given a chance to review
24 the statements and sign them, we would know exactly what they
25 said on that day, wouldn't we?

1 A. Probably so, yeah. I would think so.

2 Q. And you and the officers you were directing in this case
3 didn't take statements from most of the people you
4 interviewed in the neighborhood, did you?

5 A. It wasn't necessary to take statements from most of the
6 people or all of the people, and then not everybody wants to
7 give you a written statement. And so in that case you simply
8 jot down in your notes what was said and then you put it in
9 your case notes. You can't get a written statement from
10 everybody.

11 Q. Investigator Reese---

12 A. Yes, ma'am.

13 Q. ---are you representing to this court that you asked
14 those people to give a written statement and they refused?

15 A. I don't know what they asked those people. I just know
16 what the investigators brought back to me, and they didn't
17 bring back written statements.

18 Q. Is there anything in your job that's much more important
19 than a murder investigation?

20 A. No.

21 Q. If the officers you've delegated tasks to are
22 interviewing people who supposedly saw something that day
23 directly relevant to who might have done this, why would you
24 not as lead investigator say, "Get a statement from them"?

25 A. I think in the -- in the case you're referring to with

Kevin Reese - cross-exam by Ms. Shurling

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1 Menendez, when this was brought to me on the scene out there,
2 she was sent back to find Ms. Williams and she wasn't able to
3 find her. I don't know. I think she wasn't home or
4 something like that, and then she never got back around to
5 it.

6 Q. Is there a word of any of what you just said in your
7 case summaries or anything?

8 A. No, and I don't put everything in my case summary.
9 That's why it's a summary.

10 Q. Why would you backpedal? Why would you have people go
11 talk to people, find out what they've got to say, and then
12 have to send somebody back to get a statement? Why not just
13 write up a statement right then and there and get them to
14 review it and sign it?

15 A. I don't know in the case of Ms. Williams. I wasn't
16 there when Menendez talked to her.

17 Q. What about in the case of any of these other people that
18 didn't give statements in this case?

19 A. If -- now, if you're asking about me and the people I
20 interview, you need to ask about me, but I can't tell you
21 what happened and why Menendez and any other investigator
22 didn't do what you thought they should have done.

23 Q. Okay. Let's go back to you then. Why did---

24 A. And then just because you think they should have done it
25 don't necessarily mean they should have done it.

1 Q. Well, if you and they had done it, this jury would know
2 exactly---

3 Ms. Campbell: Objection, Your Honor.

4 The Court: Sustained. Look, let's not argue with the
5 witness. If you've got questions, ask them. Investigator,
6 you answer them.

7 The Witness: Yes, Your Honor.

8 By Ms. Shurling:

9 Q. How about Ms. Dolphin? You interviewed her, Kevae
10 Dolphin.

11 A. Yes.

12 Ms. Campbell: Objection, Your Honor. This has been
13 asked and answered over and over.

14 Ms. Shurling: No, sir. He didn't tell me why he didn't
15 take a written statement from her, I don't believe.

16 The Court: I thought he said he didn't think it was
17 necessary. Why didn't you take a written statement, officer?

18 The Witness: Because I didn't think it was necessary,
19 Your Honor.

20 The Court: All right. Let's move on.

21 Ms. Shurling: Okay. I'll move on.

22 The Court: Thank you.

23 By Ms. Shurling:

24 Q. When Mr. Hudson eventually changed his story and said it
25 was Bump, he also told you about robbing my client.

Kevin Reese - cross-exam by Ms. Shurling

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1 A. Okay. Could you -- would you mind doing me a favor?

2 You're looking at something on my case notes. Could you tell
3 me what date you're talking to so I can go---

4 Q. Sure.

5 A. ---so I can go to that?

6 Q. Well, I'm actually looking at the transcript of the
7 audio interview with Ellison Hudson---

8 **The Court:** Just ask the question. Proceed. You'll
9 have to -- you'll have to do the best you can, investigator.

10 **The Witness:** Yes, sir.

11 By Ms. Shurling:

12 Q. On 5/23 when Ellison Hudson told you that, "Okay. It
13 could have been Bump" -- remember that? He also told you --
14 he had given you a motive for why Jonathan Bailey would have
15 done it. Now he's giving you a motive for why my client
16 would have done it and that's that he robbed my client in
17 April. Right?

18 A. Right.

19 Q. But this guy is great on motives because he also told
20 you why he robbed my client. Right?

21 A. Yes.

22 Q. He tells you he robbed my client because my client gave
23 him counterfeit money. Isn't that true?

24 A. That's right. That's what he told me.

25 Q. So by May 23rd he's not only deciding that he's going to

1 say it's my client, but he's going to explain away that
2 counterfeit money at his house by saying he got it from my
3 client. Right?

4 A. All I know is he said that your client stiffed him with
5 counterfeit money, and I don't know whether that's the same
6 money that was found in his house. I don't have no idea
7 about that.

8 Q. Isn't it true that that statement was given to you in
9 May of '09? Right?

10 A. Yes, it was.

11 Q. And it wasn't until just in the last couple of weeks
12 that Ellison Hudson admitted that he'd lied about the
13 counterfeit money?

14 A. That's true.

15 Q. Okay. But he did admit he lied. He didn't get it from
16 my client; right?

17 A. That's my understanding. He didn't admit it to me, but
18 that's my understanding.

19 Q. Okay. You were in the courtroom the other day when he
20 testified that the reason he didn't tell you it was Bump to
21 begin with was because he was afraid for himself and his
22 family and because he wanted personal revenge. Remember
23 that?

24 A. Yes.

25 Q. Have you ever heard word one from his mouth about

Kevin Reese - cross-exam by Ms. Shurling

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1 wanting to withhold the name of the real killer so he could
2 go play vigilante? Did he ever tell you anything like that?

3 A. No, he didn't.

4 Q. He didn't, did he?

5 A. No.

6 Q. And, in fact, what he's telling you is that because he's
7 afraid, he names Jonathan Bailey instead of my client; right?

8 A. Actually he said in the beginning that when he brought
9 this up was that he didn't think about Hackshaw because he
10 didn't know -- he'd never realized that Hackshaw knew where
11 he lived. He didn't think Hackshaw knew where he lived, so
12 he didn't even give Hackshaw a second thought is what he said
13 pretty much.

14 Q. When he told you it was Jonathan Bailey, he told you he
15 was positive it was Jonathan Bailey, didn't he?

16 A. At that time.

17 Q. And he -- when he finished his statement saying it was
18 Jonathan Bailey, he said: I promise you I've told you
19 everything. I haven't left anything out, and I promise you
20 I've told the truth.

21 A. Say that again.

22 Q. When he told you -- when he finished his statement
23 saying it was Jonathan Bailey, he said -- he promised you
24 he'd told you everything. He was telling the truth. Didn't
25 he?

1 A. He said he was telling the truth.

2 Q. Okay. And here just the other day on the witness stand
3 he's saying he lied about it being Bailey and fingered my
4 client in part because he was scared. Well, actually he said
5 because he wanted personal revenge. That's what he said,
6 isn't it?

7 A. That's what I recall, yeah.

8 Q. And then he claimed that he decided to come clean and
9 tell the truth, the new truth, once y'all put him in jail.
10 Right?

11 A. I'm not sure if he quite put it like that, but that's
12 when he decided to give that other information up.

13 Q. Well, he testified that once he was in jail and he knew
14 he wasn't going to be able to get at Bump, he might as well
15 tell the truth. Right?

16 A. Okay. That's what I recalled him saying.

17 Q. Okay. So even then he never did -- I mean, he's telling
18 you that he decided to tell the truth when he was in jail
19 because he then couldn't get at Bump. Right?

20 A. Right.

21 Q. That's what you just said.

22 A. Right.

23 Q. He'd never told you that before either, had he?

24 A. No, he'd never told me that.

25 Q. And from that very witness stand he said part of the

1 reason he decided to tell the truth is that he was just, you
2 know, worried about his family. Right?

3 A. I recall him saying that he had a talk with his
4 grandfather who is a minister. It made him change the way he
5 thought about things.

6 Q. Let me ask you this: What did you and your police
7 department do to investigate who the second man in that back
8 yard on May 20th, 2009, was?

9 A. Everything I could possibly do.

10 Q. Well, can you describe for us how you did that?

11 A. I'll give you an example. There was one time when I
12 considered Torrian Gleaton being the second man. When we
13 found out about him, we went after him. Any information we
14 found out, any leads we came up with, myself and my partner
15 and other investigators went out to check it out. We tried
16 not to leave no stone unturned.

17 Q. How many of Jonathan Bailey's gang associates did you
18 interview?

19 A. None.

20 Q. None? When you went to my client's apartment -- pardon
21 me, not you. When law enforcement went to my client's
22 apartment to execute the search warrant, my client wasn't
23 there, was he?

24 A. I don't think he was there, no. I wasn't there either.

25 Q. Okay. But it's been reported to you, has it not, that

1 neither my client nor his wife were at home when the search
2 warrant was executed?

3 A. No, they weren't there. It was reported to me.

4 Q. And it was also reported to you that another young
5 man---

6 Ms. Campbell: Objection, Your Honor, to this hearsay at
7 this point. It's getting to be...

8 The Court: Sustained.

9 Ms. Shurling: In the course of your investigation, was
10 it reported to you that someone else was at the Hackshaw
11 residence?

12 Ms. Campbell: Objection, Your Honor.

13 The Court: Sustained.

14 Ms. Campbell: Thank you.

15 Ms. Shurling: I'll get into that with another witness.
16 By Ms. Shurling:

17 Q. Let's see. When you took a written statement from
18 Hudson after he named my client as the shooter, what reasons
19 did he give you for why he thought it was my client?

20 A. If you're referring to the written statement, I'd have
21 to see it and I'll give you your answers.

22 Q. Sure. Let me give you the exact spot. Other than the
23 robbery of my client, he referred to what else as defining
24 things that made him know that it might have been my client?

25 A. All right. Now, this isn't a statement I took.

Kevin Reese - cross-exam by Ms. Shurling

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1 Q. You're the lead investigator, aren't you?

2 A. You're asking me if I -- about the statement I took, and
3 I'm trying to answer you.

4 Q. I'll rephrase.

5 A. Thank you.

6 Q. You're the lead investigator.

7 A. Yes.

8 Q. All statements taken in this case have been turned in to
9 you.

10 A. I got a copy of it, but this isn't my statement.

11 Q. And you have reviewed those statements as the lead
12 investigator in this case, have you not?

13 A. Are you asking me to respond to what's on this
14 statement? I'd be more than glad to.

15 Q. I'm asking you to tell me what that statement tells us
16 is the -- what the compelling, distinguishing features are
17 that made Mr. Hudson supposedly know that it was Anthony
18 Hackshaw.

19 A. All right. Perhaps it would help if I just read the---

20 Ms. Campbell: Objection, Your Honor. This is hearsay
21 at this point. He didn't take the statement.

22 The Court: Pardon me?

23 Ms. Campbell: He didn't even take the statement.

24 Ms. Shurling: We can add more witnesses later, Your
25 Honor.

1 **The Court:** Let me tell you something. If you make
2 another comment after I rule, it won't be good.

3 By Ms. Shurling:

4 Q. You were present during and conducting the interview on
5 Mr. Gleaton, weren't you?

6 A. Yes, I was.

7 Q. Do you agree with me that the interview had already been
8 going on for over two hours before the portion that was
9 published to the jury today?

10 A. Actually it had been going on probably about three hours
11 and something.

12 Q. And at various junctures, even during the part we heard
13 today, he's repeatedly telling you that he had talked to
14 Ellison Hudson about this case as well as talking to E. About
15 it. Right?

16 A. Yeah.

17 Q. And he told you repeatedly that he was having trouble
18 figuring out what he'd heard from E. And what he'd heard from
19 my client, didn't he?

20 A. That's right.

21 Q. And he tried to stop talking to you at one point, didn't
22 he?

23 A. Well, I don't know about him trying to stop, but I do
24 know at any point - and he knew this - if he wanted to stop,
25 he could have stopped.

Kevin Reese - cross-exam by Ms. Shurling

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1 Q. You threatened to put him in jail, didn't you?

2 A. No, I don't think I threatened to put him in jail.-

3 Q. Did you hear the portions of the transcript that were
4 published this morning?

5 A. I think I did.

6 Q. You threatened to charge him as an accessory to this
7 homicide, didn't you?

8 A. I still don't think I threatened to put him in jail. I
9 don't know what you mean about threaten.

10 Q. A moment's indulgence. To go back to catch up on
11 something we've covered earlier, when you interviewed Mr.
12 Bailey did he or did he not tell you---

13 **Ms. Campbell:** Objection to hearsay at this point, Your
14 Honor.

15 **The Court:** Sustained.

16 By Ms. Shurling:

17 Q. Even if we believe Ellison Hudson's story that he told,
18 his most recent version that he told in court today, part of
19 it anyway---

20 A. Ellison Hudson?

21 Q. Ellison Hudson..

22 A. Okay.

23 Q. If we believe it, then we know for a fact that he was
24 willing to implicate an innocent man in murder if it suited
25 his purposes, don't we?

1 A. Yeah, but I think it's also important to know that I'm
2 willing to do whatever I can to clear an innocent man which
3 is what we did, and every single thing we did, every single
4 thing we found out, from the beginning of this whole case,
5 including the robbery, to the robbery itself to the homicide
6 and everything that happened afterwards points to one single
7 person: Your client.

8 Q. Really?

9 A. Really.

10 Q. Okay. Let's---

11 A. Not nobody else but.

12 **The Court:** Officer, we're not arguing. Okay? She
13 asked you a question. You respond to the question.

14 By Ms. Shurling:

15 Q. Mr. Reese, Investigator Reese, you honestly feel like
16 you left no stone unturned? Is that true?

17 A. Well, no. There are some things that we could have done
18 that we could not get done, like identify that other shooter.
19 But other than that, we did everything we could possibly have
20 done.

21 Q. So you think you adequately checked out Kevae Dolphin's
22 story.

23 A. You asked me the question, and I just answered it. I
24 did everything I possibly could have done.

25 Q. And I'm asking you, based on your opinion of law

1 enforcement's investigation of this case, you think the
2 investigation you did on Kevae Dolphin's story was adequate.

3 A. Yes, I do.

4 Q. And you think that it was adequate to take what she said
5 about Stephanie at face value and---

6 Ms. Campbell: Objection, Your Honor. Asked and
7 answered.

8 The Court: He's already answered that he thought what
9 he did was adequate.

10 Ms. Shurling: Your Honor, he's just -- never mind. A
11 moment's indulgence.

12 By Ms. Shurling:

13 Q. Were there any leads about who the second shooter might
14 have been that you didn't follow up on?

15 A. No, there were no leads that we didn't follow up on.

16 Ms. Shurling: Your Honor, at this time may I approach
17 the bench?

18 The Court: You can.

19 (Whereupon, a bench conference was held.)

20 Ms. Shurling: One moment, Your Honor. Nothing further,
21 Your Honor.

22 The Court: Anything?

23 Ms. Campbell: No, sir.

24 The Court: All right. You may step down.

25 The Witness: Thank you, Your Honor.

1 **The Court:** Ready to call your next witness?

2 **Ms. Campbell:** May it please the Court, Your Honor? The
3 State rests.

4 **The Court:** All right. Ladies and gentlemen, the State
5 has rested which means they have now completed the
6 presentation of their evidence in their case in chief, and
7 it's also a good time for us to take a break, and I have to
8 take up some matters with the lawyers. So I'll let you step
9 back to the jury room.

10 Because I have to take up some matters of law with the
11 -- it may be a little bit longer than 15 minutes. Y'all
12 relax. Don't discuss the case while you're back there, and
13 we'll be with you just as quickly as we can. Thank y'all.

14 (Whereupon, the jury was excused from open court at 3:42
15 p.m.)

16 **The Court:** Before we get into that, right before the
17 State rested when Ms. Shurling was in her cross-examination
18 she asked to approach and indicated she wished to make some
19 inquiry of the officer about some leads that he may or may
20 not have followed up with respect to somebody who picked up
21 Mr. Bailey at the residence.

22 **Ms. Shurling:** Yes, sir, Your Honor.

23 **The Court:** And I indicated to her that I would not
24 allow that, that I consider that to be third-party guilt and
25 I've already ruled on that, so -- but I just wanted her

colloquy

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1 request to be known, so...

2 **Ms. Shurling:** Thank you, Your Honor. And in pretrial
3 when we discussed this matter, Your Honor indicated that I
4 would be permitted to put a proffer on the record. So at
5 this time I'd ask Investigator Reese to resume the witness
6 stand.

7 **Ms. Campbell:** Can't we just agree and stipulate to a
8 proffer as far as this goes?

9 **Ms. Shurling:** No, ma'am.

10 **The Court:** I don't know. What is it you want -- what
11 is it you want him to...

12 **Ms. Shurling:** I want to ask him questions about a lead
13 that he didn't follow up on.

14 **The Court:** All right. Well, what is it that you know
15 that you want him to verify?

16 **Ms. Shurling:** An investigative report issued by
17 Investigator Babin -- well, first Investigator Gwyn and then
18 the information was relayed to Babin. Then it was given to
19 Reese, and there is a taped telephone conversation in the
20 discovery wherein Investigator Reese set up a meeting with
21 Kenneth Goodwin. The reason for that meeting, Your Honor, is
22 that when Kenneth Goodwin was arrested two days after this
23 shooting, he reported that that day his girlfriend had gotten
24 a text message from someone indicating that Q., Quattarious
25 Ford, was involved in the shooting. Quattarious Ford is an

1 individual who's named by Kevae Dolphin as the person that
2 came and picked Bailey up at her home that day.

3 **The Court:** All right. Do y'all -- do y'all agree to
4 what she just said?

5 **Ms. McDuffie:** Your Honor, to -- the information given
6 by Kenneth Goodwin was that he'd heard rumors that this is
7 what it was, not that he had personal knowledge and that,
8 Your Honor, we would stipulate to. Your Honor, I have a
9 certified transcript if Your Honor would like to read it.

10 **The Court:** Certified transcript of what?

11 **Ms. McDuffie:** The audio interview with Kenneth Goodwin
12 where he says that Q. Got a text -- I mean, that his
13 girlfriend got a text message from someone that he cannot
14 name, that his girlfriend is probably not willing to come in
15 and talk to him and that this is all conjecture on his part.

16 **Ms. Shurling:** Your Honor, in that telephone
17 conversation he, in fact, sets up a meeting with Kenneth
18 Goodwin. There's not a word about any of this in any of
19 Mr.---

20 **The Court:** Look, that's all third-party guilt.

21 **Ms. Shurling:** Yes, sir, Your Honor. I'm making a
22 proffer. As Your Honor knows, on appeal I can't show what my
23 damages are if I can't---

24 **The Court:** Well, we're not going to do that right now
25 because I got this jury here. We might do it at the end of

directed verdict motion by Ms. Shurling

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1 the day---

2 **Ms. Shurling:** Thank you, Your Honor.

3 **The Court:** ---when we turn the jury loose. You remind
4 me. All right. Have you got any motions?

5 **Ms. Shurling:** Yes, sir, Your Honor. At this time I
6 would move for a directed verdict of acquittal on all
7 charges. It is the position of the defendant that the
8 evidence adduced in this trial fails to meet the standard
9 necessary to submit this matter to the jury. It's his
10 position that there is inadequate evidence to prove---

11 **The Court:** What is the -- what is the standard?

12 **Ms. Shurling:** Your Honor, it's any direct or any
13 substantial circumstantial. I would note particularly on the
14 charges of assault with intent to kill that there was no
15 testimony from either Cleveland Joyner or Ellison Hudson that
16 they were aware of any shots specifically fired in their
17 direction. Therefore, there's no evidence of an assault with
18 intent to kill at all.

19 **The Court:** All right.

20 **Ms. Shurling:** There would be I guess arguably
21 circumstantial evidence, but it would not rise --
22 circumstantial being required to rise to the level of
23 substantial circumstantial evidence, we believe that on those
24 two charges it would not as well, and we would, of course,
25 submit that there's no credible evidence of my client's

1 involvement with this---

2 **The Court:** You'll acknowledge that credible is not a
3 factor the Court considers on a directed verdict.

4 **Ms. Shurling:** Yes, sir..

5 **The Court:** All right. Anything y'all want to say about
6 the AWIK?

7 **Ms. McDuffie:** Your Honor, addressing the argument in
8 terms of the two counts of assault with intent to kill, I
9 believe that both individuals testified that they had to run
10 and flee from the ongoing shots. Mr. Hudson, I believe,
11 testified that he heard the shots moving by his head. Mr.
12 Joyner testified that he had to go run and hide behind a shed
13 in order to avoid being shot by the assailants, Your Honor.
14 I believe that there is evidence in order to submit this to
15 the jury in the light most favorable to the non-moving party,
16 and not only is there their testimony but there's also direct
17 evidence of the 10 shell casings at the scene and further
18 testimony that the area was sprayed with bullets which is
19 consistent with the findings of the Crime Scene Unit on the
20 scene.

21 **The Court:** All right. I'm going to---

22 **Ms. Shurling:** Your Honor?

23 **The Court:** Sure.

24 **Ms. Shurling:** Pardon me. I would dispute the assertion
25 that either witness said they felt bullets going by their

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1 head. I recall no such testimony. And, further, with regard
2 to the shell casings, all the shell casings found at the
3 scene were found clustered around the deceased, the victim of
4 the alleged homicide. The officer -- the crime scene
5 technicians and officers, in fact, testified they didn't find
6 any shell casings anywhere else and they didn't look in
7 adjacent yards where they were supposedly -- where Hudson was
8 supposedly chased. So there are no shell casings that have
9 been submitted into evidence to substantiate that any further
10 shots were fired beyond those clustered around the deceased,
11 Ebony Fogle.

12 **The Court:** All right. With respect to the charge of
13 murder, there was direct testimony from one of the witnesses
14 that your client was the shooter.

15 **Ms. Shurling:** Yes, sir.

16 **The Court:** And clearly the whole case hinges on the
17 credibility of the witnesses in this case, and I can't pass
18 upon the credibility, but there is -- there is direct
19 evidence that your client was the shooter. With respect to
20 the AWIK, I'm going to find that there is circumstantial
21 evidence and it is substantial that your client came around
22 the corner, spraying the back yard which the defendants, I
23 mean, the alleged victims were in the back yard, that they
24 were of such a mind that they believed that they had to get
25 out of the way in order to avoid being shot and, therefore,

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1 took off running and, in fact, there was multiple gunshot
2 wounds resulting in the defendant, I mean, Ms. Ebony being
3 killed. So I'm going to find there's circumstantial
4 evidence, at least on the AWIK. Apparently there is no
5 motion with respect to the possession of a gun during the
6 commission of a violent crime but...

7 **Ms. Shurling:** Your Honor---

8 **The Court:** Clearly there was -- somebody got shot and
9 killed, and murder is a violent crime and there was bullets
10 that did that which would require a gun, and there was
11 testimony that a gun was seen in the hand of your client and
12 the other client -- the other shooter, so...

13 **Ms. Shurling:** Your Honor, I would renew my earlier
14 motion for a mistrial on the grounds stated at the time.

15 **The Court:** Okay. I'm going to deny that motion. All
16 right. Yes, ma'am?

17 **Ms. Campbell:** We just -- I know I keep belaboring this
18 point, but she still hasn't given us the dates of births as
19 far as what witnesses are going up this afternoon.

20 **Ms. Shurling:** Sorry. I forgot to---

21 **Ms. Campbell:** That would be helpful if we could do that
22 at the break. And also there was some documents discussed
23 earlier. I just want to make sure there was nothing else she
24 wanted to turn over to us that hasn't been turned over.

25 **The Court:** Who is your first witness? Are you going to

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1 put up a case?

2 Ms. Shurling: Yes, sir.

3 The Court: All right. Is your client going to testify
4 or is that still a decision that has not been completely
5 made?

6 Ms. Shurling: I'm 95 percent certain he's going to,
7 Your Honor, but we have a number of witnesses to go before we
8 get to him.

9 The Court: All right. Well, before he goes I need to
10 make an inquiry of him and his understanding of his right to
11 testify or not testify, so...

12 Ms. Shurling: Certainly.

13 The Court: Just let me know before you put him up so I
14 can do that and we can take the jury out.

15 Ms. Shurling: Yes, sir.

16 The Court: Make sure y'all -- and I'm sure you have
17 counseled him on the---

18 Ms. Shurling: Your Honor, my first two witnesses will
19 be my client's wife, Rosa Grenald, and her sister.

20 The Court: All right. Are these two that we need to
21 check on their rap sheets?

22 Ms. Campbell: Yes, sir.

23 Ms. Shurling: And I have their dates of birth right
24 here.

25 The Court: How long will that take to do that?

1 Ms. Campbell: Ten minutes.

2 The Court: All right. Should we stand in recess then?

3 Ms. Campbell: Thank you, Your Honor.

4 The Court: Who is -- who is Eleanor representing?

5 Ms. Shurling: Sir?

6 The Court: Is Eleanor representing somebody that's---

7 Ms. Shurling: Yes.

8 The Court: ---part of this case? Who is that?

9 Ms. Shurling: My client's wife.

10 The Court: Oh, okay. She's got her on the other
11 charge?

12 Ms. Shurling: Yes, sir.

13 The Court: All right.

14 Ms. Shurling: And the obstruction in this case.

15 The Court: That's what I mean. She's got -- but I
16 mean...

17 Ms. Shurling: Yes, sir.

18 (Whereupon, a short break was taken.)

19 The Court: All right. Did y'all get done what you
20 needed to get done?

21 Ms. Campbell: Yes, sir. They have turned over several
22 sets of documents. I did get the birth dates for their first
23 two witnesses, Your Honor. We did run rap sheets on those.
24 Ms. Rosa Grenald, the only thing that would be impeachable is
25 she has a pending obstruction of justice and P.W.I.D.

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1 marijuana, and her sister does not have a record.

2 **The Court:** Have y'all seen the rap sheet?

3 **Ms. Shurling:** No.

4 **Ms. Campbell:** Here you go.

5 **The Court:** Do you need to look at it? Wait a minute.

6 Whoa, whoa, whoa. You walked away without something.

7 **Ms. Shurling:** Sorry. Your Honor, I would object to the
8 State being allowed to use pending charges that are not the
9 subject of convictions.

10 **The Court:** Well, we've been doing it all through the
11 course of the...

12 **Ms. Campbell:** With every witness. She's not a
13 defendant in this case. It goes to her bias or her prejudice
14 just as with all of our witnesses. She's a witness for the
15 defense. It would be the same thing.

16 **Ms. Shurling:** I believe---

17 **Ms. Campbell:** I believe the case would be State versus
18 Sims, Your Honor, and there's more recent cases than that.
19 That's just one I recall off the top of my head.

20 **Ms. Shurling:** Your Honor, the reason they've been able
21 to get into pending charges or we have gotten into the
22 subject of pending charges with earlier witnesses that they
23 -- they were cooperating witnesses who were testifying on
24 behalf of the State.

25 **The Court:** Well, that doesn't make any difference.

1 Give me the case that you want me to look at.

2 Ms. Campbell: State versus Sims, Your Honor.

3 Ms. McDuffie: Your Honor, it's 348 South Carolina---

4 The Court: I know, but---

5 Ms. McDuffie: ---16.

6 The Court: ---I don't have 348 South Carolina.

7 Ms. Campbell: I'll have it for you in a minute.

8 The Court: Y'all have to understand that I'm computer
9 retard. So if you don't provide it to me, it doesn't get
10 read, especially when my law clerk is not here.

11 Ms. Shurling: Pursuant to Rule 609(a)---

12 The Court: I'm looking at... I mean, I'll be frank
13 with you. I have not had anything where pending charges were
14 ever introduced before other than this case.

15 Ms. McDuffie: Your Honor, we'd argue under 608(c),
16 Evidence of Bias: "Bias, prejudice, or any motive to
17 misrepresent may be shown to impeach the witness either by
18 examination of the witness or by evidence otherwise adduced."

19 The Court: Wait a minute. Under 608 what?

20 Ms. McDuffie: C.

21 The Court: C. "Evidence of a conviction is not
22 admissible under this rule if the conviction has been the
23 subject of a pardon, annulment, certificate or rehabilitation
24 or other equivalent procedure based on a finding of the
25 rehabilitation of the person convicted and that person has

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1 not been convicted of subsequent crime which was punishable
2 by death, imprisonment..."

3 Ms. McDuffie: Your Honor, that's 609(c).

4 The Court: Oh, I thought you said 609(c).

5 Ms. McDuffie: 608, Your Honor. 608(c).

6 Ms. Shurling: C. As in cat?

7 Ms. McDuffie: Yes.

8 Ms. Shurling: Your Honor, I would note that it is
9 608(c) that is specifically the rule that provides for---

10 The Court: I know it. I'm going to see what case
11 they've got here, Ms. Shurling.

12 Ms. Shurling: Ms. McDuffie, would you repeat that cite,
13 please, so that my associate can pull it up?

14 The Court: Oh, no. He's not getting it before I do.
15 He'll wait 'til -- what's the name of the case? Do you have
16 a cite?

17 Ms. Campbell: State versus Mandel Sims. It was a
18 murder case.

19 The Court: Marshall, can you pull it up?

20 Ms. McDuffie: 348 South Carolina 16.

21 Ms. Campbell: Your Honor, may I approach?

22 The Court: Sure. Well, you know, this case says that
23 you can go into that such as Ms. Shurling attempting to show
24 credibility on the part of one of -- some of y'all's
25 witnesses by showing that they may get some favorable deal as

1 a result of their testimony because they have pending
2 charges, not because -- now, if she's going to get some
3 favorable deal because of this---

4 Ms. Shurling: Your Honor---

5 The Court: I'm going to exclude that. I just don't
6 think that's---

7 Ms. Campbell: Your Honor, it is already in the record
8 that she was charged with obstruction of justice. That's in
9 the record.

10 The Court: Well...

11 Ms. Shurling: What?

12 The Court: I don't know.

13 Ms. Campbell: Yes, ma'am, that she was arrested and
14 charged with obstruction of justice.

15 The Court: All right. Well, we'll leave it at that.
16 Somebody did testify that she was arrested and charged -- I
17 think it's one of the -- was it one of the police officers?

18 Ms. Shurling: Pardon me. On---

19 Ms. Campbell: Yes, sir.

20 Ms. Shurling: I'm sorry. On -- you're talking about
21 Rosa Grenald.

22 Ms. Campbell: She's the only one with pending charges.

23 Ms. Shurling: Okay. And---

24 Ms. Campbell: I'm just referring to the two witnesses
25 that -- I'm not talking about your client. I'm just talking

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1 about these two witnesses we're discussing right now.

2 Ms. Shurling: Okay.

3 The Court: All right. Well---

4 Ms. Shurling: You've got nothing for the sister, and
5 the obstruction is all you have on Rosa Grenald Hackshaw.

6 Ms. Campbell: She's got a pending possession with
7 intent to distribute marijuana as well.

8 The Court: Well, we're not going into that.

9 Ms. Campbell: Okay. Well, we'll limit it to the
10 obstruction.

11 Ms. Shurling: Your Honor---

12 The Court: Look.

13 Ms. Shurling: ---I would object to going into that.
14 She's been called as my witness, not as a corroborating
15 witness for the State.

16 Ms. Campbell: She's corroborative---

17 Ms. Shurling: She certainly is not hoping to gain favor
18 with the State by testifying contrary to the State's
19 position.

20 The Court: Look, it's in evidence. We're going to
21 leave it at that. We're not going to question this witness
22 about a pending charge.

23 Ms. Campbell: Yes, sir.

24 The Court: It's already in evidence. I'm not saying
25 she's not going to be able to argue it because it's in

1 evidence but---

2 Ms. Shurling: In that case, Your Honor, I would like to
3 be able to question her specifically about what she's charged
4 with in connection with what behavior...

5 The Court: Well, that's up to you.

6 Ms. Campbell: That's fine. We just ask her to go into
7 everything she's charged with if she goes there.

8 The Court: No, no, no, no. Any pending charges, other
9 than this obstruction which has already been in evidence, I'm
10 excluding.

11 Ms. Campbell: Yes, sir.

12 The Court: Any pending charges. I don't know what they
13 are. What are they, Ms. Shurling?

14 Ms. Shurling: Sir?

15 The Court: What other pending charges does she have?

16 Ms. Shurling: Just the obstruction and the marijuana
17 charge.

18 The Court: Well, we're not going into the marijuana.

19 Ms. Shurling: That's it. And the obstruction is the
20 one they said is already in evidence.

21 The Court: Now, if you want to go into it, you can go
22 into it.

23 Ms. Shurling: Yes, sir.

24 The Court: I mean the marijuana.

25 Ms. Shurling: I have no intention of it.

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1 **The Court:** All right. Let's bring the jury in.

2 (Whereupon, the jury was brought into open court at 4:21
3 p.m.)

4 **The Court:** All right. Ladies and gentlemen, as I told
5 you, the State has rested which means the State has put up
6 all of its evidence in its case in chief, and the defendant
7 now has the opportunity to offer any evidence in this case.
8 As I told you earlier, the burden is on the State to prove
9 this defendant guilty of all the charges and prove him guilty
10 beyond a reasonable doubt, and no burden falls whatsoever on
11 the defendant. But as I said, the defendant has the right to
12 offer any evidence the defense wishes to offer, and it's my
13 understanding that Ms. Shurling intends to proceed at this
14 time. Is that correct?

15 **Ms. Shurling:** We do, Your Honor.

16 **The Court:** All right. If you would please, ma'am.

17 **Ms. Shurling:** Our first witness, Your Honor, is Rotania
18 Grenald.

19 **The Court:** Ma'am, if you'll come down.

20 Rotania Grenald, after being duly sworn, testified
21 as follows:

22 **The Clerk:** Please have a seat and state your full name
23 for the record.

24 **The Witness:** Rotania Grenald.

25 **Court Reporter:** Would you spell your first name?

1 The Witness: R-o-t-a-n-i-a.

2 Direct Examination

3 By Ms. Shurling:

4 Q. Would you please -- thank you. Would you please tell
5 the jury what relationship, if any, you have to Anthony
6 Hackshaw?

7 A. My sister is married to him.

8 Q. And your sister's name is?

9 A. Rosa Grenald.

10 Q. Rosa Grenald?

11 A. Yes.

12 Q. Did there come a time in early 2009 when your sister
13 came to visit you back home in New Jersey?

14 A. Yes.

15 Q. Do you remember exactly when it was that she came up?

16 A. I don't remember the exact day.

17 Q. Okay. Would it have been in the first quarter of the
18 year, that being January, February, March?

19 A. Honestly, I don't remember.

20 Q. Okay.

21 A. I don't remember.

22 Q. Okay. Sometime early in the year.

23 A. Uh-huh.

24 Q. When she got ready to go home to South Carolina, did you
25 ask her to do you a favor?

Rotania Grenald - direct exam by Ms. Shurling

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1 A. Yes.

2 Q. What was that favor?

3 A. I had had a vehicle that I had, and I asked her could
4 she take it with her for awhile until I was able to get the
5 money up to pay Honda for it.

6 Q. Okay. Did she drive a car up to New Jersey?

7 A. Yes.

8 Q. So were you asking her to switch cars with you?

9 A. Yes.

10 Q. Okay. So she was going to take your car---

11 A. And I was going to take hers.

12 Q. ---and you were keeping hers.

13 A. Yes.

14 Q. And did she, in fact, take your car back to South
15 Carolina?

16 A. Yes.

17 Q. Can you describe that car for us, please?

18 A. It's a -- I think it's a 2008 Honda Civic Coup, silver.

19 Q. Two-door?

20 A. Yes.

21 Q. Silver.

22 A. Yes.

23 Q. It's not a hatchback, is it?

24 A. No.

25 Q. And it's a two-door.

1 A. Yes.

2 Q. Okay. After your sister had had the car in South
3 Carolina for awhile, did you have occasion to give her
4 further instructions concerning the car?

5 A. Yes, I did.

6 Q. Tell us what you told her.

7 A. I had this cousin basically who previous to that me and
8 her got into an altercation over the vehicle. She had took
9 the vehicle from me, and basically she was trying to like let
10 Honda know where my vehicle was. So I asked my sister if she
11 could not have it at her house because my cousin know where
12 she lived at, and she would call Honda and let them know that
13 the car was there so they could come get it. So I asked her
14 if she could not have it at her house.

15 Q. After your sister had already had the car in South
16 Carolina for awhile, you asked her not to keep it at her
17 home?

18 A. Yes.

19 Q. This cousin that you were afraid would tell Honda where
20 the car was, did the cousin know where you lived?

21 A. Yeah, she did.

22 Q. And you had reason to believe she was going to tell
23 Honda Finance where they could find the car?

24 A. Yes.

25 Q. Okay. Did Rosa bring the car back to you at some point?

1 A. Yes.

2 Q. Can you remember when that was?

3 A. I don't remember exactly when it was, but I had asked
4 her to bring it back because I had the money to pay them now,
5 so I wanted my car back.

6 Q. Pardon?

7 A. I had asked her to bring it back because I had the money
8 to pay them, so I wanted my vehicle back.

9 Q. So when you got your payments -- your payment money
10 caught up---

11 A. Yes.

12 Q. ---you wanted your car back.

13 A. Yes.

14 Q. Your car was nicer than hers, wasn't it?

15 A. Yeah, it was newer.

16 Q. Okay. At my request did you obtain from Honda financing
17 documents concerning your loan agreement?

18 A. Yes, I did.

19 Q. And the status of your loan?

20 A. Yes.

21 Q. And did you get these from Honda Financing directly?

22 A. Yes.

23 Q. And these were given to you personally.

24 A. Yes.

25 Q. Can you identify these documents for me?

1 A. Yes. This is basically from Honda and it's -- it's
2 showing my lease number and my V.I.N. and all that.

3 Q. Okay. Any objection? You went to Honda and requested
4 these documents.

5 A. Yes, but also I got them sent to me and I also got them
6 sent to my sister's lawyer.

7 Q. So you had a copy that was given to you personally.

8 A. Yes, and then I had them send it to my sister's lawyer.

9 Ms. Campbell: I have no problem with that, Your Honor.
10 No objection. I'm sorry, Your Honor.

11 Ms. Shurling: Thank you.

12 By Ms. Shurling:

13 Q. The first sheet of this document is just the facsimile
14 transmittal sheet; right?

15 A. Uh-huh.

16 The Court: Are you moving to introduce that?

17 Ms. Shurling: Yes, sir, Your Honor. I'm sorry.

18 The Court: So admitted without objection. State's, I
19 mean, Defendant's 2.

20 (Defendant's exhibit 2 was received in evidence.)

21 By Ms. Shurling:

22 Q. Page 2 -- well, first, as I said, page 1 is just the fax
23 transmittal sheet. Correct?

24 A. Yes.

25 Q. Where you asked Honda to fax a copy directly to your

1 sister's lawyer?

2 A. Yes.

3 Q. All right. Page 2 is labeled an account verification.

4 Is that correct?

5 A. Yes.

6 Q. And it was sent by Honda Financing Services directly to
7 your sister's lawyer?

8 A. Yes.

9 Q. After you received a copy.

10 A. Yes.

11 Q. And can you -- you can positively identify this as the
12 document you were given?

13 A. Yes, I can.

14 Q. Okay. On the bottom line what information does it
15 provide?

16 A. The bottom line right here?

17 Q. No. I'm sorry. Of the verification portion of the
18 document.

19 A. Basically -- are you talking about all this information?

20 Q. Here you go, hun. Under the verification information,
21 what does this line address?

22 A. Oh, the payments. The number of late payments that I
23 had.

24 Q. And does this document show that you had had quite a few
25 late payments?

1 A. Yes.

2 Q. And, in fact, you had gone as much as 90 days past due
3 one time?

4 A. Yes.

5 Q. And had you previously been warned by---

6 A. Honda.

7 Q. ---Honda that they would repossess your car?

8 A. Yes.

9 Q. And at that time when you asked your sister to have it,
10 to take it back with her to South Carolina, did you have the
11 money to catch up on your payments?

12 A. Not at the moment, no.

13 Q. Okay. Was there any other reason that you asked your
14 sister to take the car other than that?

15 A. No.

16 Q. And as soon as you got caught up on your money you
17 wanted your car back. Right?

18 A. Yes.

19 Q. And, again, you don't remember exactly when that was?

20 A. No, I don't remember. I know it was like warm outside,
21 but I'm not sure the exact like time of it.

22 Ms. Shurling: Okay. A moment's indulgence. I was
23 about to walk off with the exhibit. No further questions.

24 The Court: Yes, ma'am.

25 Ms. Campbell: May it please the Court?

Cross-Examination

1

2 Q. It's Ms. Grenald?

3 A. Yes.

4 Q. Hey, I'm Luck Campbell. I'm with the solicitor's
5 office. I've just got a few questions. So let me get this
6 straight and then just correct me if I'm wrong. You had
7 gone -- been late on your payments and you said you got a
8 letter?

9 A. I never stated that I got a letter.

10 Q. I'm sorry. I might have misunderstood you. That's why
11 I need to go over it with you. You said something about
12 Honda had notified you that they---

13 A. Yeah, like they would call. Honda would give me a call
14 and then would say that I was late on my payment.

15 Q. They would call, but you don't remember when it was that
16 Honda called you and said they were going to repossess your
17 car?

18 A. No, I don't remember.

19 Q. Was it shortly before your sister brought the car back
20 to South Carolina?

21 A. I'm not -- I don't remember.

22 Q. You don't remember?

23 A. No.

24 Q. Well, was it shortly before -- was it that same year
25 your sister took it to South Carolina?

1 A. Yes.

2 Q. It was that same year?

3 A. Uh-huh.

4 Q. And Honda called you up and said, "We're going to come
5 repossess your car"?

6 A. Well, they don't say that exactly. They would either
7 call me and say I was in the process of being repossessed if
8 I couldn't be caught up on my payments, and then I would get
9 like letters in the mail like stating how far -- I mean, how
10 much I owed them and how far I was on the payment.

11 Q. Do you have those letters?

12 A. Yes. They're at home actually.

13 Q. They're at home? You didn't bring those to court?

14 A. No.

15 Q. You didn't provide those to the defense?

16 A. No.

17 Q. They didn't want to see those? They never requested
18 those.

19 A. I mean, the papers that they got was the ones from Honda
20 because I didn't feel like they needed any more from me.

21 Q. So we don't have those letters that you say exist here
22 today?

23 A. No.

24 Q. And your brother-in-law's lawyer never requested those
25 from you.

1 A. No.

2 Q. And you don't know when it was they called you on the
3 phone and told you they were going to repossess the car, and
4 in the letters did they say they were going to repossess the
5 car?

6 A. Yeah. It would -- it would -- like it would say if I
7 didn't make a payment by this time that it would be
8 repossessed or something like that because---

9 Q. That was the word they used: Repossess. Is that
10 correct?

11 A. Yes, or repossession.

12 Q. But you don't have those letters.

13 A. No, I don't.

14 Q. And then you mentioned something about that after your
15 sister had taken your car -- how long had she had the car
16 before she -- did she have it before she brought it back?

17 A. I'm not sure exactly the length of time.

18 Q. Would it be days?

19 A. No, it was longer than days.

20 Q. Weeks?

21 A. It could have been weeks. I'm not exactly sure. It
22 could have been weeks.

23 Q. Would it have been months?

24 A. It wasn't months. It could have -- it was awhile.

25 Q. So a week to a month? Would that be fair?

1 A. It was awhile. I'm not sure exactly.

2 Q. And I'm not trying -- I'm just trying to get an idea.

3 A. I know.

4 Q. You know, just---

5 A. Probably like weeks, maybe like weeks.

6 Q. A month.

7 A. Yeah, maybe.

8 Q. And you testified that at some point during that time
9 period you were contacted by a cousin with whom you had had
10 an altercation with about the car?

11 A. Well, I wasn't contacted by her. Me and her had -- it
12 was an altercation over the vehicle because she wanted it,
13 but it was my vehicle and she went---

14 Q. And in this altercation, did it get physical?

15 A. No.

16 Q. And she wanted your vehicle, but she got mad at you
17 because you wouldn't give her your own vehicle that you were
18 buying?

19 A. Actually, she had had my vehicle previously, and I had
20 to actually go through the extent of getting it back. I had
21 to call -- like it was a big commotion. The cops got
22 involved in me getting my vehicle back from her. So I guess
23 her way of getting even with me would be the Honda, taking it
24 back, period.

25 Q. And that cousin, what's her name?

- 1 A. Shanice Evans.
- 2 Q. I'm sorry. What's her name?
- 3 A. Shanice.
- 4 Q. Can you spell that?
- 5 A. S-H-A-N-I-C-E.
- 6 Q. Evans?
- 7 A. Yes.
- 8 Q. And does she have a phone number?
- 9 A. I don't -- I don't have no contact with her.
- 10 Q. Okay. Where does she live?
- 11 A. I don't have no contact with her.
- 12 Q. She was your cousin?
- 13 A. Yes.
- 14 Q. Did she live in the same state you lived?
- 15 A. She was actually -- last time I heard, she was living in
- 16 North Carolina.
- 17 Q. North Carolina?
- 18 A. Yes.
- 19 Q. But back then she lived in the same state you lived?
- 20 A. No, she lived in North Carolina.
- 21 Q. In North Carolina.
- 22 A. Yes.
- 23 Q. Where did you live?
- 24 A. I live in Jersey. New Jersey.
- 25 Q. In New Jersey?

1 A. Yes.

2 Q. So at some point prior to you asking your sister to take
3 the car down to South Carolina, for some number of weeks
4 and/or a month, she had had your car before this and y'all
5 had got in an argument about you getting it back.

6 A. Uh-huh.

7 Q. And that was a big deal.

8 A. Yes.

9 Q. So you had to go to North Carolina and get your car
10 back?

11 A. Yes.

12 Q. And then you got it back into your custody.

13 A. Yes.

14 Q. And during the same period of time where you're fighting
15 over this same silver Honda -- and describe this Honda for
16 me.

17 A. It's silver, coup, tints.

18 Q. Tints?

19 A. Yes.

20 Q. And what's tints mean?

21 A. Dark windows.

22 Q. Tinted windows?

23 A. Yes.

24 Q. And what color is the car?

25 A. Silver.

1 Q. Silver?

2 A. Yeah.

3 Q. And how many doors does it have?

4 A. Two.

5 Q. Where is the car now?

6 A. Honda.

7 Q. During the same period of time then you get information
8 that your cousin may be coming after the car?

9 A. Yes.

10 Q. And you don't have any direct contact with your cousin
11 at this point after the altercation, do you?

12 A. No.

13 Q. Well, does your sister have any direct contact with your
14 cousin?

15 A. No.

16 Q. And your testimony was that the cousin knew that your
17 sister had the car?

18 A. She -- she knew where my sister lived.

19 Q. Lived.

20 A. Yeah, and she knew that I'd like -- she knew I didn't
21 have the vehicle. It was possible that she would call Honda
22 and let them know.

23 Q. How would your cousin, to whom you have no direct
24 contact, have the information that you had sent your car with
25 your sister down to South Carolina?

1 A. You asked me if I had contact with her now and I said
2 no.

3 Q. Well, at the time did you tell her---

4 A. The only contact me and her -- I mean, during the --
5 during the time of all this, I mean, I had contact with her
6 then, but I don't have contact with her now.

7 Q. And I don't mean to be confusing; I'm just confused. So
8 back then after you had the altercation where she tries to
9 basically steal your car -- you have to get the police
10 involved. You don't have that report, do you?

11 A. No.

12 Q. And you get your car back. Then after that you continue
13 to have the cousin -- contact with this cousin who tried to
14 steal your car. So you told her your sister had it in South
15 Carolina?

16 A. No. No. No.

17 Q. Then how or why would she think from North Carolina,
18 while you lived in New Jersey and your sister lived in South
19 Carolina, that she would have the car?

20 A. Because this wasn't anything new like me -- that's my
21 sister. Like sometimes we would switch cars or I would drive
22 like -- this is something that we did occasionally. This
23 wasn't nothing that just randomly happened.

24 Q. So you would randomly switch cars, not just because your
25 car was being repossessed.

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1 A. Yeah.

2 Q. But that was the reason this time you switched.

3 A. Yes.

4 Q. But other times you'd switch it for what reason?

5 A. If something went wrong with the vehicle that she had, I
6 would let her have my car until we was able to get her
7 another vehicle. My sister actually doesn't own a car, so my
8 mother was always letting her have her car. So if anything
9 goes wrong with the vehicle that she had, she would have my
10 car for awhile until things got better.

11 Q. So you called up your sister and said, "Listen, I think
12 the cousin, who tried to steal my car who got into an
13 altercation with me and the police had to respond, is going
14 to figure out that you have my car down in South Carolina,
15 and how would she know the car wasn't in New Jersey?

16 A. I don't know.

17 Q. And was it something special about this one car that she
18 wanted so desperately?

19 A. It's not the car parts. It's more of something that me
20 and her had going on, but that -- her deal with the car had
21 -- it was a ways of her harming me so she knew that that
22 would -- it would get to me, so...

23 Q. Wouldn't it get to her more if she took the car you were
24 driving?

25 A. Excuse me?

1 Q. Wouldn't it get to her more if she took the car you were
2 driving at the time?

3 A. It wasn't personally my car, so, no.

4 Q. So you call your sister up and you tell her, "Please
5 hide the car"?

6 A. I never said, "Hide the car." I told her don't have it
7 at her house.

8 Q. Don't have it at her house.

9 A. Yes. My cousin knew where she lived, so if Honda came
10 looking for it they would go look at where she lived, and if
11 the car was there, then they would take it. So if they
12 couldn't find it there, then it would be like a---

13 Q. I'm confused. I thought you told her to put the car at
14 another person's house because of your cousin, but it was
15 because of Honda. And how on earth would---

16 A. It's the same... What I told her was to not have the
17 car at her house because my cousin would inform Honda -- she
18 knows where she lives, so she would inform Honda of where the
19 vehicle was and my sister was.

20 Q. I just want to put you on notice that when we got these
21 records earlier this week we contacted the Honda Corporation.
22 Okay?

23 A. Okay.

24 Q. And we talked to them about the contact they had with
25 you. Okay?

1 A. Okay.

2 Q. And you would agree that you purchased this car I
3 believe in 2008?

4 A. Uh-huh.

5 Q. And that during that time period you made multiple
6 payments on it?

7 A. Uh-huh.

8 **The Court:** You need to say yes or no.

9 **The Witness:** Yes.

10 By Ms. Campbell:

11 Q. According to the Honda people, you were making payments
12 up to this point. At one point they told you -- they sent
13 you a delinquency letter, but that was over a year or right
14 around a year before all this happened. Since then you had
15 made multiple -- one, two, three, four, five, six, seven,
16 eight, nine, ten, eleven, twelve, thirteen payments prior to
17 this murder occurring. Would you disagree with that?

18 A. No.

19 Q. And during that time, although you were back a little
20 bit, you were making payments on that and they didn't send
21 you any letters of repossession.

22 A. They did.

23 Q. According to the Honda people, you said earlier they
24 just called you up.

25 **Ms. Shurling:** Your Honor, objection.

1 **The Court:** Sustained. You can't testify about the
2 Honda people.

3 By Ms. Campbell:

4 Q. You said earlier that they sent you letters?

5 A. They sent letters to me, yes.

6 Q. Okay. According -- or would you disagree with the fact
7 that the first time they sent you any notice of repossession
8 was on August the 28th of 2009---

9 **Ms. Shurling:** Objection, Your Honor. She's testifying
10 from documents and there's no one here to verify---

11 **The Court:** Overruled. She's asking her a question.

12 **The Witness:** Can you repeat the question, please?

13 By Ms. Campbell:

14 Q. Uh-huh. Would you disagree with me that the first time
15 Honda, the loan corporation, how ever you want to
16 characterize it, sent you a repossession notice was on August
17 the 28th of 2009?

18 A. I don't remember the first time they sent one. I just
19 know that I was getting letters from them.

20 Q. Okay. Would you agree that August of 2009 is after May
21 of 2009?

22 A. (No response.)

23 **The Court:** Is that a yes?

24 **The Witness:** You said after? I believe that May comes
25 before August.

1 By Ms. Campbell:

2 Q. Okay. And finally just a couple more questions and I'll
3 sit down. You testified earlier that the reason you got the
4 car back was because you were going to -- you were caught up
5 on your payments and had the money to make the payments?

6 A. Yeah.

7 Q. And that would include the payments for May? You had
8 money for them?

9 A. For May? Uh-huh.

10 Q. June.

11 A. Uh-huh.

12 Q. July?

13 A. Uh-huh.

14 Q. And August?

15 A. How -- I had the money. I'm not sure what all the dates
16 are or anything, but I had the money for it, yes.

17 Q. And after May of 2007 -- and you don't remember exactly
18 when she brought the car back, I don't believe, do you?

19 A. I didn't have the car in May 2007.

20 Q. I'm sorry. In 2009. I apologize. I'm sorry. After
21 May of 2009 do you remember exactly when she brought the car
22 back in 2009?

23 A. No, I don't remember.

24 Q. Could it have been, say, early June, June 8th or 9th?

25 A. I don't remember the exact date.

1 Q. Okay. But after that, when you caught up and had the
2 money to make the payments - and that's why she brought it
3 back - that you only made one more payment on that car and
4 then you were given the repossession notice.

5 Ms. Shurling: Objection, Your Honor. She's testifying
6 from documents not provided to the defense and not
7 authenticated by anyone from Honda.

8 The Court: All right. She's asking her a question.
9 By Ms. Campbell:

10 Q. Would you agree with that?

11 A. Could you repeat the question, please?

12 Q. That after the car was returned to you, assuming it's
13 early June, that after that -- and you've testified earlier
14 it was because you wanted the car because you could make the
15 payments.

