

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Feb 18 2025

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Grace Gilchrist Knie, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2024-000848

Jacoby Jamar Gregory,.....Petitioner,

v.

State of South Carolina, ...Respondent.

APPENDIX VOLUME I OF II

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 18 2017

SC Court of Appeals

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOBY JAMAR GREGORY,

APPELLANT

APPELLATE CASE NO 2016-001533

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
) 2014-GS-23-00409
)
)
STATE OF SOUTH CAROLINA)
PLAINTIFF))
vs.) TRANSCRIPT OF RECORD
)
JACOBY JAMAR GREGORY)
DEFENDANT)

July 11-14, 2016
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge; and a
jury.

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APRIL HERRON
Official Court Reporter

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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Photograph	68	68
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3	CD	100	100
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2	Note From the Jury	701	701
3	Copy of Charge	701	701
4	Note From the Jury	701	701

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July 11, 2016

THE COURT: Welcome up to courtroom number four. And again, I want to thank you all for being here and thank you for your service. I want you to know that I appreciate your patience downstairs while we were disposing of a number of different issues. We are now prepared, as I told you down there, to qualify you all to serve for this particular case. So, I will remind you all to please fully and truthfully answer any questions propounded to you.

Before I begin the questioning, I would like to introduce the case to you. This is the State of South Carolina vs. Jacoby Jamar Gregory. It's an indictment for murder and possession of a weapon during the commission of a violent crime.

Count one alleges that Jacoby Jamar Gregory did in Greenville County, on or about the 1st day of October, 2013, unlawfully and with malice aforethought kill Barry Norman by means of shooting him and that Barry Norman died as a proximate result thereof.

Count two alleges that Jacoby Jamar Gregory did in Greenville County, on or about the 1st day of October, 2013, possess or visibly display a handgun during the commission or attempted commission of a

1 violent crime, that being murder.

2 Now, ladies and gentlemen, to these -- to this
3 two-count indictment, the Defendant has pled not
4 guilty and that plea allows certain rights to attach.
5 And that is every person charged with a crime in this
6 country is presumed to be innocent unless and until
7 the charging body, in this case, the State of South
8 Carolina, can prove to a jury beyond any reasonable
9 doubt each and every element of the offenses that
10 that person is charged with. Please keep that in
11 mind throughout the course of these proceedings.

12 Additionally, this document, which I read to
13 you, is nothing more than it appears to be and that
14 is a piece of paper. It is just a formal document
15 which contains the allegations which allows this case
16 to wind its way through our system to arrive here in
17 court for disposition. And you should make no
18 presumption or take any inference from the fact that
19 this document has been issued with respect to the
20 question of guilt or innocence. That is to be
21 determined from the evidence presented in this
22 courtroom and the law as I will give it to you, the
23 jury, throughout the course of the trial.

24 Now, before I begin the questioning, at this
25 time, I would ask the attorneys to stand, introduce

1 themselves and also their client.

2 All right.

3 MS. PAOLETTI: Thank you, Judge.

4 I'm Leigh Paoletti. I'm an assistant solicitor
5 with the Greenville County Solicitor's Office. This
6 is Bryna Seay, who's also a lawyer in our office.

7 THE COURT: Thank you.

8 Mr. Chambers.

9 MR. CHAMBERS: I'm Randy Chambers. I practice
10 law primarily here in Greenville. This is Jacoby
11 Gregory.

12 Stand up, Jacoby.

13 (Defendant stands.)

14 MR. CHAMBERS: You'll hear him referred to and
15 already been referred to as the Defendant in this
16 case. Also, seated here with us is Chris Maddox, who
17 is an associate in my office. Thank you.

18 THE COURT: Thank you very much.

19 All right. Is there any member of the jury
20 panel related by blood or marriage, or who has a
21 business, personal, or social relationship with any
22 of the attorneys involved in this case or with the
23 Thirteenth Circuit Solicitor's Office? If so, please
24 stand.

25 (There was no response.)

1 THE COURT: Is there any member of the jury
2 panel related by blood or marriage, or who has a
3 business, personal, or social relationship with
4 Mr. Jacoby Jamar Gregory or Mr. Barry Norman? If so,
5 please stand.

6 (There was no response.)

7 THE COURT: I'm going to read a list of
8 potential witnesses to you all. And I'll need to
9 know the same thing about these folks, so please
10 listen carefully. Joshua Kilgore; Lawrence Yatzeck;
11 James Cashion; Richard Firpo; Kenny Jarrett; Seri -
12 Barnes with the Anderson County Sheriff's Office;
13 Dustin Kretschmar; Officer Charles Moore; Detective
14 Josh Peden; Bobby Thomas, Jr.; James Williams; Stacy
15 Sullivan; Latasha Black; Landis Franklin; Dr. James
16 Fulcher; Adam Davis; James Armstrong; Shawndell
17 Clemons; Karen Milbrodt; Sergeant Dan Kelly; Chief
18 Keith Morton; Detective Scott Hawkins; Lieutenant
19 Robert Nelson; Lieutenant Melissa Woods; Officer
20 Robert Parker; Mark Nix; Chantee Nelson; Tiajuana
21 Davenport; James Wright; Dameon Evans; Shamar Luster;
22 Cynthia Norman; Natisha Stoddard; Londell Singleton;
23 Lanisha Simpkins; Taylor Bovain; Tammie Thompson;
24 Quintion "Duke" Johnson; Barbara Tucker; Steve
25 Tucker; Pamela Suber; Charity Tucker.

1 Is there any member of the jury panel related by
2 blood or marriage, or who has a business, personal,
3 or social relationship with any of those potential
4 witnesses whose names I have just read? If so,
5 please stand.

6 (Jurors stand.)

7 THE COURT: Okay. Hang on one second.

8 Yes, ma'am, your name and number for me, please?

9 PERSPECTIVE JUROR: Abigail Tessitore, my number
10 is (indiscernible).

11 THE COURT REPORTER: I'm sorry, I didn't get
12 that.

13 THE COURT: Okay. All right. What's your
14 number?

15 POTENTIAL JUROR: 191.

16 THE COURT: All right. Thank you.

17 Yes, sir?

18 POTENTIAL JUROR: Durwin Keeler, No. 92.

19 THE COURT: All right. Tell me --

20 POTENTIAL JUROR: I cover Fountain Inn for the
21 Greenville News, so I've worked with Chief Morton
22 before.

23 THE COURT: All right. Thank you very much.

24 Yes, sir?

25 POTENTIAL JUROR: Curtis Kilgore.

1 THE COURT: What number?

2 POTENTIAL JUROR: 95.

3 THE COURT: Okay. Who do you --

4 POTENTIAL JUROR: I'm related to Barry Norman.

5 THE COURT: Okay. All right. Thank you very
6 much.

7 Yes, ma'am, your number?

8 POTENTIAL JUROR: 22, Julia Bowden.

9 THE COURT: Uh-huh.

10 POTENTIAL JUROR: Chief Morton is a client at
11 the bank I'm employed at.

12 THE COURT: All right. Well, would the fact
13 that you all responded positively to that question,
14 would that impair your ability to be fair and
15 impartial in this case to either the State or the
16 Defense, and could you render a decision if you were
17 chosen based solely on the evidence and the law,
18 unimpeded by the relationship that you have described
19 to me? If you cannot do that, please stand. And
20 just be open and honest about it.

21 (There was no response.)

22 THE COURT: Okay. Thank you very much.

23 All right. Is there any member of the jury
24 panel who has any knowledge about any of the events
25 alleged in the indictment? If so, please stand.

1 Have you heard about this case in any way?

2 (There was no response.)

3 THE COURT: Is there any member of the jury
4 panel, a family member, or close personal friend who
5 has ever been a victim of or charged with this type
6 of offense? If so, please stand.

7 (There was no response.)

8 THE COURT: Is there any member of the jury
9 panel who is aware of any bias or prejudice towards
10 either the State or the Defense? If so, please
11 stand.

12 (There was no response.)

13 THE COURT: Is there any member of the jury
14 panel who is a member of or a contributor to a group
15 whose primary concern is the promotion of law
16 enforcement or victim's rights? Examples would be
17 MADD, SADD or CAVE. If so, please stand.

18 (There was no response.)

19 THE COURT: Is there any member of the jury
20 panel who knows of any reason whatsoever why you
21 should not be impaneled in this case, with emphasis
22 being placed on your ability to be fair and impartial
23 to both the State and the Defense and to base a
24 decision in this case solely on the evidence
25 presented in this courtroom and the law as I would

1 give it to you? If you can't do that, please let us
2 know now and stand.

3 (There was no response.)

4 THE COURT: All right. Let me see the lawyers
5 up here.

6 (WHEREUPON, an off-the-record bench conference
7 was held in the presence of the jury but out of
8 the hearing of the jury.)

9 THE COURT: All right. Ladies and gentlemen,
10 thank you very much. We are now beginning the
11 process of -- we're going to strike the jury in just
12 a minute. And this is my -- y'all have heard a lot
13 from me, but I get to keep going.

14 When I started practicing law, we had a big
15 barrel up here and the clerk -- and each one of your
16 names was on a little piece of paper inside a little
17 container inside the barrel and they spun it like at
18 a bingo parlor, and they'd stop, pull one out and
19 call your name. It worked very effectively, but it's
20 a little outdated.

21 So, now we have these computers and we have a
22 court-approved random selection application or
23 whatever they call it, program, which -- so each of
24 you are now spinning around in cyberspace. So, if
25 you feel a little dizzy, that explains what's going

1 on. And as soon as we get a list --

2 You've already got it?

3 THE CLERK: Yes.

4 THE COURT: All right. So now, we're going to
5 begin the process of striking the jury. And when
6 your name is called, if it is called, please just
7 stand in place and await further instructions.

8 THE CLERK: Juror No. 15, John Barker.

9 (John Barker, a white male, came forward.)

10 THE CLERK: What says the State?

11 MS. PAOLETTI: Please present Mr. Barker.

12 THE CLERK: What says the Defendant?

13 MR. CHAMBERS: Excuse Mr. Barker from this case,
14 please.

15 THE CLERK: You may take your seat.

16 Juror No. 143, Myndert Papenhuyzen.

17 (Myndert Papenhuyzen, a white male, came
18 forward.)

19 THE CLERK: What says the State?

20 MS. PAOLETTI: What's the number again, I'm
21 sorry?

22 THE CLERK: It's 143.

23 MS. PAOLETTI: Please present this juror to
24 serve.

25 THE CLERK: What says the Defendant?

1 MR. CHAMBERS: Seat Mr. Papenhuyzen, please.

2 THE CLERK: Please have a seat in the jury box.

3 Bring your things.

4 Juror No. 212, Tiffany Witherspoon.

5 (Tiffany Witherspoon, a black female, came
6 forward.)

7 THE CLERK: What says the State?

8 MS. PAOLETTI: Please excuse Ms. Witherspoon.

9 THE CLERK: You may take your seat.

10 Juror No. 130, Tyler Minard.

11 (Tyler Minard, a white male, came forward.)

12 THE CLERK: What says the State?

13 MS. PAOLETTI: Please present this juror.

14 THE CLERK: What says the Defendant?

15 MR. CHAMBERS: Seat Mr. Minard, please.

16 THE CLERK: Bring your things and have a seat in
17 the jury box.

18 Juror No. 86, John Jackson.

19 (John Jackson, a white male, came forward.)

20 THE CLERK: What says the State?

21 MS. PAOLETTI: Please present Mr. Jackson for
22 service.

23 THE CLERK: What says the Defendant?

24 MR. CHAMBERS: Excuse Mr. Jackson from this
25 case, please.

1 THE CLERK: You may take your seat.

2 Juror No. 156, Julia Rice.

3 (Julia Rice, a white female, came forward.)

4 THE CLERK: What says the State?

5 MS. PAOLETTI: Please present Ms. Rice for
6 service.

7 THE CLERK: What says the Defendant?

8 MR. CHAMBERS: Swear Ms. Rice, please.

9 THE CLERK: You may bring your things and have a
10 seat in the jury box.

11 Juror No. 111, Guy Luksic.

12 (Guy Luksic, a white male, came forward.)

13 THE CLERK: What says the State?

14 MS. PAOLETTI: Please present Mr. Luksic for
15 service.

16 THE CLERK: What says the Defendant?

17 MR. CHAMBERS: Seat Mr. Luksic, please.

18 THE CLERK: You may bring your things and have a
19 seat in the jury box.

20 Juror No. 46, Jennifer Derryberry.

21 (Jennifer Derryberry, a white female, came
22 forward.)

23 THE CLERK: What says the State?

24 MS. PAOLETTI: Please present Ms. Derryberry for
25 service.

1 THE CLERK: What says the Defendant?

2 MR. CHAMBERS: Seat Ms. Derryberry, please.

3 THE CLERK: Bring your things and have a seat in
4 the jury box.

5 Juror No. 209, Vicki Williams.

6 (Vicki Williams, a white female, came forward.)

7 THE CLERK: What says the State?

8 MS. PAOLETTI: Please present Ms. Williams for
9 service.

10 THE CLERK: What says the Defendant?

11 MR. CHAMBERS: Excuse Ms. Williams from this
12 case, please.

13 THE CLERK: You may take your seat.

14 Juror No. 31, Laura Catoe.

15 (Laura Catoe, a white female, came forward.)

16 THE CLERK: What says the State?

17 MS. PAOLETTI: Please present Ms. Catoe for
18 service.

19 THE CLERK: What says the Defendant?

20 MR. CHAMBERS: Swear Ms. Catoe, please.

21 THE CLERK: You may bring your things and have a
22 seat in the jury box.

23 Juror No. 201, Kayla Walker.

24 (Kayla Walker, a black female, came forward.)

25 THE CLERK: What says the State?

1 MS. PAOLETTI: Please present Ms. Walker for
2 service.

3 THE CLERK: What says the Defendant?

4 MR. CHAMBERS: Seat Ms. Walker, please.

5 THE CLERK: You may bring your things and have a
6 seat in the jury box.

7 Juror No. 225, Jonathan Kersey.

8 (Jonathan Kersey, a black male, came forward.)

9 THE CLERK: What says the State?

10 MS. PAOLETTI: What was the last name?

11 THE CLERK: It's Kersey, K-E-R-S-E-Y.

12 MS. PAOLETTI: Please present Mr. Kersey for
13 service.

14 THE CLERK: What says the Defendant?

15 MR. CHAMBERS: Seat Mr. Kersey, please.

16 THE CLERK: Bring your things and have a seat in
17 the jury box.

18 Juror No. 63, Mary Griffin.

19 (Mary Griffin, a black female, came forward.)

20 THE CLERK: What says the State?

21 MS. PAOLETTI: Please present Ms. Griffin for
22 service.

23 THE CLERK: What says the Defendant?

24 MR. CHAMBERS: Excuse Ms. Griffin from this
25 case, please.

1 THE CLERK: You may take your seat.

2 Juror No. 107, Michael Lewandowski.

3 (Michael Lewandowski, a white male, came
4 forward.)

5 THE CLERK: What says the State?

6 MS. PAOLETTI: Please excuse Mr. Lewandowski.

7 THE CLERK: You may take your seat.

8 Juror No. 200, Dennis Vick.

9 (Dennis Vick, a white male, came forward.)

10 THE CLERK: What says the State?

11 MS. PAOLETTI: Please present Mr. Vick for
12 service.

13 THE CLERK: What says the Defendant?

14 MR. CHAMBERS: Excuse Mr. Vick from this case,
15 please.

16 THE CLERK: You may take your seat.

17 Juror No. 152, Seth Reeise.

18 (Seth Reeise, a white male, came forward.)

19 THE CLERK: What says the State?

20 MS. PAOLETTI: I'm sorry?

21 THE CLERK: Juror No. 152, Seth Reeise,
22 R-E-E-I-S-E.

23 MS. PAOLETTI: Please present Mr. Reeise for
24 service in this case.

25 THE CLERK: What says the Defendant?

1 MR. CHAMBERS: Seat Mr. Reeise, please.

2 THE CLERK: Please come have a seat in the jury
3 box.

4 Juror No. 220, Wandalie Bailey.

5 (Wandalie Bailey, a white female, came forward.)

6 THE CLERK: What says the State?

7 MS. PAOLETTI: Please excuse Mr. Bailey from
8 service in this case.

9 THE CLERK: You may take your seat.

10 Juror No. 56, Lisa Gist.

11 (Lisa Gist, a black female, came forward.)

12 THE CLERK: What says the State?

13 MS. PAOLETTI: Please present Ms. Gist for
14 service.

15 THE CLERK: What says the Defendant?

16 MR. CHAMBERS: Seat Ms. Gist, please.

17 THE CLERK: You may bring your things and have a
18 seat in the jury box.

19 Juror No. 54, Christian Gates.

20 (Christian Gates, a white male, came forward.)

21 THE CLERK: What says the State?

22 MS. PAOLETTI: Please present Mr. Gates for
23 service.

24 THE CLERK: What says the Defendant?

25 MR. CHAMBERS: Excuse Mr. Gates from this case,

1 please.

2 THE CLERK: You may take your seat.

3 Juror No. 205, Douglas Webster.

4 (Douglas Webster, a white male, came forward.)

5 THE CLERK: What says the State?

6 MS. PAOLETTI: Please present Mr. Webster for
7 service.

8 THE CLERK: What says the Defendant?

9 MR. CHAMBERS: Excuse Mr. Webster from this
10 case, please.

11 THE CLERK: You may take your seat.

12 Juror No. 40, Donna Corley.

13 (Donna Corley, a white female, came forward.)

14 THE CLERK: What says the State?

15 MS. PAOLETTI: Please present Ms. Corley for
16 service.

17 THE CLERK: What says the Defendant?

18 MR. CHAMBERS: Seat Ms. Corley, please.

19 THE CLERK: You may bring your things and have a
20 seat in the jury box.

21 Juror No. 25, Phadra Brock.

22 (Phadra Brock, a black female, came forward.)

23 THE CLERK: What says the State?

24 MS. PAOLETTI: Please present Ms. Brock for
25 service.

1 THE CLERK: What says the Defendant?

2 MR. CHAMBERS: Seat Ms. Brock, please.

3 THE CLERK: You may have a seat in the jury box.

4 THE COURT: We'll have two alternates, one and
5 two for each of them.

6 THE CLERK: Juror No. 30, Taylor Carter.

7 (Taylor Carter, a black female, came forward.)

8 THE CLERK: What says the State?

9 MS. PAOLETTI: Please present Ms. Carter for
10 service.

11 THE CLERK: What says the Defendant?

12 MR. CHAMBERS: Seat Ms. Carter, please.

13 THE COURT: Okay. All right, one and two for
14 the next one.

15 THE CLERK: Juror No. 126, Kimberly Miller.

16 (Kimberly Miller, a white female, came forward.)

17 THE CLERK: What says the State?

18 MS. PAOLETTI: Please present Ms. Miller for
19 service.

20 THE CLERK: What says the Defendant?

21 MR. CHAMBERS: Seat Ms. Miller, please.

22 THE CLERK: You may have a seat in the jury box.

23 THE COURT: All right. Any exception to the
24 jury as impaneled pursuant to Batson v. Kentucky from
25 the State?

1 MS. PAOLETTI: No, sir.

2 THE COURT: From the Defense?

3 MR. CHAMBERS: No, Your Honor.

4 THE COURT: All right. Ladies and gentlemen, we
5 have two distinct groups here in the courtroom. And
6 I think probably one group thinks they're lucky and
7 the other group thinks they're not. And if you all
8 could see the happy expressions on the folks as they
9 walked up here, you'd know who thought they were
10 lucky.

11 Let me just tell you this, I think that the
12 group that's been selected is the fortunate group.
13 It's a rare event to be called up here for jury
14 service and it's extraordinarily rare to be selected
15 on a jury and it is a great privilege and a great
16 responsibility. I hope you all will get an
17 opportunity to do that if not today or this week,
18 then sometime in the future. But at this time, I ask
19 you all to please go down back -- return back to the
20 jury assembly room. Thank you.

21 (WHEREUPON, the jury venire left the courtroom
22 at 1:05 p.m.)

23 THE COURT: All right. Ladies and gentlemen, I
24 was very sincere in my remarks about my feelings that
25 you all are very, very fortunate to have been

1 selected to serve. And as I said, it is a great
2 responsibility and it is a great privilege. It's not
3 an easy job, but I think when you look back on your
4 service at the conclusion of your service, you'll
5 have a deep sense of civic pride and reward, at
6 least, I hope that you will.

7 I want to tell you that we have a dispute about
8 the facts in this case which can't be resolved in any
9 fashion other than to ask a jury to come up and
10 listen to the evidence presented in this courtroom
11 and the law as I will give it to you and make a
12 decision to resolve that dispute. I will remind you
13 that the indictment that I read to you is not
14 evidence and you should not take a presumption or
15 make any inference from the facts that's at issue in
16 this case. Evidence will be presented in this case
17 from the witness stand and other means as well.

18 I also remind you that every person charged with
19 a criminal offense in our country and our state is
20 presumed to be innocent unless and until the charging
21 body can prove beyond any reasonable doubt each and
22 every element of the offenses that are charged.
23 Please keep that in mind throughout the course of
24 these proceedings as well. And they, I would remind
25 you, are the fundamental building blocks of our

1 justice system.

2 I'll tell you, I divide a trial into five parts
3 so that you all have a procedural roadmap about
4 what's coming, where you are, and what's coming next.
5 The five parts will be what I consider to be the
6 opening statements from the attorneys. And we're
7 going to break for lunch and then they'll make their
8 opening statements after that.

9 The second part of the trial is the meat and
10 potatoes of every case, and that is the presentation
11 of the testimony and the evidence in the case. And
12 evidence will come to you in one of, generally, three
13 ways. The most common way that we think of is
14 through oral testimony from this witness chair. The
15 second most common way is through the introduction of
16 physical evidence or documents. And the third most
17 common way is when the parties and the lawyers all
18 agree that some fact is so far beyond dispute that
19 you should accept it to be true, or what we call a
20 stipulation of facts. So, I don't know what
21 combination the evidence will come to you in, but it
22 will be, generally, in one of those three ways.

23 The third part of the trial will be at the
24 conclusion of all of the evidence. When all of the
25 evidence has been presented, the lawyers will get up

1 and make their closing arguments to you. So please
2 notice that it's an opening statement, which is a
3 brief and non-argumentative statement to you about
4 the case. And then closing arguments, where the
5 attorneys argue to you and advocate for their
6 position, urge you to resolve the dispute in their
7 favor.

8 The fourth part of the trial will be when I give
9 you the charge on the law, how the law applies to
10 this case. And the fifth part of the trial will be
11 when you all retire to your jury room to deliberate
12 the case to make a decision that resolves this
13 dispute.

14 So, those are the five parts. They're not of
15 equal length. As you can imagine, the second part of
16 the trial is, generally, the most lengthy part of the
17 trial, and that is the presentation of the evidence.

18 I'm going to ask you to do many things
19 throughout the course of this trial. There are three
20 main things that I ask you to do. The first is to
21 keep an open mind. We went through all of that
22 questioning to ensure that we have a fair and
23 impartial jury, a jury that has not come in here with
24 a preset disposition about how the case should be
25 resolved. So, keep an open mind throughout the

1 course of the proceedings.

2 The second thing is vital and it's very simple,
3 and that is to pay attention. If you are to let your
4 mind wander during some piece of testimony, you may
5 miss the way a witness responds to a question, which
6 we call a witness's demeanor, and that may turn out
7 to be important at the conclusion of the trial in
8 your deliberations. And if you weren't paying
9 attention, then you will be at a disadvantage in your
10 deliberations. So, please pay attention.

11 The third thing that I ask you to do and I
12 instruct you to do is that you not discuss this case
13 with anyone until the conclusion of the trial when
14 you all are in your jury room to deliberate. That
15 means when you break for lunch, do not talk about
16 this case. When you go home -- if it last into
17 tomorrow and you go home tonight, you cannot discuss
18 it with whoever you might see, whether it be a family
19 member or a friend or anyone else.

20 Additionally, you cannot do research. It is so
21 easy now to go online and google and look up whatever
22 you want to look up. First of all, I remind you that
23 that's not necessarily accurate, but it also would
24 violate the oath that you're going to take in just a
25 minute. Everything you need to know to decide this

1 case and resolve this dispute, you will hear in this
2 courtroom. And don't violate that. Don't get on
3 social media and talk to somebody else that I'm on
4 this jury trial. Just don't do it. And it's very
5 difficult. And the deeper you get into the trial,
6 the more you're going to want to talk about it to
7 somebody, but you just cannot do it. That would
8 violate your oath.

9 Other things I'll ask -- well, one thing I'll
10 tell you right now is that you all are the sole
11 judges of the facts. And a trial judge is not
12 allowed to have an opinion about the facts. It's
13 entirely up to you all to decide what is right, what
14 is wrong, what is true, what is not true, who to
15 believe, who not to believe.

16 That same law makes me the sole judge of the
17 law. So, if you think you have some idea as to what
18 the law is or what the law ought to be and it
19 disagrees with what I tell you the law is throughout
20 the course of this trial, under your oath, you will
21 set aside your own opinion and apply the law
22 precisely as I state it to you. And that ensures
23 that everyone is treated the same and treated fairly
24 in this trial and in every trial we have up here.
25 So, please keep all that in mind.

1 Now, couple other things I want to tell you.
2 You saw me ask the lawyers to come up here and talk
3 to me. We were discussing logistical things. And
4 there may be times when I have to excuse you all to
5 go back to your jury room or I ask the lawyers to
6 come up here and talk. It's not that we're trying to
7 deceive you, but we may well be trying to keep
8 something from you. If we have to discuss a disputed
9 piece of evidence which turns out not to be
10 admissible, then you can understand why you shouldn't
11 hear it. That's why we are doing these things out of
12 your hearing, so please understand that if that
13 happens throughout the course of the trial.

14 I can't think of anything else to tell you right
15 at the moment, but I'm going to ask you to stand and
16 take your oath. And then after we've done that, you
17 all will be excused. You will see the back hallway
18 of the courthouse, the inner workings, the bowels of
19 the courthouse. You'll see where to go, how to come
20 back. And when you come back, and I'll ask y'all to
21 be back at 2:30, ask you all to see if you can decide
22 who you'd like to be your foreperson from among the
23 first 12. The foreperson is just the jury
24 spokesperson here in court, if that becomes
25 necessary, and the moderator of the discussions at

1 the end of the trial. So with that, I'll ask y'all
2 to stand and take the oath.

3 (WHEREUPON, the jury was sworn.)

4 THE CLERK: Thank you. You may have a seat.

5 THE COURT: You don't have to sit down, ladies
6 and gentlemen. Please go with the bailiff to see
7 where you need to report back and we'll see you at
8 2:30. Thank you.

9 (WHEREUPON, the jury left open court at
10 approximately 1:12 p.m.)

11 THE COURT: Anything before we break?

12 MR. CHAMBERS: Not from me, Your Honor.

13 MS. PAOLETTI: Not -- I have one pretrial matter
14 before we open, do you want to do that at 2:30?

15 THE COURT: Tell me what it is.

16 MS. PAOLETTI: Your Honor, we have a witness in
17 this case who gave a statement during the original
18 investigation that we have been trying to serve with
19 a subpoena for probably close to a month now, tried
20 to locate and serve with a subpoena. Fountain Inn is
21 small, you know, and the detectives in the case knew
22 that witness's mother, which is where the witness
23 lived, and went and spoke to her about getting in
24 touch with this witness. And she indicated to the
25 detectives that this Defendant had been contacting

1 the witness and making threats to him, had written
2 threatening letters to him about coming to testify.

3 As a result of that, we were able to search the
4 securest detention center phone calls by phone number
5 called and we were able to locate a little over an
6 hour's worth of conversations between this Defendant
7 and that witness. And the State intends to introduce
8 those conversations in its case in chief. They are
9 conversations about the substance of the case and the
10 facts of the case as well as instructions for this
11 witness to refuse service of subpoena, even if he
12 were to be served with the subpoena that he should
13 ignore it, the worst that could happen was 30 days.
14 That if he came and testified, that you were going to
15 arrest him and put him in jail for 15 years for
16 accessory, etcetera, etcetera. We have not been able
17 to locate that witness. We have other witnesses who
18 have spoken with him, who told these people that he
19 is hiding out to avoid service and has no intention
20 of coming.

21 He did give a statement in the case. And during
22 the detective's testimony, we intend to introduce the
23 conversations with this Defendant and that witness.
24 And we also intend to introduce that statement into
25 evidence. We intend to do that not, Your Honor, for

1 the truth of what's asserted in the statement, but to
2 show the reason why the Defendant doesn't want him to
3 come and testify. Regardless of whether the
4 statement is true or not, the Defendant does not want
5 the witness to come and say what he said to police to
6 this jury.

7 And I know that that's something that normally
8 is not admissible if we're going to be offering it
9 just for the truth of the statement. I just wanted
10 to bring that issue to your attention. We have some
11 Fourth Circuit case law on that issue that says that
12 statements by non-testifying witnesses are admissible
13 if they're offered for a purpose other than for the
14 truth of the matter asserted.

15 Additionally, Your Honor, the State would be
16 completely amenable to a curative instruction at the
17 time of the introduction of the statement. The jury
18 should be instructed not to take the statement for
19 its truth and only for the purpose for which it is
20 intended, which is to show the Defendant's
21 consciousness of guilt in this case and to show his
22 specific intent, which is an element of the offense
23 that the State always has to prove; and that they
24 should consider it for that only, not for the truth
25 of the matters asserted.

1 THE COURT: So, you want me to instruct the jury
2 that the purpose of the statement is to show that the
3 Defendant acknowledges guilt?

4 MS. PAOLETTI: No, no, sir.

5 THE COURT: Say it again what it is you want
6 again.

7 MS. PAOLETTI: The purpose of the statement is
8 so that the jury, after they've heard these
9 conversations -- and, Your Honor, in these
10 conversations, the Defendant tells the witness he is
11 digging his own grave if he comes and testifies. He
12 acknowledges that he has a copy of the statement. He
13 tells -- he talks about sending the statement out
14 into the community so that everybody knows what this
15 witness says, snitched on. And without understanding
16 the content or hearing the content of the statement
17 that the Defendant is so concerned about, the jury
18 doesn't understand the conversations with the
19 witness. And we're not offering it to prove that
20 what the witness said in his statement is true.

21 There's other evidence that's going to be
22 offered to prove the things that this witness says,
23 but what is very clear is that the Defendant does not
24 want him here. And, Your Honor, he's not going to be
25 here. We cannot get him served. And he's going to

1 be this mystery guy that the Defense is going to say
2 should have been charged, too, in all of this. And
3 the State should be entitled to some evidence to show
4 the jury why he is not here.

5 MR. CHAMBERS: Well, I certainly object to the
6 statement, Your Honor. I mean, she can say that it's
7 not offered for the truth of the matter asserted, but
8 that's exactly why it's offered. And it's offered
9 because they wanted him to come in and testify to
10 that and now that they can't get him here, they want
11 to put that statement in front of the jury. I'm not
12 even sure yet until they start to lay a foundation
13 whether the tape recordings are going to be
14 admissible. I mean, obviously, I don't even see how
15 they intend to bring that in. I may object to that.

16 But the bottom line is that's hearsay. It
17 doesn't fall under any exception to the hearsay rule.
18 And, clearly, the reason they want a jury to hear it
19 is because they would like the jury to believe that
20 testimony. It's clearly offered for the truth of the
21 matter asserted.

22 MS. PAOLETTI: Your Honor, it's -- it's just
23 not. It's not.

24 And, Your Honor, we would proffer the efforts
25 that we have made to produce this witness.

1 THE COURT: Okay. Well, we'll --

2 MS. PAOLETTI: And the phone calls --

3 THE COURT: What case law do you have?

4 MS. PAOLETTI: Your Honor, the Fourth Circuit
5 case is -- the cite on it is 554 Fed Appx. 143. The
6 Lexis number is 2373. It's an unpublished opinion in
7 which the Fourth Circuit acknowledges that
8 out-of-court statements made by witnesses who are not
9 testifying, if it is offered for a purpose other than
10 the truth of the matter asserted, it can be
11 admissible.

12 THE COURT: Well, what's the purpose? I'm not
13 clear on the purpose that you're offering this for,
14 Ms. Paoletti.

15 MS. PAOLETTI: Your Honor, the purpose is so
16 that the jury knows that whether or not that
17 witness's statement is true or not. Okay, and the
18 Defense would say his statement is not true. We're
19 saying regardless of whether the witness's statement
20 is true, the Defendant does not want the witness to
21 come and tell the jury what he told the police.
22 Whether it's true or not, he doesn't want the jury to
23 come in -- the witness to come in and give that
24 statement.

25 THE COURT: Well, why is the content of the

1 statement important?

2 MS. PAOLETTI: It's --

3 THE COURT: You've got the telephone calls where
4 he threatens him.

5 MS. PAOLETTI: Your Honor, and what the -- the
6 purpose of the jury being able to see what this
7 witness says makes them understand why he is so
8 adamant that he doesn't want the witness to come and
9 say what he said in that statement. I know what he
10 said in the statement, so when I heard the
11 conversations, I understood the context of the
12 conversations, but a jury not hearing what this
13 witness said is not.

14 MR. CHAMBERS: I don't know what's so hard about
15 understanding that you don't want somebody --

16 THE COURT: Well, we'll -- when do you -- at
17 what point is that going to be coming in?

18 MS. PAOLETTI: It will likely be tomorrow, Your
19 Honor, based on where we are today.

20 THE COURT: Okay. We'll just cross that bridge
21 when we come to it.

22 MS. PAOLETTI: I just --

23 THE COURT: We know.

24 MS. PAOLETTI: Your Honor, do y'all have West
25 Law?

1 THE COURT: We have West Law.

2 MS. PAOLETTI: I'll bring copies.

3 THE COURT: Have you seen it?

4 MR. CHAMBERS: No, sir. I've not heard about it
5 till now.

6 THE COURT: Okay. Well, you got the cite, too.

7 MS. PAOLETTI: I'll bring copies.

8 THE COURT: All right. Anything else?

9 MS. PAOLETTI: Not from the State.

10 (WHEREUPON, a lunch break was taken.)

11 (WHEREUPON, the jury came into open court at
12 approximately 2:45 p.m.)

13 THE COURT: All right. Ladies and gentlemen,
14 welcome back.

15 Mr. Luksic?

16 THE FOREMAN: Luksic.

17 THE COURT: Luksic, I apologize.

18 THE FOREMAN: That's all right.

19 THE COURT: Thank you for agreeing to serve.

20 All right. We're ready to proceed.

21 MS. PAOLETTI: Thank you, Your Honor. May it
22 please the Court?

23 THE COURT: Yes, ma'am.

24 OPENING STATEMENT

25 MS. PAOLETTI: Ladies and gentlemen of the jury.

1 Barry, if you keep threatening my little cousin,
2 I lost my sister and I'm not going to lose anybody
3 else.

4 That's what this Defendant said to the victim on
5 an October evening before he shot and killed Barry
6 Norman about 11:00 p.m. on the corner of Woodside and
7 Third Avenue in Fountain Inn. It was swarmed with
8 EMS and law enforcement and the victim's family. And
9 the evidence will show that this Defendant and his
10 little cousin were running. Rather than tell you and
11 walk you through the story that led up to Barry
12 Norman's murder, I think my time might be better
13 spent telling you a little bit about the people that
14 you're going to hear about in front of us as this
15 story unfolds in the courtroom.

16 The first person is very important, the victim.
17 Barry was a friend, kind of on the fringe of a group
18 of men, including this Defendant and his little
19 cousin, who were mostly from Fountain Inn. Barry
20 lived in Simpsonville. The evidence will show that
21 he had some family who lived in Fountain Inn that
22 you're going to hear from right on the corner where
23 he died. He was 25 years old. And his girlfriend
24 was six months pregnant when he died. You're going
25 to hear evidence that Mr. Norman did something that

1 day that would rightfully make anyone angry with him.
2 And because of that, there were words and piss during
3 that day between this Defendant and his little cousin
4 that led up to the murder of Mr. Norman.

5 Another person that you're going to hear from is
6 Shawndell Clemons, the little cousin. His friends
7 call him Vegas. You're going to hear a lot of
8 nicknames during the trial, so that's one of them.
9 I'm sure Clemons you're hear him referred to by his
10 friends as Vegas. Mr. Clemons was charged in this
11 murder, along with his cousin, the Defendant. He has
12 pled guilty to voluntary manslaughter and is still
13 facing up to 30 years in prison for his role in the
14 death of Mr. Norman.

15 Shawndell was present at all points of this
16 story on October 1st of 2013 for even more than this
17 Defendant was and he's going to come in here and tell
18 you what happened. He's going to come in and
19 testify. And he's going to tell you as someone who
20 is facing a significant sentence in jail, who has
21 pled guilty and accepted responsibility for his role
22 in this incident. And I'm going to come back in just
23 a moment and talk to you a little bit about the
24 dynamics of a testifying codefendant and how that
25 works.

1 You're going to hear from some other guys who
2 were part of this group of friends in Fountain Inn
3 who were present during the day leading up to the
4 shooting, who saw the Defendant and his little cousin
5 afterwards. You're going to hear from one of the
6 victim's cousins as well. And there are other
7 witnesses along the way that you'll hear from that
8 will help you understand the story that unfolds,
9 police officers and forensic officers. You're going
10 to hear some evidence about cell phone usage, the
11 date and time that calls were made and to who the
12 calls were made by this Defendant. You're also going
13 to hear approximate locations that the Defendant was
14 when those phone calls were made.

15 The evidence will also show you that the morning
16 after Barry Norman was shot and killed, this
17 Defendant called Fountain Inn Police to report that
18 he thought that his gun had been used in a murder the
19 night before and to report that it had been stolen.
20 He describes the exact weapon they found that night
21 and it is not a common handgun. And you'll hear the
22 stories that he told about what happened to his gun a
23 couple days prior.

24 I told you I would come back and talk to you a
25 little bit about the dynamics of a testifying

1 codefendant. Two men were charged with murder in
2 this case, the Defendant and his little cousin,
3 Shawndell Clemons. Mr. Clemons has pled guilty to a
4 reduced charge of voluntary manslaughter.

5 Early in this case, from the time he was
6 arrested, Mr. Clemons agreed to speak to police and
7 tell them what happened in this case. Through the
8 course of the case and the investigation, he provided
9 additional information about what happened. He will
10 come before you as one who is convicted of voluntary
11 manslaughter who has admitted to his role in what
12 happened. And he will tell you that the only
13 consideration that he has been given from the State
14 is the benefit of the reduced charge. That's it.
15 And regardless of what happens with this trial, he
16 will stand before a Judge when it's over and be
17 sentenced and is willing to accept responsibility of
18 the sentence imposed on him regardless of the outcome
19 of this trial.

20 I want to ask you to keep two thoughts about the
21 law in your mind as we go forward. At the end of the
22 case, Judge Miller is going to give you a lot more
23 law for you to consider and apply to the facts of the
24 case, but there are two things I want you to keep in
25 the front of your mind as you start to hear the

1 evidence in this case. And the first one is about
2 what murder is. It can be a common misconception
3 that to prove a murder or in order for there to be a
4 murder, there has to be evidence of premeditation.
5 And that's false.

6 What is required to prove murder is malice,
7 which is a dark heart, bad intentions, aforethought.
8 So malice is formed in the heart before the killing.
9 And the law is that that malice can be formed in an
10 instant. There is no requirement that the State give
11 any direct evidence of preplanning or premeditation
12 in order for you to find the Defendant guilty of
13 murder.

14 And the second one is about the State's burden
15 or proof, what the Judge has already talked to you a
16 little bit about. We take that seriously in this
17 courtroom. Our justice system does not work if you
18 don't take it seriously. But simply put, if at the
19 end of the evidence, you are firmly convinced of the
20 Defendant's guilt, then the State has met its burden.
21 Barry, if you keep threatening my little cousin, I
22 already lost a sister, I'm not going to lose somebody
23 else. The evidence will show that that's what this
24 Defendant decided between him and the victim. He
25 didn't lose anybody else that night. His little

1 cousin is still here, but Barry Norman is not.

2 THE COURT: Yes, sir.

3 MR. CHAMBERS: May it please the Court, Your
4 Honor? Solicitor.

5 OPENING STATEMENT

6 MR. CHAMBERS: Ladies and gentlemen, motive,
7 that's basically what the Solicitor is talking to you
8 about, motive. Now, solicitors very often say we
9 don't have to prove motive. That's true. But common
10 sense will tell each and every one of you that there
11 are very few things in life that we do that we're not
12 motivated in some way to do. And, certainly, in
13 reply to making a decision that you want to go take a
14 life, there would need to be some motive.

15 Now, the motive that the Solicitor appears to
16 have settled on, the one that she told you, is that
17 somehow it was in defense of his little cousin. His
18 little cousin, the codefendant. The person that's
19 going to come in here and testify against him. The
20 person who pled to manslaughter. The person whose
21 sentence has been deferred until he testifies so they
22 can see how he testifies.

23 But what you're going to hear about, ladies and
24 gentlemen, as you hear about the events is that all
25 the names that you're going to hear -- and there's

1 going to be several main players that you're going to
2 be hearing about, several names. Not only that, but
3 they all have nicknames. Some of them have multiple
4 nicknames. And trust me when I tell you, because I
5 spent some time going through this stuff, that it
6 starts to get confusing after a while. But of all
7 the people that were involved in the events of that
8 day -- the day we're talking about is October 1st,
9 2013, nearly three years ago. The one who had no
10 motive whatsoever is Jacoby Gregory, who's seated
11 over there.

12 Now, some time early in the day on October the
13 1st, over on Bates Street in Fountain Inn. And there
14 on Bates Street, there is a small row of brick
15 apartment buildings, single story that are located
16 behind the Bojangles. And that is where Bobby Thomas
17 lived. And there were a group of people that were
18 gathered there just hanging out with each other. At
19 some point, Barry Norman drives up there. Now, this
20 is earlier in the day. He's got some other people in
21 the car with him. There was a girl named Tiajuana
22 Davenport, who is he not happy with. He, being Barry
23 Norman, the person who was killed in this case.

24 He gets out of his car -- and there's some
25 dispute about how it all started, but there is no

1 dispute that Mr. Norman went to Tiajuana Davenport, a
2 young lady who was pregnant at the time, and he
3 mushed her. Now, I didn't know what that meant
4 before I got involved in this case. Apparently, that
5 is when you take your hand and you take it and you
6 smash somebody's face with it. And when he did that,
7 she fell down on the ground. When she fell down,
8 several individuals who were there, Stacy Sullivan,
9 Shawndell Clemons, Bobby Thomas, and I don't know who
10 else, they, essentially, jumped Mr. Norman and they
11 started beating him up. Somebody knocked the window
12 out of his car.

13 So, he finally, after he takes that beating,
14 gets up, gets in his car and he drives off. And he
15 drives away angry. Even though he's the one that
16 started things over there that day, he drives away
17 angry. I believe that you're going to hear from
18 various witnesses that he immediately began to post
19 things on Facebook, that he immediately began to blow
20 up people's cell phones with texts and phone calls
21 telling them in one form or another I'm coming back.
22 You're going to see me again.

23 Sometime later that day, most -- and I want to
24 point out to you, Jacoby Gregory is not present
25 during this altercation. He was not there. That is

1 undisputed. All right. Later on, a tan Crown Vic
2 shows up on Bates Street. Bates Street is not a very
3 long street. And it comes driving slowly down the
4 street. Now, these people had already been warned
5 that he was coming and a lot of people had left. The
6 people that were there -- again, Jacoby Gregory is
7 not one of them. Jacoby is not present when this
8 particular incident takes place. This tan Crown Vic
9 starts to come down the street. Somebody is driving.
10 Barry Norman is sitting in the back seat. And the
11 people who were there will tell you that it looked
12 like he had a gun. People took off running.

13 Now, he didn't shoot anybody. This was
14 apparently, I guess, what you would refer to as a
15 fake driveby. That happened. Jacoby Gregory, again,
16 was not present. So, two significant incidents have
17 happened you will hear and he wasn't there, wasn't
18 involved in any of them. And he leaves, and as you
19 might imagine, there's more calls and texts and
20 things going back and forth and there's a lot of bad
21 blood and there's some people angry. You'll hear
22 about the people that were angry and the people that
23 weren't.

24 Sometime after that, Jacoby comes to Bates
25 Street. He's been at work. Now, he had a doctor's

1 excuse. He wasn't even supposed to be there that
2 day, but he's been at work. He ends up leaving
3 early. He worked for -- or he did work for CFC
4 Steel, a job that he had had for some time. And he
5 comes over and everybody starts filling him on what
6 was going on. Now, I believe the evidence will show
7 that what he tried to be in this case was a
8 peacemaker. He was trying to sort things out.

9 And it's true that later on, Shawndell Clemons
10 and some other person, a person that we contend is
11 not Jacoby Gregory and that the evidence in this case
12 will not show that it was Jacoby Gregory, went to
13 Woodside Avenue, which is less than a mile from these
14 Bates Street Apartments. You make a right off of
15 Bates Street and turn right onto Woodside, follow it
16 on down to where Third Street is located. It's a
17 little area, essentially, mill houses. I'm sure
18 everybody living around here is familiar with what a
19 mill house is. It's small houses that used to be
20 affiliated with Woodside Mill. And it is true that
21 Barry Norman, who was accompanied by two people, a
22 fellow whose last name is Wright, a fellow whose last
23 name is Kilgore, was shot down roughly at the corner
24 of Third and Woodside. And the two assailants then
25 took off. That's what you're going to hear in this

1 case.

2 Ladies and gentlemen, I'm not going to try and
3 lay everything out for you. I, frankly, don't know
4 everything that you will hear in this case. It's her
5 case to present. I can tell you after this hanging
6 over his head for almost three years that Jacoby is
7 very happy that y'all are going to hear it today. He
8 finally gets his day in court, finally gets to see
9 justice done.

10 And as His Honor has already told you, you're
11 the triers of fact. You're going to decide what the
12 facts are in this case. And you will do that at all
13 times with an eye for this concept of beyond a
14 reasonable doubt. A trial by a jury is
15 extraordinarily important. The Founding Fathers
16 thought it was so important that John Adams, who was
17 the second president, said that trial by a jury is
18 the very heart and lungs of liberty. And it's
19 absolutely true. Because the government can make an
20 accusation, but they have to prove it to you beyond a
21 reasonable doubt.

22 As you heard this morning, there are other
23 courts that sometimes go on. You heard the term
24 Common Pleas. Those are civil cases. Those are very
25 important cases at times. Those are cases where

1 millions of dollars are at stake. Those are cases
2 where people have been killed or maimed. And the
3 standard of proof there is beyond a reasonable doubt
4 [verbatim]. If you think about a scale, the
5 Plaintiff, the person who brings the suit, has to
6 move that scale just ever so slightly in their favor.
7 There are other courts, arbitrations, things like
8 that where they have to prove their case by clear and
9 convincing evidence, which is a much higher standard
10 than by a preponderance of the evidence.

11 But, ladies and gentlemen, the highest burden of
12 proof is for criminal cases because those are the
13 cases where we can be deprived of our liberty, and
14 it's beyond a reasonable doubt. And you heard the
15 Solicitor say you had to be left firmly convinced.
16 If you look those words up, it's just another way of
17 saying definitely sure. After you hear their
18 evidence, will you be so convinced that you would bet
19 something that is near and dear to you, something
20 very important, or will you go home and have laboring
21 doubts?

22 Now, the jury system works because it brings
23 together people from every walk of life, different
24 ages, different life experiences. And you will go
25 back at some point after you've heard all the

1 evidence in this case and you'll deliberate together.
2 And you have to come to a unanimous decision. Some
3 of you are going to be assertive, some of you will
4 not. And that's just the nature of it. But none of
5 you, when it comes to your opinion, matters more or
6 less than anybody else here.

7 So, as you listen, you are going to do what you
8 do every day of your lives, you're going to listen to
9 people and you're going to ask yourself, do I believe
10 what this person is saying? Does what this person is
11 saying make sense? How many versions of this story
12 has this person told?

13 I will tell you, as you go through this case,
14 and I believe the evidence is going to show you,
15 there are things that just don't make sense in this
16 case. They're just kind of hanging in there. And I
17 think you're going to get the sense that there are
18 people that are not telling the truth and have told
19 various versions of what happened. Most importantly,
20 you're going to use your common sense. You're going
21 to size these things up based on just your everyday
22 experiences.

23 I look forward to seeing the Solicitor's case.
24 I don't know what she's going to offer. I think this
25 is going to be a long trial. By South Carolina

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 standards when I say long, probably most of the week,
2 if not all of the week. We don't have trials that go
3 for months the way they do in some places. So,
4 obviously, it will require a great deal of focus and
5 concentration, but I know that you folks are going to
6 do that. I've been trying cases a long time and
7 juries always seem to rise to the task of doing what
8 they should.

9 I'll tell you again, Mr. Gregory is very happy
10 that you're here. We look forward to hearing their
11 case. We believe when all this is said and done, you
12 folks will return a verdict of not guilty because we
13 believe it is the appropriate verdict in this case.
14 Thank you very much.

15 MS. PAOLETTI: Your Honor, the State calls Josh
16 Kilgore.

17 THE BAILIFF: Place your left hand on the Bible,
18 raise your right hand and face her.

19 JOSH KILGORE, after being duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat. Please state your full
22 name for the record.

23 THE WITNESS: Joshua Kilgore.

24 DIRECT EXAMINATION

25

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 BY MS. PAOLETTI:

2 Q Mr. Kilgore, how old are you?

3 A Twenty-five.

4 Q Where are you from?

5 A Fountain Inn.

6 Q Fountain Inn?

7 A Yeah.

8 Q Did you grow up there?

9 A Yes, ma'am.

10 Q All right. Where do you live now?

11 A I still stay in Fountain Inn.

12 Q Do you still live at Third and Woodside?

13 A No, ma'am.

14 Q All right. Do you work?

15 A Yes, ma'am.

16 Q Where do you work?

17 A McDonald's.

18 Q Which one?

19 A South Street, Simpsonville.

20 Q All right. How long have you been there?

21 A A year.

22 Q Do you know the victim in this case, Barry

23 Norman?

24 A Yes, ma'am.

25 Q Can you tell the jury how you know him?

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 A My cousin.

2 Q How are y'all related?

3 A Oh, second cousin.

4 Q Did you go to school with Barry?

5 A Yes, ma'am.

6 Q When did you go to school with him?

7 A My freshman year, he was a senior.

8 Q In high school?

9 A Yes, ma'am.

10 Q Before he died, how often would you see him or
11 talk to him?

12 A After I graduated high school, I was in Mauldin
13 at the basketball court, and he pulled up. We ain't seen
14 each other in a while or got together. Then I moved to
15 Fountain Inn and I start seeing him down there, so it was
16 about like every other day.

17 Q Let's talk about when you -- back in 2013, okay?

18 A Yeah.

19 Q Tell the jury where you were living then.

20 A I was staying on Third Street in Fountain Inn.

21 Q Who did you live with?

22 A My cousin, James Wright.

23 Q Anybody else?

24 A His girl and his kids and brother.

25 Q Okay. Back in 2013, how often would you see

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 Barry?

2 A Probably three times out of the week.

3 Q All right. What would y'all do?

4 A We would just hang out. He would come over and
5 play Madden, you know, video games, stuff like that, or
6 we'd go to the park and play football or basketball.

7 Q All right. Did you see him on the day that he
8 died?

9 A Yes, ma'am.

10 Q When did you first talk to him that day?

11 A He came over around about 1:00 or 2:00 in the
12 afternoon. He had somebody with him.

13 Q Who did he have with him?

14 A Stacy.

15 Q All right. Did Stacy have a nickname or did you
16 call him Stacy?

17 A I called him Stacy.

18 Q Do you know what his last name is?

19 A Sullivan.

20 Q All right. Go ahead.

21 A I was in the back room. He had called my
22 cousin, James, said he was coming over and wanted to play
23 Madden and wanted to chill out.

24 I said, Okay.

25 He came -- I came out the back room, like,

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 my room, and they was all in the living room playing games
2 and he had Stacy with him. I was, like, I know Stacy,
3 but, you know, we don't chill like that to bring in the
4 house house. I'm like, You cool with him?

5 He was like, Yeah.

6 I said, You sure?

7 He was like, Yeah.

8 I was, All right. I was like, I know him,
9 but we don't -- you know what I'm saying?

10 Q So, what were you and Barry doing?

11 A We was just sitting -- all of us sitting in the
12 living loom playing video games.

13 Q And where was that?

14 A Third Street.

15 Q All right. Will you tell the jury if you
16 noticed anything about his face?

17 A Well, when he came there, he was all fine.

18 Q Okay.

19 A They was all fine. Him and Stacy laughing, you
20 know. We was playing video games. Stacy, he was -- he
21 was like --

22 He just said, Hey, what's up, you know.

23 Sit down, stay to himself. But we was all
24 playing, but he wouldn't play.

25 He was like, Nah, I'll just watch. And he

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 was on his phone the whole time texting.

2 Q Do you remember about what time this was during
3 the day?

4 A I think they came around 1:00 or 2:00.

5 Q Okay. Did he leave?

6 A Yeah. They stayed about maybe almost to an
7 hour, 45 minutes at the most.

8 Q And then did he come back?

9 A Yeah.

10 Q Do you know how long it was before he came back?

11 A Probably 15 or 20 minutes.

12 Q Okay. What happened when he came back?

13 A I know we was still playing games and somebody
14 bust the front door open. Barry, his shirt was ripped up.

15 He was like, I been jumped, I been jumped.

16 I'm like, Who, like, by who?

17 He was like -- the first name he said Bop
18 and Shamar and them.

19 I was like, I know them, we went to school
20 together.

21 Q Wait, Bop and?

22 A Shamar.

23 Q Shamar?

24 A Yeah.

25 Q Okay.

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 A That's all he said.

2 Q Was he upset?

3 A Yeah.

4 Q Was he on the phone?

5 A Yeah. He was on the phone when he came in, but
6 I don't know who he was talking to.

7 He was yelling, like, We been jumped. We
8 been jumped. We been --

9 We was like, What happened? What happened?
10 Come here. Come here.

11 He was like, man, it's Tiajuana, because of
12 Tiajuana.

13 Q Did he tell you what had happened?

14 A He just said he went there after him and Stacy
15 had left. I don't know what happened between them two,
16 like, prior --

17 Q Did Barry tell you what happened while he was
18 gone?

19 A When he came back, he said that him and Stacy
20 had got into it.

21 Q All right. What happened after that?

22 A Then we was like, Over what?

23 And he said, Over Tiajuana.

24 We like, For what?

25 He said, They said trying to say something

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 that I slept with her or did something with her, something
2 like that.

3 Q Okay.

4 A We're like, What you talking about?

5 He said, I don't know. He said, Me and
6 him -- I guess they made up or whatever. And he said, We
7 went down to Bop's house and they was supposed to talk
8 about it.

9 Q Wait, stop. Who went to Bop's house?

10 A Barry and Stacy.

11 Q All right. When he was at your house, after he
12 had been jumped, okay?

13 A Yeah.

14 Q How long did he stay there at your house?

15 A Tell you the truth, probably a couple of
16 minutes, more than like 30 minutes, he stayed. We tried
17 to keep him, but he was so agitated, so hyped, he just
18 left.

19 Q Okay. Do you know where he went?

20 A Well, first, we didn't know, then we had gotten
21 a phone call from his momma saying if he comes back, take
22 his keys, don't let him go nowhere. They said they trying
23 to tell him to go to the cops about it, but he didn't want
24 to go to the cops about it.

25 Q And what did he not want to go to the cops

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 about?

2 A I guess when he got jumped.

3 Q Did you see his car?

4 A Yeah.

5 Q What did his car look like?

6 A When he pulled up and went outside, the back
7 side of his window was busted out. And he said --

8 We was like, Who busted your windows out?

9 He said, Man, Vegas.

10 We was like, Who's that?

11 He told us. He was like I was -- I think
12 he said he was out of town or something like that. When
13 he came back, they got a little cool and he said he was
14 taking him to work, taking him to the store and they was
15 hanging out. He couldn't believe that Vegas busted the
16 windows out. So, he was like --

17 Q Slow down just a little bit. So, why was he
18 surprised about that?

19 A Because him and Vegas was cool, they were
20 chilling. But I never seen him with Vegas chilling
21 before.

22 Q All right. I'm going to show you -- let me ask
23 you this, at some point, did you get into a car with
24 Barry? This car?

25 A Yeah.

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 Q All right. Whose car did you get into?

2 A My cousin, James Wright.

3 Q What kind of car was it?

4 A Crown Vic.

5 Q All right. Was it dark outside or light outside
6 when you got in the car?

7 A It was daytime.

8 Q It was daytime?

9 A Yeah.

10 Q And what were y'all going to do?

11 A Well, when he came in and said he got jumped, we
12 were like, By who?

13 And he was like, By Bop and Shamar.

14 I'm like, For what?

15 He said, About Tiajuana. He said, Stacy
16 was going to set him up.

17 I'm like, What happened?

18 He's like --

19 Q No, no, stop. Where did y'all go after you got
20 in the car, where were y'all going?

21 A We were going to the house.

22 Q To what house?

23 A Bop's.

24 Q Okay. Who was in the car?

25 A Me, James and Barry.

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 Q All right. And did y'all drive to Bop's house?

2 A Yes, ma'am.

3 Q Which direction did you go?

4 A Stopped at that stop sign and took that right.
5 Just a straight shot right on the left.

6 Q Okay. Did you go past Bop's house?

7 A Yes, ma'am.

8 Q Do you know what Bop's legal name is, his given
9 name? If you don't know, it's okay. Do you know what it
10 is?

11 A I don't know, we all call him Bop.

12 Q All right. Tell the jury what happened when you
13 went past Bop's house?

14 A As soon as we went past it, I told him -- when
15 he told me Bop and Shamar, I'm like, I know them boys. I
16 went to school with them, played football and all. I'm
17 like, If they had a problem with you, why didn't they come
18 to me and talk to me about it? You know what I'm saying.
19 So, I was like, Shoot, I'm going to go down there and talk
20 to them.

21 We said, Man, don't do nothing stupid.

22 So, we going to drive up there and see what
23 they said.

24 He said, There's a lot of guys out there.

25 He said, There's about 25 guys out there.

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 Q All right. When you got into that car, did you
2 have a gun?

3 A No, ma'am.

4 Q Did anybody else to your knowledge have a gun?

5 A No, ma'am.

6 Q Did you see Barry with a gun at any point during
7 that day?

8 A No, ma'am.

9 Q All right. So, tell the jury what happened when
10 you got to Bop's house.

11 A So, we like, we going to pull up. Time we
12 pulling up, we about to stop and get out, but Barry just
13 opened his door and got his phone out, like, I'm going to
14 get you. I'm going to get you.

15 We was like, Man, shut the door. What are
16 you doing?

17 I just wanted time to talk, you know what
18 I'm saying.

19 Q Whose was driving?

20 A My cousin, James.

21 Q What did he do?

22 A He was just driving. We all told him to turn --
23 I was in the front seat, Barry was in the back. We all
24 looked back, like, Barry, shut the door. We like, We
25 don't know what they got.

