

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jun 03 2024

S.C. SUPREME COURT

Certiorari to York County

Honorable Eugene C. Griffith, Circuit Court Judge

BEN ROBERT STEWART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001478

APPENDIX

SARAH E. SHIPE
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211

ATTORNEY FOR PETITIONER

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit
1675 York Highway
York, SC 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

**VOLUME II OF IV
PAGES 501-1000**

INDEX

INDEX	i
PRE-TRIAL HEARING TRANSCRIPT DATED SEPTEMBER 17, 2008	1
PRE-TRIAL HEARING TRANSCRIPT DATED FEBURARY 11, 2009	30
TRIAL TRANSCRIPT DATED FEBURARY 23-27, 2009	53
APPLICATION FOR POST-CONVICTION RELIEF	1299
RETURN	1381
AMENDED RETURN	1386
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	1393
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF	1398
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED APRIL 17, 2023	1401
STATE’S EXHIBIT NO. 1 (NOTES)	1506
ORDER OF DISMISSAL	1507
INDICTMENTS	1527
SENTENCING SHEETS	1539

1 A. Yes, sir.

2 Q. And on the statements that we are talking about, as far
3 as the Rock Hill Police Department, were all in 2006,
4 correct?

5 A. Yes, sir.

6 Q. And do you have a copy of the statement from the 19th
7 in front of you up there?

8 A. Yes, sir.

9 Q. Will you go to that in just a moment?

10 I want to ask you first, you had mentioned that first
11 statement to Hartsville was all about the Farmington story,
12 is that --

13 A. The first statement?

14 Q. The first one, the Hartsville, right.

15 A. Yes, sir.

16 Q. And he asked you about the one on the 18th of 2006, the
17 first one you gave to the Rock Hill Police Department. Was
18 that also about the Hartsville stuff?

19 A. Yes, sir.

20 Q. Are you at that point still trying to keep the
21 Hartsville line?

22 A. Yes, sir.

23 Q. And then on the 19th, I think you testified that was
24 the first time that you ended up telling what had happened,
25 is that correct?

1 A. Yes, sir.

2 Q. All right. Now, at the beginning of that statement, if
3 you will look at it, and I understand he was asking you page
4 numbers like 19. That statement isn't 19 pages long, is it?

5 A. No, sir.

6 Q. How long is it?

7 A. Five.

8 Q. Five pages.

9 Okay. So it's whatever number they have on the copies
10 that they gave you, is that right?

11 A. Yes, sir.

12 Q. All right. It doesn't have anything to do with the
13 number of pages on this statement itself, correct?

14 A. No, sir.

15 Q. Now, looking at that -- looking at the first thing on
16 that, did the officers go over those Miranda Rights with you
17 before before they talked to you?

18 A. Yes, sir.

19 Q. Did you understand those rights?

20 A. Yes, sir.

21 Q. And did you give up or waive those rights?

22 A. Yes, sir.

23 Q. And then you gave them a statement after that, is that
24 correct?

25 A. Yes, sir.

1 Q. I think also you said the -- is it the first -- how
2 much of the first part of that statement -- I think you said
3 that you started off saying something that wasn't true. How
4 much of that is not true in the first part of that
5 statement?

6 A. The whole -- the part about the car.

7 Q. Okay. Now, as far as paragraphs, the first paragraph,
8 is that one that wasn't true?

9 A. Yes, sir.

10 Q. And the second paragraph, how about that one?

11 A. The second one is not true either.

12 Q. Okay. And when you get to the third paragraph, what
13 about that one?

14 A. Yes, sir, it's the truth.

15 Q. And that's the one that starts off "okay. Stop I want
16 to get this right"?

17 A. Yes, sir.

18 Q. Now, at this point, get the dates straight here, this
19 was October 19th, 2006, correct?

20 A. Yes, sir.

21 Q. And if you go to the last page of your statement, what
22 time does is this statement signed?

23 A. At two o'clock p.m..

24 Q. Okay. Now, do you remember what day it was that you
25 were actually put in jail in Hartsville?

1 A. The 14th. October the 14th.

2 Q. Okay. Now, were you actually arrested on this charge
3 at that time, or were you arrested on something else?

4 A. On something else.

5 Q. Okay. So at that point was your brother arrested
6 around that time too?

7 A. Yes, sir.

8 Q. Did they let you guys stay together over in the
9 detention center in Hartsville?

10 A. No, sir.

11 Q. Did they let y'all have any contact down there?

12 A. No, sir.

13 Q. And then when the Rock Hill Police Department came to
14 pick you up, was that the 18th, the day you gave your first
15 statement to them?

16 A. Yes, sir.

17 Q. Did they put you and your brother together?

18 A. No, sir.

19 Q. Did you get to talk to your brother at all during that
20 period of time in Rock Hill?

21 A. No, sir.

22 Q. So when you gave this statement on the 19th, had you
23 been able to talk to your brother since the time of your
24 arrest in Hartsville?

25 A. No, sir.

1 Q. So at this point did you have any idea what your
2 brother might or might not have said to the police?

3 A. No, sir.

4 Q. This is marked State's Exhibit No. 4 for
5 identification.

6 MR. SWERLING: Can we approach?

7 THE COURT: Yes, sir.

8 BY MR. THOMPSON:

9 Q. I just simply want to ask you, is this the original
10 statement that you gave, if you will look through it for me?

11 A. Yes, sir.

12 Q. All right.

13 MR. THOMPSON: Approach then.

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 MR. THOMPSON: Your Honor, at this time I would
17 offer State's Exhibit No. 4, the statement from October the
18 19th, into evidence.

19 THE COURT: All right. I know counsel objects to
20 the admissibility of it.

21 I'll tell you what to do. Let's take just a
22 couple of minutes.

23 Mr. Foreman, ladies and gentlemen of the jury, I'm
24 going to ask you at this time to retire to the jury room for
25 a brief time. Probably about five minutes or so.

1 If you want to refresh yourselves, you may do
2 that. We will not be long.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: Solicitor, for the record, for what
6 purpose are you offering this prior consistent statement?

7 MR. BRACKETT: To rebut the implication of recent
8 fabrication or improper motive on the part of Mr. Mack that
9 the defense for Mr. Addison and the defense for Mr. Stewart
10 have both implied on cross-examination -- not implied, but
11 they have explicitly stated that he has an improper motive
12 for being here to testify. Mr. Swerling said "you are
13 hoping for leniency in your sentencing." And Mr. Snow said
14 that "you have had a deal. They are not going to pursue
15 certain charges. That if you don't come in here and
16 testify, then they could pursue other charges. Your
17 brother pled guilty to murder and he got life."

18 And the implication is clear that Mr. Mack, Mr.
19 Davorius Mack who is sitting on the stand right now, is
20 motivated to fabricate the story that he's giving to the
21 jury today, because of the concerns raised by Mr. Swerling
22 and Mr. Snow. And that's the whole reason that they 801
23 (d) (1) (b) -- wait a minute 801 -- you know the one I'm
24 talking about. 801(d) (b), to rebut the implication.

25 THE COURT: Yes, sir.

1 MR. BRACKETT: 801(d)(1)(b) of the South Carolina
2 Rules of Evidence. That's the entire reason that he did it
3 just for this precise reason. And there are cases that I
4 found -- I was looking for the smoking gun, the one that was
5 directly on point, but in the course of finding State v.
6 Donnie Raymond Nelson --

7 THE COURT: Give me the cite on that.

8 MR. BRACKETT: That would be 669 S.E. 2d 595. I
9 pulled it at the last break. It's a July 8th, 2008 opinion
10 authored by Judge Williams of the Court of Appeal and joined
11 by Thomas and Judge Pieper, and they both -- I was looking
12 for the one that had the elements of -- the second element
13 under Saltz which said "the opposing party must have
14 explicitly or implicitly accused the declarant of recently
15 fabricating the statement or of acting under an improper
16 influence or motive."

17 I was looking for the case that directly dealt
18 with a testifying co-defendant who was now testifying
19 against his co-defendants and this is about that case.

20 They said "with respect to this second element,
21 opposing counsel implicitly accused Clement," the testifying
22 co-defendant in that case, "of acting under an improper
23 motive or influence by accusing Clement of lying in order to
24 gain favorable sentencing."

25 I was listening during the cross-examination by

1 Mr. Swerling and he said that "you are hoping by testifying
2 today that your sentence will be light or lighter." That is
3 a direct -- that is right on all-fours for that.

4 And then Mr. Snow got up and cross-examined him on
5 the plea agreement and raised the issues regarding "charges
6 that were pending; charges that could have been pending that
7 you are not being prosecuted on; your deal would be off and
8 you could get in more trouble if your brother got murder,"
9 all the things I said previously. All of that goes again to
10 raising the inference in the mind of the jury that Mr. Mack
11 is lying because he hopes to gain some favorable treatment.
12 And it would be totally unfair, knowing that this statement
13 does, in fact, exists and was made well before any of this
14 plea agreement existed; therefore, could not have been the
15 motive for making the statement on October 19th and 27th.
16 It would be unfair not to let the jury know that. They have
17 to decide what the truth in this matter is. And this is
18 invaluable evidence for helping this jury understand that
19 Mr. Mack has maintained this position consistently.

20 He may have lied before on the 18th. He may have
21 lied on the 12th and every day of his life before that, but
22 on the 19th and the 27th he says the same thing he is saying
23 in court today, and the jury deserves to know that, and the
24 Rules of Evidence support that.

25 And other cases that I just remember them off the

1 top of my head. I didn't print them off. Jeffcoat was the
2 case involving a question where -- the State v. Jeffcoat. I
3 do not have the cite for that, but it was the case that
4 involved the defense asked a witness "you practice -- this
5 was a CSC case. Said "you practiced your testimony, didn't
6 you? You have worked and prepared to come to court and you
7 have gone over your testimony prior to coming into court
8 today, didn't you?" They said that was enough to raise the
9 implication of improper motive and fabrication in Jeffcoat.
10 And Mr. Snow came close to that when he said "you met with
11 the solicitor's office prior to coming in here today." So
12 that would be another reason. That small inference, that
13 implication was raised by that question was enough to give
14 the State in Jeffcoat the right to come back and
15 rehabilitate the witness' credibility with the prior
16 consistent statement that was made prior to the instance
17 that gave rise to the improper motive, and that's what we
18 have here. This is clear cut.

19 THE COURT: All right, counsel, I'll hear from you
20 on the record.

21 MR. SWERLING: Judge, first of all, as I
22 understand it, it's the October 19th statement?

23 MR. BRACKETT: October 19th.

24 MR. SWERLING: Judge in that statement --

25 MR. BRACKETT: 27th as well. We have two. We

1 haven't gotten to the second one yet, but there is another
2 statement on the 27th that we just haven't got to it,
3 because we held up on the 19th. We have another one we seek
4 to introduce.

5 MR. SWERLING: Well, judge, in the first instance,
6 I submit that what the State is trying to do and what they
7 are asking you to do is that in every single case where an
8 individual is cross-examined about a deal that he's getting
9 from the State in return for his testimony, that as soon as
10 that witness is attacked, that that is an allegation of
11 recent fabrication and they are entitled to go into all
12 prior consistent statements. I submit that's not what 801
13 stands for.

14 801(b) -- 801(d)(1)(b) allows prior consistent
15 statements where the individual has been impeached with
16 they're pointing out where -- we are on cross-examination
17 are pointing out things that he's testifying to today that
18 he hasn't said before, or what he's saying today he's never
19 said before, and they are using the statement to show a
20 prior consistent statement. But it has to be -- it has to
21 arise before the alleged fabrication.

22 He had -- on October 19th, he's admitted he was
23 lying in those statements, because he was trying to protect
24 himself. So those statements are not made before an alleged
25 fabrication or a motive for a fabrication was -- I mean, he

1 admitted he was lying in some of those statements.

2 THE COURT: Well, but most of it was true. One
3 part of it was false on the 19th, October 19th of 2006, but
4 he said the rest of it was true. And that --

5 MR. SWERLING: Judge, I have just --

6 For several reasons. Number one is I don't think
7 that is the purpose of 801 to allow in every single
8 statement that a person made, once you cross-examine. I
9 think all we have done is alleged is cross-examined this
10 witness about his motive, interests and bias. We haven't
11 alleged any recent fabrication, although the State says we
12 have done it explicitly or implicitly. What we are doing is
13 talking about his motives to testify in this particular
14 case. And these statements are four of them altogether,
15 including the letter that we introduced.

16 And so what I'm saying and what my position is
17 that those are not statements that were made prior to the
18 alleged motive to fabricate. They are not prior consistent
19 statements in total, as the State has alleged, and they are
20 not responses to specific issues that they alleged he's
21 fabricating. They are alleging that we say he's
22 fabricating.

23 I'm asking what is it that the State is saying we
24 said he's fabricating? What specific part of that statement
25 are we alleging or Mr. Snow or I alleging that he

1 fabricated?

2 THE COURT: Not the statement.

3 The allegation is that it was improper motive to
4 fabricate today on the stand.

5 MR. SWERLING: Right. And what I'm saying is what
6 specifically are we alleged he's fabricating today?

7 THE COURT: All you -- you don't have to say that.
8 You don't have to say "you are saying this today and it's
9 not true because you are getting a deal." All you have to
10 say is "you are getting a deal, so, therefore, you are
11 coming in and testifying the way you are." That's all the
12 rule requires. It doesn't require you to lay it out like
13 that.

14 The issue is -- the solicitor is quite right. The
15 rule is simpler, because this witness, if he's given -- if a
16 witness -- he's cited the case where there was a
17 co-defendant to testify.

18 He's given a statement that's pretty much
19 consistent with the statement he's given in court today.
20 And then he's attacked on the basis of "you have improper
21 motive to be here and you are trying to gain something from
22 being here for yourself, and, therefore, you have a motive
23 to come in here and fabricate and make up your story today,
24 your testimony today."

25 Now, if the jury does not know what he said

1 previously, all they have got to go by is he comes in and
2 tells a story today and you say "but you got a reason to
3 lie," okay? The rule says once you do that, they can go
4 back and show he wasn't lying before any kind of deal was
5 made with him, that he said the same thing then, and that's
6 what the rule is there for. It's what the State says, and I
7 agree. I think there are several cases here I have cited
8 and they have cited that say the same thing.

9 Your objection is noted for the record.

10 Mr. Snow, do you wish to be heard?

11 MR. SNOW: Your Honor, I would just join in that
12 motion.

13 THE COURT: All right. I'm going to admit it over
14 objection.

15 MR. SNOW: The objection part.

16 THE COURT: All right. Well, you can offer it
17 other one once the jury comes in.

18 MR. BRACKETT: Yes.

19 THE COURT: Anything else you want to say? I
20 don't want to cut you off.

21 MR. SWERLING: Yes.

22 You are offering the one on the 27th as well?

23 MR. BRACKETT: Yes, sir, that would be our next
24 one.

25 THE COURT: You are making the same argument?

1 MR. SWERLING: Judge, in that light, I would just
2 go ahead and ask that all five of them be put in.

3 THE COURT: That's the next thing I was going say.
4 If you want them all in, the court will allow them all in,
5 if the State doesn't object.

6 Now, really a prior inconsistent statement has to
7 be under -- an inconsistent statement is supposed to be
8 under oath, taken and signed and under oath under the rule,
9 but if the State doesn't object, I would be inclined to let
10 them all in.

11 MR. BRACKETT: We won't object if they want to
12 move it in.

13 THE COURT: Do you want to move it in?

14 MR. SWERLING: Well, I'm asking if you are going
15 to allow them to put them in, just let them put all of them
16 in.

17 THE COURT: No, no. If they want to put that one
18 in, I'm allowing them to put it in.

19 If you want to let the rest of the others in, I'll
20 allow those in. That's what I'm telling you. If you want
21 those the other statements in, I will allow them in, if you
22 want to move them in, in fairness to the defense.

23 MR. BRACKETT: And we would not object. They are
24 prior inconsistent statements which would be legitimately be
25 used to impeach and they would be --

1 MR. SWERLING: Your Honor, may I reserve the right
2 to do that in my case?

3 THE COURT: Absolutely.

4 MR. SWERLING: That's all.

5 THE COURT: Yes, sir.

6 MR. SWERLING: And I would tell the court I would
7 anticipate moving them in, but I just don't want to put them
8 in now, and Your Honor knows the reasons why.

9 THE COURT: I understand. That's fine.

10 MR. SWERLING: Unless you want me to state the
11 reasons why.

12 THE COURT: No, that's fine. You can do that when
13 you present your case.

14 All right. Anything else?

15 MR. BRACKETT: No.

16 THE COURT: Please bring them back in.

17 MR. SWERLING: Judge, the same objection would go
18 towards the October 27th statement.

19 THE COURT: And you can just say we object and --

20 MR. SWERLING: Yes, sir.

21 THE COURT: -- I'll overrule your objection and we
22 know that same argument would be made. Thank you.

23 (The following takes place in the presence of the
24 jury panel)

25 THE COURT: All right. Counsel, please proceed.

1 MR. THOMPSON: Thank you, Your Honor.

2 THE COURT: The exhibit is admitted over objection
3 of counsel.

4 All right, counsel, please proceed.

5 The exhibit is admitted over objection.

6 Please proceed.

7 MR. THOMPSON: Thank you.

8 BY MR. THOMPSON:

9 Q. Now, Mr. Mack, do you have a copy of your statement
10 from the October 27th, 2006? Is there a copy of that up
11 there?

12 A. No, sir.

13 Q. Okay. Let me give this to you then, State's Exhibit
14 No. 5.

15 If you will look at that for me and tell me what that
16 is.

17 A. (Witness reviewing statement).

18 The statement I wrote on the 27th. October the 27th,
19 2006.

20 Q. All right. Now, is this one that you gave to the Rock
21 Hill Police Department as well?

22 A. Yes, sir.

23 Q. And tell me generally the gist of that statement, what
24 it was for, what you said to them. You don't have to read
25 the whole thing, but just what is it that you are telling

1 them about here?

2 A. About the gun.

3 Q. Okay. What happened with the gun?

4 A. Ben Stewart gave Allen Reed his gun.

5 Q. Ben Stewart gave Allen Reed his gun where? At Monday
6 Bishop's and all that stuff?

7 A. Yes, sir.

8 Q. Now, this statement I believe you said as well, this
9 statement is true, correct?

10 A. Yes, sir.

11 MR. THOMPSON: Your Honor, I would ask to
12 introduce State's Exhibit 5 into evidence at this time.

13 MR. SWERLING: Same objection, Your Honor. I
14 don't think it qualifies under 801(d)(1)(b).

15 MR. SNOW: Same objection.

16 THE COURT: The objection is noted for the record
17 and overruled. It's admitted over objection.

18 MR. SWERLING: Your Honor, I guess it's
19 bolstering. I wanted to add that as well.

20 THE COURT: All right, sir.

21 It's admitted over objection.

22 You may proceed.

23 BY MR. THOMPSON:

24 Q. Now, if you would, tell me what's the reason that this
25 statement came to be with the Rock Hill Police Department?

1 Is it something that you just yelled at them to come and
2 talk to you, or what is it?

3 A. When he asked me what happened to the murder weapon.

4 Q. Okay. So they came to you on this occasion, is that
5 right?

6 A. Yes, sir.

7 Q. And they asked you what?

8 A. What happened to the murder weapon. Where was the
9 murder weapon, what happened to it.

10 Q. All right. And so that's when you told them about
11 this?

12 A. Yes, sir.

13 Q. Okay. Now, going back to a couple of things that Mr.
14 Swerling had asked you. He talked about that letter that
15 you had someone write for you. Why that letter?

16 A. Because I was -- some inmates back there, they boost me
17 up about this and that, so I just figured I would just write
18 a letter to try to see if I can -- just making up -- just
19 trying to get -- I don't know.

20 Q. I mean, people boosting you up in the jail is what you
21 are saying?

22 A. Yeah, just telling me this and that.

23 Q. Okay. Now, he also mentioned that in one of your
24 statements you didn't mention anything about the stuff, as
25 far as going to Darlington with Terrell, after this stuff

1 happened, after your brother was in the hospital and all
2 that. Did the police ever ask you about that in that first
3 statement?

4 A. No, sir.

5 Q. And then going back to the car itself, I believe he
6 showed you an indictment that you have pled to that -- and
7 he said it was the same as the car that you possessed was on
8 October 9th, is that correct?

9 A. Yes, sir.

10 Q. And does that indictment actually say on or about
11 October 9th, before it goes to October 9th?

12 A. The indictment I got?

13 Q. The indictment that he was showing to you.

14 A. Yes, sir.

15 Q. Okay. And was that the indictment that you pled to in
16 Darlington County?

17 A. Yes, sir.

18 Q. It's not the one here?

19 A. Yes, sir.

20 Q. All right. Now, the one here, I'll show you a copy of
21 it. Is this a copy of the indictment that you pled to here
22 regarding possession of a stolen vehicle?

23 A. Yes, sir.

24 Q. And if you will turn it over and look on its face,
25 would you tell me what date does it give on that one?

1 A. October the 10th.

2 Q. Does it say on or about October the 10th?

3 A. Yes, sir.

4 Q. Now, you had said earlier that you were supposed to
5 have that car back by around, what, six o'clock on the 9th?

6 A. Yes, sir.

7 Q. And you didn't have it back in time?

8 A. No, sir.

9 Q. All right. So you knew at that time point that there
10 is a good chance the car would be reported stolen?

11 A. Yes, sir.

12 Q. Now, Davorius, did you go into that store that night?
13 Did you go into the BP station?

14 A. No, sir.

15 Q. Did you even go close to going inside the BP station?

16 A. No, sir.

17 Q. Did you give anyone a gun?

18 A. No, sir.

19 Q. Did you have a gun?

20 A. No, sir.

21 Q. Thank you.

22 MR. THOMPSON: No further questions.

23 MR. SWERLING: Briefly?

24 THE COURT: Briefly.

25 MR. SWERLING: Very brief.

1 RECROSS EXAMINATION BY MR. SWERLING:

2 Q. Mr. Mack, so what I understand is that you pled guilty
3 to the same charge here in York County as you did down in
4 Darlington County with respect to that car?

5 A. Yes, sir.

6 Q. Same car?

7 A. Yes, sir.

8 Q. And there was that additional car we talked about, that
9 Chevy Capris?

10 A. Yes, sir.

11 Q. That you pled to in Darlington County?

12 A. Yes, sir.

13 Q. Now, what I want to -- just want to cover real briefly
14 is that there is some mention about your plea agreement and
15 you said in your plea agreement that the statements of
16 October 19th and October 27th were true?

17 A. Yes, sir.

18 Q. Isn't that correct? Is that right?

19 A. Yes, sir.

20 Q. You signed that?

21 A. Yes, sir.

22 Q. And that plea agreement says that you cannot withdraw
23 your plea once it's entered in General Sessions Court?

24 A. Yes, sir.

25 Q. You did enter the plea in General Sessions Court?

1 A. Yes, sir.

2 Q. And you told the solicitor on that day, on March 22nd,
3 2007, in that plea agreement that the statement of October
4 19th and October 7th was true?

5 THE COURT: Which one, the 27th?

6 MR. SWERLING: 27th.

7 A. Yes, sir.

8 BY MR. SWERLING:

9 Q. Okay. Now, let me just ask you this. With respect to
10 the October 19th statement that's now in evidence, that is
11 the statement that you -- we asked you about before where it
12 says that you were at the Hartsville High School when
13 Terrell and Ben Stewart drove up and to see you at that
14 point, correct?

15 A. Yes, sir.

16 Q. That's a lie?

17 A. I made it up.

18 Q. But you have told the solicitor in that plea agreement
19 it was true, correct?

20 A. Yes, sir.

21 Q. Okay. And there is a whole lot of other things that
22 the jury will get to see now, but this is also the statement
23 that Terrell was driving the car when they drove up?

24 A. Yes, sir.

25 Q. And that's not true either?

1 A. Somebody drove up where?

2 Q. This is what you said in here "the first time I saw the
3 car Ben and Terrell rode up in, Terrell was driving, so I
4 think Terrell stole the car."

5 A. Yes, sir.

6 Q. That's what you put in that October 19th statement?

7 A. Yes, sir.

8 Q. That's not true?

9 A. No, sir.

10 Q. That's a lie?

11 A. I made that up.

12 Q. But you told the solicitor in your plea agreement that
13 that was the truth?

14 A. Yes, sir.

15 Q. And that's what you represented when you appeared in
16 court as well? When you appeared in front of the judge,
17 correct?

18 A. Yes, sir.

19 Q. You agreed that your statements of October 19th and
20 October 7th were true?

21 A. Yes, sir.

22 Q. But they weren't in all respects, were they?

23 A. Just part of it.

24 Q. Part of it.

25 Some is true, some is not?

1 A. Just the first part.

2 Q. That's what I said, some is true and some is not?

3 A. Yes, sir.

4 Q. Only you know what's true and what's not, correct?

5 A. They know what's true and what's not too.

6 Q. Only you know what you put in this statement is true or
7 not true, correct?

8 A. Yes, sir.

9 Q. Let me ask you about the October 27th statement just
10 real briefly.

11 You told me -- I think you said before that you got
12 back in the champagne car at some point that morning and
13 went back to the hospital.

14 A. Yes, sir.

15 Q. Stolen car, correct?

16 A. (Shaking head yes).

17 Q. And that you saw the police there and you left the car
18 there?

19 A. No, I said -- yeah, I seen the police around the car,
20 so then when I went and go get in the car with my home boy.

21 Q. What's the answer to my question?

22 A. Yes, sir.

23 Q. You said that you left it at the hospital and got in
24 the car with your home boy?

25 A. Yes, sir.

1 Q. Your home boy is your friend?

2 A. Yes, sir.

3 Q. Your best friend?

4 A. Yes.

5 Q. And you never saw the car again?

6 A. No, sir.

7 Q. But look in your October 27th statement, which you
8 represented to the solicitor and to the judge when you pled
9 guilty that it was true. You said in there "Ben -- this is
10 after you left Monday Bishop's house, on the second page.
11 At the top, "Ben and Terrell got in the car that we drove to
12 Rock Hill and I drove Ryan's car. They followed me to
13 Tasha's house. I went in the house and I don't know where
14 Ben and Terrell went. I think they wanted to get rid of the
15 car." That's not what you told the jury today, is it?

16 A. No, sir.

17 Q. Pardon?

18 A. No, sir.

19 Q. So that's a lie too?

20 A. (Shaking head yes).

21 Q. Is that correct?

22 A. Yes, sir.

23 Q. So when you told the solicitor and the court when you
24 entered the plea that that statement was true, as well as
25 the October 19th statement was true, that's a lie?

1 A. Yes, sir.

2 MR. SWERLING: That's all I have.

3 MR. SNOW: Nothing further, Your Honor.

4 THE COURT: Thank you, sir. You may stand down.
5 Leave everything up there, if you will, and stand down.

6 THE WITNESS: All right.

7 THE COURT: All right, Mr. Foreman, ladies and
8 gentlemen of the jury, we are going to go ahead and recess
9 for the evening. It's by the courtroom clock a couple
10 minutes after 6:30. What I'm going to do is ask you to be
11 back in the jury room -- we are going to start a few minutes
12 early in the morning. I'm going to try to go to a funeral
13 for a long time friend of mine tomorrow that's going to be
14 tomorrow afternoon, and so what I would like to do is I want
15 to start court around nine o'clock and go probably until
16 about one, or so, and then probably recess for the balance
17 of the day tomorrow, and start back on Thursday morning.

18 And so I'm going to ask you on the overnight
19 recess I'll remind you not to discuss the case among
20 yourselves or with anyone else.

21 Please do not read, listen to, or watch any media
22 account of the trial, including that that might be on the
23 Internet from any source.

24 Have a pleasant night tonight and be back in the
25 jury room in the morning at nine o'clock. Thank you.

1 (The following takes place outside the presence of
2 the jury panel)

3 THE COURT: Counsel, I still have some questions
4 about these statements now, based on Mr. Swerling's cross,
5 and that is that there was information in both of these
6 statements which were not true. And so does that make a
7 difference? They are entitled -- you are entitled to get in
8 consistent statements. Are you allowed to get in statements
9 that are consistent and inconsistent? I guess that's the
10 question.

11 MR. BRACKETT: I think actually that's addressed
12 to some extent in Donnie Nelson. They talk about some
13 differences between the statements that were given and they
14 talk about the time that has passed. They said "the third
15 element requires that Clement's," the testifying
16 co-defendant's "statement be consistent with his trial
17 testimony. This element is also met. In his written
18 statement, Clement stated on the day of the Blassingame
19 robbery he went to Nanu's house and saw Nelson there.
20 Clement also stated Nanu drove the four-member party to a
21 location across the street from the Blassingame Barbershop,
22 Nelson and Clovis were dropped off and entered the
23 barbershop.

24 "Clement repeated this account during his
25 testimony.

1 Although it is true during trial Clement did not
2 remember a few of the statements he made to Patton, we
3 recognize two years passed between Clement's statement to
4 the investigator and the trial. The trial occurred in
5 January of 2006, and Clement gave his statement in January
6 of '04. We acknowledge it could be difficult for him to
7 remember.

8 "Additionally, viewing Clement's statement and his
9 testimony as a whole, we conclude his statement is
10 consistent with his testimony."

11 And, of course, from our perspective whether or
12 not he remembered Tasha's being at this house or that house,
13 that's really secondary to the main thrust of it, which is
14 that Ben Stewart and Terrell Addison were present in the
15 car. Terrell Addison went in, armed with his brother
16 Dontavious, who he implicates, which I think gives a strong
17 degree of corroboration, because he had the opportunity to
18 put both Mr. Stewart and Mr. Addison as being the two guys
19 who went in there, but instead he put his brother being the
20 guy who went in the store. And more than that, he made his
21 brother the triggerman.

22 And ultimately his own brother testified to the
23 same exact thing. His statement has that same indicia of
24 reliability. And on those issues, the thrust of what our
25 case is required to prove is that they were involved; that a

1 gun was provided to Dontavious by Ben Stewart; that Terrell
2 Addison did put on a mask and carry a gun into the store.
3 Those issues, they are wholly consistent with his testimony.

4 MR. SWERLING: Judge, I think Mr. Brackett just
5 states -- exactly stated what my point has been, that that
6 part of it, that's the part they are trying to get in has
7 not been attacked. No one has said that Terrell Addison and
8 Dontavious Mack didn't go in the store with two weapons.

9 The circumstances surrounding them going in is
10 going to be the issue in the case, but that's the one part
11 of all the testimony by Dontavious and Davorius that really
12 hasn't been attacked. They did go in the store. Nobody has
13 challenged that.

14 So what the State is trying to do is trying to get
15 in prior consistent statements that have not been attacked
16 and trying to get in all these other parts of the statement,
17 which this guy admits not only did he not -- he lied to the
18 solicitor, but he lied to the court when he did the plea,
19 because he said in that plea agreement that the 19th and the
20 27th statements are true. And it's obvious that there is
21 major portions of that statement that are not true.

22 It's just interesting, though, the one part that
23 we are not -- the State is offering these statements for is
24 not something that we have attacked. So how could it be a
25 prior consistent statement?

1 THE COURT: Well, of course -- of course, you
2 oversimplify the thing. The whole purpose of the rule is
3 for you --

4 Here is the problem. This witness gets on the
5 stand and he gives testimony. And you come in then in
6 cross-examination and point him out that he's an absolute
7 liar and everything, and making up a whole story simply to
8 come in and get the benefit of that story. And he has come
9 in solely for the purpose of getting the benefit of his
10 story and getting a reduced sentence, to get charges
11 dismissed, insinuate all that; lied to get what he wants,
12 and to get what he wants. Now, so the only thing the jury
13 is he's testified. He -- you -- defense counsel has
14 insinuated that he's lying in here; came in here and told
15 whatever he told today as a whole lie, all of it, simply to
16 get a deal for himself. The State seeks to at least
17 rehabilitate him to the point where he told this same story
18 in 2006, or predominantly the same story to the facts in
19 2006, and they weren't made at that time to get the benefit
20 of any benefit to him of any plea bargain deal that was made
21 long after that, years after he gave that statement. And
22 that's the reason for the rule to allow them to get that in,
23 to show that his whole story he came here and told today
24 that you are saying is a lie simply to get benefit of what
25 he's testified to, or insinuate that to the jury, and they

1 have no way of showing that he gave that, predominantly the
2 same statement, years ago, when he did not obviously have a
3 reason to fabricate, and so that's the whole point of the
4 rule.

5 MR. SWERLING: Yes, sir.

6 THE COURT: It's -- if you come in and basically
7 insinuate to the jury that they can't believe anything that
8 he says, because it's all made up solely to benefit him, and
9 that's what you are saying to the jury.

10 MR. SWERLING: Judge, I --

11 THE COURT: Yeah, that's what you are saying to
12 the jury.

13 MR. SWERLING: Not as to the robbery. Nothing --

14 THE COURT: Yes, you are. You are saying this
15 whole story is a lie, Mr. Swerling. You are not saying
16 "look, I'm going to pick out these little inconsistencies in
17 here." You are saying "your whole story," insinuating to
18 the jury or intimating to the jury, inferring to the jury
19 the whole story is a lie, solely made up to come in here and
20 get the benefit of something you can use. And I'm saying
21 the fact that he gave basically on the predominant facts in
22 the statement years ago when he was talking to the police,
23 long before there was any question about any plea bargain
24 deal, or anything, his charges was dismissed or getting any
25 kind of favorable treatment in return for his testimony,

1 that he gave that. And the State is saying they are
2 entitled to at least show that as well, that he said the
3 same story before he had a motive to fabricate and make up a
4 story. That's the whole point. I think they are right. I
5 think that's the reason for the rule.

6 But the question I have is there is no question in
7 my mind if it's -- you don't just get to pick and choose
8 what you find inconsistencies in these statements and then
9 say, well, we didn't attack the rest of the statement. You
10 did attack him. You are telling the jury "he's come in here
11 telling a whole lie. Everything he said, you can't believe
12 a word he's saying. He's come in here to get what he can."

13 MR. SWERLING: Yes, sir.

14 THE COURT: So you did attack the whole statement.
15 You didn't attack bits and pieces of it.

16 MR. SWERLING: Judge, I agree, but that's just
17 cross. It's all good old cross-examination.

18 THE COURT: It's also a rule that they get it in.
19 I'm going to stick with my ruling.

20 Let me say this on the rule. I think it's
21 predominantly correct on the important points that the State
22 wants to get it in. Defense has had full benefit of
23 cross-examination on where there are inconsistencies on all
24 these statements. Inconsistencies on all these statements,
25 you have had full opportunity to do that, including the ones

1 that have come in. And you can argue them to the jury once
2 they are in.

3 I will say this to you. Once you start
4 cross-examining them about these statements, they would be
5 allowed under the completeness rule to go into the
6 statements and ask him about them, even to the point of
7 reading it, saying "didn't you say that in your statement?"
8 So I think it's comes in any way. It just doesn't be made
9 an exhibit to go back to the jury, but they are entitled to
10 do that, in any event. There is no question about that. So
11 any prejudice would be --

12 MR. SWERLING: Judge --

13 THE COURT: -- minor, it appears to the court.

14 MR. SWERLING: Just so you know, I have no -- as
15 far as 106, rule of completeness, I think I said earlier on
16 I didn't have any problem with that.

17 THE COURT: Well, I understand that. Well, the
18 rule of completeness they can get it all in anyway. They
19 probably shouldn't -- they just can't send it back to the
20 jury. I guess that would be difference.

21 But I think in fairness of the witnesses that's
22 been fully examined and cross-examined with regard to all of
23 these statements, including these two, and all the
24 inconsistencies pointed out on cross and re-cross, had full
25 and ample opportunity to do that.

1 All right. I'm just in my own mind.

2 Again, they haven't been published yet, and I'll
3 think about it a little bit more and I'll look at it a
4 little bit more and I'll keep an open mind on it.

5 I have no problem with it whatsoever if it's
6 totally, but the fact that it's consistent on predominant
7 proof that the State has to offer in this case, that it's
8 consistent in that regard. That's what I'm looking at. All
9 right. I'll keep an open mind. Always glad to hear from
10 you.

11 MR. SWERLING: Thank you.

12 THE COURT: We are going to try to start at nine.
13 I'll be here a little before then, if something comes up and
14 you need to address with me, and I'll try to get started
15 right at nine.

16 I would like to try to get away about one o'clock,
17 if I can, to go to that funeral, if I can, unless something
18 happens.

19 (Whereupon, proceedings were adjourned to February
20 25, 2009)

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS
3

4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2007-GS-46-0670
6 TERRELL ANTONIO) 2007-GS-46-0671
7 ADDISON,) 2007-GS-46-0672
8) 2007-GS-46-0673
9) 2007-GS-46-0675
10) 2007-GS-46-0676
11 DEFENDANT.

FEBRUARY 25, 2009
YORK, SOUTH CAROLINA

(VOLUME III)

B E F O R E:

THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

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

KEVIN BRACKETT, SOLICITOR
WILLY THOMPSON, DEPUTY SOLICITOR
ATTORNEYS FOR THE STATE

JACK SWERLING, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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

4 THE STATE) TRANSCRIPT OF RECORD
5) 2007-GS-46-2525
6 -vs-) 2007-GS-46-2526
7) 2007-GS-46-2527
8 BEN ROBERT STEWART,) 2007-GS-46-2528
9) 2007-GS-46-2529
10 DEFENDANT. 2007-GS-46-2530
11 2007-GS-46-2531
12 2007-GS-46-2532
13 2007-GS-46-2533
14 2007-GS-46-2535

15 FEBRUARY 25, 2009
16 YORK, SOUTH CAROLINA

17
18
19 B E F O R E:

20 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.
21

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

23 KEVIN BRACKETT, SOLICITOR
24 WILLY THOMPSON, DEPUTY SOLICITOR
25 ATTORNEYS FOR THE STATE

KENNETH SNOW, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

INDEX

(FEBRUARY 23, 2009)

(JURY TRIAL - VOLUME I)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 54

INDEX

(FEBRUARY 24, 2009)

(JURY TRIAL - VOLUME II)

WITNESSES

PAGE

JURY SWORN -- PAGE 149

OPENING STATEMENT BY MR. THOMPSON -- PAGE 151

OPENING STATEMENT BY MR. SWERLING -- PAGE 165

OPENING STATEMENT BY MR. SNOW -- PAGE 175

DONTAVIOUS MACK (SW)

DIRECT EXAMINATION BY MR. THOMPSON 180

CROSS EXAMINATION BY MR. SWERLING 212

CROSS EXAMINATION BY MR. SNOW 293

REDIRECT EXAMINATION BY MR. THOMPSON 308

RECROSS EXAMINATION BY MR. SWERLING 313

RECROSS EXAMINATION BY MR. SNOW 315

DAVORIOUS MACK (SW)

DIRECT EXAMINATION BY MR. THOMPSON 331

CROSS EXAMINATION BY MR. SWERLING 362

CROSS EXAMINATION BY MR. SNOW 420

REDIRECT EXAMINATION BY MR. THOMPSON 448

RECROSS EXAMINATION BY MR. SWERLING 469

INDEX

(FEBRUARY 25, 2009)

(SUPPRESSION HEARING - VOLUME III)

WITNESSES PAGE

DETECTIVE BRUCE HAIRE (SW)

DIRECT EXAMINATION BY MR. THOMPSON 499

CROSS EXAMINATION BY MR. SWERLING 504

(NO CROSS EXAMINATION BY MR. SNOW)

REED ALLEN (SW)

DIRECT EXAMINATION BY MR. THOMPSON 508

CROSS EXAMINATION BY MR. SWERLING 516

(NO CROSS EXAMINATION BY MR. SNOW)

(JURY TRIAL)

REED ALLEN (SW)

DIRECT EXAMINATION BY MR. THOMPSON 523

CROSS EXAMINATION BY MR. SNOW 546

CROSS EXAMINATION BY MR. SWERLING 557

REDIRECT EXAMINATION BY MR. THOMPSON 566

RECROSS EXAMINATION BY MR. SNOW 569

RECROSS EXAMINATION BY MR. SWERLING 570

SHEIL SMITH (SW)

DIRECT EXAMINATION BY MR. BRACKETT 571

(NO CROSS EXAMINATION BY MR. SWERLING)

(NO CROSS EXAMINATION BY MR. SNOW:

INDEX

(FEBRUARY 25, 2009)

(JURY TRIAL - VOLUME III)

WITNESSES	PAGE
QIAUNA EFIRD (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	578
(NO CROSS EXAMINATION BY MR. SWERLING)	
CROSS EXAMINATION BY MR. SNOW	594
OFFICER LEE WRIGHT (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	596
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
WILLIAM CHRISTOPHER CORN (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	608
CROSS EXAMINATION BY MR. SWERLING	617
(NO CROSS EXAMINATION BY MR. SNOW)	
DETECTIVE DAVID HANOKA (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	619
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
LIEUTENANT BRIAN RUDICK (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	629
CROSS EXAMINATION BY MR. SWERLING	650
CROSS EXAMINATION BY MR. SNOW	655

INDEX

(FEBRUARY 26, 2009)

(JURY TRIAL - VOLUME IV)

WITNESSES	PAGE
TAMMY FLY (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	687
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
MIKE WILLIAMS (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	690
(NO CROSS EXAMINATION BY MR. SWERLING)	
CROSS EXAMINATION BY MR. SNOW	745
OFFICER RAYMOND BARNWELL (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	753
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
DR. JAMES MAYNARD (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	764
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
OFFICER BRIAN LAMBERT (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	777
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	

INDEX

(FEBRUARY 26, 2009)

(JURY TRIAL - VOLUME IV)

WITNESSES	PAGE
DETECTIVE BRUCE HAIRE (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	783
CROSS EXAMINATION BY MR. SWERLING	807
CROSS EXAMINATION BY MR. SNOW	810
SLED AGENT VICKI HALLMAN (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	814
CROSS EXAMINATION BY MR. SWERLING	829
CROSS EXAMINATION BY MR. SNOW	831
OFFICER CHERYL GUZMAN (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	834
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
STATE RESTS -- PAGE 838	
TERRELL ANTONIO ADDISON (DW)	
DIRECT EXAMINATION BY MR. SWERLING	852
CROSS EXAMINATION BY MR. SNOW	897
CROSS EXAMINATION BY MR. BRACKETT	902
REDIRECT EXAMINATION BY MR. SWERLING	967
RECROSS EXAMINATION BY MR. SNOW	969

INDEX

(FEBRUARY 26, 2009)

(JURY TRIAL - VOLUME IV)

WITNESSES	PAGE
QIAUNA EFIRD (DW)	
DIRECT EXAMINATION BY MR. SNOW	972
CROSS EXAMINATION BY MR. THOMPSON)	974
(NO CROSS EXAMINATION BY MR. SWERLING)	
REDIRECT EXAMINATION BY MR. SNOW	976
ANNA WARNER (DW)	
DIRECT EXAMINATION BY MR. SNOW	976
CROSS EXAMINATION BY MR. THOMPSON	980
(NO CROSS EXAMINATION BY MR. SWERLING)	
JOHNETTA EVANS (DW)	
DIRECT EXAMINATION BY MR. SWERLING	982
CROSS EXAMINATION BY MR. SNOW	988
CROSS EXAMINATION BY MR. THOMPSON	990
REDIRECT EXAMINATION BY MR. SWERLING	993
RE CROSS EXAMINATION BY MR. SNOW	994
RE CROSS EXAMINATION BY MR. THOMPSON	995

INDEX

(FEBRUARY 26, 2009)

(JURY TRIAL - VOLUME IV)

WITNESSES

PAGE

TIYONE EVANS (DW)

DIRECT EXAMINATION BY MR. SWERLING

997

CROSS EXAMINATION BY MR. SNOW

1002

CROSS EXAMINATION BY MR. THOMPSON

1004

RE CROSS EXAMINATION BY MR. SNOW

1007

DEFENDANT TERRELL ADDISON RESTS -- PAGE 1009

DETECTIVE BRUCE HAIRE (DW)

DIRECT EXAMINATION BY MR. SNOW

1010

INDEX

(FEBRUARY 27, 2009)

(JURY TRIAL -- VOLUME V)

WITNESSES

PAGE

DEFENDANT BEN ROBERT STEWART RESTS -- PAGE 1034

CLOSING ARGUMENT BY MR. SWERLING -- PAGE 1036

CLOSING ARGUMENT BY MR. SNOW -- PAGE 1080

FINAL ARGUMENT BY MR. BRACKETT -- PAGE 1104

COURT'S JURY INSTRUCTIONS -- PAGE 1149

JURY'S VERDICT -- PAGE 1205

SENTENCING -- PAGE 1239

REPORTER'S CERTIFICATE -- PAGE 1246

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-1	911 CALL ON CD		576
4	S-2	STORE CAMERA VIDEO ON DVD		206
5	S-3	STATEMENT OF DONTAVIOUS MACK		464
6	S-4	STATEMENT OF DONTAVIOUS MACK		
7	S-5	STATEMENT OF DONTAVIOUS MACK		465
8	S-6	PHOTO LINEUP FROM REED ALLEN		540
9	S-7	PHOTOGRAPH OF APARTMENTS		583
10	S-8	PHOTOGRAPH OF APARTMENTS		583
11	S-9	PHOTOGRAPH OF APARTMENTS		583
12	S-10	PHOTOGRAPH OF APARTMENTS		583
13	S-11	PHOTOGRAPH OF APARTMENTS		583
14	S-12	PHOTOGRAPH OF APARTMENTS		592
15	S-13	PHOTOGRAPH OF CAR		646
16	S-14	PHOTOGRAPH OF CAR		646
17	S-15	PHOTOGRAPH OF DONTAVIOUS MACK		636
18	S-16	PHOTOGRAPH OF CAR		646
19	S-17	PHOTOGRAPH - STILLS FROM VIDEO		628
20	S-18	PHOTOGRAPH - STILLS FROM VIDEO		628
21	S-19	PHOTOGRAPH - STILLS FROM VIDEO		628
22	S-20	PHOTOGRAPH - STILLS FROM VIDEO		628
23	S-21	PHOTOGRAPH - STILLS FROM VIDEO		628
24	S-22	PHOTOGRAPH - STILLS FROM VIDEO		628
25	S-23	PHOTOGRAPH - STILLS FROM VIDEO		628

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-24	PHOTOGRAPH - STILLS FROM VIDEO		628
4	S-25	PHOTOGRAPH - STILLS FROM VIDEO		628
5	S-26	PHOTOGRAPH - STILLS FROM VIDEO		628
6	S-27	PHOTOGRAPH - STILLS FROM VIDEO		628
7	S-28	PHOTOGRAPH - STILLS FROM VIDEO		628
8	S-29	PHOTOGRAPH OF SAVE AND #20 CONE		614
9	S-30	PHOTOGRAPH BEHIND COUNTER		614
10	S-31	PHOTOGRAPH OF TIME CARD		612
11	S-32	ORIGINAL VHS SECURITY TAPE FROM BP		626
12	S-33	LATENTS FROM HARTSVILLE		648
13	S-34	CRIME SCENE PHOTOGRAPHS		695
14	S-35	CRIME SCENE PHOTOGRAPHS		695
15	S-36	CRIME SCENE PHOTOGRAPHS		695
16	S-37	CRIME SCENE PHOTOGRAPHS		695
17	S-38	CRIME SCENE PHOTOGRAPHS		695
18	S-39	CRIME SCENE PHOTOGRAPHS		695
19	S-40	CRIME SCENE PHOTOGRAPHS		695
20	S-41	CRIME SCENE PHOTOGRAPHS		695
21	S-42	CRIME SCENE PHOTOGRAPHS		695
22	S-43	CRIME SCENE PHOTOGRAPHS		695
23	S-44	CRIME SCENE PHOTOGRAPHS		695
24	S-45	CRIME SCENE PHOTOGRAPHS		695
25	S-46	CRIME SCENE PHOTOGRAPHS		695

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-47	CRIME SCENE PHOTOGRAPHS		695
4	S-48	CRIME SCENE PHOTOGRAPHS		695
5	S-49	CRIME SCENE PHOTOGRAPHS		695
6	S-50	CRIME SCENE PHOTOGRAPHS		695
7	S-51	CRIME SCENE PHOTOGRAPHS		695
8	S-52	CRIME SCENE PHOTOGRAPHS		695
9	S-53	CRIME SCENE PHOTOGRAPHS		695
10	S-54	CRIME SCENE PHOTOGRAPHS		695
11	S-55	CRIME SCENE PHOTOGRAPHS		695
12	S-56	CRIME SCENE PHOTOGRAPHS		695
13	S-57	CRIME SCENE PHOTOGRAPHS		695
14	S-58	CRIME SCENE PHOTOGRAPHS		695
15	S-59	CRIME SCENE PHOTOGRAPHS		695
16	S-60	CRIME SCENE PHOTOGRAPHS		695
17	S-61	CRIME SCENE PHOTOGRAPHS		695
18	S-62	CRIME SCENE PHOTOGRAPHS		695
19	S-63	CRIME SCENE PHOTOGRAPHS		695
20	S-64	CRIME SCENE PHOTOGRAPHS		695
21	S-65	CRIME SCENE PHOTOGRAPHS		695
22	S-66	CRIME SCENE PHOTOGRAPHS		695
23	S-67	CRIME SCENE PHOTOGRAPHS		695
24	S-68	CRIME SCENE PHOTOGRAPHS		695
25	S-69	AERIAL PHOTOGRAPH		695

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-70	AERIAL PHOTOGRAPH		695
4	S-71	CRIME SCENE FOOTPRINT PHOTOS		695
5	S-72	CRIME SCENE FOOTPRINT PHOTOS		695
6	S-73	CRIME SCENE FOOTPRINT PHOTOS		695
7	S-74	CRIME SCENE FOOTPRINT PHOTOS		695
8	S-75	CRIME SCENE FOOTPRINT PHOTOS		695
9	S-76	CRIME SCENE FOOTPRINT PHOTOS		695
10	S-77	CRIME SCENE FOOTPRINT PHOTOS		695
11	S-78	CRIME SCENE FOOTPRINT PHOTOS		695
12	S-79	CRIME SCENE FOOTPRINT PHOTOS		695
13	S-80	VICTIM'S PISTOL		697
14	S-81	BULLET PROJECTILE - YEULING LAGER		718
15	S-82	BULLET PROJECTILE		709
16	S-83	BULLET FRAGMENT		712
17	S-84	BULLET FRAGMENT		712
18	S-85	SPENT SHELL CASING BY BANDANAS		716
19	S-86	SPENT SHELL CASING BY MORTON SALT		
20	S-87	PROJECTILE BEHIND COUNTER		704
21	S-88	SPENT SHELL CASING - ITEM 2		710
22	S-89	TERRELL ADDISON'S SHOES		796
23	S-90	CINGULAR RECORDS		689
24	S-91	DONTAVIOUS MACK'S TENNIS SHOES		745
25	S-92	DAVORIOUS MACK'S TENNIS SHOES		745

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-93	PP 6-7-8 - AUTOPSY		775
4	S-94	CINGULAR - 3 COLOR MAPS		807
5	S-95	YORK COUNTY DETENTION CENTER		837
6		VISITOR LOG FOR TERRELL ADDISON		
7	S-96	DAVORIUS MACK'S STATEMENT TO THE		1009
8		HARTSVILLE POLICE DEPARTMENT		
9	S-97	DAVORIUS MACK'S STATEMENT TO RHPD		1009
10				
11	D-1 (ADDISON)	DONTAVIOUS MACK'S STATEMENT	220	
12	D-2 (ADDISON)	DONTAVIOUS MACK'S STATEMENT	263	
13	D-1 (STEWART)	DONTAVIOUS MACK'S STATEMENT	315	
14	D-2 (STEWART)	DAVORIUS MACK'S STATEMENT	425	
15	D-3 (STEWART)	DAVORIUS MACK'S STATEMENT	435	
16				
17	CT-1	TERRELL ADDISON'S MENTAL HEALTH REPORT	24	
18	CT-2	BEN STEWART'S MENTAL HEALTH REPORT	24	
19	CT-3	WRIT OF HABEAS CORPUS PAPERWORK	54	
20	CT-4	LETTER FROM MR. & MRS. DARRYL KENNEDY	147	
21	CT-5	PHOTOGRAPHS (8)	686	
22	CT-6	DAVORIUS MACK'S STATEMENT	1034	
23	CT-7	JURY NOTE	1195	
24	CT-8	JURY NOTE	1201	
25	CT-9	JURY NOTE	1202	

1 (PROCEEDINGS, FEBRUARY 25, 2009)

2 THE COURT: Counsel, are we ready to proceed?

3 MR. BRACKETT: Yes, sir.

4 THE COURT: Do we have what we need to proceed?

5 MR. BRACKETT: Yes, sir. We are going to start
6 with Detective Haire. And then by that time hopefully our
7 first witness will be here and we will need to do an
8 in-camera hearing with him as well, to do a Neil v. Biggers
9 issue.

10 THE COURT: Identification issue?

11 MR. BRACKETT: Yes.

12 THE COURT: Please let's start then.

13 MR. THOMPSON: The State would call Detective
14 Bruce Haire.

15 DETECTIVE BRUCE HAIRE, having been first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. THOMPSON:

18 Q. Detective Haire, we will cut straight to the point.

19 Did you have an opportunity to interview Reed Allen in
20 the course of your investigation in this case?

21 A. Yes, I did.

22 Q. And can you tell me, do you recall when that was that
23 you interviewed Reed Allen?

24 A. It was on October 27th.

25 Q. All right. And was that 2006?

1 A. 2006.

2 Q. Okay. What was it that led you to Reed Allen?

3 A. That would be Davorius Mack, after interviewing him and
4 getting a statement from him.

5 Q. Okay. And where was it that you found Reed Allen when
6 you went to look for him?

7 A. In Hartsville.

8 Q. And what did you do when you had contact with him?

9 A. First we made sure who he was and asked him who he was.
10 He affirmed that he was, in fact, Reed Allen. And at that
11 time we took him back to the Hartsville detective division
12 and talked to him briefly there before we brought him back
13 to Rock Hill.

14 Q. Okay. And when you brought him back to Rock Hill, did
15 he give a statement at that time?

16 A. Yes, he did.

17 Q. And I believe in that statement -- I guess you tell me
18 the circumstances around how we come to the point of a photo
19 ID, I guess to make it quick that way.

20 A. Yes, that's correct.

21 Q. No, if you would tell me the circumstances of how you
22 came to that point.

23 A. During the course of his interview he brought up the
24 name of Terrell and -- well, he didn't bring up the name of
25 Terrell. Let me take that back. He mentioned that there

1 was another young man that was with Mr. Stewart and he
2 called him "Bubba", which is Davorius Mack, when they came
3 to Monday Bishop's apartment and didn't know him by name.
4 So at the --

5 Q. So one in addition to "Bubba" and Ben Stewart, is that
6 what you are saying?

7 A. Correct.

8 Q. Okay. Go ahead.

9 A. And then during the course of his interview I left
10 briefly and prepared a photo lineup, while Captain Thickens
11 talked to him. And then I brought the photo lineup back to
12 him and he immediately picked out Terrell Addison from the
13 photo lineup.

14 Q. All right. Let me show you State Exhibit No. 6.

15 If you can, take a look at that and tell me what that
16 is.

17 A. It's a photo lineup that contains Mr. Addison and also
18 the signature of Reed Allen identifying Mr. Addison.

19 Q. Okay. And in that photo lineup, is that the original
20 that you have in front of you?

21 A. Yes, it is.

22 Q. And I believe -- is it in color, or do you have it in
23 black and white?

24 A. I printed it in black and white.

25 Q. All right. And why is that?

1 A. Sometimes when you have a photo lineup, one person, in
2 particular, it might be your suspect at the time, they may
3 have a bright colored shirt that may stand out from the
4 other pictures in a colored photo lineup, so I prefer to
5 print them in black and white to alleviate that process.

6 Q. Okay. And so is everyone's pictures in that photo
7 lineup in black and white?

8 A. Yes, it is.

9 Q. I believe there is six photos in that, is that correct?

10 A. Yes.

11 Q. Are they all a black male?

12 A. Yes.

13 Q. Now, when you showed that to Reed Allen, what, if any,
14 instructions did you give him?

15 A. Basically I just handed it to him and asked him if he
16 sees the individual in the photo lineup that he was
17 referring to in this statement.

18 Q. Okay. And did he see that person?

19 A. Yes, he did.

20 Q. And did he pick him out?

21 A. Yes.

22 Q. And how did he mark that that was the person?

23 A. He wrote his name on the photo in the upper left-hand
24 corner.

25 Q. Okay. And did he have any problem picking that person

1 out?

2 A. No, he did not.

3 Q. How fast did he pick that person out?

4 A. It was pretty immediately. I handed him the photo
5 lineup. Normally, or in some cases, they will scan it two
6 or three times before they will pick out the person or say
7 they don't recognize the person, but his was pretty
8 instantaneously.

9 Q. Okay. Did you tell him anything afterwards, like "oh,
10 you got the right guy," or anything like that?

11 A. I don't believe so.

12 Q. Now, you said he signed the picture. Did he also date
13 it there?

14 A. Yes.

15 Q. Is the date correct on that?

16 A. No, he put the 28th.

17 Q. All right. What day was it actually?

18 A. It was the 27th.

19 Q. So it was the actual day that you took the statement at
20 the time that -- or at the time that you took the statement
21 on the 27th that he did this?

22 A. Correct.

23 Q. Okay. All right. Has it been altered or changed in
24 any way?

25 A. No.

1 MR. THOMPSON: Your, I would ask to tender for the
2 purposes of this hearing State's Exhibit No. 6 into
3 evidence, and that's all the questions that I have for the
4 detective.

5 CROSS EXAMINATION BY MR. SWERLING:

6 Q. Detective Haire, just a few questions.

7 Tell me, I didn't know if I understood. How did you
8 develop Terrell Addison as a suspect?

9 Let me -- Mr. Allen did not know his name, correct?

10 A. Correct, he didn't know him by name.

11 Q. So how did you develop Terrell Addison as a suspect?

12 A. Through Davorius Mack.

13 Q. Okay. So he had already been interviewed and
14 identified who it was?

15 A. That's correct.

16 Q. Was Mr. Allen shown any other photo spreads?

17 A. No, he was not.

18 Q. So the only photo spread that he was shown was that
19 particular one that had Terrell Addison's photo in it?

20 A. That's correct.

21 Q. Was anybody else present when he was reviewing that
22 photo spread?

23 A. Captain Thickens.

24 Q. No other individuals, other than law enforcement? Just
25 a few law enforcement officers?

1 A. No, sir.

2 Q. Had he talked to anyone about the photograph ID, other
3 than the two of you?

4 A. He?

5 Q. Mr. Allen? Was he isolated when he came in to talk to
6 you to do the photo spread?

7 A. Yes.

8 Q. So that's what I'm saying. He was not with any other
9 people, other than the two of you in law enforcement, prior
10 to looking at the photo spread?

11 A. That's correct.

12 Q. And there was no one else -- no other witnesses present
13 at that time, either before he came in to do the photo
14 spread or afterwards?

15 A. That's correct.

16 Q. You didn't -- did you tell him whether or not the
17 suspect that you knew as Terrell Addison was in that photo
18 spread?

19 A. No, I did not.

20 Q. Did you tell him that Terrell Addison was the name of
21 the person?

22 A. No, sir.

23 Q. Okay. So he just -- he scanned the photo spread. You
24 did not tell him that the suspect was in that photo spread?

25 A. No, I did not.

1 Q. Or that Terrell Addison was in the photo spread?

2 A. No.

3 Q. And he picked that person out?

4 A. That's correct.

5 Q. Did he go to any other person at all?

6 A. No.

7 Q. Okay. You didn't suggest anything in any way?

8 A. No.

9 MR. SWERLING: That's all judge.

10 THE COURT: Any questions?

11 MR. SNOW: No.

12 THE COURT: Thank you, sir.

13 MR. THOMPSON: Is Mr. Allen here?

14 (Off the record)

15 (Back on the record)

16 MR. SWERLING: Judge, we can do one housekeeping
17 matter. With respect to the statements, Your Honor has
18 admitted them, but you are reserving your ruling about
19 whether or not to let the actual statements in I think last
20 night. I think I'm summarizing correctly. I have thought
21 about it and I have no objection -- withdrawing the
22 objection to the actual statements coming into evidence that
23 the solicitor offered. I think it was an October 19th
24 statement and October 27th statement --

25 THE COURT: Correct.

1 MR. SWERLING: -- as well as the statement of
2 Dontavious Mack, and so I'm withdrawing that.

3 There is one part of that statement that the
4 solicitor and I agreed should be redacted regarding the
5 reference to a Crypt gang member. And I have consulted with
6 my client and he's in agreement on that. It's just
7 basically a strategic move to withdraw the objection.

8 THE COURT: All right, sir.

9 Solicitor?

10 MR. BRACKETT: No objection to the redaction of
11 the reference to Mr. Addison as a Crypt member.

12 THE COURT: All right. Mr. Snow, what's your
13 position?

14 MR. SNOW: One second, Your Honor.

15 (Off the record)

16 (Back on the record)

17 MR. SNOW: I would concur, Your Honor.

18 THE COURT: Okay. You withdraw your objection to
19 the admissibility?

20 MR. SNOW: Yes.

21 THE COURT: As long as the redaction is made?

22 MR. SNOW: Yes, sir.

23 THE COURT: Let the record so reflect.

24 MR. SWERLING: And then you agree with that, Mr.
25 Addison?

1 Is that all right, judge, if I could ask him?

2 THE COURT: Yes, sir.

3 MR. SWERLING: Do you agree with that?

4 DEFENDANT ADDISON: Yes, I agree with it.

5 THE COURT: He agrees with it. The record will so
6 reflect.

7 MR. SWERLING: Judge, can we approach one second?

8 THE COURT: Yes.

9 (Whereupon, the lawyers approached the bench for
10 an off-the-record discussion)

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 REED ALLEN, having been first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION BY MR. THOMPSON:

16 Q. Mr. Allen, could you give your full name for the court,
17 please?

18 A. My name is Reed Winshore Allen.

19 Q. And where do you live, Mr. Allen?

20 A. I stay in Hartsville.

21 Q. Okay. And were you staying in Hartsville back in
22 October of 2006?

23 A. Yes, sir.

24 Q. Was there a night when you were there in Hartsville
25 where -- where --

1 I guess I'll start off this way. Did you know
2 Dontavious or Terrell -- Dontavious or Davorius Mack?

3 A. Yes, sir, but not like affiliated with them, but I know
4 of them.

5 Q. You knew who they were?

6 A. Yes, sir.

7 Q. Okay. And how about Ben Stewart, did you know him?

8 A. Yes, sir, you could say that.

9 Q. How did you know him?

10 A. Through his sister Monday.

11 Q. And how did you know his sister?

12 A. Sort of like a relationship kind of thing, you know.

13 Q. You had a relationship with her?

14 A. Yes, sir.

15 Q. Was it kind of your girlfriend then at that time?

16 A. Yeah, you could say that.

17 Q. Okay. Is there any night while you were at Monday
18 Bishop's house that Ben Stewart and Davorius Mack came to
19 the house?