16 A. Uh-huh.

17 Q. That you only made one more payment before the
18 repossession notice was given.

19 A. I actually had spoken to Honda and they basically --
20 when I had the money to pay them, they basically didn't want
21 the money. They just wanted the car back. So I still kept
22 it for awhile after that.

23 The Court: Anything further, Ms. Shurling?
24
25

Redirect Examination

2 By Ms. Shurling:

3 Q. Rotania, do you have any idea what documents she's
4 talking about in her hand?

5 A. No.

6 Q. At the time you gave your car to your sister, to your
7 knowledge were you behind on your car payments?

8 A. Yes.

9 Q. And at some point did you have to catch up---

10 A. Yes.

11 Q. ---on your payments?

12 A. Yes.

13 Q. Do you have any knowledge of the internal workings of
14 Honda Finance and how they keep their records?

15 A. No.

16 Q. Do you know whether or not if you paid three or four
17 payments at one time ---

18 A. Yeah, I remember.

19 Q. Let me finish.

20 A. Okay.

21 Q. Do you know whether Honda would record those as
22 individual monthly payments or whether they would show it as
23 having all been paid at one time?

24 A. No, I don't.

25 Q. You don't have any idea how they keep their records, do

1 you?

2 A. No.

3 Q. When you got caught up on your payments, you asked your
4 sister to bring the car back; right?

5 A. Yeah.

6 Q. Now, let's talk about this angry cousin for a minute.
7 At some point was she trying to get you to let her take over
8 the car payments or something? What was the dispute?

9 A. Basically she had had the car and she wasn't making the
10 payments. So during that time I didn't have the car
11 physically, but I was paying for it and that's -- and
12 basically she took my car and she had -- she was living in
13 North Carolina, but I didn't have -- I didn't know where she
14 lived at. So she had my car there, and I was making the
15 payments. So I wanted my car because I'm paying for it and
16 I'm not driving it. So that was the thing with...

17 Q. How did she come to have possession of your car? How
18 did she get your car?

19 A. She had used it.

20 Q. You loaned it to her?

21 A. Yes.

22 Q. Okay. And when you loaned it to her, had she promised
23 to make the payments while she had it?

24 A. Yes.

25 Q. Did she make any payments?

1 A. Maybe one.

2 Q. So if she'd made a payment, then Honda would have had a
3 record of her making---

4 A. A payment.

5 Q. ---one of the payments. Correct?

6 A. I guess -- Yeah, I guess they would probably not have it
7 under her name, but they'd probably have like whatever card
8 that she used or something of that nature.

9 Q. Let me keep going. If Honda went looking for your car
10 in New Jersey and couldn't find it, then they would have
11 right there in their file a record of someone else that had
12 made a payment on your car at some point. Right?

13 A. I guess.

14 Q. Okay. So, once again, your concern was that if your
15 cousin had the opportunity to, she would tell Honda where
16 they could find their car.

17 A. Yes.

18 Q. Because she was mad at you because you took the car
19 back.

20 A. Yes.

21 Q. And you knew that she'd made at least one payment on it.

22 A. Yes.

23 Q. So Honda had some contact information for her; they
24 would have.

25 A. She would actually call into Honda. She had my

1 information, so she would actually call into Honda at times,
2 yes.

3 Ms. Shurling: Okay.. A moment's indulgence. Nothing
4 further, Your Honor.

5 The Court: All right. Anything?

6 Ms. Campbell: No, sir.

7 The Court: All right. You may step down. Call your
8 next witness, please.

9 Ms. Shurling: Your Honor, we would call Rosa Grenald
10 Hackshaw.

11 The Court: Y'all step up. Y'all come up here just a
12 second. I want to ask you a question.

13 (Whereupon, a bench conference was held.)

14 The Court: Are you the witness?

15 Mrs. Hackshaw: Yes.

16 The Court: Go over here.

17 Mrs. Hackshaw: Oh, excuse me.

18 (Whereupon, a bench conference was held.)

19 The Court: All right. Ms. Pendergrass, if you would,
20 please, ma'am.

21 Rosa Grenald, after being duly sworn, testified as
22 follows:

23 The Clerk: Please have a seat and state your full name
24 for the record.

25 The Witness: My name is Rosa Grenald.

Direct Examination

By Ms. Shurling:

Q. Rosa, when I called you Ms. -- pardon me, Ms. Grenald. I called you Rosa Grenald Hackshaw, but you actually go by your maiden name?

A. Yes.

Q. Okay. My apologies. Rosa Grenald. Would you spell your last name?

A. G-R-E-N-A-L-D.

Q. Is your sister Rotania?

A. Yes, she is.

Q. Okay. Where are you originally from?

A. Plainville, New Jersey.

Q. What brought you to South Carolina?

A. College.

Q. Where did you go to school?

A. Benedict College.

Q. Right here in Columbia?

A. Yes.

Q. Okay. And does your sister, the rest of your family, still live up in New Jersey?

A. Yes.

Q. Did there come a time early in 2009, Spring of 2009 sometime, when you went home for a visit?

A. Yes.

1 Q. And while you were there, did your sister ask you to do
2 her a favor?

3 A. Yes.

4 Q. What was that favor?

5 A. Just to hold her car until she could catch up on her car
6 notes. It was behind in payments.

7 Q. Now, what car had you driven up to New Jersey?

8 A. A black Honda Accord.

9 Q. Who does that car technically belong to?

10 A. My mother.

11 Q. Your mom?

12 A. Yes.

13 Q. Okay. So your sister asked you to leave y'all's mom's
14 black Honda there and take her silver Honda back to South
15 Carolina?

16 A. Yes.

17 Q. Okay. And you did that for her?

18 A. Yes.

19 Q. After you'd had the car in South Carolina for a little
20 while, did she contact you with additional instructions about
21 the car?

22 A. Yes, she did.

23 Q. Tell us, if you will, please, what, other than bringing
24 the car to South Carolina, Rotania asked you to do?

25 **Ms. Campbell:** Objection, Your Honor. Hearsay.

1 **The Court:** Sustained.

2 By Ms. Shurling:

3 Q. Until you spoke with your sister again about the car,
4 where were you keeping it?

5 A. At my apartment where I stayed, where I lived.

6 Q. Okay. And subsequently did you have reason to move it?

7 A. Ma'am?

8 Q. Did you subsequently keep for awhile -- quit keeping it
9 there at your apartment?

10 A. Did I keep or quit?

11 Q. I'm sorry. I'm not being clear. Did there come a
12 time---

13 A. Uh-huh.

14 Q. ---when you had reason to not keep it right there at
15 your apartment?

16 A. Yes.

17 Q. Okay. And at that point did you ask a friend of yours
18 to keep the car?

19 A. Yes.

20 Q. Who was the first friend you asked to keep it?

21 A. Shanelle Andrews.

22 Q. Okay. And does Shanelle Andrews have a car of her own?

23 A. She does now.

24 Q. Did she then?

25 A. No.

1 Q. Okay. So she didn't have a vehicle she could switch
2 with you?

3 A. No.

4 Q. So if you left the little silver Honda at her house, you
5 weren't going to have wheels; right?

6 A. Yes.

7 Q. How long did you leave it with her?

8 A. Not even a whole day.

9 Q. Okay. And while you left it with her, were you looking
10 for somebody else to leave it with?

11 A. Yes, I was going -- yes.

12 Q. And what was your criterion for picking somebody else
13 out?

14 A. So I could have a car to get back and forth to work.

15 Q. Okay. So you were looking for someone else you could
16 switch cars with.

17 A. Yes.

18 Q. Okay. And who did you ultimately ask to switch cars
19 with you?

20 A. My coworker, Shaquenda.

21 Q. Okay. And as you were discussing that with her - and we
22 can't get into conversations you had with her - but did the
23 possibility develop that she might actually keep the car and
24 take over the payments?

25 A. Yes.

1 Q. She had an interest in doing that?

2 A. Yes, she did.

3 Q. Did you end up leaving the car with her a little bit
4 longer than you originally thought you would?

5 A. About -- yes.

6 Q. Okay. But she worked with you at -- what is it? Home
7 Depot?

8 A. Home Depot.

9 Q. Okay. She worked with you at Home Depot?

10 A. Yes.

11 Q. She was actually your supervisor?

12 A. Yes.

13 Q. So if she'd wanted the car back any sooner, she could
14 have just asked you to switch it back sooner?

15 A. Yes.

16 Q. Okay. And there came a time when you got the car back
17 from her?

18 A. Yes.

19 Q. At that point had you been given reason to believe it
20 was time to take it back to New Jersey?

21 A. Yes. I actually went home. I go home a lot, and I went
22 home, and when I went home my sister asked for her car back.

23 Q. Okay. So when you went on your next trip to New Jersey,
24 you drove the little silver Honda.

25 A. Yes.

1 Q. But you weren't going up there specifically to take the
2 car back.

3 A. No.

4 Q. While you were up there, did you discover that your
5 sister no longer needed you to have it down here in South
6 Carolina?

7 A. Yes.

8 Q. So you left it and brought the black car back here?

9 A. Yes.

10 Q. Can you remember about when that was?

11 A. No. I know -- no, I don't -- I can't recall the exact
12 date.

13 Q. Okay. Now, there came a time when you left Columbia
14 rather abruptly, didn't you?

15 A. Yes.

16 Q. Do you remember the date?

17 A. No.

18 Q. Okay. Was it sometime in the very beginning of June
19 2009?

20 A. Yes.

21 Q. Okay. And you understand that we -- you cannot relay
22 conversations you had with other people from the witness
23 stand.

24 A. Yes.

25 Q. Correct? Okay. At some point on June 8th did you

1 discover that your home had been searched by police?

2 A. Yes.

3 Q. That upset you?

4 A. Yes.

5 Q. Were you pregnant at the time?

6 A. Yes.

7 Q. How far along were you?

8 A. I was only about maybe three weeks.

9 Q. Okay. When you found out about this, what did you do?
10 Go home?

11 A. Yes.

12 Q. Did your husband leave with you?

13 A. Yes.

14 Q. Who is your husband?

15 A. Anthony Hackshaw.

16 Q. How long had y'all been married?

17 A. This November 18th will make it two years.

18 Q. Three years?

19 A. Two..

20 Q. Two?

21 A. Two.

22 Q. Sorry. My hearing is not that fantastic. You have a
23 little girl?

24 A. Yes.

25 Q. What's her name?

1 A. Laila (phonetic).

2 Q. Laila?

3 A. Yes.

4 Q. How old is Laila?

5 A. Seven months.

6 Q. When you were back in New Jersey, did there come a time
7 when you and your husband became aware that he was wanted in
8 connection with a murder case in South Carolina?

9 A. Yes.

10 Q. And what did the two of you do?

11 A. Come back down here.

12 Q. Came back right away, didn't you?

13 A. Yes.

14 Q. And did there come a time when you understood that law
15 enforcement wanted to talk to you about the case and your car
16 or the car that had belonged to your sister?

17 A. I just knew they wanted to speak with me; I didn't know
18 what for.

19 Q. So when you first found out they wanted to talk with
20 you, you didn't have any idea what they wanted to talk to you
21 about.

22 A. No.

23 Q. Okay. And you went in to the police department.

24 A. Yes.

25 Q. And told them essentially what you've told us here

1 today?

2 A. Yes.

3 Q. And at that time did you tell them that you had given
4 your sister her car back?

5 A. Yes. We spoke about it, but they wouldn't -- they
6 didn't listen to what I had to say, but we did speak about
7 it; and that was the only thing we discussed.

8 Q. Okay. You told them why you'd had your sister's car.

9 A. Yes.

10 Q. And you told them that you had taken it home to her.

11 A. Yes.

12 Q. And, well, let me rephrase. You told them you had gone
13 home to New Jersey.

14 A. And I -- yes, and she took her car back. Yes. That's
15 what happened.

16 Q. And that while you were there you had left your car with
17 her.

18 A. Yes.

19 Q. Okay. Were they satisfied with the information you were
20 giving them?

21 A. No.

22 Q. Did the police question you concerning other matters
23 related to the charges against your husband?

24 A. Yes.

25 Q. Did you know anything about any of that?

1 A. No.

2 Q. Did you try to tell them that?

3 A. Yes, I did.

4 Q. They didn't believe you.

5 A. No.

6 Q. They put you in jail.

7 A. Yes.

8 Q. Did you get bond set?

9 A. Yes.

10 Q. What did they set bond on you for?

11 A. \$750,000.

12 Q. And you were in your first trimester of pregnancy?

13 A. Yes.

14 Q. How long did you sit in jail?

15 A. Two months.

16 Q. Who is your lawyer?

17 A. Eleanor Cleary.

18 Q. And did Ms. Cleary eventually get you a hearing -- first
19 off, the judge that set the bond at \$750,000 was a magistrate
20 judge?

21 A. Yes.

22 Q. And Ms. Cleary eventually got you in front of a circuit
23 court judge?

24 A. Yes.

25 Q. And what did the circuit court judge reduce your bond

1 to?

2 A. \$10,000.

3 Q. Okay. Was it 10 or 15?

4 A. I -- I'm not sure. I think -- I thought it was 10. I'm
5 not sure.

6 Q. Okay. In any way, a way long way less than 750.

7 A. Yes.

8 Q. Okay. And you're on bond now?

9 A. Yes.

10 Q. Okay. Have you told law enforcement the truth about
11 your sister's silver Honda?

12 A. Yes, I have.

13 Q. Now, while you and your husband had the car---

14 A. Yes.

15 Q. ---before you left it with other friends temporarily---

16 A. Uh-huh.

17 Q. ---did your husband drive it some?

18 A. Yes, he drove it also.

19 Q. He drove it to work some, didn't he?

20 A. Yes.

21 Q. He drove it to physical therapy some, didn't he?

22 A. Yes.

23 Q. You both drove it?

24 A. Yes.

25 Q. So you didn't make any attempt to conceal to law

1 enforcement the fact that there had been a time period when
2 you and your husband were using your sister's silver Honda.

3 A. No.

4 Q. Did you try to be cooperative with law enforcement about
5 this case?

6 A. Yes.

7 Q. When you were being interviewed by -- well, first off,
8 who interviewed you? Was it Investigator Reese?

9 A. Yes.

10 Q. Did he listen to you when you tried to talk to him?

11 A. Not -- no. He heard what I had to say, but he wasn't
12 listening. I wasn't saying what he wanted to hear. That's
13 how I took it.

14 Q. Okay. Did he yell at you?

15 A. No.

16 Q. Okay. Fair. He didn't yell at you.

17 A. No.

18 Q. Did he keep asking you the same things over and over
19 again?

20 A. Yes.

21 Q. Did you have the impression he just didn't believe you?

22 A. Yes.

23 Q. Okay. Have you ever lied to law enforcement about
24 anything you know about this case?

25 A. No.

1 Q. And if I'm being redundant, I'm sorry, but how old is
2 your little girl now?

3 A. Seven months.

4 Q. So your husband was in jail when she was born?

5 A. Yes.

6 Q. Has he ever even gotten to see her?

7 A. Pictures.

8 Q. He's never gotten to see his child in the flesh.

9 A. No.

10 Q. Never gotten to hold her.

11 A. No.

12 Q. A moment's indulgence. Ms. Grenald, when you were
13 interviewed by Investigator Reese, your lawyer, Eleanor
14 Cleary, was with you---

15 A. Yes.

16 Q. ---during that interview, wasn't she?

17 A. Yes, she was.

18 Q. So if you were cooperative and tried to answer
19 questions, she's your witness to that; right?

20 A. Yes.

21 Ms. Shurling: Thank you. No further questions.

22 The Court: Anything?

23 Ms. Campbell: Yes, sir.

24

25

Cross-Examination

1
2 By Ms. Campbell:

3 Q. Ms. Grenald, how long had y'all been living at the
4 Brighton Hill apartment complex?

5 A. Well, me personally, I have -- I was living there about
6 -- this was '09. I didn't move in when he moved in, so I'm
7 trying to remember.

8 Q. Yeah, I know.

9 A. I probably was living there going on a year.

10 Q. Going on a year?

11 A. Yes.

12 Q. And was Mr. Hackshaw, your husband, there the entire
13 time, too?

14 A. No.

15 Q. And when did he move in?

16 A. I don't know.

17 Q. You don't remember?

18 A. No.

19 Q. Would it have been that same year of 2009 when all this
20 happened?

21 A. That he moved in? No.

22 Q. He would have moved in the year before?

23 A. He didn't move in when I was with him. He was already
24 residing there.

25 Q. He was already residing there. I mixed that up.

1 A. Yes.

2 Q. He was already residing there, and you moved in with
3 him.

4 A. Yes.

5 Q. Okay. Was your apartment on the first or second floor?

6 A. The third floor.

7 Q. The third floor?

8 A. Yes.

9 Q. Does it have a balcony?

10 A. No.

11 Q. Did it have a hallway kind of out in the front where you
12 can see down?

13 A. Yes.

14 Q. And if you were down in the parking lot or down below,
15 could you see up to where your entrance is to your door?

16 A. No.

17 Q. Let me ask you this. Back then, turning your attention
18 first to April the 23rd of 2009, do you remember that day?

19 A. No.

20 Q. Were you home that day?

21 A. I don't -- I can't -- I don't know.

22 Q. Did you ever hear anything about a shootout that
23 occurred between somebody right in front of your apartment
24 and some other people in the apartment complex?

25 A. Yes.

1 Q. In fact, your neighbor down below, I think Ms. Morgan,
2 one of the bullets actually went into her apartment, didn't
3 it?

4 A. Yes.

5 Q. And you weren't home when that occurred?

6 A. I can't -- I don't remember that whole day because that
7 day I did -- I don't remember the whole day of the incident
8 or what time it happened, but that day I know I did pick up
9 relatives from out of state, so I'm not sure.

10 Q. So you may have been -- relatives at the airport or...

11 A. Yes, airport.

12 Q. Okay. But are you saying you don't remember whether or
13 not you were home during the shooting?

14 A. Yes, because I didn't hear the shooting.

15 Q. You didn't hear the shooting.

16 A. No.

17 Q. You may have been home; you may not.

18 A. Yes.

19 Q. Was your husband home during the shooting?

20 A. Yes.

21 Q. Okay. It's unusual for your husband to have friends
22 over?

23 A. We didn't have a lot of company at our house, yes.

24 Q. You didn't have a lot of company at your house?

25 A. No.

1 Q. Okay. Did you know Ms. Nina who lived downstairs?

2 A. Yes, I did.

3 Q. And did you know a young woman named Karen Moore?

4 A. Yes, that was my next-door neighbor.

5 Q. And sometimes on occasion would you help out Ms. Gordon
6 and go down and watch her kids if she had to run an errand?

7 A. I only did it one time for her.

8 Q. And do you remember what date that was?

9 A. I don't remember the date.

10 Q. If I told you it was May the 20th of 2009, would you
11 disagree with that?

12 A. I wouldn't disagree because that's the -- I only watched
13 -- I only baby-sat for her for one day. That only happened
14 once.

15 Q. And was that the day that she ran up to Wendy's to get
16 them some lunch?

17 A. I guess, yes.

18 Q. Do you remember while you were there with her that day
19 your husband calling you on the phone?

20 A. Yes.

21 Q. And do you remember him telling you to stay put or he
22 was mad at you about where you were?

23 A. No. He didn't tell me to stay put.

24 Q. What did he tell you?

25 A. We argued.

1 Q. You argued?

2 A. Yes.

3 Q. And why was he mad at you that day?

4 A. He was mad because when he called my phone the first
5 time I didn't answer.

6 Q. And do you know exactly what time of day that was?

7 A. No, I do not.

8 Q. Did he give you any instructions that you remember?

9 A. No.

10 Q. Where was your husband supposed to be that day?

11 A. He had -- supposed to have went to work and physical
12 therapy.

13 Q. Do you remember what your husband was wearing that
14 morning?

15 A. No.

16 Q. Was it unusual for him to wear a hat or a cap?

17 A. Was it unusual for him to wear a cap?

18 Q. Uh-huh.

19 A. No.

20 Q. In fact, he wore one on most days, didn't he?

21 A. Yes.

22 Q. And that day when he went to work, what car did he drive
23 the day on May the 20th, the day you sat with the children?

24 A. My silver Honda or the silver Honda.

25 Q. How long had you had the silver Honda down there on that

1 day, May the 20th? How long had you returned from New Jersey
2 with the silver Honda and you had been keeping the car
3 because -- I guess your testimony was you were hiding it from
4 -- was your sister worried about it getting repossessed? Is
5 that what it is?

6 A. Yes.

7 Q. Okay. And were you hiding it from the people who might
8 repossess it?

9 A. Yes. I wasn't hiding it. I was just -- well, yes.

10 Q. So you and your sister came up with a thing for you to
11 bring the car to South Carolina so they couldn't find it if
12 they wanted to repossess it.

13 A. Yes.

14 Q. Did you ever see the repossession documents?

15 A. No.

16 Q. How long had you had it? I'm sorry. I interrupted you
17 before you even answered. I apologize.

18 A. And I don't -- I can't remember how long I had it
19 before---

20 Q. Would it have been days or weeks or months or years?

21 A. Probably weeks.

22 Q. Weeks?

23 A. Or -- yeah. About a month of weeks, yeah.

24 Q. What was the plan? How long were you going to keep it
25 and hide it from the creditors?

1 A. Until she caught up on her car note. Until she caught
2 up with the -- until she earned enough money.

3 Q. Okay. At some point when you -- your testimony was you
4 received another phone call from your sister?

5 A. Yes.

6 Q. Without going into what she said to you, as a result of
7 that you felt it necessary to keep the car somewhere other
8 than your home.

9 A. Yes.

10 Q. And by coincidence, that just happened to be the day
11 after you sat for Ms. Gordon's children on the 20th, isn't
12 it?

13 A. Yes.

14 Q. The very next day is when you felt that you needed to
15 get that silver Honda away from you, your husband, and your
16 apartment. Is that correct?

17 A. Correct.

18 Q. And so that next day you asked your friend to -- what
19 was your friend's name? Shanelle?

20 A. Shanelle.

21 Q. Yes. And she was a friend of yours?

22 A. Yes, she is.

23 Q. And you asked Shanelle to keep the car for you. Is that
24 correct?

25 A. No, I didn't ask her to keep it.

1 Q. Okay. I didn't want to miss---

2 A. Well, yes. Yes.

3 Q. Okay. Where does Shanelle live?

4 A. Well, where does she live now or then?

5 Q. Then. I'm just concerned about then.

6 A. Okay. Bent Tree.

7 Q. Bent Tree?

8 A. Yes.

9 Q. And on that day when you went over there, what
10 instructions did you give her about the car and who was to
11 drive it?

12 A. There was no instructions about the car. She could have
13 drove it. I just let her know that I wasn't going to stay
14 there for long because I needed someone to switch with me. I
15 was going to ask a coworker at my job to switch with me so I
16 can get back and forth to work.

17 Q. So you actually told her the reason was because you were
18 hiding the car from your sister's creditor?

19 A. No, I just -- I didn't explain it. I was just like,
20 "Shanelle, I need to keep the car here until I can get
21 somebody to drive it," and she said, "Okay." It wasn't into
22 detail.

23 Q. And you didn't give her any reason, and so at that point
24 were you without a car?

25 A. No. Well, yes.

1 Q. Okay. How did you get the car to her house?

2 A. I drove it there.

3 Q. And then she gave you a ride back?

4 A. Yes.

5 Q. And she didn't ask you any questions about -- say,
6 "Rosa, why do you need me to keep the car at my apartment
7 overnight?" Or anything like that?

8 A. No.

9 Q. And you don't remember telling her not to let anybody
10 drive it unless it's an emergency?

11 A. No.

12 Q. The next day you made contact with I believe one of your
13 coworkers?

14 A. Yes.

15 Q. At Home Depot. Is that correct?

16 A. Yes, ma'am.

17 Q. And then you approached her because she had indicated
18 that she liked the car.

19 A. Yes.

20 Q. And you offered to let her test-drive it kind of.

21 A. Yes, because she was thinking about taking the car notes
22 over if my sister would have agreed to it.

23 Q. If your sister had agreed to it?

24 A. Yeah.

25 Q. Did your sister or you ever contact Honda to see if that

1 would be okay with them?

2 A. No.

3 Q. Did you know how far behind your sister was on the
4 payments?

5 A. Yes.

6 Q. Well, if they were about to repossess the car---

7 A. Uh-huh.

8 Q. ---which has been the testimony here today---

9 A. Yes.

10 Q. ---wouldn't it be a little too late?

11 A. No. I've been -- not -- yeah. No.

12 Q. So at that point you give it to her for the weekend is
13 what you tell her; right?

14 A. Who? Shanelle or Shaquenda?

15 Q. Shaquenda.

16 A. My coworker?

17 Q. Your coworker.

18 A. Yes.

19 Q. And the plan was for her to keep it for a couple of
20 days.

21 A. Yes, for a few days.

22 Q. But then that kept going. Was your silver Honda, the
23 one you had in your possession, was that nicer than her car?

24 A. Yes.

25 Q. A good deal nicer.

1 A. Yes.

2 Q. And she ended up keeping it not just for two days but
3 for the whole next week and then the next week. Is that
4 correct?

5 A. I'm not sure how long she kept it, but I know it was
6 more than two days.

7 Q. Until about June the 30th? Does that sound about right?

8 A. I guess. I don't know.

9 Q. And at that point you got the car back.

10 A. Yes.

11 Q. And then the testimony you had was then that you
12 returned to New Jersey---

13 A. Yes.

14 Q. ---and took the car back.

15 A. Yes.

16 Q. And why did you take the car back at that point sometime
17 after June the 5th but before June the 8th?

18 A. I took -- I went home actually to visit.

19 Q. To visit.

20 A. Yes, my sister.

21 Q. And when you go home to New Jersey, is that a pretty
22 long drive?

23 A. Yes, it is.

24 Q. Yes, ma'am. And it actually is almost a full day's
25 driving, isn't it?

1 A. About ten hours.

2 Q. Ten hours?

3 A. Yes.

4 Q. So a pretty long drive.

5 A. Yes.

6 Q. And at that point when you go up on June the 5th -- you
7 get the car back after June the 5th. Did you go up the next
8 day? Do you remember?

9 A. You're just confusing me. You said once I get it there,
10 did I go back and...

11 Q. I'm sorry. I don't mean to confuse you. Let me start
12 over.

13 A. Okay.

14 Q. I'm sorry. You said that you gave the car to Shaquenda
15 for a period of originally a weekend and then it ends up
16 being a couple of weeks. Is that correct?

17 A. Yes.

18 Q. And you don't disagree with me that you got the car back
19 sometime around June the 5th.

20 A. Yes, I don't disagree with you on that.

21 Q. And so I'm just asking -- you said then you returned the
22 car to New Jersey. Did you drive it up -- was it the next
23 day or a couple of days later is all I'm asking?

24 A. No, it was actually -- once -- that same day.

25 Q. So as soon as you get the car back from Shaquenda, you

1 immediately---

2 A. I was at work. No, we worked the whole day.

3 Q. Okay. I'm sorry.

4 A. Okay.

5 Q. Go ahead.

6 A. I was at work.

7 Q. You were at work.

8 A. Yes. I returned. That's how we switched the cars back,
9 at work.

10 Q. Okay. And so you were off for the next several days.

11 Is that correct?

12 A. Yes.

13 Q. And when were you scheduled to go back to work?

14 A. I believe it was Monday? Monday or Sunday. I'm not
15 sure. I'm not positive.

16 Q. Do you know the date?

17 A. No, I don't know the date.

18 Q. It was a Sunday or a Monday?

19 A. Yes.

20 Q. And did you end up going back to work?

21 A. Yes, I did go back to work when I came back from...

22 Q. So you leave town on that June the 5th after working.

23 A. Yes.

24 Q. And did you work a whole day or a half a day or how did
25 that work that day?

1 A. June 5th?

2 Q. June the 5th.

3 A. I'm not even sure, but I was part-time. So most likely
4 it was a half a day.

5 Q. Okay. Would you have worked the morning half or the
6 afternoon half? How would that have worked?

7 A. I'm not sure.

8 Q. Evening?

9 A. I worked any shift they...

10 Q. They just tell you the hours.

11 A. Yeah, they just gave me the hours.

12 Q. Would you have been working in the daylight hours that
13 day?

14 A. Maybe.

15 Q. And then that day on June 5th, as soon as you get the
16 car back from your friend, Shaquenda, you then immediately
17 leave town and drive the car that you've been hiding now for
18 your sister back to New Jersey.

19 A. I didn't immediately, no.

20 Q. Okay. And I'm sorry. Did you leave that same day?

21 A. Yes, I left the same day.

22 Q. And why did you want to go ahead and get back that same
23 day?

24 A. I didn't want to get it back. I was going home to
25 visit. Oh, why did I want to get back the car that day?

1 That's the only way I could make it home. Shaquenda's car
2 wasn't going to make it to Jersey.

3 Q. Okay. And it just worked out that you could get your
4 car back that day and drive it back---

5 A. Yes.

6 Q. ---and that's why you took it back.

7 A. Yes.

8 Q. Okay. Then deposited it into New Jersey?

9 A. Excuse me?

10 Q. Left it in New Jersey?

11 A. Yes.

12 Q. I'm sorry. If you can't hear me, just let me know. And
13 then you came back down in the black Honda.

14 A. Yes.

15 Q. How long did you stay in New Jersey?

16 A. About a day, two days at the longest. No longer than
17 two days.

18 Q. It takes a day to drive up.

19 A. Yeah.

20 Q. You stayed a day or two days.

21 A. Yeah.

22 Q. And then a day to drive back? Is that fair?

23 A. Not a whole day but, yes, that's fair.

24 Q. And at what point when you got back -- it wouldn't have
25 been on the 5th, the 6th, the 7th or the 8th. Did -- was it

1 shortly thereafter that the police came and searched your
2 home?

3 A. Yes.

4 Q. Was it within two days? Three days? Four days? How
5 long?

6 A. I don't know. I can't recall.

7 Q. Would have been a number of days. It could have been
8 two, could have been three, could have been four.

9 A. Yes.

10 Q. And you've testified earlier that at that point you were
11 so upset the police had searched your house that y'all leave
12 town.

13 A. Yes, ma'am.

14 Q. And had you -- but you'd gone back to work before
15 that---

16 A. Yes.

17 Q. ---and done everything you were supposed to.

18 A. Yes.

19 Q. You're responsible.

20 A. Yes.

21 Q. How did you find out they had gone through your home?

22 A. I was informed that my house was being searched.

23 Q. And who informed you of that?

24 A. My neighbor.

25 Q. Your neighbor?

1 A. Yes.

2 Q. And was that the neighbor that was inside the house?

3 A. No.

4 Q. Was there anyone in your home when the police searched
5 the house?

6 A. Yes.

7 Q. And who was that?

8 A. Sheldon Boykin.

9 Q. Once the police searched your house, did you ever return
10 to it?

11 A. No.

12 Q. And did y'all immediately leave town?

13 A. No.

14 Q. What did you do?

15 A. I went -- I left work and then I went to a friend's
16 house and then I left town.

17 Q. Okay. So that day you were at work when you found out?

18 A. Yes, I was at work.

19 Q. Then you went to the friend's house?

20 A. Yes, and I called my parents.

21 Q. And you called your parents.

22 A. Yes.

23 Q. And who went with you when you left town?

24 A. When I left town? My husband.

25 Q. Your husband?

1 A. Yes.

2 Q. Why did you leave town?

3 A. Because I didn't feel safe down here. I didn't feel
4 safe going back to the house after it had been searched.

5 Q. So you drove through the night?

6 A. Yes.

7 Q. Did y'all drive the same car or separate cars?

8 A. Same car.

9 Q. And did y'all have a second car?

10 A. No, no second car.

11 Q. Just the one?

12 A. Yes, just one car.

13 Q. Did y'all have a green Honda?

14 A. No, never had a green Honda.

15 Q. And you didn't feel safe or anything like that, and then
16 you went back to New Jersey.

17 A. Yes.

18 Q. And y'all stayed with your parent?

19 A. Yes.

20 Q. And at that point you just left South Carolina behind.

21 A. Yes.

22 Q. Did you even call into work and tell them you weren't
23 coming in?

24 A. No, I didn't.

25 Q. After that, do you recall making a phone call to

1 Investigator Reese on June the 14th, 2009?

2 A. No, I didn't.

3 Q. You didn't call him?

4 A. No, I didn't.

5 Q. And you didn't set up an appointment for that next
6 Monday morning to come in and meet with him?

7 A. No, I didn't.

8 Q. To talk about what was going on?

9 A. No.

10 Q. At what point did you find out that there was a warrant
11 out for your husband's arrest?

12 A. I received a phone call.

13 Q. And who did you get a call from this time?

14 A. Anthony's cousin.

15 Q. And where does Anthony's cousin live?

16 A. South Carolina.

17 Q. Do you know his name?

18 A. Aaron Johnson.

19 Q. Aaron Johnson?

20 A. Yes.

21 Q. Do you remember what date you got that phone call?

22 A. No, I don't.

23 Q. Okay. How long was it after you received the phone call
24 that you knew there were warrants did your husband turn
25 himself in?

1 A. I'd say -- we found lawyers and in about -- I'd say
2 about not even longer than a week, I believe.

3 Q. Not even longer than a week?

4 A. Yes.

5 Q. So y'all found lawyers?

6 A. Yes.

7 Q. And you got a lawyer I believe you referred to as Ms.
8 Cleary?

9 A. Yes.

10 Q. Who was your husband's lawyer?

11 A. He first -- I don't -- I don't know his name.

12 Q. You don't know his name.

13 A. No.

14 Q. And I believe at first your husband turned himself in?

15 A. Yes.

16 Q. On June -- on July the 29th, excuse me, and then two
17 days later you turned yourself in.

18 A. Yes.

19 Q. And did you have your attorney with you?

20 A. Yes, I did.

21 Q. And at that point did you make contact -- you, of
22 course, met Investigator Reese?

23 A. Yes.

24 Q. Do you remember meeting Investigator Thomas?

25 A. Yes.

1 Q. And at that point do you remember telling the police
2 that you knew nothing about what you were being arrested for?

3 A. Yes.

4 Q. Did they tell you why you were being arrested?

5 A. They -- not really. I didn't understand, no.

6 Q. Okay. They didn't tell you you were being arrested for
7 obstruction of justice?

8 A. Well, yes. Yeah. Okay. Yeah.

9 Q. And do you remember them asking you about the car?

10 A. Yes, they asked me about the car.

11 Q. And you told them it was a silver Honda, two-door with
12 tinted windows.

13 A. Yes.

14 Q. And you even told them that your car belonged to your
15 sister named Tania.

16 A. Yes.

17 Q. And that's short for?

18 A. Rotania.

19 Q. At that point do you remember the investigators saying
20 that they would like to record an interview with you and get
21 your side of the story?

22 A. No. He questioned me and I told him -- I explained to
23 him there's no need to do that because I have nothing -- I
24 don't have anything to tell you, and my lawyer just felt as
25 though it was best if they couldn't -- you know, they didn't

1 believe me basically, so we didn't go further with the
2 interview.

3 Q. Okay. And that was at your decision-making that you
4 didn't want to be recorded on an interview.

5 A. Yes.

6 Q. When y'all came back to South Carolina I guess the end
7 of July, did you drive the silver Honda back down?

8 A. Yes.

9 Q. Where is the silver Honda?

10 A. Now? Right now? It had got totaled, so the junk yard?
11 I don't know.

12 Q. It got totaled and it's in a junk yard?

13 A. It was in a car accident. I don't know. I can't tell
14 you where it's at right now. I know it was in an accident,
15 and that's it.

16 Q. Did that happen in New Jersey?

17 A. Yes.

18 Q. So if you drove it down here and turned yourself in, how
19 did it get back to New Jersey?

20 A. Drove it back to New Jersey? I didn't drive it back.

21 Ms. Campbell: Thank you, ma'am.

22 The Court: Ms. Shurling?

23 Redirect Examination

24 By Ms. Shurling:

25 Q. I think there might have been a little confusion there

1 at the end. When you and Anthony came back to South
2 Carolina---

3 A. We didn't come back to South Carolina together.

4 Q. You didn't come back together.

5 A. No.

6 Q. Okay. How did you get back to South Carolina?

7 A. I drove with a family friend. I didn't have -- I drove
8 with a family friend.

9 Q. Okay. And how did Anthony get back?

10 A. I believe it was the silver Honda or the black -- yeah,
11 it was the silver Honda.

12 Q. And at some point did someone in the family retrieve the
13 silver Honda?

14 A. My mother.

15 Q. Your mother.

16 A. Yes.

17 Q. Okay. So your mother -- did your mother ride with you
18 and the family friend?

19 A. No.

20 Q. Okay. But at some point your mom came down here and got
21 the silver Honda and took it back to New Jersey?

22 A. No. I'm confused.

23 Q. Okay.

24 A. You asked how did we get down here. We didn't come
25 together to turn ourselves in.

1 Q. Okay. You rode down here with a family friend.

2 A. Yes.

3 Q. You weren't in the silver Honda.

4 A. No, not at all. No.

5 Q. Who drove the little silver Honda back to South
6 Carolina?

7 A. My mom.

8 Q. Your mom.

9 A. Yes.

10 Q. And then your mom, when she went home---

11 A. She drove it back.

12 Q. Back.

13 A. Yes.

14 Q. To New Jersey.

15 A. Yes.

16 Q. How did Anthony get down here?

17 A. My mother.

18 Q. He rode with your mother.

19 A. Yes.

20 Q. Thank you for the clarity. Sorry I couldn't think of a
21 better way to ask that. Forgive me. All right. Now, when
22 you were being interviewed by Investigator Reese, was he rude
23 to you?

24 A. Yes.

25 Q. Was he mean?

1 A. He wasn't mean, but he just was saying things that I
2 didn't feel was necessary that was rude.

3 Q. When you tried to explain things to him, did you have
4 the feeling that he was paying attention to you and really
5 listening to what you were saying?

6 A. No.

7 Q. Okay. Now, you had basically told him everything you
8 knew.

9 A. Yes.

10 Q. Did you decline to do a recorded interview because you
11 didn't want to be recorded?

12 A. No. I declined because he wasn't listening to what I
13 was saying.

14 Q. If when he first started interviewing you -- when you
15 first came in, you met each other and you began the interview
16 process, if he had said, "Ma'am, Ms. Grenald, do you mind if
17 I record this interview?" Would you have had any objection to
18 that?

19 A. No.

20 Q. None at all, would you?

21 A. No.

22 Q. And, again, your lawyer was sitting there.

23 A. Yes.

24 Q. Okay. When you first left Columbia on June 8th, had you
25 already made the decision to permanently leave Columbia?

1 A. No.

2 Q. You were upset.

3 A. Yes.

4 Q. You wanted to go home to your mom and dad.

5 A. Yes.

6 Q. You went with your husband.

7 A. Yes.

8 Q. At that point you hadn't decided for sure what y'all
9 were going to be doing, had you?

10 A. No.

11 Q. At some point did it become clear that you weren't going
12 to get to come back to your apartment?

13 A. Yes.

14 Q. Why?

15 A. There was an eviction notice on the door.

16 Q. And did -- how did you find out about the eviction
17 notice?

18 A. Two people. Well, I was informed by a neighbor and also
19 Aaron Johnson.

20 Q. Okay. By a neighbor and by Aaron Johnson?

21 A. Aaron Johnson, yes.

22 Q. Now, Aaron Johnson you referred to as a cousin. At
23 various points he may also be referred to as a brother.

24 A. Yes.

25 Q. Can you explain that? I don't want the jury to get

1 confused.

2 A. Okay. They are cousins, but Aaron Johnson's mother --
3 they're first cousins, but Aaron Johnson's mother raised my
4 husband. So they consider themselves brothers.

5 Q. So it's one of those things where he may call him cous'
6 sometimes, but he's really like his big brother.

7 A. Yeah. He never called him cousin. He always called him
8 brother, but I was trying to -- it's his cousin.

9 Q. You were trying to be technically accurate when you
10 referred to him as cousin---

11 A. Yes.

12 Q. ---because biologically that's what he is.

13 A. Yes.

14 Ms. Shurling: Okay. Moment's indulgence. Nothing
15 further.

16 The Court: All right. Anything---

17 Ms. Campbell: I just have a couple of questions.

18 The Court: ---Ms. Campbell?

19 Recross Examination

20 By Ms. Campbell:

21 Q. She asked you about -- you left. When you left, I
22 believe you said that your house was searched and you were
23 scared. You didn't want to live there anymore.

24 A. Yes.

25 Q. You left that house without any clothes or anything.

1 You just left.

2 A. Yes.

3 Q. Never went back to that apartment.

4 A. No, I never went back there.

5 Q. Didn't go back to see what the police had done or
6 anything like that. You just left.

7 A. No. Yes. I'm saying, yes, I didn't go back.

8 Q. And that was because you were scared because---

9 A. Yes, I didn't feel safe.

10 Q. ---they had searched your home.

11 A. Yes.

12 Q. There was a shootout outside your home on April the 23rd
13 where bullets pierced windows. That didn't scare you?

14 A. I didn't hear any.

15 Ms. Shurling: Objection. Outside the scope of direct,
16 Your Honor.

17 The Court: It's been asked and answered.

18 Ms. Shurling: Pardon me. It's outside the scope of
19 cross.

20 The Court: Anything else?

21 Ms. Shurling: No.

22 Ms. Campbell: No, Your Honor. We just ask that she not
23 be excused. We may recall her at a later time.

24 The Court: All right. You may step down. You are
25 still under the authority of the court. Do not go anywhere.

1 **The Witness:** All right.

2 **Ms. Shurling:** Your Honor, may she go back to the hotel
3 and be with her child and be on phone standby?

4 **The Court:** Yeah. I just want her within -- I don't
5 know how y'all are going to do it. If y'all are not going to
6 get her here, I'll put her in a place where she can. So...

7 **Ms. Shurling:** Oh, no, sir. She'll -- she'll be
8 available with 30 minutes' notice.

9 **The Court:** All right. Yeah, she can go -- yeah.

10 **Ms. Shurling:** Thank you.

11 **The Court:** As long as we can get her back here within a
12 reasonable amount of time.

13 **Ms. Shurling:** Yes, sir. She just has an infant child.

14 **The Court:** Well, I don't want her sitting around doing
15 nothing. Productivity.

16 **Ms. Shurling:** Your Honor, at this time I'd call Eleanor
17 Cleary.

18 **The Court:** All right.

19 **Ms. Shurling:** And my apologies. I don't believe I
20 provided her name to the State. I had not planned on calling
21 her, but she's a member of the bar, so I don't think there's
22 a problem with that.

23 **Ms. Campbell:** May we approach?

24 (Whereupon, a bench conference was held.)

25 **The Court:** Ladies and gentlemen, we -- as I told you,

1 we read to you the names the other day and this is another
2 name that was not provided to us. What -- we already had one
3 witness, Rotania Grenald, but she's from New Jersey and I
4 assume none of y'all knew who she was unless y'all are from
5 somewhere in New Jersey and didn't tell me.

6 But this is Eleanor Cleary. Ms. Cleary is standing
7 right there, and I would inquire at this time: Is there any
8 member of this jury panel or any member of the jury panel's
9 immediate family who's related by blood or connected by
10 marriage or either now or in the past has had a close
11 personal relationship with Ms. Cleary? If so, please stand
12 or raise your hand. All right.

13 **Ms. Campbell:** Your Honor, may we approach about one
14 more issue that's coming up?

15 (Whereupon, a bench conference was held.)

16 **The Court:** Ladies and gentlemen, let me let you step
17 back to the jury room. Please don't discuss the case while
18 you're there. We'll be with you in a few minutes. Well,
19 we're going to do this on the record.

20 (Whereupon, the jury was excused from open court at 5:32
21 p.m.)

22 **The Court:** Ms. Cleary, I have been informed by Ms.
23 Shurling that one of the things that you may be testifying to
24 is the advice that you gave your client. I want you to
25 understand you may -- you may get into the point where you're

1 waiving privilege and you might want to talk about your -- I
2 don't know if your client is still here, but I don't know
3 what you're going to say and what you might be asked. You
4 might be put in a peculiar situation and I can't -- I can't
5 speak to what you might be required to testify to.

6 **Ms. Shurling:** Your Honor, if I might, I can narrow the
7 parameters of what the query will be.

8 **The Court:** Well, but I don't know what Ms. -- have you
9 discussed this with your client?

10 **Ms. Cleary:** No, Your Honor.

11 **The Court:** All right. Well, my suggestion would be is
12 you -- you discuss it with your client. I assume you're
13 going to be back here in the morning if we have to -- you can
14 do what you need to do and what you think is in your client's
15 best interest and -- but -- and I may be way off base. I
16 mean, you know, I don't know what Ms. Shurling is going to
17 ask. She is certainly an experienced attorney and a smart
18 woman and -- but she and I might disagree as to what -- or
19 she and Ms. Campbell might disagree.

20 **Ms. Shurling:** Your Honor, for purposes of her being
21 knowledgeable when she consults with her client, I'd like to
22 state for the record that it is not my intent to ask her
23 about any privileged communication she had with her client.

24 **The Court:** I clearly understand you don't intend to try
25 and do that, but, you know, sometimes people do things that

1 they don't intend to do and they open the door to things that
2 they didn't want to be there, and we're probably not going to
3 know that until it happens.

4 **Ms. Shurling:** We certainly welcome the opportunity to
5 have over the evening.

6 **The Court:** I mean, I'm not stopping you from doing it.
7 I just think it might be in everybody's best interest if she
8 at least tells her client she's going to do this and gets her
9 client to say yea, even though it's not a -- even though you
10 may not get into anything that's a problem.

11 **Ms. Shurling:** Yes, sir, Your Honor. We have five other
12 witnesses here, so---

13 **The Court:** Well, I feel comfortable that you've got
14 enough to keep us busy for awhile. Now, Ms. Cleary has been
15 here for some period of time of this trial. I don't think
16 she's been here the whole time, so I would assume she'll be
17 -- she'll be accessible in the morning if you need her.

18 **Ms. Cleary:** Yes, sir.

19 **The Court:** And probably as long as her client is on
20 some sort of standby, she'll probably be available, too.

21 **Ms. Shurling:** Your Honor, may I inquire as to how late
22 we're planning to go today? Because I do have five people
23 here. Obviously we're not going to---

24 **The Court:** Well, I was anticipating going 'til about 6,
25 but I mean, I don't know who your next witness is, whether

1 it's a lengthy witness, a short witness. I mean---

2 Ms. Shurling: Your Honor, if I can confer, we'll decide
3 who we can get up now quickly.

4 The Court: I mean, there's no magic number because we
5 know we're going to be back here next week, so it's not---

6 Ms. Shurling: Yes, sir.

7 The Court: It's not -- I mean, we could break now.

8 Ms. Campbell: If she could give me dates of birth, I
9 can...

10 The Court: We haven't run those yet?

11 Ms. Campbell: No, sir. We don't have them.

12 The Court: Well, that's going to take ten minutes.
13 There really isn't any point in going....

14 Ms. Campbell: Your Honor, if there are any more
15 witnesses in addition to the two that weren't on the list, if
16 she could just provide those names, maybe we could query the
17 jury all at once.

18 The Court: I kind of like talking to them on an
19 incremental basis.

20 Ms. Shurling: Your Honor, we have -- we have one that
21 would probably take ten minutes, Aubrey Port, who is a
22 manager from Best Buy and can testify to the employment
23 records.

24 The Court: Well, one of the problems is we've got to
25 run a -- we've got to run a rap sheet on them.

1 Ms. Shurling: We---

2 Ms. Campbell: I don't think he's on the witness list I
3 have, Your Honor.

4 Ms. Shurling: Yes, he is, Your Honor. Isn't he?

5 The Court: Nope.

6 Ms. Campbell: No, Your Honor.

7 The Court: All right. Here is what we're going to do.
8 Mr. MacDougall, I don't know what your responsibility is, but
9 I'm going to place this on you. You need to provide -- I
10 assume you know all the witnesses.

11 Mr. MacDougall: I do.

12 The Court: You need to make sure you have -- you have
13 birth dates by 9:00 in the morning of any witness that y'all
14 intend to -- we're going to start at 9:15. I have a meeting
15 at Court Administration at 8:30, but that would -- Ms.
16 Campbell or Ms. McDuffie, y'all can get rap sheets in ten
17 minutes?

18 Ms. McDuffie: Your Honor, it---

19 Ms. Campbell: Depends on the...

20 Ms. McDuffie: ---depends on the number of them.

21 Ms. Campbell: But we should -- we can get several---

22 The Court: Well, if he gives you by everything by 9 in
23 the morning---

24 Ms. McDuffie: We could get started, yes.

25 The Court: And we start at 9:15, would that...

1 **Ms. Campbell:** We could definitely do the first two---

2 **The Court:** You definitely would -- you definitely could
3 have the first one.

4 **Ms. Campbell:** If they tell me the first two---

5 **Mr. MacDougall:** I could have five of them in the next
6 two minutes.

7 **The Court:** All right. Well, just so they can get that
8 done. Anybody you're going to call---

9 **Ms. Shurling:** Yes, sir.

10 **The Court:** ---this is your last call.

11 **Ms. Shurling:** Yes, sir.

12 **The Court:** Give me the names so we can query the jury.

13 So give me a list in the morning so when you come back...

14 All right. Anything else? All right. Mr. Hollis, I guess
15 this will be your last day, so bring the jury back in. Mr.
16 Hollis informed me he didn't want to work tomorrow. How late
17 was I going on Friday afternoon because he didn't want to
18 work, so we now have shamed him into being here.

19 (Whereupon, the jury was brought into open court at 5:39
20 p.m.)

21 **The Court:** All right. Ladies and gentlemen, we are
22 going to recess for the day.

23 **Juror:** Thank you.

24 **The Court:** We're going to start back tomorrow morning
25 at 9:15. If you need to notify somebody, you better do it

1 this evening or before you come in tomorrow because we're
2 going to be here next week, at least Monday. I anticipate
3 we'll finish Monday, but I had hoped we'd finish this week.
4 So if you'll go ahead and do that...

5 I'm going to have a deputy walk with you to -- we're
6 getting towards the dark in the evening. I'm going to have a
7 deputy walk with you to -- this is fairly standard procedure
8 when we get into the fall and winter to -- when we work late
9 to have a deputy walk with you to our parking -- I guess all
10 of y'all are parked over there at the city parking garage?

11 **Juror:** Right.

12 **The Court:** So we'll just do that through the end of the
13 trial. Again, don't do anything. You know you've got four
14 solid days in this case, and we don't want to do anything to
15 jeopardize it. So don't discuss the case with anybody
16 tonight or when you come back in the morning. Don't make any
17 independent inquiry. Don't get on the internet or do
18 anything like that.

19 One of the things I am interested in at the end of this
20 trial is y'all -- of all the juries I've observed over almost
21 14 years doing this job, y'all occupy the same seats more
22 than any jury I've ever had. I don't know how y'all manage
23 to file out and file back in... I want to know your secret
24 when this trial over.

25 But, anyway, I thank you for your service up through

1 this -- these four days. Y'all have a nice evening tonight
2 and we'll see you at 9:15. The reason we're starting at 9:15
3 is I've got a meeting at Court Administration at 8:30. So I
4 should hopefully be here by 9, but if y'all want to get here
5 a few minutes early and we're all here, then we'll start as
6 soon as I get back. But I'm under orders of the Chief
7 Justice tomorrow morning. So y'all have a nice evening.

8 Juror: You, too.

9 The Court: Thank you. All right.

10 (Whereupon, the jury was excused from open court for the
11 day at 5:42 p.m.)

12 The Court: All right. Anything? Y'all have a nice
13 evening, and we'll see you tomorrow.

14 (Whereupon, the trial concluded for the day at 5:43 p.m.
15 and resumed the following day, October 29, 2010, as follows.)

16 The Court: All right. Thank y'all. Please be seated
17 if you would. All right. Let me -- let me talk to y'all. I
18 got a note from one of the jurors---

19 Ms. Shurling: Excuse me?

20 The Court: ---Christopher Gaura, who indicates that he
21 and his wife have plans to travel -- and his family have
22 plans to travel out of town this weekend and wants to know
23 how late we're going to work so he can advise his wife
24 accordingly. I had a brief conversation with Ms. Shurling
25 last night because I was -- she had indicated - I think y'all

1 were in the courtroom - that she would like to have some time
2 with her client at some point in time.

3 Deputy Gravlin, I told her I would ask y'all. She's --
4 before her client testifies, she at some point in time would
5 like to have some time, and I don't know how we're going to
6 do it here today, but I told her I would ask y'all if she
7 could meet with him in a jury room rather than---

8 Deputy: We can do that.

9 The Court: I think she indicated Mr. Thompson would be
10 there---

11 Ms. Shurling: Yes, sir.

12 The Court: ---and Mr. MacDougall as well. So if we can
13 accommodate her---

14 Ms. Shurling: Thank you.

15 Deputy: You can meet right back here.

16 Ms. Shurling: In the cell?

17 Deputy: Yeah. We'll keep it open.

18 Ms. Shurling: Your Honor, if there's an empty---

19 Deputy: If there's an empty jury room, we'll do it in
20 there, too.

21 Ms. Shurling: Thank you.

22 The Court: And I think -- I'm going to -- I think I'm
23 going to feed the jury today so that we can reduce the lunch.
24 But, anyway, Ms. Shurling indicated that she didn't think she
25 would finish the presentation of her evidence today. Now,

1 she did indicate she thought that what she didn't do today
2 would be relatively -- the evidence portion of it would be
3 relatively short on Monday. She might have a couple of short
4 witnesses. I don't know what y'all are doing on reply.

