

VOLUME V OF VI

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KIERIN MARCELLUS DENNIS,

APPELLANT.

APPELLATE CASE NO. 2019-001486

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THE FOLLOWING DOCUMENTS ARE ON FILE WITH THIS COURT FOR REVIEW:

FROM THE AUGUST 19-27, 2019 TRIAL: COURT’S EXHIBIT #2 (PHOTO DEFENDANT AND CAR DOOR) AND STATE’S EXHIBIT #23 (POSTER BOARD)

FROM THE NOVEMBER 17-19, 2014 IMMUNITY HEARING: STATE’S EXHIBIT #11 (VIDEO RECORDING), STATE’S EXHIBIT #12 (IPAD VIDEO), STATE’S EXHIBIT #35 (VIDEO INTERVIEW), STATE’S EXHIBIT #39 (VIDEO RECORDING), AND STATE’S EXHIBIT #41 (COOK-OUT VIDEO)

FROM THE AUGUST 22 & 24, 2017 IMMUNITY HEARING: STATE’S EXHIBIT #2 (CD), DEFENDANT’S EXHIBIT #2 (LEXINGTON PD 2/17/2014), DEFENDANT’S EXHIBIT #3 (COMBINED VIDEO), AND DEFENDANT’S EXHIBIT #5 (LYNCH INTERVIEW)

1 A. She didn't say that when we talked.

2 Q. Not reaching in the window. I'm sorry. Is this the
3 person you saw, being the defendant Kierin Dennis, in the car?
4 Is this the person you saw? You could have done a photo
5 lineup with six different pictures and said, do you see the
6 person? Did you do that?

7 A. No, sir. Because she didn't say that night that she
8 had actually seen the driver. She just saw a group of kids
9 going toward a car and called the police.

10 Q. She said that she saw his face and he was afraid.
11 She said she called 911 and you only told her, you and the
12 Solicitor's Office, we ain't got no record of it. You never
13 bothered to check, did you?

14 A. I actually didn't ask her that. I didn't say that
15 to her. But I wouldn't need to check because CAD provides all
16 the numbers they had.

17 THE COURT: All right. We've beat the 911 issue to
18 death.

19 MR. RUTHERFORD: Yeah. I'm done. No further
20 questions, Your Honor.

21 THE COURT: All right. Mr. Graham.

22 REDIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q. So in discussing why you charged, why you didn't
25 believe that he should be entitled to immunity, that there's a

1 presumption, when you were taking all of that into
2 consideration you were going to charge him then and now
3 because I think that's what Mr. Rutherford was talking about,
4 what, if any, effect did the testimony of Justin Wallace
5 stating that Keith Adams and Kierin Dennis came out of the
6 high school gym to the bottom of the stairs and that Kierin
7 Dennis said to Justin Wallace you don't want what I got. Did
8 that in any way effect your decision?

9 A. Well, it did because like I said, there's a long
10 process of this. This went on for a long time. And when we
11 look at just a snapshot, we get the wrong characterization
12 because there is a minor history of that night earlier when
13 there were discussions like that at the high school football
14 game, or basketball game which is why Michael James stood up
15 and did this with his arms because there had been a
16 discussion, hey, we got something for you. And they walked in
17 and he was like, hey, you were just talking big and bad, you
18 know. I'm sorry. That's just my impression. Sorry. When he
19 did that, it seemed that that was his expression and when I
20 talked to Michael James, he said, yeah, you know. He said he
21 came in and I said, you know, is that all you brought? You
22 know, you all were talking big in that sense. And then, you
23 know, this is evidence of the extension of the discussions
24 that happened earlier. This is an ongoing incident.

25 Q. What, if any, effect did Morgan Zander, she recorded

1 a video which I think Your Honor will see and on the video
2 it's testified to that in her voice in the parking lot of
3 Lexington High School that she was saying when are we
4 swinging. Did that have an effect on your decision?

5 A. Oh, yes, sir. Because it shows to the antagonistic
6 behavior between the two groups at the game prior to Cook
7 Out.

8 Q. How about the testimony of Deputy Shawn Graham --

9 MR. RUTHERFORD: Your Honor, I agree that he can
10 testify as to other things that impacted his decision but
11 because this is the Solicitor's witness he's now giving
12 him things to say didn't that impact you. And he knows
13 what to say. Yes. That impacted me. As opposed to I
14 went through what did you do? What did you do after all
15 this happened and how did you react? He doesn't need to
16 be fed it by the Solicitor on direct examination so that
17 he can say, yes. I did that. Yes. I did that. As
18 opposed to asking him a bold question what else did you
19 look at? He can testify to everything. But this is the
20 Solicitor just feeding him the answers and asking him to
21 respond.

22 MR. GRAHAM: I'm doing exactly what Mr. Rutherford
23 did. He went through person by person and said what
24 effect did this have on your investigation and I'm doing
25 the exact same thing. And my question to him is what, if

1 any, effect did it have on it.

2 MR. RUTHERFORD: That was cross examination.

3 MR. GRAHAM: I'm doing what's allowed. I'm not
4 asking a leading question. I'm doing the exact same
5 thing he did but I'm leaving it open ended.

6 MR. RUTHERFORD: On cross examination, Your Honor, I
7 can feed him. On direct he has to simply ask open
8 questions, not feed him and only get one word responses.
9 Yes. Yes. Yes. That, too. That, too. That, too. So
10 they continue to just go down the list. He can ask him
11 what all impacted your decision. He can answer.

12 THE COURT: Listen, I think we have probed the
13 depths of Investigator Carter's mind significantly. He
14 is a certified law enforcement officer in this state. He
15 is a commissioned law enforcement officer. He has made
16 the decision to go forward with this case as charged
17 based upon his investigation, any follow up investigation
18 and based upon what he said now multiple times the
19 statements that he's reviewed, the videos that he's
20 reviewed, the people that he's interviewed and whatnot.
21 I understand that he has made his mind up. The defendant
22 was charged properly and that he has made his own
23 decision that 16-11-440 does not apply to the defendant
24 and that he did that based upon the totality of the
25 circumstances and the witnesses that he talked to or

1 statements that he reviewed or videos that he watched or
2 interviewing the defendant or whatnot and that continuing
3 gathering of information through the original stand your
4 ground hearing, through the trial and even up through
5 Tuesday, at this point his opinion and it is just an
6 opinion for that matter, is that the defendant is charged
7 properly.

8 Now, that opinion is not binding on me and you all
9 understand that and I understand that and he understands
10 that but I believe that Investigator Carter based upon
11 the totality of the circumstances has made his mind up
12 that this is the appropriate charge and I don't certainly
13 need him to rehash every single piece of evidence that
14 convinced him of that charge. I think Mr. Rutherford was
15 trying to show here's the evidence that directly
16 contradicts or here is the evidence that is favorable to
17 the defendant. Did you consider that and that's why I
18 allowed that questioning of him.

19 I'll allow you a little leeway, Mr. Graham, but
20 please, God, don't reassert every single piece of
21 evidence in the case. I promise you all this. I know
22 this case has affected a lot of people. Okay? I promise
23 you. I sat in a trial for two days this week for one
24 gram of cocaine in a distribution case. Okay? One gram
25 of cocaine and there wasn't one person here. Okay?

1 Tonight a defendant has two children that he's not going
2 to see for the next ten plus years of his life because he
3 made that decision that day. Okay?

4 And so I understand that these cases affect
5 everybody and they're like bombs. They go off and they
6 go off in the life of the defendant and they affect
7 everybody around him and they go off in the life of the
8 victim and they go off all around. There's all kind of
9 collateral damage. I promise each and every single one
10 of you that I will read all of these transcripts with my
11 door shut with my reading glasses on to make sure that I
12 understand the facts and circumstances around this case,
13 the testimony that has come out, cross examination of
14 those witnesses before I make any decision. I promise
15 you all that I will get you back together and let you
16 compile all of your thoughts, all of your, the way you
17 work through the issues and the way - and let everybody
18 come in and make their legal arguments before I make any
19 decision.

20 You can continue, Mr. Graham, you know, but I don't
21 need - we don't need to rehash every single piece of
22 evidence. I promise you I will review it and I believe I
23 understand a lot better today based upon Investigator
24 Carter showing me who is who in the video and walking
25 through that and the timeline and all that makes a lot

1 more sense to me today so go ahead.

2 MR. GRAHAM: I think I can ask one more and I think
3 it will shut it down. I guess I would like Your Honor
4 just to take notice that the questions that I ask and the
5 questions that he ask you're going to have the
6 transcripts of the real testimony --

7 THE COURT: Right.

8 MR. GRAHAM: -- and the live witnesses and I ask
9 that you rely on that as opposed to anything that I
10 misstate or anything that Mr. Rutherford misstates.

11 THE COURT: I will.

12 BY MR. GRAHAM:

13 Q. The other - one final question as far as your
14 decision to charge and not grant immunity. Walden Roberson
15 and Devon Chatman what, if any, effect did their testimony at
16 the trial that Mr. Dennis in arguing with them told them
17 specifically come to the Cook Out. We've got something for
18 you?

19 A. Well, there was much discussion had about the
20 parking lot fracas I guess you would say. A lot of jawing
21 back and forth between a lot of different people and somewhere
22 in there probably I believe we heard through testimony and
23 interview right after or shortly thereafter Ms. Zander was
24 videotaping that, when are we swinging? There were some words
25 exchanged between several of the students who were at Cook Out

1 and Mr. Dennis and his group and Mr. Roberson has stated that
2 he heard Mr. Dennis say, meet us at Cook Out. We got
3 something for you.

4 MR. GRAHAM: One more, Your Honor, and then I will
5 stop.

6 BY MR. GRAHAM:

7 Q. What, if any, effect did Alexis Brunson testifying
8 that as she was at the door of Mr. Dennis' Explorer right
9 before she saw not the knife but a punch come out from Mr.
10 Dennis come out of the vehicle when she said that Kierin's
11 hand was by his side and Kierin Dennis said, you don't want
12 what I got, what, if any, effect did that have on your
13 decision now and then?

14 A. Yeah. That went to attitude of the moment. That
15 went to - from just a point of straight fear to that tells me
16 attitude of the moment and I have to weigh that against does
17 this jive with testimony that we heard about statements at the
18 basketball game. Is that attitude consistent with the
19 consistent testimony of the attitude leading up to that point.
20 If there's any sort of posturing or anything like that that
21 had been going on the whole night and then suddenly there's
22 this sudden abject fear, that's not really consistent. Even,
23 you know, depending on that situation I have to find out what
24 statements are consistent with the picture that has been
25 painted by all the witnesses with all their different pieces

1 of information they've added to it. That was a part of it.
2 It was just one small thing in looking at the case.

3 MR. GRAHAM: I don't have anymore questions for this
4 witness, Your Honor.

5 THE COURT: Mr. Rutherford.

6 RECROSS EXAMINATION

7 BY MR. RUTHERFORD:

8 Q. I wasn't going to say anything but you're saying
9 that even after looking at this picture and listening to the
10 testimony of the people saying there was so many people at his
11 car that they could not identify who all was standing next to
12 who and one person in a car armed with a knife that that
13 didn't sway you that he should be reasonably in fear?

14 A. Well, the first two people there that we see on the
15 left, Tasha Brooks and Alexis Brunson both stated they kept
16 telling him just leave. Just go. And she was saying, why
17 don't you leave? And Mr. Brooks who is also a Lexington
18 student kept telling him just go. You can actually see in the
19 iPad video him waving his hand briefly just go and he didn't
20 leave. And I think that's probably inaccurate to say nobody
21 knew who was standing where because that's actually where we
22 got the positions and ascertained some of the people that were
23 there.

24 Q. But you also got Alexis Brunson saying that his
25 window was all the way down. So is it that you choose to

1 believe only that which bolsters your story?

2 A. No, sir. Because I have more than just what she
3 said. Also I have what the defendant says. I have what
4 everybody says and I have to put all that together to see what
5 it was like. Whether or not the window was all the way down
6 or partially raised up it doesn't change my determination
7 whether or not he reached out of that vehicle and stabbed that
8 young man.

9 Q. Did Dr. Ross' testimony change whether he reached
10 out?

11 A. No.

12 Q. So can you demonstrate to me how your theory of the
13 case is that he reached out and stabbed Mr. Capers?

14 A. Reaching out (indicating.)

15 Q. Reaching out like that?

16 A. Out the window.

17 Q. But you heard Dr. Ross tell you that if he reached
18 out the way you have just described, then if Mr. Capers was
19 standing there, that ain't right?

20 A. I actually didn't hear her say that.

21 Q. Okay. So again, why don't you show me your theory
22 of the case how Mr. Capers was standing when Mr. Dennis did
23 like that?

24 A. I'm sure Mr. Capers was close to his window.

25 Q. No. No. Show me. Because I'm standing like you

1 just demonstrated. If the knife, and I'll hold it if you like
2 or you can hold it, you said he did just like that, how was
3 Mr. Capers standing?

4 A. Mr. Capers would have been standing right there at
5 window.

6 Q. Can you step down and show me and show the Judge?

7 A. I can't demonstrate where he was standing.

8 MR. GRAHAM: Your Honor, I'm going to object. He
9 didn't do the autopsy. He doesn't know what the exact
10 angle is. We're making him try to recreate how it went
11 into the body and the positions of the arms. He had Dr.
12 Ross up there for that. That's the expert's given
13 opinion.

14 MR. RUTHERFORD: So, Your Honor, they have made my
15 client on several occasions demonstrate how they thought
16 it happened. We brought in a pathologist to show that
17 what he demonstrated with me standing over him in a chair
18 wasn't right. Well, no kidding. I mean, I don't know
19 why they brought in a witness to prove that. So then
20 they have the door and my client had to demonstrate how
21 he did it then. They asked Dr. Ross what about that
22 knowing that there was no chair there, knowing that there
23 was simply a door. She said that's close. So I'm asking
24 the investigator who had the opportunity to question Mr.
25 Dennis twice tell me your theory of how Mr. Dennis could

1 have punched out the car and according to witnesses they
2 didn't even see it, it happened so fast and she clearly
3 stated that the victim either was like this or further
4 over depending on the angle of the knife. He showed
5 this, straight out. What we now know from the
6 pathologist's testimony is if the knife went straight out
7 as he demonstrated, then Mr. Capers was bent almost all
8 the way over. He would have had to have been in the car
9 and that's his own testimony.

10 THE COURT: All right. Objection overruled. Give
11 your theory on where Mr. Capers was standing based upon
12 what you believe the defendant did. Okay?

13 BY THE WITNESS:

14 A. So my theory as to where Mr. Capers was standing I
15 guess I can -- Do I need to show it or say it? I mean, if the
16 car window is here, you can actually see in the video this
17 portion over here by where the side mirror is, that space is
18 basically pretty much occupied by Ms. Brunson. She's staring
19 at Mr. Brooks who is right close to the window. So there's a
20 space where we can't really see because there's other
21 individuals there. Mr. Capers in my assertion of that,
22 obviously wasn't watching it, would have been standing more
23 towards this side of the window and probably was standing here
24 just like this looking out.

25 BY MR. RUTHERFORD:

1 Q. And so --

2 A. I'm still --

3 Q. I'm sorry. I'll let you finish.

4 A. I just want to make sure I get it all out before we
5 get chopped up and I get confused.

6 Q. All right.

7 A. So if he's standing here like this and there's an
8 individual in the window and he's sitting there looking down
9 like this and talking and maybe yelling or jawing back and
10 forth, well, then you've got an individual who's sitting up in
11 the chair or a seat and then reach out like that over hand at
12 that angle and that can also give you that -- I mean, I'm just
13 gonna take a general understanding of that was top to bottom,
14 from down inward and toward the back like that into Mr.
15 Capers.

16 MR. RUTHERFORD: Your Honor, I requested the door be
17 brought up. I don't know if it has been but what he just
18 described does not comport with what we saw Dr. Ross do.
19 You heard me ask --

20 THE COURT: That's a legal argument.

21 MR. RUTHERFORD: Right. It is.

22 THE COURT: He's given his theory of how it could
23 happen. It's up to me to weigh that in regards to what
24 Dr. Ross testified to. Dr. Ross' testimony was very
25 clear. She was very certain about the angle of injury

1 and where the body had to be for that angle to exist.

2 MR. RUTHERFORD: That's correct, Your Honor. And
3 she also testified that she had not really talked to
4 Investigator Carter. That she did not go over with
5 Investigator Carter prior to the incident how she thought
6 the wound would have occurred and so I'll move on but it
7 is again more to the point that he literally ignored
8 everything that was not in conformity with his charge and
9 tried to use a set up that we did with me standing over
10 him in the office as proof that what my client described
11 was not right. I'll move on.

12 BY MR. RUTHERFORD:

13 Q. But, Investigator Carter --

14 A. Yes, sir.

15 Q. -- if the wound to Mr. Capers could have only
16 occurred either while he was leaning over or if he was
17 standing up, it would have had to be as she held the knife of
18 which you took issue with like this?

19 MR. GRAHAM: Objection. Your Honor saw what she
20 did. He had the same objection to what I did and now
21 he's doing the same thing.

22 THE COURT: It was a 45 degree angle.

23 MR. RUTHERFORD: And again, I can't recreate the
24 angle. I'm saying that he took issue with how she held
25 the knife; that she held it up like this and did that.

1 BY MR. RUTHERFORD:

2 Q. And you heard Alexis Brunson say that it looked like
3 a punch. It happened so fast it looked like a punch. Did you
4 also hear Alexis Brunson on Officer Voravudhi's video state
5 that she wasn't even sure who got stabbed? Did you hear that?

6 A. I - I believe she did say that at that moment she
7 wasn't even sure who got stabbed. It did happen pretty
8 quick.

9 Q. So given the fact that she said it happened so fast
10 and the fact that you place her in this picture and she placed
11 herself where she could reach out and touch the mirror and the
12 victim is standing right in front of her, it is your testimony
13 that this knife came out of the window and went up and down
14 into --

15 MR. GRAHAM: Objection, Your Honor. That's a
16 mischaracterization --

17 MR. RUTHERFORD: Then he can say it's not.

18 MR. GRAHAM: -- of her testimony. She was not
19 standing in front of him. She said that she was to the
20 side.

21 THE COURT: He didn't say she was standing in front
22 of him.

23 MR. GRAHAM: He said - he said that Kierin - I mean,
24 Da'Vaon Capers was standing in front of her and that's
25 not what she testified to.

1 BY MR. RUTHERFORD:

2 Q. I'm sorry. Even better she was standing to the side
3 of him and would have had a direct view of his chest that
4 she's standing by the side of him and she's standing where she
5 can touch the mirror and she said that he got punched. You
6 heard Dr. Ross testify that the knife would have had to come
7 if he was standing erect at a 45 degree angle down in his
8 chest. He's five foot how many?

9 A. Five foot seven.

10 Q. He's five foot seven. So he's standing erect like
11 this and Alexis is standing there saying all I saw was a
12 punch. In fact, I didn't even know that he got -- And I'm
13 paraphrasing -- I didn't even know that he was the one that
14 got stabbed and I'm standing right there. And you still are
15 asserting that Mr. Capers was standing at the window erect?

16 A. Because that would be more likely than him pulling a
17 step stool out and crawling into the car in those brief
18 seconds that it took to allegedly get in that far in the car.
19 And also when the car took off because he took off immediately
20 after the stabbing so he just freely took off and we didn't
21 see Mr. Capers leg swinging out of that window where he had
22 been hanging in the car to get stabbed as you guys are saying.
23 So the issue is to me when I start to look at reasonability
24 and things like that I'm looking at what's more reasonable in
25 this situation. I take, like I said, all testimony. Once

1 again, all testimony came into play. This is how I made my
2 decision. I made it based off of all the testimony. Yes. I
3 know you have got some contradictory. Dr. Ross said something
4 in trial. You came in here and questioned her and posed
5 questions different ways. She said things at trial. He
6 crossed. I'm sorry. I'm just -- I kind of feel like I'm
7 answering a lot of the same questions over and over and over
8 again. I did take all this information and I want to answer
9 everything you give me but once again, I don't want you to
10 think I'm trying to avoid you. I took all of this into
11 consideration. This was all part of what I looked at
12 compiling the reasonability of all of it to determine the
13 charge that was made and I still feel today right at this very
14 moment the charge is appropriate of murder.

15 Q. So someone again sitting in their car with a knife
16 with God knows how many people standing around them and
17 someone outside of the window close enough to be stabbed by a
18 knife in your opinion that is not enough to create what the
19 statute says is a reasonable presumption of fear?

20 A. No, sir. It's not just that one moment. It was the
21 whole event.

22 Q. Would you not, if you were trying to make yourself
23 be correct, go back as far as you could, in fact, in the trial
24 you all tried to go back to another basketball game?

25 A. Where they were jawing at each other there as well.

1 Yes.

2 Q. Just to assert the continued opinion that you are
3 right?

4 A. No, sir. Just to establish why we felt that there
5 was contention already there.

6 MR. RUTHERFORD: No further questions, Your Honor.

7 THE COURT: All right. Thank you, Investigator
8 Carter.

9 THE WITNESS: I'm sorry, sir. I didn't mean to --

10 THE COURT: You don't need to apologize. All right.
11 It's 6:20. How late do you all want to go?

12 MR. GRAHAM: We don't have anymore live witnesses.

13 THE COURT: Okay.

14 MR. GRAHAM: What we have is a bunch of transcripts
15 and exhibits that I would like to make as a Court exhibit
16 or put in evidence, whatever the right thing would be,
17 Your Honor.

18 THE COURT: Are they from like hearings that already
19 took place?

20 MR. GRAHAM: They're from -- These are going to be,
21 I think every one of these is people from the trial who
22 testified that did not testify in the stand your ground.
23 Am I correct? Yes.

24 THE COURT: Okay.

25 MR. RUTHERFORD: Your Honor, I would simply offer

1 this as an exhibit for Your Honor and at this point I
2 think maybe I have beat a dead horse so I don't want to
3 continue to go past this point anymore and I think we can
4 either rest tonight and go back at it tomorrow but I
5 certainly don't think we need to go any further this
6 evening.

7 THE COURT: Okay. So do we need to get together
8 tomorrow or not? What are you doing about Mr. Chauncy --

9 MR. GRAHAM: Well --

10 THE COURT: -- Mr. Rutherford?

11 MR. RUTHERFORD: Your Honor, if they would like to
12 call him, they can but because I was questioning the
13 officer as to his reaction that's more to the point of
14 what I was trying to get to. They have the statement.
15 He said he reviewed it. What he did with it is more to
16 why we should have had another immunity hearing or why he
17 should have himself said I believe he now comforts with
18 the statute. Again, if it were 2:00, I would call him.
19 Don't mind calling him but again, I recognize that you
20 are a Judge, not a jury and I don't need to continue to
21 bring up witnesses unless Your Honor thinks
22 differently.

23 THE COURT: Is he here?

24 MR. RUTHERFORD: He is.

25 THE COURT: Let's call him. Get him up here.

1 MR. GRAHAM: Can I go ahead and get this marked in
2 evidence, Your Honor?

3 THE COURT: I don't know that you need to mark them
4 and add them to my stack of what I'm reading. We're
5 going to create a record of what all I reviewed. Okay.
6 Thereupon,

7 ERVIN CHAUNCY MEGGETT
8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat. Once you're seated,
10 state your full name spelling your last please.

11 THE WITNESS: Ervin Chauncy Meggett.

12 THE COURT: Spell your last name for me.

13 THE WITNESS: M-e-g-g-e-t-t.

14 THE COURT: All right. Go ahead, Mr. Rutherford.

15 MR. RUTHERFORD: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. RUTHERFORD:

18 Q. Mr. Meggett, I'm gonna jump right to the point. I
19 apologize. Do you remember talking to someone from either the
20 Solicitor's Office or from the Lexington Police Department on
21 August 26th, 2016?

22 A. I do.

23 Q. And if I showed you what would be a synopsis of your
24 statement --

25 MR. GRAHAM: Objection, Your Honor. He has never

1 reviewed that. It's not a written statement that he
2 signed. He didn't see it. Those are notes that our
3 office took when we speak with him.

4 THE COURT: Okay.

5 BY MR. RUTHERFORD:

6 Q. Do you remember telling the -- I'm sorry. Who did
7 you meet with on August 26th, 2016?

8 A. I'm not sure who was in the room at the time but
9 I want to believe it was the guy over there in the purple tie.
10 I want to say it was him. I can't really remember.

11 Q. I think you're getting confused with the trial.
12 Prior to the trial, do you remember meeting with the
13 Solicitor's Office or maybe even coming to the courthouse?

14 A. I've been here a few times but, uhm, I don't
15 remember.

16 Q. Do you remember talking to an investigator, to
17 Investigator Carter right there in the blue? I believe he had
18 a beard back then. Do you remember talking to him?

19 A. Uhm, who?

20 Q. You can't see him and I can't make him stand up but
21 the investigator right there. He had on a - he had a beard
22 back then. Do you remember talking to him?

23 A. No, sir.

24 Q. Do you remember talking to anyone in the Solicitor's
25 Office? But you don't know who works there.

1 A. No, sir.

2 Q. So do you remember giving a statement wherein you
3 said that Cape started banging on Kierin's truck and he was in
4 the wrong?

5 MR. GRAHAM: Objection. Leading.

6 BY THE WITNESS:

7 A. No, sir.

8 THE COURT: Overruled.

9 BY MR. RUTHERFORD:

10 Q. Do you remember saying, and these are direct quotes,
11 "How I seen it I know Cape was in the wrong by the way he
12 approached because old dude was trying to leave"?

13 A. I remember seeing people around the car at the time.
14 I heard banging. I don't know if it was Cape banging on the
15 car but there was multiple people around the car at the time
16 as you can see in the video.

17 Q. Okay. All right. So what you do remember from that
18 night is that you heard banging on the car?

19 A. Yes. But I don't know where it was coming from.

20 Q. Right. And I'm not trying to put words in your
21 mouth. I'm not trying to say it was Cape. But you're saying
22 that you remember people banging on the car?

23 A. I remember hearing a banging on a car. I don't
24 remember who or who done it but...

25 MR. GRAHAM: Your Honor, I would object to the type

1 of questioning. It's his witness. He's on direct. He
2 needs to ask this witness what happened as opposed to
3 trying to tell him what he said. He's not a hostile
4 witness. He's not entitled to lead him.

5 THE COURT: He needs to ask him what happened.
6 Overruled. Go.

7 MR. RUTHERFORD: Thank you, Your Honor. And again,
8 it would be easier if they would just tell me who
9 interviewed him. I don't have that information. All I
10 have is their statements so they know, not me.

11 MR. GRAHAM: The only person, for the record, the
12 only person I'm sure that was there is the person who
13 typed it up which is the paralegal Carly Glenn in our
14 office. Other than that I know there was an officer
15 there but at this time I'm not sure whether it was
16 Investigator Carter or Investigator Sullivan with our
17 office.

18 BY MR. RUTHERFORD:

19 Q. Do you see yourself in that picture?

20 A. I see my jacket. Yes, sir.

21 Q. Can you point out for the Court where that is?

22 A. (Indicating.) Right there.

23 Q. And so the initials placed above it that say CM
24 pointing to a red jacket, is that you?

25 A. Yes, sir.

1 Q. So you are almost directly at the window; is that
2 right?

3 A. Yes, sir.

4 Q. Okay. And while you were standing at the window
5 what were you saying?

6 A. Uhm, at the time I don't know.

7 Q. Let me be clear and I apologize. This is a
8 courtroom and I respect what was said may not be appropriate
9 but just to get to the truth of the matter, if you said
10 profanity, it's okay. If you didn't, that's okay, too. I'm
11 not trying to put words in your mouth.

12 A. I don't know the guy Kierin that night. That night,
13 that was the first time I ever met him.

14 Q. Right. But what were you saying when you were
15 standing at the window?

16 A. I don't feel like it was any words being said.

17 Q. So nothing was being said?

18 A. No, sir. Not from what I can remember.

19 Q. Okay. And so do you remember believing that he was
20 trying to leave when it kind of came out of nowhere and people
21 were banging on his car?

22 A. Uhm, I do remember him being in the car but
23 that's all I remember.

24 Q. Did you hear, you know an individual by the name of
25 Da'Von Capers, I believe you called him Cape, did you hear him

1 saying anything?

2 A. No, sir. But that was a friend of mines.

3 Q. All right. So you were subpoenaed to come here for
4 a trial. Do you remember that?

5 A. Yes, sir.

6 Q. And you were placed in a room with other people and
7 did someone in that room reveal to you that they knew that you
8 had said things that were unfriendly to Cape?

9 A. No, sir.

10 Q. So nobody did anything to you while you were in that
11 room to indicate that they knew that you had said things that
12 were unfriendly to Cape?

13 A. No, sir.

14 Q. Okay. And because of the statements that you gave
15 have you suffered any repercussions with your friends or
16 anybody else because of what you told Carly the paralegal?

17 A. What did I tell them?

18 Q. Well, according to them you told them I think it was
19 random how it happened and it kind of came out of nowhere.
20 Cape started banging on Kierin's truck and he was in the
21 wrong. When Cape started banging on his car, Kierin rolled
22 his window down and reached for his knife and after his hand
23 came out of the car he remembers Cape grabbing his chest and
24 walking to his car with Devon and Bruce. He doesn't know what
25 led up to the incident. He just knows he saw old dude stab

1 Cape in the chest one time. How I seen it, this is a direct
2 quote, "I know Cape was in the wrong by the way he approached
3 because old dude was trying to leave."

4 A. He was in the car at the time. Cape was outside the
5 car. Uhm, I don't remember saying that but, uhm, I do
6 remember seeing the stabbing but, uhm, that's all. I was
7 there right beside the car and as I was walking outside the
8 Cook Out I remember seeing a lot of people walking outside but
9 I didn't know what was the reason but, uhm, so I followed
10 behind everybody else just to see what was going on. Uhm,
11 then the next thing I remember just being beside the car. I
12 didn't know Kierin at the time so I had no idea - I had no
13 idea it was him but, uhm, after that, that's all I remember.

14 Q. So after you talked to, I guess Carly is not here
15 anymore, at least Carly from the Solicitor's Office, did
16 anyone --

17 A. Can you point out Carly?

18 Q. Okay. There she is.

19 A. Mm-hmm.

20 Q. Do you remember?

21 A. I remember her.

22 Q. Okay. After you spoke to a room with Carly in it,
23 did anyone from the police department follow back up with you
24 about what you had told her?

25 A. I mean, sir, I don't remember saying some of those

1 what you stated in there.

2 Q. Right. So do you remember whether anybody else
3 followed back up to say, hey, did you say this and what did
4 you mean?

5 A. No, sir.

6 Q. Okay. So after you spoke to her, the next thing you
7 got was a subpoena to come to trial?

8 A. I want to believe.

9 MR. RUTHERFORD: No further questions.

10 THE COURT: Cross.

11 MS. PATTERSON: Yes, sir. Very briefly.

12 CROSS EXAMINATION

13 BY MS. PATTERSON

14 Q. Chauncy, do you remember me?

15 A. No, ma'am.

16 Q. You don't remember me. Do you remember Mr.
17 Graham?

18 A. Yes.

19 Q. Okay. And so you remember meeting with Mr. Graham
20 and Carly, correct?

21 A. I think so. Yes.

22 Q. And in that meeting -- And that would have been
23 August 26, 2016, correct?

24 A. Correct.

25 Q. And do you remember telling them that you saw Kierin

1 roll his window down?

2 A. Uhm, no.

3 Q. Okay.

4 A. I don't know if Kierin window was already down or if
5 it was rolled up. I don't know. I was there beside the car
6 but it's not like - I wasn't focused on him. I was really
7 just -- I don't know. I was just there.

8 Q. And didn't you tell them in that meeting you didn't
9 see anyone reach inside Kierin's window?

10 A. No.

11 Q. You didn't say that?

12 MR. RUTHERFORD: I'm sorry. He's answered the
13 question. I don't know if that was just - she was just
14 talking but he already answered.

15 MS. PATTERSON: He said no. That's what I said.

16 MR. RUTHERFORD: Right.

17 BY MS. PATTERSON:

18 Q. And you also in that meeting told them that you saw
19 the defendant reach down by his side for the knife, didn't
20 you?

21 A. I did see him reach for a knife but, uhm, I didn't
22 know it was a knife at the time. I saw him reaching for
23 something and yeah.

24 Q. And you also told them in that meeting that you saw
25 the defendant's hand come out of the window and stab Cape and

1 take off in his car, correct?

2 A. That's correct.

3 Q. And Cape was standing outside the window when you
4 saw this, correct?

5 A. That's correct.

6 MS. PATTERSON: No further questions, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. RUTHERFORD:

9 Q. How was he standing?

10 A. I don't know.

11 Q. So you only know what she asked but not what I
12 asked?

13 A. I mean, what are you asking?

14 Q. How was he standing?

15 A. How am I supposed to answer that?

16 Q. Tell the truth.

17 A. I mean, he was just - he was standing there.

18 THE COURT: Stand up and show me how Cape was
19 standing. How close to Cape were you?

20 THE WITNESS: Uhm, I don't know how to explain
21 that.

22 THE COURT: Okay. Mr. Jones is going to stand
23 up right next to you. He's Cape. You go stand up next
24 to him and show me how close you were to Cape.

25 THE WITNESS: I mean, I was a few steps behind

1 Cape.

2 THE COURT: Show me. Get down.

3 THE WITNESS: (Witness complies.)

4 THE COURT: Mr. Jones is Cape. Where are you?

5 THE WITNESS: In the video you can see I was
6 probably about right here.

7 THE COURT: Okay. All right. So when Cape was
8 stabbed, you just testified that you saw Cape get
9 stabbed; is that right?

10 THE WITNESS: That's right. I did see him stab him.

11 THE COURT: Okay. How was Cape standing?

12 THE WITNESS: He was away from the car.

13 THE COURT: Show me how he was standing.

14 THE WITNESS: The car is about right here. He was
15 away from the car.

16 THE COURT: How far?

17 THE WITNESS: I would say probably like a foot.

18 THE COURT: Okay. And was he erect? Was he
19 standing up straight? Was he hunched over? Was he
20 leaning back? Was he leaning to the side? Was he doing
21 jumping jacks? What was he doing?

22 THE WITNESS: I don't know, sir.

23 THE COURT: Okay. Mr. Rutherford, you can question
24 him on those issues. Come back and sit down.

25 MR. RUTHERFORD: Your Honor, if he could stay up.

1 BY MR. RUTHERFORD:

2 Q. Just from this piece of wood how far was Cape away
3 from the car? Was he like this?

4 A. He was a - he was a - he was a good ways from the
5 car.

6 Q. So according to your testimony he was this far away
7 from the car?

8 A. He was away from the car.

9 Q. All right. I'm gonna, just to be clear, if I'm
10 standing here, this would be the car. If I take a step back
11 and a step back, he was this far away from the car?

12 A. I'm not sure, sir.

13 Q. And the Judge -- You have been asked how he was
14 standing?

15 A. Mm-hmm.

16 Q. And the Judge used the term erect. Do you know what
17 erect means?

18 A. No, sir.

19 Q. Erect is straight up. Was he standing straight
20 up?

21 A. Yes, sir.

22 Q. He was standing straight up?

23 A. Yes, sir.

24 Q. Okay. And he was standing straight up in your
25 estimation about two feet away from the car?

1 A. Yes, sir.

2 MR. RUTHERFORD: No further questions, Your Honor.

3 THE COURT: You can ask him some questions based
4 upon my questioning, Ms. Patterson, if you would like
5 to.

6 RECROSS EXAMINATION

7 BY MS. PATTERSON:

8 Q. And isn't it true you say you saw him get stabbed
9 outside the window, correct? So he was -- You saw Cape get
10 stabbed outside the window, right? Correct?

11 A. Correct.

12 Q. So he was standing at least close enough to sustain
13 that stab, correct?

14 A. Uhm, from what I saw, I saw Kierin's hand come out
15 the window.

16 MS. PATTERSON: Thank you.

17 THE COURT: All right. Thank you very much. Step
18 down.

19 THE WITNESS: All right.

20 THE COURT: Anything else, Mr. Rutherford?

21 MR. RUTHERFORD: Nothing, Your Honor.

22 THE COURT: Mr. Graham?

23 MR. GRAHAM: Not as far as witnesses, Your Honor.

24 THE COURT: Okay. Do I have everything? You're
25 good to go. Thank you very much. I appreciate you being

1 here. Thank you very much. Do I have everything that
2 you all want me to review?

3 MR. GRAHAM: I believe so, Your Honor. The stand
4 your ground transcript. One more thing, Your Honor. The
5 defendant's testimony in both trials, I thought they were
6 in those. This is from the trial. You have the
7 testimony from stand your ground and this is testimony
8 from the trial.

9 THE COURT: All right. Mr. Rutherford, anything
10 else?

11 MR. RUTHERFORD: There's a question about printing
12 off a clean copy of that which I was questioning
13 Investigator Carter about. I'm fine with a clean copy.
14 It makes me no difference.

15 THE COURT: Okay. Well, let's mark that as a
16 defense exhibit.

17 (Whereupon, Defendant's Exhibit #6 marked for
18 identification and admitted.)

19 MR. GRAHAM: Your Honor, if I could inquire what is
20 your plan from here? I guess my question is, I don't
21 know whether I need to renew all of my objections.

22 THE COURT: Can I get three weeks off from court
23 administration to review all this? I think I know where
24 you're going. Give me one second. I'm looking at my big
25 picture calendar. What do you look like on September

1 18th to do a hearing?

2 MR. RUTHERFORD: The beginning of that week, Your
3 Honor, I should be all right.

4 MR. GRAHAM: I think Ms. Patterson has a trial in
5 McCormick that week.

6 THE COURT: You do?

7 MS. PATTERSON: I just need to check on the status
8 of it, Your Honor. I've been kind of busy with this. I
9 just need to make sure that's still a go.

10 THE COURT: All right. So the week of the 18th I'm
11 in Lexington doing common pleas so doing a hearing that
12 week is easy from the stand point of me being here. Me
13 coming back over here to do a hearing isn't much of an
14 issue. I'm in Richland the rest of that time. I have a
15 week in Saluda, the week of November the 6th and I don't
16 know how long criminal court usually takes in Saluda but
17 it probably doesn't take all week.

18 MR. GRAHAM: At that hearing, I guess, what do you
19 want to accomplish? What do you expect of us? Is it
20 just for us to make arguments?

21 THE COURT: Yeah.

22 MR. GRAHAM: Are you gonna have everything read at
23 that point?

24 THE COURT: Yeah. I'm gonna try to have everything
25 read at that point in time and I'm gonna let y'all make

1 whatever legal arguments you want to.

2 MR. GRAHAM: How long would you expect -- No
3 witnesses. It's just us talking, right?

4 THE COURT: Well, the way you two talk. No
5 offense.

6 MR. GRAHAM: I thought I did pretty good, Judge.

7 MR. RUTHERFORD: None taken, Your Honor.

8 THE COURT: I would figure, you know, it's an hour
9 hearing.

10 MR. GRAHAM: Okay.

11 THE COURT: But, you know, I need enough time to get
12 everything read. I mean, the week of November 6th I'm
13 sure I can slip away from Saluda one day to come over
14 here, wouldn't you think, from criminal? I'm doing
15 criminal in Saluda that week.

16 MR. GRAHAM: I think September 18th we can make it
17 work.

18 THE COURT: Okay.

19 MR. RUTHERFORD: Your Honor, my protection is
20 supposed to start on the 19th but I don't believe I will
21 be leaving on the 19th. So as long as it's not a week
22 long hearing I should be okay.

23 THE COURT: So on the 18th of that week it says
24 Horry status conference. Is that on the death penalty?
25 What if we did it that Tuesday morning? When are you

1 leaving.

2 MR. RUTHERFORD: Well, I was supposed to leave on
3 the 19th but the flight arrangements keep getting -- So
4 right now it looks like I may be leaving as late as the
5 21st, but I'm honestly not certain.

6 THE COURT: No one knows what I have in common pleas
7 that week. Why don't we do the afternoon of the 18th.
8 Is that clear for you, Mr. Rutherford?

9 MR. RUTHERFORD: Yes, sir.

10 MR. GRAHAM: I think so, Your Honor. I have to
11 check my calendar, but I believe it is.

12 THE COURT: Okay. It will probably be easier for me
13 to move the Horry County death penalty status conference
14 than it will be to get all you all together.

15 MR. GRAHAM: The afternoon of the 18th works for me,
16 Your Honor.

17 THE COURT: Okay.

18 MR. RUTHERFORD: Yes, sir.

19 THE COURT: Y'all want to start at two, get it over
20 with to the end of the day? Two?

21 MR. RUTHERFORD: Two is good, Your Honor.

22 THE COURT: So the plan right now is to reconvene
23 September the 18th at 2:00 p.m. I will have everything
24 read and then you all can make your legal arguments at
25 that time. Fair enough?

1 MR. RUTHERFORD: Fair enough. Thank you, Your
2 Honor.

3 THE COURT: Okay. Thank you all for staying late
4 and getting it done. Thank you to my court staff for
5 being here and staying late. I know we've had kind of a
6 crazy week so thank you all very much. I really
7 appreciate it. I will see you all next Thursday in my
8 eFiling training.

9 MR. RUTHERFORD: Your Honor, I'm sorry. There is
10 one last issue. I told the Solicitor on Tuesday and I'm
11 sorry, I almost forgot. My client has been either in
12 custody or on house arrest with GPS monitoring since this
13 occurred. His boss is present in the courtroom and was
14 saying that Mr. Dennis is currently working for him and
15 there are times when Mr. Dennis, Mr. Dennis' curfew is at
16 10:00. 9:00. I'm sorry. And there are times when it is
17 conflicting with the operation of his business and what
18 he needs Mr. Dennis to do and we would simply ask that
19 the curfew be extended to 10:30. I believe that was
20 consented to when I talked to the Solicitor about it. He
21 has had no issues. No material issues.

22 MR. GRAHAM: I did not say that we consented to it,
23 Your Honor. We would oppose it.

24 THE COURT: Why?

25 MR. GRAHAM: Bad things happen at night. It was set

1 for a reason. I don't really know what his work schedule
2 is. The store closes at 6:00.

3 THE COURT: Where is the guy that runs the shop?
4 Bring him up here. I thought there was some provision
5 that said if you've been on bond this long, you're
6 entitled to a PR bond. I think there's a statute
7 directly on point.

8 MR. RUTHERFORD: There is a statute directly on
9 point, Your Honor.

10 THE COURT: Come on up here. What's your name?
11 Stay right there.

12 DERIER COUNCILS: Derier Councils.

13 THE COURT: What's your name?

14 DERIER COUNCILS: Derier Councils.

15 THE COURT: What do you do for a living?

16 DERIER COUNCILS: I own Councils Mattress and
17 Furniture.

18 THE COURT: Okay. And what does Mr. Dennis do for
19 you?

20 DERIER COUNCILS: He's my lead delivery guy. He's
21 third in charge.

22 THE COURT: Okay. And what does he do everyday?

23 DERIER COUNCILS: He delivers, moves. Whatever is
24 necessary to be done. He's my lead delivery guy.

25 THE COURT: How long has he worked for you?

1 DERIER COUNCILS: Almost three years.

2 THE COURT: What hours of the day does he work?

3 DERIER COUNCILS: What hours of the day?

4 THE COURT: Yeah.

5 DERIER COUNCILS: We come in sometimes at 7:00 in
6 the morning. Sometimes we run to 9:00, 9:30, 10:00. Not
7 him because of his situation, but it does put an impact
8 on us.

9 THE COURT: Is he making deliveries at 10:30 at
10 night?

11 DERIER COUNCILS: (Nodding head.)

12 THE COURT: To who?

13 DERIER COUNCILS: Customers. We stay pretty busy.
14 Pretty busy.

15 THE COURT: What time is his curfew now?

16 MR. RUTHERFORD: 9:00, Your Honor.

17 THE COURT: All right. I'll increase his curfew to
18 10:00.

19 MR. RUTHERFORD: Thank you, Your Honor.

20 THE COURT: All right.

21 WHEREUPON, THE HEARING CONCLUDED AT 7:30 p.m.

22

23

24

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 22nd and 24th day of August,
11 2017.

12 I FURTHER CERTIFY that the forgoing 383 pages
13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at
17 Lexington County, this 26th day of March, 2020.

18

19

By:s/Steven E. Leblanc

20

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

21

22

23

24

25

1 State of South Carolina)
) In the Court
 2 County of Lexington) Of General Sessions
) Indictment No.: 2014-GS-32-01440
) 2014-GS-32-01441
 3)
 4 State of South Carolina,)
)
 5 vs.) Plaintiff,)
) Transcript of Record
 6 Kierin Marcellus Dennis,)
)
 7 Defendant.)
)
 8 _____)

9
 10 September 18, 2017
 11 Lexington, South Carolina

12 BEFORE:
 13 The Honorable Robert E. Hood, Judge

14
 15 APPEARANCES:
 16 Shawn Graham, Assistant State Solicitor
 17 Rhonda Patterson, Assistant State Solicitor
 18 Attorneys for the State

19 Todd Rutherford, Esquire
 20 Attorney for the Defendant

21 ALSO PRESENT:
 22 Kierin Marcellus Dennis

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INDEX

PAGE

MOTIONS

3

Certificate of Reporter

54

EXHIBITS

NO. DESCRIPTION

ID

EVDS.

NONE

1 Thereupon, the following proceedings were had,

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Judge Robert E. Hood presiding.

4 THE COURT: Thank you very much. Take your seats
5 please. All right. We're on the record in
6 2014-GS-32-1440 and 1441. The State is present and
7 represented by Shawn Graham and Rhonda Patterson of the
8 Lexington County Solicitor's Office. The defendant is
9 present and represented by his attorney Todd Rutherford.

10 Okay. So this is the State of South Carolina versus
11 Kierin Dennis. And I was assigned to a term of court
12 back in August in which this case was up for trial and
13 there were some scheduling issues with getting the trial
14 completed. The defense made a motion to essentially have
15 a second stand your ground hearing for lack of a better
16 term under the 16-11-410. The State objected at that
17 time on the record and I came up with the plan of action
18 that we would allow the defense to present whatever
19 evidence they thought was necessary so that a record
20 could be created. They were essentially allowed to
21 proffer that testimony so that a record was created so
22 that one day in the future depending on whatever happens
23 with this case we don't need to be guessing as to what
24 the defense would have shown or what these witnesses
25 would have said or attempting to find the witnesses such

1 as Ms. Bettini and Zachary Lynch three or four years down
2 the road and trying to get their memories in so I wanted
3 to create a situation where I allowed the defense to
4 present those witnesses, to get them on the record, to
5 get them cross examined, then I also allowed, they called
6 those witnesses along with Dr. Ross, and then I allowed
7 the State to respond to that and then I was provided the
8 transcripts from the original immunity hearing and the
9 original trial.

10 And so at this point in time what I told the parties
11 is that I wanted to get together, get back together so
12 that having heard the additional testimony from the
13 witnesses back in August to allow everybody to put their
14 thoughts together and make whatever arguments they want
15 to. I told the State they would still be allowed to make
16 the argument that the hearing itself isn't even proper
17 and shouldn't even happen. I wasn't gonna preclude them
18 from doing that and so let's start.

19 Mr. Rutherford, this is your motion so we're gonna
20 start with you and what all you want to tell me this
21 afternoon.

22 MR. RUTHERFORD: Thank you, Your Honor. May it
23 please the Court. The State seems to believe that their
24 ongoing burden to the law and to Mr. Dennis is somehow
25 put aside because we had a stand your ground hearing.

1 16-11-440 is clear. What was unclear at the time back in
2 2014 was how exactly we proceeded. It became clear as
3 the State of South Carolina decided to follow Florida and
4 said, okay, this means that you're going to get a
5 hearing. At that hearing you'll get to present evidence
6 and you only have to prove by mere preponderance of the
7 evidence that you are entitled to immunity. 16-11-440,
8 16-11-410, all of that presumes that everything is there
9 and that that's what you're acting on, that all of the
10 information, all of the evidence, all of the testimony,
11 that everything that you need is present before you start
12 that hearing.

13 I've been doing this now almost 20 years and I can
14 tell Your Honor and I have talked about this multiple
15 times with multiple lawyers this case was different and
16 this case was different because of the amount of
17 information that we had, that the investigator had, that
18 the Solicitor's Office had that they needed to put
19 together and in trying to schedule this case to meet with
20 my schedule so that they could get this done before I go
21 back in session, we put this case up and said, okay,
22 we're ready, you can meet your burden, you can try and
23 meet your burden by a preponderance of the evidence. We
24 put up all the witnesses because there were as Your Honor
25 knows, as Your Honor has read the transcript, multiple

1 people out there that watched what happened, and my
2 client we believe showed that he was in his vehicle,
3 that's clear, that he only had a knife, not a gun, and
4 that he was able to stab someone because they were
5 standing that close to his vehicle and that
6 mere preponderance we believe would have already been
7 met.

8 After that happened and prior to the trial, the
9 Solicitor's Office met with Beth Bettini. Beth Bettini
10 is an independent person. She is not attending Dutch
11 Fork High School. She is in fact out of high school.
12 She is not attending Lexington. She's an independent
13 person that happened to be in the drive thru. As Beth
14 Bettini tried to describe what happened to the
15 Solicitor's Office and what she did when she witnessed
16 the events that night she was told we have no record of
17 you calling 911. She is made to believe that they don't
18 want to hear what she has to say, so much so that she
19 calls my office two days into the trial to say, hey, I
20 described what happened to the Solicitor's Office and
21 they don't want to hear me. As we met with her a
22 decision is then made to deal with a witness that has
23 told the Solicitor's Office that she called 911 when we
24 have no record of her calling 911 in this voluminous
25 discovery. We're told by the Solicitor's Office that

1 they have no record of her calling 911.

2 Your Honor has practiced law for a long time, so
3 have I. 911 calls are recorded, they're documented,
4 there is no reason to disbelieve the Solicitor's Office
5 or 911 that she simply did not call which calls into
6 question her credibility even for us. It called into
7 question her credibility so much so that the Solicitor's
8 Office crossed her on it. They brought it up because
9 they believe it's relevant to whether she is a credible
10 witness or not. In listening and trying to find where
11 Beth Bettini actually did what she said she did because
12 this is where we have to start, did you really do what
13 you told us that you did and that you told the
14 Solicitor's Office that you did, 15 minutes into a dash
15 cam video, and I may be off on that because again the
16 timing is off depending on which video you click on as to
17 how you get there, with Officer Voravudhi's car looking
18 at a wall seeing nothing, listening to radio chatter, you
19 finally hear Beth Bettini, and so you get some
20 credibility as to Beth Bettini's statement but you also
21 hear Zachary Lynch who says I saw it. He reached in the
22 car and that's when he stabbed him.

23 Well, as you go back and look at the evidence that
24 you're given there's a tape of Zachary Lynch and Zachary
25 Lynch is saying things that simply don't make sense, and

1 it's not until you dig down into it that it don't make
2 sense because he was interviewed at 5:00 in the morning,
3 he got to work 5:00 the day prior and he got up at 7:00
4 the day before that and he was never shown a video. Your
5 Honor read the transcript. You can see that Judge
6 Griffith actually stopped us when we were trying to cross
7 examine witnesses that we had not shown them the video
8 first, he said, hey, show them the video and then ask
9 because he realized how important it was that they're
10 trying to describe something in a vacuum that we all can
11 see what happened or at least we think that we can and so
12 that's why show them the video first and then ask them
13 the question.

14 So we go back to ask Investigator Carter. Did you
15 show him the video? Nope. Did you ever show him the
16 video? Nope. Did you watch Voravudhi's tape? I might
17 have. I must have. It's in the video. I mean it's in
18 the evidence. Okay. So we move forward. We've now got
19 two independent witnesses one of whom works at the Cook
20 Out describing what he saw and the only thing that
21 Investigator Carter did, the only thing that the State
22 did was try to make these two independent Lexington
23 County residents independent citizens out to be liars and
24 they continue to this day to suggest to the Court that
25 people who did nothing but see something and say

1 something that they're liars because they disagree with
2 Investigator Carter's immediate assumption that my client
3 should be charged with murder.

4 Given those two propositions we then have Dr. Ross.
5 Dr. Ross testified during the trial, not during the
6 initial stand your ground hearing. And again, why?
7 Because everyone saw that this was a stabbing. It's not
8 until you get later on that you realize that Dr. Ross is
9 saying something that even during the trial became
10 somewhat again I believe an ah-ha moment because she's
11 describing what they said didn't happen which was a
12 demonstration where I'm just standing there standing over
13 him in a chair and he does like this (indicating). Dr.
14 Ross, is that what happened? No. Well, of course not
15 because he's in a car and as the perpetrator he's in the
16 car and the alleged victim is standing outside of the
17 car. So as you move forward to her trying to recreate or
18 the lawyer is trying to recreate for her what exactly
19 happened, it becomes clear that for the Solicitor's
20 Office theory to be correct Da'Von Capers had to be
21 standing like this (indicating) and Mr. Dennis would have
22 had to take a knife and come down almost in front of his
23 face to enter his left nipple, above his left nipple and
24 go into his chest.

25 Dr. Ross as late as this week which we submitted to

1 the Solicitor's Office in an e-mail says that it is most
2 likely, the most likely scenario given that the
3 perpetrator is sitting in the car, the perpetrator of the
4 stabbing, the most likely scenario is that the victim was
5 parallel to the ground. The only way he could have done
6 that is as if he was in the car. We know that because
7 Dr. Ross, pathologist, states that. We have two
8 independent witnesses and Dr. Ross who is stating again
9 that Mr. Capers had to have been leaning like this
10 (indicating) before he got stabbed.

11 The State made great hay out of how tall he was, put
12 the telephone book under, where the window was, but
13 what's clear in order for him to be parallel to the
14 ground he could not have been outside of that car that
15 far because Mr. Dennis' arms couldn't reach out there.
16 We all know that. You read the transcript. You saw what
17 the witnesses said about his head bobbing and going like
18 this (indicating). Again, in order for this stabbing to
19 happen the way the State says, he would have had to come
20 out, up and down. We noticed about the wound. It's a
21 clean wound. There's no tearing. If he's down like this
22 (indicating), blood, tearing, things that you can deduce,
23 that any person could have deduced by what Dr. Ross
24 testified to.

25 After all of that and after all of that testimony

1 Investigator Carter took the stand and we are all
2 reacting as we all do to the way that a case is
3 investigated. Investigator Carter came to the conclusion
4 as he testified five minutes later, five minutes after he
5 met Mr. Dennis that he should be charged with murder. He
6 then went through and interviewed all of these witnesses,
7 got their statements, took their videos and said here,
8 here's your case. But Investigator Carter owes to the
9 Lexington County residents, he owes to this Court, he
10 owes to the Solicitor's Office, he certainly owes to
11 Mr. Dennis the benefit of investigating the case the way
12 that it should be investigated. And when asked on cross
13 examination by myself, Investigator Carter, how did this
14 happen? How did this stabbing occur? He did just like
15 this (indicating). And this is the investigator that has
16 been investigating this case for three years, he did just
17 like that (indicating).

18 Well, if he was stabbed just like that (indicating),
19 he would have had to be, as Dr. Ross testified, parallel
20 to the ground. I don't know why, it is not clear to me
21 why the Solicitors who are charged as ministers of
22 justice believe that they can abdicate that charge and
23 simply bolster what Investigator Carter says. My client
24 need only prove to this Court by mere preponderance, but
25 he also need only prove to the Solicitor's Office by a

1 mere preponderance that he was following the law that
2 night; that, in fact, the aggressor was Mr. Capers
3 because Mr. Capers, if he was doing what Investigator
4 Carter suggested by allowing Mr. Dennis to stab him this
5 way, if he was doing what Dr. Ross suggested by being
6 parallel to the ground when he got stabbed, would have
7 had to have been in the car. You heard from multiple
8 other witnesses and if you discount every single one of
9 them with an axe to grind, you are left with Dr. Ross,
10 Investigator Carter and Beth Bettini and Zach Lynch, the
11 only people without an axe to grind that are supposed to
12 be up here just telling us what really happened.

13 As to whether we deserve a new hearing, I think
14 that's clear. We've got 911 tapes that surfaced after
15 the trial, not after the first stand your ground before
16 the trial, but after the actual trial. This proposition
17 that the Solicitor is arguing that you don't get a second
18 chance at a hearing, well, where in the law anywhere does
19 a defendant not have a right to another hearing? This is
20 not a second trial wherein the burden would be much
21 higher. This is simply a hearing. We believe that we
22 would even meet the burden that they set forth that we
23 would have to meet for a second trial much less simply
24 another hearing. We're not bound by what happened in
25 that trial. If we are, then the defendant should be set

1 free because there was a mistrial. He was not found
2 guilty. That's it. They want to rely on the count. The
3 count doesn't matter. It's a mistrial pure and simple
4 and if we're bound, then let's truly be bound. Your
5 Honor knows we're not, the State knows we're not.

6 The fact that we are entitled to a new hearing
7 should be clear. The fact that other evidence exists
8 that Judge Russo did not hear when he made his initial
9 ruling is also clear. The fact that that evidence all
10 points to more than a preponderance that my client was
11 acting the way that the law allows under 16-11-440 we
12 believe is clear and based on that we would ask Your
13 Honor to not only allow this hearing or allow the
14 culmination of this hearing, but find that he is immune
15 to prosecution.

16 THE COURT: All right. Mr. Graham.

17 MR. GRAHAM: Thank you, Your Honor. Your Honor
18 should have a copy of an 18 page memo.

19 THE COURT: I have and I received it and I've read
20 it.

21 MR. GRAHAM: Okay. I will briefly go through it
22 then.

23 THE COURT: I don't say that to curtail your
24 argument. I just wanted you to know that I did take the
25 time to read it so that I was prepared and you can argue

1 for as long as you need to. I'm not putting any time
2 constraints on either side and I didn't do that in the
3 last hearing and I won't do that in this one so whatever
4 you all believe you need to put on the record to make
5 sure the record is complete you are more than welcome to
6 do.

7 MR. GRAHAM: Thank you, Your Honor. As Your Honor
8 stated when we first started this hearing, the State did
9 object to the motion to have a new hearing. The Immunity
10 Act 16-11-450 I think provides how a hearing should be
11 conducted along with State versus Duncan. Nowhere in
12 there does it say that you can have multiple hearings.
13 Nowhere in any law in the State of South Carolina Codes,
14 nowhere in any case law from any case that's analyzed
15 this stand your ground proposition, no court rule allows
16 for a second hearing in a stand your ground immunity
17 situation. My research looking across the United States
18 I have not found a single state that has allowed a second
19 stand your ground hearing. The reason is, Your Honor, at
20 what point would it ever end? Every time the defendant
21 comes up with a new piece of evidence that they claim
22 changes something, you would have to have another
23 hearing. Every time that you schedule a trial date, if
24 the defendant came up with something new that hasn't been
25 considered, you would have to have another hearing. You

1 would never be able to have any finality. I think that's
2 why it's not - I think that's why it's not allowed. It
3 may be silent on that, but I think that's why it's not
4 allowed and why we haven't seen it.

5 Mr. Rutherford, the defendant, had the discovery.
6 As in any case it's a complex case. More information
7 develops as the case goes on. When the timing, I mean,
8 it was their motion to seek immunity. They chose that
9 date and that time. They had their hearing on the
10 information they chose to present. They knew about Beth
11 Bettini. They knew about Zachary Lynch. They knew about
12 Dr. Ross. For whatever reason they chose not to call
13 them. To say that it's new evidence or that it changes
14 something and entitles them to a second hearing, I don't
15 think there's a basis in the law.

16 So our first objection, Your Honor, is that there
17 should not be a hearing. He's asking you to set new
18 precedent with no supporting law to back that up.

19 Secondly, if you are going to allow the motion to be
20 considered, what analysis does the Court conduct? The
21 defendant hasn't offered you anything, just that we have
22 new evidence and we want to present it. The closest
23 thing, while we still object to having a hearing, the
24 closest thing that we could find in our research would be
25 the factors that go into granting a new trial after a

1 conviction for after discovered evidence, and there's
2 five factors that are delineated in State versus Spann
3 which is 334 South Carolina 618 1999 Supreme Court, and
4 it says that it's the defendant's burden to show before a
5 new trial is granted. So if you apply that, the factors
6 in Spann to a hearing, it's up to the defendant again to
7 prove these factors.

8 The first one would be such as would probably change
9 the results if a new trial is granted or a new hearing is
10 granted in this case. It has to have been discovered
11 since the trial. Third, it could not have been
12 discovered before the trial by the exercise of due
13 diligence. Four, is material to the issue. And five, is
14 not merely cumulative or impeaching.

15 The thing to think about is you're talking about in
16 this scenario, in the Spann scenario, you're talking
17 about an individual who has been convicted, and the Court
18 requires those things, those five elements. I can't
19 imagine a scenario for a hearing where they would be
20 allowed to say less and to have another hearing. It
21 seems like that any benefit would go to the individual
22 who has been convicted. The purpose of the immunity was
23 to give, as I understand it, the purpose of the immunity
24 statute was to allow a defendant to convince the Court
25 that they shouldn't have to face the publicity and the

1 rigors of a trial, and he's had that opportunity.

2 However, if you look at the five factors and you
3 apply them to the proffered testimony, the proffered new
4 testimony you will see that the defendant has failed to
5 show that it is really new and new warranting another
6 hearing. If you look at Beth Bettini under the first
7 factor, the question would be really overall if you take
8 it as new and you take it, and Your Honor is the one who
9 determines credibility at this stage, would it probably
10 change the result? If you let a new hearing be granted
11 would it probably change the result? Your Honor heard
12 and saw her testify under direct and cross, you have read
13 her transcript from the trial or you will, and you will
14 see how she handled that. I believe that her court
15 exhibits show that her written statement that she had in
16 there is in there as well as the video dash cams. In all
17 of those things, and also I think Detective Carter
18 testified in the proffered testimony that he had spoke
19 with her before she left the scene, in the written
20 statement, the dash cam and with Detective Carter she
21 never testified to what she testified that would be new
22 in front of Your Honor. Nowhere in there do you see that
23 she said that she saw through her passenger window.
24 Nowhere in there does she talk about seeing the fear in
25 the defendant's eyes. She doesn't talk about knowing

1 that it was a stabbing. Did she call 911? It appears
2 that she did. Through a mistake do we not have a copy
3 over that tape? We do not.

4 THE COURT: The State agrees that, and I'm not
5 casting aspersions on the State and the 911 director or
6 whatever her terminology was testified last time, it's
7 clear that Ms. Bettini did call 911 and that no one in
8 the Solicitor's Office nor the defense knew about it
9 until just before the last hearing; is that right?

10 MR. GRAHAM: Before we started in front of Your
11 Honor in August.

12 THE COURT: Right.

13 MR. GRAHAM: The Solicitor's Office went back and
14 said will you look again.

15 THE COURT: Right.

16 MR. GRAHAM: Will you specifically look every
17 place.

18 THE COURT: So when Ms. Bettini is making her
19 statements to law enforcement, she's saying I called 911,
20 I called 911. When the CAD report and those type of 911
21 files which the investigator, which Detective Carter
22 properly requested of the 911 director, her testimony is
23 what it is, I'm not gonna try to quote it because I don't
24 know that I can, but basically she says the way that we
25 gathered it didn't gather Beth Bettini's call but now

1 that we've gone back and plugged in Beth Bettini's phone
2 number, we can see that on that night Beth Bettini did
3 call and that was just learned as of July or August of
4 2017; is that right?

5 MR. GRAHAM: Correct, Your Honor.

6 THE COURT: Okay. All right.

7 MR. GRAHAM: But if you look at what she testified
8 to, I guess my point is that --

9 THE COURT: You're argument is that if you look at
10 everything she told law enforcement on the night in
11 question outside of the 911 call which we don't know, she
12 never says he looked scared, he had fear in his eyes or
13 that she saw the stabbing.

14 MR. GRAHAM: Correct. She also goes on to say, she
15 said get the F away from my car.

16 THE COURT: Right.

17 MR. GRAHAM: She made reference to that. That is
18 nowhere in the dash cam, in a written statement or to
19 Detective Carter on the scene as well. She did testify
20 that she did call 911 which appears to be true and she
21 testified in front of Your Honor that she communicated
22 all of those things that she saw and she says that the
23 operator told her, asked her a question I think about a
24 knife or a stabbing. She testified that the 911 operator
25 told her there had been a knife used or a stabbing and

1 either asked her a question or told her that. If you go
2 back and look at Nikki Rodgers testimony and you look at
3 the time that they found that Ms. Bettini called and the
4 duration of the call and I think Your Honor will
5 remember, I saw your head shake at the time, that when
6 you compare that to the time that the call came in that
7 mentioned the knife, she hung up before knife was
8 mentioned from anybody at the Cook Out. She couldn't
9 have known. That's not true. She's either mistaken or
10 she made it up which obviously goes to her credibility
11 for each and every other thing she's claiming.

12 If Your Honor also looks at the video, the outside
13 store video from the Cook Out and Your Honor had the
14 diagrams and the graphs and the angles and the pictures,
15 for her to look out her passenger window which she was
16 adamant, she did not look through her back window or over
17 her left shoulder, she says that she looked over her
18 right shoulder out her passenger window, she would have
19 been in the, she would have been in the Cook Out video.
20 You would have seen her and she's not there. Why she's,
21 you know, I don't know whether she's mistaken and this is
22 what she believes and is just incorrect or why, or if
23 she's making it up. I don't know. But it couldn't have
24 happened the way she describes and again it goes to her
25 credibility.

