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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTONIO VASHON BARNES, JR.

APPELLANT

APPELLATE CASE NO. 2023-001390

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VOLUME I OF III
PAGES 1-500

INDEX

INDEX	i

IMMUNITY HEARING TRANSCRIPT DATED MARCH 30-31, 2022.....	1

TESTIMONY

EMMITT GILLIAM	
Direct Examination by Mr. Luke Shealey	10
STATE’S OBJECTION TO DEFENDANT’S EXHIBIT #6 (ADVICE OF RIGHTS) AS HEARSAY BY MR. SCOTT	34
RESPONSE BY MR. LUKE SHEALEY	35
COURT’S RULING FINDING DEFENDANT’S EXHIBIT #6 (ADVICE OF RIGHTS) ADMISSIBLE FOR PURPOSES OF IMMUNITY HEARING	37

TESTIMONY

EMMITT GILLIAM	
Continued Direct Examination by Mr. Luke Shealey.....	37
STATE’S OBJECTION TO HEARSAY BY MR. SCOTT.....	40
COURT SUSTAINS OBJECTION TO HEARSAY	40

TESTIMONY

EMMITT GILLIAM	
Continued Direct Examination by Mr. Luke Shealey.....	41
STATE’S OBJECTION TO IMPEACHMENT BY MR. SCOTT	76
RESPONSE BY MR. LUKE SHEALEY	78
COURT SUSTAINS OBJECTION TO IMPEACHMENT	79
STATE’S OBJECTION TO INVESTIGATIVE STATEMENTS AS HEARSAY BY MR. SCOTT.....	79
RESPONSE BY MR. LUKE SHEALEY	79
COURT SUSTAINS OBJECTION TO INVESTIGATIVE STATEMENTS AS HEARSAY	88

TESTIMONY

EMMITT GILLIAM	
Continued Direct Examination by Mr. Luke Shealey.....	89
STATE’S OBJECTION TO OPINION TESTIMONY BY MR. SCOTT	106
RESPONSE BY MR. LUKE SHEALEY	106
COURT SUSTAINS OBJECTION TO OPINION TESTIMONY	107

TESTIMONY

EMMITT GILLIAM	
Continued Direct Examination by Mr. Luke Shealey.....	110
Cross-Examination by Mr. Scott.....	130
DEFENSE’S OBJECTION TO STATE’S EXHIBITS #1-2 (PHOTOGRAPHS) BY MR. LUKE SHEALEY	146
COURT’S RULING FINDING STATE’S EXHIBITS #1-2 (PHOTOGRAPHS) ADMISSIBLE	146

TESTIMONY

EMMITT GILLIAM	
Continued Cross-Examination by Mr. Scott.....	147
Redirect Examination by Mr. Luke Shealey.....	154
Recross-Examination by Mr. Scott.....	163
KEVIN ARCHIE	
Direct Examination by Ms. Young	166
Cross-Examination by Mr. Fowler	180
Redirect Examination by Ms. Young.....	186
Recross-Examination by Mr. Fowler.....	187
SAMUEL THOMAS	
Direct Examination by Mr. Brian Shealey.....	188
Cross-Examination by Mr. Walton	211
Redirect Examination by Mr. Brian Shealey	222
Recross-Examination by Mr. Walton	223
STEVEN HARPER	
Direct Examination by Ms. Young	224
Cross-Examination by Mr. Scott.....	226
Redirect Examination by Ms. Young.....	228

CHRISTOPHER WATKINS	
Direct Examination by Ms. Young	230
OFFICER CASTRO	
Direct Examination by Mr. Scott	243
Cross-Examination by Mr. Luke Shealey	245
CHRISTOPHER WATKINS	
Cross-Examination by Mr. Scott.....	253
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #15 (PHOTOGRAPHS) BY MS. YOUNG.....	256
RESPONSE BY MR. SCOTT.....	257
COURT’S RULING FINDING STATE’S EXHIBIT #15 (PHOTOGRAPHS) ADMISSIBLE	258
TESTIMONY	
CHRISTOPHER WATKINS	
Continued Cross-Examination by Mr. Scott.....	259
DEFENSE’S OBJECTION TO STATE’S EXHIBIT #17 (CD) PURSUANT TO RULES 403 AND 404, SCRE BY MS. YOUNG.....	261
RESPONSE BY MR. SCOTT.....	261
REPLY BY MS. YOUNG.....	262
COURT DEFERS RULING ON ADMISSIBILITY OF STATE’S EXHIBIT #17 (CD).....	266
TESTIMONY	
CHRISTOPHER WATKINS	
Continued Cross-Examination by Mr. Scott.....	266
COURT’S RULING FINDING STATE’S EXHIBIT #17 (CD) INADMISSIBLE	270
TESTIMONY	
CHRISTOPHER WATKINS	
Redirect Examination by Ms. Young.....	271
Recross-Examination by Mr. Scott.....	272

DOCTOR DAREN MONROE	
Direct Examination by Mr. Luke Shealey	277
Cross-Examination by Mr. Scott.....	291
Redirect Examination by Mr. Luke Shealey.....	300
Recross-Examination by Mr. Scott.....	303
SARA GOODMAN	
Direct Examination by Ms. Young	304
Cross-Examination by Mr. Scott.....	316
Redirect Examination by Ms. Young.....	318
Recross-Examination by Mr. Scott.....	319
PAUL GREER	
Direct Examination by Mr. Luke Shealey	323
Cross-Examination by Mr. Scott.....	343
Redirect Examination by Mr. Luke Shealey.....	347
Recross-Examination by Mr. Scott.....	349
Redirect Examination by Mr. Luke Shealey.....	352
RALPH TRESSEL	
<i>Voir Dire</i> Examination by Mr. Luke Shealey	354
<i>Voir Dire</i> Examination by Mr. Scott.....	358
<i>Voir Dire</i> by Mr. Luke Shealey	365
<i>Voir Dire</i> Examination by Mr. Scott.....	368
STATE’S OBJECTION TO WITNESS TRESSEL’S QUALIFICATION AS EXPERT BY MR. SCOTT.....	
	371
RESPONSE BY MR. LUKE SHEALEY	371
TESTIMONY	
RALPH TRESSEL	
<i>Voir Dire</i> by Mr. Luke Shealey	373
<i>Voir Dire</i> Examination by Mr. Scott.....	375
COURT’S RULING FINDING WITNESS TRESSEL QUALIFIED AS EXPERT IN CRIME SCENE INVESTIGATION AND EVALUATION	
	379
TESTIMONY	
RALPH TRESSEL	
Direct Examination by Mr. Luke Shealey	379
Cross-Examination by Mr. Scott.....	394
Redirect Examination by Mr. Luke Shealey.....	404
Recross-Examination by Mr. Scott.....	407

DEFENSE RESTS	411
DEFENSE’S MOTION FOR IMMUNITY PURSUANT TO S.C. CODE ANN. §16-11-440 BY MR. LUKE SHEALEY	414
RESPONSE BY MR. SCOTT.....	431
DEFENDANT’S PROPOSED ORDER GRANTING IMMUNITY	439
STATE’S PROPOSED ORDER DENYING IMMUNITY	455
ORDER DENYING MOTION FOR IMMUNITY	469
TRIAL TRANSCRIPT DATED DECEMBER 5-8 AND 13, 2022.....	484
DEFENSE’S MOTION TO EXCLUDE EVIDENCE OF DRUG USE AND/OR DEALING BY MR. LUKE SHEALEY	486
RESPONSE BY MR. SCOTT.....	486
REPLY BY MR. LUKE SHEALEY.....	488
COURT DEFERS RULING ON MOTION TO EXCLUDE EVIDENCE OF DRUG USE AND/OR DEALING.....	491
DEFENSE’S MOTION TO EXCLUDE PHOTOGRAPHS OF GUNS BY MR. LUKE SHEALEY	492
COURT DENIES MOTIONS TO EXCLUDE EVIDENCE OF DRUG USE AND/OR DEALING AND PHOTOGRAPHS OF GUNS <i>IN LIMINE</i>	493
DEFENSE’S MOTION TO EXCLUDE RAP LYRICS BY MS. LATIMER.....	494
RESPONSE BY MR. SCOTT.....	496
COURT DEFERS RULING ON MOTION TO EXCLUDE RAP LYRICS.....	496
OPENING STATEMENT BY MR. WALTON.....	505
OPENING STATEMENT BY MS. YOUNG	511
TESTIMONY	
WANDA GRIFFIN	
Direct Examination by Mr. Scott.....	520

Cross-Examination by Ms. Young.....	540
Redirect Examination by Mr. Scott	553
IESHA WASHINGTON	
Direct Examination by Mr. Scott	555
Cross-Examination by Ms. Young.....	571
Redirect Examination by Mr. Scott	583
KEVIN ARCHIE	
Direct Examination by Mr. Fowler.....	586
Cross-Examination by Ms. Latimer.....	596
Redirect Examination by Mr. Fowler	604
JOSEPH DWYER	
Direct Examination by Mr. Walton	606
Cross-Examination by Mr. Brian Shealey	615
JAVONTAE DAVIS	
Direct Examination by Mr. Walton	620
Cross-Examination by Mr. Brian Shealey	626
Redirect Examination by Mr. Walton.....	632
JOINT STIPULATION AS TO CHAIN OF CUSTODY	633
TESTIMONY	
RYAN MCINTYRE	
Direct Examination by Mr. Scott	634
DEFENSE’S OBJECTION TO EVIDENCE OF DRUG USE AND/OR DEALING BY MS. LATIMER	638
RESPONSE BY MR. SCOTT.....	640
REPLY BY MS. LATIMER	641
COURT’S RULING FINDING EVIDENCE OF DRUG USE AND/OR DEALING ADMISSIBLE	642
TESTIMONY	
RYAN MCINTYRE	
Continued Direct Examination by Mr. Scott	642
Cross-Examination by Ms. Latimer.....	645

STATE’S OBJECTION TO DEFENDANT’S EXHIBIT #91 (DVD OF INTERVIEW) BY MR. SCOTT.....	647

RESPONSE BY MS. LATIMER.....	647

COURT’S RULING FINDING DEFENDANT’S EXHIBIT #91 (DVD OF INTERVIEW) ADMISSIBLE	649

TESTIMONY

RYAN MCINTYRE	
Continued Cross-Examination by Ms. Latimer	649
Redirect Examination by Mr. Scott	653

SAMUEL THOMAS	
Direct Examination by Mr. Fowler.....	657
Cross-Examination by Mr. Brian Shealey	662
Redirect Examination by Mr. Fowler	689
Recross-Examination by Mr. Brian Shealey.....	693

GEORGE POTASH	
Direct Examination by Mr. Scott.....	695

DEFENSE’S OBJECTION TO EXPERT TESTIMONY FROM LAYWITNESS BY MR. LUKE SHEALEY	703

COURT OVERRULES OBJECTION TO EXPERT TESTIMONY FROM LAYWITNESS	703

TESTIMONY

GEORGE POTASH	
Continued Direct Examination by Mr. Scott	703

DEFENSE’S OBJECTION TO EVIDENCE OF DRUGS AND UNRELATED GUNS BY MR. LUKE SHEALEY	713

TESTIMONY

GEORGE POTASH (<i>IN-CAMERA</i>)	
Direct Examination by Mr. Scott.....	713

DEFENSE’S CONTINUED OBJECTION TO EVIDENCE OF DRUGS AND UNRELATED GUNS PURSUANT TO RULES 402, 403 AND 404, SCRE BY MR. LUKE SHEALEY...	715

RESPONSE BY MR. SCOTT.....	716

REPLY BY MR. LUKE SHEALEY	719

COURT’S RULING FINDING EVIDENCE OF DRUGS AND UNRELATED GUNS ADMISSIBLE	720

TESTIMONY

GEORGE POTASH	
Continued Direct Examination by Mr. Scott	721
Cross-Examination by Mr. Luke Shealey	724

GEORGE SMITH	
Direct Examination by Mr. Fowler	743
Cross-Examination by Mr. Brian Shealey	746

PAUL GREER	
Direct Examination by Mr. Scott	750
Cross-Examination by Mr. Luke Shealey	766
Redirect Examination by Mr. Scott	794
Recross-Examination by Mr. Luke Shealey	800

DARREN MONROE	
Direct Examination by Mr. Scott	802
<i>Voir Dire</i> Examination by Mr. Luke Shealey	803
Continued Direct Examination by Mr. Scott	804
Cross-Examination by Mr. Luke Shealey	830
Redirect Examination by Mr. Scott	848
Recross-Examination by Mr. Luke Shealey	849

STATE RESTS	851

TESTIMONY

STEVEN HARPER	
Direct Examination by Ms. Young	853
Cross-Examination by Mr. Scott	855

CHRISTOPHER WATKINS	
Direct Examination by Ms. Young	856
Cross-Examination by Mr. Scott	868

DEFENSE’S OBJECTION TO TESTIMONY ABOUT PHOTOGRAPHS OF GUNS PURSUANT TO RULE 402, SCRE BY MS. YOUNG	878

RESPONSE BY MR. SCOTT	879

COURT OVERRULES OBJECTION TO TESTIMONY ABOUT PHOTOGRAPHS OF GUNS	881

TESTIMONY

CHRISTOPHER WATKINS	
Continued Cross-Examination by Mr. Scott.....	882
Redirect Examination by Ms. Young.....	886
Recross-Examination by Mr. Scott.....	887

ANTONIO BARNES	
Direct Examination by Ms. Young	889
Cross-Examination by Mr. Scott.....	943

DEFENSE’S OBJECTION TO RAP LYRICS PURSUANT TO RULE 5, SCRCrimP, RULES 402, 403, AND 404, SCRE, AND U.S. CONST. AMEND. I BY MS. YOUNG	943

RESPONSE BY MR. SCOTT.....	944

REPLY BY MS. YOUNG.....	947

COURT’S RULING FINDING RAP LYRICS ADMISSIBLE	961

TESTIMONY

ANTONIO BARNES	
Continued Cross-Examination by Mr. Scott.....	965
Cross-Examination <i>in-camera</i> by Mr. Scott	1029
Continued Cross-Examination by Mr. Scott.....	1031
Redirect Examination by Ms. Young.....	1043

STATE’S OBJECTION TO FOOTAGE OF DEFENDANT AFTER INCIDENT BY MR. SCOTT	1051

RESPONSE BY MS. YOUNG	1051

REPLY BY MR. SCOTT	1051

COURT’S RULING FINDING FOOTAGE OF DEFENDANT AFTER INCIDENT INADMISSIBLE.....	1052

TESTIMONY

ANTONIO BARNES	
Continued Redirect Examination by Ms. Young.....	1053
Recross-Examination by Mr. Scott.....	1054

SARA GOODMAN	
Direct Examination by Ms. Young	1062
Cross-Examination by Mr. Scott.....	1075
DEFENSE RESTS	1077
DEFENSE’S MOTION FOR A DIRECTED VERDICT BY MR. LUKE SHEALEY	1077
COURT’S DENIES MOTION FOR A DIRECTED VERDICT	1080
CHARGE CONFERENCE	1086
DEFENSE’S MOTION TO CHARGE DEFENSE OF HABITATION BY MR. LUKE SHEALEY	1097
RESPONSE BY THE STATE	1098
REPLY BY MR. LUKE SHEALEY	1098
COURT DENIES MOTION TO CHARGE DEFENSE OF HABITATION	1103
DEFENSE’S RENEWAL OF MOTION TO CHARGE DEFENSE OF HABITATION BY MR. LUKE SHEALEY	1107
RESPONSE BY MR. SCOTT.....	1113
REPLY BY MR. LUKE SHEALEY	1114
COURT GRANTS MOTION TO CHARGE DEFENSE OF HABITATION	1116
CLOSING ARGUMENT BY MR. SCOTT.....	1124
CLOSING ARGUMENT BY MR. LUKE SHEALEY	1150
CLOSING ARGUMENT IN REPLY BY MR. SCOTT.....	1185
CHARGE ON THE LAW	1194
DEFENSE’S OBJECTION TO CHARGE ON DEFENSE OF HABITATION BY MR. LUKE SHEALEY	1212
COURT OVERRULES OBJECTION TO CHARGE ON DEFENSE OF HABITATION	1213
VERDICT.....	1215

SENTENCING	1220
STATE’S EXHIBIT #83 (TEXT MESSAGES).....	1221
DEFENDANT’S REQUEST TO CHARGE #8 (DEFENSE OF HABITATION)	1227
DEFENDANT’S MOTION TO EXCLUDE PHOTOGRAPHS OF GUNS AND EVIDENCE OF DRUG USE AND/OR DEALING	1229
DEFENDANT’S MOTION TO EXCLUDE RAP LYRICS	1235
MEMORANDUM OF LAW SUPPORTING ADMISSION OF CERTAIN EVIDENCE AND CERTAIN LINES OF EXAMINATION	1243
DEFENDANT’S MOTION FOR A NEW TRIAL	1248
ORDER DENYING DEFENDANT’S MOTION FOR A NEW TRIAL.....	1259
INDICTMENTS	1260
SENTENCE SHEETS	1264
CERTIFICATE OF COUNSEL	1268

**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
FROM THE DECEMBER 5-13, 2022 TRIAL: STATE’S EXHIBITS #20, 25, 27, 28
(PHOTOGRAPHS), STATE’S EXHIBIT #71 (DVD OF INTERVIEW), AND
DEFENDANT’S EXHIBIT #108 (DVD).**

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2019A4021600441
		2019A4021600442
		2019A4021600444
		2021-GS-40-01292
		2021-GS-40-01293
		2021-GS-40-01294
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ANTONIO BARNES,	)	
	)	
DEFENDANT,	)	

March 30, 31, 2022
Columbia, South Carolina

BEFORE:

THE HONORABLE DEANDREA GIST BENJAMIN, JUDGE.

APPEARANCES:

DALE SCOTT, ASSISTANT SOLICITOR
PAUL WALTON, ASSISTANT SOLICITOR
NICK FOWLER, ASSISTANT SOLICITOR
Attorneys for the State

LAURA YOUNG, ASSISTANT PUBLIC DEFENDER
LUKE SHEALY, ESQ.
BRIAN SHEALY, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S:
INDEX OF WITNESSES:

EMMITT GILLIAM

Direct By Luke Shealey	16
Cross By Mr. Scott	.136
Redirect By Luke Shealey	.160
Recross By Mr. Scott	.169

KEVIN ARCHIE

Direct By Ms. Young	.171
Cross By Mr. Fowler	.186
Redirect By Ms. Young	.192
Recross By Mr. Fowler	.193

SAMUEL THOMAS

Direct By Brian Shealey	.194
Cross By Mr. Walton	.217
Redirect By Brian Shealey	.228
Recross By Mr. Walton	.229

STEVEN HARPER

Direct By Ms. Young	.230
Cross By Mr. Scott	.232
Redirect By Ms. Young	.234

CHRISTOPHER WATKINS - cont. below

Direct By Ms. Young	.236

OFFICER CASTRO

Direct By Mr. Scott	.249

Recross By Mr. Scott 413

> > > < < <

CERTIFICATE OF REPORTER 445

STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Photograph	135	152
2	Photograph	135	152
3	Photograph	135	142
4	Photograph	135	142
5	Photograph	135	142
6	Photograph	135	142
7	Photograph	135	142
8	Photograph	135	142
9	Photograph	135	142
10	Photograph	135	149
11	Photograph	135	143
12	Photograph	135	158
13	Photograph	135	191
14	Receipt/manufacture	146	147
15	7 photos	256	265
16	11 pages records	256	282
17	CD	256	
18	Photograph	303	304
19	Document	328	328

DEFENDANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Photograph	8	23
2	Photograph	8	23
3	House diagram	8	23
4	Lease - Samuel Thomas	8	23
5	Lease - Antonio Barnes	8	23
6	Advice of Rights	8	44
7	Photograph	8	23
8	Photograph	8	23
9	Photograph	8	23
10	Photograph	8	23
11	Photograph	8	23
12	Photograph	8	23
13	Photograph	8	23
14	Photograph	8	23
15	Photograph	8	23
16	Smalls video	8	
17	Immunity passport.	8	
18	video	137	137
19	CD body cam	135	
20	Photograph	135	202
21	Photograph	135	202
22	Photograph	135	202

23	Photograph	135	202
24	Photograph	135	202
25	Photograph	135	202
26	Photograph	135	202
27	Photograph	135	202
28	Photograph	135	202
29	Photograph	135	202
30	Photograph	135	175
31	Photograph	135	175
32	Photograph	135	175
33	Photograph	166	169
34	Photograph	166	169
35	Photograph	166	169
36	Photograph	166	169
37	Photograph	256	288
38	Photograph	256	288
39	Photograph	256	288
40	Photograph	256	288
41	Photograph	256	288
42	Photograph	256	288
43	Photograph	256	288
44	Photograph	256	288
45	Photograph	256	288
46	Photograph	256	288
47	Photograph	256	288

48	Photograph	256	288
49	Photograph	256	288
50	Photograph	256	288
51	Photograph	256	288
52	Photograph	259	334
53	Photograph	259	334
54	Photograph	259	334
55	Photograph	259	334
56	Photograph	259	334
57	Photograph	326	334
58	Photograph	329	334
59	Photograph	329	334
60	Photograph	359	388
61	Photograph	359	388
62	Photograph	359	388
63	Photograph	359	388
64	Photograph	359	388
65	Photograph	359	388
66	Photograph	359	388
67	Photograph	359	388
68	Photograph	359	388
69	Photograph	359	388
70	Photograph	359	388
71	Photograph	359	388
72	Photograph	359	388

1 (WHEREUPON, Defendant's Exhibits 1 through 17 marked
2 for identification only.)

3 THE COURT: All right. All right. My understanding
4 we are scheduled for a Stand Your Ground hearing. This is
5 the case of the State of South Carolina versus Antonio
6 Vashon Barnes, Jr., 2021-GS-40-1293. I don't have the
7 indictments.

8 All right. We're here on the motion for the defense
9 of a Stand Your Ground hearing. I'll put the correct
10 indictment number on the record once we receive it from
11 Mr. Tolbert.

12 LUKE SHEALEY: That's correct, Your Honor.

13 THE COURT: All right. And let me get who's
14 representing who, everybody's name for the record.
15 Representing Mr. Barnes, Mr. Shealey.

16 LUKE SHEALEY: Shealeys and Ms. Young of the Public
17 Defender's Office and Ms. Lattimer from the Shealey Law
18 Firm.

19 THE COURT: All right. And for the State?

20 MR. SCOTT: Your Honor, it's going to be me Dale
21 Scott, Nick Fowler, and Paul Walton.

22 THE COURT: All right. And the indictment numbers
23 are 2021-GS-40-1294, 2021-GS-40-1293 and 2021-GS-40-1292.

24 All right. Yes, ma'am.

25 MS. YOUNG: Your Honor, if I could briefly before we

1 down.

2 So whatever -- because they read -- I've learned over
3 the pandemic that court reporters read lips and so it
4 helps them to have your mask down. So yes, you can pull
5 it down. If y'all need to talk to each other, if you're
6 comfortable pulling your mask down, y'all can pull it
7 down. But that part is up to you all.

8 LUKE SHEALEY: Okay.

9 THE COURT: However you want to do that.

10 MS. YOUNG: Sorry, Your Honor. Just very briefly
11 another housekeeping matter, we were in court on Friday on
12 this case and Mr. Scott indicated that he -- we have a
13 couple of chain witnesses.

14 Mr. Scott indicated that he would be willing to
15 stipulate to chain so that we could not call those witness
16 and speed things along. I just wanted to put that on the
17 record, as well, and see if Mr. Scott was still inclined
18 to do that.

19 MR. SCOTT: That's correct, Your Honor.

20 THE COURT: All right. So you're stipulating to
21 chain for purposes of this hearing?

22 MR. SCOTT: I am, Your Honor.

23 THE COURT: And just as, I guess, my housekeeping
24 here, I have a plan to go until maybe a little before 1:00
25 and then we'll take a lunch break. I have a doctor's

1 appointment. And I believe somebody said that the
2 Shealeys, you all have a PCR hearing tomorrow afternoon?

3 LUKE SHEALEY: That has been officially continued as
4 of late yesterday.

5 THE COURT: I'm hoping we'll be done by tomorrow at
6 lunch because I have another doctor's appointment tomorrow
7 afternoon. But I can figure that out, work that out. We
8 shall see, but please have witnesses lined up to go.

9 Like I said, we'll take break close to one o'clock.
10 Probably have to start back around 2:30 just because it's
11 going to take me a minute to get there and back. But have
12 enough witnesses go through the rest of the afternoon.

13 All right. Call your first witness.

14 LUKE SHEALEY: Your Honor, may it please the Court.
15 The defense would call Investigator Emmitt Gilliam.

16 THE CLERK: State your full name, please.

17 THE WITNESS: Emmitt Gilliam.

18 THE COURT: Spell your last name.

19 THE WITNESS: G-I-L-L-I-A-M.

20 EMMITT GILLIAM, after being duly
21 sworn, testified as follows:

22 THE CLERK: All right. Have a seat in the witness
23 stand.

24 DIRECT EXAMINATION:
25

1 BY LUKE SHEALEY:

2 Q All right. Good morning, Investigator.

3 A Good morning.

4 Q Do you have your report with you, your investigative
5 files and all that? Would it help you when we talk about
6 this case if I went ahead and provided you with a copy of
7 that stuff?

8 A Sure.

9 Q This is everything I think I have from you, your
10 reference. All that look familiar? Looks like I've got
11 your followup report and your summary. Does that look
12 like you?

13 A Yes.

14 Q And I want to talk about some stuff just to give this
15 judge kind of an idea of what this case is about. I think
16 there's probably a lot of stuff we can agree about before
17 maybe we start to disagree. So we can start with the easy
18 stuff if that's all right with you.

19 I want to show you some photographs -- just for
20 reference of this case, we're talking about an incident
21 that occurred on February 7th of 2019. Do you recall
22 that?

23 A Yes.

24 Q And this occurred generally at 511 Alcott Drive here
25 in Columbia, Apartment 14G?

1 A Yes.

2 Q That's a place commonly called the Willow Run
3 Apartments?

4 A Yes.

5 Q All right. And I've got an incident time on your
6 report as 8:56 a.m. in the morning?

7 A Yes.

8 Q And I guess the time, you base that on 9-1-1 calls,
9 talking with witnesses, all that to figure out as specific
10 as you can time of an incident, right?

11 A Yes.

12 Q And that's there on your report. I want to show you
13 some photographs, if I may approach, I think we can agree
14 on. This is an aerial view from Google maps. Does that
15 look like the Willow Run Apartment complex?

16 A Yes.

17 Q And you've got have Healing Dale across the street on
18 Defendant's 1?

19 A That's correct.

20 Q I've gone ahead -- my investigator has taken the
21 liberty of marking, labeling some of those buildings with
22 apartment numbers. Do you see that?

23 A Yes.

24 Q You can see generally that would be Building 14 where
25 this incident occurred?

1 A Yes.

2 Q And you've got 15 and 13 behind it?

3 A Yes.

4 Q That's the office? Is that familiar to you?

5 A Yes.

6 Q Building 17, where Shekila Smalls lives, for example?

7 A Yes.

8 Q That accurately looks like what we're talking about.

9 I want to show you Defendant's No. 2. That's just a
10 closer-up view of that same thing. Does that accurately
11 depict that apartment complex and the buildings we
12 described?

13 A Yes, to the best of my knowledge.

14 Q All right. Now, I want to -- this is Defendant's No.
15 3, City of Columbia crime scene investigator developed
16 this diagram of, essentially, the scene. Are you familiar
17 with this document from the CSI investigator?

18 A Yes.

19 Q That looks like y'all's work?

20 A Yes.

21 Q And one of the things that we're going to get to, but
22 my client, Mr. Barnes, he was a leaseholder at 14G, were
23 you aware of that?

24 A Yes, he was one of them, one of the occupants.

25 Q Right. I'm going to show you what's marked as

1 Defendant's 5. Do you recognize -- this is probably a
2 document that you pulled showing he's on that lease,
3 right?

4 A Yes.

5 Q And the other individual, Defendant's No. 4, Sam
6 Thomas, his name is on that lease, as well?

7 A Yes.

8 Q Just for the Court's information, Samuel Thomas is a
9 roommate of Mr. Barnes who wasn't there during the
10 incident, right?

11 A Yes.

12 Q And there's another roommate, who is the decedent in
13 this case, Mr. Antonio Dash. You're familiar with him, of
14 course?

15 A Yes.

16 Q Is it fair to say he's been living there about a year
17 prior to this?

18 A That's what I was told.

19 Q You didn't find any information to the contrary,
20 okay.

21 I want to show you again just some general photos.
22 We're going to try to enter these into evidence so the
23 judge can have them. Would this, Defendant's No. 7, be
24 the kind of front entranceway to Building 14?

25 A Yes.

1 Q There's an apartment up there?

2 A Yes, it goes to the right.

3 Q And this is a picture of Ms. Iesha Washington's car
4 that she, Mr. Griffin and Ms. Griffin drove there that day
5 in front of Building 14?

6 A Yes.

7 Q This is an actual crime scene photograph of inside
8 the scene after the incident. Do you recognize that with
9 two children on the ground?

10 A Yes.

11 Q And that hole in the wall?

12 A Yes.

13 Q Defendant's No. 9. That's a closer-up of the hole in
14 the wall that CSI took, and that's No. 10, right?

15 A Yes.

16 Q We've got some photos of a flipped over table and a
17 large TV on the ground?

18 A Yes.

19 Q Defendant's No. 11. Defendant's No. 12, another shot
20 of that TV on the ground, correct?

21 A Yes.

22 Q We've got a door being propped open. I think I read
23 somewhere an officer propped that door open, right?

24 A Yes.

25 Q No. 14, this is just a clothing note of Ms. Smalls

1 once y'all interviewed her. You probably remember that?

2 A Somewhat.

3 Q You wouldn't disagree with that?

4 A No.

5 Q And this is a body cam shot of some folks standing by
6 a dumpster out there. No. 15, do you recognize Ms. Smalls
7 there?

8 A Yes.

9 Q With her face?

10 A Yes.

11 Q Okay.

12 LUKE SHEALEY: Just for right now, Your Honor --

13 Dale, do you want to look at all of these? I'm
14 seeking to enter those photos we discussed into evidence
15 for those hearing.

16 THE COURT: What numbers are they?

17 THE COURT REPORTER: I've marked through 17. I
18 forgot to tell you that. I'm sorry.

19 THE COURT: Okay.

20 MR. SCOTT: No objection from the State, Your Honor.

21 THE COURT: All right.

22 LUKE SHEALEY: And these would be somewhat haphazard
23 order, but we're talking about Defense Nos. 1, 2, 3, 4, 5,
24 skipping 6; 7, 8, 9, 10, 11, 12, 13, 14, 15.

25 THE COURT: All right. So 1 through 5, 7 through 15

1 will be entered without objection.

2 LUKE SHEALEY: All right.

3 (WHEREUPON, Defendant's Exhibit Nos. 1 through 5 and
4 7 through 15 were admitted into evidence.)

5 BY LUKE SHEALEY:

6 Q All right. Investigator Gilliam, just so the judge
7 can see now it's in evidence, again, this is the
8 apartments we're talking about here, the Willow Run?

9 A Yes.

10 Q Number 14 being the apartment in question where
11 Mr. Barnes, my client, Samuel Thomas and the decedent,
12 Mr. Antonio Dash lived?

13 A Yes.

14 Q Just a closer-up again, this would be Building 14
15 where all of this transpired?

16 A Yes.

17 Q And the car that Mr. Griffin arrived in is parked
18 right there with Ms. Washington?

19 A Move it back a little bit.

20 Q In that parking lot?

21 A It's in that parking lot, yes.

22 Q And then we've got 15, 18, 17. Bring out 17, that's
23 where Ms. Shekila Smalls lived, who is a witness in this
24 case?

25 A Yes.

1 Q And, generally, this is the crime scene diagram for
2 the judge's edification, but this is his apartment. You
3 agree it's a pretty small apartment, right? These are not
4 luxury apartments that are fairly big, right?

5 A Well, fair size apartment building.

6 Q It's Willow Run Apartment complex. And Mr. -- my
7 client slept back here in this bedroom, the far right?

8 A I think some -- I thought it was the far left. I'm
9 not -- let's see --

10 Q That's the bathroom, that's the kitchen?

11 A Okay.

12 Q This is the living room where the activity occurred.
13 This is the front bedroom?

14 A That's correct, he did stay in the back bedroom.

15 Q All right. This is what Mr. Potash did. We might
16 hear from him some time later, but this is generally what
17 he drew to help us understand the case, correct?

18 A That's correct.

19 Q And again, this is -- Mr. Thomas is the leaseholder
20 there, as we discussed, and as is my client, Mr. Barnes,
21 through Exhibit 5. And I think what we know from the
22 investigation is the other decedent, Mr. Dash, was allowed
23 to stay there, correct?

24 A Yes.

25 Q And everything you knew from your investigation is

1 that Mr. Antonio Dash was a very good close friend of
2 Mr. Barnes, right?

3 A That's correct.

4 Q And that Mr. Griffin was a friend who came over --
5 maybe not as close as Mr. Dash who's living there, but a
6 friend, correct?

7 A To my understanding, they were all pretty good
8 friends.

9 Q And just so the judge can see, this is the front of
10 the Building No. 14, correct?

11 A Yes.

12 Q And you can see, again, the day of the incidents.
13 This would be Ms. Iesha Thomas' -- or Iesha Washington's
14 car she drove there that day with Mr. Griffin?

15 A That's correct.

16 Q Eric Griffin is the other decedent in this case?

17 A Yes.

18 Q And she also came with his mother that day?

19 A That is correct.

20 Q And that's Building 14. Just so we're clear while
21 we're talking about the car, when the police got called
22 shortly before nine o'clock -- I think your incident time
23 is 8:56, but the phone calls started coming maybe 8:57?

24 A Possibly.

25 Q And that would be the shooting -- shots fired and

1 also after the shots were fired, you agree that
2 Ms. Washington and Ms. Griffin went up to the apartment to
3 see what's going on?

4 A Yes. Yes.

5 Q And that Mr. Griffin had advised them that day --
6 they were all, I think, on the way to work and he wanted
7 to stop over real quick to see T.B., right?

8 A My understanding was they were stopped over there to
9 see T.B., but Ms. Griffin, the mother was going --

10 Q She was going to work?

11 A Yes.

12 Q But he was in the car and said I want to stop at this
13 apartment to see my friend, T.B., Tony Barnes?

14 A Him or Dash, one of the two.

15 Q Well, stopped there -- he directed them. It wasn't
16 their agenda to stop by Apartment 14, Building 14. And
17 then after hearing shots, they were obviously concerned,
18 went up to the apartment, knocked on the door, right?

19 A Negative. When she initially heard the shots, they
20 called her boyfriend.

21 Q Sure.

22 A No answer again. Then they went up to the scene.

23 Q Right. Left that part out, had eyes on the
24 apartment, no one coming, no one going and then entered
25 truly a horrific scene, right?

1 A That's correct.

2 Q All right. And Mr. Griffin was their loved one and
3 he's dead there on the floor?

4 A Uh-huh.

5 Q And they see -- and Mr. Barnes, my client, is there
6 with a gun in his hand, correct?

7 A I'm not sure if they see the gun in his hand, but
8 when they knocked on the door, it took him a couple
9 minutes to get there. At the time he opened the door, he
10 opened it and closed it behind him. They said something
11 went on inside.

12 THE COURT: I didn't get the last part.

13 THE WITNESS: Yes, ma'am, when he -- the two
14 witnesses went upstairs to look at the apartment, knocked
15 on the door, it took Mr. Barnes a couple minutes to come.
16 Then when he came to the door, he stepped out the door and
17 closed the door behind him.

18 I don't know if they were fighting inside or
19 something. He closed the door behind him. That's when
20 they opened the door and saw these two individuals were in
21 there shot.

22 LUKE SHEALEY: I know in the interviews -- and we can
23 get to all of those. We're just talking 1,000 feet right
24 now generally for the judge. But I think Ms. Griffin said
25 he closed the door, the door closed, but you understand

1 the police have propped this table here so the door
2 wouldn't close. It's one of those doors that closes,
3 right?

4 MR. SCOTT: Judge, I understand we have some leeway
5 as far as leading questions, but some of the difficulties
6 with miscommunication is that Mr. Shealey seems to be
7 stating the facts as he understands them instead of a
8 question to his witness. This is direct examination. I
9 haven't been objecting so far, but it is getting a little
10 confusing when he's editorializing.

11 LUKE SHEALEY: Your Honor, I apologize, but I would
12 ask you specifically under Rule 611, this is a lead
13 investigator in a double murder case against my client,
14 that allows me to lead with permission from the Court
15 because he is an adversarial witness.

16 He's a -- when a party calls a hostile witness, an
17 adverse party or a witness identified as an adverse party,
18 interrogation may be done by leading questions. So it's
19 perfectly appropriate under the rules and it will also
20 help us move this thing along faster. If I
21 mischaracterize some evidence, I'm sure the solicitor will
22 object, but I can certainly lead for this witness.

23 THE COURT: Obviously, he can lead under 611.

24 MR. SCOTT: Your Honor, this is his witness he's
25 called to the stand in his motion.

1 THE COURT: I understand, but it's still an adverse
2 witness to his client. I think that's the way the rule
3 reading were amended. Even though he called the witness,
4 it's an adverse witness, so he can lead, however, if
5 there's an objection to a certain question and the format
6 and the form of the question, you object to that. But he
7 can lead under 611.

8 MR. SCOTT: Thank you, Your Honor.

9 BY LUKE SHEALEY:

10 Q So this is not an extremely point for me, but --

11 MR. SCOTT: Your Honor, that's objectionable, too. I
12 mean, we're not here about what Mr. Shealey feels about
13 the case.

14 THE COURT: Let's leave out the commentary, but you
15 can lead.

16 LUKE SHEALEY: And, Your Honor, we don't have a jury
17 here. I'm pretty sure you can sift through any
18 inadvertent commentary from me as I attempt to lead this
19 witness.

20 THE COURT: Yeah, just go ahead -- y'all go ahead and
21 ask the questions. There's no jury here, but we've still
22 got to follow the rules. So if we can leave the
23 commentary part -- the personal commentary part out, that
24 would be great, but you are more than welcome to lead, I
25 think, pursuant to Rule 611. Not that I think, I know

1 pursuant to Rule 611.

2 BY LUKE SHEALEY:

3 Q Just getting back to Defendant's 13, this table that
4 was set here by a police officer, that was for a reason,
5 you agree with that?

6 A Yes, to make sure the door didn't lock behind them.
7 We didn't have a personal key from management.

8 Q Now, I want to direct you to -- just so the judge see
9 on the scene, but this is what -- unfortunately, this is
10 the position of the two decedents, Mr. Eric Griffin here,
11 right?

12 A Yes.

13 Q And that would be Mr. Antonio Dash there?

14 A Yes.

15 Q Mr. Dash lives there, correct?

16 A That's correct.

17 Q You see this big hole in the wall right there,
18 correct?

19 A Yes.

20 Q We're going to talk some about what happened there,
21 but here is another example of a larger hole, a larger
22 photo of the hole that Investigator Potash found relevant
23 to his investigation. And this is a TV on the ground and
24 a table flipped over?

25 A Yes.

1 Q And we will get to it, but my client generally
2 describes a commotion, a ruckus, what he describes as an
3 altercation, a fight in his living room prior to him
4 talking action that day, right?

5 A He stated that, yes.

6 Q And that is a TV down. Another angle of the TV, you
7 see from the side. Do you recognize that?

8 A Yeah.

9 Q It's about a 50-inch TV, pretty large?

10 A I'm not sure. I think it's 42.

11 Q This is a picture from discovery of Shekila Smalls in
12 your interview room, Defendant's No. 14. It does omit her
13 head. Do you remember her that day, interviewing her?

14 A Yes, I remember that day.

15 Q You and McCoy? And that's what she was wearing that
16 day as far as you know?

17 A Yes.

18 Q Okay. And this is just a photo of her on scene
19 through body cam standing by a dumpster with her phone up?

20 A Yes.

21 Q You recall that? She advised she did a Facebook live
22 post that day?

23 A Yes, I heard that, yes.

24 Q She's right there in the center?

25 A Yes.

1 Q Do you recognize these gentlemen?

2 A No. That's not a clear picture.

3 Q Okay. So we've got this shooting event. Police are
4 responding. You've got this terrible situation where
5 Mr. Griffin's family are in the car and go up and discover
6 this. Mr. Barnes is in the apartment, right?

7 A Yes.

8 Q Now, there's numerous witnesses that get to the
9 apartment prior to law enforcement securing it. You would
10 agree with that?

11 A From my understanding, yes.

12 Q I mean, two of those would be Iesha Washington, who
13 is Mr. Griffin's girlfriend, right?

14 A Yes.

15 Q You have Ms. Wanda Griffin, who is Mr. Griffin's
16 mother, correct?

17 A That's correct.

18 Q There is a guy named Javonte Davis who ends up having
19 blood on his shirt. He was there. There is Shekila
20 Smalls, right, we're familiar with her. She enters and
21 takes a gun on the scene, right?

22 A Yes, Mr. Barnes gave her a gun.

23 Q We're going to have a conversation about whether she
24 took it or whether he gave it, but for right now, we'll
25 say she ended up being in position of a gun that

1 Mr. Barnes had that day?

2 A Yes.

3 Q We've got Jaquana Jones. Are you familiar with this
4 witness? The assistant apartment manager, does that sound
5 familiar?

6 A Yes.

7 Q So she's there. You've got Hamilton Jacobs, are you
8 familiar with that witness?

9 A Yes.

10 Q A lot of these witnesses per your investigation are
11 hearing kind of these excited utterances from Mr. Barnes,
12 right?

13 A Yes.

14 Q Okay. Many of them note that he still has the gun in
15 his hands? Ms. Smalls, for example?

16 A Yes.

17 Q I'm paraphrasing, and we can go through them very
18 specifically, but just for the 1,000-foot kind of review
19 of this case right now, almost all of them basically agree
20 that he says I was asleep. How did they get here?
21 Something to that effect, right?

22 A I'm not sure what they all said. I can tell you what
23 Mr. Barnes told me.

24 Q Well, you're the lead investigator on this case?

25 A Yeah. It varies between different ones because you

1 talking about something three years ago, but, also, you
2 talking about something where they all say yeah, he was in
3 the room when he got shot. But I think -- I don't want to
4 misquote myself, but I'm pretty sure that Mr. Barnes
5 almost said he was asleep and woke up.

6 Q Well, we can talk about it specifically, but other
7 witnesses, as well, like Ms. Jones, Jaquana Jones, who's
8 the apartment manager, passes him -- we're going to talk
9 about her statement, but you agree she notes him saying
10 things like, How did they get there? I was asleep. Do
11 you disagree with that? You're not familiar with that?

12 A Sir, do you know how many statements I went through
13 on video? I'm pretty sure she probably said it, but I
14 haven't seen her statement.

15 Q Okay, I'll show it to you. But just for the court's
16 reflection, you are the lead investigator in this case?

17 A I am.

18 Q And there are a lot of investigators working for you
19 and under you on this particular case?

20 A With me.

21 Q With you. We've got McCoy, McDonald, a lot of people
22 being interviewed. And the things that you have at your
23 disposal to review -- and this was scheduled for trial
24 last week, right?

25 A Yes.

1 Q Are there reports?

2 A Yes.

3 Q There are body cams?

4 A Yes.

5 Q Witness written statements?

6 A Yes.

7 Q So you're familiar with this case?

8 A I'm familiar, but like I said, you've got to also
9 understand, too, it's so many different stuff. I don't
10 want to misquote anybody. This person's name was that,
11 okay?

12 Q I understand.

13 A That's why I said, if you want to show it to me and I
14 can verify it, yeah.

15 Q I understand.

16 A Got no problem.

17 Q I understand. But one thing we can agree on is
18 Mr. Barnes -- this incident happened at 8:56 and
19 Mr. Barnes is on scene kind of saying hey, I live there,
20 I'm involved as early as 9:06?

21 A Sir, if you look at the body cam of -- I forget the
22 officer's name, the training officer for Castro.

23 Q We don't have his body cam, we have his partner's.

24 A That's what I'm saying, the training officer, he says
25 that yeah, I'm the one living there. He never said I'm

1 the one involved.

2 Q You can agree he's making contact with the police
3 very early as soon as they get there?

4 A Well, he made contact with them, yes.

5 Q Okay. And then by ten o'clock, he's doing even more
6 and saying, "I'm actually the shooter" as he talks to
7 Investigator Morris and Officer Cantrell. You're aware of
8 that?

9 A Yes. I know they talk to him, but I don't think it's
10 ten o'clock.

11 Q Okay, we'll talk about that later. But he ends up
12 approaching them and saying, actually, "Look, I'm the
13 shooter"?

14 A Yes.

15 Q "I want to talk to you about what happened"?

16 A Yes.

17 Q So you have no evidence that he ran away or went to
18 Argentina or was caught on a manhunt in Georgia two weeks
19 later, right?

20 A I don't have that, but he wasn't on the scene when we
21 got there. He did leave. He went somewhere. He wasn't
22 out there, unless he went in somebody's apartment or sat
23 in somebody's car.

24 Q You don't have any information on that?

25 A Well, I'm just saying he wasn't out there with us.

1 He saw us all out there. He could have walked back up to
2 us.

3 Q Well, we're going to talk about it, but you agree he
4 raised his hand and said, I live there at 9:06, right?

5 A I agree with that, yes.

6 Q And at ten o'clock, he's turning himself in to
7 investigators saying, I want to talk to y'all. And you
8 took him into the manager's office to get a statement from
9 him?

10 A I agree he came down.

11 Q You have no --

12 THE COURT: Let me do this. Investigator Gilliam, if
13 you can pull that mic and speak directly. Ordinarily --
14 but there's a whole lot of glass between me and you.

15 THE WITNESS: Yes, ma'am.

16 THE COURT: And I can't hear everything you're
17 saying.

18 THE WITNESS: Yes, ma'am.

19 BY LUKE SHEALEY:

20 Q So by ten o'clock, he's giving an official interview,
21 talking with folks. You didn't have to manhunt this guy,
22 find him somewhere with the warrant division, right?

23 A Not at the time.

24 Q Now, a little bit so the judge can understand, now
25 Shekila Smalls is an important witness in this case, lives

1 in Building 17. You told me that?

2 A Yes.

3 Q Right. And we're going to maybe disagree about
4 whether she was given a gun by my client or whether she
5 took a gun, but it ends up she is in possession of the gun
6 that was used in this case, right?

7 A Yes.

8 Q And he also volunteers that information to
9 Investigator Cantrell and Investigator Morris at ten
10 o'clock?

11 A Yes.

12 Q Okay. And based on that, that causes you to take an
13 interest in Shekila Smalls, right?

14 A Yes.

15 Q To try to locate the gun, because not only he says
16 she took it and he actually shows who she is on Facebook.
17 This is her account, this is what she looks like, all
18 that, right?

19 A Yes.

20 Q And there were seven shell casings found on the scene
21 in that living room area. Do you agree with that
22 generally?

23 A Pretty much, yes.

24 Q And once finally SLED did their job and did the
25 firearms comparison, as the lead investigator, you would

1 know that all seven of those shell casings actually match
2 the test fires from the gun that Shekila Smalls had?

3 A Yes.

4 Q And we've got a situation where these young men who
5 were deceased were shot multiple times, right?

6 A That's correct.

7 Q And we talked about this before at the preliminary
8 hearing, but Mr. Griffin had six distinct gunshot wounds
9 per the pathologist. Do you agree with that?

10 A Yes, sir, I -- yes.

11 Q Just from a 1,000 feet. I'm not asking you to
12 testify about the pathology report. And Mr. Dash had
13 seven distinct gunshot wounds, right?

14 A Yes.

15 Q But only seven shell casings were located?

16 A Yes.

17 Q And when we talked at the preliminary hearing, we did
18 not have the benefit of all this SLED kind of analysis,
19 but based on the firearms report, as the lead
20 investigator, you're aware that not all the projectiles
21 matched this gun, correct?

22 A Yes.

23 Q There's a discrepancy there?

24 A Yes.

25 Q Now, after Mr. Barnes talks to Cantrell on the scene,

1 says, hey, I live there at 9:06, and after -- and at ten
2 o'clock, he presents himself to investigators, gives a
3 body cam taped kind of informal, just verbal interview,
4 right?

5 A Yes.

6 Q You then take him down to the City of Columbia to
7 formally interview him, right?

8 A They bring him to Columbia.

9 Q Whether you take him personally, he's brought at your
10 instructions because he's saying I did this, right?

11 A Yes.

12 Q And just -- you recognize, obviously, this document?
13 That would be his official sworn statement in this case
14 with your advice of rights?

15 A Yes.

16 Q And then this two-page statement, that's actually
17 your handwriting. You wrote it for him, right?

18 A That's right.

19 LUKE SHEALEY: Your Honor, at this time, I would
20 introduce Defendant's No. 6 into evidence.

21 MR. SCOTT: Your Honor, I understand this is a
22 hearing outside the presence of the jury, but what is the
23 mechanism for getting extrinsic evidence of a statement
24 in? First of all, it's hearsay, and we've never had
25 anybody testify what his statement was. The proper avenue

1 would have him testify -- should be testified
2 inconsistently and then extrinsic evidence would be
3 admissible.

4 LUKE SHEALEY: Your Honor, first of all, it's a
5 statement against interest. The State gets this in
6 evidence all the time. Number two, there's a rule on
7 this, and we can cite the rule, but without having a jury
8 -- I've done about 20 of these hearings and, mostly, the
9 judge wants to see the defendant's statement.

10 Your Honor, I mean, I can cross-examine him and we
11 can make it confusing about it, but it's the defendant's
12 own statement.

13 THE COURT: I understand, but we still have to follow
14 the rules for purposes of the hearing. So it's hearsay.
15 You still have to --

16 LUKE SHEALEY: Well --

17 THE COURT: I mean, even though the rules -- and I
18 don't want to say relaxed, but maybe a little relaxed, but
19 you still -- we still have to follow rules. If you give
20 me a rule that says a way of getting it in, I'll consider
21 that but...

22 LUKE SHEALEY: I will. Your Honor, under Rule 803
23 number -- actually 804, hearsay exceptions, declarant
24 unavailable, statement against interest is number three.
25 And it says, A statement tending to expose the declarant

1 to criminal liability and offer the exculpate the accused
2 is not admissible unless corroborating circumstances
3 clearly indicate the trustworthiness of a statement.

4 Number one, it's clearly a statement against
5 interest. We haven't got there yet, but he admits to
6 killing two people. There's really no further admission
7 against interest.

8 THE COURT: A statement of declarant. The declarant
9 would be your client, right?

10 LUKE SHEALEY: Right. Statements against interest
11 are appropriate and not hearsay. Now, if the declarant is
12 unavailable, such as invoking the 5th Amendment.

13 We haven't gotten to that yet, but even so, there's a
14 case on this and we can get into the weeds on it if you
15 want, even though it's just a pretrial hearing, but that
16 can still be admitted even it's tended to exculpate the
17 accused as long as there are corroborating circumstances
18 clearly indicating the trustworthiness of the statement.

19 Now, this is a recorded interview where Investigator
20 Gilliam actually wrote the statement. It's about as
21 trustworthy in terms of evidence as we could possibly have
22 in this case.

23 It's against interest because admitting to killing
24 two people. And it's video recorded, which I will show
25 him some excerpts of it. This is also a pretrial hearing

1 where there's no case regarding immunity hearings that
2 says what rules we go by.

3 Now, I tend to generally want to play by the rules,
4 but I've also have judges say I just want to hear
5 everything, even stuff that might be a prior bad act or
6 whatever. Your Honor, it's my client's own statement.

7 MR. SCOTT: We have to hear from the client, Your
8 Honor. That's the easiest way to do it. Have him testify
9 under oath, have him be exposed to cross-examination
10 instead of back dooring any statements in. You have a
11 person who is clearly available. You have him testify
12 from the stand instead of eliciting inadmissible hearsay.

13 LUKE SHEALEY: Outside of the rule, Your Honor, I
14 think you'd like to read his statement as you make your
15 decision on this pretrial hearing. There's no case or
16 statute that says what rules of evidence apply in this
17 hearing. I don't know what else to tell you, Judge.

18 THE COURT: All right. For purposes of pretrial, I'm
19 going to allow the statement in only for purposes of the
20 pretrial -- I mean, for purposes of this hearing. I think
21 he's correct that it's very limited case law on the rules
22 of what's admissible at this point and stage in the trial.
23 So I'll allow it. So the objection will be overruled.

24 LUKE SHEALEY: Thank you, Judge.

25 BY LUKE SHEALEY:

1 Q I think you said that you recognize this document --

2 THE COURT: What number is it?

3 LUKE SHEALEY: This is 6, Defendant's No. 6.

4 THE COURT: That would be in over the objection of
5 the State.

6 LUKE SHEALEY: Yes.

7 (WHEREUPON, Defendant's Exhibit No. 6 admitted into
8 evidence.)

9 BY LUKE SHEALEY:

10 Q And you recognize this? Obviously, we've gone over
11 that. In here, basically -- we'll talk about this more
12 later, I just wanted to get it in evidence. There's
13 another statement that's pretty important to this case
14 that comes from my client. Like you've already testified,
15 you've learned that Shekila Smalls is in possession of the
16 gun that's used in this event, right?

17 A Yes.

18 Q And so you go and you -- I think Investigator McCoy
19 interviews her in her apartment and she -- well, quite
20 frankly, she denies it, right? She denies having this
21 gun?

22 A Yes.

23 Q Okay. Now, what she tells Investigator McCoy,
24 correct me if I'm wrong, is that she was --

25 MR. SCOTT: And this is just outright hearsay. Now,

1 they're asking for a statement by somebody other than the
2 accused, who they can clearly call as a witness. She's on
3 their witness list.

4 THE COURT: All right. Objection is sustained.
5 Rephrase the question.

6 BY LUKE SHEALEY:

7 Q You learned several things from investigating
8 Ms. Smalls, correct?

9 A Somewhat, yes.

10 Q That she was at the apartment complex that morning?

11 A Yes.

12 Q And that she was unloading her trash, right?

13 A Yes.

14 Q And that she was with two gentlemen by the name of
15 Kevin Archie and Richard Charles, right?

16 A Yes.

17 Q The maintenance men?

18 A Yes.

19 Q And based on learning that, she also -- you learn
20 that when she hears some shots, those three run over to
21 apartment 14G that we're talking about, correct?

22 A Yes.

23 Q And you learned from that part of the investigation
24 that she is in the scene witnessing these two bodies,
25 correct?

1 A Yes.

2 Q And that at that point, she either is given the gun
3 by my client or that she takes the gun, right?

4 A Yes.

5 Q Okay. And now, when Mr. Barnes early on goes to
6 investigators, he says I gave -- she took the gun, she,
7 Shekila Smalls, correct?

8 A Says she got the gun.

9 Q What I'm asking you is she initially denied that she
10 had the gun to Investigator McCoy?

11 A Yes.

12 Q You denied it at the interview at her apartment,
13 correct?

14 A Yes.

15 Q Y'all took her down to the City of Columbia and she
16 denied it again, correct?

17 A Yes.

18 Q I mean, she outright lied for 45 minutes?

19 MR. SCOTT: If I can have some rules for the road. I
20 don't want to keep objecting, but, again, he's classifying
21 statements, again, hearsay as lies. He just continues to
22 backdoor hearsay in in an attempt to avoid putting
23 witnesses on the stand.

24 THE COURT: All right. The objection is sustained.
25 Please rephrase the question. You can call -- I'm

1 assuming she's on the witness list. You call her as a
2 witness.

3 LUKE SHEALEY: She is, but, Your Honor, I'm just
4 asking him generally what he's aware as the lead
5 investigator. He's testified that she was untruthful for
6 a period of time.

7 THE COURT: Rephrase the question.

8 BY LUKE SHEALEY:

9 Q You just agreed that Ms. Smalls was untruthful to you
10 and Investigator McCoy for a period of time, correct?

11 A She was untruthful, yes.

12 Q And that period of time when you had her at the City
13 of Columbia police department was approximately 45
14 minutes, correct?

15 A I'm not sure of the time slot. It was a lot.

16 Q All right. We're going to talk about her statement
17 real quick.

18 MR. SCOTT: No, we're not. It's an objection.

19 THE COURT: What rule are you trying to get her
20 statement in under?

21 LUKE SHEALEY: He says he's unclear about the period
22 of time, so I'm going to talk to him about the period of
23 time when he had Ms. Smalls interviewed. I don't think
24 that's a proper objection, no, you're not.

25 MR. SCOTT: We're going to talk about her statement?

1 THE COURT: Hold on one second. You can show him
2 this -- before you publish it, you can show him the
3 statement and ask -- if you're trying to get him to
4 rephrase his memory, there's a way to do it. Show him the
5 statement, let him look at it and then ask him the
6 question. You can't put the statement into evidence.

7 LUKE SHEALEY: I'm not seeking to put it into
8 evidence.

9 THE COURT: You can't put it up and publish it
10 either. You're putting it up on the screen.

11 LUKE SHEALEY: I can skip that slide, Your Honor.
12 Again, you're the fact finder here. You're the
13 gatekeeper. Most judges I've been in front of want to
14 hear kind of what's going on in this case. Yes,
15 technically, if we were in front of a jury, her statement
16 would be inadmissible under extrinsic evidence unless she
17 denied the existence of it under Rule 613. I understand
18 that.

19 This is a relaxed hearing akin to a Jackson vs.
20 Denno. There is no case that says what the Rules of
21 Evidence are. I understand why the State is making their
22 objections. I would hope they would cite a rule when they
23 start doing that. I'm just trying to talk to him about a
24 witness that he's already told me was not truthful.

25 THE COURT: Yes, sir.

1 MR. SCOTT: I'm sorry, I don't mean to interrupt,
2 Your Honor. If the door is swinging open, then my
3 cross-examination, who knows where it's going to go. If I
4 elicit any hearsay I want. If we just throw away the rule
5 book, I don't know where my boundaries are going to be.

6 THE COURT: The objection is sustained. Rephrase the
7 objection. There's a purpose of following the rules in
8 the rule books not just when the jury is here, but also
9 when the jury is not here so that we can have certain
10 order as to the way things are supposed go.

11 So you can show him the document, ask him to refresh
12 his memory, and then ask him the question again. But I
13 don't need to see her statement. It's hearsay.

14 LUKE SHEALEY: I won't show you her statement.

15 BY LUKE SHEALEY:

16 Q So Investigator Gilliam, you agree Shekila Smalls was
17 interviewed by Investigator McCoy, correct?

18 A Yes.

19 Q He is advising her that Mr. Barnes is saying that she
20 has the gun. You agree with that?

21 A Yes.

22 Q And she is saying no, I don't. You agree with that?

23 A Yes.

24 Q She's denying that. You would also agree that this
25 is a process of kind of the investigators getting her to

1 feel comfortable, right?

2 A Yes.

3 Q And so there -- that's just my computer. I've got a
4 transcript, Investigator, of this interview, but if we --

5 MR. SCOTT: Same objection.

6 LUKE SHEALEY: This is inadvertent. It's on my
7 computer, I just wanted him to see it.

8 MR. SCOTT: Take it off.

9 BY LUKE SHEALEY:

10 Q I do have a transcript if you need to see it, we can
11 walk through it, but looking at the transcript of your
12 interview, she advises that she doesn't have the gun
13 and --

14 MR. SCOTT: Objection, hearsay. How many times do I
15 have to object to this?

16 THE COURT: All right. Hold on one second and let's
17 save the commentary.

18 State the objection for the record.

19 MR. SCOTT: The objection is hearsay again, Your
20 Honor.

21 THE COURT: All right. Thank you.

22 Why is it not hearsay? This is the way it works.
23 You state an objection, you tell me why it's not hearsay
24 and then I'll rule.

25 LUKE SHEALEY: I didn't even finish my question, Your

1 Honor.

2 THE COURT: All right. Finish the question. What is
3 the question? You said what did she say, I think.

4 BY LUKE SHEALEY:

5 Q When Mr. Barnes is informing police that she has a
6 gun, she advises police that he is, in fact, a liar. You
7 agree with that?

8 THE COURT: Hold on, don't answer.

9 You still have the same objection?

10 MR. SCOTT: Same objection, Your Honor.

11 THE COURT: All right.

12 THE WITNESS: I wasn't there.

13 THE COURT: All right. It's hearsay. Objection is
14 sustained.

15 Unless you're going give me an exception.

16 LUKE SHEALEY: Your Honor --

17 THE COURT: Unless you're going to give me an
18 exception. I can't throw the rule book out. This is an
19 evidentiary hearing. The court has to make a ruling based
20 on the preponderance of the evidence. So we have to
21 follow the rules.

22 LUKE SHEALEY: I'm not asking him to elicit a direct
23 quote. I'm talking about in terms of his investigation
24 when Ms. Smalls is confronted with the fact that my client
25 is saying she's got the gun, not only does she say no, she

1 says he's the liar. There's no hearsay about that.
2 That's the course and scope of his investigation and where
3 it went.

4 THE COURT: If she says he is the liar, how is that
5 not -- what she said not hearsay? I mean, give me an
6 exception, I'll be glad to consider it, but I need to know
7 why that part is not hearsay. If not, rephrase the
8 question.

9 LUKE SHEALEY: It's what he's learning in the course
10 of his investigation, Your Honor. It's minute details of
11 his investigation, but it's also not in his report. So
12 I'm going to ask him about why it's not in his report in a
13 second, but all I'm asking him is that when informed from
14 my client she's got a gun, her response to law enforcement
15 is that he's, in fact, lying. That's not hearsay.

16 I'm not asking him to elicit an out-of-court
17 statement for the truth of the matter asserted. This is
18 what they're learning as part of their investigation.

19 MR. SCOTT: So, Your Honor, as we all know, everybody
20 in this courtroom, the proper avenue is to call Shekila
21 Smalls, call Antonio Barnes and should they testify
22 inconsistently with what they told him, then it comes out.
23 However, they're trying to backdoor all this hearsay in
24 through the investigator instead of putting before Your
25 Honor people who made those statements originally.

1 THE COURT: And it is case law, it's usually the
2 other way around, where the court says that the State
3 cannot solicit hearsay testimony through an investigator
4 by asking the exact question through the course of your
5 investigation, what did you find.

6 I can't think of the name of the case, but there's a
7 case where the court has said that the State cannot do
8 that. There is case law that supports you can't ask the
9 investigator during -- because that used to be a practice
10 of the State, during the course of your investigation, did
11 you find. And this is how they got it through hearsay.
12 And the Supreme Court came and said no, you're not going
13 to do that anymore. So same law applies here. You can't
14 ask it. You have to call the witnesses. It's still
15 hearsay.

16 LUKE SHEALEY: Let's go about it this way, Your
17 Honor. I think I'll make this easier. I'll talk to him
18 about his own report. May I do that?

19 THE COURT: As long as it doesn't -- your question
20 does not solicit hearsay, but we'll keep it -- if not,
21 we're going to be here all day with objections.

22 BY LUKE SHEALEY:

23 Q Investigator Gilliam, do you have your report in
24 front of you?

25 A Yes.

1 Q And through various objections, we have learned that
2 Ms. Smalls was not truthful with you for a period of time
3 regarding the gun, correct?

4 A Yes.

5 Q Okay. And I've asked you if that was 45 minutes or
6 so, and you -- I think you said you're not sure, it was a
7 while?

8 A Actually, I don't know exactly how long. She talked
9 to Investigator McCoy.

10 Q She talked to him at her own apartment. Do you
11 recall that?

12 A Yes. And also at headquarters, too.

13 Q At headquarters. And then at headquarters, you
14 actually entered into that interview?

15 A Correct.

16 Q And you recall having to pretty much ramp up your --
17 let's say plea for her to come clean about whether she had
18 the gun or not. Do you recall that?

19 A Yes.

20 Q Because she repeatedly denied it, right?

21 A Yes.

22 Q Right. She informed you that she actually denied
23 trying to take the gun. It was presented to her and she
24 denied that, right?

25 A Something like that.

1 Q Now, these important details, they are not in your
2 report, you would agree?

3 A I don't know.

4 Q Well, read your report.

5 A That is in investigator McCormick's statement,
6 interview.

7 THE COURT: Speak into the mic, please.

8 A That's in Investigator McCoy's interview because he
9 did interview her.

10 Q But you are the lead investigator?

11 A I am.

12 Q There are portions in your report about your
13 encounter with Ms. Smalls and what her general account of
14 the case was?

15 A Yes.

16 Q You would agree -- you don't even need to look at it,
17 you would there's nothing in there about her lying to you
18 initially?

19 A No.

20 Q Okay. Initially, once she decided to be truthful,
21 she advised that she didn't have the gun?

22 MR. SCOTT: Objection to hearsay, Your Honor. I'm
23 sorry.

24 THE COURT: What's the question again?
25

1 BY LUKE SHEALEY:

2 Q Eventually, once she decided to be truthful, in your
3 opinion --

4 MR. SCOTT: "In your opinion" is objectionable, too.
5 He's not an opinion witness.

6 Q She advised you --

7 THE COURT: Let me finish hearing the question. Go
8 ahead.

9 BY LUKE SHEALEY:

10 Q She eventually told you she had the gun. You learned
11 that from your investigation, right?

12 A Yes.

13 THE COURT: Hold on.

14 The first question, he rephrased it. It was
15 sustained and he rephrased the question.

16 Move on, please, yes.

17 BY LUKE SHEALEY:

18 Q And, ultimately, you did a search warrant in this
19 case for her apartment?

20 A That's right.

21 Q And the gun was found under her mattress, correct?

22 A Yes.

23 Q And, eventually, she gave a written statement in this
24 case. You agree with that?

25 A Yes.

1 Q And that was reduced to writing. And the genesis of
2 what she says is kind of like what we already talked
3 about. She was taking out her trash, right?

4 A Yes.

5 Q She was hanging out with Kevin Archie and Richard
6 Charles, right?

7 A Yes.

8 Q They all heard shots and went running over there,
9 correct?

10 A Yes.

11 Q She runs up the stairs, sees this terrible scene,
12 Barnes gives her the gun, right?

13 A Yes.

14 Q She puts that to writing?

15 A Yes.

16 Q Okay. And that was the day of this incident over
17 three years ago. Now, as the lead investigator, you're
18 aware she has now provided to the Solicitor's Office a new
19 account of that day?

20 A Yes.

21 Q Okay. And that a new -- correct me if I'm wrong, but
22 the new account of that day came out last weekend?

23 A I think so, yes.

24 Q And there's a new detail. The part that was in the
25 record at that time was the same, but what's new now --

1 and help me out if I've got this mistaken, is that she
2 says she went over there a little earlier to that
3 apartment?

4 A That's correct.

5 Q Okay. And we know -- again, we know that this
6 incident happened at 8:56 per your report. We know you've
7 already testified that Wanda Griffin and Iesha Washington
8 with Mr. Griffin, who's a victim in this case, shortly
9 before that, right?

10 A Yes.

11 Q Do you recall, I guess, Ms. Washington saying it was
12 about five minutes, correct?

13 A Yes. Something like that.

14 Q Okay. And that she's parked literally right in front
15 of the apartment and she tells you in interviews, I had
16 eyes on the apartment. No one was coming, no one was
17 going, right?

