

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

Honorable Patrick Cleburne Fant, III, Circuit Court Judge

DEMARCUS OBRIEN FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001688

APPENDIX

GARY H. JOHNSON
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

D. RUSSELL BARLOW II
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3737

RANDY E. NEWMAN, JR.
Solicitor, Sixth Judicial Circuit
Sixth Circuit Solicitor's Office
PO Box 607
Lancaster, SC 29721
(803) 416-9336

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 18-21, 2019	1
INDICTMENTS	681
SENTENCE SHEETS	687
APPLICATION FOR POST-CONVICTION RELIEF DATED JUNE 15, 2022.....	690
RETURN AND PARTIAL MOTION TO DISMISS DATED DECEMBER 20, 2022	708
POST-CONVICTION RELIEF HEARING DATED FEBRUARY 20, 2024	715
ORDER OF DISMISSAL DATED MAY 13, 2025	749

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
 2018-GS-29-00899, -00902, -00903

STATE OF SOUTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
LANCASTER COUNTY	CIRCUIT COURT DIVISION
	2018-GS-29-00899
	2018-GS-29-00902, -03

-----X	
STATE OF SOUTH CAROLINA,	:
	:
Plaintiff,	:
	:
vs.	:
	:
DEMARCUS OBRIEN FOSTER,	:
	:
Defendant.	:
-----X	

TRANSCRIPT OF TRIAL
 VOLUME I
 PAGES 1 - 129

March 18, 2019
 Lancaster, South Carolina

B E F O R E

The Honorable Roger E. Henderson, Judge Presiding.

A P P E A R A N C E S

JARROD FUSSNECKER, ESQ.
 HEATHER WEISS, ESQ.
 Assistant Attorneys General
 Office of the Attorney General
 P.O. Box 11549
 Columbia, South Carolina 29211-1549

MARK GRIER, ESQ.
 Assistant Public Defender
 104 South Main Street
 Lancaster, South Carolina 29720

Kymerlee M. Williams, CSR/RPR
 Official Circuit Court Reporter
 P.O. Box 283
 Pineville, North Carolina 28134

I N D E X

PROCEEDINGS	3
JURY SELECTION	3
PRETRIAL HEARING	16
OPENING STATEMENT BY MR. FUSSNECKER	69
OPENING STATEMENT BY MR. GRIER	73
WITNESS: ROGER HARRIS	
Direct Examination (F)	80
Cross-Examination	88
Redirect Examination	93
WITNESS: AARON CARROLL	
Direct Examination (W)	94
WITNESS: KANEISHA YOUNG	
Voir Dire Examination (F)	93, 106
Voir Dire Examination	105
Direct Examination (F)	111
Cross-Examination	118
Redirect Examination	125
PROCEEDINGS CONTINUED	129

E X H I B I T S

ITEM NUMBER	DESCRIPTION	PAGE
(S) 1A - 1L	Photographs	110
(S) 4A - 4D .	Photographs	110
(S) 3	CD of 911 call	111
(S) 9	CD of 911 call	111

1 P R O C E E D I N G S
2 MONDAY, MARCH 18, 2019
3 LANCASTER, SOUTH CAROLINA

4 * * *

5 JURY SELECTION

6 (Whereupon, the following proceedings were
7 held in open court. The defendant was
8 present with his attorney, along with
9 counsel for the State.)

10 THE COURT: Ladies and gentlemen, I understand
11 Mr. Hammond, the clerk, has given you the instructions
12 that you need to respond to. We will follow those
13 instructions. Once we have completed roll call, we will
14 determine your qualification, and I will decide whether
15 you are qualified to serve as a juror.

16 (Whereupon, the prospective jury venire was duly
17 sworn.)

18 THE COURT: Ladies and gentlemen, I want to thank
19 you for responding to the summons to serve as jurors.
20 Our judicial system would not work if it were not for
21 jurors who come forward and serve.

22 I know it's an inconvenience to you in regard to
23 your lives. The inconvenience is for this week only if
24 you are selected to serve on a jury. I ask you to bear
25 with us. It's just part of how our system works.

1 Again, I do appreciate on behalf of Lancaster
2 County and the State of South Carolina your willingness
3 to serve as a juror this week.

4 At this time, I have to go through a number of
5 questions which will help me determine whether or not
6 you are qualified to serve as jurors. Again, I want to
7 remind you that you swore an oath a few moments ago. I
8 ask that you respond truthfully and that you keep that
9 in mind as I ask you these questions.

10 There may be some questions that you might not want
11 to answer in front of everybody else. There may be some
12 questions concerning health issues, things of that
13 nature. If any of you fall into that category, at the
14 conclusion of all of my questions concerning the
15 qualifications and my explanations about certain
16 exceptions that I will go over in a minute, after I
17 conclude all of that, I will meet with you up here in
18 the front and speak to you in private so we can address
19 any concerns that you might have.

20 Now, the first thing is: Is there any member of
21 the jury panel who is not a citizen of the United
22 States? If so, please stand.

23 (No indication)

24 THE COURT: Is there any member of the jury panel
25 who is not a citizen and resident of Lancaster County,

1 South Carolina? If so, please stand.

2 (No indication)

3 THE COURT: Is there any member of the jury panel
4 who is unable to read, write, speak, or understand the
5 English language? If so, please stand.
6 Anybody who falls into that category?

7 (No indication)

8 THE COURT: I always have trouble with that
9 question. If you don't understand the English language,
10 you wouldn't understand the question.

11 Does any member of the jury panel have less than a
12 sixth grade education or its equivalent?

13 (No indication)

14 THE COURT: Is there any member of the jury panel
15 unable, because of mental or physical infirmities, to
16 render efficient jury service?

17 For example, does any member of the jury panel have
18 any medical condition that would prevent you from
19 serving on a jury this week?

20 Keep in mind, we normally run -- we might go as
21 long as two hours before taking a break. So keep that
22 in mind if you have any issues. I understand I might
23 need to speak with some of you privately, but if any of
24 you fit into that category, please stand.

25 THE COURT: Yes, ma'am. Name and number, please.

1 THE PROSPECTIVE JUROR: 153 Jennifer Ricketts. I
2 have a doctor's note for you.

3 THE COURT: If you will bring it up for me when we
4 get to the end, I will look at it.

5 Anybody else?

6 (No indication)

7 THE COURT: Has any member of the jury panel been
8 convicted by guilty plea or a trial in a State or
9 Federal court by a crime punishable by imprisonment for
10 more than one year, and your civil rights have not been
11 restored by pardon or amnesty?

12 What I mean is, not that you served one-year in
13 prison, but the chance of the charge that you pled
14 guilty could have carried a sentence of incarceration?
15 Does anybody fall into that category?

16 This may be one of those that we need to address in
17 private.

18 (No indication)

19 THE COURT: Is any member of the jury panel a
20 clerk, or Deputy Clerk of Court, Constable, Sheriff, or
21 other commissioned law enforcement officer, Probate
22 Judge, County Commissioner, Magistrate, or other County
23 offices or employed within the walls of any courthouse?

24 If so, please stand.

25 (No indication)

1 THE COURT: Is there any member of the jury panel
2 who has previously served on jury duty in circuit
3 court -- that is, this court? Not city court or
4 Magistrate's court or Federal Court here in Lancaster
5 County or some other county during this calendar year?
6 If so, please stand.

7 (No indication)

8 THE COURT: Has any member of the jury panel served
9 on the Lancaster County Grand Jury during the past
10 several years? If so, please stand?

11 Anybody served on the grand jury?

12 (No indication)

13 THE COURT: Ladies and gentlemen, we are now moving
14 to what we call exemptions. If you fall into these
15 various categories, it doesn't mean you are not
16 qualified. It means that you can choose not to serve,
17 if you fall into this particular category.

18 You see that I just got through going through these
19 qualifications. These are the exceptions.

20 Anybody who is 65 years of age or older does not
21 have to serve on jury duty and may exercise an exemption
22 and be excused. We like for people who are 65 or older
23 to serve, because you have a lot of experience and
24 knowledge into the jury pool.

25 Is there anybody 65 or older who wishes not to

1 serve and wishes to exercise their exemption, please
2 stand at this time.

3 (No indication)

4 THE COURT: Thank you.

5 I asked about prior jury service a few moments ago
6 for this calendar year. Normally, you can serve as a
7 juror no more than once every three calendar years.
8 Therefore, if any member of the jury panel has served on
9 a jury within the last two calendar years, you may be
10 exempt from service this week.

11 If anybody falls into that category, please stand.

12 THE PROSPECTIVE JUROR: Michael Cressman, Number
13 43. I was here about this time last year.

14 THE COURT: Thank you. You are excused.

15 Anybody else who has served on a jury in the last
16 couple of years?

17 Persons who have served on the grand jury in the
18 last five calendar years, they are also exempted from
19 service.

20 (No indication)

21 THE COURT: This next exemption has several parts
22 to it. Listen carefully. You may be exempt from jury
23 service if: You have a small child or children under
24 the age of seven years; you have legal custody of your
25 child or children; you have the principal care, custody,

1 and control of your child or children; you are unable to
2 make arrangements for the adequate care or children
3 while performing jury service.

4 All of these requirements must apply to you before
5 you can be exempted.

6 Does anybody have small children seven or under in
7 this category? If so, please stand.

8 (No indication)

9 THE COURT: The next exemption deals with those of
10 you who may be attending school at this time or possibly
11 working in some capacity at a school.

12 If this applies to you and you wish to be exempted,
13 you will not be excused, but you will be transferred to
14 a different term of court to a point in time that
15 doesn't conflict with your school duties.

16 Anyone here who is a student, school or school
17 teacher, school crossing guard, school bus driver, or
18 who serves any other school-related function, who is
19 unable to serve this week because of your school
20 involvement? If so, please stand.

21 (No indication)

22 THE COURT: Is there any member of the jury panel
23 who is an employee of the Department of Corrections or a
24 penitentiary and you would like to exempt yourself?
25 Please stand.

1 (No indication)

2 THE COURT: Is there any person who performs
3 services for a business, commercial, or agricultural
4 enterprise which is so essential to the enterprise that
5 if you were required to perform jury duty, the
6 enterprise would have to close or stop functioning, or
7 if the business would just shut down if the trial were
8 to go into next week?

9 Is there any juror who falls into that category?
10 If so, please stand.

11 (No indication)

12 THE COURT: Is there any juror who is the primary
13 caretaker of a severely disabled person and is unable to
14 care for himself or herself and who cannot be left
15 unattended and you wish to be exempted?

16 Yes, ma'am. Your name and number?

17 THE PROSPECTIVE JUROR: Nancy Gordon, Number 71.

18 THE COURT: Yes, ma'am.

19 THE PROSPECTIVE JUROR: I have to take care of my
20 adult mother. I have to feed her and bathe her every
21 morning before work. Then I have to come home and feed
22 her lunch. Then my son gets home at 5:00 and helps
23 until he goes to work.

24 THE COURT: I will find that you are exempt this
25 week.

1 Anybody else who has a relative who is severely
2 disabled and can't serve?

3 (No indication)

4 THE COURT: The next question is very similar.

5 Is there any juror who is the primary caretaker of
6 a person who is over the age of 65, and you are
7 responsible for the care of that person and you wish to
8 be exempted.

9 (No indication)

10 THE COURT: All right, ladies and gentlemen. That
11 concludes the list of qualification questions and the
12 extensive questions. At this time if there is anyone
13 who wishes to discuss a matter with me in private, line
14 up on this side, please.

15 THE COURT: Yes, sir.

16 THE PROSPECTIVE JUROR: Jonathan Johnson,
17 Number 96.

18 I have a panic and anxiety disorder. I don't have
19 a doctor's note. I don't know if I can afford to go to
20 the doctor's to get one today. I am nervous just being
21 here.

22 THE COURT: You don't have anything from the
23 doctor?

24 THE PROSPECTIVE JUROR: I don't have health
25 insurance.

1 THE COURT: Do you work?

2 THE PROSPECTIVE JUROR: I work at the mall.

3 THE COURT: Do you have medicine that controls it?

4 THE PROSPECTIVE JUROR: It sustains it.

5 THE COURT: And you work at a mall?

6 THE PROSPECTIVE JUROR: Just moving and selling

7 stuff. Sitting for a long time is hard for me.

8 THE COURT: All right. I will excuse you.

9 THE PROSPECTIVE JUROR: Devon Jenkins, Number 94.

10 MR. GRIER: I served nines months of a six- to

11 twelve-month term in Pennsylvania for simple assault.

12 THE COURT: Do you know if the sentence carried

13 more than a year in incarceration?

14 THE PROSPECTIVE JUROR: I don't believe it did.

15 THE COURT: If it was a year, then I will excuse

16 you. Thank you for coming in.

17 THE PROSPECTIVE JUROR: Meredith Peterson, Number

18 146.

19 THE COURT: Yes, ma'am.

20 THE PROSPECTIVE JUROR: I have an eight-year-old

21 and an 11-year-old child. I don't have transportation

22 to and from school.

23 THE COURT: What about when school is out? Can

24 someone pick them up for this week?

25 THE PROSPECTIVE JUROR: I am a substitute teacher,

1 also.

2 THE COURT: I will transfer you to the summertime.
3 They will send you a note.

4 THE PROSPECTIVE JUROR: Judith Ottenstroer, Number
5 140.

6 I have a doctor's appointment Friday afternoon at
7 2:30.

8 THE COURT: Can you reschedule it?

9 THE PROSPECTIVE JUROR: I can try, but I am not
10 sure.

11 THE COURT: I will transfer her to another
12 time.

13 THE PROSPECTIVE JUROR: Chandra Reid, Number 151.

14 Is there any way I can be excused to go to the
15 bathroom?

16 THE COURT: Well, I have to go a lot, too. Just
17 let me know, and we will take a break.

18 How often do you need to be excused? And do you
19 have a doctor's note?

20 THE PROSPECTIVE JUROR: About 45 minutes. I don't
21 know if that will be an issue.

22 THE COURT: I will excuse you to another time,
23 transfer you to another time. Then when you come back,
24 bring a doctor's note and we can deal with your
25 condition at that time.

1 THE PROSPECTIVE JUROR: Kim Moss, Number 128. I
2 have two doctor's appointments this week. One of them
3 is my psychiatrist. I need to go to that one.

4 THE COURT: We will transfer her to another
5 term.

6 THE PROSPECTIVE JUROR: Jennifer Ricketts, Number
7 153. I have a special needs child. My husband works
8 almost an hour from home and we have no family in the
9 area. I need to be home with my child.

10 THE COURT: I will excuse you. Number 153.

11 THE PROSPECTIVE JUROR: Kristen Graf, Number 72.

12 Just in case it was showing up, in 2007 I was
13 arrested and convicted of a DUI. First offense, nothing
14 before and nothing after. I was called for jury duty
15 before in Mecklenburg County.

16 THE COURT: I appreciate your willingness to serve.
17 You are okay.

18 THE PROSPECTIVE JUROR: Deedra Sorapuru, Number
19 172.

20 Since being unemployed, I have been doing odd jobs,
21 such as marketing during the week, Monday through
22 Sunday. That would prevent me from being here each
23 morning.

24 THE COURT: I can't excuse you for that. I can
25 transfer you to another term.

1 THE PROSPECTIVE JUROR: It's my livelihood.

2 THE COURT: I can transfer you to another week.

3 Hopefully, you can come to court by then.

4 THE PROSPECTIVE JUROR: Tiffany Huggins, Number 89.

5 I am a solo practitioner.

6 THE COURT: You have your own business?

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: I will find you to be exempt.

9 THE PROSPECTIVE JUROR: Kendrick Ballard, Number 6.

10 I was convicted of criminal domestic violence.

11 THE COURT: You served time?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: You are excused.

14 THE PROSPECTIVE JUROR: Steven Roberts, Number 156.

15 I do construction work. I take medication that

16 makes me sleepy. I had an injury in California.

17 THE COURT: You were injured in California?

18 THE PROSPECTIVE JUROR: I crushed my heel. They

19 have me on all kinds of medication.

20 THE COURT: We don't need you if you can't stay

21 awake. We will transfer you to a later term.

22 THE PROSPECTIVE JUROR: Courtney Branham, Number

23 22. I have a CPR class for my work on Friday. It's a

24 dermatologist office. I need to be recertified.

25 THE COURT: We can't protect you on Friday. I can

1 transfer you to another term of court, if it will be an
2 issue.

3 THE PROSPECTIVE JUROR: I would like to be
4 transferred.

5 THE COURT: Okay. I guess that is it.

6 Ladies and gentlemen, those of you who are
7 remaining, are the lucky ones who get to serve this week
8 as jurors. At this point in time, we are going to take
9 a 15-minute break to go to the rest room. If you do --
10 and I hope you don't smoke -- you can get that done and
11 out of the way.

12 After about 15 minutes, we will come back and
13 finish going through the jury selection for those of you
14 who will be selected as jurors for our case this week.

15 So at this time, let's go ahead and take a
16 20-minute break. When you come back, we will get
17 started.

18 (Whereupon, a recess was held.)

19 (Whereupon, the following proceedings were
20 held in open court. The defendant was
21 present with his attorney, along with
22 counsel for the State.)

23 PRETRIAL HEARING

24 MS. WEISS: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. WEISS: Before you is Devon Nielson and Mark
2 Grier. They work for the same office. We discussed
3 this in chambers. We wanted to put this on the record.
4 Devon Nielson represents one of the witnesses in this
5 case, Lashawn White on unrelated charges. He was
6 present when our investigators talked to Mr. White, just
7 because he has an attorney and we invited him to be
8 there.

9 Just to be clear on the record that Mr. Grier and
10 Mr. Nielson have not discussed this case or each of
11 their clients' individual roles in this case. Mr. White
12 did not give any statement, but I want it to be clear
13 that that was based on his conversations with his
14 attorney and not conversations between the two of them.

15 MR. NIELSON: Yes, Your Honor. That is absolutely
16 true. When I went down to see Mr. White, me and Mr.
17 Grier had not discussed the case beforehand. We have
18 not discussed it since I went and saw Mr. White. We
19 have not discussed what we talked about in the meeting
20 that day.

21 Mr. White's conversation with the two investigators
22 who were there that day is what he wanted to do. He
23 consulted with me. I gave him my advice, but it was
24 based on me being on his case, and it had nothing to do
25 with anything Mr. Grier did or said to me.

1 MR. GRIER: Your Honor, I had knowledge that he was
2 going, but that is the only knowledge I have, period, of
3 that incident. Nothing after the fact.

4 THE COURT: I don't see where there is any
5 problems with this, so we will proceed with the trial at
6 this point.

7 MS. WEISS: Your Honor, I spoke to one of my
8 friends about the proposition about moving forward on a
9 bench trial with the possession of a weapon by a person
10 convicted of a violent felony. The advice that I was
11 given is, while they have not ever seen or heard of it
12 being done that way, they don't see any procedural
13 issues as long as Mr. Grier -- as long as you question
14 Mr. Grier and his client that his client puts on the
15 record that he is waiving his right to a jury trial. He
16 understands that we are moving forward with the bench
17 trial simultaneously with the jury trial.

18 Obviously, according to them, what they said is
19 that if there needed to be any extra evidence admitted
20 for that specific trial, for that specific case, that we
21 could do that in camera and away from the jury. They
22 said because of the way the case law is developing, they
23 felt like it needed to be a waiver by the defendant on
24 the record.

25 MR. GRIER: Your Honor, would you like him to step

1 up?

2 THE COURT: That would be good.

3 * * *

4 DEMARCUS FOSTER,

5 called as a witness by and on behalf of

6 the Court to testify, being first duly

7 sworn was examined and testified as follows:

8 THE COURT: I don't know if you have had time to

9 discuss this with Mr. Grier. Hopefully, you have.

10 You understand that there are three different

11 charges against you. You are aware of that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: There is the murder charge and the

14 possession of a weapon during the commission of a

15 violent crime and also possession of a weapon by a

16 convicted felon.

17 What we are focusing on is the possession of a

18 weapon by a convicted felon. Your lawyer does not want

19 that matter tried in front of the jury. He feels like

20 that would be prejudicial to you for that information to

21 come out before a jury.

22 So he has asked that we do it by way of what we

23 call a bench trial. I will make the decision and not

24 the jury. If there is a separate trial, the evidence

25 will be the same evidence that -- the jury and I will be

1 working off the same evidence; do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If for some reason I saw there was a
4 need for some additional evidence, it would be, as we
5 say, in camera. That means away from the jury and in
6 private.

7 Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: That would be the lawyers and me
10 present, the court reporter present, and you present, of
11 course.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The question that I need to ask from
15 you is are you willing to waive your right to a jury
16 trial with regard to the possession of a weapon by a
17 convicted felon charge?

18 You have the right to have a jury make that
19 decision. You have the right to present it to the jury.
20 You have the right, if you want to, to waive that and
21 have me make the decision at what we call a bench
22 trial.

23 Do you understand what I am trying to explain to
24 you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: So my question to you is, do you want
2 to waive your right to a jury trial on that charge,
3 possession of a weapon by a convicted felon? Do you
4 want to waive that or give up that right and have me
5 make the decision concerning that charge?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You said you want to waive that right
8 to a jury trial. You want me to make the decision at a
9 bench trial, which will be done simultaneously with a
10 jury trial.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you doing this freely and
14 voluntarily?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: After consultation with your attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you under the influence of any
19 alcohol or drugs today?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you suffer from any kind of
22 physical, mental, or emotional problems that keep you
23 from being able to understand things clearly?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anybody threatened you to give up

1 your right to a jury trial concerning this charge?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anybody promised you anything to
4 get you to give up your right to a jury with regard to
5 this charge?

6 THE DEFENDANT: No, sir.

7 THE COURT: How old are you?

8 THE DEFENDANT: Thirty-one.

9 THE COURT: How far did you go in school?

10 THE DEFENDANT: Tenth grade, but I completed trade
11 school and have my GED.

12 THE COURT: So you have no trouble understanding
13 what has been going on over the last several months?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you fully understand my explanation
16 to you that I made a few moments ago?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Again, you are making this decision
19 freely and voluntarily after consultation with your
20 attorney?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Grier, do you have any questions
23 you want me to ask of him?

24 MR. GRIER: I don't, Your Honor. You have covered
25 everything.

1 THE COURT: Ms. Weiss?

2 MS. WEISS: No, sir, Your Honor.

3 THE COURT: I will find for the record that Mr.
4 Foster has freely and voluntarily waived his right to a
5 jury trial with regard to the possession of a weapon by
6 a convicted felon charge.

7 I will make the decision concerning that charge by
8 way of a bench trial, which will be heard simultaneously
9 with the jury trial.

10 MS. WEISS: Thank you, Your Honor.

11 THE COURT: All right. We can bring the jurors
12 back in.

13 (Whereupon, the prospective jury venire entered the
14 courtroom.)

15 (Whereupon, the following proceedings were
16 held in open court. The defendant was
17 present with his attorney, along with
18 counsel for the State.)

19 * * *

20 JURY SELECTION CONTINUES

21 THE COURT: Ladies and gentlemen, I want to remind
22 you that you are still under oath with regard to any
23 questions I might ask you in the next several minutes.
24 We are at the point where we are going to select a
25 jury. It involves the matter of the State of South

1 Carolina v. Demarcus Foster, who is the defendant in
2 this matter.

3 The indictments for which you will be considering
4 will be murder and possession a weapon during the
5 commission of a violent crime. Mr. Foster, would you
6 stand, please.

7 This is the defendant, Mr. Foster.

8 Is there anyone here from the victim's family?

9 THE COURT: The actual victim in this matter is an
10 individual by the name of Joel McLemore.

11 My first question to you is: Is there any member
12 of this jury panel who is related by blood or marriage
13 to either Mr. Foster or to anyone related to Joel
14 McLemore? If so, please stand.

15 (No indication)

16 THE COURT: Does any member of the jury panel have
17 or have ever had a close personal, business, or social
18 relationship with Demarcus Foster or Joel McLemore?

19 (No indication)

20 THE COURT: At this time, I will ask that you bear
21 with me. This is a rather extensive list.

22 I am going to call out the names of the State's
23 potential witnesses in this case and the defendant's
24 potential witnesses in this case. Listen carefully for
25 the names.

1 If any of these individuals are present in the
2 courtroom, I will ask that they stand and we can let the
3 jury see who they are.