20 A. Yes, sir.

21 Q. And do you recall what happened when they came to the
22 house?

23 A. Not in so much full detail. I just know that Donte, I
24 heard he got shot, but no one ever went into full detail as
25 far as what happened.

1 Q. And that's something that they were telling you when
2 they got there?

3 A. Yes, sir.

4 Q. Okay. Was anyone else with them?

5 A. The Addison guy.

6 Q. Did you know him by name at that time?

7 A. No, sir.

8 Q. Had you ever seen him before?

9 A. Yes, sir.

10 Q. And can you tell me the instances that you have seen
11 him before?

12 A. Like in the street, you know, hanging around.

13 Q. All right. So hanging out in Hartsville you have seen
14 him around?

15 A. Yes, sir.

16 Q. Had you seen him more than once before?

17 A. Yeah, probably like two occasions.

18 Q. Okay. And do you remember on those occasions were you
19 up close to him to see him, or how did you see him?

20 A. I mean, yes, sir, you could say like close enough to
21 know who he is.

22 Q. And were you hanging around with other people at that
23 point that you saw him?

24 A. Are you asking me like was it me and him one on one, or
25 something like that?

1 Q. No, if there were other people hanging around. What
2 was the situation with you hanging out?

3 A. It was just like being around a friend's house and he's
4 hanging at the same place that I'm hanging around at.

5 Q. Okay. So it's not just like having seen him across the
6 street?

7 A. No. No, sir.

8 Q. Actually it's someone else's place?

9 A. Yes, sir.

10 Q. And had you really ever talked to him before this
11 night?

12 A. No, sir, I have never carried a conversation with him.

13 Q. Now, on this particular night that you saw him,
14 describe the opportunity that you had to see him when he
15 came to the place where you were at Monday Bishop's house?

16 A. Can you repeat the question?

17 Q. What opportunity did you have to see him at Monday
18 Bishop's house the night that everyone came over?

19 A. I mean, it really wasn't an opportunity. It was just
20 really I saw him, you know what I mean.

21 Q. Okay. Well, was he in the apartment with y'all?

22 A. Yes, sir.

23 Q. Were the lights on?

24 A. Yeah.

25 Q. Okay. So I'm guessing what I'm trying to say is could

1 you have a clear look at his face?

2 A. Yes, sir.

3 Q. Okay. And how long was he there?

4 A. Well, I really wasn't timing it, but it wasn't really
5 long.

6 Q. And did you have a chance to observe him while he was
7 there more than just looking at him one time?

8 A. Not really. I just seen him right there and thought
9 nothing else of it.

10 Q. Okay. Did you recognize him as someone that you had
11 seen before when he came in?

12 A. Yes, sir.

13 Q. Okay. Now, when you gave the statement to Detective
14 Haire regarding what had happened, did he also show you a
15 photo lineup at that time?

16 A. Yes, sir.

17 Q. And can you tell me -- if you will look at State's
18 Exhibit 6. I believe it's sitting right in front of you.
19 Does that appear to be the photo lineup that he showed you
20 at that point?

21 A. Yes, sir.

22 Q. And when he showed you that photo lineup, what, if any,
23 instructions did he give you?

24 A. What instructions did he give me upon giving me this?

25 Q. Yes, showing you the lineup.

1 A. He -- he asked me do I recognize a third party.

2 Q. All right. And did you recognize the third party?

3 A. Yes, sir.

4 Q. All right. And were you able to recognize him right
5 away?

6 A. Yes, sir.

7 Q. And did you point out who that person was?

8 A. Yes, sir.

9 Q. Is there any question in your mind the person that you
10 pointed out was Terrell Addison?

11 A. No, sir.

12 Q. And what did you do as a result of picking out that
13 person to indicate that that's the person that you picked
14 out?

15 A. What did I do?

16 Q. Yeah, what did you do on the lineup to indicate that's
17 the person that you picked up?

18 A. I just -- kind of just showed him the picture. I mean,
19 be more specific.

20 Q. All right. Did you mark on the picture to show who it
21 was that you had picked?

22 A. Yes, sir.

23 Q. Okay. I think that's what I'm trying to get to.
24 And how did you mark it?

25 A. Point. Write my name on it.

1 Q. Okay. So your name is written in the spot where his
2 picture was?

3 A. Yes, sir.

4 Q. Okay. And do you see him in the courtroom today?

5 A. Yes, sir.

6 Q. Can you point him out to us, please?

7 A. The guy right there.

8 Q. If you can describe him a little more.

9 A. The young man in the gold shirt.

10 Q. Okay. Thank you.

11 MR. THOMPSON: I would ask the record to reflect
12 he has pointed out Terrell Addison.

13 BY MR. THOMPSON:

14 Q. Is there any question to you in your mind that that was
15 the man that was there that night when this happened?

16 A. No, sir.

17 Q. All right. And we will briefly just go into the
18 circumstances. What did happen when they came to the house?

19 A. Well, it was pretty much a whole bunch of racket. Not
20 too much, just something had happened. I really wasn't even
21 paying no attention, to be honest with you.

22 Q. All right. Well, what do you remember observing when
23 they came in?

24 A. Mr. Addison had a gun.

25 Q. And where did he have his gun?

1 A. He had it on his personal.

2 Q. Okay. And did you see any other gun at that point in
3 time?

4 A. Not at that time.

5 Q. All right. During the time that they were there, did
6 you see any other gun?

7 A. No, sir.

8 Q. How about Mr. Stewart?

9 A. Mr. Stewart handed me a gun later.

10 Q. Okay. And how did he hand you that gun?

11 A. It was in a bag.

12 Q. All right. What, if anything, did he ask you to do
13 with it?

14 A. He told me to put it up.

15 Q. And what do you mean by that?

16 A. I mean, just put it up. It wasn't like hide it, or
17 bury it, or nothing like that. Just, you know, "put it up
18 for me."

19 Q. All right. Was there anything else with the gun that
20 he gave you?

21 A. A few cloth items, but mostly I just seen a gun.

22 Q. All right. What were they contained in?

23 A. What was what contained in?

24 Q. The gun, the cloth items, what were they contained in?

25 A. In a bag, like a grocery bag.

1 Q. All right. Do you remember what color it was?

2 A. The bag?

3 Q. Yeah.

4 A. Like a brownish bag.

5 Q. Is the one of the plastic ones, like you --

6 A. Like a transparent grocery bag.

7 Q. All right. When he handed it to you, what, if
8 anything, were you able to see?

9 A. Nothing, but, you know, you could notice it was a gun.

10 Q. All right. And that heightened your attention that
11 night as to what was going on when you saw this gun?

12 A. Not so much heightened my attention, but, you know, so
13 to speak, yes, sir.

14 Q. All right. Thank you.

15 MR. THOMPSON: No further questions.

16 CROSS EXAMINATION BY MR. SWERLING:

17 Q. Mr. Allen, did you know -- you said that you had seen
18 him on one or two occasions but had never met him, is that
19 correct?

20 A. Yes, sir.

21 Q. You did not know his name?

22 A. No, sir.

23 Q. But when he came to the house, you recognized him as
24 that person that you had seen on one or two other occasions?

25 A. Yes, sir.

1 Q. Okay. Now, in your statement that you gave that day,
2 you did not indicate to the police that had ever seen that
3 individual before, isn't that true?

4 A. No, sir.

5 Q. No, sir, what?

6 A. You are saying that I told -- that I gave a statement
7 saying that I had never seen him before?

8 Q. No.

9 In your statement you never said you had seen him
10 before.

11 A. No, sir, I don't think I did.

12 Q. Let me show you this.

13 MR. SWERLING: Your Honor, may I approach?

14 THE COURT: Yes.

15 BY MR. SWERLING:

16 Q. Mr. Allen, is this your signature here?

17 A. Yes, sir.

18 Q. Okay. And your signature over here as well?

19 A. Uh-huh.

20 Q. Okay. Would you just look in there and see if you
21 recognize that as your statement?

22 A. Yes, sir.

23 Q. Do you see anywhere in there where you indicate to the
24 police that you had seen Terrell Addison prior to that date?

25 A. No, sir.

1 Q. Okay.

2 A. No, sir.

3 Q. Okay. Now, when you were being interviewed by
4 Detective Haire, was there anybody else present in the room?

5 A. No, sir.

6 Q. Just you and him?

7 A. Yes, sir.

8 Q. And did he tell you -- you had described, you said,
9 this third person, correct? You had told him about this
10 third person that had come in?

11 A. He asked me who all did I see, could I point him out,
12 do I remember what he looked like, and, yeah. Yes, sir.

13 Q. And you didn't tell him at that time -- it's not in
14 your statement, but you also didn't tell him at that time
15 that that person was familiar to you as well, correct?

16 A. Did I tell him at the time?

17 Q. Correct.

18 A. I had to tell him at the time if I pointed him out.

19 Q. No, I understand. Two different questions. One is you
20 did point him out?

21 A. Uh-huh.

22 Q. But what I'm saying is, in your statement you did not
23 indicate that you had ever seen Terrell Addison before.

24 That's what I was asking you.

25 A. Okay, yeah. Yes, sir.

1 Q. And when he showed you the photo lineup, what did he
2 tell you about the photo lineup?

3 A. He didn't tell me anything about the photo lineup. He
4 asked me who did I recognize and did anyone look familiar,
5 as far as a third party.

6 Q. Okay. At the time that you looked at that photo
7 lineup, did you or had you already learned what Terrell
8 Addison's name was?

9 A. Yes, sir.

10 Q. Okay. What did you learn that from?

11 A. I learned that from -- I believe I learned that from --
12 I can't really remember. I can't really remember how I
13 learned his name, but, you know, I found out his name. It's
14 not hard to find out a person's name.

15 Q. And this was subsequent to -- prior to your prior
16 identification?

17 A. Prior to, yes, sir.

18 Q. Okay. Did you tell Detective Haire that you knew what
19 his name was?

20 A. No, sir.

21 Q. And did he tell you what his name was?

22 A. No, sir, not -- not until afterwards.

23 Q. Okay. And did he -- was that the only photo spread
24 that you saw?

25 A. I want to say I saw another photo spread too, but this

1 is -- I remember this one.

2 Q. Okay. And in that particular one, did he point -- did
3 he tell you that Terrell Addison --

4 Or the let me back up. Did he tell you the third
5 person was in that photo spread?

6 A. No, he didn't.

7 He specifically asked me to look at this exhibit,
8 right, and to see if I see anyone who was familiar and was
9 the third party involved. That was no more, no less. I
10 don't understand what else you are trying to get out of it,
11 but that's what he asked me.

12 Q. I'm just trying to ask you the facts around this --

13 A. Okay.

14 Q. -- around the identification.

15 A. All right. I understand.

16 Q. Okay. Did you go to anybody else, or was that the only
17 person that you had saw?

18 A. That was the only person that I saw and that was the
19 only person that I pointed out and marked on the exhibit.

20 Q. Okay.

21 MR. SWERLING: No further questions.

22 MR. SNOW: No questions regarding that.

23 THE COURT: All right. Anything further of this
24 witness then?

25 MR. THOMPSON: No, Your Honor.

1 THE COURT: Thank you, sir. You may stand down.

2 Is he going to be your first witness when the jury
3 comes back in?

4 MR. THOMPSON: Yes, Your Honor, he is.

5 THE COURT: We will bring him back in then.

6 All right. Yes, sir, I'll be glad to hear from
7 you.

8 MR. SWERLING: Judge, just so the record is clear
9 on it, I would ask the solicitor to inquire if there was
10 another photo spread shown to him. It just seems to be an
11 inconsistency without maybe there is a mistake. I just want
12 to inquire if that's --

13 THE COURT: We can ask the witness. He's still
14 under oath, if you wanted to ask him, you can do that.

15 MR. THOMPSON: There was not.

16 MR. SWERLING: You said I could ask him?

17 THE COURT: The witness -- I mean, the officer,
18 yes.

19 MR. SWERLING: Detective Haire, you heard what Mr.
20 Allen said. Was there any other photo spread shown to him?

21 DETECTIVE HAIRE: No, this was the only one I
22 showed to him.

23 MR. SWERLING: Okay. Judge, I have no argument on
24 the issue.

25 THE COURT: Okay.

1 MR. SWERLING: He indicated he had seen him on a
2 prior occasion and that's not in the statement. So had I
3 known that, I don't think we would have needed a Neil v.
4 Biggers hearing.

5 THE COURT: Very well.

6 We are ready to proceed on then.

7 I guess we will bring the jury back and get
8 started.

9 Anything else we need to take up before we bring
10 the jury in?

11 MR. SWERLING: No.

12 MR. BRACKETT: No.

13 THE COURT: Please bring the jury in.

14 (The following takes place in the presence of the
15 jury panel)

16 THE COURT: Good morning, Mr. Foreman, ladies and
17 gentlemen of the jury, I hope you had a pleasant night last
18 night.

19 I apologize for keeping you waiting a little bit
20 this morning, but as it turned out we have been in here
21 working, but a matter came up that we needed to address out
22 of your presence, so that's what we have been doing. We
23 have been here working. I didn't want you to think that we
24 had you here early and then we weren't here, but we have
25 been working. We are ready to proceed now with the trial.

1 Counsel, ready to proceed?

2 MR. THOMPSON: Yes, Your Honor.

3 THE COURT: Please call your next witness.

4 MR. THOMPSON: The State would call Reed Allen.

5 REED ALLEN, having been first duly sworn,
6 testified as follows:

7 THE COURT: Please have a seat, sir, in the
8 witness box.

9 DIRECT EXAMINATION BY MR. THOMPSON:

10 Q. Mr. Allen, could you give your full name for the court,
11 please?

12 A. My name is Reed Winshore Allen.

13 Q. How old are you, Mr. Allen?

14 A. I'm twenty-seven years old.

15 Q. And where do you normally stay?

16 A. In Hartsville.

17 Q. Did you grow up in Hartsville?

18 A. Yes, sir. Pretty much off and on all my life, yeah.

19 Q. And can you tell me, do you know Davorius Mack? Do you
20 know who he is?

21 A. Like I say, I know of him. I don't know any of them
22 personally.

23 Q. Okay. But if you saw him around, you would know who he
24 was?

25 A. Yes, sir.

1 Q. How about Dontavious Mack?

2 A. The same way.

3 Q. How about Ben Stewart, did you know him?

4 A. Yes, sir.

5 Q. How did you know Ben Stewart?

6 A. Through affiliation with his sister Monday.

7 Q. And his sister's name is Monday. What's her last name?

8 A. Bishop.

9 Q. And what was the relationship with Monday Bishop?

10 A. You could say it was my girlfriend. I was dating her
11 at the time.

12 Q. All right. And this is back in October of 2006, is
13 that correct?

14 A. Yes, sir.

15 Q. Now, had you -- as a result of knowing Monday Bishop
16 and that being your girlfriend at the time, did you have a
17 lot of occasions to see Ben Stewart then?

18 A. Yes, sir.

19 Q. Now, was he from Hartsville as well?

20 A. No, sir.

21 Q. Where was he from?

22 A. Philadelphia, from what I know. I mean, I'm not quite
23 sure, but --

24 Q. Okay.

25 A. -- from what I know.

1 Q. And can you tell me at that time did you actually know
2 Terrell Addison by name?

3 A. No, sir.

4 Q. Had you ever seen him before?

5 A. Yes, sir.

6 Q. Can you describe for me how you would have seen him
7 before?

8 A. Through associating with other people.

9 Q. Okay. Now, in the situation where -- would you see him
10 on the street, or where would you see him?

11 A. Like gathering at a group there at someone's house,
12 like a little gathering at someone's house and he might be
13 present.

14 Q. All right. And how many times before had you seen him
15 before this incident happened?

16 A. One or two occasions.

17 Q. Okay. Did you recognize him by face when you saw him
18 at those occasions?

19 A. I mean, what do you mean recognize by face?

20 Q. Let me change that. I'll go back to that. I'll tell
21 you what. I'm leave that alone and I'll go back to that.

22 Now, can you tell me, was there a day in October that
23 the three -- or, let's see, that a group of people came over
24 to your place where you were with Monday Bishop?

25 A. Well, Monday's place, yes, sir.

1 Q. Monday's place?

2 A. Yes.

3 Q. Okay. And could you tell me about -- do you remember
4 about what time that was or what time of day it would have
5 been, in general?

6 A. Late night, possibly early morning.

7 Q. Okay.

8 A. I'm not sure. I mean, I didn't record the time or
9 anything.

10 Q. All right. Was it daylight or dark when they arrived?

11 A. It was dark.

12 Q. All right. Did you have any warning that anyone was
13 coming?

14 A. I remember receiving a phone call, or her receiving a
15 phone call and talking to Ben like a few minutes prior.

16 Q. All right. And what, if anything, did Ben say to you
17 in that phone call?

18 MR. SNOW: Objection.

19 A. He just said he needed --

20 THE COURT: Hold it. Hold it.

21 I sustain the objection, counsel -- wait a minute,
22 I beg your pardon. What Ben Stewart said?

23 MR. THOMPSON: What Ben Stewart.

24 THE COURT: Overruled. You may answer.

25 BY MR. THOMPSON:

1 Q. Go ahead.

2 A. Just -- I really can't remember in detail, but it was
3 just like "I need you to do something for me. Are you still
4 there?" I need you to do something for me."

5 Q. All right. And what did you tell him?

6 A. I mean okay.

7 Q. And was it long after that that he arrived?

8 A. Not too long after that they arrived.

9 Q. Now, was there anyone else at the house, other than you
10 and Monday, at that time?

11 A. You mean like as far as with me and Monday?

12 Q. Right, with you and Monday.

13 A. Yeah, it was Val.

14 Q. All right. And who is Val?

15 A. She's just a friend.

16 Q. So a woman named Val?

17 A. Yes, sir.

18 Q. Was she a friend of Monday's, or a friend of yours, or
19 both?

20 A. I mean, you could say a friend of both of ours.

21 Q. Okay. So what had y'all been doing that night?

22 A. Nothing much. Just sitting around drinking.

23 Q. And what were you drinking, do you remember?

24 A. No, sir.

25 Q. Okay. Were you intoxicated at the time that they came

1 over?

2 A. No, sir.

3 Q. Now, when people arrived, how did it happen? Who came
4 and when?

5 A. It was -- it was Ben, it was Terrell, and it was
6 Davorius.

7 Q. All right. And how did you know Davorius? What name
8 did you know Davorius by?

9 A. By "Bubba".

10 Q. "Bubba"?

11 A. Yeah.

12 Q. And did you have a nickname as well that they used to
13 call you?

14 A. What they call me?

15 Q. Yeah.

16 A. Yeah, they call me "Wise".

17 Q. "Wise"?

18 A. Yes, sir.

19 Q. Now, did you know Terrell's name at that time?

20 A. No, sir.

21 Q. But he is someone you said you had seen before?

22 A. Yes, sir.

23 Q. Did you recognize him right away when you saw him?

24 A. Yes, sir.

25 Q. Someone that you had seen before?

1 A. Yes, sir.

2 Q. And when they arrived what happened?

3 A. Really I wasn't paying any attention. I know they had
4 said -- I heard something about Donte being shot. They
5 didn't really go into detail, as far as what had really
6 happened.

7 Q. So Donte being shot is something that they told you?

8 A. I just -- just talking in the air.

9 Q. Okay. So they are telling it to whoever was in the
10 room?

11 A. Yeah.

12 MR. SWERLING: Your Honor, I have to object. I
13 would like him to be specific about who it was that was
14 actually doing the talking. He is saying they. And if he
15 could be specific, I don't have an objection to that.

16 THE COURT: All right.

17 All right, counsel, be more specific with your
18 questioning then, if you will.

19 BY MR. THOMPSON:

20 Q. Do you know which one exactly was saying that Donte had
21 been shot?

22 A. No, sir.

23 Q. Was it one of the three who was there?

24 A. Yes, sir.

25 Q. So it wasn't Monday that said it?

1 A. No, sir, Monday didn't say anything.

2 Q. Was it Val that said it?

3 A. No, sir.

4 Q. All right. Do you know anything about Donte being shot
5 until these three showed up?

6 A. No, sir.

7 Q. And tell me how were they acting when they got there?

8 A. I mean, I really wasn't paying any attention. Really I
9 should have, but, I mean, I wasn't -- it wasn't my -- I felt
10 like it wasn't my place to -- I mean, you know, I wasn't
11 thinking about it. I wasn't really paying them any close
12 attention like that.

13 Q. What did you think when you heard Donte had been shot?

14 A. I think -- well, something was wrong, apparently, but
15 still not -- not being fully aware of what's really going
16 on. I wasn't really thinking, to be honest with you.

17 Q. All right. Now, did you normally ever hang out with
18 any of these guys?

19 A. No, sir.

20 Q. Now, at any point did you see a gun that night?

21 A. Yeah, I saw Terrell with a gun.

22 Q. All right. Can you describe for me how you saw it?

23 A. I just saw him lift his shirt up with the gun on his
24 personal.

25 Q. All right. And where was it on him?

1 A. You know, lower abdomen.

2 Q. All right. Was it in a pocket, or a waistband, or
3 what?

4 A. In his belt.

5 Q. His belt?

6 A. Yes.

7 Q. Now, could you see anything about the gun to describe
8 it at all?

9 A. No. I remember a revolver, or something like that.

10 Q. Could you tell anything about the size of it?

11 A. No, sir.

12 Q. Okay. But did it look -- you said -- did it look like
13 a revolver? Could you tell whether it was a revolver or
14 a --

15 A. By the handle, yeah.

16 Q. And what did it appear to be to you?

17 A. A revolver.

18 Q. A revolver. Okay.

19 And did he ever say anything about his gun at that
20 point?

21 A. No, sir.

22 Q. All right. How about later in the night did he say
23 anything about his gun?

24 A. Well, after I took -- after I put Ben's gun up, he was
25 saying that he wasn't putting his gun up.

1 Q. All right. And what do you mean by that?

2 A. What did he mean by that?

3 Q. Well, I mean what do you mean by that when you are
4 explaining --

5 A. Like -- the question that you asked me -- repeat the
6 question that you asked me.

7 Q. Okay, I tell you what. Let's walk through it another
8 way and we will get back to it.

9 A. All right.

10 Q. You mentioned that Ben gave you a gun to put up?

11 A. Yes, sir.

12 Q. Describe that. How did that happen? Tell us the
13 situation around it.

14 A. It really was nothing, but just, you know, "would you
15 put this up for me?"

16 Q. All right. Was that what he was talking about on the
17 phone when he said he needed something for you -- or had
18 something that he needed you to do for him?

19 A. Apparently, yes, sir.

20 Q. And how was it that he gave you this gun?

21 A. It was in a bag.

22 Q. All right. And describe what you saw when he gave it
23 to you.

24 A. A gun in a bag and a few cloth items.

25 Q. Okay. And a few cloth items in the bag?

1 A. Yes, sir.

2 Q. And what type of bag was it?

3 A. It was a transparent grocery bag.

4 Q. All right. And kind of like one of those plastic ones

5 from a grocery store?

6 A. Yes, sir.

7 Q. So could you see through it enough to see the weapon in

8 it at that point in time?

9 A. Yes, sir.

10 Q. I'm sorry?

11 A. Yes, sir.

12 Q. Could you tell anything about the weapon to describe it

13 to us, whether it was a revolver or a semiautomatic?

14 A. It was like a small caliber automatic.

15 Q. Okay. And could you tell anything about the color of

16 it at all?

17 A. It was two-tonish gray like.

18 Q. And could you tell anything about the cloth material

19 that was in there, what it looked like or appeared to be?

20 A. No, sir.

21 Q. And was the bag tied up, or how was it closed up?

22 A. I mean, just tied up. I mean, it's no other way to

23 close a bag.

24 Q. And he gave this bag to you?

25 A. Yes, sir.

1 Q. What, if anything, did he ask you to do with it?

2 A. Just told me to put it up.

3 Q. And what did you take that to mean?

4 A. Just what it was -- what was said, just put it up, I
5 mean.

6 Q. What did you do with it as a result of that?

7 A. I walked outside and I threw it under a bush.

8 Q. Now, did you throw it under a bush right next to your
9 apartment?

10 A. Like across the street. Like it was -- the way I put
11 it up, you could have found it, probably, you know what I
12 mean. I didn't bury it. I didn't put it in a safe deposit
13 box or nothing like that, but, you know, I just threw it
14 under a bush.

15 Q. How far away did you go, though, is what I'm asking
16 from Monday's apartment was to where you put it?

17 A. Like across the parking lot, at the most.

18 Q. All right. Did anyone go with you to put it there?

19 A. No, sir.

20 Q. Were they still there when you got back after doing
21 that?

22 A. No, sir.

23 Q. Now, going back then to, you had mentioned something
24 about Terrell saying what about his gun? This is where I
25 want to kind of get this --

1 A. He say he wasn't -- he wasn't going to put his gun up.
 2 Q. Did someone ask him to put his gun up?
 3 A. I believe I can recall someone asking him was he going
 4 to put his gun up.
 5 Q. I'm sorry?
 6 A. I believe I can recall someone asking him was he going
 7 to put his gun up.
 8 Q. Do you remember who it was?
 9 A. No, sir. It was -- I mean, you know, it's like
 10 everybody talking over everybody. It's like --
 11 Q. Right.
 12 A. You know what I mean.
 13 Q. Was it Monday Bishop that asked him that?
 14 A. No, sir.
 15 Q. Was it Val that asked him that?
 16 A. No, sir.
 17 Q. Was it you that asked him that?
 18 A. No.
 19 Q. So the only other people there are Ben Stewart and
 20 Davorius Mack?
 21 A. Yes, sir.
 22 Q. Was it one of those two that asked him to do that?
 23 A. I mean, it could have been. I wasn't really paying
 24 attention as far as who said what. I just heard him say
 25 "I'm not putting my gun up." You know, I can't really go

1 into detail, but --

2 Q. All right. Do you remember if they all arrived
3 together, or came separately, or how they -- what they were
4 in when they came?

5 A. I can't really remember. It seems separately, but it
6 could have been altogether. I mean, I'm not sure.

7 Q. All right. Now, how were they acting when they were
8 saying that Davorius had been -- or that Dontavious had been
9 shot?

10 A. It wasn't like --

11 MR. SNOW: I'm going to object. Asked and
12 answered, judge. He already asked the question.

13 THE COURT: Well, solicitor, I don't know where
14 you are going with that. You already asked some basis, same
15 question.

16 MR. THOMPSON: That's correct, Your Honor, but I
17 think it goes somewhat to the defense that Mr. Swerling is
18 presenting.

19 THE COURT: All right.

20 MR. THOMPSON: The --

21 THE COURT: Go ahead. I'll allow it. Go ahead.

22 BY MR. THOMPSON:

23 Q. Were they yelling at each other?

24 A. No, sir, not to my knowledge. I didn't see anybody
25 yelling.

1 Q. Did they seem angry with each other?

2 A. No, sir.

3 Q. Did anyone seem scared of one another?

4 MR. SWERLING: Objection, Your Honor. Now, that's
5 a conclusion.

6 THE COURT: I sustain it.

7 BY MR. THOMPSON:

8 Q. I guess what -- anything unusual that you noticed about
9 them at that point in time?

10 A. To be honest, sir I wasn't paying them any attention.

11 Q. All right.

12 A. I wasn't focused on them or just observing them that
13 hard. It was --

14 Q. All right.

15 A. You know.

16 Q. Did anything stick out to you?

17 A. To be honest with you, no, sir.

18 Q. Now, I believe sometime following this you talked to
19 the detectives about what had happened, is that correct,
20 detectives from Rock Hill?

21 A. Well, I got incarcerated on, what, the 27th I went into
22 custody, so they asked me a few questions, yes, sir.

23 Q. So that's when they talked to you about it?

24 A. (Shaking head yes).

25 Q. Did you tell them what happened that night at that

1 point?

2 A. Yes, sir.

3 Q. And at that time did they ask you to look at any photo
4 lineups at that time?

5 A. Yeah, they gave me Exhibit 6.

6 Q. Okay. I believe that's State's Exhibit 6 in front of
7 you?

8 A. Yes, sir.

9 Q. All right. Can you tell me is that the photo lineup
10 they showed you that night?

11 A. Yes, sir.

12 Q. All right. And the detective that showed it to you,
13 did he tell you anything? What, if anything, did he tell
14 you once he showed you that photo lineup?

15 A. He just asked me do I recognize the third party.

16 Q. All right. And by the third party, you had already
17 told him you knew Ben Stewart, is that right?

18 A. Have I already told him what?

19 Q. I'm trying to figure out what you mean by the third
20 party.

21 A. He asked me who else -- I had already ID'd Ben Stewart
22 and Davorius.

23 Q. Okay.

24 A. But at that time I didn't know Terrell Addison's full
25 name.

1 Q. Okay.

2 A. And he was asking me who the third party, the third
3 person that was -- that came to Monday's house.

4 Q. All right. Did you recognize him in that photo lineup?

5 A. Yes, sir.

6 Q. All right. And were you able to pick him out right
7 away?

8 A. Yeah.

9 Q. And is there any question that the person that you
10 identified in that lineup was the person who was there that
11 night?

12 A. No, sir.

13 Q. And after you were asked by the detective if that
14 person -- the third party was in this lineup, did you mark
15 the lineup to indicate who you had picked?

16 A. Yes, sir.

17 Q. All right. And how did you mark it?

18 A. With my name and the date.

19 Q. Okay. And has anyone altered it or changed it since
20 you last saw it?

21 A. No, sir.

22 MR. THOMPSON: Your Honor, I would ask to
23 introduce State's Exhibit No. 6 into evidence at this time.

24 MR. SWERLING: No objection.

25 THE COURT: No objection.

1 MR. SNOW: No objection.

2 THE COURT: Admitted without objection.

3 BY MR. THOMPSON:

4 Q. Now, Mr. Allen, did -- the time that you did the photo
5 lineup, is that the same time that you gave the statement to
6 the officer?

7 A. I mean, I really can't remember, but I want to say
8 yeah.

9 Q. All right.

10 A. I want to say all this took place at the same time, the
11 same night.

12 Q. Okay. If I could, I'm going to show you a copy of your
13 statement. If you can tell me, is that the statement that
14 you gave?

15 A. Yes, sir.

16 Q. All right. And would it help to refresh your memory if
17 you saw the last paragraph of that to see whether you gave
18 that -- whether you did that photo lineup that day or not?

19 A. Yes, sir.

20 Q. All right.

21 MR. THOMPSON: Your Honor, I would ask him to be
22 allowed to refer to that in order to testify to that point.

23 THE COURT: Yes, sir.

24 BY MR. THOMPSON:

25 Q. So, according to your statement, did you view the photo

1 lineup the same night as you gave the statement?

2 A. Yes, sir.

3 Q. All right. And as well, what day is that statement
4 given?

5 A. The statement was given on -- it was prepared by
6 Detective John Thickens on the 27th of October.

7 Q. All right. Now, the date on the lineup, what did you
8 write on the date on the lineup?

9 A. On the 28th.

10 Q. All right. So is that mistake on the lineup? The 28th
11 a mistake as to the date?

12 A. Yes, sir. I mean -- yeah.

13 Q. One other thing I would have you look at in your
14 statement. I think in the body of the statement in the
15 first page you mentioned something about the brown bag
16 there?

17 A. Uh-huh.

18 Q. Could you look at that part and read what you -- read
19 to yourself what you saw about the brown bag and what you
20 said about the brown bag?

21 A. (Witness reviewing statement)

22 It says also there was black gloves and a skully cap.

23 Q. All right.

24 A. But see, the statement was prepared by Detective
25 Thickens. It's not my handwritten statement.

1 Q. Right.

2 A. It was where he asked me a question and he said "well,
3 that possibly could have been the bag and the skully cap?"
4 And I was like "well, it was some cloth items," so we come
5 to an agreement and he writes it like that.

6 Q. But, now, you said it's not your handwritten statement.
7 Did you give a handwritten statement?

8 A. I never gave a handwritten statement, but I did sign
9 this.

10 Q. Right.

11 A. Yes.

12 Q. So that's the statement, though, that the detective
13 went over with you?

14 A. Yes, sir.

15 Q. Now, I believe in this particular case you were charged
16 with conspiracy, were you not?

17 A. Yes, sir, I was charged with criminal conspiracy.

18 Q. And that's regarding basically you taking the gun
19 and --

20 A. Yes, sir.

21 Q. -- at that point in time to put it away.

22 Did they ever come back for that gun?

23 A. Yes, sir, Ben Stewart came back for the gun.

24 Q. All right. And do you remember how long after he
25 dropped it off with you there --

1 A. It wasn't very long.

2 Q. -- how long was it after that?

3 A. It wasn't very long.

4 Q. Okay. Well, hours? Days?

5 A. Days. A few days elapsed.

6 Q. And how did it come to be that he got the stuff back?

7 A. I mean, it's not mine.

8 Q. Right. No, I understand. I'm just saying how did it
9 happen? Did he call you, or --

10 A. He just came and got it.

11 Q. He just showed up?

12 A. Yeah, he just showed up and got it.

13 Q. Did you tell him where it was?

14 A. Yes, sir.

15 Q. He wasn't with you when you put it away, right?

16 A. No, sir.

17 Q. Okay. Now, I believe as well you had mentioned you had
18 pled guilty to conspiracy in this. What time are you facing
19 as a result of that plea?

20 A. From what I was told, I'm facing five years.

21 Q. Okay. And I believe that's in the discretion of the
22 judge, is that correct?

23 A. Yes, sir.

24 Q. Now, you had had -- you had gotten in a little bit of
25 trouble before this on unrelated things, isn't that correct?

1 A. Yes, sir.

2 Q. I believe in 2001, false information to police, is that
3 correct?

4 A. Yeah, just giving a false name.

5 Q. Okay. And 2002, failure to stop for a blue light, is
6 that correct?

7 A. Yes, sir.

8 Q. And I believe in 2004, contributing to the delinquency
9 of a minor, is that correct?

10 A. Yes, sir.

11 Q. And I believe all those are misdemeanor charges, are
12 they not?

13 A. Yes, sir.

14 MR. SWERLING: Your Honor, I going to object to
15 him leading.

16 THE COURT: Sustained, counsel.

17 BY MR. THOMPSON:

18 Q. All right. I would ask if you would, just for a
19 moment, if you would stand up.

20 Do you see Ben Stewart in this courtroom today?

21 A. Yes, sir.

22 Q. Could you point him out for me, please?

23 A. (Witness pointing).

24 Q. Can you describe him to us?

25 A. He's the gentleman with the glasses and the nice

1 haircut.

2 Q. Okay. And which table is he sitting at? The one with
3 the blue skirt or the --

4 A. The blue skirted table.

5 Q. The blue skirted table?

6 A. Yes.

7 MR. THOMPSON: Your Honor, I would ask that the
8 record reflect that he's indicated Ben Stewart, who is
9 sitting at the table.

10 BY MR. THOMPSON:

11 Q. Do you see Terrell Addison here?

12 A. Yes, sir.

13 Q. Can you point him out for us, please?

14 A. That gentleman in the gold shirt.

15 Q. Okay. At the wooden table?

16 A. Yes, sir.

17 MR. THOMPSON: Your Honor, I would ask the record
18 to reflect that he's also pointed out Terrell Addison.

19 BY MR. THOMPSON:

20 Q. You can be seated.

21 Are these the two -- are these two of the men that were
22 at Monday Bishop's house that night --

23 A. Yes, sir.

24 Q. -- with the guns?

25 A. Yes, sir.

1 Q. Thank you.

2 MR. THOMPSON: No further questions.

3 CROSS EXAMINATION BY MR. SNOW:

4 Q. Good morning, Mr. Reed.

5 A. Good morning.

6 Q. I'm sorry, Mr. Allen.

7 I have a few questions to ask you.

8 Let me go back to a few things that you said.

9 You gave your statement on or about October 27th, 28th,
10 2006?

11 A. Yes, sir, it was either on the 27th or the 28th.

12 Q. And this was seventeen or eighteen days after the
13 incident at the BP station?

14 A. I mean, I'm not -- I'm not sure when that -- when the
15 date of the incident.

16 Q. And this was around the same time, if you know, that
17 "Bubba" gave a statement, correct?

18 A. Yes, sir.

19 Q. Do you know how many times "Bubba" had given a
20 statement to the police?

21 A. When I got my Brady motion, I seen like, I guess, like
22 three different statements.

23 Q. Okay.

24 MR. THOMPSON: Well, Your Honor, I'm going to
25 object. There is no personal knowledge. That doesn't have

1 relevance.

2 THE COURT: Sustained, counsel. It's not
3 relevant.

4 MR. SNOW: Okay.

5 BY MR. SNOW:

6 Q. Before this, before the 17th -- before the 27th or
7 28th, you had never spoken to the police about this, had
8 you?

9 A. No, sir.

10 Q. You haven't given them a statement?

11 A. No, sir.

12 Q. Hadn't told them anything about the gun or someone
13 coming to your house?

14 A. Are you asking me before the 27th or the 28th --

15 Q. Right.

16 A. -- had I talked to any law enforcement about it?

17 Q. Right.

18 A. No, sir.

19 Q. Never given a statement to anybody?

20 A. No, sir.

21 Q. One of the first things that you gave in your
22 statement, you said in your statement -- you have it there?

23 A. Uh-huh.

24 Q. You indicated that you were drinking, but you were not
25 drunk?

1 A. I mean, a beer or two.

2 Q. What time in the morning? It was very early in the
3 morning, wasn't it, or very light at night?

4 A. It was late night.

5 Q. It was probably what time?

6 A. I'm not sure what time it was.

7 Q. Okay. Can you guess what time it was, approximately?

8 A. I mean, it's been almost a year and a half. I mean,
9 I'm not sure. It was late.

10 Q. Is it possible it was four o'clock in the morning?

11 A. It's possible that it was late night. You know, I
12 mean, I don't know.

13 Q. Was this a week night? Do you recall that?

14 A. It was late night.

15 Q. Okay.

16 A. Late night.

17 Q. Do you recall if this was on a Tuesday morning?

18 A. I don't remember what day it was. It was just on late
19 night.

20 Q. Right. Right.

21 And in your statement you also mentioned that you
22 weren't -- you were -- beer or something, so you may have
23 had some other intoxicating beverage, or what have you?

24 A. Yes, sir.

25 Q. Okay. You don't recall if you had more than beer?

1 A. It was either beer or gin, something like that. No
2 more, no less.

3 Q. Was it -- could it have been marijuana?

4 A. No, sir.

5 Q. So it could have been any other drugs other than just
6 beer, or gin, or --

7 A. Beer, alcoholic beverage.

8 Q. But it also could have been liquor, right?

9 A. Yes.

10 Q. And you indicated that Mr. Stewart -- you said Mr.
11 Stewart gave you a call?

12 A. Well, it really -- he didn't give me a direct call, but
13 he called Monday's place.

14 Q. Right.

15 Did you speak with him?

16 A. I spoke with him briefly.

17 Q. And you indicated when the solicitor asked you
18 questions that he didn't say what he wanted on the phone?

19 A. No, he just said he wanted me to do something for him.

20 Q. Right.

21 And he didn't say what exactly. He just said he wanted
22 you to do something for him?

23 A. Yes, sir.

24 Q. Then he came -- you said he showed up at your house, or
25 Monday's house, where you were?

1 A. (Shaking head yes).

2 Q. And you also -- you are not sure whether he came there
3 by himself, or if he came there in a different car, correct?

4 A. No, sir, I don't. I mean, I wasn't outside waiting or
5 anything.

6 Q. So it's possible he could have shown up at a different
7 time than the other gentleman?

8 A. Yeah, it's possible, because nobody just crammed in the
9 door at the same time.

10 Q. They didn't come in the door at the same time?

11 A. No, sir.

12 Q. And you indicated in your statement that they were
13 talking about Donte?

14 A. When I mean they, I mean them as a group.

15 Q. Right.

16 A. I wasn't really focused in on the conversation and not
17 looking at anybody's mouth or anything like that. It was
18 just, you know, a bunch of babbling, you know.

19 Q. So you can't recall what Mr. Stewart said to you?

20 A. The only thing I remember Mr. Stewart ever saying was
21 "put the gun up." I mean, I can't -- I don't know anything
22 else that he could have said.

23 Q. And, in fact, you mentioned in your statement -- you
24 don't mention in your statement anything about him giving
25 you the gun, do you?

1 A. Yes, sir.

2 Q. Do you?

3 A. Yes, I do.

4 Q. You said he -- I think you indicated in your statement
5 he said "stash the gun" -- "stash the bag," some sort,
6 right, in your statement?

7 A. Yes, sir.

8 Q. So there were number of people there and so you don't
9 recall who gave you a gun, right?

10 A. Ben gave me the gun.

11 Q. Is your recollection fresher today, or was the 27th or
12 28th when you gave the police the statement?

13 A. No different. I mean, I know who gave me a gun. I
14 know -- you know what I mean.

15 Q. So your memory it as clear today?

16 A. Yes.

17 Q. During that conversation they never mentioned
18 anything -- according to you, they never mentioned anything
19 about any robberies?

20 A. No one ever went into any details as far as what had
21 happened. If they did, I wasn't paying them any attention.
22 Like I said, I wasn't focused in the conversation, or them,
23 as a whole.

24 Q. Let me ask you again that same question. You didn't
25 say anything in your statement about any robberies, did you?

1 A. I didn't know of any robbery at the time.

2 Q. Right.

3 So you didn't hear them say anything about robbery?

4 A. No, sir.

5 Q. Right.

6 You didn't hear Mr. Stewart say anything about a
7 robbery?

8 A. No, sir. The only thing Mr. Stewart asked me to do was
9 to put up a gun. That's it.

10 Q. You didn't hear Mr. Stewart mention anything about
11 anyone getting shot?

12 A. No, sir.

13 Q. You didn't hear Mr. Stewart say he was involved with
14 any robberies?

15 A. No, sir.

16 Q. You didn't hear him say anything about he went to Rock
17 Hill, did you?

18 A. No, sir.

19 Q. Now, let's just turn your attention to the last page in
20 the statement. I think you -- at some point in your
21 statement you said -- turn to your last page of your
22 statement, if you will. I think it's listed as the last --
23 the last sentence in your statement.

24 Is it fair to say that you said in your statement "I
25 never moved the bag again," right?

1 A. I mean, no, I didn't.

2 Q. All right. So you never knew what happened to the bag?

3 A. No, sir.

4 Q. All right. So you never gave the bag to Ben?

5 A. No, sir, but he retrieved the -- he came back and
6 retrieved the gun. I mean --

7 Q. Well, did you give it to him?

8 A. I don't know for a fact, but I know he came and
9 supposedly retrieved the gun.

10 Q. So you don't know that for a fact, do you?

11 A. No, sir.

12 Q. All right.

13 Now, you also indicated that you didn't write this --
14 you -- this is not word for word in your statement, is that
15 correct?

16 A. My -- this statement right here?

17 Q. Right.

18 A. No, this is a statement made by the detectives where
19 they asked you a question, you answer the question, and they
20 just really type it out, but I did sign it.

21 Q. You did sign it?

22 A. I signed it.

23 Q. Now, on direct you mentioned this was in a brown
24 grocery bag?

25 A. A transparent plastic bag.

1 Q. You didn't mention this in your statement that it was a
2 brown transparent bag, grocery bag, did you?

3 A. In my statement it was -- I said a brown bag.

4 Q. You said a transparent bag in your statement?

5 A. Yeah, a transparent bag.

6 Q. That's not brown, is it?

7 A. No, sir, but it was a transparent brown plastic bag.

8 Q. I'm asking you what you said in your statement.

9 A. Okay.

10 Q. You said in your statement it was a transplant bag --

11 A. Yes, sir.

12 Q. -- correct?

13 A. Yes.

14 Q. You didn't mention anything about a grocery bag?

15 A. Well, I mean --

16 Q. The question is --

17 A. I didn't know I had to go into that specific detail
18 about what kind of bag it was.

19 THE COURT: Hold on a second. Let him finish his
20 answer and then ask another question, please.

21 BY MR. SNOW:

22 Q. In your statement you didn't say anything about a brown
23 bag, did you?

24 A. No, sir. In the statement, what does it say?

25 No, sir.

1 Q. Right.

2 A. I said it was in a transparent plastic bag.

3 Q. Right.

4 But you didn't say a brown bag?

5 A. No, sir.

6 Q. Right.

7 Now, did you read that in any of these other

8 statements? You testified that you looked at statements in

9 your discovery, right?

10 A. I mean, yeah, when your lawyer files your Brady motion,

11 yes.

12 Q. Did you happen to read that in another statement,

13 someone else's statement?

14 A. That it was a brown bag?

15 Q. Yes.

16 A. No.

17 Q. All right. But apparently the night that the detective

18 questioned you, you didn't mention that it was a brown bag?

19 A. I didn't know it was that important to mention whether

20 it was a brown bag or what kind of bag it was. It was just

21 a bag. It was a transparent plastic bag, which happened to

22 be a brown grocery bag.

23 Q. But you knew that was important today to mention? It

24 wasn't important --

25 A. I mean, a bag is a bag, man. I mean, I don't

1 understand.

2 Q. Well, is it important when you deal with a case like
3 this.

4 A. Okay.

5 Q. And, in addition, in your statement you also say
6 that -- turn to the last page in your statement.

7 A. Yes, sir.

8 Q. The last page in your statement, the first paragraph,
9 "I did not" -- "I did" -- "as far as me stashing the bag for
10 Ben, I did that, but not knowing the seriousness of what
11 happened," right?

12 A. Yes, sir, I had no knowledge of what was going on. I
13 did not know.

14 Q. So you didn't even know --

15 A. Why would a personally involve myself into something
16 that I had nothing to do with and something so serious? I
17 mean --

18 Q. The only thing that you knew from that night is that
19 Donte had gotten shot?

20 A. Yeah.

21 Q. Okay. Right?

22 A. Uh-huh.

23 Q. Nothing about any of Ben's involvement in that shooting
24 at all?

25 A. The only thing I know is Donte -- they say that Donte

1 had got shot. I don't know nothing about as far as whether
2 Ben was with them or whatever, no, sir.

3 Q. Okay.

4 CROSS EXAMINATION BY MR. SWERLING:

5 Q. Hey, Mr. Allen.

6 You gave -- this statement that you were referring to
7 was given on October 27th, is that correct?

8 A. Yes, sir.

9 Q. Now, on May 27th, 2007, you entered into a plea
10 agreement with the solicitor's office, is that correct?

11 A. Yes, sir.

12 Q. And you agreed to plead to a conspiracy to commit an
13 accessory -- conspiracy to commit accessory after the fact
14 to armed robbery?

15 A. It's the same charge I have been charged with.

16 Q. Yes, sir.

17 A. Yes, sir.

18 Q. And you agreed to plead to that, is that correct?

19 A. Yes, sir.

20 Q. Have you done that already?

21 A. No, sir.

22 Q. And in that agreement that you had with the State, you
23 agreed to cooperate. And if you cooperated, the State would
24 make known to the sentencing judge, whoever the judge was
25 that took your plea, the extent of your cooperation?

1 A. Yes, sir.

2 Q. And the family of Mr. Marshall would stand silent?

3 A. Yes, sir.

4 Q. But if you did not cooperate, then the State would
5 argue for whatever sentence they wanted and the family of
6 Mr. Marshall would as well?

7 A. I mean, I guess.

8 Q. Okay. I mean, that's what's in the agreement?

9 A. Uh-huh.

10 Q. Okay. And that you would not be allowed to withdraw
11 your plea?

12 A. I don't know if I was -- I probably didn't read it
13 good, but, I mean, if it's in the agreement, yes, sir.

14 Q. Now, you also in that agreed that the statement of
15 October 27th, 2006, was true and accurate, is that correct?

16 A. Yes, sir.

17 Q. And, of course, if you -- if for some reason or
18 another -- that's all right.

19 Now, let me go back to this statement for a moment on
20 October 27th, okay? This was about two weeks after the
21 event, which took place on October 10th.

22 A. Okay.

23 Q. All right. And at that time you were arrested for the
24 same charge I just referred to, the conspiracy charge?

25 A. Yes, sir.

1 Q. And you were with Detective Haire, seated right over
2 there?

3 A. Detective Haire and Mr. Thickens.

4 Q. And another detective as well?

5 A. Yes, sir.

6 Q. This was down in Hartsville, or was it up here already?
7 You was brought back up here?

8 A. I was brought back here by Detective Haire and
9 Thickens, yes, sir.

10 Q. And you gave them a statement about what happened on
11 October 10th?

12 A. Yes, sir.

13 Q. Okay. And in that statement they asked you to tell
14 them everything that you knew about what happened that
15 night, is that correct?

16 A. Yes, sir.

17 Q. And you represented to them, as well as in this plea
18 agreement, that everything in that statement was true, is
19 that correct?

20 A. Yes, sir.

21 Q. All right. And you tried to be as complete as you were
22 able to be about the information that you had on October
23 27th relating back to October 10th, correct?

24 A. Yes, sir.

25 Q. Now, you signed that statement. And I assume,

1 therefore, you read it. It indicates that you did read it
2 before you signed it?

3 A. Yes, sir.

4 Q. Is that correct?

5 A. Yes, sir.

6 Q. Prior to or after giving that statement, you looked at
7 a photo lineup?

8 A. Uh-huh.

9 Q. And picked out a photograph identified as Terrell
10 Addison, is that correct?

11 A. Yes, sir.

12 Q. Was that before or after the statement?

13 A. That was before the statement.

14 Q. Okay. And how many particular photographic lineups did
15 you look at?

16 A. I looked at this one and another one, if I'm not
17 mistaken.

18 Q. Two of them?

19 A. Yes, sir.

20 Q. Now, you have indicated here that you had seen Terrell
21 Addison --

22 A. On two different occasions.

23 Q. -- on two different occasions prior to October the
24 10th, 2007?

25 A. Yes, sir.

1 Q. Is that correct?

2 A. Yes, sir.

3 Q. Did you know his name?

4 A. No, sir.

5 Q. Did you know his name when you sat down and talked with
6 Detective Haire?

7 A. No, sir.

8 Q. All right. I thought that you had said prior in
9 another hearing that we you knew his name prior to sitting
10 down with Detective Haire, you had learned what his name
11 was?

12 A. Not really. I can't really remember what was what. I
13 just don't remember his name until like after -- after this.
14 I want to say after -- I really can't remember.

15 Q. Okay. So you may have known him?

16 A. I could have known -- I could have known his name
17 before.

18 Q. Okay.

19 A. Yes, sir.

20 Q. Well, let me ask you this. In your statement --

21 A. Uh-huh.

22 Q. -- you do not indicate to Detective Haire or the other
23 detective that you knew or had ever seen Terrell Addison
24 prior to October 10th, 2006, isn't that correct?

25 A. No, sir, I never -- I never -- I mean, he didn't ask.

1 You know, it was just a question being asked. I answered
2 the question and --

3 Q. Yes, sir.

4 A. -- that being typed.

5 Q. The point is, though, that they were asking you about
6 this third person?

7 A. Yes, sir.

8 Q. And you agree that in your statement you did not
9 indicate that you had ever seen Terrell Addison before,
10 isn't that true?

11 A. I agreed in my statement?

12 Q. No. You agreed -- do you agree with me that in your
13 statement --

14 A. Uh-huh.

15 Q. -- you never mentioned the fact to Detective Haire that
16 you had ever seen Terrell Addison before?

17 A. The subject never came up, as far as have I seen him
18 when the statement was then -- when this was being printed
19 by the detective.

20 Q. Wasn't the whole idea to be talking about who --

21 A. I mean, can you be more specific, please, sir,
22 because --

23 THE COURT: He's answered that. Move on, counsel.
24 He's responded twice. Go ahead.

25 MR. SWERLING: Okay.

1 BY MR. SWERLING:

2 Q. All right. Now, let's talk about something else.

3 You indicated there in your statement or during your
4 testimony you are saying you couldn't distinguish who
5 actually was doing the talking?

6 A. Like I said, I wasn't paying any attention, you know.

7 Q. Would you look at the second paragraph of your
8 statement, down towards the bottom where it says "I said I'm
9 at the house"?

10 A. Yes.

11 Q. Doesn't it say there that when they came to the door
12 with the news that Donte got shot, "Bubba" and Ben were
13 trying to talk at the same time?

14 A. Yes, sir.

15 Q. Okay. You don't in their mention Terrell Addison being
16 one of the people who possibly was talking?

17 A. No, sir.

18 Q. As a matter of fact, isn't it true that in that
19 statement you don't mention Terrell Addison talking at all?
20 Isn't that true?

21 A. No, sir.

22 Q. Now, you also --

23 A. His name is not even -- I don't think his name is even
24 in the -- is even in the -- is even in the statement.

25 Q. Well, let's talk about it this way. Do you indicate --

1 you don't indicate in that statement that the third person,
2 who you later identified as Terrell Addison, did any talking
3 at all, isn't that true?

4 A. I never said in this statement, no, sir.

5 Q. Okay. And you had indicated here today that there was
6 some -- you had seen a gun that you had seen Terrell Addison
7 lift up his shirt?

8 A. Yeah.

9 Q. And there was a gun I guess in his waistband or his
10 belt?

11 A. Yeah, waistband.

12 Q. And would you describe that gun again?

13 A. It was a revolver.

14 Q. Okay. What color was it?

15 A. Metallic silver, chrome.

16 Q. Silver?

17 A. Yes.

18 Q. And do you know what caliber it was?

19 A. No, sir. It could have been a .38 or a .357.

20 Q. It could have been a .38, .357?

21 A. It's a revolver.

22 Q. Revolver, okay.

23 As distinguished from an automatic, is that what you
24 are saying?

25 A. Yes, sir. It is, sir.

1 Q. Now, you also indicated that you saw that gun and that
2 he had said that he was not putting his gun up in response
3 to someone's question or someone's statement, is that
4 correct?

5 A. Yes, sir. It's not in the statement, but --

6 Q. Yeah, that's what I was going to ask you. Would you
7 look at your statement and -- two questions.

8 One is do you have any anything in there that indicates
9 the third person, who you later identified as Terrell
10 Addison, said anything?

11 A. No, sir.

12 Q. Okay. And do you have anything in there that indicates
13 that you said on that evening that that third person, who
14 you later identified as Terrell Addison, pulled up his shirt
15 and showed you a gun?

16 A. No, sir.

17 Q. Is there anything in your statement that that third
18 person, whom you later identified as Terrell Addison, said
19 that he was not going to put up his gun?

20 A. No, sir, it's not in my statement, no.

21 Q. As a matter of fact, there is no reference to him --

22 A. Note reference to.

23 Q. -- or to his person having a gun at all?

24 A. No, sir.

25 Q. Only Ben Stewart?

1 A. Yeah, the only person.

2 Q. The only person that you referred to in the statement
3 as having a gun was Ben Stewart, is that right?

4 A. Yes, sir.

5 Q. Thank you.

6 MR. THOMPSON: Just briefly.

7 REDIRECT EXAMINATION BY MR. THOMPSON:

8 Q. If you would, did the detective ever ask you about
9 whether the third person had a gun?

10 A. No, sir.

11 Q. All right. And going back to when Ben retrieved the
12 gun, I think Mr. Snow was asking you regarding that. Tell
13 me again how it is that Ben came back -- how did you know
14 Ben was coming back for the gun?

15 A. I mean, I didn't know he was coming back for the gun.
16 He just popped up and, you know, asked me where the gun was
17 and got the gun.

18 Q. So you had to tell him where the gun was?

19 A. Yeah.

20 Q. And did he go and get it or --

21 A. I guess. I'm not sure.

22 Q. That's what you don't you. He just asked left after he
23 ask for --

24 A. Yeah, so I just take it as he retrieved the gun.

25 Q. Okay. And then, finally, if you go back to your

1 statement and if you go like it's the first large paragraph,
2 there is one sentence and then there is a large paragraph.
3 And right after you describe what this third person looked
4 like in that paragraph, I think it starts, it says "when
5 they came in the door," if you would read that section down
6 to the rest of the paragraph. I guess read that sentence.
7 If you would just read the sentence when they came in the
8 door.

9 A. It says "when they came in the door with the news Donte
10 got shot, "Bubba" and Ben trying to talk at the same time.
11 Everything was already bagged up. It was in a transparent
12 plastic bag. I could see the gun through the bag. It was
13 an automatic, like two tones of gray or two-tonish."

14 Q. Okay. Now, back up to the paragraph just above that,
15 if you would, and there is a sentence that starts "when they
16 came in the door." That comes right after the description
17 of the third party that had come in. "When they came in the
18 door, they were saying," can you read that?

19 MR. SWERLING: Your Honor, objection. Object to
20 leading the witness.

21 THE COURT: Well, I think he's trying to direct
22 him to a part.

23 If you want to come up and point it out to him,
24 you can do that.

25 MR. THOMPSON: All right.

1 BY MR. THOMPSON:

2 Q. We will just start up a little higher in that
3 paragraph. If you can go to this part where it says "Ben
4 called," and just read the remainder of that paragraph where
5 it says "Ben called".

6 A. It says "Ben called me and he asked me to do something
7 for him. He didn't go into detail over the phone.
8 Eventually when he got there, I want to say at least two
9 people were with him. I remember seeing "Bubba", Ben, a
10 younger guy who was a black male. He was smaller than me,
11 pretty thin and no build, maybe eighteen or nineteen, very
12 little, if any, facial hair. When they came in the door,
13 they were saying that Donte got shot. They didn't say where
14 it happened. This was at Monday Bishop's place. Val was
15 there too. It was just me, Val and Monday sitting around
16 drinking, but I wasn't drunk, beer or something like that.
17 Ben said I need you to do something for me. He sounded
18 rather dramatic like hyper."

19 Q. So in that you say "when they came in the door, they
20 were saying Donte got shot," so more than one person was
21 saying Donte got shot?

22 MR. SWERLING: I object to the leading.

23 THE COURT: Please avoid the leading, counsel.

24 All right, you can ask him to say -- read it, if
25 you want to.

1 MR. THOMPSON: All right. He's already read it,
2 Your Honor.

3 BY MR. THOMPSON:

4 Q. You mentioned they, is that correct?

5 A. Yes, sir.

6 Q. And who does they refer to?

7 A. That's in "Bubba", Ben, and Terrell.

8 Q. Okay. Thank you.

9 MR. THOMPSON: No further questions.

10 MR. SWERLING: Just briefly.

11 RECROSS EXAMINATION BY MR. SNOW:

12 Q. Turn to the last page in your statement.

13 You said that Ben got the gun, so let me ask you two
14 questions. Ben got the gun, is that correct? Is that what
15 you say?

16 A. Uh-huh.

17 Q. Now, the last page in your statement, you indicated in
18 your statement, though, that you took the gun to him,
19 correct?

20 A. Well, I didn't indicate anything. I mean, like I said,
21 the detective prepared the statement. It wasn't anything
22 handwritten. It was just he asked me a question and then
23 the most I did was just sign it, really, and just answered
24 his questions.

25 Q. But the question again is in your statement --

1 A. Uh-huh.

2 Q. -- you indicated that Ben came and got the gun?

3 A. Yes, sir.

4 Q. I'm sorry, that you took the gun to him, didn't you, in
5 your statement?

6 A. Yes, sir, it does say that.

7 Q. That's in your statement that you signed?

8 A. Uh-huh.

9 Q. All right. After you read it?

10 A. After I read it, yes, sir.

11 Q. But today you are saying that he came and got it?

12 A. Yes, sir, he came and retrieved the gun.

13 Q. Oh, and you don't mention anything in the statement
14 about what kind of gun it was, what caliber it was, do you?

15 A. No, sir.

16 Q. All right. So nowhere in your statement does it say
17 anything about caliber?

18 A. No, sir.

19 Q. Okay.

20 MR. SWERLING: Just briefly.

21 THE COURT: Yes, sir.

22 RECROSS EXAMINATION BY MR. SWERLING:

23 Q. Mr. Allen, the solicitor had you read down to where it
24 said "Ben said I need you to do something for me. He
25 sounded rather dramatic, like hyper."

1 A. Yes, sir.

2 Q. Could you just read the next two sentences as well?

3 A. I said "I'm at the house. When they came in the door
4 with the news Donte got shot, "Bubba and Ben trying to talk
5 at the same time."

6 Q. Thank you.

7 THE COURT: Thank you, sir. You may stand down.
8 Just leave everything up there, sir.

9 MR. BRACKETT: I ask that this witness be excused,
10 Your Honor.

11 THE COURT: No objection?

12 MR. SWERLING: No objection, judge.

13 MR. SNOW: No objection.

14 THE COURT: He's excused.

15 MR. BRACKETT: The State would call Sheila Smith.

16 Ma'am, if you would step forward, please, there is
17 a Bible there.

18 SHEILA SMITH, having been first duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION BY MR. BRACKETT:

21 Q. Ma'am, would you please state your full name?

22 A. Sheila Annette Smith.

23 Q. You are going to have to speak up a little bit. You
24 have got a soft voice. I'm going to stand back here. If I
25 can't hear you, then they probably can't hear you.

1 A. Sheila Annette Smith.

2 Q. And where do you live, ma'am?

3 A. In Rock Hill.

4 Q. And how long have you lived in Rock Hill?

5 A. All my life.

6 Q. And where -- what do you do for a living?

7 A. I'm a newspaper carrier.

8 Q. And how long have you been doing that?

9 A. Seven years.

10 Q. What kind of hours does a newspaper carrier work?

11 A. About 2:30 -- from about two in the morning until 4:30.

12 Q. Where do you deliver newspapers?

13 A. Downtown Fort Mill.

14 Q. For what newspaper?

15 A. The Observer and The Herald now.

16 Q. And were you doing that back in 2006?

17 A. Yes, sir.

18 Q. So you were up and out and about pretty early in the
19 morning?

20 A. Yes, sir, about one.

21 Q. Do you sometimes stop at convenience stores to get a
22 cup of coffee?

23 A. Pretty often, because there is no one on the road.

24 Very little traffic, so I need coffee or something to keep
25 me woke most of the time, so just about every day I would

1 stop.