18 A Yes.

19 Q So if we do the math, five minutes prior to 8:56 is
20 8:51?

21 A It was five minutes, yes.

22 Q Okay. But Ms. Smalls in her new account says that
23 she goes over there to buy weed from Antonio Dash?

24 A Yes.

25 Q And that when she is let in that apartment that

1 Mr. Dash is there and Mr. Griffin is there, right?

2 A Yes.

3 Q These are the two decedents in the case?

4 A Yes.

5 Q And she informs the Solicitor's Office that while
6 there, Mr. Barnes peeks out of his bedroom in the back to
7 see who it is, right?

8 A Yes.

9 Q And then closes the door, right?

10 A Yes.

11 Q Thereby, letting us -- I guess imply he's awake,
12 correct?

13 A Yes.

14 Q And that's critical because what he repeatedly tells
15 you in his written statement is that he was asleep, right?

16 A Yes, ma'am.

17 Q He hears this loud commotion and bang, right?

18 A Uh-huh.

19 Q That he is certain that his roommates are not there,
20 right? That's what he tells you?

21 A He said he laid there for a few minutes --

22 THE COURT: I can't understand what you're saying.

23 THE WITNESS: Excuse me, I apologize, Your Honor.

24 He also stated that when he heard the commotion that
25 he laid down a few minutes before he got up.

1 BY LUKE SHEALEY:

2 Q We're talking about general concept. He's certain
3 his roommates weren't there, correct? That's what he
4 tells you?

5 A I can't say that because I can't --

6 Q We can go over it.

7 A Yes.

8 Q He hears a TV crash, he heard that?

9 A He heard, yes, kind of an altercation going on.

10 Q That it was so early in the day he hadn't even gotten
11 up to use the bathroom, right? That didn't make the
12 statement, but you recall that kind of sentiment from him?

13 A Yes.

14 Q He thinks he's being home invaded or robbed, correct?
15 That's his account.

16 A Yes.

17 Q Whether you believe it or not, that's what he told
18 you, right?

19 A I'm just thinking about it.

20 Q He lies in bed for about two minutes?

21 A Yes.

22 Q He listened, listening for roommates, correct?

23 A Yes.

24 Q But he hears like this fighting or tussling going on
25 in the front bedroom?

1 A Yes.

2 Q And he advises you that he comes out, sees figures on
3 the ground and starts shooting, right?

4 A Yes. Yes.

5 Q So Ms. Shekila Smalls' statement is important to your
6 case because it would imply that he's awake while
7 Mr. Griffin and Mr. Dash are still living, right?

8 A Yes.

9 Q Okay. So she would have to be over there by our own
10 math we just did at some point after Mr. Griffin was
11 already dropped off by his family, correct?

12 A Yes.

13 Q So somewhere between 8:51 and 8:56. You agree with
14 that?

15 A Yes.

16 Q For her statement to be true?

17 A Yes.

18 Q And again, this is a woman who has lied to you
19 before. You agree with that?

20 A Yes.

21 Q Okay.

22 Brian, come help me.

23 I want to play you some videos we have from Statewide
24 Surveillance Security Systems. In Statewide Security
25 Surveillance, you pulled some video or had some video

1 requested as part of this case, right?

2 A Yes.

3 Q Statewide Security has cameras all across the city,
4 correct?

5 A Yes.

6 Q But they also have several cameras in this actual
7 apartment complex?

8 A Yes.

9 Q Now, do you recognize that right there as Building
10 17?

11 A Yes.

12 Q That's the building number right there?

13 A Yes.

14 Q And that is where Ms. Smalls lived?

15 A That's correct.

16 Q 17E?

17 A Yes.

18 Q That's where you executed that search warrant and
19 found that gun. I'm going to push play on this and I'm
20 going to ask you if you recognize some figures possibly
21 entering the view. Hold on a second. Bear with me. You
22 see that gentleman right there?

23 A Yes.

24 Q That's one of the maintenance men, Richard Charles.
25 You recognize him from your investigation?

1 A Yes.

2 Q He's got one of those trash picker upper sticks with
3 a bucket. He's one of the guys that said he was with
4 Ms. Smalls that morning?

5 A Yes.

6 Q And you note the time as being 8:44?

7 A Yes.

8 Q On the Statewide Security video surveillance system?

9 A Yes.

10 Q Do you recognize this man right here with
11 Mr. Charles?

12 A Yes.

13 Q That would be Kevin Archie?

14 A Yes.

15 MR. SCOTT: Your Honor, again, instead of Mr. Shealey
16 testifying to who the individual is, ask him do you
17 recognize this man, if so, who is this man.

18 THE COURT: Yeah, just ask him if he knows who it is.

19 LUKE SHEALEY: As far as I'm aware, that's what I
20 did, Your Honor.

21 THE COURT: You asked him did he know him. Then you
22 didn't ask him who it was. You just said who it was. So
23 go ahead and just ask him if he knows who --

24 LUKE SHEALEY: We've already covered that I'm allowed
25 to lead, right?

1 THE COURT: Yes.

2 LUKE SHEALEY: This witness.

3 THE COURT: You can lead, but you can ask him who it
4 is and maybe not suggest. But go ahead.

5 BY LUKE SHEALEY:

6 Q I think we covered it, but do you recognize this man?

7 A Yes.

8 Q Is that Kevin Archie?

9 A Yes.

10 Q Now, you have in your possession and control
11 Statewide Surveillance video evidence as a part of this
12 case, correct?

13 A Yes.

14 Q I'm going to fast forward this case a little bit up.

15 Now, it's a different angle, just using a little zoom
16 feature on my BLC player, but this is the same gentlemen
17 we just talked about, the maintenance men?

18 A Yes.

19 Q Do you see this young woman wearing the gray top and
20 with the white trash can?

21 A Yes.

22 Q Do you recognize her to be Shekila Smalls?

23 A Yes.

24 Q And she advised in the case she was taking out trash
25 that morning prior to the shooting?

1 A Yes.

2 Q And you see her interacting with the maintenance men
3 a little bit? Do you see that, sir?

4 A Yes.

5 Q That's consistent with their accounts of this case,
6 correct?

7 A Yes.

8 Q And we see some movement -- let me back it up. Do
9 you see Ms. Smalls walking?

10 A Yes.

11 Q And you know from this case that there's a dumpster
12 sister over here, correct?

13 A Yes.

14 Q Does it appear as if she's walking the trash to the
15 dumpster?

16 A Yes.

17 Q Do you know the timestamp from Statewide Security for
18 the court?

19 A Yes.

20 Q What is that?

21 A 8045 -- excuse me, 48.

22 Q So 8:48 in the morning. Do you see her walking back
23 with that now empty trash can?

24 A Yes.

25 Q She's wearing the same clothes that you encountered

1 her with when you interviewed her that day, right?

2 A Yes.

3 Q And I think that's one of the questions you asked
4 her, did you change clothes, and she said, no, I didn't
5 change clothes, right?

6 A I can't remember all that. I probably did.

7 Q I want to fast-forward you a little bit here. Do you
8 see the maintenance men kind of doing their job in the
9 corridor of the building there?

10 A Yes.

11 Q All right. Do you see another trash can emerge.
12 Does that look like Ms. Smalls to you?

13 A Yes.

14 Q Does it look like she is, perhaps, still engaged in a
15 conversation with the maintenance man?

16 A Yep.

17 Q And we can note the timestamp at this point is
18 8:50:55. Ms. Smalls is still in the corridor?

19 A Yes.

20 Q Fast-forward you a little bit. You still see her
21 there standing in the corridor?

22 A Yes.

23 Q Now, we see some movement here, don't we? You
24 stopped Ms. Smalls like she's walking upstairs toward the
25 trash can. Is that fair?

1 A Yes.

2 Q That's Mr. Smalls and that's the second load of trash
3 that morning. You note the timestamp of 8:53:16 when Ms.
4 Smalls is conducting that activity?

5 A Yes.

6 Q She's walking back after emptying her trash. Do you
7 agree with that?

8 A Yes.

9 Q There's some folks walking up. It looks like she
10 says hello to them. Looks like she has now reentered the
11 corridor of her building, do you agree that?

12 A Yes.

13 Q And the timestamp we're at is 8:54:01?

14 A Yes.

15 Q And we talked about for our basic map that Mr.
16 Griffin, based on his family members' statement, have
17 already been at the apartment, approximately 8:50, 8:51.
18 We've already testified to that. Do you agree with that?

19 A Pretty much, yeah.

20 Q And we know that you list the incident date as
21 8:56 a.m. per your report?

22 A Yes, I do.

23 Q And we know from 9-1-1 calls that it's about 8:57
24 that calls are coming in. Do you agree that?

25 A Yes.

1 Q I want to take us all the way to about around the
2 time of the incident. So 8:56, you see that timestamp
3 right there, right?

4 A Yes.

5 Q Per your investigation, that's when this shooting has
6 happened, correct?

7 A Yes.

8 Q Just roam around a little bit. We don't see
9 Ms. Smalls here anymore, do we?

10 A No.

11 Q I want you to focus your attention back to
12 Ms. Small's section, okay? Do you see that?

13 A Yes.

14 Q Do you see three figures run by at exactly 8:57?

15 A Yes.

16 Q I want to look at it one more time with you. I'm
17 just going to try and do it frame by frame. Do you see
18 that one figure running?

19 A Sure. Yes.

20 Q Wearing all gray?

21 A Yes.

22 Q Followed by a second figure wearing a black
23 sweatshirt, looks like a male build, carrying a bucket and
24 trash picker upper followed by a third person. Do you see
25 that third person?

1 A Sure.

2 Q Wearing a gray sweatshirt?

3 A Yes.

4 Q You would agree that that is Ms. Smalls and

5 Mr. Archie and Mr. Charles heading for 14G?

6 A Yes.

7 Q Okay. And that's consistent with their statements,
8 at least, at the time, correct?

9 A Yes.

10 Q I'll note timestamp is 8:57?

11 A Uh-huh, yes.

12 Q And we've, basically, looked at some photos of kind
13 of the distance between apartment 17 from an aerial view
14 to 14, right?

15 A Yes.

16 Q So noting that those are the -- that's Ms. Smalls
17 there on camera and know that Mr. Griffin is out there,
18 roughly, 8:51, the shooting happened 8:56, 9-1-1 was
19 called at 8:57. If Ms. Smalls is running at 8:57 to that
20 sound, she's not over there conducting a causal drug
21 purchase, is she?

22 A Not at that time, but I do disagree with you because
23 a lot of times people say five minutes, it's probably ten
24 minutes. Ms. Washington could be off on her time. The
25 second thing is, the backside of the building, if you do

1 it from 8:15 to the time she took the trash out -- to the
2 second time she took the trash out, we can't even tell she
3 didn't go in.

4 Q So that's something you attempted to try to piece
5 together yourself?

6 A Yes.

7 Q After her new statement?

8 A Yes.

9 Q But I mean, you've already -- so, I guess, what
10 you're saying is maybe Ms. Washington --

11 A I asked her how she got to --

12 THE COURT: Microphone, please.

13 THE WITNESS: I'm sorry, Judge.

14 I asked her about how she went like to the corner of
15 the buildings and went towards. We asked her about could
16 she see Ms. Washington in the car. She said yeah, but she
17 walked from her building, right down to that building and
18 walked in the front the steps. She did say that, yes, so,
19 I mean, I can't say.

20 Q Wait, wait, wait. You're saying that Ms. Washington
21 told you something about seeing Ms. Smalls?

22 A No, no, no. We asked her did she see
23 Ms. Washington's car out there. First, she said yes.
24 Then I asked her how did she walk from that building over
25 to the apartments because, you know, for them not to see

1 her at all. She just said she walked straight down the
2 corner of the building and came over to the -- walked
3 right upstairs and went upstairs and got what she got and
4 came back down.

5 Q Okay. But you agree with Ms. Washington from the
6 get, she knows how long she was there when Mr. Griffin got
7 dropped off, right?

8 A Yes.

9 Q She said repeatedly for your investigation about five
10 minutes, right?

11 A Yes.

12 Q Which again, we've done the math. That would put her
13 there about 8:50, 8:51, correct?

14 A Yes.

15 Q She concurs at 8:56, correct?

16 A Correct.

17 Q And we've got Mr. Smalls dumping her trash and
18 hanging out with Mr. Archie and Mr. Charles at that time
19 per surveillance video, right?

20 A That's correct.

21 Q And you testified that we can then see the figures
22 running over. So the point I'm making to you, if she's
23 over there and Mr. Griffin is there for five minutes, she
24 can't also be in apartment 14, right?

25 A That's correct.

1 Q She only had that small window while he was there to
2 actually see Mr. Griffin if that is the case, right?

3 A Yes.

4 Q So when you tell me some things that you mentioned
5 were being fleshed out by Ms. Smalls, who changed her
6 statement -- you agree with that, she changed her
7 statement?

8 A She had to, yes.

9 Q You actually interviewed her?

10 A When she -- I talked to her for a minute.

11 Q I mean, recently, like last weekend?

12 A I was there when she told me about that, yes.

13 Q Okay. So not just Mr. Scott or Ace with the
14 Solicitor's Office?

15 A They did an interview on her somewhere else. I was
16 advised of that. When I got note of that, that's when --
17 we was at the Solicitor's Office, I think, Monday when she
18 talked to me about it.

19 Q Okay. So you were there talking to her. Did you
20 take any notes?

21 A Not then.

22 Q You didn't take any notes?

23 A Not then because Ace got notes. I just kind of put
24 me and myself what she was saying.

25 Q Okay. Didn't take her back to any recorded

1 interview?

2 A No.

3 Q Okay. All right. I'm going to talk about
4 Ms. Small's change of statement. I'm going to talk to you
5 a little bit going through some stuff we've already gone
6 through about Mr. Barnes' statement and kind of the
7 unfolding of this case as you know it from being the lead
8 investigator. Again, maybe this seems obvious, but things
9 that are at your disposal are obviously your officers and
10 investigators, correct?

11 A Yes.

12 Q Their reports of the witnesses they're interviewing,
13 correct?

14 A Yes.

15 Q The witnesses' own statement, correct?

16 A Yes.

17 Q Body cams?

18 A Yes.

19 Q And we've just seen surveillance videos pretty
20 helpful to your case?

21 A Yes.

22 Q Now, I don't want to publish this and run afoul with
23 an objection, but --

24 MR. SCOTT: Well, it is objectionable because it's a
25 statement by somebody who's not in court to testify.

1 LUKE SHEALEY: So I just took it down so Your Honor
2 isn't crushed by this information that might distort her
3 view of the case.

4 THE COURT: I can't read it from here anyway.

5 BY LUKE SHEALEY:

6 Q Again, we've gone over this a little bit, but you did
7 interview Jaquana Jones, right? And you seem to not have
8 a great recollection of exactly what she said. She's the
9 apartment manager?

10 A Yeah, I thought -- if I'm correct, I think
11 Investigator Grant talked to her. I talked to her a
12 little bit.

13 Q But as the lead investigator, you're aware of her
14 position as a witness in this case?

15 A Yes.

16 Q We talked about how she was one of the ones that ran
17 up there and --

18 A Yes.

19 Q And Mr. Barnes made kind of excited statement to her,
20 right?

21 A Yes.

22 Q And asked him as he's leaving the apartment. So you
23 would agree that he, basically -- she describes seeing a
24 guy in bedroom slippers, right?

25 A Yes.

1 Q Because she's trying to figure out who the
2 leaseholder is?

3 A Yes.

4 Q And, essentially, what she tells investigators --

5 MR. SCOTT: Objection, Your Honor. Mr. Shealey is
6 testifying again for an out-of-court witness.

7 LUKE SHEALEY: What?

8 MR. SCOTT: I don't know the hearsay exception.

9 THE COURT: I didn't get to hear the whole question.

10 LUKE SHEALEY: Well --

11 THE COURT: Don't answer, Investigator.

12 LUKE SHEALEY: She is reporting an excited utterance
13 of Mr. Barnes to law enforcement as he's leaving the
14 scene, literally walking out his front door. She's right
15 there at it. So I'm trying to get the information out
16 from his investigation about what Mr. Barnes indicated
17 under the stress or excitement of that day.

18 THE COURT: She would need to testify as to the
19 excited utterance, not -- under the rules, he wasn't there
20 to witness the excited utterance. So that's the problem
21 with trying to get it in as an excited utterance. She can
22 testify. Let me ask you, are you going to call these
23 witnesses? Are they not available?

24 MR. SCOTT: Mr. Barnes is right here.

25 THE COURT: Well, I'm not talking Mr. Barnes. I'm

1 talking about -- is it Ms. Jones, Ms. Jones we're
2 referring to?

3 LUKE SHEALEY: I haven't decided yet. Your Honor,
4 just respectfully, as a lead investigator, he's aware of
5 the position of general witnesses, so I'm trying to ask
6 him generally. I don't have to get specific quotes.
7 Generally, there's about seven witnesses that hear the
8 same thing from Mr. Barnes. The same general fundamental
9 position. I don't have to get in direct quotes, but I'm
10 trying to make sure that he's aware of that. I'm sure he
11 is. I just want to know what he knows as the lead
12 investigator in the case.

13 THE COURT: All right. But you can't get into
14 hearsay. I understand if it was an excited utterance, it
15 would need to come through Ms. Jones as to what Mr. Barnes
16 said because that's like hearsay on hearsay, so the
17 objection is sustained.

18 You can rephrase the question and ask him what he
19 found during the course of his investigation or something
20 of that sort regarding his findings as a result of him
21 being the investigative officer.

22 LUKE SHEALEY: Okay.

23 BY LUKE SHEALEY:

24 Q Let me backtrack a little bit. After this shooting,
25 we've already established there's several people at his

1 door, correct?

2 A Yes.

3 Q Ms. Jones is one of them, the apartment manager?

4 A Yes.

5 Q Hamilton Jacobs is there, correct?

6 A Yes.

7 Q Devonte Davis is there, correct?

8 A Yes.

9 Q Iesha Washington is there, correct?

10 A Yes.

11 Q And Ms. Griffin is there?

12 A Yes.

13 Q And they are all noting to police various statements
14 and observations from Mr. Barnes, such as he's holding the
15 gun, correct?

16 A Yes.

17 Q There's blood everywhere, correct?

18 A Yes.

19 Q And it's important for law enforcement to know what
20 they're observing. You agree with that?

21 A Yes.

22 Q And it's documented as part of this investigation
23 through these witnesses that Barnes' general account is
24 how did they get there, right?

25 A Somewhat.

1 Q I was asleep, right?

2 A Yes.

3 Q That's consistent amongst all these kind of witnesses
4 that are encountering him literally, like, moments after
5 this event, right?

6 A Yes.

7 Q So you know that as your investigation -- one of the
8 things you're trying to figure out is whether he's lying
9 or telling the truth or something in between, right?

10 A Yes.

11 Q You're trying to figure that out. And you can agree
12 -- it's not always the case, but you can agree when people
13 are consistent in their accounts, that indicates to you
14 that they're not lying, right?

15 A Not necessarily.

16 Q Not necessarily, but that's a general indicator of
17 being truthful, being consistent. You don't agree with
18 that general premise?

19 A You can tell a lie and keep telling it over and over
20 and over, you make it the truth.

21 Q Okay. So you disagree with the general premise that
22 if a witness is consistent that they're likely truthful?

23 A No. I'll take that back, no. Usually, they are.

24 Q Okay. And if someone is inconsistent, that is often,
25 not always, but often an indication that they might be

1 lying?

2 A Good chance.

3 Q Okay. Like Ms. Smalls, for example, correct?

4 A Yep.

5 Q So what I'm trying to get at is that Mr. Barnes walks

6 out of his own apartment after this event and is

7 encountering folks. You're learning that he's saying

8 things like why are they here? I was asleep. Right?

9 A Yes.

10 Q Okay. Thank you.

11 I need help finding it.

12 Have you reviewed everybody who came into contact

13 with this case?

14 A I tried to.

15 Q Okay. So we referenced this a little bit. Tell me

16 if you looked at this portion. So the timestamp on that

17 is what? Can you see that?

18 A 9:07.

19 Q 9:07. This event happened at 8:56?

20 A I believe so, yes.

21 Q And that's Mr. Barnes on scene approaching law

22 enforcement, correct?

23 A Yes.

24 Q This is Mr. Castro that we discussed earlier?

25 A Yes.

1 Q That's the body cam he's wearing right there?

2 A Yes.

3 Q And he's with his partner who is training him?

4 A That's right.

5 Q And he's being instructed, I guess, to take
6 biographical information, right?

7 A That's correct.

8 Q And Barnes said I live there, right?

9 A Yeah, he said that part.

10 Q So you recall that. And that's, again, sometimes
11 when people flee -- let's say you had cases where they go
12 to Alabama, or they go to Georgia, they're caught a year
13 later in the woods, that makes you feel like they might be
14 guilty of something, right?

15 A Yes.

16 Q But sometimes when witnesses stay on scene, that
17 obviously helps officers, correct?

18 A Yes.

19 Q That could be consistent with innocence? Not always,
20 not always?

21 A No.

22 Q Well, at least, consistent with cooperation, we can
23 agree on that?

24 A Somewhat.

25 Q Okay. And Mr. Barnes, once you interviewed him,

1 tells you that I stopped and told them it was me?

2 MR. SCOTT: Your Honor, where is the hearsay
3 exception? Not only to the testimony, but also the
4 extrinsic evidence that he is publishing?

5 LUKE SHEALEY: Okay. Back out of that. Let me
6 rephrase.

7 MR. SCOTT: This just keeps happening, Your Honor.
8 And Rule 1101 does apply all the rules of evidence to
9 anything but prelims. So for him to say he's not bound by
10 rules of court is incorrect.

11 LUKE SHEALEY: Your Honor, that -- number one, that's
12 not an accurate statement of law. But now, I flipped
13 ahead, now I'm playing by the rules a little bit, as Your
14 Honor wants me to do. That was inadvertent. Let me ask
15 him the question first. He might just remember it.

16 THE COURT: Let's not show the statements.

17 LUKE SHEALEY: Okay.

18 THE COURT: Let's not -- ask the question and let's
19 not show the statements.

20 LUKE SHEALEY: Okay.

21 BY LUKE SHEALEY:

22 Q One of the things that you recall from interviewing
23 Mr. Barnes is that he advises you he talked to officers
24 immediately once they got on the scene, right?

25 A Yeah.

1 Q And he says, one was, I think, a white guy and one
2 was, as he called, a Mexican, right?

3 A Yes.

4 Q So the evidence, independent of what he says, tends
5 to bear that out. I don't know the nationality or
6 ethnicity of Mr. Castro, but he is a man of Hispanic
7 origin, it would appear, correct?

8 A Yes.

9 Q So that would be an example of Mr. Barnes being
10 truthful, do you agree.

11 A To a point.

12 Q Well, is there a lie in that statement?

13 A He did not say I'm the one involved in the case that
14 I lived at. He didn't say anything about I shot anybody
15 or anything.

16 Q So let me show you this since you brought that up.

17 MR. SCOTT: Objection.

18 LUKE SHEALEY: Your Honor, I'm impeaching him with a
19 transcript.

20 THE COURT: Hold on one second. Do you have a copy
21 to show him and ask him to look at it as opposed to
22 publishing it.

23 LUKE SHEALEY: I do.

24 THE COURT: Let me see what you have.

25 LUKE SHEALEY: I do.

1 THE COURT: Whatever you put on -- oh, you don't have
2 it.

3 MR. SCOTT: But, Your Honor, he is trying to impeach
4 on an interview of Mr. Gilliam while he's asking questions
5 of what the defendant said to Mr. Castro. So these are
6 two separate incidents. You can't impeach him on a
7 subsequent interview what he said on the scene.

8 LUKE SHEALEY: I certainly can, because what we're
9 talking about is Mr. Barnes and whether he's being
10 truthful. Mr. Gilliam has pointed out that he didn't
11 spill his guts about being the shooter, that all he
12 advised was that I lived there.

13 THE WITNESS: Right.

14 LUKE SHEALEY: And what I'm pointing is you're
15 correct. He's telling you when he first walked up that he
16 only informs them that I live there. That's all it is.

17 THE COURT: What's the objection?

18 MR. SCOTT: So what he's trying to impeach him with
19 is a statement he gave later. The question to him is what
20 did he tell Castro at the scene. We just heard what he
21 told him on the scene. Arguably, that was inadmissible,
22 but it came in anyway. Now, he's attempting to impeach
23 him with a statement he gave hours later.

24 THE COURT: All right. So if the question is
25 regarding what happened on the scene, you can't impeach

1 him with another statement if he says something different
2 later.

3 You can impeach him if he says something different
4 from on the scene. Impeachment is: Isn't it true that he
5 just said this on this video, not something that he said
6 later on. That's if you want to try to show an
7 inconsistent statement, but if you're trying to impeach
8 him, you've got to show what you're trying to impeach him
9 with.

10 If there's some discrepancy about what was said on
11 the video and what he said, then you show him the video
12 and say look at this video, isn't that what he just said.
13 And then he can answer.

14 LUKE SHEALEY: Your Honor, what I'm trying to
15 establish is that my client was consistent. Mr. Gilliam
16 has made the point in the middle of my question that he
17 says well, your client didn't say I'm the shooter, he only
18 said I lived there. And I'm agreeing with him. Correct,
19 he is showing consistency in his accounts.

20 He noted the guy was, as he said, Mexican. He's
21 telling them I live there when they're taking biographical
22 information. We're saying the same thing but we're
23 getting bogged down with all these objections. You can
24 sift through this and determine what's probative or not
25 for this pretrial hearing.

1 THE COURT: We still have to follow the rules. If
2 you're to impeach him, just go back to the video and
3 impeach him on the video if he has something inconsistent
4 in his document to the video.

5 MR. SCOTT: And, Your Honor, I'm sorry, I'm not
6 trying to be difficult. I promise you that, but I still
7 need to know what the hearsay exception is for the
8 defendant's statement coming in. It's certainly not his
9 party opponent. It is his party.

10 It would be my hearsay exception that he's my party
11 opponent if I was admitting his statement. This is a
12 backdoor effort, I guess, to keep him from testifying. If
13 this was me, I could get my whole case out through my lead
14 investigator. I don't have a hearsay exception to do
15 that, neither does he.

16 LUKE SHEALEY: Your Honor --

17 MR. SCOTT: What is his exception to get that
18 statement out?

19 LUKE SHEALEY: Your Honor, his statements, in
20 general, which have been reduced to writing, which are
21 video recorded, you've already acknowledged come in as
22 non-hearsay as a statement against interest because they
23 have a sufficient indicia of reliability because they're
24 coming from law enforcement. So that's a separate
25 objection.

1 I can move along from this particular question, but
2 his statement is in evidence. If Your Honor would like me
3 to move along from that very minor point of consistency, I
4 will.

5 THE COURT: I think I ruled under 803 --

6 LUKE SHEALEY: It was 804 --

7 THE COURT: 804, the declarant, which would be his
8 client.

9 MR. SCOTT: Yes, Your Honor.

10 THE COURT: And a statement against his -- the
11 declarant's interest. He's not the declarant.

12 LUKE SHEALEY: Right.

13 THE COURT: He's the investigator. And I think we
14 said 804(3).

15 LUKE SHEALEY: Correct.

16 MR. SCOTT: He is claiming immunity, so these
17 statements he is saying, I was asleep. Eventually, it's
18 going to be I guess a mistake of fact. So this is his
19 hearing. This is his party.

20 These statements need to come from him. He is -- I
21 don't know of any exception that this falls under. Again,
22 I think I can get my entire case up through my lead
23 investigator if I was to apply Mr. Shealey's rules.

24 LUKE SHEALEY: Your Honor has already ruled on this
25 particular issue. There is a rule about continuing to

1 object to things that are already ruled upon. I think
2 it's -- let's see. Once I find that rule, I'm going to
3 ask that it be enforced.

4 But you've already ruled, Your Honor, when someone
5 admits that's my apartment. I shot those guys. That's a
6 statement against interest. And it is at the bottom of
7 the rule, even if it's -- I mean, even if it tends to --
8 let's say parts of it exculpate the client that as long as
9 there's sufficient corroborating circumstances to indicate
10 its trustworthiness, then it can come in. Meaning, I
11 didn't make it up or there wasn't some jail letter written
12 that might be my client. This is police-issued body
13 camera.

14 So I'd like to move along since Your Honor has
15 already ruled.

16 THE COURT: Well, under (b) it says: The following
17 are not excluded by hearsay rule if the declarant is
18 unavailable as a witness. And so we're looking at
19 804(b) (3).

20 MR. SCOTT: And I think that's why I keep objecting
21 because he's clearly here and he can clearly testify to
22 his own statements.

23 THE COURT: I guess the question is that if he's
24 unavailable because he clearly is here, but the question
25 is, is he invoking his 5th Amendment right.

1 MR. SCOTT: I've got a case, Your Honor, it's State
2 v. Terry, the citation is 339 S.C. 532, that, basically,
3 says invoking your rights to the 5th amendment does not
4 label you as unavailable pursuant to the rules.

5 LUKE SHEALEY: And Terry also cites State v. Doctor,
6 where offering evidence of statements that were made by
7 that party opponent can be admitted if there's sufficient
8 evidence of reliability, which is the very last sentence
9 of that rule. That's why you already let this evidence
10 in.

11 There's nothing more reliable than - number one, the
12 interview is a sworn post-Miranda recorded statement that
13 Investigator Gilliam wrote himself. There is nothing more
14 reliable of their capturing what my client said that's
15 consistent with his account on a city-issued body camera.

16 The rule in saying when someone is unavailable and
17 then putting up all other kinds of evidence that may be
18 self-serving, let's say hearsay, is designed to not allow
19 things that are loose in their evidentiary providence,
20 let's just say. There's nothing wrong with where this
21 evidence is coming from, Your Honor. And you've already
22 ruled on it.

23 MR. SCOTT: He is certainly available, Your Honor.

24 LUKE SHEALEY: Here's the more fundamental point on
25 hearsay, Your Honor.

1 THE COURT: All right. There is the issue. I'm
2 looking at the Terry case. I have had a chance to glance
3 over it. If we're going to use 804, the witness needs to
4 be unavailable. All right. I think the rule is, looking
5 at that case, that under the Terry case that he can't
6 invoke his -- which he has not, but if he did, it can't be
7 used in invoking his 5th amendment privilege against
8 self-incrimination as a reason to be declared unavailable.

9 So 804(3), tell me how 80 -- so he's not unavailable.
10 So 804(3) wouldn't apply -- 804(b)(3) would not apply. So
11 tell me how it's not hearsay under 803 in which its
12 exception applies. Obviously, eight does not because it
13 clearly says the investigative notes involving opinions,
14 judgments or conclusions are not admissible.

15 I'm assuming what you all are going to try -- what
16 you -- well, let me say, what I think the State is saying
17 that you're going to try put all these statements in
18 through Investigator Gilliam, not just this statement, but
19 all of them. You said he gave a couple more statements.

20 LUKE SHEALEY: Well, he gave a lot -- what I was
21 trying to elicit is a pattern of my client's consistency.
22 Telling officers I'm on the scene, telling them that he's
23 involved in the shooting. Because Investigator Gilliam
24 has tried to point out that he's not being entirely
25 truthful. He didn't spill the beans entirely to that

1 Officer Castro. Although, he's going to be turning
2 himself into the police and talking more in his next
3 interview.

4 But to your point, Gary Terry is not a bright line
5 rule, that was the result of that particular case. But
6 that case also cites State v. Doctor, which also was an
7 example of where the rule was allowed to be used in this
8 very way in which I'm seeking to use it.

9 Because, generally, yes, if you make yourself
10 unavailable and the hearsay exception doesn't apply unless
11 you're unavailable is against interest. That's the first
12 question. Yes, admitting to killing two people is a
13 statement against interest. We can all agree to that.

14 But number two, if it's being offered by -- if it's
15 offered by the declarant, which is Mr. -- us offering it
16 on behalf of Mr. Barnes to -- you know, and it exposes him
17 to criminal liability, which it does, because he admitted
18 to killing two people, and offers to exculpate him is used
19 -- is not admissible unless corroborating evidence clearly
20 indicating the trustworthiness of the statement exists.

21 So it's a statement against interest. I am bringing
22 it forward in an immunity hearings, ostensibly, yes, to
23 exculpate him because I don't think police got this right
24 when they charged him. The question is, can it be done
25 only if it as an indicia of trustworthiness? This is not

1 some letter that he wrote from jail to his mama saying
2 look, look, look. This is police interviews, body cam on
3 the scene the day of the incident.

4 So per the Doctor case, which is an example of how
5 this was used, and that's cited right here by Terry, where
6 I think three juveniles who were codefendants took the
7 blame for some type of property crime, gave a statement to
8 their lawyer's investigator, then rather than -- he
9 couldn't call those juveniles because they invoked the
10 Fifth, but the investigator was allowed to testify that
11 they claimed responsibility. That was perfectly good in
12 the Doctor case. So really --

13 THE COURT: Yeah, but the Doctor case is also saying
14 an out-of-court statement is against penal interest by
15 unavailable declarant. That's where -- and I'll be glad
16 to hear from Mr. Scott, but that's what I'm trying to
17 figure out, is he's not -- in Terry -- and Terry cites
18 several cases, including Court of Appeals cases, some U.S.
19 Court of Appeals cases that states that he is not
20 available by -- him being able to invoke the Fifth, which
21 he has not done, making him unavailable -- does not make
22 him unavailable. I mean, it cites several cases in Terry.

23 But Mr. Scott, I'll give you the opportunity to
24 respond.

25 MR. SCOTT: Your Honor, that was just -- I just think

1 he fails the first requirement of 804(b) as he's clearly
2 available. So I think -- I was just going to stand up and
3 say that before Your Honor noted it.

4 LUKE SHEALEY: Here's the other thing that trumps
5 this particular evidentiary rule, Your Honor. It's my
6 right under the 6th amendment to confront this witness and
7 present a complete and full defense.

8 And this really is the heart of the matter as I try
9 to question Investigator Gilliam what he's learning from
10 my client and how it shapes his investigation and whether
11 he should or should not believe my client when he tells
12 him a certain version of events.

13 If I'm hamstrung over this state evidentiary rule in
14 this pretrial hearing and not allowed to do that and I am
15 specifically not allowed to present a full and complete
16 defense, as I should be able to question Mr. Gilliam on
17 his decision-making as he investigates this case, as he's
18 receiving statements from my client, as he's receiving
19 statements from other witnesses.

20 So that is really the constitutional problem that we
21 run into if we have a strict adherence to this particular
22 State rule at a pretrial hearing without a jury.

23 MR. SCOTT: Your Honor, I think we're covered by Rule
24 1101. I have no problem, you won't hear me object if he
25 says, did you talk to witness A. As a result of talking

1 with witness A, what did you do? Where did your
2 investigation lead? Not what did they say. And then the
3 double hearsay is clearly objectionable, but it just keeps
4 coming up.

5 I hate to keep bringing it up, but it just continues.
6 I won't object if it ask him where did your investigation
7 lead you after that, but hearsay is the problem.

8 THE COURT: All right. So you can ask him about his
9 investigation. And I think the way you did it earlier,
10 did she give you untruthful response? You can ask him
11 about the course of his investigation as the investigator,
12 but he can't say -- like one of the last questions I think
13 the objection came to, it was double hearsay because you
14 wanted to get an exited utterance in that the defendant
15 said to Ms. Jones and then Ms. Jones said to the
16 investigator, which would all be double hearsay.

17 So I think the objection is, if I'm clear, Mr. Scott,
18 your objection is to the investigative statements coming
19 into the record?

20 MR. SCOTT: Correct, Your Honor. I don't know of any
21 hearsay exception where we could ask Mr. Gilliam okay,
22 what did Jaquana Jones say next or what did Ms. Smalls
23 tell you, what did Mr. Barnes say after that.

24 I don't know of any hearsay exception. And just
25 general out-of-court statements offered for the truth of

1 the matter asserted by a declarant other than Mr. Gilliam,
2 unless there's an exception, I'm compelled to keep
3 objecting. I hate do it. But it just occurs to me proper
4 declarants are in the room right now, several of them. So
5 we could hear from them instead of asking Mr. Gilliam what
6 they said.

7 THE COURT: Yes, sir.

8 LUKE SHEALEY: I'm assuming that Your Honor is
9 contemplating allowing me to question the lead
10 investigator on this case regarding the decision-making he
11 made based on pieces of evidence.

12 MR. SCOTT: I have no problem that.

13 THE COURT: Yeah, you that. Yeah, that's fine. I
14 think that's what we've been doing thus far, but we can't
15 get into the actual statements. So you can ask him, did
16 you speak this person and what did you do. And I even let
17 you get into his findings, but saying word for word what
18 the person say gets you into the hearsay. And unless we
19 have an exception.

20 Now, if he spoke to someone on the scene and they
21 were yelling and screaming and you were able to -- then
22 you can get it in that way under excited utterance or
23 present sense impression or under 803(1) and (2), but it
24 would have to -- you, of course, would have to lay the
25 foundation since these witnesses are available.

1 LUKE SHEALEY: Okay. I will do my best, Your Honor.

2 THE COURT: All right.

3 BY LUKE SHEALEY:

4 Q All right. Let's backtrack a little bit,
5 Investigator Gilliam. I think we can agree that
6 Mr. Barnes at 9:06, at least, gave --

7 THE COURT: Hold on one second. He can -- and also,
8 you can ask him about consistency. I'm going to allow for
9 this hearing, even though, obviously, there's case law out
10 there that says it. You can ask him, was his statement
11 consistent. You can ask him those questions. I just want
12 to make sure you are clear on that. Did you find that to
13 be untruthful? Was it not untruthful? For purposes of
14 this pretrial here. Okay.

15 LUKE SHEALEY: All right. I'll do my best, Your
16 Honor.

17 THE COURT: All right.

18 BY LUKE SHEALEY:

19 Q We've just gone over how my client approached law
20 enforcement at 9:06 and gave them biographical
21 information, correct?

22 A Yes.

23 Q Such as, he was the leaseholder of that apartment?

24 A That's correct.

25 Q I've already gone over this, but per investigators on

1 this case, you're aware that by ten o'clock, he had
2 approached Investigator Morris and Cantrell to tell them
3 that not only was it my apartment, I'm involved in a
4 shooting?

5 A Yes.

6 Q Okay. And that you began talking to them as they
7 walked him to -- I think the manager's office to have a
8 more private conversation?

9 A Yes. I think it was just getting to, at the time,
10 Investigator McEntire.

11 Q And you know from reviewing the files and documents
12 --

13 THE COURT: You can pull it closer if you want to sit
14 back. I just need you to speak. We've got all this glass
15 in here and it's hard for me to hear.

16 THE WITNESS: I apologize again.

17 BY LUKE SHEALEY:

18 Q And being the lead investigator and having these
19 reports at your disposal and having reviewed them prior to
20 this hearing, you're aware as he's walking with
21 Investigator Morris and Cantrell that he's beginning to
22 advise them about what occurred. He's not even waiting
23 until he gets to the office?

24 A Yes.

25 Q Again, consistent with, I was asleep, right?

1 A Yes.

2 Q How did they get here, right?

3 A Yes.

4 Q And advises of a robbery incident that occurred maybe
5 a week prior?

6 A I think that robbery was two months prior.

7 Q You were advised of a robbery incident?

8 A Yeah, in December.

9 Q If memory serves, you recall this being between --
10 Antonio Dash and Samuel Thomas got robbed at the store
11 across the street?

12 A That's correct.

13 Q But he's referencing that as relating to his mental
14 state to these officers at the time of the incident,
15 right?

16 A Yes.

17 Q And then he's brought into this office and just sat
18 down. He's not advised of his Miranda rights at this
19 point, correct? Are you aware of that?

20 A No.

21 Q Have you reviewed Officer Cantrell's body cam on
22 that?

23 A I didn't know they did advice of rights at that time.
24 I did know he came to the office, yes.

25 Q You're unsure whether one was given at that point or

1 not?

2 A That's correct.

3 Q But he does speak about what occurred on the body
4 worn camera of Officer Cantrell?

5 A Yes.

6 Q Have you reviewed that?

7 A Most of it, yes, sir.

8 Q And it's at this point when he -- you know,
9 investigators learned that Shekila Smalls possessed the
10 gun, right?

11 A Yes.

12 Q It's at this point investigators learn that he was
13 sleeping?

14 A Yes.

15 Q Okay. That he believed he was being robbed, correct?

16 A Yes.

17 Q And he is visibly upset and deeply emotional is your
18 observation at this point discussing this event?

19 A Yes, but also prior to him getting with law
20 enforcement on another body camera -- and I'm trying to
21 think of who it is, when Mr. Barnes spoke to Mr. Samuel
22 through Mr. Samuel's sister's cell phone while he was
23 standing out back --

24 Q Well, I apologize. That's not my question. My
25 question is as he's being captured by the body worn camera

1 of Officer Cantrell, which you have testified you
2 reviewed?

3 A Reviewed quite a few of them.

4 Q Right. You probably reviewed all of them, right?

5 A Yes.

6 Q In your observation, you can agree that he is deeply
7 emotional and personally upset about having killed his
8 roommate and his friend?

9 A It appears to be.

10 Q Okay. Crying?

11 A Appears to be.

12 Q Now, after that, it's fair to say that law
13 enforcement knows that he's the shooter and he's already
14 talking. Probably the investigative decision by you is
15 let's get him to the City of Columbia to get a formal
16 statement, correct?

17 A That's correct.

18 Q And you sit him down in an interview room and began
19 that process, right?

20 A Yes.

21 Q You gave him his Miranda rights, which you've already
22 gone over. Now, this is all recorded?

23 A Yes.

24 Q Audio and video?

25 A Yes.

1 Q You agree that you did not advise him that he's being
2 recorded, right?

3 A No.

4 Q Now, I've watched this video a lot, but it seems like
5 there's a formal interview for about an hour while he
6 talks to you about what's happening and then that is
7 reduced to writing by you; is that fair?

8 A Yes.

9 Q And during the formal interview, there are some
10 things that he says which are not captured in his
11 statement. I'm going to talk to you about those. You do
12 agree that everything he says is not in the statement?

13 A Definitely not.

14 Q Okay.

15 A That's the reason why we've got the cameras.

16 Q Right. Let's see.

17 A I'm also correct that he looked over the statement,
18 too, and said everything was there.

19 Q Do you have the statement up there?

20 A No.

21 Q Somewhere in evidence floating around, but some of
22 the things -- I mean, obviously, the statement is
23 relatively -- it's two pages, right?

24 A Yes.

25 Q Again, we've gone over it. You're advised that he

1 was asleep, correct?

2 A Yes.

3 Q In his bedroom, correct?

4 A Yes.

5 Q Hears loud bangs, correct?

6 A Yes.

7 Q A commotion?

8 A Yes.

9 Q TV crash?

10 A Yes.

11 Q Waits in his bed for two minutes, and then comes out
12 and begins shooting at the ground, right?

13 A Yes. Shooting at the individual, yes.

14 Q He tells you repeatedly and emphatically during the
15 course of this hour or so interview --

16 MR. SCOTT: Objection as to what the defendant tells
17 him unless there's a hearsay exception.

18 LUKE SHEALEY: I'll rephrase.

19 THE COURT: Hold on. Yeah, rephrase.

20 BY LUKE SHEALEY:

21 Q You learned that he does not believe his roommates
22 are there, correct?

23 A Yes.

24 Q We haven't talked much about Samuel Thomas, but we
25 will. Samuel Thomas is the other leaseholder we already

1 went over?

2 A Yes.

3 Q He, per your investigation, normally gives Antonio
4 Dash a ride to work, right?

5 A Yes.

6 Q And Mr. Dash at the time worked at Wendy's, right?

7 A Yes.

8 Q But for reasons unknown, you were advised by
9 Mr. Thomas that Mr. Dash did not need a ride to work this
10 morning?

11 A That's correct.

12 Q We don't know why, but he was there when normally
13 Mr. Thomas would be taking him to work, right?

14 A Yes.

15 Q So Mr. Thomas, per your investigation, goes ahead and
16 goes to a doctor's appointment at the clinic, right?

17 A Yes.

18 Q He was not present during this at all?

19 A Not to my knowledge, no.

20 Q But he comes back to the scene shortly after and is
21 talking to investigators, crime scene tape is up. They're
22 trying to figure out what his role is in this, right?

23 A Yes.

24 Q And so you learned from talking to my client,
25 Mr. Barnes, that he truly believes Mr. Dash is not there,

1 correct?

2 A Yes.

3 Q Because Mr. Thomas' habit is to take him to work
4 every day at that time, correct?

5 A Yes.

6 Q And so one of the things that didn't make your
7 statement, but is important to this case is the fact that
8 he is repeatedly listening out for his roommates, right?
9 He doesn't hear their voices prior to taking action. You
10 agree?

11 A Yes.

12 Q And one of the things that didn't make your statement
13 is that he emphatically believes that he is being home
14 invaded, right?

15 A Yes.

16 Q Okay. Because he doesn't hear roommates and it is --

17 A He hears a commotion.

18 Q He hears a commotion. He calls it the hood. I guess
19 in the world of low crime, high crime, this is
20 somewhere -- you get calls out there every once in a
21 while, right?

22 A Yes.

23 Q And that you learned from him that he believe that if
24 he's lying in his bed, he will get killed, correct?

25 Someone is going to come smoke him?

1 A I won't put words in his mouth, but I can't say that.

2 MR. SCOTT: That's generally the objection. He's
3 asking him to put words in his mouth.

4 THE COURT: Sustained.

5 LUKE SHEALEY: Well, if he doesn't remember it, I can
6 refresh his recollection with playing the video for him.

7 THE WITNESS: Please do.

8 THE COURT: The video -- his video?

9 LUKE SHEALEY: His video produced in discovery of the
10 audio-video recorded interview of my client's interview.
11 If he doesn't remember something, I can certainly refresh
12 his recollection.

13 THE COURT: All right. Just that portion of the
14 video to refresh his recollection.

15 BY LUKE SHEALEY:

16 Q Before I get to that --

17 Brian, pull this up.

18 You and I had a conversation at the prelim regarding
19 phones in this case, do you recall that?

20 A Yes, two phones.

21 Q That Mr. Dash and Mr. Griffin's phones were found on
22 them and were reviewed as part of this case?

23 A That's correct.

24 Q But you indicated to me that you were unaware of
25 Mr. Barnes' phone, correct?

1 A No, I know he had a phone. I was allowing him to use
2 it inside the interview room.

3 Q Well, do you agree at the time of preliminary hearing
4 you stated that you were -- you could not locate his
5 phone?

6 A That's six months later. I think his phone -- if I'm
7 correct, I think his phone was picked up by his family.

8 Q Do you agree that at the preliminary hearing, you
9 advised me that you had not recovered Mr. Barnes' phone as
10 part of this case?

11 A You're correct. I have not recovered his phone at
12 that time, no, I have not. If I'm correct, I -- if I'm
13 correct, I thought it was, Judge, the jail said his
14 personal property was picked up by his family.

15 Q That is his phone right there sitting on his lap?

16 A Yes.

17 Q You agree that's his phone sitting right there on his
18 lap?

19 A I already answered that question once.

20 Q But at the time of preliminary hearing, you said you
21 had not recovered it?

22 A No, I did not.

23 Q But it was in your possession?

24 A Not in my possession, his possession.

25 Q But he's in custody, you agree with that?

1 A Sir, I did not take his phone. Simple as that.

2 Q You agree he's in custody?

3 A Yeah, he's in custody.

4 Q From this point on, he would get booked and then
5 travel to the jail.

6 A Yeah .

7 MR. SCOTT: I think he's answered the question, Your
8 Honor. It's been asked and answered three times now.

9 THE COURT: All right. Let's move on. I see the
10 phone.

11 BY LUKE SHEALEY:

12 Q And his phone ended up in property at the jail?

13 A Yes.

14 Q Would that be a source of evidentiary value to you?

15 A Yes, it should.

16 Q Just like --

17 A Go ahead.

18 Q Well, I'm just saying just like Mr. Dash's phones
19 were sources of evidentiary value, that would be, as well,
20 right?

21 A It would be, sir. I did tell the guys taking him to
22 jail to get his phone because I forgot to get it while he
23 was there. It's my fault. Again, I got down to the jail,
24 I'm working everything else and trying to figure out a lot
25 of things, go back on certain things. It slipped my mind.

1 And then when I tried to go get it, I assumed -- I mean, I
2 tried to get it. And if I'm correct, the jail said his
3 personal effects were picked up by the family.

4 Q Okay. So that -- you know, there's a picture of you
5 writing the statement right there. You would agree with
6 that?

7 A Yes.

8 Q Okay. So after you're taking his statement, he's
9 left in his interview room with the video running for a
10 period of several hours, right?

11 A Yes.

12 Q And are you aware that he's making phone calls to
13 various family members?

14 A Yes.

15 Q Now, that -- have you reviewed those?

16 A Those phone calls?

17 Q Yeah.

18 A No.

19 Q You have not reviewed those?

20 A No, I have not reviewed -- the phone calls to his
21 family, yes, I reviewed that part.

22 Q And he's discussing the case?

23 A Somewhat, yes.

24 Q And those would be sources of investigative value to
25 you?

1 A If he's telling the same story again, why do I need
2 to go investigate them again saying it wasn't like it was
3 supposed to be. Why do I need to talk to them if he's
4 saying the same thing on video over and over?

5 Q So you're saying that you reviewed them, and he's
6 saying the same thing over and over?

7 A Basically, what he's saying is he didn't mean to do
8 it. I don't want to quote the wrong words because I got
9 to see that video again. Things that he said that does
10 not value like talk to such and such, he knows or she
11 knows or anything. And just saying he admitted to what
12 he's done.

13 Q So he's being consistent with what he already told
14 you generally and what he told police on the scene, right?

15 A Somewhat, yes.

16 Q So if he had been -- if you had caught him on tape --
17 and you've already said he wasn't aware he was being
18 recorded saying mom, I got this cop going. I got in an
19 argument playing cards, but they think I was being home
20 invaded. I'm going to be out of here in no time. That
21 would be certainly be something of true investigative
22 value to you, right?

23 A Yes.

24 Q Because that would be him totally inconsistent with
25 what he's told you previously?

1 A Yes.

2 Q Okay. But you said you want to see the tape because
3 it's been a while, but you agree he was 100 percent
4 consistent with what he already told you?

5 A Yes.

6 Q And again, he's adding details that didn't make the
7 statement, such as I thought I was getting smoked. You
8 agree with that?

9 A Well, sir, it's very simple. That's the reason why
10 the video was there. There's a lot of stuff I was trying
11 to catch, or wanting to ask questions on, but I didn't
12 catch. That's the purpose of the video or the recording,
13 to make sure it caught everything that was said in the
14 interview.

15 Q But do you agree that he is telling his family he
16 thought he was going to be killed?

17 A Yes.

18 Q They thought he was being robbed and home invaded?

19 A I agree he said that, yes.

20 Q That he knew his home boys were not there, right?

21 A Yeah, but he had plenty of time. This is broad
22 daylight.

23 Q I'm not asking that question. I'm talking about this
24 investigative tool that you had at your disposal that you
25 looked at. He's crying on the phone. You agree with

1 that?

2 A Yes.

3 Q Saying I loved them like my brothers. Do you agree
4 that?

5 A I can't agree with that.

6 Q Okay. Well, let me refresh your recollection.

7 A I said I can't agree with it. He can say it all he
8 want to say.

9 (Video was played.)

10 THE WITNESS: Sir, can I ask you a question? Go to
11 about one minute 30. I want to hear about a minute.

12 (Video was played.)

13 THE WITNESS: Your Honor, do you mind if I come down
14 close to that microphone?

15 THE COURT: You can't hear it?

16 THE WITNESS: It's kind of muffled. I just want to
17 hear about a minute, that's all.

18 LUKE SHEALEY: I don't have a problem with that.

19 THE COURT: No, he can come down.

20 (Video was played.)

21 BY LUKE SHEALEY:

22 Q Does that refresh your memory a little bit having
23 listened to that?

24 A Yes.

25 Q So he advised whoever he's talking to he thought he

1 was getting smoked in his bed?

2 A Yes.

3 Q He heard the TV break, and he thought he was being
4 robbed?

5 A Yes.

6 Q He grabbed his trip, something about a gun?

7 A Yes.

8 Q And that didn't see who it was until after, right?

9 A Yes.S.

10 Q He's obviously crying and very emotional saying, "I
11 can't survive," right?

12 A Yes.

13 Q And someone -- I imagine in your line of work, you
14 encountered various defendants charged with serious crimes
15 like murder who do not display remorse or emotional at
16 all, right?

17 A Yes.

18 Q And then you probably encounter some folks like
19 Mr. Barnes that are truly upset over what has occurred,
20 right?

21 A Somewhat, yes.

22 Q Okay. Somewhat you encounter them?

23 A No, just sometimes his emotion, yeah, he appears to
24 be upset.

25 Q Do you think he's feigning being upset?

1 A In my opinion, yes.

2 Q Okay. So you've already said he's not aware he's
3 being recorded, right?

4 A Sir, you're inside the police department in an
5 interview room. It doesn't have to be told to you that
6 you're going to be recorded. You should know that.

7 Q So he should know that. You didn't tell him?

8 A You're in the police department, right?

9 Q Okay.

10 A In an interview room.

11 Q So having these tapes at your disposal that you
12 believe he's feigning, I want you to listen to this and
13 tell me if you think he's feigning.

14 MR. SCOTT: Objection, Your Honor. He's asking him
15 for opinion testimony regarding whether he thinks somebody
16 is feigning emotion.

17 LUKE SHEALEY: He's opened the door to this as it
18 goes to -- this is about believability of my client's
19 statement. He thinks he's feigning remorse and emotion,
20 his direct observations of this man that he's decided to
21 charge with murder. I want to play him another and see if
22 he still holds that opinion. He's brought this issue up.

23 THE COURT: All right. Well, the problem with it is
24 he can't testify as to whether or not he -- you can ask
25 him a question like you said the last time, did he say he

1 was being smoked, dada, dada, dada, but he can't testify,
2 give opinion testimony as to whether or not he believed
3 him or not. I think you can ask him if it's consistent,
4 inconsistent, but that would be improper opinion
5 testimony.

6 Yes, he did -- you asked him a question last time. I
7 think your question, specific question was you've done a
8 lot of these cases and sometimes you find people that are
9 not remorseful and sometimes you find people that are
10 remorseful and remorseful like Mr. Barnes. And he says,
11 yes, and you say yes, meaning you think he's remorseful or
12 yes, you come in contact with people who are remorseful.
13 And he says no, I don't think he's being remorseful. And
14 that's how that came out. If I am recalling that
15 correctly. So you need to ask him a question, if it's
16 something inconsistent, then you can show him the video.

17 BY LUKE SHEALEY:

18 Q Okay. Investigator, I think you just stated that you
19 believe Mr. Barnes is faking or feigning being truly
20 remorseful about what occurred here?

21 A I think so, yes.

22 Q Did you have a chance to listen to the interview of
23 him talking to his mother?

24 A Sir, I listened to that a whole bunch.

25 Q And after doing that, you believe that he's faking or

1 feigning true remorse about his actions that day?

2 A Yes.

3 Q Okay. Allow me to play that to see if that is still
4 your opinion.

5 MR. SCOTT: Your Honor, it's still --

6 THE COURT: Hold on one second.

7 LUKE SHEALEY: Your Honor, this is basic impeachment.

8 I want to play the evidence that he believes and has
9 suggested to the court is not true remorse. He has
10 brought this into question. I believe it's appropriate.

11 THE COURT: Hold on one second.

12 Yes, sir.

13 MR. SCOTT: He asked him do you believe he was
14 feigning, and he said yes. That's arguably inadmissible
15 in and of itself, but now he's asking to play certain
16 excerpts and say now, was that believable. What is your
17 opinion on the believability of this? What about that?
18 How in the world is that even admissible, how an
19 investigator testified as to his belief of truthfulness or
20 untruthfulness in his opinion?

21 THE COURT: All right. So the objection is
22 sustained. He's not supposed to be giving opinions.

23 LUKE SHEALEY: Your Honor, he offered his opinion.

24 THE COURT: You can ask him question -- you asked him
25 his opinion and that's how opinion came up.

1 LUKE SHEALEY: I did not ask his opinion initially.
2 He brought it up. He believes my client is faking his
3 story, I guess. It's very probative of me to
4 cross-examine him as a lead investigator on this. He says
5 he's faking. So I'm allowed to confront him with the
6 evidence that he believes is showing a fake remorse.

7 THE COURT: Well, your question just now was after
8 watching this video, do you still think he's faking. He
9 said yes. I don't know how you're going to impeach
10 because you already said after watching the video. He
11 said he watched it. He said that's still his belief.

12 LUKE SHEALEY: But I get to confront him with the
13 evidence that he thinks is my client faking it. The fact
14 finder, whether it's you or the jury, gets to decide
15 whether that's credible by the witness or not.

16 So you're the fact finder. He said my client is
17 faking it. I'm going to confront him with that evidence.
18 I'm allowed to do that under the constitution.

19 THE COURT: I think if you trying to impeach the
20 witness, there's another way to do it.

21 What's the objection? You're standing up again.

22 MR. SCOTT: I don't know at this point, Your Honor.
23 It's just he's asking for opinion and it really has no
24 real bearing on this hearing, whether or not Mr. Gilliam
25 thought he was telling the truth or not about his story.

1 He's already gotten out what the defendant's story was. I
2 don't know that -- it's up to Your Honor whether Your
3 Honor believes his story, but whether Mr. Gilliam believes
4 it or not is really neither here nor there.

5 THE COURT: And I think he can get the video, but
6 you've got -- you're asking the question about what his
7 opinion is. You can ask him about consistency, but his
8 opinion really as to what he's thinking, I don't think
9 that's even -- I mean, that's not relevant before the
10 court and it's not admissible as to what his opinion is.
11 I think you can rephrase the question.

12 LUKE SHEALEY: All right. I'll try do that.

13 BY LUKE SHEALEY:

14 Q Investigator Gilliam, you would agree that the
15 credibility of the witness, of the defendant that you are
16 interviewing is important in your case?

17 A Yeah.

18 Q We talked about this a little bit, a lot already,
19 whether someone is being consistent can add to their
20 credibility?

21 A Yes.

22 Q Whether somebody is being inconsistent can detract
23 from their credibility?

24 A It can.

25 Q And when someone is providing you a consistent

1 account, which you agree Mr. Barnes has throughout this
2 case, right?

3 A Yes.

4 Q And when he's showing an emotional response to
5 friends and family that is recorded, you would agree that
6 is consistent towards -- and actually corroborates the
7 credibility of what he has to say?

8 A What he said is one thing, but my opinion, again,
9 goes to what I think about it. You know, he's had plenty
10 of time to sit back and see what's going on and ask
11 questions. By the time you get -- yes, the story is the
12 same, but I can't say yes to that completely on the stand.

13 Q So you feel he's not credible?

14 A Yes, I do feel he's not credible.

15 Q And you've had this evidence in your position and you
16 have watched him sobbing to his mother and friends
17 regarding the event?

18 A Well, you also look at the nature of what he's facing
19 right now. It's two persons deceased right now.

20 Q Did you ever hear him talking about that he might be
21 facing a lengthy prison in those videos?

22 A I believe so.

23 Q You believe so? Let's listen and see if you can hear
24 for that.

25 (Video is played.)

1 So you didn't hear him saying anything about showing
2 concern for the amount of prison time he might be facing
3 in that, did you?

4 A It's kind of muffled.

5 Q You agree he was upset?

6 A Somewhat.

7 Q Somewhat is your opinion on that?

8 A Yeah.

9 Q That he was somewhat upset. And that he was asleep?

10 A Yeah.

11 Q And that he doesn't even know how long they were
12 there, right?

13 A I kind of got that, yes.

14 Q Consistent with what he told you?

15 A Somewhat.

16 Q Somewhat, okay. And that's the evidence that you
17 think shows he's, perhaps, feigning remorse over this
18 event?

19 A No, there's other things with it.

20 Q I want to turn your attention a little bit to Samuel
21 Thomas. He's an important witness in this case. Do you
22 agree?

23 A Oh, yes.

24 Q Again, Samuel Thomas is a roommate?

25 A Yes.

1 Q We've already described how he was not there. He
2 left around 8:00 to go to a doctor's appointment, right?

3 A That's correct.

4 Q And normally, he takes Ms. Dash, but not that day.
5 Mr. Dash didn't need a ride, right?

6 A Correct.

7 Q And he comes back and he's, basically, trying to
8 figure out what's going on. Law enforcement is figuring
9 out who he is and holding him, wanting to talk to him,
10 right?

11 A That's correct.

12 Q Eventually, you would pretty much formally interview
13 him a couple different times and he gives sworn statements
14 to you, right?

15 A Yes.

16 Q From an investigative standpoint, the main thing that
17 comes from Mr. Thomas is that when he left, he recalls Mr.
18 Barnes being in his room asleep, correct?

19 A That's what he said, but it's also in a statement
20 that sergeant more talked to him out at the scene where he
21 tells her that when he left Mr. Barnes was up.

22 Q I will get to that because I know you brought that up
23 before in our preliminary hearing?

24 A Yes.

25 Q But his official counts to you when you interviewed

1 him twice is that when he left, Mr. Barnes was asleep?

2 A And also Investigator McDonald, same thing, yes.

3 Q Same thing. And when we talked at the preliminary
4 hearing, you advised me that you had become suspicious of
5 that because he had spoken with Investigator Moore?

6 A Yes.

7 Q Sergeant Moore?

8 A Sergeant.

9 Q And that he had hold her something different, right,
10 something inconsistent?

11 A That's correct.

12 Q I think the exact words from your prelim were that
13 they were up all laughing and giggling?

14 A That's right, yes. I believe so.

15 Q All right. So I went to look at Investigator Moore's
16 report and you're aware that she notes seeing a young male
17 who identified himself as Samuel Thomas, but that she made
18 contact with you to actually interview him, right?

19 A Yes.

20 Q I mean, you're familiar with the report. Nowhere in
21 her report does it describe an account of Mr. Thomas as
22 you stated?

23 A Yes, sir, that comes from when we -- after we get the
24 charge when we was talking, going through stuff about
25 Mr. Thomas, as well. And I recall her -- she said what

1 she said that night, yeah, he said that he was up. And I
2 was like, he wrote a statement to Investigator McDonald
3 saying that he was in the bed. That was the first -- we
4 went out and looked for him again and brought him back to
5 question him about it, just trying get to the
6 understanding. Yes.

7 Q All right. So this is a -- what she is advising you
8 as the lead investigator is an inconsistent statement with
9 what he gave you that day?

10 A That's correct.

11 Q But yet, she failed to put that in her report?

12 A That's something I can't understand myself because
13 she didn't even remember herself. Like I said, that's the
14 only reason we went back out and picked him up. Because
15 if he had said that from the beginnings, just from
16 Investigator McDonald's statement, I would not have went
17 back and tried to locate him.

18 Q And she's not wearing a body worn camera, right?

19 A No.

20 Q So we can't really independently verify what happened
21 with that interaction?

22 A That's correct.

23 Q That's what she's advising you, but it's not in her
24 record?

25 A That's the reason we went back to locate Mr. Thomas

1 and bring him back up there for a second interview, just
2 to try to clarify that point.

3 Q And I feel like at prelim, you were advising me about
4 some digging into body cams that you had done where you
5 were aware of a family member of Mr. Thomas was getting a
6 call from Mr. Barnes, right?

7 A That is correct.

8 Q And then the phone being taken over to Mr. Thomas
9 where they're having a conversation, right?

10 A That is correct.

11 Q Now, obviously, you don't have his phone, so you
12 didn't piece that together pursuant to phone records, but
13 that is your belief, right?

14 A Yeah, that was a little while later. Because I
15 started re-going back through all the body cams when I saw
16 that.

17 Q And I think the direct quote that you made at the
18 prelim was that that call tainted Mr. Thomas as a witness,
19 right?

20 A I believe so, yes.

21 Q Okay. It's your belief that maybe Mr. Barnes told
22 him what to say?

23 A That's correct.

24 Q Okay. So, obviously, when you -- I didn't have all
25 the discovery at that point, but, obviously, when you said

1 that, I wanted to see what you were talking about. And
2 tell me if this is the body camera that you were talking
3 about?

4 (Body cam is played.)

5 So this woman right here, she's about to answer her
6 phone, is this what you're talking about?

7 (Body cam is played.)

8 Now, that looks like --

9 A There's another one where a young man is talking to
10 someone saying he's talking to T.B. now.

11 Q Right. That's Samuel Thomas sitting on the curb
12 there?

13 A Yes, I believe so.

14 Q And this woman is taking a phone call. We'll play
15 the rest of it. It looks like she is going to give him
16 the phone?

17 (Body cam is played.)

18 Right?

19 A I think so.

20 (Body cam is played.)

21 Q Right, that's Mr. Thomas taking a phone call?

22 A Yes, an individual walked towards another male --
23 there's a video where a male says yeah, he's talking to
24 T.B. now.

25 Q Now, this is -- let's note -- help me out. The

1 timestamp on that phone call that's given to Mr. Thomas is
2 -- what is that?

3 A That's 9:58.

4 Q Okay. Per the body camera?

5 A Uh-huh.

6 Q Now, I noticed on Officer Steiner's body camera that
7 you are talking to Mr. Thomas here. Do you recognize
8 yourself?

9 A I sure do.

10 Q That's Mr. Thomas?

11 A Yes.

12 Q Who is this investigator?

13 A McDowell.

14 Q Okay. At 9:34, right?

15 A Uh-huh.

16 Q So 9:34 is before 9:58, right?

17 A That's correct.

18 Q And we can hear -- tell me if you hear this.

19 (Body cam is played.)

20 Did you hear on that body cam Mr. Thomas saying --

21 A I can't understand that.

22 Q I'll play it one more time. Because you asked him a
23 question.

24 A Yeah.

25 Q You can help me determine what it is.

1 THE COURT: If you need to step down, you can.

2 BY LUKE SHEALEY:

3 Q Tell me if I'm wrong, but it sounds like you said
4 something to the effect of was anybody else over there and
5 then he gives you a response. Let's listen.

6 (Body cam is played.)

7 So you agree with that, that you say something like
8 that did anybody else show up while you were over there?

9 A Yes.

10 Q Well, listen to the rest of the response. It might
11 help me if you're right there. He tells you directly.

12 (Body cam is played.)

13 Did you hear him say, one was about to go to work and
14 one was still in his bed?

15 A Play it again.

16 (Body cam is played.)

17 THE WITNESS: Yeah, he said that.

18 BY LUKE SHEALEY:

19 Q Okay. So he is -- and the timestamp on that is 9:36?

20 A Uh-huh.

21 Q So 9:36, you agree Mr. Thomas is telling you, the
22 thing he knows for sure is when he left one was about to
23 go to work and one was still in his bed?

24 A Yes.

25 Q That was prior to the phone call at 9:58?

1 A 9:58.

2 Q Where you believe Mr. Thomas became tainted, right?

3 A Yes.

4 Q So he's telling you right off the get-go, one was
5 about to go to work, one was still in his bed?

6 A Yes.

7 Q Okay. I asked you at the preliminary hearing -- I
8 asked you a fairly kind of open question trying to figure
9 out if law enforcement had a motive because -- you don't
10 always need a motive, but sometimes, it's nice to know
11 why, right? It helps you kind of try to figure things
12 out. And you told me none that we know of at this time
13 because they all seemed to be friends, right?

14 A Yes.

15 Q But you did receive sources of information from
16 various witnesses that suggested there was a conflict
17 between Mr. Griffin and Mr. Dash, right? Let me help you
18 out. Tony Barnes told you that there was a situation
19 where Mr. Dash believed a gun was stolen by Mr. Griffin.
20 Do you recall that? I can play you through every point in
21 the video if you don't?