5 **Ms. Campbell:** Yes, sir. That would be our only
6 concern. If she could just tell us basically what's going to
7 go on Monday, we could possibly anticipate---

8 **The Court:** Well, she probably doesn't know until we get
9 further in the day.

10 **Ms. Campbell:** Yes, sir.

11 **The Court:** But y'all can talk at the end of the day,
12 but I -- because we're going into next week, there's no
13 reason to keep this jury here late today. I think I'll tell
14 them that we'll try and leave by 5.

15 **Ms. Campbell:** That's fine, Your Honor.

16 **The Court:** And if he has some real issue -- I'll ask
17 him when he comes back in. If he needs to leave at 4, maybe
18 we---

19 **Ms. Campbell:** That's fine. Whatever is good.

20 **The Court:** But, I mean, I'm not breaking at 1 so he can
21 boogie to the beach or wherever he wants to go, so...

22 **Ms. Shurling:** Excuse me, Your Honor.

23 **The Court:** No. Go ahead.

24 **Ms. Shurling:** Before we bring the jury in, there's an
25 issue that came to mind last evening, preparing for today.

1 Since Mr. Gleaton was unavailable as a witness and, of
2 course, we're going to confirm that by asking him again this
3 morning, but once it's---

4 **The Court:** Has he been brought here? Is he here?

5 **Ms. Campbell:** My understanding is he is. I need to
6 check, but we made arrangements to have him here this---

7 **The Court:** Do you know? Deputy Gravlin, is he...

8 **Deputy:** I'll go check real quick.

9 **The Court:** All right.

10 **Ms. Shurling:** And we're in the process of trying to get
11 a hold of his lawyer, Your Honor, to let him know. But once
12 we've done that, Your Honor, the evidence before the court
13 establishes that in the course of interrogation he was told
14 that if he didn't cooperate and talk that he was making
15 himself an accessory to murder. I think based on that that
16 we would be entitled -- if he were here and testifying, I
17 would be entitled to ask him if he's aware of what the
18 penalties for accessory to murder are and the penalty he
19 could be facing if he were charged with accessory to murder
20 because I believe that would be fundamental to impeaching---

21 **The Court:** Well, if you can get him to answer, I don't
22 have a problem if you ask him that question.

23 **Ms. Shurling:** Well -- and my position, Your Honor, is
24 that if he will not respond to any questions, I need to be
25 allowed to introduce the penalty for accessory to murder

1 through perhaps the testimony of Mr. MacDougall when I'm
2 questioning him about various things. At some point I should
3 be entitled to let the jury know -- with regard to the other
4 cooperating witnesses, we were able to let the jury know
5 through their testimony.

6 **The Court:** Well, what do y'all have to say about that?

7 **Ms. Campbell:** We don't care, Your Honor, if he
8 continues---

9 **The Court:** Why doesn't the Court just take judicial
10 notice of what---

11 **Ms. Campbell:** It carries zero to 15 years.

12 **Ms. Shurling:** No, ma'am. Accessory before the fact to
13 murder would carry the same penalty as murder which is 30 to
14 life.

15 **Ms. Campbell:** Except that he didn't participate in
16 anything before, so he can't be before. The only thing he
17 could be is after.

18 **Ms. Shurling:** Well, that's not what your officer
19 testified. They said that they were alerted to the fact that
20 there were phone calls between my client and Gleaton before
21 and immediately -- immediately before and immediately after.
22 Calls, you know, the day before and---

23 **Ms. Campbell:** I don't want to debate the evidence, Your
24 Honor, but the only thing that he became involved in is
25 having knowledge of it afterwards. So as far as him being

1 any possible accessory, it would be an accessory after the
2 fact. We do object to anything about accessory before the
3 fact.

4 Ms. Shurling: And again, Your Honor---

5 The Court: I can't remember. My recollection was that
6 the officer told him that if he didn't cooperate he could be
7 charged with accessory to murder.

8 Ms. Shurling: He could be.

9 The Court: I don't think he told him he was going to
10 charge him.

11 Ms. Shurling: He could be charged with accessory to
12 murder if he didn't cooperate.

13 The Court: All right. Well, he didn't say before the
14 fact or after the fact.

15 Ms. Shurling: No, sir, but they introduced testimony
16 that they became alerted to Mr. Gleaton's involvement because
17 of a series of phone calls between my client and Mr. Gleaton
18 both before and after the homicide which implies
19 communication concerning this event---

20 The Court: Well, Ms. Shurling, I don't remember any
21 testimony that this fellow had a conversation with your
22 client prior to the incident in May about the incident
23 because he couldn't have. It hadn't occurred. He may have
24 had some conversation with him about something, but he
25 couldn't have had a conversation about that. Maybe he had

1 conversations about the alleged burglary, but I will -- we'll
2 see what happens, but I will take judicial notice and
3 instruct the jury that it's zero to 15 on accessory after the
4 fact to murder. You -- you -- if you feel otherwise, you
5 indicated it on the record and...

6 **Ms. Shurling:** I was going to say just note my
7 objection.

8 **The Court:** All right. Now, did y'all get birth dates?

9 **Ms. Shurling:** Sir?

10 **The Court:** Did y'all get birth dates?

11 **Ms. Campbell:** Yes, Your Honor. We got a number of
12 birth dates. We got three more, I believe, this morning.

13 **The Court:** Well, have y'all had a chance to at least do
14 the first witness?

15 **Ms. Campbell:** They won't tell us who the first witness
16 is. We've inquired. I'm assuming that that was one of the
17 ones they gave us last night.

18 **The Court:** Well, who did you inquire?

19 **Ms. Campbell:** I inquired with Mr. Thompson and I
20 inquired of Mr. MacDougall who they thought their first
21 witness---

22 **The Court:** I don't know if Mr. MacDougall can tell --
23 Mr. Thompson, did you not give them who your first witness
24 is?

25 **Mr. Thompson:** I don't know who our first witness is,

1 Your Honor.

2 Ms. Shurling: Your Honor, it was my understanding when
3 we left the courtroom yesterday that we were going to attempt
4 to get Mr. Gleaton up and out---

5 The Court: That was---

6 Ms. Shurling: ---first.

7 The Court: That was never discussed. I told you to get
8 them all the names by 9:00 this morning.

9 Ms. Campbell: And we had the discussion expressly with
10 you and your co-counsel as to what time you wanted him, and
11 you said after lunch.

12 Ms. Shurling: I then turned around to you in the
13 courtroom and said, "Actually, whatever is most convenient
14 for the marshals," and you said, "I think they think -- would
15 think the morning would be best."

16 Ms. Campbell: But you said after lunch is what you told
17 me---

18 The Court: All right. Look---

19 Ms. Campbell: ---in this courtroom.

20 The Court: It doesn't a matter.

21 Ms. Shurling: It doesn't matter. Our first witness---

22 The Court: Who is your first witness?

23 Ms. Shurling: Leslie McCarver and our second witness
24 will be the other employee from the physical therapy, Paul
25 Lomas.

1 Ms. Campbell: Fine.

2 The Court: Do y'all have -- is there anything on any
3 kind of rap sheet?

4 Ms. Campbell: No, sir.

5 The Court: All right. Let's bring the jurors in.

6 Ms. Campbell: Thank you, Your Honor.

7 The Court: Where is Mr. MacDougall? Has he given the
8 other ones, the other birth dates?

9 Mr. Thompson: To the best of my knowledge, all birth
10 dates have been turned over for all of our witnesses.

11 The Court: All right. Well, if you haven't, it would
12 not be good. Mr. MacDougall, have you given all the
13 birthdays?

14 Mr. MacDougall: I have, sir---

15 The Court: All right. Thank you.

16 Mr. MacDougall: ---everybody except for law enforcement
17 and members of the bar.

18 The Court: You probably ought to do the bar.

19 (Whereupon, the jury was brought into open court at 9:27
20 a.m.)

21 The Court: All right. Thank you, ladies and gentlemen.
22 Sorry to keep you waiting. We had a few housekeeping matters
23 we needed to take up. But let me ask you: Did anybody have
24 any conversation about the case with anyone since we left
25 yesterday, including each other? Was anybody approached by

1 anyone about this case or did y'all conduct any inquiry or
2 read anything in the newspaper or look at anything on T.V.?

3 All right. Well, we got our own housekeeping matters
4 that we want to talk about. I got a note here this morning
5 from Mr. Gaura? Is that how you pronounce it?

6 **Juror Gaura:** Gaura. Yes, sir, Your Honor.

7 **The Court:** Who -- Mr. Gaura is supposed to go out of
8 town with his family today. What time did y'all anticipate
9 you might leave?

10 **Juror Gaura:** We weren't sure. I know this is very
11 important. We were wanting to go somewhere between 4 and 5.

12 **The Court:** All right. Well, how about -- we'll turn
13 you loose and the whole jury sometime between 4 and 5.

14 **Juror Gaura:** Thank you, Your Honor.

15 **The Court:** How is that?

16 **Juror Gaura:** Thank you, Your Honor.

17 **The Court:** A lot of it depends on where we are and
18 where we can break in the -- because we're going to be back
19 here Monday. So there's no point in working 'til 6 or 7 or
20 anything like that. This may be something you like or don't
21 like, but I'm going to keep you here for lunch today and
22 we're going to order lunch in.

23 So when we take a break in another hour, Mrs.
24 Pendergrass will give you a menu from Jimmy Johns. I hope
25 that's something that -- y'all can eat their sandwiches, and

1210
1 that way when we get them at lunch, then we'll take a break
2 and y'all can step back to the jury room and have your lunch
3 and relax a little bit. And then it might be a little
4 shorter lunch but, you know, maybe in 30, 45 minutes we can
5 start back up and proceed. So we will do that at that time,
6 but I'll get you out of here between 4 and 5 and try and do
7 it closer to 4 than 5. If you need to call your family, then
8 you let one of the bailiffs know and we'll give you access to
9 a telephone.

10 **Juror Gaura:** Thank you, Your Honor.

11 **The Court:** Okay. Ladies and gentlemen, as you will
12 recall when we broke yesterday, Mrs. Shurling was in the
13 process of putting forth her evidence in their case. So, Ms.
14 Shurling, I'll ask if you're ready to proceed.

15 **Ms. Shurling:** Thank you, Your Honor. A moment ago I
16 had informed the Court that we would be proceeding with Mrs.
17 Lorraine - pardon me - with the witnesses from Progressive
18 Therapy. Unfortunately, I'm advised by Mr. MacDougall that
19 those witnesses have not yet arrived; they're on their way.
20 So at this point I would call, Your Honor, the witness from
21 the South Carolina Department of Mental Health, Tammy Chahine
22 I believe is how she pronounces her name. She's the records
23 custodian from the Department of Mental Health.

24 **The Court:** All she's here for is for the official
25 records?

1 Ms. Shurling: Yes, sir.

2 The Court: Well, then, that wouldn't be an issue. All
3 right. Are you ready to -- where might she be?

4 Tammy Chahine, after being duly sworn, testified as
5 follows:

6 The Clerk: Please have a seat and state your full name
7 for the record.

8 Court Reporter: Would you spell your last name, too?

9 Direct Examination

10 By Ms. Shurling:

11 Q. Good morning.

12 A. Good morning.

13 Q. Would you state your full name for the record?

14 A. Yes, Tammy Chahine. Last name is spelled C-H-A-H-I-N-E.

15 Q. Thank you. By whom are you employed?

16 A. South Carolina Department of Mental Health.

17 Q. And what department of the Department of Mental Health
18 do you work in?

19 A. Human Resources.

20 Q. Human Resources. So you are involved in the maintenance
21 of records concerning employees.

22 A. Yes, ma'am.

23 Q. Okay. And at my request, the request of my law firm,
24 did you look up the records of Mr. Anthony Hackshaw, the
25 defendant in this case?

1 A. Yes, ma'am.

2 Q. And as a result of that inquiry, were you able to
3 determine when he went to work for Bryan Psychiatric
4 Hospital?

5 A. Yes, ma'am.

6 Q. And what was the date?

7 A. I don't have the date in front of me, but I can just
8 affirm that the State's records are correct. I don't...

9 Q. Records previously provided from the State...

10 Ms. McDuffie: Thank you.

11 Ms. Shurling: Thank you.

12 By Ms. Shurling:

13 Q. And to be honest, I'm not real sure you can tell from
14 this, but you probably can.

15 A. Yes, ma'am. These dates are correct.

16 Q. Yes, ma'am. And when---

17 A. March the 17th, 2007, was the appointment -- first
18 appointment date.

19 Q. Okay. And can you tell from those records when my
20 client quit working for Bryan Psychiatric Hospital?

21 A. June the 11th, 2009.

22 Q. And I use the word quit loosely.

23 A. Separated---

24 Q. He was, in fact, terminated, wasn't he?

25 A. Separated from the department, yes, ma'am.

1 Q. And the records that you have supplied me indicate that
2 he worked through when? He was terminated on June 11th; I
3 understand that.

4 A. Yes, ma'am. Yes, ma'am.

5 Q. But can you tell from those records when the last day he
6 worked was?

7 A. It indicates here that he went on leave without pay in
8 '08 and then he returned in '09 and then was separated from
9 the department in -- on June the 11th of '09.

10 Q. Okay. A moment's indulgence, Your Honor.

11 **The Court:** I assume y'all are introducing those
12 records. Is that correct?

13 **Ms. Shurling:** Sir?

14 **The Court:** You're introducing those records?

15 **Ms. Shurling:** I will in a moment, Your Honor.

16 **The Court:** Oh, okay. All right.

17 By Ms. Shurling:

18 Q. I show what's already been marked as State's exhibit 60.
19 Can you identify that document?

20 A. No, ma'am. I don't have any record of this document.
21 The only thing I have a record of is his personnel file---

22 Q. Okay.

23 A. ---and that wouldn't be included in the personnel
24 record.

25 Q. Okay. Now, you provided me a copy of a letter that was

1 given to my client when he was terminated, and that's in the
2 documents in your hand.

3 A. Yes, ma'am. That's correct. Uh-huh.

4 Q. And what does that letter indicate was the reason for
5 termination?

6 A. On this letter it indicates that he had been absent from
7 work for three consecutive days without reporting in.

8 Q. Beginning June 9th; correct?

9 A. Let me see. Just a moment.

10 Q. I believe that---

11 A. Let me get my glasses.

12 Q. Oh, I'm sorry. I need them, too, as you can see.

13 A. That's no problem. Let's see. He had been absent from
14 work since June the 9th. Yes, ma'am. That's correct.

15 Ms. Shurling: Thank you. Your Honor, at this time I
16 would -- I think it would be sufficient simply to introduce
17 the letter indicating the date of termination. Any
18 objection?

19 Ms. McDuffie: No objection, Your Honor.

20 The Court: So admitted.

21 (Defendant's exhibit 3 was received in evidence.)

22 Ms. Shurling: Thank you for being here. I have no
23 further questions.

24 The Witness: Okay.

25 The Court: Anything from the solicitor?

1 **Ms. McDuffie:** No questions for this witness, Your
2 Honor.

3 **The Court:** All right. Thank, ma'am. You are free to
4 go back to work. Call your next witness.

5 **Ms. Shurling:** Your Honor, we would call Aubrey Port.

6 **The Court:** All right. This is another one that's not
7 on the list.

8 **Ms. Campbell:** None of them are on there.

9 **The Court:** All right. Before we swear him, I need to
10 voir dire the jury. Mr. Port, if you'll stand right there
11 for a minute, please, sir. Ladies and gentlemen, this is Mr.
12 Audrey---

13 **Ms. Shurling:** Aubrey.

14 **The Court:** Aubrey Port, P-O-R-T. Is that correct?

15 **Mr. Port:** Yes, sir.

16 **The Court:** His name was not provided when we questioned
17 you on Monday. So I will inquire at this time, ladies and
18 gentlemen: Is there any member of this jury panel or any
19 member of the jury panel's immediate family who is related by
20 blood or connected by marriage or either now or in the past
21 has had a close personal relationship with Mr. Port or either
22 now or in the past has had an employment or a business
23 relationship with Mr. Port? If so, raise your hand. All
24 right. Thank you, sir.

25 Aubrey Port, after being duly sworn, testified as

1 follows:

2 **The Clerk:** Please have a seat and state your full name
3 for the record.

4 Direct Examination

5 By Ms. Shurling:

6 Q. Good morning, Mr. Port.

7 A. Good morning.

8 Q. Who are you employed by?

9 A. Best Buy.

10 Q. And how long have you worked there?

11 A. Thirteen years. Three years at the Two Notch location.

12 Q. And did you supervise, in the context of your
13 employment, an employee named Ellison Hudson?

14 A. Yes.

15 Q. How long did Mr. -- well, does he still work for you to
16 this day?

17 A. Yes.

18 Q. And do you have firsthand knowledge of how long he has
19 worked for Best Buy?

20 A. I think it's around eight years. He's worked for me for
21 three.

22 Q. Okay. Can you describe for us what his position at Best
23 Buy is?

24 A. He's the loss prevention -- our lead loss prevention
25 person. He's at the front door making sure that our products

Aubrey Port - direct exam by Ms. Shurling

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1 are checked before they leave, make sure everything is paid
2 for, keeps us safe, that kind of thing.

3 Q. Thank you. And your loss prevention employees I believe
4 wear a uniform of some sort?

5 A. Yeah, a yellow shirt and khaki pants.

6 Q. And the yellow shirt does bare some sort of insignia for
7 Best Buy?

8 A. Yes, absolutely. Yeah, it's the Best Buy logo.

9 Q. Okay. If you can identify for me this record.

10 A. Uh-huh.

11 Q. What would that be, sir?

12 A. It's a record of Ellison's clock-in or punch-in and
13 punch-outs at work.

14 Q. Okay. And can you please tell me what that document
15 indicates with regard to his hours at work on May 19th, 2009?

16 A. On May 19th he clocked in at 9:28 a.m. and he clocked
17 out at 4:32 p.m.

18 Q. Thank you. May I take it for just one moment, please?
19 Your Honor, at this time I would move to introduce this
20 document into evidence. Previously it's been provided to the
21 State.

22 Ms. Campbell: No problem.

23 The Court: Any objection?

24 Ms. Campbell: No, sir. I'm sorry.

25 The Court: So admitted. Defendant's exhibit...

1 (Defendant's exhibit 4 was received in evidence.)

2 Ms. Shurling: A moment's indulgence.

3 By Ms. Shurling:

4 Q. Mr. Ellison Hudson, Sr., is a good employee, isn't he?

5 A. Yes. Absolutely.

6 Q. Nice guy?

7 A. Uh-huh.

8 Ms. Shurling: Thank you. No further questions.

9 Ms. McDuffie: Briefly, Your Honor.

10 Cross-Examination

11 By Ms. McDuffie:

12 Q. The record that she just showed you, does it also
13 indicate that he worked on May 20th of 2009?

14 A. I believe so. I would need to see it again.

15 Q. Showing you defense exhibit 4.

16 A. May 20th?

17 Q. Correct.

18 A. Yes, he clocked in at 6:57 a.m. and looks like he
19 clocked out at 3:30.

20 Q. At 3:30. Is there's also a little notation that says
21 L.E. beside that at one point?

22 A. Yeah.

23 Q. And what does that mean?

24 A. I believe that means that he left early. Yeah, that's
25 what I believe it means. That's not something that normally

1 appears on a sheet but...

2 Q. And what time would that indicate that he would have
3 left early on May the 20th of 2009?

4 A. Well, it still indicates that he left at 3:30. The
5 right side of the document is not something that normally
6 shows on the sheets, so I'm just assuming that that's some
7 code for leave early, so...

8 Ms. McDuffie: Thank you very much. No further
9 questions for this witness, Your Honor.

10 The Court: Anything?

11 Ms. Shurling: Nothing further, Your Honor.

12 The Court: All right. Thank you, sir. You may step
13 down. You're free to leave.

14 The Witness: Thank you.

15 Ms. Shurling: A moment's indulgence, Your Honor. Your
16 Honor, at this time we would call Eleanor Cleary to the
17 stand.

18 Eleanor D. Cleary, after being duly sworn,
19 testified as follows:

20 The Clerk: Please have a seat and state your full name
21 for the record.

22 The Witness: Eleanor Duffy Cleary.

23 Direct Examination

24 By Ms. Shurling:

25 Q. Ms. Cleary, what's your profession?

1 A. I'm a lawyer.

2 Q. And were you at some point retained to represent Rosa
3 Grenald?

4 A. Yes, I was.

5 Q. Did you go with Ms. Grenald for an interview at the
6 police department with Investigator Reese?

7 A. Yes. First we met with Investigator Thomas, yes.

8 Q. Okay. When you met with Investigator Thomas, was that
9 earlier in the same day?

10 A. Yes. Yes.

11 Q. Thank you. And at some point in the interview process
12 Investigator Reese joined you?

13 A. Yes.

14 Q. Okay. To your knowledge, had there been any earlier
15 appointments to meet with your client that were not kept?

16 A. No. No.

17 Q. Were you hired by Ms. Grenald while she was still in New
18 Jersey or were you hired after she came back down here?

19 A. She contacted me from New Jersey. She took a couple of
20 days to come up with a retainer and then came down to South
21 Carolina.

22 Q. And that's not uncommon for somebody that suddenly finds
23 himself needing a lawyer, is it?

24 A. Right.

25 Q. So you were involved in communication with her by the

Eleanor Cleary - direct exam by Ms. Shurling

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1 police department from the very beginning.

2 A. Yes. Yes.

3 Q. And as soon as you were retained, did you notify the
4 police department not to have any contact with her except for
5 through you?

6 A. Well, actually when I first had contact with her from
7 New Jersey, I called Detective Reese and told him I was going
8 to be representing her and to make contact through me, and
9 that was a couple of days before.

10 Q. Okay. And for those who might not understand the rules
11 of the game, it is considered highly improper to contact
12 anyone that is represented by counsel without going through
13 their attorney, isn't it?

14 A. Yes.

15 Q. So any communication with Rosa Grenald should have come
16 through you.

17 A. Yes.

18 Q. And you're aware of no earlier appointments that were
19 arranged for her that were not kept.

20 A. No, I'm not.

21 Q. Okay. On the date of the interview that was held, at
22 some point did you advise your client to terminate the
23 interview?

24 A. Yes, I did.

25 Q. And was the reason for not going any further with the

1 interview process because you didn't want your client to be
2 taped?

3 A. No. No. Generally I advise all my clients not to talk
4 to the police. This was an unusual situation because she was
5 pregnant, and she came into my office and did not know
6 anything about the basis of the charge. And so I said that
7 we needed to talk to the police at least to find out what --
8 why she was being charged. And I asked Thomas, Detective
9 Thomas, if -- you know, what kind of bond we were looking at
10 because I'm thinking P.R. bond and he said it would be
11 high---

12 **Ms. Campbell:** Objection, Your Honor, to hearsay.

13 **The Court:** Sustained.

14 **The Witness:** Oh okay. And so I said that we wanted to
15 go ahead and sit down with them in hopes that they would see
16 that she was cooperative and give her a decent bond because I
17 didn't want her to be in jail pregnant.

18 By Ms. Shurling:

19 Q. Okay.

20 A. And so we sat down and talked and she told them that --
21 or I don't know whether it was she told them or I told them,
22 but we relayed that she did, in fact, drive a two-door Honda
23 Civic and that it was in the possession of Tania back in New
24 Jersey and it was -- it just became obvious at some point
25 that they were -- they thought that she was much more

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1 involved and that she knew things that she wasn't telling
2 them, and they showed her a picture of her mother, a big
3 blown-up picture of her mother, and I think that scared her.
4 And I realized that my original purpose for having her talk
5 to them, that was not going to happen. She was not going to
6 get a low bond.

7 So I -- when they stepped out, I guess maybe to get
8 recording equipment, I said, "I don't really think you should
9 talk anymore. This is not helping. It's not going
10 anywhere."

11 Q. Okay.

12 A. "They're not listening."

13 Q. As a general rule, if your client is going to talk to
14 the police, you generally would prefer that it be taped,
15 would you not?

16 A. Most definitely.

17 Q. When you first walked in and presented your client to
18 cooperate, if Investigator Thomas had said, "Ms. Cleary, do
19 you and your client have any objection? I'd like to tape
20 this," would you have objected?

21 A. No, not at all.

22 Q. In fact, you would have welcomed it?

23 A. Yes. Yes.

24 Q. When you first arrived, how would you describe your
25 client's demeanor?

1 A. When we first arrived at the police station?

2 Q. Yes. I'm sorry.

3 A. She was -- she was---

4 Q. That wasn't very clear. I apologize. When she first
5 sat down---

6 A. She was calm. She was calm and relaxed.

7 Q. Calm and relaxed.

8 A. Calm, yeah.

9 Q. Cooperative?

10 A. Yeah.

11 Q. Was she arrogant?

12 A. No, not at all.

13 Q. Combative?

14 A. No, not at all.

15 Q. Difficult?

16 Ms. Campbell: Objection, Your Honor, just to the
17 leading. If she can let the witness testify...

18 The Court: Sustained.

19 The Witness: No. She was -- she appeared clueless and
20 shocked by what she was being told. She was not familiar
21 with the murder that had happened, and I had to Google it to
22 find out, you know -- remember what had happened. And
23 Detective Reese showed her pictures of the deceased that
24 were, you know, very upsetting and insisted that she knew --
25 that Anthony had told her that he had done this and she was,

Eleanor Cleary - direct exam by Ms. Shurling

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1 you know, shaken. She was shaken and---

2 By Ms. Shurling:

3 Q. Was there anything about her behavior or demeanor though
4 at that stage that you would describe as uncooperative?

5 A. No. No. She kept trying to answer the questions
6 saying, "I gave the car to my friend because it was going to
7 be repossessed," and he didn't believe her.

8 Q. And there's no question in your mind that she told them
9 exactly where the car was at that time.

10 A. Oh, yeah.

11 Q. And whose possession it was in.

12 A. Right. Where it was. Well, they also had a rap sheet
13 for Rotania with them. They had information about her
14 family. He had a big stack and they -- you know, they knew
15 -- they had been casing out her mother's house. So, I mean,
16 we knew that they knew where in Plainville, New Jersey, she
17 lived so...

18 Q. Less we give the jury the wrong impression, when you say
19 they had a rap sheet for her, you don't---

20 A. No. I'm sorry.

21 Q. ---mean the sister had any prior record, do you?

22 A. No. Actually what I meant was a background check.

23 Q. Thank you.

24 A. You know, just as your previous addresses and that sort
25 of thing. I'm sorry.

1 Q. Certainly. Not a prior criminal record.

2 A. Right. Right.

3 Q. Okay. But they had run a background check on her.

4 A. Right.

5 Q. So they knew exactly where the sister was, too.

6 A. Yes.

7 Q. Was bond ultimately set in the magistrate's court?

8 A. Yes, it was.

9 Q. What was the bond set for this young woman in
10 magistrate's court?

11 A. \$750,000.

12 Q. \$750,000?

13 A. Yes.

14 Q. When you went in to have bond set, did you become aware,
15 based on representations from the Court, that Investigator
16 Reese had already spoken with the magistrate about the bond?

17 A. Yes.

18 Q. And the magistrate made that clear from the bench.

19 A. Yes.

20 Q. How long did Rosa sit in jail?

21 A. It was -- it was over two months.

22 Q. And, again, this is in the first trimester of pregnancy?

23 A. Yes.

24 Q. Did you eventually get a hearing in circuit court?

25 A. Yes.

Eleanor Cleary - cross-exam by Ms. Campbell

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1 Q. And the circuit court judge reduced that bond from
2 750,000 to what?

3 A. I think it was 15, but it might have been 10. I'd have
4 to look. It was substantially less.

5 Q. Either 10 or 15,000.

6 A. (Witness nodded head up and down.)

7 Ms. Shurling: A moment's indulgence. Nothing further,
8 Your Honor.

9 The Court: Ms. Campbell?

10 Ms. Campbell: May it please the Court?

11 The Court: Yes, ma'am.

12 Cross-Examination

13 By Ms. Campbell:

14 Q. Ms. Cleary, I need to clean up a few little details
15 first. When were you first contacted by Rosa Grenald to
16 represent her?

17 A. I would have to look at my file, but I think it was two
18 days before we turned her in, so it was July 31st.

19 Q. That you turned her in?

20 A. I mean, July 31st we turned her in, so July 29th.

21 Q. Are you comfortable with that day that that's the day or
22 do you need to refer to your notes?

23 A. I know that it was the day that Anthony turned himself
24 in.

25 Q. The day that Anthony turned himself in. Okay. So if

1 it's in the record that that was July the 29th, that would be
2 the day she -- you would comfortable with that. And---

3 **The Court:** I need you to answer the question.

4 **The Witness:** Oh, yes. I'm sorry.

5 By Ms. Campbell:

6 Q. When she contacted you, I believe you just testified
7 that you said she didn't have any idea what was going on.

8 A. She -- she didn't know anything about the murder.

9 Q. She didn't know anything about the murder?

10 A. She knew that they had executed a search warrant at her
11 house.

12 Q. Okay. So she knew about the search warrant that had
13 been executed at her house looking for evidence in some type
14 of crime. Is that correct?

15 A. Right. She just didn't know what obstruction of justice
16 was and why she---

17 Q. She had no clue what was going on as far as why she was
18 being charged with obstruction of justice?

19 A. Right.

20 Q. Okay. And you just testified that she, as far as you
21 knew, had had no prior contact with any law enforcement.

22 A. Right. That's...

23 Q. That's what she told you. She had no clue what was
24 going on. You described her as clueless; is that correct?

25 A. Yeah.

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1 Q. She had no idea what was going on. She had no prior
2 contact with law enforcement. She was clueless other than
3 she knew that a search warrant had been executed at her house
4 which caused her to become scared, I guess, and flee to New
5 Jersey. Right? Did you know that?

6 A. I heard her testify to that, yes.

7 Q. So this is the first time you've been hearing that?

8 A. No. In my notes she had told me that they were going to
9 be evicted and that the search warrant had been executed and
10 she just wanted to go home to her mama.

11 Q. Did she tell you why they were going to be evicted?

12 A. Because they hadn't paid the rent.

13 Q. It wasn't because there was a shooting involving her
14 husband?

15 A. No, she didn't tell me that.

16 Q. She didn't tell you that part. And, in fact, what she
17 did tell you was she did---

18 Ms. Shurling: Objection, Your Honor. Question assuming
19 facts not in evidence.

20 The Court: Well, overruled.

21 Ms. Campbell: Thank you, Your Honor.

22 The Court: This is cross-examination.

23 By Ms. Campbell:

24 Q. So what she did tell you was she clueless. She had had
25 no contact with the police. She didn't know why she was

1 being charged with obstruction of justice, but she was aware
2 that her husband was charged with murder perhaps.

3 A. Yes.

4 Q. Did she ever tell you about the shootout that occurred
5 on her front steps?

6 A. No.

7 Q. And you also just testified that when the police -- when
8 y'all turned her in that day on the 31st when she was
9 clueless that when the police asked her where the silver
10 Honda was, which she admitted she had, she said it was in New
11 Jersey.

12 A. Yes.

13 Q. Did you hear her testimony yesterday?

14 A. Yes.

15 Q. It was driven down here, according to her.

16 A. They had driven it back up.

17 Q. Oh, so they drove it down here and she was aware that it
18 was -- it was an item of interest because her husband had
19 been turned -- had turned himself in on a murder warrant two
20 days prior.

21 A. She did not know the car was the subject until Thomas
22 gave us the arrest warrant that day.

23 Q. So you're saying she had had no contact with her husband
24 about anything in the two days prior.

25 A. She probably had, but I mean, she still didn't know that

1 the car -- that she was being charged with obstruction based
2 on giving the car to Shaquenda.

3 Q. And when she contacted you on the 29th, you then said
4 that she had to get a couple of days together or was it prior
5 to that that she contacted you that she needed the days to
6 get the money to pay you?

7 A. Ask it again.

8 Q. When did she first contact you from New Jersey?

9 A. It would have been the 29th.

10 Q. Okay. So she was still in New Jersey on the day that
11 her husband came down here. Is that correct?

12 A. Yes.

13 Q. And then it took her a couple of days to get the money
14 together, and then she drove herself down here and
15 immediately made contact with you. Is that a fair
16 characterization?

17 A. I don't know whether she drove herself down here.

18 Q. All right. But your testimony is is that then she drove
19 herself down, made contact with you, and then somehow the car
20 ended up back in New Jersey on that same day?

21 A. I don't know how she got down here. I didn't say she
22 drove herself down here.

23 Q. You've been representing her ever since this happened?

24 A. Yes.

25 Q. Did you get discovery in this case?

1 A. Yes.

2 Q. Did you get her phone records?

3 A. Yes.

4 Q. I want to show you what's been marked as State's exhibit
5 number 84. Do you recognize these two pages of her phone
6 records?

7 A. I can't read...

8 Q. I'll get your glasses for you.

9 A. Well, I think I can do it.

10 Q. Are you sure? I'll be glad to get them.

11 A. Okay.

12 Q. You would with agree with me that that reflects her
13 phone records. You're familiar with them.

14 A. Yes.

15 Q. You represent her.

16 A. Yes. Yes.

17 **Ms. Campbell:** Your Honor, at this time we offer State's
18 exhibit number 84 into evidence.

19 **The Court:** Do you need your glasses, Ms. Cleary? Ms.
20 Cleary---

21 **The Witness:** Oh, no. No.

22 **The Court:** ---do you need your glasses?

23 **The Witness:** No, I'm fine.

24 **Ms. Shurling:** Your Honor, I would object. Ms. Cleary
25 is not the records custodian. She can't identify this

1 record.

2 The Court: Well, she just did.

3 Ms. Campbell: She just identified them.

4 Ms. Shurling: She identified what they represent.

5 themselves to be, Your Honor, but she is not an individual
6 employed by the phone company. She -- all she can say is
7 what it says on them. She has no knowledge of how they were
8 generated or by whom.

9 The Court: Well, overruled. She's identified them as
10 the records.

11 Ms. Campbell: Thank you, Your Honor.

12 (State's exhibit 84 was received in evidence.)

13 By Ms. Campbell:

14 Q. State's exhibit number 84 specifically -- again, you
15 testified your client told you she had had no prior contact
16 with law enforcement and had no clue as to what was going on.
17 She was clueless.

18 A. As far as obstruction of justice, yes.

19 Q. As far as the obstruction of justice. No contact with
20 law enforcement.

21 A. Right.

22 Q. That's what she told you; right?

23 A. Correct.

24 Q. I want to refer you to the first highlighted portion on
25 her phone records, and what's the date that's reflected

1 there?

2 A. June 14th, '09.

3 Q. And is that an outgoing call, meaning she made that
4 call?

5 A. Yes.

6 Q. On June the 14th?

7 A. Well, I don't know whether she made it or not. It was
8 made from her phone.

9 Q. Okay. Let's put it that way. Made from her phone there
10 was an outgoing call on June the 14th which you heard the
11 testimony from Investigator Reese when he said he contacted
12 her -- him. Excuse me.

13 A. Yes, I heard that.

14 Q. And she didn't make any contact with you until July the
15 29th of 2009. Is that correct?

16 A. Right.

17 Q. And then she didn't retain you until July the 31st when
18 she drove down here and retained you and turned herself in.

19 A. Right.

20 Q. Okay. So a month and a half earlier on June the 14th,
21 what number did she dial?

22 A. Well, I don't know whether she dialed it or not. She
23 told me she did not dial it.

24 Q. Okay. Well, let me ask you this: What number was
25 dialed from her phone the first time?

Eleanor Cleary - cross-exam by Ms. Campbell

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1 A. 803---

2 Q. Do you want me to get your glasses?

3 A. No. 576-3016.

4 Q. 3016? And are you aware that that's Investigator
5 William Gonzalez's number?

6 A. (No response.)

7 Q. Yes or no?

8 A. No, I'm not.

9 Q. Are you aware that the county sheriff's department's
10 main line is 576-3000?

11 Ms. Shurling: Objection, Your Honor. The prosecutor is
12 testifying.

13 The Witness: No, I'm not.

14 The Court: She can ask her whether she's aware or not.

15 By Ms. Campbell:

16 Q. You aren't aware of that?

17 A. No.

18 Q. Okay. Let's go to the next call that was made on June
19 the 14th of 2009 by your client's cell phone.

20 A. The next highlighted one or the next---

21 Q. Yes, ma'am. I tried to highlight them so we could get
22 through them easier.

23 A. Same number.

24 Q. Same number? Is it an outgoing on incoming call?

25 A. Outgoing.

1 Q. And that would mean the call was being placed by your
2 client's cell phone. Is that correct? That's how it works.

3 A. I guess, yeah, if you say so.

4 Q. Yes. Okay. Let's go to the next highlighted call.

5 A. Same number.

6 Q. Same day?

7 A. Yes.

8 Q. What time of day was this?

9 A. 14:16.

10 Q. Would that be 2:16 in the afternoon?

11 A. Uh-huh.

12 Q. And the two we've just gone over are earlier that same
13 day? Is that correct? Was this the same number?

14 A. Yes. Yes.

15 Q. Okay. Let's go to the fourth highlighted call on that.
16 Is it still on June the 14th?

17 A. Yes.

18 Q. What time?

19 A. 14:37.

20 Q. And what phone number was dialed then by your client's
21 cell phone?

22 A. 5 -- there's no area code. 545-3500.

23 Q. And are you aware that 545-3500 is the main line to the
24 Columbia Police Department?

25 A. No, I'm not.

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1 Q. Is that call completed? Did it go for a number of
2 minutes?

3 A. I'm not sure how to read this, but 360 may be...

4 Q. What time was that call?

5 A. 14:43.

6 Q. 14:43. So that would be 2:43 in the afternoon, and that
7 was after she made contact with Investigator Gonzalez first?

8 A. I don't know that she made contact with Investigator
9 Gonzalez.

10 Q. But after dialing the phone number of Investigator
11 Gonzalez, then she dialed this number as a result of that.

12 A. No, I don't know whether she dialed this number.

13 Q. You know her cell phone did.

14 A. I know. I know that anybody can use her cell phone.

15 Q. What's the next---

16 **Ms. Shurling:** Again, objection, Your Honor. There's
17 nothing in evidence establishing these officers' numbers.

18 **The Court:** All right.

19 By Ms. Campbell:

20 Q. What's the next number?

21 A. 803-576-3000.

22 Q. And, again, you don't what number that belongs to?

23 A. No.

24 Q. Okay. What's the next number highlighted on there?

25 A. 576-3016.

1 Q. I'm sorry. I missed that. What was that?

2 A. 803-576-3016.

3 Q. The next -- what time of day was that?

4 A. Oh, that was actually the next day.

5 Q. The next day. Okay. So now we're on the next day, on
6 June the 15th, when she's calling the 576-3016 number?

7 A. No, I don't know whether she's calling it.

8 Q. Her cell phone is calling that. And was that an
9 incoming or an outgoing call?

10 A. Outgoing.

11 Q. Outgoing. What's the next number and again what date?

12 A. Am I on to the next page?

13 Q. Yes, the next page. I'm sorry. There are two pages
14 here, aren't there?

15 A. 803-576-3000.

16 Q. When was that?

17 A. 6/15/09.

18 Q. And, again, this is a month and a half before she
19 contacts you; correct?

20 A. Yes.

21 Q. And it was 576-3000.

22 A. Uh-huh.

23 Q. Okay. What's the next phone call that's highlighted on
24 those pages?

25 A. 576-3000.

Eleanor Cleary - cross-exam by Ms. Campbell

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- 1 Q. And what date was that?
- 2 A. 6/15.
- 3 Q. And what time of day was it?
- 4 A. 9:50.
- 5 Q. 9:50 in the morning?
- 6 A. I guess.
- 7 Q. Was it outgoing or incoming?
- 8 A. Outgoing.
- 9 Q. What's the next phone call that's highlighted?
- 10 A. 576-3016.
- 11 Q. And what day was that?
- 12 A. 9:51.
- 13 Q. 9:51 in the morning? On what date?
- 14 A. 6/15.
- 15 Q. That would be June the 15th.
- 16 A. Uh-huh.
- 17 Q. What's the next call?
- 18 A. 576-3000.
- 19 Q. What's the date on that?
- 20 A. 6/15.
- 21 Q. June 15th?
- 22 A. Uh-huh.
- 23 Q. And what's the time on that one?
- 24 A. 10:56.
- 25 Q. Is that an outgoing or incoming?

1 A. Outgoing.

2 Q. Are there any more calls highlighted?

3 A. Yes.

4 Q. Let's keep going.

5 A. Okay. What was your question?

6 Q. What's the next call, say, that's highlighted?

7 A. 576-3000.

8 Q. What date was that?

9 A. June 15th.

10 Q. What time?

11 A. 16:20.

12 Q. That would be 4:20 in the afternoon? Are there any more
13 calls?

14 A. 576-3016.

15 Q. When was that?

16 A. 6/15, 17:32.

17 Q. What's the next call?

18 A. 576-3000, 6/15, 17:33.

19 Q. Are there any more highlighted?

20 A. No.

21 Q. And what date was that call? The last one?

22 A. 6/15.

23 Q. And your client told you and the police she was clueless
24 as to what was going on and had had no contact with the
25 police.

Eleanor Cleary - redirect exam by Ms. Shurling

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1 A. She told me she personally had had no contact. I
2 believe her mother may have called them. She did not, but
3 they did not tell her -- ever tell her the basis for the
4 obstruction of justice charge until we went into the police
5 station and Officer Thomas gave us a warrant. So she did not
6 know why she was being charged.

7 Q. You don't know what happened in those conversations with
8 Investigator Reese.

9 A. Neither do you. No, I don't.

10 The Court: Ms. Cleary.

11 The Witness: I don't.

12 Ms. Campbell: But the people she talked to would know.

13 Thank you, Your Honor. I don't have anything further.

14 The Court: Ms. Shurling?

15 Redirect Examination

16 By Ms. Shurling:

17 Q. Ms. Cleary, your client didn't describe herself as
18 clueless, did she?

19 A. No, she didn't.

20 Q. That was your adjective.

21 A. Yes.

22 Q. And if I can see that exhibit again... If you look over
23 the list of calls you were asked to address, would it be fair
24 to say that the majority of them are just a matter of seconds
25 long?

1 A. Yes.

2 Q. And would you---

3 A. And seconds apart a lot of them.

4 Q. Seconds apart and only seconds long; right?

5 A. Yes.

6 Q. In your opinion, would that be more consistent with
7 someone trying to contact law enforcement than someone having
8 conversations with law enforcement?

9 A. Yes.

10 Q. Now, I want to be real particular here because just a
11 moment ago you talked about the sister's rap sheet and then
12 you said, "I'm sorry; that's not what I meant to say. They
13 run a background on her." And you acknowledged the sister
14 didn't have a prior record; right?

15 A. Yes.

16 Q. Now, Rosa Grenald, your client, didn't tell you she
17 hadn't had any contact at all with the police, did she?

18 Ms. Campbell: Objection, Your Honor.

19 Ms. Shurling: Isn't it a fact that what she told you is
20 that she---

21 The Court: Sustained. It's hearsay.

22 Ms. Shurling. Did she or did she not tell you that she
23 had not sat down---

24 The Court: That's hearsay.

25 The Witness: I knew after talking to her that she had

Eleanor Cleary - redirect exam by Ms. Shurling

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1 not talked to the police.

2 Ms. Shurling: Has she ever represented to you that
3 neither she nor anybody in her family had ever attempted to
4 contact law enforcement?

5 Ms. Campbell: Objection, Your Honor.

6 The Court: Sustained.

7 Ms. Shurling: Your Honor, they've asked her extensive
8 questions about my client's phone records.

9 The Court: Ms. Shurling, hearsay is hearsay.

10 By Ms. Shurling:

11 Q. You were asked moments ago whether your client had told
12 you that she had had no contact with law enforcement;
13 correct?

14 A. Correct.

15 Q. I'm asking you now, if you would, please, to clarify
16 your answer to the State's question.

17 Ms. Campbell: Objection, Your Honor. Her answer speaks
18 for itself.

19 Ms. Shurling: Your Honor, it's her testimony. She---

20 Ms. Campbell: Your Honor---

21 The Court: Well, I'm not sure what that means: Clarify
22 your answer. Do you know what that means?

23 The Witness: No, sir.

24 The Court: She doesn't understand the question.

25 Ms. Shurling: Well, Ms. Cleary, may I ask you to

1 explain your answer when you said your client indicated she
2 had had no prior contact with the police? Was it your intent
3 to convey---

4 The Court: Wait a minute.

5 Ms. Campbell: Objection.

6 The Witness: Okay.

7 The Court: You can explain your answer.

8 The Witness: Okay.

9 The Court: Whatever that is.

10 The Witness: I believe I said that she'd not had any
11 contact with the police before she came down here, and I
12 stick by that. She had never talked to the police. And then
13 when we went to the interview I learned about the phone
14 calls, and she was surprised and we had talked about -- and
15 Detective Reese said it sounded like her, and having talked
16 to her mother, I mean, I figured it was probably her mother.
17 Her mother was very involved.

18 So I'm not saying she -- I mean, she never conveyed to
19 me that she didn't know, you know, anything about the police
20 being involved. I think that was clear, but, you know, a
21 search warrant had been executed in your house. I assume
22 that she had some understanding that -- and she thought
23 everything sort of centered on that. She had an
24 understanding that the -- from what I understand, they wanted
25 to determine if there was a warrant which I have clients who

Eleanor Cleary - redirect exam by Ms. Shurling

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1 want to do that all the time, you know, call up and see is
2 there a warrant for me. And I don't know whether there was
3 at that point, but she didn't know -- I know that she did not
4 know anything about the obstruction of justice. She knew
5 that from the news.

6 By Ms. Shurling:

7 Q. Okay. You're not saying she didn't know she had been
8 charged with obstruction.

9 A. She knew -- well, I don't know how she knew that.

10 Q. Okay. But, again---

11 A. She didn't know what it was.

12 Q. ---when you talked about your client as being clueless,
13 you mean she didn't understand what obstruction was?

14 A. Right, and she did not know that the car had anything to
15 do with it until we read the arrest warrant, and she didn't
16 know anything about the murder.

17 Q. And based on your involvement with the case and the
18 interviews, it was clear that the search warrant referenced
19 the April 2009 incident, not the May 2009 incident.

20 A. Right.

21 Q. So the search warrant that there's been much discussion
22 about was---

23 The Court: All right.

24 Ms. Shurling: ---referencing the previous incident, not
25 the murder.

1 The Witness: Right.

2 Ms. Shurling: No further questions.

3 The Court: All right. Anything on redirect, I mean,
4 recross?

5 Ms. Campbell: Just a couple of questions.

6 Recross Examination

7 By Ms. Campbell:

8 Q. And as a prudent lawyer, when she contacted you, you
9 contacted the police about turning herself in, didn't you?

10 A. I did.

11 Q. And you had a conversation with the police and you'd
12 want to know what she was charged with.

13 A. Right.

14 Q. And the basis of that charge.

15 A. Yeah. Well, no, he told me obstruction of justice. He
16 did not tell me any more details. Detective Reese was not
17 going to---

18 Q. And as a prudent and careful attorney - you're a defense
19 attorney - you would have inquired from Investigator Reese
20 when you contacted him, wouldn't you, about what the basis of
21 the obstruction charge was?

22 A. He just said she needs to come in and he'd serve the
23 warrant on her and she would know then.

24 Q. And then at that point did you ask to have a copy of the
25 warrant?

Eleanor Cleary - recross exam by Ms. Campbell

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1 A. Not -- I know that they're not public until they're
2 served on her.

3 Q. So you never asked the investigator---

4 A. I asked it whenever we brought her in.

5 Q. And never before that. So it was never something you
6 conveyed to the client because it's in the warrant exactly
7 what the basis of the obstruction is.

8 A. Right, but she did not retain me until that day. I was
9 not going to...

10 Q. When did you contact the police?

11 A. I contacted them July 29th, I think, or...

12 Q. July 29th, three days before.

13 A. Right. I contacted them, you know, to let them know
14 that she -- because she was afraid. You know, the police
15 were around her mother's house. I contacted them, you know,
16 to let them know that she was going to turn herself in. I
17 didn't want her to get hurt, but I was not going to interject
18 myself officially until I had my retainer. I was not going
19 to ask for any documents or that sort of thing. I just
20 generally don't ask for documents; I've just learned.

21 Q. And as a lawyer you're going to tell this jury when
22 you're considering a retainer and catching someone as a
23 client that you didn't even ask what the basis of the charge
24 was?

25 A. Of course I did.

1 Q. And you didn't convey that to your client though.

2 A. No, he didn't tell me the basis of the charge. He said
3 she needed to turn herself in. Well, he told me it had to do
4 with a murder.

5 Ms. Campbell: Okay.

6 The Court: All right. You may step down. All right.
7 I tell you what. I'm going to take a five-minute break
8 because I told Mrs. Pendergrass we'd break in an hour so that
9 she could get her menus to the jury. So we'll take a
10 five-minute break. If y'all will step back, Ms. Pendergrass
11 will come back there in just a minute and give y'all menus
12 and we can go ahead and do the order while they're going on
13 with the case. Don't discuss anything about the case other
14 than the food.

15 (Whereupon, the jury was excused from open court at
16 10:17 a.m. A short break was taken.)

17 The Court: All right. Thank you. All right. All
18 right. Ready to go? Let's bring us the jury in.

19 Ms. Shurling: Yes, sir.

20 (Whereupon, the jury was brought into open court at
21 10:25 a.m.)

22 The Court: Ms. Shurling, do you want to call your next
23 witness, please, ma'am?

24 Ms. Shurling: Thank you, Your Honor. Marjorie White.

25 The Court: Somebody ask Ms. White to come in. I guess

Paul Lomas - direct exam by Ms. Shurling

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1 she's in the back.

2 **Ms. Shurling:** Ms. White is on a personal break, I
3 understand. So at this point I would call Mr. Paul Lomas to
4 the stand. Paul Lomas.

5 Paul H. Lomas, after being duly sworn, testified as
6 follows:

7 **The Court:** If you'll have a seat in the witness box and
8 tell us your full name, please, sir.

9 **The Witness:** Paul Harmon Lomas. L-O-M-A-S.

10 Direct Examination

11 By Ms. Shurling:

12 Q. Mr. Lomas, I'm sorry. I didn't hear. Did you spell
13 your last name?

14 A. Yes. L-O-M-A-S. Yes.

15 Q. Thank you very much.

16 A. Yeah.

17 Q. Mr. Lomas, where are you employed?

18 A. Doctors Wellness Center and Progressive Physical
19 Therapy.

20 Q. Thank you. And you are, in fact, a physical therapist?

21 A. Yes, ma'am, assistant.

22 Q. Pardon?

23 A. P.T.A.

24 Q. Okay.

25 A. Yes.

1 Q. And in your capacity as a physical therapist's
2 assistant, you work one on one with patients occasionally;
3 right?

4 A. Yes.

5 Q. You actually work one on one with them fairly regularly,
6 don't you?

7 A. Yes, all day.

8 Q. Okay. And was my client, Mr. Anthony Hackshaw, someone
9 you provided therapy to at one point?

10 A. Yes.

11 Q. All right. Do you have a specific recollection of his
12 therapy session on May 20th, 2009?

13 A. Specific? No. Just that he was there.

14 Q. He was there.

15 A. He was there, yes.

16 Q. Okay. Well, did you become aware pretty shortly after
17 that that his visit to your clinic and when he was there had
18 become an issue?

19 A. I became aware a month later or so. I guess July
20 sometime it became news---

21 Q. Okay.

22 A. ---that he was allegedly involved in a crime.

23 Q. Okay. And at that point in May of 2009 Mr. Hackshaw had
24 been getting physical therapy for quite sometime at
25 Progressive Therapy---

Paul Lomas - direct exam by Ms. Shurling

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1 A. Correct.

2 Q. ---hadn't he?

3 A. Correct.

4 Q. And he had progressed nicely.

5 A. Very -- yes.

6 Q. And had been a compliant patient.

7 A. Yes.

8 Q. Worked hard.

9 A. Very hard.

10 Q. And was, in fact, essentially ready to be cut loose.

11 A. Yes. He had one more visit on Friday.

12 Q. Okay.

13 A. The next -- the 22nd. He never came to that one, but
14 that's not unusual.

15 Q. And there was nothing unusual about him missing an
16 appointment, was there?

17 A. No. He never missed one with me, I don't believe,
18 except that last one. And the last one, again it was his
19 last session, and many patients opt not to come to the last
20 session because they're better.

21 Q. So before that last session he would have already been
22 told that that was going to be it for him.

23 A. Yes. He knew there was one more left, yes.

24 Q. And, again, it's not unusual for patients to skip that
25 last therapy session.

1 A. Not at all.

2 Q. And at the time you were first asked about Mr.
3 Hackshaw's visit to Progressive Therapy on May 20th, 2009,
4 you had a clearer memory then than you would today of his
5 therapy session on that day?

6 A. I mean, other than normal rehab for shoulders. I mean,
7 he came about the same time he always did, performed his
8 therapy like he normally did. Nothing unusual. I remember
9 the date because when the issue came up in the papers or
10 whenever it was brought to my attention, my coworkers -- I
11 remember he was there that day and performed therapy. And I
12 looked back at the chart and I said, yeah, I remember we did
13 our normal routine about the same time as usual, and nothing
14 was unusual other than obviously everything that came after
15 that.

16 Q. Okay. So you and your coworkers actually contacted the
17 police to say, hey, he was here.

18 A. Yeah. I did not. I don't know if my coworkers did or
19 not; they may have.

20 Q. Let me rephrase that. You became aware that someone had
21 contacted law enforcement and made them aware that he had
22 been at your clinic on that day.