2 Q. Okay. And are you familiar with the BP gas station at
3 the corner of Celanese and India Hook?

4 A. Yes, sir.

5 Q. Do you stop there very often?

6 A. Yes, sir.

7 Q. Did you know the clerk?

8 A. Yes, sir.

9 Q. Okay. I'm going to turn your attention to October the
10 10th of 2006.

11 Just one moment.

12 (Off the record)

13 (Back on the record)

14 BY MR. BRACKETT:

15 Q. On that night, or rather the early morning of October
16 the 10th, 2006, did you have an occasion to stop at the BP
17 on Celanese?

18 A. Yes, sir.

19 Q. And about what time was that, do you know?

20 A. About 4:20.

21 Q. Are you sure about the time?

22 A. Yes, sir.

23 Q. Okay. Where did you park?

24 A. On the side of the store that the bank -- CVS and the
25 intersection with CVS, on that side.

1 Q. Okay. Do you know where the Harris Teeter is?

2 A. Yes, sir.

3 Q. On the side with the Harris Teeter, or the side with
4 the car wash?

5 A. The car wash is --

6 Q. The car wash is closer to 77.

7 A. Okay. The side with the Harris Teeter.

8 Q. Okay. Was there anybody at the store when you arrived?
9 Did you see any other cars parked out there or any other
10 customers coming in and out?

11 A. No, sir.

12 Q. What kind of car were you driving?

13 A. A black Ford Ranger.

14 Q. Why did you stop? What were you going to do?

15 A. Get gas and coffee.

16 Q. Which door did you go in; the side close to 77, or the
17 side close to the Harris Teeter?

18 A. The side close to the Harris Teeter.

19 Q. What were you thinking when you went in the store?

20 A. Not really paying attention to anything. I usually
21 call my husband by 4:30 to wake him up so he can start
22 getting ready for work.

23 Q. Were you about to do that?

24 A. I was doing that. That's why I wasn't paying attention
25 to anything else around me.

1 Q. All right.

2 A. I was dialing on my cell phone looking down at the
3 numbers on the cell phone.

4 Q. And when you walked in the store, can you tell the jury
5 what you saw?

6 A. I -- I saw Mr. Marshall laying on the floor in a pool
7 of blood with a gun, a small gun, up above his shoulder. He
8 was face down.

9 Q. Did you see anybody in the store?

10 A. No, sir. I -- when I saw him, I stopped at the door
11 and I saw him and then I looked around the store quickly and
12 backed out of the door and ran back to my truck.

13 Q. What were you thinking?

14 A. Get away from there.

15 Q. What did you do?

16 A. I ran to my truck and I got in and proceeded to leave
17 on the front side near the Burger King, the exit on the side
18 of the Burger King, and went through the red light. I ran
19 it. And when I reached the CVS I called 911 on my cell
20 phone --

21 Q. Okay.

22 A. -- and told them what I saw.

23 Q. Okay.

24 MR. BRACKETT: Your Honor, I have what's been
25 marked as State's Exhibit 1 for identification, which is a

1 copy of the 911 call, and I would like to play it now for
2 the witness to identify it. She's previously heard it and I
3 believe can identify it.

4 THE COURT: Well, are you going to admit it first?

5 MR. BRACKETT: Well, if there is no objection.

6 MR. SWERLING: No objection.

7 THE COURT: No objection?

8 MR. SNOW: No.

9 THE COURT: No objection, so you may publish it.

10 It's admitted without objection and you may
11 publish it.

12 (Whereupon, the 911 tape was played to the jury
13 panel)

14 BY MR. BRACKETT:

15 Q. Is that you?

16 A. Yes, sir.

17 Q. Okay. You were being questioned by the dispatcher
18 when she asked you did you see anybody around him. Was
19 there anybody in the store or in the parking lot when you
20 arrived?

21 A. No, sir.

22 Q. Where did they tell you to go, the police? Where did
23 you ultimately go after speaking with the dispatcher?

24 A. I was driving pretty fast and I -- I had got as far as
25 the hospital and he told me to go to Hardee's. He asked me

1 did I see an area well lit, because I was scared to stop,
2 and he told me to -- I told him I saw Hardee's and he told
3 me to stop there and he would be there, because he's -- he
4 was very close when I called. They immediately started
5 coming in that area, so he told me he was very close and I
6 wouldn't be there alone by myself.

7 Q. Okay. Did the police officer eventually show up?

8 A. Immediately.

9 Q. Okay. And did you ever at any point go back to the BP?

10 A. No, sir.

11 Q. Did you go to the police department?

12 A. I went -- he told me for me to drive in front of him so
13 that he could watch me and make sure that I was driving safe
14 and for me to drive to the police department so that he
15 could get my statement.

16 Q. Okay. Did you give a statement there?

17 A. Yes, sir.

18 Q. Now, you had -- how many times had you been at the BP?

19 A. I can't even count --

20 Q. Did you --

21 A. -- the amount of times.

22 Q. Did you see Mr. Marshall there many times?

23 A. Very often.

24 Q. So you knew that was him immediately when you went in
25 there?

1 A. Yes, sir.

2 Q. Is there any other information that you have about this
3 case?

4 A. No, sir.

5 Q. Okay. Thank you very much.

6 Please answer any questions that the counsel may have
7 for you.

8 MR. SWERLING: No questions.

9 MR. SNOW: No questions.

10 THE COURT: Thank you, ma'am.

11 Do you want to excuse this witness, counsel?

12 MR. BRACKETT: Yes, Your Honor.

13 THE COURT: No objection.

14 MR. SNOW: No.

15 THE COURT: Thank you for coming, ma'am.

16 MR. THOMPSON: The State would call Qiauna Efird.

17 QIAUNA EFIRD, having been first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION BY MR. THOMPSON:

20 Q. Good morning, Ms. Efird. I'm sorry for making you
21 wait.

22 A. No problem.

23 Q. Could you give your full name for the court, please?

24 A. Qiauna Capris Efird.

25 Q. Can you spell that for the court reporter, please?

1 A. It's Q-I-A-U-N-A. Last name Efird, E-F-I-R-D.

2 Q. Thank you.

3 All right. Ms. Efird, do you live in Rock Hill?

4 A. Yes, sir.

5 Q. And did you live in Rock Hill back in October of 2006?

6 A. Yes, sir.

7 Q. Where were you living then?

8 A. Northwoods Apartments.

9 Q. All right. Do you remember what apartment that you
10 were living in?

11 A. [REDACTED].

12 Q. Okay. In those apartments, I guess were you on the
13 first floor or the second floor?

14 A. It's a town home.

15 Q. A town home?

16 A. Uh-huh.

17 Q. So you have both the first and second floor?

18 A. Yes, sir.

19 Q. And on the night of -- or the early morning of October
20 10th of 2006, did anything unusual happen in your apartment
21 complex?

22 A. Yes. It actually was abnormally warm October, so we
23 had the windows up, and we hear -- well, I hear yelling.
24 And I have children, so I'm -- I don't sleep very heavy, and
25 I hear people yelling, and so I get up to see what's going

1 on, because we have had problems before at the apartment
2 complex. And I get up to see what's going on and I hear two
3 people like yelling at each other, and then you hear a third
4 person saying "hurry up", and then another person said "he
5 shot me." And it just struck me as odd, but still it was
6 early morning, so I wasn't quite -- I didn't know what to
7 make of it, so I called Crime Stoppers and I said "I don't
8 know what just went on. People just ran across my
9 courtyard, jumped the brick -- there is a brick wall.

10 Q. All right.

11 A. Not very high, but there is a wall. Jumped the brick
12 wall, got in the car and sped off. I don't know, you know,
13 what they were doing. I didn't know if it was a prank, if
14 they were -- if something really happened. It could have
15 been paint ball, because we have had paint ball incidents
16 like that. He said "he shot me," and I said "so I'm just
17 reporting it." I hung up the phone and went about, you
18 know, getting up, and that's when I saw the convergence of
19 police cars going down the road to the BP. And I said
20 "well, maybe I should call the police."

21 Q. Okay.

22 A. And then called the police and told them what I saw.

23 Q. Let's go back into that just a little bit.

24 A. Okay.

25 Q. Had there been anything happen in your apartment

1 complex prior to this that would cause you to want to look
2 to see what was going on?

3 A. Yes, there -- we call them the dumpster bandits, but
4 there were these young kids and they would take baseball
5 bats and beat on our dumpsters at like four o'clock in the
6 morning, three o'clock in the morning. And we had called
7 the police out before and we called our manager before, but
8 it just causes you to wake up, look at the clock. And you
9 are like, okay. So the reason I got up and called Crime
10 Stoppers also is because I wanted to get them in trouble.
11 So we have been having like issues like that, and they had
12 paint ball guns out one time and paint balled our dumpster.
13 You know, just little stuff like that.

14 Q. So you were thinking it possibly might have had
15 something to do with that initially?

16 A. Yes, I did.

17 Q. Okay. And as a result of that, did you look to see
18 what time it was when you heard it?

19 A. Yes, it was a little after 4:30. I'm not exact on the
20 time now. It's been --

21 Q. All right.

22 A. But about 4:30.

23 Q. And so right around 4:30. Did you look at the clock at
24 that point?

25 A. Yeah, I did.

1 Q. And I'm going to show you some photographs I believe of
2 the apartment complex, State's Exhibit 7 through 11.

3 A. Okay.

4 Q. And if you could identify those for me.

5 A. This is a photograph of our courtyard.

6 And this is my building where when you see the brick
7 here.

8 Q. Okay. Now, does that fairly and accurately depict what
9 your building looked like at that time?

10 A. Yes. It still looks like that, yes.

11 Q. Okay. And as you look through all of them, are they
12 all basically that part of the apartment complex or a part
13 of the town home complex?

14 A. Yes, they are.

15 Q. And do they all fairly and accurately depict what it
16 looked like at that point in time?

17 A. Yes.

18 Q. Okay.

19 MR. THOMPSON: Your Honor, I would ask to enter
20 those into evidence at this point, State's Exhibit 7 through
21 11.

22 THE COURT: Counsel?

23 MR. SWERLING: No objection.

24 MR. SNOW: No objection.

25 THE COURT: No objection.

1 They are admitted without objection.

2 BY MR. THOMPSON:

3 Q. I'm going to start off -- we are going to turn this on.
4 It will come on in just a second here with the photo of
5 State's Exhibit No. 7.

6 A. Okay.

7 Q. While we are waiting for this to warm up, your
8 apartment building -- when you are -- considering where the
9 BP is located, you are further down on Celanese Road, is
10 that correct?

11 A. Yes.

12 Q. Not the Harris Teeter side, but back on the side of
13 where Burger King and all those places would be?

14 A. Yes.

15 Q. Are you on the same side of the road as what the BP
16 would be?

17 A. Yes, I am.

18 Q. Now, what is between your apartment complex and where
19 the BP station is at this point in time?

20 A. A field and a dental office.

21 Q. And I believe since then they have made another
22 building there --

23 A. Yes.

24 Q. -- if I'm not mistaken, is that correct?

25 A. Yes.

1 Q. Okay. Now, your particular building, the way that it's
2 situated, this is State's Exhibit No. 7, which part of that
3 is your building?

4 A. The brick side here to the left.

5 Q. The side we see the bricks on the left?

6 A. Yes.

7 Q. Okay. And so that building, is it -- and I guess it's
8 sort of -- if you look over the top of it, would it be a
9 rectangular shape?

10 A. Yes.

11 Q. And so your town home would have -- would it have
12 windows on both side?

13 A. I have windows on both sides.

14 Q. Were both sides open?

15 A. Yes.

16 Q. And what side would one face and which side would the
17 other face?

18 A. One side is actually facing the courtyard and the other
19 side is facing the parking lot.

20 Q. Okay. Now, which side would the BP be on in this
21 particular photograph?

22 A. Courtyard side.

23 Q. Now, is that actually the BP that you see the green
24 roof, or is that the dental office?

25 A. No, that's the dental office.

1 Q. Is the BP on the other side of that?

2 A. Yes.

3 Q. Okay. Now, so you have windows that face, I guess,
4 towards the BP side, which you can't actually see it?

5 A. Right.

6 Q. And off to the other side I guess is your parking lot,
7 is that correct?

8 A. Yes.

9 Q. And you called it the courtyard side, would that be the
10 side where the BP is?

11 A. Yes.

12 Q. Now, in your apartment complex, when you started
13 hearing voices, what side did you hear them coming from at
14 first?

15 A. They were coming from the courtyard side, BP side.

16 Q. Okay.

17 A. Coming towards the parking lot.

18 Q. Did you ever look out that side of the apartments to
19 look out?

20 A. Yeah, I looked out that side, because I -- those are my
21 children's rooms, so I had to -- you know, I wanted to know
22 what the noise was, so just right across the hall you look
23 out and you can hear the voices coming, so I come back into
24 my room --

25 Q. Okay.

1 A. -- and look out the parking lot side.

2 Q. Was this on the first or the second floor?

3 A. Second floor. We're on the second floor.

4 Q. Okay. So you are looking out the windows on the second
5 floor when you look out?

6 A. Yes.

7 Q. Did you see anything when you looked out on the BP
8 side?

9 A. No.

10 Q. But you could hear?

11 A. Could I hear them, yes.

12 Q. Did you hear anything specifically being said at that
13 point?

14 A. They were -- they are yelling at each other. Like one
15 person saying "hurry up", and another person is saying "I
16 got shot." And that's when I -- that's when I went back to
17 thinking it was just like our paint ball --

18 Q. Paint ball guys?

19 A. -- guys, you know, and everything like that. And then
20 I didn't think anything else of it, but that also made me
21 come back and look out my window, because I wanted to get a
22 good look at them this time.

23 Q. And that would be the parking lot side?

24 A. Yes.

25 Q. So if we go to State's Exhibit No. 8 -- I believe this

1 is State's Exhibit No. 8, is that the parking lot side of
2 your apartment building?

3 A. Yes.

4 Q. And then State's Exhibit 9, the second floor apartments
5 would be up there. I understand that may not be your number
6 but that's --

7 A. Yes.

8 Q. -- what the second floor would look like.

9 Did you actually go on the balcony, or did you just
10 look out the window?

11 A. I don't have a balcony.

12 Q. Okay.

13 A. That actually is -- that's my bedroom.

14 Q. Oh, okay.

15 A. So the town homes don't have a balcony, so I was
16 looking out my bedroom window.

17 Q. Okay. But it's on -- it's that height that's up on the
18 second floor?

19 A. Yes.

20 Q. We'll go then to State's Exhibit No. 10. Is that the
21 parking lot that you are talking about that if you look out
22 your bedroom that you see?

23 A. Yes, sir.

24 Q. Is your room -- I understand we are looking at this
25 from kind of where the steps are, but in your room are you

1 looking straight on like this, or are you to the left, or
2 are you to the right when you are looking out?

3 A. I am right to the -- do you see where the light is?

4 Q. The lamp post?

5 A. The lamp post.

6 Q. Yes.

7 A. My bedroom window is just to the right.

8 Q. So if we are looking at the light, you would be farther
9 up on the right?

10 A. Yes. I mean, just barely.

11 Q. Okay. So you are up farther on this? In other words,
12 you have an angle from the right?

13 A. Yes.

14 Q. And from the second floor looking down?

15 A. Yes.

16 Q. Correct?

17 A. Yes.

18 Q. Now, can you see into this parking lot on the other
19 side of the window?

20 A. Yes.

21 Q. So you can actually see past some of that stuff into
22 the parking lot from your window?

23 A. Yes.

24 Q. Is that right?

25 A. Yes.

1 Q. Now, is this -- you were mentioning a wall. Is this
2 the wall that you were referring to?

3 A. Yes.

4 Q. All right. And this is the one -- and tell me now,
5 when you look out the window and you see this part of the
6 parking lot, is this where you first see?

7 A. This is where I first see the two guys running. And
8 where there is a -- that brick, there is dumpsters inside of
9 there.

10 Q. Okay.

11 A. He jumped up on the right side of --

12 Q. Tell you what. I have a laser pointer. If you could
13 just point to the photograph and you can tell us where this
14 was.

15 A. He -- they are running from off of here.

16 Q. Uh-huh.

17 A. They run this way and jump right here.

18 Q. Okay. So they go up right there and you are able to
19 have -- is that light on at that point?

20 A. The light is on, yes.

21 Q. Even though it's dark, there is a light there?

22 A. Yes.

23 Q. Now, did you see a car there?

24 A. Yes, there is a car parked there, and there is someone
25 yelling, you know, "hurry up. Hurry up." And they jump up

1 on the brick wall right there.

2 Q. Now, at that time when someone was yelling "hurry up",
3 is that coming from where the car is, or is that coming from
4 the two people that are going?

5 A. That's coming from where the car is.

6 Q. Okay. So State's -- going to the next one, State's
7 Exhibit No. 11. If you will tell us where this is in the
8 apartment complex.

9 A. This is where the car was parked in this parking spot.

10 Q. Okay.

11 A. And my apartment -- if there was a better picture, my
12 apartment is actually right -- right behind that tree.

13 Q. Okay. And were you still able to see, even though
14 those trees were there?

15 A. Oh, yeah. Yeah.

16 Q. Now, did that car, was it pulled in frontward, or was
17 it pulled in backwards?

18 A. It was pulled in forward, because they pulled in. And
19 when they backed out, the rear of the vehicle was facing
20 my -- I could see the rear of the vehicle --

21 Q. Okay.

22 A. -- when they pulled out.

23 Q. And what did you notice about the rear of the vehicle?

24 A. That their lights -- the lights on the back of the
25 vehicle kind of like wrap around. You know how some

1 vehicles just have headlights --

2 Q. Right.

3 A. I mean taillights. I mean these taillights kind of
4 wrapped around a little bit. And they backed out actually
5 into the light, so you could even see like the car was like
6 a beige color. I don't -- I don't -- you know, it wasn't a
7 dark car.

8 Q. So you were able to notice the beige color and the fact
9 that the taillights wrapped around?

10 A. Yes.

11 Q. Did the police ultimately show you a picture of the car
12 to ask you if the taillights were similar to those?

13 A. Yes, they did.

14 Q. And were those taillights that you saw similar to that
15 photograph?

16 A. Yes.

17 Q. I believe it's State's Exhibit 12 sitting in front of
18 you, if you could look at that.

19 Is that the photograph that they showed you?

20 A. Yes, it is.

21 Q. And the taillights that you saw -- you might not be
22 able to say that's the same car, but were they similar to
23 that?

24 A. They were similar, yes.

25 MR. THOMPSON: I would ask to enter that into

1 evidence at this time.

2 MR. SWERLING: No objection.

3 MR. SNOW: No objection.

4 THE COURT: Admitted without objection.

5 MR. THOMPSON: Madam clerk, you can put the lights
6 back on.

7 BY MR. THOMPSON:

8 Q. Now, you had mentioned that they were yelling and some
9 of the things that they were yelling. Do you remember
10 anything else that they were yelling during that time?

11 A. I know one person said they got shot.

12 I know -- like I said, I thought it was --

13 I know that another one was telling them to hurry up.

14 They were yelling at each other. It sounded like, you
15 know, one person was lagging. I don't know. You know it's
16 like "hurry up. Hurry up." And then you heard this third
17 voice say "hurry up." And then you hear the car door shut.
18 They back out and then go out of our apartment complex.
19 There is two ways to get in Northwoods.

20 Q. Were you able to distinguish how many car doors you
21 heard shut?

22 A. I heard three car doors shut.

23 Q. Okay. Now, could you tell from looking from your
24 window if there was anyone else or however many people might
25 be in that car?

1 A. I know -- no, I don't. I know three, because I could
2 hear three car doors shut. I hear three voices, but I
3 couldn't tell you if there was another person, but there
4 could be, I don't know.

5 Q. Okay. Now, you had mentioned I think -- could you
6 describe a little bit more what they looked like, the people
7 that you saw?

8 A. Yes. Because they jumped up where the light was --

9 Q. Uh-huh.

10 A. -- one was wearing a black hoodie, black pants. And
11 when he jumped up on the wall, his hoodie fell back and you
12 could see that he had either a short haircut or like -- I
13 think I said before they could have had like really small
14 braids. I couldn't tell the detail, but I could tell they
15 were black males.

16 And then the other one was kind of a short -- shorter
17 guy than that one, but I'm really tall, so, you know, he was
18 short to me.

19 Q. Okay. He was shorter than the other one?

20 A. Yes, he was shorter than the other one.

21 Q. Now, when the car backed out and sped off, where did it
22 go?

23 A. It -- at first it waited at the exit to Northwoods.

24 Q. Uh-huh.

25 A. And if you make a right, you go towards the BP. If you

1 make a left, you go towards 77.

2 Q. Okay.

3 A. They made a left.

4 Q. All right.

5 A. And that was it.

6 Q. All right. And you said you had called both Crime
7 Stoppers and the police as a result of this?

8 A. Yes.

9 Q. Thank you.

10 MR. THOMPSON: I have no further questions.

11 MR. SWERLING: No objection, Your Honor. No
12 questions, I'm sorry.

13 MR. SNOW: Just a couple of questions.

14 CROSS EXAMINATION BY MR. SNOW:

15 Q. Ms. Efird?

16 A. Efird.

17 Q. You testified here today that what you heard was -- at
18 least you heard three voices?

19 A. At least three, yes.

20 Q. In your statement, of course, I think you said at least
21 more than two --

22 A. Uh-huh.

23 Q. -- correct, in your statement.

24 And you said in your statement as well after that that
25 you heard three car door slams?

1 A. Yes.

2 Q. You were specific that it was three car doors?

3 A. Yes.

4 Q. Thank you.

5 MR. THOMPSON: Nothing further, Your Honor.

6 THE COURT: Thank you, ma'am. You may stand down.

7 MR. THOMPSON: I ask that this witness be excused.

8 THE COURT: Thank you, ma'am, for coming in. You
9 may be excused.

10 Counsel, I think it's probably a good time to take
11 a short break.

12 MR. THOMPSON: All right.

13 THE COURT: Mr. Foreman, ladies and gentlemen of
14 the jury, we are going to take a short break at this time.
15 You may refresh yourselves during the break. We will take
16 about ten minutes or so.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: Okay. Let's take about ten minutes or
20 so.

21 MR. THOMPSON: Thank you.

22 (Whereupon, proceedings were recessed)

23 (Whereupon, proceedings were reconvened)

24 THE COURT: All right, please bring the jury in.

25 (The following takes place in the presence of the

1 jury panel)

2 THE COURT: All right, ready to proceed.

3 MR. THOMPSON: If it please the court, Your Honor,
4 the State would call Lee Wright.

5 LEE WRIGHT, JR., having been first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. THOMPSON:

8 Q. Deputy Wright, could you give your full name for the
9 court, please?

10 A. Henry Lee Wright, Jr..

11 Q. And would you spell your last name for the court
12 reporter?

13 A. W-R-I-G-H-T.

14 Q. All right. Deputy Wright, can you tell me where you
15 work?

16 A. I work for the York County sheriff's office.

17 Q. How long have you worked for the sheriff's office?

18 A. Since August of 2001.

19 Q. All right. And can you tell me were you working the
20 night or the early morning hours of October 10th of 2006?

21 A. Yes, sir.

22 Q. And what was your -- what were your duties that
23 particular early morning hours?

24 A. That particular night I was a float car, which means
25 that I basically was floating all over Rock Hill taking

1 calls, checking property, just doing everything that I
2 normally do.

3 Q. And could you tell me that particular night, did you
4 get called out to the BP station on the corner of India Hook
5 and Celanese?

6 A. I did.

7 Q. And what was the situation? How did that happen?

8 A. Basically what happened was our alert tones went off on
9 our radios. They --

10 Q. What does that signify?

11 A. That something bad had just happened. A significant
12 event.

13 Q. Okay.

14 A. An armed robbery, a burglary, a -- you know, a lot of
15 different things it could signify.

16 Q. Okay.

17 A. At that point I initiated my lights and sirens, which I
18 was probably two miles from the BP whenever the call came
19 in. I initiated my blue lights and sirens, turned around --
20 I actually made a U-turn, because I was traveling away from
21 the intersection there on India Hook. I was actually going
22 toward the hospital. Made a u-turn and I drove back to the
23 store.

24 Q. Do you recall what time it was that you arrived at the
25 store?

1 A. I think it was approximately around 4:38.

2 Q. And had anyone else arrived before you?

3 A. No, sir.

4 Q. Was anyone else arriving around the same time that you
5 were arriving?

6 A. Yes, sir.

7 Q. Do you recall which people were arriving, or at least
8 how many?

9 A. During the -- during the whole thing we realized --
10 well, I was pretty familiar with Rock Hill and I knew that
11 the BP station was in the City of Rock Hill, but we actually
12 got the dispatch call. So what I did was I went ahead and
13 told our dispatch "you need to go ahead and notify Rock Hill
14 City Police Department as well to be en route."

15 Myself, the sergeant that was working that night,
16 Sergeant Wayne Smith, Deputy Joey Wallace and Deputy Buddy
17 Brown were the sheriff's office employees that -- deputies
18 that responded to the scene. There were several highway
19 patrol units that were in the area that responded, and I
20 can't count how many Rock Hill city officers.

21 Q. Well, when you arrived -- what was the scene like when
22 you arrived?

23 A. When I first arrived at the scene, there was -- like I
24 said, I was the first officer in the parking lot.

25 Are you wanting to know when I walked to the door, or

1 are you wanting --

2 Q. Well, when you meet with the officers, when you first
3 get there, what do you do? Do you go to the door?

4 A. Well, as soon as I pulled there, I drew my weapon and I
5 went to the window. And, you know, you just cover. And
6 then as I went to the window and I looked in and I saw a
7 white male subject laying on the floor in a puddle of blood.
8 I saw a small caliber handgun in his hand. My initial
9 reaction, it almost looked like what a suicide would look
10 like.

11 Q. All right.

12 A. But as I looked -- I was scanning the room and I looked
13 to the left of the individual laying on the floor, I could
14 see a shell casing, and the shell casing was a larger
15 caliber than the handgun that was in his hand. So at that
16 point I knew that it was not a suicide. And I let the
17 officers that were coming know. And by this time my sarge
18 was pulling in right behind me. We were thirty, forty
19 seconds from each other, so he was pulling in as well. And
20 that's -- we did that officers, were coming in on the other
21 side. They saw some change and some things laying out in
22 the parking lot.

23 So at that point our training is to secure the scene.
24 Basically myself, Sergeant Smith and Deputy Brown entered
25 the door from the Harris Teeter side. I did what we call a

1 hook. The other officers came in and went to the left.

2 Basically a hook is I just went into the right. I cleared
3 from the door to the front side of the store.

4 Q. Now, what do you mean by cleared that area?

5 A. Made sure there was no suspects, no other injured.

6 Just basically making sure that the scene was secure.

7 Q. So you are basically looking for the safety of anyone
8 who is there now to find out --

9 A. Right.

10 Q. -- if there was another --

11 A. Right, right, making sure there was --

12 Q. -- suspect there or another victim?

13 A. Right, to make sure there was no more suspects, no
14 other victims. I knew we were going to have to get EMS in
15 pretty quickly. And I knew EMS, it's their protocol that
16 the scene has to be secure before they will come in, so we
17 knew we had to work pretty quick.

18 Q. During that time did you have the ability and the
19 opportunity to observe the victim on the floor?

20 A. I did.

21 Q. And could you tell, did he appear at all to be
22 breathing or moving?

23 A. No, sir.

24 Q. Go ahead and tell us. Now, you said that you went to
25 the right side to start clearing?

1 A. Yes, sir, when I entered the door I went to the right
2 and went straight to the front of the store and stayed as
3 close to the wall as I could the whole time scanning for
4 suspects or anything.

5 Q. All right.

6 A. The other officers broke and went to the left. As they
7 went to the left, we had officers coming in the opposite
8 door, but they weren't -- we don't do dual entries, which
9 means we don't enter two rooms or -- a single room by two
10 points of entry, to avoid, you know, friendly fire, things
11 of that nature. So those officers were just hanging at the
12 door at first holding what they had.

13 So when we made our entry, I went to the front of the
14 store. And then as I got to the front of the store I made a
15 left and went straight behind the counter to make sure there
16 was no one hiding underneath the counter. The whole time
17 I -- on the video you can see. The whole time I'm looking
18 to my left as I'm -- I'm just constantly scanning, looking
19 down every aisle, and I probably did that three or four
20 times to make sure that there was nobody hiding anywhere
21 back in there.

22 Once I get to the hole -- get to the end of the counter
23 space I hold what I have, and the other officers begin
24 clearing the back of the building looking for suspects and
25 things of that nature.

1 Q. Okay.

2 A. That's when the other officers made entry after they
3 came to a point, and I wasn't back there, so I don't know
4 what it was. But -- I eventually went back to the back,
5 because they got to a point where they couldn't clear. They
6 had to have somebody hold the door, or something of that
7 nature.

8 Q. Okay. And was there any other suspect or any other
9 victim within the building?

10 A. No, sir.

11 Q. Now, did you -- you mentioned the video. Have you had
12 the opportunity to see the video where you come into the
13 building?

14 A. Yes, sir.

15 Q. All right. And the other officers as well?

16 A. Yes, sir.

17 Q. And I believe that was State's Exhibit No. 2 that you
18 viewed, is that correct?

19 A. I believe so.

20 Q. Okay. How many different angles did you view of that,
21 of the entry?

22 A. I believe all four.

23 Q. Okay. Did they fairly and accurately depict you coming
24 into the building at about that time?

25 A. Yes, sir.

1 Q. All right.

2 MR. THOMPSON: And if we could, I would ask if you
3 would -- if we could show that at this point, Your Honor,
4 where the officers came into the building.

5 THE COURT: Has this already been admitted into
6 evidence?

7 MR. THOMPSON: Yes, sir, State's Exhibit No. --

8 THE COURT: That's already been admitted.

9 MR. SWERLING: Could I speak with him one second?

10 THE COURT: Yes.

11 (Off the record)

12 (Back on the record).

13 MR. SWERLING: Thank you, Your Honor.

14 (Whereupon, the store videotape was played to the
15 jury panel)

16 BY MR. THOMPSON:

17 Q. And on this video do you recall exactly where it is
18 that it shows you coming in?

19 A. Yes, sir, I come in, from this video, from the
20 right-hand side. That's me there.

21 Q. Okay. That's you there?

22 A. Yes.

23 Q. Now, the video oddly enough says 5:18. Was it 5:18 at
24 that time that you came in?

25 A. No, sir, it was probably around -- we probably entered

1 the building around 4:39. 4:38, 4:39.

2 Q. So right after you arrived?

3 A. Yes, sir.

4 Q. And at this point have other officers gone down behind
5 the back of the aisles?

6 A. Yes, sir, these officers are standing at the other
7 door, they are holding. As I come in -- you can't see them,
8 but as I come in and I hook to the right and come to the
9 front, they are actually coming down this side here. And
10 there is one of them there.

11 Q. Did anyone touch anything while y'all were in there?

12 A. No, sir.

13 Q. Okay. And then at that point when you leave the
14 building right around, would you be leaving at this point
15 too, from inside?

16 A. Yes, sir, once -- once we secured the scene and we
17 realized that the individual was not breathing, was not
18 alive, we did basically just lock down the store so that no
19 evidence was disturbed and we actually just started, you
20 know, getting things ready for the Rock Hill Police
21 Department, because they were arriving at the scene while we
22 were clearing the building.

23 Q. Okay. I believe it's right around 5:18 that it comes
24 in, is that correct?

25 A. Yeah, it was like 5:18 on the video.

1 Q. That's you there?

2 A. That's me there.

3 And if you look to the back of the store, you will see
4 those are the other two officers. I'm clearing these aisles
5 to make sure no one is hiding down, because if you see, they
6 are actually paying more attention to the back.

7 Q. Right.

8 A. So I'm making sure that there is nobody ducked down
9 behind any of these aisles, basically for my protection and
10 the protection of those officers behind.

11 Q. All right. So basically after you went to the back
12 there, you come up here front another minute. Is that one
13 of Rock Hill officers in blue uniform?

14 A. Yes, sir.

15 Q. At that point after this I believe the officers exited
16 the store, is that correct?

17 A. All of our guys did for a fact, I know.

18 Q. Okay.

19 A. I -- I can't speak for anybody else, but I know all of
20 our guys, the highway patrol that were there. And the
21 highway patrol may have never entered the store, but I know
22 one of their officers were there holding that side door.

23 Q. Okay.

24 A. But after that, yes, sir, we all left the store.

25 Q. Now, after clearing and getting out of the store, what

1 did you do next?

2 A. Basically by that time, like I said, some -- I think
3 one of our deputies started assisting with setting up police
4 tape.

5 I went to a Rock Hill city officer and begin telling
6 him what I did, because I wanted to make sure they knew
7 exactly what we did, and just briefed him on how we received
8 the call, you know, what we did when we arrived at the
9 scene.

10 Q. Okay. So you and your fellow officers would be
11 securing the scene at that point?

12 A. Yes, sir.

13 Q. And did you put up the crime scene tape all around the
14 building at that point?

15 A. Yes, sir.

16 Q. Okay. And would that then prevent other people from
17 going in that were not part of law enforcement?

18 A. Law enforcement and EMS because --

19 Q. Okay.

20 A. -- they came in as well.

21 Q. Okay. And so while you were still there did EMS
22 arrive?

23 A. They did arrive.

24 Q. Okay. And while you were there, did the forensic unit
25 also arrive?

1 A. I'm wanting to say yes, but I can't say for a hundred
2 percent. Normally it takes them a little while, because
3 they are on an on-call basis, so it could have been a few
4 minutes before I left, or it could have been few minutes
5 after I left.

6 Q. Okay. Do you recall around what time that you departed
7 the scene?

8 A. Probably around 5:15.

9 Q. Okay. And at that point did you finish your shift up?
10 When is your shift normally finished?

11 A. Normally we go off shift at 5:45.

12 Q. Okay.

13 A. So I finished up.

14 Q. Okay. Now, is the exterior of the store there at the
15 BP, is that well lit?

16 A. Yes, sir.

17 MR. THOMPSON: Thank you. No further questions.

18 MR. SWERLING: No questions.

19 THE COURT: Any questions?

20 MR. SNOW: No questions.

21 THE COURT: Thank you, sir. You may stand down,
22 sir.

23 MR. BRACKETT: I would ask that this witness be
24 excused, please.

25 THE COURT: Thank you for coming. You may be

1 excused.

2 MR. BRACKETT: The State would call Mr. Chris
3 Corn.

4 WILLIAM CHRISTOPHER CORN, having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BRACKETT:

7 Q. Sir, would you please state your full name and spell
8 your last name for the court reporter?

9 A. William Christopher Corn, C-O-R-N.

10 Q. All right, sir. Where do you live?

11 A. In Rock Hill.

12 Q. And how long have you lived in Rock Hill?

13 A. My whole life.

14 Q. Okay. And what business are you in?

15 A. I own the BP station.

16 Q. At the corner of Celanese and India Hook, the one that
17 we have been discussing in this trial?

18 A. Yes.

19 Q. How long have you owned it?

20 A. Since 1992.

21 Q. Who was Ned Marshall?

22 A. He was an employee and a friend.

23 Q. Okay. And how long had he worked for you?

24 A. Four or five years.

25 Q. Did he go by a nickname?

1 A. "Pie".

2 Q. "Pie"?

3 A. P-I-E. "Pie".

4 Q. Okay. Now, did the BP -- you are the owner and the
5 operator of the store, so are you familiar with the
6 management and the day-to-day operation of the store and so
7 forth?

8 A. Yes, I am there every day.

9 Q. Are you familiar with the security system that was in
10 place in the store in October of 2006?

11 A. Yes, sir.

12 Q. Are you the individual that purchased that and had it
13 installed?

14 A. Yes, sir.

15 Q. Can you give the jury a basic idea of how that system
16 worked? Just -- I know you are not an expert in audio and
17 visual security.

18 A. Right, it was a commercial grade VCR that had a
19 multi-plexer installed with it that enabled it to record
20 four cameras at one time.

21 Q. Is that how many you had installed in the interior?

22 A. I think that's correct. There is four. We have
23 replaced it since then, but I think there were only four at
24 that time.

25 Q. You had an opportunity to view the tapes that we have

1 been showing in court here today?

2 A. I have.

3 Q. All right, sir. Do you know of your own knowledge, was
4 the system running and functioning as it was designed to
5 function on October 10th, the morning, early morning hours,
6 of October 10th, 2006?

7 A. It was. I believe the time on the CCR was off thirty
8 minutes or so.

9 Q. Okay.

10 A. Compared to the time clock when Ned clocked in.

11 Q. Compared to the actual time that it was? The time was
12 slightly off on it?

13 A. Yes.

14 Q. Does the video that was captured on that device, was
15 it -- does it accurately depict your store as it was that
16 morning?

17 A. It does.

18 Q. Were you at the store that morning?

19 A. I was.

20 Q. What time did you go to the store?

21 A. I got there, I guess at about 4:45. I got the call at
22 4:30.

23 Q. Did you remain at the store throughout the time the
24 police were there?

25 A. I did.

1 Q. When Mr. Marshall, or any employee of yours, arrives at
2 the store, how do you know when they started working to pay
3 them?

4 A. They clock in on the time clock.

5 Q. And where is the time clock located?

6 A. Behind the counter.

7 Q. Where is the security tape located?

8 A. Right below where the time clock was located.

9 Q. So they are both in the same spot back behind?

10 A. Yes, sir.

11 Q. Did you have an opportunity to view the videotape
12 showing the early morning hours when Mr. Marshall arrived?

13 A. I did.

14 Q. And approximately what time was that?

15 A. That he arrived?

16 Q. Yes, sir. What time?

17 A. On the tape it shows three -- and I may be off a few
18 minutes, about 3:37. I think he actually clocked in at
19 3:04, if I remember correctly, which verifies the VCR time
20 being about thirty minutes off, plus or minus.

21 Q. I'm showing you what's been marked as State's Exhibit
22 31 for identification and I'll ask if you can identify what
23 that photograph depicts?

24 A. This is Ned's time card. It shows his name as being
25 "Pie", which is what he used at the store, but he clocked in

1 at 3:04 that morning.

2 Q. All right.

3 MR. BRACKETT: Your Honor, I would ask that this
4 State's Exhibit No. 31 be introduced into evidence at this
5 time.

6 MR. SWERLING: No objection.

7 MR. SNOW: No objection.

8 THE COURT: Admitted without objection.

9 BY MR. BRACKETT:

10 Q. Okay, sir. When you were at your store from 4:45
11 throughout the investigation, where were you located for the
12 majority of the time?

13 A. Outside the store.

14 Q. Were you allowed to enter the store at some point in
15 time or asked to enter the store?

16 A. I was.

17 Q. Okay. And about -- do you remember approximately what
18 time that was?

19 A. I don't know exactly. I want to say it was about
20 eleven o'clock.

21 Q. Okay. What was the -- what was going on in your store
22 at that time? What did you encounter as you entered the
23 store?

24 A. The forensic people were there doing their
25 investigation, and the detectives were there doing their

1 investigation.

2 Q. Okay.

3 A. And it was a crime scene.

4 Q. Where did you go when you entered the store?

5 A. They asked me to come behind the counter and see if I
6 could tell what was missing, if anything.

7 Q. And did you do that?

8 A. I did.

9 Q. What was -- where did you normally keep the money in
10 the store?

11 A. It was in a safe, except for a small amount of change,
12 which was usually between fifty dollars and a hundred
13 dollars worth of change that Ned would have used.

14 Q. Did he have access to the safe?

15 A. He did not.

16 Q. So he just had a small amount of change to operate out
17 of in case he needed it?

18 A. (Shaking head yes).

19 Q. Okay. What was the condition of the safe when you
20 arrived?

21 A. It did not appear to have been touched. Neither had
22 the cash drawers from the registers.

23 MR. SNOW: No objection, Your Honor.

24 BY MR. BRACKETT:

25 Q. Mr. Corn, I'm showing you what's been marked as State's

1 Exhibit 29 and State's Exhibit 30 and ask if you can
2 identify those photographs?

3 A. That's behind the counter of the store with the safe
4 closed as it was when I came in, and this is after the
5 detectives asked me to open the safe, and it did not appear
6 to have been tampered with.

7 MR. BRACKETT: Your Honor, I would ask to --
8 BY MR. BRACKETT:

9 Q. Do they accurately depict the condition of your store
10 at the time you entered there and after you opened the safe
11 to check on the contents?

12 A. Yes.

13 Q. Okay.

14 MR. BRACKETT: I would ask to introduce at this
15 time State's Exhibit 29 and State's Exhibit 30 into
16 evidence.

17 THE COURT: Admitted without objection.

18 BY MR. BRACKETT:

19 Q. You should have a little laser pointer. Can you see
20 that photograph --

21 A. I can.

22 Q. -- what's marked as State's 30?

23 Can you tell the jury what that is and basically orient
24 them for --

25 A. This is register one.

1 This is register two. Where you earlier saw Ned, that
2 would have been the register that he was using.

3 That was the stool that he was using.

4 This is the safe that we use here.

5 Right here on this shelf would have been the small
6 amount of change that was in a tray that he would have used
7 before, or had access to use, before the manager came, which
8 gave them access to the rest of the change that was in the
9 bottom of the safe.

10 Q. All right. When you entered, was the safe in that
11 closed condition?

12 A. It was.

13 Q. All right. Did you have to open it?

14 A. I did.

15 Q. Does other employees have access to the safe?

16 A. Yes.

17 Q. Did Mr. Marshall?

18 A. He did not.

19 Q. He could not have opened it for them?

20 A. No.

21 Q. Turning your attention to State's Exhibit No. 29, is
22 that the condition of the safe after it was opened?

23 A. It is.

24 Q. Now, specifically the purpose of this photograph, right
25 there where the 20 is, the yellow cone above it, the red

1 object, can you highlight that with your pointer?

2 A. Here?

3 Q. No, sir, to the left of that.

4 A. Here?

5 Q. Yes, sir, there. What is that?

6 A. Those are actually just extra coin trays like these.

7 These are penny coin trays, and you go through a lot of

8 pennies, but the coin tray that we are talking about that

9 would have had three or four rolls of quarters, three or

10 four rolls of dimes and nickles and pennies was right here.

11 Q. Okay. Now, did -- when you entered, were there -- were
12 the coins there?

13 A. Here?

14 Q. Yes, sir.

15 A. No.

16 Q. Did you see them in the store?

17 A. There may have been a roll or two on the opposite side
18 of the counter going at the door going toward the
19 apartments.

20 Q. Were you asked by the police to try to determine what,
21 if anything, was missing?

22 A. I was.

23 Q. And were you able to determine how much money was
24 missing from the store, approximately?

25 A. Yes.

1 Q. About how much did they get out of there?

2 A. If I remember correctly, it was less than five dollars.

3 Q. Thank you, Mr. Corn.

4 Please answer any questions that defense counsel would
5 have for you.

6 CROSS EXAMINATION BY MR. SWERLING:

7 Q. I just want to -- how were you able to determine the
8 money missing? How did you determine that?

9 A. There was a piece of paper that they counted at night
10 and that was left for the -- for Ned to check when he got
11 there to make sure that the money he was starting with was
12 what they left him with the night before.

13 Q. So whatever that number was on that piece of paper, are
14 you saying there was five dollars less than the amount that
15 was on that paper?

16 A. I'm saying there was approximately five dollars less
17 found after the suspect had dropped it going toward the door
18 and outside the door in the parking lot, which was where the
19 change was found.

20 Q. That's what I was trying to say. The paper had an
21 amount on it --

22 A. Yes.

23 Q. -- that was supposed to start that shift with?

24 A. Yes.

25 Q. And when you added up the money, it was five -- or

1 approximately five dollars less than would have been on that
2 piece of paper the starting amount, or am I not
3 understanding you?

4 A. Plus or minus, yes.

5 Q. Plus or minus?

6 A. Yes, sir.

7 Q. And you said that money was found outside, that was the
8 change?

9 A. Yes, rolled change.

10 Q. And where was that found?

11 A. If I'm not mistaken, there were a few rolls in the
12 store, and the rest was on the outside in the parking lot on
13 the concrete just outside the door headed toward the
14 apartments.

15 Q. And do you know -- just going back. Did that amount
16 add up to that amount that you were referring to, the amount
17 of coin?

18 A. Yes.

19 Q. Thank you.

20 MR. SNOW: No questions, Your Honor.

21 THE COURT: Thank you, sir. You can stand down.

22 MR. BRACKETT: I ask that this witness be excused.

23 THE COURT: Thank you for coming, sir. You may be
24 excused.

25 MR. BRACKETT: The State calls Detective Dave

1 Hanoka.

2 DETECTIVE DAVE HANOKA, having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BRACKETT:

5 Q. Good morning, Detective Hanoka. How are you doing?

6 A. Fine.

7 Q. Would you please state your full name and spell your
8 last name for the court reporter?

9 A. Sure, it's David Joseph Hanoka, H-A-N-O-K-A.

10 Q. And where are you employed, sir?

11 A. With the Rock Hill Police Department.

12 Q. What do you do for the Rock Hill Police Department?

13 A. I'm a detective.

14 Q. How long have you been a police officer?

15 A. Eighteen years.

16 Q. How long have you been a detective?

17 A. A little over ten.

18 Q. What are your duties and responsibilities generally as
19 a detective?

20 A. Day in day out I do a lot of fraud work.

21 Q. Fraud?

22 A. Fraud investigations.

23 Q. Now, do detectives also receive training in other
24 specialized area to assist in investigations?

25 A. Yes. I'm also trained to do some video enhancement

1 work. I'm pretty sure that's where we are going, so
2 that's --

3 Q. Among other things?

4 A. Yeah, among other things that we do.

5 We also have training in some of the other types of
6 investigations that we do, but as far as specialized stuff,
7 I guess the video enhancement stuff is one thing I do.

8 Q. Okay. And do you have equipment to assist you with
9 dealing with videotaped evidence and images, movie images?

10 A. Yes, we do. It's a computer system that we bought
11 through a company known as Intergraph. They have software
12 that's designed to work in conjunction with Adobe Premier
13 Pro, which is video editing, I guess, the best way to
14 explain it. The way they describe it is it's what Hollywood
15 would use to edit video, I guess.

16 Q. Okay. But as a police officer and as a detective, you
17 guys don't edit and --

18 A. No.

19 Q. -- make movies.

20 A. No.

21 Q. You take the evidence as it comes to you?

22 A. No, absolutely not.

23 Q. Okay. Do you -- did you have an opportunity in the
24 investigation into the murder of Ned Marshall at the BP on
25 October the 10th of 2006, to receive some video evidence?

1 A. I did.

2 Q. And what were you asked to do with that?

3 A. Well, they told me it was multiplexed, like a VHS tape.

4 Q. Stop right there. You used a word I don't know.

5 Multiplexed, what does that mean?

6 A. Well, multiplexed essentially is when a video system is
7 actually recording multiple cameras at the same time and
8 they are not recording an individual video camera, one frame
9 straight through or one camera view straight through. It's
10 actually flipping from camera to camera to camera and you
11 are getting, I guess, little video still shots in time, but
12 very, very quickly.

13 Q. Okay. So it's cycling through four cameras constantly?

14 A. Exactly.

15 Q. Image, image, image, image, and then back and forth?

16 A. That's correct.

17 Q. Okay. So it's not full motion video but --

18 A. Correct, it's not full motion. You don't have a
19 recording of just one camera and what you see from that
20 camera the whole time.

21 Q. Okay.

22 A. It's flipping from camera to camera to camera.

23 Q. Is this a specialized piece of equipment that can do
24 this, filming four different cameras onto one videotape?

25 A. Are you talking about the actual VHS that would do it?

1 Q. Yes.

2 A. Yes.

3 Q. The security system tape?

4 A. Yes.

5 Q. So if I were to take a video like that that was
6 recorded on a security camera and put it in my home video
7 player and push play --

8 A. You are going to see a barrage of video flipping from
9 camera to camera to camera, just look like a mess.

10 Q. Okay.

11 A. Yeah, it's not something that you can actually see.
12 Depending on the recording speed, your eyes might not even
13 pick up how many cameras are there.

14 Q. So you have to have the specialized equipment to do
15 that?

16 A. Yes, the computer we use will actually allow us to
17 capture the video, and then we can actually separate each
18 image from each camera and line all those images back up and
19 turn it into a streaming video from one camera.

20 Q. All right. Now, did you have occasion to receive --
21 I'm going to show you what's been marked as State's Exhibit
22 No. 32, which is a VHS tape that has Monday written on the
23 spine, and there is some information on the envelope as
24 well. I would ask if you would review that?

25 A. Yes. Yes, it was given to me.

1 Q. Okay. And when did you receive that?

2 A. The first time I received it would have been October
3 10th. It looks like it was -- well, I can't really tell who
4 it's from, but they assigned it to me and --

5 Q. Was it recovered first by Detective Mike Williams?

6 A. Yes, it was.

7 Q. Okay.

8 A. And then I actually dropped it back into evidence
9 shortly after I received it.

10 Q. What were you asked to do with that video?

11 A. I was asked to capture the video originally on the
12 computer system and then to separate all of the cameras that
13 were involved with the video.

14 Q. All right.

15 A. And that was the main thing they wanted me to do.

16 Q. Is that what the Intergraph machine you described
17 earlier, is that what that does?

18 A. Yes, you can actually hook up a VCR to the computer and
19 the computer will capture those images. And then through
20 the direction of the software programming you can, you know,
21 tell the computer that you want to separate these images.

22 Q. All right, sir. Does the process of -- when you say
23 separate these images, what are you ultimately doing?

24 A. Well, ultimately what you are doing is the computer
25 actually slows everything down for you frame by frame and

1 you can see each image, if you will, from each individual
2 camera. The computer then asks you if that frame belongs
3 with this particular camera, okay.

4 So let's say we knew there was, you know, ten cameras,
5 we should ultimately have ten individual frames that we are
6 asked to look at initially, and then said, okay, these are
7 all different, so they must be from different cameras. And
8 then everything that follows that should match the
9 particular frame. You should be able to tell which camera
10 it's from.

11 Q. How many different camera angles -- let's just cut to
12 the chase.

13 A. Sure.

14 Q. How many different camera angles did that video depict?

15 A. Four.

16 Q. All right. And were you able to separate each of those
17 camera angles out into distinct video images?

18 A. Yes.

19 Q. In the course of doing that, did you change, alter, or
20 do anything in any way, shape, or form to make what was
21 displayed on those images different?

22 A. Oh, no, you can't. I don't know how.

23 Q. Okay.

24 A. All you are doing is taking what the computer actually
25 captured and working with that data. There is no way to add

1 anything to it.

2 Q. So the images that we have seen in this courtroom from
3 that video are, in fact, what was captured by the security
4 camera?

5 A. Yes, absolutely.

6 Q. And you are just the technician who managed to break it
7 down so we can see that?

8 A. Right. Yeah, the one video that you actually showed
9 that was just the straight on from one camera angle, I think
10 you might have actually shown a different angle from behind
11 the counter, and then one might have been from the back of
12 the store. That's typically what you are going to see.
13 Originally it's just individual frames, and then we will
14 take those individual frames and line them up so that you
15 can actually see that one camera as a video stream.

16 Q. Okay. And there were ultimately four different camera
17 angles with four different video streams?

18 A. Yes.

19 Q. Did you view all of those in their entirety on the
20 video?

21 A. I did.

22 Q. Okay. Was there anything -- in the process of breaking
23 this down and then recording them as four separate video
24 streams, was there anything in that process that led you to
25 believe that the system wasn't working, the security

1 security at the BP, or that there was any kind of problem
2 that it was having capturing images that were being recorded
3 at the store that day?

4 A. No. No, it was working fine.

5 Q. Okay. Everything is sequential and in common sense
6 order?

7 A. Yes.

8 MR. BRACKETT: Your Honor, at this time I would
9 move State's Exhibit 32, which is the original security
10 camera video that is un-multiplexed, but it contains the raw
11 video footage that we have seen. I would move that into
12 evidence at this time. I believe Mr. Swerling had agreed to
13 allow me to do sort of out of turn because of Mr. Hanoka's
14 training schedule yesterday, so we I think we completed
15 the --

16 MR. SWERLING: Judge, can I just ask the solicitor
17 one question?

18 THE COURT: Sure.

19 (Off the record)

20 (Back on the record)

21 MR. SWERLING: No objection.

22 MR. SNOW: No objection, Your Honor.

23 THE COURT: Admitted without objection.

24 MR. BRACKETT: All right. Just a moment, Your
25 Honor.

1 (Off the record)

2 (Back on the record)

3 BY MR. BRACKETT:

4 Q. Now, as part of your -- does the equipment that you are
5 referring to, the Intergraph, also allow you to stop the
6 video and freeze the image, like your video recorder at
7 home, to pause it?

8 A. Yes. You are actually working with a timeline of
9 video. So at any point you wanted to stop it, you could
10 actually print pictures from the timeline or save particular
11 sections of it.

12 Q. Okay. And you have a printer hooked up to your -- to
13 the equipment?

14 A. Yes.

15 Q. Okay. And were you able to do that in this case? Were
16 you asked to stop the images and print out single images
17 from the video?

18 A. Yeah, there were stuff that I had done that they saw
19 they wanted pictures printed out from, we could do that,
20 yes.

21 Q. Okay. I'm showing you what's been marked as State's
22 Exhibit 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28.
23 Would you take a look at those --

24 A. Sure.

25 Q. -- and tell me do you recognize that as your handiwork?

1 A. Yes, other than some of the magnified images that were
2 printed out, the regular store images. I don't recall right
3 off the top of my head doing any of the magnified images,
4 but the rest of the store images I do know.

5 Q. Do the magnified images appear to be accurate
6 magnifications of still images that were pulled from the
7 video?

8 A. Yes, absolutely.

9 Q. Those are accurate depictions of what the video
10 depicts?

11 A. Yes.

12 Q. Okay.

13 A. I'm sorry.

14 Q. Do they appear to be altered or tampered in any way
15 with the video that you viewed?

16 A. Oh, no, no.

17 MR. BRACKETT: Your Honor, at this time I would
18 offer into evidence State's Exhibits 17 through 28.

19 MR. SWERLING: No objection.

20 MR. SNOW: No objection.

21 THE COURT: Admitted without objection.

22 BY MR. BRACKETT:

23 Q. Thank you very much, Detective Hanoka.

24 Please answer any questions counsel for the defense may
25 have.

1 MR. SWERLING: No questions, Your Honor.

2 MR. SNOW: None.

3 THE COURT: Thank you, sir. You may stand down,
4 sir.

5 MR. BRACKETT: I ask that this witness be excused.

6 THE COURT: No objection?

7 Thank you for coming, sir. You may be excused, if
8 you would.

9 THE WITNESS: Thank you.

10 MR. BRACKETT: The State would call Lieutenant
11 Brian Rudick.

12 LIEUTENANT BRIAN RUDICK, having been first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BRACKETT:

15 Q. Sir, would you please state your full name and spell
16 your last name for the court reporter?

17 A. Brian Ray Rudick, R-U-D-I-C-K.

18 Q. Where are you employed, sir?

19 A. I'm employed with the Hartsville, South Carolina,
20 police department.

21 Q. And what do you do for them?

22 A. I am currently the patrol division commander.

23 Q. Okay. You are a lieutenant there, is that correct?

24 A. Yes, sir.

25 Q. How long have you been in law enforcement, Lieutenant

1 Rudick?

2 A. Fourteen and a half years.

3 Q. You said Hartsville?

4 A. Yes, sir.

5 Q. Where is that located, for folks who might not know?

6 A. It's in the PeeDee Region about thirty miles from

7 Florence.

8 Q. About how far from -- did you drive from there this
9 morning?

10 A. Yes, sir.

11 Q. About how long did it take you?

12 A. Hour and forty-five minutes, give or take.

13 Q. Now, you said that you have been in law enforcement
14 about fourteen years?

15 A. Yes, sir, fourteen and a half.

16 Q. In what capacity were you serving in the Hartsville
17 Police Department back in October of 2006?

18 A. I was the detective division sergeant.

19 Q. All right, sir.

20 And what were your responsibilities?

21 A. Unlike larger agencies, we are a fairly small agency.
22 We had six detectives at the time and we were tasked with
23 investigating whatever cases came up at the time.

24 I was the direct supervisor over four other detectives,
25 and you name the case, we worked it. I mean, we weren't

1 assigned to robbery or violent crime. We just -- whoever
2 was on call and caught the case worked it.

3 Q. So you were involved in generally and responsible for
4 supervising a variety of different investigations that were
5 being conducted by different detectives?

6 A. Yes, sir.

7 Q. All right, sir.

8 Are you familiar with the investigation into a
9 complaint of a stolen Buick Century Limited, South Carolina
10 license 366 PNE?

11 A. Yes, sir.

12 Q. All right, sir.

13 And when did that complaint come into the Hartsville
14 Police Department?

15 A. The report was filed on October 9th, 2006.

16 Q. Who was the individual who called in the report?

17 A. I believe it was Mr. Grantham, who was the owner of the
18 vehicle's son.

19 Q. Okay. Now, did you -- what did the Hartsville Police
20 Department do in response, or what do you typically do in
21 response to somebody calling and saying "my car has been
22 stolen"? How do things unfold from there if you are a
23 police officer?

24 A. When the initial call came in, one of the officers that
25 was working street that day was dispatched to the location,

1 which was a business in the city of Hartsville. The officer
2 took an incident report, got all the pertinent information,
3 as far as the tag, VIN number, anything along those lines.
4 We have the computerized system which we write our incident
5 reports on. He filed an incident report on that. The
6 vehicle was subsequently entered into NCIC, which is the
7 National Crime Information Center computer system that we
8 enter stolen or missing property in. And then a local, what
9 we call a BOLO, would be on the lookout for, was issued for
10 this vehicle in the local area.

11 Q. All right, sir.

12 Now, I guess in a stolen car cases, is there much more
13 than you can do than that?

14 A. Not a whole lot. The particular report indicated that
15 he had left the keys in the vehicle, so we really had no
16 indication as to who might have taken it. There was no
17 video anywhere in the area, no witnesses that we could find,
18 so at that time -- other than the BOLO that was dispatched
19 to us and the Darlington County Sheriff's Office to be on
20 the lookout for the car, that's about all we could do at the
21 time.

22 Q. All right, sir.

23 So that investigation is just sort of hanging out there
24 until you get fresh information or somebody sees the car?

25 A. Yes, sir.

1 Q. Now, turning your attention to the early morning hours
2 of October the 10th, 2006, did the Hartsville Police
3 Department receive information regarding a shooting at the
4 Farmington Apartments?

5 A. Yes, sir, we did.

6 Q. All right. What are the Farmington Apartments?

7 A. It's a multi-unit apartment complex located in
8 Hartsville.

9 Q. And about how many people live there? How big a place
10 is it?

11 A. It's six buildings with probably ten apartments in each
12 building. Sixty families. Probably several hundred
13 residents.

14 Q. How did the news of this shooting arrive to the ears of
15 the Hartsville Police Department? How did you guys learn of
16 this?

17 A. We were actually notified by one of the ER nurses from
18 Carolina Pines Regional Medical Center that they had someone
19 in the emergency room with a gunshot wound.

20 Q. All right. Is it standard protocol for them to report
21 gunshot wounds to the police?

22 A. Yes, it is.

23 Q. And as a result of that information coming to your
24 attention, what did the Hartsville Police Department do to
25 respond?

1 A. We initially sent one of the, once again, a patrol
2 officer, a uniformed marked car to the hospital. They
3 started the initial investigation. Once they determined
4 that it was in our jurisdiction where the incident occurred,
5 purportedly occurred, they notified our staff duty officer,
6 which is one of the lieutenants, or above, up to and
7 including the chief, that take a rotational call for
8 incidents along these lines. That would have been
9 Lieutenant Cusack. And at the time he had requested that
10 dispatch send our on-call detective. This was six o'clock
11 in the morning. Our on-call detectives normally don't sign
12 on until eight, so he asked that the on-call detective be
13 assigned and dispatched to the hospital at that time to
14 further the investigation.

15 Q. And was that done?

16 A. Yes, it was.

17 Q. All right. And was a statement taken from the victim,
18 the victim in that case?

19 A. Yes, it was.

20 Q. Who was the victim?

21 A. Mr. Dontavious Mack.

22 Q. All right. And briefly what was his story?

23 A. His story was that him and his brother Davorius were at
24 the Farmington Apartments visiting either a friend or a
25 family member. As they were walking, leaving the apartment

1 complex going to their vehicle, a white vehicle -- depending
2 on which interview you read, their description varied
3 slightly, but it was a white vehicle, four-door, dark tinted
4 window, pulled up in the parking lot, windows come down,
5 guns produced and they started getting -- receiving fire,
6 gunshots.

7 Q. Is this sort of allegation on the hierarchy of serious
8 criminal activity in the city of Hartsville? Is this a
9 pretty serious situation?

10 A. It's very significant, yes.

11 Q. So this would be a significant criminal event --

12 A. Yes.

13 Q. -- in the city of Hartsville?

14 A. Yes, sir.

15 Q. What did you guys do as a result of his story?

16 A. Oh, obviously we already had the investigator that came
17 out that spoke to him at the hospital.

18 The staff duty officer, Lieutenant Cusack, because of
19 the significance and the severity of the case, he came out
20 as well. He also had three or four, depending on the shift,
21 officers that were working. The night shift, as well as the
22 rotational day shift, came on at six a.m., so they were
23 there as well. We sent quite a few officers to the area
24 where the crime allegedly occurred to look for any kind of
25 physical evidence, any witnesses outside of Mr. Mack.

1 Q. At the hospital did the Hartsville Police Department
2 obtain a photograph of Mr. Mack's back?

3 A. Yes.

4 Q. All right. I'm showing you what's been marked as
5 State's Exhibit 15 and ask if you can identify that?

6 A. Yes, sir, that does appear to be a picture of the back
7 of Mr. Dontavious Mack.

8 Q. Does that show a bullet hole in the back?

9 A. It appears to, yes, sir.

10 Q. All right, sir.

11 MR. BRACKETT: I ask that State's Exhibit 15 be
12 introduced into evidence.

13 MR. SWERLING: No objection.

14 MR. SNOW: No objection.

15 THE COURT: All right.

16 THE COURT: Admitted without objection.

17 BY MR. BRACKETT:

18 Q. Now, you can't really see it too well, the location of
19 the bullet hole, but this was taken by your detectives?

20 A. Yes, it was.

21 Q. Okay. Approximately where is the bullet hole?

22 A. Approximately there.

23 Q. Okay. Is it more visible on the actual photograph?

24 A. Yes, sir, it is.

25 Q. In the ensuing investigation at the Farmington

1 Apartments were you able to -- were you able to uncover any
2 evidence of any sort of statements, physical evidence of
3 anything, any nature whatsoever, that corroborated the
4 claims of Mr. Mack as to having been shot at the Farmington
5 Apartments?