1 She also, to see what she said she saw, to be able
2 to see the fear in the defendant's eyes, she would have
3 had to look through a crowd of students who were
4 surrounding his car at the time. The iPad video shows
5 that. You can see the wall of students and you can see
6 that you can't see through. You can't even really see
7 Da'Von Capers up there. So again, I ask the Court to
8 look at the credibility of that statement and the
9 possibility and the believability of her being able to
10 see what she says she can see. Even if Your Honor finds
11 her credible, nothing would change the results of the
12 hearing. Even if Your Honor believes her, it adds
13 nothing new that Judge Russo didn't consider. There is
14 nothing new that would probably change it. The question
15 is whether he was stabbed in the car or outside the car.
16 The question is why he stabbed Mr. Capers. The question
17 is what role the defendant had in bringing on the
18 difficulty. Her testimony doesn't address any of that.
19 It's not relevant.

20 Under the third factor from Spann the new evidence
21 could have been discovered by the exercise of due
22 diligence. The defendant chose when to have this
23 hearing. The defendant could have waited until all of
24 the discovery was done, but he chose to have the hearing.
25 The defendant chose to call the witnesses he wanted to

1 call. The defendant chose what investigation to do prior
2 to having the hearing. Her name and contact information
3 was provided to the defendant before that hearing. Her
4 written statement, two officers' dash cams, were also
5 provided as well. The only thing that wasn't was our
6 finding later that she did, in fact, call 911 that Your
7 Honor is aware of. All he had to do, all the defendant
8 had to do was go talk to her and if she was gonna tell
9 the story, she would have told it then. That failure to
10 do so fails that prong and doesn't entitle him to a new
11 hearing.

12 Under the fourth factor the evidence wasn't material
13 to the issue of proving by the preponderance of the
14 evidence that the defendant was entitled immunity. Her
15 testimony sheds no light on whether the defendant was
16 attacked inside the vehicle, why, or whether the
17 defendant brought on the difficulties.

18 Under the fifth factor the evidence is cumulative.
19 Nothing new was offered that Judge Russo had not
20 previously considered. Yeah, did another person say that
21 he was scared? He said he was scared. Did another - did
22 other witnesses say there were people around the car?
23 There were people around the car. There wasn't anything
24 new that she said. He failed, the defendant has failed
25 to prove that Beth Bettini's new evidence, their proof,

1 their burden to prove to you that a new hearing is
2 warranted.

3 Zachary Lynch, Your Honor, you saw Mr. Lynch
4 testify. I really don't know what Mr. Lynch saw or
5 thought he saw. Under the first factor, again,
6 considering him, if you believe him, it wouldn't change
7 the result of the hearing. He gave two written
8 statements to law enforcement in 2014. Those were
9 written on the scene. One of them was on the scene,
10 maybe both. I honestly don't remember. I know one was
11 on the scene.

12 THE COURT: That was the next morning in the video
13 of Detective Carter coming in and passing him over a
14 sheet of paper.

15 MR. GRAHAM: He didn't appear -- It's Your Honor to
16 determine whether he appeared five or six hours later
17 that he didn't understand what was going on. I agree his
18 story didn't make sense. I don't believe his written
19 statement made sense as well, but regardless, nothing
20 that he testified to matches up with anything that he was
21 interviewed on, that he wrote about, or that he wrote
22 about on scene or that he said in the dash cams on scene.
23 But regardless, those things were all provided in
24 discovery prior to the immunity hearing. He stated that
25 he did write and he did, he wrote to law enforcement and

1 he talked about somebody reaching in the car and Your
2 Honor heard him testify it was a different person in a
3 different car. So he's being interviewed on scene making
4 statements to a dash cam, five hours later being
5 interviewed and he's clear, he's talking about a car. It
6 wasn't an SUV. It wasn't the defendant's Explorer. He
7 knew the defendant at least by sight.

8 What he wrote about and told the police that night
9 and on scene was not what he testified to so to believe
10 him there had to be two different scenarios where people
11 were reaching in vehicles and he thought people were
12 stabbed, either stabbing or thought to be stabbed and he
13 chose what he thought was the important one to talk to
14 the police about. What he testified to, Your Honor, is
15 confusing and not credible. He said that he was several
16 yards away and Your Honor has that information showing
17 that he was standing by the light pole and I don't
18 remember how far SLED said he was away or what he
19 acknowledged that he was away. He talks about that
20 position from where Your Honor knows the car was or the
21 defendant's vehicle puts him at a tough angle to see what
22 he claims to have seen. He would have to be seeing
23 through a side or a back window of a tinted window car.
24 He would have to be seeing through a crowd of students
25 who were surrounding it for him to say that he saw

1 somebody reach in.

2 Finally, even here with Your Honor he described the
3 individual that he saw into the defendant's car as an
4 individual with a white shirt not to be shaken. That's
5 what he said. He's sure of it. The victim didn't have a
6 white shirt, Your Honor. He had a red plaid shirt. Your
7 Honor has those pictures. Again, that goes to his
8 credibility of what he saw and what he claims to have
9 seen. Every other credible witness, the testimony of the
10 defendant himself, the iPad video contradict that he
11 would be able to see what he claims to have seen. His
12 testimony, Your Honor, would not change Judge Russo's
13 order denying immunity.

14 Most importantly, again, the defendant could have
15 discovered by the exercise of due diligence what they
16 claim is Lynch's new testimony and failed to meet the
17 third prong that we would offer the Court to consider.
18 Again, his name and contact information was provided
19 prior to the original immunity hearing, his written
20 statements to law enforcement was provided before the
21 2014. He was also provided the dash cam where Lynch
22 described the events that he perceived which is not what
23 he testified to. And also the video interview of Zach
24 Lynch. The defendant failed to interview him. They
25 failed to discover that evidence. They failed to call

1 him. That doesn't give him a second hearing.

2 Chauncy Meggett. Chauncy Meggett was unknown to the
3 State at the time of the first hearing. We found him in
4 preparation for the trial and we turned over what he had
5 to say as discovery to the defendant. What he testified
6 to on the stand was that all of a sudden he heard a noise
7 that sounded like somebody banging on a car roof, the
8 next thing he knows he's right there. The defendant's
9 SUV is right in front of him and he's standing next to
10 the victim Da'Von Capers. He goes on to say though that
11 the noise that he heard like banging he could not say
12 that it was from the SUV. He didn't know where it came
13 from. He cannot say that the victim is the one who
14 banged on the car or banged on the defendant's SUV or --
15 He didn't see him. He acknowledged that he did not see
16 Da'Von Capers pound on the car.

17 From the transcript that was proffered from the
18 trial, Your Honor, and maybe during the stand your ground
19 hearings, you know that the State looked, law enforcement
20 looked for fingerprints and DNA. There was no unknown
21 DNA on that car. There was no unknown fingerprints on
22 that car. People had been inside including the victim
23 had been inside eating hamburgers and French fries so you
24 would expect their hands to be greasy. There's nothing
25 on the car. There's no proof that even if Meggett claims

1 that a car was banged on that it was the defendant's car.
2 The defendant doesn't even say that in his testimony. In
3 any of the taped interviews with Detective Carter or the
4 two times he's testified he never claims that anybody was
5 pounding on his car.

6 If you look at what Meggett does say, Your Honor, is
7 that he puts Capers, Mr. Capers, Da'Von Capers
8 approximately two to three feet away from the defendant's
9 vehicle when he notices him. He says that he did not see
10 Da'Von Capers reach into the vehicle. That's what he
11 said. So you have got Mr. Lynch who's yards and yards
12 away at an angle compared with Chauncy Meggett who the
13 defendant offered to you who is two to three feet away.
14 He does say, however, that he sees the defendant stab
15 outside the vehicle. He sees the knife. He sees him
16 reach down actually, he's close enough to see him reach
17 down to his side which corresponds I believe with what
18 the defendant testified to, that he had the knife by his
19 side. So how would Meggett know that if he didn't see
20 it? But he testifies that he goes outside the window.
21 So that proffered testimony that the defense put up, if
22 it is new and Your Honor wants to consider it, it does
23 only go to strengthen the State's story. It does nothing
24 to further the defendant's burden to prove that another
25 hearing should be granted or that Your Honor should grant

1 immunity.

2 Dr. Ross. Under the first factor her testimony that
3 Your Honor heard will not change the results if a new
4 hearing were granted. As Your Honor will remember, the
5 defendant on direct examination attempted to use the
6 angle of the wound to support the claim that Capers was
7 inside the vehicle. They attempted to create a scenario
8 on direct examination where she acknowledged that it was
9 possible that Capers upper body was inside the
10 defendant's vehicle at the time of the stabbing. Your
11 Honor will remember that on cross examination once you
12 look at the height of the window where the defendant sat,
13 that's where he chose to put it multiple times on the
14 witness stand, the height of the window and the height of
15 the victim, you remember Dr. Ross having to stand on a
16 four or five inch binder to get to the right height and
17 the stab wound location on Da'Von Capers where that
18 window is at looking at that seat, that car which
19 everyone agrees is accurate, she said on cross
20 examination it could not happen given that scenario.

21 I called her this morning based on the e-mail that
22 Ms. Easler, an associate from Mr. Rutherford sent about
23 the conversation that they had recently. She isn't
24 changing her testimony. Her testimony is still the same.
25 Given the height of the window, the height of the victim

1 and the location of the knife wound it did not happen in
2 the vehicle. If Your Honor will remember looking at the
3 transcript, at least one or two of the State's witnesses
4 talked about the defendant motioning the victim closer
5 with a head nod or a finger wave saying I've got
6 something for you. I believe that that would have been,
7 Alexis Brunson I believe is the one of them. I can't
8 remember whether one of the other --

9 MS. PATTERSON: Xavier Holliday.

10 MR. GRAHAM: One more time.

11 MS. PATTERSON: Xavier Holliday.

12 MR. GRAHAM: Xavier Holliday, Your Honor. So Alexis
13 Brunson and Xavier Holliday described the defendant
14 motioning the victim closer to the car. Did he lean into
15 the car? Maybe he did. I honestly don't remember
16 whether their testimony describes that. I know that they
17 talked about the defendant motioning him closer. I
18 believe that they talked about him leaning in. Between
19 that and the defendant stabbing outside, that's where it
20 happened.

21 Focusing on the car is what the defense wants Your
22 Honor to do. They want to pretend that nothing else
23 happened and they just want to have for no reason
24 Mr. Capers and his friends attacking the defendant in his
25 car and that he has every right to have the presumption

1 of fear, to strike, to kill someone and be immune, but
2 Your Honor knows that there's much more to that story.
3 But Dr. Ross is not saying that the most likely scenario
4 is someone coming in the car and being stabbed. That is
5 not what she said. Even their own e-mail, Your Honor,
6 doesn't say that. It says that is the most probable
7 scenario if the perpetrator is inside the vehicle. She's
8 not saying -- Dr. Ross rarely, if ever, and Your Honor
9 will be aware probably with most pathologists, they are
10 very hesitant to describe exactly how somebody was
11 standing when they got shot, when they got stabbed, when
12 they got killed. What they can do is put the murder
13 weapon whether it's a projectile from a bullet or a stab
14 wound from a knife, they can put that in relation to the
15 body, but they don't tell you exactly. They give you
16 scenarios how it could have happened or a likely
17 scenario, or scenarios how it couldn't.

18 What Dr. Ross told you is that the video that the
19 defendant, when he recreated that event, Mr. Rutherford
20 was leaning over him and he was in the interview room, he
21 stabbed up. Your Honor has got that video and probably
22 looked at it. Dr. Ross said it didn't happen that way.
23 He had the opportunity to show exactly how it happened to
24 law enforcement two or three days after his arrest and
25 that's what he chose to show and that's not the way it

1 happened. She goes on and she has not changed her story,
2 that what we showed in court - what the defense showed in
3 court is not accurate. It did not happen that way given
4 the height of the window, the height of the victim, and
5 the entrance wound.

6 Under the second factor her testimony is not new.
7 The wound and the angle were described in the pathology
8 report, it was given in discovery prior. It is not new.
9 It has been discovered.

10 Under the third factor the defendant claims that
11 although the wound was described which is how I take the
12 argument, although the wound is described, it's
13 significance wasn't appreciated until later, until after
14 the hearing I believe is what the argument would be. It
15 goes back again, the third factor talks about the due
16 diligence required. The due diligence is interview your
17 witnesses, pick what you want to present, present it. It
18 was in the report. He didn't discover it. This is on a
19 new trial standard after somebody is convicted and that's
20 what the Court requires. Here we are talking about a
21 request for a second hearing. Again, Your Honor, I can't
22 imagine that somebody's freedom versus the posture of
23 this case would require a standard less.

24 As to Dr. Ross, Chauncy Meggett, Beth Bettini,
25 Zachary Lynch, combining them all together the defendant

1 has failed to prove that this information is new that
2 would warrant Your Honor granting a new hearing. It
3 would not change the outcome. It could have been
4 discovered under due diligence. It's cumulative.

5 Your Honor, finally the defendant would argue that
6 if Your Honor grants the motion to have a new hearing,
7 considers this evidence, that when you look at everything
8 the defendant has failed to establish by the
9 preponderance of evidence that he is entitled to
10 immunity. The South Carolina Supreme Court, Your Honor,
11 said under the Immunity Statute 16-11-450 that under the
12 act the Castle Doctrine you still have to have a valid
13 case of self defense. That's the defendant's burden in
14 an immunity stage to prove by a preponderance of
15 evidence. All the elements of self defense say the duty
16 to retreat. The presumption of fear under the act does
17 not apply. The act allows for a presumption of a
18 reasonable fear of imminent peril of death or great
19 bodily injury if he is attacked in an occupied vehicle.
20 It does not apply if the person uses deadly force engaged
21 in an unlawful activity or is using the occupied vehicle
22 to further an unlawful activity.

23 So, for Your Honor at the outset to look, has the
24 defendant provided proof by preponderance of evidence
25 that he was attacked in an occupied vehicle. Otherwise

1 it doesn't even apply. Was he attacked? Because someone
2 is sitting outside his car upset with him even if you
3 isolate that event, does that qualify as an attack? What
4 you have is people saying the victim, on the defendant's
5 side you have him and I believe, if you believe
6 Mr. Lynch, two people saying that somebody reached into
7 the car. On the other side you have numerous students
8 who were standing right there saying that Da'Von Capers
9 did not reach into the car. That's a jury question. How
10 could the defendant based on the defendant's testimony
11 prove that he was attacked by the preponderance of the
12 evidence when you have evidence on both sides?

13 The immunity statute goes on to say that that
14 presumption doesn't even apply if the defendant is
15 engaged in unlawful activity or uses the occupied vehicle
16 in furtherance of an activity. What they say an unlawful
17 activity is is not defined in the statute nor in case law
18 I don't believe at this time. So then the question is
19 what does unlawful activity mean? At the very least,
20 Your Honor, the State would say that that would include
21 any actions that the Assembly has already determined to
22 be unlawful or improper. There are laws on the books
23 that talk about assault. It is clear from the
24 defendant's own testimony that he assaulted or attempted
25 to assault Dutch Fork students who were in the road. And

1 again, it's not a lined road, but over three cars wide
2 and where he ran would be coming into oncoming traffic.
3 He chose to accelerate and go and almost hit at least two
4 students who were identified in this court.

5 Devon Chatman, Your Honor, that was the young man
6 just started in his senior year at the Citadel and Tyreke
7 Farrow who Your Honor would have read about in there.

8 THE COURT: TeLo?

9 MR. GRAHAM: Mr. Farrow -- I'm sorry, Your Honor.

10 THE COURT: TeLo?

11 MR. GRAHAM: TeLo. That's correct, Your Honor.

12 Testimony showed that TeLo was only saved by being pulled
13 out of the way by I believe Xavier Holliday. Mr. Chatman
14 was able to jump out of his own way. The reason
15 they were there is because Will Zander drove up and threw
16 money out. I think it was planned. I cannot prove that.
17 I think the defendant knew, but I can't prove it, but
18 what I do know is money was thrown and he accelerates at
19 the people in the road. He says that it's to come to the
20 defense of Mr. Zander, but there's no testimony in
21 anything Your Honor saw about Mr. Zander being attacked.
22 Mr. Zander gets out with a pole. People shout at him,
23 but nobody is up on his car yanking on his handles.
24 Nobody says that.

25 Once you look at the unlawful activity that the

1 defendant has taken, that presumption of fear goes away
2 so you go back to the elements of self defense. He had
3 to be in fear of imminent injury, or sustaining serious
4 bodily injury, imminent danger. The State would contend
5 that looking at everything the credibility that Your
6 Honor has to determine they failed to prove by the
7 preponderance of evidence which is required at an
8 immunity hearing. If you look at what you've got is him
9 saying that he was scared. What you've got now would be
10 Beth Bettini saying that she saw fear in his eyes which
11 Your Honor will have to determine the credibility of
12 that. To counter that you have multiple witnesses who
13 were up on the scene, who were up on the car who
14 testified that the defendant was not afraid, that he
15 spoke and motioned to the victim to come closer, in fact,
16 saying that he had something for him, even if you isolate
17 it around that car.

18 The defendant was without fault in bringing on the
19 difficulty is also another element of common law self
20 defense and that's where the analysis goes from what the
21 defense wants to have you think, that it's just right
22 around the car, to that whole night. What you see of the
23 whole night is - what you see of the whole night is that
24 the defendant was seeking a confrontation. After the
25 basketball game in Lexington, witnesses tell you that he

1 came down the steps and tried to pick a fight. Witnesses
2 tell you that he and some of his friends walked through a
3 circle of celebrating Dutch Fork students. Morgan Zander
4 even shot a video that's in evidence that Your Honor can
5 look at that she is saying, when are we swinging? When
6 are we swinging? When are we swinging? When are we
7 gonna fight? And the testimony showed that the defendant
8 was right there with her when she recorded that video.

9 Then you have him later in the parking lot for the
10 third altercation. He gets into a verbal shouting match.
11 If you go back and read the trial transcript of his
12 testimony, he was ordered by officers of the Sheriff's
13 Department to go to his car. He ignored those officers
14 and continued to use the officer and shout over the Dutch
15 Fork students saying meet me at the Cook Out. Meet me at
16 the Cook Out. Third time bringing on the difficulty. He
17 leaves the Cook Out and where does he go? Does he go
18 home? He doesn't go home. He goes to Sonic and the
19 testimony of Lucky Cook which I believe that we passed up
20 to Your Honor and Keith Adams, I believe from the stand
21 your ground hearing, they go to the Cook Out because Mr.
22 Dennis was flipped off or said he was flipped off and
23 they're looking for a confrontation at the Sonic. The
24 testimony is they decided they didn't want to eat at
25 Sonic and they drive through McDonald's and they go to

1 Cook Out exactly where he said to meet him at.

2 On the outside of the Cook Out he runs into, and I
3 may get the name wrong, but Aubrey Walker. I could be
4 wrong on that. They run into a fellow Lexington student.

5 THE COURT: Isn't that Austin?

6 MR. GRAHAM: Austin Sanders?

7 THE COURT: Yeah. Austin Sanders.

8 MR. GRAHAM: They run into a fellow Lexington
9 student prior to going inside that tells them there's
10 a lot of Dutch Fork students here and there's some stuff
11 going on and they choose to go inside. When they go
12 inside, they are met by Michael James saying, is that all
13 you brought? According, I believe, to everyone the
14 defendant says we're not here to fight. We're just here
15 to eat. And Your Honor can watch the inside video of the
16 Cook Out. Nothing else happens. There's no threats.
17 There's no fights. There's no arguments. The defendant
18 and his friends sit around I think it's for 15 minutes
19 inside. They order a drink or two and they go to leave.
20 Cell phone records show that the defendant texted out at
21 the time while he was in the Cook Out when nothing was
22 going on, they tried to fight us at the Cook Out. The
23 only evidence that would support that would be is that
24 all you brought when you came in here.

25 But the defendant and his friends chose to stay

1 there. The defendant steps outside when he gets a call
2 back from the same person he texted which I believe is
3 his cousin. When he steps out to take the call, you see
4 the video, the other Lexington students step out.
5 Shortly thereafter Michael James goes by and there's a
6 dispute about who says what first, but what's clear on
7 the video is you see Morgan Zander lean forward and bark
8 something at Michael James' back, and Michael James turns
9 around, they start talking to each other and that's when
10 the Dutch Fork students come out. If he didn't want to
11 bring on the difficulty, Mr. Dennis could have left right
12 then and there and Your Honor knows from watching the
13 video that he doesn't leave.

14 Your Honor knows from the maps that there were
15 multiple ways to get out to either Highway 378 or Highway
16 1 without driving where he chose to drive. Keith Adams I
17 believe in the stand your ground hearing said they even
18 talked about which way to leave. Somehow money is thrown
19 luring Dutch Fork students into the road. He accelerates
20 and people have to jump out of the way to avoid being
21 hit. How has the defendant proved beyond a preponderance
22 of the evidence that he's without fault in bringing on
23 any difficulty that happens? I would say that he fails
24 and, Your Honor, nothing that they have proffered changed
25 that. Beth Bettini didn't talk about bringing on the

1 difficulty. Zachary Lynch didn't talk about bringing on
2 the difficulty. Dr. Ross didn't talk about bringing on
3 the difficulty. Neither did Chauncy Meggett. So how
4 does the defendant get around that? How does the
5 defendant say that this new evidence proves beyond a
6 preponderance of evidence that the defendant did not
7 bring on the difficulty? And it's the State's contention
8 that it doesn't.

9 State versus Curry, Your Honor, 406 South Carolina
10 364, 2013 Supreme Court case, in that case, Your Honor,
11 you had witnesses on both sides of the issue, people
12 saying this and people saying that in direct
13 contradiction of each other. After looking and analyzing
14 immunity, the Court said that a murder defendant was not
15 entitled to immunity from prosecution under the
16 protection of the Persons And Property Act where the
17 testimony of the defendant and eye witnesses was in
18 direct conflict as to whether the victim attacked
19 defendant. That's exactly what we have here. That is a
20 quintessential -- I didn't pronounce that right --
21 quintessential jury question.

22 Number three, Your Honor, and I didn't explain it
23 well enough, it's in my last argument, in the trial that
24 was a mistrial it was 11 to one for guilt for murder. In
25 the jury charge that Judge Griffith read to the jury he

1 did include the presumption of 16-11-440(A). He read
2 that under the code of laws entitled in The Defense Of
3 Persons And Property Act a person is presumed to have
4 reasonable fear of imminent peril or death or great
5 bodily injury and it goes on to cite the rest of that.
6 Beth Bettini testified in that trial. Zachary Lynch
7 testified in that trial. Dr. Ross testified in that
8 trial. And I believe the defendant stated earlier that
9 Chauncy Meggett was here and they chose not to call him.

10 So the jury heard Beth Bettini, Dr. Ross and Zachary
11 Lynch. The jury had an 11 to one vote. Now, I'm not
12 saying that that stops you from analyzing it, but if they
13 have considered all the same information, how can the
14 defendant, and they looked beyond a reasonable doubt,
15 rejected self defense, rejected the presumption of fear,
16 how can the defendant's evidence rise to the
17 preponderance of the evidence now?

18 In conclusion, Your Honor, the State would ask that
19 you deny the motion in itself as there is no precedent
20 that allows for second or multiple immunity hearings.
21 Alternatively the State would ask that you deny the
22 defendant's motion for a second immunity hearing and ask
23 you to adopt the five factor test and to agree with the
24 State that the defendant has failed to establish proper
25 testimony that entitles them to a new hearing. And

1 finally, Your Honor, if Your Honor does believe they
2 deserve a new hearing, the State asks that looking under
3 the facts of the case, in looking at the requirements of
4 the Castle Doctrine and self defense and immunity statute
5 that the defendant has failed in their burden to prove by
6 preponderance of evidence that the act in the self
7 defense principles apply.

8 THE COURT: Thank you, Mr. Graham. Mr. Rutherford,
9 would you like to respond?

10 MR. RUTHERFORD: Just briefly, Your Honor. First of
11 all, noting that this case occurred February 17th, 2014,
12 and nine months later we were having a hearing in a
13 murder case in Lexington County. The Solicitor states
14 that I chose to do so. That is a bold face untruth. We
15 were told that the trial was going to be called and in
16 doing so we needed to go ahead and file our motion so
17 that we could get it heard. Never in the history of
18 Lexington County in my 20 years of practice have I seen a
19 case go from, a murder case in particular, go from the
20 date of incident to trial in nine months and to assert
21 that I did that or that I'm the one that caused that to
22 happen is just absolutely untrue and the Solicitor knows
23 that because he and I talked about it. They chose when
24 to have the hearing, they chose when to schedule it and
25 all of that had to be completed before that date because

1 they were worried that I would go back into session and
2 it would be into the next year before it got tried. It
3 was certainly not on me as to when to call it.

4 The Solicitor relies on Chauncy Meggett. Chauncy
5 Meggett it is clear when he spoke to the Solicitor's
6 Office and Your Honor will recall as I was cross
7 examining Mr. Meggett or as I was having my back and
8 forth with Mr. Meggett, Mr. Meggett didn't remember who
9 he talked to in the Solicitor's Office and when I turned
10 to the Solicitor's Office, they all hung their heads.
11 No one could remember who it was that took the statement
12 from Mr. Meggett, a friend of the victim who stated Cape
13 started banging on Kierin's truck and he was in the
14 wrong. When Cape started banging on his car, Kierin
15 rolled his window down and reached for his knife and
16 after his hand came out of the car, he remembers Cape
17 grabbing his chest and walking to his car with Devon and
18 Bruce. This is Mr. Meggett, and I quote, and this is the
19 Solicitor's Office that took this, how I seen it, I know
20 Cape was in the wrong by the way he approached because
21 old dude was trying to leave.

22 This is a statement taken on August 26th, 2016 by
23 the Solicitor's Office and they are still standing here
24 asserting to Your Honor that they did not have an
25 obligation to the defendant to say, hey, we got a

1 statement from somebody on the victim's side who is
2 saying the victim was wrong. They are continuing to
3 assert that they get to ignore that simply because when
4 that same individual came in and sat on the witness stand
5 in front of the victim's family, he said something
6 different. But this is the statement that they got, not
7 me. They took this. And again, I say they because I'm
8 not sure exactly who. They never offered it up.
9 Investigator Sully I believe was out sick that day so
10 Mr. Meggett could not simply point at him, and it is not
11 clear from the statement as to exactly who took it, but
12 what is clear is Mr. Meggett's own words that they
13 possessed.

14 They handed that over to us right before trial and
15 so right before trial should I have requested a mistrial
16 at that point or asked for a continuance to go dig into
17 Mr. Meggett? Probably so. But also, Your Honor, by not
18 doing so at this point would certainly serve me up for a
19 PCR which certainly should be granted because Mr. Meggett
20 stated to the Solicitor's Office that Cape was in the
21 wrong. But, Your Honor, again, I'm not the only one with
22 obligations. The Solicitor's Office has them, too. They
23 were given a statement by someone standing right there
24 that Cape was banging on the car; that Cape was wrong.
25 And what did they do? They simply handed it over

1 believing that their obligation has ended because my
2 client nine months after this incident had a trial. They
3 continue to assert that the trial is the end when they
4 know it is not. This ended in a mistrial. They continue
5 to try and raise the burden which the burden is given
6 after a trial knowing that this is not after a trial, it
7 is simply after a hearing.

8 And finally, Your Honor, the most offensive part of
9 the Solicitor's rendition of the facts again goes to Ms.
10 Bettini. Ms. Bettini who came in this courtroom and who
11 was visibly angry both times she came in because she was
12 basically called a liar. And the Solicitor continues to
13 call her a liar even though they lost her information.
14 He continues to question what she would have told 911
15 based on nothing but his imagination. It is offensive to
16 an individual who sees something, says something, comes
17 forward and is challenged at every level as to their
18 veracity by someone whose job it is to seek justice. He
19 still doesn't believe her.

20 And by the way, Your Honor, he tells this Court that
21 even after the trial, after the initial stand your
22 ground, what made 911 go back and check again was him
23 calling saying, hey, can you check again. You mean you
24 didn't do that after Beth Bettini told you that she
25 called 911? You didn't to that during the trial when

1 Beth Bettini testified? You waited until after the stand
2 your ground hearing to say that and that's when you
3 called and that's when you're told and you still call her
4 a liar? This woman did nothing but come forward. She
5 has no dog in this. All she did was come forward to be
6 ridiculed by the Solicitor's Office because she said
7 something that they don't want to hear. He continues to
8 challenge how she saw it. Well, that's Investigator
9 Carter's job when he interviews her initially. That's
10 Voravudhi's job when she's talking to her that night.
11 Tell me again. Show me. Because you're an independent
12 witness show me how it happened. That never occurred.

13 I talked to Investigator Carter about this and that.
14 Did you ever go back to them and show them what you've
15 learned since? No. That's their job. It is not the
16 fault of two independent witnesses to come in here and be
17 ridiculed by the Solicitor's Office because the
18 investigator did not do his job. Well, you gave a
19 statement. You didn't say all that in the statement. He
20 didn't ask. You talked to the officer that night. You
21 didn't mention anything about that. She didn't ask. So
22 now again to come in because they didn't do their job and
23 blame two independent witnesses is offensive because they
24 continue to not act as if these people came in of their
25 own volition, no dog in the fight, simply stating what

1 they saw.

2 In fact, Zach Lynch believed that the victim stabbed
3 the defendant. He says, oh, he said the shirt was white.
4 He said his shirt was white. Well, you know, you had
5 three years to ask him what he saw. You had three years
6 to show him the video of the car being surrounded by,
7 surrounded is the word the Solicitor uses, surrounded by
8 these opposing students. Did you do that? No. So who
9 did that? Us. Me. Why didn't they? Why didn't they?
10 This continues to hinge on the fact that this case from
11 the very beginning was flawed and as we delve into it we
12 continue to deal with that flaw until more and more
13 evidence comes out and it allows us literally by the
14 grace of God that he was not convicted. It allows us to
15 go back and look at it under a different lens and in
16 doing so you continue to see things that you didn't catch
17 the first time.

18 This is not about as the Solicitor says finality.
19 This is about justice and justice dictates that they do
20 their job. Justice dictates that they let independent
21 witnesses come in and see and say what they saw and
22 simply ask them questions without trying to push them out
23 of the way. Justice dictates that my client be found
24 immune from prosecution based on the facts and the
25 evidence, not people that have an axe to grind that

1 describe it one way or another, but independent
2 witnesses, the investigator, the doctor, who when they
3 give their rendition it is clear that Mr. Capers was
4 reaching into the car when he was stabbed. Dr. Ross
5 never said that, yeah, it's clear. It didn't happen in
6 the car. No. If it did, this is how it would have
7 happened. As he goes up, the angle of the knife had to
8 go up. That's what she testified to. Investigator
9 Carter says like this (indicating). Well, like this
10 (indicating) means exactly like that (indicating) and if
11 it's like that (indicating), the victim would have had to
12 be leaning over. Thank you, Your honor.

13 THE COURT: All right. Anything further, Mr.
14 Graham?

15 MR. GRAHAM: Briefly, Your Honor.

16 THE COURT: Briefly.

17 MR. GRAHAM: Briefly. As far as a timeline and I
18 honestly don't remember, if Mr. Rutherford says he was
19 forced to have a trial and have a stand your ground
20 hearing at the last minute, I'll concede to that. I
21 don't know -- I honestly don't remember.

22 As far as Mr. Meggett, I got confused about what
23 Mr. Rutherford was saying. He would never have known
24 about Mr. Meggett if we didn't talk to Mr. Meggett and we
25 didn't turn it over so he didn't discover Mr. Meggett.

1 We found Mr. Meggett for him. As far as Mr. Meggett's
2 statement about Cape was in the wrong, when we talked
3 with Mr. Meggett, he said he felt from what he saw that
4 Cape was in the wrong, but he doesn't know that people
5 were almost run over when we asked him that so his -- It
6 isn't a -- It was an opinion based on the little bit that
7 he saw. Cape was in the wrong for going up to the car.
8 That's what it meant. It's not that Cape was in the
9 wrong for anything else that he did and it was only
10 knowing - not knowing that people were almost run over
11 and that Cape was coming to confront the defendant for
12 that.

13 During the testimony when Mr. Meggett was on the
14 stand and Mr. Rutherford was talking to him, Carly Glenn
15 was in the courtroom. We asked him whether he recognized
16 talking to any of us. He did not remember talking to me,
17 he did not remember talking to Ms. Patterson. He looked
18 at her and said, yeah, I remember her. I believe we
19 indicated to Mr. Rutherford, maybe he missed it, that
20 Carly was in the courtroom and he chose not to call her.
21 If he wants to put in the written statement as a court's
22 exhibit for Your Honor to consider of what he could have
23 put Ms. Glenn up to say, yep, this is what he said, we
24 have no objection to that because it doesn't change
25 anything.

1 As far as -- I don't believe Ms. Bettini. I don't.
2 I don't believe Zach Lynch. I think Your Honor is aware
3 of that. I don't think it's my obligation to come in and
4 put every witness and let them tell their story without
5 cross examining them. Beth Bettini had a son who
6 attended class with the defendant. My understanding is
7 Beth Bettini wanted to be important to this case. When
8 she came in and spoke with us and her story didn't make
9 sense and we couldn't confirm at that time that she
10 called, all the stuff that she added was new. We never
11 heard it before. We didn't call her. I don't know why
12 she went to the defense. I don't know whether it was
13 about justice or whether she wants to be involved. She's
14 involved. I still don't believe that she's credible, not
15 because it contradicts the State's story, but it's not
16 credible for the factors that we talked about before.

17 Zach Lynch, I don't know what Zach Lynch saw. I
18 don't believe Zach Lynch saw somebody reaching in the
19 car. He wrote about reaching into another car. That's
20 what he chose to write about that night when they asked
21 him. They asked him for sure and I believe to Ms.
22 Bettini, Voravudhi said, tell me everything. Here's a
23 statement form. Tell me everything. Now they want to
24 come in later and make up all these exciting things that
25 are not included in there. Thank you, Your Honor.

1 THE COURT: All right. Mr. Rutherford, anything
2 else?

3 MR. RUTHERFORD: Nothing, Your Honor. Thank you.

4 THE COURT: Okay. All right. Now listen. This
5 case has been going on long enough and I know,
6 Mr. Rutherford, you have sometimes getting things
7 scheduled with any legislator can be difficult just due
8 to the nature of Supreme Court orders and trying to get
9 things done, but I'm not gonna let this linger for a very
10 long time. It's not fair to everybody involved to let
11 this linger any longer than it needs to. I probably need
12 about one more week to process through everything and
13 process through everything that was said today.

14 I will issue my order in a written order so that you
15 all have a copy of it and I will address all the
16 different issues from whether or not they're even
17 entitled to a hearing in a carry on court to that so that
18 there's a written order in place documenting what I have
19 reviewed and what I've looked at and one of the things
20 that I think we can't miss in this case is - one of the
21 things that I was convinced when this first issue came up
22 in August was we've got to create a record of what these
23 people would have said.

24 I can't -- I nor any Appellate Court nor any PCR
25 Court, and I'm not saying anything about Mr. Dennis in

1 saying appeal or PCR as to his guilt or his innocence,
2 but no one can make any decision on what any of us did
3 was right or wrong without a record existing and what
4 those people were to say so the Solicitor's Office is
5 protected and I believe that they have fully objected to
6 even the testimony being taken and I understand why they
7 did that. I'm not criticizing them for that, but I
8 believe as I processed through this in a 20,000 foot view
9 that we would all be remiss and however this case ends up
10 without allowing these people to come in and allowing
11 them to be subject to direct and to cross examination so
12 that the record on any type of immunity under the statute
13 is clear and that it's out there and that it's all out
14 there for whoever to read at whatever point in time as
15 opposed to making decisions in a vacuum.

16 So that's why I did that and that's why I did it
17 that way. I did it that way so that we could be clear.
18 If he is convicted or if there is a PCR or anything else,
19 we're not, everybody in the world is not searching around
20 for these witnesses and trying to get them to figure out
21 years from now what they would have said or what they
22 would have told the judge or what kind of effect would
23 that have had on the immunity judge. So that's the way -
24 why I presented it that way. I wanted everyone to have a
25 full opportunity to hear these witnesses and for the

1 State to be able to cross examine the witnesses and I
2 allow the State to respond with their own witnesses and
3 so I will allow those people to be cross examined as you
4 all know from the last hearing.

5 So I would envision about a week so that would be
6 sometime next week I'll let everybody know my decision in
7 a written order. Thank you all for being prepared.
8 Thank you all for being on time. Thank you all for being
9 ready to go. And anything else, Mr. Rutherford?

10 MR. RUTHERFORD: Nothing, Your Honor.

11 THE COURT: Mr. Graham?

12 MR. GRAHAM: Just everything that we passed up, Your
13 Honor, we'll make a court exhibit I'm assuming.

14 THE COURT: Yes. Absolutely. Yes. Then that's it
15 for today. Okay. Thank you very much. Civil court
16 tomorrow morning at 9:30. 9:30.

17 MR. RUTHERFORD: Did we pass up the exhibit of
18 Chauncy Meggett's statement? Was that included in your
19 packet?

20 THE COURT: Yes.

21 MR. RUTHERFORD: I thought it was, too.

22 THE COURT: Yes. Mr. Meggett gave a -- We're back
23 on the record. Mr. Meggett give a statement to the
24 Solicitor's Office in which he said something, and I'm
25 summarizing, that Mr. Capers was banging on the vehicle;

1 that the defendant was trying to leave. That kind of
2 statement and that was -- Well, I mean, his response to
3 that during the testimony was his response to that, but
4 what he said in that was clear. I'm pretty sure it was
5 made an exhibit.

6 MR. RUTHERFORD: I'm pretty sure it was, too. I
7 just wanted to make sure and the Solicitor wanted to make
8 sure.

9 THE COURT: Yeah.

10 MR. GRAHAM: I didn't remember it being made an
11 exhibit, Your Honor. I just wanted to make sure that it
12 was.

13 THE COURT: Okay. All right. Without any objection
14 it will be. Okay. All right. Thank you all very much.

15 WHEREUPON, THE HEARING WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 18th day of September, 2017.

11 I FURTHER CERTIFY that the forgoing 53 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 16th day of December, 2020.

17

18

19 By:s/Steven E. LeBlanc

20

21 Steven E. LeBlanc, Sr., R.P.R.
22 Eleventh Circuit Court Reporter
23 State of South Carolina.

24

25

1 State of South Carolina)
 2 County of Lexington) Indictment No.: 2014-GS-32-01440
 3 State of South Carolina,)
 4 Plaintiff,)
 5 vs.) Transcript of Record
 6 Kierin Marcellus Dennis,)
 7 Defendant.)
 _____)

8

9 August 19th through 27th, 2019

10 Lexington, South Carolina

11

12 BEFORE:

13 The Honorable Eugene C. Griffith, Junior,
14 Judge, and a Jury

15

16 APPEARANCES:

17 Rick Hubbard, Eleventh Judicial Circuit
18 Solicitor
19 Rhonda Patterson, Assistant State Solicitor
Attorneys for the State/Plaintiff

20

21 Todd Rutherford, Esquire
22 Nicole Simpson, Esquire
Attorneys for the Defendant

23 ALSO PRESENT:

24 Kierin Marcellus Dennis

25

1 THE COURT: Ritner. All right. Mr. Ritner, which
2 attorney?

3 JAMES RITNER: Mr. Rutherford.

4 THE COURT: Did he represent you in a matter?

5 JAMES RITNER: No, sir.

6 THE COURT: Were you involved in a case he was
7 involved in?

8 JAMES RITNER: Yes, sir.

9 THE COURT: Has that matter now ended? Is it over
10 with?

11 JAMES RITNER: I can't answer that, sir. I don't
12 know.

13 THE COURT: You don't know?

14 JAMES RITNER: I don't know.

15 THE COURT: All right. I may have to get more
16 information from you. Tell you what. Step up here real
17 quick and let's listen to you.

18 (Side bar on the record.)

19 THE COURT: Tell me your situation now.

20 JAMES RITNER: Yes, sir. Todd and I are, in
21 absolute candor, I was an Assistant Attorney General for
22 a few years in South Carolina. Todd and I were counsel
23 opposite on a few cases. I can't say that we got a
24 disposition while I was there. I was only there for
25 about two years.

1 he's called by, that's what he's called by.

2 MS. SIMPSON: Thank you, Your Honor. And then as to
3 motion 16, this is regarding the exclusion of the aerial
4 photographs taken by Mike Phipps. It's my understanding
5 that what law enforcement did in this case was
6 subsequent, sometime down the road from a helicopter took
7 aerial photos, however, in those maps if they're
8 intending to introduce them, they have a section where
9 three police cars were lined up, one, two, three and then
10 marked on that map. We would object to that as being
11 both confusing, misleading to the jury, it is not an
12 accurate depiction of anything and does not go to reflect
13 anything in this case.

14 I believe the argument was to show the dimensions
15 and things of that nature, but they have the aerial
16 photographs or Google maps, whatever they use, but to
17 manipulate it by putting police cars lined up at one
18 specific entrance that doesn't have people around it, it
19 doesn't show what actually occurred or not even a
20 re-enactment essentially of what's on the video, that
21 that would be unfairly prejudicial, and like I said,
22 completely misleading and confusing to the jury.

23 THE COURT: I remember those the first time.

24 MR. HUBBARD: Yeah. And here's why they're not only
25 not confusing, but they're absolutely necessary. They

1 MR. RUTHERFORD: So let's make him prove that he did
2 it. That's what's called a burden shifting.

3 MR. HUBBARD. I don't know what I'm asking him to
4 prove. I have no idea.

5 THE COURT: Let me sit on this. I've heard enough
6 talk about the map. I think we can get it resolved.
7 Let's move onto something else. I'm gonna take that
8 under advisement. When we get there, it will be much
9 easier to manage.

10 MR. HUBBARD: And if I could, Your Honor, we're
11 going down the list of their motions. The one about
12 having a Neil v. Biggers hearing, Your Honor, if we're
13 gonna do that for every witness, Your Honor, that's just
14 cross at this point. Really if that was gonna be done,
15 it should have been done a long time ago. All of these
16 kids now, all of them have seen videos, they've seen
17 photos so technically if you're saying has the State done
18 anything at this point to suggest anything, their
19 argument is gonna be, heck, they've been through multiple
20 hearings so I'm really not sure how you even begin to do
21 a Neil v. Biggers. I think it's really gonna come down
22 to cross examination. Did the State show you this. Did
23 the State tell you who to pick out. All those things.
24 It's just cross.

25 MS. SIMPSON: And, Your Honor, if I may, the law is

1 Q. What, if anything, did Deshon Chatman tell you?

2 A. The only thing Deshon Chatman mentioned because he
3 was actually at the game and not at Cook Out, he mentioned
4 seeing commotion between Dutch Fork and Lexington students.
5 He described the students involved from the Lexington side and
6 there was a description that did match the description of Mr.
7 Dennis and he spoke about the vehicle, described the vehicle
8 Mr. Dennis was in and he alleges a statement, he said that he
9 heard Mr. Dennis state meet us at Cook Out. We have something
10 for you in the car. And so he left the game and went the
11 other way.

12 Q. What, if anything, how did he describe Mr. Dennis?

13 A. Dreads that looked as if they were dyed or peroxide
14 on the tips, wearing a dark colored beanie, but he described
15 the either champagne or tan in color Ford Explorer that he was
16 in as well.

17 Q. Did he give any deeper detail on the beanie or
18 anything like that?

19 A. I don't believe he gave too much detail. He said
20 there was some writing on it or looked like a design on the
21 beanie but that's about it.

22 Q. Did you show him pictures of Mr. Dennis?

23 A. I didn't show him pictures of Mr. Dennis. No,
24 sir.

25 Q. Did he say he had already seen his photograph

1 the Internet, anything about the law because that law
2 could be wrong. Just like too many people in the front
3 seat of the pickup truck. Same applies. There's not all
4 good law on the Internet. My job is to give you the
5 proper law in South Carolina as I understand it to be
6 right now. So that's my job. I intend to do it.

7 Now, what else? Don't let anybody influence you
8 outside the courtroom about anything in the case. If
9 somebody approaches you about it and tries to have a
10 conversation with you, let my bailiffs know. They'll
11 bring it to me. I'll deal with it, okay? I think
12 that's all of my preliminary instructions. I ask you all
13 to stand and Ms. Frick will place you under oath.

14 (Whereupon, the jury was duly sworn by the Clerk of
15 Court at 10:10 a.m.)

16 THE COURT: Ms. Patterson.

17 MS. PATTERSON: Thank you, Your Honor. May it
18 please the Court.

19 THE COURT: Yes, ma'am.

20 MS. PATTERSON: Good morning. On February 17th,
21 2014, 18 year old Da'Von Capers, a senior at Dutch Fork
22 High School like many of his classmates came over here to
23 Lexington to a high school basketball game. The game was
24 between Dutch Fork High and Lexington High. It was an
25 exciting game, a riveting game, an intense game, and

1 that's the way it should be because high school rivalry
2 games have existed for hundreds of years. It's a great
3 way to learn sportsmanship and healthy competition. They
4 should be fun. They should be exciting. They should be
5 intense. But one thing they should never be is deadly.
6 But sadly for Da'Von Capers affectionately known by his
7 friends as Cape, it was deadly. Cape had his young life
8 taken away from him at the hands of the defendant Kierin
9 Dennis. Kierin Dennis who let the intensity of a rivalry
10 high school game fill his hostility, his ill will, and
11 his hatred toward the students of a rival high school.

12 It was a high stacks game. Dutch Fork had beaten
13 Lexington High School two and a half weeks prior over at
14 Dutch Fork and they had won again on this night and the
15 defendant for whatever reason couldn't let it go. The
16 defendant who had already graduated just couldn't back
17 down. He couldn't be run off from his own town. He
18 couldn't be disrespected. He couldn't be embarrassed, so
19 he just made one bad decision after bad decision after
20 another bad decision occur, and his bad decisions
21 ultimately led to the death of Da'Von Capers just about
22 an hour after Dutch Fork beat Lexington. This incident
23 occurred here in Lexington at the Cook Out Restaurant
24 over on Main Street.

25 Now, Kierin Dennis is charged with the offense of

1 murder. Murder in South Carolina is defined as the
2 willful, felonious killing of a human being with malice
3 aforethought. Now, Judge Griffith will instruct you
4 later at the end of the trial what the elements of murder
5 are, but I ask you just to listen to the witnesses that
6 take the stand and testify under oath and keep in mind
7 malice can be implied by different circumstances and we
8 will prove malice by not only the actions that the
9 defendant did when he decided to grab that knife and bury
10 it in Cape's chest, but what he also did before and after
11 it happened and you will just see how malicious his
12 decisions were.

13 Now, Judge Griffith will also instruct you that we
14 as the State of South Carolina, we bear the burden of
15 proving this case beyond a reasonable doubt and not by
16 all doubt, but just by a reasonable doubt and in order
17 for us to meet our burden of proof, as I stated you will
18 hear from a lot of different witnesses. Some of them
19 will be former students who went to Dutch Fork who were
20 either at the game, in the school parking lot afterwards,
21 or they were at the Cook Out Restaurant when this
22 incident occurred, and some of them had encounters with
23 the defendant and his friends. Some of them will even
24 say they heard the defendant say meet us at the Cook Out.
25 We got something for you. And boy did he have something

1 for them. He made good on his word. He had a plan with
2 his buddies to start trouble and he didn't stop until
3 trouble was had.

4 You will also hear from law enforcement who
5 responded and interviewed these witnesses. You will also
6 hear what the defendant had to say about the incident,
7 but more importantly you will hear about his actions
8 after he stabbed Cape. You will hear from other agencies
9 that got involved to help investigate this case and also
10 in order to help us meet our burden of proof you're gonna
11 see a lot of pictures. You're gonna see some videos and
12 that will help you decide what actually happened this
13 night. And with the videos we ask that you not only pay
14 attention to the content, but just look at the timing of
15 everything. You will also see the defendant, videos of
16 the defendant in his interview with Detective Carter.
17 Again, study these videos. See his defiance. His lack
18 of remorse. And listen to the story he gives and doesn't
19 give.

20 Now, we ask that you pay attention. Use your common
21 sense. Listen carefully and we're certain that through
22 all of this we will satisfy our burden to show that the
23 defendant and his deadly decisions and without any legal
24 justification committed the offense of murder. Thank
25 you.

1 THE COURT: Thank you, ma'am. Ms. Simpson.

2 MS. SIMPSON: Thank you, Your Honor. May it please
3 the Court.

4 THE COURT: Yes, ma'am.

5 MS. SIMPSON: Good morning. Now, I agree with one
6 thing that the State has said. Rivalries have existed
7 for a very long time be it high school, middle school,
8 college, pro, all sports, football, basketball, soccer.
9 Rivalries are what bring everybody together even when
10 they don't play the sport and with rivalries come the
11 trash talking, a house divided, insults, the ups and
12 downs. One team is the champion this day, the next
13 they're at the bottom. That's the flow of a rivalry, to
14 trash talking, insults and celebration, too. But what we
15 don't have here is a rivalry that caused so much ill will
16 and hostility that Kierin Dennis would plot, premeditate
17 to kill Da'Von Capers. A high school basketball rivalry.
18 It's a game. And remember that. It's a game and for the
19 State to try and place the murder, the purpose, the
20 reason, the motive for this murder on a game is demeaning
21 to the value of human life, not only the life of Da'Von
22 Capers but also that of Kierin Dennis and that is not
23 what the evidence will support here today. That is not
24 what the testimony will show.

25 As a matter of fact, there will be no malice on

1 behalf of really anybody. At the end of the day this is
2 truly a tragedy where ultimately children behaving like
3 children, a situation that escalated to a point where
4 Kierin was in a position where he had no other choice and
5 what that is not is murder.

6 So what happened? Well, as Ms. Patterson stated on
7 February 17th of 2014 there was a basketball game.
8 Numerous basketball games. One of the sports that has
9 probably the most game short of baseball. So again, yes,
10 Dutch Fork got beat at their home arena a week earlier,
11 several weeks and they got beat at Lexington High School.
12 They were defeated. They lost. It is the game. And
13 after the game, and you're gonna hear there were a lot of
14 people at this game because it is a rivalry, so grown
15 ups, not just kids, parents, everyone's there and there's
16 law enforcement, security present at the game no doubt.
17 And there's taunting. You're gonna hear it referred to
18 as jawing back and forth. Hurling insults. Doing dances
19 like the Nana or something like that. Anyway, an insult.

20 Of course, Lexington is taking the brunt of it, but
21 they're also kind of going back and forth. They're not
22 just sitting there doing nothing. They're all talking as
23 kids, as teenagers do, but that is where the basketball
24 game's, I guess, relevance in this case ends. Right
25 there. And even if you believe the witnesses that the

1 State may choose to put up to say, oh, somebody heard
2 meet us at the Cook Out, got something for you, even that
3 won't matter because time passes and Kierin and his
4 friends and I'm just gonna throw out a few names because
5 you're gonna hear a lot of names in this case, but with
6 Kierin's friends it's Keith Adams, Morgan Zander, Will
7 Zander and Keturah Cook fondly referred to as Lucky.

8 So they're kind of in separate cars. They arrive
9 separately, but they're close friends out of the
10 Lexington kids. But, of course, other people are
11 present, and they decide as typical after almost every
12 type of game be it football, basketball, whatever,
13 they're gonna go grab some food and hang out. They go by
14 the McDonald's. It's kind of crowded. Maybe not what
15 they want. They ride past the Sonic. And then let's be
16 clear, they ultimately end up at the Cook Out which at
17 this point was brand new. It was the hot spot back in
18 2014 and what better place for teenagers to go because
19 they're not going to the bars after games. They're not
20 going - and this is a Monday. They're going to hang out.

21 And remember, this did happen in Lexington. So the
22 Dutch Fork kids, they stayed in Lexington and they stayed
23 in massive numbers and a number of them were already
24 present when Kierin and his friends arrive. And you're
25 gonna have that video. And, yes, I agree, review these

1 videos in depth because the video will speak for itself.
2 You will have video of the interior of the Cook Out and
3 the exterior of the Cook Out and pay attention when they
4 walk in. You will hear it's crowded. Now, the Cook Out
5 is small. I don't know how many of you have actually
6 been there, but the interior is pretty small and there's
7 a lot of kids, a lot, and it's loud. People are standing
8 up by the booths. There's a lot of walking around, but
9 nothing is happening. No physical altercations and none
10 happened at the game either. Just remember that. No
11 weapons were brandished at the game. No guns. No knife.
12 No nothing. And nothing happens in the Cook Out. No
13 guns. No knives. No nothing.

14 And so you will watch for a period of about -- let
15 me make sure I have this right -- about 20 minutes. You
16 will see Kierin and those walk in and Morgan and Will,
17 they go to order their milk shakes and kind of just
18 standing in Kierin's group. Over in the corner you will
19 hear the name Michael James which is a very good friend
20 of Da'Von Capers is over there. Now, he's kind of the
21 instigator as I would call him. He's the one up. He's
22 the one who talks a lot, moving around, but still no
23 fists, no blows, no nothing. And in that video, too,
24 Da'Von walks past Kierin at least five times. There were
25 no words back and forth. And as you go through this

1 remember they don't know each other. They didn't know
2 each other before the game. There's no prior beef. This
3 isn't over money, or a girl, or some tawdry history
4 between these two kids specifically.

5 The State wants you believe that Kierin hated every
6 kid that went to Dutch Fork because they were winners
7 that year. But let's focus on the facts, because he and
8 Da'Von had no prior relationship, but at some point in
9 the Cook Out it's clear and based on some of the
10 circumstances from the game, you know, it's kind of like
11 it's a Monday, it's uncomfortable, and even though this
12 is a public place, they are outnumbered. And I'm not
13 talking outnumbered by 12 to 14 people. There's about 30
14 to 40 Dutch Fork kids and maybe more sprinkled with a few
15 Lexington kids. And already they're not stopping,
16 they're hurling insults, calling specifically more
17 towards Morgan and Will, but Kierin decides to walk
18 outside and you will see him on the video and he gets on
19 his phone. He's walking away. It's time to go.

20 Shortly thereafter his friends come out. Michael
21 James comes out beside him and actually gets in front of
22 him. Again, now there's no audio but we kind of know
23 when you walk this way (indicating) Michael James wasn't
24 going towards his car. He turns back around. What's up?
25 Y'all still salty about the game? You know, just egging

1 it on. Egging it on. Man, y'all won. Let it go. We're
2 just gonna go. But the minute he does this (indicating)
3 and Kierin and those are walking towards their separate
4 cars towards the back of the parking lot, swarms of kids
5 come outside and you will see in the video. They all
6 come into the street and not to leave. There's no reason
7 for them to be in that Cook Out parking lot except for
8 one, something is about to go down they think, but it's
9 not something that Kierin has started.

10 Kierin goes to his car and he and Keith, they kind
11 of talk about what are we gonna do. Where are we gonna
12 go. Let's just go home. Well, Morgan and Will are in
13 their cars. Lucky, and at this point the kids are kind
14 of focused on them, calling them fat, hurling insults,
15 cursing. Words I don't even really want to use right
16 now. Insulting Morgan. She's a ho. She's whatever.
17 Three out of a ten. Who knows what was said exactly and
18 y'all just broke because I guess there's some sense of
19 the Dutch Fork kids having more money than the Lexington
20 kids.

21 So at that point Will does something incredibly
22 childish and stupid. He throws money out of his car
23 like, hey, I'm not broke. Here you go. And the kids,
24 they're all still there on that little breezeway.
25 They're all in the street. Some are grabbing, but they

1 were all around Will's car. Now Kierin sees this and
2 comes up towards his friend to see what's going on
3 because like I said, watch that video. And when he does,
4 Will has already gotten out of his car and the kids you
5 will notice immediately start to swarm Kierin's car and
6 they surround that car. Again, you want to fight? What
7 you about? Whatever they're saying and they're pushing
8 on the car. People were in front of the car, the back of
9 the car, the sides at his window and Kierin just sits
10 there.

11 Now, he doesn't say nothing. He says get the F off
12 of my car. Get back. Leave me alone. Things of that
13 nature, but he's not acting aggressively. Like I said,
14 he's not outnumbered by just several people at his
15 window. And be clear, he had nowhere to go at this
16 point. And Da'Von comes up and this is the point at
17 which we're going to ask you to ask yourself how close is
18 too close. How close should a person that you don't
19 know, never met before, no prior history, be allowed to
20 get to your window, your car in a threatening and
21 aggressive manner. Let's be clear. He comes up quick
22 and everything that's already happened, drinks have been
23 thrown, trash at Kierin's car, trays, all the
24 circumstances in this moment and out of everybody Da'Von
25 is the one who gets the closest, who is the most

1 threatening, and even their own witnesses will say he
2 looked scared. Why? Because he was scared. Because he
3 was threatened.

4 And yes, he had a knife in his car because he
5 fishes. He enjoys fishing. He's country. His car is
6 decked out in camo. That's what he does. So this isn't
7 like he stored a gun or had some massive sword or
8 anything and he grabs it because I don't know what I'm
9 gonna do. They're coming after me. I'm outnumbered.
10 Are they gonna pull me out of the car, curb stomp me, and
11 I'm gonna beat up and assaulted. Because they're saying
12 do you want to fight? Do you want to fight? What am I
13 gonna do? If I press the gas, I run over and I hurt a
14 lot of people. Let's be clear. How close is too close?
15 And the stab wound that she talks about being buried into
16 his chest, pay attention to the forensic pathologist when
17 she testifies about that wound because the science of
18 this case is also very important and that is one jab, get
19 away from me. It's not stuck in his chest, but
20 unfortunately it does pierce his heart and his lung and
21 ultimately caused his death. But does Kierin keep
22 stabbing? No. He just wanted him to get away, out of
23 his car, get away from me and he drives off as any scared
24 person would. They certainly aren't going to get out and
25 say, are you okay to the person and the people who were

1 threatening him. He leaves terrified.

2 I want to note, too, here that at this point after
3 Da'Von is stabbed people scatter quickly because he says,
4 oh, I've been stabbed. So at this point kids begin to
5 move out of the way. It's chaos in the parking lot, but
6 there's room for him to leave. He even hits his friend
7 and I don't mean like hit his friend like run him over,
8 but hits his friend trying to get out and he leaves. And
9 again, remember the state of mind because fear is
10 probably the one emotion that evokes one of the most
11 powerful responses as far as physiological and biological
12 as far as just sheer reaction, adrenalin, fear and the
13 need to protect yourself. And our law recognizes that a
14 person has the right to stand their ground and protect
15 his or herself when they are being confronted with an
16 imminent attack. Our law grants us that and Kierin
17 sitting alone in his car had every right and quite
18 frankly no choice but to do what he did.

19 Now again, good morning. My name is Nicole Simpson.
20 And I along with my co-counsel Mr. Rutherford, together
21 we represent Kierin Dennis in this case and this is
22 perhaps going to be my one and only opportunity to
23 address you directly and so on behalf of myself, my
24 co-counsel, and Kierin and his family I want to thank you
25 in advance for your time, your patience, and your service

1 in this case. It's often said that jury service is
2 perhaps the greatest service that a man or woman can
3 render his or her country during times of peace and
4 that's true here today. And when you got your summons in
5 the mail, I'm sure you had a million other things you
6 needed to be doing, that you wanted to be doing, but you
7 came here to serve your duty as citizens and it is an
8 important case and after extensive questioning by the
9 Judge you were chosen after careful consideration by both
10 the State and the defendant to sit as competent qualified
11 jurors to decide the true facts and whether the defendant
12 is guilty or innocent of murder.

13 Now, as I prepared for this case I want to talk a
14 little bit about the burden of proof and briefly about
15 the law because as Ms. Patterson stated, the Judge will
16 instruct you on the law at the end of this case and he is
17 the sole Judge of the law, but the burden of proof rests
18 solely at this table. Just up until about a year ago for
19 almost ten years I was a Solicitor and a prosecutor for
20 Richland, Kershaw.

21 MS. PATTERSON: Objection, Your Honor. She's trying
22 to personalize.

23 THE COURT: She knows you can't personalize.
24 Continue on. Stay away from personal issues.

25 MS. SIMPSON: Let's just say I'm very aware of the

1 resources, the power, the control that exists with both
2 the prosecutors and law enforcement because as stated
3 earlier, every person who comes into this courtroom
4 accused of a crime, charged with a crime, indicted for a
5 crime is presumed innocent and all the choices that lead
6 up to that to include how they choose to present their
7 case, and pay attention to what witnesses they choose to
8 call and especially what ones they don't and I'll get
9 back to that. But the power rests with them and the
10 burden of proof rests with them so you make sure that
11 they prove to you this case beyond a reasonable doubt
12 which has generally been defined as a hesitation to act.
13 If you hesitate to act, that is reasonable doubt.

14 Now, not only must they prove to you the element of
15 murder, the unlawful killing of another with malice
16 aforethought either expressed or implied or inferred and
17 those terms have very specific meanings, malice as she
18 stated, hatred, ill will, nothing that you will see in
19 this case. They also have the burden of disproving that
20 Kierin had the right to stand his ground and protect
21 himself in that car that night and while Ms. Patterson
22 got up here and stated you will be able to hear all the
23 circumstances beforehand and after the fact, the decision
24 of his guilt of murder leads only up to the point of
25 where Da'Von was stabbed. His actions afterwards do not

1 go to prove malice and it just doesn't exist here.

2 This case quite frankly what it is is just as
3 important as what it is not. What it is is tragic, and
4 what it is is a rush to judgment. Kierin was arrested
5 within hours and charged with murder and I submit pay
6 close attention to the way this investigation was
7 conducted.

8 Now, these are very good prosecutors, and Sergeant
9 Carter is a very good investigator, but in this case they
10 got it wrong and that's where you come in because if they
11 got it right all the time, we would never be here in the
12 courtroom in front of you and so you challenge, you
13 question. What did they do? What did they not do? I
14 specifically want to focus on two independent witnesses
15 because we've talked a lot about Dutch Fork and Lexington
16 High School, but there are two people that were out there
17 that day. One's name is Beth Bettini, Goodwin at the
18 time. She just happened to be going through the
19 drive-thru to pick up food. She's the complaining
20 witness who called 911 and was telling, describing what
21 happened. Now, some of those tapes are missing now, but
22 she told the officers, she gave a statement about what
23 she saw, about the fear and how scared Kierin was and
24 more than that Sergeant Carter actually reports to the
25 scene and she's still there. She goes up to him and

1 tells him I just saw. They know each other. They have a
2 personal relationship as far as their kids, their family
3 know each other. Not one question is asked about what
4 you saw and at no point does he ever re-interview her.
5 And what she sees is important in this case because it
6 shows Da'Von as the aggressor.

7 Now, there is also Zachary Lynch who was an employee
8 at the Cook Out who happened to be right over there by
9 the dumpsters when this is going on and has a clear view
10 and a clear line of sight to the cars. He too hangs
11 around and gives his statement and comes in after a long
12 shift and speaks with Sergeant Carter perhaps 5:00 in the
13 morning or so and tells him what he saw. I submit it
14 just isn't consistent with the story the State would have
15 you believe. So pay close attention to who they
16 interview, how they interview, the questions they asked,
17 what they did and did not do. And I promise I'm coming
18 to the end.

19 You know, at the end of this case you will be asked
20 to decide what happened and determine whether or not the
21 defendant Kierin Dennis is guilty of murder. It's often
22 said that truth is the mother of justice and it is your
23 job, your duty here today to find the truth and to seek
24 justice and I submit to you that at the end of this case
25 when my co-counsel Mr. Rutherford comes before you, he is

1 going to ask you for a verdict that the evidence will
2 support and that is Kierin acted to protect himself in
3 self defense and he had no choice so he is not guilty of
4 murder. Thank you.

5 THE COURT: All right. I was here a little earlier
6 than you were so I need a break so y'all step into the
7 jury room and we'll take ten minutes, okay? If y'all
8 want note pads, now is the time to get them because the
9 witnesses will be called shortly. Y'all step into the
10 jury room. Don't talk about the case. About ten
11 minutes, okay?

12 (Whereupon, the jury entered the jury room at 10:40
13 a.m.)

14 (Short break.)

15 BAILIFF: Come to order.

16 THE COURT: Please be seated. Y'all ready?

17 MR. HUBBARD: Yes, sir.

18 MR. RUTHERFORD: Yes, sir.

19 THE COURT: Bring the jury in.

20 MR. RUTHERFORD: Before they come in, I'm sorry. We
21 have some staff over here that needs to get in and out of
22 the courtroom no different than theirs, but can we
23 instruct the bailiffs that when they come, I don't know
24 how they to do it without interrupting. Do they come out
25 of that door?

1 notes say, no, I wrote down he said something else. The
2 notes don't trump memory. It's just something for y'all
3 to consider individually. One doesn't better the other.
4 Some people are auditory learners. They're better
5 listeners than they are writers. The notes may be
6 accurate, but memory is just as good as notes so one
7 doesn't trump the other. I'll explain that to you. Take
8 notes but y'all are not gonna let one set of notes be the
9 end result, okay? All right. Call your witness.