4 The State's potential witness list:

5 Maryam Yuwsufiynah Rivera; Quinterious Raquon
6 Truesdale; Roger Harris; Hazel Russell Reid; Kaneisha
7 Shanta Young; Jakenia Stevens; Jalissa Stover; Kendrews
8 Stover; Quaterious Peay; Ladario Jones; Lashawn White;
9 Kristavius Stevens; Samuel Wright; Michelle Wright;
10 Lexis Grier; Bishop Blackmon; Richard Stewart; Courtney
11 Shannon; Demarcus Kiyon Montgomery, Demarcus Crawford,
12 Nykeithous Geomojhae Cunningham; Special Agent Kristen
13 Grant with the State Law Enforcement Division; Sergeant
14 A. Carroll; Deputy Katie Faust; Investigator Jason
15 Catoe; Special Agent Jennifer Miller, SLED, Special
16 Agent Dalila Jazic, SLED; Major Matt Shaw, Lancaster
17 County Sheriff's Office; Lieutenant Ryan McLemore;
18 Sheriff Barry S. Faile, Lancaster County Sheriff's
19 Office; Lieutenant Derek Horton; Investigator Eric
20 Jaillette; Special Agent John Dexter Bassard, SLED;
21 Detective Brad Whitesides; James Green, SLED; Jennifer
22 Nates, SLED; Brian Truex, SLED; Eric Grabski, SLED;
23 Marcus Heyward, SLED; Sarah Zapata, SLED; Courtney
24 Thompson, SLED; Janice Ross, M.D. Those are the State's
25 potential witnesses.

1 The defendant's potential witnesses are: Brian
2 Foster; Angela Foster; Austin Harper; Michael Beckham.

3 MR. GRIER: Your Honor, if we could state one
4 thing for the record. The defense is also writing --
5 with this list of the State, we would potentially be
6 using the State's witness list, too. I wanted that to
7 be clear. We eliminated a lot of our witnesses, because
8 we are both calling them to avoid the duplication.

9 THE COURT: If you could not hear. Some of the
10 State's witnesses may also be some of the defendant's
11 witnesses.

12 With regard to all those names that I just called
13 out who are potential witnesses, has anyone in the jury
14 panel ever been related by blood or marriage to any
15 those people whose names I just called out?

16 If so, please stand.

17 THE PROSPECTIVE JUROR: Number 13, Bradley Benson.

18 THE COURT: Mr. Benson, what is your situation
19 with regard to anyone on the potential jury lists?

20 THE PROSPECTIVE JUROR: I am kin to Demarcus
21 Montgomery.

22 THE COURT: What is the relationship to Mr.
23 Montgomery?

24 THE PROSPECTIVE JUROR: Second cousin.

25 THE COURT: How close are you-all?

1 THE PROSPECTIVE JUROR: Same family. Family on my
2 mom's side.

3 THE COURT: I understand. How close are you, did
4 you say?

5 THE PROSPECTIVE JUROR: Second cousin.

6 THE COURT: Are you close to him?

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Do you do a lot with each other, this
9 and that?

10 THE PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Would the fact that he is your second
12 cousin and that you have some close relationship with
13 him, would that keep you from being able to be fair and
14 impartial to both the State in this case and the
15 defendant? Would you be biased in some way because of
16 what he might say?

17 THE PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Yes, sir, what? Be biased or you would
19 not?

20 THE PROSPECTIVE JUROR: I would be biased.

21 THE COURT: You would be biased based on what his
22 testimony may be?

23 THE PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: If you feel like you would be biased in
25 any way, I am going to excuse you from service in the

1 trial of this case.

2 Is there any member of the jury panel who has in
3 the past or currently has any type of close business,
4 personal, or social relationship with any of those
5 individuals' names that I called out earlier?

6 If so, please stand.

7 (No indication)

8 THE COURT: Thank you. No one is standing.

9 Mr. Grier, would you stand and introduce the
10 attorney who is going to be assisting you?

11 MR. GRIER: My name is Mark Grier. I have been
12 practicing law in Lancaster since 1990. Edwin Palacio
13 is an assistant with this trial. He will be in our
14 courtroom perhaps.

15 Thank you.

16 THE COURT: Ms. Weiss, would you stand and
17 introduce yourself.

18 MS. WEISS: My name is Heather Weiss. I work with
19 the Attorney General's office. Trying the case with me
20 is Jarrod Fussnecker, also from the Attorney General's
21 office.

22 THE COURT: Let me also mention the names of other
23 attorneys who work in Mr. Grier's office: Michael
24 Livesey, Brandon Steen, Ryan Payne, Edwin Palacio;
25 Devon Nielson. These are attorneys who work in the

1 office with Mr. Grier.

2 Keeping in mind those attorneys and the
3 attorneys who have stood and identified themselves this
4 morning, has any member of the jury panel ever been
5 represented by any of these attorneys who I have called
6 out or who have stood here in the courtroom this
7 morning? If so, please stand.

8 (No indication)

9 THE COURT: Has any member of the jury panel ever
10 had any type of close personal, business, or social
11 relationship with any of the attorneys involved in the
12 trial of this case, or those who work in Mr. Grier's
13 office. If so, please stand.

14 (No indication)

15 THE COURT: Has any member of the jury panel ever
16 been related by blood or marriage to any of the
17 attorneys who stood just a few moments ago or whose
18 names are listed?

19 If so, please stand.

20 (No indication)

21 THE COURT: Has any member of the jury panel
22 formed or expressed an opinion about any issue or matter
23 involved in this case?

24 If so, please stand.

25 (No indication)

1 THE COURT: Is any member of the jury panel aware
2 of any biased or prejudice toward either the State or
3 the defendant in this case?

4 (No indication)

5 THE COURT: Is there any member of the jury panel
6 that was a member of the Grand Jury who has issued the
7 indictments in this case?

8 If so, please stand.

9 (No indication)

10 THE COURT: Is there any member of the jury panel
11 who is a member of or a contributor to any group that
12 has, as its primary concern, the promotion of law
13 enforcement or victims' rights?

14 For example, we talk about: MADD, SADD, CAVC or
15 any of these types of law enforcement organizations. If
16 anybody is a member or a contributor to any of those,
17 please stand.

18 (No indication)

19 THE COURT: Has any member of the jury panel been
20 approached by anyone on behalf of the State or the
21 victim or the defendant in this matter?

22 If so, please stand.

23 (No indication)

24 THE COURT: Has any member of the jury panel ever
25 been the victim of a crime of violence?

1 If so, please stand.

2 Yes, sir. Your name and number, please.

3 THE PROSPECTIVE JUROR: Raymond Norton, 138.

4 THE COURT: Mr. Norton, what is the situation that
5 you were involved in?

6 THE PROSPECTIVE JUROR: My aunt was murdered.

7 THE COURT: Would that fact keep you from being
8 able to be fair and impartial to the State and the
9 defendant in the trial of this case?

10 THE PROSPECTIVE JUROR: Absolutely.

11 THE COURT: You would be biased?

12 THE PROSPECTIVE JUROR: Yes, I would.

13 THE COURT: Do you feel like you would be biased
14 toward the State?

15 THE PROSPECTIVE JUROR: I probably would.

16 THE COURT: Speak up.

17 THE PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Why do you feel like you would be
19 biased?

20 Do you think you would go in that jury room and
21 just automatically think that this defendant is guilty?

22 THE PROSPECTIVE JUROR: Absolutely.

23 THE COURT: You would feel that way?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: We definitely don't need you on the

1 case. You are excused from the trial of this case.
2 Anybody else who, either yourself or a member of
3 your family, has been the victim of a crime of
4 violence?

5 (No indication)

6 THE COURT: Has any member of the jury panel or any
7 member of their family ever been charged with or
8 convicted of a crime of violence?

9 Were you or a family member charged or convicted?

10 THE PROSPECTIVE JUROR: Salvatore Pellegrino,
11 Number 144.

12 My brother was involved in an accident last year.
13 It was a fatality. He was found guilty of reckless
14 driving.

15 THE COURT: Would the fact that your brother had
16 been convicted of reckless driving, would that keep you
17 from being able to be fair and impartial to both the
18 State and the defendant in the trial of this case?

19 THE PROSPECTIVE JUROR: I could be fair.

20 THE COURT: Thank you, sir. You may be seated.

21 Anybody else?

22 Has any member of the jury panel or their immediate
23 family ever been employed by the Lancaster County
24 Sheriff's Office?

25 THE PROSPECTIVE JUROR: Robert Cogan, Number 39.

1 My son-in-law is an investigator.

2 THE COURT: With the Lancaster County Sheriff's
3 Department?

4 THE PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: The fact that your son-in-law is
6 employed by the Lancaster County Sheriff's Office, would
7 that keep you from being fair and impartial to both the
8 State and the defendant in the trial of this case?

9 THE PROSPECTIVE JUROR: No, sir.

10 THE COURT: You could be fair to both sides?

11 THE PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: Anybody else who has been employed or
13 have a relative employed by the Sheriff's Office?

14 THE PROSPECTIVE JUROR: Austin Robinson, 157.

15 THE COURT: What is your situation?

16 THE PROSPECTIVE JUROR: My mother works at the
17 Sheriff's Department as a dispatcher.

18 THE COURT: Would the fact that your mother works
19 as a dispatcher for the Sheriff's Department keep you
20 from being able to be fair and impartial to both the
21 State and the defendant in the trial of this case?

22 THE PROSPECTIVE JUROR: No, sir.

23 THE COURT: Thank you, sir.

24 Is there any member of the jury panel or a member
25 of their immediate family who is related or has been

1 related by blood or marriage or who is a close, personal
2 friend or acquaintance of Attorney General Alan Wilson,
3 Ms. Weiss, Mr. Fussnecker, or anyone employed with the
4 South Carolina Attorney General's Office?

5 (No indication)

6 THE COURT: Has any member of the jury panel or any
7 member of their immediate family ever been prosecuted by
8 or involved in any matter with the South Carolina
9 Attorney General's Office?

10 (No indication)

11 THE COURT: Has any member of the jury panel heard
12 or read any publicity about this case?

13 Yes, ma'am.

14 THE PROSPECTIVE JUROR: Randi Faile, Number 60.

15 THE COURT: Ms. Faile, what have you read or heard?

16 THE PROSPECTIVE: After it happened, I read in the
17 paper about his organ donation, and his arrangements
18 were considered by his family at my funeral home, but he
19 didn't come there.

20 THE COURT: Would anything you have read or heard
21 about this affect your ability to be fair and impartial
22 to both the State and the defendant in the trial of this
23 case in any way?

24 THE PROSPECTIVE JUROR: No, sir.

25 THE COURT: You would not be influenced by

1 anything you have read?

2 THE PROSPECTIVE JUROR: No, sir.

3 THE COURT: Has any member of the jury panel ever
4 been a member of or worked with civilian or military law
5 enforcement?

6 If so, please stand.

7 THE PROSPECTIVE JUROR: Steven Kirchner, Number
8 99.

9 I am retired Air Force.

10 THE COURT: Were you involved in law enforcement
11 when you were in the Air Force?

12 THE PROSPECTIVE JUROR: We did have security police
13 around some of the areas we worked. It was years and
14 years ago.

15 THE COURT: Would that involvement with law
16 enforcement while you were in the Air Force affect your
17 ability to be fair and impartial to both the State and
18 the defendant?

19 THE PROSPECTIVE JUROR: Not at all. No, sir.

20 THE COURT: Yes, sir. Your number?

21 THE PROSPECTIVE JUROR: Kevin Shields, Number 167.

22 THE COURT: Mr. Shields.

23 THE PROSPECTIVE JUROR: Yes, sir. Same thing. I
24 served in the Air Force. I served in law enforcement in
25 Iraq and Afghanistan for a few years.

1 THE COURT: Would the fact that you had some
2 involvement with the military -- would that keep you
3 from being able to be fair and impartial to both the
4 State and the defendant in the trial of this case?

5 THE PROSPECTIVE JUROR: No, sir.

6 THE COURT: You could be fair and impartial?

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Anybody else?

9 THE PROSPECTIVE JUROR: William McManus, Number
10 121.

11 THE COURT: Mr. McManus?

12 THE PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: What is your situation?

14 THE PROSPECTIVE JUROR: I work pretty closely with
15 law enforcement. I am kind of bias towards them. I
16 want to be fair to him, but I don't think I can. I am
17 pretty opinionated. I will leave it at that.

18 THE COURT: Do you work in Lancaster County?

19 THE PROSPECTIVE JUROR: I do work in a different
20 county. It's like -- I used to work up here. I went to
21 high school with one of the McLemores. It has been 15
22 to 17 years since I have had any contact with them. The
23 nature of the beast is that I work closely with law
24 enforcement with my job.

25 THE COURT: You think you might be slanted toward

1 them?

2 THE PROSPECTIVE JUROR: Yes, sir. I think I would.

3 I hate to say it, but I do.

4 THE COURT: That is why we ask these questions.

5 We don't want anyone to serve on the jury who can't be
6 fair and impartial. If you feel like there is some
7 possibility, we would rather excuse you.

8 I am concerned about you possibly being slanted
9 toward law enforcement. I will excuse you from the
10 trial of this case.

11 Yes, sir.

12 THE PROSPECTIVE JUROR: Raymond Norton, Number 138.

13 THE COURT: You have been excused already.

14 Has any member of the jury panel ever been a
15 witness to any crime? If so, please stand.

16 THE PROSPECTIVE JUROR: Eric Newball, Number 136.

17 When I was ten years old, I saw somebody get shot
18 in a drive-by.

19 THE COURT: Would that influence you in any way in
20 the trial of this case?

21 Can you be fair and impartial to both the State and
22 the defendant in the trial of this case despite the fact
23 that you were a witness to a violent crime?

24 THE PROSPECTIVE JUROR: It's hard to say. I would
25 most likely be able to be impartial, but I am not sure

1 how it would affect me.

2 THE COURT: I don't want you to be probably. I
3 want you to be sure.

4 THE PROSPECTIVE JUROR: I had not thought about it
5 in awhile until you brought it up. I would have to
6 think about it.

7 THE COURT: Any concerns from counsel for the State
8 or the Defendant?

9 MR. GRIER: Your Honor, I don't think it quite
10 gets there. I respect what happens to traumatized
11 children and adults, too. It sounds a little bit
12 inconclusive about fairness.

13 THE COURT: I don't want to take any chance. If
14 he has some -- if he can't give a definite answer -- he
15 said probably. I need more than a probably. I will
16 excuse you for the purpose of the trial of this case.

17 Yes, ma'am.

18 THE PROSPECTIVE JUROR: I was the victim of an
19 armed robbery.

20 THE COURT: You were the victim of an armed
21 robbery?

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Would the fact that you have been the
24 victim of a crime prevent you from being fair and
25 impartial to both the State and the defendant in this

1 case?

2 THE PROSPECTIVE JUROR: I can be fair.

3 THE COURT: Thank you, ma'am.

4 THE PROSPECTIVE JUROR: Caroline Stauers, Number
5 176.

6 I had somebody steal something out of my car. He
7 served. It was down in Myrtle Beach. We witnessed him,
8 because somebody had a camera. That is not a violent
9 crime.

10 THE COURT: You have been the victim of a crime?

11 THE PROSPECTIVE JUROR: Right.

12 THE COURT: Would the fact that you have been the
13 victim of a crime keep you from being able to be fair
14 and impartial to both the defendant and the State in the
15 trial of this case?

16 THE PROSPECTIVE JUROR: No.

17 THE COURT: Thank you, ma'am.

18 I will expand that question I asked earlier. Not
19 necessarily a crime of violence. If you have been the
20 victim of a crime, period, please stand.

21 THE PROSPECTIVE JUROR: Jeffrey Kennerly, Number
22 98.

23 THE COURT: Mr. Kennerly?

24 THE PROSPECTIVE JUROR: Yes, sir. I had my car
25 broken into in my driveway. I didn't see the

1 perpetrator. I didn't have to be a witness or
2 anything.

3 THE COURT: Would the fact that you have been the
4 victim of a crime keep you from being able to be fair
5 and impartial to both the State and the defendant in the
6 trial of this case?

7 THE PROSPECTIVE JUROR: No, sir.

8 THE COURT: Thank you, sir.

9 Anybody else? Victim of a crime, violent or
10 otherwise?

11 THE PROSPECTIVE JUROR: Ellen Ritchey, Number 154.

12 THE COURT: You had your car broken into also?

13 THE PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Would that fact keep you from being
15 able to be fair and impartial to both the State and the
16 defendant in the trial of this case?

17 THE PROSPECTIVE JUROR: No, sir.

18 THE COURT: Thank you, ma'am.

19 Anybody else? Go ahead and stand up. You keep
20 popping up one at a time.

21 THE PROSPECTIVE JUROR: Wayne Chisley, Number 36.

22 My father is a former police officer in New York.
23 Also, I had my car broken into.

24 THE COURT: So your father was in law enforcement,
25 and you had your car broken into?

1 THE PROSPECTIVE JUROR: Right.

2 THE COURT: Would those facts keep you from being
3 able to be fair and impartial to both the State and the
4 defendant in the trial of this case?

5 THE PROSPECTIVE JUROR: No, sir.

6 THE PROSPECTIVE JUROR: Pamela Neal, Number 135.

7 I haven't been the victim of a crime, but that
8 made me think of this.

9 My father was a Magistrate in Lancaster County for
10 27 years.

11 THE COURT: What is your father's name?

12 THE PROSPECTIVE JUROR: David Williams.

13 That was a long time ago.

14 THE COURT: Would the fact that your father was a
15 Magistrate here in this county keep you from being able
16 to be fair and impartial to both the State and the
17 defendant in the trial of this case?

18 THE PROSPECTIVE JUROR: No, sir.

19 THE COURT: You would not be biased toward law
20 enforcement in any way?

21 THE PROSPECTIVE JUROR: No, sir.

22 THE COURT: Is there any member of the jury panel
23 who thinks that just because someone is charged with a
24 crime that they are guilty of that crime?

25 Please stand.

1 (No indication)

2 THE COURT: Is there any member of the jury panel
3 who knows of any reason whatsoever why he or she should
4 not serve as a juror in the trial of this case?

5 Keep in mind that we are trying to determine
6 whether or not something would impair your ability to be
7 fair and impartial to both the State and the defendant
8 in the trial of this case.

9 Does anybody know of any reason that they should
10 not serve?

11 Please stand.

12 (No indication)

13 THE COURT: Is there any member of the jury panel
14 who would take the position or feels like if you are
15 working for law enforcement, that whatever you say is
16 correct regardless of what anybody else has to say?
17 If so, please stand.

18 (No indication)

19 THE COURT: Does the State have any additional
20 questions I haven't asked?

21 MS. WEISS: No, sir. Not from the State.

22 THE COURT: From the defense?

23 MR. GRIER: Not from the defense. Thank you, Your
24 Honor.

25 THE COURT: Ladies and gentlemen, we are generating

1 the list from which we select the jury. I am not going
2 to ask you to go back outside and have you come back in,
3 but I do need to give the attorneys a little bit of time
4 to go over this list. So if you will be patient and
5 bear with us while they do that.

6 (Whereupon, a recess was held.)

7 THE COURT: Is the State ready?

8 MS. WEISS: Yes, sir.

9 THE COURT: Is the defense ready?

10 MR. GRIER: Yes, sir. Thank you.

11 THE COURT: Ten and five.

12 THE CLERK: Ladies and gentlemen, if I call your
13 name, please stand.

14 Juror 53, Christie Dixon.

15 What say the State?

16 MS. WEISS: Please excuse the juror.

17 THE CLERK: Juror 60, Randi Faile.

18 What say the State?

19 MS. WEISS: Please present the juror.

20 THE CLERK: What say the defendant?

21 MR. GRIER: Please swear the juror.

22 THE CLERK: Please follow the bailiff to the jury
23 room.

24 THE CLERK: Juror 167, Kevin Shields.

25 What say the State?

1 MS. WEISS: Please present the juror.
2 THE CLERK: What say the defendant?
3 MR. GRIER: Please seat the juror.
4 THE CLERK: Please follow the bailiff to the jury
5 room.
6 Juror 174, Jennifer Starnes.
7 What say the State?
8 MS. WEISS: Please present the juror.
9 THE CLERK: What say the defendant?
10 MR. GRIER: Please excuse the juror.
11 THE CLERK: You are excused. Please be seated.
12 Juror 199, Lissa Young.
13 What say the State?
14 MS. WEISS: Please present the juror.
15 THE CLERK: What say the defendant?
16 MR. GRIER: Please swear the juror.
17 THE CLERK: Please follow the bailiff to the jury
18 room.
19 Juror 142, Kelly Oxener.
20 What say the State?
21 MS. WEISS: Please present the juror.
22 THE CLERK: What say the defendant?
23 MR. GRIER: Please swear the juror.
24 THE CLERK: Please follow the bailiff to the jury
25 room.

1 THE CLERK: Juror 195, Angela Wingert.
2 What say the State?
3 MS. WEISS: Please present the juror.
4 THE CLERK: What say the defendant?
5 MR. GRIER: Please swear the juror.
6 THE CLERK: Please follow the bailiff to the jury
7 room.
8 Juror 131, Scottie Mungo.
9 What say the State?
10 MS. WEISS: Please present the juror.
11 THE CLERK: What say the defendant?
12 MR. GRIER: Please swear the juror.
13 THE CLERK: Please follow the bailiff to the jury
14 room.
15 Juror 5, Albert Baldassarri.
16 What say the State?
17 MS. WEISS: Please present the juror.
18 THE CLERK: What say the defendant?
19 MR. GRIER: Please excuse the juror.
20 THE CLERK: You are excused. Please be
21 seated.
22 Juror 39, Robert Cogan.
23 What say the State?
24 MS. WEISS: Please present the juror.
25 THE CLERK: What say the defendant?

1 MR. GRIER: Please excuse the juror.

2 THE CLERK: You are excused. Please be
3 seated.

4 Juror 159, Lori Roney.

5 What say the State?

6 MS. WEISS: Please present the juror.

7 THE CLERK: What say the defendant?

8 MR. GRIER: Please swear the juror.

9 THE CLERK: Please follow the bailiff to the jury
10 room.

11 Juror 67, Nathaniel Gaitan.

12 What say the State?

13 MS. WEISS: Please excuse the juror.

14 THE CLERK: You are excused. Please be seated.

15 Juror 137, Diana Niven.

16 What say the State?

17 MS. WEISS: Please present the juror.

18 THE CLERK: What say the defendant?

19 MR. GRIER: Please swear the juror.

20 THE CLERK: Please follow the bailiff to the jury
21 room.

22 Juror 115, Thomas McCowan.

23 What say the State?

24 MS. WEISS: Please present the juror.

25 THE CLERK: What say the defendant?

1 MR. GRIER: Please swear the juror.
2 THE CLERK: Please follow the bailiff to the jury
3 room.
4 Juror 99, Steven Kirchner.
5 What say the State?
6 MS. WEISS: Please present the juror.
7 THE CLERK: What say the defendant?
8 MR. GRIER: Please excuse the juror.
9 THE CLERK: You are excused. Please be
10 seated.
11 Juror 157, Austin Robinson.
12 What say the State?
13 MS. WEISS: Please present the juror.
14 THE CLERK: What say the defendant?
15 MR. GRIER: Please excuse the juror.
16 THE CLERK: You are excused. Please be
17 seated.
18 THE CLERK: Juror 168, Gregory Sims.
19 What say the State?
20 MS. WEISS: Please present the juror.
21 THE CLERK: What say the defendant?
22 MR. GRIER: Please excuse the juror.
23 THE CLERK: You are excused. Please be
24 seated.
25 THE CLERK: Juror 87, Debra House.

1 What say the State?

2 MS. WEISS: Please present the juror.

3 THE CLERK: What say the defendant?

4 MR. GRIER: Please excuse the juror.

5 THE CLERK: You are excused. Please be

6 seated.

7 Juror 83, Shelly Hildreth.

8 What say the State?

9 MS. WEISS: Please present the juror.

10 THE CLERK: What say the defendant?

11 MR. GRIER: Please swear the juror.

12 THE CLERK: Please follow the bailiff to the jury

13 room.

14 Cindy Hanna.

15 What say the State?

16 MS. WEISS: Please present the juror.

17 THE CLERK: What say the defendant?

18 MR. GRIER: Please swear the juror.

19 THE CLERK: Please follow the bailiff to the jury

20 room.