23 A. I guess they did. Again, I just remember him being
24 there, looking at the chart. Maybe a coworker did. I know
25 they knew of it. Somehow they found out.

Paul Lomas - direct exam by Ms. Shurling

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1 Q. Okay.

2 A. Somebody contacted somebody.

3 Q. And was there anything unusual about Mr. Hackshaw's
4 demeanor on that date?

5 A. There was nothing unusual. The only reason I remember
6 it is because again the date that the crime allegedly
7 happened, you know, it was the same date he came to physical
8 therapy. That's the only reason I remember it. There was
9 nothing unusual about the session.

10 Q. And, again, you and your coworkers became aware of the
11 crime the day that it happened from watching the news media
12 first.

13 A. Yeah.

14 Q. Right?

15 A. My coworker alerted me to it. She saw it on the news
16 somehow.

17 Q. Okay. And it was not 'til sometime after that that you
18 were actually contacted---

19 A. Yes.

20 Q. ---by law enforcement.

21 A. Yes.

22 Q. Okay. Approximately what time do you recall Mr.
23 Hackshaw arriving at Progressive Physical Therapy on
24 May 20th, 2009?

25 A. Again, it was -- his appointment, I recall, was at 1 -

1 it usually was - and he came in around 1. It was not before
2 1, but it was around 1. It wasn't 2:00. It wasn't 1:45. It
3 was around 1:00.

4 Q. Okay.

5 A. We used to have -- we do have time-in, time-outs
6 downstairs. I'm upstairs, so I don't, you know, know exactly
7 -- you warm up downstairs. You come upstairs, and I'll work
8 with you. So around 1:00.

9 Q. Okay.

10 A. Yeah.

11 Q. Did he appear tired that day when he came---

12 A. Nothing unusual. Nothing out of the ordinary. And he
13 was---

14 Q. Did he work -- pardon me. I'm sorry.

15 A. He worked very hard, yeah---

16 Q. Worked very hard---

17 A. ---the same as always. Yeah.

18 **Court Reporter:** I can't take you both at the same time.

19 **The Witness:** Okay.

20 By Ms. Shurling:

21 Q. Did he appear winded when he arrived?

22 A. Nothing unusual. Nothing.

23 Q. Did he appear as though he had been in a hurry for any
24 reason?

25 A. No.

Paul Lomas - direct exam by Ms. Shurling

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1 Q. Was he -- was his general personality consistent with
2 the way it had always been?

3 A. Again, nothing unusual. It seemed like a normal
4 session. I recall it for one reason only: Because of the
5 date he came to therapy and the crime that allegedly happened
6 and, you know, I remember it then. Otherwise, nothing would
7 have made me remember that session. It was just a normal
8 session.

9 Q. And the time when you were alerted by a coworker to the
10 incident being on the news, do you recall how close to the
11 May 20th date that was?

12 A. I do not.

13 Q. Would it have been within days?

14 A. It was -- I think it was longer than that. I mean,
15 whenever it broke in the news apparently. I mean, I don't
16 even remember that. I was unsure. I asked -- the news broke
17 in July maybe, so I guess around then. But otherwise I
18 wouldn't remember, no.

19 Q. And, again, it's easy for you to pinpoint the May 20th
20 date because it was the very last appointment---

21 A. Last appointment.

22 Q. Last session you had with this patient.

23 A. Correct.

24 Q. And not to beat a dead horse, but did he appear furtive
25 in any way? Was he watching, looking around like he was

1 watching for anyone or anything?

2 A. Nothing unusual. Same -- same as always.

3 Q. A moment's indulgence. Thank you very much for being
4 here. I have no further questions.

5 A. You're welcome.

6 Ms. Campbell: May it please the Court?

7 The Court: Yes, ma'am.

8 Cross-Examination

9 By Ms. Campbell:

10 Q. I just have a couple of questions.

11 A. Sure.

12 Q. You don't have any specific -- you don't have any
13 specific memory about this as far as -- but generalities that
14 he was there that day.

15 A. I mean, he was there. Yeah. There was nothing---

16 Q. You can't say exactly what time he got there or anything
17 like that.

18 A. No, I cannot.

19 Q. And what was he in therapy for?

20 A. His shoulder.

21 Q. His shoulder?

22 A. Yes, ma'am.

23 Q. And was that work-related or not? Do you know?

24 Ms. Shurling: Objection, Your Honor. Approach the
25 bench.

1 **The Court:** What's the relevance of what's the -- why?

2 **Ms. Campbell:** I'll move on, Your Honor.

3 By Ms. Campbell:

4 Q. And also -- well, y'all have a system where you set up
5 appointments ahead of time. Is that correct?

6 A. That's correct.

7 Q. And I'm going to show what's been marked as State's
8 exhibit number 85. Is that a sheet where it shows what your
9 appointments are like that are set up ahead of time?

10 A. No. This right here is -- yeah, this is an appointment
11 sheet. Yes.

12 Q. Appointment sheet.

13 A. Yes.

14 Q. And that would show what appointments you had that day.

15 A. Correct.

16 **Ms. Campbell:** And, Your Honor, at this time -- and,
17 Your Honor, at this time I'd offer State's exhibit number 85
18 before he testifies to it.

19 **Ms. Shurling:** I'm sorry. No objection.

20 **The Court:** So admitted.

21 (State's exhibit 85 was received in evidence.)

22 By Ms. Campbell:

23 Q. Just one other question. On State's exhibit number 85
24 does it show what time Anthony Hackshaw's appointment was
25 with you that day?

1 A. It's not written down here that day, but I will say
2 this, that with me -- I'm the director of the wellness
3 center.

4 Q. Yes, sir.

5 A. I help out with P.T. Most of the time my patients are
6 not scheduled because they're upstairs with me. It is -- as
7 soon as they come in, I'll tell Leslie, well, so-and-so is
8 here. Put them on the books. Yeah, they won't be on this
9 schedule. They'll be on the schedule -- on the log for the
10 medical records of treatment that day.

11 Q. Excuse me. If you look at the 1:30 schedule on that
12 day, what name is that that's right there at 1:30? It's an
13 appointment with you.

14 A. Rodney Spears. I see several patients at one time.

15 Q. It doesn't say Hackshaw?

16 A. No.

17 Q. Right here it doesn't say -- that's not the word
18 Hackshaw next to the 1:30 slot?

19 A. 1:30? I'm over here. Okay. This one here.

20 Q. That's the one that has you.

21 A. Yes. ~

22 Q. And that's your name above it.

23 A. Yes.

24 Q. Just to be clear.

25 A. Okay. I was looking at the other one.

Paul Lomas - redirect exam by Ms. Shurling

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1 Q. Okay. And then at 1:30 it says Hackshaw.

2 A. Yes.

3 Q. So that's when his appointment would have been.

4 A. Yeah.

5 Ms. Campbell: Thank you.

6 The Court: Anything further?

7 Ms. Shurling: Yes.

8 The Court: Are you finished, Ms. Campbell?

9 Ms. Campbell: Yes, sir. I'm sorry.

10 The Court: All right. Ms. Shurling.

11 Redirect Examination

12 By Ms. Shurling:

13 Q. Mr. Lomas?

14 A. Yes.

15 Q. In your testimony earlier you said my client usually
16 came at 1:00?

17 A. Around 1:00, yes.

18 Q. Around 1:00?

19 A. Uh-huh.

20 Q. Are y'all real strict about appointment times there?

21 A. No.

22 Q. And---

23 A. Well, not my schedule as much. Some of them they are,
24 not with mine, because I'm upstairs seeing people all day.

25 They come in; they come out. I see three or four at a time,

1 so...

2 Q. Could I get you to identify this computer read-out,
3 please?

4 A. No, ma'am. This is not the paperwork I work with, so,
5 no. Hackshaw. The dates provided. What do you want me to
6 look at?

7 Q. Is that not a list generated from the database of---

8 Ms. Campbell: Objection, Your Honor.

9 Ms. Shurling: ---appointments?

10 Ms. Campbell: I believe he's testified that he didn't
11 recognize it.

12 The Court: Do you recognize the sheet of paper?

13 The Witness: This sheet here? No, I don't do this
14 paperwork here. I see only P.S.R.

15 The Court: All right.

16 Ms. Shurling: Okay.

17 By Ms. Shurling:

18 Q. Do you know from your own experience that Mr. Hackshaw
19 had many appointments for 1:00?

20 A. Yes.

21 Q. And your recollection as his therapist, 1:00 was the
22 time he usually came.

23 A. Around 1, yes.

24 Q. Around 1.

25 A. Yes.

Paul Lomas - redirect exam by Ms. Shurling

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1 Q. And your recollection is that he came around 1:00 on
2 May 20th, the date of his last session.

3 A. It wasn't very late. I mean, it was around 1. It
4 wasn't 2, like I said. It could have been 1:30. I don't
5 think it was that late, but it could have been. That's a
6 long time ago.

7 Q. But it's your recollection that at the time you thought
8 it was consistent with his normal arrival time---

9 A. About a normal---

10 Q. ---around 1:00.

11 A. Yes, about a normal time, about 1:00.

12 Q. And would it be fair to say if he was as much as a half
13 an hour late you would remember it?

14 A. Not necessarily. Patients come in and out. I see
15 patients all day long, and some will come early. Can you see
16 me early because I was late for work or... I wouldn't
17 remember that unless it was really -- you know, it wasn't
18 2:00. It wasn't 2:30. I mean, it was around 1:00. It was
19 in the 1-ish time.

20 Q. Okay. Thank you.

21 A. Yes, ma'am.

22 Q. You just -- that's as close as you can come.

23 A. That's as close as I can come.

24 The Court: He has answered this question.

25 Ms. Shurling: Thank you.

1 By Ms. Shurling:

2 Q. Mr. Lomas, is your professional relationship with my
3 client the only way you know him?

4 A. The only way, yes.

5 Q. And you'd never met him before he walked in the door at
6 Progressive Therapy as a patient.

7 A. No.

8 Q. Right?

9 A. No. No.

10 Q. And I assume it's fair to say you've never socialized
11 with him outside the office---

12 Ms. Campbell: Objection, Your Honor. Relevance. Asked
13 and answered.

14 Ms. Shurling: Goes to bias, Your Honor.

15 The Court: Look. He said the only way he knows him is
16 when he walked into the thing. Now, we can ask him 15 other
17 things that he might have had the opportunity to say he
18 didn't know him that way. Let's move on.

19 Ms. Shurling: Is there any reason why you would be
20 willing to come into a court of law and lie for him?

21 Ms. Campbell: Objection, Your Honor.

22 The Witness: Not at all.

23 The Court: Sustained.

24 Ms. Shurling: No further questions, Your Honor.

25 The Court: Anything?

Leslie McCarver - direct exam by Ms. Shurling

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1 Ms. Campbell: No, sir.

2 The Court: Thank you. You may step down. You're free
3 to leave. All right. Call your next witness, Ms. Shurling.

4 Ms. Shurling: Leslie McCarver.

5 Leslie McCarver, after being duly sworn, testified
6 as follows:

7 The Clerk: Please have a seat and state your full name
8 for the record.

9 The Witness: Leslie McCarver.

10 Direct Examination

11 By Ms. Shurling:

12 Q. Good morning, Ms. McCarver. Where do you work?

13 A. Progressive Physical Therapy.

14 Q. And what's your position at Progressive Physical
15 Therapy?

16 A. I work at the desk.

17 Q. At the desk?

18 A. Uh-huh.

19 Q. Okay.

20 The Court: Ma'am---

21 Ms. Shurling: Do you have---

22 The Court: Excuse me just a minute. When you answer,
23 you need to answer yes or no. If you answer uh-huh, huh-uh,
24 the court reporter might get it mixed up.

25 The Witness: Okay.

1 **The Court:** So if you'll say yes or no.

2 **The Witness:** Yes, I work at the desk.

3 By Ms. Shurling:

4 Q. Thank you. And do you -- I'm sorry. I lost my place.

5 Do you have a recollection of the last day Mr. Hackshaw came
6 in for a therapy session?

7 A. No.

8 Q. Okay. Do you have a recollection of him being at
9 Progressive Physical Therapy on May 20th, 2009?

10 A. Not definite. I mean, I know he was there because of
11 the paperwork, but I can't remember if I saw him that day or
12 not.

13 Q. Okay.

14 A. Because he came a lot.

15 Q. Okay. He came a lot.

16 A. Uh-huh.

17 Q. And as---

18 A. Yes.

19 Q. ---the person at the front desk, are you familiar with
20 what time he normally came?

21 A. Yes.

22 Q. What time did he usually come?

23 A. He came after lunch at 1.

24 Q. At 1:00.

25 A. Uh-huh.

Leslie McCarver - direct exam by Ms. Shurling

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1 Q. And that would be at your facility located on Forest
2 Drive or Trenholm Road just off Forest Drive.

3 A. Yes.

4 Q. Okay. And did there come a time when you were aware
5 because of reports in the media that he had been named in
6 connection with a murder investigation?

7 A. Yes.

8 Q. And did someone -- did you or someone on your staff
9 contact the Columbia City Police Department about it?

10 A. We contacted a client of our facility that also I
11 believe he works for the police department, yes.

12 Q. Okay. And at that time you informed him that Mr.
13 Hackshaw had been at Progressive Physical Therapy on the date
14 of the alleged homicide?

15 A. Yes.

16 Q. And you informed law enforcement that he had been there
17 at the time of his usual appointment?

18 A. Yes.

19 Q. And, again, you have no personal recollection of seeing
20 him on that date?

21 A. I might have, but I mean, I can't be -- I can't say
22 definitely, yes, I saw him because people come, you know, a
23 few times a week. You see them; you don't. Our lunch is
24 from 12 to 1. Could be he walked by. I mean, I just don't
25 specifically remember seeing him.

1 Q. Okay. And you don't recall a specific session that you
2 would remember as being the last time he was in there?

3 A. No.

4 Q. Okay. When Mr. Hackshaw would come in for his therapy
5 sessions, how long was he usually there?

6 A. Like an hour and a half, two hours. It varied.

7 Q. It varied? Was he pleasant to you when he was there?

8 A. Yes.

9 Q. Okay. Were you at work on May 20th?

10 A. Yes.

11 Q. If Mr. Hackshaw had come in on any occasion and acted
12 nervous or upset or appeared winded, would you have noticed?

13 A. Maybe.

14 Q. Okay. Do you ever recall any date when my client came
15 in and signed in and you thought you noticed he was acting
16 different from normal?

17 A. No.

18 Q. Nothing.

19 A. Huh-uh. No.

20 Q. Can you tell us the kinds of cars that you have seen Mr.
21 Hackshaw driving?

22 A. I think when he first started coming his wife would
23 bring him, and I think it was a silver car, but I'm not sure.

24 Q. Okay. And have you also seen him driving a black car?

25 A. No.

Leslie McCarver - direct exam by Ms. Shurling

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1 Q. Okay. I know. What kind of clothing do you recall
2 seeing Mr. Hackshaw wear when he came to therapy?

3 A. After he started back to work, he wore scrubs and before
4 that just regular street clothes.

5 Q. Scrubs?

6 A. Uh-huh.

7 Q. And---

8 **The Court:** Is that a yes?

9 **The Witness:** Yes.

10 By Ms. Shurling:

11 Q. And was it usual for him to have on dark-colored scrubs?

12 A. Yes.

13 Q. And, again, during the height of his therapy he was
14 coming as often as how many times a week?

15 A. Two to three.

16 Q. A moment's indulgence. The patient at Progressive
17 Physical Therapy that you first told about Mr. Hackshaw
18 having been at Progressive on the operative date, was that a
19 Mr. Tabor?

20 A. Yes.

21 **Ms. Shurling:** Thank you. No further questions.

22 **The Court:** All right. Anything?

23 **Ms. Campbell:** Just a couple of questions.

24

25

Cross-Examination

By Ms. Campbell:

Q. You don't have any specific memory of him being there on May the 20th.

A. No.

Q. So you don't know what he was wearing that day. You don't remember.

A. No.

Q. And just to be clear, you said you thought his appointment was usually around 1:00?

A. Yes.

Q. And were you aware that in the 29 out of 36 visits were at times other than 1:00?

A. Yes.

Q. So his -- he only came I believe on maybe six occasions at 1:00, and the other 29 occasions he came at either 10:00, 2:30, 3:30, 1:30?

A. Possibly, because he progressed to Paul, and usually he would -- when he started seeing Paul, he would come after lunch at 1:00, so that was like---

Q. Were you aware that his appointment that day was for 1:30?

A. No.

Q. Were you aware that his appointment for his prior session was at 1:30?

Leslie McCarver - redirect exam by Ms. Shurling

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1 A. No.

2 Q. And his appointment for that prior session was at 1:30?

3 A. No.

4 Q. And I could go on, but you just thought it was 1.

5 That's just your kind of remembering.

6 A. Right.

7 Q. Could have been 1:30. That's all I have, Your Honor.

8 The Court: Anything?

9 Ms. Shurling: Yes.

10 Redirect Examination

11 By Ms. Shurling:

12 Q. Mr. Lomas was the therapist that treated my client for
13 his appointments in the latter months of his treatment?

14 A. Yes.

15 Q. And is Mr. Lomas flexible about the time when his
16 clients come in?

17 A. Yes.

18 Q. And do appointment times really mean much of anything in
19 terms of verifying when a client was there and when they
20 weren't?

21 A. Yes, sometimes, but sometimes people will be late and we
22 will still allow them to come in or I can't be there at 1,
23 but I'll be there at 1:30 or 10 or... So it's not a
24 specific...

25 Q. Okay. Would it be unusual in your experience as the

1 employee at the front desk for Mr. Lomas to allow people to
2 come in at a time convenient for their schedule, regardless
3 of what their appointment time was?

4 A. Yes.

5 Q. That would be normal?

6 A. Yes.

7 **Ms. Shurling:** No further questions.

8 **The Court:** All right. Thank you. You may step down.

9 **Ms. Shurling:** Marjorie White, Your Honor.

10 Marjorie White, after being duly sworn, testified
11 as follows:

12 **The Clerk:** Please have a seat and state your full name
13 for the record.

14 Direct Examination

15 By Ms. Shurling:

16 Q. Would you state your full name for the record?

17 A. My name is Marjorie White.

18 Q. Thank you. I believe they call you Margie?

19 A. They call me some of everything.

20 Q. Isn't that true of all of us? Now, you work at the
21 Department of Mental Health? Is that right?

22 A. I do.

23 Q. And specifically at Bryan Psychiatric Hospital?

24 A. I do.

25 **The Court:** You need to speak up, ma'am.

1 **The Witness:** Yes, I do.

2 By Ms. Shurling:

3 Q. What's your position, ma'am?

4 A. I'm a registered nurse.

5 Q. Yes, ma'am. And are you, in fact, a charge nurse at
6 Bryan?

7 A. I am a charge nurse at Bryan, yes.

8 Q. And I'm sorry; I'm not that familiar with nursing
9 hierarchy. What does it mean when you're a charge nurse?

10 A. Usually what we do is make sure that we carry out the
11 duties of what need to be done that day for each patient.
12 That means appointments, making sure that they are taken care
13 of.

14 Q. Yes, ma'am. And in that capacity did you oversee some
15 of my client's job descriptions?

16 A. Yes, I did.

17 Q. Okay. And with regard to the date we're all concerned
18 about here, May 20th, 2009, do you remember whether or not
19 you had a scheduling issue with Mr. Hackshaw?

20 A. When I made the schedule that morning, I did not realize
21 that he had an appointment at sometime that day. When it was
22 brought to my attention, then I had to make some adjustments
23 to the schedule, yes.

24 Q. And after he informed you that he had an appointment he
25 had to go to, he asked you to arrange his schedule so that he

1 could leave at what time?

2 A. I think -- I don't exactly remember, but I think I gave
3 him a 12:30 lunch time.

4 Q. 12:30?

5 A. Yes, ma'am. I believe that's what I gave him. I don't
6 have the schedule. It's been over a year. I really can't
7 remember, but usually I give them -- if they have to be
8 somewhere at 1, 1:30, I usually give 12:30 appointment
9 lunchtimes, yes.

10 Q. Thank you, ma'am. So Mr. Hackshaw wasn't sneaking away
11 from his job on May 20th, was he?

12 A. I can't answer that.

13 Q. Well---

14 A. I did give him a 12:30 lunchtime.

15 Q. Yes, ma'am. He told you he had an appointment.

16 A. That's correct.

17 Q. Told you he had to leave.

18 A. That's correct.

19 Q. Go to the appointment.

20 A. That's correct.

21 Q. And asked for a specific time to leave so he could make
22 that appointment.

23 A. He didn't ask for a specific time. I gave him the 12:30
24 in order for him to make the appointment in time.

25 Q. Yes, ma'am. I'm sorry. My question wasn't very clear.

Marjorie White - direct exam by Ms. Shurling

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1 He told you what time he needed to be somewhere, and you set
2 up his lunch accordingly.

3 A. Yes, ma'am.

4 Q. So my question was: He wasn't trying to get away with
5 leaving campus and going somewhere without you knowing he was
6 going.

7 A. His leaving was known, yes.

8 Q. Yes, ma'am. That's all I needed to know. Thank you,
9 ma'am. Thank you for being here.

10 A. You're welcome.

11 Ms. McDuffie: No questions for this witness, Your
12 Honor.

13 The Court: All right. Thank you, ma'am. You may step
14 down.

15 Ms. Shurling: Brittany Scott, Your Honor.

16 Ms. Campbell: Your Honor, we have a matter we need to
17 take up---

18 The Court: Ma'am?

19 Ms. Campbell: ---prior to this witness...

20 The Court: All right. Ladies and gentlemen, let me let
21 you step back to the jury room. Please don't discuss the
22 case while you're there.

23 (Whereupon, the jury was excused from open court at
24 10:56 a.m.)

25 The Court: All right.

1 **Ms. Campbell:** Your Honor, it came to my attention this
2 morning through Ted Lupton with our office that he was going
3 to make some type of motion to you. Can we approach on this
4 issue? I just don't want it in open court.

5 (Whereupon, a bench conference was held.)

6 **Ms. Campbell:** Your Honor, I believe that report was
7 received over the phone. Just so I can clear it, it's just
8 going to go into the fact that he made a report to the
9 Richland County Sheriff's Department on whatever date it is
10 and that he reported over the phone to harassing phone calls
11 that extended from this time to this time.

12 **The Court:** That's correct.

13 **Ms. Campbell:** That's it.

14 **Ms. Shurling:** And, Your Honor, my associate has just
15 reminded me that the phone number he gave is already in
16 evidence. It's on the phone records introduced by the State.
17 So I see no reason why I shouldn't be able to say that he
18 reported receiving phone calls from that number. It's
19 already in evidence. That he received multiple calls from
20 that number is in evidence.

21 **Ms. Campbell:** It's not multiple times, Your Honor. I
22 believe it's reflected once on the phone records, according
23 to Ms. McDuffie.

24 **The Court:** Where is the -- what is the number?

25 **Ms. Shurling:** Actually, Your Honor, the problem is the

colloquy

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1 incident date as relayed by my client is beginning 5/11/09.

2 The State has never provided us with cell phone records for
3 my client going back any further than May---

4 The Court: Why does the State have to provide you
5 with---

6 Ms. Shurling: ---18th.

7 The Court: ---records of your client?

8 Ms. Shurling: Well---

9 The Court: Your client has access to his own records.

10 Ms. Shurling: I will rephrase that. At the time -- by
11 the time I was appointed in this case, Your Honor, and indeed
12 by the time Mr. Johnson got involved in the case, it was too
13 late to get additional cell phone records for my client.

14 The Court: Why is that?

15 Ms. Shurling: I've been told they're available for 90
16 days.

17 Ms. Campbell: No, ma'am. They're available now.

18 Ms. Shurling: Well, in any event, Your Honor, I
19 would---

20 The Court: Well, look, I mean, it seems to me if you
21 had a critical piece of evidence that you needed to have and
22 weren't able to get it that you would move to continue the
23 case until you get that evidence.

24 Ms. Shurling: Your Honor, all we need to introduce is
25 that he reported receiving a series of---

1 **The Court:** Where is -- on this sheet -- this is the
2 only thing that exists?

3 **Ms. Shurling:** Sir?

4 **The Court:** Where is the telephone number?

5 **Ms. Shurling:** The -- it's listed ironically under -- it
6 says, "Suspect unknown." Under facial hair, scars, tattoos,
7 glasses, clothing, physical peculiarities, etc., the phone
8 number is listed.

9 **The Court:** How do you know that?

10 **Ms. Shurling:** Well, then maybe we do need Ms. Scott
11 here.

12 **The Court:** Well, if Ms. Scott can testify, I mean,
13 what's the problem with that? The only thing that she's
14 going to testify to is she's a police officer with the
15 Richland County Sheriff's Department. That's the extent of
16 her involvement in this case. There's not one other thing.
17 Right?

18 **Ms. Shurling:** That's correct. She took this report.

19 **The Court:** All right. And she's going to testify that
20 that's the number that he gave her as to where the call
21 originated?

22 **Ms. Campbell:** We haven't talked to her, Your Honor.
23 However, I would assume that she would testify that that's
24 the number that was given to her over the phone is my
25 understanding. It's not like this defendant, it's my

colloquy

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1 understanding, made this -- he didn't make this complaint in
2 person.

3 **The Court:** So what are we going to let her to testify
4 to? That she's a deputy with the sheriff's department? She
5 received a telephone call from somebody purporting to be Mr.
6 Hackshaw? That she -- the complaint was made that Mr.
7 Hackshaw had received some threatening telephone calls. I
8 don't know from what period of time. Do we know that?

9 **Ms. Campbell:** I believe it's reflected on the incident
10 report that it was reported to her.

11 **The Court:** I know, but what -- I don't -- that's why I
12 didn't do criminal law. I never could read these forms so --
13 in my practice. Where does it say what the dates were?

14 **Ms. Shurling:** Incident date, Your Honor, is---

15 **The Court:** Not the day -- all right. On 5---

16 **Ms. Shurling:** 11/2009.

17 **The Court:** All right. So they all came in one day.

18 **Ms. Shurling:** No, sir, Your Honor. The offense says --
19 states he has been receiving anonymous phone calls from the
20 above number. It's an unknown male who threatens to get him.

21 **The Court:** Well, I understand that, but I mean, it says
22 incident, so the phone calls came that day.

23 **Ms. Shurling:** No, sir.

24 **The Court:** One or more calls that day.

25 **Ms. Shurling:** Complaining witness states this man

1 continues to threaten his life.

2 The Court: All right. Well, that will be the end of
3 it. Right? That's all we're going into; right?

4 Ms. Campbell: That he received harassing phone calls,
5 not threatening to end his life.

6 The Court: All right.

7 Ms. Shurling: Your Honor, the report says threatening
8 his life.

9 The Court: Well, who cares?

10 Ms. Campbell: This would -- that would be hearsay.

11 The Court: Well, the whole thing is probably hearsay.

12 Ms. Campbell: I agree, Your Honor.

13 Ms. Shurling: Your Honor, there's actually -- there are
14 two dates on the report. It gives 5/11/2009 as the original
15 date through 5/28/2009. So we have a beginning and an end.
16 5/11 to 5/28/09.

17 The Court: All right. We can do this one of two ways.
18 She can show up and testify, and I would allow her to be the
19 custodian of this record and this could be admitted. This --
20 and that would be all.

21 Ms. Shurling: Yes, sir. That would be it.

22 The Court: No testimony from her.

23 Ms. Shurling: Not if I'm allowed to introduce this.

24 The Court: Because it's hearsay or---

25 Ms. Campbell: Your Honor, I don't think the report

colloquy

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1 would be admissible.

2 **The Court:** If it's kept in the ordinary course of
3 business, why isn't the report---

4 **Ms. Campbell:** Then all our incident reports should be
5 able to come in; they never are.

6 **The Court:** This is an incident?

7 **Ms. Campbell:** Yes, sir.

8 **The Court:** Well, they generally are not admissible---

9 **Ms. Campbell:** They generally are not admissible.

10 **The Court:** ---relating to that particular incident.

11 **Ms. Campbell:** We would prefer testimony or some type of
12 stipulation.

13 **The Court:** All right. Well, then, the testimony is --
14 she's going to get up and testify -- y'all are going to let
15 her testify just what's on this thing.

16 **Ms. Campbell:** It would be -- other than she received --
17 yeah, she received a phone call from someone who identified
18 himself as Anthony Hackshaw who made a complaint about
19 threatening phone calls from May the 11th through May the
20 28th, and he made this report on whatever day. She had no
21 personal contact.

22 **The Court:** Well, I understand that.

23 **Ms. Campbell:** She can't say it's Hackshaw.

24 **The Court:** I understand that.

25 **Ms. Campbell:** But for the other reason I was concerned

1 we would just have to -- and she said that someone else could
2 testify just to that extent or we can, I think---

3 **The Court:** Well, she wants in there that the calls
4 included threats on his life. I mean, a threatening call is
5 a threatening call, and I don't see a problem with that. So
6 that's the extent of it. If she's -- that's all she's going
7 to testify to.

8 **Ms. Campbell:** That would be all she would testify to,
9 Your Honor.

10 **The Court:** Just whatever is written on this---

11 **Ms. Shurling:** What's written on here is all I want to
12 ask about.

13 **Ms. Campbell:** And you want the phone number in, too,
14 then.

15 **Ms. Shurling:** Yes.

16 **Ms. Campbell:** I don't see how the phone number is
17 relevant, Your Honor. If she had the records showing the
18 harassing calls, perhaps then it would be, but she chose not
19 to get those.

20 **Ms. Shurling:** I have a record that confirms at least
21 one phone call---

22 **Ms. Campbell:** Not at least.

23 **Ms. Shurling:** ---during this time period from that
24 number which at least partially corroborates---

25 **The Court:** Do you know whose number that is?

colloquy

1301

1 **Ms. Shurling:** No, sir, I don't have a clue.

2 **The Court:** Well, you'll just have to cross-examine her
3 on that. You don't know who it is. Nobody has ever checked
4 out who it is.

5 **Ms. Campbell:** We have checked out who it is. We don't
6 know. We can't find out. It comes back...

7 **The Court:** Well, I'm talking about this investigating
8 officer never checked it out.

9 **Ms. Campbell:** Just for the record, too, I mean, it
10 comes back to a Mr. And Mrs. Jones in West Columbia. We've
11 investigated that.

12 **The Court:** So we don't know who it is.

13 **Ms. Campbell:** Your Honor, we would -- if she gets to go
14 into the phone number, we would just ask that we be able to
15 cross on who it belongs to.

16 **The Court:** Well, you can get -- I mean, nobody knows
17 who it is.

18 **Ms. Campbell:** We do know it belongs to Mr. And Mrs.
19 Jones in West Columbia.

20 **The Court:** Well, who are you going to ask that?

21 **Ms. Campbell:** I'll ask the officer.

22 **The Court:** If she knows it belongs to Mr. And Mrs.
23 Jones?

24 **Ms. Campbell:** Yes, sir.

25 **The Court:** How does she know that?

1 **Ms. Campbell:** I'm just asking her if she does, and then
2 I can put up evidence showing it does.

3 **The Court:** You can ask her if she knows who it belongs
4 to.

5 **Ms. Shurling:** Well, Your Honor, if we go into that,
6 then we get into does she know whether or not it is a cell
7 phone that's simply in these peoples' name and---

8 **The Court:** She doesn't know anything. You could ask
9 her -- she's not going to -- this woman here, my guess is,
10 did nothing other than take a report.

11 **Ms. Shurling:** I understand, Your Honor. She's the one
12 saying that she's going to -- this witness can say who that
13 phone number---

14 **The Court:** No, she's -- no, she's not going to ask this
15 witness. She's going to put somebody up later on---

16 **Ms. Campbell:** I can put somebody else up to say that.

17 **The Court:** ---in reply.

18 **Ms. Campbell:** If you put the phone number in, that's
19 where we're going.

20 **Ms. Shurling:** And all I'm saying at that point is I
21 think they have to demonstrate whether it was a cell phone or
22 I can ask is it a cell phone or a landline---

23 **The Court:** Ask who?

24 **Ms. Shurling:** Have you talked to those individuals?

25 **The Court:** You're going to ask whoever she puts up to

colloquy

1303

1 say who the number is? Fine. That's fine. Somebody can ask
2 this lady if she knows whose number this is. My guess is
3 she's going to say no.

4 Ms. Shurling: Your Honor, may I have just one moment,
5 please?

6 Ms. Campbell: And then, Your Honor, we would be back to
7 our original concern that I approached about.

8 The Court: We're not going into that. Have you got
9 somebody -- have you got an officer that wants to get up and
10 testify to this?

11 Ms. Campbell: Do we have somebody else? We can get any
12 other -- the exposure I think, Your Honor, is the concern.

13 The Court: The only identification this lady is going
14 to give is I'm a deputy with the Richland County Sheriff's
15 Department. Is that a secret? Does she have a uniform?

16 Mr. Lupton: Your Honor, her identity -- the visual
17 identity is a secret that she is with the sheriff's
18 department.

19 The Court: So nobody knows that.

20 Mr. Lupton: Yes, Your Honor. That is correct.

21 The Court: Other than the sheriff.

22 Mr. Lupton: The officer she works with but it is not a
23 -- it is not known to the public. She does not represent
24 herself as a deputy to the public.

25 The Court: Well, do y'all have a problem with bringing

1 another deputy in?

2 Ms. Shurling: I said that in the beginning.

3 The Court: Have you got another deputy that can get up
4 and testify that this report was taken by the Richland County
5 Sheriff's Department and here's what it is?

6 Mr. Lupton: I'll be happy to get somebody if y'all
7 want.

8 Ms. Shurling: Your Honor, if someone other than Ms.
9 Scott is going to testify, I would ask to be allowed to
10 introduce the report.

11 The Court: I'm not letting the report in.

12 Ms. Shurling: But I can ask about anything on the
13 report.

14 The Court: You can ask about anything on the report.
15 What is that going to tell you?

16 Ms. Shurling: There's not a lot on here. I mean, I
17 just want to make sure these are my parameters, what's on
18 this piece of paper.

19 The Court: I mean, you know, I don't know what you're
20 going to ask. What is it you're going to ask?

21 Ms. Shurling: Does this incident report reflect a crime
22 that was reported or an incident that was reported on
23 5/31/09? Yes, it does. Who was the person reporting the
24 alleged crime? Anthony Hackshaw.

25 The Court: All right.

colloquy

1305

1 Ms. Shurling: What crime was he reporting?

2 The Court: What incident?

3 Ms. Shurling: What information did he convey and what
4 dates did he say---

5 The Court: Well, they can't testify as to what
6 information did he convey because they don't know what
7 information he conveyed. They can testify---

8 Ms. Shurling: What information does---

9 The Court: ---what information was---

10 Ms. Shurling: ---the report reflect---

11 The Court: ---is reflected.

12 Court Reporter: I can't take you both at the same time.

13 Ms. Shurling: I'm sorry. What information does the
14 report reflect that he conveyed?

15 The Court: All right. What number did he give?

16 Ms. Shurling: Yes, sir.

17 The Court: That's it.

18 Ms. Shurling: That's it, Your Honor.

19 The Court: All right. Y'all got a problem?

20 Ms. Campbell: No, sir.

21 The Court: All right. Have we got a deputy?

22 Mr. Lupton: I'll get you one, Your Honor.

23 Ms. McDuffie: We can get Joe.

24 The Court: Who?

25 Deputy Gravlin: I'm working in the courtroom.

1 **The Court:** We're not going to put him up. He's a --
2 he's security and he's involved in this trial. We've already
3 done one screwy thing by putting a witness up---

4 **Ms. Campbell:** If you can just give us a few minutes to
5 get somebody to put this---

6 **Deputy Gravlin:** You just need any deputy?

7 **Ms. Campbell:** Any deputy.

8 **The Court:** Well, I don't want anybody that's involved
9 up here.

10 **Ms. Campbell:** In the courthouse.

11 **Mr. Lupton:** I can call and have one of the narcotics
12 officers come over.

13 **The Court:** I don't care whether it's a narcotics
14 officer. This is not a nar...

15 **Ms. Campbell:** We'll get one as soon as we can.

16 **Mr. Lupton:** Can we get one from another courtroom?

17 **The Court:** I just don't think it's proper to have a
18 deputy who works up here in the courthouse---

19 **Mr. Lupton:** Courthouse.

20 **The Court:** ---that might be assigned to this case that
21 comes in and testifies something that Ms. Shurling may ask a
22 question that he gives an answer and she doesn't like it, and
23 then he's going to say -- you know, we're adding another
24 reason to appeal this case if there's a conviction. So we're
25 not going to do that. We got 800 and something deputies,

colloquy

1307

1 according to Major Smith who I talked to last week that if we
2 can't get one deputy from somewhere in Richland County to
3 come up here and---

4 Mr. Lupton: I will have it done, Your Honor.

5 Ms. Shurling: And, Your Honor, I'm ready---

6 Mr. Lupton: Give me just a minute.

7 Ms. Shurling: ---to proceed with Mr. Gleaton if you
8 would like us to do that while we wait.

9 Ms. Campbell: Wait. Are you doing that outside the
10 presence of the jury?

11 Ms. Shurling: Yes. Well, Your Honor, I guess in an
12 abundance of caution I'd have to do it in the presence of the
13 jury.

14 The Court: I have no problem with that.

15 Ms. Campbell: Whatever. I'm sorry. I thought she told
16 me that earlier.

17 The Court: All right. Now, let's hold this 'til we get
18 Deputy Smith over here, whoever that might be, or Jones or
19 Doe or...

20 Ms. Shurling: And if Your Honor wishes to -- I don't
21 know procedurally how you want to handle that, but if you
22 want to tell the jury that I'm being allowed to call Mr.
23 Gleaton out of order or whatever, it doesn't matter to me.

24 The Court: I don't know about out of order.

25 Ms. Shurling: Okay. Thank you.

1 **The Court:** All right. We got G.Q. Kirkland back here
2 now. He's all dolled up.

3 **Mr. Kirkland:** Can I warn him that he's also facing
4 contempt for his testimony today if he refuses to the
5 cooperate, just in the hallway before he walks in?

6 **The Court:** You can warn him, but it's probably---

7 **Mr. Kirkland:** If he refuses to answer the question,
8 he's once again facing contempt charges.

9 **The Court:** Well, it's probably unlikely that I would do
10 that.

11 **Mr. Kirkland:** I understand.

12 **The Court:** I mean, he was -- he refused to answer what
13 Ms. Shurling asked him the other day and she just -- she's
14 asking him a different day the same question. He's already
15 been penalized for his refusal.

16 **Mr. Kirkland:** I understand, and the only thing I want
17 to warn him though is that there still are other potential
18 penalties that he's facing. This could be further evidence
19 in an indictment for criminal contempt later on. I just want
20 to make sure he understands so that he doesn't say---

21 **The Court:** My guess is he can't be indicted for
22 criminal contempt when he's been -- something greater than
23 what he's already been sentenced to.

24 **Mr. Kirkland:** That may very well be true. I just don't
25 want him to say I didn't warn him.

colloquy

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1 **The Court:** Well, you can warn him anything you want,
2 Mr. Kirkland. I mean...

3 **Mr. Kirkland:** Okay. Thank you.

4 **The Court:** Mr. G.Q. Warning Kirkland.

5 **Mr. Kirkland:** Right.

6 **The Court:** All right. Go back there and talk to him
7 real quick.

8 **Mr. Kirkland:** I'll get him walking through the hall.

9 **The Court:** All right. Y'all got somebody after this in
10 case that deputy is not here?

11 **Ms. Shurling:** A moment, Your Honor. Your Honor, after
12 the testimony or attempted testimony from Mr. Gleaton and
13 dealing with whatever officer puts the phone record -- the
14 report issue on the record, I need a brief recess to converse
15 with the next two witnesses.

16 **The Court:** All right. And brief being? What is that?
17 Five minutes?

18 **Ms. Shurling:** No, sir, maybe 30 minutes or else we
19 could take an early lunch if Your Honor would allow.

20 **The Court:** Well, unfortunately I'm not going to break
21 at 11:30 to take an early lunch.

22 **Ms. Shurling:** Well, it should be later than 11:30 by
23 then, Your Honor. It should be closer to 12, I would think.

24 **The Court:** Well, I doubt whether we'll take more than
25 five minutes for you to talk to your witness. This is

1 something that should have been done before we got in here.

2 All right. He's talking to him in the hallway. I thought he
3 was coming in.

4 (Pause in proceedings. Mr. Kirkland and Mr. Gleaton
5 enter the courtroom.)

6 **The Court:** All right. Just stand right over there.
7 Mr. Kirkland, have you had a chance to talk to your client?

8 **Mr. Kirkland:** I did, Your Honor.

9 **The Court:** All right. Are we ready to go?

10 **Mr. Kirkland:** He's ready to go.

11 **The Court:** All right. Let's bring the jury back in.
12 No, y'all keep him over there until Ms. Shurling calls him.

13 (Whereupon, the jury was brought into open court at
14 11:22 a.m.)

15 **The Court:** All right. Ladies and gentlemen, it's my
16 understanding that Ms. Shurling is going to -- the next
17 witness she's going to call is Mr. Torrian Gleaton, and you
18 may remember Mr. Gleaton. He appeared here -- was it
19 yesterday or Wednesday? Wednesday, I think. And was put
20 under oath and I remind you that you're previously under
21 oath, Mr. Gleaton. And he took the witness stand and at that
22 time denied that he made a statement and indicated to the
23 prosecutor and indicated to Ms. Shurling that he did not want
24 to cooperate and was not going to answer any questions, and
25 after that he left the courtroom.

Torrian Gleaton - direct exam by Ms. Shurling

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1 I advised Ms. Shurling -- informed Ms. Shurling that the
2 Court would do everything it could to make Mr. Gleaton
3 available again if she in the course of her presentation of
4 evidence wanted to recall him to the stand, and it's my
5 understanding that she has elected to do that. Is that
6 correct, Ms. Shurling?

7 Ms. Shurling: That's correct, Your Honor.

8 The Court: All right. Do you want to call this
9 witness?

10 Ms. Shurling: Torrian Gleaton, please.

11 The Court: Mr. Gleaton, if you'd come back up here.
12 All right. You recall just a minute ago I told you you were
13 sworn the other day, and so you're still under oath here
14 today. Okay?

15 Mr. Gleaton: Yes, sir.

16 The Court: All right.

17 Torrian Gleaton, having been previously sworn and
18 remaining under oath, testified as follows:

19 Direct Examination

20 By Ms. Shurling:

21 Q. Mr. Gleaton, day before yesterday when you were called,
22 you indicated that you would not answer any questions from
23 the State and that you would not answer any questions from
24 me. Correct?

25 A. Yes, ma'am.

1 Q. Are you willing to answer my questions today?

2 A. No, ma'am.

3 Q. So I can't examine you about anything about this case
4 and you answer my questions. You won't do it.

5 A. No, ma'am.

6 Q. Thank you. Sorry to bring you back to say that but---

7 A. You're welcome.

8 Q. ---I had to ask. Thank you.

9 The Court: Anything from the State?

10 Ms. Campbell: No, sir.

11 The Court: All right, Mr. Gleaton. Thank you. Next
12 witness here yet, Mr. Lupton?

13 Mr. Lupton: Your Honor, he is on the way.

14 Ms. Shurling: Thank you.

15 Mr. Lupton: He should be here in 10 minutes or less.

16 The Court: Ladies and gentlemen, the next witness is
17 going to be -- my understanding is an officer with the
18 Richland County Sheriff's Department and is -- the officer
19 was asked to be here and is on -- I don't know if it's a he
20 or a she, but the officer is on the officer's way. I know it
21 seems like we're delaying you and wasting time and we are in
22 both instances, but it may be an unavoidable situation where
23 we can't do anything about it.

24 So rather than sit here looking at each other - it may
25 not be all that bad - but I'm going to let you step back to

colloquy

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1 the jury room. As soon as the officer gets here, we'll bring
2 you back. I don't anticipate it will be very long. So,
3 again, don't talk about the case while you're back there.

4 (Whereupon, the jury was excused from open court at
5 11:27 a.m.)

6 **The Court:** Are those other two witnesses you need to
7 talk to, are they here?

8 **Ms. Shurling:** One of them is, Your Honor, and I also
9 need a word with Mr. Gleaton's attorney. He was trying to
10 tell me something and...

11 **The Court:** All right. Well, maybe you can talk to that
12 other witness---

13 **Ms. Shurling:** I'll try.

14 **The Court:** ---while we're waiting. When y'all are
15 prepared to go, advise this -- I don't know who the deputy
16 is. Advise him of the parameters of the testimony.

17 **Ms. Campbell:** It's limited to whatever is on this
18 sheet.

19 **The Court:** That's correct. Well, I mean, you know, I
20 don't know what else he or she could say other than what's on
21 the sheet.

22 **Ms. Campbell:** Anything in reference---

23 **The Court:** I mean, they could get up and say a lot of
24 things. I don't know.

25 (Whereupon, a short break was taken.)

1 **The Court:** All right. Now, everybody understands --
2 where is the officer? Officer, do you understand what the
3 parameters are?

4 **Officer:** Yes, sir, Your Honor.

5 **The Court:** They're going to question you about a
6 report. You didn't take it. You can't testify to anything
7 more than what's in the report, I assume, so... All right.
8 Let's bring -- are we ready to go? Who did you have next?
9 Do you have somebody short after this?

10 **Ms. Shurling:** Yes, sir. Mr. Amos Jones. Investigator
11 Jones.

12 **The Court:** Well, that's not you. You're not
13 Investigator Jones.

14 **Deputy Williams:** No, sir.

15 **The Court:** All right.

16 **Ms. Campbell:** This is Mr. Williams.

17 **The Court:** All right.

18 **Ms. Campbell:** Deputy Williams.

19 **The Court:** All right. He looks like an investigator.

20 **Ms. Campbell:** He looks nice, doesn't he?

21 **The Court:** Over there in that sheriff's department
22 they're all G.Q., too, huh? All right. Let's bring them in.

23 (Whereupon, the jury was brought into open court at
24 11:47 a.m.)

25 **The Court:** All right. Thank you, ladies and gentlemen.

Jason Williams - direct exam by Ms. Shurling

1315

1 We got an update on lunch. They told us they should have it
2 here by 12:30, so... All right. Ms. Shurling, are you ready
3 to call your next witness?

4 **Ms. Shurling:** Yes, sir, Your Honor. I would call
5 Investigator Williams from the Richland County Sheriff's
6 Department.

7 Jason Williams, after being duly sworn, testified
8 as follows:

9 **The Clerk:** Please have a seat and state your full name
10 for the record.

11 **The Witness:** Investigator Jason Williams.

12 Direct Examination

13 By Ms. Shurling:

14 Q. Investigator Williams?

15 A. Yes, ma'am.

16 Q. Thank you. I believe that you're employed by the
17 Richland County Sheriff's Department?

18 A. Yes, ma'am.

19 Q. And you have in your hand a copy of an incident report
20 filed with the Richland County Sheriff's Department?

21 A. Yes, ma'am.

22 Q. And to be clear, you're not the officer that actually
23 took this report, are you?

24 A. No, ma'am.

25 Q. Who was that officer?

1 A. The reporting officer was a Brittany Scott.

2 Q. And she's not available today, so you're going to
3 testify about this incident report for us. Correct?

4 A. Yes, ma'am.

5 Q. Okay. Looking at this, pardon me, in this incident
6 report, who does it say is the complainant?

7 A. The complainant is listed -- suspect is an unknown
8 person.

9 Q. Okay. And who is the complainant? Who is the person
10 making the complaint?

11 A. Anthony Hackshaw.

12 Q. Okay. And Mr. Hackshaw made this report on what date?

13 A. It says...

14 Q. Bottom right.

15 A. 5/28 of 2009.

16 Q. If you could look at the date of the report, sir, on the
17 bottom right of the form.

18 A. Huh-uh. That's not -- that's not the report date---

19 **The Court:** Ms. Shurling, maybe if you could step up
20 there and offer him -- since it's not his report.

21 By Ms. Shurling:

22 Q. Okay. What is the date of the report?

23 A. The report date is going to be 5/28 of 2009. The actual
24 report was approved on 5/29 of 2009 because the report date
25 is going to be next to the reporting officer. You said the

Jason Williams - direct exam by Ms. Shurling

1317

1 bottom right. That's her supervisor.

2 Q. Okay. I'm sorry. I don't understand your hierarchy.

3 So the date that my client would have reported this incident

4 to the Richland County Sheriff's Department is 5/28---

5 A. 2009.

6 Q. So May 28, 2009.

7 A. Yes.

8 Q. And the other dates pertain to when various supervising

9 officers would have reviewed this incident report.

10 A. It was reviewed on 5/29 of 2009, and then it was

11 assigned to another individual for follow-up investigation on

12 5/31 of 2009.

13 Q. Thank you. Now, what conduct did my client report to

14 the police department on 5/28/09? What was he complaining

15 of? And if you could just publish the language on the

16 incident report, please.

17 A. He complained -- states he has been receiving anonymous

18 phone calls from the above number. It is an unknown male who

19 threatens to get him. States that this man continues to

20 threaten his life. Wishes to prosecute.

21 Q. Thank you. And there is a number on the report as well.

22 It says the number listed above. What is that number listed

23 above?

24 A. It's going to be area code 803-755-6040.

25 Q. And the incident date is reflected on this document as

1 well as May 11th, 2009?

2 A. Yes. It says May 11, 2009, at 12:00---

3 Q. May 11th. Sorry. I didn't mean to speak over you.

4 A. May 11th, 2009, at 12:00.

5 Q. And referring back again to the language contained on
6 the incident report, it specifically says that the C. Slash
7 V., complaining victim, states this man continues to threaten
8 his life. Correct?

9 A. That is correct.

10 Ms. Shurling: A moment's indulgence. Nothing further,
11 Your Honor.

12 The Court: All right. Anything?

13 Ms. Campbell: No, sir.

14 The Court: All right. Thank you, sir. You may step
15 down. You are free to leave at this time. All right. Call
16 your next witness, please.

17 Ms. Shurling: Your Honor, it had been my intent to call
18 Amos Jones. I've been informed, rather, that Aaron Johnson
19 is outside available and he has to pick up children. So if I
20 could go -- revert and do Mr. Aaron Johnson next, I would
21 appreciate it.

22 The Court: Is Aaron Johnson on this list?

23 Ms. Shurling: Yes, sir, I believe he was. He was also
24 on the State's list, and we provided them with necessary
25 information this morning.

1 **The Court:** All right. Is this Mr. Johnson?

2 Aaron Johnson, after being duly sworn, testified as
3 follows:

4 **The Clerk:** Please have a seat and state your full name
5 for the record.

6 **The Witness:** Aaron Johnson.

7 Direct Examination

8 By Ms. Shurling:

9 Q. Mr. Johnson?

10 A. Yes, ma'am.

11 Q. What is your relationship to my client, Anthony
12 Hackshaw?

13 A. He's my cousin, but we grew up as brothers from --
14 raised by our grandmother, so I call him my little brother.

15 Q. So in practice your relationship is that of big brother,
16 little brother?

17 A. Yes, ma'am.

18 Q. Okay. And you live in Columbia, South Carolina?

19 A. Yes, ma'am.

20 Q. How long have you lived here?

21 A. Approximately nine, going on ten years.

22 Q. And I believe you're a businessman?

23 A. Yes, ma'am.

24 Q. What kind of business do you own and operate?

25 A. I run a recording studio. I'm a graphic artist. I do

1 graphic work fliers, posters, business cards, anything
2 dealing with advertising and marketing.

3 Q. Among -- well, are you and your brother close?

4 A. Yes, ma'am.

5 Q. Back in the Spring of 2009 and before really, were you
6 in constant contact?

7 A. Yes, ma'am.

8 Q. Did you see each other frequently?

9 A. Yes, ma'am.

10 Q. How many times a week would you say you saw one another?

11 A. Probably up -- basically every day he would stop by
12 after work or call.

13 Q. So it wouldn't be unusual at all for him to come by your
14 place of work?

15 A. No, ma'am. He's always there.

16 Q. Your studio, I believe it's called Quantum Beats?

17 A. Yes, ma'am.

18 Q. Where is it located?

19 A. 125 Decker Park Road.

20 Q. Decker Park Road. Is that like off Decker Boulevard?

21 A. Yes, ma'am.

22 Q. How far would you say Decker Park Boulevard is from
23 where your brother works, Bryan Psychiatric Hospital?

24 A. That's off of Farrow Road. I'd say approximately seven
25 to ten minutes according to if you're stuck at the traffic

Aaron Johnson - direct exam by Ms. Shurling

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1 lights or not.

2 Q. Okay.

3 A. Or it might be less than that.

4 Q. So not very far.

5 A. No, ma'am.

6 Q. And it's also not very far from where he lives, is it?

7 A. From where he lives? No, ma'am.

8 Q. Pardon me. Well, we know where he lives now. Pardon
9 me.

10 A. Yes, ma'am.

11 Q. From where he lived in May of 2009.

12 A. Yes, ma'am.

13 Q. Did there come a time when your brother and his wife
14 left town following the search of their apartment?

15 A. Yes, ma'am.

16 Q. And to your knowledge, did they go home to New Jersey?

17 A. At that time I didn't know where they was at. I was
18 waiting for a phone call because it was on the internet and
19 stuff, and he called me and I told him to turn himself in.