6 A. No, sir. I was not physically on the scene.
7 Lieutenant Cusack, Detective Cooke, and some of the patrol
8 officers were. They searched the area. From the
9 description of what they said happened, they assumed there
10 would be shell casings on the ground. They were unable to
11 locate any shell casings. Spoke to several residents that
12 lived in the apartment complex. No one heard any gunshots.
13 And, in fact, we had an officer who lived in those apartment
14 complex, in the same building where they said this occurred,
15 or at the edge of the building where they said this
16 occurred, who was up. He was going to finish his degree at
17 Coker College, was up late working on a term paper, had his
18 window up. It was a warm October day, or evening. He heard
19 no gunshots. So that was passed onto us that -- the
20 information that the Macks were giving us and the physical
21 evidence was not matching up at the time.

22 Q. Did this arouse the suspicions of your department?

23 A. It most certainly did.

24 Q. Okay. Now, were interviews done of Mr. Dontavious
25 Mack, written interviews taken of him and his brother

1 Davorius?

2 A. Yes.

3 Q. And they both claimed to have been there at this time,
4 is that correct?

5 A. Yes.

6 Q. Now, who are Johnetta and Tiyone Evans?

7 A. Two residents from the city of Hartsville.

8 Q. Are you familiar with them?

9 A. I am.

10 Q. Do you know them personally?

11 A. Yes.

12 Q. All right, sir.

13 Did the city of Hartsville Police Department receive
14 any information from Johnetta and Tiyone Evans as regards to
15 the shooting of Mr. Mack, or information related to how he
16 might have gotten shot?

17 A. Yes, we did.

18 Q. And how did that information come to your attention?

19 A. That came to my attention through Officer McCall, one
20 of our patrol officers who is now the shift supervisor. She
21 has a very good working relationship with a lot of members
22 of the community. Ms. Evans had pulled her aside just in
23 contact on the street.

24 MR. SWERLING: Judge, I'm going to have to object
25 to anything that the Evans have to say. I haven't objected

1 so far as to what the officers were --

2 BY MR. BRACKETT:

3 Q. Without specifically relating to content of what Ms.
4 Evans said, did Ms. Evans have a conversation with Officer
5 McCall, did you say?

6 A. McCall. Yes, she did.

7 Q. Okay. And did Ms. McCall relate the gist of that
8 conversation, the substance of it to you?

9 A. Yes, she did.

10 Q. As a result of receiving the information through
11 Officer McCall, this information from Ms. Evans, what did
12 you do?

13 A. I made a phone call to the York County Sheriff's Office
14 and inquired whether they had a robbery at a gas station
15 within the past twenty-four hours.

16 Q. And what did they tell you?

17 A. The answer I got was they had not, but the Rock Hill
18 city --

19 MR. SWERLING: I have to object to that, Your
20 Honor. It's hearsay.

21 MR. BRACKETT: Well, this isn't really going to
22 the proof of the matter asserted. I think it's already been
23 fairly well thrashed out that this was what happened, but
24 this is really to show why he took the action that he
25 subsequently took, not for the truth of the matter asserted,

1 although it's clear from Deputy Wright's testimony moments
2 ago that the sheriff's office was clearly aware of a robbery
3 at the BP that morning.

4 MR. SWERLING: Judge, I'm not objecting to that.
5 What I'm objecting to it's just going beyond the fact.
6 It's -- you know, as far as the link -- establishing the
7 links, I don't have a problem with that, as far as their
8 respective investigation. I just want to make sure my
9 objection -- I'm not waiving any objection to any broader
10 conversation.

11 THE COURT: Well, I think he can -- then, as I
12 understand it, your objection is not that he would say that
13 there had been a robbery, but anything going further beyond
14 that?

15 MR. SWERLING: Right.

16 THE COURT: All right.

17 BY MR. BRACKETT:

18 Q. When you said they hadn't. You said the York County
19 Sheriff's Office hadn't had a robbery?

20 A. Yes.

21 Q. You mean within their jurisdiction?

22 A. Yes, sir.

23 Q. And that's the unincorporated areas of York County?

24 A. Yes, sir.

25 Q. But did they refer you to another agency?

1 A. They referred me to the Rock Hill Police Department.

2 Q. All right, sir.

3 And as a result of what the sheriff's office folks told
4 you, what did you do next?

5 A. I made a phone call, was -- spoke to some secretary who
6 said I needed to speak to the captain. I was put forth to
7 his voicemail and left a short brief message indicating that
8 I might have some information of interests. I left my cell
9 phone number and then subsequently a few minutes -- well,
10 within the next hour I got a phone call back from Captain
11 Thickens and explained to him what I had learned.

12 Q. Okay. Now, as a result of that, did you begin working
13 with the Rock Hill Police Department in Hartsville pursuant
14 to their investigation of the shooting at the BP?

15 A. Yes, sir.

16 Q. Okay. And did anybody from Rock Hill go to Hartsville?

17 A. Yes, sir.

18 Q. And who came to Hartsville?

19 A. It was quite a few. Detective Haire.

20 Q. Detective Bruce Haire, that's sitting here behind Mr.
21 Thompson?

22 A. Yes, sir.

23 Q. Okay.

24 A. Captain Thickens.

25 I remember Agent Williams with the crime scene unit.

1 There was --

2 Q. Mike Williams?

3 A. Yes.

4 Q. From the Forensic Services Unit?

5 A. There were two or three other detectives. I don't
6 recall their names at the time.

7 Q. Okay. And what was your role at this point? Rock
8 Hill -- the Rock Hill Police Department is at this time
9 investigating what kind of crime?

10 A. Homicide.

11 Q. A homicide?

12 A. Yes, sir.

13 Q. And you -- your charges -- what was your role in
14 assisting Rock Hill at that point in time?

15 A. We became a supportive agency. With permission from
16 our chief, we gave them access to all of our assets to
17 continue their investigation, whatever they needed.

18 Q. Okay. And did you help them find people in Rock
19 Hill -- I mean in Hartsville and do that sort of thing, help
20 them?

21 A. Yes, we did.

22 Q. Including Davorius and Dontavious Mack?

23 A. Yes, sir.

24 Q. Okay. Now, coming back to the car caper, let's go back
25 to that.

1 A. Yes, sir.

2 Q. Did at some point you guys get a break in that case?

3 A. Yes, sir.

4 Q. What form did that take?

5 A. On December -- excuse me, on October 10th, the very
6 next day after the reported theft --

7 Q. Was that just reported on the 9th?

8 A. Yes, sir.

9 Q. On the 10th you receive a --

10 A. We received a phone call right after lunch, I believe.
11 I'm not a hundred percent on the time frame, but it was in
12 the afternoon hours. A family member thought they were
13 behind the stolen vehicle. It turned out instead of calling
14 911, they called some other family members to try to get the
15 tag to confirm that this was grandma's car. And by the time
16 the car had basically ditched them at the Carolina Pines
17 Regional Medical Center and had parked. They located the
18 car. Visual confirmation, yeah, that's grandma's car, and
19 then they called us and our patrol units responded.

20 Q. To the medical center?

21 A. Yes, sir.

22 Q. Was anybody in the car at the time?

23 A. No, sir. When our officers arrived, the car was
24 sitting parked in the parking lot.

25 Q. So no one is there?

1 A. No, sir.

2 Q. What did you do after locating the car? Describe what
3 took place on that.

4 A. Officer Gause, who was one of the responding officers,
5 called me and informed me that they had recovered -- the
6 family had recovered the car and asked me to come process
7 the car for any latent prints or evidence in the car.

8 Q. Process it, how do you go about doing that?

9 A. It's sort of a systematic way of looking into a car.
10 When I arrived on the scene, the only people there were two
11 family members, my officer, and an intern.

12 The first thing I did is ask them if anybody had
13 touched the car, worried about contamination of any kind of
14 evidence, any disbursement of their fingerprints or anything
15 on the car. They was informed that no one had touched the
16 car, other than, you know, kind of peaking in the windows,
17 but no one had actually physically touched the car.

18 At that time I asked everyone to step away from the
19 car, which is a typical process that I do, to get out of my
20 way so I can do my job, basically.

21 Q. Okay. And did you process it there at the parking lot
22 of the hospital?

23 A. Yes, I did.

24 Q. Okay. And describe the steps that you took to process
25 it. What did you actually have to do?

1 A. I start with the initial visual inspection of the
2 vehicle. I walked around it, once again not touching it. I
3 used a light source for me, which was a flashlight. Can
4 look at -- using different angles of light sometimes you can
5 see latent prints on different surfaces without even having
6 to do anything to them. Just a physical examination of the
7 vehicle.

8 After I physically examined the vehicle and looked at
9 some primary locations on the car that generally people
10 would leave a fingerprint, I used a black fingerprint powder
11 and lightly dusted those common areas and was able to
12 develop several latent prints on the surfaces.

13 Q. On the exterior?

14 A. On the exterior of the vehicle.

15 Q. Okay.

16 MR. SWERLING: No objection, Your Honor.

17 MR. SNOW: No objection.

18 BY MR. BRACKETT:

19 Q. I'm showing you what's been marked as State's Exhibit
20 13, 14 and 16, sir. If you would take a look at those and
21 identify them for us?

22 A. This is the 2002 Buick Century that had been reported
23 stolen, and this is the location of where it was found
24 parked and where I processed it.

25 Q. Okay.

1 MR. BRACKETT: I ask that State's 13, 14 and 16 be
2 admitted into evidence.

3 THE COURT: Admitted without objection.

4 BY MR. BRACKETT:

5 Q. Let's start with State's 16, if we could.

6 Is that the photograph of the vehicle as it was parked
7 there at the hospital?

8 A. Yes, sir, it is.

9 Q. Okay. Showing the license plate number?

10 A. Yes, sir.

11 Q. And State's 13, again?

12 A. Just another view of the vehicle.

13 Q. And finally State's 14. Can you see any of the powder
14 on the side of the car?

15 A. Yes, sir, I can.

16 Q. Tell the jury so they can see it.

17 A. There is fingerprint -- these black marks right here
18 are actually the dust, the latent fingerprint dust.

19 Q. Okay.

20 A. Right here on the top of the door frame and right here.

21 Q. Now, when you find a fingerprint --

22 MR. BRACKETT: Thank you, Madam Clerk.

23 BY MR. BRACKETT:

24 Q. When you find a fingerprint on a vehicle, what do you
25 do with it?

1 A. Generally once we have developed it to the point where
2 it can be seen by the naked eye, we photograph it.

3 Q. Okay.

4 A. After it has been photographed and documented on the
5 surface, we use a clear lifting tape --

6 Q. Okay.

7 A. -- which is very similar in composition to just regular
8 packaging tape. You lay the -- very carefully lay the tape
9 over latent impression.

10 Q. Uh-huh.

11 A. And once it sits for a few seconds you can peel it up
12 very slowly and it will physically peel the powder and the
13 ridge lines and the latent print with it. It's now adhered
14 to the tape.

15 Q. What do you do with the tape at that point?

16 A. At that time I take a 3 X 5 index card and very
17 carefully lay the tape on the unlined or white side of the
18 card --

19 Q. Okay.

20 A. -- making the print visible.

21 Q. Did you do that with the prints that you found in this
22 case?

23 A. I did so, sir.

24 Q. I'm showing you what's been marked as State's Exhibit
25 No. 33, a yellow envelope that contains a number of items

1 and ask if you can identify those items?

2 A. Yes, sir, these are the 3 X 5 index cards that I used
3 to lift the latent -- to put the tape on after I lifted the
4 latent print.

5 Q. Okay. Is that your handwriting on them and so forth?

6 A. Yes, sir.

7 Q. What did you do with these prints after you lifted
8 them?

9 A. After they were lifted, took them to the Hartsville
10 Police Department, detective division, and I gave them to my
11 evidence officer, who placed them subsequently into our
12 evidence vault.

13 Q. Were they ultimately turned over to the Rock Hill
14 Police Department FSU investigator Mike Williams?

15 A. Yes, they were. Once we started connecting the cases
16 and we realized that it might be pertinent to their
17 investigation, we turned those over to them.

18 Q. Okay.

19 MR. BRACKETT: Your Honor, at this time I would
20 offer State's Exhibit 33 into evidence.

21 MR. SWERLING: No objection.

22 MR. SNOW: No objection.

23 THE COURT: Admitted without objection.

24 MR. BRACKETT: Court's indulgence for just one
25 minute.

1 THE COURT: Yes, sir.

2 (Off the record)

3 (Back on the record)

4 BY MR. BRACKETT:

5 Q. Lieutenant Rudick, at some point did the Hartsville
6 Police Department take Dontavious and Davorius Mack into
7 custody?

8 A. The Darlington County Sheriff's Office actually took
9 Dontavious Mack into custody on an unrelated case.

10 Q. And were -- at some point in time did Davorius Mack --
11 or not at some point in time. On October 27th did Davorius
12 Mack return with Detective Haire to Hartsville to assist the
13 Rock Hill Police Department in locating people?

14 A. Yes, sir, he did.

15 Q. Did you help with that as well driving around?

16 A. Yes, sir, I did.

17 Q. Particularly were you present when they went to look
18 for Mr. Reed Allen?

19 A. Yes, sir, I was.

20 Q. All right, sir.

21 Backing up, I forgot one thing. In the processing of
22 the car, the Buick Century, you described in detail the
23 lifting of the prints. Did you also make a search of the
24 interior of the car?

25 A. Yes, sir, I did.

1 Q. Okay. And what did you find, if anything, inside the
2 car?

3 A. The standard protocol for dealing with a vehicle is
4 wear latex gloves as not to contaminate or cross-contaminate
5 any evidence.

6 We don't actually sit in the driver's seat. We would
7 basically just lean in and examine what we could.

8 When I examined the Buick, I usually start from the
9 door that I opened and worked my way to the interior of the
10 car. Above the driver's window I found a South Carolina ID
11 belonging to Dontavious Mack. It was pinned in between the
12 weather stripping and the top of the roof.

13 In the ashtray we located several cigarette butts in
14 ashes. In speaking to the victim's son, who was actually
15 the complainant in this case, he told us his mother doesn't
16 smoke, so we collected those as possible evidence.

17 Also a straw was located in the vehicle, and what we
18 believe to be crack cocaine was also in the ashtray and that
19 was collected as evidence.

20 Q. Okay. Lieutenant Rudick, thank you very much. Please
21 answer any questions that counsel for either defendant may
22 have.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION BY MR. SWERLING:

25 Q. Lieutenant Rudick, how are you doing?

1 A. Fine, sir.

2 Q. So in this car there was a ID from Dontavious Mack,
3 correct?

4 A. Yes, sir.

5 Q. And some what looked to be a substance of crack?

6 A. Yes, sir.

7 Q. Was that ever tested and verified to be crack?

8 A. I do not know, sir. I know it was turned over -- I
9 believe it was turned over to the Rock Hill Police
10 Department subsequent to their investigation. Whether it
11 was tested or not I could not tell you.

12 Q. Let me go back to the -- the incident in Rock Hill
13 happened on October 10th, correct?

14 A. Yes, sir.

15 Q. And do you remember what day of the week, either the
16 9th or the 10th, were?

17 A. The 10th was a Tuesday, I believe.

18 Q. And the Hartsville Police Department received this
19 report of a theft of that vehicle that's in question on
20 October 9th, correct?

21 A. Yes, sir.

22 Q. And purportedly it was taken on October 9th, according
23 to the incident report, at about 6:30, is that correct?

24 A. Yes, sir.

25 Q. So that's a day before this incident?

1 A. Yes, sir.

2 Q. And that's the Grantham vehicle?

3 A. Yes, sir.

4 Q. Now, what I understood is as a result of the
5 investigation and discussing with several people, you went
6 to the hospital and Dontavious Mack was the one at the
7 hospital?

8 A. Yes, sir.

9 Q. Correct.

10 And he gave this fairly elaborate story about where he
11 was shot, is that correct?

12 A. Yes, sir.

13 Q. And that was at the Farmington Apartments. Those are
14 in Hartsville?

15 A. Yes, sir.

16 Q. And he said, did he not, that they were -- he and his
17 brother Davorius were visiting their cousin? He was giving
18 some specifics?

19 A. Yes, sir.

20 Q. Not only just a broad general statement that there was
21 a shooting there, but he actually was being very specific?

22 A. Yes, sir. According to the incident report, yes.

23 Q. They went to -- they were going to see their cousin
24 Monray Perron in apartment [REDACTED].

25 A. Yes, sir.

1 Q. And that he and his brother were walking outside to get
2 in the car and a white Buick La Sabre pulled through the
3 parking lot and fired eight to nine shots, correct?

4 A. Yes, sir, that was his statement.

5 Q. That's how he got shot?

6 A. Yes, sir.

7 Q. And he also went further on to describe the Buick as a
8 newer model bearing a University of South Carolina license
9 plate on the rear of the vehicle, correct?

10 A. Yes, sir.

11 Q. Did not know who shot him nor who drove that vehicle.

12 And based on that, you went out to the apartments and,
13 of course, didn't find any evidence that there had been a
14 shooting there, is that correct?

15 A. Yes, that's correct.

16 Q. Now, so in addition to what he had told you, you
17 interviewed -- or Davorius Mack was brought back to that
18 incident location as well?

19 A. Yes, sir.

20 Q. And he was basically giving the exact same version of
21 what happened that Dontavious Mack had given, correct?

22 A. Yes, sir.

23 Q. And he even had it down to where they were standing
24 when the white Buick drove up?

25 A. Yes, sir.

1 Q. The ■ building, correct?

2 A. Yes, sir.

3 Q. The same thing that Dontavious had said?

4 A. Yes.

5 Q. And that there was a white car that came between the
6 apartments, they fired the shots, and they ran to their car,
7 correct?

8 A. Yes, sir.

9 Q. So the stories of both brothers -- and this is -- what
10 time is this? I'm just -- see if I can nail it down.

11 A. I believe we were dispatched right at six a.m. to the
12 hospital.

13 Q. And do you know what time he had actually got to the
14 hospital? Was it -- was it shortly before you did, or --

15 A. I didn't actually go to the hospital, sir. That was my
16 detective that were working the case. I didn't actually
17 have direct contact with the Macks during this part of the
18 investigation.

19 Q. Okay. Do you know how quickly it was that they got to
20 the hospital after it was reported that there was a gunshot
21 victim there?

22 A. Probably within minutes of dispatch.

23 Q. So within minutes of him getting to the hospital, he
24 gave this version of those events at Farmington Apartments,
25 correct?

1 A. Yes, sir.

2 Q. And then his brother, independent of that, gave the
3 same version?

4 A. Yes, sir.

5 Q. Is that correct?

6 A. That's my understanding, yes, sir.

7 Q. Shortly -- at around the same time?

8 A. Yes, sir.

9 Q. And his brother was even taken to the apartments?

10 A. Yes, sir.

11 Q. And he even went further with that story by showing
12 y'all where this shooting supposedly took place?

13 A. Yes, sir.

14 Q. Okay.

15 MR. SWERLING: That's all I have, judge.

16 CROSS EXAMINATION BY MR. SNOW:

17 Q. I want to pick up where Mr. Swerling left off.

18 According to the story that the brothers told you, and
19 particularly Donte, if you recall -- I think you have a copy
20 of your report?

21 A. Yes.

22 Q. He went as far as telling your officers or you that the
23 length and what kind of hair that one of the suspects had in
24 this alleged shooting, right?

25 A. Yes, sir.

1 Q. Even talked about that he had dreads, right?

2 A. Yes, sir.

3 Q. Even said it was about four inches long?

4 A. Yes.

5 Q. He even said one of the guys were pale, a pale black --
6 a pale light skinned black male?

7 A. Yes, sir, I believe he did.

8 Q. Then he indicated that the suspect in the back had a
9 rifle? In the back had a rifle?

10 A. Yes.

11 Q. It was a .22 rifle, he even indicated?

12 A. Yes, sir.

13 Q. And that person was hanging out of the window?

14 A. That's what he reported.

15 Q. Then the driver had a handgun. He also mentioned that?

16 A. Uh-huh.

17 Q. And was shooting out of his window, according to --

18 A. Yes.

19 Q. -- Mr. Mack?

20 A. Yes.

21 Q. And he indicated also that there was eight or nine
22 shots all fired together?

23 A. Yes, sir.

24 Q. And there were two different types of shots he heard,
25 one louder than the other?

1 A. Yes, sir.

2 Q. Okay. Now, he mentioned several other things in here
3 about specifics in details, and I think you indicated to Mr.
4 Swerling that his brother kind of matched his story?

5 A. Yes, sir.

6 Q. Certainly was enough that you and your officers, your
7 colleagues, you know, believed? Enough to go out to the
8 crime scene and investigate?

9 A. Well, sure.

10 Q. Right.

11 So it's credible?

12 A. We would go to the crime scene, regardless, whether we
13 thought it was credible or not. We would do a complete
14 investigation. You say that's where it happened, we were
15 going to at least look.

16 Q. But would admit he added some details in there?

17 A. Probably too much detail.

18 Q. But it was certainly detailed?

19 A. Yes, very detailed.

20 Q. Very detailed.

21 Do you know how many officers went out to the crime
22 scene or was involved in this investigation?

23 A. Total number?

24 Q. Yes, sir.

25 A. No, sir. I would guess probably four or five.

1 Q. Four or five.

2 Did they -- did these brothers know, if you know, that
3 officers were going to go to the crime scene to investigate?

4 A. Sure.

5 Q. So they were aware of that?

6 A. Yes, sir.

7 Q. Do you know how many hours the officers spent?

8 A. At least four or five hours from dispatch to the time.

9 Probably lunchtime when they started realizing there was
10 something hinkey.

11 Q. All right. And this is certainly time that -- times
12 that your officers could do something else?

13 A. Certainly.

14 Q. Well, let's fast forward here to --

15 At some point I think you had also mentioned that you
16 received information from Ms. Evans, Johnetta Evans?

17 A. Yes, sir.

18 Q. And without saying what you heard or what she said,
19 from her conversation did you learn that anybody else was
20 involved with the shooting, other than the Mack brothers?

21 A. Not initially, no, sir. Not -- based on her
22 conversation, no.

23 Q. Right. So you didn't learn anybody else was involved?

24 A. No.

25 Q. Now, you processed the car, and I got most of that, but

1 certainly I'm not a scientist and I don't know a whole lot
2 about it, but tell me -- you certainly had some training --

3 A. Yes, sir.

4 Q. -- to do this.

5 What kind of training have you had?

6 A. The initial training through the academy and the basic
7 class does latent fingerprint developing and fingerprint.
8 Basic investigator class does basic latent and fingerprint
9 lifting.

10 Fourteen years of on-the-job experience. Like I said,
11 we are a small agency. We can't afford to have a crime
12 scene unit, so our individual officers are generally tasked
13 with collecting of certain types of evidence.

14 Q. Do you know how many hours you spent during your
15 training?

16 A. The academy was eight weeks. There was probably two or
17 three -- well, probably two days of physical evidence
18 collection out of that eight weeks. There was the basic
19 detective course I believe is four days, and fourteen years
20 of on-the-job experience.

21 Q. So a lot of experience, eight weeks of training, not
22 just something going to get a certificate in one or two
23 days?

24 A. No, sir.

25 Q. And I take it it's not on-line training? It's actual

1 classroom training?

2 A. Yes, sir.

3 Q. Do you have to go back every so often to get brush up
4 on your skills?

5 A. Not on those particular ones. It's not a requirement,
6 no, sir.

7 Q. But you have fourteen years of experience doing this?

8 A. Yes, sir.

9 Q. And based on what you have testified to, you sound
10 pretty methodical in your approach, and you -- out of your
11 experience and training, you know where one should look --

12 A. Yes, sir.

13 Q. -- to find fingerprints?

14 A. Yes, sir.

15 Q. And did you do that?

16 A. Yes, sir.

17 Q. And you did that pretty thoroughly, didn't you?

18 A. Yes, sir.

19 Q. You went to the car and you looked at where
20 fingerprints would normally be?

21 A. Yes, sir.

22 Q. And I think I saw on the photo that you looked by the
23 doors?

24 A. Yes, sir.

25 Q. And it's fair to say you looked by all the doors --

1 A. Yes.

2 Q. -- didn't you?

3 A. Yes, sir.

4 Q. And you searched on top of the car --

5 A. Yes, sir.

6 Q. -- as well.

7 And you took fingerprints?

8 A. Yes, sir.

9 Q. In addition, you also looked in the interior of the
10 vehicle?

11 A. Yes, sir.

12 Q. And you took evidence?

13 A. Yes, sir.

14 Q. Collected evidence?

15 A. Yes.

16 Q. And that was fingerprints -- I mean, did you take any
17 fingerprints of the inside?

18 A. No, sir, the -- from my experience, fingerprints of --
19 latent fingerprints on the inside of a vehicle are generally
20 difficult to lift. The seats were made of leather. The --
21 I believe that the steering wheel itself has a leather wrap
22 to it. We don't have the technology to lift latent
23 fingerprints off leather, so I didn't actually even attempt
24 to develop anything off the interior of the car.

25 Q. So you didn't take any fingerprints off the inside of

1 the car?

2 A. Not off the inside of the car, no, sir.

3 Q. Nothing off the steering wheel?

4 A. No, sir.

5 Q. But you collected additional evidence that you could
6 find that might be helpful in your investigation?

7 A. Yes, sir.

8 Q. And I think you mentioned that you found some cigarette
9 butts?

10 A. Uh-huh.

11 Q. And you found a straw?

12 A. Yes, sir.

13 Q. You also found an ID that belonged to Mr. Mack?

14 A. Yes, sir.

15 Q. Is there anything else that you found?

16 A. I believe there was a soda bottle that was located in
17 the back seat.

18 Actually I think that the soda bottle was from a
19 subsequent case, but that was -- apparently what was
20 collected was a small piece of plastic in the lighter area
21 of the ashtray.

22 Q. At the point that you were processing the vehicle, did
23 you know at that time that this car was connected to the
24 robbery and murder in Rock Hill?

25 A. No, sir.

1 Q. You didn't know at that time?

2 A. No, sir.

3 Q. But, nonetheless, you certainly knew it was important
4 to do a thorough job?

5 A. Yes, sir.

6 Q. And you did so to the best of your ability?

7 A. Yes, sir.

8 Q. And no regrets about that?

9 A. No, sir.

10 Q. All right. Thank you.

11 MR. BRACKETT: Nothing further.

12 I ask that this witness be excused.

13 THE COURT: Thank you for coming, sir.

14 Any objections to this witness being excused?

15 MR. SWERLING: No, sir.

16 THE COURT: Thank you for coming. You may be
17 excused.

18 If you have a very short witness, we could
19 probably do one more. Otherwise, we --

20 MR. BRACKETT: No, sir, our next witness is going
21 to be a long one.

22 THE COURT: Okay.

23 All right. Mr. Foreman, ladies and gentlemen of
24 the jury, we are going to go ahead and recess at this time.
25 I had told you yesterday that I wanted to attend the funeral

1 of a long time friend and a close friend of mine, and so we
2 are going to go ahead and adjourn for the day. The funeral
3 is going to be in Gastonia, so it's going to take a little
4 while to get there and back, so I'm going -- we are going to
5 go ahead and adjourn for the day.

6 What I'm going to ask you to do is be back in the
7 jury room in the morning at nine o'clock. We will try to
8 get started at nine o'clock, and hopefully we won't have
9 anything to take up out of your presence. Hopefully we can
10 get started right at nine, so please be back in the jury
11 room ready to go at that time.

12 I'll remind you, as I usually do, not to read,
13 listen to, or watch any media account of this trial and not
14 to -- through the regular media or on the Internet, and also
15 not to discuss it among yourselves or with anyone else,
16 including family, friends, or anyone else.

17 If someone should try to discuss the case with
18 you, please do not discuss it with them, but make note of
19 that person and let the bailiff or the clerk's office know
20 and they will let me know, so I can deal appropriately with
21 that person.

22 Thank you. Please enjoy your afternoon and be
23 back in the morning at nine a.m.. thank you.

24 (The following takes place outside the presence of
25 the jury panel)

1 THE COURT: All right, counsel, is there any
2 matter we need to attend to at this time out of the presence
3 of the jury, from either side?

4 MR. BRACKETT: I do not believe so, Your Honor.

5 THE COURT: All right. I appreciate being able to
6 go to this funeral. It's important to me, so we will do
7 that. We have worked a lot of hours on this case so far
8 this week. We will get started at nine o'clock in the
9 morning, and then if you need to, of course, we will go late
10 tomorrow. If we need to we will go late tomorrow. And
11 then, of course, we will have Friday.

12 All right. Thank you.

13 MR. BRACKETT: Thank you, judge.

14 (Whereupon, proceedings were adjourned to February
15 26, 2009)

16

17

18

19

20

21

22

23

24

25

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

3

4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2007-GS-46-0670
6 TERRELL ANTONIO) 2007-GS-46-0671
7 ADDISON,) 2007-GS-46-0672
8) 2007-GS-46-0673
9) 2007-GS-46-0675
10) 2007-GS-46-0676

DEFENDANT.

FEBRUARY 26, 2009
YORK, SOUTH CAROLINA

9

10 (VOLUME IV)

11

12 B E F O R E:

13 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

14

15

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

17 KEVIN BRACKETT, SOLICITOR
18 WILLY THOMPSON, DEPUTY SOLICITOR
19 ATTORNEYS FOR THE STATE

20 JACK SWERLING, ESQUIRE
21 ATTORNEY FOR THE DEFENDANT

22

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

23

24

25

26

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

4 THE STATE) TRANSCRIPT OF RECORD
5) 2007-GS-46-2525
6 -vs-) 2007-GS-46-2526
7) 2007-GS-46-2527
8 BEN ROBERT STEWART,) 2007-GS-46-2528
9) 2007-GS-46-2529
10) 2007-GS-46-2530
11) 2007-GS-46-2531
12) 2007-GS-46-2532
13) 2007-GS-46-2533
14) S007-GS-46-2535

15 FEBRUARY 26, 2009
16 YORK, SOUTH CAROLINA

17
18
19 B E F O R E:

20 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.
21

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

23 KEVIN BRACKETT, SOLICITOR
24 WILLY THOMPSON, DEPUTY SOLICITOR
25 ATTORNEYS FOR THE STATE

KENNETH SNOW, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I INDEX

(FEBRUARY 23, 2009)

(JURY TRIAL - VOLUME I)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 54

INDEX

(FEBRUARY 24, 2009)

(JURY TRIAL - VOLUME II)

WITNESSES	PAGE
JURY SWORN --	PAGE 149
OPENING STATEMENT BY MR. THOMPSON --	PAGE 151
OPENING STATEMENT BY MR. SWERLING --	PAGE 165
OPENING STATEMENT BY MR. SNOW --	PAGE 175
DONTAVIOUS MACK (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	180
CROSS EXAMINATION BY MR. SWERLING	212
CROSS EXAMINATION BY MR. SNOW	293
REDIRECT EXAMINATION BY MR. THOMPSON	308
RE CROSS EXAMINATION BY MR. SWERLING	313
RE CROSS EXAMINATION BY MR. SNOW	315
DAVORIUS MACK (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	331
CROSS EXAMINATION BY MR. SWERLING	362
CROSS EXAMINATION BY MR. SNOW	420
REDIRECT EXAMINATION BY MR. THOMPSON	448
RE CROSS EXAMINATION BY MR. SWERLING	469

INDEX

(FEBRUARY 25, 2009)

(SUPPRESSION HEARING - VOLUME III)

WITNESSES	PAGE
DETECTIVE BRUCE HAIRE (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	499
CROSS EXAMINATION BY MR. SWERLING	504
(NO CROSS EXAMINATION BY MR. SNOW)	
REED ALLEN (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	508
CROSS EXAMINATION BY MR. SWERLING	516
(NO CROSS EXAMINATION BY MR. SNOW)	
(JURY TRIAL)	
REED ALLEN (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	523
CROSS EXAMINATION BY MR. SNOW	546
CROSS EXAMINATION BY MR. SWERLING	557
REDIRECT EXAMINATION BY MR. THOMPSON	566
RE CROSS EXAMINATION BY MR. SNOW	569
RE CROSS EXAMINATION BY MR. SWERLING	570
SHEIL SMITH (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	571
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW:	

INDEX

(FEBRUARY 25, 2009)

(JURY TRIAL - VOLUME III)

WITNESSES	PAGE
QIAUNA EFIRD (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	578
(NO CROSS EXAMINATION BY MR. SWERLING)	
CROSS EXAMINATION BY MR. SNOW	594
OFFICER LEE WRIGHT (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	596
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
WILLIAM CHRISTOPHER CORN (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	608
CROSS EXAMINATION BY MR. SWERLING	617
(NO CROSS EXAMINATION BY MR. SNOW)	
DETECTIVE DAVID HANOKA (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	619
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
LIEUTENANT BRIAN RUDICK (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	629
CROSS EXAMINATION BY MR. SWERLING	650
CROSS EXAMINATION BY MR. SNOW	655

INDEX

(FEBRUARY 26, 2009)

(JURY TRIAL - VOLUME IV)

WITNESSES	PAGE
TAMMY FLY (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	687
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
MIKE WILLIAMS (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	690
(NO CROSS EXAMINATION BY MR. SWERLING)	
CROSS EXAMINATION BY MR. SNOW	745
OFFICER RAYMOND BARNWELL (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	753
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
DR. JAMES MAYNARD (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	764
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
OFFICER BRIAN LAMBERT (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	777
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	

INDEX

(FEBRUARY 26, 2009)

(JURY TRIAL - VOLUME IV)

WITNESSES	PAGE
DETECTIVE BRUCE HAIRE (SW)	
DIRECT EXAMINATION BY MR. BRACKETT	783
CROSS EXAMINATION BY MR. SWERLING	807
CROSS EXAMINATION BY MR. SNOW	810
SLED AGENT VICKI HALLMAN (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	814
CROSS EXAMINATION BY MR. SWERLING	829
CROSS EXAMINATION BY MR. SNOW	831
OFFICER CHERYL GUZMAN (SW)	
DIRECT EXAMINATION BY MR. THOMPSON	834
(NO CROSS EXAMINATION BY MR. SWERLING)	
(NO CROSS EXAMINATION BY MR. SNOW)	
STATE RESTS -- PAGE 838	
TERRELL ANTONIO ADDISON (DW)	
DIRECT EXAMINATION BY MR. SWERLING	852
CROSS EXAMINATION BY MR. SNOW	897
CROSS EXAMINATION BY MR. BRACKETT	902
REDIRECT EXAMINATION BY MR. SWERLING	967
RE-CROSS EXAMINATION BY MR. SNOW	969

INDEX

(FEBRUARY 26, 2009)

(JURY TRIAL - VOLUME IV)

WITNESSES	PAGE
QIAUNA EFIRD (DW)	
DIRECT EXAMINATION BY MR. SNOW	972
CROSS EXAMINATION BY MR. THOMPSON)	974
(NO CROSS EXAMINATION BY MR. SWERLING)	
REDIRECT EXAMINATION BY MR. SNOW	976
ANNA WARNER (DW)	
DIRECT EXAMINATION BY MR. SNOW	976
CROSS EXAMINATION BY MR. THOMPSON	980
(NO CROSS EXAMINATION BY MR. SWERLING)	
JOHNETTA EVANS (DW)	
DIRECT EXAMINATION BY MR. SWERLING	982
CROSS EXAMINATION BY MR. SNOW	988
CROSS EXAMINATION BY MR. THOMPSON	990
REDIRECT EXAMINATION BY MR. SWERLING	993
RE CROSS EXAMINATION BY MR. SNOW	994
RE CROSS EXAMINATION BY MR. THOMPSON	995

INDEX

(FEBRUARY 26, 2009)

(JURY TRIAL - VOLUME IV)

WITNESSES	PAGE
TIYONE EVANS (DW)	
DIRECT EXAMINATION BY MR. SWERLING	997
CROSS EXAMINATION BY MR. SNOW	1002
CROSS EXAMINATION BY MR. THOMPSON	1004
RE CROSS EXAMINATION BY MR. SNOW	1007
DEFENDANT TERRELL ADDISON RESTS -- PAGE 1009	
DETECTIVE BRUCE HAIRE (DW)	
DIRECT EXAMINATION BY MR. SNOW	1010

INDEX

(FEBRUARY 27, 2009)

(JURY TRIAL -- VOLUME V)

WITNESSES PAGE

DEFENDANT BEN ROBERT STEWART RESTS -- PAGE 1034

CLOSING ARGUMENT BY MR. SWERLING -- PAGE 1036

CLOSING ARGUMENT BY MR. SNOW -- PAGE 1080

FINAL ARGUMENT BY MR. BRACKETT -- PAGE 1104

COURT'S JURY INSTRUCTIONS -- PAGE 1149

JURY'S VERDICT -- PAGE 1205

SENTENCING -- PAGE 1239

REPORTER'S CERTIFICATE -- PAGE 1246

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-1	911 CALL ON CD		576
4	S-2	STORE CAMERA VIDEO ON DVD		206
5	S-3	STATEMENT OF DONTAVIOUS MACK		464
6	S-4	STATEMENT OF DONTAVIOUS MACK		
7	S-5	STATEMENT OF DONTAVIOUS MACK		465
8	S-6	PHOTO LINEUP FROM REED ALLEN		540
9	S-7	PHOTOGRAPH OF APARTMENTS		583
10	S-8	PHOTOGRAPH OF APARTMENTS		583
11	S-9	PHOTOGRAPH OF APARTMENTS		583
12	S-10	PHOTOGRAPH OF APARTMENTS		583
13	S-11	PHOTOGRAPH OF APARTMENTS		583
14	S-12	PHOTOGRAPH OF APARTMENTS		592
15	S-13	PHOTOGRAPH OF CAR		646
16	S-14	PHOTOGRAPH OF CAR		646
17	S-15	PHOTOGRAPH OF DONTAVIOUS MACK		636
18	S-16	PHOTOGRAPH OF CAR		646
19	S-17	PHOTOGRAPH - STILLS FROM VIDEO		628
20	S-18	PHOTOGRAPH - STILLS FROM VIDEO		628
21	S-19	PHOTOGRAPH - STILLS FROM VIDEO		628
22	S-20	PHOTOGRAPH - STILLS FROM VIDEO		628
23	S-21	PHOTOGRAPH - STILLS FROM VIDEO		628
24	S-22	PHOTOGRAPH - STILLS FROM VIDEO		628
25	S-23	PHOTOGRAPH - STILLS FROM VIDEO		628

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-24	PHOTOGRAPH - STILLS FROM VIDEO		628
4	S-25	PHOTOGRAPH - STILLS FROM VIDEO		628
5	S-26	PHOTOGRAPH - STILLS FROM VIDEO		628
6	S-27	PHOTOGRAPH - STILLS FROM VIDEO		628
7	S-28	PHOTOGRAPH - STILLS FROM VIDEO		628
8	S-29	PHOTOGRAPH OF SAVE AND #20 CONE		614
9	S-30	PHOTOGRAPH BEHIND COUNTER		614
10	S-31	PHOTOGRAPH OF TIME CARD		612
11	S-32	ORIGINAL VHS SECURITY TAPE FROM BP		626
12	S-33	LATENTS FROM HARTSVILLE		648
13	S-34	CRIME SCENE PHOTOGRAPHS		695
14	S-35	CRIME SCENE PHOTOGRAPHS		695
15	S-36	CRIME SCENE PHOTOGRAPHS		695
16	S-37	CRIME SCENE PHOTOGRAPHS		695
17	S-38	CRIME SCENE PHOTOGRAPHS		695
18	S-39	CRIME SCENE PHOTOGRAPHS		695
19	S-40	CRIME SCENE PHOTOGRAPHS		695
20	S-41	CRIME SCENE PHOTOGRAPHS		695
21	S-42	CRIME SCENE PHOTOGRAPHS		695
22	S-43	CRIME SCENE PHOTOGRAPHS		695
23	S-44	CRIME SCENE PHOTOGRAPHS		695
24	S-45	CRIME SCENE PHOTOGRAPHS		695
25	S-46	CRIME SCENE PHOTOGRAPHS		695

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-47	CRIME SCENE PHOTOGRAPHS		695
4	S-48	CRIME SCENE PHOTOGRAPHS		695
5	S-49	CRIME SCENE PHOTOGRAPHS		695
6	S-50	CRIME SCENE PHOTOGRAPHS		695
7	S-51	CRIME SCENE PHOTOGRAPHS		695
8	S-52	CRIME SCENE PHOTOGRAPHS		695
9	S-53	CRIME SCENE PHOTOGRAPHS		695
10	S-54	CRIME SCENE PHOTOGRAPHS		695
11	S-55	CRIME SCENE PHOTOGRAPHS		695
12	S-56	CRIME SCENE PHOTOGRAPHS		695
13	S-57	CRIME SCENE PHOTOGRAPHS		695
14	S-58	CRIME SCENE PHOTOGRAPHS		695
15	S-59	CRIME SCENE PHOTOGRAPHS		695
16	S-60	CRIME SCENE PHOTOGRAPHS		695
17	S-61	CRIME SCENE PHOTOGRAPHS		695
18	S-62	CRIME SCENE PHOTOGRAPHS		695
19	S-63	CRIME SCENE PHOTOGRAPHS		695
20	S-64	CRIME SCENE PHOTOGRAPHS		695
21	S-65	CRIME SCENE PHOTOGRAPHS		695
22	S-66	CRIME SCENE PHOTOGRAPHS		695
23	S-67	CRIME SCENE PHOTOGRAPHS		695
24	S-68	CRIME SCENE PHOTOGRAPHS		695
25	S-69	AERIAL PHOTOGRAPH		695

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-70	AERIAL PHOTOGRAPH		695
4	S-71	CRIME SCENE FOOTPRINT PHOTOS		695
5	S-72	CRIME SCENE FOOTPRINT PHOTOS		695
6	S-73	CRIME SCENE FOOTPRINT PHOTOS		695
7	S-74	CRIME SCENE FOOTPRINT PHOTOS		695
8	S-75	CRIME SCENE FOOTPRINT PHOTOS		695
9	S-76	CRIME SCENE FOOTPRINT PHOTOS		695
10	S-77	CRIME SCENE FOOTPRINT PHOTOS		695
11	S-78	CRIME SCENE FOOTPRINT PHOTOS		695
12	S-79	CRIME SCENE FOOTPRINT PHOTOS		695
13	S-80	VICTIM'S PISTOL		697
14	S-81	BULLET PROJECTILE - YEULING LAGER		718
15	S-82	BULLET PROJECTILE		709
16	S-83	BULLET FRAGMENT		712
17	S-84	BULLET FRAGMENT		712
18	S-85	SPENT SHELL CASING BY BANDANAS		716
19	S-86	SPENT SHELL CASING BY MORTON SALT		
20	S-87	PROJECTILE BEHIND COUNTER		704
21	S-88	SPENT SHELL CASING - ITEM 2		710
22	S-89	TERRELL ADDISON'S SHOES		796
23	S-90	CINGULAR RECORDS		689
24	S-91	DONTAVIOUS MACK'S TENNIS SHOES		745
25	S-92	DAVORIOUS MACK'S TENNIS SHOES		745

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
S-93	PP 6-7-8 - AUTOPSY		775
S-94	CINGULAR - 3 COLOR MAPS		807
S-95	YORK COUNTY DETENTION CENTER		837
	VISITOR LOG FOR TERRELL ADDISON		
S-96	DAVORIOUS MACK'S STATEMENT TO THE		1009
	HARTSVILLE POLICE DEPARTMENT		
S-97	DAVORIOUS MACK'S STATEMENT TO RHPD		1009
D-1 (ADDISON)	DONTAVIOUS MACK'S STATEMENT	220	
D-2 (ADDISON)	DONTAVIOUS MACK'S STATEMENT	263	
D-1 (STEWART)	DONTAVIOUS MACK'S STATEMENT	315	
D-2 (STEWART)	DAVORIOUS MACK'S STATEMENT	425	
D-3 (STEWART)	DAVORIOUS MACK'S STATEMENT	435	
CT-1	TERRELL ADDISON'S MENTAL HEALTH REPORT	24	
CT-2	BEN STEWART'S MENTAL HEALTH REPORT	24	
CT-3	WRIT OF HABEAS CORPUS PAPERWORK	54	
CT-4	LETTER FROM MR. & MRS. DARRYL KENNEDY	147	
CT-5	PHOTOGRAPHS (8)	686	
CT-6	DAVORIOUS MACK'S STATEMENT	1034	
CT-7	JURY NOTE	1195	
CT-8	JURY NOTE	1201	
CT-9	JURY NOTE	1202	

1 (PROCEEDINGS, FEBRUARY 26, 2009)

2 THE COURT: All right, counsel, ready to proceed?

3 MR. THOMPSON: The State is ready, Your Honor.

4 There is one matter before the jury comes in that
5 we would like to take up, that Mr. Swerling and Mr. Snow
6 would like to address the court on.

7 MR. SWERLING: Some pictures.

8 MR. THOMPSON: There is three photographs as part
9 of the evidence that I showed them that we are intending to
10 introduce as part of the crime scene and each one
11 containing, if not a portion of the victim's body, the
12 entire victim's body, and they are objecting to those
13 photographs. I have passed them up. I have them marked
14 currently as State's Exhibit 49, 50 and 56 and I'll pass
15 those up to the court so the court could see them as well,
16 and let them state their objections.

17 THE COURT: Why are you introducing them? What's
18 the relevance to this case?

19 MR. THOMPSON: Well, obviously our -- in the crime
20 scene itself we want to -- we intent to basically take an
21 overview of the entire crime scene to show where various
22 items are found, including the casings from the .380, the
23 projectiles that were recovered near the victim's body, the
24 fragments around the victim's body, and then there is
25 impression marks. Some of those cones where the victim's

1 body shows -- impact marks into the floor, basically showing
2 that the shots were being fired at the victim, not just
3 randomly up in the air, as if someone runs away. As part
4 of, or course, any proof of malice I think is going to be
5 that they are shooting directly at the victim in those
6 particular situations, and some of the casings are found --
7 one of them is found specifically right at the bottom of
8 his -- near the bottom of his foot.

9 And I picked pictures, Your Honor, that are
10 very -- as far as a crime scene goes, very tame. I can tell
11 Your Honor that just in looking at television every night,
12 if you watch CSI or Law and Order, the first scene where
13 they show where a crime occurs are much more graphic than
14 anything in those photographs.

15 I would show the court other photographs that we
16 have that I'm not going to use that shows a much more
17 graphic scene than this, because that picture of the
18 victim --

19 THE COURT: Let me see those as well.

20 MR. THOMPSON: That picture of the victim in that
21 case, there are really only two pictures show -- one shows
22 just his tennis shoes and doesn't show any more of him. The
23 other one just shows the bottom portion of the body. And
24 then the other one is far enough away that you really can't
25 even see the pool of blood that's beneath him. It kind of

1 blends in with the shirt that he's wearing, the dark color,
2 whereas the other one graphically shows a thick pool of
3 blood that are very egregious. I'm not trying to get those
4 in.

5 THE COURT: Well, I -- okay. Let me go ahead and
6 hear from you.

7 I would say for the record, though, no question
8 about it, the ones that you have handed me you are not
9 offering to be admitted into evidence are far worse and more
10 graphic than the ones that you have told me that you are
11 offering. Okay. I'm -- what I'm going to get you to do is,
12 once I rule on this, I will get you to make these a court
13 exhibit as one to show what you didn't offer in.

14 MR. THOMPSON: Yes, sir.

15 THE COURT: What you could have offered in.
16 Yes, sir.

17 MR. SWERLING: Judge, have we identified the
18 number of three exhibits?

19 MR. THOMPSON: Yes, sir, they are numbered for
20 identification.

21 THE COURT: They are 50, 56, and 49.

22 MR. SWERLING: Judge, with respect to those
23 particular photographs, we are not objecting to any of the
24 photographs the State is offering. We think that those are
25 not relevant to prove anything in this particular case. The

1 video showed an image of Mr. Marshall falling back. That
2 shows where he was in the store. If the State is trying to
3 get it in for that purpose, to show where the scene is,
4 there are some diagrams. Of course, there are officers and
5 first responders who were there, crime scene specialists.
6 So the pictures themselves would not be relevant to show
7 anything that's at issue in this case.

8 Number two, even if you find that they are
9 relevant, Your Honor, we would ask you to exclude them under
10 403, that their probative value is far outweighed by their
11 prejudicial effect that the jury is seeing of a dead body.

12 THE COURT: Thank you.

13 Yes, sir.

14 MR. SNOW: Your Honor, I would just add a motion
15 as well that I think the video also shows that someone shot
16 at him. I don't think it necessarily accurate.

17 THE COURT: All right. Thank you.

18 The court will find them admissible. I don't
19 think there is any question but what they are admissible.

20 The first requirement is that they show
21 something -- while the State has got the burden of proof of
22 everything in this case, including malice, and I think what
23 they are offering are certainly not graphic in any way.
24 They showed the position of different things within the
25 store, including shell casings. In No. 56 they are showing

1 the markers that the crime scene evidence -- or put down and
2 show where different things were, and I certainly don't find
3 they are graphic.

4 The ones that they are not offering are much,
5 much, much more graphic than this. So I think they have a
6 reason to put them in. I think they are relevant to the
7 case. I don't think they are more prejudice than probative
8 and I would admit them over objection.

9 I would ask you -- these very graphic ones that
10 you are not offering, ask you to show what is not being
11 offered, all right, we will make it a court exhibit for that
12 purpose.

13 MR. THOMPSON: And I'll have them marked now, Your
14 Honor.

15 (Eight Photographs marked as Court's Exhibit No. 5
16 for identification)

17 THE COURT: Anything else, counsel, before we get
18 started?

19 Please bring the jury in.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: Good morning, Mr. Foreman, ladies and
23 gentlemen of the jury, I hope you had a pleasant night and
24 afternoon yesterday.

25 We're a few minutes later getting started this

1 morning, but we had another matter we needed to take up,
2 so that's -- we were ready to go, but we had another matter
3 to take up, but we are ready to go now.

4 Counsel, ready to proceed.

5 MR. BRACKETT: Yes, sir, Your Honor.

6 The State would call Ms. Tammy Fly.

7 TAMMY FLY, having been first duly sworn, testified
8 as follows:

9 DIRECT EXAMINATION BY MR. BRACKETT:

10 Q. Good morning, ma'am.

11 Would you please state your full name and spell your
12 last name for the court reporter?

13 A. Tammy Jo Fly. That's F, like Frank, L-Y.

14 Q. Where are you employed, Ms. Fly?

15 A. AT&T.

16 Q. And what do you do for AT&T?

17 A. I'm a sales operations manager and custodian of
18 records.

19 Q. How long have you been working with AT&T?

20 A. Ten plus years.

21 Q. Did you receive a subpoena from our office requesting
22 that you come to this court with certain records?

23 A. Yes, sir.

24 Q. All right. Specifically the records relating to the
25 cell phone of Mr. Dontavious Mack, who at the time had

1 account number 38113660 with Cingular? And Cingular and
2 AT&T, are they are one in the same? I get lost. You guys
3 were AT&T and then you were Cingular and now you are ATT
4 again?

5 A. Actually we were Bell South, Cingular, now AT&T.

6 Q. Okay. We will keep up with you then.

7 Did you bring these, the phone records, for Mr.
8 Dontavious Mack pertaining to the phone that he had? I
9 believe it was telephone number [REDACTED] [REDACTED] 6298?

10 A. Yes, sir.

11 Q. And did we ask you specifically to bring the records of
12 phone calls made from that phone or to that phone on or
13 about October 9th, 2006, through October 10th, 2006?

14 A. Yes, sir.

15 Q. And did you bring all the records related to that cell
16 phone and the documents pertaining to the recording of the
17 calls? Not the actual recording of the telephone calls, but
18 recording who called in and who called out from that phone
19 number?

20 A. Yes, sir.

21 Q. Okay. And in your capacity, does Cingular, AT&T now,
22 do they keep those records in the normal course of their
23 business?

24 A. They do keep them stored.

25 Q. You are the custodian of those records?

1 A. Yes, sir.

2 Q. All right. And do you have those records with you?

3 A. Yes, sir.

4 Q. Okay. May I see them, please?

5 MR. BRACKETT: Your Honor, I would ask that these
6 be marked at this time as State's Exhibit 90 for
7 identification.

8 (Off the record)

9 (Back on the record)

10 MR. BRACKETT: Your Honor, at this time I would
11 move to introduce State's Exhibit 90 for identification into
12 evidence.

13 THE COURT: Any objection, counsel?

14 MR. SWERLING: No, sir.

15 MR. SNOW: No.

16 THE COURT: Admitted without objection.

17 BY MR. BRACKETT:

18 Q. That's all the questions that I have, Ms. Fly.

19 Please answer any questions that defense counsel may
20 have for you.

21 MR. SWERLING: No questions.

22 MR. SNOW: No questions.

23 THE COURT: Do you want to have this witness
24 excused?

25 MR. BRACKETT: Yes, sir.

1 MR. SWERLING: No objection.

2 THE COURT: Thank you for coming, ma'am. You may
3 be excused at this time.

4 MR. THOMPSON: The State would call Mike Williams
5 to the stand.

6 MIKE WILLIAMS, having been first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION BY MR. THOMPSON:

9 Q. Mr. Williams, could you state your full name for the
10 court reporter?

11 A. It's Michael Lee Williams.

12 Q. Back in 2006, where did you work?

13 A. I was employed with the City of Rock Hill police
14 department in Rock Hill, in York County.

15 Q. And what were your duties at that time?

16 A. I was assigned to the forensic units, which is a
17 multi-jurisdictional unit in this county.

18 Q. All right. And what did the forensics unit do? What
19 did they do?

20 A. The forensic unit is comprised of several different
21 agencies throughout the county, and what we do is we respond
22 to all crime scenes anywhere in the county and we process
23 any crime scene that we are called to by the patrol to
24 collect evidence, such as fingerprints, photograph the
25 location. Any physical evidence that may be there, we

1 actually do the collecting of that evidence.

2 Q. Okay. And are you still with Rock Hill doing the
3 forensic services?

4 A. No, September of last year I retired.

5 Q. All right. How many years did you serve in law
6 enforcement?

7 A. Twenty-eight years.

8 Q. And how many years did you serve in the crime scene
9 unit, the FSU?

10 A. I started -- I was in the forensic unit for sixteen
11 years of the twenty-eight.

12 Q. And so do you have any idea of how many crime scenes
13 that you have processed during that time?

14 A. No. It would be in the thousands.

15 Q. All right. And did you have an opportunity to process
16 this crime scene on October 10th of 2006, at the BP station?

17 A. Yes, I was -- our unit, we takes calls at night after
18 ten o'clock. And that night I was on call and I received a
19 page to respond to that location that night.

20 Q. All right. And when you responded, what did you find
21 as you arrived?

22 A. When I received a notification of the call, I responded
23 to that location, and upon arrival found it to be the BP
24 station at the corner of India Hook and Celanese Road.
25 There were several police cars already at that location and

1 the scene had already been roped off, which is crime
2 scene -- yellow crime scene tape that is put around the area
3 to keep anyone else from entering the location.

4 Q. All right. What are some of your duties then when you
5 arrived? What did you do initially?

6 A. Initially when I arrive, I try to locate one of the
7 first responding officers that had arrived to the scene. I
8 do not make entry into the scene until I'm told by the first
9 officer that arrived or one of the supervisors that is there
10 what had taken place.

11 Q. All right. Did you meet with anyone this day?

12 A. Yes, I met with two officers. One was with the Rock
13 Hill Police Department was Officer Lambert in the parking
14 lot, and then one was Wayne Smith I believe was a sergeant
15 for the sheriff's department.

16 Q. Sergeant, was he the supervisor of the sheriff's office
17 people who were there?

18 A. Yes, sir.

19 Q. And did they update you on what they knew of the scene
20 at that time?

21 A. Yes.

22 Q. Go ahead.

23 A. I was informed by the officers that when they arrived,
24 they had found the store open and the victim was found lying
25 on the floor inside the store.

1 Q. All right. Now, what did you do then as a result of
2 seeing the scene for yourself and arriving at that time and
3 getting that information?

4 A. Any death investigation that the forensic unit does in
5 the unit that we are involved in, or I was involved in, was
6 any deaths, we have two forensic investigators investigate
7 the scene and work the scene.

8 While en route to the scene, knowing what I knew of the
9 incident, I had them also page Ray Barnwell, who is an
10 investigator in the forensic unit to respond to assist me
11 with that scene.

12 Q. And how did he assist you in the scene?

13 A. When Ray arrived, we waited and we received a consent
14 to enter the business from the owner of the property. At
15 that time I directed Ray to start taking photographs of the
16 incident location, which would be the outside and inside of
17 the scene.

18 Q. And did you have a chance to observe those photographs
19 after they were taken?

20 A. Yes, I did.

21 Q. All right. And did Ray speak with you during that time
22 the photographs as you processed, or how did that work?

23 A. Ray would start photographing. The first thing we do
24 is we would photograph the exterior of the location and then
25 move inward.

1 While he was doing the photographs of the location,
2 Officer Lambert signed over to me a film disk that he had
3 taken photographs prior to my arrival while I was there.
4 Once I received the film disk from Officer Lambert, I
5 actually went in and retrieved the videotape from the
6 surveillance system that the store had in place.

7 Q. All right. And did you -- was that videotape
8 operational when you arrived?

9 A. To the best of my knowledge, it was still operational.

10 Q. Did you have to turn it off to get it out?

11 A. Yes.

12 Q. Okay. It's been marked State's Exhibit 32. Is that
13 the videotape that you are telling us about?

14 A. State's Exhibit 32 is one videotape and its evidence
15 location and recovery was inside the recorder inside the
16 store. It was recovered by me at that time.

17 Q. All right. And when you recovered it, what did you do
18 with it?

19 A. I took the tape, placed it in evidence, this envelope,
20 and filled out the information about it and then I signed it
21 over to Officer Lambert that was at the scene for him to
22 transport it to the Rock Hill Police Department to be viewed
23 at the PD.

24 Q. Okay. And on that evidence form on the front, does it
25 indicate who he gave it to then?

1 A. Yes, it's -- Officer Lambert's signature from him to
2 Detective David Hanoka at the Rock Hill Police Department.

3 Q. And what time does it indicate that it was transferred
4 to Officer Hanoka?

5 A. Six o'clock in the morning.

6 Q. All right. Now, I'm going to show you what's been
7 marked State's Exhibits 34 through 79 and ask you to
8 identify these photographs.

9 MR. THOMPSON: Your Honor, the defense has
10 previously seen these.

11 A. State's Exhibit 34 is a --

12 BY MR. THOMPSON:

13 Q. I'm sorry, let me get it a little better. We are going
14 to go over each of those photographs. If you could look at
15 each one and make sure that they fairly and accurately
16 depict the scene as you recall it.

17 A. (Witness reviewing photographs).

18 Yes, they do.

19 MR. THOMPSON: Your Honor, I would ask to enter
20 those into evidence at this time.

21 MR. SWERLING: No objection.

22 MR. SNOW: No objection.

23 THE COURT: Admitted without objection.

24 BY MR. THOMPSON:

25 Q. All right. Starting then with State's Exhibit 34 --

1 and just warm up for just a second, but as we are waiting on
2 that, can you tell me did y'all recover a firearm at the
3 actual scene?

4 A. Yes, we did.

5 Q. And what firearm was that?

6 A. This would be the weapon that was in the victim's hand.

7 Q. Okay. And was it in his left hand? Is that the
8 correct hand that it was in?

9 A. I believe that's correct. Investigator Barnwell
10 actually collected the weapon, but it was in the victim's
11 left hand.

12 Q. Is that one of the pieces of evidence that ultimately
13 came to your possession?

14 A. Yes, he had collected the weapon basically to render it
15 safe, and he signed it over to me at the scene after he
16 collected it.

17 Q. Okay. I'll show you State's Exhibit No. 80.

18 A. State's Exhibit 80, this is the weapon that
19 Investigator Barnwell recovered from the victim's left hand
20 at the scene where he signed it over to me at the scene.

21 Q. All right. And has it been rendered in a safe
22 condition at this point? It's not loaded or able to fire?

23 A. Yes. Yes, it's in a -- it's basically dismantled, as
24 far as the cylinder being taken out of the weapon.

25 Q. Okay.

1 MR. THOMPSON: Your Honor, I would ask to
2 introduce this into evidence at this time.

3 MR. SWERLING: No objection.

4 MR. SNOW: No objection.

5 THE COURT: It's admitted without objection.

6 BY MR. THOMPSON:

7 Q. If you would just display to briefly to the jury to
8 kind of show the size of it.

9 A. This was the revolver that was found in the victim's
10 hand, and these would be the bullets that were taken from
11 the cylinder of the weapon at the time of the recovery.

12 Q. All right. And at that time I believe were there any
13 of the bullets that were in the weapon, or had any of them
14 been fired?

15 A. Yes, I think there had been one fired.

16 Q. Okay. And going to State's Exhibit 34, the photograph,
17 was it still dark when you arrived?

18 A. Yes, it was.

19 Q. And so is this one of the photographs that was taken on
20 the outside while you were there after you arrived?

21 A. Yes, this was a photograph of -- I call this the front
22 of the store. Celanese Road would be behind this
23 photograph. This would be looking at the store from
24 Celanese Road, and this would be to the right side of this
25 store where the car wash is on the side, the gas pumps and

1 side of the building.

2 Q. All right. And go to State's Exhibit 34 -- I'm sorry,
3 State's Exhibit 35. Is this still towards the front of the
4 store at that point?

5 A. Yes, this was basically almost in the same area, and
6 this is a photograph just -- the first photograph was to the
7 right of the location. This is a photograph more looking
8 straight toward the location from Celanese.