21 The first alternate.

22 Juror 32, Barry Catoe.

23 What say the State?

24 MS. WEISS: Please present the juror.

25 THE CLERK: What say the defendant?

1 MR. GRIER: Please swear the juror.
2 THE CLERK: Please follow the bailiff to the jury
3 room.
4 Juror 135, Pamela Neal.
5 What say the State?
6 MS. WEISS: Please present the juror.
7 THE CLERK: What say the defendant?
8 MR. GRIER: Please excuse the juror.
9 THE CLERK: You are excused. Please be
10 seated.
11 Juror 160, Nawad Rophael.
12 What say the State?
13 MS. WEISS: Please excuse the juror.
14 THE CLERK: You are excused. Please be seated.
15 THE CLERK: Juror 191, Michael Weaver.
16 What say the State?
17 MS. WEISS: Please present the juror.
18 THE CLERK: What say the defendant?
19 MR. GRIER: Please excuse the juror.
20 THE CLERK: You are excused. Please be seated.
21 THE CLERK: Juror 154, Ellen Ritchey.
22 What say the State?
23 MS. WEISS: Please present the juror.
24 THE CLERK: What say the defendant?
25 MR. GRIER: No challenge.

1 THE CLERK: Please follow the bailiff to the jury
2 room.

3 THE COURT: Ladies and gentlemen, I am going to
4 ask that you call back in after 6:00 tonight to find out
5 whether or not your services will be needed tomorrow or
6 sometime later in the week.

7 Call in to the number they give you on the
8 paperwork. You will be excused until they tell you to
9 come back or not come back.

10 (The jury exited the proceedings.)

11 THE COURT: Any other jury matters we need to
12 address before lunch?

13 MS. WEISS: No, Your Honor.

14 We will be in recess until 2:30.

15 (Whereupon, a luncheon recess was held.)

16 (Whereupon, the following proceedings were
17 held in open court. The defendant was
18 present with his attorney, along with
19 counsel for the State.)

20 THE COURT: The State may call its case.

21 MR. FUSSNECKER: Your Honor, the State calls the
22 case of the State of South Carolina v. Demarcus Foster.
23 Mr. Foster is charged with murder, possession of a
24 weapon during the possession of a violent crime.

25 THE COURT: Mr. Grier.

1 MR. GRIER: We are ready, Your Honor.

2 THE COURT: All right. You have stipulations to
3 put on the record?

4 MR. FUSSNECKER: The list of stipulations that we
5 have agreed to Your Honor is that we have agreed to the
6 admissibility of photos, including crime scene, Honda
7 Accord, pictures of the house, two autopsy pictures, and
8 a picture of the defendant and his niece together. We
9 have agreed to the authenticity of cell phone records.
10 This is including cell phone records. This is subject
11 to evidentiary challenges based on evidentiary rules.

12 We have agreed to the authenticity of the 911 call
13 by Roger Harris. We have agreed to a stipulation of
14 testimony by Special Agent Brian Truex. He arrested Mr.
15 Truesdale a couple of days after this incident. So it's
16 approximately September 29, 2017, when he arrested him
17 and seized a P-95 Ruger that was analyzed by Special
18 Agent James Green at SLED, who will be testifying.

19 We stipulate to the certified chain of custody from
20 SLED, and also to the chain of custody for the gun
21 seized at X43 16th Street and the gun seized from
22 Quinterious Truesdale and the bullet removed from the
23 victim during the autopsy.

24 MR. GRIER: Judge, I would say a little bit of an
25 amendment to that. The autopsy would not be used during

1 opening arguments. There are two 911 calls. We are
2 stipulating to the authenticity of them. One actually
3 came in before Roger Harris'. If I am understanding the
4 evidence correctly, I think that it was agreed -- I
5 responded to those stipulations. That was what I asked
6 for. I assumed those modifications to the stipulations
7 articulated by Mr. Fussnecker would apply here.

8 Judge, I placed -- some of the stipulations we
9 agreed to, we need to put them on the record before we
10 get started.

11 I am told there have been no deals. So as far as
12 revealing the deal motion, I am told Ms. Weiss indicated
13 there were no deals offered, so the State is revealing
14 that they have made no deals with anyone.

15 MS. WEISS: Your Honor, that's correct as to any of
16 the charges related to this case, as to any pending
17 charges that anybody may have that may testify in this
18 case. The cases not belonging to this set of facts are
19 not even with the Attorney General's office. I have not
20 talked to any Assistant Solicitors or anybody else about
21 those. There have been no deals, no offers made at all
22 in this case.

23 MR. GRIER: Your Honor, I have handed up Maconi
24 (phonetic) as a case I would like to argue in opening.
25 The language for reasonable doubt, firmly convinced, you

1 must convict. The real possibility of innocence, you
2 must acquit language in Maconi. I have provided the
3 State with a copy of that. It's pretty standard local
4 rules; that that is one of the arguments -- reasonably
5 convinced. I would ask that I be given leave to argue
6 that.

7 THE COURT: Any response?

8 MS. WEISS: Your Honor, in my experience, the
9 firmly convinced is a language that I am most
10 comfortable with and most accustomed to. I have not had
11 a chance to review this. For opening purposes, I can
12 agree to firmly convinced. As far as reasonable
13 possibility, if we can hold off until we have had a
14 chance to look at it. Save that for the end of the
15 trial, unless that is something you intended to charge,
16 in which case, I will leave that up to Your Honor.

17 MR. GRIER: Real possibility language is part of
18 the firmly convinced language in Maconi.

19 MS. WEISS: That is fine.

20 THE COURT: It has been approved.

21 MS. WEISS: That's fine.

22 THE COURT: That is part of my standard charge on
23 reasonable doubt anyway.

24 MR. GRIER: I would think we would likewise agree
25 to sequester lay witnesses, not law enforcement, and

1 obviously, not the victim's family. The lay witnesses
2 that would testify to having been present during this.

3 Not to belabor this, but I think I need to put -- I
4 don't know if the Court would reconsider, but in
5 chambers this issue came up. I think we ought to
6 approach before I put it on the record and see how the
7 Court wants to handle that. It may be something we need
8 to do it in a sequestered courtroom.

9 I told you I would need to protect the record about
10 the attorney/client privilege issue. I don't know how
11 best to preserve that issue. I don't want to present it
12 as an issue of attorney/client, I just want to present
13 that issue as being a statement made by a person who is
14 going to be testifying in court. That goes to
15 credibility and not to be used against the person who
16 made the statement, but to be used simply to show the
17 credibility of Lashawn White having made some statement
18 about how he should testify.

19 Certainly, we can visit that before he testifies.
20 I just felt like I needed to put something on the record
21 in advance to avoid any issue of not raising it
22 pretrial. So I doubt it will be an issue, but in an
23 abundance of caution.

24 MS. WEISS: Your Honor, absolutely. As far as the
25 State is concerned, an attorney/client privilege

1 conversation that should never have been heard by
2 anyone. We know that should be a sacred conversation.
3 So the fact that it was recorded -- I never did listen
4 to it. I called all of the attorneys to let them know
5 that it was on there.

6 I think using that goes into the conversation of
7 attorney/client privilege. He ought to have the right
8 to ask his attorney whatever he wants to in a private
9 conversation with his attorney without worrying that he
10 would be questioned about it at a later time.

11 MR. GRIER: Your Honor, I respect the
12 attorney/client privilege very much myself, but it's not
13 being used against him. It is being used when he is
14 seeking to deceive. We have learned about it not
15 through any error of ourselves. We have learned of it.
16 I don't want -- I don't want to cause any problems for
17 anyone as a result of that.

18 I think it can be cured in terms of -- when someone
19 is asking how to give a statement to law enforcement, it
20 goes to their credibility. It most definitely is an
21 issue that I think wouldn't be attorney/client
22 privilege. That came to the attention through the
23 course of -- to my client as well that that happened
24 through no intention of anyone. Nobody intentionally
25 did anything wrong.

1 We have learned of a witness who wants to conform
2 his testimony. It really is an issue of credibility. I
3 would ask the Court to fashion a way to allow him to be
4 questioned without that statement -- without going into
5 the attorney/client privilege.

6 MS. WEISS: Your Honor, I would say that that goes
7 to his right to seek legal guidance. I think he is
8 characterizing it as him trying to deceive, but that is
9 not it. It was a question to his attorney, and his
10 attorney gave him the legal answer of just to tell the
11 truth.

12 THE COURT: I don't know how to get around the
13 attorney/client privilege, quite frankly. Nobody should
14 have heard that. Even if it was heard by the State,
15 it's still within the realm of attorney/client
16 privilege.

17 When do you anticipate that witness coming up?

18 MS. WEISS: Tomorrow, Your Honor.

19 THE COURT: Let me sleep on it tonight. I will
20 rule on it tomorrow, knowing what the issues are before
21 we call that witness.

22 MS. WEISS: Your Honor, at this time I would like
23 to hand up -- we will mark it as Exhibit 8. This is the
24 true and certified copy from the Chester Clerk of Court
25 of the conviction of Demarcus Foster for voluntary

1 manslaughter, before the jury comes in, for the bench
2 trial part of this.

3 MR. GRIER: Pursuant to our agreement, Your Honor,
4 that is appropriate.

5 MS. WEISS: Your Honor, at this time I would hand
6 this up to the Court as State's Exhibit 8. I would ask
7 that you take judicial notice that it's a true and
8 correct copy.

9 THE COURT: You have no objection to that?

10 MR. GRIER: No. That is what we agreed to, Your
11 Honor, as the mechanism of solving the problem for the
12 jury.

13 THE COURT: State's Exhibit Number 8, the
14 sentencing sheet of Mr. Foster is admitted into
15 evidence. I will take judicial notice that this is a
16 true and accurate copy.

17 MS. WEISS: Thank you, Your Honor.

18 Your Honor, at this time before we get started, I
19 would like to put on the record that the State has
20 served the defendant with the intent to seek life
21 without parole in this case.

22 In pretrial negotiations, the State agreed to
23 withdraw the life without parole and make a
24 recommendation or a cap, which would allow the Court to
25 decide, in your discretion, what the sentence would be.

1 Through his attorney we have been told that he rejects
2 that offer. I wanted to make sure that is on the record
3 before we begin the trial.

4 THE COURT: Okay.

5 Do you acknowledge that, Mr. Grier?

6 MR. GRIER: I acknowledge it, Your Honor. I don't
7 know if you need to inquire of my client, but my
8 understanding is we didn't negotiate beyond a cap of 50
9 years. That is the conversation that we last had.
10 Perhaps there could have been some more negotiations
11 entered into.

12 THE COURT: Mr. Foster, were you made aware of the
13 offer to withdraw the life without parole in exchange
14 for a cap being recommended of 50 years? Are you aware
15 of that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you rejected that offer?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You wish to go forward knowing that the
20 State is putting you on notice of that they are seeking
21 a sentence of life without parole?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Thank you.

24 Do we have lay witnesses in the courtroom now?

25 MS. WEISS: We do, Your Honor.

1 Are they permitted to stay for opening?

2 MR. GRIER: I see no harm in opening for anybody.

3 I have no problem with them staying through opening. We
4 may need a mechanism to remind us to get them out after
5 opening.

6 THE COURT: My only concern is, if someone states
7 something during opening, it might cause a witness to
8 reconsider his testimony or bolster someone else's
9 testimony if the testimony follows the opening
10 statement. It should; quite frankly.

11 I will order the witnesses out now, since we are
12 going to sequester the witnesses anyway.

13 Anybody who is a lay witness -- not a law
14 enforcement officer or a member of the victim's
15 family -- I want you to leave the courtroom now. At
16 such time that you are asked to come testify, you will
17 be brought back into the courtroom. For the purposes of
18 not being allowed to hear other witnesses, I am going to
19 sequester you and ask you to vacate the courtroom now.

20 If anybody stays in this courtroom and they are a
21 witness and they will be called later, they will not be
22 allowed to testify.

23 (Whereupon, the members of the gallery exited the
24 courtroom.)

25 THE COURT: Any other matters before we bring the

1 jury in?

2 MS. WEISS: Not from the State, Your Honor.

3 THE COURT: Mr. Grier?

4 MR. GRIER: Nothing from the defense.

5 THE COURT: While we are waiting for the jury to
6 come in, during the charge that I give to the jury, the
7 preliminary charge and during the lawyers' opening
8 statements, I do not want any movement in the courtroom,
9 any noise. I don't want any distractions to the
10 jury.

11 So if you feel like you need to go to the rest room
12 or something, you need to go now. You will not be
13 permitted to come back in once we start. I don't want
14 anyone standing up or moving around or anything of that
15 nature while I am talking or while the two attorneys are
16 talking. If you need to leave, leave now.

17 Bring in the jury.

18 (Whereupon, the jury entered the courtroom.)

19 THE COURT: Ladies and gentlemen, I realize it's
20 almost 10 minutes after 3:00 and you had to be back at
21 2:30, but we have been working to do things to try to
22 shorten things and speed things up. We have been
23 working while you were gone doing certain things and
24 taking up some legal issues with the attorneys.

25 Again, as I told you earlier this morning, I

1 appreciate your willingness to serve as jurors and to
2 your responding to the summons that was sent to you. A
3 lot of times people try to avoid jury service, and you
4 have not done that. The Court and the State of South
5 Carolina and the County of Lancaster appreciates the
6 fact that you are here and serving.

7 As I mentioned to you earlier, the system of
8 justice would not work if it were not for jurors. It's
9 not an easy thing to stand in judgment of a fellow
10 citizen, one of your peers, but it is something that is
11 necessary and the way our system operates.

12 That being said, I have got what we call some
13 preliminary instructions I need to give to you.
14 Basically, what I will say is an introduction to the
15 trial of this case.

16 The State has called to trial the case of State v.
17 Demarcus Foster. He has in this matter pled not guilty
18 to the two indictments for which he is going on trial.
19 The law that will be given to you later on will be done
20 at the conclusion of the trial of this case. You will
21 not make any considerations, any deliberations until
22 that point in time until the trial has been completed
23 and I have given you the law.

24 What we are doing now is we are trying to give you
25 some idea or some understanding of what is going to take

1 place. The defendant, as I mentioned, is charged by two
2 indictments. He is charged with the crimes of murder
3 and with the possession of a weapon during the
4 commission of a violent crime.

5 The elements of these two crimes will be explained
6 to you later. The indictments that I have here are
7 simply the charge by which the case is brought into
8 court. It is not in any sense evidence of the
9 allegations it contains.

10 The defendant has pled not guilty to these
11 indictments. The State, therefore, has the burden of
12 proving each of the elements of the indictments beyond a
13 reasonable doubt. It will be your duty, ladies and
14 gentlemen, to decide whether the State has met that
15 burden.

16 Your purpose as jurors is to find and determine the
17 facts. You are the sole judges of the facts. If at
18 anytime I make any comment regarding the facts, you must
19 disregard it.

20 You are to determine the facts from the testimony
21 you hear from the witness stand and any other evidence
22 that is introduced in court during the course of the
23 trial. It is up to you to determine the inferences that
24 you feel may properly be drawn from the evidence.

25 It is especially important that you perform your

1 duty of determining the facts diligently and
2 conscientiously. Ordinarily, there is no way to correct
3 an erroneous determination of the facts by a jury.
4 On the other hand and with equal emphasis, the same
5 law that makes you the judges of the facts makes me the
6 Judge of the law. The law that is given by the Court is
7 the only law that you may consider.

8 You must accept and follow it, even though you may
9 disagree with it. I cannot tell you what the facts are,
10 and you cannot disagree with me about what the law is or
11 should be. Your job is to take the law as I give it to
12 you and apply it to the facts as you find them to the
13 testimony of the witness and any other evidence that is
14 introduced.

15 After doing that, you will render your verdict.
16 Until I advise you to begin your deliberations, you must
17 not discuss this case with anyone, including your fellow
18 jurors, friends, family members, and anyone involved in
19 this case. This includes discussions face-to-face and
20 those by telephone, email, text, blogs, cell phones, or
21 any other method of communication.

22 You may not use a computer, cell phone, or other
23 electronic device with communication capabilities at any
24 time while in this courtroom or during your
25 deliberations.

1 During your breaks for meals or overnight, if
2 necessary, you may use these devices. However, you may
3 not at any time use these devices to get or send
4 information about this case. This includes information
5 about a party, a witness, an attorney, a court officer,
6 news accounts about the case.

7 You are not to do any type of research on any
8 topics raised during this trial or any topics you think
9 may be helpful in deciding this case or any testimony
10 presented by any witness.

11 During the trial, do not read, listen to, or watch
12 any news reports about this case. This includes
13 anything that may be in the newspaper or on the
14 internet, radio, or television. You must not consider
15 anything you may have read or heard about the case
16 outside the courtroom, whether it's before this trial
17 started or during the course of the trial.

18 After the case is submitted to you, you must
19 discuss it only in the jury room with your fellow
20 jurors.

21 The attorneys and parties in this case have been
22 advised that they are not to talk to you at all. So if
23 you see anyone involved in the case out in the hallway
24 or somewhere coming in and out and they don't even say
25 "hello" to you, they are just following my instructions.

1 We don't want anything to raise any questions or
2 raise any sense of impropriety in any way in this
3 matter. It's important that you keep an open mind and
4 not decide any issue in the case until all of the
5 evidence has been presented, the parties have made their
6 closing arguments, and I have instructed you on the law
7 in this case.

8 It is your solemn responsibility to determine the
9 guilt or innocence of the defendant, and your verdict
10 must be based solely on the evidence as it is presented
11 to you during and in this trial and on the law as I
12 instruct you at the close of the trial.

13 At this time, the Attorney General who is
14 representing the State in this matter will make what is
15 called an opening statement. In that opening statement,
16 the Attorney General will explain to you the issues in
17 this case, or at least what the Attorney General thinks
18 the issue are in this case.

19 The attorney for the defendant may also make an
20 opening statement, although, he is not required to do
21 so.

22 What the attorneys tell you during their opening
23 statements is not evidence in this case. It is only
24 their contention as to what the issues are.

25 The evidence in this case will be presented to you

1 by the testimony of sworn witnesses from this witness
2 stand and any exhibits that may be introduced into
3 evidence.

4 From time to time during the trial, you may hear
5 one of the lawyers say, "Your Honor, may we approach the
6 bench," or "We have a question of law or a matter of law
7 to discuss with you."

8 If they make those questions and make those
9 statements, I will find it necessary -- and even
10 sometimes on my own -- I might find it necessary to ask
11 you to retire to the jury room while we discuss these
12 issues of law. The reason for this is because, as the
13 judge of the facts -- you are the judges of the facts,
14 as I said earlier. Sometimes when I am discussing
15 matters of law with the attorneys, it might be necessary
16 for me to comment on the facts. I would not want you to
17 be influenced in any way by some comment I make
18 concerning the facts when a particular law applies to
19 it.

20 I am not supposed to tell you what I think the
21 facts are, so I will excuse you from the courtroom while
22 these discussions take place, so that in no way will you
23 be influenced by anything I may say or do in connection
24 with these facts. I realize that that can be an
25 inconvenience to you.

1 Sometimes we will come into the courtroom and we
2 will start and in five minutes I will ask you to leave
3 and go out. You will go out and sometimes you will come
4 back in and we are only here for a period of time, and I
5 will have to ask you to go back in. There is a reason
6 behind that, which I have just explained to you.

7 We try not to do that. We try not to
8 inconvenience you any more than we have to, but it may
9 become necessary at times.

10 In determining what the facts are in this case,
11 you must decide whether or not the testimony of the
12 witness is believable. It will be my responsibility to
13 rule as a matter of law as to whether certain testimony
14 is admissible at all.

15 Once the testimony is admitted by me, whether or
16 not you believe it is solely for you to determine. In
17 deciding whether to believe a witness, you have the
18 right to consider the interest of any witness, the bias
19 of any witness, the prejudice of any witness, the
20 opportunity of the witness to have seen the matters and
21 the things about which the witness may testify and the
22 way the witness acts on the witness stand.

23 You have a right to consider anything that is in
24 the record that will help you evaluate the testimony of
25 the witnesses. It is your duty to pay close attention

1 to these witnesses, to observe the witnesses, to listen
2 to the witnesses, and to pay close attention to the
3 attorneys and to the Court. Do not let your thoughts
4 wander.

5 Give your strict attention to the testimony in this
6 case, so that at the end of all of the testimony, after
7 the arguments of counsel, and the charge on the law by
8 the Court, you will then be in a position to determine
9 what the true facts are and to apply the law to those
10 facts.

11 At this time, I am going to appoint Lori O. Roney
12 to serve as the foreperson of this jury. After this
13 point in time when we come back and forth in the jury
14 room, you will sit in the very first seat where this
15 gentleman with the blue jacket has on.

16 As the foreperson, you will be the person who
17 presides in the jury room. You will also be the
18 spokesperson for the jury here in the courtroom. It
19 will be your duty later on -- I will explain to you what
20 the verdict of the jury is, but I will give you further
21 instructions on that at the conclusion of the case.
22 In order to preserve everyone's rights I will give the
23 attorneys a chance to make exception to anything that I
24 have said.

25 Does the State have any concerns?

1 MS. WEISS: No, Your Honor.

2 THE COURT: Defendant?

3 MR. GRIER: No, Your Honor.

4 THE COURT: We will now begin the trial. The State
5 may make its opening statement.

6 Let's swear the jury first.

7 (Whereupon, the jury was duly sworn and
8 empaneled.)

9 THE COURT: Yes, sir.

10 MR. FUSSNECKER: May it please the Court.

11 THE COURT: Yes, sir.

12 * * *

13 OPENING STATEMENT BY MR. FUSSNECKER

14 MR. FUSSNECKER: "You-all ain't seen nothing."

15 That is the warning that the defendant made to a
16 group of men standing outside of a house on 16th Street
17 on the evening of Wednesday, September 27, 2017. He
18 then proceeded to walk up to Joel McLemore. He raised
19 the gun to Joel's head and pulled the trigger.

20 He grabbed his beer, and he walked to a car where
21 his girlfriend was waiting to drive him away. Everyone
22 there was shocked. No one expected to witness a murder
23 that day.

24 This is Roger Harris' house at X46 16th Street.

25 This is a side view of the house, and this is where the

1 group of men were standing when the defendant murdered
2 Joel.

3 You can see that there is a lot here next to
4 Roger's house. Roger's daughter's house is on the other
5 side of that lot. You will hear that throughout the day
6 on Wednesday, September 27, 2017, several people were
7 hanging out there. They brought their children there.
8 The children would play on the empty lot. You will hear
9 that the adults -- some were drinking alcohol; some were
10 smoking marijuana.

11 You will hear that Jakenia Stevens came there that
12 evening when she got off work. She brought her
13 daughter, who is the defendant's niece.

14 The defendant arrived shortly thereafter in this
15 White Honda Accord, driven by his girlfriend Maryam.
16 This picture was taken a couple of days later at a
17 different location.

18 This picture here shows the defendant with his
19 niece on that empty lot. It was taken by Jakenia at
20 7:15. The tree is on the far edge of the lot near
21 Roger's daughter's house. Despite the presence of
22 children, this was not going to be a family-friendly
23 event.

24 The defendant told Jakenia several times: "Take
25 your daughter home." She didn't make anything of it at

1 the time. She waited until 8:00 when it started to get
2 dark. Her and other people started to take their
3 children home. That is when the crowd started to thin
4 out.

5 Around that same time, Joel McLemore arrived.
6 Around that same period, the defendant left with Maryam
7 and Quinterious Truesdale in the white Honda Accord;
8 however, they came back about 10 or 20 minutes later.
9 This time when they came back, the defendant directed
10 Maryam to back the white Honda Accord into the lot next
11 to Roger's house.

12 He got out of the car while Maryam stayed in, and
13 he walked onto that porch at Roger's house. Everyone
14 noticed that he had changed clothes while he was gone.
15 He was on the porch for a while, then suddenly he came
16 down those steps. He walked toward Joel, and he yelled
17 those fateful words, "You-all ain't seen nothing."

18 He raised the gun to Joel's head and he took Joel's
19 life.

20 Because of the defendant's actions, he is charged
21 with two crimes, murder and possession of a weapon
22 during a violent crime. The State has the burden to
23 prove those crimes beyond a reasonable doubt. Now,
24 beyond a reasonable doubt doesn't require absolute
25 certainty from you-all. It requires that you are firmly

1 convinced of the defendant's guilt.

2 To prove those charges, you will hear from law
3 enforcement who investigated the case, the forensic
4 scientist who analyzed the evidence, and from the
5 witnesses who were on 16th Street that evening.