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 He just got jumped by these boys, you know
2 what I'm saying?

3 Q What did James do?

4 A He just kept on driving.

5 Q Where did you go?

6 A We went to my Uncle Rufus house, then went to
7 see Tiajuana momma.

8 Then Barry went up, like, Man, your
9 daughter got me jumped. Your daughter got me jumped, like
10 that. Something like that.

11 Q All right. Stop. Whose house did you go to?

12 A My Uncle Rufus.

13 Q All right. And Barry was still with you?

14 A Yes, ma'am.

15 Q Was he upset still?

16 A Yeah.

17 Q All right. After you left your uncle's house,
18 where did you go?

19 A We went back to the house.

20 Q Which house?

21 A On Third Street.

22 Q All right. From the time that you left Bop's
23 house until you got back to the house on Third Street, was
24 Barry on the phone?

25 A Not yet.

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 Q Did he get on the phone at some point?

2 A He went outside time we got to the house and he
3 was on the phone calling, just yelling like, Man, they
4 jumped me, man, they jumped me, man. And he just left.

5 Q Do you know who he was talking to?

6 A I don't know.

7 Q Okay.

8 A But he didn't want us to listen. We was like,
9 Barry, who you talking to?

10 He was like, No, no, no. He just went
11 outside and got in the car and took off.

12 Q When did he come back?

13 A I say around 9:30 or 10:00.

14 Q All right. When he came back, was he still
15 upset?

16 A Yeah, he was still upset.

17 Q How was he acting?

18 A We couldn't calm him down from that. It wasn't
19 nothing -- it wasn't no calming down. He was high. He
20 couldn't believe they jumped him because he chill and did
21 stuff for them and stuff. He thought they was his
22 friends, I guess.

23 Q Was he still on the phone?

24 A When he first came in, he wasn't on the phone.

25 Q Did he get on the phone?

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 A We was inside. We was still trying to tell him
2 to calm down, just calm down. And somebody had called him
3 and he went outside and he was just arguing, they were
4 arguing back and forth. Somebody on the phone say they
5 going to --

6 Q Slow down. Slow down. Sorry. Okay.

7 A He said somebody -- I forgot what he said. He
8 said they were arguing, talking about we ain't worried
9 about that. We ain't worried about that. We ain't
10 worried about you.

11 He was like, Man, I ain't worried about
12 y'all. I'm going to get y'all back. I'm going to get you
13 back. I'm going to get you back.

14 Q All right. Where was he standing when he was
15 having this conversation?

16 A He was standing outside by the tree, by the stop
17 sign.

18 Q All right. I'm going to show you what's been
19 marked as State's Exhibit Nos. 1 and 2, and ask you if you
20 recognize what's in these pictures, okay?

21 A Yeah.

22 Q You recognize those?

23 A Yeah.

24 Q Who are those pictures of?

25 A Picture of the tree and the other picture where

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 we got shot at.

2 Q All right. The car that's in the picture, is
3 that the car that y'all drove down to Bop's house?

4 A Yeah.

5 MS. PAOLETTI: Your Honor, at this time, the
6 State moves Exhibits No. 1 and 2 into evidence.

7 MR. CHAMBERS: No objection, Your Honor.

8 THE COURT: Okay.

9 (WHEREUPON, State's Exhibits Nos. 1 & 2 were
10 marked for identification and received into
11 evidence.)

12 BY MS. PAOLETTI:

13 Q All right. Will you tell the jury what you're
14 looking at here?

15 A Yeah. Where that stop sign at, that's where
16 Barry was at right there. He was on the phone arguing.
17 We was on the porch, the house right there, on the front
18 porch sitting right there.

19 We like, Barry, get off the phone.

20 I was like, How you going to have problems
21 with somebody and you trying to tell what you going to do
22 to them.

23 They were going back and forth and he was
24 walking towards the stop sign right there in the road back
25 and forth, pacing back and forth talking.

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 Q I meant to hand you this earlier, I'm sorry.
2 It's got a button right there on the top. Show them where
3 he was standing.

4 A He was standing right here.

5 Q All right. I'm going to show you now State's
6 Exhibit No. 2. First of all, is that the car that y'all
7 drove to Bop's house?

8 A Yeah.

9 Q And where were you when he was on the phone at
10 this point?

11 A I was right here on the porch.

12 Q Was anybody else outside with him?

13 A My cousin, James.

14 Q All right. Where was James?

15 A James was right here behind this car.

16 Q Behind the white car?

17 A Yes, ma'am.

18 Q Show the jury where Barry was.

19 A He was right here and he kept pacing back and
20 forth in the street -- like, he stayed in the middle of
21 the road, but when a car come, he come right back here
22 pacing back and forth.

23 Q All right. The big tree?

24 A Yeah.

25 Q See that? The white car in front of the big

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 tree, do you see that?

2 A Yeah.

3 Q Can you point to that with your pointer?

4 A This right here?

5 Q Yeah, whose car is that?

6 A Barry.

7 Q All right. Tell the jury what happened when you
8 walked outside on that porch.

9 A He was still outside.

10 Q Who was outside?

11 A Barry.

12 Q Okay.

13 A Pacing back and forth talking. My cousin,
14 James, was right here. Me and my cousin, Dameon, went
15 back in the house right here.

16 Q Okay.

17 A By the time we walked down the stairs walking to
18 the tree, got right here by the tree, we heard gunshots.

19 Q Okay.

20 A So, me and my cousin, Dameon, we ran back around
21 the house on the other side.

22 Q Okay.

23 A After all the gunshots got done, we all call
24 each other name, you know, Barry, James, D. Yeah, yeah.
25 I'm like, Barry, Barry. It was dark. We was running

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 around because we didn't know if they was like coming
2 around the house or what because we couldn't see. Well, I
3 couldn't see. And time I came back from around the house
4 right here, came back right here, my cousin, James, right
5 here, he was like, Man -- Barry was laying right here.

6 He was like, They shot him.

7 I said, What you mean?

8 He said, They shot him. He said, He's got
9 a bullet hole in his head.

10 Q Did somebody call 911?

11 A Yeah.

12 Q Do you know who that was?

13 A My cousin, D.

14 Q Who's D?

15 A My second cousin.

16 Q What's his name, full name?

17 A Dameon.

18 Q What's his last name?

19 A I don't know. Norman.

20 Q Did you see what happened just before the
21 shooting?

22 A Huh-uh.

23 Q Okay.

24 A The only thing I know, when I was walking down
25 right here, walking up to the tree with my cousin, D, my

JOSH KILGORE-DIRECT BY MS. PAOLETTI

1 cousin, James, was right here. Barry was right here on
2 the phone still arguing to whoever he was talking to on
3 the phone.

4 Q All right.

5 A I see my cousin, James, turn and look down this
6 way while we walking up. He said, Who this -- I see two
7 people walking like that. About the time I heard him say
8 that, I seen two people walking, there were gunshots.

9 Q And was Barry still on the phone?

10 A Yeah. He was still on the phone arguing.

11 Q All right. I'm going to put State's Exhibit No.
12 1 back up for just a second, and ask if you can tell us,
13 what -- the street over there on the left where the
14 firetruck is, what is that street?

15 A I think it's Fourth Street.

16 Q That goes in front of Third Street?

17 A In front? Right here?

18 Q Yes.

19 A This is Third Street right here. I think the
20 street over there is Fourth Street.

21 Q The next block over --

22 A Yes.

23 Q -- is Fourth Street?

24 A Fourth Street.

25 Q And the road that runs parallel to those, in

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 front of those two streets, what's that called?

2 A I don't know what it's called. I know it's like
3 a warehouse with some furniture stuff in it, storage
4 buildings.

5 Q Where is that? Where are those storage
6 buildings? I mean, you can't see them in that picture,
7 but --

8 A Right here on Fourth Street, they're right
9 across the street from it.

10 Q All right. Did you see your cousin, James,
11 point down the street?

12 A Yes, right in here.

13 Q Were you able to see who it was that was
14 shooting?

15 A Huh-uh.

16 MS. PAOLETTI: All right. Will you answer any
17 questions that Mr. Chambers might for you, please?

18 CROSS-EXAMINATION

19 BY MR. CHAMBERS:

20 Q Who was it that actually called 911, was it you
21 or was it James Wright?

22 A It was my cousin, Dameon.

23 Q So, it was neither one of you?

24 A Yeah.

25 Q Where did Dameon come from?

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 A Well, he stayed there. I think he was at work
2 when we came over that morning. When he got off work at
3 night, he came home.

4 Q Are you the one they call Tiger?

5 A Huh-uh.

6 Q Who's Tiger?

7 A James.

8 Q That's James Wright?

9 A Yeah.

10 Q And were y'all -- this house where y'all were
11 hanging out, was that James Wright's house?

12 A Yes.

13 Q So, if someone said they were going to Tiger's
14 house, that's where they'd be?

15 A Yeah.

16 Q All right. Do you live in that neighborhood or
17 were you just over there visiting?

18 A I was staying with him at the time.

19 Q So, you were actually living there?

20 A Yeah.

21 Q Now, you said that Barry Norman had come over to
22 the house where you were staying with Mr. Wright. Tell me
23 again, what time did he get there?

24 A He came about around 1:00 or 2:00 in the
25 afternoon.

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 Q Okay. 1:00 or 2:00 in the afternoon, you're not
2 sure, but it was around that time?

3 A Yeah.

4 Q And he had Stacy Sullivan with him?

5 A Yeah.

6 Q Do people call him Smitty?

7 A Yeah.

8 Q Did you know him as Smitty?

9 A Well, first, I didn't, but when I moved to
10 Mauldin when he came out there, people started calling him
11 Smitty. I'm like, Who's that?

12 They like, Oh, that's Stacy.

13 I said, Oh. But I always called him Stacy.

14 Q Did you know him pretty well?

15 A Yeah.

16 Q And you knew Bop pretty well?

17 A Yeah.

18 Q Did you know Shawndell Clemons?

19 A Huh-uh.

20 Q Didn't know him at all? Had you ever seen him,
21 met him, been around him?

22 A Huh-uh.

23 Q And so at some point, you said that Stacy
24 Sullivan and Barry Norman left y'all's house and were
25 going over to Bates Street, which you said was Bop's

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 house?

2 A Yes.

3 Q Got there at 1:00 or 2:00. Do you recall what
4 time he left to go over there?

5 A We played -- we was playing games. He probably
6 stayed about 45 minutes to an hour.

7 Q So, that means that he would have been back
8 about 2:00 or 3:00.

9 A Probably around that range, yeah.

10 Q And then if I remember correctly, you said that
11 when he came back, beat up with his window out saying that
12 he had been jumped, that was only about 15 or 20 minutes
13 later?

14 A Yeah.

15 Q So, that means that he would have been back --
16 that would have been somewhere around 2:15, 3:15, 3:15
17 probably being the latest that he would have been there?

18 A Yeah.

19 Q And you're fairly certain about those times?

20 A I'm fairly certain. It's been so long now.

21 Q I got you. Been almost three years, right?

22 A Yeah.

23 Q And at some point as you recounted with the
24 solicitor, y'all got in James Wright's -- is it a Crown
25 Vic or LTD?

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 A It's an old school Crown Vic.

2 Q Okay. And rode over to where Bop's house is on
3 Bates Street?

4 A Yeah.

5 Q Presumably to talk to those folks?

6 A Yes.

7 Q But you ended up, essentially, having kind of a
8 fake driveby where you drive down the street and he opened
9 up the door like he had a gun, he, being Barry Norman?

10 A Yeah.

11 Q You were in the passenger seat?

12 A Correct.

13 Q And James was driving?

14 A Correct.

15 Q Then y'all left and you went back to your house?

16 A Went back to my uncle house.

17 Q Went to your Uncle Rufus's?

18 A Yeah.

19 Q Okay. How long did you stay there?

20 A I don't know, because we was in the house
21 talking and then went outside. Stayed outside talking
22 probably another 40, 45 minutes.

23 Q But Barry was hot, right?

24 A Yeah.

25 Q And Barry had been hot all day?

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 A Yeah.

2 Q And he was talking -- you don't know who all he
3 was talking to, but he was talking to people on the phone?

4 A Correct.

5 Q Was he going on Facebook?

6 A I don't know, I didn't have his phone.

7 Q All right. But at no point did you know anybody
8 that he was talking to, you could just hear his side of
9 the conversations?

10 A Yes.

11 Q And y'all say you were trying to calm him down,
12 no luck, not able to do it?

13 A Correct.

14 Q Do you remember whether there was ever any
15 discussion about him just meeting up to maybe fight it out
16 with one of these guys one-on-one or something?

17 A I don't know.

18 Q You don't know?

19 A He wouldn't tell us the whole thing, he just
20 kept pieces and pieces.

21 Q Okay. Now, is Wright's house right there on the
22 corner by that stop sign?

23 A Correct.

24 Q And I believe you said that you were not on the
25 street with Barry, you were on a little porch or

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 something?

2 A Yeah.

3 Q And -- but how far is that little porch from
4 where they were standing in the street if you had to
5 estimate?

6 A Who?

7 Q Well, in other words, from where you were
8 standing on the porch --

9 A Yeah.

10 Q -- how far do you think it was from there to
11 where James and Barry was standing?

12 A Probably maybe six, seven feet.

13 Q So, about the distance between me and you?

14 A Yeah.

15 Q So, you were that close?

16 A Yeah.

17 Q Were you at this angle or -- where would I have
18 been? Let's say I'm Barry by the stop sign.

19 A Yeah, at the stop sign right there. The house
20 is like this way, so I'm coming right here, coming down
21 the steps, going up towards you.

22 Q Could you see down the street?

23 A Not yet.

24 Q You didn't see the two people coming?

25 A Not yet, no.

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 Q You just saw James point and say something about
2 who was going to come?

3 A Yeah, I was walking down and he was already
4 right there in front of the big tree by the stop sign and
5 Barry was right there in the middle of the road. And I
6 see Barry did like this, looked on the phone like and I
7 seen James pointed like that. I took another step and
8 heard gunshots.

9 Q Did you see the two people?

10 A Huh-uh.

11 Q You never saw them?

12 A I never saw them.

13 Q So, when the police came out there, did the
14 police get you and James separately and speak to y'all
15 separately or did they have y'all standing together?

16 A We were all standing together.

17 Q So, they didn't separate the two of you?

18 A Well, I mean, they came and talked to us, like,
19 first, we was all together, then more came, then, you
20 know, they pulled him to the side, then pulled me to the
21 side.

22 Q But, initially, they were talking to you
23 together, right?

24 A Yeah.

25 Q So, you're not the one then who made the

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 statement -- gave a general description of the two people
2 and then said anything about where they were going --

3 A Huh-uh.

4 Q -- after the shooting?

5 A Huh-uh.

6 Q Because what you would have told them is you
7 didn't see anything, you just heard shots?

8 A Yeah.

9 Q And you took off?

10 A Yeah.

11 Q And you went for cover?

12 A (The witness nods.)

13 Q Where did you go?

14 A I went around on the other side of the house.

15 Q So, I want to nail this point down, I want to be
16 clear, you never saw -- you don't know how many people it
17 was, you don't know what direction they went in, you
18 didn't see anything?

19 A Huh-uh.

20 Q You heard gunshots and you ran?

21 A Correct.

22 Q You didn't even see Barry get hit and go down,
23 did you?

24 A Huh-uh.

25 Q All right. Do you remember that you and James

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 talked to the police on a couple of different occasions?

2 A Yeah.

3 Q Do you remember the first time that you talked
4 to them that you didn't say anything to them about having
5 gone over to Bates Street, right?

6 A I don't remember that part. Yeah, we told them
7 that we were over there when he pulled the phone out and
8 stuff. We told them all that.

9 Q You don't remember the first time telling them
10 that Barry went over to Bates Street and then came back
11 and told y'all about what happened?

12 A Yeah, we told them that, too.

13 Q But then later on, you went back and told them
14 listen, we were with him when he went to Bates Street. Do
15 you remember that?

16 A Yeah.

17 Q Okay. So, you did change your story a little
18 bit?

19 A No.

20 Q Okay. Do you remember telling the police that
21 you didn't want to give a written statement to them?

22 A Yes.

23 Q So, you were not willing to -- in order to help
24 out with this investigation and with your friend, Barry
25 Norman, you weren't willing to give them a written

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 statement, were you?

2 A No, because he asked me did I see the shooting
3 and I was like, No.

4 Q Well, I mean --

5 A The only one that seen it was James.

6 Q You could have put that in a written statement,
7 right? I mean, you were a witness.

8 A I don't know.

9 Q I mean, other than the people that did the
10 killing, there were only two people out there besides
11 Barry that were present when this happened, right?

12 A Correct.

13 Q And you were one of them?

14 A Yeah.

15 Q And he was your friend?

16 A Cousin.

17 Q But you weren't willing to give a written
18 statement, even though they asked you to?

19 A Well, it wasn't like -- he was like, Who seen
20 the shooter? And my cousin, James, said, I seen it. So,
21 he got him to write it.

22 He was like, Can y'all write a statement?

23 I can't write a statement, I didn't seen
24 nothing.

25 Q You still living with James?

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 A Huh-uh.

2 Q When's the last time you saw him?

3 A Probably two weeks ago. He was driving past.

4 MR. CHAMBERS: Okay. That's all the questions I
5 have for you. Thank you --

6 Q Hold on just real quick. You mentioned a couple
7 of times Shamar Luster?

8 A Yes.

9 Q Do you remember seeing Shamar Luster out there
10 sometime around either before, during or after the
11 shooting?

12 A I seen him before -- before it happened. We was
13 outside. Barry had left, we didn't know where he went to.
14 We was outside, you know, just talking. We seen Shamar
15 drive up in his car. Then we seen some other people down
16 there leaving out that come past the house. Then after
17 the shooting, we were all down there on the street
18 talking, family all together, then we seen -- I seen
19 something over my shoulder and I seen Shamar walking out
20 the side coming up.

21 Q How was he dressed?

22 A He had a white tee on and he had on gray
23 sweatpants on.

24 Q Okay. So, pretty much right after the shooting
25 when everybody is kind of -- because everybody is kind

JOSH KILGORE-CROSS BY MR. CHAMBERS

1 of -- once this happened, even before the police got
2 there, people came running out and gathered around there,
3 weren't they?

4 A Yes.

5 Q In fact, Barry's mom, somebody called her and
6 she came down there. Was she there before the police or
7 just shortly after they got there?

8 A Probably a little shorter, I think. Because the
9 ambulance came first, before the police did.

10 Q But there's no question that you saw Shamar
11 Luster, who is one of these people over there at Bop's
12 that was involved in the incident earlier was over there;
13 is that right?

14 A Correct.

15 MR. CHAMBERS: Thanks.

16 MS. PAOLETTI: I don't have anything else for
17 Mr. Kilgore. Your Honor, may he be released?

18 MR. CHAMBERS: No objection, Your Honor.

19 THE COURT: Yes.

20 Thank you. Step down. You're free to go.

21 MS. PAOLETTI: Your Honor, the State calls
22 Lawrence Yatzeck.

23 BAILIFF: Place your left hand on the Bible,
24 raise your right hand, please.

25 LAWRENCE YATZECK, after being duly

LAWRENCE YATZECK-DIRECT BY MS. PAOLETTI

1 sworn, testified as follows:

2 THE CLERK: Please have a seat. Please state
3 your full name for the record.

4 THE WITNESS: Lawrence Gerald Yatzeck.

5 DIRECT EXAMINATION

6 BY MS. PAOLETTI:

7 Q Mr. Yatzeck, will you tell the jury where you
8 live?

9 A Fourth Street, Fountain Inn, South Carolina
10 29644.

11 Q How long have you lived on Fourth Street in
12 Fountain Inn?

13 A Since May of 1997.

14 Q Where are you from originally?

15 A Michigan.

16 Q Are you married?

17 A Yes.

18 Q All right. Are you working currently?

19 A No.

20 Q Why aren't you working?

21 A I am disabled.

22 Q Before you became disabled, what kind of work
23 did you do?

24 A I worked at a textile plant in Simpsonville.

25 Q I'm going to direct your attention to the map

LAWRENCE YATZECK-DIRECT BY MS. PAOLETTI

1 that's up on the screen over there. And that thing that
2 looks like a pen in front of you, the top little silver
3 button is a laser pointer.

4 A Sure, it is.

5 Q It looks too much like a pen. I'm going to come
6 help you. Will you show the jury where your house is?

7 A Right there.

8 Q All right. And that's at the corner of Fourth
9 and?

10 A Woodside.

11 Q Okay. And the street that's just to the left of
12 Fourth Street that says on it, what street is that?

13 A Third Street.

14 Q Are those blocks big blocks? How would you
15 describe those?

16 A They're small blocks.

17 Q I want to talk to you about the incident date in
18 this case, which is October 1st of 2013. Will you tell
19 the jury what you were doing in the late evening hours of
20 that day?

21 A I was -- my wife and I were in Simpsonville
22 visiting with some friends. And it was after 10:30 and we
23 decided it was time to head home. I'm not exactly sure
24 what time I got home. It was just shortly before 11:00.
25 And we pulled up to the house. As we were pulling up, I

LAWRENCE YATZECK-DIRECT BY MS. PAOLETTI

1 was aware of a gathering at the house behind us, which
2 would be on the corner of Third Street and Woodside.

3 Q Okay.

4 A My wife and I brought a few things in the house.
5 I went back out to the car to grab one more thing and went
6 in the house. And I had just had time to get into the
7 house and walk into the kitchen when I heard gunfire.

8 Q All right. When you heard the gunfire, what did
9 you do?

10 A As soon as it stopped, I told my wife to call
11 911 and I went out onto my back deck out my back door and
12 looked around.

13 Q All right. Would you describe for the jury how
14 close or how far the gunfire sounded when you were in your
15 kitchen?

16 A It sounded like it was right outside the wall of
17 the house. It was -- the echoing was so bad that the lid
18 on my washing machine was bouncing up and down.

19 Q You said that you went outside on your back
20 deck?

21 A Yes.

22 Q And what did you do when you walked outside on
23 your back deck?

24 A I was prepared -- I was going to look around to
25 see what had happened. As soon as I walked out there, I

LAWRENCE YATZECK-DIRECT BY MS. PAOLETTI

1 could hear feet running on pavement and it was off to my
2 right as I walked out my door and turned to the right to
3 look at the Woodside. And I saw two young men, they had
4 just cleared the road and were heading into the field over
5 here.

6 Q All right. I'm going to show you a photo that's
7 been marked as State's Exhibit No. 4 and ask you if you
8 recognize what you're looking at in that photo?

9 A That would be the gate for my privacy fence from
10 my deck. I see the back of my car and the field across
11 the street that I saw the young men run into.

12 MS. PAOLETTI: Your Honor, at this time, the
13 State moves Exhibit No. 4 into evidence.

14 MR. CHAMBERS: No objection, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON, State's Exhibit No. 4 was marked for
17 identification and received into evidence.)

18 BY MS. PAOLETTI:

19 Q All right. Will you point again for the jury,
20 now that they can see the picture, what you're looking at
21 in this photo?

22 A That is the gate for my privacy fence as viewed
23 from where I was standing, roughly, when I saw what I saw
24 that night. That would be my car parked in my driveway.
25 That would be, I believe it's called Jones Street. You

LAWRENCE YATZECK-DIRECT BY MS. PAOLETTI

1 just had a number on it. And this is about where I saw
2 the gentleman -- when I first saw them they were heading
3 that way.

4 Q Tell the jury why you remember that's where they
5 were.

6 A Well, I heard the feet on pavement and when I
7 looked that way, they had just cleared the street. And
8 there's a sidewalk about three feet beyond the road and
9 they were crossing that. One gentleman was on the left
10 and he was sort of running and looking over his shoulder
11 at the same time and they were looking past me. The other
12 gentleman to the right, as he was looking back, I saw him
13 drop something and he had to backtrack to get it. And
14 then after he picked it up and started -- he started
15 running that way again with the other gentleman or
16 trailing him.

17 Q Obviously, this photo is taken during the day.
18 How could you see all that at night?

19 A It's very well lit out there. There's, at
20 least, five street lights and a number of the buildings
21 have lights on them.

22 Q All right. So, were you able to see what these
23 two men were wearing?

24 A Yes. The gentleman on the left was wearing, it
25 was dark clothing. I couldn't tell you whether it was

LAWRENCE YATZECK-CROSS BY MR. CHAMBERS

1 black or blue, but his shirt and pants both appeared to be
2 dark. The one on the right were dark pants and he had an
3 orange or a red shirt. And he would be the one that
4 dropped the object.

5 Q All right. And can you tell the jury where they
6 continued to go from there?

7 A I saw them heading up from here about to there.
8 I no longer looked at them because to my left, I heard the
9 people that lived at the house behind me and I drew my
10 attention that way.

11 Q When you said you heard them, what did you hear?

12 A A wail of horror as best I can describe it. I
13 don't know how long I looked that way. When I looked back
14 towards the field, I didn't see the gentleman anymore.

15 Q When police arrived, did you communicate to them
16 what you seen that night?

17 A I did.

18 MS. PAOLETTI: All right. Would you answer any
19 questions that Mr. Chambers might have for you?

20 THE WITNESS: Yes.

21 CROSS-EXAMINATION

22 BY MR. CHAMBERS:

23 Q Tell me again your address.

24 A Fourth Street.

25 Q Okay. And how far from Third and Woodside is

LAWRENCE YATZECK-CROSS BY MR. CHAMBERS

1 that?

2 A My property backs roughly to that property.
3 There's a 10-foot easement between the two properties that
4 the city maintains.

5 Q So, your house then is --

6 A It's less than a hundred feet, I think, to the
7 back of their house from the back of mine.

8 Q So, is your house on the corner of Fourth and
9 Woodside?

10 A It is.

11 Q Does it face Fourth?

12 A Yes.

13 Q And the house that's on the corner of Third and
14 Woodside, you said, is about 100 feet from your house.
15 Are you talking about the back of the property or are you
16 talking about literally house to house?

17 A House to house. It's small.

18 Q Hundred feet house to house?

19 A Probably.

20 Q And you said that you got home just before
21 11:00, 11:00 p.m.?

22 A I never looked at a clock, so.

23 Q Well, your testimony a few minutes ago --

24 A Yeah.

25 Q -- was just before 11:00 --

LAWRENCE YATZECK-CROSS BY MR. CHAMBERS

1 A Yeah.

2 Q -- what do you base that on?

3 A Pardon me?

4 Q What do you base that on?

5 A I left Simpsonville just after -- well, we
6 started to get things together about 10:30. We probably
7 left about 10 minutes after that and it takes us 10 or 12
8 minutes to get home from there.

9 Q Okay. So, it would have been at the earliest
10 probably 10:45, more like 10:50, 10:55?

11 A Yeah, it was probably closer to 10:50 or 10:55.

12 Q And you said to the Solicitor a minute ago there
13 was a large gathering?

14 A No, I said a gathering. I don't know how many
15 people. I just was aware that they had people over there.

16 Q How is it that you were aware?

17 A I drove past their house to get to mine and
18 there were some people out in the yard.

19 Q Okay. I mean, was there a large group of
20 people?

21 A I have no idea how many there were. I just -- I
22 can see my house as I'm going past there and I just
23 automatically looked over there because I saw people.

24 Q Well, I assume it was more than one since you
25 said it was a gathering?

LAWRENCE YATZECK-CROSS BY MR. CHAMBERS

1 A Yes, I saw a number of people.

2 Q Was it more than three?

3 A I do not know.

4 Q Okay. So, there was a gathering. Was there
5 music, frivolity, noise of any kind?

6 A Not that I'm aware of.

7 Q Okay. You saw some number of people there and
8 that's what you're referring to as a gathering?

9 A Yeah.

10 Q Okay. And you -- I believe you said you were in
11 your kitchen when you heard these gunshots?

12 A Yes, sir.

13 Q And they sounded like they were right outside
14 your house?

15 A Yes.

16 Q Do you know how many gunshots you heard?

17 A It was really hard to tell because it was
18 echoing crazily. I heard a number of shots, like three or
19 four maybe, then a brief pause, and then there was a
20 couple, two or three more. I think I said it was five.
21 That's the best I could do because after the second shot,
22 it was echoing really bad.

23 Q Any chance that there were multiple shots being
24 fired at the same time?

25 A Very possible.

LAWRENCE YATZECK-CROSS BY MR. CHAMBERS

1 Q Okay. So you heard, at least, three or four,
2 hard to tell from the echoing?

3 A Yes.

4 Q Then there was a short pause, then you heard
5 several other shots?

6 A Yes.

7 Q And you're certain about that?

8 A Yes.

9 Q So it's almost as though -- well, today you said
10 orange or red. Do you recall that in your statement you
11 said orange and you seemed pretty certain about that?

12 A Yeah. I'm sure it was -- it was orangish. The
13 light out there is sort of -- it's like the mercury vapor
14 lights so it sort of skews colors, but I was pretty sure
15 it was an orangish shirt.

16 Q Now, you said it's well lighted out there?

17 A It is well lit.

18 Q But it's not like daytime?

19 A No, it's not baseball stadium lit. You could
20 throw a football around, but --

21 Q Are there street lights?

22 A Yes.

23 Q But there's no street light that's directly --
24 that field's, basically, just an open grassy field, right?

25 A Yes, it is. It's surrounded by light, but out

LAWRENCE YATZECK-CROSS BY MR. CHAMBERS

1 in the middle of it, it gets darker.

2 Q Yeah. And on the other side of that is the
3 natural gas company and then Holly Oak Chemical, right?

4 A Yeah, and there's some apartments over there,
5 too.

6 Q But the apartments are to the right -- if you
7 were facing the field from your house, the apartments are
8 to the right of the field?

9 A Yeah, they're to the right of the field and the
10 companies are farther up.

11 Q They actually have a fence that goes around the
12 back portion of those, don't they?

13 A Yes, they do.

14 Q So, I mean, you couldn't just run through that
15 parking lot, you'd be stopped by the fence, right?

16 A Yeah. I didn't see them get as far as the
17 apartments. It looked like they were heading that way
18 when I saw them.

19 Q And you indicated -- I mean, you couldn't tell
20 anything about what these individuals looked like other
21 than what you said about what they were wearing?

22 A No.

23 Q You couldn't see anything that they might have
24 had in their hands?

25 A No. I saw that one of them dropped something

LAWRENCE YATZECK-CROSS BY MR. CHAMBERS

1 and I saw them double back to pick it up.

2 Q But you don't know what that thing was?

3 A No, I couldn't tell you exactly what it was.

4 Q All right. Did you ever go back outside again?

5 I don't mean ever, but I mean that evening after you heard
6 the gunshots?

7 A Yes. I walked out towards the sidewalk and
8 looked up the street where the gentleman was laying.

9 Q Other than those two people running through the
10 field, did you ever observe anybody else that may have
11 been departing the scene in any way?

12 A Those were the only two people I could see from
13 my deck.

14 Q When you said --

15 A Until the police arrived, actually.

16 Q When you said you heard footsteps, just based on
17 the sound alone, were you able to tell how many
18 individuals there were?

19 A No.

20 MR. CHAMBERS: That's all the questions I have
21 for you. Thank you.

22 THE WITNESS: Thank you.

23 MS. PAOLETTI: I don't have anything else for
24 Mr. Yatzeck. I ask that he be excused, Your Honor.

25 THE COURT: Any objection?

JAMES CASHION-DIRECT BY MS. SEAY

1 MR. CHAMBERS: No, Your Honor.

2 THE COURT: All right. Thank you. You are
3 released.

4 THE WITNESS: Thank you.

5 MS. SEAY: The State calls James Cashion.

6 JAMES CASHION, after being duly sworn,
7 testified as follows:

8 THE CLERK: Please have a seat. And will you
9 state your full name for the record?

10 THE WITNESS: James Edward Cashion, III.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MS. SEAY:

14 Q Good afternoon, Mr. Cashion. Where are you
15 employed?

16 A Holly Oak Chemical.

17 Q And how long have you been employed there?

18 A I've been a full-time employee since January the
19 1st, 2013.

20 Q And where is Holly Oak located?

21 A 305 West Jones Street.

22 Q What's your position there?

23 A I'm an environmental health and safety resource
24 manager.

25 Q Okay. And is Holly Oak equipped with security

JAMES CASHION-DIRECT BY MS. SEAY

1 cameras?

2 A Yes, it is.

3 Q Can you tell us how many you have and where
4 they're located?

5 A We actually have four camera systems that are
6 independent of each other. One on the main office, one on
7 our production facility, one on our truck maintenance bay
8 and one at our distribution center.

9 Q Were you asked to provide some footage from your
10 surveillance cameras to the Fountain Inn Police Department
11 --

12 A Yes, I was.

13 Q -- back in October --

14 A Yes.

15 Q -- 2013?

16 A Yes.

17 Q Did you do that?

18 A Yes, I did.

19 Q I'm going to show you what has been marked as
20 State Exhibits 14, 15 and 16. I want you to look at
21 these. And ask if you recognize those?

22 A Yes, this exhibit is my personal zip drive that
23 we use for the footage from the main office.

24 Q Okay.

25 A And these two drives were provided to me by the

JAMES CASHION-DIRECT BY MS. SEAY

1 Fountain Inn Police Department to take footage off two of
2 the other cameras, one being at our production facility
3 and one at our distribution warehouse.

4 Q All right. And this is State's Exhibit 3, do
5 you recognize that?

6 A Yes, this is a CD that it was copied to. And I
7 viewed the footage on there and it is accurate.

8 Q Okay. So, this contains an accurate and true
9 representation of what was on this USB drive?

10 A Yes.

11 MS. SEAY: Your Honor, I'd offer this into
12 evidence at this time.

13 THE COURT: Any objection?

14 MR. CHAMBERS: No, Your Honor.

15 THE COURT: Okay.

16 (WHEREUPON, State's Exhibit No. 3 was marked for
17 identification and received into evidence.)

18 BY MS. SEAY:

19 Q Mr. Cashion, you talked about that you have the
20 three different systems. And it's my understanding that
21 your time stamp on those three systems was not exactly the
22 same; is that correct?

23 A That is correct. They're not all connected into
24 the internet. They're independent, so there is a slight
25 discrepancy between them.

JAMES CASHION-DIRECT BY MS. SEAY

1 Q Okay. Did you make any alterations or changes
2 to the surveillance that you provided to the Fountain Inn
3 Police Department?

4 A No, I did not. It's directly off of the hard
5 drive.

6 MS. SEAY: Thank you. Please answer any
7 questions Mr. Chambers has.

8 MR. CHAMBERS: I don't have any questions, Your
9 Honor.

10 THE COURT: All right. Thank you, sir. You may
11 step down. You are released from subpoena.

12 THE WITNESS: Thank you.

13 MS. SEAY: The State calls Richard Firpo.

14 RICHARD FIRPO, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please have a seat.

17 THE COURT: Just hang on for a second.

18 Tell you what, ladies and gentlemen, if you need
19 to stand and stretch, why don't you go ahead and do
20 that.

21 Okay. All right.

22 THE CLERK: Please state your full name for the
23 record.

24 THE WITNESS: Richard Ronaldo Firpo, Jr.

25 THE CLERK: Thank you.

RICHARD FIRPO-DIRECT BY MS. SEAY

DIRECT EXAMINATION

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BY MS. SEAY:

Q Mr. Firpo, will you tell the jury your full name
one more time, please?

A Richard Ronaldo Firpo, Jr.

Q Thank you. Where are you currently employed?

A (indiscernible.)

Q And were you a former employee of Holly Oak
Chemical?

A I was.

Q How long were you employed there?

A A year and a half or so.

Q Were you employed there back in October of 2013?

A Yes.

Q What was your position there?

A Chemical operator.

Q Let me direct your attention back to October 1st
of 2013, were you working at night that night?

A I was.

Q What were you doing?

A Taking a break.

Q Okay. Did anything draw your attention that
evening?

A Gunfire.

Q Please describe what happened.

RICHARD FIRPO-DIRECT BY MS. SEAY

1 A Well, we went to take a smoke break after
2 working for a little while and about the time we sat down
3 and lit our cigarettes, we suddenly heard a lot of
4 gunshots. So, I immediately jumped up, went to run and
5 check to see if the front gate was closed because we had
6 drivers coming in and out all night long.

7 So, I saw that the gates were closed, but
8 then I started hearing some screaming, so I continued on
9 up and looked down towards where the screaming was coming
10 from. And when I did that, I saw a gentleman running like
11 in our direction. It was kind of dark in that spot, so I
12 couldn't really tell if he was hurt or what.

13 Q So, you saw someone running in your direction?

14 A Yeah, directly towards me.

15 Q Were you able to see what that person looked
16 like?

17 A No.

18 Q What did you do when you saw that person running
19 towards you?

20 A Like I said, I was trying to see if he was hurt
21 or not because the gunshots just happened. As I was
22 looking a little closer, I saw somebody else coming up
23 behind him. So, I couldn't tell if he was being chased or
24 what, so I immediately got out of the way and went and
25 took cover by the car.

RICHARD FIRPO-DIRECT BY MS. SEAY

1 Q When you saw the second person, were you able to
2 see anything about that person?

3 A No, not really.

4 Q Okay. Were these males or females, could you
5 tell us that much?

6 A Yes. Once they actually kept coming on up, I
7 eventually could tell they were two males.

8 Q Could you tell if they were white males or black
9 males?

10 A African-American.

11 Q Did they appear to be young or old, were you
12 able to tell that about them?

13 A Fast as they were moving, I would say young.

14 Q So, you moved out of the line of sight of these
15 folks?

16 A Yes.

17 Q Okay. And what would you say the lighting was
18 in the area where you were?

19 A It wasn't very good.

20 Q Okay. And I understand from Mr. Cashion's
21 testimony that there is some security cameras out there?

22 A There is.

23 Q Have you had an opportunity to come to the
24 solicitor's office and view some surveillance footage from
25 Holly Oak Chemical?

RICHARD FIRPO-DIRECT BY MS. SEAY

1 A I have.

2 Q Were you able to see some activity on the
3 surveillance video around the time of the incident that
4 we're talking about, what you just described?

5 A Yes.

6 Q Did you recognize anything in that time period?

7 A Yeah, everything that happened.

8 Q Okay. We're going to show that to you and ask
9 if you will tell us a little bit about what you see.

10 A Okay.

11 (WHEREUPON, a video was played.)

12 THE WITNESS: That's the gate I was making sure
13 that was closed. I hear the screaming and that's
14 when I started walking over there and saw the guy
15 coming up right behind him. And I would have been
16 like in the line of fire if he was chasing this
17 person, so that's when I took off. This guy comes
18 running up, turns the corner. He's over there kind
19 of hunched over, hands on his knees looking panicky.
20 And the second gentleman came up, turned the corner.
21 He was a lot calmer. I heard the first guy --

22 BY MS. SEAY:

23 Q Mr. Firpo, let me ask you this, after these two
24 guys came running past you, did you see either one of them
25 do anything beyond that?

RICHARD FIRPO-DIRECT BY MS. SEAY

1 A Yeah, after -- right after he was hunched over?

2 Q Yes, did you see him do anything?

3 A Yeah, he said something to the guy behind him.

4 Q What did you see him do?

5 A Took his shirt off.

6 Q Yeah, would you describe that?

7 A One guy took his shirt off and felt it and then
8 stashed something else. And then the second guy, I think
9 that it was, came running up and pulled his phone out and
10 made a phone call after the other guy had already taken
11 off again.

12 Q All right. And when we showed you the
13 surveillance video, did you see that on the surveillance
14 video as well?

15 A No. Just then?

16 Q Did we show you a camera view at the solicitor's
17 office? Were you able to see that?

18 A Yeah, I think so.

19 Q Let me show you this and see if you recognize
20 it.

21 A All right.

22 Q Is this a different view from what we just
23 looked at?

24 A Yeah, that's the corner that they turned. I
25 tried to take cover. It's a little less lit right there,

KENNY JARRETT-DIRECT BY MS. SEAY

1 also.

2 Q And did you see what you had described earlier?

3 A Yes.

4 Q Okay. Now, did you overhear some conversation?

5 A Yeah, I heard something, something gun. I
6 couldn't make out everything he said. That's when it was
7 solidified for me that they weren't running from the
8 problem, that they were the problem, whoever these two
9 guys were.

10 MS. SEAY: Okay. Thank you. Please answer any
11 questions Mr. Chambers might have for you.

12 MR. CHAMBERS: I don't have any questions for
13 this witness, Your Honor.

14 THE COURT: All right. Thank you, sir. You may
15 step down. You're released from subpoena.

16 MS. SEAY: The State calls Kenny Jarrett.

17 KENNY JARRETT, after being duly sworn,
18 testified as follows:

19 THE CLERK: Please have a seat. State your full
20 name for the record.

21 THE WITNESS: Kenneth Lee Jarrett.

22 DIRECT EXAMINATION

23 BY MS. SEAY:

24 Q Good afternoon, Mr. Jarrett. Where are you
25 employed?

KENNY JARRETT-DIRECT BY MS. SEAY

1 A Fountain Inn Natural Gas.

2 Q How long have you been employed with Fountain
3 Inn Natural Gas?

4 A Twelve years.

5 Q What's your position there?

6 A I'm assistant superintendent.

7 Q And were you employed there back in October of
8 2013?

9 A Yes, ma'am.

10 Q What position were you doing back in October of
11 2013?

12 A I was acting superintendent. Our superintendent
13 had just took another job.

14 Q So, you were acting superintendent back then.
15 Where is Fountain Inn Natural Gas located?

16 A 301 Jones Street, Fountain Inn.

17 Q Okay. And where is 301 Jones Street in
18 relationship to Holly Oak Chemical?

19 A Next door.

20 Q So, were you here just now when we were looking
21 at the surveillance from Holly Oak?

22 A Yes, ma'am.

23 Q So, you're next door to what we just saw?

24 A Yes.

25 Q Is your building equipped with security cameras

KENNY JARRETT-DIRECT BY MS. SEAY

1 as well?

2 A It is.

3 Q Were you called in on October 1st -- the evening
4 of October 1st, 2013, and asked to retrieve video
5 surveillance from your cameras at Fountain Inn Natural
6 Gas?

7 A I had a missed call on my phone. I did not come
8 in. I came in the following morning around 7:15 the next
9 morning, which, I guess, would have been October 2nd.

10 Q Okay. Were you able to pull that footage that
11 they asked you to?

12 A I was.

13 Q Did you see activity on your video surveillance
14 during the time period in question?

15 A Yes, ma'am.

16 Q Did you observe Officer Melissa Woods when she
17 pulled that video footage off onto a thumb drive?

18 A Yes, ma'am.

19 Q Did you alter that video surveillance in any
20 way?

21 A No, I did not.

22 MS. SEAY: All right. Thank you. Please answer
23 any questions that Mr. Chambers may have for you.

24 MR. CHAMBERS: No questions for this witness,
25 Your Honor.

SERI BARNES-DIRECT BY MS. PAOLETTI

1 THE COURT: All right. Thank you, sir. You may
2 step down. You're released from subpoena.

3 MS. PAOLETTI: Your Honor, the State calls
4 Officer Seri Barnes.

5 SERI BARNES, after being duly sworn,
6 testified as follows:

7 THE CLERK: Have a seat. Will you state your
8 full name for the record?

9 THE WITNESS: Seri Barnes.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MS. PAOLETTI:

13 Q Officer Barnes, will you tell the jury where
14 you're currently employed?

15 A I'm currently a deputy at the Anderson County
16 Sheriff's Office.

17 Q How long have you been with Anderson County?

18 A Approximately 15 months.

19 Q Where were you before Anderson County?

20 A I was a reserve officer with Pelzer Police
21 Department.

22 Q All right. And prior to that?

23 A I was with Fountain Inn Police Department.

24 Q All right. Were you with Fountain Inn in
25 October of 2013?

SERI BARNES-DIRECT BY MS. PAOLETTI

1 A Yes, ma'am.

2 Q All right. Will you tell the jury a little bit
3 about the training that you have in law enforcement,
4 please?

5 A Yes, ma'am. I have an Associate's Degree in
6 criminal justice with a minor in forensics. I completed
7 the required training for classroom law certification at
8 the South Carolina Criminal Justice Academy. I've had
9 several advanced training courses continuing education
10 courses since then regarding forensics, elder abuse,
11 victim services, active shooter training, etcetera.

12 Q What other specialized units are you with with
13 Anderson County currently?

14 A I'm currently a member of the K-9 tracking team
15 for Anderson County.

16 Q Let's go back and talk again about October of
17 2013. Will you tell the jury when you were working at
18 that time?

19 A Yes. I was on night shift October of 2013. We
20 worked from 7:00 p.m. to 7:00 a.m.

21 Q All right. And tell the jury about how many
22 officers -- or if you know, how many officers were working
23 out on the road in Fountain Inn that night?

24 A I believe there were three of us.

25 Q Did you respond to a report of a shooting that

SERI BARNES-DIRECT BY MS. PAOLETTI

1 night?

2 A Yes, ma'am.

3 Q Do you remember what time that call came out?

4 A I believe I was dispatched at approximately
5 22:50 or 10:50 p.m.

6 Q And where were you when you got that call?

7 A I was driving southbound on Fairview at the
8 corner of Woodside Avenue. Eastbound Fairview.

9 Q There's a map up here. Let me get the
10 orientation right. That thing that looks like a pen in
11 front of you has a laser pointer on it. It's the top
12 small button on the side.

13 A Uh-huh.

14 Q All right. Can you show the jury where you were
15 when you got the call, please? Can you see?

16 A I would be traveling in on Fairview Street in
17 this direction. Right around there. Right at the corner
18 of Fairview and Woodside.

19 Q So, how long did it take you to get to Third
20 Street?

21 A Moments, 30 seconds or less.

22 Q Would you describe for the jury the size of the
23 blocks or the distance between First and Second Street and
24 Second and Third Street there on Woodside?

25 A It's very short. There's probably, maybe a

SERI BARNES-DIRECT BY MS. PAOLETTI

1 hundred yards. There's only several houses, just a few
2 houses from First Street to Second Street that face
3 Woodside Avenue. So, once you're on the corner of
4 Woodside and Fairview, the distance is -- from Fairview to
5 Third is maybe -- I wouldn't even say it's the distance of
6 a football field, maybe a little bit further.

7 Q All right. Will you describe for the jury what
8 was going on when you arrived at Woodside and Third,
9 please?

10 A Yes, ma'am. Shortly before I arrived at
11 Woodside and Third, I was flagged down on the corner of
12 Woodside and Second by a black female stating that I
13 needed to hurry up and get down to Woodside and Third
14 because her nephew had been shot. I got down to Woodside
15 and Third and saw a gathering of approximately eight
16 people, maybe a few more standing around the area between
17 Second, Third, kind of facing the same direction looking
18 at Woodside Avenue.

19 Q All right. And what did you do when you got
20 there?

21 A When I got there, it was -- everyone attempted
22 to run at me in order to tell me what had happened. It
23 was quite chaotic. People were in various stages of
24 crying, yelling, screaming. I drew my weapon at the low
25 ready and evaluated the scene to make sure there was no

SERI BARNES-DIRECT BY MS. PAOLETTI

1 one there that was an immediate threat to myself or others
2 on scene by brandishing a weapon or anything of that
3 nature.

4 Q All right. Did you check the status of the
5 victim at that time?

6 A I observed the victim, who was a black male
7 lying in the roadway near the corner of Third and
8 Woodside. At that time, he was lying on his right-hand
9 side, mostly on his stomach. There was a large pool of
10 blood forming around his head. At that time, I was
11 waiting for backup, so my main concern at that point was
12 officer safety and the safety of the public and everyone
13 standing around. It appeared to me based on his -- just
14 looking at him that there was no services that I could
15 render based on my training to him.

16 Q After you assessed the victim and determined
17 that, did you have backup on scene at that point?

18 A I did, yes. Sergeant Snelgrove arrived a few
19 moments later and then within moments -- we're a small
20 town, within moments, EMS was on scene, other officers
21 were on scene at that time.

22 Q All right. I'm going to show you -- what's
23 being projected right now is State's Exhibit No. 1. Are
24 you able to recognize that location based on that photo?
25 Let me switch to State's Exhibit No. 2, which actually has

SERI BARNES-DIRECT BY MS. PAOLETTI

1 the street sign if you're able to see that.

2 A Yes, ma'am.

3 Q Tell us what we're looking at there.

4 A I believe that is the corner of Woodside Avenue
5 and Third Street.

6 Q And that's where you responded?

7 A That's correct.

8 Q Did you make it a priority to secure the scene
9 at some point?

10 A Yes, ma'am, I did. Sergeant Snelgrove and I
11 began trying to back witnesses off from the scene. And
12 again, securing the scene by doing that and putting up
13 crime scene tape.

14 Q All right. Did you collect the identifying
15 information of all the people that were there?

16 A I collected the identifying information of
17 people that were there. All the people that were there,
18 I'm not sure.

19 Q Tell the jury how you would do that in a scene
20 like that.

21 A We, as officers, carry a small note pad on our
22 person. And I would -- that evening, I believe what I did
23 was go around and just start asking people their names,
24 their telephone numbers, their addresses, any of their
25 identifying information. Some people would just throw

SERI BARNES-DIRECT BY MS. PAOLETTI

1 information at me about what was going on at that time.
2 So I would write it down in my notebook and then transfer
3 it to a report later on.

4 Q All right. And did you at that time speak to
5 any witnesses who had been present for the shooting?

6 A At that time, I spoke with Joshua Kilgore, who
7 stated that he -- when I arrived on scene, he was the
8 second person that spoke with me, who told me that I
9 needed to hurry up because his cousin had been shot. I
10 also spoke with -- initially, the first female that I was
11 flagged down by was the victim's, I believe, aunt, who
12 stated that her nephew had been shot, Ms. Stephanie
13 Norman.

14 Q All right. And based on just speaking with the
15 witnesses that were there, did you have information about
16 the direction that the suspects had gone?

17 A I did. At that time, several witnesses -- and I
18 can't state exactly which ones at the time. Like I said,
19 as I began gathering information, people were just
20 throwing things at me. Several witnesses stated that
21 there were two black males that ran towards Woodside Park.

22 Q While you were out there on scene, would you
23 describe the grid search that you and the other officers
24 did?

25 A Throughout that evening, I can't necessarily

SERI BARNES-DIRECT BY MS. PAOLETTI

1 call it a grid search. The officers -- the detectives
2 that arrived and the officers that arrived as backup, we,
3 basically, did a search of the area.

4 Q Okay.

5 A We were all on high alert because the subjects
6 had not been apprehended at this time. So, we were all,
7 basically, looking in the area of the direction that the
8 witnesses stated that the subjects traveled and then, you
9 know, the areas directly surrounding the crime scene.

10 Q All right. Did you speak to other neighbors or
11 potential witnesses?

12 A I did, yes. At that time, I spoke with an
13 employee at Holly Oak Chemical, who later gave a written
14 statement about observing two black males that had run
15 through the parking lot at Holly Oak Chemical. And I also
16 spoke later on with Ms. Norman, the victim's aunt, who
17 spoke about what had happened earlier in the day between
18 the victim and other family members.

19 Q All right. Were you assigned to do any
20 followup?

21 A I was not.

22 Q All right. So, you arrived on scene, again,
23 about what time?

24 A Right about -- within moments of the call at
25 10:50 p.m., 10:51 or less -- or later.

SERI BARNES-CROSS BY MR. CHAMBERS

1 Q And at some point, did you go back to the office
2 or back in service that night?

3 A I did. It was approximately 4:00, 4:30 in the
4 morning to write my report.

5 Q All right. Let's talk about what you did at
6 4:00 or 4:30. You went to the office and wrote a report?

7 A That's correct, I did.

8 Q All right. And after you finished that, what
9 did you do?

10 A I went to the autopsy of the victim at
11 approximately 9:30 in the morning at Greenville Memorial
12 Hospital.

13 Q Is that protocol for a member of that agency to
14 go and attend the autopsy of a homicide victim?

15 A It is.

16 Q Was there a member of forensics there as well to
17 collect any evidence from the victim?

18 A Yes, there was.

19 Q Was that the extent of your work on this case?

20 A Yes, it was.

21 THE COURT: Any other questions?

22 MS. PAOLETTI: No, sir, Your Honor.

23 THE COURT: Cross?

24 CROSS-EXAMINATION

25

SERI BARNES-CROSS BY MR. CHAMBERS

1 BY MR. CHAMBERS:

2 Q So, you were the very first officer that arrived
3 on scene?

4 A Yes, sir.

5 Q And when you got there -- I mean, you said,
6 basically, everybody came running at you and you even --
7 to the point that you put your sidearm at the low ready
8 position. And if I understand, that, basically, just
9 means you took it out of the holster and you held it down;
10 is that right?

11 A That's correct.

12 Q And that's just in case -- I mean, obviously,
13 you don't want somebody running up on you with a gun, you
14 want to protect yourself, you want to be ready?

15 A Yes.

16 Q Okay. And that's standard procedure, any
17 officer in that situation would probably do that; is that
18 correct?

19 A I can't speak to what other officers would do,
20 but that's what I did.

21 Q Okay. How long -- and the next officer that
22 came was Kilgore?

23 A No, the next officer that came was Sergeant
24 Snelgrove.

25 Q Oh, Snelgrove. I'm sorry, that's my fault.

SERI BARNES-CROSS BY MR. CHAMBERS

1 Snelgrove. And how long did it take before he got there?

2 A I couldn't say exactly, but it was a very short
3 period of time.

4 Q And did officers start -- did other officers
5 start to arrive -- and, generally speaking, how long did
6 it take before other officers started to arrive?

7 A It was just several minutes at the most before
8 Sergeant Snelgrove arrived. Then after that,
9 everything -- I couldn't -- I cannot recall for sure how
10 long, but not very long at all. Other officers,
11 typically, arrive very quickly because we were such a
12 small agency.

13 Q Okay. Do you know how many officers in total
14 came out there?

15 A I do not.

16 Q Do you know who the first detective to arrive
17 was?

18 A I do not.

19 Q Did you give a status update or anything to any
20 detective that evening?

21 A I don't recall.

22 Q You don't recall talking to a detective?

23 A I do not recall. I would have probably given
24 that information to the sergeant, my sergeant that arrived
25 and he would have passed that information on.

SERI BARNES-CROSS BY MR. CHAMBERS

1 Q So, it would have passed from you through
2 somebody who wasn't there when you first got there and
3 then to the detectives?

4 A Most likely.

5 Q Do you even know what detectives came out there?

6 A Yes, I know that Detective Peden was out there
7 at that time.

8 Q Uh-huh. Did you do anything before other
9 officers arrived to secure the scene or to secure the
10 people that were present or anything like that?

11 A Before other officers arrived, I began to --
12 once I established that there was no immediate threat to
13 myself or anyone else at the scene, I began to terry frisk
14 members of the people that were on scene in the crowd to
15 make sure that no one had a weapon that I could feel or
16 see and I started backing people off from the scene. The
17 scene, meaning there were many people crowded around the
18 victims -- the victim who was lying on the ground.

19 Q And you listed in the report that you prepared
20 several people that you talked to; is that correct?

21 A There are several people that are listed as
22 witnesses, that would be information that I have took down
23 as far as simply names and addresses and phone numbers.
24 And then yes, within the narrative of the report, there
25 were a couple of people I actually spoke with about

SERI BARNES-CROSS BY MR. CHAMBERS

1 details.

2 Q So, in listing these people, you didn't
3 necessarily talk to all of them?

4 A Well, I talked to them to get their name,
5 address and phone number, but to the extent of what
6 happened on the scene detail-wise, no.

7 Q Okay. And in your report on the part on the
8 front page that says event, you list two times. The first
9 being 22:48, which would be 10:48 p.m., correct?

10 A That's correct.

11 Q So, is that the actual time that you arrived on
12 scene?

13 A No. Usually, we would put -- I would put in my
14 report the event -- the incident date and time. So, the
15 incident date was October 1st. The time would be the time
16 that the crime occurred. So, just a couple moments before
17 I actually got the call.

18 Q Okay. Do you just guess at that number or do
19 you deduce it from events? I mean, that's a pretty
20 specific number, 22:48.

21 A That's correct. Usually -- it was because I was
22 dispatched at approximately 22:50. I can't recall if I
23 asked dispatch at that time when the call came into them
24 or if I got that from a witness at the scene.

25 Q So, it would be for sure then that the shooting

SERI BARNES-CROSS BY MR. CHAMBERS

1 occurring sometime before 22:48?

2 A To the best of my knowledge.

3 Q All right. Then 4:05 would be the time that you
4 departed?

5 A That's correct.

6 Q And that also seems to be a fairly precise
7 number, so I would imagine that you looked at your watch
8 or some other device that gives time when you were writing
9 your report?

10 A Usually, we'll ask dispatch for our times that
11 we arrived on scene and our times that we cleared.

12 Q Okay. You said that you -- you talked to Joshua
13 Kilgore?

14 A That's correct.

15 Q Did you do anything other than get his name and
16 address?

17 A At the time, Joshua Kilgore stated -- when I
18 arrived on scene, Joshua Kilgore was the first person that
19 I spoke with after the female that had flagged me down and
20 told me to hurry up and get down another few feet. Joshua
21 Kilgore is the one -- he stated to me that he was on the
22 phone with 911 and I needed to hurry up because his cousin
23 had been shot.

24 Q So, he was on the phone with 911 even though you
25 had already been dispatched there at that point?

SERI BARNES-CROSS BY MR. CHAMBERS

1 A I can't recall if he was on the phone at that
2 time. In my report, I stated that he was on the phone
3 with 911 and that I needed to hurry up.

4 Q Did you field interview him or are those just
5 things he volunteered to you?

6 A Those are things that he volunteered to me.
7 It's not uncommon for a complainant, the person that calls
8 911, to remain on the phone --

9 Q Okay.

10 A -- while officers and EMS are enroute to the
11 scene.

12 Q But did you field interview him? Did you try to
13 get any information from him?

14 A I do not believe that I did.

15 Q So, you -- what about James Anthony Wright, did
16 you field interview him?

17 A I don't recall.

18 Q And when you list somebody as a witness, does
19 that mean that they actually saw or heard something?

20 A No, it doesn't.

21 Q Okay. So what's the reason for listing them as
22 a witness?

23 A I try to gather as much information as I can
24 about people that were even standing on the scene at the
25 time.

SERI BARNES-CROSS BY MR. CHAMBERS

1 Q Okay. But if they're listed here, they were
2 certainly on the scene when you got there?

3 A They were on the scene at the time I started
4 collecting witness information.

5 Q And do you feel like that you talked to
6 everybody that was on the scene when you started gathering
7 information or is there somebody you didn't talk to?

8 A I believe that when I began gathering
9 information, everyone that I could see that was within my
10 field of vision, I got their information.

11 Q Okay. And that was all you were trying to do is
12 get their information?

13 A That's correct.

14 Q So, you spoke to Dameon Evans? You can refer to
15 your report. I see that you have it right there in front
16 of you.

17 A Okay. I do. Yes, if their name is listed on
18 this report, then it's most likely that I was the one that
19 took down their name, telephone number and address.