9 Q. Okay. And Exhibit 36, could you describe that for us?

10 A. And this is the same area, general area, and basically
11 panning from right to left, just showing the opposite side
12 of the store, which would be toward India Hook Road,
13 depicting the victim's car and the pumps on the opposite
14 side of the road -- or opposite side of the store, I'm
15 sorry.

16 Q. All right. And go to the next exhibit, Exhibit 37.

17 A. This is a photograph looking from where the car -- the
18 police cars are at in the background. This was one of the
19 first photographs were taken. This is at the back of the
20 store on the east side, which would be -- the car wash is
21 immediately to the left, looking back toward the side door
22 that would enter, and Celanese would be beyond the police
23 cars.

24 Q. All right. Now, on this particular photograph I
25 understand that it would be hard to see, but was there

1 anything on the ground that you recognized there when you
2 first arrived?

3 A. Yes, you -- outside the door of the location in the
4 parking lot there is a little black spot. We noticed it to
5 be a coin -- a plastic coin holder or coin tray.

6 Q. All right. Was there also any change outside in that
7 area around the coin tray?

8 A. Yes.

9 Q. Go to the next please, 38. Is that as well -- is that
10 the -- where are we on the station at this point?

11 A. This is a photograph from the same side, but this is
12 back at the -- actually at the edge of the curbing at the
13 rear of the store. The curbing that you see just to the
14 left, partial curbing, that would be the curbing that's near
15 the car wash that's on that side of the store.

16 Behind the store where the van is, that would be
17 Celanese Road. And this would be the -- I would consider
18 this to be like the left rear corner of the parking lot.

19 Q. And you were all there long enough to stay until it
20 turned daylight, is that correct?

21 A. Yes, we were actually there I think until I think nine
22 o'clock that night.

23 Q. Now, I see some yellow tape going across the front. It
24 looks like something in the far back. Can you tell me what
25 that is?

1 A. Yes, on the -- that is the crime scene tape that was in
2 place when I arrived by the officers that responded. It
3 basically goes from the car wash around to the back of the
4 property. It goes over to where there is a patrol car, I
5 believe, in the right corner, and it's tied to a telephone
6 pole where the phone booths are located.

7 Q. Okay.

8 A. And that would be on the India Hook side of the store.

9 Q. So it's tied to a telephone pole. You said there were
10 phone booths located there or telephones located there?

11 A. Yes.

12 Q. Public telephones?

13 A. Yeah, those are public telephones.

14 Q. Okay. If we could then go to State's Exhibit 30, which
15 I believe is already in evidence, and you won't it in your
16 stack, but if you look at this photograph, tell me where we
17 are located in the store at this point.

18 A. This is the checkout counter at the BP store.

19 Where you see I think it says Copenhagen, right outside
20 that door would be where the victim's car would be parked,
21 and that would be heading towards Celanese. That's what I
22 consider the front of the store.

23 This is a photograph taken from the corner, left
24 corner, inside the store photographing where the counter
25 registers are at. And where the stool is at, there is a

1 swivel door there that would actually lead you back out into
2 the store itself.

3 Q. All right. And if you could grab a pointer in front of
4 you, that may assist you in being able to point things out.

5 We will go then to State's Exhibit No. 39.

6 If you could tell me what this is what that cone 21
7 denotes?

8 A. Is it okay if I stand up?

9 Q. Certainly.

10 (Witness off the witness stand)

11 A. This photograph is taken also behind the counter of the
12 store.

13 The photograph previously was taken from that corner,
14 which would be over here looking the opposite direction.

15 This photograph is where we moved away from that corner
16 and actually looked back.

17 And this would be where the video machine was found,
18 where I recovered the videotape. And the cone number is
19 just a reference number to indicate that is what that
20 represents. 21 represents where the video recorder would
21 have been.

22 BY MR. THOMPSON:

23 Q. Okay. So that's something that you placed there, the
24 yellow cone?

25 A. Yes.

1 Q. If we could go to the next slide, Exhibit 40.

2 A. This photograph was taken in the general area, the same
3 area. This was looking from toward the camera of the
4 register. And 21 cone was placed right here, and this
5 basically shows where the video recorder was found in the
6 store when I arrived, and recovered the videotape from the
7 machine.

8 Q. And State's 41?

9 A. This is the videotape. Once I recovered it out of the
10 machine, I had the photograph taken just to show that this
11 is the tape that I took out of that machine that was there.

12 Q. Okay. And that's the tape that you have already
13 identified for us at this point?

14 A. Yes, sir.

15 Q. Okay. Now, if you would go then to the next slide, I
16 believe No. 45 -- I'm sorry, 42.

17 Can you tell me what that is?

18 A. This is a number cone that we placed. It represents a
19 location area where we recovered a shell casing that had
20 been fired.

21 This is behind the counter, the same photographs that
22 you just saw. This is standing behind the counter in the
23 that same area, and the shell casing was found basically up
24 underneath the -- this area here. It was just -- we
25 couldn't get down there low enough to make a photograph of

1 it, so we placed the cone in the place. This would actually
2 be the counter. If you walked into the store, this is where
3 you would walk up, and the clerk would be standing in this
4 area here to look at you, as far as paying for something.

5 Q. So if we go back one exhibit. Can you tell me, is that
6 near this location here where we are looking down at the
7 tape?

8 I'm sorry, we want to go back one more. Here we go.

9 A. Cone 50 would have been placed right here in the -- if
10 you look at the photograph we looked at, cone 50, you will
11 see the wood frame as far as the outline of the counter and
12 the file cabinets, the black file cabinets, and the cable
13 that would have been running underneath there.

14 Q. All right. Go forward again to the next exhibit.

15 I'm sorry, before we leave that one, State's Exhibit
16 No. 87. State's Exhibit No. 87, if you could tell me what
17 that is?

18 A. Exhibit 87, this is shell casing. It's a Winchester
19 .380 shell casing. This is the one that was found
20 underneath the cabinet right here. It was collected by me
21 and that was with the cone that showed number 50 in the
22 photograph.

23 Q. Okay.

24 MR. THOMPSON: Your Honor, I would ask to enter
25 that into evidence at this time.

1 MR. SWERLING: No objection.

2 MR. SNOW: No objection.

3 THE COURT: Admitted without objection.

4 BY MR. THOMPSON:

5 Q. If we could go on then to the next photograph.

6 All right. Where is this located within the store?

7 A. This is still behind the counter area. This is a roll
8 of coins that we found on the mat that is located behind the
9 same counter area where the clerk would be working.

10 Q. Did you find more than one roll of coins within the
11 store?

12 A. Yes, we found numerous rolls of coins in different
13 locations in the store. This one just happened to be behind
14 the counter to the mat.

15 Q. Let's go to the next one, State's Exhibit No. 44.

16 A. This is also another roll of coins. A roll of coins
17 that were was behind the counter that was basically against
18 the cigarette rack.

19 Q. Okay.

20 A. Or cigarette display.

21 Q. If we go to the next one, State's Exhibit 45.

22 What does this photograph depict? Are we still behind
23 the counter at this point?

24 A. Yes, we are still behind the counter and the stool that
25 was in the previous photograph. We found bullet holes that

1 is right there between the side of the fire extinguisher
2 that was mounted right there against that cabinet at the
3 swinging door, so we marked it as A.

4 Q. Okay. Go to the next -- and the cones we see over to
5 the back, as far as around the store, I think they're 25,
6 26, 27, do you recall what those are offhand?

7 A. Yeah, those were placed by bullet fragments that we
8 found on the floor in that location. Those all represent a
9 fragment that was found.

10 Q. Did you find a lot of bullet fragments throughout the
11 store?

12 A. A great deal.

13 Q. Do you remember about how many bullet fragments were in
14 the store that you found?

15 A. 25 to 30.

16 Q. Okay. Go to the next slide, State's Exhibit 46.

17 A. That is photograph behind the counter basically showing
18 a crossword puzzle that had been started.

19 Q. All right. Is that a -- the prior picture where that
20 stool was, the prior picture, was that where that was on the
21 counter?

22 A. Yes.

23 Q. Okay. And next photograph, 47?

24 A. This is a photograph just showing -- what we did is we
25 took a rod and ran this through the wall where the bullet

1 holes entered. And if you look on the back side, you can
2 see it. It basically gives you a direction of where the
3 bullet would have been traveling through the wall. We put
4 the rod through and actually had it come out the opposite
5 side where the bullet actually exited the wall.

6 Q. State's Exhibit 48?

7 A. This is a reverse side. This is where you would
8 actually be in the store where a customer could go, and this
9 would show the bullet hole that had come through the wall
10 and exited on this side of the wall.

11 Q. Do you recall what cone 19 indicated?

12 A. I think it was a fragment that was found.

13 Q. Okay. Now, on that actual swing door, is there
14 anything to denote to you?

15 A. Yes, on the door you could see there is little red
16 stains of what appeared to be blood on the door.

17 Q. Okay. And in that same area of the door, was there
18 other stains on the floor that you were able to detect as
19 well?

20 A. There were red stains here on the floor, here.

21 Q. All right. Is it -- and we haven't looked at it, but
22 if you open that door, is it level, or is there a step that
23 goes up into that area?

24 A. Once you open the door, the clerk's work area is
25 actually elevated. It's a small step, a step up to the

1 back, or into that area.

2 Q. Okay. And do you recall were there any spots that
3 appeared to be blood droplets there as well?

4 A. Yes.

5 Q. Go to the next one, State's 49.

6 What does this indicate to you at this point?

7 A. This is a photograph that -- of -- showing the bullet
8 hole that was found in the wall, and then blood droplets
9 that was found on the floor in this area.

10 Q. Okay. And, of course, the tennis shoes there, could
11 you tell what this is?

12 A. This would be the victim that we found when we entered
13 the store.

14 Q. Did y'all move Mr. Marshall at all when you were in the
15 store?

16 A. No, we did not.

17 Q. Okay. Had EMS come in to try and treat him at all?

18 A. To the best of my knowledge, I think they had already
19 been there and left before I got there.

20 Q. So apparently nothing they could have done at that
21 point?

22 A. No.

23 Q. Go to the next photograph, State's Exhibit 50.

24 A. This is a photograph just moved over a little bit more
25 toward the employees entrance. This showing the blood

1 droplets in this area and also the victim, where he was
2 laying.

3 Q. All right. And now did you notice anything with the
4 Red Bull display there as you were examining this area?

5 A. Yes, the stain -- this stain right here was actually we
6 found was leaking from one of the Red Bull cans.

7 Q. All right. And then we will go to the next exhibit, I
8 believe 51.

9 A. Once we looked at the stain or found something was
10 leaking, we actually examined the Red Bull stack and we
11 actually found this can here to have damage to the can.

12 Q. All right. And then State's Exhibit 53 -- or, I'm
13 sorry 52.

14 A. This is just a photograph. We actually removed all the
15 levels of the Red Bull to get down to the one that was
16 damaged.

17 Q. And what are you looking for at this point?

18 A. Looking for a projectile, bullet projectile fragments
19 that caused the can -- that actually struck the can.

20 Q. State's Exhibit 53?

21 A. This is a photograph of the Red Bull cans, and to the
22 left of the Red Bull cans we actually found a bullet
23 projectile that was beside the can. We marked it as cone
24 No. 24.

25 Q. All right. State's Exhibit 54?

1 A. And this is an opposite side photograph of the same
2 projectile that we found.

3 Q. Okay. And that projectile, did you collect it as well?

4 A. Yes, we did.

5 Q. I'm showing you State's Exhibit No. 82. Could you tell
6 me what that is?

7 A. Exhibit 82, this is one projectile that was found on
8 the floor beside the Red Bull display that was recovered by
9 me.

10 Q. All right. Was that ultimately sent to the South
11 Carolina Law Enforcement Division?

12 A. Yes, we actually submitted this to SLED, or commonly
13 known as SLED, for analysis.

14 Q. Okay. And has it been, from your viewing of it,
15 altered or changed in any way?

16 A. No.

17 MR. THOMPSON: I would ask to enter this into
18 evidence at this time.

19 THE COURT: No objection?

20 MR. SWERLING: No.

21 MR. SNOW: No.

22 THE COURT: Admitted without objection.

23 BY MR. THOMPSON:

24 Q. If we go to State's Exhibit No. 55. We have a cone
25 there, number 2. What is that cone number 2?

1 A. That is a spent shell casing that had been fired from a
2 weapon. A spent shell casing found on the floor.

3 Q. Okay. And do you recall where that was in location to
4 the victim?

5 A. This would be at the -- below his feet, below the
6 victim, toward the east side door on the door that would go
7 out toward the car wash.

8 Q. I show you State's Exhibit 88. Can you tell me what
9 that is?

10 A. Exhibit 88, this is the shell casing -- spent shell
11 casing, .380 caliber, and I found this on the floor near the
12 victim's feet, and it was recovered by me.

13 Q. Is that this shell casing that's photographed here?

14 A. Yes.

15 MR. THOMPSON: Your Honor, I would ask to
16 introduce this into evidence at this time.

17 MR. SWERLING: No objection.

18 MR. SNOW: No objection.

19 THE COURT: Admitted without objection.

20 BY MR. THOMPSON:

21 Q. Going to the next slide, does this orient us to where
22 that shell casing was according to where Mr. Marshall was?

23 A. Yes, this would be a photograph between the counter
24 where you would pay to the left and the aisle that you would
25 go in to shop to the right. The shell casing is labeled as

1 No. 2. That's where it was located in the store when I
2 collected it.

3 Q. All right. And --

4 MR. SWERLING: Judge, those three photos are
5 subject to the objection we made.

6 THE COURT: Yes. The record will so note and they
7 are admitted over objection.

8 BY MR. THOMPSON:

9 Q. Now, I see that you have No. 1 is that the victim's
10 feet. Can you tell me what that denotes?

11 A. Yes, the scenes that we worked, we actually place a
12 number cone beside the victim just for reference, as far as
13 item number 1, as far as the photo cone represents the
14 victim himself. Not just that certain area of him, but just
15 him as a whole.

16 Q. And I also show you State's Exhibit No. 83 and 84.
17 Look at those and tell me what those are.

18 A. Exhibit 83 is a bullet fragment that we found on the
19 victim's left pant's leg while -- before he was moved, we
20 examined the body for any evidence that we may find. We
21 found a bullet fragment on his left pant's leg and we
22 labeled it as item 1-B.

23 Q. All right. And the other one?

24 A. Exhibit 84, this is a bullet fragment that was found on
25 the floor or near the victim and we labeled that as 1-C.

1 Q. Okay.

2 MR. THOMPSON: Now, Your Honor, I would ask to --

3 BY MR. THOMPSON:

4 Q. Before I do that, did you send both of those to SLED or
5 the South Carolina Law Enforcement Division for testing as
6 well?

7 A. Yes, we did.

8 Q. Okay.

9 MR. THOMPSON: Your Honor, I would ask to enter
10 those into evidence at this time.

11 THE COURT: No objection?

12 MR. SWERLING: Just as to the photo, are you
13 talking about the --

14 THE COURT: He's offering the --

15 MR. THOMPSON: I'm offering in the fragments.

16 MR. SWERLING: Fragments, no problem, still
17 preserving our objection.

18 THE COURT: Yes, sir.

19 Admitted without objection.

20 BY MR. THOMPSON:

21 Q. Now, were there any place that you could see in the
22 store where there were actually marks where something looked
23 like it had struck the ground?

24 A. Yes, there was several locations around the victim. We
25 found impact marks in the tile of the floor. Basically it

1 was like a gouged-out spot within -- on the floor near the
2 victim.

3 Q. And did some of those cones indicate that there as
4 well?

5 A. Yes, they do.

6 Q. If we can go to the next slide, please.

7 Where is this in location to the one we just saw?

8 A. This is the -- I believe this is the aisle right -- the
9 victim would be below us and this is an aisle in front of
10 him.

11 Q. And what are the things that are denoted by some of
12 these cones in that aisle?

13 A. The number cones in these aisles, these are locations
14 that we found lead fragments on the floor down this aisle.

15 Q. Okay. Go to the next slide, please, Exhibit 58.

16 Is this next to the aisle we just saw?

17 A. Yes. If you're standing in the store -- we are
18 standing where the register is at, the aisle we just looked
19 at would be immediately to the left. This would be the
20 aisle to the right of that aisle.

21 Q. All right. And what is indicated? What are these
22 things on the floor we are seeing here?

23 A. The number cones here represent loose change and rolled
24 change that we found in that aisle.

25 Q. All right. And now the next slide, please, Exhibit 58.

1 I'm sorry go, let's back one.

2 A. And number --

3 Q. There is a small object I see below, it's under that
4 bandana rack. Do you have the pointer with you?

5 A. Here?

6 Q. Yes. Could you tell us what that is?

7 A. That's a spent .380 caliber shell casing.

8 And correct myself, 11 and 13 in this photograph are
9 change and rolled money.

10 And the next photograph I noticed that number 12 is
11 representing a spent shell casing that was found.

12 Q. Okay. And we will go to number 12, please, the next
13 slide, which think is cone 12, Exhibit 59. And is that the
14 .380 shell casing that you were just telling us about, item
15 12?

16 A. Yes, that would be where that was located. And 12 was
17 placed beside it for identification for a reference point.

18 Q. I show you State's Exhibit No. 86. Is that that shell
19 casing that's located there?

20 A. Yeah, this is a spent shell casing, .380 in caliber.

21 This was on the floor in front of the Morton Salt rack
22 shelf, or rack where the Morton Salt was located. This was
23 collected and recovered by me.

24 MR. THOMPSON: Your Honor, I would ask to enter
25 that into evidence at this time.

1 MR. SWERLING: No objection.

2 MR. SNOW: No objection.

3 THE COURT: Admitted without objection.

4 BY MR. THOMPSON:

5 Q. If we could go to the next slide, Exhibit 60.

6 Is that still within the same aisle, kind of at a
7 different angle, I suppose?

8 A. Yeah. This was actually to show item number 14, which
9 is a rolled -- some rolled coins. We were not able to see
10 it due to that rack to the right, so we just moved over to
11 the left and did a photograph of that.

12 Q. Okay. Now, going back again to the front of that rack,
13 I think you can point out again what that is, the bottom of
14 that rack?

15 A. Right here?

16 Q. Yes.

17 A. This is a spent shell casing that was also found in
18 that area.

19 Q. If we can go to State's Exhibit 61.

20 A. This is a photograph of that rack, a close-up shot of
21 that shell casing where we placed cone No. 40 in that
22 location.

23 Q. All right. I'll show you State's Exhibit No. 85. If
24 you can look at that and tell me what that is?

25 A. This was the spent shell casing, .380 in caliber. It

1 was on the floor beside the display, which was that display,
2 and it was recovered by me.

3 Q. All right. If we could go to State's Exhibit No. 62,
4 please.

5 What is indicated in this particular photograph?

6 A. This is a display that is in the store of beer that is
7 stacked up. To the right of this photograph would be the
8 victim.

9 Directly behind where the mat is at the bottom, this
10 would be the door that is on the west side of the location
11 that you could enter from the India Hook store -- or India
12 Hook side of the business.

13 This is a display that we found leaking cans also. We
14 found where the entry point was, as far as where the leaking
15 cans were, and we placed a rod it in for directional
16 purposes for the shot -- or the direction it may have
17 traveled to get to that location.

18 Q. Okay.

19 MR. THOMPSON: And going back, I think State's 85
20 that I just showed you, I would ask to move that into
21 evidence at this time, the .380 shell casing he identified
22 before this photograph.

23 THE COURT: Admitted without objection.

24 BY MR. THOMPSON:

25 Q. Now, if we could go to the next exhibit, State's

1 Exhibit 63, and describe that for me.

2 A. Yes, this is a -- we did the same thing to the beer
3 that we did to the Red Bull. We actually just started
4 removing the cases of beer until we got down to the area
5 that was damaged and made a photograph. And inside of this
6 case right here you could see a bullet projectile that we
7 found in that box.

8 Q. And I'll show you State's Exhibit No. 81. If you could
9 tell me what that is?

10 I'm sorry 86. 86 -- 87. Let me correct that, 87.

11 A. On the exhibit it shows 81.

12 Q. Well, then let's say 81. If it's on the exhibit, it's
13 what we go with.

14 A. Exhibit 81 is one projectile. This was inside the
15 second from the bottom case of -- and I'm going to --
16 Yeuling Lager, pronunciation from the beer. This was
17 collected by myself.

18 Q. Okay. And did you send that to the South Carolina Law
19 Enforcement Division for testing?

20 A. Yes, it was -- actually it was submitted to SLED for
21 analysis.

22 Q. Okay. Now, is that -- I believe that's the second
23 bullet or projectile that you found, is that correct?

24 A. Yes.

25 Q. Did you find any other bullets or projectiles within

1 the store itself?

2 A. I think the only other things we found in the store
3 were just fragments of bullets found. I believe we only
4 found two.

5 Q. Now, of those two items that you sent to SLED, those
6 two projectiles that you recovered, what, if any, result
7 came back from SLED on those?

8 A. We had these examined by SLED for analysis to basically
9 to compare and to make sure -- see if they were fired from
10 the same weapon or from a different weapon and what type of
11 weapon would have fired the -- with the caliber of the
12 bullet would be. The results that they were both fired from
13 the same firearm.

14 Q. All right. And did they have -- did they have any
15 information on what type of firearm or what type of bullets
16 those would have been?

17 A. I believe it was a .380 caliber.

18 Q. Okay. Thank you.

19 MR. THOMPSON: I would ask to enter that in
20 evidence at this time as well, Your Honor.

21 THE COURT: Any objection to that?

22 MR. SWERLING: No.

23 MR. SNOW: No.

24 THE COURT: Admitted without objection.

25 BY MR. THOMPSON:

1 Q. Going on to State's Exhibit 64.

2 A. This is a photograph of -- going over another aisle to
3 the right, and basically this would be the door that would
4 lead out toward the car wash side of the previous
5 photographs that we showed. This would be where you would
6 actually exit the building. If you are standing from
7 Celanese looking at the building, this would be to the
8 right.

9 Q. Would that also be the side where the Northwoods
10 Apartments are?

11 A. Yes. This is indications that in this location they
12 actually found more rolled coins in this area.

13 Q. All right. If we could you go to the next exhibit, 65?

14 A. This is just a photograph of the roll coins that we
15 actually saw and found underneath that display of Coke that
16 was just in the previous photograph.

17 Q. Okay. And 66?

18 A. And a roll of coin that was found in the same area.

19 Q. Now, going to the parking lot, if we could look at
20 State's Exhibit 67.

21 A. That is a photograph from the gas pumps. Just inside
22 this door would have been 17 and 18.

23 Q. That's where the Coke display was?

24 A. Yes.

25 This is a photograph from the gas pump looking towards

1 that door. And the number cones in this area basically
2 represent loose change that we found throughout this area
3 and the coin -- the plastic coin display or the holder rack
4 and rolled coins that we found.

5 Q. Okay. If we could go to the next, State's 68.

6 A. This is just a close-up shot of the one before showing
7 that the blue plastic coin display that we -- the rack that
8 we found in the parking lot, and the rolled coins that were
9 also around that area.

10 Q. Okay. Now, altogether do you recall how much change
11 you were able to find, both on the floor in the store and
12 outside the store itself?

13 A. Somewhere around eighty-five dollars to ninety dollars,
14 I think. I don't know the exact amount, but it was less
15 than a hundred dollars.

16 Q. All right. As well did you -- as part of your work
17 here at the scene that day, did you go back at any point and
18 get an overview of the scene from basically an aerial-type
19 photo?

20 A. Yes. Actually we went back and pulled an aerial
21 photograph off of the -- I think it was Google.

22 Q. I'll show you State's 69 and 70. Could you tell me
23 what those are?

24 A. 69, this is an aerial photograph that I pulled off of
25 the computer showing the location of the intersection, this

1 being Celanese Bypass.

2 Q. We are going to show them to the jury in just a moment,
3 but I just want you to look at them for yourself.

4 A. I'm sorry.

5 Q. Does that accurately depict that area?

6 A. Yes, these are -- these are the ones that I did.

7 Q. And are you familiar with -- you are familiar with the
8 area that we are talking about here and the buildings around
9 it?

10 A. Yes, I am.

11 Q. All right. And each one of those accurately depicts an
12 aerial photograph of that area?

13 A. Yes, sir.

14 Q. And as well, I believe that you measured distance from
15 the BP station to the apartment complex?

16 A. Yes, I did.

17 Q. All right.

18 MR. THOMPSON: Your Honor, I would ask to enter
19 these into evidence at this time, State's 69 and 70.

20 MR. SWERLING: No objection.

21 THE COURT: They are admitted without objection.

22 BY MR. THOMPSON:

23 Q. And if we could go to State's 69 on the --

24 All right. If you could tell us, just kind of orient
25 us as to where we are on this photograph?

1 A. This is India Hook Road. This would be coming from --
2 the general area would be Ebenezer. The hospital would be
3 this direction. This would be coming down India Hook Road.
4 This would be take you out to the dam or out to the river,
5 in that general area.

6 This is Celanese Bypass. This direction would take you
7 towards York, and this direction would take you toward I-77
8 and Cherry Road, in that area.

9 Q. All right. And where is the store in location to this
10 photograph here?

11 A. The BP station -- this is a BP station that is at the
12 corner of Celanese and India Hook.

13 Q. Okay. And where is the Harris Teeter in this
14 photograph?

15 A. This is the Harris Teeter shopping center across the
16 street.

17 Q. And if you would, where are the apartment complexes
18 that we have been discussing?

19 A. The apartment complexes is one here and here.

20 Q. Okay. If we could go to the next exhibit, State's 70,
21 and if you could describe what you intended to do with this
22 picture or photograph?

23 A. This is just a -- I just zoomed in and looked to show
24 the store. This would be in the BP, India Hook Road,
25 Celanese Bypass. And the apartment complex is east of the

1 store.

2 Q. All right. And, now, if you would, tell me how did you
3 look at the measurements? What did you use -- or what
4 points of reference did you use in your measurements to
5 measure the distance between the store and the apartments?

6 A. I started -- and this is from the curb of the parking
7 lot or the business itself to a spot in the pavement behind
8 the -- or to the east of the business that shows shoe
9 impressions that were found at that location. And then the
10 direction from that shoe impression to the front corner of
11 that building, which is an apartment complex. And then this
12 spot right here, which is kind of hard to see, is a parking
13 space at the rear of the apartments.

14 Q. All right. And what is the total distance between the
15 curb there at the BP all the way to that parking space?

16 A. I added into the bottom, there's a distance from the
17 parking lot to the BP station to the rear parking lot of the
18 Northwoods Apartments on Celanese Road is 1,225.34 feet.

19 Q. So it's just over 400 yards?

20 A. Yes.

21 Q. Thank you.

22 Now, if we could go to State's Exhibit 77.

23 If you could look at this for me and tell me what this
24 depicts?

25 A. This is at the back of the Northwoods Apartments

1 parking lot. This is a brick wall, and there is a -- we
2 found where it was partial shoe impressions were found in
3 the sand that -- where you would actually step up or step
4 down off of the wall.

5 Q. All right. And if we could go to State's Exhibit 10
6 please, which is already in evidence.

7 Where is that in location or in relative location to
8 this photograph?

9 A. It would be just to the right in this area here of the
10 dumpster.

11 Q. Okay. Right there where the top of that, the bricks we
12 saw would be the bricks from that brick wall?

13 A. Yes, it would actually be on top of that, right there
14 on top of that ledge of the brick.

15 Q. If we could go back to State's 78.

16 And what is this depicting here?

17 A. This is a photograph of the shoe impression that we
18 just saw. I actually went to that location and this is a
19 plastic cast of the shoe impression itself.

20 From the center of the cast measuring back, it's giving
21 us a distance from the center of the cast measuring back to
22 the wall that is like a petition wall from the dumpster
23 showing a measurement of how far that would be in
24 relationship to the wall.

25 Q. Okay. And the next photograph, 79?

1 A. This is a same shoe impression. This is a plaster cast
2 that I did of that shoe is the previous photograph. This is
3 basically showing me what the height from the parking lot
4 and how high the wall is up to the ledge.

5 Q. Okay. About how high is that about?

6 A. I show it right at 38 inches high.

7 Q. Okay.

8 A. So it would be 3'2".

9 Q. Okay. Now, that plaster cast that you did, did you
10 also recover that after you made it?

11 A. Yes, I collected it and turned it in.

12 Q. And was that ultimately sent to the South Carolina Law
13 Enforcement Division for testing as well?

14 A. Yes, it was.

15 Q. Okay. Thank you. You can be seated.

16 (Witness back on the witness stand)

17 BY MR. THOMPSON:

18 Q. Now, going back again to the BP station, did you
19 recover -- we saw of that splatter that you talked about on
20 the swinging door and thing. Did you go back ultimately and
21 recover any swabs of those what appear to be blood spatters?

22 A. Yes, which we -- I actually went back and swabbed the
23 red stains in that area and collected that.

24 Q. And did you send those to SLED as well?

25 A. Yes, I did.

1 Q. And what were the results of any testing done on those
2 swabs?

3 A. The red swabs were sent to SLED for analysis and
4 compared to DNA from the victim and they all returned as a
5 match to the victim.

6 Q. Okay. Now, going on after this particular day, on the
7 10th, did you have an opportunity to remain involved on the
8 11th?

9 A. Yes.

10 Q. Did you go to Hartsville on the 11th?

11 A. Yes, I did.

12 Q. What happened when you went to Hartsville?

13 A. Myself and Investigator Barnwell responded to
14 Hartsville to process and photograph a car that had been
15 taken to Hartsville Public Works by the Hartsville PD.

16 Q. All right. And was that a Buick that y'all processed
17 at that point in time?

18 A. I believe it was.

19 Q. Okay. And when you processed that vehicle, describe
20 how and what you do to process the vehicle.

21 A. It's basically like responding to any crime scene. We
22 would look for -- we would photograph the vehicle or
23 photograph that location. We would then process the car for
24 any latent fingerprints; any trace evidence which could be
25 hair, fibers; any evidence that would be in that vehicle;

1 and also check the vehicle and swab the vehicle for any
2 known touch DNA.

3 Q. So did you swab parts of the inside of the vehicle for
4 touch DNA?

5 A. Yes.

6 Q. And how about hair follicles? Did you find any pieces
7 of hair within the vehicle?

8 A. Yes.

9 Q. Did you collect those as well?

10 A. Yes, we did.

11 Q. And was there anything else that you collected, other
12 than the swab and the hair?

13 A. I believe there was some straws that we found inside
14 the interior of the car and some plastic bags in the trunk
15 of the car.

16 Q. All right. Were there any cigarettes that were
17 recovered as well?

18 A. I believe so.

19 Q. Okay. Were all of those sent to SLED as well?

20 A. Yes.

21 Q. And from the testing at SLED there, were they able to
22 compare those against the DNA standard of each of the
23 defendants in this case?

24 A. Yes, they were.

25 Q. And what, if any, results came from that?

1 A. I believe the results were inconclusive or negative.

2 Q. Okay. So nothing that linked any one of these
3 defendants to the car from those, basically?

4 A. From the DNA?

5 Q. Right.

6 A. No.

7 Q. Now, while you were down in Hartsville, did you also --
8 and talk about processing the car. Did you also try to lift
9 any prints yourself out of the car?

10 A. Yes, we processed the vehicle for fingerprints.

11 Q. All right. Now, had Hartsville already done some
12 fingerprint lifting off of the car at that time?

13 A. Yes, they had.

14 Q. So what you did was basically a little more, I guess,
15 in depth of what they might have done, is that correct?

16 A. Yes.

17 Q. Now, going back, I believe, on October 26th of 2006,
18 did you have an occasion to go back down to Hartsville at
19 that time?

20 A. Yes.

21 Q. And did you recover some evidence that Hartsville had
22 collected at that point?

23 A. Yes, I met with I believe Sergeant Rudick at the
24 Hartsville PD and collected some evidence that they had
25 collected.

1 Q. And did that include the latent lifts that he had made
2 from the print cards he had lifted?

3 A. Yes.

4 Q. I'll show you I believe what's already been marked and
5 put into evidence as State's Exhibit 33. Does that appear
6 to be the latent lifts that you collected or the latent
7 lifts that Hartsville collected?

8 A. This is twelve latent print cards recovered by
9 Sergeant -- or Detective Rudick. He signed them over to me
10 on the 26th.

11 Q. Okay. And you brought those back at that time?

12 A. Yes, brought them back to the forensic unit.

13 Q. Now, I'm going to ask you as well, what is your
14 training, as far as trying to compare prints?

15 A. I have attended the South Carolina Criminal Justice
16 Academy numerous times. Basically basic police academy --
17 or basic police training I got in 1980, '81.

18 After that I returned numerous times to advanced
19 classes, which contain fingerprint identification
20 classification, advanced latent fingerprint identification
21 and ID technician school. These three classes are basically
22 geared toward latent fingerprints and fingerprint
23 classifications at the academy.

24 Q. All right. Now, how often as an officer did you
25 compare prints and try to see if they matched or not?

1 A. In forensics solely daily.

2 Q. So daily you would compare prints while you worked
3 prints?

4 A. Roughly. I would say a -- a pretty good bit would be
5 almost daily we would actually examine latent prints.

6 Q. So how many prints are we talking that you have
7 compared or looked at and tried to examine?

8 A. Well over -- well over in the thousands.

9 Q. Okay. And can you tell me, have you testified before
10 as an expert in matching prints?

11 A. Yes.

12 Q. And what is the procedure, as far as matching prints?
13 After you match prints, do they generally have other people
14 look at them as well?

15 A. Yes, if we get a request to compare latent fingerprints
16 to an inked ten print card of a suspect, if I look at the
17 print and I'm able to make what I consider to be a match to
18 that latent print that was recovered from the scene to the
19 known inked ten print fingerprint card of the suspect, I
20 would then pass them to another individual within our unit
21 and have them confirm my findings.

22 Q. Now --

23 MR. THOMPSON: The court's indulgence just one
24 moment, Your Honor, to talk to the defense.

25 (Off the record)

1 (Back on the record)

2 MR. THOMPSON: Your Honor, I would tender Mr.
3 Williams as an expert in comparing fingerprints at this
4 time.

5 MR. SWERLING: No objection.

6 MR. SNOW: No objection.

7 THE COURT: All right. Without any objection he's
8 so qualified.

9 Counsel, let me pause at this point and give the
10 jury an instruction with regard to expert witnesses.

11 Mr. Foreman, ladies and gentlemen of the jury, I
12 charge you that, although lay witnesses are limited to
13 testifying about facts within their knowledge, are not
14 allowed to give opinions. Certain witnesses who, by
15 training, education, or experience, are considered as
16 experts in the particular field may give opinions in that
17 field, based upon the facts from that or in their
18 conclusions. And these opinions constitute evidence to be
19 considered by you in connection with all of the other
20 evidence and testimony in the case. And it is for you, the
21 jury, to give it such weight as you in your experience and
22 discretion may determine. By this I mean that you must
23 weigh such evidence and accept or reject it in the same
24 manner as you treat all other evidence in the case.

25 The value of expert testimony does not depend upon

1 the skill or knowledge professed by experts, but upon the
2 skill and knowledge they actually possess. Expert testimony
3 is given for the purposes of enlightening you and not for
4 the purpose of controlling your judgment.

5 You may proceed solicitor.

6 BY MR. THOMPSON:

7 Q. Officer Williams, I'll hand you some of the information
8 that I believe that you had brought in from the FSU for the
9 next questions, and we'll mark it as needed.

10 You mentioned that you had gotten the lifted latent
11 prints from Hartsville, correct?

12 A. That is correct.

13 Q. And you had lifted some latent prints as well out of a
14 vehicle?

15 A. Yes.

16 Q. Now, did you ultimately -- were you able to end up
17 getting a ten print card or a known standard card for each
18 of the defendants in this case?

19 A. Yes, we received known ten print cards from each of the
20 defendants.

21 Q. All right. So you had a print card from Ben Stewart?

22 A. Yes.

23 Q. And Terrell Addison?

24 A. Yes, sir.

25 Q. And Dontavious Mack?

1 A. Yes.

2 Q. And Davorius Mack?

3 A. Yes, sir.

4 Q. Were you able to sit down with those ten print cards
5 and compare them to the actual lifts that you made from the
6 vehicle?

7 A. Yes.

8 Q. All right. And if you could, go over the results of
9 what you found from that with us.

10 A. From the vehicle, the latent prints that I recovered
11 from sergeant -- or Detective Rudick from Hartsville, they
12 were examined, all four defendants inked fingerprints. And
13 what I mean by inked fingerprint, this is where -- it's a
14 controlled process where an individual is fingerprinted on a
15 ten print card, and the ten print card consists of each
16 finger; thumb, to the little finger on the right hand,
17 thumb, to the little finger on the left hand, and then
18 simultaneous prints at the bottom where the four fingers are
19 touched to the card at the same time.

20 To recover the prints on a ten print card, the
21 individual -- I believe now most of the locations use a
22 scanning system to where you just roll it across the scan
23 and it puts it onto a card. Some departments still use the
24 rolled ink where you put printer's ink on a metal surface
25 and you actually take the individual's finger and you roll

1 it across the ink, transferring the ink the metal plate to
2 the individual's finger, and then you roll the individual's
3 finger on an inked fingerprint card, and that is known as a
4 ten print card, known standard from a ten print card.

5 Q. All right.

6 A. In this case I was actually -- I received those cards
7 and compared those cards to the latent fingerprints that
8 were recovered by Sergeant Rudick and also the latent
9 fingerprints that I recovered in this case.

10 Q. And can you tell me, from the prints that you were able
11 to recover, did any of them come back to match anyone within
12 the vehicle that you examined?

13 A. Yes, on the four individual cards that I examined, I
14 was able to find a match to Davorius Mack and to Terrell
15 Addison.

16 Q. All right. And, if you would, if you could go over the
17 individual spots where the -- where it matched with Davorius
18 Mack first.

19 A. It's labeled as LP-1-A, which LP stands for latent
20 print. 1-A is the item number for that latent. It was
21 lifted by Hartsville PD, Sergeant Rudick. This was
22 recovered from the driver's side B pillar and found to
23 positively match the right middle finger of the inked ten
24 print card of Davorius Mack.

25 The B pillar of a vehicle, if you are standing by the

1 driver's side of the vehicle, the windshield comes up. That
2 is the A pillar. The center pillar where the driver's door
3 would close, that is a B pillar that would go up the
4 vehicle. And the back rear window of the car, that would be
5 considered the C pillar of a vehicle.

6 This was found on the pillar based on where he
7 recovered it on the driver's side, that would be near the
8 center of the driver's door and the back window.

9 Q. I'm going to point your attention to State's Exhibit
10 14, which is already in evidence. I would ask you to review
11 that.

12 Let's go onto the next one that you were able to look
13 at and actually discover --

14 Before we discuss that, if you could tell me just
15 briefly and tell the jury just briefly, one, with
16 fingerprints, are they specific to each individual?

17 A. Yes.

18 Q. And how is that?

19 A. On everyone's hands -- everybody's hands, you have
20 patterns that are developed. These patterns have unique
21 characteristics to each individual print.

22 On fingerprints or on the palms of your hands and
23 the -- I call the palm of your foot or the bottom of your
24 foot you have raised ridges, and these ridges basically are
25 a fingerprint, and on the bottom of your foot, I'll

1 basically explain it as fingerprints.

2 On your fingerprints you have ridges and valleys, and
3 this is where you get your grip in your fingers. The
4 ridges, when it comes up to a ridge, that is basically the
5 fingerprint outline. And along these ridges you have minute
6 pores that secrete water. When you touch something on a
7 finger -- or your finger, if you touch something -- if your
8 hands are oily, where you may touch your forehead or you are
9 sweating, if you touch something and raise your hand, you
10 are -- you may leave an impression of those ridges that are
11 raised that would be identified to just your finger. And by
12 that you would have ending ridges.

13 Where some ridges on your finger, they may come in and
14 go all the way around your finger and go out the other side
15 or go back out the same side they entered.

16 An ending ridge may come in and stop and it doesn't go
17 any farther. Well, that would be an identifying
18 characteristic.

19 Other ridges may come in and all of the sudden they
20 split into two ridges. That is known as a bifurcation, and
21 that would be a unique characteristics to that finger,
22 fingerprint.

23 You may have islands where a ridge would come in and
24 all of the sudden the ridge would split and come back
25 together somewhere down the line. That would be an

1 identifying characteristic to your fingerprint or an
2 individual's fingerprint.

3 There are islands, which we consider, are dots that we
4 consider that is characteristic, and the patterns themselves
5 are characteristic to an individual.

6 Q. And when we talk about a match today, what do we mean?
7 What do you mean by a match?

8 A. What we do, or what I did was I take the latent
9 fingerprint that was recovered and that's where I dust the
10 vehicle, or dust any object, and I see what appears to be a
11 fingerprint. I then apply powder to the print, dust the
12 print. And if it -- I take tape, place it across the latent
13 impression. I then remove the tape and place it onto a
14 fingerprint card.

15 I would then take that latent print that I had
16 recovered, take them back. And in this case we had four
17 defendants that I had known ten print fingerprint cards
18 from. I examined the latents and then I would compare that
19 latent to the fingerprint cards of the defendants, you know,
20 to look for unique characteristics - the bifurcations where
21 the ridges split, where that would been in place with a
22 known fingerprint of a defendant. The ending ridges, things
23 of that, I would plot those to see if I could match those
24 against the known fingerprints of the defendants.

25 Q. All right. So in this particular case you said that

1 the first one that matched Davorius Mack was on the B
2 pillar, and that is something that you were able to
3 determine specific characteristics that the lifted latent
4 matched the actual inked print standard that you had?

5 A. Yes.

6 Q. All right. And if you could show us in this
7 photograph, I believe it's State Exhibit No. 14, the B
8 pillar of the car?

9 A. This is A pillar. This would be at the windshield.

10 The B pillar is down the center of the vehicle.

11 And the C pillar would be down the rear of the vehicle.

12 This was on the B pillar section of the vehicle.

13 Q. Okay. Now, go to the next one, if you would, and tell
14 us how that one --

15 A. This is labeled as LP-2. It was lifted by Hartsville
16 PD, Sergeant Rudick, from the right side of the trunk lid
17 and found to positively match the left palm of the inked
18 print card from Davorius Mack.

19 Q. I'm sorry, which -- Davorius?

20 A. Davorius, I'm sorry.

21 Q. And that was from off of the trunk lid?

22 A. Yes.

23 Q. Okay. And did you match that one as well?

24 A. Yes, I did.

25 Q. Was there any question that that was a match?

1 A. No.

2 Q. Now, go to the next one, if you would, in the report.

3 A. This is LP-2-B, which was lifted by myself from the
4 front hood area of the Buick registered -- South Carolina
5 registration, which would be the tag number of 366 PNE, and
6 found to positively match the right palm print of Davorius
7 Mack.

8 Q. All right. And where was that located again on the
9 vehicle?

10 A. This was on the front hood area of the car.

11 Q. That was on the front hood.

12 All right. Now, the next one that you were able to
13 look at and determine a match on?

14 A. This is labeled as LP-3. This was lifted by
15 Hartsville, Sergeant Rudick, from the driver's B pillar and
16 found positively --

17 Q. The pillar you just pointed out here?

18 A. Yes.

19 Q. Okay.

20 A. And this was a positive match to the right palm print
21 of Terrell Addison.

22 Q. All right. And so did you match that one to Terrell
23 Addison?

24 A. Yes.

25 Q. And is there any question in your mind that that's a

1 match?

2 A. No.

3 Q. All right. Now, what is the -- is there any more that
4 you were able to match after that?

5 A. No, those were the only ones out of all the prints that
6 we recovered that were -- that we were able to make any kind
7 of identifying comparison to and match. These -- and once I
8 did this, these were actually passed on to two investigators
9 instead of just one. We had Investigator Gardner and
10 Bagwell actually confirm those findings.

11 Q. So were there any matches to Ben Stewart?

12 A. No.

13 Q. Were there any matches to Dontavious Mack?

14 A. No.

15 Q. Now, let me ask you. The processing of a vehicle, and
16 this vehicle in particular as you remember it, from the
17 inside of the vehicle, is that an easy spot to where to
18 gather fingerprints from?

19 A. No, the inside of vehicles are textured. There is not
20 really a smooth surface inside vehicles and I know that's
21 for the cosmetic of the vehicle.

22 The only good spots in a vehicle that we actually look
23 for for latent fingerprints is the rearview mirror, the
24 shifter handle, if it's a shifter with like a knob or
25 something that is very smooth. But the only good spots

1 inside a car basically for us, my experience, is the windows
2 on the inside, the rear view mirror, the outside mirrors,
3 things that would be commonly -- if you get into a vehicle
4 and it's not your vehicle, you would adjust and not really
5 think about the process of leaving prints. But the seats,
6 things like that, no, because of the texture.

7 Q. Now, in your experience is it possible for someone to
8 get a car, get in a car, move thing around and never leave a
9 fingerprint?

10 A. Yes. Probably in my experience I have processed more
11 cars without finding fingerprints than I did find
12 fingerprints.

13 Q. All right. Let me ask you this. In the actual store,
14 the BP store in this case, did you process for prints behind
15 the counter?

16 A. Yes, I actually processed the store to latent prints,
17 and recovered some prints off the door that would lead out
18 toward the car wash side.

19 Q. Off of the glass, the glass door?

20 A. Yes.

21 Q. But now what about behind the counter itself? Were you
22 able to recover any identifiable prints off of the area
23 around the counter?

24 A. No.

25 Q. And obviously the counter's door would be something

1 that someone would touch a lot, wouldn't it?

2 A. Yes.

3 Q. But there were no -- and tell me what we mean by no
4 identifiable prints off of that area.

5 A. Basically we -- if a counter -- counters in stores, the
6 high traffic area, processing those you may end up getting a
7 lot of smudged or prints that appear to be a print, but
8 there is just no detail there to make an identification.

9 And they -- actually if the clerk cleans the counter
10 periodically, that would take away from having any prints
11 there.

12 Q. So in processing the counter there, you didn't find
13 anything even with Ned Marshall's prints on it?

14 A. No, I did not.

15 Q. Okay. Now, did you have an opportunity to view the
16 videotape?

17 A. Yes, I did.

18 Q. All right. Did you do that as part of your
19 investigation too?

20 A. Yes, actually at point during that day, and I don't
21 remember the exact time, we -- before I released the
22 location we viewed the videotape.

23 Q. Okay.

24 A. Or I viewed the videotape.

25 Q. And was part of that to determine if they could have

1 left fingerprints?

2 A. Yes. Actually when I -- any location that has an
3 offense that happens and they have video, the sole purpose
4 that I look for it is their hands, to see what they did with
5 their hands.

6 Q. And in looking in this video, was there anything that
7 you noticed about their hands?

8 A. They were wearing, I believe, gloves.

9 Q. Okay. And obviously that would have a poor effect on
10 fingerprints, is that correct?

11 A. Yes.

12 Q. All right. Going back then to one other time, November
13 14th of 2006.

14 It's marked as State's 91 and 92. If you would look at
15 these for me and tell me what they are?

16 A. State's Exhibit 91, these are a pair of black tennis
17 shoes, property of Dontavious Mack, Nike Air Force One.
18 These were recovered by me.

19 Q. Did you recover those shoes yourself?

20 A. Yes, these were -- I received these from the -- at the
21 Moss Justice Center here, at the detention center property
22 room.

23 Q. All right. Would that be the property of that
24 defendant at that time?

25 A. Yes.

1 Q. Okay. Is that something that they take off of them
2 when they are arrested?

3 A. Yes, sir.

4 Q. Okay. And what did you do with those shoes after you
5 recovered them?

6 A. I collected them and placed them in this bag and then
7 placed them into evidence.

8 Q. Were they ultimately sent to SLED for evaluation?

9 A. Yes, sir, they were.

10 Q. All right. And the next bag, if you would point that
11 one out, please?

12 A. This is another pair of black tennis shoes that I
13 recovered.

14 Q. Whose are those?

15 A. These belong to Davorius Mack, a black tennis shoe,
16 Nike Air, and these were collected from the property room in
17 the detention center also.

18 Q. All right. From where his property was located?

19 A. Yes.

20 Q. All right. Did you take those to SLED as well for
21 evaluation?

22 A. Yes, they were sent to SLED.

23 MR. THOMPSON: Your Honor, I would ask to enter
24 both of those into evidence at this time.

25 MR. SWERLING: No objection.

1 MR. SNOW: No objection.

2 THE COURT: Admitted without objection.

3 BY MR. THOMPSON:

4 Q. Does the -- a final couple of questions.

5 Going back to the crime scene, did you notice as
6 well -- I think you had mentioned that an area where you had
7 seen some footprints. Do you remember where those were in
8 the area of the crime scene?

9 A. Yes, if you are standing in front of the store, you
10 would go toward Northwoods Apartments. And in the roadway
11 that leads behind the store, Investigator Barnwell located
12 shoe impressions in the roadway, in which he photographed
13 those.

14 Q. All right. And is that the reason that you went and
15 took these shoes from their property?

16 A. Yes.

17 Q. Okay. Thank you. No further questions.

18 MR. SWERLING: Judge, I have no questions.

19 MR. SNOW: Judge, I have a few questions.

20 THE COURT: Okay.

21 CROSS EXAMINATION BY MR. SNOW:

22 Q. Mr. Williams, you indicated there were several
23 fingerprint cards that you recovered, or someone else
24 recovered, as a result of this investigation from the car?

25 A. Latent fingerprints?

1 Q. Yes.

2 A. Yes, sir.

3 Q. And this was from the car that was allegedly driven
4 from the suspects from Hartsville to Rock Hill and then
5 back, if you know?

6 A. Yeah, based on the information, I understand that was
7 the vehicle.

8 Q. Okay. And do you know if these fingerprints were taken
9 from the windows?

10 A. I would have to look at each individual card to see
11 what it would represent.

12 Q. Do you mind doing that, if you have it? Are you able
13 to look at them?

14 A. Yeah, I have them here.

15 Q. If you don't mind, when you are going through them, can
16 you just tell me where they were taken from, if you don't
17 mind?

18 A. This would be on the passenger's side rear C pillar
19 outside of the vehicle.

20 The front hood left side, or the right side. If you
21 were looking from the front of the vehicle, it would be from
22 the right side on the front hood.

23 Right side front hood.

24 Left side rear outside window.

25 Left side near the window and B pillar.

1 The gas cap. Outside gas cap on the vehicle.

2 And the front door outside window of the vehicle.

3 Q. Okay. I think the solicitor asked you did any of these
4 fingerprints that you recovered match Ben Stewart?

5 A. No, they did not.

6 Q. None matched Ben Stewart?

7 A. No, sir.

8 Q. This car appeared to be washed, if you know?

9 A. To me it had not been cleaned.

10 Q. Had not been cleaned.

11 And you even -- I don't know if you said you took
12 samples from the inside, but you didn't recover any
13 fingerprints from the inside?

14 A. No.

15 Q. So you didn't find any fingerprints from the inside or
16 inside mirror that matched Ben Stewart?

17 A. No, I did not.

18 Q. And, again, you did look at the inside of the car. Had
19 it been cleaned or washed, did it?

20 A. No, it had not been cleaned, in my opinion.

21 Q. Now, you looked at the -- I think you said you looked
22 at the video?

23 A. Yes, sir.

24 Q. And the video showed Dontavious wearing gloves?

25 A. Yes.

1 Q. You didn't find any fingerprints of Dontavious either,
2 did you?

3 A. No, I did not.

4 Q. And, if I may, turn your attention to the DNA evidence
5 I believe you said that you recovered -- that was recovered
6 as a result of your investigation.

7 I think you mentioned that, and tell me if I'm right or
8 wrong, and I'm certainly not an expert on DNA, but you said
9 that you did take DNA analysis of several items, correct?

10 A. Yes, sir.

11 Q. And I want to read you a sentence from your -- from the
12 report.

13 First, let me ask you if you familiar with it. You are
14 familiar with --

15 MR. SNOW: May I approach, judge?

16 THE COURT: Yes.

17 BY MR. SNOW:

18 Q. Is this the report from this case?

19 A. This would be a SLED analysis report that was sent back
20 to Detective Haire from SLED.

21 Q. Okay. And that's something that you have been using in
22 your investigation -- in your testimony?

23 A. Yes.

24 Q. Okay. Let me just step back.

25 Do you have a copy of it there with you?

1 A. I do not.

2 Q. Well, I'm going to --

3 MR. SNOW: Judge, may I stand up here?

4 THE COURT: All right.

5 BY MR. SNOW:

6 Q. If you would, do you mind reading this sentence here?

7 A. Which one?

8 Q. The second sentence.

9 A. This one?

10 Q. Yes.

11 A. "The DNA obtained from item 18 is a mixture of at least
12 two individuals. No conclusion can be made regarding the
13 inclusion or exclusion of Dontavious Mack, Terrell Addison,
14 or Davorius Mack as possible contributors to this mixture."

15 Q. And that sentence I think you included inclusion and
16 exclusion. What do you mean by that?

17 A. Basically that means that the sample -- there was
18 something there in the DNA sample that was submitted, but
19 there was not enough of a sample to verify whose it
20 belonged -- or who exactly the DNA belonged to.

21 Q. Now, isn't it also true about any DNA that was taken
22 from the vehicle or the items in the vehicle that you could
23 not exclude or include Davorius Mack, Terrell Addison or
24 Dontavious Mack?

25 A. Yes, there was no DNA evidence collected that singled

1 out one individual, or excluded individuals.

2 MR. SNOW: If I may approach?

3 THE COURT: Yes.

4 BY MR. SNOW:

5 Q. Now, this -- tell the court or tell the jury what that
6 is that you are looking at.

7 A. This is a SLED analysis report that was returned to
8 Detective Bruce Haire of the Rock Hill Police Department
9 from SLED.

10 Q. And do you know what the samples are they are testing?

11 A. Yeah, at the bottom it says items analyzed. 43 would
12 be an oral swabs from Ben Stewart; number 26 would be a
13 straw (yellow). Number 30.2 is a cigarette butt.

14 Q. And those are items taken from the vehicle?

15 A. Yes.

16 Q. That allegedly these suspects were in that they drove
17 from Hartsville to Rock Hill and then from Rock Hill back to
18 Hartsville?

19 A. That's correct.

20 Q. This is the car allegedly Ben Stewart was in?

21 A. Yes.

22 Q. Okay. If you would read the results of this, please.

23 A. Under results it says "Ben Stewart is excluded as a
24 contributor to DNA on items 26 and 30.2."

25 Q. Now, that's a little bit different from the other

1 report that you read, which said that simply they couldn't
2 come to any conclusion whatsoever as the DNA taken from the
3 items -- you couldn't conclude whether it was a match to the
4 Mack brothers or Terrell? There was no conclusion?

5 A. That's correct.

6 Q. Correct?

7 A. Yes.

8 Q. But this report excludes Ben Stewart altogether from
9 any of the samples?

10 A. Yes, the report that I just read excluded him from
11 those items.

12 Q. So, in other words, it's no chance whatsoever that it's
13 his DNA?

14 A. Based on the report, that's correct.

15 Q. Okay. And based on the report -- and you would
16 certainly vouch for these reports, wouldn't you?

17 A. Yes.

18 MR. SNOW: Thank you.

19 MR. THOMPSON: Nothing further, Your Honor.

20 THE COURT: All right. Thank you, sir. You may
21 stand down.

22 MR. THOMPSON: I ask that this witness be excused,
23 Your Honor.

24 THE COURT: Any objection to the witness being
25 excused?

1 Thank you for coming, sir. You may be excused at
2 this time, if you wish.

3 THE WITNESS: Thank you, sir.

4 Counsel, I think we will probably just go ahead
5 and take a short recess at this time.

6 Mr. Foreman, ladies and gentlemen of the jury,
7 let's take a short recess at this time. We will take about
8 ten minutes, or so, and refresh yourselves and then return.
9 Thank you.

10 (The following takes place outside the presence of
11 the jury panel)

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 MR. SWERLING: Judge, can we just approach?

15 THE COURT: Yes.

16 (Whereupon, the lawyers approached the bench for
17 an off-the-record discussion).

18 THE COURT: We are ready to go, counsel.

19 Please bring the jury in.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: Counsel, we're ready to proceed.

23 MR. THOMPSON: If it please the court, Your Honor?

24 THE COURT: Yes, sir.

25 MR. THOMPSON: The State would call Ray Barnwell

1 to the stand.

2 OFFICER RAYMOND BARNWELL, having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. THOMPSON:

5 Q. Officer Barnwell, could you give your full name for the
6 court, please?

7 A. Raymond Martin Barnwell.

8 Q. Okay. And Officer Barnwell, where do you work?

9 A. I work for the sheriff's office in the
10 multi-jurisdictional Forensic Services Unit.

11 Q. And can you tell me how long have you been in law
12 enforcement?

13 A. I have been policing about eighteen years.

14 Q. And how long have you been with the forensics unit?

15 A. I originally started when -- before the forensic unit
16 started, I was with -- as a part time crime scene person.
17 But once the forensic unit started, I was a road sergeant
18 and then came to the forensic unit about three years ago.

19 Q. Okay. And so have you processed many crime scenes in
20 the times that you have been in the forensics unit?

21 A. Yes, sir, I have.

22 Q. Did you become involved in the processing of the scene
23 at the BP station?

24 A. Yes, sir.

25 Q. And that's back on October 10th of 2006, is that

1 correct?

2 A. Yes, sir.

3 Q. Now, when you became involved in that, what were your
4 duties in that particular investigation?

5 A. When I first arrived on the scene with Mike Williams,
6 he -- he was the lead investigator. He instructed me to
7 take photographs.

8 At that time I started taking photographs. We take
9 photographs of the scene first untouched, no number cones,
10 no moving anything at all. And then we will come back and
11 put number cones down, photograph it again, each individual
12 item, but we try not to -- we don't -- we don't do anything
13 without taking the first of what we call a picture of
14 everything as the way it was, a sterile situation as we go
15 into it.

16 Q. And during your investigation did you have an
17 opportunity to then photograph some footprints that you
18 found?

19 A. Yes, sir. During the investigation and search of the
20 areas for more evidence, some shoe impressions were found
21 and I photographed those.

22 Q. All right. And can you tell me when you were finding
23 those shoe prints, exactly where were they in the whole
24 scheme of things?

25 A. In -- on the -- it would be easier if I had the --

1 Q. Photograph?

2 A. The photograph of -- the overall photograph, the GPS.

3 Q. The GPS photograph?

4 A. Yes.

5 Q. We have that up there warming up right now.

6 A. But it was near the bank, back area through a parking
7 lot.

8 Q. Let me show you State's Exhibit No. 70. Is that the
9 photograph that you are talking about?

10 A. Yes, that would be a good thing to use.

11 Q. There is a pointer there. You are welcome to step
12 down, if you need to, to point it out for us.

13 (Witness off the witness stand)

14 A. As earlier stated, the BP is right here.

15 The shoe prints were found on this, right in this area
16 coming out of the dirt area here onto the parking lot. And
17 then it went -- and then another shoe print was photographed
18 and later collected with plaster or dental stones in the
19 area -- in this area over here.

20 But the shoe prints that I photographed that you are
21 requesting or talking about is right in that area.

22 Q. And which direction were they facing?

23 A. They were facing away from the BP towards the
24 apartments.

25 Q. Okay. And I'll show you the next photograph that's

1 already in evidence. I believe it's State's Exhibit No. 71.
2 Can you tell me, did this indicate any of the spots where
3 these shoe prints were that you were talking about?

4 A. Yes, the shoe prints are kind of hard to see, but they
5 come -- they are pretty spread out, because it's a long
6 stride, as in a person running. Here and here.

7 And this is the BP. As you can see, the gas pump and
8 the overhang right here.

9 Q. All right.

10 A. This is the BP right here.

11 Q. And so how many sets of footprints did you see there?

12 A. There is two sets. One set here and one set here.

13 Q. Okay. We will go to State's Exhibit 72.

14 Does that show us a little closer on some of those?

15 A. Yes, you can see this footprint, this direction, and
16 this footprint here.

17 If you look very carefully in this photograph, you can
18 see the actual toe here and you can see the actual toe in
19 this area right here.

20 Q. Okay. Now, I believe you sent a report to SLED, did
21 you not, of kind of detailing where some of these prints
22 were?

23 A. Yes, I took photographs of each individual shoe print
24 as best described. SLED will only identify certain
25 footprints if they have certain characteristics, because

1 it's more like a fingerprint to a shoe. If it's two -- if
2 it doesn't have enough detail in it, you could not even come
3 close to even identifying it to anything.

4 Q. All right. Now, from the two sets of tracks that we
5 see here, did you label one one thing and one another
6 another?

7 A. My report states it was subject A -- excuse me, one
8 second. I'll get my book.

9 My report says that there is a subject A, a subject B,
10 and an unknown subject.

11 Well, subject A is actually identified over on this
12 side.

13 Subject B --

14 Q. If we face the BP, subject A would be --

15 A. If I'm facing the BP -- as I take this picture, I'm
16 facing the BP, which is right here.

17 Q. Right.

18 A. Okay?

19 Q. So subject A is the right side of that photograph?

20 A. The right side of this photograph.

21 Q. And then the left side, that set of prints, what did
22 you label those?

23 A. That would be subject B.

24 Q. All right.

25 A. As time -- and all I can say is I have shoe prints.

1 Those I can tell you if they are subject, and they ran
2 across the parking lot.

3 Q. Okay.

4 A. But I have identified as A and B.

5 The unknown in my report was identified as the shoe
6 collection, which we'll talk about.

7 Q. Okay. We will get to that one, right, in just a
8 moment.

9 So in another photograph of State's Exhibit 73, what
10 direction is that in?

11 A. Okay. This is towards the apartment. Basically I'm
12 standing back on the opposite side of where I was.
13 Originally I was standing here taking a picture this way,
14 and now I'm the opposite way.

15 This is A on the left and B on the right in this
16 photograph.

17 Q. Headed towards the apartments, correct?

18 A. Yes.

19 Q. I'll show you State's Exhibit No. 74.

20 A. All right. I identified the A subject. Shoe
21 impressions were identified by placing a short L on this
22 scale. You have to have a scale to identify -- so I can
23 actually take a negative or to re-scale it to a piece of
24 paper the exact same size. That's why the scale is on
25 there.

1 Q. So the short end is at the toe?

2 A. The short end is at the toe.

3 And on B, I used -- to identify it so it wouldn't
4 change anything, I used B and I put the short end at the
5 heel.

6 Q. So if we go to State's Exhibit 76, would that be an
7 example of --

8 A. That would be an example of --

9 Q. Of the heel?

10 A. -- the B subject.

11 Q. All right. So the A subject has -- the one that you
12 identified as A is with it at the toe, the small end of the
13 toe, the measuring stick; and then the subject B is the
14 small end of the heel, correct?