22 A I've been trying to play because -- I know about --
23 you said about the robbery. I can't say that I agree with
24 that. I mean, right now, I can't. There's too much in my
25 head. I'm jumping from one point to another. If you can

1 play it, play it.

2 Q All right.

3 A I really doubt it. I don't remember that.

4 Q Well, one instance, it starts at the apartment
5 complex when he's being interviewed. Do you want me to
6 play that part?

7 A At the time, I didn't know nothing about that
8 interview.

9 Q It's in your possession?

10 A At the time, I did not know about that interview.

11 Q Do you know about it now?

12 A I do now, yeah.

13 Q Are you aware that he references it might have been a
14 gun problem between Mr. Griffin and Mr. Dash?

15 A I know that now. At the time when this happened, I
16 didn't know.

17 Q But you agree he informed the officers that were
18 talking to him that was a possible source of conflict?

19 A Now, yes.

20 Q Okay.

21 A Later on, yes.

22 Q And he tells that to you in your actual interview.

23 I'm going to find the transcript of it since you ask me to
24 if I can find it.

25 A Please.

1 Q All right. This is a transcript of the interview
2 where he is specifically advising you -- you see right
3 here where it says Mr. Barnes and it's highlighted? He's
4 advising you well, he's believing the boys had to start
5 fighting over some shit that happened a couple days ago
6 'cause first my homeboy, Antonio, was staying with us.
7 And you say uh-huh. You see that, right?

8 A Uh-huh.

9 Q I'm not going to use all the expletives. So like two
10 days ago, N word, I was at my homeboy house and N word
11 said somebody stole a gun out the house, not my gun, but
12 they stole Tonio gun. Right?

13 A Yes.

14 Q Tonio, meaning Antonio Dash. And you respond uh-huh.
15 So he tells you right there in your interview, that
16 had to be why they started fighting or whatever. I don't
17 really know. I was asleep. You agree with that?

18 A That's what he said, yes.

19 Q So that was something he's telling you in your formal
20 interview that was also advised in his interview in the
21 apartment manager's office, right?

22 A Yes.

23 Q And, ultimately, Mr. Griffin's girlfriend was advised
24 the same thing. You agree with that? Ms. Washington?

25 A Say it again.

1 Q She would advise you -- you asked her point blank,
2 what could this be about and she told you that she had
3 heard that there was this possible dispute about a gun
4 being stolen by Mr. Griffin?

5 A I vaguely remember.

6 Q Do you want me to play it for you?

7 A Please.

8 Q Okay.

9 (Audio is played.)

10 Do you recall that?

11 A Yes.

12 Q Okay. Now, because we can agree on the way -- we've
13 got the photos in evidence. So there appears to be this
14 fight, table is turned over, TV is smashed, a hole in the
15 wall, right?

16 A Yes.

17 Q We've got earrings ripped out on the ground, correct?

18 A Yes.

19 Q Mr. Barnes doesn't have any visible injuries on him
20 that would indicate that he was involved in a physical
21 altercation, correct?

22 A No.

23 Q But these two deceased gentlemen were found on the
24 floor, basically, on top of each other, right?

25 A That's correct.

1 Q So when you're hearing about this conflict, possibly
2 about a gun, that would be an investigative lead for you,
3 right?

4 A What's the date of that?

5 Q Right, that's the 22nd.

6 A When did this occur?

7 Q The 7th.

8 A When's the first interview?

9 Q The 7th.

10 A At that time, she didn't know. She heard that.

11 THE COURT: I can't hear you.

12 THE WITNESS: I'm sorry.

13 The initial interview, she didn't know about that.

14 That's what we were trying -- that was the 22nd.

15 BY LUKE SHEALEY:

16 Q But Mr. Barnes is telling you about that during his
17 --

18 A Yeah, but word got out on the street, people can say
19 anything they want to say then. That's what she hearing
20 on the street.

21 Q I'm not talking about her now. I'm talking about --

22 A He says -- that's what I'm saying. She said she
23 heard it on the street.

24 Q You asked that kind of open-ended question, do you
25 have any idea?

1 A Right. I have to ask that because I still don't have
2 no reason to understand why this happened the way it did.

3 Q But what she tells you is --

4 A She heard it on the street.

5 Q Let me finish. What she tells you is the same thing
6 Mr. Barnes told you?

7 A Yes, but that's on the street. We're talking 15 days
8 later.

9 Q Mr. Barnes told you this dispute about the gun the
10 day of, correct?

11 A I get you. I understand that. But I'm telling you
12 she stated she heard on the street, so this is 15 days
13 later.

14 Q What she's hearing on the street is consistent with
15 what he told you the first time he ever talked to you?

16 A If I put it out there, then that's what you hear. If
17 I put something out there saying that's what it is, that's
18 what people going to think.

19 Q And that transcript, you read it just with me, he's
20 telling you --

21 A Well, he says that. I'm not saying he didn't. I'm
22 talking about what she's saying. She said she heard it.

23 Q Right. They're saying the same things?

24 A Yeah, but it's 15 days later.

25 Q Right. So that would be -- as you're trying to

1 figure out what's happening and as the date of the prelim,
2 you still don't have a motive. These are two people
3 telling you the same thing, right?

4 A Fifteen days later, yes.

5 Q And you also got to figure out -- there's some other
6 things that are important. Now, you're aware that there
7 are a couple of projectiles, we talked about this, that do
8 not match Mr. Barnes' gun?

9 A That's correct.

10 Q Okay. And we've counted 13 distinct wounds, but only
11 seven shell casings, correct?

12 A That's correct.

13 Q So we talked about this at the prelim, that would
14 lend itself the question, there's certainly another gun
15 possibly involved in this scenario?

16 A Yes.

17 Q And you heard from Mr. Barnes and Ms. Washington that
18 there is a dispute about a gun between Mr. Griffin and
19 Mr. Dash?

20 A Fifteen days later after.

21 Q You've heard about this dispute?

22 A Fifteen days later.

23 Q That's a yes?

24 A Fifteen days later, yes.

25 Q Okay. And so as an investigator, you want to

1 determine amongst the parties whether there's conflicts,
2 peace, try to figure out what happened here, right?

3 A Yes.

4 Q Because you said you can't determine obvious motive?

5 A Right.

6 Q But yet, there is this potential motive there about
7 this stolen gun allegation, right?

8 A Yes.

9 Q And we also know that the crime scene evidence tends
10 to yield that there has the potential for there being
11 another gun involved in this altercation, right?

12 A Yes.

13 Q So we've listed about seven witnesses that had access
14 to that crime scene prior to police securing it, right?

15 A That's correct.

16 Q We've already named their names. We don't have to
17 name them again, but a couple are relatives, loved ones of
18 Mr. Griffin, right?

19 A Yes.

20 Q So you also have to figure out every party, what are
21 their motivations, what are they doing, right? Right?

22 A Yes.

23 Q And because you know there's another gun likely
24 involved based on the forensic evidence, you have to try
25 to figure out well, where could another gun have gone,

1 right?

2 A That's correct.

3 Q And, obviously, there's seven people there before law
4 enforcement gets there, right?

5 A Yes.

6 Q Because you're thinking about this problem and where
7 the other gun might be, you specifically asked
8 Ms. Griffin, the mother of Eric, whether he carries a gun,
9 right?

10 A I asked him.

11 Q And she says yes, he is known to carry a gun, but
12 she's very clear he didn't that day, right?

13 A That's correct.

14 Q So what you know is he's known to carry a gun,
15 correct?

16 A Yes.

17 Q And he was out on bond at that point in time for a
18 gun-related incident, correct?

19 A Yes.

20 Q So you, in your investigative bucket, you have this
21 information at your disposal and that tends to point
22 you -- you've got a gentleman whose family says is known
23 to carry a gun, who has a possible conflict with a
24 roommate of this situation and both are dead, correct?

25 A Possible.

1 Q Okay.

2 LUKE SHEALEY: Investigator Gilliam, I think that's
3 all I have for right now. Please answer any questions
4 that Mr. Scott might have for you.

5 THE COURT: All right. We're going to -- this will
6 be a good point to take a break, and we are going to take
7 our lunch break.

8 It's ten till 1:00. As I told you, I have a doctor's
9 appointment. We'll start back at 2:30. I've got to sign
10 something for SLED, so right around about 2:30.

11 LUKE SHEALEY: Your Honor, may the lawyers approach
12 real quick?

13 THE COURT: Yeah.

14 And Investigator Gilliam, you can step down.
15 Obviously, you know you can't discuss your testimony with
16 anyone, including the solicitors.

17 (Whereupon, there was a bench conference.)

18 (Whereupon, a lunch recess was taken.)

19 (WHEREUPON, Defendant's Exhibit Nos. 19 through 32
20 marked for identification only.)

21 (WHEREUPON, State's Exhibit Nos. 1 through 13 marked
22 for identification only.)

23 LUKE SHEALEY: Your Honor, may I address a
24 housekeeping matter before Mr. Scott starts?

25 THE COURT: Yes.

1 LUKE SHEALEY: I tagged an exhibit that was marked
2 that were Statewide Surveillance Security videos that the
3 witness, Mr. Gilliam, authenticated and he talked about.

4 I didn't enter it because what I had pre-burned had
5 some other videos that during the course of the objections
6 and your rulings I figured would not be admissible.
7 During the break, I burned it so it's just that particular
8 video we've been over so I could seek to admit it. If
9 Your Honor would allow me, I would seek to admit it at
10 this time.

11 THE COURT: Any objection?

12 MR. SCOTT: No, Your Honor.

13 THE COURT: What's the number on that?

14 LUKE SHEALEY: It's number 18.

15 THE COURT: Number 18 without objection.

16 MR. SCOTT: It's my understanding it's just the video
17 he published?

18 THE COURT: Just the video from the security cameras.

19 (WHEREUPON, Defendant's Exhibit No. 18 was marked for
20 identification and received into evidence.)

21 THE COURT: All right. Yes, sir.

22 MR. SCOTT: Thank you, Your Honor.

23 CROSS-EXAMINATION:

24 BY MR. SCOTT:

25 Q I've got on the board here, this is State's No. 3.

1 Investigator Gilliam, can you see that?

2 A Yes, sir.

3 Q I think a lot of this was covered during direct
4 examination, but just to orient Your Honor, this would be
5 the front door to the apartment complex?

6 A Yes.

7 Q Is that correct?

8 A That's correct.

9 Q And then your understanding was this back bedroom was
10 the defendant's bedroom?

11 A Yes, sir.

12 Q And then Samuel Thomas would have been in this room,
13 is that your understanding?

14 A Yes.

15 Q To your knowledge, where did -- the defendant himself
16 told you that Mr. Dash had been there for about a year, as
17 well, correct?

18 A That's correct.

19 Q So we've got Thomas and Barnes listed on the lease,
20 but it's uncontested that Antonio Dash lived there, as
21 well?

22 A That's correct.

23 Q Do you know where he was sleeping?

24 A I believe he was on the couch in the living room.

25 Q There's no couch in that living room in the picture,

1 is there?

2 A No, sir.

3 Q So do you know, in fact, where he was sleeping?

4 A No.

5 Q I'm going to show you -- let me show you State's No.

6 5. All right. That is a picture taken of Mr. Barnes'

7 room, correct?

8 A That's correct.

9 Q And let me see where it is on here. It depicts
10 Mr. Barnes' bed, correct?

11 A That's correct.

12 Q And then at the foot of the bed, here it is, you've
13 got a driver's license belonging to Mr. Barnes, correct?

14 A That's correct.

15 Q And then do you recall this sort of a pallet laid out
16 beside his bed?

17 A Yes, sir.

18 Q It's like a pillow and blanket?

19 A Yes.

20 Q Because maybe one time, there was a couch in that
21 living room, but there was not any couch in that living
22 room on the day of this incident; is that correct?

23 A That is correct.

24 Q Okay. Did you notice any such pallet like this in
25 Mr. Sam Thomas' room?

1 A No.

2 Q Okay. And then I've got a few items you guys
3 recovered. This is going to be State's 6, 7, 8, 9. This
4 is 6, 7, 8 and 9, do you recognize these items?

5 A Yes.

6 Q Okay. And what are those?

7 A Item 6 is a Social Security card, item 7 is a --
8 excuse me, back up. The Social Security card for Antonio
9 D. Andrea Dash is No. 6. Number 7 is a tax form for
10 Antonio Deandre Dash for that same apartment, 14G. I
11 can't really make out, but it looks like the same form in
12 picture No. 8 eight, which is shoes inside of a box.

13 Q Okay.

14 A And No. 9 is an OSHA card for Mr. Dash.

15 Q Do you remember when these items were selected?

16 A Not off the top of my head without the search
17 warrant.

18 Q So these were found in the home indicating that Mr.
19 Dash has a Social Security card, some kind of tax document
20 in Item 7, his OSHA compliance card in State's 9, and then
21 a shoebox that contains this tax documentation in State's
22 No. 8?

23 A Yes.

24 Q Okay. And there is a closet at the very end of that
25 hall right next to Mr. Barnes' room. Is that your

1 recollection?

2 A Yes, sir.

3 Q So I'm back to the defense exhibit, but if you go
4 from the doorway straight down the hallway, there's a
5 closet at the end?

6 A Yes.

7 Q Is that where the shoebox was or -- with the
8 documents or was it Mr. Barnes' room?

9 A I'm not sure, but I believe it was in the bedroom of
10 Mr. Barnes.

11 Q Okay. And then coupled with that pallet from the
12 floor beside Mr. Barnes' bed, did it appear to you that
13 Mr. Dash was staying in Mr. Barnes room?

14 A Yes.

15 LUKE SHEALEY: Objection, calls for speculation.

16 THE COURT: Sustained. Please rephrase the question.

17 BY MR. SCOTT:

18 Q Okay. But I guess your testimony was you found
19 Social Security cards, OSHA compliance reports, tax
20 documentation for Mr. Dash. Do you recall where you found
21 it?

22 A I wasn't there when the search warrant was actually
23 secured, but to the best of my knowledge, it was in
24 Mr. Barnes' room.

25 Q This is State's 3 and 4. Do you recognize these?

1 A Yes.

2 Q Okay. What is State's No. 3?

3 A State's No. 3 is Social Security card for Antonio
4 Barnes, Jr. and State's No. 4 is a box with green plant
5 substance in it, which appears to be marijuana, and tested
6 marijuana, black box with some other items in it.

7 Q Okay. Such as?

8 A Speed stick, like -- that's supposed to be a belt
9 and --

10 THE COURT: Microphone.

11 THE WITNESS: I'm sorry. Speed stick, some type of
12 belt, I believe that's what that is, and some type of
13 card, maybe an OSHA card itself. I'm not sure.

14 BY MR. SCOTT:

15 Q Take a look at State's No. 4. Can you read what that
16 OSHA card is?

17 A Not really. I can't read it, not like that, no.

18 LUKE SHEALEY: Your Honor, I'm just going to -- I
19 know I've been saying that necessarily strict rules might
20 not need to apply because we've got some objection, but I
21 don't think that item is in evidence yet, but it is being
22 published, Your Honor. So maybe it could be admitted
23 before.

24 THE COURT: Yes.

25 MR. SCOTT: Let me go ahead and do that, Your Honor.

1 He testified to State's -- the State moves 3, 4, 5, 6, 7,
2 8, and 9 into evidence for purposes of this hearing.

3 LUKE SHEALEY: Without objection.

4 THE COURT: All right. They'll be entered without
5 objection.

6 (WHEREUPON, State's Exhibit Nos. 3 through 9 admitted
7 into evidence.)

8 THE WITNESS: This is a card for Antonio Dash, also,
9 the bullets.

10 BY MR. SCOTT:

11 Q Okay. Let me ask you this, when you compare State's
12 4 and 8, is that the same shoebox?

13 A Yes.

14 Q Okay. And you testified there's some bullets, green
15 plant-like material, speed stick and Mr. Dash's OSHA card
16 in that shoebox?

17 A Yes.

18 Q Let me show you State's 11. Do you recognize that?

19 A Yes, this is the hallway.

20 Q Okay. Is that how it appeared on the date in
21 question whenever you went to the home?

22 A To the best of my knowledge, yes.

23 MR. SCOTT: Your Honor, the State offers State's No.
24 11 for admission into evidence?

25 THE COURT: Any objections? Any objection to 11?

1 LUKE SHEALEY: No, Your Honor.

2 THE COURT: All right. And 11.

3 (WHEREUPON, State's Exhibit No. 11 admitted into
4 evidence.)

5 BY MR. SCOTT:

6 Q So we're looking straight down the hallway. This is
7 a back closet here?

8 A Yes.

9 Q And then the very last door on the right, you
10 testified was Mr. Barnes' door?

11 A That's correct.

12 Q And Mr. Sam Thomas' door is opened in this picture;
13 is that correct?

14 A Yes.

15 Q Okay. And, clearly, for Mr. Barnes -- you get from
16 his bedroom to the front living room, he would have had to
17 passage Sam Thomas' open door?

18 A Yes.

19 Q I mean, there's no other way to get in that living
20 room other than come down the hallway?

21 A That's correct.

22 Q Okay. And I think you testified earlier, through
23 police investigation, you determined that Mr. Sam Thomas
24 had left some time earlier in the morning and had gone to
25 a doctor's appointment?

1 A Yes.

2 Q And then when he came back, police already secured
3 the perimeter?

4 A That's correct.

5 Q And y'all actually checked into that. He had been
6 gone?

7 A Yes, he was at the doctor's office. We verified it.

8 Q Okay. And the relationship as you understand it, I
9 presume it's uncontested Mr. Sam Thomas, Antonio Dash and
10 Antonio Barnes were friendly with one another?

11 A Yes.

12 Q I mean, they all lived together?

13 A Yes.

14 Q And was it your understanding that Eric Griffin was a
15 friend of Mr. Barnes, as well?

16 A Yes.

17 Q And was it your understanding that Mr. Griffin had
18 been over there just two days prior?

19 A Yes.

20 Q Okay. And so there was some indication that a gun
21 had been missing; is that correct?

22 A That came up -- he stated that in the interview.
23 Mr. Barnes stated that in the interview. And then again,
24 Ms. Washington said something about it during her second
25 interview about the gun.

1 Q Okay. Now, you don't have the return up there, but
2 do you recall that a nine millimeter was a weapon that
3 Mr. Barnes had given to Shekila Smalls to...

4 A Yes.

5 Q And, of course, you said there were seven nine
6 millimeter casings found at the scene?

7 A Yes.

8 Q Okay. Was there evidence that there were other
9 firearms or had been other firearms in that home at some
10 other time?

11 A Yes.

12 Q Okay. When you looked through the shoebox and some
13 of the belongings, is it fair to say that I believe there
14 was 40 caliber ammunition back there?

15 A 40 caliber.

16 LUKE SHEALEY: Your Honor, I'm going to object.

17 THE COURT: What's the objection.

18 LUKE SHEALEY: Rule 404, 403, 401. We've got a
19 situation where the investigator has testified about the
20 caliber weapon used in the crime, and we're talking about
21 unrelated loose bullets of different calibers. I don't
22 see how it's relevant. Normally, I wouldn't care because
23 there's not a jury, but because we're insisting on
24 strictly applying the rules. If we were in front of the
25 jury, I'd be saying that to just depict random guns or

1 bullets not associated with this crime, it kind of -- it
2 violates the rules because of a prior propensity towards
3 violence or the fact that someone has multiple bullets or
4 guns. If it's relevant to this crime, ballistically,
5 forensically matches, that's certainly understandable, but
6 because he also testified it's nine millimeter and 40
7 Caliber, I have to make those objection under those rules.

8 MR. SCOTT: I think he elicited testimony earlier
9 about a phantom gun that had potentially gone missing.
10 I'm only responding to some of the issues raised by Mr.
11 Shealey.

12 LUKE SHEALEY: Well, I didn't discuss the caliber. I
13 brought up that there's allegations of theft by Mr.
14 Griffin against Mr. Dash.

15 THE COURT: All right. The objection is going to be
16 overruled. I find that it's relevant. I don't think it's
17 a 404(b) issue in terms of any bad acts or other crimes or
18 wrongs. So objection is overruled.

19 (WHEREUPON, State's Exhibit No. 14 marked for
20 identification only.)

21 MR. SCOTT: Judge, these are two sheets. I'm going
22 to move to have it entered as one.

23 BY MR. SCOTT:

24 Q State's No. 14, do you recognize that?

25 A Yes, sir.

1 Q Okay. So what is it?

2 A It's a receipt for -- excuse me, Academy Sports and
3 Outdoors for a Smith and Wesson 40 Caliber.

4 Q Okay. Who purchased that Smith and Wesson 40
5 Caliber?

6 A Antonio Barnes.

7 Q Okay. So you have evidence in the apartment that
8 Antonio Barnes had purchased a 40 Caliber pistol. Did you
9 ever locate a 40 Caliber pistol?

10 A No.

11 Q So we're missing a 40 Caliber pistol that Mr. Barnes
12 had purchased at some point?

13 A Yes.

14 MR. SCOTT: Your Honor, the State offers 14, and if I
15 have not already, State's No. 11?

16 LUKE SHEALEY: One may be over objection, I guess.
17 No objection except for the one I objected to.

18 THE COURT: What did you object to? I thought 11 was
19 without objection.

20 (WHEREUPON, State's Exhibit No. 14 was admitted into
21 evidence.)

22 LUKE SHEALEY: I don't know where it is specifically,
23 but it's in over my objection.

24 THE COURT: It wasn't entered in evidence, was it?

25 MR. SCOTT: I think it's the shoebox picture. It's

1 going to be State's No. 4, Your Honor.

2 THE COURT: You're objecting to 4 now? Because
3 earlier, you said no objection.

4 LUKE SHEALEY: I didn't object to 4. I object to the
5 bullet one. Okay, 4, that's the one I objected to.

6 MR. SCOTT: It's already in evidence.

7 THE COURT: We had already entered it earlier when he
8 did all of them together. So now, you're objecting?

9 LUKE SHEALEY: I'm not reobjecting to it. My
10 recollection was it came later, I objected and it was
11 overruled.

12 THE COURT: Okay.

13 BY MR. SCOTT:

14 Q Let me show you State's Exhibit No. 10. Do you
15 recognize that?

16 A Yes.

17 Q Okay. What is that?

18 A This is the door of the -- to go into the apartment.

19 Q Okay. That's the entry door to enter the apartment?

20 A Yes.

21 Q Okay. Why is State's No. 10 relevant to you?

22 MR. SCOTT: Your Honor, the State does offer State's
23 No. 10 for admission into evidence.

24 THE COURT: Any objection?

25 LUKE SHEALEY: No objection.

1 THE COURT: Without objection, it's in evidence.

2 (WHEREUPON, State's Exhibit No. 10 was admitted into
3 evidence.)

4 THE WITNESS: It looks like damage on the inside of
5 the door right here.

6 BY MR. SCOTT:

7 Q Is that the strike plate of the door?

8 A No.

9 Q Did the door appear to be kicked open or any other
10 forcible entry made in this apartment?

11 A No.

12 Q Did you find any evidence of broken windows or any
13 other of the signs you would normally see as far as like
14 forced entry?

15 A I didn't see none.

16 Q Okay. State's 1 and 2, do you recognize these?

17 A Yes.

18 Q Okay. Now, the defense had been asking you earlier
19 regarding some statements about Mr. Barnes, but right off
20 the bat, he tells you, I'm going to --

21 BRIAN SHEALEY: Objection.

22 THE COURT: What's the objection?

23 LUKE SHEALEY: Your Honor, 404(b), 403. The
24 investigator has testified that he has no idea why this
25 event occurred in terms of motive. As far as they know,

1 these guys are friends. The State is seeking to elicit,
2 and I would make the same objection if we were in front of
3 a jury, there are pictures of marijuana that's found
4 there.

5 Now, it's not relevant to this case. If the State
6 had evidence or Mr. Gilliam had testified that yes, this
7 was a drug transaction and we think that's the motive. We
8 found cell phone records linking that as the cause of this
9 violent outburst, it certainly would be relevant.

10 Right now, it violates 404(b) regarding the admission
11 of other crimes, wrongs or acts. And it's not probative
12 to this analysis because the State has already testified
13 they don't know why this occurred. So just simply
14 entering evidence of that violates 403 and 404(b).

15 MR. SCOTT: Your Honor, we still have not really been
16 given any, I guess, hint at which subsection of the
17 immunity statute we're looking at. However, if it's
18 subsection C, which I suspect they will attempt to do, he
19 can't be involved in any unlawful activity.

20 He has made statements to law enforcement that are
21 highly relevant to an immunity hearing and that will be
22 part of Your Honor's analysis whenever you look at the
23 requirements of the immunity statute and their burden of
24 proof.

25 LUKE SHEALEY: I mean, Mr. Scott has misstated the

1 law. We can argue that at the end of the case about
2 immunity. But still, for you as the fact finder listening
3 to evidence when you already have been advised by the lead
4 investigator that they don't know why this occurred. It's
5 not a drug deal gone wrong. It would violate 403 and
6 404(b) to enter evidence of drug use, drug dealing or
7 whatever it might be.

8 THE COURT: All right. The objection is overruled.

9 Let me hear some testimony that somebody went over
10 there --

11 MR. SCOTT: There was.

12 THE COURT: -- to buy weed.

13 MR. SCOTT: He elicited some testimony, he got in
14 some hearsay statement about a Shekila Smalls who had gone
15 over there to purchase marijuana.

16 THE COURT: So the objection would be overruled. All
17 right.

18 MR. SCOTT: Thank you, Your Honor.

19 BY MR. SCOTT:

20 Q So he tells you, I'm a marijuana dealer and there's
21 traffic in and out of this house all the time. There's
22 always something going on?

23 A Basically, yes.

24 LUKE SHEALEY: Objection, hearsay.

25 MR. SCOTT: He is my party opponent, Your Honor.

1 Statement by a party opponent is not hearsay.

2 THE COURT: Objection is overruled.

3 BY MR. SCOTT:

4 Q Okay. And he says he's a dope dealer. And then
5 State's 1 and 2, you guys certainly found evidence that he
6 was a marijuana dealer?

7 A That's correct.

8 Q There was a large amount of marijuana located in the
9 apartment?

10 A Yes.

11 Q Okay. And then we got a receipt for a missing 40
12 Caliber pistol. We found ammunition for a 380. And we
13 know he used a nine millimeter to kill these people?

14 A Yes.

15 Q Okay. Now, there was some testimony earlier about --

16 MR. SCOTT: Your Honor, the State offers 1 and 2 for
17 admission?

18 THE COURT: Any objection? Do you need to see them?

19 LUKE SHEALEY: Those are the ones that were just
20 discussed. That would be with objection.

21 THE COURT: 1 and 2 will be entered over the
22 objection.

23 (WHEREUPON, State's Exhibit Nos. 1 and 2 admitted
24 into evidence.)

25

1 BY MR. SCOTT:

2 Q Now, there was some testimony earlier about
3 projectiles that did not match the firearm. Do you
4 remember when Mr. Shealey was asking you about that?

5 A Yes.

6 Q Okay. But we actually had SLED analyze all the
7 firearms; is that correct?

8 A The firearm, yes.

9 Q And SLED analyzed the projectiles?

10 A Yes.

11 Q SLED analyzed the casings?

12 A Yes.

13 Q SLED analyzed jackets or bullets?

14 A Yes.

15 Q And then SLED tested that pistol, correct?

16 A Yes.

17 Q You're not qualified as an expert in firearms?

18 A No.

19 Q So if an expert came in here and said I never said
20 projectiles didn't match the gun --

21 LUKE SHEALEY: Objection.

22 THE COURT: Sustained. Please rephrase the question.

23 BY MR. SCOTT:

24 Q You're not qualified to testify whether or not a
25 projectile matches a gun, are you?

1 A No.

2 Q That would be for another witness to testify to?

3 A That's correct.

4 Q I want to just begin -- go back to the diagram. This
5 is Defense No. 3. Okay. You, yourself, did you observe
6 the location of the casings? They point to several by the
7 front door and then several, four, at least, around the --
8 or five around the location where the bodies were found?

9 A Yes.

10 Q Okay. But you, yourself, observed these two casings
11 at the front door?

12 A I did.

13 Q Let me ask you this, were any casings found in this
14 hallway?

15 A No.

16 Q Okay. But the defendant told -- well, what was the
17 defendant's explanation for why he shot these two people?

18 A He said he heard a commotion going on. He laid there
19 two or three minutes, then he jumps up with a gun and goes
20 around there and starts shooting.

21 Q He just goes around and starts shooting?

22 A Yes.

23 Q And we watched several Shealey Security videos, did
24 you observe it to be daylight?

25 A Yes.

1 Q And do you recall whether or not that living room had
2 a window in it?

3 A Yes, it does.

4 Q Okay. And were the blinds open to your recollection?

5 A I can't say yes or no.

6 Q When you, yourself, went into the room, did you have
7 any difficulty seeing?

8 A No.

9 Q Again, he testified Mr. Dash had lived there for an
10 entire year. He testified that was his homeboy, right?

11 A Yes.

12 Q Okay. He testified -- or he told you Eric Griffin
13 was his friend, too, correct?

14 A That's correct.

15 Q And he said Eric Griffin had just been there two days
16 before?

17 A Yes.

18 Q He says he comes out of his room and begins firing?

19 A He said he comes out of his room and starts firing.

20 Q Okay. So he wouldn't have seen Mr. Dash on the floor
21 beside him on that pallet?

22 LUKE SHEALEY: Objection, calls for speculation.

23 BY MR. SCOTT:

24 Q Where was that pallet located in Mr. Barnes' room?

25 THE COURT: Hold on. Objection is sustained. I was

1 waiting to see if you had a response, but rephrase the
2 question.

3 MR. SCOTT: I'm sorry, Your Honor.

4 BY MR. SCOTT:

5 Q Where was that pallet we showed you in that State's
6 Exhibit located in relation to Mr. Barnes' bed?

7 A Next to his bed.

8 Q So he would have had to have gotten out of his bed
9 and gone down the hallway. You already testified he would
10 have had to have walked right by the open door of Mr. Sam
11 Thomas?

12 A Yes.

13 Q We know Sam Thomas wasn't there?

14 A Yes.

15 Q And I don't -- maybe some questions are too dumb, but
16 Mr. Griffin and Mr. Dash were both black males?

17 A Yes.

18 Q And he would have just seen his empty doorway?

19 LUKE SHEALEY: Objection, calls for speculation.

20 BY MR. SCOTT:

21 Q Had to walk by Mr. Sam --

22 THE COURT: Hold on, objection sustained. Please
23 rephrase the question.

24 BY MR. SCOTT:

25 Q He would have had to walk by Mr. Thomas' empty room?

1 A Yes.

2 Q And he would have seen two black males in the living
3 room?

4 A Yes.

5 Q And his testimony is he just fired just -- three
6 times is what he said, correct?

7 A I believe that's what he said.

8 Q Okay. Seven empty shell casings, though, correct?

9 A That's correct.

10 Q And did he ever indicate how close he got up to them?

11 A I think he said he was like, basically, standing over
12 them, but I'm not 100 percent sure.

13 Q Where was Mr. Barnes between the time that he shot
14 the two men and then when he approached officers at 9:07?
15 Where was he, I don't know, approximately 11 minutes?

16 A I'm not sure.

17 Q Did he ever explain where he went?

18 A No.

19 Q Did he indicate whether or not he had changed
20 clothes?

21 A No.

22 Q Okay. This is State's No. 12. This is just another
23 picture I want to show you. What are we looking at?

24 A The victims laying on the floor side to side, the
25 hallway, broken chair next to the trash can.

1 THE COURT: I can't hear you.

2 THE WITNESS: Excuse me. The victims laying on the
3 floor close to the hallway, broken chair next to the trash
4 can.

5 BY MR. SCOTT:

6 Q Okay. And do we know whether or not that chair was
7 already in that state even before this happened?

8 A No.

9 Q Okay.

10 MR. SCOTT: Your Honor, the State offers State's No.
11 12 for admission?

12 LUKE SHEALEY: No objection.

13 THE COURT: No. 12 will be entered without objection.
14 (WHEREUPON, State's Exhibit No. 12 admitted into
15 evidence.)

16 BY MR. SCOTT:

17 Q All right. Did he ever say when he approached these
18 two people -- were they standing up or were they down on
19 the ground when he shot them?

20 A If I'm correct, he said they were down.

21 Q Okay. Did they ever make a statement that they
22 lunged toward him?

23 A No.

24 Q Did he ever indicate whether either one of them had a
25 weapon?

1 A No.

2 Q Okay. It's just I think I'm getting robbed, so I'm
3 going to shoot the first thing that moves?

4 A That's correct.

5 LUKE SHEALEY: Objection, that's a
6 mischaracterization of evidence. I don't think that's a
7 direct quote.

8 THE COURT: Sustained.

9 BY MR. SCOTT:

10 Q How did he characterize it? What was his explanation
11 for seeing two black males in his living room when he has
12 two black male roommates, black male roommates, what's his
13 explanation for why he just starts shooting no questions
14 asked?

15 A He said he just came around the corner and started
16 shooting.

17 Q He never said that either one of them had a gun?

18 A No.

19 Q Did he ever say either one of them threatened him?

20 A No.

21 Q Neither one of them made any movements toward him?

22 A Not to my knowledge. If I'm correct, he never said
23 he heard any gunshots.

24 Q I don't know if I even need to -- was this in
25 Richland County when this occurs?

1 A Yes.

2 MR. SCOTT: Your Honor, this would be -- I'm about to
3 sit down. I just want to make sure I got everything in
4 that I intended on introducing. Okay, Your Honor, I show
5 that I admitted State's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
6 12 and 14.

7 THE COURT: That's what I have.

8 Is that what you have?

9 THE COURT REPORTER: Yes.

10 MR. SCOTT: Thank you, Your Honor.

11 Answer any questions, I guess, redirect that they
12 have for you.

13 REDIRECT EXAMINATION:

14 BY LUKE SHEALEY:

15 Q Investigator Gilliam, just briefly since we spent a
16 lot of time together this morning. You were just telling
17 Solicitor Scott -- you were asking -- answering questions
18 from him about what Tony advised you occurred during this
19 shooting event, right? You just remember that?

20 A Yes.

21 Q And what you testified to seems somewhat different
22 than what we talked about this morning. It seemed a
23 little more condensed. Do you agree with that?

24 A Maybe, I don't know.

25 Q What was just elicited from you, and correct me if

1 I'm wrong, is that Tony heard a commotion, he waited two
2 or three minutes and he came out shooting, right?

3 A Yes.

4 Q That's not what Tony actually told you. You would
5 agree with that?

6 A What did he tell me?

7 Q We went through this morning, but what he told was
8 number one, that he was asleep. You agree with that?

9 A Yes.

10 Q Number two, that he believed all his roommates were
11 gone, right?

12 A Yeah, he said that.

13 Q Yet, Mr. Thomas usually takes Mr. Dash and he thought
14 they were all gone at work, right? He told you that?

15 A Yes, he said that.

16 Q He told you he heard a loud bang?

17 A A loud noise, yes.

18 Q And a loud bang?

19 A I didn't hear no bang.

20 Q You're saying that he didn't tell you that?

21 A You talking about bang as in a gun or bang --

22 Q Bang is the word he used. He didn't say whether it
23 was a gun or not, but you agree he told you a loud bang?

24 A I can really -- I -- yes, I'll say he said bang.

25 Q Okay.

1 A I don't think he meant towards a gun or anything.

2 Q I mean, we listened to some phone calls after the
3 interview, right? We have some questions about what he
4 was saying with family or his mom, right?

5 A Uh-huh.

6 Q And there, he told his family, I listened for my boys
7 and they weren't there, right? That's in that, correct?

8 A Yep.

9 Q He thought he was being robbed. You agree with that?

10 A He said that, yes.

11 Q He thought he was getting smoked, right?

12 A That's what he says.

13 Q Meaning, slang for killed, right?

14 A Yes.

15 Q So he just came out and started shooting at the
16 people on the ground, right?

17 A Yes.

18 Q So that's a little bit more involved than what you
19 just testified to Mr. Scott, right?

20 A Basically, the same thing, sir.

21 Q Okay. I want to touch on some other questions that
22 you were just asked. Looking at the diagram and trying to
23 figure out, you testified that Mr. Barnes slept here,
24 right?

25 A That's correct.

1 Q Mr. Thomas slept here, correct?

2 A Yes.

3 Q Mr. Scott showed you a picture of what looked like
4 some covers or what he called a pallet down here in the
5 corner, right?

6 A Yes.

7 Q And you told him you weren't there when CSI came
8 through and processed it. That wasn't part of your job,
9 right?

10 A That's correct.

11 Q You were interviewing witnesses and trying to figure
12 out what was going on, but you didn't actually lay eyes on
13 where that pallet was or whatever Mr. Scott was talking
14 about, correct?

15 A I went through every room before I even left the
16 scene. I remember some things, and that's why I say it's
17 easy for me to look at the search warrant and photographs.

18 Q But you don't have a witness in this case, whether
19 it's a family member of Mr. Dash or anybody else that says
20 oh, yeah, Antonio Dash was sleeping in the same room with
21 Barnes?

22 A No.

23 Q You don't have that information?

24 A No.

25 Q And a couple of different times, Mr. Scott talked

1 about walking -- Mr. Barnes needed to walk down this
2 hallway, right, before he did the shooting?

3 A Yes.

4 Q And he described Sam Thomas' doorway as being opened
5 in that photograph?

6 A Yes.

7 Q Now, CSI is in there taking all those photos,
8 correct?

9 A Yes.

10 Q We don't have any idea about whether that door was
11 opened during the shooting or not, do we?

12 A Potash, actually, when he dusts, he dusts the outer
13 scales of every room, how it looked before he ever dusted
14 the crime scene, takes pictures of every room how it
15 looks, if the door is closed, door is open, he takes those
16 pictures first.

17 Q Sam Thomas didn't tell you anything about leaving his
18 door open, did he?

19 A No.

20 Q So you testifying from your own personal knowledge
21 from this witness stand have no idea of knowing whether
22 the door that's open in the crime scene photo was closed
23 earlier during the day?

24 A No, no.

25 Q Okay. A photo was introduced into evidence of some

1 40 Caliber bullets. As far as you know from your --
2 again, you're not a gun expert in this case, but as far as
3 you know, no 40 Caliber weapon was used in this event?

4 A As far as what shell casing we got, no.

5 Q Right. They showed you a picture of the door and the
6 doorjamb. Do you recall that?

7 A Yes.

8 Q And the door is a metal door, right?

9 A I think it's a wood door. I'm not 100 percent sure.

10 Q Okay. But now, he was asking you to look and see if
11 there's any evidence of the doorjamb being damaged, right?

12 A That's correct.

13 Q Because sometimes, if someone were to kick in a door,
14 it would actually break the jambs, locks and all that?

15 A Yes.

16 Q We don't have that in this case, right?

17 A No.

18 Q And Mr. Barnes didn't specifically tell you that I
19 heard my door being kicked in. He just says I thought I
20 was being robbed, right?

21 A I heard a bang and then I heard a commotion.

22 Q He's hearing what he believes is a robbery or home
23 invasion based on his perception from the back bedroom,
24 right?

25 A Yes.

1 Q The bang?

2 A Yes.

3 Q The commotion?

4 A Yes.

5 Q The 50-inch TV breaking or crashing down, as he tells
6 you?

7 A Yes.

8 Q Right. You agree he says that. There's some
9 question about Mr. Barnes changing clothes. I can pull it
10 up on my laptop, but do you recall specifically asking him
11 that question in your interview? Did you change clothes?

12 A No, because I looked at the shirt he had on and it
13 was clean. I said if somebody did a crime like this, the
14 shirt has been washed or cleaned. That's why he changed
15 his clothes.

16 Q Well, you asked him the question did you change
17 clothes and he says no, right?

18 A Yes.

19 Q It's your belief that he changed clothes?

20 A Yes. Or washed them or something.

21 Q Don't make me do this?

22 A It's my belief.

23 (WHEREUPON, Defendant's Exhibit No. 33 through 36
24 marked for identification only.)
25

1 BY LUKE SHEALEY:

2 Q All right. I'm going to show you what's marked as
3 Defense's 33, which is a still frame from body cam
4 footage. Do you see Mr. Barnes there?

5 A Yes.

6 Q Gray short, white tank top?

7 A Uh-huh.

8 Q Black sweatshirt?

9 A Yes.

10 Q I want to show you what's marked as Defendant's 34,
11 which is surveillance from the in-car dash camera. Do you
12 see that 9:06?

13 A Uh-huh.

14 Q Do you recognize Mr. Barnes there?

15 A Sure do.

16 Q Gray shorts, white tank top, black hoodie?

17 A Yes.

18 Q Would you agree that looks the same as that other
19 photo, Defense 33?

20 A Yes.

21 Q I want to show you've Defendant's 35. It's another
22 still of Mr. Barnes on the scene, same outfit, right?

23 A Yes.

24 Q Now, he's taken into custody. This is him in your
25 interview room?

1 A Uh-huh.

2 Q Gray pants, right?

3 A Uh-huh.

4 Q White tank top?

5 A Yes.

6 Q Black hoodie?

7 A Yes.

8 Q Same Crocs or bedroom slippers?

9 A Yes.

10 Q He looks the same in those photos at 9:06 as he does
11 in your interview room?

12 A Yes.

13 Q Okay.

14 A I still believe he changed shirts.

15 Q That's your personal belief?

16 A That's the reason why I didn't take it.

17 Q Right.

18 A Thank you.

19 Q But you're not trained in crime scene analysis?

20 A No.

21 Q You have no ability to give an opinion about whether
22 somebody would get blood from a shooting versus blood in a
23 physical altercation?

24 A You're right.

25 Q You don't have that ability?

1 A No.

2 Q That's just your opinion?

3 A Right.

4 Q Everybody has got one?

5 A Yeah.

6 LUKE SHEALEY: I would seek to admit 33, 34, 35 and
7 36 into evidence.

8 THE COURT: Any objection?

9 MR. SCOTT: No, Your Honor.

10 THE COURT: All right. 33, 34, 35, 36 will be
11 entered without objection.

12 (WHEREUPON, Defendant's Exhibit Nos. 33 through 36
13 admitted into evidence.)

14 LUKE SHEALEY: Nothing further from this witness,
15 Your Honor.

16 THE COURT: Anything else from the State?

17 RE CROSS-EXAMINATION:

18 BY MR. SCOTT:

19 Q How would you characterize the amount of blood at the
20 scene?

21 A Extensive. It was a lot of blood left on the scene.

22 Q And the Defense Exhibit 36, this is what he was
23 wearing sometime after in the interrogation room?

24 A That's correct.

25 Q Okay. And then here's a picture at 9:06?

1 A Yes.

2 Q Okay. And so sometime, ten, 11 minutes after the
3 9-1-1 call are the pictures you were just shown?

4 A Yes.

5 Q I'm asking again, do you know what he did between the
6 time he killed those two boys and the time he's seen in
7 those pictures?

8 A I don't know.

9 Q Okay. So that wife beater he's wearing in that
10 picture had no blood on it is your testimony?

11 A That is correct.

12 Q Okay.

13 MR. SCOTT: That's all, Your Honor.

14 THE COURT: All right. You may step down there.

15 All right. Call your next witness.

16 MS. YOUNG: Your Honor, briefly, while we mess with
17 the technology and before we call our next witness, I was
18 going to inquire of the Court as to whether any contact
19 had been made with Officer Castro and any progress had
20 been made in getting an answer to the -- the question of
21 getting him up here and answering questions about the body
22 worn camera?

23 MR. SCOTT: We're summoning him up here now, Your
24 Honor.

25 THE COURT: He was in the building?

1 MR. SCOTT: He was working nights, so I think when
2 Sharon called him earlier, she asked him if he could be
3 available this afternoon. So she's letting him know now
4 to come on up here.

5 THE COURT: All right. Let's call our next witness.

6 MS. YOUNG: Yes, Your Honor, the defense is going to
7 call Kevin Archie. He is currently sequestered outside
8 the courtroom.

9 LUKE SHEALEY: Judge, we may need a second to get our
10 equipment set up again.

11 THE COURT: Okay.

12 THE BAILIFF: Come forward and be sworn, please.
13 Please your left hand on the Bible, raise your right and
14 face the clerk.

15 THE CLERK: State your full name, please.

16 THE WITNESS: Kevin D. Archie.

17 THE CLERK: A-R-C-H-I-E?

18 THE WITNESS: Yes, ma'am.

19 KEVIN ARCHIE, after being duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat right there.

22 MS. YOUNG: May it please the Court, Your Honor?

23 THE COURT: Yes, ma'am.

24 DIRECT EXAMINATION:

25

1 BY MS. YOUNG:

2 Q Thank you, Mr. Archie for being here and thank you
3 for your patience. We appreciate it. Mr. Archie, what's
4 your job? What do you do for a living?

5 A HVAC.

6 Q HVAC, okay. And what did you do for a living back in
7 February of 2019.

8 A HVAC maintenance work.

9 Q And where did you do that?

10 A Willow Run Apartments.

11 Q And what kind of tasks did you do as maintenance and
12 HVAC maintenance person?

13 A Like, when the tenants would call, like, if they had
14 a leak plumbing, electrical or anything like that, like
15 refrigerator light go off, clogs, tubs, toilets, sinks,
16 all stuff like that.

17 Q So as the maintenance HVAC person, did you get to
18 know some of the tenants either by face or by name?

19 A Yeah.

20 Q In February of 2019, did you know Antonio Barnes by
21 face?

22 A I'm not going to say fully, fully knew him, but just
23 started recognizing him because I started working out
24 there August of 2018.

25 Q Okay. Did you know Shekila Smalls by face and name?

1 A Uh-huh.

2 Q And you, in fact, close -- during February of 2019,
3 you had been in her apartment working on her apartment,
4 right?

5 A In and out.

6 Q Yeah, fixing a door, I believe?

7 A Yeah, the front door.

8 Q And were you working on February 7th of 2019? That
9 would be the day of the shooting.

10 A Yes.

11 Q And what time would you have gotten to work that day?

12 A Eight o'clock.

13 Q Eight o'clock. And what would you have done once you
14 got to work?

15 A First thing you do like from about 8:00 to 10:00, we
16 would clean the property up, like walking the grounds and
17 picking up trash.

18 Q When you say we, were you working with someone that
19 day?

20 A Yeah, supervisor Richard Charles.

21 Q I'm going to show you some pictures.

22 MS. YOUNG: If I may approach, Your Honor, the
23 witness?

24 THE COURT: Yes.

25

1 BY MS. YOUNG:

2 Q Mr. Archie, so I have three photos for you. Start
3 with these first two. So do you recognize kind of this
4 parking lot the picture is of?

5 A Uh-huh. That's behind Building 17 and right in the
6 front right there would be Building 20.

7 Q All right. And that's in the Willow Run Apartments
8 where you work?

9 A And that's me right there.

10 Q Perfect, so you see yourself kind of in the black
11 shirt?

12 A And that's Richard Charles right there.

13 Q All right. Perfect. That's Defense Exhibit 31 for
14 identification purposes. And then looking at one marked
15 30 for identification purposes, can you see yourself in
16 that one, too?

17 A Me, Richard and Shekila.

18 Q Okay. And looking at the dates on both of these
19 photos, do they say February 7th, 2019?

20 A Uh-huh.

21 Q And does this parking lot look like you remember it
22 did on February 7th of 2019?

23 A Uh-huh.

24 Q And I have one more photo for you. Do you kind of
25 recognize this area?

1 A That's building -- that's the dumpster right there
2 beside Building 15 and that's Building 18. That's a
3 breezeway -- not breezeway, but a driveway that goes
4 through there.

5 Q Do you recognize yourself in this photo?

6 A Right there.

7 Q Do you recognize anybody else in this photo?

8 A Richard and Shekila.

9 Q All right. I'm going to talk with you and put them
10 up there and I'm going to leave you some copies to follow
11 along?

12 A All right.

13 MS. YOUNG: Your Honor, I would like to enter into
14 evidence what's been marked as Defense Exhibit 30, 31 and
15 32?

16 THE COURT: Any objection?

17 MR. FOWLER: No objection, Your Honor.

18 THE COURT: Those will be entered without objection.

19 (WHEREUPON, Defendant's Exhibit Nos. 30 through 32
20 admitted into evidence.)

21 BY MS. YOUNG:

22 Q All right. So we're going to look at what is marked
23 as Defense Exhibit 31. And that's the one that you kind
24 of identified just yourself and Richard Charles. So you
25 said you saw yourself right here in the black shirt,

1 right?

2 A Uh-huh.

3 Q And this would be Richard Charles in the hoodie --

4 A Yeah.

5 Q -- in the additional photo? And y'all are picking up
6 trash just like you said?

7 A Uh-huh.

8 Q And that would have been on February 7th, 2019 at
9 8:45 in the morning?

10 A Uh-huh.

11 Q All right. Perfect. So we're going to look at that
12 next photo of the parking lot near Building 17. And this
13 one is marked as Defendant's Exhibit 30 for the court. So
14 you're looking at this photo, it says February 7th, 2019
15 up here in the left-hand corner. It says 8:47 in the
16 morning?

17 A Yeah.

18 Q And then you see yourself over here?

19 A And that's Shekila.

20 Q And that's Shekila?

21 A Yeah.

22 Q And so, it looks like Shekila Smalls. She's coming
23 out of Building 17, right?

24 A Yeah, because she stayed in that top apartment, which
25 is 17E, right above where we standing. The top window at

1 the top, that's her apartment.

2 Q So she lived in the apartment. It looks like maybe
3 she had some trash?

4 A Yeah.

5 Q So, that morning, did she come down and, I guess,
6 kind of talk to y'all a little bit?

7 A Yeah, because that morning when we got to work, if
8 you see right there, like, from the first picture where
9 we're in the parking lot, usually, when we get to work,
10 we're usually like good morning, just talking and all that
11 stuff right there. But by the time we made it through
12 there, she came out.

13 I guess she heard our voice in the breezeway that
14 morning. So she came out and just, like, good morning,
15 how are you doing and started talking.

16 Q Okay. When you saw her, did she look like she had
17 just woken up?

18 A Yeah.

19 Q She looked a little sleepy, I guess. And she comes
20 down and chats with y'all. And does she, I guess, take
21 that trash out next?

22 A No, she just leaves it right there.

23 Q Okay. Kind of during that time, she's just milling
24 around talking to y'all; is that right?

25 A Uh-huh.

1 Q And when she's talking to y'all, do you remember her
2 saying anything about seeing Antonio Barnes that morning?

3 A No.

4 Q What about Eric Griffin?

5 A Nope.

6 Q Antonio Dash?

7 A Nope.

8 Q Okay. So when y'all were talking, is that about when
9 you heard gunshots?

10 A Okay. You see where we're standing at in that
11 picture right there?

12 Q Yeah.

13 A We walked -- we stood there for a little while
14 talking, maybe five minutes, if that. Then we walked
15 through the breezeway. After we made it through the
16 breezeway, that's when we heard four gunshots.

17 Q And y'all started running, I guess, towards the
18 gunshots?

19 A Well, no, no, not at that point. We just kept coming
20 through the breezeway. Then the lady at Building 15 was
21 in her breezeway, which is like -- that building is like
22 -- this is 17 this way and you got 18, then you got 15,
23 which is down there. She came out of 15 as we was on the
24 other side of 17. And she said, Come quickly, there's
25 shooting. So we went over to Building 14.

1 Q All right. So I'm going to show you a video really
2 quick kind of the same scene. So I'm going to direct your
3 attention over here. It's a little far away, so just bear
4 with me and keep an eye on that area. Really quickly,
5 this says February 7th, 2019, right?

6 A Uh-huh.

7 Q And the timestamp says 8:56, almost 8:57 in the
8 morning, right?

9 A Yeah.

10 Q I'm going to go ahead and play it if you'll keep an
11 eye right there.

12 (Video is played.)

13 All right. You see one, two, three people running in
14 that direction?

15 A Uh-huh.

16 Q So is that you?

17 A Me, Richard and Shekila.

18 Q Okay. Perfect. So y'all go running to the apartment
19 building and you get up to apartment 14G, right?

20 A (Nods in the affirmative.)

21 Q And Antonio Barnes opens the door?

22 A (Nods in the affirmative.)

23 Q Okay. When he opens the door, is he holding a gun or
24 anything?

25 A (Indicating in the negative.)

1 Q Is he wearing a white tank top?

2 A I believe so.

3 Q Okay. That's what you remember?

4 A That's right.

5 Q And what you said --

6 A Uh-huh.

7 Q -- previously when you've been questioned?

8 A Yeah.

9 Q All right. So when you saw kind of into the
10 apartment and you saw the bodies on the floor, you turned
11 around and told someone to call for help, right?

12 A Yep.

13 Q And there was lot of commotion in that room, right?

14 A Well, at that point, it looked like they was in there
15 fighting, to be honest with you.

16 Q Okay. So there were a lot of people?

17 A No, it was just Antonio, Antonio and Eric.

18 Q Okay. So he opens the door wearing a white t-shirt
19 and you asked them to call for help. Barnes kind of stays
20 around the apartment and stays around y'all?

21 A Well, okay, when it all happened, we -- when I seen
22 Antonio and Eric on the floor, I just took off, turned
23 around and went down the steps. So I called the office
24 and I told Richard, Y'all better call somebody quick.
25 When I'm coming down, commotion just started piling up in

1 that parking lot.

2 So we just -- like, the dumpster, we just stood right
3 by that dumpster because a police officer came and was
4 asking us what was going on and we said we worked there.
5 And he told us to stay right there by that dumpster until
6 he find out what was going on. And then once he find out
7 what was going on, he took us to the office.

8 Q At some point before going to the office and then, I
9 guess, getting to the apartment, Barnes says something to
10 you, right? He talks to you?

11 A Uh-huh.

12 Q He, basically, says, I was asleep. He was really
13 confused?

14 A He said that at first.

15 Q And he said that people are fighting, right?

16 A He said that second.

17 Q Okay. And then he came out -- he thought he was
18 getting robbed and he came out shooting, right?

19 A Well, that was what he said at the second, but then,
20 you know, this is a roommate right here.

21 Q If you'll just answer kind of what he said and not
22 what you think --

23 A Okay, he said -- he said, I'm going to tell y'all the
24 truth. They was in there fighting and I came out the back
25 blasting. Let me change my shirt and I'm going to turn

1 myself in.

2 Q Okay. So he said let me change my shirt. Did you
3 see him change his shirt?

4 A Well, there's a store right up there called Bob's
5 Mart. He walked that direction.

6 Q When you first saw him --

7 A No, he had the tank top on when he left and went that
8 way towards Bob's Mart. We was already in the office.
9 And if you come in our office, there's a window coming
10 down Alcott Drive, we got windows right there. I seen him
11 come back, stop by the office and turn himself in.

12 Q Okay. So he did what he said he was going do, turn
13 himself in?

14 A Yeah.

15 Q He was still wearing a white tank top?

16 A No, he had went and got a shirt. He had went and
17 changed his shirt. So I was under the impression he went
18 to Bob's Mart and bought him -- because they sell -- like,
19 a convenience store sells like shirts and stuff. He came
20 back a white t-shirt on.

21 So I was under the impression when he kept walking --
22 because when he talked to us, he kept walking, like, going
23 to Building 19, which is by the office. And that's like
24 going towards the store. So he went that way, you know.

25 Q All right. We'll leave that alone. When he opened

1 the door, he was wearing a white tank top, correct?

2 A Uh-huh.

3 Q Perfect. So whenever EMS arrived, you said you went
4 over to the dumpster and Richard Charles was there with
5 you and Shekila Smalls was there, too?

6 A Yeah.

7 Q Let me show you another picture, that kind of last
8 one. And this is Defendant's Exhibit 32. And so that's
9 you standing right here?

10 A Uh-huh.

11 Q Richard Charles?

12 A Uh-huh.

13 Q Shekila Smalls? EMS had already arrived and the
14 police had already arrived?

15 A Yes.

16 Q Okay. And when Shekila Smalls is standing there next
17 to y'all, she did say, Oh, man, I saw Antonio Barnes
18 earlier that morning, right?

19 A I never even knew she had been over there.

20 Q Well, she didn't tell you that?

21 A She never mentioned it, not to me.

22 Q Okay. And you only think that because an individual
23 named Ace came over about a week ago and told you that,
24 right?

25 A No, I came down here and that's when I found out.

1 Q You came here?

2 A Yeah, when I had came to court last Monday.

3 Q All right. Do you see -- I don't see Ace in the
4 courtroom, but Ace is with the Solicitor's Office, right?

5 A Yes.

6 Q So he's the one that told you that, correct?

7 A Uh-huh.

8 Q She never said anything about seeing any of these
9 people? She never said she was afraid of Barnes that
10 morning, right?

11 MR. SCOTT: Judge, what is the hearsay exception?
12 She keeps asking what this woman said.

13 THE COURT: That is an objection?

14 MR. SCOTT: It is.

15 THE COURT: So your objection is hearsay?

16 MR. SCOTT: Right. There's been a number of
17 questions asking what Smalls said, what Ace said. And the
18 objection is hearsay unless there's an exception.

19 MS. YOUNG: Yes, Your Honor. So I didn't actually
20 elicit a hearsay statement at all. He said no, she didn't
21 say anything. There is no statement. And then for Ace's
22 statement, I'm not offering it for the truth of the matter
23 asserted. I'm offering it to show where his knowledge and
24 notice of that information came from.

25 THE COURT: All right. The objection is overruled.

1 MS. YOUNG: Thank you, Your Honor.

2 BY MS. YOUNG:

3 Q So did you end up going back to 14G after
4 February 7th, 2019 to maybe clean up the apartment?

5 A Uh-huh.

6 Q So when you were there, you saw a hole in the hall,
7 right?

8 A (Nods in the affirmative.)

9 Q You saw a broken chair?

10 A (Nods in the affirmative.)

11 Q Kind of a mess?

12 A Yeah.

13 Q Okay. So you were at apartment 14G prior to
14 February 7th, 2019 for like an inspection, right?

15 A Yeah, because we -- like, at the beginning of the
16 year, we do something called a react for marketplace. And
17 when the react comes around, like, once a year, we go from
18 apartment to apartment to see what needs to be fixed in
19 each apartment.

20 Q And when you went into the apartment before February
21 7th, there wasn't a hole in the hall?

22 A No.

23 Q Wasn't a broken chair?

24 A No.

25 MS. YOUNG: Okay. That's all I have for you. If

1 you'll answer any questions the State might have for you.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: All right. Yes, sir.

4 MR. FOWLER: Thank you, Your Honor. May it please
5 the Court.

6 CROSS-EXAMINATION:

7 BY MR. FOWLER:

8 Q Afternoon, Mr. Archie. How are you?

9 A I'm fine.

10 Q You said you knew Shekila Smalls, correct?

11 A Correct.

12 Q Do you know if she smoked weed?

13 A Yeah.

14 MS. YOUNG: Objection, Your Honor, relevance.

15 THE COURT: Overruled. I think there's been some
16 testimony regarding her smoking weed or buying weed or
17 something. Yeah, it's overruled.

18 MR. FOWLER: Thank you, Your Honor.

19 BY MR. FOWLER:

20 Q You also testified that she appeared sleepy to you
21 that morning when you were talking to her?

22 A Yeah, I was under the impression that she had just
23 got up. We get to work at eight o'clock. When you see
24 somebody that time of the morning, I don't know if she
25 visiting people. You know, I'm thinking she was just

1 getting up when I first seen her come out the apartment
2 that morning.

3 Q Do you think she could have been -- seemed that way
4 because she had just smoked marijuana?

5 MS. YOUNG: Objection, Your Honor.

6 THE COURT: Sustained, speculation.

7 BY MR. FOWLER:

8 Q After y'all heard the gunshots, the three of y'all
9 ran to the apartment where they came from; is that
10 correct?

11 A Yes.

12 Q Did you knock on the door?

13 A Yes.

14 Q Who opened the door?

15 A Antonio Barnes.

16 Q Did he say anything to you?

17 A When he opened up the door, he yell out What, what,
18 what.

19 Q What was his demeanor?

20 A Wasn't no aggressive demeanor, but it was like rowdy,
21 you know. He had an aggressive tone, but he wasn't
22 physically aggressive.

23 Q Was he yelling, what, what, what?

24 A Yes, kind of like that. It was a little loud when he
25 say it. Because I knocked on the door, he opened the door

1 and then I asked what was going on and he just say, What,
2 what, what. And I looked and I said, Oh, never mind,
3 nothing, and I turned around and left.

4 Q Did you see inside the apartment when he opened it?

5 A Uh-huh.

6 Q And you know who Eric Griffin and Antonio Dash are?

7 A I know Eric the most because I worked with -- during
8 the time they was remodeling, he worked with Polaris
9 Plumbing and I was with Green's Heating and Air.

10 Q Right.

11 A So that's how I met Eric, when we was remodeling, but
12 I got to know him a little bit, but I knew his face very
13 well.

14 Q But you recognized Antonio Dash, as well?

15 A Yeah.

16 Q How were their bodies situated when you looked in the
17 room?

18 A Like the apartment, you got the living room and,
19 like, a little dining area right here, a big open space,
20 then you got the hallway that goes straight down. Eric
21 was laid down, like his body was covering up like a cross
22 in the walkway, hallway with his face facing the door. He
23 was already dead. And then Antonio was on top of Eric and
24 he was jerk and his brains was coming out of his head.

25 Q So they were laying on top of one another with --

1 Eric had his back on the ground, Antonio Dash was on top?

2 A Uh-huh.

3 Q I think you just said that after Mr. Barnes greeted
4 you at the door, you left almost immediately?

5 A Yeah.

6 Q Where did you go?

7 A Down, like, in the parking lot.

8 Q Did you see the defendant after you walked away from
9 the door?

10 A Antonio Barnes?

11 Q Yes, did you see Mr. Barnes --

12 A Yeah, he came -- yeah.

13 Q Okay. Who were you standing with?

14 A It was me, Hamilton Jacobs, Jaquana, I can't remember
15 her last name, and Richard Charles.

16 Q And y'all asked him what happened?

17 A Uh-huh.

18 Q And I think you said he gave you three different
19 stories?

20 A First thing he said was, Man, I don't know, I was
21 sleeping. I was like, Come on, man.

22 Q What did you say to him after that?

23 A I said, Man, come on man, there's two dead bodies in
24 here. Then he said, Man, they tried to rob me, man. Then
25 I said, Man, that's your roommate right there. He said,

1 All right, I'm going to tell you the truth, man. They was
2 in their fighting and I just came out the back blasting.
3 I'm going to change my shirt and turn myself in.

4 MR. FOWLER: Beg the Court's indulgence.

5 (Pause.)

6 BY MR. FOWLER:

7 Q You said earlier that Shekila told you nothing about
8 seeing Barnes earlier. Did you ever ask her about seeing
9 him earlier?

10 A No, I didn't have no reason. She was with us when we
11 heard the shots, so I wouldn't have thought she would have
12 been over there.

13 Q Okay. You were a maintenance man at the apartment
14 complex. Is it possible that some of the damage in the
15 apartment had occurred before the shooting incident?

16 MS. YOUNG: Objection, speculation.

17 THE WITNESS: I think --

18 THE COURT: Objection is sustained. Please rephrase
19 the question.

20 MR. FOWLER: Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 BY MR. FOWLER:

23 Q Do you recognize where that picture is taken at?

24 A Yeah, that's where the -- if you look right through
25 there, that's the kitchen right there. Where the chair is

1 broken over in the corner, that goes into the kitchen.

2 That's the little dining area right there.

3 Q Do you recognize the person in that picture?

4 A Uh-huh.

5 Q But that chair that's in that apartment is broken in
6 that picture?

7 A Yeah.

8 MS. YOUNG: If I may see that?

9 MR. FOWLER: Yeah.

10 BY MR. FOWLER:

11 Q Who is the person in this picture, Mr. Archie?

12 A Antonio.

13 Q Dash?

14 A Yeah.

15 MR. FOWLER: Your Honor, the State would seek to
16 admit State's Exhibit 13?

17 THE COURT: Any objection?

18 MS. YOUNG: None, Your Honor.

19 THE COURT: Entered without objection.

20 (WHEREUPON, State's Exhibit No. 13 was admitted into
21 evidence.)

22 MR. FOWLER: No further questions, Your Honor.

23 THE COURT: All right. Yes, ma'am.

24 MS. YOUNG: Thank you, Your Honor. May it please the
25 Court.

1 REDIRECT EXAMINATION:

2 BY MS. YOUNG:

3 Q Mr. Archie, so you previously said you did an
4 inspection about a week before February 7th, 2019, right?

5 A Uh-huh.

6 Q And there wasn't a hole in the wall then, right?

7 A No.

8 Q And then you were kind of talking about what Barnes
9 said whenever he came down from the apartment and you
10 stated he was asleep, right, and you were kind of
11 prompting him, asking him questions?

12 A Yeah, we were.

13 Q And so, you know, some of those statements you
14 attributed to him, was that more of like the vibe you were
15 getting from him or do you remember that's what he said
16 verbatim?

17 A That's just what he said because, you know, he
18 said -- he answered the questions we asked.

19 Q He said he was asleep, he said he heard fighting,
20 came out shooting, right --

21 A He said they was trying to rob him and then he said
22 there was fighting.

23 Q So he's asleep, there's fighting, he believed
24 somebody is going to rob him and he comes out shooting; is
25 that about right?

1 A Yeah.

2 MS. YOUNG: All right. Thank you. I have no further
3 questions for you.

4 THE COURT: All right. Yes, sir.

5 RE CROSS-EXAMINATION:

6 BY MR. FOWLER:

7 Q You said that he gave three different versions of the
8 story, correct? And all the versions were words that he
9 spoke out of his mouth to you?

10 A Yeah.

11 Q And they were all different, each story he gave you?

12 A (Nods in the affirmative.)?

13 THE COURT: Thank you. Answer.

14 THE WITNESS: I'm sorry, yes.

15 MR. FOWLER: No further questions, Your Honor.

16 THE COURT: All right. Thank you. You may step
17 down.

18 Any objections to this witness being excused?

19 MS. YOUNG: None, Your Honor.

20 THE COURT: All right. Any from the State? Any
21 objections to --

22 MR. FOWLER: No objection, Your Honor.

23 THE COURT: All right, sir. You're free to leave.
24 Thank you.

25 All right. We're going to take about a five or ten

1 minute break.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: All right. Are we ready?

4 BRIAN SHEALEY: Yes.

5 THE COURT: Call your next witness.

6 BRIAN SHEALEY: Your Honor, the defense would call

7 Sam Thomas.

8 SAMUEL THOMAS, after being duly sworn,
9 testified as follows:

10 THE CLERK: Samuel Thomas.

11 DIRECT EXAMINATION:

12 BY BRIAN SHEALEY:

13 Q Good afternoon, Sam. How are you?

14 A I'm good.

15 Q So let's get right to the point. So on this day in
16 question, you were living in apartment 14G with Antonio
17 Barnes and Antonio Dash?