20 Q Did you field interview him?

21 A Not that I recall.

22 Q Lacy Sweet, did you talk to her?

23 A I did.

24 Q Did you field interview her?

25 A In my report, it states that I spoke with

SERI BARNES-CROSS BY MR. CHAMBERS

1 Ms. Sweet. There were several of these witnesses that I
2 didn't necessarily field interview, but they just started
3 giving me information. As I was asking them their name,
4 address, telephone number, they maybe made -- they may
5 have made statements to me that I wrote down next to their
6 name, address and phone number that I added to my report.
7 So yes, Ms. Sweet, I did get a little bit more information
8 from.

9 Q Did she give you a written statement?

10 A She stated that she would provide a written
11 statement at a later date and time.

12 Q But she did not provide that to you?

13 A She did not.

14 Q Did you speak to a Latiffany Sullivan?

15 A I believe so.

16 Q Did you interview her?

17 A No.

18 Q Okay. How about Wilson Dewberry, did you talk
19 to him?

20 A I believe I got his information.

21 Q But no interview?

22 A No. Officer Jackson field interviewed several
23 of these subjects.

24 Q Okay. How about Brian Brown, did you talk to
25 him?

SERI BARNES-CROSS BY MR. CHAMBERS

1 A I obtained his personal information.

2 Q Kadonna Moseley, did you speak to her?

3 A Yes, I did.

4 Q How about Braxton Bailey?

5 A Yes.

6 Q Okay. You already said you spoke to Stephanie

7 Norman?

8 A That's correct.

9 Q Christopher Pearson?

10 A Yes, he was an employee of Holly Oak Chemical.

11 Q And Shamar Luster, do you remember talking to
12 him?

13 A Shamar Luster?

14 Q Yeah, look on Page 3 of 4 of your report, listed
15 as witness number 12.

16 A Yes.

17 Q Do you remember if you got any kind of statement
18 from Mr. Luster?

19 A I don't believe I did.

20 Q And, finally, Jimmy Johnson, did you talk to
21 him?

22 A That's a female, and yes, I did.

23 Q Oh, okay, that's a female. Did she give you a
24 statement?

25 A Well, at the time, she did not provide a written

SERI BARNES-CROSS BY MR. CHAMBERS

1 statement, but she did state that there was a suspicious
2 vehicle on the street earlier that day that had hit her
3 fence. She stated she would provide a written statement
4 later.

5 Q And you said you began to secure the scene, what
6 did you do in that regard?

7 A At that time, Sergeant Snelgrove was already
8 there putting up crime scene tape. I was backing the
9 witnesses and other people that were on scene just away
10 from the victim who was lying in the street. And I
11 believe I began securing crime scene tape also with
12 Sergeant Snelgrove.

13 Q All right. What's the significance, if you
14 know, of that cup that's on the sidewalk?

15 A I don't know.

16 Q You don't know? Was that something that was
17 there or was that placed there by police?

18 A I don't know.

19 Q Okay. And the Solicitor asked you about doing a
20 grid search and you said you didn't do a grid search. Was
21 there not a time when all of the officers that were there
22 lined up and started to walk across the field in the
23 direction of where the two people that people had seen
24 flee the scene and walk across that field?

25 A I don't recall exactly how the search began, if

SERI BARNES-CROSS BY MR. CHAMBERS

1 we have all lined up or if we all just went looking.

2 Q So, you -- there's a possibility that y'all just
3 kind of haphazardly started looking around the field as
4 opposed to lining up to do a grid search to cover the
5 entire area, is that what you're saying?

6 A I'm saying I don't recall how it was formed.

7 Q Okay. Well, you know, you got off at 4:05 and
8 you went back and immediately wrote a report. You didn't
9 put any of that in your report about what you did in that
10 regard?

11 A I did not.

12 Q I mean, looking for evidence after you've
13 secured a scene, that's a pretty important step for a
14 police officer, would that be fair to say?

15 A That's correct. At this point, I do recall we
16 were more concerned with looking for subjects than looking
17 for evidence at that time. I was standing fairly close by
18 to another officer, so we were being instructed that
19 victims -- that witnesses had stated that subjects had
20 gone in certain directions, so that's where our focus was.

21 Q But do you recall, you know, securing that
22 entire area? Not just the area around where Mr. Norman's
23 body lay, but also that field and the area around Holly
24 Oak Chemical and all those places, did you secure those
25 areas?

SERI BARNES-CROSS BY MR. CHAMBERS

1 A As far as putting up crime scene tape?

2 Q Well, yeah. I mean, I would assume that since
3 all of that was indicated to be part of the crime scene
4 because we've got where the shooting occurred and we've
5 got where the assailants allegedly fled to, that it would
6 be fair to assume that you might find evidence anywhere in
7 those areas, would it not?

8 A That would be true.

9 Q And one of the things that you do as a police
10 officer, especially when you first respond is to make sure
11 that you are securing the entire crime scene in order to
12 promote evidence gathering?

13 A True.

14 Q So, what I'm asking is did you -- I realize
15 that's a big area --

16 A That's correct.

17 Q -- but that's also all part of the crime scene.
18 Did you secure all of that?

19 A I did not.

20 Q So, you don't remember whether there was a grid
21 search or just a random search, right?

22 A I do not recall.

23 Q What you recall is, frankly, being more
24 concerned about apprehending whoever the assailants were?

25 A Initially, I was -- my duties were to obtain

SERI BARNES-CROSS BY MR. CHAMBERS

1 personal information of the people that were on scene when
2 I arrived and that continued to arrive on scene as I was
3 interviewing -- as I was obtaining their personal
4 information. After that, I participated in looking for
5 subjects.

6 Q Well, you stayed there until 4:05 and then you
7 went back to the police station. So, I'm trying to figure
8 out what you did to go look for subjects?

9 A We followed the -- I followed the orders of my
10 sergeant, who stated that I needed to go with the other
11 officers to look for subjects.

12 Q But where did you go?

13 A I believe that where I was was off of Woodside
14 Avenue in the direction of Main Street. There are some
15 storage facilities and I remember being back behind there.

16 Q Did you put any of that in your report?

17 A I did not.

18 Q Okay. So, even though that's what you were
19 directed to do and it was a fairly important thing to be
20 doing, it wasn't important enough to make it into your
21 report?

22 A It did not make it into my report.

23 Q Did you find anything in those storage
24 facilities?

25 A Not that I recall.

SERI BARNES-REDIRECT BY MS. PAOLETTI

1 Q Okay.

2 MR. CHAMBERS: That's all the questions I have
3 for you. Thank you.

4 REDIRECT EXAMINATION

5 BY MS. PAOLETTI:

6 Q Did y'all receive any support from Greenville
7 County while you were out there?

8 A I believe we did.

9 Q All right. Thank you.

10 MS. PAOLETTI: I don't have anything else for
11 this witness, Your Honor.

12 THE COURT: All right. Thank you. You may step
13 down. You're released from subpoena.

14 MR. CHAMBERS: No objection, Your Honor.

15 THE COURT: Okay.

16 Ladies and gentlemen, let's just take a short
17 break. We'll get right back to you. Don't discuss
18 the case. All right. Thank you.

19 (WHEREUPON, the jury left open court at
20 approximately 4:40 p.m.)

21 THE COURT: All right. Anything before we
22 break?

23 MS. PAOLETTI: Your Honor, the next witness that
24 we have to call is the forensics officer who
25 processed the scene and his testimony is going to be

SERI BARNES-REDIRECT BY MS. PAOLETTI

1 lengthy. There's a video, several pieces of evidence
2 that we intend to introduce through him.

3 MR. CHAMBERS: Let's start back in the morning,
4 Your Honor. It's a quarter to 5:00. It's a good
5 time to break.

6 THE COURT: It's a brave new world, isn't it?

7 MS. PAOLETTI: I know, Judge. I know what
8 you're thinking. Your Honor, we will come tomorrow
9 with a lineup ready to go.

10 THE COURT: So, your next witness is who?

11 MS. PAOLETTI: He's Dustin Kretschmar with the
12 Department of Public Safety Forensics Division.

13 THE COURT: Well, I can't remember a case taking
14 five days, so we're going to make sure it doesn't.

15 MS. PAOLETTI: Yes, sir.

16 THE COURT: All right. Bring the jury back.

17 (WHEREUPON, the jury came into open court at
18 approximately 4:44 p.m.)

19 THE COURT: All right. Mr. Foreman, ladies and
20 gentlemen of the jury, I understand that the next
21 witness will be fairly lengthy, so we're going to
22 relent for the night. I ask y'all to be back at 9:30
23 in the morning.

24 Now, y'all have heard some parts of this case
25 and it's got to be very tempting to discuss it or to

SERI BARNES-REDIRECT BY MS. PAOLETTI

1 go visit the scene or something along those lines. I
2 can't decide what to have for dinner without
3 discussing it with my wife, so in a weighty decision
4 like this, I know you all would like to seek the
5 advice of people you trust, but you can't do that.
6 It wouldn't be fair to the parties involved in this.
7 It wouldn't be fair to your fellow jurors. And it
8 would not be fair to yourselves to allow someone
9 outside of this courtroom, who's not making the
10 sacrifices that you're making, who's not listening to
11 the evidence and the law as I'll give it to you to
12 have any input in the outcome of this case. So, as
13 tempting as it might seem, don't do it. This case
14 belongs to you and no one else.

15 All right. We will see you in the morning at
16 9:30. Thank you.

17 (WHEREUPON, the jury left open court at
18 approximately 4:49 p.m.)

19 THE COURT: Okay.

20 (WHEREUPON, the proceedings were concluded for
21 the day to be reconvened on June 12, 2016.)
22
23
24
25

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

July 12, 2016

(WHEREUPON, State's Exhibits Nos. 19-31 were marked for identification only.)

THE COURT: All right. Anything before we bring the jury in?

MS. PAOLETTI: No, sir, Judge.

MR. CHAMBERS: No, Your Honor.

THE COURT: All right.

(WHEREUPON, the jury came into open court at approximately 9:50 a.m.)

THE COURT: All right. Ladies and gentlemen, welcome back and we are ready to begin the trial again.

All right, Ms. Paoletti.

MS. PAOLETTI: Ms. Seay's witness, Your Honor.

THE COURT: Ms. Seay.

MS. SEAY: Thank you, Your Honor, the State calls Officer Dustin Kretschmar.

THE COURT: Okay.

DUSTIN KRETSCHMAR, after being duly sworn, testified as follows:

THE CLERK: Please have a seat. State your name for the record.

THE WITNESS: Dustin Kretschmar.

DIRECT EXAMINATION

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 BY MS. SEAY:

2 Q Officer Kretschmar, where are you employed?

3 A Greenville County Forensics.

4 Q How long have you been employed as Greenville
5 County Forensics?

6 A Five and a half years.

7 Q And what are your duties there at forensics?

8 A We respond to crime scenes to document and
9 collect evidence.

10 Q What's your training and education to perform
11 those duties?

12 A I've been in law enforcement for seven and a
13 half years. Two of those on the road as an officer. And
14 within that timeframe, I've gone through training classes,
15 including forensics photography, shooting reconstruction,
16 bloodstain pattern analysis, arson investigation. And
17 then we have several in-house training sessions that cover
18 various crime scene processing topics.

19 Q Were you working in your current capacity back
20 in October of 2013?

21 A Yes, ma'am.

22 Q Did you process the crime scene at Third Street
23 and Woodside in Fountain Inn in Greenville County?

24 A Yes, ma'am.

25 Q What date did you do that?

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 A On October 1st of 2013.

2 Q Did you make any observations about that scene
3 when you arrived?

4 A When I arrived on scene, there were several
5 emergency vehicles lining the streets. And, also, the
6 section between Third Street and Fourth Street along
7 Woodside Avenue was sectioned off with crime scene tape.

8 When I actually got onto the scene, there
9 were several items that were marked with white styrofoam
10 cups. I made contact with Detective Peden and he advised
11 that he marked those items with the cups and items of
12 interest. Going further into the scene, there was also a
13 pool of suspected blood at the corner of Woodside Avenue
14 and Third Street. And, also, around the corner on Third
15 Street, there was a white vehicle with a smashed rear
16 windshield and the rear passenger window was partially
17 smashed as well.

18 Q Did you locate any shell casings?

19 A Yes, ma'am.

20 Q Where did you locate those shell casings?

21 A They were in between Third Street and Fourth
22 Street along Woodside Avenue along the sidewalks and
23 partially into the street, into the roadway.

24 Q Did you make any observations about the distance
25 of the shell casings as far as where they were located in

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 proximity to the suspected blood?

2 A Yes, ma'am. It appeared that all the shell
3 casings were about three-fourths of a block away from the
4 suspected blood. However, there were two distinct groups
5 of shell casings. One being 9mm shell casings that were
6 further away from the suspected blood, and then four
7 45-caliber shell casings that were closer to the suspected
8 blood.

9 Q Okay. I'm going to show you some items and ask
10 you if you recognize them. This is State's Exhibit 6,
11 this is item DK-1. State's Exhibit 7, this is item DK-2.
12 State's Exhibit 8, this is item DK-3. State's Exhibit 9,
13 this is item DK-4. State's Exhibit 10, this item DK-5.
14 State's Exhibit 11, this is item DK-6. And State's
15 Exhibit 12, this is item DK-7. Can you look at these
16 items individually and tell me if you recognize them?

17 A Yes, ma'am, they're the cases I collected on the
18 scene.

19 Q How do you recognize those items?

20 A The labels that we put on the packaging indicate
21 that they're the casings. And I was the one that
22 collected them due to the initial that I put on the
23 packaging.

24 Q Can you tell us specifically where you collected
25 each of those shell casings?

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 A May I reference my report --

2 Q Yes.

3 A -- to get that information? DK-1 was a casing,
4 a 9mm casing located on the sidewalk next to Woodside
5 Avenue. DK-2 is another casing, 9mm, in the grass in
6 between the sidewalk and the roadway for Woodside Avenue.
7 DK-3 is a 9mm casing, also, in the grass between the
8 sidewalk and Woodside Avenue. DK-4 is the 45-caliber
9 casing in the roadway on Woodside Avenue. DK-5 and DK-6
10 were both 45-caliber casings in the dirt in between the
11 sidewalk and Woodside Avenue roadway. And DK-7 is another
12 .45 casing that was in the roadway on Woodside Avenue.

13 Q Okay. Were you asked to go to another location
14 in reference to this case to collect some evidence?

15 A Yes, ma'am.

16 Q And where was that?

17 A That was at Fountain Inn Natural Gas.

18 Q Okay. What did you do there?

19 A There was a sweatshirt and a firearm that was
20 located that I documented and collected.

21 Q Okay. This is item DK-8, can you tell me if you
22 recognize this?

23 A Yes, ma'am, it's a black, long-sleeve
24 sweatshirt.

25 Q And how do you recognize this item?

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 A Due to the label that was placed on the
2 packaging and my initials on the evidence label.

3 Q Okay. And does the evidence label indicate
4 what's contained in this package?

5 A Yes, ma'am.

6 Q I'm just going to place this right here for a
7 moment. This is State's Exhibit 18, do you recognize this
8 item?

9 A Yes, ma'am.

10 Q What is this?

11 A It's a firearm I collected on scene.

12 Q Okay. And will you open this item and tell me
13 if you recognize it?

14 A Yes, ma'am.

15 Q What's contained in there?

16 A It is one firearm with a magazine and live
17 rounds.

18 Q Okay. And this is the item that you collected
19 on the scene?

20 A Yes, ma'am.

21 Q Can you tell us where you collected that?

22 A I collected it at the Fountain Inn Natural Gas
23 building at 301 West Jones Street just outside the fence,
24 I believe on the south corner of the building.

25 Q Let me show you a couple more items, and ask you

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 did you do any further processing of the gun and the other
2 items contained in this box?

3 A Yes, ma'am. I processed the handgun for
4 potential DNA by taking swabs of the grip and the trigger
5 on the handgun.

6 Q And is that standard protocol for forensics to
7 do that kind of processing?

8 A Yes, ma'am.

9 Q Will you please describe what you did in this
10 case?

11 A In this case, I took a swab of the grip on all
12 four sides and then also a swab of the trigger.

13 Q And do you recognize the items that I showed you
14 there?

15 A Yes, ma'am.

16 Q How do you recognize those?

17 A Two of them are the potential DNA swabs that I
18 just described from the grip and the trigger on the gun.
19 The other two swabs are potential DNA swabs from item
20 DK-8, which is the black sweatshirt. I noticed an unknown
21 substance on both the front and back of the shirt. In an
22 effort to preserve that item, I took a swab of both the
23 front and back of the shirt.

24 Q Okay. And tell us about swabbing for DNA. Are
25 you always able to get a good DNA sample when you take a

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 swab from something like a gun or a sweatshirt?

2 A No, ma'am. It depends on a lot of variables.
3 Those variables include where the item is, whether it's
4 inside or outside, what the whether conditions are, cold
5 or hot. It also has to do with the texture and materials
6 that the substance is on, whether it's a rough surface or
7 a smooth surface. A big factor is also the length and the
8 strength that the individual holds the item or presses
9 down on the item.

10 Q And in this case, you testified, I think, that
11 you found both the sweatshirt and the gun outside; is that
12 correct?

13 A Yes, ma'am.

14 Q What did you do with all of the evidence that
15 you collected in this case?

16 A I placed them in bags and transported them back
17 to the crime scene office, where, at that time, I put them
18 in the secured storage locker. Then at a later date, I
19 collected the swabs from both the gun and the black shirt,
20 then packaged all those items transported them to our
21 property and evidence section.

22 Q Does your name appear on these property and
23 evidence sheets?

24 A Yes, ma'am.

25 Q What does that indicate?

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 A That shows the chain of custody that each item
2 goes through. Because I'm the one that collected them on
3 scene, I start the chain of custody, then it gets scanned
4 from one person to the next. So, whoever obtains the
5 items gets scanned into the chain of custody to show who
6 has possession of the item.

7 Q Okay. Let's talk about item DK-7, State's
8 Exhibit 12. You've already identified this item that you
9 recognize it as a shell casing that you collected. Tell
10 us again what that is.

11 A This is a shell casing that was collected on
12 scene. It's one of the 45-caliber shell casings.

13 Q Was there an issue with the storage and
14 transportation of that particular shell casing?

15 A Yes, ma'am. I collected the item on scene and
16 transported it back to the crime scene office. At some
17 point between when I exited my truck and to the front
18 entrance of our crime scene office, the item dropped out
19 of the bag and was later located by another technician.

20 Q And what happened after it was located by the
21 other technician?

22 A The technician notified his supervisor, who, in
23 turn, notified my supervisor. And I verified -- I went
24 down to my secured storage locker. The bag that I had
25 transported it in was down there, but there was no shell

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 casing. Through pictures, my supervisor noted that it was
2 a very similar cell casing and most likely the one that
3 was in this bag. And then that item was transferred back
4 to my custody and I packaged it up and placed it in
5 property and evidence.

6 Q And was this an obvious concern to you that this
7 had happened?

8 A Yes, ma'am.

9 Q What did you do as a result of that?

10 A I was given a written warning for the
11 mishandling of the evidence. And then on top of that, I
12 currently have changed my -- the way I transport and
13 package evidence, which includes I used to crease the bags
14 in an attempt to secure the item in transport. Now, I not
15 only crease them, but I also place evidence tape, a piece
16 of evidence tape over the crease to make sure that it's
17 secured during transport.

18 Q Thank you, Officer Kretschmar. Did you also
19 take photographs in this case?

20 A Yes, ma'am.

21 Q Did you take photographs of all of the evidence
22 and of the scene in this case?

23 A Yes, ma'am.

24 Q Did you also make a video of the scene in this
25 case?

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 A Yes, ma'am. Another technician, Parker,
2 responded to the scene as well, and he helped me with the
3 video of this case.

4 Q And did you supervise the making of that video?

5 A Yes, ma'am.

6 Q Let me show you State's Exhibit 17, did you
7 review this crime scene video?

8 A Yes, ma'am.

9 Q Okay. And these are photographs, would you tell
10 us if you've reviewed those photographs?

11 A Yes, ma'am.

12 Q Okay.

13 A I reviewed them.

14 Q Is the crime scene video of the photographs true
15 and accurate representations of the scene that you
16 observed that night?

17 A Yes, ma'am.

18 MS. SEAY: Your Honor, I'm going to offer DK-1,
19 DK-2, DK-3, DK-4, DK-5, DK-6, DK-7, DK-8, and DK-10
20 into evidence at this time and request the Court's
21 permission to publish the photographs and the crime
22 scene video?

23 MR. CHAMBERS: No objection, Your Honor.

24 THE COURT: Okay.

25 MS. SEAY: And for the record, the exhibit

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 numbers for the photographs are State's Exhibit 19,
2 State's Exhibit 20, 21, 22, 23, 24, 25, 26 and 27.
3 And the video is State's Exhibit 17.

4 (WHEREUPON, State's Exhibits Nos. 6-12 were
5 marked for identification and received into
6 evidence.)

7 (WHEREUPON, State's Exhibit No. 17 was marked
8 for identification and received into evidence.)

9 (WHEREUPON, State's Exhibits Nos. 19-27 were
10 admitted into evidence.)

11 (WHEREUPON, State's Exhibits Nos. 13-16 were
12 marked for identification only.)

13 BY MS. SEAY:

14 Q Can you tell us what this is, Officer
15 Kretschmar?

16 A That's a photograph of the four, .45 casings
17 found on scene on Woodside Avenue.

18 Q And the styrofoam cups, were those put for
19 placement of the casings?

20 A Those were to mark the location of the casings.

21 Q And State's Exhibit 20?

22 A That's a photograph of the three, 9mm casings
23 found on scene.

24 Q State's Exhibit 21?

25 A That's an overall photograph of both areas of

DUSTIN KRETSCHMAR-DIRECT BY MS. SEAY

1 cases, both the 9mm and 45mm casings.

2 Q And State's Exhibit 22?

3 A This is walking further up Woodside Avenue
4 towards Third Street.

5 Q This is No. 23.

6 A This is item DK-8, the black sweatshirt that was
7 at Fountain Inn Natural Gas inside the fence line.

8 Q This is Exhibit 24.

9 A This is one of the .45 casings that was located
10 on the scene.

11 Q State's Exhibit 25.

12 A This is item DK-9, the firearm that was located
13 just outside the fence line.

14 Q And this is State's Exhibit 26, if you can tell
15 us what we're looking at.

16 A This is also item DK-9, just an overall shot
17 showing the fence and the placard in relationship to the
18 fence.

19 Q And this is State's Exhibit 27.

20 A This is the firearm that was collected on scene,
21 made safe with the bullet in the -- or the live round in
22 the chamber above the firearm, and then the magazine which
23 held four live rounds to the right of the magazine.

24 Q Thank you, Officer Kretschmar.

25 (WHEREUPON, a video was played.)

DUSTIN KRETSCHMAR-CROSS BY MR. CHAMBERS

1 MS. SEAY: Thank you, Officer Kretschmar.

2 Please answer any questions that Mr. Chambers may
3 have for you.

4 CROSS-EXAMINATION

5 BY MR. CHAMBERS:

6 Q It appears that the crime scene was already
7 marked off for you before you got out there; is that
8 correct?

9 A They had placed the white styrofoam cups next to
10 items of interest, yes, sir.

11 Q And you didn't -- you didn't conduct any kind of
12 a search or notice anything?

13 A I did.

14 Q You did?

15 A Yes, sir.

16 Q Tell me about that.

17 A After I arrived on scene and got information,
18 then I did a strip search of the area within the crime
19 scene tape and slightly outside of the crime scene tape
20 just to extend it a little bit further.

21 Q Where was the crime scene tape?

22 A It sectioned off the block between Fourth Street
23 and Third Street.

24 Q And that's not a large block, correct?

25 A No, sir.

DUSTIN KRETSCHMAR-CROSS BY MR. CHAMBERS

1 Q And it looked like from those styrofoam cups, as
2 you said earlier, the closest shell casing that you found
3 to that stop sign was about three-quarters of a block
4 away?

5 A Approximately.

6 Q So, whoever was doing the shooting was a pretty
7 considerable distance, is that fair to say?

8 A I wouldn't say it's considerable distance, but
9 for shooting a handgun, it was a distance amount.

10 Q Was it closer or farther away than I am from you
11 right now?

12 A It would be further away.

13 Q How about to the wall back there?

14 A Maybe about to the wall.

15 Q So, from you to the wall is where somebody would
16 have been standing that shot that particular handgun?

17 A Yes, sir.

18 Q And you said you looked slightly beyond the
19 marked off crime scene. Tell me where you looked.

20 A I'd say where the crime scene tape was, extended
21 about 10, 15 feet out.

22 Q Out into the street?

23 A Beyond the crime scene tape into the street as
24 well.

25 Q But what about over into the grassy area and in

DUSTIN KRETSCHMAR-CROSS BY MR. CHAMBERS

1 around the house, did you do any kind of search there?

2 A No, sir.

3 Q Now, it appeared based on the fact that -- your
4 camera, did it have a light on it?

5 A The video camera?

6 Q Yes.

7 A No, sir, it was a flashlight that he was
8 holding.

9 Q So, you had to illuminate things with a
10 flashlight?

11 A Yes, sir.

12 Q It's fairly dark where the crime scene is
13 located, correct?

14 A Yes, sir.

15 Q The only light appeared to be across the street
16 where the mini warehouses were?

17 A Yes, sir.

18 Q Did you conduct any kind of search in the field
19 that's across the street from -- well, that borders
20 Woodside that is across the street from where those houses
21 are, did you do any kind of search there?

22 A No, sir.

23 Q And it didn't appear that anybody had located
24 anything there and marked it with a styrofoam cup?

25 A Correct.

DUSTIN KRETSCHMAR-CROSS BY MR. CHAMBERS

1 Q So, essentially, what you did was, you picked up
2 items that had been marked with a styrofoam cup and you
3 collected those?

4 A Yes, sir.

5 Q And that was seven shell casings, correct?

6 A Yes, sir. There was also a cell phone that
7 Detective Peden had collected.

8 Q Okay. Did you or do you know of anybody that
9 may have gone back out in the daylight hours to conduct
10 any kind of search of the marked off crime scene or beyond
11 that marked off crime scene?

12 A I'm not aware of it. I did not.

13 Q Is that something that you would ever do?

14 A Yes, sir.

15 Q But nobody asked you to do that in this case?

16 A No, sir.

17 Q Unless you get asked, you don't go do it, do
18 you?

19 A No, sir.

20 Q Were the police the ones who directed you across
21 the street to the gas company?

22 A Yes, sir.

23 Q Had they already located there the pistol and
24 the sweatshirt?

25 A Yes, sir.

DUSTIN KRETSCHMAR-CROSS BY MR. CHAMBERS

1 Q Okay. Had those also been marked with styrofoam
2 cups?

3 A No, sir.

4 Q Okay. No shell casings or anything found around
5 there?

6 A No, sir.

7 Q And, obviously, you don't know if there may have
8 been other shell casings out there at the scene other than
9 the ones that you found, do you?

10 A No, sir. I did do a systematic search of the
11 crime scene as mentioned before and I did not locate any
12 more shell casings within that area.

13 Q Okay. And both of those items that we talked
14 about, the sweatshirt and the 45-caliber pistol, were
15 lying on the ground?

16 A Yes, sir.

17 Q Okay. How close in proximity were they to one
18 another?

19 A I'm sorry?

20 Q Okay. How close in proximity were they to one
21 another?

22 A Fairly close. You had the sweatshirt that was
23 inside the fence, and then the gun was just outside the
24 fence, that same fence line.

25 Q Okay. So, they were on opposites side of the

DUSTIN KRETSCHMAR-CROSS BY MR. CHAMBERS

1 fence?

2 A Yes, sir.

3 Q But very close to one another?

4 A Yes, sir.

5 Q Now, let me ask you, the pistol -- and it looks
6 like from those pictures, you examined it pretty well?

7 A Yes, sir.

8 Q I mean, you took out the live round, you took
9 out the magazine, you actually had it opened up. Was it
10 lying on top of the surface or was it any way embedded in
11 the surface?

12 A In the grass where it was lying?

13 Q Yeah, yeah, or into the ground at all?

14 A I'd have to reference back to my photographs.

15 Q Well, let me ask you this, you didn't find any
16 dirt or anything clumped on the pistol anywhere, did you?

17 A No, sir.

18 Q I mean, not on the butt end of the pistol or in
19 the barrel?

20 A No, sir.

21 Q So, would it appear that someone had rather than
22 throwing it had probably just taken it and laid it down on
23 the ground?

24 A I could imagine someone also throwing it.

25 Depending on the ground that it was lying on, if you've

DUSTIN KRETSCHMAR-CROSS BY MR. CHAMBERS

1 got grass or brush or debris, someone could still throw
2 the item and there not be any dirt in the barrel or
3 something to that nature. Or they could have just laid it
4 down on the ground.

5 Q But it's consistent with somebody just laying it
6 on the ground; is that correct?

7 A Yes, sir.

8 Q You talked about taking those DNA swabs.

9 A Yes, sir.

10 Q Did you brush for fingerprints at all?

11 A No, sir.

12 Q Is that something that you do?

13 A Yes, sir.

14 Q What was your reason for not checking for
15 fingerprints?

16 A If DNA was a more likely source for potential
17 evidence, then we'd want to get the DNA over the
18 fingerprint processing because putting the powder or doing
19 fuming on a gun would destroy the DNA.

20 Q So, it's a lot easier to find DNA than it is
21 fingerprints?

22 A It depends on the type of gun and the surfaces
23 that you're working with.

24 Q Well, in this particular case, you favored
25 checking for DNA over checking for fingerprints?

DUSTIN KRETSCHMAR-CROSS BY MR.. CHAMBERS

1 A Yes, sir.

2 Q The more that you handle an item, is it more
3 likely that you would have DNA on that item?

4 A Yes, sir.

5 Q So, in other words, if I were the gun owner, if
6 I owned that .45, and I was the one that carried it
7 around, cleaned it, loaded it, had it in my position, I
8 would be the more likely -- it would be more likely that
9 my DNA would be on it rather than somebody who just picked
10 it up?

11 A Yes, sir.

12 Q You talked about how weather conditions and
13 temperature and things like that can effect the collection
14 of DNA. It wasn't raining that evening, was it?

15 A No, sir.

16 Q It wasn't -- it was an actually fairly moderate
17 temperature, is that fair to say?

18 A Yes, sir.

19 Q I mean, it wasn't really cold and it wasn't
20 really hot?

21 A Correct.

22 Q Okay. Short-sleeve weather, is that fair to
23 say?

24 A Yes, sir.

25 Q And it's a gun that had apparently been handled

DUSTIN KRETSCHMAR-CROSS BY MR. CHAMBERS

1 in the very recent past. I mean, it was apparently used
2 in a shooting?

3 A Yes, sir.

4 Q Is that fair to say?

5 A Yes, sir.

6 Q And someone had loaded that gun, is that right,
7 at some point?

8 A Yes, sir.

9 Q How many bullets does that magazine hold, do you
10 know? If you started out with it empty and you started to
11 load it, how many bullets would you put in there?

12 A I don't know, sir, I'd have to look the
13 photograph.

14 Q But are you familiar enough with guns to say
15 whether I saw that the magazine comes outs and then that's
16 where you load it, and a person would probably in the
17 loading process would hold it in one hand and take the
18 shells and push them down into the chamber with their
19 thumb or their finger or something like that?

20 A Yes, sir.

21 Q So, they would come into contact with that
22 magazine, but they would also come into contact with each
23 shell as they put it in there; is that right?

24 A Yes, sir.

25 Q Which would, obviously, increase the chances of

DUSTIN KRETSCHMAR-CROSS BY MR. CHAMBERS

1 leaving any kind of DNA traces, right?

2 A Yes, sir.

3 Q Would also -- I mean, metal is actually a pretty
4 good surface to get fingerprints off of; is it not?

5 A Yes, sir.

6 Q And if I were holding a magazine like that and
7 then I put it into the pistol, and nothing else is
8 touching that, because it's guarded by the outer portion
9 of the gun, that would be a pretty good way to preserve
10 those fingerprints?

11 A Yes, sir.

12 Q Would also be a pretty good way to preserve the
13 DNA?

14 A Yes, sir.

15 Q Now, if somebody had that gun -- oh, and it
16 would be -- would you think it would be logical to
17 conclude in a situation like that that a person finding
18 that gun would be able to find my DNA on it?

19 A It depends on, like I said earlier, how long
20 they had held the gun and how much pressure they applied
21 to the gun.

22 Q If somebody were to take that gun, for example,
23 and wipe it down with a sweatshirt before they put it down
24 on the ground, would that effect whether or not you would
25 be able to find any DNA on it?

CHARLES MOORE-DIRECT BY MS. PAOLETTI

1 A Yes, sir.

2 Q It would make it less likely, wouldn't it?

3 A Yes, sir.

4 MR. CHAMBERS: That's all the questions I have
5 for you. Thank you.

6 THE COURT: Redirect?

7 MS. SEAY: No, sir. May he be excused?

8 THE COURT: Any objection?

9 MR. CHAMBERS: No, Your Honor.

10 THE COURT: All right. Thank you. You're
11 released from your subpoena.

12 MS. PAOLETTI: Your Honor, the State calls
13 officer Charles Moore.

14 CHARLES MOORE, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please have a seat. Please state
17 your full name for the record.

18 THE WITNESS: Charles Moore.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MS. PAOLETTI:

22 Q Officer Moore, will you tell the jury for whom
23 you work?

24 A Greenville County Detention Center.

25 Q How long have you been at the detention center?

CHARLES MOORE-DIRECT BY MS. PAOLETTI

1 A Four and a half years.

2 Q What are your duties as an officer at the
3 detention center?

4 A I'm a custodian of records over the jail call
5 system.

6 Q Will you tell the jury what that jail call
7 system is called?

8 A Securus Technology Secured Call Platform.

9 Q How long has Greenville County Detention Center
10 used Securus as its platform for recording calls from the
11 detention center?

12 A Four years.

13 Q Will you describe the format for the jury,
14 please?

15 A It's, basically, like a search engine. You can
16 search calls on any inmate who is currently incarcerated
17 within the detention center or was incarcerated within the
18 past four years. All calls that they've made are
19 recorded.

20 Q All right. And will you tell the jury how an
21 inmate sets up an account to use the system, please?

22 A When they are booked into the detention center,
23 they are placed on a phone that records voice
24 verification. They enter in their assigned pack number,
25 which is a six-digit pack number, and they use that as an

CHARLES MOORE-DIRECT BY MS. PAOLETTI

1 account number to place calls. And they also follow voice
2 prompt, voice commands to verify their voice and identity,

3 Q And would you explain that just a little bit
4 further, the voice verification and the account number,
5 please?

6 A Each inmate, upon booking, they're assigned a
7 six-digit pack number. It goes through our canteen
8 service as well as the phone service. It's unique to each
9 individual inmate. Also, it goes through voice
10 verification, they follow voice commands. Basically, two
11 minutes long so that the system can recognize their
12 particular voice code. So, whenever they access their
13 phone account, the system will recognize them and allow
14 them access to that particular account.

15 Q All right. So, in order to make a call, do they
16 have to go through the voice prompts every time?

17 A Yes. They either state their first or last name
18 or they'll say United States.

19 Q Will the system connect them to the number
20 called until they have matched the pin for the account
21 number with the voice?

22 A Yes, ma'am.

23 Q Okay. Is there anything that -- in the Securus
24 system that would prevent an inmate from dialing a phone
25 number, evading the voice ID prompts and then making a

CHARLES MOORE-DIRECT BY MS. PAOLETTI

1 connection to the caller, then handing the phone off to
2 another inmate?

3 A No, an inmate can do that.

4 Q Are they supposed to do that?

5 A No, it's against Greenville County policy.

6 Q Okay. But does that happen in the detention
7 center?

8 A It does. And when that does happen, there's a
9 rating system. And it usually gives me a number between
10 one and a hundred to verify if one inmate is on another
11 inmate's account.

12 Q So, there's a way that Securus monitors that as
13 well?

14 A Yes.

15 Q Are the phone calls made on the Securus system
16 recorded?

17 A Yes.

18 Q Are some of them recorded or all of them
19 recorded?

20 A Most of them are recorded. The only calls that
21 are not recorded are approved calls that are made to the
22 inmate's lawyers or public defender's office.

23 Q Are inmates notified that their phone calls are
24 being recorded?

25 A Yes. Each and every call, there's a prompt

CHARLES MOORE-DIRECT BY MS. PAOLETTI

1 notifying each call -- each inmate that their call is
2 subject to recording and monitoring.

3 Q And that happens, you say, when they pick up the
4 phone to make a call?

5 A Yes. After they've placed the call and paid for
6 the call or the call connects, they're notified right when
7 the call is being made that it's being monitored and
8 recorded.

9 Q Are there other ways that they are notified that
10 their calls are being recorded?

11 A We have signs throughout the facility that
12 informs them that their calls are monitored and recorded.

13 Q Are you able to -- if someone who has access to
14 the Securus system to monitor calls as they are being
15 made?

16 A Yes.

17 Q I want to talk to you about the way that the
18 Securus system and data base can be searched. Will you
19 tell us the ways that the system can be searched?

20 A You can search through inmate's first and last
21 name, a phone number they've called, their six-digit pack
22 number, also, the date in which a call is made.

23 Q All right. Can you then search specific time
24 periods within a day?

25 A Yes. You can go anything from 12:01 a.m. to

CHARLES MOORE-DIRECT BY MS. PAOLETTI

1 11:59 p.m. in the day.

2 Q All right. Once the phone calls are recorded on
3 the Securus server, can they be manipulated or edited in
4 any way?

5 A No.

6 Q And you said that you -- there's a function that
7 allows you to search the system by a number called?

8 A Yes.

9 Q Will that show you any phone calls that are made
10 to that number?

11 A Yes.

12 Q Are you able to search for both completed calls
13 and calls that were made, but not answered?

14 A Yes.

15 Q Are there authorized law enforcement agents who
16 have access to the data base of these recorded phone
17 calls?

18 A Yes.

19 Q Will you tell the jury a little bit about how
20 that works?

21 A Generally, law enforcement, they would submit a
22 request to their supervisor, who would, in turn, contact
23 my supervisor and I would set up an access account to the
24 investigator on the Securus platform.

25 Q Do y'all have a way of insuring that the people

CHARLES MOORE-DIRECT BY MS. PAOLETTI

1 who are applying for accounts are law enforcement
2 agencies?

3 A Yes.

4 MS. PAOLETTI: All right. Answer any questions
5 that Mr. Chambers may have for you.

6 MR. CHAMBERS: No questions, Your Honor.

7 THE COURT: All right. Thank you. You may step
8 down. You're released from subpoena.

9 MS. PAOLETTI: Your Honor, may we approach
10 briefly?

11 THE COURT: Okay.

12 Well, I tell you what, ladies and gentlemen, why
13 don't we go ahead and take a morning break. This
14 would probably be a good time for it. Remember,
15 don't discuss the case.

16 Let me just say one other thing about taking
17 notes. I have absolutely no problem with that. Just
18 let me caution you that when you're taking notes, if
19 you're busy writing something down, again, you may
20 miss a reaction of a witness to the answer of the
21 question that might be important later. Keep that in
22 mind. And then I instruct you that one juror's
23 written notes carry no more weight in your
24 deliberations than another juror's recollection.

25 Okay. With that, ladies and gentlemen, we'll

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 get back with you in just a couple of minutes.

2 (WHEREUPON, the jury left open court at
3 approximately 10:45 a.m.)

4 MS. PAOLETTI: I just need to use the restroom.

5 THE COURT: All right. We'll take a short
6 break. Thank you.

7 (WHEREUPON, a short break was taken.)

8 (WHEREUPON, State's Exhibits Nos. 32-36 were
9 marked for identification only.)

10 THE COURT: Are you ready to proceed,
11 Ms. Paoletti?

12 MS. PAOLETTI: Yes, sir, thank you.

13 THE COURT: All right, bring the jury in.

14 (WHEREUPON, the jury came into open court at
15 approximately 11:02 a.m.)

16 THE COURT: All right, Ms. Paoletti.

17 MS. PAOLETTI: Thank you, Judge. The State
18 calls Detective Josh Peden.

19 JOSH PEDEN, after being duly sworn,
20 testified as follows:

21 THE CLERK: Please have a seat. Will you state
22 your full name for the record?

23 THE WITNESS: Yes, ma'am. Joshua Peden.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 BY MS. PAOLETTI:

2 Q Detective Peden, will you tell the jury where
3 you are currently employed?

4 A I work with the Fountain Inn Police Department.

5 Q What is your role with the police department at
6 Fountain Inn?

7 A I'm currently the detective in the criminal
8 investigations division.

9 Q I want to talk to you about your background and
10 education in law enforcement. Will you tell the jury
11 about your undergraduate degree, please?

12 A Yes, ma'am. I graduated from USC Upstate with a
13 four-year degree in criminal justice. I then attended the
14 Criminal Justice Academy in early 2006. I have undergone
15 several training classes since then for continuing
16 education.

17 Q All right. When were you certified in law
18 enforcement?

19 A 2006, April.

20 Q And did you go to work immediately?

21 A I did, I began working for Fountain Inn Police
22 Department January 3rd of 2006, I believe it was.

23 Q Have you been there continuously ever since?

24 A Yes, ma'am, I have.

25 Q Okay. As part of maintaining your certification

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 in law enforcement, do you have to do continuing
2 education?

3 A Yes, ma'am, we do.

4 Q Will you tell the jury just a little bit about
5 that, please?

6 A Every three years, we're required to complete 40
7 hours total of continuing education. Every year, we're
8 required to do one-hour block of legal update and, I
9 believe, it's a two-hour or four-hour block of CDV,
10 criminal domestic violence, update.

11 Q Are you current on all of your continuing
12 education requirements?

13 A Yes, ma'am.

14 Q Have you done even more education in continuing
15 ed above the requirements?

16 A Yes, ma'am.

17 Q Will you tell the jury a little bit about what
18 it's like and what your duties are as a detective in
19 Fountain Inn?

20 A Yes, ma'am. We are general investigators, which
21 means we investigate any crime that is forwarded to our
22 division, usually from patrol, anything from financial
23 crimes, all the way up to death investigations.

24 Q All right. How many officers total do y'all
25 have in the Fountain Inn Police Department, do you know?

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A I don't know off the top of my head, it's the
2 mid-20's.

3 Q All right. I want to talk to you now about
4 October 1st, 2013.

5 A Yes, ma'am.

6 Q Were you working as a detective at Fountain Inn
7 at that time?

8 A Yes, ma'am, I was.

9 Q Did you respond to a shooting that was reported
10 that night?

11 A Yes, ma'am, I did.

12 Q Will you tell the jury where you were, what you
13 were doing when you got that call, when you heard the
14 call?

15 A Detective Hawkins and I had actually been in
16 Laurens searching some subjects in another case. And we
17 were on Highway 14, at Exit 19, 385, fixing to get back
18 onto 385 northbound headed back to the city. We were
19 going to be done for the night. And we heard the call
20 come over the radio about a shooting and a possible
21 victim.

22 Q All right. Did you respond to the location that
23 was recorded in the radio traffic?

24 A We did. We responded to the area of Woodside
25 Avenue and Third Street.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q All right. I'm going to put a map up here.

2 You've got a pointer there in front of you.

3 A Yes, ma'am.

4 Q Does Fountain Inn jurisdiction include some of
5 Laurens County as well?

6 A Yes, ma'am. A portion of the city -- the
7 southern portion of the city is in Laurens County, and the
8 remainder of the city is in Greenville County.

9 Q All right.

10 MS. PAOLETTI: Will you turn on just that front
11 row of lights? That's perfect.

12 BY MS. PAOLETTI:

13 Q All right. Will you show the jury here on this
14 map where Woodside and Third is?

15 A Yes, ma'am. Right there is the intersection of
16 Woodside Avenue and Third Street.

17 Q All right. Do you know about how long it took
18 you to get there?

19 A I don't. I would approximate maybe 10 minutes
20 or less.

21 Q All right. Is that location that you just
22 indicated where you responded within Greenville County?

23 A Yes, ma'am, it is city limits of Fountain Inn
24 and the County of Greenville.

25 Q When you arrived, were there other officers

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 already on the scene?

2 A Yes, ma'am, there were.

3 Q Tell the jury what the protocol is for the First
4 Responders when the detective who's going to take over the
5 case gets on scene?

6 A Yes, ma'am. They would, typically, brief us on
7 what's happened so far, what they've done thus far.

8 Q Who takes custody or control of the scene at
9 that time?

10 A At that time, it's transferred over to criminal
11 investigations.

12 Q And were you designated the lead detective on
13 this case?

14 A Yes, ma'am, I was.

15 Q Had the scene of the shooting been secured or
16 cordoned off by crime scene tape by the time you arrived?

17 A No, ma'am. When we arrived, the other officers
18 on the scene were still speaking with witnesses or
19 actually searching and patting them down for weapons.
20 Then shortly after our arrival is when they put up the
21 crime scene tape.

22 Q When you arrived, was the victim still on scene
23 or had he been transported by EMS?

24 A He was still there, yes, ma'am.

25 Q Was EMS there?

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A I don't believe so. I believe they were waiting
2 on the scene to be cleared before the fire department and
3 EMS came.

4 Q Were you briefed on his condition?

5 A Yes, ma'am.

6 Q And what was your understanding of his medical
7 condition?

8 A It was believed that he had been shot in the
9 head.

10 Q All right. Did you get any information that led
11 you to believe that he might survive that wound?

12 A No, ma'am.

13 Q When you arrived on scene, were you able to
14 speak with anyone who had been a witness to the shooting?

15 A Yes, ma'am.

16 Q All right. Tell the jury who you spoke with.

17 A There were two of the victim's cousins on scene,
18 a James Wright and a Josh Kilgore, and I spoke briefly
19 with them.

20 Q Would you describe to the jury what their
21 demeanor was and how they were acting when you were trying
22 to talk to them?

23 A They were frantic, hysterical, talking very
24 loudly, trying to talk at the same time. And we were
25 trying to calm them down and find out as much information

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 as we could from them.

2 Q And from that conversation with them, what did
3 they tell you had happened?

4 A They said that Mr. Norman, the victim, had been
5 in an altercation earlier that evening, and then that just
6 prior to the shooting that he had been on the phone. And
7 one of them saw some people walking up the sidewalk area,
8 roadway area. And when they kind of pointed those people
9 out, that was when the gunshots began.

10 Q All right. When you say when they pointed
11 somebody out, who are you talking about?

12 A Mr. Wright, I believe, is, actually, the one who
13 stated that he had pointed down the street.

14 Q And did he tell you who he was communicating
15 that to? Who he was trying to point to show these people?

16 A I assume, Barry Norman. He was saying something
17 to the effect of who was that or there's somebody or
18 something like that.

19 Q Tell the jury what was starting to go on at the
20 scene as you're trying to talk to these two witnesses?

21 A We -- at that time, we had some vague
22 information, some witness descriptions -- or some suspect
23 descriptions and a general direction in which they had
24 fled. And another officer coordinated with Greenville
25 County to get some additional manpower down there, to get

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 some K-9 tracking teams to attempt to track any suspects.
2 And then I believe they also launched their helicopter in
3 an effort to assist us.

4 Q And that's support that Greenville County
5 provided?

6 A Yes, ma'am.

7 Q And then, also, during that time, were the fire
8 trucks and EMS that we saw on video also starting to
9 arrive?

10 A They had already arrived. They arrived just
11 shortly after me. As soon as the scene was secured, they
12 arrived and began rendering aid.

13 Q Where there other members of Fountain Inn Police
14 Department who arrived and were assisting in the
15 investigation?

16 A Yes, ma'am. We had called in some extra people.
17 Obviously, notified the captain and the chief and they
18 responded. And some other off-duty officers came in to
19 assist.

20 Q All right, sir. Were you able to locate the
21 shell casings as they were indicated by Officer Kretschmar
22 with forensics?

23 A Yes, ma'am.

24 Q Would you tell the jury a little bit about how
25 that came about?

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A I was advised that Mr. Yatzeck had heard some
2 gunshots right outside his residence and I began searching
3 in that area in an effort to locate the evidence.

4 Q And can you -- just while this map is up here --
5 and I don't know why I can't get it to go as focused as it
6 was, but can you show the jury again where Mr. Yatzeck's
7 house is?

8 A Yes, ma'am. His house would be right here at
9 the corner of Fourth Street and Woodside.

10 Q Okay. And so, is that why you began searching
11 there for projectiles?

12 A Yes, ma'am.

13 Q Did you find any?

14 A Yes, ma'am.

15 Q Did you touch them at all?

16 A No, ma'am.

17 Q Did you move them in any way?

18 A No, ma'am.

19 Q Okay. I'm going to show you State's Exhibit 21,
20 and ask you if you recognize what we're seeing in that
21 photo?

22 A Yes, ma'am. That's the sidewalk bordering
23 Woodside Avenue.

24 Q Would you use your pointer so --

25 A Oh, I'm sorry.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q So, the jury can see what you're talking about.

2 A I'm sorry.

3 Q That's okay.

4 A The sidewalk bordering Woodside Avenue -- I'm
5 sorry, I'm trying not to talk behind the reporter over
6 here. Fourth Street would be back behind this cone right
7 here. Third Street would be down this way. And these
8 would be the cups right here that I used.

9 Q And the purpose of that was just so that their
10 location was noted; is that right?

11 A Yes, ma'am.

12 Q Did you do the same thing for the victim's cell
13 phone that was located on scene?

14 A Yes, ma'am.

15 Q I'm going to show you State's Exhibit No. 1, and
16 ask you to indicate that for the jury, please, if you
17 would.

18 A Yes, ma'am. This is the stop sign on Third
19 Street. This would be Woodside Avenue right here. This
20 would be the cousin's house. And this would be the
21 general area that Mr. Norman was lying. And that would be
22 his cell phone and cup.

23 Q All right. Would you -- while we're here at
24 this photograph, would you tell the jury the -- in
25 relationship to that in that photo, where the victim's

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 feet would have been? Which direction was he lying?

2 A Yes, ma'am. His head was up this way and his
3 feet were down this way.

4 Q All right. While you were conducting your
5 investigation on scene, did you receive information about
6 video surveillance in the area?

7 A Yes, ma'am.

8 Q All right. And I'm going to go back to the map
9 here and ask you if you'll show the jury your
10 understanding of where that surveillance was coming from.

11 A Let's see, this would be Third Street --

12 Q Right.

13 A -- Fourth Street. Then this is a field here.
14 And there is a company right here in this area. There's
15 Holly Oak Chemical, then directly beside it on the corner
16 here is Fountain Inn Natural Gas.

17 Q All right.. I'm going to show you State's
18 Exhibit No. 4 and ask you if you recognize what we're
19 looking at in that photo?

20 A Yes, ma'am. This would be Woodside Avenue.
21 This would be Mr. Yatzeck's residence, I believe. This is
22 Jones, some apartment buildings, and then the front cab of
23 that truck right there is the chemical company. It's kind
24 of blocked by the tree. That building right there is
25 Holly Oak.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q Was it your understanding that that's where the
2 video surveillance was coming from?

3 A Yes, ma'am.

4 Q All right. And as a result of the video
5 surveillance being reviewed, was there any evidence
6 located?

7 A Yes, ma'am.

8 Q All right. Tell the jury what was found in that
9 vicinity.

10 A I was advised that on the video two subjects
11 could be seen. One subject could be seen removing a
12 garnet and discarding it over the fence into -- it's,
13 actually, the police department's impound lot we share
14 with the public works and with Fountain Inn Natural gas,
15 the dirt parking lot behind it. Part of that is section
16 off for the police department. And it had been discarded
17 there. And then the same subject had been seen squatting
18 down beside the fence on the outside as if placing
19 something there.

20 Q What was located there?

21 A On the outside of the fence was located a
22 Springfield handgun and on the inside of the fence was
23 located a black sweatshirt.

24 Q This is State's Exhibit No. 23. Is that the
25 sweatshirt?

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A Yes, ma'am.

2 Q Then I'm going to show you State's No. 25. What
3 is that?

4 A That's the handgun that was found.

5 Q Did you interview any other witnesses that night
6 or early morning of October 1st of 2013 in Mauldin?

7 A When we left the scene, we went to Mauldin and
8 met with the victim's girlfriend and the victim's mother,
9 actually.

10 Q All right. Do you remember about what time that
11 was?

12 A It was a little after 5:00 in the morning.

13 Q All right. So between the time that you
14 responded close to 11:00 and when you were interviewing
15 them at 5:00, can you just let the jury know what was
16 going on? I'm not necessarily asking in sequence. That's
17 a long period of time.

18 A Yes, ma'am.

19 Q Okay.

20 A After our initial arrival on scene and we
21 obtained a suspect description, the tracking team and
22 helicopter was called in, other officers with our
23 department and, then, possibly Greenville County set up a
24 perimeter nearby, just parking their cars at main
25 intersections.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q What was the purpose of that?

2 A That was -- the information that we had was that
3 they had fled on foot. So, it's common practice to set up
4 a perimeter in case you see anybody walking, it could be a
5 potential suspect. So, they set up a loose perimeter.
6 And then after a short period of time before we cleared
7 that scene, we searched that field. Yes, ma'am, we
8 searched this field right here because of one of the
9 statements that was told to us describing one of the
10 subjects possibly having dropped something or turned
11 around and came back and left again. So, we searched that
12 field all the way up to Holly Oak.

13 Q And were there -- the K-9 units also in that
14 field at some point?

15 A They were in that field prior to our search of
16 that field, yes, ma'am.

17 Q Okay. So, then did that take -- how long did
18 that take?

19 A I don't know, 10, 15 minutes maybe, maybe
20 longer. There were quite a few of us lined up down
21 through there.

22 Q Okay. Do you know about how many people, do you
23 remember?

24 A I don't.

25 Q Okay. I'm going to -- let me go back to the gun

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 that was located outside of Fountain Inn Natural Gas.

2 What kind of weapon was it?

3 A I was advised that it was a Springfield handgun.

4 Q All right. Do you know -- is that the make?

5 A That's the make, yes, ma'am.

6 Q All right. So, then after doing your search of
7 the field, what did you do after that?

8 A After we searched the field and we cleared for
9 the night, that's when we went to Mauldin and spoke with
10 the victim's girlfriend and mother.

11 Q All right. Were you present when forensics
12 arrived on the scene?

13 A Yes, ma'am.

14 Q And were you present when he processed and
15 searched the scene as well?

16 A Yes, ma'am, I believe I was.

17 Q Do you know about how long that took?

18 A No, ma'am, I don't.

19 Q Okay. By the time you cleared early that
20 Wednesday morning -- and you said you spoke to the
21 victim's girlfriend and mother about 5:00 a.m.?

22 A It was shortly after 5:00, yes, ma'am.

23 Q Okay. And what was the victim's condition at
24 that point?

25 A He had already been deceased.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q When you cleared on the early morning hours of
2 October 2nd, had any suspects been located on foot
3 anywhere in that area based on the perimeter that y'all
4 set up?

5 A No, ma'am.

6 Q All right. So, let's go to October 2nd during
7 the day, that Wednesday. Did you still have other
8 officers assisting you in the investigation?

9 A Yes, ma'am.

10 Q All right. Did you have people that you wanted
11 to talk to?

12 A Yes, ma'am.

13 Q All right. How did you develop some of the
14 individuals that you wanted to talk to that day?

15 A Based off of the statements made by Mr. Wright
16 and Mr. Kilgore and some other information, we had a
17 couple of names, nicknames that I was familiar with. And
18 we knew where Mr. Norman had been prior to the shooting.

19 Q All right. Was Mr. Norman's mother able to
20 provide some information about that, too?

21 A I would have to refer to her statement, but I
22 don't remember her having much information.

23 Q Had she seen him earlier in the day?

24 A She had. And she was actually trying to get him
25 to call the police and report the assault.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q All right. And what about his girlfriend,
2 what's her name?

3 A Latasha Black.

4 Q Had she seen him earlier in the day?

5 A She had.

6 Q Before we start talking about all of the
7 witnesses that you wanted to and that you were able to
8 speak to in this case, you mentioned that you had a lot of
9 nicknames?

10 A Yes, ma'am.

11 Q Did you have any legal names to go from at that
12 point?

13 A Some legal names I knew from the nicknames. I
14 interacted with these individuals in the past, so I knew
15 who they were. Some of them, I was not familiar with and
16 we had to research to figure out who they were.

17 Q Okay. So, before we get started, I want to go
18 over some of those names, okay. Who is Bop?

19 A Bop is Bobby Thomas, Jr.

20 Q All right. And Smitty?

21 A Smitty is Stacy Sullivan.

22 Q Who is Vegas or Styles?

23 A That would be Mr. Shawndell Clemons.

24 Q What does James Williams go by?

25 A I don't recall hearing a nickname for Mr.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Williams. Everybody just called him James.

2 Q Landis Franklin?

3 A I always knew Landis as Landis. They referred
4 to him as So-So.

5 Q And then Mr. Norman, did they call him anything
6 other than by his name?

7 A Just Barry, by his first name.

8 Q Let me ask you this, the victim's cousins, who
9 you first spoke to?

10 A Yes, ma'am.

11 Q Did you ask them to give you written statements
12 about what they say saw?

13 A Yes, ma'am, I did.

14 Q Would they do that?

15 A They did not want to do that at the time.

16 Q Why not?

17 A I really don't know. I believe it was because

18 --

19 MR. CHAMBERS: Objection, Your Honor, he's
20 speculating.

21 THE COURT: Yeah, sustained.

22 THE WITNESS: I really don't know.

23 BY MS. PAOLETTI:

24 Q At some point, did they all tell you they really
25 hadn't seen anything?

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A No, ma'am.

2 Q All right. Who was the first witness to the
3 events before the shooting that was interviewed?

4 A Mr. Thomas, Bop.

5 Q All right. And did he give an initial statement
6 and interview?

7 A He did.

8 Q And then at a later date, did you followup with
9 them?

10 A I did.

11 Q Did an individual named Tara Smith come to the
12 station with information?

13 A She did.

14 Q All right. And as a result of her information
15 that she provided, who did you speak to next?

16 A Mr. James Williams.

17 Q All right. Then after Mr. Williams, who did you
18 want to speak with next?

19 A Landis Franklin.

20 Q We'll come back to Mr. Franklin in just a
21 moment. Was Stacy Sullivan ever interviewed?

22 A He was.

23 Q Did this Defendant contact Fountain Inn about
24 the murder the following day?

25 A Yes, ma'am, he did.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q All right. Will you tell the jury about that,
2 please?

3 A Yes, ma'am. He -- a male subject called the
4 Fountain Inn Police Department, wanting to speak to
5 someone about reporting a gun stolen. He was initially
6 referred to Greenville County. And then called back, I
7 believe, two more times and spoke again with -- after
8 speaking with dispatch, spoke with the lieutenant over
9 investigations.

10 Q Are phone calls to the Fountain Inn Police
11 Department recorded?

12 A Yes, ma'am.

13 Q Have you listened to these calls?

14 A Yes, ma'am.

15 Q Is the caller male or female?

16 A Male.

17 Q And does the caller identify himself in any of
18 the phone calls?

19 A In the second two phone calls, he does.

20 Q And what name does he give?

21 A He gives the name Jacoby Gregory.

22 Q And then in the first phone call, can you
23 recognize the voice in that phone call?

24 A It appears to be the same voice.

25 Q And all the calls taken together, do they make

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 sense?