10 MS. PATTERSON: Thank you, Your Honor. The State
11 calls Dr. Sherri Walters.

12 Thereupon,

13 SHERRI WALTERS

14 after having been first duly sworn, testified as follows,

15 THE CLERK: Please have a seat. Once you're seated,
16 state your full name spelling your last please.

17 THE WITNESS: Sherri Antoinette Walters,
18 W-a-l-t-e-r-s.

19 DIRECT EXAMINATION

20 BY MS. PATTERSON:

21 Q. Dr. Walters, where are you employed?

22 A. Lexington High School.

23 Q. How long have you been employed at Lexington High
24 School?

25 A. 15 years.

1 Q. What is your job title?

2 A. I'm an Assistant principal.

3 Q. And have you been an assistant principal all 15
4 years?

5 A. Yes.

6 Q. What are some of your duties as an assistant
7 principal?

8 A. I create the master schedule. I work with currently
9 twelfth grade discipline and I also work with the
10 international baccalaureate program.

11 Q. Back in 2014 what were some of your duties as an
12 assistant principal?

13 A. Pretty much the same. I worked with the master
14 schedule. I create that for our school year. I also was the
15 coordinator of the international baccalaureate program and at
16 that time I was working with twelfth graders.

17 Q. Did you have a lot of interaction with your students
18 on a daily basis?

19 A. Yes.

20 Q. Dr. Walters, I'm gonna show you what's marked as
21 State's Exhibit 6 and 7 for ID only at this time. Will you
22 take a look at 6 and 7?

23 A. Yes. (Witness complies.)

24 Q. Do you recognize what I have handed up to you?

25 A. Yes.

1 Q. Have you had an opportunity to review those CD's?

2 A. Yes.

3 Q. When did you review those CD's?

4 A. This morning.

5 Q. Have you had an opportunity to review copies of
6 those CD's previously?

7 A. Yes.

8 MR. RUTHERFORD: Your Honor, I'm sorry. She showed
9 us the CD's. We objected. It continues. I'm not sure
10 whether she's going to break or she's going to ask Your
11 Honor for a break or whether we need to do that.

12 MS. PATTERSON: He needs to make an objection.

13 THE COURT: Okay.

14 MR. RUTHERFORD: Your Honor, I assume -- I'm not
15 sure exactly what she's doing. She showed them to us and
16 we objected.

17 THE COURT: She was going for identification. If
18 you object, we'll stop and we'll deal with that right
19 now.

20 MS. PATTERSON: Yes, sir.

21 THE COURT: Okay. So your objection is noted.

22 MR. RUTHERFORD: Yes, sir. Thank you, Your Honor.

23 THE COURT: This is on a 403 which we talked about
24 pretrial.

25 MR. RUTHERFORD: Your Honor, I don't know what that

1 original trial because I know Your Honor saw --

2 THE COURT: I think that would be a better way to
3 refer to it, back in '16, or near that time, okay?

4 MS. PATTERSON: And while the jury is still out, I
5 know the defense objected to the video of the high school
6 game. I was gonna get it entered in through this witness
7 as well, Your Honor. The footage of the game is so large
8 so it's on two different CD's. It's on the left side of
9 the gym and the right side of the gym. The entire
10 footage, Your Honor, like I said, is large so it will
11 take a long time to actually show. I wasn't gonna show
12 the entire game. However, what we've done, we've clipped
13 the image of Dr. Walters inside the game so I was gonna
14 have her ID herself as well as the Dutch Fork kids
15 because she is gonna talk about the exit strategy that
16 was executed because of the prior game and the intensity
17 of that game so it's three separate CD's.

18 THE COURT: So the left side, right side, and then
19 there's just a short clip, a portion of it?

20 MS. PATTERSON: Yes, sir.

21 THE COURT: All right. Mr. Rutherford.

22 MR. RUTHERFORD: Your Honor, it's the same pattern
23 that we've talked about starting with Mr. Hubbard leading
24 into this witness. It was so bad that we're gonna be
25 here at the game and this is where this witness was

1 standing. Were you at the game? Yes. I was. As
2 assistant principal you were there? Yes. That's enough.
3 But what they're doing is establishing this pattern that
4 has nothing to do with Mr. Dennis, of bad blood and bad
5 things. If they can relate it to him, maybe, but all
6 they're talking about is exit strategies like this is a
7 terrorist event. This is a basketball game. That's all
8 it is. But they're making it into more. Can you
9 identify Morgan's voice? What are your duties? We need a
10 cop to come in. He recognizes Kierin. Nothing to do
11 with what happened at the Cook Out. This is a basketball
12 game. There was no interaction between Mr. Dennis or Mr.
13 Capers at the game. Zero. This is just we've got to
14 have discipline and he's outside of that line, which he's
15 not, but it leads one to believe that all of this was set
16 up to prevent people like Mr. Dennis.

17 THE COURT: That's all closing argument, weight
18 argument. I agree with you. That's their strategy, but
19 they can introduce it. It's relevant to what happened
20 that night. So there was a heated rivalry. The
21 principal and the school safety officers have to have a
22 plan to manage the game and the students. It's in their
23 plan. I think that's relevant testimony to this case.
24 Cross examination certainly is my client is not involved
25 in this. He's quietly exiting, not causing any trouble.

1 it, all right? Y'all ready?

2 MR. RUTHERFORD: Yes, sir, Your Honor.

3 THE COURT: All right. Bring in the jury.

4 (Whereupon, the jury entered the courtroom at 11:40
5 a.m.)

6 THE COURT: All right. Thank y'all for your
7 patience. We'll continue. So, Ms. Patterson, continue
8 on.

9 MS. PATTERSON: Thank you, Your Honor.

10 DIRECT EXAMINATION CONTINUED

11 BY MS. PATTERSON:

12 Q. Dr. Walters, I think I handed you State's Exhibit
13 number 6 and 7 for identification purposes.

14 A. Yes.

15 Q. And how do you recognize those items?

16 A. Because I viewed them.

17 Q. When did you have the opportunity to view them?

18 A. Today and in 2016.

19 Q. Were you able to identify the female's voice on the
20 CD?

21 A. Yes.

22 Q. Before naming the person who you identified, how
23 much contact did you have with that person?

24 A. For the four years that that person was at our
25 school lots of contact.

1 Q. How often did you hear that person's voice?

2 A. Probably if I had to guess on a weekly basis at
3 least one to two times a week.

4 Q. And have you heard that person's voice under
5 different circumstances?

6 A. Yes.

7 Q. Who did you recognize the voice on State's Exhibit 6
8 and 7 to be?

9 A. Morgan Zander.

10 Q. And, Dr. Walters, did you attend the Lexington/Dutch
11 Fork basketball game at Lexington on February 17th, 2014?

12 A. Yes.

13 Q. As the administrator is that something that you
14 typically do?

15 A. Yes.

16 Q. What was your role at this game?

17 A. For us that night we were administrators -- I'll
18 speak for me. I was administrator and we were there to make
19 sure that everyone had a good time and got out of there safely
20 so crowd control.

21 Q. And were you part - was the exit strategy formulated
22 with respect to the Dutch Fork students?

23 A. Yes.

24 Q. Were you part of that development in formulating
25 that exit strategy?

1 A. Yes.

2 Q. What was the strategy that the Dutch Fork students
3 were supposed to take after the game was over?

4 A. They were to go out, if you look at our gym, you
5 will see the Wildcat mural in the back of the gym facing the
6 back door. They were supposed to go out that far, for us it
7 would have been facing the far right. For them it would have
8 been the immediate exit door. They were to go out that door
9 back in the Hall of Fame area and there's a parking lot that
10 connects to our baseball field and they would have gone
11 through those exit doors and then they would have been able to
12 get to their cars.

13 Q. I think I have something that may help you explain
14 that just a little bit clearer for the jury. I'm gonna show
15 you State's Exhibit --

16 MS. PATTERSON: Your Honor, I'm gonna hand her up
17 State's Exhibits 8, 9 and 10, but I will just seek to
18 publish 10.

19 MR. RUTHERFORD: Without objection.

20 THE COURT: Okay. All right.

21 BY MS. PATTERSON:

22 Q. Do you recognize State's Exhibit 8, 9 and 10?

23 A. Yes, ma'am.

24 Q. What do you recognize those to be?

25 A. 8 is the left side where if you're facing the back

1 of the, or facing the gym towards the back, it would be where
2 we were standing or I was standing and then the right side
3 would be when you see it that's our visiting student section
4 and then the exhibit 10 is the game is almost over and we're
5 standing up just waiting for the final buzzer to ring.

6 MS. PATTERSON: Your Honor, at this time I move in
7 8, 9 and 10 I think without objection.

8 THE COURT: That's the snippet, some short portion
9 of it.

10 MS. PATTERSON: Yes, Your Honor. And, Your Honor,
11 we move to publish number 10.

12 THE COURT: Okay. So the jury understands, the game
13 video out there at the school inside of the gym, 8 and 9,
14 it's a 10 second snippet so y'all don't have to see the
15 whole game to kind of see what's going on.

16 (Whereupon, State's Exhibit #10, snippet of video
17 played.)

18 BY MS. PATTERSON:

19 Q. Dr. Walters, can you kind of point out where you
20 were located during the game?

21 A. I'm right in between these two ladies. There's me
22 where I dipped my head.

23 Q. Once again, can you point to the Dutch Fork student
24 section?

25 A. This is the Dutch Fork or our visiting student

1 section right in here.

2 Q. And how were they supposed to exit again?

3 A. They should have exited this door and then there's a
4 back hall that they can go down and there's an exit right
5 directly to this door or these doors rather back hall and then
6 at the end of that hallway is the parking lot. It's the
7 parking lot that connects to our baseball field.

8 Q. And in this video -- Did you know Kierin Dennis?

9 A. Yes.

10 Q. As you stated you knew Morgan Zander?

11 A. Yes.

12 Q. Does she have a brother at the school?

13 A. Yes.

14 Q. What was his name?

15 A. Will.

16 Q. Did you know someone named Keith Adams?

17 A. Yes.

18 Q. If you can, for the jury, can you point them out if
19 you see them in this clip?

20 A. Okay. That's Will, Keith, Kierin and then Morgan is
21 right in front of them.

22 Q. Dr. Walters, after the game, did you go outside to
23 participate in crowd control or anything?

24 A. Yes.

25 Q. And did anyone in particular come to your attention

1 in the parking lot?

2 A. Well, I usually park my car close to the end facing
3 with the front of the hood facing out so I can just get in and
4 leave and as I was going through the parking lot I actually
5 was passing in front of the vehicle that Will, Morgan and
6 another young man, they were in and they were getting ready I
7 thought to pull out and then right behind them there was
8 another person and they were blowing the horn and so when I
9 went back to see who that was, it was Kierin in the vehicle.

10 Q. Dr. Walters, I'm gonna show you what's been marked
11 as State's Exhibit number 4.

12 MS. PATTERSON: I don't think there's an objection
13 to this.

14 MR. RUTHERFORD: Without objection, Your Honor.

15 THE COURT: State's 4?

16 MS. PATTERSON: Yes, sir. We ask it to be entered.
17 State's 4, an aerial of the high school.

18 THE COURT: Without objection.

19 MS. PATTERSON: Permission for the witness to step
20 down.

21 THE COURT: Absolutely.

22 BY MS. PATTERSON:

23 Q. Dr. Walters, do you remember what area of the
24 parking lot that you were parked?

25 A. Right in this area right here.

1 Q. And by the time you got to or were headed to your
2 car, was the parking lot crowded, empty or somewhere in
3 between?

4 A. Somewhere in between. Most of the vehicles had -
5 they were gone.

6 Q. Okay. You said you saw Will and Morgan Zander?

7 A. Yes.

8 Q. Where were you when you saw them?

9 A. I was coming from, we were standing kind of right in
10 here and then I was walking and it was in this area and I was
11 passing by and, of course, I know them so I stopped to talk to
12 them when I was enroute to my car.

13 Q. Where did you see Kierin Dennis?

14 A. He was, this was Will's vehicle and Kierin was right
15 behind him.

16 Q. What was Kierin doing?

17 A. Honking his horn trying to get Will's attention.

18 Q. What did you do when you heard the horn?

19 A. When I heard the horn, I walked back to Kierin's car
20 and I asked him what do you want and he said he wanted me to,
21 or just to let Will to know to meet him across the street at
22 the store.

23 Q. Did you do that?

24 A. Yes. I walked back over to Will's car and I told
25 him they needed, that Kierin wanted him to meet him at the

1 store, but they really needed to go on over there and go on
2 home because this wasn't a good night.

3 Q. You can have a seat, doctor.

4 A. (Witness complies.)

5 Q. Was there any particular reason why you told them to
6 go home?

7 A. Well, it was, we had just gotten beaten. You could
8 tell that nobody was happy. We hadn't gotten beaten that bad
9 in a long time and it just was a kind of sense of uneasiness
10 in the atmosphere.

11 Q. Dr. Walters, when did you find out something had
12 happened at the Cook Out?

13 A. When I got home that night, I turned on the TV and I
14 actually heard the news. It was on Channel 19 and the news
15 reporter said there had been a stabbing at the Cook Out.

16 Q. And how did that make you --

17 A. I'm sorry (witness crying.)

18 MS. PATTERSON: Beg the Court's indulgence, Your
19 Honor.

20 THE COURT: Yes, ma'am.

21 BY THE WITNESS:

22 A. I felt we had gotten everyone out of the parking lot
23 and off the school site. I just --

24 MS. PATTERSON: Thank you, Dr. Walters.

25 THE WITNESS: I'm sorry.

1 MR. RUTHERFORD: No questions, Your Honor.

2 THE COURT: You may step down, ma'am.

3 MS. PATTERSON: Your Honor, can this witness be
4 excused? They have school starting.

5 THE COURT: I can imagine she's busy this time of
6 year.

7 MS. PATTERSON: The State calls Deshon Chatman.

8 Thereupon,

9 DESHON CHATMAN

10 after having been first duly sworn, testified as follows,

11 THE CLERK: Please have a seat. Once you're seated,
12 state your full name spelling your last please.

13 THE WITNESS: Deshon Chatman. Last name
14 C-h-a-t-m-a-n.

15 DIRECT EXAMINATION

16 BY MS. PATTERSON:

17 Q. Mr. Chatman, where are you living now?

18 A. I live in Los Angeles, California.

19 Q. What are you doing in Los Angeles?

20 A. I'm working on a business dealing with private jets.
21 The place I work in dealing with private jets right now.

22 Q. Mr. Chatman, where did you graduate high school?

23 A. Dutch Fork.

24 Q. What year?

25 A. 2014.

1 Q. I think you have a twin brother?

2 A. Yes.

3 Q. What's his name?

4 A. Devon Chatman.

5 Q. Let's go back to 2014 on February 17. Did you
6 attend the basketball game at Lexington High School?

7 A. I did.

8 Q. Who did you attend the game with?

9 A. Justin Wallas and Waldon Roberson.

10 Q. Do they have nicknames?

11 A. Scooter and Chubb.

12 Q. Who is Scooter?

13 A. Uh, Walter's brother. They're both my brother's,
14 and Walter is one of my, well, Scooter is one of my best
15 friends.

16 Q. So Scooter is Walter and Chubb is Waldon?

17 A. Yes.

18 Q. Who drove to the game?

19 A. I drove.

20 Q. Who won the game?

21 A. Dutch Fork.

22 Q. Deshon, I'm gonna show you what's marked as State's
23 Exhibit 5 and ask you to take a look at this. Do you
24 recognize what's in this picture?

25 A. That's the Dutch Fork student section.

1 Q. And are you present in the Dutch Fork student
2 section?

3 A. I am in the top right corner.

4 Q. Does this fairly and accurately represent the game
5 on February 17th, 2014?

6 A. Yes, ma'am. Happy and excited.

7 MS. PATTERSON: Your Honor, at this time we move
8 State's Exhibit 5 into evidence.

9 THE COURT: Any objection?

10 MR. RUTHERFORD: No objection.

11 THE COURT: No objection to 5.

12 BY MS. PATTERSON:

13 Q. Can you take that pointer and just point out to the
14 jury where you were in this picture?

15 A. I'm in the top right corner laughing.

16 Q. Just press it.

17 A. I'm right here laughing.

18 Q. Okay. And everybody is celebrating?

19 A. Yes. That's me right there, that guy.

20 Q. And, Deshon, after you, after the game was over and
21 Dutch Fork won, do you remember exiting the gym?

22 A. Yes. I do.

23 Q. Now, when you exited the gym, were you able to go
24 outside immediately?

25 A. No. We went through the back doors that was to our

1 right.

2 Q. And I'm gonna show you what's entered as State's
3 Exhibit number 4.

4 MS. PATTERSON: And, Your Honor, permission for the
5 witness to step down.

6 THE COURT: Certainly.

7 BY THE WITNESS:

8 A. (Witness complies.)

9 BY MS. PATTERSON:

10 Q. Deshon, how do you remember exiting out of the
11 game?

12 A. Uhm, so when we exited the game, we went out, from
13 our student section we went to the right. On our right there
14 was a back door, uhm, led into like a big hallway and we sat
15 there for probably like two or three minutes, and then when we
16 exited out, we came from that back door that was back in the
17 school section all the way around and then it kind of brought
18 us to the front doors so there was like a side door that leads
19 basically back to the front and we exited through the front
20 door basically from like coming around.

21 Q. Do you remember where you parked your car?

22 A. I do. I parked it like back here basically like
23 right where this car is right here back there then.

24 Q. When you got to the stairs, did you notice
25 anything?

1 A. Uhm, well, when we got to the stairs, to the top of
2 the stairs, it had already been like probably five minutes
3 after the game was over, I would say five to ten minutes, so
4 when we got to the stairs, our student section, and I got
5 there, what I'm guessing is they were trying to split up the
6 student sections, let Lexington go out first and let us come
7 out the back and bring us back around, split us up. Once we
8 got back around, we got there, the top of the stairs we just
9 kind of hung, we kind of like seen there's like another group
10 of people still hanging around from Lexington.

11 Q. Can you describe the people that was in this
12 group?

13 A. Yes. It was -- I didn't know their names until now,
14 but they had a orange shirt, orange sweater, hoodie, black
15 guy, black beanie, bigger guy, girl, all of them was just kind
16 of hanging around right here at the top of the stairs as we
17 were coming out as we were exiting.

18 Q. Okay. Did you notice, did any of those people have
19 any interaction with any of your classmates?

20 A. Uhm, yes. The guy with the orange sweater, he got
21 into a little argument, confrontation talking trash with
22 Justin Wallas. He was like gradually flowing with the going
23 down the stairs.

24 Q. You say you didn't know these people at the time,
25 but have you since learned who that person's name was?

1 A. I think Keith. I think his name is Keith in the
2 orange shirt.

3 Q. You described a heavier set guy being with him?

4 A. Yes.

5 Q. You described someone with dreads being with him?

6 A. Yes.

7 Q. Have you since learned his name?

8 A. Kierin in dreads and Keith with the orange sweater
9 and I think his name is Will, big, heavy set guy. There was a
10 girl. I don't know her name. I know like the last name is
11 Zander.

12 Q. So how did you proceed out to your car?

13 A. As we were walking down the stairs kind of like
14 right here like over like going, everybody is kind of walking
15 back but we were all like right here slowing just walking and
16 --

17 Q. I'm sorry. I apologize. Going back to the stairs,
18 could you really hear what Justin and Keith were saying to
19 each other?

20 A. I did not hear exactly what they were saying, but I
21 could see them. I was basically, you have two people in front
22 of you, I'm kind of like back a little bit and, uhm, I can see
23 them talking but I couldn't exactly make out what they were
24 saying but I could see them talking. Basically there was a
25 post between them and I was behind, Justin Wallas was on the

1 right side of the post and Keith was on the left side of the
2 pole. They was right beside each other and I was probably
3 like a step or two behind them, but I couldn't exactly hear
4 what they were saying.

5 Q. What else did you see going on in the parking lot?

6 A. Dancing from our school section.

7 Q. Where were they dancing? Where did you see them
8 dancing?

9 A. Gradually we were walking right here dancing,
10 dancing, dancing the whole way. Our little group right here
11 just dancing the whole way.

12 Q. So was it kind of like a constant moving?

13 A. Yes. Constant, slow flow, dancing, slowing walking
14 through the parking lot.

15 Q. Did you stop and pay attention to the dancing?

16 A. Personally we did not stop. I was already like -
17 basically just along with the crowd. As they were dancing I'm
18 just walking with them. Like I'm not dancing so I'm just
19 walking.

20 Q. Did you make it to your car?

21 A. Yes. I made it to my car.

22 Q. And the two people that were riding with you Walter
23 and Waldon, were they right there beside you when you got to
24 the car?

25 A. Uhm, no. They were a little bit behind me. I was

1 in a rush because I had to pick up my mom so I was trying to
2 get, telling them to come on. They was walking real slow.
3 They was in the crowd dancing so I was moving. As I was
4 moving, they're a little behind me.

5 Q. At some point did they catch up and come towards
6 your car?

7 A. Uhm, yeah. Slowly. Gradually.

8 Q. What did you see going on?

9 A. Uhm, so when I was at my car, when I actually got to
10 my car, they was, Chubb was talking to a girl probably up
11 around here and me standing all the way at my car at the
12 corner. I backed in so I was at the right left headlight. I
13 was standing there and I seen Chubb and the girl talking and I
14 noticed she was walking this way. Chubb was walking this way.
15 And he was walking to my car. She was walking towards her way
16 and so Chubb was back here, students a little bit ahead of
17 him. I was already at my car. He was already talking with
18 the girl having a conversation and Scooter kind of backed up,
19 went back and trying to grab his brother and telling her to go
20 ahead on and telling him to move on with me because I had to
21 go. Uhm, they both basically gradually came and got in my
22 car.

23 Q. At any point did you hear or see someone from her
24 group come up to Chubb or Walter?

25 A. Well, with his group, or their group the girl was

1 talking right here and his car is over here.

2 Q. You're saying "his", who?

3 A. Kierin's car is right here. I was right here. My
4 car is here. I was at my car observing everything. I was
5 just standing there looking at them trying to make them come
6 on, looking at her so basically kind of had this whole view of
7 this area and everything that was happening. I wasn't moving.
8 That's when I heard Kierin shout out meet us at Cook Out. We
9 got something for you. Because I'm looking directly at him
10 when he said it, seen him shout it and looking at her walking
11 to the car and looking at Chubb slowly walking to me. All
12 this happened at the same time, a constant flow.

13 Q. Have a seat.

14 A. (Witness complies.)

15 Q. So how far away were you when you heard the
16 defendant shout out meet us at the Cook Out, we got something
17 for you?

18 A. About where his table is, but like me being where he
19 is, where this guy is to about where his table is. If you see
20 basically like a lane, like a school, like a school parking
21 lot, about that distance.

22 Q. Okay. Did you have any problems observing who said
23 those words?

24 A. Say that again.

25 Q. Did you have any problem observing who was saying

1 this?

2 A. Oh, no. Not at all.

3 Q. Did you ever see a police officer come up?

4 A. Yes. He did come up. He was in the middle of the
5 lane.

6 Q. And did Walter and Waldon, did they finally make it
7 to your car?

8 A. Yes.

9 Q. Did you go to the Cook Out?

10 A. I did not go to the Cook Out.

11 Q. Other than the passengers in your car, did you have
12 a conversation with anybody about the Cook Out?

13 A. Yes. Alexis Brunson and Taylor Bianchi.

14 Q. Did you call her? Did she call you?

15 A. Alexis, uh, called me about, about the time I got
16 out of the parking lot of Lexington, made that right, uhm, she
17 called me. Uhm, I was taking the back way home, well, back
18 way to Dutch Fork. Uhm, she called me.

19 Q. What did you tell her about gonna to the Cook Out?

20 A. Uhm, well, she asked me, called me and the first
21 thing she was like what is the move for the night? What are
22 we doing tonight? And, uhm, the first thing I said is go
23 home. Go to Friarsgate. That's first thing that came out of
24 my mouth. Go to Friarsgate. And like I said, I don't, I
25 don't know why I said that. It's just like a feeling I had,

1 but it was just like the first thing that popped out of my
2 mouth. Just go to Friarsgate.

3 Q. Did you know she -- Did you and her have a
4 conversation about the Cook Out in particular?

5 A. Uhm, when I said go to Friarsgate and then she was
6 like, you know, --

7 MR. RUTHERFORD: Your Honor, he can't give both
8 sides of the conversation. I kind of allowed hearsay at
9 first but the...

10 THE COURT: I'll sustain that so caution him as to,
11 ask him what he said.

12 BY MS. PATTERSON:

13 Q. Yes. Without saying what Alexis said, did you tell
14 her anything about the Cook Out?

15 A. I didn't tell her anything about the Cook Out. I
16 didn't initially, like I didn't say anything about the Cook
17 Out. I just told her to go to Friarsgate.

18 Q. Did you know something about her going to the Cook
19 Out?

20 MR. RUTHERFORD: Your Honor --

21 BY THE WITNESS:

22 A. I can state what she said in the conversation.

23 THE COURT: No. No. Hold on. Sustain the
24 objection. Rephrase your question. I don't think he
25 understands what he can't say.

1 MR. RUTHERFORD: And, Your Honor, if she can stop
2 the leading.

3 BY THE WITNESS:

4 A. I can't say what she said?

5 THE COURT: Hang on. You hush. Let her ask the
6 questions. Sustain the objection. Rephrase your
7 question.

8 BY MS. PATTERSON:

9 Q. Other than the people in your car, did you have a
10 conversation with anybody about the Cook Out?

11 A. Yes.

12 Q. Who was that person?

13 A. Alexis Brunson.

14 Q. What did you tell her about the Cook Out?

15 A. I told her to not to go. To go to Friarsgate.

16 Q. Why did you tell her that?

17 A. Because I had a bad feeling like something wasn't
18 gonna be good that night.

19 Q. Deshon, did you know Da'Von Capers?

20 A. I did. I knew him since second grade. One of my
21 bestest friends.

22 Q. When did you find out about what happened that
23 night?

24 A. Uhm, on the way -- Well, I had already dropped off
25 Walter and Waldon, and I was on the way picking up my mom.

1 Q. What did you do after that?

2 A. Uhm, Collin James called me and told me what
3 happened and the first thing I did was call or text my dad or
4 call my dad to get Da'Von's dad's number at the time and then
5 I called up his dad and told him.

6 Q. And where did you do after you had that conversation
7 with his dad?

8 MR. RUTHERFORD: Your Honor, objection.
9 Relevance.

10 THE COURT: What was the question again?

11 MS. PATTERSON: What did he do after he had the
12 conversation with Da'Von's father about what happened.

13 THE COURT: I'll allow that. Objection noted.

14 BY THE WITNESS:

15 A. After I had the conversation with him, I had told
16 him to go to Richland, Richland Hospital because that's what I
17 had received information from and that's where I went, too,
18 and then, uhm, after receiving that, I went down there and he
19 wasn't there. No one was there and my mom was like maybe he
20 went to Lexington, then I went to Lexington.

21 BY MS. PATTERSON:

22 Q. When you got to Lexington, what happened?

23 A. When I got to Lexington Hospital, uhm, I had parked
24 the car. Uhm, I let my mom do whatever. I ran in.

25 MR. RUTHERFORD: Your Honor, again, objection.

1 Relevance. This is after the Cook Out after he's already
2 called.

3 THE COURT: I'll sustain that one.

4 BY MS. PATTERSON:

5 Q. Just one question. When did you find out Cape had
6 passed away?

7 THE COURT: I'll allow that.

8 MR. RUTHERFORD: He already did that. He's already
9 testified to that.

10 THE COURT: I don't think he has.

11 MR. RUTHERFORD: That's when he called his father.

12 THE COURT: I don't think I've heard that yet so...

13 BY THE WITNESS:

14 A. I didn't know when I called his father, that he -
15 anything. I just knew that he got stabbed. That's all I knew
16 when I called his dad. When I got to the hospital after going
17 to the wrong hospital, when I got to Lexington Hospital, I
18 seen the white Cadillac his dad drives parked in the middle of
19 the road with hazards on. When I got there, I knew he was
20 already there and so I walked in trying to talk to the lady to
21 let me back there. That's when me and his brother actually
22 showed up.

23 MR. RUTHERFORD: Your Honor, again --

24 BY THE WITNESS:

25 A. I didn't find out that he was --

1 THE COURT: Hold up. She asked you when did you
2 find out. You're not answering the question. Just
3 answer the question. When did you find out?

4 BY THE WITNESS:

5 A. I didn't find out until I was sitting there for like
6 a few hours, and I found out that he actually passed on
7 Twitter when people saying RIP.

8 MS. PATTERSON: Thank you. Please answer any
9 questions the defense may have.

10 CROSS EXAMINATION

11 BY MR. RUTHERFORD:

12 Q. When the Solicitor said to you what did you say to
13 Alexis, you said I told her to go to Friarsgate, correct?

14 A. Yes.

15 Q. And then she said what did you say about the Cook
16 Out? And your answer was I didn't say anything about the Cook
17 Out, correct?

18 A. Correct. Not until she said it, oh, I heard about
19 the Cook Out or I heard about Sonic.

20 Q. So when the Solicitor first asked you what did you
21 say about the Cook Out, you meant that you simply didn't say
22 it first, you said it in response to what Alexis said; is that
23 correct?

24 A. Exactly.

25 Q. Okay. And when you testified that you were looking

1 at the entire scene and an officer came between Waldon --

2 A. No. I didn't say that he came between.

3 Q. Tell me what happened.

4 A. I said that the officer came and was telling people
5 to go to their cars. He didn't come between them two, but as
6 a crowd, people, he was splitting up the whole crowd of
7 people.

8 Q. Do you remember that officer pulling his Taser?

9 A. Yes.

10 Q. Who did he point it at?

11 A. He didn't point it at anyone. He was pointing it to
12 the ground waving it.

13 Q. He was pointing it to the ground and who was he
14 talking to at the time?

15 A. Everyone.

16 Q. Who is everyone?

17 A. Everyone that was in the parking lot. All of the
18 students.

19 Q. So you're watching as Waldon and his brother are
20 standing there, correct?

21 A. Yep.

22 Q. And Kierin is on the other side?

23 A. They're not standing. They're flowing walking to my
24 car.

25 Q. They're walking to your car?

1 A. Yes.

2 Q. And Kierin is on the other side, correct?

3 A. Kierin is at his car.

4 Q. Where is the police officer?

5 A. The police officer is to the right of me in the
6 middle of the lane not of me but if we're standing, if my car
7 is here, I'm at my car, say this is my car, I'm at the right
8 taillight - or the left taillight. The officer is in the
9 middle of the lane over here to the right. Kierin is at his
10 car to my left diagonal. The officer is flowing with everyone
11 that's dispersing to their cars.

12 Q. So do you remember the officer yelling at people to
13 stop and telling them to go home? Do you remember that? Yes
14 or no?

15 A. I don't remember him yelling at anyone, but I
16 remember him telling everyone to go home, waving his Taser and
17 saying, oh, disperse to your cars. Go to your cars. Go to
18 your cars.

19 Q. Did you see him pull his Taser from its sheath?

20 A. Yeah.

21 Q. So he walked from the doors of the school all the
22 way back to where you and your friends were?

23 A. There was multiple officers that let us out. All of
24 them was walking with us. They was flowing with us. They
25 wouldn't have just left us just walk to the cars so as we was

1 walking, they was with us.

2 Q. Okay. The officer that you saw pull his Taser out,
3 you're back here, correct?

4 A. Yeah.

5 Q. You saw him pull his Taser out back here, correct?

6 A. Like I said, they were dancing here so he was with
7 the crowd flowing with the crowd. We all split across here.

8 Q. Where did you see him pull his Taser out?

9 A. Right here.

10 Q. So the officer that you saw left the school, came
11 down here, was with other officers here, but didn't have to
12 pull his Taser until right here with you and your friends; is
13 that right?

14 A. Yeah. He had his Taser. It was multiple officers
15 had Tasers out.

16 Q. So where you and your friends were standing, that's
17 where officers pulled their Tasers; is that correct?

18 A. Not directly. When he pulled his Taser out, he
19 pulled his Taser out right here. He already had his Taser in
20 his hand right here. We was flowing. You asked me did I see
21 him pull it out of his sheath? No. I seen him have it in
22 hand like this though.

23 Q. So now you didn't see him pull it out?

24 A. I seen it in his hand.

25 Q. But you didn't see him pull it out?

1 A. Directly pull it out? No. But in his hand waving
2 it, yes.

3 Q. So let's go back. When I asked you before did you
4 seen him pull it out, you said yes. That's not true.

5 A. Well, I seen it in his hand but pulling it out --
6 You trying to ask me did I see him pull it exactly out. No.

7 Q. That was the exact question. No now the answer is
8 no?

9 A. I did not see him pull it out of the sheath.

10 Q. Okay. And you saw that officer back here with his
11 Taser out?

12 A. Yes.

13 Q. You say it was pointed at the ground, correct?

14 A. Yes.

15 Q. What did he say?

16 A. Same thing he's been saying the whole time to
17 everyone, go to your cars.

18 Q. So this officer pulled his Taser and was just saying
19 go to your cars. Who was he talking to?

20 A. Everyone. I just said that.

21 Q. Who is everyone?

22 A. The students. The students that were dancing.
23 Everyone.

24 Q. So I thought the students were dancing up here. You
25 said they were dancing up here.

1 A. Right here. They danced -- If you heard me earlier,
2 I said they were dancing with a flow. It was flowing. They
3 were dancing the whole time flowing so right here to in here
4 they was still dancing.

5 Q. So I can't tell and maybe I'm wrong. Is this the
6 end of the parking lot or not?

7 A. What do you mean end of the parking lot?

8 Q. Is this the last row of cars where you parked in the
9 last row of cars?

10 A. Yeah. Where over where the covering is. The shed,
11 the rain thing.

12 Q. And you and your friends were walking back here and
13 y'all got to this area, correct?

14 A. Mm-hmm.

15 Q. And that is when the officer had his Taser out and
16 was telling y'all to leave; is that right?

17 A. If you're saying y'all, who are you stating is
18 y'all?

19 Q. You tell me.

20 A. Are you saying y'all as in me, as in me and my
21 friends, or y'all as in me and the student section?

22 Q. The student section inside the gym or is there a
23 student section in the parking lot?

24 A. Yes. There is. The student section.

25 Q. So there's a student section in the parking lot?

1 A. Yes. Walking to their cars.

2 Q. Okay. So the students are walking to their cars,
3 correct?

4 A. Mm-hmm.

5 Q. But you and your friends are parked here; is that
6 correct?

7 A. Yes.

8 Q. And you told your friends to come on, let's go,
9 correct?

10 A. Yes.

11 Q. But they were not walking with you; is that right?

12 A. Yes. They were walking behind me. They were
13 walking like I'm in talking distance to them.

14 Q. So the officer was not talking to you when he said
15 to leave, correct?

16 A. No.

17 Q. He was talking to them?

18 A. No. He wasn't talking to them. He was talking to
19 the student section so he wasn't talking to anyone
20 specifically. He was talking to someone, he was talking to
21 the group of people. So when you saying the officer is
22 talking to them or me, they're talking to the group of people.
23 So you can't sit there and say, oh, he was talking to this
24 person or talking to that person. He was talking to a crowd
25 of people so you can't pinpoint one person that he was talking

1 to. It was a crowd of people.

2 Q. So what did the two brothers that you were with,
3 what did they say back to him?

4 A. They didn't say anything back to him.

5 Q. What did they say, period?

6 MS. PATTERSON: Objection. Hearsay.

7 THE COURT: That would be hearsay.

8 MR. RUTHERFORD: Your Honor, the problem is the only
9 person that he heard distinctly is Mr. Dennis. He didn't
10 hear anybody else.

11 BY THE WITNESS:

12 A. And the reason why I heard Kierin Dennis is because
13 I was standing at my car and I actually heard him shout it and
14 say --

15 BY MR. RUTHERFORD:

16 Q. If you would wait until I ask you a question. So
17 again, Mr. Dennis is where?

18 A. At his car. He's standing - my car is here. His
19 car is like right here.

20 Q. And where are the brothers?

21 A. Over here.

22 Q. And the officer would be where?

23 A. Right here in the middle of the lane.

24 Q. Standing between Mr. Dennis and the brothers; is
25 that right?

1 A. No. Can you put it up?

2 Q. You can step down, if you like.

3 A. Yeah. I'll step down. I'm standing here at my car.

4 THE COURT: Speak up so everybody can hear you.

5 BY THE WITNESS:

6 Q. I'm standing right here at my car at the left
7 taillight. The officer is in this lane. Kierin Dennis is
8 right here at his car. They're walking across here. The girl
9 is walking here. So everyone is splitting off. I'm standing
10 at my car standing and observing. I'm literally observing all
11 of it, seeing all of this. I'm seeing the officer over here.
12 I'm seeing them walking to my car. I see a girl walking like
13 this, and I see him over at his car. She's walking to his
14 car. And I literally sat there and watched this whole thing.
15 I'm not moving. I'm observing. And I literally see him and
16 hear him and look right in his face and heard him say it
17 because I seen his body do this (indicating.) And I knew who
18 said it.

19 BY MR. RUTHERFORD:

20 Q. So you looked in his face and you heard him and you
21 watched him say meet us at the Cook Out. We got something for
22 you, correct?

23 A. Exactly.

24 Q. So if you're looking at him, how would you know who
25 he was talking to?

1 A. I knew who he was talking to because he was looking
2 directly at us.

3 Q. So if you're looking at him, he was talking to
4 you?

5 A. She was talking to us, to people that, I guess, the
6 girl. He seen the girl.

7 Q. If you could not guess. Because you said you're
8 over here. You said your friends are over here. You said the
9 officer is here?

10 A. Mm-hmm.

11 Q. But you're looking in his face. His friends are
12 where?

13 A. With him in his car.

14 Q. So they were riding with him?

15 A. Yeah. They were --

16 Q. So his friends are riding with him?

17 A. Literally he was standing at his car probably in the
18 middle, not probably, actually in the middle and they was
19 surrounding him.

20 Q. His friends?

21 A. Like, and they had -- Yes. His friends.

22 Q. And you saw them all get in the car?

23 A. And I seen -- They didn't get in the car. I didn't
24 see them get in the car.

25 Q. So his friends were riding with him? Yes or no?

1 A. I'm gonna guess they were riding with him if they by
2 his car.

3 Q. I'm not asking you to guess.

4 A. Well, I don't know but they at his car. If I see
5 someone actually by the car, I'm gonna guess they're riding
6 with him.

7 Q. Okay. So again, he and all his friends are here?

8 A. At his car.

9 Q. And the officer is standing between you and Kierin
10 or between --

11 A. Right here. Right here.

12 Q. -- you and your friends?

13 A. Right here.

14 MS. PATTERSON: Your Honor, we've asked and answered
15 this.

16 BY THE WITNESS:

17 A. Right here. You keep saying the same thing. I'm
18 telling you where he was standing. He's been standing right
19 here.

20 MR. RUTHERFORD: Your Honor, you can't see his laser
21 pointer, but if you see it, it goes like this
22 (indicating.)

23 BY THE WITNESS:

24 A. Right here. Because he's like this.

25 THE COURT: That's why he came down there.

1 BY MR. RUTHERFORD:

2 Q. He's walking?

3 A. He's walking.

4 Q. Right. So --

5 A. So I can't say he's standing still because he's not
6 standing still.

7 Q. But my point to you is that when Kierin is at his
8 car with his friends, did you see them get in the car
9 together? Yes or no?

10 A. No. I didn't see them get in his car, but I seen
11 them standing at his car.

12 Q. Okay. And so while you're looking at him, do you
13 know who he's talking to?

14 A. Yes.

15 Q. Who is he talking to?

16 A. He's talking to me and probably Chubb and Walter.

17 Q. So they drove with you?

18 A. Because the reason why I say he was probably talking
19 to us, because he just seen that, oh, the girl and Waldon was
20 talking.

21 Q. So they were talking?

22 A. Yeah.

23 Q. So what were they saying?

24 A. I don't know what they were saying. I said that
25 earlier.

1 Q. So what you can testify to is the only person that
2 you heard clearly was Kierin Dennis?

3 A. Yes. Because he shouted it.

4 Q. Okay.

5 A. Ain't no confusion. You're confused I know.

6 MR. RUTHERFORD: No further questions, Your Honor.

7 THE COURT: All right. Any redirect?

8 MS. PATTERSON: No, sir, Your Honor.

9 THE COURT: You may step down young man.

10 THE WITNESS: Thank you, sir.

11 MS. PATTERSON: We ask this witness be excused.

12 THE COURT: Sir.

13 MR. RUTHERFORD: No objection, Your Honor.

14 THE COURT: Okay. Is this a good time for a break
15 or do you want to do one more witness?

16 MS. PATTERSON: Yes, Your Honor.

17 THE COURT: Okay. Good time for a break. Take an
18 hour and 20 minutes. Maybe come back at 1:45. Y'all be
19 back in the jury room at 1:45. It's 12:25 now. Give you
20 time to get in and out of the courthouse. Can't talk
21 about the case. Y'all be back in the jury room by 1:45.
22 Stand at ease until then.

23 (Whereupon, the jury was released for lunch break at
24 12:25 p.m.)

25 (Lunch break.)

1 broadcast like the other trial was, so I just wanted to
2 give y'all that little bit of information. He worked
3 with me and so did the reporter out here, we had that
4 lengthy trial I've got a little history with this crowd
5 so very glad to have them. They're easy to work with. I
6 let them set up over lunch. Are y'all ready to go?

7 MS. PATTERSON: Yes, sir, Your Honor.

8 THE COURT: Call your witness.

9 MS. PATTERSON: Thank you, Your Honor. The State
10 calls Waldon Roberson.

11 Thereupon,

12 WALDON COLOGNE ROBERSON

13 after having been first duly sworn, testified as follows,

14 THE CLERK: Please have a seat. Once you're seated,
15 state your full name spelling your last please.

16 THE WITNESS: Hello. My name is Waldon Cologne
17 Roberson.

18 DIRECT EXAMINATION

19 BY MS. PATTERSON:

20 Q. Spell your last name for the record.

21 A. R-o-b-e-r-s-o-n.

22 Q. And, Waldon, I think you have a nickname. What's
23 your nickname?

24 A. They call me Chubb, C-h-u-b-b.

25 Q. And, Waldon, Where did you graduate high school?

1 A. Dutch Fork High.

2 Q. What year did you graduate?

3 A. 2016.

4 Q. In 2014 what year would that have been for you?

5 A. Tenth grade year.

6 Q. Did you attend the game of Dutch Fork High and
7 Lexington High School over here in Lexington?

8 A. Yes, ma'am. I did.

9 Q. And who did you come to the game with?

10 A. Going to the game I rode with my friends. It was
11 two of them. Their names are Emajah and Marshon.

12 Q. I'm gonna show you what's been entered as State's
13 Exhibit number 5. I'll stand up here so you can point out to
14 the jury and just identify yourself in this picture.

15 A. Right here (indicating.)

16 Q. So you have changed your appearance a little bit,
17 right?

18 A. Yes, ma'am.

19 Q. So that's you sitting in the Dutch Fork student
20 section?

21 A. Yes, ma'am.

22 Q. And what was going on with you in this picture, do
23 you remember?

24 A. In that picture it looks to be I was chanting for my
25 school.

1 Q. And how was the atmosphere inside?

2 A. To me it was pretty calm. It was energetic as in we
3 knew we were gonna get a victory so we were pretty hyped.

4 Q. When you exit the game and got to the parking lot,
5 did anything catch your attention?

6 A. There were a lot of loud noises, a lot of people
7 dancing, music playing, so it seemed to be pretty much fun so
8 I walked over towards the direction that I was already going
9 to.

10 Q. Where were you already heading to?

11 A. I was heading to my vehicle. Well, it wasn't my
12 vehicle. It was my friend's Deshon Chatman's vehicle and I
13 was riding back with him.

14 Q. Who all was riding back with Deshon?

15 A. My brother and I was riding back with Deshon.

16 Q. Did you know what area he had parked the car?

17 A. It was in the back of the parking lot.

18 Q. As you're heading to the car, what do you do?

19 A. As I was heading to the car, I was really looking
20 for my brother because like I said, I had rode there with my
21 friends but I was leaving with my brother and when I was
22 walking through the parking lot, I seen lots of people
23 dancing, people surrounding people dancing in the middle of
24 the crowd and a lot of chanting and Hoo Ha, which is a
25 dance.

1 Q. Who did you see celebrating?

2 A. I seen a guy Will Sweeper that was from Dutch Fork
3 and I seen a lot of Dutch Fork students surrounding him hyping
4 him up.

5 Q. Did you go over there to see what was going on?

6 A. I did.

7 Q. When you got over there, did anybody stick out to
8 you other than your Dutch Fork classmates?

9 A. There were a specific group of people that stood out
10 to me because I haven't seen them in the Irmo area and it was
11 kind of weird because I just seen them recording things. I
12 seen - I heard some things. I don't really recall what I
13 heard but it was just negative from them. That's what made
14 them stick out a little bit.

15 Q. When you say they, how many people was it that you
16 recall?

17 A. It was like three to four.

18 Q. Can you describe these people each individually?

19 A. Yes. I remember a girl. Uhm, I remember a dude
20 with dreads as well. I remember a big guy, and I think I
21 remember a light skinned dude that was with them with an
22 orange jacket.

23 Q. Now, do you remember the guy with the orange
24 jacket?

25 A. Yes. I do remember him.

1 Q. And did anything about the girl in particular stick
2 out to you?

3 A. Yes. It did stick out to me because I seen her
4 recording. It looked to be recording because I seen a flash
5 from her phone and that's what stuck out and she was, she
6 stuck out because she was walking around with the camera
7 flashing like either is she, uhm, there to, like be there to
8 see the dance or is she there to cause problems and the way
9 she was recording it just seemed like she was causing problems
10 because she's up in the air and there was some words she was
11 saying. I don't really remember, but the recording and the
12 words stuck out to me.

13 Q. And I'm not going to ask you if you heard her say
14 what you heard her say, but you did hear her say some words?

15 A. I recall. Yes, ma'am.

16 Q. Was anyone responding to her?

17 A. Nobody seemed to be paying her any attention.

18 Q. And did you have any further encounters with this
19 girl?

20 A. Yes. My brother did say something to her because
21 like I said, she was recording things and it would seem like
22 in a negative way so he comes up to her like, what are you
23 doing? What are you saying? Why are you doing this? And her
24 people responded, the boy she was with responded to him which
25 recreated a little bit of animosity between that.

1 Q. Did you say something to either one of them?

2 A. I said something to the girl because she was in an
3 argument between my brother. I wouldn't really say it was an
4 argument only because my brother wouldn't really argue with a
5 female. She was just being a little extra so it looked to be
6 an argument and I stepped in like, hey, chill out. None of
7 that. That's when her brother or her friend's brothers came
8 in.

9 Q. When you say her friend's brothers came in, describe
10 those people.

11 A. The guy with the dreads and the big dude. I don't
12 think the dude with the orange jacket came in. That's why I
13 don't really remember him. He didn't come and say anything to
14 my brother after that situation.

15 Q. Where are y'all when all of this exchange is going
16 back and forth? Wait a minute. Let me show you what's been
17 entered as State's Exhibit number 4.

18 MS. PATTERSON: Your Honor, may Mr. Roberson step
19 down?

20 THE COURT: Sure.

21 MR. RUTHERFORD: Your Honor, if the witness could
22 answer the question first before the suggestion is made
23 as to where the witness was.

24 THE COURT: All right. Can you answer the question?
25 Or rephrase your question. Either one.

1 MR. PATTERSON: I'm just asking him where he was and
2 let him point it out.

3 MR. RUTHERFORD: But he didn't say he was outside.
4 That's the problem. The question was, where were you?
5 The witness was about to answer and then she's putting up
6 a map of outside but as we know this was a basketball
7 game and then went to the outside.

8 THE COURT: It did so --

9 MS. PATTERSON: We talked about being in the parking
10 lot.

11 THE COURT: I thought she was in the parking lot
12 already when the girl was filming.

13 MR. RUTHERFORD: But she can say that and then if
14 she does, then fine.

15 THE COURT: Just ask your question again, Ms.
16 Patterson.

17 BY MS. PATTERSON:

18 Q. Mr. Roberson, where were you when you had this
19 exchange with the girl?

20 A. We were out in the parking lot area. You had asked
21 me where at in the parking lot and I was coming to show you.

22 Q. Can you get -- Is the pointer up there? And just
23 keep your voice up for the jury to hear you and the court
24 reporter.

25 A. This is what I remember. This is the school's

1 parking lot. My vehicle was parked, the vehicle that I went
2 to go into was parked in this area in the back of the parking
3 lot area. Where we all walked from was this area. This is
4 how I could see the commotion, all of the things going on
5 right here and my brother was telling me, yeah, we're parked
6 in the back of the parking lot. He could see everyone walking
7 in this direction. So that's what made me go into that
8 direction and look for the car. But I was so happy, me and
9 Deshon, and with the situation that was happening in this
10 area. Like I said we were parked in this area along this row
11 somewhere. I don't remember.

12 Q. Where was all the dancing where you saw her with the
13 phone?

14 A. All the dancing was going on about around here.

15 Q. And as you're making your way to Deshon's car, are
16 you then still constantly moving or something else?

17 A. Everyone was constantly moving. There was no one
18 really standing still. Like I said, there were people
19 celebrating and chanting so there was a lot of movement going
20 on.

21 Q. At some point did you see police officers?

22 A. I seen a group of police officers and they were like
23 kind of standing in the back watching things going on so when
24 the girl and I and my brother and the people has came in and
25 started arguing and stuff, that's really when they started

1 coming and step up and say that, okay, well, this is when we
2 need to go on and see people about their business.

3 Q. Did the officers say something to you and the other
4 group?

5 A. I remember this one officer, he was telling my
6 brother and I to get back to the car because I think he seen
7 what was going on so he came up to us with a Taser pointing at
8 us because he had his Taser gun pointed at us like get in your
9 car, get in your cars and leave, get in your cars and leave.
10 We're like. Hold up. Hey there, uhm, you have that one
11 behind you because there was the boy Kierin with the dreads,
12 he was like hyped up behind him pointing his finger and doing
13 all of this. And we're like watch him. We're straight.
14 Watch him behind you. Because like I said, he was coming on
15 behind the officer and we were just backing up to the cars.

16 Q. And did you make it to Deshon's car?

17 A. Yes. It was literally right there. The car was
18 literally right there. I can step right here and I would be
19 at the car. So like I said, we were all moving. There was no
20 standing still so we were just walking back, walking to the
21 car like, hey, chilling. We got to the car. That's when we
22 kind of really disbursed after he seen that all right, this is
23 our vehicle, we're about to get into it.

24 Q. Have a seat.

25 A. (Witness complies.)

1 Q. Did you know the guy with dreads before this
2 night?

3 A. No, ma'am.

4 Q. Did you have any problems recognizing the people you
5 were interacting with at this time?

6 A. Could you repeat that question?

7 Q. Did you have any problems identifying the people you
8 were interacting with at the parking lot at this time? Were
9 you able to see what they looked like?

10 A. Meaning was I able to recognize my people or
11 recognize the group of people that wasn't in Irmo or wasn't
12 from Irmo?

13 Q. You said you recognized the girl?

14 A. No. I didn't recognize her. I never seen that girl
15 until that night and she stood out because she wasn't a part
16 of the school or the Irmo community.

17 Q. But you were able to describe her and see what she
18 looked like?

19 A. Right. Right.

20 Q. And you said that there was a guy with dreads with
21 her?

22 A. Correct.

23 Q. You were able to see what he looked like?

24 A. Correct.

25 Q. And have you since learned his name?

1 A. Yes. His name is Kierin.

2 Q. When Kierin -- At some point did you hear Kierin say
3 something?

4 A. When we were, when the officer was breaking us
5 apart, not really breaking us, I'm not trying to say it as if
6 in he had to push us apart, but breaking us apart where he was
7 like get to your cars, get to your cars, he was really, like
8 he was behind him saying a whole bunch of gibber jabber and
9 then after everything was said and done and everything was
10 resolved, I heard someone saying, and it was him, saying meet
11 us at Cook Out. I got something for you.

12 Q. Let's back up a second. You said the officer was
13 telling both groups to get to their car?

14 A. He was telling my brother and I get to your car.
15 Get to your car, with the Taser pointed on us as well.

16 Q. Did you hear the officer say something to the other
17 group?

18 A. No. It looked to be that he just turned around and
19 said y'all go ahead. It looked like he knew those people and
20 he didn't really know us so --

21 MR. RUTHERFORD: Your Honor, I'm sorry. It's going
22 into now just speculating as to what the officer knew.

23 MS. PATTERSON: That's fine, Your Honor. I'll ask
24 the question again.

25 THE COURT: I agree. Just rephrase the question.

1 The witness can testify to what she saw, heard, not
2 exactly what somebody else was thinking. So I agree.
3 Sustain the objection.

4 BY MS. PATTERSON:

5 Q. Did you see or hear the officer say something to the
6 other group?

7 A. No.

8 Q. And where were you in relation to Deshon's car when
9 you heard Kierin say meet us at the Cook Out?

10 A. On the passenger side by the mirror in the passenger
11 door.

12 Q. And again, for the last time, what did you hear him
13 say?

14 A. Come to Cook Out. He had something for us.

15 Q. Did y'all leave at this point?

16 A. At that point we had got in the cars and we were
17 like, no, we're not going there. We're not going to Cook Out.
18 Call the friends, call all of them and tell them let's go to
19 Irmo.

20 Q. Did you go to Irmo?

21 A. I did. Deshon, my brother and I, we did go to
22 Irmo.

23 MS. PATTERSON: Mr. Roberson, please answer any
24 questions the defense may have.

25 THE WITNESS: Yes, ma'am.

1 CROSS EXAMINATION

2 BY MR. RUTHERFORD:

3 Q. So to recap what you said, you said that the young
4 lady that you didn't know was recording?

5 A. Right.

6 Q. So you would say that she was in high school at the
7 time, your guess?

8 MS. PATTERSON: Your Honor, objection.
9 Speculation.

10 BY MR. RUTHERFORD:

11 Q. What I'm trying to get to is why you speculated that
12 she was recording in any type of manner except holding up a
13 phone and recording?

14 A. Because like I said her, her vibe, her movement, her
15 person like --

16 Q. Her vibe? Her movement? I'm sorry.

17 A. -- her move, it was showing that, oh, yeah,
18 something is about to go down. Let me record.

19 Q. So a high school kid or a kid holding up a phone and
20 recording comes across to you and your brother as negative; is
21 that right?

22 A. No. Not like that. No, sir.

23 Q. So much so that your brother had to go and have
24 words with her; is that right?

25 A. Wrong.

1 Q. Your brother, you stated, had words with the young
2 lady that was recording, correct?

3 A. Correct.

4 Q. And she was recording and you said you couldn't hear
5 what she was saying or you don't know what she was saying?

6 A. I said I didn't remember.

7 Q. All right. So you don't remember what she said?

8 A. Correct.

9 Q. But you do remember that your brother went and had
10 words with her, correct?

11 A. So much so that he had to go so obviously she was
12 doing something that she didn't really need to be doing that
13 was negative.

14 Q. Like recording. And so --

15 A. In so many words.

16 Q. I'm sorry?

17 A. In so many words.

18 Q. Okay. And so then you all end up closer towards the
19 car you're riding home in; is that correct?

20 A. Correct.

21 Q. And your brother's actions drew the attention of a
22 police officer so much so that he did what with his Taser?

23 A. That the guy pulled out his Taser and was escorting
24 us to the car.

25 Q. He pulled it out. Did you say he pointed it at you;

1 is that correct?

2 A. Correct.

3 Q. So he was pointing a Taser at you?

4 A. Mm-hmm.

5 Q. A police officer was pointing a Taser at you and
6 your brother; is that correct?

7 A. Correct.

8 Q. Can you demonstrate exactly how that --

9 A. Like this (indicating.) Can I?

10 Q. Yes. I'll be you.

11 A. Because this is the thing that I have seen and he
12 was telling us go to your cars. Go to your cars.

13 Q. So he's pointing it at you and you're doing what?

14 A. Go to -- I was like, okay. Hey. That's that hyped
15 one behind you.

16 Q. So you've got your hands up and he's walking towards
17 you still?

18 A. Correct. Like making sure we're escorted to our
19 cars, correct.

20 Q. Where was your ride at the time?

21 A. Right beside us.

22 Q. Who did you ride with again?

23 A. Deshon and my brother.

24 Q. Deshon and your brother. And they're standing right
25 there and your brother has the Taser on him as well,

1 correct?

2 A. Correct. Saying like, hey, we're not the ones.

3 Q. Did he point the Taser at Deshon?

4 A. No. Because Deshon was on the opposite side of the
5 vehicle.

6 Q. Could Deshon see y'all?

7 A. I'm sure he could.

8 Q. So Deshon -- You could see Deshon --

9 A. I could not.

10 Q. -- when you had the Taser on you, correct?

11 A. I could not see anything except the officer and the
12 person that was looking like they were trying to come at me.

13 Q. That being the officer with his Taser pointed at you
14 and your hands in the air, right?

15 A. That being the officer and Kierin coming behind the
16 officer.

17 Q. Where was the young lady?

18 A. She was nowhere to be found after the brothers had
19 came to say what they were gonna say.

20 Q. So when the officer is telling you to back up --

21 A. Mm-hmm.

22 Q. -- go to your car --

23 A. Mm-hmm.

24 Q. -- as he's got a Taser pointed at you, she's gone?

25 A. Well, not back up. Just go to your car.

1 Q. Okay. So go to your car?

2 A. Go to your cars.

3 Q. Go to your cars?

4 A. Get to your cars. Yes. Get to your cars. Get in
5 your car.

6 Q. And the girl who started all of this is gone; is
7 that right?

8 A. I don't see her. I was worried about what was being
9 pointed at me.

10 Q. And then you said that Kierin said, come to Cook
11 Out. We got something for you, while the officer has his
12 Taser on you, correct?

13 A. Correct.

14 Q. And you're trying to tell the officer that he's
15 standing behind you, correct?

16 A. Like, look at his movement. Look at his body
17 movement. I mean, it's looking like he's about to try to -
18 he's putting me in a predicament where I feel like I had to
19 fend for myself.

20 Q. And he's walking behind the officer?

21 A. Right. He's not walking behind. He was
22 (indicating.)

23 Q. So he's not at his car, correct? He's walking
24 behind this officer?

25 A. Correct. Coming towards us.

1 Q. And he's by himself, he and the officer?

2 A. Uhm, the friends was a little bit behind him. They
3 seen what was going on.

4 Q. But the girl is gone?

5 A. From my recollection, yes, sir.

6 Q. Okay. And I'm sorry. You can sit back down.

7 A. (Witness complies.)

8 Q. During this whole entire incident, did you have your
9 phone out?

10 A. No, sir.

11 Q. Did any of your friends have their phone out?

12 A. Phones out as in recording or phones out as in just
13 having your phone out?

14 Q. Having their phones out texting, calling?

15 A. Oh, yeah. My phone was out because I was trying to
16 find where my brother was located.

17 Q. But then once you found your brother, was your phone
18 still out then or did you put it away?

19 A. No, sir. It was put up.

20 Q. So did any of your friends record anything that was
21 going on?

22 A. I don't think so.

23 MR. RUTHERFORD: No further questions, Your Honor.

24 THE COURT: Redirect, Ms. Patterson?

25 MS. PATTERSON: No, sir, Your Honor.

1 THE COURT: You may step down.

2 MR. HUBBARD: The State calls Jason Willoughby.

3 MS. PATTERSON: Your Honor, may this witness be
4 excused?

5 MR. RUTHERFORD: Without objection.

6 THE COURT: He's excused.

7 Thereupon,

8 JASON WILLOUGHBY

9 after having been first duly sworn, testified as follows,

10 THE CLERK: Please have a seat. Once you're seated,
11 state your full name spelling your last please.

12 DIRECT EXAMINATION

13 BY MR. HUBBARD:

14 Q. Officer Willoughby, will you please tell the jury
15 who you are?

16 A. Yes. I am Jason Louis Willoughby.

17 Q. Where do you work?

18 A. I work at the South Carolina Criminal Justice
19 Academy.

20 Q. How long have you been there?

21 A. I've been there a little over two years.

22 Q. Prior to that, where did you work?

23 A. The Richland County Sheriff's Department.

24 Q. Back in February of 2014, where were you working?

25 A. The Richland County Sheriff's Department.

1 Q. Okay. All right. Let me ask you this: What
2 capacity in 2014 were you working at the Sheriff's
3 Department?

4 A. I was assigned as a school resource officer for the
5 Sheriff's Office at Dutch Fork High School.

6 Q. Do you remember covering a game at Dutch Fork or
7 Lexington High School game, played a basketball game?

8 A. I do, sir.

9 Q. Did you typically cover the games for the high
10 school?

11 A. I did not. Not normally.

12 Q. Is this the first one you had done?

13 A. I believe so. I may have done a womens baseball
14 game possibly. I can't remember. But never basketball.

15 Q. After that game, as that game concluded what, if
16 anything, was going on that would involve you and other law
17 enforcement officers?

18 A. Well, that game was a pretty tense game. It was a
19 close game so at the conclusion of it, both fan bases were
20 pretty emotional, pretty hyped up. There was a lot of
21 interaction between them so basically our response was to try
22 to keep those two fan bases separated as best we could and try
23 to channel those fan bases out of the building without
24 incident was the goal.

25 Q. Looking back at that time, did y'all realize that

1 y'all were really unprepared for the reaction that occurred
2 that night?

3 A. Absolutely. That is definitely the case. To put it
4 bluntly we were a little understaffed for that incident which
5 is part of why I was thrust into working that game and that
6 circumstance.

7 Q. Who won that game?

8 A. I believe we won that game. Dutch Fork. I worked
9 at that school.

10 Q. Being a resource officer at Dutch Fork, y'all were
11 known for football?

12 A. That's correct.

13 Q. Lexington often has a good basketball team but this
14 particular game Dutch Fork won?

15 A. Surprisingly.

16 Q. About two and a half weeks later do you remember
17 coming to the Lexington High School auditorium where Lexington
18 High and Dutch Fork played again?

19 A. I do, sir.

20 Q. Now, why would you as a SRO come over? Did you come
21 as a spectator or were you on duty?

22 MR. RUTHERFORD: Your Honor, he already told him why
23 he was there. He said he'd already done it before, and
24 at the womens game as well.

25 THE COURT: Yes. I think he told him the first

1 game. This is the second game rematch.

2 MR. HUBBARD: So I'll rephrase it just to make sure
3 we're all on the same page.

4 BY MR. HUBBARD:

5 Q. Did you come to the Lexington High School game where
6 Dutch Fork came as visitors?

7 A. I did.

8 Q. Were you on duty?

9 A. I was on duty.

10 Q. Now, why did you come to the Lexington game?

11 A. I was asked to attend the Lexington High School game
12 based on the fact that there had been some back and forth
13 between the fan bases at the game that had previously occurred
14 at Dutch Fork High School. Because of that and because of my
15 position as a school resource officer at Dutch Fork they felt
16 it would be good to have me there having prior knowledge how
17 the previous game went and also having a working knowledge of
18 members of our student body and fan base.

19 Q. And do you recall, were you positioned down where
20 the students, Dutch Fork students were during the game?

21 A. That's correct, sir. I was assigned specifically in
22 front of our student body area, that way I could monitor both
23 their reaction to the game and be there as additional officer
24 for Lexington.

25 Q. I'll show you a photograph. Is that you at the game

1 down on the floor?

2 A. That is me, sir.

3 MR. HUBBARD: I offer this in evidence.

4 MR. RUTHERFORD: Without objection, Your Honor.

5 MR. HUBBARD: This will being 12, Your Honor.

6 THE COURT: State's 12 without objection.

7 BY MR. HUBBARD:

8 Q. So this is you standing there looking back at the
9 Dutch Fork students?

10 A. That's correct, sir.

11 Q. During this game when you're watching the students,
12 did you have any problem with any of them?

13 A. No, sir. Not during that game.

14 Q. And the door in the back --

15 A. Yes, sir.

16 Q. -- was that where the students were supposed to
17 exit?

18 A. That was my understanding according to the Lexington
19 County Sheriff's Department plan. Yes, sir.

20 Q. Now, did you leave the students out or did you stay
21 in and kind of herd them?

22 A. Basically stayed in the entrance corralling them
23 making sure they follow the directions being given by
24 Lexington County to head out those doors towards the parking
25 lot.

1 Q. Once you pretty much cleared the auditorium, what
2 was your plan at that point?

3 A. My responsibility had concluded and I was intending
4 to go home at that point.

5 Q. When you walked out, did you go out the front
6 door?

7 A. I did, sir.

8 Q. As you were walking out that front door what, if
9 anything, did you notice?

10 A. I walked out, there were some Lexington County
11 Sheriff's Department deputies there, and then kind of said
12 some hellos, good-byes type thing with some of their officers
13 and then I noticed a crowd had gathered up, sounded like some
14 noise, looked like there was one of the Lexington County
15 deputies was over there in the middle of it kind of like a
16 circle of people forming just kind of stuff giving me the
17 indication there might be an issue, and then I went over there
18 and it sounded like chanting or dancing or something going on.
19 The other deputy was telling them to clear out.

20 Q. Had you ever heard of anything called the Nana, a
21 dance called the Nana?

22 A. Not the Nana. I'm not a very hip guy.

23 Q. Me either. That's why I'm asking.

24 A. Yeah. No. I'm not familiar with the Nana.

25 Q. Did they appear to be kind of dancing and chanting

1 and a lot of noise?