18 A Yes.

19 Q Okay. And you were all friends, right?

20 A Yes.

21 Q Friends and roommates?

22 A Yes.

23 Q And how long approximately had you lived at the
24 Willow Run Apartments?

25 A Maybe close to a year.

1 Q Okay. And you were a leaseholder, right?

2 A (Nods in the affirmative.)

3 Q And who else was the other leaseholder?

4 A Barnes.

5 Q Is that Antonio Barnes?

6 A Yes.

7 Q And Antonio Dash was just allowed to stay there,
8 right?

9 A Right.

10 Q But he wasn't on a signed lease or anything, but
11 y'all all were friends and let him live there, right?

12 A Right.

13 Q Now, what is your normal routine? Are you an early
14 riser?

15 A Sometimes, yes, it depends on the night before, yes.

16 Q Sam, make sure you speak into this microphone so this
17 judge and this court reporter can clear you, okay?

18 A Okay.

19 Q Now, would you routinely give Antonio Dash a ride to
20 work?

21 A Yes.

22 Q Was that your practice, your arrangement with him?

23 A I mean, I was the only one that had a car at the
24 time, so I provided transportation for everybody.

25 Q Did he almost always need a ride to his job?

1 A Yes.

2 Q And did you almost always take him to his job?

3 A Yes.

4 Q But you didn't take him that day, right?

5 A No.

6 Q And tell the court why you didn't take him to work
7 that day?

8 A He told me he had a ride already.

9 Q Did you think anything of that?

10 A No.

11 Q Okay. And you had some place else to be, as well,
12 that morning, right?

13 A Yes.

14 Q And where was that?

15 A I went to the walk-in clinic.

16 Q And do you know approximately when you would have
17 left your apartment to go to the doctor's office?

18 A No.

19 Q Okay. But does 8:15 sound about right in the
20 morning?

21 A Yeah.

22 Q Can you speak up, please?

23 A Yes.

24 Q Do you think approximately 8:15 sounds about right?

25 A Yes.

1 Q And you went to the doctor to?

2 A Get a checkup.

3 Q Now, when you left the apartment -- and you told law
4 enforcement this, but what is your understanding of what
5 Antonio Dash was getting ready to do?

6 A Go to work.

7 Q And did you see Antonio Barnes up?

8 A No.

9 Q Was his door to his room opened or was it closed?

10 A Closed.

11 Q In fact, you hadn't seen him at all that morning,
12 right?

13 A No.

14 Q Was it your assumption that he was asleep?

15 A Yes.

16 Q Was he often asleep when you would take Tonio Dash to
17 work?

18 A Yes.

19 Q Okay. Now, y'all were all friends, right?

20 A Correct.

21 Q Okay. There was no beef, no bumping heads with
22 anybody, right? I mean, y'all were friends enough to live
23 together, right?

24 A Right.

25 Q And Tonio Dash, even though he wasn't on the lease,

1 he stayed with y'all, right?

2 A Yes.

3 Q I'm going to show you a picture and let me know if
4 you can see it up here. This is Defendant's 3. Now, this
5 you may not have seen before, but this was generated by
6 law enforcement to depict the crime scene. But just so
7 the judge knows what we're talking about, do you recognize
8 this as the door, front door?

9 A Yes.

10 Q Okay. Now, if this is the front door, this would be
11 the kitchen, right?

12 A Yes.

13 Q And this would be your bedroom, this front bedroom?

14 A Correct.

15 Q And this would be Antonio Barnes' bedroom, right?

16 A Correct.

17 Q And then we got a bathroom, right?

18 A Yes.

19 Q Now, there was no third bedroom or anything, right?

20 A No.

21 Q Now, there is kind of a storage area in the back of
22 the hallway, correct?

23 A Yes.

24 Q And who would sleep in that storage area every night?

25 A Tonio Dash.

1 Q Tonio Dash would sleep there, right?

2 A Right.

3 Q Did he keep some stuff there in that closet area?

4 A Yes.

5 Q Now, he never slept in Antonio Barnes' room, did he?

6 A No.

7 Q Now, when he would sleep in this room, how would he
8 sleep? Obviously, there's no bed in the closet --

9 A Maybe on covers or a blowup bed, whatever.

10 Q But it was always his practice of sleeping in that
11 little storage closet, right?

12 A Yes.

13 Q Now, again, this apartment is a little bit small?

14 A Yes.

15 Q Just two bedrooms?

16 A Two bedrooms.

17 Q And he wasn't sleeping in your bedroom, right?

18 A No.

19 Q Now, again, when you left the apartment that day,
20 there was no arguing, right?

21 A No.

22 Q Antonio Barnes' door was closed?

23 A Correct.

24 Q And you assumed he was asleep?

25 A Correct.

1 Q And the only reason you weren't giving a ride to
2 Mr. Dash is because he said he had some other way to get
3 to work, right?

4 A Right.

5 Q All right. I'm going to show you a couple of
6 pictures -- if I may approach, Your Honor -- of your
7 apartment. I'm going to you what's marked as Defendant's
8 Exhibit 20. Do you recognize that as a television and a
9 chair turned over?

10 A Yes.

11 Q You recognize that as generally your apartment,
12 right?

13 A Yes.

14 Q Do you recognize Defendant's 21 as your television
15 that's flipped over?

16 A Yes.

17 Q Also, the table that it was sitting on is upside
18 down, right?

19 A Yes.

20 Q Do you recognize this hole in the wall?

21 A No.

22 Q Do you understand that that was your apartment?

23 A Yes.

24 Q Okay. We'll talk about the hole. Do you recognize
25 Defendant's 23 as an image of yourself?

1 A Yes.

2 Q Similarly, an image of yourself on Defendant's 24?

3 A Yes.

4 Q Similarly, an image of yourself and some other people
5 on Defendant's 25?

6 A Yes.

7 Q Twenty-six?

8 A Yes.

9 Q Speak up, please. I'm not trying to yell at you. I
10 just want to make sure they can hear you. Defendant's 27,
11 do you recognize that as a picture of your sister?

12 A Yes.

13 Q Twenty-eight, again, your sister on the phone?

14 A Yes.

15 Q And then your sister, and then you're sitting down on
16 the corner there, right?

17 A Yes.

18 Q Does that fairly and accurately represent what these
19 images looked like on the day of this shooting?

20 A Yes.

21 Q Okay.

22 BRIAN SHEALEY: Your Honor, at this time, I'd seek to
23 admit Defendant's 20 through 29?

24 THE COURT: Any objection?

25 MR. WALTON: No objection, Your Honor.

1 THE COURT: Okay. They'll be entered without
2 objection.

3 (WHEREUPON, Defendant's Exhibits Nos. 20 - 29 were
4 admitted into evidence.)

5 BY BRIAN SHEALEY:

6 Q We've kind of covered some of these with the Court,
7 but I know you have not. I'm just going to show you
8 Defense 20, which is an overturned coffee table and a
9 television. Is that the way that looked in your apartment
10 when you left?

11 A No.

12 Q And was your television sitting up on that table?

13 A Yes.

14 Q And, again, this is pretty similar, just zoomed out,
15 show you Defendant's 21. And you, again, recognize that
16 as a more blown-up version of this corner. And that's not
17 how it looked, right, when you left?

18 A Correct.

19 Q TV was on that stand, correct?

20 A Correct.

21 Q Okay. And, again, there was not a giant hole in the
22 wall when you left either, right?

23 A Correct.

24 Q There was no arguments, no beef, no fighting when you
25 left that apartment, right?

1 A No.

2 Q And certainly not that hole. And I know this is
3 tough because everyone was your friend and I hate showing
4 you these pictures, but it's important. And you're here
5 today to tell the truth, right?

6 A Correct.

7 Q Just like you told the truth when you came back from
8 the doctor's office and you, basically, flagged down the
9 first officer that you saw, right?

10 A Correct.

11 Q And you did not know his name, but I've shown you
12 these pictures before. Do you recognize yourself in this
13 picture?

14 A Yes.

15 Q For the record, this is Defendant's Exhibit 23. Is
16 this, basically, an image of you from a body camera of the
17 first officer that you came across?

18 A Yes.

19 Q And are you coming up to your apartment and seeing
20 all this yellow tape?

21 A Yes.

22 Q Are you concerned?

23 A Yes.

24 Q Okay. That's you trying to get the attention of the
25 officer that was behind that tape?

1 A Right.

2 Q Okay. And this will be important, there's a little
3 timestamp. Just for the record, what time does it say on
4 the bottom of this body cam?

5 A 9:31.

6 Q So 9:31, you're coming back to the apartment, you're
7 making contact with an officer that's standing behind that
8 yellow tape, right?

9 A Right.

10 Q Here's Defendant's 24. You're a little bit closer
11 here, closer to the officer. Obviously, what is your
12 demeanor in this image?

13 A My demeanor?

14 Q Yeah, are you upset?

15 A Confused, distraught, sad.

16 Q Okay. So that's you, obviously, being very sad to
17 learn about what had happened in the apartment, right?

18 A Yeah.

19 Q And on this timestamp right there, what does that
20 say?

21 A 9:31.

22 Q All right. So 9:31.

23 Now, I'm going to show you -- stepping forward a
24 little bit from 9:31, did that officer put you in touch
25 with other investigating officers in this case?

1 A Excuse me?

2 Q Did that officer that you talked to and identified
3 yourself, did that officer -- once you told him who you
4 were and you lived in that apartment, did he want you to
5 speak to the investigating officer in this case?

6 A Yes.

7 Q Okay. So he directed you to an investigating
8 officer?

9 A Yes.

10 Q And so here we are, in this image of you, do you
11 recognize yourself speaking to Investigator Gilliam?

12 A Yes.

13 Q And that was the first time you'd ever spoken to
14 Investigator Gilliam, right?

15 A Yes.

16 Q And you're telling him everything you know, right?

17 A Right.

18 Q Telling him that you didn't give Mr. Dash a ride that
19 day, right?

20 A Right.

21 Q And that Antonio was in his room asleep, right?

22 A Right.

23 Q And you thought Antonio Dash was getting ready to go
24 to work that day, right?

25 A Right.

1 Q So Investigator Gilliam is trying to figure out
2 what's going on, why this occurred and if you're telling
3 him the truth, right?

4 A Right.

5 Q And, again, this is at 9:34 per this body cam,
6 correct?

7 A Yes.

8 Q And, again, just a little bit more down the line,
9 here you are again speaking to two officers, Gilliam and
10 another officer. And that's at 9:35, right?

11 A Yes.

12 Q At the very bottom, that's 9:35. Did they
13 immediately take you down to be questioned at headquarters
14 or did you sit and kind of hang out in the parking lot for
15 a while waiting to be told what to do next?

16 A Yes, they didn't take me right away.

17 Q And I'm going to show you a picture, Defense 28.
18 Mind you, you're talking to Investigator Gilliam at
19 9:35 and the timestamp on this image, Defendant's 28, is
20 at 9:58. Do you recognize anyone in that photograph?

21 A Yes.

22 Q Who do you recognize?

23 A My sister.

24 Q All right. Is this lady that seems to be holding a
25 phone, she's got something on her head and she's to the

1 left of this gentleman here in the white shirt, right?

2 A Yes.

3 Q And do you know approximately where you were at this
4 time?

5 A I was sitting down on the sidewalk by that car right
6 there. I was just sitting to the side.

7 Q Okay. You were sitting down. Again, this is at
8 9:58. This is after you've already spoken to Investigator
9 Gilliam, right?

10 A Right.

11 Q Now, that was 9:58:10, for those that are keeping
12 count, right? Do you see that, 9:58:10, right?

13 A Yes.

14 Q I'm going to show you a picture at 9:58:19, is that
15 still your sister?

16 A Yes.

17 Q And she had something in her hand?

18 A Yes.

19 Q What is that?

20 A Phone.

21 Q All right. And does she, basically -- I don't have a
22 picture on that, but is she, basically, giving you the
23 phone and allowing you to speak somebody?

24 A Yes.

25 Q And who is that?

1 A Tonio Barnes.

2 Q Okay. So that is the first time that you had spoken
3 to your roommate, Antonio Barnes, since this thing
4 happened?

5 A Yes.

6 Q Is he telling you what happened?

7 A No, he's just really apologizing saying he didn't
8 mean for anything to happen.

9 Q Okay. Did he tell you about any kind of crash or bam
10 or any kind of commotion that caused him to do what he
11 did?

12 A Yeah, he said he heard a commotion and stuff like
13 that.

14 Q Okay.

15 A He thought people was like coming in and robbing the
16 house.

17 Q So he thought he was getting robbed?

18 A Yes.

19 Q Was he upset at this time?

20 A Yeah, you can hear the frustration.

21 Q Is he telling you it was a --

22 A You can hear him upset, sniffing and stuff.

23 Q So he told you, basically, that he thought he was
24 getting robbed, right?

25 A Yes.

1 Q And then that -- now he's come to realize some people
2 he shot -- or people he knows are terrified, right?

3 A Right.

4 Q He's telling you, the other roommate, how upset he
5 was about this, right, and how it was an accident?

6 A Right.

7 Q Now, again, that was at 9:58:19, right, that you were
8 first talking to Mr. Barnes that day, right?

9 A Right.

10 Q Because earlier, the door was closed when you left to
11 go to the doctor and he was asleep, right?

12 A Right.

13 Q So you're just taking all that in for the first time?

14 A Right.

15 Q I'm going to play you a video that's already been
16 played, but you have not had an opportunity to hear it
17 today.

18 BRIAN SHEALEY: Beg the Court's indulgence.

19 BY BRIAN SHEALEY:

20 Q I'm going to play this for you and see if you can
21 hear it. Again, this was earlier in the day at 9:36,
22 right?

23 A Right.

24 (Video was played.)

25 Q Can you hear your voice on that body cam?

1 A Yes.

2 Q You're saying one was about to go to work and one was
3 still in bed?

4 A Yes.

5 Q So, again, you're telling Investigator Gilliam that
6 at 9:36 on this officer's body worn camera, right?

7 A Yes.

8 Q But you didn't get the phone call from your sister,
9 who had Antonio Barnes on the phone, until later at 9:58,
10 right?

11 A Right.

12 Q So you always told anyone that would listen to you on
13 the scene exactly what you knew, right?

14 A Right.

15 Q Which was the truth?

16 A Right.

17 Q There was no beef, no bumping, as you say?

18 A Right.

19 Q And Antonio had his door closed, Tonio Barnes, and
20 that your idea was Mr. Dash was getting ready to go to
21 work, right?

22 A Right.

23 Q Now, you didn't see Eric Griffin in the house when
24 you left, right?

25 A No, I didn't see him at all.

1 Q And you never told anyone that when you were up that
2 everybody was up giggling and laughing? You never told
3 anybody that, did you?

4 A No.

5 Q Repeat that for record?

6 A No.

7 Q Do you recall talking to a female investigator or
8 sergeant that maybe would have been in plain clothes
9 telling her that Tonio Barnes was up?

10 A No.

11 Q Okay. Do you recall talking to a lot of different
12 officers that day?

13 A Yes.

14 Q Okay. Let me ask you this, Investigator Gilliam kind
15 of kept on asking you some questions through that day and,
16 I guess, later on at your mom or grandma's house. Do you
17 recall that?

18 A Yes.

19 Q So I know you were talking to him here. And we just
20 determined that you were telling him as far as you know,
21 Antonio Barnes was in bed and Antonio Dash was getting
22 ready to go to work. But did he also take you down there
23 that day and ask you some questions at the Columbia Police
24 Department?

25 A Yes.

1 Q Were you in an interview room, small room?

2 A Yes.

3 Q Did you tell him the same thing?

4 A Yes.

5 Q Now, did he try to, I guess, ask you questions that
6 did Antonio Barnes tell you what to say? Did he ask you
7 that line of questioning?

8 A Yes.

9 Q And what did you always tell him?

10 A No.

11 Q So you always were consistent that Antonio never told
12 you what to say at all, right?

13 A Right.

14 Q And as we can see here, you already told him what you
15 knew, right?

16 A Right.

17 Q So on that phone call when your sister gave you the
18 phone and Antonio Barnes was on the other line, he was
19 just telling you roommate to roommate, friend to friend
20 this terrible thing that happened, right?

21 A Right.

22 Q And why it transpired that way, right?

23 A Right.

24 Q Now, Investigator Gilliam interviewed you again that
25 day; did he not? He interviewed you twice, more along the

1 lines of questioning about this phone call, right?

2 A Yes.

3 Q Trying to insinuate that you were lying, right?

4 A Yes.

5 Q Or that Antonio Barnes somehow gave you some story to
6 tell, right?

7 A Yes.

8 Q But again, we know that's not the case because you're
9 already telling Investigator Gilliam the truth earlier on,
10 right?

11 A Right.

12 Q And I've got transcripts of the interview itself that
13 was recorded and we had a court reporter transcribe it,
14 but do you recall when Antonio Barnes was talking to you
15 that day on the phone him saying things like he thought
16 they were breaking into the crib?

17 A Yes.

18 Q And he heard a loud rumble, right?

19 A Right.

20 Q And that he didn't come out of the room until he
21 heard the TV slam, right?

22 A Right.

23 Q And he thought they were breaking in?

24 A Right.

25 Q Do you recall him telling you that on the phone? And

1 that he was telling you, I really thought he was breaking
2 into the crib. You remember that?

3 A Yes.

4 Q And he just woke up and that S-H-I-T woke him up,
5 right?

6 A Yes.

7 Q And do you also recall multiple times Investigator
8 Gilliam still kind of asking you just got to make sure he
9 didn't ask you to change anything or say anything, right?

10 A Right.

11 Q And you were consistent he didn't. I promise you he
12 didn't, right?

13 A Right.

14 Q So you always told Investigator Gilliam that, right?

15 A Right.

16 Q You always told Investigator Gilliam the truth,
17 right?

18 A Right.

19 Q And, in fact, when he came out again to -- was it
20 your grandma's house or your mom's house?

21 A My grandmother's house.

22 Q This would have been like weeks later, right?

23 A Yes.

24 Q He showed up again, and really was trying to get down
25 to insinuating that you were lying again, right?

1 A Right.

2 Q Can you speak up for this Judge?

3 A Right.

4 Q Do you recall telling him I'm just trying to speak
5 facts?

6 A Yes.

7 Q Do you recall telling him I did not see Barnes, but I
8 know for a fact his door was closed?

9 A Yes.

10 Q Do you recall Investigator Gilliam telling you
11 something like, so he didn't tell you to cover up for him
12 at all, right?

13 A Yes.

14 Q And you said no, correct?

15 A Yes.

16 Q And he kept on and kept on and kept on with that,
17 right?

18 A Yes.

19 Q But again, you always told the truth in this case?

20 A Correct.

21 Q That y'all were friends?

22 A Correct.

23 Q That you almost always gave Antonio Dash a ride to
24 work, just not that day, right?

25 A Correct.

1 Q That y'all had no bad blood between the roommates, no
2 beef or anything, right?

3 A Correct.

4 Q And that Antonio Barnes' door was closed that day?

5 A Correct.

6 Q Let me talk to you a little bit about, is it Shekila
7 or Shekila Smalls? Do you know who I'm talking about?

8 A Yes.

9 Q She lives some place in the apartment?

10 A Uh-huh.

11 Q Are you aware that she lives in the apartment
12 complex?

13 A Yes.

14 Q And since you've been there about a year, has she
15 ever come over to the apartment?

16 A Yes.

17 Q Now, let me ask you this, in all the time you lived
18 there, would she ever pop up at the apartment at like
19 8:00, 8:30 in the morning?

20 A No.

21 Q When, if she ever come over, in your experience would
22 she come over?

23 A You said when would she come over?

24 Q Yeah, in your experience living there, when would she
25 --

1 A Anytime after 12:00.

2 Q But never popping up?

3 A Never.

4 Q At like 8:00, 8:30?

5 A No.

6 Q Okay. As long as you lived there?

7 A As long as I lived there.

8 BRIAN SHEALEY: Beg the Court's indulgence.

9 (Pause.)

10 Sam, I appreciate it. Please answer any questions
11 the State has for you.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION:

14 BY MR. WALTON:

15 Q How are you doing, Mr. Thomas?

16 A I'm doing good.

17 Q On the date in question, Antonio Dash borrowed your
18 car, didn't he?

19 A Uh-huh.

20 Q Why did he do that?

21 A He went to the store right up the street.

22 Q Is it normal for him to do that, borrow your car?

23 A Yeah, anytime he needed to go.

24 Q That's because you said you were the only one that
25 had a car, right?

1 A Right.

2 Q Just random questions, you lived there over a year
3 together?

4 A Close to a year.

5 Q Defendant Antonio Dash and you lived there for about
6 a year. Is it customary for you to lock your doors at
7 night? Do you normally lock your door?

8 A Yeah.

9 Q Okay. So let's switch gears to the date in question.
10 You've talk about what's your normal routine. You wake up
11 kind of early, right?

12 A Uh-huh.

13 Q So on this particular day, you got up and you said
14 you went to the walk-in clinic?

15 A Uh-huh.

16 Q What did you that for?

17 A I had some concerns, obviously, as a man.

18 Q Okay.

19 A I just wanted to go check that out.

20 Q I'm not trying to pry. You had some concerns,
21 something kind of private?

22 A Right.

23 Q Because it was private, you didn't go tell anybody,
24 right?

25 A No, I didn't mention it.

1 Q You just got up that morning and went, right?

2 A Uh-huh.

3 Q Before you actually, you spoke with Antonio Dash
4 about driving him to work, right? Is that correct? You
5 normally drive him to work?

6 A Yes.

7 Q But he told you he didn't need a ride that day?

8 A Correct.

9 Q So then you got up and went to the clinic?

10 A Yes?

11 Q And do you remember telling law enforcement that it's
12 about 8:15 in the morning that you left?

13 A Yes.

14 Q Okay. You also remember that it was about 9:20 that
15 you got back?

16 A Yes.

17 Q And now, I know you weren't there, but are you aware
18 that the shooting took place approximately 8:50 in the
19 morning that day?

20 A Am I aware?

21 Q Yeah, are you aware?

22 A Yes.

23 Q So you're aware it took place while you were gone?

24 A No.

25 Q You were not aware that it happened while you were

1 gone?

2 A That's not what you asked me.

3 Q So if it was -- you left at 8:15 in the morning,
4 right?

5 A Yes.

6 Q And you got back at 9:20. So was everything okay
7 when you left in the morning?

8 A Yes.

9 Q And it wasn't when you come back?

10 A Right.

11 Q So is it fair to say the shooting happened while you
12 were gone?

13 A Right.

14 Q Okay. On direct, you mentioned that Antonio Dash
15 stayed in the storage area; is that right?

16 A Uh-huh.

17 Q You mentioned that you are kind of like an early
18 riser. You always take him to work. So if you will just
19 walk us through, like, explain to us how that procedure
20 works. Do you go get him up? Does he come to you? How
21 did that normally work?

22 A As soon as I walk out of my room, Dash was already
23 up. He's kind of up before everybody. It's kind of like
24 he doesn't sleep sometimes. So when I come out my room,
25 he would be in the living room already. I wouldn't have

1 to go get him or nothing.

2 Q I thought I saw -- where is that storage closet in
3 relation to your room?

4 A If I was to walk out my room and walk to the right,
5 straight ahead.

6 Q So fair to say it's easy, not hard to miss that?

7 A Excuse me?

8 Q You could see it?

9 A Yes.

10 Q Okay. I just want to switch gears a little bit. I'm
11 not going to go through all the pictures, but I wrote down
12 some timestamps Mr. Shealey talked to you about. The
13 first picture I saw had a timestamp of 9:31 in the
14 morning. And that's after you got back from the walk-in
15 clinic?

16 A Correct.

17 Q Okay. And you were aware that the shooting happened
18 prior to that?

19 A No.

20 Q You're not aware?

21 A I didn't know that.

22 Q Prior to 9:31 in the morning?

23 A I didn't know.

24 Q You didn't know. So you said earlier that you left
25 at 8:15, right?

1 A Uh-huh.

2 Q And you left the clinic at 9:20, 9:15?

3 A Uh-huh.

4 Q So when you got back -- you knew it was okay when you
5 left, right?

6 A Right.

7 Q And then when you got back, something was wrong,
8 correct?

9 A Right.

10 Q So in between those times, you understand what I'm
11 saying? Like --

12 A You're asking me was I aware at the time when I got
13 there?

14 Q Right. Like you -- right now, do you know it
15 happened after?

16 A Now, I know that.

17 Q Yeah, that's what I'm asking?

18 A I thought you were asking me when I pulled up, did I
19 have prior knowledge.

20 Q No, no, no. Sorry about that. Not at all. I'm
21 asking right now, you know now.

22 The same thing for the picture that had a timestamp
23 of 9:35, the same question, that was while you were --
24 that was after the shooting had taken place to your
25 knowledge right now; is that correct?

1 A Correct.

2 Q And there's a picture that was timestamped 9:58.

3 Same question, that was -- that occurred after the
4 shooting had taken place is your knowledge right now?

5 A Correct.

6 Q Okay. So it was also a picture with your sister and
7 your sister had a phone in her hand, correct?

8 A Uh-huh.

9 Q And that timestamp was 9:58?

10 A Yes.

11 Q Again, that was after the shooting had taken place,
12 according to your knowledge right now?

13 A Yes.

14 Q And you spoke with the defendant, Antonio Barnes?

15 A Yes.

16 Q And you said on the phone he was upset?

17 A Yes.

18 Q And he was apologizing to you?

19 A Yes.

20 Q And he started telling you what happened?

21 A No.

22 Q He didn't tell you what happened?

23 A No.

24 Q So he didn't say there was a loud boom or anything
25 like that?

1 A Yes.

2 Q He did say that, okay. He said there was like a
3 burglary or --

4 A The questions that you're asking me kind of confused
5 me.

6 Q I'll switch it up for you. Did he tell you about
7 what was happening?

8 A Yes.

9 Q Okay. And that's -- is that the first time you
10 learned about that information?

11 A Yes.

12 Q Because you weren't there when this happened, right?

13 A Right.

14 Q So you learned about the burglary based on your
15 conversation with Antonio Barnes, right?

16 A Yes.

17 Q You learned about the potential robbery from your
18 conversation with Antonio Barnes, right?

19 A Yes.

20 Q You stated that you saw the picture with the hole in
21 the wall, but you said that picture -- that hole in the
22 wall was not there when you left that morning?

23 A Correct.

24 Q Now, you know it happened after you left, but you
25 weren't there when it happened, were you?

1 A No.

2 Q So you really don't know what actually happened?

3 A Correct.

4 Q Okay. I'm almost done, I promise. So in regards to
5 Shekila, you said you had seen her come over before,
6 right?

7 A Right.

8 Q And just never seen her come over that early in the
9 morning, right?

10 A Right.

11 Q And about what time you said -- what was the typical
12 time that she would come?

13 A In the evening.

14 Q Evening, like approximately?

15 A 12:00, 1:00.

16 Q Okay.

17 A Around time like lunch or something.

18 Q Never 8:00 in the morning?

19 A Never.

20 Q But you left the house at 8:15 on the date in
21 question; is that correct?

22 A Correct.

23 Q And you don't typically go -- you don't leave the
24 house typically at 8:15. What time do you typically
25 leave?

1 A I mean, if I have to go to work, I go to work, but
2 that day, I didn't have to go.

3 Q Okay.

4 A So...

5 Q Is it fair to say you changed your routine a little
6 bit on that day? It's a different routine because of the
7 circumstances?

8 A Yes.

9 Q When you left, you also didn't see Eric Griffin in
10 the apartment; is that correct?

11 A Correct.

12 Q You did see Dash in the apartment?

13 A Yes.

14 Q And you said Antonio Barnes' door was shut?

15 A Yes.

16 Q You said Antonio Barnes was asleep?

17 A Yes, I assume.

18 Q That's what I was going to ask you, you didn't
19 actually go in there and check to see if he was asleep,
20 right?

21 A No.

22 Q Beg the Court's indulgence.

23 (Pause.)

24 Just a couple more, Mr. Thomas. Previously, you
25 stated that Antonio Dash would sleep in a storage closet?

1 A Yes.

2 Q What would you say he slept on, like a comforter?

3 What would he sleep on?

4 A Sometimes covers, like lay a pallet down, or he blow
5 up like an air mattress.

6 Q You said when you wake up in the morning, it's easy
7 for you to see the storage closet where he used to sleep,
8 right?

9 A Yes.

10 Q Did he just leave his clothing, like his bed item or
11 the air mattress, he would leave it in the storage closet?

12 A Yes.

13 Q He did leave it in there?

14 A Yes.

15 Q Okay. So you've never seen -- have you gone into
16 Antonio Barnes' room before?

17 A Yes.

18 Q Did you ever notice a comforter on the bed, next to
19 the bed?

20 A No.

21 Q Never seen it before?

22 A No.

23 Q Last thing, so you lived with Antonio Barnes, Antonio
24 Dash and Samuel Thomas, but you know Eric Griffin, as
25 well?

1 A Yes.

2 Q Would you consider him a friend?

3 A Yes.

4 Q Was he friends with everybody who lived there?

5 A Yes.

6 Q Does he visit the house? Is it normal for him to
7 come visit the house?

8 A Yes.

9 MR. WALTON: Thank you.

10 BRIAN SHEALEY: Briefly, Your Honor.

11 REDIRECT EXAMINATION:

12 BY BRIAN SHEALEY:

13 Q So it was your routine to give Antonio Dash a ride to
14 work pretty much every morning, right?

15 A Yes.

16 Q But when you left that day, Antonio Barnes' door was
17 still closed, right, we covered that?

18 A Yes.

19 Q So he would not have been able to know that day you
20 were not giving Mr. Dash a ride, correct?

21 A Correct.

22 BRIAN SHEALEY: Thank you.

23 THE COURT: All right. Anything else?

24 MR. WALTON: Just one, one, Your Honor.

25 RE CROSS-EXAMINATION:

1 BY MR. WALTON:

2 Q Mr. Thomas, you stated that it wasn't normal for
3 Shekila to come out --

4 BRIAN SHEALEY: Objection, Your Honor, that was
5 outside --

6 THE COURT: What's the question?

7 MR. WALTON: Asking about his routine.

8 BRIAN SHEALEY: It outside of my redirect.

9 Therefore, he can't go into it. Outside the scope.

10 THE COURT: Let me hear the question.

11 MR. WALTON: Regarding Shekila not coming at 8:15 in
12 the morning, eight o'clock in the morning.

13 THE COURT: What's the question?

14 Don't answer, sir.

15 MR. WALTON: It's not normal for her to come that
16 early.

17 THE COURT: Yes, that's outside the scope of
18 redirect, so objection is sustained.

19 BRIAN SHEALEY: And just for housekeeping, Judge.
20 This video that we've been playing, I'm just seeking to
21 move it into evidence.

22 THE COURT: What's the number?

23 BRIAN SHEALEY: This is Defense 19.

24 THE COURT: 19, any objection?

25 MR. SCOTT: That's already been published, Your

1 Honor.

2 THE COURT: All right. You may step down. Any
3 objection to this witness being excused?

4 BRIAN SHEALEY: No, Your Honor.

5 THE COURT: All right. Call your next witness.

6 MS. YOUNG: Your Honor, the defense calls Steven
7 Harper to the stand.

8 THE CLERK: State your full name, please.

9 THE WITNESS: Steven Harper.

10 THE CLERK: Spell your first name, please.

11 THE WITNESS: S-T-E-V-E-N.

12 STEVEN HARPER, after being duly sworn,
13 testified as follows:

14 THE COURT: Are we ready?

15 MS. YOUNG: Sorry, Your Honor, I was looking for the
16 witness list. I'm sorry, happy to proceed.

17 THE COURT: You can get it to us tomorrow.

18 DIRECT EXAMINATION:

19 BY MS. YOUNG:

20 Q Good afternoon, Steven. Thanks for working late.
21 Steven, where do you work?

22 A Public Defender's Office in Richland.

23 Q Okay. What's your job there?

24 A Paralegal.

25 Q Do you do a little bit of everything?

1 A Yes.

2 Q In 2019, who were you working for as a paralegal?

3 A Morgan Drapeau.

4 Q And anybody else?

5 A Possibly, even you.

6 Q That's the answer I was looking for. Is it possible
7 you were my paralegal when I started in 2019?

8 A Yes.

9 Q I joined the office I believe in February or early
10 March of 2019.

11 A Right.

12 Q On February 27th, 2019, do you recall me asking you
13 to do something?

14 A I believe that's the day you asked me to go to the
15 jail and get Antonio Barnes' phone.

16 Q Beg the Court's indulgence real quick. This may
17 help.

18 Steven, I'm going to show you a couple of documents
19 that might help you remember specifically the day. Does
20 February 27th sound right?

21 A Correct.

22 Q What did I ask you to do?

23 A I just went to the jail and went and picked up
24 Antonio's property. I believe it was a watch, earrings
25 and a phone.

1 Q Okay.

2 A Earrings and a phone.

3 Q And what did you do with that property after you
4 picked it up from the jail?

5 A I put it in like a manila envelope and put it -- I
6 have like a little drawer, like, deal in my office,
7 labeled it and closed it with tape and put it in there.

8 Q At some point, did I ask you to then take that phone
9 to Chris Watkins?

10 A Yes.

11 Q Let me show you this, too. What day did I ask you to
12 take that phone and deliver it to Chris Watkins?

13 A That's on March 6th, 2019.

14 Q Did you, in fact, take the phone and deliver it to
15 his office?

16 A I did.

17 MS. YOUNG: Okay. I don't think I have any further
18 questions.

19 CROSS-EXAMINATION:

20 BY MR. SCOTT:

21 Q I haven't met you yet. I've seen you. You're very
22 familiar with all the discovery in this case, aren't you?

23 A I wouldn't say very familiar, but somewhat familiar.

24 Q Somewhat?

25 A Yes.

1 Q You reviewed all those body cam videos?

2 A I did not review them. I was with Laura when she was
3 looking through them.

4 Q I remember you being pretty familiar with which once
5 you had and which ones you didn't have. Are you saying
6 you're not familiar with your discovery?

7 A We had a list there.

8 Q What is your job? You work for Ms. Young?

9 A I do.

10 Q How do you assist her?

11 A Well, I'm not her paralegal now. I was her paralegal
12 in 2019.

13 Q You've been in my office, haven't you?

14 A Yes.

15 Q A couple of times?

16 A Uh-huh.

17 Q And we've talked a lot about this discovery?

18 A Yes.

19 Q Did you review that phone dump?

20 A No.

21 Q You have no knowledge of what's on that phone you
22 asked the jail to release to you?

23 A I have no idea.

24 Q That's your testimony under oath?

25 A Yes.

1 Q And you're not privy to the contents of it?

2 A No.

3 Q What are you privy to as far as discovery?

4 A Statewide Security camera, some of the body cams.
5 That's probably about it.

6 Q You didn't bother going through that phone dump to
7 assist your boss?

8 A No, I didn't.

9 MR. SCOTT: Okay. Nothing further of this witness
10 then.

11 MS. YOUNG: Yes, Your Honor. Just briefly.

12 REDIRECT EXAMINATION:

13 BY MS. YOUNG:

14 Q Steven, are you in the habit of just helping people
15 when they need something done?

16 A Yes.

17 Q And when people are preparing for court and preparing
18 for trial, do they just run around grabbing whoever is
19 available to help with something?

20 A Yes.

21 Q And last week when the State failed to turn over 25
22 hours of video footage that I had to go and spend
23 two-and-a-half hours in their office reviewing and trying
24 to keep track of, did I grab you out of your office at the
25 last minute and ask you to come with me?

1 A You did.

2 Q When you had that phone, did you ever open it?

3 A No.

4 Q Did you ever look at it?

5 A No.

6 Q Did you do anything other than stick it in your
7 drawer and take it to Chris Watkins when I asked you?

8 A Did not.

9 MS. YOUNG: Okay. Thank you.

10 THE COURT: Anything else from the State?

11 MR. SCOTT: No, Your Honor.

12 THE COURT: You may step down.

13 Any objection to this witness being excused?

14 MR. SCOTT: None from the State.

15 THE COURT: All right. Who's your next witness?

16 MS. YOUNG: Your Honor, our next witness is Chris
17 Watkins. He's a phone expert. He's the one who extracted
18 the phone and did some analytics of that.

19 THE COURT: How long do you think he's going to be?

20 MS. YOUNG: I can't imagine that my questioning would
21 be more than 15 or 20 minutes, but I always underestimate,
22 so I'm not 100 percent sure, Your Honor.

23 THE COURT: Is he here?

24 MS. YOUNG: He is. I believe Officer Castro is here,
25 as well.

1 THE COURT: All right. Go ahead and call Mr.
2 Watkins. We'll see how far we get.

3 MS. YOUNG: Okay. The defense calls Christopher
4 Watkins.

5 THE BAILIFF: Come forward to be sworn. Place your
6 left hand on the Bible, raise your right hand and face the
7 clerk.

8 THE CLERK: State your full name, please.

9 THE WITNESS: Christopher James Watkins.

10 CHRISTOPHER WATKINS, after being duly
11 sworn, testified as follows:

12 THE CLERK: Have a seat right there, please.

13 DIRECT EXAMINATION:

14 BY MS. YOUNG:

15 Q Good afternoon, Mr. Watkins.

16 A Good afternoon.

17 Q Where are you currently employed?

18 A I am employed at Certified Computer Forensics here in
19 Columbia, located at 1416 Park Street.

20 Q Okay. What is your current title and position there?

21 A I am a owner/operator of Certified Computer
22 Forensics. I am SLED licensed investigator and a digital
23 forensics analyst.

24 THE COURT: Sir, you can pull your mask down if you
25 like so we can hear you.

1 BY MS. YOUNG:

2 Q Sorry, I should have told you that?

3 A All right.

4 Q And how long have you been working as an investigator
5 and a digital forensics analyst?

6 A Twelve years. I began my career February of 2010. I
7 certified -- I was employed at a private investigation
8 firm here in Columbia known as Stillinger Investigations.
9 In 2016, I left that company to start my own company,
10 Watkins Digital Forensics Investigations. And in 2019, I
11 dissolved that company and started a new company,
12 Certified Computer Forensic, which is where I'm currently
13 working.

14 Q Do you have any certifications or qualifications in
15 the field of digital forensics science?

16 A Yes, I do. I've got two certifications through
17 IACIS, which is the International Association of Computer
18 Investigative Specialists. I am recognized by IACIS as a
19 computer forensic type -- sorry, certified forensic
20 computer examiner and a certified mobile device examiner.

21 Q Can you tell the court a little bit about what is
22 digital forensics science?

23 A Yeah, certainly. Digital forensics science is a
24 branch of forensic science that encompasses the
25 acquisition, preservation, recovery, investigation,

1 examination and analysis of materials found in digital
2 devices, most often in relation to mobile phones and
3 computer-related crime.

4 Q And who do you typically work for?

5 A So our office is open to the general public. We're
6 also frequently hired by private attorneys, public
7 defenders' offices. Where it pertains to civil matters,
8 we're most often contracted by a member of the general
9 public or a private attorney. Where it pertains to
10 criminal investigations, we're most often contracted by
11 private attorneys and public defenders. There are some
12 occasions where we can be contracted by a private client.
13 That's just very rare.

14 I've also testified on two occasions for the State.
15 So our services are available to the State, just that's
16 kind of rare because my understanding is that the State
17 will most often rely upon their own investigators versus
18 contracting an independent examiner. So that's why it's
19 rare for me to be a contractor called upon by the State.

20 Q And how did you come to be involved in this case?

21 A So for this case in particular, on March 6th, 2019, I
22 received a cellular device belonging to Mr. Antonio
23 Barnes. It's an Apple iPhone 6 Plus. Serial identifier
24 for that device is, I'll read the phonetic alphabet for
25 the court reporter's accuracy. It's fox trot niner

1 Charlie Romeo hotel one echo niner golf five Quebec
2 picker. The telephone number pertaining to that cell
3 phone is (803)569-8986.

4 I received that device from a Mr. Steven Harper with
5 Richland County Public Defender's office. And at the time
6 that I received that device, we did not have a service
7 contract, so I was asked to just hold onto the device.
8 The device was then placed into our CODIS locker, where it
9 remained until June 15th of 2020.

10 Now, on June 15th, 2020, that was the date that I was
11 contracted by the Richland County Public Defender's Office
12 and I was asked initially to acquire the data from
13 Mr. Barnes iPhone for preservation purposes until I
14 received additional instructions. So that data was
15 acquired on June 15th, 2020.

16 And then on or about March 11, 2021, I was asked to
17 provide a forensic examination and analysis of that data
18 from that phone. I was asked to do that pursuant to
19 developing a timeline of the events pertaining
20 specifically to the date of incident February 7, 2019.
21 And then later, I was also asked to review additional
22 discovery, which was related to digital evidence collected
23 by law enforcement. And that was received on March 11,
24 2021. And I later received discovery related to Mr. Dash
25 and Mr. Griffin's mobile devices on December 17, 2021.

1 Q And did you forensically process Mr. Barnes' Apple
2 iPhone 6 Plus?

3 A Yes.

4 Q And how did you exactly do that? What does that
5 mean?

6 A So what I did is I received the device. It was
7 stored in our evidence locker. On June 15th, 2020, I
8 retrieved the device from our locker. I removed it from
9 the envelope that it was received in and I connected the
10 device to a charger to power the battery enough to power
11 it on.

12 Once the device was on, I input a pin code to unlock
13 it and I navigated through the settings and engaged
14 airplane mode. This is done to prevent any additional
15 data from being transacted onto the device -- or from the
16 device. And I set auto lock to never, which is an option
17 that allows us to ensure that the device remains unlocked
18 through the duration of the forensic acquisition process.

19 The tool that I use to acquire an image from this
20 device was Cellebrite UPED 4PC. And I executed two
21 forensic extraction methods on the device. And I did this
22 to ensure that all available extractible data was
23 retrieved from the device. And at the time that this was
24 done on June 15th, 2020, there were two recommended
25 extraction methods, which in this case would be a logical

1 acquisition method and an advanced logical file system
2 extraction method.

3 Q Okay. When you say that there were only recommended
4 extraction method available of the device, does that imply
5 that there are other ones now?

6 A Yes. Technically, at the time, there would have been
7 other extraction methods that I could utilize. I was
8 limited by the device's operating system version, which
9 was 11.2.2. And had it been update to, at least, 12.0,
10 which was available in February of 2019. In fact, the
11 latest version was available in February of 2019 was
12 12.1.13, that was released on January 22nd, 2019. But had
13 it been upgraded to, at least, 12.0, I would have been
14 able to use a more advanced extraction method known as --
15 some may refer to it as checkmate. It utilizes an known
16 as Checkra1n. And that's spelled as Checkra1n, one word,
17 with the I positioned as the number one.

18 Now, had I had the ability to do that, we would have
19 been able to get additional data from the device,
20 including other database files, additional application
21 data, as well as additional data all around.

22 Q Okay. And can you explain the actual extraction
23 method that you utilized in more detail?

24 A Sure. So again, there were two utilized. One with
25 you see the logical extraction method. The other one was

1 the advanced logical file system. Now, the logical file
2 -- I'm sorry, the logical extraction method, the way that
3 works is we connect device to a forensic machine,
4 forensics station using a USB cable.

5 Once that connection is established, there are
6 various profiles that are transmitted between the forensic
7 work station and the device to, essentially, request a
8 copy of user accessible data. And once that data is
9 copied over, it is packaged into a container file or some
10 kind of series of container files. And that's the data
11 that is ultimately preserved.

12 The advanced logical file system extraction method is
13 a step above that, because what that does is it request a
14 copy of the file system hierarchy of the user data, so
15 with that, we do get additional application data and some
16 database files, which is useful because that's going to
17 have additional data.

18 All that being said, it's very technical, so any
19 nontechnical persons may not understand that, so an
20 analogy we use is a logical extraction would be like going
21 to the library and making a copy of all available books in
22 the library and maybe some of the library's catalog,
23 whereas an advanced logical file system extraction would
24 be like going to the library, copying all available books,
25 all the book shelves, the complete library catalog. And

1 if we were able to do a more advanced extraction method
2 that I mentioned earlier, that would be like copying the
3 entire library, the entire catalog, administrative
4 databases and whatnot, everything.

5 Q Okay. So after you extracted Tony's phone, Mr.
6 Barnes' phone, what did you do with it?

7 A So once the extraction method was completed and
8 verified successful, the device was returned back into the
9 evidence locker. It was later picked up by a -- Marilyn
10 Chisholm on July 8th, 2020. And my understanding is that
11 Ms. Chisolm is Mr. Barnes' grandmother.

12 Q What did you do with the resulting data after it was
13 extracted?

14 A So the resulting data that was acquired from the
15 device, that was secured on our secure server where it was
16 held until we got the additional information instructions
17 to examine and analyze it. That was on March 11, 2020.
18 Again, I did say that earlier. On that date was the date
19 that I utilized forensics software, forensic protected, to
20 examine and analyze that data.

21 Q Okay. What, if anything, did you find out about the
22 timeline of events as they relate to the date of the
23 incident, which was February 7th of 2019?

24 A Okay. So there were a few things, referring to my
25 notes here. I examined the timeline of events for

1 February 7, 2019, the day of the incident, with the
2 timestamp adjusted throughout the time, of course, because
3 by default they would be EPC.

4 And on that date in question, I observed that there
5 was a gap in the timeline between 2:59 a.m. and 8:49 a.m.
6 There was an outgoing FaceTime video call that was
7 initiated at 12:25:22 a.m. with the telephone number
8 (803)479-8007. That number was stored as a contact in
9 Mr. Barnes' phone under the name Santonio. That call
10 lasted for two hours, 33 minutes and 39 seconds, so that
11 would mean that the call would have precluded at
12 2:59:01 a.m.

13 There's an incoming text message at 8:22:28 a.m. from
14 telephone number (803)339-3224. This number was not
15 stored as a contact on the phone. However, the message
16 read status meta data associated with this record
17 indicated that the message was not read on the date of
18 incident, but actually read later on March 5, 2019 at
19 4:47:43 p.m.

20 The next outgoing activity beyond that was at
21 8:55:24 a.m., and at that time there was a call made from
22 Mr. Barnes' phone to 911 and that call lasted for seven
23 seconds.

24 Additionally, I observed that there were two records
25 within that timeframe that were logged in the Apple Health

1 app activity database. And that activity occurred
2 beginning at 8:49:11 a.m. and ending at 8:49:01 a.m. And
3 the records -- or those two records indicated 121 steps
4 taken covering the distance of 76.6 meters, which is about
5 250 feet within that timeframe, so about ten-minute
6 timeframe.

7 Q So the take-away there is from about 3:00 in the
8 morning until 8:49 that morning, Mr. Barnes phone is not
9 in use?

10 A That's right.

11 Q And then you said the Apple -- but he did make a call
12 or a call was made from that phone at 8:55 to 9-1-1?

13 A That's correct, yes.

14 Q And that lasted seven seconds?

15 A That's correct.

16 Q And you said that according to the Apple Health data,
17 he took some steps and some meters were -- it covered some
18 distance starting at 8:49 and going to 8:59. You know,
19 what can you tell us about -- if anything, about
20 implications of that?

21 A So what I can't testify to is the accuracy of these
22 values. So while the records do indicate that there were
23 121 steps over a distance of about 250 feet, the accuracy
24 of the Apple Health data is dependent on multiple factors.
25 It can be anything from whether biometric perimeters have

1 been set.

2 Typically, this is going to be -- it's going to
3 require the aid of the Apple watch. The accuracy can also
4 be affected by how the iPhone device is being held, you
5 know, whether it's stored in a pocket, on a jacket or
6 pants pocket or being carried in the individual's hand.
7 Because what's happening is the accelerometer and
8 gyroscopic sensor within these devices, they're trying to
9 calculate movements. So it's trying to determine speed,
10 distance and that rate of travel, so it is estimated.

11 And there are ways to improve that accuracy, but the
12 biggest take-away here is that the existence of these
13 records do suggest -- not just suggest, it serves to show
14 the device was moved and carried beginning at 8:49:11.
15 And that this wasn't just a simple nudge or just bumping
16 the device. Somebody had to actively carry this device in
17 order for this data to have appeared.

18 Q And prior to that, the device had not moved?

19 A That's correct. If the device had been moved prior
20 to that, we would expect to see. And the data covering
21 this app is very inclusive. We have data on this app all
22 the way back to November 2017. So had it been moved prior
23 to that, there would be a record.

24 Q And you also mentioned the 9-1-1 call at 8:55 that
25 lasted for seven seconds. Do you have enough information

1 from the phone extraction to determine whether that call
2 was connected?

3 A So the way that iPhones work, when you're dialing
4 out, the duration of the call does not begin to increment
5 until there is a connected call. So just knowing that,
6 that implies to me or that suggests to me that there was a
7 connected call. The call did connect.

8 Q Did you also take a look at the extractions that were
9 provided to me by law enforcement of Antonio Dash's phone
10 and Eric Griffin's phone?

11 A I did, yes.

12 Q And I think I asked you to just take a look and see
13 if those parties had communicated with each other around
14 this time, right?

15 A That's right. Okay. Yes, according to the records
16 that I received, the last time that Mr. Dash and
17 Mr. Griffin communicated with each other occurred at
18 9:43:25 a.m. and 9:45:02 a.m. respectively on
19 February 6th, 2019. The call that occurred at 9:43:02
20 a.m. was from Mr. Dash to Mr. Griffin, which lasted 52
21 seconds according to Mr. Dash's records and 53 seconds
22 according to Mr. Griffin's records. The call that
23 occurred at 9:45:02 a.m. was from Mr. Griffin to Mr. Dash,
24 which last nine seconds per Mr. Griffin's records and zero
25 seconds according to Mr. Dash's records.

1 MS. YOUNG: Beg the Court's indulgence.

2 (Pause.)

3 Nothing further for the moment, Your Honor.

4 Please answer any questions the State has.

5 THE COURT: How long do you think you're going to be?

6 A lot? If so, we're going to stop for the afternoon and

7 start back in the morning.

8 MR. SCOTT: Probably reconvene tomorrow morning, Your
9 Honor.

10 THE COURT: All right. We're going to go ahead and
11 take our evening break.

12 You can step down. Please to not discuss your
13 testimony with your attorneys -- or with the attorneys or
14 anyone else. Thank you.

15 MR. SCOTT: Your Honor, we do have Officer Castro
16 here, too.

17 THE COURT: All right. What do you want to ask
18 Mr. Castro, where -- what happened with his body camera?

19 You can just stand up, Officer, raise your right
20 hand.

21 OFFICER CASTRO, after being duly
22 sworn, testified as follows:

23 THE COURT: You can put your hand down.

24 Mr. Scott, you wanted to -- I mean, he can come sit
25 on the stand if he needs to.

DIRECT EXAMINATION:

BY MR. SCOTT:

Q Officer Castro, February 7th of 2019, do you remember responding to 511 Alcott?

A Yes, sir.

Q In reference to a double homicide?

A Yes, sir.

Q Do you recall this video that looks like you're being trained by Officer Bosco? Was he your training officer?

A Yes, sir, I was in field training at the time.

Q There is some body cam footage that captures you.

Can you estimate how many officers were on the scene that day?

A Not accurately.

Q But you know --

A There was an abundance amount of police presence there.

Q What now?

A There was an abundant amount of police presence there.

Q Do you recall how long you were on the job at that point?

A I know it was around my second or third day of field training, so, roughly, from basic training with the police department to then, roughly, about close to a year.

1 Q Okay. I guess it looks like in the video you were
2 wearing your body cam?

3 A Yes, sir.

4 Q Okay. I don't have and I've never seen your body cam
5 footage. Do you know for certain whether you recorded it
6 and whether or not you downloaded it on that particular
7 occasion?

8 A As far as the body cam goes, you know, it is part of
9 our job to initiate it as soon as we arrived on the scene.
10 So I'm confident that I did turn on the body cam.

11 Q It's customary for you to do, is that what you're
12 saying?

13 A Absolutely, yes, sir, upon arriving on any crime
14 scene. Secondly, to answer the second question is our
15 body cams are uploaded after every shift. So as soon as
16 we get to our office after our shift, we place them on the
17 dock and they start downloading after every shift.

18 Q If I don't have it in my possession, me representing
19 the State of South Carolina, do you have an explanation of
20 why I don't have it?

21 A No, sir.

22 Q But I think your testimony is you believe it does
23 exist or, at least, rather you believe you were recording
24 on that particular occasion?

25 A Yes, sir.

1 Q But you can't answer why I don't have it?

2 A No, sir.

3 Q Okay.

4 THE COURT: All right.

5 LUKE SHEALEY: Do you want to allow me questions from
6 the defense?

7 THE COURT: If you have a question, now is the time
8 to ask him.

9 LUKE SHEALEY: I do.

10 CROSS-EXAMINATION:

11 BY LUKE SHEALEY:

12 Q So you were new, but you knew you had your body cam
13 on and it was working to your knowledge?

14 A Yes, sir.

15 Q Is part of your duties to activate it when you're at
16 a crime scene like that?

17 A Yes, sir.

18 Q Because you were interviewing witnesses, like
19 Mr. Barnes, actually?

20 A Yes, sir.

21 Q When you say -- I think you said it automatically
22 uploads when you are done with your shift?

23 A Yes, sir, as soon as we place it on the dock.

24 Q On a docking kind of station?

25 A Yes, sir, it's almost like a charging, slash,

1 downloading docking station that we have.

2 Q So it's just -- that's technology. You don't have to
3 push upload, it just does it?

4 A Right. You just place it to the dock and it
5 automatically starts to download to the server.

6 Q And it's a server that the City of Columbia
7 maintains?

8 A Correct.

9 Q So you don't have any reason to believe or any
10 knowledge of why your body cam wouldn't be available that
11 day and upload to a server, right?

12 A No, sir.

13 Q And who would be the person that could have access to
14 those body cameras? Would that be the lead investigator
15 on the case or someone else?

16 A I believe if you're in a supervisory position, you
17 have access to the body cams.

18 Q So as far as you know, the City of Columbia possesses
19 that information?

20 A As far as I know, it was downloaded to the servers,
21 yes, sir.

22 Q And you probably don't have any specific idea of
23 whether it was purged or erased or still there right now,
24 you don't know?

25 A No, sir, I haven't looked at the history of that

1 data.

2 Q Okay. Thank you. Oh, did you take any notes that
3 day, handwritten notes?

4 A I believe that I took the criminal -- everyone that
5 arrived on the scene at the front door, the crime scene
6 log.

7 Q Do you recall Mr. Barnes coming up and talking to you
8 that day saying hey, that's my apartment? I know it was
9 three years ago, but.

10 A Not off the top of my head.

11 Q If someone were to give you information like date,
12 biographical, did you write that down?

13 A Yes, I would.

14 Q Where does that go?

15 A In my notebook.

16 Q And then where does that go?

17 A Just depending on the notebook, sometimes I throw
18 notebooks away, sometimes I keep them, just depends.

19 Q Okay. But if something was pertinent to the case,
20 would it be provided to the lead investigator?

21 A It would have been provided in an incident report.

22 Q If you did one?

23 A Right. So I would provide my notebook. I would
24 provide any information I had pertinent to the case on an
25 incident report.

1 Q And you were training with Officer Bosco at that
2 time?

3 A Correct.

4 Q It seems like you guys had a joint report, you
5 remember that at that time?

6 A Correct.

7 Q It was just one narrative for you and Bosco?

8 A Correct.

9 Q Are you writing that or is he writing that?

10 A I wouldn't be able to tell you exactly. At the time,
11 I was in training, you know, he could have corrected some
12 things, but I wouldn't be able to answer that accurately.

13 Q Okay. Thank you.

14 THE COURT: All right. You can step down.

15 Anything else from the State? I'm sorry.

16 MR. SCOTT: No, Your Honor.

17 THE COURT: You can step down.

18 All right.

19 LUKE SHEALEY: Your Honor, on the matter of the

20 missing discovery we brought up this morning, it seems

21 like the officer in question has every reason to believe

22 that he would have turned it on, that it would have

23 automatically uploaded at the conclusion of his shift.

24 Obviously, Your Honor is aware of why it's important to us

25 because he interviews Mr. Barnes immediately, and then his

1 training officer walks away, so we don't really know what
2 is being said by the defendant in this case.

3 But I would ask, Your Honor, to instruct, order
4 Mr. Gilliam or whoever is the appropriate person at the
5 City of Columbia go find it and either one, retrieve it,
6 produce it to us; and number two, if it has been purged
7 for some unknown reason identify why, who instructed that
8 and when. Thank you.

9 THE COURT: All right. I don't know what the
10 database looks like or anything, but if you all can go
11 back and look. I'm assuming his body cam has a serial
12 number or something on it to see if it was uploaded or
13 downloaded -- uploaded and see if you all can locate it.
14 He said he had it on, he thinks he had it on. So see if
15 it was -- it should be some way to be able to tell if it
16 was on or it wasn't on. I don't know does that, but
17 Investigator Gilliam can probably figure it out.

18 MR. GILLIAM: Your Honor, I can go back, but
19 everything that was located for that case was all on one
20 file. I'll go back and check again. And also, I still
21 have -- they've seen before my whole stack of DVDs, I'll
22 check that again just to make sure that we don't have it.

23 THE COURT: All right. Thank you.

24 All right. 9:30.

25 (There was an overnight recess).

1 (WHEREUPON, State's Exhibit Nos. 15 through 17 marked
2 for identification only.)

3 (WHEREUPON, Defendant's Exhibit Nos. 37 through 51
4 marked for identification only.)

5 THE COURT: All right. We ready?

6 MS. YOUNG: Your Honor, very briefly this morning --
7 oh, man, I just broke my mask. I believe, Your Honor, was
8 in receipt of an e-mail this morning about speaking to
9 Mr. Watkins during the middle of his testimony by
10 Mr. Scott.

11 He was ordered yesterday not to and I understand
12 maybe Your Honor gave permission to do that this morning.
13 But now I am asking, at least, an inquiry as to what was
14 discussed.

15 THE COURT: I don't know if I gave permission, I just
16 got an e-mail saying I need to speak Mr. Watkins for ten
17 minutes.

18 MS. YOUNG: Well, Your Honor, yesterday, in the
19 middle of his testimony, they asked to speak to him for
20 ten minutes, and I believe the e-mail response was that's
21 fine.

22 THE COURT: It was. I was thinking more -- I thought
23 you all apparently agreed upon that.

24 MS. YOUNG: No.

25 THE COURT: The ten minutes was in terms of starting,

1 we need ten minutes to talk to Mr. Watkins.

2 MS. YOUNG: I see, Your Honor. Then, no. I was not
3 aware it was going to happen and I certainly did not
4 discuss that with Mr. Scott this morning. He was in the
5 middle -- this is like.

6 THE COURT: I thought about it afterwards. I was
7 like well, really, he's testifying, but I assumed you all
8 must have agreed on it.

9 MR. SCOTT: He was not in the middle of testimony.
10 He has finished direct. He has not yet begun cross.

11 THE COURT: Yeah, but he's still testifying. Once he
12 takes the stand and is sworn, you can't really talk to him
13 about his testimony.

14 MR. SCOTT: I've never had a chance to -- this person
15 has never met me. I've never had a chance to speak with
16 him.

17 THE COURT: I know, but it probably should have been
18 before we took his testimony probably should have let
19 you -- before he started. But, technically, once they
20 take the stand, a witness takes the stand, even though
21 he's finished his direct, he's not supposed to talk to
22 anyone. So --

23 MS. YOUNG: Your Honor --

24 THE COURT: -- I apologize for the confusion on my
25 part because I thought you all must have agreed. What I

1 said was fine was in terms of I need ten minutes.

2 MS. YOUNG: I understand. And, Your Honor, he's had
3 our witness list for over a week with Mr. Watkins' name on
4 it. He never asked to speak to Mr. Watkins.

5 He never approached Mr. Watkins before being in the
6 middle of his testimony, which is a clear violation of,
7 you know, rules. We thought we were playing by the rules
8 in here, but all that is to say, I would just like to --
9 I'm fine with moving forward.

10 I would still -- I mean, if it happened prior to him
11 taking the stand, I would be able to ask him, what did
12 they talk to you about, what did they show you, what did
13 they want to know. Now, I can't do that because he's in
14 the middle of his testimony.

15 THE COURT: So you want to be able to ask him?

16 MS. YOUNG: That's correct, Your Honor.

17 MR. SCOTT: That's fine. I asked him about the
18 contents of the dumpster they provided to me because I've
19 never been able to speak with him before about it.

20 THE COURT: Yeah, I think the proper process would
21 have been to ask to talk to him before he took the stand.
22 Once he takes the stand, he's not supposed to speak to
23 anyone after. That's my understanding of the rules.
24 After he takes the stand, he can't talk to anyone about
25 his testimony.

1 MS. YOUNG: Your Honor, if I can just have five
2 minutes to talk with Mr. Watkins, I think that would solve
3 the issue.

4 THE COURT: Yes, ma'am.

5 MS. YOUNG: Thank you.

6 (Pause.)

7 (WHEREUPON, Defendant's Exhibit Nos. 52 through 56
8 marked for identification only.)

9 MS. YOUNG: Okay, Your Honor. We're ready to
10 proceed.

11 THE COURT: Okay. We're ready for cross-examination.

12 CHRISTOPHER WATKINS, having been
13 previously duly sworn, continued to testify as follows:

14 Mr. Watkins, you can take the stand.

15 CROSS-EXAMINATION:

16 BY MR. SCOTT:

17 Q Okay. Mr. Watkins, I just spoke with you briefly for
18 the first time before this court proceeding, correct?

19 A That's correct.

20 Q I was asking you sort of -- when we talked yesterday
21 about activity on Mr. Barnes' phone. And if you have your
22 app on, I guess my phone is in my pocket right now, if I'm
23 moving about, theoretically, it's tracking my steps and my
24 movement?

25 A It is if you have the Apple Health app, if it's

1 engaged and tracking.

2 Q So I've got it engaged, it's tracking. If I'm
3 moving, it's tracking my movement, correct?

4 A Yes.

5 Q Is it fair to say if I set it down and I'm moving
6 around without my phone on me, it's not necessarily
7 tracking my movements?

8 A It will stop. If you look at the records, they are
9 usually given in ten-minute increments or approximately
10 ten minutes, but that's how long each tracking iteration
11 is.

12 Q Okay. So I think yesterday you testified that the
13 first movement you noted on Mr. Barnes' phone was
14 approximately 8:49 a.m.?

15 A That's correct.

16 Q But it's only tracking his movement if he's got it on
17 him. Is that fair to say?

18 A Yes.

19 Q All right. And you can't testify to whether he was
20 asleep or awake or what time he woke up on February 7th,
21 2019?

22 A No, but I did look at the application history for the
23 Apple Health app and did that pursuant to trying to
24 determine the pattern on the phone. And I found that the
25 phone -- there were records on the phone that indicate

1 that the eight o'clock hour on certain days was consistent
2 with the first time the phone was being moved.

3 There was some records that were in the seven o'clock
4 hour and there were some at the nine o'clock hour. So
5 when I limited the range down to a four-week period, that
6 became a little bit clearer. We could see there were
7 several records in the eight o'clock hour that show the
8 first time the device is being moved.

9 And as I limited the range to a shorter time range,
10 you could see that the pattern of usage, it was either the
11 eight o'clock hour or the nine o'clock hour within a
12 four-week period, two-week period and four-day period.

13 So that would be consistent with somebody who may
14 wake up or if they're asleep during the night, the last
15 use would be around -- per Mr. Barnes' record, around
16 twelve o'clock hour, one o'clock hour, two o'clock hour.
17 And then we have a gap of time when there's no movement at
18 all in the Apple Health app.

19 So that would be consistent with somebody who is
20 sleeping during that time period, but I cannot testify as
21 to whether somebody is sleeping or not.

22 Q Okay.

23 A I can only say it's consistent.

24 Q Got you. And as part of your analysis of the phone,
25 I think you were telling me that you were able to -- I

1 guess you -- maybe at the defense's instruction, but you
2 filtered out every time the word gun was mentioned?

3 A What do you mean?

4 Q You told me something about filtering out or any time
5 the gun was mentioned?

6 A Oh, no, you pulled up the messages pertaining to the
7 guns and that was not a primary focus, no. I did look
8 through the phone. I did see that there were pictures of
9 guns and there were some messages involving guns. So that
10 is true.

11 Q Okay. Well, specifically, February 6th, the day
12 before this incident, is it safe to say that there were
13 several messages that Mr. Barnes sent in regard to a gun
14 that was missing?

15 A On the 6th, there were messages with that language in
16 it, yes.

17 Q Okay. So you said that you noted several pictures of
18 Mr. Barnes and guns?

19 A I did see that, yes, on the image.

20 Q Okay. Your recollection was that it was just one
21 single gun over and over or was it multiple guns?

22 A I recall there being multiple guns.

23 MS. YOUNG: Your Honor, the defense objects to all of
24 these images under 401, 403, 404(b). They are not
25 relevant to anything in question in this case. None of

1 these images appear -- I mean, I can't say for sure. I
2 guess to clarify about the date, we don't know when they
3 were taken. We don't know what time leading up to the
4 incident, you know, where these were. They just make him
5 look like a gad guy. They're pictures of marijuana and my
6 client with guns. That's not relevant to what happened on
7 February 7th, 2019 at all. And he's just using it for bad
8 guy stuff and bad character, that's it. And we object to
9 it.

10 THE COURT: Yes, sir.

11 MR. SCOTT: Your Honor, some of the testimony they
12 were able to elicit yesterday was they claimed he was a
13 drug dealer, he thought he was getting robbed. There's
14 testimony that he was missing a gun or guns.

15 These are proof that there were other guns than the
16 olive green nine millimeter that was seized on this
17 incident date. I only offer these to confirm what he
18 said. There appeared to be a gun missing that he was
19 concerned about.

20 He was texting about it the day before. These
21 pictures show that there were multiple guns in that home
22 at one point, or he had access to multiple guns before.

23 MS. YOUNG: Your Honor, if I may briefly respond, we
24 didn't elicit any testimony about Mr. Barnes being a
25 marijuana dealer. Mr. Scott did under our objection. And

1 we still think that that is not proper.

2 Regardless of that, the text messages -- and I'll
3 bring this out since Mr. Scott didn't, they're about
4 Antonio Dash's gun being missing, not Mr. Barnes'. All of
5 these pictures are Mr. Barnes, not Mr. Dash. The alleged
6 gun that was missing that Mr. Washington talked about and
7 Mr. Barnes talked about that are in these text messages
8 are about a man named Antonio Dash having a gun stolen,
9 not Mr. Barnes.

10 THE COURT: Well, you know, there's been testimony
11 about different shell casings for different guns. There's
12 been testimony about a missing gun. There was testimony
13 on yesterday about marijuana.

14 And so -- and there was also testimony I think from
15 you all regarding the whole issue of motive. And so I do
16 find that the -- I think under 404, that 404 -- you said
17 404(b), but I think under 404(2), I find it relevant and
18 that the probative value of the document outweighs any
19 prejudicial effect.

20 So I'm going to overrule the objection. It will be
21 entered over the objection of the defense.

22 What exhibit is that?

23 LUKE SHEALEY: Fifteen.

24 THE COURT: Okay.

25

1 (WHEREUPON, State's Exhibit No. 15 admitted into
2 evidence.)

3 BY MR. SCOTT:

4 Q State's Exhibit No. 15, have you seen those before?

5 A Yes.

6 Q And where did you recover those pictures?

7 A These are located on the Apple iPhone that I
8 received.

9 Q And who does that belong to, do you know?

10 A Mr. Barnes.

11 Q But you just testified the day before there was some
12 texts that he was concerned about a gun that had been
13 stolen from his home?

14 A Yes, there were texts consistent with that.

15 Q Okay. Were you able to extract any videos from the
16 phone?

17 A All media, pictures, video, audio was extracted, yes.

18 Q And had the defendant made some rap videos that you
19 were able to view?

20 A I did not view the videos and any audio files at the
21 time that I was doing the examination. However, this
22 morning, you had shown me one.