2 A Yes, ma'am.

3 Q During the course of the conversation with
4 Fountain Inn, who is he talking to? Who's the detective
5 or lieutenant that he's talking to?

6 A He's speaking with Lieutenant Nelson.

7 Q And you recognize his voice?

8 A Yes, ma'am.

9 Q Does he give a phone number at which he can be
10 reached?

11 A Yes, ma'am, he does.

12 Q All right. And do you recognize the voices of
13 the other Fountain Inn employees who were on those phone
14 calls?

15 A I do.

16 Q Who were the other employees?

17 A The first one that he speaks with initially is
18 one of our dispatchers, Kelly. And then when he calls
19 back the second time, he speaks with a different
20 dispatcher, Mary.

21 Q All right. I'm going to show you what's been
22 marked as State's Exhibit No. 33.

23 A Yes, ma'am.

24 Q Do you recognize that?

25 A Yes, ma'am.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q How do you recognize that?

2 A My initials appear to the right side of it.

3 Q All right. Have you had a chance to review the
4 recordings on this disk?

5 A Yes, ma'am.

6 Q Have they been altered in any way?

7 A No, ma'am.

8 Q Tell the jury about how many people have access
9 to the recording system at Fountain Inn Police?

10 A There are -- to my understanding, there are four
11 people that have access to listen to the recordings, but
12 only one lieutenant has access to download and copy the
13 recordings.

14 MS. PAOLETTI: Your Honor, at this time, the
15 State moves Exhibit 33 into evidence.

16 MR. CHAMBERS: No objection, Your Honor.

17 THE COURT: Okay.

18 (WHEREUPON, State's Exhibit No. 33 was marked
19 for identification and received into evidence.)

20 MS. PAOLETTI: Your Honor, permission to publish
21 these?

22 THE COURT: Yes, ma'am.

23 (WHEREUPON, State's Exhibit No. 33 was published
24 to the jury.)

25 MS. PAOLETTI: Judge, can I have a moment? I

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 need a moment to figure out what's going on with
2 these speakers.

3 THE COURT: All right. If y'all would like to
4 stand and stretch, please feel free.

5 (WHEREUPON, State's Exhibit 33 was continued to
6 be published to the jury.)

7 BY MS. PAOLETTI:

8 Q Did the Defendant come by the following morning
9 between 6:00 and 7:00 o'clock in the morning?

10 A No, ma'am, not to my knowledge.

11 Q All right. What kind of gun was found outside
12 the Fountain Inn Natural Gas building the night of the
13 murder?

14 A Springfield XE .45 GAP.

15 Q We just heard from Officer Kretschmar about
16 swabbing the gun for DNA.

17 A Yes, ma'am.

18 Q Did you make any request for any DNA testing on
19 that gun?

20 A No, ma'am.

21 Q Why not?

22 A Because that would have been made at a later
23 time. And at that point in the investigation, Mr. Gregory
24 had already called and identified it as his gun or
25 believed it to be his gun. Then we later interviewed the

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 co-defendant, who described the same gun.

2 Q All right. Let's go back to Landis Franklin.

3 Did you hear his name in that phone call?

4 A Yes.

5 Q From the Defendant?

6 A Yes, ma'am.

7 Q What was it -- can you remind us what the
8 Defendant said about Mr. Franklin in that phone call?

9 A If memory serves, he's talking about Landis
10 being at a hotel party the weekend before.

11 Q Was Mr. Franklin interviewed?

12 A Yes, ma'am, he was.

13 Q Who interviewed him initially with Fountain Inn?

14 A Initially, Chief Morton interviewed him?

15 Q And who was with Mr. Franklin when Chief Morton
16 interviewed him?

17 A His mother.

18 Q All right. Was there -- did you followup with
19 him about his original statement at a later date?

20 A We did.

21 Q Who did that?

22 A Detective Hawkins and I followed up with him at
23 a later time.

24 Q Did he give a statement on both of those dates?

25 A Yes, ma'am, he did.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q After he gave his original statement, do you
2 remember what day that was?

3 A His original statement?

4 Q Yes. Let me ask you this, the day that you
5 applied for and eventually got warrants for the Defendant
6 and Mr. Clemons, did you do that after interviewing
7 Mr. Franklin?

8 A Yes, ma'am.

9 Q What kind of warrants did you apply for? What
10 did you charge them with?

11 A Murder and possession of a weapon during the
12 commission of a violent crime.

13 Q All right. Was the Defendant arrested that same
14 day?

15 A Yes, ma'am, he was.

16 Q All right. Did you seize anything from him when
17 he was arrested?

18 A Yes, ma'am.

19 (WHEREUPON, State's Exhibits Nos. 37 & 38 were
20 marked for identification only.)

21 MS. PAOLETTI: I've learned not to talk when
22 April's marking exhibits.

23 BY MS. PAOLETTI:

24 Q What did you seize from the Defendant?

25 A Two cell phones.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q All right. I'm showing you what's been marked
2 as State's Exhibit Nos. 37 and 38, do you recognize those
3 two items?

4 A Yes, ma'am.

5 Q What are those?

6 A Those are cell phones that were seized from
7 Mr. Gregory at the time of his arrest.

8 MS. PAOLETTI: Your Honor, at this time, we move
9 State's Exhibits 37 and 38 into evidence.

10 MR. CHAMBERS: No objection, Your Honor.

11 THE COURT: Okay.

12 (WHEREUPON, State's Exhibits Nos. 37 & 38 were
13 admitted into evidence.)

14 BY MS. PAOLETTI:

15 Q All right. When you got the warrants for
16 Mr. Clemons, did you have any information about where he
17 was?

18 A Yes, ma'am.

19 Q And I didn't recall if it was Mr. Clemons or
20 Shawndell, what's his nickname again?

21 A Vegas or Styles.

22 Q What information did you have about his
23 location?

24 A We received a call from a female who wanted to
25 remain anonymous. I don't remember the exact date and

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 time. But stating that Mr. Clemons was believed to be in
2 Syracuse, New York.

3 Q All right. Did you eventually hear from
4 Mr. Clemons?

5 A Yes, ma'am, I did.

6 Q Was he eventually arrested and questioned in
7 this case?

8 A He was.

9 Q Would you tell the jury how that all unfolded,
10 please?

11 A If I could refer to my notes. I believe it was
12 Friday, the fourth. Yes, ma'am, on Friday, October the
13 4th, Mr. Clemons called a reported line and I was able to
14 speak with him. And he stated that he intended to come
15 speak with us, but he wanted to see his daughter just in
16 case anything bad did go wrong. And I spoke briefly with
17 him. He initially told me that he was in Charleston. I
18 offered to come to Charleston to see him. He stated that
19 that wouldn't be a good idea.

20 Q Okay. Did he ever come into Fountain Inn
21 voluntarily?

22 A No, ma'am.

23 Q Okay. When was he arrested?

24 A I believe it was the seventh.

25 Q Let me ask you this --

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A Yes, ma'am.

2 Q -- had you been contacted by a lawyer on
3 Mr. Clemons's behalf?

4 A Yes, ma'am.

5 Q All right. Did -- and then was Mr. Clemons
6 located in the Greenville area?

7 A He was. He was located at just inside the
8 Mauldin city limits, kind of on the Greenville side.

9 Q Tell the jury how that happened.

10 A At some point during this investigation, we were
11 able to obtain his cell phone number. And that number was
12 provided to the Marshal's Task Force through -- the
13 Greenville County Sheriff's Office has a deputy assigned
14 to the Marshal's Task Force. And it was provided to them
15 in an effort to try to locate him in Syracuse. However,
16 he later returned to South Carolina. And when he did,
17 somehow they were alerted and notified us.

18 Q Okay. And that was using his cell phone
19 information?

20 A Yes, ma'am.

21 Q When Mr. Clemons was arrested, did he give a
22 statement?

23 A Initially, he did not.

24 Q And tell the jury how that -- what was going on
25 at that time.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A We were initially contacted by a local attorney
2 stating he was representing Mr. Clemons and that
3 Mr. Clemons wanted to turn himself in. I believe it was
4 supposed to be at like 2:00 on October the 9th, which was
5 Wednesday, October the 9th. However, Mr. Clemons didn't
6 show up. That's when the Marshal's Task Force was able to
7 pinpoint his location in Mauldin. We responded. We
8 didn't speak with him or question him because we had been
9 contacted by his attorney. And his attorney was contacted
10 and responded and just stated that he was still in
11 negotiations with the family as to whether he was going to
12 officially represent him or not. So we gave him some time
13 to sort out his attorney issues.

14 Q Was that eventually sorted out?

15 A He was.

16 Q All right. Did he agree to speak with you
17 without a lawyer?

18 A He did.

19 Q All right. Let's talk about what happened when
20 he was being interviewed by you and when he was giving his
21 statement in this case. Did he ask to make any phone
22 calls or talk to anyone during that time?

23 A Yes, ma'am, he did.

24 Q Who did he want to call and talk to?

25 A After his initial interview, while he was giving

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 a written statement --

2 MR. CHAMBERS: Objection, hearsay, Your Honor.

3 If he's going to say who this person --

4 THE COURT: I'm sorry. What -- you asked who he
5 wanted to, correct?

6 MS. PAOLETTI: Who the witness asked to speak
7 to.

8 THE COURT: That is not hearsay. Okay, go
9 ahead.

10 THE WITNESS: He asked to make a phone call to
11 his mother.

12 BY MS. PAOLETTI:

13 Q All right. Was he able to do that?

14 A He was.

15 Q All right. And did he speak to anybody else?

16 I'm not asking what they talked about, but was he able to
17 make contact with other family members?

18 A He was not able to make contact with his mother
19 and asked to call, I believe it was a uncle.

20 Q What about an aunt?

21 A I don't remember if it was an aunt or
22 grandmother. I believe he did ask to call another person,
23 though.

24 Q Did he come back and finish giving his
25 statement?

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A He did.

2 Q When he gave this initial statement, did he
3 offer any information about the second weapon that was --
4 appeared to be used in this case --

5 A He did not.

6 Q -- at that time? Okay. All right. I want to
7 talk about the evidence of the use of a 9mm at the scene
8 of the shooting for a minute, okay?

9 A Yes, ma'am.

10 Q On the night of the shooting, did you know that
11 the evidence was that there were two weapons that had been
12 fired?

13 A Yes, ma'am, we did.

14 Q Just explain for the jury how you knew that that
15 night.

16 A After Officer Kretschmar arrived and began
17 documenting and collecting evidence, we were advised that
18 there were two separate caliber shell casings located.

19 Q So, was part of the search that night for the
20 other weapon?

21 A Yes, ma'am.

22 Q Did you find anything?

23 A We did not.

24 Q All right. After you spoke with Landis
25 Franklin, did you search another location for any evidence

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 of a second weapon?

2 A We did.

3 Q All right. Tell the jury just about that.

4 A Based off of the statement given by
5 Mr. Franklin, we searched an area where -- can I point it
6 out on the map?

7 Q Yeah.

8 A It's another business located down Wall Street
9 behind Fountain Inn Natural Gas.

10 Q Show them where Wall Street is.

11 A So, this would be Wall Street down through here,
12 down through here. This is Third and Woodside over here.
13 So, one block over, I guess you could say, is Wall Street.
14 And there's a business right approximately in this area.

15 Q Okay.

16 A I'm sorry.

17 Q No, you're fine.

18 A Down this way.

19 Q And while we've got this map pulled up, there's
20 been discussions about Bop and Bop's house?

21 A Yes, ma'am.

22 Q Can you show the jury where on this map Bop's
23 house is?

24 A Yes, ma'am. This is Bates Street -- this is
25 Bates Street right here and Bop's apartment would be right

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 in this area. There's a series of little brick apartments
2 right there.

3 Q All right. And that road dead ends into
4 Woodside?

5 A Yes, ma'am.

6 Q And show me again where the incident location
7 is?

8 A Yes, ma'am. Right here is Woodside and Third,
9 where the incident took place. Here is Fourth and
10 Woodside, Holly Oak and Fountain Inn Natural Gas. And the
11 second building that we searched or parking lot that we
12 searched is right here.

13 Q Were you able to find anything then?

14 A No, ma'am.

15 Q All right. Let's fast forward about a year.
16 Did you search another location for the 9mm?

17 A Yes, ma'am.

18 Q Tell the jury about that, please.

19 A Later on, Mr. Clemons provided some information
20 that he did, in fact, possess a 9mm that night, and stated
21 that he had discarded it while he was out driving around.

22 Q When?

23 A The night of the shooting.

24 Q All right. So, did you search for the weapon
25 where he told you it was or where he told you he had

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 thrown it?

2 A We did, yes, ma'am.

3 Q Who went with you?

4 A Detective Hawkins and myself responded to
5 Greenville Detention, picked up Mr. Clemons. And
6 Mr. Clemons seated in the back seat of my patrol car
7 directed us to the location where he stated he had
8 discarded it.

9 Q All right. At that time, did he have a lawyer?

10 A I have no idea. I believe he did, but I don't
11 know.

12 Q Okay. Did he have a lawyer with him at the
13 time?

14 A He did not have a lawyer with him at that time.

15 Q All right. Let's talk about the Defendant's
16 vehicle. What kind of car did the Defendant drive?

17 A A Yukon.

18 Q What color was it?

19 A Burgundy. Maroon, burgundy, I'm not good with
20 colors.

21 Q I want to show you an exhibit here. Was it
22 seized in this case?

23 A Yes, ma'am, it was.

24 Q And was it processed for any evidence?

25 A Yes, ma'am, it was.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Q And based on the processing of that vehicle, was
2 there any evidence of this crime generated?

3 A Not that I recall, no, ma'am.

4 Q All right. Do you -- was the -- was there any
5 testing done for gunshot residue on his car?

6 A Not to my knowledge.

7 Q All right.

8 A I don't recall.

9 Q When was it recovered?

10 A It was recovered a couple of days later. I can
11 probably tell you the exact date.

12 (WHEREUPON, State's Exhibit No. 39 was marked
13 for identification only.)

14 BY MS. PAOLETTI:

15 Q I'm going to show you what's been marked as
16 State's Exhibit No. 39. Do you recognize that?

17 A Yes, ma'am.

18 Q All right. What is that?

19 A That's Mr. Gregory's vehicle.

20 MS. PAOLETTI: Your Honor, we move State's
21 Exhibit 39 into evidence.

22 MR. CHAMBERS: No objection.

23 THE COURT: Okay.

24 (WHEREUPON, State's Exhibit No. 39 was admitted
25 into evidence.)

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 BY MS. PAOLETTI:

2 Q Were you able to see when his car was seized in
3 relation to the shooting date?

4 A Yes, ma'am, it was Friday, October the 4th.

5 Q All right. All right. After the Defendant was
6 arrested in this case, did y'all receive correspondence
7 from him at the Fountain Inn Police Department, a letter?

8 A Yes, ma'am.

9 Q And did he ask that y'all do something on his
10 case?

11 A I don't remember the exact contents of the
12 letter, but he provided, I believe it was about five names
13 and telephone numbers of people that he wanted contacted
14 on his behalf.

15 Q All right. Did you or anyone else from Fountain
16 Inn ever get to interview those people?

17 A No, ma'am.

18 Q Why not?

19 A Chief Morton handles the mail sent to the police
20 department, and he called all the numbers provided. I
21 don't remember which ones were active, but I know that one
22 was disconnected. Two, he left messages for; and two, he
23 spoke to people who were supposed to come to the police
24 department and, to my knowledge, never did.

25 Q Was that information provided to you as the lead

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 detective on this case?

2 A Yes, ma'am.

3 Q All right. I want to talk to you now about
4 attempting to contact witnesses in anticipation of this
5 trial?

6 A Okay.

7 Q I want to talk first about Stacy Sullivan. In
8 fact, let's talk about Mr. Sullivan back closer to the
9 time of the incident?

10 A Yes, ma'am.

11 Q Okay. Did he give an additional interview?

12 A He did.

13 Q All right. Was there a point in time where you
14 wanted to follow up with him?

15 A There was.

16 Q Were you able to do that?

17 A I was not.

18 Q All right. Tell the jury what you did to try to
19 find him?

20 A We responded to the address that he had provided
21 for us that on his license at the time, I believe. And we
22 were advised that he did not live there anymore. And I
23 believe since that time, the house has actually been sold.

24 Q All right. Were you able to get him on the
25 phone?

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A I don't believe so. I don't specifically
2 remember trying to call him, but.

3 Q All right. Let's fast forward to attempting to
4 get in touch with him to serve the subpoena for this case.
5 Did you try to do that?

6 A Yes, ma'am.

7 Q Tell the jury what you tried to do to do that?

8 A We responded to the address that he had provided
9 based off an arrest and on his license, and we spoke with
10 his mother. And she stated that she hadn't spoken to him
11 in about two weeks, that she don't have a phone number or
12 wasn't willing to provide a phone number. Didn't know
13 where he was staying and didn't know who his girlfriend
14 was or where he worked. I believe I asked her where he
15 worked.

16 Q All right. Did you attempt to make contact with
17 a potential employer to see if he worked somewhere?

18 A We did. One of the other witnesses in this case
19 thought he may have worked at a local company, but that
20 was -- that never panned out.

21 Q All right. Let's talk about Landis Franklin.
22 What have you done to try and serve Landis Franklin with a
23 subpoena for this trial?

24 A We have gone by his house multiple times. We
25 have spoken with his mother multiple times. I believe

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 people from the solicitor's office have spoken to him by
2 telephone. I have attempted to call him by telephone.
3 Left him a message, he wouldn't call me back. We
4 attempted to locate his employer with no success.

5 Q All right. Tell the jury what you did to try to
6 do that.

7 A His mother told us that he was working for a
8 trucking company, but didn't know what trucking company.
9 We spoke with some other people who stated the same thing,
10 they knew he worked for a trucking company, but didn't
11 know which one. I contacted the State Transport Police
12 who monitors any commercial vehicle on roadway. They're
13 in charge of monitoring and enforcing those laws. They
14 have data bases that drivers are put into along with
15 company names. And they searched that and came up with no
16 results.

17 Q Who is James Williams?

18 A He was one of the subjects that we spoke with in
19 this case.

20 Q Have you spoken to him recently?

21 A Yes, ma'am, I have.

22 Q Did you ask him where you could find Landis
23 Franklin?

24 A I did.

25 Q What did he tell you?

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 A He told us that he did not know the trucking
2 company that he worked for. I believe Mr. Williams was
3 asked something to the effect of if you knew where he was
4 staying, would you tell us. And Mr. Williams stated that
5 no, he would not.

6 Q Did he tell you that he would contact him?

7 A He did. He stated that he would contact
8 Mr. Franklin.

9 Q Has Mr. Franklin ever returned any of your phone
10 calls?

11 A No, ma'am.

12 Q All right. You said you spoke to Mr. Franklin's
13 mother?

14 A Yes, ma'am.

15 Q After you spoke to Mr. Franklin's mother, what
16 did you do to try and verify or confirm any information
17 that she was giving you about what was going on with
18 Landis?

19 A She had --

20 Q Just tell us what you did after you talked to
21 her.

22 A I'm sorry.

23 Q That's okay.

24 A We searched the Securus system for the
25 Greenville County Detention Center for Mr. Franklin's

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 phone number.

2 Q For calls to his phone number?

3 A Yes, ma'am.

4 Q Are you an authorized user of the Securus
5 system?

6 A Yes, ma'am.

7 Q You have a user name and password?

8 A Yes, ma'am, I do.

9 Q Do you know how to search it for numbers called?

10 A Yes, ma'am.

11 Q Were you able to find any phone calls from this
12 Defendant to Mr. Franklin's phone number?

13 A Yes, ma'am.

14 Q All right. And have you listened to those phone
15 calls?

16 A Yes, ma'am.

17 Q All right. Are those the first phone calls from
18 this Defendant to anyone that you've listened to in this
19 case?

20 A No, ma'am.

21 Q All right. Tell the jury just a little bit
22 about that.

23 A It's become more common for us to listen to jail
24 calls once we put somebody in jail now that we have access
25 to it just to see if there's any additional evidence that

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 can be retrieved or gained through the phone calls.

2 Q All right. So, do you know how many hours of
3 phone calls from this Defendant you've listened to to
4 date?

5 A No, ma'am. Many hours.

6 Q Have you listened to previously the phone calls
7 that the jury just heard that he made to Fountain Inn
8 police?

9 A Yes, ma'am.

10 Q All right. Do you recognize his voice when you
11 hear it?

12 A Yes, ma'am.

13 Q I'm going to show you what been marked State's
14 Exhibit No. 34 and 35, and ask you if you recognize those
15 two items?

16 A Yes, ma'am.

17 Q All right. How do you recognize those two
18 things?

19 A My initials appear on them, again, to the right.

20 Q What are those items?

21 A Those are phone calls that were downloaded and
22 saved?

23 Q From where?

24 A From the Securus system.

25 Q All right. And will you tell the jury what the

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 date of the first phone call to Mr. Franklin's phone
2 number that you were able to locate was?

3 A December 28th, 2015.

4 Q Okay. So, how many months ago?

5 A Seven.

6 Q Less than a year?

7 A Yeah.

8 MS. PAOLETTI: Your Honor, at this time, we move
9 State's Exhibit Nos. 34 and 35 into evidence.

10 MR. CHAMBERS: I just want to make sure I'm
11 clear. These are all of the phone calls that you saw
12 that were made from the Securus system from Jacoby
13 Gregory --

14 THE COURT: Wait a minute, this is not
15 cross-examination. Do you have an objection to the
16 introduction of these?

17 MR. CHAMBERS: I'm not quite sure what's being
18 offered at this point. That's part of the reason for
19 the question.

20 MS. PAOLETTI: I showed the two disks, Your
21 Honor.

22 MR. CHAMBERS: I guess what I want to know --

23 THE COURT: Hang on.

24 Ladies and gentlemen, we'll just take a short
25 break. Please return to the jury room, don't talk

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 about it.

2 (WHEREUPON, the jury left open court at
3 approximately 12:25 p.m.)

4 THE COURT: Show him the disks, see if he's --

5 MR. CHAMBERS: Well, I see that these are disks,
6 Your Honor. My question is -- I mean, I've listened
7 to a lot of phone calls. What phone calls are on
8 these disks? I'm not clear on that. Are they every
9 phone call that was made?

10 MS. PAOLETTI: The witness has identified phone
11 calls on 12/28 so far. And then there are phone
12 calls on January 1st of 2016.

13 MR. CHAMBERS: Okay. So, you've got two
14 separate phone calls, one on each disk?

15 MS. PAOLETTI: There are two dates, two phone
16 calls on each date.

17 MR. CHAMBERS: You plan to play each of those in
18 its entirety?

19 MS. PAOLETTI: Yes.

20 MR. CHAMBERS: Okay, I'm clear now.

21 MS. PAOLETTI: No partial conversations --

22 THE COURT: All right. Any objection to the
23 introduction?

24 MR. CHAMBERS: No, Your Honor, no objection.

25 THE COURT: All right. Let's take about five

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 minutes.

2 If you need to step down, Officer, please do.

3 Do not discuss your testimony with anybody.

4 THE WITNESS: Thank you, Your Honor.

5 (WHEREUPON, a short break was taken.)

6 (WHEREUPON, the jury came into open court at
7 approximately 12:31 p.m.)

8 THE COURT: Okay, Mr. Foreman, ladies and
9 gentlemen of the jury, I understand that these phone
10 calls last almost an hour. So, I think it's probably
11 appropriate that we break for lunch at this time. If
12 I ask y'all to be back at -- is 1:30 too soon? Is
13 everybody okay with 1:30?

14 (WHEREUPON, all members of the jury nods.)

15 THE COURT: Remember, don't discuss this case.
16 The deeper you get into it, the more tempting it is
17 to talk about it. You have a lot more to consider,
18 but don't do that. All right. See you back at 1:30.
19 Thank you.

20 Everyone else remain seated.

21 (WHEREUPON, the jury left open court at
22 approximately 12:32 p.m.)

23 THE COURT: Detective, of course, you're allowed
24 to step down, have some lunch, but don't discuss your
25 testimony with anybody.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Anything else before we break?

2 MS. PAOLETTI: Your Honor, are those disks in
3 evidence? I don't know if they've been moved in or
4 not. I tried to.

5 THE COURT: You made the move, I don't think he
6 objects.

7 Is there any objection to the disks being
8 introduced?

9 MR. CHAMBERS: There's no objection, Your Honor.

10 THE COURT: Okay. They're in.

11 MS. PAOLETTI: Okay. I just wanted to make
12 sure. Thank you.

13 THE COURT: Okay, 1:30.

14 MS. PAOLETTI: Yes, sir.

15 (WHEREUPON, State's Exhibits Nos. 34 & 35 were
16 admitted into evidence.)

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: Ready?

19 MS. PAOLETTI: Yes, sir.

20 MR. CHAMBERS: Yes, sir.

21 THE COURT: Okay.

22 (WHEREUPON, the jury came into open court at
23 approximately 1:40 p.m.)

24 THE COURT: All right, ladies and gentlemen,
25 welcome back. When we broke for lunch, we were about

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 to listen to the -- I don't remember the exhibit
2 number, but recordings which have been admitted into
3 evidence. So, at this time, we'll proceed with that.

4 MS. PAOLETTI: Thank you, Your Honor.

5 (WHEREUPON, State's Exhibit No. 34 was
6 played.)

7 BY MS. PAOLETTI:

8 Q Detective Peden, I'm going to show you State's
9 Exhibit No. 35. What's the date of the phone calls on
10 this?

11 A January 1st, 2016.

12 (WHEREUPON, State's Exhibit No. 35 was played.)

13 BY MS. PAOLETTI:

14 Q Did you do a search for attempted phone calls to
15 Landis Franklin's phone number?

16 A Yes, ma'am.

17 Q All right. Tell the jury the last -- the date
18 of the last attempted phone call to Landis Franklin.

19 A From whose account?

20 Q I'm sorry?

21 A From whose account?

22 Q From any account to his phone number.

23 A The last attempt to Landis Franklin's phone at
24 the date of the printing of this was June 30th, 2016.

25 Q And the last attempted phone call from this

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 Defendant's account to Landis Franklin?

2 A Looks like June 15th, 2016.

3 Q All right. I'm going to show you what's been
4 marked as State's Exhibit No. 36 and ask if you recognize
5 that document? And there's three pages to it.

6 A I recognize two of the three.

7 Q All right. And what is that?

8 A The first page appears to be a copy of the
9 statement that Landis Franklin gave to myself and
10 Detective Hawkins October 7th, 2014.

11 Q And the second page?

12 A The second page is a copy of Mr. Franklin's
13 statement that he provided to Chief Morton with his mother
14 present.

15 Q All right. Then the third page?

16 A Third page appears to be a handwritten --
17 appears to be a handwritten map.

18 Q What's the date at the bottom of that?

19 A It's dated October 3rd, 2013.

20 Q Whose signature is that at the bottom? Can you
21 read it? If you can't, that's fine.

22 A I can't. I can make out the first name, but not
23 the last.

24 Q What's the first name?

25 A It appears to be Landis.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 MS. PAOLETTI: Your Honor, at this time, the
2 State moves Exhibit No. 36 into evidence.

3 MR. CHAMBERS: Object, Your Honor, on the basis
4 of hearsay.

5 THE COURT: All right. Well, why don't we
6 take -- we've been going for a while, it's probably a
7 good time for a midafternoon break. Y'all don't
8 discuss the case. We'll get back with you shortly.
9 Thank you.

10 (WHEREUPON, the jury left open court at
11 approximately 2:45 p.m.)

12 THE COURT: Okay.

13 MS. PAOLETTI: Your Honor, this is the statement
14 that I raised with you pre-trial. The State is not
15 offering this witness' statement for the truth of the
16 matters contained in the statement. It's not
17 hearsay. What the jury has just heard is a serious
18 concerted effort by this Defendant to keep the
19 witness from coming and testifying to what is in the
20 document.

21 Your Honor, even during the phone call, you can
22 hear the Defendant saying -- he's inserting that this
23 is not true. He just doesn't want the Defendant
24 [verbatim] to come and say it to a jury. And the
25 jury has heard a lot about this statement and in

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 order to give those phone calls context, they need to
2 see what it is the Defendant is so concerned about,
3 about what this witness said.

4 Your Honor, you can instruct them they may only
5 consider it for that and not for the truth of the
6 matter. And that's the reason why the State is
7 offering it, not for the truth of the matter. I will
8 not be standing in front of them arguing that they
9 should read it and take it for the truth. And that's
10 the basis for offering it, Your Honor.

11 MR. CHAMBERS: Well, Your Honor, as I understand
12 it, she's certainly not arguing that this is hearsay
13 because of any exception. She's, essentially, saying
14 that it's not hearsay because she doesn't plan to
15 offer it for the truth of the matter asserted.

16 First of all, my position would be that she is,
17 in fact, offering it for the truth of the matter
18 asserted. She wants it in there because she doesn't
19 have Landis Franklin here to testify, so she wants
20 that statement before the jury.

21 If the Court were to get past that argument,
22 then our position is you run up against the
23 confrontation clause. Essentially, he would be
24 testifying and I would not be able to cross-examine
25 him. Frankly, I would even challenge their assertion

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 that he was pressuring Landis Franklin not to be
2 here. He says repeatedly to him, I don't care
3 whether you come or not, I just want you to tell the
4 truth. So, you know, he indicated to him that there
5 might be consequences if he comes, legal
6 consequences. Frankly, if you look the facts in this
7 case, it's a mystery to me as why Landis Franklin
8 wasn't charged with murder based on the statement
9 that he gave, but he wasn't.

10 There were no threats, certainly, no threats of
11 the violence or that anything was going to happen to
12 him or family members or anything like that. He
13 indicate to him that there might be legal
14 repercussions if he were to come and testify. He did
15 not ever say don't. In fact, he said repeatedly you
16 can come testify, I just want you to tell the truth.
17 But the bottom line is, Your Honor, this is offered
18 for the truth of the matter asserted. I cannot
19 cross-examine his statement, so it violates the
20 confrontation clause.

21 For all those reasons, I would oppose this
22 coming into evidence. I think it does a lot more
23 than provide context. I don't know any curative
24 instruction that you could give that would in any way
25 address what it is she says she's trying to do.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 THE COURT: Well, you all apparently have had
2 this statement for a number of years. I have never
3 even seen it. I have no idea what the content is. I
4 still have not heard a legitimate reason why this
5 statement is being offered other than just put the
6 phone conversations in context. If I am to agree
7 with what you're saying, then it is almost as if I'm
8 commenting on the facts and saying that yes, in fact,
9 the interpretation of the State with respect to the
10 meaning of the statements made in those phone
11 conversations is correct. So first of all, I'd like
12 to look at the statement and see what it says.

13 MS. PAOLETTI: Yes, sir. And, Your Honor, first
14 of all, if the statement's not being offered for its
15 truth --

16 THE COURT: Then we get into a 403 analysis.

17 MS. PAOLETTI: Well -- and Crawford's not
18 implicated in that situation, Your Honor. Crawford
19 only applies if it's being offered for its truth.

20 But, Your Honor, Rule 804 -- if you believe that
21 it's hearsay and you're not buying the argument that
22 we're not going to stand up there and ask the jury to
23 believe the content of the statement, Your Honor,
24 this witness is clearly unavailable. That's been
25 established under 804. He's given a statement

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 against interest that this -- Mr. Chambers just said
2 is clearly against his penal interest, which is an
3 exception that allows the document in if you believe
4 that it's hearsay.

5 THE COURT: I'm sorry, repeat that.

6 MS. PAOLETTI: Under Rule 804, declare
7 unavailable.

8 THE COURT: Right.

9 MS. PAOLETTI: Here's the exceptions, Section B
10 of the rule, A statement against interest. A
11 statement which was at the time of its making so far
12 contrary to the declarant's pecuniary and proprietary
13 interest or so far tended to subject him to criminal
14 liability, then it can be offered. And that's an
15 exception to that rule under 804(b). And the reason
16 why, Your Honor, is because that's in addition of the
17 liability if it's a statement against penal interest.

18 THE COURT: Whose statement?

19 MS. PAOLETTI: Landis. Mr. Chambers just said
20 he should have been charged with murder based on his
21 statement.

22 THE COURT: Okay. I get that.

23 MS. PAOLETTI: Okay. And so --

24 THE COURT: So, how does it apply against this
25 guy?

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 MS. PAOLETTI: I will sit down and let you read
2 it, Your Honor.

3 THE COURT: All right, we'll just take a short
4 break.

5 MS. PAOLETTI: Yes, sir.

6 THE COURT: Officer, you can stand down. Just
7 don't talk about your testimony.

8 (WHEREUPON, a short break was taken.)

9 THE COURT: All right. So, I understand the
10 State's position, why are you offering this
11 statement? Now that I've read it, now that I see
12 what's in it, which this guy is not -- claims not to
13 have been a witness to the homicide.

14 MS. PAOLETTI: Yes, sir.

15 THE COURT: Okay.

16 MS. PAOLETTI: Well; Your Honor, the jury has
17 heard a lot about what -- that he has given a
18 statement and he is not here to testify and to tell
19 the jury anything, whether it what's in his
20 statement, a different version so that I can treat
21 him as hostile to cross-examine so that Mr.
22 Chambers -- and the reason why he's not here is
23 because of what he's been told by the Defendant. He
24 thinks he's going to jail if he comes in here and
25 testifies to what's in that document. And he's

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 unavailable under the rule and the rule allows for
2 his statement, the unavailable witness's statement to
3 come in if it is against his penal interest. The
4 Defense has said that they think that based on what
5 he says he did in the case as the driver, he should
6 be exposed to criminal liability of some sort.

7 THE COURT: Well, I'm not sure what -- you've
8 handed up this unpublished, non-precedential opinion
9 --

10 MS. PAOLETTI: Well, Your Honor --

11 THE COURT: Wait a minute. What are you relying
12 on to introduce this statement? Are you saying it is
13 hearsay and it should come in under this unpublished
14 opinion or are you saying that it's 804?

15 MS. PAOLETTI: It was my understanding that you
16 were not convinced this is not hearsay. I think that
17 there is a non-hearsay reason for admitting the
18 statement. What I'm saying is if you believe it to
19 be hearsay, it's still admissible under 804(b)(3).
20 That's my position.

21 THE COURT: Well, there's no question that this
22 statement is testimonial in nature.

23 MS. PAOLETTI: Yes, sir.

24 THE COURT: The Coldrine case that you have
25 handed up talks about --

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 MS. PAOLETTI: That the statement offered for a
2 non-hearsay purpose and the Court found that one was
3 not hearsay --

4 THE COURT: I haven't found anything yet. I
5 haven't found anything. That's what I'm trying to
6 find out, why you're introducing it. We're all over
7 the map on this.

8 MS. PAOLETTI: Your Honor --

9 THE COURT: What I understood you to say was you
10 wanted to introduce it to put these phone
11 conversations in context.

12 MS. PAOLETTI: I believe that to be a
13 non-hearsay purpose for offering the statement into
14 the record. If you disagree and think that the
15 statement is hearsay, the State's position is that
16 it's still admissible under 804.

17 THE COURT: Well, this content -- this is a
18 two-page statement. And I disagree with
19 Mr. Chambers's assertion that the guy should be
20 charged with murder based on this statement. That's
21 hearing a lot of overstatement from both sides. I am
22 not convinced based on what I listened to in those
23 phone conversations that the conclusion of the State
24 is the only reasonable inference to be drawn from
25 that evidence. I understand that that is the theory

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 of the State.

2 We'll make it an exhibit for the appellate
3 record. I'm not going to allow it to come in. I
4 think it is hearsay. It doesn't fit under these
5 limited circumstances that are pointed out in the
6 United States vs. Coldrine. And it would be, in my
7 opinion, volitive of the Sixth Amendment if I allow
8 it to come in.

9 MS. PAOLETTI: I understand.

10 THE COURT: Make that -- how do you want to make
11 it?

12 MS. PAOLETTI: Just a Court's Exhibit?

13 THE COURT: Yeah, I guess.

14 MS. PAOLETTI: Can we just keep it ID since I've
15 marked it for the State?

16 THE COURT: That's fine.

17 Everybody ready?

18 MS. PAOLETTI: Um.

19 THE COURT: How much more do you have?

20 MS. PAOLETTI: Your Honor, we have a lot more.

21 THE COURT: Well, let's get cracking.

22 MS. PAOLETTI: Yes, sir. We're ready to go.

23 THE COURT: Okay. That's not to comment on
24 whether or not the conversations that were played
25 wouldn't be volitive of some other criminal offense.

JOSH PEDEN-DIRECT BY MS. PAOLETTI

1 I don't know, that's something that the State would
2 have to look into, intimidation of a witness or
3 something.

4 MS. PAOLETTI: If we get in touch with the
5 witness, Your Honor, we'll explore that.

6 (WHEREUPON, the jury came into open court at
7 approximately 3:10 p.m.)

8 THE COURT: Welcome back.

9 Ms. Paoletti.

10 MS. PAOLETTI: Thank you, Your Honor.

11 BY MS. PAOLETTI:

12 Q Detective Peden, do you know who Poo is?

13 A I have heard that name before.

14 Q Do you know what his legal name is?

15 A The Poo that I'm familiar with is Terrell Cook.

16 Q Was he involved in this case at all that you
17 know of?

18 A Not to my recollection.

19 Q In your investigation, did his name come up?

20 A Not to my recollection.

21 Q Do you know who Ethan is?

22 A Possibly.

23 Q Okay. But do you know who he's talking about?

24 A No, ma'am.

25 Q All right. Was a fired bullet ever recovered in

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 this case?

2 A Yes, sir.

3 Q Tell the jury where that was recovered from.

4 A The -- at autopsy, there was a fired bullet
5 recovered from the victim's skull?

6 Q All right. Did you request the crime lab do a
7 ballistic comparison with all the ballistic evidence that
8 you collected in this case?

9 A Yes, ma'am, we did.

10 MS. PAOLETTI: All right. Detective, will you
11 answer any questions that Mr. Chambers might have for
12 you.

13 THE WITNESS: Yes, ma'am.

14 CROSS-EXAMINATION

15 BY MR. CHAMBERS:

16 Q Are you the lead investigator in this case?

17 A Yes, sir.

18 Q And about what time did you arrive out there at
19 the crime scene?

20 A We were on the Interstate, getting on the
21 Interstate when the call came out, so I'm approximating
22 less than 10 minutes. We were two exits down.

23 Q So, what time did you get there?

24 A I'm going to say around 11:00 o'clock.

25 Q So, it's your estimation then that within 10

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 minutes of the call -- now, are you talking about 10
2 minutes from the time dispatch contacted you or 10 minutes
3 from the time that the call came into 911?

4 A I was in my patrol car when the call came out
5 over the radio, so I heard it dispatched to patrol.

6 Q So, you immediately went there?

7 A Yes, sir.

8 Q And what officers were there when you got there?

9 A To the best of my recollection, Officer Barnes
10 and Sergeant Snelgrove were there.

11 Q So, those were the only two officers there
12 besides you at that point?

13 A I believe Officer Jackson arrived at some point.
14 I'm not sure if it was there before or after me.

15 Q And those first two officers, Barnes and
16 Snelgrove, are uniformed officers?

17 A Yes, sir.

18 Q So, they were there in their marked patrol cars
19 wearing their uniforms?

20 A Yes, sir.

21 Q Do you remember where their cars were positioned
22 relative to where the victim was laying on the ground?

23 A I do not.

24 Q Okay. Had they begun to do anything to secure
25 the scene before you got there?

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A When I arrived, they were in the process of
2 searching the bystanders for weapons.

3 Q Approximately how many bystanders were there?

4 A I don't remember. Probably six or eight.

5 Q Okay. Did you take control at that point -- you
6 were the ranking officer, correct?

7 A It would have been turned over to us at that
8 time, yes, sir.

9 Q Did you direct those two officers as to what you
10 wanted them to do or did they just continue doing what
11 they had been doing?

12 A They continued searching. And after that, I
13 probably directed them to put up some crime scene tape.

14 Q Did you tell them where you wanted the tape or
15 did they just kind of use their own discretion?

16 A They probably used their own discretion.

17 Q And it appeared from that video that we watched
18 earlier that they strung crime scene tape, roughly, from I
19 guess where that stop sign is where the victim was lying
20 on the ground, pretty much all the way down the sidewalk
21 there, the block -- well, I can't remember if it was a
22 sidewalk there or not, but, anyway, down the end of that
23 block, between Third and Fourth Street?

24 A There is a sidewalk down between there, yes,
25 sir.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q So, that's where -- that's where the -- that's
2 the crime scene that was secured?

3 A Yes, sir.

4 Q And -- but not the field across the street or
5 around the chemical company or the gas company or any of
6 those places?

7 A No, sir.

8 Q All right. It appeared, at least, on that
9 sidewalk portion that it was pretty dark based on that
10 video, was that what your recollection is, is that it was
11 dark there?

12 A I don't recall there being a street light at
13 Third Street and Woodside. The only illumination would
14 have been coming from some parking lot lights or street
15 lights that were across at the mini storages.

16 Q Now, there were several houses in close
17 proximity to where this shooting occurred, correct? These
18 are apartments?

19 A They're houses, mill houses, yes, sir.

20 Q Yeah, I'm sorry, mill houses.

21 A Uh-huh.

22 Q And there are -- I mean, there's probably on
23 that one block, at least, somewhere between eight, twelve
24 houses where you've got the two rows facing each other on
25 each Third and Fourth Street, is that accurate or am I

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 wrong about that?

2 A That would probably be accurate, six to eight on
3 each side maybe.

4 Q Okay. Did you extend the crime scene out,
5 perhaps, into the yard or between these houses or did you
6 do any kind of search or have anybody look out in those
7 areas?

8 A I don't recall. I do recall searching down in
9 front of Mr. Wright's house.

10 Q Did you direct anybody to canvas the
11 neighborhood? By that, I mean go door to door and talk to
12 anybody what they may have seen or heard?

13 A I believe they did, but I can't remember.

14 Q So, you're the lead investigator, but you don't
15 know if anybody did that?

16 A I do not, no, sir.

17 Q If they had done that, they would have generated
18 a report?

19 A What do you mean by generated a report?

20 Q Well, in other words, police officers, it's my
21 understanding, any time y'all go out and -- on any kind of
22 a call or anything, you will then write up a report
23 because you do lots of things, you work on lots of cases
24 and you want to be able to specifically recall the facts
25 and circumstances of the case that you've been working on,

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 correct?

2 A Correct.

3 Q I mean, like, for this case, you prepared
4 reports so that when the day came that you would come
5 testify, you would have some idea besides just your
6 recollection about what you had done and what had
7 happened, correct?

8 A Yes, sir.

9 Q But you're not aware of any information that
10 came to you by any kind of a canvas of the neighborhood?

11 A I am not.

12 Q So, that if anybody saw -- we know that we had
13 witnesses based on what we've heard so far that saw two,
14 apparently, young men running through that field, but we
15 don't know or we don't have any statements by anybody that
16 they saw anybody run off in another direction, correct?

17 A Correct. The statements that we have are
18 consistent that they ran in that direction.

19 Q But we do know from Officer Barnes that she
20 spoke to several people out there at the scene. I would
21 assume that a lot of that was going on after you got there
22 since you arrived so quickly; is that right?

23 A Potentially, yes, sir.

24 Q Well, I mean, you were here -- were you here in
25 the courtroom yesterday and you heard her testify?

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A Yes, sir.

2 Q And she talked about the fact that she took -- I
3 don't think she did any field interviews really of
4 anybody, but she got names, addresses and phone numbers
5 and just general information from, it looks like, 12
6 different people?

7 A Okay.

8 Q Is that true?

9 A I would have to go back and count, but she did
10 gather names and information of people.

11 Q Well, if you need to look at your notes at any
12 point, please feel free to do that because I want to make
13 sure what I'm saying and what we're talking about is
14 accurate. So, is her reason for getting those names and
15 numbers so that you can then followup because it's
16 important to talk to people who were out there at or
17 around the time this happened, correct?

18 A Correct.

19 Q Do you recall talking to or following up with
20 any of those 12 people?

21 A Let me look and see who she documented.

22 Q Do you have her report?

23 A I do, yes, sir.

24 Q Okay. I mean, the first one she list is Barry
25 Norman, so, obviously, he's the victim.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A Yes, sir.

2 Q But then it starts, as you can see, on Page 2
3 there with complainant number one, which would be Joshua
4 Kilgore.

5 A Yes, sir, I did speak to him.

6 Q Okay. And you also spoke to James Wright,
7 correct?

8 A Correct.

9 Q They spoke to you there at the scene; is that
10 correct?

11 A Yes, sir, that's correct.

12 Q And we've already -- I'm not going to rehash
13 everything that they said, but you heard what the
14 testimony was from Kilgore and that's, basically, what you
15 recall him saying to you?

16 A Yes, sir.

17 Q Now, as I recall in your report, it would seem
18 to indicate -- and again, look at your report if you need
19 to, but did they initially explain to you that they had
20 not gone with Barry Norman over for the fake driveby, that
21 they heard about that later?

22 A That part was not mentioned in my initial
23 contact with him, no.

24 Q So, at the very least, they omitted that from
25 you?

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A Correct.

2 Q It was at a later time that they indicated to
3 you that they had, in fact, gone over to Bates Street and
4 they were involved in that; is that correct?

5 A Yes, sir, that's correct.

6 Q All right. Neither of them were willing to give
7 you any kind of a written statement, were they?

8 A That's correct.

9 Q And you asked them for written statements?

10 A I did.

11 Q But they, obviously, were reluctant for whatever
12 reason to do that?

13 A Correct.

14 Q Based on what we heard earlier, would it be fair
15 to say that they knew a lot of the people that were
16 involved in this trouble that had gone on with Barry
17 Norman; is that right?

18 A I don't know about a lot. They had mentioned a
19 few names to me that night, though.

20 Q Okay. And who were some of the names that were
21 mentioned to you?

22 A The two names that were mentioned to me were Bop
23 and Smitty.

24 Q All right. Those were two of the people that
25 were supposed to have jumped Barry Norman?

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A Or, at least, been present when that happened?

2 Q Okay. Did they also tell you that there was a
3 young man named Shamar Luster who had been involved in
4 that assault on Barry Norman?

5 A My recollection is they did not tell me that he
6 had been involved in that. I do remember them saying his
7 name because one of them, I don't remember which, had seen
8 him shortly -- after the crime search was taped off, saw
9 him on the other side of the crime scene tape.

10 Q Didn't they also, in your report, indicate that
11 Shamar Luster were friends with those people, that he
12 referred to, I believe, as the 44 Boys?

13 A I don't know if that's indicated in my report,
14 but I do remember him saying that he was friends with the
15 ones at Bates Street Apartments, yes.

16 Q Did not indicate that he was a friend of theirs,
17 for example, he wasn't over there visiting with them?

18 A That was not my understanding, no.

19 Q Did not indicate that he was over there as a
20 friend of Barry's or anything?

21 MS. PAOLETTI: Your Honor, I object to the
22 relevance of these questions about this person at the
23 scene.

24 MR. CHAMBERS: I'm just trying --

25 THE COURT: That's all right. Go ahead.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 MR. CHAMBERS: All right.

2 BY MR. CHAMBERS:

3 Q So, we know you talked to Mr. Kilgore and
4 Mr. Wright. The next person that she has listed is Dameon
5 Evans, did you talk to him, get a statement from him at
6 any point?

7 A I did not, no, sir.

8 Q Do you know anything about Dameon Evans other
9 than he was there that night?

10 A I do not.

11 Q The next one is somebody named Lacy Sweet, did
12 you get a statement from her?

13 A I did not. She did provide a statement that
14 night.

15 Q Do you know who took that statement?

16 A If you give me just a minute, I can tell you.
17 That statement was taken by Detective Nelson.

18 Q Okay.

19 A Lieutenant Nelson, I'm sorry.

20 Q The next one listed is Latiffany Sullivan. Did
21 you ever speak to a Latiffany Sullivan?

22 A I do not remember speaking with her.

23 Q Do you know of anybody under your command that
24 talked to Latiffany Sullivan?

25 A I do not know.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q Wilson Dewberry, did you talk to him?

2 A I did not.

3 Q Do you know if anybody that was part of this
4 investigation talked to him?

5 A I believe Officer Jackson may have spoken with
6 him just enough to get his information. I don't know the
7 content of that conversation.

8 Q But only information, I mean, nobody thought to
9 followup and see if he had anything that he could share
10 with you?

11 A No, sir.

12 Q Okay. Brian Anthony Brown, did you talk to him?

13 A I did not, no, sir.

14 Q Okay. Did anybody followup with Brian Anthony
15 Brown?

16 A Not to my knowledge.

17 Q Kadonna Moseley, did you talk to her?

18 A No, sir.

19 Q Do you know of anybody that followed up with
20 Kadonna Moseley?

21 A I'm not aware.

22 Q Braxton Bailey, did you talk to him?

23 A I did not.

24 Q Do you know of anybody that followed up with
25 Braxton Bailey?

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A I believe he was with Mr. Dewberry when Officer
2 Jackson spoke with him, but that was it.

3 Q So he, basically, just got their name and phone
4 numbers, but nobody ever talked to him about anything of
5 any substance?

6 A Do my understanding, yes, sir.

7 Q Stephanie Norman, did you talk to her?

8 A I did not.

9 Q Did somebody else?

10 A I don't recall.

11 Q Okay. Christopher Pearson, did you talk to him?

12 A I did not.

13 Q Do you know if anybody else talked to
14 Christopher Pearson?

15 A Yes.

16 Q Did you get -- did somebody get a statement from
17 him?

18 A Somebody did get a statement from him, yes, sir.

19 Q Then the aforementioned Shamar Luster, did you
20 talk to him?

21 A I did not.

22 Q Okay. Did anybody else ever talk to Shamar
23 Luster?

24 A Not to my knowledge.

25 Q You did -- so those were all people that were

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 present, at least, within minutes of this shooting having
2 occurred?

3 A Potentially, yes, sir.

4 Q Well, I mean, you got there within 10 minutes
5 and they were already there when you got there?

6 A Yes, sir.

7 Q So, all of these people are potential witnesses
8 to something that might have been of interest, correct?

9 A Potentially, yes, sir.

10 Q Because if I remember correctly from Officer
11 Barnes, she said that what at that point was of paramount
12 importance was finding the identity and the location of
13 these armed assailants, correct?

14 A Correct.

15 Q And witnesses like that are the way that you
16 find people. I mean, that's your first source of
17 information are people that are there on the scene?

18 A Yes, sir.

19 Q You had already talked to Mr. Wright and
20 Mr. Kilgore and they were only able to give you a general
21 description?

22 A Yes, sir.

23 Q And you also at some point talked to
24 Mr. Yatzeck, the fella who testified yesterday?

25 A Correct.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q And he was the one who indicated that he saw two
2 individuals running through the field, I believe one of
3 whom was wearing a black sweatshirt or hoodie, I can't
4 remember how he described it, and the other one wearing
5 what appeared to be something orange?

6 A Yes, sir, that's how he described it.

7 Q So, that is one of the first descriptions you
8 had along with Wright and Kilgore?

9 A Yes, sir.

10 Q So, it would seem that the people that you
11 talked to at that point agreed that these people were
12 African-American, somewhere around five-nine, five-ten,
13 somewhere around 150 pounds or so; is that right?

14 A Yes, sir.

15 Q Dark pants and hoodies of some color?

16 A Yes, sir.

17 Q Now, you later looked at video -- we saw the
18 video that was brought in, were you here and watched the
19 video?

20 A Yes, sir.

21 Q Am I correct in my remembering and from what you
22 know from this investigation that we saw two people who,
23 more or less, fit the description of African-American
24 males, five-nine, around 150 pounds at some point walk
25 across in front of the camera?

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A Yes, sir.

2 Q Do you recall that one of them took off a hoodie
3 and threw it?

4 A Yes, sir.

5 Q And that's the one y'all later found, it was a
6 black hoodie, correct?

7 A Correct.

8 Q The other individual that we saw walk across,
9 though, was only wearing dark pants and white T-shirt,
10 correct?

11 A Correct.

12 Q Not wearing a hoodie?

13 A Not that I could tell, no.

14 Q Not wearing a red shirt, an orange shirt or any
15 kind of shirt other than the T-shirt?

16 A It appeared to be a light color or a white
17 shirt.

18 Q And you never found a red or an orange hoodie or
19 sweatshirt or shirt of any kind anywhere out there, did
20 you?

21 A No, sir.

22 Q Now, Christopher Pearson is the person at Holly
23 Oak Chemical, and you did get a statement from him?

24 A Yes, sir.

25 Q So, that's one of the people that she had listed

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 that she talked to. Did you also make contact with a
2 couple of employees that were working for Pike Electric?

3 A Yes, sir.

4 Q Did they indicate anything to you about having
5 heard shots?

6 A They did.

7 Q Were they able to give you a description of
8 someone that they saw at the time of the occurrence?

9 A The description that they gave me was that a
10 short time after the shooting or the sound of gunshots,
11 they observed a black male wearing black pants and a white
12 T-shirt and a black hat walk between the houses.

13 Q And that's on Page 5 out of 17 of your report;
14 is that correct?

15 A Yes, sir.

16 Q Is that where you -- is that the person that you
17 later found to be Shamar Luster?

18 A It was determined that it could have been Shamar
19 Luster, yes, based on his clothing description when he
20 came back --

21 Q You indicated earlier that Wright and Kilgore --
22 but isn't that also where you say that Wright and Kilgore
23 told you that Luster was known as one of the 44 Boys?

24 A That's how they described him, yes, sir.

25 Q Yeah. And went further as someone who had

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 assaulted Norman earlier, in the day?

2 MS. PAOLETTI: Your Honor, I object to that
3 question. It's mischaracterizing the report.

4 MR. CHAMBERS: You can read it.

5 THE COURT: Go ahead. You can answer the
6 question. Explain your answer if you need to.

7 THE WITNESS: Okay. It says, According to
8 Wright and Kilgore, Luster is known as one of the "44
9 Boys" that they referred to that assaulted Norman
10 earlier in the day.

11 And what I meant by that is the same group of
12 people that they had referenced earlier.

13 BY MR. CHAMBERS:

14 Q So, right there, you talked to this guy from
15 Pike Electric, climbed down off his pole when he heard
16 these gunshots. He tells you that he sees this
17 individual, who you later find out to be Mr. Kilgore -- I
18 mean, not Mr. Kilgore, but Mr. Luster?

19 A Correct.

20 Q Mr. Luster is wearing dark pants and a white
21 T-shirt?

22 A Yes, sir.

23 Q He is not wearing any kind of a hoodie?

24 A He is not.

25 Q But you don't know where Shamar Luster came

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 from when he was spotted by the employee for Pike

2 Electric, do you?

3 A I do not.

4 Q You don't know where he had been, you don't know
5 where he was going?

6 A I do not.

7 Q But you do know that he was identified as
8 somebody that may have been involved in the assault
9 earlier in the day, right?

10 A Correct.

11 Q And you do know that he was wearing dark pants
12 and a white T-shirt?

13 A Correct.

14 Q And he was out there on the scene and,
15 presumably, after getting his name and phone number, y'all
16 let him go, just let him walk away from the scene?

17 A He left. My memory of him was he was on the
18 outside of the crime scene.

19 Q Well, you had him, you could have taken him and
20 talked to him if you wanted to, couldn't you?

21 A Could have, yes, sir.

22 Q But did not?

23 A We did not. And I don't recall if I had spoken
24 to Coon and Nix before or after Mr. Luster.

25 Q And you had his information. The fact of the

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 matter is, even after letting him leave the scene, you
2 could have contacted him any time you wanted to to talk to
3 him about what he was doing out there?

4 A Correct.

5 Q You did not?

6 A No, sir, not to my recollection.

7 Q And as we stand here today, has anybody ever
8 taken a statement or found out what he was doing there?

9 A Not to my knowledge, no, sir.

10 Q We don't know how he got there and we don't know
11 how he left?

12 A Correct.

13 Q And we don't know what he was doing while he was
14 there?

15 A Correct.

16 Q That all occurred on October 1st. Once you
17 left -- well, let me ask you this, how long did it take
18 you to wrap things up there at the crime scene?

19 A I honestly don't remember because there was a
20 lot going on.

21 Q Okay.

22 A I believe Officer Barnes's report indicated.

23 Q We heard from the fellow from the forensics who
24 came out. And when he got there -- again, you were here
25 in the courtroom. Do you recall that he said that the

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 crime scene had already been marked off, and, in fact,
2 someone had gone around with white styrofoam cups and had
3 put them beside each item that, presumably, you wanted
4 collected?

5 A Correct.

6 Q Were you the person who put those styrofoam cups
7 there?

8 A To the best of my recollection, I did put some
9 down. I don't know if I put them all down.

10 Q So, there were seven shell casings that were
11 found, correct? Four proved to be 45-caliber shell
12 casings, correct?

13 A Yes, sir.

14 Q And three proved to be 9mm shell casings?

15 A That's correct.

16 Q I assume as a long-time police officer, you're
17 probably much more familiar with firearms than I am, but
18 you have a good familiarity with firearms, correct?

19 A I would say I have a basic understanding of
20 them, yes, sir.

21 Q Well, I think your knowledge would cover what
22 I'm about to ask you.

23 A Okay.

24 Q For cartridges like that to be on the ground,
25 they would have been fired from a semiautomatic pistol,

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 correct?

2 A Yes, sir, correct.

3 Q In other words, that's the kind that the
4 magazine is pushed up into the butt end and then you pull
5 it back to chamber around. And then once you start to
6 shoot, that magazine just feeds bullets into the chamber,
7 but you have to squeeze the trigger each time, right?

8 A Correct.

9 Q And as it does that, it throws a cartridge out?

10 A Correct.

11 Q So, that would indicate to you that both of the
12 weapons for which you found cartridges were semiautomatic?

13 A I believe so, yes.

14 Q If they had been a revolver, that would not kick
15 a shell casings, they would stay in the cylinders,
16 correct?

17 A Until someone opened it and ejected them, yes.

18 Q That's exactly right. How did you locate the
19 cartridges that you found?

20 A After Mr. Yatzeck had described these gunshots,
21 just looking around with a flashlight and started seeing
22 them on the ground.

23 Q So, with the use of a flashlight, starting,
24 roughly, where Mr. Yatzeck told you he heard shots, you
25 started to, I guess, just walk down the street looking for

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 shell casings or whatever you could find?

2 A Yes, sir.

3 Q Did you have any help doing that or did you do
4 it all by yourself?

5 A I'm sure someone was helping me, but I can't
6 tell you who.

7 Q You didn't know who?

8 A I don't recall who was helping me.

9 Q Did anybody find anything other than you?

10 A The sweatshirt and the handgun were not found by
11 me.

12 Q What about shell casings and things like that?

13 A I don't remember.

14 Q Other than starting at Mr. Yatzeck's and walking
15 toward the stop sign inside that tape, did you look for
16 shell casings or projectiles anywhere else?

