

20236

ORIGINAL  
VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONTA KEVON REID,

APPELLANT

APPELLATE CASE NO. 2011-204288

RECORD ON APPEAL

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| State of South Carolina) | In the General Sessions    |
| )                        | Court of York              |
| )                        |                            |
| County of York )         | Case No.: 2010-GS-46-04457 |
|                          | 2010-GS-46-00989           |

|                            |                      |
|----------------------------|----------------------|
| State of South Carolina.,) |                      |
| )                          |                      |
| Plaintiff., )              |                      |
| )                          |                      |
| -vs- )                     | Transcript of Record |
| )                          |                      |
| Davontay Henson., )        |                      |
| Donta Kevon Reid., )       |                      |
| )                          |                      |
| Defendants. )              |                      |
| )                          |                      |

November 14-18, 2011  
York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge, and a jury.

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For the Defendants

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NO EXHIBITS WERE ENTERED BY THE DEFENDANTS.

Reporter's Note: All Exhibits were filed with the York County Clerk of Court's Office.

1 (ON THE RECORD MONDAY, NOVEMBER 14, 2011 AT 02:40 PM.)

2 THE BAILIFF: Please come to order.

3 THE COURT: Thank you, take your seats.

4 Get the Defendant's in.

5 THE COURT: Ms. Inzerillo, you represent Reid?

6 MS. INZERILLO: Yes, Your Honor.

7 THE COURT: And Ms. Anderson, you represent Henson?

8 MS. ANDERSON: No, Your Honor. I'm assisting Ms.

9 Inzerillo.

10 THE COURT: All right. Mr. Chiarenze, you have?

11 MR. CHIARENZA: Henson.

12 THE COURT: All right. I know it will be a few

13 minutes before we get the jury up, but while they come in,

14 do I have a witness list from both sides? Well, all three.

15 I've got the victims' names.

16 (DEFENDANT REID ENTERING COURTROOM.)

17 MS. INZERILLO: Your Honor, on behalf of Mr. Reid, we

18 do not anticipate calling any witnesses other than of

19 course Mr. Reid decides to testify.

20 THE COURT: Okay.

21 (DEFENDANT HENSON ENTERING COURTROOM.)

22 THE COURT: Solicitor.

23 MR. BRACKETT: If it please the Court, Your Honor.

24 THE COURT: Yes, sir.

25 MR. BRACKETT: This is in regards to State of South

1 Carolina versus Davontay Darrell Henson and Donte Kevon  
2 Reid. There are a number of indictments. I'll put them on  
3 the record when the jury comes in. If you want, I'll put  
4 them on the record now.

5 THE COURT: That will be fine. I've got a list.

6 MR. THOMPSON: Yes, sir. They are present in court  
7 with their counsel and have entered pleas of not guilty to  
8 this charge. And the State is ready to go forward.

9 We have a jury being picked in the next courtroom in  
10 front of Judge Alford. As soon as that jury is selected,  
11 we will have a pool large enough to select for this case.

12 But we are prepared to go forward on some pretrial  
13 motions that have been filed by Counsel for the Defendants.  
14 And we can hear those motions up until the time jury  
15 selection is ready to break, and then pick the jury, and  
16 move on with the motions.

17 We don't anticipate -- We prepared, basically, not to  
18 start the actual opening statements and taking testimony  
19 until tomorrow morning.

20 So, we've reserved the balance of the afternoon to  
21 take care of any pretrial matters and the jury selection.

22 THE COURT: All right. I've got a list of motions  
23 from Ms. Inzerillo. The first is, Compliance with Rule 5  
24 and Brady.

25 MS. INZERILLO: Yes, Your Honor, that's just to



1 inquire as to whether the State has received any  
2 information between today, and I believe my last  
3 conversation with Mr. Thompson on Friday regarding any  
4 discoverable material.

5 THE COURT: Let's couch it like this. Has the State  
6 complied with Rule 5 and Brady? Anybody.

7 MR. THOMPSON: Yes, Your Honor, we have.

8 THE COURT: How about as to Mr. Henson?

9 MR. THOMPSON: Yes, Your Honor, Mr. Henson and Mr.  
10 Reid.

11 MR. CHIARENZA: Your Honor, I apologize. I've got  
12 some motions if I may approach.

13 (DOCUMENTS RECEIVED UP BY THE COURT FROM ATTORNEY  
14 CHIARENZA.)

15 MR. CHIARENZA: Thank you.

16 THE COURT: I'm working on Mr. Reid's at this time.  
17 Next, prior record of Mr. Reid with impeachment.

18 MR. THOMPSON: I don't believe Mr. Reid has any other  
19 prior record, Your Honor.

20 MS. INZERILLO: That's our understanding as well.

21 THE COURT: List of witnesses says the criminal  
22 history of non-law enforcement, we've got the list of  
23 witnesses. Do you have criminal histories at this point or

24 --

25 MR. THOMPSON: I believe they have the criminal

1 histories of the two female co-defendants that are  
2 scheduled to testify for the State. I don't know if we  
3 have the criminal histories given to them of other  
4 witnesses. I don't think they're as far as for the victims  
5 they do not have a history for impeachable offenses. And  
6 we want to make sure that none has any prior to having them  
7 testify. I can check with that tonight and make sure  
8 that's squared away by in the morning.

9 THE COURT: If any lay witness has a criminal record,  
10 please provide from the history, please provide it to  
11 opposing counsel prior to calling witnesses.

12 MR. THOMPSON: Yes, Your Honor.

13 THE COURT: Mr. Chiarenza, any comments on that?

14 MR. CHIARENZA: No, Your Honor. I just join in that  
15 motion.

16 THE COURT: Next is sequestration. That will be  
17 granted reciprocally.

18 Next as to Mr. Reid, any Lyle testimony?

19 MR. THOMPSON: As to Mr. Reid, no, there's no Lyle  
20 testimony, Your Honor.

21 THE COURT: All right. We'll get to Henson in a  
22 minute.

23 Statements under Jackson versus Denno?

24 MR. THOMPSON: There are statements as to Mr. Reid.  
25 He gave four statements to law enforcement, all in writing.

1 So, there would be four statements that we seek to  
2 introduce that we would use for Jackson Denno.

3 THE COURT: All right. We'll have -- Yes, ma'am.

4 MS. INZERILLO: No, Your Honor.

5 THE COURT: We'll have Jackson versus Denno hearing  
6 those four statements.

7 MS. INZERILLO: Yes, Your Honor.

8 THE COURT: Motion to suppress items found at [REDACTED]  
9 [REDACTED]. This happened at [REDACTED] so it's obviously a  
10 different address.

11 MS. INZERILLO: Yes, Your Honor. There's a search  
12 warrant executed at the client's house at [REDACTED].  
13 I had spoken with Mr. Thompson about this motion. There  
14 were two items taken into evidence pursuant to that search  
15 warrant. It's my understanding the State does not intend  
16 to introduce those items. And with that being the case, we  
17 will not go through the motion at this time, but just  
18 reserve the right if the State does seek to enter those  
19 items to -- ask the Court to hear that motion at that time.

20 MR. THOMPSON: That's correct.

21 THE COURT: All right. Mr. Henson's motions. First,  
22 again discovery, which we've have already covered. This  
23 one's a little more specific. Mr. Henson asked in addition  
24 to discovery requests including any deals reveal the deal  
25 kind of deal as to anyone who is testifying.

1 MR. THOMPSON: There are two written plea agreements  
2 with the testifying co-defendants. Those have been handed  
3 over to the defense, both defendants. No other deals are  
4 with any other witnesses, Your Honor.

5 THE COURT: Has the prosecution revealed to the  
6 Defense scientific test results, videotapes which related  
7 in any way to the Defendant?

8 MR. THOMPSON: We have -- there are two SLED results  
9 that we've delivered to the Defense. One is a ballistic  
10 report regarding the shellcases that were recovered and the  
11 fact that they matched. And one is a DNA report that  
12 basically says that there was no -- was not enough DNA to  
13 be tested.

14 THE COURT: This One, Number C, or not number C,  
15 letter C, is always a difficult one because it's saying if  
16 you've -- ask if you turned over everything that you may or  
17 may not have been provided. Let's ask that, make it a two-  
18 part question. Have you turned over everything from law  
19 enforcement or investigative files, which were provided to  
20 you.

21 MR. THOMPSON: We turned over everything that was  
22 discovered, Your Honor, and a lot more. There is nothing  
23 that we know of in law enforcement files at this point that  
24 we have not seen and made available to the Defendant.

25 THE COURT: Well, Mr. Chiarenza, you're going to have

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1 to help me with the second part of that. You're asking if  
2 they've turned over what may have not have been provided.  
3 I guess the question really is have you provided everything  
4 that you are required to provide?

5 MR. THOMPSON: We have, Your Honor. And I've gone  
6 over the law enforcement's file and both detectives who  
7 were the main detectives in the case, Detective Ayers and  
8 Detective Aaron, and gone over in length with them.  
9 They've revealed to me everything within their file and  
10 everything that was discovered has been handed over. And  
11 many things that were not discoverable I handed over as  
12 well.

13 THE COURT: You want to elaborate on your motions, Mr.  
14 Chiarenza?

15 MR. CHIARENZA: Your Honor, this is a motion that I  
16 typically make. If Mr. Thompson is relaying to the Court  
17 that they've handed over everything in the file then that's  
18 fine. Certainly if something were to come out during the  
19 course of the trial that I have not seen or that was part  
20 of the file, then we'd have to take it up at that time.  
21 And I think where this motion gets complicated is when we  
22 are told that we have not seen everything in the file, that  
23 the State has determined that there are things in the file  
24 that are not discoverable. And then I think I have argued  
25 unsuccessfully at the point that I believe that the Court

1 should inspect those matters, make a determination as to  
2 their discoverability. But if the State is advising us  
3 that we've seen everything that there is to see, then I'm  
4 satisfied.

5 THE COURT: All right. D I think we've covered,  
6 cooperating witnesses agreements or plea agreements.

7 MR. CHIARENZA: Yes, Your Honor, A, A and D sort of  
8 play off of each other, and they should have been combined  
9 into one.

10 THE COURT: And C, we've already talked about --  
11 That's criminal history of the lay witnesses. I really  
12 says all witnesses, but that, we've covered that.

13 Now the motion for severance, we'll have to hear that  
14 at some point.

15 Motion to suppress Donte Reid's fourth statement. It  
16 inculcates -

17 MR. CHIARENZA: My client.

18 THE COURT: --- Mr. Henson despite it's actually his  
19 actual name, but that takes care of that. Any Lyles. We  
20 need Two and Three along with Jackson versus Denno we'll  
21 have to take testimony on.

22 Number four, Lyle, any Lyle testimony regarding Mr.  
23 Henson?

24 MR. THOMPSON: The only thing that I believe could be  
25 considered Lyle is that at the point he was arrested, he

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1 was actually arrested in Baltimore almost a year later,  
2 about eleven months later. And the officer there is coming  
3 to testify. He arrested him for possession of marijuana.  
4 The Defendant gave a false name, and a false date of birth  
5 at that time. Ultimately was then charged as well with  
6 giving false information because of the fact that the false  
7 information that he had given as well as, I think, false  
8 information regarding, if you look through the report, who  
9 his parent or guardian was and things of that nature give a  
10 lot of false information to the police at that point. And  
11 so we would intend to introduce those items into evidence  
12 as far as the Defendant's arresting, the circumstances  
13 surrounding his arrest in Baltimore at the time.

14 THE COURT: You kind of lost me there. It wouldn't be  
15 Lyle.

16 MR. THOMPSON: Well, it is a bad act, I think  
17 ultimately, so I don't know that it would necessarily be  
18 under Lyle. But there are some instances that I didn't  
19 want to say I have no Lyle, but then later on be told that  
20 is Lyle. So that's why I mentioned that at this point.

21 MR. CHIARENZA: Your Honor, and at the time -- So I  
22 don't know if we want to address this now in limine, but at  
23 the time the State would offer that evidence, I would have  
24 an objection.

25 One, insofar as it is or isn't Lyle, I would submit

1 that it doesn't fall into one of the Lyle categories. Two,  
2 I would object that it is evidence of an arrest for simple  
3 possession of marijuana a year after this alleged event  
4 took place is irrelevant.

5 I understand the State's position on wanting to get  
6 into some maybe other issues regarding Mr. Henson being in  
7 Baltimore. But my concern is there they then would then be  
8 dooring, getting into the back door, the evidence of his  
9 arrest, which I don't even know if he was being the subject  
10 of a conviction for the simple possession of marijuana and  
11 a false evidence to the police. It may raise another issue  
12 if he were to testify, but as far as their case in chief,  
13 my position on that would be, one, it doesn't fall under  
14 Lyle And two, it's just not relevant. And it has no  
15 probative value, but is indeed prejudicial.

16 THE COURT: Well, we probably need to look at that  
17 when we get the witness here. Of course, flight is  
18 admissible. But something that happened a year after the  
19 event, I'm not sure you can categorize that as indicating  
20 flight. And having been arrested for anything sometimes  
21 give rise to people giving false information, regardless of  
22 whether they've got perhaps outstanding charges are not.  
23 So, we'll have to look at that real close.

24 MR. THOMPSON: That's fine.

25 THE COURT: I'm not showing skepticism, I'm just



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1 showing concern. I hope.

2 MR. BRACKETT: If it please the Court, Your Honor, Ms.  
3 McNerney has told me that they are held up picking the jury  
4 next door. So they are assembling the pool to come  
5 upstairs now. So I just want to let you know that we're  
6 going to go first instead of second.

7 THE COURT: Okay.

8 MR. THOMPSON: So if you see jurors start showing  
9 up --

10 THE COURT: We need to get the courtroom set up then  
11 for the jury. And then understand -- keep in mind, we'll  
12 quit while we're shuffling around. Sequestration's in  
13 effect for both sides. And we will probably need almost  
14 all of both sides of the courtroom since the strikes are 10  
15 and 20 -- 10 and 10 and 10?

16 MR. THOMPSON: Yes, sir.

17 THE BAILIFF: Y'all may just have to go outside when  
18 we pick the jury, there may not be enough room. We just  
19 ask you to go on out.

20 MR. BRACKETT: Mr. Cunningham and Mr. Jackson, we  
21 would ask that their witnesses and they are victims in the  
22 case -

23 THE COURT: They can remain in.

24 MR. BRACKETT: And well as the mother of the victim.

25 THE COURT: She can stay in too. The mother of the

1 deceased.

2 MR. BRACKETT: If we can just get you on one row.

3 THE COURT: Yeah, if we could just have one row of  
4 people. We might not -- It's really -- I'm not trying to  
5 exclude anybody from court. It's just a matter of space.

6 All right. Next is impeachment as to Mr. Henson.

7 MR. THOMPSON: I believe the only impeachable offense  
8 that he has is -- was his malicious injury to property and  
9 a juvenile conviction, I think in 2006, I believe.

10 THE COURT: Personal property or real property?

11 MR. THOMPSON: I believe personal property. I'll have  
12 to look back and see, it's one or the other. They both  
13 require malicious intent which I think is something that is  
14 impeachable.

15 THE COURT: Okay. We'll look at that. Any statements  
16 by Mr. Henson?

17 MR. THOMPSON: He has no statements, Your Honor.

18 THE COURT: All right, going back to the last one.  
19 The question is really moral turpitude, not malice.

20 MR. THOMPSON: Right.

21 THE COURT: So we --

22 MR. THOMPSON: Well, I believe malice is determined to  
23 be part of what made it a crime of moral turpitude.

24 THE COURT: All right. We'll take at that. No  
25 statements by Mr. Henson. All right. No need for Jackson

1. versus Denno then as to Mr. Henson?

2. MR. THOMPSON: Correct.

3. THE COURT: All right, several concerns the evidence  
4. from Baltimore, which we've already discussed. Motion for  
5. judicial dismissal of the charges if it is logically  
6. necessary supported by the granting of denial of any of the  
7. above motions. We can't really adapt it until we find out  
8. --

9. MR. CHIARENZA: Yes, Your Honor, those are all sort of  
10. in that vein, so I don't think we need to get there  
11. until -- They all asked for, if the Court does something  
12. with these other motions, then potentially either dismiss  
13. or continue this matter. Again if it would logically  
14. follow on what the Court does on these other motions.

15. THE COURT: I'll kind of have to explain that later.  
16. That looks like more of your asking for a directed verdict  
17. before the trial started because even if certain evidence  
18. is suppressed, there are a ton of witnesses here who might  
19. fill in whatever gaps are suppressed. So I just have to  
20. kind of see where we are and if you feel like you --  
21. anything falls under that category just call it to my  
22. attention and make your motions at that time.

23. MR. CHIARENZA: Yes, Your Honor, thank you. And I  
24. think I can apply all of them all the way through again.

25. THE COURT: All right.

1 MR. CHIARENZA: Now if you can --- 11 is back again in  
2 sort of a more specific light.

3 THE COURT: All Right. In court identification if  
4 any?

5 MR. CHIARENZA: The only identification that occurred  
6 was with Mr. Jackson. He went to the bond hearing of Mr.  
7 Henson in October of 2010 a year after this occurred. When  
8 he was brought back to South Carolina, and they held the  
9 bond hearing in the city of Rock Hill. He was called in  
10 and his mother went to get him to the bond hearing and sat  
11 down. And didn't have any communication with Officer  
12 Ruthers. But sat down and as the Defendant sat there in  
13 the room there waiting for the bond hearing to occur right  
14 after it began, Mr. Jackson tells me that the Defendant  
15 looked over towards him and his mother said something to  
16 the effect of, "Yo, that's my homeboy. I went to school  
17 with him. I didn't know it was him I did this to," or  
18 something of that nature.

19 He at that point recognized the voice because in the  
20 actual armed robbery the person was masked. He recognized  
21 the voice as the person from the armed robbery itself from  
22 that night as well as the voice of a person he had gone to  
23 school with and remembered that he had gone to school with  
24 that man at Northwestern High School, and he remembered his  
25 voice and the Baltimore accent that he had. And he had

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1 told the police prior to all of this back when the incident  
2 occurred that he remembers that the person had a voice as  
3 if he were from up north like Baltimore because the victim  
4 has relatives in Baltimore that knew of the accident.

5 So but that is not a police, so show up lineup so I  
6 don't know that that's one that requires a pretrial  
7 hearing.

8 THE COURT: Well, before we have an in-court  
9 identification, we probably ought to --

10 MR. THOMPSON: Well, both of the female co-defendants  
11 identified the Defendant as well but of course they knew  
12 him from before. They picked him out of a photo lineup too  
13 but it's not one in which they were saying they know him  
14 just from the robbery, it's because they have known him for  
15 some time.

16 THE COURT: Well, he only asked that, indicated that  
17 on Mr. Jackson or Mr. Cunningham.

18 MR. THOMPSON: Right, Mr. Jackson -- it's only as to  
19 the State that Mr. Cunningham is not going to testify to  
20 who has had knowledge of who he is.

21 THE COURT: Well they probably all have.

22 MR. CHIARENZA: Well, Your Honor, I think -- and just  
23 that the Court will beg me its indulgence for just a moment  
24 here, I may be able to clarify.

25 I, you know, to be quite candid I think that -- I

1 don't know that there would be any reason to stop the State  
2 from eliciting some sort of testimony from Mr. Jackson  
3 about what he believes he may have seen and observed at the  
4 bond hearing. My concern is that you don't know that, you  
5 know, the in court identification is a specific event that  
6 occurs during the course of the trial. And I just don't  
7 know that he's capable of making that based on anything  
8 that's been in the file previously as identifying him as  
9 the shooter on that night. Now whether he can identify him  
10 as someone that he went to school with, I mean that's -- I  
11 don't know that we can argue that the two of them both went  
12 to the same school, but what I'm looking at preventing here  
13 is a specific, what we all recognize as a legal in court  
14 identification because he's never done that at any time, in  
15 any of the discovery that I've seen, we've had a positive  
16 identification of my client as the shooter on the night in  
17 question. Until here recently, he's divulged to the  
18 solicitor's office that he recognized his face at the bond  
19 hearing that we heard. So that's -- again I think that  
20 they can on direct examination ask him basically anything  
21 that he may have or may have observed at the time. But I  
22 -- what I would object to is him pointing to my client and  
23 making a positive identification as someone that he's ever  
24 previously identified as the shooter in this case.

25 MR. THOMPSON: I'm not sure how to address that except

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1 -- you would simply testify that, as I said, that you  
2 recognize the voice as the same person whose voice it was  
3 at the front porch at his house. And that he also then  
4 recognized his face not from the front porch, his face from  
5 having gone to school. And recognized his voice as well  
6 because he heard his voice at school before and realized,  
7 basically, at that point is when he put it all together,  
8 and this was the guy ---. But it was based on the voice.

9 THE COURT: I understand. And he's putting the face  
10 with the voice.

11 MR. THOMPSON: Right.

12 THE COURT: Well, we'll probably have to have some  
13 testimony on that before we bring that before the jury too.

14 MR. THOMPSON: Okay.

15 THE COURT: Yes, ma'am.

16 MS. INZERILLO: Your Honor, if I may just before the  
17 jury comes up, it appears that the State on its potential  
18 witness list has listed my client as a potential witness  
19 for the State, and I would just ask the Court to not read  
20 out his name as a potential witness of the State. As of  
21 right now it's my understanding Mr. Reid is not going to  
22 testify for the State.

23 THE COURT: Okay. Mr. Henson will give two, I guess.  
24 Is that the same one, is that Donte.

25 MR. CHIARENZA: Yes, Your Honor.

1 THE COURT: And Donte Reid, I'm going to strike him  
2 out. Usually, of course not usually, but I ask that we  
3 start a trial in relationship to the defendants. And  
4 usually if their name appears on the witness list and I  
5 catch it, I don't ask again. I think my initial question  
6 covers it. And it covers it in the context other than that  
7 they are possible witnesses. So I think you'll get the  
8 information that you want, the Solicitor and the Court  
9 needs as far as the relationship, but it won't be in the  
10 context -- it will be in the context of the defendants as  
11 opposed to witnesses.

12 Other than that, anything else?

13 MR. CHIARENZA: No, sir, Your Honor.

14 MR. THOMPSON: No, Your Honor.

15 THE COURT: You want to check to see where the jury  
16 is? I don't want to start on anything --

17 MR. THOMPSON: We've received an informal response that  
18 -- Ms. Collins just called this to my attention, but not a  
19 formal response in that we filed a reciprocal discovery  
20 request as well as a notice in motion for alibi ----.  
21 It's my understanding those will not be imposed as  
22 defenses, but for the record we just want to confirm that.  
23 And also ask whether there's any reciprocal discovery at  
24 this point in this case.

25 THE COURT: Ms. Inzerillo?



1 MS. INZERILLO: No, Your Honor.

2 THE COURT: No discovery?

3 MS. INZERILLO: No discovery.

4 MR. CHIARENZA: No discovery, Your Honor. And none of  
5 those affirmative defenses.

6 THE COURT: The jury is going to be coming up. I'm  
7 going to step out minute. And all of you may, of course --  
8 it might be better if you remain seated so the defendants  
9 will be coming back and forth. But we'll get the jury but  
10 I am going to step out a minute.

11 Also, I have Defendant Reid's request for voir dire.  
12 And, Do I -- I don't see one for Mr. Henson.

13 MR. CHIARENZA: No, Your Honor, I was just joined in  
14 what's been submitted by Defendant Reid. And I'm also very  
15 satisfied with this court, unless this court has  
16 substantially changed its typical line questioning. I  
17 would just ask the Court to ask what it generally asks.

18 THE COURT: I won't ask 10. Does the State have any  
19 objections to any of the other ones?

20 MR. THOMPSON: No, Your Honor.

21 THE COURT: All right.

22 MS. INZERILLO: Your Honor, is there anything that you  
23 will not ask them?

24 THE COURT: Yeah, I'm not going to ask them whether  
25 they have any strong feelings against or for the

1 recreational use of marijuana.

2 MS. INZERILLO: May I State for the record why I did  
3 question that, Your Honor?

4 THE COURT: You certainly may.

5 MS. INZERILLO: One of the anticipated facts that may  
6 be listed in their testimony is that my client did contact  
7 one of the victims about smoking marijuana, meeting up to  
8 smoke marijuana. And we anticipate that fact being  
9 elicited. That is the reason why it wasn't just some  
10 random fact thrown in there to make sure that the juror --  
11 any potential juror doesn't feel so strongly about that  
12 fact. And that, sort of, precedent meeting between the  
13 parties as to cloud their judgment, and as to any of the  
14 other facts in the case, Your Honor.

15 THE COURT: What does the State have to say about  
16 that?

17 MR. THOMPSON: We have no objection to that.

18 THE COURT: Well I'll answer -- well you can answer  
19 it, kind of thing.

20 MR. THOMPSON: In this case, we are not setting any  
21 precedent for future cases, but in this case we'll have no  
22 objection.

23 THE COURT: All right.

24 MR. THOMPSON: And our only request, Your Honor --  
25 your standard request about family, relatives, close

1 personal friends with the defendants as well as counsel for  
2 the defense or anyone working in the Public Defender's  
3 Office. And then the other question, Your Honor, that  
4 would typically be asked is that if any person holds any  
5 Strong moral, philosophical, or religious reasons -- any of  
6 those religious or moral, philosophical reasons why they  
7 could not serve in standing judgment of another person.

8 THE COURT: If I miss anything, call it to my  
9 attention when I ask you to, okay?

10 MR. THOMPSON: Yes, Your Honor.

11 THE COURT: Just let me know when the jury gets here.

12 (SIDE BAR OFF THE RECORD AT 03:14 PM.)

13 (JURY ENTERS COURTROOM AT 03:14 PM.)

14 (COURT BACK IN SESSION AT 03:18 PM.)

15 THE COURT: Thank you, you may take your seats.

16 Members of the jury panel, I am John Hayes from Rock  
17 Hill and along with Judge Alford, who you met this morning,  
18 I am one of the two resident judges with the 16th Judicial  
19 Circuit. That includes both York and Union County. Like  
20 Judge Alford, I've been assigned this week to hold court  
21 here in York, Criminal Court, General Session's Court, is  
22 the technical name.

23 We're starting the first trial of the week for this  
24 courtroom at this time. And I am going to call on the  
25 Solicitor, Mr. Brackett or his associate Deputy, Mr.

1 MS. INZERILLO: No, Your Honor.

2 MR. CHIARENZA: No, Your Honor.

3 THE COURT: All right, we'll see you at 10:00 in the  
4 morning. Have a pleasant evening.

5 (JURY PANEL EXCUSED AT 04:19 PM.)

6 THE COURT: It's 4:15, we've been at it for a while.  
7 I know we got some motions to take up. I do have drug  
8 court tonight which means we'll have to stop at least about  
9 quarter to Five, quarter to Six, at the latest. But, we've  
10 got several motions.

11 Why don't we take a real short, refresher break, and  
12 then come back, and take motions. And I'll let Counsel  
13 establish the order in which we are to take them.

14 (SHORT RECESS AT 04:20 PM.)

15 (BACK ON THE RECORD AT 04:33 PM.)

16 THE BAILIFF: Come to order.

17 THE COURT: Thank you, take your seats. Get the  
18 defendants in.

19 MR. THOMPSON: If it please the Court.

20 THE COURT: We'll need the defendants.

21 MR. THOMPSON: Okay.

22 (DEFENDANT'S REENTER COURTROOM.)

23 THE COURT: Defendants with counsel are present.  
24 Solicitor.

25 MR. BRACKETT: Yes, sir, Your Honor. We discussed it

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1 with Counsel for the defendants, and we think that probably  
2 the most logical way to proceed is to handle Mr. Reid's  
3 Denno motion. That will familiarize you then with the  
4 statements that he made which will aid you in deciding  
5 Bruton issues.

6 But, perhaps, we can take up a severance motion first.  
7 I think Mr. Chiarenza said he had some brief comments to make  
8 about that.

9 THE COURT: All right.

10 MR. CHIARENZA: Thank you, Your Honor. Just for the  
11 record, I know we indicated that we would be moving to sever.  
12 And this is on the grounds of -- The Court is obviously  
13 familiar with -- just, there is an antagonistic  
14 -- the defenses here, Mr. Reid's given statement, which we  
15 -- it's going to be the basis of the Denno hearing. And we  
16 feel quite certain the State is going to move to introduce  
17 that statement. That statement or portions thereof  
18 implicate my client.

19 I'm aware that the State realizes that it will  
20 -- Under the law should probably have to redact portions  
21 of that statement. Nevertheless, we would take the  
22 position that it's still not much of a leap for a jury to  
23 read between the lines as it were. So, based on that, I  
24 believe that trying these clients -- these two defendants  
25 together deprives my client of a fundamental right to a

1 fair trial, Your Honor. It's for that reason that I would  
2 move to have these two defendants tried separately for  
3 the Court to sever this trial today and let the State decide  
4 against which defendant they want to go to trial today, Your  
5 Honor.

6 THE COURT: All right. We'll hear from the State.

7 MR. THOMPSON: Your Honor, I believe the Defense really  
8 has shown no real prejudice at this point. There's nothing  
9 -- The cases have certainly arise out of all the same  
10 facts and charged with exactly the same charges as co-  
11 defendants within the case. As a matter of fact two other  
12 defendants, two female defendants were charged with the exact  
13 same charges and pled and are testifying regarding the  
14 involvement of both. With these defendants, there's nothing  
15 really to, you know. as far as judicial economy that  
16 there's a great benefit to try them together of course, if  
17 the jury deserves the whole picture as well to be able to see  
18 everyone here, the involvement that each person had according  
19 to the people who are testifying.

20 And as far as the redaction of the State but there is  
21 one statement that Donte Reid gave that does implicate this  
22 defendant, however, I believe, we can come to a very good and  
23 successful conclusion on how to redact that. And we'll see  
24 that as we get into that with the Bruton motions that I'm  
25 sure will follow.

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1 But the first three statements that Mr. Reid gives say  
2 nothing about Mr. Henson. They simply say, first him, and  
3 then another man altogether, named Darius Jeter. And Mr.  
4 Jeter was actually charged and the charge was dismissed  
5 because that ended up being untruthful that Mr. Jeter was  
6 involved. Then he admitted that him and Samantha Ervin and  
7 Mr. Jeter did it, ultimately, on the third statement.

8 And then we find the fourth statement is where he  
9 mentions everyone and clears Mr. Jeter.

10 And so, there are a number of things that can be done.  
11 And we can correct any Bruton issue with the redactions that  
12 the State is proposing. But there is nothing else that  
13 points out that this is a case in which, on its face, any  
14 prejudice to the defendants going to trial together on these  
15 criminal charges

16 MR. CHIARENZA: And if I may, Your Honor.

17 THE COURT: All right.

18 MR. CHIARENZA: I apologize, but I just -- just so the  
19 record is crystal clear, obviously the right I am speaking  
20 about is the right for my client to confront and cross  
21 examine witnesses against him. So, what we are anticipating  
22 is that Mr. Reid would not take the stand. However, his  
23 statement would come in, and my client would not be able to  
24 cross examine on that statement. So, I think, just for the  
25 matter of the record, I need to clarify what specific right

1 I'm arguing that he would be deprived of by virtue of these  
2 two individuals being tried together.

3 (PAUSE.)

4 THE COURT: How have you got it? How's the redaction  
5 and how does it read?

6 MR. THOMPSON: Your Honor, the State can provide --

7 THE COURT: Do it this way. Read it to me unredacted  
8 and then redacted.

9 MR. THOMPSON: All right. We went back to the statement  
10 that says,

11 "I have earlier made statements to the police officers  
12 about what happened the night Tyrone King, who I call Banks  
13 was shot. I told parts of the truth because I had been  
14 threatened by the guy that done the shooting. The guy's name  
15 is Davontay. And I picked him out of a photo lineup today  
16 also.

17 The night this happened, it was me, Davontay, and Lee  
18 Lee over at Samantha's house on Keels Avenue. Sam and  
19 Davontay left and when they got back, Davontay had a  
20 rifle, and he was loading it up. The rifle was black and  
21 brown in color. It was about three feet long. It was  
22 white tape around the butt of the gun. I assume that Sam and  
23 Davontay had went and got the gun because he didn't have it  
24 before they left. And they said they were going to get  
25 something. It was already dark, and we were all standing



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1 around outside. And Sam told him to take the gun in the  
2 house, and he did. He took it to Sam's room. We all went up  
3 there too. I wanted to be" -- It says, "noise," but I  
4 believe it should have been "nosey" -- "to see what the gun  
5 looked like.

6 Davontay was holding the gun, and he said he was wanting  
7 to let it rip. He said it was automatic. He asked me if I  
8 wanted to walk with him because he had said something about  
9 robbing somebody. I didn't want to go because I didn't know  
10 where we were going or where he was going to put the gun. He  
11 said that he was putting it in his pants. I told him I  
12 didn't want to go. He asked Sam if she wanted to go  
13 somewhere. She asked -- it says 'where,' and he said,  
14 'anywhere that he can make a lick.'

15 Me, Sam, and Lee Lee, and Davontay got in Sam's  
16 grandfather's truck, a small truck. I got in the bed, and  
17 Lee Lee and Davontay got in the cab with Sam, and Sam drove.  
18 As they were leaving, I saw Duke, who was Darius Jeter  
19 walking near Sam's house. He tried to flag us down, but we  
20 kept going.

21 We rode around a little bit and went to Sam's mother's  
22 house. I asked Sam to take me home, so I could use the  
23 bathroom. I called Maurice, that's on Sam's phone, on the  
24 way to my house. I was going to smoke with him. And when I  
25 asked if he wanted to, he said, 'Yes.' I told Maurice, we

1        could call him when I got home. I told Maurice I would call  
2        him when I got home. Sam asked me if Maurice had any money  
3        or if he'd sell weed. I told her that he did sell weed, and  
4        that he might have some money. Sam asked me if I would set  
5        up Maurice. I told her that I really don't want to, but I  
6        can.

7        When we got to my house, Sam told me to call Maurice  
8        when I got inside, and find out who all was with him at his  
9        house, and then to call her back. I went to the back room  
10       and tried to call Maurice from my house phone, but he  
11       wouldn't pick up his cell phone. So, I walked to his house.  
12       He only lived a couple of houses from me on Byar Street.

13       When I got to Maurice -- When I got there, Maurice was  
14       there along with Tyrone King and Kenny. I asked Maurice to  
15       use his cell phone to call Sam to let her know that there was  
16       two other people there with Maurice. I then asked Maurice to  
17       walk with me to midtown, but he wouldn't. While I was on the  
18       porch with Maurice, Sam drove by three or four times. And  
19       Maurice said, 'Why does this truck keep coming by?' I walked  
20       off the porch.

21       And when I got to the end of Byar Street, I made a left  
22       on Maple Street. And Sam was driving down Byar Street. And  
23       when she saw me, she made a left turn on Maple Street too.

24       Davontay and Lee Lee then got out of Sam -- got out  
25       after Sam stopped. I told Lee Lee that there was three

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1 people since Maurice would walk with me. Davontay then said,  
2 'Fuck it. I might as well run up on the porch and rob all  
3 three of them.'

4 Sam had drove over to Reynolds Street and parked on the  
5 dirt road to the left after the bridge. Davontay asked me  
6 which house they were at, and what did it look like. I told  
7 him that they were all on the porch. Davontay had the rifle,  
8 and him and Lee Lee walked towards Maurice's house. I walked  
9 toward where Sam was parked. I knew where she was going to  
10 keep" -- or -- "I knew where she was going to be because she  
11 told us where she was going to park. I got in the truck with  
12 Sam, and we sat there for maybe five minutes and then  
13 heard a bunch of shots. Sam pulled off and picked up  
14 Davontay and Lee Lee at the bridge. Davontay got inside the  
15 truck with me and Sam, and Lee Lee got in the bed. We all  
16 went back to Sam's house. We started talking about the  
17 situation, and Lee Lee said that she was the one that asked  
18 the guys for the weed. Davontay started saying he didn't  
19 want anyone to snitch on him, and if anybody did snitch, he  
20 would come back and get them. I got a call on Sam's house  
21 phone from my step-dad telling me that Tyrone and Kenny had  
22 been shot. Davontay and Lee Lee left in the truck, and Lee  
23 Lee drove. I believe that Davontay took the rifle with him,  
24 and Lee Lee came back a little while later by herself. I  
25 stayed all night at Sam's, and when I woke up, Sam had gotten

1 a text message saying that Tyrone had died. My step-dad  
2 called again and told me that the police had been by my house  
3 or by the house and wanted to talk with me. I walked home  
4 and called the number the officer had left."

5 And that's the statement that's unredacted.

6 The redacted statement, and I'll point out that this  
7 statement, Your Honor, there are no blanks or lines that are  
8 struck through. This has been seamlessly put together so  
9 that it appears as if it hasn't been altered at all. So,  
10 that's one of the concerns, I believe, in the case law on  
11 these type of issues with Bruton.

12 "Since I had earlier made statements to police officers  
13 about what happened the night that Tyrone King and Banks, who  
14 I call Kenny, was shot. I told parts of the truth because I  
15 had been threatened by 'the guy' that done the shooting.  
16 This guy's name is" -- I'm sorry, I thought I redacted it but  
17 didn't.

18 "I had earlier made statements to the police officers  
19 about what happened the night that Tyrone King who I  
20 called Banks was shot. I told parts of the truth because I  
21 had been threatened by 'the guy' that had done the shooting.

22 The night this happened, it was me, 'the guy' that did  
23 the shooting, and Lee Lee over at Samantha's house on Keels  
24 Avenue. Sam and 'the guy' left. And when they got back,  
25 'the guy' had a rifle, and he was loading it up. The rifle

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1 was black and brown in color. It was about three feet long.  
2 It had white tape around the butt of the gun. I assume  
3 that Sam and 'the guy' had went and got the gun because  
4 he didn't have it before they left. And they said they were  
5 going to get something. It was already dark, and we were all  
6 standing around outside. And Sam told him to take the gun in  
7 the house, and he did. He took it to Sam's room. We all  
8 went up there too. I wanted to be noisey and see what the  
9 gun looked like.

10 'The guy' was holding the gun, and he said he was  
11 wanting to let it rip. He said that it was automatic. He  
12 asked me if I wanted to walk with him because he had said  
13 something about robbing somebody. I didn't want to go  
14 because I didn't know where he was going to put the gun. He  
15 said that he was going to put it in his pants. I told him I  
16 didn't want to go. He asked Sam if she wanted to go  
17 somewhere. She asked him 'where,' and he said, 'anywhere  
18 that he can make a lick.'

19 Me, Sam, Lee Lee, and 'the guy' got in Sam's  
20 grandfather's truck, a small truck. I got in the bed, and  
21 Lee Lee and 'the guy' got in the cab with Sam, and Sam drove.  
22 As we were leaving, I saw Duke, who was Darius Jeter walking  
23 near Sam's house. He tried to flag us down, but we kept on  
24 going.

25 We rode around a little bit and went to Sam's mother's

1 house. I asked Sam to take me home, so I could use the  
2 bathroom. I called Maurice on Sam's phone, on the way to my  
3 house. I was going to smoke with him. And when I asked if  
4 he wanted to, he said, 'Yes.' I told Maurice, I would call  
5 him when I got home. Sam asked me if Maurice had any money  
6 or did he sell weed. I told her that he did sell weed, and  
7 he might have some money. Sam asked me if I would set up  
8 Maurice" -- or -- "if I would set Maurice up. I told her  
9 that I really don't want to, but I can.

10 When we got to my house, Sam told me to call Maurice  
11 when I got inside, and find out who all was with him at his  
12 house, and then to call her back. I went to the bathroom and  
13 tried to call Maurice from my house phone, but he wouldn't  
14 pick up his cell phone. So, I walked to his house. I only  
15 live a couple of houses from -- He only lives a couple of  
16 houses from me on Byar Street.

17 When I got there, Maurice was there along with Tyrone  
18 King and Kenny. I asked Maurice to use his cell phone to  
19 call Sam to let her know that there was two other people  
20 there with Maurice. I then asked Maurice to walk with me to  
21 midtown, but he wouldn't. While I was on the porch with  
22 Maurice, Sam drove by three or four times. And Maurice said,  
23 'Why does this truck keep coming by?' I walked off the  
24 porch.

25 And when I got to the end of Byar Street, I made a left

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1 on Maple Street. And Sam was driving down Byar Street. And  
2 when she saw me, she said she" -- I'm sorry -- "when she saw  
3 me, she made a left turn on Maple Street too.

4 'The guy' and Lee Lee then got out after Sam stopped.  
5 I told Lee Lee that there was three people since Maurice  
6 wouldn't walk with me. 'The guy' said, 'Fuck it' and 'I  
7 might as well run up on the porch and rob all three of them.'

8 Sam had drove over to Reynolds Street and parked on the  
9 dirt road on the left after the bridge. 'The guy' asked me  
10 which house they were at, and what did it look like. I told  
11 him that they were all on the porch. 'The guy' had a rifle,  
12 and him and Lee Lee walked towards Maurice's house. I walked  
13 to where Sam was parked. I knew where she was going to be  
14 because she told us where she was going to park. I got in  
15 the truck with Sam, and we sat there for maybe five  
16 minutes and then heard a bunch of shots. Sam pulled off and  
17 picked up 'the guy' and Lee Lee at the bridge. 'The guy' got  
18 inside the truck with me and Sam, and Lee Lee got in the bed.  
19 We all went back to Sam's house. We started talking about  
20 the situation, and Lee Lee said that she was the one that  
21 asked the guys for the weed. 'The guy' started saying he  
22 didn't want anyone to snitch on him, and that if anybody did  
23 snitch, he would come back and get them.

24 I got a call on Sam's phone from my step-dad telling me  
25 that Tyrone and Kenny had been shot. 'That guy' and Lee Lee

1 left in the truck, and Lee Lee drove. I believe that 'he'  
2 took the rifle with him, and Lee Lee came back a little while  
3 later by herself. I stayed all night at Sam's, and when I  
4 woke up, Sam had gotten a text message saying that Tyrone had  
5 died. My step-dad called again and told me that the police  
6 had been by their house and wanted to talk with me. I walked  
7 home and called the number the officer had left."

8 I can pass both of these up, Your Honor, and copy -

9 THE COURT: Do you have the cases? Any cases?

10 MR. THOMPSON: Yes, Your Honor.

11 Do you want me to address the Bruton in addition to the  
12 severance, at this point, Your Honor?

13 THE COURT: Well I think, I think the severance is, sort  
14 of, predicated on the Bruton matter.

15 MR. THOMPSON: Bruton?

16 THE COURT: Yes.

17 All right.

18 MR. THOMPSON: Basically, the tenets, I think, that we  
19 look at are, one, if the redactions themselves, the changes  
20 are not obvious. I think as we look at the actual, physical  
21 statements, the fact that that redactions were made are not  
22 obvious. There's no blanks, there's no blacked out spaces,  
23 there's no large gaps in between paragraphs or sentences  
24 or things like that. There appears to be a seamless  
25 statement as it would have been taken if he had not mentioned



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1 the name of the final co-defendant.

2 And going and looking at, for instance, the Holder case  
3 that is before the Court. One of the cases that I passed up  
4 is 382 S. C. 278; and 676 S. E. 2d 690; 2009 case from the  
5 Supreme Court South Carolina. In this case, it mentions  
6 specifically that just putting in "she" in this particular  
7 case, that while that is sometimes appropriate, it's not  
8 enough to satisfy Bruton in this case because by looking at  
9 the statement on its face, everyone knew it was still meaning  
10 this particular defendant. But the fact pattern in that case  
11 is much different than in this case. That's a fact pattern  
12 in which she was the mother of this child. It was a homicide  
13 by child abuse case. She was the only female involved in the  
14 whole thing. So when the defendant was saying that there  
15 were bruises on the child, and he thought that she was the  
16 one who had placed those bruises or caused those bruises or  
17 caused the abuse, it made it obvious, the only other person  
18 in the household was her, so as far as she goes. So, I think  
19 that in this particular case, it's saying, if you look at it  
20 on its face and based on the facts, it's going to have to be  
21 her without anything else. In other words, no one else had  
22 to testify, and there's no other doubt that she was the one  
23 who did it.

24 Whereas, in this case, by using "he" or "the guy,"  
25 there's more than one guy. There's actually two that we have

1 charged. But in addition, Mr. Reid also mentions another guy  
2 in his initial statements, in his first initial three  
3 statements, a Darius Jeter person, that he ultimately says  
4 was not involved. And the last statement where it says that  
5 they just passed by and wasn't involved.

6 At this point, you can't discern who in the world he's  
7 talking about. If you look at this statement on its face,  
8 there could be any number of people because the house they're  
9 talking about being at is Samantha Ervin's house. That's not  
10 the house of everybody else. You don't know who other people  
11 will be there. And, I think, actually the testimony will  
12 show that the people that are there -- We're going to have  
13 testimony from Elijah James who was there, who would have  
14 been another black male who was at that house, but did not  
15 participate in this crime, but was at that house. So, I  
16 think, it doesn't just in itself say that Davontay Henson was  
17 involved in this crime.

18 Now of course there will be other witnesses who testify  
19 saying that Davontay Henson was involved in a crime but  
20 that's all right. I mean this case law if the case law tell  
21 us that it's not a matter if other evidence can prove because  
22 you're always going to have the other evidence. It's a  
23 matter of the statement on its face as we look at it.

24 And I would point out too, in the Holder case, while  
25 they found that error, they still found it to be a

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1 harmless error because the defendant had made some of  
2 their own admissions. And they also looked at the strength  
3 of the State's case. And if you go to *State versus*  
4 *Johnson*, once again in this particular case, one of the  
5 things that happened here is the investigator testified in  
6 addition to having some blank spaces and things like that in  
7 the statement which we do not have here. The investigator in  
8 *State versus Johnson*, which is 390 S.C. 600 and 703 S. E. 2d  
9 217, it was also based on the fact that the investigator said  
10 that after he spoke with this "x" witness, who was the one  
11 that used -- that redacted the statement with -- He then used  
12 that to charge the defendant who the statement was used  
13 against. So, it implicated, made it obvious by that  
14 testimony based only on the statement that was redacted  
15 with these major holes in it, that as we looked at the  
16 statement itself that then it implicated the defendant. We  
17 don't have that here. I'm not going to be calling the  
18 detectives to testify about the statement of Donte Reid and  
19 then they arrested or made an arrest warrant for Davontay  
20 Henson. Because actually in this case, they had already  
21 received information from Samantha Ervin that Donte -- That  
22 not only Donte was involved, but that Davontay Henson was  
23 involved, and that Aileen Newman was involved. And they had  
24 already reissued warrants based on her statements she has  
25 testified. So, I think, he won't be talking about the

1 statements of Donte Reid to being the one that causes him  
2 to charge Davontay Henson. And so we don't have to worry  
3 about that in this case either.

4 And as I said, the other thing that they look at is  
5 the strength of the State's case itself. If there's a lot  
6 of other strong evidence that helps to prove, that's not  
7 the only thing that links the Defendant, in other words.  
8 In this case, it's not. There's two co-defendants who are  
9 going to come forward and say, "They were with us. They  
10 did this with us." And as a matter of fact, the victims in  
11 the case will identify Donte Reid as being the one who came  
12 before the robbery occurred, that he borrowed the victim's  
13 cell phone. He made a call. And on that call, you'll  
14 recall him saying about two others or two more. And that's  
15 really what broke the case open, when the victim told about  
16 what Donte Reid had done. And then, of course, then the  
17 other Defendant's telling who all was involved because  
18 Donte Reid doesn't mention Davontay Henson until the final  
19 statement. And so, as far as redaction goes, it's the only  
20 statement that has to be redacted. And by virtue of him  
21 naming other people as he went along, it leaves a wide  
22 variety of people that this other person can be. There's  
23 no direct pointing to the Defendant in that particular  
24 instance.

25 I think that's it, Your Honor. I think, as I said, in

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1 its plain reading of the statement, it doesn't point to  
2 Davontay Henson.

3 THE COURT: Mr. Chiarenza.

4 MR. CHIARENZA: Your Honor, I believe Mr. Thompson has  
5 accurately, more or less, stated the law. But I think that  
6 I would take issue to him as to the overall strength of the  
7 State's case. There's no physical evidence in this case  
8 against my client. There's no forensic evidence against my  
9 client. The State's entire case against my client  
10 essentially depends on the testimony of cooperating co-  
11 defendants and granted, to a lesser extent, some other  
12 individuals who may be able to put my client with these  
13 people on the night in question, but not as eyewitnesses to  
14 the actual crime.

15 So, I take the position that to allow the statement in  
16 without giving my client the opportunity to cross examine  
17 on this statement, does deny him of a substantial right  
18 under the constitution, the right to confront witnesses, one  
19 of the premier rights that a criminal defendant has, and we  
20 just quite simply would be denied that right in this  
21 instance.

22 And I -- It sort of begs the question if Mr.  
23 Thompson's so convinced that the jury is likely to just  
24 plug in anybody in this void where they've redacted and put  
25 in "the guy," "the guy," "the guy." And then I wonder why

1 he wants the statement in at all. It's so vague. And when  
2 measured against the three prior statements of Mr. Reid,  
3 that it -- He'll have you believe that the jury can do  
4 nothing but just assume that it's right in line with the  
5 other three statement that are given. I think that, that  
6 takes a rather narrow view of the situation that we've got  
7 here with these two individuals sitting side by side at  
8 trial together. Personally, in my personal opinion,  
9 matters very little when it comes to matters of law. But  
10 I've always found it to be disingenuous that any court has  
11 managed to find that this redaction somehow satisfies the  
12 screening problem here which is a non-testifying co-  
13 defendant implicating his co-defendant without the person  
14 being implicated, having an opportunity to cross examine,  
15 particularly here where there are some credibility issues  
16 with Mr. Reid. He gave a number of false statements  
17 leading up to the statement in question. I just think to  
18 let his statement stand without my client having an  
19 opportunity to attack the validity of that statement denies  
20 him of that right, Your Honor. And it's not a clear-cut  
21 area of the law. And I'll leave it up to the Court to  
22 render its decision.

23 THE COURT: Well, I find it is, if not completely  
24 clear-cut, fairly clear-cut. And I find that the statement  
25 they've redacted is not on its face incriminate the

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1 Defendant Henson with use of the term, "the guy," "the guy  
2 that did the shooting' "the guy." And I think that  
3 purports with the current status of the law as to what  
4 terms satisfy the requirement of a proper redaction. That  
5 is, as opposed to leaving blanks, using "x," or using some  
6 -- This is not a situation such as the Holder case.

7 So, I find there is no violation of confrontation  
8 clause. No Bruton violation will occur as by use of the  
9 State's production of the redacted statements. And I also  
10 deny, based on that ruling, deny the motion to sever as  
11 that appears to be the only predicate for there being any  
12 grounds for severance. And having been exposed of  
13 adversely to Mr. Henson, I deny the motion to sever.

14 All right. What motion is next?

15 MR. THOMPSON: Your Honor, at this point, I think  
16 we'll do the Jackson Denno hearing.

17 THE COURT: All right.

18 MR. THOMPSON: The State would call Detective Les  
19 Herring to the stand.

20 (WHEREUPON: LESLIE R. HERRING,  
21 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION (IN CAMERA)

23 LESLIE R. HERRING BY MR. THOMPSON:

24 Q. Detective Herring, will you state your full name,  
25 please?

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1 A. Leslie R. Herring.

2 Q. And where do you work?

3 A. I work for the City of Rock Hill Police Department.

4 Q. And how long have you worked there?

5 A. December the 1st will be thirty-three years.

6 Q. Were you the lead detective assigned to this case when  
7 this occurred when Mr. King was killed and Mr. Cunningham  
8 shot.

9 A. Yes, sir, I was.

10 Q. All right. And can you tell me, initially, what were  
11 you able to learn that night when this occurred as far as  
12 what you were looking for and who you were looking for?

13 A. Indication that night where we were looking for a  
14 black male with dreadlocks and a black female.

15 Q. Okay. And is that -- and I guess we'll try to make it  
16 fast for the purposes of this hearing, is that because the  
17 robbery itself, the only people that the victim saw were  
18 the two robbers that were in front of them?

19 A. That is correct, yes, sir.

20 Q. Okay. And then in looking into that, did you have any  
21 names or anything right at that point that you knew about?

22 A. Not at that point. Not at that night at all. No, no  
23 names.

24 Q. How do you come then to Donte Reid? What brought you  
25 to him?



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1 A. The next morning, we got a call to go back to the  
2 scene of the shooting and talk to the victim -- one of the  
3 victims involved in the robbery. And he indicated that --

4 Q. And which one was that?

5 A. The victim?

6 Q. Which victim?

7 A. Jackson.

8 Q. All right. So, the one who was not shot, but who was  
9 also robbed?

10 A. Right.

11 Q. Was this his residence on Byar Street, at [REDACTED]

12 [REDACTED]

13 A. Yes, sir, it was.

14 Q. Okay. Go ahead.

15 A. Mr. Jackson called us to come back to the scene, that  
16 he had remembered some other details. When me and  
17 Detective Ayers got to the scene, he indicated that he had  
18 remembered that Donte Reid, Defendant Reid, had been at his  
19 house right before the robbery, and had said -- had asked  
20 to use his telephone. And while he was using his  
21 telephone, the victim's telephone, made a comment of  
22 "There's two more, there's two more here." And he said  
23 that seemed strange to him. He thought at that point that  
24 Reid had set the robbery up.

25 Q. All right. Was he able to say for sure that Reid was

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1 not one of the robbers?

2 A. He knew Reid was not involved because Reid lived right  
3 up the street from him, but he felt like Reid set the  
4 robbery up.

5 Q. All right. And at that point in time, did you then  
6 try to contact Mr. Reid after your interview with the  
7 victim then?

8 A. Yes, we left and went by Mr. Reid's residence there on  
9 Byar Street. He wasn't at home. And we talked with an  
10 older gentleman and left a card there with a phone number  
11 for Mr. Reid when he returned home to give us a call.

12 Q. And ultimately, did he call your office?

13 A. Yes, sir, later that morning, or around noon, he did  
14 call.

15 Q. And then he -- Did you contact Mr. Reid then? Did you  
16 go talk to him?

17 A. I was at the station, and Detective Ayers was getting  
18 ready to leave the station when we got the call that he was  
19 at home. So, Detective Ayers actually went by the house  
20 himself and picked Mr. Reid up and brought him to the  
21 station.

22 Q. And when you brought Mr. Reid in, was he under arrest  
23 at that point in time?

24 A. No, sir. He voluntarily came to the police department  
25 with Detective Ayers.

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1 Q. And then were you there when he arrived at the police  
2 station with Detective Ayers?

3 A. Yes, sir, I was.

4 Q. Did anything happen? When he comes into the station,  
5 what did you do at that point?

6 A. We brought him into an interview room and began  
7 talking with him about what he might have observed the  
8 night he had stopped by the house and had borrowed  
9 Jackson's cell phone to call someone. If he noticed anyone  
10 else around the scene or anything unusual.

11 Q. What did he say?

12 A. He said that there -- He didn't notice anything  
13 unusual the night when he was there right before the  
14 robbery. He indicated that he did borrow Mr. Jackson's  
15 cell phone to call someone.

16 Q. Did he say who he called on it?

17 A. He initially said that he had called a girl, I  
18 believe, over in midtown, and was going to walk over to her  
19 house.

20 Q. Did you get her name from him at that point?

21 A. Yes, sir. While we were interviewing him, he gave us  
22 a name of a female and the address in the midtown  
23 apartments to where she was living with her mom.

24 Q. What did your group do as a result of that, getting  
25 that information?

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1 A. We got Mr. Reid to get in the car with us, back in  
2 Detective Ayer's unmarked car and we rode over to midtown  
3 apartments. And he told us which apartment it was again.  
4 And told us, as I was getting ready to get out of the car,  
5 he said, "Don't ask for her by the name I told you, ask for  
6 her by a different name." So, I got on out of the car,  
7 walked over to where he said he walked to that night, and  
8 talked to the girl's mom.

9 Q. All right. And he said -- Now he had said that he had  
10 called her, but he stated he had also gone over there right  
11 after he called her?

12 A. Right. He said that he called her to let her know  
13 that he was going to come over. And she agreed to let him  
14 come over. So, he walked on over to her apartment.

15 Q. And were you able to determine if he had been at that  
16 apartment that night?

17 A. Talking to the mother, she indicated that he had not  
18 been there. And she called her daughter, and the daughter  
19 also confirmed what the mother said that he had not been  
20 there at all that night.

21 Q. Up to this point, did anyone force or threaten Mr.  
22 Reid to make any statements or to talk to them?

23 A. No, sir, he was voluntarily cooperating with us.

24 Q. Was he, in any way, under an arrest or being detained  
25 in cuffs or anything like that?

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1 A. No, sir.

2 Q. And did he volunteer to go with you to this residence  
3 to check that out as well?

4 A. Yes, sir. He agreed to ride with us to show us which  
5 apartment it was.

6 Q. So when you realized he was not telling you the truth,  
7 what did you do?

8 A. After I talked to his mom and the mom had contacted  
9 the daughter, I walked back to the car and I told Mr. Reid  
10 that he wasn't being honest with us, to get out of the car.  
11 And I placed the handcuffs on him at that point for my  
12 safety and Detective Ayer's safety. And I indicated we  
13 needed to go back to the station and for him to be honest  
14 with us.

15 Q. Did you feel from what you had learned at that point  
16 that there was other things that you could arrest him for  
17 at that time if you felt necessary?

18 A. Yes, sir. I felt like at least charge him with a  
19 criminal conspiracy charge because he had not been honest  
20 with us about his actions that night with the victim's cell  
21 phone, who he had called. And it did sound like from what  
22 the victim -- Jackson had told us that he had set the  
23 robbery up.

24 Q. And is there a charge as well, do you think, as far as  
25 the fact that he had lied to you about what had occurred?

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1 A. Right. I contemplated charging him as prison of  
2 felony and along with the criminal conspiracy charge ---

3 Q. All right.

4 A. --- or hindering a police investigation charge.

5 Q. And when -- After you got back in the car, did you  
6 demand that he speak to you at that point or do anything at  
7 that point to force him to do anything?

8 A. No, sir. I -- Like I said, I placed him in cuffs for  
9 mine and Detective Ayers protection. We went back directly  
10 to the station which was just a couple of blocks away.

11 Q. And when you got back to the station, did you then  
12 talked to him again?

13 A. Yes, sir, we removed the cuffs. At that point, he was  
14 read his Miranda rights.

15 Q. All right. And can you tell me, did you read them?  
16 How did you read them to him? Did you read them off of a  
17 card, or did you read them off of a form, or how did read  
18 them to him?

19 A. No, sir. They're on a computer screen. And I read  
20 them directly off of the computer screen.

21 Q. And if you would -- Do you have that in front of you,  
22 the statement of the Defendant?

23 A. No, sir, I didn't bring any of the statements with me.

24 Q. Is it here in your notebook?

25 A. Yes, sir.

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1 (NOTEBOOK HANDED TO WITNESS.)

2 A. Thank you, sir.

3 MR. THOMPSON: Your Honor, the Defense has copies.

4 I'll pass up copies since we're going over these, the  
5 first, second, and third statements that the Court has not  
6 yet seen so the Court can follow along with the testimony.

7 A. Yes, sir, I've got it.

8 Q. Detective, if you would, read to us as you did to the  
9 Defendant, the Miranda rights.

10 A. This would have been on the screen of the computer.  
11 And he was seated right beside the computer, and I read  
12 this off to him.

13 And it says, "Before we ask you any questions, you  
14 must understand your rights.

15 You have the right to remain silent. Anything you say  
16 can be used against you in court.

17 You have the right to talk to an attorney for advice  
18 before we ask you any questions and to have him with you  
19 during questioning. You have this right to the advice and  
20 presence of an attorney, even if you cannot afford to hire  
21 one. We have no way of appointing you an attorney, but one  
22 will be appointed by the court for you, if you wish. If  
23 you wish, you may answer questions without the presence of  
24 an attorney, and you may stop answering any time you desire  
25 until an attorney is present."

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1 Q. And as we see it on the form in front of us from your  
2 -- from the -- that you read his Miranda rights on, does it  
3 have those signature lines on it too on the computer  
4 screen?

5 A. Yes, sir. It also has a line.

6 Q. Okay. Did you explain to those -- to him what those  
7 lines were for?

8 A. Yes, sir. I indicated after I read him the above, I  
9 said, there's a place for you to sign. And there's a place  
10 over here on the other side for me to sign to witness that  
11 I did give you these rights.

12 Q. And did you tell -- Did you have them printed out and  
13 have him sign it at that point, or did you tell him that  
14 you would do it after you had taken his statement?

15 A. No, I told him after we got through with his  
16 statement, I'd have printed out the whole thing, and he  
17 could sign the whole statement at that point.

18 Q. Did he indicate that he understood his rights at that  
19 time?

20 A. Yes, sir, he did.

21 Q. And what did you read to him further?

22 A. The next paragraph said, "I have read or have read to  
23 me the statement of my rights, shown above. I understand  
24 what my rights are. I'm willing to make a statement. I do  
25 not want an attorney at this time. I understand and know



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1 what I'm doing. I know that the person who is talking to  
2 me is a police officer. And I understand what he is  
3 talking about." And again, it's got a sign -- a line for  
4 the individual signing and also a witness line.

5 Q. All right. And did he agree to talk to you at that  
6 time?

7 A. Yes, sir, he did.

8 Q. All right. Do you note anywhere on the statement what  
9 time it was that you began speaking with him at the  
10 station, and taking the statement, and what time it ended?

11 A. We began talking about 1:45 p.m., and the statement  
12 was over about 2:15 p.m.

13 Q. All right. And what day was this that this was  
14 occurring?

15 A. That was the day after the murder on Byars Street.  
16 The murder actually took place late on the 1st of October.  
17 And this would be done on October the 2nd.

18 Q. This is all in 2009. Correct?

19 A. 2009, yes, sir.

20 Q. Okay. What did Mr. Reid tell you, and how did the  
21 conversation go that ultimately ended in this statement?

22 A. He basically said that he had went over there that  
23 night. Initially, he said he used his cousin's cell phone  
24 to call. And after using his cousin's cell phone to call  
25 Maurice Jackson, he went over there, and wanted to know if

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1 he wanted to smoke some weed. Then he said he went to his  
2 house before he went over there. And he called Maurice  
3 Jackson from his house.

4 Q. And now as you get this on the paper, or on the  
5 computer, I guess, do you type it in as you are going on  
6 the computer?

7 A. Yes, sir, as he's telling it to me, I'm typing it on  
8 the computer.

9 Q. And is it you and Detective Ayers together while this  
10 is occurring?

11 A. Yes, sir.

12 Q. And once again, at this point, at any time did he,  
13 during your conversation with him, did he invoke his right  
14 to an attorney?

15 A. No, sir.

16 Q. Did you threaten him or coerce him or any way?

17 A. No, sir, completely voluntary.

18 Q. Did you or Detective Ayers promise him any hope of  
19 reward if he gave a statement?

20 A. No, sir.

21 Q. Now, how does this work? As he's talking to you, do  
22 you type at that point? Or do you wait until he's talked,  
23 and then you type it in and then -- How does that work?

24 A. Normally, I go over the whole statement at one time  
25 with him. And then after hearing the complete story, we go

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1 over it again. And the second time I hear it, I start  
2 typing.

3 Q. And is that how you did it here?

4 A. Yes, sir.

5 Q. So, you basically went over the whole story and then  
6 went back and began typing?

7 A. Yes, sir.

8 Q. All right. And as you're typing, do you continue to  
9 talk and ask him questions?

10 A. Yes, sir, I do.

11 Q. And is that how this first statement was produced?

12 A. Yes, sir.

13 Q. When you were done with the statements, is these all  
14 the words that the Defendant had told you? Are these the  
15 things he had told you that you recorded in this statement?

16 A. Yes, sir, that is what the statement consist of.

17 Q. Did you give him the opportunity to look over the  
18 statement at that time?

19 A. Yes, sir.

20 Q. And did he?

21 A. Yes, sir. He looked over it on the computer screen  
22 and again after I printed it out.

23 Q. All right. Now, do you have him read it or do you  
24 read it?

25 A. I read it back to him off the computer screen and then

1. printed it.

2. Q. So, you read it out loud to him back?

3. A. Yes, sir.

4. Q. And did he agree that, that was the statement that he  
5. had given you?

6. A. Yes, sir.

7. Q. Did you ask him if he wanted to change anything?

8. A. Yes, sir, I did.

9. Q. Is there anything he wanted to change?

10. A. No, sir, there was not.

11. Q. If there was, would you have changed it?

12. A. Yes, sir.

13. Q. And at this point what, if anything, did you do when  
14. that was complete?

15. A. It was printed out and I got him to sign the three  
16. places that I had indicated earlier that he needed to sign  
17. where I'd given him his rights. And I showed him that  
18. rights part again. I said, "This is where I'd read to you  
19. earlier." And he signed it on both of those lines, and  
20. again, he signed it at the end of the statement. And I  
21. informed him that he was signing there just so there  
22. wouldn't be anything added to the statement.

23. Q. Okay.

24. A. And then again on the third page where he signed it,  
25. and also was notarized by Detective Ayers.

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1 Q. Is that an affidavit swearing that he told the truth  
2 in that statement?

3 A. Yes, sir, it is.

4 Q. And also confirming that he did it without -- by his  
5 own free will without hope of reward?

6 A. Yes, sir, it is.

7 Q. Did you read that to him as well?

8 A. Yes, sir, I did.

9 Q. Okay. And he understood that?

10 A. Yes, sir, he did.

11 Q. And he signed that?

12 A. Yes, sir.

13 Q. And, I believe, that's Detective Ayers that notarized  
14 it; is that correct?

15 A. Yes, sir, that is correct.

16 MR. THOMPSON: Your Honor, the best way to do this, we  
17 can either have him read the statement or the Court can  
18 take the copy that we have if you want to save on time.

19 THE COURT: I'll be glad to -- I've been perusing it  
20 while listening to the testimony.

21 MR. THOMPSON: Okay.

22 THE COURT: I will read it on my own.

23 MR. THOMPSON: All right.

24 Q. Now, Detective, at the end of this point in time, did  
25 you then have Donte Reid placed under arrest?

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1 A. Yes, sir, I did.

2 Q. Is it at this point, I believe, he's basically  
3 admitting that he set this up; is that correct?

4 A. Yes, sir.

5 Q. But that the person he is pointing to is Duke or  
6 Darius Jeter is the one who did the actual robbery; is that  
7 correct?

8 A. That is correct, yes, sir.

9 Q. Does he mention any females committing the robbery in  
10 this statement?

11 A. Not in this statement. He's indicating it was just  
12 the Jeter.

13 Q. Where was he taken after that?

14 A. Once he gave his sworn statement, he was taken back to  
15 the jail to be processed, to be booked in.

16 Q. Okay. And after that, did you have more contact with  
17 Donte Reid that same day?

18 A. Yes, sir, I did. Later on that same day I did talk  
19 with him again.

20 Q. And tell me how did that contact occur?

21 A. We were informed that Mr. Reid had contacted the  
22 jailer, and I wanted to give additional information about  
23 the first statement that he gave us.

24 Q. So one of the jailers told you he was asking for you?

25 A. Yes, sir.

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1 Q. Okay. And did you go back there and talk to him  
2 again?

3 A. Yes, sir. We went back and brought him back out of  
4 the jail and brought him back to the same interview room  
5 and talked with him again.