23 Q And did you recognize that as coming from the phone
24 analysis performed?

25 A I saw that it came from the image format that I

1 provided you, yes.

2 Q All right. And did the defendant indicate what he
3 would do if anybody had stolen from him?

4 A In the --

5 Q In the lyrics of the rap video, did he indicate what
6 he would do if anybody ever stole anything from him?

7 MS. YOUNG: Your Honor, objection. It's not in
8 evidence.

9 BY MR. SCOTT:

10 Q Okay. Do you recognize State's No. 17?

11 A Yes.

12 Q And what is State's No. 17?

13 A The video that you played for me this morning.

14 Q And you recognize that as coming from the phone dump
15 you performed on behalf of the defense on Mr. Barnes'
16 phone?

17 A Yes.

18 Q This was a video that came from that phone?

19 A It did.

20 Q Did -- and I just want a yes or no answer, did
21 Mr. Barnes in the video indicate what he would do if
22 somebody stole from him?

23 MS. YOUNG: Objection your, the substance of the
24 video is not in evidence and he's asking him to comment on
25 it.

1 MR. SCOTT: Your Honor, the State would offer 17 for
2 admission into evidence.

3 MS. YOUNG: Your Honor, we would object under 401,
4 403(b), 404 and recent Supreme Court case law. This is a
5 rap video that my client made having, again, nothing to do
6 with this incident.

7 THE COURT: What is the case law you're citing?

8 MS. YOUNG: Your Honor, as soon as we find it, I will
9 get it to you. We didn't know this was going to be an
10 issue. We didn't know they were trying to get into it and
11 we will find it.

12 LUKE SHEALEY: It's also the State's burden of proof
13 how it's admissible.

14 MS. YOUNG: Your Honor, again, it's just not
15 relevant. What he sings about when he makes music is not
16 relevant to what happened on February 7th, 2019. It's his
17 art, it's his music, it's not relevant.

18 Again, they're just trying to make him look like a
19 bad guy. That's, basically, what the Supreme Court found
20 in that case, which I will cite to, but it is his burden
21 to prove why it's relevant.

22 THE COURT: Well, I'll give him a second in a minute
23 to tell me why it's relevant.

24 MR. SCOTT: Okay. Your Honor, it goes clearly to his
25 state of mind. It shows an intent. Again, motive has

1 been raised by the defense. The question was, did he
2 indicate what he would do if anybody ever stole from him.
3 It clearly goes to his state of mind, clearly shows motive
4 and it clearly shows intent --

5 MS. YOUNG: Your Honor --

6 THE COURT: Let him finish.

7 MR. SCOTT: Their defense is that it was
8 self-defense, basically. It waivers on accident, it
9 waivers mistake of fact. This shows his state of mind and
10 shows what he has warned others he would do if anybody
11 stole from him.

12 The testimony was just the day before, a stolen gun
13 was very much on his mind. And, you know, we're trying to
14 explain possibilities of what happened on the day in
15 question.

16 MS. YOUNG: Sorry, Your Honor. I apologize to
17 Mr. Scott, as well, I did not mean to interrupt. But we
18 don't even know when this was made. It could have been
19 made two years before this incident happened. It doesn't
20 have anything to do with his state of mind. That's like
21 saying when an author writes a book about murder, then
22 they have murder on their mind. That's completely absurd.
23 He wrote a song and he rapped about it. It doesn't have
24 anything to do with what happened in his apartment that
25 day. Just because someone creates art does not mean

1 that's always their state of mind or it's somehow always
2 in their mind. That is completely absurd.

3 THE COURT: Can you establish when the video was -- I
4 guess these days, when was it posted? You'd have to be
5 able to lay the foundation. Obviously, you would have to
6 lay the foundation.

7 I read a case recently and I'm trying to remember
8 what the holding was regarding rap music. Obviously, I do
9 understand things are said in rap music that is not
10 necessarily true. A lot of times, it's a whole lot of
11 bluffing. So I do understand that.

12 MS. YOUNG: And, Your Honor, just very briefly, I
13 actually don't know when this video appears on his phone,
14 which I'm sure they'll be able to figure out here in a
15 second, I'm sure Mr. Watkins can, but unless they can
16 prove that the video was made with the phone on that date,
17 there's absolutely no telling when that video was made.

18 THE COURT: And the question is also when was the
19 video posted. So if he posted it on social media -- but
20 he's got to be able to lay the foundation. Whether or not
21 we get into 401, 403, he's still got to lay the foundation
22 to get the video in. And so I have not heard anything
23 thus far to lay any foundation.

24 MR. SCOTT: Your Honor, it was filmed or created
25 January 18th, 2019, so less than a month before the

1 incident.

2 MS. YOUNG: Again, Your Honor --

3 THE COURT: Hold on a second.

4 January 18th.

5 MR. SCOTT: Twenty days before.

6 THE COURT: All right.

7 LUKE SHEALEY: And I can cite, at least, one case.

8 It's not in South Carolina, but this issue has taken
9 national stage and I would cite for you a New Jersey case,
10 New Jersey versus Skinner, 95 A.3d 236, in which a man was
11 convicted in part based on his rap lyrics and the Supreme
12 Court in New Jersey indicated that that violated,
13 essentially, our 403 rule, that the lyrics were highly
14 prejudicial and it should not have been admitted. And it,
15 essentially, also violates 404(b) regarding bad character.

16 Obviously, with a little more time, there is a
17 Supreme Court case that just came out in the past month,
18 the United States. They're all addressing the same issue.
19 That's literally the same issue we have here. At least,
20 the New Jersey Supreme Court said violated 404(b) and 403.

21 THE COURT: What's the cite? Well, and there's also
22 some case law out there where people have confessed to
23 doing stuff in rap music and it's been admissible, so I
24 can't -- I can't listen to tell you the name of it, but
25 there was a -- I'm sure other people in this courtroom

1 could probably say it where they was convicted for
2 confessing to a multistate chase and confessing in rap
3 music to murdering people, so -- and where it is
4 admissible. But I'm looking for a South Carolina case or
5 a United States case. I think you said it was a Supreme
6 Court case that came out. There is a case that recently
7 came out.

8 MS. YOUNG: Your Honor, I haven't had time to review
9 it in full, but State v. Cheeseboro, 346 S.C. 526, I
10 believe excluded some rap lyrics or said that the rap
11 lyrics should have been excluded.

12 THE COURT: What's the --

13 MS. YOUNG: I'm sorry, 346 S.C. 526.

14 THE COURT: What year is that? Cheeseboro, that's --

15 MS. YOUNG: 2001.

16 THE COURT: Yeah, I'm familiar with that case.

17 MS. YOUNG: Your Honor, right, Mr. Scott just said
18 this it appears on his phone a month before this incident
19 happened, so clearly not having anything to do with state
20 of mind regarding any text messages that were on the 6th
21 where there's a stolen gun. And again, it's about Antonio
22 Dash's stolen gun, not Mr. Barnes' stolen gun.

23 But having said that, unless the phone took the
24 video, there is still no way to know when the video was
25 created. If a videographer is using a video camera, makes

1 a music video, edits it, whatever, and then sends it to
2 Mr. Barnes, we don't know when it was created. It could
3 have been months before that. It could have been years.
4 We don't know.

5 THE COURT: Once again, the biggest issue, I guess,
6 first what needs to happen is I need the foundation to be
7 laid and then I can consider 401, 403 and 404(b). But I
8 think under 404(b), the issue in this case -- there is an
9 issue of motive, but before we can even get into any of
10 that, he has to be able to lay the foundation, when was it
11 taken, when was it posted, was it recorded on the phone?
12 And so you would have to do that. Then once you do that,
13 then I need to consider whether or not it is admissible or
14 relevant. All right?

15 MR. SCOTT: Okay.

16 BY MR. SCOTT:

17 Q So Mr. Watkins, back in the office, you were able to
18 review on the laptop the video; is that correct?

19 A I saw the video content, yes.

20 Q And you recognize that as coming from the dump you
21 performed on Mr. Barnes' phone?

22 A Yes, the dump, what's been brought up just a moment
23 ago, I didn't see any of the meta data associated with
24 this particular video, so I can't testify to when it was
25 created. The other issue that was phrased is how do we

1 verify it was created by this device and not another
2 device and sent to his device, that's also an important
3 distinction.

4 Because although it may show a created date on the
5 device as being January of 2019, how do we know that it
6 was created by the device and not created as a result of
7 receiving it on the device. Just because the created date
8 says a certain date does not mean that's the date the
9 video originated, just the file was originated on the
10 device. So if it's a copy, it's going to have a new
11 create date.

12 Q But you certainly pulled that off Mr. Barnes' phone;
13 is that correct?

14 A I did.

15 Q It was stored on his phone?

16 A It did come off the phone.

17 Q Are you able -- if I showed you your dump on the
18 laptop, are you able to see -- and I understand you're
19 saying there's a possibility that somebody else filmed it
20 on another device and sent it to him?

21 A That could be possible. Based on what I know, again,
22 the only thing I've seen so far is the content of this
23 video. I haven't seen anything else. I don't know the
24 path, what the application it's associated with, the time
25 and date stamp meta data. I don't know any of that.

1 Q What could you tell if I showed you the phone dump?

2 A Well, it would show the meta data, but what I would
3 also need to see is where that file is actually stored,
4 where the directory is for that file. And then I could
5 possibly come up with how it originated on the device.

6 Q Could you do that if I hand you the laptop with your
7 dump on it?

8 A That's a good possibility, yes.

9 Q Okay.

10 A All right. May I write this down so I can -- my
11 memory is not too good.

12 Q 2016, I put it up there.

13 A Oh, okay. So I can look at this and see the modified
14 date stamps read January 18th, 2019, 7:35:56 p.m. The
15 creator bundle ID indicates com.B-U-R-P-N. Instagram,
16 which would indicate that it originated from that
17 particular application, and the source of this item
18 indicates saved from other source. So that tells me this
19 was not a video that was recorded on the device, but by
20 another device and received on this device on this
21 particular date and time.

22 I'll also add that if it did, in fact, come from
23 Instagram, as it does indicate, any videos, any media
24 content that's indicated by Instagram will be stripped of
25 its original meta data so I cannot see the exact date and

1 time it was created.

2 Q All you can testify to is he received it on the 18th
3 of January?

4 A Or it was downloaded onto the phone at that time.

5 MR. SCOTT: Okay. I think that's all the questions I
6 have, Your Honor. I would submit that, you know, I think
7 the video comes in. It was pulled directly from his
8 phone. It's content that he has on his phone.

9 He's making certain statements on it that I think are
10 relevant. He has indicated he can't testify exactly when
11 it was made. It was received or downloaded 20 days before
12 this incident. I would admit it as a State's Exhibit,
13 Your Honor.

14 THE COURT: Yes, ma'am.

15 MS. YOUNG: Your Honor, we would make the same
16 objections under 401, 403, 404(b). They can't
17 authenticate it, doesn't know when the video was created.
18 No one has even actually testified or IDed who is on the
19 video. And this is a video that, at most, was downloaded
20 or sent to Mr. Barnes in January of -- more than -- about
21 a month before this incident occurred. And the text
22 messages I guess they're trying to tie it to where there's
23 an exchange about a stolen gun is the day before.

24 This video was made well before this incident ever
25 happened or there was any argument about it. Plus, we

1 don't even know when the video was made and they can't
2 authenticate it and we would object to it coming in.

3 THE COURT: All right. The objection is sustained.
4 The video cannot be authenticated as to time, as to when
5 it was created. He said it originated on Instagram on
6 January 18th, 2019.

7 Furthermore, the court -- I think the State trying to
8 get it in as to state of mind, under 404, it was posted on
9 January 18th of 2019, which is about a month -- well, a
10 couple of weeks before the incident. And the issue
11 regarding a stolen gun apparently came up based on all the
12 testimony that I've heard thus far a day before or a day
13 or two before the actual incident in this case on
14 February 7th, I think it was the 7th. February 7th.

15 So for that reason, I think being able to
16 authenticate the video and also under 404, that the
17 relevance of it, because the gun that they are referring
18 to that was stolen -- in the text messages was apparently
19 alleged stolen within a day or two of this incident. So
20 the video posted in January regarding somebody stealing
21 something would not be relevant to this case. And so I'm
22 going to sustain the objection. And that was --

23 But you can mark that as a Court's Exhibit if you
24 like. Do you want to mark it as a Court's Exhibit.

25 MR. SCOTT: It will be No. 17, Your Honor.

1 THE COURT: What Court Exhibit would it be?

2 THE COURT REPORTER: We don't have Court's -- can we
3 just keep ID 17 or do I need to mark it --

4 THE COURT: Okay.

5 THE COURT REPORTER: I mean, it's already marked 17,
6 so I'll just make a note it's ID only.

7 MR. SCOTT: We did admit 15, correct?

8 THE COURT: Yes.

9 MR. SCOTT: Your Honor, that's all, that's all the
10 questions I have of Mr. Watkins.

11 THE COURT: All right. Thank you.

12 MS. YOUNG: Very briefly, Your Honor.

13 REDIRECT EXAMINATION:

14 BY MS. YOUNG:

15 Q Mr. Watkins, do you have a copy of the text messages
16 they showed you earlier?

17 A I have a text message of -- I mean, I have a copy of
18 texts messages that include what they showed me earlier,
19 yes.

20 Q Can I take a look?

21 A Yes. Page 1, this section here, page 2, this top
22 section, page 4.

23 Q So on February 6th, 2019, at 1:42 p.m., there is an
24 outgoing text from (803)479-8007, that says, had to be one
25 of our supposed friends. I don't know, it wasn't my gun.

1 Is that correct?

2 A That's correct, yes.

3 Q Now, right before that -- sorry, these are out of
4 order?

5 A They are out of order, yes.

6 Q And then right before that, there's an outgoing text
7 to the same number, still trying to figure out who took
8 the gun. Right?

9 A I recall that, yes.

10 Q And then right after that, he said, it wasn't my gun?

11 A That's right.

12 MS. YOUNG: Thank you. I don't have anything
13 further, I don't think. Briefly, Your Honor.

14 (Pause.)

15 Nothing further.

16 THE COURT: Yes, sir.

17 RE CROSS-EXAMINATION:

18 BY MR. SCOTT:

19 Q The conversation started a little bit before that one
20 particular text message, did it not? It's State's No. 16.
21 Do you recognize this thread?

22 A Yes. However, it looks like two different
23 conversations, two different contexts.

24 Q Do you recognize the text being sent by Mr. Barnes?

25 A Any text, in particular?

1 Q No, I mean, you know what his phone number is, right?

2 A I mean, there's incoming and outgoing.

3 Q Okay, outgoing. Once he makes himself.

4 A There's outgoing messages from that number, yes.

5 Q Do you recognize which ones?

6 A Yeah.

7 Q Could you read the ones that Mr. Barnes texted?

8 A In any particular order?

9 Q Most people go from the front to back.

10 A Well, you've got two different conversations here.

11 Q Can I see?

12 A Yes.

13 Q Number 16, do you recognize it, I slept good, but we,
14 still trying to figure out who stole gun?

15 A Yes.

16 Q You recognize that?

17 A That's an outgoing message.

18 Q By Mr. Barnes?

19 A Yes.

20 Q Does he indicate somebody else is trying to figure it
21 out? He says we are trying to figure out who stole the
22 gun?

23 A Yes.

24 Q And is it safe to say in these messages, he is
25 racking his brain trying to figure out how that gun went

1 missing? I'll give you a minute to read it.

2 MS. YOUNG: Your Honor, objection speculation. He
3 doesn't know what's in his head.

4 THE COURT: Sustained. Rephrase the question.

5 BY MR. SCOTT:

6 Q This came off Mr. Barnes' phone, right?

7 A Correct.

8 Q So following message was, February 6th, 2019, I slept
9 good, but we're still trying to figure out who stole the
10 gun.

11 A Yes.

12 THE COURT: What was the date?

13 BY MR. SCOTT:

14 Q February 6th, 2019.

15 11:59 a.m. I'm unclear if that's UTC or standard
16 Eastern.

17 A May I see it?

18 Q That's local time.

19 A So it's 11:59 a.m. Apparently, he receives one,
20 dang, it got stolen yesterday and I'm just fixing to make
21 breakfast.

22 Q That's incoming?

23 A Incoming, yes.

24 Q Then on February 6th, 2019, that's an incoming, where
25 was it at?

1 A This is the next conversation. This is a different
2 number. But yes, it's incoming.

3 THE COURT: What time was that one?

4 BY MR. SCOTT:

5 Q February 6th, 1:26 p.m.?

6 A Yes, that's local time.

7 Q And there's an outgoing message February 6th, 2019,
8 1:38 p.m., correct?

9 A Yes.

10 Q And it says on the little table in the corner. And
11 the shit so crazy is we was all in the same place when it
12 had to happen?

13 A Yes.

14 Q Okay. February 6th, 2019, 1:39 p.m., there's an
15 outgoing message on that phone, like right in front of our
16 face type shit?

17 A Right. That's on outgoing message.

18 Q Incoming from February 6th, 2019 at 1:41 p.m., y'all
19 asses must have been playing the game and not paying
20 attention?

21 A Yes, that exists.

22 Q Incoming message, February 6th, 2019, 1:41 p.m., you
23 think it was somebody you been serving to. Then
24 February 6th, 2019, 1:42 p.m., it had to be one of our
25 supposed to be friends, I don't know. It wasn't my gun,

1 but still, how the F. And then incoming, February 6th,
2 2019, 1:46, shaking my head, is that what you
3 understanding SMH to mean?

4 A Yes.

5 Q And this is February 6th, 2019 at 2:09 p.m., do you
6 know what L K R means? It's an acronym.

7 A It might be IKR, which is I know, right.

8 Q Just got to keep MS around. This came up in this
9 phone in two different conversations where he's discussing
10 with somebody this missing gun?

11 A Yes.

12 Q And he indicates we are trying to figure out who
13 stole the gun?

14 A That's consistent, yes.

15 MR. SCOTT: Your Honor, the State would offer 16 for
16 admission into evidence.

17 THE COURT: Any objection?

18 MS. YOUNG: No objection.

19 THE COURT: All right. State's 16 is entered without
20 objection.

21 (WHEREUPON, State's Exhibit No. 16 admitted into
22 evidence.)

23 MR. SCOTT: Your Honor, that's all I have.

24 THE COURT: You may step down.

25 Any objection to this witness being excused?

1 MR. SCOTT: None from the State.

2 MS. YOUNG: No, Your Honor.

3 THE COURT: You're free to leave.

4 All right. Ready for the next witness.

5 LUKE SHEALEY: Yes, Your Honor, I believe he's here.

6 The defense is going to call Dr. Daren Monroe.

7 THE CLERK: State your full name, please.

8 THE WITNESS: Daren Monroe.

9 THE CLERK: Excuse me?

10 THE WITNESS: Daren Monroe.

11 THE CLERK: Spell your first name, please.

12 THE WITNESS: D-A-R-E-N.

13 DAREN MONROE, after being duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION:

16 BY LUKE SHEALEY:

17 Q Good morning, Dr. Monroe.

18 A Good morning.

19 Q Can you tell the court where you work?

20 A I work for a private physician group called
21 Professional Pathology Services.

22 Q Okay. That's here in Columbia?

23 A That's here in Columbia.

24 Q And what is the primary purpose of this group?

25 A They do all kinds of pathology, which is a branch of

1 medicine. I specifically do forensics pathology.

2 Q So you're a medical doctor?

3 A Yes.

4 Q Graduated from med school?

5 A Yes.

6 Q And how long have you been at Professional Pathology
7 Services?

8 A Since 2014.

9 Q Okay. Is it fair to say you do a lot of autopsies?

10 MR. SCOTT: I'm stipulating to his qualifications.

11 LUKE SHEALEY: Yeah, that will save me some time.

12 THE COURT: So he'll be qualified as an expert in the
13 area of forensic pathologist.

14 LUKE SHEALEY: Yes, Your Honor.

15 BY LUKE SHEALEY:

16 Q Dr. Monroe, did you have occasion to work on a case
17 involving decedents, Eric Griffin and Antonio Dash back on
18 February 7th or thereabouts of 2019?

19 A Yes.

20 Q And you obviously performed autopsies and then I
21 think you would prepare autopsy reports, correct?

22 A Yes.

23 Q Do you have that information with you today?

24 A I do.

25 Q And you and I have discussed this case previously

1 once, right?

2 A Yes.

3 Q Okay. I want to show you some items. Is it fair to
4 say that part of your job is to determine the cause of
5 death?

6 A That's one of the main ones, yes.

7 Q Perhaps, preserve evidence that might be collected as
8 part of your autopsy?

9 A Yes.

10 Q And particularly in this case, you did preserves a
11 lot of projectile fragments and things of that nature; is
12 that right?

13 A Yes.

14 Q Now, just so the court order is clear, when you get a
15 task, such as the one you were given in this case where
16 two deceased gentlemen are showing up in the morgue, are
17 you privy to crime scene documents, accounts of what may
18 or may not have occurred? Is that something you are fully
19 briefed on and aware of?

20 A The amount of information I get regarding a scene and
21 circumstances is usually very minimal when we're actually
22 starting the autopsies. I do get some information from
23 the deputy coroner who investigates the case and,
24 occasionally, from whatever police department, CPD or
25 sheriff's department, whoever is down there covering, as

1 well.

2 Q Do you recall receiving or reviewing any crime scene
3 photos in this case prior to the autopsy?

4 A Prior to the autopsy, I do not.

5 Q I want to show you some photographs that you will
6 probably recognize that are associated with this case.
7 I'm going to show you Defendant's No. 37 for ID. Do you
8 recognize this photograph?

9 A Yes.

10 Q Do you recognize 38?

11 A Yes.

12 Q Thirty-nine?

13 A Yes.

14 Q Forty?

15 A Yes.

16 Q Forty-one?

17 A Yes.

18 Q Forty-two?

19 A Yes.

20 Q Forty-three?

21 A Yes.

22 Q And do you recognize this, 44?

23 A Yes.

24 Q Okay. Are these photographs of Mr. Eric Griffin, do
25 you recall that?

1 A Yes.

2 Q And that's one of the gentlemen that you performed an
3 autopsy on?

4 A Yes.

5 Q All right. And I have some other photographs I'll
6 briefly show you. Do you recognize Defendant's No. 45?

7 A Yes.

8 Q Forty-six?

9 A Yes.

10 Q Forty-seven?

11 A Yes.

12 Q Forty-eight?

13 A Yes.

14 Q Forty-nine?

15 A Yes.

16 Q Fifty?

17 A Yes.

18 Q And then 51?

19 A Yes.

20 Q Are those photographs and items in evidence
21 associated with Antonio Dash; is that correct?

22 A Yes.

23 THE COURT: That's 45 through what?

24 LUKE SHEALEY: It will be 45 through 51.

25

1 BY LUKE SHEALEY:

2 Q Are you taking these photographs or is someone else
3 for the coroner's office taking photographs?

4 A The deputy coroner in the autopsy room takes
5 photographs and also the investigating police department,
6 as well, takes photographs.

7 LUKE SHEALEY: Your Honor, at this time, I would seek
8 to introduce those photographs into evidence.

9 THE COURT: Any objection?

10 MR. SCOTT: No objection.

11 THE COURT: All right. So was it 38?

12 LUKE SHEALEY: It was 37 through 51.

13 THE COURT: They'll be entered without objection.

14 (WHEREUPON, Defendant's Exhibits Nos. 37 through 51
15 admitted into evidence.)

16 BY LUKE SHEALEY:

17 Q Now, Dr. Monroe, if you'll bear with me, I'd like to
18 discuss some of these injuries and your findings. As to
19 this photo, which you've already recognized, which would
20 be Defendant's 37, would that be -- well, first let me
21 just ask you right out of the gate, how many distinct
22 bullet wounds do you find to Mr. Eric Griffin?

23 A Eric Griffin was shot six times.

24 Q And this is Eric Griffin. This is one of the bullet
25 wounds to the back of his neck; is that correct?

1 A Yes.

2 Q And that would be a fatal shot, correct?

3 A That is, yes.

4 Q Now, that -- this is also another photo of that shot.
5 You noted in your autopsy report that that would be what
6 you call a contact wound?

7 A That is a contact wound. It's not very apparent in
8 that picture.

9 Q Okay. But you recognize it through your medical
10 training as a contact wound, correct?

11 A Yes.

12 Q Is part of your job to determine cause of death and,
13 perhaps, you realize that might be a bullet wound, but
14 you're trying to assist in determining, perhaps, how far a
15 shooter might have been, correct?

16 A Yes.

17 Q You're also recovering evidence and projectiles to be
18 packaged and sent to other firearms examiners and things
19 like that; is that right?

20 A Yes.

21 Q Now, with this contact wound, you and I discussed
22 this before. You don't have a way of determining whether
23 this gentleman was standing when he was shot with this
24 wound or lying on the ground or seated? You don't have
25 that ability, do you?

1 A I don't, no. That's not something I can say.

2 Q Is it all relative to the position of the gun and the
3 position of Mr. Griffin?

4 A The only thing I can say with regard to trajectory is
5 just the relative position of the muzzle of the gun to the
6 body or the part of the body at the time the gun was
7 fired.

8 Q Right. And there are -- you recognize these two
9 wounds to the right back; is that correct, Defendant's 39?

10 A Yes.

11 Q And this is another, probably a little better photo
12 of it, but you were able to pull projectiles out of all
13 three of these wounds, correct?

14 A That is correct. We recovered projectiles or
15 fragments from all three of those.

16 Q And you also recognize this wound to the right
17 shoulder of Mr. Griffin?

18 A Yes.

19 Q And you also recovered a projectile of that wound?

20 A Yes.

21 Q Now, this wound in Defendant's No. 42. Do you see
22 that right there?

23 A Yes.

24 Q Would you classify that as kind of a graze wound?

25 A That's a gunshot wound.

1 Q The trajectory was a what?

2 A The trajectory was back to front.

3 Q But being a graze, you didn't recover a projectile
4 out of that particular wound, correct?

5 A Correct.

6 Q And this -- you recognize this wound to the left arm?

7 A Yes.

8 Q And that would be a wound that -- these are not two
9 specific shots, but it's a through-and-through; is that
10 right?

11 A That's correct, one is an entrance, one is an exit.

12 Q Okay. You did not recover a projectile from that?

13 A Correct.

14 Q When it comes to what you can recover in terms of
15 projectiles, I think you told me this before, your job is
16 not to hunt and find every fragment or shard of metal
17 necessarily in a body, is it?

18 A The major pieces, especially any jagged fragments are
19 the most necessary to recover. If the projectile is
20 fragmented into very many tiny pieces, then we get what we
21 can out of it.

22 Q For example, you're not going to dissect, let's say,
23 an arm if you get a fragment and you don't know, perhaps,
24 where the rest of the projectile may have traveled.

25 You're not going to do that, are you?

1 A If there is a fragment noted on an x-ray and it is
2 sizable enough to go after it, then I will.

3 Q Okay. And part of your job, like we discussed, is to
4 pull these items of relevant evidence and label them?

5 A Yes.

6 Q And it looks like you've done that here; is that
7 right?

8 A Yes.

9 Q And so this gets packaged and sent on to other
10 experts, but what we've got here is -- this is what you
11 recovered from Mr. Griffin's neck; is that right?

12 A Yes.

13 Q And you write that from neck using metal instrument.
14 That's a pretty, you know, one piece kind of chunk of
15 metal, right?

16 A That's a fairly intact projectile.

17 Q And these are coming from T4?

18 A Yes.

19 Q This is the other back wound?

20 A Yes.

21 Q And this would be the one coming from the right arm?

22 A Yes.

23 Q Okay. And, again, the left arm was a
24 through-and-through, so you didn't recover anything from
25 there, right?

1 A Correct.

2 Q So you package these up and they're preserved for
3 evidence and they go on to other folks to help determine
4 what occurred or what might be ballistically or
5 forensically regarding the firearm, correct?

6 A Correct.

7 Q I want to talk to you about Mr. Antonio Dash now.
8 You and I have talked before, but you agree that you have
9 six distinct bullet wounds that you've identified with
10 Mr. Dash?

11 A Mr. Dash was shot seven times.

12 Q I apologize. Right, Mr. Griffin was shot six times,
13 Mr. Dash was shot seven times. Thank you for that
14 correction.

15 Now, in addition to bullet wounds, Mr. Dash -- is it
16 fair to say he had some rather distinct blunt force trauma
17 wounds, as well?

18 A Yes, I did.

19 Q I want to show you Defendant's No. 45. Now, you note
20 in your autopsy report that this is a -- this right here
21 would be a bullet wound to his right temple?

22 A Correct.

23 Q Before we get to the picture, Mr. Dash has another
24 bullet wound to his left temple, correct?

25 A Yes, he does.

1 Q And that would be associated with this entry wound
2 there?

3 A Yes.

4 Q Now, one thing I think is important is you note that
5 these bullet wounds off to the side of his head, they
6 enter, but they don't have any exits; is that correct?

7 A That is correct.

8 Q So without an exit wound, that would, basically,
9 establish that whatever projectiles you may find in this
10 young man's head cavity are consistent with two bullets?

11 A Being shot twice, yes.

12 Q Right. This other wound, you give a very particular
13 pronunciation. You can help me out. Is it stellate,
14 stellate lacerations?

15 A Yes. It's stellate.

16 Q All right. Tell the court what a stellate laceration
17 is?

18 A It just means star shaped.

19 Q Now, you know that did not come from a bullet,
20 correct?

21 A Correct.

22 Q Okay. We've discussed this before, but would this
23 type of wound that you've noted here, would it be possible
24 just to be hit with a flat hand and cause that type of
25 wound or would you need a blunt object?

1 A A flat hand would be very unlikely to cause that.

2 Q You note it as blunt force trauma, would it require
3 some hard object hitting his head or either his head
4 hitting some hard object?

5 A It is most likely from either hitting the hard object
6 or being hit by a hard object.

7 Q If you got hit with a metal object, like a gun, could
8 that cause that injury?

9 A Yes.

10 Q Okay. Now, getting to this wound on the other side
11 of his head, again, that's a second gunshot wound, but
12 what can you tell us about this other blunt injury you
13 note about his left eyebrow?

14 A That's another blunt force injury, not a gunshot
15 wound.

16 Q Okay. Now, getting back to these particular wounds
17 to the head, they're going into this young man's brain,
18 correct?

19 A Yes.

20 Q Each one of these is a fatal-type wound that could
21 induce a fatal result?

22 A Yes.

23 Q If somebody -- if you take, you know, obviously,
24 there's nothing in the record that you're aware of that
25 would indicate which one of these wounds occurred first,

1 but if you took either one of these wounds, whether it's
2 the left side or the right side, that would be a fatal
3 incapacitating shot; is that right?

4 A Both are fatal.

5 Q Based on the damage to the brain, it takes a shot to
6 his right side, is his body going to be in a position to
7 move and do a lot of its normal functioning?

8 A Fairly instantly, he would be incapacitated with
9 either shot.

10 Q With either shot, okay. Now, this is a picture,
11 Defendant's No. 47, we discussed previously of his left
12 arm. Do you see that?

13 A Yes.

14 Q And do you recognize the four distinct bullet wounds
15 to the left arm?

16 A Yes.

17 Q And those were all through-and-through shots,
18 correct? As evidenced by this photo, they were exit
19 wounds on the interior of his arm?

20 A Yes.

21 Q And you found one additional shot to his right arm,
22 correct?

23 A Yes.

24 Q And you note that it entered from the anterior, his
25 anterior side and exits the left side of his arm?

1 A Yes.

2 Q Again, this a very --

3 Can you help me zoom out on this?

4 So, again, this would be your way of precisely
5 labeling and identifying different projectiles and
6 fragments from various parts of the body where they were
7 recovered by yourself?

8 A Correct.

9 Q And looking at all these in the temporal lobe, the
10 nasopharynx, the parietal lobe, temporal, frontal, ear
11 area, is it fair to say that all of these came out of Mr.
12 Dash's head, but for this fragment that came out of his
13 arm?

14 A Yes.

15 Q Just in general layman's terms?

16 A Yes.

17 LUKE SHEALEY: Beg the Court's indulgence.

18 (Pause.)

19 Dr. Monroe, please answer any questions Mr. Scott may
20 have.

21 THE WITNESS: Yes.

22 CROSS-EXAMINATION:

23 BY MR. SCOTT:

24 Q Dr. Monroe, I'm probably going to have some exhibits
25 that are duplicates of the defense, but let me start with

1 Mr. Dash. I think the testimony was you noted a gunshot
2 wound to the left temple?

3 A Yes.

4 Q There was one to the right scalp?

5 A Yes.

6 Q He had four gunshot wounds in the left arm?

7 A Yes.

8 Q And then blunt force trauma to the head?

9 A Yes.

10 Q I want to show you State's No. 37.

11 THE COURT: Any objection? It's already been
12 entered?

13 LUKE SHEALEY: I believe it's a duplicate. I don't
14 have any objection.

15 THE COURT REPORTER: State's 37? The last one I have
16 is 18 for the State.

17 MR. SCOTT: I'm going to remark some of these.

18 This is Defense 47, I'll withdraw mine.

19 THE COURT: That's already in.

20 BY MR. SCOTT:

21 Q Defense 47, Dr. Monroe, what are we looking at in
22 that particular picture in regard -- that is Mr. Dash,
23 correct?

24 A Yes.

25 Q And what are we looking at?

1 A That is the left upper arm and the outside aspect,
2 right here. And you see in this picture four entrance
3 gunshot wounds and also stippling.

4 Q All right. You noted that all four of those were
5 through-and-through?

6 A Yes.

7 Q All right. You noted all four of those were
8 through-and-through wounds?

9 A Yes.

10 Q Is it potential that a through-and-through gunshot
11 wound could enter through one victim and go into another
12 victim?

13 A That can happen, yes.

14 Q And stippling, what is stippling? What are these
15 pock marks we're looking at all over Mr. Dash's left arm?

16 A The lower marks that you can see distributed over the
17 arm there are called stippling. And what that is is when
18 the gun is fired, after the projectile exits the barrel,
19 it's followed by all the gas which is expanding and that's
20 what makes the bullet go fast, and it's also followed by
21 tiny bits of unburned and incompletely burned gunpowder.
22 And those then impact the skin, which you can see there,
23 and cause a little tiny abrasion.

24 Q What is stippling? I guess it's indicative of
25 unburned gunpowder, but is it helpful for you in

1 determining gunshot range?

2 A Yes, it is.

3 Q Okay. Do you have an opinion as to stippling being
4 formed at any specific distance?

5 A Yes. So we see stippling, pretty much, it's
6 established for automatic handguns and ammunition types.
7 You see stippling anywhere from about six inches to
8 three-and-a-half feet. And we call that an intermediate
9 range.

10 Q So the stippling on Mr. Dash's arm indicates that he
11 was shot at or the barrel of the gun was between
12 six inches and three-and-a-half feet away from him?

13 A Yes.

14 Q Okay. But you said it's indeterminate or
15 intermediate?

16 A Intermediate.

17 Q What does that mean?

18 A That is just the term we use to describe a gunshot
19 wound where there is stippling present so we can say it's
20 intermediate range.

21 Q So you can't say it's closer than six inches or
22 closer than three-and-a-half feet?

23 A It's between six inches and three-and-a-half feet.

24 Q But your expert opinion is Mr. Dash was shot no
25 further away than three-and-a-half feet?

1 A Yes.

2 Q So you testified that some of the -- he had four
3 through-and-through gunshots?

4 A On his left upper arm, yes.

5 Q Any other through-and-through?

6 A His right upper arm had an entrance and exit from a
7 single gunshot.

8 Q Okay. So potentially, bullets could have gone
9 through Mr. Dash and into Mr. Griffin?

10 A Potentially.

11 Q And vice versa, if Mr. Griffin had any
12 through-and-through wounds?

13 A Potentially.

14 Q This is Defense No. 39. This is Mr. Griffin?

15 A Yes.

16 Q And how many times was he shot in his back?

17 A Twice.

18 Q Is that what we're looking at in Defense No. 39 here?

19 A Yes.

20 Q Where were the other gunshot wounds Mr. Griffin
21 received?

22 A Mr. Griffin was also shot in the left upper arm, the
23 posterior upper neck and a graze wound of the right
24 shoulder.

25 Q This is Defense 43, that's the left upper arm. Is

1 that how you describe it?

2 A Yes.

3 Q And that's a through-and-through?

4 A Yes, it is.

5 Q Okay. State's [sic] 41. That's Mr. Griffin's right
6 upper arm?

7 A Yes.

8 Q And then Defense 42, this depicts the graze wound
9 to his upper right shoulder?

10 A Yes.

11 Q This is Defense 38. You testified a little bit about
12 it. What is noteworthy about this wound on Mr. Griffin?
13 Where is the location of this wound, by the way?

14 A This is on the posterior right neck.

15 Q Okay. So somewhere around here?

16 A Exactly.

17 Q And what is relevant about this gunshot wound?

18 A This is a -- first of all, a fatal gunshot wound and
19 it's also a contact gunshot wound.

20 Q What is a contact gunshot wound?

21 A A contact gunshot wound is one where the muzzle of
22 the gun is -- has contact with the skin at the time it was
23 shot.

24 Q Okay. So hold your hand like a gun. Now, show me
25 what a contact gunshot wound looks like. Your hand is a

1 gun. You're pressing it against my neck right now; is
2 that correct?

3 A Yes.

4 Q Is that your opinion of how Mr. Griffin was shot?

5 A Yes.

6 Q Somebody pressed a pistol up against the base of his
7 neck and pulled the trigger?

8 A Yes.

9 Q Okay. I think you indicated you had some pictures
10 that you may have taken that more clearly illustrated what
11 you are talking about?

12 A Yes.

13 (WHEREUPON, State's Exhibit No. 18 marked for
14 identification only.)

15 BY MR. SCOTT:

16 Q This is State's No. 18. What is that?

17 A This is a picture of that same gunshot wound that's
18 in that picture right there after having been shaved, the
19 hair around it.

20 Q So you shaved some of Mr. Griffin's hair in order to
21 more clearly see the wound, is that what you did?

22 A Correct.

23 MR. SCOTT: The State offers State's 18, Your Honor?

24 THE COURT: Any objection.

25 LUKE SHEALEY: No.

1 THE COURT: That will be entered without objection.

2 (WHEREUPON, State's Exhibit No. 18 was admitted into
3 evidence.)

4 BY MR. SCOTT:

5 Q Okay. Can you explain what was in there to Judge
6 Benjamin?

7 A Yes. What you're seeing there -- actually, could I
8 point?

9 MR. SCOTT: Your Honor, could he step down and point
10 to a few things?

11 THE COURT: Yes.

12 THE WITNESS: So the gunshot wound is right here.
13 That's the entrance. Around it is an abrasion border that
14 we see in entrance gunshot wounds especially. And then
15 there's little bits of soot which might be hard to
16 appreciate from a distance, but there is soot around the
17 edge. There's also this darker rim surrounding around
18 here, that's contusion. And then right here, you have
19 part of an abrasion from part of the muzzle of side of the
20 gun, just any part of the front of the gun.

21 BY MR. SCOTT:

22 Q When there's a contact wound such as a -- you talk
23 about the gas and everything going into the skin, could
24 you explain that a little bit?

25 A So with a contact wound on a flat bone, such as at

1 the base of the skull where this is, the gases that come
2 out after the projectile have nowhere to go but inside the
3 wound.

4 When they do that, effectively, they balloon both the
5 skull and the scalp outward and that causes a very quick,
6 basically, a slapping of the skin around the barrel and
7 anything else. So if there's a sight, such as in this
8 case right here, and that's what causes this other
9 abrasion and contusion that's surrounding it there.

10 Q But your opinion is that right there is caused by an
11 actual sight of the gun?

12 A This sight or any part of the top of the gun around
13 the barrel, yes.

14 Q Okay. And you're able to observe, I guess, the
15 imprint of the muzzle of the gun on Mr. Griffin's neck?

16 A That's what all of that is.

17 Q Okay. Thank you. Okay. So it's your opinion that
18 that was what killed Mr. Griffin, this wound in State's
19 No. 18?

20 A That is a fatal shot, yes.

21 Q And then Defense No. 46 for Mr. Dash, that indicates
22 the gunshot wound to his left temple?

23 A That is also a fatal shot.

24 Q That would have been fatal for Mr. Dash, but then
25 Mr. Dash could have also died by the wound shown in

1 Defense No. 45; is that correct?

2 A That's correct.

3 Q So Mr. Dash had two head shots and Mr. Griffin had
4 one?

5 A Yes.

6 MR. SCOTT: Okay. I think that's all the questions I
7 have for Dr. Monroe.

8 REDIRECT EXAMINATION:

9 BY LUKE SHEALEY:

10 Q Dr. Monroe, based on your experience and training as
11 a medical examiner, obviously, you have the ability to
12 determine an entrance wound versus an exit wound, correct?

13 A Yes.

14 Q And you know from your training and experience when a
15 gun is fired that the bullet is turning, correct, like
16 rifled as we call it?

17 A If the barrel is rifled, and that's the way most guns
18 are.

19 Q And kind of like throwing a spiral football, I guess,
20 laymen's terms?

21 A Yes.

22 Q And you -- that helps you determine whether there's a
23 wound that's entering because is it fair to say it's more
24 clean, more circular, things of that nature? Describe
25 that, how you determine between an entrance or exit wound?

1 A So entrance wounds have a number of different
2 characteristics. Generally, they tend to be more round if
3 they're straight onto the skin and not angled. If they
4 are angled, it will be more elliptical. The edges of the
5 wound are more regular and smooth.

6 Exit wounds can vary wildly in their characteristics.
7 Generally, they are irregular, might be the best way to
8 put it.

9 Q Okay. Now, I learned a term of medical art when I
10 was consulting with a pathologist on this case prior to
11 talking to you about a wound being atypical. Can you talk
12 to us about that?

13 A Atypical isn't an official term. That's certainly a
14 good descriptor for any sort of gunshot wound that has --
15 well, typical findings versus a rough entrance and exit
16 wound, for instance.

17 Q Now, that rifled, football spiral bullet helps you
18 determine an entrance wound. Based on your training and
19 experience, if it passes through a body or an object, is
20 it continuing to spiral cleanly like that at that point in
21 time?

22 A Usually, no.

23 Q Okay. Is it -- can it be tumbling in a different
24 direction?

25 A It can be tumbling. It can be fragmented, deformed.

1 Q I'm sure over the course of your work as a
2 pathologist doing autopsies, you've encountered wounds
3 that pass through something, whether it's another body or
4 a wall or something to cause them to not be spiraling and
5 actually be tumbling when they enter a body, correct?

6 A Yes.

7 Q And they make a less perfect circle and more atypical
8 wound entrance point, correct?

9 A Yes.

10 Q Now, I did not note that you documented or found any
11 wounds of that nature in either of these two autopsy
12 reports, did you?

13 A I did not think any of them were definitely any sort
14 of reentrance wound.

15 Q Okay. So the State's question, you -- based on your
16 findings and analysis do not conclude that either of these
17 gentlemen's entry wounds had come through a wall or
18 another body prior to entering these specific points on
19 their bodies?

20 A Most of the shots were definite clean entrance
21 wounds. I believe -- looking at the pictures when
22 questions were raised by both the prosecution and defense,
23 I believe one shot by each person has the potential to be
24 a reentry wound.

25 Q The potential?

1 A Yes. I can't say for sure.

2 Q You can't say for sure. And the total shot count
3 that we had, seven plus six, is 13, correct?

4 A Correct.

5 Q So you're saying not for sure, but there's a
6 potential that two of those 13 maybe could have that
7 ability?

8 A Potentially.

9 Q Potentially, but you can't say for sure?

10 A I can't say for sure.

11 Q If you had known that for sure, you certainly would
12 have put it in your autopsy report, correct?

13 A Yes, if it was a home run reentry wound, yes.

14 LUKE SHEALEY: Okay. That's all I have. Wait one
15 second. I'm being flagged.

16 (Pause.)

17 Thank you, Doctor. That's all I have.

18 THE COURT: Yes, sir, anything?

19 RECROSS-EXAMINATION:

20 BY MR. SCOTT:

21 Q What you're saying, I think I heard, you can't
22 definitively rule out some of these were reentry wounds?

23 A Correct, I can't rule it out completely.

24 Q Another thing, you can't tell who was shot first, can
25 you?

1 A (Indicating in the negative.)

2 Q Okay.

3 MR. SCOTT: Nothing further Your Honor?

4 THE COURT: All right. You may step down.

5 Any objection to this witness being excused?

6 LUKE SHEALEY: No, Your Honor.

7 THE COURT: Okay. Thank you. We're going to go
8 ahead and take about a ten-minute break. We'll start
9 break around 11:30, maybe 11:35.

10 Let me see the attorneys for second.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: Call your next witness.

13 MS. YOUNG: Sara Goodman.

14 THE CLERK: Would you state your full name, please.

15 THE WITNESS: Sara Goodman.

16 THE CLERK: Would you spell your name, please.

17 THE WITNESS: S-A-R-A, G-O-O-D-M-A-N.

18 SARA GOODMAN, after being duly sworn,
19 testified as follows:

20 THE CLERK: Take a seat.

21 DIRECT EXAMINATION:

22 BY MS. YOUNG:

23 Q Good morning, Ms. Goodman.

24 A Good morning.

25 MS. YOUNG: Your Honor, at this point, I'm going to

1 go ahead and ask that she be offered as an expert.
2 Mr. Scott has indicated he would stipulate to her
3 qualifications?

4 THE COURT: All right. An expert in?

5 MS. YOUNG: Oh, sorry, DNA analysis.

6 THE COURT: All right. She will be qualified as an
7 expert in DNA analysis by stipulation.

8 BY MS. YOUNG:

9 Q Ms. Goodman, where do you work?

10 A I work at the South Carolina Law Enforcement
11 Division, commonly referred to as SLED.

12 Q Did you as part of your job come to work on the case
13 that we are here for today in the State of State vs.
14 Antonio Barnes?

15 A I did.

16 Q Were you asked to look at some DNA?

17 A Yes, I was.

18 Q And what were you provided?

19 A I was provided a few known standards from Antonio
20 Dash and Eric Griffin, as well as fingernail scrapings
21 from the left and right hands of Eric Griffin and Antonio
22 Dash, as well, and then I was provided some cartridge
23 casings.

24 Q And what did you do with those items?

25 A So I analyzed all of those items for DNA and

1 developed a DNA profile from each of those items, and if I
2 could, compared them to the DNA profiles from any of the
3 known standards that I received.

4 Q And how did you do that?

5 A So for the items, as far as my analysis, I would take
6 a small portion of the item. So, for example, if it's a
7 swab, I would take a small cutting of the swab. I would
8 take it through my laboratory analysis, which includes
9 extracting the DNA, which is separating it, off of
10 whatever item it's on, purifying it. I would quantify it,
11 which tells me at that point how much DNA is present on
12 that item. I would then make many copies of the DNA to a
13 level that our instruments can detect and then we rerun it
14 through an instrument that separates out the DNA by size
15 and gives us our DNA profile.

16 So I did that for all of my items of evidence and
17 then separately for all of my known standards. And then I
18 will do my interpretation and make any comparisons I can.
19 And if I can make a comparison, I will calculate a
20 statistic to give a weight to that comparison.

21 Q And in order to make your comparison, do you make
22 something called STRmix?

23 A Yes.

24 Q Can you tell us what STRmix is and how it works?

25 A So STRmix is a computer program that we use to assist

1 with our interpretation of the DNA profiles and in
2 calculating our statistics for our comparison.

3 So what STRmix does is we will input our evidence
4 profiles, so we will tell STRmix -- we will do our
5 interpretation first to determine how many individuals are
6 present in that DNA profile, whether it's single source,
7 which is from one person, or a mixture, which is from more
8 than one person.

9 So we will input that number of contributors into
10 STRmix and we will then put the DNA profile from the
11 evidence items into STRmix. If it's a mixture, it will
12 break it down into the different possibilities for each
13 contributor. It's called de-convoluting the mixture.

14 And then once we have reviewed that data and agree
15 with that, we will input the DNA profiles from the known
16 standards and STRmix will compare that to the profile, to
17 the deconvolution to the evidence and calculate a
18 statistic on whether or not that individual could be a
19 contributor to that profile.

20 Q Okay. So that's what you did in this case?

21 A Yes.

22 Q Okay. Do you have your report with you?

23 A I do.

24 Q Did you put all your findings in your report?

25 A I did.

1 Q Okay. I was just going to go over them kind of item
2 by item?

3 A Uh-huh.

4 Q Item 9.1, can you tell us what that is?

5 A Yes, that is left-hand fingernail scrapings from Eric
6 Griffin.

7 Q Okay. And what did you find after, I guess,
8 analyzing and comparing those fingernail scrapings to your
9 known standards?

10 A So for this item, a DNA profile suitable for
11 comparison was developed, likelihood ratios for this
12 profile were calculated using STRmix, which likelihood
13 ratios are the type of statistics that STRmix is
14 calculating.

15 And what likelihood ratios are is it is comparing two
16 different possible scenarios to explain the evidence.
17 Usually, one scenario is whether a known standard could be
18 included in that DNA profile or whether it's some other
19 unidentified individual. And the result tells you which
20 one of those is more likely. So each proposition in that
21 report is a likelihood ratio comparison.

22 So for this item, for the proposition set one, this
23 DNA profile was interpreted as a mixture originating from
24 three individuals. Eric Griffin is contributing to the
25 mixture.

1 So my first scenario that's being compared is that
2 Eric Griffin, Antonio Dash and an unidentified unrelated
3 individual contributed to the mixture. The second
4 scenario is that Eric Griffin and two unidentified
5 unrelated individuals contributed.

6 The result for that is the DNA profile is
7 approximately 13 trillion times more likely if Eric
8 Griffin, Antonio Dash and an unidentified unrelated
9 individual contributed to the mixture than if Eric Griffin
10 and two unidentified unrelated individuals contributed.

11 Q So to boil that down, does that mean that it's likely
12 that there was DNA from Antonio Dash in Eric Griffin's
13 fingernail scrapings?

14 A Yes, that is a strong likelihood for that first
15 scenario of it being Eric Griffin, Antonio Dash and
16 another individual versus if it were just Eric Griffin and
17 two other unidentified.

18 Q Were you able to exclude anyone from the fingernail
19 scrapings?

20 A Yes. So for my second proposition set, it's similar,
21 but comparing Eric Griffin and Antonio Barnes, Jr. and
22 Shekila Smalls and they are both excluded as contributors
23 to the mixture.

24 Q Okay. Meaning that you didn't find any DNA from
25 Mr. Barnes present?

1 A Correct.

2 Q So moving onto item 9.2, what did you -- what is
3 that?

4 A So item 9.2 is right-hand fingernail scrapings from
5 Eric Griffin.

6 Q Okay. And what happened with those fingernail
7 scrapings?

8 A The partial DNA profile developed is insufficient for
9 interpretation.

10 Q Okay. Just meaning you weren't able to develop any
11 profiles to compare?

12 A Yes. I developed a DNA profile, but there just
13 wasn't enough information there for me to be able to make
14 comparisons.

15 Q And then moving on to item 10.1, what was that?

16 A Item 10.1 is left-hand fingernail scrapings from
17 Antonio Dash.

18 Q And what were your findings with those?

19 A For this item, again, a DNA profile suitable for
20 comparison was developed and likelihood ratio for this
21 profile were calculated using STRmix. This mixture was
22 interpreted as a mixture originating from two individuals.
23 So from my first proposition set, I'm comparing the
24 scenario that Antonio Dash and an unidentified unrelated
25 individual contributed versus whether it was two

1 unidentified unrelated individuals. And the result is
2 that the DNA profile is approximately 12,000 times more
3 likely if Antonio Dash and an unidentified unrelated
4 individual contributed to the mixture than the two
5 unidentified unrelated individuals contributed.

6 And then for my second proposition set, Antonio Dash
7 is contributing to the mixture. So then I'm comparing
8 whether Antonio Dash and Eric Griffin contributed to the
9 mixture versus if Antonio Dash and an unidentified
10 unrelated individual contributed. And the result for that
11 is the DNA profile is approximately 2.6 octillion times
12 more likely if Antonio Dash and Eric Griffin contributed
13 to the mixture than if Antonio Dash and an unidentified
14 unrelated individual contributed.

15 Q Okay. So, again, sort of in layman's terms, it's
16 very likely that there's DNA from Mr. Griffin under
17 Antonio Dash's fingernails.

18 A Essentially, yes. That is a very strong likelihood
19 for that first scenario being Antonio Dash and Eric
20 Griffin.

21 Q Again, were you able to Mr. Barnes as being a
22 contributor?

23 A Yes. Antonio Barnes, Jr. and Shekila Smalls are
24 excluded from this mixture, as well.

25 Q Moving on to 10.2, I believe that's the right-hand

1 fingernail scrapings from Antonio Dash, what were your
2 findings there?

3 A So for this item, a DNA profile suitable for
4 comparison was developed and likelihood ratios were
5 calculated using STRmix. This was again a mixture
6 originating from two individuals.

7 So for my first proposition set, I'm comparing
8 whether Antonio Dash and an unidentified unrelated
9 individual contributed versus if it's two unidentified
10 unrelated individuals. And my results for that is the DNA
11 profile is approximately 170 times more likely if Antonio
12 Dash and an unidentified unrelated individual contributed
13 than two unidentified unrelated individuals contributed.

14 For my second set, I'm comparing whether Eric Griffin
15 and an unidentified individual is contributing versus two
16 unidentified. And the result is the DNA profile is
17 approximately 1.6 octillion times more likely if Eric
18 Griffin and an unidentified individual contributed rather
19 than two unidentified.

20 And then for my third proposition, I'm comparing
21 whether Antonio Dash and Eric Griffin could both be
22 contributing to the mixture versus if it's just two
23 unidentified individuals. And the results for that is the
24 DNA profile is approximately 720 octillion times more
25 likely if Antonio Dash and Eric Griffin contributed to the

1 mixture than if two unidentified unrelated individuals
2 contributed.

3 Q Okay. And you have this little note there at the
4 bottom of proposition set. Can you explain that?

5 A Yeah, so the note is stating that the LR fourth
6 proposition set three was calculated to confirm that the
7 mixture can be explained by the contribution of DNA from
8 all individuals listed under HB, which is that first
9 scenario. And that due to the disparity and the
10 individual LRs between the contributors for this item,
11 it's recommended to put more weight on the results of
12 proposition set one rather than proposition set three when
13 considering Antonio Dash as a possible contributor.

14 So, essentially, because the result for the
15 comparison of whether Antonio Dash could be in that
16 mixture was 170. On our chart that's at the end of our
17 report to kind of help give kind of a scale for these
18 numbers, that it would be weak support, but he was
19 contributing. So he may be, but that's kind of weak
20 support of whether or not he is. But for Eric Griffin,
21 his number was 1.6 octillion, which is very strong
22 support. And for them together, it's also 720 octillion.

23 So, essentially, what it's saying is since Antonio's
24 individual number was weak support and then the number for
25 them together is very strong support, they could be

1 contributing together, but we don't want to give the false
2 idea that it's definite that they're both contributing
3 together since his individual number was much smaller than
4 that number of them together.

5 Q Okay. But Griffin is certainly a contributor?

6 A Yes, there's very strong likelihood that Eric Griffin
7 is contributing.

8 Q Okay. And then I think the last one is a shell
9 casing. That would be -- sorry. Again, Mr. Barnes was
10 excluded, Mr. Barnes and Ms. Smalls were excluded as
11 contributors to 10.2?

12 A Yes.

13 Q And then moving on to 31.1, that was some swabs from
14 a shell casing; is that right?

15 A Yes, that's correct.

16 Q And that swab was actually blood?

17 A I believe so. I can look up that serology report
18 just to make sure. Yes, so presumptive testing for blood
19 was positive for this item.

20 Q Okay. And then what were your findings there?

21 A For this item, a DNA profile suitable for comparison
22 was developed and likelihood ratios are calculated using
23 STRmix. This, again, was interpreted as a mixture
24 originating from two individuals.

25 So for my first set of comparisons and comparing

1 whether Antonio Dash and an unidentified unrelated
2 individual is contributing versus two unidentified
3 individuals. And the result is that the DNA profile is
4 approximately 62 quintillion times more likely if Antonio
5 Dash and an unidentified unrelated individual contributed
6 versus the two unidentified individuals contributed.

7 For the second set, I'm comparing whether it be Eric
8 Griffin and an unidentified individual versus two
9 unidentified. And the result is that the DNA profile is
10 approximately 84 trillion times more likely if Eric
11 Griffin and an unidentified individual contributed rather
12 than two unidentified.

13 And then for my third set of comparisons, I'm
14 comparing whether the mixture would be whether Antonio
15 Dash and Eric Griffin contributing to the mixture versus
16 two other unrelated individuals. And the result is that
17 the DNA profile is approximately 280 undecillion times
18 more likely if Antonio Dash and Eric Griffin contributed
19 than if two unidentified individuals contributed.

20 And then for my last set, similar comparisons, but
21 Antonio Barnes, Jr. and Shekila Smalls are excluded as
22 contributors to this mixture.

23 Q So, again, boiling it down, the blood that was
24 swabbed from a shell casing and given to you seems to be
25 from Mr. Griffin and Mr. Dash?

1 A Yes, there's very strong likelihood for that
2 scenario.

3 Q And then backing up just in general with the report,
4 it's fair to say that Mr. Griffin and Mr. Dash have each
5 other's DNA under each other's fingernails?

6 A Yes, there is a very strong likelihood for all of
7 those fingernail scrapings that I could compare that they
8 are contributing.

9 Q And nothing you analyzed had any DNA for Mr. Barnes?

10 A That's correct.

11 MS. YOUNG: Bear with me one second, okay?

12 (Pause.)

13 Nothing further, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION:

16 BY MR. SCOTT:

17 Q Just briefly, do you make any kind of distinction on
18 what kinds of DNA you're testing? I heard there was some
19 blood on the casing?

20 A Yes, sir.

21 Q Under the fingernails. Just any kind of DNA you can
22 pick up?

23 A Yes. Either swabs or the whole fingernail forward.
24 So I didn't do any serology testing as far as certain body
25 fluids or anything.

1 Q This is a Defense No. 9. What do you see in that
2 picture?

3 A I see two people laying on the ground with some red
4 substance around them.

5 Q Okay. Would you characterize that red substance as
6 being -- I mean, quantity-wise, is that a lot or a little
7 in your observation?

8 A It appears to be a good amount of red substance
9 around them.

10 Q Okay. So Eric Griffin and Antonio Dash were lying in
11 a large pool of their combined blood. Is it possible what
12 you're testing is the blood they're lying in under their
13 fingernails?

14 A That could be possible.

15 Q And if the crime scene photos indicate that there's a
16 quantity of casings lying in the pool of blood that is a
17 mixture of their blood because they've both been shot
18 multiple times, would that explain their DNA being on the
19 casing?

20 A That could be a possibility.

21 Q You're not asking -- or, really, you're not offering
22 an opinion as to how each other's DNA gets under each
23 other's fingernails?

24 A No, I could never say for certain how the DNA got
25 there. I could just say that it is or is not there.

1 Q Okay. But, again, if they're lying in a large pool
2 of their combined blood, that's a fair possibility that
3 that's what you're picking up in the DNA?

4 A That could be a possibility.

5 Q And if a number of the casings are lying in that pool
6 of combined blood, that could be an explanation of their
7 DNA being on the casing?

8 A That could be possible, yes.

9 MR. SCOTT: Thank you.

10 THE COURT: Yes, ma'am.

11 MS. YOUNG: A brief moment, Your Honor.

12 THE COURT: Okay.

13 REDIRECT EXAMINATION:

14 BY MS. YOUNG:

15 Q Ms. Goodman, you're not provided any crime scene
16 photos or anything like that before you do your analysis,
17 right?

18 A No, I'm not.

19 Q And I know Mr. Scott just showed you some photos from
20 the crime scene. I'm going to show you some photos, as
21 well, some fingernails. Is there any visible blood that
22 you can see there?

23 A I do not see anything that looks physically like
24 blood.

25 Q And then I know you don't actually -- do you know how

1 they collect fingernail scrapings. I know you don't
2 actually do it, right?

3 A I do not. So, typically, for fingernail clipping,
4 they will clip the fingernails and send us those
5 clippings. Sometimes for scrapings, they'll use a small
6 pointed plastic stick. But, again, we don't watch them
7 collect it.

8 Q In this case, were you sent both?

9 A I believe I was just send scrapings.

10 Q And if they're doing it correctly, they take the
11 plastic swabs and run it underneath the fingernail?

12 A Yes.

13 Q Now, I know in this photo, there's blood on the
14 nails. Is there any visible blood underneath the
15 fingernails?

16 A I do not see anything that appears to be red under
17 the fingernails.

18 MS. YOUNG: Thank you, Your Honor. I don't have
19 anything further?

20 MR. SCOTT: Can I see those pictures?

21 RE CROSS-EXAMINATION:

22 BY MR. SCOTT:

23 Q Defense showed you that picture right there?

24 A Yes.

25 Q That is a right hand --

1 THE COURT: Can you identify what you -- document
2 you're showing her?

3 MR. SCOTT: Oh, it was Defense Exhibit she just
4 showed her to --

5 THE COURT: Is it marked?

6 MR. SCOTT: She didn't mark it.

7 THE COURT: Let's mark it for ID for the record.
8 What's that number? It's going to be Defense's?

9 THE COURT REPORTER: 57.

10 THE COURT: Okay. It's for ID purposes.

11 (WHEREUPON, Defendant's Exhibit No. 57 marked for
12 identification only.)

13 BY MR. SCOTT:

14 Q Defense 57, can you tell if that's a right hand or a
15 left hand?

16 A I cannot. I cannot tell which angle it's taken from.

17 Q You know what a thumb looks like, don't you?

18 A I do.

19 Q Okay. But you don't know?

20 A I can't tell which angle the photo was taken from or
21 whether the image has been flipped from the camera.

22 Q The partial DNA profile -- or the right hand of Eric
23 Griffin, you couldn't develop any kind of a DNA profile?

24 A I did develop a profile, but there was not enough
25 information there to make a comparison.

1 Q Okay. So could that be a picture of the right hand
2 of Mr. Griffin?

3 A It's possible.

4 Q And maybe that's why you didn't get enough mixture
5 because it didn't have blood on it like the other hands
6 did?

7 MS. YOUNG: Objection speculation.

8 THE COURT: Sustained.

9 BY MR. SCOTT:

10 Q I'm going to show you State's 25. Is that just sort
11 of another image of their hands and their bodies in
12 position?

13 A Yes.

14 Q Can you see the casings in the blood?

15 A I can see items in the blood. I can't identify
16 whether or not there are casings.

17 Q Okay. But your testimony is that amount of blood
18 could be potentially what you're picking up when you're
19 taking fingernail clippings?

20 A It's a possibility that the DNA could be from any
21 type of fluid.

22 MR. SCOTT: Okay. Your Honor, that was State's 25 we
23 would admit into evidence.

24 THE COURT: Any objection?

25 MS. YOUNG: Is State's 25 already in?

1 THE COURT REPORTER: State's 25 is not marked. We
2 left off on 18. It might be the ones you plan to use for
3 the trial, but I don't know. I'm not on 25 yet.

4 MS. YOUNG: No objection, Your Honor.

5 THE COURT: Entered without objection.

6 THE COURT REPORTER: Do you want me to just skip
7 ahead to 25 or --

8 MR. SCOTT: Oh, I'm sorry. You know what we did,
9 Your Honor. We premarked a lot of these.

10 Where are we at now?

11 THE COURT REPORTER: This would be 19. I think that
12 would be better. Otherwise, it's going to look like there
13 are missing exhibits if we don't.

14 MR. SCOTT: It's 25, Your Honor, we're entering as
15 State's 19.

16 MS. YOUNG: Still no objection.

17 THE COURT: Thank you.

18 (WHEREUPON, State's Exhibit No. 19 was marked for
19 identification and received into evidence.)

20 THE COURT: Anything else?

21 MR. SCOTT: I'm sorry, Your Honor. No, nothing
22 further from the State.

23 THE COURT: All right. You may step down.

24 Any objection to this witness being excused?

25 MS. YOUNG: Not at all.

1 MR. SCOTT: None from the State.

2 (WHEREUPON, Defendant's Exhibits Nos. 58, 59 were
3 marked for only.)

4 THE COURT: All right. You're free to leave. Thank
5 you, ma'am.

6 THE WITNESS: Thank you.

7 LUKE SHEALEY: The defense is going to call Paul
8 Greer.

9 THE CLERK: State your full name, please.

10 THE WITNESS: Paul Greer.

11 PAUL GREER, after being duly sworn,
12 testified as follows:

13 LUKE SHEALEY: Your Honor, may it please the Court,
14 Mr. Greer is employed by SLED in their firearms analysis
15 department. I think Mr. Scott is willing to stipulate he
16 is an expert in firearms and firearms analysis.

17 MR. SCOTT: That's correct.

18 THE COURT: All right. He will be qualified --
19 Mr. Greer will be qualified as an expert in the area of
20 firearm and firearm analysis.

21 DIRECT EXAMINATION:

22 BY LUKE SHEALEY:

23 Q Okay.

24 MR. SCOTT: Firearms identification I think is his
25 typical expert qualification.

1 THE COURT: Firearm identification and analysis,
2 firearm analysis.

3 LUKE SHEALEY: Yes.

4 BY LUKE SHEALEY:

5 Q Mr. Greer, how are you doing?

6 A I'm well.

7 Q You and I talked once before, right?

8 A Yes, sir.

9 Q Okay. You know what we're here for, talking about a
10 case with a couple of individuals that are deceased, but
11 is it fair to say you aren't privy necessarily to all the
12 ins and outs of the crime scene or anything like that,
13 right?

14 A No, sir.

15 Q You are in receipt of certain evidence and given a
16 specific task within your professional framework, right?

17 A That's correct.

18 Q I want to show you some photos as part of this case.
19 Do you recognize item 52 defense?

20 A Yes, sir.

21 Q Okay. And do these look like nice little envelopes
22 that you received from the coroner's office?

23 A Those are envelopes containing evidence that was
24 submitted to SLED.

25 Q Right. And do you see that they have labels,

1 individual's name, Antonio Dash?

2 A Yes.

3 Q And there's a description of where certain items of
4 evidence would be taken from, right? Do you agree with
5 that?

6 A Yes, sir.

7 Q It says left arm or parietal lobe, things of that
8 nature?

9 A Yes, sir.

10 Q Is that fairly common for you to receive evidence
11 like when it comes from a pathologist office?

12 A Yes, sir, a lot of times the packaging will indicate
13 where the item was received from or recovered from.

14 Q Do you recognize your own handwriting on this
15 photograph?

16 A Yes, sir.

17 Q So I guess for your own preparation of ultimately
18 what would be a report, do you give it your own number?

19 A Yes, sir, everything at SLED when it's received
20 receives a SLED lab number. And that evidence is given a
21 SLED item number.

22 Q And you also recognize this, Defense 3, as being a
23 closer up of item 17?

24 A Yes, sir.

25 Q Okay. Do you recognize my 54 as being a closer up of

1 item 22?

2 A Yes, sir.

3 Q Okay. And do you recognize my Defense 5 as being a
4 closer upshot of your labeling of materials coming from a
5 body by the name of Eric Griffin. Do you see that?

6 A Yes, sir.

7 Q And, again, we see your handwriting giving numbers of
8 each of these packages?

9 A That's correct.

10 Q And you've got different packages that appear, and
11 correct me if I'm wrong, to be coming from the actual
12 crimes scene itself. Do you recognize this? That's
13 different from what you're seeing in the coroner's office?