20 Q. Okay. When he contacted you, did you tell him the
21 police were looking for him in connection with a murder?

22 A. Yes, ma'am, because it was on the internet.

23 Q. Okay.

24 A. And all over the news.

25 Q. And once you told him the police were looking for him in

1 connection with a homicide, did he come back to Columbia,
2 South Carolina, fairly quickly?

3 A. Yes, ma'am.

4 Q. Do you have any specific recollection of how long it
5 took from the time you told him they wanted to question him
6 in connection with the murder and when he came back?

7 A. No, ma'am. I'd say approximately -- I would say a week
8 or two when I spoke to him.

9 Q. Okay.

10 A. But to say the exact time, no.

11 Q. And during this time period when you communicated with
12 your brother, did he indicate he was going to make
13 arrangements for a lawyer?

14 A. Yes, ma'am.

15 Q. Okay. At some point before that---

16 A. Uh-huh.

17 Q. ---did you find out that an eviction notice had been put
18 at your brother's apartment?

19 A. Yes, ma'am, and I spoke to the landlord and told her I
20 was going to make arrangements to come and get everything and
21 put it in storage for 'em.

22 Q. Okay. So the reason you contacted the landlord about
23 getting their stuff out of the apartment was because they
24 were being evicted.

25 A. Yes, ma'am. As a matter of fact, they had -- they had

1 called me and told me I had I think like 48 hours to get
2 everything out. I believe when I spoke -- called -- called
3 out, went down to the office, told her I have to get a truck
4 and everything to get the stuff out, if she could give me a
5 week to get it out. They offered me, you know, ample time to
6 get everything out.

7 Q. So you initially contacted the landlord.

8 A. Yeah. No. She -- as I remember, she -- they called me
9 first.

10 Q. Okay.

11 A. And then I called them back and went down to the office
12 to get the keys and stuff to get the stuff out.

13 Q. Okay. Had you been listed, to your knowledge, as some
14 kind of contact person on Anthony's rental agreement?

15 A. Yes, ma'am.

16 Q. So that's how the landlord knew to call you---

17 A. Yes, ma'am.

18 Q. ---when they couldn't reach him.

19 A. Yes, ma'am.

20 Q. A moment's indulgence. You know your brother really
21 well, don't you?

22 A. Yes, ma'am.

23 Q. You've been around him in happy times?

24 A. Yeah. Yes, happy, sad. Yes, ma'am.

25 Q. Sad times?

1 A. Yes, ma'am.

2 Q. You know what his voice sounds like when he's under
3 stress?

4 A. Yes, ma'am.

5 Q. When he's surprised about something?

6 A. Yes, ma'am.

7 Q. When you told your brother that he was all over the
8 media being wanted for questioning in connection with a
9 murder---

10 A. Yes, ma'am.

11 Q. ---did your little brother sound surprised?

12 A. He did, and I asked him if he had anything to do with
13 it. He told me no. And I said, "Well, as long as you keep
14 running, it's going to look worse. You need to come and turn
15 yourself in and take care of it."

16 Q. But based on your knowledge of your little brother, you
17 believe he was surprised by that information?

18 A. No, I couldn't see his face and stuff so, you know---

19 Q. I understand.

20 A. Yeah.

21 Q. But based on his voice.

22 A. Yes, ma'am.

23 Q. And did he show any reluctance at all to come straight
24 back to South Carolina and answer their questions?

25 A. He was kind of scared, you know, that he didn't want to

Aaron Johnson - cross-exam by Ms. Campbell

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1 -- you know, they want to lock him up for something like that
2 and say, "Well, you come in and take care of it. It might
3 take awhile, but you need to come take care of it."

4 Q. Okay. But other than being scared, which I suppose
5 would be understandable with a murder charge---

6 A. Yes, ma'am.

7 Q. ---he didn't indicate he wasn't going to come back and
8 answer questions, did he?

9 A. No. He told me he was going to come back.

10 Q. And, in fact, he came back fairly quickly.

11 A. Yes, ma'am.

12 Q. As soon as he lined up a lawyer.

13 A. Yes, ma'am.

14 Q. Do you remember who that lawyer was that he got---

15 A. No, ma'am.

16 Q. ---to... Okay. Thank you. No further questions.

17 **Ms. Campbell:** May it please the Court?

18 **The Court:** Yes, ma'am.

19 Cross-Examination

20 By Ms. Campbell:

21 Q. Mr. Johnson?

22 A. Yes, ma'am.

23 Q. I just have a few questions. You indicated that when
24 you talked to him, you told him the longer he ran, the worse
25 it was going to look.

1 A. Yes, ma'am.

2 Q. Why was he running?

3 A. Didn't want to go to jail. As far as we know, they got
4 pot in the apartment. So they said if he comes back, they're
5 going to lock him up. I said, "Well, you better come and
6 face the charges, whatever they got in there."

7 Q. So he wasn't running because he was scared or he was
8 scared?

9 A. Well, yes.

10 Q. And---

11 A. You know, they got marijuana in the apartment.

12 Q. He knew they'd done a search on his house and he never
13 went back to his house. He just took off to New Jersey; is
14 that correct?

15 A. Yes, ma'am.

16 Q. And you mentioned earlier that y'all have a close
17 relationship.

18 A. Yes, ma'am.

19 Q. You talked on a daily basis.

20 A. Uh-huh.

21 Q. He would come by the studio?

22 A. Yes, ma'am.

23 Q. He was a big part of your life.

24 A. Yes, ma'am.

25 Q. And you also testified that once he went to New Jersey

Aaron Johnson - cross-exam by Ms. Campbell

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1 -- did you continue to talk to him all the time?

2 A. I didn't know if he was in New Jersey or not, ma'am.

3 Q. Why was that?

4 A. He called me -- because after he left, I haven't heard
5 from him. And then he called me. I didn't know where he was
6 at, and I told him -- I said, "You're all over the internet
7 and the T.V. You need to go ahead and turn yourself in."

8 Q. Okay. So you continued to talk to him---

9 A. As far as---

10 **The Court:** Wait a minute. Y'all don't talk over each
11 other.

12 **The Witness:** Yes, ma'am.

13 By Ms. Campbell:

14 Q. Or call the investigator?

15 A. Yes, ma'am.

16 Q. I didn't mean to interrupt.

17 A. Yeah.

18 Q. So y'all continued to talk on a daily basis?

19 A. Not on a daily basis. I would hear from him off and on.

20 Q. You would hear from him off and on?

21 A. Yeah.

22 Q. And approximately what date was it when you heard or you
23 saw on the internet that he was wanted for this murder?

24 A. I can't remember. I know it was around that time. I
25 can't give you a specific date.

1 Q. Could it have been early July?

2 A. I can't remember that, ma'am.

3 Q. And how long was it after you talked to him that he
4 actually turned himself in? Do you remember that?

5 A. Like I say, approximately maybe a week or two.

6 Q. A week or two?

7 A. Yes, ma'am.

8 Q. You mentioned---

9 A. As far as I could recollect. Sorry.

10 Q. He lived close by to your studio?

11 A. Yes, ma'am.

12 Q. Do you remember when the police came and talked to you
13 earlier this summer?

14 A. Yes, ma'am.

15 Q. About your brother?

16 A. Yes, ma'am.

17 Q. And specifically that was on July the 28 of this summer,
18 just a few months ago?

19 A. In July, yes. Sometime in July. Yes, ma'am.

20 Q. And do you remember talking to them about your knowledge
21 about the shooting and the robbery that had taken place back
22 in April of 2009?

23 A. No. They asked me about the robbery that my brother got
24 robbed and told them, yeah, he had got robbed and that he---

25 Q. And did you tell them how you knew he had gotten robbed?

Aaron Johnson - cross-exam by Ms. Campbell

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1 A. No, ma'am.

2 Q. Do you remember telling that your brother had called you
3 at the studio and he was frantic?

4 A. Yeah, he told me that he had got robbed and that---

5 Q. That was your brother who told you that---

6 A. And I told him to call the police -- yes, and I told him
7 to call the police.

8 Q. ---right after it happened.

9 A. Yes, ma'am.

10 Q. Back in April.

11 A. When he got robbed.

12 Q. Of 2009.

13 A. About April. I can't remember that, ma'am.

14 Q. And you told him specifically -- you don't remember what
15 he told you about the robbery but that he admitted to you
16 that he had been robbed.

17 A. That he'd been robbed.

18 Q. And he was frantic.

19 A. Yes, and I told him to call the cops.

20 Q. And you told him -- you didn't ever ask him anything
21 about the robbery because you didn't want to know anything.

22 A. I told them I didn't ask him about the robbery. He
23 called and told me that he had gotten robbed and I told him
24 to call the cops.

25 Q. You told him to call the cops?

1 A. Yes, ma'am.

2 Q. Do you remember them asking you about a certain car, a
3 silver Honda? Had you ever seen him with the silver Honda?

4 A. No, ma'am.

5 Q. Do you remember telling them though it wasn't unusual
6 for him to come over to your studio and hang out during the
7 day?

8 A. Yeah, like after work he'll stop by, hang out, download
9 music, stuff like that.

10 Q. And specifically they asked you about May the 20th when
11 this murder occurred?

12 A. Yeah, and I told them I didn't know anything about the
13 date and the time or nothing.

14 Q. But you told them it's possible that he was at your
15 studio prior to the murder occurring and you wouldn't be
16 aware of it necessarily.

17 A. He would be at the studio -- like I said, I can't give
18 you exact date and time, but basically every day he'll stop
19 by after work or call me.

20 Q. Until he took off to New Jersey; is that correct?

21 A. Until he took off. I don't know Jersey or where he was
22 at, ma'am.

23 Q. Wherever he was at.

24 A. Yes, ma'am.

25 Q. And then you didn't talk to him so often.

1 A. Yes, ma'am.

2 Q. You also told them that it wasn't unusual for your
3 brother to show up with some different friends and hang out
4 at the studio.

5 A. I believe I told them like young ladies drop him off
6 sometime. I see him with young ladies and stuff like that.

7 Q. And other than what you've testified to here today,
8 other than the eviction and how you handled that, you don't
9 know anything, do you?

10 A. No, ma'am.

11 Ms. Campbell: Thank you, sir.

12 The Court: Ms. Shurling?

13 Redirect Examination

14 By Ms. Shurling:

15 Q. Mr. Johnson?

16 A. Yes, ma'am.

17 Q. When you finally talked to your brother---

18 A. Uh-huh.

19 Q. ---and found out where he was, did he tell you he was
20 running because he found out that they had searched his
21 apartment?

22 A. Yes, ma'am.

23 Q. Okay. He didn't say anything about running because of
24 anything to do with this murder, did he?

25 A. No, ma'am, and I asked him if he did it. Like I told

1 the investigator, he told me, "No."

2 Ms. Campbell: Objection, Your Honor. This is self-
3 serving.

4 The Court: All right.

5 Ms. Shurling: Your Honor, it came in without objection.

6 The Court: Let's move on.

7 By Ms. Shurling:

8 Q. And, again, you're the one that told him they were
9 looking for him in connection with the homicide.

10 A. Yes, ma'am.

11 Q. And then he came back.

12 A. Yes, I told him to go on the internet, W.I.S., and he'll
13 see the everything right there.

14 Ms. Shurling: Thank you. No further questions.

15 The Court: Anything, Ms. Shurling? I mean Ms.
16 Campbell?

17 Recross Examination

18 By Ms. Campbell:

19 Q. Just one question.

20 A. Yes, ma'am.

21 Q. Once you found out he was wanted for this murder, did
22 you call the police and tell them where he was?

23 A. What did you say, ma'am?

24 Q. Did you call the police and tell the police where your
25 brother was?

1 A. No, ma'am, I didn't know where he was at.

2 Ms. Campbell: Thank you.

3 The Court: All right. You may step down. Thank you,
4 sir.

5 The Witness: Thank you, sir.

6 The Court: All right. Call your next witness.

7 Ms. Shurling: Mr. Amos Jones, please.

8 Ms. Campbell: Your Honor, may we approach?

9 Ms. Shurling: Certainly.

10 (Whereupon, a bench conference was held.)

11 Amos Jones, after being duly sworn, testified as
12 follows:

13 The Clerk: Please have a seat and state your full name
14 for the record.

15 Direct Examination

16 By Ms. Shurling:

17 Q. Good afternoon, Mr. Amos (sic).

18 A. Good afternoon.

19 Q. Mr. Amos, what is your profession?

20 A. I'm a private investigator.

21 Q. And did you have occasion to be hired in connection with
22 the murder charges against Anthony Hackshaw?

23 A. Yes, I was.

24 Q. And you were hired by an attorney who had been appointed
25 to represent Mr. Hackshaw prior to me. Correct?

1 A. That's correct.

2 Q. And that attorney's name is Charlie Johnson?

3 A. Charlie J. Johnson.

4 Q. Charlie J. Johnson. And Mr. Johnson was, to the best of
5 your recollection, appointed to represent Anthony Hackshaw
6 right after he was arrested?

7 A. That's correct.

8 Q. And how quickly after Mr. Johnson got on the case did he
9 hire you?

10 A. I don't recall exactly, but I believe it was within days
11 or maybe a week or so after he got appointed. He had the
12 court order signed by the judge and had me assigned to
13 investigate it for him.

14 Q. Thank you. And would you have gone to visit Mr. Anthony
15 Hackshaw at the Alvin S. Glenn Detention Center immediately
16 after you were brought on the case?

17 A. That's correct.

18 Q. So you would place your first visit with Mr. Hackshaw at
19 how close to the point of arrest?

20 A. I'm not exactly sure, but I'm thinking it was within the
21 -- a week or two at least.

22 Q. Okay. Now, you are in the course of your career hired
23 to work with defense attorneys representing clients in
24 criminal cases. Correct?

25 A. That's correct, all the time.

Amos Jones - direct exam by Ms. Shurling

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1 Q. Is that predominantly what you do?

2 A. About 95 percent of my work is criminal defense.

3 Q. Okay. And are there certain things that you do when you
4 interview or, pardon me, when you first go visit a defendant
5 in a brand-new case? Let me rephrase that. When you've been
6 hired in a new case, do you go see the defendant as quickly
7 as you can?

8 A. As quickly as I can schedule, yes.

9 Q. And is there certain advice that you give defendants who
10 are detained in the jail, not on bond? They're detained in
11 jail. Is there certain advice that you routinely give to
12 every defendant in a jail?

13 A. Yes, I do.

14 Q. And can you describe for us what that advice is?

15 A. Yes. At the conclusion of my interview with all
16 defendants, I warn them not to discuss their case with
17 anybody in the jail because of the dangerous repercussions of
18 a conversation that they may have with somebody in jail.

19 Q. Okay. And do you warn them against having conversations
20 with persons in the jail regardless of whether or not they're
21 claiming their innocence?

22 A. That's correct. That's a standard procedure for me.
23 I've been doing it for the last 30 years, since I've been an
24 independent investigator.

25 Q. Okay. And in the course of warning them not to

1 communicate with people in jail, do you tell them why it is
2 risky for them to talk to anyone in the jail?

3 A. Yes, I do.

4 Q. And what is the advice you give them concerning the
5 dangers of communicating with people in the jail?

6 A. Well, I always tell the defendant that if the
7 conversation is held with somebody in jail, there's a very
8 good possibility that that person may be looking out for
9 their own self-interest and that they may use whatever
10 conversation they had as an advantage for them to help
11 themselves. So I always caution them not to have a
12 conversation about their charges whatsoever.

13 Q. And just so we're clear here, do you warn them about
14 individuals who may be looking for an opportunity to
15 cooperate with the State in order to better their own
16 situations?

17 A. That's correct.

18 Q. Commonly known as jailhouse snitches?

19 A. That's correct.

20 Q. And do you warn them that it's possible for such people
21 to claim statements that have been made to them, whether they
22 were made to them or not?

23 A. Absolutely. I've seen that happen over the last 30
24 years of my career as a private investigator, that some folks
25 will come into the courtroom and testify that they've had

Amos Jones - direct exam by Ms. Shurling

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1 certain conversations with defendants and sometimes it's not
2 true at all. I've never found it to be advantageous for the
3 defendant to talk to anybody in the jail about their charges.

4 Q. Okay. And so when you say don't talk to anybody in the
5 jail about your charges, you mean don't talk, period, about
6 your case.

7 A. That's correct.

8 Q. And you tell them that.

9 A. Yes, ma'am.

10 Q. And do you warn them that certain people who might want
11 to be jailhouse snitches will look to be finding out just
12 enough about their case that if they decide to claim they've
13 said something to them they can make it sound credible?

14 Ms. Campbell: Objection, Your Honor. I think this has
15 been asked and answered.

16 The Court: It's been asked and answered. It's leading.
17 By Ms. Shurling:

18 Q. What do you warn them about discovery materials?

19 A. Pardon me?

20 Q. Do you warn them about the dangers of leaving their
21 discovery materials around?

22 A. Correct. Well, that's part of the warning. We -- I
23 never leave that out or leave that defendant during the
24 initial interview. Even if I take the discovery or somebody
25 else have given them the discovery, I always tell them to be

1 careful about leaving the discovery out so somebody else can
2 get their hands on it so they could learn about their case
3 and possibly use the information, you know, to gain an
4 advantage for themselves. So I warn them about having a
5 conversation with anybody about their charges and about the
6 -- sharing their discovery.

7 Q. You've been in Alvin S. Glenn Detention Center a few
8 times?

9 A. Quite a few.

10 Q. Be fair to say probably hundreds?

11 A. That's fair to say.

12 Q. Have you had occasion to be in what's called Hotel Unit?

13 A. Yes, I have.

14 Q. And are all of the pods at Alvin S. Glenn essentially
15 the same?

16 A. Basically the same, yes.

17 Q. Can you describe the living accommodations, the way
18 they're set up, for us?

19 A. Well, the -- the units are individual cells. I can't
20 remember the numbers, but they're in a sort of horseshoe
21 shape, two tiers. There's an open area I guess for the rec
22 area outside and then there's an open area with tables for
23 the inmates to sit and play cards, talk, what have you. So
24 it's a pretty open area. There's a guard station at the
25 front of the entrance when you first walk into the unit.

Amos Jones - direct exam by Ms. Shurling

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1 Q. On occasions when you've been to Alvin S. Glenn and
2 specifically to Hotel or any of the pods like Hotel, is it
3 common for doors to cells to be standing open?

4 A. I can't recall the doors to the cells being open.
5 Normally when I do an interview, most people conduct
6 interviews at the -- in the pod. We use the multipurpose
7 room which is a separate room adjacent to the open pod area.

8 Q. Sure. But my question is: Just thinking back to the
9 appearance of the common area, isn't it common for the cell
10 doors -- some of them to be open and some of them to be
11 closed?

12 Ms. Campbell: Objection, Your Honor. He just answered
13 that.

14 The Court: He just answered the question.

15 By Ms. Shurling:

16 Q. Mr. Jones, if you are an inmate in the Alvin S. Glenn
17 Detention Center, is there any way for you to hide?

18 A. Any way to do what? I'm sorry.

19 Q. Let me rephrase that question. Would it be possible to
20 be in jail, in one of those pods for an extended period of
21 time, and there not be an opportunity for someone to have
22 claimed they had a chance to have conversations with you?

23 A. If I understand your question correctly, there's always
24 an opportunity to have a conversation with another inmate
25 because they're out in the open pod area at times, yes.

1 Q. Okay. So anyone can talk to someone who's in the common
2 area. There's no restriction to their access to talk to each
3 other.

4 A. Not that I know of, no.

5 Q. And if someone is seen having conversations with an
6 inmate, say my client, Mr. Hackshaw, he has no way to prove
7 later whether that conversation was about the weather or his
8 daughter or about his crime, does he?

9 A. I wouldn't think so, no.

10 Q. All the -- all or most of the people on the pod have an
11 opportunity to have visits over monitors with people from the
12 outside community, don't they?

13 A. Yes.

14 Q. And they have an opportunity to talk to people from the
15 community about various things when they have visits with
16 their friends and their family members; right?

17 A. I'm sure they do, yes.

18 Q. And that would provide yet another opportunity for them
19 to find out details about a crime that's been in the media.

20 A. Absolutely. Some of the people in jail know more about
21 the crimes on the street than we, the investigators, know
22 about. That's -- law enforcement is included.

23 Q. Have you sometimes been surprised how fast the grapevine
24 works at Alvin S. Glenn Detention Center?

25 A. There's quite a grapevine. I've heard information about

1 other cases---

2 Ms. Campbell: Objection, Your Honor. I think this is
3 getting in some hearsay.

4 The Court: Sustained. It's not relevant, other cases.
5 By Ms. Shurling:

6 Q. Okay. Just so we're clear, you warned Anthony Hackshaw
7 about the fact that there would be people looking for an
8 opportunity to be a snitch.

9 A. That's correct.

10 Q. You warned him that there were people looking for an
11 opportunity to barter knowledge they claim to have in order
12 to make their own situation better.

13 A. That's correct.

14 Q. And you warned him not to communicate anything about his
15 case to other people in the cell block in order to try to
16 avoid that risk the best he could.

17 A. That's correct. I did give him that warning.

18 Ms. Shurling: Thank you.

19 The Court: All right. Ms. Campbell?

20 Ms. Campbell: Just a couple of questions.

21 Cross-Examination

22 By Ms. Campbell:

23 Q. And you first made contact with him what month?

24 A. I believe it was July or August. I'm not absolutely
25 sure.

1 Q. July or August?

2 A. July or August, yeah.

3 Q. Yes, sir. Of 2009?

4 A. Correct.

5 Q. Basically your advice is to -- basically you're telling
6 him not to tell -- you tell him not to tell anyone what they
7 did.

8 A. Well, my advice to all inmates that I interview at the
9 jail is not to discuss their case whatsoever with anybody
10 other than myself, if I'm working with the attorney, or the
11 attorney that represents them.

12 Q. And how would it have hurt anyone to go out and say "I
13 didn't do this" to anyone in the pod?

14 A. I'm sorry. Say that again.

15 Q. How would it hurt anyone to say "I didn't do this" to
16 anyone in the pod?

17 A. Probably wouldn't hurt them at all.

18 Ms. Campbell: Nothing further.

19 Redirect Examination

20 By Ms. Shurling:

21 Q. Mr. Jones, if someone had a conversation with an inmate
22 in their pod about what they're charged with and gave a
23 general description---

24 Ms. Campbell: Objection, Your Honor. She's assuming
25 facts -- she's giving a hypothetical.

Amos Jones - redirect exam by Ms. Shurling

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1 **The Court:** Let's ask him what he did. Okay?

2 **Ms. Shurling:** Did you warn him it was dangerous to talk
3 to people about anything about their charges, period?

4 **Ms. Campbell:** Objection, Your Honor.

5 **The Court:** Ms. Shurling, you have---

6 **Ms. Campbell:** Asked and asked.

7 **The Court:** ---asked him that and asked him that.

8 By Ms. Shurling:

9 Q. Mr. Jones, the prosecution has just asked you whether
10 you told him, your client, not to tell anyone what he did.
11 Do you recall that question?

12 A. Yes.

13 Q. Was your advice not to tell anyone what he did or not to
14 tell anyone anything?

15 A. My advice to Mr. Hackshaw when I spoke to him was not to
16 discuss his case with anybody other than myself or his
17 attorney, Mr. Johnson. Not to discuss it at all.

18 **Ms. Shurling:** Thank you. No further questions.

19 **The Court:** Anything?

20 **Ms. Campbell:** No, sir.

21 **The Court:** All right. Thank you, sir. You may step
22 down.

23 **The Witness:** Thank you.

24 **The Court:** Do you know whether the lunches are here?

25 (An off-the-record discussion takes place between the

1 Court and the clerk.)

2 The Court: Who is your next witness?

3 Ms. Shurling: Sir?

4 The Court: Who is your next witness?

5 Ms. Shurling: Your Honor, my next witness is not here
6 yet, and the only other two are the ones that...

7 The Court: Have you got a short witness?

8 Ms. Shurling: Your Honor, I believe I have a matter I
9 would need to take up outside the presence of the jury before
10 the next witness.

11 The Court: All right. Ladies and gentlemen, step back
12 to the jury room. Please don't discuss the case.

13 (Whereupon, the jury was excused from open court at
14 12:26 p.m.)

15 Ms. Shurling: Your Honor, the next witness I would
16 propose to call would be Debra Chapman. She is an attorney
17 for Mr. Torrian Gleaton. I have it upon information and
18 belief that she had conversations with the prosecution as
19 early as a week from this past Wednesday during which time
20 she advised that Mr. Gleaton was not willing to cooperate. I
21 further have it upon information and belief that at that time
22 she was told that the State would help him get a downward
23 departure in his federal charges if he agreed to cooperate.
24 That infor -- Ms. Chapman conveyed that information to Mr.
25 Gleaton, and despite those representations he declined to

colloquy

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1 cooperate. I believe the fact that he was offered a downward
2 departure in exchange for cooperation would be relevant in
3 this case, and I would move to introduce that.

4 **Ms. Campbell:** Your Honor, as far as -- I did contact
5 and talk with Ms. Chapman, I believe, the Wednesday before we
6 started this trial on Monday. She indicated her client was
7 not cooperative at that point. She also indicated she wanted
8 to continue to talk to him. I said -- I conveyed to her what
9 Ms. Taylor at the U.S. Attorney's Office said to me that if
10 he cooperated that could be considered as cooperation as far
11 as his sentencing in federal court, and then I spoke to Ms.
12 Chapman again and she continued to talk to her client up
13 until the point when he testified on Wednesday at which point
14 I put on the record he indicated he did not want to
15 cooperate. I don't understand where this is going.

16 **The Court:** Well, what is -- I don't understand it
17 either.

18 **Ms. Shurling:** Your Honor, I would like to put on the
19 record that we have now been able to verify---

20 **The Court:** That what?

21 **Ms. Shurling:** ---that he has been offered assistance
22 with obtaining a downward departure on his federal charges in
23 exchange for his cooperation.

24 **Ms. Campbell:** And if he had cooperated that would have
25 come out that he would have been -- gotten, but he didn't.

1 So how can I do the inverse? I don't understand what she's
2 saying.

3 **The Court:** I don't understand it either. He was asked
4 and I think he testified the other day that, yes, that he
5 understood that if he cooperated it could be of some benefit
6 and offer him some downward departure from his sentence in
7 the federal court.

8 **Ms. Shurling:** Your Honor, then I would ask that at
9 minimum I be allowed to establish for the record that the
10 State had notice as far as the Wednesday before this trial
11 began that Mr. Gleaton had indicated he would not cooperate,
12 that after one additional call he was still saying he was not
13 going to cooperate. We were not given notice of that.

14 As a result of our not finding out until the day he was
15 called to the stand, we had moments to do research on the
16 laptop here in the courtroom to argue against the State's
17 motion to introduce the taped interview whereas it's now
18 clear and -- and the next day when we attempted to supplement
19 that motion and Your Honor noted that the rules didn't allow
20 me to reargue it, when it is now apparent that the State knew
21 for some time before trial that Mr. Gleaton was not going to
22 cooperate, and I did not have notice of that. And I believe
23 the fact that they knew that he had said he was not going to
24 cooperate would be potentially even Brady material that would
25 have to be disclosed to me.

colloquy

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1 **Ms. Campbell:** We disclosed everything about him prior
2 to him testifying, Your Honor. Ms. Chapman asked me on
3 Friday -- she says, "I want to continue to talk to him," and
4 she'll testify to this. "You know, I want him to cooperate.
5 Let me talk to him one more time." And I don't know that I'm
6 at liberty to divulge any kind of conversation she has with
7 her client other than what she represents to me, and I did
8 divulge that.

9 **The Court:** So what is it you want to do? You want Ms.
10 Chapman to get up and say that she indicated at some point in
11 time she advised the solicitor that her client was not
12 cooperating---

13 **Ms. Shurling:** Your Honor---

14 **The Court:** ---and that she would continue to work on
15 it?

16 **Ms. Shurling:** If Ms. Campbell is now acknowledging for
17 the record that as long ago as a week before this trial,
18 Wednesday before this trial began on Monday, she was notified
19 that Mr. Gleaton said he wasn't going to cooperate, that
20 after one telephone conversation she was notified again that
21 he was still saying he wasn't going to cooperate but that
22 admittedly Ms. Chapman may have said that she was going to
23 continue to work on him -- but the State had notice that he
24 had said he was not going to cooperate and they did not
25 advise us of that.

1 **Ms. Campbell:** She said he was scared and she wanted to
2 talk to him some more. I mean, that's the extent of it, Your
3 Honor, and we turned that over -- I put it on the record that
4 he was not cooperating before he took the stand to make sure
5 that everything was out there.

6 **The Court:** Well, I'm really not sure what all this has
7 to do with anything, but y'all want to let Ms. Chapman come
8 in and say what she said?

9 **Ms. Shurling:** Yes, sir, Your Honor. I'm fine with
10 doing that in front of the jury.

11 **The Court:** No.

12 **Ms. Campbell:** No, sir, Your Honor.

13 **The Court:** You can do it in front of the jury if you
14 want.

15 **Ms. Campbell:** No, sir. Thank you.

16 **The Court:** Y'all just don't want to go away, do you,
17 Mr. Kirkland?

18 **Mr. Kirkland:** We're trying so hard.

19 **The Court:** All right. Bring Ms. Chapman in here.

20 (Ms. Chapman enters the courtroom.)

21 **Ms. Chapman:** Judge, I apologize. I wasn't prepared to
22 argue or didn't even know that I was coming to court today.

23 **The Court:** That seems to be the norm for your office.
24 I saw one of your lawyers on Wednesday and he... All right.

25 Debra Chapman, after being duly sworn, testified as

1 follows in camera:

2 Examination by the Court

3 Q. Have a seat up here. All right. It's been reported in
4 here that approximately a week or so before this case was
5 brought -- how long?

6 Ms. Campbell: The Wednesday before.

7 By the Court:

8 Q. Wednesday would be -- today is the -- the 20th of
9 October you had had a conversation with the solicitor, Ms.
10 Campbell, and indicated that your client did not want to
11 cooperate in this case. Is that correct?

12 A. Well, it wasn't with Ms. Campbell. It was Ms. McDuffie.

13 Q. All right. Ms. McDuffie.

14 A. And as a matter of fact, she called to let me know that
15 my client had given a statement. I didn't know that he'd
16 given a statement; this is the first I'd heard of it. And on
17 that day I told her I would go to the jail, talk to my client
18 and see what his position was. I called her back and told
19 her - I guess I'm not divulging any of my attorney/client
20 privilege - but I thought my client was scared. I probably
21 really needed to talk to him some more.

22 I went back down, talked to him again. I called Ms.
23 McDuffie back and told her I just don't think that he would
24 be willing to do it, but I would continue to work on him.
25 Obviously I've got him on a federal case. Any cooperation he

1 may give would be beneficial for him in the future in his
2 federal case.

3 Then I did not talk to Ms. Campbell until Wednesday
4 morning. That's the first conversation I've had with her,
5 and she had asked me about whether he wanted to testify and I
6 said, "No, he's not going to do it." That was the first time
7 I told her he was not going to do it. She told me she was
8 going to declare him as a hostile witness. I told her to do
9 what she had to do.

10 Q. All right. Have you got anything else you want to add?

11 A. That's all.

12 The Court: Anything you want to ask her, Ms.

13 Campbell---

14 Ms. Campbell: No, sir.

15 The Court: ---or Ms. McDuffie? I don't know which
16 one... All right. Ms. Shurling, what do you want to ask?

17 Direct Examination

18 By Ms. Shurling:

19 Q. Ms. Chapman, when you spoke with Joanna McDuffie on
20 Wednesday you said you'd go see your client and get back in
21 touch with her?

22 A. That's right.

23 Q. Did you get back in touch with her later that same day?

24 A. I don't -- I don't remember if it was that same day. I
25 doubt it because I'm just going to tell you when I go to the

Debra Chapman - direct exam by Ms. Shurling

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1 Lexington County jail, I go home because I live in Lexington.
2 So I don't know if I called her Thursday. I know I talked to
3 her twice---

4 Q. Okay.

5 A. ---is what I remember, and I know it was last week.

6 Q. Okay. And after your initial conversations with your
7 client, is it fair to say that you advised the solicitor's
8 office that your client was not inclined to cooperate?

9 A. Yeah. He wasn't interested in it.

10 Q. Okay.

11 A. But certainly as a lawyer, I was going to do my best to
12 convince him to do otherwise.

13 Q. I understand, but there's no question that the
14 solicitor's office knew, based on communications with you as
15 early as say Thursday or so of the week before this trial,
16 that your client had indicated he was not interested and
17 wasn't going to be testifying.

18 A. Well, that he wasn't interested. I wasn't going to tell
19 you that he's definitely -- he didn't tell me he definitely
20 was not going to testify is what I can tell you. I know he
21 wasn't interested; he had some issues.

22 Q. Okay. All I'm trying to establish is that as early
23 as---

24 **The Court:** She's testified that she told Ms. McDuffie
25 or somebody Wednesday of the trial for the first time --

1 that's when she said that he was not going to testify.

2 Correct?

3 The Witness: He wasn't interested. That's correct.

4 The Court: And that he refused to testify.

5 The Witness: That's right.

6 The Court: Up to that point, you had advised them that
7 you didn't think he wanted to do that, but you were
8 continuing to work on him.

9 The Witness: That's right and not to give up hope
10 because I had every intention of my client -- I wanted him to
11 testify.

12 The Court: All right. That's it.

13 Ms. Shurling: No further questions, Your Honor.

14 The Court: You can step down. Thank you, ma'am.

15 You're free to go.

16 The Witness: Thank you, Judge.

17 The Court: You and Mr. Kirkland...

18 Ms. Shurling: Sorry to get you away from your office.

19 The Court: All right. I'm going to feed the jury. Who
20 do you need to talk to?

21 Ms. Shurling: My client.

22 The Court: All right. Where is -- is Deputy Gravlin in
23 here?

24 Bailiff: He's out here.

25 The Court: He's eating huh? That's his problem. Y'all

colloquy

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1 got -- y'all got something for Mr. Hackshaw to eat?

2 Ms. Shurling: Your Honor, I'm going to ask my associate
3 to go get us both a bite to eat and come back.

4 The Court: Well, you'll have to clear that with the
5 sheriff. They want to talk to his -- to Mr. Hackshaw over
6 lunch. So if y'all could make the arrangements... You
7 probably can use that jury room.

8 Deputy Gravlin: Well, we'll take him to the third floor
9 so he doesn't have to be out in the jury hall.

10 The Court: That's a good idea, Mr. Gravlin. You always
11 think of those things.

12 Ms. Shurling: Is there any problem with me sending my
13 associate to get a sandwich for---

14 Deputy Gravlin: We feed them downstairs.

15 Ms. Shurling: Pardon?

16 Deputy Gravlin: We feed downstairs. We'll grab him
17 lunch downstairs.

18 Ms. Shurling: Will you bring it upstairs to where we
19 are?

20 Deputy Gravlin: Yes, sir.

21 Ms. Shurling: Thank you.

22 The Court: All right. We're going to stand in recess
23 for a half-hour. Well, if you'll walk -- I'll go ask the
24 jury how long they think they need to eat. Pardon me? Let
25 me tell you: We have wasted lots of time here today. We

1 have not moved at all, so---

2 **Ms. Shurling:** Your Honor, I appreciate that, but the
3 State has taken three and a half days to present their case
4 and I---

5 **The Court:** But they -- they moved it, Ms. Shurling.
6 They went bam, bam, bam, bam, bam. We've stopped, started,
7 stopped, started, stopped, started.

8 **Ms. Shurling:** Your Honor---

9 **The Court:** I'm going to go talk to the jury to see how
10 much time they need, so don't go anywhere right now. Let me
11 talk to...

12 (Pause in proceedings.)

13 **The Court:** All right. You've got 45 minutes.

14 (Whereupon, a lunch break was taken.)

15 **The Court:** All right. Ms. Shurling, who is your first
16 client -- I mean your first -- your first witness?

17 **Ms. Shurling:** Dave MacDougall.

18 **The Court:** Mr. MacDougall. All right. Where is Mr.
19 MacDougall? There he is.

20 **Mr. MacDougall:** Right here.

21 **The Court:** Y'all ready to go? Y'all ready to go?

22 **Ms. Campbell:** Yes, Your Honor. If we can just look at
23 whatever they're intending to introduce, we might be able to
24 expedite things.

25 **The Court:** Pardon me?

colloquy

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1 **Ms. Campbell:** If we can just look at what they're
2 intending to introduce...

3 **The Court:** I don't have any idea. Y'all got some
4 exhibits y'all intend to introduce?

5 **Ms. Shurling:** Yes, sir, Your Honor.

6 **The Court:** Let Ms. Campbell...

7 **Ms. Campbell:** If I could just see them.

8 **The Court:** Show...

9 **Ms. Campbell:** I don't want to see his notes.

10 **The Court:** Huh?

11 **Ms. Campbell:** Oh, he does have notes? We've not been
12 provided those.

13 **Ms. Shurling:** Notes concerning measurements of the back
14 yard at the crime scene.

15 **Ms. Campbell:** That's fine. If that's what his notes
16 show, we'd like to see them.

17 **The Court:** Notes are notes.

18 **Ms. Campbell:** Notes are notes.

19 **Ms. Shurling:** And the doctor's office stuff we've
20 already given them.

21 **The Court:** All right. Can we bring the jury in yet?

22 **Ms. Shurling:** As far as I'm concerned you can, Your
23 Honor.

24 (Pause in proceedings.)

25 **The Court:** Are you ready?

1 **Ms. Campbell:** Yes, Your Honor. They have not provided
2 us any of this information before.

3 **The Court:** From this point forward, if we don't get
4 stuff -- if it hasn't been provided, we'll determine whether
5 we're going to admit it. All right. Let's bring---

6 **Ms. Campbell:** I don't have a copy.

7 **The Court:** Bring the jury in.

8 **Ms. Campbell:** Your Honor, apparently this is not my
9 copy.

10 **Ms. Shurling:** I'm sorry. I didn't hear Ms. Campbell.

11 **The Court:** You have not given her copies. She's
12 entitled to copies.

13 **Ms. Shurling:** We were planning on introducing these,
14 Your Honor.

15 **The Court:** Pardon me?

16 **Ms. Shurling:** We were planning on introducing these
17 things.

18 **The Court:** She is entitled to a copy of everything that
19 you have. If you have not given her copies of your notes---

20 **Ms. Shurling:** Your Honor, she's not entitled to copies
21 of my investigator's notes. That's attorney work client --
22 work privilege -- work product. Pardon me. The notes of my
23 investigator---

24 **The Court:** All right. We got... Your client is
25 testifying. He's going to testify from that stuff? Are they

colloquy

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1 coming in?

2 **Bailiff:** Yes, sir.

3 **The Court:** What are they doing? Getting in line out
4 there to make sure---

5 **Bailiff:** Must be. Must be. Getting in their chosen
6 seats.

7 **The Court:** Ms. Shurling, keep in mind what I told this
8 jury about when we're breaking. If you could find a good
9 spot between 4 and 4:30...

10 **Ms. Shurling:** Yes, sir, Your Honor.

11 **The Court:** I mean, just, you know, if it looks like a
12 witness is going to go beyond -- if you get to a good spot...

13 **Ms. Shurling:** I think it's possible we may be finished
14 before then.

15 **The Court:** Everything?

16 **Ms. Shurling:** Everything.

17 **The Court:** If we are, that's good, but if not, keep
18 that in mind.

19 **Ms. Shurling:** Oh, I will.

20 (Whereupon, the jury was brought into open court at 1:36
21 p.m.)

22 **The Court:** All right. Thank you. Y'all enjoy your
23 lunch? Good. Good. Don't thank me. Thank yourselves
24 because you taxpayers paid for it. All right. Ms. Shurling,
25 are you ready to call your next witness?

1 Ms. Shurling: Yes. Investigator Dave MacDougall.

2 David MacDougall, after being duly sworn, testified
3 as follows:

4 The Clerk: Please have a seat and state your full name
5 for the record.

6 The Witness: My name is David MacDougall.

7 Direct Examination

8 By Ms. Shurling:

9 Q. Mr. MacDougall, what is your profession?

10 A. I'm a licensed private investigator, have been since
11 1979.

12 Q. Prior to going into that line of work, were you in law
13 enforcement?

14 A. I was with the Columbia Police Department for two years,
15 and I had a State constable's commission for one year before
16 that.

17 Q. Okay. But ever since then you've been in private
18 practice as an investigator.

19 A. Right. Since 1979.

20 Q. And were you hired by me to assist in the development of
21 this case for trial?

22 A. I was.

23 Q. And in that capacity have you helped me factually
24 develop some evidence concerning the scene where this
25 homicide occurred?

David MacDougall - direct exam by Ms. Shurling

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1 A. I have, ma'am. Yes, ma'am.

2 Q. Specifically, we have a diagram that's already been
3 introduced by the State showing the dimensions of the yard.
4 Let me get this. This diagram shows the house and the shed
5 and the tree and the area where the little table was; right?

6 A. That's what it appears to be to me, yes.

7 Q. Okay. And you've been to the scene with me?

8 A. Probably three or four different times.

9 Q. All right. Now, on the left end here there's a carport?

10 A. No. Yes, on the left end of the house there's a
11 carport, yes. It's -- and there's a second -- at a slight
12 angle there's also another self-standing carport.

13 Q. So there are really two carports.

14 A. There are. One attached---

15 Q. One---

16 A. ---to the house, one separate.

17 Q. And you and I have a tendency to talk over each other.
18 Let's try to watch out for the court reporter, please. On
19 the left end of the house there's a carport that's attached
20 to the house.

21 A. That's correct, ma'am.

22 Q. And then there's thing that juts out at an odd angle
23 that's separate.

24 A. That's correct.

25 Q. Okay. Is there a chain link fence along here?

1 A. The chain link fence extends from the end of the house,
2 that corner of the house -- actually the end of the house and
3 the carport out from your diagram in the direction of Moses
4 Street.

5 Q. Okay.

6 A. And that is a regular chain link fence. I guess they're
7 about three feet high, the kind you have around your house,
8 and that particular one has a gate in it that swings open and
9 closed.

10 Q. And the entrance area is approximately here?

11 A. I'm sorry.

12 Q. Is that accurate?

13 A. No. That's a second fence. There's another fence --
14 there's another fence that runs parallel to Moses Street. So
15 the fence actually comes out from the -- comes out from the
16 house to about this point, and there's a gate in it. It's
17 about a three-foot-high chain link fence. Then it extends
18 down here. This is the Moses Street along this side, and
19 this extends quite a distance and there's about a 12 -- I
20 measured it to be a 12 -- let's see. I think it's about 12
21 and a half feet -- 12-and-a-half-feet opening on in this
22 fence. It has no gate; it's just open.

23 Q. At this time it has no gate.

24 A. At this time it has no gate, and having viewed the crime
25 scene pictures, I don't recall seeing any gate on it at that

1 time either.

2 Q. Okay. And the little fence that goes from the corner of
3 the house out to Moses Street has what we would call a
4 pedestrian gate?

5 A. That sounds like a good way to describe it, yes. It
6 swings open. Actually, it swings open towards Juniper
7 Street. It has a little latch on it just so you can get in
8 and out of it.

9 Q. Just kind of a standard chain link fence.

10 A. Very standard, probably like many folks have.

11 Q. At my request did you confirm the measurements on this
12 diagram?

13 A. I just did my independent measurements---

14 Q. Okay.

15 A. ---to measure the yard and where some of the items were
16 positioned.

17 Q. Okay. From the opening for what would be the driveway
18 into the back yard---

19 A. Moses Street side of the fence?

20 Q. Moses Street side---

21 A. Right.

22 Q. ---to the fence on the far end---

23 A. Uh-huh.

24 Q. ---of the back yard, how many feet is it?

25 A. From here -- the fence to the fence on this end of the

1 yard is 99 feet.

2 Q. 99 feet?

3 A. 33 yards.

4 Q. 33 yards. Not very far. Okay. And from the house to
5 the shed?

6 A. Well, what I actually did was I measured from the house
7 to the fence which is slightly behind the shed.

8 Q. Okay.

9 A. And that is a distance of 44 feet.

10 Q. Okay.

11 A. And I would estimate the -- at the time of this incident
12 there were two sheds in the yard. When I was there the other
13 day, there was only one, and they set out a few feet from the
14 fence on that side.

15 Q. Okay. And the fence behind the shed, for at least a
16 portion of it, has a wooden privacy fence immediately behind
17 the chain link?

18 A. It's -- yeah. Some of it's overgrown. It's a
19 combination of the fence and some -- a wooden fence that has
20 been there for awhile. It's somewhat overgrown with vines
21 and the like.

22 Q. Okay. Now, you were in court when you heard
23 descriptions of where the young lady who was killed in this
24 incident's car was parked?

25 A. Yes, ma'am.

David MacDougall - direct exam by Ms. Shurling

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1 Q. Right?

2 A. Uh-huh.

3 Q. In front of this shed?

4 A. Yes. That's correct.

5 Q. Is that correct?

6 A. Yes.

7 Q. On this diagram it looks like the back yard is kind of
8 wide, but it's actually narrow, isn't it?

9 A. Well, if you consider its widest is 44 feet -- you've
10 got that shed which then makes -- lessens the space and then,
11 of course, if you pulled a vehicle in there it would be even
12 more congested.

13 Q. So if the jury pays close attention to the crime scene
14 photos, they can see that there wasn't a lot of room in that
15 yard once that S.U.V. was parked in there.

16 A. Correct.

17 Q. At least as it pertains to the space between the house
18 and the shed.

19 A. That's correct.

20 Q. Okay. Now -- well, one more thing. You have also said
21 that there was a fence along this side?

22 A. It actually is -- yes. Uh-huh. It runs the length. It
23 actually is -- the fence actually starts a little bit beyond
24 the house. It's not attached to the house. It starts up
25 here somewhere and runs all the way over to the corner.

1 That, too, is the same make -- same kind of chain link fence.
2 I estimate it to be three feet tall, nothing -- nothing out
3 of the ordinary.

4 Q. Okay. Mr. MacDougall, you have heard various witnesses,
5 particularly Mr. Hudson, talking about running and jumping
6 over a fence. I believe Mr. Joyner also talked about running
7 and jumping over a fence. You confirmed that portions of the
8 fence on the back side behind the shed and the side are of a
9 height that someone could jump over.

10 A. Oh, very easily. Maybe not me but young folks could,
11 I'm sure.

12 Q. But---

13 A. I used to be able to.

14 Q. Probably not me, but they are jumpable.

15 A. Sure. Again, they're the standard chain link fence.

16 There was no barbed wire, no wire on the top, nothing -- you
17 know how the links -- the fence comes up, so if you don't
18 clear it you might hurt yourself, but most of us jump those
19 things -- you know, can jump them without any problem.

20 Q. If someone were standing right by where Ms. Fogle's car
21 was parked and made a dash for the fence at the end of the
22 yard, is it close enough by that they could span that
23 distance in a matter of seconds?

24 A. Oh, certainly. Someone like Mr. Hudson, his size and
25 age? Certainly.

David MacDougall - direct exam by Ms. Shurling

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1 Q. And the same thing with Cleveland Joyner?

2 A. Yes.

3 Q. You would have no reason to question that they could,
4 especially---

5 A. Absolutely.

6 Q. ---if they were really scared.

7 A. Under the circumstances they described, jumping that
8 fence would probably be second nature. I mean, they'd be
9 over that in a second.

10 Q. And given the measurements, it's clear that they could
11 clear that space in a matter of seconds.

12 A. Very quickly. Yes, ma'am.

13 Q. Thank you. Now, you've been involved in the
14 investigation of a number of homicide cases over the years?

15 A. In 31 -- I can't count the number of them. I've done a
16 lot of death penalty cases, probably more than any other
17 private investigator that I know, and I am -- I have been
18 involved in -- I don't know if I'd say a hundred murder cases
19 but probably close to it over the 31 years.

20 Q. In your experience in homicide investigations, starting
21 first at the State level, is it common practice for witness
22 statements to be taken from anyone able to give material
23 information about a homicide?

24 A. If you want to preserve what they say, absolutely. It's
25 a necessity. In any kind of investigation, even a car wreck

1 -- I do civil action matters. Oftentimes the attorneys call
2 me, and that's exactly what they want. They want witness's
3 statement sworn to in writing preserved forever. Sometimes
4 they'll even ask for a recorded statement.

5 Q. Okay. But in reviewing -- as a private investigator,
6 assisting lawyers in preparing murder cases for court, you've
7 reviewed many, many files or documents for many, many files
8 for law enforcement, haven't you?

9 A. Yes, ma'am.

10 Q. And in your estimation as a professional investigator,
11 is it usually the practice to take written statements from
12 people who have something material to contribute to the
13 investigation?

14 A. Absolutely.

15 Q. And there's been some information put before the jury
16 during this trial that the F.B.I. doesn't take statements.
17 In your experience is that true?

18 A. They use a -- I think it's called 302 form where the
19 agent capsulizes or gives a synopsis of the interview, but
20 there are cases when they're important enough, big enough,
21 and serious enough that they will do -- and I've even seen on
22 occasions where they've had recorded statements of witnesses
23 and victims, suspects.

24 Q. And are you currently working on a homicide case in
25 federal court involving F.B.I. agents?

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1 A. I am, although the case did originate in Lexington
2 County. It was not originally investigated by the F.B.I.,
3 but since it's gone to the federal court, they have become
4 involved.

5 Q. Okay. And in that case are there some witness
6 statements reviewed by witnesses, signed by witnesses, that
7 were taken by the F.B.I.?

8 A. I'm trying to remember if there are -- there may be a
9 couple. They're still working on it, my understanding, but I
10 believe there have been a couple of them that we have
11 received so far.

12 Q. Okay. Well, in other cases in the past have you seen
13 witness statements where the substance of the witness's
14 statement is reduced to writing and the witness is given an
15 opportunity to review it and sign it? Have you seen witness
16 statements produced by the F.B.I.?

17 A. Yes, ma'am.

18 Q. Okay. So it would not be true that they never take
19 statements in the F.B.I.

20 A. Never? No, ma'am, that would not be accurate.

21 Q. Okay. Mr. MacDougall, when you're hired by an attorney
22 to assist in the presentation of the defense, are you often
23 hired fairly quickly after the defendant is arrested?

24 A. Sometimes. Never quickly enough but sometimes early on,
25 you know. It can be within a few days or weeks on occasion.

1 Q. Okay. And in this particular case, because I was not
2 the first lawyer, you didn't get hired very soon after the
3 client was arrested, did you?

4 A. That's correct. It was months, I believe, and I believe
5 there had at least been one other attorney and I believe
6 obviously another investigator involved in it.

7 Q. Okay. And when you are hired by a lawyer immediately
8 after a defendant is arrested, do you try and go see the
9 defendant as quickly as you can?

10 A. Yeah. Other than the attorney's office, that's usually
11 my first stop.

12 Q. Okay. And what are some of the reasons you would want
13 to go as quickly as you possibly can to see the defendant?

14 Ms. Campbell: Objection, Your Honor, just this line of
15 questioning is irrelevant as far as -- unless he's saying he
16 saw this defendant.

17 The Court: All right. Sustained. He's not testifying
18 as an expert. He's testifying as a fact witness in this
19 case. So he needs to limit it to what he's done in this
20 case.

21 By Ms. Shurling:

22 Q. Mr. MacDougall, even though you weren't hired
23 immediately after my client was arrested, what was your first
24 stop after coming to my office when you were hired?

25 A. To go interview Mr. Hackshaw.

1 Q. And are there certain things that it is your
2 professional habit of telling a new client, any new client---

3 A. Oh, yes.

4 Q. ---when you become involved in a case?

5 A. Yes, there is.

6 Q. And what would some of those be?

7 A. Well, I usually talk to them, make sure they understand
8 who I am, know that I'm working with their attorney on their
9 behalf, and I explain to them that the attorney and myself
10 and only -- and only anyone or only somebody from the
11 attorney's office -- and usually with most offices it would
12 be like identify yourself, Mr. Thompson and myself, and my
13 advice is and instructions, if it can be termed that way:
14 Don't talk to anybody else. I'm well aware of the fact
15 through my experience in cases that people sit in these jails
16 and they are people that sit back there who gather
17 information from other defendants in hopes of bartering it
18 for a lesser sentence for themselves. The term I think
19 that's been used here that's common is a jailhouse snitch.
20 And I caution them against it.

21 Sometimes some people that I have that are clients have
22 never been in a jail before. They don't know what's going on
23 back there, and I've seen too many cases where it's come back
24 to haunt them if they sit around and discuss their case. So
25 one of the first things is: Don't talk to anybody but your

1 attorney or myself or someone that we bring with us and make
2 sure they understand that.

3 Q. And do you make sure that they understand that that same
4 advice applies whether they did it or not?

5 A. That's -- absolutely. The fact they're in jail is why
6 they're given that instruction.

7 Q. Okay. And in your experience, are there people who are
8 willing to come forward and offer claimed confessions
9 regardless of whether there's any truth to them or not?

10 A. There are people who spend all their time in jail---

11 Ms. Campbell: Objection. This is -- he's giving his
12 opinion.

13 The Court: He is. Let's stick to the facts of the
14 case.

15 Ms. Shurling: Mr. MacDougall, do you warn clients about
16 the danger of giving anyone the opportunity to gather
17 information about the charges against them?

18 Ms. Campbell: Objection, Your Honor. If she could be
19 specific as to this case.

20 By Ms. Shurling:

21 Q. In this case did you warn my client, Anthony Hackshaw,
22 about the dangers of giving anybody the opportunity to gather
23 information about the facts surrounding the crime he was
24 charged with?

25 A. Absolutely. I told him when we first met, even though

1 he'd been there awhile: Don't talk to anybody about it.
2 Talk about your friends, your family. Listen to other
3 people. Read the Bible. Read magazines. Watch T.V.
4 There's plenty of things to talk about, plenty of things to
5 discuss, but one thing you don't discuss is your case and,
6 more importantly, your defense, which all blends in together.