6 Q. And that's the jail right there in the City of Rock  
7 Hill in the Law Center there?

8 A. Yes, sir, it is.

9 Q. So, you just basically go a little bit farther back in  
10 the station to find him?

11 A. Yes, sir.

12 Q. And when you took him out, did he want to talk to you  
13 again?

14 A. Yes, sir, he did.

15 Q. All right. And at that point, once again, had he at  
16 any point invoked his right to an attorney?

17 A. No, sir, he had not.

18 Q. Did you offer to threaten him in any way at that  
19 point?

20 A. No, sir.

21 Q. And was he giving -- Was he talking freely and  
22 voluntarily at that time?

23 A. Yes, sir, he was.

24 Q. And in the second statement, did you again go over his  
25 Miranda rights?

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1 A. Yes, sir. I went over them the same way I went over  
2 them the first time. I read them to him off the computer  
3 screen and showed him there was a place that he needed to  
4 sign once we printed the thing out, the whole statement  
5 out, and went over it each step of the way just like we did  
6 it the first time.

7 Q. Is that the exact, same form that you had read to him  
8 before?

9 A. Exact, same form. Yes, sir.

10 Q. And so you read both of those paragraphs to him again  
11 word for word just as they're written.

12 A. Yes, sir.

13 Q. And did he indicate that he wished to talk to you at  
14 that point in time?

15 A. Yes, sir, he did.

16 Q. And did he invoke his right to an attorney?

17 A. No, sir, he did not.

18 Q. Did he say he didn't want to talk?

19 A. No, he indicated he did want to talk.

20 Q. Okay. And what did he tell you then? Did you  
21 basically do the statement in the same fashion at that  
22 point?

23 A. Yes, sir. I listened to what he had to say initially.  
24 And then after he told us the statement the first time, the  
25 second time I had him to go over it, that's when I started



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1 typing.

2 Q. You started typing at that point. Can you tell me --  
3 Did you indicate on the statement, what time it was that  
4 you took him out, and when you began talking to him, and  
5 when you finished with the statement?

6 A. Yes, sir. The second time I talked with him, we began  
7 talking about 4:10 p.m. on the 2nd of October. And we  
8 ended at about 4:45 p.m. on the 2nd of October.

9 Q. So just later that same afternoon, in other words,  
10 when this was done?

11 A. Yes, sir.

12 Q. Okay. And in this particular statement, was there  
13 anything he added to it that, I guess, that indicated  
14 anyone else being involved in the case other than what he  
15 had said earlier as far as -- as far as Duke or Darius  
16 Jeter or himself being involved?

17 A. Yes, sir. He gave a little bit more information about  
18 the role that he and Darius Jeter played in the robbery.

19 Q. Okay. And so after that, did you do the same thing as  
20 far as when you printed it off in front of him? Before you  
21 printed it off did you read the statement to him?

22 A. Yes, sir, I did.

23 Q. And did he indicate -- Did you offer him the chance to  
24 make any changes that he wanted at that point?

25 A. Yes, sir, I did.

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1 Q. Was there any changes he wanted to make?

2 A. No, sir. He did not wish to make any additions, or  
3 subtractions, or changes to the statement.

4 Q. And you printed it off in front of him there?

5 A. Yes, sir, I did.

6 Q. And after you printed it off, what did you do?

7 A. I showed him the lines that he -- that I pointed out  
8 on the computer screen and told him this is where I'd read  
9 him his rights, got him to sign it -- both of those front  
10 pages, and again at the end of the statement, and again at  
11 the notary page of the statement.

12 Q. All right. And you witnessed that statement?

13 A. Yes, sir, I did.

14 Q. And was that notarized as well?

15 A. Yes, sir.

16 Q. Who notarized that statement?

17 A. That was notarized by Detective Jerry Waldrup.

18 Q. And again, the last page of that is also, you read to  
19 him the one that says, "I make this statement with my own  
20 free will and accord without hope of reward. I'm not being  
21 mistreated or threatened in any way. All the above is the  
22 truth, the whole truth, and nothing but the truth so help  
23 me God"?

24 A. Yes, sir.

25 Q. And so after he gave you that statement, did you take

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1 him then back to the lockup cell at that point, in Rock  
2 Hill?

3 A. Yes, sir, I did.

4 Q. All right. And did you end up talking to him again  
5 that day?

6 A. Later that night, I did talk with him along with  
7 Detective Ayers.

8 Q. Detective Ayers. And can you tell me, in the  
9 meantime, were you able to talk with Darius Jeter?

10 A. Yes, sir, from the information that he had given us in  
11 the second statement, about a burglary that Mr. Jeter was  
12 involved in along with a robbery and the homicide. Mr.  
13 Jeter was picked up and then questioned also along the  
14 lines of this homicide.

15 Q. All right. Did Mr. Jeter also tell you of meeting up  
16 with any of these folks the night of the murder?

17 A. Yes, sir, he did. When we talked with Mr. Jeter, he  
18 gave us a sworn statement also about who he saw together  
19 that night.

20 Q. All right. And can you tell me, what name was he able  
21 to give you as far as Mr. Jeter goes in order to go --  
22 Before you go back to Mr. Reed, what did Mr. Jeter give you  
23 as far as a detective, as far as any names?

24 A. He indicated that he had saw Mr. Reed and a female  
25 together. Her name was Samantha Ervin -- had saw them

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1 together in a truck along with some other people that were  
2 in the truck, but he couldn't tell us anybody else because  
3 the window tint was too dark in the truck, and he didn't  
4 see anybody but Samantha Ervin and Mr. Reid.

5 Q. Okay. And is that the first time you heard Samantha  
6 Ervin's name as possibly being involved in this?

7 A. Yes, sir, that's the first indication.

8 Q. Okay. But at this point you knew, I believe, from the  
9 victims already that there was a female that was involved.  
10 Correct?

11 A. Yes, sir. That is correct.

12 Q. And so did you then go back again to speak with Donte  
13 Reid?

14 A. Yes, sir, we did. Like I said we talked to him again  
15 later on that night right before midnight going into the  
16 morning of the 3rd.

17 Q. Okay. And did you -- I'm assuming you took him out of  
18 the Rock Hill Law Center, the detention area; is that  
19 correct?

20 A. Yes, sir. It is correct.

21 Q. And when you brought him back into the Detective  
22 Division, I believe you say it was you and Detective Ayers  
23 again at that time?

24 A. Yes, sir, it was.

25 Q. Now did you start off the same with him at that point

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1 as far as on the computer screen having the form up and all  
2 of that?

3 A. Yes, sir. I indicated the same routine as before.  
4 And right before I got ready to type it, Detective Ayers  
5 volunteered to type it because I'd already typed two  
6 previous statements. So Detective Ayers actually typed  
7 this statement.

8 Q. And while you were there, Detective Ayers typed that  
9 statement, did he go through the Miranda rights of the  
10 Defendant at that time?

11 A. Yes, sir. He indicated -- read them off the computer  
12 screen just like I had read them off the computer screen,  
13 and indicated that there was a place that Mr. Reid was  
14 going to have to sign on the front page, at the end of the  
15 statement, and also at the notary page.

16 Q. All right. And so did he read the exact same pages  
17 that you had read earlier ---

18 A. Yes, sir.

19 Q. --- to the defendant again?

20 A. Yes, sir, he did.

21 Q. Both the Miranda warnings and the warnings about he  
22 understands his rights and he does not want an attorney at  
23 this time. Both that paragraph as well?

24 A. Yes, sir, he did.

25 Q. Did he indicate at any point that he did not want to

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1 talk or that he wanted an attorney?

2 A. No, he voluntarily talked with us this time also.

3 Q. How did the conversation go this time? Did you bring  
4 up to him the fact that you knew that a woman was involved?

5 A. Yes, sir. We indicated that now that we had  
6 information of who the female was that was involved. And  
7 again, once we confronted him with that information, he  
8 provided additional information about how the robbery  
9 actually took place.

10 Q. All right. And did he say that Samantha Ervin, in his  
11 statement, was one of the people involved?

12 A. Yes, sir, he did. And he continually was saying that  
13 it was Samantha Ervin and Darius Jeter that did the  
14 robbery.

15 Q. And did Detective Ayers basically do the same thing  
16 you had done, you all listen to the story, then type it,  
17 and then as you talked to him again?

18 A. Yes, sir.

19 Q. And did Detective Ayers then give him the opportunity  
20 to read that? Or did you read it to him?

21 A. He read it back to him. Yes, sir.

22 Q. Okay. And did he want to alter or change anything in  
23 that statement?

24 A. No, sir. He did not.

25 Q. And did y'all ask him if he wanted to alter or change

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1 anything?

2 A. Yes, sir.

3 Q. And did he?

4 A. He did not want to change anything, no, sir.

5 Q. And so, did you follow the same thing, printing it out  
6 at that point, in front of him?

7 A. Yes, sir, we did.

8 Q. All right. And did he then sign all of the waivers as  
9 well as the statement itself?

10 A. Yes, sir. He signed every page just like on the other  
11 two statements.

12 Q. And the affidavit sheet at the end?

13 A. Yes, sir.

14 Q. All right. And, I believe, in that one, Detective  
15 Ayers witnessed that you were the one who notarized.  
16 Correct?

17 A. That is correct. Yes, sir.

18 Q. And what was the length of the interview, again, on  
19 this? What time did it last for?

20 A. This one started at 11:55 p.m. on October 2nd and it  
21 ended about 12:35 a.m. on the 3rd of October.

22 Q. Okay. And did he at any point on any of these three  
23 statements, between or afterwards, did he ask for an  
24 attorney at any point?

25 A. No, sir.

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1 Q. Did he -- Was he threatened or coerced in any way?

2 A. No, sir, he was not.

3 Q. Was he offered any hope of reward or any promises?

4 A. No, sir, he was not.

5 Q. Is there anything that indicated to you anything other  
6 than that he was giving his statement freely and  
7 voluntarily at that time?

8 A. No, sir. Nothing indicated that.

9 Q. All right. After this statement, did you then sign  
10 warrants out on Samantha Ervin?

11 A. Yes, sir, I did.

12 Q. Okay. And were you able to find Samantha Ervin right  
13 away?

14 A. No, sir. At this point, it was a couple of days  
15 before she was located, actually turned herself in.

16 Q. And do you remember when it was that you got to talk  
17 to Samantha Ervin?

18 A. I believe it was on the 5th of October when we  
19 actually talked with Samantha Ervin when she came that  
20 afternoon and turned herself in.

21 Q. And then from talking to her what, if any, other  
22 suspects did you have then at that point?

23 A. Well from the information that she provided, we knew  
24 there was another female involved, Aileen Newman. She  
25 provided that name and to what extent she was involved in



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1 the robbery. And also Davontay Henson, she provided his  
2 name and what his role was in the robbery.

3 Q. Okay.

4 A. Along with her involvement and Mr. Reid's involvement.

5 Q. Did she say what if any involvement Mr. Jeter had in  
6 it?

7 A. She indicated that he was not involved at all that she  
8 had saw him earlier when they were leaving to -- right  
9 before the robbery took place that she had seen him earlier  
10 and he tried to flag them down but she didn't stop for him.

11 Q. Did you desire to confront then, Donte Reid about what  
12 -- this information you had found out?

13 A. Yes, sir, I did.

14 Q. And try to get more information regarding what was  
15 happening regarding those folks?

16 A. Yes, sir.

17 Q. Okay. And do you remember what day it was then that  
18 you went to Donte Reid the fourth time, or the fourth time  
19 that you spoke to him to find out more information?

20 A. Well talking to Samantha Ervin on the 5th, the next  
21 day, we went right back and talked to him on the 6th.

22 Q. So on the 6th. And do you have times indicated on  
23 that statement as when you would have talked to him?

24 A. Yes, sir. That was on the 6th of October at 9:40 a.m.  
25 That's when we began talking with him. And we finished

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1 talking with him about 10:45 that morning on the 6th.

2 Q. All right. And did you initiate contact with him that  
3 day?

4 A. Yes, sir, we did. He had --

5 Q. Where was he located that day?

6 A. He had already been taken from our facility to the  
7 Moss Justice Center here.

8 Q. All right. So did you come up here to interview him  
9 or did you have him transported back to Rock Hill?

10 A. He was transported back to Rock Hill.

11 Q. All right. And when he got back, did you do the  
12 transporting or did someone else?

13 A. No, sir. I did not. Someone else transported him for  
14 me.

15 Q. When he was transported back, was there -- did he at  
16 any point say that he wanted an attorney at that time?

17 A. No, sir, he did not.

18 Q. And when you began to talk to him, did he talk freely  
19 to you at that point?

20 A. Yes, sir, he did.

21 Q. Once again, did you do the same type of method with  
22 the computer in front of you and this waiver of rights form  
23 on the computer screen?

24 A. Yes, sir, I did it the same way as I had done it the  
25 other previous times. I read him the rights off the

DETECTIVE LESLIE HERRING: DIRECT BY MR. THOMPSON - IN CAMERA -110-

1 computer screen, showed him there was a place that he was  
2 going to need to sign, the thing that had been printed out,  
3 and he understood what I was talking about just like --

4 Q. You read it to him just as you read earlier?

5 A. Yes, sir, I did.

6 Q. The same form?

7 A. Yes, sir.

8 Q. And you read it the exact same way?

9 A. Yes, sir, same way.

10 Q. Did he indicate that he wanted to talk to you at that  
11 time?

12 A. Yes, sir, he did.

13 Q. And as well, you read him the second paragraph as well  
14 that's in that form?

15 A. Yes, sir, I did.

16 Q. And did he indicate that, that was correct as well,  
17 that he was still willing to make a statement, that he did  
18 not want an attorney at that point?

19 A. Yes, sir.

20 Q. And at this point while you're talking to him, what  
21 happens? How does this conversation go?

22 A. Pretty much, we confronted him with the information we  
23 had about Samantha Ervin and Aileen Newman, what their  
24 involvement was, and along with Davontay Henson. And at  
25 that point, Mr. Reid gave us additional information

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1 concerning all the participants in the robbery itself. And  
2 he included Aileen Newman, who he calls "Lee Lee," and  
3 Davontay Henson.

4 Q. Did he tell you at that time that "Duke" or Darius  
5 Jeter was not involved?

6 A. Yes, sir. He indicated that Duke had tried to flag  
7 them down as they were leaving, but they didn't stop and  
8 pick him up.

9 Q. Did he indicate why he named him and not Davontay?

10 A. He was scared of what Davontay Henson might do to him  
11 because he had threatened everybody there at the house if  
12 someone had ratted him out.

13 Q. Did you do it once again the same way, basically have  
14 him tell what occurred and then go back and write as you  
15 talk to him again?

16 A. Yes, sir. I had him go over the whole story. And the  
17 second time around, we went over it as I typed it.

18 Q. And after you finished typing it, did you read it to  
19 him aloud?

20 A. Yes, sir, I did.

21 Q. Did you offer them a chance to change or alter his  
22 statement at that time?

23 A. Yes, sir, I did.

24 Q. Did he wish to change or alter it in any way?

25 A. No, sir, he did not.

DETECTIVE LESLIE HERRING: DIRECT BY MR. THOMPSON - IN CAMERA -112-

1 Q. And then did you print it out at that point?

2 A. Yes, sir, I did.

3 Q. And then did he sign the statement?

4 A. He signed in all the spaces provided for him. Yes,  
5 sir.

6 Q. Signed his waiver of rights?

7 A. Yes, sir.

8 Q. Signed the second paragraph that he did not want a  
9 lawyer at that time, he was willing to give a statement?

10 A. Yes, sir, he did.

11 Q. Sign at the end of the statement itself. Correct?

12 A. Yes, sir. Even though there wasn't a line there, we  
13 had him sign at the bottom of the statement.

14 Q. And then also sign the affidavit form on the back,  
15 that this was of his own free will without hope of reward?

16 A. Yes, sir.

17 Q. That he wasn't being mistreated in any way. It was  
18 all the true.

19 A. That is correct, yes, sir.

20 Q. Did you also read that portion to him again?

21 A. Yes, sir, I did.

22 Q. All right. During the course of this, and I guess it  
23 was -- Is that Lieutenant Dalton at the time that notarized  
24 that for you?

25 A. Yes, sir. Lieutenant Dalton was present when the

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1 statement was --

2 Q. He was with you during this interview?

3 A. Yes, sir, he was present.

4 Q. Okay. Once again, at any time that you were around  
5 the defendant, or any of the other detectives, any time  
6 that you are aware of, was the Defendant threatened or  
7 coerced in any way to give these statements?

8 A. No, sir. They were all voluntary.

9 Q. Was he promised any hope of reward?

10 A. No, sir.

11 Q. Was he -- Did he at any time invoke his right and say  
12 he did not want to speak or that he wanted his right to an  
13 attorney to be present at that time?

14 A. No, sir, he did not.

15 Q. Did he invoke any of his Miranda rights at all during  
16 this period of time?

17 A. No, sir, he did not.

18 Q. Did he do anything other than indicate that he wished  
19 to speak with you?

20 A. No, sir.

21 MR. THOMPSON: Your Honor, I think, to make it easy,  
22 if we would --

23 Q. Detective, do you have the originals with you today?

24 A. Yes, sir, I do.

25 MR. THOMPSON: If we could make those -- Your Honor,

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1 the best way to do it, and I would ask the Court's  
2 suggestion. If you would prefer that we do Court's  
3 exhibits of copies, and then have the real ones, if they  
4 are introduced into to trial?

5 THE COURT: That would be fine.

6 MR. THOMPSON: Okay.

7 Q. Then I'd ask for you to look at the four copies that I  
8 have in front of me here. Make sure those are all correct,  
9 and we'll have those numbered as "Court's Exhibits" for  
10 this hearing.

11 And I'll point out just for the purpose of this, on  
12 the top right-hand corner, a little "1" is drawn on one  
13 with the circle around it. And "2" is drawn on the second  
14 statement, "3" is on the third, the fourth statement is not  
15 numbered. But those are written in by our office staff  
16 just to keep them straight. It was not on the original  
17 statement.

18 A. Yes, sir. All four of those are the -- copies of the  
19 statements that I took.

20 MR. THOMPSON: All right. Madame Court Reporter, if  
21 you'll number these "State's Exhibits One through Four" --  
22 Or, "Court's Exhibits One through Four," please.

23 MADAME COURT REPORTER: In the order which you're  
24 handing them, Mr. Thompson, again?

25 MR. THOMPSON: Yes, I believe.

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1 MADAME COURT REPORTER: Yes, sir.

2 MR. THOMPSON: Yes, number one?

3 MADAME COURT REPORTER: One?

4 MR. THOMPSON: Yes. Two, Three, Four. Thank you.

5 And I'll let Counsel for the Defense look over them  
6 and make sure that I haven't messed up a page.

7 MR. CHIARENZA: Your Honor, I don't object to these  
8 being entered as Court's Exhibits. And just for the  
9 record, noticing that the number four is the un-redacted  
10 version. For these purposes I don't think that's an issue.

11 THE COURT: Thank you.

12 (WHEREUPON: COURT'S EXHIBITS NUMBERS ONE THROUGH FOUR  
13 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

14 Q. Detective, just a couple of other things before I let  
15 you go.

16 The area of the statement right there in the middle  
17 where it has some personal information, did you get that  
18 from the Defendant as you were reading -- or as you were  
19 going over initially with him on the screen with the  
20 computer?

21 A. Yes, sir.

22 Q. And I believe that's right after his rights, the first  
23 two paragraphs, the one of rights and the one of not  
24 wanting an attorney?

25 A. That is correct, yes, sir.



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1 Q. And do you ask him if he is able to read and write and  
2 understand the English language?

3 A. Yeah. Yes, sir. That is one of the questions on this  
4 form.

5 Q. All right. And did Mr. Reid indicate that he could  
6 read and write and he did understand what you were talking  
7 about?

8 A. Yes, sir. He indicated he could read and write, that  
9 he had completed eleven years in school.

10 Q. Okay. And the other personal information he gave you,  
11 such as date of birth, address. Those are the things that  
12 he gave you in each one of the statements; is that correct?

13 A. Yes, sir.

14 Q. And so you filled these out in each one of the  
15 statements?

16 A. That is correct, yes, sir.

17 Q. According to what he gave you?

18 A. Yes, sir.

19 Q. Now this wasn't a situation, was it, where you had the  
20 old statement up on the computer screen and you were  
21 cutting and pasting; was it?

22 A. No, these were -- It's a different statement, I mean,  
23 blank statement --

24 Q. Okay, so you start blank each time?

25 A. Yes, sir.

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1 Q. Okay. And once again, Detective, at any point did the  
2 Defendant invoke his right to an attorney?

3 A. No, sir.

4 Q. Tell you he didn't wish to speak with you?

5 A. No, sir.

6 Q. And again, any force, coercion, anything of that  
7 nature, did any promise or hope of reward, you or any other  
8 officer in your presence?

9 A. No, sir.

10 Q. Thank you, Detective.

11 MR. THOMPSON: I have no further questions, Your  
12 Honor. I'll pass up the Court's exhibits to you.

13 THE COURT: I'm going to let you give them to Ms.  
14 Nelson right now because it's 5:30. We've got -- I've got  
15 to meet with drug court staff and have drug court at 6:00.  
16 So, we'll do cross tomorrow. Let's reconvene at 9:30.  
17 We'll be at ease until 9:30 in the morning.

18 MS. INZERILLO: Yes, Your Honor.

19 (COURT IN RECESS AT 05:40 PM.)

20 (BACK ON THE RECORD TUESDAY, NOVEMBER 15, 2011 AT  
21 09:38 AM.)

22 THE BAILIFF: Order in the Court.

23 THE COURT: Thank you, take your seats. Good morning.

24 All right, we're into the cross examination of the  
25 witness.

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1 If you will come back up and take the stand.

2 And, Ms. Inzerillo, the current issue is that of, this  
3 is a Jackson versus Denno hearing regarding four statements  
4 allegedly given by Mr. Donta Reid.

5 All right. Ms. Anderson.

6 MS. ANDERSON: May it please the Court?

7 THE COURT: Yes, ma'am.

8 CROSS EXAMINATION (IN CAMERA)

9 DETECTIVE LESLIE R. HERRING BY MS. ANDERSON:

10 Q. Detective Herring, going back to some of the  
11 discussion, I believe, of what we, sort of, reference the  
12 statement to -- and that was the statement you indicated  
13 was taken at 4:10 pm on October 2nd. Correct?

14 A. Okay.

15 Q. And, I think, you testified that you were told by a  
16 jailer that Mr. Reid wished to talk to you?

17 A. To the best of my memory, that's -- We were informed  
18 that he had additional information that he wanted to pass  
19 on to us.

20 Q. Do you recall the name of who spoke to Mr. Reid?

21 A. I do not.

22 Q. And do you recall whether that was just sort of said  
23 in passing to the jailer; or any, sort of, written request;  
24 or anything of that nature?

25 A. I don't think it was a written request. It probably

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1 was just a phone call to the detective division from  
2 someone in the jail, probably.

3 Q. Do you know -- Do you recall what time that request  
4 was made or how soon after you learned of that you went to  
5 talk to Mr. Reid?

6 A. No, ma'am, I do not.

7 Q. And, I believe, that the testimony was that Mr. Reid  
8 was at the Rock Hill jail in between Statement One and  
9 Statement Two. Correct?

10 A. Yes, ma'am.

11 Q. And was not released at any point in time?

12 A. No, ma'am.

13 Q. And because I believe you testified after Statement  
14 Number One was given, you indicated at that point, you read  
15 him Miranda rights -- or prior to that, you had said you  
16 felt you could charge him with conspiracy or misprisonment  
17 of a felony.

18 A. Or hindering a police investigation. Yes, ma'am.

19 Q. And at Statement Number Three, I think you testified,  
20 that was the statement that you said began somewhere around  
21 11:55 p.m. on October 2nd?

22 A. Yes, ma'am.

23 Q. And that interview, sort of, carried over to  
24 October -- the morning hours of October 3rd?

25 A. Yes, ma'am.

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1 Q. And indicated that the statement was signed  
2 approximately 12:35 a.m. on October the 3rd?

3 A. Some -- Around that time frame. Yes, ma'am.

4 Q. And prior, in between, Statement Two -- So this would  
5 have been -- If Statement Two was completed at 4:45 p.m.,  
6 approximately, more or less, 7 or 8 hours later?

7 A. Yes, ma'am, somewhere in that neighborhood.

8 Q. Do you know whether prior to Statement Three, whether  
9 Mr. Reid was allowed to sleep at any point in time prior to  
10 that?

11 A. Yeah, he would have been back in the jail cell with a  
12 bunk. I don't know if he actually slept, or what he did.

13 Q. Do you know of any records of whether he was given a  
14 meal or anything to drink during that period of time while  
15 he was there?

16 A. I'm sure he would have been given food and drink.

17 Q. That would be something probably in the jail records?

18 A. Yes, ma'am.

19 Q. And when you spoke to Mr. Reid during Statement Number  
20 Two, you said you told Mr. Reid you had information about a  
21 female involved during that interview?

22 A. I don't remember if that was Interview Two or Three.

23 Q. Well the first time you spoke -- whichever one it was  
24 -- the first time you spoke to Mr. Reid about we have  
25 information of the female involved, did you supply the name

1 of Samantha Ervin to him?

2 A. It was either in Statement Three -- Two or Three. I  
3 possibly could have told him that we knew there was a  
4 female involved, and I possibly could have provided a name.  
5 I don't remember.

6 Q. Okay. Just not fully sure?

7 A. Yes, ma'am.

8 Q. And then, Statement Number Four, that's the statement  
9 you indicated was taken on October 6th, 2009 at 9:40?

10 A. A.M, yes, ma'am.

11 Q. A.M. And you had testified that in between or prior  
12 to that statement, Mr. Reid had been moved to the Moss  
13 Justice. Correct?

14 A. Yes, ma'am.

15 Q. And at that point, he had already been arrested on a  
16 murder charge. Correct?

17 A. I think the murder charge had been served on him. I'm  
18 not sure -- I knew he was at least charged with a  
19 conspiracy charge.

20 Q. Okay.

21 A. I'm not sure when all the warrants were actually  
22 served on him.

23 Q. And, I believe, you testified on direct that in the  
24 meantime, I think it may have been on October 5th, you  
25 spoke to Samantha Ervin?

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1 A. Yes, ma'am.

2 Q. And it was Samantha Ervin who gave you additional  
3 information. And Samantha Ervin's information caused you  
4 to believe that things may have been different than what  
5 Mr. Reid's prior statement was?

6 A. A little different. Yes, ma'am.

7 Q. And it was based on, then, the information from  
8 Samantha Ervin that you wished to go back and talk to Mr.  
9 Reid about that information?

10 A. Yes, ma'am.

11 Q. And I think you testified that you went -- Was it you  
12 that went to Moss Justice Center?

13 A. No, ma'am. I did not go to Moss Justice --

14 Q. But it was a request of an officer to go over to Moss  
15 Justice and transport Mr. Reid back to Rock Hill?

16 A. Yes, ma'am. It might have been my supervisor,  
17 Lieutenant Dalton, at the time. I'm not sure if he  
18 actually transported or had someone to transport him. But  
19 Mr. Reid was brought back to the Rock Hill Police  
20 Department.

21 Q. And so, basically, that request would have been made  
22 of wishing to talk to him based on what Samantha Ervin had  
23 said at that point?

24 A. Yes, ma'am.

25 Q. And then Mr. Reid was actually brought to the Rock

1 Hill Police Department for that interview?

2 A. Yes, ma'am. And it would have been based on what  
3 Samantha Ervin said. And Darius Jeter had information in  
4 the statement he had provided. It wouldn't have just been  
5 Ms. Newman ---

6 Q. Okay --

7 A. --- I mean, Ms. --

8 Q. Okay, but that was based on those two statements you  
9 had talked to with other people?

10 A. Yes, ma'am.

11 Q. And when you brought him in, it was the same interview  
12 room you had previously used?

13 A. Yes, ma'am.

14 Q. And you went through, you testified, as to the same  
15 process you had done before?

16 A. Yes, ma'am.

17 Q. And in that interview, you were questioning Mr. Reid,  
18 more specifically about the information you had learned in  
19 the meantime?

20 A. Yes, ma'am.

21 Q. And so, it would be accurate to say that this fourth  
22 statement was in response to the questions or the  
23 information you discussed with him that you had learned?

24 A. I had provided some information, and he also provided  
25 me some additional information about the circumstances.



DETECTIVE LESLIE HERRING; CROSS BY MS. ANDERSON

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1 Q. Okay. And then that information was typed up in the  
2 same process you used previously?

3 A. Yes, ma'am.

4 Q. And you were either the lead investigator or one of  
5 the two lead investigators on this case?

6 A. Yes, ma'am.

7 Q. And had been from early on in the case. Correct?

8 A. I have been up until April of 2010 when I was  
9 transferred out of the detective division.

10 Q. But back in October of 2009, you were involved  
11 essentially, sort of, from the beginning of the  
12 investigation?

13 A. Yes, ma'am.

14 Q. And was it ultimately your decision to take out  
15 warrants on Mr. Reid for the murder charge, for the armed  
16 robbery charges, for all the charges?

17 A. I think it was a joint decision between myself and  
18 Detective Ayers and probably our supervisor.

19 Q. Okay. And the warrants themselves were -- You were  
20 not the affiant on the warrants. Correct?

21 A. Probably on some of them I actually was the affiant,  
22 and the other, we had another detective that was helping  
23 out with some of the paperwork.

24 Q. And so Detective Harveston would have been the affiant  
25 on some. And then on the -- And do you know -- recall what

1 processes -- Do you just request a different officer who's  
2 available to go to the magistrate or how that's carried  
3 out?

4 A. Whoever's available. You know, we provide them with  
5 the information of what, you know -- what the investigation  
6 has revealed and ask if they would fill the warrants out  
7 for us.

8 Q. But you're aware that -- You were aware, in other  
9 words, that Detective Harveston was going to seek warrants?

10 A. Yes, ma'am.

11 Q. And are you -- You're familiar that the warrants in  
12 this case were signed by a magistrate on October 2nd, 2009?

13 A. On the Defendant Reid?

14 Q. Yes, on Mr. Reid.

15 A. Yes, I -- I didn't know the date. That probably would  
16 be about the right time. Yes, ma'am.

17 Q. And I think you testified -- and I don't want to be  
18 inaccurate -- that Mr. Reid -- or whether you are familiar  
19 that Mr. Reid was served with the warrants on October the  
20 3rd, 2009?

21 A. That's probably about the time frame. I don't know  
22 who actually served the warrants. I don't have 'em right  
23 here in front of me to look at.

24 Q. Do you want to --

25 A. But if you say that's when it was served, that's

DETECTIVE LESLIE HERRING: CROSS BY MS. ANDERSON

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1 probably the date on the warrant.

2 Q. Okay. And once warrants are served an individual is  
3 taken in front of the judge for a bond hearing at some  
4 point in time after the warrants are served. Correct?

5 A. Yes, ma'am.

6 Q. And at the bond hearing as well, there's also a --  
7 whether the individual wishes to apply for an attorney.  
8 Correct?

9 A. I think that's part of the process.

10 Q. Part of the process, okay.

11 And are you familiar with the fact that the magistrate  
12 will ask an individual if they wish to apply with a public  
13 defender?

14 A. I think that is part of the process in finding out if  
15 they can afford one or, you know, what their financial, you  
16 know, circumstances are.

17 Q. Did you actually -- Do you recall if you attended the  
18 bond hearing for Mr. Reid?

19 A. I don't think so. I don't remember attending.

20 Q. Do you know if any other officer involved with this  
21 investigation would have been there?

22 A. I don't know if they did or not.

23 Q. And are you aware of the fact that Mr. Reid was -- did  
24 ultimately request a public defender on this charge?

25 A. I was not familiar with that, no, ma'am.

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1 Q. And that he was appointed a public defender?

2 A. No, ma'am.

3 Q. And so --

4 MS. ANDERSON: I beg the Court's indulgence.

5 (PAUSE.)

6 Q. And, Detective Herring, were you aware in this case of  
7 the fact that Mr. Reid was appointed -- approved and  
8 appointed a public defender on October 3rd of 2009?

9 A. I was not aware of that. No, ma'am.

10 MS. ANDERSON: Your Honor, that's all I have on cross.

11 THE COURT: Mr. Chiarenza?

12 MR. CHIARENZA: I don't have any.

13 THE COURT: Any redirect?

14 MR. THOMPSON: No, Your Honor.

15 THE COURT: You can step down.

16 Call your next week.

17 MR. THOMPSON: The State would call Tim Ayers,  
18 Detective Tim Ayers.

19 THE COURT: Come up and be sworn.

20 (WHEREUPON: TIM AYERS, BEING

21 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION

23 DETECTIVE TIM AYERS BY MR. THOMPSON:

24 Q. Detective Ayers, could you state your full name for  
25 the Court, please?

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1 A. Detective Tim Ayers, A-Y-E-R-S.

2 Q. And where do you work?

3 A. Rock Hill Police Department.

4 Q. How long have you been there?

5 A. Seventeen years.

6 Q. And you're a detective with the Rock Hill Police

7 Department; is that correct?

8 A. That is correct.

9 Q. And were you assigned to work on this case with

10 Lieutenant Herring as well?

11 A. Yes, I was.

12 Q. And could you tell me, how did you become involved in  
13 the case? What was your first initial involvement?

14 A. The -- The night that the call went out on the radio,  
15 I was actually out. I was not on call, but I was actually  
16 out that night, had been on some other assignments, and  
17 initially responded to the scene within minutes of the  
18 call.

19 Q. All right. So, you were on the scene fairly quickly  
20 that night after the call was made that there had been a  
21 robbery and a shooting?

22 A. That's correct.

23 Q. And in the process of working this case, how is it  
24 that you came to the name Donta Reid or to look at Donta  
25 Reid?

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1 A. During the initial interviews with the victims at the  
2 scene, the witnesses, we started progressing into the case.  
3 And then as the next morning came about, we received a call  
4 from Maurice Jackson to return to his house. He had  
5 further information that he felt that Mr. Reid might be  
6 involved.

7 Q. And did he tell you what that information was when you  
8 went back that morning?

9 A. We went back to the house, and -- Myself and Detective  
10 Herring went to Mr. Jackson's house. Him and his  
11 grandmother were there. And he began to explain how Donta  
12 Reid had made some phone calls to him earlier the prior  
13 evening during the incident and had come to his house and  
14 spoken to him about purchasing some marijuana -- smoking  
15 some marijuana with them, hanging out. And he made some  
16 phone calls from that phone, and then fifteen minutes  
17 later, probably, that the incident happened as he walked  
18 away.

19 Q. He made phone calls from Jackson's phone?

20 A. That's correct.

21 Q. Jackson's cell phone; is that correct?

22 A. Cell phone and attempted one from the house phone.

23 Q. And did he tell you what -- the calls that he made  
24 from his cell phone -- if he heard any of the conversation  
25 that Donta Reid had?

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON - IN CAMERA

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1 A. He said he could hear them talking. He said that  
2 there was two, which he thought was strange, cause there  
3 was three people there. But he said that, you know, the  
4 phone calls were made and then he walked away.

5 Q. Okay. And as a result of that, did you then go to  
6 talk to Donta Reid about any involvement?

7 A. Yes, Mr. Reid lives across the street and several  
8 houses up on Byar Street. So we went on up to Mr. Reid's  
9 house, and he was not at home at the time, and spoke with  
10 the relative there at the house.

11 Q. Did you leave a message for him to contact you?

12 A. Left a card and asked him to call when he returned  
13 home.

14 Q. And did he actually contact you that day?

15 A. When we left from that meeting there, myself and  
16 Detective Herring went back to the station. By the time we  
17 got back to the station, Mr. Reid was already calling,  
18 saying he was at home, wanted to talk to us.

19 Q. And were you the one who went and picked him up?

20 A. Yes, I did.

21 Q. When you got to him, did he come willingly with you at  
22 that point?

23 A. As I pulled up in front of the house, my passenger  
24 side was to his side of the house that he lived at. He  
25 came right out and walked out. I told him who I was and we

1 got in the car and drove to the station.

2 Q. And can you tell me, when you went to the station, was  
3 he under arrest? Did you cuff him or anything like that?

4 A. No, sir. He rode in the front seat of my car to the  
5 station, no handcuffs. He was voluntarily coming up, and  
6 we pulled into the rear of the police station, went in the  
7 back door to the Detective Division.

8 Q. All right. Is that when you met up with Detective  
9 Herring?

10 A. That's correct.

11 Q. All right. And what happened then?

12 A. We introduced ourselves to Mr. Reid, and we went into  
13 the small interview room that's on the person's crime side  
14 of the Detective Division. And we began the interview with  
15 Mr. Reid.

16 Q. Okay. And in the interview with Mr. Reid, what did he  
17 say at that time?

18 A. The interview started out with Detective Herring,  
19 because of the fact that we had information that he may be  
20 involved, but we didn't have anything to solidify that;  
21 Detective Herring did go ahead and advise him of Miranda  
22 rights. And then we began the interview. I'd have to  
23 review the statement to know exactly, but I know it was in  
24 his statement that he had stopped by and he talked to  
25 another person, Darius Jeter, who had been involved in the,



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1 case.

2 Q. Let me go back. Before the actual written statement,  
3 he talked to you first regarding what? I mean when you  
4 first took him back and you started talking to him, I don't  
5 believe it resulted in a statement right there. He talked  
6 to you and you took him somewhere else. What happened?

7 A. As far as?

8 Q. When Donta Reid -- When you took him to the station  
9 and talked to him ---

10 A. Correct.

11 Q. --- Y'all got some sort of information from him then  
12 at that point. What information -- before the witness  
13 statement occurred, what information did he give you at  
14 that point?

15 A. I'm not aware of what it might have been, right now.

16 Q. Were you with Detective Herring when he went to check  
17 out the residence of the young girl he was supposed to be  
18 with the night before?

19 A. I don't recall that. I was -- Everyone was assigned  
20 different tasks, and I'm just -- Are we talking about the  
21 apartments that were in midtown apartments?

22 Q. Yes.

23 A. Okay. That came after the second statement, I  
24 believe. The very first statement when we had spoken with  
25 him, he was not under arrest. He came voluntarily to the

1 station.

2 Q. Right, right, he had come voluntarily to the station.

3 A. Right. He started telling us what he had done that  
4 night before as an alibi that he had walked -- After he  
5 left from Mr. Jackson's house, he walked down to midtown  
6 apartments and gone to a girl's house.

7 Q. Did he give you a name of that girl at the time?

8 A. He did.

9 Q. And what did y'all do as far as the name he gave?

10 A. Myself and Detective Herring drove over to that  
11 location and tried to find this person.

12 Q. And did the Defendant go with you? Did Reid go with  
13 you?

14 A. Yes, he rode with us.

15 Q. Did he point out what apartment to go to at that  
16 point?

17 A. Correct. He -- as we pulled up, he says it's that  
18 one, we go up and told us which one inside the breeze way,  
19 but then he gave us a different name of a person to ask  
20 for.

21 Q. Okay. And were you able to confirm that he was at  
22 that residence that night?

23 A. The lady that was there -- I was not at that  
24 conversation. I was still in the vehicle.

25 Q. You were still -- That's right, you were still --

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1 A. The only thing I could do is what Detective Herring  
2 relayed to me when he came back from that --

3 Q. And when he came back to the vehicle, what was said at  
4 that point?

5 A. It was obvious that he had not been there. And  
6 Detective Herring stated that he wasn't there. And the  
7 lady and her daughter by phone call had confirmed that he  
8 had not been there that night before.

9 Q. All right. And then, so what happened at that point?  
10 What did you all do?

11 A. At that point, Detective Herring and myself escorted  
12 him back to the station.

13 Q. Okay. And when you got back to the station, what  
14 happened then?

15 A. He was read Miranda, and again, another interview  
16 began.

17 Q. And you heard Detective Herring read the Miranda  
18 rights off of a form. Is that the Miranda rights that you  
19 heard him read to the Defendant at that time?

20 A. That's correct.

21 Q. And both the first time and the second time?

22 A. Yes, sir.

23 Q. And did the Defendant seem to understand his rights at  
24 those points?

25 A. Yes, sir.

1 Q. And did he freely and voluntarily talk to you at that  
2 time?

3 A. Yes, he did.

4 Q. Did he ask at any point to have an attorney or to stop  
5 talking?

6 A. Never did.

7 Q. Was he given any hope of reward or any promise of  
8 anything to talk?

9 A. No, sir.

10 Q. Was he threatened or coerced in any way?

11 A. No, sir.

12 Q. And if we could, if I could have the Court's exhibits,  
13 I think they're One, Two, Three, and Four?

14 I'll have you look at those. We'll start with Court's  
15 Exhibit One. Court's Exhibit One, is that the first  
16 statement that was ultimately taken as far as the written  
17 statement from the Defendant?

18 A. Yes, sir, I believe so both times.

19 Q. Okay. And were you present during the taking of that  
20 statement?

21 A. Yes, I was -- Detective Herring was the lead, and I  
22 was sitting kind of at the door beside Mr. Reid.

23 Q. And while that statement was taken, can you describe,  
24 kind of, the process that was done as far as how the  
25 statement itself was taken?

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1 A. Basically, with any of these interviews that we do  
2 with someone, we come in and we sit them down. "Before we  
3 get started, we've got to go ahead and read you your  
4 rights." And they're on the computer screen in front of  
5 us. We'll go through those rights. "Do you understand  
6 your rights? You willing to talk to me?" And then proceed  
7 from there.

8 Q. And was it typed up, basically, during the course of  
9 the interview in front of the Defendant at that point?

10 A. Usually it's kind of a back and forth, you know, kind  
11 of tell me the story. And then you're typing it as you go,  
12 and then you'll go back and ask them to read it and make  
13 changes, that type thing. But usually you do an interview  
14 back and forth and then type up everything afterwards.

15 Q. All right. And can you tell me, was it typed up in  
16 the presence of the Defendant at that time?

17 A. Yes, we were all three in the room there.

18 Q. And did Detective Herring read that statement to him  
19 during that point in time in order to tell him what was on  
20 the computer screen?

21 A. Right, we'll read it back to him at that time and see  
22 if he wants to make any changes, add anything to it, see if  
23 there's "No, that's not right; that's not what I said."  
24 You know, give him a chance at that point to go through all  
25 that.

1 Q. Did the Defendant ask to alter or change it in any way  
2 at that point?

3 A. I don't remember any changes ---

4 Q. Okay.

5 A. --- that were requested.

6 Q. And was it then printed out, and he was asked to then  
7 sign the statement at that point; is that correct?

8 A. Once it's printed out we'll actually ask him to read  
9 it again to make sure if they would like to. "This is what  
10 we just read to you off the screen. Here's a printed copy  
11 if you want to read through it and make sure everything's  
12 right." And then we'll ask them to sign. At that point,  
13 we'll actually start "This is the rights that we read to  
14 you at first. If you will, sign here, saying that we read  
15 you your rights." And then next, "I've read or have had  
16 read to me the statement of rights shown above."

17 Q. And he signed those?

18 A. Signed those voluntarily. And then you go through the  
19 statement itself, you know, sign the statement itself. And  
20 then there's a notary page at the end.

21 Q. And did he sign that as well in front of you?

22 A. Signed that as well.

23 Q. And you notarized that page. Correct?

24 A. That's correct.

25 Q. Okay. And so that is Court's Exhibit One. If you

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1 would look then at Court's Exhibit Two. Were you actually  
2 there during the taking of the second statement, the one in  
3 which Detective Herring testified he was contacted by the  
4 jailer to come and talk to the Defendant?

5 A. I'm not positive whether I was at this one or not?

6 Q. All right. And let's go to Court's Exhibit Number  
7 Three. And you see that one as well?

8 A. Yeah, this one I actually started the interview myself  
9 as the primary.

10 Q. Okay. And you and Detective Herring were both there  
11 during this interview?

12 A. That's correct.

13 Q. And when was the time of this interview?

14 A. This interview actually started on October the 2nd  
15 around 11:55 p.m., just before midnight. And finished up,  
16 actually, on October the 3rd at 12:35 a.m.

17 Q. Okay, so about 40 minutes long altogether?

18 A. Yes, sir.

19 Q. Okay. And in that interview, how did it go? What was  
20 the process that you used to talk with the Defendant?

21 A. Again, the same way, come in, "Mr. Reid, I know we've  
22 advised you of your rights before, but we're going to go  
23 ahead and read them to you again." I read his rights. At  
24 that time, went into the interview, the additional  
25 information that he wanted to provide.

1 Q. All right.

2 A. And we started typing up that interview. And during  
3 the middle of that interview, something came up, I don't  
4 know what it was. But Lieutenant asked me to come out. I  
5 don't remember what it was for, but it was some kind of  
6 other issue that was going on. And Detective Herring  
7 actually finished typing up the statement, I believe, on  
8 this one.

9 Q. All right. Did you get to come back in there for the  
10 end of that interview as well?

11 A. Yes, once it was done, I came back in and signed the  
12 rights. Since I had read the rights to him and everything,  
13 I thought it was needed to go ahead and do the signatures  
14 there.

15 Q. Did the Defendant understand his rights at that time?

16 A. He didn't question them at all.

17 Q. And did he in any way invoke any of his rights, his  
18 right to remain silent?

19 A. No, sir.

20 Q. How about his right to an attorney?

21 A. No, sir.

22 Q. Was he threatened or coerced in any way to give this  
23 statement?

24 A. No.

25 Q. And the statement in Court's Exhibit Number Three, is



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1 that fairly and accurately -- I mean is that an accurate  
2 copy of the statement you took that night ---

3 A. That's correct.

4 Q. --- and you prepared? And he signed that statement  
5 saying that, that was his statement. Correct?

6 A. That's correct.

7 Q. Was he also given the opportunity to correct or change  
8 that statement if he wanted?

9 A. Correct. Again in the same manner. Read it to him  
10 and then print it off and allow him to read it again.

11 Q. All right. Now, I believe, Court's Exhibit Four, you  
12 weren't involved in that statement; were you? The one that  
13 occurred on October 6th?

14 A. No, sir, I was not.

15 Q. Okay. Are there any of the times that you were around  
16 or with the Defendant, was there any point that he invoked  
17 his right to an attorney or asked to remain silent?

18 A. No, sir.

19 Q. And at any point, did anyone threaten or coerce him  
20 while you were with him during any of those times?

21 A. No, sir.

22 Q. Did he act freely and voluntarily giving these  
23 statements and talking to the police during this time?

24 A. He appeared to be in my opinion.

25 Q. Thank you, Detective, no further questions.

DETECTIVE TIM AYERS: CROSS BY MS. ANDERSON - IN CAMERA  
REDIRECT BY MR. THOMPSON - IN CAMERA

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CROSS EXAMINATION - IN CAMERA

TIM AYERS BY MS. ANDERSON:

Q. Detective Ayers, just for clarification, the Solicitor asked you about the trip out to the apartments. And I believe your testimony, just to clarify, was you thought that had happened sequentially after -- Was it the second statement, or what was your recollection?

A. It's been over two years, I really couldn't say. I'd have to go through -- It was after the first statement we went over there.

Q. Okay. So your recollections, you think it was after the first statement, but before the second statement?

A. I believe. I may be wrong.

Q. And you just spoke basically -- You did not have any involvement with Mr. Reid during the fourth interview, the fourth statement?

A. No, no.

MS. ANDERSON: Nothing further, Your Honor.

THE COURT: Mr. Chiarenza?

MR. CHIARENZA: Nothing, Your Honor.

THE COURT: Redirect?

MR. THOMPSON: Yes, Your Honor.

REDIRECT EXAMINATION - IN CAMERA

TIM AYERS BY MR. THOMPSON:

Q. Detective, it seems like you may be having some

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1 problems remembering exactly when you drove out with the  
2 Defendant to the apartments, whether it was before or after  
3 that first statement; is that correct?

4 A. Yes..

5 Q. Did you all include that in the summary that was done  
6 during the investigation that you and Detective Ayers [sic]  
7 did?

8 A. Detective Herring completed the summary. I would have  
9 to review it to know if it was in there.

10 Q. Would it help you to refresh your recollection if you  
11 were able to look at the summary to see ---

12 A. Yes, it would.

13 Q. --- if it were in the summary?

14 MR. THOMPSON: I'm going to ask that we provide him a  
15 summary of the case.

16 THE COURT: Okay, to refresh his memory?

17 MR. THOMPSON: Yes.

18 Q. If you could, I believe, the third page of the  
19 summary, and the center paragraph, and the first full  
20 paragraph.

21 (WITNESS REVIEWING CASE SUMMARY.)

22 A. It appears it was right after we picked him up and  
23 gave him a ride to the station. It looks like we started  
24 talking to him, and he gave us the information. So, it  
25 must have been before the first.

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1 Q. So does that refresh your recollection of what  
2 occurred?

3 A. Yes, sir.

4 Q. All right. And so, could you tell me then, did you go  
5 in the interview at the midtown apartments where you  
6 discovered that Mr. Reid was not being completely truthful,  
7 did that occur before the first statement was taken or  
8 after?

9 A. It appears from the summary that we did it before,  
10 but --

11 Q. Thank you. No further questions.

12 THE COURT: Ms. Anderson?

13 MS. ANDERSON: Nothing further, Your Honor.

14 MR. CHIARENZA: Nothing, Your Honor.

15 THE COURT: You can step down. Thank you.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Call your next witness.

18 MR. THOMPSON: Your Honor, that's all for the Jackson  
19 Denno Hearing.

20 THE COURT: Ms. Anderson, do you have any witnesses?

21 MS. ANDERSON: No, Your Honor.

22 THE COURT: Be glad to hear you, Ms. Anderson.

23 MS. ANDERSON: Yes, Your Honor.

24 Your Honor, as to sort of split essentially as to the  
25 first three statements the Solicitor identified as

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1 Statement One, Two and Three, I just ask Your Honor to make  
2 a finding based on the testimony and the law whether that  
3 meets the standard of establishing those were freely and  
4 voluntarily made and in compliance with Miranda versus  
5 Arizona. As to the Fourth Statement I would at this time  
6 move to suppress that statement on the ground that, Your  
7 Honor, the testimony was that this statement was obtained  
8 on October 6th, 2009; that the interview started at 09:40  
9 a.m, and ended approximately 10:45 a.m. The testimony on  
10 direct which is also consistent of cross examination of  
11 Detective Herring is that they either Detective Herring or  
12 supervisor requested an officer from the Rock Hill Police  
13 Department to go to the Moss Justice Center and bring Mr.  
14 Reid to the Rock Hill Police department to the interview  
15 room. There was no testimony in contrast to some of the  
16 prior statements; there was no testimony by any of the  
17 officer or by any of the witnesses presented by the State  
18 that this was at Mr. Reid's request to speak to officers  
19 again.

20 The warrants were sought on October 2nd, those were  
21 signed on October 2nd, 2009, obtained by a detective who  
22 was sort of with Detective Herring direction or permission,  
23 and Mr. Reid was ultimately taken in front of a Magistrate  
24 judge and I can make if Your Honor wishes a Court Exhibit  
25 of that, was requested appointment of counsel, was

1 appointed counsel on October 3rd, 2009 in Rock Hill.

2 Whether or not the detective indicates he was familiar with  
3 it as a law enforcement officer, I believe it would have  
4 been within his duty to ascertain prior to attending to  
5 initiate further interview of Mr. Reid -

6 THE COURT: While you're arguing let me see the piece  
7 of paper you're holding up.

8 MS. ANDERSON: Would Your Honor like me to have it  
9 marked as a Court Exhibit?

10 THE COURT: I think it would be the correct thing to  
11 do.

12 (WHEREUPON: COURT EXHIBIT NUMBER FIVE MARKED AND  
13 RECEIVED INTO EVIDENCE, RECEIVED UP BY THE COURT.)

14 MS. ANDERSON: Your Honor, what I'm passing up is  
15 essentially a packet. The first page indicating an  
16 application for appointment of counsel. It contains a  
17 series of questions which the Magistrate judge would have  
18 required, ask of Mr. Reid as to ascertain whether or not he  
19 wished to have an attorney and whether or not he qualified  
20 under our -- or under our law for a public defender. That  
21 at the end of that is signed by Mr. Reid and it is dated  
22 October 3rd. There is a box checked indicating that Mr.  
23 Reid was granted counsel and this is dated October 3rd,  
24 2009 in Rock Hill, South Carolina.

25 Following that are copies of the warrant which

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1 indicate that the warrants were served on Mr. Reid. The  
2 first was obtained by Officer Vaughan on October 2nd, 2009,  
3 served on Mr. Reid on October the 3rd, 2009 by Officer  
4 Vaughn. The remaining warrants were obtained with the  
5 affiant being Detective Harveston with Rock Hill Police  
6 Department, signed by a magistrate on October 2nd, 2009;  
7 served on Mr. Reid on October 3rd, 2009.

8 The final form in that packet of Court's Exhibit  
9 Number Five being a form giving the date and time of Mr.  
10 Reid's initial appearance, also a form stating approved for  
11 public defender. That was also signed by Mr. Reid and that  
12 was also dated October 3rd, 2009. Your Honor, in support  
13 of my position, I hand up at this time the case of *State*  
14 *versus Anderson*, 357 S.C. 514., to believe it is a similar  
15 factual scenario under South Carolina law which would be  
16 consistent with South Carolina appointment procedures  
17 whereby an individual was appointed a public defender,  
18 signed the form, I'm reading from at Page 518 indicating  
19 that the appellate in this case was arraigned for the  
20 murder, signed a form requesting the service of a public  
21 defender. His aunt then visited him at the police station  
22 and the aunt then went to the police and suggested that  
23 they talk to Anderson again and Anderson did divulge or  
24 give statements in that interview. And in this case the  
25 Court of Appeals did find that even if the police had

1 reentered the room at the behest of the appellate's aunt,  
2 the officer initiated the conversation which I thin in  
3 contrast to the first three statements the testimony that  
4 Detective Herring was that on Statement Number Four was  
5 more of a police initiated based on the information they  
6 had learned from Samantha Ervin and Darrius Jeter, in the  
7 meantime between October 3rd and October 6th that it was  
8 more of questioning Mr. Reid about that information and  
9 that the statements made by Mr. Reid I would submit were  
10 more in responses to the officers either questioning or  
11 providing that information, and then sort of essentially  
12 him giving that information in respond -- to respond to  
13 them. And so, Your Honor, based on that case law and the  
14 testimony by the detective in this case, I would move  
15 therefore Statement Number Four to be suppressed.

16 THE COURT: The State?

17 MR. THOMPSON: I pass up to the Court, Your Honor,  
18 *United States Supreme Court case, Montejo versus Louisiana.*

19 (CASES RECEIVED UP BY THE COURT.)

20 MR. THOMPSON: In the case that the Defense relies  
21 upon, Your Honor, says in that case itself and I believe  
22 that was the Anderson Case, the document that they've  
23 handed up on Page 3 of that on the left hand side, the  
24 final paragraph, in the center of that pargraph, it says,  
25 "However, this very issue was considered by the United



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1 States Supreme Court in *Michigan versus Jackson*. And it  
2 goes on to resolve this in the favor of the defendnat in  
3 this particular case. *Montejo versus Louisiana*  
4 specifically states that *Michigan versus Jackson* should be  
5 and now is overruled." That is not the law anymore by the  
6 United State's Supreme Court so the reliance upon that here  
7 in a South Carolina case which is a 2004 case the Supreme  
8 Court case is a 2009 case, expressly overruled and so the  
9 whole basis for that decision is now overruled.

10 In *Montejo* basically the Court gives a long discussion  
11 of the various rules the Court has, it refers to the  
12 Edwards Rule which previously stated is once the right to  
13 counsel is invoked it can only be waived when the defendant  
14 initiates contact with law enforcement. Then it weighs  
15 that against what was the *Jackson Rule* which is now over  
16 turned which Ms. Anderson was referring to which is  
17 basically determined in *Jackson* at a request for counsel in  
18 an arraignment which is similar in this case although we  
19 have for our DCN in which the magistrate is required at  
20 that point to go over an indigence request form for a  
21 public defender with anybody who comes before him at that  
22 time.

23 This is a situation obviously with these charges the  
24 magistrate cannot set bond so the bond hearing really is  
25 perfunctory administratively at that point because he

1 simply says bond denied until the defendant would ask for a  
2 bond in General Sessions. But at that point also the  
3 magistrate as the court is well aware here in York County  
4 from our DCN order that the judge is then required to go  
5 over Defendant Indigence Form whether the defendant ask for  
6 it or not. And in the *Jackson Rule* basically is if that  
7 the defendant request counsel at this arraignment, he  
8 should be treated as an indication of the *Sixth Amendment*  
9 right. Well that's what the Court in *Montejo* expressly  
10 rejects now and says that, that's not the case. As a  
11 matter of fact in the paperwork that I have before the  
12 Court on *Montejo*, I'll direct the Court to a couple of  
13 pages specifically. Page 18 in the decision that I have,  
14 in the copy that I have.

15 THE COURT: All right.

16 MR. THOMPSON: In the first second of the paragraph of  
17 the first full sentence starts out, "What matters for  
18 *Miranda* and *Edwards* is what happens - -

19 THE COURT: Page 18?

20 MR. THOMPSON: Yes, Page 18.

21 THE COURT: Which paragraph?

22 MR. THOMPSON: The first paragraph, it's the first  
23 full sentence. It would be right after the cite *McNeil*.

24 THE COURT: I got you.

25 MR. THOMPSON: Okay. It says, "What matters for

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1 Miranda and Edwards is what happens when the defendant is  
2 approached for interrogation, and (if he consents) what  
3 happens during the interrogation -- not what happened at  
4 any preliminary hearing." And then at the end of the next  
5 paragraph it specifically says, "*Michigan versus Jackson*  
6 should be and now is overruled."

7 One of the things or the things in *Montejo* that the  
8 Court kind of weighs is the -- or they weigh a number of  
9 things but they weigh the benefits of the rule as opposed  
10 to the problems that the rule creates. And basically they  
11 said that still while *Edwards* applies we can no longer  
12 assume that simply an appointment at an arraignment of an  
13 attorney is a situation which would require us to assume  
14 that a defendant has invoked his right to counsel. And as  
15 they go back and forth in discussing it I think it becomes  
16 clear that the Court's saying for the few instances that  
17 might have a problem where a defendant would actually in  
18 that situation say I do want an attorney, please appoint me  
19 an attorney right now, that the benefit of -- that society  
20 has and the Court system has and the judicial system has in  
21 defendants when they properly waive their Miranda and give  
22 statements that, that benefit in catching criminals is  
23 something that is very important and very worth while and  
24 it outweighs the few that might have invoked their right  
25 during the initial hearing or the process. And they go

1 back and forth and then we have many states, it seems at  
2 least half the states in our Union have similar rules to  
3 ours that basically say that you have to screen someone for  
4 indigence and appoint a public defender whether they  
5 request one or not. And that seems to be unfair to give  
6 the defendant a break when he hasn't actually made that  
7 particular motion at that point in time.

8 And it points that one of the other things that I  
9 think the case is on the setting is that if its okay to  
10 waive your rights right before you have an arraignment  
11 hearing if you can hear your Miranda rights being properly  
12 waive those or at the same time you can properly say,  
13 "look, I don't want to talk to you, I want an attorney" the  
14 *Edwards* rule would then apply.

15 However, if that works right before an arraignment,  
16 there's no reason that same thing doesn't work right after  
17 an arraignment whether the defendant requested an attorney  
18 or not. And so that he is still protected by those same  
19 rules and that basically by invoking the Fifth Amendment  
20 rights and simultaneously invokes his Sixth Amendment  
21 rights as well or protects his *Sixth Amendment* rights as  
22 well. So the Court basically reasons it out that what is  
23 the important part is, is he being interrogated. And then  
24 in the interrogation does he then invoke his right to an  
25 attorney at that point or does he then ask not to speak to

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1 law enforcement any more at that point.

2 We're saying that the actual preliminary hearing in  
3 our case the indigence bond hearing that we had would be  
4 the same thing is not relevant as to this decision. It  
5 comes only on interrogation because it would be unfair to  
6 tell law enforcement who doesn't know if they then - so if  
7 we would say the judge found him not indigent and did not  
8 appoint anyone then he wouldn't have an attorney? And that  
9 would be okay for law enforcement to talk to him. It seems  
10 odd that if we try to make these particulars and go into  
11 the particulars of the preliminary hearing as they follow  
12 here or as in our case the bond hearing, it seems unfair  
13 that law enforcement then goes in blind never knowing  
14 whether they can talk to the defendant again.

15 And I think the court has expressly tells us here that  
16 that's not the relevant part, the relevant part is whether  
17 there is an interrogation and if that interrogation is done  
18 and the *Miranda* is properly given and the defendant either  
19 properly waives that or properly invokes his rights at that  
20 point. And I think here we have a situation where the  
21 defendant did not invoke his rights to law enforcement at  
22 all or in any of the interrogations.

23 THE COURT: All right. Ms. Anderson.

24 MS. ANDERSON: Your Honor, in regards to the *Montejo*  
25 case, I think one of the issues in the *Montejo* case was

1 that essentially Louisiana had a system of almost an  
2 automatic appointment. And the Court points several times  
3 factually that in fact Montejo said nothing during the  
4 dependency of the hearing. So I think to a certain extent  
5 I think what Montejo was speaking at is whether or not an  
6 individual or whether or not an individual has essentially  
7 invoked the right of an attorney when they may never have  
8 said it. I think our system does differ in that there are  
9 circumstances and when applications are taken when an  
10 individual does not wish to apply for an attorney. And the  
11 judge in my experience simply writes the individual does  
12 not wish to hire or apply for a public defender. Or an  
13 individual indicates he will hire his own attorney and that  
14 an individual would then be denied the appointment of a  
15 public defender based on that ground.

16 So I think our system is different from the Louisiana  
17 system in that it does require an individual to indicate a  
18 wish to have an attorney on their case rather than just an  
19 automatic screening which was the issue with the Louisiana  
20 case.

21 Your Honor, the *Anderson* case and in the case law in  
22 South Carolina, *Michigan versus Jackson* is cited within  
23 South Carolina case primarily in terms of the principle of  
24 law enforcement not indicating ignorance of what happened  
25 at the hearing. And that would be a circumstance, Your

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1 Honor, where when the bond hearing or appointment hearing  
2 was done or in which the appointment was done, was  
3 essentially done in Rock Hill, in the same building or  
4 right in close proximity to Rock Hill Police Department.  
5 Your Honor, what the *Anderson* case and the South Carolina  
6 cases, and the reason I handed up the South Carolina case  
7 is that relies on a previous case of *State versus Council*  
8 by the *South Carolina Supreme Court 335 S.C. 1*. It doesn't  
9 rely solely on *Michigan versus Jackson* but it relies on a  
10 separate line of South Carolina case law that seems to be  
11 granting this right. So my argument would be that  
12 certainly the South Carolina Supreme Court expand this  
13 right in this case, in fact that is what they are doing,  
14 it's not a limiting of the right granted by *Michigan versus*  
15 *Jackson*, but the fact that South Carolina case, the  
16 *Anderson* case relies on South Carolina precedent in *Council*  
17 which I'm not aware has been over ruled; that if the right  
18 is grounded in the South Carolina case law and arrives to  
19 that then I think the *Anderson* case should still be  
20 interpreted to say that the South Carolina state of the law  
21 is still the principle in *Anderson* that once an individual  
22 has requested and been appointed an attorney that the  
23 police may not initiate contact. I think it would be a  
24 different situation when you have a situation where the  
25 testimony as to three prior statements. There was

1 testimony that Mr. Reid initiated contact, that law  
2 enforcement went through the rights with him. I think the  
3 Fourth Statement is distinguishable from those and I think  
4 it does fit squarely into the *Anderson* case which relies on  
5 State versus Council, not on *Michigan versus Jackson*.

6 THE COURT: Well I disagree a little bit. It looks to  
7 me like you're relying on *Michigan versus Harvey* and  
8 actually quote it. Page 3: "*The Sixth Amendment*  
9 guarantees that in all criminal prosecutions" "the accused  
10 shall enjoy the right to have the Assistance of Counsel for  
11 his defense." "Once a criminal defendant invokes his *Sixth*  
12 *Amendment* right to counsel, a subsequent waiver of that  
13 right-even if voluntary, knowing, and intelligent under  
14 traditional standards-is presumed invalid if secured  
15 pursuant to police-initiated conversations," and  
16 "statements obtained in violation of that rule may not be  
17 admitted." And cites *Michigan versus Harvey*. And then it  
18 just says "Likewise the South Carolina Supreme Court has  
19 held:" Then it cites *State versus Council*, 1999 case.

20 MS. ANDERSON: And, Your Honor, that paragraph that  
21 when they begin -- they state the South Carolina Supreme  
22 Court, my argument would be that South Carolina has been  
23 established a precedent in South Carolina specific,  
24 specifically saying "when the *Sixth Amendment* right to  
25 counsel has attached, if police initiate interrogation



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1 after a defendant's assertion, at an arraignment or other  
2 similar proceedings, - right to counsel, any waiver of the  
3 defendant's right to counsel for that police initiated  
4 interrogation is invalid unless the defendant initiates the  
5 contact himself." And that is citing specific language  
6 from *State versus Council*.

7 THE COURT: I guess I need to look at *State versus*  
8 *Council*. But before I do that, anything else from the  
9 State?

10 MR. THOMPSON: Yes, Your Honor. I point out in the  
11 application form that is before the court that Ms. Anderson  
12 handed up, at the bottom of that form on a couple of the  
13 pages it gives the form actually coming from Court  
14 Administration. This is something that is approved by the  
15 South Carolina Supreme Court to be done and given to the  
16 defendant in the State of South Carolina. And I think on  
17 Page 3 - there is more than three pages probably in front  
18 of you - but there is one that's listed Page 3 of 3 or it's  
19 mostly printed material for the first half of the page, and  
20 then there is the signature of Donta Reid and the 3rd of  
21 October 2009 in the middle of the page.

22 Right above that is a paragraph that's printed in this  
23 form that says "I am financially unable to employ council  
24 and request that counsel be assigned to represent me."  
25 This is the form that the judge goes over with the

1 defendants automatically. They look through their  
2 indigence process at the beginning of the form to see if  
3 they qualify and they immediately go to this and basically  
4 by having this, if we're looking at it this way, if Ms.  
5 Anderson's argument is correct, then the *Supreme Court of*  
6 *South Carolina* or *Court Administration of South Carolina* is  
7 automatically invoking the rights for counsel for any  
8 defendant who goes through the indigence process to  
9 determine if he is indigent or whether he would qualify for  
10 a public defender.

11 And that certainly can't be the intent of the *South*  
12 *Carolina Supreme Court* to invoke rights for defendants at  
13 the point that they are screened for indigence. I would  
14 point out as well in the Supreme Court case of *Montejo*, I  
15 think that the discussion becomes very clear, unfortunately  
16 it's a long case and there is a lot of discussion in it and  
17 I think that's just the way the Supreme Court is, but it  
18 becomes clear if you read through it all, that this is a  
19 situation in which the Supreme Court gives the pros and  
20 cons and basically says "regardless of whether a defendant  
21 invokes his right to an attorney at this point in time you  
22 can't bind law enforcement by that." It over ruled the  
23 *Jackson* rule, it looked at *Edwards* to see if an  
24 interrogation of the defendant then invoked his rights.  
25 Because just as he could have done it before the

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1 application for DNC or the automatic application for  
2 indigence he could have invoked his rights the same way  
3 afterwards. And so it doesn't change anything, it's not a  
4 burden on the defendant, the defendant understands his  
5 rights more than ever at this point.