14 A Yes, sir. As far as where it's from, I would
15 reference the chain to see where those items were
16 specifically submitted from.

17 Q For example, this one says one spent shell casing,
18 number six. You give it your item number 19 -- well,
19 actually, you give it your own item number, right?

20 A It was given a SLED item number.

21 Q And this says one spent shell casing from about the
22 room. You don't dispute these are items of evidence
23 coming to you from the crime scene, do you?

24 A No, sir.

25 Q And talking about number seven, it says one fired

1 projectile. When you receive these packages like number
2 seven, is that usually your experience, correspond to an
3 evidentiary item from the crime scene or some marker?

4 A It often can. Typically, I don't always know what
5 the information on the packages is, the packages reference
6 a lot of times to that marker.

7 Q And this -- do you recognize that as being a
8 projectile?

9 A Yes, sir.

10 Q And would Defense No. 58 look like it's on the floor?

11 A It appears to be on some wooden surfaces.

12 Q And we've got item seven that says one fired
13 projectile?

14 A That is what that envelope says.

15 Q Does that appear to correlate with items of evidence
16 that you received in this case?

17 A Yes, sir.

18 Q Do you see a marker number three right there?

19 A I do.

20 Q You recognize that to be a core of a bullet?

21 A I don't know what exactly what item of evidence that
22 --

23 Q That's going to be --

24 A -- is represented.

25 Q You see a marker number three next to it?

1 A Yes, sir.

2 Q And you see in the package right here number three
3 where you've given it your item number 15?

4 A Yes, sir.

5 Q Can you look on your report and see if item number 15
6 you recognize if it's core?

7 A Yes, sir, in my report, item 15 is a bullet core. As
8 to how that relates to item three in that packaging, I
9 don't know that's marker -- what that represents based on
10 how it's collected at the crime scene.

11 Q Right. You didn't write that number?

12 A No, sir. So I can't say definitively what that
13 means.

14 Q But you do recognize that as being a bullet?

15 A It's possible. It appears it could be some piece of
16 lead, yes, sir.

17 LUKE SHEALEY: Your Honor, at this time, I would seek
18 to introduce Defendant's 52 through 59?

19 THE COURT: Any objection?

20 MR. SCOTT: No, Your Honor.

21 THE COURT: All right. That will be entered without
22 objection.

23 (WHEREUPON, Defendant's Exhibit No. 52 through 59
24 admitted into evidence.)

25

1 BY LUKE SHEALEY:

2 Q All right. Mr. Greer, I'd like you to refer to your
3 report, please. I want to go over some of these items and
4 your findings and what you were tasked with doing.

5 Just generally speaking, do you recall that you did
6 receive in evidence a gun, specifically, a nine millimeter
7 FN -- FN model MS Nassey (phonetic), right?

8 A Yes, sir, that's correct.

9 Q You don't know anything about the gun. You just know
10 you received it and were asked to do some comparisons
11 based on that gun, right?

12 A That's correct.

13 Q Do you recall you received seven shell casings in
14 this case?

15 A Yes, sir, I did receive seven fired cartridge
16 casings.

17 Q And you received in some of the folders that we just
18 discussed numerous projectiles and projectile fragments
19 and jackets associated with this case?

20 A That's correct.

21 Q So I think you told me before that you're given tasks
22 in something called I-Lab; is that right?

23 A Evidence is submitted to the SLED laboratory either
24 in person or through an online portal that is referred to
25 as I-Lab.

1 Q Okay. And one of your basic tasks, and correct me if
2 I'm wrong, in this case is to figure out, generally
3 speaking, well, do these shell casings match, let's say,
4 this gun in evidence, right?

5 A Yes, sir.

6 Q Do these projectiles match this gun in evidence,
7 right?

8 A Yes, sir.

9 Q And is it fair to say that you performed that task
10 and you started by doing some test fires with this
11 particular gun?

12 A The way I would approach the case, I would examine
13 the fired components of the fired cartridge cases and the
14 fired bullet, determine their characteristics. And then
15 after doing that, I would test fire the firearm to compare
16 those test specimens to the other fired components to see
17 if there was a match or what other conclusions might be
18 possible.

19 Q Okay. And this gun did test fire and was in working
20 order?

21 A Yes, sir, that's correct.

22 Q And allowed you to produce some projectiles and shell
23 casings to test against?

24 A Yes, sir.

25 Q And as a result of this testing, you determined that

1 the seven shell casings in this case did match this
2 particular gun, right?

3 A Yes, sir, it was concluded that the seven fired
4 cartridge cases were fired by the item one pistol.

5 Q And there were numerous projectiles that also matched
6 this gun based on your analysis, correct?

7 A That's correct.

8 Q In looking at your report, part of the bottom of page
9 three, that last paragraph, it's really going over some of
10 the items that were test fired and matched, specifically
11 item five, item 16, item 19, 24 through 26, correct?

12 A Yes, sir, and some of those were just fragments of
13 the jacket portion. It wasn't the complete item that we
14 were able to identify as having been fired.

15 Q Now, but some of these items that you were asked to
16 analyze, you could not match the gun evidence; is that
17 correct?

18 A There were two items that I was unable to identify as
19 having been fired by the pistol, specifically item 17 and
20 22, the fired bullet jacket fragment.

21 Q Okay. We'll get to that in one moment. Just so the
22 judge can see what I'm talking about visually since I've
23 been talking about it without showing her. This is an
24 idea, you see the name Eric Griffin here. This indicates
25 the contents of these envelopes and what's in them,

1 correct?

2 A Yes, sir. I don't believe that is my photograph.

3 Q It's not your photograph, but you trust what comes to
4 you, what you get from the coroner's office, right?

5 A Yes, sir. If the evidence is submitted, I only have
6 the information that is logged in and how it's labeled,
7 yes, sir.

8 Q And so that's showing contents -- and this might help
9 you out to be more comfortable about answering this
10 question. But either that's the same photograph, but with
11 your numbers associated reflecting the contents,
12 projectile from T4, and you're going to give it item five?

13 A Yes, sir.

14 Q Projectile from back, you're going to give it item 24
15 and so on, correct?

16 A Yes, sir.

17 Q Again, this is the same essential thing. You have no
18 idea where these are coming from other than it's labeled a
19 name and somebody has put a body area on there, correct?

20 A That's correct.

21 Q And that's not necessarily -- I mean, that's not
22 really part of your analysis, where it came from. It's
23 identifying it, it is matching, is the casing matching and
24 so, right?

25 A Right, identifying where it's recovered from and

1 labeled in the envelope would not be part of my
2 examination.

3 Q These four items that came from Mr. Griffin here,
4 would you describe these -- particularly these as fairly
5 intact projectiles that have mushroomed out?

6 A Based on that photograph, those appear to be
7 projectiles that have mushroomed out. That top right one
8 is kind of dark.

9 Q And this one it's associated with T4, does that look
10 like a jacket to you?

11 A Yes, sir, it does prepare to be a jacket.

12 Q And the core?

13 A Yes, sir, I can't exactly determine what's in that
14 photograph.

15 Q Okay. Put you can associate that these are four --
16 in laymen's terms, four bullets that came from that
17 gentleman?

18 A Yes. Yes, sir.

19 Q And those ended up matching the item one pistol in
20 evidence, correct?

21 A The projectiles that matched item one were the item
22 from fired bullet jacket, item 16, the item 19 fired
23 bullet fragment jacket and items 24 through 26.

24 Q Maybe you can reel them off, but 5, 24, 25, and 26
25 from Mr. Griffin did all match?

1 A Yes, sir, the items from a fired bullet jacket
2 specifically.

3 Q And looking at these packages that include your
4 numbers associated with them, now, we had items 22 and
5 items 17 are contained within these packages, correct?

6 A Yes, sir.

7 Q Okay. So this is item 17 that's coming from here.
8 Do you see that?

9 A Yes, sir.

10 Q Item 22, nasopharynx, correct?

11 A Yes, sir.

12 Q We've got these temporal lobe, parietal lobe,
13 temporal love, you're not a medical doctor, but that seems
14 to all be in the head part of the body, right?

15 A It's possible.

16 Q And you know that this upper arm, that's -- you know
17 what an upper arm is, right?

18 A Yes, sir.

19 Q Okay. So then kind of superimposing these materials
20 in the same way and cross-referencing, you know that item
21 17 is from the ear. That would be this hunk of lead right
22 here, plus a little jacket and the core from left ear.
23 And you would agree that item 22 says it's fragments from
24 the nasopharynx. So we cross-referenced that, this is
25 nasopharynx right here and the fragments and jacket

1 associated with that; is that right?

2 A Yes, sir. And I'm trying to confirm those locations.
3 Could I look at the photograph with the SLED lab number on
4 it?

5 Q Yes. SLED lab number 22?

6 A Yes, sir. Based on the packaging of item 22 was from
7 the nasopharynx location based on the label. And item 17
8 based on the label was from the left ear, it appears.

9 Q Okay. This is just a closer up. It might give you a
10 better idea. But this is your SLED lab number 22 and
11 that's the materials associated with that. Do you agree?

12 A Yes, sir, that's correct.

13 Q And then 17 SLED lab number and materials associated
14 with that, right?

15 A Yes, sir, that's correct.

16 Q So getting to those items on your results page -- and
17 I find your work fascinating, but you helped me understand
18 some things where you -- you're a scientist, right, so
19 certain words have certain meanings in your report,
20 correct?

21 A Yes, sir.

22 Q And turn to the last page of your report. When we're
23 talking about 17 and 22, you use this specific phrase, due
24 to damage and insufficient corresponding individual
25 identifying characteristics, the results of these

1 comparisons had you unable to determine whether they were
2 fired by pistol one or another firearm or firearms,
3 correct?

4 A That's correct.

5 Q Okay. So I tried to have you really help me
6 understand exactly what that meant. I think you told me
7 that you generally have four descriptors -- correct me if
8 I'm wrong, but it's pretty -- you would use one as being a
9 match if it's clearly unequivocally a match, correct?

10 A Yes, sir, that would be positive identification.

11 Q And the things that help you do that are the specific
12 characteristics involved in that jacket or shell casing or
13 projectile, right?

14 A Yes, sir.

15 Q You examined these with a microscope and you can see
16 it distinctly in relation to the item of evidence?

17 A That's correct.

18 Q A negative match means that you've got tons of
19 information, right, lots of characteristics. They just
20 don't match your comparison item, right?

21 A Yes, sir. And that could be from microscopic
22 characteristics we have on those fired components and that
23 could be something even as large as different calibers or
24 different types of rifling or different number of lands
25 and grooves that are displayed on that bullet.

1 Q You've got a third type which you told was unsuitable
2 for comparison. Is it fair to say it's because it's not
3 enough material to look at or it could be completely
4 damaged and you can't get anything out of it?

5 A Yes, sir. Unsuitable could be because the item was
6 too damaged, there were no marks of value when we were
7 looking at it under a microscope that we can use to
8 compare to other items of evidence or other test fires.
9 Item could be just a small portion of per se a jacket that
10 doesn't have any identifiable rifling. So there's no
11 marks at all to begin with on that item. It could just be
12 damaged so that we're not able to compare it. There is no
13 value there for us to compare.

14 Q And then you have a fourth type, which is
15 inconclusive; is that right?

16 A That's right.

17 Q Is that what we're talking about here for 17 and 22?

18 A Yes, sir.

19 Q In laymen's terms, I don't know?

20 A Yes, sir. Inconclusive is kind of a fancier term for
21 I don't know. Based on the evidence that we were looking
22 at and examining and comparing, there's not enough
23 information and markings on a specific item so that we can
24 say it was fired by a specific firearm or it was not. And
25 that's what leads us to the inconclusive result.

1 Q Correct. So for these items 17 and 22, in your
2 professional opinion, they could have been fired by a
3 different weapon other than item one?

4 A That's possible.

5 Q Okay. And regarding these items, I mean, you can
6 gather certain class characteristics out of, I think,
7 number 22, correct?

8 A Yes, sir.

9 Q And you've listed on page three of your report that
10 you can tell enough about it to know that it could have
11 been fired as a 38 caliber cartridge, which includes nine
12 millimeter, 38 Special, 357 Magnum, among others; is that
13 right?

14 A Yes, sir.

15 Q So it could have been fired by a 357 Magnum?

16 A That's correct.

17 Q Or it could have been fired by a 38 Special?

18 A That's possible.

19 Q It could have been fired by a nine millimeter?

20 A That's possible, as well.

21 Q And based on what you have to look at and analyze,
22 can you tell whether a 22 -- item 22 is fired from a
23 revolver or semi-automatic that would leave a shell casing
24 or can you just not determine?

25 A No, sir. Based on the rifling characteristics on

1 item 22, simply the fired bullet jacket fragment, we
2 compared that with the test fire because it did share
3 similar characteristics with the rifling type, but we were
4 unable to say it was fired by the item one pistol.
5 Therefore, it could have been fired by any other pistol or
6 firearm that shares those characteristics.

7 Q Including a revolver?

8 A Yes, sir, if it had the same rifling characteristics
9 as the item 22 fired bullet jacket fragment, it's
10 possible.

11 Q Now, I asked you to do something with me, which was
12 try as best as we can to try to determine how many
13 projectiles are we really talking about here. And you and
14 I have kind of talked about that twice now, right?

15 A Yes, sir.

16 Q So let's start with what's easy?

17 A Yes, sir.

18 Q These, which we know they don't have your specific
19 corresponding SLED markings on them, but these are the
20 four projectiles that were removed from Eric Griffin's
21 body. You said those are consistent with four different
22 bullets?

23 A Yes, sir, and specifically that would be item five
24 fired bullet jacket, and items four through 26 fired
25 bullets. Yes, sir that would represent four bullets that

1 were fired.

2 Q Okay. Here we go again with SLED numbers, 5, 24, 25
3 and 26. Now, I've asked you to -- I want to turn your
4 attention to this photo, which represents contents that
5 came from Mr. Dash. Again, we know generally that we're
6 talking about lobes, parietal lobes, nasopharynx,
7 temporal. We're talking about the head whereas the left
8 upper arm is item number four, correct?

9 A Yes, sir, based on those labels.

10 Q And I've asked you specifically to look at the
11 material that has come from Mr. Dash's head. And I
12 believe you informed me after reviewing that carefully
13 that that would be consistent with two projectiles coming
14 from Mr. Dash's head amongst that material?

15 A Yes, sir, based on the evidence that was submitted
16 from Mr. Dash, in looking -- we had a lot of fragments and
17 lead pieces and things involved in those items that were
18 already covered from Mr. Dash. Out of all that, I am able
19 to say there's, at least, two fired bullets in that mix of
20 evidence.

21 Q At least two?

22 A Yes.

23 Q Possibility for more?

24 A Well, those are all fragments, so based on just the
25 evidence that I have in looking at some of those more

1 intact jackets, I'm able to say two.

2 Q Okay. this looks like a fairly pristine in
3 comparison to the others projectile, correct?

4 A Yes, sir.

5 Q Has its jacket intact?

6 A Yes, sir, it appears so.

7 Q It's number seven, and we've already gone over this,
8 but this is number seven from what you have your number 16
9 associated with. It says one fired projectile you
10 received as part of the evidence in this case, right?

11 A Yes, sir.

12 Q And if we're counting projectiles, that is certainly
13 a projectile?

14 A Yes, sir, that's a projectile.

15 Q So that would put us up to seven, correct?

16 A Yes, sir.

17 Q And we've talked about this piece where, ultimately,
18 you identified as a core item five on your SLED numbering?

19 A Was that five or item 15?

20 Q I got -- you might have me. You're right, item 15.

21 A Yes, sir, item 15 is the bullet core.

22 Q The core is like the center. It's like a lollipop.
23 It's the center?

24 A Yes, sir, the core is the part of the bullet that is
25 enclosed by the jacket material.

1 Q You don't see any jacket material by it, right?

2 A No, sir.

3 Q We do have other jacket material in this case that
4 potentially could be associated with the core, such as
5 that one. For example, here's some jacket material from
6 Mr. Dash's left upper arm. We know that's the only
7 material that didn't come from his head. Is it possible
8 that core could be associated with something like that?

9 A That core could be associated with some fragment
10 material that was submitted from the victims, yes, sir.

11 Q Okay. So if that's the case, we would be talking
12 about eight projectiles?

13 A It's possible that it could be. I mean, it could
14 also have been comprised of some of the other missing
15 pieces of the projectiles that were submitted with the
16 seven that we kind of distinguished so far, but it's
17 possible that belongs to -- that's an answer that I don't
18 know and I've not come across that information.

19 Q So your best guess is certainly seven, possibly eight
20 projectiles based on the material you got?

21 A Yes, sir. Based on the material we received, seven,
22 that bullet core, it could have belonged to the other
23 fragments submitted from the victims that were recovered
24 at autopsy to make one of those seven projectiles or it
25 could belong to something else. That's something I don't

1 know.

2 Q Beg the Court's indulgence.

3 (Pause.)

4 Just to reiterate, I can't remember if I covered this
5 point or not. I think I did. But item 17 and 22, I
6 believe you testified already, the ones that do not match,
7 you can see that they are labeled as belonging to Antonio
8 Dash, 22?

9 A Yes, sir, that is how they were submitted to the SLED
10 lab.

11 Q And specifically, 17 is associated with a fragment
12 from left ear, right? Did you read that? Is that how it
13 came to you?

14 A Yes, based on that photograph and the labeling, yes,
15 sir.

16 Q 22 is a fragment associated with the nasopharynx,
17 what that is, right?

18 A Yes, sir.

19 LUKE SHEALEY: All right. Thank you.

20 THE COURT: Yes, sir.

21 LUKE SHEALEY: Thank you, Your Honor.

22 CROSS-EXAMINATION:

23 BY MR. SCOTT:

24 Q Paul, is it typical or atypical to find projectiles
25 that are so badly damaged that you're unable to performed

1 analysis on them?

2 A That is something that we see commonly sometimes
3 based on those projectiles have been injured traveling to
4 its target. It's possible and it's common that we see
5 things that we're unable to positively identify.

6 Q So that's a common occurrence that projectiles are so
7 badly damage, you're uncomfortable forming an opinion?

8 A Yes, sir.

9 Q And maybe you have in your mind well, that sure does
10 look like a match, but I'm not going to opine on that
11 because I don't have all the check marks I need?

12 A Yes, sir. Sometimes the damage sustained by the
13 bullet is so great that we're unable to see enough of
14 those marks of value that we're looking for. It may be
15 missing pieces that we're not able to look at because we
16 don't have that because it's fallen off as it's been
17 striking its target. We're not able to use those markings
18 because they're nonexistent.

19 Q And a lot of times, upon entering the human body, a
20 projectile will fragment and break apart in multiple
21 pieces?

22 A Yes, sir, that is possible.

23 Q Does that kind of damage affect the likelihood of you
24 analyzing it to match it to a specific gun?

25 A It can.

1 Q Tell me if this is an accurate statement, it's easier
2 for you to match a fired casing to a known pistol in any
3 given case than it is to match projectiles? I mean, are
4 you more -- I guess, the question is do you find that you
5 are more likely to compare fired casings to a gun as
6 compared to fired projectiles?

7 A That really depends on the evidence. Sometimes, just
8 depending on how the firing is marked by the evidence,
9 those fired cartridge cases or fired bullet, I can't one
10 way or another.

11 Q Well, do you think in your career you've matched more
12 projectiles to guns or more casings to guns?

13 A I'm unable to say.

14 Q Okay. But in this particular case, you are able to
15 say that seven casings that you tested did match the gun
16 you were given to compare them to?

17 A That's correct.

18 Q Let's see. Other than that, you were -- a jacket
19 from Dash, that is your item 19, I believe. You were able
20 to determine that was fired by the pistol you tested?

21 A That's correct, the 19 fired bullet jacket fragments.

22 Q All right. And that was recovered from Antonio Dash
23 according to your records?

24 A Yes, sir.

25 Q Okay. And then the casings, you were able to

1 determine came from the gun. And then item five was a
2 fired bullet jacket recovered from Eric Griffin.
3 Likewise, you were able to determine that came from the
4 gun that you tested against, correct?

5 A Yes, sir, that's correct.

6 Q Other than that your findings would be -- or the ones
7 where you were able to give an opinion, they were all
8 consistent with nine millimeter Lugers?

9 A Yes, sir, the items that I was able to determine were
10 nine millimeter Luger were item 16 and 24 through 26. On
11 some of the other items, such as the items fired bullet
12 jacket, item 19, fired bullet jacket fragment, those were
13 consistent with being the jacket portion of the jacket
14 bullet, that was a nine millimeter Luger caliber.

15 Q And what about 22, was a jacket fragment from Dash's
16 body?

17 A Yes, sir. Specifically, the item 22, fired bullet
18 jacket fragment, that was most consistent with being the
19 jacketed portion, the jacket bullet loaded into a nominal
20 38 caliber cartridge. The nominal 38 caliber includes a
21 nine millimeter Luger, 38 Special, 357 Magnum, calibers.

22 Q So everything you were able to form an opinion on --
23 in other words, it was something you felt comfortable
24 analyzing because it wasn't too badly damaged or whatever
25 the reason, your opinion on everything was either that it

1 was consistent with a nine millimeter or 38 Nominal, which
2 could be fired by a nine millimeter, or that, in fact, it
3 was fired from the pistol you analyzed?

4 A Yes, sir. Those items were consistent with a nine
5 millimeter or nominal 38, which includes a nine
6 millimeter.

7 Q All right. So, I guess, just to boil it down, you
8 found absolutely no evidence of anything other than a nine
9 millimeter as far as all the ammunition you tested?

10 A Yes, sir. Based on the evidence that I was able to
11 measure weigh and determine on a specific caliber, those
12 were all nine millimeter or Nominal 38.

13 Q And everything else you tested, it was just too badly
14 damaged for you to form an opinion?

15 A That's correct. Due to the damage or their size, I
16 was unable to determine a caliber for those items.

17 MR. SCOTT: Thank you. That's all the questions I
18 have.

19 LUKE SHEALEY: Briefly, Your Honor.

20 THE COURT: Yes, sir.

21 REDIRECT EXAMINATION:

22 BY LUKE SHEALEY:

23 Q Mr. Greer, item 17 and 22, you did not -- we
24 discussed this. They were not part of an unsuitable for
25 analysis category, right? Your opinion was inconclusive

1 on those items?

2 A Yes, sir. And that's the item 17 and item 22 fired
3 bullet jacket fragments specifically.

4 Q Because the solicitor was going -- asking you some
5 questions about evidence and projectiles, in fact, are
6 sometimes just too damaged and you can't -- unsuitable
7 because you can't get a read on them, right?

8 A Yes, sir.

9 Q For lack of a better term, but those were not of that
10 distinction. They were not conclusive, which is
11 different, right? Inconclusive?

12 A They were inconclusive.

13 Q It's a combination of things. It's due to damage and
14 they just don't have the corresponding identifying
15 characteristics what you're comparing against, right?

16 A Yes, sir.

17 Q And you told us that those could mean, items 17 and
18 22, that they were fired by some gun other than item one,
19 which was the gun in evidence, right?

20 A Yes, sir.

21 Q It could have been fired by a revolver?

22 A They could have been fired by a, you know, any type
23 of firearm that shared the same characteristics that these
24 items exhibited.

25 Q Which you've stated could have been fired by a 357

1 Magnum?

2 A Yes, sir.

3 Q As far as that class?

4 A Yes, sir, specifically, the item 22, the fired bullet
5 jacket fragment.

6 Q Right. Or a 38 Special?

7 A Yes, sir. And those firearms had the same rifling
8 specifications as the items of evidence.

9 Q As well as a nine millimeter?

10 A Yes, sir.

11 Q So you have all of those different possibilities,
12 correct?

13 A Yes, sir, that could be possible.

14 Q Okay.

15 LUKE SHEALEY: That's all I have.

16 RECROSS-EXAMINATION:

17 BY MR. SCOTT:

18 Q Can a nine millimeter fire other ammunition than a
19 nine millimeter bullet?

20 A It's possible, depending on the firearm.

21 Q So I guess Dash could have been shooting nine
22 millimeters, but what else could he have been shooting out
23 of that --

24 LUKE SHEALEY: Objection, calls for speculation.

25 THE COURT: Sustained.

1 BY MR. SCOTT:

2 Q What other kinds of ammunition --

3 THE COURT: Sustained. Rephrase the question.

4 BY MR. SCOTT:

5 Q What other kinds of ammunition can you fire out of a
6 nine millimeter?

7 A It may not be specific to all firearms. Typically,
8 it would be a caliber that would be smaller than a nine
9 millimeter so that it would fit properly -- or excuse me,
10 not property, but fit into the chamber of the firearm. It
11 may not function properly, but it would be possible. Such
12 as nine millimeters, sometimes you hear folks firing
13 380 ammo caliber out of it.

14 Q Okay. So the shooter of that nine millimeter could
15 have had other ammunition?

16 LUKE SHEALEY: Objection, calls for speculation.

17 THE COURT: Objection overruled.

18 BY MR. SCOTT:

19 Q Is that possible? You just said, I think, that nine
20 millimeters can fire other ammunition?

21 A Nine millimeters can sometimes fire 380.

22 Q Okay.

23 A Anything that would be a smaller caliber that would
24 fit into that chamber. The firearm may not function
25 properly and that would be specific to each individual

1 gun.

2 Q Okay. Got you. Just help me, am I missing
3 something? This paragraph right here, if I'm reading it,
4 in regard to 17 and 22, due to damage and/or their limited
5 size, the caliber or calibers of item 17 and item 22
6 bullet jacket piece of lead could not be determined. It
7 says due to damage and/or their limited size. What am I
8 missing?

9 A Yes, sir. Specifically, on item 17, that result is
10 referring to every components of the fire bullet jacket
11 fragment and the two pieces of lead. We were not able to
12 determine any type of caliber for the entire item for all
13 those fragments and lead. Item 22, bullet jacket
14 fragment, that was just one portion of item 22 and we were
15 unable to determine the caliber on that.

16 Q Okay. So you're not testifying those items were
17 fired from another gun, but you're also saying I can't
18 form an opinion that they were fired from the item one
19 pistol. It's just too damaged or something about those
20 projectiles that you felt uncomfortable testing or were
21 unable to test; is that accurate?

22 A On item 17 and item 22, they're a fired bullet jacket
23 fragment and a fired bullet jacket fragment for item 22,
24 as well. Item 22 also has one bullet jacket fragment. So
25 the bullet jacket fragment had no rifling impressions that

1 we were able to gather any information or use for
2 comparison purposes.

3 The item 22 bullet jacket fragment, that was the
4 portion of item 22 along with the pieces of lead that we
5 were unable to determine the caliber. The item 22 bullet
6 jacket fragment pieces of lead were unsuitable. The
7 portion of item 22, which was the fired bullet jacket
8 fragment, that was inconclusive with our comparisons with
9 the test specimens from item one.

10 Q Okay. So bottom line, you were just -- you're unable
11 to form any opinion as to those items?

12 A Not to those fired, no, sir.

13 Q Okay. And that's just not uncommon, I think you
14 testified earlier?

15 A No, sir. Inconclusive is a common result?

16 MR. SCOTT: Thank you.

17 LUKE SHEALEY: One question?

18 THE COURT: Yes, sir, you can.

19 RE-REDIRECT EXAMINATION:

20 BY LUKE SHEALEY:

21 Q The solicitor has been asking you about whether
22 smaller caliber bullets can be fired out of a nine
23 millimeter. You did receive a magazine in this case,
24 correct?

25 A Yes, sir.

1 Q And it indicates it contained nine millimeter
2 ammunition?

3 A I did not receive any unfired cartridge casings.

4 Q Are you familiar with the magazine that was -- the
5 ammunition that was contained in them?

6 A No, sir, I don't know what the ammunition was loaded
7 into that.

8 LUKE SHEALEY: Okay. Thank you.

9 THE COURT: Thank you. All right. You may step
10 down.

11 Any objection to this witness being excused?

12 LUKE SHEALEY: No, Your Honor.

13 THE COURT: All right, sir. You're free to leave.

14 LUKE SHEALEY: Your Honor, may we take a short break,
15 ever so short?

16 THE COURT: Yes, ten minutes?

17 LUKE SHEALEY: Yes, ma'am, run to the restroom.

18 (WHEREUPON, a short break was taken.)

19 (WHEREUPON, Defendant's Exhibit Nos. 60 through 72
20 marked for identification only.)

21 THE COURT: All right. Call your next witness.

22 LUKE SHEALEY: May it please the Court. The defense
23 calls Bob Tressel.

24 THE CLERK: Would you state your full name, please?

25 THE WITNESS: Ralph Robert Tressel.

1 THE CLERK: Would you spell your last name, please?

2 RALPH TRESSEL, after being duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION:

5 BY LUKE SHEALEY:

6 Q Mr. Tressel, good afternoon.

7 A Good afternoon.

8 Q How old are you, sir?

9 A I'm 68 years old.

10 Q Are you currently employed?

11 A Semi-employed. I run a consulting service called
12 Forensic Investigative Services.

13 Q And what do you do at Forensic Investigative
14 Services?

15 A I provide consulting services to attorneys, defense
16 attorneys and prosecutors, pertaining to crime scene
17 analysis and homicide investigations and a myriad of
18 things dealing with crime scenes.

19 Q And how long have you been owner of that outfit?

20 A Since the mid-1990s.

21 Q Have you ever worked in law enforcement?

22 A Yes, sir, I have.

23 Q Briefly describe your experience with that to the
24 court.

25 A Sure. I went to work with Cobb, C-O-B-B, County

1 Police Department in July of 1973. I was a uniformed
2 patrol officer. I was in uniform patrol for right at a
3 year-and-a-half where I transferred to the crimes against
4 persons unit. Most agencies commonly refer to that as the
5 homicide/robbery division.

6 I worked in the robbery/homicide division from 1975
7 to 1978, when I was promoted to the rank of detective
8 sergeant and left the homicide unit. I then stayed in the
9 homicide unit until February of 1985 where I resigned my
10 law enforcement position and I went to work at the Cobb
11 County Medical Examiner's Office as an investigator. In
12 1988, I was promoted to operations manager, which is the
13 chief investigator for the medical examiner's office.

14 Q Tell me about your duties at the medical examiner's
15 office?

16 A Well, our title was officially a medical, dash, legal
17 investigator. We were, essentially, the eyes and ears of
18 the medical examiners on death scenes throughout the
19 county. We handled everything from natural deaths to
20 homicides, traffic accidents, suicides, unexplained
21 deaths.

22 Q What kind of specific training would you have
23 regarding that particular job?

24 A Well, the time I was there, you had to be ex-law
25 enforcement with homicide experience. In other words, how

1 to process scenes, what to look for at a crime scene.
2 While I was there, I took the advanced training at the
3 University of -- let's see, got to get them in order,
4 University of Miami School of Medicine in medical legal
5 death investigation, University of St. Louis School of
6 Medicine in medical legal death investigation, and the
7 University of Georgia in crime scene and homicide
8 investigations.

9 Q And what is a medical legal death investigation in
10 laymen's terms?

11 A It takes the medical aspect of the death, if it's
12 natural try and look for certain key signatures of what
13 that death might be based on medical history, all the way
14 up to working homicide cases. You're looking for evidence
15 that's near or around the body in evaluating the crime
16 scene. It involves looking at the recovery of any
17 evidence, including shell casings, bullets, knives,
18 sticks, anything that could have been used to create an
19 injury that caused somebody's death, and then relating it
20 back to the criminal investigations being parallel
21 conducted by the law enforcement agency.

22 Q Okay. After the medical examiner's office, where did
23 you go?

24 A I went out on my own in 1999, just doing consulting
25 work for the next, essentially, ten years. I worked with

1 a group called Verdin & Associates. We do primarily
2 injury causation analysis.

3 Q Okay. And then where did you go?

4 A In April of 2011, I went back to work for the Cobb
5 County District Attorney's office as a chief criminal
6 investigator. I hold a certificate as the chief of police
7 in the State of Georgia.

8 Q Do you have any training in crime scene analysis or
9 crime scene reconstruction?

10 A Yes, it's all part of the medical legal investigation
11 of death trying to determine when you're at a crime scene
12 what are the trajectories of bullets, positioning of
13 victims and positioning of suspects who may have been
14 inside a crime scene, blood spatter analysis, what does it
15 tell us about how the incident occurred, and where it
16 occurred and how it travel throughout a residence -- or I
17 should say crime scene versus residence.

18 Q Have you ever been qualified as an expert in crime
19 scene reconstruction and analysis?

20 A I've been qualified in 14 states, including South
21 Carolina, Georgia, Alabama, haven't been to Tennessee,
22 North Carolina, Missouri, Texas, Kansas, Pennsylvania,
23 Connecticut, probably a couple more in there somewhere.

24 Q If memory serves, you've been qualified in this
25 courthouse for that exact --

1 A At least, three times I know of.

2 Q Have you ever been qualified as an expert in firearms
3 generally?

4 A Generally, yes. I do not do firearms identification.
5 I don't look at bullets and shell casing under a
6 microscope, but how a firearm functions, how they work and
7 what evidence can we get from a firearm.

8 Q Okay.

9 LUKE SHEALEY: Your Honor, at this time, I would seek
10 to introduce Mr. Tressel as an expert in crime scene
11 analysis and reconstruction and firearms generally?

12 THE COURT: Any voir dire? You said crime scene
13 analysis?

14 LUKE SHEALEY: And reconstruction.

15 THE COURT: Reconstruction?

16 LUKE SHEALEY: Crime scene reconstruction.

17 THE COURT: Crimes analysis and reconstruction and
18 what was the last one?

19 LUKE SHEALEY: Firearms generally.

20 THE COURT: Yes, sir. Any voir dire?

21 MR. SCOTT: Okay. What court in South Carolina were
22 you qualified as an expert in?

23 THE WITNESS: I've been qualified in this courthouse
24 three times, Sumter County, whatever county Moncks Corner
25 is in.

1 MR. SCOTT: Berkeley County.

2 THE WITNESS: That's it, Berkeley County, yes. Thank
3 you.

4 MR. SCOTT: Do you remember the case name? Was it
5 general sessions here?

6 THE WITNESS: Two were general sessions, one was an
7 appellate hearing.

8 MR. SCOTT: You're not a doctor, correct?

9 THE WITNESS: No.

10 MR. SCOTT: Let me ask you, in forming your opinion,
11 what have you studied in this particular case?

12 THE WITNESS: Well, I've seen the complete
13 investigative report, crime scene photographs, SLED
14 reports, things of that nature.

15 MR. SCOTT: Have you been to the scene?

16 THE WITNESS: No, I haven't.

17 MR. SCOTT: Why not?

18 THE WITNESS: Because I got involved in the case too
19 late as far as trying to do a reconstruction.

20 MR. SCOTT: Okay.

21 THE WITNESS: According to the incident reports,
22 there's no evidence other than the evidence that was
23 collected inside the scene. There were no bullet holes or
24 anything like that to try to determine trajectories.

25 MR. SCOTT: So you haven't gone in there and looked

1 at the dimensions overall --

2 LUKE SHEALEY: Your Honor, I'm going to object at
3 this point. This voir dire is limited to his
4 qualifications as an expert. That's the question, not
5 what he's done --

6 THE COURT: But you're asking me to qualify him as an
7 expert in reconstruction.

8 LUKE SHEALEY: Correct.

9 THE COURT: But he -- that's why he has a right to
10 ask him -- if he's going to qualify as an expert in
11 reconstruction as to this case, then he needs to -- I
12 think it's appropriate to ask what he's done regarding
13 this case.

14 LUKE SHEALEY: Well --

15 THE COURT: I mean, in terms of the reconstruction
16 portion of it.

17 LUKE SHEALEY: Maybe it's just semantics, but I'm
18 offering him as an expert in crime scene analysis and
19 reconstruction. He has the qualifications to do that.
20 Now, whether he's done that to the State's satisfaction
21 once he's admitted is another question, another line of
22 inquiry, but he's going further than just voir dire as to
23 his qualifications. That's my only objection.

24 THE COURT: All right. The objection is overruled.
25 I think if you are offering him as an expert in

1 reconstruction, he has to -- there has to be -- he didn't
2 do any reconstruction. I'm not sure how -- I mean, unless
3 there's another method and he has the right to ask him if
4 there's another method to that in terms of reconstruction
5 without being on the scene. That would be one of the
6 questions that I would ask.

7 LUKE SHEALEY: Okay. Maybe that's my fault. Maybe I
8 could just seek to admit him as an expert in crime scene
9 analysis and firearms without the reconstruction part.
10 Maybe I confused that.

11 THE COURT: Unless there's a way that he can
12 reconstruct it without going to the scene is what I'm
13 asking. I think somebody needs to ask him that.

14 MR. SCOTT: Thank you, Your Honor.

15 So tell me why you don't think it would have been
16 helpful to actually go to the scene and physically view
17 it. Like pictures are two dimensional, right?

18 THE WITNESS: Pictures are two dimensional, but three
19 dimensional objects are gone by the time I would get there
20 in this case.

21 MR. SCOTT: Well, did you check?

22 THE WITNESS: I didn't even ask.

23 MR. SCOTT: Okay.

24 THE WITNESS: Bodies were gone, shell casings were
25 gone, bullets were gone.

1 MR. SCOTT: Well, could the hallway still have been
2 there? Could the walls have been there still maybe?

3 THE WITNESS: Possibly.

4 MR. SCOTT: Possibly?

5 THE WITNESS: Yeah. I don't know how quickly they
6 would have made any repairs.

7 MR. SCOTT: You could have probably taken a tape
8 measure and checked general dimensions. Did you see a
9 blueprint of the place, at least?

10 THE WITNESS: I have not seen one produced in the
11 file.

12 MR. SCOTT: And you weren't there at the time. You
13 said -- you just got involved recently, is that what you
14 said? You said you got involved too late.

15 THE WITNESS: Well, I got involved last year, in
16 2020.

17 MR. SCOTT: Okay. That was a year after?

18 THE WITNESS: The incident, approximately. I don't
19 have it in my head.

20 THE COURT: Last year was 2021.

21 THE WITNESS: Is that --

22 THE COURT: No, you said that was a year. This
23 happened in '19.

24 MR. SCOTT: Right. He said last year, 2020, so I
25 assumed he was mistaken.

1 THE COURT: Everybody's mixed up the last two years.

2 THE WITNESS: I've lost two years of my life
3 somewhere.

4 THE COURT: I think we all have. So you mean 2020?

5 THE WITNESS: 2021 was when I got involved.

6 THE COURT: All right. Thank you.

7 MR. SCOTT: That just sort of answers my question.
8 You weren't there on February 7th of 2019?

9 THE WITNESS: No.

10 MR. SCOTT: And I don't know, you are seeking to
11 offer opinion as to how all of this went down?

12 THE WITNESS: No.

13 MR. SCOTT: Okay. What are you seeking to --

14 THE WITNESS: My analysis of the evidence that was
15 collected and the condition of the apartment based on the
16 photographs that were taken at the time of the incident.

17 MR. SCOTT: Okay. Do you seek to offer an opinion in
18 any way?

19 THE WITNESS: Well, it depends on the questions that
20 I'm asked.

21 MR. SCOTT: Okay. Well, you can make general
22 observations like we all can looking at these pictures;
23 can you not?

24 THE WITNESS: I can.

25 THE COURT: Okay.

1 THE WITNESS: And I can offer an opinion if I'm asked
2 to about certain aspects of the photographs.

3 MR. SCOTT: What do you seek to offer an opinion?
4 I'm just curious. I've never -- we've never met, have we?

5 THE WITNESS: Not that I'm aware of, no, sir.

6 MR. SCOTT: What do you seek offer -- because we had
7 a medical doctor in here to talk about trajectories. You
8 didn't examine the wounds, correct?

9 THE WITNESS: No.

10 MR. SCOTT: And a pathologist has, are you aware of
11 that?

12 THE WITNESS: He did the autopsy, yes. I'm not sure
13 anyone has done a true trajectory analysis, but it would
14 be impossible to do in this case.

15 MR. SCOTT: You didn't examine the bodies?

16 THE WITNESS: No, I did not.

17 MR. SCOTT: I'm just trying to get to the bottom of
18 what your testimony -- what do you seek to offer opinion
19 evidence toward in this case?

20 THE WITNESS: Well, I will offer the opinion that
21 there was obviously some sort of altercation that took
22 place inside of this apartment.

23 MR. SCOTT: Okay. All right. But you weren't there
24 that day?

25 THE WITNESS: No.

1 MR. SCOTT: Judge, I don't -- you know, I don't know
2 that -- I'm fine with observations generally. I'm fine
3 with talking about an overturned TV. It does not seem
4 appropriate for him to opine that an altercation took
5 place. I don't know that we're even really countering
6 that per se, but just opinion evidence based on pictures
7 without even going to the scene, not being there at the
8 time, I don't know he's spoken with officers. I don't
9 think opinion testimony in this case is appropriate. I
10 have no problem with him generally stating his
11 observations as to the pictures and whatnot.

12 LUKE SHEALEY: And I have an additional question that
13 might help here, Your Honor.

14 BY LUKE SHEALEY:

15 Q Mr. Tressel, you were provided complete discovery in
16 this case?

17 A Yes, sir.

18 Q Including CSI Potash's diagrams of the crime scene
19 with measurements?

20 A Some measurements, yes.

21 Q And diagrams, which are already in evidence, of
22 positions of shell casings and bodies and blood?

23 A Yes.

24 Q Okay. Now, if I had hired you on February 7th, 2019,
25 and said go bust up that crime scene based on your history

1 of law enforcement, would you have been allowed to enter
2 the crime scene, pass the crime scene tape and nudge
3 Investigator Potash aside and say let me do some work in
4 here?

5 A Not without the court's knowledge.

6 Q Now, you've testified in this courthouse for me
7 before as a crime scene expert on a double homicide case,
8 do you remember that?

9 A Yes, sir. Don't ask me the name.

10 Q The State vs. Todd Parvo (phonetic) ring a bell?

11 A Yes.

12 Q Before the Honorable Clifton Newman, who admitted you
13 and qualified you as an expert in crime scene construction
14 and analysis?

15 A That's correct.

16 Q Did you in that case go out to the crime scene the
17 day of the incident and look at shell casings and marks in
18 the sand and all that in that crime scene at the home?

19 A No.

20 Q Of Woodland Drive?

21 A I did not.

22 Q Yet, you were still admitted in this case based on
23 your view of the evidence?

24 A Of the documentation and evidence that was collected,
25 yes.

1 Q Which consists of pictures of blood, right?

2 A Yes.

3 Q Consists of pictures of blood castoff?

4 A Yes.

5 Q Consists of your view of turned over tables and holes
6 in walls?

7 A Yes.

8 Q Do you have an opinion to render on wounds and
9 whether they're consistent with a bite or not, correct?

10 A Yes.

11 Q And you agree that crime scene with the City of
12 Columbia department did a fairly good job of documenting
13 this house?

14 A Yes.

15 Q And based on that documentation, that provides you
16 the ability to render some opinions in terms of crime
17 scene analysis; does it not?

18 A Yes, and crime scene evaluation.

19 LUKE SHEALEY: Your Honor, he is qualified and is not
20 disqualifying that he was not able to elbow his way into
21 the crime scene on February 7th, 2019. If that were the
22 standard, we would never have any experts admitted
23 regarding crime scenes, so that is not the standard. He
24 can do it based on the detailed photographs, analysis and
25 diagrams that he's reviewed in this case, quite simply.

1 And I'd seek to qualify him at this time.

2 THE COURT: All right. Yes, sir?

3 MR. SCOTT: Just, you know, you were an investigator
4 for how many years?

5 THE WITNESS: Been investigating since 1975.

6 THE COURT: 1975, he said.

7 MR. SCOTT: Okay. You went straight to
8 investigations in '75.

9 THE WITNESS: Year and a half as a patrol officer,
10 went straight into homicide.

11 MR. SCOTT: It just occurs to me, what was the first
12 thing you did as an investigator when somebody said hey,
13 we got a homicide here? What was the very first thing you
14 did?

15 THE WITNESS: I notified my superiors and I responded
16 to the crime scene.

17 MR. SCOTT: And that's my point, why didn't you do
18 that here? I mean, I know the bodies are gone. I
19 understand that. And I understand the tables and chairs
20 may be removed, maybe, maybe not, but you always go and
21 check the crime scene. You've been doing that since 1975.
22 That's 48 years.

23 THE WITNESS: That's what we hope law enforcement
24 does is document the scene correctly.

25 MR. SCOTT: I know, but if you are here to testify as

1 an expert and provide an opinion, it just -- I mean, I've
2 been to the scene. I've walked over there. And you've
3 been on -- I think you've been on this case longer than
4 me. I only started in this officer less than a year go.

5 THE WITNESS: Well, I live in Atlanta, Georgia, and
6 you live here in Columbia somewhere.

7 MR. SCOTT: I know that, but how much are you getting
8 paid?

9 THE WITNESS: How much am I getting paid?

10 MR. SCOTT: Yeah.

11 THE WITNESS: For this and, potentially, down the
12 road, \$3,000, plus 2500 is the initial retainer.

13 MR. SCOTT: That's plenty to get from Atlanta to here
14 to investigate a scene, isn't it?

15 LUKE SHEALEY: Your Honor, we're getting into opinion
16 from Mr. Scott about monetary travel arrangements. Let me
17 interject a rule into this case.

18 THE COURT: Hold on. Let him finish his questions
19 and then I'll you all argue --

20 LUKE SHEALEY: Well, he's not questioning, he's
21 asserting characterizations about money and what you can
22 do with money.

23 THE COURT: All right. We're going to move on. The
24 objection is going to be overruled, but please move on. I
25 may have signed the -- I may have been the one that signed

1 the form to pay him. I don't know. I mean, I know what
2 they pay, so we can move on.

3 MR. SCOTT: Well, you would have been compensated to
4 come here and visit the scene; would you not?

5 THE WITNESS: It would have been included in my fee,
6 yes.

7 MR. SCOTT: So nobody was holding you back from going
8 and checking out the scene.

9 THE WITNESS: Just the delay from the time of the
10 incident to the time I got involved in the case.

11 MR. SCOTT: Okay.

12 THE WITNESS: And we had good documentation of the
13 crime scene.

14 MR. SCOTT: And you are going to testify to blood
15 patterns, is that what you said?

16 THE WITNESS: I can talk about some blood patterns.

17 MR. SCOTT: You've been qualified as an expert in
18 blood --

19 THE WITNESS: Blood spatter interpretation, yes.

20 THE COURT: And you seek to do that by looking at
21 photos here?

22 THE WITNESS: Not on this case, no.

23 MR. SCOTT: You just generally want to opine about
24 whether or not a skirmish occurred?

25 THE WITNESS: Well, that and the evidence collected.

1 MR. SCOTT: But would the person who actually
2 collected the evidence be better suited to talk about the
3 evidence collected?

4 THE WITNESS: About how he collected it, yes, but not
5 about whether everything was collected or how thorough
6 that collection was.

7 MR. SCOTT: I don't quite understand how his opinion
8 testimony aids the court in this particular case. Again,
9 I have no problem with just general observations based on
10 the pictures and whatnot. Clearly, Your Honor, can see
11 the same pictures he's going to look at and form opinions,
12 you know, if the court considers applicable. It just does
13 not strike me as an appropriate expert in this particular
14 case.

15 LUKE SHEALEY: Your Honor, if it please the court?

16 THE COURT: Yes, sir.

17 LUKE SHEALEY: It seems like Mr. Scott's main
18 objection seems to be that Mr. Tressel didn't go to this
19 apartment. Obviously, he doesn't -- he's testified he
20 wouldn't have access to that. He wasn't hired in time to
21 do that.

22 If he had gone there a year ago, what we would find
23 is a cleaned up apartment with someone else living there.
24 I've been there. The holes are fixed in the walls. The
25 blood has been removed. There's been a thorough cleaning

1 process. The floor has been repaired. So it's not really
2 relevant.

3 But Rule 703, the basis of opinion testimony by
4 experts allows an expert to base his opinion on the work
5 of other experts. So in this case, the crime scene
6 expert, CSI Potash, who took all these voluminous photos
7 that have already been in evidence, what we can read from
8 the forensic scientist Greer's testimony in his report,
9 these are all what my crime scene analysis expert can base
10 his opinion on. He doesn't have to have access and
11 custody and control of all that evidence and do his own
12 testing.

13 It's clearly appropriate, clearly proper and
14 certainly good enough for Judge Newman several years ago
15 on a double homicide for this particular expert. So I
16 would object to the State's objection. I don't think it
17 has any merit whatsoever. I would seek to admit him in
18 crime scene analysis and firearms generally.

19 THE COURT: All right. I'm looking at Rule 701 and
20 702. The court considers the following things: Is the
21 subject matter beyond the ordinary knowledge of, in this
22 case, the court requiring an expert to explain the matter?
23 I would say yes. Is the substance -- is the witness
24 qualified? This is where -- he is qualified to testify as
25 to crime scene analysis and evaluation. I do not believe

1 he can testify to reconstruction or give opinion testimony
2 as to reconstruction because he's never been to the scene
3 to reconstruct the scene.

4 Firearms, I'm not quite sure what opinion testimony
5 he's giving as to firearms. There's not been any --
6 he's -- obviously, he's a patrol officer, so he's familiar
7 with -- he's been a patrol officer, he's been an
8 investigator, medical examiner. I'm just not sure what
9 you're trying to opine from him regarding firearms. He
10 says that he is not qualified to testify to -- I think he
11 said projectiles --

12 THE WITNESS: Analysis.

13 THE COURT: And analysis. So other than -- I'm not
14 sure what you're eliciting from him regarding firearms,
15 other than general knowledge that everybody else has.

16 LUKE SHEALEY: Well, perhaps, I can flesh that out.
17 What I can establish is he's not like Paul Greer. He
18 doesn't have a microscope and compare striations and
19 rifling characteristics. He has more than just what you
20 and I would know about firearms. And I can flesh this out
21 more with him if it suits the court.

22 BY LUKE SHEALEY:

23 Q Tell us what your qualifications and training are
24 concerning handguns, firearms, generally, tell the court.

25 A Well, the functionality of the firearm, the pistol,

1 revolver works a particular way by rotating the cylinder.
2 A semi-automatic will eject shell casings to what we call
3 upright rear to some fashion. How far will they throw gun
4 powder based on laboratory testing, we've looked for
5 gunpowder, gunshot residue, it's now called. We called it
6 gunpowder years ago. You know, we look at guns and their
7 functionality and how well they function. What are the
8 characteristics of each weapon and the caliber. And then
9 we have to look at the ammunition that's being used. What
10 is the function of that ammunition, how does it usually
11 react.

12 Q And have you received training in that?

13 A Oh, yeah. Matter of fact, my resume as ATF firearm
14 school that I went to where we probably fired 100
15 different weapons and how they function and what you can
16 expect from them.

17 Q And are you capable of identifying the difference
18 between jackets, cores, fragments, class and caliber of a
19 projectile?

20 A Well, I don't do the class and caliber except on
21 visuals.

22 Q Right. You know what can be fired from a particular
23 gun?

24 A From particular gun and so forth, yes.

25 Q But you have certainly more training than being a

1 patrol officer who happened to be carrying a sidearm?

2 A Yes. I've dealt with firearms for 40 some years now
3 and on my own firearms and how they react and how they
4 function, what can you expect from them.

5 Q In addition to the ATF training?

6 A In addition to the ATF and firearms training.

7 LUKE SHEALEY: Your Honor, are you more satisfied
8 regarding his qualifications on that?

9 THE COURT: He's got questions.

10 MR. SCOTT: Again, I just don't see -- I'm fine with
11 him testifying how a gun works. I don't understand why we
12 need opinion testimony for that.

13 THE COURT: And you want to keep bringing up Judge
14 Newman, but I've tried numerous murder cases and the guys
15 come in from SLED and they talk about -- let me say, I
16 don't have a problem with the analysis and evaluation.
17 I'm a little troubled with the reconstruction because he's
18 not been to the scene and --

19 LUKE SHEALEY: I can withdraw that qualification. I
20 think I already have.

21 THE COURT: Okay. And the firearm, they usually come
22 in and testify that they test the gun and they -- so if
23 he's -- I mean, I don't know if any of that has happened
24 in this case. So that is my concern regarding him
25 testifying.

1 Now, he can talk about guns and how they work and any
2 differences between different guns, but I'm not sure even
3 what opinions you're going to ask him and maybe we just
4 need to -- I need to go ahead and qualify him and they can
5 object if there's an opinion or question that you're
6 listening to on an opinion that he may not be qualified to
7 testify to. But I think he has to -- I think it has to be
8 some testimony regarding -- if he's getting into
9 trajectory of the gun, I think that's going to be beyond
10 what he's qualified as an expert to testify for purposes
11 --

12 LUKE SHEALEY: Sure. He has clearly stated and I've
13 not sought to admit him as a firearms ID expert. That is
14 what Paul Greer. Do you routinely -- and I understand you
15 listen to experts all day long in numerous trial, many of
16 them in the custody and employment of the State of South
17 Carolina.

18 THE COURT: I understand, I understand that, yes.
19 Usually they have the benefit that it is in SLED's custody
20 or it's in the police department's or sheriff's
21 department's custody.

22 LUKE SHEALEY: And, occasionally, the defense has to
23 seek other experts that may have different opinions. They
24 might have the same opinion, you know, whether it's DNA.
25 You know, we're not going to bring necessarily SLED's DNA

1 analyst. In this case, we did because she said perfectly
2 fine things. Here, we sought a crime scene analyst, who
3 happens to also be qualified and moved previously as an
4 expert in firearms. That's all I'm seeking to admit. I
5 don't have to be hamstrung and try to call George Potash
6 here in this hearing if I don't want to. The State could
7 call George Potash.

8 THE COURT: Well, as to CSI, I don't find that to be
9 an issue. I think he is qualified to testify. He's been
10 a medical examiner. He's been an investigator. He's been
11 a parole officer. I mean, I do think he's qualified -- I
12 was going to get to that. I think he can qualify as an
13 expert in CSI. My concern is if you want him to testify
14 as an expert in -- as to the guns and the projectiles and
15 the trajectory, that is where I think you need to develop
16 more expert -- you need to ask him some more questions to
17 get him qualified as an expert in that area.

18 LUKE SHEALEY: Well, what I sought to qualify him was
19 in firearms generally. I didn't seek to qualify in what
20 Paul Greer does. He's attended the ATF firearms school.

21 THE COURT: What year did you attend that, sir? I
22 have that written down, but I don't have which year you
23 attended.

24 THE WITNESS: I'm sorry?

25 THE COURT: Where and when did you attend the ATF

1 firearms school?

2 THE WITNESS: It was while I was with Cobb County PD,
3 so it was prior to '85. I'd have to look on my resume.

4 THE COURT: They didn't give me -- I need his CV. If
5 you have an extra copy, I'll take a look at it.

6 LUKE SHEALEY: I'm let him refresh his memory and I
7 will just give you that copy, Your Honor.

8 THE COURT: Okay.

9 THE WITNESS: 1981.

10 LUKE SHEALEY: I can hand this to Your Honor if you'd
11 like to review it. I think he's qualified in firearms.
12 If the State thinks he's exceeding the scope of his
13 expertise, I'm sure they will object and we can pick that
14 up at the appropriate time.

15 THE COURT: Anything else from the State?

16 MR. SCOTT: No, Your Honor. I just contend an expert
17 in firearms was overly broad. In 1981, he took some
18 course in firearms investigations techniques from the
19 Department of Treasurer. I was two years old in 1981. I
20 don't see -- for him to testify as an expert generally in
21 firearms, that's far too broad. Again, I think he can
22 talk about the difference in a semi-automatic and a
23 revolver. He can talk about casings being ejected from
24 the right or from the left, but to form opinion testimony
25 just firearms, in general, we don't think it would be

1 appropriate.

2 THE COURT: What are you wanting him to testify to?
3 I mean, I guess in terms of firearms, what are opinion are
4 you seeking from him?

5 LUKE SHEALEY: Shell casings, identifying
6 projectiles.

7 THE COURT: Well, all of that I think would be a part
8 of his CSI investigation.

9 LUKE SHEALEY: It's quite a crossover. So if you
10 agree with that -- I'm not asking him to do what Paul
11 Greer does, I'm just not.

12 THE COURT: Well, I'm going to qualify him as an
13 expert. I do find that based on his education and
14 experience that he is qualified to get in -- to testify as
15 a crime -- in the area of crime scene investigation and
16 evaluation, I believe is what he said. And I assume as a
17 part of crime scene investigation, that is also -- there
18 is, you know, he can discuss shell casings and yes -- but
19 if there's anything that they ask you all have the right
20 to object and I can handle it at that time.

21 LUKE SHEALEY: Thank you, Your Honor.

22 THE COURT: All right.

23 BY LUKE SHEALEY:

24 Q Mr. Tressel, at some point, were you employed in this
25 case, obviously?

1 A Yes.

2 Q It was not on February 7th, 2019, was it?

3 A No.

4 Q I think you said about a year ago?

5 A Yeah, sometime, I believe it was in early 2021
6 somewhere.

7 Q And you get paid money for your work?

8 A I do.

9 Q Have you received a lot of information from the
10 defense for your review in this case?

11 A I have.

12 Q Have those consisted of pretty much all the crime
13 scene photos that were taken in this case?

14 A Yes.

15 Q Have you received and reviewed the diagrams in this
16 case from CSI Potash?

17 A I have, yes.

18 Q Have you read over and reviewed the pathologist
19 report about his findings?

20 A I have.

21 Q Have you read over and reviewed the forensic
22 scientist, Paul Greer's, firearms report in this case?

23 A I have.

24 Q And you have no problem reading that and determining
25 what he means in his report?

1 A No, I did not.

2 Q Okay. I want to show you some photos. You tell me
3 if you recognize these, Defense 9 through 12 are already
4 admitted, but do you recognize those photos as part of
5 what you see in this case, the crime scene?

6 A I do, yes, sir.

7 Q Okay. Part of discovery you reviewed?

8 A It is.

9 Q I'm going to show you some more photos and ask if you
10 recognize these as also being part of the crime scene
11 photos in this case. These are items 60 through 72. Take
12 a quick look and see if you recall those?

13 A I do.

14 Q Do you recognize those being the CSI photos you
15 received in this case and that you reviewed to help form
16 an opinion in this case?

17 A Yes.

18 LUKE SHEALEY: Your Honor, at this time, I would seek
19 to admit Defendant's 60 through 72.

20 THE COURT: Any objection? Oh, I'll give you chance
21 to look at them.

22 MR. SCOTT: No objection, Your Honor.

23 LUKE SHEALEY: Your Honor, that is without objection.

24 THE COURT: All right. Sixty through 72 will be
25 entered without objection.

1 (WHEREUPON, Defendant's Exhibit Nos. 60 through 72
2 admitted into evidence.)

3 BY LUKE SHEALEY:

4 Q Mr. Trestle, I want to talk to you more specifically
5 about some of these photos. Obviously, you've seen this
6 photos generally of these two young men dead in the living
7 room of this apartment, correct?

8 A Yes, sir.

9 Q You've seen that their legs are kind of crossed over
10 one over the other, correct?

11 A Yes.

12 Q And you noted that appears to be what to you?

13 A It's an impact with the wall fracturing the
14 sheetrock.

15 Q Does that look like a closer photo of that?

16 A Closer photograph, yes, sir.

17 Q And that type of impact -- I mean, obviously, you
18 weren't there that day. You have no personal knowledge
19 about whether that was there before or not, but what would
20 this indicate to you if you're walking through this part
21 of that crime scene?

22 A Well, the fact it's so broad from the centralized
23 fractures, it's some sort of body impact.

24 Q Okay.

25 A Or a large object impact.

1 Q Okay. And looking at Defense No. 71, do you see any
2 blood there?

3 A Yes, sir, I see blood drops.

4 Q What does that tell you?

5 A Well, by looking at that, you can tell the
6 directionality the blood was coming from. It was coming
7 from the top of the picture towards the bottom of the
8 picture. It impacted and left what we call the tell-tell
9 tail.

10 Q Okay. Can you glean anything else from that or is
11 that all?

12 A With no measurements, you can't tell anything from it
13 other than it came from above where the photograph was
14 taken.

15 Q And you, based on your experience and training, gave
16 an opinion about whether that is -- that type of blood
17 spatter, if you want to call it, appears to be from a
18 gunshot wound or some kind of blunt trauma. Do you have
19 an opinion an that?

20 A Because of way the top one slides so much with a long
21 tail on it, that's what we call projected blood. It's got
22 movement. An object that had blood on it was shaken in
23 such a way or moved in such a way that the blood came off
24 and traveled down.

25 Q So not from a gunshot wound, but some object that had

1 blood?

2 A Something that had blood. It could be from a bloody
3 hand, it could be a lot of different things, but it was
4 something bloody, had blood on it that created the two
5 stains you see there. And they're probably from the same
6 object at the same time because they're parallel.

7 Q Now, you've already testified that you reviewed the
8 two autopsy reports in this case, correct?

9 A Yes.

10 Q And you're aware that as to Mr. Griffin this wound
11 right here has been listed as a stellate wound?

12 MR. SCOTT: Just to correct, that's Mr. Dash.

13 LUKE SHEALEY: I'm sorry, Mr. Dash. Thank you, Mr.
14 Scott.

15 BY LUKE SHEALEY:

16 Q You're aware of that?

17 A Yes.

18 Q Do you have an opinion about what type of objects or
19 what could make that type of wound?

20 A Most of the time when the medical examiner talks
21 about a stellate wound, he's talking about a gunshot
22 wound, it's what we call pressed contact. It's where the
23 gases get trapped beneath the skin before they go into the
24 skull. Stellate wounds can be also caused by a blunt
25 object that has some broadness to it.

1 Q So if I hit you with my hand, is that going to cause
2 that type of wound?

3 A No. It would have to be an object that would cause
4 that.

5 Q Something hard?

6 A Something hard. Classic is the hammer head.

7 Q The hammer head.

8 A Like the head of a hammer.

9 Q Head of a hammer, okay?

10 A Something like that.

11 Q If someone was hit with a pistol in a pistol whip
12 kind of motion, could that cause that?

13 A It can, yes.

14 Q And if someone is hit like that, would that be
15 responsible for the type of castoff that he described
16 previously?

17 A It can, yes.

18 Q I want to show you this photo. Do you recognize this
19 photo with this TV turned over?

20 A Yes, sir, I do.

21 Q And you've read my client's statement in this case
22 regarding hearing a TV crash?

23 A Heard a TV crash. And if I remember it in the
24 correct order, the TV crashed and then a boom.

25 Q And I want to show you this photo. How does the rug

1 look to you?

2 A Well, it's askew underneath the table. The table has
3 been moved and the rug moved with it.

4 Q Okay. We've got a much closer photo of that phone
5 jack within that body indent that you described earlier.
6 Do you notice anything here?

7 A Yeah, we've got dropping of blood again coming from
8 above it.

9 Q Is that still consistent with some type of castoff
10 object?

11 A Off of an object.

12 Q That has blood on it?

13 A Has blood on it.

14 Q Okay. Now, generally, you have seen photographs
15 documented in this case, I assume, what has been described
16 as an earring. Does that look like that?

17 A Yes, sir, that's an earring that matches one of the
18 victims. It's a -- it's missing the back to it.

19 Q Right. And we know -- I can refresh your
20 recollection. Here's the earring on the other ear of
21 Mr. Griffin?

22 A Yeah.

23 Q Does that look like a match to you, matching set?

24 A Yes, sir, it does.

25 THE COURT: Identify what you're showing.

1 THE WITNESS: I'm sorry?

2 THE COURT: For the report, Exhibit 70.

3 BY LUKE SHEALEY:

4 Q Exhibit 70 with the earring in the ear and Exhibit 63
5 with the earring back on the ground, correct?

6 A Yes.

7 Q And Exhibit 65 for the record, what does that look
8 like to you?

9 A It's the right ear. It looks like that the lower
10 lobe has been ripped open.

11 Q When you have that kind of evidence with an earring
12 that appears to be torn from a person's body, what does
13 that indicate to you?

14 A That usually indicates there's an altercation going
15 on and during the altercation, the earring got pulled
16 loose physically by the person that was in the altercation
17 with the person or, depending on how well it's seated, it
18 could have come off during some sort of struggle with the
19 bodies rubbing against each other.

20 Q And this photo right here, do you see some type of --
21 does that look like a table leg to you?

22 A That's what I understand it to be, is a table leg.

23 Q It's broken, not attached to the table?

24 A It's broken and not attached to the table anymore.

25 Q Now, we'll talk about this in a little bit, but do

1 you know, 66, this, what does that appear to be to you,
2 that shiny object?

3 A It appears to be a projectile.

4 Q Does it appear to be relatively intact?

5 A Yes. From the photograph, it appears to be a copper
6 jacketed, fully jacketed bullet.

7 Q Do you also recognize Exhibit 59 already in evidence?
8 Are you familiar with what that is?

9 A That appears to be a lead core of a bullet.

10 Q That's what goes within -- that's within the
11 projectile?

12 A Yeah, the copper sits over the top of it. When we're
13 talking about ammunition, you have semi-jacketed and you
14 have fully jacketed. And the fully jacketed is what was
15 in this weapon.

16 Q Okay.

17 A And semi-jacketed is a jacket that only comes up part
18 of the way leaving the lead exposed at the top.

19 Q Okay. And, obviously, you've seen various shell
20 casings collected in this case?

21 A Yes.

22 Q And you've had a chance to review firearms before in
23 this case?

24 A I have, yes.

25 Q Generally do you have an opinion about whether there

1 was a struggle or a fight in that living room based on
2 what you've testified regarding the holes, the earring
3 ripped, the turned over tables and broken TV, do you have
4 an opinion on that?

5 A Well, as an investigator, an altercation had taken
6 place in the apartment.

7 Q That's your opinion?

8 A Yeah.

9 Q Okay.

10 A An altercation had taken place and they were
11 semi-destroyed the place, knocking tables over, busting
12 the legs, busted the wall, things of that nature.

13 Q And you reviewed the firearms report in this case?

14 A Yes, sir.

15 Q And you reviewed the autopsy photographs in this
16 case?

17 A Yes.

18 Q Wounds in this case. You're aware that there are 13
19 distinct wounds in this case?

20 A That's exactly what my count was based on autopsy
21 report was 13 distinct wounds.

22 Q And we're talking about bullet wounds, correct?

23 A That's how the medical examiner reported it.

24 Q We're not talking about blunt trauma wounds?

25 A No. These are 13 gunshot wounds.

1 Q And you're aware there were seven shell casings in
2 this case collected on the scene?

3 A Yes.

4 Q So what opinion do you have, if any, regarding 13
5 distinct bullet wounds, but only seven shell casings in
6 this case?

7 A Well, then you have to go back and look at the
8 identification done by Mr. Greer and how many bullets he
9 actually identified because we have so many fragments that
10 are taken out of the head. He identifies eight bullets.

11 Q Okay.

12 A And there's only seven shell casings. So the
13 question arises as a crime scene investigator, am I
14 missing a shell casing or do I have another weapon
15 involved with the case that's created more wounds that's
16 occurred with one of the victims.

17 Q Correct. So you know from reading the autopsy report
18 that there are 13 distinct bullet wounds, correct?

19 A Correct.

20 Q We're not talking about through-and-through. We're
21 talking about that have a discernible entry point?

22 A Entrance point and exit point.

23 Q So we only have seven shell casings. You testified
24 to that?

25 A Yes, that were recovered.

1 Q Does that beg the question in your mind as a crime
2 scene analyst that there is another potential gun
3 involved?

4 A That would be the first key thing is I've got more
5 wounds than I've got bullets for, so there may be a second
6 weapon involved.