2 A. Yes. That's what it seemed like.

3 Q. The folks doing this, were they Dutch Fork High
4 School kids?

5 A. I recognized Dutch Fork High School students which
6 is why I went in that direction to see if I could assist.
7 Yes, sir.

8 Q. They were just kind of hanging out in the parking
9 lot and you had an officer moving them along?

10 A. Yes, sir. Another deputy was trying to get everyone
11 to disburse.

12 Q. Did you see some Lexington kids out there, kids you
13 didn't recognize?

14 A. There looked to be a small group of Lexington High
15 students or students that were definitely not our students.

16 Q. Did you see any back and forth between that small
17 group and some of the Dutch Fork kids?

18 A. I did. Yes, sir.

19 Q. I'll ask you, I'm not even gonna make you get down,
20 I'll bring up State's number 4. Can just point out the
21 general area, this being the auditorium, whereabouts you saw
22 these kids?

23 A. Most of that was occurring in this kind of area here
24 of the parking lot.

25 Q. Okay. Now, when you went down to assist, what group

1 did you focus on?

2 A. Well, naturally I focused more on our group just
3 trying to see who we had there to make sure they were ours and
4 encouraged them to leave.

5 Q. Did you ever pull your Taser out?

6 A. No, sir.

7 Q. Do you know if any other officer had their Taser
8 out?

9 A. I believe the Lexington County deputy had his Taser
10 out to his side.

11 Q. Did you speak to some of the students you knew?

12 A. I did.

13 Q. What did you tell them to do?

14 A. I told our students that they needed to - that this
15 thing was over, they needed to move along, get in their cars
16 and take their behinds back to Irmo.

17 Q. What, if anything, did you hear come from the group,
18 the small Lexington group?

19 A. As I was approaching, it looked like there was some
20 maybe some pointing, you know, in that direction of some of
21 the Dutch Fork students, something to the effect of, you know
22 where it's at or you know where it is or something like
23 that.

24 Q. Now, if you had heard the name of a specific
25 restaurants or meeting place, what would you have done?

1 A. Notified the local jurisdiction for them to address
2 which would be Lexington County there since it was their
3 organization for the sporting event.

4 Q. But again, what were those words that you
5 remember?

6 A. Something to the effect of you know where that's at
7 or you know where it is. It kind of sounded like that's what
8 was said.

9 Q. Did that come from the Dutch Fork kids or that small
10 Lexington group?

11 A. That came from the group I assume be the Lexington.
12 They were not Dutch Fork students.

13 Q. Can you describe how those folks looked?

14 A. I'm sorry. Say again.

15 Q. Can you describe any of the members in that
16 Lexington group?

17 A. Yes. Two stood out to me. One was a heavier set
18 gentleman, and then the other gentleman was darker clothing,
19 brads, I guess is what the haircut would be called, what I
20 know to be a toboggan or I guess also called a beanie.

21 Q. The fellow that had the toboggan or beanie with the
22 brads, do you see him present in the courtroom today?

23 A. Yes, sir. That would be the gentleman right there
24 next to counsel.

25 MR. HUBBARD: Your Honor, I ask the record to

1 reflect he pointed out the defendant Kierin Dennis.

2 THE COURT: So noted.

3 MR. HUBBARD: Thank you, sir.

4 THE WITNESS: Yes, sir.

5 MR. RUTHERFORD: No questions, Your Honor.

6 THE COURT: You may step down.

7 MR. HUBBARD: Ask him to be excused, Your Honor.

8 THE COURT: Sure.

9 MR. RUTHERFORD: Without objection, Your Honor.

10 MS. PATTERSON: The State calls Johnny Shaw.

11 Thereupon,

12 JOHNNY SHAW

13 after having been first duly sworn, testified as follows,

14 THE CLERK: Please have a seat. Once you're seated,
15 state your full name spelling your last please.

16 THE WITNESS: Hello. Johnny Shaw.

17 DIRECT EXAMINATION

18 BY MS. PATTERSON:

19 Q. Johnny, where did you go to high school?

20 A. I went to Dutch Fork High School, ma'am.

21 Q. What year did you graduate?

22 A. 2015.

23 Q. Did you attend the Dutch Fork/Lexington High game at
24 Lexington on February --

25 A. Yes.

1 Q. -- 17th, 2014?

2 A. Yes, ma'am. I did.

3 Q. Who did you go to the game with?

4 A. I rode with my friend Kody.

5 Q. And was it just you and Kody?

6 A. Me, Kody and Joe in the car.

7 Q. Who drove?

8 A. Kody Imel.

9 Q. Where did y'all go after the basketball game?

10 A. We went to Cook Out to eat in Lexington.

11 Q. When y'all got there, were y'all one of the first
12 group of people there or in the middle or kind of last?

13 A. In the middle I'd say.

14 Q. Did you order anything to eat?

15 A. Me? Yes. I got food.

16 Q. And inside the restaurant did you recognize most of
17 the people inside?

18 A. A couple kids from my school, a couple kids. I
19 didn't know everybody.

20 Q. At some point did you leave out of the restaurant?

21 A. Yes, ma'am.

22 Q. Once you got outside, what did you see going on?

23 A. Just - just a little bit of commotion, people kind
24 of just leaving abruptly. When I got outside just noticed
25 some commotion in the distance. I didn't really pay it any

1 mind or go towards it.

2 Q. I'm gonna show you State's Exhibit number 13 and ask
3 you to take a look at this. Do you recognize the scene that's
4 depicted in that picture?

5 A. Yes.

6 Q. And what do you recognize it to be?

7 A. Parking lot of the Cook Out we were at.

8 Q. Does that fairly and accurately represent the way it
9 looked on February 17th, 2014?

10 A. Yes, ma'am.

11 Q. Does it look like it's been changed or altered?

12 A. No, ma'am.

13 MS. PATTERSON: Your Honor, at this time we move
14 State's Exhibit number 13 into evidence.

15 MR. RUTHERFORD: Without objection, Your Honor.

16 THE COURT: 13 without objection.

17 BY MS. PATTERSON:

18 Q. John, do you see yourself in this picture?

19 A. Yes, ma'am.

20 Q. Where are you?

21 A. (Indicating.) Right there.

22 Q. Do you remember what you are doing when you're
23 standing there?

24 A. Looking at all these people.

25 Q. Did you recognize those people from school?

1 A. Some of them.

2 Q. And what did you see going on outside?

3 A. Couldn't tell at that moment.

4 Q. Did you stand there at that same spot throughout the
5 - did you ever move from that location?

6 A. Yes, ma'am.

7 Q. Where did you go?

8 A. I got into my friend, back into my friend Kody's car
9 expecting to leave.

10 Q. Do you remember where Kody had parked his car?

11 A. If I could like show it somewhere on the screen, but
12 it doesn't - probably around this region back here, you know,
13 this direction.

14 Q. And so at some point did you get inside Kody's
15 car?

16 A. Yes, ma'am.

17 Q. Could you still see or hear what was going on
18 outside once you got inside Kody's car?

19 A. Couldn't hear much, see it all kind of still looked
20 like this, just a bunch of kids gathered around.

21 Q. Are you focused on any particular group at this
22 point?

23 A. No.

24 Q. And so what did you do next?

25 A. Got in my friend Kody's car. At some point started

1 filming with my iPad camera that the school gave me.

2 Q. What made you start recording with your iPad?

3 A. I thought something funny might happen to be really
4 honest, wanted to get it on video, laugh about it later.

5 Q. I'll show you what's marked as State's Exhibit 14.
6 Do you recognize this?

7 A. Yes.

8 Q. What is it?

9 A. Should be a DVD copy of the iPad video.

10 Q. What is this that I'm pointing to?

11 A. My initials.

12 Q. So have you viewed the video?

13 A. Yes, ma'am.

14 Q. Does it fairly and accurately represent what you
15 recorded on your iPad?

16 A. Yes, ma'am.

17 Q. Does it look like it's been changed or altered in
18 any way?

19 A. No, ma'am.

20 MS. PATTERSON: Your Honor, we move State's Exhibit
21 14 into evidence.

22 MR. RUTHERFORD: Fine, Your Honor.

23 THE COURT: State's 14 without objection.

24 BY MS. PATTERSON:

25 Q. And where are you sitting inside Kody's car when

1 you're making that video?

2 A. The middle. The back seat in the middle.

3 Q. Why are you sitting in the middle?

4 A. Just something I do. I wanted to just sit in the
5 middle right then.

6 Q. As you're sitting there in the car, are you
7 observing what's going on in your recording?

8 A. Yes, ma'am.

9 Q. How much of -- Did something happen that you ended
10 up recording and turning over to law enforcement?

11 A. Yeah. Yes, ma'am.

12 Q. How much of it did you actually record?

13 A. A good portion of the commotion. It's a fairly
14 short video clip. I don't really know the whole duration
15 though.

16 Q. When did you realize that someone had actually got
17 hurt?

18 A. When people started yelling about it.

19 Q. And after y'all found out that somebody had been
20 hurt, did Kody stay positioned in that same parking spot?

21 A. We maneuvered a little bit to a different parking
22 spot.

23 Q. Do you see on this picture where y'all may have
24 moved?

25 A. From my recollection somewhere in this region over

1 closer towards the door. I believe we backed in.

2 Q. Do you remember what kind of car Kody was driving?

3 A. No, ma'am. I don't.

4 MS. PATTERSON: Mr. Shaw, please answer any
5 questions the defense may have.

6 MR. RUTHERFORD: No questions, Your Honor.

7 THE COURT: You may step down.

8 MS. PATTERSON: Your Honor, we ask that this witness
9 be excused.

10 THE COURT: Any problem with that?

11 MR. RUTHERFORD: No, Your Honor.

12 THE COURT: You may go.

13 MR. HUBBARD: Your Honor, we're at that point where
14 we need to meet with you.

15 THE COURT: We'll take a break now?

16 MR. HUBBARD: Yes, sir. Remember we had that matter
17 we want to take up at this point.

18 THE COURT: Okay. Good enough. Time for a break.
19 Y'all step into the jury room. Don't discuss the case.
20 We'll be back here shortly.

21 (Whereupon, the jury entered the jury room at 2:35
22 p.m.)

23 THE COURT: All right.

24 MR. HUBBARD: One of the things I wanted to do is
25 we're gonna be calling Brent Carter and we'll play that

1 you get back.

2 THE COURT: I'll do it when I get back. Y'all check
3 them out.

4 (Short break.)

5 BAILIFF: Come to order.

6 THE COURT: Please be seated.

7 MR. HUBBARD: Your Honor, while he's powering that
8 back up, I want to go back to the one that Your Honor I
9 believe last trial allowed this in. We had the argument
10 over lanes and all of that which for us is our purpose is
11 not to show lanes, but width of visual to show that
12 because measurement means whatever to everybody
13 individual. I know 20 feet to me may be 20 yards to my
14 wife. So this just shows width. That's all. As you
15 know the vehicle that Kierin Dennis was driving ended up
16 being up here. There's gonna be a question of did he
17 have room. We just want to show how much room there is.
18 Your Honor let it in last time.

19 MS. SIMPSON: Thank you, Your Honor. May it please
20 the Court. Again, not to belabor the point, but we are
21 in a new trial and due to new strategies we are objecting
22 because this does not fairly and accurately depict the
23 scene and it's confusing and misleading to the jury.
24 Quite frankly we don't know the size of the vehicles, we
25 don't know how much space is in between them, and quite

1 frankly having gone out there, this is not a three lane
2 road and so to put up police cars side by side does not
3 fairly and accurately reflect anything. They continue to
4 talk about dimensions and measurements and width. Crime
5 scene investigators an even themselves could go out there
6 and measure it. They measured everything else in this
7 case. So to put in a map that is clearly misleading, it
8 doesn't - we have the video with the people all around
9 the cars. This doesn't depict that. So, Your Honor, I
10 do not think the probative value substantially outweighs
11 any unfair prejudice and more so than that quite frankly
12 it's just confusing and misleading to the jury and
13 cumulative at this point. I have no objection to State's
14 whatever it will be which is a map that does not include
15 the police cars and the aerial photos that were not taken
16 at the time and practically manipulated by the State and
17 law enforcement to show something that is not a fair and
18 accurate depiction of the actual scene itself. We've
19 already put in a lot of stuff.

20 THE COURT: How is that not fair and accurate?

21 MS. SIMPSON: Because first of all, it's not a three
22 lane road. We don't know the width of the cars. First
23 of all, at no point that night were there three cars
24 lined up like this. None of the testimony is that at
25 all. And quite frankly it's irrelevant at this point

1 since it doesn't show anything relevant to that night
2 especially when they could have just taken measurements.
3 They were out there.

4 THE COURT: That's what his point was. His
5 measurements, people don't under measurements all the
6 time so he wanted to have a visual demonstrative showing
7 of that and say, all right, the road is 27 and a half
8 feet wide. What does that mean to you or me or whoever.
9 It means different things.

10 MS. SIMPSON: The problem here is, Your Honor --

11 THE COURT: I can visualize it.

12 MR. SIMPSON: -- this whole entire case --

13 THE COURT: I can visualize it. I know many people
14 who can't.

15 MS. SIMPSON: The problem is this visualization is
16 not an accurate depiction of even how people would have
17 testified about how they come in and go out of the Cook
18 Out and not knowing the dimensions of the cars and we are
19 in a trial where, you know, inches, feet, everything
20 matters, measurements matter, accuracy matters, and to
21 keep and continuously put up information and evidence
22 that does not fairly and accurately depict anything and
23 except for three police cars where we see two SUV's,
24 maybe three, a car, whatever, and in State's whatever
25 this is, two of them are depicted in it, they're not

1 taken at the same time and they don't accurately reflect
2 any of what we have the best of which is already in
3 evidence and will be in evidence to include still shots
4 and everything else and they do have a map for which I
5 have no objection. Looks like just an aerial map where
6 they have not potentially manipulated the evidence in
7 this case. If they want to go to the crime scene, fine.

8 THE COURT: I think that the jury ought to be
9 allowed to go out there.

10 MR. HUBBARD: And I don't disagree, but until then
11 for an officer to testify -- First of all, nothing is
12 manipulated here. Nothing's been altered.

13 THE COURT: I don't disagree with you. I mean, you
14 have not repaved that road.

15 MR. HUBBARD: Right. And I'm not declaring lanes
16 where they're not, but I'm helping the jury understand
17 and an officer to assist in testifying where a car is
18 positioned in relation to the rest of the road. That's
19 why this is beneficial. It helped in the last trial. It
20 helped both sides last time.

21 MS. SIMPSON: And I believe, Your Honor, he said
22 last time the testimony got into which lane is he in.
23 Was he in lane one, lane two. Kierin's car was here.
24 That is not necessarily Kierin's car. That is not - this
25 is a car that is here, but they also have two other cars

1 beside it and not a group of kids around it. They have a
2 map that shows the area which depicts it, and like I
3 said, if they want to go out to the scene, I understand
4 that, but at this point they've put snippets, they've put
5 pieces, bits and pieces to show things and they could
6 have just measured it.

7 MR. HUBBARD: And they can do that, too.

8 MS. SIMPSON: And, I mean, the road would be the
9 width of this - not even the width of this courtroom.
10 They could have demonstrated it in here.

11 THE COURT: I agree with both of you. I think
12 that's fair. I think it's an accurate depiction. Now,
13 what I don't want is for to keep putting that up,
14 Kierin's car position one, two, three. You can show
15 that. I would like to use one without vehicles to show
16 his car was about here on the video so that will be my
17 caveat.

18 MR. HUBBARD: Sure. Now, as far as what part of the
19 road, can we use it for that? Because that's how this
20 officer is discussing. So, for instance, the last time
21 was Will Zander's car was up in here in the middle of the
22 road.

23 THE COURT: Have we got another picture without
24 those cars there that he can say that? I mean, where you
25 just pointed there's no car there so I think that's fair

1 testimony.

2 MR. HUBBARD: That's fine, Your Honor.

3 THE COURT: You see what I'm saying?

4 MR. HUBBARD: That's fine.

5 THE COURT: It looks to me like those bushes on the
6 pet store side of the drive are close enough to the car
7 doors to where the cars avoid it because there's sand in
8 the road. You can see where they go around that bush so
9 as not to hit it. Cars don't normally travel through
10 there. You can tell. They come closer to the Cook Out.

11 MR. HUBBARD: Yes, sir.

12 THE COURT: It's clear to me that that's a sandy
13 area where cars don't normally drive and the sand is
14 built up there and kind of avoid that bush to not scuff
15 up your car. I don't see how that's not maybe helpful to
16 the defense.

17 MR. HUBBARD: Okay.

18 MS. SIMPSON: Your Honor, there are two we don't
19 have an objection to. I'm just making sure they're not
20 out of order. I don't know if this will be marked as
21 Mr. Hubbard will potentially say this was in the last
22 trial. It is another aerial photo that essentially
23 depicts the same stuff except for only the two police
24 cars are pictured here so with the three getting in and
25 having a clear aerial view at this point it just becomes

1 cumulative.

2 THE COURT: That's fine.

3 MS. SIMPSON: So this can be out.

4 THE COURT: We're very cumulative and so I'm not
5 gonna - I'm gonna rule on cumulative. All of them can
6 come in subject to your objections. You're pointing to
7 the three cars, I understand, but they're all coming in
8 so we can move on, all right?

9 MR. HUBBARD: Right.

10 MS. SIMPSON: Even this one as being cumulative?

11 THE COURT: All of them. Even cumulative. I'm
12 gonna let them in subject to your objection. I've heard
13 enough on those pictures.

14 MR. HUBBARD: All right.

15 THE COURT: I like the videos. I like the jury
16 going out there. I don't know why y'all wouldn't say,
17 Judge, please let us go out there even maybe tomorrow and
18 then come back and testify. I'm good with that.

19 MR. HUBBARD: I'm thinking at end of our case that's
20 what we're looking at doing so after we get the testimony
21 in. Your Honor, I'm gonna go ahead, and these have
22 already been State's 15 through 24, if that's --

23 THE COURT: It's a little bit repetitive but we're
24 gonna keep moving.

25 MR. HUBBARD: So, Your Honor, I'll formally move

1 those in during trial.

2 THE COURT: Subject to the one with three cars put
3 there, subject to defense objections, I'll just say
4 subject to objection. We've made a complete record of
5 that.

6 MR. HUBBARD: Yes, sir.

7 MS. SIMPSON: And, Your Honor, as long as some of
8 the proper foundation is laid for these, I'm assuming the
9 Solicitor will ask the appropriate questions about the
10 photographs.

11 THE COURT: Yes. He should. Okay. Ready for the
12 jury?

13 MR. HUBBARD: Yes, sir.

14 THE COURT: All right.

15 (Whereupon, the jury entered the courtroom at 3:20
16 p.m.)

17 MR. HUBBARD: Thank you, Your Honor. The State
18 calls Sergeant Brent Carter.

19 Thereupon,

20 BRENT CARTER
21 after having been first duly sworn, testified as follows,

22 THE CLERK: Please have a seat. Once you're seated,
23 state your full name spelling your last please.

24 THE WITNESS: My name is Brent Carter,
25 C-a-r-t-e-r.

1 DIRECT EXAMINATION

2 BY MR. HUBBARD:

3 Q. Sergeant, where do you work?

4 A. I work for the town of Lexington Police
5 Department.

6 Q. How long have you been there?

7 A. I started there February of 2006.

8 Q. What do you currently do for the Lexington Police
9 Department?

10 A. I am currently a shift supervisor for the patrol
11 shift.

12 Q. Back in 2014 what were your duties?

13 A. I was assigned to the criminal investigation
14 division.

15 Q. In February, specifically February 17th of 2014
16 what, if anything, were you assigned to do that day?

17 A. I was on-call. I was a detective on-call so during
18 the off hours when detectives weren't in the office in case
19 something happened that required a detective's assistance I
20 would be the one called by the street supervisor that night to
21 come in and help a shift.

22 Q. Do you remember getting a call bringing you into
23 this case involving Kierin Dennis?

24 A. I did. That night I was called I think it was
25 around a quarter to ten that night by the shift supervisor who

1 advised me I needed to come to the Cook Out due to a stabbing
2 that had just occurred. I got there I think 15 minutes later
3 or so, made contact with that supervisor, observed several
4 officers having everything blocked off and various witnesses
5 that the officers had corralled and I just went about my
6 work.

7 Q. How long do you think you were on that scene?

8 A. Oh, on that scene probably would have been an hour
9 or so.

10 Q. Did you have an opportunity to talk to some folks?

11 A. I did, sir.

12 Q. After that, what did you do?

13 A. After I spoke with those individuals, I went back to
14 my agency because I understood that some information had been
15 followed up on from the scene where they were able to locate a
16 possible suspect in the case and I went to that location
17 prepared to conduct interviews to my department.

18 Q. All right. Let's do this. Let's go back to the
19 Cook Out and at some point during the process of investigating
20 this case, you were the lead on this case?

21 A. Yes, sir.

22 Q. So more than you were involved in this case?

23 A. Absolutely.

24 Q. More officers?

25 A. Absolutely.

1 Q. You had assistance?

2 A. Sure.

3 Q. At some point were you able to make contact with the
4 Cook Out Restaurant and obtain video footage from both the
5 inside and the exterior?

6 A. During the investigation we were able to obtain
7 that, sir.

8 Q. I'm gonna show you what's been marked for ID as
9 State's 17, State's 18. Do you recognize these?

10 A. I do, sir.

11 Q. It's the internal, 17 being the internal video of
12 the Cook Out and 18 being the external video?

13 A. Yes, sir. Videos from both inside and outside.

14 MR. HUBBARD: I offer these into evidence.

15 MS. SIMPSON: Without objection, Your Honor.

16 THE COURT: Without objection. That's State's what?

17 MR. HUBBARD: 17 and 18, Your Honor.

18 THE COURT: 17 and 18 without objection.

19 BY MR. HUBBARD:

20 Q. Now, detective, when you got there, there are still
21 a bunch of kids?

22 A. There were several individuals. Yes, sir.

23 Q. And you had a number of officers -- While he's
24 cranking it up, I know if I touch it it will crash, but in
25 looking at the videos that have just been entered in, those

1 were videos from that night?

2 A. Yes, sir.

3 Q. These were the actual store videos, the Cook Out
4 Restaurant videos?

5 A. Yes, sir.

6 MR. HUBBARD: We're gonna look at State's 17
7 beginning in the entrance viewing the interior. Your
8 Honor, I'm gonna ask James Sullivan from my office to
9 assist me in this.

10 THE COURT: I would insist on it.

11 MR. HUBBARD: What's that?

12 THE COURT: I'm gonna insist on it. He's very
13 helpful.

14 MR. HUBBARD: Yeah. Thank you, Your Honor.

15 THE COURT: Mr. Sullivan, he's with most trials I'm
16 involved in. If he weren't there, the trials would just
17 still be difficult.

18 (Whereupon, playing State's Exhibit #17, a video.)

19 BY MR. HUBBARD:

20 Q. All right. Sergeant Carter, can you see from your
21 vantage point what we're looking at?

22 A. Doing my best. Yes, sir.

23 Q. You have a pointer up there I think on the side.
24 Now on the far left, what area of this restaurant are we
25 looking at?

1 A. This here being the actual counter to order and pick
2 up food from the inside. The exit and entrance of the store
3 is right here.

4 Q. See the gentleman in the white shirt. Is that a
5 booth, a table?

6 A. Right here?

7 Q. Yes, sir.

8 A. Yes, sir.

9 Q. Is it a booth?

10 A. It's a booth.

11 Q. Does that booth abut next to the window, the side of
12 the restaurant?

13 A. It is, sir. A window would be on the opposite side
14 of the booth right here.

15 Q. Pretty tight quarters?

16 A. Sure.

17 Q. Sergeant, as you look at this, did you try to locate
18 and discuss and talk to various students that you could
19 find?

20 A. Yes, sir.

21 Q. At this point do you see the defendant at all,
22 Kierin Dennis and his friends?

23 A. Do not.

24 MR. HUBBARD: Your Honor, I'm gonna have him speed
25 it up a touch so we can see when the defendant and his

1 friends come in.

2 THE COURT: Okay.

3 BY MR. HUBBARD:

4 Q. Who do you see walking into the frame at this
5 point?

6 A. It's Mr. Dennis right here.

7 Q. Do you know who's behind him in the green?

8 A. Keturah Cook, Lucky.

9 Q. Behind Keturah, who is that?

10 A. Will Zander.

11 Q. Behind him?

12 A. And that's Keith Adams.

13 Q. Behind him?

14 A. That is Morgan Zander.

15 Q. Who is standing up in the white shirt right there?

16 A. Mr. Michael James.

17 Q. And in this frame, in this shot do you see Da'Von
18 Capers?

19 A. I do.

20 Q. Where is he?

21 A. He's right here.

22 Q. Holding the cup and carrying food?

23 A. I can see the cup, yes, sir.

24 Q. As he approaches see if he's also carrying food.

25 A. He is, sir.

1 Q. He's right there with the defendant?

2 A. Yes, sir.

3 Q. As many times as you have watched this, have you
4 seen any confrontation between the defendant and Mr. Capers?

5 A. No, sir.

6 Q. How long is Mr. Kierin and his friends, Kierin
7 Dennis and his friends in Cook Out approximately?

8 A. It's approximately 15 minutes, maybe a little bit
9 longer.

10 Q. At any time they're in there is there any kind of
11 confrontation or fight?

12 A. No, sir.

13 Q. Now, do you see where they're congregating now? Can
14 you see where the defendant is at this point?

15 A. I do, sir.

16 Q. Can you point him out?

17 A. Standing here.

18 Q. Do you see his friends standing with him? Can you
19 point them out again?

20 A. Yes, sir. That's Mr. Adams, Mr. Zander, Ms. Zander,
21 Mr. Cook.

22 Q. At any point during this 15 minutes or so do they
23 look for a table?

24 A. No, sir. Not that I saw.

25 MR. RUTHERFORD: Your Honor, objection. He can't

1 tell what they're looking at. It's a tiny place. He
2 already said that.

3 MR. HUBBARD: Your Honor, let me rephrase the
4 question.

5 THE COURT: I think rephrasing it would be
6 appropriate.

7 BY MR. HUBBARD:

8 Q. At any time while they're in the restaurant do you
9 see them get a table?

10 A. No, sir.

11 Q. Thank you. As they stand there do you also at some
12 point in time see --

13 MS. SIMPSON: Objection, Your Honor. Just briefly
14 --

15 THE COURT: Wait a minute. Wait a minute. Wait a
16 minute. Y'all can't two on one. One of you have got to
17 handle the witness.

18 MS. SIMPSON: I got it, Your Honor.

19 THE COURT: Okay.

20 MS. SIMPSON: I'm gonna object to the leading at
21 this point. He indicated that Sergeant Carter --

22 THE COURT: Okay. I got that. I'm with you. I
23 know leading. Don't lead.

24 MR. HUBBARD: I'm asking a yes or no. No leading.

25 THE COURT: Okay. Don't lead.

1 BY MR. HUBBARD:

2 Q. At any time do you see other folks come up and talk
3 with Mr. Kierin Dennis or his friends?

4 A. I see a couple of moments where individuals come up
5 to where Mr. Adams is and speak to him. I think at some point
6 someone speaks to Mr. Zander.

7 Q. We bumped it ahead a little bit. You see it's
8 clearing out and there's some girls there?

9 A. Yes, sir.

10 Q. Again, any kind of confrontation?

11 A. No, sir.

12 Q. At this point nobody is ordering food?

13 A. No, sir.

14 Q. We'll bump it up a little bit more. Now, who is
15 standing up and walking there?

16 A. Mr. Capers.

17 Q. Did you see any kind of interaction as many times as
18 you have watched this between him and that Lexington crowd?

19 A. No, sir.

20 Q. As he walks back through again, did you note any
21 issues?

22 A. No, sir.

23 Q. Is that him going there again?

24 A. Yes, sir. He goes back and forth a few times.

25 Q. I'm gonna back it up. I want to see if you can tell

1 us at any time has anybody in that group recognized this
2 camera?

3 MS. SIMPSON: I'm sorry. I didn't hear that last
4 part, Your Honor.

5 THE COURT: What's the entire question?

6 MR. HUBBARD: If he can at any time point out if
7 anybody seems to point out or notice the camera.

8 MS. SIMPSON: Objection, Your Honor.

9 THE COURT: The security camera?

10 MR. HUBBARD: Yes, sir, the security camera.

11 THE COURT: What's wrong with that?

12 MS. SIMPSON: Calls for speculation whether any of
13 these kids seem to acknowledge a camera. He can't
14 testify to that --

15 THE COURT: Why can't he?

16 MS. SIMPSON: -- that they clearly seen or knew
17 beforehand --

18 THE COURT: Why can't he?

19 MS. SIMPSON: -- if there were cameras.

20 THE COURT: I think he can. I'll allow the
21 question.

22 BY MR. HUBBARD:

23 Q. I want you to watch this film footage right here and
24 again, who is the in the black and white right there?

25 A. That's Ms. Zander pointing directly at the camera

1 there.

2 Q. Morgan Zander?

3 A. Yes, sir.

4 Q. Where is her brother?

5 A. Her brother is standing right here.

6 Q. And where is Kierin Dennis?

7 A. He's standing right here to her side.

8 Q. All right. Now watching her brother.

9 A. That's where he turns around and sees the camera as
10 well as she pointed it out.

11 Q. At this point they still haven't ordered food?

12 A. Correct, sir.

13 Q. Now, if we can just jump ahead. Do you see the
14 victim walk by again?

15 A. Yes, sir.

16 Q. So now we're at 16 minutes and 34 seconds. Who's
17 that at the counter?

18 A. That's Mr. Zander.

19 Q. Does anybody in that group approach that counter at
20 any time prior to him going to the counter?

21 A. No, sir. I don't believe so.

22 Q. What does he end up purchasing?

23 A. I believe he gets a drink and a milk shake.

24 Q. Does his sister at some point go up as well?

25 A. She does.

1 Q. Does Mr. Dennis at any time order any food or
2 drinks?

3 A. No, sir.

4 Q. Does his friend Keith Adams in the orange at any
5 time order food or drinks?

6 A. No, sir.

7 Q. Keturah Cook, the one that they call Lucky, does he
8 order any food or drinks?

9 A. No, sir.

10 Q. Who's that at the counter?

11 A. That's Ms. Zander.

12 Q. So just two of them get drinks?

13 A. Yes, sir.

14 Q. I'm gonna show you when they're walking out. Who is
15 that walking toward the door?

16 A. That's Mr. Dennis and then Mr. Adams following
17 behind.

18 Q. That's at 19 minutes and 9 seconds. And then who is
19 that?

20 A. That's the other three individuals, Mr. Cook,
21 Mr. and Ms. Zander.

22 Q. Do they ever come back in?

23 A. No, sir.

24 (Whereupon, the playing of the video stops.)

25 BY MR. HUBBARD:

1 Q. So they were in there, based on that video that's in
2 evidence, about 19 minutes?

3 A. Yes, sir.

4 Q. In going over that interior view what, if anything,
5 did you find? Did you find it significant that anybody was
6 even pointing or looking at a camera?

7 A. Well, it's not a normal reaction.

8 MS. SIMPSON: Objection, Your Honor, as far as to a
9 normal reaction.

10 THE COURT: I'll sustain that.

11 BY MR. HUBBARD:

12 Q. Is that something as a law enforcement officer you
13 felt you needed to note?

14 A. It is. I felt it was note worthy.

15 Q. Okay. Now, Morgan Zander, the woman in black and
16 white, at some point that evening after the stabbing and after
17 Mr. Capers was deceased, did you have an opportunity to talk
18 to her?

19 A. I did, sir.

20 Q. And in talking to her did she provide you video
21 footage from her phones?

22 A. Yes, sir.

23 Q. I want to show you State's ID 6. See if you
24 recognize that.

25 A. I do, sir.

1 Q. Okay. What does this purport to be?

2 A. That's a cell phone video from Ms. Zander from
3 Lexington High School parking lot.

4 Q. And 7, can you tell us what that is?

5 A. That's also cell phone footage from Ms. Morgan from
6 inside the Cook Out.

7 Q. She provided both of these to you?

8 A. Yes, sir.

9 Q. Are these the video clips that Dr. Walters discussed
10 earlier saying that that was Morgan's voice?

11 A. Yes, sir.

12 MR. HUBBARD: I offer these into evidence.

13 MS. SIMPSON: Just for clarification, this isn't any
14 of the altered or slowed down snippets?

15 THE COURT: No. Raw video?

16 MR. HUBBARD: Yes, sir.

17 MS. SIMPSON: Without objection.

18 THE COURT: 6 is the high school and 7 is the Cook
19 Out.

20 MR. HUBBARD: Yes, sir.

21 THE COURT: They're in evidence.

22 MR. HUBBARD: Okay. Your Honor, again, I'm gonna
23 have Mr. Sullivan play State's 6 which is the high school
24 game.

25 (Whereupon, State's Exhibit #6 video played.)

1 BY MR. HUBBARD:

2 Q. Sergeant, again, this is from Lexington High
3 School?

4 A. Yes, sir.

5 Q. After the basketball game?

6 A. Yes, sir. That's in the parking lot after the
7 basketball game.

8 Q. What are you hearing there?

9 A. "When are we swinging."

10 Q. "When are we swinging"?

11 A. Yes, sir. And the scene.

12 Q. And that was Morgan's voice?

13 A. Yes, sir, as attested to through the previous
14 witness.

15 (Stopped playing video.)

16 BY MR. HUBBARD:

17 Q. And "swinging", Sergeant Carter, is that fighting?

18 MS. SIMPSON: Objection, Your Honor.

19 MR. HUBBARD: I'm not asking him to speculate.

20 MS. SIMPSON: It is with respect to -- It's improper
21 characterization.

22 THE COURT: I'm gonna sustain her objection. There
23 was a lot of commotion on that.

24 MR. HUBBARD: I can rephrase it, Your Honor.

25 THE COURT: Try to rephrase that.

1 BY MR. HUBBARD:

2 Q. How does Morgan characterize that, fighting, dancing

3 --

4 MS. SIMPSON: Objection, Your Honor.

5 BY MR. HUBBARD:

6 Q. -- or something else?

7 THE COURT: He's asking how she characterized him.

8 That's a fair question.

9 MS. SIMPSON: That's a different objection, too,
10 Your Honor, as far as improper hearsay testimony. If
11 they want to put up Ms. Morgan Zander to testify about
12 her characterization, that's one thing.

13 THE COURT: How she characterized it, that's fair.
14 I understand your objection. He can answer that
15 question. Your objection is noted for the record.

16 MS. SIMPSON: Thank you, Your Honor.

17 BY THE WITNESS:

18 A. As I recall, I remember her saying that they were
19 walking through the parking lot and there was a crowd that was
20 dancing doing the Nana and she took the video of what was
21 going on at that time and she showed me the video.

22 BY MR. HUBBARD:

23 Q. And did she characterize what she was saying?

24 A. I don't recall her exactly characterizing.

25 MS. SIMPSON: Objection, Your Honor.

1 THE COURT: He answered. He said he didn't know.
2 That's fair.

3 MS. SIMPSON: Okay.

4 BY MR. HUBBARD:

5 Q. All right. Now, I want to show you State's 7.

6 (Whereupon, State's Exhibit #7 a audio and video
7 played.)

8 BY MR. HUBBARD:

9 Q. Is this from inside the Cook Out?

10 A. Yes, sir.

11 Q. On her cell phone?

12 A. Yes, sir.

13 Q. Okay. And again you hear her voice?

14 A. Yes, sir.

15 Q. And what are we hearing her voice say?

16 A. Well, she says, "thug Fork ain't gonna do nothing."

17 (Playing audio and video.)

18 BY THE WITNESS:

19 A. "Thug Fork is not doing anything" you can hear
20 there.

21 (Audio and video stopped.)

22 BY MR. HUBBARD:

23 Q. All right. So thug Fork is not gonna do anything.
24 And again, that interior, even while that is going on do you
25 see anybody from Dutch Fork offering to fight or anything that

1 visually looking at it that would look like a confrontation?

2 A. I didn't see anything that appeared to be a
3 confrontation.

4 Q. Thank you. Now I want to look at the exterior of
5 the Cook Out which is State's 18.

6 MS. SIMPSON: Not to interrupt, can we move the
7 tripod just a little bit?

8 MR. HUBBARD: Okay.

9 MS. SIMPSON: Thank you.

10 (Whereupon, State's Exhibit #18 played.)

11 BY MR. HUBBARD:

12 Q. Now, sergeant, who do we see coming out? Who's out
13 there right now?

14 A. Right now Mr. Zander and Ms. Zander and Mr. Adams.

15 Q. And now coming out?

16 A. There's Mr. Dennis, Mr. Adams following behind.

17 Q. What does Mr. Dennis appear to be doing?

18 A. He's on the phone.

19 Q. On the phone.

20 A. And then Mr. Zander, Ms. Zander and Mr. Cook.

21 Q. Now, in a minute a fellow comes out in a white
22 shirt. Do you notice any kind of gesturing or exchange?

23 A. He walks past. Obviously they look at him. He
24 turns and makes a motion possibly saying something. There's
25 something said back from Morgan. You see her move her head

1 and look that way. We can see it. He's turning around with
2 his arms open so there's an exchange of some words there.

3 Q. Who is the guy in the white shirt?

4 A. That's Michael James. Mr. James.

5 Q. What school does he go to?

6 A. He attended Dutch Fork.

7 Q. All right. Who's coming out now?

8 A. Other individuals who were in the Cook Out.

9 Q. As they're coming out do you see any fights?

10 A. I don't.

11 Q. Do you see Michael James still kind of holding his
12 hands up occasionally?

13 A. Yes, sir. He was doing that briefly.

14 Q. At any time as many times as you have watched this
15 is there a fight in this parking lot?

16 A. No, sir.

17 Q. Where do you see the defendant and his friends
18 going?

19 A. They were going across that roadway there toward the
20 old Block Buster. I think it's now a Petco and then toward
21 the car wash down there.

22 Q. Okay.

23 A. Kind of in that zone.

24 Q. So hold it right there.

25 (Video stopped.)

1 BY MR. HUBBARD:

2 Q. Sergeant, I want to see if you recognize several
3 boards I've got here with aerials. State's 20. What does
4 that depict?

5 A. That's an aerial view of that area where we see the
6 Cook Out, then we have the car wash towards the back and then
7 the Petco across the road from the Cook Out.

8 Q. State's 21?

9 A. That's a similar area but from a different angle.

10 Q. Okay. Then State's 22.

11 A. Same area different angle from the opposite side.

12 Q. Can you see --

13 A. Yeah. Lexington Urgent Care, that big building up
14 there.

15 MR. HUBBARD: Your Honor, I offer all these into
16 evidence.

17 MS. SIMPSON: Just subject to my previous
18 objections.

19 THE COURT: All of them cumulative subject to your
20 objection.

21 MS. SIMPSON: Cumulative.

22 THE COURT: Okay. They're in. Fair enough.

23 BY MR. HUBBARD:

24 Q. Detective, if you could, you might need to use the
25 pointer for these folks, where is the Cook Out?

1 A. This is the Cook Out here.

2 Q. Where is the pet store you were just describing?

3 A. Petco is right here.

4 Q. And the car wash?

5 A. The car wash is right here.

6 Q. So the Cook Out is the little small building right
7 there trimmed in red?

8 A. Yes, sir. The old Taco Bell.

9 Q. State's 21, similar view?

10 A. Yes, sir.

11 Q. And again, the restaurant, the small building right
12 here?

13 A. Yes, sir. Right there.

14 Q. Okay. And State's 22 a little bit different
15 angle?

16 A. Yes, sir.

17 Q. Then at a distance you can see Lexington Urgent
18 Care?

19 A. Yes, sir, at the top up there.

20 Q. So it's just a few blocks down the road? It's just
21 a few blocks down the road?

22 A. About a city block. Might be a little bit
23 farther.

24 Q. Now, I'm trying to keep you from coming down off the
25 stand, but I might need you to do that. Are you okay with

1 that?

2 A. Absolutely.

3 Q. I was telling you I wouldn't but I'm gonna bring you
4 down?

5 A. Should I bring the pointer?

6 Q. Yeah. Bring the pointer.

7 A. (Witness complies.)

8 Q. Just keep your voice up. Now having watched that
9 Cook Out exterior video whereabouts do you see the defendant
10 Mr. Dennis and his friend Will Zander parking?

11 A. They're down towards this end kind of in this
12 corner.

13 Q. Make sure that they can see.

14 A. Right here.

15 Q. All right. So the other folks can see, too, just in
16 case I was blocking it.

17 A. Right in this zone right over here. This is where
18 they were moving to.

19 Q. And Keith Adams, where was he parked?

20 A. He was parked over here on the Petco side as well.

21 Q. Do a lot of folks and patrons in that restaurant
22 park in those areas?

23 A. It does get full.

24 Q. Okay. You can have a seat.

25 A. (Witness complies.)

1 Q. I want to go back to this exterior video. I'll make
2 Mr. Sullivan get up.

3 (Playing video.)

4 BY MR. HUBBARD:

5 Q. Is that where we see Mr. Dennis and his friends
6 walking down towards the car wash?

7 A. Yes, sir.

8 Q. Whose car are we seeing right there?

9 A. That's Mr. Adams' vehicle right there.

10 Q. Lights coming out right there?

11 A. Yes, sir.

12 Q. From the car wash.

13 A. That's Mr. Zander's vehicle because I remember he
14 got out and went to the trunk right there and that's the trunk
15 lit up or the hatch. That's Mr. Zander going into this hatch
16 so that's his vehicle.

17 Q. Explain that again because you've watched this a
18 lot. Please explain what we see there.

19 A. We see Mr. Zander stops for some reason here and
20 goes to the rear of his vehicle and opens the hatch and then
21 returns back to the driver's seat and moved the car.

22 Q. Okay. At any time do you see any students rushing
23 their vehicles as they're in their car?

24 A. I don't, sir. No, sir.

25 Q. Whose car is leaving at that point?

1 A. That was Mr. Zander. He's turning around in the
2 Petco parking lot. You'll see his headlights come up in the
3 back of Mr. Adams' car because there's multiple outlets to
4 that Petco parking lot.

5 Q. And the headlights right there coming up the hill,
6 whose vehicle is that?

7 A. That's Mr. Dennis' vehicle.

8 Q. What is he driving?

9 A. It's a Ford Explorer.

10 Q. And the car that you identified right there, the
11 white vehicle with Keith Adams, what kind of vehicle is
12 that?

13 A. I believe it's a Nissan Armada.

14 Q. What was Will Zander driving?

15 A. Will Zander was driving a Lexus, like a Crossover
16 vehicle, one of those kind of station wagon, SUV kind of
17 things. Can't decide.

18 Q. Now, when you see -- Back it up a little. You see
19 headlights behind Keith Adams' car?

20 A. Yes, sir.

21 Q. Who is that?

22 A. That's Mr. Zander pulled up behind him.

23 Q. Does he at any time get out of his car?

24 A. I do believe I see him at one point get out and go
25 between Mr. Dennis and Mr. Adams.

1 Q. Right there?

2 A. Moving right there.

3 Q. Okay. Again, at any time while this is going on do
4 you see any students, at any time do you see any students or
5 anybody coming up on their vehicle?

6 A. No, sir.

7 Q. Where do most of these students appear to be
8 congregating?

9 A. Most of them are staying right there in the Cook Out
10 parking lot. Some do cross the street to go and get in their
11 vehicles to leave. Some are parked over there but they're
12 right here against the curb parking spaces.

13 Q. Mr. Dennis and Mr. Adams' vehicles, are they kind of
14 driver side to driver side?

15 A. Yes, sir.

16 Q. The way kids talk? How cops pull up side by side?

17 A. Yes, sir.

18 MS. SIMPSON: Objection, Your Honor. If he could
19 just ask the question and stop with some of the leading
20 and characterization and allow Sergeant Carter to
21 testify.

22 THE COURT: Sergeant Carter can testify. Ask your
23 next question.

24 BY MR. HUBBARD:

25 Q. How would you characterize how they pulled up and

1 talked to one another?

2 A. Everybody calls that cop style.

3 MS. SIMPSON: Objection, Your Honor. Improper
4 characterization. Everybody calls?

5 THE COURT: It's his answer.

6 MR. HUBBARD: Thank you, Your Honor.

7 (Video stops.)

8 BY MR. HUBBARD:

9 Q. Now, did you, in looking at this, determine an
10 approximate amount of time that Mr. Dennis and his friends are
11 in that parking lot talking to one another?

12 A. I believe from the time they come out of Cook Out
13 it's about seven minutes, but I think they sit parked maybe a
14 couple of minutes there.

15 Q. You never see anybody going up to their vehicles?

16 A. I don't. No, sir.

17 Q. And using State's 20 whereabouts, with this being
18 the Cook Out and this is the pet store that you identified,
19 whereabouts are they on this diagram?

20 A. Right here at this entrance slash exit to Petco.

21 Q. Where are most of the students that you're seeing?

22 A. They're all right here in this road, parking spots
23 right there.

24 Q. Is that a raised median?

25 A. It is. Well, it's not a median. It's a raised curb

1 at the edge of that property, yes.

2 Q. That's where you see most of them?

3 A. Yes, sir.

4 (Playing video.)

5 BY MR. HUBBARD:

6 Q. Then you see some of these young folks waving their
7 hands?

8 A. Yes, sir.

9 Q. Did you ever hear of a dance called the Nana?

10 A. Oh, yeah. The young man in the pink shirt was
11 giving a good example of the Nana, or a poor example of the
12 Nana.

13 Q. All right. Now, who is leaving here?

14 A. That's Mr. Adams leaving. He actually is coming up
15 this road to exit.

16 Q. Who's pulling in behind him?

17 A. That's Mr. Zander coming behind him.

18 Q. Now, hold it right there. What do you see Mr.
19 Dennis doing?

20 A. He's turning around in the parking lot because he
21 was faced kind of this way inward toward the - I mean it's
22 shown better on the picture - but he's coming up the hill.

23 Q. I think I'm gonna need you to come step down again.

24 A. (Witness complies.) So what essentially happened is
25 they had just been up here at this particular entrance of

1 Petco. Mr. Adams comes up this way to leave. Mr. Zander
2 pulls up this way which you will see. And Mr. Dennis is
3 facing this way so he starts to head this way but stops and
4 turns around that way so he can exit through that portion.

5 Q. Through the same way that --

6 A. Yes, sir.

7 Q. Now, in looking at this, if he wants to get up to
8 this road right here which is Main Street, could he have just
9 gone straight?

10 A. The fastest way there if you're pointing this way
11 from right here is here.

12 Q. To go through the Petco parking lot. Same exit and
13 entrance. But that's not what he does.

14 A. No, sir.

15 Q. So he could have gone, just to repeat, just speak up
16 -- Tell you what. Swap sides with me. That way your voice is
17 going that way.

18 A. All right.

19 Q. All right. So you see him where?

20 A. They're here. Mr. Adams leaves going out this way
21 which is the most direct route for him because he's already
22 pointed there. Mr. Zander is pointed this way as well because
23 he's behind Mr. Adams. So he pulls out here. Mr. Dennis is
24 facing this way as they pulled up driver door to driver door
25 so he starts to pull this way in the parking lot and turns

1 around so as to exit the Petco parking lot from here.

2 Q. Okay. How could he have gone to come to the same
3 exit?

4 A. Well, pointing this way, the fastest and most
5 natural way is that way just shoot through right there.

6 Q. So whose car is that coming up right there?

7 A. I'm sorry. I just turned and looked right there.

8 Q. Back it up a little bit to Will Zander's car.

9 A. All right. That's Mr. Adams leaving. That's
10 Mr. Zander pulling up. You will see headlights where Mr.
11 Dennis is executing his turn back here. See him come out this
12 way. That's Mr. Zander zipping up right there.

13 Q. Hold it right there. Where his vehicle is there,
14 can you describe, would that be the incoming lane?

15 A. That's the incoming lane. He's on the wrong side.

16 Q. He's on the wrong side?

17 A. Mm-hmm.

18 Q. Do you see students moving at that point?

19 A. Yeah. Students moving. There's a truck that passes
20 by up here a second ago. Students are moving towards this
21 direction right there.

22 (Video stopped.)

23 BY MR. HUBBARD:

24 Q. Now, did you have a chance -- Let me ask you this:
25 The incident involving Mr. Dennis and Mr. Capers, is it just

1 off view of this camera?

2 A. Yes, sir.

3 Q. Can you show this jury where this incident takes
4 place using State's 20?

5 A. All right. I want to make sure he hears me. So
6 essentially they're stopping right up in here. That's where
7 Mr. Dennis is stopping.

8 Q. What about his friend Will Zander?

9 A. Will Zander is kind of up a little ways off center
10 kind of the in the middle there.

11 Q. Middle of the road?

12 A. Yes, sir.

13 Q. This lane, this little in between road, is it fairly
14 wide?

15 A. I would say so. Yes, sir. It's abnormally wide for
16 a regular drive.

17 Q. Looking at what has been marked State's 23, does
18 that depict the width of the road?

19 A. Yes, sir.

20 MR. HUBBARD: Your Honor, I offer 23 in.

21 THE COURT: That's in subject to objection again.

22 MS. SIMPSON: Thank you, Your Honor.

23 BY MR. HUBBARD:

24 Q. So between the two shops, the Cook Out and the pet
25 store, can comfortably fit three vehicles?

1 A. Sure.

2 Q. Okay. Now, in addition to looking at the Cook Out
3 video, did you also look at iPad video?

4 A. I did, sir.

5 Q. I'll show you what's marked as State's 14. Is this
6 the video?

7 A. Yes, sir.

8 MR. HUBBARD: Your Honor, I would like to publish it
9 at this time.

10 THE COURT: 14 is --

11 MR. HUBBARD: It's already in.

12 THE COURT: Mr. Shaw got it in, an iPad video.

13 BY MR. HUBBARD:

14 Q. Now, the video we're about to watch came from Johnny
15 Shaw?

16 A. Yes, sir.

17 Q. How long is the snippet that actually shows Mr.
18 Dennis' vehicle?

19 A. Seconds. Just a matter of seconds.

20 Q. Again, this is still right near that curb that you
21 pointed out?

22 A. Yes, sir.

23 (Whereupon, playing State's Exhibit #14 iPad video.)

24 BY MR. HUBBARD:

25 Q. That's his vehicle driving off?

1 A. Yes, sir. Mr. Dennis' vehicle.

2 (Video stopped.)

3 BY MR. HUBBARD:

4 Q. Now, where was this filmed from?

5 A. That's filmed from a parked car in the Cook Out
6 parking lot.

7 Q. On an iPad?

8 A. Yes, sir. With an iPad.

9 Q. Now, how many times have you watched that?

10 A. A lot. A lot.

11 Q. And in trying to analyze what we see there in that
12 short time frame did you have a chance to look at frame by
13 frame shots to explain what you were seeing to us?

14 A. Yes, sir.

15 MR. HUBBARD: Your Honor, at this time I offer --

16 BY MR. HUBBARD:

17 Q. Well, let me show you what's been marked as State's
18 15 and State's 16. What are these?

19 A. It's a PowerPoint presentations that contains the
20 screen shots as they were depicted screen by screen shot by
21 shot.

22 Q. Frame by frame?

23 A. Frame by frame.

24 Q. So you can analyze that little snippet a little bit
25 more closely?

1 A. Yes.

2 MR. HUBBARD: Your Honor, I offer these into
3 evidence.

4 THE COURT: Admitted 15 and 16, but they are only
5 portions of the video taken?

6 MR. HUBBARD: That's correct.

7 THE COURT: Two separate portions?

8 MR. HUBBARD: Correct.

9 BY MR. HUBBARD:

10 Q. So, sergeant, playing the first one, 15, does this
11 show the movement of vehicle and the people in front of the
12 car?

13 A. Yes, sir. Yes, sir.

14 (Whereupon, State's Exhibit #15, a video, played.)

15 BY MR. HUBBARD:

16 Q. Frame by frame the vehicle we're looking at is whose
17 vehicle?

18 A. That's Mr. Dennis' vehicle.

19 Q. Did you make an effort to try to see who these
20 students were?

21 A. Sure. Yes, sir.

22 Q. Take it frame by frame. What are you looking for as
23 we go?

24 A. So I want to look at the movements of the folks on
25 the side of the car because I see that's where the people are.

1 They're standing right there at the curb next to where the car
2 is. I'm also gonna look for forward motion of the vehicle.
3 I'm gonna look for that brake light to see when that brake
4 light comes off to tell me when his foot comes off the brake,
5 what his timing is to say I'm getting out of here.

6 Q. Can you point out, before we go on, the brake
7 light?

8 A. So the lights, they're the lights in the back right
9 here. So I'm looking to that backside just past this group of
10 kids.

11 Q. And is this where the stabbing occurs during this
12 incident?

13 A. Yes, sir. In this area just past this young lady
14 with the pink shirt just in front of her.

15 Q. Is that Alexis Brunson?

16 A. Yes, sir. You can actually see the movement here,
17 see him moving forward.

18 Q. You see the vehicle moving forward?

19 A. Yes, sir.

20 Q. Now, let me back up. Do we need to dim some of the
21 light?

22 A. This one right here. I'm a little bit older now.
23 My eyes ain't so good.

24 Q. Tell you what. Why don't you come down here.

25 THE COURT: We did one time with the center come

1 off, leave the sides on. Try that. Does that help you?

2 THE WITNESS: A little bit. I think it's that one
3 that's really hitting me unfortunately. I can move down
4 there.

5 MR. HUBBARD: With the Court's permission, can he
6 come done here?

7 THE COURT: Absolutely. Let me ask the jury. Can
8 y'all see it better if the lights are cut back? Does
9 that help y'all? Okay. All right. They have indicated
10 it does. Sergeant, go ahead. Go around there.

11 THE WITNESS: (Complies.)

12 BY MR. HUBBARD:

13 Q. We're showing brake lights there?

14 A. Yes, sir.

15 Q. All right. Now what are you looking for?

16 A. Well, I'm looking for, I can obviously see these
17 individuals standing right here, these brake lights. I want
18 to look for forward motion of the vehicle. You can see the
19 top of the vehicle right there. That's where that is and you
20 can kind of see it angle down. So that's the driver's window
21 right there, that gap above Ms. Brunson's head. All right.
22 So as we see things start to happen here as the vehicle starts
23 to move you can see this individual fall backward, something's
24 coming to him and the individual in front of him.

25 Q. Now, the guy in white that you're talking about

1 falling back, what color are Mr. Capers' pants?

2 A. They're like a carhartt. Like mustard kind of color
3 like carhartt pants.

4 Q. Can you at any time see his pants if we go frame by
5 frame?

6 A. Sure. We'll see him actually between the knees here
7 of several of these individuals. So we'll see - so we'll see
8 a couple of individuals here fall back, something comes into
9 them up here as the car is beginning to move away, falling
10 farther back here, then you will see that mustard color right
11 there, the pants, the car continues to move on, rise up of the
12 tire as it accelerates, continues to accelerate.

13 Q. Again, is he right on the curb?

14 A. Yes. And then you see those pants again as he
15 progressively moves farther back. There's obviously the
16 driver's window, Mr. Dennis right there. You see his face.

17 Q. You see his face?

18 A. Yes, sir. What appears to be his face out of the
19 window there. And then everyone here obviously sees something
20 has occurred. I don't believe they know exactly what just
21 occurred.

22 (Video stopped.)

23 BY MR. HUBBARD:

24 Q. All right. Now, if we could, I would like to play
25 the next disk. Just stay here if you don't mind. I'm going

1 to ask you, the frames that we're gonna watch now, we've
2 jumped ahead just a touch.

3 (Playing video.)

4 BY MR. HUBBARD:

5 Q. Have we jumped ahead just a touch?

6 A. We have. This is just briefly past the ending of
7 that last clip and this is after Mr. Dennis has gotten out of
8 that frame.

9 Q. At some point do we see Mr. Capers step into the
10 frame?

11 A. We do, sir, towards the right, you will actually see
12 him step into the frame about this far if I remember
13 correctly.

14 Q. Can you see his pants?

15 A. Yes, sir. Right here you can see right between the
16 knees.

17 Q. Move it a little bit more.

18 A. Yes, sir. Right there. That's Mr. Capers coming
19 into the screen right there. If you keep clipping, you will
20 see him come and he'll pull his shirt up to expose he was
21 stabbed.

22 Q. He's still wearing his flannel shirt?

23 A. Yes, sir. Still wearing the flannel shirt. You'll
24 see him lifting his shirt up to show his friend he was
25 stabbed. I don't think until that point anybody realized he

1 was stabbed.

2 Q. All that was on that really quick iPad?

3 A. Yes, sir. All that's on the iPad.

4 Q. And he goes off screen again?

5 A. Yes, sir.

6 (Video stopped.)

7 BY MR. HUBBARD:

8 Q. Have a seat please.

9 A. (Witness complies.)

10 Q. Now, did you also do a combined video?

11 A. Yes, sir.

12 Q. So I ask you if you recognize State's 19?

13 A. Yes, sir.

14 Q. And what videos are combined on this?

15 A. That's the Cook Out with the iPad because the iPad
16 is showing some angles that the Cook Out also has from outside
17 surveillance and you can marry them up to get a better idea of
18 what's there.

19 MR. HUBBARD: Your Honor, I offer 19 into
20 evidence.

21 MS. SIMPSON: Without objection.

22 THE COURT: 19 is admitted without objection.

23 BY MR. HUBBARD:

24 Q. Sergeant, again, this is at real speed?

25 A. Yes, sir.

1 Q. Again, do you see the vehicles?

2 A. Yes, sir. We're picking up where we have Mr. Adams
3 and Mr. Dennis next to each other driver door to driver door,
4 then Mr. Zander pulled up behind them.

5 Q. And at sometime will the iPad video pop in the frame
6 as well and play simultaneously?

7 A. Yes, sir.

8 (Whereupon, State's Exhibit #19, a video played.)

9 BY MR. HUBBARD:

10 Q. Who is leaving there?

11 A. Mr. Adams.

12 Q. Followed by?

13 A. That's Mr. Zander.

14 Q. And then the lights?

15 A. Yes, sir. That's Mr. Dennis turning around. That
16 was his lights. He's on the left side there. I think there
17 was a car in front of him that just drove through not
18 involved. And that's that truck that goes around him right
19 there and this other car comes up the wrong side as well.

20 Q. And that car backs up?

21 A. Yes, sir. They were on the wrong side of the
22 road.

23 Q. At this point where is Mr. Dennis' car?

24 A. He's up against this curb just out of frame which we
25 see right there.

1 Q. Approximately how long is Mr. Dennis up on that
2 curb?

3 A. About a minute roughly.

4 (Video stopped.)

5 BY MR. HUBBARD:

6 Q. After this incident -- We can turn the lights
7 back up. When you got a call, where did you go?

8 A. I went straight to the Cook Out initially. Yes,
9 sir.

10 Q. And after being there, you were there for about how
11 long?

12 A. About an hour or so.

13 Q. Where did you go after that?

14 A. I went back to my agency so I could interview, help
15 interview witnesses that were coming in.

16 Q. At some point did you have an occasion or did y'all
17 determine a suspect for that stabbing?

18 A. We determined a possible suspect. Yes, sir.

19 Q. Who was that?

20 A. Mr. Dennis.

21 Q. Is that based on interviews?

22 A. Based on a few things. Based on information
23 provided by witnesses which include the license plate of the
24 vehicle he was in and someone actually provided the name
25 Kierin.

1 Q. Did you have an opportunity later that night to
2 actually have an interview with him?

3 A. I did. Yes, sir.

4 Q. Where did that interview take place?

5 A. It took place at my agency in the interview room.

6 Q. Now, where was he located?

7 A. When he was located, he was at his home.

8 Q. Was he placed under arrest at his house?

9 A. No, sir. He was not.

10 Q. Was he transported by law enforcement or did he
11 drive his own vehicle?

12 A. He agreed to come with law enforcement to our
13 agency.

14 Q. Now, when he comes in to be interviewed, is he in
15 cuffs or not?

16 A. He is, sir.

17 Q. Can you explain why?

18 A. Whenever we have someone that's gonna be transported
19 in the back of our marked caged patrol unit, they're gonna be
20 transported in handcuffs especially if they're deemed to be a
21 possible suspect in a crime. It's a safety issue.

22 Q. Where exactly did the interview take place?

23 A. Second floor criminal investigations division in the
24 little interview room we have there.

25 Q. Did you have video set up?

1 A. There's video and audio in that room.

2 Q. Is this conversation and interview recorded?

3 A. Yes, sir. It is.

4 Q. I ask if you can identify what's already been placed
5 into evidence as State's 1a and 1b. Are these the
6 interviews?

7 A. Yes, sir.

8 Q. Can you explain the first and second? Is it just
9 the software we couldn't get it all?

10 A. Yes, sir. It was a software issue.

11 Q. So that one interview is actually a and b, 1a and
12 1b?

13 A. Yes, sir.

14 Q. Prior to interviewing him, did you go over his
15 Miranda Rights?

16 A. Yes, sir.

17 Q. What, if anything, did you use in going over his
18 right?

19 A. We actually have Miranda Waiver Forms to make it a
20 lot more explanatory to the individual we're speaking with so
21 your individual Miranda Rights are written, typed on the form
22 itself and what we'll do is provide that to them, we'll ask
23 them to read the form itself. Obviously if they can't, we'll
24 read we'll read it for them. As they understand each of those
25 rights, then we ask them if they understand it, to confirm

1 that by putting their initials by each of them. At that point
2 we would then proceed to discuss what a waiver of your rights
3 means, and then we would say that now that we know that you
4 understand your rights as you understand them, or if they
5 understand them I should say, if they confirm they understand
6 them through their initials and through vocalization, we ask
7 if they would be willing to speak with us at that time without
8 their attorney and they will either indicate they do or they
9 don't. He indicated that he did.

10 Q. I'm show you what's marked in evidence State's
11 number 2. Is this the form you're talking about?

12 A. Yes, sir. That is the form.

13 Q. And whose initials do you see on this form?

14 A. KD, Kierin Dennis.

15 Q. Do you see his printed name and signature?

16 A. Yes, sir.

17 Q. And a date. What's the date?

18 A. February 17th, 2014.

19 Q. So it's the very same day of the video that we just
20 saw?

21 A. In the waning moments of that day just before
22 midnight.

23 Q. Is your review of his rights captured on the video
24 as well?

25 A. It is, sir.

1 MR. HUBBARD: Your Honor, I would like to publish
2 that video.

3 MS. SIMPSON: Your Honor, I do believe these are
4 already admitted without objection.

5 THE COURT: They were admitted without objection.

6 BY MR. HUBBARD:

7 Q. When you went over his rights, did Mr. Dennis appear
8 to understand his rights?

9 A. Yes, sir. He even asked a question at one point
10 while I was going over it. I explained it and explained what
11 those rights were and what they were about.

12 Q. Did he appear clear headed and understand what was
13 going on?

14 A. Sure. Yes, sir.

15 Q. Was he able to answer questions responsibly?

16 A. Yes, sir.

17 Q. Seemed to understand what you were asking?

18 A. Sure. Very responsive.

19 Q. And the answers he would give would pertain to your
20 questions?

21 A. Yes, sir. And if he didn't understand something,
22 there's a couple times he asked questions for clarification.

23 Q. Did he appear to be under the influence of any
24 alcohol or drugs?

25 A. He did not.

1 Q. At any time were any promises or threats made even
2 before you got to that room about getting him to talk?

3 A. No, sir.

4 Q. No threats and no promises?

5 A. No, sir.

6 MR. HUBBARD: Go ahead, Sully.

7 (Whereupon, State's Exhibit #2 interview played.)

8 MR. HUBBARD: I'll bump it forward a little bit,

9 Your Honor.

10 THE COURT: All right.

11 BY MR. HUBBARD:

12 Q. Is that Mr. Dennis?

13 A. It is, sir.

14 Q. At this point is he still cuffed?

15 A. He is, sir.

16 MR. HUBBARD: Your Honor, this one is a little bit
17 more touchy. I'd speed it up if I could but I don't
18 think that's possible.

19 BY MR. HUBBARD:

20 Q. That's you?

21 A. In all my gory.

22 MR. HUBBARD: Your Honor, we have to start the
23 second video. It's the software.

24 THE COURT: Okay.

25 BY MR. HUBBARD:

1 Q. Sergeant, when you step out, what are you doing at
2 that time?

3 A. When I step out, I'm giving the handcuffs back to
4 that officer and I'm going in and advising my people, my
5 supervisors what's going on, we've had an interview because I
6 jumped into this before being able to really make contact with
7 them, I know they've gotten to the scene at that point so I
8 want to let them know how it's progressing. I want to see
9 who else is on the way, anybody else coming down, because he's
10 giving me the information he's giving me. I want to see do we
11 have any video yet, do we have anything we can look at and we
12 just don't. That's what I find out.

13 Q. Do you know about how long you're out?

14 A. It's not terribly long. Just a couple minutes.

15 MR. HUBBARD: We'll go ahead and move it forward a
16 little bit, Your Honor, if we can. We'll try to.

17 (Playing video.)

18 MR. HUBBARD: Your Honor, at this point the
19 interview subsequent to this is terminated.

20 THE COURT: Okay. All right.

21 MR. HUBBARD: And it's probably a good time to break
22 for the day, Your Honor. I know we've been going pretty
23 long.