7 Q. And in this particular case did you make certain, even
8 though you weren't the first investigator on the case, to
9 warn Mr. Hackshaw of the dangers of jailhouse snitches?

10 A. Absolutely. I didn't know if he had been warned. So
11 whether I was too late or not, I figured I better make sure
12 that he knows. And, again, I do this with everybody. If I
13 get them on day one or day 101, I've got to tell them that.

14 Q. Now, how many times have you visited Anthony Hackshaw at
15 the prison?

16 A. I believe two or three times. Two I can recall and
17 possibly a third.

18 Q. Okay. And on at least a couple of those occasions have
19 you had an opportunity to speak with him at length?

20 A. Yeah. My first -- my first interview -- the way I work
21 this is I take what's commonly called the discovery which is
22 a lot of the -- basically it's a printed copy of the State's
23 case. It's got incident reports. It may have photographs.
24 It may have forensic reports. It may have statements, a lot
25 of statements, and I review it and I talk to the defendant

1 and ask him or her about it, and we discuss their side and
2 what they've got to report to and we talk about that.

3 Q. Okay. And---

4 A. I'm sorry. As a result---

5 Q. As a result?

6 A. As a result of that, then I formulate what I'm going to
7 do and where to go with it.

8 Q. And, of course, you also get your marching orders from
9 me, from the attorney---

10 A. Between---

11 Q. ---who hired you---

12 A. It's a combination---

13 **Court Reporter:** I'm sorry. Y'all keep overlapping each
14 -- talking on top of each other. If you could stop, please.

15 By Ms. Shurling:

16 Q. In addition to items that you decide you need to look
17 into after talking to the client, you also get instructions
18 from the lawyer that hired you in this case: Me.

19 A. That's correct.

20 Q. Right? Okay. How many -- and I'm not talking about
21 homicides necessarily, but how many defendants would you say
22 you had the opportunity to interview in your career?

23 **Ms. Campbell:** Objection, Your Honor, as to relevance as
24 to this case.

25 **The Court:** Sustained.

1 Ms. Shurling: In your experience, did Mr. Hackshaw
2 strike you as a very---

3 Ms. Campbell: Objection.

4 Ms. Shurling: To what?

5 Ms. Campbell: You're trying to get him to characterize
6 him.

7 The Court: Look, this is a fact witness.

8 By Ms. Shurling:

9 Q. Mr. MacDougall, did you have any trouble engaging Mr.
10 Hackshaw in conversation?

11 A. No, ma'am.

12 Q. Did you have any trouble getting him to understand---

13 Ms. Campbell: Objection as to what his -- what the
14 defendant understood.

15 The Court: Sustained.

16 By Ms. Shurling:

17 Q. Mr. MacDougall, at any point in your interaction with my
18 client, did he express any difficulty in understanding you?

19 A. No. We discussed everything we needed to. He
20 understood what I told him or appeared to. He didn't have
21 any problems with it. I understood his responses. We
22 discussed everything that was important at that point.

23 Q. And were you able to understand him?

24 A. Without any problem.

25 Q. Was he reasonably articulate?

1 A. Quite so.

2 Q. Let's talk for a minute about the whole business about
3 these cell towers. Once you understood that there was going
4 to be some issue about telephone records in this case, did I
5 ask you to plot out, based on the coordinates on the phone
6 record, the location of the various cell towers in this area?

7 A. Yes, ma'am, you did.

8 Ms. Campbell: Your Honor, it's not just cell towers
9 that his phone was hitting on.

10 The Court: I'm sorry?

11 Ms. Campbell: It's just not the cell towers that his
12 phone was hitting on. There are other cell towers in the
13 Columbia area. I just don't want the jury to be misled that
14 these are the cell towers his phone had hit on. Some of them
15 aren't.

16 The Court: I don't know what it is, so...

17 By Ms. Shurling:

18 Q. Mr. MacDougall, did you prepare this map?

19 A. I did.

20 Q. And does this map reflect the locations of all the cell
21 phone towers within the geography of the area covered by the
22 map?

23 A. I believe it does. There were six particular cell
24 towers based on the cell phone records that I plotted out to
25 determine their exact location, and those are the six on

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1 there.

2 Q. Okay. Now, we're not -- you're not saying that these
3 six cell towers are the six cell towers with reference to any
4 specific telephone calls, are you?

5 A. No. No, ma'am.

6 Q. Just calls on Mr. Hackshaw's cell phone records.

7 A. That's correct.

8 Ms. Shurling: All right. Move to introduce as defense
9 exhibit.

10 Ms. Campbell: As far as that that's his understanding,
11 no objection, Your Honor.

12 The Court: So admitted.

13 (Defendant's exhibit 5 was received in evidence.)

14 By Ms. Shurling:

15 Q. I want to try to get my bearings here.

16 A. Okay.

17 Q. Up in the top left there's actually a lake. I love this
18 one: Alcohol and Drug Abuse Lake. Do you see that?

19 A. Right.

20 Q. Okay. Can you point to that?

21 A. Right. Right. Well, that's the lake and right below it
22 is the location of Bryan Psychiatric Hospital---

23 Q. That's exactly---

24 A. ---which is where I understood Mr. Hackshaw was
25 employed.

1 Q. Okay. And from there can you move the pointer to the
2 geographic location where the shooting occurred?

3 A. That would be -- I marked that with a little house right
4 here. This would be [REDACTED] This is Farrow Road
5 along here. Juniper Street runs off Farrow Road, and the
6 incident location was I think two blocks down Juniper Street.

7 Q. Okay. And at my request did you measure the distance
8 between Bryan Psychiatric Hospital and [REDACTED]

9 A. I did. I just drove it on an August afternoon about
10 midday, and it was a distance of 2.1 miles, took me four
11 minutes and 21 seconds.

12 Q. Can you also point out for us where the residence of
13 Kevae Dolphin is located?

14 A. That is off -- off the map. If you go up Farrow Road,
15 you get up to this point where you cross over 77, I believe
16 that is, and it's -- it's not incorporated in this map.

17 Q. Okay.

18 A. I know how to get there. If you go up Farrow Road to
19 Hard Scrabble Road, turn right, and her subdivision is
20 probably a half mile down Hard Scrabble Road, the first on
21 the right.

22 Q. Okay. And also at my request did you drive from the
23 location of Ms. Dolphin's house to the scene of this
24 shooting?

25 A. I did. That -- that's a distance of 7.2 miles, 7.1

1 miles. Took me about 18 minutes.

2 Q. Are you sure about that time?

3 A. It was -- it was about seven miles, about 18 minutes.

4 Q. Okay.

5 A. In traffic.

6 Q. And wasn't there another occasion when you drove from
7 Ms. Dolphin's residence to the crime scene with me at a time
8 of day when there was little traffic?

9 A. Right.

10 Q. And it took ten minutes.

11 A. Approximately 10 to 15. I think it was a Sunday
12 afternoon.

13 Q. Okay. Thank you. Now, also on this location can you
14 point out where the physical therapy clinic is?

15 A. That would be right down here, this little house
16 location. The address is Monckton Court. It's right off
17 Trenholm Road right near the Trenholm Plaza, right in that
18 vicinity down here at the bottom.

19 Q. Okay. And how about Anthony Hackshaw's apartment?

20 A. That would be -- let's see. Did I mark that on there?
21 His apartment would be---

22 Ms. Campbell: Objection, Your Honor, to him marking
23 anything on the exhibit. If he wants to take a pen and point
24 it out, that's fine.

25 By Ms. Shurling:

1 Q. You can take a pen---

2 A. Okay.

3 Q. I thought you were going to point it out.

4 A. I'm sorry. It's my mistake. It's already marked, this
5 little house right up here. That's Brighton Pointe. I
6 believe 80 Brighton Pointe. It's parallel to 277, and to get
7 to the apartment you come in off of Parklane Road.

8 Q. Okay. And have you driven, at my request, from Bryan
9 Psychiatric Hospital to where Mr. Hackshaw's apartment was?

10 A. I did. I drove -- again, it was in August. I made trip
11 from Bryan Psychiatric Hospital to [REDACTED] the
12 apartment. It was 2.8 miles, and it took me four minutes and
13 20 seconds.

14 Q. Okay. And from Mr. Hackshaw's apartment to where he
15 would go to physical therapy, how far was that?

16 A. Actually what I did was I drove from Bryan to physical
17 therapy. I didn't go from his apartment.

18 Q. Okay. So what was the distance from where he worked to
19 Bryan?

20 A. That was a distance of---

21 Q. Pardon me. Let me get it straight. From where he
22 worked at Bryan to physical therapy, how far was that?

23 A. That was 2.8 miles.

24 Q. Okay.

25 A. Now, the only factor that would factor into that is you

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1 had to turn in off of Parklane and go down toward his
2 apartment. That might add a mile and maybe a minute or so of
3 travel time.

4 Q. So it's not very far from where he works to his
5 apartment.

6 A. 2.8 miles.

7 Q. Okay. And even from where he works to his physical
8 therapy is how far again?

9 A. I ran that, as a matter of fact, based on the path that
10 I understood that Mr. Hackshaw would take. I drove that on
11 June 22nd, leaving Bryan Psychiatric at 2, correction 12:20,
12 in the afternoon, drove the speed limit, went with the flow
13 of traffic, sunny day, was relatively hot, and I followed the
14 path that I understood he took. That trip took exactly 18
15 minutes and was eight and six-tenths miles. That was from
16 Bryan Psychiatric, work, to the physical therapy at Monckton
17 Court.

18 Q. Okay. Now, with regard to cell phone towers, in this
19 area encompassing where he lived, where he worked, where he
20 went to physical therapy and the location where this young
21 lady was killed, there are one, two, three, four, five, six
22 -- am I counting correctly?

23 A. That's correct.

24 Q. Cell towers?

25 A. One down here. Two, three, four, five, and six.

1 Q. And each of those towers marked on this map are
2 significant because they're towers that calls made on Mr.
3 Hackshaw's cell phone pinged off of at one time or another
4 and they're reflected on his phone bill.

5 A. Phone records, yes.

6 Q. Yes. Phone records. Pardon me. Correct?

7 A. That's correct, ma'am.

8 Q. A moment. Do you know where Columbia Mall is?

9 A. Yes, ma'am.

10 Q. Is it on this map?

11 A. It's Columbia Place Mall I believe is the current name
12 of it.

13 Q. Is it on this map?

14 A. I can point it out. I know where it is.

15 Q. Okay. Let me do it the right way. I'm sorry.

16 A. It's basically at the -- all right. If you come down
17 Parklane Road -- this is Two Notch Road or U.S. 1. Parklane
18 Road. This little circle area that kind of looks like a
19 doughnut is going to be Columbiana -- Columbia Place Mall.

20 Q. Okay.

21 A. That whole area.

22 Q. And are you familiar with the Best Buy located near
23 Columbia Mall?

24 A. I am. That would be -- let's see. It's just -- where
25 this little dot says Dentsville, it would be just about at

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1 that location, just prior to the cut off of 1, Two Notch Road
2 to Shakespeare Road. Right -- it's in essence directly
3 across from the Columbia Place Mall.

4 Q. And right around the congested area near Columbia Mall
5 there are countless restaurants and little stores in addition
6 to the mall complex itself, aren't there?

7 A. I think there's nothing but that around that area, Two
8 Notch and Parklane, yes.

9 Q. And, again, all of this is -- this whole retail complex
10 at Columbia Place Mall is very close to where my client lives
11 and works, isn't it?

12 A. That's correct.

13 Q. Very, very close.

14 A. Yes.

15 Q. Well, can you give us an estimation of the distance
16 between where he lives and where Columbia Mall is?

17 A. Well, I didn't do the exact measurement, but I would
18 venture the guess of two miles or less.

19 Q. Okay.

20 A. And that would be traveling by road. Now, again, if
21 you're talking cell phones, they travel as the bird flies.
22 There's no -- they travel a straight line.

23 Q. As my granddaddy would say, as the crow flies.

24 A. Crow flies.

25 Q. Okay. So the bottom line is that this whole area,

1 including where this shooting happened and where he works and
2 where he lives, is all basically his neighborhood.

3 A. My understanding of where he works, where his brother's
4 studio is, where he lives, that's his -- that's his
5 neighborhood, his area, his part of town.

6 Q. When I say his neighborhood, I obviously don't mean his
7 housing development or his apartment complex, but it would be
8 what some would call his stomping ground. It's the area
9 that's just within miles of his home. Correct?

10 A. That sounds correct. Yes, ma'am.

11 Q. Where he might reasonably be expected to go eat, go
12 shop---

13 **Ms. Campbell:** Objection, Your Honor. Speculation.
14 By Ms. Shurling:

15 Q. Would the stores and the restaurants in that area be
16 among the closest to his home and his place of work?

17 A. Yes, they would be.

18 Q. Oh, I was about to forget one thing. You've heard
19 discussion in this case about what time our client signed in
20 at Progressive Therapy?

21 A. I have.

22 Q. At my request did you visit at random a number of
23 doctors' offices?

24 A. I did.

25 Q. And did you obtain blank copies---

1 **Ms. Campbell:** Objection, Your Honor, to the relevance
2 of any of this.

3 **The Court:** What is the relevance?

4 **Ms. Shurling:** It is my intent to demonstrate, Your
5 Honor, that---

6 **Ms. Campbell:** Objection to her...

7 **The Court:** Step up here.

8 (Whereupon, a bench conference was held.)

9 **The Court:** All right. I sustain the objection.

10 **Ms. Shurling:** Note my objection for the record. Thank
11 you. Mr. MacDougall, thank you very much. Will you please
12 answer the State's questions?

13 **Ms. Campbell:** May it please the Court?

14 **The Court:** Yes, ma'am, if you would.

15 Cross-Examination

16 By Ms. Campbell:

17 Q. Mr. MacDougall, you refer to this neighborhood as his
18 stomping ground. Where is he from?

19 A. I believe New York is where he grew up, and I think he
20 has lived in D.C., I believe.

21 Q. So this isn't his neighborhood or his stomping ground
22 where he grew up or something like that. You aren't saying
23 that, are you?

24 A. Oh, no. No, ma'am.

25 Q. You talked about the cell phone records and the towers.

1 Are you saying that these are all the towers in the Columbia
2 area, these six towers?

3 A. No, ma'am.

4 Q. Are those just the ones she requested you plot?

5 A. Those are the ones that were connected to the phone
6 records of Mr. Hackshaw that I reviewed.

7 Q. These are all the ones that are connected to the phone
8 records with Mr. Hackshaw?

9 A. No. Those are the ones in that area.

10 Q. In this area.

11 A. Yes.

12 Q. There are, of course, other cell phone towers on his
13 extensive phone records. Is that correct?

14 A. I would believe so. I didn't focus on those.

15 Q. And who asked you to focus on these six?

16 A. I believe Ms. Shurling, plus on my own volition as part
17 of my investigation.

18 Q. And in order for a phone to hit off the cell tower, it
19 has to be in use.

20 A. I believe so.

21 Q. Okay. So if I'm driving down the road and nobody is
22 calling me and I'm not calling anybody, my phone is not going
23 to hit off any tower.

24 A. I believe so. I'm not a---

25 **Ms. Shurling:** Your Honor, I object. Mr. MacDougall is

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1 not called as an expert---

2 **The Court:** Well, if he doesn't know, he can say he
3 doesn't know.

4 **Ms. Shurling:** Outside of his field of experience and
5 knowledge, Your Honor.

6 **The Court:** I don't know what his---

7 **The Witness:** I believe so is the best I can say.

8 By Ms. Campbell:

9 Q. Okay. And, well, you were in here for the testimony all
10 week; right?

11 A. Most of it.

12 Q. Well, were you here when the guy from Sprint testified?

13 A. Unfortunately not.

14 Q. Were you familiar enough to be able to make a map of
15 cell phone towers on it?

16 A. Based on the information, the printed information, I had
17 from the cell phone records, yes.

18 Q. But you don't disagree with me that in order for a phone
19 or a person's location or that phone's location to be
20 determined in that radius the phone has to be in use.

21 A. I believe it would.

22 Q. And even if it's turned on but I'm not talking on it or
23 somebody is not calling me or it's not going to my voice
24 mail, it's not going to hit the tower.

25 A. Well, I'd have to disagree with that.

1 Q. Okay. And tell me why.

2 A. Because last started Saturday I lost my telephone. So I
3 went to the Sprint web site, clicked on to this little deal
4 they offer, what's called a family locator, and I tried to
5 locate my phone through that. Ironically, my phone could not
6 be located. I located my wife's phone in California where
7 she was visiting, but had the phone been found it wouldn't
8 have been found that way.

9 Q. That's correct, and that's a special service through a
10 G.P.S. service that can be provided through that. I'm
11 talking about hitting on a cell phone, not that G.P.S.
12 separate service.

13 A. Well, that would have had to hit the cell tower to be
14 found. That's how it works.

15 Q. That was a service that was activated.

16 A. Right.

17 Ms. Shurling: Objection, Your Honor. She's testifying
18 about matters not in evidence.

19 The Court: Overruled.

20 By Ms. Campbell:

21 Q. Let me ask you this: You've gotten all these cell
22 towers off of these six cell towers, and are you familiar
23 with State's exhibit number 67?

24 A. No, I'm not.

25 Q. You haven't had an opportunity to review this?

1 A. No, I haven't.

2 Q. Would you agree with me, if you look at it, that this
3 reflects the cell towers that his phone hit on between 11:00
4 on -- 11:00 in the morning on the 20th through 14:18?

5 A. All I have to go by at this point is that. I didn't do
6 that.

7 Q. Did you have an opportunity to review his cell phone
8 records?

9 A. I did, but they're not committed to my memory. I don't
10 remember where they hit, what times, which towers, but I will
11 concur that the towers that you have on there - 147, 223,
12 102, and 256 - appear to be the same towers that I mapped out
13 on the other map we just brought in.

14 Q. Uh-huh. And then we've gone over the fact of where he
15 works at Bryan Psychiatric Hospital right below this lake up
16 here. Approximately.

17 A. Yes. Uh-huh. It would be right.

18 Q. And then right off Farrow Road right when you go under
19 20 is the -- is the Juniper Street.

20 A. That's correct.

21 Q. And then he lives over here, and I believe it's on here
22 as far as right next to 277, Brighton Hill Road.

23 A. Correct.

24 Q. And that's all reflected on this map.

25 A. Yes.

1 Q. And you would agree with me that Kevae Dolphin's house
2 isn't on either of these maps. It's further out.

3 A. Let me look at yours again.

4 Q. Yeah, make sure.

5 A. Just barely. Hers -- her house is just barely beyond
6 the edge of that map.

7 Q. And it's not on your map.

8 A. It's not on my map.

9 Q. Ms. Shurling asked you on direct or you actually drove
10 the distance from Juniper Street to ?

11 A. I did. Uh-huh.

12 Q. And in the notes you just provided to me, what was your
13 travel time? I believe you drove that on two different
14 occasions. We won't get -- let me wait 'til we get to the
15 Sunday afternoon you did with Ms. Shurling. What was your
16 travel time?

17 A. One was 18 minutes, 35 seconds, and 7.2 miles. The
18 other time was 19 minutes, 58 seconds, and 6.27 miles.

19 Q. And that wasn't driven on a Sunday afternoon, was it?

20 A. No, it was not.

21 Q. And, in fact, on a Wednesday afternoon around lunchtime,
22 that would be a far different situation from a Sunday
23 afternoon with no traffic.

24 A. It would be different. I was actually kind of surprised
25 the Sunday when we were out how much traffic there was

1 because I normally don't venture out on Sundays.

2 Q. Okay.

3 A. But there was a fair amount of traffic both times.

4 Q. So when you were preparing for this case -- you got in
5 the car last Sunday with Ms. Shurling?

6 A. That's correct.

7 Q. Your time periods from the Summer Park Road of Kevae
8 Dolphin's house to [REDACTED] was between 18 minutes
9 and 35 seconds up to right -- two seconds shy of 20 minutes.

10 A. That's correct.

11 Q. She asked you about statements, and you said you were
12 familiar with the F.B.I. practice. And they reduce what the
13 witness says to them in kind of a summary form, I believe you
14 said, usually.

15 A. Generally speaking, yes.

16 Q. The vast majority of the time, you would agree with me.

17 A. I would agree with you.

18 Q. And that's similar to what these investigators did in
19 their follow-up notes. They made a summary of what that
20 witness told them just like the F.B.I. does the vast majority
21 of the time.

22 A. The F.B.I. uses a -- I think it's a 302 form, and the
23 one thing that they do that's different from what these
24 investigators did: Each particular interview is dealt with I
25 believe on a 302 form. What they have done, from the

1 information that I had to read, they just kept sort of a
2 running... And then there were other interviews done by
3 other investigators that were inserted in there, some of
4 which had no names on them.

5 Q. They were summaries of what the witnesses told them.
6 They just might put more than one on the same page, like the
7 F.B.I. puts everyone on a separate page. Is that what you're
8 saying?

9 A. Basically, yes.

10 Q. But it doesn't affect the material that's summarized.
11 That's just whether or not they've put more than one summary
12 on a page.

13 A. That's correct.

14 Q. That's the difference you're talking about.

15 A. Basically. Uh-huh.

16 Q. And in this case, you would agree with me, most of the
17 statements were actually either recorded and/or in written
18 statements.

19 A. I wouldn't agree with that. Most of the statements
20 or...

21 Q. Well -- and I'm talking about the witnesses that came
22 forth and testified.

23 A. There were the summaries that the investigators put into
24 their notes on more than I think were actually statementized
25 (phonetic).

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1 Q. Terran Hughey?

2 A. Pardon?

3 Q. Terran Hughey.

4 A. He was recorded, I believe, wasn't he?

5 Q. Uh-huh. Travis Golston?

6 A. I believe he was recorded.

7 Q. Torrian Gleaton?

8 A. Correct.

9 Q. Ellison Hudson?

10 A. Correct.

11 Q. On three different occasions?

12 A. Two recordings and two written, I believe.

13 Q. Cleveland Joyner?

14 A. Yes.

15 Q. Jonathan Bailey?

16 A. Correct.

17 Q. Do I need to go any further?

18 A. No.

19 Q. In the notes that you just provided to me you didn't --
20 you mentioned that you traveled a route -- and whenever
21 you're doing these times, of course, it's important and --
22 you don't ever exceed the speed limit. You don't want to be
23 speeding, do you?

24 A. No, I don't.

25 Q. So to be fair to everyone you---

1 A. I go with the flow of traffic.

2 Q. You go with the flow of traffic, but you don't speed
3 over the speed limit.

4 A. No, ma'am.

5 Q. And that's important in order to accurately report. So
6 if somebody is speeding or going slower or whatever, the
7 times could vary a little. And on this one I notice -- on
8 all these others you talk about travel time and distance, but
9 why did you pick -- I mean, you picked this certain route.
10 Was this the most direct route that you drove?

11 A. No. This was the route -- this June 22nd route?

12 Q. Yes, sir.

13 A. That was the route that---

14 Q. You can't say what anybody said to you, but that was not
15 the most direct route.

16 A. No.

17 Q. And so you chose to time or to do the distance of eight
18 and six-tenths miles, the travel time 18 minutes, from the
19 Bryan Psychiatric Hospital to the Progressive Physical
20 Therapy and that it's not the most direct route.

21 A. I took the route that my understanding was---

22 Q. No, no, no. You can't talk about what was said to you.

23 A. I am not. I'm explaining why I took that route. That
24 was my understanding of how Mr. Hackshaw had got there. So I
25 followed that route to, in essence, recreate his travel, and

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1 that's why I -- and I readily agree with you: I know that
2 that's not the most direct route but---

3 Q. Well, if someone were going to a doctor's appointment
4 and perhaps wanted to get there, would they tend to take the
5 most direct route?

6 A. Well, as you pointed out, he's from Washington, D.C.,
7 and New York and this isn't where he grew up, so he probably
8 didn't know any better.

9 Q. No, sir. Just yes or no and then you can explain.

10 A. That would be the question.

11 Q. Yes? And did you bother to go back and travel the most
12 direct route so that you could give this jury accurate
13 information?

14 A. No.

15 Ms. Campbell: Thank you, Your Honor.

16 The Court: Anything, Ms. Shurling?

17 Ms. Shurling: Yes, Your Honor. One moment.

18 Redirect Examination

19 By Ms. Shurling:

20 Q. Mr. MacDougall, based on your investigation would it
21 have been accurate for our purposes to drive a different
22 route from the one you understood the client to have driven?

23 Ms. Campbell: Objection, Your Honor. May we approach?

24 (Whereupon, a bench conference was held.)

25 By Ms. Shurling:

1 Q. Mr. MacDougall, moving on to something else, you've been
2 questioned about the four cell phone towers on the State's
3 exhibit versus the six on ours?

4 A. Yes, ma'am.

5 Q. I hand you a copy of -- our client's phone records have
6 previously been introduced into evidence. You're aware of
7 that; right?

8 A. Yes, ma'am.

9 Q. Okay. If you could take a look at the two phone calls
10 that I have highlighted. I'll show the State. And these
11 calls are -- I'm sorry. It's hard to run the lines up. From
12 14:31 and 15:07 on 5/20? Do you see those calls?

13 A. 14:31? Yes. Uh-huh.

14 Q. And the one following it?

15 A. This would have been a call on May 20th, 2009, at 14:31
16 hours that lasted, according to this, for 21 seconds.

17 Q. And the one after it?

18 A. Was a phone call that was also on May 20th, 2009,
19 started at 15:06:59, lasting 27 seconds.

20 Q. Now, I'm not good at military time, but can you convert
21 that for me?

22 A. That would have been 2:31 on the first call, 3:06 on the
23 second call.

24 Q. So -- and both of those calls are from the afternoon
25 very shortly after the time period that this homicide was

1 alleged to have occurred.

2 A. May 20th. That's correct.

3 Q. And those two calls pinged off of cell towers that were
4 not reflected on the State's exhibit; right?

5 A. Well, let me look at that again. The first one went off
6 Tower 144.

7 Q. Well, let's look. They have 102, 147, 223---

8 A. I don't see 144.

9 Q. ---and 256. Right?

10 A. That's correct.

11 Q. Okay. What's the second one?

12 A. The second one would have been Tower 224.

13 Q. And 224 is not on their exhibit either, is it?

14 A. Let me see again. Not 224.

15 Q. So our exhibit reflects the six cell towers that calls
16 pinged off of on the operative date, May 20th, in the general
17 time period we're dealing with in this case.

18 A. That's correct.

19 Q. The cell tower over by Shakespeare Road, can you point
20 that out on our---

21 A. I can.

22 Q. ---exhibit?

23 A. The tower on Shakespeare Road is cell number 144. That
24 would be this one right here, Cell Tower 144. Shakespeare
25 Road is where Channel 25 has the broadcast tower. It's a

1 high location that sort of overlooks the whole Dentsville
2 area including the mall. That would be right -- that would
3 be right there.

4 Q. And that would be the cell tower that is the closest to
5 the incident location; correct?

6 A. The incident location is here, and that tower is there.
7 Based on this map, that would be the -- it would be the
8 closest tower.

9 Q. In fact, a good bit closer than the other towers.

10 A. Well, there's another one down here, another one up at
11 that location, so... And here is the incident location. So
12 144 would be the closest.

13 Ms. Shurling: Okay. And -- no further questions, Your
14 Honor.

15 The Court: All right. Anything?

16 Ms. Campbell: Yes, sir.

17 Recross Examination

18 By Ms. Campbell:

19 Q. Just a couple of questions to clear up -- so as not to
20 confuse the jury. She asked you about these calls that -- I
21 believe it was at 2:31 and then one later on closer to 3. Is
22 that correct?

23 A. The first call was at 2:31. The second call was at 3:06
24 p.m.

25 Q. And you would agree with me that this occurred between

1 12:50 and 1:00 on the afternoon of the 20th?

2 A. I would agree with you on that.

3 Q. And would you agree with me that on this map it shows
4 the calls starting at 11:00 until -- up until 2:18 which
5 would include the time period when this occurred?

6 A. That's correct.

7 Q. And this accurately reflects the cell phone towers that
8 were hit during that time period.

9 A. Well, I can't attest to that. I don't know which ones
10 they hit without all the records, and I have to go through
11 all those.

12 Q. And in reviewing this, there is a time period where this
13 shows an outgoing call at 12:25?

14 A. That shows the end of it, yes.

15 Q. And then the next call that's outgoing is at what time?

16 A. 13:11 which would be 1:11 p.m.

17 Q. And during that time period there are no cell towers
18 hit.

19 A. Not according to those records.

20 Ms. Campbell: Thank you.

21 The Court: All right. Thank you, Mr. MacDougall. You
22 may step down.

23 Ms. Shurling: Your Honor, my next witness will be the
24 defendant, Anthony Hackshaw. I expect his testimony to be
25 quite lengthy. I don't know whether Your Honor wanted to

1 take a brief break.

2 **The Court:** I do. Ladies and gentlemen, we're going to
3 take a little bit of a break before we get with the next
4 witness. If y'all will step back to the jury room. Please
5 do not discuss the case, and we'll bring you back in about 15
6 or 20 minutes.

7 (Whereupon, the jury was excused from open court at 2:33
8 p.m.)

9 **The Court:** All right. Mr. Hackshaw, let me get you to
10 stand and raise your right hand if you would, please. You
11 can stay right there. That's fine.

12 Anthony Hackshaw, after being duly sworn, testified
13 as follows in camera:

14 Examination by the Court

15 Q. All right. I'm going to ask you some questions. I'm
16 not going to ask you anything about the facts of this case,
17 but I want you -- I want to review with you your right to
18 testify under the Constitution and your right not to testify
19 under the Constitution to make sure you understand what those
20 rights are. Now, Ms. Shurling has indicated that you wish to
21 go ahead and testify.

22 A. Yes, Your Honor.

23 Q. Do you understand under the Constitution of this state
24 and the Constitution of the United States you do not have to
25 testify?

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1 A. Yes, Your Honor.

2 Q. That you don't have to do anything and you certainly
3 don't have to testify, but if you do testify you understand,
4 of course, you will be subject to being examined by the State
5 of South Carolina---

6 A. Yes, sir.

7 Q. ---if they wish to do so.

8 A. Yes, Your Honor.

9 Q. All right. Now, you have had an opportunity to review
10 your options with Ms. Shurling and Mr. Thompson.

11 A. Yes, Your Honor.

12 Q. And you've discussed thoroughly your wishes to go ahead
13 and testify.

14 A. Yes, Your Honor.

15 Q. And, of course, you understand if you elected not to
16 testify that I would instruct the jury that they couldn't
17 even consider that fact in the course of their deliberations.
18 Do you understand that?

19 A. Yes, Your Honor.

20 Q. So the fact that you didn't testify, they couldn't go
21 back and talk about it. They couldn't say, well, Mr.
22 Hackshaw didn't testify. They couldn't do any of that. Do
23 you understand that?

24 A. Yes, Your Honor.

25 Q. All right. Now, your decision here today, is that your

1 decision?

2 A. Yes, Your Honor.

3 Q. Has anybody pressured you or forced you or attempted to
4 intimidate you or make you make that decision?

5 A. No, sir.

6 Q. Your decision is being made freely and voluntarily?

7 A. Yes, Your Honor.

8 Q. And you believe it's being made knowingly and
9 intelligently?

10 A. Yes, Your Honor.

11 Q. Now, you've not had any alcoholic beverages in the last
12 24 hours, have you?

13 A. No, Your Honor.

14 Q. Have you taken any drugs or had any medication in the
15 last 24 hours?

16 A. No, Your Honor.

17 Q. Are you under the influence of any kind of substance
18 here today?

19 A. No.

20 Q. So this decision is being made with a clear head and a
21 full understanding of your rights.

22 A. Yes, Your Honor.

23 Q. All right. Now, have you understood my questions here
24 today?

25 A. Yes, Your Honor.

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1 Q. Have your answers been truthful and correct?

2 A. Yes, Your Honor.

3 The Court: Now, Ms. Shurling, is there any further
4 inquiry you would like me to make of your client?

5 Ms. Shurling: No, sir, Your Honor.

6 The Court: You believe that your client fully
7 understands his rights, that he does not have to testify but,
8 of course, as he's apparently elected to do, he has a right
9 -- you have a right to get up and tell your side of the
10 story. Do you understand that?

11 The Witness: Yes, Your Honor.

12 The Court: And you have been available to counsel him
13 fully with respect to his testifying or not.

14 Ms. Shurling: Yes, sir. And I would just note for the
15 record that this is -- this particular decision has been the
16 subject of extensive counseling by both myself and Mr.
17 Thompson, and it's a very thoroughly-advised decision. He's
18 been counseled at length concerning all the ramifications,
19 pro and con.

20 The Court: You don't know anyone or anything that's
21 pressured him or forced him to make this decision.

22 Ms. Shurling: Nothing, Your Honor. In fact, I have
23 specifically declined to make the decision for him.

24 The Court: Well, clearly it's his decision.

25 Ms. Shurling: Yes, sir.

1 **The Court:** I mean, he will rely on your counsel, as
2 long as he understands all of this. Now, do you think his
3 decision is being made freely and voluntarily?

4 **Ms. Shurling:** Absolutely, Your Honor.

5 **The Court:** And knowingly and intelligently.

6 **Ms. Shurling:** Absolutely.

7 **The Court:** Okay. You certainly will be able to do so.
8 We're going to take a break here, and you've got Ms. Shurling
9 to your left if you change your mind or anything. We'll
10 reexamine the -- revisit the issue, but other than that,
11 that's fine. Yes, ma'am?

12 **Ms. Shurling:** Your Honor, I would inquire as to what
13 items from my client's prior record the State believes are
14 admissible for impeachment purposes.

15 **Ms. McDuffie:** Your Honor, we would submit that the 2000
16 robbery, armed robbery, on his prior record - excuse me - one
17 count of -- I beg... Your Honor, it's two counts of robbery
18 that we would submit are admissible for impeachment purposes.
19 Those convictions were in 1994. However, the rule in 1995---

20 **The Court:** Wait a minute. When you talk down, your
21 voice---

22 **Ms. McDuffie:** I apologize.

23 **The Court:** ---travels that way.

24 **Ms. McDuffie:** The convictions were in '94 and '95.
25 However, Your Honor, the rule allows for -- or when the

colloquy

1403

1 10-year period starts or looks back, Your Honor, I believe
2 that the rule says from---

3 The Court: When he's released.

4 Ms. McDuffie: ---the time of the sentence or the end
5 the -- the end of that sentence. He was given ten years
6 suspended on four or five years service in jail, Your Honor,
7 and I have those records from Maryland to show Your Honor and
8 that his sentence was completed on 7/21/04, according to his
9 rap sheet.

10 The Court: All right.

11 Ms. Shurling: His sentence was completed when?

12 Ms. McDuffie: It shows 7/21/04, certified, \$300 fee on
13 page 5 and 6 of the rap sheet.

14 Ms. Shurling: You said the conviction was on what date?
15 I'm confused?

16 Ms. McDuffie: One is May 11th, 1995. He pled to
17 distribution of cocaine and robbery, ten years. On 8/1 of
18 '95 he pled to attempt armed robbery or attempted robbery
19 with a deadly weapon and something use of a handgun, Your
20 Honor, and I can hand the information we received from the
21 circuit court---

22 Ms. Shurling: The penalty on the second set of charges
23 was what?

24 Ms. McDuffie: Four years -- I'm sorry. Five years and
25 then five years consecutive to the sentence that he was

1 currently serving.

2 Ms. Shurling: And it's your information he was released
3 in 2004?

4 Ms. McDuffie: No. Your Honor, I could not tell you the
5 date of the release that's -- his period of whatever it was
6 on the sentence ended in '05 -- in '04. He was, Your Honor,
7 I believe placed on probation -- according to his rap sheet,
8 he also had a revocation in 1999 on these charges.

9 The Court: He had a revocation?

10 Ms. McDuffie: Yes, sir, Your Honor.

11 The Court: All right. Well, it definitely runs from
12 the end of the sentence.

13 Ms. Shurling: Your Honor, it was my understanding it
14 runs from the end of his term of incarceration.

15 The Court: Well, that's -- I thought that's what we
16 were talking about.

17 Ms. Shurling: Yes, sir, but they're saying they don't
18 know when he was released.

19 The Court: Well, I don't know. What does your client
20 say?

21 Ms. Shurling: Your Honor, my client says he doesn't
22 recall exactly when he was released, and I would submit that
23 in order for them to run the ten-year period they have to
24 know the date he completed his term of detention.

25 The Court: Well, the only thing I know -- I don't know

colloquy

1405

1 what you've got there in terms of...

2 **Ms. Shurling:** And, Your Honor, it's my understanding
3 that there is---

4 **The Court:** Wait a minute. Wait a minute. Wait a
5 minute. Well, I don't -- when -- when was he released, Madam
6 Solicitor?

7 **Ms. McDuffie:** Your Honor, his -- his rap sheet shows
8 that on 7/21/04. It was time served -- got time served, five
9 years, and it was to robbery. Your Honor, that he was then
10 placed on supervised release, according to his rap sheet.

11 **The Court:** So he got ten years. Then he got five years
12 consecutive to the ten years?

13 **Ms. McDuffie:** According to those documents, Your Honor,
14 that's the way it appears.

15 **The Court:** And he was -- he started in 1995?

16 **Ms. McDuffie:** I think that the first one was 1994.
17 That was the one that indicates ten years. The one in 1995
18 indicates consecutive to the sentence that he was currently
19 serving.

20 **The Court:** And the information you have is he completed
21 that active sentence on when?

22 **Ms. McDuffie:** Your Honor, all I can tell you is that in
23 19 -- October the 7th of '99 he had a parole violation for
24 two counts of robbery. He was sentenced to serve the
25 remainder of his sentence. He got out at some point in -- on

1 or before August of 2000 because he then picked up another
2 charge, Your Honor, and then it shows on the next page of his
3 rap sheet that on 7/21/04 for the robbery charge is when --
4 time served, five years, and then it says supervised release.

5 The Court: On when?

6 Ms. McDuffie: 7/21/04.

7 The Court: And that was on the what robbery?

8 Ms. McDuffie: Your Honor, that -- I can't tell you more
9 than just robbery. That's all the rap sheet indicates.

10 The Court: I know, but he had two robberies. Right?

11 Ms. McDuffie: Correct. I can't tell you which one it
12 is.

13 Ms. Shurling: Your Honor, as I understand it, she's
14 just said he was released in 2000.

15 The Court: And then picked up -- went back on the
16 robbery charge and he got out in 2004. Sounds to me like he
17 probably completed -- well, let's see. It's 2000. He
18 completed his first sentence and didn't complete his second
19 sentence until 2004.

20 Ms. Shurling: In which case, Your Honor, I would submit
21 that the judgments and sentences from the first set would not
22 be admissible. He was released in 2000.

23 The Court: And that's what I'm going to -- that's what
24 I'm going to find.

25 Ms. Shurling: Then he would be limited to---

colloquy

1407

1 The Court: One robbery that he completed in 2004.

2 Ms. Shurling: Thank you, Your Honor.

3 The Court: All right. We will take -- oh, I'm sorry.

4 All right. We'll take about -- how much time do y'all need?

5 Ms. Shurling: I just need a personal break, Your Honor.

6 The Court: Five minutes?

7 Ms. Shurling: That would be fine.

8 The Court: Y'all have -- y'all take just five.

9 (Whereupon, a short break was taken.)

10 The Court: All right. Merci. You may have a seat.

11 Ms. Shurling: Your Honor, while on break I discussed
12 the matter with the solicitor's office and we have agreed
13 that---

14 The Court: Discussed what matter?

15 Ms. Shurling: The 1995 robbery case is just a robbery,
16 not an armed robbery.

17 The Court: I don't know. Whatever it is it is.

18 Ms. McDuffie: (Nodded head up and down.)

19 The Court: We'll stick to what it is. Let's not make
20 something up. All right. He's not shackled in any way;
21 right?

22 Officer: No, sir.

23 The Court: All right. We ready to go?

24 Ms. Campbell: Your Honor, can we put a deputy just over
25 here?

1 **The Court:** I don't think that's necessary. I mean, the
2 deputy can sit right down there where---

3 **Ms. Campbell:** Right down there. That's fine.

4 **The Court:** That's Mr. Hollis's chair. Now, he might...
5 He's proprietary so...

6 **Ms. Campbell:** Thank you, Your Honor.

7 **The Court:** They once had a deputy trainee up here, Lee
8 Blatt. I don't know if y'all know who Lee Blatt -- I think
9 he flies for the sheriff. I know his mom and dad. So he was
10 up here like the first or second day that he was training. I
11 said, "Mr. Deputy, I need to see you in my office." He came
12 in. He was all nervous. And I said, "Let me tell you: Your
13 one job in this building is if you hear that anything goes
14 wrong, you come find me and protect me." He said, "Well,
15 Judge, I don't know if I can do that." I said, "Mr. Blatt,
16 you find me. I'm your goal." "Okay." Then I think he went
17 and asked Joe whether that was -- he had to do that. All
18 right. Let's bring the jury in.

19 (Whereupon, the jury was brought into open court at 2:55
20 p.m.)

21 **The Court:** All right. Thank you. Ms. Shurling, do you
22 want to call your next witness?

23 **Ms. Shurling:** I would, Your Honor. At this time we
24 would call the defendant, Anthony Hackshaw.

25 Anthony Hackshaw, after being duly sworn, testified

Anthony Hackshaw - direct exam by Ms. Shurling

1409

1 as follows:

2 **The Clerk:** Please have a seat and state your full name
3 for the record.

4 **The Witness:** Anthony Hackshaw.

5 Direct Examination

6 By Ms. Shurling:

7 Q. Mr. Hackshaw, I know you're a little nervous, but if you
8 can just speak slowly. You talk kind of fast sometimes, but
9 if you can speak slowly so the jury can understand you.
10 Okay?

11 A. Yes, ma'am.

12 Q. Okay. How old are you?

13 A. Thirty-four.

14 Q. And where were you brought up?

15 A. Brooklyn, New York, and Washington, D.C.

16 Q. Okay. And how long have you lived in South Carolina?

17 A. Maybe two and a half years.

18 Q. About two and a half years?

19 A. Yes, ma'am.

20 Q. Okay. I'm going to jump around a little bit but just to
21 establish a few timeline matters. Back in April of 2009 were
22 you and your wife, Rosa, already married?

23 A. Yes, ma'am.

24 Q. And when you got married, did she move in with you at an
25 apartment that you were already living in?

1 A. Yes, ma'am.

2 Q. And you've heard us talk about your apartment the whole
3 trial. Can you tell us the address at your apartment?

4 A. [REDACTED]

5 Q. Okay.

6 A. Wyndham Pointe Apartments.

7 Court Reporter: I'm sorry. What was that?

8 The Witness: Wyndham Pointe Apartments.

9 By Ms. Shurling:

10 Q. And if you get too close to that microphone, it's going
11 to sputter and pop. So try to speak up so you don't have to
12 be quite so close to it. Okay?

13 A. Yes, ma'am.

14 Q. Okay. Thank you. Let's cut straight to the chase.
15 Okay?

16 A. Yes, ma'am.

17 Q. On April 23rd, 2009, were you robbed?

18 A. Yes, ma'am.

19 Q. And who robbed you?

20 A. E.

21 Q. And do you know what Ellison Hudson's full name is?

22 A. Ellison Hudson.

23 Q. I'm sorry. I didn't mean to do that. The person you
24 know as E. - what's his full name?

25 A. Ellison Hudson.

Anthony Hackshaw - direct exam by Ms. Shurling

1411

1 Q. Okay. And on the day in question, on April 23rd, 2009,
2 when you were robbed did you recognize him that day as---

3 A. Yes.

4 Q. ---the person that robbed you?

5 A. Yes, ma'am.

6 Q. Okay. What you did just then was good. You stopped
7 when you caught yourself about to talk over me. We can't
8 talk at the same time; okay?

9 A. Yes, ma'am.

10 Q. You recognized him that day, didn't you?

11 A. Yes, ma'am.

12 Q. You admit that?

13 A. Yes, ma'am.

14 Q. And that day when he came to your apartment, did he have
15 somebody else with him?

16 A. Yes, ma'am.

17 Q. And you saw that person testify during the trial?

18 A. Yes, ma'am.

19 Q. I believe he was referred to as Hot Boy?

20 A. Yes, ma'am.

21 Q. And his name is Sheldon McDowell.

22 A. Yes, ma'am.

23 Q. Did you know him before April 23rd, 2009?

24 A. No, ma'am.

25 Q. But you knew E.

1 A. Yes, ma'am.

2 Q. Okay. And to your knowledge that day, E. Was coming to
3 buy a little reefer from you?

4 A. Yes, ma'am.

5 Q. You admit that.

6 A. Yes, ma'am.

7 Q. Okay. And during what you thought was going to be a
8 drug transaction for a little bit of marijuana, did he rob
9 you?

10 A. Yes, ma'am.

11 Q. And he pulled a gun on you.

12 A. Yes, ma'am.

13 Q. Did the guy with him pull a gun on you, too?

14 A. Yes, ma'am.

15 Q. They both did.

16 A. Yes, ma'am.

17 Q. Now, you've heard him claim that they got something like
18 seven or eight ounces of marijuana from you that day. Is
19 that true?

20 A. No, ma'am.

21 Q. How much did you have in that backpack they took?

22 A. About three -- three ounces.

23 Q. About three ounces?

24 A. Yes, ma'am.

25 Q. And I thought I heard someone say -- well, I know

Anthony Hackshaw - direct exam by Ms. Shurling

1413

1 Sheldon McDowell testified that he chipped in \$250 for a half
2 ounce of marijuana. Was the marijuana you had that day
3 anything fancy or special?

4 A. No, ma'am.

5 Q. Just plain old garden variety pot?

6 A. Yes, ma'am.

7 Q. And on the market as it existed in April of 2009, about
8 what did an ounce of just regular pot sell for?

9 A. Anywhere from \$90 to a hundred dollars.

10 Q. So basically when you were robbed you were out 2 or \$300
11 worth of pot.

12 A. Yes, ma'am.

13 Q. After they grabbed the bag and ran, what did you do?

14 A. Well, I ran before then.

15 Q. Well, then you ran.

16 A. Yes, ma'am.

17 Q. Then they ran.

18 A. Yes, ma'am.

19 Q. As you were running, did you hear anything?

20 A. Yes, ma'am.

21 Q. What did you hear?

22 A. A couple of shots.

23 Q. A couple of shots. Could you tell whether it was from
24 two different guns or you couldn't tell?

25 A. No, ma'am.

1 Q. Okay. You couldn't tell whether it was one gun or two.

2 A. Yes, ma'am.

3 Q. So where did you run to?

4 A. I ran upstairs to my apartment.

5 Q. Okay. And did you grab a pistol?

6 A. Yes, ma'am.

7 Q. What kind of pistol did you grab?

8 A. 40 millimeter.

9 Q. And who did that gun belong to?

10 A. It was registered to my wife.

11 Q. Okay. And when you grabbed that gun, where did you go?

12 A. Well, I ran back to where we was at and looked down to
13 see if they still was there. Then I ran into the front of
14 the building in the stairwell.

15 Q. And when you looked out, did you see them?

16 A. No, ma'am.

17 Q. When you looked out the front -- when you looked out
18 where you originally were, you didn't see them?

19 A. No, ma'am.

20 Q. When you ran from the front of the building to the
21 stairway and looked, did you see them?

22 A. Yes, ma'am.

23 Q. And did they see you?

24 A. Yes, ma'am.

25 Q. And what happened when they saw you?

Anthony Hackshaw - direct exam by Ms. Shurling

1415

1 A. They fired a shot.

2 Q. And did you return fire?

3 A. Yes, ma'am.

4 Q. When you returned fire, did you -- you were shooting
5 down in the parking lot?

6 A. Yes, ma'am.

7 Q. Were there any other people down in the parking lot?

8 A. No, ma'am.

9 Q. Okay. Were you aiming for them?

10 A. No, ma'am.

11 Q. What were you trying to accomplish by firing in that
12 direction?

13 A. To make them get away.

14 Q. Make them get away?

15 A. Yeah.

16 Q. When they were firing, were they firing in the direction
17 of your apartment building?

18 A. Yes, ma'am. They hit a window like right next to me.

19 Q. Okay. And were you concerned that someone might get
20 hurt?

21 A. Yes, ma'am.

22 Q. Maybe you?

23 A. Of course. Yes, ma'am.

24 Q. And could have been somebody else, too, though; right?

25 A. Yes, ma'am.

1 Q. Okay. After that incident the police came; right?

2 A. Yes, ma'am.

3 Q. Did you lie to them?

4 A. Yes, ma'am.

5 Q. Why did you lie to them?

6 A. Honestly because I didn't want them to know that I had a
7 pistol and it was over marijuana.

8 Q. Okay. Was there any way you could report Ellison Hudson
9 for armed robbery of a little bit of marijuana without
10 telling the police that you'd had a little bit of marijuana?

11 A. No, ma'am.

12 Q. Was it worth 2 or \$300 worth of marijuana to you to get
13 involved with the police?

14 A. No, ma'am.

15 Q. Now, you've also heard testimony that in the time period
16 after that you told a neighbor that you weren't messing with
17 the police; you were going to take care of it yourself. Do
18 you remember that?

19 A. Yes, ma'am.

20 Q. What do you mean by you were going to take care of it
21 yourself?

22 A. I never told them that.

23 Q. Oh, you didn't.

24 A. No, ma'am.

25 Q. Okay. Well, if you said to anyone you were going to

Anthony Hackshaw - direct exam by Ms. Shurling

1417

1 take care of it yourself, what would you have meant?

2 Ms. Campbell: Objection, Your Honor. He said he didn't
3 say that.

4 The Court: Sustained.

5 Ms. Shurling: Mr. Hackshaw, was it -- did you at some
6 point consider trying to get Ellison Hudson to give you
7 back---

8 Ms. Campbell: Objection, Your Honor. Leading.

9 The Court: Ms. Shurling, I'm going to have to take
10 about a two-minute break---

11 Ms. Shurling: Yes, sir.

12 The Court: ---to get rid of my cough. Excuse me.

13 (Pause in proceedings.)

14 The Court: I apologize, ladies and gentlemen. I have
15 cough drops. They don't beat the cough. All right. Excuse
16 me, Ms. Shurling.

17 Ms. Campbell: Your Honor, I objected to a leading
18 question.

19 The Court: I don't remember the question. Ask your
20 next question and don't lead.

21 By Ms. Shurling:

22 Q. At any time after the April incident did you talk to
23 Ellison Hudson?

24 A. I'm not quite sure, but I know I did try to call him.

25 Q. Okay. And what was the purpose of your trying to call

1 him?

2 A. Trying to get the marijuana back.

3 Q. Okay. After the incident happened on April 23rd and the
4 police had been to the apartment, did your wife find out
5 about it?

6 A. Yes, ma'am.

7 Q. After that, did she have any reason to believe you'd
8 continued to sell marijuana?

9 A. No, ma'am.

10 Q. Okay. Now, did there come a time in early June when you
11 heard that your apartment had been searched?

12 A. Yes, ma'am.

13 Q. How did you find out?

14 A. Through my wife.

15 Q. And what was your understanding about how your wife
16 found out?

17 A. A neighbor had called her.

18 Q. Okay. And after your neighbor told your wife, did she
19 call you?

20 A. Yes, ma'am.

21 Q. Who was staying at your apartment at the time the search
22 warrant was executed at the apartment in early June?

23 A. My cousin, Sheldon Boykins (sic).

24 Q. Sheldon Boykin?

25 A. Yes, ma'am.

Anthony Hackshaw - direct exam by Ms. Shurling

1419

1 Q. And is he literally a cousin?

2 A. Yes, ma'am.

3 Q. He's, in fact, your mother's brother's son; correct?

4 A. Yes, ma'am.

5 Q. Where is he from? The Washington, D.C. area?

6 A. Yes, ma'am.

7 Q. Okay. After you talked to your wife and found out about

8 this search warrant, did you get in touch with your cousin?

9 A. Well, actually he called -- he called my wife after me
10 and my wife got together.

11 Q. Okay. And did you make arrangements with your wife to
12 meet her somewhere?

13 A. Yes, ma'am.

14 Q. Was it a geographic location known to you -- all of you?

15 A. Yes, ma'am.

16 Q. And where was that?

17 A. A barbershop.

18 Q. A barbershop near your apartment?

19 A. A friend's barbershop, yes, ma'am.

20 Q. And who met at the barbershop?

21 A. Me and my wife.

22 Q. And what about Sheldon Boykin? Did he meet you there?

23 A. No, ma'am.

24 Q. Did you subsequently meet up with Sheldon Boykin?

25 A. Yes, ma'am.

1 Q. Where did you meet him?

2 A. I believe at a friend's house.

3 Q. Okay. And, again, Sheldon Boykin was at the apartment
4 when the police came and served the search warrant?

5 A. Yes, ma'am.

6 Q. And had Mr. Boykin seen a copy of the search warrant?

7 A. Yes, ma'am.

8 Q. Was it your understanding from talking to your cousin
9 that the search was conducted---

10 **Ms. Campbell:** Objection, Your Honor, to hearsay.

11 **The Court:** Sustained.

12 By Ms. Shurling:

13 Q. Was your cousin given a copy of the search warrant?

14 A. Yes, ma'am.

15 Q. Did he bring it?

16 A. Yes, ma'am.

17 Q. Did you see it?

18 A. Yes, ma'am.

19 Q. And the search warrant was issued in connection with the
20 April 23rd, 2009, robbery of you by Ellison Hudson. Correct?