6 And so I would point out that in this particular  
7 situation I think Ms. Anderson also mentioned that in the  
8 *Fourth Statement* she felt was just a response to law  
9 enforcement. If you actually look at the *Fourth Statement*  
10 by the defendant, it is the most detailed of all the  
11 statements. It's not simply a response, it's truly a  
12 giving of a lot of information, much more than he had given  
13 in the prior statements. So I don't think it's a  
14 perfunctory response by the defendant to what he was told  
15 about by the police.

16 But I would go back again to *Montejo* and say they even  
17 go to the discussion of the ABA rules and the fact that as  
18 attorneys we would not be allowed to talk to a defendant  
19 who is represented on a certain matter. But they said the  
20 ABA rules do not apply to law enforcement, it only applies  
21 to lawyers. And therefore law enforcement can't be  
22 required to know at any point if a person had automatically  
23 appointed to represent them. The officer testified he  
24 didn't realize that he had gone through and actually been  
25 appointed an attorney at that point in time. He can't be

1 given -

2 THE COURT: Well the *Montejo* case you handed up says  
3 and cites another case, I can't remember which one now  
4 because I turned the pages, it says that state action is  
5 state action, the action by any body, any part of the state  
6 is imputed to other agencies in the state.

7 MR. THOMPSON: Right. And I believe that's in  
8 *Jackson*. I believe that's the quoting of *Jackson* which is  
9 now expressly over ruled.

10 MR. BRACKETT: In the *Anderson* decision --

11 THE COURT: One at a time, one at a time. No, one at  
12 a time.

13 MR. BRACKETT: Yes, sir.

14 THE COURT: One at a time. That's the way we do it.

15 MR. THOMPSON: As Mr. Brackett was pointing out, in  
16 the decision in *Anderson* itself, in that same paragraph on  
17 the 3rd page that we discussed earlier, it talks about that  
18 when it's talking about *Michigan versus Jackson*, it says  
19 "and was resolved in favor of the defendant because "Sixth  
20 Amendment principles require that we impute the State's  
21 knowledge from one state actor to another." So it's  
22 actually quoting *Jackson* as being the one who says that and  
23 *Jackson* is now specifically over turned.

24 THE COURT: Anything further, Ms. Anderson, because I  
25 want to take a break and take a look at *Council*?

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1 MS. ANDERSON: Your Honor, I do have a copy of *Council*

2 ---

3 THE COURT: Okay.

4 MS. ANDERSON: --- if you wish. The only thing  
5 additionally to add, Your Honor, is I just do disagree with  
6 Solicitor's assessment of the application form. I don't  
7 think the problagation of standard form by Court

8 Administration is an automatic invitation. I think that  
9 what it turns on is the filling out of the form. And one  
10 of the lines that the Solicitor read is indicate that the  
11 signature says I requesting an attorney on my case so I  
12 would still disagree with the -- that a form is

13 automatically done invoked I think it turns on more of the  
14 way our system works than in an individual requesting an  
15 attorney when the form is filled out, so that's the only  
16 thing I would disagree with that assessment of the form.

17 THE COURT: Well, as I understand it in the Louisiana  
18 system everybody gets appointed one unless they go out and  
19 get private counsel I guess.

20 MS. ANDERSON: Yes, Your Honor. I think Louisiana did  
21 individual and I think the *Montejo* didn't say a word during  
22 the entire hearing and still regardless was appointed an  
23 attorney without ever even asking.

24 THE COURT: In this one Mr. Reid, your client,  
25 voluntarily filed out this affidavit of indigence and is

1       relied on that for his invocation of his *Sixth Amendment*  
2       right. What is the difference? I mean an attorney  
3       appointment is an attorney appointment regardless if  
4       somebody is appointed an attorney therefore an attorney  
5       whether its by state action automatically or by request.

6               MS. ANDERSON: I think it's turning on whether the  
7       individual is making some affirmative act indicating they  
8       wish an attorney.

9               THE COURT: Why?

10              MS. ANDERSON: I think even the *Montejo* case was -- I  
11       think it's granted the fact it's done automatically whether  
12       or not an individual makes any statement or wish an  
13       attorney on a case then I think that's where the US Supreme  
14       Court would say in doing that automatically and treating  
15       that as an indication whether or not anyone indicated they  
16       wished to invoke that right was a step the court wasn't  
17       willing to take. I think the difference is that an  
18       individual -- is an individual can come into a hearing and  
19       there are applications filed out that says does not wish to  
20       apply for an attorney and is denied on that basis  
21       regardless of their financial status. Or an individual  
22       hired their own attorney and was denied on that basis  
23       regardless of their status. I don't think our system is  
24       the same scenario where a magistrate will still find out  
25       about financial circumstances and appoint an attorney over

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1 an individual's wishes and I think that's the  
2 distinguishing factor.

3 THE COURT: All right. The next question, I now have  
4 *Council* and I'm looking at head note 16, 17, and 18, and  
5 that states "the *Sixth Amendment* right to counsel attaches  
6 when an adversarial judicial proceeding has been initiated  
7 and at all critical stages. The *Sixth Amendment* attaches  
8 only on post indictment -- well let's see. "When the *Sixth*  
9 *Amendment* right to counsel has attached, if police initiate  
10 interrogation ... any waiver is invalid." And they  
11 predicate all of that in *Michigan versus Council*. They  
12 quote -- They cited *Michigan versus Jackson* three times in  
13 that one paragraph. And later on in head note 20 and 21  
14 they cite it again. So it appears to me the Supreme Court  
15 or Court of Appeals, the Supreme Court in South Carolina in  
16 reaching their decision in *Council* and thus how *Council*  
17 bears on *Anderson* is still predicated on *Michigan versus*  
18 *Jackson*.

19 All right. On as to the report, I got to go through  
20 all of them in a minute, but as to the report and as to  
21 your particular motion and as to that in that it should be  
22 suppressed based on the police initiated statement  
23 indicated contact with Mr. Reid, post Mr. Reid's having  
24 requested counsel, based on the *Anderson* case, I will not  
25 suppress it on that. I find that, that the later case of

1        *Montejo versus Louisiana* from October of 2008, I have to  
2        pull the cite, I will ask counsel, not counsel but *Council*  
3        case, but counsel for the State, here it is 556, *US* 778.  
4        So as to that ground as to the report I over rule the  
5        motion, I deny the motion to suppress. As to all four I  
6        find by a preponderance of the evidence and of course I do  
7        it by a preponderance of the evidence the State -- I'm  
8        sorry, the jury will have an opportunity to pass on the  
9        same issue of voluntariness -- of the voluntariness,  
10       knowingly and intelligently in regard to the waiver and  
11       there the standard is beyond a reasonable doubt, of course  
12       that would be submitted to the jury.

13       I find that Mr. Reid has freely voluntarily knowingly  
14       and intelligently waived his rights to the *Fifth* and *Sixth*  
15       *Amendment*, that he was properly and completely as to all  
16       four advised of his constitutional rights under those  
17       amendments and as required under *Miranda* he was advised  
18       that he had the right to remain silent, that anything he  
19       said could be used against him in Court, that he had a  
20       right to talk to an attorney for advice before he was asked  
21       questions, he had the right to have the attorney since him  
22       could possibly be heard with him during questioning, that  
23       he had the right to the advice and presence of an attorney;  
24       if he could not afford to hire one that law enforcement had  
25       no way of appointing an attorney but one would be appointed



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1 by the court if he wished, if he desired or wished. And  
2 that he could answer questions with the presence of an  
3 attorney and may stop answering at any time he desired.

4 I find he freely voluntarily knowingly and  
5 intelligently waived these rights, he did it in writing. I  
6 find that there is no evidence that there was any threats  
7 or coercion, no promise of reward or favorable treatment,  
8 no evidence of lack of sobriety or any other physical or  
9 mental condition which would impair his ability to  
10 understand his rights and to freely voluntarily had  
11 intelligently waives the same. He has an eleventh  
12 education indicated he could read and write. So I deny the  
13 motion to suppress all four indictments keeping in mind  
14 that the indictment -- I'm sorry, that all four statements  
15 keeping in mind that *Statement Number Four* is actually  
16 going to be utilized through a redacted copy as opposed to  
17 the copy - actually to the original. That was taken care  
18 of yesterday. All right, let's take - we need to take a  
19 break. Is there any other motions before we get the jury  
20 in?

21 MR. THOMPSON: I think before we finish on this  
22 matter, Your Honor, there are a couple of things I would  
23 like to put on the record. One regarding the redaction. I  
24 just want the Court to be aware that in addition to the  
25 changing of the -- taking out of Devante Henson's name --

1       there is a sentence that is removed in which he said that  
2       he identified or law enforcement had him identify in a  
3       photo line up of Detonte Henson so Mr. Reid would not be  
4       questioned, the officers would not be questioned about the  
5       photo line up identification by Mr. Reid and it is not any  
6       longer in his statement. I wanted to point that out. And  
7       as well for the portion we just had, I would like to make a  
8       part of the record the DMC order basically for York County  
9       in which on the first page this is the order that was  
10       signed December 27th, 2000 by the Court. On the first page  
11       under bond hearings this is Number Two. It says "At this  
12       time of the bond hearing all the defendants shall be  
13       screened by the magistrate or municipal judge to determine  
14       if they qualify for the appointment of counsel." And this  
15       is simply for the Court that if the case were to go on  
16       appeal then the determination as to our DCN order here in  
17       York County.

18               Do you all have any objections?

19               MS. ANDERSON: No, Your Honor.

20               MR. THOMPSON: I ask to make it a Court's Exhibit and  
21       be made a part of the record.

22               THE COURT: You can go ahead and hand it to Ms.  
23       Nelson.

24               (WHEREUPON: COURT'S EXHIBIT NUMBER SIX IDENTIFIED AND  
25       MARKED, RECEIVED INTO EVIDENCE.)

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1 THE COURT: Do we have any more motions? Or are we  
2 ready when we get back to have the jury come up?

3 MR. CHIARENZA: Your Honor, you had indicated  
4 yesterday that we were going to need to have some further  
5 discussion on a couple of my pretrial motions. I don't  
6 know if you want to do that at the time that those issues  
7 come up during the course of the trial. Particularly it  
8 was a question as to whether or not my client's arrest in  
9 Baltimore would be -

10 THE COURT: I think we need on that one is to have the  
11 officer -- I've got your motions now. I think we might  
12 have to have a proffer on that one. I kind of telegraphed  
13 yesterday that I had the grave concern about the ability of  
14 the State to get that evidence in. But I'm at least giving  
15 the State the ability to show me what they got so to speak,  
16 show their cards, and then I'll see if they can play 'em.

17 MR. CHIARENZA: Your Honor, I do have another issue  
18 that might be best taken up in chambers and then we can  
19 decide if we need a Denno hearing.

20 THE COURT: All right. Anything else for the record?

21 MR. THOMPSON: I don't believe so. I would like the  
22 Court to know that I had talked to the defense regarding  
23 the sequestration and both Detective Herring and Detective  
24 Ayers, their allowing them both in the courtroom during the  
25 course of the trial. If there is no objection to that --

1 THE COURT: Any objection, Ms. Inzerillo?

2 MS. INZERILLO: No, Your Honor.

3 THE COURT: Mr. Chiarenza?

4 MR. CHIARENZA: No, Your Honor.

5 THE COURT: All right. Let's take a short break and  
6 then after you've taken a few minutes break join me in  
7 chambers and then we'll be ready to bring in the jury and  
8 kick off.

9 (COURT IN RECESS AT 10:45 AM.)

10 (DEFENDANT'S REENTER COURTROOM AT 11:11 AM.)

11 (COURT BACK IN SESSION AT 11:12 AM.)

12 THE COURT: Thank you, take your seats. Back on the  
13 record, and the defendants are present. It was called to  
14 my attention by my law clerk Mr. Leightner, during the  
15 break in this line of issues with the *Edwards, Jackson, and*  
16 *Montejo* case, there is another South Carolina case that the  
17 *Tracy B., A Juvenile, 391 S.C. 51*. I called it to the  
18 State and Mr. Reid's attorneys. They were both aware of it.  
19 It kind of confused me for a little bit, but I'm not as  
20 bright as counsel are, and determined as did counsel that  
21 the Tracy decision is predicated on a different fact  
22 pattern that's not here, present, and so it is not  
23 applicable to what we have here.

24 All right. State ready for the jury?

25 MR. BRACKETT: The State is ready, Your Honor.

OPENING STATEMENT: BY MR. BRACKETT

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1 that's a good breaking time. But if any of you need a  
2 break at anytime, please raise your right hand, and we will  
3 take a break. It's hard to pay attention if you're not  
4 comfortable, and I would rather take a break than have you  
5 not being able to pay attention. And I extend that to  
6 counsel and the attorneys -- counsel and the defendants.  
7 We wish to move the case along, but we're not in such a  
8 hurry that we won't take a break if someone needs it.

9 You do not need to take notes.

10 And at this time I'm going to ask the attorneys to  
11 make their opening statements if they wish.

12 MR. BRACKETT: Thank you. May it please the Court?

13 THE COURT: Yes, sir.

14 MR. BRACKETT: October 1st, 2009, in the city of Rock  
15 Hill, it was a cool, clear evening, about 51, 52 degrees.  
16 At [REDACTED] which is a little road that runs right  
17 off Reynolds, which runs into Freedom, right near where it  
18 comes into Heckle, three individuals were sitting on the  
19 porch: Henry Jackson, who lived at that house; and two of  
20 his friends, Kenny Cunningham, and Tyrone King.

21 Henry Jackson had received a phone call, from a fellow  
22 he knew, asking whether or not he could come by and see him  
23 on the porch that night. And Henry said, "That would be  
24 fine." The fellow who called him was this man over here,  
25 Donta Reid. He said, "I'll be here. Come on by whenever

OPENING STATEMENT: BY MR. BRACKETT

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1 you want." About sometime between 10:30 and 10:40 that  
2 night, Mr. Reid showed up at the porch and spoke briefly  
3 with the man sitting on the porch that night. He told them  
4 that he knew a girl that he wanted Henry to go and see, but  
5 she was in Midtown and asked him, "Would you come with me  
6 to see this girl?" And Mr. Jackson declined. He said,  
7 "No, I'm going to stay right here." So Donta Reid said,  
8 "Well, can I borrow your phone for a minute? I need to  
9 make a quick phone call." And he did. And Henry Jackson  
10 was listening to him, and he heard him say, "There's two  
11 more," a couple of other things, and then he hung up and  
12 left.

13 A few minutes after that, 5 maybe 10, a young woman  
14 walked up. A young woman they didn't know. She walked  
15 around. There's a wooden rail fence that surrounds their  
16 yard and an opening on the left side. She came around and  
17 came through the opening and walked up to the porch and  
18 started talking to them.

19 Very shortly after she walked up and started talking  
20 to them, a man that they didn't know either, came up behind  
21 them. They didn't know him because they couldn't recognize  
22 him. He had a mask covering his face. He reached down  
23 into his pants and pulled out a rifle, a short rifle that  
24 looked as if maybe the barrel had been sawed off. He  
25 pointed the gun at the three men on the porch and told them

OPENING STATEMENT: BY MR. BRACKETT

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1 that they had to give it up.

2 He instructed the girl to step up onto the porch, and  
3 search the men, and look around the porch area for anything  
4 of value. She did. The two individuals sitting on the  
5 porch, Mr. Tyrone King and Kenny Cunningham were relieved  
6 of a cell phone, some cigarettes. Mr. Jackson was relieved  
7 of his wallet and another cell phone.

8 She came back down off the steps of the porch and  
9 rejoined the man holding the rifle, pointing it at the  
10 three men, Cunningham, King, and Jackson holding their  
11 hands up, Jackson standing on the porch of his own home  
12 being robbed at gunpoint. She walked back down to him, and  
13 they started to leave.

14 She said something to the man. And the man turned  
15 around and decided to take one more thing. He squeezed the  
16 trigger of that rifle, which as it turns out was an  
17 automatic .22 and quickly sprayed 10 bullets across the  
18 front of the porch striking Mr. Cunningham in the leg and  
19 striking Mr. King, taking from his mother Detric something  
20 that was more valuable than you could carry away in your  
21 pocket, something more valuable than anybody ever deposited  
22 in a bank. Tyrone King fell to those steps, and that's  
23 where he died with a gunshot to his head.

24 The two individuals ran out of the opening around the  
25 fence and down Byar Street in the direction of Scoggin.

OPENING STATEMENT: BY MR. BRACKETT

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1 Mr. Jackson grabbed his friend Mr. Cunningham as they  
2 were running off not knowing if they were going to fire  
3 again, and dragged Ms. Cunningham into the house, and  
4 called 911, and the police responded.

5 Mr. King was taken to the hospital where he was  
6 pronounced dead. Mr. Cunningham was treated for the shot  
7 to his leg.

8 They gave as good a description as they could of the  
9 individuals who had done this crime. And the police got to  
10 work trying to figure out who had done this, who had killed  
11 Tyrone King, who had shot Kenny Cunningham, and who had  
12 robbed all three men at gunpoint.

13 The next morning, Mr. Jackson recalled an important  
14 fact. He said, "You know what? Right before those two  
15 people showed up, Donta Reid came to my house. That's  
16 right. And he asked to use my phone. And he called  
17 somebody, and I heard him say something strange. 'There's  
18 two more.' He might have had something to do with this."

19 So the police go, and they interview Mr. Reid. And  
20 they ask him, "Where were you last night?" He says, "I was  
21 at this girl's apartment over in Midtown."

22 So they go to that apartment to see if the girl would  
23 vouch for the fact that he was there. She doesn't. Nobody  
24 at that apartment saw him that night.

25 So they go back to the police department. They read



OPENING STATEMENT: BY MR. BRACKETT

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1     Donta Reid his rights and obtain a statement from him in  
2     which he acknowledges that he was there on Byar Street that  
3     night. But he says, "The fellow that I was with was named  
4     'Duke.' His real name is Darius Jeter. And Darius Jeter  
5     had the gun. And I saw Darius Jeter walk off in the  
6     direction telling me he was going to rob somebody. And  
7     Darius Jeter was the guy who shot and killed Tyrone King.  
8     That's the man you need to be looking for." And he signed  
9     that statement swearing under oath that it was true.

10     So the police went to find Darius Jeter, and then  
11     brought him in and charged him with a crime. But as it  
12     turns out, Darius Jeter had nothing to do with this. The  
13     only thing Darius Jeter had anything to do with was earlier  
14     that night, he saw them as they drove past in the truck.  
15     They saw him standing out in the middle of the road, and  
16     they talked to him for a minute. But other than that,  
17     Darius Jeter had nothing to do with this case. In two more  
18     statements after the first one, Mr. Reid stuck to the  
19     Darius Jeter story.

20     But ultimately, he implicated another individual named  
21     Samantha Ervin. You're going to hear from Samantha Ervin.  
22     We're going to call her to the stand. She is cooperating  
23     with the State. She will testify as to exactly what  
24     happened that night. She told the police. And she will  
25     take this witness stand over here. And she will tell you

OPENING STATEMENT: BY MR. BRACKETT

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1 that they left out that night from her house on Keels  
2 Avenue, her; a woman named Aileen Newman; Donta Reid; and  
3 this man right here, Davontay Henson, nicknamed "B'more"  
4 because he's from Baltimore.

5 That they left out of her house on Keels Avenue with  
6 the intention of going and robbing these people on Byars,  
7 that they only knew about the people on Byars because they  
8 were friends of Donta Reid. And it was Donta Reid's idea,  
9 that he's the one that told them, "These are three guys I  
10 know. They might have something." And Davontay jumped  
11 right on it and said, "Well let's go rob them." So the  
12 plan was for Donta to go and lure them down the street, and  
13 B'more would be waiting with the gun. But when Henry  
14 Jackson didn't want to go, B'more decided, "Well if he's  
15 not coming to me, I'll go to him." And Samantha Ervin is  
16 going to tell you that.

17 She told them about another person that was involved,  
18 Aileen Newman, the girl who walked up to the porch with  
19 B'more, with Davontay Henson. Samantha Ervin said, "Her  
20 name's Aileen Newman. She lives up in Charlotte." So the  
21 police started looking for Aileen Newman. When she was  
22 apprehended up in Charlotte, taken to the Charlotte-  
23 Mecklenburg Police Department to be interviewed there, and  
24 she gave a statement basically saying the same thing up  
25 front that Samantha Ervin had said, that the four of them

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1 were involved. At the beginning, though, she tried to make  
2 it sound like she was forced to do it at gunpoint, that she  
3 was an unwilling participant. Aileen Newman is going to  
4 take that witness stand in this courtroom and tell you  
5 that, that wasn't true, that she was a willing participant,  
6 that she did go willfully and voluntarily to the porch on  
7 Byar Street. She searched those three gentlemen, she took  
8 their property, she ran off down the street after Davontay  
9 Henson, squeezed off ten rounds killing Tyrone King.

10 That's not all you're going to hear, though. The  
11 house on Keels Avenue, which was Samantha Ervin's house,  
12 was also the home of her cousin, a gentlemen named Alijah  
13 James. Mr. James is going to come into the courtroom and  
14 tell you, "While I wasn't with them that night when they  
15 went to Byars, I was at the house before they left, and all  
16 four of them were together. And I was at the house later  
17 on when they came back, all four of them together, agitated  
18 and excited.

19 You're going to hear from Alijah James' sister  
20 Shaleika Black who also was staying at the house at that  
21 time. And she's going to tell you the same thing.

22 Now Davontay Henson, as I just told you, you're going  
23 to hear that Mr. Henson is the one who held the gun in his  
24 hands. You're going to hear that Mr. Henson is the one  
25 whose finger pulled the trigger taking Tyrone King's life.

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1 But he's not the only one charged with murder.

2 Donta Reid is also charged with murder. He didn't  
3 pull the trigger, how can he be charged with murder?

4 The judge is going to instruct you at the end of the  
5 case there's a principle of law that's called, "The hand of  
6 one is the hand of all." When two or more people conspire  
7 and act together to commit some criminal object, each  
8 person is responsible for the acts of the other in the  
9 conspiracy just as if they did the act themselves. There's  
10 an old case in South Carolina law, and it came from Clover,  
11 South Carolina. A group of men decided they wanted to rob  
12 a bank. One guy's job was to set fire to a barn on the  
13 other side of the town distracting everybody to the barn  
14 fire while the other men went to the bank and robbed it,  
15 while all the men in town, and the police, and the fire  
16 department were engaged in fighting the fire on the other  
17 side. Well, the guy who set fire to the barn, he never  
18 went into the bank. He didn't hold a gun on anybody. But  
19 he was just as guilty of bank robbery as the guys who did  
20 because he was where he was doing what he was supposed to  
21 do to make it easier for the other people to do what they  
22 had to do.

23 And Donta Reid was on the porch that night counting  
24 the guys, calling them up, saying, "There's two more, not  
25 just Henry Jackson, but Henry Jackson and two more." And

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1 he also told them one other piece of information, "They  
2 don't have guns. They're not armed. So let's take them,  
3 and you can come down here and rob them." Donta Reid  
4 helped set this robbery-murder up, and Donta Reid is just  
5 as guilty of murder as Davontay Henson is. The hand of one  
6 is the hand of all. That's what the judge will instruct  
7 you.

8 Now, the judge will also instruct you that the burden  
9 of proof in this case belongs to the State. The Defendants  
10 as they sit there are presumed innocent. And that's a real  
11 right. It's not just something we say. But I submit to  
12 you, after you hear from Samantha Ervin, after you hear  
13 from Aileen Newman, Alijah James, Shaleika Black, the  
14 police that investigated this case, there will be no  
15 reasonable doubt in your mind that both of these gentlemen  
16 are guilty of murder, both of these gentlemen are guilty of  
17 armed robbery and conspiracy. And at the end of the case,  
18 we will ask you to return a verdict of guilty on all these  
19 charges.

20 Until then, thank you very much for your kind, careful  
21 attention in this case. And I put on the case along with  
22 my Deputy Solicitor Willie Thompson. I'm Kevin Brackett,  
23 the Solicitor. I appreciate your service in this matter,  
24 and we look forward to the summation at the end of the  
25 case. Thank you.

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1 THE COURT: Ms. Anderson.

2 MS. ANDERSON: May it please the Court?

3 THE COURT: Yes, ma'am.

4 MS. ANDERSON: Ladies and gentlemen, the Solicitor has  
5 just stood in front of you and painted a picture of what  
6 the State's view of this case is.

7 I want to call your attention to what officers found  
8 on October the 1st, 2009, but more particularly, what  
9 officers didn't find when they responded to the scene on  
10 October 1st, 2009 at [REDACTED]

11 We look through the eyes, perhaps, of Officer  
12 Harrelson who was one of the first officers from Rock Hill  
13 Police Department who was all on the scene. And Officer  
14 Harrelson arrived there the late evening hours, began the  
15 investigation, was able to observe, was able to talk to  
16 people that night. And there were two words, ladies and  
17 gentlemen, that at no time when Officer Harrelson was there  
18 on October 1st, 2009 did he ever hear. And those two words  
19 were "Donta Reid." On the evening of October 1st, 2009,  
20 none of the witnesses that Officer Harrelson talked to on  
21 the scene mentioned Mr. Reid's name. When he arrived on  
22 the scene, Mr. Reid wasn't at [REDACTED] He wasn't  
23 observed or talked to that evening at all by police in the  
24 area.

25 And to this point, ladies and gentlemen, no witness

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1 has said that when the robbery, when the shooting occurred,  
2 at [REDACTED] on October 1st, 2009, that Donta Reid was at

3 [REDACTED].  
4 Forensic Services Unit was called out to [REDACTED] on  
5 October 1st, 2009. And they processed the scene. And  
6 there's no forensic evidence that shows that Donta Reid was  
7 at [REDACTED] at the time two other people came up to  
8 the porch and robbed the three individuals, and then one of  
9 those individuals began shooting.

10 And I believe, ladies and gentlemen, if you watch  
11 through the course of this trial, you won't see a single  
12 witness called by the State, come through these doors,  
13 cross this carpet, sit in this witness stand, and tell you  
14 that when the robbery and the shooting occurred, that Donta  
15 Reid was there.

16 Now the State referenced some statements made by Donta  
17 Reid, and that's correct. Mr. Reid did talk to the police,  
18 and he told them what he knew. And Mr. Reid did tell the  
19 police that he had talked with some other people and there  
20 was a plan. There was an original plan to rob an  
21 individual named Maurice Jackson who lived at [REDACTED]  
22 [REDACTED]. But Mr. Reid also told the police that he didn't  
23 want to. And he also told the police that there were other  
24 people involved. And yes, he told the police that earlier  
25 on October 1st, he had gone to [REDACTED]. And he

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1 did, in fact, use a phone, and he did, in fact, call  
2 another person. And he did say something to the effect of  
3 "two people" or "two more," something to that nature.

4 And then, ladies and gentlemen, he told the police  
5 that he left. And he told the police that he was afraid.  
6 And he also told the police that he had been threatened by  
7 someone else. And I bring that up, ladies and gentlemen,  
8 because the key fact is that he told the police that he  
9 left. And indeed no witness will come into this courtroom  
10 and tell you that when the robbery took place, when those  
11 individuals came up to the porch on [REDACTED] when those  
12 individuals started shooting, that Donta Reid was there.  
13 And he never told the police that he knew that was going to  
14 happen, that he knew that someone would begin shooting,  
15 that he knew these individuals would choose, ultimately, to  
16 rob the people on the porch.

17 But for that, ladies and gentlemen, the State will ask  
18 you to find him guilty beyond a reasonable doubt of murder.

19 I'd like to give you an illustration to think about as  
20 you hear all the testimony in this case. If I walked out  
21 of this courtroom right now, walked out of those doors, and  
22 went through those double-doors out into the front corridor  
23 -- I'm not going to do it. I'll just let you imagine it.  
24 If I went in and out in that front hallway and all of you  
25 remain here in this courtroom, you wouldn't know what I



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1       said out in that front hallway. You wouldn't know what I  
2       did. You could make assumptions about what you thought I  
3       might do, but you won't know for certain because you're not  
4       out there to see what I do, and you're not out there to  
5       hear what I do. And no individual can know what another  
6       person is thinking. And you couldn't know what I'm  
7       thinking out there. But that's exactly the theory that the  
8       State is standing up here and asks you to convict Donta  
9       Reid on. He wasn't present when the robbery happened. He  
10      wasn't present when the shooting happened. He didn't see  
11      what happened. He didn't hear what happened. He couldn't  
12      know what decisions those other individuals might have  
13      made.

14             In the course of this case and at the end of this  
15      case, you'll hear more about the law in this case and the  
16      burden of proof. But I bring up in particular, the State's  
17      burden of beyond a reasonable doubt because it is such an  
18      important part of our system. And it's a very, very high  
19      burden. And if the State fails to meet that burden, then  
20      it's your duty as jurors in our system to return the  
21      verdict, not guilty. And if the State comes one millimeter  
22      short of meeting that burden, then it is your duty to  
23      return a verdict not guilty.

24             I ask you, ladies and gentlemen, to listen critically  
25      to what you hear, to look at this case critically, to

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1 listen for what you do hear, and just -- it's important to  
2 listen to what you don't hear, and to think about what is  
3 just. Our system is about justice. Your duty as jurors is  
4 to do justice with your verdict. I ask you to think about  
5 what seems right, and what seems fair, and what seems just  
6 in all of the circumstances.

7 At the end of the case, my co-counsel Ms. Inzerillo  
8 will stand in front of you, and will talk to you again, and  
9 will ask you to return a just verdict. I ask you to  
10 remember, ladies and gentlemen, to look at the evidence and  
11 to remember that on October 1st of 2009, Donta Reid left.  
12 I ask you to return a verdict -- We'll ask you at the end  
13 of this trial to return a verdict of not guilty.

14 Thank you, ladies and gentlemen.

15 THE COURT: Mr. Chiarenza.

16 MR. CHIARENZA: May it please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 MR. CHIARENZA: I hope you don't mind, I may, maybe,  
19 reference these notes from time to time. Years ago, I used  
20 to just come up here and wing it, but I find the older I  
21 get, the less able I am to remember things quite the way I  
22 need to, so...

23 First of all, I want to welcome you to the courtroom.  
24 I want to welcome you to the Moss Justice Center. You've  
25 got a terrific responsibility this week, and I know that

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1 you all are going to be able to carry it out and do your  
2 duty excellently. Really quite literally, you all are the  
3 chosen ones. We chose you. The State got to pick you, got  
4 to say yes or no. Counsel for Mr. Reid got to say yes or  
5 no. And then it was up to me to say yes or no. There's a  
6 reason that all of you are sitting on this jury because all  
7 of us, for whatever reasons, based on your backgrounds,  
8 your education, maybe just the way you carry yourselves, we  
9 all believe that you will make fine jurors in this case,  
10 that you will follow your oath, and that you will do what  
11 is required of you. So again, in line of welcoming you  
12 here, I just want to -- This can be, I guess, an odd  
13 experience if you've never been here before. And, in fact,  
14 as luck would have it, a very dear friend of mine is  
15 sitting in jury duty in Richland County, in criminal court,  
16 in General Sessions. And we spoke yesterday, and she asked  
17 me a question about the proceedings. So, I just can't help  
18 but wonder that maybe you all are thinking the same thing.

19 So, I'm going to take a little liberty here and just  
20 advise you. This woman here is the court reporter. And  
21 that funny thing she's speaking into is taking down  
22 everything she says. And what she is saying is everything  
23 that I'm saying right now. It is her job to memorialize  
24 these proceedings here today. So whenever there is a  
25 witness testifying, whenever the judge speaks to you,

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1 whenever any of the lawyers are speaking, the court  
2 reporter will repeat it into that microphone and it will be  
3 preserved forever. You may be asking yourself, "Why can't  
4 they just do a tape recording?" Well they do that as well,  
5 but this is sort of like a backup. So in case in the  
6 future, people are listening to the recording, they have a  
7 difference over what a word may be, we've got also the  
8 court reporter's interpretation of what was said.

9 While we're introducing people, this is one of our  
10 fine assistant clerks. And it's the Clerk of Court's job  
11 to basically wrangle all the paperwork that's involved in a  
12 court proceeding, to be the liaison between what's going on  
13 up here, and what's going on downstairs, and handle matters  
14 of record. And we've got a fabulous clerk's office here in  
15 York County, and they do a wonderful job.

16 Now you've already met the judge.

17 There are various other individuals in the courtroom  
18 including some security.

19 I am counsel for the Defendant Donta Reid -- I'm sorry  
20 -- for the Defendant Davontay Henson. I should have  
21 checked my notes and seen who my client was. Right?

22 These are co-counsel for Defendant Donta Reid.

23 These are the attorneys for the State. They prosecute  
24 the case. And as Mr. Brackett told you, it is their burden  
25 to prove to you the allegations they brought against both

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1 defendants of this case. They are alleging that these  
2 gentlemen have committed certain crimes.

3 As these individuals sit before you today, as my  
4 client sits before you today, Mr. Henson is presumed  
5 innocent. And he is innocent all throughout this  
6 proceeding until you determine whether or not you've heard  
7 enough evidence to find him guilty beyond a reasonable  
8 doubt of the numerous charges that the State claims he is  
9 guilty of.

10 So you've heard a little bit of what this case is  
11 about. And I'm not going to get too much into what the  
12 testimony is going to be because nothing I say to you is  
13 evidence. I can't testify. I wasn't there. I didn't do  
14 an investigation in this case. I can't present any  
15 evidence to you. What Mr. Brackett told you, that's not  
16 evidence either. That's his understanding of this case,  
17 and that's his theory of the case, and that's his outline  
18 to you based on what he believes his evidence will show.  
19 And I expect that much of what he presents to you will be  
20 along the lines of what he said he will present to you. We  
21 just sort of differ on what all that stuff's going to end  
22 up meaning in the end. How do I know that? Well, there's  
23 this terrific movie, maybe you've seen it. It's one of my  
24 favorites. It's "My Cousin, Vinny." And there's a point  
25 in the movie where Joe Pesci plays this lawyer that, sort

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1 of, finds himself down south, maybe in a little bit over  
2 his head trying a case where his relative is actually  
3 charged with murder along with another individual. And Joe  
4 Pesci's down there with his fiancé, Marisa Tomei. And at  
5 one point, he says, "I just wish I could see into the  
6 Prosecutor's file, and I wish I knew what he had." She  
7 tells him, "He's got to show you his file, you idiot, it's  
8 called discovery. You're entitled to it." Right? So  
9 that's why I know what's in their file. Discovery is a  
10 fairly universal concept in the criminal law in the United  
11 States. So, I've seen their file. I know what's in their  
12 file, and I think I have a pretty good idea of what they're  
13 going to present to you today. So, I will touch on that  
14 briefly. We'll get into it a whole lot more when the case  
15 is over.

16 Essentially, what they're going to present to you is a  
17 number of law enforcement witnesses who are not  
18 eyewitnesses to the proceedings that occurred on October  
19 1st, 2009. There isn't a single law enforcement officer  
20 who is going to testify in this trial, who has any  
21 firsthand knowledge from seeing what occurred or hearing  
22 what occurred on that night.

23 Now I submit to you what those officers are going to  
24 be able to prove to you is that an event occurred. I take  
25 no issue with that. I freely admit that something occurred

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1 on that. A young man lost his life. Another young man was  
2 shot and injured. Another young man was robbed along with  
3 the first two. That certainly occurred. But it's not the  
4 State's job in this case, or at least it's not their  
5 primary purpose to prove to you that something occurred.  
6 This is not a "What happened?" This is a "Who done it?"  
7 If you don't remember a single thing I say other than that,  
8 please remember that. Remember that when you are  
9 evaluating witnesses on a witness stand. Remember that  
10 when you are evaluating the physical evidence that is  
11 introduced into evidence in this case, which you'll be  
12 given to take back into the jury room. Don't look at it  
13 from the standpoint of "Does this prove something  
14 happened?" because that's not the question you're here to  
15 answer. Look at it from the standpoint of "Does this prove  
16 Davontay Henson committed these crimes?" That is the  
17 question you are here to answer.

18 To put it another way. If this were an arson case,  
19 okay, that's the criminal burning of property or a  
20 building, the State would have to prove that the fire was  
21 purposely caused by someone with the intention to burn down  
22 the building. So they do have to prove, what. In an arson  
23 case, they have to prove somebody did this on purpose. It  
24 wasn't just a faulty toaster, a bad wire. And then they  
25 have to prove, who, okay. So this case isn't about the

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1. "what." Why am I spending so much time on that? Because  
2. they're going to have a lot of evidence to present to you.  
3. Again, this goes back to, how do I know what they're got?  
4. Because of discovery. I've seen the file. They will show  
5. you probably dozens, if not hundreds of photographs. I  
6. submit to you that everyone of those photographs, more or  
7. less, proves that something occurred, or it gives you an  
8. idea of what the location looked like. Where did this  
9. happen? I will also submit to you that not a single one of  
10. those photographs proves that Davontay Henson did anything.

11. I also suspect that the State will enter into evidence  
12. some shell cases from what, we will be told, is a 22  
13. rifle. Those shell casings would seem to tend to prove  
14. that a .22 rifle was fired on this night at the Byars  
15. Street address because that's where they were found. Those  
16. shell casings do not prove that Davontay Henson fired the  
17. rifle. Again, they prove a "what," but they do not prove a  
18. "who." And the question you've got to answer in this case  
19. is "Who?"

20. I submit to you that I could beat this dead horse, and  
21. go on with all the evidence that they're going to present  
22. to you with the exception of some live witness testimony.  
23. They will put some people on this stand that will tell you  
24. who. And I'll talk about them a little bit more at the end  
25. of the case. But what I want to impress upon you now



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1 before you see those witnesses is that you need to ask  
2 yourself, "All right, this person Samantha Ervin is telling  
3 me Davontay Henson was involved. Does she have something  
4 to gain by that? Is it important that she tell us that?  
5 Does she benefit by telling us that? Has she been  
6 inconsistent in things she said in the past? Do I maybe  
7 have a reason to question Samantha Ervin's credibility?"  
8 You need to be asking yourself that question when she  
9 testifies.

10 Aileen Newman will testify as well. And she will  
11 attempt to answer the who question. She will say that  
12 Davontay Henson was involved. Again, you need to look at  
13 Aileen Newman and say, "Are you the type of person I'm  
14 going to believe? Are you a credible witness? Have you  
15 gained something by coming into this courtroom and saying  
16 that it was Davontay Henson? Have you lied previously  
17 about what occurred in this case? Have you sworn an oath  
18 and lied about this case in the past? Should I have some  
19 reason to maybe not believe everything you're telling me is  
20 the truth?"

21 You'll hear other witnesses who are not charged in  
22 this case, but they're also not eyewitnesses to the case.  
23 Those people are people that will supposedly have been  
24 around that evening when they saw the other individuals  
25 together at various points in the night. Again, the same

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1 goes for them. "Have you been inconsistent before? Do  
2 your statement maybe not match up? Do you have something  
3 to gain here? Were you forthcoming right when this  
4 occurred? Were you truthful, or did we have to get this  
5 out of you? Should I believe you?" When all the dust  
6 settles, what you're going to have, those witnesses are all  
7 going to fall into a particular category of young people  
8 seem to be, sort of, idle. You all know idle hands are the  
9 devil's workshop? They don't appear to be doing much with  
10 their lives. And that's what the State's going to be  
11 basing their entire case on: the testimony of those  
12 individuals with the exception now of the two surviving  
13 victims. What you'll hear from those individuals is what  
14 they were able to see and hear on that night. And again,  
15 you'll hear it from them, what I'm telling you is not  
16 evidence. But I submit to you that they had very little  
17 opportunity to observe on that evening, that they were both  
18 interviewed very soon after the event took place by law  
19 enforcement. They have got sworn, written statements, and  
20 that those statements say precious little that's going to  
21 be able to allow you to come to the conclusion that  
22 "Clearly, the guy they saw that night was Davontay Henson."  
23 Their statements are general in nature. They describe a  
24 masked individual and really not much else.

25 What we're asking you to do this week is not easy, but

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1       it's honorable, and it's important. And again, all of us  
2       have determined that you are very well suited for this  
3       case. We can only ask that you listen to your oath, and  
4       you apply your oath. You listen to the judge's  
5       instructions on the law, and you apply the law. And that  
6       you get into that jury room and say that "The State proved  
7       their case to me beyond a reasonable doubt. Have they  
8       proved the 'who' of this case beyond a reasonable doubt?  
9       Is the fact that a couple of co-defendants and some other  
10      people with a limited opportunity to observe things on that  
11      evening came into court and to some degree, less or more,  
12      made Davontay Henson one of the who. Is that enough for me  
13      to find him guilty of murder, and all the other things he's  
14      been charged with, beyond a reasonable doubt?"

15       I submit, ladies and gentlemen, that from what I've  
16      seen in the file, and from what I expect to be presented to  
17      you over the course of the next couple of days, that if you  
18      follow your oath in this case, you're going to have to come  
19      to the conclusion that the State did not prove their case.  
20      And not proving should mean not guilty.

21       Thank you.

22       THE COURT: Call your first witness.

23       MR. THOMPSON: If it please the Court, Your Honor, the  
24      State would call Henry Maurice Jackson to the stand.

25       MADAME CLERK: Please raise your right hand, place

HENRY MAURICE JACKSON: DIRECT BY MR. THOMPSON

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1 your left hand on the Bible.

2 (WHEREUPON: HENRY MAURICE  
3 JACKSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
4 FOLLOWS:)

5 THE COURT: Can I see Counsel up here just a minute?

6 Go ahead and have a seat.

7 (WITNESS ENTERED WITNESS BOX.)

8 (BENCH CONFERENCE AT 12:00 PM OFF THE RECORD OUR OF  
9 HEARING OF JURY.)

10 THE COURT: Members of the jury panel, based on what I  
11 understand, the time that it's going to take to present  
12 this witness, it's 12:00 o'clock, I think we usually go to  
13 12:31. But I think we'll take an early lunch. I'll ask  
14 you to be back at 1:30, and we'll try to start as promptly  
15 as we can at 1:30. Have a pleasant lunch.

16 (JURY EXITS COURTROOM @ 12:00 PM.)

17 THE COURT: Mr. Jackson, you can step down. We'll  
18 reconvene at 1:30 and start promptly as we can after that.

19 Before we adjourn, in looking at my big stack of  
20 papers, we also had a motion on behalf of Mr. Reid to  
21 suppress items from [REDACTED]. My recollection is  
22 that that is not going to be an issue?

23 MR. THOMPSON: I believe that is correct.

24 THE COURT: I just wanted to make sure. Thank you.  
25 All right, we'll see you at 1:30.

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1 (RECESS AT 12:00 PM.)

2 (BACK ON RECORD AT 1:30 PM.)

3 (DEFENDANTS REENTER COURTROOM.)

4 THE BAILIFF: Order in the Court.

5 THE COURT: Thank you, take your seats. Is the State  
6 ready?

7 MR. BRACKETT: The State's ready, Your Honor.

8 THE COURT: Ms. Inzerillo?

9 MS. INZERILLO: Yes, Your Honor.

10 THE COURT: Mr. Chairenza?

11 MR. CHIARENZA: Yes, Your Honor.

12 THE COURT: All right.

13 Mr. Jackson, please come back up, and take the stand.  
14 You're under oath.

15 MR. CHIARENZA: Your Honor, just a matter that's off  
16 the record.

17 (OFF THE RECORD BRIEFLY AT 1:31 PM.)

18 THE COURT: Bring in the jury.

19 (JURY ENTERS THE COURTROOM AT 01:36 PM.)

20 THE COURT: All right. We have Mr. Henry Maurice  
21 Jackson on the stand.

22 Mr. Thompson.

23 MR. THOMPSON: Thank you. If it pleases the Court,  
24 Your Honor.

25 THE COURT: Yes, sir.

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1 DIRECT EXAMINATION

2 HENRY MAURICE JACKSON BY MR. THOMPSON:

3 Q. Mr. Jackson, will you give your full name for the  
4 Court, please?

5 A. Henry Maurice Jackson.

6 Q. And can you speak up just a little bit, please?

7 A. Henry Maurice Jackson.

8 Q. Do you go by Maurice?

9 A. Yes, sir.

10 Q. Maurice, can you tell me where you live?

11 A. [REDACTED]

12 Q. Is that in Rock Hill?

13 A. Yes, sir.

14 Q. And that's here in York County?

15 A. Yes, sir.

16 Q. How long have you lived at [REDACTED]

17 A. Fifteen years.

18 Q. Ten years?

19 A. Fifteen.

20 Q. Oh, fifteen.

21 Who else lives with you there?

22 A. My grandma.

23 Q. Did your grandmother live with you there back in 2009?

24 A. Yes, sir.

25 Q. And did anyone else live with you there other than

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1 your grandma?

2 A. No, sir.

3 Q. Now can you tell me, on the night of October 1st of  
4 2009, who all was at your house that night?

5 A. Me, Tyrone King, and Kenny Cunningham.

6 Q. Okay. Are those a couple of friends of yours?

7 A. Yes, sir.

8 Q. How long have you know them?

9 A. All my life.

10 Q. And can you tell me, what were you all doing that  
11 evening?

12 A. Sitting on the porch and listening to music.

13 Q. Okay. And where were you keeping -- where was the  
14 music playing from? Did you have something out on the  
15 porch with you or --

16 A. I got an outlet outside on the front porch.

17 Q. Okay. And how long had you all been out on the front  
18 porch that night?

19 A. Well, a couple of hours. A few hours.

20 Q. Okay. And going to the point of the robbery that  
21 night, can you tell me, about what time did the robbery  
22 occur?

23 A. About 10:50, close to 11:00, Eleven o'clock.

24 Q. All right.

25 A. PM.

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1 Q. And before that time, how long had the three of you  
2 been on the porch?

3 A. For about a good hour. A good hour.

4 Q. And tell me about what happened. What did you first  
5 notice when the robbery occurred? How did it all go down?

6 A. We were sitting on the porch, texting on the phone,  
7 music playing. And then all of the sudden, we look up, and  
8 we see two people. It's a girl and a dude. And we're  
9 asking each other, do we know them. And we're saying, no.  
10 So by that time, the girl asked a question, but I ain't  
11 hear.

12 Q. Was she still out in the street when she asked the  
13 question or had she come up to the porch?

14 A. She was about -- about like my post, the fence, and  
15 the driveway.

16 Q. Okay. And, I ask if you would, I show you State's  
17 Exhibit Number One.

18 MR. THOMPSON: Your Honor, for the purpose of these  
19 exhibits, State's Exhibits One through Thirty-two are  
20 photographs of the scene. We showed them to the Defense,  
21 and they have stipulated that they can be entered into  
22 evidence at this time before we get started. I believe  
23 without objection.

24 THE COURT: Counsel for Mr. Reid?

25 MS. ANDERSON: That is correct. No objection.



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1 MR. CHIARENZA: That's correct, Your Honor, with the  
2 understanding that the foundation as far as who took these  
3 photos and such will be dealt with later.

4 THE COURT: All right. Thank you.

5 (WHEREUPON: STATE'S EXHIBIT NUMBERS ONE THROUGH  
6 THIRTY-TWO IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

7 Q. I'll have you look at State's Exhibit Number One.

8 Does that depict the fence post that you're talking about  
9 in it?

10 A. Yes, sir.

11 MR. THOMPSON: I'll ask to display Defense Exhibit  
12 Number One -- State's Exhibit Number One on the screen for  
13 Mr. Jackson.

14 MR. CHIARENZA: Your Honor, with the Court's  
15 permission --

16 THE COURT: Yes, you all can move where you can see.

17 (STATE'S EXHIBIT NUMBER ONE PUBLISHED ON COURTROOM  
18 OVER HEAD.)

19 Q. All right. And as that powers up, if you would tell  
20 me, she was at the post there. What, if anything, was she  
21 saying to you at that time?

22 A. I couldn't remember because I had the music up to  
23 loud.

24 Q. And did you recognize her?

25 A. No, sir.

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1 Q. Did you recognize what she was wearing?

2 A. She had on a gray sweater and pink jogging pants.

3 Q. And did you recognize anything about her hair? Did  
4 she have any --

5 A. She had light-color brown strips in her hair that  
6 looked like a wig.

7 Q. And did -- Once again, did you recognize her face?

8 A. Yes, sir.

9 Q. But is it someone that you knew at that time?

10 A. No, sir.

11 Q. All right. Can you see that photograph?

12 A. Yes, sir.

13 Q. All right. If you would, if you would take this  
14 pointer and show me where she was standing when you first  
15 saw her when she started to talk to you.

16 THE COURT: Turn the lights down.

17 (CLERK OF COURT DIMMED COURTROOM LIGHTS.)

18 THE COURT: Thank you.

19 A. Right up in there.

20 Q. Right up in there? So, she hadn't got quite to the  
21 entrance to the walkway?

22 A. No, sir.

23 Q. All right. And where were you on the porch at that  
24 time?

25 A. Rocking chair.

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1 Q. Okay. So, that's a rocking chair up there on the top  
2 of the porch?

3 A. Yes, sir.

4 Q. And you were sitting on the rocking chair?

5 A. Yes, sir. I was sitting in it inside. It wouldn't  
6 turn sideways, though. It was facing straight.

7 Q. It was facing out toward the street?

8 A. Yes, sir.

9 Q. And where were the other two gentlemen? Where were  
10 Tyrone King and Kenny Cunningham?

11 A. Tyrone was sitting right there at the top, and Kenny  
12 was sitting right there on the other side.

13 Q. All right. So both of them at the top of the steps  
14 sitting on the steps?

15 A. Yes, sir.

16 Q. Were they also facing out to the street or were they  
17 facing towards you?

18 A. They was facing out to the street, but they had their  
19 head down.

20 Q. All right, okay. What happened after that? What did  
21 she do at that point?

22 A. She asked a question. And by the time she asked the  
23 question, she just ranned up to the porch.

24 Q. Okay, so --

25 A. Like she come, ran to the porch, and said, "It's a

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1 robbery. It's a stickup. Everybody give it up. You've  
2 got drugs, money, whatever, give it up."

3 Q. And so, did you see what the other person was doing at  
4 that point in time?

5 A. He was standing right here. And then by the time she  
6 ran to the porch, he come running. And when he got right  
7 there, he pulled out a rifle.

8 Q. And where did he pull it out from?

9 A. From his pants.

10 Q. All right. And could you see the rifle at that point?

11 A. Yes, sir.

12 Q. And what, if anything, did he do at that point?

13 A. He said, "Yo, yo, give it up, this is" -- "This is a  
14 mother-fucking stickup. If you got drugs, if you move,  
15 I'll shoot."

16 Q. And at that point, could you see what he was wearing?

17 A. He had on all black.

18 Q. Okay.

19 A. Black mask over his face, black flag over his head,  
20 black jacket.

21 Q. And describe what you mean by the mask and the flag.

22 A. Well the mask -- Well the mask was like a pulled-over  
23 toboggan with the holes in it.

24 Q. Okay.

25 A. And then he had the flag over his face, a black flag

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1 over his face.

2 Q. Kind of like a bandanna?

3 A. Yeah.

4 Q. Is that -- Okay.

5 A. Yeah.

6 Q. And what else was he wearing?

7 A. He had on a black jacket, black hoodie. The jeans  
8 looked black, but they probably was a dark navy blue.

9 Q. All right. Now he pulled the gun out of the jeans.  
10 Right?

11 A. Yeah.

12 Q. Well I mean, were the jeans tightfitting? I mean  
13 could you see the gun ahead of time? Were those, kind of,  
14 really lose?

15 A. You couldn't see the gun.

16 Q. Was he wearing -- Were they really lose then? I mean  
17 something you could actually fit that rifle in?

18 A. I guess so.

19 Q. Okay. How about the top of his shirt or his jacket?  
20 Was it kind of baggy or was it pulled to his body?

21 A. Kind of baggy.

22 Q. Okay. Were you able to tell that he had a weapon  
23 before he pulled it?

24 A. No, sir.

25 Q. All right. Could you recognize him at that point in

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1 time?

2 A. No, sir, 'cause he had a mask over his face.

3 Q. All right. What did you all do at that point when  
4 they were starting to demand whatever you had? What did  
5 you do?

6 A. We put our hands up.

7 Q. Okay. And when you had your hands up, then what did  
8 you do? I mean did you start to take things out of your  
9 pockets?

10 A. No, she ranned up to the -- the girl ranned up to the  
11 porch, and she pat our pockets down, and she made me stand  
12 up. Took my wallet, took my cell -- Well, my cell phone  
13 dropped. She took my cell phone from my lap. Well, as it  
14 hit the floor, it dropped, and then she took it. Went in  
15 my pocket, got my wallet. Went in my other pocket, got my  
16 cigarettes.

17 Q. Okay.

18 A. And then the dude that was holding the gun, he was  
19 like, "Hurry up, hurry up, hurry up." And she was like, "I  
20 got this" -- "I got this shit."

21 Q. Well, go ahead and say what they said, please.

22 A. She was like, "I got this shit." "I got this." And  
23 when she opened my wallet up, it wasn't nothing but \$25  
24 dollars in it. She must have thought she had \$100, \$200,  
25 \$300 dollars. And then, by that time, when she leaved me,

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1 the dude with the rifle, he comes on the porch, put the gun  
2 in Tyrone and Kenny's face, checking their pockets. They  
3 didn't have nothing on them. But Tyrone had a cell phone.

4 Q. Did they take that cell phone from Tyrone?

5 A. Yeah, they took the cell phone.

6 Q. Okay. And did she also go through their pockets as  
7 well or just yours?

8 A. She went through theirs too.

9 Q. Okay. And did he go through their pockets after she  
10 did or before she did.

11 A. He went through it after she did, after he waived the  
12 gun in their face.

13 Q. Okay.

14 A. And he actually touched their pockets too to make --  
15 to check, I guess, after.

16 Q. And what did he do with the gun as he was going  
17 through their pockets?

18 A. He was waiving it in they face, and then pointing it  
19 at me at the same time.

20 Q. Can you demonstrate to us how he was holding it when  
21 he was going through their pockets?

22 (WITNESS STOOD.)

23 A. Like this. "Don't move. Mother-fucker, don't move.  
24 This is a stickup."

25 Q. And where was she when he was doing that?

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1 A. She was up there where I was.

2 Q. Okay.

3 A. But she --

4 Q. So, she was still farther up on the porch, but he was  
5 on the steps. Correct?

6 A. Yeah.

7 Q. When you looked at him on the steps, was there  
8 anything you could notice about him as far as, you know,  
9 looking around the mask?

10 A. All I could see is that he had hair, dreads.

11 Q. He had dreads?

12 A. Yeah.

13 Q. His hair were dreads?

14 A. Yeah.

15 Q. About how long were they?

16 A. They was long -- They was long so they came about  
17 right here.

18 (WITNESS INDICATED TO SHOULDER.)

19 Q. All right. Did they come out of the mask?

20 A. Yeah.

21 Q. They came out of the bottom of the mask?

22 A. Yeah, out of the bottom.

23 Q. And from seeing him at that point, did you -- I mean,  
24 he was covered with a mask. Could you recognize him at  
25 all?



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1 A. I couldn't recognize him, but I know from his voice  
2 that he wasn't from Rock Hill. He was from up north.

3 Q. And what did you recognize about his voice? You said  
4 from up north?

5 A. No, he -- "Yo, yo" -- You could tell -- You could tell  
6 from somebody from Rock Hill who is not from Rock Hill from  
7 how they talk.

8 Q. Okay. And he didn't sound like he was from Rock Hill  
9 to you?

10 A. No, sir.

11 Q. Okay. Now, I'm going to ask as well, at that point,  
12 they had taken, I think, your cell phone, and your wallet.  
13 And you had said some cigarettes as well. How were the  
14 cigarettes packaged that they took?

15 A. There wasn't nothing but two cigarettes in there. It  
16 was a Newport box.

17 Q. So, it was a box of Newports?

18 A. Yeah.

19 Q. And what was in it?

20 A. Two cigarettes.

21 Q. Okay. And they took that from you out of your pocket?

22 A. Yes, sir.

23 Q. All right. And do you know if they got anyone else's  
24 wallet at that point in time?

25 A. No, sir, not that I know of. I don't know if anybody

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1 else had a wallet.

2 Q. All right. Was your ID in your wallet when they took  
3 it?

4 A. Yes, sir. ID, social security card, school ID.

5 Q. Now when you -- When this happens and he starts  
6 patting down the pockets, what happens next?

7 A. Well, after they robbed us, they gets to take -- They  
8 gets to walk off. And then, she was like, "They seen my  
9 face. You've got to turn back around and shoot. Shoot or  
10 do something."

11 Q. Who said that?

12 A. The girl.

13 Q. The girl?

14 A. Yeah.

15 Q. Okay.

16 A. She say, "You got to turn back around and shoot or do  
17 something." So by that time, he came back to the bottom  
18 step right there and started shooting. And when he was  
19 shooting, he was shooting from like the bottom going up to  
20 the top. So, as I'm standing up in the rocking chair, all  
21 I see is bullets just rippling fine out of the gun. And so  
22 as I -- That's why -- The reason why the rocking chair  
23 turned this way 'cause when I dove to the front of the  
24 steps, I dove right here in front of the door. And as I  
25 dropped -- As I dropped, he was shooting at me, so bullets

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1 hit the door, knocked the door open, and when I dropped --  
2 When I dropped to the ground, the bottom glass shattered  
3 from him shooting at me. And then he outlined my whole  
4 body from the holes being in the house.

5 Q. Now, what were Kenny and Tyrone doing at that point?

6 A. They was holding their head down telling them, "Please  
7 don't shoot. Stop, stop fuckin shooter. You got what  
8 you -- You got -- You got -- You robbed us, go on and go  
9 away."

10 And by that time -- by that time, right after he shot  
11 and took off, I heard Tyrone say, "Oh man, this mother-  
12 fucker shot me." And then, by that time, I got up, getting  
13 ready to go in the house. Kenny got up behind me, and he  
14 dropped right here at the door. So, I just pulled him on  
15 in the house and dialed 911 immediately.

16 Q. And was Kenny shot too; did you find out?

17 A. Yeah, he was shot in his leg and in his pinky toe.

18 Q. All right.

19 A. In between his pinky toe.

20 Q. Now, as you heard that gun fire, can you tell me how  
21 rapid the firing was?

22 A. Pshew, pshew, pshew. He was just shooting.

23 Q. Was it like someone pulling a trigger repeatedly? Or  
24 was it like something going automatically?

25 A. Like automatic.

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1 Q. Okay. And what did he do as he fired? Did he move  
2 away from the porch as he was firing?

3 A. No, he was standing in the same spot.

4 Q. Now, did he have any problems with the gun when he  
5 went to fire it?

6 A. Yeah. When he fired the first time, it's like the gun  
7 jammed up. He done something, and then he just started  
8 back shooting.

9 Q. About how many times did it fire before it seemed to  
10 jam up?

11 A. Like three or four times.

12 Q. Now, if we could, I'm going to ask you to look at  
13 State's Exhibit Number Three. I believe that's up on top  
14 of the porch; is that correct?

15 A. Yeah.

16 (STATE'S EXHIBIT NUMBER THREE PUBLISHED ON COURTROOM  
17 OVERHEAD.)

18 Q. I believe that's the rocking chair there. Is that the  
19 rocking chair you were in?

20 A. Yes, sir.

21 Q. And now is that -- Tell me what you did. Is this the  
22 spot where you --

23 A. I was lying right there.

24 Q. Okay.

25 A. And then, when the glass shot out, it fell on top of

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1 me.

2 Q. All right. So when you got up, was there glass all  
3 over you?

4 A. Yeah, I had to get up and shake it off. And I was  
5 checking myself to make sure I wasn't shot. And that's  
6 Tyrone's charger right there.

7 Q. His charger to his cell phone?

8 A. Yeah.

9 Q. Had it been plugged in prior to all of this?

10 A. Yeah, it was plugged in.

11 Q. Now, we'll go to another exhibit. We'll go to State's  
12 Exhibit Number Twenty-four.

13 (STATE'S EXHIBIT NUMBER TWENTY-FOUR PUBLISHED ON  
14 COURTROOM OVER HEAD.)

15 Q. I believe that's the door from the inside, the front  
16 door. Correct?

17 A. Yes, sir.

18 Q. All right.

19 A. And that's one -- That's one of the bullets right  
20 there that came from the inside of the house from him  
21 shooting at me where the rocking chair was at.

22 Q. One of the bullets went through the wall there?

23 A. Yeah.

24 Q. All right. Can you tell me -- If you can describe  
25 this front screen door to me, is it all glass all the way

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1 down that front screen door?

2 A. Yeah.

3 Q. I mean, is there glass in the middle, on top, on the  
4 bottom, all of it?

5 A. Yeah, there's glass at the top, middle, and at the  
6 bottom.

7 Q. Okay. What was the only glass broken on that door?

8 A. Right there.

9 Q. Right at the bottom, right where you were?

10 A. Yeah.

11 Q. And then, if we could then go to State's Exhibit  
12 Number Twenty-three.

13 (STATE'S EXHIBIT TWENTY-THREE PUBLISHED ON COURTROOM  
14 OVER HEAD.)

15 Q. Can you see that all right from where you are?

16 A. That's the bullet hole right there from when I dove.

17 Two -- two -- three bullet holes went past my head. That's  
18 one, and the other two skint the door right here.

19 Q. Now when that -- Was that -- So that mark wasn't on  
20 the door prior to all this; is that correct?

21 A. No.

22 Q. Tell me, was that metal door, was it pulled to when  
23 the firing occurred?

24 A. When the firing occurred and hit it, it pushed the  
25 door -- The door was closed, but it just pushed it open.

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1 Q. Okay. So the metal door was closed initially, but  
2 after the firing started, it was pushed open?

3 A. Yes, sir.

4 Q. Now going back, I think, to State's Exhibit Number  
5 Twenty-four. And I think you can see just a portion of it  
6 on the right there at the corner. Is that the boom box you  
7 all were listening to?

8 A. Yeah, right there.

9 Q. Is that where the music was coming from?

10 A. Yes, sir.

11 Q. Okay. Now, we saw the first photograph that we looked  
12 at with the fence. If we could go back to that just  
13 briefly.

14 (STATE'S EXHIBIT NUMBER ONE PUBLISHED ON COURTROOM  
15 OVER HEAD.)

16 Q. That is State's Exhibit Number One. Does that fence  
17 go out and go all the way around the yard?

18 A. Yes, sir.

19 Q. All right.

20 State's Exhibit Number Twenty-nine, please.

21 (STATE'S EXHIBIT NUMBER TWENTY-NINE PUBLISHED ON  
22 COURTROOM OVER HEAD.)

23 Q. Is that how the fence looked in front of the yard that  
24 night?

25 A. Yes, sir.

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1 Q. And as well State's Exhibit Thirty.

2 (STATE'S EXHIBIT NUMBER THIRTY PUBLISHED ON COURTROOM  
3 OVER HEAD.)

4 Q. And it continued to the other corner of the yard; is  
5 that right?

6 A. Yes, sir.

7 Q. And then the last State's Exhibit Thirty-one.

8 (STATE'S EXHIBIT NUMBER THIRTY-ONE PUBLISHED ON  
9 COURTROOM OVER HEAD.)

10 Q. And is that where the corner of it is on the front as  
11 you face the house on the right side?

12 A. No, that's the left side. That's the left side.

13 Q. If you're on -- If you're standing at the house -- Are  
14 you talking about facing the house, or are you standing at  
15 the house looking at the street?

16 A. No, if I'm standing -- Like say if I was standing in  
17 front of my yard like where the police car at.

18 Q. Uh-huh.

19 A. Like say if I was facing the fence -- Which way are  
20 you talking about? 'Cause like --

21 Q. Where the opening is on the fence. Where that corner  
22 is -- If you're -- Let's just do it this way. If you're  
23 standing on your porch where the rocking chair is.

24 A. Yeah.

25 Q. And you look out at the street, is that corner of the



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1 fence on the left or the right?

2 A. It's on the left.

3 Q. And is that an opening there at the fence ---

4 A. Yes, sir.

5 Q. -- at that part? Is that the only other opening on  
6 the fence on that as you go around the fence as it goes  
7 around the yard?

8 A. Yes, sir.

9 Q. And the one you showed us initially, that's the other  
10 one?

11 A. Yes, sir.

12 Q. Okay.

13 MR. THOMPSON: Can you turn the lights back on, Madame  
14 Clerk?

15 (COURTROOM LIGHTS BROUGHT BACK UP.)

16 Q. Now after the shooting started, did you see which way  
17 they went?

18 A. They came back -- They came back out the way that they  
19 came.

20 Q. The way they came in at that opening?

21 A. Yeah. And they left running down -- They left running  
22 down Byar Street like they're going to Scoggins.

23 Q. Okay. So, once again, standing on your porch, as you  
24 were at your rocking chair, on Byar Street, did they go to  
25 the right, or did they go to the left?

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1 A. Well as I'm standing on my porch, I just see them take  
2 off down -- down the left. You say standing on my porch?

3 Q. Right.

4 A. Well they took off the left way.

5 Q. And that's towards Scoggins?

6 A. Yeah.

7 Q. Did you see anyone else with them at that point in  
8 time?

9 A. No, sir.

10 Q. So only two people?

11 A. Just two people.

12 Q. Now, was there enough light that you could actually  
13 see them when they were up close to you?

14 A. No, sir.

15 Q. Were you able to tell some things -- Obviously, you  
16 gave me some description about clothing and stuff, were you  
17 able to tell then, was there enough light to be able to  
18 tell that?

19 A. Yes, sir.

20 Q. Now, once again, tell me -- She's actually on the  
21 porch with you. Correct?

22 A. Yes, sir.

23 Q. So how close is she to you? Just, I mean,  
24 obviously --

25 A. She like right in front of me.

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1 Q. Okay.

2 A. Like, right here.

3 Q. And patting you down?

4 A. Yeah.

5 Q. Were you able to get a good look at her at that point  
6 in time?

7 A. Yes, sir.

8 Q. And could you tell -- Is there any chance that was a  
9 guy?

10 A. No, it was a girl.

11 Q. All right. And the one that had the gun, how close  
12 did he get to you?

13 A. He didn't get -- He didn't come up -- He didn't come  
14 up to me. He just kind of like -- When he came to the  
15 steps, like from the time that I seen him was like, really  
16 like -- like as far as seeing his dreads was when he got  
17 like right there.

18 Q. Okay. Was that when he was patting down your other  
19 two friends?

20 A. Yeah, yes, sir.

21 Q. All right. So, were you sitting in your rocking chair  
22 or standing at that point?

23 A. I was standing up.

24 Q. Were you watching him as he was patting them down?

25 A. Yes, sir.

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1 Q. Okay. And again, did you recognize him at all at that  
2 point?

3 A. No, sir, because he had on a mask.

4 Q. Any possibility that, that person was other than --  
5 Was a woman, not a man?

6 A. It was a man.

7 Q. Okay. Any doubt in your mind?

8 A. It had to be a man from the voice. I know a woman  
9 ain't got no deep voice.

10 Q. Okay. Now, at this point, when they start running  
11 off, what do you do?

12 A. When they started running off?

13 Q. Yeah, when they started running off, what do you do?

14 A. I guess, shake the glass off of me, pat myself down,  
15 make sure I wasn't shot. Kenny hops up behind me and he  
16 fell. And that's when we went in the house and called 911.