24 THE COURT: That's what I'm thinking. Can we start
25 a little earlier than we did this morning?

1 MR. HUBBARD: Yes, sir.

2 THE COURT: Can we get started by 9:00?

3 MR. HUBBARD: Whatever time Your Honor wants.

4 THE COURT: Can you do 9:00.

5 MR. RUTHERFORD: Your Honor, can we do 9:30? I'm
6 sorry. There's a copy of a video we have to do.

7 THE COURT: Okay. Let's start at 9:30 sharp. Be
8 here about 9:20. Let's start at 9:30 sharp.

9 MR. HUBBARD: Okay.

10 THE COURT: Thank you. You can't talk about this
11 case. See you in the morning.

12 (Whereupon, court was adjourned for the day at 5:30
13 p.m.)

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1 AUGUST 21, 2019

2 BAILIFF: All rise. Court is now in session.

3 THE COURT: Good morning. Please be seated. Y'all
4 ready?

5 MR. HUBBARD: Yes, Your Honor.

6 MR. RUTHERFORD: Yes, Your Honor.

7 THE COURT: Okay. The jury is here. Bring'em in
8 please.

9 (Whereupon, the jury entered the courtroom at 9:35
10 a.m.)

11 THE COURT: All right. Some of y'all were a few
12 minutes late. I was almost late because of the school
13 traffic this morning, wrecks on the interstate. It was
14 just one thing or another so I understand. Thank y'all
15 for coming on in. We're ready to continue on. Sergeant
16 Carter is still testifying. I remind him he's still
17 under oath. Solicitor.

18 MR. HUBBARD: Thank you, Your Honor.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. HUBBARD:

21 Q. Sergeant, just picking up where we left off
22 yesterday, you had this interview with Kierin Dennis in the
23 evening hours of February 17th, 2014 and I think we concluded
24 that interview; is that correct?

25 A. I believe so. Yes, sir.

1 Q. Now, I want to go back to a few things that you
2 mentioned and just talk about how you conducted the interview.
3 When you stepped out, what were you doing?

4 A. When I stepped out, uhm, oftentimes during
5 interviews like that we'll step out and confer with, you know,
6 our other investigators to find out if they've gathered
7 anything more, anything that can be helpful to continue the
8 interview. There were other interviews being started at the
9 time. We had other detectives interviewing other witnesses
10 from the scene and I'm checking to see if there's any video or
11 anything that's been produced at that point that we can then
12 discuss as we continue the interview.

13 Q. I want to bring up, you had mentioned to Mr. Dennis
14 about trash or money or something being thrown out a window?

15 A. Yes, sir.

16 Q. Did you further investigate and learn that it wasn't
17 from his car?

18 A. That's correct.

19 Q. Whose car was it from?

20 A. Mr. Zander.

21 Q. Who had gone out before Mr. Dennis?

22 A. Yes, sir.

23 Q. Multiple times Mr. Dennis asked you to show him what
24 you had, statements, names, video?

25 A. Yes, sir.

1 Q. What is the practice of an investigator when you are
2 interrogating? Would you ever do that?

3 A. We typically don't do that.

4 Q. Why not?

5 A. We don't want to tell them everything because I want
6 to hear the truth that comes from them. I want to hear their
7 story that's not been manipulated by anyone or anything else.
8 I don't want to show him something then have - if, in fact,
9 the individual was there or a party to whatever it was, I want
10 them to be able to give me unobstructed from themselves from
11 their memory what they saw. I want to see their recall
12 because then I can compare it to the same recall from other
13 individuals we talked to.

14 Q. Okay. Would you do that differently with any other
15 witness?

16 A. I would not.

17 Q. Why is that?

18 A. For the same reason. Sometimes people tend to fill
19 gaps artificially and things like that. I don't want that.
20 I want to hear what they have to say. That's the first thing
21 I want to hear is what their version of events are, what they
22 know to be from what they saw, what they experienced or I'll
23 say what they would like to tell me. I want to know what they
24 want to tell me before anything like that occurs.

25 Q. Did you bring a charge on Mr. Dennis?

1 A. We did that night, sir.

2 Q. and that charge was?

3 A. Or I guess that morning. That was homicide.

4 Q. Murder?

5 A. Murder. Yes, sir.

6 Q. Now, although you brought that charge, did you stop
7 investigating at that point?

8 A. No, sir. At the conclusion of the interview he was
9 detained. With knowing there was a search warrant going on
10 with the vehicle and that someone had been injured and that we
11 would be looking for DNA, things like that, we detained him as
12 we got a warrant for buccal swab for DNA test. We were
13 waiting on that, but I also had Mr. Zander coming in, Ms.
14 Zander coming in, other people being interviewed that I wanted
15 to talk to. So he was being detained at that point for that
16 under suspicion of this, we continued our interviews and
17 gathered what we could and I spoke with detectives who
18 interviewed other people and eventually the decision was made
19 to go ahead and do the warrant for murder.

20 Q. And even after that warrant is brought, did you
21 still have to obtain videos and watch those videos?

22 A. It continues. It continues. You continue to gather
23 everything you have because you don't want to charge someone
24 who doesn't need to be charged. It's just not in the
25 constitution placed in front of us to do. You know, that's

1 the last thing I want to do. So what I want to do is continue
2 to investigate because at that point the preponderance of the
3 evidence showed yes, this is going to be my individual who was
4 there who did this and this is gonna be the appropriate charge
5 and then I continue to investigate just to see is that still
6 the appropriate charge because if I find something else
7 eventually that says no, there's absolutely no way he did
8 this, then I'm gonna take steps to rectify the situation, but
9 everything we continued to find bolstered what we had found
10 that night.

11 Q. Let me ask you this: You mentioned you had talked
12 to some of Mr. Dennis' colleagues. That included Will
13 Zander?

14 A. Yes, sir.

15 Q. Did you get any information from Will Zander when
16 you interviewed him about being hit by Mr. Dennis?

17 A. I did not.

18 Q. That never came up from him?

19 A. No, sir.

20 Q. Now, I want to shift. The vehicle, the Explorer
21 that Mr. Dennis was driving, did you take some measurements?

22 A. I did, sir.

23 Q. What was the purpose of that?

24 A. We wanted to be able to take measurements of the
25 vehicle because if there's an allegation that someone has gone

1 inside or reaching out, we want to be able to recreate that
2 scenario to determine which of those stories is most
3 plausible.

4 Q. Did you assist James Sullivan our investigator with
5 these measurements and the creation of a door and seat mock up
6 of that vehicle?

7 A. Yes, sir.

8 Q. I'm gonna show you what purports to be notes to see
9 if this is what we're talking about?

10 A. That is my chicken scratch. Yes, sir.

11 MR. HUBBARD: Any objection?

12 MS. SIMPSON: No objection.

13 MR. HUBBARD: Your Honor, this is State's 25.

14 THE COURT: State's 25 without objection.

15 BY MR. HUBBARD:

16 Q. So, sergeant, you've got like height, width and
17 other measurements from that vehicle?

18 A. Yes, sir.

19 Q. All the pertinent measurements you would need to
20 know how big the car is, how big the window opening is, things
21 like that?

22 A. Pertaining to that door. Yes, sir.

23 Q. Have you had an opportunity to see the mock up that
24 was done and confirm those measurements?

25 A. Yes, sir.

1 Q. One other thing I wanted to show you is this board
2 which is marked as State's 24. Does this look familiar to
3 you?

4 A. It does.

5 Q. What is this?

6 A. That's a still shot from the iPad video of Mr.
7 Dennis' vehicle.

8 MR. HUBBARD: Your Honor, I have not offered this
9 yet, but I'm offering it as State's 24.

10 MS. SIMPSON: Without objection, Your Honor.

11 THE COURT: State's 24 without objection.

12 BY MR. HUBBARD:

13 Q. This is just a blow up of a snapshot from that
14 window?

15 A. Yes, sir.

16 Q. With the various people at the door?

17 A. Yes, sir.

18 MR. HUBBARD: Sergeant, I believe that's all I have
19 at this time but, Your Honor, I would like leave to call
20 the sergeant a little bit later in the trial for
21 additional information.

22 THE COURT: Sure. All right.

23 MS. SIMPSON: Thank you. May it please the Court.

24 THE COURT: Yes, ma'am.

25

1 CROSS EXAMINATION

2 BY MS. SIMPSON:

3 Q. Sergeant Carter, I gonna kind of probably need a
4 little help with the technology here. You have been with the
5 Town of Lexington for how many years?

6 A. Since February of '06.

7 MR. HUBBARD: Your Honor, I was just gonna say if
8 they need anything on the screen, James Sullivan can help
9 you out.

10 THE COURT: Okay.

11 BY MS. SIMPSON:

12 Q. And with respect to that, you actually moved up into
13 investigations pretty quickly, correct?

14 A. I moved up in investigations?

15 Q. To investigations from the road?

16 A. Actually it was a step down. I took a voluntary
17 demotion to go and assist them with their gang work.

18 Q. I'm talking about when you started, like road deputy
19 patrol?

20 A. I'm confused. Investigations or patrol?

21 Q. Patrol. Let's talk about when you started because
22 everything has been kind of jumping around.

23 A. I'm sorry.

24 Q. I'll try to keep this in a chronological order so we
25 can understand.

1 A. Sure. Sure.

2 Q. So when you started in investigations, you worked
3 the road, right? You went to the academy and you worked the
4 road?

5 A. I'm sorry. Okay. Investigations is something --

6 Q. In law enforcement? Law enforcement?

7 A. Okay. Yes, ma'am. I did. Yes, ma'am. Sorry. I
8 was just confused by that.

9 Q. Okay. And how long were you on the road?

10 A. Let's see. I was at, I started at Richland County.
11 I worked there briefly in the courthouse for less than a year,
12 then I went to Columbia Police Department and spent about six
13 years working the Two Notch Road area, Saxon Homes and all
14 that, came over to Lexington in '06. I was on the road here
15 patrolling in Lexington for a year, I was promoted to a vacant
16 corporal position that I filled for a year and a half before
17 taking a voluntary demotion to go assist with a new position
18 of gang intelligence.

19 Q. Let's focus on some of the trainings that you have.
20 You're familiar with the best practice policies, correct?

21 A. The best practice policies?

22 Q. In law enforcement with respect to interviewing and
23 interrogating witnesses or potential suspects?

24 A. So I don't know if I have heard it referred to as
25 such. I have had classes in forensic interview and

1 interrogation multiple times, retechnique and other places.

2 Q. Well, isn't it true what you taught, or that you are
3 taught at the Criminal Justice Academy is the best practice
4 pursuant to the standards set forth by the Department of
5 Justice?

6 A. So when I went through the academy as a patrolman, I
7 didn't do any investigations training when I went through the
8 academy as a patrolman, not to that level.

9 Q. But even as a road deputy you were trained at the
10 academy on how to talk to people, how to interview people
11 because you respond to a number of things be it not homicides
12 or violent crimes --

13 A. To a degree.

14 Q. -- you respond to everything.

15 A. We do classes on what they would consider vernal
16 judo at the time. This would have been 2000 so the classes
17 have changed since then in terms of descriptions but we did a
18 class called verbal judo and how we talk to people and things,
19 how we interact with the public, yes, ma'am.

20 Q. Pursuant to those policies it's fair to state it is
21 the best practice to keep witnesses separate whenever possible
22 when interviewing them, correct?

23 A. So typically, yes, ma'am. When you have witnesses
24 to an event who may contaminate the other, you want to try to
25 keep them as separate as possible but sometimes that can be

1 situational.

2 Q. Okay. Situational, but general best practice. And
3 so if you bring someone in to interview them, you could easily
4 separate them from another, correct?

5 A. Sure, depending on what needs to happen. Yes,
6 ma'am.

7 Q. So one of the best things to do would not be to
8 interview two brothers, a mother and a lawyer all in the same
9 interview, correct?

10 A. Well, it depends on what they witnessed, right? So
11 if they're witnessing two events that are separate from each
12 other, then they're not contaminating each other on the same
13 event. Does that make sense?

14 Q. But if they are part of the same incident, and let
15 me give you an exact example from this case, okay? Deshon
16 Chatman who we heard testify earlier in this case, correct?
17 His twin brother Devon Chatman was interviewed at the exact
18 same time about several months later, correct?

19 A. He was in the room, yes, ma'am.

20 Q. He was in the room along with his mother, correct?

21 A. Mm-hmm. Mm-hmm.

22 Q. And I believe an attorney was present as well?

23 A. Yes, ma'am.

24 Q. And prior to that you didn't speak with Deshon
25 Chatman. He actually came to you, correct?

1 A. I did not speak to him personally. I believe
2 someone did contact him to set that appointment up.

3 Q. Are you able to find that in your report? Because
4 you also review all the reports and all the evidence that
5 comes to you as a lead investigator, correct?

6 A. Okay. Yeah. I do that, but sometimes officers will
7 set up and say, hey, we need to interview this individual,
8 this individual. I have officers assisting especially with
9 that many so they might set up an appointment for someone to
10 come speak with me.

11 Q. Let me back up then to the very beginning of this
12 investigation because you stated that you didn't respond to
13 the basketball game, right?

14 A. No, ma'am. Not at all.

15 Q. You were called out to the Cook Out?

16 A. Yes, ma'am.

17 Q. Exactly what time was that?

18 A. I got called at 21:57 which would have been just
19 before 9:00. That's when my phone call came in and then I
20 responded out there so I would have arrived on scene just
21 after 10:00. 22:13.

22 Q. So 22:30 is

23 A. 13.

24 Q. 13. So that is military time?

25 A. 10:13.

1 Q. 10:13. And the time of this incident and the
2 dispatch time, are you familiar with that?

3 A. I'm not exactly familiar with the dispatch time off
4 the top of my head. I'm going with when I came in contact
5 with the incident. Yes.

6 Q. I'm gonna show you something. Let me back up. You
7 did have a chance to review the incident report in this
8 case?

9 A. I have read the incident report, yes, ma'am, which
10 is the initial contact with the patrol officer responding.

11 Q. Who was that initial patrol officer who made
12 contact?

13 A. I believe Officer Voravudhi might have been first on
14 scene is who it was, either her or another officer in the
15 vicinity.

16 Q. She had dash cam available as well?

17 A. She did have dash cam available.

18 Q. And certain items are captured on that dash cam from
19 the scene.

20 A. Sure. It would be anything right in front of the
21 car.

22 Q. And you have reviewed that as well?

23 A. Yes, ma'am.

24 Q. And another officers responded, too, correct?
25 Several of them?

1 A. A few officers. Yes, ma'am.

2 Q. To include, I beleieve, Officer Holiday?

3 A. Yes, ma'am. I believe he did go out there.

4 Q. And he has dash cam available as well?

5 A. I believe he does. He left very quickly and
6 responded to a traffic stop or just before he got there, a
7 traffic stop. I know there's that dash cam available. I'm
8 not positive of his on scene.

9 Q. Okay. But Deputy Hassler was on scene for a period
10 of time, correct?

11 A. Officer Hassler went to the hospital or to the
12 Lexington Urgent Care, I believe.

13 Q. But that was after responding initially, he quickly
14 went?

15 A. He went to urgent care first from what I recall.

16 Q. You can check your notes.

17 A. Because they had a call at urgent care because when
18 Mr. Taylor drove the victim up to the urgent care, came out,
19 they were banging on the door frantically and someone had --

20 Q. Let me stop you right there because my question is
21 but Hassler responds to the crime scene as well with dash cam
22 as well as the hospital or wherever, correct?

23 A. I'm not positive if he responded to the crime scene
24 first, but if he did, it would have been moments.

25 Q. Then you have Officer Ellisor, correct?

1 A. He was a detective, yes, ma'am, at the time.

2 Q. And he responded to the hospital?

3 A. He would have been out there as well. Yes, ma'am.

4 Q. And he has dash cam available as well?

5 A. No, ma'am. He's a detective so his vehicle would
6 not be equipped with dash cam.

7 Q. Okay. But he's on someone else's dash cam because
8 you've reviewed all the evidence, correct?

9 A. If someone else's dash cam was on and he crossed
10 that, then he would have crossed in front of that screen.

11 Q. So backing up to my initial question --

12 MS. SIMPSON: And I want to mark this as a Defense
13 Exhibit 1 just for ID purposes only.

14 MR. HUBBARD: Can I see that?

15 MS. SIMPSON: It's the incident report.

16 (Whereupon, Defendant's Exhibit #1 marked for
17 identification.)

18 BY MS. SIMPSON:

19 Q. I'm showing you what's been marked as Defendant's
20 Exhibit 1. Do you recognize that?

21 A. This appears to be one of our incident reports.
22 It's the incident report for this murder charge.

23 Q. And what is the actual dispatch time on that
24 report?

25 A. She has listed as her dispatch as 21:47.

1 Q. 21:47. And let's see. Military time --

2 A. That's 9:47.

3 Q. 9:47.

4 A. Mm-hmm.

5 MR. HUBBARD: Your Honor, I have no objection to
6 refreshing his memory using this. Of course, I know it's
7 just ID so obviously under the rules it can't be
8 published.

9 MS. SIMPSON: I have no intention of introducing.
10 He just stated he doesn't recall the time.

11 MR. HUBBARD: No objection to refreshing his memory.

12 THE COURT: He's got notes.

13 MS. SIMPSON: I know it doesn't come in.

14 BY MS. SIMPSON:

15 Q. So as to 9:47 the dispatch time and Voravudhi is the
16 first on the scene?

17 A. Yes, ma'am. It appears so.

18 Q. And her incident report, what is actually the time,
19 I guess, that the scene is released that it indicates?

20 A. That the scene is released?

21 Q. Or that it's over?

22 A. All right. So that's a little bit different.

23 Q. If I can borrow it for one second because sometimes
24 I use the wrong term so you just have to bear with me. So the
25 time arrived, the departure time?

1 A. That would be her departure time. That wouldn't
2 necessarily concern when the scene is released because she
3 could have been released as a patrol officer and continue
4 patrolling on the road. That's listed as her depart time.

5 Q. What is her depart time?

6 A. Her departure time is listed as 1:20 a.m.

7 Q. A.m.?

8 A. Yes, ma'am.

9 Q. And it's fair to say the crime scene came out,
10 SLED?

11 A. Yes, ma'am. They did come out.

12 Q. And processed that scene?

13 A. Yes, ma'am.

14 Q. And those agents would have been Tiffant Hezel and I
15 believe another agent as well?

16 A. There were two agents. Yes, ma'am.

17 Q. Two agents. Were you present during the actual
18 crime scene processing?

19 A. I was not present during all of that. No, ma'am.

20 Q. Just so I'm clear, dispatch time, you end up at the
21 scene approximately 23 minutes or so after she's dispatched
22 out at 9:47 to 10:13?

23 A. Sure. That looks about right.

24 THE COURT: 26 minutes.

25 BY MS. SIMPSON:

1 Q. 26 minutes. My math is not very good so bear with
2 me. I'll deal with that.

3 A. I'm with you. We'll struggle together.

4 Q. That will work. Okay. So when you got out, the
5 crime scene is already kind of tapped up, correct?

6 A. Yes, ma'am.

7 Q. However, there are still a number of people present
8 on scene?

9 A. Well, they've been cordoned off to an area where
10 they can be not disruptive.

11 Q. Right. And some of those are at the patrol cars?

12 A. Yes, ma'am. Some of them are.

13 Q. And you're aware from Officer Voravudhi's dash cam
14 that actually Beth Bettini, the complaining witness in this
15 case, is contained on that dash cam?

16 A. So the complainant, we use the choice of the
17 officer. The officer can use the individual who they first
18 spoke to. They can use the individual who comes up to their
19 car first is generally what happens, or they'll go through
20 dispatch records and ask dispatch who was the original caller
21 and dispatch will give them the original caller and then
22 they'll use the original caller. So I don't know why she made
23 the decision, but those could be any of the reasons why. But,
24 yes, ma'am, she is listed here.

25 Q. And it's fair, you actually do know the decision

1 because Beth Bettini is one of the people who initially called
2 911; isn't that correct?

3 A. I'm assuming that's why, or it could have been
4 because she was the first one who walked up to her.

5 Q. 911 calls are important to you, correct?

6 A. Sure.

7 Q. Especially if it's an eyewitness who is observing
8 what is happening as it's going on, correct?

9 A. Well, that then has to be deemed because you have a
10 lot of people who will call and hear something, they'll
11 believe something is going on, they'll see part of it. It
12 doesn't mean that the person who calls has always witnessed
13 everything one hundred percent. We find quite often that's
14 not the case.

15 Q. Okay. That's fair because in this case you actually
16 had several people calling 911 because there's a huge group of
17 people gathering outside the Cook Out parking lot and it's
18 clear that some disturbance is occurring?

19 A. I believe it was two people. Yes, ma'am.

20 Q. No. Actually it's only two calls that y'all were
21 able to maintain. The others were lost, correct?

22 A. Well, I don't maintain it. Lexington County
23 dispatch has their own system and situation for that so that's
24 up to them to maintain.

25 Q. Oh, so Lexington County dispatch could actually give

1 us a little more information about the 911 calls?

2 A. Maybe so. They run that facility and maintain all
3 that equipment.

4 Q. And in the course of it, even though the calls
5 may be lost themselves because after a period of time --

6 A. I don't know whether it is or isn't lost, ma'am. I
7 don't know.

8 Q. Well, in your investigation you often receive closed
9 incident reports, 911 incident reports telling you who called
10 when and what happened?

11 A. But if they've lost something and not retained it,
12 it just won't be there so I won't see that. All I can do is
13 analyze their reports. If you have it, I can look at it and I
14 can tell you what I see on the report, but I can't tell you
15 what they did or didn't have or what they couldn't put on
16 there. All I know is the report they give me as a detective
17 and I take that as what they have to provide me.

18 Q. In this case though you did review and you are aware
19 of what existed and what didn't at the time?

20 A. I have the report. I have the report. Yes, ma'am.

21 MS. SIMPSON: You have the report. And I want to
22 mark this as Defense Exhibit 2 for ID.

23 (Whereupon, Defendant's Exhibit #2 marked for
24 identification.)

25 BY MS. SIMPSON:

1 Q. Okay. Now, this was provided to us from the
2 Solicitor's Office. Do you recognize what that would be?

3 A. Yes, ma'am. It's listed as Voravudhi patrol video
4 dash camera.

5 Q. And you have reviewed that, correct?

6 A. Yes, ma'am. I have seen that.

7 Q. And you're aware that Beth Bettini it actually
8 contained on that dash cam?

9 A. Sure. Yes, ma'am.

10 Q. And in that she's speaking with Voravudhi,
11 correct?

12 A. Yes, ma'am.

13 Q. And even though the 911 call is lost, she's actually
14 dictating exactly what she saw on that dash cam?

15 A. I know it's been a while since I have seen it, but I
16 know she's talked to her, yes, ma'am. She's talking about
17 what she saw.

18 Q. She's talking about what she saw and she's even
19 pointing out certain individuals as they walk by, this guy,
20 that's the one who threw the cup, that's the one who threw the
21 tray, that's the one who did whatever, correct?

22 A. I don't remember anything about a tray. I think I
23 might have heard her say something about a cup.

24 Q. About a cup. But she's identifying people as she's
25 talking?

1 A. She may have. I would have to see it.

2 Q. And in there, too, there's no doubt that she says
3 basically the person in the car was scared?

4 MR. HUBBARD: Objection to hearsay.

5 MS. SIMPSON: I'll rephrase or back up, Your
6 Honor.

7 THE COURT: Sustained as to hearsay.

8 BY MS. SIMPSON:

9 Q. And so as far as that dash cam, the photos, you go
10 out after Voravudhi arrives, okay, and who all do you make
11 contact with at the scene?

12 A. I spoke with multiple individuals who were there
13 during the event and I also spoke with Ms. Bettini.

14 Q. Let's talk about the multiple individuals. Do you
15 have those names?

16 A. I have several names. Ms. Brunson, Aubrey Walker,
17 because we called most of them back to make statements. Ms.
18 Taylor Bianchi. I have to go through a list of names here,
19 but we did have multiple individuals on the scene itself and
20 what ended up happening because you have so many --

21 Q. Well, hold on. First I want to make sure we get the
22 actual individuals because I'm trying to keep up with the
23 names.

24 A. Sure. So from what I can remember --

25 Q. Well, just reflect, because in the incident report

1 it has names, too, as well, correct, of possible witnesses? I
2 can give it back to you.

3 A. There's certainly names of possible witnesses but
4 that would include any witness we also developed later --

5 Q. Subsequent to?

6 A. -- subsequent to or as we would have gathered -
7 because what I'm saying is I spoke to a few people but what
8 happened is it began to mount and there were so many more
9 beyond the five or so we spoke to that they took names down of
10 who we needed to talk to or interview again or to actually
11 interview and get full statements from at a later time so I
12 didn't interview 30, 40 people at the scene.

13 Q. But there were approximately at least 30 to 40
14 people at the scene according to your own responding
15 officers?

16 A. I would say maybe when they rolled up but as you can
17 see in the iPad video kids were leaving at the time.

18 Q. Yeah. They're fleeing the scene, right?

19 A. I don't know any crime they committed --

20 MR. HUBBARD: Objection --

21 BY THE WITNESS:

22 A. -- to flee the scene.

23 THE COURT: Hang on. Hang on.

24 MR. HUBBARD: I object to the characterization. She
25 can just say they're leaving. She doesn't know if

1 they're fleeing or what they're doing.

2 THE COURT: Y'all just ask simpler questions. You
3 asked the question, who did you talk to out there and
4 that got turned into who else is on the list.

5 MS. SIMPSON: And I'm kind of following his path,
6 Your Honor, but at the same time --

7 THE COURT: Let him answer the question and then ask
8 him the next question because I think y'all got off track
9 on that question and answer.

10 MS. SIMPSON: Okay. We'll get back on track.

11 THE COURT: What you did for me.

12 MS. SIMPSON: I'll get back on track.

13 BY MS. SIMPSON:

14 Q. So you spoke with Ms. Brunson?

15 A. I did speak with Ms. Brunson and I spoke with Mr.
16 Aubrey Walker. I believe I spoke with a Joshua Brooks, K.J.
17 Williams also.

18 Q. Who's K.J. Williams? That's a nickname?

19 A. Kenneth Williams. I'm sorry. I believe I spoke
20 with him out there. There was a lot of kids that one night.

21 Q. I want to make sure we get this correct because it's
22 important. So those were the ones you actually made contact
23 with?

24 A. I know for sure absolutely Alexis Brunson. I spoke
25 with Aubrey Walker. I spoke with Ms. Bettini briefly out

1 there as well. In my head I want to remember that I spoke to
2 K.J. Williams at that scene. Like I said, I spoke to many
3 children that night throughout the night.

4 Q. Many children throughout the night. But you also,
5 backing up, Beth Bettini was one of the people who actually
6 came up to you, correct?

7 A. Well, she was there and I was pointed out to her
8 that she was there. I saw her and I recognized who she was so
9 I walked over to her to speak with her.

10 Q. Yeah. And you spoke with her and you knew her and
11 tell the jury because y'all actually had a personal
12 relationship --

13 A. Not quite.

14 Q. I mean personal in the sense of you knew each other
15 outside of the context of this scene?

16 A. Very little. When my child, my son who will be 17
17 in a few months, when he was five he attended five year old
18 kindergarten with her child so my wife knew her in picking up
19 and dropping off children. I think maybe they even had a play
20 date one time. My interaction with Ms. Bettini is very
21 little.

22 Q. Okay. But you knew her and at that point you knew
23 she had information regarding the incident but yet you chose
24 not to ask her one question about what she observed or what
25 she saw, correct?

1 A. She wrote a statement for us.

2 Q. She wrote a very short statement which you hadn't
3 reviewed and you --

4 A. I did review it.

5 Q. -- did not --

6 A. I did review it.

7 MR. HUBBARD: Your Honor, I object. She's --

8 THE COURT: You're not letting him answer the
9 question.

10 MR. HUBBARD: -- testifying.

11 MS. SIMPSON: Your Honor, with all due respect, it's
12 cross examination.

13 THE COURT: No. No. No. You're interrupting. You
14 asked a question. He started answering and you kept
15 supplying more information. Let him answer and you can
16 aks him the next question and --

17 MS. SIMPSON: Okay. So as long as he answers yes or
18 no.

19 THE COURT: Now you're interrupting me.

20 MS. SIMPSON: I'm sorry.

21 THE COURT: Quit interrupting me and him. Just ask
22 your question, let him answer, then ask your next
23 question.

24 MS. SIMPSON: Okay.

25 BY MS. SIMPSON:

1 Q. So, yes, you spoke with her?

2 A. Yes, ma'am.

3 Q. And you didn't ask her any other questions about
4 what she saw that night even though she would have been an
5 independent witness?

6 A. Have you ever met Ms. Bettini?

7 Q. As a matter of fact, I have, but I'm the one asking
8 the questions. So --

9 A. I'm just asking because --

10 Q. -- my question to you is --

11 A. -- you don't have to ask her anything. She will
12 offer it when you walk up to her. She's I think --

13 Q. And so what did she offer to you?

14 A. -- willing to offer extra --

15 Q. What did she offer to you?

16 A. She started talking about, man, I was just up here
17 and all these things happened --

18 MR. HUBBARD: Your Honor, I am going to object to
19 hearsay.

20 MS. SIMPSON: He opened the door on that one, Your
21 Honor.

22 THE COURT: I agree. That's not a fair question to
23 him to say what she said. He introduced the statement.
24 Ask your next question.

25 BY MS. SIMPSON:

1 Q. Moving on still though focused on Beth Bettini, it's
2 clear and even in the interview we reviewed with Kierin Dennis
3 that you had two independent witnesses who were not associated
4 with Dutch Fork or Lexington High School, correct, at least?

5 A. Uh, well, no. We - we -- Yes. Ms. Bettini for
6 sure.

7 Q. And who was the other person?

8 A. Well, we talked to Aubrey Walker from Lexington
9 actually who knew Mr. Dennis and then Ms. Brunson was from
10 Dutch Fork who was standing right at the door. I asked for
11 people who arrived there who knew what was going on, who saw
12 who was there, who was involved in the incident who didn't see
13 so we start to try to separate folks who actually saw
14 something and who didn't.

15 Q. And did you ever make contact at the scene with
16 Zachary Lynch or was that just later at like 5:00 in the
17 morning?

18 A. I didn't know about Zachary Lynch until after I left
19 the scene because officers remained there to continue to talk
20 to individuals and to bring them in. I was provided an
21 initial statement from Zachary Lynch and I was told, hey,
22 you're gonna want to talk to this individual because he says
23 he saw the whole thing and so I waited to talk to him.
24 Actually we waited on him to get done and come talk to us
25 before the decision to make the charges was finalized.

1 Q. And the decision to make the charge finalized, what
2 time was that?

3 A. Almost five in the morning, I think.

4 Q. Now, let's be exact here. When was he actually
5 served with the arrest warrant?

6 A. The report says it would have been 2/18/14 at 0:500
7 hours.

8 Q. So 2:18 a.m. before Zachary Lynch even came in?

9 A. No, ma'am. 2/18 would be the date so it was the day
10 after the initial incident. 2/18/14 which is the date here
11 and then 0:500 hours which is 5:00 a.m.

12 Q. 5:00 a.m.

13 A. I'm sorry. I do the military thing. I know it's
14 confusing. I'm sorry. I need to stop doing that.

15 Q. And as far as Zachary Lynch, he actually was
16 interviewed approximately at that time, but his statement
17 actually conflicted with what you had with respect to murder,
18 correct?

19 A. His statement was very conflicting of all sorts of
20 things.

21 Q. What were those sorts of things?

22 MR. HUBBARD: Your Honor, I object to hearsay.
23 Again, she's asking what did he say.

24 THE COURT: No. She asked what was conflicting.

25 MR. HUBBARD: Which would come from his mouth and

1 that's what I'm objecting to. I don't know how this
2 officer can answer in fairness without saying what he
3 said.

4 MS. SIMPSON: Your Honor, he's testified extensively
5 about the murder, the homicide, and choosing to charge
6 Mr. Dennis with that and waiting until Mr. Lynch actually
7 was interviewed so I think it's a fair question as to
8 what was so inconsistent that he still charged murder.

9 MR. HUBBARD: Your Honor, I have no objection to all
10 the stuff she brought out, but I do object by saying what
11 did he say and therefore you can figure out what is
12 inconsistent.

13 THE COURT: I think she asked the question trying
14 not to elicit hearsay so that now she's saying what is
15 inconsistent. That's a fair question.

16 MR. HUBBARD: That's fine, Your Honor. I would just
17 ask that it not go into any direct statements. That's
18 the problem.

19 THE COURT: I agree. I agree.

20 MS. SIMPSON: Thank you, Your Honor.

21 THE COURT: What were the inconsistencies?

22 BY THE WITNESS:

23 A. Well, the inconsistencies were everyone that we had
24 spoken to in detail the basics in a similar manner has Mr.
25 Dennis as being in the gold Explorer, Mr. Dennis coming up,

1 Mr. Zander being in the white car, Mr. Zander coming through
2 before Mr. Dennis.

3 BY MS. SIMPSON:

4 Q. Slow down just a little bit because I want to keep
5 up with you, okay?

6 A. Yes, ma'am.

7 Q. So the inconsistencies were the gold Explorer?

8 A. Well, I haven't listed -- No. No. I haven't listed
9 those yet. I'm telling you what the consistencies where up
10 until that point that I had and then what his, was
11 inconsistent with the versions that seemed as if he hadn't
12 seen anything at all.

13 Q. So the consistencies of everyone you interviewed
14 were what?

15 A. So so far the consistencies were, even when
16 Mr. Zander - Mr. Dennis, showed Will going out, Mr. Dennis
17 coming up behind him and then Mr. Dennis did not exit his
18 vehicle. Mr. Lynch claims there were two males in Mr. Dennis'
19 vehicle and those males got out and stabbed someone.

20 Q. Two males got out and stabbed someone?

21 A. Yeah. Two males exited the gold Explorer he says
22 and the one male from the gold Explorer reaches in another car
23 and stabs somebody else.

24 Q. We'll get back to that. You listed several things
25 before. You had the gold Explorer and you're saying that

1 Zachary Lynch says that two males got out of the car and
2 stabbed someone one time basically is how this ends up because
3 there's one stab wound?

4 A. I'm sorry. Are you asking me if he alleges there's
5 only one stab wound?

6 Q. Well, two males got out and stabbed the guy per his
7 statement and there's only one stab wound, correct?

8 A. Let's see. He has two individuals get out of the
9 car because he made an initial statement that was provided to
10 me. And then he made a more lengthy statement when he came
11 in. He talks about two individuals who act suspicious. He
12 talks about them getting into a gold Explorer, that there was
13 an argument, then he says a guy goes runs to his Expedition,
14 then runs back to somebody in the driveway, starts yelling at
15 people to get in the car. He's conflating multiple people
16 into one incident around this gold Explorer. Then he says, he
17 did say, so then the guy - so he's talking about the guy who
18 gets out of the gold Explorer, says that guy reaches into the
19 car and stabs someone, and then the guy that got stabbed ended
20 up speeding off and that the other guy goes back to his gold
21 Explorer and then they leave, and then he talks about another
22 person coming up saying he got stabbed.

23 Q. So he does put that one person reaches into the car,
24 stabs another so he believes per that statement?

25 A. Yes. And that was the person who came out of the

1 gold Explorer is what he says.

2 Q. Came out of the gold Explorer. But he has a person
3 reaching into some car of some type?

4 A. Definitely not the gold Explorer or that's what's
5 alleged in the statement.

6 MS. SIMPSON: I'm a little confused so we'll get
7 back to that. At this point, Your Honor, I believe, and
8 the State maybe can help me with certain exhibits...

9 BY MS. SIMPSON:

10 Q. You explained earlier that you had watched the Cook
11 Out video, the exterior/interior. Let me see if I can find
12 it. Now, we only saw snippets, but you've watched the whole
13 thing numerous times, correct?

14 A. I watched the Cook Out interior and exterior video
15 while the defendant was present and also times after and
16 before as well.

17 Q. Before and after. So more than what we saw
18 yesterday. You've seen everything?

19 A. Sure.

20 Q. And I'm going to play these a little out of order
21 but just kind of the way the testimony has happened.

22 A. Mm-hmm.

23 Q. Is there a laser pointer?

24 A. Oh, yes, ma'am. Yes. Do you want me to have it?

25 Q. I'll probably hand it up to you in a minute so.

1 We'll start at the very beginning with this.

2 (Playing video.)

3 BY MS. SIMPSON:

4 Q. And no slowing down. And there's no audio with
5 this, correct?

6 A. No, ma'am.

7 Q. And I just kind of want to talk about what you see,
8 all right? At this point who is coming out?

9 A. That's Mr. Dennis and Mr. Adams.

10 Q. Mr. Adams. Who do we see in the striped shirt with
11 the drink?

12 A. Ms. Zander.

13 Q. Ms. Zander.

14 A. Then Mr. Zander, then Mr. Cook.

15 Q. That's Will Zander?

16 A. Yes, ma'am.

17 Q. Who is that?

18 A. Mr. Cook.

19 Q. Mr. Cook. And there are cars driving past?

20 A. Sure.

21 Q. And who is that?

22 A. That's Michael James.

23 Q. Michael James.

24 A. You can see Ms. Zander and --

25 Q. Hold on. Hold on. So Michael James is right here

1 --

2 A. I'm sorry. I was just --

3 Q. -- making some sort of hand gestures, correct?

4 A. You asked me what I saw so... I'm sorry.

5 Q. He's over here making some sort of gestures,
6 correct?

7 A. Right. He's responding at that point to something
8 Ms. Moragn said.

9 Q. Well, hold on a second. I just asked a simple
10 question. Is he making gestures?

11 A. He did make a gesture. You're correct.

12 Q. I don't want you to speculate.

13 A. No. You can see it.

14 Q. And actually I want to pause it here and back it up
15 just a few moments. At this point we see a lot of kids coming
16 out

17 A. Sure.

18 Q. And this is immediately after Michael James is
19 making the gestures?

20 A. Certainly. Surely close after.

21 Q. And they're all - some are over to this side. And
22 we don't have a camera angle of the PetSmart stuff so any
23 assumptions about where people went, that would be just that,
24 an assumption, correct? There are people in the street.

25 A. Yeah. If there's something I can't see on screen, I

1 can't say what it is.

2 Q. Right. An assumption, speculation.

3 A. Now, if I see them walk directly across the street,
4 then that's directly to that other parking lot so my --

5 Q. You don't know whether they leave or whether they
6 stay or what they do?

7 A. They could have flown away. I don't know. They
8 walked across the street and didn't come back so...

9 Q. So we have kids all here, all here just in the
10 parking lot?

11 A. Looks like it.

12 Q. Are you aware of how many feet that parking lot
13 is?

14 A. How many feet the parking lot is?

15 Q. Or the distance from --

16 A. I can't tell you, ma'am. No, ma'am. I don't
17 know.

18 Q. Did crime scene take any measurement of that?

19 A. I don't know if the crime scene folks took
20 measurements of that parking lot specifically, no.

21 Q. What about measurements of the road, this roadway
22 over here?

23 A. I don't know if they took measurements of the
24 roadway, ma'am. I don't believe they did.

25 Q. I see a few people on the other side of that road

1 though, correct?

2 A. Yes, ma'am. But you see them proceeding off to the
3 left going towards that parking lot right there away from Mr.
4 Dennis and his group.

5 Q. So kids are pretty much scattered everywhere?

6 A. They're disbursing. They're going off to cars and
7 such or maybe going back inside.

8 Q. But it's clear that a lot of them are still right
9 here in the parking lot?

10 A. Yes, ma'am. There is a much smaller contingency.

11 Q. And they're crowding in certain places, and even
12 places we can't see off screen you don't know what's
13 happening? If you can't see it out there, you don't know
14 what's happening?

15 A. Right.

16 Q. We see the two car, of course, belonging to Mr.
17 Adams and --

18 A. Yes, ma'am. Mr. Zander just walked up to the
19 window.

20 Q. Mr. Zander is where?

21 A. He's right there at the window. You can see him
22 right there at Mr. Dennis' car.

23 Q. Maybe I'll have you --

24 A. Sure. You might have to back it up a second.

25 Q. -- point him out for just a second.

1 A. Yeah. You see him walk --

2 Q. We may have a lost him now.

3 A. Yeah. You see him walk up from here and he's
4 standing right there.

5 Q. Where is his car?

6 A. His car is parked behind Mr. Adams. He's already
7 driven out that driveway and made a loop.

8 Q. At this point the kids are still going toward that
9 direction of those cars, specifically probably Will Zander's
10 direction?

11 A. I cannot assume they're going towards Mr. Zander. I
12 see several of them going to the curb and stopping, some just
13 milling around walking back and forth. Like I say, there is
14 parking over there as well which is where a lot of those kids
15 parked, especially today.

16 Q. Okay. At this point -- This time around we'll go a
17 little bit slower. I just want to know if I see in realtime
18 because with the snippet it kind of seems like this was a long
19 event but everything was happening fast, correct?

20 A. Relatively quickly. Yes, ma'am.

21 So starting at the beginning time of this video --
22 MS. SIMPSON: Sully, slow it down. Now back it up. All
23 the way up. All the way a little bit before. Before
24 that. A little bit before that. Okay.

25 (Playing video.)

1 BY MS. SIMPSON:

2 Q. So here -- he actually backed it all the way up --
3 people were kind of exiting. Those people actually look like
4 they're leaving, correct?

5 A. Sure. Those people are. Yes, ma'am.

6 Q. One is even getting into a car?

7 A. Mm-hmm.

8 Q. Okay. So when Kierin comes out --

9 A. Yes, ma'am.

10 Q. -- that's 22:37?

11 A. Mm-hmm.

12 Q. There's Keith. So 22:37 is kind of when everybody
13 is outside when all this starts occurring. Will is out.
14 Lucky is out. And Michael James comes out all by himself?

15 A. Yes, ma'am.

16 Q. Passes him?

17 A. Yes, ma'am.

18 Q. Turns around. We're still within a matter of
19 seconds. Arms are up?

20 A. Mm-hmm.

21 Q. Gesturing like this (indicating.) Okay. That's
22 just a matter of seconds. It's kind of slow up here but he's
23 looking in the direction of Kierin and his friends?

24 A. Yes, ma'am. Ms. Zander addressed him right there.
25 You can see her head move and her mouth starts moving.

1 Q. But you don't know -- Hold on. You see her head
2 move?

3 A. Sorry.

4 Q. Theses are all observations --

5 A. It's just a reasonable observation on my part.

6 MR. HUBBARD: Your Honor, I'm just gonna ask, she's
7 pointing out her observations. I think he gets to point
8 out his to answer the question.

9 MS. SIMPSON: I'm seeing gestures which is clearly
10 observed.

11 BY THE WITNESS:

12 A. You can clearly observe her head.

13 THE COURT: I know. But you asked him if he watched
14 the video. He said a lot. He can say what he saw. You
15 can't say he didn't see something because you asked
16 him.

17 MS. SIMPSON: Yeah. But you're -- Okay. Let me
18 clear it up.

19 BY MS. SIMPSON:

20 Q. So Michael James comes out, turns around, does this
21 (indicating), then Morgan Zander is responding, correct?

22 A. No, ma'am. No, ma'am. Not at all. If you back it
23 up, you will very much see her head move. You'll see her
24 mouth move. You'll see her head move. She's talking to him.
25 She had a problem keeping her mouth shut that night which all

1 the people said.

2 Q. So you're saying she had a problem that whole night
3 about keeping her mouth shut?

4 A. The interactions. Several individuals said that.
5 She's got her own video for having a problem with that that I
6 think we have actually shown.

7 Q. We'll come back to Morgan. But what you can't see
8 is what Michael James is saying coming up behind her when
9 they're walking out, can you?

10 A. I can't -- I'm not saying he didn't say anything.
11 What I'm saying is I can't see his mouth move. I can't see
12 his head move. She's very animated. You can see her head jut
13 out and her mouth move when she's talking and you can actually
14 see her head turn to look at him when he comes out, maybe just
15 looking at him, and he could have said something absolutely.

16 Q. So a whole lot of things that could have happened?

17 A. Absolutely. I'm just saying what I saw for certain
18 and I know that his -- What I'm saying is the characterization
19 that he just turned around and threw his arms up just out of
20 the blue incorrect and untruthful is what it is.

21 Q. Oh, I agree with you that --

22 A. Yeah. It's untruthful.

23 Q. -- he clearly didn't do that. But let's talk about
24 what occurs after that.

25 A. Sure.

1 Q. Keep it moving. So they're walking toward their
2 cars. Now we don't even know -- A little bit more. Pause it
3 please.

4 A. I can't assume that they're going to their cars. I
5 see them going towards him.

6 Q. Well you know because you watched the video and they
7 eventually pass him and they up at their cars?

8 A. They do eventually make that decision. Yes,
9 ma'am.

10 Q. But immediately after Michael James has done this
11 within a matter of seconds, right now we have outside of we'll
12 just call it Kierin' friends --

13 A. Sure.

14 Q. -- Kierin, Morgan Zander and them. Right now we
15 have, one, two, three, four, five, six, seven, seven people
16 coming out?

17 A. Sure.

18 Q. Pause it. Then we have eight, nine, 10, 11, 12.
19 Keep moving.

20 MR. HUBBARD: Your Honor, we're gonna be here for a
21 while. I think the jurors can handle it. I think they
22 can.

23 MS. SIMPSON: Your Honor, if it please the Court,
24 this is cross examination and they only showed snippets
25 and a whole circumstantial thing --

1 THE COURT: I'll let you do it. You don't have to
2 keep arguing it. I'm gonna let you do it. Just let me
3 rule.

4 MS. SIMPSON: Thank you, Your Honor. Sorry.

5 BY MS. SIMPSON:

6 Q. Pause it. I forgot what number I was at last.
7 Okay. I'm going to 12 from 11. This is 12, 13, 14, 15, 16,
8 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30. Pause
9 it. There's a lot at this point. 31, 32, 33. Keep moving.
10 34 from the side. 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45,
11 46.

12 THE COURT: Now you're testifying.

13 MS. SIMPSON: 47. Okay. Well, if he wants to count
14 but...

15 THE COURT: No. But you interrupted him. But it's
16 45 plus, I mean...

17 MS. SIMPSON: Your Honor, at this point it's
18 extremely important because of what they said.

19 THE COURT: All right. I get it, but you counted
20 them. Ask a question for him.

21 MS. SIMPSON: Okay.

22 THE COURT: I figured y'all did this pretrial.
23 Y'all have had the video for a long time. You could have
24 counted them ahead of time.

25 BY MS. SIMPSON:

1 Q. But for the jury's purposes to see there are over,
2 there are approximately 50 plus kids --

3 A. Sure.

4 Q. -- that just swarm out directly after Michael James
5 does this (indicating), correct?

6 A. I can assume --

7 Q. For whatever reason?

8 A. I can assume there's a large number. Yes, ma'am.
9 We can see a large number. Sure. I can't give you an
10 accurate 50 but there's a large number of kids.

11 Q. More than 45 as His Honor just said?

12 A. I'll go with that. I trust you.

13 MR. HUBBARD: Your Honor, that's putting you in a
14 position to testify.

15 THE COURT: I can't. She was at 45 when I
16 interrupted her.

17 MR. HUBBARD: I'll agree she was at 45 so we're fine
18 with that.

19 BY MS. SIMPSON:

20 Q. Well, I did want to keep going, but I just figured
21 to count to show how many kids were actually out there in the
22 street at this point for no reason, correct, that you are
23 aware of?

24 A. I don't know what their reasoning but, yes, ma'am.
25 They exited.

1 Q. Okay. And so I want to pay attention a little bit.
2 We're gonna keep going because there's a person who's gonna
3 come out -- We're actually going to see Zachary Lynch come out
4 as well, too, correct?

5 A. Okay.

6 Q. What are these, dumpsters? These are dumpsters,
7 right?

8 A. I believe that is, like one of those brick
9 enclosures where they put dumpsters. I believe that's what it
10 is.

11 Q. And the car wash is behind it?

12 A. Yes, ma'am. Right there where the lights are.

13 Q. This is like a pole?

14 A. There is a pole there. Yes, ma'am.

15 Q. Okay. And a little bush which kind of on the map
16 looks a little different but it's February there, right?

17 A. Yes. You got that.

18 Q. And newly planted. We see a car drive up. The kids
19 are still all in this roadway right here, too?

20 A. I see a few up there, yes, ma'am, on the curb.

21 Q. You can see a few back here?

22 A. A couple at their cars right there.

23 Q. In the street. Some coming from a little bit over
24 here. And there's kind of like a picnic area in the front,
25 too, where some of those from the side come around.

1 A. There's an outdoor seating. Yes, ma'am.

2 Q. And again, we're just a few minutes in. This is
3 only from 22:37 to 22:41?

4 A. Sure.

5 Q. Are you aware that that was actually the manager
6 that's poking his head out? So the manager poked his head out
7 at this point or did you speak with him at all?

8 A. Yes, ma'am. There's a detective that did speak with
9 the employees there.

10 Q. Okay. The group at this point everybody has kind of
11 moved towards this area of the parking lot?

12 A. Well, or the ones who are moving back towards the
13 store at this point.

14 Q. Some are moving over, still back over there where we
15 don't know what's going on?

16 A. Sure. And there's the Nana.

17 Q. And some are still coming out?

18 A. Yes, ma'am.

19 Q. Who is this?

20 A. That's one of the Chatman brothers.

21 Q. The one that actually went there, Devon Chatman,
22 correct?

23 A. Yes, ma'am.

24 Q. Not the one we heard from, Deshon Chatman?

25 A. Well, he's there so that's definitely the one that

1 was there.

2 Q. And that's Devon. Okay. And then this individual
3 right here, do you recognize him?

4 A. I believe that's Mr. Lynch.

5 Q. That's Mr. Lynch?

6 A. I'm not positive. I mean, I'm seeing kind of a bad
7 angle there.

8 Q. Yeah. So but he's wearing the apron clearly
9 whatever and based on his statement that's consistent?

10 MR. HUBBARD: What was that question?

11 BY MS. SIMPSON:

12 Q. And what area was he walking to?

13 MR. HUBBARD: I'm sorry. What was the question
14 about Mr. Lynch? I missed it.

15 BY MS. SIMPSON:

16 Q. Is that him and based on the apron and his direction
17 is that consistent with what he said?

18 A. He did say he walked out of the store at some
19 point.

20 Q. All right. So he's walking over here. I just kind
21 of want to focus on him for a second. So this is him. So
22 he's right here. He doesn't go to the dumpsters. He's right
23 there. What area is that?

24 A. Well, that's actually down towards the dumpsters.
25 It's not quite all the way there, but he's certainly very

1 close. That's where he's going I think to smoke.

2 Q. Right. And he's also, he's actually closer -- Where
3 does that curve kind of mid section stop?

4 A. I'm sorry. I might have to look exactly at what
5 you're talking about.

6 (Video stopped.)

7 BY MS. SIMPSON:

8 Q. I think I have an actual accurate map here.

9 A. Do you want me to come down there?

10 Q. No. I'll just bring you one because I'm gonna have
11 you look at the screen here in a moment.

12 A. Sure.

13 Q. Okay. I'm gonna show you what's been entered as
14 State's Exhibit 22. You recognize this from earlier, right?

15 A. I do. Yes, ma'am.

16 Q. Actually I will have you stand down --

17 A. Whatever you need.

18 Q. -- because I don't think everyone can get a good
19 angle.

20 A. Whatever you need. I'll face this way. Yes. I
21 know.

22 Q. All right. So as far as where he is located in the
23 video, his path is kind of outside the door. Here are the
24 dumpsters, but he's right here at the pole?

25 A. It looks like he is. It looks like he - he was

1 right here towards this little drive right here.

2 Q. Okay. So his perspective an absent the tree because
3 these are grown up --

4 A. That's the other side. That's Petco.

5 Q. Yeah. So there's like pretty clear right here, and
6 that's that roadway where the cars are coming and some of the
7 kids are in the street, correct?

8 A. I don't know how many kids are in the street. I can
9 say --

10 Q. Let me --

11 A. Is the question what's his perspective or is the
12 questions the kids in the street?

13 Q. Well, from this area he can see --

14 MR. HUBBARD: Your Honor, I object to the conclusion
15 that he can see. That's a conclusion. Where he is I
16 don't have any problem with.

17 BY THE WITNESS:

18 A. It appears his facing is facing the dumpsters.

19 BY MS. SIMPSON:

20 Q. And we haven't continued, but that vantage point,
21 would you agree with me that it's pretty close to where the
22 cars were located in the roadway?

23 A. So he is -- At that time? Because at that time --

24 Q. At that time. We'll get to where he goes in the
25 future?

1 A. I'm just trying to get some specifics.

2 Q. Yeah. That's fine.

3 A. So he's standing right around this area facing these
4 dumpsters.

5 Q. Right. And absent the trees we see in the
6 roadway?

7 A. Well, if he turned around. Yes, ma'am.

8 Q. So if he turns around and looks to see the millions
9 of people in the parking lot, he's gonna see that, correct?

10 MR. HUBBARD: Objection, Your Honor. Now she's just
11 testifying. I don't mind questions. I really don't.

12 THE COURT: Yeah. I agree. There's not millions of
13 people.

14 BY MS. SIMPSON:

15 Q. So let's move the video forward a little bit more
16 and see exactly where he kind of goes.

17 A. That's Mr. Zander leaving through the driveway --

18 Q. Hold on. I just want to focus just on Zachary
19 Smith.

20 A. Yeah. He's still facing that way.

21 Q. He's still facing and he's looking towards this side
22 or at least he's facing that way?

23 A. I believe he's facing like right here. When you
24 look at him right there, he's facing kind of directly across
25 right here.

1 Q. At this point cars are moving?

2 A. Yes. Mr. Zander's already come up and left.

3 Q. Right. You see a truck. Kids are in the roadway
4 wherever they're going, whatever they're doing, correct?

5 A. That's the parking lot. They haven't crossed the
6 curb yet.

7 Q. No. The one that I'm pointing to over here.

8 A. That's standing on the curb otherwise the car
9 wouldn't be able to pass through there.

10 Q. Well, if we backed it up, we would have see the kids
11 right there, correct?

12 A. I don't know. Let's back it up and I'll tell you.

13 Q. Let's back it up.

14 A. There's Keith Adams right there and those kids --

15 Q. And I want to focus on kids walking towards the
16 street.

17 A. Those kids are all in the parking lot.

18 Q. Parking lot. Keep moving.

19 A. All right. There's kids exiting the street back
20 into the Cook Out parking lot. There's a kid walking on the
21 little curb there. That's not the street. That's on the curb
22 there. You can see their feet on the ground. And there's Mr.
23 Adams. He freely leaves that way. Kids are still in the
24 parking lot. Mr. Zander freely leaves that way and the kids
25 are still on the curb and in the parking lot.

1 Q. We have Zachary Lynch Lynn standing right here.

2 A. And that's Mr. Adams who has chosen - or Dennis who
3 has chosen to turn around and come back out this way.

4 Q. And as far as --

5 A. Another car in between them leaves there and then
6 that's where he's about to stop.

7 Q. Okay. Now you can have a seat. Thank you.

8 A. (Witness complies.)

9 Q. Now, what does it appear they're doing at this
10 point?

11 A. Who is "they"? Which one specifically? I'm
12 sorry.

13 Q. All these kids right here.

14 A. Well, they're standing in the parking lot.

15 Q. Including the ones we have identified?

16 A. I'm sorry. I couldn't hear that.

17 Q. Watch them and tell me what you observe.

18 A. I'm seeing them in the parking lot, then they all go
19 start running towards the road. That's about the time Mr.
20 Zander threw money in the road to pull them out there.

21 Q. But we don't see Ms. Zander?

22 A. Right. Because he's off screen, but he admitted to
23 throwing the money out in the road into that lane which is
24 what drew them out there.

25 Q. Keep going. Kids are running.

1 A. And Mr. Dennis almost runs over them. He drives
2 into them straight away --

3 Q. Hold on. Hold on. We're not there yet.

4 A. I'm sorry. You told me to tell you what I observed
5 and I was.

6 Q. He pulls in and doesn't hit anyone, correct?

7 A. Right. He stops short of hitting folks. Yes,
8 ma'am.

9 Q. I'm not sure why it blurs like that. And earlier
10 you testified -- pause it just for a second -- and I say
11 earlier, on direct that he pulled in the wrong lane. That's
12 how you termed it?

13 A. He pulled in the opposite side.

14 Q. So he's on the opposite side?

15 A. Mm-hmm. He's in the lane or the side of the road
16 incoming traffic would be.

17 Q. Okay. Incoming traffic even though you said we
18 don't know how wide that lane is?

19 A. I don't have the exact dimensions for you. There's
20 a picture there that displays it though.

21 Q. Yeah. That displays State's exhibit 23?

22 A. Yes, ma'am.

23 Q. And it's fair to say you could have easily sent
24 crime scene or somebody to take measurements of that?

25 A. Crime scene was out there. I don't know what

1 decisions they did or didn't make to measure that road. I was
2 not part of that.

3 Q. But you just took measurements of the car. You're
4 capable of taking measurements, too, correct?

5 A. Sure. Crime scene handled the crime scene. We
6 don't go back and do secondary crime scene investigation.

7 Q. But you go back and do secondary creations of
8 exhibits, correct?

9 A. Well, I didn't create the road. It was there.

10 Q. Well, I know the road was there. But these are
11 police cars, correct?

12 A. I believe a couple of them are unmarked police
13 cars.

14 Q. And this was actually -- You're familiar with Mike
15 Phipps?

16 A. I do know Mike Phipps. He works for the county.

17 Q. And he took aerial photos?

18 A. Yes, ma'am. This photo looking directly down on
19 that road as it was.

20 Q. Well, we don't know the width or the length of this
21 at all?

22 A. I don't have measurements. Yes, ma'am.

23 Q. But since you referred to it -- It's not really a
24 three lane road even though three cars can fit there, right?

25 A. Sure. No, ma'am. It's not three lanes.

1 Q. As a matter of fact and let me point out in State's
2 23, we actually see a bunch of dirt here where it really
3 doesn't look as though cars are on that side anyway?

4 A. Well, it depends. That could be wash out from
5 rain.

6 Q. It could be a lot of things but let's say, this is
7 clear?

8 A. Two tire marks right there.

9 Q. Right.

10 A. Right there. You can actually see a tire mark leave
11 out of it.

12 Q. I see a, but I see a lot of dirt on top, correct?

13 A. Sure. It does get a lot of run off right there.

14 Q. And this area is the closest to the Cook Out?

15 A. It is.

16 Q. Okay. And so you're saying Kierin came in the wrong
17 way this way?

18 A. Yes, ma'am.

19 Q. Okay. And as far as where Will Zander was, he's off
20 screen but you testified during direct that he was kind of off
21 center in the roadway which would have been really close right
22 about here based on all the testimony and investigation that
23 you did?

24 A. Okay. So based on testimony I got, he was up ahead
25 and then towards the middle of that expanse there.

1 Q. So he's kind of off center in the middle --

2 A. Yes, ma'am.

3 Q. -- here and Kierin is over here?

4 A. Because the money got thrown into that side so he
5 would have had to been over here.

6 Q. So he's over here and he actually gets out of his
7 car at some point with something in his hand?

8 A. He does state he get's out of his car. Yes,
9 ma'am.

10 Q. And in that car you learn through the course of your
11 investigation Morgan Zander and Lucky are present in that
12 one?

13 A. Mm-hmm. Yes, ma'am.

14 Q. Kierin is in the car. Is he with anyone?

15 A. He's alone. He's alone the whole time.

16 Q. He's completely alone the whole time?

17 A. Yes, ma'am.

18 Q. And kids are over here --

19 A. Sure. Yes, ma'am.

20 Q. -- right? And you see the truck passed. And we'll
21 keep moving the video. I may have you to step down again.

22 A. I'll do anything you need me to do, ma'am. (Witness
23 complies.)

24 Q. And again, it's still going fast. I think we backed
25 it up just a little bit too far. So the kids are running

1 towards the vehicle in this spot?

2 A. Towards where the money was. Yes, ma'am. They're
3 going out into the street to the money.

4 Q. Where Will's car was, correct?

5 A. Well, he threw it to the side of his car. Yes,
6 ma'am. So they would have gone to the money.

7 Q. So that area where Will's car is. So the answer to
8 my question is yes?

9 A. Yeah. Within the distance of wherever he threw the
10 money is where they went.

11 Q. And that swarm of children, kids, teenagers, are
12 going in that direction. Now this car comes up. I'll
13 probably have to back it up. This is a blue car of some
14 sort?

15 A. Mm-hmm. They're on the wrong side of the road as
16 well. They're behind Mr. Dennis who is stopped there.

17 Q. They're behind Mr. Dennis. And we'll back it up
18 just a little bit. Kids are running. It's fair to say
19 through the course of your investigation you identified a lot
20 of these kids, right?

21 A. A lot of those kids were identified. Yes.

22 Q. And most of them went to Dutch Fork or at least a
23 substantial amount?

24 A. There was a decent number that went to Dutch Fork.
25 Yes, ma'am.

1 Q. All right. And right here we have kids in the road,
2 on the curb?

3 A. I don't know. Like you said before, it's off camera
4 so I'm just gonna - I can base it off my investigation.

5 Q. Then here, who is this again?

6 A. that's Mr. Chatman.

7 Q. Chatman walking towards with a drink in his hand?

8 A. Mm-hmm.

9 Q. Headed in that direction as well. And here's where
10 we see, this is the car. Pause for just a second. I was busy
11 talking about the car. There's another car that had backed
12 up?

13 A. What? I'm sorry. This is backing up. Yeah.

14 Q. Hold on. Let me pause it.

15 A. This is different. This is earlier.

16 Q. That's Keith?

17 A. That's Keith Adams leaving the scene and that's Mr.
18 Zander.

19 Q. This is Mr. Zander's car.

20 A. Driving up and then he stops and throws the money
21 out. That's Mr. Dennis turning around choosing to go out that
22 way.

23 Q. This is another random car pulling in the wrong way.

24 A. Let it proceed.

25 Q. Or is that Zander?

1 A. No, ma'am. That's not Zander. That's a different
2 car in between that actually gets through as well.

3 Q. Okay. So there's a different car in between where
4 Zander and Kierin are?

5 A. Mm-hmm. And then Mr. Dennis pulls up, zips up on
6 that wrong side, the truck comes and goes around him on the
7 right side.

8 Q. One second. And I mean he's --

9 MR. HUBBARD: Your Honor, I didn't hear what the
10 witness just said.

11 THE COURT: I didn't either.

12 MR. HUBBARD: What was the witness' answer? Repeat
13 it. I did not hear that.

14 BY THE WITNESS:

15 A. I observed Mr. Dennis zip on that wrong side towards
16 the incoming traffic and then the truck I'm describing, I'm
17 just trying to describe the cars which are - the truck goes
18 and goes on the right side of the road, the correct side and
19 gets through. And then I think what you were getting to --

20 BY MS. SIMPSON:

21 Q. No. No.

22 A. -- is the other car which gets behind Mr. Dennis and
23 has to back up because they're on the wrong side as well.

24 Q. Back it up one more time because I'm pretty sure
25 that was a car first.

1 A. Yeah. There's a couple. There's a few that get
2 through.

3 Q. And we don't really know where they go or what they
4 do but somehow maybe they get out?

5 A. Yeah. They manage to get through because they
6 certainly weren't in the way when they left.

7 Q. This is Kierin. This is Keith's --

8 A. That's Keith.

9 Q. -- car?

10 A. Keith goes up and takes one of several exits to go
11 towards the Walgreens.

12 Q. He's kind of in the wrong lane, too, right?

13 A. No. Keith is doing okay. He's probably about in
14 the middle of the road he testified. There's --

15 Q. Okay. Pause it just for a second just so you can
16 talk. Sorry.

17 A. Yes, ma'am. So he took that wide turn with that big
18 Armada. He took that wide turn. He's traveling up.
19 Everything is fine. He travels freely. Mr. Zander pulls in
20 which looks to be directly behind where Mr. Adams was.

21 Q. So Mr. Adams is kind of in the middle of the road,
22 then Zander?

23 A. I don't know if he was exactly in the middle of the
24 road, ma'am.

25 Q. He's pretty close to it?

1 A. Maybe. I don't know. You would have to ask him.
2 Then Mr. Zander pulls up and he stops and throws the money.

3 Q. So this is Zander's car?

4 A. No, ma'am. That's a completely unrelated vehicle
5 who manages to come up and make it through.

6 Q. I want to pause here. There's another car coming
7 up, right?

8 A. That's Mr. Dennis. That's his headlights I believe
9 right there because he's chosen to whip around and come back
10 up and that's where he goes on the wrong side where they've
11 run out to get the money.

12 Q. Pause. And to be fair, they're all zipping up at
13 about the same pace on the video?

14 A. Well, I didn't check all their speeds, but he
15 appears to be moving a little bit faster. You can see the
16 headlights come up, the speed at which those headlights come
17 up and then he comes directly pointed. He's angled to that
18 wrong side of the road purposely because you can see the
19 headlights coming at you which you didn't really see on the
20 other cars.

21 Q. Okay. So our perceptions may be a little bit
22 different.

23 A. Sure.

24 Q. But anyway, cars coming. This is Kierin's car.
25 What's the next car?

1 MR. HUBBARD: Your Honor, I am gonna object.

2 MS. SIMPSON: I'm moving on.

3 THE COURT: Hang on. I haven't heard the objection
4 yet.

5 MR. HUBBARD: I have no objection to his
6 observations. If there's a difference she has, it needs
7 to be in the form of a question, not I disagree with you.
8 I'm just gonna ask that.