6 These witnesses are not perfect people. You will
7 hear that some of them have prior convictions. You will
8 hear that there were two guns found amongst the people
9 who were there. You will hear from a ballistics expert
10 that neither of those guns matched the bullet that was
11 in Joel's head. Those guns could not have shot that
12 bullet.

13 You will hear that the murder weapon was never
14 found. You will hear that the defendant fled the
15 scene. However, some witnesses did stay at 16th Street
16 that night, and they talked to law enforcement. You
17 will hear that some of the witnesses even consented to a
18 gunshot residue test.

19 The gunshot residue expert will explain to you that
20 the presence of gunshot residue on someone's hands can
21 mean one of three things: It can mean that they shot a
22 gun, that they held a gun, or that they were near a gun
23 when it was shot.

24 One of those witnesses, Lashawn White, had three
25 particles of gunshot residue on his hand. He stood next

1 to his friend, Joel McLemore, when the defendant raised
2 his gun about a foot from Joel's head and pulled the
3 trigger.

4 Since the defendant took everyone by surprise,
5 you will hear different perspectives. Some people
6 actually saw the defendant rush up and shoot Joel in the
7 head; others, taken by surprise, heard the gunshot but
8 didn't see it. What you will find from all these
9 witnesses is that the defendant's attempt to intimidate
10 them by yelling those words, "You-all ain't seen
11 nothing" has not worked.

12 Witnesses saw the defendant on 16th Street that
13 day. They saw him with a gun. They watched with horror
14 as he raised that gun to Joel McLemore's head and ended
15 his life. Because of that, after you have heard from
16 these witnesses, you will have no reasonable doubt that
17 the defendant murdered Joel.

18 At the end of this trial, we will ask that you find
19 him guilty of both charges.

20 THE COURT: Mr. Grier.

21 OPENING STATEMENT BY MR. GRIER

22 MR. GRIER: Ladies and gentlemen of the jury,
23 thank you for participating in this trial. This is a
24 sad day, just like every day since Joel McLemore was
25 murdered senselessly. Your heart goes out to his

1 family, but Demarcus Foster is innocent of these
2 charges, and I am his advocate. Just like the Attorney
3 General is an advocate for the State, I am the advocate
4 for Demarcus Foster.

5 I am a guide. Just like the bailiff is a guide for
6 you while you are in this courtroom, I am a guide for
7 Demarcus Foster instead of him representing himself in
8 these proceedings.

9 You have been sworn, and you have taken an oath.
10 Just like I am an officer of the Court, you are an
11 officer of the Court. You are temporarily an officer of
12 the Court for the purposes of this trial.

13 So what you have sworn to do is to follow the law.
14 You are the finder of facts. The Judge is the finder of
15 law. There is a lot of finger pointing in this
16 courtroom, because the passions when somebody is
17 senselessly murdered are great.

18 Right out of the shot -- no pun intended -- the
19 Attorney General is trying to get you to look at
20 Demarcus Foster and prejudice you right out of the box,
21 because that is where the burden of proof is.

22 I will point too, because if you are passionate
23 enough, your deliberation and your sensibility about
24 weighing the evidence can be overcome. You saw it in
25 the jury selection. We had a juror willing to convict

1 just because a person is charged with a crime. You
2 heard it in the jury selection room.

3 The passions are great, and the zest for judgment
4 and to punish someone for a senseless murder is great.
5 But pointing at Demarcus Foster is pointing in the wrong
6 direction. You will see that as the evidence is
7 developed in this case.

8 The witnesses will say that Demarcus Foster was
9 called and asked to come over -- this happened in an
10 area of Lancaster, 16th Street. We had the world's
11 largest cotton mill at one time in Lancaster. We had a
12 radio station, WLCM, back in the old days.

13 That cotton mill -- unfortunately, there are a lot
14 of bad things going on in that neighborhood. Demarcus
15 Foster had a routine of going to visit his niece. His
16 brother had been killed sometime prior. He regularly
17 went to visit his niece.

18 If you know Lancaster, we get about a mile away
19 from 16th Street, my guess, is we have the Shrimp Boat.
20 We have Baker Street over there. That is where he would
21 typically go to visit his niece.

22 On this particular day, he was called and told to
23 go over to 16th Street to visit his niece. You saw the
24 picture. He went over and visited with his niece on
25 that day.

1 He had no plan to be on 16th Street. Certainly, he
2 went to visit his niece. There was partying that went
3 on, and people were getting intoxicated and maybe a
4 little bit rowdy. It was not in a bad way. It was just
5 that the party was cranking up.

6 It was time to get the kids out of there, because
7 the adults were acting -- drinking and doing things
8 maybe the kids shouldn't be exposed to. So it would
9 make sense that he would want to get his niece away from
10 that environment. He said that or may have said that.

11 The State is on trial. People say, so-and-so is on
12 trial. In every criminal case, the State is on trial,
13 because they never have the burden of proof. The burden
14 of proof in a criminal trial is beyond a reasonable
15 doubt.

16 Now, if you are familiar with the difference in
17 burdens of proof -- maybe you are and maybe you are not.
18 Talk about them just a little bit to make sure there is
19 no confusion about what the State's burden of proof is.
20 If Demarcus Foster was being sued for money in this
21 courtroom, it would be a civil case.

22 If he was being sued for wrongful death -- people
23 who are accused of murder can be sued for that. To
24 collect money from Demarcus Foster, the person bringing
25 the suit would have to prove by a preponderance of the

1 evidence.

2 Our system is set up so that in a civil proceeding,
3 you have to prove merely it's more likely than not. If
4 you prove that more likely than not, someone caused you
5 an injury, you can get money or you can get a piece of
6 paper that says you are getting money. You can file
7 that with the Clerk of Court whether you do or not.

8 In a criminal proceeding, you are talking about
9 putting limitations on somebody's freedom. If you take
10 my money away, I have still got my freedom. If you take
11 my freedom away, I can't make money and my pursuit of
12 happiness is being taken away from me.

13 Proof beyond a reasonable doubt is the kind of
14 doubt that would cause -- the State must prove the
15 evidence in a way that the jurors do not hesitate to
16 convict -- to act.

17 Our Supreme Court has likewise said, upon hearing
18 all of the evidence, if you are firmly convinced of the
19 guilt of the defendant, then you must convict him, but
20 if you find there is a real possibility of innocence,
21 then you must acquit him.

22 I submit to you there will be abundant evidence
23 that Demarcus Foster is innocent. The law of the State
24 protects him. He has that presumption of innocence. He
25 is cloaked in innocence. Only you can remove that cloak

1 of innocence if you find that the State has proven its
2 case beyond a reasonable doubt if you do not hesitate to
3 convict.

4 If you find there is not even a real possibility,
5 it's not even possible that Demarcus Foster is innocent,
6 then you have the power. If you make that finding to
7 remove that cloak of presumed innocence -- that is why
8 the Judge tells you in his charges to wait before you
9 make any decisions.

10 Each of you is your own little jury in the sense of
11 you can't deliberate as a unit until all of this is over
12 and you have heard all the evidence. You can't just
13 start making decisions and deciding someone's fate until
14 everything has been heard. Obviously, as individuals,
15 we hear stuff throughout a trial and we may be leaning a
16 certain way or whatever, but you must wait and
17 deliberate and let all the evidence be heard before you
18 make a collective decision as a jury.

19 Ladies and gentlemen of the jury, Demarcus Foster
20 is innocent. Upon hearing all the evidence, I believe
21 you will believe that he is innocent.

22 You may believe that he might be guilty. If you
23 believe he might be guilty, the State hasn't met that
24 burden of proof, most certainly. Might be guilty
25 doesn't get you to more likely than not in a civil

1 case.

2 We all might be guilty. Probably guilty.
3 Probably guilty is more likely than not. It means that
4 if Demarcus Foster were being sued and you were in a
5 civil jury trial, you could award money for wrongful
6 death for a civil charge.

7 This is a criminal case. Demarcus Foster is
8 innocent. Upon the conclusion and upon your
9 deliberations and when you consider all the evidence and
10 listen attentively -- which I know you will do -- if you
11 believe he might be innocent, there is a real
12 possibility of innocence, you must acquit him, I submit
13 to you. I ask you to find him not guilty. Thank you.

14 THE COURT: The State may call its first witness.

15 MR. FUSSNECKER: The State calls Roger Harris.

16 * * *

17 ROGER HARRIS,

18 called as a witness by and on behalf of
19 the State to testify, being first duly
20 sworn was examined and testified as follows:

21 THE COURT: Mr. Harris, if you would please speak
22 loudly and clearly. Pull yourself up near the
23 microphone. In responding to questions, please answer
24 with a yes or no response, not a uh-huh or huh-uh.

25 Do not nod your head. Just answer yes or no with

1 the required response.

2 THE WITNESS: Yes, sir.

3 DIRECT EXAMINATION BY MR. FUSSNECKER

4 BY MR. FUSSNECKER:

5 Q Good afternoon, Mr. Harris.

6 A Good afternoon.

7 Q Please tell the Court how old you are.

8 A Sixty-nine.

9 Q Where do you live, sir?

10 A I live at X46 16th Street.

11 Q Is that here in Lancaster?

12 A Yes.

13 Q How long have you lived there?

14 A Going on 20 years or more.

15 Q I would like to turn your attention to the day of

16 September 27, 2017.

17 Were you at home on Wednesday, September 27, 2017?

18 A Yes.

19 Q What was happening at your house that day?

20 A A lot of guys standing around, joking around and

21 everything -- talking and having fun.

22 Q Did several people come to your house that day?

23 A Yes.

24 Q Did they have children with them?

25 A I ain't seen no kids.

1 Q Were you outside all day or part of the day?

2 A Part of the day.

3 Q Did you ever see Joel McLemore at your house that

4 day?

5 A Not that day. No.

6 Q Do you know Joel McLemore?

7 A Not really. I know him by face.

8 Q You had met Joel?

9 A Yes. I knew him by face. I didn't know him by

10 name.

11 Q Do you know Joel McLemore as a white male?

12 A Yes, sir.

13 Q Had he been to your house before?

14 A He has been to my yard. He hasn't been in my

15 house, but he has been in my yard.

16 Q Do you remember him coming to your house that night

17 -- him being outside? Do you remember seeing him there?

18 A No.

19 Q Do you remember being interviewed and saying that

20 he was there that night?

21 A Yes.

22 Q You remember seeing Joel?

23 A I know he was in the yard, but he wasn't in the

24 house.

25 Q So you saw Joel at your house that night?

1 A Yes.

2 Q Please describe Joel to the members of the

3 jury.

4 A He's no young man. Not a young man to me. He

5 wasn't violent or nothing.

6 Q I would like to show you some pictures. These will

7 pop up on the TV screen here. This will help the jury

8 familiarize themselves with your house.

9 Do you recognize that as your home, sir?

10 A Yes.

11 Q That is X46 16th Street?

12 A Yeah.

13 Q I am handing this to you. Do you recognize that as

14 the side of your home?

15 A It's the side of my home.

16 Q Is that the side of your house that the lot is on?

17 A The vacant lot?

18 Q Yes. The vacant lot.

19 A Yes, sir.

20 Q On the other side of the vacant lot, is that where

21 your daughter lives?

22 A Yes.

23 Q Did there used to be a trailer that sat on that

24 vacant lot?

25 A Yeah. Trailer there.

1 Q So it's a normal-sized lot for a home?

2 A Yes.

3 MR. FUSSNECKER: I will retrieve that. If it is
4 all right, Your Honor, I would just like to show that to
5 the jury.

6 THE COURT: Sure.

7 BY MR. FUSSNECKER:

8 Q Do you recognize this as being from the same side
9 of the house, this being the back of the house?

10 A Yes. That is my house.

11 Q There is a basketball goal back there?

12 A Yes, sir.

13 Q Sometimes Joel would come to your house, and he
14 would play basketball?

15 A He would come over and play basketball with his
16 friends.

17 Q Does this portray the empty lot to the side of your
18 house?

19 A The vacant lot on the side. Yes, sir.

20 Q Sir, do you recognize this as your front porch?

21 A Yeah. My front porch.

22 Q Do you remember sitting on that chair that
23 evening?

24 A Beforehand? Yes, sir. I remember that now.

25 Q There were people outside at that time?

1 A There were peoples outside.

2 Q Do you remember anyone coming and standing in front
3 of you?

4 A I know a man come and stand in front of me.
5 Without knowing him -- I never met him before.

6 Q What race was he?

7 A Excuse me?

8 Q Black? White? Another race?

9 A He was a black guy.

10 Q Was he younger? Older?

11 A He was younger than me. Way younger than me.

12 Q Was he 20s? 30s?

13 A I don't know how old he was, but I would put him at
14 about 30.

15 Q Did he stand in front of you?

16 A I remember he stood in front of me. I said, "I
17 don't appreciate no man standing in front of me like
18 this." He said, "We won't bother you." There wasn't no
19 problem after that.

20 Q He left after you told him that?

21 A Yeah. There wasn't no problem after that.

22 Q Do you recognize this as the bush that sits
23 directly in front of the chair?

24 A Yes. That's the hedge.

25 Q That is in front of your house?

1 A Yes.

2 Q Do you recognize this as the view immediately to

3 the right of that bush?

4 A Yes, sir.

5 Q If you were sitting on the front porch, that is

6 what you would see to the right of the bush?

7 A Yes.

8 Q You have got two sets of stairs to your front

9 porch?

10 A Yes, sir.

11 Q You have a front set of stairs, and you have a set

12 of stairs to the left?

13 A Yes.

14 Q Do you recognize these as the side steps?

15 A The side of my house.

16 Q Do you recognize this as the bush that sits

17 immediately in front of your house?

18 A Yes, sir.

19 Q Two more. Is this another picture of your home?

20 A Yes, sir.

21 Q Then another picture that shows the side lot in

22 your home?

23 A Yes, sir.

24 Q Thank you for that.

25 Now, you said you were sitting outside on the

1 porch. Did you ever go back in there that evening?

2 A Excuse me?

3 Q Did you ever go back inside the house after you
4 were done sitting on your porch?

5 A I went back inside the house. Yes.

6 Q Around what time was it when you went back inside?

7 A I would say, 10 or 15 minutes.

8 Q Do you remember what time it was? Was it getting
9 dark at that time?

10 A It was getting dark at that time.

11 Q What happened after you went inside?

12 A I would say, I went inside my house, I would say,
13 between 10 to 15 minuets.

14 Q Then what happened after you had been in your home
15 for about 10 or 15 minutes?

16 A I heard a gunshot.

17 Q What did you do after you heard the gunshot?

18 A I went outside to see what was happening.

19 Everybody who was on my patio was gone.

20 Q So everybody had left after you heard the gunshot?

21 A Yeah.

22 Q Then when you went outside, what did you see?

23 A I didn't see nobody then. I went to the edge of my
24 porch back at the side, and I saw Joel laying in the
25 yard out there. I said, "What happened?" When I ran

1 out there and saw Joel had been shot, I got on the
2 telephone, me and my daughter, called 911.

3 Q When you saw Joel, was he laying in the yard in
4 front of the bush near the street?

5 A He was laying in the street by the bush. Yes.

6 Q Was Joel saying anything or doing anything at that
7 time?

8 A At the moment, he was trying to move. I told him,
9 "Don't move now, because you have been shot." I don't
10 think he knowed he had been shot like that. I said,
11 "Don't move now." That's when I called 911.

12 MR. FUSSNECKER: I am approaching the witness with
13 what has been marked as State's Exhibit 3.

14 BY MR. FUSSNECKER:

15 Do you recognize this?

16 Do you recognize your initials on this disk?

17 A Yes, sir.

18 Q Do you recognize this as the disk you listened to
19 the 911 phone call on?

20 A Yes.

21 Q This is the 911 phone call that you made?

22 A Yes.

23 MR. FUSSNECKER: With your permission, Your Honor,
24 I would like to go ahead and play this.

25 THE COURT: All right, sir.

1 MR. FUSSNECKER: Your Honor, since it has been
2 stipulated to that it is in evidence, we would asked to
3 be allowed to play it later on.

4 THE COURT: Do you have any problem with that, Mr.
5 Grier?

6 MR. GRIER: I'm sorry, Your Honor?

7 MR. FUSSNECKER: The person who is assisting us
8 with the technology has left the courtroom. We asked to
9 be able to play it later on.

10 MR. GRIER: It's your case. You can play it
11 whenever you want to.

12 MR. FUSSNECKER: I have no further questions for
13 you, Mr. Harris, but the defense may.

14 THE COURT: Mr. Grier.

15 CROSS-EXAMINATION

16 BY MR. GRIER:

17 Q Mr. Harris, you have been living on 16th Street a
18 long time, haven't you?

19 A Going on 20 years.

20 Q That is what you said. That is a pretty good
21 while.

22 Mr. Harris, are you related to Lashawn White in any
23 way?

24 A No, sir.

25 Q How about the Stevens? Are you related to the

1 Stevens' -- to Kristavius Stevens in any way?

2 A No, sir.

3 Q Are you related to the Peay family in Lancaster?

4 A No, sir.

5 Q How long had you been seeing Joel around on 16th

6 Street?

7 A I have been seeing Joel -- who is Joel?

8 Q Mr. McLemore?

9 A Yes, sir.

10 Q How long? Had it been more than five months? Six

11 months? Three months?

12 A Not that long. Three or four months.

13 Q Who lived across the street from you?

14 A The nickname they call him -- I don't know his

15 name. The nickname -- they call him Deuce.

16 Q Who was the woman who lived with him?

17 A I don't know her name.

18 Q Do you know who lived with them across the street

19 from you at some point?

20 A I didn't know Joel lived across the street with

21 them. I know he visited them.

22 Q You talked about a man standing in front of you,

23 and you told him he was coming in your space and then he

24 moved.

25 Who are you talking about? Are you talking about

1 Demarcus Foster?

2 A I really didn't know who Demarcus is. I didn't
3 know that particular name. He peeked in the yard. I
4 was on the porch. I told him that I don't appreciate
5 people standing in front of me like that. I told him to
6 move out in front of my porch. It wasn't no problem
7 after that.

8 Q Who was that man that moved?

9 A The man that I moved?

10 Q Yes.

11 A I really don't know.

12 Q I was just trying to figure that out, if it was Mr.
13 Foster.

14 Did you see Mr. Foster there?

15 A I had never met Mr. Foster before until that day.
16 That is my first time seeing him there.

17 Q Is he right here in this courtroom today?

18 A Yes, sir. In the courtroom.

19 Q So he didn't hang around on 16th Street, did he?

20 A I never saw him before.

21 Q Was there a party going on? Was it a cookout? Was
22 it your party?

23 A My party?

24 Q Yes. On that day, the 27th of September?

25 A Wasn't no party.

1 Q Just people hanging out?

2 A Yes. There wasn't no party.

3 Q Did you see -- we call her Baka?

4 A I know about a Baka from the brick house. My
5 daughter goes with her brother. That is the only way I
6 know Baka from.

7 Q And that is Jakenia Stevens? Is that how you
8 pronounce her name, or do you know?

9 A I don't know.

10 Q Did you know her children -- Baka's children?

11 A No.

12 Q Did you see them out there that day?

13 A There was some kids out in the yard, but I didn't
14 know who. There weren't no kids in my yard. There were
15 kids out there in the back of the lot, but I don't know
16 who.

17 Q Mr. Harris, when you called 911 -- I realize that
18 hadn't been played yet -- do you remember what you told
19 law enforcement or what you told the 911 operator?

20 A Yes, sir, I do. I told him a man had been shot and
21 we need some help.

22 Q You stayed on the line, didn't you?

23 A I stayed on the line until my daughter got there.
24 My daughter helped me out then, because I was so
25 excited.

1 Q Understood. Do you recall saying, "I knew
2 something bad was going to happen out there"?

3 A I don't remember saying that like that. I don't
4 remember saying I know something bad. No.

5 Q Was anyone with you when you saw Joel out there?
6 Was anyone right there with you when you saw that had
7 happened?

8 A Yeah. Deuce was there. I told Deuce.

9 Q Where was he at?

10 A He was standing in the yard.

11 Q Was he near Joel?

12 A Near Joel, yes.

13 Q Right there at Joel?

14 A No. He was near Joel.

15 Q Did everybody else run?

16 A Everybody was gone.

17 Q Did you have a cell phone?

18 A Did I have one?

19 Q How did you call 911?

20 A My daughter.

21 Q What is your daughter's name?

22 A Jalissa.

23 Q She wasn't a witness? She wasn't a witness to
24 anything that happened out there?

25 A She helped me to call 911.

1 MR. GRIER: Thank you, Mr. Harris.

2 THE COURT: Any redirect?

3 MR. FUSSNECKER: Shortly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. FUSSNECKER:

6 Q You said that you saw Deuce outside when you came
7 out after the gunfire; right?

8 A Yes, sir.

9 Q And Deuce lived right across the street from you at
10 that point in time?

11 A Yes, sir. He lived right across the street at that
12 point in time. He lived across the street.

13 Q Would you see Deuce and Joel together on occasion?

14 A Yes. They used to be together on occasion. Joel
15 gave Deuce rides, take his wife to work, back and forth
16 like that. He was a good guy.

17 Q It's fair to say that Deuce and Joel were friends?

18 A I would call them friends -- the way they
19 participate together.

20 Q It was your daughter, Jalissa Stover, that brought
21 you the phone that you used to call 911?

22 A Yes. She had me call.

23 MR. FUSSNECKER: Thank you. No further questions,
24 Your Honor.

25 THE COURT: Anything?

1 MR. GRIER: No, Your Honor.

2 THE COURT: You may step down, Mr. Harris. Thank
3 you, sir.

4 (Whereupon, the witness exited the witness stand.)

5 MS. WEISS: Your Honor, may Mr. Harris be excused
6 from the subpoena?

7 THE COURT: Mr. Grier, any objection to Mr. Harris
8 being excused?

9 MR. GRIER: No objection.

10 * * *

11 AARON CARROLL,

12 called as a witness by and on behalf of
13 the State to testify, being first duly
14 sworn was examined and testified as follows:

15 THE COURT: Mr. Carroll, in responding to
16 questions, please respond with a "Yes" or "No."

17 DIRECT EXAMINATION BY MS. WEISS

18 BY MS. WEISS:

19 Q Good afternoon.

20 Please tell the jury who you are and where you
21 work.

22 A I am Aaron Carroll. I am a sergeant with the
23 Lancaster County Sheriff's office.

24 Q How long have you been with Lancaster County?

25 A Coming up on five years.

1 Q Where did you work before that?

2 A Carolina Healthcare System.

3 Q When did you go to the law enforcement academy?

4 A 2014. I think it was October or November, 2014.

5 Q That is when you started working in Lancaster?

6 A No. I started there back in September.

7 Q What were your duties when you were first hired on?

8 A Basic stuff. Ride-along, pay attention, absorb
9 what I could.

10 Q When you were first hired with Lancaster County,
11 what was your position there?

12 A As a patrol deputy.

13 Q What is your job now? What is your current job
14 now?

15 A I am currently the sergeant over the street crimes
16 unit.

17 Q Street crimes unit?

18 A Yes, ma'am.

19 Q What are your duties as the sergeant over the
20 street crimes unit?

21 A Help with leads with reference to cases. Warrant
22 apprehension. I also supervise the traffic unit,
23 traffic-related offense.

24 Q What was your job on September 27, 2017.

25 A I was the sergeant over the patrol shift on that

1 area.

2 Q What was your job that night?

3 A Supervise deputies. To navigate what they were
4 doing that evening, along with assisting in calls.

5 Q Did you at some point get called out to 946 16th
6 Street?

7 A I did.

8 Q What brought you out to that address?

9 A I was dispatched through 911.

10 Q What time were you dispatched out there?

11 A 8:33 p.m.

12 Q Who was the first officer on the scene?

13 A I believe I was.

14 Q As part of your equipment, do you have a Body One
15 camera?

16 A I do.

17 Q How does that work? What does it record?

18 A Basically, point of view in front of me. It
19 attaches to my chest on my shirt. It sees what I see,
20 basically.

21 Q What turns it on?

22 A Depending on if I initiate my blue lights in my
23 car. I can turn it on that way. It also has a button
24 on it that I can press myself to initiate it.

25 Q Do you recall what turned it on that night?

1 A My blue lights.

2 Q I will show you what has been marked as State's
3 Exhibits 4, 4A, 4B, 4C, and 4D.

4 Do you recognize these photos?

5 A Yes.

6 Q Where are these photos from?

7 A X46 16th Street.

8 Q Do you know where they came from?

9 A My body cam.

10 Q So you were dispatched at 8:33?

11 A Yes, ma'am.

12 Q About how long did it take you to get -- where were
13 you? Were you out on the road? Were you at the
14 Sheriff's Department?