17 Q. And you called 911 at that point.

18 I want to show you what's marked as State's Exhibit  
19 Number Thirty-four. Can you tell me what that is?

20 A. That's the tape from the call to 911.

21 Q. If you could speak up because, I can hear you, but I  
22 don't know that everyone else can.

23 A. It's the tape from the call to 911.

24 Q. All right. And have you listened to that?

25 A. Yes, sir.

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1 Q. And does it properly record the conversation you had  
2 with 911 that night?

3 A. Yes, sir.

4 Q. And is it accurate?

5 A. Yes, sir.

6 Q. And you've listened to this. Correct?

7 A. Yes, sir.

8 Q. And did you mark something to note that you had  
9 listened to it?

10 A. Yes, sir. I put my initials on it.

11 Q. And those are your initials here?

12 A. Yes, sir.

13 MR. THOMPSON: Your Honor, I ask to enter this into  
14 evidence at this time.

15 THE COURT: Any objection?

16 MS. ANDERSON: No, Your Honor.

17 MR. CHIARENZA: No, Your Honor.

18 THE COURT: In without objection.

19 MR. THOMPSON: And I ask to publish it to the jury,  
20 Your Honor.

21 THE COURT: All right.

22 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-FOUR  
23 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

24 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-FOUR,  
25 PUBLISHED TO THE JURY AT 01:59 PM.)

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1 Q. Can you tell me -- You mentioned you lived there with  
2 your grandmother. Where was your grandmother when all this  
3 happened?

4 A. She was in the bed asleep.

5 Q. And did she wake up after this occurred?

6 A. Yes, sir.

7 Q. Were the police able to get there quickly?

8 A. Yes, sir.

9 Q. When the police came, were you able to tell them, kind  
10 of, a description of what you had seen and what had  
11 occurred?

12 A. Yes, sir.

13 Q. Were you able to give a description as to the height  
14 and weight of the people that were involved?

15 A. Yes, sir.

16 Q. And do you recall the description you gave them at  
17 that time?

18 A. I told them that the girl's height had to be like  
19 5'8," 5'6" to 5'8," 130. And the boy -- the boy's height  
20 was like -- the dude's height was like from 5'7" to 5'9,"  
21 like 145 pounds.

22 Q. And do you recall telling the officer about the dreads  
23 that you described to us today?

24 A. Yes, sir.

25 Q. As well, were you able to describe, kind of, an age

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1 range that you were able to determine?

2 A. Well, from the voice, I -- From the voice of the girl,  
3 I was thinking she was maybe 20, and the dude, 22 to 23.

4 Q. And did you tell the police that at that time?

5 A. Yes, sir.

6 Q. Now, on the porch there, about how high up is that  
7 porch off the ground when you're standing right next to it?

8 A. I don't know how high it is.

9 Q. About how high is it on you -- If you'll stand up and  
10 just kind of -- If you were standing at that porch, about  
11 what part of your body does it come to?

12 (WITNESS STOOD.)

13 A. Probably to -- Probably to, like, right here.

14 (WITNESS INDICATED TO HIS BODY.)

15 Q. So, about the top of your chest?

16 A. Yeah.

17 Q. And how tall are you?

18 A. 6'1."

19 Q. So Maurice is 6'1" and it comes to about the top of  
20 your chest?

21 A. Yeah.

22 Q. So, it's kind of a higher porch. It's not just a --  
23 It's not one you would just step off of or step onto.

24 A. No, it's a high porch. It ain't nothing you can step  
25 off of.

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1 Q. Now I notice as well, at the front of this picture,  
2 there's a bicycle there down at the bottom of the steps.  
3 With the lights on it's a little harder to see. Whose  
4 bicycle was that?

5 A. Kenny Cunningham.

6 Q. Had Kenny ridden his bicycle there?

7 A. Could you repeat that?

8 Q. Had Kenny ridden his bicycle there?

9 A. Yes, sir.

10 Q. All right. Was there another bicycle there as well?

11 A. Yes, sir. It was on the -- on the other side of  
12 the -- of the police.

13 Q. On the other side of the fence behind the police  
14 officer?

15 A. Yes, sir.

16 Q. Whose bicycle was that?

17 A. It's Tyrone King.

18 Q. Is that what Tyrone had ridden there?

19 A. Yeah, he rode that bike there.

20 Q. Now, had you all hung out earlier in the day out here  
21 too?

22 A. Yes, sir.

23 Q. When was the first time that day that you all were  
24 together?

25 A. Around like Four o'clock.



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1 Q. And during that time, did anyone else come over around  
2 Four o'clock or so?

3 A. A couple of my friends.

4 Q. Okay. And what did you all do then?

5 A. Sitting on the -- Well, we were playing basketball at  
6 first.

7 Q. Okay.

8 A. And after that we were sitting on the porch, chilling.  
9 And we was talking to my mom because she was there too.

10 Q. Your mom came by?

11 A. Yeah.

12 Q. All right. How long did she stay?

13 A. She stayed from like Four to Seven o'clock.

14 Q. All right. And when she comes, is she there strictly  
15 to visit with you or does she help her mom there? Is that  
16 her mom that's your grandmother that lives there?

17 A. Yes, ma'am -- Yes, sir.

18 Q. Okay. Does she help out with your grandmother there?

19 A. Yes, sir.

20 Q. Now, is there a time between then, did Kenny and  
21 Tyrone stay there the whole time all the way through or did  
22 they leave and then come back?

23 A. They left and came back.

24 Q. All right. How long were they gone? Do you recall?

25 A. They was gone -- They left like around Seven, and they

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1 came back like around -- like around -- like 9:30 or close  
2 to Ten, like right before -- right before the shooting and  
3 all that occurred.

4 Q. Okay. Now, the night this occurred, were you able to  
5 tell officers about anyone else who had stopped by that  
6 night? Did you recall other people stopping by right  
7 before it occurred, or not?

8 A. Donta Reid.

9 Q. Okay. But did you remember to tell officers that  
10 night when that happened?

11 A. No, I told them the next day.

12 Q. All right. When did it jog your mind that Donta Reid  
13 had stopped by?

14 A. Could you repeat that?

15 Q. When did it -- When did you remember that Donta had  
16 stopped by?

17 A. Right before the shooting occurred.

18 Q. Right, I know, but I'm asking -- You said that you  
19 didn't tell the police right away. You told them the next  
20 day --

21 A. Yeah, the next day.

22 Q. Right. What is it in your mind that jogged you to  
23 remember that Donta had stopped by?

24 A. Well, the next day when the police came, they asked me  
25 did -- was -- did anybody come by before or after. And I

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1 told them, and it hit in my head, I said, "Donta Reid came  
2 to use my phone ---

3 Q. All right.

4 A. --- right before it happened."

5 Q. Did anything stand out to you about Donta Reid using  
6 your phone at that time?

7 A. Yeah, when he said, "two of them."

8 Q. All right. Now, we'll go back to that in a second,  
9 but how long have you know Donta Reid?

10 A. I known him for like -- probably like six, seven  
11 months.

12 Q. Okay.

13 A. 'Cause he had -- As far as I know, he had just moved  
14 on that street.

15 Q. All right. And did he live near you on Byar Street?

16 A. Yes, sir, like, on the next street -- not the next  
17 street, but on the other side, on the left side, just a  
18 couple of houses down.

19 Q. So, he lived pretty close to you?

20 A. Yes, sir.

21 Q. Did you see him on a fairly regular basis?

22 A. Yes, sir.

23 Q. Did he used to come and hang out on your porch with  
24 you?

25 A. Yes, sir.

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1 Q. And again, tell me about when he stopped by your house  
2 that night. How did that happen?

3 A. He called -- He -- Well first, he was texting. And he  
4 say he was at the store going to get some cigars, and did  
5 he know -- did I know where some weed at. I told him no.

6 And he said, "Well" -- When he called -- When he  
7 called me back it probably was like about 20 or 30 minutes  
8 later he called me back and say, "Well, I'm at the house.  
9 I'm fixing to come down -- I'm fixing to come down the  
10 street and holler at you." And then, he was -- That's when  
11 he was wanting me to walk -- He say, "I got some" -- "I  
12 know of some pine in the midtown, would you walk with me?"  
13 And I told him, no. I say, "I'm not leaving my company on  
14 the porch."

15 Q. Now what do you mean when you say, "Pine"?

16 A. Weed.

17 Q. Some weed? Some marijuana?

18 A. Yeah.

19 Q. All right. Now going back. It seems a little  
20 confusing the way I'm hearing it from you. You said you  
21 were texting a little bit back and forth, and then he  
22 called you?

23 A. Yeah.

24 Q. When do you remember him calling you? Do you remember  
25 about what time that was? Or how far before the robbery

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1 was it that you remember him calling you?

2 A. It was probably like about 15, 20 minutes before --  
3 before the robbery.

4 Q. That he called you or that he used your phone to call  
5 out?

6 A. Are you talking about used my phone to call them? To  
7 call --

8 Q. No, no. Let's go back.

9 A. Yeah.

10 Q. Let's step back. I don't want to confuse you. When  
11 you're back here, you're getting some texts from Donta.  
12 And you said he was telling you that he wanted -- that he  
13 was asking you if you had any weed and about coming over.  
14 When was that conversation? How far before the robbery was  
15 that conversation?

16 A. It was like about 45 minutes earlier.

17 Q. Okay. So, a good bit earlier before the robbery. In  
18 other words, not just like 10 or 15 minutes before?

19 A. Yeah.

20 Q. Okay. And when he called you, did you tell him to  
21 come on over?

22 A. Yeah, I told him, I say -- I say, "Come on" -- Well,  
23 when he asked me did I know where some weed was, I told  
24 him, "No." And then he was like, "Well, when I leave the  
25 store, I'm going to come on" -- "I'm going to come on

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1 over."

2 Q. Okay.

3 A. And so that's what he done. When he left the store,  
4 he came on over.

5 Q. All right. And so when he came over, at that point,  
6 what did he do when he came over?

7 A. He asked -- He asked to use one of our phones, but  
8 Tyrone wouldn't let him use his phone. So, he used mine.

9 Q. All right. And did he stand right in front of you and  
10 talk on the phone?

11 A. No.

12 Q. What did he do?

13 A. He came off the porch and stepped out in the yard --  
14 out in the front yard.

15 Q. So could you actually hear all of his conversation  
16 when he was on the phone?

17 A. No, sir.

18 Q. What, if any, did you hear in the conversation?

19 A. The only thing I heard in the conversation was when he  
20 was coming back on to the porch, and he was saying,  
21 "There's two." Then I guess, whoever he was talking to,  
22 they were saying, "What?" And he was, like, "It's two of  
23 them."

24 Q. Okay. And is that what stuck out to you when you  
25 remembered to tell the police about it?

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1 A. Yes, sir.

2 Q. All right. And at that point, after this had all  
3 happened, and then you had recalled that, did that make you  
4 suspicious of Donta at that time?

5 A. Yes, sir.

6 Q. Did you tell the police you were suspicious of him at  
7 that time?

8 A. Yes, sir.

9 Q. And then going back to that, when he actually used  
10 your phone to call out, and you heard him say, "There's  
11 two" or "two of them" how far before the actual crime did  
12 that occur?

13 A. You're talking about when he had called -- called out?

14 Q. Right.

15 A. When he used my phone?

16 Q. Right. When he called out using your phone.

17 A. It was like -- It was like 15 to 20 minutes.

18 Q. All right.

19 A. And then that's when that occurred -- the robbery  
20 occurred.

21 Q. Okay, so --

22 A. But he say -- He say he was coming back when he was  
23 trying to get me to walk down to midtown with him.

24 Q. And tell us what that means. What do you mean, "Walk  
25 down to midtown"? Where is midtown?

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1 A. Right off Scoggin Street.

2 Q. So, he was asking you to go with him down towards --  
3 on Byars down towards Scoggins and head down to an area of  
4 the city that you all call "Midtown."

5 A. Yes, sir.

6 Q. All right. Did he say what he wanted to do there?

7 A. No, he just say, "Come and take a walk with me." And  
8 I told him, "No, 'cause I got company on the porch. I'm  
9 not leaving my company."

10 Q. So, you wouldn't go because both Tyrone and Kenny were  
11 there?

12 A. Yeah, that's why I didn't go.

13 Q. All right. But he had asked you to go with him at  
14 that point in time?

15 A. Yes, sir. And then when he left, he said he was going  
16 to be back, but he never came back.

17 Q. All right. And so how long were you there, I mean,  
18 having come back, would the police have been there at that  
19 point?

20 A. If he would have came back, yeah.

21 Q. Okay. Did he call you again at all that night, that  
22 you recall?

23 A. No, sir.

24 Q. And you have a land line in addition to your cell  
25 phone. Right?



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1 A. Yes, sir.

2 Q. Has he ever called you on that line as well? In other  
3 words, does he know your land line number, the number to  
4 the house?

5 A. Yes, sir.

6 Q. So, you've talked to him on that line before?

7 A. Yes, sir.

8 Q. And he didn't call you on that line either?

9 A. No, sir.

10 Q. Now, let me ask you this. You know Donta Reid pretty  
11 well. Right?

12 A. Yes, sir.

13 Q. Any chance that, that gunman was Donta Reid?

14 A. No, sir.

15 Q. Would you have recognized him if it were Donta?

16 A. Yes, sir. I'd recognized his voice.

17 Q. Okay.

18 A. And the way how he walk.

19 Q. And how he walks?

20 A. Yes, sir.

21 Q. In other words, how he holds himself?

22 A. Yes, sir.

23 Q. And so, in your mind, is there any way that could have  
24 been Donta with the gun that night?

25 A. It wasn't him.

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1 Q. All right. How about the girl? Any way that Donta  
2 could have been dressed up to try and be the girl that  
3 night?

4 A. It wasn't him.

5 Q. Any chance that, that girl was actually a guy?

6 A. It wasn't.

7 Q. Now, let me ask you, do you know a guy named Darius  
8 Jeter?

9 A. Yes, sir.

10 Q. How do you know Darius Jeter?

11 A. Went to high school with him.

12 Q. Have you known him fairly well?

13 A. I know him from high school.

14 Q. Okay. Have you seen him around the neighborhood too?

15 A. Yes, sir.

16 Q. Had you talked to him here and there over the past  
17 several years?

18 A. Yes, sir.

19 Q. Do you recognize him when you see him?

20 A. Yes, sir.

21 Q. Do you recognize him when you hear him?

22 A. Yes, sir.

23 Q. Can you tell me, is there any way that either one of  
24 those people that were robbing you that night were Darius  
25 Jeter?

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1 A. No, sir. I know his voice. He came to my house and  
2 chilled a couple of times too.

3 Q. So he's been with you on the front porch hanging out  
4 too?

5 A. Yes, sir, playing a game, video game too.

6 Q. All right. Now when the detectives -- I believe, you  
7 said that it was the next day that you recalled this stuff  
8 with Donta Reid. Did you have them to come to your house  
9 and talk to you again at that time?

10 A. Yes, sir.

11 Q. And was that Detective Herring and Detective Ayers?

12 A. I can't remember which one it was, but I think it was  
13 him.

14 (WITNESS INDICATED TO DETECTIVES BEHIND SOLICITOR.)

15 Q. Okay, Detective Ayers?

16 A. Yeah.

17 Q. And while you were talking to him, did you tell him  
18 about all this stuff with Donta?

19 A. Yes, sir.

20 Q. And the phone calls?

21 A. Yes, sir.

22 Q. Did you tell him whether you thought Donta was the one  
23 who robbed you or not?

24 A. No, sir. I told him that, but I was like, it couldn't  
25 have been him because of his voice. I know his voice.

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1 Q. Were you telling them, though, that he set it up?

2 A. Yeah, I told them he set it up.

3 Q. Okay. And in addition to that, were you able to  
4 describe anything more about the Defendants at that time?  
5 Something you recognized about the Defendants?

6 A. Could you --

7 Q. In other words, you had mentioned earlier that you had  
8 said that you had noticed a northern accent.

9 A. Yes, sir.

10 MR. CHIARENZA: Objection, leading, Your Honor.

11 THE COURT: Rephrase the question.

12 BY MR. THOMPSON:

13 Q. Is there anything that you told the detectives at that  
14 morning about the Defendants that you recognized?

15 A. Yes, sir.

16 Q. What was that?

17 A. Donta Reid.

18 Q. Right, you told Donta Reid but, I mean, the Defendants  
19 that committed the robbery. Is there anything you  
20 described to --

21 A. Oh, I told them about -- I told them about the dread  
22 locks. That he had dread locks.

23 Q. Right.

24 A. And he had a -- And he had a up north accent, voice.

25 Q. All right. And did you describe it any more than up

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1 north?

2 A. Yeah, I said he sounded like he from Baltimore 'cause  
3 I got people from Baltimore.

4 Q. You have some relatives in Baltimore?

5 A. Yes, sir.

6 Q. Have you been there before?

7 A. Yes, sir.

8 Q. And have you -- You contact your relatives regularly  
9 from Baltimore?

10 A. They came down here. They came down here like last  
11 month. My grandma passed.

12 Q. But, I mean, even before that, before this crime  
13 occurred ---

14 A. Oh, no.

15 Q. -- have you had regular contact with your folks in  
16 Baltimore?

17 A. Huh-uh.

18 Q. I mean, have you talked to them? You say when you  
19 talk about the accent. how do you know about a Baltimore  
20 accent?

21 A. Oh, 'cause of my aunt. She calls the house a lot.

22 Q. Okay. And you talk to her a lot?

23 A. Yes, sir.

24 MR. THOMPSON: I beg the Court's indulgence, Your  
25 Honor, for one moment.

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1 (PAUSE @ 2:15 PM.)

2 Q. Did -- You had said that Donta Reid had come over at  
3 times and hung out with you. Did he also know Tyrone and  
4 Kenny?

5 A. Yes, sir.

6 Q. And, I mean when he showed up that night and talked to  
7 you, did he also talk to them while he was there?

8 A. Yes, sir.

9 Q. And has he hung out with them as well on your porch?

10 A. Yes, sir.

11 Q. After all this happened, did Donta ever call you back  
12 to ask ---

13 A. No, sir.

14 Q. --- if they were all right or what he had heard?

15 A. No, sir.

16 Q. Did you ever have contact with him again after that?

17 A. No, sir.

18 Q. Now one other thing, when you all were on the front  
19 porch and the robbery occurred, did you all resist them in  
20 any way? I mean, did you try to fight them off when they  
21 were trying to search you?

22 A. No, sir.

23 Q. Did you refuse to give anything up to the robbers?

24 A. No, sir.

25 Q. Do anything to try to incite them to shoot at you all?

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CROSS BY MS. ANDERSON

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1 A. No, sir.

2 Q. So at the end when he started shooting was that a  
3 surprise to you?

4 A. Yes, sir.

5 Q. Did you see or figure out any reason why they would  
6 have shot at you at that point?

7 A. No, sir, because I didn't have -- I mean I didn't have  
8 nothing but \$25 dollars in my wallet and some cigarettes.  
9 And they ain't had nothing, so I figure, what's the use of  
10 shooting? But, like the girl say, "They seen our face."  
11 So, I guess that's the reason why he shot.

12 Q. All right. Thank you.

13 Nothing further.

14 MS. INZERILLO: May it please the Court, Your Honor.

15 THE COURT: Yes, ma'am.

16 CROSS EXAMINATION

17 HENRY MAURICE JACKSON BY MS. ANDERSON:

18 Q. Maurice, you received several phone calls from Donta -  
19 over that evening. Right?

20 A. Yes, ma'am.

21 Q. And guesstimate there were about five to seven phone  
22 calls made between you and Donta?

23 A. Five to seven?

24 Q. Uh-huh.

25 A. No, ma'am.

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1 Q. Okay. About five? Less than five or more than five?

2 A. Less than five.

3 Q. Okay. On some of these phone calls, you didn't pick  
4 up every time? You might have noticed you had a miscall or  
5 something like that; is that right?

6 A. Yes, ma'am.

7 Q. Okay. But at some point that evening you did, as you  
8 testified, talk to Donta on the phone. Right?

9 A. Yes, ma'am.

10 Q. And Donta was calling you about getting some weed.  
11 Right?

12 A. Yes, ma'am. He was asking did I knew someone who had  
13 some weed.

14 Q. Okay.

15 A. And I told him, no.

16 Q. And he was also calling you to, essentially, hang out  
17 with you and smoke marijuana. Right?

18 A. Yes, ma'am.

19 Q. Okay. And on this night, Donta came to your house to  
20 meet with you. Right? He walked down to your house?

21 A. Yes, ma'am.

22 Q. All right. And when he came by your house, he was  
23 pretty calm. Right?

24 A. Yes, ma'am.

25 Q. He didn't pick a fight with you?



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- 1 A. No, ma'am.
- 2 Q. Or with Tyrone?
- 3 A. No, ma'am.
- 4 Q. Or with Kenny?
- 5 A. No, ma'am.
- 6 Q. He wasn't angry or aggressive with you?
- 7 A. No, ma'am.
- 8 Q. Now, you testified that when Donta was there he was,
- 9 essentially asked you to walk with him to Midtown?
- 10 A. Yes, ma'am.
- 11 Q. And that you didn't want to go?
- 12 A. No, ma'am.
- 13 Q. He asked you that question. Right?
- 14 A. Yes, ma'am.
- 15 Q. Not Tyrone or Kenny.
- 16 A. No, ma'am.
- 17 Q. And when you said, "Look man, I don't want to leave
- 18 'cause I got company," he asked to use your phone?
- 19 A. Yes, ma'am.
- 20 Q. Okay. And you let him use your phone?
- 21 A. Yes, ma'am.
- 22 Q. And Donta stepped into the yard to talk on the phone.
- 23 Right?
- 24 A. Yes, ma'am.
- 25 Q. Now, I'm going to -- I know we've seen the pictures,

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1 Maurice, but I kind of want you to help me envision the  
2 yard. Okay?

3 If I am the back fence that we're seeing in that  
4 picture. I'm about this far away from you if you're  
5 sitting on the porch. Is that fair?

6 A. Okay. I'll point on here. I'll say about like -- He  
7 stepped like right up in there.

8 (WITNESS INDICATED ON PHOTO.)

9 Q. Okay. Well, let's step back one -- Let's pretend I'm  
10 the fence. Okay? Is this about how far away I would be  
11 from you if you were sitting on your front porch?

12 A. It's a little bit back more.

13 Q. A little bit back more, okay. How about here?

14 (ATTORNEY STEPPED BACK FROM WITNESS STAND.)

15 A. Right there.

16 Q. Okay, right here. So, I'm standing right next to the  
17 chairs at the State's Counsel table. Right?

18 A. Uh-huh.

19 Q. Okay. Now I know you kind of pointed it out, but when  
20 Donta used your phone, he was about here.

21 (ATTORNEY MOVED CLOSE TO WITNESS STAND.)

22 Q. Is that right?

23 A. When he used my phone?

24 Q. Uh-huh.

25 A. When he grabbed my phone -- when he grabbed my phone

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1 and used it, when he dialed the number out, he was walking  
2 off the porch.

3 Q. Okay.

4 A. And he stepped way back there.

5 Q. So he stepped here?

6 (ATTORNEY MOVED BACK FROM WITNESS STAND.)

7 Q. Is this fair?

8 A. No, huh-uh.

9 Q. Or further back?

10 A. Where you were standing at back there.

11 Q. Okay. Right here?

12 (ATTORNEY MOVED BACK FROM WITNESS STAND MORE.)

13 A. Back there.

14 Q. Oh, back next to Mr. Brackett?

15 A. Yeah.

16 Q. Okay.

17 (ATTORNEY MOVED BACK TO SOLICITOR'S TABLE.)

18 Q. So he stepped all the way back to the fence?

19 A. Yeah, while he was talking on the phone.

20 Q. Okay. And then after that, you said he was still on  
21 the phone, and he walked up the stairs onto the porch. And  
22 that's where you heard, sort of, the snippet of the  
23 conversation that you heard?

24 A. Yes, ma'am.

25 Q. Okay. So he's, sort of, moving back and forth across

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1 your yard; is that right?

2 A. Yes, ma'am.

3 Q. Okay. And if I'm understanding you right,  
4 essentially, on this night, you and your friends were kind  
5 of hanging out on the porch. Right?

6 A. Yes, ma'am.

7 Q. So there was music going from the boom box. Right?

8 A. Yes, ma'am.

9 Q. You all were kind of hanging out, chatin'.

10 A. Yes, ma'am.

11 Q. And so, there's other noise going on other than it  
12 just being a quiet night at your house; is that right?

13 A. Yes, ma'am.

14 Q. Okay. So when he comes back on the porch, and you say  
15 that you hear this, sort of, snippet on the phone where he  
16 says, "two of them," or "two guys," or something like that.

17 A. Yes, ma'am.

18 Q. And that's the only part of the conversation that you  
19 heard. Right?

20 A. Yes, ma'am.

21 Q. And you're testifying that, sort of, recollecting that  
22 you thought that was a little bit odd?

23 A. Yes, ma'am.

24 Q. And that, I believe you testified under Mr. Thompson's  
25 questioning that, that's what led you to believe Donta was

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1 setting you up?

2 A. Yes, ma'am.

3 Q. Okay. But having not heard the entire conversation,  
4 it's just as likely he was telling someone there were two  
5 other people on the porch, it wasn't going to work. Is  
6 that fair?

7 A. I mean -- I don't know.

8 Q. Right, because you didn't hear the whole conversation.  
9 Right?

10 A. Yes, ma'am.

11 Q. Okay. So at this point, he gives you back your phone.

12 A. Yes, ma'am.

13 Q. He doesn't try to stick it in his pocket, walk away  
14 with it, or anything.

15 A. No, ma'am.

16 Q. Okay. And then he leaves your yard. Right?

17 A. Yes, ma'am.

18 Q. Okay. And you don't see him again after that. Right?

19 A. No, ma'am.

20 Q. You didn't see where he went afterwards. Right?

21 A. Took off walking down the street going towards  
22 Midtown.

23 Q. Okay. That was the last you saw him?

24 A. Yes, ma'am.

25 Q. So if you had -- If he had any conversations when he

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1 left your yard, you didn't hear those either?

2 A. No, ma'am.

3 Q. Now a little bit later, as you testified, two people  
4 came into the yard and essentially robbed you and your  
5 friends. Right?

6 A. Yes, ma'am.

7 Q. You didn't see the guy's face?

8 A. No, ma'am.

9 Q. And I think you were pretty clear on the direct that,  
10 in your mind, there was a guy and a girl. Right?

11 A. Yes, ma'am.

12 Q. The guy had the gun.

13 A. Yes, ma'am.

14 Q. And you said obviously there was a girl. Right?

15 A. Yes, ma'am.

16 Q. And that's pretty obvious because she didn't have  
17 anything covering her face?

18 A. Yes, ma'am.

19 Q. And the guy had, I think, a ski mask and then a  
20 bandanna?

21 A. Yes, ma'am.

22 Q. Okay. And you were clear and are clear that the  
23 shooter wasn't Donta.

24 A. No, ma'am.

25 Q. When they came into the yard they, at least the girl

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1 initially, demanded that you guys hand over everything you  
2 had. Right?

3 A. Yes, ma'am.

4 Q. And you complied. Right?

5 A. Yes, ma'am.

6 Q. In fact, I think you initially told the police, you  
7 kind of put your hands in the air like "I don't have  
8 anything." Right?

9 A. Yes, ma'am.

10 Q. I mean, you were signally to them, you know, I'm not  
11 going to fight you; is that right?

12 A. Yes, ma'am.

13 Q. Okay. And since you were sitting up on the porch in  
14 that rocking chair, you sort of could look down and see  
15 Kenny and Tyrone in your eyesight?

16 A. Yes, ma'am.

17 Q. So from what you remember on this night, they  
18 essentially did the same thing. Right?

19 A. Yes, ma'am.

20 Q. So at no point during this robbery did you lunge for  
21 either the girl or the guy.

22 A. No, ma'am.

23 Q. And at no point during this incident on the porch did  
24 either one of your friends do that either?

25 A. No, ma'am.

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1 Q. Okay. And essentially even when the girl is sort of  
2 touching you, going through your pockets, you don't even so  
3 much as push her off of you?

4 A. No, ma'am.

5 Q. You don't give her any reason to suspect that you are  
6 going to fight back or hurt her; is that right?

7 A. No, ma'am.

8 Q. Okay. And again because of where you are sitting on  
9 the porch, you don't see Tyrone or Kenny do that either?

10 A. No, ma'am.

11 Q. And you don't see them do that even when the guy's in  
12 their face with the gun going through their pockets?

13 A. No, ma'am.

14 Q. Okay. And I'm gesturing going through the pockets,  
15 that's essentially what happened. Right? She physically  
16 reached into your pockets, was taking stuff out?

17 A. Yes, ma'am.

18 Q. Okay. And I believe you indicated when you stood up,  
19 essentially, to show them, you know, take what you need,  
20 your cell phone fell out on to your lap. Right?

21 A. Yes, ma'am.

22 Q. So she had to bend down pretty close to you to pick it  
23 up. Right?

24 A. Yes, ma'am.

25 Q. You didn't kick her?



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1 A. Nothing.

2 Q. You didn't hit her?

3 A. I didn't do nothing.

4 Q. You didn't say a curse word to her. Right?

5 A. No, ma'am.

6 Q. Giving her or him any indication you all were going to  
7 do anything but comply. Right?

8 A. Yes, ma'am.

9 Q. Okay. Now when they were done, they essentially start  
10 walking down out of your yard. Right?

11 A. Yes, ma'am.

12 Q. Maurice, I'm going to kind of have you walk me through  
13 this as well. You're sitting on your porch, all right?

14 And as you can sort of see from some of the pictures Mr.  
15 Thompson showed you that your yard -- If I'm walking from  
16 your porch through that opening in the fence, it kind of  
17 curves like this. Right?

18 A. Uh-huh.

19 Q. So let's say this right here is the opening in your  
20 fence. Okay? So if I were to walk to you on the porch, I  
21 would have to physically walk into your yard like this and  
22 actually, sort of, turn and walk toward you on the porch.  
23 Right?

24 A. Yeah.

25 Q. Okay. So after you guys have given them everything

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1 you've got, okay? The two people in the yard, the guy and  
2 the girl, start walking away.

3 A. Yes, ma'am.

4 Q. Is that right? Okay.

5 So, they're going, and they're walking away from you  
6 like this.

7 (ATTORNEY DEMONSTRATING.)

8 Q. Right?

9 A. Yes, ma'am.

10 Q. And their back's toward you, and they're walking out  
11 of the yard?

12 A. Yes, ma'am.

13 Q. And even with their backs toward you, you still don't  
14 lunge for them. Right?

15 A. No, ma'am.

16 Q. You still don't curse at them.

17 A. No, ma'am.

18 Q. Neither one of your friends do that?

19 A. No, ma'am.

20 Q. You don't threaten them in any way?

21 A. No, ma'am.

22 Q. And then at that point, you indicated you heard the  
23 girl say, "They've seen my face, shoot 'em," or "You have  
24 to do something." Is that right?

25 A. Yes, ma'am.

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1 Q. Okay. And so at this point, you say the shooter runs  
2 up -- actually runs back to the porch steps. Right?

3 A. Yes, ma'am.

4 Q. And starts shooting?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. INZERILLO: No further questions, Your Honor.

8 THE COURT: Mr. Chiarenza?

9 MR. CHIARENZA: Thank you, Your Honor.

10 CROSS EXAMINATION

11 HENRY MAURICE JACKSON BY MR. CHIARENZA:

12 Q. Mr. Jackson, I'm sorry for your loss. I'm sorry you  
13 lost your friend.

14 I'm going to ask you a couple of questions about your  
15 testimony here today.

16 On the night in question, shortly after this event  
17 occurred and officers show up, you recall giving a  
18 statement to a Rock Hill police detective. Correct?

19 A. Yes, sir.

20 Q. All right. And over the last couple of days or maybe  
21 couple of weeks, you have met with the Prosecution and  
22 reviewed your written statement; is that correct?

23 A. Yes, sir.

24 Q. Okay. So you're pretty familiar with it. And I've  
25 got a copy here. And I'll be happy to show it to you if we

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1 need for you to look at it to remember these things. Okay?

2 A. Yes, sir.

3 Q. I'm going to ask you some stuff about what's in this  
4 statement. Would you agree with me that this statement was  
5 given just after midnight on the night in question? So,  
6 you all got robbed late at night, and then almost to  
7 midnight, and then just past midnight. This says, "Time:  
8 0051," which would be military time indicating just almost  
9 1:00 in the morning the next day; is that correct?

10 A. Yes, sir.

11 Q. Okay. So, we're talking about not a whole day had  
12 passed, just maybe an hour or an hour and a half from the  
13 time of the robbery.

14 A. Yes, sir.

15 Q. Okay. So events are fresh in your mind at that point.  
16 Correct?

17 A. Yes, sir.

18 Q. All right. Is there anything in this -- I'm just  
19 going to go with what I'm seeing right here in this  
20 statement, but if you don't recall saying this stuff, I'll  
21 be happy to show you the statement where, that you've  
22 signed. All right?

23 A. Yes, sir.

24 Q. All right. Do you recall in your written statement  
25 indicating that from the voice of the shooter, he sounded

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1 to be 22 or 23-years-old?

2 A. Yes, sir.

3 Q. Okay. Do you recall in your written statement  
4 indicating that he was wearing a black hoodie and a black  
5 coat?

6 A. Yes, sir.

7 Q. Okay. What -- how -- What's a hoodie? What's your  
8 idea of what a hoodie is?

9 A. A hoodie is like a pullover sweater.

10 Q. And it actually has a hood on it?

11 A. Yes, sir.

12 Q. Okay. So that hood covers from -- covers the entire  
13 back of your head and the sides of your head. Correct?

14 A. Yes, sir.

15 Q. All right. And then you also indicated, I think, well  
16 not in this statement -- Would you agree that in this  
17 statement, you don't say anything about a bandanna or a  
18 black flag? And I'll let you see if you do or you don't.  
19 I think you say a ski mask, but nothing about a bandanna or  
20 a black flag. I want you to take a look at these two  
21 pages, and see if anywhere in there you mention a black  
22 bandanna or a black flag.

23 (WITNESS READING DOCUMENTS.)

24 A. A black toboggan mask over his face. And I said --

25 Q. A black toboggan mask over the face?

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1 A. The mask is to -- The mask is basically a flag, a  
2 black bandanna.

3 Q. Well, you weren't referring to like a ski mask?

4 A. No, I wasn't referring to a mask. I was referring to  
5 the bandanna.

6 Q. A bandanna? Okay, fair enough. I guess, if that's  
7 the way you describe it; that's fine. So he's got this  
8 hoodie on covering the sides and the back of his head. And  
9 he's got a flag, or cloth, or a bandanna, or something  
10 covering up his face?

11 A. Yes, sir.

12 Q. But you could see his eyes; is that correct?

13 A. Yes, sir.

14 Q. And that's all you could really see?

15 A. Yes, sir. And the dreads hanging from the front side.

16 Q. Okay, the dreads. Show me in the statement where you  
17 mention seeing dreads?

18 A. I didn't put it in the statement, but I said it to the  
19 police call when I called.

20 Q. Okay. You didn't say it in the 911 tape, did you,  
21 that we just listened to? Did you ever mention dread locks  
22 in that? What we just listened to?

23 A. Well when -- I was telling it to -- Well, not in the  
24 call, but like when the police came, and they actually got  
25 there when he was talking over the -- over his intercom

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1 thing.

2 Q. Uh-huh.

3 THE COURT: You need to speak up so he can hear you.

4 A. When he was talking over his intercom when the police  
5 got there, asking me what happened, I was telling them  
6 that, that he possibly have dreads.

7 Q. Okay. Do you recall which officer that was that you  
8 spoke to?

9 A. I can't remember his name.

10 Q. But will you agree with me that on this 911 tape you  
11 made mere seconds after the robbery, you didn't mention  
12 dreads in part of --

13 A. Yeah, I didn't mention it in the tape, but when the  
14 police came, that's when I --

15 Q. I just want to know if you mentioned it, if you heard  
16 it here.

17 A. Okay.

18 Q. Was it on the 911 tape?

19 A. No.

20 Q. Okay. And would you agree with me that the officer  
21 who was speaking to you on the 911 tape asked at least  
22 three or four times for a description of the shooter; is  
23 that correct?

24 A. Yes, sir.

25 Q. Okay. And would you agree that what you told them --

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1 What you were able to tell them was, "He's wearing all  
2 black, and he's got a flag on his head."

3 A. Yes, sir.

4 Q. Would you agree that maybe you told them that two or  
5 three times?

6 A. Yes, sir.

7 Q. Okay. But at no time did you say, "He's got dreads."

8 A. Are you talking about on the 911?

9 Q. On the 911.

10 A. Yes, sir.

11 Q. You did not ever mention that. Correct?

12 A. No, sir.

13 Q. All right. Also can you show me anywhere in this  
14 statement where you mention the shooter having some sort of  
15 a northern accent. Is that in there, in your statement?

16 A. No, sir. I told that -- I told that to the police  
17 when they got -- they got to my house.

18 Q. All right. Same policemen ---

19 A. Yeah, the same police.

20 Q. --- you supposedly told about the dreads? Okay.

21 But the police officer who took a written, sworn  
22 statement from you at 51 minutes past midnight, you did not  
23 mention dread locks or a northern accent, too. Correct?

24 A. No, sir, but as I was down at the station, I was  
25 telling them.



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1 Q. Well where did this occur? Where was this statement?

2 A. At the station.

3 Q. Down at the station. Right?

4 A. At the station.

5 Q. Okay.

6 A. But I was telling him. I didn't put it in my  
7 statement though.

8 Q. Okay. Explain to me, because I'm not sure that I'm  
9 familiar, how does a Baltimore accent differ from a New  
10 York accent?

11 A. From a New York? Well as far --

12 THE COURT: Speak in the microphone, please.

13 A. In the -- In the Baltimore accent as far as saying  
14 like, "Yo, yo." In the New York accent, they "Yo, what's  
15 up, B.?" "Hey B." That's a New York accent.

16 Q. Okay. Does everyone from New York speak like that?

17 A. The majority of them do.

18 Q. And everyone from Baltimore speaks the same way. Is  
19 that what you're saying?

20 A. Yes, sir.

21 Q. Okay. And how would those differ from a Boston  
22 accent?

23 A. I don't know no Boston accent.

24 Q. How about an accent from Richmond, Virginia?

25 A. I don't know no accent from no Richmond, Virginia

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1 either.

2 Q. You don't have any special training in speech dialects  
3 or accents or anything like that?

4 A. No.

5 Q. Now this robbery, how long would you say it occurred?  
6 Maybe a minute, two minutes total time?

7 A. About two, three, four minutes.

8 Q. Two, three, four, somewhere in there?

9 A. Yeah.

10 Q. Okay. And you testified that the shooter, he never  
11 came up on the porch. Did he?

12 A. He came up on the steps.

13 Q. But not all the way up on top?

14 A. He didn't come all the way up.

15 Q. Okay. And again, you were asked twice, once by Mr.  
16 Thompson and once by Ms. Inzerillo, and I'll just make it  
17 three. The only portion of Mr. Reid's conversation in your  
18 yard, you heard was him saying, "There's two."

19 A. Yes, sir.

20 Q. And you heard as -- At the end of the robbery, you  
21 heard the girl say to the individual in the mask something  
22 along the lines of, "Shoot them. You've got to shoot them.  
23 They've seen my face."

24 A. Yes, sir.

25 Q. And then that's when the shooting began?

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1 A. Yes, sir.

2 Q. Again back to meeting with the Prosecution's office in  
3 preparation for this matter, was that the first time you  
4 started discussing dread locks with people?

5 A. The -- the -- Could you repeat that?

6 Q. Was -- You don't have dread locks in your written  
7 statement. You don't mention dread locks on the 911 tape.  
8 I'm just curious as to whether or not it first occurred to  
9 you the shooter had dread locks after you met with the  
10 Prosecution, people working for the Prosecutor's office?

11 A. You're talking about -- You're talking about down at  
12 the station?

13 Q. No, those are police officers. When you met with  
14 either Mr. Thompson, Mr. Brackett, Mr. Tolson, or any of  
15 the individuals here. This meeting would have occurred in  
16 this building. I'm going to ask you, did they discuss  
17 dread locks with you at that time?

18 A. No -- No, sir.

19 Q. You've already testified that's your, basically, your  
20 front yard to your home; is that correct?

21 A. Yes, sir.

22 Q. And this -- this little white item that's up there in  
23 the yard kind of halfway between the police officer and the  
24 fence post. Is that one of those plastic plumbing things,  
25 like a clean-out?

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1 A. Yes, sir.

2 Q. That's what that is?

3 A. Yes, sir.

4 Q. All right. And you're there every day. But from this  
5 photograph, it looks like it's sort of covered with mud  
6 almost two-thirds of the way up. Is that what that  
7 substance is on there?

8 A. Yes, sir.

9 Q. And your yard there is essentially -- It looks like  
10 you have about as much luck as I do growing grass. It's  
11 not a very grassy lawn. Is it?

12 A. No, sir.

13 Q. That's mostly dirt and clay, and so there's really not  
14 much growing there. Correct?

15 A. Yes, sir.

16 Q. Now initially -- I think in your initial direct  
17 examination from Mr. Thompson, in describing the shooter's  
18 voice, what you first said was just that he didn't sound  
19 like he was from Rock Hill; is that right?

20 A. Yes, sir.

21 Q. And is that what you actually told the officer that  
22 night on the street that just -- He just didn't sound like  
23 he was from around here?

24 A. Yes, sir.

25 Q. You didn't tell that officer he sounded like he was

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REDIRECT BY MR. THOMPSON

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1 from Baltimore did you?

2 A. Yes, sir. I said he sounded like he got a up north  
3 accent from Baltimore.

4 Q. But that's -- Again, that's nowhere in your written  
5 statement?

6 A. It's not in the statement, but that's what I said to  
7 the police.

8 Q. And you can't remember what officer that was that you  
9 supposedly told that to?

10 A. No, sir.

11 MR. CHIARENZA: Court's indulgence. Just a second,  
12 Your Honor.

13 (PAUSE.)

14 Q. The physical description of the shooter was 5 foot 9,  
15 145 pounds; is that correct? I mean roughly.

16 A. Yes, sir.

17 Q. Thank you, Mr. Jackson.

18 MR. CHIARENZA: That's all I have, Your Honor.

19 THE COURT: All right.

20 REDIRECT EXAMINATION

21 HENRY MAURICE JACKSON BY MR. THOMPSON:

22 Q. Just briefly before you step down, Mr. Jackson. Now,  
23 you had mentioned when Ms. Inzerillo was asking you about  
24 Donta Reid that he had left going toward Midtown; is that  
25 right?

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1. A. Yes, sir.

2 Q. Okay. And that, once again, that's going left on  
3 Byars if you're standing on your porch facing the street?

4 A. Yes, sir.

5 Q. Left on Byars?

6 A. Yes, sir.

7 Q. And that's also towards where Scoggin Street is.  
8 Right?

9 A. Yes, sir.

10 Q. And I think you testified earlier, that's also the way  
11 that the robbers went; is that correct?

12 A. Yes, sir.

13 Q. Did the robbers also come from that direction?

14 A. Yes, sir. They came -- They came together. Like, the  
15 way I -- When we looked up on the front porch, they was,  
16 like, standing side by side, really.

17 Q. All right.

18 A. But he was a little bit farther back from me.

19 Q. Okay. So they came from that direction, would they  
20 have come around the fence and then into the opening there?

21 A. Yes, sir.

22 Q. Now again, Mr. Chiarenza was mentioning the statement  
23 that you had given to the police at the station. I believe  
24 that statement was given to a female officer, an Officer  
25 Allen; is that right?

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1 A. I don't --

2 Q. As far as --

3 A. I don't know her name.

4 Q. Was it a female officer?

5 A. Yes, sir.

6 Q. Was she out at the scene with you when it happened? I  
7 mean, did she come out at the scene to your house, or did  
8 you see her at the station?

9 A. No, she took me down to the station.

10 Q. Okay. Is it safe to say that at a point that you  
11 talked to her? You had told several people about this --

12 MR. CHIARENZA: Objection, Your Honor.

13 THE COURT: It is a leading question.

14 MR. THOMPSON: Okay.

15 Q. Had you told any other officers about this before you  
16 told her?

17 A. Yes, sir. 'Cause she -- she came like -- After --  
18 After the officers came in the house and was looking around  
19 and was looking on the porch and stuff, that's when I was  
20 telling them.

21 Q. After this happened, were you scared?

22 A. Yes, sir.

23 Q. Were you nervous?

24 A. Yes, sir.

25 Q. Have you ever had anything like this happen to you

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1 before?

2 A. No, sir.

3 Q. Thank you, no further questions.

4 THE COURT: Ms. Inzerillo?

5 MS. INZERILLO: Nothing further, Your Honor.

6 THE COURT: Mr. Chiarenza?

7 MR. CHIARENZA: Nothing, Your Honor.

8 THE COURT: You can step down and have a seat back in  
9 the --

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Call your next witness.

12 MR. CHIARENZA: Your Honor, I think we're just going  
13 to permanently relocate where we are.

14 THE COURT: Okay.

15 MR. THOMPSON: If it please the Court, Your Honor.  
16 The State would call Kenny Cunningham.

17 THE COURT: If you would come up, put your left hand  
18 on this Bible, and raise your right.

19 (WHEREUPON: KENNY CUNNINGHAM,  
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 MADAME CLERK: Thank you. You may have a seat.

22 THE COURT: You need to speak fairly loud and into  
23 that microphone, if you would please, sir. Thank you.

24 DIRECT EXAMINATION

25 KENNY CUNNINGHAM BY MR. THOMPSON:



KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 Q. Mr. Cunningham, can you give your full name for the  
2 Court, please?

3 A. Kenny O'Brien Cunningham.

4 Q. And where do you live?

5 A. [REDACTED]

6 Q. I'm sorry.

7 A. [REDACTED]

8 Q. Clarinda?

9 A. Yes, sir.

10 Q. And that's in Rock Hill?

11 A. Yes, sir.

12 Q. How long have you lived in Rock Hill?

13 A. All my life.

14 Q. How old are you, Kenny?

15 A. Twenty-one.

16 Q. Can you tell me, how do you know Henry Maurice  
17 Jackson?

18 A. I went to school with him, 3rd grade and on up.

19 Q. Is he a good friend of yours?

20 A. Yes, sir.

21 Q. How did you know Tyrone King?

22 A. I went to school with him.

23 Q. Was he also a good friend of your?

24 A. Yes, sir.

25 Q. Did y'all hang out a lot together?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. Yes, sir.

2 Q. Do you go by Kenny? Is that --

3 A. Yes, sir.

4 Q. Now Kenny, can you tell me, on the day of the robbery,  
5 were you over at Maurice's house, at Mr. Jackson's house?

6 A. Yes, sir.

7 Q. What were y'all doing there at the house?

8 A. Sitting on the front porch listening to the radio.

9 Q. And how long had you been there before the robbery  
10 occurred. Do you recall?

11 A. Like a good hour.

12 Q. An hour?

13 A. Yeah.

14 Q. And can you tell me, before the robbery actually  
15 happened, do you remember anyone coming by?

16 A. Before it happened?

17 Q. Yeah, before the robbery happened.

18 A. Oh, Mr. Reid came by.

19 Q. And that's Donta Reid?

20 A. Yes, sir.

21 Q. The Defendant here today?

22 A. Yes, sir.

23 Q. Did you know Donta Reid?

24 A. Yeah, I knew him from being over Maurice house.

25 Q. Has he hung out with you before?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. Not like that, but I seen him, though. I speak to  
2 him, whatever. I ain't know him like that.

3 Q. You know him when you see him?

4 A. Yeah.

5 Q. If you hear his voice, you recognize him?

6 A. Yeah.

7 Q. And how long had it been since you had first met him  
8 back when the robbery occurred? How long had it been that

9 --

10 A. Couple of months, two -- about two or three months.

11 Q. I'm sorry. Two or three --

12 A. About two or three months. About two or three months.

13 Q. Months?

14 A. Yeah.

15 Q. Okay. Now when he came by, do you remember what  
16 happened when he stopped by?

17 A. He stopped by, used Maurice's phone.

18 Q. Did he talk to you or Tyrone while he was there?

19 A. No. He walked between us while we were sitting on the  
20 steps, and asked "Rece" can he use the phone.

21 Q. So y'all were sitting on the top of the steps when he  
22 came by?

23 A. Yes, sir.

24 Q. And he walked up between you to talk to Maurice?

25 A. Yeah, yeah.

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 Q. Did you hear much of the conversation between him and  
2 Maurice?

3 A. No, I heard him say, "Let him use the phone." Then he  
4 got on the phone.

5 Q. Where did he go when he got on the phone?

6 A. Like walked off the steps and walked back up the  
7 steps.

8 Q. Did he go out in the yard at all with the phone?

9 A. Yeah, he came out a little bit, like, right off the  
10 steps.

11 Q. Okay.

12 A. Went back --

13 Q. And that's while he was talking on the phone?

14 A. Yeah, he was talk -- while he -- You know what I'm  
15 saying? Walking -- leaving off the steps.

16 Q. Did you hear anything while he was on the phone?

17 A. Yeah, he was like "There's two of 'em."

18 Q. And was that near the beginning of the conversation,  
19 the end of the conversation? Could you tell?

20 A. It was right before he hung up the phone.

21 Q. So was he coming back onto the steps at that point  
22 when he hung up?

23 A. Yeah.

24 Q. So, was he actually -- I mean, how close he was to you  
25 when you heard that?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. Like right there on the steps, right there on the  
2 steps. He was coming, like, two steps in front of -- like,  
3 where I was sitting at.

4 Q. And on the steps, as we look at the house, were you  
5 sitting on the left top of the steps or the right top of  
6 the steps?

7 A. From this side, I was sitting on the right.

8 Q. And where was Tyrone sitting?

9 A. On the left.

10 Q. Now tell me again. How far was that before the  
11 robbery that he stopped by?

12 A. Are you talking about --

13 Q. Yeah, how long was it from the time that Donta stopped  
14 by to the robbery occurred?

15 A. I give him 25, 30 minutes.

16 Q. And did you see which way Donta went when he left?

17 A. Really, I wasn't paying no attention. I was listening  
18 to the radio.

19 Q. All right. So you didn't even watch when he left  
20 which way he went?

21 A. Yeah.

22 Q. Okay. Now at the time of the robbery, what were you  
23 doing then?

24 A. At the time of the robbery?

25 Q. Yeah.

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. I was scared.

2 Q. No, I mean, what were you doing? Before it starts,  
3 before it all happens, how do you describe it?

4 A. Oh, oh, before it -- before it happened, oh, that girl  
5 -- A girl had walked up and she was like, could she get a  
6 cigarette -- something -- She was asking for something. I  
7 believe she asked for a cigarette, and she walked up  
8 between us. She was like -- And we were like, we ain't got  
9 no cigarette. So, I believe, she was fixing to get a  
10 cigarette from Maurice.

11 So, next thing you know, we -- I looked down the  
12 stairs, it was a dude with a gun.

13 Q. When did you first see the girl?

14 A. When I first seen the girl?

15 Q. Yes.

16 A. I seen her when she walked in the yard.

17 Q. So, you saw her walk through the opening on the side  
18 of the fence?

19 A. Yeah.

20 Q. Did you see which way the girl came from on the  
21 street?

22 A. She came from the way like from Scoggin Street, like,  
23 from this way.

24 Q. So she's coming down Byar Street, but from the  
25 direction of Scoggin Street?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. Yeah.

2 Q. So, as you're sitting on the porch and facing the  
3 road, is that from the left or the right that she's coming?

4 A. That's from the right. The way I was sitting, that's  
5 from the right.

6 Q. Okay, the way you were sitting. Okay well, let's do  
7 it this way. I'll just stick with this -- from the  
8 direction of Scoggin Street. Correct?

9 A. Yeah, yeah, yeah, yeah.

10 Q. Okay. Now when she comes, does that mean that they  
11 have to walk all the way around the fence there to get in?

12 A. No, they could have cut through the little part right  
13 there, but they came all the way around.

14 Q. But they didn't cut through. They came all the way  
15 around?

16 A. Yeah, they came all the way around.

17 Q. And she came up first. Right?

18 A. Uh-huh.

19 Q. What did you notice about her? What could you tell  
20 me? What did she look like?

21 A. She had like some, like, some pajama pants on.

22 Q. Do you remember what color they were?

23 A. Like, pink and something. They were pink and  
24 something. It was nighttime. I know I seen that pink.

25 Q. Could you tell what kind of top or anything she had on

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 at that point?

2 A. Gray-looking.

3 Q. And did she have anything covering her face?

4 A. No, she had a hoodie on, though, when she walked up.  
5 But when she got up on the front porch, we weren't even  
6 really paying no attention to her because we was looking at  
7 the phone and listening to the radio. We didn't pay no  
8 attention to her. But when I actually -- when I looked up,  
9 you know, I looked behind me because we facing this way  
10 towards the road on the steps, you know. And I looked up,  
11 and I looked back down. It was -- It was a dude with a gun  
12 saying, "Yo, yo, don't fucking move, yo. It's a fucking  
13 stickup, yo."

14 Q. Okay.

15 A. Like that, but with --

16 Q. She was already up on the steps when that occurred?

17 A. Uh-huh.

18 Q. Now, had you -- Did you recognize her? Did you know  
19 who she was at that point?

20 A. No, I didn't recognize her. I didn't know who she  
21 was.

22 Q. Now when your attention gets turned to this dude, do  
23 you see a weapon on him at all?

24 A. A weapon on her?

25 Q. On him?



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1 A. Oh, yeah, I seen a weapon. It right in my face. It  
2 was right in my face.

3 Q. Can you describe it at all?

4 A. It was a rifle.

5 Q. And was he right at the bottom of the steps, right in  
6 front of you?

7 A. Yeah, he was right in front of me and Tyrone from the  
8 bottom of the steps.

9 Q. All right.

10 A. And he was -- He walked like halfway, like two steps  
11 up. He was patting on our pockets going like this.

12 (WITNESS PATTING HIS BODY.)

13 A. "I know y'all fucking got something. I know y'all  
14 fucking got something." But he kept waving the gun, you  
15 know. He kept waving it at all three of us.

16 Q. And can you tell me as far as the girl goes, what did  
17 she say to you? Did she say anything other than the fact  
18 that she was asking for some cigarettes or something like  
19 that when she first came up?

20 A. No, that's all she -- she -- That's all she asked for..  
21 It's -- Really they used her to throw it out, like, you  
22 know.

23 Q. And now, you mentioned that he searched you. Did she  
24 search you at all?

25 A. No, she ain't search me. She ain't search me. But he

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 did though.

2 Q. Did you have anything on you?

3 A. Huh?

4 Q. Did you have anything on you that was taken?

5 A. No, I ain't had noting but ten dollars.

6 Q. Did they take that from you at that time?

7 A. No, that was on the steps, on the picture.

8 Q. But I mean, did you have it on the steps or was that  
9 money on you when --

10 A. That was in my pocket.

11 Q. Okay. And after the robbery, it ended up on the  
12 steps?

13 A. Uh-huh.

14 Q. Did -- When he patted you down, did he stick his hand  
15 in your pockets and stuff like that?

16 A. Yeah, he -- he -- he had the gun -- He was doing like  
17 this ---

18 (WITNESS PATTING HIS BODY.)

19 A. --- patting on my pocket, you know, trying to see what  
20 was in there, but there wasn't nothing in my pocket.

21 Q. What could you recognize about him when he was patting  
22 you down --

23 A. That's all I seen is all black.

24 Q. Okay.

25 A. That's all I seen.

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1 Q. Could you tell, was it a dude at that time? You know  
2 it was a guy?

3 A. Yeah, I know it was a guy.

4 Q. Could you tell it was a black male?

5 A. Yeah, I could tell he was black how he was talking,  
6 stuff like that, how his reaction was, but --

7 Q. Could you see his hands as well?

8 A. No, I ain't seen his hands. I seen the gun.

9 Q. Okay. And did he also pat down Tyrone?

10 A. Yeah, he was patting -- We was sitting right beside  
11 each other. He was patting down both of us like this ---

12 (WITNESS PATTING HIS BODY)

13 A. --- holding the gun with one hand, patting down both  
14 of us.

15 Q. And the girl, when she got up on the steps, did you  
16 see when she patted down Maurice?

17 A. My eyes was just focused on that gun. That's all I  
18 was focused on.

19 Q. So you didn't look back behind you. You just stayed  
20 focused to the gun?

21 A. Yeah, that's all I was focused on.

22 Q. Can you describe what he had as far as on his face and  
23 head?

24 A. He had a mask on.

25 Q. Like what?

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1 A. Like all black. Whatever he had on, he could see out  
2 his eyes, though.

3 Q. Could you see anything else really other than the eyes  
4 as far as that part of the face?

5 A. No, I don't know how -- All I see is eyes and that  
6 gun. I wasn't really focused on that. I was only focused  
7 on "Don't shoot." That's all I was saying, "Don't shoot."

8 Q. What kind of other clothes was he wearing?

9 A. Huh?

10 Q. What kind of other clothes was he wearing?

11 A. That's all I seen is all black.

12 Q. So black clothing?

13 A. Yeah.

14 Q. Could you tell was it baggy, or was it tightfitting  
15 or --

16 A. It had to be baggy. It had to be baggy if he pull a  
17 gun up out of there.

18 Q. You saw him pull the gun up out of his clothes?

19 A. Yeah, I seen it when he pulled it out

20 Q. Now when he was up close to you was there anything --  
21 What, if anything, did you notice about his hair?

22 A. About his hair?

23 Q. Yeah.

24 A. I wasn't focused on his hair.

25 Q. You weren't focusing on his hair?

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1 A. No, I wasn't focusing on the hair. I was focusing on  
2 that gun he was pointing at me.

3 Q. Now did you comply with his commands at that time?

4 A. Yeah.

5 Q. Y'all did everything they asked you to do. Right?

6 A. Everything he asked me to do.

7 Q. How did it go after that? After he's patting you  
8 down, what happened next?

9 A. After he pat -- After he patted her down, the girl  
10 came on down the steps, but he was fixin -- They was fixin  
11 to walk off because they had got the phones and stuff.  
12 They had got the phones and the money out of Reese pocket,  
13 or whatever. And they fixing to walk off till she say,  
14 "They seen my face -- face -- They seen my face. And they  
15 ain't got shit. You might as well do something. You might  
16 as well do something." And then he turned around and  
17 started shooting.

18 Q. How close was he when he started shooting?

19 A. At the bottom of them steps, right there.

20 (WITNESS INDICATED TO PHOTO.)

21 Q. Okay. And what happened when he started shooting? Do  
22 you recall?

23 A. When he started shooting, I did like this.

24 (WITNESS COVERED HIS TORSO.)

25 A. I was like, "No, no, no." I did -- I folded up like

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1 this. That's how I believe I got shot in my leg and my  
2 foot in between my toe.

3 Q. So you had two gunshots that hit you?

4 A. Yeah.

5 Q. If you would, if you would be willing to step out,  
6 could you show us where the gunshot hit you in your leg?

7 (WITNESS LEFT WITNESS STAND.)

8 A. It hit me right here.

9 Q. Okay.

10 A. It hit me right here and came out the back, right  
11 there.

12 Q. So right in front, it came out your calf in the back  
13 of your --

14 A. Yeah, it went straight through. The doctor said it  
15 went straight through.

16 Q. And that's your left leg?

17 A. Yeah.

18 Q. So it went in the front of your left leg, just in  
19 front of your calf, and then went out the back --

20 A. Yeah, yeah, the doctor say it went around. It went  
21 around. It went straight out. And between my pinky toe  
22 and my other toe, the bullet hit right there, like, the  
23 bottom, I mean, between your pinky toe.

24 Q. Right.

25 A. And it got like stuck, like right here. Like the

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1 bullet was stuck in my feet, and I had to have surgery,  
2 like, a week later.

3 Q. So you had to have surgery on the other foot that --

4 A. Yes, sir.

5 Q. Did they recover that to make it right?

6 A. Yes, sir. 'Cause the bullet was stuck.

7 Q. Were they able to get the bullet out?

8 A. Yeah, they -- they got it out.

9 Q. Do you still experience any pain from the bullets and  
10 the gunshots?

11 A. Like, like, when they be, like when the weather be bad  
12 or whatever, like when it rain or whatever, my leg be  
13 aching -- aching. And sometime I, like, I be walking and  
14 it -- it'll go out on me. I have to sit down somewhere.  
15 And I sit too long.

16 Q. What happened then at that point? You said you felt  
17 yourself get shot; is that right?

18 A. Yeah, I didn't feel I got shot till I stand up.

19 Q. And when you stood up, what happened?

20 A. I had fell back down like, "Damn, I'm shot." I was --  
21 You know what I'm saying? I was -- I was in shock. I was  
22 -- You know what I'm saying? 'Cause this ain't never  
23 happened to me.

24 Q. When did you notice that Tyrone had been shot?

25 A. When I looked at him. When I looked at him, he was

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1 saying nothing. I was calling his name. I ain't touch him  
2 or nothing like that 'cause I ain't know, you know, where  
3 he was shot at. So I just -- I jumped up, and I was fixing  
4 to go in the house, and I just fell. I was so -- I was so  
5 shocked. And Reese pulled me on in the house and I  
6 talked --

7 Q. And "Reese," that's Maurice Jackson?

8 A. Yes. And I kept telling them to call an ambulance,  
9 "Call an ambulance." She got on the phone and called the  
10 ambulance.

11 Q. All right. And you've heard the 911 tape. Right?

12 A. Yes, sir.

13 Q. Is that you in the background hollering to them?

14 A. Yes, sir.

15 Q. Okay. Was Tyrone able to get up at all after the  
16 shooting? If you can answer out loud, please.

17 A. No, no, sir.

18 Q. Now did the police arrive pretty quick after the 911  
19 call?

20 A. One did. But it took a long time for the ambulance to  
21 come, though.

22 Q. The one that arrived, was he able to get information  
23 from you as far as what had occurred in the robbery?

24 A. No, 'cause I was loud. I was yelling and I was  
25 just --



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1 Q. You were in a lot of pain because of the shooting at  
2 that point?

3 A. Yeah, yeah, yeah, uh-huh. I didn't really talk to her  
4 until I got to the hospital.

5 Q. Did you try to give a description to them, though,  
6 while you were still there?

7 A. No, Reese was doing that.

8 Q. Okay. Can you tell me, when the rifle fired off, what  
9 did it sound like as far as the shots go?

10 A. Pow, pow, pow, pow. Pow, pow, pow.

11 Q. So did it sound faster than someone just pulling the  
12 trigger?

13 A. That's how it sounded, just like that.

14 Q. Did it seem like there were a lot of shots?

15 A. Yeah, it was a lot of shots.

16 Q. Now when the paramedics came, did they start treating  
17 you then as well?

18 A. Yeah.

19 Q. As Tyrone?

20 A. Uh-huh.

21 Q. And did they take you to the hospital then, at that  
22 point, to be treated?

23 A. Uh-huh.

24 THE COURT: You need to say, "Yes" or "No."

25 A. Yes, sir.

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1 Q. Did the detectives -- Did any detective come to the  
2 hospital and talk to you?

3 A. Yes, sir.

4 Q. Were you still in pain when you were talking to the  
5 detectives at that point?

6 A. Yes, sir.

7 Q. How long did you have to stay in the hospital that  
8 night?

9 A. I left, like, about 1:00 something that night.

10 Q. And did you have to go back, then, to the hospital?  
11 After that?

12 A. Yeah, that -- the -- the -- like a, like a week later.  
13 'Cause they had wrapped me up and all that. I had to go  
14 back and get my X-ray's and all that, and show where the  
15 bullet was at -- all that, then. I had surgery, then I  
16 had -- got a cast and all.

17 Q. So it required you go back to the hospital more than  
18 once after that?

19 A. Yes, sir.

20 Q. Now you had mentioned that you did know Donta Reid.  
21 Is there any possibility that the guy that had that gun on  
22 you that night was Donta Reid?

23 A. No.

24 Q. And the girl that was involved in the robbery that was  
25 there in front of you, that came up the steps, was -- Are

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 you certain that, that was a girl? Any possibility that  
2 was a guy?

3 A. It was a girl.

4 Q. Any possibility that was a guy?

5 A. No.

6 Q. Now let me ask you this as well. Do you know Darius  
7 Jeter?

8 A. Yes, sir.

9 Q. How do you know Darius Jeter?

10 A. I know him from seeing him around the neighborhood.

11 Q. How long have you known him?

12 A. I knew him from school too. I know him from seeing  
13 him.

14 Q. About how long have you known Darius Jeter?

15 A. About three or four years, probably longer than that.

16 Q. So if you saw him, you'd know him?

17 A. Yes.

18 Q. Would you know his voice if you heard it?

19 A. Yes.

20 Q. Okay. Any possibility it was Darius Jeter that was  
21 the gunman that night?

22 A. No -- No, sir.

23 Q. Any possibility it was Darius Jeter that was looking  
24 like the girl that night?

25 A. No, sir, too short.

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1 Q. Now I notice in that picture there was a bike down  
2 there at the bottom of the steps. Is that one of your  
3 bikes?

4 A. Yes, sir.

5 Q. Had you ridden your bike there that night?

6 A. Yes, sir.

7 Q. Had Tyrone ridden his bike there as well?

8 A. Yes, sir.

9 Q. So if we look through the pictures, the two bikes that  
10 are there are yours and Tyrone's?

11 A. Yes, sir.

12 Q. After this all happened, did Donta ever call you to  
13 ask you if you were all right?

14 A. No, sir.

15 Q. Did you ever have any contact with Donta after that  
16 night?

17 A. No, sir.

18 Q. Do you see Donta here in the courtroom today?

19 A. Yes, sir.

20 Q. Can you point him out for me, please?

21 (WITNESS POINTED TO DEFENSE TABLE.)

22 Q. If you will describe, just kind of, what he's -- what  
23 he's got on.

24 A. Sitting right there.

25 Q. I understand you are pointing. If you could tell us

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON  
CROSS BY MS. INZERILLO

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1 who you're pointing to. If you could point it out a little  
2 bit more -- Who is he next too? Who is he sitting between?

3 A. See him sitting right beside that lady and the dude  
4 right there.

5 Q. All right. At the counsel table here?

6 A. Yes, sir.

7 MR. THOMPSON: Your Honor, I ask that the record  
8 reflect that he's pointed out Donta Reid.

9 THE COURT: All right. Okay.

10 Q. Thank you, Mr. Cunningham. Please answer any  
11 questions they have for you.

12 A. All right.

13 MS. INZERILLO: May it please the Court.

14 CROSS EXAMINATION

15 KENNY CUNNINGHAM BY MS. INZERILLO:

16 Q. Kenny, you know Donta Reid. Right?

17 A. Yes, ma'am.

18 Q. And I believe you just testified that you know for a  
19 fact he wasn't the shooter. Right?

20 A. Yes, ma'am.

21 Q. On October 1st in 2009, you were hanging out with  
22 Tyrone and Maurice on Maurice's porch. Right?

23 A. Uh-huh. Yes, ma'am.

24 Q. And while you guys were there, you were kind of, you  
25 were hanging out. You were listening to some music on the

1 boom box. Right?