7 Q And do resolvers leave shell casings?

8 A No, not unless the person totally fires all five or
9 six rounds, depending on what kind of revolver it is, and
10 then decides to dump those rounds and reload while he's
11 present on the crime scene. If he doesn't reload and
12 takes it with him, the shell casings would be on the crime
13 scene.

14 Q Having fully reviewed the firearms report, you're
15 aware that there are two items in that report that do not
16 match Mr. Barnes' gun, correct?

17 A That's correct. They're inconclusive.

18 Q Inconclusive is the term?

19 A Uh-huh.

20 Q You're aware from reading it that they are able to
21 get some class characteristics out of some of those items?

22 A Yes. SLED uses the word nominal, it's what we call
23 a 30 caliber class bullet.

24 Q And that just means -- and he listed in his report
25 that the item 22, which is associated with Mr. Dash, could

1 have been fired by a 38 Special, 357 Magnum, amongst
2 others, or nine millimeter?

3 A Or nine millimeter.

4 Q And you sat here and listened to Mr. Greer's
5 testimony, right?

6 A Yes, sir, I did.

7 Q And this could have been fired by a revolver, as
8 well, correct?

9 A Yes, sir, could have been.

10 Q Now, you -- as a homicide investigators, I assume
11 have investigated in your police career multiple crime
12 scenes involving shootings, right?

13 A Probably in the thousands by now.

14 Q Okay.

15 A Between consulting and actually physically working
16 them when I was at the PD and medical examiner's office.

17 Q And sometimes it takes a while for police to get on
18 the scene and actually secure that crime scene?

19 A Oh, absolutely. There's -- you can have a delay from
20 anywhere of a couple of minutes from the incident to days
21 later before the incident is called in, then you have
22 response time. And the national average goal with law
23 enforcement on what we call a major incident, which would
24 be a shooting incident, is seven minutes is what their
25 goal is. But you rarely see that occurring anymore

1 because of short number of officers. Every agency is
2 short of them.

3 Q Now, in your experience, is it uncommon for weapons
4 to be removed from crime scenes if they are not secured
5 instantaneously?

6 A No, they can get gone. It depends on other
7 individuals that may or may not be on the crime scene or
8 come to the crime scene shortly after an incident occurs.
9 Guns get missing from crime scenes all the time.

10 Q From reviewing discovery in this case, are you aware
11 that is, in fact, the case here, that multiple individuals
12 had access to the crime scene prior to it being secured?

13 A Yes.

14 Q Having reviewed discovery and looked at the photos,
15 as well of my client and custody, do you have an opinion
16 about whether he's received or had upon his person any
17 wounds indicating that he was in a big drag out fight that
18 day?

19 A Not that were documented, no, sir.

20 Q And having reviewed the discovery in this case, you
21 are aware of the DNA results in this case?

22 A I am, yes.

23 Q That being that Mr. Griffin and Mr. Dash, the two
24 gentleman on the floor, have each other's DNA under their
25 fingernails?

1 A Yes.

2 Q Does that help shape your opinion in any way about
3 whether they were engaged in an altercation?

4 A It would be an indicator that they were physically
5 involved in an altercation between each other.

6 Q Okay. So, again, just in summation, you believe
7 we've got too many gunshots for shell casings?

8 A Yes, sir.

9 Q We have seven shell casings and, at least, eight
10 identifiable projectiles?

11 A Yes.

12 Q And these guys were involved in what appeared to be a
13 very violent altercation, Mr. Dash and Mr. Griffin?

14 A It does appear that way, yes, sir.

15 LUKE SHEALEY: Beg the Court's indulgence.

16 (Pause.)

17 Mr. Tressel, I don't have any further questions for
18 you right now. Please any questions Mr. Scott may have
19 for you.

20 THE WITNESS: Certainly.

21 CROSS-EXAMINATION:

22 BY MR. SCOTT:

23 Q Could it be possible some of that broken furniture
24 could have existed before that day?

25 A Yes, sir, it could have been.

1 Q Have you looked at that dump you guys did on
2 Mr. Barnes' phone?

3 A I did not review the phone records, no, sir. It
4 didn't have anything to do with the crime scene.

5 Q Well, if I said I have pictures from his phone of the
6 crime scene prior to February 7th?

7 A Prior to February 7th?

8 Q Yeah. So you could have looked at those and seen
9 what the general appearance of that room looked like
10 before the date in question, correct?

11 A I could have, yes.

12 Q Somewhere in there, if I was to show you I've got a
13 picture of Mr. Dash standing beside the broken furniture,
14 would that be compelling to you in any way?

15 LUKE SHEALEY: Objection. He's going to have to show
16 him a photo.

17 MR. SCOTT: Let me look for it.

18 THE COURT: All right.

19 BY MR. SCOTT:

20 Q But you did testify that it was noteworthy --

21 THE COURT: The objection is sustained.

22 BY MR. SCOTT:

23 Q Let me just -- you did testify that the broken
24 furniture was noteworthy?

25 A Well, it was part of the indication as I said an

1 altercation had taken place inside apartment.

2 Q Okay. State's No. 13?

3 THE COURT: What's the number again?

4 MR. SCOTT: It's 13.

5 THE COURT: All right.

6 BY MR. SCOTT:

7 Q Maybe the place has just always been a pigsty, huh?

8 A Well, I wouldn't call it a pigsty, but it's got a
9 broken kitchen -- what appears to be a broken kitchen
10 chair.

11 Q Yeah. Is that something you reviewed in the
12 discovery and you made an assessment that an altercation
13 happened based on that broken furniture?

14 A Not in this photograph.

15 Q You've never seen that broken chair?

16 A You just asked me if I saw the phone dump.

17 Q Did you see this broken chair in other photographs of
18 the crime scene?

19 A I saw a broken table, a chair leg.

20 Q State's No. 12. I thought you had looked at all
21 these pictures?

22 A Sir, there's 100 pictures and I'm in my third hearing
23 in three weeks.

24 Q Well, you're an expert, though. I just wanted to
25 make sure you're familiar with everything.

1 A Yeah, they obviously didn't get rid of the broken
2 chair and it's over in the corner near the trash can.

3 Q Okay.

4 A And not near the other damages in the apartment.

5 Q Okay. So evidence of broken furniture when Mr. Dash
6 is clearly still alive, correct?

7 A Yes, sir, I imagine so.

8 Q You recognize who that is?

9 A Actually, no, I do not recognize him from his autopsy
10 pictures because he doesn't look exactly the same.

11 Q What have you reviewed again in forming your opinion
12 here? You don't know what the victims look like? That's
13 Antonio Dash.

14 A Okay. I'll take your word for it.

15 Q You shouldn't take my word for it. You should take
16 your investigation.

17 A Is that a question?

18 LUKE SHEALEY: Your Honor, I'm going to object at
19 this point.

20 MR. SCOTT: All right.

21 LUKE SHEALEY: His characterization of the
22 investigation. He's testifying in kind of in a baseless
23 pointless way.

24 MR. SCOTT: He's an expert.

25 THE COURT: The objection is sustained. Rephrase the

1 question.

2 BY MR. SCOTT:

3 Q All right. Now, you did -- I know you listened to
4 Mr. Barnes' statements because you testified to that
5 earlier?

6 A Yes.

7 Q Remember that point when he said Eric Griffin had a
8 revolver and pointed it at him? Do you remember that
9 part?

10 A I do remember that.

11 Q You do?

12 A Excuse me, my apologize. It's not in his interview.

13 Q Okay. If I ask something and you need me to repeat
14 it, just --

15 A I just apologized.

16 Q Okay. And do you remember that point when he said
17 Antonio Dash pointed a pistol at him?

18 A No, sir.

19 Q Okay. Do you remember that time when he said he was
20 in his bed and he kept hearing gunshots coming from the
21 living room?

22 A No, sir.

23 Q Okay. Do you remember that time he said he saw a gun
24 on Rick Griffin in his statement?

25 A I don't remember that, no, sir.

1 Q Okay. Maybe because he never said that?

2 A I --

3 Q You read the statements?

4 A I don't have everything totally separated out. And
5 the interview, I listened to.

6 Q You agree with me an expert needs to be held to a
7 high standard?

8 A And my process was the crime scene, not the
9 interview.

10 Q But you relied on all the discovery in forming your
11 opinion. That's the basis of your opinion?

12 A I have the discovery, yes.

13 Q So how many people were on the scene -- who was the
14 first officer to arrive?

15 A I don't know off the top of my head.

16 Q Would you disagree with me that it was Officer Dwyer?

17 LUKE SHEALEY: I'm going to object to the relevance
18 of this line of questioning, Your Honor.

19 THE COURT: What's the objection?

20 LUKE SHEALEY: Relevance, 401.

21 MR. SCOTT: He's a crime scene expert.

22 THE COURT: Objection is overruled.

23 LUKE SHEALEY: He's asking him to list out who is
24 first there amongst legions of officers as a way to try to
25 say he's not a good crime scene expert. He's not a --

1 THE COURT: I don't know. What's the question after
2 that.

3 MR. SCOTT: The question after --

4 THE COURT: He has the right to question the expert.
5 I mean, all of that goes to weight.

6 LUKE SHEALEY: Ask good questions.

7 BY MR. SCOTT:

8 Q Okay, here's a good question. Did you see Officer
9 Dwyer's body cam video?

10 A Yes.

11 Q Okay. First officer there?

12 A Yes.

13 Q Okay. Do you remember the room was well lit?

14 A I can't say as I can remember it was well lit.

15 Q Do you remember the blinds were opened?

16 A I believe so, yes.

17 Q State's No. 19. Let me see if this is a good
18 question. Are those blinds open?

19 A One is and one isn't.

20 Q Okay. You see the light pouring in through the
21 window?

22 A Through the one that's on the far right.

23 Q And when Dwyer gets to the scene, how many people are
24 already in the room, the living room?

25 A To be honest with you, I do not remember.

1 Q Several?

2 A Based on the reports, yes.

3 Q So you talk about guns sometimes walking off the
4 scene?

5 A Yeah, guns disappear.

6 Q Do casings sometimes get kicked around and casings
7 sometime leave the scene or can casings sometimes not be
8 accounted for?

9 A Well, casings do bounce, roll. They can get picked
10 up under certain conditions. The conditions being
11 intentionally picked up by somebody, or a second would be
12 if somebody is wearing a -- I call it a work-type boot
13 that has the heavy lugs on the bottom. We've had police
14 officers carry shell casings on the bottom of their shoes
15 after they've entered into a crime scene. So there's
16 different ways that it can get out of a crime scene, yes.

17 Q So there are explanations of how casings can come up
18 missing?

19 A There are sometimes, yes.

20 Q Okay. Let me show you what's been admitted as
21 State's No. 15. Do you recognize that individual?

22 A Do I recognize the photographs?

23 Q Do you recognize that as Antonio Barnes?

24 A I couldn't say one way or the other, sir.

25 Q All right. Well, you are qualified to, what,

1 firearms identification?

2 A Yes, sir.

3 Q How many different guns do you see in that exhibit?

4 THE COURT: He was not qualified in firearms.

5 MR. SCOTT: Okay.

6 THE COURT: He was qualified as an crime scene.

7 BY MR. SCOTT:

8 Q Don't offer an opinion. How many different guns do
9 you see in this?

10 A Readily identifiable, three.

11 Q Three different guns?

12 A Three different guns, readily identifiable.

13 Q Okay. Is it possibly more?

14 A There could be. But there's not enough detail of the
15 guns themselves.

16 Q I don't have the exhibit, but the blood dripping?

17 A Uh-huh, yes.

18 Q We don't know how that got transferred?

19 A No, sir, we don't.

20 Q Your opinion was it dripped off something?

21 A It's what we call blood in motion, so it had some
22 projection to it. I use the example if you cut your
23 finger and you shake it, blood comes off the end of your
24 finger, that's blood in motion.

25 Q Okay. Do you recall on the body cam multiple people

1 touching the bodies, walking through the blood?

2 A Oh, yeah.

3 Q Even Officer Dwyer?

4 A Yes, sir.

5 Q You don't make any assumptions, certainly, of who
6 cast that blood off, do you?

7 A No, sir, I don't.

8 Q All right. I think that's all. It would be wild
9 speculation on your part to say that there was another
10 gun. You have no evidence that there was another gun?

11 A I have no physical evidence of another gun. I have
12 physical evidence that indicates there might have been
13 another gun.

14 Q Well, I might walk out of here and get in a 2022
15 Rolls Royce and drive away from the courthouse, right?

16 A The answer is, I doubt that.

17 Q Okay. But it's a possibility, right?

18 A It could be.

19 Q Okay. And maybe there was another gun. We certainly
20 -- you listed, at least, three that Mr. Barnes poses with?

21 A Maybe it was, I don't know.

22 Q And he was able to -- you understand that he was able
23 to get a friend of his to move his gun away from the
24 scene?

25 A Yes.

1 Q Okay. So we don't know what he did with those other
2 guns in those pictures, do we?

3 A Not unless they were recovered somewhere. I don't
4 have documentation of that, so I would say there is
5 nothing located.

6 MR. SCOTT: Okay. Well, I appreciate it. Thank you.
7 That's all the questions I have.

8 LUKE SHEALEY: Briefly, Your Honor.

9 REDIRECT EXAMINATION:

10 BY LUKE SHEALEY:

11 Q In addition to your extensive of crime scene
12 training, you also have powers of deduction, correct?

13 A I hope so.

14 Q So just again, you testified we have 13 distinct
15 bullet wounds identified, right?

16 A Right.

17 Q And seven shell casings?

18 A Correct.

19 Q At least, eight projectiles.

20 A Yes.

21 Q It stands to reason based on powers of deduction that
22 something else other than what powered those seven shell
23 casings was fired in this case, correct?

24 A Yes.

25 Q There's just too many bullets holes?

1 A There's too many bullet holes.

2 Q Too many projectiles?

3 A And projectiles don't match the number of shell
4 casings and the number of shell casings and the number of
5 projectiles recovered don't match 13 distinct gunshot
6 wounds.

7 Q Right. Now, we've got -- we know from discovery that
8 after Mr. Barnes did this shooting that he was quickly --
9 the apartment was quickly approached by family members of
10 one of the decedents, as well as one of the witnesses?

11 A Yes.

12 Q Within a couple of minutes, right?

13 A Apparently so, yes.

14 Q And you're also aware that nobody indicates that he
15 left or left the apartment prior to them confronting him?

16 A Not that I've seen anywhere.

17 Q But then he exits per discovery?

18 A Yes.

19 Q He gave one gun to a lady by the name of Smalls?

20 A Yes.

21 Q Gave one, but not two?

22 A According to all the documentation, it was one gun.

23 Q So I guess if he had two, he could have given two to
24 her if he had two, right?

25 A I assume he could have.

1 Q And we know there's very likely another gun in this
2 case, right?

3 A I would suspect there's another gun involved in this
4 case, yes.

5 Q And you're aware relatives of the decedent were on
6 the scene before police?

7 A Correct.

8 Q Do you have any idea of when this State's 15, kind of
9 selfie photo from his phone was taken?

10 A I have no idea.

11 Q You don't any idea? You haven't seen it?

12 A I haven't seen it. I haven't looked at the data.
13 There is a thing called meta data that you can pull the
14 data, but you have to request it.

15 Q Now, he asked you to look at a picture of a broken
16 chair by the kitchen?

17 A Yes.

18 Q And a photo -- any idea when this photo was taken?

19 A No, sir, I don't.

20 Q But that same broken chair appears to be in actual
21 crime scene photos?

22 A What is marked as State's 12.

23 Q Is that anyway near to where the actual struggle
24 actually unfolded?

25 A No. It's opposite, virtually opposite of where the

1 struggle took place.

2 Q Does that have any relevance to you regarding this
3 case whatsoever?

4 A No. Because, like I said, it's sitting with the
5 garbage can. It's going to be taken to the dumpster
6 outside eventually.

7 Q But what was relevant to you was the broken TV table,
8 broken TV, the huge hold in the wall, shell casings,
9 projectiles, blood?

10 A That's it.

11 LUKE SHEALEY: Nothing further, Judge.

12 THE COURT: All right. Yes, sir, anything else?

13 RECROSS-EXAMINATION:

14 BY MR. SCOTT:

15 Q Were you here when the pathologist testified?

16 A No, I was not.

17 Q But you reviewed his autopsy report?

18 A I've read his autopsy report several times.

19 Q And did you know there was, at least, five
20 through-and-through wounds between the two of them?

21 LUKE SHEALEY: I would object, that's a
22 mischaracterization of evidence.

23 THE COURT: Sustained.

24 BY MR. SCOTT:

25 Q You read the pathology report, tell me what your

1 recollection is, tell me that.

2 A It appears based on my calculation, it's about seven.
3 Again, it's sometimes hard to tell with graze wounds.

4 Q But since you're not a doctor, you already told me
5 you weren't, don't rely on your calculations, look at
6 Dr. Monroe's pathology report and tell me how many
7 through-and-throughs there were?

8 A I'd have to pull the report and count the --

9 LUKE SHEALEY: Object to the form of the question. I
10 don't think it is a question.

11 MR. SCOTT: Okay.

12 THE COURT: Sustained. Please rephrase the question.

13 BY MR. SCOTT:

14 Q Would you agree there were -- Dash had five exit
15 wounds?

16 A Yes.

17 Q Okay. Do you agree there was one exit wound on
18 Griffin?

19 A Yes.

20 Q Okay. All right. Some of these bullets are going in
21 and out of a person?

22 A Yes.

23 Q Okay. And just like me and just like that gun
24 possibly being on the scene you're talking about, it's
25 possible some of those bullets passed through one of the

1 decedent and into the other?

2 A I believe that's possible, yes.

3 Q Okay. And?

4 A Based on the -- excuse me, I'm sorry. Based on the
5 autopsy report, usually, when a bullet passes through say
6 an upper arm or something, it changes the shape of the
7 bullet and you get an irregular entry wound.

8 Q Right. We had an expert testify to that a little
9 while ago.

10 A Okay.

11 Q He said sometimes, just like you?

12 A Yeah. It's not positively a given. One of the
13 reasons that I started to say it's very difficult when you
14 have if you full metal jackets, bullets because they don't
15 perform rapidly.

16 Q Okay. And tell me how many bullets the magazine or
17 pistol that Mr. Barnes shot these two men, how many
18 bullets did it hold?

19 A I believe it's a 15 plus one, isn't it?

20 Q What does your record show? Was it 17 bullets in the
21 magazine and one in the chamber?

22 A Seventeen, yes. It was enough to hold 18 rounds.

23 Q All right. So Mr. Barnes had the capability of
24 firing that weapon and ejecting 18 bullets before he had
25 to reload?

1 A No.

2 Q What was his capability then?

3 A When he made the determination to reload.

4 Q Oh, correct me then.

5 A You may not empty the magazine completely. Law
6 enforcement sometimes teaches when there's a lull in the
7 shooting data, drop a dead magazine, it's dead if it's
8 only got four rounds left in it, insert a new one. So
9 you're now back to the 17 plus one.

10 Q Let me ask this a different way. Fully loaded, Mr.
11 Barnes aiming at those two fellows, how many times can he
12 pull the trigger and fire bullets?

13 A Eighteen times.

14 Q All right.

15 A If there's one in the chamber at the time.

16 Q Eighteen times. He can shoot 18 bullets at a time
17 with that weapon. Did you examine that firearm?

18 A No.

19 MR. SCOTT: Thank you.

20 LUKE SHEALEY: Nothing further.

21 THE COURT: You may step down. All right. Thank
22 you.

23 Any objection to this witness being excused?

24 MR. SCOTT: No, Your Honor.

25 LUKE SHEALEY: No.

1 THE COURT: All right. You're free to leave. Thank
2 you.

3 All right. Call your next witness.

4 LUKE SHEALEY: Your Honor, the defense rests in terms
5 of this immunity hearing.

6 THE COURT: All right. Does the State plan on
7 calling witnesses?

8 MR. SCOTT: No, Your Honor. We're prepared to --
9 well, would you have arguments today or -- I've got
10 2:25 or so.

11 THE COURT: I was thinking we would. How long do
12 y'all think you're going to argue? And I was going to --
13 how long do y'all think you're going to argue? I was
14 going give you the opportunity -- well, let me ask you
15 this, does Judge Lee have this scheduled for trial?

16 LUKE SHEALEY: Not yet, Your Honor. She wanted to
17 see what would happen with the immunity hearing.

18 THE COURT: And then I was going to give you all an
19 opportunity to present proposed orders. I'll let you
20 argue and present proposed orders.

21 Okay. Yes, ma'am.

22 MS. YOUNG: So, Your Honor, if I don't clean this up,
23 I'm going to get yelled at. All morning or all day, I've
24 meant to revisit Officer Castro body worn camera issue.
25 We did get informed this morning by the solicitor's office

1 that, apparently, this Investigator Gilliam did, in fact,
2 go back and try -- I don't know what he did.

3 What we got told was that his body warn cam wasn't
4 activated. And given the fact that he testified that he
5 believed it was activated, we just wanted to inquire
6 further as to how they know that? What steps were taken
7 to ensure that it was not activated and does not exist?

8 THE COURT: All right. State?

9 All right. You're still under oath.

10 INVESTIGATOR GILLIAM: Yes, ma'am. Your Honor, what
11 I did was went back and print a copy from 8:20 in the
12 morning of February 7th through, I think, 10:58. I went
13 each line and I made sure when I highlighted one that I
14 put in the next one showing his body cam was, I think, 255
15 or -- I'm sorry, his body cam number didn't even show up,
16 so that's why I had to contact him again last night to
17 make sure what his number was. And, again, he gave me --
18 I'm sorry, 2526. And I made a copy of everything from
19 8:00 something in the morning till 10:00 showing his body
20 cam was never in that -- never even was activated that
21 they can upload to the system.

22 THE COURT: So he probably thought he activated it,
23 but he didn't. But I think you need to get a copy of
24 those reports to the defense.

25 THE WITNESS: I sent it to them last night.

1 THE COURT: You have that?

2 MS. YOUNG: No, we have not been provided that.

3 INVESTIGATOR GILLIAM: Here you go.

4 THE COURT: And his number again was what so she can
5 cross-reference it?

6 MS. YOUNG: I have it, Your Honor. I do have it.

7 THE COURT: 2526, I think.

8 MS. YOUNG: Yes.

9 THE COURT: I'll be glad to hear from you all. Like
10 I said, proposed orders. I don't know how much time you
11 need. I don't know when she intends on trying to schedule
12 it, but if she's just going to wait on me to get her my
13 order, then I guess it's no rush. How much time y'all
14 need on proposed orders?

15 LUKE SHEALEY: I hope for, at least, ten days.

16 THE COURT: I'll give you, at least, ten days,
17 Mr. Shealey.

18 LUKE SHEALEY: It's pro bono, Your Honor, so I've got
19 to make some money, too.

20 THE COURT: And I know everybody is busy. Judge Lee
21 said Mr. Scott is supposed to be in Kershaw next week
22 trying a case.

23 MR. SCOTT: April 11th. Scared me a minute there.

24 THE COURT: She said next week.

25 MR. SCOTT: April 11th. We can comply in ten times.

1 THE COURT: Ten days. If you need more time, just
2 e-mail me.

3 LUKE SHEALEY: I've got a copy of some case law, Your
4 Honor, for your review, if I may approach?

5 THE COURT: Yes. Thank you.

6 LUKE SHEALEY: I took the liberty of tabbing and
7 highlighting two things. You're free to ignore them.

8 Your Honor, this is my motion, or defense motion, so
9 I'll be happy to argue. We're seeking immunity under the
10 protections of Persons and Property Act, 16-11-440.
11 16-11-420 describes what the intention of the General
12 Assembly was, and I find that persons residing or visiting
13 in this state have a right to expect to remain unmolested
14 and safe in their homes, businesses and vehicles.

15 They find that no person or victim of crime should be
16 required to surrender his personal safety to a criminal or
17 should a person be required to needlessly retreat in the
18 face of intrusion or attack. And it establishes the
19 immunity provision if the defense can prove by a
20 preponderance of the evidence in a pretrial hearing that a
21 defendant is entitled to that.

22 We've come a long way in kind of the evolution of the
23 case from Duncan to Curry to Whitman Jones to State v.
24 Douglas to Isaac. And just in layman's terms, what I will
25 tell you is that we've been instructed by the Supreme

1 Court to instead of just strictly construe the texts of
2 the act itself, to first look at the common law. I think
3 that makes sense because we've got a couple hundred years
4 of common law regarding the application of self-defense.
5 I'm guessing that the Supreme Court didn't like it and all
6 of a sudden the legislature interjected new language that
7 was relatively specific.

8 So the latest case that has kind of touched base on
9 where we are right now is State v. Glenn. You've got a
10 copy of that with Your Honor. It should be the first case
11 in your stack. That's 429 S.C. 108 cited in 2019. And in
12 that case, a young man got into a shooting incident, it
13 was an attempted murder charge where he was found guilty
14 at trial. And in pretrial, he sought immunity because
15 witnesses said that he had -- you know, the victim was
16 pulling a gun, someone yelled gun and he shot first. And
17 in seeking immunity, the judge quickly denied him immunity
18 by saying well, look, you're on trespass notice,
19 therefore, we think you're at fault in bringing about the
20 difficulty. You were engaged in unlawful activity. So
21 the Supreme Court took a look at that case and said no,
22 that was not the proximate cause.

23 So based on that, the Glenn case is very instructive
24 and I've highlighted some portions in that. What the
25 Supreme Court wants us to do now in assessing immunity is

1 number one, address the common law. The classic elements
2 of self-defense first. If for some reason, there's some
3 aspect of self-defense that fails, like if you brought
4 about the difficulty, or if you were in a public place and
5 you didn't abide by your duty to retreat so long as that
6 didn't put you in more jeopardy, then you would fail the
7 common law four-element test. Then the court says that
8 you should then be defaulted into then doing a statutory
9 analysis.

10 So what we're looking at there, I can refer you to
11 page five of that case, first column, accordingly the
12 trial court should first consider whether the defendant
13 had proved the elements of self-defense by a preponderance
14 of the evidence. If the defendant has failed to meet the
15 element of reasonable fear or duty to retreat, the court
16 should then determine whether 16-11-440(a) or (c) is
17 applicable.

18 So they really want you to look at the common law
19 first. If somehow you fail, then they want you to, I
20 guess, go through analysis of the text of the act, either
21 (a) or (c), whichever one applies. But very clear in the
22 holding of the case at the conclusion is that the courts
23 must also -- the trial courts, Your Honor's court must
24 also conclude a proximate cause analysis regarding any
25 potential failure of the elements of self-defense.

1 So in the Glenn case, Mr. Glenn was on trespass
2 notice, but there were no facts in the record that being
3 on trespass notice as a prohibited person at that
4 particular complex had anything to do with the altercation
5 itself. So that was not the proximate cause of the
6 problem. So that is the last thing that we are now
7 instructed to do in these immunity hearing that Your Honor
8 is asked to analyze. If there's some raised issue that
9 might be a problem with one of the elements of
10 self-defense. So that's where we were.

11 So the other thing that I would ask, I would just say
12 this from the get, we are seeking immunity under both (a)
13 and (c), but I will concede that I do not believe that
14 Mr. Barnes is entitled to immunity under 16-11-440(a) as
15 it relates to his roommate, Mr. Dash. And what section
16 (a) is, it's just codified the defense of habitation law.
17 Section (a) makes it very clear that you don't -- what
18 it's giving you is a presumption that someone is there to
19 kill you. A presumption that you're in fear of death or
20 great bodily injury if someone is unlawfully and forcibly
21 entering your house. But it precludes you from having
22 that against your roommate.

23 I would cite State v. Whitman Jones where a battered
24 woman ended up killing her abusive boyfriend. He lived
25 there, she lived there. They went up on appeal and they

1 said look, you can get immunity just under section (c),
2 common law self-defense.

3 You don't get a presumption because, obviously, it
4 would be against public policy if your wife comes home,
5 you know, hey, I thought she was out of town, you're dead
6 now. That's just a bad public policy.

7 So they're not giving you that presumption for
8 someone that lives there. And I would submit in this case
9 that we have proven by a preponderance of the evidence
10 that he believed he was in fear of great bodily death or
11 imminent danger and it was a very reasonable belief.

12 I do think we are entitled to that presumption as
13 contained in section (a) as it relates to Mr. Griffin
14 because he does not live there and all the evidence
15 suggests that he was unexpected. There is evidence of
16 extreme forcible violence. I'll talk about the facts of
17 the case. So I think we would be entitled to both section
18 (a) and (c) as it relates to Mr. Griffin, but I think as
19 it relates to Mr. Dash, only the common law elements of
20 self-defense. So the question is have we proven that?

21 I will note out for you, as well, as we think about
22 self-defense, State v. Rash, 182 S.C. 42, it's in your
23 packet. It's the third case after Glenn. I highlighted
24 some portions. But as we think about the elements of
25 self-defense, this is the case that sets forth that you

1 may act on appearances. And they quote as one may act on
2 appearances, he may be mistaken.

3 The law does not hold him to a refined assessment of
4 the danger, provided, of course, he acted as a person of
5 ordinary coolness and courage would have acted or should
6 have acted in meeting the appearance of danger.

7 He does not have to wait until his assailant gets the
8 drop on him. He has a right to act under the law of
9 self-preservation and prevent his assailant getting the
10 drop on him. If it is apparent or reasonably apparent his
11 assailant is taking steps to get the drop on him, he must
12 take steps first to prevent such assailant from getting
13 the drop on him.

14 This case is from 1936. It's very good law. It's
15 cited routinely throughout our self-defense cases and it
16 stands for that assessment as you analyze self-defense.
17 You may act on appearances as a reasonably and prudent man
18 would. You don't to be correct. You can be mistaken.
19 You don't have to make a refined assessment. You just
20 have to do what an average person who is reasonable and of
21 the same, as they say, firmness, coolness and courage
22 would do in that person's same shoes.

23 State v. Hendrix stands for the proposition that once
24 someone is entitled to self-defense and acts to preserve
25 their own life, they are justified in the shooting. Once

1 you're justified in firing the first shot, you're
2 justified in continuing to shoot until it is apparent the
3 danger to his life and body has ceased. That's coming
4 from State v. Hendrix, which is in your packet.

5 It's well known that there is no duty to retreat in
6 your own home. Here's what I would submit to you about
7 the case, Your Honor. You've been very attentive and
8 we've heard a lot of evidence. There's no evidence of
9 motive about why Mr. Barnes would want to kill his best
10 friend, roommate, Mr. Dash, and his friend, Mr. Griffin.

11 The evidence that we do have from Mr. Barnes'
12 statement from the video that you've heard and played of
13 Mr. Barnes' remorseful account of the event from his
14 roommate, Samuel Thomas, is that time of day, Samuel
15 Thomas, who has the only car takes Mr. Dash to work at
16 Wendy's routinely, and he goes to work. When he left that
17 morning, Mr. Barnes' door was closed and he assumed he was
18 asleep. He had no interaction.

19 Mr. Samuel Thomas, his story of events has been
20 questioned here, but I think the questioning has been
21 fairly well stamped out. We've proven to you by evidence
22 in this case that when he arrives on the scene, even prior
23 to taking a phone call from his roommate, he's telling
24 Investigator Gilliam when I left, one was about to go to
25 work, one was in his bed. That's a direct quote that

1 Investigator Gilliam agreed with, that Mr. Barnes was
2 asleep.

3 Later, he does receive a phone call from Mr. Barnes
4 via his own sister and he's testified they talked about
5 what happened, meaning, this is a stressful thing, he's
6 remorseful. He's explaining, you know, I just killed our
7 roommate. He denied ever being influenced in any way. I
8 know Investigator Gilliam believes -- it's his personal
9 belief that he was somehow tainted, but Mr. Thomas has
10 repeatedly denied that any improper influence. He gave
11 two statements consistently to Investigator Gilliam. And
12 we know that he told Investigator Gilliam the same thing
13 prior to him receiving the phone call. So there's no
14 evidence that he was lying for his friend. He was caught
15 in the middle. One of his roommates is dead and one of
16 his roommates is under investigation for the killing.

17 In terms of providing --you know, Investigator
18 Gilliam, he agreed and he testified at the preliminary
19 hearing and he agreed even here that he could not
20 determine a motive for why Mr. Dash and Mr. Griffin were
21 apparently engaged in a mortal fight to the death. You
22 heard from crime scene expert, the pictures speak for
23 themselves. You've heard from Mr. Barnes' own account
24 that he was asleep. He heard a loud bang, a commotion.
25 His TV crashed. He listened out for his roommates, did

1 not hear them and believed them to be gone based on usual
2 patterns of that day, and just sat in his bed for a couple
3 of minutes fearful and then ran out to shoot because he
4 believed he was being robbed, he believed he was being
5 home invaded. He believed that if he laid in his bed and
6 waited, he would get, in his own words, smoked, killed.

7 That is absolutely what he's entitled to do under the
8 case law that I just described. He doesn't have to wait
9 for an assailant to get the drop on him. He just has to
10 act on appearances. He does not have to have a refined
11 assessment.

12 In his mind and his evidence and the testimony, he
13 believed he was being home invaded because what else could
14 it be? His roommates were not there. None of this would
15 have happened if his roommates had been there. He lives
16 in what he calls the hood and believed that he was being
17 robbed, and if he laid in his bed that someone was going
18 to kill him.

19 You've heard from witnesses and from the investigator
20 about some excited utterances and other things that came
21 out even as witnesses are pouring into the crime scene.
22 Within a couple of minutes, Mr. Griffin's family is there,
23 as well as Kevin Archie, janitors, Devonte Davis.

24 People are entering this crime scene. And Mr. Barnes
25 is just uttering statements consistent with excitement,

1 stress and remorse. I was asleep. When did they get
2 there? They was fighting. Just right moments after the
3 distress of this.

4 And what we know from review of his own phone, which
5 the State failed to collect, is that he called 9-1-1.
6 Typically, when I try cases, it might be a generalization,
7 but people who aren't guilty of malice, murder, typically,
8 don't call 9-1-1.

9 It's the ones that are there that want help from
10 police and aren't trying to hide from police are the ones
11 that call 9-1-1. And as we know, by 9:06, he was given
12 his identifying information to Officer Castro.

13 The shooting occurred per Investigator Gilliam at
14 8:56. Mr. Griffin got there, per his family's account,
15 five minutes earlier, so we did the math together, 8:51.
16 Within ten minutes, Mr. Barnes is on the scene talking to
17 police saying, I live here. By ten o'clock, he's turning
18 himself into custody. This is a chaotic scene, saying let
19 me tell you what happened. Consistent and remorseful the
20 entire time. Consistent the entire time that he was
21 asleep, that he heard all this commotion, banging,
22 fighting and he thought he was going to die.

23 It's clear from the tapes that I played with
24 Mr. Gilliam of his interview that he is distraught by this
25 and Your Honor got to hear that. Mr. Gilliam projected

1 that he thought he was maybe faking remorse, but I think
2 the tape recordings speak for themselves.

3 So analyzing -- you know, he did -- a gun was removed
4 from the scene. We took great pains to talk about Ms.
5 Shekila Smalls. But Investigator Gilliam admitted that
6 she was a liar. Mr. Barnes, as soon as he talked to
7 police at the apartment manager's office gave up her up.
8 He said yeah, she took the gun. I was in shock. She just
9 grabbed it and left. He never said he gave it to her. He
10 never said I was trying to get her to get rid of this.

11 Now, she said he told her to hold it, but only after
12 lying for about 45 minutes, denying she ever had the gun.
13 She never testified, the State never called her. That's
14 where that gun went. He volunteered that information.
15 The gun was covered and it was useful in this case.

16 Had Mr. Barnes never named Shekila Smalls, this gun
17 would have never been recovered. But he did because he
18 wasn't necessarily trying to hide anything. Just like why
19 he called 9-1-1 and just like why he told about seven or
20 eight consistent accounts to law enforcement and other
21 witnesses.

22 In analyzing the elements of self-defense in this
23 case, one, Mr. Barnes, we've established that he was not
24 at fault in bringing about this difficulty. He had no
25 personal conflict with who he called his homeboy, his best

1 friend, Antonio Dash. He didn't have any conflict with
2 Mr. Griffin.

3 What we have presented as the defense because the
4 State had no identifiable motive was evidence that was
5 ignored by police initially and was even corroborated by
6 Iesha Washington, which is what Mr. Barnes said, I'm
7 hearing that Mr. Griffin may have taken a gun from
8 Mr. Dash. Not his gun, doesn't provide any reason for him
9 to be mad at those guys, but it does provide a reason for
10 those guys to be mad at each other.

11 Consistent with their fighting wildly that day.
12 Consistent with him being truthful when he says I hear
13 bangs, I hear my TV crash. My roommates aren't supposed
14 to be there, so that's why he thinks he's being home
15 invaded. Those guys are fighting and we just supplied the
16 reason why they might be fighting.

17 Now, the State ignored that evidence. It was part of
18 his interview. It was ignored. It was discounted even
19 when Ms. Washington was describing what she's hearing
20 later in a followup interview about the missing gun.

21 But Mr. Barnes has not brought about the difficulty.
22 He's asleep. It's hard to bring about a difficulty when
23 he was asleep. There's been no evidence presented --
24 although there's evidence that loosely over our objection
25 that he might sell marijuana occasionally or that

1 marijuana was in the house.

2 There's no evidence in this case about this incident
3 that has anything to do about drugs. This is not a drug
4 deal gone bad. There's no text messages about that. Mr.
5 Barnes -- no one is saying that Mr. Barnes is up and
6 someone shorted him some money and so he got mad and
7 killed them. That's absent from this case. So he's not
8 at fault in bringing about any difficulty, number one.

9 Number two, the second element for self-defense is he
10 has to show that he had a reasonable belief that he was in
11 danger of death or great bodily injury. You can get by it
12 by showing actual imminent danger or a reasonable belief
13 that you are in danger. Here we're talking about just
14 reasonable belief. And that is why I read to you the
15 acting on appearances language and why I hope you read it
16 again. He doesn't have to have a refined assessment. It
17 just has to be reasonable.

18 So someone can't -- it's not reasonable if I pull my
19 hand out my pocket and someone shoots me, that's not a
20 reasonable belief. But when you're in your bed asleep and
21 you crashing and banging and fighting and you know your
22 roommates are gone, that is, I would submit, a reasonable
23 belief. And he's testified to that. He just has to do
24 what an ordinary man of firmness and courage would have
25 done in the same circumstances.

1 Additionally, the fourth element of self-defense is a
2 duty to retreat. Even that is diminished if retreating
3 would have put you in more danger, but there is no duty to
4 retreat in your own house. Classic defense application of
5 case law says there is no duty to repeat. I think for
6 both of these gentlemen, he's established it under the
7 common law self-defense. I don't think it has fault under
8 a statutory analysis because it doesn't fail any of those
9 elements.

10 Now, the question is does he get the presumption of
11 imminent danger under section (a) under defense of
12 habitation analysis regarding Mr. Griffin? I would say
13 yes. Now, I think he established a reasonable belief that
14 he's about to be harmed, but he also gets that presumption
15 because Mr. Griffin doesn't live there. He wasn't
16 supposed to be there. He's clearly having a forcible,
17 violent fight to the death with one of the occupants of
18 the home. So, certainly, Mr. Barnes would be entitled to
19 enjoy that presumption.

20 You know, the case law says you don't have -- the
21 courts are not required to just take Mr. Barnes' word for
22 it. Your Honor has heard his word from his own statement
23 that Investigator Gilliam wrote and you've heard his word
24 in various ways through impeachment evidence and various
25 recordings. But there's a multitude of other evidence

1 that corroborates his word.

2 We know from his phone analysis that his phone was
3 not moving until just before the incident. Chris Watkins
4 testified that it was consistent with him being asleep
5 till just before the incident as documented. And then
6 there's motion with his phone.

7 So the State has tried to insinuate through witness
8 Samuel Thomas that Officer Moore, even though it's not in
9 the report and even though she doesn't have the body cam
10 and even though it's not in any notes told Investigator
11 Gilliam that she recalls Sam Thomas saying I think they
12 were up laughing and giggling. Well, that's been
13 completely debunked because Sam Thomas says no, I never
14 said that. No, I never talked to Officer Moore. And we
15 know he talks to Emit Gilliam right away and says one was
16 about to go to work and one was in his bed. He's not
17 awake. If he were awake as the State might try to
18 suggest, I guess you could say well, if you know that
19 they're there, well, that's not reasonable. There's a
20 dirt of evidence regarding that. There just isn't
21 anything there in the record.

22 We talked a lot about the wounds in this case because
23 I think they're significant and that we appear to have a
24 missing fun. The reason why the defense has banged that
25 drum is because Mr. Griffin, who seems to have a conflict

1 with Mr. Dash over a missing gun, there's evidence -- I
2 asked Investigator Gilliam pursuant to his own mother is
3 known to carry a gun. He was on bond at the time for a
4 gun-related offense.

5 So I think it stands to reason that he could have
6 been armed entering that apartment that day when he got
7 into that fatal encounter. We've got too many gunshots.
8 We've got 13 distinct wounds, seven shell casings and
9 eight projectiles.

10 It's a very important fact that a projectile that is
11 inconclusive was contained inside Mr. Dash's brain. And
12 that's important because if Griffin were armed in coming
13 over there and getting into a fatal altercation with Mr.
14 Dash, it would make sense that the gun that wasn't Mr.
15 Barnes' gun, if it was a gun possessed by Mr. Dash, it
16 would be a different projectile in the gun possessed by
17 Mr. Griffin, it would make sense that the missing
18 unmatched bullet would be recovered from Mr. Dash's head.
19 He had two opposing bullet wounds in his head that don't
20 have exit wounds, Your Honor. One is from the right side.
21 One is from the left side. Dr. Monroe said each one of
22 those would have been immediately fatal and immediately
23 incapacitating.

24 Number one, there is no evidence to suggest that Mr.
25 Barnes, Tony Barnes came running out shooting. How would

1 he get one wound on the left and one wound on the right?
2 No. There's an inconclusive bullet in that head that
3 belongs to another gun. Paul Greer said could have been a
4 revolver. Could have been a 38 Special. Could have been
5 a 357 Magnum. It's not on the scene. And you know from
6 trying cases, but you also heard it from the expert today,
7 that is not uncommon.

8 The State will probably try to say yeah, Mr. Barnes
9 came out blazing with two guns. Well, why would he give
10 one gun away and not the other? That makes no sense.
11 That makes no sense.

12 Fundamentally, Your Honor, we have established by a
13 preponderance of the evidence that he did not bring about
14 this difficulty, that he acted as a reasonable man would
15 believing he's about to be killed in his own bed. He did
16 not believe his roommates were there.

17 He was allowed to act on appearances based on
18 everything that was going on in his living room. He's not
19 required to make a refined assessment. He had no duty to
20 retreat. Both of these classes are clearly proven by
21 common law self-defense and immunity.

22 Additional, as to Mr. Griffin, he's entitled to the
23 presumption under section (a) of imminent fear and death.
24 We don't even need that presumption because it's already
25 proven, but he is entitled as to the unexpected and

1 violent entry by Mr. Griffin as he's fighting Mr. Dash.

2 I do hope that you read the case law. I think it
3 pretty clearly speaks for itself, but there isn't really
4 evidence to the contrary in this case other than what the
5 defense has proven. No other motives, no nothing. Thank
6 you.

7 THE COURT: Thank you.

8 All right. Yes, sir.

9 MR. SCOTT: Your Honor, I feel like we may have been
10 in two different hearings. I just heard about testimony
11 of an unexpected and violent entry by Mr. Griffin. I
12 challenge you to recall any time that was testified to.
13 On the contrary, it was testified there were no signs of
14 forced entry.

15 Certainly, they elicited testimony there was no
16 damage done to the exterior of the door. There was some
17 question whether it was metal or wooden. Certainly, and
18 you can see, there was no evidence of forced entry.

19 You just heard there was testimony Dash -- either one
20 of his head shots was immediately fatal. We know that's
21 not true because even Kevin Archie said Eric Griffin was
22 passed on by the time he got there. Antonio Dash was
23 still drawing breath.

24 There has been no evidence that Mr. Barnes was
25 asleep. The closest we got was Mr. Sam Thomas saying the

1 door was closed. He assumed he was asleep. Other than
2 that, we have a phone that doesn't show movement until
3 8:49. We have the 9-1-1 call somewhere around 8:56, 8:57
4 eight minutes before then, he's already started to move
5 around.

6 Judge, the -- first, the defendant must be without
7 fault in bringing on the difficulty. There's been no
8 testimony from anyone other than Antonio Barnes who was
9 armed with a firearm on that occasion. That was the only
10 testimony you heard.

11 You heard some speculation, wild speculation that
12 there may have been another gun. Even their crime scene
13 expert says we can't always account for all the casings.
14 Even their crime scene expert said that gun that
15 Mr. Barnes had was capable of firing 18 bullets.

16 Even their own experts conceded it was either five or
17 six shot wounds between the two of them that had exit
18 wounds. Everybody, including the pathologist and their
19 crime scene expert testified that it was possible some of
20 the bullets passed through one of the decedents and into
21 the other.

22 Second, defendant must have actually believed he was
23 in imminent danger of losing his life or sustaining
24 serious bodily injury. There's been no testimony that
25 anybody offered violence to Mr. Antonio Barnes. It has

1 been none. No evidence that anybody made any movements
2 towards him. No evidence that anybody presented any
3 weapons to him. They themselves pointed out he didn't
4 have a wound on him.

5 Third, if his defense is based upon his belief of
6 imminent danger, a reasonably prudent man of ordinary
7 firmness and courage would entertain the same belief.
8 That, to me, is what this whole case kind of boils down
9 to. This idea of reasonableness. In the light most
10 favorable to the defense, the defendant would have had to
11 exit his room -- and the State had some evidence that
12 there was a makeshift bed beside Mr. Barnes indicated the
13 possibility that Mr. Dash had slept beside Mr. Barnes.
14 However, they had a witness that testified no, Mr. Dash
15 slept in the kind of closet right next to Mr. Barnes'
16 room.

17 So Mr. Barnes would have had to stand up and realized
18 his roommate was neither beside him on the makeshift bed.
19 He wasn't in the closet right outside of his room. He
20 would have then had to proceed down the hallway and he
21 would have had to pass the open door of Mr. Sam Thomas and
22 realized he wasn't his room either. And then he would
23 have seen two black males in the defense's assertion of
24 fighting on the floor, on the ground was the testimony.
25 Knowing he had two roommates who are not in their rooms

1 that he would have had to pass, tussling on the floor,
2 would a reasonable person fire into these two individuals?
3 Then on top of that, Your Honor, we had testimony that
4 when he shot Mr. Dash, he was no farther than
5 three-and-a-half feet away. Judge, he pressed the muzzle
6 of that nine millimeter up against the base of his buddy,
7 Eric Griffin, before he fired that fatal shot.

8 We heard their expert, crime scene expert talk about
9 the blinds were open. There's pictures of the light
10 pouring in. A reasonable person, is that the first thing
11 you do? You've got two roommates.

12 You walk into the living room, you see two
13 individuals that match the physical characteristics of
14 your roommate, you see two individuals wrestling and
15 fighting on the floor.

16 Would a reasonable person shoot these people multiple
17 times, including pressing a pistol against their head and
18 firing? I can't -- and the defendant had no probable
19 means of avoiding the danger. It hasn't been established
20 how he was in any danger. The defense's theory is these
21 two individuals are fighting with each other. There's no
22 mention whatsoever that he was ever put in any danger.

23 This 440, subsection (a), no forceable and unlawful
24 entry. There has been no evidence of any forceable or
25 unlawful entry. The defendant himself indicated Eric

1 Griffin was his friend. He indicated Eric Griffin had
2 just been there two days prior. Samuel Thomas said they
3 lock their doors. Certainly, somebody that kicked in a
4 locked door, there would have been some evidence of that.
5 So there is no evidence whatsoever of forceable and
6 unlawful entry.

7 Again, as Mr. Shealey said, subsection (a) doesn't
8 apply when deadly force was used against someone who has a
9 right to be in the dwelling or a lawful resident. That's
10 Mr. Dash. And Mr. Griffin is an invitee over there. He
11 is normally at the house.

12 He was there two days prior. They elicited testimony
13 that Shekila Smalls said that she saw Eric and Dash
14 sitting together prior to the shooting. According to that
15 statement, she herself saw Mr. Barnes peek at them from
16 the room once she entered the residence.

17 Subsection (a) doesn't apply when the person who uses
18 deadly force is using the dwelling to further unlawful
19 activity. By his own admission, he thought he was
20 getting -- there was a home invasion. He says, I'm not
21 going to lie to you. I'm a weed dealer. I thought
22 somebody was breaking in. By his own admission and the
23 evidence located in the apartment and testimony, statement
24 by Ms. Small's they elicited, marijuana sales are what
25 that gun was used for.

1 Subsection (c) -- Your Honor, I'm moving on quickly
2 here. Subsection (c), a person who is not engaged in
3 unlawful activity and who is attacked where he has a right
4 to be has no duty to retreat and has the right to stand
5 his ground and meet force with force. We heard absolutely
6 no testimony that Mr. Barnes was attacked. No evidence
7 that anybody lunged towards him, made any movements
8 towards him. No evidence that anybody else had any
9 weapons.

10 And attacked where he has the right to be. The
11 defendant has the right to be in his own apartment, of
12 course. By his own admission, was he ever attacked? He
13 said people were fighting on the ground and he shot them.
14 No evidence either Griffin or Dash attacked him.

15 And stand your ground, meet force with force. The
16 defendant, again, was never attacked, no force was ever
17 used against him, so he can't satisfy this one. No gun
18 was ever recovered. A phantom gun, which is the new
19 theory by the defense. We recovered a gun that he used
20 that matched the casings, but no other gun was recovered.

21 They say his statements have been consistent. Their
22 witness, Kevin Archie, said he gave three separate
23 accounts of what happened to him right after the event.
24 It was, I was asleep. I don't know what happened. Then
25 it was, I thought I was getting robbed. Then it was, they

1 were fighting.

2 Your Honor, I submit to you, there was a lot of
3 objecting going on yesterday. Probably more than I've
4 done in 17 years of prosecuting, but what you heard was
5 from the defense inadmissible hearsay. There was never
6 any exception to the hearsay rule.

7 They were offering statements or portions of his
8 statement to Your Honor to make their case. I would ask
9 what is the hearsay exception? Excited utterance. Well,
10 it wasn't an excited utterance or admission by party
11 opponent. That's not their party opponent. That's their
12 client.

13 So hearsay in and of itself, the nature of hearsay is
14 unreliable. That's why we don't allow it. The testimony
15 they've offered in the manner of hearsay, which I objected
16 to I don't know how many times, is unreliable on its face.

17 Your Honor, I just -- the reasonable aspect of this
18 thing -- you know, even Samuel Thomas said he didn't know
19 I was gone. I didn't tell me anybody I was going to the
20 doctor. I was going for a checkup of a sensitive nature.
21 You know, Mr. Dash is recognizable as his roommate.

22 When he walks into the living room, sees two black
23 males tussling on the floor, would a reasonable person
24 think to fire at these people multiple times, including at
25 close range and, one instance, contact? It just

1 doesn't -- I think they had kind of milled it a
2 mistake-of-fact-type of defense into an immunity-type
3 defense, but it occurs to me they're trying to wedge a
4 square peg into a round hole. And this is not a stand
5 your ground case. We think he fails self-defense. We
6 think he fails subsection (a) and subsection (c).

7 THE COURT: All right. Thank you. As I stated
8 earlier, you all can present proposed orders if you like
9 within the next ten days. Obviously, if anyone needs an
10 extension, just e-mail me.

11 LUKE SHEALEY: Including weekends on that or do you
12 mean business days?

13 THE COURT: Which one would you like, Mr. Shealey?

14 LUKE SHEALEY: Business days, please, Your Honor.

15 THE COURT: Business days. All right. That's fine.

16 MS. YOUNG: Thank you, Your Honor.

17 THE COURT: All right. Thank you.

18 (Whereupon, the proceedings were concluded.)
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25

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Warrant Numbers:

The State of South Carolina,

2019A4021600441, 2019A4021600442,
2019A4021600444

Indictment Numbers:

2021GS4001292, 2021GS4001293,
2021GS4001294

Antonio Barnes,)
)
)
 _____ Defendant.)

NOTICE OF PROPOSED ORDER FOR IMMUNITY

TO: THE HONORABLE DEANDREA BENJAMIN

COMES NOW, Mr. Barnes, through undersigned counsel and notifies the court that the attached proposed order has been submitted and filed as ordered at the conclusion of the immunity hearing held on March 30 and 31, 2022.

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Columbia, South Carolina
This 18th day of April, 2022

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

The State of South Carolina)

vs.)

Antonio Barnes,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment Numbers: 2021GS4001292,
2021GS4001293,
2021GS4001294

PROPOSED ORDER GRANTING IMMUNITY

This matter came before The Honorable DeAndrea Gist Benjamin on March 30 and 31, 2022, pursuant to Mr. Barnes' motion asserting statutory immunity from prosecution, pursuant to Section 16-11-450 of the S.C. Code Ann. (otherwise known as the Protection of Persons and Property Act, S.C. Code Ann. § 16-11-410 *et seq.* – hereinafter referred to as the "Act"). Mr. Barnes is charged with two counts of murder and possession of a weapon during a violent crime, wherein it is alleged that, on February 7, 2019 Mr. Barnes shot and killed Antonio Dash and Eric Griffin. Mr. Barnes admitted to shooting both Mr. Dash and Mr. Griffin but asserts that he is absolved from prosecution pursuant to the immunity granted in the Act. Present at the hearing were Assistant Solicitors Dale Scott, Nick Fowler and Paul Walton. Mr. Barnes was present and represented by Laura Young, Luke Shealey, Brian Shealey and Caroline Latimer. For the reasons set forth below, I hereby GRANT Mr. Barnes' motion and hold that he is immune from prosecution under the Act.

I. FINDINGS OF FACT

Based on the testimony before the Court, together with the exhibits produced at the evidentiary hearing, the Court makes the following findings of fact:

1. I find that the Court had the opportunity to hear and view statements Antonio Barnes made to law enforcement shortly after the shooting, and personally observe him during the course of the hearing. Taking this into consideration, and the fact that other testimony and exhibits corroborate and are consistent with his statements, I find that Mr. Barnes' statements are credible and worthy of belief.
2. I find that on February 7, 2019 Mr. Barnes resided at 511 Alcott Dr., Apartment 14-G in Columbia, South Carolina. He lived there with two others, Samuel Thomas and Antonio Dash.¹
3. I find that on the morning of February 7, 2019, Eric Griffin, an acquaintance of the residents, asked his girlfriend, Ieasha Washington, and his mother, Wanda Griffin, to stop by 511 Alcott Dr., Apt 14-G. They agreed to do so and Mr. Griffin arrived at the apartment unannounced sometime between 8:50 and 8:57 a.m. that morning.²
4. I find that Mr. Barnes was in his room, still in bed, when Mr. Griffin arrived at the apartment. Samuel Thomas testified that he had not seen or spoken with Mr. Barnes that morning before leaving the apartment at 8:15 a.m. to go to the doctor.³ Testimony further revealed that Mr. Barnes' phone was not in use or moved that morning until 8:49 a.m. and Mr. Barnes stated that he was awoken that morning shortly before the shooting to a loud noise that he described as a "boom."⁴

¹ At the evidentiary hearing, it was uncontested that Mr. Barnes and Mr. Thomas were named as tenants on the lease and they allowed Mr. Dash to reside in the apartment as well.

² According to the testimony of Investigator Gilliam, Ieasha Washington and Wanda Griffin reported waiting in the car for Mr. Griffin for five to seven minutes before hearing gunshots and becoming concerned.

³ Investigator Gilliam asserted that he believed Mr. Barnes' called Samuel Thomas, and that after his phone call Mr. Thomas changed his story to be consistent with Mr. Barnes' account; however, Investigator Gilliam was impeached with body camera evidence which showed Mr. Thomas advising Inv. Gilliam himself, prior to Barnes' call, that when he left the apartment "one was about to go to work, and one was in his bed."

⁴ Investigator Gilliam testified that Shakihla Smalls told law enforcement on March 20, 2022 (for the first time) that she purchased marijuana from Mr. Dash the morning before he was shot and saw Mr. Griffin there, as well as Mr. Barnes peek his head out of his bedroom door shortly before the gunshots. However, this court does not find Ms. Washington's new account credible. Surveillance footage from the morning of the incident shows Ms. Smalls outside of Building 17 at 8:45

5. I find that it was the routine within the apartment for Mr. Barnes to be the only one present in the morning, as the other roommates would leave to go to work. Samuel Thomas testified that he was the only occupant with a car and that he almost always drove Antonio Dash to work in the mornings. He testified on the morning of the shooting, Mr. Dash woke him up and told him he had another ride to work and didn't need Mr. Thomas to take him. Accordingly, Mr. Thomas decided to go to the doctor.
6. I find that Mr. Barnes, believing his roommates not to be at home, listening for familiar voices and hearing none, continued to hear loud noises in his living room and reasonably concluded that there was an intruder (or intruders) in his home. It is clear from his statements to law enforcement that he lived in a bad neighborhood, and that he reasonably believed that intruders were in his home and that he would be robbed and killed if they got to his bedroom. After hearing his television crash to the floor, Mr. Barnes picked up his gun, walked down the hallway and fired his weapon in the direction of the person (people) he believed to be invading his home.⁵
7. I find that upon learning he shot Mr. Dash and Mr. Griffin, Mr. Barnes called 911 at 8:56 a.m. Mr. Barnes stayed on scene and identified himself to responding officers. He made several consistent statements to multiple people on scene, including Kevin Archie, Ieasha Washington and Wanda Griffin. He stated that he had been asleep, that

a.m. and then running with two men in the direction of Building 14 for the first time at 8:57 a.m. This footage is consistent with her original account to investigators that she provided the day of the incident, and Investigator Gilliam identifies her in the video footage. Ms. Smalls cannot have been at 14-G to see Mr. Griffin and Mr. Barnes before the shooting because she is on camera at her apartment at Building 17. Furthermore Investigator Gilliam testified that Ms. Washington lied to police during her interviews, highlighting her unreliability.

⁵ Photographs presented at the hearing confirm that there was damage consistent with Mr. Barnes' statements about hearing loud noises from his living room – the television was broken on the floor, the table was knocked over and missing a leg, and there was a large hole in the wall. Kevin Archie testified that an inspection had been completed at the apartment the week before and no damage was observed. Samuel Thomas further testified that the television and damaged apartment were not like that when he left at 8:15 a.m. that morning. There was also testimony at the hearing about a potential conflict between Mr. Dash and Mr. Griffin over a stolen gun, indicating that the two may have had reason to engage in an altercation.

he believed he was being “robbed,” and that Mr. Dash and Mr. Griffin must have been fighting.⁶

8. The Defense presented numerous expert witnesses in the fields of pathology, firearms, DNA, cell phone forensic analysis and crime scene investigation which corroborated Mr. Barnes’ version of events. It is clear that there was a violent altercation occurring between Mr. Dash and Mr. Griffin in the living room of the apartment, and it is also clear that forensic evidence suggests the possibility that another firearm was involved in that confrontation.⁷ Investigator Gilliam confirmed that Mr. Griffin was on bond for gun related crimes at the time of the shooting, and his mother, Wanda Griffin, confirmed during the investigation that Mr. Griffin is known to carry a gun; however, she asserted that she did not see him armed that day.
9. I find that Mr. Barnes cooperated with law enforcement, immediately identifying the woman who had taken his gun from the apartment after the shooting and providing officers the location of her apartment building. Mr. Barnes provided a video recorded statement and told multiple officers what happened.
10. I find that no evidence of motive or malice was presented at the hearing and that Mr. Barnes expressed remorse for the killings of his friends.⁸

⁶ In addition to the damage to the apartment, evidence at the scene and testimony from crime scene expert, Bob Tressel, confirm that that Mr. Dash and Mr. Griffin were engaged in a fight. They each had the other’s DNA under their fingernails, blood droplets were on the wall near the knocked over television, there was a hole in the wall consistent with a body impact, they were found on top of each other, Mr. Griffin’s earring was ripped out, and Mr. Dash had blunt force trauma injuries to his head.

⁷ Pathologist Dr. Darren Monroe testified that he identified 13 distinct bullet wounds, with seven to Mr. Dash and six to Mr. Griffin, and that at best two of these could be wounds that passed through one victim and into the other. Only seven shell casings were found on scene attributable to Mr. Barnes’ gun. SLED Firearms expert Paul Green was able to identify up to eight distinct projectiles and confirmed that items 22 and 17 were inconclusive when compared to Mr. Barnes’ gun. He agreed that they could have been fired by another gun, and that gun could have been a revolver which would not leave shell casings. Crime scene expert Bob Tressel corroborated the other experts in identifying eight projectiles, and with significantly more bullet wounds than shell casings, concluded that a second gun likely was involved in this conflict and it could have been a revolver.

⁸ At the hearing Investigator Gilliam testified that he believed Mr. Barnes’ remorse was disingenuous, stating that it was

II. CONCLUSIONS OF LAW

A. **Standard of Review**

As our Supreme Court noted in State v. Jones, 416 S.C. 283, 296, 786 S.E.2d 132, 139 (2016), “the Legislature clearly enunciated its intent and reasons for promulgating the Act in section 16-11-420.”

The complete text of S.C. Code Ann. § 16-11-420 provides:

(A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a **person’s home is his castle** and to extend the doctrine to include an occupied vehicle and the person’s place of business.

(B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others **from intruders and attackers** without fear of prosecution or civil action for acting in defense of themselves and others.

(C) **The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.**

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to **remain unmolested and safe within their homes**, businesses, and vehicles.

(E) The General Assembly finds that **no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.**

(emphasis added).

In order to accomplish the objectives set forth in section 16-11-420, the Legislature enacted section 16-11-440. Jones, 416 S.C. at 296, 786 S.E.2d at 139. This section “identifies the circumstances for which a person may invoke the protection of the Act.” Id. Specifically, subsection

(A) of section 16-11-440 provides:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

because Mr. Barnes didn’t want to go to prison. However, Mr. Barnes’ video recorded statement revealed that he broke down sobbing while on the phone with his grandmother in the interrogation room and expressed that he did not mean to kill his friends.

- (1) against whom the deadly force is used *is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence*, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

Subsection (c) of section 16-11-440 provides:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground **and meet force with force, including deadly force**, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

(emphasis added).

The General Assembly created a statute providing for immunity from prosecution to “[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law.” S.C. Code Ann. § 16-11-450(A). The phrase “another applicable provision of law” found within the Act “includes the common law of self-defense.” State v. Glenn, 429 S.C. 108, 117, 838 S.E.2d 491, 496 (2019). “Another applicable provision of law” would also include the analogous common law defense of defense of habitation. “A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard.” State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). Thus, a person who proves by a preponderance of the evidence that he satisfied (1) the elements of common law self-defense *or* (2) the elements of the Act is entitled to immunity from prosecution.

According to the Supreme Court, “a trial court should first consider whether the defendant has proved the elements of self-defense by a preponderance of the evidence.” Glenn, 429 S.C. at 118, 838 S.E.2d at 496. “If the defendant has failed to meet the elements of reasonable fear or the duty to retreat, the court should then determine whether section 16-11-440(A) or (C) is applicable.” Id. Thus, “in cases where the defendant has not proved the duty to retreat element by a preponderance of the evidence, the

court should then consider whether section 16-11-440(C) is applicable because the provision was enacted to extend the protections of the Castle Doctrine to other places where he has a right to be.” Id. at 118-119, 838 S.E.2d at 496. “Where this section is applicable, it replaces the duty to retreat element required to establish self-defense.” Id. at 119, 838 S.E.2d at 497. “In determining whether a defendant satisfies section 16-11-440(C), the circuit court must analyze whether, at the time of the incident, he was engaged in an unlawful activity and was attacked in another place where he had a right to be.” Id. Pursuant to Glenn, if it is determined that the defendant was not in a place he had a right to be, or was acting unlawfully, analysis must be conducted to determine if either of these two issues is the proximate cause of the shooting. Id. at 123.

Additionally, the case law makes clear that witness testimony is likely to differ concerning issues of fact during the course of an immunity hearing. This does not in and of itself create a “quintessential jury question” such that immunity should be denied. Rather, it is more the norm than the exception that both parties will present evidence that is factually incompatible with each other, and it is the Court’s duty to sit as fact finder and reach a conclusion regarding immunity under the Act. See State v. Cervantes-Pavon, 426 S.C. 442, 451 (2019).

B. Barnes is immune under the common law Defense of Habitation as to Griffin.

Our common law has long recognized the defense of habitation as analogous, yet distinct to self-defense, and that for the defense of habitation to apply, a defendant need only establish that a trespass has occurred and that his chosen means of ejection were reasonable under the circumstances. Bradley, 126 S.C. at 533, 120 S.E. at 242. Stated differently, unlike the defense of self-defense, the defense of habitation does not require that a defendant reasonably believe that he (or his property) was in imminent danger sustaining serious injury or damage. Instead, the defense of habitation provides that where one attempts to force himself into another's dwelling, the law permits an owner to use reasonable force to expel the trespasser. Although our precedents properly recognize that

self-defense and habitation are analogous, *see, e.g., State v. Sullivan*, 345 S.C. 169, 173, 547 S.E.2d 183, 185 (2001), the defenses are not identical. For defense of habitation to apply it is also not necessary to show that the trespasser entered by force:

A man who attempts to force himself into another's dwelling, or who, *being in the dwelling by invitation or license refuses to leave when the owner makes that demand, is a trespasser, and the law permits the owner to use as much force, even to the taking of his life, as may be reasonably necessary to prevent the obtrusion or to accomplish the expulsion.*

Bradley, at 533 (emphasis added). The evidence is clear that Mr. Barnes was awakened the day of the incident to a loud “boom,” followed by raucous sounds of commotion and fighting. He distinctly hears his television crash, and it was his firm belief that he was being home invaded and would be killed in his bed if the intruders made it to his bedroom. Although Mr. Griffin was a friend of Mr. Barnes and had been invited to the home recently, there is no evidence to suggest he was invited or expected to come over the morning of the incident. It also appears from Mr. Barnes’ statement to police, as well as information provided by Ieasha Washington, that there was a dispute between Mr. Griffin and Mr. Dash regarding gun stolen by Mr. Griffin. It is uncertain whether Mr. Griffin used force at the door to gain entry, or whether he was initially permitted entry by Mr. Dash prior to Mr. Dash’s violent confrontation with Mr. Griffin. Either scenario is plausible given the loud “boom” heard by Mr. Barnes, and either would also justify defensive action. The only evidence of any motive is provided by the defense, as it relates to the stolen gun allegation, and if this is true it is unlikely that Mr. Griffin would have been welcomed into the home by Mr. Dash. Based on the evidence of the violent struggle in the living room of the home, it is axiomatic that Mr. Dash was in the process of trying to eject Mr. Griffin from the home and viewed him as an unwelcomed intruder. Under the common law defense of habitation, Mr. Barnes would be justified in using deadly force to end the unwarranted intrusion and expel the trespasser. Although Mr. Griffin and Mr. Dash’s identities were unknown to Mr. Barnes at the time he sought to end the intrusion into his home, he would be immune from prosecution under

common law defense of habitation as it relates to Mr. Griffin, as it is clear that he was engaged in a violent attack against the home and one of its occupants, Mr. Dash. Defense of habitation would not be applicable to Mr. Dash as he was a roommate and had an equal right to be in the home under common law and the Act.