15 A. Yes, every picture that I took of subject A had the
16 short end of the scale at the toe.

17 Every one of B had it at the heel.

18 Q. All right. Now, if we go to the next photograph, I
19 believe 77, where is this one located?

20 A. That's the one at the end of the -- where the plaster
21 cast or dental stone cast was taken.

22 Q. All right.

23 A. It was at the -- near the dumpster that Mike Williams
24 took a plaster cast of.

25 Q. So State's Exhibit No. 10, where would it be in regards

1 to that dumpster?

2 A. Right in that area right there.

3 Q. Right there.

4 On top of the wall there?

5 A. Yes.

6 Q. And then going back to State's Exhibit 78, is that
7 where it was plastered?

8 A. Yes. If you go back to the pictures, you can
9 actually -- if you will go back to the picture, please?

10 Q. Okay.

11 A. You will see the actual dirt comes all the way out to
12 the edge. This is standing on the -- about three feet below
13 this brick wall, and this is the -- the shoe comes all the
14 way out to here, to the edge.

15 If you will go back forward too. That is why the
16 shoe -- that is why this is all the way out here, because
17 that's where the shoe print was found, all the way on the
18 edge.

19 Q. Now, of all the shoe prints that were out there, did
20 you take a close-up photograph of each one that you could
21 find?

22 A. I took up most of them that were identifiable.

23 Q. Okay.

24 A. In other words, if you could say may possibly that this
25 is a Nike shoe, it was photographed.

1 If it was a shoe impression that had -- that you could
2 only see like someone just walked across and you could see
3 some dirt and not tell if it was a shoe or a tire, it was an
4 overall photograph taken of it, but not a direct photograph.

5 Q. All right. And going back to State's Exhibit 71, where
6 we originally looked at the footprints from a distance, were
7 there any other spots, other than spots we just talked
8 about, these two lines right here and that one spot next to
9 the dumpster, that you found any footprints?

10 A. No. As I said, you can -- if you look right here, the
11 shoe prints starts fading out.

12 Q. Okay.

13 A. Due to coming off the grass and the moisture, the dirt
14 starts coming off. I took an overall picture of those,
15 because they start fading out, but the good close up prints
16 were taken of these at the end.

17 Q. And did you make a photo of this with all those
18 pictures on it?

19 A. Yes, I did.

20 Q. And did you send that to SLED for examination?

21 A. Yes, sir, I did.

22 Q. Okay. Thank you. You can go ahead and have a seat.

23 (Witness back on the witness stand)

24 BY MR. THOMPSON:

25 Q. One final thing, Officer Barnwell.

1 When you were at the scene, inside the BP station
2 itself, I'll show you State's Exhibit No. 80.

3 A. Yes, sir.

4 Q. Did you recover that pistol?

5 A. Yes, sir, I recovered this from the victim's left hand.

6 Q. All right.

7 A. It was photographed as I took it apart. And the only
8 reason it is taken apart is being the firearms person I am,
9 you cannot make it clear without taking out the cylinder.

10 Q. What do you mean by that?

11 A. You have to take this pin out here.

12 Q. Right.

13 A. You remove this cylinder and you can actually make it
14 safe and unload it or reload it.

15 Q. Okay.

16 A. And it was in one -- intact, so the only way to do it
17 is remove this cylinder.

18 Q. Right.

19 A. And so I had to pull the pin, remove a cylinder to make
20 it safe.

21 Q. So it was all intact and in operational order when you
22 found it, correct?

23 A. Yes, sir.

24 Q. And was it loaded at that time?

25 A. Yes, it was. I photographed it when I took it apart

1 and there was one round fired. Both ends of the cylinder
2 had been photographed --

3 Q. Right.

4 A. -- showing that there was one round loaded -- excuse
5 me, one round had been fired. The other ones are loaded.

6 Q. So the other ones were loaded with active bullets at
7 the time?

8 A. Yes.

9 Q. And those are in that bag as well?

10 A. Yes.

11 Q. Thank you.

12 Did you give that to Officer William at that point?

13 A. Yes, I did.

14 MR. THOMPSON: Thank you. No further questions.

15 MR. SWERLING: No questions, Your Honor.

16 MR. SNOW: No questions, judge.

17 THE COURT: Thank you, sir. You may stand down.

18 MR. BRACKETT: I ask the witness be excused.

19 THE COURT: Thank you for coming, sir. You may be
20 excused.

21 THE WITNESS: Yes, sir.

22 MR. BRACKETT: The State would call Dr. James
23 Maynard.

24 DR. JAMES MAYNARD, having been first duly sworn,
25 testified as follows:

1 DIRECT EXAMINATION BY MR. BRACKETT:

2 Q. Good morning, Dr. Maynard.

3 A. Good morning, sir.

4 Q. Would you please state your full name and spell your
5 last name for the court reporter?

6 A. James Lewis Maynard, M-A-Y-N-A-R-D.

7 Q. All right, sir. And where are you employed, sir?

8 A. With York Pathology Associates.

9 Q. And in what capacity?

10 A. I'm a pathologist or physician with the group.

11 Q. And what kind of training background do you have in
12 pathology? Is that a branch of the medical science?

13 A. Yes, sir, a pathologist is a physician, one who has
14 gone to medical school.

15 My training began at the University of North Carolina
16 with four years of medical school, followed by a
17 sub-specialization in pathology.

18 Pathology is sort of a broad area. It covers the
19 anatomic, the tissue levels, the autopsies.

20 Then the clinical side, the operation of a laboratory,
21 the testing of blood, urine, and other body samples.

22 Q. All right, sir. And have you been qualified as an
23 expert and as a physician, and specifically as a forensic
24 pathologist?

25 A. Yes, sir, I have.

1 Q. And when we say forensic, what do we mean by that term?

2 A. Forensic pathology is a subspecialty or another branch
3 of pathology that deals primarily in the unusual, unnatural,
4 or strange circumstances of death.

5 This is additional training above the typical four
6 years that train for a pathologist, where you are working
7 both on the identification of remains at collection of
8 evidence and determination of cause and manner of death in
9 situations.

10 Q. How long have you been practicing as a forensic
11 pathologist?

12 A. I have been in York County for thirty-three years, and
13 thirty-five years total.

14 MR. SWERLING: We would stipulate to the doctor's
15 qualifications as a forensic pathologist, judge.

16 MR. SNOW: I'll stipulate.

17 THE COURT: There is a stipulation that he's
18 qualified as an expert in the field of forensic pathology.

19 You may proceed.

20 MR. BRACKETT: Thank you, Your Honor.

21 BY MR. BRACKETT:

22 Q. Sir, turning your attention to this particular case,
23 did you receive -- how do you receive an authorization to
24 perform an autopsy on an individual? How does that happen?

25 A. We receive a phone call or a visit in person from the

1 coroner, or one of the deputy coroners, or law enforcement,
2 stating that there is a deceased person that they wish us to
3 at least do either a superficial exam or thorough autopsy,
4 depending upon the circumstances of death.

5 Q. All right, sir. And was an autopsy or a postmortem
6 authorized by Sabrina Gast, the York County coroner for
7 James E. Ned Marshall, III?

8 A. Yes, sir, it was.

9 Q. And when did you perform that autopsy?

10 A. On October the 10th, 2006, in the afternoon.

11 Q. And were you the lead pathologist or the only
12 pathologist who performed that?

13 A. Yes, sir, I was.

14 Q. Did you prepare a report detailing the circumstances of
15 the autopsy and your findings and so forth?

16 A. Yes, I did.

17 Q. And would that report assist you in giving your
18 testimony today?

19 A. Yes, sir, it certainly would.

20 Q. And does the report include a diagram?

21 A. Yes, sir, it does.

22 Q. Okay. If you would, sir, we are going to go through
23 this briefly. We are not going to take a lot of time, but I
24 would like you to, if you could, step down and tell us
25 basically --

1 (Witness off the witness stand)

2 BY MR. BRACKETT:

3 Q. -- how an autopsy -- what you first do, how you go
4 about conducting it and so forth. Just give a very brief
5 overview, and then we will go into the findings in this
6 particular case.

7 A. Certainly. Autopsy, the first thing is finding some
8 history of what happened: Where is the decedent found? Is
9 it in a car, home, business? In the middle of the road? We
10 collect all the information that we can, and discuss with
11 law enforcement what suspicions or concerns that they have
12 of this person who has become deceased. If it's a violent
13 death, an unnatural death, or someone who is just found
14 lying in bed at home, but we are collecting all that
15 information.

16 Then we are going through the external examination. We
17 do an external examination, which includes are they clothed,
18 unclothed, and then we are looking for evidence along with
19 forensic units. Looking for trace evidence - hairs, fibers,
20 etcetera. Then the clothes are removed and these are gone
21 through both by us and forensics, and then we start looking
22 at the body.

23 When we do the external examination, we do a general
24 overview, again looking for trace evidence, and then we are
25 looking for specific things. Are there areas there? Are

1 there identifying marks there? Are there things that are
2 unnatural on a person? There may be lumps, bumps, bruises,
3 or there may be gunshots or lacerations, or actually blunt
4 force trauma to a body.

5 And then once we do this, we do the internal
6 examination, where the organs are looked at in place. And
7 then they are removed and examined by us and then
8 microscopic sections are subsequently taken. Any blood or
9 body fluids are taken when needed during this time. And
10 then these are analyzed and then a final report is made,
11 along with our conclusions.

12 Q. Okay. Now, if you would, and with leave the court, I
13 would like you to demonstrate on me -- I will take my jacket
14 off.

15 A. Yes, sir.

16 Q. I would like you to come over and just using me as the
17 example, would you show the jury what injuries, if any, you
18 found? If I were Mr. Marshall, what injuries that you found
19 on Mr. Marshall's body when you did the external
20 examination, what that revealed?

21 A. There were several injuries of gunshot wounds. One was
22 in the right anterior leg, if I may. And on Mr. Marshall
23 this was? We measured from a height -- or from a space that
24 we could identify that so anybody could understand, but
25 thirty-nine and a half inches below the top of his head we

1 measured down, and then we measured from the midline of the
2 body over. So anybody could take a ruler and come back and
3 identify where the injury was. But thirty-nine inches below
4 the top of the head and nine and a half inches above the
5 knee. And in the lateral or medial lateral side there was
6 an entrance gunshot wound. This wound was is somewhat
7 irregular on the entrance, and then there was an exit on the
8 left inner thigh.

9 Q. Here?

10 A. Yes, sir.

11 Q. Okay.

12 A. And a bullet then reentered the left thigh, went behind
13 the bone and then exited on this back side.

14 Q. So basically both through both legs?

15 A. Yes, sir. The bullet was going from the right side,
16 across the right leg, into the left leg, and then exited the
17 left leg.

18 Q. Did there appear to be any trajectory to the bullet up
19 or down?

20 A. Yes, sir, there was -- it was right to left, slightly
21 front to back, because it entered on the front and came out
22 on the back side of the left leg --

23 Q. Okay.

24 A. -- and it was absolutely downward.

25 We measured the entrance wound and we measured the exit

1 wound, and it entered thirty-nine and a half inches, and
2 then exited forty-one inches. So this inch and a half
3 downward angle on this. Not much, but just going slightly
4 downward.

5 Q. Were there any other injuries to Mr. Marshall's body
6 that you noted in the external examination?

7 A. Yes, sir, there was another one in his right hand. In
8 the -- over the right second knuckle. There was a wound
9 that went in, broke the bone here, exited. And this is on
10 the top of the hand. Went in, came out the palm side of the
11 hand or the second knuckle, and then went into the soft
12 tissue of the thumb. It did not strike the bone of the
13 thumb, and then exited the body.

14 Q. Okay.

15 A. So, again, from I guess right to left and at a pretty
16 much of a level plane, depending upon how you are holding
17 your thumb, going to the left side.

18 Q. All right, sir. Were there any other injuries?

19 A. Yes, sir, there was one further injury in the left
20 shoulder you will see. And this -- as we measured on Mr.
21 Marshall was thirteen and a half inches below the top of the
22 head and five and a half inches to the left of the midline.
23 So we come over five and a half inches, and go down from the
24 top of the shoulder an inch and a half.

25 So in your left chest, this is where the chest and

1 shoulder join. The bullet then went into the chest. There
2 was a pocket of blood sitting underneath the skin here, and
3 this -- we call it the pectoralis muscle, the big chest
4 muscle here. It entered the chest between the first and
5 second ribs, if you -- you call it the bone there. Your
6 first rib is this underneath the collarbone. Your second
7 rib is underneath that, and it actually makes the bump on
8 your sternum or breast bone there. The bullet went in there
9 and then went into the left lung causing a laceration or
10 tear of the lung, which causes hemorrhage. The bullet then
11 continued across the body striking the aorta.

12 When the heart is pumping, the aorta is the great
13 artery or the big vessel coming out and that's supplying
14 blood to the entire body. It's typically about
15 three-quarter inch in size and it's elastic, because there
16 are elastic fibers in there. So it's able to expand and
17 contract. And that comes up and comes around and then goes
18 down the body. Then there are arteries going to your brain
19 and the arms.

20 The bullet entered that aorta on the left side,
21 lacerated -- put a three and a half inch laceration in the
22 aorta. Then it went across the aorta and exited the other
23 side causing a three inch laceration.

24 The bullet then hit the vena cava, which is the main
25 vein that's bringing blood back from the upper part of the

1 body to the lower part the body back to the heart to then be
2 pumped out to be oxygenated. So all your blood is coming
3 through this area here.

4 The bullet then went into the left lung -- or right
5 lung, excuse me, tore through the lung. Then the bullet
6 exited the chest on the right side and then reentered the
7 soft tissue of the arm. The bullet then went across the arm
8 and exited the other side of the arm.

9 In there we found massive bleeding. It appears the
10 aorta, which is carrying all the blood of the body, and you
11 have a three and a half inch and a three inch laceration or
12 tear in that, so all the blood is essentially coming out
13 through those tears and filling your chest and cavities,
14 both your chest cavities as well, and the bullet exited and
15 continued on to somewhere else.

16 Q. Okay. Were there any other -- and you can delineate
17 between an entrance wound and an exit wound?

18 A. Yes, sir.

19 Q. Okay. Were there any other injuries to the body, that
20 you know of?

21 A. No, sir, there were not.

22 Q. Okay. So that was the complete -- that was the result
23 of your external examination?

24 A. Yes, sir.

25 Q. So then you proceeded to what you previously described

1 as the internal examination?

2 A. Yes, sir.

3 Q. All right, sir. If you wouldn't mind having a seat.

4 (Witness back on the witness stand)

5 BY MR. BRACKETT:

6 Q. Now, I gather from what you were saying in your
7 description that you were describing the internal injuries
8 as you went along, particularly the top -- the injuries to
9 the chest through the arm and the right -- in the left side
10 through the chest and out through the right arm?

11 A. Yes, sir, I was.

12 Q. Were the wounds to the legs, the internal examination
13 of that, did they strike any major veins or vital arteries?

14 A. No, sir, they did not. It stayed in soft tissue, did
15 not strike the bone or the main arteries.

16 Q. Would those wounds have been fatal?

17 A. No, sir, they would not have.

18 Q. Now, the second, did the bullet that you described, how
19 about the one that hit the hand at the knuckle and then
20 through the thumb? You described the soft tissue of the
21 thumb. Would that have been a fatal wound?

22 A. No, sir, it would not have.

23 Q. Now, the final one, obviously you have described it
24 striking the aorta and the vena cava?

25 A. Yes, sir, that's correct.

1 Q. Those were two of the major arteries in your body?

2 A. Yes, sir, certainly is.

3 Q. These are the two major arteries in your body?

4 A. Yes.

5 Q. Were those fatal?

6 A. Yes, sir, they are definitely fatal.

7 Q. All right. How long would it take for somebody who had
8 been struck by a bullet in those two arteries to expire?

9 A. A few seconds for a loss of consciousness and within a
10 few minutes his true clinical death.

11 Q. Now, in your report you have a diagram and you detailed
12 one of the wounds on the diagram as being on the left arm?

13 A. Yes, sir.

14 Q. Was that correct?

15 A. No, sir, it's not. It's actually exiting the right arm
16 instead of the left arm on the diagram. The --

17 Q. Go ahead.

18 A. Yeah, the description of the report does indicate the
19 correct side.

20 Q. Otherwise the diagram and the report is correct?

21 A. Yes, sir, they are.

22 Q. Okay. Is that your original report, or a copy?

23 A. That's probably a copy.

24 Q. Okay. And is that your report there?

25 A. Yes, sir, it is.

1 Q. Okay. You have marked that.

2 A. I have marked that.

3 Q. You have marked that one.

4 MR. SWERLING: Excuse me one moment.

5 THE COURT: Yes, sir.

6 (Off the record)

7 (Back on the record)

8 BY MR. BRACKETT:

9 Q. I'm showing you what's been marked as State's Exhibit
10 No. 93 and are pages six, seven, and eight of the autopsy
11 report. That is the clinical summary and the diagram that
12 you prepared pursuant to your autopsy?

13 A. Yes, sir, this is the final summary, the final
14 pathological diagnosis, along with my signature and the
15 diagram that I --

16 Q. The diagram which is correct, except the exit wound
17 should be on the other arm?

18 A. Yes, sir, that's correct.

19 Q. Okay.

20 MR. BRACKETT: Your Honor, I would offer State's
21 Exhibit 93 into evidence at this time.

22 MR. SWERLING: We have no objection to those
23 pages, Your Honor.

24 MR. SNOW: No objection.

25 THE COURT: Admitted without objection.

1 BY MR. BRACKETT:

2 Q. All right, sir. Did you recover --

3 Did you recover any bullets from Mr. Marshall's body?

4 A. No, sir, I did not.

5 Q. Now, did you, based on the autopsy that you performed,

6 Dr. Maynard, come to any conclusions or form an opinion as

7 to the cause and manner of death?

8 A. Yes, sir, I did.

9 Q. All right. And what is your opinion as to the cause of
10 death in Mr. James E. Ned Marshall, III?

11 A. Mr. Marshall died as a result of multiple gunshot
12 wounds.

13 Q. And what is the manner of death?

14 A. The manner of death is homicide.

15 Q. Thank you, Dr. Maynard.

16 Please answer any questions that the defense counsel
17 may have for you.

18 MR. SWERLING: No questions, judge.

19 MR. SNOW: No questions.

20 THE COURT: Thank you, sir. You may stand down,
21 sir.

22 Do you wish to have this witness excused?

23 MR. BRACKETT: Yes, sir, Your Honor.

24 MR. SNOW: No objection.

25 MR. SWERLING: No objection.

1 THE COURT: Thank you for coming, sir.

2 THE WITNESS: Thank you, sir.

3 MR. BRACKETT: The State would call Officer Brian
4 Lambert. Corporal Brian Lambert.

5 OFFICER BRIAN LAMBERT, having been first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BRACKETT:

8 Q. Sir, would you please state your full name for us and
9 spell your last for the court reporter?

10 A. Brian Keith Lambert, L-A-M-B-E-R-T.

11 Q. And where are you employed, sir?

12 A. Rock Hill Police Department.

13 Q. And in what capacity?

14 A. With the patrol division as a patrol officer.

15 Q. How long have you been with the Rock Hill Police
16 Department?

17 A. Over five years.

18 Q. Okay. So you were employed there in the patrol
19 division in October of 2006?

20 A. Yes, sir.

21 Q. Did you happen to be working the evening shift,
22 starting on the 9th of October and going over in through the
23 morning of the 10th of October?

24 A. Yes, I was.

25 Q. All right. And what was your duties? What were your

1 assigned duties that night?

2 A. I was just patrolling a certain area of town, assigned
3 to a certain area with the patrol division, with regular
4 patrol.

5 Q. Okay. Did you have occasion to receive a call to
6 respond to the BP gas station at the corner of India Hook
7 and Celanese?

8 A. Yes.

9 Q. And I will cut right to the chase. At some point did
10 you enter the store with Investigator Mike Williams of the
11 Forensic Services Unit?

12 A. Yes.

13 Q. And were you present when he retrieved a security video
14 tape from a security camera system there?

15 A. Yes.

16 Q. All right, sir, I'm showing you what's been marked as
17 State's Exhibit 32 in evidence and I'll ask you do you see
18 the chain of custody portion of that envelope?

19 A. I do.

20 Q. Okay, sir. Do you see your name on that?

21 A. Yes, sir, I do.

22 Q. Okay. What involvement did you have in the movement of
23 that tape from the BP to the Rock Hill Police Department?

24 A. Investigator Williams retrieved the video from the
25 incident. He gave me the copy of the videotape, at which

1 point I transported the copy of the videotape to Detective
2 David Hanoka with the Rock Hill Police Department.

3 Q. All right. Did you keep that tape in your custody and
4 control the entire time --

5 A. Yes.

6 Q. -- prior to giving it to Detective Hanoka?

7 A. Yes.

8 Q. Did you tamper with, or alter, or change in any way,
9 shape, or form the videotape that's contained in the
10 envelope?

11 A. No, not at all.

12 Q. When you turned it over to Detective Hanoka, it was in
13 the same condition that you received it from Investigator
14 Williams?

15 A. Yes, sir.

16 Q. One other question. What time did your shift start the
17 previous day, on the 9th?

18 A. Third shift starts at seven p.m..

19 Q. Okay. All right. And what time were you supposed to
20 get off?

21 A. Six a.m..

22 Q. And was it a busy night that night?

23 A. It was. It was busy.

24 Q. Okay. And what area of town are you responsible for
25 patrolling?

1 A. At the time of the incident I was responsible for
2 Cherry Road and the northern portion of the City of Rock
3 Hill this evening.

4 Q. Do you recall -- you and I have spoken on Tuesday of
5 this week, is that correct?

6 A. Yes, sir.

7 Q. And did I ask you to go back and look at your events of
8 that evening to see if you had any other calls that night?

9 A. Yes.

10 Q. Okay. Turning your attention specifically to one of
11 them, did you receive a call dispatched to a tire rim store
12 that had an alarm going off?

13 A. Yes, I did.

14 Q. All right. What time was that?

15 A. That would have -- it would have been dispatched at
16 4:09.

17 Q. All right.

18 A. 4:09.

19 MR. SWERLING: I'm sorry, 4:09?

20 BY MR. BRACKETT:

21 Q. 4:09 a.m.?

22 A. Yes, that's when myself and another officer were
23 dispatched.

24 Q. What location were you dispatched to? What's the name
25 of the place?

1 A. It's called Sound on Wheels at the corner of Cherry
2 Road and Chandler Drive.

3 Q. Does it have rims in the window --

4 A. Yes.

5 Q. -- that place there?

6 A. Yes, it does.

7 Q. And it's on Cherry Road you say?

8 A. Yes, sir.

9 Q. And what county is that in?

10 A. That's in York County.

11 Q. And what county is the BP in?

12 A. York County.

13 Q. Okay. Typically have you responded to many business
14 alarms before?

15 A. Many, yes.

16 Q. Is it -- do you get a call the moment the alarm goes
17 off? Is it hard wired to the police department, or does the
18 alarm company call you?

19 A. It comes through an alarm company. Obviously the alarm
20 company receives a signal and then they will attempt to
21 contact representatives at the business and also on a
22 representative sheet. If they are not able to reach anyone
23 or receive a cancellation from the business, they will
24 dispatch police, which takes a number of minutes.

25 Q. Do you know approximately how many usually between the

1 time the alarm goes off and the time you get a call?

2 MR. SWERLING: Judge, unless it's actually
3 applicable to this particular situation, I think I have to
4 object.

5 THE COURT: Well, counsel, it's speculative. I'll
6 sustain the objection, counsel.

7 MR. BRACKETT: Very good.

8 BY MR. BRACKETT:

9 Q. I have no further questions, Officer Lambert. Thank
10 you very much.

11 Please answer any questions that the defense counsel
12 may have.

13 MR. SWERLING: Judge, I have no questions.

14 MR. SNOW: No questions.

15 THE COURT: Thank you, sir. You may stand down,
16 sir.

17 MR. BRACKETT: I ask this witness be excused.

18 THE COURT: No objection.

19 MR. SWERLING: No objection.

20 THE COURT: Thank you for coming, sir. You may be
21 excused at this time.

22 MR. BRACKETT: The State would call Detective
23 Bruce Haire.

24 DETECTIVE BRUCE HAIRE, having been first duly
25 sworn, testified as follows:

1 MR. BRACKETT: Beg the court's indulgence one
2 minute.

3 THE COURT: Yes.

4 (Off the record)

5 (Back on the record)

6 MR. BRACKETT: If it please the court, Your Honor,
7 we have those motions and the orders that Your Honor
8 previously requested our office to draft.

9 THE COURT: Bring them up.

10 MR. BRACKETT: We styled them as a rule to show
11 cause, I believe.

12 (Off the record)

13 (Back on the record)

14 MR. BRACKETT: Thank you, sir.

15 DIRECT EXAMINATION BY MR. BRACKETT:

16 Q. Sir, would you please state your full name and spell
17 your last?

18 A. Bruce Darryl Haire, H-A-I-R-E.

19 Q. Where are you employed, sir?

20 A. I work for the City of Rock Hill Police Department.

21 Q. And in what capacity?

22 A. I'm a detective in the Crimes Against Persons Unit.

23 Q. Okay. How long have you been a detective in the Crimes
24 Against Persons Unit?

25 A. In that particular division about three years.

1 Q. All right, sir. How long have you been in law
2 enforcement?

3 A. Almost fourteen.

4 Q. Were you involved in the investigation of the robbery
5 and shooting of Ned Marshall at the BP at the City of Rock
6 Hill?

7 A. Yes, I was.

8 Q. And how did you get called out in that investigation?

9 A. I was the on-call detective for that week and I
10 received a page about 4:45 a.m. and was told that there had
11 been a robbery and a shooting at the BP on Celanese and they
12 needed me to respond.

13 Q. And when you get called out because you're the on-call
14 detective for the week, when you get called out on a case
15 like this, do you ultimately become the case agent for the
16 investigation?

17 A. Typically, yes.

18 Q. Well, what if -- if you would describe to the jury,
19 basically, what are the duties and responsibilities of a
20 case agent in a major investigation like this?

21 A. In a case like this, the case agent typically is the
22 lead investigator. There is several areas that need to be
23 investigated in a case like this, so there is numerous
24 amount of people involved; other detectives, crime scene
25 unit, and witnesses to interview, leads to follow up on.

1 And typically all that information is gathered and then
2 forwarded to the case agent.

3 Q. Okay. And who is ultimately responsible for compiling
4 the notebook and putting all that stuff together in an
5 orderly fashion?

6 A. The case agent.

7 Q. All right. What time did you -- what time did you get
8 called out on this case again?

9 A. I was paged out about 4:45 a.m., and arrived on the
10 scene I believe it was a little after five a.m..

11 Q. Okay. And what was going on at the store when you
12 arrived?

13 A. When I arrived, there was already several officers
14 there. The area was taped off with the yellow crime scene
15 tape. I was informed or briefed by a couple of the officers
16 what they had observed and what they believed had taken
17 place.

18 Q. And were there any witnesses apparent at the scene that
19 were that standing by waiting to tell you that they had seen
20 something?

21 A. Not at the scene.

22 Q. Okay. Did you have any leads through the early part of
23 the investigation? Did you have any immediate evidence, any
24 evidence that immediately pointed you in the direction of
25 one person or another that, you know, seemed fairly

1 conclusive?

2 A. Not that would lead us to any particular person. Not
3 for the first day or so.

4 Q. When did you get a break in the case?

5 A. That would have been on October 11th, when we received
6 a phone call from Detective Rudick from the Hartsville
7 Police Department.

8 Q. The gentleman who testified yesterday?

9 A. Yes, sir.

10 Q. Lieutenant Brian Rudick.

11 Based on that call from Lieutenant Rudick, what did
12 your agency do?

13 A. We contacted our Forensic Service Unit and -- well,
14 first we had them bring the vehicle that they had told us
15 about. We asked them to secure the vehicle for us.

16 Q. Is that the champagne colored Buick Century that we
17 seen pictures of?

18 A. That's correct.

19 Q. All right, sir.

20 A. And after they secured the vehicle, we had sent our
21 Forensic Service Unit up there to take pictures of the car
22 and also to process it.

23 Q. All right, sir. And did their information -- I believe
24 the information that you had related to you -- without going
25 into the substance of what was said, did Hartsville have an

1 informant or an individual who had given them information?

2 A. Yes, they did.

3 Q. Related to your case?

4 A. Yes.

5 Q. And did you -- were you able to ascertain who that was
6 in Hartsville?

7 A. Yes, we were.

8 Q. And were you able to interview those people?

9 A. Yes.

10 Q. All right. Based on this information, were the Mack
11 brothers, Dontavious and Davorius, ultimately taken into
12 custody by the Darlington County Sheriff's Department and
13 the Hartsville Police Department on the 14th of October?

14 A. As a result from the informant's information?

15 Q. No, but at some point were they taken into custody?

16 A. Yes. Yes, they were.

17 Q. For unrelated matters?

18 A. Yes, they were.

19 Q. All right, sir. Were they aware at that time, based on
20 your -- were you working closely with Hartsville at this
21 point in time?

22 A. Yes, we were.

23 Q. Were the Mack brothers aware that you were onto them?

24 A. Not to my knowledge.

25 Q. Did you ask -- did you have any requests of the

1 Hartsville Police Department and the detention center there
2 in Darlington County regarding keeping them separated?

3 A. Yes, we had asked for them to keep them separate during
4 their detainment there to prevent them from talking with
5 each other, sharing information with each other.

6 Q. Did you ultimately go to Hartsville and take one or
7 both of the Mack brothers into custody?

8 A. Yes, we did.

9 Q. And what date was it that you took them into custody?

10 A. It would have been -- I believe it was the 19th
11 of April. I'm sorry, of October.

12 Q. Now, you interviewed Davorius Mack, did you not?

13 A. Yes.

14 Q. And the first interview that you did, what date was
15 that on?

16 A. That would have been on the 18th of October.

17 Q. Okay. Now, the first interview of Dontavious, what day
18 was that on?

19 A. That was done on the 20th of October.

20 Q. Okay, sir.

21 And where did those interviews take place?

22 A. At the Rock Hill police department.

23 Q. So did you actually take them, at least Davorius, into
24 custody on the 18th?

25 A. Yes.

1 Q. Did they have any idea -- when you took them into
2 custody on the 18th, did they have any idea that you were
3 coming to -- had anybody, to your knowledge, informed them
4 at --

5 MR. SWERLING: Judge, only if he knows, first
6 hand.

7 THE COURT: Well, he's asking him to his
8 knowledge, so I'll let him answer to his knowledge.

9 BY MR. BRACKETT:

10 Q. To your knowledge, did anybody inform them that you
11 were coming or that they were suspects in the shooting at
12 the BP in Rock Hill?

13 A. Not to my knowledge.

14 Q. Now, were you present when Davorius gave his first
15 statement?

16 A. No, I was not.

17 Q. Are you familiar with that statement or was it made
18 part of your file?

19 A. Yes.

20 Q. And are you familiar with the contents of it?

21 A. Yes.

22 Q. How many statements did he ultimately give?

23 A. A total of three statements.

24 Q. To the Rock Hill Police Department?

25 A. Yes.

1 Q. Were you aware if he had given a statement prior to
2 that to Hartsville?

3 A. Yes, there was one brief statement that he had
4 handwritten to Hartsville.

5 Q. Okay. Now, were you aware that Dontavious had been
6 shot?

7 A. At what point? At that time?

8 Q. At any point in time.

9 Early on you became aware that he had been shot, is
10 that correct?

11 A. Yes.

12 Q. And were you familiar with their explanation of how
13 Dontavious got shot?

14 A. Yes.

15 Q. A person's explanation about Farmington Apartments?

16 A. Yes.

17 Q. After you took Dontavious and Davorius into custody and
18 transported them to Rock Hill, during the time that you took
19 custody of them in Hartsville to the time they arrived in
20 Rock Hill, were they kept separate, or were they transported
21 together?

22 A. They were transported separately, and they were also
23 kept in separate cells in the jail to prevent any contact
24 between the two.

25 Q. Was that the whole point of keeping them separate?

1 A. Yes.

2 Q. Were you aware of whether or not they were kept
3 separate while they were in Rock Hill?

4 A. Yes.

5 Q. So when Dontavious -- when Davorius gave his statement,
6 had he had an opportunity to consult or confer with
7 Dontavious?

8 A. No.

9 Q. And when Dontavious gave his statement on the 20th of
10 October, up to that point when he had been in Rock Hill's
11 custody, had he had any opportunity to consult or confer
12 with Davorius?

13 A. No.

14 Q. Why did you re-interview Davorius on the 27th of
15 October?

16 A. Davorius had indicated that he wanted to help in
17 locating Ben Stewart and Terrell Addison, who we had
18 warrants on at that time. And he told us that he could take
19 us to Hartsville and show us different locations --

20 MR. SWERLING: Judge, other than investigative
21 information, I object to anything else.

22 THE COURT: Yes, sir.

23 BY MR. BRACKETT:

24 Q. Without saying what he said, what was the purpose?
25 What were you as a police officer trying to accomplish in

1 re-interviewing him?

2 A. To get information about where Ben Stewart and Terrell
3 Addison might be, and also as to what happened to the
4 weapons that were used in the robbery and any other
5 evidence.

6 Q. Was Davorius cooperative in that regard?

7 A. Yes, he was.

8 Q. And based on your interview of him, who did you go see
9 and interview in Hartsville?

10 A. Based on his information, we went and talked to Monday
11 Bishop, which is Ben Stewart's sister.

12 We also became aware of an individual named "Wise",
13 which we learned was Reed Allen. We did end up talking with
14 him as well.

15 Q. All right. And you were in the courtroom the other
16 day. Was that the individual who testified on -- I forgot
17 the day. Wednesday morning?

18 A. Yes.

19 Q. Yesterday morning.

20 Had you ever heard of Reed Allen before that October
21 27th interview, re-interview with Davorius?

22 A. No.

23 Q. Who is Katresha or Kat Johnson?

24 A. That is Ben Stewart's girlfriend at the time.

25 Q. Okay. And in the course of your investigation were you

1 able to ascertain what her telephone number was?

2 A. Yes, I was.

3 Q. And what's her telephone number?

4 A. What's the phone number?

5 Q. Yes. If you need your notebook, or do you have -- what
6 was Katresha Johnson's telephone number, back in October of
7 2006?

8 A. That would have been [REDACTED] 2807.

9 Q. All right. And who is Monday Bishop?

10 A. Monday Bishop is Ben Stewart's sister.

11 Q. And in the course of your investigation I believe you
12 just testified that you spoke with her?

13 A. Yes.

14 Q. Were you able to ascertain her phone number?

15 A. Monday's?

16 Q. Yes.

17 A. I don't recall having her number.

18 Q. Okay. When was the warrant issued for Terrell Addison?

19 A. I have to check through my records.

20 That would have been October 19th.

21 Q. And what did you do to try to serve that warrant and
22 apprehend Mr. Addison?

23 A. Myself, along with a couple other detectives, went to
24 Hartsville, met with Detective Rudick and other officers
25 there. We went to different locations in Hartsville, as

1 well as -- while we were doing that, we had other officers
2 going to locations that we thought were familiar with
3 Terrell Addison within Rock Hill.

4 Q. How and when was he -- well, starting when did you
5 start to look for him?

6 A. On the 19th of October.

7 Q. All right. And were these locations, were these
8 friends, family, both? Which locations were you going to?

9 A. The location here in Rock Hill, it was his mother's
10 address at the time.

11 The addresses in Hartsville were other family members.

12 Q. Okay. Were people present at the house when you
13 arrived?

14 A. Yes, I believe so. I know they were in Hartsville.
15 I'm not sure about the Rock Hill address.

16 Q. Were the people there his family members?

17 A. In Hartsville, yes.

18 Q. Did you make them aware that you were looking for him?

19 A. Yes.

20 Q. And that was on the 19th?

21 A. Yes.

22 Q. When and where was he apprehended?

23 A. Mr. Addison turned himself in to the Rock Hill Police
24 Department, along with his attorney, on October 31st.

25 Q. All right, sir. And what time was that, do you

1 remember?

2 A. Let me check a minute.

3 Q. That's all right. That's fine.

4 Did you -- did you have occasion --

5 Let me show you what's been marked as State's Exhibit
6 89 for identification and ask if you recognize those items?

7 A. Yes, I do.

8 Q. What are those?

9 A. Those are the tennis shoes that Terrell Addison was
10 wearing when he turned himself in.

11 Q. And who -- who made the decision to take these into
12 evidence?

13 A. I did.

14 Q. And why was that?

15 A. After reviewing the video, I had noticed that the
16 second suspect that came in the store was wearing some
17 peculiar distinctive looking shoes. And when I went to the
18 jail and saw these shoes, I was -- I felt like these were
19 probably the shoes that were used in the --

20 Q. They appeared similar?

21 A. They appeared similar, yes.

22 Q. Were these the shoes he was wearing when he turned
23 himself in?

24 A. Yes, sir.

25 MR. THOMPSON: Your Honor, I would ask to

1 introduce into evidence State's Exhibit No. 89 for
2 identification.

3 MR. SWERLING: No objection.

4 MR. SNOW: No objection.

5 THE COURT: Admitted without objection.

6 BY MR. BRACKETT:

7 Q. Now, how about Mr. Ben Stewart?

8 MR. SNOW: May we approach, Your Honor?

9 THE COURT: Yes, sir.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury, there is a matter I need to take up with counsel
14 briefly out of your presence. This will only take a couple
15 of minutes, but I'll ask you to retire to the jury room
16 while we are doing that.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: All right, counsel, you need to
20 address some concerns on the record. Yes, sir.

21 MR. SNOW: Judge, I just wanted to object to any
22 testimony that's relative to Mr. Stewart being apprehended
23 or going to the State of Pennsylvania. Under 403, judge, I
24 believe that any testimony as to him going to Pennsylvania
25 or being apprehended in Pennsylvania would certainly be more

1 prejudicial than probative, and I think that the jurors
2 should not be allowed to hear that.

3 THE COURT: All right.

4 MR. BRACKETT: I don't believe the mere fact that
5 he was apprehended in Pennsylvania gives rise to any
6 implication whatsoever, and I believe Mr. Snow is free to
7 argue that. There is ample evidence in the record already
8 that Mr. Stewart is from Pennsylvania, so it would make it
9 entirely -- it would be entirely reasonable that he would be
10 caught in Pennsylvania and in Philadelphia.

11 Now, if he had been born and raised in the
12 Hartsville and lived there all his life and the evidence and
13 the record was clear, then there might be some force to what
14 he's saying, but I think it's pretty clear that's where Mr.
15 Stewart is from. So to have him apprehended there is not --
16 I don't think that's --

17 THE COURT: Well, let me say I think that if the
18 police were looking for Mr. Stewart in the Hartsville
19 area -- he has relatives there and they were looking for him
20 there and let the relatives know that they were looking for
21 him, they were looking for him and asking for him and they
22 were made aware of that, then I think that's certainly
23 probative to the State as to when he got notice that there
24 was charges against him, first of all.

25 And, secondly, we have got testimony from at least

1 two people who -- maybe more, but at least two people who
2 said that he is a resident of Philadelphia. He's not from
3 Hartsville. And really, as I recall the testimony, wasn't
4 really -- that wasn't his home in Hartsville, although he
5 was there, but his home was in Philadelphia, what I recall
6 the witnesses saying. Nobody said he was from or lived in
7 Hartsville.

8 And so I think it's reasonable if he was
9 ultimately apprehended in Philadelphia, I don't believe that
10 gives any rise to any inference that he was fleeing without
11 notice. And so -- so I think it's relevant to the State's
12 case. I don't see how it's prejudice to the defendant. I
13 think it's more probative than prejudicial. It's what
14 actually happened in the case. I can't see any prejudice to
15 the defendant, because he -- all of the testimony is that he
16 lived in Philadelphia and that's his home. So I don't see
17 how there is any prejudice in him being apprehended in
18 Philadelphia when that's his home. He had a legitimate
19 reason to be there, counsel.

20 And so I would deny your motion to keep that out,
21 where he was ultimately apprehended. I'll deny it.

22 The biggest concern I have got is that -- please,
23 don't get into any testimony concerning the fact that he was
24 in custody in Philadelphia, anything connected with that.
25 He was just apprehended there. Unless the door gets opened

1 up by the defense, I want to make sure that you stay away
2 from that, because that would be more prejudicial than
3 probative and I would not want that to come in.

4 MR. BRACKETT: The date of his arrest in
5 Philadelphia was --

6 MR. SWERLING: The 27th.

7 MR. BRACKETT: The 27th of January. So I think we
8 will just say he was apprehended in Philadelphia on the 27th
9 of January and leave it at that point. We don't need to
10 mention that he was arrested on other charges.

11 THE COURT: I want to make sure there is nothing
12 to do that he was being detained up there by the police, or
13 was in jail, or had any charges against him. You got to
14 stay away from any of that.

15 The fact that he was apprehended there and brought
16 back, I think that's relevant, but nothing recent -- any
17 other charges, or in custody, or anything like that. I want
18 to make sure that you stay away from that.

19 MR. BRACKETT: And the other thing that I think
20 that it would bear out, because my next line of questioning
21 for the next couple of questions after we go through that
22 would be was the .380 ever located. And I think it's
23 important to know that Mr. Stewart was apprehended that much
24 later and, you know, eight hundred miles away, because I
25 think that gives a reasonable inference for where the gun

1 could have gone. That would be our position.

2 Obviously their position is there never was one in
3 his hands, but our position would be being apprehended four
4 months later, eight hundred miles away, that's why we don't
5 have a .380 in this courtroom today.

6 THE COURT: Well, I agree with that. That's
7 always probative on the State's case.

8 All right. Anything else?

9 MR. SNOW: Judge, I would just object to that as
10 well for the record.

11 THE COURT: Object to what?

12 MR. SNOW: Any mention of the firearm being in
13 Pennsylvania, or --

14 THE COURT: He's not saying that. He's saying
15 that it wasn't found.

16 MR. BRACKETT: They didn't find it.

17 THE COURT: And it's reasonable -- that's one
18 possible explanation is that the reason it wasn't found is
19 because he was eight hundred miles away sometime later, much
20 later.

21 MR. SNOW: He's not saying that the detective is
22 going to say that.

23 THE COURT: No, no.

24 MR. SNOW: Okay.

25 THE COURT: That's an inference they can make.

1 MR. SNOW: Okay.

2 THE COURT: He's not going to say anything about
3 that. I mean, that's certainly an argument he can make to
4 the jury, "well, the gun wasn't found. One reason for that
5 is that we wouldn't expect to find it."

6 Yes, sir?

7 MR. SWERLING: Can I step outside, judge?

8 THE COURT: Oh, yeah. Okay.

9 MR. SWERLING: That's my motion, judge.

10 THE COURT: Okay. Well, let's take a -- very
11 briefly let's just take about two or three minutes. If
12 anybody needs to run to the restroom, go ahead. Come
13 straight back, please. I'm going to remain right here.

14 (Whereupon, proceedings were recessed)

15 (Whereupon, proceedings were reconvened)

16 THE COURT: Ready to proceed now?

17 Please bring the jury in.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: Please continue.

21 BY MR. BRACKETT:

22 Q. Detective Haire, now turning your attention to Mr. Ben
23 Stewart seated over here, was a warrant issued for his
24 arrest?

25 A. Yes, it was.

1 Q. And what steps did you take to apprehend and locate Mr.
2 Stewart?

3 A. We had gone to residents in Hartsville, residents that
4 we were given through the Hartsville Police Department.

5 Q. Okay. And were you able to locate him in Hartsville?

6 A. No, we were not.

7 Q. Did you speak with -- I believe you mentioned earlier
8 that he had a sister?

9 A. Yes, Monday Bishop.

10 Q. Was she in Hartsville?

11 A. Yes, she was.

12 Q. Were you able to relate to her that you were looking
13 for him?

14 A. Yes.

15 Q. Was she helpful in finding him?

16 A. She gave us a phone number for his girlfriend Kat. She
17 said she had not seen him in a few days at that time.

18 Q. Were you able to -- were you ever able to locate him in
19 Hartsville?

20 A. No, sir.

21 Q. All right. When was Mr. Stewart -- what day was Mr.
22 Stewart apprehended?

23 A. He was apprehended on January 27th, 2007.

24 Q. And where was he apprehended?

25 A. In Philadelphia.

1 Q. Pennsylvania?

2 A. I'm sorry, Pennsylvania.

3 Q. Philadelphia, Pennsylvania.

4 And were you ever able to recover the .380 that was
5 identified by the various witnesses, Mr. Allen and so forth,
6 as having come from him and being given back to him?

7 A. No, we did not.

8 Q. I'm showing you what's been marked as State's Exhibit
9 90 in evidence, the Cingular records. Ms. Fly was here
10 earlier. I believe you saw her testimony?

11 A. Yes.

12 Q. She identified these records as accurate copies of Mr.
13 Dontavious Mack's cell phone activity the evening of October
14 the 9th and the early morning hours of October the 10th,
15 2006.

16 Did you receive that material during the course of your
17 investigation?

18 A. Yes, I did.

19 Q. All right, sir. And were you able to identify phone
20 calls based on that, phone calls that were made?

21 A. Yes.

22 Q. Okay. And did that material from Cingular contain any
23 information related to the location of cell phone towers
24 that their cellphones were pinging off of?

25 A. Yes, it did.

1 Q. And were you able to -- what form does that -- what
2 form is that in? What how do they locate that -- how is
3 that location identified on that?

4 A. On this paperwork here?

5 Q. Yes.

6 A. It's located by the number under the LAC column. It's
7 identified by a five digit number.

8 Q. Okay. And is it also shown by longitude and latitude?
9 Is that longitude and latitude given on there?

10 A. Yes.

11 Q. Okay. And the LAC number, is that --

12 MR. SNOW: Objection. May we approach?

13 THE COURT: Yes.

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 BY MR. BRACKETT:

17 Q. Now, when a cell phone call is made, you said the LAC
18 number on there, what does that relate to? What does the
19 LAC number identify?

20 A. The LAC number identifies a particular tower within
21 that range that it is pinging off a signal to.

22 Q. Okay. So when my cell phone makes a call from here, it
23 hits the tower?

24 A. Yeah.

25 Q. And the LAC identifies the tower?

1 A. That's correct.

2 Q. And that information is contained in the records that
3 you received from Cingular that are in your hands as State's
4 Exhibit 90?

5 A. Yes.

6 Q. Were you able to determine, based on phone calls being
7 made from Dontavious Mack's cell phone, the location of
8 towers that were being pinged from that cell phone as calls
9 were being made throughout the night?

10 A. Yes.

11 Q. From the time immediately after the robbery to about
12 6:30 in the morning, were you able to identify the cell
13 phone towers that were being hit by that cell phone as calls
14 were made?

15 A. Yes, we were.

16 Q. And what direction were those headed?

17 A. They were traveling east.

18 Q. Towards?

19 A. Towards Hartsville.

20 Q. Did they ultimately terminate at one location and stop?

21 A. Yes, they did.

22 Q. In what city?

23 A. In Hartsville.

24 Q. Okay. Is there a map that identifies that that you
25 have in your -- that shows -- do these pages, three of three

1 ad two of two, can you identify these three pages?

2 A. On page two of two, it indicates a tower on Cherry Road
3 that was pinged off of.

4 On page two of three, it indicates an area in Lancaster
5 County, a tower that was pinged off of in that location.

6 And also another location in Rock Hill off of 21
7 Bypass.

8 Q. All right. Did you review all the calls that were on
9 that and determine in which direction they were heading as
10 they made these calls?

11 A. Yes.

12 Q. Are you the one that prepared these three maps?

13 A. Detective Harris did those.

14 Q. Are you familiar with how they were prepared?

15 A. Yes.

16 Q. Are they accurate and do they reflect the date that's
17 contained in the Cingular report?

18 A. Yes.

19 MR. BRACKETT: Your Honor, I would ask be that
20 these be marked as State's Exhibit -- appended together as
21 three documents and marked as State's Exhibit 94, and moved
22 into evidence.

23 THE COURT: No objection, counsel.

24 MR. SWERLING: No, sir.

25 MR. SNOW: No, sir.

1 THE COURT: Admitted without objection.

2 MR. BRACKETT: Just one moment.

3 (Off the record)

4 (Back on the record)

5 MR. BRACKETT: Thank you very much, Detective
6 Haire.

7 Please answer any questions that counsel for
8 defense may have for you.

9 MR. SWERLING: I have got a few questions.

10 CROSS EXAMINATION BY MR. SWERLING:

11 Q. First of all, you went out to the scene, correct?

12 A. Correct.

13 Q. Okay. And I just want to make sure that this is clear,
14 that when you went there, you found three -- you found three
15 projectiles from a .380, is that correct?

16 A. Two or three, I believe.

17 Q. I'm sorry. You found -- you found the evidence --
18 let's see. You found evidence that a .380 had been used?

19 A. That's correct.

20 Q. And there were shell casings, .380 shell casings, in
21 the store, is that correct?

22 A. Yes.

23 Q. And there were three of them?

24 A. Yes.

25 Q. Is that correct?

1 A. Right.

2 Q. You found them at different locations in the store?

3 A. Yes.

4 Q. And from the evidence, the .380 was the weapon used by
5 Dontavious Mack, is that correct, from your investigation?

6 A. Correct.

7 Q. Now, you had indicated that you got involved in this
8 case and transferred Dontavious Mack and Davorius Mack. I
9 believe you took them into custody on the 19th of October?

10 A. Correct.

11 Q. They had actually been arrested in Hartsville on the
12 14th of October, is that correct?

13 A. Yes.

14 Q. Four days after this event?

15 A. Correct.

16 Q. So obviously for those four days they were not
17 separated and were together, or could be together, during
18 that period of time?

19 A. I guess they could have been, yes.

20 Q. From the 10th to the 14th they weren't in custody?

21 A. No. Right.

22 Q. And as a matter of fact, you are aware that they both
23 gave a -- and I think you alluded to it, they both gave a
24 statement as to how Dontavious got shot at the Farmington
25 Apartments?

1 A. That's right.

2 Q. Okay. And that was obviously subsequent to the events
3 up here in Rock Hill?

4 A. Yes, sir.

5 Q. Okay. Now, I believe you said that the warrant for
6 Terrell Addison was issued on the 19th of October as well as
7 a result of your investigation?

8 A. Yes.

9 Q. And he turned himself in on October 31st here in Rock
10 Hill, or in Rock Hill, is that correct?

11 A. Yes, sir.

12 Q. Did he turn himself in to you?

13 A. No, sir, I had already gone for the evening. It was
14 after I had already left.

15 Q. And he turned himself in with a lawyer that he had at
16 that particular time, is that correct?

17 A. Yes, sir.

18 Q. When you were also conducting this investigation, you
19 interviewed down in Hartsville Johnetta Evans --

20 A. Yes, sir.

21 Q. -- and Tiyone -- I'm not sure I'm pronouncing the name
22 correctly. It would be spelled, just for the court
23 reporter's benefit, T-I-Y-O-N-E, Evans?

24 A. Yes, sir, I believe he pronounces it Tiyone or --

25 Q. Tiyone, okay.

1 A. Yes.

2 Q. And you interviewed both of them on the -- it appears,
3 it looks like on the 17th of 2006?

4 A. No, sir.

5 Q. What was that date, because it's not clear?

6 A. We interviewed Johnetta on October 12th.

7 Q. 12th?

8 A. Yes.

9 Q. It looked like a 6. Sorry.

10 And what about Tiyone?

11 A. Tiyone I believe was the 17th or the 18th.

12 Q. Okay. And without going into the details of that
13 interview, the interview was concerning -- part of it was
14 concerning statements that Dontavious Mack had made to them
15 after the shooting and robbery in Rock Hill, is that
16 correct?

17 A. Yes, sir.

18 Q. And that was reduced to written statements?

19 A. Yes.

20 Q. They were reduced to written statements?

21 A. Yes, sir.

22 Q. Thank you.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION BY MR. SNOW:

25 Q. Detective, you testified that -- and let me make sure I

1 get this correct, that you took Donte into custody on -- was
2 it the 18th or 19th of October, 2006?

3 A. 19th.

4 Q. What?

5 A. 19th.

6 Q. 19th.

7 And you testified, to your knowledge, these boys --
8 these brothers had no contact, to your knowledge?

9 A. Yes, sir.

10 Q. Right. But you don't know for certain whether they had
11 an opportunity to speak with each other while they were in
12 custody, do you?

13 A. To my knowledge, they did not.

14 Q. To your knowledge. But you don't know for certain,
15 other than the fact, because you weren't there, were you?

16 A. No, sir.

17 Q. Right.

18 You weren't in Hartsville or you weren't in -- I'm
19 sorry, when they were -- but you weren't there when they
20 were in custody?

21 A. No, I wasn't.

22 Q. And you don't know if they have had mutual friends or
23 relatives to talk with both of them and exchange
24 information?

25 A. No, I don't.

1 Q. Okay. And you don't know if they exchanged letters
2 either while they were in custody?

3 A. Not to my knowledge.

4 Q. Or notes?

5 A. No, sir.

6 Q. So it's possible they could have done that without your
7 knowledge, right?

8 A. It's possible.

9 Q. And the number that you said belonged to Ms. Johnson,
10 Mr. Stewart's girlfriend, or used to be girlfriend,
11 ex-girlfriend, I think that number is -- have you -- would
12 you repeat that number, please? Is that [REDACTED] 2807?

13 A. 2807, yes.

14 Q. Now, you also learned as part of this investigation
15 that that's also a cell phone that Ben Stewart carried,
16 correct?

17 A. I was not made aware he carried, no.

18 Q. So you didn't know -- you didn't know he had access to
19 that telephone?

20 A. No, sir.

21 MR. SNOW: Beg the court's indulgence.

22 THE COURT: Yes.

23 (Off the record)

24 (Back on the record)

25 BY MR. SNOW:

1 Q. One other question.

2 In the store you located -- there were located shell
3 casings?

4 A. Yes.

5 Q. .380?

6 A. Yes.

7 Q. Did you happen to -- did anyone happen to recover any
8 fingerprints off the shell casings?

9 A. No.

10 Q. Is it -- do you know, is it possible sometimes to
11 recover fingerprints from shell casings?

12 A. It's possible, but it's very rare.

13 Q. But it's possible, though?

14 A. Yes.

15 Q. Okay. Thank you.

16 MR. BRACKETT: Nothing further, Your Honor.

17 I ask that the witness be allowed to step down.

18 THE COURT: Yes. Thank you, sir. You may stand
19 down, sir.

20 Counsel, is this a good time to break for lunch,
21 or do you want to try to get another witness in?

22 MR. BRACKETT: We probably have twenty minutes
23 left of witnesses, twenty-five at the outside.

24 THE COURT: Go ahead.

25 MR. THOMPSON: The State would call Vicki Hallman.

1 SLED AGENT VICKI HALLMAN, having been first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. THOMPSON:

4 Q. Agent Hallman, would you give your full name for the
5 court, please?

6 A. Vicki Hallman, and it's spelled H-A-L-L-M-A-N.

7 Q. How is Vicki spelled?

8 A. V-I-C-K-I.

9 Q. Now, Agent Hallman, where do you work?

10 A. I'm employed with the South Carolina Law Enforcement
11 Division, which is also known as SLED.

12 Q. And how long have you been there?

13 A. About a month shy of five years.

14 Q. And what are your duties there?

15 A. I'm assigned to the crime scene unit. We are
16 responsible for assisting local agencies with the processing
17 of crime scenes.

18 I also do latent fingerprint processing and comparison.

19 I do footwear and tire tread comparison.

20 And I also do blood stain pattern interpretation and
21 crime scene reconstruction.

22 Q. And did you do footprint comparisons in this particular
23 case?

24 A. Yes, sir, I did.

25 MR. THOMPSON: And just to try to make this fast,

1 I'll ask the defense to stipulate at this point to your
2 qualifications as an expert in analyzing footprints and
3 matching?

4 MR. SWERLING: I would.

5 MR. SNOW: Stipulated, judge.

6 THE COURT: With that stipulation, she's so
7 qualified and you may proceed.

8 MR. THOMPSON: Thank you. We will go right into
9 it.

10 BY MR. THOMPSON:

11 Q. Now, did you receive the three pairs of shoes in this
12 case; one to Dontavious Mack, one of Davorius Mack, and one
13 of Terrell Addison?

14 A. Yes, I did.

15 Q. And I'll show them to you briefly here.

16 They are all marked, I believe, State's Exhibit No. 89.

17 A. Okay.

18 Q. And whose shoes are those?

19 A. These are marked as belonging to Terrell Addison.

20 Q. If you could take one of those shoes out and show it to
21 the jury just briefly.

22 Those are the shoes of Terrell Addison?

23 A. Yes.

24 Q. Now, I notice some red on the bottom. Is that there
25 when you got them?

1 A. No, that is a -- part of what we do to do our
2 comparison, I actually powdered the bottom of the shoes.
3 And basically what I lift is something along the lines of
4 what you would lift when you lift a fingerprint, and it
5 would be done on transparency so I can do that as part of my
6 comparison.

7 Q. Okay. As far as any other part of the shoe, do you
8 alter those in any way?

9 A. No, sir.

10 Q. All right. Thank you..
11 State's Exhibit No. 92.

12 A. Okay.

13 Q. And whose shoes are those?

14 A. These are marked as belonging to Davorius Mack.

15 Q. All right. And if you could show us one of those
16 shoes.

17 Now, this shoe also has the red on the bottom is
18 something that you put on it?

19 A. Absolutely, yes.

20 Q. Okay. Now, finally, the last one, State's Exhibit 91,
21 whose shoes are those?

22 A. These are marked as belonging to Dontavious Mack.

23 Q. All right. And if you -- once again, the bottoms are
24 red something that y'all do at SLED?

25 A. Yes.

1 Q. Okay. Are they changed in any other way?

2 A. No, sir.

3 Q. Thank you. Can you tell me what similarities did you
4 see in these shoes when you received them?

5 A. Two pairs of shoes actually had a size in them.

6 One pair of shoes, the ones that I show as belonging to
7 Davorius Mack, did not have a size tag in them.

8 Q. All right.

9 A. The other two both contained size tags and they both
10 were size 10's.

11 They are also both made by Nike and they both actually
12 share the same tread design, which is the pattern that's on
13 the bottom of the shoe.

14 Q. You say both. How about all three? Are all three made
15 by Nike as well?

16 A. Yes, all three are made by Nike.

17 Q. Do they all share the same tread design on the bottom?

18 A. Yes, they do.

19 Q. Now, you had mentioned one of the sizes was not
20 actually in the shoe. In your visually looking at them, was
21 it comparable to the other two sized 10?

22 A. Yes, it did. It seemed to be probably within a half a
23 size, if not right at the same size.

24 Q. Okay. Now, if you could explain to the jury briefly
25 what it is that you look at in order to try and compare

1 shoes like this to say the foot impressions that ultimately
2 receive?

3 A. What we usually do is we usually are receiving the
4 unknown footwear impressions, which you have seen that they
5 have showed previously. We also receiving the shoes. I
6 send the shoes to our photography department and they
7 photograph the bottoms of the shoes for me so that I
8 actually have a photograph of what they look like. I powder
9 them with a red powder and basically do like a transparency
10 of that shoe. As then I compare it to the unknown
11 impressions that I have.

12 There is several different things that we do with
13 footwear. We can actually positively identify a shoe.
14 That's done if there are things that are considered random
15 characteristics on the bottom of a shoe, something along the
16 lines of a nail, or a tack, or a cut, or a hole being
17 present and represented on both the unknown and the known,
18 and it has to be, of course, in the same location. And I
19 could identify that shoe to the exclusion of all other
20 shoes.

21 We also look at the way a person wears their shoes, how
22 their feet move. Some people were theirs on the outside of
23 the heel, some people on the inside. That's another part of
24 what we can do.

25 We also -- basically you start out, the main thing that

1 you are going to look at, is the tread design that's on the
2 bottom of your unknown impression the same tread design that
3 is on the bottom of your known impression. That's
4 considered a class characteristic, along with size and
5 shape.

6 And in this case all of them appeared to have a similar
7 combined class characteristic in a lot of cases. They all
8 actually did share the same tread design. But with some of
9 them, I was able to eliminate one or two shoes based on the
10 wear pattern or the size pattern.

11 Q. Now, and I noticed when you lifted out one of the
12 shoes, one of them had actually a tack on the bottom. Does
13 that actually assist you in any of your examination of these
14 shoes?

15 A. Not in this case. It's best for us to receive the
16 shoes or the shoes to be taken as soon after the incident as
17 possible, because a lot of people continue to wear their
18 shoes. And when they do so, they continuously change the
19 bottom of those shoes.

20 Q. So there is no -- you don't know whether the tack would
21 have been on there at the time the shoe left an impression,
22 that sort of thing?

23 A. There is no way of knowing with the photographs in that
24 specific area.

25 Q. Okay. Now, you said that you made some -- that you had

1 the photography department make some photographs for you.

2 Do you have some of those photograph with you today?

3 A. I do.

4 Q. Can you give us just an example of what some of those
5 photographs look like in your comparison?

6 A. Basically what I do with the unknowns that are
7 submitted to us, our photography department uses this ruler
8 and makes this photograph one to one for me. So, in other
9 words, this footwear impression should actually correspond
10 in exact size with the pair of shoes that I have been given
11 to compare them to.

12 Q. All right.

13 A. And then each one is done individually.

14 Q. Okay. Now, you said that you also made some
15 impressions from the shoes using some sort of red substance?

16 A. Yes, sir.

17 Q. Can you show us an example of some of these substances?

18 A. Oh, an example, and this would be my item No. 37. This
19 is what the test impression that I used looks like. And I
20 would have done one for the right shoe and one for the left
21 shoe and also for the other two pair of shoes that I
22 received.

23 Q. And then when you are comparing that with one of the
24 photographs, how are you actually doing comparison to
25 testify?

1 A. I basically -- just basically do an overlay to try to
2 match everything up. I look first, like we said, for the
3 tread design, to make sure the tread design is the same.
4 Then I try to determine whether or not they are the same
5 size.

6 Q. Okay.

7 A. If they are shaped the same, if the toe ends at the
8 same spot, and then I can go in and start looking at the
9 wear characteristics.