2 A. Yes, ma'am.

3 Q. And I think you said you were kind of looking at  
4 things on his phone, like on YouTube, stuff like that?

5 A. Yes, ma'am.

6 Q. And you guys, generally, were just chatting because  
7 you were just hanging out. Right?

8 A. Yes, ma'am.

9 Q. And somewhere in the middle of all this, Donta came to  
10 the house. Right?

11 A. Yes, ma'am.

12 Q. And I believe you testified that you didn't really  
13 talk to Donta, he kind of walked in between you and Tyrone  
14 to go talk to Maurice. Right?

15 A. Yes, ma'am.

16 Q. And essentially, looking here at the picture that's up  
17 here that's of the front porch, you and Tyrone are sitting  
18 on the top step. Right?

19 A. Yes, ma'am.

20 Q. So if Donta wanted to get up the stairs to get to  
21 Maurice who's sitting on the rocking chair on the porch,  
22 he'd have to go between you guys. Right?

23 A. Yes, yes, ma'am.

24 Q. There's no other way on that high porch to get up  
25 there except by the steps. Right?

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. So when he goes past you, he doesn't make any  
3 conversation with you. Right?

4 A. No, ma'am.

5 Q. He doesn't ask you to walk anywhere with him?

6 A. No, ma'am.

7 Q. The only person he talked to is Maurice. Right?

8 A. Yeah.

9 Q. And I believe you indicated you weren't sure what the  
10 conversation was. You just kind of saw him go up there and  
11 talk to Maurice.

12 A. Uh-huh. Yes, ma'am.

13 Q. And by the same token, you didn't see him talk to  
14 Tyrone either. Right? Ask Tyrone to walk anywhere.

15 A. No, ma'am.

16 Q. Now when Donta was there and he walked between you, he  
17 wasn't aggressive with you or anything? He just walked  
18 between you and Tyrone. Right?

19 A. No, ma'am.

20 Q. Then you indicated that you saw him using Maurice's  
21 cell phone; Is that right?

22 A. Yes, ma'am.

23 Q. And that Donta went back, sort of, between you and  
24 Tyrone again, down the stairs, into the yard. Right?

25 A. Yes, ma'am.

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 Q. To use his cell phone. And while he's doing that,  
2 again, you guys -- the boom box is still going. Right?  
3 You're still looking at things on YouTube on the cell  
4 phone. Right? You're not stopping what you're doing  
5 because he's there.

6 A. Yes, ma'am.

7 Q. So when he is talking on the cell phone, you said  
8 he's, essentially, at the base of the stairs; is that  
9 right?

10 A. Yes, ma'am.

11 Q. And you guys are sitting at the top of the stairs of  
12 the porch. Right?

13 A. Yes, ma'am.

14 Q. And there's about, correct me if I'm wrong, one, two,  
15 three, four, five, six, seven steps on those steps?

16 A. Yes.

17 Q. So, you indicated that when he walked back up the  
18 stairs that you heard a comment that was "two guys," or  
19 "two of them," or something like that. Right?

20 A. Yes, ma'am.

21 Q. And you didn't hear any other part of the  
22 conversation?

23 A. No, ma'am.

24 Q. So just that snippet. That's all you heard. Right?

25 A. Yes, ma'am.



KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 Q. And when he finished talking on the phone -- When  
2 Donta finished talking on the phone, he gave the phone back  
3 to Maurice. Right?

4 A. Yes, ma'am.

5 Q. He didn't try to stick it in his pocket, walk away  
6 with it, anything like that?

7 A. No, ma'am.

8 Q. Then at that point, Donta left the yard. Right?

9 A. Yes.

10 Q. And you didn't see him come back to the house at all  
11 that night. Right?

12 A. No.

13 Q. You didn't see, other than him leaving the yard, you  
14 didn't see where he went after that?

15 A. No, ma'am.

16 Q. But a couple of minutes later, two other people did  
17 come into the yard; is that right?

18 A. Yes, ma'am.

19 Q. And I know from your testimony on direct, really your  
20 focus was on the guy; is that right?

21 A. Yes, ma'am.

22 Q. And we can all agree that the person with the gun was  
23 a guy. Right?

24 A. Yes, ma'am.

25 Q. And you indicated you noticed he was dressed in all

1 black and all you remember was the gun; is that right?

2 A. Yes, ma'am.

3 Q. What you remember immediately before that is that the  
4 girl comes into the yard, and you think asks somebody for a  
5 cigarette; is that right?

6 A. Yes, ma'am.

7 Q. And essentially when she does that, she's also, sort  
8 of, walking up the stairs onto the porch. Right?

9 A. Yes, ma'am.

10 Q. And then, next thing you know, some guy pulls out a  
11 gun; is that right?

12 A. Yes, ma'am.

13 Q. Okay. So you're sitting on the top stair of the  
14 porch, sort of, looking at the gun; is that right?

15 A. Yes, ma'am.

16 Q. And while you're doing that, you're not fighting with  
17 the guy; is that right?

18 A. No, ma'am.

19 Q. You're not lunging at him. Right?

20 A. No, ma'am.

21 Q. In fact you, essentially, put your hands up to show,  
22 "I'm not going to fight you. I'm not going to resist  
23 this."

24 A. Yes, ma'am.

25 Q. Okay. And essentially, when you're sitting on this

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 porch, if Tyrone is sitting next to you, he is probably  
2 within about 5 inches of you; is that right?

3 A. Yes, ma'am.

4 Q. So it's not like you guys are really far apart.  
5 Right?

6 A. No, ma'am.

7 Q. So you're, sort of -- You would have been aware if  
8 Tyrone had lunged at the guy. Right?

9 A. Yes, ma'am.

10 Q. You would have heard if Tyrone had cursed at the  
11 person or threatened him in any way. Right?

12 A. Yes, ma'am.

13 Q. And you didn't see him lunge or hear him say anything  
14 to the robber threatening; is that right?

15 A. Yes.

16 Q. So essentially, from your perspective, you guys are  
17 complying with what the robber wants. Right?

18 A. Yes.

19 Q. And you indicated that the guy had a gun in his hand,  
20 and he is physically touching you; ---

21 (ATTORNEY PATTING HER TORSO.)

22 Q. --- is that right?

23 A. Yes.

24 Q. He's physically going through your pockets looking for  
25 things?

1 A. Yes, he's patting on me.

2 (WITNESS PATTING HIS TORSO.)

3 Q. He's physically touching you. Right?

4 A. Uh-huh.

5 Q. And even as he's physically touching you, you don't  
6 take his hand and push him away. Right?

7 A. No, ma'am.

8 Q. You don't, you know, push your shoulder away. Right?

9 A. No, ma'am.

10 Q. Essentially, you sit there, and you let him touch you

11 ---

12 (ATTORNEY PATTING HER TORSO.)

13 Q. --- to get whatever he wants. Right?

14 A. Yes, ma'am.

15 Q. And when they are coming off the porch, they've gotten  
16 everything from you. Right?

17 A. Yes, ma'am.

18 Q. So they're physically walking away from the house; is  
19 that right?

20 A. Yes.

21 Q. And to kind of illustrate this again, if you're  
22 sitting on the step, where you're sitting, and I'm walking  
23 away from you, in order to get to the opening from the  
24 fence, I'd have to walk straight and then, sort of, do a  
25 right turn to get out the yard---

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 A. Yes.

2 Q. --- if I want to go through the fence post. Right?

3 A. Yes. Yes, ma'am.

4 Q. So, your hands are up. Right?

5 A. Uh-huh.

6 Q. The guy's going through your pockets, waving the gun.  
7 Right?

8 A. Yes.

9 Q. And you're sitting there.

10 A. Yes.

11 Q. And you're letting him do it. Right?

12 A. Yes.

13 Q. And then the next thing you know, the guy and the  
14 girl, they start walking away from you. Right?

15 A. Yes.

16 Q. They are leaving you behind. Right?

17 A. Yes.

18 Q. Their backs are toward you?

19 A. Yes.

20 Q. And then with their backs toward you, you don't holler  
21 at them. Right?

22 A. No.

23 Q. You don't threaten them. Right?

24 A. No.

25 Q. You don't lunge for them. Right?

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 A. No.

2 Q. You don't do anything to indicate to them, I'm going  
3 to come after you now; is that right?

4 A. No.

5 Q. Okay. And so when the girl and the guy are walking  
6 away from you, you hear the girl say, "They've seen my  
7 face, shoot 'em." Right?

8 A. Yes.

9 Q. Or something to that effect?

10 A. Yes, ma'am.

11 Q. Because the guy has something covering his face.  
12 Right?

13 A. Yes, ma'am.

14 Q. But the girl doesn't. Right?

15 A. Yes, ma'am.

16 Q. She's wearing a hood over her head, but you could  
17 still see her face. Right?

18 A. Yes.

19 Q. And so you hear her say that, and then the guy turns  
20 around and starts shooting all of y'all on the porch; is  
21 that right?

22 A. Yes, ma'am.

23 Q. Okay. Now just to be clear, he started shooting when  
24 she said that, not because of anything that you guys did?

25 A. When she -- When she -- As soon as she said that, that

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 is when he started shooting.

2 Q. So it wasn't anything that you guys did. Right?

3 A. No.

4 Q. Okay. And you were -- You indicated that you were hit  
5 in your left calf area.

6 A. Yeah. And my leg, went straight through and my pinky  
7 toe.

8 Q. And your pinky toe. Okay. And you indicated that you  
9 went to the hospital and you, essentially, were released  
10 that night because they had to get the X-rays done, take  
11 the bullet out here.

12 A. Yes, ma'am.

13 Q. I guess it would be the heel of your foot since it  
14 kind of stuck there?

15 A. Yeah, yeah, yeah.

16 Q. Okay. And so, you were on crutches until the bullets  
17 could be removed?

18 A. Yes, ma'am.

19 Q. And then you had your surgery. They put you in a  
20 cast. Right?

21 A. Yes, ma'am.

22 Q. Were you on crutches while you were on your cast?

23 A. Yes, yes.

24 Q. Okay. And then once you got your cast off, you  
25 walked. Right?

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO  
CROSS BY MR. CHIARENZA

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1 A. Yes.

2 Q. You are not still permanently on crutches or using a  
3 cane or anything like that?

4 A. Yes, ma'am.

5 MS. INZERILLO: No further questions, Your Honor.

6 THE COURT: Mr. Chiarenza?

7 MR. CHIARENZA: Thank you, Your Honor.

8 CROSS EXAMINATION

9 KENNY CUNNINGHAM BY MR. CHIARENZA:

10 Q. Mr. Cunningham, I'll express to you as well, I'm sorry  
11 for your loss of your friend.

12 I've just got a couple of questions for you. You  
13 testified that the girl in this instance, that could not  
14 have been Mr. Jeeter because the girl was too short to be  
15 Mr. Jeeter?

16 A. Yes, sir.

17 Q. And so, despite everything else going on, you were  
18 able to make fairly good identifications of the height of  
19 these individuals; is that correct?

20 A. Yes, sir.

21 Q. Okay so, that's the reason you gave why that this girl  
22 was too short. So you were able to observe the height of  
23 these individuals. In fact, you recall giving a statement  
24 to law enforcement shortly after the incident occurred?

25 A. Yes, sir.



KENNY CUNNINGHAM: CROSS BY MR. CHIARENZA

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1 Q. Okay. And now - and I know, I mean, quite honestly,  
2 I'm pretty impressed that you could even give a statement  
3 given the fact that you had been shot. But you did about  
4 an hour after the incident gave a statement, and you recall  
5 that. Correct?

6 A. Yes, sir.

7 Q. Okay. And you've recently met with the Prosecution in  
8 this case over the course of the last couple of weeks, gone  
9 over your testimony with them. Correct?

10 A. Yes, sir.

11 Q. And you've prepared for this trial, discussed what all  
12 they'd be asking you, and what you'd be testifying to.  
13 Correct?

14 A. Yes, sir.

15 Q. And you had, during that time, certain -- Or well, you  
16 tell me. Did you have an opportunity to go over that  
17 statement that you had given to law enforcement?

18 A. Yes, sir.

19 Q. And I apologize. I didn't do this the last time.

20 This is one you all --

21 (ATTORNEY CHIARENZA SHARED DOCUMENT WITH SOLICITOR AND  
22 OTHER DEFENSE ATTORNEYS.)

23 Q. And is this -- Do you recognize this as the  
24 handwritten statement that you gave to them?

25 A. Yes, sir.

1 Q. Do you recall in this statement describing the  
2 shooters being 5 foot 10, 150 pounds?

3 A. Yes, sir.

4 Q. And you've testified you were in a situation to get a  
5 good look at least as far as height and weight of these --  
6 Well you testified you could see height and felt like you  
7 got a pretty good feel of the weight of that individual as  
8 well?

9 A. Yes, sir.

10 Q. Okay. And the last thing you said was specifically  
11 that you did not recognize the voice of the guy?

12 A. Yes, sir.

13 Q. Are you aware of any other written statement that you  
14 may have given to law enforcement while they were  
15 investigating this case?

16 A. Say that again, sir.

17 Q. Are you aware, is there any other written statement  
18 other than this one that you recall ---

19 A. No, sir.

20 Q. --- with law enforcement?

21 Okay. And I know Ms. Inzerillo asked you, and I think  
22 Mr. Thompson may have, but I'll ask you. Your testimony  
23 was, as far as the telephone conversation that you overheard  
24 Donta Reid discussing, the only portion of that you heard  
25 him say was "two of them"?

KENNY CUNNINGHAM: CROSS BY MR. CHIARENZA  
REDIRECT BY MR. THOMPSON

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1 A. Yes, sir.

2 Q. Okay.

3 MR. CHIARENZA: Your Honor, that's all I've got for  
4 Mr. Cunningham.

5 THE COURT: Redirect?

6 MR. THOMPSON: Just briefly, Your Honor.

7 REDIRECT EXAMINATION

8 KENNY CUNNINGHAM BY MR. THOMPSON:

9 Q. Let me show you real quick a copy of the statement Mr.  
10 Chiarenza was asking you about. Was that your handwriting?

11 A. No, sir.

12 Q. Who was writing that statement for you?

13 A. The detective.

14 Q. Were you still at the hospital when this was done?

15 A. Yes, sir.

16 Q. So the detective came into your room and asked you  
17 some questions and wrote them down on the paper and asked  
18 you to sign?

19 A. Yes, sir.

20 Q. Okay. One other thing, did you hear -- And I guess --  
21 Did you hear Donta ask, when Donta was there, did you hear  
22 him ask Maurice to walk to Midtown?

23 A. Yes, sir.

24 Q. Okay. Thank you. No further questions.

25 THE COURT: Ms. Inzerillo?

1 MS. INZERILLO: Nothing further, Your Honor.

2 THE COURT: Mr. Chiarenza?

3 MR. CHIARENZA: Nothing, Your Honor.

4 THE COURT: You can step down and have a seat back out  
5 there.

6 And we'll take our afternoon, 12 or so minute, break.

7 (JURY EXITS COURTROOM AT 03:20 PM.)

8 THE COURT: We will be at ease for a few minutes.

9 (COURT IN RECESS AT 03:20 PM.)

10 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-FIVE  
11 PREMARKED FOR IDENTIFICATION.)

12 (DEFENDANT'S REENTER COURTROOM AT 03:32 PM.)

13 (COURT BACK IN SESSION AT 03:37 PM.)

14 THE COURT: Thank you, take your seats.

15 Bring in the jury.

16 (JURY REENTERS COURTROOM AT 03:39 PM.)

17 THE COURT: All right. Call your next witness.

18 MR. BRACKETT: The State would call Mr. Dominick  
19 Stowers.

20 Mr. Stowers, if you would please, sir, step right up  
21 to where that lady is sitting. There's a Bible in front of  
22 her. Place your left hand on it, and raise your right.

23 (WHEREUPON: DOMINICK STOWERS,  
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 THE COURT: You can have a seat there, and try to  
26 speak loud and into that microphone.

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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DIRECT EXAMINATION

DOMINICK STOWERS BY MR. BRACKETT:

Q. would you please state your full name for us?

A. Dominick Lamont Stowers.

Q. And how old are you, Mr. Stowers?

A. Twenty.

Q. And where do you live?

A. Barber Street, Rock Hill, South Carolina.

Q. All right. Now what do you do for a living?

A. I work in the warehouse.

Q. Which -- Where at?

A. On York Highway, unloading trucks for my uncle.

Q. I got'cha. Now where is Barber Street in relation to Byars?

A. Probably like five minutes away.

Q. Are you familiar with Byars Street? Know anybody that lives on Byars?

A. My cousin.

Q. Who's that?

A. Maurice.

Q. Maurice -- What's his last name?

A. Maurice --

Q. Is he seated here in the courtroom?

A. Yes.

Q. Maurice Jackson?

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 A. Yes, sir.

2 Q. And he's your cousin?

3 A. In-law, yes, sir.

4 Q. Cousin-in-law?

5 A. Yeah, through marriage.

6 Q. I got 'cha. Okay. Were you on Byars Street on  
7 October 1st of 2009?

8 A. I was.

9 Q. In the evening around a few minutes before Eleven  
10 o'clock?

11 A. Yes, sir.

12 Q. What were you doing there?

13 A. Riding on a bike coming from the Boyd Place at the end  
14 of Byars.

15 Q. Are you familiar -- You were on a bicycle -- Are you  
16 familiar with that area, Byars Street and the surrounding  
17 streets, Maple, and Scoggins, and Virginia and Reynolds?

18 A. That's where I grew up. Yes, sir.

19 Q. So, you know that area very well?

20 A. Yeah.

21 THE COURT: That wasn't clear. Coming from where?

22 THE WITNESS: The end of Byars Street.

23 THE COURT: End of Byar Street.

24 Q. I'm showing you what's been marked as State's Exhibit  
25 Thirty-five for identification. And ask, can you tell the

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 jury what that is an aerial view of?

2 A. Byar Street area, everything around it. Yeah,  
3 everything around Byar Street area.

4 Q. Does that accurately depict the area that we're  
5 talking about where your cousin lives?

6 A. Hundred percent, yes, sir.

7 Q. [REDACTED] is that where your cousins lives?

8 A. Yes, sir.

9 Q. All right.

10 MR. BRACKETT: I'd ask -- I move State's Exhibit  
11 Thirty-five. I previously shared this with Counsel for the  
12 Defense and move it into evidence at this time.

13 MS. INZERILLO: No objection, Your Honor.

14 MR. CHIARENZA: No objection.

15 THE COURT: In without objection.

16 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-FIVE  
17 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

18 Q. Sir, can you see there from where you're sitting? Can  
19 you see the map pretty good?

20 A. Yeah.

21 Q. I want you to take this pointer, and you can use it to  
22 show areas on the map. Point out if you need to reference  
23 where we're talking about.

24 Can you tell me approximately where Byars Street is?

25 A. Right here.

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 (WITNESS INDICATING ON STATE'S EXHIBIT THIRTY-FIVE ON  
2 COURTROOM OVER HEAD.)

3 Q. And can you show me where -- Do you know where your  
4 cousin's house is on Byars?

5 A. Yeah, right here.

6 Q. Can you tell me which direction down Byars Street you  
7 were coming?

8 A. I was coming from this end, coming around the curve.

9 Q. And approximately what time was it?

10 A. Something after Ten. A little bit before Eleven  
11 after Ten.

12 Q. And as you came around the curb, tell the jury what  
13 you saw.

14 A. As I came around the curve, I pass my cousin house,  
15 and I seen them on the porch, like, with their hands up,  
16 whatever. I seen a girl standing in the yard --

17 Q. You say, "them." Tell us who you're talking about.

18 A. I seen a girl, and I seen a boy. And I seen another  
19 dude and another girl. And I seen the girl standing beside  
20 the dude. And I seen the dude with a rifle in his hand, or  
21 it looked like some long gun.

22 Q. You saw a guy and a girl?

23 A. Yes, sir.

24 Q. And the guy had a rifle?

25 A. Yeah.



DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 Q. Did you see your cousin?

2 A. I really couldn't make out if it was him or not,  
3 but...

4 Q. Okay. Could you see people on the porch?

5 A. Yeah, I seen people on the porch.

6 Q. About how many people did you see? Can you say?

7 A. Three.

8 Q. Now Dominick, you wear glasses, don't you?

9 A. Yes, sir.

10 Q. Were you wearing your glasses that day?

11 A. No, sir.

12 Q. So how bad is your vision?

13 A. Bad.

14 Q. So can you make out faces at the distance you were?

15 A. No, sir.

16 Q. Now, where were you when you first saw these people?

17 A. Like, diagonally across the street.

18 Q. You put this lecture pointer rest about where you  
19 were.

20 A. About right here.

21 Q. And when you saw them sitting there, what did you do  
22 when you saw the folks there, and you see a guy standing  
23 there with a rifle?

24 A. I stopped on my bike, like, to kind of see what was  
25 going on. And then I heard a female say something like --

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 "They're going to identify us," or "They seen our face," or  
2 something like that.

3 Q. Were they looking in your direction, or was their  
4 front to you, or was their back to you?

5 A. Their back -- Their back was to me.

6 Q. Did they see you?

7 A. No, they ain't see me.

8 Q. What was the lighting like where you were?

9 A. Dark, real dark.

10 Q. All right. Now tell us what happened after you heard  
11 that.

12 A. After I heard the girl say something like, "They're  
13 going to identify us," or "They seen our face," I heard a  
14 couple of shots. And after that, I fled the scene on my  
15 bike.

16 Q. Okay. And where did you go?

17 A. I went down Scoggin Street and went to Midtown.

18 Q. Can you identify who those people were? Could you see  
19 them well enough to ever be able to identify them again?

20 A. No, sir.

21 Q. And some point, did you report what you saw that night  
22 to the police?

23 A. Yes, sir.

24 Q. When was that?

25 A. Like a day after. I mean, the next day.

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 Q. The next day?

2 A. After it happened. Yes, sir.

3 Q. You called the police?

4 A. No, sir. Maurice was up there, whatever. And my  
5 uncle, he heard I had been in the area when it happened, so  
6 he came and got me and took me up there.

7 Q. And did you give a statement to them?

8 A. Yes, sir.

9 Q. Is what you just told us essentially what you told  
10 them?

11 A. Yes, sir, basically.

12 Q. Did you know either of the robbers? The girl or the  
13 guy? Did you recognize them in any way, shape, or form?

14 A. When it was happening?

15 Q. Yes.

16 A. No, sir.

17 Q. Did you see anybody else besides the people on the  
18 porch there? As you were riding up the street, did you see  
19 anybody else?

20 A. No, sir.

21 Q. Can you describe -- Could you see the man well enough  
22 to see what he was wearing -- the man with the gun?

23 A. I think he had like on a black hoodie and a black ski  
24 mask or something like that.

25 Q. And how about the girl?

DOMINICK STOWERS: DIRECT BY MR. BRACKETT  
CROSS BY MS. ANDERSON

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1 A. Just seen like some pink pants or something -- like  
2 pink tights or whatever.

3 Q. How long did this whole thing last for you from your  
4 perspective from the time you first saw them to the time  
5 you started running down the road?

6 A. Like 30 seconds, 45 seconds.

7 Q. Now Mr. Stowers, you've been in trouble before haven't  
8 you?

9 A. Yes, sir.

10 Q. Back on New Year's Eve of last year, I think you got  
11 arrested for possession of cocaine, and you pled guilty to  
12 that?

13 A. Yes, sir.

14 Q. Thank you very much, Mr. Stowers. Please answer any  
15 questions that counsel for either Mr. Reid or Mr. Henson  
16 may have.

17 CROSS EXAMINATION

18 DOMINICK STOWERS BY MS. ANDERSON:

19 Q. Mr. Stowers, you weren't involved in any way, with  
20 what happened October 1st of 2009. Right?

21 A. No, ma'am.

22 Q. You just happened to be riding by on your bike at the  
23 time?

24 A. Yes, ma'am.

25 Q. And so what you're relaying to the Court today and the

DOMINICK STOWERS: CROSS BY MS. ANDERSON

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1 jury today is just what you saw that day?

2 And you don't have --

3 THE COURT: He didn't answer.

4 A. Yes, sir.

5 Q. And you don't have any reason not to be honest about  
6 what you saw that day?

7 A. No reason.

8 Q. And from what you could see, you could see it clearly  
9 enough that you believed you did see a robbery taking  
10 place. Correct?

11 A. Yes, ma'am.

12 Q. And so from where you were, you felt like you were  
13 seeing it as it was happening... Correct?

14 A. Yes, ma'am.

15 Q. And you testified that the people that you saw you  
16 thought were actually robbing the individuals on the porch,  
17 that there were two of them. Right?

18 A. Say that again.

19 Q. That there were two robbers that you saw. Right?

20 A. I seen one person with a gun. I seen three people  
21 standing around.

22 Q. And you said you saw some people were on the porch.  
23 Right?

24 A. Yes, ma'am.

25 Q. And you saw the one guy with the gun?

1 A. Yes, ma'am.

2 Q. And you saw one person you said you thought was  
3 female?

4 A. Yes, ma'am.

5 Q. And when you talked with -- you met with the police  
6 back in October, on October 2nd, you talked with the  
7 Lieutenant Dalton on that day?

8 A. Yes, ma'am.

9 Q. And do you recall telling him on that statement that  
10 you saw two people robbing some people on a porch?

11 A. No, ma'am. I told him what I seen.

12 Q. And you said, you testified, that you did hear the  
13 female, person you thought was female, say something?

14 A. Yes, ma'am.

15 Q. And you heard her say something to the effect of,  
16 "They're going to identify us" or something to that manner?

17 A. Yes, ma'am.

18 Q. And then you heard gunshots after that?

19 A. Yes, ma'am.

20 Q. And then that was when you started running?

21 A. Yes, ma'am.

22 Q. But from where you were, it sounded to you like the  
23 gunshots happened after you heard this female say  
24 something?

25 A. Yes, ma'am.

DOMINICK STOWERS: CROSS BY MR. CHIARENZA

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1 MS. ANDERSON: Nothing further, Your Honor.

2 THE COURT: Mr. Chiarenza?

3 CROSS EXAMINATION

4 DOMINICK STOWERS BY MR. CHIARENZA:

5 Q. Mr. Stowers, I'm just a little bit confused, so I just  
6 want to ask you one or two questions to clarify. Are you  
7 saying that in addition to the folks that were on the  
8 porch, you saw four other people involved in the commission  
9 of the robbery, in doing the robbery, or being with the  
10 robbers?

11 A. People I seen being with the robbers, I seen two  
12 people. I seen a girl and a boy. I seen, like, three  
13 people on the porch.

14 Q. Okay, because I thought when you first started, you  
15 said you saw a boy, a girl, and another boy, and another  
16 girl, and --

17 A. Yeah, it could have been my cousin and them. It could  
18 have been -- It could have been the people who was getting  
19 robbed. I mean, I just seen like four or five people in  
20 all.

21 Q. Maybe four or five people total? Okay so, you're just  
22 not really sure of what you saw. Is that what you're  
23 saying?

24 A. No, sir. I know what I seen. I'm telling you what I  
25 seen.

DOMINICK STOWERS: CROSS BY MR. CHIARENZA  
OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 Q. How many girls do you think you saw?

2 A. At least one.

3 Q. Possibly two?

4 A. Possibly two, but at least one.

5 Q. Okay.

6 MR. CHIARENZA: That's all I've got, Your Honor.

7 THE COURT: Redirect?

8 MR. BRACKETT: Nothing further.

9 THE COURT: Thank you, Mr. Stowers. You may be  
10 excused. I appreciate your time.

11 (WITNESS LEAVING WITNESS STAND.)

12 THE COURT: Call your next witness.

13 MR. THOMPSON: May it please the Court, Your Honor,  
14 the State would call Officer Leland Harrelson with the Rock  
15 Hill Police Department.

16 Would you go up and be sworn, Mr. Harrelson.

17 (WHEREUPON: LELAND HARRELSON,  
18 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 DIRECT EXAMINATION

20 LELAND HARRELSON BY MR. THOMPSON:

21 Q. Officer Harrelson, could you give your full name for  
22 the Court, please?

23 A. Hugh Leland Harrelson, Junior.

24 Q. And where do you live, Officer Harrelson?

25 A. I live here in Rock Hill.



OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 Q. And how long have you been with the Rock Hill Police  
2 Department?

3 A. I've been with the police department for four years.

4 Q. And can you tell me, back in October 1st of 2009, were  
5 you with the Rock Hill Police Department at that point?

6 A. I was.

7 Q. And what were your duties then?

8 A. I was assigned to the Rock Hill Police Street Crimes  
9 Unit.

10 Q. And did you become involved in this case at that time?

11 A. I did. Yes, sir.

12 Q. And how did you become involved?

13 A. I was the first one to respond on scene.

14 Q. Do you remember when it was that you were called out?

15 A. It was approximately Eleven o'clock in the evening.

16 Q. And where were you when you received the call?

17 A. I was at the intersection of Black Street and Wilson  
18 Street right near the post office in downtown Rock Hill.

19 Q. Is that far away from the place we're talking about on  
20 Byars Street, [REDACTED] [REDACTED]?

21 A. No, sir. It's only four or five blocks away.

22 Q. So were you able to get there rather quickly?

23 A. I did. Yes, sir.

24 Q. And when you came in on Byars Street, did you come in  
25 from the side of Scoggin Street or did you come in from the

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 other side?

2 A. I came in the side of Scoggin Street.

3 Q. And did you actually drive down Scoggin Street or how  
4 did you arrive? What was your path at that point?

5 A. Yeah, I came down Maple Street -- Yeah, I came down  
6 Maple Street past Scoggins, and then made a left on Byars  
7 Street and went all the way down and stopped just short in  
8 front of the residence.

9 Q. Do you recall what time you arrived there?

10 A. It was two or three minutes after the call initially  
11 came out.

12 Q. And what was the scene like when you arrived?

13 A. I saw a gentleman laying on the porch. And I could  
14 see that the glass of the door had been shot. And I saw  
15 some lights on inside the residence.

16 Q. Could you hear people inside the residence?

17 A. I could. Yes, sir.

18 Q. What were you hearing from inside the residence?

19 A. I could hear people talking to each other. I exited  
20 my patrol vehicle, approached the house, walked up to the  
21 steps, checked on the gentleman on the steps. He was  
22 unresponsive. And then I went on into the residence to  
23 secure the residence.

24 Q. And the young man that was at the top of the steps,  
25 can you describe exactly how he was when you found him?

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 A. He was laying almost at the very top, kind of at the  
2 porch area, and he was laying just kind of face down. And  
3 I came by and, you know, just kind of shook him and asked  
4 him if he was okay. He didn't say anything to me. I went  
5 on inside the residence to secure it to make sure the  
6 suspects had left so EMS, the medical technicians, could  
7 come on in, and that it was a safe environment for them.

8 Q. So is that one of your first duties when you arrive on  
9 the scene to secure and make sure that there is no more  
10 perpetrators there?

11 A. It is, yes, sir.

12 Q. And you did that at that time?

13 A. I did.

14 Q. Did you meet Maurice Jackson inside?

15 A. I did, yes.

16 Q. And how about Kenny Cunningham?

17 A. Yes, they were both inside the residence.

18 Q. Who else, if anyone, was inside the residence at that  
19 time?

20 A. I believe it was one of their -- it's the grandmother.  
21 She was inside. She was just sitting in a chair in the  
22 living room where everybody was.

23 Q. And can you describe the demeanor of both Maurice  
24 Jackson and Kenny Cunningham when you arrived?

25 A. They were both, you know, just very excited, you know.

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1 You could definitely tell something did happen. They were  
2 just both just, you know, just talking to me, you know,  
3 just shouting out what had happened. You know, I tried to  
4 take them in, you know.

5 I searched the residence. I asked them if anybody  
6 else was here. They said, no, that they had ran. And I  
7 went ahead and just walked through the residence to make  
8 sure, you know, nobody else as far as the suspects were  
9 still inside.

10 Q. Was either one of them injured at the time, that you  
11 could tell?

12 A. I believe it was Mr. Cunningham was laying on the  
13 floor directly in front of the door. And I could see that  
14 he had been shot in his foot and leg area.

15 Q. Now at this point when in your investigation, you  
16 cleared the house, what is the next thing that you are  
17 supposed to do as an officer or as the first officer on the  
18 scene?

19 A. I spoke with both of the victims and tried to get a  
20 description of the suspects to try to get it out to other  
21 officers that are responding, so in case, you know, they --  
22 if it's a vehicle. If they pass a vehicle or, you know,  
23 also the physical and clothing description of the suspects  
24 in case they would observe them walking down the street or  
25 cutting through a wood line.

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 Q. Now you're in a suit today, were you in an officer's  
2 uniform that day?

3 A. Yes, I was in a uniform that day, and also I was in a  
4 marked police car.

5 Q. And now you say you would call out the description  
6 that they would give you. Do you have your radio on? Is  
7 it a handheld device or is it one of the ones that's kind  
8 of hooked to your shoulder?

9 A. Yes, a handheld device. I have a mic on my shoulder.  
10 And I called it out, you know, as soon as I got information  
11 from them as what they looked like and what they were  
12 wearing. I called it out to the other units, you know,  
13 arriving on scene.

14 Q. Do you recall the descriptions that you called out  
15 that night?

16 A. Yeah, it was a black male that had dreads. I think  
17 the approximate height was 5'6," 5'7," 150 to a 160 pounds.  
18 Also, there was a black female who had on pink pants. And  
19 I think she was around 5 foot, 120, a 130 pounds.

20 Q. And were you able as well -- Did they give you any  
21 description of a weapon that you called out as well?

22 A. They said it was an automatic-type rifle.

23 Q. Were they able to tell you about the robbery itself?

24 A. They told me that --

25 MR. CHIARENZA: Your Honor, I'm going to object.

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1 That's hearsay.

2 Q. Well then, let's go this way.

3 A. Yes, sir.

4 Q. Were you able to call out then what direction that the  
5 perpetrators left?

6 A. Yes, sir, I did. They had told me that they had --

7 MR. CHIARENZA: Your Honor, I'm going to object to  
8 hearsay and --

9 MR. THOMPSON: It's what he called out. It's not --

10 THE COURT: Wait, wait. What now?

11 MR. THOMPSON: It's what he called out.

12 THE COURT: Well you can testify to what he called  
13 out.

14 MR. CHIARENZA: Well --

15 THE COURT: Let me let the jury go to the jury room  
16 just a minute while I take up a matter of law.

17 (JURY EXITS COURTROOM AT 03:59 PM.)

18 THE COURT: Mr. Chiarenza, the point is, he couldn't  
19 call out anything unless he heard it from someone. So,  
20 it's an indirect way of getting it in.

21 MR. THOMPSON: And that's true; however, Mr. Chiarenza  
22 also questioned heavily both of the victims on the  
23 descriptions they had given and whether they only came up  
24 with some of those descriptions when they spoke with our  
25 office. I'm allowed now to show that they did not come up

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1 with those just speaking to our office. At the time of the  
2 actual crime, they told the officer who arrived. And he's  
3 confirming that with some of those descriptions. And that  
4 would include not just descriptions of the defendants, but  
5 descriptions of what happened.

6 MR. CHIARENZA: I'll buy that if that's been  
7 memorialized in writing somewhere, but I haven't seen any  
8 notes, or reports, or anything to that effect.

9 MR. THOMPSON: If Mr. Chiarenza would go over the CAD  
10 report, it's listed out and written down what was called  
11 out.

12 MR. CHIARENZA: Well if Mr. Thompson wants to lay a  
13 foundation for that report, he can do that, Your Honor.

14 MR. THOMPSON: I don't have to. I have the officer  
15 who called it out.

16 THE COURT: Well, why does this not fall in 803-2 an  
17 excited utterance?

18 MR. THOMPSON: It would fall under that as well. He's  
19 already --

20 THE COURT: I hate to bring that up. I hate to be the  
21 one to bring it up.

22 MR. THOMPSON: Well, and it would fall under that,  
23 Your Honor. One of the reasons I asked for the demeanor  
24 was -- during that -- was to point out they --

25 THE COURT: Well, I find under Rule 803 and 2 that

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1 it's a condition or startling event. Everybody I think can  
2 argue with that under the stress of excitement caused by  
3 the event or condition.

4 So, I'll allow it in.

5 MR. CHIARENZA: Your Honor, just for the record, I  
6 would submit that this is more -- This is an interrogation,  
7 it is an officer asking questions of a witness to prepare  
8 for trial and testimony. The excited utterance might be  
9 the 911 tape or something immediately blurted out, but once  
10 a line of questioning occurs, I think, we're looking at a  
11 Crawford situation. This officer is clearly gathering  
12 evidence for trial or as part of his investigation. So, I  
13 would just bolster my objection. But I don't think this  
14 falls under excited utterance.

15 THE COURT: Anything else, Mr. Thompson?

16 MR. THOMPSON: The only thing I would put on the  
17 record, Your Honor, is that the officer -- That this is in  
18 preparation for trial. This isn't trying to capture the  
19 assailants. This is not -- "Oh, let's prepare for trial  
20 now as he arrives on the scene." He's putting out a call  
21 to try and apprehend the assailants at that point. He's  
22 not thinking about what's going to happen later on in  
23 General Sessions Court.

24 THE COURT: Well I'm going to allow it in.

25 Bring in the jury.



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1 I'm going to bring the jury back in, but while they're  
2 in, they...

3 Would you see if they have some coffee?

4 THE BAILIFF: Sir?

5 DEPUTY FERGUSON: Make some coffee.

6 THE COURT: I'm going to bring the jury back in and  
7 we'll make some coffee for them.

8 (JURY REENTERS COURTROOM AT 04:03 PM.)

9 THE COURT: I miss read it. We've got coffee. We'll  
10 get water. I misread. All right.

11 Would you all like some water brought in here? I'll  
12 be glad to do it. Everybody says their fine now, we'll  
13 make sure you have some. I apologize for not having it.

14 MR. THOMPSON: Thank you, Your Honor. If it please  
15 the Court.

16 DIRECT EXAMINATION - CONTINUED

17 LELAND HARRELSON BY MR. THOMPSON:

18 Q. Officer, in what you were calling out at that time,  
19 were you able to call out, from what they were able to give  
20 you, a direction that the suspects were heading?

21 A. Yes, sir. If I was standing on the porch looking out  
22 at Byar Street, they stated to me that the suspect ran to  
23 the left, which would be down Byars towards Maple and  
24 Scoggins Street.

25 Q. And again, were they able to tell you how many

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 suspects you were looking for at that point?

2 A. They stated two.

3 Q. And you have already mentioned the description of a  
4 male and female; is that correct?

5 A. That is correct.

6 Q. Did they mention whether they were black or white?

7 A. They both mentioned they were black.

8 Q. And anything about the rifle that was given to you  
9 that you called out?

10 A. They said it -- they thought it was like an automatic-  
11 type rifle.

12 Q. Now I believe you gave the description earlier, you  
13 called out the description of all black. Did they say  
14 anything about whether their faces were covered?

15 A. They did say the face of the male was covered, and the  
16 female.

17 Q. Did they -- Do you recall as far as the face of the  
18 male, did they tell you how it was covered?

19 A. They said it was like a ski mask, had the eyes and the  
20 mouth cut out.

21 Q. Now when you arrived and looked at the situation  
22 itself. Also, I'm going to go back. I haven't finished  
23 with some of the descriptions I'd like you to go to. What,  
24 if anything, were they able to tell you about the actual  
25 incident itself?

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1 A. They said they were standing on the porch, said the  
2 male and female approached them, said the male had a rifle  
3 in his hands. They told them to give it up, to give them  
4 all of their money. They searched all three of them, took  
5 their cell phones and money, and stated, you know, if they  
6 gave up what they had that they would not shoot. Said that  
7 the female searched them, took the items off of them. And  
8 then as she stepped back, the male started to fire upon  
9 them.

10 Q. Now as you arrived, was the house light on when you  
11 arrived there that night?

12 A. Yes, sir. The front porch light was on.

13 Q. And were there streetlights on as well, on the street?

14 A. Yes, sir.

15 Q. After you called out the initial descriptions and  
16 everything, did any other officers arrive soon after that?

17 A. Yes, they did.

18 Q. And who were those officers?

19 A. There were two officers that arrived shortly after I  
20 did, Officer Swagger and Officer Andrews.

21 Q. And can you tell me, when they arrived, what became  
22 your duty at that point in time? After you called these  
23 out and these officers arrived, what did you do next?

24 A. I stayed inside the residence with both of them and  
25 just kept trying to get information, and we'd go back over

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON  
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1 it to make sure that we did have everything correct.

2 Q. And can you tell me, outside, what were the other  
3 officers doing at that point in time who had arrived?

4 A. I observed some other officers pull out some business  
5 cards that they had. There were multiple shell casings on  
6 the ground in front of the residence. I observed them.  
7 They would fold the card in half and stick the card over the  
8 shell casing, so as EMS was working and other officers  
9 came, they wouldn't knock the shell casings around.

10 Q. And did EMS come shortly thereafter?

11 A. They did.

12 Q. Did they try to work on both Mr. King and Mr.  
13 Cunningham?

14 A. They did.

15 Q. And how long did you stay at the scene that night?

16 A. I was there approximately an hour, an hour and a half.

17 Q. And as you told -- As they told you these things,  
18 there were things that you called out over the radio; is  
19 that correct?

20 A. That is correct. All the information they gave me, I  
21 called out over the radio to other officers.

22 Q. Thank you. No further questions.

23 CROSS EXAMINATION

24 LELAND HARRELSON BY MS. ANDERSON:

25 Q. Officer Harrelson, the dispatch calls essentially for

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1 a shots fired call. Correct?

2 A. I believe that is right.

3 Q. And in the dispatch call that you responded to, there  
4 were no named suspects listed?

5 A. That is correct.

6 Q. So essentially, you were going there. You didn't have  
7 any idea who was involved? You were going there to  
8 investigate that?

9 A. That is right.

10 Q. And you were the first officer on the scene. Correct?

11 A. I was.

12 Q. So you would have been the first officer or the first  
13 in, sort of, person from Rock Hill Police Department to  
14 speak to any of the witnesses on the scene?

15 A. That is correct.

16 Q. And you indicated that you were able to speak with  
17 Maurice Jackson, a guy you named?

18 A. Yes.

19 Q. And Kenny Cunningham, also.

20 A. Yes.

21 Q. So Mr. Cunningham was injured and did require medical  
22 attention?

23 A. He did.

24 Q. But he was conscious at the time and was able to relay  
25 some information to you?

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1 A. Yes, Mr. Cunningham also gave me some information.

2 Q. And Mr. Jackson was not injured, so you were able to  
3 talk with him probably more thoroughly?

4 A. I talked with both of them at the same time.

5 Q. Okay. And you indicated that this -- You responded  
6 only a few minutes after this had taken place?

7 A. Yes.

8 Q. And you testified that when some other officers  
9 arrived on scene subsequently, that they were placing  
10 business cards over -- it looked like some shell casings?

11 A. Yes, I observed them doing that from inside the  
12 residence.

13 Q. So essentially, that was to preserve any evidence that  
14 Forensics might be able to process. Correct?

15 A. Yes.

16 Q. And when you talked with Mr. Jackson and Mr.  
17 Cunningham, both were consistent of that evening relaying  
18 to you that there were two people who came up and robbed  
19 them. Correct?

20 A. That is right.

21 Q. And there was one individual with a gun?

22 A. That is right.

23 Q. And that was the male they described to you?

24 A. Yes.

25 Q. And an incident report was filed in this case.

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1 Correct?

2 A. Correct.

3 Q. And were you actually the officer who drafted, wrote  
4 the incident report?

5 A. I did not write the incident report.

6 Q. Then that would be Officer Swagger that wrote the  
7 incident report?

8 A. Yes -- Well, I can't -- I did not see him write it. I  
9 believe his name is on the report.

10 Q. And you indicated you did not draft the incident  
11 report in this, but you are familiar with what an incident  
12 report is. Correct?

13 A. I am.

14 Q. And essentially what an incident report is, it is sort  
15 of the first report written about a case?

16 A. Yes, it's just a -- It has all the descriptions of  
17 everybody involved as far as a suspect or a victim. It  
18 also has the address and a brief, narrative summary of what  
19 took place.

20 Q. And an incident report would usually be written fairly  
21 shortly after an officer has responded to a scene and  
22 conducted some sort of investigation. Correct?

23 A. Yes.

24 Q. And it's going to be written while the information  
25 basically is fresh in the officer's mind?

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1 A. That is correct.

2 Q. And an incident report -- Because an incident report  
3 may ultimately be forwarded on to a detective if additional  
4 investigation is needed?

5 A. That is right.

6 Q. But that would be the information that the detective  
7 would have about sort of the first information learned  
8 about the case?

9 A. Yes.

10 Q. And have you had an opportunity to look over the  
11 incident report by the Officer Swagger in this case?

12 A. I have.

13 Q. And just before we get to that, you testified on  
14 direct that you relayed that the suspects ran to the left  
15 down Byars Street?

16 A. That is right.

17 Q. And in the CAD report, it indicates that the call was  
18 toward Downey Street?

19 A. Downey Street is not in the area of Byars Street.

20 Q. Okay so, from this map that the State has on the  
21 board, Downey Street does not appear on that?

22 A. That is right.

23 Q. So your indication was that they did not run toward  
24 Downey Street? That was not in the information you  
25 relayed?



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1 A. That is not.

2 Q. I'm going to have you just look over and verify if  
3 that is the incident report that Officer Swagger filed on  
4 this case.

5 A. Yes, this is the incident report.

6 Q. And that incident report was written, I believe it  
7 says on the date on October 1st of 2009?

8 A. On this, that's right.

9 Q. And it was approved by an approving officer on October  
10 2nd 2009?

11 A. That is correct.

12 Q. And so it appears that Officer Swagger would have  
13 wrote this report within hours actually of perhaps being on  
14 scene?

15 A. That is correct.

16 Q. And if you look through -- If you look on that report,  
17 and look through that report, there is no mention of Donta  
18 Reid's name in that report. Correct?

19 A. That is correct.

20 Q. And when you arrived on scene at [REDACTED] [REDACTED] on  
21 October 1st, 2009, you did not come in contact with Donta  
22 Reid. Correct?

23 A. I did not.

24 Q. You did not come in contact with him at any point on  
25 October 1st, 2009?

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CROSS BY MR. CHIARENZA

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1 A. I did not.

2 Q. And when you spoke to Kenny Cunningham on October 1st,  
3 2009, he did not mention Donta Reid to you that time?

4 A. No, he did not.

5 Q. And when you spoke to Kenny Cunningham on October 1st,  
6 2009, he did not accuse Donta Reid of being a robber, of  
7 being involved in a robbery.

8 A. No, he didn't.

9 Q. And then when you spoke to Maurice Jackson on October  
10 1st, 2009, he did not mention the name Donta Reid to you?

11 A. That is correct.

12 Q. And when you spoke to Maurice Jackson on October 1st,  
13 2009, Maurice Jackson did not accuse Donta Reid of being  
14 involved in the robbery?

15 A. He did not.

16 Q. And in the course of your investigation on October  
17 1st, 2009, at no point was the name Donta Reid mentioned to  
18 you?

19 A. It was not.

20 MS. ANDERSON: No further questions, Your Honor.

21 THE COURT: Mr. Chiarenza?

22 MR. CHIARENZA: Thank you, Your Honor.

23 CROSS EXAMINATION

24 LELAND HARRELSON BY MR. CHIARENZA:

25 Q. Officer Harrelson, I'm going to stick along the same

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1 lines of the incident report that Ms. Anderson was  
2 questioning you about.

3 These reports, they're generated -- I guess they're a  
4 summary. In this case, I see your name on the bottom and  
5 Officer Swagger's name on the bottom. So can we glean from  
6 that, that the information in this report came from both  
7 you and Officer Swagger, some combination?

8 A. I relayed the information that I had before I left the  
9 scene to Officer Swagger.

10 Q. Okay. And then that information ends up in this  
11 report?

12 A. That is correct.

13 Q. And giving your testimony today you -- I mean this was  
14 two years ago and I suspect you've been involved in a lot  
15 of other calls between then and now. You're not simply  
16 recalling all this just from memory are you?

17 A. Some of it I remember and some of it, you know, I  
18 refresh my memory as far as reading the incident report,  
19 and also the call log the dispatch had.

20 Q. Now when you reviewed this incident report, did you  
21 notice that the description of the unknown black male --  
22 Well first of all, would that be referring to the shooter  
23 in this case? The unknown black male?

24 A. Yes, they said that there was a male that pulled the  
25 trigger.

OFFICER LELAND HARRELSON: CROSS BY MR. CHIARENZA

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1 Q. Okay. Can you just read what's given as his height  
2 and weight description?

3 A. It says 5'9," 145.

4 Q. And so that information had to be either relayed by  
5 you or Officer Swagger?

6 A. That is correct.

7 Q. And there's some other information in this report. I  
8 believe you've testified to some of it about the weapon was  
9 a rifle, and what direction down Byars Street they went,  
10 and that the girl was wearing pink pants. Please tell me  
11 if you find anywhere in this report a mention of the  
12 unknown black male shooter having dread locks?

13 A. It does not say in this report.

14 Q. And just one more -- while you got it --

15 A. Sure.

16 Q. Does it say anywhere in there that either one of the  
17 victims relayed to you any sort of accent or how the --  
18 what the unknown black shooter sounded like?

19 A. It does not.

20 Q. Did they, in fact, relate that to you that it may not  
21 be in this report, anything about his accent or anything  
22 like that. Do you recall that?

23 A. No, they did not relay anything to me about an  
24 accident.

25 Q. Thank you very much, Officer.

OFFICER LELAND HARRELSON: REDIRECT BY MR. THOMPSON

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1 THE COURT: Redirect?

2 MR. THOMPSON: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 OFFICER LELAND HARRELSON BY MR. THOMPSON:

5 Q. You had mentioned that you could go look at the  
6 incident report in your call log. What is the call log?

7 A. The call log is what I -- What I say to other  
8 officers. Dispatch actually types it in and every officer  
9 has a computer in their vehicle. And that way they can go  
10 back and actually look at a narrative of the radio traffic  
11 that's been going on to refresh their memory on something.  
12 Or, you know, if they step out of the vehicle and they just  
13 don't hear it, they can go back and actually look and see  
14 the conversations that's been going on over the radio.

15 Q. And was the description of dreads of the black male  
16 shooter, was that listed in the call log?

17 MR. CHIARENZA: Your Honor, I'm going to object. I  
18 think that's outside the scope of my cross examination.

19 A. It was.

20 THE COURT: No, I think it was a question about ---

21 MR. THOMPSON: It was directly.

22 THE COURT: --- did it or did it not have a reference  
23 somewhere about the dreads.

24 MR. CHIARENZA: It came in, in the incident report,  
25 and this -- And Mr. Thompson's had an opportunity to do a

OFFICER LELAND HARRELSON: REDIRECT BY MR. THOMPSON

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1 direct examination.

2 THE COURT: I overrule the objection.

3 MR. CHIARENZA: Thank you.

4 BY MR. THOMPSON:

5 Q. In the call log, does it mention the dreads?

6 A. Yes, the call log did have a -- my description of  
7 dread locks.

8 Q. And again, that's what you called out. Correct?

9 A. That is correct.

10 Q. Thank you.

11 THE COURT: Ms. Anderson?

12 MS. ANDERSON: Nothing further.

13 THE COURT: Mr. Chiarenza?

14 MR. CHIARENZA: No, Your Honor.

15 THE COURT: All right. Call your next witness.

16 You can step down and be excused. We appreciate your  
17 time.

18 OFFICER HARRELSON: Yes, sir.

19 (WITNESS LEAVING WITNESS STAND.)

20 MR. BRACKETT: The State would call Investigator Brian  
21 Bagwell.

22 MADAME CLERK: Please raise your right hand, place  
23 your left on the Bible.

24 (WHEREUPON: BRIAN BAGWELL, BEING

25 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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## DIRECT EXAMINATION

BRIAN BAGWELL BY MR. BRACKETT:

Q. Good afternoon, sir. Would you please state your full name and spell your last for the Court Reporter?

A. Yes, my name is Brian Bagwell, B-a-g-w-e-l-l.

Q. And where are you employed, sir?

A. With the York County Sheriff's Office.

Q. What do you do for the Sheriff's Office?

A. I am currently assigned to the Forensic Services Unit.

Q. What -- Can you tell the jury what the Forensic Services Unit is?

A. Yes, sir. Typically, we respond to crime scenes --

THE COURT: We need that --

MR. BRACKETT: Not this particular picture, but we'll need another one in just a moment.

THE COURT: That's fine.

A. Typically, we respond to crime scenes and process that scene whether it be -- whatever kind of scene it may be. We document the scene with either sketches or photographs. And we collect whatever physical evidence we may come across as evidence.

Q. So would that be like CSI?

A. Sort of, but not like TV. No, it works a little different than that.

Q. What's the difference?

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 A. The difference is they get results in 10 or 15 minutes  
2 and it might take us 6 weeks to get a DNA result back or,  
3 you know, along those lines.

4 Q. All the tests and scientific gizmos that they have on  
5 CSI, do you -- do those really exist? Do you have all that  
6 stuff?

7 A. Some of them we do have. They use them improperly on  
8 TV. They don't work the same as we have, and the way  
9 they're actually used, but yeah, we have some of the same  
10 tools.

11 Q. But not all of them?

12 A. Not all of them, no.

13 Q. How long have you been doing crime scene  
14 investigation?

15 A. Since about 2001, so 10 years, roughly.

16 Q. So you're very well experienced.

17 A. Yes, sir.

18 Q. Have you -- During that time, have you been going to  
19 training and --

20 A. Yes, sir, I have.

21 Q. And have you -- With 10 years of experience, have you  
22 ever been qualified in court as an expert in crime scene  
23 investigation?

24 A. Yes, sir, I have.

25 Q. In state court?



INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 A. Yes, sir.

2 Q. In this court?

3 A. In this court, yes, sir.

4 Q. By that judge?

5 A. Yes, sir, by that judge.

6 Q. All right.

7 MR. BRACKETT: Your Honor, at this time, I would move  
8 that Investigator Bagwell be qualified as an expert in  
9 crime scene investigation.

10 THE COURT: Any voir dire?

11 MS. ANDERSON: No, Your Honor.

12 THE COURT: Mr. Chiarenza?

13 MR. CHIARENZA: No objection, Your Honor.

14 THE COURT: I find he is qualified.

15 MR. BRACKETT: All right, sir.

16 Q. Now were you working the evening of October the 1st of  
17 2009?

18 A. I was on call, yes, sir.

19 Q. When you're on call, what does that mean?

20 A. That means we're on telephone standby. Basically, if  
21 an incident happens where they need our assistance, they  
22 will page us or text us out and have us respond to the  
23 scene.

24 Q. Did you get texted out for an incident on that evening  
25 around Eleven o'clock?

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 A. Yes, sir, I did.

2 Q. And where were you sent to?

3 A. To Byars Street. I don't remember the number. We'll  
4 have to check the report, but it was on Byars Street.

5 Q. Does [REDACTED] sound about right?

6 A. That is correct, yes, sir.

7 Q. Now what did you find when you -- Do you know about  
8 the time you got there?

9 A. I believe it was around 11:30-ish when I arrived on  
10 the scene.

11 Q. What did you find when you got there?

12 A. When I arrived on the scene there was a numerous  
13 number of Rock Hill officers and detectives already on the  
14 scene. There was a lot of shell casings laying out on the  
15 front walkway area. The officers had been kind enough to  
16 put little white tents up and mark the location, the ones  
17 that they saw for me. We noticed some little plastic  
18 baggies; some currency laying on the steps; of course, some  
19 blood; some EMS items on the porch area. That kind of  
20 thing.

21 Q. Now let me back up one second. You said you work for  
22 the Sheriff's Office?

23 A. Correct.

24 Q. And this happened in the City of Rock Hill?

25 A. That's correct.

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1 Q. How are you and the Sheriff's Office doing work in the  
2 city case?

3 A. We have a Multi-jurisdictional Unit where all the  
4 agencies come together and put a person in that unit so  
5 that we're able to respond anywhere in the county. Rock  
6 Hill officers can respond to York County and work  
7 incidents, and I can respond in city limits and work  
8 incidents.

9 Q. So you were the officer on call that night?

10 A. Yes, sir.

11 Q. Now when a crime like this happens, what is the --  
12 What is the duty as far as crime scene preservation and  
13 crime scene investigation, what are the duties of the first  
14 responding officer?

15 A. The first responding officer is to rope off the area  
16 to make sure that none of the items that may be laying  
17 around get disturbed, damaged, moved, touched, or anything  
18 along those lines. So they will rope it off and secure the  
19 scene.

20 Q. And what do they use to rope it off with?

21 A. Crime scene tape, typically. Yellow-barrier tape.

22 Q. And what's the point of roping it off?

23 A. To keep unwanted individuals out and, like I said, to  
24 make sure nothing happens to the integrity of the scene.  
25 You know, if there's a shell casing laying there in the

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1 road and a vehicle rolls across it, it could get caught in  
2 the tread and, of course, it's carried away. So, it's  
3 imperative to make sure nobody gets in and alters the  
4 scene.

5 Q. When you arrived on the scene, did it appear that  
6 first responding officers had properly performed their  
7 responsibilities as far as preserving the crime scene?

8 A. Yes, sir. As I recall, it had barrier tape up around  
9 the perimeter of the yard.

10 Q. And nobody's allowed in there until y'all do your  
11 work; is that correct?

12 A. It's supposed to be, yes, sir. But sometimes officers  
13 go in and out if they're talking. There might be a witness  
14 left in the house. It could be an elderly subject, and  
15 they're still going back and forth talking to that person.  
16 So, it's -- it's open for debate, but --

17 Q. Well, an EMS as well; isn't that right?

18 A. Correct.

19 Q. If there's somebody injured at the scene, then they  
20 have to go in.

21 A. Correct.

22 Q. Okay. Now were you able to set up and document this  
23 particular crime scene?

24 A. Yes, sir. When I arrived, I took digital photographs  
25 of the incident location, and I did a sketch of the

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 incident location as well.

2 Q. I'm going to show you a series of photographs that are  
3 marked State's Exhibit One through Thirty-two. If you  
4 would just look through those quickly and tell me if you  
5 can recognize what is depicted in those photographs, and if  
6 you know who took those photographs.

7 A. Yes, sir. These would be photographs taken by myself  
8 the night of the incident when I arrived at the scene.

9 Q. Do those photographs depicted in State's Exhibit One  
10 through Thirty-two, thirty-two photographs you're holding  
11 in your hand, do they accurately depict the crime scene at  
12 [REDACTED] [REDACTED] as you found it at approximately 11:30 and  
13 the following hours during which you were processing the  
14 scene?. Do they accurately depict that scene during that  
15 time period as you found it that night?

16 A. Yes, they do.

17 MADAME COURT REPORTER: Excuse me, Mr. Brackett.  
18 Would you come look at this, sir.

19 MR. BRACKETT: Oh, there's one left out?

20 MADAME COURT REPORTER: Yes, sir.

21 MR. BRACKETT: Thank you so much.

22 Q. State's Exhibit Three. Can you tell me whether or not  
23 you recognize that?

24 A. Yes, sir. It's also a photograph I took the night of  
25 the incident.

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1 Q. And does that likewise accurately depict the scene as  
2 you found it?

3 A. Yes, sir.

4 Q. All right, sir. Now can you tell me if you recognize  
5 what's been marked as State's Exhibit Thirty-three for  
6 identification?

7 A. Yes, sir.

8 Q. And what is that?

9 A. That is a crime scene sketch that I diagramed the  
10 night of the incident.

11 Q. And does that crime scene sketch accurately depict the  
12 scene and the items that you found in it?

13 A. Yes, sir.

14 Q. We'll talk about that a little bit more, but at this  
15 time I would move State's Exhibit Thirty-three for  
16 identification into evidence.

17 THE COURT: Any objection?

18 MS. ANDERSON: No objection, Your Honor.

19 MR. CHIARENZA: No objection.

20 THE COURT: In without objection.

21 MR. BRACKETT: Okay.

22 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-THREE  
23 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

24 Q. Right here, Investigator, if you would is a pointer.  
25 And if you would, take us to State's Exhibit Thirty-

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1 three.

2 Can you shut the lights down? Thank you so much.

3 (COURTROOM LIGHTS LOWERED.)

4 Q. Can you tell us what is -- Just basically orient the  
5 jury if you would, to what we're seeing in that diagram.

6 A. All right. What we're looking at, this is the diagram  
7 of the house itself. It's basically an overview if you  
8 were looking down on top of the house. This would be the  
9 front porch area. This would be the fence, the wooden  
10 fence that you see in some of the pictures. And all these  
11 numbers are the evidence markings and cones and items of  
12 evidence that I collected that night.

13 Q. Now when you say, "cones," what are you talking about?

14 A. We have numbered cones that we put out once we  
15 initially photograph the scene. Some of the pictures do  
16 not have numbered cones in it. We document as is, and then  
17 we go back and put numbered cones on it so that we can  
18 identify it back to that cone at a later time.

19 Q. So each cone would indicate an item of interest that  
20 was found in the crime scene?

21 A. That's correct.

22 Q. And that numbers of a legend on the right side, does  
23 that correspond with the cones, telling what each one is?

24 A. Yes, sir, it does.

25 MR. BRACKETT: Let's see State's Exhibit One, Ms.

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1 Collins.

2 (STATE'S EXHIBITS PUBLISHED ON COURTROOM OVER HEAD.)

3 Q. Can you tell us what that's a photograph of?

4 A. Yes, sir. Cone number one is representing a spent  
5 shell casing that was located out on the scene.

6 Q. And just walk us right up that --

7 A. As we have here, we have items 1, 2, 3, 4, 5. And you  
8 can't really see back here, but we have 7, 8, 9, 10. All  
9 of those are representative of spent shell casings that  
10 were laying out on the sidewalk area of this incident  
11 location.

12 Q. And State's Exhibit Two. Can you tell us what that  
13 depicts?

14 A. May I refer to my key, so that I can make sure that I  
15 get it.

16 Q. Yes, sir. Let me let you hold that.

17 A. Thank you.

18 Q. Yes, sir.

19 A. All right. Item 11 and 12 represents two live rounds  
20 that were found at the incident location, meaning they had  
21 not been fired. They were ejected out of the gun or  
22 dropped. We didn't know at the time, but they were just  
23 live ammunition laying there on the ground.

24 Marker Number 13 is a \$10 dollar bill that was found  
25 on the step.



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1        Number 14 is a plastic baggie, small Ziploc-style  
2        baggie, if I recall correctly.

3        Item Number 15 was a swab with red stain. We had what  
4        appeared to be blood, so we took a swab of it.

5        Item Number 16 down here was a small plastic bag that  
6        was similar in nature to the one on the step.

7        And Number 17 up at the top was another swab with red  
8        stain. It appeared to be blood on the top section that we  
9        swabbed as well.

10       Q.    Okay, sir. How about State's Exhibit Four?

11       A.    That's a picture of the EMS trash, for better  
12       terminology that they, when they were treating patients,  
13       they were ripping bags open, and that's what's left behind  
14       when they were trying to treat somebody.

15       Q.    All right, sir. And State's Exhibit Five?

16       A.    I believe we have two, at least one, bullet hole that  
17       I can recall. That's what we're trying to depict that the  
18       rounds hit the side of the building as well. There was  
19       multiple rounds fired, and I was just trying to get some  
20       shots of the bullet holes.

21       Q.    All right, sir. Six?

22       A.    And that's just a closeup of a bullet hole as well.

23       Q.    Seven?

24       A.    Another closeup shot of a bullet hole.

25       Q.    And I'm going to go back, and you were talking about

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1 some of the spent shell casings that were found. Let's  
2 take a look at eight.

3 A. All right, there's the shell casing right here.

4 Q. Ultimately, what was done with the shell casings that  
5 were located?

6 A. They were collected, of course, packaged and turned  
7 over to evidence control. After investigation, they were  
8 sent down to SLED to ultimately see if they were all fired  
9 from the same weapon.

10 Q. Do you have similar shots of shell casings for 1  
11 through 10, I believe you said?

12 A. Yes, sir.

13 Q. Those are the shell casings?

14 A. Yes, sir.

15 Q. And we'll look at a bunch of pictures of shell  
16 casings. Move right along here. How about 12? I'm sorry,  
17 16.

18 A. That is the live round that I was referring to that  
19 was found on the step area.

20 Q. What caliber were those rounds?

21 A. It appeared to be .22. They didn't an actual stamp on  
22 it, but they appeared to be .22 in size.

23 Q. Smaller caliber?

24 A. Smaller caliber, yes, sir.

25 Q. Number 17?

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1 A. And that's the \$10 dollar bill that was found on the  
2 step area.

3 Q. Number 18?

4 A. Fifteen is a swab with red stain. You can see some of  
5 the staining running across right here. That's what was  
6 swabbed.

7 Q. All right. And Nineteen?

8 A. Nineteen depicts the pants and some bloodied items  
9 that were found laying inside the home next to the couch.

10 Q. Twenty? I'm sorry. I've got State's Exhibit Twenty.

11 A. As you can see, a blood smear on the floor, right  
12 there.

13 Q. And State's Twenty-one?

14 A. I believe we have another bullet hole that we're  
15 trying to depict in that photograph.

16 Q. State's Twenty-two?

17 A. That's just an inside shot of the home. We just  
18 typically take overall shots of the whole location.

19 Q. State's Twenty-four?

20 A. Just showing the front door where a bullet had come  
21 through the door and shattered the glass and struck the  
22 door. Just wanting to get a shot of that.

23 Q. State's Twenty-seven? Those white items in the right  
24 mid-section of the photograph.

25 A. Yes, sir.

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1 Q. What are those?

2 A. Those are the little cones or little tents that I  
3 referred earlier. The patrol officers are kind enough  
4 sometimes that they -- Not all of them will do it, but some  
5 of them will mark what they see on the ground so that we  
6 don't have any trouble finding it. They kind of make it a  
7 little easier for us to locate items of interest.

8 Q. So this is a photograph of the entrance into the yard  
9 where your cones were, but it's before the cones went down?

10 A. That's correct.

11 Q. And off to the left there, you can see it sort of  
12 running across the rear taillights of that car on the left  
13 side.

14 A. Yes, sir.

15 Q. What is that on?

16 A. That is the barrier tape, the crime scene tape.

17 Q. State's Thirty-two.

18 A. And this is a shot from the front porch area just  
19 looking down upon those same tents that we just saw in the  
20 previous picture.

21 Q. All right, sir. Now all the items that you've  
22 referenced, what would you do, again, with the shell  
23 casings that you located?

24 A. Initially, they were collected, put in evidence  
25 envelopes, sealed, signed over to evidence control. We

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1 eventually did a -- Excuse me, I can't think -- a SLED  
2 analysis sheet. I'm sorry, I got tongue-tied there. Do a  
3 SLED sheet to get them to test items for us. We sent them  
4 down to have them tested to see if they were all fired from  
5 the same weapon.

6 Q. Were you -- Did each casing get bagged individually?

7 A. Yes, they did.

8 Q. Were you also able to recover some projectiles?

9 A. Yes, I believe I got two projectiles from the scene.

10 Q. And what do you do with those?

11 A. We collect those the same way, seal them up, put them  
12 in evidence control.

13 Q. What is the value forensically of collecting a  
14 projectile?

15 A. If they are intact, then there's enough of the head  
16 there. You can compare it to a gun. They can test fire a  
17 gun and see if that bullet was fired from that gun because  
18 they leave distinct markings on the bullet.