15 A I was out on patrol. I can't recall my exact
16 location.

17 Q Do you know about how long it took you to get over
18 to 16th Street?

19 A Not the exact time. It was within minutes.

20 Q What did you find when you got to 16th Street?

21 A Originally, I pulled up on Brooklyn and 16th.
22 That is where I was first dispatched to. When I got
23 there, there were people outside that were telling me to
24 go down 16th Street, as well as Mr. Rogers. At the end
25 of 16th Street he motioned for me to come down there, so

1 I pulled down there.

2 Q Is **X46** 16th Street in Lancaster County?

3 A Correct. Yes.

4 Q This photo that you see in front of you, can you

5 see the time at the top of the photo?

6 A 8:39.

7 Q Was that approximately what the scene looked like

8 when you first arrived?

9 A Yes, ma'am.

10 Q Was anybody else on scene when you got there?

11 A I believe Kaneisha Young.

12 Q Did you see anybody else?

13 A No, ma'am.

14 Q Was EMS there when you arrived?

15 A No, ma'am.

16 Q By 2039, six minutes after dispatch, did you have

17 the opportunity to talk to anyone else? You said Mr.

18 Harris was there. He was motioning you down the hill.

19 He was there. Kaneisha Young. By this point, was EMS

20 there?

21 A Not at this point just yet. No.

22 Q Did they pull up about the same time?

23 A A little after. After the scene was secured. They

24 waited until we had the scene secured.

25 Q Just for clarification, that is where you found Mr.

1 McLemore?

2 A Yes.

3 Q Did you know who it was that you were responding to

4 when you first got the call?

5 A No.

6 Q Was Mr. McLemore still moving when you got there?

7 A Yes.

8 Q Was he able to speak when you got there?

9 A No.

10 Q Did you try to talk to him?

11 A Yes.

12 Q Did he say anything that you were able to

13 understand? Did he say anything at all?

14 A No.

15 Q I am just showing you stills from this.

16 Was it a pretty active scene, as far as what your

17 body camera actually recorded of that part of the scene?

18 A Active?

19 Q Active, as far as Mr. McLemore's body and EMS?

20 A Yes.

21 Q Your body camera recorded all of that?

22 A Yes.

23 Q Once EMS -- what happened next? You said EMS

24 arrived. What did they do?

25 A I assisted helping load Mr. McLemore onto the board

1 so that he could be placed into the ambulance at that
2 time.

3 Q Once you did that, what did you do next?

4 A At that time, I communicated what I currently had
5 with command staff and directed another deputy who had
6 just arrived on scene about the same time as me to
7 establish a crime scene.

8 Q I will show you what has been marked as State's
9 Exhibit 4D.

10 Do you recall -- this is 2042. This is a couple of
11 minutes after you arrived and nine minutes after
12 dispatch. There were a couple of people outside?

13 A Yes.

14 Q What did you do with those people?

15 A I had them stay back.

16 Q They stayed on scene waiting on law enforcement to
17 arrive --

18 A Yes.

19 Q -- additional law enforcement?

20 A Yes.

21 Q In that picture, do you see a vehicle?

22 A Yes.

23 Q Were you able to identify if that vehicle had any
24 tie to the scene?

25 A Yes. I ran the plate, and it came back to Joel

1 McLemore.

2 Q Did anybody identify that vehicle as belonging to
3 the victim -- or pointed it out to you?

4 A I think somebody did, yes. They said that that was
5 his vehicle. That is what led me to run the plate.

6 Q That is the first time you were able to identify
7 who the person was?

8 A Correct.

9 Q Ten minutes after. You said that EMS was on the
10 scene and remained on the scene for a little while?

11 A Yes.

12 Q He was removed at that point? It was after you had
13 already loaded him into the ambulance?

14 A Yes.

15 Q More law enforcement came out? Is that law
16 enforcement on the scene?

17 A Yes. That is Lancaster City.

18 Q Finally, this picture. As things were calming down
19 or as more law enforcement was arriving, this is 2051.
20 That is still the vehicle sitting out there?

21 A Yes.

22 Q That is 16th Street?

23 A Yes, ma'am.

24 Q Once you were able to identify the victim in the
25 case, what did you do?

1 A Mr. Roger Harris was standing outside. Once I
2 directed the other deputy to start working on the crime
3 scene, I asked him if he knew anything that had occurred
4 at that point in time. He stated, no. He was
5 inside.

6 Q At some point, did you turn the scene over to
7 other law enforcement?

8 A Yes.

9 Q What is the process for that?

10 A As command staff arrived on scene as well as
11 investigators, our role then at that point is just to
12 keep the scene secure and to assist them as they direct.

13 Q When you pulled up on 16th Street, to 946 16th
14 Street, was there a party going on?

15 A No.

16 Q Was there a group of people standing out in the
17 yard?

18 A No.

19 Q You were dispatched at 8:33. By the time you got
20 there minutes later, it was clear?

21 A Yes, ma'am.

22 Q Other than Joel, Mr. Harris, and Kaneisha Young?

23 A Yes, ma'am.

24 MS. WEISS: I have no further questions. Please
25 answer any questions the defense may have.

1 MR. GRIER: No questions. Thank you.

2 THE COURT: Mr. Carroll you may be excused from the
3 stand.

4 (Whereupon, the witness exited the witness stand.)

5 MS. WEISS: Your Honor, may this witness be excused
6 from his subpoena?

7 THE COURT: Any objection, Mr. Grier?

8 MR. GRIER: No objection.

9 THE COURT: You may be excused, Sergeant Carroll.

10 MS. WEISS: Your Honor, at this time we have a
11 matter to take up outside the presence of the jury.

12 THE COURT: All right, ladies and gentlemen. This
13 is one of the times I talked to you about earlier where
14 I need to send you to the jury room. Every time you
15 leave, do not discuss what you have heard so far. It's
16 the tip of the iceberg in this matter. Follow my
17 instructions until the end of the case. Follow my
18 instructions. Do not talk about what you heard.

19 (Whereupon, the jury exited the courtroom.)

20 MS. WEISS: Your Honor, at this time, the State
21 will call Kaneisha Young to the stand. We had an issue
22 with an excited utterance. The defense asked to do this
23 in camera first before we put it into the record. That
24 is what we intend to do.

25 MR. GRIER: Certainly, the statements made, Your

1 Honor. You can't go back. Whatever curative
2 instruction wouldn't suffice. This is the way to handle
3 it. I appreciate that.

4 * * *

5 KANEISHA YOUNG,
6 called as a witness by and on behalf of
7 the State to testify, being first duly
8 sworn was examined and testified as follows:

9 VOIR DIRE EXAMINATION BY MR. FUSSNECKER

10 BY MR. FUSSNECKER:

11 Q You are Kaneisha Young?

12 A Yes.

13 Q Do you live at X43 16th -- on September 27, 2017,
14 did you live at X43 16th Street here in Lancaster?

15 A Yes.

16 Q Is that across the street from Roger Harris' house?

17 A Yes.

18 Q That night, did you hear a gunshot?

19 A Yes, I did.

20 Q What happened after you heard the gunshot?

21 A I seen everyone start running. Quaterious Peay
22 came in the house and said, "D just shot Joel."

23 Q What was Quaterious Peay's demeanor when he came
24 inside your home and said, "D Just shot Joel?"

25 A He was just, like, "D just shot Joel."

1 Q Was he calm, or was he excited?

2 A He was shocked.

3 Q When you say, "D," who do you believe that to be?

4 A Demarcus Foster.

5 Q Is that what Demarcus Foster commonly went by, D?

6 A D.

7 Q How long from the time you heard the gunshot until

8 Quaterious came in the house and said, "D just shot

9 Joel?"

10 A It wasn't long. Less than five minutes.

11 MR. FUSSNECKER: Thank you. No further questions.

12 THE COURT: Mr. Grier.

13 MR. GRIER: Thank you.

14 VOIR DIRE EXAMINATION BY MR. GRIER

15 BY MR. GRIER:

16 Q Ms. Stevens, you said that it was less than five

17 minutes. Do you think it was four at least?

18 A It was less than five minutes.

19 Q Can you get us closer to an approximate number?

20 A There was a gunshot and everybody started running.

21 He came in the house and said, "D just shot Joel."

22 Q It could have been as much as five minutes later?

23 A Less than. It wasn't five minutes.

24 Q Do you remember giving an interview, a statement to

25 law enforcement? He also said, "D was standing on the

1 front porch when he shot Joel."

2 Do you recall saying that to law enforcement when
3 you gave that interview?

4 A I don't recall that.

5 MR. GRIER: I think that is all as to that issue
6 of excited utterance, Your Honor.

7 MR. FUSSNECKER: A few follow-up questions.

8 VOIR DIRE EXAMINATION BY MR. FUSSNECKER

9 BY MR. FUSSNECKER:

10 Q What happened between the time frame of you hearing
11 the gunshot and Quaterious coming inside your home?

12 A I was in my house. I wasn't outside period. When
13 he came in the house and he said -- I said, "Why is
14 everybody running? What is going on?"

15 He said, "D just shot Joel."

16 Q Was anybody with Quaterious as he came in the door?

17 A Deuce was behind him.

18 Q Is Deuce Lashawn-White?

19 A He is.

20 THE COURT: Anything else, Mr. Grier?

21 MR. GRIER: No, Your Honor.

22 THE COURT: You may step down.

23 (Whereupon, the witness exited the witness stand.)

24 THE COURT: Anything else, Mr. Grier?

25 MR. GRIER: Yes, Your Honor. I don't think it's

1 admissible at all. I don't think it's an excited
2 utterance. She didn't indicate the guy was excited,
3 number one. She was ambiguous about a time frame for
4 when it happened. There is no indicia of reliability
5 about a startling event.

6 If he had turned to someone immediately and said
7 that, it might qualify. When he leaves the scene and
8 goes to another location, we don't know what the
9 timeframe -- within five minutes -- there is uncertainty
10 about that. We don't know what kind of frame of mind he
11 was in. Without evidence that he was even excited, how
12 can it be an excited utterance, Your Honor?

13 THE COURT: She testified he was in shock. That is
14 the testimony I heard.

15 MR. GRIER: Then I apologize. I was having
16 difficulty hearing. She was speaking very fast and
17 running together, and I did not hear her say he was in
18 shock. Your Honor, there is no contemporaneous element
19 to this. I just don't believe it's an excited utterance,
20 and I would ask you to exclude it.

21 MR. FUSSNECKER: Your Honor, the witness said that
22 Quaterious Peay was in shock as he rushed through the
23 door with Deuce. When asked, "What happened after the
24 gunshot," the next thing that she remembers is them
25 coming in the door. So that lends itself to this being

1 a very short amount of time that passed from the gunshot
2 until Quaterious Peay came rushing in the door. She
3 said she didn't want to repeat his curse words, but that
4 he was shocked when he said, "D just shot Joel."

5 THE COURT: She also testified that it was less
6 than five minutes. People were running, obviously
7 running from the scene. Obviously, we know we had a
8 startling event. A man gets shot.

9 Because she testified that he was in shock,
10 obviously, he was under some sort of stress, under
11 stress at the time the statement was made. The stress
12 could only have been caused by the startling event,
13 which was the shooting. I am going to find that this
14 witness can testify and that this is an excited utterance
15 and an exception to the hearsay rule.

16 I respectfully note any objections that you have,
17 Mr. Grier.

18 MR. GRIER: It's on the record, Your Honor. I
19 would object to it.

20 MR. FUSSNECKER: Your Honor, I would just ask that
21 when we bring the jury back in -- now that we have the
22 audio problem fixed -- we would like to play the 911 and
23 the photographs that were stipulated to, go ahead and
24 enter those into evidence.

25 THE COURT: Okay. Everybody ready to go forward?

1 MR. GRIER: Could we have the some conversation
2 about what the Court's intentions are as to how long you
3 want to go?

4 THE COURT: It's 4:30. We have not given them a
5 lot of warning, obviously, before they got here today as
6 to what time we would normally work to.

7 I normally try to knock off about 5:00 to 5:30 at
8 the latest, just for the sake of the jurors who are here
9 all day. I could put them on notice that today we will
10 work until about 5:30. It will be my plan to start at
11 9:30 every day and work until 5:00 to 5:30.

12 When they come back in, let's go ahead and play the
13 tape and introduce the exhibits you want to enter into
14 evidence, and we will call the witness. That should be
15 close to 5:00.

16 Bring the jury in.

17 (Whereupon, the jury entered the courtroom.)

18 THE COURT: Yes, sir.

19 MR. FUSSENECKER: Your Honor, as previously
20 discussed, at this time we will ask to move into
21 evidence the photos that Roger Harris testified to of
22 his home. They are marked as 1A through 1L. We have
23 stipulated to their admissibility.

24 I am returning those to the court reporter at this
25 time.

1 THE COURT: Those will be admitted into evidence as
2 1A to 1L from the State.

3 (The aforementioned items were marked as
4 State's Exhibits 1A to 1L for identification and
5 were admitted into evidence.)

6 MR. FUSSNECKER: Also, at the same time, we would
7 like to admit photos 4A through 4D, which Sergeant
8 Carroll just testified to. These are the scene when he
9 reported to the house.

10 THE COURT: Those will be admitted into evidence as
11 4A to 4D from the State.

12 (The aforementioned items were marked as
13 State's Exhibits 4A to 4D for identification and
14 were admitted into evidence.)

15 MR. FUSSNECKER: At this time, I would like to go
16 ahead and play the 911 call by Roger Harris.

17 We will play the two 911 calls in sequence. The
18 first one is from the unidentified caller. That has
19 been stipulated to, to come into evidence, Your Honor.

20 At this time, Your Honor, I will play the 911 call
21 by Roger Harris, which came shortly after the first
22 call.

23 (Whereupon, Roger Harris' 911 audio recording was
24 played for the jury).

25 MR. FUSSNECKER: Your Honor, at this time I would

1 like to enter the 911 call by Roger Harris that was
2 stipulated to and premarked as State's Exhibit 3 into
3 evidence.

4 THE COURT: State's Exhibit 3 is admitted into
5 evidence.

6 (The aforementioned item was marked as
7 State's Exhibit 3 for identification and was
8 admitted into evidence.)

9 MR. FUSSNECKER: Your Honor, I would like to move
10 this into evidence. It has not yet been marked. I
11 believe this would be State's Exhibit 9.

12 THE COURT: State's Exhibit 9 is admitted into
13 evidence.

14 (The aforementioned item was marked as
15 State's Exhibit 9 for identification and was
16 admitted into evidence.)

17 MR. FUSSNECKER: At this time the State calls
18 Kaneisha Young.

19 * * *

20 KANEISHA YOUNG,
21 called as a witness by and on behalf of
22 the State to testify, being first duly
23 sworn was examined and testified as follows:

24 DIRECT EXAMINATION BY MR. FUSSNECKER

25 BY MR. FUSSNECKER:

1 Q You are Kaneisha Young?

2 A I am.

3 Q On September 27, 2017, at that time did you live at

4 X43 16th Street here in Lancaster?

5 A I did.

6 Q That is in Lancaster County?

7 A Yes, it is.

8 Q Who lived across the street from you?

9 A Roger.

10 Q Is that Roger Harris?

11 A Yes.

12 Q Does he live at X46 16th Street?

13 A Yes.

14 Q How long had you been living on 16th Street at

15 that time?

16 A Since 2016, August.

17 Q So about a year?

18 A Yes.

19 Q Who lived with you there?

20 A Me and Lashawn White.

21 Q Does Lashawn White have a nickname that he goes

22 by?

23 A Deuce.

24 Q Did you know Joel McLemore?

25 A I did.

1 Q How did you know Joel?

2 A He was friends of Deuce, and he was friends with

3 me.

4 Q Describe Joel for the jury.

5 A He was an outgoing person. He never did nothing

6 wrong. He was always happy. He was never sad. You

7 can't be mad at him. You can't have no beef with Joel

8 period -- at all.

9 Q How long had you know him at that time?

10 A A couple of months.

11 Q How often did you see him?

12 A Every other day. He used to drive me to work.

13 Q What was his relationship like with Lashawn?

14 A Friends.

15 Q Do you know the defendant?

16 A I do.

17 Q What is his name?

18 A Demarcus Foster.

19 Q How do you know him?

20 A That is my cousin.

21 Q Please identify him in the courtroom.

22 What is he wearing?

23 A Pink and white shirt.

24 Q Is he sitting at the defense table in the

25 courtroom?

1 A Yes.

2 Q I would like to direct your attention to

3 Wednesday, September 27, 2017. Did you see Joel that

4 day?

5 A I did.

6 Q When was the first time you saw him?

7 A Early in the morning. Around 12:00.

8 Q You saw him around 12:00. What happened then?

9 A He came to speak, to come over. "Hey. How are you

10 doing?" He didn't stay long.

11 Q Did you see him again that day?

12 A Yes.

13 Q When was that?

14 A About 8:00.

15 Q Was it dark yet?

16 A It was dark.

17 Q Was he driving when he came back?

18 A He was.

19 Q Do you remember what he was driving?

20 A A silver Toyota.

21 Q Is that a car?

22 A Yes.

23 Q Where did he park?

24 A In front of my house.

25 Q Did you talk to him at that time?

1 A I did. He said he was going back outside. He went
2 back outside.

3 Q Did he go to Roger Harris' house?

4 A Yes.

5 Q How do you know that?

6 A I seen him walk across the yard.

7 Q Did you see Demarcus Foster that day?

8 A I did.

9 Q When was that?

10 A Before the sun went down. It was earlier that
11 day.

12 Q Where did you see him?

13 A He was in front of my house.

14 Q On 16th Street?

15 A Yes.

16 Q You said that Joel arrived around 8:00, and then he
17 went back across the street.

18 Did you ever go over there to Roger Harris'?

19 A I did.

20 Q Where were you at that time?

21 A Inside my house.

22 Q Was anybody there with you?

23 A No. Just me.

24 Q What happened after that?

25 A He went back across the street. Like, 10, 15

1 minutes later, we heard a gunshot. I didn't think
2 nothing about it. It's 16th Street. You hear gunshots
3 every other day.

4 MR. GRIER: I am having trouble. She is speaking
5 very fast.

6 THE COURT: Slow down and speak closer to the mike.

7 BY MR. FUSSNECKER:

8 Q So you said Joel arrived at your home, parked out
9 front. About 10 to 15 minutes later, then he went
10 across the street; is that correct?

11 A Yes.

12 Q Please repeat what happened after Joel went across
13 the street.

14 A Ten or 15 minutes after that, I hear a gunshot. I
15 didn't think nothing else about it, because it's 16th
16 Street. It's Brooklyn. It's the worst neighborhood in
17 Lancaster, so you always hear gunshots. Then I saw
18 everybody run. He said, "Don't move."

19 Q You said, "He." What is his name?

20 A Quaterious Peay.

21 Q Please go on. Quaterious Peay runs into your
22 house.

23 A He runs in the house and said, "D just shot Joel."
24 He was shocked.

25 Q Was anyone with Quaterious Peay when he came

1 running inside your house?

2 A Just Deuce -- that's him.

3 Q When you say "Deuce" --

4 A Lashawn White.

5 Q Is Lashawn White your boyfriend?

6 A He is.

7 Q He was at the time?

8 A Yes.

9 Q He is still now?

10 A Yes.

11 Q You said that Quaterious said, "D just shot Joel."

12 Who goes by the name D?

13 A Demarcus Foster.

14 Q That is your cousin?

15 A Yes.

16 Q What happened after they came running in the door

17 and told you that the defendant just shot Joel?

18 What did you do?

19 A I went outside, and I seen Joel for myself laying

20 down on the ground.

21 Q What did you observe about Joel?

22 A I went over there, and I stayed with Joel until the

23 paramedics came.

24 Q Did you see anybody else out there?

25 A Roger was out there, Jovan (phonetic) was out

1 there, and Baka was out there.

2 Q Do you know if they were there before or after the
3 shooting?

4 A No.

5 MR. FUSSNECKER: I don't have any further
6 questions for you. The defense may have some questions.

7 THE COURT: Mr. Grier.

8 CROSS-EXAMINATION

9 BY MR. GRIER:

10 Q At the time, you were living with Lashawn White?

11 A Yes.

12 Q He is your boyfriend?

13 A Yes.

14 Q Still?

15 A Yes.

16 Q How long did you live -- what was that address?

17 A X43 16th Street.

18 Q How long had you lived there?

19 A Since August of 2016.

20 Q So a year in September of 2017. You worked at
21 Walmart?

22 A I did.

23 Q At the time this happened?

24 A I did.

25 Q Did you have transportation?

1 A Joel used to take me to work from time to time.

2 Q You worked in Indian Land, didn't you?

3 A I did.

4 Q That is a pretty good ride up there. Joel would

5 carry you up there from time to time?

6 A Yes.

7 Q Did you have other reliable transportation, or was

8 it just Joel?

9 A I had other transportation.

10 Q What kind of relationship did Joel have with

11 Lashawn -- Deuce?

12 A They was friends.

13 Q How long had they been friends?

14 A About a month.

15 Q What did they do together as friends?

16 A Played video games, went fishing.

17 Q Did they have any other kind of relationship

18 besides just friends? Did they have a business

19 relationship?

20 A No.

21 Q You heard a gunshot. Who was in the house when

22 you heard the gunshot with you?

23 A It was just me.

24 Q Do you remember giving an interview back on

25 September 28, 2017? Do you remember being interviewed

1 by law enforcement?

2 A I do.

3 Q Do you recall saying that you and your boyfriend
4 were the only ones inside during the shot? You were in
5 the living room when you heard the shot, and you went
6 outside and saw Joel laying on the ground?

7 Do you recall saying that to law enforcement when
8 you were interviewed?

9 A Yes, I do.

10 Q On that day, you had Deuce in the house with you?

11 A Yes.

12 Q So why was that?

13 A At first he was in the house, and then he went
14 outside.

15 Q When you heard the shot, you went outside with
16 Deuce?

17 A No. I went outside by myself.

18 Q So you are not saying that you and your boyfriend
19 were the only ones inside during the shot, when you
20 heard the shot?

21 Is that what you told law enforcement?

22 A No. I said we was in the house, then we went back
23 outside. When the shot happened, I was the only one in
24 the house.

25 Q You did not say that you and Deuce were in the

1 house when you heard the shot?

2 A No.

3 Q You don't deny it?

4 A I didn't say it.

5 Q Do you recall saying -- Quaterious -- you used to

6 call him Damu? You told law enforcement that he was

7 outside?

8 A Yes. He was.

9 Q How did you know that?

10 A I seen him.

11 Q Did he have a gun?

12 A No.

13 Q How do you know that?

14 A I didn't see nobody with a gun that day.

15 Q Tweak was outside. Do you know who Tweak is or

16 City?

17 A He was out there.

18 Q Did you see him with a gun?

19 A No.

20 Q Baka was out there?

21 A She was.

22 Q At the time of the gunshot?

23 A No.

24 Q I am talking about at the time of the gunshot.

25 You were inside, but you went outside immediately.

1 Did you see anybody out there when you went outside?

2 A No. Nobody was out there.

3 Q Was Deuce out there?

4 A He came back on the porch.

5 Q And your boyfriend was out there when you went

6 outside?

7 A He came back on the porch when I came outside.

8 Q You remember giving this interview. Do you recall

9 saying that Damu and Jamon -- who is Jamon?

10 A He pulled up after the shooting.

11 Q Do you recall telling law enforcement during that

12 interview that Damu and Jamon went in your house after

13 the shot?

14 A I did.

15 Q Do you recall saying that D was standing on

16 Roger's porch when he shot Joel?

17 A I didn't say that.

18 Q You didn't?

19 A I didn't.

20 Q Ms. Young, did you have a phone at the time?

21 A I did.

22 Q Does law enforcement have that phone?

23 A No.

24 Q Did they ask for it?

25 A No.

1 Q Did you have communication with Joel?

2 A I didn't.

3 Q None at all?

4 A I had his number.

5 Q On the phone. Any phone communication at that

6 time?

7 A That day?

8 Q Yes.

9 A I didn't.

10 Q How was Joel compensated for giving you rides?

11 A He didn't mind giving me rides.

12 Q Did you hear anything or see anything indicating

13 to you that there was any problem going on prior to that

14 shooting?

15 A I didn't.

16 Q Were you outside some too, earlier in the day or in

17 the evening?