21 A. Yes, ma'am.

22 Q. Okay. At that point did you decide to leave town?

23 A. Yes, ma'am.

24 Q. So at that point who left town?

25 A. Me and my wife and Sheldon Boykins.

1 Q. Okay. Did the three of you leave together in one
2 vehicle?

3 A. Yes, ma'am.

4 Q. And where did you go first?

5 A. I believe New Jersey to my wife's mom's house.

6 Q. Okay. And do you remember how long you were there?

7 A. No, not at all. I don't remember how long I stayed
8 there.

9 Q. Was it a few days or a few weeks?

10 A. It could have been a few days, not weeks.

11 Q. Okay.

12 A. I'm positive not weeks.

13 Q. Did you subsequently leave there?

14 A. Yes, ma'am.

15 Q. And where did you go next?

16 A. To Washington, D.C.

17 Q. Okay. Did you go to the community where Sheldon Boykin
18 was from?

19 A. Yes, ma'am.

20 Q. And at that point did you stay with Sheldon Boykin for
21 awhile?

22 A. Yes, ma'am.

23 Q. And your wife, Rosa, was with you.

24 A. Yes, ma'am.

25 Q. Okay. Now, you heard your brother, Aaron Johnson,

1 testify earlier in this trial, didn't you?

2 A. Yes, ma'am.

3 Q. Are you two tight?

4 A. Yes, sometimes.

5 Q. Did he help raise you?

6 A. Yes, ma'am.

7 Q. When you found out that your apartment had been searched
8 and you left town, did you call your big brother and tell him
9 you were leaving?

10 A. No, ma'am.

11 Q. Why not?

12 A. Because I knew he would be upset with me.

13 Q. You knew he'd be upset with you?

14 A. Yes, ma'am.

15 Q. If the police were looking for you, was it likely that
16 they would go to your brother?

17 **Ms. Campbell:** Objection, Your Honor. Calls for
18 speculation.

19 **The Court:** Sustained.

20 By Ms. Shurling:

21 Q. Was your brother listed on your apartment leasing
22 information as your contact person?

23 A. Yes, ma'am.

24 Q. Based on that, did you think that the police were
25 looking for you---

1 **Ms. Campbell:** Objection, Your Honor. I don't think he
2 can say what other people were doing.

3 **The Court:** Ask the question.

4 By Ms. Shurling:

5 Q. Based on your brother being listed as a contact person
6 with your rental -- on your rental agreement for your
7 apartment, did you fear that law enforcement would contact
8 him when they were trying to find you?

9 A. Yes, ma'am.

10 Q. And is that part of the reason you didn't want him to
11 know where you were?

12 A. Yes, ma'am.

13 Q. Why?

14 A. Because I knew that his name was on the lease. I put it
15 on there. And if they know he's my brother, of course
16 they're going to try to find me through him.

17 Q. And if they talked to him about it and he knew where you
18 were, what would happen?

19 A. He'd get in trouble.

20 Q. He would either have to tell where you were---

21 **Ms. Campbell:** Objection.

22 **The Court:** Sustained.

23 **Ms. Shurling:** If he didn't tell where you were, what
24 would happen to him?

25 **Ms. Campbell:** Objection.

1 The Court: Sustained.

2 By Ms. Shurling:

3 Q. Okay. But you didn't tell him before you left.

4 A. No, ma'am.

5 Q. And when you left town without letting him know you were
6 leaving, did he make attempts to call you?

7 A. I'm not quite sure.

8 Q. Okay. Well, after awhile did he get in touch with you
9 and your wife by phone?

10 A. Yes, ma'am.

11 Q. To the best of your recollection, who did he call? You
12 or your wife?

13 A. Well, both, but when I did finally get in contact with
14 him he got in contact with my wife.

15 Q. Okay. And at that time did you find out that the police
16 were looking for you in connection with a murder case?

17 A. Yes, ma'am.

18 Q. Had you known that before?

19 A. No, ma'am.

20 Q. When you found that out -- well, first, did your brother
21 advise you to come home?

22 A. Yes, ma'am, him and his mom.

23 Q. Okay. Once you found out the police wanted to question
24 you not concerning this pot or this robbery, did you
25 immediately decide to come home?

1 A. Yes, ma'am.

2 Q. Were you scared?

3 A. Of course.

4 Q. Did you feel like you needed to make arrangements for
5 you and your wife to have a lawyer before you came back?

6 A. Yes, ma'am.

7 Q. And did it take you a little while to line up the money
8 and make the arrangements for both of you to have a lawyer?

9 A. Yes, ma'am.

10 Q. As soon as you did that, did you come back?

11 A. Yes, ma'am.

12 Q. And when you first came back, you were represented by
13 who?

14 A. I believe Mr. Jack Swerling.

15 Q. Okay. Now, Mr. Swerling only was with you for a very
16 short period of time?

17 A. Yes, ma'am.

18 Q. Ultimately why did you not end up using Mr. Swerling as
19 your lawyer?

20 A. Why didn't I?

21 Q. Uh-huh.

22 A. I didn't have enough money to retain him for the case.

23 Q. You couldn't afford him.

24 A. Yes.

25 Q. And at that point did you ask for a court-appointed

1 lawyer?

2 A. Yes, ma'am.

3 Q. And the first court-appointed lawyer was Charlie
4 Johnson?

5 A. Yes, ma'am.

6 Q. And in connection with Charlie Johnson's representation,
7 did you also meet an investigator named Amos Moses?

8 A. Yes, ma'am.

9 Q. When you were interviewed by the police in the presence
10 of Charlie Johnson, your first lawyer---

11 A. Yes, ma'am.

12 Q. ---you still lied to them about April 23rd, 2009, didn't
13 you?

14 A. Yes, ma'am.

15 Q. Why?

16 A. Because I was afraid about the gun and the marijuana.

17 Q. Okay. Did you tell them that neither you or your wife
18 had any access to a silver Honda?

19 A. I never told them that.

20 Q. Well, let's go at that from another angle. Did there
21 come a time in early Spring 2009 when your wife went home for
22 a visit to New Jersey?

23 A. Yes, ma'am.

24 Q. And prior to that time, what car had she been driving?

25 A. Ma'am, to be honest, I'm not quite sure what car because

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1 she switched so much.

2 Q. Okay. Well, when she came home from that trip to New
3 Jersey, what car was she driving?

4 A. I believe a silver Honda.

5 Q. Okay. And to your understanding, who did that car
6 belong to?

7 A. Her sister.

8 Q. Okay. And for awhile did you and Rosa both use that
9 car?

10 A. Yes, ma'am.

11 Q. Did you drive it to work?

12 A. Yes, ma'am.

13 Q. Did you drive it to physical therapy?

14 A. Yes, ma'am.

15 Q. Did you drive it all around your neighborhood?

16 A. Yes, ma'am.

17 Q. Drive it to the grocery store?

18 A. Yes, ma'am.

19 Q. So you were seen or would have been seen by many people
20 driving that car.

21 A. Yes, ma'am.

22 Q. Would there be any reason for you to attempt to lie to
23 law enforcement---

24 A. No, ma'am.

25 Q. ---about having access to a silver Honda?

1 A. No, ma'am.

2 Q. Was that something that you knew would be easy for
3 anybody to establish that you and your wife had been driving
4 a little silver Honda for awhile?

5 A. Well, to be honest, I knew they already knew that I knew
6 that I had the car, so why would I lie to them?

7 Q. Okay. So you don't deny lying about the April 23rd,
8 2009, incident.

9 A. Yes, ma'am.

10 Q. You lied because you were scared?

11 A. Yes, ma'am.

12 Q. And you didn't want to admit you had the reefer and the
13 gun.

14 A. Yes, ma'am.

15 Q. But you didn't lie about the car.

16 A. No, ma'am.

17 Q. Okay. Do you remember Amos Jones coming to see you
18 after you were put in jail?

19 A. Yes, ma'am.

20 Q. How long was that after you were arrested?

21 A. I'm not quite sure.

22 Q. Was it fairly soon after your arrest?

23 A. It was pretty close.

24 Q. Okay. And do you recall him giving you certain warnings
25 about communicating with people in jail?

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1 A. Yes, ma'am.

2 Q. And did you take those warnings seriously?

3 A. Yes, ma'am. Of course.

4 Q. While you were in jail, were there various people that
5 attempted to communicate with you and talk with you about
6 your case?

7 A. Yes, ma'am.

8 Q. And did you ever agree to do that? Did you ever sit
9 around and chat with people about your case?

10 A. No, ma'am.

11 Q. Why not?

12 A. Because, first of all, I don't know them and why would I
13 talk to them about my case and I know they can turn around
14 and use it against me?

15 Q. Okay. When you say you know they're going to turn
16 around and use it against you, you mean you'd been warned
17 about jailhouse snitches, hadn't you?

18 A. Of course. Yes, ma'am. Long before Charlie Johnson
19 investigated.

20 Q. Okay. But Amos Jones reinforced that warning when he
21 came to see you.

22 A. Yes, ma'am, he advised me.

23 Q. Now, there came a time when Mr. Johnson wasn't going to
24 be your lawyer anymore. That's when I was appointed; right?

25 A. Yes, ma'am.

1 Q. And fairly quickly after Charlie Johnson was relieved I
2 was appointed. Isn't that true?

3 A. Yes, ma'am.

4 Q. And one of the first things that happened after that was
5 that you had another investigator come see you.

6 Ms. Campbell: Objection, Your Honor, just to the
7 continued leading.

8 The Court: Don't lead him.

9 By Ms. Shurling:

10 Q. Before you ever saw me at the jail, Mr. Hackshaw, who
11 came to visit you?

12 A. I believe Mr. Jeremy Thompson.

13 Q. And after Mr. Jeremy Thompson, who else came to see you?

14 A. Mr. MacDougall.

15 Q. Can you identify Mr. MacDougall in the courtroom?

16 A. The heavy-set guy with the silver hair.

17 Q. The silver-headed gentleman; correct?

18 A. Yes, ma'am. I'm sorry about that.

19 Q. That's okay. I'm sure he's not offended. Did Mr.
20 MacDougall echo the words that you had earlier heard from
21 Amos Jones?

22 A. Yes, ma'am.

23 Q. Did he also warn you about the danger of discussing
24 anything about the charges against you with anybody in that
25 jail?

1 A. Yes, ma'am.

2 Q. Did he emphasize how common jailhouse snitches were?

3 Ms. Campbell: Objection, Your Honor. If she could just
4 let him testify.

5 The Court: You're leading. You need to ask him what
6 did he---

7 Ms. Shurling: Describe---

8 The Court: What did he emphasize? What did he tell
9 you? What did he -- I mean, what did he ask you?

10 By Ms. Shurling:

11 Q. Describe for us, if you will, the kinds of warnings Mr.
12 MacDougall gave you.

13 A. Not to let anybody see my motion of discovery, if I did
14 have it from my previous lawyer. Never admit to them that I
15 am charged with that crime, things of that nature, but I
16 already knew that.

17 Q. Okay.

18 A. But he did warn me.

19 Q. Now, that's the second time you've said you already knew
20 that. How did you know before talking to Amos Jones to be
21 careful about jailhouse snitches?

22 A. Because I have been in prison before.

23 Q. And you're familiar with people offering to cooperate in
24 other cases?

25 A. Yes, ma'am.

1 Q. And while you were at Alvin S. Glenn Detention Center,
2 did you hear various people talking about cooperating---

3 Ms. Campbell: Objection, Your Honor, to hearsay.

4 The Court: Sustained.

5 Ms. Shurling: Was it common at Alvin S. Glenn to hear
6 inmates discussing---

7 Ms. Campbell: Objection, Your Honor.

8 Ms. Shurling: I'm not asking what anyone said, Your
9 Honor.

10 The Court: Well, you're asking him what they heard --
11 what he heard. They had to... I'm going to let -- I'm going
12 to let her (sic) answer that on the basis that it's not being
13 offered for the truth of the matter asserted.

14 Ms. Shurling: But rather to show his state of mind,
15 Your Honor. Thank you.

16 The Court: But, rather, show what was going on.

17 By Ms. Shurling:

18 Q. Was it common at Alvin S. Glenn to hear other inmates
19 talking about cooperating with the State to try to get help
20 with their own charges?

21 A. Yes, ma'am, very much so.

22 Q. Knowing that and having heard warnings from both Mr.
23 Jones and Mr. MacDougall, why would you talk to anybody about
24 your case?

25 A. I wouldn't.

1 Q. Was there anything about Mr. Golston, for example, that
2 made him an important person in your life?

3 A. He wasn't an important person in my life.

4 Q. Did you know him well?

5 A. Yes, very well.

6 Q. You knew him from the street?

7 A. No, ma'am.

8 Q. How did you know him?

9 A. Well, I got to know him while we both was at the jail.

10 Q. Okay. Did you trust him?

11 A. No.

12 Q. Was he someone you would confide in?

13 A. No.

14 Q. How about Mr. Gleaton who was not in jail, but did you
15 ever have the occasion to confess to him?

16 A. No, ma'am.

17 Q. To your knowledge, did Mr. Gleaton know E., Ellison
18 Hudson?

19 A. Yes, ma'am.

20 Q. Okay. What about Mr. Hughey?

21 A. Me and Mr. Hughey, we didn't get along at all.

22 Q. You didn't get along at all? Why?

23 A. Because previously he had, when we was there, had a
24 fight with a friend of mines (sic), and me and him never
25 really liked each other behind that, to be honest.

1 Q. Okay. Did Mr. Golston ever ask you to get your family
2 to help him with bond?

3 A. Yes, ma'am.

4 Q. Did you refuse?

5 A. Yes, ma'am.

6 Q. Did that make him mad?

7 A. Yes, ma'am.

8 Q. Anthony, in jail, particularly in Hotel, is that the
9 unit you were in? Hotel?

10 A. Yes, ma'am.

11 Q. How many people are in there at one time approximately?

12 A. I'm not sure, but maybe 60. Sixty guys to a dorm.

13 Q. Is it crowded?

14 A. Yes, ma'am.

15 Q. Loud?

16 A. Very.

17 Q. Is there a large common area in the middle of where the
18 cells are?

19 A. Yes, ma'am.

20 Q. While you're in the parts of the day where people can be
21 out in the middle---

22 A. Yes, ma'am.

23 Q. ---are all the cell doors closed?

24 A. No, ma'am.

25 Q. Do people leave their doors open frequently?

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1 A. Yes, ma'am. People even go to the extent to leave their
2 doors open, jamming them up, putting something in it so it
3 can't lock.

4 Q. Okay. Have you had cell mates while you were Alvin S.
5 Glenn?

6 A. A few. Yes, ma'am.

7 Q. You haven't had one the whole time you were there, have
8 you?

9 A. Yes, I have. A few.

10 Q. Were there times when you didn't have a cell mate?

11 A. Yes, ma'am.

12 Q. And other times when you did.

13 A. Yes, ma'am.

14 Q. You've had three cell mates I believe you said?

15 A. Yes, ma'am.

16 Q. Okay. Well, while you have a cell mate and you leave
17 the room for some reason, you can't lock the door, can you?

18 A. No, ma'am. You can lock it, but most common, you know,
19 you wouldn't lock it.

20 Q. Well, you can't lock your cell mate out of his room, can
21 you?

22 A. No, ma'am.

23 Q. So if there were times when you were having lengthy
24 meetings with myself or my investigator or Mr. Thompson,
25 there would be times when your room would be open and

1 unprotected.

2 A. Yes, ma'am.

3 Q. How about if you went to medical for some reason?

4 A. Yes, ma'am.

5 Q. How about the shower?

6 A. Yes, ma'am.

7 Q. Okay. So there were plenty of opportunities for people
8 to go in your room.

9 A. Yes, ma'am.

10 Q. And your previous attorney had given you copies of some
11 of your discovery materials, hadn't he?

12 A. Yes, ma'am.

13 Q. And you referred to it as your motion for discovery
14 awhile ago, but what we mean when we talk about the discovery
15 materials is---

16 **Ms. Campbell:** Objection, Your Honor, to educating the
17 jury.

18 **The Court:** Sustained.

19 By Ms. Shurling:

20 Q. Tell me what you mean by your motion for discovery.

21 A. Well, basically your charge, what you've being charged
22 for, detail-by-detail paperwork.

23 Q. Okay. Tell me some of the documents that would be
24 included in those discovery materials.

25 A. The witness statements, the events that happened.

1 Q. Anything from law enforcement?

2 A. Yes, ma'am.

3 Q. Like what?

4 A. The interviews, the things the witnesses told them,
5 things of that nature.

6 Q. Okay. And from reading those materials, can you find
7 out a whole lot about the facts of what you're charged with?

8 A. Yes, ma'am.

9 Q. Okay. While you have been at Alvin S. Glenn, have there
10 been people in jail with you from the Greenview community?

11 A. Yes, ma'am.

12 Q. Have there been people in jail with you that knew
13 Ellison Hudson?

14 A. Yes, ma'am.

15 Q. Have there been people that you knew were neighbors of
16 Ellison Hudson from that general community?

17 A. Yes, I would -- yes.

18 Q. And would it be fairly easy for someone to talk to those
19 people about that neighborhood?

20 A. Yes, ma'am.

21 Q. And about people that live in the neighborhood?

22 A. Yes, ma'am.

23 Q. Why would you jeopardize your future by talking about
24 your case with anyone?

25 A. Ma'am, I wouldn't -- I wouldn't do such a stupid thing

1 like that. Excuse my language.

2 Q. That's okay. Tell me about your daughter. When did you
3 find out your wife was pregnant?

4 A. I would not like to get into that.

5 Q. You're not sure exactly?

6 A. Yes, ma'am.

7 Q. Your baby was born while you were in jail?

8 A. Yes, ma'am.

9 Q. You've seen photographs of her; right?

10 A. Yes, ma'am.

11 Q. Have you ever gotten to see her in person?

12 **Ms. Campbell:** Objection, Your Honor, as to relevance.

13 **The Court:** It is. Let's move on. Let's talk about the
14 case.

15 **Ms. Shurling:** A moment's indulgence.

16 By Ms. Shurling:

17 Q. Anthony, before I leave the April 23rd issue, are you
18 sorry you lied to law enforcement now?

19 A. Yes, ma'am.

20 Q. Do you regret not being truthful about the pot and the
21 gun way back then?

22 A. Yes, ma'am.

23 Q. On May 20th, 2009, did you go to work?

24 A. Yes, ma'am, to my recollection.

25 Q. Did you have an appointment at physical therapy that

1 day?

2 A. Yes, ma'am.

3 Q. Did you make arrangements -- did you have to make
4 arrangements with your work to go to that appointment?

5 A. Yes, ma'am.

6 Q. To the best of your recollection, what time did you go
7 to physical therapy?

8 A. To be honest, I'm not sure, but normally my appointments
9 was for 1:00.

10 Q. Okay.

11 A. And I went during lunch time at 1:00.

12 Q. When you would get to physical therapy, did you have to
13 go to a sign-in desk?

14 A. Yes, ma'am.

15 Q. The document up there at the desk when you signed in---

16 A. Yes, ma'am.

17 Q. ---were you supposed to write down your appointment time
18 or what time you got there?

19 A. I'm not sure. To be honest, I would have to see the
20 form.

21 Q. Okay. Well, do you ever recall noticing before that
22 whether you were writing down what time you got there or what
23 time your appointment was?

24 A. Again, I'm not sure. I don't want to say something
25 that's not the truth, so I'm not sure.

1 Q. Okay.

2 A. But I know I was sloppy for doing things like that, and
3 I really regret it now.

4 Q. Okay. Most of the time what time did you go to physical
5 therapy?

6 A. After noon. Lunchtime.

7 Q. Lunchtime?

8 A. Yes, ma'am.

9 Q. And most commonly what time would you go for your
10 treatment?

11 A. 1, 1:30.

12 Q. Okay. Until you talked to your brother after you went
13 back up north, was there anything special about May 20th,
14 2009?

15 A. No, ma'am.

16 Q. Any particular reason for it to stand out in your mind
17 as a special day?

18 A. No, but now yes. Back then no.

19 Q. Back then no.

20 A. Yes, ma'am.

21 Q. At the time no.

22 A. Yes, ma'am.

23 Q. On a regular day when you would go to work and go to
24 physical therapy, did you always go directly from work to
25 physical therapy?

1 A. No.

2 Q. Did you sometimes go to the apartment first?

3 A. Yes.

4 Q. Why would you do that?

5 A. Any given reason. Food. Any given reason.

6 Q. Well, tell us what some reasons you would run home first
7 would be.

8 A. Maybe to get sweatpants, food, get lunch. I couldn't
9 honestly tell you every reason, but that's some -- many
10 reasons.

11 Q. Well, if you were going to use your lunch hour at
12 physical therapy, you wouldn't be getting another lunch hour,
13 would you?

14 A. No, ma'am.

15 Q. So you'd need to get a bite to eat?

16 A. Yes, ma'am.

17 Q. Okay. Can you remember specifically what you did on
18 May 20th, 2009?

19 A. No, ma'am.

20 Q. You know you went to physical therapy.

21 A. Yes.

22 Q. And you know you went to work that morning.

23 A. Yes, ma'am.

24 Q. But other than that, you know don't remember anything
25 else?

1 A. No, ma'am.

2 Q. And, again, that wasn't your anniversary, was it?

3 A. No.

4 Q. Was it your birthday?

5 A. No, ma'am.

6 Q. Did anything in your world special happen that day?

7 A. No, ma'am.

8 Q. Did you know anything about Ebony Fogle getting shot and
9 killed?

10 A. Afterwards but not that day.

11 Q. After the fact.

12 A. Yes, ma'am.

13 Q. So at the time there was no reason for that date to have
14 any particular significance to you.

15 A. No, ma'am.

16 Q. No reason for you to be paying special attention to what
17 you were doing.

18 A. No, ma'am.

19 Q. If you'd known that you were going to need to account
20 for your whereabouts every minute of that day, would you have
21 kept better track?

22 A. Of course.

23 Q. But you didn't have any reason to, did you?

24 A. No, ma'am.

25 Q. Anthony, you've got a prior record, don't you?

1 A. Yes, ma'am.

2 Q. Back in 1995 you got a judgment for a robbery, didn't
3 you?

4 A. Yes, ma'am.

5 Q. And you served some time in prison for that, didn't you?

6 A. Yes, ma'am.

7 Q. And you're admitting to these folks here today that you
8 were selling a little bit of reefer on the side back in April
9 2009.

10 A. Yes, ma'am.

11 Q. Would you ever under any circumstances physically harm
12 another human being over 2 or 300 dollars?

13 A. No, ma'am, at least I didn't think I was.

14 Q. Sir?

15 A. No, ma'am, at least I didn't think I was.

16 Q. Let me get you to explain that answer. When you say you
17 didn't think you were, what do you mean?

18 A. I know it was the wrong thing to do, but I didn't look
19 at it as a big, big deal.

20 Q. Okay. So when you say at the time you didn't think you
21 was, you meant you didn't think selling marijuana was such a
22 bad thing back then.

23 A. Yes, ma'am.

24 Q. You now realize it was.

25 A. Of course. Yes, ma'am.

1 Q. But would you jeopardize your whole future and your life
2 with your wife and your daughter for revenge over 2 or \$300?

3 A. No. Never.

4 Q. Did you have anything to do with what happened at [REDACTED]
5 [REDACTED]?

6 A. No, ma'am.

7 Q. Nothing.

8 A. No, ma'am.

9 Q. Were the police really angry at you when you wouldn't
10 tell the truth about April 23rd, 2009?

11 A. Yes, ma'am.

12 Q. And you realize now just how stupid lying to them was?

13 A. Yes, ma'am.

14 Q. Can you think of anything else you can tell this jury to
15 make them believe you?

16 Ms. Campbell: Objection, Your Honor.

17 The Court: Sustained. If he wants to tell them
18 something about the facts and you've got a question to ask,
19 go ahead.

20 By Ms. Shurling:

21 Q. Well, Mr. Hackshaw, you weren't at [REDACTED] on
22 May 20th, were you?

23 A. No, ma'am.

24 Q. They didn't find any forensic evidence at [REDACTED]
25 [REDACTED] that you were there, to your knowledge, did they?

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1 A. No, ma'am.

2 Q. They haven't found any ballistic evidence tying you to
3 [REDACTED] have they?

4 A. No, ma'am.

5 Q. The only person tying you to [REDACTED] is
6 Ellison Hudson.

7 Ms. Campbell: Objection, Your Honor. That's not true.

8 Ms. Shurling: I'll rephrase.

9 By Ms. Shurling:

10 Q. To your knowledge, is the only person who has I.D.'d you
11 as a person present at [REDACTED] at the time of the
12 killing is Ellison Hudson.

13 A. Yes, ma'am.

14 Q. Is it within your power to prove he's lying?

15 A. (No response.)

16 Q. Do you understand what I'm saying, Anthony?

17 A. Yes, ma'am.

18 Q. All you can do is tell these people what you did do;
19 right?

20 A. Yes, ma'am.

21 Q. Admit what you did lie about.

22 Ms. Campbell: Objection, Your Honor. If she could just
23 let him testify.

24 The Court: Ask him questions. Don't lead.

25 By Ms. Shurling:

1 Q. You've told everything you can about what you were doing
2 on May 20th, 2009. Is that correct?

3 A. Yes, ma'am.

4 Q. There's nothing else you can tell, is there?

5 A. No, ma'am.

6 Q. I want you to look straight at this jury and tell them
7 you admit you got robbed at gunpoint by Ellison Hudson in
8 April 2009. Tell them.

9 A. I did get robbed by him.

10 Q. And you lied to the police about it.

11 A. I did lie to the cops about the situation.

12 Court Reporter: I'm sorry. Repeat that.

13 The Witness: I did get robbed by him, and I did lie to
14 the cops about the situation.

15 Ms. Shurling: Are you lying about the death of Ebony
16 Fogle?

17 Ms. Campbell: Objection, Your Honor.

18 The Witness: No.

19 The Court: Overruled.

20 The Witness: Can I...

21 The Court: All right. He said no, so let's...

22 Ms. Shurling: A moment's indulgence.

23 By Ms. Shurling:

24 Q. Mr. Hackshaw, tell the truth. Did you shoot Ebony
25 Fogle?

1 A. Ma'am, no.

2 Q. Were you with someone that shot Ebony Fogle?

3 A. Ma'am, no.

4 Q. Do you know who shot Ebony Fogle?

5 A. No, ma'am.

6 Q. Did you have anything to do with planning---

7 A. No, ma'am.

8 Q. ---an attack on Ellison Hudson on May 20th?

9 A. No, ma'am.

10 Q. Did you know it was going to happen?

11 A. No, ma'am.

12 Q. So you weren't involved in any way in her death.

13 A. No, ma'am.

14 **Ms. Shurling:** Thank you. Please answer the State's
15 questions.

16 **The Court:** All right. Ms. Campbell?

17 **Ms. Campbell:** May it please the Court?

18 Cross-examination

19 By Ms. Campbell:

20 Q. Let me get this straight. You thought at the time it
21 wasn't a big deal for you to be selling a little bit of weed,
22 and we'll get back to that. Is that correct? That's what
23 you just testified to?

24 A. Yes, ma'am.

25 Q. And in July you find out that you are wanted for the

1 murder of an 18-year-old young woman; and then you make
2 arrangements to turn yourself in to the police with your
3 lawyer.

4 A. Yes, ma'am.

5 Q. And on June the, excuse me, July the 29th you turn
6 yourself in to the police. So at that point, knowing it
7 wasn't a big deal because all you'd done is sell the reefer
8 and you were the victim of a robbery, you told them, "I
9 didn't do this. I'm innocent." Is that what you told them?

10 A. Well, actually I didn't even speak to them.

11 Q. You didn't speak to them. So at that point, okay, you
12 turned yourself in, said you wanted to talk to your lawyer.
13 You get a lawyer. You couldn't keep Mr. Swerling, so you get
14 Mr. Johnson, and Mr. Johnson's appointed to your case just
15 shortly after that. Right?

16 A. Yes, ma'am.

17 Q. And at that point you're in jail on a murder charge, and
18 you realize that's a pretty big deal, don't you?

19 A. I did know that was a big deal.

20 Q. You knew that was a big deal.

21 A. Yes, ma'am.

22 Q. So at that point you talked to your lawyer and you say,
23 "I want to talk to the police." So on November 18th your
24 lawyer gets in touch with the police, doesn't he?

25 A. No, ma'am.

1 Q. Do you remember going to the police station on
2 November 18th and talking to these investigators right here?

3 A. Well, actually can I tell you about that? We went in
4 front of a judge---

5 Q. You can answer me yes or no and then you can explain.
6 Right?

7 A. Yes, ma'am. No, ma'am, that's not how it went. We went
8 in front of the judge, and the judge told me if I take a
9 polygraph test she will reconsider me getting a bond. And
10 when I went to take the polygraph test and my test came back
11 the same as Ellison Hudson's, these cops was mad and I didn't
12 want to be interviewed by them. And I told my attorney that
13 I did not want to speak to neither one of them because of the
14 things that they was telling friends and family members. I
15 did not want to speak to them. I said I will talk at a
16 trial, and they was upset and they was jiggling at me.

17 One cop was playing a good cop role. One cop was
18 playing a bad cop role, and they were upset. I was talking
19 to them like they was talking to me, and they didn't want to
20 interview me anymore.

21 Q. Maybe I misunderstood your testimony on direct. You
22 said you were scared and you didn't want to tell them.

23 A. I never said I was scared. Did I say---

24 Q. You were scared of getting in trouble.

25 A. Scared of getting in trouble for something I didn't do?

1 I never---

2 Q. Why would you lie to them about the robbery, sir?

3 A. Why did I lie? Because I was scared about the shots.

4 Q. About the shots.

5 A. Yes.

6 Q. That you fired.

7 A. Right.

8 Q. And the reefer that you had.

9 A. Yes, ma'am.

10 Q. And at that point you admit to this jury you were facing
11 a murder charge in state court and you're lying to them about
12 the robbery because you're scared about the shots you fired
13 and didn't hit anybody?

14 A. Yes, ma'am, and you know why, too.

15 Q. No, sir.

16 A. Because I'm on probation.

17 Q. Because you're on probation.

18 A. Yes, ma'am.

19 Q. Probation for what?

20 A. You know. Weapons charge.

21 Q. For a weapons charge?

22 A. Yes, ma'am.

23 Q. And how much time are you facing on your probation?

24 A. Fifteen to life.

25 Q. So you didn't want to admit to that, but you would --

1 you don't want to admit to that but -- where you may not get
2 that time, but you don't want to tell them about a murder?

3 A. That I didn't do? You want me to admit to something I
4 didn't do?

5 Q. No, sir.

6 A. I would gun down an innocent young lady---

7 Q. I want you to tell the police the truth.

8 A. And I'm doing that.

9 Q. You didn't do it before, did you?

10 A. Ma'am, listen. That's something totally different.

11 This is---

12 Q. And as far as---

13 A. This has taken -- and I'm sorry to talk over you. This
14 has taken someone's life, an innocent young lady's life.

15 Q. Yes, sir.

16 A. Yes.

17 Q. Let me get back to that.

18 A. Yes.

19 Q. As far as on that day when you had the opportunity to
20 speak to the police and you lied to them about the robbery,
21 you had the opportunity to tell them you didn't do it.

22 A. Yes, ma'am.

23 Q. And all you did was deny you didn't know where the
24 silver Honda was.

25 A. Ma'am, I never denied that. I never -- why would I deny

1 something I know they already know? Why would I tell them
2 something like that? I never denied any of that.

3 Q. Okay.

4 A. And it's so funny that the recording you -- they don't
5 have it anymore. How is that? The interview, they did
6 record it in front of my lawyer.

7 Q. In front of your lawyer.

8 A. Yes, ma'am.

9 Q. Mr. Johnson.

10 A. Yes, ma'am.

11 Q. And let me get back to something. You mentioned that in
12 the robbery -- I want to talk about the April 23rd robbery.

13 A. Yes, ma'am.

14 Q. You go there or you're there at your apartment and
15 you're selling weed.

16 A. Yes, ma'am.

17 Q. What time of day was it?

18 A. I can't even remember.

19 Q. And how had you known Ellison Hudson?

20 A. Through mutual friends.

21 Q. Through mutual friends?

22 A. Yes.

23 Q. And how did you come up to arrange it for Ellison Hudson
24 and his friend to come buy weed from you that day?

25 A. Well, first, they used to hang out at a building next

1 door to my building.

2 Q. At the building next door to your building?

3 A. Yes, ma'am.

4 Q. And when they came to buy from you that day, how much
5 weed were you planning on selling them?

6 A. He only wanted a few bags.

7 Q. A few bags?

8 A. Yes, ma'am.

9 Q. And you had that amount with you in your bag?

10 A. Yes, ma'am. I had more than that.

11 Q. And then he pulled out a gun.

12 A. Yes, ma'am.

13 Q. And then when he pulled out a gun, you ran up the
14 stairs, you said. You went and got your gun.

15 A. Yes, ma'am.

16 Q. And at that point did you call the police?

17 A. No, ma'am.

18 Q. Were you in fear of your life?

19 A. Yes, ma'am.

20 Q. Did you hear gunshots?

21 A. Yes, ma'am.

22 Q. But you didn't call the police.

23 A. No, ma'am.

24 Q. Why not?

25 A. Because I had marijuana and a gun.

1 Q. Okay. And you didn't think you needed to call the
2 police to protect yourself?

3 A. No, ma'am.

4 Q. You were going to handle it yourself, and you did,
5 didn't you?

6 A. Once I was fired at, I did fire.

7 Q. Wait a minute. You had to go back to the house and get
8 the gun, didn't you?

9 A. Yes, ma'am.

10 Q. And then you went back out there where the gunshots were
11 going on.

12 A. Yes, ma'am.

13 Q. And at that point you start firing into the parking lot;
14 isn't that correct?

15 A. Yes, ma'am.

16 Q. And I show you this picture. You even hit this car
17 that's shown in this picture in front of your apartment
18 complex. Isn't that right?

19 A. I believe so.

20 Q. So you handled the situation yourself because that's how
21 you handle things. Isn't that right?

22 A. No, ma'am.

23 Q. Do you want to answer?

24 A. No, ma'am.

25 Q. That's how you handled it that day.

Anthony Hackshaw - cross-exam by Ms. Campbell

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1 A. Yes, ma'am.

2 Q. And then the police came because your downstairs
3 neighbors -- a bullet went in her apartment.

4 A. Upstairs.

5 Q. People were scared; right? Police came and said, "What
6 happened?" Didn't you want to tell them about this violent
7 criminal that had just robbed you?

8 A. No, ma'am.

9 Q. Why not?

10 A. Because there was marijuana involved.

11 Q. And you wanted to handle it yourself?

12 A. Well, if that's what you say, yes, ma'am.

13 Q. Okay. And the police came back and interviewed you a
14 second time, investigators, and you denied any knowledge of
15 anything.

16 A. Yes, ma'am.

17 Q. And you never reported it to the police.

18 A. Yes, ma'am.

19 Q. Even after your own brother told you that's what you
20 needed to do.

21 A. Yes, ma'am.

22 Q. And he knew you were on probation.

23 A. Yes, ma'am.

24 Q. So you ignored his advice as well because you wanted to
25 handle it. How did you feel about Ellison Hudson after he

1 robbed you, the drug dealer, at your own apartment complex?

2 A. A petty thief.

3 Q. He was a petty thief? And that day, your testimony is,
4 you just had some regular marijuana that was only worth 90 or
5 a hundred dollars?

6 A. Yes, ma'am.

7 Q. And then you testified you made some phone calls and
8 told him to bring your stuff back. That's why your records
9 -- the records show your phone?

10 A. Yes, ma'am.

11 Q. Over a couple hundred dollars worth of marijuana?

12 A. Yes, ma'am.

13 Q. But you weren't mad at him. He was just a petty thief.

14 A. Yes, ma'am.

15 Q. He had humiliated you in front of your boys that day.

16 A. No, ma'am.

17 Q. And who was with you?

18 A. A friend.

19 Q. What's his name?

20 A. Slim.

21 Q. What's Slim's real name?

22 A. I don't know his real name.

23 Q. You don't know Slim's real name?

24 A. No, ma'am.

25 Q. What does Slim do for a living?

Anthony Hackshaw - cross-exam by Ms. Campbell

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1 A. I don't know.

2 Q. Was Slim selling drugs for you that day?

3 A. No.

4 Q. So you had no ill will towards Ellison. You merely
5 called him up afterwards on occasions and asked him politely
6 to bring your couple hundred dollars worth of marijuana back.

7 A. Yes, ma'am.

8 Q. That's your testimony here today.

9 A. Yes, ma'am.

10 Q. Did he bring it back?

11 A. No, ma'am.

12 Q. You also testified that there's nothing special, that
13 they had vastly overrated the marijuana they got from you and
14 the amount or the cost.

15 A. Yes, ma'am.

16 Q. When they did the search warrant on your house, you
17 mentioned they found some marijuana?

18 A. Yes, ma'am.

19 Q. And what else did they find?

20 A. The .40.

21 Q. The .40? And which .40 was that?

22 A. That was registered to my wife.

23 Q. And was that the .40 -- that was just a gun of yours or
24 your wife's?

25 A. Yes, ma'am.

1 Q. Was there anything special about that weed when they
2 found that?

3 A. Special about it?

4 Q. Uh-huh. The quality of it. You're familiar with -- you
5 deal with -- you've just admitted to this jury you deal in
6 marijuana, don't you?

7 A. Yes, ma'am.

8 Q. And there are different types of marijuana and the
9 quality of marijuana.

10 A. Yes.

11 Q. The price depends on that, doesn't it?

12 A. Yes, ma'am.

13 Q. And the marijuana that they found in your apartment in
14 the search warrant, what kind of marijuana was that?

15 A. The same marijuana.

16 Q. It wasn't what they call exotic?

17 A. No, ma'am.

18 Q. It was just another couple hundred dollars worth of
19 marijuana?

20 A. Yes, ma'am.

21 Q. Okay. Let me ask you some questions about the people
22 you know. Ellison Hudson, you met him through mutual
23 friends?

24 A. Yes, ma'am.

25 Q. And what was his nickname?

Anthony Hackshaw - cross-exam by Ms. Campbell

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1 A. E.

2 Q. Did you know Cleveland Joyner?

3 A. Yes, ma'am.

4 Q. How did you know Cleveland Joyner?

5 A. He hung out at the building. His girlfriend lived at
6 the building next door where they all hung out.

7 Q. And did you have any problems with him?

8 A. No, ma'am.

9 Q. How did you know Mr. Gleaton?

10 A. He was a mutual friend also.

11 Q. Mutual friend of you and who?

12 A. Ellison Hudson.

13 Q. And Joe Smith?

14 A. Yes, ma'am.

15 Q. How do you know him?

16 A. He was a friend also.

17 Q. And then there was Terran Hughey and Mr. Golston?

18 A. Yes, ma'am.

19 Q. E. Robbed you, but you didn't feel any ill will towards
20 him.

21 A. (Witness shook head from side to side.)

22 Q. Oh, I forgot someone. Sheldon. Hot Boy? How did you
23 know him?

24 A. Through them.

25 Q. And did you have any beef with Mr. Ellison Hudson?

1 A. Well, no.

2 Q. Not even after he robbed you.

3 A. Of course.

4 Q. Did you have any beef with Cleveland Joyner?

5 A. I didn't like him because he hung out with E.

6 Q. What about Mr. Gleaton?

7 A. No. Me and him was more -- better friends.

8 Q. In fact, he was a friend of yours?

9 A. Yes, ma'am.

10 Q. Would want to protect you to some extent?

11 A. Yes, ma'am.

12 Q. Joe Smith?

13 A. He was okay.

14 Q. He's a friend of yours?

15 A. Yes, ma'am.

16 Q. No reason for him to make up things.

17 A. He would.

18 Q. He would?

19 A. If he was in any type of trouble.

20 Q. Well, are you aware of any trouble he's in?

21 A. I don't know.

22 Q. He's not in any trouble that's come out here, is he?

23 A. I don't think so.

24 Q. And Sheldon, Hot Boy. Do you have any animus towards
25 him?

1 A. I don't deal with him. He's more of an E. Friend.

2 Q. He's more of E's friend?

3 A. Yes, ma'am.

4 Q. And in the street as far as drug dealing goes, does E.

5 Deal drugs, too?

6 A. I don't know.

7 Q. You don't know?

8 A. No.

9 Q. You knew he bought from you.

10 A. Yes.

11 Q. And in fairly decent quantities so he could

12 redistribute.

13 A. Smoking quantities.

14 Q. You don't like the police, do you?

15 A. I mean, not all.

16 Q. No?

17 A. Not all.

18 Q. Okay. Well, would you ever say anything about the

19 police about like when Mr. Smith told you that you were

20 wanted on a murder charge and you told him that you were,

21 "Laughing at those fuck boys"?

22 A. I did say that.

23 Q. And what did that mean?

24 A. Detective Gonzalez was doing a lot of things to me, like

25 these two officers. He was calling my job. He was calling

1 neighbors. He was calling the rental office department, and
2 he was telling them things about me. And he told them that I
3 had drug charges and I was married and things trying to get
4 people roused up at me, and they kept calling me from work to
5 there and I didn't like them. The interviews we had, they
6 didn't come out good, so...

7 Q. So you didn't get along with Investigator Gonzalez.

8 A. No, ma'am.

9 Q. And you didn't get along with Investigator Reese.

10 A. No, ma'am.

11 Q. You didn't get along with Investigator Thomas.

12 A. No, ma'am.

13 Q. And you didn't get along pretty much with any police you
14 came into contact with. What about the other officers that
15 interviewed you when you told them -- when you became hostile
16 with them?

17 A. I wouldn't say hostile.

18 Q. Why did you ask Mr. Smith for some nine millimeter
19 bullets?

20 A. I never asked Mr. Smith for nine millimeter bullets.

21 Q. So he just made that up against you?

22 A. Yes, ma'am.

23 Q. Don't you remember talking to Mr. Smith and telling him
24 you knew who robbed you?

25 A. No, ma'am.

1 Q. And that he had people to take care of that person?

2 A. No, ma'am.

3 Q. And that you were going to take care of him?

4 A. No, ma'am.

5 Q. But Mr. Smith is your friend.

6 A. He's okay.

7 Q. Do you remember calling up your good friend Mr. Gleaton
8 right after this happened---

9 A. No, ma'am, but if my records---

10 Q. ---telling him you had sprayed the yard?

11 A. No, ma'am. I never done such a thing.

12 Q. Wanting to know how things were in the neighborhood?

13 A. No, ma'am.

14 Q. What had happened to E.?

15 A. No, ma'am.

16 Q. He's your friend, and he just made those things up.

17 A. I guess so. Maybe he was in some trouble and he felt as
18 though it was necessary to do that.

19 Q. He wasn't in any trouble at the time.

20 A. Ma'am, I don't know. He's in a whole lot of trouble
21 now. He's in a federal case now, a few federal cases, so I
22 wouldn't know.

23 Q. And you know a lot about people being in trouble.

24 A. Yeah.

25 Q. Let me ask you this: You called up on May the 28th and

1 made a report to the police about somebody having harassing
2 phone calls on you?

3 A. Yes, ma'am.

4 Q. And you gave them a phone number, I believe?

5 A. Yes, ma'am.

6 Q. And you reported to them that they had been making
7 threats on your life?

8 A. Yes, ma'am.

9 Q. Who is this anonymous person making threats on your
10 life---

11 A. Ma'am, I couldn't tell---

12 Q. ---other than Ellison Hudson?

13 A. I couldn't tell you.

14 Q. Well, let me let you look at your phone records
15 basically back on May the 28th before you reported it to the
16 police. Do you see those phone records?

17 A. Yes, ma'am.

18 Q. And there's one incoming from that phone number that you
19 reported to the police that's harassing you.

20 A. Yes, ma'am. I see the numbers, but I didn't---

21 Q. It shows five phone calls back to that number where you
22 called them back and talked to them for 207 seconds or
23 something.

24 A. Yes, ma'am.

25 Q. So when people call up and threaten to kill you, you

1 don't just call the police first. You call them back and
2 have a conversation?

3 A. Maybe it was a girlfriend's boyfriend that made the
4 prank calls to me or whatever.

5 Q. Well, were you involved in some girlfriend/boyfriend
6 situation that would get you so some guy would threaten to
7 kill you, honestly?

8 A. Yes, I would say so.

9 Q. And just to be straight, you don't want to report
10 anything to the police, but you went to the police for this.

11 A. Yes, because that wouldn't get me in any trouble, ma'am.

12 Q. You talked about the people that you met in jail, the
13 people that you became friends with, and you told this jury
14 you were friends with Travis Golston?

15 A. Yes, ma'am.

16 Q. And as time passed, you liked Mr. Golston.

17 A. He was okay.

18 Q. And you would talk to him.

19 A. Yes, ma'am.

20 Q. And you considered him a friend.

21 A. Yes, ma'am.

22 Q. Would he tell you about what was going on with his case?

23 A. No, ma'am.

24 Q. And you wouldn't tell him about what happened in your
25 case.

1 A. No, ma'am.

2 Q. And Mr. Terran Hughey, I believe you said you couldn't
3 stand -- you didn't like him because he had gotten in a fight
4 with one of your friends?

5 A. Yes, ma'am.

6 Q. What friend?

7 A. Michael Sims.

8 Q. Michael Sims?

9 A. Yes, ma'am.

10 Q. And how did you meet Mr. Sims?

11 A. In jail.

12 Q. So you made friends in jail.

13 A. Yes, ma'am.

14 Q. And do you trust Mr. Sims?

15 A. To an extent.

16 Q. Like you trusted Mr. Golston?

17 A. No.

18 Q. That's different.

19 A. Yes, ma'am.

20 Q. You also talked about how when you first got this you
21 were told not to talk about it, but you knew that anyway from
22 being in prison or whatever. But as time passes you built up
23 a trust in jail just like you do on the outside. Let me ask
24 you this: Are you with a gang?

25 A. No.

Anthony Hackshaw - cross-exam by Ms. Campbell

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1 Q. You aren't a blood?

2 A. No, ma'am.

3 Q. What do your tattoos say?

4 A. Bump, my name. Do you want to see them?

5 Q. I've got pictures of them; I was just asking. What do
6 they say?

7 A. My name.

8 Q. And you talked about how you had gotten some discovery
9 from your first lawyer, Mr. Johnson, shortly after this
10 happened.

11 A. Yes, ma'am.

12 Q. And do you remember when that was?

13 A. No, ma'am.

14 Q. Do you remember him being relieved sometime around
15 November?

16 A. I couldn't even tell you the dates.

17 Q. And did you keep that discovery with you?

18 A. Yes, ma'am.

19 Q. What discovery did you have with you during this time
20 period?

21 A. I'm not quite sure.

22 Q. You aren't sure?

23 A. No, ma'am.

24 Q. Well, you understand that's important.

25 A. Yes, ma'am.

1 Q. Do you still have that discovery?

2 A. Bits and pieces.

3 Q. Bits and pieces?

4 A. Yes, ma'am.

5 Q. What's happened with the rest of it?

6 A. Well, ripped up.

7 Q. Who ripped it up?

8 A. Me.

9 Q. Why?

10 A. Because I didn't want it after this type of stuff that
11 happened. It was stupid to have it.

12 Q. You ripped it up, but everything you would agree with me
13 you received through Mr. Johnson prior to this---

14 A. No, ma'am. I even got some I believe from Jack
15 Swerling. He gave me something.

16 Q. Okay. In the first day or two that he represented you
17 he gave you something?

18 A. Yes, ma'am.

19 Q. And then Mr. Johnson gave you some stuff.

20 A. Yes, and also my wife.

21 Q. Your wife?

22 A. Yes, ma'am.

23 Q. How was she able to give you things?

24 A. By the mail.

25 Q. By the mail?

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1 A. Yes, ma'am, by the mail.

2 Q. So your wife would mail you things? Legal documents?

3 A. Yes, ma'am.

4 Q. And do you remember what your wife mailed you?

5 A. I'm not sure.

6 Q. And now you've ripped that up?

7 A. Yes, ma'am.

8 Q. What type of things, just for example, would your wife
9 give you?

10 A. The same thing my lawyers would give me that she got.

11 Q. Phone records?

12 A. I'm not sure.

13 Q. Witness statements?

14 A. I'm not sure.

15 Q. Would you talk to your wife about what was going on?

16 A. Not really.

17 Q. Was it important for you to figure out what we had
18 against you?

19 A. To some extent I wanted to know.

20 Q. And it's important for you to know for you to be able to
21 come in here and 16 months after it happens to testify in
22 front of a jury.

23 A. Yes, ma'am. I tried to come earlier before 16 months,
24 but the trial was pushed back.

25 Q. And you tried to come -- you actually came forward with

1 your lawyer that one time.

2 A. Yes.

3 Q. And he -- you didn't want to talk to the police. You
4 didn't tell them anything---

5 A. No, no, no, no, no. I thought you was talking about for
6 a trial; I'm sorry. I'm not talking about an interview with
7 the cops. I'm talking about the trial. I thought that's
8 what you were speaking of. I asked for a speedy trial before
9 the 16 months.

10 Q. No, sir. You fled from South Carolina on June the 9th
11 or I guess you left June the 8th because you were worried
12 about a marijuana charge?

13 A. Yes, ma'am, and a gun charge.

14 Q. Do you remember telling people that you were relieved
15 because they arrested another guy?

16 A. Ma'am, no, ma'am.

17 Q. You had the opportunity to turn yourself in after you
18 fled to New Jersey, the District of Columbia or wherever you
19 were.

20 A. Yes, ma'am.

21 Q. You found out you were accused of murder.

22 A. Yes, ma'am.

23 Q. And I don't care what probation you're on; you would
24 agree with me that murder is a very serious offense.

25 A. Yes, ma'am.

1 Q. And when you had the opportunity, when you turned
2 yourself in, you didn't tell the police, "I didn't do it. I
3 don't know what you're talking about. Let me tell you."

4 A. Ma'am, first of all, that day I wasn't with my lawyer.
5 I was with Jack Swerling's assistant, and he, Jack Swerling,
6 advised his assistant to tell Detective Reese that we wasn't
7 going to talk, so we didn't get an interview at all that day.

8 Q. But you---

9 A. They just booked me and took me to prison.

10 Q. But your next lawyer---

11 A. Yes, ma'am.

12 Q. ---wanted you to talk to the police---

13 A. Yes, ma'am.

14 Q. ---and tell them what you knew about that day and how
15 you---

16 A. Yes, ma'am.

17 Q. But you didn't do that either.

18 A. No, ma'am.

19 Q. And you've never come forward until this day after
20 hearing all the testimony the State has against you,
21 reviewing all the discovery, and this is when you come
22 forward.

23 A. Isn't this the time? The trial, isn't this the time for
24 you to talk and let people know that you're not guilty of a
25 crime?

1 Q. I would think any time---

2 The Court: Ms. Campbell, let's not push that. Okay?

3 By Ms. Campbell:

4 Q. He's the one going there, Your Honor.

5 A. I'm not going on. I'm answering you honestly. If I
6 know officers are saying bad things about me, if you're
7 feeling somebody don't like you or persons that they don't
8 like you, you're not going to want to be involved with them.
9 So why would I want to talk to officers that I know have been
10 telling people bad things about me, that I'm armed and
11 dangerous and I murdered someone? What would I want to talk
12 to them for? My lawyer advised me the same thing: What
13 would I talk to them about?

14 Q. Your lawyer took you there to talk to them.

15 A. And do you know the reason why he told me to talk to
16 them? He told me because they're going to try to say my
17 polygraph test -- I was -- just denial. I didn't want to do
18 it, so go ahead and talk to them so they can't get back in
19 front of the judge and say that.

20 Q. Did you tell them anything about not killing Ebony that
21 day?

22 A. Ma'am---

23 Q. Did you deny the robbery?

24 A. Yes, ma'am.

25 Q. Did you say anything about Ebony? Did you deny about

1 the car?

2 A. I talked about Ebony and I never denied the car, and I
3 even said her name and I said it wrong and he started
4 slamming things down. And I said, "Sir, I'm sorry. I didn't
5 know her name." I don't know her. I didn't know this young
6 lady, and it would have been a lot better if that tape would
7 have been here to be played.

8 Q. So you're just the victim.

9 A. Yes, ma'am. I'm a victim.

10 **The Court:** Anything, Ms. Shurling?

11 Redirect Examination

12 By Ms. Shurling:

13 Q. Mr. Hackshaw, I want to get something straight about
14 charges and what you've done time for and what your fears
15 were so we're straight. Okay?

16 **The Court:** We're on a short leash. Let's just ask him
17 the questions.

18 By Ms. Shurling:

19 Q. Okay. You were convicted or did you plead or were you
20 convicted by a jury in 1995 of robbery?

21 A. No, ma'am, I pled. I didn't take it to trial because I
22 was guilty of it and I pled up.

23 Q. Okay. And you got out of prison in 2000?

24 **Ms. Campbell:** Objection, Your Honor. She's leading.

25 By Ms. Shurling:

1 Q. When did you get out of prison?

2 A. Around 2000.

3 Q. Okay. Now, when this incident happened in April of 2009
4 you made some reference awhile ago to a weapons charge. You
5 didn't actually have a weapons charge against you, did you?

6 A. No, ma'am.

7 Ms. Campbell: Objection, Your Honor. He said he did.

8 The Court: Don't lead him.

9 By Ms. Shurling:

10 Q. Have you been charged with a weapons charge?

11 A. No, ma'am. In the past I have but not on that charge.

12 Q. Have you been convicted of a weapons charge since 2000
13 when you got out?

14 A. No, ma'am.

15 Q. And you were on probation for the robbery? Is that
16 correct?

17 A. Yes, ma'am.

18 Q. And when you said you were worried about a weapons
19 charge, were you worried about one you already had or one you
20 were afraid of getting?