17 A Down that sidewalk and the roadway back towards
18 Third Street, that's where I was predominately searching,
19 yes, sir.

20 Q Okay. And you were doing that with a
21 flashlight?

22 A Correct, yes, sir.

23 Q Because it was dark out there?

24 A The only light was coming from the mini storages
25 across the street.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q And as we could see from the crime scene video,
2 it wasn't illuminating that sidewalk area very well at
3 all, was it?

4 A Not very well, no, sir.

5 Q You needed that flashlight?

6 A Correct.

7 Q Of course, with a flashlight, you're limited to
8 the area where the light spreads out and shines on the
9 ground and you can't really see beyond that, right?

10 A Correct.

11 Q Was it still dark when you secured the crime
12 scene and left?

13 A Was it still dark when we left?

14 Q Yeah.

15 A Yes, sir.

16 Q Did you take down the crime scene tape and say
17 we're done here and move on?

18 A Someone would have taken the tape down, yes,
19 sir.

20 Q All right. So, nobody ever went back out to the
21 scene in the light of day to look around and see if you
22 could find anymore cartridges or projectiles or anything
23 like that?

24 A I don't recall doing that, no, sir.

25 Q I mean, do you think that that would have been

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 useful to find out if there had been more shots fired or
2 anything out there?

3 A Yes, sir, potentially.

4 Q But you didn't do it, why not?

5 A The following day, we were busy interviewing and
6 following up on some other stuff, some other leads.

7 Q Okay. So, I mean, I guess it didn't -- the
8 priority was not there to you to go back out to see if
9 there was any other evidence that could be found?

10 A I guess you could say it never crossed my mind
11 to go back and recheck the area.

12 Q Okay. I mean, you could have sent forensics out
13 there, couldn't you?

14 A I could have.

15 Q But you chose not to?

16 A I did not.

17 Q Because it just didn't dawn on you to do it?

18 A Correct.

19 Q You said that you found one projectile -- why do
20 you refer to -- it's actually -- I mean, I guess it's a
21 piece of lead, the bullet, what do you refer to that as,
22 what do you call that?

23 A I guess it's referred to as a projectile.
24 That's the common name that I hear.

25 Q You found one projectile and that was,

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 unfortunately, in the skull of the victim, correct?

2 A Correct.

3 Q And that was from -- well, you weren't -- I
4 guess it didn't show positively on the report that you got
5 back from Mr. Armstrong? There was --

6 MS. PAOLETTI: Your Honor, I object.

7 MR. CHAMBERS: I'm sorry, Your Honor, I withdraw
8 that.

9 THE COURT: All right.

10 BY MR. CHAMBERS:

11 Q But there was a projectile that was found inside
12 the victim's skull?

13 A Yes, sir.

14 Q All right. And I guess from your testimony,
15 there were no projectiles of any kind that were found that
16 might have been shot into the ground out there at the
17 scene, correct?

18 A Correct.

19 Q If someone were to have, say, a 9mm pistol in
20 his hand and shoot it straight down into the -- let's say
21 into the dirt, there's a good likelihood that you would
22 find the projectile right there embedded in the dirt,
23 would you not?

24 A I don't know. I don't know how far down in the
25 dirt that it may go.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q And if somebody were to shoot onto asphalt or
2 concrete, would it be likely that at the very least it
3 probably would ricochet off. It would also probably make
4 some sort of a mark on the asphalt or the concrete or
5 something like that, wouldn't it?

6 A Correct, yes, sir.

7 Q But you never saw anything like that out at the
8 scene, did you?

9 A Not that I recall.

10 Q Okay. So, you told me the witnesses you talked
11 to and the ones that nobody talked to and you told me
12 about gathering and not going back in the daylight. Who
13 alerted you to the .45 and the sweatshirt that were found
14 in the field?

15 A I don't remember who called me and told me that
16 they had been found. I remember that Chief Morton went to
17 Holly Oak with Mr. Cashion to observe the video that
18 night.

19 Q Okay. You were not the one who retrieved the
20 gun, were you?

21 A No, sir.

22 Q Did you ever see the gun and sweatshirt lying on
23 the ground yourself?

24 A No, sir.

25 Q So, you didn't go over there. Chief Morton

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 actually didn't that, didn't he?

2 A It's my understanding, yes, sir.

3 Q All right. You indicated to the Solicitor when
4 she asked that among other people that you had interviewed
5 Stacy Sullivan, correct?

6 A Someone had interviewed her, yes, sir.

7 Q Landis Franklin?

8 A Correct.

9 Q James Williams?

10 A Correct.

11 Q Bobby Thomas.

12 A Yes, sir.

13 Q Those are all people that you talked to. You
14 always talked to and got a statement from Jacoby Gregory,
15 correct?

16 A I did not, but Mr. Gregory did speak to law
17 enforcement.

18 Q He did come in?

19 A Yes, sir.

20 MS. PAOLETTI: Your Honor, I object to anything
21 after that about Mr. Gregory.

22 THE COURT: Let's see where he's going. I don't
23 know what he's going to ask. No anticipatory
24 objections.

25

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 BY MR. CHAMBERS:

2 Q Well, you're the lead investigator. Even if you
3 didn't actually take a statement, you would have known a
4 statement was taken, correct?

5 A Correct.

6 Q And that statement, are you aware of the date
7 that that statement was taken?

8 MS. PAOLETTI: Your Honor, I object to any
9 questions about anything about a statement.

10 THE COURT: All right. Hang on.

11 Ladies and gentlemen, we're going to take a
12 short break again. Please don't discuss the case.
13 Thank you.

14 (WHEREUPON, the jury left open court at
15 approximately 3:41 p.m.)

16 THE COURT: Okay. Where you going?

17 Mr. Chambers, where you going?

18 MR. CHAMBERS: Well, Your Honor, I wasn't going
19 to ask about the contents of the statement if that's
20 what she's so upset about. He's the lead
21 investigator and I just wanted to know when his
22 understanding is that Jacoby came in and gave a
23 statement and whether or not he was arrested that
24 day, which I believe to be October 3rd. That's all I
25 was driving at.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 MS. PAOLETTI: Your Honor, even the fact that
2 the Defendant gave a statement coming from the
3 Defense is not admissible. It's hearsay.

4 Your Honor, I'm handing up State vs. Sweet,
5 which goes specifically to the contents of the
6 statement. And I've got another case that's directly
7 on point about offering evidence in front of the jury
8 that the Defendant cooperated in some way or even
9 just came in and gave a statement is not admissible.
10 It's self-serving coming from the Defense. It's
11 hearsay and it's improper.

12 MR. CHAMBERS: Again, I'm not getting into the
13 contents, Your Honor. And I would point out to you
14 that they elicited information that my client was
15 somehow uncooperative, that he had called there, but
16 that he had not come into the office. In fact, he
17 did.

18 THE COURT: I think it's admissible because the
19 door was opened, but you do not get into the content.

20 MR. CHAMBERS: I'm not.

21 MS. PAOLETTI: Your Honor, I would object to any
22 question about characterizing him as being
23 cooperative.

24 MR. CHAMBERS: She characterized him as
25 uncooperative.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 THE COURT: Are you putting your client's
2 character into issue, Mr. Chambers?

3 MR. CHAMBERS: I'm not even going to use the
4 word cooperative, Your Honor.

5 THE COURT: I'm just asking you are you going to
6 put your client's character into issue?

7 MR. CHAMBERS: Not yet. Not right now.

8 THE COURT: Well, then don't go there.

9 All right. We'll take about five minutes.

10 (WHEREUPON, a short break was taken.)

11 THE COURT: How much more you got?

12 MR. CHAMBERS: It shouldn't be too much longer,
13 Your Honor.

14 (WHEREUPON, the jury came into open court at
15 approximately 3:55 p.m.)

16 THE COURT: All right. Mr. Chambers.

17 BY MR. CHAMBERS:

18 Q So, getting back to what we were talking about,
19 as the lead investigator, you are aware that Mr. Franklin
20 was in the police station on October 3rd?

21 A Mr. Franklin?

22 Q I mean, not Mr. Franklin, I'm sorry.
23 Mr. Gregory?

24 A Yes, sir.

25 Q All right. And somebody talked to him on that

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 day?

2 A Yes, sir.

3 Q And that is also the day that you served a
4 murder warrant on him; is that correct?

5 A That's correct.

6 Q So, prior to him getting there, you had already
7 decided to charge him with murder?

8 A Not exactly, no, sir.

9 Q You had a warrant?

10 A We got the warrant while he was there, yes, sir.

11 Q So, then while he was there, you went somewhere
12 to a neutral and detached magistrate and you obtained a
13 warrant for murder?

14 A I called our judge, our on-call judge at the
15 time, and presented the case to him and he indicated that
16 he would issue a warrant.

17 Q As far as this .45 that was found, is it your
18 understanding that that .45, Springfield 45-caliber pistol
19 belonged to Mr. Gregory?

20 A That's correct.

21 Q And that was because he called, as we heard on
22 those phone conversations, and told you that he believed
23 his gun might have been used in this shooting; is that
24 correct?

25 A That's correct.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q And as we heard -- I mean, you listened to those
2 recordings, correct?

3 A The ones that have been played?

4 Q Yes.

5 A Yes, sir.

6 Q And that was part of your investigation?

7 A Yes, sir.

8 Q And I assume part of the reason that y'all
9 wanted to make contact with Mr. Gregory?

10 A Yes, sir.

11 Q Would it be fair to say that he became a suspect
12 when he called in and told you that he thought his gun had
13 been used in this crime?

14 A Not based solely on that, but, yes, he was.

15 Q And he indicated to you and to the other
16 people -- well, at least, to the people that he talked to
17 in those phone conversations that he was -- that his gun
18 had gone missing, which he traced to the hotel?

19 A That's correct.

20 Q The name of which escapes me right now. And he
21 had indicated in that call, did he not, that he had
22 actually called the hotel -- the Clarion, he had actually
23 called the Clarion and had -- to inquire about whether or
24 not they had found the gun in one of their rooms or
25 something, correct?

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A That's what he stated, yes, sir.

2 Q As far as you know -- and again, you're the lead
3 investigator, did you or anybody involved in this
4 investigation ever contact the Clarion Inn to find out if
5 there had been a report of a missing gun at that hotel?

6 A No, sir.

7 Q So, I guess just from the outset, you didn't
8 believe what he told you and you weren't going to check up
9 on it?

10 A We did have some other information that
11 confirmed his story about being at the Clarion, yes, sir.

12 Q But, I mean, don't you think it would be
13 important to find out whether or not he had actually
14 inquired about his gun missing at the hotel?

15 A It would have, yes, sir.

16 Q But nobody did that?

17 A No, sir.

18 Q Because had you done that, it could very well
19 have corroborated exactly what he was telling you,
20 couldn't it?

21 A Potentially.

22 Q Did anybody talk to anybody -- he said that he
23 called Greenville County Sheriff's Office. Did you talk
24 to anybody there about whether or not he tried to file a
25 report or anything like that?

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A No, sir.

2 Q Because again, that would have, perhaps,
3 corroborated his story that even before this thing had
4 happened was trying to locate his missing pistol?

5 A Potentially, yes, sir.

6 Q All right. Now, you indicated that -- as did
7 the young man from forensics, that when y'all took the
8 pistol in possession that it was processed for DNA?

9 A Correct.

10 Q It was not processed for fingerprints?

11 A No, sir.

12 Q And the explanation was you opted to do DNA
13 because it's easier to detect DNA, correct?

14 A Correct.

15 Q And it looked in that picture that we saw -- let
16 me see if it's over here. Well, you recall the picture of
17 the gun all laid out? You've seen it?

18 A On the table?

19 Q Yeah.

20 A Yes, sir.

21 Q I mean, it looks as though the magazine was
22 removed, all of the bullets were removed, and it was --
23 the chamber was open to show that there was no live round
24 in there, correct?

25 A Correct.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q So, that entire weapon and all of those bullets
2 could have been swabbed for DNA?

3 A Potentially.

4 Q But you made the decision as the lead
5 investigator not to have those tested for DNA?

6 A Correct.

7 Q Because you believed, I assume, that you didn't
8 need that, right?

9 A I believed that after he called and said that it
10 was his gun that it would just confirm that his DNA was on
11 it.

12 Q But don't you want as an investigator,
13 especially when you're investigating something as serious
14 as a murder, as much corroborating evidence that you can
15 have in a case?

16 A Yes, sir.

17 Q I mean, there's no such thing as too much
18 evidence, is there?

19 A Correct.

20 Q And wouldn't you have liked to have known if
21 somebody other than Jacoby Gregory had ever been in
22 possession of that weapon?

23 A Yes, sir.

24 Q But you'll never know, right?

25 A We only know of one other based off his

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 statement.

2 Q Based off of his statement, but not based off
3 any physical evidence?

4 A Correct.

5 Q Did you do anything to attempt to independently
6 trace this weapon?

7 A It was run through NCIC to ensure that it wasn't
8 stolen.

9 Q So, it wasn't stolen then?

10 A Correct.

11 Q Let's say that you just find a weapon, no idea
12 about ownership. Are there ways that you can trace the
13 ownership of that weapon?

14 A There are ways that you can trace the original
15 purchaser of the weapon.

16 Q Okay. I mean, there seems to be -- and I run
17 into this all the time, but there appears to be this
18 widespread belief that there's a gun registry out there
19 somewhere. There's nothing like there, is there?

20 A No, sir.

21 Q But if you legally buy a gun from a dealer, then
22 that -- there is a record of that transaction?

23 A There is, yes, sir.

24 Q And, very often, don't you as a police officer
25 when you're trying to ascertain the ownership of a weapon,

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 you can track that sale? You could have gone to where
2 that was sold and find out who it was sold to?

3 A Yes, sir.

4 Q But you did not do that in this case?

5 A I did not, no.

6 Q But this was a legally-owned gun as far as you
7 know?

8 A As far as I know, yes.

9 Q Through your investigation, are you aware that
10 Mr. Gregory was a concealed weapons permit holder?

11 A Yes, sir.

12 Q So, he had actually, apparently, qualified for
13 and earned a concealed weapons permit?

14 A Yes, sir.

15 Q So, we have no physical evidence that links him
16 to that particular gun, correct?

17 A Yes, sir.

18 Q And we have no transaction records or anything
19 that would link him to that gun?

20 A Correct.

21 Q You know about that gun based on information
22 that he provided and, perhaps, from some other statement?

23 A Yes, sir.

24 Q You never found the much-discussed 9mm?

25 A No, sir.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q You did look for it?

2 A We did, yes, sir.

3 Q And nobody was ever able to lead you to it?

4 A No, sir.

5 Q I see from your -- when you testified -- do you
6 remember testifying in the preliminary hearing in this
7 case?

8 A Yes, sir.

9 Q And you indicated that you had knowledge that
10 the victim had been tested for gunshot residue?

11 A Yes, sir.

12 Q And did you testify that he came back positive
13 for gunshot residue on his hand?

14 A I do not remember.

15 Q As far as you know, there was no gunshot residue
16 test done on anybody else?

17 A No, sir.

18 Q Through your training and experience,
19 obviously -- I mean, would you be able to say that gunshot
20 residue gets on somebody's hand from the firing of a gun?

21 A I would say that's a fair and accurate
22 statement.

23 Q Can that gunshot residue be transferred to
24 another substance?

25 A It's my understanding it can.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q So, if I were to fire a gun, run to my car, get
2 in and drive, then it is possible that there would be
3 gunshot residue, say, on my steering wheel or on the
4 handle of my car?

5 A It's possible, yes.

6 Q Did you find any gunshot residue anywhere in
7 this case?

8 A Not to my recollection, no, sir.

9 Q Let me ask you a hypothetical question. And
10 again, I want your answer based on your training and
11 experience and knowledge of the law. Let's say you're
12 investigating a case that involves me. And my associate
13 over there, Chris and I, I drive him over here to the
14 Spinx gas station. And my understanding is he's going to
15 go in and he's going to rob the Spinx gas station --

16 MS. PAOLETTI: Your Honor, I object to the
17 relevance of this.

18 THE COURT: Yeah, where are you going with this?

19 MR. CHAMBERS: Again, it's a hypothetical, Your
20 Honor. It's leading toward the decisions that they
21 made in this case.

22 THE COURT: Well, you can ask him about the
23 facts of the case. He hasn't been qualified as an
24 expert in any subject.

25

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 BY MR. CHAMBERS:

2 Q The phone that was located -- we saw a styrofoam
3 cup by a phone, where a phone was out there at the scene.
4 You put that cup there?

5 A I don't recall if I put that cup there or not,
6 but I do recall the phone.

7 Q Is it your understanding that that was the phone
8 that Barry Norman was using?

9 A Yes, sir, that's correct.

10 Q Did you take that phone into custody?

11 A We did.

12 Q Did you do any examination of that phone?

13 A I know that -- I believe Chief Morton may have
14 looked through the phone that night in an effort to
15 determine who had been in contact with him.

16 Q But you did not do that?

17 A I did not do that, no, sir.

18 Q Do you know who owned that particular phone?

19 A I believe I do.

20 Q Well, I don't want you to assume, but, I mean,
21 based on your investigation, you have some idea who the
22 phone belonged to?

23 A Yes, sir. It was my understanding that that
24 phone was his girlfriend's phone, that they for some
25 reason switched phones.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q So, it wasn't his phone, it belonged to his
2 girlfriend?

3 A It was the phone that he was carrying, yes, sir.

4 Q All right. Getting back -- I want to go back
5 just a few minutes, and I'm almost finished, with Wright
6 and Kilgore. You heard their testimony -- or you heard
7 Kilgore's testimony yesterday that he was, I think,
8 standing up on the porch looking out and that Wright was
9 in the street. Is that consistent with what they told you
10 at the scene?

11 A To the best of my recollection, I do remember
12 that Wright was down -- or said that he was down near
13 Barry near the street. And I have no reason to believe
14 that Mr. Kilgore was anywhere other than the porch.

15 Q And you heard the testimony that the shots that
16 were fired, that those shell casing -- again, based on
17 your knowledge of firearms, if I were standing here and I
18 was shooting toward the wall, the shell casings would come
19 out the left side and fall somewhere right here, correct?

20 A Typically, they would eject out the right side.

21 Q The right side, okay. I got it wrong. So, to
22 the other side?

23 A Yes, sir.

24 Q And those shell casing, as he said, the first
25 one that he found, the closet one to where the victim was

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 lying in the street was, roughly, from where you're
2 sitting to the wall. Does that seem accurate to you?

3 A It does. Potentially, a little bit further,
4 but.

5 Q That's a long way when you're shooting with a
6 pistol, isn't it?

7 A It's hard to say. Different people have
8 different skills.

9 Q Okay. One of the things I wanted to talk to you
10 about was, you -- on the day that Jacoby was arrested,
11 you, I believe, was the one who obtained a search warrant
12 for his burgundy Denali?

13 A It was not me, no, sir.

14 Q You didn't testify that someone got a -- because
15 I remember you saying you were bad colors, maroon,
16 burgundy?

17 A Yes, sir.

18 Q So, somebody got a search warrant for that
19 Denali?

20 A Yes, sir, but it wasn't me.

21 Q Was that at your direction?

22 A Yes, sir.

23 Q Okay. So, you wanted somebody to secure a
24 search warrant for that Denali?

25 A And I believe that was actually the following

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 day on the fourth.

2 Q But you got it?

3 A Yes, sir.

4 Q Did you get the keys to the Denali?

5 A We did.

6 Q And you got those from Jacoby, right?

7 A Correct, when he was arrested.

8 Q And his car was parked where?

9 A It was parked at, I believe the address is
10 East Georgia Road in Simpsonville.

11 Q Do you know who lived there?

12 A That was Ms. Chantee Nelson.

13 Q And is that somebody that had been identified to
14 you as a current or former girlfriend of Jacoby Gregory's?

15 A That was my understanding, yes, sir.

16 Q What was your reason for wanting to search his
17 car?

18 A To locate any potential evidence.

19 Q Okay. And you didn't find any?

20 A Not to my recollection, no, sir.

21 Q Y'all even swabbed for DNA, right?

22 A I don't remember. That would have been done by
23 forensics at their office.

24 Q Are you aware of any DNA being recovered?

25 A I am not.

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 Q Would you have wanted to swab for DNA? Is there
2 anything you would have been interested in with that car?

3 A Potentially.

4 Q So again, why wouldn't you do that?

5 A Again, I don't recall. They may have done it at
6 forensics, I just don't recall if they did it or not.

7 Q Did you do any kind of testing for gunshot
8 residue inside the car?

9 A I don't know.

10 Q Okay. I mean, you said that it could be
11 transferred, was that not something you were interested in
12 finding out?

13 A It can be transferred. However, the vehicle was
14 located on the Fourth. And my basic understanding of
15 gunshot residue is it needs to be collected within six
16 hours.

17 Q Okay. What other cars did you search or
18 process?

19 A The victim's vehicle was searched.

20 Q Okay. And did you locate any useful evidence
21 there?

22 A No, sir.

23 Q So, nobody else's car?

24 A Not that I recall, no, sir.

25 Q There were other cars that were identified as

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 part of your investigation, correct?

2 A There were.

3 Q Did you make any effort to locate those cars and
4 process them?

5 A We did make an effort to locate a co-defendant's
6 vehicle, but we were never able to locate it.

7 Q Were there cars that you knew the location of or
8 could have ascertained that you didn't test?

9 A There were.

10 Q And why not?

11 A Test for?

12 Q Well, for evidence? For anything? I mean,
13 you're the lead investigator in this case.

14 A Yes, sir..

15 Q Okay. So, you made a decision just not to
16 pursue that?

17 A There was -- there were no other vehicles
18 searched. I can't give you an explanation as to why.

19 Q Detective, it would seem that once you settled
20 on Jacoby Gregory as being one of the shooters involved in
21 this that -- I mean, you were pretty much satisfied at
22 that point; is that correct?

23 A There were several items that indicated he was
24 involved, yes, sir.

25 Q Well, I mean, you say items, there is no

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 physical evidence other than the gun, which he called you
2 about?

3 A Correct.

4 Q I mean, that's it?

5 A And statements, I should have said statements.

6 Q Well, those aren't items. I mean, we're talking
7 about evidence, right?

8 A Correct.

9 Q And as we've learned through questioning, I
10 mean, you made the decision, did you not, to not pursue
11 corroborating physical evidence in this case, correct?

12 A Correct.

13 Q I mean, for example, you didn't pursue trying to
14 corroborate his report that he had called various people
15 about his missing gun. You chose not to do that?

16 A That he called who?

17 Q In other words, that he had called the hotel,
18 that, perhaps, he had called, you chose not to do that?

19 A Correct.

20 Q Because that might have indicated that he was
21 telling you the truth about his gun missing?

22 A Potentially.

23 Q Okay. You made the decision, even though DNA
24 had been collected, not to have those DNA swabs tested,
25 correct?

JOSH PEDEN-CROSS BY MR. CHAMBERS

1 A Correct.

2 Q DNA swabs that could have told you if people
3 other than Jacoby Gregory, who was the gun owner, had ever
4 handled that gun, correct?

5 A Potentially, yes, sir.

6 Q You made the decision to only process the two
7 cars that you told me about, correct?

8 A Correct.

9 Q You made the decision to not go out in the light
10 of day and search for more evidence, correct?

11 A Correct.

12 Q I mean, this 9mm that was supposed to have been
13 used, you might have found that out there at the crime
14 scene or in that field across the street or over there at
15 Holly Oak Chemical or anywhere over there, correct?

16 A Potentially.

17 Q But you chose not to do that?

18 A Correct.

19 Q So, would it be fair to say that what you did
20 here was an incomplete investigation?

21 A I don't think so, no. I felt it was complete --

22 Q So, you were satisfied what you did --

23 MS. PAOLETTI: Objection, let him answer the
24 question.

25 THE COURT: Let him answer the question.

JOSH PEDEN-REDIRECT BY MS. PAOLETTI

1 Go ahead.

2 THE WITNESS: What was the question?

3 BY MR. CHAMBERS:

4 Q So, you're satisfied with the job you did in
5 this case?

6 A I think more can be done in every case, but I am
7 satisfy with this case, yes, sir.

8 Q But this -- you actually made the decision, did
9 you not, to not do more?

10 A Correct.

11 MR. CHAMBERS: Thank you.

12 REDIRECT EXAMINATION

13 BY MS. PAOLETTI:

14 Q All right, Detective, the night that this area
15 was searched, did you decide Jacoby Gregory was involved
16 in the murder?

17 A No, ma'am.

18 Q Before daylight, you didn't?

19 A No, ma'am.

20 Q Tell the jury about the fire trucks that come
21 out there on that scene.

22 A There was, at least, two fire trucks, an
23 ambulance and a quick response vehicle driven by EMS.

24 Q Does the fire department have supplemental
25 lighting that they bring out to those scenes?

JOSH PEDEN-REDIRECT BY MS. PAOLETTI

1 A They do.

2 Q Can you see that on the scene video?

3 A I don't recall, but, potentially, yes, ma'am.

4 Q Let's talk about the other car that Mr. Chambers
5 is asking you about. Whose car is he talking about that
6 wasn't processed?

7 A I assume he's referring to Landis' car.

8 Q And how long after the murder did you develop
9 the evidence that Landis Franklin's car could have been
10 evidence in this case?

11 A It was the following day.

12 Q All right. Was it outside the window of
13 collecting any GSR?

14 A Yes, ma'am.

15 Q All right. Let's talk about -- and just clarify
16 your testimony about GSR on the victim, okay. What's your
17 understanding of protocol of taking GSR samples from a
18 victim at autopsy?

19 A From my understanding is that forensics is going
20 to process the victim for GSR no matter what, if he's the
21 victim of a gunshot.

22 Q What steps are taken after the victim's death to
23 preserve that?

24 A There's paper bags placed over the hands to
25 ensure that it doesn't get wiped off or rubbed off either

JOSH PEDEN RECROSS BY MR. CHAMBERS

1 in the ambulance or at the hospital.

2 Q All right. And you said that it's protocol for
3 a victim's hands to be preserved and then tested -- for
4 gunshot residue kits to be collected if they're a victim
5 of a gunshot wound, right?

6 A That's my understanding, yes, ma'am.

7 Q Did you ever have any evidence in this case that
8 the victim was in possession of a weapon?

9 A No, ma'am.

10 MS. PAOLETTI: I don't have anything else.

11 RECROSS-EXAMINATION

12 BY MR. CHAMBERS:

13 Q You indicated that -- you talked about Landis
14 Young's car and you indicated that it was too late to
15 check for gunshot residue, right?

16 A Landis Franklin, yes, sir.

17 Q Landis Franklin, I mean. It wasn't too late,
18 however, to check for DNA, fingerprints, anything that
19 might have indicated who would have been in the car with
20 Landis Franklin, was it?

21 A Correct.

22 Q And again, you made the decision not to even
23 try, correct?

24 A Correct. His vehicle was not processed.

25 MR. CHAMBERS: Thank you.

JAMES FULCHER-DIRECT BY MS. SEAY

1 MS. PAOLETTI: I don't have anything else,
2 Judge.

3 THE COURT: All right. Thank you. You may step
4 down. Thank you very much.

5 MS. SEAY: The State calls Dr. James Fulcher.

6 THE CLERK: Place your left hand on the Bible,
7 raise your right, please.

8 JAMES FULCHER, after being duly sworn,
9 testified as follows:

10 THE CLERK: You may have a seat. Will you state
11 your full name for the record?

12 THE WITNESS: Dr. James William Fulcher.

13 DIRECT EXAMINATION

14 BY MS. SEAY:

15 Q Dr. Fulcher, where are you currently employed?

16 A I'm a pathologist with Pathology Consultants of
17 Greenville, South Carolina.

18 Q How long have you been employed there?

19 A Seven years.

20 Q Would you please tell us what your educational
21 background is?

22 A Sure. I'm a medical doctor. I went to the
23 Medical College of Virginia in Richmond, Virginia. I did
24 a residency in anatomic and clinical pathology in
25 Richmond, Virginia, at the VCU Medical Center. And I

JAMES FULCHER-DIRECT BY MS. SEAY

1 completed a one-year fellowship in forensic pathology at
2 the chief medical examiner's office in Richmond, Virginia.

3 Q Thank you. What is your professional work
4 experience?

5 A Sure. I've been year seven years. This is my
6 first and only job out of fellowship. I do autopsies for
7 this county, Pickens County, Laurens County, Greenville
8 Hospital Systems, and have performed approximately 2000
9 autopsies.

10 Q Thank you. Could you also tell us where you're
11 licensed to practice and your Board certifications?

12 A Sure. I'm Board certified in anatomic, clinical
13 and forensic pathology. I'm licensed to practice medicine
14 in South Carolina and North Carolina.

15 Q Have you testified in court before?

16 A Yes.

17 Q Have you been qualified as an expert?

18 A Yes.

19 Q Can you tell us approximately how many times?

20 A Approximately 20.

21 MS. SEAY: Your Honor, I offer him as an expert
22 in forensic pathology.

23 MR. CHAMBERS: No objection, Your Honor.

24 THE COURT: All right.

25 MS. SEAY: Thank you.

JAMES FULCHER-DIRECT BY MS. SEAY

1 BY MS. SEAY:

2 Q Would you, please, tell us a little bit about
3 what forensic pathology is?

4 A Forensic pathology is the study of the human
5 body, particularly after someone dies, usually, as a
6 result of some action against them. In various cases, it
7 can be traffic accidents, it can be drug overdoses, it can
8 be stabbings, it can be a gunshot wound. Just about any
9 way you can die will be involved in it.

10 Q And what is an autopsy, Dr. Fulcher?

11 A An autopsy is the examination of the external
12 surface of the body and then a detailed examination of the
13 internal surface of the body. Basically, removing all the
14 organs, eviscerating the entire body and then taking
15 selective pieces of organs and looking at them under a
16 microscope to determine additional detail in that organ.

17 Q Did you perform on Barry Norman back in October
18 of 2013?

19 A I did, yes, ma'am.

20 Q On what date did you do that?

21 A It appears the -- I'm going to refer to my notes
22 on the case at this point. The autopsy was performed
23 October 2nd, 2013 at 9:00 a.m.

24 Q All right. Where did you do that?

25 A This would have been at the jointly-owned county

JAMES FULCHER-DIRECT BY MS. SEAY

1 morgue, GHS morgue. It's in the basement of GHS Hospital
2 System.

3 Q Were you able to determine his cause of death?

4 A I was.

5 Q And what was that?

6 A Mr. Barry Norman died from a gunshot wound to
7 the head.

8 Q Would you please explain what the injuries were
9 as they relate to that gunshot wound to head?

10 A Sure, yes, ma'am. The projectile enters on the
11 left temple. So I will point to my own head, here. I
12 recover it on the right side of the skull over here. So,
13 the projectile crosses midline, destroying the portions of
14 the brain in between, which includes vital structures as
15 the corpus callosum and large portions of the cortex,
16 which is the upper portion of your brain.

17 Q Did you find any skin surface, soot, or
18 stippling?

19 A No, ma'am. There is no skin surface, soot, or
20 stippling present surrounding this injury wound.

21 Q What did that indicate to you?

22 A That the range of fire, generally, with a pistol
23 was, at least, several feet away.

24 Q Okay. What was the direction of the wound?

25 A The direction of the wound in this case was from

JAMES FULCHER-DIRECT BY MS. SEAY

1 left to right, slightly front to back and very slightly
2 upwards.

3 MS. SEAY: Would you, please, mark this for
4 identification?

5 (WHEREUPON, State's Exhibit No. 40 was marked
6 for identification only.)

7 BY MS. SEAY:

8 Q Dr. Fulcher, this is State's Exhibit 40 for
9 identification, do you recognize that?

10 A Yes. It's a picture I took of the entrance
11 wound.

12 Q Is that a true and accurate representation of
13 what you observed at autopsy?

14 A Yes, that is exactly what I observed at autopsy.

15 MS. SEAY: Your Honor, I'd offer this into
16 evidence at this time.

17 MR. CHAMBERS: No objection, Your Honor.

18 THE COURT: All right.

19 (WHEREUPON, State's Exhibit No. 40 was admitted
20 into evidence.)

21 BY MS. SEAY:

22 Q During the autopsy, did you locate any physical
23 evidence, Dr. Fulcher?

24 A Yes. We recovered a large caliber jacketed
25 projectile from the lateral aspect of the right parietal

JAMES FULCHER-DIRECT BY MS. SEAY

1 bone. It actually impacted the internal surface of the
2 bone on this side of the head, the skull, if you will.
3 So, we recovered that projectile at autopsy.

4 Q What did you do when you recovered the
5 projectile?

6 A Projectiles recovered at autopsy are always
7 given to the forensics officer that was present at the
8 autopsy.

9 Q Okay.

10 MS. SEAY: And, Your Honor, the State and the
11 Defense have stipulated that this projectile would be
12 entered into evidence. So, this is State's Exhibit
13 32 and I move it into evidence at this time.

14 MR. CHAMBERS: No objection, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON, State's Exhibit No. 32 was admitted
17 into evidence.)

18 BY MS. SEAY:

19 Q Dr. Fulcher, did the victim in this case have
20 other injuries that you observed?

21 A Yes. There are abrasions on the posterior of
22 the bilateral hands. Additionally, there's a large
23 abrasion on the midline forehead and on the nose. I do
24 not believe that -- there are no significant fractures or
25 internal injuries. These are more cuts and bruises.

JAMES FULCHER-DIRECT BY MS. SEAY

1 Q In addition, were there any other findings as a
2 result of your autopsy?

3 A Yes. It appears there was some fairly extensive
4 fibro adhesive disease in the abdominal cavity. It
5 appears that the decedent had had remotely, probably years
6 previously, a remote laparotomy, which means an open
7 incision in the belly to -- and I couldn't tell this from
8 autopsy, but review of the decedent's medical records
9 showed that he had been shot in the abdomen a while back.
10 And I don't know exactly when that was.

11 Q Thank you. Did you conduct a toxicology exam on
12 Mr. Norman?

13 A Yes, we did, ma'am.

14 Q And can you explain a little bit just about what
15 that is?

16 A Sure. We send all our toxicology results to
17 National Medical Services Laboratory in Walnut Grove,
18 Pennsylvania. They have multiple panels we can chose
19 from. In this case, I chose the expanded postmortem
20 panel, which includes a large number of drugs, everything,
21 essentially, illegal that's easily available on the
22 street, including all abusable prescription drugs. It's
23 hundreds and hundreds of compounds that are tested for.

24 Q Okay. What were the results?

25 A Nothing was found.

JAMES FULCHER-CROSS BY MR. CHAMBERS

1 Q Okay. You testified that his cause of death,
2 that being a gunshot wound. Can you explain the
3 difference between cause of death and manner of death?

4 A Sure. Cause of death is why the person died,
5 the physical injury or ailment that killed the person. It
6 could be a gunshot wound to the head. It could be a stab
7 wound to the chest. It could be blunt force trauma to the
8 head. The manner in this state -- as a medical legal
9 descriptor, it is my opinion as to why this person died.
10 In this state, it can be natural, homicide, undetermined,
11 pending, suicide. In this case, given the location of the
12 wound and the additional investigation of the coroner's
13 office did, it was determined this was a homicide. And
14 that, for me, basically, means this man did not shoot
15 himself in the head.

16 MS. SEAY: Thank you, Dr. Fulcher. Please
17 answer any questions that Mr. Chambers might have for
18 you.

19 CROSS-EXAMINATION

20 BY MR. CHAMBERS:

21 Q You said that the entrance wound was to the left
22 front of the head and traveled to the right and,
23 basically, came out this back part of the head; is that
24 right?

25 A The projectile never exited, but it impacted the

JAMES FULCHER-CROSS BY MR. CHAMBERS

1 skull at that point.

2 Q So, it did not exit?

3 A No, it did not.

4 Q That's where you located it?

5 A Correct, yes, sir.

6 Q And I know you just do the autopsy, you're not a
7 ballistics expert or anything, but could you tell from --
8 I mean, from where the wound was, roughly, what direction
9 this projectile would have come from?

10 A Well, once you take the body outside of the
11 scene, it's difficult to extrapolate back. But what I can
12 tell you is that based on where the entrance is and where
13 the bullet eventually ends up -- and for practical
14 purposes, bullets travel in pretty much a straight line in
15 the human body. There can be some deviation when it
16 impacts the skull, but, generally speaking, this weapon
17 was fired to the left of decedent's head and came across
18 midline. So the gun was presumably to the left of his
19 head. Now, that's not to mean that the decedent couldn't
20 have had his head turned. Of course, that changes things
21 a lot.

22 Q It other words, it depends on which way he was
23 facing?

24 A Absolutely.

25 Q The projectile that you found was a solid

JAMES FULCHER-CROSS BY MR. CHAMBERS

1 projectile?

2 A Yes, it had not separated. It was jacketed and
3 large caliber. Which large caliber for me means something
4 larger than 38, basically.

5 Q Did you find any bullet fragments in the brain?

6 A Let me refer to my notes here. No, it was
7 largely intact. I describe it as mostly intact.

8 Q Have you ever had a shooting victim where there
9 were multiple fragments?

10 A Yes, that's very common with high velocity rifle
11 rounds.

12 Q What about with a hollow point bullet?

13 A Hollow point projectiles can lose some mass in
14 the head. They don't always, but sometimes they can. It
15 depends on the muzzle projectile, the density of the
16 skull, various other factors, but yes, they can lose mass,
17 hollow points.

18 MR. CHAMBERS: Thank you. That's all the
19 questions I have for you.

20 MS. SEAY: Thank you. May he be excused?

21 THE COURT: Any objection?

22 MR. CHAMBERS: No, Your Honor.

23 THE COURT: Thank you. You're excused from your
24 subpoena. Thank you very much.

25 MS. PAOLETTI: Your Honor, the State calls Bobby

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 Thomas, Jr.

2 THE CLERK: Place your left hand on the Bible,
3 raise your right hand.

4 BOBBY THOMAS, after being duly sworn,
5 testified as follows:

6 THE CLERK: Please have a seat. Will you state
7 your full name for the record?

8 THE WITNESS: Bobby Louis Thomas, Jr.

9 DIRECT EXAMINATION

10 BY MS. PAOLETTI:

11 Q Mr. Thomas, will you tell the jury where you
12 live, please?

13 A At the time?

14 Q No, right now.

15 A Fairview Street, Apartment

16 Q What city is that in?

17 A Fountain Inn.

18 Q All right. Will you tell the jury what people
19 call you? What's your nickname?

20 A Bop.

21 Q How would are you?

22 A Twenty-three.

23 Q Where did you go to high school?

24 A Hillcrest.

25 Q Do you work?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

- 1 A Yes, ma'am.
- 2 Q Where do you work?
- 3 A Woven Electronics.
- 4 Q I'm sorry?
- 5 A Woven Electronics.
- 6 Q How long have you been there?
- 7 A Since last Wednesday.
- 8 Q What about before that?
- 9 A I was at Kyocera.
- 10 Q Okay. Who do you live with?
- 11 A My mother.
- 12 Q Have you always lived with her?
- 13 A Yes, ma'am.
- 14 Q Tell the jury why you live with her currently.
- 15 A Because she's very -- she's very, very sick.
- 16 She's like 63 years old, so she's very old, so she needs
- 17 somebody to be there with her all the time.
- 18 Q What was your address before you moved to where
- 19 you are now?
- 20 A It was in Gray Court. I can't recall the place,
- 21 but like Track Drive. It was in Gray Court.
- 22 Q Let's talk about when this incident happened
- 23 that we're talking about for this trial. Back in
- 24 October of 2013, where were y'all living?
- 25 A Bates Street, apartment .

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 Q Number , is that also in Fountain Inn?

2 A Yes, ma'am.

3 Q Did you live with your mom then, too?

4 A Yes, ma'am.

5 Q What's your birthdate?

6 A 9/30/92.

7 Q All right. I want to talk to you now about your
8 birthday back in the year 2013, how old were you turning
9 that year?

10 A Twenty-one.

11 Q Did the 30th that year fall on a weekend?

12 A I think like Tuesday.

13 Q So, what were your plans to celebrate your 21st
14 birthday?

15 A Well, not Tuesday, I celebrated the weekend
16 before my birthday. So Tuesday, I just was with my
17 mother.

18 Q Okay. So, we're talking about -- tell me when
19 your birthday is again?

20 A 9/30, September 30th.

21 Q Let's talk about the party in Greenville at the
22 hotel. You know what I'm talking about?

23 A Yes, ma'am.

24 Q Tell the jury what the plans were to celebrate
25 your birthday then?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A Got rooms -- got a room. Chilled out, went to
2 the strip club.

3 Q All right. When was that? What day of the
4 week?

5 A That was on a Friday. We got the room -- I got
6 the room Friday. We stayed all the way to Sunday.

7 Q Okay. Who were you with that Friday?

8 A I can name a lot. It was a lot of us, really.

9 Q Okay.

10 A Like my family and my friends.

11 Q I'm talking about Friday night when you were in
12 Greenville. You just said you went to the strip club?

13 A Yes.

14 Q Who was with you there?

15 A My family, my friends. I can name -- it's about
16 10 or 11 of them I can name.

17 Q Okay.

18 A Me, Vegas, Jacoby, Barry, Tiajuana, Taylor, my
19 niece, Nasha, my nephew, Shamar, my cousin, Tyrone, my
20 cousin, Jarell. It was a lot more, I just can't think.
21 We were having a party at the time. We all left the party
22 and went out.

23 Q Okay. You said your nephew, Shamar?

24 A Yes, sir.

25 Q What's his last name?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A Luster.

2 Q All right. We'll talk about him in a minute.

3 So after y'all went out to the club Friday night, where
4 did you go?

5 A Went back to the room.

6 Q Okay. And do you remember the name of the hotel
7 where you were?

8 A Clarion.

9 Q Where is that?

10 A I don't know the name of the exact road, but
11 it's in Greenville. In front of a store called Mike and
12 Jack's.

13 Q In front of a store?

14 A Called Mike and Jack's. I don't know what road
15 it was on, but I know it was in Greenville.

16 Q Okay. What did you do on Saturday?

17 A We stayed at the room. We got drunk there,
18 partied..

19 Q All right. Did other people come to the hotel
20 on Saturday night?

21 A Yes. Like a lot of people came Saturday.

22 Q Okay. I want to talk to you about the people
23 that you just mentioned. Vegas, what's Vegas's real name,
24 his given him?

25 A His real name?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 Q Yeah.

2 A Shawndell.

3 Q All right. And do you also call him another
4 nickname?

5 A Yeah, I always call him Styles.

6 Q And was Barry still there --

7 A At the room?

8 Q -- on Saturday?

9 A Yes, he had a room of his own.

10 Q What about the Defendant?

11 A Yes, he had a room of his own.

12 Q Okay. Stacy Sullivan, was he there?

13 A Yes.

14 Q What do y'all call him?

15 A Stacy.

16 Q You just call him Stacy?

17 A Yes.

18 Q Tell us what happened on Saturday. Did anybody
19 get into a fight on Saturday?

20 A I really can't recall, but I know it was like --
21 I got into it with my cousin. I was drunk in the bathroom
22 and I ain't let him in and I got into it with him.

23 Q All right. Who are you talking about, your
24 cousin?

25 A Tanasha.

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 Q Let me ask you this, did Barry get into a fight
2 with anybody?

3 A Yes, he got into an altercation down in his
4 room.

5 Q Okay. With who?

6 A Stacy.

7 Q What was that about?

8 A I really can't recall what they got in an
9 argument about. I think they was in there drunk.

10 Q All right. Do you remember giving a statement
11 to the police in this case?

12 A Yes, ma'am.

13 Q I'm going to hand you this and ask you to take a
14 look at it and see if you recognize that?

15 A Yes, ma'am.

16 Q All right. What is that?

17 A It's my statement.

18 Q Okay. I'm going to ask you to read there at the
19 top and I'll ask you that question again.

20 A (The witness complies.) Yeah, that's about
21 right.

22 Q So, what were they arguing about?

23 A I really don't know what they were arguing about
24 because they didn't argue for that long. Like, they got
25 into it. They got cool. We was all like, you know, like

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 drunk. I guess they got into it because they was drunk.

2 Q In your statement, they got into it about some
3 liquor?

4 A Drunk.

5 Q But they hugged and made up?

6 A Yeah, it was good.

7 Q So, when you say they were good, did that last
8 all night?

9 A What, the coolness?

10 Q The arguing between them?

11 A No, that didn't last all night.

12 Q You said they hugged and made up?

13 A Yes.

14 Q Did you see anybody else get into fight at your
15 birthday party that Saturday night?

16 A No, ma'am.

17 Q All right. What did y'all do on Sunday?

18 A Clocked out, head back home.

19 Q All right. Anything else happen that Saturday
20 night?

21 A No, ma'am.

22 Q Okay. Where did you go when you left on Sunday?

23 A Home.

24 Q Okay. Did you go back to your house at Bates
25 Street?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A Yes, ma'am.

2 Q Who went back to your house with you?

3 A Me, Coby and Taylor and Tiajuana and them. You
4 know, they just come back sorting everybody's clothes out
5 and stuff.

6 Q People that were at the party?

7 A Yes.

8 Q Okay. What happened on Monday? Anything?

9 A I can't recall.

10 Q Okay. Was everything normal when y'all got back
11 to Fountain Inn?

12 A Yes, ma'am.

13 Q Or was there something going on?

14 A No, ma'am, when we got back, everything was
15 cool. I was about to go home and cook out on the grill.

16 Q All right. So when you were at your house, did
17 you stay there Monday night?

18 A Yes, ma'am.

19 Q All right. Did anybody come back to your house
20 on Tuesday?

21 A Tuesday was the 30th. Tuesday was my birthday.

22 Q I'm talking about the weekend of October 1st,
23 2013, after the party.

24 A Okay. I'm confused. Yes, ma'am.

25 Q That's okay. That's okay. On that Tuesday. So

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 you just testified that you celebrated your birthday in
2 Greenville Friday night, Saturday night?

3 A Yes, ma'am.

4 Q Came home on Sunday?

5 A Yes, ma'am.

6 Q And you said that Tiajuana was at your house
7 when you got home?

8 A Yes, ma'am.

9 Q Is that right?

10 A Yes, ma'am.

11 Q Okay. Was she happy or was she upset about
12 something?

13 A She was upset about something.

14 Q All right. Who was at your house on that
15 Tuesday?

16 A Tuesday, me, Vegas, Tiajuana, Taylor, Barry,
17 Stacy, and my nephew, Shamar, and my little nieces and my
18 mother.

19 Q All right. You said your nieces, who --

20 A That's Shamar, that his little daughter.

21 Q Shamar's daughter, okay. So they were all there
22 at the house on Tuesday?

23 A Yes, ma'am.

24 Q Okay. I want to talk about the confrontation
25 that happened at your house with Barry. Do you know what

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 I'm talking about?

2 A Yes, ma'am.

3 Q Tell the jury what happened.

4 A Him and Tiajuana got into it. I guess -- I
5 didn't know they was cousins, but they got into about
6 something.

7 Q Say what you said just before, you didn't know
8 what?

9 A I did not know that they were kin, they're
10 family.

11 Q Okay. You didn't know that.

12 A And they got into it, and Barry, he slapped her.
13 She hit her stomach on the ground. Tried to break it up
14 and stuff, got to fighting out there. We tried to tell
15 him to leave -- well, my brother-in-law was trying to tell
16 him to leave, but he never left.

17 Q Okay, stop. Let me stop you right there.

18 Tiajuana, you said she fell and hit her stomach on the
19 ground?

20 A Yes.

21 Q Why was that bad?

22 A Because she was pregnant.

23 Q Okay.

24 A She was like seven months pregnant at the time.

25 Q How old was she, do you know?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A She was like 17.

2 Q All right. So, when Barry did that --

3 A That's when --

4 Q -- what happened?

5 A Stacy jumped up and got to fighting with him
6 because this would have been like -- I guess that's his
7 baby mother.

8 Q And who else?

9 A And Vegas.

10 Q Anybody else?

11 A No, ma'am.

12 Q Okay. Did you see this happen? You're watching
13 this happen, the fight?

14 A Yes.

15 Q Tell the jury where this was happening.

16 A In my front yard.

17 Q All right. Whose cars were parked in front of
18 your house?

19 A I don't recall.

20 Q All right. Did the fight eventually break up?

21 A Yes, ma'am.

22 Q What happened after the fight broke up?

23 A The police came.

24 Q All right. Did you see anybody do anything to
25 Barry's car?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A No, ma'am.

2 Q You didn't see that?

3 A No, ma'am.

4 Q All right. Who's your brother-in-law that broke
5 this up?

6 A His name is Marcus.

7 Q Okay. Was your cousin -- I'm sorry, your
8 nephew, Shamar Luster, involved in the fight with Barry?

9 A No, ma'am.

10 Q What was he doing?

11 A Washing his clothes.

12 Q Did Barry leave?

13 A Yes, ma'am.

14 Q Do you know what kind of car he drove?

15 A I think it was like a little white Honda Accord.

16 Q And you said that the police came --

17 A Yes, ma'am.

18 Q -- is that right? Tell the jury what happened
19 when the police officer came.

20 A Really -- really nothing.

21 Q Was Barry there when the officer got there?

22 A No.

23 Q All right.

24 A They just -- they came and they just -- I guess
25 they were trying to figure out what happened. We told

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 them what happened and they just -- they left.

2 Q All right. Did everybody else stay there except
3 for Barry? Did Tiajuana stay?

4 A Yes, but, eventually, my mother told everybody
5 to leave after the altercation.

6 Q All right. Why did she do that?

7 A She -- well, it's a rule you can't -- you really
8 don't supposed to have a lot people over anyway because we
9 on Section 8.

10 Q All right. And did Vegas stay at your house for
11 a minute?

12 A After the fight?

13 Q Yes.

14 A He had to leave, too.

15 Q All right. I'm going to -- you said the girl
16 stayed?

17 A Yeah, but they had to leave. My mother had to
18 make them leave.

19 Q All right. What about what happened at
20 7:00 o'clock when Barry came back by the house?

21 A That's when everybody took off running, dipping.
22 It was like soon after the fight. It was like 10, 15
23 minutes later, he came back by. It wasn't no like hours
24 or -- it was like he came right back by.

25 Q Okay. What I'm asking you is did the police

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 respond --

2 A To that, no.

3 Q No, let me finish, okay? Did the police respond
4 to your mom's house after Barry and Stacy and Vegas got
5 into the fight?

6 A Yes.

7 Q Was Barry present when the police came that
8 time?

9 A No, ma'am.

10 Q When was the next time Barry came back by the
11 house?

12 A Like, when he came by, like, he was waving
13 something out the car.

14 Q Okay. Well, let's talk about who was there when
15 that happened, okay?

16 A Okay.

17 Q I just want to be clear about who was there when
18 all these things happened. Okay. That has been called
19 the fake driveby?

20 A Yes.

21 Q Is that a fair characterization of what
22 happened?

23 A Yes.

24 Q Who was there at your house?

25 A Me, my nephew, his daughters, my other nephew.

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 Q Who is that?

2 A Simon.

3 Q Okay.

4 A My brother-in-law, Taylor, Tiajuana and Vegas
5 and Stacy.

6 Q What about James?

7 A I don't even recall seeing James.

8 Q You don't recall seeing James at your house?

9 A At all.

10 Q Okay. You know what kind of car James drives?

11 A No, ma'am.

12 Q All right. After Barry drove by the house --
13 and describe for the jury what he did when he drove by the
14 house.

15 A Like, hanging out the window like that.

16 Q Did that scare everybody?

17 A Yes.

18 Q What about Tiajuana, did that scare her?

19 A I wasn't really -- I was just worried about my
20 nephew.

21 Q All right. Did Barry start calling anybody
22 after that?

23 A Yes, he called Vegas and Coby phone.

24 Q All right. How do you know about that?

25 A I'm saying, like, Facebook.

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 Q No, how do you know that he called them?

2 A Because Vegas stated that he been threatening
3 him, saying he was a dead man walking, stuff like that.
4 He was saying all that.

5 Q And that was after the fight?

6 A After the driveby thing, yes.

7 Q And when did this Defendant get to your house?

8 A I think he got there after he got off work. I
9 don't recall what time, though.

10 Q But you didn't list him when you just talked
11 about the people that were there when Barry drove by?

12 A Yeah.

13 Q He came after that?

14 A Yeah, he was there after, like, work time, after
15 he got off work.

16 Q Do you remember about what time that was?

17 A No, ma'am.

18 Q Was it dark outside or light outside?

19 A It was still light.

20 Q Okay. When Barry drove by, were you able to see
21 what he had in his hand when he leaned out the car door?

22 A No, ma'am. I wasn't even trying to figure out.

23 Q All right. When this Defendant got to your
24 house on Bates Street, was Vegas there?

25 A Yes.

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 Q Was Stacy there?

2 A I can't recall.

3 Q Okay. You don't remember if Stacy was there or
4 not?

5 A No, ma'am.

6 Q All right. At some point, did the people who
7 were at your home when this Defendant got there, did they
8 leave?

9 A When the Defendant -- when he got there?

10 Q After he got there?

11 A Did they leave?

12 Q Yes, at some point that night?

13 A Yeah, they left way before then because -- like,
14 who are you talking about?

15 Q Well, you said that --

16 A I said some people left, but my family members
17 they stayed there because that's their grandma house.

18 Q I understand. I understand. And you're talking
19 about Shamar?

20 A Yes.

21 Q What did you say your other nephew's name was?

22 A Marcus and Zira and Quay.

23 Q They stayed there?

24 A Yes.

25 Q But this Defendant and Stacy and Vegas left your

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 house?

2 A Stacy, I don't recall him being there after
3 that. He left after the driveby thing. Like I said, my
4 mother, she told everybody to leave after the altercation.
5 But when Coby got off work, I don't think Stacy was there.
6 I can't recall if he was there or not.

7 Q Oh, you don't remember if he was there or not?

8 A I can't recall. It's been like three years ago.
9 I can't really remember.

10 Q Okay. I'm going to show you your statement
11 again and direct your attention to this sentence right
12 there, okay. Let you read that again.

13 A Now I understand.

14 Q All right. I'll ask again to make it more
15 clear. I'm not asking good questions, I'm sorry. After
16 the -- Barry drove by, did you tell people they had to
17 leave?

18 A Yes, I said that.

19 Q What did you do then?

20 A Went in the house and started cooking for my
21 mother.

22 Q Was your girlfriend there?

23 A Yes, ma'am.

24 Q What's her name?

25 A Her name is Angel.

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 Q What's the next thing that happened that you
2 remember that night?

3 A I heard gunshots.

4 Q Do you remember about what time it was?

5 A I can't recall.

6 Q Okay. I'm going to let you look at this again
7 just so you can remind yourself. I'm not trying to trick
8 you.

9 A (The witness complies.)

10 Q All right. Do you remember about what time you
11 told police you heard gunshots?

12 A Yes, my statement say 10:30.

13 Q And then what did you do when you heard the
14 gunshots?

15 A Stayed in the home, stayed in the house. I was
16 in there cooking.

17 Q All right. Well, your statement, I'm going to
18 show it to you again. Read where it says there at 10:30,
19 what you were doing?

20 A We were sitting outside. 10:30, we heard the
21 gunshots.

22 Q What did you do when you heard the shots?

23 A I went in the house.

24 Q Okay. So, you were outside when you heard the
25 shots?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A Yes, but I was cooking at the same time.

2 Q Okay. That's fine. That's fine. I just want
3 to make sure that the jury understands you were outside
4 when you heard that; is that right?

5 A Yes.

6 Q Okay. If it's not right, tell me it's not
7 right. All I've got is your statement, okay. After you
8 went inside the house, what happened after that, after you
9 heard the gunshots?

10 A Then I was cooking, but I left with my girl.

11 Q You left?

12 A With my girl.

13 Q Is that in your statement?

14 A That's what it say on there, doesn't it?

15 Q Three to five minutes after you heard the
16 gunshots, what happened?

17 A Oh, yeah, that's when they came back running to
18 the house. I'm thinking you asking what did I do.

19 Q I mean, what happened?

20 A Okay. I heard the gunshots and I looked down
21 the street, like, through my screen door, I see Vegas and
22 Coby trying -- Coby was trying to come in the house. And
23 I pushed him back like that, I'm like, no, you can't come
24 in. I'm like you just heard -- what's going on, I hear
25 gunshots. Then he left.

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 Q All right. Did you see him get out of a car?

2 A Not that I can recall.

3 Q Let me show you your statement again. Did you
4 see him get out of the car?

5 A No, ma'am.

6 Q James, are you here because you're under
7 subpoena or are you here under your own free will --

8 A James?

9 Q I'm sorry, Bop, Mr. Thomas.

10 A Yes, ma'am.

11 Q You're here on your own free will?

12 A No, under subpoena.

13 Q You're here under subpoena, right?

14 A Yes, ma'am.

15 Q In fact, what you told police is that you saw
16 this Defendant and Vegas get out of --

17 MR. CHAMBERS: Objection, Your Honor.

18 MS. PAOLETTI: Your Honor, he's clearly hostile.
19 He's testifying contrary to his statement. I'm going
20 to lead him now.

21 THE COURT: All right. I'm going to allow that.
22 Go ahead.

23 BY MS. PAOLETTI:

24 Q About three to five minutes, Jacoby and Styles
25 hopped out some dark green BMW jeep.

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 That's what you told police, isn't it?

2 A I guess so.

3 Q Well, this is your handwriting, isn't it?

4 A Yes, ma'am. But at the time, I was scared. I
5 didn't know what was going on, so --

6 Q You just made that up?

7 A No, I wasn't making it up, I was just telling
8 them --

9 Q Who drives a dark green SUV?

10 A I have no idea.

11 Q Do you remember talking to me a couple of weeks
12 ago?

13 A Yes, ma'am.

14 Q All right. And we went over this statement,
15 didn't we?

16 A Yes, ma'am.

17 Q You didn't tell me at the time that you didn't
18 know about the dark green SUV?

19 A You had the statement. You didn't ask me
20 nothing about that. I told you it happened three years, I
21 cannot remember everything.

22 Q And we let you look at your statement?

23 A I had my own statement.

24 Q Right, we let you look at it and read a copy of
25 it, right?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A No, you came down here asking me questions about
2 different parts. You didn't say I should read over my
3 statement.

4 Q Did I ask you if there was anything about your
5 statement that I needed to know?

6 A And I don't remember nothing.

7 Q You told police that this Defendant tried to run
8 in your door, but it was locked. You opened it and
9 punched him in the face and we fell to the ground. And
10 you cussed him out and said what?