9 THE COURT: Okay. Keep going.

10 BY MS. SIMPSON:

11 Q. Pause it right here. Okay.

12 A. That's that truck that goes around --

13 Q. That's the truck?

14 A. -- and gets through. Yes, ma'am. He gets on the
15 right side of the road and gets through.

16 Q. He goes around?

17 A. Mm-hmm.

18 Q. Okay. So the kids though - and at this point
19 they're still kind of running towards the money, right?

20 A. Yes, ma'am.

21 Q. So they're not already in the road or doing anything
22 wrong when the truck passes?

23 A. No, ma'am.

24 Q. Pause it. Back it up just a little bit. Right
25 after that truck comes --

1 A. Yes, ma'am.

2 Q. -- we're gonna see a blue car, correct?

3 A. Yes, ma'am. And it pulls on the other side.

4 Q. Comes from the same direction as Kierin does?

5 A. Pause it right there. See it going around the
6 truck? It's on the left side of that truck. It's on the
7 wrong side of the road.

8 Q. It's on the wrong side?

9 A. Yes, ma'am. It's pulling up behind Kierin.

10 Q. Were you able to identify who was in that truck?

11 A. I was not able to identify who was in the truck?
12 Because the truck left.

13 Q. No. Not --

14 A. The truck got through and left.

15 Q. Not the truck. The truck left. The blue car.

16 A. No, ma'am. I don't believe we were ever able to
17 identify who was in the blue car. They stopped and backed up
18 to leave.

19 (Stopped video.)

20 BY MS. SIMPSON:

21 Q. Are you certain about that?

22 A. I'm not positive. I'm trying to remember because
23 there was a lot of cars and a lot of people we talked to.

24 Q. You interviewed a lot of people?

25 A. If you can ask me who I interviewed, I can certainly

1 confirm if I interviewed them.

2 Q. Okay. So and even if you didn't interview them, one
3 of your officers did?

4 A. One of my officers may have interviewed them.

5 Q. So let me go because I want to make sure I get the
6 right person.

7 A. Sure.

8 Q. Two people were interviewed by the name of Collin
9 James and Stephen Davis; isn't that correct?

10 A. Yes, ma'am. I don't believe I interviewed them.

11 Q. But you do, your agency actually keeps something I
12 believe called a case management report; is that right?
13 That's a document you keep? I'll show that to you.

14 A. I would have to look at it.

15 MS. SIMPSON: Hold on one second. And I apologize.
16 I'll mark it for ID but, of course, this has all my notes
17 on it so...

18 THE COURT: It's a good time for a break. 13, 14
19 minutes. Go back to the jury room. Don't talk about the
20 case.

21 (Whereupon, the jury entered the jury room at 10:47
22 a.m.)

23 THE COURT: All right. Stand at ease until 11:00.

24 (Short break.)

25 BAILIFF: All rise.

1 THE COURT: Be seated.

2 MR. HUBBARD: Your Honor, I have one quick thing,
3 not as to this witness, but my next witness involves the
4 car door. They're getting that now. It won't be long,
5 but they're aware they're getting that. It takes a good
6 ten plus minutes just to wheel it up.

7 MS. SIMPSON: And, Your Honor, we will have a matter
8 of law as to that issue.

9 MR. HUBBARD: We'll take that in camera then.

10 THE COURT: Sure.

11 MR. HUBBARD: I just wanted to put Your Honor on
12 notice. I don't know what you want to do with the jury.

13 THE COURT: Okay. We've got to get through with
14 Sergeant Carter first. It's two minutes to 11. I told
15 them to 11. Y'all ready?

16 MS. SIMPSON: Yes, Your Honor.

17 MR. HUBBARD: Yes, Your Honor.

18 THE COURT: Bring the jury.

19 (Whereupon, the jury entered the courtroom at 11:00
20 a.m.)

21 (Whereupon, Defendant's Exhibit #3 marked for
22 identification.)

23 BY MS. SIMPSON:

24 Q. Sergeant Carter, back to what we were talking about.
25 Your Police Department maintains a case management report. Do

1 you recognize what's marked as Defendant's Exhibit 3? You can
2 take a second to review.

3 A. Okay. This is actually from the Tyler System which
4 is an old report system that we used to have about the time
5 this happened. We've transitioned from Tyler to LawTrac
6 during this incident unfortunately so it changed. We don't
7 use this system anymore and we only used it very briefly.
8 We're still just learning, but it was so bad we had to get rid
9 of it and we had to change to a different one.

10 Q. But that what was -- Are you finished?

11 A. I guess I can say at the time this probably would
12 have been what we used.

13 MR. HUBBARD: Your Honor, may I just ask what we're
14 looking at? Defense ID what?

15 MS. SIMPSON: 3.

16 MR. HUBBARD: 3. Okay. Thank you.

17 BY MS. SIMPSON:

18 Q. And after glancing through it, that system was still
19 in place, correct?

20 A. This system would have been obviously when this was
21 printed, sure.

22 Q. To kind of expedite, it definitely shows that you
23 entered certain information as well as other officers involved
24 in the case to include, I believe, Officer Ellisor, Bledsoe
25 and a number of others?

1 A. There's a number of names in here. Yes, ma'am.

2 Q. In reviewing it you stated that y'all get together,
3 you look at statements, you're, of course, gonna look at all
4 the statements that the officers under you would have taken
5 and all the information they have even after the defendant is
6 arrested, correct?

7 A. Yes, ma'am. They would have said give me a
8 briefing, a summary and if there was a written statement,
9 provide it to me for review.

10 Q. Because of that ongoing investigation. I want to
11 direct your attention, since we're talking about this blue
12 car, I'm not familiar with cars, whatever the blue car is that
13 comes up behind Kierin's vehicle in the video.

14 A. Yes, ma'am.

15 Q. I'll direct your attention to the page where Collin
16 James is interviewed by, I believe it's actually Ellisor. So
17 go to page 6 of that report.

18 A. Let's see.

19 Q. And I know it's been a while so if you need to
20 review it to refresh, take your time.

21 A. So on page 6 where Collin James is interviewed by
22 Detective Ellisor, correct?

23 Q. Or the entry is made. Yes. So I assume Ellisor
24 made it based on the language.

25 A. Yes, ma'am. Sometimes you will see different

1 initials underneath it so it could have been opened up by that
2 officer or another officer. Yes, ma'am.

3 Q. You have reviewed it before?

4 A. I would have reviewed it back then. Yes, ma'am.

5 Q. So in that statement Collin James actually tells you
6 he's with Stephen Davis, correct?

7 A. Yes, ma'am. I believe it does.

8 Q. And that they were actually in that dark blue Impala
9 that had been parked in the parking lot closer to the PetSmart
10 or whatever it was at the time?

11 A. Uhm, I didn't talk to him. I'm having to read
12 this.

13 Q. That's fine. Take your time.

14 MR. HUBBARD: Your Honor, since I'm not really --

15 MS. SIMPSON: I'll show you. I'm sorry.

16 MR. HUBBARD: Let me glance at it. That's fine.

17 BY MS. SIMPSON:

18 Q. Are you finished reading?

19 A. Your question was did they park at the pet store?

20 Q. Yeah. So the blue Impala -- Backing up, my
21 question, your agency, y'all actually were, maybe not you
22 specifically, talking to them but were able to identify who
23 was in that Impala?

24 A. Yes, ma'am.

25 Q. And that would be Collin James and Stephen Davis; is

1 that correct?

2 A. It appears from this statement. Yes, ma'am.

3 Q. Both of those students went to Dutch Fork, correct?

4 It's listed in there, student at Dutch Fork.

5 A. Okay. So yes. He did speak to him, student at

6 Dutch Fork. Yes, ma'am.

7 Q. And he also spoke with Stephen Davis as well?

8 A. Yes, ma'am.

9 Q. That's a little higher up on the page. Do you need
10 a minute to review that, too?

11 A. No. I see it. I see it.

12 Q. They testify about a number of things, but focusing
13 on that car, that's the car that pulls in behind Kierin,
14 right? And there's actually two sets of kids who kind of run
15 toward the road; is that fair?

16 A. I don't know.

17 MR. HUBBARD: Your Honor, I'm kind of lost, too.

18 THE COURT: Yeah.

19 (Playing video.)

20 BY MS. SIMPSON:

21 Q. The blue Impala that pulls up behind Kierin --

22 A. Right.

23 Q. Or no. It's coming up.

24 A. That's Will right there.

25 Q. Will right there.

1 A. He goes up and he throws the money and we'll see
2 kids run out there.

3 Q. One set of kids running.

4 A. There's a car that comes through, proceeds on
5 through. All right. Those kids run and here comes
6 Mr. Dennis.

7 Q. Dennis?

8 A. Yep.

9 Q. And another set starts running. And that truck --
10 Pause it for just a second.

11 A. That truck goes to the side. Yes, ma'am.

12 Q. And you don't know if he has to run up on the
13 curb?

14 A. No. It doesn't appear. You can't see him hop up.
15 You see him go --

16 Q. Yeah. You don't see it.

17 A. Right. He just moves --

18 Q. So you don't know if he had to go up on the curb to
19 get around.

20 THE COURT: You interrupted him answering.

21 BY MS. SIMPSON:

22 Q. Did he go up on the curb?

23 A. As you explained earlier, I can't see what happened
24 once he gets off the screen, but on the screen I don't see him
25 on the curb. He's moving straight. You don't see his truck

1 pop up. He just goes straight. He got out though.

2 Q. He got out?

3 A. It appears he got out.

4 Q. And then this Impala -- Pause it.

5 A. Goes on the wrong side of the road. Yes, ma'am.

6 Q. Directly behind Kierin?

7 A. Yes, ma'am.

8 Q. That's the car that Collin James and Stephen Davis
9 were in per your agency?

10 A. According to these statements, what Detective
11 Ellisor would have talked -- I mean, I'm kind of talking about
12 what they talked to somebody else so I'm just going off of
13 their statements. Yes, ma'am.

14 (Video stopped.)

15 BY MS. SIMPSON:

16 Q. Okay. And you have to rely on a number of officers
17 --

18 A. Sure.

19 Q. -- in your capacity --

20 A. Sure.

21 Q. -- because you can't do it all especially as the
22 lead?

23 A. Sure.

24 Q. So you have a number of people tasked with search
25 warrants --

1 A. Yes, ma'am.

2 Q. -- executing that?

3 A. Absolutely.

4 Q. And you review everything at the end?

5 A. Yes, ma'am.

6 Q. And then Zachary Lynch, I'm gonna move on from him
7 for a second. Let me go to, I want to jump around just a
8 little bit. The map I showed you, I believe it was State's 22
9 earlier.

10 A. Yes, ma'am.

11 Q. Can you tell me the date and time that this was
12 actually taken?

13 A. I don't know the date and time that was taken
14 offhand. It would have been after this incident.

15 Q. Okay. Was it taken at night?

16 A. No, ma'am.

17 Q. Did this incident occur at night?

18 A. It did not.

19 Q. The stabbing at the Cook Out didn't occur at
20 night?

21 A. I'm sorry. Yes. It did. I'm sorry. Yes, ma'am.
22 It did happen at night.

23 Q. So a more accurate vantage point or accurate thing
24 would have been taken at night?

25 A. You could have taken it at night. Sure.

1 Q. And at night we can see things a lot differently
2 than we do during the day, correct?

3 A. That is a scientific fact.

4 Q. And we definitely don't know what date and time this
5 was ever taken?

6 A. I don't know what date and time that was taken.

7 Q. I want to go back to your - I kind of want to focus
8 on the basketball game and like I said, I'm jumping around a
9 little bit, but you were here when Dr. Washington testified?

10 A. I did hear her testify. Yes, ma'am.

11 Q. And about the reason for the security and the need
12 for it, correct?

13 A. Yes, ma'am.

14 Q. And in that she indicated the reason for it,
15 correct?

16 A. Yes, ma'am. There had been trouble at a game
17 prior.

18 Q. Right. And you were actually, you're aware that
19 Deputy Creech, who you're familiar with, correct?

20 A. I know the name.

21 Q. You know the name. And he was notified that night
22 that the actual issue was between White Knoll and Dutch Fork
23 students, correct?

24 A. I don't remember that. I don't recall.

25 Q. And let me show you something then. And his was

1 that there had been a game prior and it was actually the
2 patrons of Dutch Fork that had become unruly and violent.

3 MR. HUBBARD: Your Honor, she's testifying.

4 THE COURT: Yes.

5 MS. SIMPSON: I'm gonna show him the report.

6 THE COURT: You asked him did he talk to Creech. He
7 said he knows who he is and then you said everything he
8 says. It's kind of unfair.

9 MR. HUBBARD: And I'm gonna object. She's showing a
10 report of somebody he didn't talk to. That's not fair
11 either.

12 MS. SIMPSON: But, Your Honor, he's reviewed all of
13 the reports in this case. This is part of the incident
14 supplemental reports provided.

15 THE COURT: But you're not showing him the report
16 that you're talking about, Mr. Creech --

17 MS. SIMPSON: I'll be happy to show him.

18 THE COURT: -- and you're talking about another game
19 that's not subject to this. You're really jumping around
20 a lot. You said I'm gonna jump around. You're good to
21 your word. Keep on track.

22 MS. SIMPSON: I'll mark this as Defense Exhibit 3
23 for ID, or 4. Sorry.

24 MR. HUBBARD: Your Honor, I object to this one
25 because the officer writes in a report preliminary

1 MS. SIMPSON: Yes, Your Honor.

2 THE COURT: Bring in the jury please.

3 (Whereupon, the jury entered the courtroom at 11:30
4 a.m.)

5 THE COURT: All right. Continue on.

6 BY MS. SIMPSON:

7 Q. Okay. Sergeant Carter --

8 A. Yes, ma'am.

9 Q. -- isn't it true that you had information that the
10 Dutch Fork kids had, or patrons had become unruly and violent
11 at a previous White Knoll game?

12 A. There was a report that Lexington County Sheriff's
13 Department produced where there was an officer stating he
14 recalled another officer telling him something about that.

15 Q. And that officer, Officer Creech also relayed that
16 --

17 MR. HUBBARD: Your Honor, I'm gonna object to any
18 hearsay at this point. Officer Creech isn't here. We've
19 gone over this.

20 MS. SIMPSON: I'm trying --

21 THE COURT: Right. It's in the report. He examined
22 it. She can ask that. You can't republish any
23 hearsay.

24 MR. HUBBARD: Can he have that report?

25 THE COURT: Sure.

1 MS. SIMPSON: I believe I handed it --

2 THE WITNESS: I've got a copy.

3 BY MS. SIMPSON:

4 Q. Yeah. I believe I handed it up. Isn't it true that
5 Creech was actually involved in more of the investigation,
6 correct, than just the game?

7 A. As far as more of the investigation? I believe he
8 came to the Cook Out scene right after it occurred, but he
9 wasn't involved in the investigation that I know of. I mean,
10 I know he went to the, I believe he went to a house to stand
11 by at one point.

12 Q. And he helped identify the tag of Kierin Dennis?

13 A. I'm not sure if he's the one who provided that
14 information.

15 Q. Okay. But if it's in the report, that would be
16 accurate?

17 A. If it's in the report, that's his recollection.

18 Q. And he also had information relayed to him that
19 Capers had been stabbed by a guy with dreads while leaning in
20 the driver's side window, correct?

21 A. Where in the report?

22 Q. That would be, one, two, three, four paragraphs
23 down.

24 MR. HUBBARD: Your Honor, again, I'm objecting. I
25 know it's in a report, but as if it's fact. Officer

1 Creech isn't here. He didn't say where he got it from.
2 He's gonna write down everything. That's the problem.

3 MS. SIMPSON: And, Your Honor, if I may briefly
4 respond?

5 THE COURT: Yes.

6 MS. SIMPSON: This is their lead investigator who
7 has extensively testified about the other officers and
8 relying on their reports for purposes of the
9 investigation. I don't know whether the State is gonna
10 put up Creech.

11 THE COURT: Wait a minute. Isn't the question what
12 happened out there?

13 MS. SIMPSON: Yeah. And Creech has information,
14 Officer Ellisor, a number of them do.

15 THE COURT: All right. But Creech's information is
16 Creech's. He can rely on it to decide what he's gonna
17 do, but he can't say what Officer Creech said and that's
18 a jury's job, what happened, right?

19 MS. SIMPSON: But I believe he testified earlier
20 that everything was consistent with his murder charge.

21 THE COURT: No. No. No. He had statements that
22 were inconsistent. Ask your next question. But you
23 can't say didn't Officer Creech tell you thus and such.
24 I don't think that's fair.

25 MS. SIMPSON: Okay. I believe that's all I have for

1 --

2 BY MS. SIMPSON:

3 Q. One more question. Back to Zachary Lynch because
4 you stated some things regarding his consistencies and
5 inconsistencies and I'm gonna show you -- Do you have a copy
6 of his statements?

7 A. I do have a copy of his statements. Yes, ma'am.

8 Q. Both of them?

9 A. Yes, ma'am.

10 MR. HUBBARD: Your Honor, I have no objection if
11 those go into evidence.

12 MS. SIMPSON: As far as I'll just refer to them. If
13 we want to mark this as Defense Exhibit 5 or whatever
14 number. 4.

15 THE COURT: I thought we marked somethig else.

16 COURT REPORTER: No, Your Honor, we didn't mark
17 it.

18 THE COURT: Oh, we didn't mark it. This will be 4?

19 MS. SIMPSON: For ID purposes only.

20 COURT REPORTER: Is this two separate reports?

21 MS. SIMPSON: We can mark it as one. I'll staple it
22 together.

23 MR. HUBBARD: So they're both going in evidence?

24 THE COURT: She said she marked them for ID.

25 MS. SIMPSON: For ID only.

1 MR. HUBBARD: Okay. I just wanted to make sure. I
2 have no objection.

3 THE COURT: Okay. This is both statements but it's
4 one exhibit, correct.

5 MS. SIMPSON: Correct, Your Honor.

6 THE COURT: Okay. Got it.

7 (Whereupon, Defendant's Exhibit #4 marked for
8 identification.)

9 BY MS. SIMPSON:

10 Q. As far as your comments regarding Zachary Lynch,
11 those were not correct, correct?

12 A. I'm sorry. As far as my comments?

13 Q. About Zachary Lynch's inconsistencies your testimony
14 was incorrect?

15 A. I don't believe it is. I'm looking at the report
16 where he talks about two guys getting out of the car and one
17 reaching in a different car and stabbing.

18 Q. Perhaps maybe you can point me in the direction of
19 where you're referring to in this.

20 A. All right. So in its entirety?

21 Q. In its entirety?

22 A. Well, you can't just pull out three words and say
23 all right, that's it.

24 Q. All right. Well help me with the entirety. Let's
25 go through that

1 A. So the entirety of the report?

2 Q. You can just read it.

3 A. Sure. So we've got two statements here, okay?

4 Q. Mm-hmm.

5 A. So in the first statements he talks about walking
6 out of the restaurant. Then he says he walks towards the
7 incident when actually he walked over there towards the
8 dumpster. So then he says -- You know, and that's all fine.
9 He has a vantage point there. So then he says -- I mean, I
10 can read them word for word.

11 Q. That's fine.

12 MR. HUBBARD: I think that needs to be in evidence
13 for that.

14 THE COURT: I don't think he can publish them. If
15 you want them to come into evidence, the jury can see
16 them, you can ask him questions, but don't read the whole
17 thing. I don't think that's fair.

18 MS. SIMPSON: Okay? I don't know. We were just
19 kind of - maybe if it's easier.

20 BY THE WITNESS:

21 A. So in the first statement he identifies --

22 THE COURT: Wait a minute. Wait a minute. Stop.
23 Do you want it in evidence or not?

24 MS. SIMPSON: No. I want him - his inconsistent but
25 that is not accurately reflected in the report as to

1 solely just two guys running up as he testified earlier.

2 THE COURT: He was in a different portion. The
3 inconsistency was he walked toward the incident. He said
4 he walked toward the dumpsters. Then your next question
5 was? Go ahead.

6 BY MS. SIMPSON:

7 Q. Then my next question was what was the other
8 inconsistency?

9 A. All right. So he's discussing a few things. In the
10 first statement he mentions a male in a white shirt starts to
11 go towards a car parked in the driveway. All right. And then
12 he says a male in a white shirt which neither the defendant or
13 the victim were wearing --

14 Q. Wait. Hold on. Back up. So he says a male in a
15 white shirt walks up towards that Explorer?

16 A. No. He doesn't.

17 Q. What's he saying?

18 A. If you read it right there in those very words,
19 third line - second to the third line. African-American male
20 wearing a white shirt proceeds to go towards the car parked in
21 driveway.

22 Q. Okay.

23 A. All right. So he's going in that direction. He
24 reaches in the car as if to stab somebody and another guy
25 walks up and throws a cup and takes off, then two males get

1 into a two door gold Explorer and drive off. So when you
2 actually watch the iPad video, you see a black male in a white
3 shirt walk out towards the driver. That's after Kierin Dennis
4 leaves. That's Marcus Taylor. That's not either of our
5 parties. He's seen some things and piecing things together
6 and jumped, and then he talks about two males getting in the
7 gold Explorer and taking off. Uhm, let's see. Then he says,
8 and then when he comes back --

9 Q. Let me stop you. So now we're into the second --

10 A. Sure. The second one.

11 Q. -- the second handwritten statement where he does
12 acknowledge everybody yelling and cursing?

13 A. Sure.

14 Q. You said that was consistent?

15 A. Yeah.

16 Q. And you also stated that some kids were in an
17 argument with the black guy. That was consistent. There was
18 more screaming and cursing, correct?

19 A. Yes.

20 Q. But as far as an inconsistency you still stated that
21 as the gold Expedition then runs back to the kid in the
22 driveway as he is about to leave, starts saying get out of the
23 car so the black guy reaches in the car with one arm and what
24 looks like he stabs him.

25 A. Right.

1 Q. That's an inconsistency, correct?

2 A. So here's the investigative part of it. So I have
3 to balance this against video and a things like that, right?
4 So at this time I had already seen, you know, Marcus Taylor
5 and things like that and we have this information so he says
6 the kid, they get in an argument and the kid leaves in a hurry
7 and the buff black guy. The only person out there I saw just
8 a few that were buff that made any sort of these motions is
9 Marcus Taylor. Buff black guy runs to his gold Expedition.
10 Mr. Dennis never ran to his gold Expedition. That's doesn't
11 even make any sense. He's just jumbling stuff up together.
12 He's compiling something based off of most likely hearing
13 other people's observations and piecing them together as he's
14 down by the dumpster on his smoke break and then se says --

15 Q. We see him right there --

16 A. Sure.

17 Q. -- just referring to the video --

18 A. Down by the dumpsters.

19 Q. -- doing that down by the dumpsters, that's him?

20 A. And he's looking up from the rear. He's looking up
21 from the rear of this. So then he talks about a kid leaving
22 in a hurry. Buff black guy runs to his --

23 Q. Which actually the kid leaves in a hurry, correct?

24 A. Yeah. I'm just --

25 Q. That's a consistency?

1 A. I'm trying to get to the point. Yes, ma'am.

2 Q. I didn't want to go too off track to where you're
3 just reading me the statement. I wanted you to kind of --

4 A. I mean, you asked me about the information. I'm
5 giving it to you.

6 Q. I wanted to tailor it back to just the consistencies
7 and inconsistencies.

8 A. I'm sorry. I don't tailor things. I just kind of
9 read what's there. I'm just giving the flat truth.

10 Q. I mean based on His Honor's ruling. I mean, I can
11 --

12 A. I'm sorry. I didn't want you to think I was
13 tailoring anything.

14 THE COURT: Y'all just keep interrupting each other.
15 I can hear Steve struggling.

16 THE WITNESS: I'm sorry, Steve.

17 THE COURT: Ask your next question and then --

18 BY THE WITNESS:

19 A. I mean, I was describing the inconsistency. I don't
20 know if I'm supposed to still do that.

21 BY MS. SIMPSON:

22 Q. I believe I was basing it off of what you testified
23 to earlier and now you're expounding upon that but I have more
24 questions --

25 A. Yeah. That further explains what that is.

1 Q. -- after.

2 MS. SIMPSON: And as far as identities, Your Honor,
3 I believe, and just for purposes of timing and kind of
4 scheduling wise the State is recalling this witness, so I
5 would ask that the rest of my cross examination be
6 conducted at that time.

7 THE COURT: You can do that. You can do that.
8 Sure.

9 MS. SIMPSON: Without objection.

10 THE COURT: Sure. That's fine.

11 REDIRECT EXAMINATION

12 BY MR. HUBBARD:

13 Q. A few quick follow ups. Do you still have defense
14 ID exhibit there?

15 A. I have Zachary Lynch's statements if that's what
16 you're talking about.

17 THE COURT: That's defense ID number 4.

18 MR. HUBBARD: May I see the ID?

19 THE COURT: It was 4 for ID.

20 MS. SIMPSON: It should be up there with him. I
21 believe that's Creech's report.

22 THE COURT: No. I think you had that. He had it in
23 his notebook.

24 MR. SIMPSON: Oh. Is that Zachary Lynch's?

25 THE COURT: It was stapled together.

1 COURT REPORTER: It was stapled together. There's a
2 sticker on it.

3 THE COURT: It was stapled together with a sticker
4 on it.

5 COURT REPORTER: You don't have it there?

6 THE WITNESS: I don't believe I have it. I'm
7 looking at - I'm looking at my own copies.

8 MS. SIMPSON: Here are my copies.

9 THE WITNESS: That's the report.

10 MR. HUBBARD: That's the report.

11 THE WITNESS: That's the initial report.

12 MR. HUBBARD: This is the report.

13 MS. SIMPSON: Okay.

14 THE COURT: Okay. So we did find it.

15 MS. SIMPSON: We did find it.

16 MR. HUBBARD: You said exhibit. This is ID though
17 here, right?

18 THE COURT: Nothing's been put in yet. The defense
19 has ID'd four things. Number 4 is the one you're talking
20 about, the two statements of Mr. Lynch and they are here
21 somewhere.

22 MR. HUBBARD: Let me ask.

23 THE COURT: Sure.

24 BY MR. HUBBARD:

25 Q. Do you have the original of Mr. Lynch's

1 statements?

2 A. I have copies of the originals. Yes, sir.

3 Q. Tell you what. Let's just do this. Can I see your
4 copies?

5 A. Sure (proffering.)

6 MR. HUBBARD: Your Honor, under Rule 106, Rule of
7 Completeness, I offer them into evidence.

8 THE COURT: Any objection?

9 MS. SIMPSON: Your Honor, I would object. Actually,
10 hold on. Beg the Court's indulgence.

11 THE COURT: Sure.

12 MS. SIMPSON: Without objection, Your Honor.

13 THE COURT: All right. This is State's Exhibit
14 number 26.

15 MS. SIMPSON: And are we marking them both as one?

16 MR. HUBBARD: Just one.

17 THE COURT: Yeah. Two statements, or two pages,
18 State's Exhibit 26 without objection.

19 MR. HUBBARD: If I may approach.

20 THE COURT: You may.

21 BY MR. HUBBARD:

22 Q. I ask you, State's Exhibit 26, the first statement
23 by Zachary Lynch, can you read that and then go onto the
24 second statement?

25 A. The first statement of Zachary Lynch which would

1 have been taken by an officer at the scene says, walked out of
2 restaurant, saw a lot of commotion, then proceed to walk
3 toward incident and an African American male wearing white
4 T-shirt proceeds to go toward car parked in driveway. He
5 reaches in the car as if to stab somebody, then another guy
6 walks up and throws a cup at the car and takes off. The two
7 African American males get in a gold two door Explorer and
8 drive off. Then a dark car pulls out right behind them and
9 clips a guy standing by and almost hits three cars then drives
10 off. Then everybody takes off.

11 Q. That's the end of the first statement?

12 A. That's the end of the first one.

13 Q. All right. The second statement.

14 A. The second statement. I'm sitting -- And this is
15 him as he's coming back before we make the decision to charge.
16 This is later. I'm sitting inside and I noticed two African
17 American guys sitting down acting suspicious. So a group of
18 kids walk in and they start pointing and whispering to each
19 other. So they get up and leave to their vehicle. I go to
20 walk outside and there's a crowd of people standing around a
21 car and they're yelling and cussing at each other. So some of
22 the kids leave. A kid and the black guy get into an argument
23 and start screaming and cussing again. So the kid goes to
24 leave in a hurry and the buff black guy runs to his gold
25 Expedition and then runs back to the kid in the driveway as he

1 is about to leave and starts saying get out of the car. So
2 the black guy reaches in the car with one arm and what looks
3 like he stabs him. So the kid speeds off to the left exiting
4 the parking lot. The black guy runs back to his truck and
5 goes out the same direction as the kid. So a guy comes
6 running in my direction saying why they stab my dude. I'm
7 gonna get him back. So he gets in his car and follows him.
8 Then everybody started running around saying he got stabbed.
9 He got stabbed, and they all ran off and drove away.

10 Q. Thank you. We know the guy in the gold Explorer
11 never got stabbed?

12 A. Correct.

13 Q. Now, one final thing. You were shown State's
14 Exhibit 23 by the defense concerning the road --

15 A. Yes, sir.

16 Q. -- and where the vehicles were?

17 A. Yes, sir.

18 Q. Using this, can I have you come down just briefly
19 and show where the defendant's vehicle was when it pulled up
20 to those kids?

21 MS. SIMPSON: Your Honor, I'm gonna have a brief
22 objection based on this as far as where the kids are not
23 off screen. This area is off screen on the map. We
24 can't really relate it together and it's kind of outside
25 the scope of my cross.

1 MR. HUBBARD: Your Honor --

2 HE COURT: Hold on. I don't know about that.

3 MR. HUBBARD: She used this. I'm following up.

4 THE COURT: I thought she used the other one?

5 MR. HUBBARD: No, sir. She used this one because
6 she pulled this out for three vehicles because they
7 talked about the three vehicles. She used that and I
8 know this witness will verify that she used it to talk --

9 THE COURT: All right.

10 MS. SIMPSON: I used it to talk about the lanes and
11 describing the dirt and that people don't usually don't
12 travel. I also used --

13 THE COURT: I understand.

14 MS. SIMPSON: -- this map, State's 22, is the one I
15 believe I used regarding the incident.

16 THE COURT: All right. I agree with that, too. I
17 think this officer being the lead investigator can deal
18 with what he believes is approximation of where the
19 incident took place based on all the videos.

20 MR. HUBBARD: Thank you, Your Honor.

21 THE COURT: That's the question she asked I believe.

22 MR. HUBBARD: Right. It is.

23 THE COURT: It's an approximation. It's not exact.
24 Nobody measured it.

25 MS. SIMPSON: Well, Your Honor, at this point I

1 believe it's speculation that he testified to because
2 it's off screen and we can't see it and that's
3 specifically what he testified to when I attempted to
4 cross him on that issue.

5 THE COURT: I'm gonna let him answer the question.

6 MR. HUBBARD: Thank you, Your Honor.

7 MS. SIMPSON: Thank you, Your Honor.

8 BY MR. HUBBARD:

9 Q. Sergeant, if you would, keep our voices up. State's
10 23, whereabouts was Kierin Dennis' vehicle?

11 A. It's in this approximate area here which is just off
12 camera there but this approximate area right here.

13 Q. When you were talking about the incoming lane, that
14 would be that incoming lane?

15 A. Yes, sir. The rules of the road, stay to the right
16 side. That would be what we would use as the incoming lane.

17 Q. And he would be on the far left side?

18 A. To properly exit?

19 Q. Yes.

20 A. Yes, sir. To properly exit one would travel this
21 way which would then be to their right.

22 MR. HUBBARD: That's all I got. Thank you. Your
23 Honor, I don't have any other questions.

24 THE COURT: And, Ms. Simpson, you have cross
25 examination right when he's called back.

1 MS. SIMPSON: Yeah, but brief recross just on the
2 two issues.

3 THE COURT: Okay.

4 RECROSS EXAMINATION

5 BY MS. SIMPSON:

6 Q. With respect to Zachary Lynch, isn't it true that he
7 had been working for about 24 hours when you interviewed
8 him?

9 A. I don't know exactly his timeline he worked.

10 Q. But it was a long time?

11 A. He had been working roughly about what I had been
12 working.

13 Q. And at the time he wasn't aware of what was
14 important. He was just telling you some of the stuff he saw,
15 correct?

16 A. Well, he knew the sort of incident that happened so
17 I'm assuming that would be what he focused on because that's
18 the important thing, right? Yeah. I'm not gonna - I'm not
19 gonna tell him what I want to hear from him. I'm just gonna
20 ask him what did you see. Is that what you're asking?

21 Q. And you actually took both those statements?

22 A. No. Another officer took this written statement and
23 provided it to me and said here you go. We need to talk to
24 this kid and I said I agree. I need to talk to him.

25 Q. And you never took him back to actually kind of

1 re-enact or see what he could see, correct? Even though he
2 worked there, you never took him back?

3 A. Right. So as you say, he worked there so he would
4 be pretty darn familiar.

5 Q. Okay. But he's one of the few independent witnesses
6 and you didn't take him back?

7 A. I didn't. So I guess you're asking me why I didn't
8 take him back to Cook Out?

9 Q. Or what did you do to clear up some of his testimony
10 or to find out what he saw?

11 A. I asked him what he saw.

12 Q. And as far as your maps -- I don't even know where
13 it went -- this is pure speculation as to where the cars were
14 located because everything is off camera?

15 A. Well, if I based it just on that camera, then sure,
16 but there were questions asked of the individuals there.

17 Q. Questions and statements. But you are only
18 approximating and all of the testimony wasn't consistent as to
19 where the cars were placed, correct?

20 A. As to where all of the cars were placed?

21 Q. Any of the cars?

22 THE COURT: You changed your question. Ask him the
23 first question.

24 BY MS. SIMPSON:

25 Q. The first question -- The testimony -- I'll make it

1 a little more clear.

2 THE COURT: There you go.

3 BY MS. SIMPSON:

4 Q. The testimony regarding the placement of Will's car
5 wasn't consistent with everyone. Nobody said the same thing.
6 Like everybody didn't say the same thing; is that right?

7 A. Everybody was generally in the proper area.
8 Everybody was generally saying Will pulled up. Will himself.
9 I mean, that's the best, you know. I'm gonna ask Will where
10 did you go? And what he said --

11 Q. And --

12 A. -- was consistent with what most folks were
13 saying.

14 Q. Like I said, I don't want to go off track based on
15 His Honor's ruling. But as far as you using this picture
16 which you didn't measure, you didn't do approximates, you're
17 only guesstimating where the cars were located even though we
18 have the video, correct?

19 A. Mm-hmm.

20 Q. Because you can't see where the cars are and exactly
21 how they exit, correct?

22 A. That's correct. It was all from statements
23 provided.

24 Q. So other people can testify to it but you're not
25 exactly correct? Like you weren't an eye witness?

1 A. No, ma'am. I was not present when the incident took
2 place. That is correct.

3 Q. So yours is pure speculation except for what other
4 people said?

5 A. It's more than speculation because investigation
6 requires more than just guessing.

7 Q. But you didn't see it and you don't know because --

8 A. You are correct. Yes, ma'am. I didn't.

9 Q. -- it's not on that video?

10 A. That's correct, ma'am. I did not see it. I was not
11 there.

12 MS. SIMPSON: Thank you. No further questions.

13 MR. HUBBARD: Nothing further.

14 THE COURT: How long is your next witness?

15 MR. HUBBARD: We have that matter.

16 THE COURT: Okay. Oh, yeah. That's right. I
17 forgot about that. That shouldn't take too long. Y'all
18 step into the jury room. We have to take up a quick
19 matter of law and then we'll have y'all back in here.

20 MR. HUBBARD: Your Honor, I didn't know if you
21 wanted to go ahead, I know that they had some issues with
22 this next matter so I didn't know if you wanted to go
23 ahead and take a lunch break.

24 THE COURT: That may be even better that way they
25 don't have to sit in the jury room. All right. How

1 about, if takes us 20 to 30 minutes, that will be 12:20
2 for us, 1:30, is that enough time for us to get done what
3 we need to get done?

4 MR. HUBBARD: Yes, sir.

5 THE COURT: All right. Y'all got lunch to 1:30.
6 We've got about another 20, 30 minutes, something I need
7 to take up so y'all don't have to sit in the back. Don't
8 discuss the case. Be back in the jury room at 1:30.

9 (Whereupon, the jury was released for lunch break at
10 12:20 p.m.)

11 THE COURT: All right. The next witness is whom?

12 MR. HUBBARD: James Sullivan. Your Honor, bringing
13 in the door.

14 THE COURT: Is that the matter of law, is the door
15 thing?

16 MS. SIMPSON: Yes, Your Honor.

17 THE COURT: All right.

18 MR. HUBBARD: Go ahead and get it. All right.

19 THE COURT: Do you want to proffer testimony,
20 Solicitor?

21 MR. HUBBARD: Yes, sir.

22 THE COURT: Is that what y'all want, Mr. Rutherford
23 or Ms. Simpson?

24 MR. RUTHERFORD: What was the question, Your Honor?
25 I'm sorry.

1 THE COURT: Sullivan is gonna testify on the proffer
2 and the foundation for this thing, then y'all want to be
3 heard then? Is that okay?

4 MR. RUTHERFORD: Yes, sir.

5 THE COURT: Okay. Sullivan, come on up. Ms. Frick,
6 place him under oath.

7 Thereupon,

8 JAMES PATRICK SULLIVAN
9 after having been first duly sworn, testified as follows,

10 THE CLERK: Please have a seat. Once you're seated,
11 state your full name spelling your last please.

12 THE WITNESS: James Patrick Sullivan,
13 S-u-l-l-i-v-a-n.

14 DIRECT EXAMINATION

15 BY MR. HUBBARD:

16 Q. And what do you go by?

17 A. Sully, sir.

18 Q. Sully, where do you work?

19 A. I work for you, sir, the Eleventh Circuit.

20 Q. Where did you work before coming to the Solicitor's
21 Office?

22 A. I was previously employed by the City of West
23 Columbia.

24 Q. Before that?

25 A. United States Marine Corps.

1 Q. How long were you in the Marine Corps?

2 A. Eight years.

3 Q. When you left the Marine Corps, what was your
4 rank?

5 A. I was a sergeant.

6 Q. What did you do in the Marine Corps during those
7 eight years?

8 A. I started off in the patrol division, later a
9 tactical unit and I finished my career as a CID agent.

10 Q. CID is what?

11 A. Criminal Investigation Division working in with
12 NCIS.

13 Q. Of those eight years, how long were you in CID?

14 A. The majority of that time, sir. Approximately five
15 years.

16 Q. When you joined West Columbia, how long were you
17 with West Columbia Police Department?

18 A. Eight Years, sir.

19 Q. What did do while you were at West Columbia?

20 A. The first year I was on the road, then a short time
21 started investigations, after that I completed my tenure there
22 as a crime scene investigator.

23 Q. About how many years were you CSI?

24 A. About six years, sir.

25 Q. How long have you been with the Solicitor's

1 Office?

2 A. Five years, sir.

3 Q. I just want to show you your resume --

4 A. Yes, sir.

5 Q. -- for lack of a better word. Is that accurate with
6 your education?

7 A. It is, sir.

8 MR. HUBBARD: Mark it for State's ID. Or I'll tell
9 you what. How about if you want, Court's Exhibit.

10 MR. RUTHERFORD: We're okay with it. That's his
11 resume.

12 (Whereupon, Courts Exhibit #1 marked for
13 identification.)

14 BY MR. HUBBARD:

15 Q. So, Sully, you've got a bachelor's degree and you
16 have a master's degree in criminal justice?

17 A. Yes, sir.

18 MR. HUBBARD: I'll pass it up to Your Honor so you
19 can see (proffering.)

20 BY MR. HUBBARD:

21 Q. All right. Now, back when this case came in was
22 about the time you started working in our office; isn't that
23 correct?

24 A. That's correct.

25 Q. What were you asked to do back in 2014?

1 A. You asked me to create an aid, a visual aid to
2 assist witnesses in providing testimony just to help out.

3 Q. So initially when you created this visual aid, what
4 did it consist of?

5 A. It was a door mounted to a frame that was powered to
6 allow the window to go up and down and it was done so with the
7 measurements taken by Investigator Carter to make sure it's
8 the correct height, but it's nothing more than a door.

9 Q. Let me show you State's 25. Are those the
10 measurements you used?

11 A. They are, sir.

12 Q. Those are the measurements from Mr. Dennis'
13 Explorer?

14 A. Yes, sir.

15 Q. So this door, what year is this door?

16 A. The door is off of a 1998 Ford Explorer Sport.

17 Q. Okay. And what year was Mr. Dennis' vehicle?

18 A. His vehicle was a 2001 Ford Explorer Sport.

19 Q. Now, there's a difference in years. Is that an
20 issue?

21 A. No, sir. The Ford Explorer Sport was built, the
22 second generation was built from 1995 to 2003 so the model
23 basically did not change.

24 Q. So all those doors should be the same?

25 A. Yes, sir.

1 Q. So if you went to a body shop, as long as they've
2 got one from that year to put on your vehicle it will work?

3 MR. RUTHERFORD: Your Honor, I'm sorry. I heard his
4 resume. I heard he was law enforcement. I heard he was
5 in the Marines, and he's an all around great guy. I get
6 that. What he is not is an automotive expert and so this
7 testimony as to a 1998 Ford door and a 2001 Ford door,
8 none of that is contained in that resume. His ability to
9 state the distinction is not contained in that resume.
10 All he knows is that it's the same car.

11 THE COURT: Yeah.

12 MR. RUTHERFORD: But it does not make him or give
13 him the ability to say that this door is the same as a
14 1998 at this moment. Now again, we'll go into more
15 detail.

16 THE COURT: No. This is a '98.

17 MR. RUTHERFORD: That's a '98.

18 THE COURT: The other one was a 2001.

19 MR. RUTHERFORD: That's correct.

20 MR. HUBBARD: I'll follow up and clarify.

21 BY MR. HUBBARD:

22 Q. You're an investigator?

23 A. Yes, sir.

24 Q. In investigating the second generation of Ford
25 Sport, two door Sport, from what year to what year did you

1 determine under your investigation Ford Motor Company made
2 those two door Sports?

3 A. From 1995 to 2003, the second generation.

4 Q. From your investigation were all those models
5 interchangeable?

6 A. Yes, sir.

7 Q. Thank you. Now, using those measurements is that
8 how you got the height of this door, the placement of this
9 door?

10 A. Yes, sir.

11 Q. And then you made the window operational?

12 A. Yes, sir. I wired directly to a circuit to allow
13 the switch interior to operate the window.

14 Q. Now, in 2016 when we had the first trial this door
15 was used?

16 A. Just the door. Yes, sir.

17 Q. And in 2014 when we had the stand your ground
18 hearing this door was used?

19 A. Yes, sir.

20 Q. At that trial there's a lot of talk about where the
21 defendant was in this vehicle; is that correct?

22 A. That is correct.

23 Q. The purpose for the seat inside is that you have
24 built onto this exhibit, what was that purpose?

25 A. To provide an extra layer of testimony so they see

1 the face or how certain things were done. If a person reached
2 out, how the person was positioned, the seat belt functions,
3 the floor pan is the right height, so it puts the seat in the
4 correct height given the door frame so it's a more accurate
5 representation or more accurate visual aid for the witnesses,
6 sir.

7 Q. Now, this frame that you got, this frame here that
8 the seat sits on --

9 A. Yes, sir.

10 Q. -- what model of vehicle did that come out of?

11 A. That came out of another 1998 Ford Explorer Sport.

12 Q. Same model series second generation?

13 A. Yes, sir.

14 Q. What about the seat and then the console?

15 A. Same thing. Came out of that vehicle when it was
16 salvaged when we cut the floor pan out.

17 Q. Let me ask you about the VIN number for the door.
18 What was that? Do you have that in front of you?

19 A. No, sir. I do not have the VIN number of the
20 door.

21 Q. Let me ask you this: Did you run the VIN number
22 from this door and the VIN number from the frame?

23 A. Yes, sir. I did.

24 Q. What, if anything, did they have in common?

25 A. They're both built at the same plant.

1 Q. Where was that?

2 A. In Kentucky, sir.

3 Q. Now, this frame, when you set it, can you manipulate
4 the height of this vehicle once that frame is set?

5 A. No, sir. The big - the height is set through
6 Sergeant Carter's height, what he gave. The frame is attached
7 to that so what I tried to do is level the floor pan so that's
8 how Ford stamped the steel so it couldn't be manipulated so
9 how they had it is how I mounted the frame making sure the
10 height is correct. So everything is based off the
11 measurements that Sergeant Carter gave me.

12 Q. So this seat that we see in this demonstrative
13 exhibit, can it go up or down in elevation?

14 A. No, sir. It was not a powered seat. It is a manual
15 seat like the defendant's.

16 Q. Now, it can slide forward and backwards?

17 A. Yes, sir.

18 Q. The back of the seat can come forward or go back?

19 A. Yes, sir.

20 Q. But you can't take that seat and elevate it higher
21 or lower?

22 A. No, sir. That's why the purpose of keeping the
23 floor pan is so that cannot happen.

24 Q. And this exhibit also has a seat belt?

25 A. Yes, sir.

1 Q. Is this standard also and also part of that second
2 generation Ford?

3 A. Yes, sir.

4 Q. Now, even though these are 1998 pieces, is this what
5 you would see in a 2002 two door Ford Sport?

6 A. Yes, sir. Same second generation.

7 Q. Now, let me ask you this: I'm scared to move it
8 around too much. So we have this window placed with some
9 white tape. What is that?

10 A. That's indicating where on the 2014 trial the
11 defendant placed the height of the window. Sergeant Carter
12 after the trial placed a marker to denote that's where he left
13 the window.

14 Q. Initially was that red tape?

15 A. Yes, sir. It was.

16 Q. When did it become white tape?

17 A. During the 2016 trial. It was removed for the
18 purposes of trial. Again, the defendant put it there and we
19 marked it and measured it and put it right back.

20 Q. But we had it measured?

21 A. Initially Sergeant Carter had it measured.

22 Q. I see another little sticker here has L.B. Who's
23 that?

24 A. That is the mark made by Lamar Butler where he said
25 that he thought the window was

1 Q. Again, we have a little power switch over here so
2 the window can go up and down?

3 A. Yes, sir.

4 Q. Now, using this exhibit, is this helpful in
5 explaining if somebody is up on the window basically their
6 height compared to this window and whether they can get in the
7 vehicle or not?

8 A. I think it would be a good visual aid and assist
9 people in determining what happened.

10 Q. And I notice the center console doesn't have an
11 armrest on it?

12 A. No, sir. In looking at the defendant's photographs
13 of his vehicle and prior testimony, he didn't have a center
14 console. He explained that. So this center console was
15 removed to be consistent with his vehicle.

16 Q. The victim, Mr. Capers, how tall was he?

17 A. Five foot seven, sir.

18 Q. Is that from the autopsy?

19 A. Yes, sir. That's from Dr. Ross' notes.

20 Q. In explaining how somebody can be stabbed under the
21 nipple on the left side who is five seven is this also a
22 helpful aid?

23 A. Yes, sir.

24 Q. And having them up on the window?

25 A. Yes, sir.

1 Q. And also a helpful aid in determining whether
2 somebody could come into that window?

3 A. Yes, sir.

4 Q. The defendant's testimony in '14 and in '16 was that
5 this window always stayed at this height and this level?

6 A. Yes, sir.

7 MR. HUBBARD: Your Honor, I would move to be able to
8 use this for demonstrative purposes only for all my
9 witnesses. I think it would be helpful, not confusing to
10 the jury.

11 THE COURT: Okay. Mr. Rutherford.

12 CROSS EXAMINATION

13 BY MR. RUTHERFORD:

14 Q. Investigator Sullivan, how far is it from the ground
15 to the center of a 2001 Ford Explorer?

16 A. I did not take that measurement, sir.

17 Q. Is the Solicitor gonna come give you answers or is
18 he just standing there?

19 MR. HUBBARD: I'm moving over here. Is there an
20 issue? I want to watch.

21 MR. RUTHERFORD: So now I'm talking.

22 BY MR. RUTHERFORD:

23 Q. You didn't take the measurement; is that correct?

24 A. No, sir. I left it at how Ford stamped the steel.
25 I can't manipulate that.

1 Q. No, sir. How far is it so that we can verify that
2 this is correct? Because it's only grounded on this side.
3 How far is it on this side?

4 A. I did not take that measurement, sir.

5 Q. What is the clearance between a seat and the door
6 frame in a 2001 Ford Explorer?

7 A. I didn't take that measurement.

8 Q. Okay. On Mr. Dennis' car the measurement that
9 Investigator Carter took said that it is 44 and a half inches
10 from the ground to the top of the window; is that correct?

11 A. No, sir. It's 44 and a quarter inches from the seal
12 to the ground.

13 Q. So it's 44 and a quarter inches from this right here
14 or this right here?

15 A. The top. The first portion you touched. Yes,
16 sir.

17 Q. How did he measure that?

18 A. He showed me how he measured it, sir.

19 Q. No. How did he measure it?

20 A. From that seal to the ground.

21 Q. How did he measure it? What did he use to measure
22 that?

23 A. A measuring tape.

24 Q. So he used a measuring tape?

25 A. That's my understanding. Yes, sir.

1 Q. Is that what he told you?

2 A. Yes, sir.

3 Q. Okay. So he used a measuring tape to measure from
4 here to here. You can see that it protrudes? It prowed,
5 right?

6 A. Yes.

7 Q. So how did he use measuring tape to measure form
8 here down?

9 A. I believe he placed it parallel and then checked
10 it.

11 Q. Checked it with what?

12 A. I don't know, sir.

13 Q. So if he simply placed a measuring tape and did like
14 that and looked at it, the exact measurement may be off
15 depending on where he looks if he did not use a level, is that
16 not correct?

17 A. That is correct.

18 Q. And, in fact, if he places the level here, he would
19 get one measurement, but if he placed it up here, he would get
20 another; isn't that right?

21 A. Yes, sir. Because of the contour of the door so I'm
22 going off of the location where he says he measured that
23 point.

24 Q. Which is where?

25 A. May I step down, sir?

1 Q. Sure. Absolutely.

2 A. (Witness steps down.) Sergeant Carter said he
3 measured it from here to the ground and got 44 and a quarter
4 inches.

5 Q. Okay. And did he take pictures of him measuring or
6 he just said that that's what he did? That's what you tried
7 to emulate?

8 A. He told me that's what he did and then he gave me a
9 copy of his notes, sir.

10 Q. In other 13 year old Ford Explorers what kind of
11 clearance did you get ground to window?

12 A. I did not measure any 13 year old Ford Explorers,
13 sir, other than prepping this exhibit or this visual aid, sir.
14 I just used those measurements because that are consistent
15 with Mr. Dennis' car.

16 Q. Well, they are consistent with what you were told
17 the measurements were.

18 A. Yes, sir.

19 Q. You don't know that they're consistent with the car
20 because you didn't measure it, correct?

21 A. I did not measure it.

22 Q. Okay. And what year was Mr. Dennis' car
23 manufactured?

24 A. 2001.

25 Q. Are you sure about that? Did you run the VIN?

1 A. I ran the VIN. The VIN it shows -- Can I sit down?

2 Q. Yes.

3 A. The manufactured date is July of 2007 which would
4 denote it's a 2001 which it is registered as so it's seven of
5 February of 2000 manufactured date of Ford listed as 2000.

6 Q. I thought you said 2007. What you meant was July
7 2001?

8 A. July 2000, Ford listed it as a 2001 manufactured
9 date.

10 Q. So the car was actually manufactured in 2000?

11 A. Yes, sir.

12 Q. So it's not a 13 year old car. When it happened it
13 was a 14 year old car; is that correct?

14 A. Yes, sir.

15 Q. What plant was this one manufactured -- What plant
16 was Mr. Dennis' car manufactured in?

17 A. All of these visual aids came from the same plant in
18 Louisville, Kentucky.

19 Q. Right. Not the visual aids. Where was Mr. Dennis'
20 car manufactured?

21 A. Louisville, Kentucky.

22 Q. So Mr. Dennis' car was manufactured in Louisville,
23 Kentucky; is that right?

24 A. Yes, sir.

25 Q. How many different VIN's did Ford produce as they

1 relate to the Ford Explorer Sport? As you well know they will
2 denote in the VIN a mid year change or something that changes
3 to the car, correct?

4 A. I'm not aware of that, sir. I just ran the VIN.

5 Q. Okay. So what did Ford tell you this measurement
6 should be from here to the ground?

7 A. I didn't look at that, sir. The reason is why I'm
8 going off of the measurement of the defendant's car given to
9 me by Sergeant Carter because Ford's measurements weren't
10 relevant. It's the measurement of his car. That's why I was
11 creating an aid to reflect his vehicle.

12 Q. So when Sergeant Carter measured the car, what was
13 the tire pressure on the car?

14 A. I don't know, sir.

15 Q. Would tire pressure on a car change how high or high
16 low the car was?

17 A. Yes, sir.

18 Q. And did Investigator Carter tell you that he checked
19 the tire pressure on the car?

20 A. He did not.

21 Q. When Investigator Carter told you about the gold
22 Ford Explorer, what kind of tires and wheels did it have on
23 the car?

24 A. He didn't tell me that, sir.

25 Q. Did he check?

1 A. I don't know, sir.

2 Q. Are you aware of whether he had the car in his
3 custody, in his care in evidence when he made these
4 measurements?

5 A. My understanding is he took these measurements
6 during the execution of the search warrant at the house so
7 that's roughly not too far removed from the incident time and
8 then he took that one measurement which I based the visual aid
9 off of.

10 Q. Did you check how level the ground was where he
11 measured the car and compared it to the level of the ground at
12 the Cook Out where Sergeant Carter places the car at the time
13 of the incident?

14 A. No, sir.

15 Q. I know Solicitor Hubbard was asking you about
16 someone five seven and they're ability to reach into the car,
17 correct?

18 A. Yes, sir.

19 Q. Did he ask you about someone that was 15 and a half
20 inches from the head down to below the nipple and their
21 ability to reach into the car?

22 A. No, sir. He didn't talk about the location of the
23 wound.

24 Q. So Dr. Ross, the last time this was used, Solicitor
25 Hubbard referred to this, Dr. Ross said it doesn't matter how

1 tall someone is. It matters 15 and a half inches from the top
2 to the stab wound. In addition to the fact that the
3 individual is five seven, did you all use someone five seven,
4 15 and a half inches from the top of their head to the
5 incision as you looked at the measurements of the car?

6 A. We have done so since.

7 Q. Someone who is 15 and a half inches --

8 A. No. No. No.

9 Q. -- from here to there?

10 A. No. We had Dr. Ross come. We had somebody who was
11 five foot seven mark that and it was helpful.

12 Q. So this individual that you all had come and the
13 measurements that you have taken, how tall were their shoes?

14 A. They were measured with their shoes on as five foot
15 seven.

16 Q. Which shoes were those?

17 A. I don't know that, sir.

18 Q. Where Nike Air Jordan 12's?

19 A. I do not know, sir.

20 Q. Because you would agree with me that Solicitor
21 Hubbard has on cowboy boots that would probably make him
22 taller than if he were wearing regular shoes, correct?

23 A. Correct, sir.

24 Q. And Dr. Ross testified 15 and a half inches from
25 here to here, five seven total. She didn't measure how tall

1 the shoes were either, did she?

2 A. I don't know what Dr. Ross measured, sir.

3 Q. How far was the seat in Mr. Dennis' car from the
4 steering wheel in the vehicle?

5 A. I do not know, sir.

6 Q. How far should this seat be from the steering wheel
7 to the seat?

8 A. It's variable, sir. Wherever he moves the seat.

9 Q. No. Your exact placement is not variable. Where it
10 sits in relation to this post, where it sits in relation to
11 this door is going to be set by Ford Motor Company, is it
12 not?

13 A. Yes, sir. That's why the frame is the way it is.
14 The seat can move forward and back. So that doesn't change.
15 It cannot be manipulated.

16 Q. Right. But how far is it back from the steering
17 wheel?

18 A. I do not know, sir.

19 Q. How far was Mr. Dennis' steering wheel from the
20 seat?

21 A. I don't know, sir.

22 Q. You would agree with me that Mr. Dennis' car was 13
23 years old, correct?

24 A. Yes, sir.

25 Q. How were the springs in Mr. Dennis' car?

1 A. Springs on the suspension and --

2 Q. Springs on the seat?

3 A. I can't tell you that, sir.

4 Q. What does Ford say about wear and tear on seat
5 springs after 13 years?

6 A. I didn't research that, sir.

7 Q. I'm sorry. I correct myself. 14 years. What does
8 Ford say about the height of the vehicle if someone has come
9 up at a high rate of speed and pressed on the brakes, what do
10 we know about the change in height there?

11 A. Are you asking me what Ford says or what I know from
12 experience?

13 Q. What Ford says?

14 A. I don't know, sir. I didn't research that.

15 Q. What is it that you know about someone who comes up
16 at a high rate of speed and presses on the brakes?

17 A. In most cases the vehicle loads up and comes to a
18 stop.

19 Q. Right. And in this case you sat through
20 unfortunately like I have four of these, you can see Mr.
21 Dennis' foot is on the brake almost the entire time. In fact,
22 Solicitor Hubbard pointed out when he took it off the brake.

23 A. Yes, sir.

24 Q. What does Ford say about how that would impact the
25 height of this car?

1 A. I don't know. I didn't research what Ford says.

2 Q. How does Ford set their motors in their windows?

3 The judge talked about how an older car it may droop. You set
4 it and it may come down a little bit. Did Mr. Dennis' car do
5 that

6 A. Talking about the window droop due to age of his
7 vehicle?

8 Q. Yes.

9 A. I do not know, sir.

10 Q. Okay. The center console here is gone so that -
11 because Mr. Dennis did not have an armrest.

12 A. Correct, sir.

13 Q. We don't know that this is what it looked like,
14 correct?

15 A. I'm basing it off pictures so when I marked that and
16 cut that out, that would be consistent of the void that he had
17 in his vehicle.

18 Q. But you don't know how deep or how long any of that
19 is?

20 A. No, sir. I just wanted to create a visual aid that
21 was consistent with his testimony and the crime scene
22 photographs taken by SLED.

23 Q. Did Investigator Carter take the seat covers that
24 were on Mr. Dennis' car off and keep them in evidence?

25 A. No, sir. I don't know.

1 Q. Do you know whether they were padded seat covers?

2 A. They didn't appear to be, sir, but I do not know for
3 sure.

4 Q. So you saw them?

5 A. I have seen them in SLED photographs, yes, sir.

6 Q. So in photos, but you didn't lift them up to examine
7 them?

8 A. I did not.

9 Q. Do you --

10 MR. RUTHERFORD: And, Your Honor, obviously I can
11 get this from Investigator Carter but I'm trying to speed
12 it up.

13 BY MR. RUTHERFORD:

14 Q. Do you know how long Investigator Carter held onto
15 Mr. Dennis' car before he released it?

16 A. My understanding those measurements were taken that
17 night and then the vehicle was released at the culmination of
18 the search warrant.

19 Q. So he had the opportunity to hold onto the vehicle;
20 is that correct?

21 A. I assume so, sir.

22 Q. Are you aware of whether Investigator Carter walked
23 any witness, took any witness, took any of Mr. Capers'
24 friends, enemies, anybody and walked them up to a car either
25 Mr. Dennis' car or another Ford Explorer Sport to show them

1 and talk to them about what happened?

2 A. I'm not aware of that, sir.

3 MR. RUTHERFORD: Your Honor, that's it for me.

4 THE COURT: Okay.

5 MR. HUBBARD: Just a few follow up.

6 REDIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q. Mr. Sullivan, once you have the measurement from the
9 height, does it really matter what type of tires he had?

10 A. No, sir. The suspension load, the tire height won't
11 matter because I'm basing everything off of the height of his
12 vehicle that night so everything else, that makes it easy for
13 me because I can't change the distance of the seat from the
14 door, I can't change where the armrest is located because Ford
15 stamped the steel frame and that's why when I salvaged this
16 vehicle, I had to cut out such a large portion so nothing else
17 could be manipulated. As long as I can work off of the height
18 that Sergeant Carter gave me, it would be accurate given
19 everything else. So it takes the variable out for me. As far
20 as suspension load, my understanding is he was stationary for
21 some time and then you see during the iPad video preparation
22 his vehicle loads up on the front so the vehicle is
23 stationary. From there it all matters on the height of him
24 given by Sergeant Carter. Everything else is set.

25 MR. HUBBARD: Your Honor, I believe that's way more

1 than I need to use it as a demonstrative piece of
2 evidence. If I was putting it in and I was saying it was
3 identical in every respect to the defendant's car, there
4 would be an issue, but for demonstrative purposes I can't
5 imagine how it can be an issue.

6 THE COURT: Okay.

7 MR. RUTHERFORD: Your Honor, again, Investigator
8 Sullivan is an all around great guy, no doubt about it
9 but he relied on what was given to him by Investigator
10 Carter. I think if anyone called Ford Motor Company and
11 said do you all build cars using tape measures, they
12 would say that's absolutely foolish. It is not the way
13 anybody builds anything of that size. You can build
14 houses, buildings, but certainly not cars. There are
15 laser measures. They have laser pointers. There are
16 multiple ways to measure a car that is not using a tape
17 measure and potentially placing it outside of this and
18 try because that's what I had to do and try and line it
19 up as best I could get to 44 and a quarter.

20 I don't know whether Investigator Carter knows what
21 the small lines are on a tape measure, whether he knows
22 that it could have gone to three sixteenths, three
23 thirty-seconds. Those are actual measurements that make
24 a difference when what you're talking about is 15 and a
25 half inches and whether within 15 and a half inches that

1 could have been stuck inside a vehicle and stabbed.

2 What we know is, I have looked at this. I have
3 worked my way around it and the problem came when we put
4 a seat in it. The problem came when we relied on his
5 measurements to determine in a car that he had and could
6 have gotten, the car was available up until last year in
7 Hopkins, South Carolina. We have done this three times.
8 They didn't bother to get it. They would rather use this
9 one because it works better for them. The car belonged
10 to a lady who lived in Hopkins. She took it to a salvage
11 yard. The car we believe is now in Florida. They've
12 done none of that because it's easier to work off of what
13 they have created or tried to create that is not the
14 same.

15 The Solicitor stated he wants to know whether
16 someone could have crawled in the window. Well, as I sit
17 right here, what I'm missing and what should be any car
18 is a steering wheel. It's not here. We don't even know
19 where it is. We don't know what this measurement is. We
20 don't know how far this seat was back. We don't know how
21 far it goes back because there's no steering wheel,
22 crucial measurements that go to what the Solicitor stated
23 whether someone could have gotten inside of the vehicle.
24 Where that 44 and a quarter came from along this door
25 still we have no idea. We don't know anything. We don't

1 know the temperature when it was taken, and he says
2 tires, air pressures don't matter, everybody knows tires
3 and air pressure matters on how high a car is.

4 Again, if all we're looking for is whether it was a
5 Ford door, well it's clear this is a Ford door. What is
6 unclear after that is whether it bears any resemblance to
7 a car that was made three years later that is at the
8 point of this 13 years old, actually 14 years old.
9 Literally it sounded good. It felt good the first three
10 times and then we realized you couldn't do it. And Dr.
11 Ross, and you remember her direct and her cross as you
12 missed when Carly sat here and Carly was five three, five
13 seven in heels, and Dr. Ross said it doesn't matter.
14 She's about 15 and a half from here to here, because
15 that's the crucial measurement.

16 And so now we are talking about something this big
17 where measurements may not matter so much to something
18 that's only 15 and a half inches and that 15 and a half
19 inches matters a great deal, and it means it shifts the
20 burden over to my client to say how could 15 and a half
21 inches fit through here. Well, I don't know because none
22 of this may be right and if it's off by a millimeter,
23 it's wrong. If it's off by two millimeters, it's very
24 wrong. If it's off by a quarter of an inch which it
25 could have been by air pressure, by tires, by load on the

1 vehicle, it's all the way wrong, and that's where we are.

2 We have a demonstrative that could be so far off
3 because all we're talking about is 15 and a half inches
4 that it throws the whole thing off and that is what it
5 has done for the past three times that we've had this
6 trial and that's the problem because it keeps getting
7 piece by piece. He had the car. He could have kept it.
8 He didn't take a single -- It was so important he didn't
9 take a single witness to it. It was so important he
10 didn't bother to hold onto it. I've been doing this 20
11 something years. I know they hold cars all the time for
12 years because they say they're evidence. He didn't
13 bother. But why are we bothering to recreate something
14 they could have gone out and gotten? And the answer is
15 there's a best evidence rule. There's an evidence
16 preservation rule all of which are violated by using a
17 car that wasn't even built the same model year. There's
18 a 2001 that they could have bought right now in Greenwood
19 but they didn't look because it didn't fit. It fits
20 their narrative to create something that is only based
21 off of the lead investigator's number and not reality.

22 The reality in this case is the car was available,
23 they could have kept it, we'd still be using it and
24 the fact that we're not violating both of those rules and
25 it does so in a way that prohibits my client from getting

1 a fair trial because it shifts the burden to him.