19 Q. Did you ever recover a gun in your investigation in  
20 this case to compare any of those projectiles to?

21 A. No, sir.

22 Q. All right.

23 MR. BRACKETT: The Court's indulgence for a moment.

24 (PAUSE AT 04:36 PM.)

25 Q. Investigator Bagwell, would you take a look in this

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1 box, and tell me if you recognize what's contained in  
2 there?

3 (WITNESS OPENED EVIDENCE BOX.)

4 A. This box contains items of evidence collected at the  
5 incident location. And it may contain items by Kevin  
6 Sullivan that was taken from, I think, the ER from one of  
7 the victims. So, it's from the scene and later on through  
8 the course of the investigation, other evidence.

9 Q. So a projectile was recovered from, I believe, Mr.  
10 Cunningham?

11 A. I believe so, yes, sir.

12 Q. As well as two projectiles from the scene?

13 A. That's correct.

14 Q. Ten shell casings?

15 A. Yes.

16 Q. All right now, you also recovered two live rounds, I  
17 believe?

18 A. Yes, sir.

19 Q. And were those similarly packaged and sent to SLED?

20 A. Yes, they were.

21 Q. But they're not in here?

22 A. I did not see them, no, sir.

23 Q. I'd ask that this be marked as State's Exhibit Thirty-  
24 six and moved into evidence at this time.

25 MS. ANDERSON: Your Honor, may we approach?

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1 THE COURT: Yes, ma'am.

2 (BENCH CONFERENCE AT 04:40 PM OFF THE RECORD OUT OF  
3 THE HEARING OF THE JURY.)

4 THE COURT: Ms. Anderson, any objection?

5 MS. ANDERSON: No objection.

6 THE COURT: Mr. Chiarenza?

7 MR. CHIARENZA: No objection.

8 THE COURT: In without objection.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-SIX  
10 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

11 Q. And real quick, these items, they are sealed. What's  
12 that red tape across the back?

13 A. It's evidence tape that we put on the back to maintain  
14 the integrity of the envelope. We seal it up, and we can  
15 tell if it's been tampered with or opened up after that  
16 point.

17 Q. And does it have, like, initials, the name of the  
18 person that seized it? Is that your handwriting on the  
19 front.

20 A. I don't believe that one is. I believe that was Kevin  
21 Sullivan's. That might be the projectile taken from --

22 Q. Oh, okay. Well, I grabbed the one bag out of there  
23 that wouldn't -- That's my luck. Let's go with this one  
24 here. Take a look.

25 A. Yes, sir. Yes, sir, that's my initials on the back of

1 the red tape.

2 Q. Okay. So if somebody had gotten into this bag, they  
3 would -- it would be obvious by looking at the bag, either  
4 the tape's going to be torn, or there will be a cut or a  
5 hole in the back?

6 A. That's correct.

7 Q. And those are your initials on the tape?

8 A. Yes, it is.

9 Q. And your handwriting on the front of it?

10 A. Yes, sir.

11 Q. Is that the same true for each of those except for the  
12 projectile that Kevin Sullivan recovered from the victim  
13 Mr. Cunningham?

14 A. Possibly. And I say that because the handwriting may  
15 be different on some envelopes 'cause Directors Means at  
16 the time was out there and he may have filled out some of  
17 the envelopes for me. But I did the actual collecting and  
18 the sealing and the signing of the envelopes.

19 Q. Okay. So it would be a true statement to say that all  
20 these envelopes contained items that you collected, placed  
21 in there and sealed, to make sure that they were -- that  
22 the items that you recovered were placed in a sealed  
23 envelope?

24 A. That's correct.

25 Q. Okay. I'll show you another envelope, sir. Can you



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1 tell me what that is?

2 A. Yes, sir. It's item number 13 marked as the one \$10  
3 dollar bill that I collected from the second step of the  
4 residence.

5 Q. All right. And did you place that \$10 bill in the  
6 envelope?

7 A. Yes, sir, I did.

8 Q. And is that your handwriting again on that?

9 A. Yes, sir, it is.

10 Q. And your initials on the evidence tape on the back?

11 A. Yes, sir.

12 Q. All right.

13 MR. BRACKETT: Your Honor, I'd ask at this time to  
14 move State's Exhibit or have this marked as State's Exhibit  
15 Thirty-seven and introduced into evidence at this time.

16 MS. ANDERSON: No objection.

17 MR. CHIARENZA: No objection.

18 THE COURT: In without objection.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-SEVEN  
20 IDENTIFIED AND MARKED; RECEIVED INTO EVIDENCE.)

21 Q. Investigator Bagwell, can you tell me for the purposes  
22 of establishing jurisdiction in this case, what county is  
23 [REDACTED] in?

24 A. It is in York County.

25 Q. Did you also have occasion to attend the autopsy of

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT  
CROSS BY MS. ANDERSON

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1 Mr. King?

2 A. Yes, I did.

3 Q. All right. And did you recover -- I believe it's in  
4 that box as well -- Did you recover the projectile pieces  
5 that were recovered during the course of that autopsy?

6 A. Yes, sir, I did.

7 Q. And were they similarly secured in an evidence bag as  
8 the others were taped, and so forth?

9 A. Yes, sir.

10 Q. And ultimately all these items of evidence were turned  
11 into Master Evidence Locker?

12 A. Yes, in Rock Hill PD. Yes, sir.

13 Q. Thank you very much, Investigator. Please answer any  
14 questions that the counsel for either Mr. Reid or Mr.  
15 Henson may have.

16 A. Okay.

17 CROSS EXAMINATION

18 INVESTIGATOR BRIAN BAGWELL BY MS. ANDERSON:

19 Q. You have the diagram, right?

20 A. Yes.

21 Q. And basically, Investigator, State's Exhibit -- I  
22 believe it's Thirty-three.

23 A. Uh-huh.

24 Q. Correct? That is a diagram you made and that you  
25 illustrated some to the jury?

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 A. That's correct.

2 Q. And you indicated on your testimony that Items 1  
3 through 10 on that diagram were spent casings.

4 A. That's correct.

5 Q. And looking at the diagram, those spent casings  
6 essentially sort of stretch from -- The spent casings here  
7 on the 1 through 10, sort of, start the farthest out from  
8 the house --

9 THE COURT: Make sure -- They can't see through you,  
10 so --

11 MS. ANDERSON: I apologize.

12 Q. Essentially, they start from here, and this is  
13 essentially -- Well, let's clarify. This here is a  
14 representation of a fence in the yard?

15 A. That's correct.

16 Q. And this would be the spacing between the fence?

17 A. That's correct.

18 Q. And then if you travel to here, you would be traveling  
19 up the yard to the steps?

20 A. That's correct.

21 Q. And then this would represent the front porch?

22 A. Yes, ma'am.

23 Q. And then this, where this number -- What is that?  
24 Eighteen?

25 A. Uh-huh..

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 Q. This here, was this the front door?

2 A. That's correct.

3 Q. And you indicated items -- these items here, all of  
4 these 1 through 10's are spent casings?

5 A. That's correct.

6 Q. And so the spent casings would start geographically  
7 sort of on the outside of this space between the fence and  
8 then continue at some point on the wall up to the steps?

9 A. Correct. All 10 were located in that distance.

10 Q. And there were no spent casings recovered on the front  
11 steps of the residence?

12 A. That's correct.

13 Q. And you recovered two spent projectiles from inside  
14 the residence. Correct?

15 A. One was in the doorframe where 18 is; that's correct.  
16 And one on the inside of the home.

17 Q. But no spent casings recovered on the porch of the  
18 residence?

19 A. No.

20 Q. And talking about spent casings versus projectile,  
21 essentially, roughly, the casing would be, sort of, the  
22 bottom part of a cartridge?

23 A. That's correct.

24 Q. And the projectile would be the, sort of, top part of  
25 the cartridge?

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 A. That's correct.

2 Q. And when you talk about a live round, you're talking  
3 about a cartridge and a -- a projectile and a casing that  
4 has not separated?

5 A. Correct, has not been fired. That's correct.

6 Q. And when the gun is fired, then the two, if it is  
7 fired successfully, will separate?

8 A. Correct.

9 Q. And it's typically common that a spent casing will,  
10 sort of, eject from the gun somewhat geographically close  
11 to where the gun is. Correct?

12 A. It depends on the gun, yeah. But most of them eject  
13 to the right, but some eject back, some go left. So it  
14 just varies on the gun.

15 Q. But not uncommon when an automatic weapon that it  
16 ejects to the right?

17 A. No.

18 Q. And generally stay at a distance of no more, say, than  
19 maybe 2 feet from the weapon?

20 A. That would be a good guess.

21 Q. And so based on where you found the spent casings, it  
22 would be logical to say that the gun would have been fired  
23 somewhere in the area of the yard out here?

24 A. Yes.

25 Q. And we know from the victim's injuries, that you were

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 made aware on the scene, that the gun was -- we can --  
2 fired in the direction of the house. Correct?

3 A. Yes.

4 Q. And when you are called -- Basically, when you are  
5 called out on a scene, you are looking for any evidence  
6 that may be important to the case. Correct?

7 A. Correct.

8 Q. And you're doing that based on your training and your  
9 experience?

10 A. Correct.

11 Q. And essentially, you're going to take into evidence  
12 items that might be important to an investigation?

13 A. Yes.

14 Q. And if you are on the scene, and there is an item that  
15 you can determine is not likely to have any sort of  
16 investigative value, you wouldn't take that into evidence?

17 A. That's correct.

18 Q. 'Cause ultimately these items are going to become part  
19 of the case?

20 A. Yes.

21 Q. And you don't want to take space up with evidence for  
22 something that is not going to be important?

23 A. Right.

24 Q. You were called out to the scene on October 1st, 2009.  
25 Correct?

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 A. Correct.

2 Q. And this was sort of late in the evening, so some of  
3 your collection stretched over into the morning hours of  
4 October 2nd?

5 A. That's correct.

6 Q. And once you were called out to the scene, you had the  
7 ability to continue collecting evidence past your time on  
8 the scene of October 1st?

9 A. I'm not sure I know what you are asking.

10 Q. In other words -- Let me rephrase that. Your  
11 investigation is not limited to merely the time you  
12 respond?

13 A. No, we can stay as long as it takes to process the  
14 scene. However long it takes, we can be there processing.

15 Q. And continuing collecting evidence in the days, weeks,  
16 however after you respond. However long a time.

17 A. Yes and no. Typically what we'll do if we get called  
18 to a scene like this if we have a permission to search or a  
19 search warrant, it's valid for only that initial search.  
20 If we leave the scene, we'd have to get more permission or  
21 a search warrant to go back on the scene again.

22 Q. The only time evidence was collected from this scene  
23 was October 1st and October 2nd. Correct?

24 A. To my knowledge, yes.

25 Q. To your knowledge.

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 MS. ANDERSON: I beg the Court's indulgence.

2 (PAUSE.)

3 Q. But the items that were collected on October 1st, you  
4 requested that 10 of the spent casings be submitted to SLED  
5 for analysis. Correct?

6 A. Correct.

7 Q. And the spent projectiles that were taken down were  
8 not submitted for testing. Correct?

9 A. I believe they were -- No, they weren't sent by me.  
10 That's correct.

11 Q. And the two live rounds you took into evidence were  
12 submitted?

13 A. That's correct.

14 Q. But out of all of the items that you took into  
15 evidence on October 1st and October 2nd, those 12 items,  
16 the 10 spent casings, the 2 live rounds, were the only  
17 items that were submitted for any testing?

18 A. As far as I know, yes.

19 Q. And you did not perform any test yourself on any  
20 additional items?

21 A. No.

22 Q. For example, you testified that you recovered, I  
23 believe, it was a total of three swabs with red stain at

24 [REDACTED]

25 A. Correct.



INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON  
CROSS BY MR. CHIARENZA

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1 Q. And ultimately that was never tested to verify whether  
2 it wasn't that blood. Correct?

3 A. I don't believe it was sent down to SLED, no.

4 Q. And you also testified you recovered a Ten dollar bill  
5 from the scene?

6 A. Uh-huh, correct.

7 Q. And there was never any fingerprint analysis or any  
8 sort of DNA analysis run on that?

9 A. No, not to my knowledge, no.

10 MS. ANDERSON: Nothing further, Your Honor.

11 MR. CHIARENZA: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION

14 INVESTIGATOR BRIAN BAGWELL BY MR. CHIARENZA:

15 Q. Officer Bagwell, in relation to this case, is the Byar  
16 Street location the only location that you processed?

17 A. Yes, sir.

18 Q. So you weren't sent out anywhere else in Rock Hill in  
19 relation to this case?

20 A. No, sir.

21 Q. So all the evidence you collected would, therefore,  
22 then obviously be limited to evidence you collected at the  
23 Byar Street location?

24 A. That's correct, and the autopsy. I did attend the  
25 autopsy.

INVESTIGATOR BRIAN BAGWELL: CROSS BY MR. CHIARENZA

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1 Q. And what again did you personally recover that was  
2 associated with the autopsy?

3 A. Can I refer to my report?

4 Q. Sure, absolutely.

5 A. I collected head and pubic hair standards, inked  
6 fingerprints, a gray-type tube of blood, and a fragment  
7 from a projectile. And I took digital photographs.

8 Q. That projectile fragment, how far down the line did  
9 that get as far as being sent off for any individual --  
10 Sorry -- Any additional tests?

11 A. I don't know that it was sent because I don't think it  
12 was enough. If I recall correctly, it was a very small  
13 fragment, that was recovered. It was enough to get a  
14 ballistics test performed on.

15 Q. And I think the one item that the Solicitor handed you  
16 that did not have your signature on there was the  
17 projectile recovered from the surviving victim's leg; is  
18 that correct?

19 A. I believe that's correct, yes, sir.

20 Q. Okay. But you didn't -- From what I understanding,  
21 you didn't deal with that?

22 A. That's correct.

23 Q. All right, so you've got a number of items here that  
24 you collected that have been put in evidence. Can you tell  
25 me -- And I don't want to -- It's late in the day, and I

INVESTIGATOR BRIAN BAGWELL: CROSS BY MR. CHIARENZA

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1 don't want to go through every single one of these. So I  
2 will ask you as to any event. Did any of those items --  
3 Let's just start with, in general, the casings, all of the  
4 casings combined. Do any of those casings bear any  
5 particular qualities, or characteristics, or identifying  
6 features that somehow relate to my client Mr. Henson?

7 A. No.

8 Q. Okay. So those casings, as far as those casings go,  
9 they don't in any way indicate a particular individual  
10 who's responsible for those casings being at the scene?

11 A. That's correct.

12 Q. It could certainly be argued that those casings would  
13 indicate that a firearm was shot at that scene. I mean  
14 that's not a hundred percent had to be that way, but it  
15 certainly would be a reasonable conclusion to draw, that a  
16 firearm was shot and these casings got dejected and ended  
17 up there.

18 A. That's correct.

19 Q. Some possible scenarios, somebody could have just  
20 pulled them out of their pocket and sprinkled them there?

21 A. Could happen, but you had bullet holes in the home and  
22 everything to go along with it, so --

23 Q. And absolutely. And I'm not trying to make that  
24 case -- I suppose my point is, they are good for  
25 illustrating one thing, maybe not so good at illustrating

1 other things.

2 A. Right.

3 Q. And what -- what I'm -- And I believe you've answered  
4 it. They do not in any way illustrate a particular  
5 person's involvement with them by their very nature?

6 A. That's correct.

7 Q. Okay. Let's talk about the projectiles. And again,  
8 same question. Any of the projectiles that were recovered  
9 on the scene, do they bear any particular qualities, or  
10 characteristics, or identifying features that can tell  
11 you -- that can help you tell this jury who's responsible  
12 for those projectiles being on the scene?

13 A. No.

14 Q. Okay. The photographs. You took a number of  
15 photographs and clearly they are an excellent documentation  
16 of what that scene looked like when you arrived, which is  
17 not very long after this event occurred. To your  
18 knowledge, did any of those photographs indicate by their  
19 nature or by what's contained in the photographs, that Mr.  
20 Henson, my client specifically, to the exclusion of other  
21 individuals, was on that scene that night?

22 A. No.

23 Q. And I guess I sort of promised this at the beginning,  
24 so I'll do it now. Without going through everything that  
25 is there, are you aware of anything that the Solicitor has

INVESTIGATOR BRIAN BAGWELL: CROSS BY MR. CHIARENZA

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1 spoken to you about, any of the items of evidence that  
2 you've recovered that are put into evidence that bear any  
3 particular qualities, or characteristics, or identifying  
4 features that point to my client Mr. Henson being involved  
5 in this case?

6 A. No.

7 MR. CHIARENZA: The Court's indulgence just a second,  
8 Your Honor.

9 THE COURT: Yes, sir.

10 Q. I think they're Number 13 and Number 16 on the yellow  
11 placards. Are those the two little plastic baggies?

12 A. Thirteen, I believe is a \$10 dollar bill.

13 Q. Oh, okay --

14 A. The plastic bag, it should be Number 14 and Number 16.

15 Q. That's what I'm referring to, 14 and 16. And those  
16 were -- One was found on the steps, and one was found next  
17 to the step, the stoop steps up against the foundation?

18 A. That's correct.

19 Q. All right. Do you have enough experience as a law  
20 enforcement officer to testify as to whether or not those  
21 baggies appeared consistent with drug packaging?

22 A. They appeared consistent with drug packaging. Yes,  
23 sir.

24 Q. And just a couple, just to wrap up here real quick.  
25 The blood -- To your knowledge, the blood or what appeared

INVESTIGATOR BRIAN BAGWELL: CROSS BY MR. CHIARENZA

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1 may have been blood on the scene, that wasn't tested or  
2 ever matched up to any particular individuals?

3 A. No, it wasn't.

4 Q. And as far as the mechanics and firearms, I believe it  
5 was Ms. Anderson who asked you sort of the way the  
6 projectiles would eject from a fireman. But not all  
7 firearms, in fact, eject their casing. Some remain with  
8 the gun, is that correct?

9 A. Some will stove pipe and jam up, and -- Yes, sir.

10 Q. Well, I'm speaking about revolvers.

11 A. Oh okay, yes, sir.

12 Q. A revolver would not eject its casing.

13 A. Correct.

14 Q. In fact, if one were to shoot six rounds out of a six-  
15 shooter, all six casings, you'd expect them to be  
16 still -- remain in the gun itself.

17 A. Yeah, that's correct.

18 Q. So, if that individual, this hypothetical individual,  
19 shot a revolver, and then walked away with it, they would  
20 leave no casing evidence. We wouldn't expect those casings  
21 to still be on the scene.

22 A. Correct.

23 Q. Thanks a lot, Officer Bagwell. That's all I have.

24 THE COURT: Redirect?

25 MR. BRACKETT: Yes, sir. I have a few questions.

INVESTIGATOR BRIAN BAGWELL: REDIRECT BY MR. BRACKETT

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REDIRECT EXAMINATION

INVESTIGATOR BRIAN BAGWELL BY MR. BRACKETT:

Q. Ms. Anderson asked you about the length of time that you stayed there and the things that you processed. And you could have stayed there longer or come back another day; isn't that correct?

A. Yes, sir.

Q. When you go to a scene like this, what do you use -- How do you know where to process?

A. Based on officer information we get on the scene. They'll kind of give us a synopsis of what happened, visually what we can see, and a combination of both.

Q. So based on the victims' relating that all the events transpired in the yard or on the stairs, would you have felt it necessary to process the garbage can in the kitchen?

A. No, sir.

Q. Any indication that anybody went there?

A. No, sir.

Q. So you confined your inquiry to those areas that you reasonably expected to yield some information, possibly.

A. That's correct.

Q. Now the casings. Mr. Chiarenza was talking to you about, the spent casings. And they don't definitively link. They contain no quality or characteristic which

1 links his client to anything?

2 A. Right.

3 Q. Had you developed me or anyone as a suspect, and I  
4 were apprehended with a .22-caliber-sawed-off rifle, would  
5 it have been possible to identify that rifle as the rifle  
6 that authored the markings on those casings?

7 A. Yes, sir.

8 Q. So that's the value of seizing them?

9 A. Correct, correct.

10 Q. But we never got a rifle?

11 A. Right.

12 Q. Did you process everywhere that you could possibly  
13 think of on that porch that might yield a fingerprint?

14 A. No, we did not. We had no information that they  
15 approached the porch at all.

16 Q. Okay.

17 A. The information we had was the suspects maintaining  
18 themselves down in the yard area and never approached the  
19 porch to --

20 Q. Had you heard that they had patted down the victims,  
21 searched them and --

22 A. Yeah, I possibly did hear that, yeah. I was thinking  
23 at the time that we had information they didn't go on the  
24 porch. But yeah, I do remember them being patted down,  
25 somebody mentioning that. One of the officers said that.



INVESTIGATOR BRIAN BAGWELL: REDIRECT BY MR. BRACKETT

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1 Q. Possibly on the steps or on the top of the porch?

2 A. Right.

3 Q. Is it possible to lift -- Are my fingerprints going to  
4 be on that shirt?

5 A. No, sir.

6 Q. Why?

7 A. The fabric soaks it in so quick. It doesn't let the  
8 oils and the residue from your fingerprint stay there to be  
9 developed.

10 Q. And likewise, if I'm putting my hands and frisking on  
11 the outside of your pants, is it likely that you're going  
12 to develop a DNA profile?

13 A. No, it's not.

14 Q. And was there anything that you had any information on  
15 that might yield fingerprints, DNA, or other forensic  
16 evidence that could link someone to that scene that you did  
17 not test?

18 A. Not to my knowledge, no.

19 Q. You tested everything you could think of?

20 A. Yes, sir.

21 Q. Thank you very much.

22 THE COURT: Recross?

23 MS. ANDERSON: Nothing, Your Honor.

24 MR. CHIARENZA: Very briefly, Your Honor.

25 RECROSS EXAMINATION

INVESTIGATOR BRIAN BAGWELL: RECROSS BY MR. CHIARENZA

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1 INVESTIGATOR BRIAN BAGWELL BY MR. CHIARENZA:

2 Q. Officer, but you only -- You don't only perform your  
3 test and examination of the scene based on what the victims  
4 tell you. Right?

5 A. No, it's based on the total circumstances; officers,  
6 victims, any information we have.

7 Q. Okay. So the detectives in this case believe case,  
8 the lead case investigators, could have directed you, I'm  
9 sure, asked you very nicely to go and process any scene in  
10 York County; is that correct?

11 A. If they thought it was related to the case, yeah, they  
12 would have directed us to that location.

13 Q. Okay. That's all I've got.

14 THE COURT: You can step down and be excused. We  
15 appreciate your time.

16 THE WITNESS: All right, thank you, sir.

17 (WITNESS LEAVING WITNESS STAND.)

18 THE COURT: Let me see counsel up here just one  
19 second.

20 (BENCH CONFERENCE AT 05:05 PM OFF THE RECORD OUT OF  
21 THE HEARING OF THE JURY.)

22 THE COURT: I'm going to allow them to call one more  
23 witness today. I was just trying to get some idea of time,  
24 so that we don't go too late into the evening. We will go  
25 through one more witness.

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 Call your next witness.

2 MR. THOMPSON: The State would call Detective Tim  
3 Ayers to the stand.

4 (WHEREUPON: TIM AYERS, BEING  
5 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

6 DIRECT EXAMINATION

7 DETECTIVE TIM AYERS BY MR. THOMPSON:

8 Q. Detective Ayers, where do you work?

9 A. Rock Hill Police Department.

10 Q. How long have you worked there?

11 A. Seventeen years.

12 Q. And what are your duties there at Rock Hill Police  
13 Department?

14 A. For the last 12 years, I've been assigned to the  
15 Criminal Investigation or Detective Division. For the last  
16 6 years, I've been assigned to person's crime, robbery,  
17 homicide, major assaults.

18 Q. And can you tell me, did you become involved in this  
19 particular case as a detective?

20 A. Yes, I did.

21 Q. And how did you become involved?

22 A. The night that the incident occurred on the 1st, I was  
23 actually out and about in my vehicle. Heard the incident  
24 given out over the radio and just responded immediately.

25 Q. So did you actually get to Byar Street yourself?

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 A. Yes, I did.

2 Q. And was it long after the incident occurred that you  
3 had gotten there?

4 A. EMS had not arrived on the scene or was just pulling  
5 up as I arrived on the scene. I was probably the fourth or  
6 fifth person on the scene.

7 Q. When you arrived, what was going on?

8 A. There were patrol officers roping off -- starting to  
9 rope off the area. EMS was getting there, trying to go up  
10 and attend to Mr. King who was laying on the porch.  
11 Officer Harrelson was inside the house with Kenny  
12 Cunningham and with Maurice Jackson. Detective Dugan was  
13 the first investigator on the scene. I asked him to go  
14 ahead and start snapping pictures to preserve everything  
15 the way it was because we knew that Mr. King would be moved  
16 immediately for trying to treat him further, which would,  
17 you know, not be documented in the scene and all. So, we  
18 were trying to document everything we could as quickly as  
19 we could.

20 Q. So at this point, is it kind of your duty at this  
21 point to kind of direct the other officers who arrived at  
22 the scene?

23 A. The primary detective that's on the scene, it's his  
24 job first to make sure that someone is securing the scene;  
25 patrol is doing their functions as they're supposed to;

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 making sure somebody's trying to locate and, I guess, keep  
2 any witnesses from leaving the area to where we can get to  
3 those people to find out any and all information we can.  
4 You know, just basically securing the scene, making sure  
5 and seeing what we needed, determining if we need to call  
6 in additional detectives to assist with the investigation,  
7 with interviews, those type things.

8 Q. Were you one of the detectives then responsible for  
9 that, that night?

10 A. Yes, Detective Dugan was on call as backup, but he is  
11 assigned to property crimes. And I knew that it would be  
12 coming, this case being a person's crimes case would be  
13 assigned to our part of the Detective Division. So, I  
14 would become more of the primary at that time.

15 Q. Did you have the opportunity to speak to either Mr.  
16 Cunningham or Mr. Jackson that night?

17 A. As I arrived on the scene and went to go inside,  
18 Officer Harrelson was inside, just inside the door on the  
19 floor Mr. Cunningham was laying there and in great pain.  
20 He was hollering from the pain and all. And Maurice  
21 Jackson was sitting there along with his grandmother  
22 sitting in a chair in the den. And I was able to speak  
23 with them at that time.

24 Q. Were they still pretty excited when you had gotten  
25 there?

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 A. Yes, sir. Mr. Cunningham, like I said, he was very  
2 excited from being shot. He was in pain. He was -- Every  
3 time I tried to ask him a little further, it was, "Man, I  
4 don't know, I don't know. I've been shot, I've been shot."  
5 It was very hard for him to relay a lot of information.  
6 His main thought was the fact that, you know, the  
7 excitement of just being robbed, being shot. He didn't  
8 know how bad his injuries were going to be. And we were  
9 able to go to Mr. Jackson at that time to get a little  
10 further.

11 Q. All right. And can you tell me when you were on the  
12 scene there, what other duties did you perform?

13 A. Once -- Once it was basically established that  
14 everyone was performing their duties as needed to be,  
15 Officer Harrelson was giving the victim -- Or to give them  
16 the description of the suspects, the male and the female.  
17 And he was actually broadcasting that out onto the radio.  
18 And our dispatchers were entering that into the CAD system,  
19 so all the officers that were in the area could look for  
20 any suspects, making sure everything was there. At that  
21 time, Mr. King and Mr. Cunningham had been transported to  
22 Piedmont Medical Center. Other detectives and Captain  
23 Bolinger had arrived on the scene could take over the  
24 initial investigation at the scene. And I went to the  
25 hospital to speak with Mr. Cunningham.

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 Q. Did you take the statement from Mr. Cunningham?

2 A. Yes, I did. I did a handwritten using my own  
3 handwriting. Mr. Cunningham was receiving treatment at the  
4 time, at the hospital. They were trying to give him  
5 medications for his pain. They were trying to assess the  
6 wounds, moving him around trying to see so, it was very  
7 hard to get a lot of information. It was basically, let's  
8 get the basics of what we can down on paper just in case we  
9 run into a suspect tonight where we have a little further  
10 to go on. But that was the basics of what I got from him  
11 at the hospital.

12 Q. Was he still in a good bit of pain at the hospital?

13 A. Yes, he was still in pain.

14 Q. Can you tell me, after you went to the hospital, what  
15 then did you do that night? What was your other  
16 responsibilities?

17 A. After I finished at the hospital, I went back to the  
18 scene at Byar Street and see if anything else was needed.  
19 At that time, I went to the Law Center where all the  
20 detectives that had been called out will all come together,  
21 kind of share the information. And everybody's trying to  
22 put together any pieces of the puzzle that we have at that  
23 time. We knew that we were looking for a black male with  
24 dreads; a female, pink pants, gray sweatshirt given the  
25 descriptions that we had been given. So we were trying to

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1 come up with any suspect that we could at that point 'cause  
2 we had no names.

3 Q. And in your duties as a detective and the robberies  
4 that you handle, is it common to have a male and female  
5 commit the robberies often?

6 A. It was very strange to have a female directly actively  
7 involved in the furtherance of actually committing the  
8 robbery. A lot of times in the setup part of it or part of  
9 the crime, you know, being the knock at the door, and then  
10 behind it. But actually, physically directly being  
11 involved, it was a little different than most of the  
12 robberies we work.

13 Q. Such as patting someone down, that sort of thing?

14 A. Directly involved, yes, sir.

15 Q. So what initially were you looking for then that  
16 night? As a detective, what were you trying to pinpoint?

17 A. Well at that point, we were talking to anybody that,  
18 you know -- The zone, the police officers at the  
19 department, they're assigned to a certain zone. They ride  
20 that zone over and over and over. They know the people in  
21 that area. Our street crimes unit, which Officer Harrelson  
22 was assigned to at the time.

23 Our Narcotics Unit, they have informants. We're  
24 putting out feelers to everybody. "Hey, talk to your  
25 people, find out anything." We started running the



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1 scenario of "Do you know of any black males with dread  
2 locks walking around the neighborhoods with a female?"  
3 those type things.

4 We were trying to find any leaks we could at that  
5 time.

6 Q. And when did the first real lead, as far as being able  
7 to talk to someone who might be involved, come to you?

8 A. The next morning -- You know, we were there pretty  
9 much through the night, but then the next morning, I come  
10 back in and myself and Detective Herring received a phone  
11 call to go to [REDACTED] to talk with Maurice Jackson.  
12 He had further information he wanted to relay to us.

13 Q. And did you both go there then?

14 A. Yes, we both rode over to Mr. Jackson's house.

15 Q. Do you remember about what time that would have been?

16 A. I want to estimate around 9:00, 9:30, 9:45 in the  
17 morning.

18 Q. Okay.

19 A. It could have been later, but I would estimate  
20 somewhere around that time.

21 Q. And when you got there, what information did you  
22 receive at that time?

23 A. Went up to the house, Mr. Jackson and his grandmother  
24 were inside. There were numerous people outside. The  
25 neighborhood was very upset and agitated that the event had

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1 happened. So we were able to go inside and speak with just  
2 the two of them inside the house --

3 MR. CHIARENZA: Your Honor, I'm going to object to  
4 anything they tell us at this point that's not an excited  
5 utterance.

6 THE COURT: I sustain your objection.

7 MR. THOMPSON: Your Honor, could we take up a  
8 matter of law?

9 THE COURT: I'm going to let the jury go to the jury  
10 room just a minute.

11 (JURY EXITS TO JURY ROOM AT 05:18 PM.)

12 THE COURT: All right.

13 MR. THOMPSON: I'll let the Court know, the intention  
14 of the State, Your Honor, with this particular line of  
15 questioning is that this is the morning time in which  
16 Maurice Jackson told the detectives he recalled what had  
17 happened with Donta Reid the night before, with the phone  
18 calls, and with him stopping by, and then right after the  
19 whole thing about "two others" or "two more." And as well,  
20 Donta Reid also told -- Or, I'm sorry. Maurice Jackson  
21 told them at that time about the fact that he remembered  
22 the accent, that it was someone from up north, and that it  
23 was like a Baltimore accent. He has relatives from that  
24 area and that's why he knew that. In addition he relayed  
25 information such as he knew it wasn't Donta that had done

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1 it because Donta wasn't one of those two -- wasn't one of  
2 the two that robbed him, but he set it up. He was setting  
3 it up. And he's telling the detectives this at this time  
4 because that's when he remembers. I think I could get into  
5 it for a number of reasons. One, I know the Defense for  
6 Mr. Reid has specifically questioned the facts of him  
7 coming over when he was told that night --

8 THE COURT: He who?

9 MR. THOMPSON: When Donta Reid came over to Maurice  
10 Jackson's residence. They pointed out on cross and made  
11 him look as if somehow he -- Maybe this isn't true or maybe  
12 this is not being correct -- that he didn't mention  
13 anything to officers that night. He even asked the  
14 officers that did he mention anything to him about Donta  
15 Reid that night. No, he did not. Because of course, he  
16 hadn't really thought until later that he was involved,  
17 when he had more time to contemplate on the events of that  
18 night. And that is certainly an honest mistake on his  
19 behalf.

20 In addition, Mr. Chiarenza questioned heavily both of  
21 the victims as to whether they told the descriptions that  
22 they gave, and whether they said anything about accents.  
23 And he questioned the officers, "Did he tell you anything  
24 about an accent or anything about the voices of these  
25 people?" And questioned heavily the ability of those

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1 victims to be able to be truthful in that aspect. This is  
2 where the victims told both this detective and the other  
3 one that -- Or, that's when Mr. Jackson told him about the  
4 accent. That's when he told him about Donta Reid. That's  
5 when he told him his impressions at that point and the  
6 victim has testified to that. And his testimony has been  
7 called into question, his credibility. His statement has  
8 been called into question. So now I think I can  
9 rehabilitate that with a prior consistent statement that he  
10 has given to these officers.

11 MR. CHIARENZA: It's a mighty novel theory, Your  
12 Honor, but I can see if I questioned Detective Ayers about  
13 "He never told you about dread locks, or his accent," or  
14 something along those lines. I don't open the door on what  
15 this witness can say by cross examining another witness. I  
16 don't -- the Solicitor has told us nothing changes this  
17 testimony from hearsay, and it's clearly hearsay.

18 MR. THOMPSON: There's --

19 MR. CHIARENZA: It's cumulative to what Mr. Jackson  
20 has testified to, and Mr. Jackson's testimony; he had an  
21 opportunity to direct Mr. Jackson. I had an opportunity to  
22 cross examine Mr. Jackson. And then -- And that's the end  
23 of Mr. Jackson. I don't -- I'm unaware of any concept that  
24 says now we can ask half a dozen other witnesses what Mr.  
25 Jackson may or may not have told them. It's hearsay as to

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1 those witnesses.

2 MR. THOMPSON: Your Honor --

3 MR. CHIARENZA: I can't go back and cross examine Mr.  
4 Jackson about it.

5 MR. THOMPSON: And Rule 801 (D) and 1 (B), it says  
6 that, "statements which are not hearsay." And (B) says,  
7 "consistent with the declarant's testimony it's offered to  
8 rebut, and express, or apply charge against the declarant  
9 of recent fabrication or improper influence or motive,  
10 providing however that the statement must have been made  
11 before the alleged fabrication or before the alleged  
12 improper influence or motive that arose." And he alleged  
13 that when he was questioning the victim that he didn't  
14 bring these things forward until he talked with our office,  
15 and so -- in recent weeks. This is talking about something  
16 he did the very next morning that he specifically called  
17 detectives there to tell them about to inform them as part  
18 of their investigation. And it's consistent with what he  
19 had said before that he was directly questioned on as being  
20 not truthful on.

21 MR. CHIARENZA: I asked when he first spoke about it,  
22 and if it was when he met with the Solicitor's Office. He  
23 answered, "No." I had to take that answer. I think in  
24 light -- I don't know that they get to bring it up now. I  
25 mean I asked him the question. If you follow the

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1 Solicitor's logic, then it's any time you ask any question  
2 of a witness that you may find slightly incredulous or that  
3 you want to delve into a little bit further. But now that  
4 opens the door to anything they may have told someone else.

5 THE COURT: No, I don't think its that. I think it  
6 was an implication through questioning that this testimony  
7 arose as a result of some reason to fabricate it. And  
8 there was at least some implication that this didn't  
9 arise -- I say, "this." Now I'm using pronouns myself that  
10 don't relate to anything. But that the testimony regarding  
11 the dread locks particularly and the description that was  
12 given the -- that was not -- The information including that  
13 about Mr. Reid and that of -- Well let me back up. I kind  
14 of lost my train of thought. What's the question again?  
15 Where -- that Mr. Reid --

16 MR. THOMPSON: Yeah, Mr. Reid came forth telling them  
17 about or, Mr. Jackson came forth telling him about Donta  
18 Reid and the call that he had made from stopping over and  
19 making the call, and what he had heard on the call.

20 THE COURT: All right.

21 MR. THOMPSON: In addition --

22 THE COURT: But there's no implication that, that was  
23 fabricated.

24 MR. THOMPSON: Right, but they certainly questioned  
25 that -- I think it was Mr. Reid's attorney -- that when it

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1 occurred that it didn't occur the night that -- the night  
2 that the crime occurred. That Mr. Reid's name was never  
3 brought up that night.

4 THE COURT: Yes, ma'am.

5 MS. INZERILLO: Your Honor, just in light of that, and  
6 on behest of Mr. Reid, I would just state that my  
7 understanding is that Detective Ayer's testimony would go  
8 to the fact that this information was relayed to him the  
9 next day, which we were not questioning. Ms. Anderson was  
10 merely questioning the officer at the scene that, that  
11 information was not relayed on the scene that night. But  
12 even under my crosses of both the victims, they both relay  
13 that it was -- Or at least Mr. Jackson relayed that it was  
14 told the next day. And that was not the question that I  
15 asked or asserted to be fabricated.

16 MR. THOMPSON: Then I still would then, Your Honor, if  
17 the Court thinks that I cannot go into that, I still -- I  
18 think I could go into the fact that he would say that at  
19 that point, he also told them about the accent that he  
20 heard from the shooter that was "He's not from around  
21 here." That it wasn't Donta that did it, that did the  
22 shooting, but it was someone else not from around here.  
23 And he had a voice like from Baltimore and his family is  
24 from Baltimore.

25 THE COURT: Why isn't that hearsay?

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1 MR. THOMPSON: Well, Your Honor, it would be however,  
2 they specifically attacked the victim's credibility as to  
3 that particular statement and as to him fabricating that  
4 most recently when he talked to our office. Now we have  
5 someone who can confirm that, no it was not fabricated. It  
6 was something that happened before and falls directly under  
7 the Rule as not hearsay.

8 THE COURT: I'm looking at 801 (B) (1B). "Declarant  
9 testified at the trial subject to cross examine relation  
10 concerning the statement." But he was never asked, or was  
11 he asked about the statement that he gave to --

12 MR. THOMPSON: He was asked if he had ever told the  
13 officers about that statement.

14 THE COURT: "And the statement is consistent with his  
15 testimony and his offer to rebut and express and implied  
16 charge against the Declarant of recent fabrication."

17 MR. THOMPSON: Right. And Mr. Chiarenza implied that  
18 it was only in recent weeks when he spoke with our office  
19 that he told about this accent.

20 THE COURT: "The statement must have been made before  
21 the alleged fabrication." What is the alleged fabrication?

22 MR. THOMPSON: It would be that he most recently only  
23 told us this information in the weeks just a few weeks here  
24 before trial when he interviewed with our office. Of  
25 course, this would have actually been 2 years ago when he



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1 talked with the detective. So certainly it is before when  
2 the alleged fabrication could have possibly occurred and  
3 the further fabrication occurred.

4 THE COURT: Mr. Chiarenza.

5 MR. CHIARENZA: Your Honor, I don't know that I even  
6 alleged that he was fabricating it other than just when he  
7 first spoke about it. You know if he recalled it after  
8 meeting with the Solicitor's Office. There's -- I think  
9 that there's some evidence in the file at least, that it  
10 can be inferred that the shooter may have had dread locks.  
11 As to whether or not he remembered that at the time, spoke  
12 to someone about it at the time, I asked him that. It's  
13 not in his written statement. Let's just look at the  
14 reality here. It's not in his written statement. It's not  
15 in his 911 call to the police. It's not in the incident  
16 report. It's just curious how there's nothing in any of  
17 those items about dread locks or this supposed northern  
18 accent until they develop Mr. Henson as a suspect who  
19 happened to have dread locks at the time and was from  
20 Baltimore. And it's then -- This isn't memorialized  
21 anywhere in the file. But now, he supposedly told all of  
22 these officers about that. And I asked him, and that's the  
23 answer he gave me. And I don't know that I accused him of  
24 fabricating that honestly.

25 THE COURT: You didn't accuse him, but you certainly

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1 implied just on the basis of what you said. I mean it just  
2 bolstered that which --

3 MR. CHIARENZA: Your Honor, I would like the testimony  
4 read back because I don't know that I --

5 THE COURT: No, let me finish. You asked and I  
6 believe counsel for Mr. Reid continued because it's a good  
7 tactic. It's done all the time by defense lawyers. "Well,  
8 it's not in this report. It's not in that report. It's  
9 not in this report," implying to the jury that they just  
10 made it up or it came up later. So I'm going to allow it  
11 in under 80 -- Whatever it was. I lost it. 801 (D) (1B).

12 MR. CHIARENZA: Your Honor, as it requires an  
13 implication that I am alleging that he has fabricated his  
14 statement, I'd ask that we listen to the testimony and --

15 THE COURT: Well I think I've heard enough testimony.  
16 Again, it's a very good approach where "You're telling  
17 something now that you didn't tell something earlier. You  
18 didn't tell something now." And I can hear the arguments,  
19 and if you made that argument, it -- If you did not make  
20 that argument, it's probably going to be dismissed that  
21 "Well, it's not in the report." Shake the report at the  
22 officers, "It's not in here. Here's your black and white."  
23 So I think there's enough here that there's an implication  
24 that this was fabricated or -- I think it's allowed to be  
25 again to rebut an improper motive and fabrication under the

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1 Rules. So I'm going to allow it.

2 MS. INZERILLO: Your Honor, just to clarify. Is that  
3 only to any statements made about Mr. Chiarenza's client or  
4 about Mr. Reid as well?

5 MR. THOMPSON: Your Honor, I think it's Mr. Reid. One  
6 other reason that it would be allowed as testimony of res  
7 gestai is this is part of the whole of the case. This is  
8 as it happened, and as the Officer's first learn of Donta  
9 Reid. This is when he first comes into the case.

10 THE COURT: I don't think it comes under res gestai.

11 MR. THOMPSON: I don't think it necessarily would be  
12 hearsay for the Officer to say at this point is when he  
13 learned of Donta Reid.

14 THE COURT: Well, I don't think it would be hearsay  
15 when you say as a result of discussing. I mean I think we  
16 kind of -- Well, Mr. Reid as opposed to the accent, I think  
17 that it was -- the usual method is as a result of having a  
18 conversation with Mr. "X." "Did you go" -- "What did you  
19 do next?" "Well I went and found Mr. 'Y,' and went from  
20 there." So I'm going to allow you to go into it as to the  
21 accent and dreads, but not as to Mr. Reid.

22 MR. THOMPSON: All right.

23 THE COURT: Bring in the jury.

24 MS. INZERILLO: Your Honor, before we bring in the  
25 jury, may I step out a minute?

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1 THE COURT: Yes, ma'am, all right.

2 Ms. Inzerillo, would you tell them to wait just a  
3 minute?

4 MS. INZERILLO: Hold up the jury.

5 (MS. INZERILLO REENTERS COURTROOM.)

6 (PAUSE AT 05:30 PM.)

7 THE COURT: Now we bring in the jury.

8 MR. CHIARENZA: Your Honor, I'm protected on that?

9 I'm not going to have to renew that objection?

10 THE COURT: You made it, it's been ruled on.

11 MR. CHIARENZA: Thank you.

12 (JURY REENTERS COURTROOM AT 05:33 PM.)

13 THE COURT: Counsel, you may proceed.

14 MR. THOMPSON: Thank you, Your Honor. If it please  
15 the Court.

16 DIRECT EXAMINATION - CONTINUED

17 TIM AYERS BY MR. THOMPSON:

18 Q. Detective, I believe we last left off when you were at  
19 Mr. Jackson's house once again on Byar Street; is that  
20 correct?

21 A. Yes, sir.

22 Q. With Detective Herring?

23 A. Yes, sir.

24 Q. And at that point, was Mr. Jackson able to relay  
25 anything else to you and Detective Herring regarding the

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1 identity or description of any of the defendants at the  
2 scene?

3 A. Mr. Jackson was describing the voice of the person who  
4 had, had the gun on him the night before, who had actually  
5 pulled the trigger, was the shooter in the incident. And  
6 he said, "He's not from around here. He's from up north.  
7 He has like a Baltimore accent. I have family in  
8 Baltimore, and it sounds like a Baltimore accent."

9 Q. And both you and Detective Herring were there to hear  
10 that at that time?

11 A. That's correct.

12 Q. After speaking with Mr. Jackson that morning, where  
13 did you then go? What was your next step?

14 A. After we got through with that conversation with Mr.  
15 Jackson, we were able to determine that we needed to speak  
16 with Donta Reid who lives on Byar Street.

17 Q. Does he live right near Byar where Mr. Jackson lives?

18 A. Mr. Jackson at [REDACTED] If you were at  
19 Scoggins Street coming up Byar Street, he's on the right-  
20 hand side of the road.

21 Mr. Reid would live on the left-hand side of the road  
22 four or five houses up as the road curves up, back up  
23 toward Freeman.

24 Q. Did you go to his residence at that point in time?

25 A. Yes, we did.

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1 Q. Was he home?

2 A. No, he was not.

3 Q. And did you leave any message for him to call you at  
4 the police station or that you were looking for him?

5 A. Yes, we left a business card there. It was Detective  
6 'Herring's card. We left it at the scene and asked his  
7 relative -- I think it was his grandfather, to give us a  
8 call when he arrived home.

9 Q. All right. And after that, where did you go?

10 A. I went back to the station to continue working on the  
11 investigation, both of us.

12 Q. All right. What was the next step then for you?

13 A. Not much longer after we arrived back at the station,  
14 received a phone call that Mr. Reid had arrived home on  
15 Byar Street and wanted to speak with us.

16 Q. What did you do then?

17 A. Detective Herring stayed at the station. I went in my  
18 vehicle and went to Byar Street and pulled up at Mr. Reid's  
19 house. I parked with my passenger side towards his  
20 residence. He came right out, and got in the front seat,  
21 and we rode to the station.

22 Q. Now did he at any point say he didn't want to go with  
23 you at that time?

24 A. No, sir.

25 Q. Did you threaten or force him to go with you at that

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1 point?

2 A. No, sir.

3 Q. When you took him to the station, what happened as  
4 when you arrived back to the station?

5 A. We arrived at the station, we walked in the back door  
6 into the Detective Division and met with Detective Herring.  
7 And the three of us went into a interview room right there  
8 in the Detective Division.

9 Q. And what did you ask him about when you went in there?

10 A. We began speaking with him about the night before, you  
11 know, where he'd been, that type thing. I was just getting  
12 a basic time line of where he'd been the night before.

13 Q. Was he in custody at this time?

14 A. No.

15 Q. Had you arrested him for anything?

16 A. No, sir.

17 Q. And basically you were just trying to get information  
18 from him at that point?

19 A. Correct.

20 Q. And what did he tell you as far as where he had been  
21 and what he'd done?

22 A. He said that he had been over at his house. He left  
23 from there, stopped over at Maurice Jackson's house on Byar  
24 Street and made a phone call to a female, and left from  
25 there and went to the female's residence over in Midtown

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1 Apartments, which is right around the corner from the house  
2 in Byar Street.

3 Q. Did he say when he had done that?

4 A. In the, you know, 11:00, 11:30 range the night before.

5 Q. Okay. So around the time or after the time of the  
6 robbery, somewhere in there?

7 A. Correct.

8 Q. And what did you do as a result with the information  
9 he gave you at that point?

10 A. The -- Detective Herring, you know, just feeling like  
11 there was not a lot of honesty in what was coming out.

12 MS. INZERILLO: Objection to the speculation.

13 THE COURT: Yeah, just don't define as to their  
14 credibility. That's --

15 A. The --

16 THE COURT: Go ahead.

17 THE WITNESS: Yes, sir.

18 THE COURT: Disregard that answer.

19 A. Detective Herring and myself had Mr. Reid ride over to  
20 the location that he had described and given the name for  
21 the night before over at Midtown Apartments.

22 Q. Did y'all force him to do that?

23 A. No, sir.

24 Q. Did you ask him and he just said, "Okay"?

25 A. Asked him if he would go show us this residence and we



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1 could meet with this lady.

2 Q. Did he direct you where to go to get there?

3 A. He directed us to the location and gave us the name of  
4 the person, and we pulled up to the front, and then he  
5 changed the name of the lady.

6 Q. What do you mean "changed the name of the lady"?

7 A. He had given the original name of the person that he  
8 had called and met with. And as we arrived at the location  
9 and knew that we were going in to talk with somebody, he  
10 said, "You need to ask for a different person's name".

11 Q. And who went in to talk to somebody at that point?

12 A. I stayed in the vehicle with Mr. Reid, and Detective  
13 Herring went inside to where he had described the location.

14 Q. All right. What happened when Detective Herring came  
15 back out?

16 A. Detective Herring returned to the car. At that time  
17 he pulled Mr. Reid out of the car -- He didn't jerk him  
18 out -- He opened the door, asked Mr. Reid to step out,  
19 placed him in handcuffs, told him that we were going back  
20 to the station to talk about it because he hadn't been  
21 truthful.

22 Q. And so when y'all -- Did y'all talk about it more on  
23 the way to the station or just wait until you get back?

24 A. No, on the way back to the station, you know, when  
25 you're interviewing someone in that manner, you want to be

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1 able to read their body language, their facial expressions,  
2 those type things. And it just wasn't the place to conduct  
3 an interview in the car.

4 Q. Okay. So when you got back to the station, what  
5 happened at that point?

6 A. We escorted him into the Detective Division, into the  
7 interview room there in the Detective Division, and he was  
8 read his *Miranda* rights at that time.

9 MS. ANDERSON: Your Honor, at this time, we would just  
10 renew previous objections to this.

11 THE COURT: All right, subject to our Rules.

12 MR. CHIARENZA: I will as well, Your Honor, and for  
13 different reasons without any previous objections subject  
14 to --

15 THE COURT: Objections are overruled subject to --  
16 based on earlier ruling.

17 BY MR. THOMPSON:

18 Q. Detective Ayers, can you tell me how were his *Miranda*  
19 rights read to him at that point in time?

20 A. The interview room, as you walk in the door, there is  
21 a seat to the left, a table or desk, and then a office  
22 chair there with a computer and all in front of it. And  
23 the *Miranda* rights are displayed on the screen, and we read  
24 them right from the computer screen.

25 Q. And did you or Detective Herring read him his *Miranda*

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1 rights at that point?

2 A. If I may review just to make sure. On -- Detective  
3 Herring read his *Miranda* rights.

4 Q. And how did that -- How did he do that in your  
5 presence at that point?

6 A. I was seated right at the door just to the right of  
7 Mr. Reid, and Detective Herring was sitting in front of the  
8 computer.

9 Q. And the *Miranda* rights, are they up on the screen of  
10 the computer at that point?

11 A. That's correct.

12 Q. And is that where you read them from?

13 A. Yes, sir.

14 Q. And would you read them to us as Detective Herring  
15 read them to the Defendant at that time?

16 A. "Before we ask you any questions, you must understand  
17 your rights.

18 You have the right to remain silent. Anything you say  
19 can be used against you in court.

20 You have the right to talk to a attorney for advice  
21 before we ask you any questions and to have him with you  
22 during questions. You have this right to the advice and  
23 presence of a attorney, even if you cannot afford to hire  
24 one. We have no way of appointing you a attorney, but one  
25 will be appointed by the courts for you, if you wish. If

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1 you wish, you may answer questions without the presence of  
2 an attorney, and you may stop answering at any time you  
3 desire until an attorney is present."

4 Q. Did he indicate that he understood those rights?

5 A. At that time I asked him, "Do you understand your  
6 rights?" and he stated that he did.

7 Q. And are there more rights that you read after that or  
8 that Detective Herring read after that?

9 A. After that is a statement that states, "I have read or  
10 have read to me the statement of my rights shown above. I  
11 understand what my rights are, and I am willing to make a  
12 statement. I do not want an attorney at this time. I  
13 understand and know what I am doing. I know that the  
14 person who is talking with me is a police officer, and I  
15 understand what he is talking about."

16 Q. And did he indicate that he understood that?

17 A. That's correct.

18 Q. And he wished to speak to you still at that time?

19 A. He made no indication that he did not.

20 Q. At this point or at any point you were speaking with  
21 him during this speaking, did he invoke his right to an  
22 attorney and ask to stop speaking?

23 A. No, sir.

24 Q. Was he threatened or coerced by either you, or  
25 Detective Herring, or anyone else in his presence?

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1 A. No, sir. No, sir.

2 Q. Was he offered any hope of reward for giving the  
3 statement at that time?

4 A. No, sir.

5 Q. Now after that, after the reading of the rights, did  
6 you then begin to talk to him about what he knew?

7 A. Yes, sir.

8 Q. And did he start to tell you things that he knew  
9 regarding the actual robbery in this case?

10 A. Yes, sir. We started speaking with him, and  
11 conducting the interview, and to his involvement.

12 Q. And if you would, kind of describe to me the interview  
13 process. How do you actually get it into paper at this  
14 point?

15 A. Basically, you know, usually the way I start is just,  
16 "Look, the information's not right, what you've been  
17 telling us. Why don't you go ahead and tell us the whole  
18 story." At that time, they'll start telling where they'd  
19 been at that night. And we ask them to go in chronological  
20 order, you know, kind of, "Tell me what you did," through  
21 the whole time. And he'll start describing the events as  
22 he wants to tell them to us at that time. So once --

23 Q. Is that what Mr. Reid did at this point when you began  
24 talking to him?

25 A. Correct.

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1 Q. And during this conversation did he basically give you  
2 a story of what occurred the night of the robbery?

3 A. That's correct.

4 Q. And now did you type it right then or Detective Ayers,  
5 did you type it right then -- Or I'm sorry, Herring not  
6 Ayers.

7 A. We always just go through the story, and at that time  
8 have it pretty much in your mind. It allows you to move  
9 through that, when you're typing it up, a little faster  
10 than sitting there trying to keep up with someone who is  
11 speaking.

12 Q. So you kind of went through the story the first  
13 time ---

14 A. Correct.

15 Q. --- and then went through it again, and at that point  
16 one of you began typing?

17 A. Right.

18 Q. And during the course of that, was the statement then  
19 typed up on the computer screen?

20 A. Yes, sir, it was.

21 Q. And how was it confirmed that, that was the statement  
22 that Mr. Reid wished to give at that time?

23 A. At that point, we actually read the statement back to  
24 him off the screen.

25 Q. Okay.

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1 A. Is that -- Are you --

2 Q. Yeah, that's what I'm asking.

3 A. Right.

4 Q. You read the statement back to him off the screen?

5 A. Read the statement back to him off the screen to see  
6 if he wanted to change anything in the statement, see if  
7 there was anything wrong, something that we had worded  
8 incorrectly in the statement. Give him the chance -- If he  
9 indicates there's anything to change, we would change a  
10 word here or there, but I don't recall any changes, but --

11 Q. Would that include if he wanted to add something to  
12 it?

13 A. Yeah. "Is there anything else" -- At the end of it,  
14 we always ask, "Is there anything else you want to add? Is  
15 there anything else you need to say in this?"

16 Q. Did y'all say that to Mr. Reid that night?

17 A. I -- every one of my statements, I always do them that  
18 way.

19 Q. And after it was read, did he agree that, that was his  
20 statement?

21 A. It was -- He indicated, yeah, that was correct as far  
22 as the story.

23 Q. Do y'all indicate the time period in which you take  
24 the statement as far as how long he's with you during that  
25 period of time?

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1 A. Yes, sir.

2 Q. And what were the actual date and time period that  
3 y'all did the statement?

4 A. This was actually on October the 2nd at 1:45 p.m. when  
5 we started in the afternoon. And we finished that same day  
6 around 2:15 p.m. -- 30 -- 40 -- 30.

7 Q. At that point after he confirms that, that's the  
8 statement, how do you then again put it on paper because at  
9 that point it's on the computer. Right?

10 A. At that time, everything's fine with the statement  
11 they have. We'll print it out, and we'll go over to the  
12 printer and bring the copy of that back in to them, and ask  
13 them, "Look, this is" -- "This is the statement that we  
14 just printed off. Here's your rights that we read to you  
15 at the first part. Here's the other statement that I read  
16 or had read to me, my statement and rights. This is just  
17 some personal information about you, your name, your  
18 address, and all that. All right, this is your statement.  
19 If you want to, go ahead and read that again, and make sure  
20 it's all the same that we just looked at that on the  
21 computer." At that time, I'll ask them to go back and sign  
22 that we did read them their rights. They did understand  
23 their rights, and they wanted to go ahead and give the  
24 statement. And at the end, we'll ask them to sign their  
25 statement.



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1 Q. Is that what you did -- Is that what you and Detective  
2 Herring did with Mr. Reid?

3 A. That's correct.

4 Q. Did he sign, waiving his *Miranda* rights at that point?

5 A. Yes, he did.

6 Q. Did he sign as well under the second information of  
7 rights that you read to us?

8 A. Yes, sir.

9 Q. And then after looking over the statement, did he sign  
10 the statement itself?

11 A. Yes.

12 Q. His statement?

13 A. Yes, he did.

14 Q. And there's a third page. If you would tell us what  
15 that is.

16 A. The third page is what we refer to as the notary page.  
17 It's basically that "You're swearing and affirming that the  
18 statement is true." And he signed that one as well.

19 Q. And you were the one who notarized that, I believe.  
20 Is that --

21 A. Yes, I notarized that.

22 Q. Detective Herring witnessed it?

23 A. Correct, yes. That is Les Herring.

24 Q. Now if you would, do you have a copy of that statement  
25 in front of you?

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1 A. Yes, sir.

2 Q. I'm going to hand you this. I think we'll ultimately  
3 mark this.

4 And that's State's Exhibit?

5 MADAME COURT REPORTER: I've got Thirty-eight, Mr.  
6 Thompson.

7 MR. THOMPSON: All right.

8 (WHEREUPON: STATE'S EXHIBIT THIRTY-EIGHT PREMARKED  
9 FOR IDENTIFICATION.)

10 Q. If you can tell me what State's Exhibit Thirty-eight  
11 is?

12 A. This is the statement that we took from Donta Reid on  
13 August -- October 2nd.

14 Q. Is that the original statement?

15 A. Yes, it appears to be the original.

16 Q. Looking over it, has it been altered or changed in any  
17 way since you were with Detective Herring and you took that  
18 statement from the Defendant?

19 A. No, sir.

20 Q. And again I'll ask you, at any time during this  
21 interview, did he ask for his attorney or ask that he stop  
22 speaking?

23 A. No, he did not.

24 Q. Did y'all offer him any benefit or hope of reward for  
25 telling you anything?

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1 A. No, sir.

2 Q. Did anyone threaten or coerce him in any way?

3 A. No, sir.

4 Q. Thank you.

5 MR. THOMPSON: Your Honor, I ask to enter this into  
6 evidence at this time, State's Exhibit Thirty-eight.

7 MS. INZERILLO: Just my previous objection.

8 THE COURT: All right.

9 MR. CHIARENZA: Yes, the same, subject to previous  
10 objections.

11 THE COURT: Subject based on previous rulings,  
12 objections overruled and admitted into evidence.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-EIGHT  
14 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

15 BY MR. THOMPSON:

16 Q. Detective, if you would, read the statement for us.

17 A. Do you want me to start at the rights and go all the  
18 way through or just the statement itself?

19 Q. Well, we've already read the rights. And before you  
20 actually start in the body of the statement, you had  
21 mentioned that there was some personal information taken  
22 there?

23 A. Yes, sir.

24 Q. In the personal information, do you confirm that he  
25 could read and write and understand the English language?

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1 A. That's correct.

2 Q. And how much school had he said he had completed at  
3 that time?

4 A. He stated he had completed 11 years, and that he could  
5 read and write English.

6 Q. If you would, just then read the body of the statement  
7 for us.

8 A. "Last night, October 1st, 2009, I called Maurice  
9 Jackson on my cousin's cell phone. His name is Mike  
10 Dunalon. His number is [REDACTED]. I asked him if he  
11 wanted to smoke some weed. He said, 'Yes.' I went home,  
12 and I called Maurice from home. His cell number is [REDACTED]  
13 [REDACTED]. He didn't answer his cell phone, so I walked over to  
14 his house.

15 Before all of this, I had talked with Duke, a guy that  
16 I knew from Northwestern High School. He had told me that  
17 he wanted to make a lick and get some money. I was talking  
18 with him at the Sunset Park. There was just me and him,  
19 nobody else heard what was being said. He asked me if I  
20 knew who had any money or weed, and I told him that Maurice  
21 had some weed.

22 When I went over to Maurice's house, I called Duke on  
23 Maurice's cell phone. Duke's cell phone number is [REDACTED]  
24 [REDACTED]. And I told him that there were two people at  
25 Maurice's house because I was going to get Maurice to walk

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1 with me to Midtown to keep him out of it since there were  
2 two other guys that were there and had weed too. Maurice  
3 wouldn't walk to Midtown with me, and then I left.

4 I walked up the street to where Duke was at. He was  
5 standing at Scoggins and Maple Street. And that's when I  
6 told him that there was three people there instead of two.  
7 And I told him they were on the porch smoking.

8 Duke walked over to the ditch where he had put a  
9 .22-caliber rifle. It was black all over. It looked like  
10 the butt had been cut off, and there was white tape around  
11 the butt. I told him that he shouldn't do it, but he said,  
12 'Fuck that, I'm going to get the money.'

13 As I was walking off, Duke was walking toward  
14 Maurice's house. I was on Scoggins Street when I heard  
15 what sounded like a whole clip being shot, like it was  
16 automatic. It must have been at least 10 to 12 shots.  
17 Duke didn't look like he was high or anything.

18 I have not talked with Duke since then. I was shown a  
19 photo of him at the police department, and his hair is  
20 shorter now than it was in the picture."

21 Q. And that was the statement he gave to you at that  
22 point in the afternoon?

23 A. That's correct.

24 Q. After he gave that statement, Detective, can you tell  
25 me where did y'all -- what did y'all do as a result of that

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1 information?

2 A. We began looking for Duke and drawing up warrants for  
3 Duke involved in the case.

4 Q. And can you tell me, and Duke is who? What's his real  
5 name?

6 A. Darius Jeter.

7 Q. Tell me as well, when he mentions that they wanted to  
8 make a "lick," what was he describing to you? What was  
9 that he --

10 A. Street language for "making a lick" is to do a  
11 robbery.

12 Q. And as he gave you some of these numbers, were you  
13 able to confirm that Maurice's number was actually the 324-  
14 0215 that he had given you?

15 A. That's correct.

16 Q. How about the cell phone number for Duke at [REDACTED]  
17 Did you find that to be correct?

18 A. We determined that was an incorrect number.

19 Q. Now after you -- Then as you said, you started looking  
20 possibly for Duke at this point in time. Were y'all able  
21 to find him that day?

22 A. Yes, there were numerous detectives going different  
23 ways, different avenues of investigation. At that time,  
24 Duke was or -- Darius Jeter was spotted in Confederate Park  
25 on Confederate Avenue, and officers responded to that area,

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1 and were able to take him into custody.

2 Q. And did you have a chance to talk to Duke as well that  
3 afternoon?

4 A. I did not.

5 Q. Did one of the detectives, did he come -- Was he  
6 picked up that afternoon?

7 A. Yes, he was picked up and brought to the station.

8 Q. Did you learn what he had spoken to the detectives  
9 about at that point?

10 A. Yes.

11 Q. And as a result of that, did you then again go to  
12 speak with Donta Reid?

13 A. Yes, we did.

14 Q. And when was the next time that you were involved with  
15 speaking with Donta Reid?

16 A. If I can review my notes here. I don't know exactly.  
17 Next time I was involved with speaking with Donta Reid was  
18 on October the 2nd at 11:55 p.m., just before midnight.

19 Q. So just later that same day?

20 A. Right.

21 Q. And where was he at that time when y'all went to talk  
22 to him?

23 A. He was at the station still.

24 Q. So he had been placed under arrest at that point; is  
25 that correct?

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1 A. That's correct.

2 Q. And so when he -- Was he in the holding area back in  
3 the station? Is that --

4 A. Yes, sir.

5 Q. Did y'all bring him out of the holding area to talk to  
6 him?

7 A. Yes, sir.

8 Q. And who was with you at that time and spoke with him?

9 A. Myself and Detective Herring.

10 Q. So the same detective that was with you the first  
11 time?

12 A. That's right.

13 Q. Did you go to the same place to conduct the interview?

14 A. That's -- The same interview room was used.

15 Q. All right. And did you follow the same procedures  
16 when you went in?

17 A. That's correct.

18 Q. And once again, if you'll describe briefly those  
19 procedures again so that we're familiar with them.

20 A. As we enter the room, ask them to have a seat. And  
21 because he was in custody, we again read him his *Miranda*  
22 rights. And I explained to him, "I know you had your read"  
23 -- "had your rights read to you already, but I'm going to  
24 read them to you again." And at that time --

25 Q. And did you read them to him the same way off your



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1 computer screen?

2 A. Exactly. Verbatim again off the computer screen, same  
3 way I'd done it before.

4 Q. And did he indicate that he understood those rights?

5 A. He did.

6 Q. And is it the same waiver that you read to us just a  
7 few minutes ago that you read to him again?

8 A. Exactly.

9 Q. Because that's what's on the computer screen at the  
10 Detective Division?

11 A. That's correct.

12 Q. Okay. And at any point during the time that you spoke  
13 to him this evening, did he invoke his right and ask to  
14 have an attorney present or remain silent?

15 A. No, sir.

16 Q. Did y'all threaten or coerce him in any way at this  
17 point?

18 A. No, sir.

19 Q. Now when you went back to talk to him, is there  
20 anything you confronted him with at that point?

21 A. At that time we confronted him and advised him that we  
22 had developed further information, further people that were  
23 involved, including a female.

24 Q. And now again, just to clarify. He had once again  
25 waived his rights at this point in time?

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1 A. That's correct.

2 Q. Did you conduct the interview the same way? Kind of  
3 go over the story initially and then go back and begin to  
4 type through it.

5 A. At that point, you know, we're going to advise him,  
6 "Look, what you told us earlier, you know that's not  
7 correct. We've developed further information. These  
8 people are involved now, you know. You need to come  
9 forward and help yourself out and tell the truth."

10 Q. Again, did you follow the same procedure that you had  
11 before as far as basically having him tell the story before  
12 you began typing? And then --

13 A. Correct. And then go through the scenario of what  
14 they're going to explain to us at that time.

15 Q. And at that point, did he then give you another full  
16 statement?

17 A. Yes, sir, he did.

18 Q. And once again, after the statement was typed out on  
19 the computer, how was it relayed to the Defendant?

20 A. The same way. Again, after we finished, we would  
21 review the entire statement with him again on the computer.  
22 "Do you want to make any changes? Anything you want to add  
23 or take out?" Again, we would print it out, bring it back  
24 to him, show him the printed copy, explain to him the  
25 rights, the advisement that he wants to waive his rights.