11 A Get the fuck out of here, Coby.

12 Q Why?

13 A Because he was trying to come in my house after
14 I heard some gunshots.

15 Q So, it's just a green BMW that you say you don't
16 remember now; is that right?

17 A I don't recall.

18 Q Why did you tell police about it? I don't
19 understand.

20 A (There was no response.)

21 Q Did you talk to the police the next day?

22 A Yes.

23 Q And you gave this statement?

24 A (There was no response.)

25 Q Yes or no?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A Yes, ma'am.

2 Q And you signed it?

3 A Yes, ma'am.

4 Q You went through every page; is that right?

5 A What do you mean every page, like?

6 Q Of your statement?

7 A Did I sign every page?

8 Q Yes.

9 A Yes.

10 Q You even made changes to it, didn't you, in some
11 places?

12 A What changes in what places? Scratching out BT?

13 Q Yeah, when you scratched something out and wrote
14 BT, what does that mean? Who's BT?

15 A That would be my initials.

16 Q Okay. So, as you were giving the statement to
17 police --

18 A What did I change?

19 Q You changed a letter right there.

20 A What's that letter?

21 Q I can't read it. You marked it out and you
22 wrote BT.

23 A I can't read it either.

24 Q Okay. But you made changes to it and initialed
25 the changes, isn't that right?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A Yes, but what were the changes?

2 Q And here on Page 3 of 4, where you say about
3 three to five minutes, Jacoby and Styles hopped out some
4 dark green BMW Jeep. Jacoby tried to run in my door, but
5 it was locked.

6 You didn't make any changes there?

7 A Are you asking me or are you telling me?

8 Q I'm asking you.

9 A I don't recall.

10 Q You see any marks around there, anywhere on this
11 page where you made any changes?

12 A No, ma'am.

13 Q You know Landis Franklin?

14 A Yes, ma'am.

15 Q When's the last time you talked to him?

16 A Like, I seen him at the grocery store, at Bi-Lo.

17 Q All right. When's the last time you talked to
18 him?

19 A I don't recall. Like, about three months, four
20 months ago, I seen him at the Bi-Lo.

21 Q I want to go back and talk to you about the
22 hotel the weekend before Barry was killed. Did anyone at
23 your birthday party have a gun?

24 A Yes, ma'am.

25 Q Who had a gun?

BOBBY THOMAS-DIRECT BY MS. PAOLETTI

1 A Coby.

2 Q Where did he carry it?

3 A On his waist.

4 Q Can you describe it?

5 A It was black.

6 Q Did you ever see Barry with a gun?

7 A No, ma'am.

8 Q Ever?

9 A Ever.

10 Q What about Vegas?

11 A No, ma'am.

12 Q Ever?

13 A Ever.

14 Q At the hotel that weekend?

15 A No, ma'am?

16 Q What about Stacy?

17 A No, ma'am.

18 Q Ever?

19 A Ever.

20 Q Did this Defendant ever ask you if you knew

21 where his gun was after that weekend?

22 A No, ma'am.

23 Q Have you ever had the Defendant's gun?

24 A No, ma'am.

25 Q Did you ever see anyone else with the

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 Defendant's gun that weekend?

2 A No, ma'am.

3 Q What about on Sunday?

4 A No, ma'am.

5 Q Monday?

6 A No, ma'am.

7 Q Tuesday?

8 A No, ma'am.

9 MS. PAOLETTI: Answer any question that
10 Mr. Chambers might have for you.

11 CROSS-EXAMINATION

12 BY MR. CHAMBERS:

13 Q You and Jacoby Gregory know each other, but
14 you're not really good friends, right?

15 A Like, we know each other, like, grew-up-wise
16 together?

17 Q I mean, you're younger than he is, correct?

18 A Yes, sir.

19 Q And y'all knew each other and you had parties
20 and things like that together, but y'all weren't like best
21 friends, right?

22 A No, sir.

23 Q I mean, you would see him around at times, along
24 with all these other people?

25 A Yes, sir.

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 Q And there were other people that were in this
2 group that you were talking about that you're much closer
3 with than you are with Jacoby, correct?

4 A I wouldn't say I'm closer.

5 Q I mean, some of them you're related to, right?

6 A Yeah.

7 Q Who is the nephew, is that Shamar Luster?

8 A Shamar Luster.

9 Q And he was at your house with you that night,
10 correct?

11 A Yes, sir.

12 Q And now, you talked about this party that
13 happened at the Clarion on the weekend before all this
14 other stuff happened, right? And you said -- I believe
15 you said that there were five separated rooms?

16 A Yes, sir.

17 Q Is that right? Barry had a room. Barry's room
18 was kind of off from everybody else's, wasn't it?

19 A Downstairs?

20 Q Then there were four rooms, one of which was
21 Jacoby's, right?

22 A Yes.

23 Q And everybody else kind of shared the other
24 rooms. Again, total, how many people were there, you
25 think?

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 A Were there?

2 Q Yeah.

3 A I'd said about 20 people.

4 Q Okay. Did that number change over time? Did
5 people come and go?

6 A Yes, it got up to about 40, 50 people out there.

7 Q Were y'all drinking?

8 A Yes.

9 Q Smoking weed?

10 A Yes.

11 Q Listening to music?

12 A Yes.

13 Q Just having a good time?

14 A Yes.

15 Q Celebrating your birthday?

16 A Yes, sir.

17 Q Was that the only reason for it or did your
18 birthday just happen to come at that time?

19 A That was the only reason for it. I was turning
20 21.

21 Q Oh, okay. And so, obviously, I mean, you're
22 drinking, getting high, having a good time and there's
23 over 20 people there coming and going. I mean, you didn't
24 see and hear everything that went on, am I right?

25 A No, sir.

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 Q You did say that you saw Jacoby there?

2 A Yes, sir.

3 Q And you said you he -- you saw him with a gun
4 and it was on his hip?

5 A Yes, sir.

6 Q He, in fact, had a holster for that gun, didn't
7 he?

8 A Yes, sir.

9 Q All right. Had you ever seen him with it
10 before?

11 A No, sir, not that I recall.

12 Q But did you know him to be a concealed weapons
13 permanent holder?

14 A Yes, sir.

15 Q So, you had seen that he actually had a holster
16 that that gun would go in, correct?

17 A Yes, sir.

18 Q He was able to secure that gun in that holster
19 and walk around and the gun wouldn't just fall out or
20 anything like that, correct?

21 A Yes, sir.

22 Q You don't recall anybody -- any discussion about
23 his gun missing?

24 A No, sir.

25 Q But you don't know that it wasn't missing, do

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 you?

2 A No, sir.

3 Q I mean, it could very well have been missing and
4 he talked to somebody else about it?

5 A Yes, sir.

6 Q So, in response to the Solicitor's question,
7 you're not saying that you know one way or another whether
8 his gun went missing?

9 A Yes, sir. I don't recall his gun missing at
10 all.

11 Q Okay. And you talked with the Solicitor about
12 this fight that happened between Barry and was it --

13 A Stacy.

14 Q Stacy. Do some people call him Smitty?

15 A Yes.

16 Q You don't, though, you call him Stacy?

17 A Yes.

18 Q But then they hugged it out and everything was
19 good the rest of the night?

20 A Yeah.

21 Q There was never any trouble between Barry and
22 Jacoby, right?

23 A No.

24 Q Did Barry and Jacoby seem to be friends best you
25 could tell?

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 A I'm saying there was -- at that time, everybody
2 was cool. They the one that got rooms for us and the
3 liquor.

4 Q So, as the Solicitor pointed out to you there on
5 October 1st, which, I believe, was the Tuesday after that
6 weekend; is that right?

7 A Yes, sir.

8 Q Okay. You had all these folks that were hanging
9 out at your house. And you've identified who these people
10 were?

11 A Yes, sir.

12 Q And among those were family members, your mom,
13 your aunt, I believe?

14 A My mother, my brother-in-law, my nieces and
15 nephews.

16 Q And one of the nephews was Shamar?

17 A Yes.

18 Q And so, is that common that people hang out at
19 your house like that?

20 A I'm saying at the time, like, I wasn't thinking,
21 so I thought it was cool just to have everybody over, but
22 it wasn't at the time. I ain't supposed to have all them
23 people over there at the house.

24 Q All right. And Bates Street is kind of a short
25 street, right? There aren't a lot of apartments over

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 there.

2 A Yeah, that's the only apartments right there.

3 Q Okay. And, basically, on that street are just
4 those Section 8 apartment houses that you're talking
5 about?

6 A Yes, sir.

7 Q How many total are there?

8 A Eight.

9 Q About eight. And they're right behind the
10 Bojangles?

11 A Yes, sir.

12 Q Okay. So, about what time was it when Barry
13 came over?

14 A I don't recall.

15 Q But it was during the daylight?

16 A Daylight.

17 Q Was it before lunch or after lunch or do you
18 know?

19 A It was after lunch.

20 Q Jacoby wasn't there, was he?

21 A No, he wasn't.

22 Q And I believe you said that Stacy, Smitty, was
23 with him, is that right, with Barry?

24 A Yes, sir.

25 Q All right. Was anybody else with Barry and

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 Smitty?

2 A No, sir.

3 Q But as you said, there was an altercation that
4 then happened between Tiajuana, who was seven months
5 pregnant, and Barry, right?

6 A Yes, sir.

7 Q And Barry is somehow kind, right, they're
8 related to each other?

9 A Yes, sir.

10 Q At some point, did he take his hand and like
11 smash her in the face with it?

12 A No, he smacked her.

13 Q He smacked her?

14 A Yeah.

15 Q Hard?

16 A Yes.

17 Q Then she fell down on the ground?

18 A Yes.

19 Q That's when she fell on her stomach?

20 A Yes.

21 Q Did that alarm you?

22 A Yes, we don't do that around, like, you hitting
23 a woman.

24 Q Did you react at all, did you do anything?

25 A No, I push him off of her, not nothing serious,

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 though.

2 Q Who did you push?

3 A Barry.

4 Q All right. You pushed Barry off -- when you say
5 pushed off of her, was he continuing to try to do stuff to
6 her?

7 A No, like get up, you know, like that.

8 Q Yeah.

9 A Trying to stand above him.

10 Q So, you went up to him and pushed him?

11 A Yeah. And that's when him and Stacy and Vegas
12 got in a fight in the road.

13 Q Okay. And they beat him up pretty good, didn't
14 they?

15 A Not really. He probably --

16 Q You think he gave as good as he got?

17 A He beat up Stacy, you know.

18 Q Barry's a big boy, right?

19 A Yeah, he's a big boy. He's older than
20 everybody.

21 Q But you didn't see anybody do anything to his
22 car, break his windows or anything? You don't remember
23 that?

24 A Not that I recall.

25 Q But you do remember him getting in his car and

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 driving off?

2 A Yes.

3 Q Did the police come by after that?

4 A Yes. After --

5 Q After that fight in the yard?

6 A Yes.

7 Q Do you know who called the police?

8 A My mother.

9 Q Your mother called the police?

10 A Yes.

11 Q Did she ask the police assistance in getting
12 everybody to leave?

13 A No, she was just saying she wanted everybody out
14 of her house.

15 Q She wanted everybody out of there?

16 A Yeah.

17 Q So, at that point, pretty much everybody left,
18 except for family?

19 A Yes, pretty much.

20 Q All right. So, after that fight then, you're
21 saying the only people that were there were your family
22 members?

23 A Well, like -- I don't even know if you call
24 like -- some of them like -- like a couple of them stayed,
25 but it wasn't like -- all the women, all the females

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 because she thought the females started it, so we got
2 mostly all the females out and like -- so y'all them left,
3 like only person that stayed was like Shamar, my nephew,
4 really.

5 Q So --

6 A And Marcus.

7 Q Who's Marcus?

8 A That's my brother-in-law.

9 Q So tell me, after the police left, after the
10 altercation that you just described where Tiajuana got
11 knocked down, as best you can recollect, who was there in
12 that house?

13 A As best I can -- I done told you already my
14 family was there.

15 Q Okay. So, nobody that wasn't related to you was
16 there?

17 A Yes.

18 Q Who?

19 A Vegas, he was still there. But like I said,
20 they had to leave, too. They didn't stay that long.

21 Q Okay. And did they leave before Barry came
22 back?

23 A They left before -- they was there when Barry
24 came back through with the gun.

25 Q Yeah.

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 A Vegas was gone, but the girls and all them was
2 still out there.

3 Q So, Vegas was gone, he wasn't there --

4 A Huh-uh.

5 Q -- you're saying when Barry came back by with
6 the gun?

7 A The police came, I guess he dipped off
8 because -- I guess they got to fighting out there, so he
9 left.

10 Q Was anybody with Barry when he came by with the
11 gun?

12 A He was in the back seat, I think. Barry was
13 hanging out the back seat. I didn't see who was driving,
14 nothing like that.

15 Q You didn't see. Did y'all take off running?

16 A Yes, I grabbed my nephew and took him in the
17 house.

18 Q Is that Shamar you grabbed?

19 A No, that's my baby nephew, Zira. Shamar is my
20 other nephew.

21 Q Where did Shamar go?

22 A Shamar grabbed his two daughters and took them
23 in the house.

24 Q How old are his daughters?

25 A Two and three.

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 Q How old is Shamar?

2 A Twenty-four.

3 Q Do you remember -- any chance, I know it was a
4 while back, do you remember what Shamar was wearing?

5 A I don't recall. I know the car he drove.

6 Q What kind of car did he have?

7 A It's a Solara.

8 Q Okay. And did Jacoby come to your house at some
9 point?

10 A Yes. Everybody -- like I said, it was about the
11 time as soon as he got off work. I guess he got off work
12 about that time. It was still daylight, though.

13 Q But it was a good bit after --

14 A It was way good bit afterwards.

15 Q And Vegas wasn't there then?

16 A No.

17 Q All right. Just your family members and then
18 Jacoby?

19 A Yes.

20 Q And Jacoby came by and then he left?

21 A When Coby got there, that's when Vegas pulled
22 back up.

23 Q Oh, he came back?

24 A Yeah, they came back. Everybody like -- you
25 know, everything settled down.

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 Q Okay.

2 A People came back.

3 Q So, everything was settled down and everybody
4 was just kind of hanging out at that point?

5 A Yes.

6 Q Then I think you said that at some point
7 everybody left again --

8 A Yes --

9 Q -- and you were cooking?

10 A -- when the shooting -- when all that happened
11 and they tried to run back to my house and --

12 Q Well, how long had everybody left before --

13 A I --

14 MS. PAOLETTI: Let him answer the question.

15 THE COURT: Yeah, she's got to take it all down.

16 BY MR. CHAMBERS:

17 Q How long had everybody left before you heard
18 those shots?

19 A I don't recall a certain time.

20 Q Do you recall who left with who or anything like
21 that?

22 A No.

23 Q Because you were coming in and out of your house
24 cooking?

25 A Yes, sir. I was sitting with my girl on the

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 porch.

2 Q And you were heard those shots, I mean, you
3 didn't know where they were coming from, did you?

4 A Huh-uh, it just -- it sounded close, very close.

5 Q You didn't know anything about what was going
6 on, you just heard gunshots that sounded nearby?

7 A Yes, sir.

8 Q Any idea how many gunshots you heard?

9 A I can say, at least, about four or five.

10 Q Okay. And your testimony and then, apparently,
11 the statements that you gave earlier was that Jacoby, this
12 person that you're fairly friendly with, following
13 gunshots, shows up at your house and your response is to
14 come out and punch him?

15 A Don't let him in because he was trying to get in
16 my house.

17 Q I mean, he could have been running from whoever
18 was shooting.

19 A At the time, it's not my -- I don't want that
20 shooting come in my house.

21 Q You just didn't care?

22 A Not at the time. I was just scared for my
23 family. I was worried about my momma.

24 Q So, it could have been anybody that ran up and
25 you're doing the same thing?

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 A Yes.

2 Q Okay. Do you -- you actually gave the police
3 two statements, didn't you? Do you remember?

4 A It was two pieces of paper, yeah.

5 Q Well, do you remember that on two different
6 dates you gave statements?

7 A Yes.

8 Q Do you remember that you gave this half-page
9 statement, looks like, on October the 7th?

10 A Yeah, I wrote that, then I guess they wanted me
11 to write -- they wanted me to rewrite something over, put
12 out in better words for them.

13 Q And in that, did you indicate something about
14 Coby having a black hoodie?

15 A Said he had on a black hoodie that day.

16 Q Okay. And did you say that was balled in his
17 hands?

18 A Yes.

19 Q Okay. But you didn't say anything about that in
20 your second statement, did you?

21 A That's the first one, isn't it? The half one is
22 the second one.

23 Q You're exactly right, that is the second one.
24 You didn't say anything about it in your first one, about
25 him having a black hoodie?

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 A I don't recall. I have to read it.

2 Q You want to look? Go ahead and look through
3 there.

4 A (The witness complies.)

5 Q So, nothing about the black hoodie?

6 A No, sir.

7 Q And that four-page statement you gave was the
8 first statement you gave, right?

9 A The four-page?

10 Q Yeah.

11 A Yes.

12 Q Then the police had you come back on the seventh
13 and that's when you gave the half-page statement?

14 A Yes. It was like an interrogation going on at
15 that time with all that.

16 Q And you did indicate -- you said that Jacoby got
17 in his Denali and left?

18 A Yes.

19 Q So, his Denali was parked right there?

20 A His Denali was parked there when he pulled up
21 from work.

22 Q Okay. So, you just punched him and then he went
23 on?

24 A I don't know if he got in the car. I fight with
25 him and I closed my door.

BOBBY THOMAS-CROSS BY MR. CHAMBERS

1 Q Okay. So, as I gather from your statements and
2 from what you've had to say here today, you didn't witness
3 any shooting?

4 A No, I didn't witness no shooting or no gun that
5 whole day.

6 Q Did Shamar ever leave the house?

7 A No, he was -- well, he do his laundry at my
8 house because they don't have a washer and dryer.

9 Q So before, during or after the shooting, you're
10 saying he was at your house?

11 A Yeah, both those times, and afterwards, we had
12 to go pick up his old lady at the time. And I guess -- I
13 guess he went over -- he said he went by there and he said
14 he was seeing what was going on and a police questioned
15 him out there and said what were you doing out here. But
16 --

17 Q So, he did leave the house?

18 A Yeah, when it was time to go home to leave.

19 Q What time was -- how long after --

20 A I don't recall.

21 Q Okay. But you are aware then that he was over
22 there at the scene?

23 A Yes.

24 Q Okay.

25 MR. CHAMBERS: That's all the questions I have

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 for you. Thank you.

2 THE COURT: Any redirect?

3 MS. PAOLETTI: I don't have anything for
4 Mr. Thomas, Your Honor. Can he be released?

5 THE COURT: Yes.

6 Do you have any objection to that?

7 MR. CHAMBERS: No, Your Honor.

8 THE COURT: All right. You're excused.

9 MS. PAOLETTI: Your Honor, can we approach?

10 THE COURT: All right.

11 (WHEREUPON, an off-the-record bench conference
12 was held in the presence of the jury but out of
13 the hearing of the jury.)

14 MS. PAOLETTI: Your Honor, the State calls James
15 Williams.

16 JAMES WILLIAMS, after being duly
17 sworn, testified as follows:

18 THE CLERK: Please have a seat. Will you state
19 your full name for the record?

20 THE WITNESS: James C. Williams.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MS. PAOLETTI:

24 Q Mr. Williams, will you tell the jury how old you
25 are?

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

- 1 A Twenty-six.
- 2 Q Where are you from originally?
- 3 A Originally, I'm from Fountain Inn.
- 4 Q Where did you go to high school?
- 5 A Hillcrest.
- 6 Q All right. You working?
- 7 A I am.
- 8 Q Where do you work?
- 9 A Hopefully, I'm still at CF.
- 10 Q Why do you say that?
- 11 A Because I done missed two days of work.
- 12 Q Why are you here?
- 13 A Because y'all tracked me down and brought me
- 14 here.
- 15 Q Did we serve a subpoena on you?
- 16 A Yes, you did.
- 17 Q All right. How long have you worked at CF?
- 18 A For three years.
- 19 Q What kind of work do you do for them?
- 20 A We build axles for BMW.
- 21 Q Is that the kind of work you've always done?
- 22 A Manufacturing and warehousing, yes.
- 23 Q Was there a time that you lived in Fountain Inn,
- 24 South Carolina?
- 25 A Can you repeat that?

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 Q Was there a time that you lived in Fountain Inn?

2 A Was there a time?

3 Q Yes.

4 A Yes.

5 Q Okay. I'm just asking if there was a time when
6 you lived there.

7 A Okay.

8 Q All right. Were you living there in October of
9 2013?

10 A I was.

11 Q All right. I want to talk to you about October
12 1st of 2013. Do you remember that date?

13 A Yes.

14 Q All right. Did you go to Bop's house on that
15 date?

16 A I did.

17 Q Had you been with them in Greenville the weekend
18 before?

19 A No.

20 Q What kind of car were you driving when you went
21 to Bop's house?

22 A I had a gray Toyota, the car I have now. Gray
23 Toyota, 2006.

24 Q When you got there, did you talk to Bop?

25 A Not really. When I got there, I was with

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 Landis. Landis had said, Let's go to Bop house. So, I
2 went over there, pulled in the yard. Landis got out, I
3 stayed in my car. I had just got a new stereo and I was
4 messing with my stereo.

5 Q Okay. What were your plans for that day?

6 A I was waiting on my son's mother to call me so I
7 could go see him. So I was, basically, just really
8 wasting time over there waiting on her to call me.

9 Q Do you remember about what time it was when you
10 got there?

11 A It was daylight. Not really.

12 Q It's okay if you don't. It was still light
13 outside?

14 A Yeah.

15 Q Did you see Barry there that day?

16 A I did.

17 Q Do you know Barry Norman?

18 A I do.

19 Q How did you know him?

20 A From school.

21 Q Tell the jury what happened when Barry got
22 there.

23 A When Barry got there, three females -- as soon
24 as he got out the car, three females approached him,
25 yelling about something all in his face.

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 Barry was telling the girls to calm down,
2 chill, get out my face with that. I'm not trying to hear
3 that. Get out my face. Get out my face.

4 The girls continued hitting Barry all in
5 his face, yelling at him. I think that's when Barry
6 mushed one of the girls who was pregnant, mushed her and
7 she fell.

8 Q All right. Let me stop you right there. Will
9 you tell the jury what you mean by that? Mushed her.

10 A Mush means when you take your open palm fist and
11 you push it in somebody's face and you shove it.

12 Q All right. We just heard testimony that Barry
13 smacked Tiajuana.

14 A I heard that.

15 Q All right. Is that accurate?

16 A Not to my knowledge.

17 Q All right. Tell the jury how you were watching
18 this go on.

19 A I was still in my car. Like I said, it was
20 parked in the driveway, so all I really had to do was turn
21 around and see it out -- because they was at the back of
22 my car.

23 Q But you did see Barry push her down?

24 A Mush her, yes.

25 Q What happened when he did that?

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 A After Barry -- as soon as he mushed her, Bop,
2 Bobby ran off the porch, Smitty ran off the porch and
3 Vegas ran off the porch. You can say it was a fight, but
4 it really wasn't. It was more like they was just dancing
5 around out there in the street. It was probably, you
6 know, maybe three, four punches were thrown. They ripped
7 his shirt up and that was it.

8 Q Were you involved in the fight at all?

9 A No.

10 Q Was Vegas?

11 A Yes.

12 Q All right. And you said Smitty. Who's Smitty?

13 A Stacy.

14 Q What did you do?

15 A What did I do?

16 Q Uh-huh.

17 A Nothing.

18 Q Okay. Were you there when the police came by?

19 A I was.

20 Q All right. Did Barry leave?

21 A Yes, Barry left.

22 Q Had he left by the time police got there?

23 A Yes.

24 Q Did Barry call anyone at Bop's house after he
25 left?

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 A He did.

2 Q How do you know that?

3 A They had him on speaker phone. I could hear him
4 cussing people out. You know that was messed up what
5 y'all did over --

6 Can I cuss?

7 THE COURT: I'm sorry?

8 THE WITNESS: Can I cuss?

9 THE COURT: Yeah.

10 THE WITNESS: He was like, that was messed up,
11 you know, y'all fighting me over a bitch and all
12 that. Y'all supposed to be my home boys, you know.

13 BY MS. PAOLETTI:

14 Q Do you remember whose phone he was on on speaker
15 phone? If you don't, it's okay. I'm asking you if you
16 remember.

17 A I don't remember.

18 Q Okay. All right. What happened after that?

19 A After that, you know, the phone calling kept
20 continuing. And, you know, y'all -- this ain't the last
21 time y'all going to see me and all that. Maybe 10, 15
22 minutes went by, we see a Crown Vic coming from our right.
23 As soon as he gets about midway in front of the house, you
24 see Barry out the back door waving what appeared to be at
25 the time a gun, but it was his phone, waving it.

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 Everybody ran off the porch to the right and I ran to the
2 left.

3 Q All right.. You said what appeared to be a gun,
4 but it was a phone?

5 A Yes.

6 Q Describe for the jury -- and I'm just going to
7 give you a phone. Will you show them what he was doing
8 with the phone?

9 A Like this.

10 Q So, did you -- were you able to see that it was
11 a phone when he went by?

12 A Not necessarily. It wasn't until after he
13 completely went by the house, he yelled, Yeah, y'all some
14 bitches. Because, you know, we realized he didn't have a
15 gun, so we just assumed it had to be his phone.

16 Q But you didn't stick around to study it to see
17 what --

18 A No.

19 Q -- it was?

20 A No.

21 Q Did that upset you?

22 A It did.

23 Q All right. What happened? I mean, what did you
24 do? What were y'all doing at the house?

25 A We wasn't really doing -- we didn't go anywhere

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 or do anything at that time. We was just talking about
2 it, saying that was messed up. Once again, he began
3 calling people's phones and saying, You know, y'all some
4 bitches. Y'all thought -- y'all thought y'all was dead
5 and all that. And he just -- you know, everybody was just
6 really talking about it.

7 Q Did some time go by? Did some time -- I mean,
8 did -- let me ask you this, do you know about what time
9 that was when that happened?

10 A I don't know.

11 Q Do you remember if it was light outside or dark
12 outside?

13 A It was still light, yeah.

14 Q Okay. After Barry drove by, did this Defendant
15 come to the house?

16 A You talking about Coby?

17 Q Yes.

18 A Yes, he did.

19 Q All right. Did Barry continue to call after he
20 arrived?

21 A He did.

22 Q Did he ever call you?

23 A No.

24 Q Did he call this Defendant?

25 A I want to say he did, yes.

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 Q Would the calls be put on speaker phone so
2 people could hear?

3 A Yeah, yeah.

4 Q That's how you knew he was calling?

5 A Yeah.

6 Q Was Landis at Bop's house at this point?

7 A He was.

8 Q What did you do next?

9 A Are you taking me after he drove by?

10 Q Yes.

11 A Okay. After, you know, he just kept calling.

12 Coby finally came. He came out there. People filled him

13 in on what happened. He was seeing things on Facebook

14 Barry was posting and he wanted to know what was going on.

15 After that, after maybe a couple of minutes, me, Coby and

16 I want to say Vegas, we all went to the store because at

17 that time, I needed some cigarettes. I needed to clear my

18 mind.

19 Q Was there a time that you took Landis home
20 before this?

21 A Yes.

22 Q Tell the jury about that.

23 A Landis -- after, you know, all that done went

24 by, maybe two hours done went by, Landis talked to me

25 called going to a club called Cream in Greenville. I told

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 him I probably not going to go, but since I drove you over
2 here, I'll drive you back home and let you get your stuff
3 situated.

4 Q So, did you take Landis home?

5 A I did.

6 Q Where did you drop him off?

7 A At his house.

8 Q Do you know what the address is or what the
9 street is?

10 A Kings Court, that's all I know.

11 Q Is that also in Fountain Inn?

12 A Yes.

13 Q Do you have to drive by an Exxon to get to his
14 house?

15 A Yes. It's one of the ways, yes, to get to his
16 house. You don't have to go that way.

17 Q All right. Is that the way you took him home
18 that night to the best of your recollection? Or if you
19 don't know, it's okay.

20 A It's most likely the way I took him, yeah.

21 Q All right. Where did you go after you took
22 Landis home?

23 A I believe I went back to Bop's house.

24 Q All right. Was Stacy Sullivan still there?

25 A I want to say he was.

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 Q All right. And what about Vegas?

2 A Yes.

3 Q And this Defendant?

4 A I don't think he had got there by the time I
5 dropped Landis off and got back to Bop's house. I don't
6 think he had got there yet.

7 Q But you told us earlier that you heard Barry
8 call his cell phone at Bop's house?

9 A That was after when he got there, but when I got
10 back to Bop's house after dropping Landis off, he had not
11 yet got there.

12 Q So, you took Landis home before this Defendant
13 got there?

14 A Right.

15 Q At all?

16 A Right.

17 Q Got it. So Vegas -- when you got back from
18 taking -- or when you're getting ready to go out, is this
19 Defendant at Bop's house?

20 A Yes.

21 Q And was Vegas there?

22 A Yes.

23 Q Was Stacy Sullivan there?

24 A Yes.

25 Q Let me ask you this, did you and this Defendant

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 and Vegas get in a car?

2 A Yes.

3 Q Tell the jury about that.

4 A We got in my car and we was going to get some
5 cigarettes.

6 Q Where did you go?

7 A To the Exxon.

8 Q Is that the Exxon that you were just talking to
9 near Landis' house?

10 A Yes.

11 Q What happened when y'all were in the car on the
12 way to the Exxon?

13 A What happened while we was in the car on the way
14 to the Exxon?

15 Q Was anybody calling anybody's phone?

16 A I cannot remember. I know I needed to use
17 Vegas's phone to call my son's mother because my phone had
18 went dead. So, I was on his phone. That's the only phone
19 usage I can remember.

20 Q So, you don't know if Barry continued to call
21 this Defendant?

22 A I don't.

23 Q Was this Defendant talking about Barry and what
24 had happened when y'all were on the way to Exxon?

25 A No, he was talking about Pizza Hut.

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 Q Pizza Hut?

2 A Yeah.

3 Q All right.

4 A Right next to the Exxon.

5 Q What happened when y'all got there?

6 A He told me to pull over at Exxon and he said he
7 was going to go over there in the Pizza Hut parking lot.

8 Q Did he do that?

9 A He did.

10 Q Did he evidently come back?

11 A He did.

12 Q Did he have anything with him?

13 A No.

14 Q Did he have any pizza?

15 A No, they were closed.

16 Q All right. When y'all were on your way over to
17 the Exxon, did you talk to Landis?

18 A I believe he had -- yes, he called me.

19 Q All right. And what was the plan that you made
20 with Landis?

21 A To go to Club Cream.

22 Q Was he going to meet you somewhere?

23 A The initial -- the initial arrangement wasn't
24 for him to meet me, but the fact that I was already at the
25 Exxon, he just pulled up on me while I was using Vegas's

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 phone to talk to my baby mother.

2 Q What car was he driving?

3 A I believe it was BMW jeep.

4 Q When you say jeep, you mean like an SUV?

5 A Yeah.

6 Q Do you remember what color it was?

7 A Dark.

8 Q Okay. Who was in the car with Landis at that
9 point?

10 A Nobody, I don't think.

11 Q Do you remember giving a statement in this
12 case -- I'm not trying to trick you, I just want to ask
13 you about this.

14 A You're fine.

15 Q Do you remember giving a statement?

16 A Yes.

17 Q I'm going to let you look at this right here and
18 direct your attention to the middle part there and ask if
19 you will review that, please?

20 A Okay. Yes, Stacy was in the car with him.

21 Q Do you know how Stacy got over to Landis' house?

22 A No. No.

23 Q You just know that he was in the car with Landis

24 --

25 A Yeah.

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 Q -- when y'all met them at the Exxon? Was it
2 light outside or dark outside when you met them?

3 A It was dark.

4 Q All right. So, what happened when Landis pulled
5 into the Exxon?

6 A When he pulled in, I was still on the phone with
7 my son's mother. And Coby got out and got in his car and
8 Vegas rushed me off the phone, said he needed to go. Said
9 they were going to leave and I had to get off the phone.
10 So, I got off the phone, gave Vegas his phone and they got
11 out of my car and got in his.

12 Q Into whose car?

13 A Landis.

14 Q Okay. Was that confusing to you when that
15 happened?

16 A It was.

17 Q Why?

18 A Because, you know, like I say, it was no initial
19 agreement for us to meet up. So, you know, when he pulls
20 up on me, I'm already thinking, you know, okay, well, he
21 just happened to pull up on me because I'm near his house.
22 But when they jumped out, I'm lost because I'm like, you
23 know, we all going to same place, so --

24 Q And when you say, We're all going to the same
25 place; what are you talking about?

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 A Club Cream.

2 Q Okay. So, that's what you thought the plan was?

3 A Yeah.

4 Q What did you do after that?

5 A After they got out, I made a left going to my
6 house, I believe.

7 Q Okay. Where did you go from there, from the
8 Exxon?

9 A I got at the stop sign, made a left and I went
10 to my house.

11 Q All right. I'm going to show you your statement
12 again and just let you review that, okay. I just want to
13 make sure I understand it right.

14 A Okay.

15 Q Does that help you remember?

16 A Yeah. I see Bop and another guy named Jarell,
17 they pull up also at the Exxon. And I pull up beside of
18 them -- I get behind them. They turned right and I make a
19 left thinking that everybody's going back to Bop's house.
20 And when I get there, there's nobody there at Bop's house.

21 Q All right. Who called you then?

22 A Landis.

23 Q All right. What did he say?

24 A He asked me where I was.

25 Q What did you do?

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 A I told him I was at Bop's house.

2 Q What did you do next?

3 A I don't remember.

4 Q I'm just trying to establish where you went
5 after that. Did you drive down Woodside at some point?

6 A Yes.

7 Q Tell the jury what happened when you drove down
8 Woodside.

9 A When I drove down Woodside -- I believe what
10 you're talking about is when I saw the police and
11 ambulances outside. And I look over to my left and I see
12 a body on the sidewalk.

13 Q All right. Did you talk to the police there?

14 A Not really. Wasn't too much to say because
15 Detective Hawkins told me to turn around, I needed to
16 leave the scene. He said I needed to leave.

17 Q You see Landis later that night?

18 A Yes.

19 Q All right. When you talked to Landis earlier,
20 where had you made a plan to go?

21 A Club Cream.

22 Q That was a horrible question. After y'all left
23 the Exxon, the next time you talked to Landis --

24 A Uh-huh.

25 Q -- did you have a plan to meet him somewhere

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 else other than Club Cream?

2 A No.

3 Q I'm going to ask you to look at your statement
4 again just to help you remember. Did you plan to meet him
5 in Mauldin?

6 A Oh, yeah, he went to pick up Brad, who he was
7 picking up to go to Club Cream.

8 Q That's okay. I'm not trying to trick you. I --

9 A Yeah, I mean, that's kind of, you know,
10 irrelevant kind of because we all still going to Club
11 Cream.

12 Q So, that was still part of the plan?

13 A Yes.

14 Q Did you go to Mauldin?

15 A I want to say I did, but I don't remember.

16 Q Did you end up going to Club Cream?

17 A Yes.

18 Q Who did you go with?

19 A By myself. I was in the car by myself.

20 Q Did you meet anybody there?

21 A At Club Cream?

22 Q Yes.

23 A Yes.

24 Q Who?

25 A Landis.

JAMES WILLIAMS-DIRECT BY MS. PAOLETTI

1 Q Anybody else?

2 A Not that I can remember.

3 Q What about Brad?

4 A Yeah, Brad was there.

5 Q He went, too?

6 A Yeah.

7 Q After you left Cream, where did you go?

8 A Went to Tiara's house, Tiara Smith.

9 Q Is that where you spent the night?

10 A It is.

11 Q Do you remember about what time you got to her

12 house? It's okay if you don't remember.

13 A I do not remember.

14 Q Was it early morning hours?

15 A Yeah.

16 Q After midnight?

17 A Yeah. Okay. Club Cream closes at 2:00, so
18 maybe around 4:00ish, 5:00ish maybe. I don't remember.

19 Q Okay. That's okay. Did -- when you were at
20 Ms. Smith's house -- her name is Tiara Smith?

21 A Right.

22 Q Did you talk to her about what had happened that
23 day at Bop's house?

24 A I did.

25 Q Did you talk to her about what had happened at

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 the Exxon? About them getting into Landis' car?

2 A I don't recall, but if I told her what happened,
3 I'm pretty sure I was telling her everything, yeah.

4 Q Did police come and want to speak with you after
5 that night?

6 A They did.

7 Q Did you give them a statement and tell them what
8 you knew?

9 A I did.

10 MS. PAOLETTI: All right. Thank you,
11 Mr. Williams. Will you answer any questions that
12 Mr. Chambers might have?

13 THE WITNESS: I will.

14 THE COURT: All right, cross.

15 CROSS-EXAMINATION

16 BY MR. CHAMBERS:

17 Q You actually give the police two statements,
18 didn't you?

19 A I believe I got four pages of statements, so it
20 might have been more than two.

21 Q Do you recall that you gave them a statement on
22 October 2nd?

23 A Yes.

24 Q Do you recall that on October 23rd, they had you
25 come down and talk to them again?

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 A I do not recall.

2 Q Okay. Now, you were at Bop's house with all
3 these other people when the fight broke out between --
4 where Bop mused --

5 A You mean, Barry?

6 Q Yeah, yeah, yeah, I'm sorry. I get confused
7 with all these names.

8 A It's all right.

9 Q When Barry mused Tiajuana?

10 A Right.

11 Q And several people at that point jumped him as a
12 result of that, correct?

13 A If that's what you want to call it.

14 Q Well, I want you to describe it.

15 A When he mused her, Bop, Vegas and Stacy came
16 off the porch, got him away from her completely. They in
17 the middle of the street. It's, basically, you know,
18 everybody got their guard up. They might swing and miss,
19 swing and miss, swing and miss, swing, hit, grabbing his
20 shirt, you know, ripped his shirt up.

21 Q So, there really wasn't a fight?

22 A It really wasn't.

23 Q But Bop was one of those people?

24 A Yeah -- well, he was out there. I wouldn't say
25 he was -- like I say, he was the first one to get him away

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 from her.

2 Q Okay. Did you see anybody break Barry's
3 windows?

4 A No.

5 Q Did you see Barry drive away?

6 A Yeah. Yeah.

7 Q And you stayed there and you were there when
8 this what everybody's referring to as the fake driveby?

9 A Yeah, I was there.

10 Q Were there people leaving before that because
11 they were afraid that something was about to happen?

12 A I can't remember if people was leaving.

13 Q Okay. Did the police come out after the
14 altercation?

15 A Yeah, the police did come out there.

16 Q Did they come again after the driveby?

17 A No, they did not.

18 Q Do you remember Bop's mom and little kids and
19 all these people being there at the house?

20 A Like I say, I spent most of my time in the car,
21 so I never really got out until later on after Barry left.
22 I hadn't got out of my car yet.

23 Q So, you don't know who was in the house then
24 because you didn't go in --

25 A I don't know who was in the house.

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 Q And then sometime after the driveby, that's when
2 Jacoby got off work and came by?

3 A Right.

4 Q So, he wasn't part of anything that had happened
5 up until that point?

6 A Right.

7 Q Do you recall indicating to the police that from
8 what you could see, that Smitty was the one who was, like,
9 really worked up?

10 A Right.

11 Q And he's the one you refer to as Tiajuana's baby
12 daddy, right?

13 A Right.

14 Q And Smitty, again, is Stacy Sullivan; is that
15 correct?

16 A Right.

17 Q And vegas, I think was also fairly upset about
18 the whole thing?

19 A Everybody was upset, okay. I was upset at what
20 happened.

21 Q But Smitty seemed to be more enraged about it
22 than anyone?

23 A Yes.

24 Q Because that was his baby momma?

25 A Right.

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 Q Jacoby was asking about it, but he wasn't, like,
2 particularly mad about the whole thing, was he?

3 A He felt some type of way about Barry kept
4 calling Vegas's phone. That's where he felt some type of
5 way about it. It wasn't about Barry really mushing the
6 girl. I don't think he had any, you know, no problem with
7 that or, you know, not saying he didn't care or anything,
8 it's just that -- it was just the point that where Barry
9 just kept calling and calling and calling.

10 Q So, you were going to go get some cigarettes.
11 And this is after you took Landis Franklin home?

12 A Correct.

13 Q You took Landis home and you came back?

14 A Correct.

15 Q To Bop's house?

16 A Correct.

17 Q Then you indicated you were going to go back to
18 that Exxon, which is on North Main Street, correct?

19 A Correct.

20 Q About a mile or so from Bop's house?

21 A Yes.

22 Q And you -- and so Jacoby and Shawndell rode with
23 you?

24 A Right.

25 Q They were the only other people in the car with

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 you?

2 A Right.

3 Q The discussion on the way over there, at least,
4 from Jacoby was about going to the Pizza Hut?

5 A Right.

6 Q And when you got there, he, in fact, went to the
7 Pizza Hut only to find that it was closed.

8 A Right.

9 Q So, apparently, he wanted to get something to
10 eat, that was his reason for going?

11 A Right.

12 Q And you spent most of your time on Shawndell
13 Clemons's phone talking to your baby momma?

14 A Right.

15 Q Do you remember what Jacoby was wearing?

16 A No, I do not recall.

17 Q Okay. They didn't have guns with them, did
18 they?

19 A No.

20 Q You didn't see anything like that?

21 A No.

22 Q And they weren't talking about killing anybody
23 or anything?

24 A No.

25 Q There was talk about getting pizza?

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 A I mean, there was talk -- when he -- if there
2 was any talk about any retaliation, it was mainly about
3 fighting. Because like I said, he kept calling and
4 calling and calling. And when I see y'all, I'm going to
5 do this and that and this and that. The main talk was,
6 you know, well, when we see you, we see you.

7 Q Fistfight?

8 A Right.

9 Q Okay. And you said while you were there, Landis
10 unexpectedly pulls up?

11 A Right.

12 Q And Smitty's with him?

13 A Right.

14 Q Stacy Sullivan?

15 A Yes.

16 Q He's in the car with Landis?

17 A Right.

18 Q While you were there, Bop, Bobby Thomas and
19 Jarell pulled in behind you at the Exxon, didn't they?

20 A Right.

21 Q So, you said that Shawndell Clemons and Jacoby
22 get in the car and they ride off with Landis?

23 A Correct.

24 Q What did Bop and Jarell do?

25 A They took the opposite way.

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 Q Okay. Did they go the same way you went?

2 A No.

3 Q So, they went a different way?

4 A Right.

5 Q Were they going the same way that the car that
6 Landis was driving went?

7 A After Landis had pulled off, I sat in the
8 parking lot because I was pulled up beside Jarell and Bop.
9 And I was trying to figure out, you know, what y'all
10 fixing to do, what's going on. And they really wasn't
11 saying nothing, so when they pulled off, I pulled off
12 behind them. See, by then, I hadn't seen which direction
13 Landis and them had went.

14 Q All right. And so, you don't know where they
15 went?

16 A No.

17 Q But you know that Bop and Jarell went in the
18 opposite direction from the way that you went?

19 A Right.

20 Q Is that when you said you went back to Bop's
21 house?

22 A That is.

23 Q And nobody was there?

24 A Nobody.

25 Q I mean, nobody at all?

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 A Nobody.

2 Q Did you go in the house?

3 A No.

4 Q All right. Do you know if anybody was in the
5 house?

6 A No.

7 Q But you know there was nobody outside?

8 A I do know there was nobody outside.

9 Q Did you ever see Bop again that night?

10 A No.

11 Q When you -- so when you got back there and
12 nobody else was there, did you leave immediately or did
13 you hang out there for a while?

14 A I left immediately.

15 Q Did you hear gunshots?

16 A I did not.

17 Q You never heard any gunshots?

18 A I don't recall. I want to say I didn't. I
19 think I would remember gunshots.

20 Q Okay. So the way you found out then about Barry
21 was you just happened to be driving down Woodside and you
22 saw all the commotion?

23 A Right.

24 MR. CHAMBERS: All right, Mr. Williams. Thank
25 you, very much.

JAMES WILLIAMS-CROSS BY MR. CHAMBERS

1 THE COURT: Anything else?

2 MS. SEAY: No, sir. Can Mr. Williams be
3 excused, please?

4 THE COURT: Any objection?

5 MR. CHAMBERS: No, Your Honor.

6 THE COURT: All right, you're excused.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: All right. Let me talk to the
9 lawyers briefly.

10 (WHEREUPON, an off-the-record bench conference
11 was held in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: All right. Mr. Foreman, ladies and
14 gentlemen, we will break for the evening. I ask you
15 to be back at 9:30 in the morning. Y'all know what
16 else I'm going to say. Don't do any research, don't
17 go visit the scene, don't get on social media, don't
18 talk to anybody, don't get any advice. Everything
19 you need to know about this case you'll learn in this
20 courtroom. So see you morning. Have a good night.

21 (WHEREUPON, the jury left into open court at
22 approximately 5:50 p.m.)

23 THE COURT: All right, anything before we break?

24 MS. PAOLETTI: No, sir, Judge.

25 MR. CHAMBERS: None.

1 THE COURT: All right, see y'all in the morning.
2 (WHEREUPON, the proceedings were concluded for
3 the day to be reconvened on July 13, 2016.)
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1 July 13, 2016

2 All right, anything before we start?

3 MR. CHAMBERS: Just one thing, Your Honor. I
4 spoke to your clerk about a situation that came up
5 that I don't know if it's an issue or not, quite
6 frankly. My client had mentioned to me in trial
7 preparation last week, and then I just forgot and he
8 mentioned it to me again this morning. Shawndell
9 Clemons, who is the co-defendant in this case, claims
10 to testify, is represented by Scott Robinson. Jacoby
11 tells me that at some point before he hired me that
12 Scott Robinson met with him in the jail, talked
13 extensively about representing him, talked about the
14 case, and quoted him a fee. He never retained Scott
15 Robinson, but he said he did talk with him about the
16 case.

17 I've never had a situation like this, frankly.
18 I don't know if it raises any kind of concerns or
19 not. But now being aware of that, I just wanted to
20 bring it to the Court's attention. Scott is
21 representing him now. My understanding is that John
22 Abdalla represented Shawndell Clemons before that.

23 THE COURT: Where is Robinson?

24 MS. PAOLETTI: Your Honor, he's supposed to be
25 here this morning. We ask transport deputies to

1 check and see if they've seen him yet this morning
2 and they haven't. And I just didn't leave to go
3 call, but I can do that, Your Honor, and get him up
4 here.

5 THE COURT: I want him up here now.

6 MS. PAOLETTI: Yes, sir.

7 MR. CHAMBERS: Your Honor, I just want to offer
8 an apology for not bringing this to the Court's
9 attention sooner.

10 THE COURT: Yeah, this is serious. That's why
11 we have a code of professional conduct.

12 MS. PAOLETTI: Judge, I left a message on his
13 cell phone and I sent a text message to him. I got
14 one from him about 8:00 o'clock this morning saying
15 he would be up here this morning.

16 THE COURT: Does he have an office?

17 MR. CHAMBERS: His office is over there where --
18 the one that's right next to the jail where --
19 there's a bunch of lawyers in there. Judge
20 Bartlett's got an office in there.

21 THE COURT: Okay.

22 MR. CHAMBERS: It's right there.

23 THE COURT: Okay. All right.

24 Mr. Gregory, raise your right hand. Stand up.

25 And I'll say this to the lawyers. We stand up

1 when we make an objection or when we address the
2 Court. It's not me personally, it's the institution
3 of the court. And if the lawyers don't show respect
4 for that institution, we cannot expect it from the
5 general public. So, I will require that from now on
6 and punish those people who do not do it. All right.

7 JACOBY GREGORY, after being duly
8 sworn, testified as follows:

9 THE COURT: Put your hand down. And before I
10 question you, Mr. Chambers talk to him about what was
11 said -- I want to know his story on what the
12 relationship with Scott Robinson was, so if you need
13 to talk to him about it.

14 MR. CHAMBERS: No, Your Honor, he can go ahead
15 and tell you about that.

16 EXAMINATION

17 BY THE COURT:

18 Q All right. Go ahead, tell me about it.

19 A The relationship, we called him, he came down to
20 the jail to see me, set up an interview time. I brought
21 my motion and everything. He went through the motion. He
22 let me know that -- I told him I was raised in Syracuse,
23 New York and he let me know he was from Rochester. Right
24 then, he kind of really wanted to get the case. He asked
25 me what happened. I gave him the details. I told him

JACOBY GREGORY-EXAMINATION BY THE COURT

1 that I had just got offered a plea from the solicitor,
2 told him what the plea was. I told him exactly what was
3 said. I showed him my co-defendant's statements.

4 His exact words were, Based on these
5 statements, I can get the case dismissed.

6 He told me a fee. I'm not sure I can tell
7 you the fee, but he told me one price. Immediately, I
8 told him -- he asked what my family did. I told him what
9 my dad did. He told me to call my dad on his cell phone.
10 My dad's behind me, he can also testify to that. We
11 called my dad on his cell phone. He kept telling me to
12 tell my dad he's from Rochester and that he wanted the
13 case. My dad said something like he couldn't afford that
14 much or something like that.

15 Scott, before he left, he told me to talk
16 to my dad, talk to my dad, he really wanted the case, that
17 he could beat the case, he wanted the case. He gave me a
18 card with his cell phone number and his office number. I
19 believe it was that same day that I called my dad's office
20 and talked to my sister and we called Scott on three-way.
21 He has ring back tone. We talked to him.

22 He said, I can do it for --

23 He took 10,000 off the original price. And
24 quoted for my sister also that based on my co-defendant's
25 statement, he would get the case dismissed.

JACOBY GREGORY-EXAMINATION BY THE COURT

1 I think then is when I gave Scott my dad's
2 number or my dad gave -- they exchanged numbers somehow,
3 someway and they did talk. The price eventually dropped
4 down like another 25, \$3500 and. My dad said, You know,
5 being that he kept dropping the price, he didn't trust
6 him, he didn't want to deal with him. At the time, I
7 didn't know anything about my co-defendant even trying to
8 obtain a lawyer. I was under the impression that my
9 co-defendant was trying to make bail and so on and so
10 forth.

11 Q When you say co-defendant, who are you talking
12 about?

13 A Shawndell Clemons.

14 Q Okay.

15 A So, we were actually next door to each other and
16 he was telling me about his plans on making bail or
17 whatever. This year --

18 Q Can you tell me when this occurred? Do you know
19 when you met with him?

20 A This was March or might have been April, 2015,
21 sir. And my co-defendant obtained Scott this year, 2016,
22 I'm not sure what month.

23 Q Okay. When you say you showed him your motion,
24 you mean the material produced pursuant to a motion for
25 discovery?

JACOBY GREGORY-EXAMINATION BY THE COURT

1 A Yes, sir. I showed him --

2 Q So, you had a lawyer before you spoke with him;
3 is that right?

4 A I had a public defender.

5 Q Who was that?

6 A Alex Stalvey.

7 Q Stalvey?

8 A Yes, sir.

9 Q Okay.

10 A And I didn't show him -- I don't think he looked
11 through the police reports. I think the only thing he
12 looked through while I was speaking was the actual
13 statements, the written statements. He didn't look
14 through them long. He just kind of glanced at them, gave
15 them back. I put them back in the folder. He asked me
16 what my co-defendant was saying. I told him what he was
17 saying. He asked me what happened. I told him what
18 happened. And he asked me one question, I told him the
19 answer. And he started bragging about, you know, how he's
20 a murder lawyer. He can beat murders. And, you know,
21 bragging about a trial that he -- I think that he -- I
22 actually think that he lost a trial he told me about, I
23 can't remember, but --

24 Q So, you told him your story about that case; is
25 that right?

JACOBY GREGORY-EXAMINATION BY THE COURT

1 A Yes, sir.

2 THE COURT: All right, thank you.

3 What is the order of the witnesses that we're
4 talking about in this case?

5 Not you, Mr. Gregory.

6 MS. PAOLETTI: Your Honor, this morning, we have
7 Latasha Black, James Armstrong with the crime lab,
8 and a witness from Verizon Wireless, our records
9 custodian, and then the co-defendant.

10 THE COURT: And do your records indicate when
11 Robinson was retained by the co-defendant?

12 MS. PAOLETTI: April 5th, 2016, is the date the
13 letter was wrote to my office.

14 THE COURT: April 5th of 2016?

15 MS. PAOLETTI: Yes, sir.

16 THE COURT: So, Stalvey was -- when was Stalvey
17 relieved?

18 MS. PAOLETTI: When Randy was hired.

19 THE COURT: When was that, Mr. Chambers?

20 MR. CHAMBERS: Your Honor, I left that part at
21 my office. I just brought things that I needed this
22 morning. But I've been on the case a good long time.

23 MS. PAOLETTI: I got it.

24 MR. CHAMBERS: And I'd say that by April, we had
25 already made a decision that we were going to trial.

JACOBY GREGORY-EXAMINATION BY THE COURT

1 Leigh and I, you know, I was waiting to hear back
2 from her about when she could put the case on the
3 trial docket.

4 MS. PAOLETTI: Your Honor, I received an email
5 from Meredith Wilson of the Public Defender's Office
6 on Tuesday, April 7th, letting me know that
7 Mr. Gregory had retained Randy. I hadn't received
8 anything yet, but I got an email confirmation from
9 Randy confirming that on April 13th of 2015.

10 THE COURT: 2015?

11 MS. PAOLETTI: Yes, sir.

12 THE COURT: Okay.

13 MS. PAOLETTI: And I think I have seen a letter
14 of representation, I just can't put my hands on it
15 right now.

16 THE COURT: All right. Well, we'll proceed with
17 the trial.

18 MS. PAOLETTI: Yes, sir.

19 THE COURT: Do not call the co-defendant. Just
20 get as much evidence in right now as we can before we
21 decide what we have to do with this case.

22 MS. PAOLETTI: Yes, sir.

23 THE COURT: Okay.

24 (WHEREUPON, the jury came into open court at
25 approximately 10:15 a.m.)

LATASHA BLACK-DIRECT BY MS. SEAY

1 THE COURT: All right, ladies and gentlemen,
2 welcome back. I hope y'all had a pleasant evening.
3 And we are ready to resume the trial at this point.

4 All right, Ms. Paoletti.

5 MS. SEAY: Thank you, Your Honor, the State
6 calls Latasha Black.

7 LATASHA BLACK, after being duly sworn,
8 testified as follows:

9 THE CLERK: Please have a seat. Please state
10 your full name for the record.

11 THE WITNESS: Latasha Black.

12 DIRECT EXAMINATION

13 BY MS. SEAY:

14 Q Good morning, Ms. Black. Would you please tell
15 the jury how old you are?

16 A Twenty-seven.

17 Q Where do you live?

18 A Mauldin.

19 Q Okay. How long have you lived there?

20 A A year.

21 Q All right. Where did you grow up?

22 A In Greenville.

23 Q Okay. Do you work?

24 A Yes, ma'am.

25 Q Where do you work?

LATASHA BLACK-DIRECT BY MS. SEAY

- 1 A Frankie's Fun Park.
- 2 Q How long have you worked there?
- 3 A On and off for the last 11 years.
- 4 Q Okay. Do you have children?
- 5 A Yes, I have a two-year-old.
- 6 Q Okay. Now, I understand that you know Barry
- 7 Norman, is that correct?
- 8 A Yes.
- 9 Q How did you know him?
- 10 A He was my boyfriend.
- 11 Q Okay. Now, your child, is that Barry Norman's
- 12 child?
- 13 A Yes, ma'am.
- 14 Q Okay. When was she born?
- 15 A January 2014.
- 16 Q And so, were you pregnant with her when Barry
- 17 was killed?
- 18 A Yes, ma'am.
- 19 Q Tell us a little bit about how you Barry came to
- 20 know each other.
- 21 A We met through mutual friends. My sister and
- 22 his friend, they was dating and we just met through them.
- 23 Q About when did y'all meet?
- 24 A About the end of 2009, beginning of -- yeah, end
- 25 of 2009, beginning of 2010.

LATASHA BLACK-DIRECT BY MS. SEAY

1 Q Okay. What was Barry doing at that time? Was
2 he working?

3 A Yes, he was working. He was working somewhere,
4 I believe, in Fountain Inn.

5 Q Okay. And did Barry graduate from school
6 anywhere?

7 A Yes.

8 Q Where did he go to school?

9 A He graduated from Mauldin and he went to
10 Greenville Tech.

11 Q What did he do at Greenville Tech?

12 A I believe a computer class or something. I'm
13 not 100 percent sure.

14 Q Okay. Did Barry have any other children other
15 than your daughter that he shared with you?

16 A Yes.

17 Q Okay. How many other children did he have?

18 A Just one.

19 Q Okay. Let me direct your attention to the day
20 that he died. Did you see him that day?

21 A Yes.

22 Q When did you see him?

23 A That morning and, also, when he picked me up
24 from work that evening?

25 Q Okay. About what time did you see him that

LATASHA BLACK-DIRECT BY MS. SEAY

1 morning?

2 A He took me to work, so -- and he stayed the
3 night, so he was there all night. I had to be at work
4 about 7:00, so.

5 Q Were y'all living together?

6 A No.

7 Q And what time did he take you to work?

8 A Had to be there at 7:00, so 6:50, we left the
9 house.

10 Q What car did he take you to work in?

11 A His white Honda.

12 Q Okay. Did you ride in his white Honda
13 regularly?

14 A Yes.

15 Q So, he took you to work that morning and then
16 you said he picked you up that afternoon?

17 A Uh-huh.

18 Q About what time was that?

19 A About 3:00.

20 Q Okay. And when he picked you up that afternoon,
21 what did y'all do?

22 A We went to go look at cars.

23 Q Where was that?

24 A On Pleasantburg.

25 Q Okay. What did you do after you went to look at

LATASHA BLACK-DIRECT BY MS. SEAY

1 cars?

2 A After we looked at cars, he went to go pick up
3 Smitty.

4 Q Do you know Smitty's real name?

5 A I know it from the case, Stacy.

6 Q Okay. But --

7 A But at the time, no, I just knew him by Smitty.

8 Q Okay. How well did you know Smitty at that
9 time?

10 A I don't know him. That was my first time seeing
11 him.

12 Q Okay. So, this day was your first time seeing
13 him?

14 A Uh-huh.

15 Q Where did y'all go to get him?

16 A On White Horse Road, it was a house across from
17 Mt. Pleasant Center.

18 Q Okay. And after you picked Smitty up, where did
19 y'all go?

20 A He dropped me off back at the house I was
21 staying at.

22 Q Did you see him anytime after that?

23 A I saw him again after he got into a fight.

24 Q Okay. About what time was that?

25 A I do not recall exactly the time.

LATASHA BLACK-DIRECT BY MS. SEAY

1 Q All right. Where were you when you saw him
2 after he got into the fight?

3 A At the house I was staying at.

4 Q Tell us about when you saw him again.

5 A When I saw him, his face was swollen, his shirt
6 was ripped, his window in his car was busted. He was
7 angry.

8 Q Okay. Tell me about that.

9 A Like, he didn't want to talk about it. I told
10 him to call the police and everything. And he just -- he
11 sat down, let his phone charge and just didn't want to
12 call the police for some reason.

13 Q And he was upset?

14 A Yes, ma'am.

15 Q Okay. Was he making or receiving any phone
16 calls?

17 A The phone was actually on the charger. He was
18 charging the phone up.

19 Q Okay. Was there anybody else there at that time
20 when he came back and his -- and he was beat up and his
21 shirt was torn and he was charging his phone, was there
22 anybody else there?