2 MR. HUBBARD: Your Honor, there's no burden shifting
3 here and best evidence rule doesn't apply to
4 demonstrative evidence. If I was trying to introduce it,
5 sure, we might have an argument. All Mr. Rutherford has
6 to do, all anybody has to do, it's not shifting. If he
7 wants to argue or ask questions as to how this differs
8 and all those variables, he can do that in front of the
9 jury. But here's why there's a car seat. And I'll mark
10 this, we'll make this a Court's Exhibit 2.

11 (Whereupon, Court's Exhibit #2 marked for
12 identification.)

13 MR. HUBBARD: Court's Exhibit 2, Your Honor, this is
14 a photograph taken by a state newspaper.

15 MR. RUTHERFORD: Your Honor, it would be nice if he
16 showed it to me.

17 MR. HUBBARD: It's in your discovery. This is a
18 photograph taken by the state newspaper during the 2016
19 trial when Mr. Dennis was explaining how he stabbed Mr.
20 Capers and you have Mr. Rutherford coming through the
21 window and you will notice Mr. Dennis is standing up and
22 jabbing this way. The reason why we have a seat is
23 because Mr. Dennis' head would be through the top of his
24 vehicle if this is actually accurate and this was what he
25 was trying to tell the jury is what happened. This

1 demonstrative aid simply assists us. Once we know this
2 height, we know where the seat is, the height of the
3 seat.

4 Mr. Dennis can get in this car and put that seat
5 wherever he thinks it was. Any witness who says they
6 believe the seat was this way or that way, it's all
7 testimony and there may be variables in the testimony.
8 All that's fine. But this is purely demonstrative. But
9 what was very misleading was what is seen in Court's
10 Exhibit number 2. Nobody can stand like this and do a
11 dance. He'd have been in the passenger seat, head poking
12 out the top of the roof. This is to avoid that. And,
13 Your Honor, we want to extra effort to do it. But the
14 only measurement that really matters is the height
15 because if we went out and bought another vehicle, I
16 don't know what the height that vehicle is compared to
17 what Mr. Dennis' was. This comes from Mr. Dennis and it
18 comes contemporaneously with the time of the event. All
19 these other questions they have they can ask that of
20 Mr. Sullivan or Sergeant Carter or anybody else they want
21 to.

22 THE COURT: All right.

23 MR. RUTHERFORD: Your Honor, the Solicitor, again,
24 must be forgetting this not a civil trial. We don't have
25 to ask a single question. More importantly, Your Honor,

1 anyone that measures something this long even if you're
2 hanging a picture would take at least two measurements,
3 one at the front, one at the front, and one at the back.
4 We don't even know whether it's different here than here.
5 We honestly don't even know where he took the measurement
6 that got the 44 and a quarter inches. This is wrong and
7 the problem is with it being wrong is it just looks like,
8 oh, it's a big car door. But as the Solicitor stated
9 when my client tried to stand behind it, you can't stand
10 behind it and Your Honor remembers and figure out where
11 you're supposed to be sitting and standing, but you what
12 you can't also do, you can't sit in it and figure out
13 where the steering wheel and the brake and all of that is
14 supposed to be. We know his foot is on the brake. Where
15 is the brake?

16 The Solicitor states that my client can just get in
17 the car and figure out where his seat was. So five years
18 ago my client is supposed to remember and have to testify
19 about where his seat was. I don't know if any of you
20 have ever gotten in a car that somebody is messing with
21 your seat, but it's impossible to find where my seat was
22 last positioned much less when it happened. What the
23 Solicitor is doing is again the same improper shift that
24 he talked about back then as my client tried to
25 demonstrate using this fake demonstrative and he couldn't

1 do it. He's not going to be able to do it now either for
2 the same reasons that I am talking to you through the
3 front windshield A pillar of a car. It doesn't work and
4 that's why it has not worked all the way up until this
5 point. It's not going to because the variables are too
6 great and they come down to micrometers, not 44 and a
7 quarter inches from somewhere on the door.

8 THE COURT: All right. If this comes in evidence --
9 I agree with everything you've said. It's demonstrative.
10 You can move the seat up and down, seat back and forth,
11 window up and down, the seat belt can be moved. It's
12 demonstrative. Everything you said can be argued.
13 Everything he said can be argued. It's approximation,
14 it's demonstrative. It still can be manipulated. It's
15 not going in the jury room. I think it's allowed.

16 MR. RUTHERFORD: Your Honor, the problem is it is so
17 inaccurate that it's misleading.

18 THE COURT: I mean, it doesn't have to be perfect,
19 but it's the height that was measured from the seal of
20 the door to the ground which is consistent with Mr.
21 Dennis' car.

22 MR. RUTHERFORD: That's not true, Your Honor.
23 That's not true.

24 THE COURT: How do you know it's not true?

25 MR. RUTHERFORD: That's the problem. Just because

1 he said it. You can't tell where he even measured it
2 from or how he even used what he used to line up a tape
3 measure with the door.

4 THE COURT: Conveniently he hasn't been asked that
5 question. He's been sitting here listening.

6 MR. RUTHERFORD: It's not my call to put him up.

7 THE COURT: You can't say it's wrong if he's sitting
8 there. I mean, you just haven't called him. But it's
9 demonstrative.

10 MR. RUTHERFORD: Your Honor, I got his notes. It's
11 44 and a quarter. It's right here. That's all he did.

12 THE COURT: Okay.

13 MR. RUTHERFORD: And he wrote one, two, three, four,
14 five measurements. That's all he did and that we are
15 going to use. This demonstrative is so inaccurate that
16 it's gonna throw the jury off. It throws my client in a
17 position where it has before where he has to get up and
18 try and demonstrate something in this demonstrative and
19 it's impossible to demonstrate because it is that
20 inaccurate.

21 MR. HUBBARD: Your Honor, I guess, I keep hearing
22 incorrect. You'd only know if it's inaccurate if you
23 pulled in an actual Ford Explorer and re-measured and
24 compared the two, otherwise the best evidence is the
25 original measurement taken off the defendant's car and

1 that's what Sergeant Carter did.

2 THE COURT: Do we have a tape measure in here to see
3 what the height is?

4 MR. RUTHERFORD: Your Honor, the best measurement is
5 his car, is the defendant's car. If you let evidence go,
6 then it's not the defendant's fault.

7 THE COURT: All right. I just asked a question. If
8 you had a tape measure, we can measure that door to the
9 floor and that should be exactly what Sullivan said it
10 was. From there to the floor should be what Carter did
11 with Dennis' vehicle five years ago. Should be. I'm not
12 gonna do it.

13 MR. RUTHERFORD: It should be. The problem is how
14 does that measure to what the elevation of the ground
15 was, the slant of the ground was at the Cook Out.

16 THE COURT: That goes to weight. It's
17 demonstrative.

18 MR. RUTHERFORD: It goes to weight as to how someone
19 was stabbed inside a vehicle which is what the Solicitor
20 is getting to which is only 15 and a half inches, period.

21 THE COURT: It goes to weight. You're right. It's
22 demonstrative. I think it's allowed to be used. I think
23 it's demonstrative. You can argue all these inaccuracies
24 but if somebody pulls a tape measure out and measures it,
25 you'll see. I'm not gonna measure it.

1 MR. RUTHERFORD: Your Honor, but that's why I
2 pointed out, Your Honor, you can't do it because the tape
3 measure will not go straight up and down. This is not
4 something that you measure straight up and down. If you
5 put a laser measure, and we'll go get one, and then if
6 measure it and it's not 44 and a quarter inches, will
7 Your Honor throw it out then?

8 THE COURT: No.

9 MR. RUTHERFORD: So then it doesn't matter what the
10 measurement is?

11 THE COURT: No. I didn't say that. I'm not gonna
12 answer a hypothetical and give you a preliminary. I'm
13 not gonna do that for you. You go get your measures and
14 then you want to make some more agreements, fine but I'm
15 ready to go eat. I'm not gonna measure it. That's not
16 my job. Nobody is measuring it so I don't have anything
17 to say it's inaccurate other than he says what he did, he
18 says what he did, you said, well, that's not right
19 because they didn't do that. How do I know?

20 MR. RUTHERFORD: Your Honor, we don't know either
21 because he had the car. He could have brought the car.
22 They could have kept the car to know what this
23 measurement is.

24 THE COURT: Yeah. Okay.

25 MR. RUTHERFORD: And they have no clue.

1 THE COURT: No. They have a clue. They've
2 testified to the clue.

3 MR. RUTHERFORD: No, sir, Your Honor. He said he
4 measured from here. He doesn't know what this is.

5 THE COURT: If Carter comes up and says I measured
6 it from this spot and this is how I measured it and
7 that's how I got the measurement, that may have been
8 done. I mean, he's been sitting over there conspicuously
9 quiet.

10 MR. RUTHERFORD: Well, once he ends, then I'll call
11 Investigator Carter up and ask him.

12 THE COURT: Ask him right now. Let's get a tape
13 measure right now. Y'all got a tape measure?

14 MR. HUBBARD: You got one, Sully?

15 THE WITNESS: I don't have a tape. I have a
16 standard --

17 THE COURT: Go ahead and get that. It's
18 demonstrative. This is not the space shuttle.

19 MR. RUTHERFORD: No, Your Honor. It's his life.
20 It's more important than the space shuttle. It's more
21 important. It is his life. Your Honor, we asked in the
22 process to get a proper measurement rather than what can
23 be manipulated with a tape measure which does not measure
24 curved surfaces. No one measures a curved surface with a
25 tape measure and if he even called Ford and Ford said they

1 do it with a tape measure, I stand corrected.

2 THE COURT: Well let you see how they did it.

3 MR. HUBBARD: You still want to go on or are we
4 taking a break?

5 THE COURT: I want Carter so show me how he measured
6 it because he's the one that measured it. Sullivan can
7 show me how matched the measurement.

8 MR. HUBBARD: You need a legal pad? A legal pad?
9 Just use mine. Speak up loud.

10 BRENT CARTER: You've got to use a level. So you
11 take this and make it level here. All right. Take this,
12 make it level here. All right. That is level right
13 there. You want to make your level as level as possible.
14 Which other measurements you want?

15 MR. RUTHERFORD: Well, the problem is, is that I
16 asked Sully where it was from. You initially started
17 here and then moved up here --

18 BRENT CARTER: Actually I just want to --

19 MR. RUTHERFORD: -- and that's again -- I'm
20 talking.

21 BRENT CARTER: I just wanted to clarify.

22 MR. RUTHERFORD: Don't clarify when I'm talking.
23 That's been part of the problem.

24 THE COURT: All right.

25 MR. RUTHERFORD: So again, he said it was here

1 initially and then Carter comes up here and puts his
2 notebook here and he moves it up. That's what --

3 BRENT CARTER: That's wrong.

4 MR. RUTHERFORD: I'm standing here watching. So
5 again --

6 BRENT CARTER: You have to be on the other side
7 so...

8 MR. RUTHERFORD: I'm still talking.

9 THE COURT: All right. It's okay.

10 MR. RUTHERFORD: Your Honor, that's what we talked
11 about earlier.

12 THE COURT: No. No. I'm letting you talk. You
13 need to let me do my job with him.

14 MR. RUTHERFORD: So again, where he took the
15 measurement, where Sully said he took it and then where
16 he adjusted to take it is again, we're now measuring what
17 they're trying to use as a demonstrative rather than
18 using the car --

19 THE COURT: The car is not available. I've got that
20 argument. You don't have to keep repeating it.

21 MR. RUTHERFORD: But that's the problem. We're now
22 verifying it with the demonstrative rather than verifying
23 it with the car. We're saying is this right? And this
24 even according to that, he said you've got to use a
25 level. We don't have one. We'll get one.

1 THE COURT: Let's get one.

2 MR. RUTHERFORD: Let's get one.

3 THE COURT: Everybody get something to eat, too.

4 MR. RUTHERFORD: Thank you, Your Honor.

5 THE COURT: See you back at 1:30.

6 (Lunch break.)

7 BAILIFF: All rise.

8 THE COURT: Thank you. Please be seated. Did y'all
9 have time to eat? I wasn't trying to rush you but I eat
10 fast. All right. Where do we stand right now? Y'all
11 were going to do some deciphering and measuring or
12 something.

13 MR. HUBBARD: We're ready for the jury, Your
14 Honor.

15 THE COURT: What are we doing?

16 MR. RUTHERFORD: If we're gonna have this argument
17 in front of the jury, we can, too.

18 THE COURT: No. I don't want to do that.

19 MR. HUBBARD: Heres what we did during the lunch
20 break. We got our measuring stick, a level, Sully and
21 Brent measured it from where Brent said he measured it
22 and at most it would be off less than one sixteenth of
23 one inch basically to the benefit of the defense. It was
24 built in 2017 and I would ask Sully to testify to that.

25 THE COURT: All right. Mr. Rutherford.

1 MR. RUTHERFORD: I'm unsure of how we get a benefit
2 out of it being off.

3 MR. HUBBARD: I'll explain it real quick, because
4 it's lower and therefore the ability, this goes down, you
5 got a shorter guy who is now elevated so it's easier
6 really to get to that area where he's stabbed and it's
7 also a taller person --

8 THE COURT: He doesn't want that. He wants a taller
9 person.

10 MR. RUTHERFORD: No. No. No, Your Honor. I want
11 it to be accurate. I want it to be right and that's the
12 problem. As we have already stated he mentions a shorter
13 guy, but a shorter guy wearing Air Jordans that nobody
14 measured and all we're talking about is the height of the
15 door, not the inside parameters of the vehicle. So if we
16 had gone back to the original, all we had was the door
17 and we're seeing proximity to the door, that is a much
18 better demonstrative for the 44 and a half and whatever
19 of inches.

20 THE COURT: Let me ask you this: The State can't
21 call your guy as a witness, right?

22 MR. RUTHERFORD: No. But that's the problem. They
23 then shift the burden to us to show and that's what
24 happened before, how did this happen. That's what Rick
25 is talking about because he gets to stand up here and

1 say, oh, it couldn't have happened here, a shorter
2 person, but it's not right. It's right based on the
3 measurements of what Sully gave from the car that they
4 had in their custody that they turned back over that they
5 could have gotten --

6 THE COURT: But it's demonstrative and we're not
7 gonna re-enact the event.

8 MR. RUTHERFORD: But the problem is it begs for
9 re-enacting which is why you've got tape on the door. If
10 it's not re-enactment, there's no tape on the door. They
11 left the tape on the door for three years.

12 THE COURT: I thought the tape was coming off the
13 door.

14 MR. RUTHERFORD: The tape has to come off the door.
15 But the reason why they leave it there is because they
16 want it to be accurate. They're saying this is where you
17 put it and we're gonna put a tape here because that's
18 accurate to where you put it, but nobody knows and nobody
19 specifically knows when the seat and how close it is
20 isn't right, the seat covers, and there were clearly seat
21 covers. You can see it in the picture of the car.
22 People put seat covers on their seats because their seats
23 are rotted out. So where is Mr. Dennis? He doesn't
24 know. He can't re-enact it. He can't do it and that's
25 why it shifts and it's improper burden because it's an

1 inaccurate demonstrative.

2 THE COURT: I think it's accurate within a sixteenth
3 of an inch of what the vehicle was situated that night.

4 MR. RUTHERFORD: But that's not what it is. It's
5 within a sixteenth of an inch of what Carter reported
6 that it was. Nobody had the benefit of going behind him
7 and saying this is what's right. And, in fact, when he
8 first came up, he took the note pad and put it here which
9 is not where Sully reported that it was from and that's
10 the problem. I don't know. He doesn't know either.
11 He's gonna get it right because he has time to do it, but
12 the difference is when he tells Sully it's from the
13 bottom of the window and Sully says, oh, okay that must
14 mean from right here.

15 THE COURT: That's your argument. They've got to
16 prove that. It's a demonstrative piece of evidence.

17 MR. RUTHERFORD: How can they prove what one person
18 said and another understood but for the fact that they've
19 now had time to talk about it because that's what they
20 were doing?

21 THE COURT: They've talked about it for five
22 years.

23 MR. RUTHERFORD: No. I don't think they did. I
24 think that he said that that's what the measurements that
25 he gave them were and he used that. They had the car.

1 THE COURT: This is the same door on the same mount
2 for the same last three years.

3 MR. RUTHERFORD: No. No. Actually, Your Honor,
4 it's not. It was a door, then they added the seat.

5 THE COURT: Right. But the door has been mounted
6 like that the entire time.

7 MR. RUTHERFORD: Right. So take the seat off and we
8 will let it stand that this is a door. But to say that
9 it matches Mr. Capers' is not right because we don't know
10 that and to say that this matches Mr. Capers is wrong.
11 It doesn't. And when he gets up and he testifies as he
12 has before, we measured Mr. Capers' car and this was
13 built to those specifications, that's what they said.

14 THE COURT: Dennis.

15 MR. RUTHERFORD: I'm sorry. Dennis. That's what
16 they said and it doesn't.

17 THE COURT: But it does.

18 MR. RUTHERFORD: Okay. Then how far is it from the
19 steering wheel? Because that's a car. This is not a car
20 and if you're gonna tell me that this matches the car,
21 tell me how far it is back from the steering wheel. Tell
22 me what the tire pressure was and how high it was on the
23 night in question. Tell me what the elevation was. He
24 was on the wrong side of the road and as you know roads
25 do like this (indicating.) What's the slant? Because

1 we can go out there and measure it. It's not hard. Like
2 I just went to Home Depot and picked up accuracy tools to
3 do it. They didn't bother. So the tape measure went up
4 and down.

5 THE COURT: I think it's demonstrative.

6 MR. HUBBARD: Your Honor, just one thing. This
7 tape, this goes back to two hearings and so we have
8 memorialized it, that way with this window being up and
9 down because every witness has been moving it, so like
10 during the trial, it was memorialized again, but this is
11 where Mr. Dennis put it under oath and so it has always
12 been taped and so I was gonna have our officer say this
13 is where Dennis put it and I can say it during the
14 hearing. It's actually been two hearings in the exact
15 spot so that has been part of the demonstrative piece.

16 MR. RUTHERFORD: Now it's not a demonstrative. Now
17 it's evidence and that's the problem.

18 MR. HUBBARD: No. No. It's demonstrative showing
19 where it is based on his prior conversation, his
20 testimony. It's purely visual.

21 THE COURT: All right. I was under the impression
22 it's a demonstrative piece of evidence.

23 MR. HUBBARD: It is.

24 THE COURT: The tape comes off. I don't see how you
25 can use his prior testimony marking that window. I'm not

1 sure you can do that.

2 MR. HUBBARD: All right. We'll take the tape off.

3 THE COURT: I think the door sitting like it is is a
4 piece of demonstrative evidence and all that cross
5 examination or challenge, that's cross examination.
6 That's fair game. Who knew. The car isn't here. We
7 couldn't bring the car in the courtroom.

8 MR. RUTHERFORD: But, Your Honor, they could have
9 parked the car outside and we could have all gone outside
10 to it no different than we can go the Cook Out, and they
11 left us without that ability because they took the car.
12 They had the car. They could have kept the car. Best
13 evidence rule. There's no standing rule in South
14 Carolina that you have to return cars. I've got clients
15 that they've had cars for years because the case hasn't
16 gone to trial yet. The car was, in fact, the crime
17 scene. All they had to do was keep it. It wasn't a
18 Porsche. The value was about \$1100.00 current value, but
19 it didn't matter. They chose to give it away based on
20 four measurements?

21 THE COURT: I thought they gave it back.

22 MR. HUBBARD: We gave it back

23 MR. RUTHERFORD: They didn't preserve evidence.
24 That's the problem.

25 MR. HUBBARD: It's kind of an interesting argument

1 to make, that they prejudiced my client because they
2 returned his vehicle to him in a prompt manner.

3 MR. RUTHERFORD: No. It's just an argument. If
4 it's evidence -- If it's demonstrative of something, then
5 let it be demonstrative. And what is most demonstrative
6 here, Investigator Carter didn't walk one person to that
7 vehicle when he had it, didn't ask for it, can we use it
8 again, we want to demonstrate. Why is it so
9 demonstrative now? When they had it, they didn't use it.
10 They gave it back. They didn't say preserve it. They
11 didn't preserve their own evidence, and now they want to
12 try to re-create that which they had and did not keep and
13 that's the problem.

14 MR. HUBBARD: It's all argument.

15 THE COURT: I understand your argument. I think
16 it's a piece of demonstrative evidence. It doesn't go
17 back to the jury. The jury can't play with it. Y'all
18 can manipulate it in here to your heart's content and
19 you're welcome to use that cross examination questions of
20 the inconsistencies there. You're welcome to do that. I
21 mean, it's not gold. There's all kinds of things you can
22 say, tan or whatever color it was.

23 MR. RUTHERFORD: Thank you, Your Honor.

24 THE COURT: Mm-hmm. I don't know how the State is
25 gonna use it or how the defense is gonna use it. I

1 remember the first trial it was for the purpose of
2 proximity of the people. All right. Are we ready?

3 MR. HUBBARD: Yes, sir.

4 THE COURT: All right. Mr. Hagler on the break he
5 did tell me he's five foot seven.

6 MR. HUBBARD: And we measured him. He is.

7 MR. RUTHERFORD: I'm sorry, Your Honor.

8 THE COURT: My bailiff is five foot seven.

9 (Whereupon, the jury entered the courtroom at 1:55
10 p.m.)

11 THE COURT: All right. Solicitor, all yours.

12 MR. HUBBARD: Thank you, Your Honor. The State
13 calls James Sullivan.

14 Thereupon,

15 JAMES PATRICK SULLIVAN

16 after having been first duly sworn, testified as follows,

17 THE CLERK: Please have a seat. Once you're seated,
18 state your full name spelling your last please.

19 THE WITNESS: James Patrick Sullivan,
20 S-u-l-l-i-v-a-n.

21 DIRECT EXAMINATION

22 BY MR. HUBBARD:

23 Q. You go by Sully?

24 A. Yes, sir.

25 Q. So if I call you Sully, you're not offended, are

1 you?

2 A. Not at all.

3 Q. Where do you work?

4 A. Currently work for you, sir.

5 Q. The Solicitor's Office?

6 A. Yes, sir.

7 Q. How long have you been with the Solicitor's
8 Office?

9 A. Five years.

10 Q. Prior to being at the Solicitor's Office, where did
11 you work?

12 A. I worked for the City of West Columbia.

13 Q. What did you do for West Columbia?

14 A. For the first two years I was a patrol officer, then
15 worked in investigations, I finished out approximately the
16 last five years in crime scene.

17 Q. Is that also CSI?

18 A. Yes, sir.

19 Q. Prior to working with West Columbia, where did you
20 work?

21 A. I was enlisted in the United States Marine Corps.

22 Q. How long were you in the Marine Corps?

23 A. Eight years.

24 Q. What were your duties in the Marine Corps?

25 A. My first couple years I was a military police

1 officer, then I went to a tactical team, and eventually I
2 became a criminal investigator for crime scene
3 investigation.

4 Q. Your education background, you've got a bachelor's
5 degree?

6 A. Yes, sir.

7 Q. And you also have a master's in criminal justice?

8 A. Yes, sir.

9 Q. Now, were you tasked some time back in 2014 to help
10 create a demonstrative exhibit?

11 A. I was.

12 Q. Demonstrative meaning it's not something that goes
13 into evidence but just something visual?

14 A. Just a visual aid.

15 Q. 2014, you see in the door here, was this what you
16 were tasked to re-create for us?

17 A. Just the door at the time, sir.

18 Q. And what was the purpose of the door?

19 A. To provide a visual aid to help witnesses that would
20 possibly testify or to look at.

21 Q. Let me ask you this: The defendant's vehicle, Mr.
22 Dennis' vehicle, the Ford Explorer, what year was that?

23 A. It was a 2001.

24 Q. What kind of 2001 Ford Explorer was it?

25 A. It was a 2001 Ford Explorer Sport which is like a

1 compact model instead of the four door. It only had two
2 doors.

3 Q. Is that a first or second generation Ford
4 Explorer?

5 A. It is a second generation.

6 Q. What year, time zone or time frame is that second
7 generation?

8 A. Ford produced it from 1995 to 2003.

9 Q. So fell in, you said 2001?

10 A. Yes, sir.

11 Q. Now, the door that we see, what year was that?

12 A. It came off a 1998 Ford Explorer Sport.

13 Q. The '98 model, would this '98 door go on a 2001 Ford
14 Explorer two door Sport?

15 A. Yes, sir.

16 Q. The exact same model for all those years?

17 A. Yes, sir.

18 Q. Now, you also see -- I may need your help at some
19 point spinning this around -- a frame, a seat and a center
20 console.

21 A. Yes, sir.

22 Q. What year are those?

23 A. Those are off of a 1998 as well.

24 Q. Now, what's the purpose of the frame?

25 A. The frame is so I can mount the seat in the

1 appropriate location and the center console. Ford stamped it.
2 It's stamped a certain way. You can't manipulate it. It's
3 really thick steel so it gives me my mounting points for the
4 factory seat and center console so it can't be manipulated.

5 Q. So this seat can't go up or down?

6 A. No. It was a manual seat which is consistent with
7 what Mr. Dennis had in his vehicle.

8 Q. This center console came out of that same second
9 generation?

10 A. Yes, sir.

11 Q. Now, I notice something has been removed here. Is
12 there a reason for that?

13 A. In looking at the crime scene photographs, I noticed
14 that the center section of his vehicle was missing so in order
15 to duplicate that to create a proper visual aid I removed that
16 section as well.

17 Q. How did you know what height to hang this door?

18 A. I used the measurements taken by Sergeant Carter.

19 Q. I'll show you State's 25. Are these the
20 measurements?

21 A. They are, sir.

22 Q. What was the most important measurement for you?

23 A. The height of the window.

24 Q. When we say the height of the window -- let me swing
25 this thing around again -- talking from here?

1 A. Yes, sir. That's where it was indicated to me that
2 the measurement was taken.

3 Q. Who indicated that to you?

4 A. Sergeant Carter.

5 Q. All right. Now, when you built this, was it to
6 spec? What was a measurement from that point down?

7 A. When I built it, it was 44 and a quarter inches.

8 Q. Did you just today on this break get with Sergeant
9 Carter to measure again? Let me ask you this: When did you
10 initially build this, the door with the seat and the frame?

11 A. I believe it was 2016/2017. Yes, sir.

12 Q. So did you measure it again today while we were on
13 break?

14 A. We did.

15 Q. What did you use?

16 A. I used a level and a large measuring stick.

17 Q. These?

18 A. Yes, sir. I did.

19 Q. What, if anything, do you see about the measurements
20 now?

21 A. The measurement is actually pretty accurate except
22 for it's almost a sixteenth of an inch lower.

23 MR. HUBBARD: Sixteenth of inch. Your Honor, if I
24 can ask him to step down.

25 THE COURT: Yes.

1 THE WITNESS: (Complies.)

2 BY MR. HUBBARD:

3 Q. If you're looking at a ruler, this is the inches on
4 the top, can you show this jury, both halves of this just what
5 we're talking about as a sixteenth of an inch?

6 A. Sixteenth of an inch is one tic over from this inch
7 mark. One tic over. (Witness complies.)

8 Q. Now, this door and the frame, were you able to
9 determine where they were manufactured?

10 A. Yes, sir. Ford built that in their Louisville,
11 Kentucky plant.

12 Q. What about the 2001 Explorer owned by the
13 defendant?

14 A. I was built in the same plant in Louisville,
15 Kentucky.

16 Q. When you did your measurement, obviously the
17 original measurement was done by Detective Carter?

18 A. Yes, sir.

19 Q. So he showed you where he measured from when you did
20 your measurement?

21 A. Yes, sir.

22 Q. Now, let me ask you a few other questions. This
23 window, is it operational?

24 A. Yes, sir. I went to the circuit of the door, traced
25 it and powered it with a lawnmower battery so it would go up

1 and down with the actual window switch.

2 Q. If I turn this switch on, I can set the window at
3 different levels?

4 A. Yes, sir.

5 Q. This seat, you said it's a manual seat, but can it
6 recline?

7 A. Yes, sir. It can do everything from the factory.

8 Q. So it can be moved forward and moved back?

9 A. Yes, sir.

10 Q. This model that you built, does it also have a seat
11 belt?

12 A. It does.

13 Q. It's operational?

14 A. Yes, sir. And adjustable from a height perspective
15 and it locks in place and still works.

16 Q. So it has a little device here you can go up or
17 down?

18 A. Yes, sir.

19 Q. As far as how this seat sits in here and the
20 distance between the door and any distance involving the
21 center console, when you put that base frame in, do you have
22 any leeway where that seat goes?

23 A. Absolutely not, sir. It's a very thick frame. The
24 bolt holes are in a certain spot so when I mounted it, it is
25 what it is. I can't manipulate it. It's very thick. That's

1 why I cut out such a large portion so it would be that way.

2 Q. Let me ask you this: Talking about this measurement
3 on the door, does it matter what size tires, what type of
4 tires, air pressure, any of that to this measurement?

5 A. No, sir. Because I'm going off of the measurement
6 of his vehicle taken by, of Mr. Dennis' vehicle taken by
7 Sergeant Carter so I based everything off that measurement so
8 if the tires were up or down, suspension was loaded, unloaded,
9 it would not make a difference to the measurement he took and
10 the visual aid I produced.

11 Q. Now, if you went to another Ford Explorer two door
12 Sport could that measurement be off?

13 A. It could be different. Yes, sir.

14 Q. It might have different tires?

15 A. It might have different tires, different rims, could
16 have sagging suspension, bad shocks. There's a number of
17 variables to change that.

18 Q. But again, this is all off of his car, trying to
19 take measurements off of his car?

20 A. Yes, sir.

21 Q. And it's just for demonstrative purposes?

22 A. That's a visual aid. Nothing more.

23 Q. I notice there's not a steering wheel in here. Did
24 I not ask you to do that?

25 A. No, sir. It would become a point we couldn't move

1 it it would have gotten so heavy, you know, if we had chopped
2 out half the dashboard and everything else. It's pretty heavy
3 now.

4 MR. HUBBARD: So answer any questions Mr. Rutherford
5 or Ms. Simpson might have of you.

6 THE WITNESS: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. RUTHERFORD:

9 Q. Sully, if you could, tell me what year Mr. Dennis'
10 car was manufactured?

11 A. May I look at my notes, sir?

12 Q. Yes, sir.

13 A. His manufacturing date was 2000. Ford listed it as
14 a 2001 according to the VIN check.

15 Q. Do you know the date of this incident?

16 A. The date of the incident was February 17th, 2014.

17 Q. You said 2014?

18 A. Yes, sir.

19 Q. So at that point how old was the car that Mr. Dennis
20 was driving?

21 A. Approximately 14 years old, sir.

22 Q. According to CARFAX how many wrecks had it been
23 in?

24 A. I didn't run a CARFAX on this vehicle, sir.

25 Q. You didn't run a CARFAX?

1 A. I did not run a CARFAX.

2 Q. Did you check with the insurance company to see
3 whether any damage had been reported to the frame?

4 A. No, sir. I did not.

5 Q. Did y'all take it to Midas or some place to check on
6 the shocks or the struts?

7 A. No, sir. I did not.

8 Q. You stated that every car is not the same including
9 every Ford Explorer; is that correct?

10 A. Yes, sir. Every time it could be different.

11 Q. And a 13 year old car, you're a former Marine,
12 former investigator, a 13 year old car from day to day may not
13 be the same; is that correct?

14 A. That could be a possibility. Yes, sir.

15 Q. And the struts and the shocks and those things that
16 you mentioned to Mr. Hubbard, those things on a 14 year old
17 car could be acting up; is that right?

18 A. They could potentially. Yes, sir.

19 Q. And in this case I believe earlier we saw a video
20 where Mr. Dennis was pressing on his brakes and I believe the
21 Solicitor, one of the two, showed where he had actually let
22 off the brakes and drove off at that point. Do you know how
23 coming up and putting on the brakes affected Mr. Dennis' car
24 and the height of that car at that moment?

25 A. I do not know, sir.

1 Q. Do you know the tolerances meaning the differences
2 of how much it could have gone up or down given those
3 variables on that night?

4 A. No, sir.

5 Q. Do you know the temperature on that night?

6 A. No, sir.

7 Q. Do you know the temperature when Investigator Carter
8 measured from -- In fact, where did he measure, was it carpet
9 or concrete?

10 A. Actually it was in the garage, concrete, sir.

11 Q. So it was concrete?

12 A. Yes, sir.

13 Q. So when he measured from the concrete up, do you
14 know what the temperature was then?

15 A. I do not know, sir.

16 Q. Do you know whether the tires had been inflated
17 since Mr. Dennis left the Cook Out?

18 A. No, sir.

19 Q. So what we have here is essentially what
20 Investigator Carter measured from this point to here; is that
21 right?

22 A. Yes, sir. About that area. Yes, sir.

23 Q. So about this area. So he didn't mark it where he
24 actually took the measurement?

25 A. No, sir.

1 Q. Do you know whether he took a level to it to see
2 whether it is actually level?

3 A. No, sir.

4 Q. Would it surprise you to know that it's not?

5 A. No. Because the curvature of the door is down where
6 it's sloped. That's part of the manufacturer.

7 Q. So but again, who did you speak with at Ford to get
8 the tolerances for the door?

9 A. I didn't speak with anybody at Ford. I merely took
10 what they produced and cut it out and mounted it.

11 Q. So when you said that's part of the curvature of the
12 door, you're stating that based on the fact that you put this
13 together, not how Ford manufactured the car, right?

14 A. No, sir. I'm just making a visual observation of
15 the curvature of the door in relation to the cut out frame.

16 Q. But you don't know whether Mr. Dennis' car did that,
17 do you?

18 A. No, sir.

19 Q. And you don't know whether it was more or less or
20 any of that, do you, sir?

21 A. That would be depending on the suspension.

22 Q. Okay. Now, if we move it around to the inside, you
23 put the floorboard on the inside of the car; is that
24 correct?

25 A. Yes, sir. I mounted it to that frame.

1 Q. Is it level?

2 A. It's how Ford stamped it. I couldn't manipulate
3 that, sir.

4 Q. No, sir. Meaning what you're talking about is how
5 it attaches to the door. What I'm asking you is is this
6 floorboard level?

7 A. No, sir.

8 Q. So in essence this seat could be at an angle towards
9 the door and grossly inaccurate; is that right?

10 A. No, sir.

11 Q. It's not right? So if it's not level, how do you
12 know where the seat is supposed to be in comparison to the
13 door frame?

14 A. Because I'm utilizing what Ford made. I didn't
15 manipulate that so where the seat mounts into that big heavy
16 frame, I can't change that. That's how it mounts. I can't
17 adjust that, sir.

18 Q. No, sir. I think we're saying two different things.
19 This right here, if it is not level, if it is higher than it
20 would be in Mr. Dennis' car, it would push this seat closer
21 towards what -- Do you know this is the B pillar?

22 A. Yes, sir.

23 Q. It would push it closer towards the B pillar, would
24 it not?

25 A. It could.

1 Q. According to what you read of the investigation that
2 you did, is this supposed to be level?

3 A. No, sir. I don't know.

4 Q. You don't know. So what we do know is that a car
5 normally has pedals. How far are the pedals in Mr. Dennis'
6 seat, in Mr. Dennis' car away from the seat?

7 A. I do not know, sir.

8 Q. You don't know. How far is the steering wheel away
9 from the bottom of Mr. Dennis' seat?

10 A. I did not take that measurement, sir.

11 Q. Did investigator Carter?

12 A. May I check my notes, sir?

13 Q. Yes, sir.

14 A. He did not, sir.

15 Q. How far is the steering wheel from the back of where
16 Mr. Dennis had his seat that night?

17 A. Didn't take that measurement, sir.

18 Q. Okay. Do you remember or do you recall whether you
19 examined Mr. Dennis' vehicle or -- Did you examine Mr. Dennis'
20 vehicle?

21 A. No, sir. I did not.

22 Q. Did you examine the pictures of Mr. Dennis'
23 vehicle?

24 A. I did.

25 Q. What did you notice about his seats?

1 A. They had covers on them.

2 Q. Did Investigator Carter or yourself take the covers
3 off?

4 A. No, sir.

5 Q. So do you know whether the seats had rotted out
6 after 14 years?

7 A. No, sir.

8 Q. Do you know whether Mr. Dennis placed a seat cover
9 there because he was sitting on springs?

10 A. I do not know, sir.

11 Q. Do you know whether there was a pad under Mr.
12 Dennis' seat?

13 A. I do not know, sir.

14 Q. So the height of Mr. Dennis' seat as it relates to
15 the roof of the car, did you have that measurement?

16 A. No, sir.

17 Q. Now, this 2001 Ford Explorer that Mr. Dennis was
18 driving, do you know how many mid year changes Ford had to
19 that vehicle between 1998 when this door and this, well, this
20 door was the only thing manufactured in 1998, correct?

21 A. The door and the frame.

22 Q. So the door and the frame are both from 1998?

23 A. Yes, sir.

24 Q. Okay. So how many mid year changes did Ford have to
25 the Explorer between 1998 and 2001?

1 A. I do not know, sir.

2 Q. Do you know what I'm talking about when I say a mid
3 year change? For example, if Ford has a Pinto and they
4 realize that the U bolt is wrong, they will change it without
5 changing the car. They'll just change that bolt and they will
6 mark it by a change in the VIN number; is that right?

7 A. I'm aware of different manufacturing changes. Yes,
8 sir.

9 Q. Right. But you didn't check that between the 1998
10 and model the 2001 that Mr. Dennis was driving; is that
11 correct, sir?

12 A. No, sir.

13 Q. Okay. And do you know, I understand from the
14 questions that Solicitor Hubbard asked you that this is done
15 this way to demonstrate what Mr. Dennis' center console looked
16 like; is that correct?

17 A. That is correct.

18 Q. So it looked like this? It was hollowed out?
19 Explain.

20 A. His console had actually a plastic cubby. That one
21 did not, so in order to re-create the plastic cubby I just
22 went with the dimensions and cut it out to be consistent with
23 what he had in his vehicle.

24 Q. I'm sorry. So you're saying that the 2001 didn't
25 have it or his vehicle simply didn't have it?

1 A. I'm saying that his vehicle did not have an armrest
2 on it so I removed the armrest and cut out that portion below
3 it to accurately duplicate what the photographs he had of his
4 vehicle, sir.

5 Q. Right. But my question is, did the 2001 have an
6 armrest and it was broken or was Mr. Dennis' car simply
7 different and did not have this?

8 A. My understanding was his was removed or broken.

9 Q. Not your understanding. I mean what's reality.

10 A. The pictures of the crime scene photographs it was
11 no longer there.

12 Q. So it was, this center console simply was not
13 there?

14 A. No, sir. The center console was there. The armrest
15 was no longer there.

16 Q. Where would the armrest be?

17 A. Can I step down, sir?

18 Q. Sure.

19 A. The armrest would come directly across here and oval
20 in shape and under here would have been a cubby to hold stuff
21 upon it and this section was gone in Mr. Dennis' vehicle and
22 it was like this here.

23 Q. Was this cut out?

24 A. Yes, sir. It was -- It wasn't there in the
25 photographs so in order to accurately make this a correct

1 visual, I cut this section out because it wasn't there.

2 Q. Right. So in Mr. Dennis' vehicle how high was it
3 from here to the roof of the car?

4 A. I didn't take that measurement, sir.

5 Q. Okay. Have a seat.

6 A. (Witness complies.)

7 Q. And we talked about tolerances and differences or
8 the distance between the bottom of the seat and the steering
9 wheel. Was it recorded in Investigator Carter's notes how far
10 the seat was back or forward?

11 A. It was not, sir.

12 Q. Do you know how many notches are under the seat, how
13 many different places it can go to?

14 A. Whatever Ford put there, sir. I do not know.

15 Q. So you didn't check it?

16 A. No, sir.

17 Q. How do you know whether this seat position which
18 was, I guess, how old was it when you got it, the seat
19 position?

20 A. Talking about the photographs from his car?

21 Q. No, sir. This right here. When you got the floor
22 pan and attached the seat to it, how old is this seat position
23 when you put it in the car?

24 A. It came off of a 1998 Ford Explorer so it would be
25 from 1998.

1 Q. I'm sorry. If I knew math, I would have been a
2 doctor. I'm sorry. So I'm not trying to trick you. I'm
3 using whatever number you tell me.

4 A. Roughly 16 years.

5 Q. Roughly 16 years old. Do you know whether the one
6 in Mr. Dennis' car stopped at the same points and had the same
7 points on that?

8 A. I can't confirm that, sir.

9 Q. Do you know whether Mr. Dennis' car had the same
10 points and stopped at the same places as the seat back?

11 A. No, sir.

12 Q. So in essence, would it be accurate to say that the
13 only measurement that you know is right between this, what we
14 have in front of us and the measurement that Investigator
15 Carter gave you is the 44 and one-fourth inches between here
16 and here?

17 A. That's the only measurement that I based the whole
18 reconstruction on, yes.

19 Q. So you can't tell this jury that anything inside
20 this car matches Mr. Dennis' car; is that correct?

21 A. No, sir. I'm merely making a visual aid.

22 Q. And even with this visual aid without the seat
23 cover, without examining the seat, without examining how it
24 stops, how it leans back, you can't tell this jury that this
25 seat in any way, shape or form is close to Mr. Kierin Dennis'

1 car except that they were manufactured by Ford within a couple
2 years of one another; is that right?

3 A. No, sir. There's a couple of other variables
4 there.

5 Q. But they're all variables?

6 A. Yes, sir.

7 Q. They're not certainties?

8 A. No, sir. It's a mechanical seat just like the seat
9 was in --

10 Q. I'm sorry. Let me stop you. We already talked
11 about the fact that you don't know how Mr. Dennis' car,
12 whether it had been in any accidents prior to that point,
13 correct?

14 A. Yes, sir.

15 Q. You don't know whether he had any repairs on a 13,
16 14 year old Ford before he got it?

17 A. Correct.

18 Q. We don't know previous owners. We don't know
19 previous problems. So again, all we know for certain is that
20 it's 44 and a quarter inches from here to the ground; isn't
21 that right?

22 A. Yes, sir. I did confirm that.

23 Q. All right. Now, the Solicitor asked you about the
24 window and this is great work jerry-rigging it to a lawnmower
25 battery I believe you testified. In Mr. Dennis' car do you

1 know if whether when he put the window up, that it stayed
2 where he put it or do you know whether it would droop like
3 some may?

4 A. No, sir. I don't know that.

5 Q. So it could have been that if he put it up, it may
6 have gone down. Is there a technical term for that?

7 A. The window actuator would be failing at that point
8 and then it's been my experience swapping out several of them
9 that droopage is not that extreme. It happens from time to
10 time.

11 Q. When it happens, people get the windows replaced; is
12 that correct?

13 A. Yes, sir. They do.

14 Q. Did we check with the local body shops and local
15 repair shops to see if Mr. Dennis had ever had his repaired?

16 A. No, sir.

17 Q. So this is a window and we know that Mr. Dennis had
18 a window and that's where the similarities stop because you
19 can't tell the jury that this actuator, and although it's very
20 good work, you can't tell the jury this actuator and this
21 window is similar in any way, shape or form to Mr. Dennis'
22 window, we simply know, isn't this true, that this window is
23 like models that were manufactured between the years that Ford
24 manufactured this car?

25 A. Yes, sir. That's correct. They are the same.

1 Q. Did you or anyone, and obviously you can't testify
2 to this if you don't know, but did anyone have the vehicle
3 that Mr. Dennis was driving that night?

4 A. I do not know that, sir.

5 Q. Well, you know that Investigator Carter had it,
6 correct?

7 A. Yes, sir. He provided me with the measurements.

8 Q. Did Mr. Carter use Mr. Dennis' vehicle as a
9 demonstrative?

10 A. Not that I'm aware of, sir.

11 Q. So you don't know whether Investigator Carter took
12 witnesses out and said, hey, describe this? Show this to me.

13 A. No, sir. That would be a question for Sergeant
14 Carter.

15 Q. And again, I'm saying that you know. I'm just
16 asking.

17 A. No, sir. No, sir.

18 Q. And you didn't take witnesses out and ask using Mr.
19 Dennis' vehicle to demonstrate, did you?

20 A. No, sir. I did not.

21 Q. And you worked on this case since 2014; is that
22 right?

23 A. That is correct, sir.

24 Q. I'm sorry. I didn't want to put words in your
25 mouth. I can't count back to know that you have been here

1 that long because you look so young, but either way, at no
2 point did you take witnesses out to demonstrate using this
3 door; is that correct?

4 A. Not his door. No, sir.

5 Q. And so even though the car was in custody and it was
6 used to take measurements, it was never used to demonstrate
7 with a single witness what happened that night; is that
8 right?

9 A. That's my understanding. Yes, sir.

10 MR. RUTHERFORD: No further questions, Your Honor.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. HUBBARD:

14 Q. Couple follow up. Sully, you weren't here to build
15 an exact model, correct?

16 A. No. Just a visual aid, sir.

17 Q. And in doing that you used all Ford products?

18 A. Yes, sir. I did.

19 Q. From the same generation?

20 A. Yes, sir.

21 Q. The most important measurement was the height of the
22 window?

23 A. Yes, sir.

24 MR. HUBBARD: That's all I've got.

25 MR. RUTHERFORD: Briefly, Your Honor.

1 standing in this approximate area, that sort of thing.
2 It's demonstrative to demonstrate relation to the
3 vehicle, where they were standing, that sort of thing.
4 It's not coming in the jury room, it's not gonna be
5 admitted into evidence. It's been made by
6 Mr. Sullivan.

7 MR. RUTHERFORD: Your Honor, we would ask that as
8 Your Honor has somewhat stated and as the Solicitor
9 stated earlier that the demonstrations be limited to what
10 happened here on this side of the door since their own
11 investigator testified that he doesn't know anything
12 about the inside except the center console that's gone.
13 Again, I'm not saying that it's not right. I'm saying
14 there's nothing to compare it to because they never
15 measured it.

16 THE COURT: We'll call the witnesses and see what
17 they do.

18 MR. HUBBARD: Your Honor, I absolutely intend to use
19 the entire model and if he wants to cross on all the
20 things he just brought up, I'm happy for it.

21 THE COURT: All I know is this. Mr. Dennis has a
22 right to remain silent and he doesn't have to say
23 anything.

24 MR. HUBBARD: Thank you, Your Honor.

25 MR. RUTHERFORD: The question becomes how can he use

1 the inside of the car when his own person admitted he
2 doesn't know whether it's right? He doesn't know where
3 the steering wheel was. Where his pedals were. How big
4 his steering wheel was. Where he is.

5 THE COURT: It's demonstrative. It's not to
6 demonstrate where the steering wheel. It's demonstrative
7 as to the car. All right. Any more questions of
8 Mr. Sullivan?

9 MR. HUBBARD: No, sir.

10 THE COURT: All right, sir. Step down.

11 MR. HUBBARD: Thank you, Sully.

12 MR. RUTHERFORD: Your Honor, he can't be excused.

13 THE COURT: Oh, no.

14 MR. RUTHERFORD: Just want to be clear.

15 MR. HUBBARD: I think we all go home if he goes
16 home. Thank you, Your Honor.

17 THE COURT: Have a seat.

18 MR. HUBBARD: Your Honor, I would ask that any time
19 the jurors can't see, if they let us know and we will be
20 happy to move around and do whatever we need to do.

21 THE COURT: We'll move it wherever we need for them
22 to see.

23 MS. PATTERSON: The State calls Michael James.

24 Thereupon,

25 MICHAEL JAMES

1 after having been first duly sworn, testified as follows,

2 THE CLERK: Please have a seat. Once you're seated,
3 state your full name spelling your last please.

4 THE WITNESS: Michael Dwayne James, J-a-m-e-s.

5 DIRECT EXAMINATION

6 BY MS. PATTERSON:

7 Q. Good afternoon, Mr. James.

8 A. Good afternoon.

9 Q. Mr. James, where did you graduate high school?

10 A. Dutch Fork High School 2014.

11 Q. What are you currently doing?

12 A. Taking classes for civil engineering.

13 Q. Where do you take classes?

14 A. I just finished up at Midlands trying to transfer
15 back to USC again so...

16 Q. Let's go back to your senior year at Dutch Fork.
17 Did you attend a high school game between Dutch Fork High
18 School and Lexington High School on February 17th, 2014?

19 A. Yes, ma'am.

20 Q. Who did you go to the game with?

21 A. At Dutch Fork, right?

22 Q. At Lexington.

23 A. Oh, K.J. Williams.

24 Q. Who drove to the game?

25 A. Me.

1 Q. Do you remember what kind of car you drove?

2 A. A '99 Acura CL.

3 Q. Did you an K.J. get to the game early, late or
4 somewhere in between?

5 A. A little bit late. I think the first quarter had
6 just ended.

7 Q. When you got to the game, where did you sit?

8 A. We went toward the front of our student section.

9 Q. I'm gonna show you what's been entered as State's
10 Exhibit number 5 and ask you to take a look at this and see if
11 you recognize it. Do you recognize what's depicted in that?

12 A. Yes, ma'am.

13 Q. Do you see yourself in this photo?

14 A. Yes, ma'am.

15 Q. Can you point to the jury where you are?

16 A. (Witness complies.) With the green tie and white
17 shirt.

18 Q. Okay. And what's going on in this picture if you
19 can remember? What are y'all doing?

20 A. Just having a good time celebrating. Looks like the
21 game was pretty good so we were just having a good time.

22 Q. What are you wearing, Mr. James?

23 A. White shirt, green tie and some jeans and loafers.

24 Q. Do you always dress up for games?

25 A. Yeah. In high school I pretty much dressed up

1 everyday.

2 Q. So do you remember who won the game?

3 A. Yes. Dutch Fork.

4 Q. Would you describe yourself as school spirited?

5 A. Yes, ma'am. I have been attending Dutch Fork since
6 about the fourth grade.

7 Q. So how did you feel about that win?

8 A. It was pretty good. Uhm, we had a big rivalry with
9 Lexington that year so it was a pretty good feeling.

10 Q. So when you left out of the game and got to the
11 parking lot --

12 A. Yes, ma'am.

13 Q. -- did anything in particular catch your
14 attention?

15 A. Not specifically. Uhm, when we were leaving the
16 game, they directed us out of two different exits. The more
17 we were like in the parking lot and working our way towards
18 our cars, there was just trash talking going on between
19 Lexington and Dutch Fork fans.

20 Q. Were you a part of this trash talking?

21 A. I guess you could say that. Yes. It was a group
22 effort.

23 Q. And let me show you what's been marked as State's
24 Exhibit number 4, entered in evidence State's Exhibit 4. Do
25 you remember where you parked your Acura?

1 A. This picture.

2 Q. Can you see it in this picture?

3 A. I would say along this row right up under that
4 little under pass.

5 Q. Okay. So as you exited out, you described people
6 trash talking?

7 A. Yeah.

8 Q. Was there in any particular place in the parking lot
9 or what was it?

10 A. Well --

11 Q. Or where was it?

12 A. Well, uhm, Dutch Fork students came out from over
13 here. I believe Lexington came out from over here. But
14 everybody was parked over here so when we were walking down
15 here, we were on like opposite sides just talking trash back
16 and forth but since Lexington and Dutch Fork people parked
17 here, some of the trash talking happened, you know, in that
18 area pretty much.

19 Q. Did you go over in that area any?

20 A. Yes, ma'am, with my group of friends.

21 Q. Did you run into anybody in particular who you would
22 consider a Lexington, in the Lexington group?

23 A. I wouldn't really say a Lexington group, but there
24 was a group of individuals that, you know, we specifically
25 recognized. That was about it.

1 Q. Who was in that group?

2 A. A young girl, a heavier set guy, a guy with dreads,
3 and then a light skinned guy with a jacket on, like an orange
4 jacket or something.

5 Q. Did you know these people?

6 A. No, ma'am.

7 Q. Had you seen them before?

8 A. No, ma'am. The first time I saw them we were just
9 trash talking in the parking lot at Lexington. That was my
10 first encounter with them.

11 Q. When you say trash talking, describe what kind of
12 talking would you say is trash talking?

13 A. Uh, I guess that year trash talk could be a lot of
14 different things. We were dancing like doing the Nana, things
15 like that, uhm, you know, Lexington's trash, things along
16 those lines.

17 Q. Were you challenging anybody to a fight?

18 A. No, ma'am.

19 Q. At some point do you remember law enforcement coming
20 up to either group or both groups?

21 A. Yes, ma'am. They were coming in that parking lot
22 area to just disburse the crowd, telling everybody to go back
23 to their cars.

24 Q. When you heard law enforcement talking to the
25 groups, were they talking to your group, both groups or the

1 other group?

2 A. Everybody. I can't really directly say who he was
3 speaking to. There was a bunch of students out there so...

4 Q. You said they was trying to get you to your cars?

5 A. Yes, ma'am.

6 Q. Did you make it to your car?

7 A. Yes, ma'am.

8 Q. Where did you go after you left Lexington High
9 School?

10 A. Well, before we all left, it was a group decision
11 within like the classmates from Dutch Fork to go to nearby
12 Cook Out and just hang out there for a minute, eat until, you
13 know, we had to make it home for our curfew if some students
14 had any.

15 Q. And did you go straight to the Cook Out?

16 A. Yes, ma'am.

17 Q. Who rode with you to the Cook Out?

18 A. K.J. Williams.

19 Q. When you got to the Cook Out, do you remember if
20 there was a lot of people there?

21 A. I wouldn't say it was -- It was already Lexington
22 students there so it was a couple people there. That was
23 pretty much it. And then since we all left about the same
24 time, we all got there around the same time so...

25 Q. Did you know any of the people that you described as

1 Lexington students?

2 A. No. They weren't there. It was like some other
3 students. I guess they left the game early and they were
4 already there, but some of my classmates already knew the
5 Lexington students that were there. They were taking pictures
6 with them and eating so we didn't have any issue. We were
7 just there to eat and work our way home.

8 Q. So did you, in fact, get something to eat?

9 A. I don't recall myself specifically buying anything
10 myself but I did eat off people here and there and things like
11 that so...

12 Q. And so during this time period while you were
13 sitting down eating is anything special going on inside the
14 restaurant?

15 A. No, ma'am.

16 Q. And at some point did you notice the crowd that you
17 described earlier from the Lexington High School parking lot,
18 did you notice them coming into the Cook Out?

19 A. Yeah. Someone pointed it out and I turned around
20 and they were already walking in so...

21 Q. When they walked in what, if anything, did you do?

22 A. I had my hands up, you know, just saying what's up
23 to them. They say, you know, we're good. We're just here to
24 eat. That's pretty much it. That was the only thing.

25 Q. Why did you feel the need to do or say anything to

1 this group?

2 A. Because we had, just, you know, trash talking with
3 them at the game so, you know, we assumed they came to have a
4 confrontation with us so I just asked, you know, you guys,
5 what's up. That was about it so...

6 Q. All right. I'm gonna show you a video and we have
7 seen it earlier, but I want you to kind of identify yourself
8 in this video.

9 (Playing video.)

10 BY MS. PATTERSON:

11 Q. Michael, can you kind of describe what's going on
12 inside the Cook Out at this point?

13 A. Just hanging out. Everybody ordering food. Waiting
14 on their food.

15 Q. Can you identify yourself in the video with the
16 pointer?

17 A. (Witness complies.)

18 Q. We're going to fast forward it just a little bit.
19 And do you remain -- Michael, where are you sitting in the
20 restaurant? Where would you describe where you were sitting?

21 A. It's like the first little booth right there. So go
22 ahead.

23 Q. Where is that in relation to like the front door or
24 the door everybody would enter and exit?

25 A. It's right next to the door. I believe there's

1 garbage cans right behind the booth I want to say. I can't
2 quite remember.

3 Q. Did you stay in that same booth while you were in
4 the restaurant?

5 A. Yes, ma'am.

6 Q. Mike, is this what you described earlier, you
7 standing up?

8 A. Yes, ma'am.

9 Q. Okay. Who are you talking to?

10 A. I can't quite see. I guess whoever was walking in
11 at that moment.

12 Q. After you said what you said to them, did they
13 respond back?

14 A. Yeah. I believe. Yeah. It wasn't anything
15 aggressive so they said they were just here to eat and that
16 was it.

17 Q. What did you say to them again?

18 A. What's up. Because somebody, one of my other
19 classmates pointed out like, yeah, those, they were talking
20 trash to us at the Dutch Fork, you know, at the parking lot
21 so... I just turned around and said what's up. They said
22 they was just here to eat like we were and I just sat back
23 down and minded my business pretty much.

24 Q. What did you do after that? Was that group able to
25 walk by you?

1 A. Yeah.

2 Q. Were you trying to block them or anything?

3 A. No, ma'am. Like I said, nothing was said or going
4 on at this moment. Like everybody is minding their own
5 business, you know. Like they said they came to eat, but
6 after a while we noticed they were just standing not doing
7 anything, so we didn't say anything to them. They didn't say
8 anything to us. Everybody was just minding their own
9 business.

10 (Video stopped.)

11 BY MS. PATTERTON:

12 Q. Just so we don't have to keep playing this video I'm
13 gonna show you a couple still shots. Mike, I'm showing you
14 what's been marked as State's Exhibit 27 and 28. Let's just
15 look at 27 first. Do you recognize what's in that picture?

16 A. What?

17 Q. Do you recognize the image in that picture?

18 A. Yes.

19 Q. Is that what we just saw in the video?

20 A. Yes. Yes. Yeah.

21 MS. PATTERSON: Your Honor, I don't think we have an
22 objection to moving State's 27 into evidence.

23 MR. RUTHERFORD: Without objection.

24 THE COURT: Without objection State's 27 is in.

25 BY MS. PATTERSON:

1 Q. Michael, State's 28, would you take a look at the
2 photograph. Do you recognize yourself in that photograph?

3 A. Yes.

4 Q. Does that fairly and accurately represent you inside
5 the Cook Out Restaurant on February --

6 MR. RUTHERFORD: Your Honor, I'm sorry. We can
7 allow the picture to come in without all the does it
8 fairly and accurately represent you. The video fairly
9 and accurately represents you. This is a snapshot.

10 THE COURT: Okay. This is from the video. This is
11 28?

12 MS. PATTERSON: Yes, Your Honor.

13 THE COURT: Any objection to 28?

14 MR. RUTHERFORD: No, Your Honor.

15 THE COURT: Okay.

16 BY MS. PATTERSON:

17 Q. And on State's Exhibit 28 -- Michael, after the
18 group from Lexington go to the front of the restaurant, do you
19 say anything else to them?

20 A. No, ma'am.

21 Q. Did you hear anyone of your classmates say anything
22 to them while they were inside that restaurant?

23 A. No, ma'am.

24 Q. And who are you sitting beside in the restaurant?

25 A. Da'Von Capers.

1 Q. Do you know if Da'Von ate anything?

2 A. Yes, ma'am.

3 Q. Would you consider yourself good friends with
4 Da'Von?

5 A. Yes, ma'am.

6 Q. And at some point did the kids that you described
7 from Lexington, did they leave out of the restaurant?

8 A. I didn't notice them leaving, but they weren't in
9 the area. Yes, ma'am.

10 Q. And at some point you leave out of the restaurant?

11 A. Yes, ma'am.

12 Q. Now, when you left out of the restaurant, did you
13 know where the Lexington kids went?

14 A. No, ma'am.

15 Q. But did you see them once you exited the
16 restaurant?

17 A. Yeah. They were right at the door, like next to the
18 door there's like a little center column that you can't really
19 see behind it when you're inside the store so...

20 Q. Did you follow them out of the restaurant?

21 A. No, ma'am.

22 Q. Mike, can you step down for a minute.

23 A. (Witness complies.)

24 Q. I will put this on the overhead. I want
25 Mr. Sullivan to power up another video. Stand over here.

1 Keep your voice up so the court reporter can hear you. Can
2 you just point out to the jury, can you take a look at that
3 photograph. Do you see the Lexington people still in the
4 photograph?

5 A. Yes.

6 Q. Where are they?

7 A. I only recognize from this photo the guy in the
8 orange jacket. So yes, they're there. Yes, ma'am.

9 Q. Do you see yourself in this picture?

10 A. Yes, ma'am. Sitting right there.

11 Q. Who is sitting to the right of you?

12 A. Right would be Da'Von here. To my left would be
13 Alexis Brunson.

14 Q. And is there a lot of Dutch Fork High kids up there
15 by the counter?

16 A. No, ma'am.

17 Q. Have a seat.

18 A. (Witness complies.)

19 Q. We're gonna play another video.

20 (Playing video.)

21 BY MS. PATTERSON:

22 Q. Michael, do you remember where you parked your
23 car?

24 A. Yes, ma'am.

25 Q. Where did you park your car?

1 A. Right there.

2 Q. And on this picture is this the Lexington group that
3 you have described twice?

4 A. Yes.

5 Q. Is that you coming out of the door?

6 A. Yes, ma'am.

7 Q. I see you're walking looking like you're turning
8 back to say something to them?

9 A. Yes, ma'am. Well, I didn't say - I don't believe I
10 said anything at that moment. I just looked back because they
11 said something to me and I kept walking. That was pretty much
12 it until I felt safe myself to say something back to them
13 because it is four of them and it was just me so I just kept
14 walking until I felt safe on my own ground to respond back to
15 them.

16 Q. What did you hear someone say to you?

17 A. I can't remember directly what it was. It was
18 something along the trash talking that we had been talking all
19 day, or all night. I wouldn't say all day. All night.

20 Q. Do you remember if it was a male or a female's
21 voice?

22 A. No, ma'am. I do not know.

23 Q. And so after you heard that, what do you do? Stop
24 it there. So are you still - where are you heading still?

25 A. To my car.

1 Q. Why do you turn around like that?

2 A. Because I felt safe to turn around and say some
3 trash back, but that was the only reason. I just pretty much,
4 I think what I said at that moment was it was a good game.
5 There's no need for you guys to still be salty. That was
6 pretty much it.

7 Q. Do you ever remember Kierin Dennis saying something
8 to you, the guy with dreads?

9 A. I remember the guy with dreads. He did walk up a
10 little bit to the forefront of their group. I can't
11 specifically tell you what he said because we were just trash
12 talking like I say all night so I wasn't speaking to anybody
13 directly so that's pretty much my perspective.

14 Q. And at this point do some of your classmates come
15 out of the restaurant?

16 A. Yes, ma'am.

17 Q. Now, did you call for them to come out in the
18 parking lot with you?

19 A. No, ma'am.

20 Q. Is that some type of hand signal that you give to
21 them to come out --

22 A. No, ma'am.

23 Q. -- and check on you? So did you almost get to your
24 car before you turned around?

25 A. Yeah. I was close. I was about, I was going to get

1 hit by a white car so I moved out of the white car's way.

2 Q. And of all the people in that group do you remember
3 that girl saying something?

4 A. She was pretty provocative. She was loud. I can't
5 tell you specifically what she was saying. She was pretty
6 loud.

7 Q. After your classmates come out, what are you guys
8 doing?

9 A. Talking trash again.

10 Q. And is the group talking trash back to you all?

11 A. Yes.

12 Q. You still see yourself?

13 A. I think I'm at my car now. Yeah. Right there at my
14 car.

15 Q. So you do eventually make it to your car?

16 A. Yes, ma'am. That was my main objective.

17 Q. So do you ever follow the Lexington kids out to
18 their cars?

19 A. No, ma'am.

20 Q. Do you ever see them get to their cars?

21 A. Yes, ma'am.

22 Q. Do you remember where they were parked?

23 A. One car was parked in the car wash area. I think
24 another one was parked across the street in that parking lot.
25 That's all I remember.

1 Q. Did you notice if any of your classmates followed
2 them to their cars?

3 A. No, ma'am.

4 Q. Did you notice or did any of them follow them to
5 their cars?

6 A. No, ma'am. I did not notice. I did not notice.

7 Q. Now, did you ever notice this Lexington group
8 again?

9 A. When they went to their cars?

10 Q. Yes.

11 A. No. Only when the whole situation happened with
12 their vehicles when, you know, they tried to hit a few people
13 with the money thrown out, things like that and they were just
14 standing over there just talking. That was about it.

15 Q. Now, when you say they were standing over there
16 talking, were they inside their cars?

17 A. No. They were outside. Actually one car had the
18 trunk open like they went to get something. We weren't really
19 worried about it because our intention wasn't really anything.
20 Uhm, we just sitting there hanging out just figuring out what
21 they were doing and that was pretty much it.

22 Q. What do you remember about the car that you said the
23 trunk came open?

24 A. Just the trunk came open. That's all I can
25 remember.

1 Q. Did you see who went to the trunk?

2 A. No, ma'am.

3 Q. And so what were y'all doing when the group got to
4 their cars? Did you notice any of the cars leaving?

5 A. One car did leave. At least I thought it left. I
6 guess it just made a roundabout and came back around. That's
7 all I noticed. I was still at my car talking with some of my
8 classmates.

9 Q. What did that car look like, if you remember?

10 A. It was a white, a white, I can't remember if it was
11 a SUV or a four door sedan. One of those two.

12 Q. What made you think that car left?

13 A. Because it drove out. I didn't pay attention to it
14 leaving, but it did drive out and that's all I can recall so
15 it may not have left but from my perspective I thought it left
16 so...

17 Q. What do you remember happening after that car
18 left?

19 A. It just came back around and kind of parked behind I
20 guess the white SUV there and then just sat there for a few
21 minutes.