18 A Earlier in the day.

19 Q How long had you been inside when you heard the

20 shooting, would you guess?

21 A I don't go outside, period, at all. I don't go

22 outside.

23 Q You just said you had been out earlier in the day?

24 A Yes. I walked outside. I didn't stand there long.

25 Q Why don't you go outside?

1 A Just the kind of neighborhood that I stay in, I
2 don't go outside.

3 Q Did you see who all was outside during the course
4 of the day?

5 A A lot of people was over there. When I walked out
6 there, a lot of people were across the street.

7 Q Can you recall the time you went outside in
8 relation to how --

9 A I was outside five minutes.

10 THE COURT: Let him finish the question.

11 BY MR. GRIER:

12 Q How long from the time you went outside to the time
13 the shooting happened?

14 A When I went outside, it was daylight.

15 Q When the shooting -- was it dark?

16 A It was dark.

17 Q It was hours before?

18 A It was hours before the shooting.

19 Q Do you have children?

20 A I do.

21 Q Were your children out there that day?

22 A No. My son wasn't there.

23 Q Did you see children out there that day?

24 A There was.

25 Q Did you see Demarcus out there that day?

1 A I spoke to him.

2 Q Do you recall telling law enforcement that you
3 didn't know that Demarcus was there?

4 A I told them I spoke to him.

5 Q Ms. Young, were you aware of communications between
6 Joel and Deuce during that day?

7 MR. FUSSNECKER: Objection, Your Honor; hearsay.

8 THE COURT: She hasn't said what anybody said yet.

9 He just asked if there was communication. It
10 wouldn't require a hearsay response for her --

11 MR. GRIER: To say simply they communicated, it
12 wouldn't be hearsay.

13 THE COURT: She wouldn't know if they communicated
14 unless somebody told her.

15 MR. GRIER: Can I ask whether she was aware of
16 communication between them?

17 BY MR. GRIER:

18 Q Are you aware of communication between Joel and
19 Deuce during the day?

20 A He came over there, like I said earlier.

21 Q Were you aware of any electronic phone
22 communication?

23 A No, I wasn't.

24 MR. GRIER: Thank you.

25 THE COURT: Mr. Fussnecker, anything else?

1 REDIRECT EXAMINATION

2 BY MR. FUSSNECKER:

3 Q Are there any issues between you and Demarcus, the
4 defendant?

5 A No.

6 MR. FUSSNECKER: Those are all the questions I
7 have, Your Honor.

8 THE COURT: Anything else, Mr. Grier?

9 MR. GRIER: No, Your Honor. Thank you.

10 THE COURT: You can step down, ma'am.

11 (Whereupon, the witness exited the witness stand.)

12 MR. FUSSNECKER: Your Honor, we would ask that this
13 witness be released from her subpoena.

14 MR. GRIER: Your Honor, we are sharing subpoenas.
15 I need her to stay under subpoena, Your Honor, in case I
16 need to recall her, which I expect to.

17 THE COURT: If you request that, then, Ms. Young,
18 you will need to make yourself available to testify
19 again, possibly, in the trial of this case.

20 MR. GRIER: As a courtesy to her and as a
21 convenience -- I believe we had more or less a
22 stipulation that the defense would not start before
23 Wednesday. I don't think they anticipate calling her.
24 Today is Monday. I would ask that she be back on
25 Wednesday. That way, she will be under a Court order.

1 I understand that.

2 THE COURT: Do you understand, Ms. Young?

3 THE WITNESS: I do.

4 THE COURT: Make sure they have your phone number
5 in case something happens, and they may call you back
6 tomorrow. He has said he would want you back on
7 Wednesday, so I am ordering that you be back on
8 Wednesday morning, unless you are called in the
9 meantime.

10 THE WITNESS: All right.

11 THE COURT: Now appears to be a good time to break
12 for the evening. All right, ladies and gentlemen. I am
13 going to stop for the day. Normally, what we will do is
14 work from 5:00 to 5:30 every day, because I know
15 everybody has lives and things to take care of and
16 responsibilities at night.

17 I do want you back in here tomorrow morning. We
18 will start back at 9:30. So if you would be back in the
19 jury room by 9:15, that will be fine.

20 As long as there are no legal issues or matters
21 that need to be brought before the Court, we should
22 start back promptly at 9:30 in the morning. We will
23 probably work until about 5:00 or 5:30 tomorrow and
24 continue that schedule until we have concluded the
25 trial.

1 As I instructed you earlier, please do not discuss
2 the case amongst yourselves in the jury room. As I
3 instructed you earlier, if your spouse, boyfriend or
4 girlfriend or anybody friend asks do not talk about the
5 case at all. If there is something on the news on TV,
6 turn the TV off.

7 If you see something in the paper tomorrow, do not
8 read it. Have a good evening.

9 (Whereupon, the jury exited the courtroom.)

10 THE COURT: Counsel, any matters we need to take up
11 before we break for the evening?

12 MS. WEISS: Not from the State, Your Honor.

13 MR. GRIER: No, Your Honor.

14 THE COURT: I would like to start back promptly at
15 9:30, unless we have some issue that comes up overnight.

16 Now, with regard to cell phones. I am not pleased
17 that two went off. If it's not necessary for your work,
18 leave it in your car. Don't bring it in the courtroom.

19 Is that clear? They can't bring them in. They
20 can't have them, so we shouldn't be able to have them
21 either. It's disruptive.

22 That is my instructions. The next one that goes
23 off is mine. I will put it that way. Whether it's owned
24 by law enforcement or whoever, it's mine.

25 You all have a good evening.

1 (Whereupon, the proceedings were continued until
2 the following day without interruption.)

3 * * *

4 END OF VOLUME I

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2018-GS-29-00899, -00902, -00903

STATE OF SOUTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
LANCASTER COUNTY	CIRCUIT COURT DIVISION
	2018-GS-29-00899
	2018-GS-29-00902, -03

-----X		
STATE OF SOUTH CAROLINA,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	TRANSCRIPT OF TRIAL
	:	VOLUME II
	:	PAGES 130 - 348
DEMARCUS OBRIEN FOSTER,	:	
	:	
Defendant.	:	
-----X		

March 19, 2019
Lancaster, South Carolina

B E F O R E

The Honorable Roger E. Henderson, Judge Presiding.

A P P E A R A N C E S

JARROD FUSSNECKER, ESQ.
HEATHER WEISS, ESQ.
Assistant Attorneys General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

MARK GRIER, ESQ.
Assistant Public Defender
104 South Main Street
Lancaster, South Carolina 29720

Kymerlee M. Williams, CSR/RPR
Official Circuit Court Reporter
P.O. Box 283
Pineville, North Carolina 28134

1	I N D E X	
2	PROCEEDINGS	133
3	WITNESS: JENNIFER MILLER	
	Direct Examination (F)	133
4	Cross-Examination	142
	Redirect Examination	146
5	Recross-Examination	146
6	WITNESS: JALISSA STOVER	
	Direct Examination (F)	149
7	Cross-Examination	153
8	WITNESS: KRISTAVIUS STEVENS	
	Direct Examination (W)	158
9	Cross-Examination	172
	Redirect Examination	181
10	WITNESS: LASHAWN WHITE	
11	Direct Examination (W)	183
12	WITNESS: QUATERIOUS PEAY	
	Direct Examination (W)	204
13	Cross-Examination	222
	Redirect Examination	231
14	WITNESS: KRISTEN GRANT	
15	Direct Examination (W)	233
	Cross-Examination	239
16	Redirect Examination	240
17	WITNESS: JAKENIA STEVENS	
	Direct Examination (W)	242
18	Voir Dire Examination (W)	257
	Voir Dire Examination (W)	259
19	Cross-Examination	269
	Redirect Examination	276
20	WITNESS: MARYAM RIVERA	
21	Direct Examination (W)	279
22	Cross-Examination	302
23		
24		
25		

1	I N D E X		
2	(CONTINUED)		
3	WITNESS: LADARIO JONES		
4	Direct Examination (F)	313	
5	Cross-Examination	324	
6	WITNESS: JENNIFER NATES		
7	Direct Examination (F)	331	
8	Cross-Examination	340	
9	PROCEEDINGS CONTINUED	348	

8	E X H I B I T S		
9	ITEM NUMBER	DESCRIPTION	PAGE
10	(S) 7A - 7C	Photographs	146
11	(S) 6A - 6C	Photographs	150
12	(S) 12	Photograph	235
13	(S) 13	Photograph	235
14	(S) 5	Photograph	251

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S
2 TUESDAY, MARCH 19, 2019
3 LANCASTER, SOUTH CAROLINA

4 * * *

5 (Whereupon, the following proceedings were
6 held in open court. The defendant was
7 present with his attorney, along with
8 counsel for the State.)

9 THE COURT: Is the State ready to proceed?

10 MS. WEISS: Yes, Your Honor.

11 THE COURT: Mr. Grier?

12 MR. GRIER: We are ready, Your Honor.

13 THE COURT: Bring in the jury.

14 (Whereupon, the jury entered the courtroom.)

15 THE COURT: Good morning, ladies and gentlemen. I
16 hope you-all had a good evening last night and you are
17 ready to come back to work today.

18 The State may call its next witness.

19 MR. FUSSNECKER: The State calls Jennifer
20 Miller.

21 * * *

22 JENNIFER MILLER,
23 called as a witness by and on behalf of
24 the State to testify, being first duly
25 sworn was examined and testified as follows:

1 DIRECT EXAMINATION BY MR. FUSSNECKER

2 BY MR. FUSSNECKER:

3 Q Good morning, Agent Miller. How are you?

4 A Good morning.

5 Q Where do you work?

6 A I work at the South Carolina Law Enforcement
7 Division, otherwise known as SLED.

8 Q What is your job there?

9 A My job is as a special agent in the crime scene
10 unit.

11 Q How long have you been a special agent in the crime
12 scene unit?

13 A Four years.

14 Q What is your educational background?

15 A I got my Bachelor's degree in Forensic Science at
16 Winsburg University. I graduated in 2013 with a minor
17 in biology and chemistry.

18 Q What are your duties as a crime scene
19 investigator?

20 A As a crime scene investigator, I get called to
21 crime scenes anywhere in the State of South Carolina.
22 We go to document, take pictures, photographs, collect
23 evidence, bring it back to the lab, package it, and
24 disperse it to the different departments we have at the
25 lab for analysis.

1 Q Directing your attention to the night of September
2 27, 2017.

3 Were you on duty that night?

4 A Yes.

5 Q Please tell me what happened that night?

6 A I received a call around 9:03 p.m. by our dispatch,
7 which we refer as SLED operations. They notified me of
8 the call that the Lancaster County Sheriff's Office was
9 requesting crime scene in reference to a shooting.

10 Q I will show what has been previously marked as
11 Exhibit 1.

12 Do you recognize this?

13 A Yes.

14 Q What is that?

15 A That is a photograph of the residence located at
16 X46 16th Street.

17 MR. FUSSNECKER: I will go ahead and show that to
18 the jury, Your Honor.

19 BY MR. FUSSNECKER:

20 Q There is where you reported that night?

21 A Yes.

22 Q What happened upon your arrival there?

23 A When we arrived, the scene was taped off with crime
24 scene barrier tape, and law enforcement personnel and
25 their vehicles were present.

1 Q What did you do upon arrival?

2 A Upon arrival, we met with investigators. We just
3 did an initial walk-thru of the scene.

4 Q What did you observe during your initial walk-thru?

5 A There was some suspected blood in the roadway and
6 other miscellaneous items that were in the road and in
7 the yard and parking area of X46 16th Street.

8 Q I will show you what has been marked as Exhibit
9 10A.

10 Could you please hold that up to the jury and
11 explain to the jury what they are seeing there.

12 A This is after we marked what we saw in the
13 roadway. This ends at the corner of where 946 16th
14 Street is. The residence would be up further from here.

15 So this is after we marked what we saw in the
16 roadway. This is at the corner of the yard of 946 16th
17 Street where their driveway parking area meets at the
18 corner.

19 At Marker 3 was suspected blood that we observed on
20 the roadway on 16th Street.

21 Marker 2 is marking a black iPhone that had a
22 shattered screen.

23 Marker 4 was suspected blood that we had marked.

24 Marker 5 is a car key.

25 Marker 6 is suspected blood.

1 Marker 7 is a cigarette butt.

2 Marker 8 was a shoe.

3 Marker 9 is a beer can.

4 And Marker 10 is a hat.

5 MR. FUSSNECKER: Your Honor, I would like to show
6 what has been previously entered into evidence as
7 Exhibit 1B.

8 BY MR. FUSSNECKER:

9 Q Please show the jury where those items were located
10 in that picture.

11 A So Marker 3 is down here at the corner right there
12 on the roadway.

13 Marker 2 would have been down here. The EMS debris
14 right there is the plastic that you see there.

15 Marker 9, which would have been the beer can
16 located right here. The shoe is located there.

17 Q Did you collect those items?

18 A Yes.

19 Q I believe you made a measurement from one of those
20 items to the house across the street, 943; is that
21 correct?

22 A Yes. We used a reference point, somewhere we can
23 refer to when we are measuring. It was a telephone
24 pole, and it was located next to X46 16th Street, in
25 that area.

1 Q The telephone pole, was it in the yard of 943
2 across the street?

3 A It was in that area. Close by.

4 Q From there to your measurement in the front of
5 Roger Harris' house, how far was it between those two
6 homes?

7 A I am not sure of the distance.

8 Q How far was it from Marker 6 in front of Roger's
9 house to the telephone pole across the street at X43
10 16th Street?

11 A Marker 6 was in reference to where the telephone
12 pole was, approximately 23.67 feet.

13 Q You said you took those photos in the front yard.
14 Please explain those here.

15 A This is X46 16th Street. These are marking a
16 plastic bag that had a Coca Cola can and a red cup in
17 it.

18 16 has a Yuengling already ck'd spelling bottle and
19 some other items in there.

20 Marker 15 is marking a Bud Lite bottle.

21 Marker 16 is marking a white-in-color rag and a
22 white T-shirt.

23 Q Is this Exhibit 10E?

24 A Yes.

25 Q Will you please show the jury where that is located

1 in this picture here. This is Exhibit 1B.

2 A There is a red-in-color bench that you see in this
3 photo. It's up here on the porch.

4 Q I am handing you what has been marked as Exhibit
5 10D.

6 Please explain 10D to the jury.

7 A This is Marker 17. It's a white plastic bag that
8 was on the front porch in front of the red bench shown
9 earlier. It has the name on the bottle beside it.

10 Q Please use Exhibit 1B to show the jury where that
11 is located.

12 A You can see the white plastic bag right next to the
13 bench.

14 Q These items?

15 A These are the items that were in Marker 17 in the
16 wet plastic bag in front of the bench. This is a
17 Yuengling bottle, the Bud Lite, and another cognac clear
18 bottle and a plastic straw with a cup like you would get
19 at McDonald's or something.

20 Q For the record, that is Exhibit 10C. Show them
21 where that item is located in Exhibit 10C.

22 A That white bag right there that you see.

23 Q Finally, for X46 16th Street, I am handing you what
24 has been marked as Exhibit 10B. Please explain to the
25 jury what that is.

1 A Marker 13, this is on the porch railing of X46 16th
2 Street. It's marking another Yuengling bottle.

3 Q Please show the jury where that Yuengling bottle is
4 located in Exhibit 1B.

5 A Here is the porch railing and the bench. The
6 railing was in front of the bench on the porch. The
7 Yuengling bottle is what you see right there.

8 Q Did you also collect items from across the street
9 at X43 16th Street?

10 A Yes.

11 Q Did you collect a gun there?

12 A Yes.

13 Q Where was it located?

14 A In the bathroom in the back of a toilet seat lid.

15 Q Handing the witness what has been marked as Exhibit
16 10G. Explain that to the jury.

17 A This is the toilet that was located in the bathroom
18 in that residence. Upon removing the cover, there was a
19 Smith & Wesson .40 handgun.

20 Q This is what has been marked as Exhibit 10F.

21 Is this the Smith & Wesson gun you referred to?

22 A Yes.

23 Q Did you submit that to SLED ballistics for
24 examination?

25 A Yes.

1 Q Did you collect all the items that were out there
2 that night?

3 A Not all of them.

4 Q Did you collect all the items that were located
5 there on the street near where the blood was?

6 A Correct.

7 Q Did you collect gunshot residue from anyone?

8 A Yes.

9 Q How do you collect gunshot residue?

10 A I have a kit.

11 Q Do you know the names of the people you tested for
12 GSR?

13 A I would have to refer to my notes.

14 MR. FUSSNECKER: May the witness refresh her
15 memory?

16 THE COURT: Sure.

17 BY MR. FUSSNECKER:

18 Q Who did you collect gunshot residue from?

19 A Quaterious Peay, Kendrews Stover, Lashawn White,
20 and Kaneisha Young.

21 Q Did they voluntarily do that? Did they consent to
22 it?

23 A They had to sign a voluntary consent-to-search
24 form.

25 Q After that initial collection of evidence, did you

1 continue to work the case, or did your role end that
2 night in this case, other than being here for court
3 today?

4 A Yes. I just work crime scenes and collect evidence
5 and move on to the next crime scene.

6 Q Immediately after that?

7 A Yes.

8 Q So you had no further investigatory function other
9 than to collect any evidence that night?

10 A Correct.

11 MR. FUSSNECKER: I don't have any further questions
12 for this witness at this time, but the defense might.

13 THE COURT: Mr. Grier?

14 CROSS-EXAMINATION

15 BY MR. GRIER:

16 Q You are from Columbia?

17 A Yes.

18 Q Do you recognize the document I am handing you?

19 A Yes.

20 Q What is that?

21 A My crime scene route showing the path I made to
22 place markers and cover the crime scene.

23 Q You said you took a phone into evidence at that
24 point?

25 A Yes. Marker 2 shows the cell phone that we

1 collected for chain of custody. It was turned over to
2 Special Agent Dexter Bassard.

3 Q Did you do any interviews of anybody?

4 A No, sir.

5 Q How long were you there?

6 A We arrived on scene at approximately 10:36 p.m. I
7 believe we cleared -- arrived at 10:36 p.m. was on
8 September 27, 2017. We cleared at approximately 5:01
9 a.m.

10 Q On September 28, 2017?

11 A Yes.

12 Q You collected the evidence, and you turned it over
13 to somebody?

14 Who do you turn it over to after you have collected
15 it?

16 A Any evidence that we take from the scene?

17 Q Yes, ma'am.

18 A I bring it back to the lab. We will disperse it to
19 other departments for analysis.

20 Q Do you have a role in determining which part of the
21 particular pieces of evidence go to be tested?

22 A I speak with the field agents or investigators.
23 They can request testing on it, what they want tested
24 for certain items.

25 I can send it to that specific department.

1 Q Did you have that conversation with agents and
2 make some determination of what was going to be tested
3 and where it was going to go?

4 A Yes.

5 Q Can you tell me, item by item, how the decision was
6 made and what decisions were made about that piece of
7 evidence?

8 MR. GRIER: Objection, Your Honor. That calls for
9 hearsay.

10 THE COURT: I will overrule that objection.

11 BY MR. GRIER:

12 Q To be clear, I am asking you what you did, not
13 what someone else said or did.

14 A Okay.

15 Q You sent evidence to other people and to other
16 labs; correct?

17 A Yes.

18 Q Internally in SLED?

19 A Yes.

20 Q You made determinations that there is going to
21 certain areas of SLED for different types of testing;
22 correct?

23 A Yes.

24 Q Can you tell me what you did with those particular
25 items and where they were sent?

1 A If I could refer to notes.

2 Q Yes. Tell me where each item was sent.

3 A Item 1, the Smith & Wesson gun that was collected
4 from the bathroom at X43 16th Street. That was sent for
5 latent print and firearms.

6 The gunshot analysis kit from Quaterious Peay was
7 sent to gunshot analysis.

8 The GSR kit of Jalissa Stover was sent for gunshot
9 analysis.

10 The buccal swabs from Demarcus Foster were sent
11 for a DNA standard.

12 We had also requested on September 28 a vehicle
13 process.

14 Q So you don't know whether the items were tested
15 and when the results were obtained?

16 A No.

17 Q What does GSR stand for?

18 A Gunshot residue.

19 Q Did you make any determinations of who lived there
20 at the different addresses?

21 There were two houses that were involved in this
22 investigation, as I understand it; correct?

23 A Correct.

24 Q You had some function in developing evidence at
25 both addresses.

1 Do you recall what those numbers were and who lived
2 at those residences?

3 A I don't make a determination who lives in them.

4 MR. GRIER: Thank you, Special Agent Miller.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. FUSSNECKER:

8 Q I will hand you what has been marked as Exhibit

9 7. Do you recognize these photos?

10 A Yes.

11 Q What does it depict?

12 A We were requested for a vehicle processing on
13 September 29, 2017. This is the vehicle. A
14 white-in-color Honda Accord.

15 MR. FUSSNECKER: Request to enter Exhibit 7 into
16 evidence and publish to the jury.

17 THE COURT: All right. Exhibit 7 is admitted.

18 (The aforementioned item was marked as
19 State's Exhibit 7 for identification and was
20 admitted into evidence.)

21 MR. FUSSNECKER: That's all, Your Honor. Thank
22 you.

23 THE COURT: Anything else?

24 RECROSS-EXAMINATION

25 BY MR. GRIER:

1 Q The car was processed two days after you arrived
2 at the crime scene?

3 A Yes.

4 THE COURT: Anything else?

5 MR. FUSSNECKER: No, Your Honor.

6 THE COURT: Thank you. You may step down.

7 (Whereupon, the witness exited the witness stand.)

8 MR. FUSSNECKER: Your Honor, we would ask that she
9 be released from her subpoena.

10 MR. GRIER: No objection.

11 THE COURT: You are excused from your subpoena.

12 MS. WEISS: At this time, we have a matter to take
13 up outside the presence of the jury.

14 THE COURT: Ladies and gentlemen, I will ask you to
15 step back into the jury room. We will be back with you
16 shortly.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: Yes, ma'am.

19 MS. WEISS: Thank you, Your Honor. I wanted to
20 bring up -- we have had some miscommunication. The
21 witness we were going to call first is on the way. He
22 was in Cherokee at a hearing. We can make that work.
23 We are juggling.

24 However, because we are juggling, we have a couple
25 of other witnesses who have been subpoenaed and have not

1 shown up. I would request a bench warrant so our
2 officers can go out and locate them and have them come
3 into court, if that will be appropriate.

4 THE COURT: That will be appropriate. If you
5 prepare a warrant, I will certainly send for the
6 Sheriff's Department to go find that person and have
7 them appear in court.

8 Who are those people?

9 MS. WEISS: Quaterious Peay and Lashawn
10 White.

11 THE COURT: Who was the second one?

12 MS. WEISS: Lashawn White.

13 THE COURT: If you will get those warrants
14 prepared.

15 MS. WEISS: If I can have a minute to get those
16 done. Can I just talk to defense counsel and let him
17 know our switch of order, what we are going to do, and
18 proceed forward?

19 THE COURT: Sure.

20 MR. FUSSNECKER: The State calls Jalissa Stover.

21 * * *

22 JALISSA STOVER,

23 called as a witness by and on behalf of

24 the State to testify, being first duly

25 sworn was examined and testified as follows:

1 THE COURT: Ms. Stover, please answer the question
2 with a "yes" or "no" response and not "uh-huh" and
3 "huh-uh" or nodding or shaking yr head.

4 THE WITNESS: Yes, sir.

5 DIRECT EXAMINATION BY MR. FUSSNECKER

6 BY MR. FUSSNECKER:

7 Q Good morning, ma'am.

8 A Good morning.

9 Q Please tell the jury your name.

10 A Jalissa Stover.

11 Q Are you related to Roger Harris?

12 A He is my dad.

13 Q Are you familiar with where he lives?

14 A On 16th Street.

15 Q Does your sister also live on 16th Street?

16 A Yes, sir.

17 Q I would like to direct you to the night of
18 Wednesday, September 27, 2017.

19 Do you know where you were at approximately 8:30
20 p.m. that night?

21 A I was coming from my friendgirl's. We were coming
22 like towards that way.

23 Q I will hand you what has been marked as Exhibits 6,
24 6A, 6B, 6C.

25 MR. FUSSNECKER: Your Honor, these are photos that

1 have been stipulated to with the defense.