10 On the Nike Air Force One's, at the -- around the tops
11 of the toe there is a lot of little small stars. And as you
12 continually wear them, those stars go away. So that would
13 be one thing that I would look for in the Nike Air Force One
14 is the stars, and then the size of the circles in the toes
15 and in the heels because, those wear down at different
16 rates.

17 Q. Okay. Now, the scales that you have on there that you
18 said that they used for the photograph, are those the scales
19 that were already on the photograph when they arrived to
20 you?

21 A. Yes.

22 Q. And you received all those photographs from Law
23 Enforcement here, correct?

24 A. Yes.

25 Q. Okay. Now, in your examination were there any

1 photographs of shoe prints that there is just no way that
2 you could tell, that there wasn't enough detail in the shoe
3 print itself?

4 A. Yes, sir, there were several.

5 Q. And so on those you are not able, I'm assuming, to
6 match anybody to those, is that correct?

7 A. That's correct.

8 Q. Now, were there some that you were able to tell more
9 about?

10 A. Yes, there were.

11 Q. And can you tell me kind of -- the situation I guess we
12 will go on and we'll try to put them in groups. How many
13 did we have that, say, could possibly be all the shoes?
14 Were there any of that sort?

15 A. Yes, sir there were.

16 Q. Could you go over those with us briefly.

17 A. You need to see the photographs?

18 Q. No, no, you can just tell us about them.

19 A. They were -- and let me count them. I'm sorry.

20 I believe it's ten altogether, that when I compared
21 them, I could not differentiate between the three shoes as
22 to which one made it. It could have been made by any of
23 those three pairs of shoes.

24 Q. Now, you had talked about class, as far as size, shape,
25 tread design, as being characteristics. Did they share the

1 same class, as far as that goes, in those areas?

2 A. Yes, sir, they do.

3 Q. All right. And when you are examining, is there just
4 not enough to tell in those type of photographs that
5 distinguishes one shoe from another? Is that it?

6 A. And in this case the photographs that I received, the
7 impressions were all made on pavement, so the only thing
8 that's left is the trace that's left on the bottom of the
9 shoes; where as, if they had been deposited in dirt or sand,
10 I probably would have had more detail in the shoes. But
11 just because of where they were taken from, that median that
12 they are deposited on doesn't give me a lot to actually give
13 me those nice minute details that I need in order to make a
14 positive identification.

15 Q. All right. And did you have any that you were able to
16 determine that you could actually rule someone out on?

17 A. Yes, sir, there were also several of those.

18 Q. All right. And let's go over the ones in which you
19 were able to rule at least one person out on.

20 A. I had -- and I can do it by my item number. I don't
21 know whether that will help you.

22 Q. That's fine.

23 A. My item 25.3 and my item 25 was the CD that I received
24 in from the Rock Hill Police Department in order to do the
25 comparison. And each photograph I basically sub-itemized,

1 so 25.3 is a sub item of that.

2 I was able to eliminate the item 24 shoe, which would
3 actually belong to Dontavious Mack.

4 My item 25.5, in that photograph I was able to
5 eliminate the item 37 shoe, which belongs to Terrell
6 Addison.

7 My item 25.6, I was actually able to eliminate the item
8 23 shoe, which belongs to Davorius Mack and the item No. 24
9 shoe, which belongs to Dontavious Mack.

10 Q. So you were actually able to get rid of two shoes in
11 that combination?

12 A. Yes, sir.

13 Q. So the possibility of matching up these three shoes is
14 who is left?

15 A. The only possibility out of three that I'm given is for
16 Terrell Addison.

17 Q. Okay. Now, you had also mentioned --

18 MR. BRACKETT: If it please the court, I apologize
19 for interrupting. May we approach on another matter?

20 THE COURT: Yes, sir.

21 (Whereupon, the lawyers approached the bench for
22 an off-the-record discussion)

23 MR. BRACKETT: Apologize, Your Honor.

24 BY MR. THOMPSON:

25 Q. All right. Going back to that particular impression.

1 That one --

2 MR. SWERLING: Which number are we talking about
3 now?

4 MR. THOMPSON: 25.6.

5 MR. SWERLING: Thank you.

6 BY MR. THOMPSON:

7 Q. On that particular impression you were able to rule out
8 both Davorius and Dontavious as their shoes being involved
9 in that impression?

10 A. Yes, sir.

11 Q. Okay. So of the three we had, of that classic
12 characteristics, Terrell's would be the only one left that
13 could match it?

14 A. Correct, and it wasn't positively identified. It just
15 matches the basic characteristics of that size, shape and
16 tread design.

17 Q. So, for instance, if we had a fourth shoe that was the
18 same maker of Nike that had the same pattern and the same
19 size, that's a possibility that you could match another shoe
20 like that?

21 A. Correct.

22 Q. And when I say match, I use it loosely as having --
23 consistent with the characteristics of that?

24 A. Yes, sir.

25 Continue?

1 Q. Yes, please.

2 A. My item 25.10, I was able to identify my item 23 shoe,
3 which belonged to Davorius Mack.

4 My item number 25.12, I was able to eliminate the shoes
5 belonging to Davorius Mack.

6 Q. And so when you eliminated that shoe, that leaves the
7 other shoes as possible matches, correct?

8 A. Correct. It means that they actually share sample of
9 the same characteristics.

10 Q. Okay.

11 A. Let's see. And then my final item, which was my 25.31,
12 I was able to eliminate the shoes that belonged to Terrell
13 Addison in that case, but the other two could be
14 possibilities.

15 Q. All right. Now, on -- that's all for that.

16 Okay. Now, in going back to -- you had mentioned
17 that -- you told us now some that eliminated at least one
18 person. And going back to 25.6 where two people are
19 eliminated, are there any other item numbers that you have
20 where you were able to limit two -- or eliminate two of the
21 three defendants?

22 A. No, sir.

23 Q. So at least in all the other items, there is a
24 possibility of two of the people being involved in that or
25 having that shoe?

1 A. Yes, sir.

2 Q. All right. And do you recall specifically what it was
3 that allowed you to rule out Dontavious and Davorius Mack's
4 shoe on 25.6?

5 A. For the item 23 shoe, which belongs to Davorius Mack,
6 the size didn't appear to be consistent.

7 And for the item 24 shoe, which belonged to Dontavious
8 Mack, the wear on the shoe was different than what appeared
9 in the impression.

10 Q. Okay. And do you have the photograph of that that you
11 could show us?

12 A. Yes, sir. This would be that photograph.

13 Q. All right. And the small part of that ruler, is that
14 to the toe or to the heel?

15 A. That was to the toe.

16 Q. Thank you. And if you would, one other item I want to
17 ask you about specifically, which is I believe item 25.29.
18 Do you have a photograph of that one?

19 A. Yes, I do, but I will have -- you will have to bear
20 with me for a minute while I pull it out.

21 Q. Sure.

22 Do you have it?

23 A. Yes, sir.

24 Q. Can you show us that photograph?

25 So that's the one in the sand or the dirt?

1 A. Yes, sir.

2 Q. And I believe it looks like a brick underneath it, kind
3 of a brick wall?

4 A. Yes, sir.

5 Q. All right. And on that particular one, were you able
6 to determine whether it could possibly match any of their
7 shoes?

8 A. It was my determination that this impression
9 corresponded in size, shape, and tread design with all three
10 of the pairs of shoes that I had to compare.

11 Q. So it's possible that any of those shoes left that
12 impression?

13 A. Yes, sir.

14 Q. And now, once again, just going it, you had mentioned
15 all these photographs I think were taken on pavement, other
16 than that one there?

17 A. Yes, sir.

18 Q. And I believe is that consistent with the cast that you
19 received, the shoe cast?

20 A. Yes, sir, it is.

21 Q. All right. So that's -- in other words, the shoe cast
22 is the same as that photograph?

23 A. Yes.

24 Q. All right. And other than the cast in that photograph,
25 all the other different photographs, are they on pavement?

1 A. Yes, sir.

2 Q. All right. So they would have been not necessarily
3 from in the store or anything, but on the paved area?

4 A. Correct, on the blacktop.

5 Q. Okay. All right. Thank you.

6 MR. THOMPSON: No further questions.

7 MR. SWERLING: Just a couple, Your Honor.

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION BY MR. SWERLING:

10 Q. Hey, Ms. Hallman, how are you doing?

11 A. I'm fine.

12 Q. Good. For my education, as I understand it, there were
13 thirty-one photographs, is that correct, impressions?

14 A. The CD initially contained thirty-one photographs.

15 There were some problems with it when it arrived at SLED. I
16 couldn't open the photographs because of the way they were
17 shot with the camera. They were sent -- it was sent back
18 and some of the photographs were determined to be
19 duplicates, so I did not examine thirty-one actual
20 photographs.

21 Q. Okay. But actually -- I'm just looking at -- your
22 report actually gives a conclusion on all of them.

23 A. If you will notice, some of them I sub-itemized. And
24 what I tried to do was put the same -- like item 25 is the
25 CD. If there was a 25.1, I tried to use that number as a

1 25.1. If you notice, some of the numbers aren't in
2 sequence. Like 1 and 2 are missing, because apparently they
3 were duplicate photographs with the item 3.

4 Q. All right. Okay. I was getting confused.

5 A. I'm sorry.

6 Q. No, that's all right. No problem.

7 Let me ask you something. This -- it's been a long
8 time since I bought sneakers, but these Nike Air Force One
9 sneakers, which is what all three of them were, is that
10 correct?

11 A. Yes.

12 Q. It's about the most popular sneaker out there right
13 now, isn't it?

14 A. They seem to be quite prevalent, yes, sir.

15 Q. And -- I mean, you see these particular sneakers in
16 footprint analysis all the time?

17 A. Yes, sir.

18 Q. And I guess -- I guess the bottom line of all of this
19 is that when you say that they are consistent, what I
20 understand you to be saying is that they could have been
21 made by that shoe that you are examining, whether it's
22 Addison or either one of the Macks, correct?

23 A. Correct.

24 Q. Or any other person who has that size Nike Air Force
25 One shoe?

1 A. Correct, the same size, shape, and tread design, yes,
2 sir.

3 Q. There is no -- you can't conclude that it came from
4 those sneakers? It just anybody who -- or any sneaker that
5 has that same characteristic?

6 A. In this case, yes, sir, because of the photographs.

7 Q. Right. All right.

8 MR. SWERLING: That's all. Thank you.

9 MR. SNOW: Briefly, judge.

10 CROSS EXAMINATION BY MR. SNOW:

11 Q. You were given imprints from the two Mack brothers?

12 A. I --

13 Q. Were you given impressions from -- were you asked --

14 A. I was given shoes --

15 Q. Shoes?

16 A. -- from both brothers.

17 Q. And you were asked to make comparisons?

18 A. Yes, sir, with the unknown impressions taken from the
19 crime scene.

20 Q. Of the two brothers and also Mr. Addison?

21 A. Well, I received shoes from all three, but I was -- I
22 compared the knowns, which would be the shoes, with the
23 unknowns from the crime scene, because I don't have any idea
24 who made -- which ones are what at the crime scene. That
25 was the point of the comparison.

1 Q. But you weren't given any shoes from Mr. Stewart,
2 correct?

3 A. No, sir, I did not receive any from him.

4 Q. So you were given shoes from three people?

5 A. Correct.

6 Q. Three people, not from my client?

7 A. That's correct.

8 Q. Okay.

9 MR. SNOW: Thank you.

10 MR. THOMPSON: Nothing further, Your Honor.

11 THE COURT: Thank you, ma'am. You may stand down.

12 MR. THOMPSON: I ask her to be excused.

13 THE COURT: Thank you, ma'am. You may be excused,
14 if you wish.

15 MR. SWERLING: Judge, could we approach for one
16 moment?

17 THE COURT: Yes, sir.

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 THE COURT: All right, Mr. Foreman, ladies and
21 gentlemen of the jury, I had a long discussion about
22 scheduling. We need to get a good idea about that, so we
23 were doing that, and I feel reasonably sure we will at least
24 finish this case by tomorrow mid day. So -- I mean, in any
25 event, we will see how that works out, but that's the way it

1 looks right now.

2 We are going to go ahead at this time and break
3 for lunch. And it's right now about twenty -- well, by my
4 watch it's about twenty-five after one and we are going to
5 take just a few minutes extra for lunch. There is something
6 else we have got to do, and so we will give you just a
7 little bit longer for lunch.

8 What I'm going to ask you to do is to be back in
9 the jury room ready to go at 2:45. 2:45. That's about hour
10 and twenty minutes. So if you would be back in there ready
11 to go at 2:45.

12 Again, I'll remind you not to discuss the case
13 among yourselves or with anyone else during the break.
14 Thank you.

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

17 THE COURT: All right, 2:45, gentlemen.

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT: Counsel, ready to proceed?

21 MR. SWERLING: Yes, sir.

22 MR. BRACKETT: State is ready.

23 THE COURT: Please bring the jury in.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: Good afternoon, Mr. Foreman, ladies
2 and gentlemen of the jury, I hope you enjoyed your lunch
3 today.

4 We are ready now to resume with the trial.

5 Counsel ready to proceed.

6 MR. THOMPSON: The State is ready, Your Honor.

7 MR. SWERLING: We are ready.

8 MR. SNOW: Ready, Your Honor.

9 THE COURT: Please call your next witness.

10 MR. THOMPSON: The State would call Cheryl Guzman.

11 OFFICER CHERYL GUZMAN, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. THOMPSON:

14 Q. Officer Guzman, could you state your full name for the
15 court, please?

16 A. Cheryl Guzman.

17 Q. And if you will spell that for the court reporter,
18 please?

19 A. C-H-E-R-Y-L G-U-Z-M-A-N.

20 Q. All right. And Officer Guzman, where do you work?

21 A. York County detention.

22 Q. And how long have you been there?

23 A. Since May of 1993.

24 Q. And what are your duties there at the detention center?

25 A. I'm currently the administrative lieutenant and keeper

1 of the records.

2 Q. So you keep all the records within the detention
3 center?

4 A. Yes, sir.

5 Q. Can you tell me, are -- do you keep certain visitation
6 request forms at the detention center?

7 A. Yes, we do.

8 Q. And do you keep those forms on each inmate?

9 A. Yes.

10 Q. And are those kept in the normal course of business for
11 the detention center?

12 A. Yes, sir.

13 Q. All right. Can you tell me the process in which
14 someone there would fill out a visitation request form?

15 A. The arrestee asks their housing unit officer for a
16 visitation form. They then fill that form out, return it to
17 the officer, and it's forwarded to the front desk, where the
18 information is approved or disapproved and their visitation
19 is scheduled.

20 Q. And do you have such forms filled out by Terrell
21 Addison?

22 A. I do.

23 Q. All right. And can you tell me, are those forms kept
24 in the normal course of business up at the detention center?

25 A. Yes, sir.

1 Q. Do they get altered or changed by you in any way?

2 A. No, sir.

3 Q. Do you maintain the originals of those?

4 A. Yes.

5 Q. Do you have the originals of those with you today?

6 A. I do.

7 Q. I direct your attention to one, in particular. Is
8 there one that listed a visitor on his form a --

9 MR. SWERLING: Could I see it first before you
10 publish it?

11 MR. THOMPSON: Yes.

12 (Off the record)

13 (Back on the record)

14 BY MR. THOMPSON:

15 Q. On that form, is there one that lists a person by the
16 name of Haile, Scottia or Scottie?

17 A. Number five on the list in front of me is Haile,
18 Scottia.

19 Q. Or name is -- I'm sorry, go ahead and say that one for
20 me again. What's the name on the list?

21 A. I'm sorry? I'm not exactly sure how to pronounce it.

22 Q. Tell us how it's spelled so we can at least record it
23 properly.

24 A. Line number five reflects S-C-O-T-T-I-A H-A-I-L-E.

25 Q. Okay. And this person is listed as someone he is

1 requesting to have as a visitor?

2 A. Yes.

3 Q. Is that correct?

4 A. Yes.

5 Q. And where is their address?

6 A. [REDACTED] Swinging Tree Lane in York.

7 Q. Do they also list a phone number there?

8 A. Yes, sir.

9 Q. What's the phone number that they list?

10 A. [REDACTED] [REDACTED]-6769.

11 Q. And when -- does it indicate when this form was filled
12 out?

13 A. This form was completed on December 17th of 2008.

14 MR. THOMPSON: Your Honor, I don't believe she can
15 give up here original record, but I would ask to put a copy
16 of that into evidence at this, just mark that particular
17 phone number.

18 MR. SWERLING: That particular one document?

19 MR. THOMPSON: Yes, that one document.

20 MR. SWERLING: That's fine, no problem.

21 THE COURT: Okay. Admitted without objection.

22 (York County Detention Center Visitor Record for
23 Terrell Addison marked and admitted into evidence as State's
24 Exhibit No. 95)

25 MR. THOMPSON: What I will do is go ahead and --

1 BY MR. THOMPSON:

2 Q. Can you identify this as a copy -- is this copy
3 accurate, Officer Guzman? Can you look at that for me?

4 A. Yes, sir.

5 Q. Okay. Thank you.

6 MR. THOMPSON: Then I would enter this in as
7 State's Exhibit 95.

8 BY MR. THOMPSON:

9 Q. Thank you, Officer Guzman.

10 MR. THOMPSON: Nothing fourth.

11 THE COURT: Any question?

12 MR. SWERLING: No questions.

13 THE COURT: Thank you, ma'am. You may stand down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Do you wish her to be excused, I
16 assume?

17 MR. BRACKETT: Yes, sir, Your Honor.

18 THE COURT: Thank you for coming, ma'am. You may
19 be excused.

20 THE WITNESS: Thank you.

21 MR. BRACKETT: If it please the court, the State
22 would rest.

23 THE COURT: All right, counsel, approach just a
24 minute.

25 (Whereupon, the lawyers approached the bench for

1 an off-the-record discussion)

2 THE COURT: All right, Mr. Foreman, ladies and
3 gentlemen of the jury, there are matters I need to take up
4 with counsel at this time out of your presence, so I'm going
5 to ask you to retire to the jury room. We are going to be
6 about fifteen minutes, or so, and so we will have you back
7 out here. Thank you.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: Okay, counsel, be glad to hear you on
11 any motions that you might wish to make at this time.

12 MR. SWERLING: Yes, sir.

13 MR. BRACKETT: Prior to Mr. Swerling making his
14 motions, this would be an opportune time to save time on
15 that.

16 The State would at this time withdraw the
17 indictment for possession of a stolen vehicles for both
18 defendants. We will withdraw those indictments at this
19 point in time --

20 THE COURT: All right.

21 MR. BRACKETT: -- and nolle pros on both of those
22 counts.

23 THE COURT: All right. Hand those up. Okay.

24 Yes, sir.

25 MR. SWERLING: Judge, Mr. Addison is indicted for

1 murder, armed robbery, criminal conspiracy, possession of
2 firearm during the commission of a violent crime.

3 And they are not going forward under possession of
4 21, is that correct?

5 MR. BRACKETT: That's correct.

6 MR. SWERLING: And possession of a stolen vehicle
7 we are not going forward on.

8 MR. BRACKETT: That's right.

9 MR. SWERLING: Then the other one is kidnapping.

10 Judge, as to the charges that they are going
11 forward on, the defendant at this time would ask the court
12 to consider a motion for a directed verdict as to each
13 charge.

14 Taking all the evidence in the light most
15 favorable to the State, we submit that the State has failed
16 to offer elements of each of those offenses as they relate
17 to Terrell Addison so as to submit the case to the jury.

18 Particularly, Your Honor, even though the State
19 has offered proof that Mr. Addison was in the store at the
20 time of the robbery, the evidence we think shows that Mr.
21 Addison was not a willing participant or not aiding and
22 abetting in any way. That comes out through the evidence of
23 the co-defendants.

24 And so for those reasons, Your Honor, as to all
25 the charges, we think that he should be granted a directed

1 verdict.

2 THE COURT: Thank you, sir.

3 Does the State wish to be heard on the motion?

4 MR. BRACKETT: We believe the evidence is ample on
5 each count.

6 THE COURT: All right. Looking at the motion for
7 a directed verdict, the court is required to look at the
8 evidence in the light most favorable to the party against
9 whom the motion is being made.

10 In this case, looking at the evidence in the light
11 most favorable to the State, I find there is substantial
12 evidence from which the jury could infer the State had
13 proven the elements of each of these offenses beyond a
14 reasonable doubt. The weight of the evidence is a matter
15 for the jury, not for the court, but I find there is
16 substantial evidence from which they could infer the guilt
17 of the defendant on each of these charges.

18 I would deny your motion for a directed verdict.

19 THE COURT: Counsel?

20 MR. SNOW: May it please the court, Your Honor, at
21 this time we move the court for a directed verdict in favor
22 of my client, Mr. Stewart, Your Honor.

23 Even in viewing the evidence most favorable to the
24 State, Your Honor, we believe the State has failed to create
25 an issue for the jury, Your Honor.

1 And I would argue in general for all these
2 particular cases, particularly the kidnapping, judge. I
3 feel that the kidnapping charge certainly, even considering
4 the allegations, if it were true, the kidnapping is
5 certainly is not a natural occurrence of any conspiracy or
6 any armed robbery. I would ask the court to consider that,
7 in particular, and just move for a directed verdict.

8 THE COURT: Thank you, sir.

9 Does the State wish to be heard on that?

10 MR. BRACKETT: We believe the evidence is ample in
11 both.

12 The only issue really is a question of fact, I
13 believe, for the jury to resolve between accessory before
14 the fact of several of these charges, or convict him as a
15 principal, whether the jury considers his presence at the
16 Northwoods Apartments to be present for the purposes of
17 being a principal and the attending these crimes, or whether
18 he was sufficiently removed from the crime scene to consider
19 him to be an accessory before the fact. So that's the
20 question I think the only thing that's an issue in court.
21 That's why we presented the jury with these alternative
22 indictments so that they can make that determination.

23 THE COURT: Well, I agree with that.

24 In looking at the evidence in the light most
25 favorable to the State, as I'm required to do on a motion

1 for a directed verdict, in this case I find there is
2 substantial evidence on which the jury could infer that the
3 State had proven the elements of the offenses beyond a
4 reasonable doubt.

5 Again, if they find that he was a willing
6 participant in the crime, provided a weapon as is alleged to
7 one of the persons who came in and committed the murder and
8 the armed robbery, including the kidnapping, would be a --
9 it's alleged that there was a -- that he was inveigled or
10 taken into custody and moved against his will within the
11 store, which would constitute under the law, if jury
12 believes that, kidnapping, and not taken outside the store.

13 If he was a principal and -- considered an
14 accessory before the fact and, therefore, a principal, he
15 certainly could be convicted on all of the offenses to which
16 the two defendants who went into the store could be
17 convicted.

18 And so, again, I'll deny your motion for a
19 directed verdict as to the charges against this defendant.

20 Anything else?

21 (No response)

22 THE COURT: Anything else?

23 Mr. Swerling, let me ask if you would bring Mr.
24 Addison around to the bench and let me advise him about his
25 right to testify or not to testify.

1 MR. SWERLING: Yes.

2 THE COURT: Please place him under oath, Madam
3 Clerk.

4 THE CLERK: Sir, please raise your right hand and
5 place your left on the Bible.

6 TERRELL ANTONIO ADDISON, having been first duly
7 sworn, testified as follows:

8 THE COURT: Sir, you can put your hand down now.

9 For the record you are Terrell Antonio Addison, is
10 that correct?

11 DEFENDANT ADDISON: Yes, sir.

12 THE COURT: Mr. Addison, we have reached the stage
13 of your trial where you may present your defense.

14 You have the right to testify in your own behalf.
15 However, no one can make you testify. In the event you have
16 a record for any conviction involving dishonesty or false
17 statement or for a crime punishable by imprisonment for more
18 than one year and this court determines that the probative
19 value of admitting this evidence outweighs its prejudicial
20 effect to you, the solicitor would be able to introduce this
21 record for impeachment purposes to attack your credibility.

22 If you elect not to take the stand, I would charge
23 the jury that they are not to give the fact that you did not
24 testify any consideration whatsoever and there is to be
25 absolutely no prejudice to you because you did not testify.

1 It is left entirely up to you whether or not you
2 testify. You may talk with your attorney, your family and
3 friends, or anyone else, but the ultimate decision is left
4 entirely up to you.

5 Do you understand that it is your decision as to
6 whether you will or will not testify in your case?

7 DEFENDANT ADDISON: Yes, sir.

8 THE COURT: Have you discussed with your attorney
9 the advantages and disadvantages of testifying?

10 DEFENDANT ADDISON: Yeah. Yes, sir.

11 THE COURT: You have discussed that with him?

12 DEFENDANT ADDISON: (Shaking head yes).

13 THE COURT: And do you wish to testify, sir?

14 DEFENDANT ADDISON: Yes, sir.

15 THE COURT: Is that your decision, sir?

16 DEFENDANT ADDISON: My decision.

17 THE COURT: Okay. Thank you. You may return to
18 your seat.

19 Any other matter we need to take up at this time?
20 Do you want just a few minutes, did you say?

21 MR. SWERLING: Well, judge, just one thing I
22 wanted to raise with the court. We are just discussing what
23 the solicitor contends could be admitted under 609, as far
24 as a prior conviction.

25 It's my understanding that the solicitor maintains

1 that the only conviction that they could offer would be a
2 threatening school official charge, when the -- the order of
3 commitment was dated May 13th, 2003. So that was
4 approximately five and a half years ago. And -- I'm trying
5 to see how old he would have been, judge.

6 Your Honor, about that time he was about fifteen
7 years of age. He was born -- what day? [REDACTED] 88. So that
8 would have been just fifteen years. He would have been
9 fifteen years old.

10 Judge, first of all, 609 requires that it be a
11 conviction that -- in order for a juvenile conviction to be
12 admitted, it has to be admitted against an adult, if an
13 adult were charged with the same crime, which, of course,
14 requires the one year period of time for it to be
15 admissible.

16 The other thing, of course, when you are dealing
17 with an accused, is that the accused -- the court has to
18 make a determination that the probative value of admitting
19 the evidence outweighs the prejudicial effect of the
20 accused.

21 THE COURT: Yes, sir.

22 MR. SWERLING: Judge, in the first instance I
23 would ask Your Honor to go ahead and weigh the exclusion of
24 this and exclude it under 609.

25 In this particular case we do submit that the

1 probative value of admitting that evidence is far outweighed
2 by the prejudicial effect of it coming in. He was a
3 juvenile at the time. He was fifteen years of age. It
4 involved a school official. And, of course, in this
5 particular case he's charged with murder, armed robbery and
6 kidnapping. It's some five years -- it's almost six years
7 later. So I would ask Your Honor --

8 THE COURT: I understand the defense is going to
9 be duress. He was scared of the person he went in with, is
10 that right?

11 MR. SWERLING: Yeah, that's it.

12 THE COURT: That makes it a lot more probative,
13 doesn't it, counsel?

14 MR. SWERLING: Well, I just wanted -- Your Honor,
15 I just make the motion. I think in this particular matter
16 we ask that you exclude it for that reason, that the
17 prejudicial effect far outweighs any probative value.

18 THE COURT: Well, I'll hear from the solicitor on
19 that.

20 MR. BRACKETT: We think it's appropriate to
21 impeach him with this offense, Your Honor. And I think it
22 is probative as to his credibility, especially when he's
23 asserting the defense of duress.

24 THE COURT: Well, under Green v. State, the State
25 v. Culp, the court is required to look at five factors in

1 making that determination. Those five factors are the
2 impeachment value of the prior crime, the point in time of
3 the conviction, the witness' subsequent history,
4 similarities between the past crime and the charged crime,
5 the importance of the defendant's testimony, and the
6 centrality of the credibility issue.

7 In reviewing all of those -- I'm not going to make
8 a specific finding on each on of the five, except to say
9 that I have considered all five, and I do find that -- of
10 course, obviously the impeachment value is very high in this
11 case, given what his testimony and what his defense is
12 going, as I understand it, is going to be when he testifies.
13 And it's -- so his credibility will be a primary factor in
14 the case as to number five, the centrality of the
15 credibility issue. It's very important if he's going to
16 allege duress in this case, when he was -- if he was inside
17 the store when it was being robbed and somebody was killed,
18 and he's going to allege that he was under duress.
19 Certainly he's going to testify to that, then I think
20 certainly the credibility issue is very important.

21 The importance of defendant's testimony.
22 Obviously he can't -- obviously he can't establish that
23 probably without his own testimony. He couldn't raise that
24 issue without his own testimony. And he has the burden of
25 proof on that defense.

1 The similarity between the past crime and the
2 charged crime. Really there is no similarity. Armed
3 robbery and killing, kidnapping, has nothing to do with
4 simply threatening a public official, that being a school
5 official. And so I don't see any similarity between the
6 two, except as to show, you know, something about his
7 credibility.

8 There is a little time passed between the two, but
9 I don't find that significant.

10 So, you know, in weighing it, I'm considering
11 these five factors, as I'm required to do. In considering
12 those five factors, I find the impeachment value of the
13 crime far more probative than prejudicial, if he chooses to
14 testify.

15 Certainly, and it's particularly important in this
16 case, I think where if he's going to rely on the defense of
17 duress, and that's going to be based primarily on what he
18 says, then credibility -- his credibility becomes very
19 important. And also as to what his demeanor might be in a
20 given situation where he might allege that he was in fear.

21 Secondly, I point out to you in weighing that I
22 also need to consider the fact that defense counsel spent a
23 great deal of time, not necessarily impeaching, but trying
24 to establish the violent character of the two State's
25 witnesses, who are co-defendants in this case, by bringing

1 up an assault and battery of a high and aggravated nature,
2 they got, picked up when they were twelve and thirteen years
3 old. And, of course, counsel spent a lot of time
4 questioning them about that in an effort to show that they
5 are kind of violent people.

6 So I think in the context of all of that, it
7 becomes more probative in this case where the defense of
8 duress which alleged these people were more violent and he
9 was afraid of them. I think it becomes much more probative
10 than it might be under normal circumstance. Having made
11 that evaluation, I would determine that it is admissible to
12 impeach with it, if he testifies.

13 MR. SWERLING: Thank you, sir.

14 Judge, can we approach one second?

15 THE COURT: Yes, sir.

16 (Whereupon, the lawyers approached the bench for
17 an off-the-record discussion)

18 THE COURT: We are addressing a security
19 situation.

20 MR. BRACKETT: That would be an alternative that
21 would not cause a security problem, even to keep them on and
22 he would be seated. They would in come and he would be
23 there already and then they wouldn't have to see him
24 obviously.

25 THE COURT: Whatever you want to do.

1 MR. BRACKETT: That suits us fine.

2 THE COURT: Do you have any problem with that?

3 MR. SWERLING: No, that's fine.

4 THE COURT: All right. Is he going to be your
5 first witness?

6 MR. SWERLING: Yes.

7 THE COURT: We are ready to proceed then, or do
8 you need couple of minutes?

9 MR. SWERLING: Just two minutes.

10 THE COURT: Okay.

11 (Off the record)

12 (Back on the record)

13 MR. SWERLING: We are ready, Your Honor.

14 THE COURT: Please bring the jury in.

15 MR. SWERLING: Your Honor, did you say that you
16 wanted to get him up there?

17 THE COURT: Oh, I beg your pardon. Let him come
18 on up here and let's get him sworn in.

19 TERRELL ANTONIO ADDISON, having been first duly
20 sworn, testified as follows:

21 MR. SWERLING: Judge, do you have any problem if I
22 use this over here?

23 THE COURT: No, sir.

24 Okay, bring the jury in.

25 Counsel, I think for the jury's sake I am simply

1 going to say before you start that Mr. Addison, you have
2 been sworn for purposes of your testimony this time, and go
3 from there.

4 MR. SWERLING: Thank you.

5 (The following takes place in the presence of the
6 jury panel)

7 MR. SWERLING: Thank you.

8 THE COURT: Mr. Addison, you have been sworn for
9 your testimony at this time.

10 DEFENDANT ADDISON: Yes, sir.

11 THE COURT: Proceed, counsel.

12 DIRECT EXAMINATION BY MR. SWERLING:

13 Q. Terrell, would you introduce yourself to the jury,
14 please? Tell them your name.

15 A. My name is Terrell Addison.

16 Q. And, Terrell, how old are you?

17 A. I'm twenty years old.

18 Q. Where do you live?

19 A. I live in Rock Hill, South Carolina.

20 Q. Terrell, let me ask you this. In the past have you
21 been treated for ADHD?

22 A. Yes, sir.

23 Q. And what is that?

24 A. It's a hyper disorder. It's for -- it's for anxiety
25 and depression.

1 Q. Okay. It's Attention Deficit Disorder?

2 A. Yes, sir.

3 Q. And for a good part of your life were you treated with
4 medication for that?

5 A. Yes, sir.

6 Q. When did you stop taking medicine for the ADHD?

7 A. Right when I was like sixteen.

8 Q. How does it affect you now?

9 MR. BRACKETT: If it please the court, relevance.

10 THE COURT: Sustained.

11 MR. SWERLING: Judge, if I could explain?

12 Could I approach?

13 THE COURT: Yes.

14 (Whereupon, the lawyers approached the bench for
15 an off-the-record discussion)

16 BY MR. SWERLING:

17 Q. Okay. Terrell, where is your family originally from?

18 A. Originally from Hartsville, South Carolina.

19 Q. And who is in the Hartsville now? Who still lives in
20 Hartsville?

21 A. Most of my family.

22 Q. Is that where -- and you lived in that area as well?

23 A. Yes, sir.

24 Q. When did you -- were you born there or raised there?

25 A. Yes, sir.

1 Q. When did you leave Hartsville?

2 A. When I was ten years old, sir.

3 Q. And where did your family move then?

4 A. To Rock Hill, South Carolina.

5 Q. Is that your mom and dad sitting there in the front
6 row?

7 A. Yes, sir.

8 Q. On the left-hand side?

9 A. Yes, sir.

10 Q. Now, currently right now who lives in Hartsville, in
11 your family?

12 A. My grandma and aunts and everybody in my family.
13 Everybody lives in Hartsville.

14 Q. Do you go to Hartsville frequently?

15 A. Yes, sir.

16 Q. About how often do you go down to Hartsville?

17 A. Every weekend or every other weekend.

18 Q. And who do you stay with?

19 A. Relatives. My grandma, or my aunt, or friends.

20 Q. Okay. How do you usually get there?

21 A. My mom and dad.

22 Q. Do you drive?

23 A. No, sir.

24 Q. Have you ever had a driver's license?

25 A. No, sir.

1 Q. Now, I want to ask you. Back when you were about
2 fifteen years of age, did you have to go to Family Court?

3 A. Yes, sir.

4 Q. And was that on a charge of threatening a school
5 teacher?

6 A. Yes, sir.

7 Q. And did you enter a plea to that?

8 A. Yes, sir.

9 Q. Okay. In Family Court?

10 A. Yes, sir.

11 Q. And that was -- which teacher was that?

12 MR. BRACKETT: Objection, Your Honor. I don't
13 believe you can go into the event itself. Simply recite the
14 conviction.

15 THE COURT: That's correct.

16 BY MR. SWERLING:

17 Q. But you did enter a plea to that?

18 A. Yes.

19 Q. Accepted responsibility for that?

20 A. Yes, sir.

21 Q. So you said that -- you testified that you go to
22 Hartsville every weekend or every other weekend and stay
23 with one of your relatives?

24 A. Yes, sir.

25 Q. Do you also have a girlfriend down there?

1 A. Yes, sir. Friends, yes, sir.

2 Q. Some friends?

3 A. Yes, sir.

4 Q. And where do they live?

5 A. They live in Farmington Apartments on Cameo Street and
6 Flynn's Road, in the country.

7 Q. Now, when you go to Hartsville or are going to
8 Hartsville and visiting your family, do you stay there for
9 the weekend? Do you stay for any longer period of time?

10 A. I stay there for the weekend.

11 Q. Do you have any close friends down in the Hartsville
12 area?

13 A. Part of the family, yes, sir.

14 Q. Your family?

15 A. Yeah.

16 Q. Okay. Now, do you know Dontavious and Davorius Mack?

17 A. I know of them, sir.

18 Q. Were they friends of yours?

19 A. No, sir.

20 Q. Were they associates of yours?

21 A. No, sir.

22 Q. Did you hang around with them?

23 A. No, sir.

24 Q. Okay. Did you know about them and their reputation?

25 A. Yes, sir.

1 Q. Do you know their reputation for violence and fighting?

2 A. Yes, sir.

3 Q. And what was it?

4 A. Fighting, violence. They liked to tote weapons and
5 stuff like that.

6 Q. Did you -- and was that one of the reasons that you did
7 not hang around with them?

8 A. Yes, sir.

9 Q. Now, you said that you had some cousins down there?

10 A. Yes, sir.

11 Q. Are they your age as well, the same age as you?

12 A. I have got cousins that are younger than me, cousins
13 that are older than me. I got cousins, you know, in all
14 type of ages.

15 Q. Now, on the weekend before October 10th --

16 A. Yes, sir.

17 Q. -- did you have an occasion to go down to Hartsville?

18 A. Yes, sir.

19 Q. And who did you go with?

20 A. My family. My mom and dad.

21 Q. And do you remember what day that you went down to
22 Hartsville?

23 A. I went on a Friday.

24 Q. And when did you actually -- did you stay there through
25 the weekend?

1 A. Yes, sir.

2 Q. Were you still in Hartsville on October 10th, 2006?

3 A. Yes, sir.

4 Q. Where did you stay during that weekend?

5 A. I stayed from Flynns Road, to Farmington Street, then
6 Cameo Street.

7 Q. Tell the jury, because they don't know who is at those
8 different places. Whose homes are those that you were
9 staying between?

10 A. Well, Flynns Road is my grandma's house. That's Eloise
11 Wilson. That's my grandma's house.

12 Q. Okay.

13 A. Flynns Road.

14 And Farmington, I was staying at Shonda's house.

15 Q. That is who?

16 A. A friend of mine.

17 Q. One of your friends?

18 A. And Cameo Street, I was staying at my aunt's house, Ms.
19 Betty Anne and my cousin Tyrone House.

20 Q. Now, on Sunday, did your mother come back to Rock Hill?

21 A. Yes, sir.

22 Q. And did you decide to stay in Hartsville that Sunday?

23 A. Yes, sir.

24 Q. And so your mother came back to Rock Hill. You stayed
25 in Hartsville. Where did you spend -- where did you stay

1 that night?

2 A. Sunday night?

3 Q. Sunday night.

4 A. I stayed in Farmington Apartments.

5 Q. And with who?

6 A. Shonda.

7 Q. Now, on Monday what did you do?

8 A. Monday I went from Cameo Street back to Farmington and
9 just chill out in the Farmington Apartments.

10 Q. When you say chill out, I don't know if the jury
11 understands what you mean by chill out.

12 A. Well, I hung out in Farmington Apartments, the area out
13 there in Farmington Apartments, and that's where I stayed
14 at.

15 Q. Now, on Monday evening where did you stay?

16 A. Monday evening, I just hung out at Farmington
17 Apartments.

18 Q. Now, during those few days that I have just been
19 referring to, were there occasions or was there an occasion
20 where you saw either one or the other of the Mack brothers?

21 A. I saw them.

22 Q. Okay. Where did you see them?

23 A. In Farmington Apartments.

24 Q. Okay. Now, do you know why they would be in Farmington
25 Apartments?

1 A. They have family out there, sir.

2 Q. And would you describe -- like at Farmington
3 Apartments, what do people do? They just hang out in the
4 parking lot, or what?

5 A. People just walk around in the parking lot, you know,
6 drink and whatever, just -- it's in the parking lot.
7 Everybody be in the parking lot.

8 Q. Now, let me ask you something. Did you know Ben
9 Stewart?

10 A. Yes, sir.

11 Q. Okay. And did you know Ben Stewart from also going
12 down to Hartsville?

13 A. No, sir, I just know of him.

14 Q. Knew of him?

15 A. Yes, sir.

16 Q. So how did -- you did not know him personally?

17 A. No, sir.

18 Q. Now, on Tuesday, October 10th, do you recall what you
19 did that day?

20 A. 2010, that day?

21 Q. October 10th?

22 A. Yes, sir, I just stayed in Farmington most of that day,
23 and then that night that's when everything happened.

24 Q. All right. Well, let me ask you about that night.

25 Did you make a decision that night that you wanted to

1 go back to Rock Hill?

2 A. Yes, sir.

3 Q. And would you tell the jury how it was that you came
4 about to be with the Mack brothers that evening?

5 A. Well, they came and picked me up from Farmington
6 Apartments and -- I was in the car. They got -- I had got
7 in the car with them at the Farmington Apartments.

8 Q. Well, let me break that down a little bit. You were at
9 the Farmington Apartments?

10 A. Yes, sir.

11 Q. And you wanted to go back to Rock Hill?

12 A. Yes, sir.

13 Q. So how was it that the Mack brothers -- you got in the
14 Mack brothers vehicle that particular evening?

15 A. Well, I was standing outside the Farmington Apartments
16 and they was talking about going back to Charlotte, going
17 somewhere in Charlotte, so I asked them for a ride home,
18 because I heard them talking about going to Charlotte.

19 Q. Okay. And did you offer them anything or did they say
20 they would do that for something?

21 A. Well, I offered them some money, some gas money.

22 Q. Did you have a way back that night, other than to get a
23 ride from somebody in Hartsville?

24 A. No, sir, I ain't had no ride back home, so that was the
25 only ride.

1 Q. And do you recall about what time it was that you got
2 in their car to come back to Rock Hill?

3 A. It was like eleven something, almost like twelve
4 o'clock.

5 Q. Now, when you were coming back to -- when you got in
6 the car, what was the plan? What were you intending to do
7 that evening?

8 A. Just get a ride back home and just get some gas money
9 and pay them and just stay up in Rock Hill.

10 Q. Okay. When you got in the car, was there any
11 discussion about doing anything wrong?

12 A. No, sir.

13 Q. Would you tell the jury where everybody was sitting in
14 the car at that time when you got in?

15 A. Well, Donte was sitting in the front seat. Davorius
16 was sitting in the passenger's seat, and I was sitting
17 behind Davorius in the back seat, and Ben was sitting on
18 the -- behind Dontavious.

19 Q. So Ben Stewart was in the car when you got in the car?

20 A. Yes, sir.

21 Q. Is that right?

22 A. Yes.

23 Q. Now, so you left Hartsville. And do you recall
24 approximately what time that you actually left Hartsville to
25 come up to Rock Hill?

1 A. Yes, sir.

2 Q. And what time was that?

3 A. Right at almost like eleven o'clock. Right at eleven
4 o'clock, sir.

5 Q. Now, when you were in the car, was there any discussion
6 at all on the trip up here about doing anything wrong, doing
7 any kind of criminal act? Did anybody suggest that?

8 A. Yes, sir.

9 Q. And where was that? Where did that happen?

10 A. It started off in Lancaster, sir.

11 Q. Well, between Hartsville and Lancaster had there been
12 any discussion about doing anything like that?

13 A. No, sir, just music. That's all, sir.

14 Q. And when you say music, you mean music on the radio?

15 A. Yes, sir.

16 Q. You all were listening to music?

17 A. Yes, sir.

18 Q. At that time when you had left Hartsville and
19 Lancaster, had you seen any weapons in the vehicle?

20 A. No, sir.

21 Q. Had you seen any kind of masks, or bandanas, or
22 hoodies, or anything like that?

23 A. No, sir.

24 Q. Let me ask you this. Did you have a weapon?

25 A. No, sir.

1 Q. You have heard testimony about having a .38. Did you
2 ever own a .38, ever have a .38?

3 A. No, sir.

4 Q. Do you know anything about what they are talking about
5 when they were saying that you had a .38?

6 A. No, sir.

7 Q. All right. Now, on the way you said there was
8 something -- there was some discussion that took place in
9 Lancaster?

10 A. Yes, sir.

11 Q. And would you relate to the jury what kind of
12 discussion that you heard in the vehicle? And be specific
13 about who was talking in the car about what they wanted to
14 do in Lancaster.

15 A. We was riding through Lancaster and Dontavious and
16 Davorius was talking about robbing Domino's. I don't know
17 where it's at in Lancaster, but it's going towards Rock
18 Hill. And then they was just talking about robbing all type
19 of places. They were talking about robbing Domino's.

20 Q. What did you tell them?

21 A. I told them to take me home.

22 Q. Okay. Is that what you wanted to do?

23 A. Yes, sir.

24 Q. Go home?

25 A. Yes, sir.

1 Q. Well, let me ask you something. Did they do anything
2 in Lancaster?

3 A. No, sir, because I was -- I told them I wanted to go
4 home, so they kept going.

5 Q. Now, so you left Lancaster, and where did you go from
6 Lancaster?

7 A. We -- from Lancaster we went straight to Rock Hill.

8 Q. Did anything -- what were you doing in the vehicle
9 between Lancaster and Rock Hill?

10 A. Well, it was drinking and stuff like that.

11 Q. When you say he, be specific about who you are talking
12 about?

13 A. Well, Dontavious and Davorius was drinking and they was
14 on Ecstasy pills.

15 Q. They were on Ecstasy pills?

16 A. Yes, sir.

17 Q. Now, did anything happen when they got to Rock Hill?

18 A. Well, we had -- we got on Cherry Road and we was just
19 riding around for a little while. You know, riding up and
20 down Cherry Road, just riding, first of all.

21 Q. And what was going on? What was the discussion in the
22 car at that time?

23 A. Well, they seen the Capris, a car, a Capris on Cherry
24 Road and they was talking about robbing the Capris.

25 Q. Okay. When you say they, who are you talking about?

1 A. Dontavious and Davorius.

2 Q. Okay. What was your reaction to that?

3 A. My reaction was like no, that's -- that's nonsense.

4 That's crazy.

5 Q. So did they do that?

6 A. No, sir.

7 Q. Now, did they -- did there come a time when they went
8 past a rim place?

9 A. Yes, sir.

10 Q. And would you tell the jury what happened there?

11 A. Well, they -- when they went past the rim store, they
12 had did a U-turn and they had went and pulled behind the rim
13 store. It's like right behind it, you know what I'm saying.
14 Not no big parking lot. It's just a small parking lot. And
15 Dontavious had got out of the car and Davorius had got out
16 of the car.

17 Q. And what did -- did they tell you what they were going
18 to do?

19 A. They was -- they was talking about stealing rims.

20 Q. Well, were you participating in that?

21 A. No, sir.

22 Q. Did you want to participate in that?

23 A. No, sir.

24 Q. Did you get out of the vehicle?

25 A. No, sir.

1 Q. Did you express anything to them about whether they
2 should do it or not do it?

3 A. I told them -- I told them that it was nonsense. I
4 told them I wanted to go home, but that was the only ride I
5 had.

6 Q. Now, did anything happen while you were all at the rim
7 store?

8 A. Well, Dontavious had kicked the door in and the alarm
9 went off.

10 Q. So when the alarm went off, did they go into the rim
11 store? Did anybody go into the rim store?

12 A. No, sir.

13 Q. So what happened at that point?

14 A. Well, after that they just sat there and -- they just
15 sat there for a minute trying to get in there after the
16 alarm went off. Then they -- they got in the car like five
17 minutes, ten minutes after, and got in the car and then we
18 started driving again.

19 Q. Now, at this point had anybody asked you or told you to
20 do anything?

21 A. No, sir.

22 Q. So after you left the rim store, was the alarm ringing?

23 A. Yes, sir.

24 Q. How did you feel about that?

25 A. I was scared, frightened.

1 Q. Well, where did you want to go? What did you want to
2 do?

3 A. Go home.

4 Q. Did you have any other way to get home?

5 A. No, sir.

6 Q. All right. Now, when you got back in the car where did
7 you go?

8 A. I got back in the car, they was just riding around
9 Cherry Road. Then about twenty minutes later we went on
10 Celanese.

11 Q. Okay. Now, at that point -- how much did you tell them
12 or how much did they ask for to take you up there for the
13 ride to Rock Hill?

14 A. I told them right at about fifty dollars. Fifty
15 dollars.

16 Q. How far -- do you know how long it takes from coming
17 from Hartsville to Rock Hill?

18 A. It takes about an hour and a half, almost two hours.

19 Q. Now, who lives on Celanese Road?

20 A. I have a brother that lives on Celanese Road. He was
21 living there at that time.

22 Q. And did you attempt to call your mom to see if you
23 could get some money from her?

24 A. I called several numbers that night.

25 Q. Several?

1 A. Yes, sir.

2 Q. And whose phone were you using?

3 A. I was using -- it had to have been Dontavious or
4 Davorius' phone, cell phone, Cingular.

5 Q. And when you were -- you made several phone calls. Did
6 you connect with anybody?

7 A. No, sir.

8 Q. All right. Were you able to find someone to give you
9 the money that you needed for the ride?

10 A. No, sir.

11 Q. So did you go to your brother's?

12 A. Yes, sir.

13 Q. Now, how do you get to your brother's from where you
14 were with these guys?

15 A. Okay. We are on Cherry Road. The rim store is right
16 here by the Family Dollar and the car -- the car shop -- the
17 car wash place. You go straight down Cherry Road and you
18 branch off by like Steak & Shake. They got, you know, all
19 types of restaurants. It branched off and then there is
20 Celanese, you know. You end up on Celanese. And then --

21 Q. And that's how you got to where your brother is?

22 A. Yes, sir.

23 Q. Did he live in an apartment complex?

24 A. Yes, sir.

25 Q. What apartment complex?

1 A. Heather Heights Apartments, sir.

2 Q. So did you tell those guys that you needed to go by and
3 see if your brother had some money?

4 A. Yes, sir.

5 Q. All right. Now, did they take you to that apartment
6 complex?

7 A. Yes, sir.

8 Q. Is everybody still seated the same way they were
9 before?

10 A. Yes, sir.

11 Q. Now, did you go in to see your brother?

12 A. Yes, sir.

13 Q. Okay. Did he have any money?

14 A. No, sir.

15 Q. What -- approximately what time of the morning was
16 this?

17 A. It was right at like almost -- almost three o'clock.

18 Q. And did you talk to your brother?

19 A. For a little while.

20 Q. Did he have any money?

21 A. No, sir.

22 Q. So how long did you stay in your brother's apartment?

23 A. A little while, sir.

24 Q. And after you left your brother's apartment, where did
25 you go?

1 A. I had went back to the car.

2 Q. Were they waiting for you?

3 A. Yes, sir.

4 Q. Okay. So they were -- do you know approximately from
5 your apartment where? Were they waiting on the street, or
6 in the parking lot of the apartments? Where?

7 A. They was waiting in the car.

8 Q. Now, how did you feel about going back to the car and
9 telling them you didn't have any money?

10 A. How did I feel? I feel real scared and frightened by
11 going back to the car and telling them I didn't have no
12 money, because I got them all the way down here without no
13 money and -- and I was scared.

14 Q. But did you go back to the car and tell them that you
15 did not have any money?

16 A. Yes, sir.

17 Q. And did the mood of everybody change at that point?
18 Did their attitude toward you change?

19 MR. BRACKETT: Objection to the leading.

20 THE COURT: Sustained, counsel. Avoid leading,
21 please.

22 MR. SWERLING: Yes, sir.

23 BY MR. SWERLING:

24 Q. What was their reaction when you came back to the
25 vehicle?

1 A. Argumentative. Just arguing, threatening, and --

2 Q. Now, when you say -- I would like you to be specific as
3 to who.

4 A. Davorius and Donte Mack.

5 Q. And would you tell the jury the types of things that
6 they were saying to you when you told them that you didn't
7 have any money?

8 A. They was telling me they would take my life and take my
9 family's life and just threatened me. Threatened me all
10 types of ways.

11 Q. Okay. And was there any discussion at that point about
12 what they wanted you to do or what they were going to do?

13 A. They were telling me -- just threatened me, sir.
14 That's basically it.

15 Q. What did they want you to do?

16 A. They wanted me to give them some money.

17 Q. And if you couldn't get the money from your brother or
18 anybody else, how did they want you to get the money?

19 A. They wanted me to rob some person, or rob a store, or
20 rob something.

21 Q. Now, was that the first time that they talked to you
22 about doing something?

23 A. Yes, sir.

24 Q. Were you in the vehicle at that time?

25 A. Yes, sir.

1 Q. And how did you feel when they were telling you that?

2 A. I was just scared, because I didn't have no weapon and
3 they had weapons and I was just scared for my life like.

4 Q. Tell the jury, now, when did you see the weapons?

5 A. I seen the weapons after we got towards the BP station
6 in the apartments right there by the BP station.

7 Q. Now, who had weapons?

8 A. Davorius had the .38 and Ben Stewart had the .380.

9 Q. So you saw those after you left your brother's?

10 A. Yes, sir.

11 Q. Now, let me ask you. At any time did someone stop at
12 some place to go in and buy any masks, or anything like
13 that?

14 A. No, sir.

15 Q. Or steal any masks?

16 A. No, sir.

17 Q. So from your brother's apartment to the BP station,
18 what's the location of those two?

19 A. They both are on Celanese, sir, and they ain't nothing
20 but like three minutes away. Like really not that far away.

21 Q. So you're in the car?

22 A. Yes, sir.

23 Q. And the discussion going on between them and you?

24 A. Yes, sir.

25 Q. And just so at that point did they -- who made the

1 decision or who decided that they wanted to go ahead and rob
2 that BP station?

3 A. Davorius and Donte.

4 Q. And did they tell you that they wanted you to go in
5 there as well?

6 A. Yes, sir.

7 Q. Okay. And did they tell you what would happen if you
8 didn't?

9 A. Yes, sir.

10 Q. What would happen if you didn't?

11 A. They threatened my life and they threatened my family's
12 life.

13 Q. Did you have a gun?

14 A. No, sir.

15 Q. Did they have guns?

16 A. Yes, sir.

17 Q. At that point did they stop the vehicle?

18 A. In the apartments, sir, yes, sir. It was parked.

19 Q. The apartments that have been described on the screen
20 over there?

21 A. Yes, sir. It was parked in the back.

22 Q. Do you know the name of those apartments?

23 A. No, sir, I don't.

24 Q. And was the BP station just randomly picked? Did you
25 have anything to do with picking it, or did they pick it?

1 A. They picked it, sir.

2 Q. And at that point you're in the car. Is everybody
3 still in the same seating position?

4 A. Yes, sir.

5 Q. All right. Tell the jury what happens in the car when
6 you pull up to that apartment complex across from the BP
7 station.

8 A. From the apartment complex we was just sitting there
9 debating on who was going to go in the store. And then they
10 was arguing and -- arguing and telling me if I don't go in
11 the store, they are going to kill me and kill my family. So
12 I was really scared and frightened. So I just, you know,
13 went on with the flow.

14 Q. Did you think that you had any choice at that time?

15 A. No, sir.

16 Q. So tell the jury then what happened. I mean,
17 physically what happened? You are in the car. Tell the
18 jury how people got out of the car and what they did.

19 A. Well, Davorius got out of the car and grabbed me and --
20 got me out of the back seat and grabbed me and then --

21 Q. Where was Davorius sitting again?

22 A. He was sitting in the front seat, the passenger's side,
23 sir.

24 Q. And he did what?

25 A. Got out of the passenger's side and grabbed me.

1 Q. He came around to your side?

2 A. And grabbed me. I was on the back behind him, sir. I
3 was in the back seat right behind him. He got out and
4 grabbed me.

5 Q. Did he have a pistol at that time?

6 A. Yes, sir.

7 Q. And what did he tell you?

8 A. He told me "you better do this or I'm going to kill
9 you."

10 Q. And where was Ben Stewart and where was Dontavious at
11 that time?

12 A. Ben Stewart was behind Dontavious. In the back seat
13 behind Dontavious. And Dontavious was in the driver's side.
14 That's when he got out of the car after "Bubba" had -- after
15 Davorius had grabbed me.

16 Q. All right. And what did Dontavious do?

17 A. He came around the car after he received the gun from
18 Ben.

19 Q. Okay. Well, let me ask you about that. You said he
20 received a gun from Ben?

21 A. Yes, sir.

22 Q. Where did that happen and when?

23 A. He grabbed -- when Davorius had got out of the car and
24 grabbed me, Ben had gave Davorius -- Dontavious the .380.

25 Q. Okay. Now, so the three of you were standing outside

1 the car?

2 A. Yeah, me and Davorius --

3 Q. You, Davorius, and Dontavious?

4 A. Yes, sir.

5 Q. And were you instructed to do anything?

6 A. Was I instructed to do anything?

7 Q. Were you instructed to do anything?

8 A. Yes, sir.

9 Q. By who?

10 A. By Davorius and Dontavious.

11 Q. And what did they tell you to do?

12 A. They told me to go in the store with Donte.

13 Q. Did they tell you when you went in the store what they
14 wanted you to do?

15 A. They wanted me to grab this individual and tape him up,
16 and I refused.

17 Q. Did you want to go in the store and rob it?

18 A. No, sir.

19 Q. Did you want to go in the store and have the man hurt?

20 A. No, sir.

21 Q. At that point in time did you feel like you had any
22 choice but to follow their instructions?

23 A. Yes, sir.

24 Q. Is that -- did you have a choice or no choice?

25 A. I didn't have no choice at that time.

1 Q. Why didn't you run?

2 A. Because it was two of them and there was two weapons
3 and I didn't feel I could get away.

4 Q. So how far was it from where you were parked over to
5 the BP station?

6 A. Steps away. Ain't that far. Steps.

7 Q. Who went up to the BP station?

8 A. Me and Dontavious.

9 Q. What did Dontavious have in his hands or on him?

10 A. A .380.

11 Q. And what was everybody wearing?

12 A. Well, Dontavious, he was wearing all black. And black
13 forces -- I mean, it was a black.

14 I was wearing blue jeans, a white shirt with a black
15 hoodie on top with a blue ski mask.

16 Q. And who gave you that mask?

17 A. Dontavious.

18 Q. When did he give it to you?

19 A. As we was in the car.

20 Q. Did you want to put it on?

21 A. No, sir.

22 Q. Did he tell you to put it on?

23 A. Yes, sir.

24 Q. So when you get over to the BP station and -- let's
25 just go through that. Where did you and Dontavious go?

1 A. Me and Dontavious went by the dumpster, the trash can
2 behind the BP station.

3 Q. All right. And tell -- go ahead and tell the jury what
4 happened.

5 A. After that he led me to the door on the other side of
6 the BP station. Not on his side, but the other side. He
7 led me to that side first, sir.

8 Q. And then what did he do?

9 A. He told me to sit here and wait until he go on the
10 other side.

11 Q. All right. Why didn't you take off at that point?

12 A. Because Davorius was -- Davorius was still standing out
13 at the car.

14 Q. How were you feeling at that point?

15 A. Feeling like I was -- my life was in danger, sir.

16 Q. So what happened actually, physically, about him going
17 in the store?

18 A. Sir?

19 Q. What happened about going in the store?

20 A. Well, he went -- he went in the other side and went in
21 first.

22 Q. Okay.

23 A. Then --

24 Q. Did you see him go in?

25 A. Yes, sir.

1 Q. Did you go in?

2 A. Yes, sir.

3 MR. SWERLING: Judge, at this time I would like to
4 play the video so he could describe it.

5 THE COURT: Yes, sir.

6 BY MR. SWERLING:

7 Q. I want you to look at the screen.

8 A. All right.

9 Q. And I'm going to ask you to describe to the jury what's
10 happening at a particular point in time, okay?

11 (Whereupon, the videotape was played for the jury
12 panel).

13 MR. SWERLING: All right. Okay. Stop it one
14 second.

15 (Videotape stopped)

16 BY MR. SWERLING:

17 Q. Who is that that's coming in that door?

18 A. That's Dontavious, sir.

19 Q. Okay.

20 (Videotape started)

21 BY MR. SWERLING:

22 Q. Who is that taking Mr. Marshall behind the desk?

23 A. Dontavious, sir.

24 Q. The counter?

25 A. Dontavious.

1 MR. SWERLING: All right. Now, stop it right
2 there.

3 (Videotape stopped)

4 BY MR. SWERLING:

5 Q. Who is that right there?

6 A. That's me.

7 Q. And where did you come in from?

8 A. The other door, sir.

9 Q. Did you have a gun on you at that time?

10 A. No, sir.

11 Q. And did you ever go behind the counter?

12 A. No, sir.

13 Q. Did you ever touch anything?

14 A. No, sir.

15 Q. Did you ever take anything?

16 A. No, sir.

17 MR. SWERLING: All right. You can roll it.

18 (Videotape played)

19 (Videotape stopped)

20 BY MR. SWERLING:

21 Q. All right. You are standing there right now. What's
22 going on?

23 A. I'm just standing there and seeing them talking. They
24 were just talking.

25 Q. All right.

1 MR. SWERLING: Go ahead.

2 (Video tape played).

3 MR. SWERLING: Now, stop right there.

4 (Videotape stopped)

5 BY MR. SWERLING:

6 Q. At that point who is that leaving on that door?

7 A. That's me, sir.

8 Q. Okay. Do you see Dontavious on the screen at all?

9 A. No, sir, not right now, sir.

10 Q. All right. Had a shot already been fired?

11 A. No, sir, I didn't --

12 Q. Who is that in the fore screen right there in the
13 front?

14 A. That's me, sir.

15 Q. No, I'm talking about in the front of the screen.

16 A. Oh.

17 Q. The foreground?

18 A. That's Marshall, sir. Mr. Marshall.

19 Q. All right. That's Mr. Marshall. That's you going out
20 the door?

21 A. Yes, sir.

22 Q. All right.

23 MR. SWERLING: You can roll it.

24 (Videotape played)

25 (Videotape stopped)

1 BY MR. SWERLING:

2 Q. Now, were you ahead of Mr. Mack when you exited the
3 door?

4 A. Yes, sir.

5 Q. Were you out the door before he was out the door?

6 A. Yes, sir.

7 MR. SWERLING: Could you run that back one second?

8 (Videotape played)

9 (Videotape stopped)

10 BY MR. SWERLING:

11 Q. That's him standing there, right, going towards the
12 door?

13 A. Yes, sir.

14 Q. You were already outside?

15 A. Yeah, I'm already running, sir.

16 Q. Did he follow you?

17 A. No, Davorius was coming up as I was coming out the
18 store.

19 Q. Davorius was coming the other way?

20 A. About four steps away from me, five steps away from me.

21 Q. Let me ask you something. Did you hear the gunshots?

22 A. Yes, sir.

23 MR. SWERLING: Okay. You can turn the light on.

24 BY MR. SWERLING:

25 Q. At that point, I mean, how did you feel about it when

1 you heard the gunshots?