C. Barnes is immune under common law self defense as to Mr. Griffin and Mr. Dash

To establish self-defense, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty; (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief, or if the defendant was actually in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life; and (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in the particular instance. State v. Hendrix, 270 S.C. 653, 657-658, 244 S.E.2d 503, 505-506 (1978); see also State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

An individual has the right to act on appearances. State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000); see also State v. Jackson, 277 S.C. 271, 87 S.E.2d 681 (1955). One may act on appearances. He may be mistaken. The law does not hold him to a *refined assessment* of the danger, provided, of course, he acted as a person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of danger. *He doesn't have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.* State v. Rash, 182 S.C. 42, 50 (1936),

Starnes at 322. (emphasis added). Furthermore, “when a person is justified in firing the first shot, he is justified in continuing to shoot until it is apparent that the danger to his life and body has ceased.” Hendrix, 270 S.C. at 661, 244 S.E.2d at 507. In Douglas v. State, 332 S.C. 67, 72-73, 504 S.E.2d 307, 309-10 (1998), the Supreme Court noted the judge had charged that if the defendant was justified in firing the first shot he was justified in continuing to shoot until any danger to his life and body had ceased. Additionally, a homeowner has no duty to retreat within his own home when invoking the law of self-defense, and this rule applies equally to an intruder or against a co-occupant. State v. Grantham, 224 S.C. 41 at 44, 77 S.E. 2d 291 at 293.

The instant case is similar to the factual and legal findings from State v. Scott, 424 S.C. 463, 819 S.E. 2d 116 (2018), where a homeowner was granted immunity while defending his property under the common law of self-defense, which resulted in him killing an uninvolved party mistakenly. Scott used lethal force while shooting from the curtilage of his home in what he reasonably believed to be a threat against his home and his family, and even though he was mistaken regarding the involvement of the decedent, his actions were reasonable under the circumstances and therefore justified. In Chief Justice Few’s opinion he highlights comments made by Justice James during oral argument, and they are particularly instructive as it applies to Mr. Barnes’ case. Justice James asked the State, “Does [Scott] have to interview, I’m not being facetious, does he have to interview the perpetrators and ask ‘which one of you fired that shot so I can fire my shot accordingly?’” The answer is, “No,” because, “A person has the right to act on appearances, even if the person’s belief is ultimately mistaken.” Dickey, 394 S.C. at 501, 716 S.E.2d at 102 (citing State v. Fuller, 297 S.C. 440, 443-44, 377 S.E.2d 328, 331 (1989)). The circuit court understood this, and found based on the evidence of what Scott knew and observed in the heat of that moment, “[Scott] reasonably believed [Niles] was engaged in an unlawful and forcible act against his home.” Scott at 472.

Barnes, like Scott, was acting lawfully at the time of the incident and cannot be said to have brought about the difficulty. He was asleep in his bed when he heard a loud “boom” that was followed by further commotion and his television crashing. This is corroborated by his statements, the physical evidence, and his own cell phone activity. Like Scott, Mr. Barnes had a reasonable belief that he was under threat of imminent death or great bodily injury based on the sounds coming from his living room, combined with his belief that he was home alone with his roommates at work. He laid in bed for a couple of minutes and listened for his roommates and heard no familiar voices. He reasonably believed, based on the nature of his neighborhood, that he was being home invaded and if he allowed the intruders to get back to his room he would be “smoked” or killed. Mr. Barnes was entitled to arm himself with his lawfully owned handgun and take action to defend himself against what he reasonably believed to be a threat to his person and home. He traveled the short distance from his bedroom to the hall and shot at the threat until the threat was extinguished. Like Scott, pursuant to the common law, he had no duty to retreat on his own premises. Like Scott, he was ultimately mistaken regarding the intentions of at least one of the decedents, that being his roommate and best friend Dash; however, it is unclear what the intentions of Mr. Griffin were that day towards Mr. Barnes, if any. The evidence shows that Mr. Barnes called 911 for help, and throughout the day gave consistently shocked and remorseful statements concerning the shooting of his friends. Mr. Griffin and Mr. Dash were engaged in what the evidence shows was a fight to the death, with the only apparent motive being that of a stolen gun allegation, and it was that fight that caused Mr. Barnes to take action to preserve his own life against what he reasonably perceived to be a serious threat by unknown intruders.

D. Barnes would also be immune under 16-11-440(A) for Mr. Griffin

The above analysis confirms that Barnes is entitled to immunity pursuant to common law principles of self-defense and defense of habitation; however, for the purposes of argument, even if Mr. Barnes’ common law defense failed in one or more respects, he would then be entitled to seek

immunity by looking to the Act in either 16-11-440 (A) or (C). Glenn at 118. Section 16-11-440(A) is applicable in this case based on the evidence, and it provides the Act's strongest protections. 16-11-440(A) provides:

A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

- (1) against whom the deadly force is used *is in the process of unlawfully and forcefully entering*, or has unlawfully and forcibly entered a dwelling, residence, *or occupied vehicle*, or if he removes or *is attempting to remove another person against his will from* the dwelling, residence, or *occupied vehicle*; and
- (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(Emphasis added). The evidence shows that Mr. Griffin had unlawfully and forcefully entered the residence, and that is supported by the loud "bang" heard by Mr. Barnes, as well as the violent and damaged state of the living room. Mr. Griffin and Mr. Dash were engaged in a violent fight to the death, as evidenced by the body imprint in the wall, blunt force trauma to Mr. Dash's head, torn earrings and DNA under each other's fingernails. Also, as stated supra, the forensic and ballistic evidence suggests that Mr. Griffin was likely armed and shot Mr. Dash during their struggle. This unlawful and forceful entry into Mr. Barnes' residence would entitle him to the presumption of reasonable fear of imminent peril of death or great bodily injury, but as stated above, this is not just a reasonable fear but also one that is proven in fact. State v. Scott at 472. State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011). Mr. Barnes has established immunity under 16-11-440(A) by a preponderance of the evidence against Mr. Griffin; however, he would not be entitled to this under the Act as to Mr. Dash given he is a roommate.

E. Immunity is Established Under 16-11-440(C)

Although immunity has been established by a preponderance of the evidence under common law principles of self-defense and defense of habitation, as well as pursuant to the Act under 16-11-440 (A) regarding Mr. Griffin, for the sake of argument and in keeping with the holding from Glenn, if 16-11-440 (A) is not applicable regarding Mr. Dash then Mr. Barnes has established immunity under 16-11-440 (C). This section states:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground **and meet force with force, including deadly force**, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

(emphasis added). This portion of the Act specifically does away with any common law duty to retreat⁹, so long as an individual can prove he was attacked while acting lawfully and in a place he had a right to be. The evidence shows that Mr. Barnes was in his own bed, in his lawfully rented apartment, and asleep when he heard a loud bang and commotion that he reasonably believed to be home invaders. The evidence reveals through his statements to police, as well as by his phone records, that he was not awake that morning and he believed, as was the custom of the apartment, that his roommates were at work per usual that day. After laying in bed for a couple of minutes listening for any familiar voices, once he heard his television crash, he made the decision to meet force for force and confront his would be assailants. He met what he reasonably believed to be home invaders, using deadly force, as is allowed under the Act. Only after would he realize who he had shot, at which time he called 911 per phone records and was

⁹ However, there is no duty to retreat in one's own home. State v. Grantham, 224 S.C. 41 at 44, 77 S.E. 2d 291 at 293.

shortly thereafter confronted by Mr. Griffin's shocked and grieving mother and fiancé.

There is evidence in the record based on Mr. Barnes' own statements, as well as pursuant to the search warrant of the apartment, that he was in possession of an unknown quantity of marijuana and sold marijuana. However, it is clear from the evidence submitted by both the state and the defense during the immunity hearing that possession or sale of marijuana had nothing to do with what transpired between the parties during this shooting event. Investigator Gilliam repeatedly stated that they were "all friends" and he had not identified a motive. The defense presented evidence of animus between Mr. Griffin and Mr. Dash relating to a stolen gun allegation; however, that would appear to be an isolated incident that has nothing to do with the possession or sale of marijuana. As is required by State v. Glenn, a proximate cause analysis must be conducted regarding any failure of the elements of self-defense. Although Mr. Barnes could be said to be acting unlawfully in his possession of marijuana, there is no evidence in the record to suggest that unlawfulness had any part to play in what occurred in the shooting of Mr. Griffin and Mr. Dash, or in the reasons why they were fighting in the first place. Accordingly, as in Glenn, possession or prior sales of marijuana is not the proximate cause of this incident and would not preclude him from otherwise establishing immunity in this case.

II. CONCLUSION

The Court finds that Mr. Barnes is immune from prosecution for the shootings of Mr. Griffin and Mr. Dash on February 7th, 2019 that ultimately resulted in their deaths. Mr. Barnes' actions are immune from prosecution under the Act, as interpreted by State v. Glenn, and Mr. Barnes has proven his immunity by a preponderance of the evidence pursuant to both the common law principles of defense of habitation and self-defense as well as the text of the Act in both 16-11-440(A) and (c). Accordingly, his criminal charges are dismissed.

IT IS SO ORDERED.

The Honorable DeAndrea Gist Benjamin
Chief Administrative Judge, General Sessions
Fifth Judicial Circuit

This _____ day of _____, 2022.

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
Warrant Numbers: 2019A4021600441-42, 44

The State of South Carolina,

vs.

ORDER

Antonio Barnes,

Defendant.)

Hearing Date: March 30, 2022 – March 31, 2022
Presiding Judge: DeAndrea G. Benjamin
On Behalf of State: Dale Scott, Nick Fowler, and Paul Walton
Defendant’s Attorneys: Laura Young, Brian Shealey, Luke Shealey, Caroline Latimer

INTRODUCTION

THIS MATTER is before the Court pursuant to the Defendant’s Motion asserting Statutory Immunity from Prosecution. The Defendant has been indicted for two counts of Murder and one count of Possession of a Weapon During the Commission of a Violent Crime, in which it is alleged that on or about February 7, 2019, he killed both Antonio Dash (hereinafter “Dash”) and Eric Griffin (hereinafter “Griffin”) with a pistol. The Defendant’s motion is based on the Protection of Persons and Property Act (hereinafter “the Act”), § 16-11-410, et. seq., of the South Carolina Code of Laws. The Defendant admits to shooting and killing both Dash and Griffin, but asserts that his actions were justified, and that he is entitled to immunity from prosecution pursuant to § 16-11-440 and 16-11-450 of the Act.

The Defendant, by and through his attorneys, filed a Motion to Enforce the Protections of § 16-11-440(A), 16-11-440(C), and 16-11-450 (self-defense)¹. The Defendant requested an Order

¹ “Subsection 16-11-450(A) provides that “[a] person who uses deadly force as permitted by ... an[] applicable provision of law is justified in using deadly force and is immune from criminal prosecution.” Self-defense is the classic provision of law that justifies the use of deadly force. It was clearly the Legislature's intent that if a person seeking immunity under subsection 16-11-450(A) could prove the elements of self-defense in an immunity proceeding, immunity must be granted.” State v. Scott, 424 S.C. 463, 473, 819 S.E.2d 116, 120–21 (2018).

of immunity from prosecution under § 16-11-450 of the Act and requested a hearing to determine whether the Act applies to this case. The Act codified the long-standing common law Castle Doctrine, which stands for the principle that a person, in his or her own home or another place where he has a right to be, such as his place of business, and acting without fault, has no duty to retreat from an aggressor. § 16-11-450 of the Act provides that a person who uses deadly force, as permitted by the provisions of §16-11-440, “is justified in using deadly force and is immune from criminal prosecution ... for the use of deadly force.”

The Court presided over the hearing on the Defendant’s Motion, on March 30, 2022 through March 31, 2022. The Defendant and his attorneys were present along with Assistant Solicitor Dale Scott; Assistant Solicitor Nick Fowler; and Assistant Solicitor Paul Walton for the State. The question presented to the Court was whether the Defendant was entitled to immunity under § 16-11-450 of the Act, and specifically, whether such immunity should be granted under subsections §16-11-440(A); §16-11-440(C) and 16-11-450 (self-defense). Defendant has the burden of proof and must prove his right to immunity by a preponderance of the evidence. State v. Duncan, 392 S.C. 404, 411 709 S.E.2d 662, 665 (2011).

FINDINGS OF FACT

In February of 2019, the Defendant lived at an apartment located at 511 Alcott Drive, Columbia, SC 29203—apartment 14G (hereinafter “apartment”). These are the Willow Run Apartments. At the time, the Defendant had two roommates—Samuel Thomas and Antonio Dash. Dash was not listed on the apartment lease agreement, but he had been living with the Defendant and Thomas for approximately one year. Additionally, a man named Eric Griffin was a friend of all three roommates, and it was common for him to visit the three individuals at their apartment

On the morning of February 7, 2019, Eric Griffin visited the apartment where the

Defendant, Samuel Thomas, and Antonio Dash lived. Samuel Thomas was not home at the time, so Griffin was let into the apartment by Dash. Ultimately, a fight ensued between Dash and Griffin. The Defendant—who was in his bedroom—heard the commotion from the fight between Dash and Griffin. He then retrieved a pistol, observed the two men fighting on the ground in the living room, and shot both individuals several times at close range. The Defendant made two recorded statements to law enforcement where he admitted to shooting the two individuals that were on the ground fighting. Both individuals died from their respective gunshot wounds.

APPLICATION OF THE ACT TO THE FACTS

After considering the evidence presented and applying the law of South Carolina, I conclude that the Defendant is not entitled to statutory immunity under the Act.

I. The Defendant is Not Entitled to Statutory Immunity Under § 16-11-440(A) of the Act Because: (1) There Was No Unlawful and Forceful Entry into the Apartment; (2) Dash was a Lawful Resident and Griffin was Social Guest of the Apartment; and (3) The Defendant Used the Residence to Further an Unlawful Activity

§ 16-11-440(A) of the Act, commonly referred to as the “Castle Doctrine”, provides:

- (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
 - (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
 - (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

Additionally, § 16-11-440(B), lists circumstances in which the presumptions of § 16-11-440(A) do not apply. § 16-11-440(B) provides:

- (B) The presumption provided in subsection (A) does not apply if the person:

- (1) against whom the deadly force is used has the right to be or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or
- (2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or
- (3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
- (4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

§ 16-11-430 provides definitions for dwelling and residence as the following:

- (1) “Dwelling” means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.
- (2) “Residence” means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

The primary and cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). “Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Pittman, 373 S.C. at 561, 647 S.E.2d at 161 (citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

1. No Unlawful And Forceful Entry into Apartment

Under § 16-11-440(A) of the Act, a person is presumed to have a reasonable fear of imminent peril of death and is, thus, justified in the use of deadly force against another person—provided that person has unlawfully and forcefully entered a dwelling. Additionally, the person who uses deadly force needs to know or have reason to know that unlawful and forceful entry has been made into the dwelling.

In the case the case at hand, there is no credible evidence of unlawful and forced entry into the Defendant's apartment. In fact, the evidence demonstrates the exact opposite of forced entry. First, there was no credible evidence that the door to the apartment had been kicked in, pried open, or damaged in any way. Additionally, there was testimony that it was customary for the residents of the apartment to lock the front door. Furthermore, the evidence that was presented demonstrates that Griffin, who is the victim who did not live in the apartment, was invited into the apartment on February 7, 2019.

Shakihla Smalls went to the apartment that morning, and she saw Griffin and Dash sitting together in the living room. Griffin was invited inside by Dash—who had been living there for approximately one year. When Smalls came into the apartment, the Defendant came out of his bedroom to see who had just entered. The Defendant saw Smalls, Griffin, and Dash all in the living room. Griffin did not unlawfully and forcefully enter the apartment. He was a social guest of Dash. Furthermore, the Defendant knew Griffin was a social guest, since he observed the two men sitting together. Because the Defendant knew that Griffin was a social guest, it can be established that he was aware that no unlawful and forceful entry into the apartment had taken place.

2. Dash was a Lawful Resident and Griffin was Social Guest of the Apartment

Under § 16-11-440(B)(1) of the Act, the presumption of reasonable fear of imminent peril

of death or great bodily injury—§ 16-11-440(A)—is inapplicable when the person who uses deadly force against a person who has a right to be in or is a lawful resident of the dwelling. Here, Dash had been living at the apartment with the Defendant and Samuel Thomas for an extended period of time. Samuel Thomas testified that Dash had been living in the apartment for approximately one year. Additionally, the Defendant admitted to law enforcement that Dash had been living in the apartment for more than one year. Ultimately, it is uncontested that Dash lived at the apartment—making him a lawful resident.

Griffin, on the other hand, was not a resident of the apartment. He did, however, have a right to be there. The evidence showed that Griffin came to visit the apartment, Dash allowed Griffin to enter, and they were sitting in the living room together. Because Dash allowed Griffin into the apartment, Griffin then became Dash’s social guest. In South Carolina, the presumption of § 16-11-440(A) are inapplicable when deadly force is used against a social guest who is rightfully in an apartment. State v. Curry, 406 S.C 364, 752 S.E. 2d 263 (2013). Griffin was invited inside the home by a lawful resident. As a result, for purposes of the Act, Griffin had a right to be within the dwelling.

Because Dash is a lawful resident of the apartment and Griffin was a social guest who was rightfully in the apartment, the presumption of reasonable fear found in § 16-11-440(A) is inapplicable.

3. The Defendant Used the Residence to Further an Unlawful Activity

Under § 16-11-440(B)(3) of the Act, the presumption of reasonable fear of imminent peril of death or great bodily injury—§ 16-11-440(A)—is inapplicable when the person, who uses deadly force, is using the dwelling or residence to further an unlawful activity. § 16-11-430 defines a dwelling as a building with a roof over it that is designed to be occupied by people lodging there

at night. Additionally, a residence is defined within § 16-11-430 as a dwelling in which a person resides either temporarily or permanently. In the State of South Carolina, according to § 44-53-370(b)(2), the distribution of marijuana is illegal. In this case, there is no question that the Defendant lives within the apartment—making it a residence. The Defendant, by his own admission to law enforcement, sells marijuana out of the apartment. Furthermore, the Defendant admits to police that there are numerous people who come in and out of the apartment due to the marijuana sales.

In addition to the defendant's admission to law enforcement about selling marijuana from the apartment, it was brought out during the cross examination of Investigator Gilliam that Shakihla Smalls went to the apartment the morning of February 7, 2019 to purchase marijuana. Although the Defendant did not sell the marijuana to Smalls directly on this particular occasion, the fact that she went to purchase the marijuana from the apartment corroborates the Defendant's admission that he sells marijuana out of the apartment—which is an unlawful act.

Because the evidence shows that the Defendant used the apartment as a venue for marijuana distribution, it can be established that he used the residence to further an unlawful activity. Therefore, the presumption of reasonable fear found in § 16-11-440(A) is inapplicable, and this Court cannot grant the Defendant immunity from prosecution under this section of the Act.

II. The Defendant is Not Entitled to Statutory Immunity Under § 16-11-440(C) Because: (1) He Was Engaged in an Unlawful Activity; (2) The Defendant was Not Attacked and Did Not Meet Force With Force; and (3) The Defendant Did Not Reasonably Believe Deadly Force was Necessary

Due to § 16-11-440(A) of the Act being inapplicable, the Defendant is therefore defaulted to seeking immunity under § 16-11-440(C), which deals with the use of force by one who is attacked in a place where he has a right to be. State v. Curry, 406 S.C. 364, 752 S.E. 2d 263 (2013). More specifically, § 16-11-440(C) provides:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

1. The Defendant was Engaged in an Unlawful Activity

In order for § 16-11-440(C) of the Act to apply and grant immunity from prosecution, the individual who uses deadly force must not be engaged in an unlawful activity. However, in regards to the unlawful activity element of subsection (C), a proximate cause analysis must be applied to the unlawful activity and the use of deadly force. State v. Glenn, 429 S.C. 108, 838 S.E. 2d 491 (2019). As stated above, the Defendant used the residence to further the unlawful activity of selling marijuana. In a statement to law enforcement, the Defendant admitted that he sells marijuana from the residence. Due to the drug sales, several people often frequented the apartment and “something is always going on”.

Because of this fact, he stated that he believed someone was breaking into his apartment—when in reality it was a fight between Dash and Griffin. The defendant armed himself with a pistol and shot both Dash and Griffin. The marijuana distribution directly affected the Defendant’s mental state by leading him to believe that one of the frequent occupants from the drug sales was breaking into his apartment. As a result, there is an apparent causal nexus between the marijuana distribution from the apartment and the use of deadly force. Therefore, it can be determined that § 16-11-440(C) of the Act is inapplicable, due to the defendant engaging in an unlawful activity.

2. The Defendant was not Attacked and Did not Meet Force with Force

Two additional requirements for § 16-11-440(C) to apply are: an individual who uses deadly must be attacked where they have a right to be, and that person must meet force with force. In the case at hand, it is clear that the defendant had a right to be in the apartment—since he was

a resident. With that said, there is no credible evidence that the Defendant was attacked. Consequently, the Defendant could not have met force with force. According to the Defendant's statement to law enforcement, he observed two individuals in the living room on the ground each other. At this point the Defendant opened fire and shot both individuals while they were still on the ground.

The evidence shows that the Defendant was never threatened or assaulted by either Griffin or Dash. Nor was firearm or any weapon ever pointed at him. In fact, there is no credible evidence that either Dash or Griffin were aware that the Defendant was in the same room as them prior to shots being fired—which would be necessary in order to attack him. Since the Defendant was not attacked in any way, then it is impossible for him to have met force with force. § 16-11-440(C) requires the existence of both aforementioned elements. Because both are nonexistent in this case, § 16-11-440(C) does not apply.

3. The Defendant Did Not Reasonably Believe Deadly Force was Necessary

The Defendant did not have a reasonable fear justifying the use of deadly force. Immunity from prosecution under § 16-11-440(C) of the Act also requires a person who uses deadly force to reasonably believe the use of force is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60. § 16-11-430(2) defines great bodily injury as “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.”

Here, the evidence demonstrated that there was a fight taking place between Dash and Griffin in the living room of the apartment. The Defendant told law enforcement that he saw two individuals on the ground fighting and shot them. In order to adequately assess the reasonableness

of Defendant's actions, it is important to consider the testimony that was presented. First, multiple witnesses testified to the fact that the Defendant had two roommates—Samuel Thomas and Antonio Dash. Since the Defendant had two roommates at the time, it was unreasonable for him to observe two individuals on the ground fighting and immediately shoot them. Furthermore, according to Shahkila Smalls, the Defendant was aware that Dash and Griffin were in the apartment shortly before the shooting took place. A reasonable person in this situation would consider the possibility that it could be either be his two roommates fighting—Samuel Thomas and Dash—or the two individuals he observed earlier that morning—Dash and Griffin.

Another fact that was testified to, which is vital to assessing the reasonableness of the Defendant's decision to utilize deadly, is the time of day that the shooting occurred. The shooting took place at approximately 9:00 in the morning. This is important because the sun is out at this time of day. In fact, photographs and testimony revealed that sunlight was traveling through the windows into the living room the morning of February 7, 2019. A by-product of that sunlight was a well-lit living room. A reasonable person would have considered above-mentioned possible identity of the two combatants and identified them—since they were fighting each other, not him, in a sun-lit living room. Instead of doing so, however, the Defendant used deadly force and shot both men.

An additional factor in considering the reasonableness of the Defendant's actions, is the distance from which he shot Dash and Griffin. Dr. Monroe testified that all shots were fired at close range—the majority being from six inches to three feet away. The only shot that does not fall within this range is the contact wound the back of Griffin's head, which required the Defendant to press the muzzle of his firearm to Griffin's head. A reasonable person who believes deadly force is necessary to prevent great bodily injury or death would not approach two individuals on the

ground fighting in a well-lit living room, get within six inches to three feet of them, overlook the fact that he knows both individuals, and shoot them several times at close range—which is exactly what the evidence shows the Defendant did.

This is corroborated by the testimony of Kevin Archie, a maintenance worker at the Willow Run Apartments that spoke with the Defendant shortly after the shooting occurred. According to Archie, the Defendant gave him three versions of what took place that morning. The Defendant ultimately admitted to Archie that he observed Dash and Griffin on the ground fighting each other, and he shot them. The Defendant was not in fear of great bodily injury or death. He was not protecting another person, since he shot both Dash and Griffin several times. Also, being that there was no credible evidence to the contrary presented, the Defendant did not utilize deadly force to prevent a statutory violent crime.

Therefore, the Defendant has not proven by a preponderance of the evidence that it was reasonable for him to believe the use of deadly force was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in §16-1-60 and this Court cannot grant immunity to the Defendant under section 16-11-44(C).

III. The Defendant is Not Entitled to Statutory Immunity Under the Act because the Defendant Cannot Prove the Necessary Elements of Self-Defense

In State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), our Supreme Court ruled that when reviewing whether a defendant should be granted immunity under subsection (C), the trial court “must necessarily consider the elements of self-defense...this includes all elements of self-defense, save the duty to retreat.” The Court went on to say that a “claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.” *Id.* at 368, 752 S.E.2d 372. Therefore, this Court must evaluate whether the

Defendant has proven by a preponderance of the evidence that the Defendant acted in self-defense when he shot the victim. Self-defense requires that the defendant:

- 1) be without fault in bringing on the difficulty;
- 2) be in actual imminent danger of losing his life or sustaining serious bodily injury, or have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury;
- 3) show that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief and would have struck the fatal blow in order to save himself from serious bodily harm or the loss of his life; and
- 4) have no other probable means of avoiding the danger.

However, as stated in State v. Jones, 416 S.C. 283, 302, 786 S.E.2d 132, 142 (2016), “the defendant must demonstrate the elements of self-defense, save the duty to retreat” when he is attacked in his own home. Regarding the Defendant’s assertion of self-defense, none of the above-mentioned elements have been satisfied.

1. Be Without Fault in Bring About the Difficulty

The Defendant was at fault in bringing about the difficulty, so he cannot satisfy the requirements for self-defense. Here, regarding the first element of self-defense, the difficulty is the Defendant’s use of deadly force. The Defendant heard people talking in the living room. He then heard sounds consistent with a physical altercation between those individuals. The Defendant introduced a firearm into the scenario, observed the fight between two people in a sun-lit living room, and made the decision to shoot them both at close range.

As stated above, there is no credible evidence that the Defendant was threatened or attacked—which means there was no justification for the use of deadly force. Based on the evidence that has been presented, had the Defendant not introduced the firearm into the situation, no person inside the apartment would have been shot on February 7, 2019. A person cannot see

two unarmed people fighting, insert themselves into the equation by shooting both individuals, and then claim self-defense—which is what the Defendant is asserting. The Defendant brought about the difficulty by introducing a firearm into the situation and shooting two people without provocation. As a result, the assertion of self-defense has failed, and this Court cannot grant immunity from prosecution.

2. Be in Actual Imminent Danger or Believing in Imminent Danger

Next, there is no credible evidence that either Dash or Griffin presented any imminent danger to the Defendant. Furthermore, there is no credible evidence that the Defendant believed that he was in imminent danger. The evidence shows that the Defendant observed two individuals fighting each other on the ground, and he shot them both. No credible evidence was presented that the Defendant was ever threatened, attacked, or even acknowledged by either Dash or Griffin prior to the shooting. Thus, it is impossible for him to be in actual imminent danger of serious bodily injury or losing his life.

Regarding the Defendant's belief of imminent danger, there was no credible evidence presented demonstrates that the Defendant subjectively felt he was in any danger whatsoever. The evidence demonstrated that the Defendant shot two individuals who were fighting each other on the ground, so it has not been established that the Defendant actually believed he was in imminent fear of serious bodily injury or losing his life. In South Carolina, a person when asserting a claim of self-defense is permitted to act on appearances—in terms of the belief of imminent danger. State v. Jackson, 227 S.C 271, 87 S.E.2d 681 (1955)

With that said, in this case, there was no credible evidence presented as to what appearance the Defendant was acting on that would have substantiated his belief of imminent fear of serious bodily injury or losing his life. As a result, the Defendant cannot rely on this aspect of the law for

purposes of self-defense. Thus, in regards to actually believing or actually being in imminent danger of losing his life or sustaining serious bodily injury, the Defendant's assertion of self-defense fails. This Court cannot grant immunity from prosecution.

3. Reasonable Person Would Have Entertained the Same Belief

As stated above, there was no credible evidence that Defendant was in actual imminent danger or believed that he was imminent danger of the loss of life or seriously bodily injury. The evidence shows that the Defendant observed two individuals fighting each other, and he shot them. The Defendant's actions were both unnecessary and unreasonable. A reasonable person, in this exact situation, would not have used deadly force. Instead, they would have called the police. Therefore, due to the Defendant failing to prove a reasonably prudent person of ordinary firmness and courage would have believed they were in imminent danger, the requirements of self-defense are not satisfied. Thus, this Court cannot grant the Defendant immunity from prosecution.

CONCLUSION

Based upon the foregoing, I conclude the Defendant's use of deadly force was not justified and that he is not entitled to immunity as enunciated in §16-11-450 of the Protection of Persons and Property Act. Therefore, the Defendant's Motion for Immunity is denied.

IT IS SO ORDERED.

The Honorable DeAndrea G. Benjamin
Presiding Judge

Columbia, South Carolina

_____, 2022

of immunity from prosecution under § 16-11-450 of the Act and requested a hearing to determine whether the Act applies to this case. The Act codified the long-standing common law Castle Doctrine, which stands for the principle that a person, in his or her own home or another place where he has a right to be, such as his place of business, and acting without fault, has no duty to retreat from an aggressor. § 16-11-450 of the Act provides that a person who uses deadly force, as permitted by the provisions of §16-11-440, “is justified in using deadly force and is immune from criminal prosecution ... for the use of deadly force.”

The Court presided over the hearing on the Defendant’s Motion, on March 30, 2022 through March 31, 2022. The Defendant and his attorneys were present along with Assistant Solicitor Dale Scott; Assistant Solicitor Nick Fowler; and Assistant Solicitor Paul Walton for the State. The question presented to the Court was whether the Defendant was entitled to immunity under § 16-11-450 of the Act, and specifically, whether such immunity should be granted under subsections §16-11-440(A); §16-11-440(C) and 16-11-450 (self-defense). Defendant has the burden of proof and must prove his right to immunity by a preponderance of the evidence. State v. Duncan, 392 S.C. 404, 411 709 S.E.2d 662, 665 (2011).

FINDINGS OF FACT

Based on the testimony presented before the Court at the hearing, I make the following findings of fact. In February of 2019, the Defendant lived at an apartment located at 511 Alcott Drive, Columbia, SC 29203—apartment 14G (hereinafter “apartment”). These are the Willow Run Apartments. At the time, the Defendant had two roommates—Samuel Thomas and Antonio Dash. Dash was not listed on the apartment lease agreement, but he had been living with the Defendant and Thomas for approximately one year. Additionally, a man named Eric Griffin was a friend of all three roommates, and it was common for him to visit the three individuals at their apartment.

On the morning of February 7, 2019, Eric Griffin visited the apartment where the Defendant, Samuel Thomas, and Antonio Dash lived. Samuel Thomas was not home at the time, so Griffin was let into the apartment by Dash. Ultimately, a fight ensued between Dash and Griffin. The Defendant—who was in his bedroom at the end of the hallway—heard the commotion from the fight between Dash and Griffin. He then retrieved a pistol, walked down the hallway from his bedroom to the living room, observed the two men fighting on the ground in the living room, and shot both individuals several times at close range. The Defendant made two recorded statements to law enforcement where he admitted to shooting the two individuals that were on the ground fighting. Both individuals died from their respective gunshot wounds.

APPLICATION OF THE ACT TO THE FACTS

After considering the evidence presented and applying the law of South Carolina, I conclude that the Defendant is not entitled to statutory immunity under the Act.

I. The Defendant is Not Entitled to Statutory Immunity Under § 16-11-440(A) of the Act Because: (1) There Was No Unlawful and Forceful Entry into the Apartment; (2) Dash was a Lawful Resident and Griffin was Social Guest of the Apartment; and (3) The Defendant Used the Residence to Further an Unlawful Activity

§ 16-11-440(A) of the Act, commonly referred to as the “Castle Doctrine”, provides:

- (A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:
 - (1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle; and
 - (2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

Additionally, § 16-11-440(B), lists circumstances in which the presumptions of § 16-11-



440(A) do not apply. § 16-11-440(B) provides:

- (B) The presumption provided in subsection (A) does not apply if the person:
- (1) against whom the deadly force is used has the right to be or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder; or
 - (2) sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship, of the person against whom the deadly force is used; or
 - (3) who uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or
 - (4) against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, residence, or occupied vehicle in the performance of his official duties, and he identifies himself in accordance with applicable law or the person using force knows or reasonably should have known that the person entering or attempting to enter is a law enforcement officer.

§ 16-11-430 provides definitions for dwelling and residence as the following:

- (1) "Dwelling" means a building or conveyance of any kind, including an attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging there at night.
- (2) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

The primary and cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and

the court has no right to impose another meaning.” Pittman, 373 S.C. at 561, 647 S.E.2d at 161 (citing Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)).

1. No Unlawful And Forceful Entry into Apartment

Under § 16-11-440(A) of the Act, a person is presumed to have a reasonable fear of imminent peril of death and is, thus, justified in the use of deadly force against another person—provided that person has unlawfully and forcefully entered a dwelling. Additionally, the person who uses deadly force needs to know or have reason to know that unlawful and forceful entry has been made into the dwelling.

In the case at hand, there is no credible evidence of unlawful and forced entry into the Defendant’s apartment. In fact, the evidence demonstrates the exact opposite of forced entry. First, there was no credible evidence that the door to the apartment had been kicked in, pried open, or damaged in any way. Additionally, there was testimony that it was customary for the residents of the apartment to lock the front door. Furthermore, the evidence that was presented demonstrates that Griffin, who is the victim who did not live in the apartment, was invited into the apartment on February 7, 2019.

Shakihla Smalls went to the apartment that morning, and she saw Griffin and Dash sitting together in the living room. Griffin was invited inside by Dash—who had been living there for approximately one year. When Smalls came into the apartment, the Defendant came out of his bedroom to see who had just entered. The Defendant saw Smalls, Griffin, and Dash all in the living room. Griffin did not unlawfully and forcefully enter the apartment. He was a social guest of Dash. Furthermore, the Defendant knew Griffin was a social guest, since he observed the two men sitting together. Because the Defendant knew that Griffin was a social guest, it can be established that he

was aware that no unlawful and forceful entry into the apartment had taken place.

2. *Dash was a Lawful Resident and Griffin was Social Guest of the Apartment*

Under § 16-11-440(B)(1) of the Act, the presumption of reasonable fear of imminent peril of death or great bodily injury—§ 16-11-440(A)—is inapplicable when the person who uses deadly force against a person who has a right to be in or is a lawful resident of the dwelling. Here, Dash had been living at the apartment with the Defendant and Samuel Thomas for an extended period of time. Samuel Thomas testified that Dash had been living in the apartment for approximately one year. Additionally, the Defendant admitted to law enforcement that Dash had been living in the apartment for more than one year. Ultimately, it is uncontested that Dash lived at the apartment—making him a lawful resident.

Griffin, on the other hand, was not a resident of the apartment. He did, however, have a right to be there. The evidence showed that Griffin came to visit the apartment, Dash allowed Griffin to enter, and they were sitting in the living room together. Because Dash allowed Griffin into the apartment, Griffin then became Dash's social guest. In South Carolina, the presumption of § 16-11-440(A) are inapplicable when deadly force is used against a social guest who is rightfully in an apartment. State v. Curry, 406 S.C 364, 752 S.E. 2d 263 (2013). Griffin was invited inside the home by a lawful resident. As a result, for purposes of the Act, Griffin had a right to be within the dwelling.

Because Dash is a lawful resident of the apartment and Griffin was a social guest who was rightfully in the apartment, the presumption of reasonable fear found in § 16-11-440(A) is inapplicable.

3. *The Defendant Used the Residence to Further an Unlawful Activity*

Under § 16-11-440(B)(3) of the Act, the presumption of reasonable fear of imminent peril

of death or great bodily injury—§ 16-11-440(A)—is inapplicable when the person, who uses deadly force, is using the dwelling or residence to further an unlawful activity. § 16-11-430 defines a dwelling as a building with a roof over it that is designed to be occupied by people lodging there at night. Additionally, a residence is defined within § 16-11-430 as a dwelling in which a person resides either temporarily or permanently. In the State of South Carolina, according to § 44-53-370(b)(2), the distribution of marijuana is illegal. In this case, there is no question that the Defendant lives within the apartment—making it a residence. The Defendant, by his own admission to law enforcement, sells marijuana out of the apartment. Furthermore, the Defendant admits to police that there are numerous people who come in and out of the apartment due to the marijuana sales.

In addition to the defendant's admission to law enforcement about selling marijuana from the apartment, it was brought out during the cross examination of Investigator Gilliam that Shakihla Smalls went to the apartment the morning of February 7, 2019 to purchase marijuana. Although the Defendant did not sell the marijuana to Smalls directly on this particular occasion, the fact that she went to purchase the marijuana from the apartment corroborates the Defendant's admission that he sells marijuana out of the apartment—which is an unlawful act.

Because the evidence shows that the Defendant used the apartment as a venue for marijuana distribution, it can be established that he used the residence to further an unlawful activity. Therefore, the presumption of reasonable fear found in § 16-11-440(A) is inapplicable, and this Court cannot grant the Defendant immunity from prosecution under this section of the Act.

II. The Defendant is Not Entitled to Statutory Immunity Under § 16-11-440(C) Because: (1) He Was Engaged in an Unlawful Activity; (2) The Defendant was Not Attacked and Did Not Meet Force With Force; and (3) The Defendant Did Not Reasonably Believe Deadly Force was Necessary

Due to § 16-11-440(A) of the Act being inapplicable, the Defendant is therefore defaulted

7


to seeking immunity under § 16-11-440(C), which deals with the use of force by one who is attacked in a place where he has a right to be. State v. Curry, 406 S.C. 364, 752 S.E. 2d 263 (2013).

More specifically, § 16-11-440(C) provides:

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

1. The Defendant was Engaged in an Unlawful Activity

In order for § 16-11-440(C) of the Act to apply and grant immunity from prosecution, the individual who uses deadly force must not be engaged in an unlawful activity. However, in regards to the unlawful activity element of subsection (C), a proximate cause analysis must be applied to the unlawful activity and the use of deadly force. State v. Glenn, 429 S.C. 108, 838 S.E. 2d 491 (2019). As stated above, the Defendant used the residence to further the unlawful activity of selling marijuana. In a statement to law enforcement, the Defendant admitted that he sells marijuana from the residence. Due to the drug sales, several people often frequented the apartment and “something is always going on”.

Because of this fact, he stated that he believed someone was breaking into his apartment—when in reality it was a fight between Dash and Griffin. The Defendant armed himself with a pistol and shot both Dash and Griffin. The marijuana distribution directly affected the Defendant’s mental state by leading him to believe that one of the frequent occupants from the drug sales was breaking into his apartment. As a result, there is an apparent causal nexus between the marijuana distribution from the apartment and the use of deadly force. Therefore, it can be determined that § 16-11-440(C) of the Act is inapplicable, due to the Defendant engaging in an unlawful activity.

2. The Defendant was not Attacked and Did not Meet Force with Force

Two additional requirements for § 16-11-440(C) to apply are: an individual who uses deadly must be attacked where they have a right to be, and that person must meet force with force. In the case at hand, it is clear that the Defendant had a right to be in the apartment—since he was a resident. With that said, there is no credible evidence that the Defendant was attacked. Consequently, the Defendant could not have met force with force. According to the Defendant's statement to law enforcement, he observed two individuals in the living room on the ground fighting on top of each other. At this point the Defendant opened fire and shot both individuals while they were still on the ground.

The evidence shows that the Defendant was never threatened or assaulted by either Griffin or Dash. Nor was firearm or any weapon ever pointed at him. In fact, there is no credible evidence that either Dash or Griffin were aware that the Defendant was in the same room as them prior to shots being fired—which would be necessary in order to attack him. Since the Defendant was not attacked in any way, then it is impossible for him to have met force with force. § 16-11-440(C) requires the existence of both aforementioned elements. Because both are nonexistent in this case, § 16-11-440(C) does not apply.

3. The Defendant Did Not Reasonably Believe Deadly Force was Necessary

The Defendant did not have a reasonable fear justifying the use of deadly force. Immunity from prosecution under § 16-11-440(C) of the Act also requires a person who uses deadly force to reasonably believe the use of force is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60. § 16-11-430(2) defines great bodily injury as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the

9


function of a bodily member or organ.”

Here, the evidence demonstrated that there was a fight taking place between Dash and Griffin in the living room of the apartment. The Defendant told law enforcement that he saw two individuals on the ground fighting and shot them. In order to adequately assess the reasonableness of Defendant’s actions, it is important to consider the testimony that was presented. First, multiple witnesses testified to the fact that the Defendant had two roommates—Samuel Thomas and Antonio Dash. Since the Defendant had two roommates at the time, it was unreasonable for him to observe two individuals on the ground fighting and immediately shoot them. Furthermore, according to Shahkila Smalls, the Defendant was aware that Dash and Griffin were in the apartment shortly before to the shooting took place. A reasonable person in this situation would consider the possibility that it could be either be his two roommates fighting—Samuel Thomas and Dash—or the two individuals he observed earlier that morning—Dash and Griffin.

Another fact that was testified to, which is vital to assessing the reasonableness of the Defendant’s decision to utilize deadly force, is the time of day that the shooting occurred. The shooting took place at approximately 9:00 in the morning. This is important because the sun is out at this time of day. In fact, photographs and testimony revealed that sunlight was traveling through the windows into the living room the morning of February 7, 2019. A by-product of that sunlight was a well-lit living room. A reasonable person would have considered above-mentioned possible identity of the two combatants and identified them—since they were fighting each other, not him, in a sun-lit living room. Instead of doing so, however, the Defendant used deadly force and shot both men.

An additional factor in considering the reasonableness of the Defendant’s actions, is the distance from which he shot Dash and Griffin. Dr. Monroe testified that all shots were fired at

close range—the majority being from six inches to three feet away. The only shot that does not fall within this range is the contact wound the back of Griffin's head, which required the Defendant to press the muzzle of his firearm to Griffin's head. A reasonable person who believes deadly force is necessary to prevent great bodily injury or death would not approach two individuals on the ground fighting in a well-lit living room, get within six inches to three feet of them, overlook the fact that he knows both individuals, and shoot them several times at close range—which is what the evidence presented at the hearing shows the Defendant did.

This is corroborated by the testimony of Kevin Archie, a maintenance worker at the Willow Run Apartments that spoke with the Defendant shortly after the shooting occurred. According to Archie, the Defendant gave him three versions of what took place that morning. The Defendant ultimately admitted to Archie that he observed Dash and Griffin on the ground fighting each other, and he shot them. The Defendant was not in fear of great bodily injury or death. He was not protecting another person, since he shot both Dash and Griffin several times. Also, being that there was no credible evidence to the contrary presented, the Defendant did not utilize deadly force to prevent a statutory violent crime.

Therefore, the Defendant has not proven by a preponderance of the evidence that it was reasonable for him to believe the use of deadly force was necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in §16-1-60 and this Court cannot grant immunity to the Defendant under section 16-11-44(C).

III. The Defendant is Not Entitled to Statutory Immunity Under the Act because the Defendant Cannot Prove the Necessary Elements of Self-Defense

In State v. Curry, 406 S.C. 364, 752 S.E.2d 263 (2013), our Supreme Court ruled that when reviewing whether a defendant should be granted immunity under subsection (C), the trial court

“must necessarily consider the elements of self-defense...this includes all elements of self-defense, save the duty to retreat.” The Court went on to say that a “claim of self-defense presents a quintessential jury question, which, most assuredly, is not a situation warranting immunity from prosecution.” *Id.* at 368, 752 S.E.2d 372. Therefore, this Court must evaluate whether the Defendant has proven by a preponderance of the evidence that the Defendant acted in self-defense when he shot the victim. Self-defense requires that the defendant:

- 1) be without fault in bringing on the difficulty;
- 2) be in actual imminent danger of losing his life or sustaining serious bodily injury, or have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury;
- 3) show that a reasonably prudent person of ordinary firmness and courage would have entertained the same belief and would have struck the fatal blow in order to save himself from serious bodily harm or the loss of his life; and
- 4) have no other probable means of avoiding the danger.

However, as stated in State v. Jones, 416 S.C. 283, 302, 786 S.E.2d 132, 142 (2016), “the defendant must demonstrate the elements of self-defense, save the duty to retreat” when he is attacked in his own home. Regarding the Defendant’s assertion of self-defense, none of the above-mentioned elements have been satisfied.

1. Be Without Fault in Bring About the Difficulty

The Defendant was at fault in bringing about the difficulty, so he cannot satisfy the requirements for self-defense. Here, regarding the first element of self-defense, the difficulty is the Defendant’s use of deadly force. The Defendant heard people talking in the living room. He then heard sounds consistent with a physical altercation between those individuals. The Defendant introduced a firearm into the scenario, observed the fight between two people in a sun-lit living room, and made the decision to shoot them both at close range.

As stated above, there is no credible evidence that the Defendant was threatened or attacked—which means there was no justification for the use of deadly force. Based on the evidence that has been presented, had the Defendant not introduced the firearm into the situation, no person inside the apartment would have been shot on February 7, 2019. A person cannot see two unarmed people fighting, insert themselves into the equation by shooting both individuals, and then claim self-defense—which is what the Defendant is asserting. The Defendant brought about the difficulty by introducing a firearm into the situation and shooting two people without provocation. As a result, the assertion of self-defense has failed, and this Court cannot grant immunity from prosecution.

2. Be in Actual Imminent Danger or Believing in Imminent Danger

Next, there is no credible evidence that either Dash or Griffin presented any imminent danger to the Defendant. Furthermore, there is no credible evidence that the Defendant believed that he was in imminent danger. The evidence shows that the Defendant observed two individuals fighting each other on the ground, and he shot them both. No credible evidence was presented that the Defendant was ever threatened, attacked, or even acknowledged by either Dash or Griffin prior to the shooting. Thus, it is impossible for him to be in actual imminent danger of serious bodily injury or losing his life.

Regarding the Defendant's belief of imminent danger, there was no credible evidence presented demonstrating that the Defendant subjectively felt he was in any danger whatsoever. The evidence demonstrated that the Defendant shot two individuals who were fighting each other on the ground, so it has not been established that the Defendant actually believed he was in imminent fear of serious bodily injury or losing his life. In South Carolina, a person when asserting a claim of self-defense is permitted to act on appearances—in terms of the belief of imminent

danger. State v. Jackson, 227 S.C 271, 87 S.E.2d 681 (1955). In this case, there was no credible evidence presented as to what appearance the Defendant was acting on that would have substantiated his belief of imminent fear of serious bodily injury or losing his life. As a result, the Defendant cannot rely on this aspect of the law for purposes of self-defense. Thus, in regards to actually believing or actually being in imminent danger of losing his life or sustaining serious bodily injury, the Defendant's assertion of self-defense fails. This Court cannot grant immunity from prosecution.

3. Reasonable Person Would Have Entertained the Same Belief

As stated above, there was no credible evidence that Defendant was in actual imminent danger or believed that he was imminent danger of the loss of life or seriously bodily injury. The evidence shows that the Defendant observed two individuals fighting each other, and he shot them. The Defendant's actions were both unnecessary and unreasonable. A reasonable person, in this exact situation, would not have used deadly force. Instead, they would have called the police. Therefore, due to the Defendant failing to prove a reasonably prudent person of ordinary firmness and courage would have believed they were in imminent danger, the requirements of self-defense are not satisfied. Thus, this Court cannot grant the Defendant immunity from prosecution.

CONCLUSION

Based upon the foregoing, I conclude the Defendant's use of deadly force was not justified and that he is not entitled to immunity as enunciated in §16-11-450 of the Protection of Persons and Property Act. Therefore, the Defendant's Motion for Immunity is denied.

IT IS SO ORDERED.



The Honorable DeAndrea G. Benjamin
Presiding Judge

Columbia, South Carolina

6 - 14, 2022

State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
County Of Richland) 2021-GS-40-1292
 2021-GS-40-1293
 2021-GS-40-1294

The State of South Carolina,)
)
)
 vs.) Transcript of Record
)
)
 Antonio Barnes, Jr.)
)
)

December 5, 6, 7, 8, 13, 2022
Columbia, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge, and a jury

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

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Certified Verbatim Reporter - Master
Certificate of Merit

1 MONDAY, DECEMBER 5, 2022

2 THE COURT: Mr. Solicitor.

3 MR. SCOTT: Sir.

4 THE COURT: Yes, sir. You have a case?

5 MR. SCOTT: Do I have a case?

6 THE COURT: Yeah.

7 MR. SCOTT: We're ready.

8 THE COURT: Go ahead.

9 MR. SCOTT: I have *State v. Antonio Barnes*. He has
10 been indicted on two counts of murder and one count
11 possession of weapon during violent crime. Those
12 indictments are 2021-GS-40-01292 and 1293, 1294. He is
13 represented by the public defender's office and the Shealey
14 Law Firm.

15 We had a stand-your-ground hearing that was decided by
16 Judge Benjamin, I believe back in March. At that time, we
17 did agree upon the December 5th term to resolve this case
18 with jury trial. All discovery has been provided to the
19 defense; all *Riddle* information and evidence has been
20 disclosed to the defense.

21 We are ready to proceed to qualify a jury. That's all
22 I've got right now.

23 THE COURT: All right. For the defense.

24 MR. LUKE SHEALEY: Thank you, Your Honor. May it
25 please the court?

1 THE COURT: Yes, sir.

2 MR. LUKE SHEALEY: I think just for housekeeping and
3 for the record, I probably have to object to even being
4 here in a trial, given that the immunity hearing was heard
5 by Judge Benjamin. That motion was not granted. Obviously
6 we respectfully disagree the her opinion on that, but I
7 think for the record I covered myself there.

8 Your Honor, we do have several pretrial motions. I
9 tried to slip them through the slot up there, and they
10 might be behind your computer. I don't -- hopefully they
11 landed in somewhat neat fashion.

12 One of those pretrial motions in particular might
13 impact what we would ask in voir dire, and that would be
14 the motion, the notice of motion to exclude photos of guns
15 in evidence, of drug use, and/or drug dealing. Obviously,
16 defer to you, how you want to take up any pretrial, but
17 that one would affect voir dire, in my opinion.

18 THE COURT: You want me to hear some testimony or
19 something?

20 MR. LUKE SHEALEY: No. I would like to argue to you
21 about it. Whether you want to make some rulings on that or
22 not, it might impact voir dire questions that we seek to
23 ask a potential jury.

24 THE COURT: From the state.

25 MR. SCOTT: Judge, just briefly, let me -- let me tell

1 you as quick as I can Cliff's Notes version of evidence we,
2 we suspect the state will present to the court.

3 The defendant back in -- during the incident date
4 lived in Willowbrook (sic) Run Apartments. He had two
5 roommates. There was -- one of them ended up being a
6 victim. His name was Antonio Dash, and another one was Sam
7 Thomas. He had a friend named Eric Griffin, which ended up
8 being our other victim. On the incident date, Eric Griffin
9 showed up to the apartment complex, a visit supposedly with
10 the tenants of the Willowbrook Apartments, the room that
11 Mr. Barnes lived in. And Mr. Griffin's mother and
12 girlfriend heard gunshots. They go up to the apartment to
13 find Mr. Dash and Mr. Griffin dead. Died of gunshots
14 wounds. Mr. Barnes exits the apartment complex and has a
15 series of explanations for what happened.

16 Ultimately, what he tells law enforcement is that he
17 was asleep in the back bedroom. He hears some commotion up
18 front. He says I'm a drug dealer and so one of my greatest
19 fears is people coming in and me being the victim of a home
20 invasion due to me being a drug dealer. People know I have
21 money and drugs in my apartment.

22 He, he -- and again, I'm kind of giving you
23 paraphrasing here, but he basically describes this
24 commotion. In his mind, being a drug dealer, he's getting
25 his home broken into. So, he goes up to the front of the

1 apartment, like any drug dealer would do, and starts
2 shooting anybody who's in the apartment. Unfortunately,
3 one of those people ended up being his roommate; the other
4 ends up being his good friend Eric Griffin.

5 That was the basis of his self-defense claim. So, if
6 that's his explanation, I think the evidence of him being a
7 drug dealer by his own admission, and that being the reason
8 that he killed these two, I do find that to be relevant.
9 And if the testimony goes that way, I think that should be
10 admissible.

11 THE COURT: All right. Anything else on that issue?

12 MR. LUKE SHEALEY: Yes, Your Honor. I'd like to argue
13 the motion. Mr. Scott's rendition of the facts is maybe
14 from 10,000 feet. Mine would be 1,000 feet.

15 I don't dispute that Mr. Griffin came over unannounced
16 that morning. He was driving with his mother.

17 THE COURT: Was that a statement he gave to the police
18 that Mr. Scott mentioned?

19 MR. LUKE SHEALEY: That was a portion of the statement
20 my client gave to the police. There are other portions
21 that indicate other ---

22 THE COURT: Well, does the portion include that he's a
23 drug dealer and that he had a gun and he shot these people?

24 MR. LUKE SHEALEY: He does admit to shooting people.
25 What he states to police consistently is he thought he was

1 being robbed. One the one hand, he says he lives in the
2 hood, meaning his neighborhood is dangerous. He repeatedly
3 references how his roommates were robbed not, not just two
4 weeks prior at The Corner Store. He's basically
5 speculating as to why he heard what was going on.

6 This is important, Your Honor. It's pretty much
7 uncontested that the decedents were locked in some type of
8 fight to the death in the living room of, of the apartment
9 while our client was sleeping. We've heard undisputed
10 evidence ---

11 THE COURT: That undisputed -- what's undisputed?

12 MR. LUKE SHEALEY: That the decedents, Mr. Eric
13 Griffin and the roommate, Mr. Antonio Dash, were engaged in
14 a violent, what I would call fight to the death, including
15 crashing of TVs, holes in the walls, ripping out of
16 earrings, blunt force trauma in the front living room.
17 It's undisputed as far as any evidence we've heard so far
18 that our client ---

19 THE COURT: You know, I haven't heard any evidence.

20 MR. LUKE SHEALEY: I know.

21 THE COURT: Everything is disputed as far as I'm
22 concerned.

23 MR. LUKE SHEALEY: And it -- I can only tell you just
24 based, Your Honor, on what -- the evidence we heard from
25 the immunity hearing. So, obviously we know and -- I'm

1 asking you to make some decisions that you may not want to
2 make right now. But as you will read in our motion, it's
3 pretty well clear, one, there's no -- law enforcement does
4 not believe that this is a drug deal gone bad. There's no
5 cell phone evidence, no statements by the family of
6 decedents saying that this was a drug deal in progress.
7 Our client was asleep. He was not awake or engaged in the
8 drug dealing progress.

9 So, now as he spends numerous hours with law
10 enforcement crying, trying to wrack his mind about why his
11 roommates were fighting, trying to explain what was going
12 on in his mind as he was asleep and in bed, one of the
13 things he does say is that I, I, sell weed in the
14 neighborhood. We have foot traffic here. Maybe people
15 could have been coming in here to rob us, but he also
16 references that this is a bad neighborhood. That he -- his
17 roommates were robbed not just, in his words, two weeks ago
18 at The Corner Store at gunpoint. So, he's describing to
19 police his general state of anxiety of fear of being
20 robbed.

21 There's no objective evidence that this was a drug
22 deal. So, that's why I make the motion I'd be seeking to
23 exclude his own statement concerning his own speculation
24 about maybe people were coming here to rob me because I'm a
25 drug dealer.

1 THE COURT: Concerning his own state of mind?

2 MR. LUKE SHEALEY: Parts of his states of mind, yes,
3 because I think it, it, it violates 402, it violates Rule
4 403, and 404(b).

5 THE COURT: Well, I can't rule. I can't agree with
6 you as part of the motion in limine.

7 MR. LUKE SHEALEY: I know. It's hard to -- I
8 understand.

9 There's, there's also evidence. Here's some other
10 evidence that is uncontested that I will hope Your Honor
11 will consider. My client, after the shooting, walked out
12 of his apartment, and the family members of Mr. Griffin,
13 his mother and his fiancée, came up, saw the scene, and he
14 had a gun in his hand, the gun of the shooting. A witness
15 named Ms. Smalls came, took the gun from him. She later --
16 was found under her mattress. When she testifies, we'll
17 hear about that.

18 THE COURT: Wouldn't it -- wouldn't it be important
19 for the jury to know that?

20 MR. LUKE SHEALEY: I'm not asking to ---

21 THE COURT: If we're trying to explain to the jury
22 what happened there.

23 MR. LUKE SHEALEY: Yes, sir. You'll see in my motion,
24 I'm not seeking to exclude that evidence.

25 THE COURT: Okay.

1 MR. LUKE SHEALEY: What was brought up at the immunity
2 hearing was evidence from our client's phone that we
3 provided to the state some photos of him holding guns in
4 general at a time unknown, evidence that he had purchased a
5 gun of a .40 caliber variety that's part of the search
6 warrant. In his apartment, there was a receipt from
7 Academy Sports.

8 We know what the gun is in question. It was
9 recovered. It was ballistically compared. It's an FN .9
10 millimeter. It left seven shell casings on the crime
11 scene. Those match the test fires.

12 Two of those projectiles are inconclusive, but
13 they're, you know, to basically -- to show that our client
14 has a propensity to collect or have guns that are unrelated
15 to this event only serves the purpose to try to prejudice
16 our client in the minds of a jury, and that's -- it's
17 articulated in the motion. I know Your Honor probably
18 hasn't had a chance to read the motion, but in addition to
19 the marijuana dealing evidence, as well as unrelated
20 evidence of possession of guns, we would seek to suppress
21 that for reasons outlined in the motion.

22 There was a quantity of marijuana found pursuant to
23 search warrant in his dresser as well as in the hallway.
24 Would probably be -- it's 50 some-odd grams PWID weight.
25 He's not charged with marijuana. We would seek to exclude

1 that on the same basis. Thank you, Your Honor.

2 THE COURT: I deny the motions in limine. Some of
3 these things may be excluded based on evidence as it might
4 be revealed during trial, but as far as me granting these
5 motions in advance of trial, I deny the motions.

6 MR. LUKE SHEALEY: Yes, sir.

7 THE COURT: What else do we have?

8 MR. LUKE SHEALEY: Well, we have several other
9 pretrial motions, just however Your Honor wants to hear it.
10 It you're interested in getting a jury selected sooner than
11 later, I do have one motion on that.

12 THE COURT: All right.

13 MR. LUKE SHEALEY: You have a motion before you for
14 attorney-conducted voir dire and supplemental voir dire.
15 And I'm not seeking death-penalty style, individual,
16 sequestered voir dire as Your Honor is well versed with. I
17 do have in the motion thirteen questions which would be --
18 I would seek to conduct in the form of attorney-conducted
19 voir dire in order to get to the heart of the matter, the
20 biases and prejudices of potential jurors, and I do have
21 supplemental judge-conducted voir dire that I would seek
22 for Your Honor to ask them. They are outlined in my motion
23 after that.

24 If Your Honor doesn't feel that there's any authority
25 for me to ask questions of the jury, I understand that. I

1 MS. LATIMER: Your Honor, we have another motion in
2 limine to limit a rap video. This rap video was found on
3 the defendant, Mr. Barnes's, phone on phone dump. It
4 appears that the rap video was downloaded from Instagram on
5 or about January 18th of 2019, and this incident that we're
6 here for the trial happened on February 7th of 2019.

7 This rap video, while it was excluded at immunity
8 hearing, it was alluded to that the pertinent parts the
9 state would bring out was that defendant rapped about
10 potentially killing someone if he was the victim of a
11 theft. We submit that this should not be admitted into
12 evidence for multiple reasons. One, that it's protected.
13 Music is protected speech under the First Amendment.
14 Second ---

15 THE COURT: Said music is protected speech.

16 MS. LATIMER: Lyrics.

17 THE COURT: Lyrics.

18 MS. LATIMER: In music it's protected speech.

19 THE COURT: I imagine there must be some cases on
20 this.

21 MS. LATIMER: Yes, Your Honor, I do have a case.

22 THE COURT: If someone says on a rap video that I --
23 yes, I killed the sucker, then that would be protected
24 speech under your theory?

25 MS. LATIMER: And, Your Honor, it would be protected

1 speech. Now, whether or not it would get in under certain
2 rules, that might be a different argument. I submit that
3 this rap video specifically would not get under -- in
4 because of a failure to authenticate. They won't be able
5 to say when this rap video was created, when the lyrics
6 were written, when it was even sent to the defendant. They
7 only know it was downloaded January 19th.

8 And also it was downloaded before this incident
9 happened. So, before Mr. Barnes was ever a victim or
10 perceived to be a victim of any kind of theft. He wasn't
11 speaking after the incident. So, it's not relevant to this
12 case. You can't say it would go to state of mind if he had
13 never been the victim of a theft.

14 THE COURT: All right.

15 MS. LATIMER: There's a lot of bravado in rap where
16 they use -- and I -- this motion goes extensively into, you
17 know, cases where this has been referenced and journals
18 have addressed this issue, but there's a lot of bravado in
19 rap. There, murder is often used as a metaphor, and it's
20 not often autobiographical.

21 So, I would submit you can't authenticate this. It
22 will be irrelevant. It will also be more prejudicial than
23 probative. It's going to talk about a lot of what we say
24 is bad character evidence, and it's going to talk about a
25 theft and it's going to talk about a murder, but it's going

1 to talk about it before this event ever even occurred and
2 before Mr. Barnes even perceived he was a victim of a
3 theft. So, it would be highly prejudicial.

4 Our Supreme Court has also addressed the prejudice of
5 raps in *State v. Cheeseboro*. That was back in 2001. I
6 have that cite if Your Honor would like it. And they did
7 find that the rap was highly prejudicial. And that rap was
8 actually made after the charged crimes occurred, and they
9 still find it -- found it highly prejudicial, and that its
10 probative value could not outweigh the prejudice.

11 THE COURT: What says the state?

12 MR. SCOTT: Your Honor, just on Monday before we know
13 where testimony is going, I don't know whether not it will
14 become relevant. Certainly I think it would be fodder for
15 cross-examination should he take the stand.

16 Some of these lyrics are going to his state of mind.
17 At least one of his rap songs specifically references him
18 killing his two -- the victims in this case. Other ones
19 he, he kind of -- you've seen it from the bench, Your
20 Honor. Some, some people seek a certain amount of clout
21 from saying they've killed people. That could potentially
22 be a motive here. I don't know.

23 THE COURT: Well, we're going to address that issue
24 later in the trial.

25 MR. SCOTT: Thank you, Your Honor.

1 Just so Your Honor knows, my client gave a two-page
2 written statement that was written by Investigator Gilliam,
3 but he was in the -- he gave several on-scene statements
4 regarding this shooting event, as well as in the
5 interrogation room. He was there for about six or seven
6 hours.

7 He was allowed to have his phone, and he was talking
8 to family members and friends about what had occurred and
9 how it occurred. I don't -- you know, obviously a lot of
10 this will be somewhat of a judgment call in the heat of the
11 moment. I think we have appropriate evidentiary exceptions
12 for admission of this evidence. But this just -- this
13 whole memo just goes to show that this is a constitutional
14 due process right as well to present a complete and full
15 defense to attack the credibility of law enforcement.

16 THE COURT: What's the caption of that motion?

17 MR. LUKE SHEALEY: It's captioned Memorandum of Law
18 Supporting Admission of Certain Evidence and Certain Lines
19 of Examination, and it just goes through the cases that
20 analyze that and how the fundamental constitutional due
21 process rights of the federal constitution as well as our
22 state constitution do cause local state rules to bow before
23 them.

24 I just wanted to have that for your consideration to
25 review. It may not be a problem at all, but again just

1 like lots of these motions in limine, I do want to put the
2 court on notice. And if you'd like to read it, I would
3 welcome that.

4 THE COURT: All right. I will review the memorandum.
5 What else? Mr. Truitt, do we have a jury available?

6 CLERK OF COURT: Yes, Your Honor. They're waiting
7 down in the jury assembly room.

8 THE COURT: All right, we're ready for them, and as I
9 listen to various motions and everything, they can -- they
10 can come on.

11 CLERK OF COURT: Yes, Your Honor.

12 THE COURT: Ms. Young, you were going to say
13 something? Ms. Young?

14 MS. YOUNG: Oh. Sorry, Your Honor. It was me.

15 THE COURT: All right.

16 Anything about the proposed voir dire questions from
17 either side?

18 MR. SCOTT: No, Your Honor. You've made your ruling
19 on the defense motions, and we accept that.

20 MR. LUKE SHEALEY: I think I've made my position
21 clear. I'd like you to ask them all, and I'd like to be
22 the one asking it. You've made your ruling, and I think I
23 understand your ruling.

24 THE COURT: All right. Do we have some of the
25 prospective witnesses here?

1 MR. SCOTT: We do, Your Honor.

2 THE COURT: Can you get them all to raise their hands
3 so I'll know who to look for when I'm dealing with the
4 jury?

5 MR. SCOTT: Wanda, this is Wanda, Wanda Griffin on
6 Your Honor's right, and on Your Honor's left is Teasha
7 Washington, and this is Investigator Emmitt Gilliam right
8 here. That is all the witnesses we have present right now,
9 Your Honor.

10 THE COURT: All right.

11 (A PAUSE.)

12 THE COURT: Let's all get another stretch in before
13 that jury comes in.

14 (A PAUSE.)

15 THE COURT: All right, be seated.

16 Regarding the defendant's issue, the situation,
17 situation with bond, what is it?

18 MR. LUKE SHEALEY: Your Honor, he's out on bond. He's
19 made every court appearance. He is on an ankle monitor.
20 His bonding company is happy to stay on his bond. We
21 respectfully request that you allow that.

22 THE COURT: Are you going to have the bonding company
23 certify that here?

24 MS. YOUNG: Your Honor, Mr. Harper actually just
25 walked in the room. We were scheduled to start this trial

1 -- I think Mr. Scott mentioned this -- back in March. And
2 they provided a letter. Titus wasn't in the office over
3 the weekend and this morning, but he did authorize that
4 additional note.

5 Your Honor, I also have an email from OMS saying that
6 they'll keep that ankle monitor on him until you order them
7 to take it off.

8 THE COURT: All right. We'll make these a part of the
9 record.

10 (EMAILS CONCERNING BOND MARKED AS COURT'S EXHIBIT
11 NUMBER 1 RECEIVED INTO EVIDENCE.)

12 (WHEREUPON, THE JURY PANEL ENTERS.)

13 THE COURT: Ladies and gentlemen, I am Clifton Newman
14 and I am presiding in this courtroom. You all were sent up
15 here for jury selection in the trial of the case we're
16 about to do in this room.

17 The state may call its case.

18 MR. SCOTT: Thank you, Your Honor. May it please the
19 court? The first case that the state intends to call this
20 week is the *State v. Antonio Vashon Barnes, Jr.* I have
21 three true billed indictments for Mr. Barnes. The first
22 one is 2021-GS-40-01293; that is a true billed indictment
23 for murder. The second indictment I have is
24 2021-GS-40-01292; that is another true billed indictment
25 for murder. Finally, I have indictment 2021-GS-40-01294.