2 MR. GRIER: That's right.

3 THE COURT: Okay.

4 BY MR. FUSSNECKER:

5 Q Take a look at those and tell me if you recognize
6 those.

7 A Yes.

8 Q What are those photos of?

9 A My dad's house and my sister's house.

10 MR. FUSSNECKER: At this time I would like to
11 admit Exhibits 6A to 6C into evidence.

12 THE COURT: 6A to 6C are admitted.

13 (The aforementioned items were marked as
14 State's Exhibits 6A - 6C for identification and were
15 admitted into evidence.)

16 BY MR. FUSSNECKER:

17 Q Let's start with 6B. Please show the jury your
18 father, Roger's Harris' house and your sister's house.

19 A This is it.

20 MR. FUSSNECKER: The witness is pointing to the
21 house on the lower right-hand corner.

22 THE WITNESS: My dad's house is right here. My
23 sister's house is right here.

24 BY MR. FUSSNECKER:

25 Q Is this the empty lot that sits between them?

1 A The empty lot that sits between the houses.

2 Q How was it that you came to 16th Street that night?

3 Did you walk there or drive there?

4 A I was riding, and I seen the blue lights. I

5 thought it was my sister's house, but it wasn't.

6 Q I will show you Exhibit 6A. Show the jury where

7 you got dropped off.

8 A Right here (Indicating).

9 Q Is that here at the corner of Brooklyn and 16th

10 Streets?

11 A Yes. I had to walk down. That is where I seen

12 them.

13 Q Please show the jury where your sister's house is

14 on the map.

15 A (Indicating.)

16 MR. FUSSNECKER: Let the record reflect that the

17 witness is pointing to the house directly in the center

18 of the photo.

19 BY MR. FUSSNECKER:

20 Q As you approached your sister's house, what did you

21 see going on?

22 A People running.

23 Q You saw people running?

24 A Yeah. People was running.

25 Q Did you see any vehicles?

1 A A white Honda down the road.

2 Q How fast was he going?

3 A The car was going up the road very fast. You knew

4 it was going too fast.

5 Q Please look at these photos.

6 Do you recognize that car?

7 A Yes.

8 Q How do you recognize it?

9 A The side and the back, I saw the front. That is

10 how the car looked.

11 Q Is that the car that you saw that night?

12 A Yes, sir.

13 Q Who did you see inside that car?

14 A Two males and a female.

15 Q How old did the males look?

16 A Like they were in their 20s.

17 Q What race did they look like they were?

18 A Black.

19 Q Did you see the car -- which direction it was

20 heading?

21 A Turned right at the stop sign.

22 Q When you say "Right at the stop sign," is that at

23 the intersection of Brooklyn and 16th Street?

24 A Yes, sir.

25 Q Please use Exhibit 6A and show the jury where you

1 saw the car turn?

2 A Right here (Indicating), toward Crenco.

3 Q When you say it looks like it was going right on
4 Brooklyn Avenue and going toward Crenco, what is Crenco?

5 A A store.

6 Q Is it a gas station?

7 A Yes, sir.

8 Q I am showing you what has been marked as Exhibit
9 6C. Do you recognize where Crenco is here?

10 A Right here (Indicating).

11 MR. FUSSNECKER: Let the record reflect that the
12 witness pointed to the upper-right-hand side to the
13 store marked "Crenco." That is at the intersection of
14 Brooklyn Avenue and South Main Street.

15 Q After you saw the white Honda Accord with a female
16 and two black males zooming up the street, what did you
17 do next?

18 A Waited for my dad to answer. He called 911.

19 Q That is Roger Harris who made that phone call?

20 A Yes, sir.

21 Q Do you know who Yawni (phonetic) is?

22 A No, sir.

23 MR. FUSSNECKER: No further questions.

24 THE COURT: Mr. Grier.

25 CROSS-EXAMINATION

1 BY MR. GRIER:

2 Q Ms. Stover, where do you live?

3 A I live on Rock Street.

4 Q How far, approximately, would that be from where
5 your dad lives?

6 A About a mile away.

7 Q A good little piece?

8 A Yes.

9 Q But you can walk it?

10 A Yeah.

11 Q That is off of Chesterfield Avenue? Rock Street?

12 A Right.

13 Q Your dad and your sister both live there in the two
14 different houses you pointed out?

15 A Yes, sir.

16 Q Did you ever live over there with either of them?

17 A No, sir.

18 In that house I did grow up.

19 Q How old are you?

20 A I am 31.

21 Q Do you visit your dad often?

22 A I do, but I don't go over there like that.

23 Q Your sister?

24 A No.

25 Q Why not?

1 A There be too much going on over there.

2 Q Do you want to tell me what you are talking about?

3 What is going on over there? Are people selling drugs?

4 A I don't know what they do. They do be standing

5 around, in their cars or whatever.

6 Q Is it common to hear gunfire over there --

7 gunshots? Not to see it necessarily, but to hear it?

8 A No, sir.

9 Q Who is Damu?

10 A I don't know nobody's name. Just face. Nobody's

11 real name. Street names is all I know.

12 Q So you don't know Quaterious Peay?

13 A No.

14 Q Do you know Lashawn White?

15 A No, sir.

16 Q Kaneisha Young?

17 A No, sir.

18 Q Do you know Ladarion Jones?

19 A Yes, sir.

20 Q How do you know Ladarion Jones?

21 A That is my little cousin.

22 Q So Ladarion has a child with Baka?

23 A Yes.

24 Q Baka is? How do you pronounce her name?

25 A I can't even say it.

1 Q Jalissa Stevens?
2 A I guess so.
3 Q Did you know Joel McLemore?
4 A No, sir.
5 Q You said that this car was going too fast?
6 A Yes.
7 Q What do you mean? Like dangerously?
8 A Yes. Like that car was going so fast up the road.
9 That is what I was wondering.
10 Q Was it dark?
11 A It was.
12 Q You went to the scene and saw your dad out there?
13 A Yeah. He was trying to get a phone. Nobody gave
14 it to him, so I gave him my phone.
15 Q Did you see anybody laying out there?
16 A Yeah. I don't know his name.
17 Q I understand. You saw someone on the ground out
18 there?
19 A Yeah.
20 Q Did you see anyone else out there?
21 A No, sir.
22 Q So nobody else was out there? Just your father?
23 A Yes. And a girl named Bay. She stood out there
24 the whole time. I don't know her real name.
25 Q You just heard her called Bay?

1 A Yes.

2 Q Do you know if -- you would know if it was Baka?

3 A I would know if it was Baka. It wasn't her.

4 Q You said saw people running?

5 A Yeah.

6 Q 16th Street runs into Brooklyn Avenue; right?

7 A Right.

8 Q It actually goes across Brooklyn Avenue. It turns

9 into down a dirt road eventually?

10 A Yes.

11 Q Going towards town, if you go that way?

12 A Yes.

13 Q Were people running up 16th Street?

14 A They was running all over the place. I don't know

15 where they was going.

16 Q They were running from whatever happened there?

17 A Right.

18 Q Did you recognize anybody?

19 A I didn't.

20 Q Did you see any faces?

21 A No, I didn't.

22 MR. GRIER: No further questions, Your Honor.

23 THE COURT: Mr. Fussnecker?

24 MR FUSSECKER: Your Honor, we ask to release her

25 from her subpoena.

1 MR. GRIER: No objection.

2 THE COURT: You can step down. You can be
3 excused.

4 MR. FUSSNECKER: The State calls Kristavius
5 Stevens.

6 * * *

7 KRISTAVIUS STEVENS,
8 called as a witness by and on behalf of
9 the State to testify, being first duly
10 sworn was examined and testified as follows:

11 THE COURT: Mr. Stevens, please answer the question
12 with a "yes" or "no" response and not "uh-huh" and
13 "huh-uh" or nodding or shaking your head.

14 THE WITNESS: Okay.

15 DIRECT EXAMINATION BY MS. WEISS

16 BY MS. WEISS:

17 Q Good morning.

18 A Good morning.

19 Q What nickname do you go by?

20 A Bree.

21 Q How long have you gone by that?

22 A Since I was born. It's my middle name.

23 Q How old are you?

24 A Twenty-six.

25 Q Where did you grow up?

1 A Lancaster, South Carolina.

2 Q How far did you go in school?

3 A Eleventh grade.

4 Q Which high school?

5 A Lancaster.

6 Q Where did you live when you were growing up?

7 A Bay Street.

8 Q Where do you currently live?

9 A I live in Brooklyn.

10 Q Who do you live with?

11 A My girlfriend.

12 Q What is her name?

13 A Camilla.

14 Q Does she live on 16th street?

15 A Yeah.

16 Q That is in Lancaster County?

17 A Yes, ma'am.

18 Q Does she live next to a lot?

19 A Yes.

20 Q Whose house is next to that?

21 A That's her daddy house.

22 Q Who is her dad?

23 A Roger.

24 Q Roger Harris?

25 A Yes, ma'am.

1 Q I will show you State's Exhibit 1A. It has been
2 entered into evidence. Do you recognize this residence?

3 A Yes.

4 Q Whose residence is this?

5 A That is Roger's house.

6 Q Do you recognize this, Exhibit 1B? Do you
7 recognize this picture?

8 A That's Roger's house.

9 Q Does this side of Roger's house -- does that face
10 the house that you live in?

11 A Yeah.

12 Q How long have you lived with Camilla there?

13 A A year or so.

14 Q Were you living with Camilla on September 27, 2017?

15 A No, ma'am.

16 Q Was she your girlfriend then?

17 A Yes, ma'am.

18 Q Mr. Stevens, did you want to come in here today?

19 A No.

20 Q Why are you here?

21 A To testify.

22 Q Did you get served a subpoena?

23 A Yes. Not necessarily me. You didn't serve me with
24 a subpoena.

25 Q But it got to you?

1 A Right.

2 Q That is why you are here?

3 A Yeah.

4 Q You have prior convictions for possession of

5 cocaine?

6 A Yes, ma'am.

7 Q You currently have pending charges?

8 A Yes, ma'am.

9 Q Those charges carry up to -- if they were all to

10 run consecutive, it would be about 50 years in prison;

11 correct?

12 A I guess.

13 Q Are the charges pending in the Solicitor's Office?

14 A Yes, ma'am.

15 Q Have you talked to me before yesterday?

16 A No, ma'am.

17 Q Have you ever talked to me about these charges?

18 A No, ma'am.

19 Q You know I am not with the Solicitor's Office?

20 A Yes, ma'am.

21 Q Do your remember September 27, 2017, the day that

22 we are here for today?

23 A Yes, ma'am.

24 Q What stands out to you about that day?

25 A It's the day the boy got killed.

1 Q Who is that boy?

2 A Joel.

3 Q How do you know Joel?

4 A I just know him from being on 16th Street.

5 Q Do you know his last name?

6 A No.

7 Q How would you describe Joel?

8 A He was a good person. He was cool.

9 Q Is there anything different about Joel and

10 everybody else that hung out over there?

11 A No. He just come around. He was a good person.

12 He gave me a ride. You know what I am saying?

13 Q Where did he give you rides to?

14 A To the store.

15 Q Did you have to pay him to give you a ride?

16 A No.

17 Q Do you know what kind of car he drove?

18 A A Toyota.

19 Q How did you get in touch with him if you wanted to

20 reach him?

21 A I just seen him out there.

22 Q Who is he friends with out there?

23 A Deuce.

24 Q What is his full name?

25 A I don't know.

1 Q You don't know his name?

2 A No. I never knew his name. That is all I know.

3 LaShawn, I think.

4 Q Where did he live?

5 A Across the street.

6 Q Across the street from?

7 A From me.

8 Q Who does he live with?

9 A His girlfriend?

10 Q What is her name?

11 A We call her Baka.

12 Q Do you know what her real name is?

13 A No.

14 Q Back in September of 2017, were you working?

15 A No.

16 Q Where were you that day?

17 A I was in the house that night.

18 Q So you stayed in the house?

19 A Yeah.

20 Q Who was in the house with you?

21 A My sister-in-law and me.

22 Q What time did you go outside?

23 A I don't know what time I went outside.

24 Q Do you remember if it was light or dark?

25 A It was dark.

1 Q Was anyone else outside when you went out there? A
2 A Yeah.
3 Q Who was out there?
4 A Me, Ladario, Damu and Deuce.
5 Q Dario, do you know his real name?
6 A Ladario.
7 Q Damu?
8 A I don't know his real name.
9 Q We already talked about Deuce. The three of them
10 were out there. Anybody else out there?
11 A Joel pulled up.
12 Q Do you know if there had been a bigger group of
13 people out there earlier?
14 A I guess.
15 Q How do you know?
16 A Like I said, I went out when it got dark.
17 Q Did you look out the window?
18 A No.
19 Q Anyone come in the house and see the people out
20 there?
21 A No.
22 Q Did you hear music or anything?
23 A I ain't heard nothing.
24 Q Joel pulled up. Where did he park?
25 A Right in front of Deuce house.

1 Q Is Joel white or black?

2 A White.

3 Q Where did he go once he pulled up?

4 A He walked over to where we were, on the side of

5 Roger house, by the side step.

6 Q I will show you again what has been admitted as

7 State's Exhibit 1B.

8 Is that what you are talking about -- side steps?

9 A Yes, ma'am.

10 Q Where were you standing?

11 A Right there on the porch.

12 Q Where was Damu?

13 A He was standing like right there.

14 Q Close to you?

15 A Yeah.

16 Q What about Deuce?

17 A I don't remember exactly where Deuce was standing.

18 Q What about Joel?

19 A Joel was standing right in front of me. Right

20 about the steps.

21 Q Dario?

22 A I think Dario was on the wall there.

23 Q You-all were all right here in this little area?

24 A Yes.

25 Q What happened next?

1 A A white Honda pulled up.

2 Q I will show you State's Exhibit 7C. Is that the

3 white Honda?

4 A Yeah.

5 Q When you say it pulled up, where did it pull up?

6 A In the lot we be standing at, right here

7 (Indicating.)

8 Q Do you know if it backed in or drove straight in?

9 A It just pulled in.

10 Q Did you see who was driving?

11 A Maryam was driving.

12 Q Do you know her full name?

13 A No.

14 Q Did you see if anybody else was in the car?

15 A Yes.

16 Q Who else was in the car?

17 A Tweak and D.

18 Q Who is Tweak?

19 A I don't know his real name.

20 Q Who is D?

21 A Demarcus.

22 Q What happened next?

23 A They got out of the car, and we were sitting on the

24 porch.

25 Q Who got out of the car?

1 A D got out of the car.

2 Q That is Demarcus?

3 A Yeah.

4 Q Was he on your side or was he on the other side?

5 A He went and sat down.

6 Q Then he got out. The car was parked there, so he

7 got out on the other side of the car, or on the

8 passenger's side of the car?

9 A Passenger's side.

10 Q Was that facing you, or was that away from you?

11 A Away from me.

12 Q What did he do next?

13 A He went up on the porch.

14 Q Was he carrying anything?

15 A A beer.

16 Q Do you know what kind of beer it was?

17 A I can't pronounce it.

18 Q Can you describe it?

19 A Not really.

20 Q Was it a can or a bottle?

21 A Bottle.

22 Q Did it have some kind of strange name on it?

23 A Yeah.

24 Q Is that why you say you can't pronounce it?

25 A Yeah.

1 Q Show you State's Exhibit 10C.
2 Do you recognize this bottle?
3 MS. WEISS: Ask the record to reflect that he is
4 pointing out the Yuengling Lager bottle.
5 BY MS. WEISS:
6 Q He went up there on the porch with the Yuengling
7 beer. Did he have one or two in his hands?
8 A He had one.
9 Q Did he talk to anybody?
10 A He spoke.
11 Q Who did he speak to?
12 A He spoke to everybody that was out there.
13 Q Does that include you?
14 A Yeah.
15 Q What did he say?
16 A He said, "What's up?"
17 Q What was he wearing?
18 A I don't remember what he was wearing.
19 Q Do you remember if it was a certain color?
20 A I think it was like a white shirt on, I think.
21 Q Did you see if he had anything else on him?
22 A No.
23 Q Do you recall, when you gave a statement to law
24 enforcement -- do you remember telling law enforcement
25 that he had changed his shirt?

1 A I think he did. I don't remember exactly what
2 color shirt he had on.

3 Q Did he describe that shirt to you in any way?

4 A No.

5 Q Who it belonged to?

6 A No.

7 Q Do you recall giving a statement to law
8 enforcement that the shirt belonged to his deceased
9 brother Bullet?

10 A I don't know what kind of shirt he had on. I don't
11 remember what kind of shirt he had on.

12 Q Did he talk to you about his brother at all?

13 A Yeah.

14 Q What did he say about his brother?

15 A He said he misses his brother.

16 Q What about the beer?

17 A Yes. He said that is what his brother drank.

18 Q What happened to his brother?

19 A His brother got shot.

20 Q He got out, and he talked to you-all. Was anybody
21 fighting?

22 A No, ma'am.

23 Q Anybody arguing?

24 A No.

25 Q Was it loud?

1 A No.

2 Q Do you know about what time it was?

3 A No, ma'am.

4 Q How long had you been out of your house at that

5 point?

6 A About an hour or so.

7 Q How long had he been there at that point?

8 A He had just pulled back up.

9 Q He had been there earlier?

10 A He came and he left and he came back.

11 Q You said Tweak got out of the car, too?

12 A No.

13 Q When he came back?

14 A No. I don't think he got out of the car.

15 Q Do you recognize the Demarcus that you are

16 referring to in this courtroom today?

17 A Yes, ma'am.

18 Q Tell the jury what he is wearing.

19 A A blue color shirt.

20 Q Sitting at the table?

21 A Yes, ma'am.

22 MS. WEISS: At this time, I would like the record

23 to reflect that he has pointed out the defendant.

24 THE COURT: All right.

25 BY MS. WEISS:

1 Q What did he do next?

2 A He got out, and he pulled a gun out.

3 Q What did he do?

4 A He lifted it up, and he said, "You-all ain't seen
5 nothing." I took off running. As I was running, I
6 heard a gunshot.

7 Q Did you look back?

8 A No.

9 Q Did you see who was shot?

10 A He shot the boy.

11 Q Did you see the gun?

12 A Yeah.

13 Q What did it look like?

14 A A revolver.

15 Q What did he do after he shot him?

16 A I ran.

17 Q What did he do?

18 A They left.

19 Q Did you see what kind of car they left in?

20 A The white Honda you just showed me.

21 Q Which way did they go?

22 A Up the street towards 16th Street.

23 Q Towards Brooklyn?

24 A Yes.

25 Q Which way did you run?

1 A I ran down Brooklyn.

2 Q Did you see Demarcus on 16th Street very often?

3 A No.

4 Q Did you ask him why he was there that day?

5 A No.

6 Q As far as you know, was there any argument between
7 Demarcus and Lashawn?

8 A No.

9 Q Did Demarcus ever say anything to you about the
10 shooting other than, "You ain't seen nothing?"

11 A No.

12 Q What did you take "You ain't seen nothing" to mean?

13 A I didn't say nothing.

14 Q But you are here talking?

15 A Right.

16 Q Why is that?

17 A Because I got put in it.

18 MS. WEISS: I don't have any further questions of
19 this witness. Please answer any questions the defense
20 may have.

21 THE COURT: Mr. Grier.

22 MR. GRIER: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. GRIER:

25 Q Did I hear you say it got to you?

1 A What?

2 Q You said early on that you were testifying because

3 it got to you, because you wanted to do right?

4 A No. Because somebody put me in it.

5 Q Who put you in it?

6 A I don't know.

7 Q Mr. Stevens, your girlfriend is Roger's daughter,

8 Camilla; right?

9 A Yes, sir.

10 Q She lives on 16th Street, or you-all live together

11 on 16th Street with Roger?

12 A No.

13 Q Is she Jalissa's sister?

14 A Yes.

15 Q She is. That explains why her sister was there.

16 You live with her sister?

17 A Right.

18 Q How do you know Deuce?

19 A Deuce my cousin.

20 Q He is also your friend?

21 A Yes, sir.

22 Q Do you spend a lot of time with him?

23 A No.

24 Q So you live on 16th Street. But you didn't live on

25 16th Street at the time?

1 A No.

2 Q But you were over there that day?

3 A Yes.

4 Q Were you over there pretty regularly?

5 A No.

6 Q How about -- Damu, Mr. Peay? Quaterious Peay?

7 A No.

8 Q Did you see him over there?

9 A He be over there.

10 Q A lot?

11 A A good little bit.

12 Q Friends with Deuce, isn't he?

13 A Yes.

14 Q You are friends with Deuce?

15 A Right.

16 Q How about Ladario Jones?

17 A He goes with my sister.

18 Q Your sister is Baka?

19 A Yes, sir.

20 Q How do you pronounce her first name?

21 A Jakenia.

22 Q So he goes with Jakenia, Baka, and they have a baby

23 together?

24 A Yes, sir.

25 Q Mr. Foster's brother has a child with Baka too?

1 A Yes, sir.

2 Q Are you friends with him, too? Do you get along
3 with him?

4 A Yes, sir.

5 Q He was hanging out that day?

6 A Yes, sir.

7 Q When the gunshot happened, you and Dario and Damu
8 and Deuce were all out there?

9 A Yes, sir.

10 Q You said Foster was on the porch to start with?

11 A Yes, sir.

12 Q Was there anyone else on the porch?

13 A No.

14 Q Are you sure Mr. Peay wasn't sitting on the steps?

15 A No.

16 Q Damu?

17 A Yes, sir.

18 Q We are talking about Mr. Peay. We have to keep the
19 nicknames straight so the jury can keep up with it.

20 A Okay.

21 Q You and Deuce and Damu and Ladarario -- Deuce is
22 Lashawn White? Are you all tight?

23 A Yeah. We ain't got no problem.

24 Q You-all hang out together a lot?

25 A I didn't say a lot. I said we hang out.

1 Q You are related to some and friends with the
2 others. Everybody is tied together somehow, either
3 through friendship or cousins or family in common;
4 correct?

5 A Yes, sir.

6 Q All of you?

7 A Yes.

8 Q Now, was Bay out there when the shooting happened?

9 A No, sir.

10 Q Joel had just pulled up?

11 A Yes, sir.

12 Q Who pulled up first?

13 A Maryam.

14 Q Are you related to her too?

15 A Maryam?

16 Q Yes. Maryam Rivera?

17 A No.

18 Q Who pulled up first, Joel or Maryam and Mr. Foster?

19 A Joel pulled up first.

20 Q Did he get out of the car immediately?

21 A Yes, sir.

22 Q Your sister is Baka?

23 A Yes, sir.

24 Q What are your nieces' names? What was Demarcus
25 Foster's, Bullet's, child's name with Baka?

1 A MarKhyla.

2 Q How old is she?

3 A She is about to be six.

4 Q Did you see Demarcus Foster with her that day

5 visiting?

6 A I didn't see him with her.

7 Q Was it light when you got there?

8 A I just said it was dark.

9 Q Was it dark when you got there?

10 A When I got outside, it was dark.

11 Q When you got over there, what was it?

12 A It was dark outside.

13 Q When you came over to 16th Street, it was dark

14 outside?

15 A It was dark.

16 Q Were you not inside of the house, too?

17 A Yeah.

18 Q How long before the shooting did you come out of

19 the house?

20 A I just said it was dark when I came out of the

21 house.

22 Q Thank you for repeating that. I appreciate it.

23 You heard the shot or you saw the shot?

24 A I said he pulled the gun out. When he lifted the

25 gun up to Joel, I ran. As I heard the gunshot, I ran.

1 Q You did not see the gunshot?

2 A No.

3 Q You said a minute ago that you didn't look back;

4 right?

5 A He lifted the gun up to him, then I ran. What are

6 you saying?

7 Q I am asking the questions.

8 A I know. I am telling you, though.

9 THE COURT: Let him ask the question, then give a

10 response.

11 BY MR. GRIER:

12 Q When the gun got lifted up, you ran? You didn't

13 look back; correct?

14 A Yeah.

15 Q That is what you just testified to a minute ago?

16 A Yes.

17 Q You never seen D out there before; right?

18 A Right.

19 Q You ran.

20 A Yeah. I have been shot. I don't play with

21 guns, so I ran.

22 Q You ran, and you kept running?

23 A Of course.

24 Q You kept running until May of 2018? Nobody was

25 ever able to talk to you; correct?