2 A. Scared, sir. Frightened.

3 Q. What did you think had happened?

4 A. I didn't know if he was shot or Donte was shot. I
5 didn't know.

6 Q. I mean, can you describe to the jury how you felt at
7 that moment?

8 A. I felt really scared and frightened, because I heard
9 gunshots, and it was more than one gunshot, and I didn't
10 know.

11 Q. Do you remember how many shots that you heard?

12 A. No, sir. I just know it was a lot of gunshots.

13 Q. Did you ever want that to happen?

14 A. No, sir.

15 Q. Did you ever intend that to happen?

16 A. No, sir.

17 Q. Did you even want to be there?

18 A. No, sir.

19 Q. All right. So you go out the door?

20 A. Yes, sir.

21 Q. And where do you go?

22 A. Going towards the apartments.

23 Q. Well, why didn't you at that point run somewhere?

24 A. Davorius was coming. He was like four or five steps
25 away from me. He was coming toward the store after he heard

1 the gunshots. He was already outside the car. He was
2 coming towards the store, because he heard gunshots, and he
3 had a gun in his hand.

4 Q. So what does that mean?

5 A. I was stuck between both of them. One was behind me
6 and one was in front of me.

7 Q. Did you find out at some point that Dontavious had been
8 shot?

9 A. Yes, sir.

10 Q. When did they tell you -- when did he tell you that?

11 A. When he got back to the car. They was arguing about
12 why I didn't grab the man, grab Mr. Marshall.

13 Q. And where was this argument that took place about you
14 not grabbing Mr. Marshall?

15 A. In the apartments.

16 Q. Where?

17 A. In the apartments. The apartments. Them apartments
18 where we was running towards. I don't know.

19 Q. Where the car was?

20 A. Yes, sir.

21 Q. And tell the jury about that. What was -- what they
22 said to you and who said it.

23 A. Dontavious and Davorius just was threatened me, because
24 he was like "why you ain't grabbed the man and why you
25 didn't harass the man. Why you didn't -- you just let him

1 just -- you just let him shoot my brother."

2 I was like I didn't want to play no parts in it anyway,
3 and they still was making me play a part in it.

4 Q. Well, how were they talking?

5 A. Threatening.

6 Q. I mean, were they talking just like you are talking now
7 or, were they talking in some other way?

8 A. Loud voice, high pitch voice, and --

9 Q. Okay. And what were they -- were they saying anything
10 to you, other than why didn't you do that?

11 A. Why did I do that?

12 Q. Why didn't you grab him?

13 A. Just telling me why -- that's what -- that's all they
14 was talking about was why.

15 Q. Now, were they talking, or were they yelling?

16 A. They was yelling.

17 Q. What did they tell you to do at that point?

18 A. They was telling me to get in the car.

19 Q. And why were they telling you to get in the car?

20 A. Because they didn't want to leave me in Rock Hill,
21 because they feel that I was going to tell something, or
22 they feel that I was, you know, going to report to the
23 police.

24 Q. Would you have run away if you could?

25 A. Yes, sir.

1 Q. So you were in the car. And where was everybody seated
2 at that point?

3 A. Back in the same spot.

4 Q. And where did they go from there?

5 A. Where did we go from there? We just went back to
6 Hartsville.

7 Q. Did you ask them to take you home?

8 A. Yes, sir.

9 Q. And what did they say?

10 A. It was like "no, you are coming with us." They was
11 telling me I'm coming with them. I didn't have no other
12 choice.

13 Q. Well, in the car you said Dontavious said something
14 about being shot. What was his condition at that point?

15 A. He was injured. Injured, but mad, and -- madder than
16 he was because of the money. I didn't give him no money and
17 he was still mad about the situation being shot and I didn't
18 grab the man.

19 Q. And Davorius, what was he doing? How was his demeanor?

20 A. Davorius?

21 Q. Yes.

22 A. He was mad because his brother had been shot and we
23 didn't get no money to pay for the gas. No money, period,
24 so --

25 Q. Was he yelling at you?

1 A. Yeah, they was yelling at me, asking me why I didn't
2 have no money and -- you know, for the money.

3 Q. And by not grabbing Mr. Marshall?

4 A. Yes, sir.

5 Q. So did you -- from Rock Hill did you go straight back
6 to Hartsville?

7 A. Yes, sir.

8 Q. And was there -- other than this argument that was
9 going on in the car, was there any other discussion about
10 anything else going on in the car?

11 A. Any discussion about anything else?

12 Q. Yes.

13 A. No, sir.

14 Q. Now, who was driving?

15 A. Dontavious, sir.

16 Q. So he was shot, but he was still driving?

17 A. Yes, sir.

18 Q. And when you got down to Hartsville, did they go to any
19 particular place?

20 A. No, sir.

21 Q. Well, did they go to the hospital?

22 A. They went to this hospital. That's it.

23 Q. Were you still in the car when they went to the
24 hospital?

25 A. Yes, sir.

1 Q. What happened at the hospital?

2 A. Well, they told -- Donte was in the back and they took
3 him in there and, you know, and seeing what's going on, what
4 the problem was and this and that.

5 Q. And that was where, in the emergency room?

6 A. Yes, sir.

7 Q. Okay. Did you go in there with them?

8 A. Yes, sir.

9 Q. Okay. How long were you there?

10 A. About ten, fifteen minutes, sir.

11 Q. All right. And what happened after the hospital?

12 A. Well, Davorius and me had left the hospital.

13 Q. You and Davorius left the hospital?

14 A. Yes, sir.

15 Q. Anybody else?

16 A. No, sir.

17 Q. What about Ben?

18 A. Ben was got dropped off by somebody else to Swift Creek
19 Apartments, or somewhere like that.

20 Q. So you and Davorius left together?

21 A. Yes, sir.

22 Q. Now, let me ask you something. You are at the
23 hospital. Why did you go in the hospital? And if you went
24 in the hospital, why didn't you just take off there?

25 A. Why didn't I take off at the hospital?

1 Q. Uh-huh.

2 A. Because I was still scared and frightened. Just so
3 scared for all what had happened that night and what was
4 going on, that I don't -- I'm way out here in the country.
5 Ain't no way I can get back to my house. I didn't have no
6 ride and I didn't have no phone at the point in time.

7 Q. Well, you were in the hospital. Why didn't you tell
8 anybody?

9 A. Because I was scared and frightened for my family.

10 Q. When you left the hospital, you and Davorius, where did
11 you go?

12 A. When I left?

13 Q. What was he going to do?

14 A. He was talking about going to -- stopping by somebody's
15 house.

16 Q. Was he going to take you to your grandmother's
17 eventually?

18 A. Yes, sir.

19 Q. All right. Where did he want to stop?

20 A. He wanted to stop at Ben Stewart's sister's house, Ms.
21 Monday.

22 Q. Ms. Monday Bishop?

23 A. Yes, sir.

24 Q. And do you know where she lives?

25 A. She stays in Midtown Apartments.

1 Q. And did you and Davorius go there?

2 A. Yes, sir.

3 Q. Did you go there in the same car?

4 A. Yes, sir.

5 Q. And who was there when you got there?

6 A. It was me. Davorius had went there, and then it was
7 Reed Allen.

8 Q. Who?

9 A. Reed Allen.

10 Q. Reed Allen.

11 The gentleman who testified?

12 A. Yes, sir.

13 Q. Okay.

14 A. And Monday Bishop, his sister, and some other dude.

15 Q. Did you know who that was?

16 A. I don't know who that was.

17 And then --

18 Q. Did Davorius -- who told you to come in the apartment?

19 A. Davorius. And -- yeah, Davorius, yeah.

20 Q. What were you doing while you were in the apartment?

21 A. I was just sitting at the -- standing at the door and
22 then -- yes, standing at the door.

23 Q. And then did Ben Stewart show up?

24 A. A couple minutes later he popped up in the --

25 Q. Tell the jury what happened when he showed up.

1 A. Well, him and Davorius got together and they went in
2 the back room with Reed Allen.

3 Q. Okay. And do you know what happened in that back room?

4 A. No, sir. I was at the door. I was waiting. I didn't
5 know who these people was. I ain't never been in their
6 house, so I was at the door. I didn't know what was going
7 on.

8 Q. So what did you see next, if anything?

9 A. I just seen them come out with a brown -- a brown bag.

10 Q. When you say they, who had the bag?

11 A. Davorius and Ben.

12 Q. Okay. And where did they go?

13 A. They came back to the front and then gave it to Reed
14 Allen.

15 Q. And do you know what Reed Allen did?

16 A. Well, at that point in time all of us left out at the
17 same time.

18 Q. Okay.

19 A. Out of the apartment, because Reed Allen was getting
20 ready to go take it across the street to put it under a
21 tree.

22 Q. Are you -- you heard that?

23 A. No, sir. It's the truth. I seen this.

24 Q. You saw it?

25 A. Yes, sir, when I was walking towards the car.

1 Q. And what car did you get back into?

2 A. Back in that Cadillac. Back in the Cadillac.

3 Q. The car that had y'all had driven to --

4 A. At the scene.

5 Q. -- Rock Hill?

6 A. Yes, sir.

7 Q. Same car?

8 A. Yes, sir.

9 Q. Who got in that car?

10 A. Me and Davorius.

11 Q. And who else?

12 A. And Ben Stewart.

13 Q. All three of you?

14 A. Yes, sir.

15 Q. Where did you go from there?

16 A. We went and took Ben Stewart to Swift Creek Apartments.

17 Q. Okay. That's another apartment complex, sir?

18 A. Yes, sir.

19 Q. And then what happened?

20 A. After that they just took me out to my grandma's house
21 out there in the country on Flynns Road.

22 Q. When you got your grandmother's house, you got dropped
23 off, at that point why didn't you at that point tell
24 somebody what had happened?

25 A. Because I was -- I just was scared and I just feel like

1 they what they would do to my family, or somebody would do
2 to my family that know them. And I was just scared for my
3 life too.

4 Q. Did you tell anybody?

5 A. No, sir.

6 Q. Now, that was on Wednesday morning --

7 A. Yes, sir.

8 Q. -- is that right?

9 A. Yes, sir.

10 Q. How long did you stay in Hartsville?

11 A. Stayed in Hartsville until that Friday.

12 Q. Then from Hartsville where did you go?

13 A. I went to Columbia, South Carolina.

14 Q. You got family in Columbia?

15 A. Yes, sir.

16 Q. And did you stay down in Columbia for a few days?

17 A. About a week or two, yes, sir.

18 Q. And during that period of time did you tell anybody
19 about what had happened?

20 A. No, sir.

21 Q. After Davorius dropped you off on the morning of the
22 11th -- the 10th, did you see them again that week?

23 A. No, sir.

24 Q. Either him or Dontavious?

25 A. No, sir.

1 Q. Now, at some point did you find out there had been a
2 warrant issued for your arrest?

3 A. Yes, sir, by my cousin on Cameo Street, Tyrone and my
4 aunt Betty's house.

5 Q. And you found out -- and how long after this situation
6 did you find out about that there was a warrant for your
7 arrest?

8 A. Well, after this situation happened on the 10th, it was
9 like nine days after. But the same day they had put out a
10 warrant for me for my arrest, but it was by an individual,
11 my cousin. It was in the newspaper, he said.

12 Q. Okay.

13 A. So I just -- his word. I didn't know.

14 Q. So you are saying that was about nine or ten days
15 later?

16 A. Yes, sir.

17 Q. The records reflect that you turned yourself in on the
18 31st of October?

19 A. Yes, sir.

20 Q. Now, why didn't you turn yourself in sooner than that,
21 if you knew that the police were looking for you?

22 A. I wanted somebody to support me. I wanted a lawyer at
23 the point in time, and I feel -- my family was still in
24 threaten and harm, and I was still in harm, but at the time
25 I wanted a lawyer present when I go to report.

1 Q. Did you go see a couple of lawyers?

2 A. Yes, sir. Two or three of them, sir.

3 Q. Okay. And did you eventually meet with Mr. Bishop?

4 A. Bishop, yes, sir.

5 Q. And he's a lawyer from where?

6 A. He's a lawyer from down there in Florence, South
7 Carolina, sir.

8 Q. And as a result of your meeting with him, did y'all
9 turn yourself in, or did he make arrangements for your
10 surrender?

11 A. Well, I mean, I made my own decision to turn myself in.

12 Q. I know, but did he make arrangements for you to turn
13 yourself in?

14 A. Yes, sir.

15 Q. Did you, in fact, turn yourself in?

16 A. Yes, sir. The next day -- I already happened that day,
17 and next day I turned myself in.

18 Q. Did you want to rob that BP station?

19 A. No, sir.

20 Q. Did you want to see Mr. Marshall ever get hurt?

21 A. No, sir.

22 Q. Would you have avoided that, if you could?

23 A. Yes, sir.

24 Q. Did you feel like that you could avoid it?

25 A. No, sir.

1 Q. Why did you go with them?

2 A. Because I was scared and I needed a ride home.

3 Q. And you were scared why?

4 A. Because of what happened.

5 Q. I'm talking about when you were scared of them, why?

6 A. Because the other people were talking about their
7 record and talking about what type of people they was, and I
8 didn't --

9 Q. I'm talking about going into the store.

10 A. Why I went in the store?

11 Q. Yes.

12 A. Because I was forced.

13 Q. Did you feel like you had a choice?

14 A. No, sir.

15 Q. All right. Answer any questions that either Mr. Snow
16 has or the solicitor has.

17 A. All right.

18 THE COURT: Counsel.

19 CROSS EXAMINATION BY MR. SNOW:

20 Q. Mr. Addison, before today you have never mentioned
21 anything about Mr. Stewart being involved with this crime,
22 have you?

23 A. No, sir.

24 Q. No, sir.

25 You never told the DA this, did you?

1 MR. SWERLING: Your Honor, I would object. He's
2 not -- he never gave a statement.

3 A. I didn't give no statement.

4 MR. SWERLING: I think jury need to be instructed
5 about that. I don't think he can inquire on that.

6 THE COURT: Yes, sir.

7 That's correct, counsel, you cannot ask him that.

8 MR. SNOW: Can we approach, judge?

9 THE COURT: Yes, sir.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. SNOW:

13 Q. Let me finish my question, Mr. Addison.

14 Before you were arrested, before you turned yourself
15 in, you never mentioned anything to anyone about duress or
16 my client, did you?

17 A. About who?

18 Q. My client being involved with you, this crime?

19 A. No, sir.

20 Q. Right.

21 You never mentioned anything to anyone?

22 A. My lawyer, that's it.

23 Q. Other than your lawyer, you never mentioned anything to
24 anyone, did you?

25 A. No, sir.

1 Q. And let's. Let's go back.

2 This offense took place on about October 10th --

3 A. Yes, sir.

4 Q. -- 2006, right?

5 A. (Shaking head yes).

6 Q. And you turned yourself in when?

7 A. On the 31st, sir.

8 Q. 31st.

9 So that's almost twenty days, and you never mentioned
10 anything to anyone about Ben Stewart being involved, right?

11 A. No, sir. I ain't wrote no statement, sir.

12 Q. Right.

13 Now, you had a long -- since you have been arrested,
14 you have had a while to think about what you wanted to say,
15 didn't you?

16 A. Yes, sir.

17 Q. Right.

18 And you sat here all week and you have heard the
19 testimony of some various individuals, haven't you?

20 A. Yes, sir.

21 Q. Right.

22 And you decided to come here and you wanted to tell
23 your story to what they said, didn't you?

24 A. Yes, sir.

25 Q. Haven't you changed your story towards to what

1 everybody else said?

2 A. No, sir.

3 Q. You haven't?

4 A. No, sir.

5 Q. You wanted to come across as being the nice guy and
6 blame everybody else, didn't you?

7 A. No, sir.

8 Q. Right.

9 Because you know that you are facing some substantial
10 time as well, right?

11 A. I know I'm facing time, yes, sir.

12 Q. Right.

13 And you wanted to make yourself come clean, or appear
14 clean?

15 A. No, sir.

16 Q. Right.

17 You wanted to blame everybody else because you are in
18 trouble?

19 A. No, sir.

20 Q. Let's talk about the evidence.

21 Now, they have your fingerprints, don't they?

22 A. I don't know if it's my palm print or fingerprints,
23 sir.

24 Q. They don't have Mr. Stewart's fingerprints, do they?

25 A. No, sir.

1 Q. They have matched your shoe prints up to the shoe
2 prints at the crime scene, haven't they?

3 A. Yes, sir.

4 Q. Right.

5 They don't have Mr. Stewart's shoe prints, do they?

6 A. No, sir.

7 Q. Right. Right.

8 And you have heard the testimony and they have excluded
9 Mr. Stewart's DNA from anything that they found in the car,
10 haven't they?

11 A. Yes, sir.

12 Q. Now, you saw the videotape all week long, haven't you?

13 A. Yes, sir.

14 Q. Right.

15 Now, who is that in the store?

16 A. Me, sir.

17 Q. Right.

18 You're in the store, right, doing the robbery?

19 A. I wasn't willing. I wasn't willing to do it. I was
20 forced.

21 Q. The question is you are in the store, isn't that right?

22 A. Yes, sir.

23 Q. That's not Mr. Stewart in the store, is it?

24 A. No, sir.

25 Q. Right.

1 Now, if we had someone to come and testify that you are
2 making up to curry favor, would they be lying?

3 MR. SWERLING: Judge, I object.

4 A. Yes, sir.

5 MR. SWERLING: First of all, wait a minute. That
6 question is --

7 MR. SNOW: No further questions.

8 MR. SWERLING: First of all, I don't even
9 understand the question, but it's certainly not a proper
10 question.

11 THE COURT: I sustain the objection.
12 Go ahead.

13 MR. SNOW: Hang on a minute, judge.
14 (Off the record)

15 (Back on the record)

16 MR. SNOW: Nothing else, judge.

17 THE COURT: Solicitor.

18 CROSS EXAMINATION BY MR. BRACKETT:

19 Q. Good afternoon.

20 A. How are you doing, sir?

21 Q. How are you doing?

22 A. Fine, sir.

23 Q. How old did you say that you were?

24 A. Twenty years old, sir.

25 Q. Mr. Addison?

1 A. Yes, sir.

2 Q. Twenty years?

3 A. Yes, sir.

4 Q. All right. Did you graduate from high school?

5 A. No, sir.

6 Q. How far did you go in school?

7 A. I stopped at about 10th grade, sir.

8 Q. Where did you go to high school?

9 MR. SWERLING: Judge, can we approach?

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. BRACKETT:

13 Q. Did you play any sports in school?

14 A. Yes, sir.

15 Q. What did you play?

16 A. I played football, sir.

17 Q. All right. What position did you play?

18 A. Running back.

19 Q. Running back?

20 A. Yes, sir.

21 Q. How long have you been going to Hartsville?

22 A. How long have I been going to Hartsville?

23 Q. Yeah. I mean, you pretty much go there every weekend
24 you say?

25 A. Yes, sir, every other weekend, every weekend.

1 Q. Have you ever been to a club called the Hipnotic?

2 A. Once before. Like once.

3 Q. Okay. Now, you said your relationship with the Mack
4 brothers, when did you first meet Davorius and Dontavious
5 Mack?

6 A. When we was real little.

7 Q. Like how little?

8 A. When I was like preschool, like four -- you know what
9 I'm saying, 4-K. Little.

10 Q. And how about -- how long did you know them at that
11 time?

12 A. I didn't know them too much. I just knew of them.

13 Q. Where did they live at that time?

14 A. They were in 4-K and all this?

15 Q. Yes.

16 A. I didn't know. I didn't know where they were staying
17 at, sir.

18 Q. You left Hartsville when you were ten?

19 A. Yes, sir.

20 Q. Okay. Did you know them before you left Hartsville
21 when you were living there?

22 A. I used to see them. I ain't never chilled with them,
23 sir.

24 Q. Did they live close to you?

25 A. No, sir.

1 Q. Okay. So when you moved from Hartsville at the age of
2 ten, you came straight to Rock Hill, is that right?

3 A. At age ten, yes, sir.

4 Q. And you stayed in Rock Hill since you were ten?

5 A. Yes, sir.

6 Q. And every weekend, just about every weekend, you would
7 go back to Hartsville?

8 A. Yes, sir.

9 Q. All right. And you would see your grandma and your
10 cousins and aunts and uncles, basically your whole family?

11 A. Yes, sir.

12 Q. Is both your mom and daddy's side of the family from
13 Hartsville?

14 A. Yes, sir.

15 Q. So it's pretty much your mom and daddy your only family
16 that you have in Rock Hill?

17 A. Yes, sir.

18 Q. Are you any relationship to Louise Addison?

19 A. No, sir. It's by marriage, but it really ain't no --
20 not really kin.

21 Q. By marriage how?

22 A. I really don't know. I just know that she got my last
23 name and that's all I know.

24 Q. And that's Dontavious and Davorius' grandmother?

25 A. Yes, sir.

1 Q. So you are related by marriage to Dontavious and
2 Davorius?

3 A. That's what I think. I don't know. I really don't
4 know, sir. I can't really say.

5 Q. Okay.

6 A. I know they are Addisons.

7 Q. I'm sorry?

8 A. I know she's an Addison. I know somewhere we are kin.

9 Q. Now, you went to Hartsville, you said, the Friday
10 before all this happened?

11 A. Yes, sir.

12 Q. And where were you staying?

13 Let's go back to that?

14 A. From Flynns Road to Farmington to Cameo Street.

15 Q. That Glenns, G-L-E-N-N-S?

16 A. Flynns Road, sir.

17 Q. Flynns?

18 A. Yes, sir.

19 Q. It's almost like that thing isn't on. I can't hear you
20 too good. You really got to speak up.

21 A. Yes, sir.

22 Q. Flynns Road is the first place that you stayed on
23 Friday night?

24 A. Yes, sir.

25 Q. That's your grandma's house?

1 A. Yes, sir.

2 Q. You got brothers and sisters?

3 A. Yes, sir.

4 Q. Do they go with you to Hartsville?

5 A. No, sir.

6 Q. How old are they?

7 A. I got a brother -- I got all -- both of them are older
8 than me. One is twenty-five and one is about twenty-three.

9 Q. And where do they live?

10 A. Stay down there in -- my brother stay in Rock Hill and
11 my sister stay in Hartsville.

12 Q. Okay. Have you got a job?

13 A. Not at this point in time, no, sir. No.

14 Q. Did you have a job back then?

15 A. Yes, sir.

16 Q. Where were you working?

17 A. At DSMI, sir.

18 Q. DSMI?

19 A. Yes, sir, in Charlotte.

20 Q. What did you do at DSMI?

21 A. I used to -- I used to do like doing like lifting stuff
22 on -- the furniture stuff like that, putting it on the
23 trucks.

24 Q. Just manual labor?

25 A. Yes.

1 Q. Lifting stuff up. And you are in pretty good shape?

2 A. Yes, sir.

3 Q. How many hours a week do you make at DSMI?

4 A. Hours a week, I was making about thirty hours a day or
5 forty hours a day.

6 Q. Forty hours a week?

7 A. Yes.

8 Q. A full-time job?

9 A. Yes.

10 Q. Pay benefits?

11 A. Yes, sir.

12 Q. How long did you have that job?

13 A. I didn't stay there that long, sir.

14 Q. When did you leave?

15 A. A month or two later.

16 Q. A month or two later?

17 A. Yes, sir.

18 Q. After this incident?

19 A. No, this was before. This was before the incident.

20 Q. Okay. Where were you working at the time of the
21 incident?

22 A. I wasn't working nowhere, sir.

23 Q. All right. So where did you stay Saturday night?

24 A. Where I stayed Saturday night, sir? I stayed in
25 Farmington Apartments, sir.

1 Q. With who?

2 A. Shonda.

3 Q. Shonda?

4 A. Yes, sir.

5 Q. Who is that?

6 A. Some girl I met through "Jeeze", some dude met. I met
7 here out there at Farmington Apartments and I just stayed
8 over there.

9 Q. So you just hooked up with some girl on Saturday and
10 stayed at her place?

11 A. Yes, sir.

12 Q. Did you see the Mack brothers that day?

13 A. No, sir, I -- no, I seen them right around, but no
14 conversation-wise.

15 Q. How about Ben Stewart?

16 A. No, sir, I ain't seen him.

17 Q. Okay. When was the first time that you ever met Ben?

18 A. The night when they had came and picked me up.

19 Q. Had you never seen him before?

20 A. No, sir.

21 Q. Never?

22 A. Never.

23 Q. So you stayed with Shonda at the Farmington Apartments
24 on Saturday night?

25 A. Yes, sir.

1 Q. And you woke up there on Sunday?

2 A. Yes, sir.

3 Q. And what did you do all day on Sunday?

4 A. Just hang out. Just Farmington and Cameo Street, just
5 back and forth.

6 Q. Cameo?

7 A. Cameo.

8 Q. How do you spell that?

9 A. C-A-M-E-O.

10 Q. Oh, Cameo Street?

11 A. Yes.

12 Q. Have you got family on Cameo?

13 A. Yeah, my aunt and my cousins, sir.

14 Q. How close is it to the Farmington Apartments?

15 A. It not that -- it's walking distance, sir. I walked
16 there all the time.

17 Q. How many people -- how many family members would you
18 say that you have? You have got a sister that lives in
19 Hartsville?

20 A. I got a sister that lives in Hartsville from marriage.

21 Q. Okay. And you got aunts and uncles and cousins?

22 A. Aunts, uncles, cousins, and that family.

23 Q. How many would you say that you got, ten, fifteen?

24 A. I got a lot of family.

25 Q. Forty?

1 A. I got a lot.

2 Q. Give me your best guess, Terrell.

3 A. Hundreds. A hundred, two hundred.

4 Q. A hundred?

5 A. A two hundred or two hundred people.

6 Q. Are they close?

7 A. Yes.

8 Q. Very close?

9 A. Not really. We ain't that close, but we close. Some
10 of us close.

11 Q. But you have got some people there that you are very
12 close with?

13 A. Yes, sir.

14 Q. Now, tell me what you know about the Mack brothers.

15 A. Well, I just know of them and their history out in the
16 world, in the streets.

17 Q. Bad news?

18 A. Yes, sir.

19 Q. Not people that you want to be around?

20 A. No, sir.

21 Q. You have been hearing about them for a long time?

22 A. Yes, sir.

23 Q. Where did you hook up with them on Sunday?

24 A. Why did I hook up on Sunday with them?

25 Q. Yeah.

1 A. They was in Farmington.

2 Q. All right.

3 A. I didn't hook up with them.

4 Q. Doing what? You saw them in Farmington?

5 A. They was over to their cousin's house in Farmington,
6 sir.

7 Q. Who is their cousin?

8 A. Some dude stayed under Shonda. I don't know his name.
9 I think they call nickname "Jeezy" or "Jug".

10 Q. Okay. "Jeezy" or "Jug"?

11 A. Yeah, that's what they call him, the nickname. That's
12 all I know him by. I don't know him.

13 Q. All right. Now, you haven't seen -- when was the last
14 time that you seen the Mack brothers before that day?

15 A. Well, the last time I seen them, that -- that was the
16 last time.

17 Q. Before that when did you see them?

18 A. Before?

19 Q. Yeah.

20 A. Before I seen them where?

21 Q. That day when they are down at "Jeezy" or "Jug's", when
22 was the time you saw them before that day?

23 A. I ain't never seen them -- I ain't seen them before
24 that day.

25 Q. Since 4-K?

1 A. No, I ain't seen them until Sunday.

2 Q. Since?

3 A. I didn't see them until Sunday.

4 Q. Until Sunday, but I'm saying how often did you used to
5 see the Mack brothers? You go up there every week. How
6 often did you used to see the Mack brothers?

7 A. Like if I go to Farmington Apartments, they might be
8 out there, but I didn't never chill with them or associate
9 with them or nothing like that.

10 Q. Okay. They kept to themselves and you kept to
11 yourself?

12 A. Yes, sir.

13 Q. People talked about them?

14 A. Yeah, they always talk about them.

15 Q. And you knew to stay away?

16 A. Yes.

17 Q. They were bad news?

18 A. Yes, sir.

19 Q. Dangerous people?

20 A. Yes, sir.

21 Q. Not the kind of people that you would want to be
22 associated with?

23 A. Yes, sir.

24 Q. Likely to get in trouble?

25 A. Yes, sir.

1 Q. And everybody around them getting in trouble too?

2 A. Yes, sir.

3 Q. Carry guns?

4 A. I didn't know. I ain't never seen them, but I know of
5 them. That's what other people say they have guns.

6 Q. They were the kind of people that would, though?

7 A. Yes, sir.

8 Q. And you wouldn't want anything to do with that?

9 A. No, sir.

10 Q. Until Monday when you needed a ride home?

11 A. Well, I just needed a ride home, yes, sir.

12 Q. So you decided to jump in the car with these dangerous
13 guys?

14 A. No, sir. I just -- only reason I got in the car is
15 because I was -- I asked them could I get a ride, because
16 they were going to Charlotte.

17 Q. Because you were desperate to get home to your family
18 in Rock Hill?

19 A. Yes, sir.

20 Q. And you had no other way?

21 A. Yes, sir.

22 Q. With your two hundred family members there, you opted
23 to go with the dangerous Mack brothers rather than call one
24 of your family members and "look, I got to get. I got left
25 behind"?

1 A. Most of my -- all my family don't have cars, sir.

2 Q. Okay. Where did you see them on Monday?

3 A. I seen them Monday night.

4 Q. Where?

5 A. At Farmington Apartments there when they picked me up.

6 Q. What were they doing at Farmington?

7 A. What were they doing at Farmington?

8 Q. Yeah.

9 A. Going I guess to their cousins. They have got family
10 all over Farmington Apartments at that point in time.

11 Q. How did you know that they were going to Charlotte?

12 A. Because when they were standing out in front of
13 Farmington, I was at Shonda's house. I came down and I was
14 chilling in the parking lot and they were talking about --
15 they were talking about going to Charlotte and I --

16 Q. Just hanging out with you?

17 A. Yeah, they was in the -- no, in the parking lot. They
18 were just hanging out in the parking lot.

19 Q. You overheard them say that?

20 A. Yes, sir.

21 Q. And you walked up to them and said "hey, I need a
22 ride"?

23 A. Yes, sir.

24 Q. Okay. What kind of car did they have?

25 A. A tan Cadillac. It was a Cadillac.

1 Q. So you had been in Farmington pretty much steady since
2 Saturday?

3 A. Yes, sir. I have been there since Friday, sir.

4 Q. I thought you spent Friday with your grandma on Flynn's
5 Road?

6 A. Well, I was right there and I went to Farmington and
7 them came back. You know, I was there. I went -- I chilled
8 in Farmington Friday.

9 Q. Were you at Flynn's Road on Friday night, or were at
10 Farmington?

11 A. I chilled on Flynn's Road. And I went to Farmington
12 that day. Then I went back to my grandma's house that
13 night.

14 Q. Okay.

15 A. Yes, sir.

16 Q. All right.

17 A. I was both places.

18 Q. What time did you see the Mack brothers on Monday?

19 A. It was right at twelve o'clock.

20 Q. About midnight?

21 A. Yes, sir.

22 Q. Had you been drinking anything?

23 A. No, sir.

24 Q. Had anything to smoke?

25 A. No, sir.

1 Q. Was your head straight?

2 A. Yeah, my head was straight, sir.

3 Q. Who was with the Mack brothers?

4 A. The Mack brothers? Davorius, Donte, Ben Stewart.

5 Q. And Ben Stewart was down there too?

6 A. Yes.

7 Q. Was he hanging out with them for a period of time?

8 A. I guess. He was coming over there in the parking lot
9 chilling with them, drinking and just chilling.

10 Q. Okay.

11 A. I don't know what --

12 Q. How long had he been chilling with the Mack brothers in
13 the parking lot?

14 A. For like thirty minutes to an hour.

15 Q. Okay. Had you seen him out in the parking lot the day
16 before?

17 A. No, sir.

18 Q. You saw the Mack brothers the day before?

19 A. Yes.

20 Q. You didn't get involved with them?

21 A. No, I didn't talk to them.

22 Q. Ben with them then?

23 A. Sir?

24 Q. Was Ben with them then?

25 A. No, sir.

1 Q. Did they have that same car with them?

2 A. No, sir. They had a -- I guess the dude name Ryan's
3 car. I don't know his real name, but I know his name --
4 that's what they call him, Ryan.

5 Q. Okay.

6 A. It was a gray bird.

7 Q. A gray -- what?

8 A. Yeah, a gray bird. They were driving that day,
9 Saturday.

10 Q. A Thunderbird?

11 A. A Buick. A bigger car, like a four-door Buick. Old
12 school Buick car.

13 Q. Buick?

14 A. Yes, sir.

15 Q. That was Ryan's car?

16 A. Yes, sir.

17 Q. All right. You get in the car and what time to head to
18 Charlotte?

19 A. It was right at one, almost. It was eleven, after
20 eleven.

21 Q. After eleven.

22 I thought you didn't see them until twelve?

23 A. Well, right at twelve. Well, it was about twelve
24 o'clock. I can't remember if it was 11:00 or 11:30 or
25 twelve o'clock.

1 Q. 11:00, or 11:30, or twelve o'clock?

2 A. It's right in there, in that area.

3 Q. Okay.

4 A. I wasn't looking at the clock.

5 Q. And Ben gets in the car too?

6 A. Yes, sir.

7 Q. All right. Now, how did you approach them? These bad
8 dangerous Mack brothers that are standing there talking
9 about going to Charlotte, and there you are and you walk
10 over to them and you say what?

11 A. Well, I was just coming down the stairs, walking out
12 the apartments coming outside to smoke a cigarette.

13 Q. Okay.

14 A. When I had stepped out, I just heard them out there.
15 They was out there, you know, listening to music, dancing,
16 and -- you know.

17 Q. Yeah.

18 A. Like regular people and --

19 Q. A lot of people out in the parking lot?

20 A. Yes, sir, there was just a couple of people out there.

21 Q. They had the music on in the car?

22 A. Yes, sir.

23 Q. Let me finish the question. Then you give me an
24 answer.

25 They had the music on in the car?

1 A. Yes, sir.

2 Q. And they were standing outside the car?

3 A. Yes, sir.

4 Q. All right. Now, they were standing out there talking
5 and the music is going. Do they have the music turned up
6 loud?

7 A. Yes, sir.

8 Q. How close were you to them?

9 A. I was -- when I came downstairs?

10 Q. Uh-huh.

11 A. I was just right in the stairway and they was like
12 right in the parking lot. The parking lot is right there.
13 The stairway is right here. Where you come downstairs from
14 upstairs, I was coming downstairs.

15 Q. About the distance from me to you?

16 A. About right -- come --

17 Q. A little closer?

18 A. A little bit in front of the table right there.

19 Q. All right. So I'm the Mack brothers and you come to me
20 and say what?

21 A. I was coming right here down the stairs --

22 Q. Okay.

23 A. -- and I was smoking a cigarette.

24 Q. Okay.

25 A. So I just heard them talking about "man, we are about

1 to go to Charlotte. Man, do this. Ride around and let's go
2 do this around here."

3 Q. What were they going to do in Charlotte?

4 A. I do not know. I just know they was going to Charlotte
5 that night.

6 Q. Okay. And go on.

7 A. Yes, sir. And I asked for a ride home.

8 Q. Okay. And they said?

9 A. They said they would give me a ride if I give them some
10 gas money.

11 Q. Okay. So you told them what?

12 A. I will give them some gas money, sir.

13 Q. And they were heading to Charlotte anyway. How much
14 gas money were you going to give them?

15 A. Fifty dollars, sir. I told them that I will give them
16 right at fifty dollars.

17 Q. Okay. How much money did you have on you?

18 A. At the point in time I had no money on me, any, none.

19 Q. Did you think that was a good idea telling them that
20 you were going to give them money that you didn't have?

21 A. I was going up to Rock Hill to get the money.

22 Q. From who?

23 A. My brother or my momma, but nobody --

24 Q. Did you work that out with them before you promised the
25 dangerous Mack brothers that you were going to pay them

1 fifty dollars for a ride two hours away?

2 A. No, sir.

3 Q. You just went on a wing and a prayer?

4 A. I went in there -- I know they were going to give it
5 me. That's what of type of family I have.

6 Q. Except they didn't give it to you?

7 A. No, sir, they wasn't up. I guess they were asleep.

8 Q. I thought you said you talked to your brother?

9 A. My brother was up, but my momma wasn't up.

10 Q. Okay. When did you go by your momma's?

11 A. I called my momma's house. I called her house and went
12 by my brother's.

13 Q. Okay. So you brokered this deal with the Mack brothers
14 to give you a ride to Rock Hill for fifty dollars?

15 A. Yes, sir.

16 Q. Is that right?

17 A. Yes, sir.

18 Q. And you, what, you jumped right in the car?

19 A. Yes, sir.

20 Q. They were leaving out that moment?

21 A. They was about to leave. And they sat out in the
22 parking lot for about thirty minutes to an hour. After I
23 said can I get a ride with them, I sat out there for a
24 little bit, about twenty more minutes smoking cigarettes and
25 chilling.

1 Q. And then you left?

2 A. And then they was like they are about to head out, so I
3 got in the car.

4 Q. You didn't have to go up to Shonda's as say good-bye?

5 A. No.

6 Q. Get your toothbrush?

7 A. No.

8 Q. You got a backpack, an overnight bag?

9 A. No, sir. No, sir. I was wearing the same clothes. I
10 was --

11 Q. Okay.

12 A. Yes, sir.

13 Q. Okay. All right. You get in the car and you are
14 heading out. What are you guys talking about?

15 A. What are we talking about?

16 Q. In the car.

17 A. Just the music blasting and they drinking and smoking
18 and I'm just smoking a cigarette.

19 Q. Uh-huh. And what route did you take to get up to Rock
20 Hill?

21 A. Which route did I take to go to Rock Hill?

22 Q. Yes.

23 A. I went straight from going through McBee, the McBee
24 area, going up 121 to Highway 5. Right there at Highway 5.
25 I just went straight through McBee and then Lancaster.

1 Q. You picked up 9 at McBee?

2 A. Huh?

3 Q. And then went to 5 in Lancaster?

4 A. Yeah.

5 Q. And then came into Rock Hill?

6 A. Like a regular -- like going straight.

7 I really don't know how -- really I don't really know
8 how to get to Rock Hill. They already knew how to get
9 there. I didn't know how to get there.

10 Q. Okay.

11 A. You know what I'm saying?

12 Q. I hear you.

13 A. Yes.

14 Q. Although you have been going back and forth to
15 Hartsville every weekend --

16 A. I didn't drive.

17 Q. -- since you were ten years old.

18 A. I know how to get there, but I don't know all the signs
19 and all the Highway 5's and 91 and all that.

20 Q. About what time did you got to --

21 Do you wear a watch?

22 A. Sir?

23 Q. Do you wear a watch?

24 A. No, sir.

25 Q. Did you wear a watch then?

1 A. No, sir.

2 Q. Did you have a cell phone?

3 A. No, sir.

4 Q. Did you know what time it was when you got to Rock
5 Hill?

6 A. When I got Rock Hill, I only know the time when I
7 stopped to my brother's house.

8 Q. Okay. And what time was that?

9 A. Right after two something. It was like two something,
10 going on three o'clock.

11 Q. All right. Let's back up to Lancaster to the Domino's.

12 A. Okay. Yes, sir.

13 Q. The Domino's?

14 A. All right.

15 Q. Up to that point you have just been listening to music?

16 A. Listening to music until we got all the way to
17 Lancaster.

18 Q. To Lancaster?

19 A. Yes.

20 Q. Then all the sudden you see a Domino's and the music
21 stops?

22 A. Yes, sir, they turned the music down a little bit, yes,
23 sir.

24 Q. And start talking about what?

25 A. They started talking about robbing Domino's, sir.

1 Q. Who started talking about it?

2 A. Dontavious and Davorius, sir.

3 Q. What about Ben?

4 A. Ben was quiet the whole time, sir.

5 Q. Okay. He was just sitting there holding his gun?

6 A. Yes, sir.

7 Q. Where did he have that gun? You were in the back seat
8 with him, right?

9 A. I didn't know he had no gun then.

10 Q. Okay. Well, wait a minute. You just said he was
11 sitting there holding his gun.

12 A. He had to have a gun, I mean at the point in time, but
13 I didn't know.

14 Q. Okay.

15 A. That's what I'm telling you.

16 Q. Okay. You are sitting in the back seat with him and he
17 never showed you the gun?

18 A. No, sir.

19 Q. Had you talked to him at all in the back seat?

20 A. He was listening to music and they were smoking and
21 drinking and I was just smoking my cigarettes.

22 Q. Two hours you didn't talk at all?

23 A. The whole conversation about -- you know, talking about
24 what we were about to go, go get some womens or just -- just
25 ordinary conversation.

1 Q. All right. So what about the Domino's? How were they
2 going to do that? What were they saying?

3 A. What they was going to do at the Domino's? They were
4 just talking about going and robbing it.

5 Q. Why didn't they?

6 A. Because I told them "man, I'm here to get a ride home,
7 man."

8 Q. So they listened to you?

9 A. Yes, sir.

10 Q. And they said "okay. Well, we don't want to go rob the
11 Domino's because Terrell doesn't want anything to do with
12 that"?

13 A. Yes, sir.

14 Q. So they kept on going?

15 A. They kept going.

16 Q. And then where did you go to?

17 A. Went to Cherry Road. We finally got to Cherry Road.

18 Q. Where in Rock Hill do you live?

19 A. I stay like off Evanport, like it was Evanport Road
20 going to Airport Elementary.

21 Q. Berryhill?

22 A. Yes, sir.

23 Q. Is that the name of the street?

24 A. Yes, sir.

25 Q. Is that where your momma lives?

1 A. That's where I was staying at the point in time, sir,
2 yes, sir.

3 Q. And that's off of Evanport. Evanport runs off of India
4 Hook heading towards Cherry Road?

5 A. Yes, sir.

6 Q. And then Berryhill runs off Evanport, is that right?

7 A. Yes, sir.

8 Q. Okay. Now, you come in on Highway 5, which brings you
9 up -- right up there towards where Anderson Road, in that
10 area?

11 A. Right by the bank, Founders Bank, down there around
12 that way. By Founders Bank.

13 Q. Dave Lyle Boulevard?

14 A. Yes, sir, right by Founders Bank. Do you know where
15 the Founders Bank is at?

16 Q. Which one?

17 A. The Founders Bank is going like -- yeah, Dave Lyle
18 right here, I guess. The Founders Bank is right here, yes,
19 sir.

20 Q. So you came down Dave Lyle Boulevard?

21 A. Yes, sir.

22 Q. All right. And where did you go?

23 A. Going straight up and I was going to Cherry Road.

24 Q. Okay.

25 A. Then I made -- we made a left on Cherry Road. And then

1 when we going towards Cherry Road, we was going past the rim
2 shop.

3 Q. Okay. Was that -- so this is right after you get back
4 to Rock Hill?

5 A. Yeah, we got -- yes, sir. We got back in Rock Hill,
6 sir.

7 Q. About 1:45, two o'clock in the morning?

8 A. Yes, sir.

9 Q. Okay. And you get to the rim shop and what happens
10 there?

11 A. It wasn't about -- it was right at one something, yes,
12 sir.

13 Q. Okay.

14 A. Okay. We was just riding down Cherry Road and then I
15 was -- they were talking about going -- robbing this Capris,
16 this car.

17 Q. Okay.

18 A. This Capris. This orange and black Capris.

19 Q. Okay.

20 A. Talking about taking the rims off the car.

21 Q. Okay.

22 A. Well --

23 Q. Was somebody in the car?

24 A. Yeah, it was a dude in the car.

25 Q. All right. What happened with that?

1 A. Well, they didn't ever do it because I was telling them
2 "go on and take me home, man. Let's go home." Telling them
3 to go home.

4 Q. And so they listened to you again?

5 A. They listened to me again?

6 Q. Yeah. Did they not rob the guy in the Capris?

7 A. No, they didn't never rob him.

8 Q. Because they listened to Terrell?

9 A. I don't know if they was listening to me. I guess they
10 just took my -- my advice at the point.

11 Q. Okay. Where on Cherry Road was that?

12 A. On Cherry Road, it's the rim shop. You know where
13 Family Dollar is at and they got a -- it's a Domino's Pizza.
14 You know where that's at? It's across the street, Domino's
15 Pizza.

16 Q. I'm not sure?

17 A. They got a -- Cherry Road got a Family Dollar.

18 Q. Okay.

19 A. They have got a car wash right here, right?

20 Q. Yeah.

21 A. And it's got a pawn shop right here.

22 Q. Is that Teeg's?

23 A. Huh? I guess that's what it is, yes, sir.

24 Q. Okay.

25 A. And then they got a rim shop right like right on the

1 corner right there by the pawn shop.

2 Q. Okay.

3 A. Yes, sir.

4 Q. Sounds on Wheels?

5 A. Yes, sir, something like that. I don't the name of it.

6 Q. And so after you let the Capris go by, is that where
7 they went?

8 A. Yes, sir, we went past that and then did a U-turn and
9 came back.

10 Q. Okay.

11 A. After we seen the Capris, we turned. We were going
12 behind the Capris, like we were about to rob it, but I
13 didn't -- they didn't do it.

14 Q. Okay. So what happened?

15 A. They turned back around and went behind the store.
16 Behind the store.

17 Q. Okay.

18 A. And just parked. Parked there right behind the rim
19 store.

20 Q. All right. Where is the door?

21 A. What door?

22 Q. The door to the Sounds on Wheels place.

23 A. It was the back door, the door -- we parked in the back
24 of the store, or the rim store.

25 Q. Who got out?

1 A. Davorius and Donte.

2 Q. And you were in the back seat?

3 A. Yes, sir.

4 Q. Okay. This is a four-door car, right?

5 A. Yes, sir.

6 Q. They do what?

7 A. What do they do?

8 Q. Yes.

9 A. They goes to the store and Dontavious kicked the door
10 in.

11 Q. Was it a solid door? Did it have windows?

12 A. It was a hard door. It was real hard door. It took a
13 lot of kicking from him to get it open.

14 Q. Did he get it open?

15 A. He got it -- he cracked it. He didn't it all way open.
16 It was just -- it was damage to the door and that's what set
17 the alarm off.

18 Q. Okay. And could you hear the alarm?

19 A. Sir?

20 Q. Could you hear the alarm?

21 A. Yes, sir, it was loud. It was real lead.

22 Q. What did they do when the alarm went off?

23 A. Well, they was just sitting there. Going -- I mean
24 talking to each other and trying to talk them out, trying to
25 get in the store, trying to get in there, but couldn't get

1 in there for about five minutes, and then after that they
2 just got back in the car.

3 Q. Okay. And where did you go from there?

4 A. From Cherry -- off of Cherry Road, went back up Cherry
5 Road back up that way.

6 Q. Okay.

7 A. And off of that we had went and ended up going some --
8 right here by the -- there is a restaurant. It's -- you
9 know the restaurant going towards Celanese? This way, going
10 towards Celanese off Cherry Road.

11 Q. Okay. I'm not sure where that is, but what was the
12 point of going there?

13 A. Going where, Celanese?

14 Q. The restaurant on Celanese.

15 A. We didn't go to the restaurant. We was going past the
16 restaurant. The name of -- it was like Zaxby's. I was
17 telling different places was out there, like Zaxby's, and --

18 Q. Zaxby's by the Home Depot there?

19 A. Steak & Shake and all that.

20 Q. Right there where Cherry Road meets Celanese?

21 A. Yes, sir.

22 Q. So you turned down Celanese?

23 A. Yes, sir.

24 Q. And where did you go?

25 A. Straight to Heather Heights. We was riding to Heather

1 Heights -- I mean Celanese and went to Heather Heights.

2 Q. That's right next to the Sonic on Celanese?

3 A. Yes, sir.

4 Q. Okay.

5 A. On the right.

6 Q. Okay. And what time was this now?

7 A. It was right at two something, or three o'clock.

8 Q. Okay. And what did you do at Heather Heights?

9 A. What did we do at Heather Heights?

10 Q. Yes.

11 A. We just -- I went in. I went in and asked my brother
12 for some money.

13 Q. What's your brother do for a living?

14 A. He was staying with an individual woman. He don't do
15 nothing for a living, no.

16 Q. So he was there with a girl?

17 A. Yeah, he stayed with a girl, yeah.

18 Q. Had he been there living a while?

19 A. A while.

20 Q. So you knew where to go to find him?

21 A. Yes, sir.

22 Q. Okay. And where did Dontavious, Davorius and Ben stay
23 while you are upstairs talking to your brother in this
24 girl's apartment?

25 A. They stayed in the car.

1 Q. How long were you up there?

2 A. About twenty, thirty minutes.

3 Q. Okay. Why did you go to your brother's?

4 A. To get some money, sir.

5 Q. All right. And they -- and at this point in time had
6 you called your momma yet?

7 A. Yes, sir.

8 Q. Okay. And you were unable to reach her?

9 A. I wasn't able to reach her. She didn't answer the
10 phone, sir.

11 Q. What does your momma doing for a living?

12 A. My mom, she works -- she works at Wells Fargo, sir.

13 Q. Okay. Does she make a pretty good living?

14 A. Yes, sir.

15 Q. All right. And does she work nine to five?

16 A. Yes, sir.

17 Q. A day job?

18 A. Yes, sir.

19 Q. And so you couldn't get ahold of her?

20 A. No, sir.

21 Q. Were you starting to get a little nervous now?

22 A. Nervous?

23 Q. Yeah.

24 A. No, sir.

25 Q. You can't come up with the fifty dollars, your momma is

1 not answering the phone.

2 A. At the point in time I wasn't nervous, because I was --
3 I was going -- I knew I could stop by my brother's house and
4 ask him.

5 Q. Okay.

6 A. But I thought he would have it, but he didn't have it.

7 Q. Okay. So he doesn't have the money.

8 How long did you stay at your brother's?

9 A. About twenty, thirty minutes.

10 Q. Your brother's girlfriend's house?

11 A. Yes, sir, twenty, thirty minutes.

12 Q. And they're waiting downstairs?

13 A. Yes, sir.

14 Q. All right. After you -- after you finished talking to
15 your brother and he's telling you he can't come up with the
16 money, where do you go?

17 A. I come back downstairs, sir.

18 Q. Are you nervous now?

19 A. Yeah, I'm kind of nervous, sir.

20 Q. Why did you go back downstairs?

21 A. Because I was just -- I had to let them know I didn't
22 have no money. I was just --

23 Q. Because you are that kind of guy?

24 A. If they asked me, tell them that I didn't have no
25 money.

1 Q. Because you're an honorable man and you feel obliged to
2 let them know that you are broke?

3 A. Just -- just -- yeah.

4 Q. But you are very nervous?

5 A. Nervous at the same time.

6 Q. Because you know they were not going to be happy?

7 A. Yes, sir.

8 Q. And you know they were armed?

9 A. No, I didn't know they were armed at that point in
10 time, sir.

11 Q. But they are talking about robbing the Domino's and
12 jacking the Capris and --

13 A. You can do that with your hands, sir. You don't have
14 to a weapon to do that, sir.

15 Q. They didn't say they had a gun when they were talking
16 about robbing the Domino's and robbing the guy in the
17 Capris?

18 A. No, sir.

19 Q. What were they going to do, ran the Capris?

20 A. I do not know what they were taking about, sir, then.

21 Q. Okay. So you tell them that you can't get fifty
22 dollars from your brother and they say?

23 A. They told me -- start threatening me and we start
24 arguing.

25 Q. Where, out there in the parking lot --

1 A. Yes, sir.

2 Q. -- at Heather Heights?

3 A. Inside the car. I was in the car. I got back in the
4 car.

5 Q. You got back in the car?

6 A. Yes, sir.

7 Q. To deliver the bad news?

8 A. Yes, sir.

9 Q. Did you tell your brother anything about the Mack
10 brothers downstairs, the dangerous Mack brothers?

11 A. No, he didn't --

12 Q. You owe them fifty dollars and if you couldn't get it
13 from him, they were probably going to be upset with you?

14 A. He don't know them.

15 Q. I know, but did you tell him that you were in dire
16 straights?

17 A. No, sir, I didn't to tell him. I didn't get to tell
18 him. I was just telling him I had got a ride up here and
19 I'm about to -- I'm about go back to momma's house.

20 Q. You didn't have time to tell him?

21 A. No, sir, I didn't.

22 Q. Now, you -- you -- they tell you -- you're in the car
23 and they are upset now?

24 A. Yes, sir.

25 Q. You haven't got their money?

1 A. Yes.

2 Q. And they tell you what?

3 A. What did they tell me?

4 Q. What were you going to do?

5 A. They are telling me if I don't do -- if I don't do this
6 or get the money or -- get the money, or I'm going to have
7 to rob some person, or I'm going to have to go rob a store.

8 Q. Okay. And what store? Did they say at that point in
9 time?

10 A. They weren't talking about no certain specific store at
11 the point in time, sir.

12 Q. All right. What happened next?

13 A. Well, we was riding up Celanese, sir.

14 Q. Okay.

15 A. And we was going towards the apartments. I don't know
16 the name of the apartments on Celanese.

17 Q. Okay. Did you -- you were in the courtroom when we
18 showed those pictures when that lady was testifying, isn't
19 that right?

20 A. Yes, sir.

21 Q. Ms. Efird?

22 A. Yes, sir.

23 Q. And you saw the pictures of the parking lot and how she
24 said she saw people in the car parked and heard people
25 yelling and all that? You saw that, right?

1 A. Yes, sir.

2 Q. Is that where you parked?

3 A. Yes, that's where Dontavious parked, sir.

4 Q. Well, I mean you, you all?

5 A. Yes, sir, I was in the --

6 Q. That was the car that you were in?

7 A. I was in the back seat, yes.

8 Q. So that's where you -- that's definitely where you
9 guys -- that was you --

10 A. Yes, sir.

11 Q. -- and the other three?

12 A. I was in that car, yes.

13 Q. Okay. So you -- you go there and you pull into this
14 apartment complex. Did you know where you were at this
15 point in time?

16 A. I knew where I was at, but I didn't know the name of
17 the apartments, sir.

18 Q. Okay. But you had a general idea where you were
19 located in Rock Hill?

20 A. Yes, sir.

21 Q. So what happens at this apartment complex?

22 A. Well, I was sitting in the car and they was still -- we
23 was still arguing and stuff about the -- about negotiating
24 what -- I am why I didn't -- I mean, why I ain't going --
25 why I ain't had the money, stuff like that.

1 Q. Uh-huh.

2 A. So after awhile Davorius get out the passenger's side,
3 passenger side of the car -- the passenger's door. He gets
4 out and grabs me out the back seat --

5 Q. Okay.

6 A. -- and hold a gun on me then. Dontavious asked Ben
7 Stewart for the gun, his gun.

8 Q. Now, Ben Stewart reaches where and gets what gun?

9 A. I guess he is reaching -- he reached in his waist and
10 he gave it to Dontavious Mack.

11 Q. Okay. And when he pulls you out of the car -- on the
12 way to this place, these apartments, they are telling you
13 you got to rob some place?

14 A. Yes, sir.

15 Q. And they said you got to -- "you owe us this money" --

16 A. Yes, sir.

17 Q. -- "and we are going to kill you" --

18 A. Yes, sir.

19 Q. -- "unless you rob this place," is that right?

20 A. Yes, sir.

21 Q. So this is understood that's where you were heading?

22 A. Yes.

23 Q. You were going to do a robbery?

24 A. Yes, sir.

25 Q. This is being discussed in the car?

1 A. Threatening me with this. Just talking loud and
2 threatening me, yes, sir. Yes, sir.

3 Q. Okay. And so when he gets out of the car and grabs you
4 out of the car and he has his gun, Davorius?

5 A. Yes, sir.

6 Q. And then Dontavious gets out of the car and he walks
7 over to this man right here, Ben Stewart, and he says "give
8 me your gun"?

9 A. He just reached in the back seat -- he reached in the
10 back seat and got the gun and then got out of the driver's
11 side.

12 Q. Well, hold on now. You said Ben had to reach down in
13 his waistband and pull it out?

14 A. Yeah.

15 Q. So he had to ask him for it, right?

16 A. Ben Stewart reached in his waist, sir.

17 Q. Okay.

18 A. And when he reached in his waist, he handed it to
19 Dontavious from the passenger to the driver's seat. He was
20 driving. And he got out the car after "Bubba" already got
21 me grabbed outside the car.

22 Q. Right.

23 A. Yes, sir.

24 Q. Okay. And so he's saying "give me your gun"?

25 A. He -- he got his gun.

1 Q. He got Ben's gun?

2 A. Yeah, he got Ben's gun.

3 Q. Ben reaches down and gets it and hands it to
4 Dontavious?

5 A. Yes.

6 Q. So now you and Davorius and Dontavious are standing
7 outside the car?

8 A. Yes, sir.

9 Q. Is the car running?

10 A. No, sir, the car was cut off at that point in time,
11 sir.

12 Q. Okay. Did you pull in straight or back in?

13 A. We pulled in straight in, sir.

14 Q. Is that where the car stayed until they got back from
15 the BP, that location where it was parked right then, or did
16 it move again before then?

17 A. It stayed there, sir.

18 Q. Okay. So now Dontavious has the pistol, and that's a
19 semiautomatic pistol?

20 A. He had a .380, yes, sir.

21 Q. It's a .380?

22 A. Yes, sir.

23 Q. No doubt in your mind?

24 A. Yes, sir, I know that it was.

25 Q. You know it was a .380?

1 A. Yes, sir.

2 Q. Had you seen the gun before?

3 A. No, I just know people -- of people who got weapons.

4 Q. Okay. So you were familiar with it?

5 A. Yeah.

6 Q. You knew that was a .380?

7 A. Yes, sir.

8 Q. Okay. Now, Davorius has got another pistol?

9 A. Yes, sir.

10 Q. What kind of pistol has he got?

11 A. A .38.

12 Q. A .38?

13 A. Yes, sir.

14 Q. Were the descriptions given of the guns pretty much
15 accurate through the trial; dark, two-tone .380 and a dark
16 .38?

17 A. No, the .38 was dark, but the .380 was silver and
18 black.

19 Q. Two-tone?

20 A. Yes, sir.

21 Q. So Ben is sitting in the back seat?

22 A. Ben is sitting in the back seat.

23 Q. Has Ben ever gotten out of the car since you got to
24 Rock Hill?

25 A. No, sir, he just sat in the back seat, sir.

1 Q. Did he get out at that point in time?

2 A. No, sir.

3 Q. All right. So Davorius and you are standing outside
4 with Dontavious, and what do you do next?

5 A. Well, Davorius grabbed me and told me I had -- he told
6 me just go to the store. He told me "let's go".

7 Q. Okay. Davorius did?

8 A. On the way --

9 Q. Or Dontavious?

10 A. I mean Dontavious grabbed me, yeah.

11 Q. Okay.

12 A. Yes, sir.

13 Q. Davorius, he stays back at the car?

14 A. Yes, sir.

15 Q. Okay. Dontavious and you head out and go to the store?

16 A. Yes, sir.

17 Q. Which store?

18 A. We go towards the BP station store.

19 Q. Okay. Could you tell us about the journey to the BP?
20 How long did it take you to get there?

21 A. Just a couple steps, sir. It wasn't even that far.

22 Q. Thirty seconds, fifteen seconds?

23 A. About ten seconds.

24 Q. Ten seconds?

25 A. Fifteen seconds. It's right there, you know.

1 Q. So you just ran straight up and --

2 A. No, we went passed by them trash cans, sir.

3 Q. Oh, to the back of the BP?

4 A. Yes, sir.

5 Q. And you are huddled down by the trash cans?

6 A. No, sir, he -- he -- he is right behind me while I'm
7 standing at the trash can and then he takes me to the other
8 side of the door.

9 Q. Okay. When did you put your mask on?

10 A. I put my mask on? Whenever he got me out of the car.

11 Q. Okay. Where did he get the mask from?

12 A. Out of his pocket.

13 Q. Where did he get his mask from?

14 A. Out of the trunk.

15 Q. Okay. How about the hoodie?

16 A. The hoodie?

17 Q. Yeah.

18 A. I already had a hoodie on.

19 Q. And what kind of mask was it?

20 A. I had a blue bandana.

21 Q. A blue bandana?

22 A. Yes, sir.

23 Q. Were you wearing a hat?

24 A. Yes, sir.

25 Q. What kind of hat?

1 A. A blue hat.

2 Q. And then Dontavious is wearing what kind of mask?

3 A. A black mask, black ski mask.

4 Q. A ski mask with the holes in it? The holes for the
5 mouth?

6 A. Yes, sir.

7 Q. Okay. So you get to the store and you are back by the
8 garbage can and it's you and Dontavious and his .380?

9 A. Me and Dontavious and my .380.

10 Q. Uh-huh.

11 A. You say my .380?

12 Q. No, his .380, the .380 he's holding.

13 A. Dontavious, he was holding the .380, yes, sir.

14 Q. Yes, sir.

15 So it's you two and that .380 huddled down by the
16 garbage can, and what's the plan?

17 A. He was telling me I need to go to this side of the
18 store and he took me over there to the side of the store.
19 He ducked down and took me over there. He grabbed me by my
20 shirt and we was walking towards the end of the store, and
21 then he went to the other side of the store.

22 Q. Now, on the other side of the store. If this is the
23 store here, this is the back of the store?

24 A. Yes, sir.

25 Q. You come around this end here?

1 A. Yeah.

2 Q. This is where your car -- you came from this direction
3 from the car. You come back over here by the garbage can?

4 A. Yes, sir.

5 Q. Then you move up and he's dragging you over to this
6 part?

7 A. Not dragging me. He just grabbed me by my shirt.

8 Q. Grabbing you, pulling you along?

9 A. Yes.

10 Q. Threatening you with a .380?

11 A. Yes, sir.

12 Q. He comes over here?

13 A. Yes, sir.

14 Q. Comes over to this side of the store with you?

15 A. Yes, sir.

16 Q. And there is windows over here?

17 A. He's ducking down, yes.

18 Q. And you are looking in the window?

19 A. I'm standing there, yeah, like at the door, yes, sir.

20 Q. And you could see inside the window?

21 A. Yes, sir.

22 Q. You could see Mr. Marshall inside the store?

23 A. I seen a man, but I didn't -- yes, sir, Marshall, yes,
24 sir.

25 Q. So you were about -- how many feet from the corner are