22 Q. Did you ever see that white SUV leave?

23 A. No. I didn't see that car leave. No.

24 Q. What do you remember happening next?

25 A. The next thing I remember happening is the heavier

1 set guy in this car pulled up with his window down and he
2 threw out some money and he was like, this is all you guys are
3 worth, threw out the money and he drove off and then I was
4 paying attention to a couple classmates that ran out in the
5 road to gather the money.

6 Q. Let me stop you right there.

7 (Video stopped.)

8 BY MS. PATTERSON:

9 Q. I'll show you State's Exhibit 23. Mike, can you
10 step down?

11 A. (Witness complies.)

12 Q. Mike, I'm gonna show you this picture. The Cook Out
13 over here to the right. Can you just kind of familiarize
14 yourself with this scene and kind of point out where you were
15 parked?

16 A. I was parked here, right there. Yeah. I was parked
17 right here. I remember there was a pole light right here but
18 they might have took it down.

19 Q. On this picture where were those two cars parked
20 that we kind of see in this video?

21 A. They were right around here in this area.

22 Q. And where were you when you saw the heavy set guy
23 pull up and throw the money out?

24 A. I was in this area by my car.

25 Q. And where were you would you say he threw the money

1 out?

2 A. Right in this area, I guess there so right by my
3 car.

4 Q. And where did you say you seen some of your
5 classmates run out into the road?

6 A. (Indicating.)

7 Q. Now, when he pulled up, did he stay in that same
8 spot that he threw the money out?

9 A. I couldn't tell you. I wasn't paying attention to
10 him anymore.

11 Q. Who was your attention focused on?

12 A. My classmates in the road trying to grab the
13 money.

14 Q. And what do you remember happening next?

15 A. Well, when I was looking at my classmates going out
16 into the road to grab the money, I hear a car just like pretty
17 much speed up and try to hit whoever was out there trying to
18 grab the money but he didn't hit them. He just stopped right
19 before. That's pretty much it.

20 Q. Okay. Where were you standing when you saw this?

21 A. I was still in this area.

22 Q. And do you know who was driving that car that almost
23 hit your classmates?

24 A. Yes. It was the guy with dreads.

25 Q. Take your seat.

1 A. (Witness complies.)

2 Q. How did you know it was him?

3 A. His window was down.

4 Q. Now, what was the reaction of your classmates when
5 this almost happened?

6 A. Confused. Shocked. You know, somebody just tried
7 to speed up and hit them, you know, so pretty much that.

8 Q. And after he sped into your classmates, did his car
9 stay right there?

10 A. Yes. It's stationary. Yes, ma'am.

11 Q. Now, did you go up to the car?

12 A. Yes, ma'am.

13 Q. I'm gonna show you what's been entered as State's
14 Exhibit 24 and ask you to take a look at this. Can you
15 identify yourself in this picture?

16 A. Yes, ma'am. Here at the back of the vehicle.

17 Q. Now, how do you know you're in the back of the
18 vehicle?

19 A. Taillights.

20 Q. Now, I see, we can tell that people are kind of
21 standing next to you. Is there anybody else in front of
22 you?

23 A. One person. One or two people in front of me right
24 there.

25 Q. Could you tell what was going on at that window?

1 A. Some more arguing, trying to figure out what was
2 going on since he almost hit like two of our classmates.

3 Q. Did you see anybody in particular at the window?

4 A. I remember Alexis.

5 Q. Can you point her out.

6 A. I remember Alexis. I remember Lamar and I remember
7 Xavier.

8 Q. Now, you heard some arguing at the window but could
9 you make out anything in particular that was being said?

10 A. No, ma'am.

11 Q. Now, based on the tone, was it a happy, sad or
12 something else reaction, or angry?

13 A. Are you talking about my tone or my classmates?

14 Q. Any of the people at the window.

15 A. My tone, I was just trying to figure out what was
16 going on. There was a couple people that were a little
17 aggressive. They were upset they almost got hit but that was
18 about it.

19 Q. Before that what was the mood of your classmates in
20 the parking lot?

21 A. Just hanging out. Chilling. You know, having a
22 good time. Just waiting, you know, to go home. Everybody
23 make that last, you know, everybody going home and that was
24 about it.

25 Q. But after that car pulled up, did it change?

1 A. Yes. It did change.

2 Q. Now, did you see anybody reach inside of that car
3 window?

4 A. From my view, no, ma'am.

5 Q. Did you see anybody banging on that car?

6 A. No, ma'am.

7 Q. Was anybody throwing at that car?

8 A. No, ma'am.

9 Q. Now, at this point where you pointed out on the
10 poster where you're standing, at what point did you see the
11 driver of the car?

12 A. I saw him as he was, like when I walked up to the
13 car so the angle that I walked up I could see who the driver
14 was but from my angle at the car I couldn't see anything.

15 Q. And so did you hear him say anything?

16 A. No, ma'am.

17 Q. Could you see anything that he was doing?

18 A. No, ma'am.

19 Q. What did you you see happen next?

20 A. The next thing, you know, like he just drove off
21 frantically and the next thing, you know, Cape said he got
22 stabbed and everything just pretty much went down hill after
23 that.

24 Q. Do you remember his rate of speed when he first came
25 up into the crowd?

1 MR. RUTHERFORD: Your Honor, he can't testify to
2 rate of speed.

3 THE COURT: I think he can describe it in some
4 fashion. Rephrase it. He has been asked something
5 similar earlier.

6 MR. RUTHERFORD: Right. No. He can testify to
7 something but not rate of speed.

8 BY MS. PATTERSON:

9 Q. Can you describe how the car came into the crowd?

10 A. It was aggressive, almost like, you know, if you
11 start off as if you're racing another car. It was a pretty
12 aggressive, you knone, lunge towards whoever were in the
13 road.

14 Q. Can you point out to the jury where his car would
15 have came?

16 A. Would have came?

17 Q. When you saw it come in the crowd?

18 A. It was in relation to this car here so along this
19 line closer to the curb. Yes, ma'am.

20 Q. Were your classmates, where were they standing?

21 A. Closer to the curb. Yes, ma'am. I think some of
22 them were actually standing on the curb if I can remember.

23 Q. When he left out, how did he leave out, if he left
24 out, if you remember?

25 A. He drove out pretty, like I said, frantically.

1 Basically he hopped the curb at the entrance, you know, so he
2 drove off pretty aggressively.

3 Q. Was anybody standing in front of his car when he
4 drove off?

5 A. Not directly. No, ma'am.

6 Q. Were you up far enough up on the window -- You said
7 you didn't see what was going on?

8 A. Yeah. He had like five percent tint. That's like
9 limo tint. You can't see through that even if you're up close
10 to the car.

11 Q. When did you realize that Cape had been stabbed?

12 A. After the guy drove off and, you know, Cape said,
13 oh, yeah, he got me. He got me. Somebody else said they
14 stabbed him and that's pretty much it.

15 Q. Now, were you able to see any -- Did you see Cape
16 get stabbed?

17 A. No, ma'am. I didn't.

18 Q. What, if anything -- Do you know why?

19 A. I couldn't tell you why. No, ma'am.

20 Q. Were there other people standing in front of you?

21 A. Yes. It was a group of people at the car so I
22 couldn't really see anything. I just knew that, you know,
23 there was a little bit of arguing going on. That was about
24 it. Next thing you know he drives off aggressively, Cape runs
25 and, yeah, that's all I can remember.

1 MS. PATTERSON: Thank you, Mr. James. Please answer
2 any questions the defense has.

3 CROSS EXAMINATION

4 BY MR. RUTHERFORD:

5 Q. Mr. James, how are you doing today?

6 A. Good. How about you?

7 Q. Doing great. You said you went to Dutch Fork for
8 how long?

9 A. Since fourth grade.

10 Q. Since fourth grade. What grade were you in in
11 2014?

12 A. Twelfth. Senior.

13 Q. So what is this? What is that?

14 A. Lexington High School.

15 Q. How do you know?

16 A. I've been there.

17 Q. Yeah. But you can tell by looking at this and that
18 that that's Lexington High School?

19 A. Yes.

20 Q. And so you have seen it from overhead before?

21 A. Yes.

22 Q. Okay. And that night when you came, you said you
23 parked where?

24 A. Under this underpass.

25 Q. So right here under the underpass?

1 A. Yes.

2 Q. And you told the Solicitor that the trouble was over
3 here?

4 A. Yes.

5 Q. And you were over here?

6 A. Yes.

7 Q. But your car was over here?

8 A. Yes, sir.

9 Q. So what were you doing over here? Were you the one
10 causing trouble?

11 A. No, sir. Just hanging out with some friends after
12 the game from the students' section.

13 Q. Did you hear officers telling people to go home when
14 you came outside?

15 A. No, sir.

16 Q. You didn't?

17 A. No, sir.

18 Q. You never heard officers telling people to go
19 home?

20 A. No, sir. Not until we were down here.

21 Q. So did an officer specifically tell you to go
22 home?

23 A. No, sir.

24 Q. So no officer between here and here ever told you to
25 just go home?

1 A. No, sir. Not directly.

2 Q. All right. So you went and you got in your car; is
3 that correct?

4 A. Yes.

5 Q. Who was with you?

6 A. K.J. Williams.

7 Q. Who else?

8 A. That was it.

9 Q. So you said that you and your friends had made a
10 plan to go to the Cook Out. Where did y'all make the plan?

11 A. At the parking lot of Lexington.

12 Q. In the parking lot at Lexington you and your friends
13 made a plan to go to the Cook Out?

14 A. I wouldn't say it was a plan, just more of like,
15 yeah, we're going to Cook Out because any time after any game
16 especially at Dutch Fork we had a Sonic that we all used to go
17 to so it was a normal occasion for us to link up somewhere to
18 go eat after a sports game.

19 Q. Mr. James, earlier when you told the Solicitor you
20 all planned to go to the Cook Out, you're saying it wasn't
21 really a plan?

22 A. It wasn't a plan. That was the wrong
23 interpretation. Yes, sir.

24 Q. So when she showed you the video in Cook Out and as
25 soon as my client walks in you stand up and you do this to ask

1 what?

2 A. What's up.

3 Q. What's up. Just what's up?

4 A. Yes, sir.

5 Q. Do you know him?

6 A. No, sir.

7 Q. What's up. What does that mean to you?

8 A. I guess it depends on how you interpret, you know,
9 and --

10 Q. So -- I'm sorry. Go ahead.

11 A. -- it could be a greeting or it could be however you
12 want to interpret it.

13 Q. And they're walking into a room and as they come
14 through like this passageway, you stand in their way and you
15 say what's up?

16 A. I didn't stand in their way. No, sir.

17 Q. Okay. So I'll play it. And if you're standing in
18 someone's way, you have to move in order for them to pass by;
19 isn't that right?

20 A. Yes, sir.

21 Q. And if you had continued to stand with your hands
22 outstretched saying what's up, they could not have walked by
23 without bumping into you; is that right?

24 A. No, sir.

25 Q. That's not right?

1 A. No, sir.

2 Q. Okay. So you're standing there in the way and you
3 say what's up?

4 A. Not in the way. No, sir.

5 Q. Okay. You're standing there in front of them and
6 you say what's up?

7 A. Not in front of them. No, sir.

8 Q. You're not behind them, are you?

9 A. I'm not directly in front of them.

10 Q. I didn't say directly. You're in front of them, are
11 you not?

12 A. Okay.

13 Q. You're looking them in their face, are you not?

14 A. Yes, sir.

15 Q. And you say what's up, correct?

16 A. Yes.

17 Q. And when they say to you we're just here to eat, you
18 put your arms down and sit down, that your testimony?

19 A. Yes, sir.

20 Q. So it's not the magic words, but once they clear it
21 with you that they're okay, they're just here to eat, you
22 allow them to come in; is that right?

23 A. No, sir. They were already walking into the Cook
24 Out so there was no allowing me to allow them in or out.

25 Q. Not only were they already walking into the Cook

1 Out, one of the people at your table according to your
2 testimony earlier told you here they come; isn't that right?

3 A. I wouldn't say here they come. No, sir.

4 Q. What did they say?

5 MS. PATTERSON: Objection. Hearsay.

6 MR. RUTHERFORD: He already testified to it. He
7 said it. He said they told me they're coming in.

8 THE COURT: I'll allow it.

9 BY THE WITNESS:

10 A. Say that again.

11 BY MR. RUTHERFORD:

12 Q. What did they say?

13 A. Who?

14 Q. Whoever at your table told you that Mr. Dennis was
15 coming in?

16 A. Didn't really say. They just pointed out like they
17 recognized them from the parking lot and the game.

18 Q. They said all that?

19 A. Said directly?

20 Q. What did they say?

21 A. What did they say?

22 Q. What did your friends say?

23 A. I can't remember that.

24 Q. You can't remember.

25 A. I just remember being pointed out that that was the

1 group that part of our classmates were arguing with from the
2 parking lot.

3 Q. Who said it?

4 A. I don't remember.

5 Q. You don't remember?

6 A. No, sir.

7 Q. Okay. So when this unknown person sitting at your
8 table -- You knew everybody at your table, correct?

9 A. Yes, sir.

10 Q. You went to school with them, correct?

11 A. Yes, sir.

12 Q. You had known them for some time, correct?

13 A. Yes, sir.

14 Q. But you don't remember who said it, correct?

15 A. Yes, sir.

16 Q. Okay. And when this unknown person said this, you
17 then stand up and you say what's up, correct?

18 A. I don't believe I stood up. I believe I was already
19 standing up.

20 (Playing video.)

21 BY MR. RUTHERFORD:

22 Q. Okay. And that would be you, right

23 A. Yes, sir.

24 Q. Hands outstretched, what's up?

25 A. Yeah. What's up.

1 Q. Who said we're just here to eat?

2 A. I can't quite tell you who said it.

3 (Video stopped.)

4 BY MR. RUTHERFORD:

5 Q. Okay. So they come in. Do you remember when you
6 arrived at the Cook Out?

7 A. When I arrived?

8 Q. Yes, sir.

9 A. No, sir. I don't remember.

10 Q. You said when you got there, you told the Solicitor
11 when you got there were a couple people there; is that
12 right?

13 A. Yes, sir.

14 Q. And because there were a couple people there you
15 were able to get a table, correct?

16 A. Yes, sir.

17 Q. The Solicitor showed you stills or pictures from
18 inside the restaurant. I'll show you what is marked as
19 State's Exhibit number 28 and 27. You are familiar with Cook
20 Out, are you not?

21 A. This Cook Out? No, sir.

22 Q. Cook Out in general. You know it's a fast food
23 place?

24 A. Yes, sir.

25 Q. Do you make reservations for tables?

1 A. No, sir.

2 Q. Do you sit down and a waitress comes to you?

3 A. No, sir.

4 Q. So if you order your food and there's no place to
5 sit, what would you have to do?

6 A. Stand.

7 Q. So when you got there, you were lucky enough to get
8 a table; is that right?

9 A. Yes, sir.

10 Q. What do you notice in picture number 27? Is it
11 crowded?

12 A. Yes, sir.

13 Q. Is there a line in front of where the Lexington
14 people are?

15 A. I guess you would have to explain.

16 Q. Is there a line to the counter where you order your
17 food?

18 A. Yes, sir. There's a line to the counter. Yes,
19 sir.

20 Q. So if you order your food and you don't have
21 anywhere to sit, what do you do when you're at the Cook Out?
22 Do they come and bring a table out so everybody can sit
23 down?

24 A. No, sir.

25 Q. So it's common sense, fast food restaurant, you

1 order your food, then you go sit down, correct?

2 A. Yes, sir.

3 Q. But if there are no tables, do you order or do you
4 wait?

5 A. You order and wait.

6 Q. Maybe.

7 A. I mean, I guess just based off those two pictures
8 you can't really say that there's no table.

9 Q. Exactly. But in picture number 28 do you see any
10 empty table?

11 A. Based off those two, no, sir.

12 Q. And in picture number 27 which is the one I showed
13 you with the line even if by the time they got to the counter,
14 there are four or five people in front of them, correct?

15 A. Yes, sir.

16 Q. So just from what you know about fast food places
17 you don't sit down and wait on a waitress. You have to order
18 your food and if you order your food and there's no table,
19 they don't create one for you. You may have to stand up and
20 eat; is that right?

21 A. Yes, sir.

22 (Playing video.)

23 BY MR. RUTHERFORD:

24 Q. Okay. So playing on through the video, you're
25 sitting at the table with whom?

1 A. Da'Von Capers, Alexis Brunson, I believe, Devon
2 Taylor. I can't don't remember the other guy.

3 Q. So y'all are sitting there and the Lexington kids
4 are standing right here?

5 A. Yes.

6 Q. It looks like it's packed. Is that the feeling?

7 A. Yes.

8 Q. Okay. So it's packed and so Da'Von Capers was
9 sitting with you; is that right?

10 A. Yes, sir.

11 Q. Did he indicate to you that he knew Kierin Dennis?

12 A. No.

13 Q. Did you see him walk across the restaurant a couple
14 of times?

15 A. Who?

16 Q. Da'Von Capers.

17 A. Yes.

18 Q. Okay. And so did you know Mr. Dennis?

19 A. No. No, sir.

20 Q. So at this point y'all are just in the restaurant
21 together; is that right?

22 A. Yes, sir. Just having a good time.

23 Q. Okay. So at any point while you were in the Cook
24 Out do you stand up like on the chair or on the table getting
25 somebody else's attention?

1 A. I can't remember.

2 Q. Could have happened. Maybe not. You don't
3 remember?

4 A. Yes, sir.

5 Q. Okay. So when you are -- And I believe that's you
6 in the back on the left; is that right?

7 A. Yes.

8 Q. You have your phone on you, correct?

9 A. Yes.

10 Q. Who are you sitting with at that point?

11 A. I think that's still Devon Taylor. That may be
12 Stephen Davis. I think so. I can't quite tell from that.

13 Q. Where is Mr. Capers?

14 A. I do not know. Probably went to get in the line or
15 somewhere. I do not know.

16 Q. So you're standing there and then Mr. Dennis and his
17 friends walk outside and then what do you do?

18 A. I don't know.

19 Q. You don't know?

20 A. Yes, sir.

21 Q. So when the Solicitor showed the video of them
22 coming out and you walking out after them, you don't remember
23 that?

24 A. Based off this right here?

25 Q. Based off of what you did.

1 A. Well, yes, I did walk outside.

2 Q. You walked outside. And what were you doing?

3 A. I'm going to my vehicle.

4 Q. For what?

5 A. I believe it was my wallet because it looks like I
6 had my phone. I thought last time it was my phone so I want
7 to say it was my wallet.

8 Q. So last time you said it was your phone, but it
9 wasn't your phone. It's your wallet now?

10 A. Yeah. It looks like I had it.

11 Q. So even though you had been there for how long at
12 this point?

13 A. I couldn't tell you.

14 Q. Looks like people are already eating. Looks like a
15 lot of people are done, but even though you had been there for
16 we can agree some time --

17 A. Yes, sir.

18 Q. -- you decide to go out and get your wallet?

19 A. Yes, sir. Because I had got, Da'Von had gave me a
20 BLT sandwich. It was good. I had a sip of a slushy from I
21 believe one of the girls there so I just, the last minute
22 before I left I wanted to get a BLT because it was a dollar.
23 I just didn't have my wallet on me it looks like.

24 Q. And you remember all of that now?

25 A. Yes, sir.

1 Q. Okay. So when you walk outside, you are walking
2 past the four Lexington kids; is that right?

3 A. Yes, sir.

4 Q. And at that point you say that a girl says something
5 to you; is that right?

6 A. I do not know who said anything to me. I just know
7 something was said to me because I, you know, looked at them a
8 little bit but I didn't say anything.

9 Q. So if someone said that they know that a girl said
10 something to you and that's why you turned around, they would
11 be wrong, correct?

12 A. I can't quite say that.

13 Q. Because you can't even say that, correct?

14 A. Yeah. I can't say that.

15 Q. Okay. So when you get outside, you then do it
16 again, what's up, right?

17 A. I didn't say what's up that time.

18 Q. What did you say this time.

19 A. I said it was a good game. No need to be upset
20 about it. That's about it.

21 Q. It's a good game. No need to be upset about it as
22 you start walking towards them; is that right?

23 A. Not towards them. I was walking away from the white
24 vehicle that was backing up.

25 Q. We'll get to that. So you're now walking away from

1 the white vehicle that was pulling up that was behind you as
2 you walked toward them with your hands out saying it was a
3 good game, right?

4 A. Yes.

5 Q. So at that point even though you think, or you said
6 that it was nothing to it --

7 A. Right.

8 Q. -- all of your home boys, all of your friends --

9 A. Right.

10 Q. -- came streaming out of the restaurant, didn't
11 they?

12 A. They came out. Yes.

13 Q. Did you say no big deal, fellas. Go on back in.
14 We're just talking about the game?

15 A. No, sir. I didn't say that.

16 Q. You didn't say that, but that's what you were doing,
17 right?

18 A. As far as what?

19 Q. As far as when you were talking to them you said it
20 was a good game, it's over, right?

21 A. I'm not a director or anything like that so I can't
22 control somebody and tell them to go back and do what they
23 were doing.

24 Q. Did you ask them to?

25 A. There was no need to.

1 Q. You stated to the Solicitor that when you went
2 outside, there was one of you and four of them?

3 A. Yes.

4 Q. So you had to make sure that you were safe?

5 A. Yes.

6 Q. But at this point it was how many of your friends
7 and four of them?

8 A. I do not recall.

9 Q. And it didn't bother you to say, no, we're just
10 talking about the game?

11 A. No. No, sir.

12 Q. So then you see them walk past you; is that right?

13 A. Yes, sir.

14 Q. And do you go back in?

15 A. Go back?

16 Q. Go back into the Cook Out?

17 A. Let's back up a little bit.

18 Q. When they walk past you after you've done this like

19 --

20 A. Outside?

21 Q. Yes, sir.

22 A. Okay. Go ahead.

23 Q. -- do you go back inside the Cook Out?

24 A. No, sir.

25 Q. You walk --

1 A. I just stayed at my car because it was a lot of
2 commotion going on outside so I forgot about going back in to
3 do what I originally wanted to do.

4 Q. You stayed at your car or you continued walking to
5 get past your car?

6 A. I stayed at my car.

7 Q. You would agree that this is not at your car, is
8 it?

9 A. Yes, sir. That's not at my car.

10 Q. And before you were there, you said that you were on
11 the curb or in the street behind your car, correct?

12 A. I was at my car in the same vicinity. Yes, sir.

13 Q. You had gone out to get some money to go back in?

14 A. Yes, sir.

15 Q. But you weren't doing that anymore, were you?

16 A. No, sir.

17 Q. And at that point how many kids from Dutch Fork were
18 outside in the parking lot?

19 A. I do not recall.

20 Q. Now, what grade were you in at this point?

21 A. Senior, twelfth grade.

22 Q. Senior. Had you ever seen a fight before in
23 school?

24 A. I can't quite -- It's Dutch Fork. There's not too
25 many.

1 Q. You've never seen a fight before in school?

2 A. No, sir.

3 Q. So you don't know that the crowd out there was
4 waiting to see something?

5 A. No, sir.

6 Q. And so when all of those people came outside of the
7 Cook Out that were friends of yours, you don't know why they
8 came out there?

9 A. Yes, sir.

10 Q. Yes, sir, you do, or yes, sir, you don't?

11 A. No, sir. I don't know why they came out.

12 Q. You don't have a clue?

13 A. No, sir.

14 Q. So when they all came and grouped around you and you
15 all kept walking in the same direction as my client, you don't
16 know why that happened either, do you?

17 A. No, sir.

18 Q. Okay. So you stated that you didn't know Mr.
19 Dennis; is that right?

20 A. Yes, sir.

21 Q. And yet you find yourself at his car?

22 A. Yes, sir.

23 Q. Now, this was an SUV; is that right?

24 A. Yes, sir.

25 Q. Would it be odd if I posed the question to you, is

1 it longer than say a Volkswagen Beetle or do you not know?

2 A. Do not know.

3 Q. Do you know that an SUV is usually bigger than a
4 car?

5 A. Yes, sir.

6 Q. Can you see yourself almost at the taillight of the
7 SUV?

8 A. Yes, sir.

9 Q. Can you see that you can't even see anything almost
10 up until the headlight? Can you see that?

11 A. It's pretty tough --

12 Q. I'm sorry. Do you need me to bring it closer?

13 A. Rephrase that one for me.

14 Q. Can you see that from you almost to the taillight
15 all the way up until the headlight you can barely even see the
16 car because there's so many people there? Can you see that,
17 yes or no?

18 A. Through the crowd? No, I can't.

19 Q. Through the crowd.

20 A. It depends on what perspective, you know, how I'm
21 looking. I can look like this and see in front of the car.

22 Q. No, sir. This picture.

23 A. But if I look through the crowd, I'm blocked. I
24 can't see anything.

25 Q. Look at this picture. Can you tell?

1 A. In that picture?

2 Q. Yes.

3 A. You can't see the front of the car. Yes, sir.

4 Q. Okay. So but from where you're standing you can see
5 the car; is that right?

6 A. Yes.

7 Q. Because you're standing right there, correct?

8 A. Yes.

9 Q. Who is that?

10 A. That's Lamar Butler.

11 Q. And who is that?

12 A. Do not know.

13 Q. Who is that?

14 A. Xavier.

15 Q. Xavier?

16 A. Holliday, I believe.

17 Q. I'm sorry. And who is that?

18 A. Alexis Brunson.

19 Q. Okay. So you're standing at someone's car that you
20 don't know with all your friends from Dutch Fork; is that
21 right?

22 A. Not all of my friends. Just a few.

23 Q. Where is Da'Von Capers?

24 A. I do not know.

25 Q. You don't know. So when Da'Von Capers comes up to

1 the car, what happens?

2 A. I do not know.

3 Q. Who had their shirt off?

4 A. Do not know.

5 Q. You don't know that either?

6 A. No, sir.

7 Q. Okay. What was the temperature that night, do you
8 remember?

9 A. Temperature?

10 Q. Yes, sir.

11 A. Do not know.

12 Q. You don't know that either. Okay. So you're
13 standing at the car?

14 A. Yes, sir.

15 Q. What happens next?

16 A. I would say there's an argument going on. Uhm, I
17 see Cape come, you know, to the window and then the car just
18 speeds off. That was about it.

19 Q. So when I asked you where Da'Von Capers was and you
20 said you don't know, what you meant was at this moment you
21 don't know where he is?

22 A. I don't know. Yeah.

23 Q. But then you saw him appear at the car window; is
24 that correct?

25 A. Yes.

1 Q. So when you first went to the car window, Da'Von
2 Capers was not standing there, was he?

3 A. At the window? No, sir.

4 Q. So he wasn't there. He wasn't in the street. He
5 wasn't somebody that almost got hit, correct?

6 A. I can't recall.

7 Q. But you know that he wasn't standing at the car when
8 you were, correct?

9 A. Yes, sir.

10 Q. So he comes and he goes up to the window --

11 A. Yes, sir.

12 Q. -- correct? And what does he do?

13 A. I do not know. I didn't see anything.

14 Q. You don't know?

15 A. Yes, sir.

16 Q. Okay. Do you remember talking to Investigator
17 Carter, that man right there about what happened that night?

18 A. That night? Yes, sir.

19 Q. Do you remember talking to him about that?

20 A. Yes, sir.

21 Q. Do you remember telling him what happened?

22 A. I remember going through the story, but detail by
23 detail I do not remember.

24 Q. But when you tell this jury that you don't know,
25 it's not that you don't remember. You're saying it happened

1 so fast I don't know?

2 A. I don't remember.

3 Q. So now you don't remember?

4 A. Yes.

5 Q. Okay. So there was a point at which you remembered
6 what happened, correct?

7 A. Yes.

8 Q. And that point is when you were talking to
9 Investigator Carter, correct?

10 A. No, sir.

11 Q. So when you were talking to Investigator Carter
12 right after this happened, you didn't remember what happened
13 then either?

14 A. You got me. No, sir.

15 Q. You said I got you. What do you mean?

16 A. You're confusing me.

17 Q. I'm sorry.

18 A. That's the way -- Yeah. You're getting --

19 Q. I'll slow down.

20 A. Yeah.

21 Q. When you gave your statement to this police officer
22 right here --

23 A. Yes, sir.

24 Q. -- did you remember then what happened that night?

25 A. Yes, sir.

1 Q. And so what you said here today about you not
2 remembering it's okay to disregard that and go with what you
3 told that police officer that night; is that right?

4 A. Yes, sir.

5 Q. Okay. So you described -- I'll wait. I'll play it.
6 I'm sorry.

7 THE COURT: Might be a good time for a break.

8 MR. RUTHERFORD: Thank you, Your Honor. I've got to
9 pee. I'm sorry.

10 THE COURT: I think I do, too. All right. We're
11 gonna take a short break. Go to your jury room. We'll
12 be right back in here.

13 (Whereupon, the jury entered the jury room at 3:30
14 p.m.)

15 (Short break.)

16 BAILIFF: All rise.

17 THE COURT: Please be seated.

18 MS. PATTERSON: Your Honor, before the jury comes
19 out, it seems that Mr. Rutherford is gonna attempt to
20 play Mr. James' recorded interview with Detective Carter.
21 I'm a little confused because it seems that he's gonna
22 try to get this in to impeach Mr. James on something, but
23 I'm not quite sure what he's trying to impeach him on.
24 Mr. James has said he don't remember certain things, but
25 he hasn't said anything differently. Well, I really

1 MS. PATTERSON: That's what he remembers.

2 THE COURT: But he's represented to the Court that
3 there was three answers given, not just two. I don't
4 know the third one.

5 MS. PATTERSON: What's the third one?

6 THE COURT: I mean, that's what he just said,
7 there's three answers. I think he gets it. Bring in the
8 jury.

9 (Whereupon, the jury entered the courtroom at 4:00
10 p.m.)

11 THE COURT: All right. Mr. Rutherford.

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

14 THE COURT: Mm-hmm.

15 (Playing video.)

16 BY MR. RUTHERFORD:

17 Q. Now, Mr. James, do you remember sitting in this room
18 talking to Investigator Carter?

19 A. Yes.

20 Q. Who is that with you?

21 A. My parents.

22 Q. And you sat down. Do you remember when this was?

23 A. I do not know. No, sir.

24 Q. Do you remember where it was?

25 A. It was I think out here in Lexington somewhere.

1 Q. And you sat down with Investigator Carter and your
2 parents to talk about this incident; is that correct?

3 A. Yes, sir.

4 (Video stopped.)

5 BY MR. RUTHERFORD:

6 Q. Okay. And Investigator Carter went through with you
7 you what happened that night; is that right?

8 A. Yes, sir.

9 Q. And I enquired of you earlier as to why you went to
10 your car. Do you remember that?

11 A. Yes, sir.

12 Q. Would this help refresh your memory?

13 A. You said will it help?

14 Q. Yes, sir.

15 A. I can't say it will because I was under trauma that
16 night, the night after my friend, you know, got killed so I
17 can't quite say I remember anything I said that night so no,
18 sir.

19 Q. So now you can't quite remember anything that you
20 said when you were talking to the police officer?

21 A. I don't remember.

22 Q. You don't remember?

23 A. Yeah. I was under trauma that night.

24 Q. You were under trauma as you described what had
25 happened?

1 A. To the best of my ability, yes, sir.

2 Q. To the best of your ability. I see. And so when
3 you told the investigator --

4 MS. PATTERSON: And, Your Honor, I don't know if he
5 gets to play it. He said he don't know if it will help.

6 BY THE WITNESS:

7 A. Yeah. I was, this was the night --

8 MR. RUTHERFORD: Your Honor, if the witness will
9 wait until Your Honor rules.

10 THE WITNESS: Okay.

11 MR. RUTHERFORD: I'm not sure there's an objection,
12 just that she doesn't want the truth to come out.

13 THE COURT: No.

14 MS. PATTERSON: Yeah. I object to that, Your Honor.

15 THE COURT: What we're trying to do is find out
16 whether it's gonna be a recollection refreshed or it's
17 impeachment. Did you ask him, do you remember what he
18 said this night?

19 MR. RUTHERFORD: Your Honor, that's what I thought I
20 said, but I can ask him again.

21 THE COURT: Okay.

22 BY MR. RUTHERFORD:

23 Q. Do you remember what you said that night?

24 A. No, sir. I do not know.

25 MS. PATTERSON: Your Honor, may we approach please?

1 THE COURT: Yeah.

2 (Side bar off the record.)

3 BY MR. RUTHERFORD:

4 Q. Mr. James, you just testified that you talked with
5 Investigator Carter the day after this incident; isn't that
6 right?

7 A. Yes, sir.

8 Q. Do you know that that is not true? Do you know that
9 this was three days after the incident when you went to talk
10 to Investigator Carter? Do you know that?

11 A. I don't know, sir. Like I said, I was under trauma
12 for like two or three months after that --

13 Q. So now it's from trauma?

14 A. -- so I don't remember anything. I don't remember
15 anything after watching my friend bleed out in front of me so
16 that's pretty much it. That --

17 Q. Are you done?

18 A. Go ahead.

19 Q. Okay. So you don't remember anything now for two or
20 three months but five years later you remember it?

21 A. No, sir.

22 Q. You told the Solicitor - you never told the
23 Solicitor one time you didn't remember what happened, did
24 you?

25 A. As far as what?

1 Q. As far as this incident. She asked you questions
2 for 30 minutes. You didn't tell her one time that you didn't
3 remember, did you?

4 A. No, sir.

5 Q. You didn't tell her one time that you were under
6 trauma, did you?

7 A. No, sir.

8 Q. Did you tell Investigator Carter three days after
9 the incident that you were under trauma and you couldn't
10 remember anything?

11 A. No, sir.

12 Q. So again, are you just saying things because
13 you want the jury to believe it? What is true? Could you
14 remember when you talked to Investigator Carter, yes or no?

15 A. I can't recall.

16 Q. Could you remember when the Solicitor was asking you
17 questions and you told this jury under oath what happened,
18 could you remember then, yes or no?

19 A. Yes.

20 Q. So yes. So now it's when I ask you that you can't
21 remember; is that right?

22 A. Well, you just asking me cross examination questions
23 that confuse me so therefore I can't specifically give you an
24 answer that will satisfy your needs so therefore I don't know.
25 You know, I just don't remember everything that you want me to

1 specifically know so no, sir, I don't.

2 Q. Do you remember telling Investigator Carter that you
3 went to your car so that you could leave?

4 A. No, sir.

5 Q. Okay.

6 (Playing audio video.)

7 BY MR. RUTHERFORD:

8 Q. You walked to your car because you were about to
9 leave. Is that not what you told Investigator Carter?

10 A. Based off that video that is what I told him. Yes,
11 sir.

12 Q. Does that now refresh your memory that that is why
13 you were walking to your car?

14 A. No, sir.

15 Q. That doesn't refresh your memory?

16 A. No, sir.

17 Q. So what you just told us about going to get a BLT or
18 money for a BLT, is that the truth or is that a lie?

19 A. Not a lie. No, sir.

20 Q. So when you told Investigator Carter you were going
21 to your car to leave, is that the truth or is that a lie?

22 A. It's not a lie. No, sir.

23 Q. Okay. So later on you told Investigator Carter, you
24 told Investigator Carter what Da'Von Capers did at Mr. Dennis'
25 window. Do you remember that?

1 A. No, sir. I don't remember that.

2 Q. You don't remember that.

3 (Playing audio video.)

4 BY MR. RUTHERFORD:

5 Q. So if you would as you tried to demonstrate to
6 Investigator Carter, if you could demonstrate to me now --
7 I don't remember what I was demonstrating, sir.

8 MS. PATTERSON: Can he continue to let it play? He
9 kind of cut it off.

10 THE COURT: Yes. Maybe it will refresh what he was
11 trying to say.

12 (Playing audio video.)

13 BY MR. RUTHERFORD:

14 Q. So would you like to demonstrate now what you meant
15 about Da'Von putting his hand in the car?

16 A. I don't remember.

17 Q. You don't remember?

18 A. Yes, sir.

19 Q. This was three days after the incident and this
20 investigator right here asked you about your friend putting
21 his hands inside of a car and you begin to demonstrate and you
22 can't do it now?

23 A. Five years ago. I can't.

24 Q. It's foggy?

25 A. Yes, sir.

1 Q. So it's foggy. So, Mr. James, you were standing
2 there and you said that Mr. Dennis' hands never came out of
3 the car. Do you remember that?

4 A. I don't remember.

5 Q. You don't remember?

6 A. No, sir.

7 Q. You don't remember saying it or after hearing it
8 again it's foggy to you?

9 A. Either.

10 Q. Either. When you were standing at the car and the
11 car drove off there was an individual standing with you named
12 Marcus Taylor. Do you know him?

13 A. Yes.

14 Q. Do you know what Marcus had on?

15 A. No, sir.

16 Q. If you watched the video, could you identify Marcus
17 Taylor?

18 A. Depending on the video.

19 MR. RUTHERFORD: Which is the exhibit?

20 THE COURT: The highest number is the last one they
21 put in, 19.

22 MR. RUTHERFORD: Your Honor is correct. You read
23 these thing. You're correct saying number 19. It is the
24 combined video and I'm going to start at the iPad video
25 portion.

1 THE COURT: Okay. That's toward the end?

2 MR. RUTHERFORD: Right. Right. Sometimes reading
3 this stuff you can --

4 MR. RUTHERFORD: It's hard to see.

5 THE COURT: If he needs to come down and look better
6 because it may be easier to see it closer up.

7 MR. RUTHERFORD: If you don't mind.

8 THE COURT: Get closer because you may see better
9 with the huge screen.

10 MR. RUTHERFORD: Your Honor, it may be easier for
11 the witness using frame by frame rather than -

12 THE COURT: Okay. That would be 18. No. Be the
13 one before. 17, I believe. Because that's the first
14 half of it, not the second half of it.

15 MR. RUTHERFORD: Or is it 16?

16 THE COURT: 16 is the frame by frame.

17 MR. RUTHERFORD: Your Honor, this is State's number
18 16. This is the PowerPoint presentation. I believe this
19 is the third frame which shows --

20 BY MR. RUTHERFORD:

21 Q. Can you describe the individual in the white
22 shirt?

23 A. I don't know.

24 Q. I don't want you to name him. I said can you
25 describe him, give a description?

1 THE COURT: Play it for the jury, point with the
2 pointer instead of that guy. Who is itAnd if you can,
3 describe him, whatever.

4 (Playing video.)

5 BY THE WITNESS:

6 A. Tank top on and pants.

7 BY MR. RUTHERFORD:

8 Q. Is it a tank top or a wife beater?

9 A. A wife beater.

10 Q. Do you remember who that is?

11 A. No, sir. I know who this is. He was in the car
12 with them. That's about it.

13 Q. The one in the wife beater, it's commonly known as
14 that, do you know who that is?

15 A. No, sir.

16 Q. Do you remember someone there taking their shirt off
17 while they were at Mr. Dennis' car?

18 A. No, sir.

19 Q. So as we play the iPad video and you see the people
20 that you have identified as Dutch Fork kids standing at the
21 car and then the car drives off and here comes somebody
22 running away in a wife beater, you're saying you don't know
23 who that is and you don't remember anybody taking their shirt
24 off?

25 A. I don't remember them taking their shirt off. I

1 don't know who it was.

2 MR. RUTHERFORD: But I'm sorry, Your Honor. That
3 is, we're getting video number 14.

4 THE COURT: Is that the one at regular speed.

5 MR. RUTHERFORD: Yes, sir.

6 THE COURT: That's 14. That should have shown the
7 young man that took the vidoes with his initials on it.

8 MR. RUTHERFORD: I see. I see, Your Honor.

9 (Playing video.)

10 BY MR. RUTHERFORD:

11 Q. Does that refresh your memory as to who that is?

12 A. No, sir.

13 Q. Sit back down.

14 A. (Witness complies.)

15 MR. RUTHERFORD: No further questions at this time,
16 Your Honor.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION

19 BY MS. PATTERSON:

20 Q. Give me one second to pull up that interview Mr.
21 Rutherford showed. Okay. Michael, Mr. Rutherford was asking
22 you about a portion of your interview with Detective Carter
23 and you was about to demonstrate something or demonstrate --

24 MR. RUTHERFORD: Your Honor, I'm sorry. It sounds
25 like leading on redirect but I can't tell.

1 THE COURT: As long as she pointing to that area in
2 the testimony she can ask the question.

3 MS. PATTERSON: Thank you, Your Honor.

4 BY MS. PATTERSON:

5 Q. When you were about to demonstrate what you saw Cape
6 do, we're just gonna play it and I just want you to look at
7 it.

8 MR. RUTHERFORD: Your Honor, the problem is he
9 already said he doesn't recall. I'm looking at you
10 through the window.

11 THE COURT: I saw that.

12 MR. RUTHERFORD: He said it doesn't do anything for
13 him so replaying it won't refresh his memory. He already
14 said that.

15 MS. PATTERSON: It's redirect, Your Honor. I get to
16 follow up to make sure that we're clear about what he was
17 describing.

18 THE COURT: On a limited amount of that portion of
19 what the gesture was. He did answer it did not help him
20 earlier.

21 MR. RUTHERFORD: Your Honor, I'm sorry. I thought
22 your ruling was that limited portion. That was at two
23 minutes and 50 seconds.

24 THE COURT: Y'all advanced it somehow.

25 (Playing video.)

1 MR. RUTHERFORD: Your Honor, what we're trying to do
2 is get more testimony.

3 THE COURT: Yeah. We're not gonna replay the whole
4 thing but we all agree that we weren't getting in any
5 more testimony.

6 (Playing video.)

7 MR. RUTHERFORD: Your Honor, can we stop it?

8 THE COURT: Yes.

9 MS. PATTERSON: Let's approach, Your Honor.

10 (Side bar off the record.)

11 THE COURT: Y'all step in the jury room while I
12 watch a part of the video we just watched.

13 (Whereupon, the jury entered the jury room at 4:25
14 p.m.)

15 THE COURT: All right. Wait a minute. I want the
16 witness to be put outside while we talk about this
17 because I don't want to suggest any answer to him about
18 our discussion, all right? Wait right out there
19 somewhere close by. Just don't go far. I don't want to
20 suggest what he said and our discussion on the law to
21 suggest an answer to him in any way so out of an
22 abundance of caution put outside for the time being.

23 (Whereupon, the witness exited the courtroom.)

24 THE COURT: Let's go back to -- Now I can ask. What
25 are you trying to play? What is he about to say that you

1 problem is not the video and playing it. It is that he
2 is a liar. And I'm standing in front of him, my first
3 time in 20 some odd years of practicing law as he stands
4 there and he's clearly lying and doesn't want to answer
5 another question because he knows he's gonna be caught on
6 another one, and so what they want to do is now play more
7 of his testimony that I can't cross because he doesn't
8 remember.

9 THE COURT: I mean, it's clear you can't cross that,
10 neither side. Y'all are both kind of hamstrung. That's
11 why I wanted him out of here. All right. Ms. Patterson,
12 I think you ask him the question of you were there by the
13 car. Did you see. I think that's how you clear it up.
14 You don't clear it up by playing the video and that's
15 what I'm gonna suggest that you do. All right. Let's
16 bring him back in and bring the jury back in.

17 MS. PATTERSON: Thank you, Your Honor.

18 (Whereupon, the witness entered the courtroom and
19 resumed the witness stand at 4:40 p.m.)

20 (Whereupon, the jury entered the courtroom at 4:40
21 p.m.)

22 THE COURT: Ms. Patterson, still on redirect.

23 MS. PATTERSON: Thank you, Your Honor.

24 BY MS. PATTERSON:

25 Q. Mr. James, just so we can just try to clarify some

1 of the questions Mr. Rutherford was asking you, where again on
2 this poster, you've got the pointer up there, where again were
3 you standing?

4 A. Right here, the back of the vehicle.

5 Q. And from your vantage point -- Well, let me just
6 back up. Do you remember telling Detective Carter, he showed
7 you a little bit of the video, do you remember showing
8 Detective Carter, remember telling Detective Carter you don't
9 remember Capes hands going inside --

10 MR. RUTHERFORD: Your Honor, I'm sorry. That's
11 direct. Leading.

12 THE COURT: Rephrase your question. I sustain the
13 objection.

14 BY MS. PATTERSON:

15 Q. What, if anything, do you remember telling Detective
16 Carter about Cape going inside the car?

17 A. Yeah. I don't remember anything.

18 Q. You don't remember?

19 A. You said what about Cape do I remember that I said
20 that night?

21 MR. RUTHERFORD: Your Honor, that wasn't the
22 question.

23 THE COURT: It isn't. I'm gonna step out this way
24 to see both of you.

25 (Side bar off the record).

1 THE COURT: All right. Rephrase your question. I
2 think he's confused about the timing. Be specific about
3 it.

4 BY MS. PATTERSON:

5 Q. Mr. Rutherford showed you this little clip?

6 A. Mm-hmm.

7 Q. What, if anything, do you remember telling Detective
8 Carter about Cape?

9 A. I don't remember. I can't remember.

10 Q. Do you remember today --

11 MR. RUTHERFORD: Your Honor, he answered. He does
12 not remember. He told me the same thing. Continuing to
13 ask leading questions about, well, do you remember this.
14 He said I don't. He told me the same thing.

15 THE COURT: All right. Your next question will be?

16 BY MS. PATTERSON:

17 Q. Did you see yourself demonstrating something on this
18 video?

19 A. On the video? Yes, I did see me demonstrate
20 something.

21 Q. What exactly were you demonstrating?

22 A. I can't remember.

23 Q. Do you think it will help refresh your memory if you
24 saw a little bit more of the video?

25 A. No, ma'am. That was just a - I didn't - this was

1 just one of those nights. I don't recall too much. I know we
2 had the interview. I just can't tell you exactly what I
3 remember saying.

4 Q. Michael, the questions I just asked you, was your
5 ability to remember what you recall telling Detective Carter
6 that night, with the passage of time are you able to remember
7 things now?

8 A. Not specifically. No, ma'am. I just remember like
9 the big details. That was about it.

10 Q. In your head would the big details be the things I
11 asked you about earlier?

12 A. Yes. Yes, ma'am.

13 MS. PATTERSON: Thank you.

14 RE CROSS EXAMINATION

15 BY MR. RUTHERFORD:

16 Q. So the big details are the wallet, the slushy, the
17 BLT. Those are the big details that you can remember but you
18 can't remember anything else?

19 A. I wouldn't quite say that. Uhm, like I said, I
20 can't quite remember. I know it was either my phone or my
21 wallet based off the new evidence that they showed me. I had
22 my phone so I can only assume that I went for my wallet. Out
23 of those two, you know, that's just what I'm gonna stick
24 with.

25 MR. RUTHERFORD: No further questions, Your Honor.

1 calling or have they called their witness yet?

2 THE COURT: I believe they're deciding who to go
3 get.

4 MS. SIMPSON: Okay.

5 MS. PATTERSON: The State calls Justin Wallas.
6 Thereupon,

7 JUSTIN RENDELL WALLAS
8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat. Once you're seated,
10 state your full name spelling your last please.

11 THE WITNESS: Justin Randall Wallas, W-a-l-l-a-s.

12 DIRECT EXAMINATION

13 BY MS. PATTERSON:

14 Q. And, Justin, where are you currently living?

15 A. I live in Killeen, Texas.

16 Q. What are you doing in Killeen, Texas?

17 A. I'm in the military.

18 Q. What's your MOS in the military?

19 A. 92 Alpha.

20 Q. Justin, where did you go to high school?

21 A. Dutch Fork High School.

22 Q. What year did you graduate?

23 A. 2014.

24 Q. Do you remember going to the Dutch Fork/Lexington
25 basketball game on February 17th, 2014?

1 A. Yes, ma'am.

2 Q. When you got to the game, where did you sit?

3 A. Uhm, to the, in the bleachers on the right side.

4 Q. Let me show you what's been entered as State's
5 Exhibit number 5 and ask you to take a look at this. Can you
6 identify yourself in this picture?

7 A. (Indicating.)

8 Q. Is that on the floor of the basketball court?

9 A. Yes. Yes, ma'am.

10 Q. Can you describe to the jury what's kind of going
11 on?

12 A. Uhm, we were just celebrating, chants, possibly at
13 this time chanting, some type of chant.

14 Q. What are you doing?

15 A. Uh, claping.

16 Q. Justin, just for the jury's information, were you
17 part of the pep team?

18 A. Yes, ma'am. I was vice-president.

19 Q. And so what was your role as the vice-president of
20 the pep team?

21 A. My role? We just lead the student section, get the
22 student section hyped, start chants.

23 Q. So were you pretty loud that night?

24 A. Yes, ma'am.

25 Q. So did you pretty much stay in that same area

1 throughout the game?

2 A. Yes, ma'am.

3 Q. And, Justin, when you exited the game, how did you
4 exist out? You don't have to explain the - which door did you
5 exit out?

6 A. When I was leaving the building?

7 Q. Yes.

8 A. You want me to show you?

9 Q. I'm gonna show you what's been entered as State's
10 Exhibit number 4 and ask you to take a look at it and kind of
11 just take a moment and orient yourself to it.

12 A. These doors right here (indicating.)

13 Q. Would that be the front entrance where you entered
14 the game as well?

15 A. Yes, ma'am.

16 Q. Okay. And when you exited the game, was it only
17 Dutch Fork students exiting the game through that way?

18 A. No, ma'am.

19 Q. And who else did you see exiting the game?

20 A. Uhm, Kierin and Keith.

21 Q. Now, you say Kierin and Keith. Did you know these
22 two people before this night?

23 A. No, ma'am.

24 Q. How would you identify Kierin and Keith? Describe
25 what they look like.

1 A. Uhm, Keith was light skinned. Had a, I believe he
2 had a orange jacket on that night. Kierin had dreads with
3 like a black beanie on.

4 Q. What drew your attention to them?

5 A. Uhm, they walked up to me at the bottom of the
6 stairs.

7 Q. Did they say anything to you?

8 A. Yes, ma'am. Something along the lines of, what's
9 up? What's up? You don't want this.

10 Q. And did you see anybody with those two?

11 A. No, ma'am.

12 Q. Did you say anything back to them?

13 A. I didn't.

14 Q. Did you challenge them to a fight or anything?

15 A. No, ma'am.

16 Q. How did you feel them approaching you? How did that
17 make you feel?

18 A. I was kind of confused at first but...

19 Q. Was this encounter merely verbal?

20 A. Yes, ma'am.

21 Q. Do you remember Kierin saying anything in
22 particular?

23 A. No, ma'am.

24 Q. And after, where did you go after you had this
25 encounter with them? I think you said it was at the bottom of

1 the stairs. Just to be clear, can you kind of clear it up?

2 A. Where I was?

3 Q. Yes.

4 A. (Indicating) This area.

5 Q. Do you remember if anybody was with you at that
6 time?

7 A. There was but I don't know, I can't remember exactly
8 who was with me.

9 Q. How did you get to the game, Justin?

10 A. I drove.

11 Q. Do you remember where you parked?

12 A. Right about there (indicating.)

13 Q. What else do you remember happening as you were
14 making your way to your car?

15 A. Uh, I remember just a bunch of Dutch Fork kids like
16 celebrating, chanting, dancing in the parking lot like around
17 here.

18 Q. Did you have any trouble getting to your car?

19 A. No, ma'am.

20 Q. Did anybody ride with you to the game?

21 A. Yes, ma'am.

22 Q. Who rode with you?

23 A. Parker Pitman, Ken Williams, Taylor Long and
24 Christian Aiken.

25 Q. Where do you all go after you leave the game?

1 A. We went to the Cook Out.

2 Q. When you got to the Cook Out, was there much of a
3 crowd there?

4 A. When I got inside. Yes, ma'am.

5 Q. Do you remember where you parked your car when you
6 got to the Cook Out?

7 A. In the back.

8 Q. That's the back of the restaurant?

9 A. Yes, ma'am.

10 Q. And did you eat?

11 A. Repeat that.

12 Q. Did you eat at the restaurant?

13 A. Yes, ma'am.

14 Q. Were you able to find a place to sit?

15 A. Yes, ma'am.

16 Q. Where were you sitting in the restaurant?

17 A. Towards the back of the restaurant.

18 Q. Do you remember anything in particular going on
19 inside the restaurant when you first got there eating?

20 A. No, ma'am.

21 Q. What were pretty much everyone doing?

22 A. Talking, laughing, eating. That's about it.

23 Q. Did you ever notice the defendant when he and his
24 friends walked into the restaurant?

25 A. Yes, ma'am.

1 Q. Did you hear anyone from that group say anything?

2 A. Yes, ma'am.

3 Q. Who did you hear?

4 A. The heavier set guy. He said, oh, they're not
5 talking now. They're quiet now.

6 Q. Did you hear anybody from your school say anything
7 back?

8 A. No, ma'am.

9 Q. Did you continue to stay in that same, in the back
10 of the restaurant kind of?

11 A. Yes, ma'am.

12 Q. Did you notice anything else happening inside the
13 restaurant?

14 A. No, ma'am.

15 Q. At some point did you leave out of the restaurant?

16 A. Yes, ma'am.

17 Q. When you first got outside, did you know what was
18 going on?

19 A. No, ma'am. Just back and forth verbally people
20 saying things verbally. That's it. No physical
21 interaction.

22 Q. When you say people, can you kind of describe who
23 these people were?

24 A. Uhm, Dutch Fork kids and then the group that they
25 came into Cook Out with. They were just back and forth

1 verbally.

2 Q. Now, did you notice when everybody else started
3 leaving out of the restaurant?

4 A. Say it again.

5 Q. Did you notice when all of your classmates started
6 leaving out of the restaurant?

7 A. Yes, ma'am.

8 Q. Did you leave immediately when they started leaving
9 or did you kind of lag behind?

10 A. I lagged behind a little bit.

11 Q. So by the time you got outside where in the parking
12 lot were your classmates?

13 A. When I got outside?

14 Q. Let me just show you a picture.

15 A. Yes, ma'am.

16 Q. I'm just going to show what's been marked as State's
17 Exhibit 31 and again, based on the picture that I showed you
18 earlier are you able to remember what you were wearing that
19 night?

20 A. Yes, ma'am.

21 Q. Do you see yourself in that photograph?

22 A. Yes, ma'am.

23 MS. PATTERSON: Your Honor, I think this picture can
24 be admitted without objection.

25 MS. SIMPSON: Without objection, Your Honor.

1 THE COURT: The picture is admitted without
2 objection. That would be 28?

3 MS. PATTERSON: 31, Your Honor.

4 THE COURT: What's 29 and 30?

5 THE CLERK: Yeah. We haven't gotten a 29 and 30.

6 THE COURT: I was going off my list. This should be
7 29. Similar photographs. So 29 and 30 -- We just
8 submitted 31. 29 and 30 wasn't admitted. It was marked
9 and identified.

10 BY MS. PATTERSON:

11 Q. Justin, do you see yourself in this photograph?

12 A. Yes, ma'am.

13 Q. Where are you?

14 A. (Indicating.)

15 Q. So I think you testified that you kind of lagged
16 behind your other classmates?

17 A. Yes, ma'am.

18 Q. When you got to the parking lot, what did you see
19 going on?

20 A. Uhm, just a lot of just back and forth verbally.
21 That's it. Like verbal talk. Yelling back and forth.

22 Q. Did you know who was yelling back and forth at each
23 other?

24 A. No, ma'am.

25 Q. Did you recognize some of your classmates

1 involved?

2 A. No, ma'am.

3 Q. Could you hear anything in particular being yelled
4 out?

5 A. No, ma'am.

6 Q. Did you ever see the Lexington kids go to their
7 cars?

8 A. Yes, ma'am. Walking towards the back towards the
9 car wash.

10 Q. Can you point out where you saw them walking
11 towards?

12 A. (Indicating.)

13 Q. Do you pretty much stay in the same area that you
14 are in this picture?

15 A. No, ma'am. I moved up a little bit into the road.

16 Q. Which way did you move when you moved up?

17 A. Up here (indicating.)

18 Q. As you're standing there what do you notice?

19 A. Uhm, the cars. One car is leaving or trying to
20 leave and across the road and then the Ford Explorer pulls up
21 and they're like talking to each other at each others
22 window.

23 Q. Do you know about how long they were sitting there
24 talking to each other?

25 A. Ten, 15 minutes.

1 Q. What are you thinking when you see this?

2 MS. SIMPSON: Objection, Your Honor.

3 THE COURT: On what basis?

4 MS. SIMPSON: As far as -- I may have heard her
5 wrong. I believe she said what are you thinking at that
6 time and where it's going into is improper call for
7 speculation on his part as to what he was thinking about
8 what was happening at the car.

9 THE COURT: Your question was did you see him in the
10 car 10 or 15 minutes. The next question was what are you
11 thinking. Rephrase that.

12 BY MS. PATTERSON:

13 Q. When you saw their cars standing there 10 minutes or
14 so, what were you thinking?

15 A. Just kind of asking myself like what --

16 MS. SIMPSON: Objection, Your Honor. I mean, this
17 is the exact same question she just asked.

18 THE COURT: I think it's fair. It's what he thinks.
19 It's not what they're thinking. Continue. It's his
20 perception.

21 MS. SIMPSON: Your Honor, if we may approach just
22 briefly?

23 THE COURT: Yes.

24 (Side bar off the record.)

25 BY MS. PATTERSON:

1 Q. Justin, when you saw those cars parked there for 10
2 minutes, what were you thinking?

3 A. Thinking to myself what are they were doing, kind of
4 confused why they would just be sitting there.

5 Q. And what happens next, Justin? What do you remember
6 next?

7 A. Next the first car left, the car that was facing
8 out. The car that was facing out and that was talking to the
9 Explorer left.

10 Q. In which direction did you see him leave?

11 A. Left.

12 Q. Did you see another car after that?

13 A. Yes, ma'am.

14 Q. Describe what happened.

15 A. So the white car, it was a white car, like a white
16 four door came up, somebody threw money out of the window.
17 Dutch Fork kids went to grab the money from the ground and the
18 Ford Explorer came revving up and slammed on the brakes.

19 Q. Did you see who was driving that car that threw out
20 the money?

21 A. No, ma'am.

22 Q. Did you see where it was he threw out the money?
23 Let me show you State's Exhibit 23. And at this time show the
24 jury where you were standing when you say the car throw out
25 the money.

1 A. (Indicating.)

2 Q. Whereabouts did you see him throw the money?

3 A. (Indicating.)

4 Q. When he threw the money out, did you hear him say
5 anything?

6 A. No, ma'am.

7 Q. Okay. Did he stay in that same spot?

8 A. This is where the money was thrown on the ground.
9 The car was right in here. They stopped. Yes, ma'am.

10 Q. You say they stopped?

11 A. Well, the car stopped.

12 Q. The car stopped again where?

13 A. (Indicating.) Right in here.

14 Q. Where were your classmates?

15 A. Uhm, when they went to grab the money?

16 Q. Yes.

17 A. In the road where the money was on the ground.

18 Q. What do you recall happening next?

19 A. The Explorer came revving up and stopped, slammed on
20 the brakes like right in this area.

21 Q. What happened when he got to that area?

22 A. People were screaming, got mad and went up to the
23 car.

24 Q. Did you go up to the car, Justin?

25 A. No, ma'am.

1 Q. Could you really see what was going on?

2 A. No, ma'am.

3 Q. Did you see who was driving the car that almost hit
4 the kids?

5 A. No, ma'am.

6 Q. Did you ever see the heavy set guy get out of the
7 car?

8 A. Yes, ma'am.

9 Q. Okay. Where did you see him standing?

10 A. Behind the white car.

11 Q. Did you see him have anything in his hands?

12 A. Yes, ma'am.

13 Q. What did you see in his hands?

14 A. Like a metal pole.

15 Q. Was there anyone standing in front of his car?

16 A. The white car?

17 Q. Yes.

18 A. No, ma'am.

19 Q. But did you see anyone standing in front of the
20 Explorer that drove up and almost hit the kids?

21 A. No, ma'am.

22 Q. Was anyone blocking that Ford Explorer from
23 leaving?

24 A. No, ma'am.

25 Q. Did you see him eventually leave?

1 A. Yes, ma'am.

2 Q. Can you describe how his driving was when he took
3 off?

4 A. Took off and swerved right, went up to the
5 intersection and went left.

6 Q. Justin, when did you find out Cape had been
7 stabbed?

8 A. Uhm, probably like 15 minutes after the cars had
9 left.

10 Q. Were you still at the restaurant?

11 A. Yes, ma'am.

12 Q. Did you talk to law enforcement? Did you see law
13 enforcement come to the restaurant that night?

14 A. Yes, ma'am.

15 Q. Did you talk to them that night?

16 A. No, ma'am.

17 Q. Do you remember why?

18 A. Uhm, no reason exactly. Just I didn't see anything
19 at the window so I wasn't trying to speak.

20 MS. PATTERSON: Thank you, Justin. Answer any
21 questions the defense may have.

22 THE WITNESS: Yes, ma'am.

23 MS. SIMPSON: May it please the Court, briefly.

24 CROSS EXAMINATION

25 BY MS. SIMPSON:

1 Q. Mr. Wallas, how many people did you see run towards
2 Will's car like once the money was thrown from that car?

3 A. Uhm, I'm not sure. A lot of people though.

4 Q. A lot. Would you say like 10 or more?

5 A. Less.

6 Q. Less than 10 running towards the money?

7 A. Yes, ma'am.

8 Q. And how many people -- I guess you were farther back
9 but you kind of moved forward. She showed you on the map,
10 right?

11 A. Yes, ma'am.

12 Q. So you could see the guy get out of his car?

13 A. Yes, ma'am.

14 Q. And you stated that this guy had something in his
15 hands?

16 A. Yes, ma'am.

17 Q. And he was actually standing in the road?

18 A. Yes, ma'am.

19 Q. And as far as his car, I believe you indicated in
20 State's Exhibit 23 that his car was somewhere right over in
21 here, right, where you can see that, correct?

22 A. Yes, ma'am.

23 Q. Subsequent to that the Explorer pulls up, correct?

24 A. Yes, ma'am.

25 Q. And then after that, did you see any car pull up

1 behind him?

2 A. Behind the --

3 Q. The Explorer.

4 A. No, ma'am.

5 Q. And while you were standing there, and all this is
6 happening pretty fast, right?

7 A. Yes, ma'am.

8 Q. While you were standing there did you see any cars
9 go around or leave or exit during that time?

10 A. No, ma'am.

11 Q. And as far as you stated a bunch of kids, some of
12 your classmate then ran up to the Explorer, right?

13 A. Yes, ma'am.

14 Q. Okay. But you didn't run up with them?

15 A. No, ma'am.

16 Q. And from the distance you were, I mean, if you saw
17 that many people running towards you, what might you be
18 thinking?

19 A. Nothing good. I mean...

20 MS. SIMPSON: No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MS. PATTERSON: Just a couple, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. PATTERSON:

25 Q. Justin, did you see people, when the car came up and

1 threw out the money, did you see people run to the car or did
2 you see people run to the money?

3 A. To the money.

4 Q. And did you ever see anybody go near the guy that
5 was standing outside the car with the metal pipe?

6 A. No, ma'am.

7 MS. PATTERSON: That's all, Your Honor.

8 THE COURT: Okay. You may step down. Nice time to
9 break. We'll start at 9:15. Be here shortly after 9:00
10 and we'll start from there and don't discuss the case.

11 (Whereupon, court was adjourned for the day at 5:30
12 p.m.)

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1 AUGUST 22, 2019

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Eugene C. Griffith presiding.

4 THE COURT: All right. Thank you. Good morning.
5 Please be seated. Let's bring in the jury.

6 (Whereupon, the jury entered the courtroom at 9:20
7 a.m.)

8 THE COURT: All right. Ready to go. Let's go.
9 Call your witness please.

10 MS. PATTERSON: Thank you, Your Honor. May it
11 please the Court. The State calls Devon Chatman.

12 Thereupon,

13 DEVON CHATMAN
14 after having been first duly sworn, testified as follows,

15 THE CLERK: Please have a seat. Once you're seated,
16 state your full name spelling your last please.

17 THE WITNESS: Devon Chatman, C-h-a-t-m-a-n.

18 DIRECT EXAMINATION

19 BY MS. PATTERSON:

20 Q. Mr. Chatman, where are you currently living?

21 A. Virginia.

22 Q. What are you doing in Virginia?

23 A. I'm in the Air Force.

24 Q. How long have you been in the Air Force?

25 A. I've been in the Air Force just over a year.

1 Q. Did you go -- What did you do prior to going into
2 the Air Force?

3 A. Prior to commissioning into the Air Force I was a
4 cadet at Citadel.

5 Q. Where did you graduate high school?

6 A. Dutch Fork High School class of 2014.

7 Q. Were you the student body president that year?

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

9 Q. Did you go to the Lexington High School/Dutch Fork
10 basketball game February 17, 2014?

11 A. I did.

12 Q. That game was played over in Lexington?

13 A. Yes, ma'am.

14 Q. Who did you go to the game with?

15 A. I went to the game with Justin Mitchell and Nick
16 Martin.

17 Q. Other than Dutch Fork winning the game, did anything
18 eventful, was there anything eventful that you remember going
19 on inside the game?

20 A. No, ma'am. Just a typical high school sporting
21 event atmosphere, everyone's excited.

22 Q. And as you leave the game, do you see anything in
23 particular going on in the parking lot?

24 A. Nothing that was alarming. Everyone exiting to
25 their cars. Some people were dancing. Nothing really