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1 And then allow him to read through the statement again if  
2 he would like to, to make sure that he understands that it  
3 was the same one.

4 Q. And at this point in time, did he indicate that he  
5 wanted to change or alter anything in the statement?

6 A. No, sir.

7 Q. And he was given that opportunity?

8 A. That's correct.

9 Q. Okay. And so when the statement was typed out, did he  
10 then sign, saying that was his statement?

11 A. Yes, sir, he did.

12 Q. And again, did he sign his waiver of rights on that  
13 statement as well?

14 A. That's correct.

15 Q. And the final sheet, the affidavit on the back, did he  
16 sign that as well?

17 A. That's correct.

18 MR. THOMPSON: I'll mark this as the next State's  
19 Exhibit, Your Honor.

20 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE  
21 PREMARKED FOR IDENTIFICATION.).

22 Q. This is State's Exhibit Number Thirty-nine.

23 State's Exhibit Thirty-nine, if you can tell me what  
24 that is.

25 A. This is the second statement that I was involved with

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1 in taking from Mr. Reid.

2 Q. And can you tell me again the hours that, that was  
3 done.

4 A. This was done October 2nd at 11:55 p.m., going into  
5 October 3rd at 12:35 a.m.

6 Q. All right. Now is that the original statement that  
7 you took with Detective Herring?

8 A. It appears so.

9 Q. Has it been altered or changed in any way?

10 A. No, sir.

11 MR. THOMPSON: Your Honor, I ask to admit State's  
12 Exhibit Thirty-nine into evidence at this time.

13 MS. INZERILLO: Subject to previous objections.

14 MR. CHIARENZA: And again, just renew previous  
15 objections.

16 THE COURT: All right. Based on earlier rulings,  
17 objections are overruled and the statement is admitted into  
18 evidence.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE  
20 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

21 BY MR. THOMPSON:

22 Q. Detective Ayers, if you would now, go to the body of  
23 this statement and read to us what he told you that  
24 evening.

25 A. "Earlier today on October the 2nd, 2009, I gave them

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1 additional information to Detective Herring in reference to  
2 the shooting and robbery on Byar Street the night before.  
3 I did not tell everything because I was scared.

4 What really happened was I was over in Sunset Park.  
5 And I was going to walk over to Sam's house. Sam is a girl  
6 named Samantha who lives on Keel's Avenue. I saw Duke in  
7 the park, and we sat down and started talking. He started  
8 asking if I was down with doing a lick that night to try  
9 and get some money. I really wasn't wanting to do that,  
10 but I was tired of being broke. I finally said, yes, I  
11 would do it. He asked me if Maurice had any weed, and I  
12 said, 'He should have some.' He asked me to call him up to  
13 see if he had any, and I said to him, 'You know I ain't got  
14 no phone.' He said he was going to call Sam and tell her  
15 what was going on with doing a lick on Maurice for any  
16 weed.

17 I walked to Sam's house, and she asked me if I had  
18 talked to Duke to know what was going on tonight. I told  
19 her that I had talked to him and I knew the deal.

20 A little bit later, we got in a dark-colored truck  
21 that Sam was driving. I got in the back part of the truck,  
22 and she started to drive off to find Duke.

23 We got to Parks Grocery, and we saw Duke and he got in  
24 the truck. I told him to drop me off, but Sam told me to  
25 call Maurice first to see if he had some weed. I called

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1 Maurice from Sam's phone, and he said he didn't have any  
2 weed right then, but he said he could get some. He told me  
3 to come by when I got home.

4 I had Sam drop me off at my house and she and Duke  
5 were going over to Reynolds Street to park the car and wait  
6 in the dark. I called Maurice from my house phone, and he  
7 didn't pick up so I walked down there to his house.

8 I saw Banks and Kenny Boo on the porch with Maurice.  
9 Maurice said the guy he gets his weed from was asleep and  
10 wouldn't wake up. I asked him if I could use his phone. I  
11 called Sam's phone from Maurice's phone and made it sound  
12 like I was calling her to get some weed. She asked me how  
13 much I wanted, and I said, 'two.' I asked Maurice to walk  
14 to midtown with me, and he said he didn't want to go.

15 I started to walk down Byar Street to Maple Street,  
16 and Sam and Duke were standing on the corner of Scoggins  
17 Street. Duke pulled a .22-caliber rifle out of the ditch.  
18 It was the same way that I described it to you in the other  
19 statement. Duke asked me how many people were at the  
20 house, and I told him there were three people. I told him  
21 that it was Maurice, Banks, and Kenny Boo. He asked what  
22 they were doing, and I told him they were smoking. He  
23 said, 'Man, I'm about to go up on the porch and rob all  
24 three of them.' I told him not to do it, and he just  
25 started walking off towards Maurice's house. Sam was going

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1 with him, and I called her -- called out to her to come  
2 back and she it would be all right, and she would be right  
3 back.

4 I went to the truck where it was parked on Reynolds  
5 Street and sat there for about 5 minutes. That's when I  
6 heard gunshots.

7 I saw them come running towards the truck, and Duke  
8 put the gun in the back of the truck, and he said he  
9 thought he shot one of them. Duke said he got a cell  
10 phone.

11 I told them I was going to walk over to Sam's house,  
12 and they drove off in the truck. I didn't want to ride  
13 with them because I had a bad feeling that they were going  
14 to get pulled over, and I didn't want to get caught up in  
15 their mess. I walked to her house and about an hour later,  
16 I got a call from my step-dad and he said that two of the  
17 boys down the road had gotten shot and were in the  
18 hospital. He asked me if I was safe, and I said I was  
19 okay. That was when Duke threatened me and Samantha that  
20 if we talked about it to anyone, he would shoot us and our  
21 house up. Once he threatened me was when I got scared to  
22 tell you all the story."

23 Q. And that was the statement he gave to you then, that  
24 evening around 11:55 going into early morning the next day.

25 A. That's correct.

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1 Q. Can you tell me again if you would, you mentioned some  
2 people by nicknames. Could you describe what their real  
3 names were? For instance, he mentions "Banks." Did he  
4 tell you who Banks was?

5 A. Banks is Mr. King.

6 Q. That's Tyrone King?

7 A. That's correct.

8 Q. And he mentioned "Kenny Boo." Do you know --

9 A. Kenny Boo is Kenny Cunningham.

10 Q. And then he mentioned "Maurice."

11 A. Maurice is Mr. Jackson.

12 Q. So the three young men at 340 or -- [REDACTED]  
13 Correct?

14 A. The three victims in this case. Yes, sir.

15 Q. Okay. Now, were you ultimately able to get the phone  
16 records of Samantha Ervin's phone?

17 A. That's correct, we were.

18 Q. And were you able to confirm that these phone calls  
19 had occurred?

20 A. We were able to determine these phone calls were made  
21 in the time frame just before the robbery occurred.

22 Q. And can you tell me as well in your investigation,  
23 ultimately, did you -- I know while it doesn't mention --  
24 Well, only mentions Samantha Ervin here. Were y'all able  
25 to ultimately interview Samantha Ervin as well?



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1 A. Yes, sir. I was not involved in this.

2 Q. You were not involved in that?

3 A. I just notarized the signatures when she signed.

4 Q. Okay. But ultimately as a result of what Donta Reid  
5 has told you here, was she interviewed as a result of that,  
6 by some detectives?

7 A. Yes, sir.

8 Q. Detective, to wrap things up now with you. There was  
9 a good bit more investigation that was done after this; is  
10 that correct?

11 A. Yes, sir.

12 Q. Did y'all also all end up -- Did you or one of the  
13 other detectives end up interviewing Aileen Newman as well  
14 as a result of this?

15 A. The search was done and she was located in Charlotte.  
16 And afterwards, an interview was done with her.

17 Q. And ultimately -- I'll just leave that. That's all  
18 for right now.

19 Thank you. Answer any questions the Defense has.

20 THE COURT: We'll stop for the day and do this cross  
21 examination in the morning because it's a little after  
22 6:00. So we're going to stop for the day.

23 Keep in mind my earlier admonitions. They continue  
24 throughout the trial. We'll start back at 9:30. So be  
25 back at 9:30, and we'll try to start promptly thereafter

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 again. Have a pleasant evening.

2 (JURY EXITS COURTROOM AT 06:12 PM.)

3 THE COURT: We'll start back at 9:30 in the morning.

4 MR. CHIARENZA: Thank you.

5 THE COURT: Have a pleasant evening.

6 (COURT RECESSED AT 06:15 PM.)

7 (COURT BACK IN SESSION WEDNESDAY, NOVEMBER 16, 2011 AT  
8 09:56 AM.)

9 THE COURT: Thank you. Take your seats please.

10 If we can have the witness back on the stand.

11 Procedurally, we're with Mr. Reid's Counsel, cross  
12 examination.

13 You can bring in the jury.

14 (WITNESS RETURNS TO WITNESS STAND.)

15 (JURY ENTERS COURTROOM AT 09:58 AM.)

16 THE COURT: Good morning. I see we've finally been  
17 able to locate some water. We're ready to get started  
18 back. If you will call the witness that has been directly  
19 examined by the State, and now the Defense has the  
20 opportunity to cross examine.

21 Ms. Inzerillo.

22 MS. INZERILLO: May it please the Court, Your Honor.

23 THE COURT: Yes, ma'am.

24 CROSS EXAMINATION

25 DETECTIVE AYERS BY MS. INZERILLO:

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Q. Detective Ayers, your role in this case was as case  
2 agent along with Detective Herring. Right?

3 A. That's correct.

4 Q. And as case agent, essentially that means that you  
5 guys are managing all parts of the case; is that fair?

6 A. That's correct.

7 Q. So essentially, any leads or information that come in,  
8 you guys, sort of, sift through; perhaps, follow up with  
9 witnesses; go through any paperwork; anything like that?

10 A. All of it should be directed to the two of us, yes.

11 Q. So it's fair to say that as, sort of, lead  
12 investigator along with Detective Herring, you have a  
13 pretty good overview of the case?

14 A. That's correct.

15 Q. Now, one of the things that you did in this case was  
16 you spoke to Donta Reid. Right?

17 A. Yes, ma'am.

18 Q. And you indicated yesterday under direct that you  
19 initially spoke to Donta about - or took a statement from  
20 Donta about 1:45 on October 2nd; is that right?

21 A. The one in the -- the afternoon, 1:45 p.m.?

22 Q. Right.

23 A. Correct, yes.

24 Q. And you can keep that out because I'm going to ask you  
25 some more questions on it.

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1 And that was approximately about 12, 13 hours after  
2 the incident on the porch; is that right?

3 A. Correct.

4 Q. And you went through yesterday how you and Detective  
5 Herring were in a room with Donta and took the statement?

6 A. Yes, ma'am.

7 Q. And you indicated that, essentially, you interview  
8 them first, and then you typed in what he says; is that  
9 right?

10 A. That's correct.

11 Q. And in doing that, on the form that you used, you also  
12 take personal information about Mr. Reid; is that right?

13 A. That's correct.

14 Q. And on this form, for example, the personal  
15 information reflects the date of birth of May 1992; is that  
16 right?

17 A. That's correct. [REDACTED]

18 Q. Right. Of 1992?

19 A. Yes.

20 Q. And that meant in 2009, he was 17 years old. Right?

21 A. Correct.

22 Q. So when he came in to meet with you, he didn't come in  
23 with his mom or his step-dad or anything like that?

24 A. No.

25 Q. And it was just him in a room with you and Detective

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Herring?

2 A. Correct.

3 Q. And this personal information also reflects that I  
4 have a phone number of [REDACTED] Right?

5 A. That's what he provided, yes.

6 Q. And, I believe, you touched on briefly yesterday that  
7 you did subpoena some cell phone records in this case?

8 A. Yes, ma'am.

9 Q. And, essentially, just to kind of put in on the  
10 context, in the age of cell phones and that type of thing,  
11 law enforcement now has the ability to subpoena cell phone  
12 records to see if there's any calls made back and forth,  
13 any text messages back and forth, that type of thing.  
14 Right?

15 A. You can, yes.

16 Q. And your understanding from the investigation is there  
17 were the -- Mr. King and Mr. Jackson at least did have some  
18 cell phones in their possession?

19 A. Yes, ma'am.

20 Q. And so, anytime you got a phone number, you were able  
21 to subpoena those records to see if there was anything from  
22 those records that could yield any clues about any  
23 conversations or contact right around the time of the  
24 robbery on the porch?

25 A. Yes, ma'am.

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Q. And I believe you indicated yesterday under direct  
2 that you did subpoena that, and there were some phone calls  
3 made between Maurice's cell phone and Samantha Ervin's cell  
4 phone?

5 A. Yes, there were.

6 Q. And you also subpoenaed -- had the ability to cross-  
7 reference this [REDACTED] number with the records that you  
8 received, Maurice Jackson's records; is that right?

9 A. If there was a call made to his house, it would show  
10 up.

11 Q. It would have gone there?

12 A. And to your recollection, there were a couple of calls  
13 made from Donta Reid's house to Maurice Jackson's cell  
14 phone; is that right?

15 A. I would have to go back and review the records. The  
16 main ones that I paid attention to were the cell phone  
17 calls, and the one that was outgoing from the land line,  
18 the house phone ---

19 Q. Okay.

20 A. --- at [REDACTED] [REDACTED].

21 Q. On this day at 1:45 when you're speaking to Donta.  
22 Again it's you and Detective Herring in an interview room;  
23 is that right?

24 A. Yes, ma'am.

25 Q. And he is, essentially at this point, you have placed

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 him under arrest. Right?

2 A. That's correct.

3 Q. And conveyed to him in some manner that you guys were  
4 investigating him?

5 A. Yes, ma'am.

6 Q. I know yesterday you read through the statement. I'm  
7 not going to ask you to do that again. But I just want to  
8 have you reference a couple of things in the statement.

9 From being lead investigator and investigating the case,  
10 you know there are certain facts that came to your  
11 attention during the investigation of the case?

12 A. Correct.

13 Q. One of those facts being, Donta Reid went to Maurice  
14 Jackson's house. Right?

15 A. Correct.

16 Q. And that he made a phone call from the porch?

17 A. Made -- There was -- Yes.

18 Q. On Maurice's cell phone?

19 A. Correct.

20 Q. And that sometime around -- Actually, prior to that,  
21 he had asked Maurice to walk with him to Midtown?

22 A. That's correct.

23 Q. And then he made the phone call, and then he ended up  
24 leaving, walking toward, essentially, Scoggin Street, Byars  
25 Street area; is that right?

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. So looking at the first statement, Donta does tell you  
3 about midway down the paragraph on the first page, when  
4 he's talking to this person Duke, "He asked me if I knew  
5 who had any money or weed, and I told him that Maurice had  
6 some weed." Right?

7 A. That's correct.

8 Q. And from your investigation, you learned that there  
9 was some discussion about, perhaps, taking some weed or  
10 some money from someone?

11 A. Yes, ma'am.

12 Q. And he goes a little bit further as describing the  
13 number of people at the house. And he told you on October  
14 2nd, that he had indicated there were two people at  
15 Maurice's house. Right? Which is about two lines past.

16 A. "I told him there were two -- There was two people at  
17 Maurice's house."

18 Q. And of course from your investigation, you know there  
19 was a snippet of conversation overheard about two people.  
20 Right?

21 A. Correct.

22 Q. And later on, again, a couple of lines down, he also  
23 relays to you on October 2nd that Maurice wouldn't walk to  
24 Midtown with him, so he left. Right?

25 A. Correct.



DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Q. Now he tells you that he goes back towards where Duke  
2 was at. Right? Which is towards Scoggins and Maple  
3 Street?

4 A. Right.

5 Q. And in this statement, which is the first statement he  
6 gives you on October 2nd, he tells you, and I'm going to  
7 read directly from the statement, "I told him," meaning  
8 Duke, "that there were three people there instead of two."  
9 Right?

10 A. Yes, that's correct.

11 Q. "And that they were on the porch smoking." Right?

12 A. Correct.

13 Q. He then mentions that Duke picks up a .22-caliber  
14 rifle. Right?

15 A. Yes, ma'am.

16 Q. Which you knew from your investigation was the caliber  
17 of bullet found at the scene?

18 A. That's correct.

19 Q. And then he says, "I told him that he shouldn't do  
20 it." Meaning, he's telling Duke he shouldn't do it. "but  
21 he," meaning Duke, "said 'Fuck that, I'm going to get the  
22 money.'" Right?

23 A. Correct.

24 Q. And then he indicates, he has the exchange with Duke.  
25 He walks away, and Duke walks towards the house. Right?

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 A. That's -- That's what his statement...

2 Q. And then a couple of lines down, he indicates that it  
3 must have been at least 10 or 12 shots that he heard?

4 A. Correct.

5 Q. And that, again, you being lead investigator on the  
6 case, know that there was about 10 or 12 either spent  
7 casings or projectiles found on the scene. Right?

8 A. Yes, ma'am.

9 Q. So this was the first statement that he gives you?

10 A. Yes, ma'am.

11 Q. And you know from your investigation that these facts  
12 that he's relaying to you are true. They're supported by  
13 the investigation.

14 A. They seem to match the other evidence that we've been  
15 able...

16 Q. Now, about 10 hours later, you actually speak with  
17 Donta again. Right?

18 A. Yes, just before midnight we started again.

19 Q. And to kind of put this in context, you spoke to him  
20 at 1:45 and again at somewhere around midnight, but it's  
21 your understanding that Detective Herring had spoken to him  
22 in between that time; is that right?

23 A. That's correct.

24 Q. Okay. And Detective Herring was in the room with you  
25 at the first statement, and again at this next statement

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 that you requested for. Right?

2 A. That's correct.

3 Q. And essentially, while you guys are investigating the  
4 case when there's, sort of, common officers involved, you  
5 don't need the person you're talking to, to start all over  
6 again. You need details. Right?

7 A. Right.

8 Q. Because in fairness, the three people in the room,  
9 you, Detective Herring, and Donta, you've discussed this  
10 before?

11 A. Yes, ma'am.

12 Q. Okay. And so this third statement, essentially, you  
13 go back to him because you need information from him on  
14 some more details of that night; is that right?

15 A. Yes. We had developed further evidence in the case  
16 and knew that the first statement didn't contain the  
17 evidence that we had at that point.

18 Q. Okay. But it did contain very significant details  
19 that were purporting with your investigation?

20 A. This statement.--

21 Q. The first statement.

22 A. The first statement had details in it that were  
23 significant in the case, but as the case developed, it was  
24 obvious there was more to it.

25 Q. And so, about a little before midnight that night, you

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1       went -- you and Detective Herring went back into the room  
2       and spoke with Donta again. Right?

3       A.    Yes, ma'am.

4       Q.    And again, it was just him in the room with the two of  
5       you guys. Right?

6       A.    Yes, ma'am.

7       Q.    And he, and I'm pointing your attention to that third  
8       statement. He indicates in the second line, "I did not  
9       tell everything because I was scared." Right?

10      A.    Yes, ma'am.

11      Q.    So he's initially told you about 24 hours after the  
12      fact that he is scared? Someone has scared him, he's  
13      scared of a fact, or some reason to explain to you why he's  
14      not been completely truthful?

15      A.    That's what he stated to us.

16      Q.    Now he details, you know -- He inserts Samantha  
17      Ervin's name in this statement; is that right?

18      A.    Yes, ma'am.

19      Q.    And that's essentially because you guys had  
20      information that Samantha Ervin was involved?

21      A.    Yes, ma'am.

22      Q.    So when you guys talked with him again on this date,  
23      you told him, "Look we know Samantha Ervin is involved, you  
24      need to tell us what you know." Right?

25      A.    Yes, ma'am, basically.

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1 Q. Basically. Okay. And so he starts off this statement  
2 after telling you that he did not tell everything because  
3 he was scared. He goes a little bit -- He's explaining  
4 seeing Duke in the park. And he says that Duke asked if he  
5 was down with doing a lick that night to try to get some  
6 money. Right?

7 A. That's what he stated.

8 Q. And as you testified yesterday, "doing a lick"  
9 essentially means robbing somebody?

10 A. Yes, ma'am.

11 Q. And after that he says, "I wasn't really wanting to do  
12 that, but I was tired of being broke." Right?

13 A. Yes, ma'am.

14 Q. And again, because we did have you go through the  
15 statements yesterday, I won't have you read every line, but  
16 I'm going to turn your attention to the second page. In  
17 the second line of the second page Donta continued, "I told  
18 them to drop me off, but Sam told me to call Maurice first  
19 to see if he had some weed." Right?

20 A. Correct.

21 Q. So he's indicating to you, it was at Sam's direction  
22 that he get in contact with Maurice?

23 A. That's what he stated here.

24 Q. So he did indicate that he called Maurice from Sam's  
25 phone and had a conversation with him. Right?

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1 A. Yes, ma'am.

2 Q. And again, you did pull the phone records and that was  
3 substantiated by your review of the phone records of  
4 Samantha Ervin's phone?

5 A. That's correct.

6 Q. He indicates he had Sam drop him off at his house.  
7 Right?

8 A. Yes, ma'am.

9 Q. And that he called Maurice from his house phone, but  
10 Maurice didn't pick up. So he walked down to Maurice's  
11 house; is that right?

12 A. That's correct.

13 Q. Okay. He then indicated to you, "I saw Banks and  
14 Kenny Boo on the porch with Maurice." Right?

15 A. Yes, ma'am.

16 Q. And we know "Banks" is Tyrone. Right?

17 A. Correct.

18 Q. And "Kenny Boo" is Kenny Cunningham. Right?

19 A. Yes, ma'am.

20 Q. And you of course in your investigation knew that  
21 Tyrone, and Kenny, and Maurice were all hanging out on the  
22 porch at that time?

23 A. Yes, ma'am.

24 Q. Okay. So then he indicates, "I asked him," meaning  
25 Maurice, "if I could use his phone." Right?

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1 A. Yes.

2 Q. And again, you knew from your investigation, he did  
3 use Maurice's phone. Right?

4 A. That's correct.

5 Q. That he called Sam's phone from Maurice's phone.  
6 Right?

7 A. Correct.

8 Q. And again, from your review of the phone records, you  
9 knew there was phone contact between Sam's phone and  
10 Maurice's phone?

11 A. That's correct.

12 Q. He does indicate in the next line that she's having a  
13 conversation with him, and he said, "two." Right?

14 A. Yes.

15 Q. Which again, as in the previous statement from your  
16 investigation, you were aware that there was a snippet of  
17 conversation heard saying, "two" or "two people," something  
18 like that?

19 A. Yes, ma'am.

20 Q. He indicates he asked "Maurice to walk to Midtown with  
21 me," but Maurice didn't want to go. Right?

22 A. Correct.

23 Q. And again, not to beat a dead horse, but you knew  
24 that, that wasn't a fact that was revealed by your  
25 investigation. Right?

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 A. Correct.

2 Q. In this statement as well, he also describes it as a  
3 .22-caliber rifle. Right?

4 A. Yes, ma'am.

5 Q. Which we know from Forensics was the type of bullet  
6 found at the scene?

7 A. Yes.

8 Q. He also again describes a meeting between him and  
9 Duke, and now says that Sam was there. Right?

10 A. Yes.

11 Q. He says, "Duke asked how many people were at the  
12 house, and I told him there were three people." Right?

13 A. Correct.

14 Q. He says that he then asked what they were doing, "I  
15 told them they were smoking." Right?

16 A. Correct.

17 Q. Which is exactly the same thing he told you in the  
18 first statement. Right?

19 A. That's correct.

20 Q. And again in this statement, Donta said, "he" meaning  
21 "Duke" said, "Man, I'm about to go up on the porch and rob  
22 all three of them." Right?

23 A. Correct.

24 Q. And again he tells you in this statement, "I told him  
25 not to do it, and he just started walking off towards



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1 Maurice's house." Right?

2 A. Correct.

3 Q. In this statement he indicates Sam started walking  
4 with Duke. He told her to stop or come back, and she  
5 wouldn't come back. She went home; is that correct?

6 A. That's correct.

7 Q. Okay. Now, he ends this statement by saying he got a  
8 phone call from his stepfather about the incident on Byars  
9 Street and said, "That was when Duke threatened me and  
10 Samantha that if we talked about to anyone, he would shoot  
11 us and our house up." Right?

12 A. That's correct.

13 Q. "Once he threatened me was when I got scared to tell  
14 you all the story." Right?

15 A. Correct.

16 Q. Which kind of refers back to the initial thing he told  
17 you was, "The reason I didn't tell you everything initially  
18 was because I was scared"?

19 A. Correct.

20 Q. And he's conveying to you that he has been actually  
21 threatened by Duke?

22 A. That's what he stated.

23 Q. Right. That if he told anyone what happened, he would  
24 be shot, or his house would be shot up; is that right?

25 A. That's what he stated to us.

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1 Q. Okay. Detective Ayers, I had asked you sort of at the  
2 beginning of this questioning about any phone calls made  
3 from Donta's home phone and Maurice's cell phone. Right?

4 A. Correct.

5 Q. And you do recollect subpoenaing records from Cricket;  
6 is that right?

7 A. Yes, ma'am.

8 Q. Okay. And you subpoenaed records from Cricket because  
9 that was the service that Maurice Jackson had?

10 A. That's correct.

11 Q. And you knew his phone number. Right?

12 A. Yes, ma'am.

13 Q. And so you were able to look at records and sort of  
14 cross-reference his phone number with any other phone  
15 numbers you may have; is that right?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. INZERILLO: May I approach the witness, Your  
19 Honor?

20 THE COURT: Yes, ma'am.

21 Q. I'm going to show you these phone records and see if  
22 you recognize those as the phone records that you  
23 subpoenaed.

24 A. Yes, ma'am. They appear to be.

25 Q. I'm going to turn your attention to an entry at

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CROSS BY MR. CHIARENZA

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1 10-1-2009.

2 MR. THOMPSON: Objection, Your Honor. If she's going  
3 to publish the record, we ask that she enter it into  
4 evidence.

5 THE COURT: This is what record?

6 MS. INZERILLO: Cell phone records, Your Honor. I  
7 just want to question him about one section of them.

8 MR. THOMPSON: We have no objection to them being  
9 published once it's entered into the record.

10 THE COURT: Then they need to be part of the record  
11 for it to be published.

12 Q. So Detective Ayers, after speaking to Donta  
13 essentially twice in this about 12 to 24 hour period,  
14 right? He gave essentially two statements to you that do  
15 have very common, similar facts in them; is that right?

16 A. The basics were there, and then additional information  
17 was added to each thing, yes.

18 Q. Okay.

19 MS. INZERILLO: No further questions, Your Honor.

20 THE COURT: Mr. Chiarenza?

21 MR. CHIARENZA: Thank you, Your Honor.

22 CROSS EXAMINATION

23 TIM AYERS BY MR. CHIARENZA:

24 Q. Detective, you are one of the co-lead case agents in  
25 this case?

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 A. Yes.

2 Q. And as such, you're allowed to remain in the courtroom  
3 during the entire proceedings. That's correct, right?

4 A. Yes, sir.

5 Q. And you've been here during the entire proceedings.  
6 Correct?

7 A. Yes, sir.

8 Q. You've heard all the testimony from all the witnesses  
9 so far?

10 A. Yes, sir.

11 Q. Now obviously as a case agent, you've got a lot of  
12 involvement in this, so I'm going to try and break it down  
13 into the various aspects that you've been involved with.  
14 Going back to something you testified to yesterday, which  
15 is having taken Mr. Cunningham's statement who was one of  
16 the individuals on the porch. You recall taking his  
17 statement. Correct?

18 A. Yes, handwritten statement in my handwriting, at the  
19 hospital.

20 Q. And Mr. Cunningham sustained a gunshot wound to the  
21 leg; is that correct?

22 A. Through and through on his leg and also into his right  
23 foot.

24 Q. And these weren't -- And you're not a doctor, but I'll  
25 just ask you to render an opinion as a police officer.

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1 You've probably had some dealings with gunshots. These  
2 were not life-threatening wounds were they?

3 A. They did not appear to be life-threatening.

4 Q. And I know you testified that it appeared Mr.  
5 Cunningham was in some pain, but he was clearly lucid  
6 enough to conversate with you wasn't he?

7 A. Yes, he was able to give us some details, yes.

8 Q. And in fact, you took a statement from him and made it  
9 part of your investigatory files in this case?

10 A. Correct.

11 Q. And to some extent relied on some of the information  
12 he gave you to do follow-up investigation in this case?

13 A. Definitely. Yes, sir.

14 Q. So you either, based on dealing with his current  
15 injury or -- Nothing else gave you reason to consider his  
16 statement to be inherently unreliable or not worth  
17 following up on?

18 A. No, sir.

19 Q. Okay. I believe you also testified that there were  
20 portions of Mr. Reid's statement that were given to you  
21 which indicated there was an individual named "Duke Darius  
22 Jeter" involved in this case?

23 A. Yes.

24 Q. Mr. Jeter is not on trial here today?

25 A. No, he's not.

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 Q. And Duke, that's not my client's nickname?

2 A. No, sir.

3 Q. So when Mr. Reid is discussing with you an individual  
4 named Duke Jeter having the gun, and Duke Jeter saying  
5 things like "F that, I'm going to go do this" and all that,  
6 he's talking about another individual who is not in this  
7 courtroom here today?

8 A. That's correct.

9 Q. And based on some of the information that you received  
10 regarding Mr. Jeter, you, yourself actually sought the  
11 search warrant for Mr. Jeter's residence; is that correct?

12 A. That's correct.

13 Q. Do you recall issuing -- Were you involved in the  
14 issuing of that warrant? Processing, get going, and  
15 actually conducting the search?

16 A. I arrived on the scene in the middle of the search  
17 inside. I did not go inside the residence. I was outside.

18 Q. And now, the way a search warrant works, just in  
19 general, not specific to this case, but an officer who's  
20 investigating a case or has reason to believe that there  
21 may be evidence in a particular place would go to a judge,  
22 and there is a formal process, but in laymen's terms  
23 essentially, you would tell the judge orally and in writing  
24 that, "Look, we're working on a case, and we've developed  
25 information, and I've got certain experience which would

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1 lead me to believe that certain items may be found at a  
2 particular residence."

3 A. That's correct.

4 Q. We're looking for a gun, or a handkerchief, or a  
5 stolen car, or whatnot, and we think it might be in a  
6 garage, or a warehouse, or somebody's house. Right?

7 A. That is correct.

8 Q. And then if a judge reviews the information that you  
9 give him, and the judge decides, "Well it sounds like  
10 you're on the right trial. I'm going to let you search  
11 this place," and they would issue the search warrant, and  
12 then you could go search the place.

13 A. That's correct.

14 Q. And it's important that when you present that evidence  
15 to a judge, that's called your affidavit. Isn't it?

16 A. Yes, sir.

17 Q. And an affidavit, I mean these things, you go to  
18 training for these things, and they have particular  
19 requirements that you need to fulfill and that you're aware  
20 of when you're petitioning the judge for the search  
21 warrant. Correct?

22 A. That's correct.

23 Q. And you've been trained that this affidavit should  
24 indicate that one, you, based on your knowledge and  
25 experience and your involvement in this case, you're in a

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1 position to be able to talk knowledgeably about what it is  
2 you're looking for and where you might find it. Correct?

3 A. That's correct.

4 Q. And then your affidavit also wants to specifically  
5 tell the Court exactly what items you are looking for and  
6 where you believe those items would be?

7 A. That's correct.

8 Q. And you did that in this case?

9 A. Attempted to, yes.

10 Q. In regard to Mr. Jeter's house?

11 A. That's correct.

12 Q. Now do you recall in your affidavit swearing to the  
13 Court that you believe the female was armed with a revolver  
14 handgun?

15 A. That is in the affidavit, yes.

16 Q. And you swore to that information when seeking a  
17 warrant for Mr. Jeter's -- to search Mr. Jeter's house?

18 A. That's correct.

19 Q. Did you ever tie a revolver handgun to a female in  
20 this case?

21 A. No, we did not.

22 Q. You did find -- Do you recall what you found at Mr.  
23 Jeter's house and recovered?

24 A. I did not find it, but there was a .9-millimeter  
25 handgun at that residence.



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1 Q. Were there were also some bullets recovered at the  
2 residence?

3 A. Possibly was.

4 Q. If I showed you the return for the search warrant,  
5 would that refresh your memory as to what all you got out  
6 of there?

7 A. Yes.

8 (WITNESS REVIEWING PAPERWORK.)

9 A. Yes.

10 Q. So you remember now what y'all got out of there?

11 A. Uh-huh.

12 Q. So were there some bullets taken from Mr. Jeter?

13 A. Yes, there was three .38-special caliber.

14 Q. And I don't -- It's not my intention to mislead the  
15 jury. Those were a different caliber than what we've been  
16 talking about so far in this case?

17 A. Correct.

18 Q. They weren't -- They didn't match up with any of those  
19 casings that were taken from Byars Street?

20 A. No, sir.

21 Q. They were just bullets and -- Okay.

22 You did find five cell phones at Mr. Jeter's house.  
23 Correct?

24 A. Correct.

25 Q. And there was, in fact -- There was indication that

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1 during the course of the robbery, some cell phones were  
2 taken from the victims. Correct?

3 A. Correct.

4 Q. Found some marijuana at Mr. Jeter's house?

5 A. That's correct.

6 Q. And you've testified there was a weapon there but also  
7 kind of along the lines of the bullets, y'all made a  
8 determination that, that .9-millimeter pistol you found at  
9 Mr. Jeter's house didn't have anything to do with this  
10 robbery?

11 A. That's correct.

12 Q. Now where did the information come from that the  
13 female had a gun?

14 A. I have no idea.

15 Q. But you put that in your sworn affidavit?

16 A. That was the information that was provided by numerous  
17 officers. Sworn officers had provided information to  
18 myself as well. Previous search warrants that were issued  
19 had that in there. I didn't know if someone else had  
20 relayed that information either to Detective Herring or one  
21 of the other officers. It was in other affidavits for a  
22 search warrant. So, I followed that same information in my  
23 search warrant as well.

24 Q. So you personally swore in your affidavit to the judge  
25 upon information that you did not have any personal

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1 knowledge about. Is that what you're saying?

2 A. I would have had personal knowledge that an officer  
3 passed along that information to me.

4 Q. Okay.

5 A. Which officer it was, I cannot recall.

6 Q. Okay.

7 A. It would have had to been told to me, or I would have  
8 never put it in there. And it was also included in other  
9 search warrants.

10 Q. But those officers aren't the ones swearing to this  
11 affidavit?

12 A. That's correct. But an officer can give me  
13 information that I can swear to in that affidavit as well.  
14 I don't have to have direct personal knowledge that I  
15 directly saw that gun or was told by the witness or victim  
16 that, that gun was there. And an officer can relay that  
17 information to me as well.

18 Q. And that would be fine if a judge was aware of that.  
19 But does anywhere in your affidavit say that "Other  
20 officers told me"?

21 A. No.

22 Q. No, okay. In fact, a judge reading this affidavit,  
23 there's nothing inherent in your affidavit here that would  
24 indicate to a court that you were doing anything other than  
25 relaying personal knowledge?

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 (PAUSE.)

2 Q. Let me rephrase that. Is there any part of this  
3 affidavit where you indicate, "I received information  
4 from"?

5 A. No.

6 Q. This thing just simply tells the judge, your sworn  
7 signature on it, information. It doesn't say anything  
8 about where it's coming from. Correct?

9 A. Everything in that is information that I've received  
10 from somewhere.

11 Q. Okay.

12 A. It could be from personal knowledge. It could be -

13 Q. But you're the case investigator.

14 A. --- from somebody telling me about phone records that  
15 we were looking for cell phones. Exactly, but yes.

16 Q. But you are the one swearing to it?

17 A. That's correct.

18 Q. And you don't remember who told you anything. You're  
19 the lead case agent in this case ---

20 A. Yes.

21 Q. --- and you do not remember who told you ---

22 A. No, I do not.

23 Q. --- about the female having a handgun?

24 A. No, sir.

25 Q. Okay. Now, was Mr. Jeter arrested after the search of

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 his home or prior to the search of his home?

2 A. Mr. Jeter was taken into custody before the search of  
3 his home in Confederate Park on the other charges, yeah.

4 Q. Okay. So y'all were -- Mr. Jeter was actually  
5 involved in some other criminal action?

6 A. No, he was involved in this case at the time due to  
7 the statements that we had. So he was taken into custody  
8 on the warrants that we had active.

9 Q. And Mr. Jeter, y'all charged him with criminal  
10 conspiracy related to this case. Correct?

11 A. I would assume that was what he was charged with.

12 Q. If I show you the warrant, would that --

13 A. He was charged with -- I think he was initially  
14 charged with all the crimes.

15 Q. Okay, and that's where I'm getting at.

16 A. Yeah.

17 Q. So, and all of the crimes being -- Did you charge Mr.  
18 Jeter with criminal conspiracy; murder; armed robbery;  
19 possession of a firearm during the commission of a violent  
20 crime; another count of armed robbery; another count of  
21 armed robbery; assault and battery with intent to kill  
22 based on shooting Mr. Cunningham, and of course the murder  
23 would be based on the death of Mr. King; another charge of  
24 criminal conspiracy. I apologize, there's just one  
25 conspiracy. I went further on to another individual's

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1 warrants. Do I need to show you these, or would you agree  
2 that you charged Mr. Jeter with all of them?

3 A. Yes.

4 Q. Okay. And when y'all charge somebody with a warrant,  
5 there's some language you put on there, similar but not  
6 exactly the same, as the kind of affidavit you put on a  
7 search warrant. And that language says something to the  
8 effect of "Law enforcement has done an investigation and  
9 has reason to believe that -- Well first, it says what  
10 happened, and then it says, "The affiant is swearing to  
11 this warrant based on belief for various reasons. Right?

12 A. Correct.

13 Q. And you weren't the affiant on any of these warrants  
14 for Mr. Jeter?

15 A. No, sir.

16 Q. Were you -- As case agent, did you have any sort of  
17 supervisory or approval role in having these warrants  
18 issued against Mr. Jeter?

19 A. No, there's a lieutenant, and all of us will come back  
20 and we'll sit down and talk, and then either the case  
21 agents will decide to go ahead with the warrants. We  
22 usually discuss it with the lieutenant as well.

23 Q. And it's not uncommon to find on these warrants  
24 that -- Warrant again -- We talk about warrants. You're  
25 asking permission to do something. A search warrant is

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1 permission to search something, and an arrest warrant is  
2 permission to go arrest somebody.

3 A. Correct.

4 Q. And in both cases, they have to be signed off by a  
5 judge who says, "Yeah, you've given me enough information.  
6 This sounds like you ought to go do what it is you want to  
7 do."

8 A. Correct.

9 Q. Okay. And when you're asking for that permission, and  
10 in an arrest warrant, it may be not -- you may not have to  
11 get as detailed as a search warrant, but you still have got  
12 to give some kind of reason why you want to arrest the  
13 person. Right?

14 A. Correct.

15 Q. Okay. And it's not uncommon for that reason to be  
16 "The reason we think this is the guy is because we've done  
17 a police investigation, we've recovered some evidence, or  
18 we've got some sworn statements from witnesses, or maybe  
19 even perhaps the defendants themselves." Correct?

20 A. Correct.

21 Q. And in fact in this case, Mr. Jeter's warrants  
22 indicated all of that. You have knowledge that his warrant  
23 indicated all those things?

24 A. I would have to review them to say definitely yes, but  
25 I would say that they all, after the affidavit of the basic

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1 facts of it, would say police investigation, probably sworn  
2 co-defendant statements, recovered evidence. Yes.

3 Q. Okay. But now, ultimately despite all of those things  
4 that were alleged to have existed in the pursuit of the  
5 warrant against Mr. Jeter, Mr. Jeter's charges were  
6 ultimately dismissed by law enforcement?

7 A. Through further investigation, it was determined he  
8 was not involved.

9 Q. But he was booked, arrested, searched, processed, put  
10 into an orange jumpsuit, all that stuff. Had to make bond  
11 and everything else.

12 A. Denied bond.

13 Q. Or had bond denied.

14 A. Correct.

15 Q. So had to spend a little time in the jail, or I don't  
16 honestly know. Do you know how long he was in jail before  
17 he was released?

18 A. I do not know. I know it was as soon as it was  
19 determined within days of his arrest I know procedures were  
20 underway to get him out.

21 Q. You testified some, I believe it was a combination  
22 maybe of direct examination and cross examination by Ms.  
23 Inzerillo, that one of the things law enforcement can do in  
24 a case that involves telephone communication is determine  
25 if indeed calls that were alleged to have been made were



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1 made because you can just look at the records and say -

2 A. Correct.

3 Q. --- my phone number called your phone number.

4 A. Yes, sir.

5 Q. Y'all did that in this case. Right?

6 A. Yes, sir, we did.

7 Q. And in fact, y'all looked at a great deal of telephone  
8 records to determine as far as who was calling who and  
9 where those phone calls were made from?

10 A. Yes, we were given some false phone numbers that we  
11 received records that didn't exist and other phone numbers  
12 as well. There was several that we received.

13 Q. All right. And so not only can a review of those  
14 records tell you if a particular call was made from a  
15 particular number to a particular number, it can tell you  
16 what time the call was made. Correct?

17 A. That's correct.

18 Q. And it can even -- Y'all even have a way to figure out  
19 if their cell phones -- probably where the person was  
20 standing within reasonable proximity, where they were when  
21 they made the call based on what cell tower picked up the  
22 call?

23 A. If you request a cell tower site information, on some  
24 phones you get a general area triangulation there within  
25 five hundred to a thousand yards of this area. Other ones

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1 can put you down to -- Other cell phones are good enough to  
2 put you within five to eight feet of something.

3 Q. And in your review of all the various cell phone  
4 records that y'all investigated in this case, none of them  
5 led to any phone that you connected to Mr. Henson?

6 A. No, sir.

7 Q. Okay. There is no indication in your investigation  
8 that as far as having to do with this robbery, or at this  
9 time, or any of those records that there were any calls  
10 made by or to Mr. Henson?

11 A. Nothing indicates that a way at all.

12 Q. And there's no -- And I just want to caution you here,  
13 Detective, because other witnesses are likely to be called  
14 who may testify to things that they said. I'm speaking  
15 specifically about physical evidence, and you know the  
16 difference, right, between physical evidence and  
17 testimonial evidence? Of course you do, and I just want to  
18 just prevent any mistakes from being made.

19 In this case, are you aware of any physical evidence  
20 that bears any certain unique qualities or characteristics  
21 or identifying features that can be linked specifically to  
22 my client Mr. Henson?

23 A. You want -- You're going into forensic evidence?

24 Q. Yeah, that type.

25 A. Forensic, fingerprints, his DNA, no.

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1 Q. Exactly.

2 A. No.

3 Q. There are no, say, footprints in this case that have  
4 been matched up to his particular shoe he wears?

5 A. No, sir.

6 Q. And there's no blood, or fingernail scrapings, or hair  
7 samples that can -- that bear his DNA?

8 A. No, sir.

9 Q. And there are no fingerprints, like you said, at the  
10 scene of the crime or anywhere else for that matter, that  
11 have been linked to Mr. Henson as being involved in this  
12 crime?

13 A. No, sir.

14 Q. And just to -- I just want to clarify some things  
15 chronologically about some of the statements you were  
16 involved in, in this case. And I don't want to hear  
17 anything about what was in these statements. It's not  
18 where I'm going. I just want to know the statement we've  
19 been calling the *Statement Number Three* from Mr. Reid, that  
20 was taken on October 2nd. Do you recall?

21 A. Started just before midnight, I believe. 11:55 p.m.,

22 ---

23 Q. Okay.

24 A. --- and went into, what, 30 minutes, 40 minutes into  
25 the next day on the 3rd, if that long.

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1 Q. Okay. And up to that point -- I'm sorry. And then  
2 you took a statement from -- Sorry, let me backtrack again  
3 just one bit. In *Statement Number Three*, that's the first  
4 time that Mr. Reid mentions a woman named Samantha Ervin;  
5 is that correct?

6 A. That's correct.

7 Q. Okay. And then you did an interview with Ms. Ervin,  
8 who I believe will testify here at some point. I don't  
9 want to know what's in it. But you spoke to her on October  
10 5th. Correct?

11 A. I did not.

12 Q. You didn't do Ms. Ervin's statement?

13 A. I did not do that interview. I had notarized the  
14 signatures as she finished.

15 Q. Okay.

16 A. But I was not involved with the interview.

17 Q. No problem because that's even better. I just want to  
18 know when it was taken. Was that one done on -- Can you  
19 tell us when that statement was taken?

20 A. Samantha Ervin had a voluntary statement that she did  
21 on November the 1st, but her sworn statement that she took,  
22 that was taken from her by Detective Herring was on October  
23 the 5th at 6:30 to 8:00.

24 Q. So that statement is taken after Mr. Ervin [sic]  
25 implicated her into things in his *Number Three Statement*?

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REDIRECT BY MR. THOMPSON

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1 A. Correct.

2 Q. And then after Ms. Ervin's statement down there at the  
3 Law Enforcement Center, Mr. Reid finally does a *Number Four*  
4 which is after Ms. Ervin's statement?

5 A. That's correct.

6 Q. Okay.

7 MR. CHIARENZA: Court's indulgence just a second, Your  
8 Honor.

9 THE COURT: Certainly.

10 MR. CHIARENZA: That's all I've got, Your Honor.  
11 Thank you.

12 REDIRECT EXAMINATION

13 DETECTIVE TIM AYERS BY MR. THOMPSON:

14 Q. Going back to Mr. Chiarenza's mentioned forensic  
15 evidence. Actually in this case is there forensic evidence  
16 that links anybody to the crime?

17 A. No, sir, there is not.

18 Q. And is that unusual as a detective in this type of  
19 case?

20 A. No, sir.

21 Q. Now going back also to one of the questions that he  
22 asked you about swearing out an affidavit. Can you tell me  
23 as a case agent, are there times that you would swear  
24 out -- Or that as case agent, you would have another  
25 officer swear out an arrest warrant or some other type of

1 affidavit on your behalf?

2 A. Yes. The same with the arrest warrants. Detective  
3 Harveston, who might not have been involved with doing  
4 something at that time, She was doing some of the warrants.  
5 You know, can you help us out? And I think, you know, the  
6 same thing with the search warrants.

7 Q. So you're saying to help you out. Is that because you  
8 are busy at that point in time, investigating?

9 A. Yes, correct.

10 Q. So you get someone else to help you by swearing out  
11 the warrant for you?

12 A. That's correct.

13 Q. Do you relay the information to that person so they  
14 can swear out the warrant?

15 A. You'll relay information to them, this is the facts  
16 that I know in the case, and you'll give them to that  
17 person to the best of your knowledge. And I give them the  
18 location, what you're looking for, that type thing. And  
19 they'll proceed with the warrant.

20 Q. And is that common practice within the police  
21 department.

22 A. Yes, sir.

23 Q. And is that how you're also trained to do it?

24 A. Yes, sir.

25 Q. Now looking just briefly as to Darius Jeter. At his

DETECTIVE TIM AYERS: REDIRECT BY MR. THOMPSON

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1 residence when that search warrant was served, who all  
2 lived at that residence, or who was at that residence? Was  
3 it just him?

4 A. I know his mother was there. Without looking at the  
5 return on it, it was made in the presence of, I think,  
6 there was a total of three people at the residence when the  
7 warrant was executed.

8 Q. So was it a residence that Darius Jeter himself owned,  
9 or was it --

10 A. No, he lived there with his mother.

11 Q. All right. So other people lived there as well?

12 A. That's correct.

13 Q. Okay.

14 A. I think his brother also lived at the residence. As a  
15 matter of fact, the .9-millimeter that was inside the  
16 residence, the picture was taken of, was his brother's.  
17 And there was paperwork with it that showed where he had  
18 bought it at a pawn shop.

19 Q. So his brother was in legal possession of the .9-  
20 millimeter?

21 A. That's correct.

22 Q. Okay. Now once again, going back to Darius Jeter.  
23 Initially y'all did warrants on him, as Mr. Chiarenza  
24 pointed out. Correct?

25 A. That's correct.

1 Q. Was that based off of the statement that Donta Reid  
2 had given you?

3 A. It was the totality of everything, not just Mr. Reid's  
4 statement. There was -- You know, we knew that our victims  
5 were describing this exact rifle. You know, everything was  
6 there that matched up. And with Mr. Reid's statement, it  
7 did line up to where it appeared to be the truth at the  
8 time.

9 Q. And speaking of that, you're talking about the  
10 details. Did you tell Donta Reid those details before he  
11 gave his statement?

12 A. No, sir.

13 Q. As a matter of fact, did you tell him any details of  
14 the robbery or the incident before he gave his statement?

15 A. Would never have revealed that to him.

16 Q. So the details he provided you, he provided to you  
17 without you suggesting?

18 A. Correct.

19 Q. Now of course, this is on -- We're talking about  
20 things that happened on the 2nd and 3rd of October. Did  
21 y'all continue to investigate the case after that?

22 A. Yes, sir.

23 Q. And can you tell -- Did you ultimately clear Darius  
24 Jeter, Duke, from being involved in this case?

25 A. Yes, we were able to clear his name, involvement in



DETECTIVE TIM AYERS: REDIRECT BY MR. THOMPSON

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1 this case.

2 Q. Did that takes months or days?

3 A. It was several days. I would say by the 5th, 6th, at  
4 the most, we knew that he was no longer the one that had  
5 been portrayed as the shooter in this case.

6 Q. But was Darius Jeter also still arrested for something  
7 unrelated to this?

8 A. He had some other charges unrelated to this case as  
9 well.

10 Q. So you didn't actually let him out of jail. He stayed  
11 on the other charges?

12 A. We were able to get those charges released to where he  
13 could have a bond set on those other charges, but he was  
14 still in jail on those charges -- additional charges.

15 Q. Okay. Thank you. No further questions.

16 MS. INZERILLO: Nothing, Your Honor.

17 MR. CHIARENZA: No, Your Honor.

18 THE COURT: You can step down. Have a seat. Thank  
19 you.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Call your next witness.

22 MR. BRACKETT: The State would call Samantha Ervin.

23 (WITNESS ENTERS COURTROOM FROM HOLDING CELL ADJACENT  
24 TO COURTROOM.)

25 MR. BRACKETT: Step right over here.

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 Can we remove the bracelets?

2 (WRIST BRACELETS/SHACKLES REMOVED FROM WITNESS.)

3 MR. BRACKETT: Put your left hand on the Bible, the  
4 Clerk will swear you in.

5 MADAME CLERK: Raise your right hand, place your left  
6 on the Bible.

7 (WHEREUPON: SAMANTHA ERVIN, BEING FIRST CALLED AND  
8 DULY SWORN, TESTIFIED AS FOLLOWS:)

9 MR. BRACKETT: Ma'am, if you would please, just step  
10 up into that little booth there. Be careful, it's one step  
11 up. Don't trip. Have a seat in that chair.

12 DIRECT EXAMINATION

13 SAMANTHA ERVIN BY MR. BRACKETT:

14 Q. Would you please tell the jury your name, and spell  
15 your last so the court reporter can get it right.

16 A. Samantha Ervin, E-r-v-I-n.

17 Q. How old are you, Samantha?

18 A. I am 24.

19 Q. And where do you live now?

20 A. Currently, here.

21 Q. And where do you live regularly?

22 A. [REDACTED].

23 Q. Where were you living back in 2009?

24 A. [REDACTED].

25 Q. And where is that?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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- 1 A. Rock Hill, South Carolina.
- 2 Q. Have you lived in Rock Hill all your life?
- 3 A. Yes, sir.
- 4 Q. Are you married?
- 5 A. No, sir.
- 6 Q. Do you have any children?
- 7 A. Yes, sir.
- 8 Q. How old?
- 9 A. She's one.
- 10 Q. So were you pregnant when you got arrested for this
- 11 offense?
- 12 A. Yes, sir.
- 13 Q. And you had your daughter while you were incarcerated?
- 14 A. Yes, sir.
- 15 Q. Where is she now?
- 16 A. My mom has her.
- 17 Q. Now you lived, you said, at [REDACTED]?
- 18 A. Yes, sir.
- 19 Q. Whose house was that?
- 20 A. My uncle Alfonso Leach.
- 21 Q. And who all lived there?
- 22 A. Alijah James, Shaleika Black, and me.
- 23 Q. And your uncle? Did he live there?
- 24 A. Yeah, Alphonso, yeah.
- 25 Q. How old was he?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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- 1 A. Seventy-four.
- 2 Q. And has he just recently passed away?
- 3 A. Yes, sir.
- 4 Q. Now tell me, how old is Alijah James?
- 5 A. Twenty-one.
- 6 Q. And who is he to you?
- 7 A. He is my cousin.
- 8 Q. And Shaleika Black?
- 9 A. She is my cousin.
- 10 Q. She is Alijah's sister, I believe.
- 11 A. Yes, sir.
- 12 Q. So you were living there in October? September,
- 13 October of 2009?
- 14 A. Yes, sir.
- 15 Q. Who is Aileen Newman?
- 16 A. She was my ex-girlfriend.
- 17 Q. How old -- How did you meet her?
- 18 A. Through my cousin Lashonda Leach.
- 19 Q. And when did you meet her?
- 20 A. In September '09.
- 21 Q. How long was your relationship with Aileen Newman?
- 22 A. A couple of weeks.
- 23 Q. Where was she living back in 2009?
- 24 A. Charlotte and Rock Hill.
- 25 Q. Where did she spend most of her time?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 A. In Rock Hill.

2 Q. Back in September and the first part of October of  
3 2009?

4 A. Yes, sir.

5 Q. Did she have a nickname?

6 A. Lee Lee.

7 Q. Is that what everybody called her, Lee Lee?

8 A. Yes, sir.

9 Q. Now how about Davontay Henson. Who is he?

10 A. He is my cousin Alijah's friend.

11 Q. And how did you meet him?

12 A. Through Alijah.

13 Q. And about when did you meet him?

14 A. In September.

15 Q. Did he have a nickname as well?

16 A. B'more.

17 Q. B'more. Why did they call him B'more?

18 THE COURT: I think when we talk about months, we  
19 might want to talk about years.

20 MR. BRACKETT: Okay.

21 Q. You said you met him in September of what year?

22 A. '09.

23 Q. Are all the people and relationships, everything,  
24 we're focusing on '09?

25 A. Yes, sir.

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1 Q. So his nickname was B'more?

2 A. Yes, sir.

3 Q. Why did he have B'more? What was --

4 A. He was from Baltimore, Maryland.

5 Q. How long did you know him altogether as of October  
6 1st, 2009?

7 A. A couple of weeks.

8 Q. And where was he living? Do you know?

9 A. On Flint Street in Rock Hill.

10 Q. Did he spend much time on Keels Avenue?

11 A. Yes, sir.

12 Q. How often would you see him in the later half of  
13 September of 2009?

14 A. Almost every other day.

15 Q. Now can you stand up and look around the courtroom,  
16 and tell me, do you see Davontay Henson, B'more? Do you  
17 see him in the courtroom?

18 A. Yes, sir.

19 Q. Can you stand up and identify him for the jury?

20 (WITNESS STOOD.)

21 A. He's right there with that white shirt on.

22 Q. With the tie, sitting next to the gentleman here?

23 A. Yes, sir.

24 Q. So that's B'more?

25 A. That's B'more.

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1 MR. BRACKETT: I ask that the record reflect that the  
2 witness has identified the Defendant Davontay Henson.

3 THE COURT: All right. The record will so reflect.

4 MR. BRACKETT: Thank you, Your Honor.

5 Q. How about Donta Reid?

6 A. Yes, sir.

7 Q. How do you know him?

8 A. Through my cousin Alijah.

9 Q. And do you know where he lived?

10 A. He lived on Byars Street.

11 Q. On Byars? And how long did you know him?

12 A. I just met him in September '09 also.

13 Q. And who introduced you to him?

14 A. My cousin Alijah.

15 Q. And did you see -- How often did you see him back in  
16 September of '09?

17 A. Almost every other day.

18 Q. Does he have a nickname?

19 A. Yes.

20 Q. What was his nickname?

21 A. Crud.

22 Q. Crud?

23 A. Yes, sir.

24 Q. C-r-u-d?

25 A. Yes, sir.

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1 Q. Did he -- That's all right. Do you see him in the  
2 courtroom?

3 A. Yes, sir.

4 Q. And where is he?

5 A. He is currently sitting right there.

6 Q. Can you tell me what he is wearing?

7 A. He has a yellow tie on.

8 MR. BRACKETT: I ask that the record reflect that the  
9 witness has identified the Defendant Donta Reid.

10 THE COURT: The record will so reflect.

11 Q. Okay. I want to turn your attention to October 1st of  
12 2009, that day. And tell the jury, just give them a real  
13 brief overview from about the time you woke up to the  
14 evening hours, what did you do that day?

15 A. Well I woke up that Thursday morning. My sister  
16 called me, and I went with her to Lancaster.

17 When I got back from Lancaster, I hung out with Donta,  
18 B'more, Aileen, and Alijah for a little while.

19 I went upstairs and I took a nap, and I woke up, and I  
20 got into an argument with Peanut.

21 Q. Who's Peanut?

22 A. My cousin Shandra's boyfriend.

23 Q. And about what time was it that you -- Do you know  
24 what time you got back, about, from Lancaster? Can you  
25 remember?



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- 1 A. I don't remember.
- 2 Q. Do you remember about what time you woke up?
- 3 A. I don't remember.
- 4 Q. Was it dark or light outside?
- 5 A. It was still light outside.
- 6 Q. So you get up and Peanut -- Who is he again?
- 7 A. My cousin Shandra's boyfriend.
- 8 Q. And you get in an argument with Peanut?
- 9 A. Yes, sir.
- 10 Q. About how old is Peanut?
- 11 A. About 54.
- 12 Q. And where does he live?
- 13 A. On Chestnut.
- 14 Q. Is that close to where you were on Keels?
- 15 A. Yes, sir.
- 16 Q. How long did the argument last? Was it a violent
- 17 argument?
- 18 A. No. It didn't last long. About 5 minutes or so.
- 19 Q. All right. And what did you do?
- 20 A. I left and went up the street and got B'More.
- 21 Q. So when you woke up, B'More was no longer in the
- 22 house?
- 23 A. He wasn't there.
- 24 Q. How long were you gone from the house?
- 25 A. Not long. Maybe 10 minutes or so.

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1 Q. When you came back, was Peanut still there?

2 A. No.

3 Q. Who was at the house at that point when you returned?

4 A. Elijah; Lee Lee; Shaleika; my uncle Alfonso; and my  
5 cousin Alfonso, Jr.

6 Q. Okay. Was Donta there?

7 A. Yes, he was.

8 Q. And how about B'more? Did he come back with you?

9 A. Yes, B'more came back with me.

10 Q. Now at this time, can you recall, was it light or dark  
11 outside?

12 A. It was dark outside.

13 Q. So about how long was it from the time you woke up,  
14 got in the argument, left the house, were gone and came  
15 back, what are we talking about there? How much time?

16 A. I don't remember.

17 Q. You just remember it was dark or getting dark when you  
18 got back?

19 A. Yes, sir.

20 Q. When you got back to the house, where did you go? Did  
21 you go in the house, or --

22 A. We were sitting in the backyard.

23 Q. Who all was sitting back there?

24 A. Me and B'more.

25 Q. Anybody else back there with you?

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1 A. No.

2 Q. When you -- At this point in time, did you have a  
3 weapon?

4 A. No, sir.

5 Q. Did you see B'more with a weapon?

6 A. Yes, sir.

7 Q. Had you ever seen him with a weapon before then, that  
8 day?

9 A. No, sir.

10 Q. What kind of weapon was it?

11 A. It was a black shotgun.

12 Q. Where did he have it?

13 A. In his pants.

14 Q. About how long was it? Use your hands to show the  
15 jury.

16 (WITNESS DEMONSTRATES WITH HER HANDS.)

17 Q. Okay. Are you very -- Do you know a lot about guns?

18 A. No, sir.

19 Q. So it was like a rifle kind of gun?

20 A. Yes, sir.

21 MR. CHIARENZA: Objection, Your Honor, leading, and it  
22 contradicts the testimony already given by --

23 THE COURT: Let's don't get into contradiction. Let's  
24 just -- Right now, it's just a leading question.

25 MR. CHIARENZA: Yes, sir.

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1 THE COURT: I sustain the objection.

2 BY MR. BRACKETT:

3 Q. Can you describe the gun?

4 A. It was black, and it had tape on it, clear tape around  
5 the butt of the gun.

6 Q. What was he doing with the gun?

7 A. He was showing it.

8 Q. To who?

9 A. Me. And Alijah and them came outside. Alijah and  
10 Aileen.

11 Q. How long were y'all in the backyard?

12 A. Not very long.

13 Q. Where did you go from there?

14 A. Inside the house.

15 Q. And who was in the house?

16 A. Donta Reid.

17 Q. So tell us what happened when you got in the house.

18 A. I went in the house. We was all sitting around  
19 talking about robbing somebody. And that's when Donta said  
20 he knew --

21 Q. You were talking about what?

22 A. Robbing someone.

23 Q. Who brought that up?

24 A. B'more did.

25 Q. And at what point did that come up? What were you

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 doing when that happened?

2 A. We was just sitting around talking amongst ourselves.

3 Q. All right. How long were you inside the house talking  
4 before that subject came up?

5 A. I don't remember how long we was in the house. About  
6 10 minutes or so, maybe?

7 Q. Did you have a watch on?

8 A. No, sir.

9 Q. Were you keeping track of the time?

10 A. No, sir.

11 Q. Okay. So do you recall how that subject came up?

12 A. No, sir.

13 Q. What prompted it?

14 A. I guess because he had a weapon with him.

15 Q. Well, tell us how that conversation unfolded.

16 A. We were sitting there, and they said they wanted to  
17 rob somebody. And that's when Donta said that he knew  
18 somebody they could rob. And at that time, he got my phone  
19 and started texting someone on my phone.

20 Q. All right. Did he say who he was texting?

21 A. No.

22 Q. All right. Well tell us what happened.

23 A. After that, he said he was ready to go. So we all got  
24 in the car --

25 Q. We all -- Who is we all?

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1 A. Me, Aileen, B'more, and Donta.

2 Q. Okay. Where did you go?

3 A. We went to Party World to get gas. And after we left  
4 Party World, we stopped back by the house. Aileen had to  
5 go in the house and pick up something. And when we got  
6 back from there, we went by my mom's house. And after we  
7 left my mom's house, we dropped Donta off at his house.

8 Q. Do you know how long all this took to go to Party  
9 World, come back, go to your mom's house? Can you  
10 guesstimate about how long that took?

11 A. No, sir.

12 Q. All right. So you dropped Donta off at his house.  
13 Why did you do that?

14 A. He told us to drop him off at his house.

15 Q. Did he say what he was going to do?

16 A. No, he said he was going to go down there, and call  
17 the phone, and let them know how many people was on the  
18 porch.

19 Q. Call whose phone?

20 A. Call my phone, let us know how many people was on the  
21 porch.

22 Q. Who all had a phone at that time?

23 A. Just me.

24 Q. Now how were you getting around?

25 A. My uncle's truck.

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1 Q. What kind of truck was it?

2 A. It was a Dodge Dakota.

3 Q. What color was it?

4 A. Hunter green.

5 Q. And how big of a truck is it? Is it like a crew-cab,

6 or short-cab, what kind of -- How many people fit in the  
7 interior passenger area?

8 A. You could fit about five people in there.

9 Q. So who was sitting where?

10 A. I was driving, B'more was sitting on the passenger  
11 side, Aileen was in the back seat, and Donta was in the bed  
12 of the truck.

13 Q. Now could Donta hear what you were saying inside of  
14 the car?

15 A. Yes, sir.

16 Q. Could you hear what he was saying from the truck?

17 A. Yes, sir.

18 Q. How was that possible?

19 A. The window was broke in the back.

20 Q. The window, where?

21 A. On the passenger side.

22 Q. Was he talking to y'all through the window?

23 A. No, sir.

24 Q. But he could stick his head in if he wanted to?

25 A. Yeah, he could stick his head in if he wanted to.

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1 Q. So now you dropped Donta off at his house. Where was  
2 his house? Do you know?

3 A. On Byars Street.

4 Q. And you said -- Tell us again what he was going to  
5 do -- what he said he was going to do?

6 A. He said he was going to call the phone and let us know  
7 how many people was on the porch.

8 Q. Were y'all talking about the robbery while you were  
9 driving around?

10 A. Yes, sir.

11 Q. So was there planning going on in the car?

12 A. Yes, sir.

13 Q. And at some point, the plan was to drop him off?

14 A. Yes.

15 Q. Now what happened after you dropped him off?

16 A. After I dropped him off, we went down the street on  
17 Reynolds Street, and we were sitting there, and he called  
18 the phone, and Aileen answered the phone, and he told her  
19 it was two other people on the porch.

20 Q. And where were you guys located when that phone call  
21 came in?

22 A. On Reynolds Street.

23 Q. Were you parked?

24 A. Yes, sir.

25 Q. Who all was in the car?



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1 A. Me, Aileen, and B'more.

2 Q. And what was the significance of two other people on  
3 the porch?

4 A. I have no idea.

5 Q. Were you aware that they were going to try to rob  
6 somebody?

7 A. Yes, sir.

8 Q. So what happened after that phone call was made?

9 A. After that phone call, they got out of the truck, and  
10 they went down the street.

11 Q. Who's "they"?

12 A. Aileen and B'more got out of the truck, and they went  
13 down the street.

14 Q. Which direction did they go?

15 A. Straight down the street.

16 Q. Towards where?

17 A. Byars Street.

18 Q. Where did you go? Did you stay there, or did you  
19 move?

20 A. I stayed there.

21 Q. How long were you sitting there?

22 A. For a little while.

23 Q. Do you know -- Do you have any idea how long?

24 A. I don't know how long.

25 Q. What was the next thing that happened as far as you

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1 could tell?

2 A. Next thing that happened was they was gone for a  
3 little while, then Donta comes up the street and gets in  
4 the truck with me.

5 Q. Inside the car?

6 A. Yes, sir.

7 Q. And after that, he got inside --

8 A. And what did he tell you?

9 Q. I asked him where they was at. He was like, he didn't  
10 know.

11 Q. Okay.

12 A. And so, we got in. We was listening to the music, and  
13 the next thing you know, we heard gunshots.

14 A. How long after Donta got there?

15 Q. I don't recall how long after.

16 A. Was Donta aware that they were going to try to rob  
17 somebody?

18 A. Yes, sir.

19 MS. INZERILLO: Objection, Your Honor, speculation.

20 THE COURT: Yeah don't, you're going into somebody's  
21 thought process. I sustain the objection.

22 BY MR. BRACKETT:

23 Q. When you were discussing the planning of the robbery,  
24 was Donta there?

25 A. Yes, sir.

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1 Q. Was he participating in the conversation?