23 A Yes. It was my sister, her boyfriend, her two
24 kids, and I'm not sure if my mom was there or not.

25 Q Okay. Was his mother there?

LATASHA BLACK-DIRECT BY MS. SEAY

1 A No.

2 Q Okay. Were y'all ever with his mother at any
3 point in time that afternoon?

4 A No. Only time I was with his mother was after
5 he passed.

6 Q Okay. So, you did try to encourage him to call
7 the police?

8 A Yes, ma'am.

9 Q Did you encourage him -- or did you discourage
10 him from going back to Fountain Inn?

11 A Yes, I tried to get him to stay, but he said he
12 was going home, which he stayed in Fountain Inn.

13 Q Can you tell us what Barry's phone number was?

14 A -9107.

15 Q Okay. Did you ever see Barry with a gun?

16 A No, ma'am.

17 Q At any time that you knew him?

18 A No, ma'am.

19 Q Okay. And did you ever see a gun in his white
20 Honda?

21 A No, ma'am.

22 Q And you were in his car regularly?

23 A Yes, ma'am.

24 MS. SEAY: Thank you. Please answer any
25 questions that Mr. Chambers has.

JAMES ARMSTRONG-DIRECT BY MS. SEAY

1 MR. CHAMBERS: Your Honor, I have no questions
2 for this witness.

3 THE COURT: All right. Thank you, ma'am. You
4 may step down.

5 MS. SEAY: The State calls James Armstrong.

6 JAMES ARMSTRONG, after being duly
7 sworn, testified as follows:

8 THE CLERK: Please have a seat. Will you state
9 your full name for the record?

10 THE WITNESS: James William Armstrong.

11 DIRECT EXAMINATION

12 (WHEREUPON, State's Exhibit No. 18 was marked
13 for identification only.)

14 BY MS. SEAY:

15 Q Good morning, Mr. Armstrong. Would you please
16 tell us what your occupation is?

17 A I'm currently with Greenville County Department
18 of Public Safety Forensic Division, crime laboratory, as a
19 forensic firearm and tool mark examiner.

20 Q How long have you been employed there?

21 A A little over 20 years.

22 Q Okay. What's your training and education to
23 perform those duties?

24 A I have a Bachelor of Science Degree in chemistry
25 from Erskine College. I trained in the area of firearm

JAMES ARMSTRONG-DIRECT BY MS. SEAY

1 identification approximately two years as an
2 apprenticeship. I trained under the direction of a
3 retired firearm examiner. I have toured 13 different
4 firearm manufacturing facilities to see how the firearms
5 are manufactured from raw materials to the finished
6 product. I've been through five different armor schools
7 to learn how to work on various firearms. I've been
8 through four different ammunition manufacturing plants to
9 see the same process, how they're made and put together.
10 I've attended numerous schools sponsored by alcohol,
11 tobacco and firearm explosives in the identification and
12 workings of firearms. And I've testified in federal and
13 state court, at least, 49 times as an expert.

14 Q And what are your duties in the crime lab?

15 A I have dual responsibilities, not only as a
16 firearm examiner, but also as a drug chemist.

17 Q Do you hold any certifications or association
18 memberships?

19 A I'm a member of the Association of Firearm and
20 Tool Mark Examiners.

21 Q And would you please tell the jury what the
22 science of ballistics exam and microscopic comparison is?

23 A The basics of firearm comparison is we actually
24 compare a firearm or fired piece of evidence to itself or
25 each other. What we look at is striations, any

JAMES ARMSTRONG-DIRECT BY MS. SEAY

1 imperfections that are left behind on a firearm during the
2 manufacturing process. It's kind of like putting a puzzle
3 together. We do side-by-side comparison of the two.

4 Q Okay. Thank you.

5 MS. SEAY: Your Honor, I would submit him as an
6 expert in ballistic comparison.

7 MR. CHAMBERS: No objection, Your Honor.

8 THE COURT: All right.

9 MS. SEAY: Thank you.

10 BY MS. SEAY:

11 Q Mr. Armstrong, were you asked to perform a
12 microscopic ballistic comparison in this case?

13 A Yes, ma'am, I was.

14 Q What items were you provided for analysis?

15 A It is the -- from Fountain Inn Police
16 Department, it's items DK-4, DK-5, DK-6, DK-7, DK-8, DK-9.
17 And those are fired cartridge casings, fired bullet
18 specimens and a pistol.

19 Q Okay. So, I'm going to show you State's Exhibit
20 18 and ask you if you recognize that? It's marked for
21 identification.

22 A Yes, ma'am, I do.

23 Q Okay. And is that that firearm that you
24 examined?

25 A Yes, ma'am, it is.

JAMES ARMSTRONG-DIRECT BY MS. SEAY

1 Q Okay. And you were also provided shell casings;
2 is that correct?

3 A That is correct.

4 Q Okay. And what was the purpose of that
5 analysis?

6 A To try to determine if the fired cartridge
7 casings had been fired in the same firearm and then if
8 they had been fired from that particular firearm.

9 Q When did you receive the items and from whom did
10 you receive them?

11 A I received them from our property and evidence
12 room, which is in the basement of the law enforcement
13 center on August the 6th, 2014.

14 Q And what did you do with them when you got them?
15 What was the first thing you did to analyze them?

16 A The first thing I did in the office, I actually
17 inventoried what I had by cutting open the containers and
18 then marking them with my initials and the date of when I
19 opened them. And then I identify each individual item by
20 placing the identifier or identify it by serial number.

21 Q Were you able to draw any conclusions from your
22 analysis?

23 A Yes, ma'am. They will say that the item DK-9
24 pistol, I examined it and found it to be operable. The
25 items DK-4, 5, 6, and 7, fired cartridge casings, was very

JAMES ARMSTRONG-DIRECT BY MS. SEAY

1 similar, but insufficient microscopic marks to permit
2 identification to the pistol or each other. The item A-1,
3 fired bullet specimen, very similar, but insufficient
4 microscopic marks to permit identification to item DK-9
5 pistol.

6 Q In your experience, are those results that those
7 are insufficient for comparison, are those results common
8 or uncommon in your experience?

9 A That is fairly common.

10 Q Can you explain why?

11 A It's different manufacturing processes leave
12 different imperfections or different marks on a firearm.
13 It's kind of like the fingerprints of that firearm. And
14 if you have a firearm that's made by a process where it
15 leaves a smooth finished product. It may not leave the
16 ridges or any kind of detail behind. So when it's fired,
17 those details are transferred to the evidence.

18 You also have differences in components
19 like the fired cartridge casings, the different kinds of
20 metal, it's harder or softer and may not pick up the types
21 of markings that would make a positive identification.

22 Q So, when you compare that firearm to those shell
23 casings, are you able to rule out that firearm as having
24 fired those shell casings?

25 A No, I cannot rule it out.

JAMES ARMSTRONG-DIRECT BY MS. SEAY

1 Q Okay. Let's talk a little bit more about the
2 gun that you examined. Can you describe the gun in terms
3 of costs, like in retail value? Can you tell us a little
4 bit about the gun?

5 A Approximately. That is a Springfield Armory
6 Model XD 45 LE, caliber 45 gap. They typically run around
7 600, \$650.

8 Q Is it a gun that you would commonly find in a
9 store where you would buy guns?

10 A That make, the Springfield Armory, those are
11 fairly common; however, this caliber is not the most
12 common, but they are out there.

13 Q Where would you buy a gun like that?

14 A Typically, a main gun store.

15 Q Is it common or uncommon?

16 A It's not that common. I mean, there are a few,
17 but it's not as common as your most common caliber, such
18 as 9mm, 40, 380, such like that.

19 Q Okay. And what about this ammunition, 45
20 caliber gap, is that common, readily-available ammunition?

21 A It's not your most readily available. It is out
22 there, but there are only a few manufacturers of that
23 component. This cartridge was actually developed around
24 2003, so it's still a fairly new item.

25 Q And is it readily available?

JAMES ARMSTRONG-CROSS BY MR. CHAMBERS

1 A Not as available as your most common, the 45,
2 all the 9mm and 40.

3 Q And what about the cost?

4 A The cost is a little more expensive because of
5 the demand.

6 Q Okay.

7 MS. SEAY: Thank you, Mr. Armstrong. Please
8 answer any questions that Mr. Chambers may have.

9 CROSS-EXAMINATION

10 BY MR. CHAMBERS:

11 Q Given that this is not as common a gun as some
12 of the other guns you said you normally find in a main gun
13 store, correct?

14 A Yes, sir.

15 Q Would that make it easier for law enforcement to
16 trace, at least, the initial sale of that pistol?

17 A That is a possibility, yes, sir.

18 Q And same thing with the ammunition, I mean, you
19 could probably -- there's probably only a few places that
20 even have that kind of ammunition, right?

21 A I really don't know. I know that most of the
22 firearm manufacturing facilities or in stores in the area,
23 they may carry it or they can actually do a special order
24 for you.

25 Q And that's the kind of thing that sometimes law

KAREN MILBRODT-DIRECT BY MS. SEAY

1 enforcement can trace if they're trying to do that, right?

2 A I'm not positive what they do outside of there.

3 Q And you tested this pistol and, essentially,
4 what you're testifying to is you cannot say conclusively
5 that those shell casings came from that pistol that you
6 tested?

7 A That's correct.

8 MR. CHAMBERS: Thank you.

9 THE COURT: Anything else?

10 MS. SEAY: Nothing further. May he be excused?

11 THE COURT: Any objection?

12 MR. CHAMBERS: No, Your Honor.

13 THE COURT: All right. Thank you very much.

14 KAREN MILBRODT, after being duly
15 sworn, testified as follows:

16 THE CLERK: Please have a seat. Will you state
17 your full name for the record?

18 THE WITNESS: Yes, ma'am.

19 Good morning, my name is Karen Milbrodt. And
20 Milbrodt is spelled M-I-L-B, as a boy, R-O-D-T.

21 DIRECT EXAMINATION

22 BY MS. SEAY:

23 Q Morning, Ms. Milbrodt. Where are you employed?

24 A I work for Verizon Wireless out of our Tampa,
25 Florida office.

KAREN MILBRODT-DIRECT BY MS. SEAY

1 Q And what kind of company is Verizon Wireless?

2 A Verizon is a telecommunications company.

3 Q Okay. And how long have you worked for them?

4 A Just over 17 years.

5 Q What's your position?

6 A My title is I'm a senior analyst in our
7 executive relations department. And one of my
8 responsibilities as a senior analyst in this department is
9 to act as a records custodian for the business.

10 Q What are your duties as records custodian?

11 A Certainly. When we receive a subpoena for
12 business records from various law enforcement agencies,
13 from time to time, these records get entered into a trial
14 and we receive another subpoena for a person from the
15 business to appear and discuss and authenticate the
16 records. And that would be someone like me who would
17 appear.

18 Q Okay. And how long have you worked in that
19 capacity?

20 A Just about six years.

21 Q Okay. And did you receive a request from law
22 enforcement for two phone numbers in this case?

23 A Yes, ma'am, we did.

24 Q All right. That being 9074 and
25 -9893?

KAREN MILBRODT-DIRECT BY MS. SEAY

1 A Yes, ma'am.

2 Q For cell records?

3 A For cell phone records, yes, ma'am.

4 Q Okay. And did you provide those to law
5 enforcement?

6 A Yes, our office that produces the records did
7 provide those records to law enforcement.

8 Q Okay. All right. I'm going to show you a disk
9 and ask you if you recognize it?

10 A Yes, ma'am, I do.

11 Q How do you recognize that?

12 A This is a disk that I reviewed yesterday with
13 State's attorneys. And I marked date and time and some
14 information on the disk -- excuse me, it was just date,
15 not the time.

16 MS. SEAY: We need that marked for
17 identification.

18 (WHEREUPON, State's Exhibit No. 41 was marked
19 for identification only.)

20 BY MS. SEAY:

21 Q And the disk that I just showed you, do you
22 recognize it as containing reports from your company?

23 A Yes, ma'am, it does.

24 Q And is the information contained on the disk
25 kept by Verizon in the ordinary course of regularly

KAREN MILBRODT-DIRECT BY MS. SEAY

1 conducted business activity?

2 A The records themselves come from the normal
3 course of business, yes.

4 Q And the information compiled in the report kept
5 by Verizon and released upon request?

6 A It is.

7 Q Okay. Do you have access to the information in
8 these records as a regular function of your job?

9 A I do.

10 Q And the records are from the telephone numbers
11 that I previously gave to you?

12 A Yes, ma'am.

13 Q And in whose name was that account?

14 A I would need to look at the subscriber records
15 that we provided you in order to respond to that.

16 Q Okay.

17 MS. SEAY: I'm going to ask that the Court

18 Reporter mark these two items for identification.

19 (WHEREUPON, State's Exhibits Nos. 42 & 43 were
20 marked for identification only.)

21 BY MS. SEAY:

22 Q All right. I'm going to show you State's
23 Exhibit 42 and State's Exhibit 43. And would you please
24 look at those and tell me if you recognize them?

25 A I do.

KAREN MILBRODT-DIRECT BY MS. SEAY

1 Q What are those documents?

2 A This is what we call subscriber information.
3 It's a record of a specific account number, phone number,
4 the name of the person who receives the bill and billing
5 address of where we send the bills to and the type of
6 account, whether it's a prepaid or postpaid account.

7 Q Okay. So, who is the subscriber for that
8 account?

9 A Sure. The subscriber for both mobile numbers
10 mentioned is Tywan Jacoby Gregory.

11 Q Okay. Thank you, Ms. Milbrodt, I'm going to
12 show you some documents.

13 And I'm going to ask the Court Reporter to
14 mark this for identification.

15 (WHEREUPON, State's Exhibit No. 44 was marked
16 for identification only.)

17 BY MS. SEAY:

18 Q All right. This is State's Exhibit 44, do you
19 recognize those?

20 A Yes, ma'am.

21 Q Okay. What are those?

22 A The first page is a ledger that helps explain
23 what all of the columns on subsequent pages mean. What
24 this is called is a call detail report. And it is
25 incoming and outgoing call record for the phone number

KAREN MILBRODT-DIRECT BY MS. SEAY

1 that ends 9074.

2 (WHEREUPON, State's Exhibit No. 45 was marked
3 for identification only.)

4 BY MS. SEAY:

5 Q Okay. This is State's Exhibit 45, do you
6 recognize those?

7 A Yes, ma'am.

8 Q What are those?

9 A This is another business record of incoming and
10 outgoing call detail records, but this is for the mobile
11 home number 9893.

12 Q Okay. Thank you.

13 (WHEREUPON, State's Exhibits Nos. 46-48 were
14 marked for identification only.)

15 BY MS. SEAY:

16 Q Okay. Ms. Milbrodt, this is State's Exhibit 46,
17 do you recognize that?

18 A Yes, ma'am.

19 Q Okay. What is that?

20 A This is another CD that we sent responsive to
21 the search warrant subpoena. And on it includes the
22 records, such as your call detail, text detail, cell site
23 locations where cell towers are located throughout the
24 Carolina market, subscriber information, text message
25 content, all of that is on this disk which has been turned

KAREN MILBRODT-DIRECT BY MS. SEAY

1 in paper form.

2 Q And let me show you State's Exhibits 47 and 48,
3 do you recognize those?

4 A I do.

5 Q What are those?

6 A When a person sends a text message, there's
7 content typically in the message and this is a log of the
8 actual content that was stated in the text for the two
9 mobile numbers that were referenced.

10 Q Okay. Thank you.

11 A Yes, ma'am.

12 (WHEREUPON, State's Exhibit No. 49 was marked
13 for identification only.)

14 BY MS. SEAY:

15 Q Okay, Ms. Milbrodt, finally, let me show you
16 State's Exhibit 49. Do you recognize this disk?

17 A I do.

18 Q What is that?

19 A This is another business record that we produced
20 responsive to the subpoena. And included on this disk is
21 what's called an EBDO record. EBDO is when a consumer
22 uses -- is using data as traffic, browsing the web,
23 sending and receiving emails, anything that we call data.
24 And so there's a log for data traffic.

25 And then there's another log called RTT.

KAREN MILBRODT-DIRECT BY MS. SEAY

1 And RTT is another log that we keep. And this is for all
2 activity on a mobile device, that would be voice, text,
3 data, and what's the -- it includes the device that was in
4 use, the cell tower that was in use and it also includes a
5 column of how far away was the cell phone or device from
6 the tower when that activity happened. So, this is
7 included on this particular disk.

8 Q Okay. Thank you. And all of the records that
9 I've shown you are kept in the regular course of your
10 business?

11 A Yes, ma'am.

12 Q Okay. And you are the custodian of those
13 records?

14 A Yes, ma'am.

15 MS. SEAY: Your Honor, at this time, I would
16 offer State's Exhibits 49, 46, 47, 48, 44, 45, 41, 43
17 and 42 into evidence.

18 THE COURT: Any objection?

19 MR. MADDOX: We object. Prejudicial value
20 outweighs probative value of this. It's improper lay
21 testimony as well.

22 THE COURT: All right. Hang on.

23 Ladies and gentlemen, let's take a short break.

24 It's a good time for a break. Don't talk about it.

25

KAREN MILBRODT-DIRECT BY MS. SEAY

1 (WHEREUPON, the jury left open court at
2 approximately 10:50 a.m.)

3 THE COURT: Okay.

4 MR. MADDOX: My understanding is the map of the
5 cell towers is being entered to show some sort of
6 plot as to where the accused supposedly went that
7 night. Our position is that requires expert
8 testimony. There are a number of factors that go
9 into which cell tower receives the radio frequency
10 from a cell phone.

11 In an ideal world, it would normally be the
12 closest tower. There are a number of factors that go
13 into that dealing with the cell site itself, the
14 antenna on the cell site, weather, topography, other
15 factors that go into that. And we would say that
16 they need to produce some sort of expert to testify
17 as to the calculation that went into this.

18 THE COURT: Well stated. Overruled. You can
19 certainly bring it out on cross-examination. I think
20 that's a novel issue. I've never heard that raised
21 before.

22 MR. MADDOX: We do have a law review article
23 from the Richland Journal of Law and Technology which
24 states these factors.

25 THE COURT: Do you have a South Carolina case?

1 MR. MADDOX: No, sir, we don't.

2 THE COURT: We might be making law.

3 Yes, ma'am, Ms. Seay.

4 MS. SEAY: I just want to clarify that I was not
5 offering any kind of map into evidence. I was
6 offering business records into evidence.

7 THE COURT: Which include what?

8 MS. SEAY: Cell phone records.

9 THE COURT: Of numbers dialed and --

10 MS. SEAY: Correct.

11 MR. CHAMBERS: We don't have --

12 THE COURT: Wait a minute. Wait a minute. Only
13 one lawyer argues a motion.

14 MS. SEAY: These are cell phone records and text
15 content, cell sites. I'm not offering -- he's
16 referencing a map and I'm not offering that map into
17 evidence.

18 THE COURT: Well, he's, I think, probably going
19 to say you're extrapolating a map from the cell phone
20 towers.

21 MS. SEAY: Well, there is a map that we have
22 provided to the Defense --

23 THE COURT: And you're not offering it?

24 MS. SEAY: That we intend to offer later. We're
25 not offering that at this time.

1 MR. MADDOX: Okay. I apologize.

2 THE COURT: Save your objection.

3 MR. MADDOX: Thank you, Your Honor.

4 THE COURT: All right. Have you heard anything
5 from Mr. Robinson?

6 MS. PAOLETTI: Your Honor, I'd have to go check
7 my phone. I'm happy to do that.

8 Also, Your Honor, the next witness that we would
9 have in order would be the co-defendant. I've called
10 Sergeant Kelly, who is the witness who's going to
11 come and offer the map they're referencing in
12 evidence, but I don't think that he's here yet.

13 THE COURT: Okay, we're going to take a few
14 minutes.

15 MS. SEAY: Yes, sir.

16 THE COURT: Okay. All right.

17 Ma'am, you may step down if you need to freshen
18 yourself, whatever, but don't discuss your testimony
19 with anyone.

20 All right, we'll take a short break.

21 (WHEREUPON, a short break was taken.)

22 THE COURT: All right, we're going to revisit
23 this -- how much more do you have with this witness?

24 MS. SEAY: I just need to make a motion to move
25 these records in. And that --

1 THE COURT: Well, you made the motion. And
2 their objection was overruled because it wasn't with
3 respect to these records, am I right about that?

4 MR. MADDOX: That's correct, Your Honor.

5 MS. SEAY: So, I just need to move the records
6 into evidence and that concludes this witness.

7 (WHEREUPON, State Exhibits Nos. 41 through 49
8 were admitted into evidence.)

9 THE COURT: And then your next witness is what?

10 MS. SEAY: The codefendant.

11 THE COURT: Are y'all going to cross-examine
12 this lady?

13 MR. CHAMBERS: Just briefly, Your Honor, maybe a
14 couple of questions.

15 THE COURT: All right. Ma'am, I'm just going to
16 have to ask you to wait.

17 Mr. Robinson.

18 MR. ROBINSON: Yes, sir.

19 THE COURT: There has been -- I would like you
20 to describe to me your representation in this matter.

21 MR. ROBINSON: I represent the co-defendant,
22 Shawndell Clemons, Your Honor, in this matter.

23 THE COURT: When did you begin representing him?

24 MR. ROBINSON: This would have been -- it's
25 probably been about four or five months, Your Honor.

1 THE COURT: Prior to that, have you had any
2 contact with anyone else involved in this case.

3 MR. ROBINSON: Your Honor, my understanding is
4 this person said he called me, I went down to the
5 jail. If I -- I don't know, I'd have to check the
6 jail records to see if I saw this guy, but if he has
7 not hired me or anything like that, I normally just
8 go over who I am, what it costs and that's it.
9 That's all I do with potential clients to avoid any
10 conflicts in the future.

11 THE COURT: Well, that is not what he has
12 represented to this Court under oath.

13 MR. ROBINSON: Okay, Your Honor.

14 THE COURT: He said that he told you his story
15 and you went through the discovery. That you also
16 spoke on the cell phone with his father.

17 MR. ROBINSON: I don't recall that, Your Honor.
18 I don't recall speaking to anyone about that. As far
19 as discovery goes, I don't know what discovery he's
20 talking about in this case.

21 THE COURT: Well, the discovery that all defense
22 lawyers receive and pass onto their clients.

23 MR. ROBINSON: There's nothing that I would have
24 gone over with him. All I would talk about with him
25 is what my fee would be and that's it. There's

1 nothing more about it that I would talk about with
2 him.

3 The reason for that, Judge, is that you don't
4 want to -- you can talk to someone and say what the
5 fee is, that's usually -- I normally would call the
6 public defender's office and find out if they have an
7 attorney first and get their permission first before
8 I go see somebody typically. I don't know, this
9 was -- Mr. Chambers said this was sometime in 2015
10 that I would have gone to see him. I don't know -- I
11 have no independent knowledge.

12 THE COURT: Mr. Chambers, you represent
13 Mr. Gregory, is there anything you would like to ask
14 of Mr. Robinson with respect to this issue? Your
15 client has asserted some vague conflict of interest.
16 I need -- if he's going to pursue that, I need to
17 know it now. This is his opportunity to make
18 whatever allegations he's going to make with respect
19 to conflict of interest. And I am thinking down the
20 road. And if he wants to -- we're not coming back on
21 this issue. So, if there's anything he wants to
22 check on now, let's get it resolved.

23 MR. CHAMBERS: I don't have any specific
24 questions, Your Honor, but my client obviously under
25 oath told you what his recollection was. He was very

1 specific about it. His father is also here and he
2 may be able to speak to whether or not there was a
3 phone call or not. But I spoke to Scott before he
4 talked to the Court and Scott indicated to me that he
5 didn't remember talking to Jacoby. But Jacoby
6 obviously remembers in great detail they had a
7 conversation and what it involved.

8 I will reassert to the Court the way this came
9 to me. I mean, obviously, a murder trial, spending
10 long hours, many, many days getting ready for this
11 trial. I was over in the jail talking to him on
12 Saturday. We had about a four-hour discussion where
13 we discussed a lot of stuff getting ready for trial.
14 He, I think, sort of passing before I left mentioned
15 this thing about Scott. And, you know, I said to him
16 then, I don't -- I mean, I honestly don't know if
17 there's anything to that or not. And frankly, in my
18 trial preparation, at that point just forgot about
19 it. And then we plow through, we're on our third day
20 of trial and my client mentioned it to me again this
21 morning.

22 You've heard what I heard. Essentially, at this
23 point, we've got one person who has no memory of the
24 conversation, the other person that told you what it
25 was. I don't -- I mean, I don't know that we

1 necessarily have a position on it: I'm not -- when
2 it comes down -- I mean, I don't know. I just raised
3 it because I thought that it might be some concern.

4 THE COURT: Well, let me just -- when an issue
5 like that comes up, you need to disclose it
6 immediately, not three days into a trial.

7 MR. CHAMBERS: And I certainly --

8 THE COURT: And, Mr. Robinson --

9 Where is the co-defendant?

10 MS. PAOLETTI: He's downstairs.

11 THE COURT: I mean this is happening too
12 frequently. Well, I don't want Mr. Gregory to --
13 would you please check with him and see if he made
14 any inculpatory statements to Mr. Robinson?

15 MR. CHAMBERS: Your Honor, he did not make any
16 inculpatory statements. And I just know from
17 representing Jacoby, he has been very consistent on
18 what his position was. I don't think he would have
19 ever changed that. That said, he tells me that now
20 what his concern is is that he says that Mr. Robinson
21 made a statement to him that based on his
22 co-defendant's statement that he could get the case
23 dismissed. But now, he sees that his co-defendant is
24 testifying against him.

25 I will say, because I think the solicitor will

1 probably say this, too, is that prior to
2 Mr. Robinson, Shawndell Clemons was represented by
3 John Abdalla. And they had already talked to the
4 solicitor's office about providing testimony at that
5 point when John Abdalla was representing him. And
6 actually gave a statement to Ms. Paoletti, which
7 Ms. Paoletti in an email provided to then Alex
8 Stalvey, and I think somebody else. But at any rate,
9 what the gist of that statement was that he gave, I
10 don't know that there's been any change since then.
11 I haven't seen any updates on any statements or
12 anything, but that occurred before Scott was involved
13 in this case. I will say that.

14 THE COURT: All right. So, if it were
15 determined that everything that your client said were
16 true; where is the prejudice to him with Mr. Robinson
17 representing this co-defendant?

18 MR. CHAMBERS: I don't know that there is any.
19 I mean, I can't stand here and assert that there
20 would be prejudice. But my client has been
21 consistent in what he had said. He has always
22 professed his innocence. And I'm quite certain he
23 did that with Mr. Robinson.

24 THE COURT: Okay. Well, I'm going to find that
25 Mr. Robinson complied in this matter with Rule 407

1 1.18 and that there is no conflict. However, if
2 during the presentation of the co-defendant's
3 testimony, there is something that your client
4 believes is a violation of the perspective client
5 rule, please indicate to me and we'll have a bench
6 conference.

7 MR. CHAMBERS: Yes, sir.

8 THE COURT: I want to give him every
9 opportunity -- I don't know -- he raises this issue
10 halfway through the trial. So, let's -- you know,
11 which --

12 MR. CHAMBERS: And I want to be clear, Your
13 Honor, he told me for the very first time on
14 Saturday. It's my fault for not raising it
15 beforehand. I honestly forgot about it.

16 THE COURT: Well, clearly, you didn't think it
17 was a big issue or it would have stuck out like a
18 sore thumb, am I correct?

19 MR. CHAMBERS: I wasn't sure about the issue,
20 but yes, it wasn't on my mind like wait a minute,
21 we've got to stop everything and address this. So,
22 exactly.

23 THE COURT: Okay. All right.

24 Your client's the next witness, so have a seat,
25 Mr. Robinson.

1 MR. ROBINSON: May I go to the car and get his
2 clothes, Your Honor?

3 THE COURT: Yeah, get him ready.

4 All right. You ready, Ms. Paoletti?

5 MS. PAOLETTI: Your Honor, we've got somebody,
6 Dan Scott from the sheriff's office to come and
7 testify to finish up the cell phone testimony before
8 the co-defendant.

9 THE COURT: Okay.

10 MS. PAOLETTI: I'm sorry, Sergeant Kelly, Your
11 Honor, Dan Kelly. After he testifies, Your Honor, if
12 I can just have a moment to make sure that I've
13 covered everything that needs to be covered on this
14 potential issue. I think I have, Your Honor, but I--

15 THE COURT: Do it now.

16 MS. PAOLETTI: Yes, sir. Sorry, I was caught
17 offguard with it.

18 THE COURT: We're all caught offguard with it.
19 Do it now.

20 MS. PAOLETTI: I'm sorry, so I can get you
21 anything?

22 THE WITNESS: No, thank you.

23 THE COURT: Do it now. If you need to confer
24 with co-counsel, do it.

25 MS. PAOLETTI: Thank you.

1 (WHEREUPON, a short break was taken.)

2 THE COURT: Okay. Anything further?

3 MS. PAOLETTI: No, sir, Judge.

4 THE COURT: All right. Let's get the jury back.

5 (WHEREUPON, the jury came into open court at
6 approximately 11:25 a.m.)

7 THE COURT: All right. Ms. Paoletti or
8 Ms. Seay.

9 MS. SEAY: Thank you, Your Honor. The State
10 would move to admit the exhibits.

11 THE COURT: Okay.

12 MS. SEAY: No. 41, 42, 43, 44, 45, 46, 47, 48,
13 49 into evidence.

14 THE COURT: Any objection?

15 MR. CHAMBERS: No, Your Honor.

16 THE COURT: Okay.

17 (WHEREUPON, State's Exhibits Nos. 41-49, were
18 previously received into evidence.)

19 MS. SEAY: Thank you, Your Honor.

20 THE COURT: Okay.

21 BY MS. SEAY:

22 Q So, Ms. Milbrodt, you were talking about RTT
23 data. What does RTT stand for?

24 A It stands for realtime tracking or range to
25 tower, either acronym works for us.

1 Q Okay. So, range to tower, what does that mean
2 exactly?

3 A Sure. Our network will determine how long it
4 takes for a signal to run from the device to the cell
5 tower. And using -- I guess, using our system, we
6 determine how far away you are from -- or how far away the
7 device is from tower and information is recorded in miles.

8 Q Okay. So, you can determine how far away a
9 person is -- or how far away their handset is from the
10 tower?

11 A Yes, that's what -- the RTT log has a column
12 that specifically states what -- or how far away they are
13 from the tower.

14 Q Okay.

15 MS. SEAY: Please answer any questions that
16 Mr. Chambers may have for you.

17 THE WITNESS: Yes, ma'am, I will.

18 CROSS-EXAMINATION

19 BY MR. MADDOX:

20 Q Just one quick question. I understand that you
21 produced some records in response to a subpoena from --
22 incoming and outgoing phone calls from -9074 and
23 -9893; is that correct?

24 A Yes, that's correct.

25 Q Based upon those records, are you aware that any

KAREN MILBRODT-CROSS BY MR. MADDOX

1 phone calls are received by the phone number -9107
2 from the subscriber?

3 A I would need to look at the call detail report
4 to determine that.

5 MR. MADDOX: Your Honor, may I approach the
6 witness?

7 THE COURT: Sure.

8 THE WITNESS: Could you refresh my memory what
9 phone call I'm looking for?

10 BY MR. MADDOX:

11 Q Yes, ma'am, certainly. From either of the phone
12 numbers of the subscriber, the 9074 number or the 9893
13 number and an outgoing phone call to -9107?

14 A 9107?

15 Q Yes, ma'am.

16 A And any of the date range in these records?

17 Q Yes, ma'am, in particular, October 1st?

18 A And just to be clear, 9017?

19 Q 9107.

20 A Outgoing call to that number?

21 Q To that number.

22 A Okay. Yes, sir, I've located a call.

23 Q Okay. Do you know what time that phone call was
24 made?

25 A There were two calls. One at 1616 hundred hours

KAREN MILBRODT-CROSS BY MR. MADDOX

1 and the second at 1620 hundred hours on October 1st, 2013.

2 Q Is there any way to tell whether the -9107
3 number if that is a Verizon subscriber as well based upon
4 those records?

5 A Not the records that we have.

6 Q Not with the records.

7 A There may be more. I just mentioned the first
8 two that I saw. You want me to continue to look on?

9 Q Certainly.

10 A Yes, there are several more to that number, the
11 same day.

12 Q But there's no way to tell whether it's a
13 Verizon subscriber or not?

14 A Not with the records that were provided.

15 Q Were you asked to determine whether that number
16 was a Verizon subscribed base on the subpoena?

17 A Not to my knowledge.

18 Q Okay. Thank you.

19 MR. MADDOX: No further questions, Your Honor.

20 THE COURT: All right. Any redirect?

21 MS. SEAY: Nothing further. May she be excused?

22 THE COURT: Any objection?

23 MR. MADDOX: No objection, Your Honor.

24 THE COURT: Thank you, ma'am. You're released
25 from subpoena. Thank you very much.

DAN KELLY-DIRECT BY MS. PAOLETTI

1 MS. PAOLETTI: Your Honor, the State calls
2 Sergeant Dan Kelly.

3 THE CLERK: Place your left hand on the Bible,
4 raise your right.

5 DAN KELLY, after being duly sworn,
6 testified as follows:

7 THE CLERK: Please have a seat. Will you state
8 your full name for the record?

9 THE WITNESS: Daniel Paul Kelly..

10 DIRECT EXAMINATION

11 BY MS. PAOLETTI:

12 Q Sergeant, will you tell the jury who you work
13 for?

14 A I work for the Greenville County Sheriff's
15 Office.

16 Q How long have you been with the sheriff's
17 office?

18 A I've been with the Greenville County Sheriff's
19 Office for 20 years.

20 Q All right. Before that?

21 A With the Webster County Sheriff's Office in
22 Marshfield, Missouri.

23 Q How many total years in law enforcement do you
24 have?

25 A Too many, 27.

DAN KELLY-DIRECT BY MS. PAOLETTI

1 Q All right. Will you tell the jury what some of
2 your roles have been in law enforcement in your 27 years?

3 A I started out on the road as a road deputy and
4 then worked my way up as a master deputy. And then -- on
5 the road and then became a sergeant and worked the road as
6 a sergeant and a supervisor. And then I was asked to go
7 to the administrative services division over the technical
8 services unit.

9 Q Is that what you do currently?

10 A That's what I currently do now.

11 Q Decode that for the jury, please.

12 A Wear several hats at technical services. We,
13 basically, deal with a lot of data, a lot of information.
14 We work with cell phone data. We work with video data,
15 video recovery, video analysis. If there's a robbery at a
16 store, we'll go pull the video. We work the website. We
17 work with numerous programs and software for information
18 that the officers can obtain and use in their
19 investigative purposes.

20 Q Okay. And how long have you been doing that
21 again?

22 A Since 2002.

23 Q Will you give us some examples of the mapping
24 tools of software that you use in your role in technical
25 services?

DAN KELLY-DIRECT BY MS. PAOLETTI

1 A Yes, one of the tools that we use is called
2 GeoTime. And GeoTime is by a company out of Canada called
3 Oculus Info. And it is for -- basically, it's like a big
4 coin sorter for phone data. You know, a coin sorter where
5 you throw all the different coins in, it sorts them out
6 nice and neat where you can get to them and you know where
7 everything's at, that's what this does with phone data. A
8 lot of the phone data is several columns of information
9 and it sorts it to where it's a visually represented --
10 it's a visual representation of that data.

11 Q All right. I'm going to show you just, for
12 example, State's Exhibit No. 45. How many columns are on
13 that?

14 A There's 11 just on this page.

15 Q All right.

16 A That's one of the short ones.

17 Q That's a short one. What about a spreadsheet
18 like that that contains RTT data?

19 A That will have maybe three or four, or even five
20 times as much data, as many columns. Sometimes -- if
21 you're familiar with Microsoft Excel, it goes A to Z and
22 then goes AA, BB, all the way through, then it goes to the
23 triple digits. It sometimes can go into the double digits
24 on that.

25 Q Would it be reasonable to expect that anyone who

DAN KELLY-DIRECT BY MS. PAOLETTI

1 didn't know those numbers and the information on that
2 sheet to make any sense of the spreadsheet that had RTT
3 data?

4 A No, it's very difficult.

5 Q What other programs do you have to be able to
6 use in order to use GeoTime?

7 A You need to be familiar and very fluent with
8 Microsoft Excel, access mapping programs, such as Arc
9 Map, which is one of the ones that we use. There are web
10 map services that they have available to them. Word PDF,
11 which is a format that Acrobat used, so we have to be very
12 fluent with that stuff.

13 Q When you're working with GeoTime and you have
14 questions or encounter novel issues, what do you do?

15 A They have a great support structure in place and
16 you can contact them by phone, email, they will call you
17 back, conference call with you to work with the data and
18 answer any questions that you have.

19 Q All right. And using that GeoTime program, do
20 you import the data provided by cell phone carriers and
21 then the program generates the cell activity?

22 A That's correct.

23 Q All right. What else with the RTT data, when
24 it's imported and generated, will the output show? Does
25 it generate a map?

DAN KELLY-DIRECT BY MS. PAOLETTI

1 A Yes. It visual representation. So it put the
2 points that are supplied by the cell phone provider onto
3 the map.

4 Q In this case, which cell service provider did
5 the data you use come from?

6 A It came from Verizon.

7 Q And the information that you got from Verizon,
8 did you have to add in any information in order to
9 generate the visual representation of the data?

10 A Yes. One of the limitations of Microsoft Excel
11 is whenever you get a format of a date in a column, it
12 doesn't always put the date. So, when it came from
13 Verizon, it just had the day and the month, but it was
14 supplied for the year that was requested. So, you had to
15 change the date back to when it is because their default
16 date is the current year in Microsoft Excel. So, we had
17 to change that back to 2013 so that it represented the
18 correct.

19 Q Got it. I'm showing you -- or I'm going to show
20 Defense counsel first what's been marked as State's
21 Exhibit No. 50 in just a moment. Ask you if you recognize
22 that document?

23 A Yes.

24 Q All right. What is that?

25 A That's a map of the RTT data.

DAN KELLY-DIRECT BY MS. PAOLETTI

1 Q All right. Is any part of the information
2 that's included on this map your opinion in any way?

3 A No, ma'am.

4 Q And do the map and the labels on the map fairly
5 and accurately represent the cell phone RTT data provided
6 by Verizon from -9074?

7 A They do.

8 Q Does it show the estimated location of the
9 handset for cell activity for those phones on October 1st
10 of 2013?

11 A It does.

12 Q All right. I'm going to show you the map again
13 and ask you what activity times are included on the map?

14 A First time is -- on October 1st is 22:48:10.
15 The second is 22:48:25, then 22:53:28, and then 22:59:59.

16 Q All right. Can you describe what this map would
17 look like if all cell activity for that time period were
18 included on this map?

19 A It would be unreal. It would look like -- you
20 ever play pickup sticks as a kid? You play pickup sticks
21 with the sticks, you drop them? Picture that and multiply
22 it a thousand times and staked high. It's just too
23 unreadable. There's so much data that it puts on there
24 that you cannot make sense, so that's why we have the
25 dates and times to shrink down just what we're looking

DAN KELLY-DIRECT BY MS. PAOLETTI

1 for.

2 Q All right. And let me ask you this, the points
3 that are indicated on this map, do those indicate cell
4 phone calls or it is cell activity?

5 A It's cell activity.

6 Q Tell the jury what that would be.

7 A It could be anything. It could be phone calls,
8 it could be looking for a map giving a location of where
9 they are on Google Earth or Google Maps, whatever apps
10 they have on their phone. It could be anything.

11 Q So, it's not just a phone call?

12 A No, ma'am.

13 Q And then we just heard from the Verizon
14 representative. I just want to confirm your understanding
15 of the points that are generated by the RTT data. Are
16 they exact locations?

17 A They're the best estimate, that is the GPS
18 coordinates supplied by the phone extent.

19 MS. PAOLETTI: Your Honor, at this time, the
20 State moves Exhibit No. 50 into evidence.

21 MR. CHAMBERS: No objection, Your Honor.

22 THE COURT: All right.

23 (WHEREUPON, State's Exhibit No. 50 was marked
24 for identification and received into evidence.)

25

DAN KELLY-DIRECT BY MS. PAOLETTI

1 BY MS. PAOLETTI:

2 Q All right. That's not really legible from right
3 there. And while we're getting copies so you can actually
4 read the information that's on the labels, would you
5 describe for the jury what they're looking at here on the
6 map?

7 A Those are the points, the RTT data, that was
8 plotted from the phone company by the software on the map
9 in the Fountain Inn area.

10 Q All right. And I've got -- I'm going to hand
11 this to you because I can't read it either. If you'll
12 start with the label or the point that's all the way on
13 the left of the map and give us the date and time of that?

14 A Okay. That is October 1st, 2013, at 22:48:10.

15 Q And for us civilians?

16 A That is 10:48 and 10 seconds p.m.

17 Q All right.

18 A And it is over in the Third and Fourth Street
19 area in Fountain Inn.

20 Q Are you able to see the cross street there? I
21 don't think you can see it on that, the label is on top of
22 it.

23 A I'm having a tough time reading it here.

24 Q And there's a laser pointer right there, it
25 looks like a pen, in front of you. The top button is the

DAN KELLY-DIRECT BY MS. PAOLETTI

1 laser function. Can you show us where -- show us where
2 Third Street is indicated on that map?

3 A Third Street is right there.

4 Q Then, the this next label over to the right?

5 A That one there?

6 Q Yes, sir, tell us what time that is.

7 A That is at 22:48:25.

8 Q Okay. So, just seconds later?

9 A Seconds later.

10 Q All right. And then going further to the right?

11 A That label there is 22:53:27.

12 Q 10:53?

13 A 10:53, correct.

14 Q What's that street down below that that curves
15 around?

16 A I'm having trouble reading that with the
17 lighting. Is it Burn Street?

18 Q Bates Street?

19 A Bates Street. Yes, it's Bates Street.

20 Q And then over further to the right?

21 A The last point is right there and 22:59:58 or
22 10:59:58. And that looks like it's on Industrial Drive.

23 MS. PAOLETTI: All right. Thank you, Sergeant
24 Kelly. Answer any questions that the Defense might
25 have for you.

DAN KELLY-CROSS BY MR. CHAMBERS

CROSS-EXAMINATION

1

2

BY MR. CHAMBERS:

3

4

5

Q Okay. In regard to the things you showed us on that map, all of those, I believe you said, were in regard to phone number -9074; is that correct?

6

A Correct.

7

8

Q Okay. And we're not talking about any other phone?

9

A No other phone.

10

11

Q And all you know is the number, you don't know the type of phone or anything else like that?

12

A No, sir.

13

14

Q And as I understand it, you are a person who is skilled in the usage of these computer programs, correct?

15

A Yes, sir.

16

17

18

Q Okay. And you don't have any underlining knowledge about cell tower locations or anything like that, correct?

19

A No, sir.

20

21

Q You, basically, feed data into a program, then the program gives you a response?

22

A Correct.

23

24

25

Q So, it would be much akin to, you know, I know how to drive a car, but I don't know anything much about how the car operates, is that fair to say?

DAN KELLY-CROSS BY MR. CHAMBERS

1 A How it operates or what makes it operate?

2 Q What makes it operate?

3 A Right.

4 Q Obviously, you know how it operates.

5 MR. CHAMBERS: Thank you very much.

6 MS. PAOLETTI: Nothing further from Sergeant
7 Kelly. May he be excused?

8 THE COURT: Any objection?

9 MR. CHAMBERS: No, Your Honor.

10 THE COURT: All right, you're released from
11 subpoena. Thank you very much.

12 THE WITNESS: Thank you, Your Honor.

13 MS. PAOLETTI: May we approach briefly, Your
14 Honor?

15 THE COURT: Yeah.

16 (WHEREUPON, an off-the-record bench conference
17 was held in the presence of the jury but out of
18 the hearing of the jury.)

19 THE COURT: All right, ladies and gentlemen,
20 it's a little early, but it appears that it would be
21 appropriate to break for lunch at this time. I ask
22 you to be back at 1:00. Is that enough time? We're
23 kind of shortening it down, but does anybody need
24 longer than an hour and 15 minutes?

25 Okay. Y'all have a nice lunch. Don't talk

1 about it.

2 (WHEREUPON, the jury left open court at
3 approximately 11:45 a.m.)

4 THE COURT: All right, anything before we break
5 for lunch? /

6 MS. PAOLETTI: No, sir, Judge, thank you.

7 THE COURT: From the Defense?

8 MR. CHAMBERS: No, Your Honor.

9 THE COURT: All right, 1:00.

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: Okay. Everybody ready?

12 MR. CHAMBERS: Yes, sir.

13 THE COURT: All right. Let's get it on the
14 road.

15 MS. PAOLETTI: Your Honor, we have clothes here
16 for the Defendant. Sergeant McCall has asked that
17 you authorize the witness to dress out, been informed
18 of that. I'll leave that in your discretion, Judge.
19 I know you're ready to get going. He's got clothes
20 here.

21 THE COURT: Why does he need to be dressed out?
22 He's in jail. Is there some reason? From the
23 Defense, any reason?

24 MR. CHAMBERS: I don't care whether he's dressed
25 or not dressed, Your Honor.

1 THE COURT: From the State, any reason?

2 MS. PAOLETTI: Your Honor, I just think that out
3 of fairness to him and his situation --

4 THE COURT: All right, I authorize it.

5 Jimmy, tell him to get him changed, let's get it
6 done.

7 While we've got this little break, Mr. Gregory,
8 you are still under oath. I want to tell you that
9 you have an absolute Constitutional right when the
10 times comes to testify on your own behalf. You have
11 an equal absolute Constitutional right to not testify
12 and it cannot be held against you.

13 You -- this is a strategic decision, quite
14 often, that's made between you and your attorney. He
15 will make recommendations to you about how he thinks
16 the case ought to proceed. And with respect to your
17 testimony, he'll make recommendations. But in the
18 final analysis, that is your decision, it is your
19 Constitutional right and no one can waive it except
20 you.

21 Do you have any questions you want to ask me
22 about your right to testify or not testify?

23 MR. GREGORY: No, Your Honor.

24 THE COURT: All right. When the time comes -- I
25 want you to be thinking about it because you will

1 have to make a decision when that time comes and I'll
2 need to know what it is. All right?

3 MR. GREGORY: Yes, sir.

4 THE COURT: Okay.

5 MR. CHAMBERS: Your Honor, may I step outside
6 from just a minute?

7 THE COURT: Sure.

8 (WHEREUPON, a short break was taken.)

9 THE COURT: All right, let's get the jury.

10 (WHEREUPON, the jury came into open court at
11 approximately 1:20 p.m.)

12 THE COURT: All right, ladies and gentlemen,
13 welcome back. We're ready to proceed.

14 All right.

15 MS. PAOLETTI: Your Honor, the State calls
16 Shawndell Clemons.

17 THE CLERK: Place your left hand on the Bible,
18 raise your right.

19 SHAWNDELL CLEMONS, after being duly
20 sworn, testified as follows:

21 THE CLERK: Have a seat. Will you state your
22 full name for the record?

23 THE WITNESS: Shawndell Clemons.

24 DIRECT EXAMINATION

25 BY MS. PAOLETTI:

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q Mr. Clemons, will you tell the jury where you're
2 from originally, please?

3 A Syracuse, New York.

4 Q How old are you?

5 A Twenty-five.

6 Q When did you come down to South Carolina?

7 A About 2010, I believe.

8 Q All right. Have you been in South Carolina
9 continuously since then?

10 A Yes, ma'am.

11 Q Okay. And when you were growing up, did you
12 always live in Syracuse?

13 A Back and forth my whole life.

14 Q Between Syracuse and where?

15 A Fountain Inn.

16 Q Who have you lived with growing up?

17 A My mother.

18 Q All right. Does she live here now?

19 A No, ma'am.

20 Q I want to talk to you about October of 2013,
21 okay? Were you working at the time?

22 A Yes, ma'am.

23 Q Where were you working?

24 A At Faurecia.

25 Q What were you doing at Faurecia?

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 A Quality inspecting.

2 Q How long had you been there?

3 A About five to six months.

4 Q All right. And before that?

5 A On and off at BMW.

6 Q All right. Do you have any specific kind of job
7 training?

8 A Yes, ma'am, forklift and OSHA certifying, things
9 of that nature, palletizing.

10 Q All right. Back in October of 2013, were you on
11 probation?

12 A Yes, ma'am.

13 Q Tell the jury what you were on probation for.

14 A For burglary second degree and grand larceny.

15 Q All right. Did you have one conviction for
16 burglary second or two?

17 A Two.

18 Q All right. What do your friends call you?

19 A Vegas.

20 Q Do you know the Defendant, Mr. Gregory?

21 A Yes, ma'am.

22 Q How do you know him?

23 A Cousin.

24 Q Will you tell the jury exactly how the two of
25 you are related? Are your mothers related?

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

- 1 A Yes, ma'am. His mother is my mother's aunt.
- 2 Q What do you call him?
- 3 A By name?
- 4 Q Yes.
- 5 A Coby.
- 6 Q Before October 1st of 2013, were the two of you
- 7 friends?
- 8 A Yes, ma'am.
- 9 Q Did you hang out before this happened?
- 10 A Yes, ma'am.
- 11 Q How often would you see the Defendant?
- 12 A Every day.
- 13 Q Would you go out together?
- 14 A Yes, ma'am.
- 15 Q Did you have the same group of friends?
- 16 A Yes, ma'am.
- 17 Q Where did he live in Fountain Inn?
- 18 A About five minutes away, three minutes away from
- 19 my house.
- 20 Q What's the name of the street?
- 21 A Boyd Street.
- 22 Q Where did you live?
- 23 A In Country gardens.
- 24 Q Who did you live with?
- 25 A My grandmother.

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q All right. Let's talk about the weekend before
2 Barry was killed. What was going on that weekend?

3 A A three-day event, a party at a hotel in
4 Greenville, South Carolina.

5 Q What was the occasion?

6 A A friend's birthday.

7 Q All right. Whose birthday was it?

8 A Bobby Thomas.

9 Q What did you call him?

10 A Bop.

11 Q Whose else was at the Clarion -- and we'll start
12 with that Friday, okay, who else was there?

13 A It was a lot of people, but Landis Franklin,
14 myself, Coby, Bop, a lot of other people.

15 Q Was Stacy Sullivan there?

16 A Not Friday.

17 Q Okay. What about Barry Norman?

18 A Yes, he was present Friday.

19 Q And what happened Friday night, what did y'all
20 do Friday night?

21 A Mainly, we went out to Aquarius, I believe, that
22 night. And after Aquarius, we went back to the rooms. It
23 was really like laid back. It was the first night of us
24 having rooms for three days, so it was laid back on
25 Friday.

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q Okay. Did you stay the night there?

2 A Yes, ma'am.

3 Q Okay. Anything out of the ordinary happen that
4 night?

5 A Not that night.

6 Q All right. What happened on Saturday?

7 A Saturday, things kind of revved up. More people
8 came and it's when the night where Barry and Smitty got to
9 fighting.

10 Q Tell the jury about that.

11 A They got into a small altercation. Liquor
12 played a part in this. I don't know what it was about,
13 but I was called to the room and they was just shoving
14 each other back and forth and things like that, but it
15 didn't get out of too hand.

16 Q After that happened, was everything okay with
17 Barry and Smitty?

18 A I mean, they had to be separated, but it was
19 like no -- nothing like crazy.

20 Q Okay. What happened after that, the rest of the
21 night?

22 A The rest of the night was like Friday night,
23 calm down a little bit. Still was more fights by this
24 time females that was present at the party.

25 Q All right. Who was that?

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 A Taylor --

2 Q The females that were present, tell us the names
3 of those people.

4 A Taylor Bovain and -- I don't know all like all
5 the names. Taylor Bovain was one of the main girls, and
6 another girl by the name of Libby got into a fight. And
7 that's -- I don't know the whole name.

8 Q Okay. All right. Anything else on Saturday
9 happen out of the ordinary?

10 A Nothing else.

11 Q Was the Defendant there on Saturday?

12 A Yes, ma'am.

13 Q All right. And did you stay Saturday night?

14 A Yes, ma'am.

15 Q Did the Defendant stay Saturday night?

16 A Yes, ma'am.

17 Q What about Landis Franklin, did he stay Saturday
18 night?

19 A I can't recall if he did.

20 Q Stacy Sullivan?

21 A Yes.

22 Q What do you call Stacy Sullivan?

23 A Smitty.

24 Q He spent the night Saturday night?

25 A Yes, ma'am.

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q Okay. And when did you go back to Fountain Inn?

2 A Sunday evening.

3 Q All right. Who did you go back to Fountain Inn
4 with?

5 A In the car was me, Jacoby, Bop, Taylor Bovain,
6 Natia Sullivan, and two other females.

7 Q Who were the other girls that you were going to
8 say? I'm sorry.

9 A Tiajuana Davenport and one more girl, I didn't
10 know her name.

11 Q Had they, all of the girls you just listed been
12 at the party the night before?

13 A Yes, ma'am.

14 Q All right. During this weekend at the Clarion
15 hotel, did the Defendant have a gun?

16 A Yes, ma'am.

17 Q Did you see him with a gun at the hotel?

18 A Yes, ma'am.

19 Q Where did you see it?

20 A On his hip.

21 Q Can you describe it for the jury, please?

22 A Basically, in a holster, like an officer would
23 carry his firearm.

24 Q All right. You mentioned that there were two
25 arguments or fights that happened this weekend. Were

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 either of those altercations about a gun?

2 A No.

3 Q Did anybody else have a gun at the hotel that
4 weekend?

5 A No, ma'am.

6 Q At any point that weekend at the Clarion, did
7 the Defendant ever ask you if you took his gun?

8 A No, ma'am.

9 Q Did he say anything to you about his gun being
10 missing?

11 A No.

12 Q Did he say anything to you about his gun being
13 missing on Saturday?

14 A No, ma'am.

15 Q What about on Sunday?

16 A No, ma'am.

17 Q Did you see him that next Monday?

18 A I can't recall if I seen him Monday.

19 Q Did you talk to him?

20 A Probably, most likely, yeah.

21 Q And you said -- how did you get back to
22 Greenville -- I mean, from Greenville to Fountain Inn?

23 A In his car.

24 Q And in the ride back from Greenville to Fountain
25 Inn, did he say anything to anybody about his gun being

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 missing?

2 A No, ma'am.

3 Q And then on Monday, did the Defendant say
4 anything to you about his gun being missing?

5 A No.

6 Q Did he ever say anything to you about his gun
7 having gone missing that weekend?

8 A No.

9 Q Did you hear him ask anyone else if they took
10 his gun that weekend?

11 A No.

12 Q Did you ever see Barry with his gun?

13 A No.

14 Q Did you go to work on that Monday?

15 A No, ma'am.

16 Q What did you do on Monday?

17 A Recovered from the weekend, mainly sleep.

18 Q All right. I want to go to Tuesday. After
19 everybody got back to Fountain Inn from Greenville, was
20 there a problem who had been at the party?

21 A Yes, ma'am.

22 Q What was the problem?

23 A Allegations that some -- that I slept with
24 Tiajuana Davenport while she was eight months pregnant.

25 Q And did that upset you?

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 A Yes, ma'am.

2 Q Was Ms. Davenport upset about that?

3 A Yes.

4 Q All right. Who did you understand was telling
5 people that?

6 A Barry Norman.

7 Q On Tuesday morning, when you woke up, where were
8 you?

9 A At my grandmother's house.

10 Q At some point, did you go to Bop's house?

11 A Yes, ma'am.

12 Q Tell the jury where Bop's house is, the name of
13 the street, if you know?

14 A No, I don't know the name of the street.

15 Q All right. Is there a restaurant nearby?

16 A Yes, ma'am, it's a Bojangles out in front of the
17 apartments where he stays.

18 Q All right. Do you remember about what time it
19 was that you went to Bop's house?

20 A Probably 1:00 or 2:00 o'clock, 3:00.

21 Q In the afternoon?

22 A Yeah.

23 Q After lunch. All right. At some point, did
24 Barry Norman come to Bop's house?

25 A Yes, ma'am.

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q Okay. Tell the jury what happened when he got
2 there.

3 A Arguments between him and Tiajuana. As soon as
4 he got out the vehicle, Tiajuana approached him about the
5 allegations that was made. And he never said anything
6 about the allegations, about me sleeping with her. He was
7 just yelling that they sell their bodies on Backpage or
8 whatever, they was arguing about that. Then he put a --
9 smacked her to the floor.

10 Q Tell the jury what he did.

11 A As they're arguing, he smacked Tiajuana and she
12 fell. And that's when I -- myself and Bobby Thomas and
13 Smitty Sullivan rushed him to defend the female that had
14 been hurt and we got into a fight with him.

15 Q Tell us, again, who was fighting with Barry?

16 A Me, Bop and Smitty.

17 Q All right. There's testimony that Mr. Norman
18 mused Tiajuana to the ground.

19 A Yeah.

20 Q Can you tell the jury what your understanding of
21 that is, what mused means?

22 A Mush is when you put your hand up to the
23 forehead of another person and use all your force to push
24 them, push them.

25 Q All right. Is that what Barry did to her or did

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 he smack her? You just said he smacked her.

2 A No, it was more of a mush, like, made contact
3 with her facial area and push her backwards.

4 Q All right. Talk about what happened when you
5 and Smitty and Bop were fighting with Barry after that
6 happened.

7 A After that happened, it was a lot of things
8 being said. And as he's walking towards his car to get in
9 his car while we arguing, he kicked my vehicle and I got
10 upset again. And then I took it upon myself to bust his
11 windows out of his. He told us he would be back.

12 Q What did you knock the windows out with?

13 A With like a tire rod, something you take the
14 tires off your car with.

15 Q Where did you get that?

16 A Out of my car.

17 Q Were you upset?

18 A Yeah.

19 Q Okay. Did you know Tiajuana Davenport before
20 this?

21 A Yes, ma'am.

22 Q How did you know her?

23 A We used to date, also, so -- and we were also
24 just friends.

25 Q The evidence is that she was pregnant at the

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 time, is that right?

2 A Yes, ma'am.

3 Q All right. Who was understood to be the father
4 of that baby?

5 A Stacy Sullivan.

6 Q Was he mad?

7 A Yes, ma'am.

8 Q All right. Tell the jury what Barry was saying
9 as he was leaving.

10 A That we crossed -- he'll be back around
11 8:00 o'clock and show us what type of person he is and
12 he's not to be played and ask anybody from Fountain Inn.

13 Q All right. Did he eventually leave?

14 A Yes, ma'am.

15 Q Do you know where he went?

16 A No.

17 Q Did you stay there?

18 A Yes, ma'am.

19 Q What happened after he left?

20 A We started receiving phone calls, a lot of phone
21 calls from Barry just yelling and cursing and saying what
22 he was going to do to us if we would continue to stay at
23 the house. Just threats from over the phone.

24 Q All right. Did he call your phone?

25 A My phone, Landis Franklin's phone, Bop's phone.

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1 Q All right. Was Landis there?