21 A. Getting.

22 Q. Okay. And just so we're clear, you mentioned a sentence
23 awhile ago of 15 years to life? What was that in reference
24 to?

25 Ms. Campbell: Objection, Your Honor. Any further

1 mention of any sentence...

2 **The Court:** He mentioned the penalty of 15 years to
3 life. I don't know about a sentence.

4 **Ms. Shurling:** Well, he mentioned the possible---

5 **The Court:** All right. Well, go ahead and ask the
6 question.

7 By Ms. Shurling:

8 Q. You mentioned the possible penalty of 15 years to life
9 in your testimony a little while ago, didn't you?

10 A. Yes, ma'am.

11 Q. What was that in reference to?

12 A. Getting caught with a gun.

13 Q. Okay. So that would -- that's your understanding of the
14 trouble you could get in if you got caught with a gun?

15 A. Yes, ma'am.

16 Q. After already having had an earlier charge for robbery.

17 A. Yes, ma'am.

18 Q. You didn't mean to be telling this jury that you already
19 had a weapons charge.

20 A. No, ma'am.

21 Q. Okay. Just so we're very clear, you admit you lied to
22 the police about the robbery.

23 A. Yes, ma'am.

24 Q. And about the reefer. Right?

25 A. Yes, ma'am.

1 Q. Okay. And you explained why; right?

2 A. Yes, ma'am.

3 Q. And you did come back and turn yourself in on the murder
4 charge.

5 A. Yes, ma'am.

6 Q. All right. We filed a motion for a speedy trial in this
7 case, didn't we?

8 A. Yes, ma'am.

9 **Ms. Campbell:** Objection, Your Honor. This is outside
10 the scope of what's proper in front of the jury.

11 **The Court:** That's true. Let's not -- he testified he
12 wanted a trial sooner than 16 months. Let's move on.

13 By Ms. Shurling:

14 Q. Okay. When you talked to law enforcement, you didn't
15 admit the April incident. You've already said that; right?

16 A. Yes, ma'am.

17 Q. That doesn't mean that you committed murder, does it?

18 A. No, ma'am. It was stupid because maybe if I would have
19 done it they wouldn't be blaming me for this.

20 Q. I'm glad you admit it was stupid. You regret it.

21 A. Yes, ma'am.

22 Q. But to be very clear, you deny ever telling them that
23 you didn't have access to a silver Honda.

24 A. I never told them that, and my lawyer, my previous
25 lawyer, will say the same thing. I never denied that. I

Anthony Hackshaw - redirect exam by Ms. Shurling

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1 knew they knew that, so why would I lie about that, something
2 that simple?

3 Q. If you didn't admit to the robbery in April of '09, did
4 you have reason to hope they couldn't prove it?

5 A. Yes, ma'am.

6 Q. You knew they could prove that you and your wife had had
7 a silver Honda for a little while, didn't you?

8 A. Yes, ma'am.

9 Q. So, as you say, lying about that would be a stupid lie,
10 wouldn't it?

11 A. Yes, ma'am.

12 Q. Okay. You know, the prosecutor has made a lot out of
13 the fact that you didn't deny doing this to law enforcement.
14 You're denying it to this jury, aren't you?

15 A. Yes, ma'am. Can I answer?

16 Q. Yes.

17 A. The officer that gave me the polygraph test, I even told
18 him that I didn't want to speak with these two officers but I
19 would speak with any other officer, if he could do it. He
20 told me that he just specialized in the polygraph test, and
21 my lawyer was present. It was just these two officers that I
22 didn't want to talk to. It wasn't the fact that I didn't
23 want to tell them anything. It was them two officers in
24 specific.

25 Q. Okay. And you have mentioned the polygraph a couple of

1 times now. Were you told that they couldn't get any reliable
2 results from your polygraph test?

3 A. I was told I manipulated it.

4 Q. Okay. They claimed that you tried to manipulate the
5 test?

6 A. Yes, ma'am.

7 Q. Did you?

8 A. No, ma'am.

9 Q. They didn't say you failed it.

10 A. No, ma'am. They told the judge that I manipulated it; I
11 cheated it.

12 Q. Okay. Did you?

13 A. No, ma'am. I don't know how you can do that to a
14 polygraph test.

15 Q. Well, I don't either but---

16 **The Court:** Let's move on.

17 By Ms. Shurling:

18 Q. ---did you?

19 A. No, ma'am.

20 Q. Would you know how to if you wanted to?

21 A. No, ma'am.

22 Q. And you mentioned that your results were the same as
23 Ellison Hudson's?

24 A. Yes, ma'am.

25 Q. How do you know that?

1 A. Because when he was in here---

2 **Ms. Campbell:** Objection, Your Honor. How can he even
3 know that?

4 **The Court:** Sustained.

5 **The Witness:** Because I read the paper you put on the
6 desk over there.

7 **The Court:** Sustained.

8 **Ms. Shurling:** Well, actually was a copy of the report
9 from his polygraph part of the discovery?

10 **The Court:** Let's move on.

11 **Ms. Campbell:** Objection.

12 By Ms. Shurling:

13 Q. Mr. Hackshaw, you've admitted what you lied about,
14 haven't you?

15 A. Yes, ma'am.

16 Q. And you've tried to explain to the jury why you lied
17 about that stuff.

18 A. Yes, ma'am.

19 Q. Are you telling the truth about that?

20 A. Yes, ma'am.

21 Q. Did you have anything to do with Ebony Fogle's death?

22 A. No, ma'am.

23 Q. Would you have ever even thought about trying to kill
24 Ellison Hudson over 2 or \$300 worth of marijuana?

25 A. No, ma'am.

1 Q. Again, I don't want to be repetitive, but would you risk
2 your whole future and that of your wife and child over 2 or
3 \$300 worth of marijuana?

4 A. No, ma'am, and I don't see no light in why would I
5 murder an innocent girl and I knew his friends and where they
6 were. Why would I want to murder an innocent woman? It
7 don't make no sense.

8 Q. Had you ever met Ebony Fogle?

9 A. No, ma'am.

10 Q. You didn't even know her, did you?

11 A. No, ma'am.

12 Q. On these people -- Solicitor Campbell was writing on the
13 board. You knew Ellison Hudson from previous encounters with
14 him?

15 A. Yes, ma'am.

16 Q. You knew Cleveland Joyner?

17 A. Yes, ma'am.

18 Q. But you'd never had any run-ins with Cleveland, had you?

19 A. No, ma'am.

20 Q. Okay. And Mr. Gleaton was actually a friend.

21 A. Yes, ma'am.

22 Q. If you had to describe one as an acquaintance and one as
23 a friend, which one would be the friend and which one would
24 be the acquaintance?

25 A. Gleaton, because his brother once upon a time worked at

1 my brother's studio. So we had a better friendship.

2 Q. Okay. And you were acquainted with Ellison Hudson?

3 A. Yes, ma'am.

4 Q. And acquainted with Cleveland Joyner.

5 A. Yes, ma'am.

6 Q. I believe I asked you before, but I'm not sure: When E.
7 Hudson robbed you in April of 2009, there was somebody with
8 him that day?

9 A. Yes, ma'am.

10 Q. And that person was also armed?

11 A. Yes, ma'am.

12 Q. And before that day did you know who that person was?

13 A. No, ma'am.

14 Q. Have you subsequently come to know that he was Sheldon
15 McDowell?

16 A. Yeah, after reading discovery.

17 Q. Okay. And you subsequently found out all the people
18 he's friends with?

19 A. Yes, ma'am.

20 Q. But he wasn't somebody you knew by sight at the time of
21 the robbery.

22 A. He testified that he never knew me and I never knew him.

23 Q. That's correct. Okay. And Mr. Golston -- the State
24 asked you if you were friends with Mr. Golston in prison.

25 A. Yes, ma'am.

1 Q. Is he somebody you would call a friend?

2 A. Kind of sort of back then.

3 Q. Okay. Did you have any idea that he would be trying to
4 use your situation to better his own fortunes?

5 A. No, ma'am.

6 Q. And you mentioned somebody else in prison that you'd
7 gotten to be better friends with. Who was that, the person
8 that...

9 A. Hughey.

10 Q. That Mr. Hughey...

11 A. Michael Sims.

12 Q. Michael Sims?

13 A. Yes, ma'am.

14 Q. And he's somebody you would consider a real friend;
15 right?

16 A. To an extent, yes.

17 Q. But you didn't discuss your case even with him, did you?

18 A. No, ma'am.

19 Q. You didn't discuss your case with anybody.

20 A. No, ma'am.

21 Q. Why?

22 A. Because it's stupid. If I didn't do a crime, why would
23 I tell them something so they can turn around and say I told
24 them something and get me in trouble? It's down right dumb.

25 Q. And you've been advised by multiple lawyers just how

1 dumb that would be, haven't you?

2 A. Yes, ma'am.

3 Q. Okay. Well, you've been waiting a long time for this
4 trial. This is your last chance. Look at the jury. Did you
5 have anything to do with the death of Ebony Fogle?

6 A. No, ma'am. I never knew this woman. I never in my life
7 -- and I don't see any sense why, if I knew who his friends
8 was, to take revenge out on a young lady. Chase her down and
9 let them go away? That was downright stupid, and I seen no
10 point in that and I never done that. And if this young lady
11 could speak and tell the truth, she would say she never seen
12 me. I never did this crime.

13 Q. Something has been made out of the fact -- and I was
14 about to forget this. I'm backtracking a little bit. The
15 fact that at your apartment they found a printout from --
16 from the jail booking sheet from Ellison Hudson?

17 A. Yes, ma'am.

18 Q. Now, that sheet has been introduced into evidence, so
19 the jury will have it to look at. It shows that you
20 downloaded it after the May 20th incident. Correct?

21 A. Yes, ma'am.

22 Q. And when you did that, were you curious about what
23 Ellison---

24 Ms. Campbell: Objection, Your Honor, to leading.

25 By Ms. Shurling:

1 Q. Why did you do it? Why did you download it?

2 A. Because first I heard he murdered somebody and I didn't
3 believe it, and I was given his name, his whole name, at my
4 job and I pulled it up from my job.

5 Q. To see what he was charged with?

6 A. Yes, ma'am.

7 Q. You already knew E. Hudson; right?

8 A. Yes, ma'am.

9 Q. You knew what he looked like.

10 A. Yes, ma'am.

11 Q. So you didn't need to pull it up to see what he looked
12 like, did you?

13 A. No, ma'am.

14 Q. And if you wanted to get him, do you know of any way you
15 could get in the Alvin S. Glenn correctional institution to
16 get him?

17 A. No, ma'am.

18 Q. Okay. And there's been suggestions that you were going
19 through all sorts of efforts to try to locate E. Hudson.
20 You've heard that.

21 A. Yes, ma'am.

22 Q. Now, do you know how to use a computer?

23 A. Yes, ma'am.

24 Q. You downloaded the reference to him from Alvin S. Glenn?

25 A. Yes, ma'am.

1 Q. Do you know how to use the computer to look for
2 somebody?

3 A. Well, I guess Google.

4 Q. Google?

5 A. Yes, ma'am.

6 Q. Did you ever try -- did you ever have any reason to try
7 to Google Ellison Hudson?

8 A. No, ma'am.

9 Q. A moment's indulgence, Your Honor. Do you know whether
10 or not you could have found information by looking him up
11 through Google?

12 Ms. Campbell: Objection, Your Honor. What is the
13 relevance of this?

14 The Court: He said he didn't Google him, so he can't --
15 he doesn't know. Let's---

16 By Ms. Shurling:

17 Q. I'm sorry. Did you say -- you never tried to use
18 Google.

19 A. No, ma'am.

20 Q. But you knew how to use Google.

21 A. Yes, ma'am.

22 Q. So if you'd really been looking for him, you would
23 have---

24 Ms. Campbell: Objection, Your Honor. Asked and
25 answered.

1 **The Court:** Look, that is irrelevant.

2 By Ms. Shurling:

3 Q. Do you know how to use Google to look for someone?

4 A. I guess put their name in.

5 Q. Okay. Were you looking for Ellison Hudson back then?

6 A. No, ma'am.

7 Q. Thank you. All right. Mr. Hackshaw, you're guilty of
8 selling marijuana, aren't you?

9 A. Yes, ma'am.

10 Q. And you're guilty of being stupid, aren't you?

11 A. Yes, ma'am.

12 Q. Are you guilty of murder?

13 A. No, ma'am.

14 **Ms. Shurling:** Thank you. No further questions.

15 **The Court:** All right. Anything?

16 **Ms. Campbell:** No, sir.

17 **The Court:** All right. Thank you, Mr. Hackshaw. You
18 may step down. All right. Ladies and gentlemen, well, we
19 just made it, didn't we? It's 25 after. I hope your spouse
20 will have a little bit of patience with us. I hope all of
21 your families will have patience with us.

22 I'm going to ask y'all to come back here tomorrow --
23 Monday morning. I tell you -- it's Monday. I'm going to let
24 y'all come in about 9:30. Do not discuss this case. Don't
25 do anything to jeopardize this solid week of work that you

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1 have put into the case. Don't go do any investigation.

2 Don't get on Google. Don't do anything.

3 When you come back in on Monday, I'm going to ask you to
4 do me a favor when you get in. That is, I need you to select
5 me a foreperson. So if you come in -- maybe you can come in
6 about five minutes early, 9:25 or so, and if you'll select me
7 a foreperson. Just write it down. Give it to one of the
8 bailiffs and they'll give it to me because I think we're
9 getting closer to the end, and we're going to need that
10 foreperson.

11 So y'all have a great weekend. Again, I thank you on
12 behalf of the State and Ms. Shurling for your patience and
13 hard work, and we'll see you Monday morning. 9:30.

14 (Whereupon, the jury was excused from open court for the
15 day at 4:27 p.m.)

16 **The Court:** All right. We'll come back here at 9:30 on
17 Monday morning. Are y'all going to have any more witnesses?

18 **Ms. Shurling:** We may have one additional witness, Your
19 Honor. I'm not certain on it. I'll---

20 **The Court:** So there's a good chance we can get it to
21 the jury sometime on Monday.

22 **Ms. Shurling:** Oh, absolutely.

23 **The Court:** All right. If you've got any charges other
24 -- I mean, we've talked about some charges already. If you
25 have anything else -- Ms. Campbell gave me some charges

1 today, I think her version of what she would like on the
2 reasonable doubt, but I've got my reasonable doubt. I think
3 mine is appropriate, and I'm going to give it. If you've got
4 anything else -- do you think y'all are going to have any
5 reply?

6 Ms. Campbell: Yes, sir.

7 The Court: Do you know how long?

8 Ms. Campbell: No. I mean, I didn't think we'd have any
9 until he testified, so...

10 The Court: All right. Well, I mean---

11 Ms. Campbell: We've got to regroup.

12 The Court: Do you think we'll be all day Monday on
13 reply?

14 Ms. Campbell: I don't think so, but I don't know who
15 their other witness is either, Your Honor, so it's hard to --
16 if someone admits to something and then not be able to---

17 The Court: They say it's a short witness, so whatever
18 -- whoever it is, it's probably not going to... All right.
19 Well, look, I'm on vacation Thursday and Friday of next week,
20 so keep that in mind.

21 Ms. Campbell: Not a problem.

22 The Court: Okay. Well, y'all have a great weekend
23 yourselves, and thank y'all for your patience and hard work
24 and we'll see you Monday morning. Ms. Campbell, if you've
25 got any other charges, bring them in Monday. I don't know if

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1 you've shared what you've got.

2 (Court's exhibit 2 was marked for identification. The
3 trial concluded for the day at 4:29 p.m. and resumed the
4 following Monday, November 1, 2010, as follows.)

5 **The Court:** All right. Thank y'all. Please be seated
6 if you would. Are you ready, Daphne?

7 **Court Reporter:** Yes, sir.

8 **The Court:** I had a pretrial or a pre-start conference
9 with Ms. Campbell and Ms. Shurling, and the State -- the
10 defendant indicated through Ms. Shurling that they don't
11 intend to call any more witnesses in their case and that they
12 do have some procedural matters they want to take up.

13 Ms. Campbell indicated two things: One, she doesn't
14 know exactly where they are at this point in time and they
15 needed 15, 20 minutes to be able to make some decisions about
16 witnesses in reply, and she also had a case that she wants me
17 to read. I told her I'd be happy to do that, but I would
18 like to tell the jury where we are so they don't sit back
19 there and wonder what's going on.

20 For your information, Roosevelt Diamond has been
21 selected as foreperson. Interesting thing about this is they
22 all signed the ballot. They must be getting ready for
23 tomorrow, so...

24 Do y'all have an objection if I call the jury in and
25 y'all can -- you can rest? Then I can tell the jury we now

1 need to take up some procedural matters and that they'll step
2 back to the jury room. In the meantime, Ms. Campbell can
3 figure out where she is on witnesses, and we can address some
4 of the things that you want to address. I think we decided
5 on some of these proffers that we will wait 'til the jury
6 begins deliberations, and it's understood that Ms. Shurling
7 is going to make the proffers rather than delay the trial.

8 **Ms. Shurling:** Yes, sir, Your Honor.

9 **The Court:** Anybody have any objection to bringing the
10 jury in and y'all resting, Ms. Shurling?

11 **Ms. Shurling:** None, Your Honor.

12 **The Court:** Ms. Campbell?

13 **Ms. Campbell:** No, sir, Your Honor.

14 **The Court:** All right. Let's bring the jury in.

15 (Whereupon, the jury was brought into open court at 9:47
16 a.m.)

17 **The Court:** All right. Good morning, ladies and
18 gentlemen. Nice to see you this morning and, Mr. Diamond,
19 you lobbied for that job so you could keep that seat, didn't
20 you?

21 **Foreman:** No, Your Honor.

22 **The Court:** Okay. Well, I appreciate y'all's
23 attentiveness to selecting a foreperson because we're going
24 to put y'all to work sooner than maybe we anticipated when we
25 broke on Friday. But before we begin, get back into the

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1 trial, let me ask you as I've asked you every day: Has
2 anybody had any conversation with anyone since we left on
3 Friday afternoon about this case or has anyone been
4 approached by anyone about this case since we left on Friday?

5 All right. Has anybody done any independent inquiry or
6 their own investigation, gotten on the internet, gone by any
7 scene, cell tower or anything like that since we left on
8 Friday? All right. As you'll recall when we concluded on
9 Friday, Ms. Shurling was putting forth the defendant's
10 evidence in their case. And so, Ms. Shurling, I'll call on
11 you at this time.

12 **Ms. Shurling:** Your Honor, at this time the case for the
13 defense would rest.

14 **The Court:** All right. Ladies and gentlemen, the
15 defendant has rested. We had anticipated maybe there might
16 be additional testimony -- I mean evidence, but the defense
17 has rested which means that the State now has the
18 opportunity, if it wishes to, to offer any evidence in reply,
19 but before we get to that stage I need to take up some
20 procedural matters with the attorneys.

21 So I'm going to have to send you back to the jury room
22 for a few minutes while I do the matters that I have to
23 discuss with them, and then we will bring you back just as
24 soon as we can. Again, please do not discuss the case with
25 each other at all while you're back in the jury room. Thank

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1 you very much.

2 (Whereupon, the jury was excused from open court at 9:50
3 a.m.)

4 **The Court:** All right. Since this election ballot is so
5 complete, I'm going to make it Court exhibit number 3 I think
6 it is, Daphne.

7 (Court's exhibit 3 was marked for identification only.)

8 **The Court:** All right. Anything we need to take up now?
9 I know you wanted to -- you had some motions you wanted to
10 make, Ms. Shurling, relating to closing arguments, and I
11 don't know if you want to do that now or wait to see what the
12 State is going to do on reply. I think we could probably do
13 it now if you wanted to. I don't know if you have any other
14 motions you want or if the State has any motions anybody
15 wants to address at this time.

16 **Ms. Shurling:** Your Honor, first I would note for the
17 record that when the jury returns there was the outstanding
18 matter of advising the jury on the penalties for accessory to
19 murder as they would be pertinent to---

20 **The Court:** Who was that? Gleaton?

21 **Ms. Shurling:** Gleaton, Your Honor.

22 **The Court:** And---

23 **Ms. Shurling:** It was the State's position that the fact
24 that there were phone calls to Mr. Gleaton both prior to and
25 after the homicide was germane---

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1 **The Court:** Right. I understand.

2 **Ms. Shurling:** ---somehow. And there was testimony,
3 Your Honor, that at some juncture in the interview process
4 Mr. Gleaton was told that he could be charged as an accessory
5 to murder.

6 **The Court:** All right. What I have agreed to do is to
7 -- Ms. Shurling's position is that accessory to murder should
8 include exposure to both accessory before the fact and
9 accessory after the fact. I had previously ruled that
10 clearly none of his -- none of the actions on behalf of Mr.
11 Gleaton that he was being addressed about occurred prior to
12 the murder so that accessory after the fact would be the
13 appropriate charge if, in fact, he were charged which he has
14 not been.

15 I think in the course of the interview with one of the
16 officers that they told him: Do you understand that you
17 possibly could be -- you might be charged with accessory to
18 murder? I have agreed to tell the jury that accessory after
19 the fact of murder carries up to 15 years. Isn't that it?
20 Fifteen?

21 **Ms. Shurling:** Yes, sir, Your Honor.

22 **The Court:** And I know you want further instructions of
23 accessory before the fact, but I'm not charging that. I
24 mean, I'm not instructing in that regard, but you -- I
25 understand you disagree with me.

1 **Ms. Shurling:** My objection is noted for the record,
2 Your Honor.

3 **The Court:** All right. Anything else?

4 **Ms. Shurling:** Yes, sir, Your Honor. I would move at
5 this time for the State to be precluded from making an
6 opening on the law. I understand that that is a tradition
7 that arises from the common law. However, the South Carolina
8 Constitution very clearly states that it is the purview of
9 the Court to determine what law is appropriate in a case and
10 that the jury is to receive the law from the bench.

11 It is our position that it is inconsistent with that
12 delegation of authority for the State then to be permitted to
13 open on the law and give their own prosecutorial spin on the
14 law that's applicable on the facts of the given case, and for
15 that reason we would object. We think that it's
16 inappropriate, unconstitutional, and inconsistent with other
17 charges that will be given from the bench that the jury is
18 to, in fact, derive the law to be applied from Your Honor.
19 Additionally -- I'm sorry. I'm...

20 **The Court:** I'm listening.

21 **Ms. Shurling:** Additionally, the second motion, Your
22 Honor, would be for the defendant, Anthony Hackshaw, to be
23 given the final closing statement to the jury in this case.
24 I understand that under South Carolina case law the defendant
25 in a capital murder case is allowed to have the final

motions

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1 argument to the jury regardless of whether he puts up a
2 defense or not. As a threshold matter, I would argue that
3 there is -- should be no appreciable variance in the standard
4 of due process for one facing possibly life in prison without
5 parole and someone facing the death penalty.

6 But perhaps even more important, there's ample case law
7 in South Carolina for the proposition that there should be
8 nothing which occurs in the judicial setting that in any way
9 punishes the defendant for exercising his constitutional
10 right to put forth a defense to criminal charges. Both the
11 State Constitution and the sixth amendment to the United
12 States Constitution guarantee a defendant's right to be fully
13 heard in his defense.

14 Where the common law rule is applied as it traditionally
15 is in South Carolina, the defendant loses the right to make
16 the final statement to the jury in a non-capital homicide
17 case if and only if he defends himself. If he doesn't put up
18 any evidence at all, he retains the right to make the last
19 statement to the jury. The net effect is that the defendant
20 is directly punished for presenting a defense and that is
21 repugnant to the Constitution to both the State and the
22 United States, and for that reason I would move that he
23 retain the privilege of the last address to the jury.

24 **The Court:** All right. Anything from the State with
25 respect to these motions?

1 **Ms. McDuffie:** Your Honor, we would argue that it's the
2 State's position not only to close last in this case because
3 the defendant has presented evidence, relying on State v.
4 Gillis, 158 South Carolina 471, and also State v. Pinker, 365
5 South Carolina 541. Further, Your Honor, we would rely on
6 State v. Rogers for the proposition that the State is
7 entitled to open the closing argument to the jury and
8 therefore, Your Honor, we would argue that we are entitled
9 not only to open the closing arguments to the jury but also
10 to have the last closing argument as supported by case law
11 and the statutes of South Carolina, Your Honor.

12 **The Court:** All right. Did you want to say something?

13 **Ms. Shurling:** Merely to note, Your Honor, that I don't
14 believe either of the cases cited by the State were argued on
15 the constitutional principle put forth to the Court today.

16 **The Court:** All right. I'm going to deny both motions.
17 I'm going to find that the State has a right to open on the
18 law, and I'm going to find that the State has the right to
19 make the last -- last argument. The defendant did put forth
20 evidence in the case, and as a result, because the burden
21 falls on the State of South Carolina to prove this defendant
22 guilty of all charges beyond a reasonable doubt, they have
23 the right to -- to make that argument. All right. Anything
24 further?

25 **Ms. McDuffie:** Your Honor, may I hand up the case law

motions

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1 that Ms. Campbell mentioned earlier?

2 The Court: Sure.

3 Ms. Shurling: Your Honor, beyond those motions that
4 dealt with new subject matter, I would, of course, renew my
5 earlier motions for directed verdict and renew my earlier
6 motion for a mistrial. In addition, I would at this time
7 move for a mistrial based on the Court's decision to allow
8 the prior statement of Mr. Gleaton into evidence,
9 notwithstanding the fact that he was clearly unavailable
10 pursuant to the South Carolina rule addressing hearsay and
11 that the authority relied upon by the State and by the Court
12 in introducing that evidence was a case that clearly did not
13 rely on the unavailability exception to the hearsay rule and,
14 therefore, it's not on all fours.

15 So at this time with that statement having been
16 introduced, we would add that as an additional ground on the
17 motion for a mistrial. Barring a mistrial, we would renew
18 the motion for a directed verdict of acquittal on all counts,
19 specifically, Your Honor, with regard to the charge of
20 assault with intent to kill on Cleveland Joyner. There is
21 absolutely no testimony in this record that any shots were
22 fired at Cleveland Joyner. Mr. Joyner has not indicated that
23 he felt -- felt or sensed that he was being fired upon. In
24 fact, at one juncture in his testimony he specifically said
25 that they could have killed him any time -- they could have

1 shot him any time they wanted to and they didn't. And for
2 that reason, Your Honor, we would say that the evidence is
3 totally lacking with regard to the charge of assault with
4 intent to kill pertaining to Cleveland Joyner. And without
5 abandoning our directed verdict motion with regard to all
6 other charges, of course, we would note that one particularly
7 is not supported by either any direct evidence or any
8 substantial circumstantial evidence, Your Honor.

9 The Court: Anything?

10 Ms. McDuffie: Your Honor, I believe the testimony of
11 Mr. Joyner was that all three individuals - Ms. Ebony Fogle,
12 Mr. Ellison Hudson and Mr. Joyner - were in a very small
13 area. Mr. Joyner and Ms. Fogle were sitting at a table. Mr.
14 Hudson was standing close to them washing a vehicle when the
15 defendants entered the back yard and began firing. Mr.
16 Joyner said that he first fell to the ground trying to get
17 away from the shots and then ran and hid behind a shed trying
18 to get away from the shots.

19 Your Honor, I believe that taking the evidence as most
20 favorable to the non-moving party, there is not only direct
21 evidence but circumstantial evidence to show that not only
22 was he in fear for his life, Your Honor, in the testimony
23 that he had to run and hide behind the shed in order to try
24 and avoid being shot, Your Honor, but also direct evidence
25 that he was being fired upon, and his actions as a result of

motions

1499

1 that firing was to run and hide behind the shed, Your Honor.
2 Therefore, there is both direct and circumstantial evidence
3 from which the jury can conclude that he was assaulted with
4 the intent to kill, Your Honor, in this matter.

5 **The Court:** All right. Let's start with those. Okay.
6 I'm going to deny the motion for a directed verdict, as I
7 previously found, that there is -- on the murder charge
8 clearly there's evidence that the -- by Mr. -- what was his
9 name?

10 **Ms. Shurling:** Hudson, Your Honor?

11 **The Court:** Hudson. That Mr. -- Ms. Shurling's client
12 came -- came looking for him with a gun and started shooting
13 and someone ended up dead. On the other charges I'm going to
14 find when they -- that there's testimony that they came
15 around the corner into the back yard with guns blazing and
16 firing and that they had to -- both the alleged victims had
17 to jump out of the way. One fell to the ground and
18 ultimately got up and ran. The other one ran in order to
19 avoid being shot. At the very least there's substantial
20 circumstantial evidence and there was a gun involved.

21 On the directed verdict on the basis of -- well, I guess
22 it's the mistrial on the basis of availability. I determined
23 that he was available, that, you know, there's ample case law
24 that when a -- in an instance when a defendant refuses to
25 answer the question about the statement that that can amount

1 to an admission about it and that in this instance, even
2 though he refused to ultimately answer the questions of Ms.
3 Shurling, he did answer a good part of some of the testimony
4 of the -- that he got up and he talked about charges that
5 were faced -- that he faced. He admitted -- he denied he
6 ever made a statement. At some point in time he then
7 indicated that he would not cooperate and he would not answer
8 questions, but I'm going to find that under State v. Stokes
9 that the ability to confront that witness was there.

10 So for reasons previously denied, the State has been
11 denied the other mistrial motion during the course of the
12 trial. For those some reasons the mistrial motion is denied
13 for that basis as well. Anything else?

14 Ms. Shurling: Nothing further at this time, Your Honor.

15 The Court: All right. What -- have y'all got any idea
16 what's going on here, Ms...

17 Ms. McDuffie: Beg the Court's indulgence for a minute.

18 Ms. Campbell: Your Honor, if we could just have a
19 couple of minutes to confer. Any reply we have would be very
20 brief. I just need to see who's here.

21 The Court: I'm sorry.

22 Ms. Campbell: If we could just have a couple of minutes
23 to -- any reply we have will be very brief. I just need to
24 see who's here.

25 Ms. Shurling: Your Honor, I would just note -- having

colloquy

1501

1 reviewed the Court's decision in Darby, I would reiterate our
2 position that the hesitate-to-act charge that Your Honor
3 traditionally gives has been repeatedly approved by our
4 Supreme Court and is appropriate on the facts of this case,
5 and we would ask that you limit your charge to that.

6 **The Court:** I'm trying to read their case, if you'd give
7 me a second.

8 (Pause in proceedings.)

9 **The Court:** All right. Anything further?

10 **Ms. Campbell:** Your Honor, I would just cite State
11 versus Mahoney on that same proposition in which they
12 approved the reasonable doubt.

13 **The Court:** Well, I agree. They -- clearly that -- you
14 know, you can make that charge and it's not error, but that
15 charge has been around a long time under Victor v. Nebraska
16 and I have never charged that in a case that I'm aware of and
17 I'm not going to charge it now. I'm going to charge hesitate
18 to act, and that will be the extent of the charge. I
19 understand your position, Ms. Campbell.

20 **Ms. Campbell:** Is there any problem with me, since that
21 is the law, arguing it to the jury---

22 **The Court:** Well---

23 **Ms. Campbell:** ---as another way they could---

24 **The Court:** I think you can probably argue that, but I'm
25 going to charge hesitate to act. I mean, you know, there's

1 all kinds of ways to explain what that is. So I think you
2 probably can argue it, but that will not be charged.

3 Ms. Campbell: Thank you, Your Honor.

4 The Court: What else?

5 Ms. Shurling: Your Honor, I would just note that I had
6 requested a charge on mere suspicion, and Your Honor
7 indicated earlier in chambers that your standard charge
8 includes some limited language of addressing suspicion.
9 Thank you.

10 The Court: All right. We've got to -- we've got to
11 decide something here because I've got to -- I've got to
12 figure out this jury. If we're going to go straight into
13 argument, I want to go ahead -- I think I probably want to go
14 ahead and order lunch because -- how long are y'all going to
15 take total?

16 Ms. Campbell: I think around an hour, an hour and 15.

17 The Court: How long are you going to take?

18 Ms. Shurling: I would anticipate an hour to an hour and
19 a half.

20 The Court: Well, let's limit it to an hour and 15
21 minutes to each one of you. You can get it done. You've got
22 an argument. They've got to do the law, so... I'm not going
23 to shut you down at 75 minutes but...

24 Ms. Shurling: I'll do my best, Your Honor.

25 The Court: So let's -- what will that be? 10:15,

colloquy

1503

1 11:15, 12:15, 1:15. Let's -- I don't want Jimmy John's
2 again. What other choices do we have?

3 The Clerk: Zoe's and Lizard's Thicket.

4 The Court: Zoe's. What is that?

5 (An off-the-record discussion takes place between the
6 clerk and the Court.)

7 The Court: Yes, ma'am?

8 Ms. McDuffie: Your Honor, we are going to put up one
9 witness in reply.

10 The Court: All right. How long is that witness going
11 to take?

12 Ms. Campbell: Less than 10 minutes.

13 Ms. McDuffie: No more than 10 minutes on direct, Your
14 Honor.

15 Ms. Shurling: Your Honor?

16 The Court: Is y'all's witness here?

17 Ms. McDuffie: Yes, sir, Your Honor.

18 Ms. Shurling: I would note for the record: I would
19 object to any testimony from any polygraphers involved in
20 this case---

21 The Court: Any what person?

22 Ms. Shurling: Polygraph examiners involved in this case
23 and if the State is attempting to introduce such testimony is
24 permitted to do so, we would ask that we be allowed to reopen
25 and address the polygraph of Ellison Hudson.

1 The Court: What do y'all intend to offer?

2 Ms. McDuffie: We intend to offer Joe Gray, the
3 polygrapher that gave the defendant a polygraph examination
4 in this matter.

5 The Court: To say what?

6 Ms. McDuffie: To talk about the test that was
7 administered to the defendant, his observations during the
8 test, and how he believes the defendant manipulated the test,
9 Your Honor.

10 The Court: You ain't going into that.

11 Ms. Campbell: Your Honor---

12 The Court: Polygraph has been in this thing -- who was
13 it that first brought it up?

14 Ms. Shurling: Hudson.

15 The Court: Hudson.

16 Ms. Campbell: Hudson brought it up on cross.

17 The Court: In response to a question.

18 Ms. Campbell: Yes, sir, and then the defendant brought
19 it up on cross.

20 The Court: I understand that. But we're not having
21 some -- polygraph is not coming in. If y'all want to -- what
22 did he put on the other one? That it was inconclusive or
23 that he didn't know what the results were?

24 Ms. Campbell: Yes.

25 The Court: And you've already had somebody come in and

colloquy

1505

1 said it was inconclusive? I think he testified -- didn't the
2 defendant testify it was inconclusive?

3 Ms. Campbell: The defendant, I think, testified: They
4 said he manipulated it, but there's no way you can manipulate
5 a polygraph is the part I'm addressing.

6 The Court: What did the polygraph show? The test.

7 Ms. Campbell: The test itself was never actually scored
8 because he manipulated the test. He scored it, but he never
9 reported it out. It would have been inconclusive had it been
10 reported out.

11 The Court: Well, I'm not going into that.

12 Ms. Campbell: Is she planning on arguing it?

13 The Court: I have no idea.

14 Ms. Campbell: There is also testimony from Terran
15 Hughey that the defendant came and said he passed it.

16 The Court: We're not going into the polygraph. Are you
17 planning on arguing the polygraph?

18 Ms. Shurling: No, sir, Your Honor, absolutely not.

19 The Court: All right. You're not going to go into it.

20 Ms. Campbell: Your Honor, that's fine if we aren't able
21 to put up the testimony, but I can at least argue what he
22 testified to that's in the record. He brought it up; he's
23 put it out there.

24 The Court: Well, do y'all want to argue what's in the
25 record on the polygraph?

1 Ms. Campbell: Yes, sir.

2 The Court: All right. Y'all can argue what's in the
3 record; that's all. You can only argue what's in the record
4 anyway.

5 Ms. Campbell: That's true.

6 Ms. Shurling: Your Honor, in that -- in that case, I
7 have to renew my objection to not being permitted to
8 introduce the results of Ellison Hudson's polygraph.

9 The Court: Which was what?

10 Ms. Shurling: Inconclusive.

11 The Court: He said he didn't know what it was.

12 Ms. Shurling: And---

13 The Court: Polygraphs are not admissible in criminal
14 court. Never should have gotten to where we got---

15 Ms. Shurling: I understand.

16 The Court: ---in this thing the other day, but it came
17 out as a result of your questioning.

18 Ms. Shurling: I disagree, Your Honor, respectfully.

19 The Court: You're the one that asked the question in
20 both instances that got responses about a polygraph.

21 Ms. Shurling: And in neither case were the answers
22 responsive to my questions.

23 The Court: I'm not blaming you for it, but the fact is
24 it was during the course of your either cross-examination or
25 direct examination that it came out.

colloquy

1507

1 **Ms. Shurling:** But, Your Honor, as long as it wasn't
2 responsive to a question I asked that was---

3 **The Court:** The record is established, and you can argue
4 based on whatever the record is. Stick to it. We're not
5 reopening anything.

6 **Ms. Shurling:** And I would object---

7 **The Court:** Well, I know that. You objected. All
8 right. Are we ready to go? Let's take about -- Jackie,
9 let's take a couple of minutes and...

10 **Ms. McDuffie:** Your Honor, if I may, Brien Gwyn is here
11 I believe at the request of the defendant's subpoena. Does
12 he need to stay or...

13 **The Court:** I don't know. Why is he here?

14 **Ms. Shurling:** He's part of the proffer, Your Honor,
15 that you said you wished to put off until the jury is
16 deliberating.

17 **The Court:** All right. Well, he doesn't have to stick
18 around right now. Are you -- how far are you going to
19 disappear?

20 **Mr. Gwyn:** Back to the office, Your Honor.

21 **The Court:** All right. So how long will it take you to
22 get back here?

23 **Mr. Gwyn:** 10, 15 minutes.

24 **The Court:** All right. Well, there's no point in having
25 him sitting around here for the next few hours.

1 **Ms. Shurling:** Your Honor, as with all our witnesses, we
2 requested cell phone numbers so they can be on telephone
3 standby. It's my understanding Officer Gwyn didn't provide
4 one. That's the only reason he's here.

5 **Ms. McDuffie:** Your Honor, we have Investigator Gwyn's
6 cell phone number, and we can get him here.

7 **The Court:** All right. Well, that's great.

8 **Ms. Shurling:** Your Honor, I would ask, now that both
9 sides have concluded their cases, as I understand it---

10 **The Court:** Well, they haven't officially but...

11 **Ms. Shurling:** Well, when the State has finally
12 concluded their case, I would ask that my client's wife be
13 allowed to return to the courtroom. She was sequestered as a
14 witness.

15 **The Court:** Sure.

16 **Ms. Shurling:** I would ask that she be allowed to be
17 here for the balance of the trial.

18 **The Court:** Sure.

19 (Pause in proceedings.)

20 **The Court:** All right. My understanding is Jackie is
21 ready. Let's go ahead and bring the jury in.

22 (Whereupon, the jury was brought into open court at
23 10:27 a.m.)

24 **The Court:** All right. Thank you, ladies and gentlemen.
25 All right. Anything from the State in reply?

closing argument on the law by Ms. Campbell

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1 **Ms. Campbell:** No, sir.

2 **The Court:** All right. Ladies and gentlemen, that means
3 we have now concluded all of the evidence that will be
4 introduced in this case, and the next phase of the trial is
5 the opportunity for the lawyers to speak to you again. In
6 this instance, the State gets two opportunities because the
7 burden of proving this defendant guilty of each and every
8 charge falls upon the State, and they must prove him guilty
9 beyond a reasonable doubt. They will get to open on the law.
10 Then the -- Ms. Shurling will have an opportunity to make her
11 closing argument, and the State will then have an opportunity
12 to make argument. So with that said, I will call on -- Ms.
13 Campbell, are you going to make the argument on the law?

14 **Ms. Campbell:** Yes, sir.

15 **The Court:** All right. If you would, please, ma'am.

16 **Ms. Campbell:** May it please the Court?

17 **The Court:** Yes, ma'am.

18 **Ms. Campbell:** Good morning. The first thing I would
19 like to do on behalf of the State of South Carolina, on
20 behalf of Ebony Fogle's family and friends, is to thank you
21 for your service in this case. I know when you showed up -
22 it's been a week now - for jury duty on that Monday morning
23 you might have anticipated or tried to anticipate what kind
24 of case you might be seated on, and I don't know that any of
25 you would have anticipated the type of testimony that you, by

1 taking your oath, have had to listen to over the last week.

2 Thank you for your service. You've been attentive.

3 It's been long. I know y'all have been sitting back there,
4 had to wait on us to argue about certain matters, what's
5 relevant and what's not and all that.

6 But as you have probably figured out over the last week,
7 this is a very important case. It's very important to the
8 State of South Carolina, to the citizens of Richland County,
9 to Ms. Fogle's family, and it's important to the defendant as
10 well because you, the 12 of you, individually and then once
11 you get back there after the judge has charged you on the
12 law, collectively, must determine what actually happened back
13 on May the 20th of 2009. Who actually committed this murder?

14 Now, as the judge just told you, I'm going to have the
15 opportunity and I'm going to take this opportunity to talk to
16 you a little bit about the law. Then you'll hear from Ms.
17 Shurling, and then I'll have an opportunity to address the
18 facts more fully after that.

19 If I misquote the law in any way, please take the law as
20 the judge gives it to you. He is the person that determines
21 what the law is that you must apply to the facts. It's not
22 intentional on my part, but take that that way. And in that
23 same manner, if either side mischaracterizes the facts, you
24 remember because you all, each of you, are the sole finders
25 of what the facts really are, what the credible evidence

1 shows.

2 And on that vein, you've heard all the evidence you can
3 consider and you must base your verdict on the evidence and
4 the physical evidence and the testimony that you have heard.
5 You aren't to base - and the judge will tell you - on
6 questions by the lawyers. A fishing expedition, innuendo,
7 conjecture, speculation or just plain wishful thinking is not
8 evidence. It is when those witnesses get up there, tell you
9 what happened, and if it's credible. And what is credible?
10 Believable.

11 Now, the roles in this courtroom are defined. The
12 State's role is to bring forth to you all relevant, credible
13 evidence that you can consider. The defense's role is
14 equally as obvious: To defend her client to the best of her
15 ability. And the judge's role is to determine what actually
16 you're able to hear, what's admissible as far as your basing
17 your consideration of the facts.

18 But finally, ladies and gentlemen, the most important
19 role in this courtroom without a doubt is yours because you
20 must determine what happened back on May the 20th.. You must
21 determine what evidence that has been brought before you is
22 credible, is believable, is the truth. That's all we are
23 seeking is the truth.

24 Now, I want to apologize if over the last couple of days
25 we have done anything on behalf of the State to offend you in

1 any way. There's been times there's been legal wrangling
2 back and forth, millions of objections back and forth. The
3 judge has had to rule, things of that nature. You've been
4 sent back to the jury room while we sit here and argue over
5 legal theory and legal applicability in this case. At times
6 our questions have been inartful, clumsy, sloppy. Please
7 don't hold that against the State and don't hold it against
8 Ebony Fogle and her family.

9 Now, as you may have noticed over the last several days,
10 criminal cases are somewhat unique. In our Constitution it
11 guarantees a defendant the right to confront each and every
12 witness that comes to give testimony before you, the right to
13 confront each and every witness. It's in our Constitution,
14 as it should be. To confront the witness.

15 You've heard references to reports. You've heard
16 references to statements, and as you notice, you probably
17 haven't seen any depositions, any audio depositions or
18 anything of that nature. The reason for that is in a
19 criminal case the law says that each witness must come before
20 you so that you have the right to see them, to judge their
21 credibility, to determine their believability so that when
22 you weigh the testimony -- and in this case what's very
23 important, ladies and gentlemen: It's not just one witness
24 saying something happened. It's each witness corroborated by
25 another witness. Is the testimony corroborated by the

closing argument on the law by Ms. Campbell

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1 physical evidence? Does the witness have some bias or
2 prejudice? Even with expert witnesses, such as the
3 pathologist, his report just wasn't submitted. He must come
4 before you, and that's the reason.

5 You've also heard that there may have been some other
6 officers, say, at the scene and another officer that took a
7 report and things of that nature. We can only bring before
8 you so many witnesses to say the same thing over and over.
9 So if you've heard references to other witnesses that haven't
10 appeared before you, it's merely because we can't bring each
11 and every witness that absolutely had anything to do with
12 this to say the same thing over and over. It's called
13 cumulative evidence. So that's why you may have heard
14 references and may wonder why you haven't heard from them,
15 people that may have like participated in a search warrant,
16 things of that nature.

17 Now, the burden of proof in criminal cases is on the
18 State to prove a defendant's guilt beyond a reasonable doubt,
19 as it should be. The burden is on the State to prove back on
20 May the 20th of 2009 that this defendant committed this
21 murder, as it should be. The Constitution guarantees it.

22 Now, what is reasonable doubt? The judge will instruct
23 you, and the easiest way to define it: A reasonable doubt is
24 the type of doubt that makes a reasonable man hesitate to
25 act. But the courts have gone further, ladies and gentlemen,

1 in defining what reasonable doubt is. The judge won't tell
2 you this, but this is an appropriate legal thing, as far as
3 determining what reasonable doubt is.

4 The law in our state says that proof beyond a reasonable
5 doubt is proof that leaves you firmly convinced of the
6 defendant's guilt. There are very few things in this world
7 that we know with absolute certainty, and in criminal cases
8 the law does not require proof that overcomes every possible
9 doubt. If, based upon on your consideration of the evidence,
10 you're firmly convinced that the defendant is guilty of the
11 crime charged, you must find him guilty. If, on the other
12 hand, you think there's a real possibility that he is not
13 guilty, you must give him the benefit of the doubt and find
14 him not guilty. Firmly convinced of the defendant's guilt.
15 Even in criminal cases the law recognizes that you can't
16 overcome every possible doubt but just that that makes you
17 firmly convinced.

18 Now, you will have when you go back to the jury room
19 four different indictments to consider, and you must come up
20 with your verdicts on each of those separately. Each one
21 will be guilty or not guilty. Very simply, the first
22 indictment you will have back there -- and I'm just not
23 taking these in any order and the judge won't -- may not take
24 these in the same order, but simply just to start with:
25 Murder is defined in our code of laws - the shortest

closing argument on the law by Ms. Campbell

1515

1 definition for the most heinous crime there is - as the
2 unlawful killing of another with malice aforethought, either
3 express or implied.

4 What does that mean? What is malice? And the judge
5 will instruct you on the term malice. And in this case,
6 ladies and gentlemen, I will submit to you that no one is
7 going to get up here, I don't think, and argue that this
8 wasn't murder. If this isn't murder, it doesn't exist.

9 But what are the elements that the State must prove?
10 The unlawful killing of another with malice aforethought,
11 either express or implied. Now, malice has been defined,
12 ladies and gentlemen, and the judge will tell you that you
13 can infer malice from the use of a deadly weapon alone. The
14 use of a deadly weapon, such as a gun, infers malice. It's
15 an evidentiary fact you can consider when considering whether
16 or not the defendant acted with malice.

17 Malice may be inferred from conduct showing a total
18 disregard for human life. It's a legal term implying
19 wickedness and excluding just cause or excuse. It indicates
20 a formed purpose designed to do a wrongful act under the
21 circumstances that exclude the legal right to do it. It is
22 something that springs from wickedness, depravity, from a
23 heart devoid of social duty and fatally bent on mischief. In
24 other words, malice is a mental state. It may be inferred
25 from the facts and circumstances proven by the State beyond a

1 reasonable doubt.

2 Now, as you hear the judge instruct you on the law, you
3 will not hear different degrees of murder. Murder is defined
4 as that. You will also listen carefully because the State
5 doesn't have to prove that there's any premeditation
6 involved. The State doesn't have to prove there's actually
7 any motive involved. The judge will not instruct you that
8 those are necessary elements. All we have to prove is that
9 it's the unlawful act causing the killing of another with
10 malice at the time.

11 You heard the term aforethought. In this case, ladies
12 and gentlemen, I just mentioned that we don't have to prove
13 premeditation, although I submit in this case there is
14 evidence of premeditation which you may consider as far as
15 determining whether or not malice existed, and we don't have
16 to prove actual motive. However, ladies and gentlemen,
17 you've heard and the judge will instruct you about a prior
18 bad act that occurred back on April the 23rd, and the reason
19 for that is when there is a motive involved or when there is
20 something that the State can prove; we have the right to
21 bring it before you, not to show the defendant's propensity
22 to do bad acts, only to show you what the motive was so that
23 you get a whole picture of the reason that the events
24 occurred as they did on May the 20th, and that's why there
25 were references to the April 23rd robbery and shooting.

closing argument on the law by Ms. Campbell

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1 That's the purpose of that, because when there is a motive or
2 when there is evidence of premeditation, we are able to bring
3 that before you and then show you what malice is.

4 Now, as far as aforethought, what does that mean? How
5 long does malice have to actually exist? Malice aforethought
6 does not require that malice exists for any particular time.
7 The law doesn't say it has to be in their heart for a minute,
8 for an hour, for a day prior to the act itself. Malice must
9 exist in the mind of the defendant just before and at the
10 time the act is committed. Therefore, there must be a
11 combination of the previous evil intent and the act itself.
12 And I submit, ladies and gentlemen, no one will get up here
13 and argue that hunting down people, going into their back
14 yard and start spraying the general area, shooting Ebony
15 Fogle six times, two different types of bullets -- no one is
16 going to get up here and argue that this is anything but a
17 murder.

18 Now, in conjunction with that charge and also with the
19 assault with intent to kill charge, you also are going to
20 hear some various legal terms the judge is going to instruct
21 you. One of those doctrines is the doctrine of transferred
22 intent. The evidence in this case may show and does show
23 that Ebony Fogle was not the intended victim that day. The
24 law recognizes that -- does not provide a defense for murder
25 just because you killed the wrong person or killed someone in

1 addition to the right person.

2 If malice is found at the time of the killing, even if a
3 third party is killed rather than the intended victim, the
4 defendant is guilty of murder. In other words, just because
5 this defendant may not have known Ebony Fogle, may not have
6 intended her to be his absolute victim, the fact that he had
7 malice in his heart towards anyone at the time of the act,
8 that malice transfers to the third person. It is not a
9 defense that he killed the wrong person or not the intended
10 victim.

11 You also heard in this case that there's evidence of two
12 people being there and evidence of two different types of
13 guns: A .38 and a nine millimeter. We know that from the
14 slugs that were recovered underneath her body. The law in
15 this state is that if the crime is committed by two or more
16 persons who are acting together in the commission of an
17 offense, the act of one is the act of both or all.

18 By way of illustration, two people can be guilty of
19 killing another or murder. When only one of the two had a
20 pistol and only one bullet, if both are together, acting
21 together, assisting each other in the commission of the
22 offense, the law says under those circumstances the act of
23 one is the act of all. As it is sometimes said, the hand of
24 one is the hand of all.

25 As the pathologist testified, he can't say which one of

closing argument on the law by Ms. Campbell

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1 those bullet wounds, be it from one from the .38 or all the
2 ones from the .9 millimeter, actually caused her death first.
3 It was the combination of all of them. The law recognizes
4 even an unidentified co-defendant -- it doesn't matter. It
5 doesn't give him a defense. If he is there acting -- he
6 doesn't even have to be shooting, but if he is present
7 participating in the crime and murder results, then he is
8 guilty as a principal. In other words, the hand of one is
9 the hand of all.

10 If two people go and commit into a robbery, intending to
11 go into a convenience store -- one goes in. The other one
12 stays at the door as a lookout. The one with the gun goes
13 in. During the course of the robbery, even though it wasn't
14 his intended purpose, he shoots and kills the clerk. Both
15 are guilty under the law to be lookout.

16 Now, in this case with these facts, both are much more
17 actively involved. Both actually shoots either at or through
18 the victim, but the hand of one is the hand of all. And Mr.
19 Hackshaw is not excused or relieved of his responsibility
20 just because the State was not able to identify the second
21 perpetrator or the second shooter.

22 Now, you also are going to have as far as indictments
23 two counts of assault with intent to kill, and very simply,
24 ladies and gentlemen, the easiest way to define it -- we
25 don't have attempted murder in our state, but this is the

1 equivalent at the time. Assault with intent to kill is an
2 unlawful attempt to offer to commit violent injury to the
3 person of another with malice aforethought and with the
4 ability to complete the attempted injury. And I submit
5 shooting in the direction of people, if the bullet hits them,
6 as a result of that would that be a murder? And in our
7 state, ladies and gentlemen, when someone chooses to get
8 their revenge for being robbed and goes to another person's
9 back yard and chases them down and attempts to kill them,
10 then it is murder. The malice part applies just the same way
11 it would. And in this case it wouldn't be the transferred
12 intent; it would be the actual intent.

13 So, in other words, an offer to commit violent injury to
14 the person of another with malice aforethought and with the
15 present ability, it's assault with intent to kill. The
16 reason it's not assault and battery with intent to kill is
17 the battery would be the actual touching. If the bullet had
18 grazed or if the bullet had gone through an arm, that would
19 be assault and battery with intent to kill. It's still the
20 offer to do violent injury, but there's an actual touching.
21 In this case the proper charge, and what the judge will
22 instruct you on, is assault with intent to kill. He goes
23 there with the intention of -- with malice in his heart and
24 attempts but does not complete the act.

25 The final indictment that will be before you is