2 A. Yes, sir.

3 Q. Was he aware of the plan?

4 A. Yes, sir.

5 Q. And did he have a role in the plan?

6 A. Yes, sir.

7 Q. After you heard the gunshots, what happened?

8 A. Aileen and B'more came running up the street.

9 Q. All right. From which direction?

10 A. They came running up from Byars Street.

11 Q. And what happened?

12 A. Aileen got in the bed of the truck, B'more got in the  
13 passenger side, and Donta slid into the back seat.

14 Q. Did anybody have anything in their hands?

15 A. No, I didn't see nothing in nobody's hands.

16 Q. Did you see any weapons?

17 A. No.

18 Q. What did they say when they got in the car?

19 A. They didn't say nothing. B'more just took off his  
20 sweatshirt, and threw it out the window.

21 Q. All right. And then what happened?

22 A. We went back to my uncle's house.

23 Q. How did you know to go there?

24 A. There was a meet-up spot to go back to.

25 Q. Did anybody tell you, "Let's go, let's drive"?

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- 1 A. Yeah.
- 2 Q. Who was that?
- 3 A. B'more told me, let's go.
- 4 Q. How long did it take you to get back to your uncle's
- 5 house?
- 6 A. Not long, maybe 10 minutes.
- 7 Q. Prior to this, did you see anybody else with any guns?
- 8 A. No, sir.
- 9 Q. Did you have a gun?
- 10 A. No, sir.
- 11 Q. Did you see Donta with a gun?
- 12 A. No, sir.
- 13 Q. Did you see Aileen with a gun?
- 14 A. No, sir.
- 15 Q. Did you see any of those people -- Other than B'more,
- 16 did you see anybody else have a weapon in their hand that
- 17 evening?
- 18 A. No, sir.
- 19 Q. What happened when you got back to the house?
- 20 A. We got back to the house and B'more was trying to hide
- 21 the gun in my uncle's abandoned truck. And my cousin came
- 22 outside and told him, no, he can't put it there. And we
- 23 all went --
- 24 Q. Your cousin, who?
- 25 A. Alijah.

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1 Q. Alijah.

2 A. Yes, sir.

3 Q. Okay.

4 A. We all went into the house, and they pulled out two  
5 ID's and two cell phones in a Newport box --

6 Q. Who? Who's they?

7 A. B'more.

8 Q. Okay. And what did they do with these things?

9 A. They threw them on the table.

10 Q. Where in the house were you at this time?

11 A. In the living room.

12 Q. What were they saying?

13 A. B'more was doing his little dance saying, he got 'em,  
14 he got 'em.

15 Q. He was doing a dance?

16 A. Yes, sir.

17 Q. Like, literally a dance?

18 A. Yes, sir.

19 Q. Okay. And you were in the living room.

20 Who else was there besides you and B'more?

21 A. Me, B'more, Aileen, and Donta.

22 Q. Okay. Where was Alijah?

23 A. In the living room also.

24 Q. So he was close enough to witness this?

25 A. Yes, sir.

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1 Q. Now what happened with the stuff that he took out of  
2 his pocket?

3 A. They put it on the table, and we was looking through  
4 the ID's, and B'more said he recognized an ID, which was  
5 Tyrone King's ID. He said it was his brother's home boy.

6 Q. Was there any money in the wallet?

7 A. I didn't see any money.

8 Q. Did you see any money out on the table?

9 A. No, sir.

10 Q. What else was there? You said there were --

11 A. A Newport box with marijuana in it.

12 Q. Were there any cigarettes in it?

13 A. No, sir.

14 Q. How much marijuana was in the Newport box?

15 A. About a blunt.

16 Q. Okay. What's a blunt?

17 A. Basically like the lowest you can get, lowest you can  
18 buy.

19 Q. A very small amount?

20 A. Yeah, very small amount.

21 Q. Enough to roll into one cigarette maybe?

22 A. Yes, sir.

23 Q. And what else was there? There was the Newport box --

24 A. Two cell phones and two ID's.

25 Q. What happened to all that stuff?

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1 A. Well Donta took the phone to a Cricket store, and he  
2 was trying to get it transferred over to a Cricket phone,  
3 whatever. And he couldn't, so he just threw it in the  
4 bushes.

5 Q. Is this what he told you? Or did you go with him?

6 A. No, this is what -- I went with him.

7 Q. When was that?

8 A. That was Friday, the next day.

9 Q. About what time?

10 A. It was afternoon, about One or Two o'clock, maybe.

11 Q. Okay. And let's back up to the night before. You got  
12 all this stuff out. So, Donta keeps at least one of the  
13 cell phones. What happened to the other one?

14 A. I have no idea.

15 Q. And the cigarette box?

16 A. They smoked it.

17 Q. And the ID's?

18 A. I don't know what they did with the ID's.

19 Q. Did you take them?

20 A. No, sir.

21 Q. How long did you stay at the house? How long was  
22 everybody at the house after you got back?

23 A. Everybody pretty much -- We stayed there for a little  
24 while.

25 Q. Did everybody stay there for the whole night?

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1 A. No, sir.

2 Q. Who left?

3 A. B'more left.

4 Q. About how long after you got there did B'more leave?

5 A. He stayed for a little while. They went to the store  
6 and bought beer and blunt cigarillos and stuff. And then  
7 after that, he stayed for a little while longer, and then  
8 he decided to leave.

9 Q. Who decided to leave?

10 A. B'more.

11 Q. And how did he leave, on foot?

12 A. Aileen drove him somewhere.

13 Q. Do you know where she took him?

14 A. To Spring Street.

15 Q. How long was she gone?

16 A. I don't remember how long she was gone.

17 Q. Where were you when they left?

18 A. In the bed.

19 Q. Did Aileen return at some point after she left to take  
20 Mr. Henson -

21 A. Yes, sir.

22 Q. --- to Spring Street.

23 A. Yes, sir.

24 Q. When she returned to the house, where did she go?

25 A. Back to bed.



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1 Q. Did you get up and move around again that night, or  
2 did you stay in bed?

3 A. We stayed in bed.

4 Q. Did you keep anything that was taken in the robbery?

5 A. No, sir.

6 Q. Did you smoke any of the blunt that was in the  
7 cigarette pack?

8 A. No, sir.

9 Q. What time did you get up the next morning?

10 A. Early that morning about Eight o'clock.

11 Q. Who was in the house when you woke up?

12 A. Alijah, Donta, and Aileen.

13 Q. Did they wake up as well?

14 A. Yes, sir.

15 Q. Where did -- What happened that day?

16 A. We all went to the store. We came back from the  
17 store --

18 Q. What store?

19 A. Parks Grocery.

20 Q. Is that close to your house?

21 A. Right up the street. Yes, sir.

22 Q. How long were you gone to the store?

23 A. Maybe about five minutes or so.

24 Q. Where did you go when you came back?

25 A. Went back to the house.

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1 Q. What did you do?

2 A. We took my uncle Alfonso Leach to pick up his brother,  
3 and we went to a liquor store, and then came back down the  
4 highway, and that's when Elijah called and said that  
5 Donta's mom --

6 MR. CHIARENZA: Objection, objection.

7 MR. BRACKETT: You can't say --

8 THE COURT: Wait. I sustain your objection. Don't go  
9 into what this other person said.

10 MR. BRACKETT: You can't talk about what other people  
11 say unless it's what Mr. Henson, or Mr. Reid, or Aileen  
12 said.

13 A. Yes, sir.

14 Q. So what --

15 A. Okay. After we went back, we went to Leach Road,  
16 which is on Highway 5. And I got a phone call. Donta's  
17 mom was looking for him.

18 Q. Okay.

19 A. So we --

20 Q. Did you tell Donta that?

21 A. Yes.

22 Q. Was he with you?

23 A. Yes, he was with me.

24 Q. Was he able to talk to his mom?

25 A. Yes, he talked to his stepfather, I believe.

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1 Q. Okay. And then what happened next?

2 A. After that, they said the police was looking for him,  
3 and it was best for him to come home. So we took him home,  
4 but we didn't take -- He didn't want to get dropped off at  
5 his house. We let him off around the corner from Central  
6 Park Elementary School.

7 Q. Is that close to Byars Street?

8 A. Yes, you could say.

9 Q. Did you -- So he got out of the car at that point?

10 A. Yes, sir.

11 Q. Okay. Did you see him again later that day?

12 A. At the City of Rock Hill.

13 Q. And did you see -- Where was Aileen at this time?

14 A. Aileen was at the house.

15 Q. Where did you go after you dropped Donta off?

16 A. Back to the house.

17 Q. Did you see B'more again that day?

18 A. Not until later that afternoon.

19 Q. About where were you when you saw him?

20 A. I had just got back from the police department.

21 Q. And what -- Did he talk to you at all?

22 A. No, he didn't say nothing.

23 Q. How long did -- How long was he -- Where did you see  
24 him again?

25 A. At the house.

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1 Q. How long was he there?

2 A. I don't know how long he was there, prior to me  
3 getting there, but I know he was there.

4 Q. After you got there, how long was he there?

5 A. For like a few minutes, and then he walked down the  
6 street.

7 Q. Did you talk to him at all about what happened the  
8 night before?

9 A. No, not --

10 MR. CHIARENZA: Asked and answered, Your Honor.

11 THE COURT: Overruled.

12 Q. That morning, did you talk to B'more about what  
13 happened?

14 A. No, he wasn't there.

15 Q. No, I mean that -- when you saw him at the house in  
16 the afternoon?

17 A. No.

18 Q. You didn't discuss the events of the prior night?

19 A. No.

20 Q. How about with Donta when you were driving around with  
21 him, did y'all talk about what had happened?

22 A. No.

23 Q. When did you learn that Tyrone King was killed?

24 A. That Friday morning. I got a text on my phone.

25 Q. What did it say?

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1 A. RIP Tyrone King.

2 Q. Did you share that with everybody there?

3 A. Yes.

4 Q. Including Donta?

5 A. Yes.

6 Q. Did Davontay Henson or Aileen Newman, the night of the  
7 robbery and the shooting, after you got back to the house,  
8 did they say anything else about what happened --

9 MR. CHIARENZA: Your Honor, I don't think she can  
10 testify to what Aileen Newman said.

11 THE COURT: I agree.

12 MR. BRACKETT: Okay.

13 Q. The Defendant Donta -- Davontay Henson, did he say  
14 anything more about what happened at the porch other than  
15 what you testified?

16 A. Yes, sir. He said, "I told them to give me  
17 everything, and they replied, 'We gave her everything we  
18 got.'"

19 Q. Did he say anything else?

20 A. No, sir.

21 Q. Did he say why he shot?

22 A. No, sir.

23 Q. At some point in time, did the police call you?

24 A. No, sir.

25 Q. At some point in time, did you call the police?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 A. Yes, sir.

2 Q. Did you find out they were looking for you?

3 A. No, sir.

4 Q. What made you call the police?

5 A. I had called them. I was going to tell them  
6 everything that happened.

7 Q. And when did that happen? When did you call them? Do  
8 you remember?

9 A. I don't remember the time.

10 Q. How many days? Was it the next day?

11 A. Yes, sir.

12 Q. Did you talk to the police about what happened?

13 A. No, sir.

14 Q. Did you ultimately go to the police department and  
15 meet with the detectives?

16 A. Yes, sir, when I turned myself in.

17 Q. And you were arrested?

18 A. Yes, sir.

19 Q. And they had warrants for you?

20 A. Yes, sir.

21 Q. And you knew they had warrants for you?

22 A. I didn't find out they had warrants for me till that  
23 Monday.

24 Q. But before you went to the police department, you knew  
25 they were looking for you, and they had warrants for you?

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1 A. No, sir.

2 Q. Did you get an attorney?

3 A. No, sir.

4 Q. Eventually, did you get an attorney?

5 A. When I got here.

6 Q. And who was that?

7 A. Tawana Burris.

8 Q. Is she in the courtroom?

9 A. Yes, sir.

10 Q. Can you point her out?

11 A. Sitting right there.

12 (WITNESS POINTED TO ATTORNEY TWANA BURRIS.)

13 Q. And did she discuss this case with you?

14 A. Yes, sir.

15 Q. And what did you ultimately decide to do? Did you  
16 want a jury trial?

17 A. No, sir.

18 Q. What did you decide to do?

19 A. Tell the truth.

20 Q. And have you pled guilty to any of these charges?

21 A. Yes, sir.

22 Q. What did you plead guilty to?

23 A. Criminal conspiracy and three counts of armed  
24 robberies.

25 Q. And you're awaiting sentencing for that right now?

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1 A. Yes, sir.

2 Q. Is there any question in your mind that Davontay  
3 Henson, the gentleman you identified earlier today, or  
4 earlier when we were talking, and Donta Reid were present  
5 with you that night on Reynolds Street and Byars Street the  
6 night of the robbery?

7 A. Excuse me?

8 Q. Is there any question that those two gentlemen are the  
9 ones that were with you the night of the robbery?

10 A. There's no question. There was with me.

11 Q. Were they there -

12 A. Yes.

13 Q. --- and actively participating in the robbery?

14 A. They was there.

15 Q. And is there any question about who had the gun that  
16 night?

17 A. No, sir.

18 Q. Who was that?

19 A. B'more.

20 Q. Davontay Henson?

21 A. Henson, yes, sir.

22 Q. Did you see what happened with the gun after Alijah  
23 said, "You can't leave it here"?

24 A. No, sir.

25 Q. Now you testified you were the only person that had a



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1 cell phone that night?

2 A. Yes, sir.

3 MADAME COURT REPORTER: Forty, Mr. Brackett.

4 MR. BRACKETT: Thank you so much, Wanda.

5 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY, PREMARKED  
6 FOR IDENTIFICATION.)

7 Q. Now, you testified you were the only person that had a  
8 cell phone that night?

9 A. Yes, sir.

10 Q. Do you recognize the cell phone number or the  
11 telephone number [REDACTED]

12 A. Yes, sir.

13 Q. Whose phone is that?

14 A. That's mine.

15 Q. Have you -- I'm showing you what's been marked as  
16 State's Exhibit Forty for identification. Have you had a  
17 chance to look at these phone records from the phone 230-  
18 5226, these Verizon records?

19 A. Yes, sir.

20 Q. Do you recognize those phone calls and those records?  
21 Some of them, not all of them.

22 A. Yes, sir.

23 Q. Are you able to recognize enough to know that those  
24 are the records of your phone?

25 A. Yes, sir.

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1 Q. Is that an accurate phone recording to the best of  
2 your knowledge of the phone calls you made on that phone?

3 A. Yes, sir.

4 MR. BRACKETT: I'd move State's Exhibit Forty for  
5 identification into evidence at this time.

6 MS. INZERILLO: No objection.

7 MR. CHIARENZA: No objection.

8 THE COURT: In without objection.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY IDENTIFIED  
10 AND MARKED, RECEIVED INTO EVIDENCE.)

11 MR. BRACKETT: The Court's indulgence, one minute.

12 (PAUSE.)

13 Q. Whose phone was Donta using to text his friend?

14 A. My phone.

15 Q. And did he call him from your phone as well?

16 A. I don't remember.

17 Q. One last question. Looking at Mr. Henson, has his  
18 appearance changed any?

19 A. Yes, sir.

20 Q. How did he used to look?

21 A. He had dreads.

22 Q. And those are gone?

23 A. Yes, sir.

24 Q. How long were the dreads? Do you remember?

25 A. Shoulder-length.

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1 Q. Down to here?

2 (SOLICITOR INDICATED TO HIS SHOULDER.)

3 A. Yes, sir.

4 Q. That Verizon phone that you had, Samantha, was that a  
5 monthly subscription, or was this a buy-the-minutes?

6 A. Buy-the-minutes.

7 Q. So when you want to put more minutes, you have to go  
8 to the Verizon store?

9 A. Yes, sir.

10 Q. Thank you very much. Please answer any questions that  
11 counsel for Mr. Reid or Mr. Henson may have for you.

12 A. Yes, sir.

13 THE COURT: Do you need a break?

14 MR. FOREMAN: Yes, sir.

15 THE COURT: All right. We'll take a break before we  
16 get into cross examination. Take about a 12 minute break.

17 (JURY OUT AT 11:20 AM.)

18 (WITNESS ESCORTED FROM COURTROOM TO HOLDING CELL.)

19 THE COURT: We'll take about a twelve minute break.

20 (COURT IN RECESS AT 11:22 AM.)

21 (COURT RECONVENED AT 11:42 AM.)

22 THE BAILIFF: All rise. Order in the Court.

23 THE COURT: Thank you.

24 Take your seats. Thank you.

25 Bring in the jury.

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO

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1 (DEFENDANT'S REENTER COURTROOM.)

2 (WITNESS RETAKES THE WITNESS STAND.)

3 (JURY REENTERS COURTROOM AT 11:44 AM.)

4 MS. INZERILLO: May it please the Court, Your Honor.

5 THE COURT: Yes, ma'am.

6 CROSS EXAMINATION

7 SAMANTHA LATREAL ERVIN BY MS. INZERILLO:

8 Q. Ms. Ervin, today is not the first day you've spoken to  
9 someone about this case is it?

10 A. No, ma'am.

11 Q. In fact, when you were arrested by the police, you  
12 gave them a statement. Right?

13 A. Yes, ma'am.

14 Q. And then after that, you gave a statement to the  
15 Solicitor's Office. Right?

16 A. Yes, ma'am.

17 Q. And so today is actually the third time you discussed  
18 this case?

19 A. Yes, ma'am.

20 Q. Now you were very specific in what happened the next  
21 day when you woke up; Is that right?

22 A. Yes, ma'am.

23 Q. You recalled you got up on Eight o'clock, you remember  
24 who was in the house; is that right?

25 A. Yes, ma'am.

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1 Q. But you failed to tell the jury that you were actually  
2 confronted by the police in Confederate Park on that day;  
3 is that right?

4 A. Yes, ma'am.

5 Q. And so when you had interaction with the police the  
6 day after this happened, you didn't tell them anything  
7 about this case did you?

8 A. No, ma'am.

9 Q. You didn't tell them that you had information on a  
10 murder. Right?

11 A. No, ma'am.

12 Q. You didn't tell them that you could possibly give them  
13 the names and places involved in that murder did you?

14 A. No, ma'am.

15 Q. And you did not tell them that you had in fact seen  
16 what you considered to be a murder weapon, and whoever was  
17 holding that weapon; is that right?

18 A. Yes, ma'am, that's right.

19 Q. Okay. So fast-forward to when you get arrested  
20 several days later, okay? You met with the police on that  
21 day. Right?

22 A. Yes, ma'am.

23 Q. And on that day, you were in a room with Detective  
24 Herring here; is that right?

25 A. Yes, ma'am.

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1 Q. And he asked you some questions about this case?

2 A. Yes, ma'am.

3 Q. In fact, he asked you to tell him everything that you  
4 knew about this case.

5 A. Yes, ma'am.

6 Q. Including your involvement in it. Right?

7 A. Yes, ma'am.

8 Q. He indicated to you, he wanted you to tell him the  
9 truth, everything that happened?

10 A. Yes, ma'am.

11 Q. And you told him a version of events that day. Right?

12 A. Yes, ma'am.

13 Q. And then he typed in those events. Right?

14 A. Yes, ma'am.

15 Q. And then you reviewed that statement, and you signed  
16 it. Right?

17 A. Yes, ma'am.

18 Q. And also as part of that statement, you signed  
19 swearing that everything you told him was "the truth, the  
20 whole truth, and nothing but the truth, so help me God."  
21 Right?

22 A. Yes, ma'am.

23 Q. And that is exactly like the oath that you had to take  
24 today when you put your hand on the Bible about an hour and  
25 a half ago; is that right?

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1 A. Yes, ma'am.

2 Q. Okay. And in that first statement, when you were  
3 talking to Detective Herring, you conveyed to him that you  
4 really didn't know what was going on; is that right?

5 A. Yes, ma'am.

6 Q. That you thought maybe they were talking. You drove  
7 down to this area, and the only reason why you went back to  
8 this area is because you realized that Aileen had your cell  
9 phone?

10 A. Yes, ma'am.

11 Q. Okay. And then that was a lie. Right?

12 A. Yes, ma'am.

13 Q. So when Detective Herring asked you to tell him the  
14 whole truth, you lied to him?

15 A. Yes, ma'am, because I was scared.

16 Q. And you were scared because Davontay Henson had  
17 threatened you. Right?

18 A. Yes, ma'am.

19 Q. In fact, he had threatened you and everybody in the  
20 room that he was going to kill you if you talked?

21 A. Yes, ma'am.

22 Q. Okay. Now that was on October 5th of 2009; is that  
23 right?

24 A. Yes, ma'am.

25 Q. And then as you indicated on direct, you got an

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO

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1 attorney. Right?

2 A. Yes, ma'am.

3 Q. And after speaking with your attorney, you decided to  
4 tell the truth; is that right?

5 A. Yes, ma'am.

6 Q. And telling the truth, in order to do that, you  
7 entered into a plea agreement with the Solicitor's Office.  
8 Right?

9 A. Yes, ma'am.

10 Q. And essentially at the time you entered into this plea  
11 agreement, you were charged with murder. Right?

12 A. Yes, ma'am.

13 Q. You were charged with three counts of armed robbery.  
14 Right?

15 A. Yes, ma'am.

16 Q. You were charged with criminal conspiracy?

17 A. Yes, ma'am.

18 Q. And you were charged with possession of a weapon  
19 during the commission of a violent crime?

20 A. Yes, ma'am.

21 Q. Okay. And you knew that you were looking at life in  
22 prison if you got convicted of murder. Right?

23 A. Yes, ma'am.

24 Q. And you didn't want to serve life in prison did you?

25 A. I just wanted to tell the truth.



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1 Q. But you didn't want to go to jail for life either did  
2 you?

3 A. No, ma'am.

4 Q. Because you testified that you have a little baby?

5 A. Yes, ma'am.

6 Q. You didn't want to go the rest of your life not seeing  
7 her?

8 A. No, ma'am.

9 Q. And so you decided to meet with the solicitors and  
10 agree to a deal. Right?

11 A. Yes, ma'am.

12 Q. And the solicitors made you a deal. Didn't they?

13 A. Yes, ma'am.

14 Q. And as part of that deal, they dropped the murder  
15 charge against you. Right?

16 A. Yes, ma'am.

17 Q. So you don't have to spend the rest of your life in  
18 prison, do you?

19 A. That's correct.

20 Q. They only had you plead to three counts of armed  
21 robbery. Right?

22 A. Yes, ma'am.

23 Q. And criminal conspiracy?

24 A. Yes, ma'am.

25 Q. And as part of your agreement, you and the Solicitor's

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO

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1 Office agreed that the range of time that you would serve  
2 would be between 10 years and 25 years; is that right?

3 A. Yes, ma'am.

4 Q. And so you know the least you can get is 10 years.  
5 Right?

6 A. Yes, ma'am.

7 Q. And really, being honest, that's all you want to  
8 serve. Right?

9 A. Yes, ma'am.

10 Q. You don't want to serve 25 years. Right?

11 A. No, ma'am.

12 Q. Because if you serve 25 years, your daughter will be  
13 26 by the time you get out of prison. Right?

14 A. Yes, ma'am.

15 Q. And you don't want to see that?

16 A. No, ma'am.

17 Q. So you want to get out of prison when she's around 10  
18 or 11 years old. Right?

19 A. Yes, ma'am.

20 Q. Okay. Now, in order to get this agreement, you had to  
21 write another statement. Right?

22 A. Yes, ma'am.

23 Q. And when you gave that statement, you were in a room  
24 with your attorney. Right?

25 A. Yes, ma'am.

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1 Q. And with Mr. Thompson, here, in the yellow shirt.

2 Right?

3 A. Yes, ma'am.

4 Q. And similarly to what happened in October of 2009,  
5 they typed down what you said. Right?

6 A. Yes, ma'am.

7 Q. And in that statement, you told them, "You know, I  
8 lied to the police. I did know there was going to be  
9 something going on"; is that right?

10 A. Yes, ma'am.

11 Q. Okay. And you admitted that you were hanging around  
12 down on Reynolds Street or around the bridge down there  
13 because that's where you were supposed to be, not because  
14 you realized Aileen had your phone; is that right?

15 A. Yes, ma'am.

16 Q. You also indicated that you didn't know who was going  
17 to get robbed that night. Right?

18 A. That's right.

19 Q. And you told them that you remembered seeing two ID's  
20 and cell phones from the guys. Right?

21 A. Yes, ma'am.

22 Q. And that you thought you recognized someone off of one  
23 of the ID's?

24 A. Yes, ma'am.

25 Q. At no point in that statement did you ever tell the

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO

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1 Solicitor's Office that Donta Reid took one of the phones  
2 and took it to Cricket?

3 A. No, ma'am.

4 Q. And at no point when you talked to Detective Herring  
5 four days after this happened did you ever tell them that  
6 Donta Reid took that phone to Cricket to try to put it in  
7 his name, essentially?

8 A. No, ma'am.

9 Q. So you testified that you decided to tell the truth,  
10 and that was the truth, this statement. Right?

11 A. Yes, ma'am.

12 Q. Now, you also put in your statement to the Solicitor's  
13 Office that the plan was to rob all three guys on the  
14 porch; is that right?

15 A. Yes, ma'am.

16 Q. That while you were at your uncle's house at Keels  
17 Avenue, that y'all knew there were going to be three people  
18 on the porch?

19 A. No, ma'am.

20 Q. Okay. You indicated that you heard Donta talking on  
21 the phone essentially to Aileen while you were in the  
22 truck. Right?

23 A. Yes, ma'am.

24 Q. And you could hear that whole conversation.

25 A. No, ma'am.

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1 Q. So you don't know everything that Donta told Aileen  
2 about whatever he'd seen on the porch?

3 A. That's correct.

4 Q. And by your own admission in all of your statements,  
5 you were essentially in the car the whole time?

6 A. Yes, ma'am.

7 Q. You never got out of the truck and went on scene?

8 A. No, ma'am.

9 Q. So you didn't see any of the events that happened on  
10 scene?

11 A. That's correct.

12 Q. All of your information is based on what people in the  
13 house were saying. Right?

14 A. Yes, ma'am.

15 Q. And you indicated that when you got back to your  
16 uncle's house that it was Davontay Henson who was dancing  
17 around, kind of bragging about getting them; is that right?

18 A. Yes, ma'am.

19 Q. Now, you're also clear on your testimony today that it  
20 was about 1:00 or Two o'clock the next day that Donta took  
21 this phone to Cricket to try to put it in his name  
22 essentially?

23 A. Yes, ma'am.

24 Q. Okay.

25 A. But I didn't remember exactly.

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO  
CROSS BY MR. CHIARENZA

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1 Q. But somewhere around 1:00 or 2:00?

2 A. Yeah, somewhere -

3 Q. Okay. And then it was after that, that you took him  
4 home?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. INZERILLO: No further questions, Your Honor.

8 THE COURT: Mr. Chiarenza.

9 MR. CHIARENZA: Thank you, Your Honor.

10 CROSS EXAMINATION

11 SAMANTHA ERVIN BY MR. CHIARENZA:

12 Q. Ms. Ervin, you enjoying prison?

13 A. No, sir.

14 Q. It's a rotten place to be, isn't it?

15 A. Yes, sir.

16 Q. And you're serving currently to your knowledge, you  
17 will have to do a minimum of 10 years in the South Carolina  
18 Department of Corrections. Correct?

19 A. Yes, sir.

20 Q. And that is for this case, your involvement that  
21 you've pled guilty to. Correct?

22 A. Yes, sir.

23 Q. But you haven't actually received your sentence yet  
24 have you?

25 A. No, sir.

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1 Q. All right. And is it your understanding that your  
2 sentence is going to be somewhere between 10 years and 25  
3 years. Right?

4 A. Yes, sir.

5 Q. And what will affect whether you get 10 years or 25  
6 years?

7 A. How well I cooperate.

8 Q. Right. And that's how well you do today testifying  
9 for the State. Right?

10 A. Yes, sir.

11 Q. So you're looking out for yourself today. Right?

12 A. I'm just telling the truth, sir.

13 Q. But if you don't tell the truth, you won't be helping  
14 yourself, will you?

15 A. No, sir.

16 Q. Okay. So you think you're looking out for yourself by  
17 what you're doing today. Correct?

18 A. Correct.

19 Q. So while you say you may be here because you've got  
20 the truth on your mind, you also have your future on your  
21 mind. Correct?

22 A. Yes, sir.

23 Q. And you've got a little child who -- Have you ever  
24 been out of prison with this baby?

25 A. No, sir.

1 Q. So this child was born while you were incarcerated?

2 A. Yes, sir.

3 Q. So you have a very strong desire to get out of prison  
4 as soon as you can to get with this child. Right?

5 A. Yes, sir.

6 Q. And that's only going to happen if you tell the State  
7 what the State wants you to say. Correct?

8 A. Yes, sir.

9 Q. Now you have given now, three distinct versions of  
10 what occurred that night, two of those being in prior  
11 statements. You recall the first statement you gave to law  
12 enforcement at the police department on October 5th of  
13 2009?

14 A. Yes, sir.

15 Q. And do you recall that being the date of that  
16 statement, October 5th?

17 A. Yes, sir.

18 Q. All right. And you're aware that this robbery that  
19 you were involved in occurred on October 1st. Right?

20 A. Yes, sir.

21 Q. So you didn't go up to the police department between  
22 the 1st and the 5th to talk to them, did you?

23 A. No, sir.

24 Q. But you did have an unrelated run-in with the police  
25 on October 2nd. Right?



SAMANTHA LATREAL ERVIN: CROSS BY MR. CHIARENZA

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1 A. Yes, sir.

2 Q. In fact, that occurred in a park in Rock Hill. What  
3 park was that?

4 A. Confederate Park.

5 Q. And Confederate Park, you stay on Keels Avenue.  
6 Right?

7 A. Yes, sir.

8 Q. Confederate Park is just -- From Keels, you'd have --  
9 It's kind of a straight shot up northwards. You'd cross  
10 Main Street, and then you'd get to the park. Right?

11 A. Yes, sir.

12 Q. All right. And when you were at the park, you were  
13 actually there with "Duke" Darius Jeter?

14 A. Yes, sir.

15 Q. All right. And he stays on Main Street. Right?

16 A. Yes, sir.

17 Q. So you're on Keels. Just a couple of blocks away is  
18 Duke on Main, and then the two of y'all, the day after this  
19 murder are together at the park; is that correct?

20 A. Yes, sir.

21 Q. And the police come and start questioning you and Duke  
22 about something they're investigating. It's got nothing to  
23 do -- They're not talking about the robbery, or murder, or  
24 this case. Right?

25 A. That's right.

1 Q. It was something totally different. Right?

2 A. Yes, sir.

3 Q. All right. And at that time, wanting to tell the  
4 truth and all, you didn't say, "Hey, I got to talk to you  
5 guys about some stuff that went down last night." You  
6 didn't tell them that, did you?

7 A. No, sir.

8 Q. I just want to make sure we didn't miss that  
9 statement. You didn't in any way say -- try and get a  
10 phone number from one of those officers and say, "Can I  
11 maybe call y'all later and talk to you?"

12 A. No, sir.

13 Q. And you didn't make any effort that day whatsoever to  
14 reach out to law enforcement and tell them about this  
15 robbery and this murder, did you?

16 A. No, sir.

17 Q. But you had opportunity to. I mean, you were face to  
18 face speaking to a police officer on that day. Right?

19 A. Yes, sir.

20 Q. Okay. Let's talk specifically about some of the stuff  
21 you told them on the 5th when you did get around to the  
22 police department.

23 First of all, before you even get into what you're  
24 talking about, you went up to the police department because  
25 you had been told that they had been at your house on Keels

SAMANTHA LATREAL ERVIN: CROSS BY MR. CHIARENZA

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1 Avenue looking for you. Right?

2 A. No, sir.

3 Q. You're not aware that they searched your house and  
4 went over there with a search warrant at Keels Avenue?

5 A. Yes, I'm aware of that.

6 Q. Okay. So, you know the police were at your house  
7 searching?

8 A. Yeah, Monday I found that out.

9 Q. And when you found it out on Monday, and that's why  
10 you went to the police station because you were made aware  
11 the police wanted to speak to you.

12 A. Yes, sir.

13 Q. You didn't just happen to, you know, among your list  
14 of things to do that day, go pick up the laundry, buy  
15 groceries, go stop at the police department and tell them  
16 what I know about this crime. It didn't go down like that,  
17 did it?

18 A. No, sir.

19 Q. They wanted to talk to you, and you knew that. Right?

20 A. Yes, sir.

21 Q. All right. So when you got there, they served you  
22 with warrants. You didn't leave the police department that  
23 day, did you?

24 A. No, sir.

25 Q. Okay. You got booked, processed, arrested, and have

SAMANTHA LATREAL ERVIN: CROSS BY MR. CHIARENZA

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1 you ever been out of custody since that day?

2 A. No, sir.

3 Q. Okay. Yeah, but on that day, you gave *Statement*  
4 *Number One*, your written statement. And you've had an  
5 opportunity to review the statement, I'm guessing on a  
6 number of occasions since that day two years ago. Right?

7 A. Yes, sir.

8 Q. You've gone over it with your lawyer, Ms. Burris?

9 A. Yes, sir.

10 Q. And you've gone over it with some folks from the  
11 Solicitor's Office?

12 A. Yes, sir.

13 Q. All right. Now, let's talk about what you told them  
14 on that day. And in this statement, you are aware that  
15 right above where you signed this statement, it says, "All  
16 of the above is the truth, the whole truth, and nothing but  
17 the truth so help me God." Correct?

18 A. Yes, sir.

19 Q. And you signed that?

20 A. Yes, sir.

21 Q. Now if I represent to you something that's in this  
22 statement and you don't remember it, just ask me and I'll  
23 show it to you, okay? And we can both get on the same page  
24 literally. Your recollection that in this statement, you  
25 told them that you were -- You came downstairs. From Keel

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1 Street, you were up in the bedroom with Aileen Newman who  
2 was your girlfriend at the time. Correct?

3 A. Uh-huh.

4 Q. And you came downstairs, and you told them, "In the  
5 living room was Davontay Henson, my cousin Alijah James" --  
6 I'm sorry. I'll start right from the beginning of it. You  
7 say, "When I came downstairs, there was a guy named Donta  
8 Reid, Alijah James, and also Davontay Henson." You told  
9 them all that, that those three people were down there when  
10 you came down the stairs. Right?

11 A. Yes, sir.

12 Q. All right. But when Mr. Brackett was questioning you,  
13 you told him that you had gone and got Davontay Henson that  
14 day?

15 A. Yes, sir.

16 Q. So those two things, one of them is not the truth?

17 A. Yes, sir.

18 Q. If something is not the truth, what do we call it?

19 A. A lie.

20 Q. So, you told them that these three guys who were down  
21 in the living room, your cousin Alijah and the two  
22 defendants here today were all talking about smoking weed.  
23 Right?

24 A. Yes, sir.

25 Q. All right. Now, here's your opportunity once and for

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1 all to get this right. Was there anybody else in the  
2 living room at that time?

3 A. No.

4 Q. And Aileen who we call Lae Lae too. Right, that's her  
5 name?

6 A. Lee Lee.

7 Q. Lee Lee, I'm sorry. She was upstairs?

8 A. Yes, sir.

9 Q. Okay... And they were talking about smoking weed, and  
10 where they can all maybe get some weed from, more or less.  
11 Right?

12 A. Yes, sir.

13 Q. And then Lee Lee comes downstairs, and I guess  
14 overhears them and provides some weed for them. Did you  
15 observe that -- say that?

16 A. Yes, sir.

17 Q. Then you talked about Mr. Reid texting some people  
18 back and forth, and then about getting into your uncle's  
19 truck. And then you told them that you actually -- You saw  
20 Darius Jeter as y'all were in the truck that day. Correct?

21 A. Yes, sir.

22 Q. And that he, as you were droven by yelled back --  
23 yelled at y'all about wanting some pot, or "I need some  
24 pot."

25 A. Yes, sir.

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1 Q. You told officers that on this statement, you were  
2 going to Midtown, and you were going to pick up somebody  
3 named Keeke Wilson at her sister's house, but then when you  
4 got there, you didn't pick her up because the truck was too  
5 full. Remember telling that?

6 A. Yes, sir.

7 Q. Okay. But when Mr. Brackett was talking to you today,  
8 you told him that you went to your mom's house, and you  
9 also went to get gas and made absolutely no mention about  
10 going to Keeke's house or going to Midtown. Right?

11 A. That's correct.

12 Q. Okay. So those two things, they don't agree with each  
13 other. Right?

14 A. Right.

15 Q. So one of them is a?

16 A. Lie.

17 Q. Right.

18 A. But I did go over at Keeke's house to Midtown.

19 Q. But you didn't tell -- say that --

20 A. Yeah, I didn't say that at first, but I did go over  
21 there.

22 Q. Now in this first statement, you don't make any  
23 mention, and if you think you do, I'll be happy to let you  
24 read it over. But you don't make any mention about seeing  
25 Mr. Henson with a gun at any time before the robbery

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1 supposedly happened, and the shooting supposedly happened,  
2 and him and Lea-Lea [sic] got back into the truck; is that  
3 correct?

4 A. That's correct.

5 Q. And even the whole part about the truck, that's really  
6 not how it went down. What I mean by that is, in this  
7 statement, you make it sound like you dropped off Mr. Reid,  
8 and then you dropped off Lee Lee, and my client Mr. Henson,  
9 and then that you remembered, "Oh, Lee Lee's got my phone,  
10 so I better go back and get it." And when you went to do  
11 that, you saw Davontay -- I'm sorry. You saw Mr. Reid, and  
12 he hopped in the truck, and you asked him where the other  
13 two were, and then as you were riding around, you saw them,  
14 and then they got back in the truck. But, it didn't really  
15 happen that way.

16 A. No, sir.

17 Q. So that is a?

18 A. Lie.

19 Q. Right. And in fact very specifically, the first time  
20 you mentioned the gun, in this first statement you say,  
21 "When I got back home, they were getting out of the truck,  
22 and that's when I saw the gun that B'more had." Correct?

23 A. Yes, sir.

24 Q. Okay. And then you and Lee Lee went back -- went  
25 upstairs, and the other people we've mentioned so far were



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1 downstairs?

2 A. Yes, sir.

3 Q. And still, those other people are my client, Mr. Reid  
4 and Alijah. Correct?

5 A. Yes, sir.

6 Q. That's it?

7 A. That's it.

8 Q. And Lee Lee had talked to you about, you know, saying  
9 she wanted y'all to cover for her on this thing, be an  
10 alibi. Right?

11 A. Yes, sir.

12 Q. And at some point, it's your testimony that Lee Lee  
13 took Mr. Henson back. Well they went to a store, got some  
14 liquor, alcoholic beverages of some kind, and came back and  
15 drank them?

16 A. Yes, sir.

17 Q. All right. And I think you testified -- Or it was  
18 your observation that Lee Lee took him home even though she  
19 was a little buzzed, drunk at the time. Correct?

20 A. Yes, sir.

21 Q. Okay. Eventually she returned back to the house.

22 A. Yes, sir.

23 Q. And y'all just went to sleep?

24 A. Yes, sir.

25 Q. Now, in this statement, *Number One* here again, when

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1 Lee Lee gets back, she tells you that she took Davontay.  
2 And then you say, "I haven't seen B'more since then." So  
3 that's the night that he leaves the house, and you tell  
4 police officers, "I haven't seen him since that night."  
5 Correct?

6 A. Correct.

7 Q. But today, I'm pretty sure it was on your direct  
8 testimony, you testify that you did see B'more the next  
9 day.

10 A. That Friday, after --

11 Q. The day after.

12 A. The day after.

13 Q. In the morning, sun's up now. Everybody's been to  
14 sleep, and they got up and woke up, and now it's a new day.

15 A. That Friday afternoon.

16 Q. In the afternoon of that day, so --

17 A. Yeah, when I got back from the police department.

18 Q. That you saw B'more, Mr. Henson, my client?

19 A. Yes, sir.

20 Q. Okay. I just want to make sure we're all done with  
21 *Statement Number One.*

22 All right, let's go to *Statement Number Two.* Now this  
23 is a little different. This one was -- Do you remember  
24 where this one was done?

25 A. Yes, sir.

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1 Q. Where was that?

2 A. At the Solicitor's Office.

3 Q. That's here in this building. Right?

4 A. Yes, sir.

5 Q. And you were with Ms. Burris who's your attorney at  
6 that time. Right?

7 A. Yes, sir.

8 Q. Now this statement -- Is it your recollection that  
9 this occurred on November 1st, 2010, a full year and one  
10 month after the robbery. Right?

11 A. Yes, sir.

12 Q. So, up until that time, y'all -- you hadn't stepped  
13 forward and said, "I want to tell the truth, make a plea,  
14 do a deal." You had plenty of time to talk to your lawyer  
15 about various options of what you might do with this case.  
16 Right?

17 A. Yes, sir.

18 Q. But thirteen months go by after the robbery, and now  
19 you're at the Solicitor's Office and giving another  
20 statement. Correct?

21 A. Yes, sir.

22 Q. All right. Now, in this statement, you told -- well,  
23 the statement that you signed and met with Mr. Tolson, I  
24 believe, who's an investigator for the Solicitor's Office.  
25 Again in this statement, you don't say that you went out

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1 and picked up Mr. Henson, do you? According to this one,  
2 he was already in the house; is that correct?

3 A. That's correct.

4 Q. Okay. So two times, in two previous statements, you  
5 said he was already there when you first saw him, but today  
6 you said that you went out and actually picked him up and  
7 brought him back to the house. Right?

8 A. Yes, sir.

9 Q. And now in this statement that you're giving here to  
10 the Solicitor's Office -- And this statement is part of  
11 something they wanted you to do when y'all were negotiating  
12 what your plea deal was going to be. Right?

13 A. No, sir. That's when I decided to tell the truth.

14 Q. But this was part -- Your understanding is that part  
15 of your plea agreement required this statement?

16 A. For me to tell the truth.

17 Q. But it required that you give a statement?

18 A. Yes, sir.

19 Q. Let's assume you were giving the truth. You still had  
20 to give a statement to get the plea deal. Right?

21 A. Yes, sir.

22 Q. Okay. And now in this statement, it's a little more  
23 pointing to these guys. They're not just talking about  
24 smoking some weed and where they can get some weed. This  
25 one's pulling licks and -- You go right into, "They're

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1 talking about pulling licks and doing a robbery"; is that  
2 correct?

3 A. That's correct.

4 Q. Okay. And in this statement, it says that Donta,  
5 Donta Reid, made it known that he knew someone they could  
6 rob. Right?

7 A. Yes, sir.

8 Q. And that he got your phone and started making some  
9 calls and this -- All that stuff he was doing had to do  
10 with setting up a robbery?

11 A. Yes, sir.

12 Q. And in this statement, this isn't -- Y'all aren't --  
13 You're not driving around. You're waiting. You and --  
14 First you're just in the car, and then Mr. Reid comes in  
15 the car with you. Right?

16 A. Yes, sir.

17 Q. And now in this statement also, it makes no mention of  
18 seeing Mr. Henson with a gun till afterwards. You say "I  
19 did see Davontay with a gun that night after the robbery."  
20 Right?

21 A. Yes, sir.

22 Q. And your direct examination with Mr. Brackett, this  
23 part about the victims ID's being laid out on the table,  
24 today you said that Mr. Henson looked at one of the ID's  
25 and said, "I know that guy. I recognize this guy." Was

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1 that -- Am I getting that right?

2 A. Yes, sir.

3 Q. All right. That's nowhere in this one here though.  
4 Right? The one that you said, "I'm going to tell you the  
5 truth as part of my plea deal."

6 A. Yes, sir.

7 Q. This statement says that you recognized one of the  
8 guys. Right?

9 A. Yes, I also did too.

10 Q. But this statement says you recognized one of the  
11 guys?

12 A. Yes.

13 Q. Okay. It doesn't say anything about Davontay  
14 recognizing one of the guys?

15 A. No, sir.

16 Q. All right. And in fact, in this statement, you gave a  
17 -- kind of referenced your first October 5th statement  
18 where you once again said that the October 5th statement,  
19 you were telling the truth given that statement too, except  
20 "I didn't make it sound like I knew that a robbery was  
21 going to happen when I actually did know a robbery was  
22 going to happen." You clarified that point.

23 A. Yes, sir.

24 Q. But you specifically said on October 5th, "I gave a  
25 statement to the Rock Hill police. I told the truth when

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REDIRECT BY MR. BRACKETT

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1 given that statement, but I did not make it sound like I  
2 knew that a robbery was going to happen." Right?

3 A. Right.

4 Q. When in fact, there are actually -- There's more than  
5 just that in the October 5th statement that's not truthful?

6 A. Correct.

7 MR. CHIARENZA: The Court's indulgence just a second,  
8 Your Honor.

9 THE COURT: Okay.

10 (PAUSE AT 12:15 PM.)

11 MR. CHIARENZA: Thank you, Ms. Ervin, you've been very  
12 helpful.

13 THE COURT: Redirect?

14 MR. BRACKETT: Yes, sir.

15 REDIRECT EXAMINATION

16 SAMANTHA ERVIN BY MR. BRACKETT:

17 Q. Ms. Ervin, did you have an attorney on October the 5th  
18 of 2009 when you were at the police department?

19 A. No, sir.

20 Q. Was Ms. Burris there with you?

21 A. No, sir.

22 Q. Did anybody from the Solicitor's Office show up?

23 A. No, sir.

24 Q. Was I there?

25 A. No, sir.

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1 Q. Mr. Thompson over there?

2 A. No, sir.

3 Q. Did anybody offer you any kind of deal -- negotiate  
4 any kind of plea arrangement with you then?

5 A. No, sir.

6 Q. You were just talking to the police?

7 A. Yes, sir.

8 Q. And you gave a statement?

9 A. Yes, sir.

10 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-ONE

11 PREMARKED FOR IDENTIFICATION.)

12 Q. I'm showing you what's been marked as State's Exhibit  
13 Forty-one for identification. Does this -- Take a look at  
14 it. Does that look like the statement you gave?

15 A. Yes, sir.

16 Q. Look through it all. Look at the last page. Is that  
17 your signature?

18 A. Yes, sir.

19 Q. And what date does it say on there?

20 A. October 5th, 2009.

21 Q. Okay.

22 MR. BRACKETT: Your Honor, I move State's Exhibit  
23 Forty-one into evidence at this time.

24 MS. INZERILLO: No objection.

25 MR. CHIARENZA: I'm going to object because it's



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1 redirect, Your Honor.

2 THE COURT: Well, there's been an awful lot of  
3 questioning concerning this statement, so I rule that you  
4 allow it in over objection.

5 MR. BRACKETT: Your Honor, for the record too, I would  
6 also note that under 801 (D), the implication that her  
7 testimony today is somehow motivated improperly, and that  
8 she's fabricated her testimony --

9 MR. CHIARENZA: Your Honor, I think the Court's ruled  
10 and is allowing it in.

11 THE COURT: Yeah, you don't need to --

12 MR. BRACKETT: Yes, sir.

13 THE COURT: You don't need to --

14 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-ONE  
15 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

16 Q. You didn't have a deal when you made this statement,  
17 did you? What does this say right there?

18 A. "I make this statement of my own free will and accord  
19 without reward or hope of reward. I have not been  
20 mistreated or threatened in any way. All of the above is  
21 the truth, the whole truth, and nothing but the truth, so  
22 help me God."

23 Q. Now was it all the truth?

24 A. No, sir.

25 Q. Did you put yourself in the middle of this?

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1 A. No, sir.

2 Q. What were you trying to say your involvement was?

3 A. I didn't know what was going on. I was just dropping  
4 them off. I had no idea what was going to happen.

5 Q. But who did you say was involved?

6 A. Donta Reid, Aileen Newman, and Davontay Henson.

7 Q. B'more? Davontay Henson and Donta Reid, the two  
8 people here on trial?

9 A. Yes, sir.

10 Q. Has that story ever changed?

11 A. No, sir.

12 Q. Okay. Now Mr. Chiarenza asked you a question about  
13 the second statement that you made where he said, "You  
14 didn't say anything in that statement about going to get  
15 B'more." Did you?

16 A. No, sir.

17 Q. He asked you about that, and you didn't say anything  
18 in that statement about going to get B'more. I'm showing  
19 you that statement right now. What does it say, that first  
20 sentence?

21 A. "Statement concerning the homicide" --

22 Q. No, no.

23 THE COURT: You're reading --

24 A. Oh, right here? "On the evening of October 1st, 2009,  
25 I met up with Crud, Donta Reid -

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1 THE COURT: Hold on, wait, wait. Let her read into  
2 the microphone.

3 A. Okay.

4 Q. Slow down.

5 A. Okay. "On the evening of October 1st, 2009, I met up  
6 with Crud; Donta Reid; "Lee Lee", Aileen Newman; and  
7 "B'more", Davontay Henson at my uncle Alfonso Leach's house  
8 on [REDACTED] in Rock Hill.

9 Q. Is that true? Did you meet up with all those people  
10 there?

11 A. Yes, sir.

12 Q. Did anybody ask you how all those people got there?

13 A. No, sir.

14 Q. All right. So there were a number of things that you  
15 didn't include, but that doesn't mean they were lies if you  
16 didn't ask about them?

17 A. That is correct.

18 Q. Likewise, did anybody ask you whether or not B'more  
19 recognized anybody in the ID's?

20 A. No, sir.

21 Q. Is that true though. Did he?

22 A. Yes, he did.

23 Q. Now, you said you were asked about Darius Jeter, and  
24 you were with him. You saw Darius Jeter on October 1st, I  
25 believe you testified to.

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1 A. Yes, sir.

2 Q. Where did you see him?

3 A. He was standing in the middle of the road.

4 Q. Where at?

5 A. On Keels.

6 Q. How far from 403 Keels where you were living?

7 A. Right there in front, the sidewalk.

8 Q. Like feet?

9 A. Yeah, about 5 feet, maybe.

10 Q. Okay. Did he get in the truck with you?

11 A. No, sir.

12 Q. Did he know where you were going?

13 A. No, sir.

14 Q. Did he have any idea what your were up to?

15 A. No, sir.

16 Q. Did he show up over there on Byars Street later on?

17 A. No, sir.

18 Q. Did you see him over there getting into the truck  
19 after the robbery?

20 A. No, sir.

21 Q. To your knowledge, did he have anything to do or any  
22 knowledge of the robbery on Byars?

23 A. He didn't know anything about the robbery. He didn't  
24 have anything to do with it.

25 Q. Now Mr. Chiarenza asked you about the sentence that

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1       you're going to get. You're facing a range of 10 to 25  
2       years; is that right?

3       A.    Yes, sir.

4       Q.    And the judge is going to sentence you; isn't that  
5       correct?

6       A.    Yes, sir.

7       Q.    All right. Now, am I the judge?

8       A.    No, sir.

9       Q.    Is Mr. Thompson the judge?

10      A.    No, sir.

11      Q.    So your sentence is going to be decided by somebody  
12      other than the Solicitor's Office?

13      A.    That is correct.

14      Q.    You could get the 10 years?

15      A.    Yes, sir.

16      Q.    You could get 10; you could get 25?

17      A.    Yes, sir.

18      Q.    In any of your statements from October 5th till today,  
19      sitting in that witness stand, have you ever said to  
20      anybody that anybody other than B'more, Davontay Henson; or  
21      "Crud" Davontay Reid was involved in the robbery and  
22      shooting over on Byars Street on October 1st?

23      A.    No, I said no one else was involved.

24      Q.    I'm sorry.

25      A.    No one else was involved.

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RECROSS BY MS. INZERILLO

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1 Q. All right. Have you ever said to anybody that they  
2 weren't involved?

3 A. No, I never said that.

4 Q. No further questions.

5 MS. INZERILLO: May it please the Court, Your Honor.

6 RECROSS EXAMINATION

7 SAMANTHA ERVIN BY MS. INZERILLO:

8 Q. Ms. Ervin, Mr. Brackett just asked you if your story  
9 ever changed about the involvement of -- I'm going to speak  
10 specifically to Mr. Reid; is that right?

11 A. That's right.

12 Q. And you indicated that your story of his involvement  
13 never changed. Right?

14 A. Correct.

15 Q. But on your first statement that you gave -- Do you  
16 still have it up there with you?

17 A. No, ma'am.

18 MS. INZERILLO: May I approach the witness, Your  
19 Honor?

20 THE COURT: Yes.

21 BY MS. INZERILLO:

22 Q. I'm going to show you what's been entered as State's  
23 Forty-one, so you can read off of that. Okay?

24 A. Uh-huh.

25 Q. That's your first statement that you gave. Right? At

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1 the police station.

2 A. Yes, ma'am.

3 Q. And in that statement, I'm going to turn your  
4 attention to the top of the second page. Right?

5 A. Yes, ma'am.

6 Q. Now you call my client, Crud, right? That's his  
7 nickname?

8 A. Yes, ma'am.

9 Q. So you say, "Crud said he was going to text his friend  
10 and tell him I got some weed." Right?

11 A. Yes, ma'am.

12 Q. "That he, Crud, was texting back and forth with  
13 someone on my phone." Right?

14 A. Yes, ma'am.

15 Q. "Crud asked me if I was going to drop them off so that  
16 they could match the blunt with the person he was texting."  
17 Right?

18 A. Yes, ma'am.

19 Q. And essentially, I imagine the blunt means you get  
20 more marijuana, so you get more of a high. Right?

21 A. Yes, ma'am.

22 Q. It doesn't mean stealing, or robbing, or anything like  
23 that?

24 A. No, ma'am.

25 Q. So in this statement, you never said that he came up

1 with any plan to rob anybody from what you put in this  
2 statement; is that right?

3 A. That's right.

4 Q. What you put in this statement is that Donta Reid was  
5 just going to go smoke marijuana with some friends. Right?

6 A. Yes, ma'am.

7 Q. Okay. But then in your -- the statement that you gave  
8 to the Solicitor's Office -- And if you don't remember,  
9 then let me know, and I can -- I can show it to you.

10 That's the first time you say Donta made it known that he  
11 knew someone that they could rob and used your phone to get  
12 in touch with them. Right?

13 A. Correct.

14 Q. That's not the same thing you told the police on  
15 October 5th?

16 A. No, ma'am.

17 Q. And then after that, you said the plan was for Aileen,  
18 Donta, and Davontay to smoke some weed with the guys that  
19 they were going to rob, and then rob them of their weed.  
20 Right?

21 A. Yes, ma'am.

22 Q. So, and that of course is different than what you told  
23 the police on October 5th?

24 A. Yes, ma'am.

25 Q. And again, you gave this statement in November of 2010



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1 in exchange for some consideration on your sentence.

2 Right?

3 A. Yes, ma'am.

4 Q. Now, do you recall that -- the plea agreement with the  
5 State?

6 A. Yes, ma'am.

7 Q. And just to kind of put all this in context, you gave  
8 that statement to the Solicitor's Office. Right?

9 A. Yes, ma'am.

10 Q. And then you've actually agreed to plead guilty to the  
11 charges that are still remaining. Right? The armed  
12 robberies and the criminal conspiracy.

13 A. Yes, ma'am.

14 Q. So you came into court and did that. Right?

15 A. Yes, ma'am.

16 Q. So when you come into the courtroom, you stand in  
17 front of a judge, and you say "I'm pleading guilty of this.  
18 I gave this statement. It's the truth." Right?

19 A. Yes, ma'am.

20 Q. Okay. You put your hand on the Bible a second time  
21 when you tell that to the judge. Right?

22 A. Yes, ma'am.

23 Q. And you did that in this case. Right?

24 A. Yes, ma'am.

25 Q. And you are aware that in your plea agreement, it's

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1 clear that both the State and your attorney can ask the  
2 judge for whatever sentence is appropriate between that 10  
3 and 25 year range. Right?

4 A. Yes, ma'am.

5 Q. So while the judge makes the final decision, the State  
6 can make some remarks to either help you get the 10 or make  
7 you get the 25; is that right?

8 A. Yes, ma'am.

9 Q. Okay.

10 MS. INZERILLO: No further questions, Your Honor.

11 THE COURT: Mr. Chiarenza.

12 MR. CHIARENZA: I think just one or maybe a couple of  
13 follow-ups, Your Honor.

14 RECROSS EXAMINATION

15 SAMANTHA ERVIN BY MR. CHIARENZA:

16 Q. Mr. Brackett's redirect question of you has left me a  
17 little confused now. Is it your testimony that you did not  
18 go pick up Mr. Henson on that day?

19 A. I went to go pick him up.

20 Q. Okay. And the only reason you didn't say that is  
21 because nobody asked you about it?

22 A. Yes, sir.

23 Q. But the statement says that you met up with them at  
24 the house. Right?

25 A. Yes, sir.

SAMANTHA LATREAL ERVIN: RECROSS BY MR. CHIARENZA

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1 Q. Well, isn't that different than somebody asking you  
2 how they got there? It says you met up with them at the  
3 house. Right?

4 A. Yes, sir.

5 Q. So that -- That's not a truthful statement. Correct?

6 A. Correct.

7 Q. Thank you. Nothing further.

8 THE COURT: You can step down and return to where you  
9 were setting.

10 We're going to break for lunch till 1:45. It's almost  
11 12:30, that's about an hour and fifteen minutes. And we'll  
12 see you back in the jury room at that time. Thank you.  
13 Have a pleasant lunch.

14 (JURY LEAVES COURTROOM FOR LUNCH AT 12:30 PM.)

15 THE COURT: May she can be excused and returned?

16 MR. BRACKETT: Yes, sir.

17 (WITNESS RETURNED TO HOLDING CELL.)

18 THE COURT: We'll be at ease 'till 1:45.

19 (DEFENDANT'S REID AND HENSON ESCORTED TO HOLDING  
20 CELLS.)

21 (COURT IN LUNCH RECESS AT 12:30 PM.)

22 (DEFENDANT'S REID AND HENSON REENTER COURTROOM.)

23 (COURT BACK IN SESSION AT 01:47 PM.)

24 THE BAILIFF: Order in the Court.

25 THE COURT: Thank you, take your seats.

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 Is the State ready?

2 MR. BRACKETT: The State's ready, Your Honor.

3 THE COURT: Is the Defense ready?

4 MS. INZERILLO: Yes, Your Honor.

5 MR. CHIARENZA: Yes, Your Honor.

6 THE COURT: Bring in the jury.

7 (JURY REENTERS COURTROOM AT 01:48 PM.)

8 THE COURT: Call your next witness.

9 MR. BRACKETT: The State would call Darius Jeter.

10 (WITNESS ESCORTED FROM HOLDING CELL ADJACENT TO  
11 COURTROOM.)

12 MR. BRACKETT: Here you go, sir.

13 (BRACELETS/SHACKLES REMOVED FROM WITNESS WRISTS.)

14 MADAME CLERK: Raise your right hand, place your left  
15 on the Bible.

16 (WHEREUPON: DARIUS BERNARD JETER,  
17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 DIRECT EXAMINATION

19 DARIUS BERNARD JETER BY MR. BRACKETT:

20 Q. Mr. Jeter, would you please state your full name and  
21 spell your last so the court reporter can get it right?

22 A. Darius Bernard Jeter. J-

23 THE COURT: Would you speak up, please, sir?

24 A. Darius Bernard Jeter.

25 Q. The court reporters going to hand you a microphone.

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 You have a soft voice, Mr. Jeter, and I want to make sure  
2 everybody can hear you really well. So, you can use that  
3 microphone. Speak into that so everybody can hear you.

4 Darius Bernard Jeter, is that D-a-r-i-u-s?

5 A. Yes, sir.

6 Q. You have a nickname, Mr. Jeter?

7 A. Duke.

8 Q. Duke. How old are you, sir?

9 A. Nineteen.

10 Q. And I notice you're wearing a jumpsuit from the  
11 Detention Center. Are you currently housed over in the  
12 York County Detention Center?

13 A. Yes, sir.

14 Q. Is this for something completely unrelated to the  
15 reason we're here today? Isn't it?

16 A. Yes, sir.

17 Q. Where do you live, Mr. Jeter?

18 A. [REDACTED]

19 Q. I want to turn your attention back to October of 2009.  
20 You ever been charged with murder before?

21 A. Yes, sir.

22 Q. Back in October of 2009, did the Rock Hill Police  
23 Department serve a warrant on you for murder?

24 A. Yes, sir.

25 Q. How did they -- Do you know how they came to you? Who

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 gave them information that you were involved in a murder?

2 A. Crud.

3 Q. Crud. What's his real name?

4 A. Donta Reid.

5 Q. Do you see him in the courtroom?

6 A. Yeah.

7 Q. Can you tell me what he's wearing?

8 A. Uh, a yellow tie.

9 Q. A yellow tie. This gentleman seated right over here?

10 A. Yeah.

11 MR. BRACKETT: I ask that the record reflect Mr. Jeter  
12 has identified the Defendant Donta Reid.

13 THE COURT: All right.

14 Q. When did you first find out -- How did you find out  
15 that you had been implicated or accused of being involved  
16 in a murder?

17 A. 'Cause I had got locked up for a burglary charge, and  
18 I seen him in there. And I just seen him like earlier that  
19 day.

20 Q. Okay.

21 A. And I had got locked up. He was -- He was in jail and  
22 I was surprised. And I was like, "What's up?" He didn't  
23 say nothing. He was sitting in the back, in the back cell,  
24 Cell 6. And so they served him some warrants.

25 Q. Is this at the Rock Hill Police Department?

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 A. Yeah.

2 Q. Is that when you got served with the warrants?

3 A. Yes, sir.

4 Q. For murder? Okay.

5 Now the murder warrants accused you of being involved  
6 in a murder of a man named Tyrone King. Did you know  
7 Tyrone King?

8 A. Yes, sir.

9 Q. Did you know Maurice Jackson, Henry Jackson?

10 A. Yes, sir.

11 Q. And Kenny Cunningham? They call him Kenny-Boo?

12 A. Yes, sir.

13 Q. You knew all of those guys. Okay.

14 On October 1st of 2009, did you rob with a gun Kenny  
15 Cunningham, Maurice Jackson, or Tyrone King?

16 A. No, sir.

17 Q. Were you at the house on Byars Street that night?

18 A. No, sir.

19 Q. Did you shoot anybody on Byars Street or anywhere else  
20 in Rock Hill on October 1st of 2009?

21 A. No, sir.

22 Q. Now, did you see Donta Reid on October 1st of 2009?

23 A. Yes, sir.

24 Q. Where did you see him?

25 A. On Keel Street.

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 Q. When you saw him on Keel Street, what were you doing?

2 A. I was coming down Keel Street trying to go to get some  
3 -- get some weed.

4 Q. Get some weed? Where were you heading?

5 A. Down to a home boy house, Alijah house.

6 Q. And did you make it there?

7 A. Huh-uh.

8 Q. Where were they when you saw them? Where was Mr. Reid  
9 when you saw him?

10 A. He was coming up the street in a green truck.

11 Q. Where was -- Was he in the truck?

12 A. No, he was in the back of the truck.

13 Q. In the bed part of the truck?

14 A. Yeah.

15 Q. Who else was in the truck? Could you see?

16 A. Ervin, Samantha Ervin driving.

17 Q. Could you see if -- Was there anybody else in the  
18 truck?

19 A. I ain't see. Their windows was tinted.

20 Q. You couldn't see if anybody else was in there, or you  
21 couldn't see who they were?

22 A. Couldn't see.

23 Q. Did you talk to Mr. Reid or Ms. Ervin on the street  
24 that night?

25 A. I talked to Ms. Ervin.



DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 Q. What did you say?

2 A. I asked them what they where they was going.

3 Q. All right.

4 A. They say they was going, to get in.

5 Q. How long did you talk to them?

6 A. Probably like 3 minutes.

7 Q. And did you get in the truck with them?

8 A. No, sir.

9 Q. Did they tell you a specific location that they were  
10 going?

11 A. Huh-uh.

12 Q. After you talked to them, where did you go?

13 A. I went back to the store.

14 Q. Which store was that?

15 A. Grocery.

16 Q. Park? Is that Park Grocery?

17 A. Yeah.

18 Q. Is that a short block from where you met them?

19 A. Yeah.

20 Q. All right. Did you see them again that night?

21 A. No, sir.

22 Q. Do you have any information about what happened on  
23 Byars Street?

24 A. No, sir.

25 Q. Did you witness anything that happened there?

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 A. No, sir.

2 Q. When they arrested you and charged you with murder,  
3 they also charged you with a burglary. Right?

4 And you were actually -- Ultimately, you pled guilty to two  
5 burglaries and a criminal conspiracy, and you're on  
6 YOA. You got a Youthful Offender sentence for that?

7 (WITNESS INDICATED.)

8 Q. When they arrested --

9 THE COURT: Okay, wait, wait. You've got to answer  
10 with something other than --

11 MR. BRACKETT: Yes, sir.

12 Q. Is that correct?

13 THE COURT: You've got to say yes or no. When he asks  
14 you a question you've got to answer.

15 A. Yes, sir.

16 Q. So you were convicted of two burglaries and a criminal  
17 conspiracy?

18 A. Yes, sir.

19 Q. Okay. When they arrested you and charged you with  
20 those charges as well as the murder, did they book you in?  
21 That is to say, did they take your picture, your  
22 fingerprints, and do all that stuff?

23 A. Yes, sir.

24 Q. In the jail?

25 A. Yes, sir.

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 Q. Okay. I'm showing you -- Let me get this marked if I  
2 can.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-TWO  
4 PREMARKED FOR IDENTIFICATION.)

5 Q. I'm showing you what's been marked as State's Exhibit  
6 Forty-two for identification. Do you recognize that  
7 booking photo?

8 A. Yes, sir.

9 Q. What date does it say on there?

10 A. October 3rd.

11 Q. What year?

12 A. 2009.

13 Q. Is that a picture -- Does that picture accurately --  
14 Who's in the picture?

15 A. Me.

16 Q. Does it accurately depict -- Let me see that. Does  
17 that accurately depict you as you were on October 3rd and  
18 October 1st as well of 2009?

19 A. Yes, sir.

20 Q. There was another picture in the back of this that  
21 doesn't have anything to do with...

22 So that's how you looked?

23 A. Yes, sir.

24 Q. And that's how your haircut looked?

25 A. Yes, sir.

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT  
CROSS BY MR. CHIARENZA

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1 MR. BRACKETT: Your Honor, I would move State's  
2 Exhibit Forty-two into evidence at this time.

3 MS. INZERILLO: No objection.

4 MR. CHIARENZA: Your Honor, I'm going to object on the  
5 lack of foundation as far as where, and who took this  
6 photograph, and the circumstances.

7 THE COURT: In over objection.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-TWO  
9 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

10 MR. BRACKETT: Thank you, Mr. Jeter. Please answer  
11 any questions the counsel for Mr. Reid or Mr. Henson may  
12 have for you.

13 MS. INZERILLO: No questions, Your Honor.

14 MR. CHIARENZA: If it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 DARIUS BERNARD JETER BY MR. CHIARENZA:

18 Q. Mr. Jeter, when you saw these individuals driving by  
19 in the truck that you previously testified, you could  
20 only -- The only people you saw was Donta Reid and Samantha  
21 Ervin. Correct?

22 A. Yes, sir.

23 Q. And Donta Reid, he was in the back of the truck, so  
24 there wasn't an issue with seeing him through any tinted  
25 windows. He was in the bed part. Correct?

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

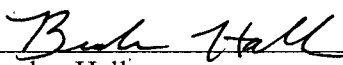
DONTE KEVON REID,

APPELLANT

APPELLATE CASE NO. 2011-204288

CERTIFICATE OF SERVICE

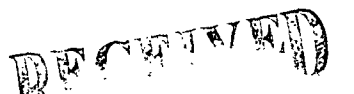
I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of February, 2013.

  
\_\_\_\_\_  
Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 11th day of February, 2013.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: October 2, 2013

  
FEB 11 2013  
SOUTH CAROLINA COURT OF APPEALS