2 A Yes, ma'am.

3 Q Was he involved in the fight?

4 A No.

5 Q All right. Where was he when that was going on?

6 A On the porch. On the porch.

7 Q Did the police come after Barry left?

8 A Yes, ma'am.

9 Q All right. Tell the jury what happened when the
10 police officer got there.

11 A They showed up about a noise complaint and they
12 were told that nothing was going on here. And they just
13 said that if any more problems keep coming from this
14 apartment, they'll be forced to try to get the people
15 evicted, Bop's mother and him. And then they left.

16 Q Was there glass on the ground around where
17 Barry's car had been?

18 A Yeah.

19 Q Okay. Did the police officer ask you about
20 that?

21 A He didn't ask me, but he asked an individual.

22 Q Who did he ask about that?

23 A Andrey Plouse.

24 Q What was the officer told about the glass on the
25 ground?

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1 A It came from him working on his vehicle. He had
2 broke something working on his vehicle.

3 Q Did the officer leave at some point?

4 A Yeah.

5 Q And this entire time, did you stay at Bop's
6 house?

7 A Yes.

8 Q And was your car there still?

9 A Yes.

10 Q What kind of car did you drive at the time?

11 A A white Volvo.

12 Q All right. At some point, did Barry come back
13 to Bop's house?

14 A Yes, ma'am. At 8:00 o'clock, like he said over
15 the threats, he came back at 8:00 o'clock, like, doing a
16 fake driveby.

17 Q All right. Describe that, exactly what happened
18 for the jury when he came back by.

19 A He was hanging out the back seat of the vehicle
20 as the car had its headlights off. The car was going
21 probably maybe three miles an hour at first, until we
22 noticed the car sped up and he was hanging out the window
23 waving an object out the back window as if it was a gun.

24 Q Were you able to see what he had in his hand?

25 A No, ma'am.

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1 Q Could you see who else was in the car with him?

2 A No.

3 Q What did you do when he did that?

4 A Took cover.

5 Q Were you upset by that?

6 A Yes.

7 Q What about the other people at the house?

8 A Very upset.

9 Q Did y'all hear from Barry again?

10 A As soon as he left and did that, he called our
11 phones again.

12 Q What was he saying then?

13 A That we were --

14 Q You can say what he said.

15 A That we were pussies for running and hiding and
16 stuff like that.

17 Q Did things calm down after a bit at Bop's house?

18 A Yes, ma'am.

19 Q Tell the jury what unfolded after that.

20 A Well now, like after that, maybe an hour or so
21 passed by and things started to die down a little bit, but
22 we still were receiving phone calls from Barry. But, you
23 know, we -- Landis started saying like let's go to the
24 club, to Club Cream, and go to Greenville and just get
25 away from all this and chill out. And that started to be

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1 the next plan, to get everybody start preparing to go to
2 Cream, like to go change clothes, their clothes from the
3 day and take showers and things like that.

4 Q Did this Defendant come to Bop's house after
5 Barry drove by?

6 A Yes, ma'am.

7 Q What was he driving?

8 A His Denali truck.

9 Q Was your car still there?

10 A Yes, ma'am.

11 Q Was it light outside or dark outside when the
12 Defendant got there?

13 A Dark outside.

14 Q Do you remember about what time it was?

15 A I would say between 8:20 and 9:00 o'clock.

16 Q Okay. So, was it close in time after Barry
17 drove by?

18 A Yeah.

19 Q You said that Barry was calling you at this
20 time, was he still calling you?

21 A Yeah, we were receiving calls all that night.

22 Q When you say we, who do you mean?

23 A Me and Landis and Bop.

24 Q What about the Defendant?

25 A Yeah, he was getting a lot of calls, too. He

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 was the main one talking to Barry.

2 Q What was your phone number that you used at that
3 time?

4 A I couldn't even remember.

5 Q It's been a while?

6 A Yeah.

7 Q All right. You said this Defendant was getting
8 a lot of calls from Barry, is that right?

9 A That's right.

10 Q How did you know that?

11 A Mainly, before he even came to the scene, it
12 was -- Barry had called Jacoby's phone while Jacoby was at
13 work, I believe, and told him about the fight earlier that
14 day and everything that happened. And Jacoby, my cousin,
15 as Barry was calling him to let him know what happened,
16 that we had jumped him or what happened, he was making
17 threats over the phone to Coby about me saying he was
18 going to do things to me and things of that nature.

19 Q So, had this Defendant communicated that to you
20 somehow?

21 A Yeah, he call me. Before he left work, he call
22 my phone and asked me where I was at and what had
23 happened. And he felt like my life was in danger. So, he
24 was on the way to wherever I was at at the time.

25 Q All right. And when this Defendant arrived at

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Bop's house, what was he doing?

2 A On the phone with Barry.

3 Q And again, how did you know he was on the phone
4 with Barry?

5 A Because most of the time, he put him on speaker
6 phone.

7 Q All right. Describe for the jury what the tone
8 of the conversation was?

9 A Mainly, it was he was trying to get Barry to
10 calm down and stop making threats and stop saying he was
11 going to come shoot houses up and things like that. It
12 was a calm conversation at first until I think Barry said
13 something that made him mad.

14 Q All right. What did you tell the Defendant to
15 do?

16 A Leave it alone.

17 Q Okay. At that point, were you still mad at
18 Barry?

19 A Yeah, I'm still mad a little bit, yeah.

20 Q What had you planned to do later that night?
21 What were your plans at that point?

22 A To go to Cream.

23 Q Did you leave Bop's house at some point?

24 A Yes, ma'am.

25 Q All right. Do you know what time it was when

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

- 1 you left?
- 2 A No.
- 3 Q Was it dark outside still?
- 4 A Yes, ma'am.
- 5 Q Who did you leave with?
- 6 A Me, Jacoby and James Williams.
- 7 Q Who was driving?
- 8 A James.
- 9 Q What were you wearing?
- 10 A Black pants and a short-sleeve shirt -- like a
- 11 black short-sleeve shirt.
- 12 Q Do you remember what the Defendant was wearing?
- 13 A His work clothes with a Champion hoodie.
- 14 Q Do you remember what color it was?
- 15 A The hoodie?
- 16 Q Yes.
- 17 A Black.
- 18 Q All right. Where did y'all go?
- 19 A We went to the Exxon in Fountain Inn.
- 20 Q All right. Were the Defendant and Barry on the
- 21 phone on the way to the Exxon?
- 22 A Yeah.
- 23 Q How do you know that?
- 24 A Speaker again. Speaker on and off.
- 25 Q What happened when you got to the Exxon?

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1 A Well, then, me and Jacoby got out of the vehicle
2 with James Williams and this is when Landis pulls up. And
3 we got in the vehicle with Landis Franklin and Smitty
4 Sullivan.

5 Q And where had they been?

6 A They went to Landis house to change clothes so
7 we can go to the nightclub, to the nightclub Cream.

8 Q So, when did they leave Bop's house, do you
9 know?

10 A Not really.

11 Q Was it before you and --

12 A Yeah, it was before we had left Bop's house.

13 Q All right. So, what was your understanding of
14 the plan once you got in Landis' car?

15 A To go to the nightclub, Cream.

16 Q What happened next?

17 A Next, we get in the car with Landis and we -- I
18 guess, we were dropping Smitty off because Smitty wasn't
19 going to the nightclub with us, so we were taking him back
20 to Bop's house, which that is back to Third Street, going
21 back towards Fountain Inn.

22 Q All right. I'm going to put a map up here and
23 that thing that looks like a pen in front of you has a
24 button on it at the top.

25 A I got it.

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1 Q Can you see that?

2 A (There was no response.)

3 Q I'm going to let you look at it for a minute so
4 you can see what you're looking at, okay. You see where
5 that is?

6 A Yeah, I see -- I see South Main Street and --

7 Q All right. Use the pointer there that you've
8 got and tell us what you're talking about.

9 A I see South Main Street, but I can't understand
10 the rest of this.

11 Q You see the Bojangles down at the bottom?

12 A Yes, ma'am. Now I see it.

13 Q All right. So, you just said that when y'all
14 left the Exxon, you came back down Woodside?

15 A Yes, ma'am.

16 Q Show us where that is.

17 A (The witness complies.)

18 Q Okay. Were y'all coming from which direction on
19 Fairview?

20 A Going on coming back from Exxon?

21 Q Coming back from the Exxon?

22 A Coming back -- when we got on this side, we were
23 coming down like this.

24 Q Okay. All right. I'm going to take you back up
25 to where you first found Woodside up there, you see that?

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1 A Yes, ma'am.

2 Q What's that cross street right there?

3 A I can't see it.

4 Q All right. Here, I'm going to --

5 A But I can see First, Second, Third, Fourth and
6 so on. And we were going, we turned down Woodside to go
7 back to Bop's house, which is right here. We come down
8 Woodside and then we stopped right here. This has to be
9 Woodside Apartments right in this area.

10 Q So, there's an apartment complex right there?

11 A Yes, ma'am. I didn't see it when we was coming
12 back, but it was told to me. I guess they seen Barry when
13 we was coming back, coming back down Woodside Avenue. So,
14 it was told to me that we were going to meet with Barry to
15 squash this whole thing, to talk to him or whatever,
16 whatever. Squash it or fight it out or whatever take --
17 whatever was going to happen was going to happen. That's
18 what was told to me.

19 Q Who told you that?

20 A Coby.

21 Q Was he still on the phone with Barry during this
22 time?

23 A I can't -- I can't remember if he was on the
24 phone when we was coming back.

25 Q Did you see Barry and anybody standing at Third

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1 Street when y'all went past?

2 A No, I didn't.

3 Q Okay. Did you know where Barry was at that
4 time?

5 A No.

6 Q And you said that this Defendant told you you
7 were going to squash this?

8 A Yeah. All that night, that him and Barry had
9 been talking on the phone trying to get it arranged for me
10 and Barry to meet and fight or whatever Barry wanted,
11 either me, Bop or Smitty, and he chose -- I guess Barry
12 chose me and I guess I was supposed to meet with Barry to
13 fight him over there. That's what they had been arranging
14 the whole night over the telephone.

15 Q All right. You're going to have to help the
16 jury understand that as the way to work this out.

17 A He's, basically, a mediator throughout the whole
18 situation. He's on the phone with Barry the whole time.

19 I --

20 Q You say he, who are you talking about?

21 A Jacoby Gregory?

22 Q Were you talking to Barry during this time?

23 A No, more after -- I talked to him one time on
24 the phone when I was at Bop's house.

25 Q Okay.

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1 A But I stopped taking phone calls. Landis told
2 me to stop talking to him on the phone. Just let
3 everything chill out.

4 Q Okay. So, you said that this Defendant was
5 acting as the -- what's the word you used?

6 A Mediator.

7 Q Who it was the arrangement?

8 A I guess we were supposed to meet at the Bi-Lo or
9 a baseball field or something like that and meet and fight
10 and squash it.

11 Q When you say fight, what do you mean? Continue
12 what had happened earlier.

13 A I guess, basically, between me and Barry where
14 we would fight one on one and shake at the end of it,
15 shake hands.

16 Q All right. When the Defendant was on the phone
17 with Barry, did the Defendant say anything to Barry that
18 referenced this Defendant's sister who had passed away?

19 A He said that to me after the phone call.

20 Q Okay. Tell me what he said.

21 A Something, I guess, got hit between him and
22 Barry over the phone or whatever, he said something about
23 Barry, you doing too much, you doing too much, you taking
24 it too far.

25 This is when Barry was saying he was going

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1 to come shoot the house up, Bop's house up or something
2 over the phone.

3 And he said something about, I'm not going
4 to lose another family member, something to that, I'm not
5 going to lose another family member or something like
6 that.

7 Because, I guess, Barry said he was going
8 to kill me or something like that.

9 Q I'm going to show you State's Exhibit No. 39 and
10 ask you if you recognize what's in that picture?

11 A Yeah.

12 Q What is that?

13 A His truck.

14 Q Whose truck?

15 A Jacoby Gregory.

16 Q All right. And it's really impossible to see in
17 this picture, but I'll publish it. Tell the jury what's
18 on the rims of that car?

19 A It says, Rest in peace to three individuals.
20 One, his sister, and two other people said, Rest in peace,
21 Kiki, and Rest in peace somebody else.

22 Q Can you use the pointer and show the red on that
23 tire?

24 A It's -- I can't see it on that one, but.

25 Q Just a little bit red right there. Did you know

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1 what he was talking about when he said that, the
2 Defendant? Did you know his sister?

3 A No, ma'am.

4 Q Do you know how she died?

5 A I was told, but I forgot.

6 Q All right. I'm going to put this map back up
7 for you. All right. You were talking about where y'all
8 stopped and got out on Woodside Avenue, is that right?

9 A Yes, ma'am.

10 Q Okay. Tell the jury where y'all stopped.

11 A So, this would be Woodside right here. We're
12 coming down Woodside into this little box area, it's
13 Woodside Apartments, I believe. We stopped right here.
14 Landis let us out right here. And this is where we got
15 out at.

16 Q All right. What is the entrance of that
17 apartment complex, if you remember?

18 A It's a stone, like a stone monument that,
19 basically, says Woodside Apartments. It's like a big
20 stone.

21 Q When you got out of the car at that point, what
22 did you think was going to happen?

23 A I'm thinking we was going to meet with Barry and
24 make contact with him and either talk or fight. Fight,
25 worst case scenario.

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1 Q All right. Did Smitty get out of that car?

2 A No, ma'am.

3 Q Did Landis get out of that car?

4 A No, ma'am.

5 Q Did you get out of the car?

6 A Yes.

7 Q Did this Defendant get out of the car?

8 A Yes.

9 Q All right. What happened when you got out of
10 the car?

11 A Once I got out of the vehicle and Landis made a
12 left going back towards Bop's apartment -- yeah, Bop's
13 apartment, back down that way, he handed me a 9mm.

14 Q Where did it come from?

15 A He had it tucked inside of his hoodie area.

16 Q All right. When you say he, who are you talking
17 about?

18 A Jacoby Gregory.

19 Q Did you know that he had that gun on him?

20 A No, but I did know he had his .45 because it
21 was -- even though it was concealed, it was out in the
22 open as an officer would carry his weapon in the holster.

23 Q It was still in the holster?

24 A Yes, his .45.

25 Q You saw that when you got out of the car?

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1 A Yes, ma'am.

2 Q Did you say anything to him when he handed you a
3 gun?

4 A It was a small conversation. I was like, What's
5 this for?

6 And he was like, Just in case. Barry been
7 talking about he had a gun the whole night, so just in
8 case.

9 But we was going to meet with him and try
10 to squash and talk it out. As we're talking, we're
11 walking up Woodside now.

12 Q Okay. Show the jury which direction you're
13 going now.

14 A Woodside -- so, this is the apartment area.
15 Now, we're walking up Woodside on the left-hand sidewalk.
16 We're walking up to go make contact -- is this Third
17 Street right here?

18 Q Uh-huh.

19 A They standing at the corner of Third, right here
20 and we're walking up.

21 Q And as you were walking up, could you see
22 Mr. Norman?

23 A Not at the time. It took me all the way until
24 we got to like three to five feet away from that corner
25 where the shots were fired before I actually seen the

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 victim.

2 Q All right. Let me back you up. You said that
3 the Defendant said -- when you asked him what the gun was
4 for, what did he say?

5 A Just in case. Take it just in case.

6 Q And -- but did he say that Mr. Norman had said
7 something about having a gun?

8 A Yeah, he said -- he said, you know -- when he
9 gave me the gun, he said, take it just in case because he
10 been saying something about he had a gun the whole time on
11 the phone.

12 Q That Barry was saying that?

13 A Yes, ma'am.

14 Q All right. We'll go back to that in just a
15 minute. Did you take the gun from the Defendant?

16 A Yes.

17 Q Had you seen that gun before?

18 A Yes.

19 Q How do you know?

20 A Only reason I seen the gun, I knew that it was
21 Hood gun from earlier because Hood showed the gun to me.

22 Q Who is that?

23 A Jerell, I don't know his last name, though.

24 Q Did you know how the Defendant got it?

25 A Not at all.

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1 Q What did you do with it?

2 A When -- I took it out and put inside my hoodie
3 area. At this time, he had gave me his work hoodie, the
4 Champion black hoodie, and gave it to me earlier that
5 night because I was -- like it was getting a little
6 chilly.

7 Q Okay. So, you testified a moment ago that when
8 y'all were on the way to the Exxon that the Defendant had
9 on a hoodie?

10 A No, he didn't have his hoodie on when we went to
11 the Exxon.

12 Q Okay.

13 A He had gave me the hoodie prior to us going to
14 the Exxon.

15 Q Okay. I asked you what he was wearing when
16 y'all were in the car?

17 A No, you asked me what he had on in general that
18 night?

19 Q Okay. What was he wearing?

20 A His work clothes.

21 Q What is that?

22 A Like some blue khaki jeans and he had like
23 blue -- basically, jeans with the pocket on them by the
24 knee area and the Champion hoodie. He had it on earlier
25 before he gave it to me.

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1 Q Okay. And so, after he gave it to you, he just
2 had the work shirt on?

3 A Just a white T-shirt, work shirt or whatever.

4 Q All right. Let's go back to Woodside.

5 A Me?

6 Q Yes. All right. Tell the jury where y'all went
7 after you got out the car, again.

8 A As we got out of the vehicle, we started
9 crossing over to the left side of the street area and
10 walking. He stayed on the sidewalk. I started to get --
11 because the street area was dark because not that many
12 street lights, I started to get like walking in the middle
13 of the street area where you can actually kind of see,
14 like see a person. I was in the street, like in the
15 middle of the street, and he stayed on the sidewalk until
16 we got all the way.

17 Q To where?

18 A To the top of Fourth, right here.

19 Q All right. And tell the jury what happened when
20 you got about to Fourth Street.

21 A As soon as we got to Fourth Street, we seen -- I
22 seen like Barry walking like -- when I did see him like
23 right before we hit Fourth Street, I seen him coming like
24 from behind that vehicle and walking towards the -- like
25 on the sidewalk.

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1 Q Show the jury where he was.

2 A On the corner of Third.

3 Q Okay.

4 A And his Honda was on Woodside, like facing us.

5 So, he was walking from the trunk area, walking around
6 towards the back. And that's when I seen, also, like a
7 heavysset guy with dreads on the sidewalk area right to
8 him, maybe two or three feet in front of -- well, to his
9 right, not in front of him, but to the right.

10 Q Did you know who that was?

11 A Not at all.

12 Q What happened?

13 A He pointed in our direction.

14 Q Who did?

15 A The heavysset kid that was kind of next to Barry
16 pointed in our direction. And then I immediately heard
17 shots fired -- shots being fired by Jacoby Gregory on my
18 left.

19 Q And what did you do?

20 A I reacted to the shots being fired, I pulled the
21 9mm because they're no houses or anything blocking me,
22 behind me or anything. I pulled out the 9mm and shot
23 three times.

24 Q Where did you fire that gun?

25 A Towards the ground area, like in front of my

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 feet area.

2 Q Why did you do that?

3 A Just because there was nothing protecting me.

4 And I figured if they did have a gun and whatever that guy
5 just pointed, if he would have shot, I would have been the
6 one to get hit because I was in the middle of the street
7 like a deer.

8 Q What is going through your mind at this point?

9 A Get out of there.

10 Q All right. Do you know how many shots the
11 Defendant fired? If you don't -- if you do remember.

12 A Three to four.

13 Q All right. Do you remember how many times you
14 fired that gun?

15 A Three times.

16 Q When you began firing that gun, were you just
17 standing there? What were you doing when you started
18 firing the gun?

19 A Two shots were like -- two of my shots were
20 standing still and the last one was like running away,
21 running towards the area where -- like going back to --
22 running back the opposite way.

23 Q Back the direction you came?

24 A Yeah.

25 Q Show the jury where exactly you went when you

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 were running away?

2 A Yes, ma'am. Running away, we ran like --
3 basically, toward back to where we got dropped off at.
4 Like running back towards that area. There's a field
5 right next to Woodside Apartments.

6 Q And you started running there?

7 A Yeah, we started running towards the field area.

8 Q And you said we, was the Defendant behind you --

9 A Yes, ma'am.

10 Q -- running with you?

11 A Me and Jacoby Gregory.

12 Q Were you in front of him or behind him?

13 A In front of him.

14 Q When he started firing shots, was he in front of
15 you or behind you, or beside you, where was he?

16 A Beside me.

17 Q All right. And could you tell in which
18 direction he was firing?

19 A Like, I'm sorry, could you explain?

20 Q What direction was he firing the gun?

21 A Towards Barry.

22 Q Did you know whether or not anybody had been
23 hit?

24 A No, ma'am.

25 Q At that time?

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1 A Not at all.

2 Q All right. When you got into the grass, what
3 happened when you were running through the field?

4 A The field -- the field that we ran in, it's
5 probably 80 to 70 yards. So, maybe at the 10 to 15-yard
6 line, right, I'm trying to explain it that way. 10 to 15
7 yards, I'm kind of in front of him about five yards. He
8 yells to me he's fixing to drop something because he has
9 his iPhone and his Nokia attached to his hip like -- two
10 cell phones attached to his hip.

11 Q I'm showing you State's Exhibit 38 and 37. Do
12 you recognize those?

13 A Yeah, those are the two phones.

14 Q And again, what did he say?

15 A Help, I'm fixing to drop something.

16 Q All right. What did you do?

17 A I immediately turned back around to go help him
18 because I didn't know if he was going to drop a phone or a
19 gun or whatever. But this is when he hands me the .45
20 that he had just shot.

21 He told me, Here, take the gun because my
22 phone and my keys are fixing to drop, either or.

23 Q All right. And was he handling both of these?

24 A Yeah, these two and the phone cases that you
25 attach to your belt buckle area. They are like clips,

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1 like phone clips. They are phone clips on his hip
2 dangling while his keys are on the belt buckle area
3 attached to his hip.

4 Q Could you hear those when you were running?

5 A Yeah.

6 Q I'm going to show you State's Exhibit No. 4 and
7 let you look at it before I project it so you can see if
8 you recognize what's in that picture.

9 A Yeah, that's the field.

10 Q Okay.

11 A That's the field.

12 Q That's the field that y'all ran through?

13 A Yes, ma'am.

14 Q All right. Do you see a car in that picture?

15 A Yes, ma'am.

16 Q All right. Show the jury, if you can, when you
17 say you're about 10 to 15 yards in the field where this
18 happened.

19 A We're in like this area right here. See right
20 here in between this tree, in this area, when he yells at
21 me and says, Come back, I'm fixing to drop something.

22 I haven't even got -- like this big tree
23 area, I haven't -- way over here is where we end up being,
24 so this area right here is when he called me back to come
25 back and get the gun.

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q What did you do next?

2 A After I received the gun in this area right
3 here, I put the 9mm that I had inside my -- like in my
4 front area by my pelvis in between my belt -- my belt area
5 and my pants and I put the .45 in my hoodie, in the hoodie
6 pocket, in the front of the hoodie pocket.

7 Q What did you do?

8 A Ran that way. Ran this way over in this
9 location.

10 Q Were you running hard, fast?

11 A I couldn't run fast, but I was like -- had
12 the -- couldn't run my top speed due to the gun in between
13 my --

14 Q Which one are you talking about?

15 A The gun.

16 Q Which one?

17 A The 9mm.

18 Q Okay. Is that the one that was -- you had stuck
19 down your pants?

20 A Yeah.

21 Q All right. Have you watched the surveillance
22 video from the building that you ran behind?

23 A Yes, ma'am.

24 Q The best that you can there on that picture,
25 show the jury the direction of that building.

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1 A This little white truck area be way back here.

2 Q You said you watched the surveillance video from
3 that building, is that right?

4 A Yes, ma'am. So, that company would be back here
5 in this little square right here.

6 Q Now, have you also reviewed the surveillance
7 footage from Fountain Inn Natural Gas building?

8 A Yeah.

9 Q All right. And show the jury again on here the
10 general direction where you ran?

11 A (The witness complies.)

12 Q Okay. Behind there. Okay. And is what you saw
13 on the surveillance video what happened?

14 A On the surveillance video, by this time, this
15 is -- like I said, the field is probably about 70 yards.
16 We haven't reached 70 yards, so I take the hoodie off and
17 throw it over the fence area, which is right here.

18 Q Okay.

19 A And I put the .45 at the front of the building
20 right after I put the hoodie over the fence.

21 Q Can you see that on the video?

22 A Yes.

23 Q Does what you watched on that video show what
24 actually happened that night?

25 A Yes.

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q All right.

2 MS. PAOLETTI: Your Honor, at this time, the
3 State moves Exhibit 5 into evidence, the Fountain Inn
4 Natural Gas surveillance.

5 MR. CHAMBERS: No objection, Your Honor.

6 THE COURT: All right. Thank you.

7 (WHEREUPON, State's Exhibit No. 5 was marked for
8 identification and received into evidence.)

9 (WHEREUPON, State's Exhibit No. 5 was played in
10 open court for the jury.)

11 BY MS. PAOLETTI:

12 Q When you were coming around the building, did
13 you see that man?

14 A Not at all.

15 Q Tell the jury what they're watching come into
16 view.

17 A Okay. That's me.

18 Q How do you know that?

19 A Because I was in front of him.

20 Q Who is that?

21 A That's him.

22 Q Who is that?

23 A That's me.

24 Q What are you doing right there?

25 A Taking the hoodie off.

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q What did you do with it?

2 A Threw it over to the fence.

3 Q All right. Then right now on there, what are
4 you doing?

5 A Placing the gun down, the .45 down.

6 Q And who's that?

7 A Jacoby Gregory.

8 (WHEREUPON, there was a short pause.)

9 THE COURT: If you all would like to stand and
10 stretch, please feel free.

11 MS. PAOLETTI: Your Honor, I'll move on and
12 we'll come back to this when we get it.

13 THE COURT: All right.

14 MS. PAOLETTI: Just taking a long time to load.

15 THE COURT: All right.

16 BY MS. PAOLETTI:

17 Q What was the Defendant doing on that video when
18 he was walking away?

19 A From the time that I received the .45 from him,
20 he started playing with his phone and trying to get Landis
21 on the phone to come back and pick us up.

22 Q Let me ask you this, too, while we're getting
23 this loaded. Have you met with me before?

24 A Yes, ma'am.

25 Q All right. And did you have the opportunity

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 then to view these videos?

2 A When I met you?

3 Q When you were preparing for trial, did you watch
4 these videos?

5 A Yes, ma'am.

6 Q And then did we ask you questions about what
7 happened in the case?

8 A Yes.

9 Q And let you know what questions we might be
10 asking you?

11 A Today, yes.

12 Q You said that the Defendant was playing on his
13 phone. Was he -- what was he doing on his phone?

14 A I don't know because I was running away, but I
15 knew he was, obviously, trying to get Landis on the phone
16 or calling somebody.

17 Q Could you hear him talking?

18 A No.

19 THE COURT: Okay, ladies and gentlemen, I tell
20 you what, we'll just take a short and see if they
21 can't get these technical issues resolved. Don't
22 discuss the case. We'll be back with you very
23 shortly. Thank you.

24 (WHEREUPON, the jury left open court at
25 approximately 2:20 p.m.)

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 THE COURT: We'll just take a short break.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: Ready?

4 (WHEREUPON, the jury came into open court at
5 approximately 2:33 p.m.)

6 THE COURT: All right, proceed.

7 MS. PAOLETTI: Thank you, Judge.

8 (WHEREUPON, a video was played in open court for
9 the jury.)

10 BY MS. PAOLETTI:

11 Q What is that?

12 A That's the other side of the fence, of the
13 impound, the police impound.

14 Q All right. The figure that you just saw there?

15 A Yeah, that was me.

16 Q All right. And right there?

17 A That's Jacoby Gregory.

18 Q What direction did you go when you came around
19 the side of the building, to the right or left?

20 A The right.

21 Q Who is that?

22 A That's me.

23 Q Did you have the .45 at that point?

24 A No.

25 Q Where was the 9mm?

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 A In my front area in between my pants and belt
2 buckle.

3 Q Who is that?

4 A Jacoby Gregory.

5 (WHEREUPON, the video was continued to be played
6 in open court.)

7 BY MS. PAOLETTI:

8 Q Can you tell the jury what those lights are on
9 the top of that screen?

10 A That's the truck, Landis BMW truck.

11 Q No, I'm talking about the lights at the top.

12 A All over there, that's the bank and like a
13 little plaza.

14 Q Who was that that just went past?

15 A Me.

16 Q Were you communicating with this Defendant at
17 all at this time?

18 A No.

19 Q All right. I'm going to show you -- I'm going
20 to show you what is in evidence as State's Exhibit No. 13,
21 ask you to take that out and take a look at it, please.

22 A (The witness complies.)

23 Q You recognize that?

24 A Yes, ma'am.

25 Q What is it?

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 A The hoodie that he gave me. The hoodie that I
2 was wearing.

3 Q Is that the one that you are seen in those
4 videos throwing over the fence?

5 A Yes.

6 Q All right. I'm going to show you State's
7 Exhibit No. 25 and ask you if you recognize what's in that
8 picture?

9 A Yes.

10 Q What's that picture of?

11 A Of the .45 caliber gun he gave me.

12 Q Is that the way that it looked when you left it
13 on the ground?

14 A I wouldn't remember how I left it.

15 Q Could you see in that light?

16 A Talking about when I placed the gun down?

17 Q Yes. Was it dark or light?

18 A It was a little dark. Even though it looked
19 like it was a lot of lights in front of the building, it
20 was kind of dark.

21 Q All right. I'm going to show you what's been
22 marked as State's Exhibit No. 18 and ask you if you
23 recognize that?

24 A Yes.

25 Q What is that?

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1 A That's the .45 that he gave me and the .45 that
2 I placed by the tree in front of that place.

3 Q Is that the gun that you had seen the Defendant
4 with before?

5 A Yes, ma'am.

6 Q All right. After you leave the view of those
7 cameras, tell the jury where you went.

8 A As you can see in the video, I'm running around
9 to the right, which is going -- when I ran around the
10 building, I'm going back towards the direction, which is
11 Wall Street. It takes you back to Bop's apartments where
12 my vehicle was located. So, that's the direction I was
13 running in.

14 Q Is that where you were trying to go?

15 A Yeah.

16 Q How far did you get?

17 A Close. Close.

18 Q All right. At some point -- did you make it all
19 the way to Bop's house on foot?

20 A No, ma'am. No, ma'am.

21 Q What happened?

22 A I eventually got picked up by Landis Franklin
23 and Jacoby Gregory as he was coming up Wall Street.

24 Q Who's he?

25 A Landis Franklin.

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q All right.

2 A So, by this time, he had picked up Jacoby
3 Gregory and they continued up Wall Street back towards
4 Bop's apartments and they picked me up in the vehicle.

5 Q Okay. So, as you were running down Wall
6 Street -- and I'm going to get this map back up in just a
7 second, okay. When you were running towards Bop's house
8 on Wall Street, from which direction did Landis come in
9 his car?

10 A From --

11 Q Was he in front of you or did he come behind
12 you?

13 A Behind us.

14 Q Okay. Can you show the jury on that map where
15 Wall Street is?

16 A (The witness complies.)

17 Q Okay.

18 A And it loops around right here to the Bojangles
19 location that we talked about earlier.

20 Q Can you indicate on that map how far you made it
21 back towards Bop's house on foot?

22 A Maybe like right here. Bop house would be right
23 here, I made it back to right here before the street loop.

24 Q Before it turns back around to the right?

25 A Yeah, before it loops around right here back to

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Bop's house. Bop's house right here.

2 Q And you said that someone was in the car with
3 Landis?

4 A Yes, ma'am.

5 Q Who was in the car with Landis?

6 A Jacoby Gregory.

7 Q Who was driving the car?

8 A Landis Franklin.

9 Q And where was the Defendant sitting in the car?

10 A In the front seat, I believe. In the front
11 seat.

12 Q Was Smitty in the car?

13 A No, ma'am.

14 Q All right. When you got in the car with Landis
15 Franklin and this Defendant, did you say anything to this
16 Defendant about what had just happened?

17 A Nothing.

18 Q Did this --

19 A Oh, yeah, I'm sorry. I apologize. Yes. It
20 was -- it was a small conversation. He asked me where did
21 I put the gun?

22 And I told him, In front of the thing.

23 And that was it.

24 Q All right. Tell the jury what was going through
25 your mind at this point.

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1 A At this point, we didn't know that Barry was
2 dead, nobody had got hit or anything, so we just trying to
3 get away from what just happened, shots been -- from us
4 shooting. And I'm just thinking get away from him, get
5 away from everybody.

6 Q Where did Landis drive his car?

7 A To the front of Bop's house.

8 Q All right. And did you get out of Landis' car?

9 A Yes, ma'am.

10 Q What did you do when you got out of Landis' car?

11 A Got into my car.

12 Q All right. What did this Defendant do when he
13 got out of Landis' car?

14 A I don't know. I believe he ran back in to try
15 to get in Bop's house or something like that.

16 Q Did you try to go into Bop's house?

17 A No, ma'am.

18 Q Were you in a hurry to get out of there?

19 A Yeah.

20 Q Did you say anything to the Defendant right
21 then?

22 A No, ma'am.

23 Q Okay. After you left Bop's house, where did you
24 go?

25 A Riding around.

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1 Q Where did you go?

2 A Riding around Greenville.

3 Q You went to Greenville?

4 A Like riding around, yeah, riding around towards
5 the Greenville area.

6 Q When you say riding around, you mean immediately
7 you don't get out anywhere?

8 A No.

9 Q Were you just driving or were you going
10 somewhere?

11 A Well, when I left the scene -- when I left from
12 Bop's house, I rode like -- like towards the Greenville
13 area, going towards Greenville, but I made a stop and
14 throw the 9mm away.

15 Q When did you do that?

16 A After I left Bop's house?

17 Q That's the first thing you did?

18 A (The witness nods.)

19 Q All right. Tell the jury where you went to do
20 that.

21 A It's like a back road that take you to Bryson
22 Cemetery. I did it then.

23 Q Where did you go?

24 A Through that like -- I can't -- like I'm
25 trying -- like through Main Street and the back roads to

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1 Kingston Court. And it's a side street that take you on
2 another back road to Bryson Cemetery. Like by Bryson
3 Cemetery, I took that back road, toward that little lake
4 area.

5 Q That's what I'm asking, where were you trying to
6 go?

7 A Just really just driving, getting away from what
8 just had happened. I had no destination or plan.

9 Q All right. Do you remember talking to me about
10 what you did with the 9mm?

11 A Yes, ma'am.

12 Q Do you remember telling me that you ditched it
13 along the route that you and the Defendant took that
14 night?

15 A See, I think that conversation between me and
16 you got crossed up, but I never said I lost the gun with
17 him. I never said that I got rid of the 9mm while I was
18 with him because I never was with him after the shooting.

19 Q Okay.

20 A So, it probably got mixed.

21 Q The jury needs to understand, okay. Tell them
22 where you took it to get rid of it?

23 A The 9mm?

24 Q Yes.

25 A I took it to the location I just said, the back

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1 road -- I can't explain the back road, but I took it to
2 this little lake area, like a little pond and discharged
3 it, threw it in a bag, put it in a Bi-Lo bag and threw it
4 over into the pond area.

5 Q Into some water?

6 A Yes, ma'am.

7 Q When did you find out that Barry was dead?

8 A Probably about 10, 15 minutes after that. I was
9 getting calls and stuff like that. And found out he was
10 dead through text messages and phone calls.

11 Q Who was calling you?

12 A Lot of friends. Just like do you know what
13 happened? Have you heard what happened? Somebody got
14 shot. I know you got in fight with him earlier that day,
15 things like that.

16 Q All right. I need to go back and talk to you,
17 about the 9mm for a minute. At some point in time, did
18 you go out with the Fountain Inn police to try to recover
19 that 9mm?

20 A Yes, ma'am.

21 Q Tell the jury about that.

22 A I took -- I agreed with the Fountain Inn Police
23 Department to go find the gun that I had put in the Bi-Lo
24 bag and threw into the pond area, but I believe they never
25 found it.

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1 Q Did you go out there with them?

2 A Yes, ma'am.

3 Q Was that immediately after this happened?

4 A No, ma'am.

5 Q Do you remember how long after the shooting it
6 was?

7 A Probably about -- I had been in jail for about a
8 year, 12 or 13 months by that time.

9 Q Did you go out with Fountain Inn after you
10 disclosed that to the State?

11 A Not again, no.

12 Q Okay. But that's when you went out -- after
13 that is when you went out with Fountain Inn Police?

14 A Yes, ma'am.

15 Q All right. Did you see the Defendant again that
16 night?

17 A Yes.

18 Q All right. Where did you see him?

19 A We met at -- he called me, whatever -- once we
20 found out Barry was dead, whatever, we met at Taylor
21 Bovain's house or Pam Suber's house in Simpsonville and we
22 talked about the events that had just occurred. We had
23 talked about it.

24 Q All right. Who was there when you were talking
25 about what happened?

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1 A Me, Jacoby Gregory and Taylor Bovain.

2 Q All right. Did she hear what y'all were talking
3 about?

4 A Not really. She wasn't paying any attention.
5 She was half asleep like.

6 Q Tell the jury what y'all talked about.

7 A Well, like what we were going to do, that's the
8 next step. I'm looking at him like, now we know he's
9 dead, what's the next step?

10 He's like, Well, well, I don't know, I
11 don't know.

12 You know, we talk like we didn't think it
13 was going to go that far. And I said, Well, I'm fixing go
14 to New York. Tomorrow, I going to go to New York and get
15 away from this or whatever.

16 And he said, Well, I'm going back to work
17 like nothing ever happened. And that's what his plan was.
18 He said he was going to stay down here a while while I go
19 to New York and he was going to go back to work.

20 Q Okay. Did you talk about what you'd done with
21 the .45?

22 A Yeah. I told him that it was right there where
23 I had threw the hoodie at.

24 And he said, Well, we got to go back and
25 get that gun. There was also a conversation, we got to go

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1 back and get my gun. We got to go get my gun.

2 And I'm like, Well, I'm not going to get
3 it. You can go get it. I tell you where I put it at, but
4 you shouldn't gave it to me to put right there.

5 Q Did you go back and try to get it?

6 A No.

7 Q Do you know if the Defendant did?

8 A I don't know if he did or not.

9 Q All right. Tell the jury what you talked about
10 as far as what your story would be about what happened?

11 A I'm sorry?

12 Q What you and the Defendant discussed about what
13 you would say if somebody asked you what happened?

14 A Like police or like we was to get caught?

15 Q Yeah.

16 A We never discussed like what our stories would
17 be. We never rehearsed or nothing like that.

18 Q Did you have a conversation with the Defendant
19 about throwing people in --

20 A Oh, yes, yes, ma'am. I said -- by this time, I
21 had reached New York, or my destination, rather, and I'm
22 talking to him.

23 And he said, I'm going to Fountain Inn
24 Police Department to report my gun stolen.

25 But he never told me he was going to make

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1 me the one that actually stole the gun. So, I'm just
2 telling him, Whatever you do, if you go down there and try
3 to dig yourself out of it, don't put my name in it. Throw
4 somebody else. Because, you know, I didn't want nothing
5 to do with this from the jump.

6 Q Okay. And did y'all talk about who you would
7 throw?

8 A No, I didn't say any names. I said, Don't throw
9 me. Throw anybody but me.

10 Q Did you -- do you remember how many times you
11 may have talked to the Defendant on the phone after y'all
12 left Pam Suber's house?

13 A Probably about three to five times.

14 Q All right. And after you left Pam Suber's
15 house, where did you go?

16 A To my grandmother's house.

17 Q Is that where you lived?

18 A Yes, ma'am.

19 Q All right. Did you talk to anyone when you got
20 home to your grandmother's house?

21 A Yes, I spoke to my grandmother.

22 Q All right. What did you do?

23 A I had told her that, Grandma, somebody's dead.
24 You know, I was crying and stuff like that. We turned on
25 the news.

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1 And she was like, Well, just tell me what
2 happened from jump.

3 And I was like just telling her about the
4 events, about the fight and the threats that I was getting
5 and everything like that. But, that's all we talked
6 about.

7 Q All right. Did you make arrangements to go to
8 New York?

9 A Yes. Not with her, but.

10 Q Right. What did you do?

11 A I -- the following morning after the night of
12 the shooting, I got with my friend girl and she drove me
13 to the bus station and I caught a bus station ticket to
14 Syracuse, New York.

15 Q What did you do with your car?

16 A I left it at my grandmother's house.

17 Q So, when you left to go to New York, what was
18 your plan? What were you going to do?

19 A Main thing -- well, my plan was really to see my
20 children. My children's in Syracuse, New York and I
21 wanted to see my kids before anything did happen. I know
22 it was going to become a time where I would eventually
23 come back and face it, face what had happened, you know
24 what I mean? I wasn't trying to run from it but I was
25 trying to go see -- make sure I see my kids just in case

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1 something did happen.

2 Q When you say in case something did happen, what
3 do you mean?

4 A I mean, I'm just saying like when we were to get
5 arrested.

6 Q You knew that was coming?

7 A Yeah.

8 Q Did you go to New York?

9 A Yes.

10 Q All right. And I asked you earlier, while you
11 were in New York, were you communicating with this
12 Defendant?

13 A I talked to him maybe twice, like three out of
14 five. I talked to him all together about five times.

15 Q Okay. And the entire time after the shooting on
16 the phone?

17 A Uh-huh.

18 Q While you were up in New York, did you contact
19 Fountain Inn Police Department?

20 A Yes, ma'am. I called --

21 Q Tell the jury about that.

22 A I called down to see who was the lead detective
23 or whatever. And I spoke to Detective Peden and I told
24 him I wasn't running at all, but I was coming to see my
25 kids and turn myself in. I would be down soon, following

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1 week.

2 Q While you were in New York, what else were you
3 doing to prepare to come down to South Carolina?

4 A Getting an attorney.

5 Q All right. Did you talk to any family members
6 while you were up there?

7 A Yes.

8 Q Who did you talk to?

9 A To my aunt and just a lot of family, my brother,
10 a lot of people.

11 Q All right. Did you talk to them before you
12 called Fountain Inn Police?

13 A Yes, ma'am.

14 Q Okay. Is that why you called Fountain Inn
15 Police?

16 A Yes, ma'am.

17 Q All right. Did you come back to Fountain Inn?

18 A Yes, I came back to Greenville.

19 Q Okay. You came back to Greenville, but you
20 didn't go turn yourself in?

21 A No, I was supposed -- I had got an attorney and
22 I was in Mauldin and I was supposed to turn myself in the
23 following morning, but I was just waiting for the call
24 from my lawyer, but he never called. But the plan was to
25 turn myself in that following morning.

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 Q Okay. Is that why you didn't go turn yourself
2 in?

3 A Yes, ma'am.

4 Q Were you ever able to get an attorney to go with
5 you?

6 A Yes.

7 Q Tell about that.

8 A Like I was saying, when I was in New York, they
9 had purchased an attorney. That's what made me come back
10 or whatever, things like that. That's when I came back
11 and we were discussing about when I was going -- he even
12 presented letter to Fountain Inn Police Department saying,
13 basically, he was representing me, things like that. So,
14 we were just waiting on that process for me to turn myself
15 in, but he obviously not doing it.

16 Q All right. Did you get arrested?

17 A Yes.

18 Q Tell the jury about that.

19 A I got arrested in Mauldin by the Marshalls. And
20 I was cooperative. They just drove me to Fountain Inn to
21 wait for my lawyer.

22 Q Did your lawyer ever come to Fountain Inn?

23 A Yes, ma'am.

24 Q All right. Tell the jury about that. Were you
25 able to hire them to represent you?

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1 A Yes.

2 Q On this case?

3 A He was hired at the beginning, but, you know, he
4 said he was -- not enough money to cover the actual
5 murder.

6 Q Okay. Did you speak to investigators or
7 detectives with Fountain Inn Police?

8 A Yes.

9 Q Did you have a lawyer with you when you did
10 that?

11 A No.

12 Q Did you speak to them and waive your rights to
13 an attorney?

14 A Yes.

15 Q All right. I'm going to show you -- I'm going
16 to show you a document and ask you if you recognize that,
17 okay?

18 A Yes, ma'am.

19 Q Look at all the pages.

20 A Yes, ma'am.

21 Q All right. What is that?

22 A My statement. Me waiving my rights and my
23 statement.

24 Q All right. Did you tell detectives about having
25 and fired a 9mm when you gave them that statement?

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 A Not at the time.

2 Q Why not?

3 A Because I didn't have -- I didn't have no
4 lawyer. I didn't have no lawyer at the time.

5 Q All right. Well, you told them that you would
6 tell truth about what happened. Did you tell them the
7 whole truth?

8 A I did not.

9 Q All right. Do you remember taking a break
10 during giving your statement?

11 A Yeah. Towards the end of the statement, I asked
12 if I could get a break or can I -- they told me to finish
13 the statement before I could make a call. But I wanted to
14 talk to a family member, you know. I didn't want to tell
15 the whole story from front to end without an attorney
16 present. So, I got to make that call. They let me make
17 the call before I finished the statement. And my family
18 let me know he wants way too much money right now. So,
19 just go ahead and tell the truth and put it in God's
20 hands.

21 Q All right. Do you remember tearing up a page
22 that you started on your statement?

23 A Yes, ma'am.

24 Q Did you do that before you went and talked to
25 your family?

SHAWNDELL CLEMONS-DIRECT BY MS. PAOLETTI

1 A Uh-huh.

2 Q Have you talked to Landis Franklin since you've
3 been in jail?

4 A Yes, ma'am.

5 Q Have you ever told Landis not to come and
6 testify in court?

7 A No.

8 Q All right. Let's talk about your plea deal,
9 okay? What were you originally charged with?

10 A Murder.

11 Q What did you plead guilty to?

12 A Voluntary manslaughter.

13 Q All right. Do you understand the maximum
14 sentence that you're looking at?

15 A Thirty years.

16 Q All right. What is your understanding of the
17 sentence range that you could get?

18 A I can get anything from two to 30 years.

19 Q Has anyone from the solicitor's office or
20 Fountain Inn Police promised you a sentence or
21 recommendation?

22 A No, ma'am.

23 Q Do you hope to get less than 30 years?

24 A Yes.

25 Q You understand that you're going to be sentenced

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 regardless of what happens in this case?

2 A Yes, ma'am.

3 Q Do you want to be here testifying against your
4 cousin?

5 A No.

6 Q Has anyone told you what to say today?

7 A No.

8 MS. PAOLETTI: All right, Mr. Clemons, answer
9 any questions that Mr. Chambers may have for you.

10 MR. CHAMBERS: Your Honor, may we take just a
11 short break?

12 THE COURT: All right, short recess. Please
13 don't discuss the case.

14 (WHEREUPON, the jury left open court at
15 approximately 3:05 p.m.)

16 THE COURT: All right.

17 (WHEREUPON, a short break was taken.)

18 THE COURT: All right, ready?

19 MS. PAOLETTI: Yes, sir.

20 THE COURT: Let's get the jury.

21 (WHEREUPON, the jury came into open court at
22 approximately 3:15 p.m.)

23 THE COURT: All right, cross.

24 CROSS-EXAMINATION

25 BY MR. CHAMBERS:

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q All right, Mr. Clemons, as you discussed with
2 the solicitor a little bit earlier, you've had two
3 burglary convictions and a grand larceny conviction in the
4 past, correct?

5 A Yes, sir.

6 Q And I believe that you told the solicitor that
7 you were actually out on probation when these events that
8 you're here to talk about today were discussed; is that
9 correct, also?

10 A Yes, sir.

11 Q And you also indicated that prior to coming in
12 here to testify today, that you pleaded guilty to
13 manslaughter; is that right?

14 A That's right.

15 Q Do you recall the date that you actually pleaded
16 guilty?

17 A No, sir.

18 Q Okay. Can you tell us roughly how long ago it
19 was?

20 A About a month.

21 Q So, about a month ago, you pleaded guilty to
22 manslaughter?

23 A (The witness nods.)

24 Q Is that right?

25 A That's right.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q I'm going to need you to answer out loud.

2 A Yes, sir.

3 Q And you weren't sentenced on the day that you
4 pleaded, were you?

5 A No, sir.

6 Q In fact, the sentence was deferred, is that
7 correct?

8 A That's right.

9 Q And deferred until after you came in to testify
10 against Jacoby Gregory, whatever day that was going to be?

11 A That's right.

12 Q So, is it your understanding then that your
13 testimony here would have some impact on how you are
14 sentenced later?

15 A No.

16 Q That would be the reason for deferring it rather
17 than sentencing you right there at the time, correct?

18 A I don't know how the process at the solicitor's
19 work.

20 Q Okay. But at any rate, you haven't been
21 sentenced yet?

22 A That's right.

23 Q You also indicated that you had met with the
24 solicitor prior to coming in here to give your testimony
25 today?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A Yes, sir.

2 Q And you indicated that in meeting with her that,
3 among other things, you reviewed all of the security
4 videos in this case, is that correct?

5 A Yes, sir.

6 Q So, you watched those along with her and you
7 were able to process that with her and have an idea of
8 what she was going to show here in court, correct?

9 A Yes, sir.

10 Q Likewise, I'm assuming that y'all went over your
11 statements and things together, the various statements
12 that you've given over time, is that also fair to say?

13 A Yes, sir.

14 Q So, there was a general discussion about things
15 that you had said before and how you were going to
16 plead -- or how you were going to testify when you came in
17 here to testify today, correct?

18 A Can you rephrase that question?

19 Q In other words, the two of you prepared for your
20 testimony today?

21 A Just told me to tell the truth.

22 Q I understand. But she reviewed all those things
23 with you as we've discussed?

24 A Yes, sir.

25 Q I want to go back again and talk to you about

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 October -- well, first, the party. The party occurred the
2 weekend before October 1st, which was a Tuesday, is that
3 correct?

4 A Correct.

5 Q And that was a -- you described it as a
6 three-day party where you were celebrating Bop's 21st
7 birthday?

8 A That's right.

9 Q And that took place at the Clarion Inn, which is
10 on Augusta Road just off Interstate 85 in Greenville; is
11 that correct?

12 A That's correct.

13 Q And over the course of that time, there -- do
14 you recall whether -- you had four or five rooms booked;
15 is that correct?

16 A That's correct.

17 Q There were lots of people that were present in
18 and out during the course of that three days?

19 A That's correct.

20 Q Barry had a room of his own, is that your
21 recollection?

22 A That's correct.

23 Q Jacoby had a room of his own, is that your
24 recollection?

25 A No.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q You don't recollect that. What's your
2 recollection about where people were staying and what the
3 room situation was?

4 A The rooms were conjoined, so they ran into each
5 other. So, me and Coby had a room together that ran into
6 another room, so we had two rooms together.

7 Q And you do recall that Jacoby did have his gun
8 there at the party?

9 A Yes.

10 Q And you indicated that when he would have his
11 gun with him, the .45 we're talking about, he would wear
12 it in a holster, which is very much like a police
13 officer's holster?

14 A That's right.

15 Q In fact, he would attach it to his belt; is that
16 correct?

17 A That's right.

18 Q And there was a strap by which you could
19 actually secure the pistol itself, much like a police
20 officer's holster, correct?

21 A I don't know if his holster had a strap or not,
22 sir.

23 Q But it was secured. When you walked around, you
24 didn't have to worry about the gun falling out or
25 anything, correct?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A I don't know.

2 Q Well, I mean, you've seen it. I'm trying to get
3 a notion from you about this holster. He had a holster
4 that was specifically designed for that particular pistol
5 and that's generally when he had his pistol with him is
6 how he wore it; is that correct?

7 A That's correct.

8 Q Have you seen him at times take his pistol and
9 put it in the console of his Denali?

10 A Not the console, but the middle compartment,
11 yes.

12 Q Well, that's what I'm talking about.

13 A Okay, yes, sir.

14 Q That middle compartment. So, it would not be
15 uncommon for him to store it there; is that right?

16 A He can store it, yes.

17 Q Now, at this party, there were -- we've already
18 discussed, there were lots of people, men and women.
19 Would it be fair to say that people were drinking, getting
20 high and just general party activities?

21 A Yes, sir.

22 Q All right. You said at some point, there was an
23 altercation between Barry and Smitty, Stacy Sullivan?

24 A Yes, sir.

25 Q Now, Stacy Sullivan is supposed to be Tiajuana

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 baby daddy; is that correct?

2 A That's correct.

3 Q How did that -- how did that fight go between
4 the two of them? I mean, describe it.

5 A At the hotel?

6 Q Yeah.

7 A There wasn't a fight at all. It was just
8 pushing and shoving. Like, mainly, drunk talk, shoving
9 each other, pushing, pushing.

10 Q Did they make up?

11 A I believe so, yes.

12 Q So, everything after that went okay?

13 A Uh-huh.

14 Q So, then we go forward to October the 1st of
15 2013. Do you recall that day?

16 A Yes, sir.

17 Q And you said that you were at Bop's house?

18 A Yeah.

19 Q Bop's house is on Bates Street?

20 A That's correct.

21 Q About what time did you arrive at Bop's?

22 A Between 1:00 and 3:00.

23 Q All right. So, 1:00 and 3:00 in the afternoon.
24 Were there already other people there when you got there?

25 A Yes.

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q About how many people were there?

2 A Maybe five to eight.

3 Q All right. Was there any particular reason for
4 this gathering in the middle of a work day on October the
5 1st of 2013?

6 A This is everyday thing that we do. We be there
7 everyday.

8 Q So, everyday everybody just shows up over at
9 Bop's?

10 A That's correct.

11 Q Bop lives -- he has family that live there,
12 mother, aunts, different people, right?

13 A That's right.

14 Q They're in the last apartment on these little
15 Section 8 brick houses that are right there on Bates
16 Street?

17 A That's correct.

18 Q Not very big, is it, these apartments?

19 A Not very big.

20 Q But every day, sort of as a routine, all of you
21 gather over there to, I guess, just hang out?

22 A Correct.

23 Q And Jacoby was not hanging out there, was he?

24 A No.

25 Q Jacoby was working?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A Correct.

2 Q Do you know the name of the place where Jacoby
3 worked?

4 A No.

5 Q It was a steel company, right?

6 MS. PAOLETTI: Your Honor, I object to that. He
7 said he didn't know where he worked.

8 THE COURT: Well, it's asked and answered. He
9 said no.

10 THE WITNESS: Yeah, I said no.

11 BY MR. CHAMBERS:

12 Q Well, have you ever seen him in his work attire?

13 A Yes.

14 Q What would he wear to work?

15 A Steel-toed boots and jeans with the pockets by
16 the knees.

17 Q Did he have a blue work shirt with his name on
18 it?

19 A No, not that I know of. I never seen a shirt
20 with his name on it.

21 Q Okay. I thought I heard you describe earlier it
22 was a blue work shirt when you were talking to the
23 solicitor?

24 A Is that when he was giving me -- when he gave me
25 the hoodie, he had a white T-shirt on?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 Q Okay. So, he wasn't there, right? He was not
2 there and --

3 A No.

4 Q And at some point is when you said that that car
5 arrived that had Barry and Smitty and was there somebody
6 else in the car?

7 A You talking earlier that day?

8 Q Well, I'm talking about, you got over there at
9 Bop's house about 1:00 or 3:00?

10 A Yes, sir.

11 Q Sometime between 1:00 and 3:00. And then you
12 said that at some point Barry arrived and I believe Smitty
13 was in the car with him and somebody else was in the car
14 with him. When did that happen? When did they arrive?

15 A This happened around 4:00 to 5:00 o'clock.

16 Q So, you had already been there for a few hours
17 when this occurred?

18 A Correct.

19 Q Okay. And when they arrived, that's when you
20 said there was this altercation between him and Tiajuana?

21 A Correct.

22 Q And you described that he pushed Tiajuana down?

23 A Correct.

24 Q Then that was the altercation where several
25 people went out there and intervened with Barry?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A Correct.

2 Q Describe again exactly what you remember
3 happening as far as this altercation?

4 A Starting from what point, sir?

5 Q From the point that he --

6 A Pushed her down?

7 Q Yeah.

8 A Immediately after he pushed her down, me,
9 Barry -- me and Bop and Smitty began to go defend
10 Tiajuana.

11 Q And how did you defend her?

12 A Mainly, once he seen us three coming towards
13 him, he started like back peddling and it was kind of like
14 a hill, a small hill where he was back peddling up to.
15 So, after he got in the middle of the street, it was just,
16 you know, swinging and things of that nature.

17 Q At some point, you got a tire iron and you
18 knocked his windows out with it?

19 A Correct.

20 Q Which windows did you knock out?

21 A The side.

22 Q Okay. Did he see you do it?

23 A Yes.

24 Q And did he say anything to you there at the
25 scene?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A Yeah.

2 Q What did he say to you?

3 A He'll be back and he got something for my -- got
4 something for me. And I'll see him, stay here, don't go
5 nowhere.

6 Q So, immediately, you were sort of the focus of
7 his rage, is that fair to say?

8 A Correct.

9 Q And he got in his car and he drove off?

10 A Correct.

11 Q Now, Barry is -- or was a very large guy, right?

12 A Correct.

13 Q How big was Barry?

14 A Probably about six-one, six-two, 220, 230.

15 Q Okay. How tall are you?

16 A Five-seven.

17 Q How much do you weigh?

18 A 175.

19 Q So, you're considerably smaller than Barry, is
20 that correct?

21 A Correct.

22 Q You said that -- okay, so that happened around
23 4:00 or 5:00?

24 A Uh-huh.

25 Q And then at some point, did Barry -- well, did

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 the police arrive?

2 A Yes.

3 Q About what time did they come?

4 A Immediately, about 5:30ish, 5:20.

5 Q Did anybody leave after the police came on the
6 scene?

7 A I can't recall if people left. I don't know.

8 Q Okay. And did the police ask y'all to break it
9 up?

10 A They didn't see anything. Only thing they saw
11 was broken glass when the police arrived.

12 Q Well, somebody called them out there. Did they
13 not inquire about what was going on?

14 A Yeah, they said what was going on. The loud
15 noises and everything -- because like I said, we hang out
16 there every day.

17 Q Do you know who called the police?

18 A Anonymous.

19 Q And so they left?

20 A (The witness nods.)

21 Q And I believe you indicated to the solicitor at
22 that point that you and other people began to get texts,
23 phone calls, threats of various types from Barry?

24 A Yes.

25 Q And did he tell you that he was coming back?

SHAWNDELL CLEMONS-CROSS BY MR. CHAMBERS

1 A Yes.

2 Q Did he come back?

3 A Yes.

4 Q About what time was that?

5 A 8:00 o'clock.

6 Q So, 8:00 o'clock. Was it dark yet?

7 A Not all the way. It was getting there, sun was
8 just about to.

9 Q This was October, so it was probably -- would it
10 be fair to say dusk, where it was just starting to get
11 dark?

12 A As a matter of fact, it was dark at
13 8:00 o'clock.

14 Q So, it was already dark?

15 A Yes.

16 Q Okay. Are there any street lights on that
17 street?

18 A Yes.

19 Q And it illuminates it pretty well?

20 A Yes.

21 Q And there's also a Bojangles there, too, is that
22 correct?

23 A That's correct.

24 Q And that's lit up pretty well, right?

25 A That's correct.