1 A Somebody talked to me.

2 Q I am talking about law enforcement didn't talk to
3 you until May of 2018.

4 A Yeah.

5 Q So you wanted to do right by what happened out
6 there on 16th Street, didn't you, and get the record
7 straight?

8 A I am doing it right now.

9 Q You could have done it on that day, couldn't you?

10 A Yeah. I could have. Like I said, I was scared.

11 Q How long were you scared?

12 A I can't justify that remark. Me being scared. You
13 can't justify that, when I said I was scared. You know
14 what I am saying?

15 Q I understand you have been shot before. If you
16 want to do right, don't you need to go to law
17 enforcement and make sure the person that cause this to
18 happen?

19 A I am testifying now.

20 Q Do you remember speaking with law enforcement in
21 May of 2018, Mr. Stevens?

22 A Yes.

23 Q Do you remember telling law enforcement that you
24 saw Demarcus Foster shoot?

25 A He pulled the gun out. What do you mean? Ain't

1 nobody else had no gun out there.

2 Q Do you recall telling law enforcement that after he
3 shot him, he went to the car and went back and got his
4 beer and then went back and left?

5 A No.

6 Q You didn't tell law enforcement that?

7 A I don't remember that.

8 Q That didn't happen?

9 A I don't remember that.

10 Q Mr. Stevens, you are facing up to 50 years on your
11 pending charges?

12 A Yeah. I haven't talked to nobody about what I am
13 facing.

14 Q So you don't know what you are facing?

15 A No, sir.

16 Q In 2016 you got convicted of possession of
17 cocaine; is that correct?

18 A Yes, sir.

19 Q The reason you are here today is because you got
20 put in it?

21 A Yes, sir.

22 Q Did anyone accuse you of shooting Demarcus Foster?

23 A Who?

24 Q Did anyone accuse you of shooting Joel McLemore?

25 A No.

1 Q How did you get put in it?

2 A Somebody said I was out there, basically.

3 Q And you were?

4 A Right.

5 Q If somebody hadn't said you were out there, you
6 wouldn't have come forward?

7 A I didn't want to tell. I was thinking about it.

8 Q You have got to answer to your family and friends,
9 don't you?

10 A Yes, sir.

11 Q You are stuck with them, just like I am with mine?

12 A Okay. What are you saying, Mark?

13 THE COURT: Let him ask the questions.

14 THE WITNESS: I want to know what he means.

15 BY MR. GRIER:

16 Q I will let you answer that question in your own
17 mind, Mr. Stevens. Thank you.

18 THE COURT: Anything else?

19 MS. WEISS: Nothing further, Your Honor. I'm
20 sorry. Just a few more questions.

21 REDIRECT EXAMINATION

22 BY MS. WEISS:

23 Q Is your sister Jakenia?

24 A Yes, ma'am.

25 Q Did she tell you what to say today?

1 A No, ma'am.

2 Q Did anybody tell you what to say today?

3 A No, ma'am.

4 Q If you hadn't been put into this, you wouldn't be

5 here talking?

6 A No, ma'am.

7 Q If we hadn't gotten a subpoena to you, you wouldn't

8 be here talking?

9 A No, ma'am.

10 Q Are you telling the truth?

11 A Yes, ma'am.

12 MS. WEISS: Thank you. No further questions.

13 THE COURT: Anything further?

14 MR. GRIER: No, Your Honor.

15 THE COURT: You may step down, sir.

16 (Whereupon, the witness exited the witness stand.)

17 MS. WEISS Your Honor, ask that this witness be

18 excused.

19 THE COURT: Any objection, Mr. Grier?

20 MR. GRIER: If he can stand by for a few minutes

21 while we make a decision.

22 THE COURT: All right. Wait back outside where

23 you were, and we will let you know whether you have been

24 excused or not.

25 MS. WEISS: The State calls Lashawn White.

1 * * *

2 LASHAWN WHITE,

3 called as a witness by and on behalf of

4 the State to testify, being first duly

5 sworn was examined and testified as follows:

6 THE COURT: Mr. White, please answer the question
7 with a "yes" or "no" response and not "uh-huh" and
8 "huh-uh" or nodding or shaking your head.

9 THE WITNESS: Yes, sir.

10 DIRECT EXAMINATION BY MS. WEISS

11 BY MS. WEISS:

12 Q Mr. White, where are you currently housed?

13 A [REDACTED] Crenson Drive.

14 Q Is that where you are living right now?

15 A Yes, ma'am.

16 Q Today?

17 THE COURT: Sir, you have to speak up. We all need
18 to hear what you are saying and so the court reporter
19 can take it down correctly.

20 BY MS. WEISS:

21 Q Where did you come from this morning?

22 A Prison.

23 Q What are you there for?

24 A Cocaine, marijuana, and common law robbery.

25 Q You still have other charges pending in Lancaster

1 County; right?

2 A Yes, ma'am.

3 THE COURT: Speak up.

4 BY MS. WEISS:

5 Q Without talking about what your charges currently
6 are, you are facing somewhere between 70 or 70 years
7 with all the charges you are facing, if all of those
8 charges run consecutively; correct?

9 THE COURT: Say yes or no.

10 THE WITNESS: I don't know.

11 BY MS. WEISS:

12 Q But you are aware you have charges pending?

13 A Yes, ma'am.

14 Q Has the Lancaster Solicitor's Office talked to you
15 about those charges?

16 A Yes.

17 Q And you understand I am not with the Solicitor's
18 Office?

19 A No.

20 Q You didn't know that?

21 A No.

22 THE COURT: Speak up. Please don't say "uh-huh."

23 "Yes" or "no," as I instructed you earlier.

24 BY MS. WEISS:

25 Q I am Heather Weiss with the Attorney General's

1 Office. Over there is Jarrod Fussnecker with the
2 Attorney General's Office. We have never met before?

3 A No. No, ma'am.

4 THE COURT: Speak up.

5 THE WITNESS: No, ma'am.

6 BY MS. WEISS:

7 Q What is your nickname?

8 A I don't got a nickname?

9 Q What is your nickname?

10 A I said I ain't got a nickname.

11 Q Does anybody call you Deuce?

12 A Not that I know of.

13 THE COURT REPORTER: I can't hear him, Your Honor.

14 THE COURT: Speak up, as I told you, loudly and
15 clearly. You may not want to be here, but you will have
16 to respond to these questions.

17 THE WITNESS: Not that I know of.

18 BY MS. WEISS:

19 Q If I were to tell you that you have been referred
20 to as Deuce, would that surprise you?

21 A Yes, ma'am.

22 Q Your name is Lashawn White?

23 A Yes, ma'am.

24 Q Where do you live in Lancaster County when you are
25 not in the Department of Corrections?

1 A [REDACTED] Crenson Drive.

2 Q Where is that?

3 A Over there by Lynwood.

4 Q Is that in Lancaster?

5 A Yes, ma'am.

6 THE COURT: We can't hear you. Speak into the
7 microphone loudly and clearly.

8 THE WITNESS: By Lynwood.

9 BY MS. WEISS:

10 Q In Lancaster?

11 A Yes, ma'am.

12 THE COURT: Mr. Grier, you may come closer if you
13 need to do so.

14 MR. GRIER: I may do that. Thank you.

15 BY MS. WEISS:

16 Q How old are you, Mr White?

17 A Twenty-five.

18 Q Where did you grow up?

19 A In Lancaster.

20 Q Where did you go to high school?

21 THE COURT: Speak up, please.

22 THE WITNESS: In Lancaster.

23 BY MS. WEISS:

24 Q How far did you go in school?

25 A I graduated.

1 Q Graduated from Lancaster High?

2 A Yes, ma'am.

3 Q What did you do after you graduated?

4 A I worked.

5 Q Where did you work?

6 A Tyson.

7 Q How long did you work there?

8 A About two years.

9 Q Did you ever know a guy named Joel McLemore?

10 A Yes, ma'am.

11 Q Who is Joel McLemore?

12 A A friend.

13 Q How long were you-all friends?

14 A I don't really know.

15 THE COURT: I don't understand why you are having
16 such a hard time answering these questions. Please do
17 so.

18 THE WITNESS: I said I can't remember.

19 BY MS. WEISS:

20 Q Would you say that it was months or years?

21 A Months.

22 Q How would you describe Joel?

23 A I guess a nice person.

24 Q Back in September of 2017, where were you living?

25 A 16th Street.

1 Q 16th Street?

2 A Yes, ma'am.

3 THE COURT: Speak up loudly and clearly. I am
4 tired of instructing you to do so. There is no reason
5 you can't speak loudly and clearly.

6 If you were out on the street, you would be talking
7 much louder than you are now. Please do so in here.

8 BY MS. WEISS:

9 Q Who were you living with at the time?

10 A My sister.

11 Q Who is your sister?

12 A She wasn't my real sister.

13 THE COURT: I have no idea what you just said.

14 THE WITNESS: She isn't my real sister.

15 BY MS. WEISS:

16 Q What is her name?

17 A I forgot her name.

18 Q What do you call her?

19 A Shaft.

20 Q Shaft?

21 A Yes, ma'am.

22 Q Do you know Kaneisha?

23 A Yes, ma'am.

24 Q Is that who you are talking about?

25 A No, ma'am.

1 Q Is Kaneisha your girlfriend?

2 A No, ma'am.

3 Q She wasn't your girlfriend?

4 A Not that I know.

5 Q I said was she?

6 A No.

7 Q No?

8 A I don't want to say never, but not at that time.

9 Q Not in September of 2017?

10 A No, ma'am.

11 Q Where did Kaneisha live in September of 2017?

12 A 16th Street.

13 Q X43 16th Street?

14 A Yes, ma'am.

15 Q That would have been across the street from where

16 you lived?

17 A Yes, ma'am.

18 Q Did you spend some time with her?

19 A Yes, ma'am.

20 Q Did you spend some time at her place?

21 A Yes, ma'am.

22 Q Did you and Joel spend some time hanging out at her

23 place?

24 A Sometimes.

25 Q What kinds of things did you and Joel do together?

1 A We just played games.

2 Q What kind of games?

3 A Sports.

4 Q Video games or like running around with footballs?

5 A Video games.

6 Q What else did you do together?

7 A Nothing really.

8 Q Was he hanging out with you a lot?

9 A Not a lot, no.

10 Q Several times a week?

11 A No.

12 Q Do you know if he gave anybody a ride?

13 A He gave Kaneisha a ride.

14 Q Where would he give her a ride?

15 A To work.

16 Q Where did she work?

17 A I think she worked at Walmart at the time.

18 Q Which Walmart?

19 A Indian Land.

20 Q Did you pay him in any way to give her a ride?

21 A No, ma'am.

22 Q Were you aware if she paid him in any way to give

23 her a ride?

24 A I don't know.

25 Q Did he ever drive you anywhere?

1 A Probably to my mom's house or somewhere.

2 THE COURT: What did you say?

3 THE WITNESS: Probably to my mom's house or
4 somewhere.

5 BY MS. WEISS:

6 Q Did he ever charge you to drive you anywhere?

7 A No, ma'am.

8 Q So why would he drive you?

9 A Just a good friend, I guess.

10 Q He was a good friend?

11 A I guess so.

12 Q Just to be clear, do you want to be here today?

13 A No. Not really, no.

14 Q Why not?

15 A There is no reason to, really.

16 Q Are you scared?

17 A No.

18 Q Do you remember September 27, 2017, the day that we
19 are here about today?

20 A Not really.

21 Q Do you remember the day that your friend Joel died?

22 A Yeah. He died.

23 Q You remember he died?

24 A (Shaking head).

25 Q This was your friend?

1 A Yes, ma'am.

2 Q Do you know who Roger Harris is -- Doc?

3 A Yes, ma'am.

4 Q Who is that?

5 A An old man across the street.

6 Q State's Exhibit 1A. Do you recognize this photo?

7 A No.

8 Q Do you remember what Roger Harris' house looked

9 like?

10 A Not really. It's been a minute.

11 Q How long has it been?

12 THE COURT: Speak up, please.

13 THE WITNESS: Ever since I have been incarcerated.

14 BY MS. WEISS:

15 Q Do you recognize State's Exhibit 1B?

16 A No, ma'am.

17 Q Do you recognize the house across the street?

18 A No, ma'am.

19 Q Do you remember 16th Street at all?

20 A Some of it.

21 Q What do you remember about 16th Street?

22 A I used to stay over there.

23 THE COURT REPORTER: Say it again.

24 THE WITNESS: I used to stay over there.

25 BY MS. WEISS:

1 Q I will take you back to September 27, 2017, the day
2 that your good friend Joel died.

3 Were you outside?

4 A When he got shot?

5 Q I am not even there yet. Were you outside that
6 day?

7 A I think so, yes, ma'am.

8 THE COURT: What did you say?

9 THE WITNESS: I said I think so, yes, ma'am.

10 BY MS. WEISS:

11 Q Do you remember anybody else who was out there with
12 you?

13 A No, ma'am.

14 Q Did you know someone by the name of Merk Patterson?

15 A No, ma'am.

16 Q You have never known that person?

17 A No, ma'am.

18 Q Do you know Ladario Jones?

19 A No, ma'am.

20 Q Do you know Kristavius Stevens?

21 A No, ma'am.

22 Q Do you know Bree?

23 A I got a cousin named Bree.

24 Q Do you know a person named Bree?

25 A I don't think so. I heard the name.

1 Q Do you know a guy named Damu?

2 A No, ma'am.

3 Q Do you remember giving a statement to law
4 enforcement on October 3, 2017?

5 A Yes, ma'am.

6 Q Do you remember telling law enforcement that
7 Ladario Jones, Kristavius Stevens, and McLemore were in
8 the yard, and Quaterious, Damu Peay, was sitting on the
9 side steps?

10 A No, ma'am, not really.

11 Q You don't remember that?

12 A It has been a long time.

13 Q Do you remember telling them that Kevis Wright
14 (phonetic) and Nasty Reed (phonetic) were sitting on the
15 front porch?

16 A No, ma'am.

17 Q Do you remember being out there when it was dark?

18 A Not really, no.

19 Q Do you know Demarcus Foster?

20 A No, ma'am.

21 Q You have no idea who that is?

22 A No, ma'am.

23 Q Do you remember someone coming up to the house --
24 driving up to the house?

25 A No, ma'am.

1 Q Do you remember telling law enforcement that
2 somebody in a bright car came up to the house?

3 A No, ma'am.

4 Q Do you remember anybody getting out of the car?

5 A No, ma'am.

6 Q Do you remember telling law enforcement that a
7 black male walked up from the vehicle, up the side steps
8 by Quaterious Peay and onto the porch?

9 A No, ma'am.

10 Q Do you remember telling law enforcement that a shot
11 was fired?

12 A Yes, ma'am.

13 Q You do remember that?

14 A Yes, ma'am.

15 Q Tell me what you remember about that.

16 A I just remember a shot was fired.

17 Q Who was there?

18 A I don't remember. I be drinking.

19 Q You can't remember. You had been drinking?

20 A Yes, ma'am.

21 Q Did you have a gun?

22 A No, ma'am.

23 Q Did you fire the shot?

24 A No, ma'am.

25 Q Did you see who fired the shot?

1 A No, ma'am.

2 Q Where were you at the time the shot was fired?

3 A Over in the yard.

4 Q In what yard?

5 A I think Doc yard.

6 Q Do you recall what the yard looked like?

7 A No, ma'am.

8 Q Do you remember seeing anyone leave after the shot

9 was fired?

10 A No, ma'am.

11 Q Did you leave after the shot was fired?

12 A No, ma'am.

13 Q Did you call 911 after the shot was fired?

14 A Yes, ma'am.

15 Q On what phone did you call 911?

16 A It might have been my phone, I think. I can't

17 remember.

18 Q Where did you go after the shooting?

19 A To Kaneisha house.

20 Q What did you do when you got to Kaneisha's house?

21 A I can't remember.

22 Q Do you recall telling law enforcement there was a

23 guy in all black that walked off the porch before the

24 shooting?

25 A No, ma'am.

1 Q Do you recall seeing any guns out there that night?

2 A No, ma'am.

3 Q Do you recall telling law enforcement that the

4 person who did the shooting was Bullet's brother?

5 A No, ma'am.

6 Q Do you know who Bullet is?

7 A Yes, ma'am.

8 Q Who is Bullet?

9 A One of my old friends.

10 Q Where is Bullet now?

11 A He passed.

12 Q What happened to him?

13 A He got shot.

14 Q Did he have a brother?

15 A I don't know.

16 Q Do you remember if there was any arguing going on?

17 A No, ma'am.

18 Q Any fighting?

19 A No, ma'am.

20 Q Do you remember seeing an outline of a gun on

21 anybody that night?

22 A No, ma'am.

23 Q Do you remember telling law enforcement that

24 Kaneisha Young was your girlfriend?

25 A I don't know.

1 Q Do you remember telling law enforcement that the
2 suspect was your girlfriend's cousin?

3 A No, ma'am.

4 Q Did you go back outside?

5 A No, ma'am. I don't think so. No.

6 Q Did you see who was shot?

7 A No. Not really, no.

8 Q You didn't see who was shot?

9 MR. GRIER: Judge, I will have to ask that the
10 questioning be direct as opposed to leading. I have
11 been tolerant of it. Almost all of this questioning is
12 leading, and I don't think it's permissible. I think it
13 ought to be direct examination.

14 MS. WEISS: Your Honor, I would ask this witness
15 be declared as a hostile witness.

16 THE COURT: I will agree to that. I will make that
17 finding. You can lead him.

18 BY MS. WEISS:

19 Q Do you recall law enforcement coming over to
20 Kaneisha's house across the street?

21 A Yes, ma'am.

22 Q Did they talk to you?

23 A Not really, no.

24 Q Did they ask you about taking a gunshot residue
25 test?

1 A Yes, ma'am.

2 Q What did you do when they asked you about that?

3 A I took the test I think.

4 Q You think you took the test?

5 A Yes, ma'am.

6 Q Were you afraid to take the test?

7 A No, ma'am.

8 Q Did you know that you had gunshot vehicle on your

9 hand?

10 A Yes, ma'am.

11 Q Do you know why you had gunshot residue on your

12 hands?

13 A No, ma'am.

14 Q Did you fire a gun that night?

15 A No, ma'am.

16 Q Are you sure?

17 A Positive.

18 Q How are you positive?

19 A I didn't shoot no gun.

20 Q Did you shoot Joel McLemore?

21 A No, ma'am.

22 Q Are you sure?

23 A Yes, ma'am.

24 Q How are you sure?

25 A Because I didn't shoot nobody.

1 Q Why did you have gunshot residue on your hand, one
2 hand?

3 A I don't know.

4 Q Were you standing near Joel when he was shot?

5 A I can't remember.

6 Q Has anything happened to you since October 3 to
7 keep you from being able to remember today?

8 A No, ma'am.

9 Q Has anyone threatened you?

10 A No, ma'am.

11 MS. WEISS: Beg the Court's indulgence one minute.

12 Your Honor, may we approach?

13 THE COURT: Yes.

14 (Whereupon, a discussion was held off the record
15 and outside the presence of the jury.)

16 THE COURT: Yes, ma'am, Ms. Weiss.

17 MS. WEISS: Your Honor, may we take a break at
18 this time and continue this testimony at another time?

19 THE COURT: All right. Do you have any problem
20 with that?

21 MR. GRIER: No, Your Honor. I agree that it is
22 necessary for the defense to prepare as well.

23 THE COURT: All right. We are going to suspend
24 your testimony at this point in time.

25 Mr. Stevens, I will ask that you be brought back

1 tomorrow. We will resume his testimony tomorrow. There
2 are some matters that need to be attended to by both of
3 these attorneys before we resume this testimony.

4 You can be taken back. You may step down.

5 (Whereupon, the witness exited the witness stand.)

6 THE COURT: Let's all take about a five-minute
7 break at this point in time, and we will come back and
8 do another witness before we go to lunch. Please do not
9 discuss the case.

10 (Whereupon, the jury exited the courtroom.)

11 THE COURT: We will take a short break to collect
12 our thoughts and go to the rest room.

13 (Whereupon, a recess was held.)

14 (Whereupon, the following proceedings were
15 held in open court. The defendant was
16 present with his attorney, along with
17 counsel for the State.)

18 THE COURT: All right, Counsel. Let's bring the
19 foreperson in.

20 (Whereupon, the foreperson of the jury entered the
21 courtroom.)

22 THE COURT: Ms. Roney, during the break, it was
23 brought to my attention that you are related by marriage
24 to Chris Adams. Is that the name of the individual?

25 MS. RONEY: Mike Adams.

1 THE COURT: He is an investigator with the
2 Sheriff's Office in Lancaster?

3 MS. RONEY: Yes, sir. He is my son-in-law. I
4 forgot to bring that up earlier.

5 THE COURT: When I asked that question during voir
6 dire yesterday, you didn't reveal that to anybody. That
7 is critical information to the attorneys. Either side
8 may have struck you for that reason.

9 MS. RONEY: I beat myself up for not mentioning
10 that when I got home.

11 THE COURT: We have to deal with the issue now.
12 Mr. Grier, you have indicated that you are concerned
13 about her continuing to serve. I understand that.

14 MR. GRIER: Your Honor, I am sure she is a
15 delightful woman. Nothing personal, but appearances
16 would justify excusing her under the circumstances
17 simply for PCR and appellate reasons. I think there is
18 potential for this having consequences beyond what we
19 are doing here this week.

20 MS. RONEY: I understand.

21 THE COURT: Anything in response, Ms. Weiss?

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

23 THE COURT: It causes me concern, too, Mr. Grier.
24 I am like you. Appellate issues, things like that down
25 the road. I would not want this to be a reason to have

1 to deal with those issues.

2 So I will excuse you from further service on this
3 jury. That is the reason why we have alternates, so you
4 can be replaced by one of the alternates. If you are
5 ever in this situation again, and you have any question
6 about it, err on the side of responding to everything.
7 That is critical information in a situation and a case
8 like this, and information that the attorneys need to
9 know. That is reason why we ask the questions.

10 MS. RONEY: I understand.

11 THE COURT: You are excused from further service.
12 You can go on.

13 (Whereupon, the former foreperson exited the
14 courtroom.)

15 THE COURT: I will replace Ms. Roney with Mr.
16 Barry O. Catoe.

17 Is that all right with everyone?

18 MS. WEISS: Yes, sir, Your Honor.

19 MR. GRIER: Thank you, Your Honor.

20 THE COURT: We will talk to him when he gets back.
21 I will do that when we get back from lunch as well.

22 We will be in recess until 2:00.

23 (Whereupon, a luncheon recess was held.)

24 (Whereupon, the jury entered the courtroom.)

25 THE COURT: Ladies and gentlemen, I hope you all

1 had a good lunch. You may have noticed that we are
2 missing one of your fellow jurors. The former
3 foreperson, Ms. Roney, has been excused. Mr. Catoe, you
4 will now be a member of this jury and not an
5 alternate.

6 Mr. Shields, I am going to appoint you as foreman
7 of this jury for the duration of this trial that began
8 yesterday. You are now the spokesperson for the other
9 jurors who preside in the jury room. I will give you
10 further instructions about the verdict at the proper
11 time.

12 MR. SHIELDS: Yes, sir.

13 THE COURT: Thank you.

14 The State may call its next witness.

15 MS. WEISS: Thank you, Your Honor. The State calls
16 Quaterious Peay.

17 QUATERIOUS PEAY,
18 called as a witness by and on behalf of
19 the State to testify, being first duly
20 sworn, was examined and testified as follows:

21 THE COURT: Mr. Peay, please answer the question
22 with a "yes" or "no" response and not "uh-huh" and
23 "huh-uh" or nodding or shaking your head.

24 THE WITNESS: Yes, sir.

25 DIRECT EXAMINATION BY MS. WEISS

1 BY MS. WEISS:

2 Q Good afternoon, Mr. Peay.

3 A Good afternoon.

4 Q Mr. Peay, what is your nickname?

5 A What are you talking about?

6 Q What do people call you?

7 A They call me Damu.

8 Q How long have they called you that?

9 A Years.

10 Q But your full name is Quaterious Peay?

11 A Yes, ma'am.

12 Q Where did you grow up?

13 A Lancaster.

14 Q Where in Lancaster?

15 A Pardue.

16 Q Did you go to high school here?

17 A Yes, ma'am.

18 Q Where did you go to high school?

19 A Lancaster.

20 Q Did you graduate?

21 A No, ma'am.

22 Q What year did you get to?

23 A Tenth grade.

24 Q Did you work anywhere after that?

25 A I worked at Tyson before.

1 Q Do you have any children?

2 A Yes, ma'am.

3 Q How many?

4 A Two.

5 Q Boys or girls?

6 A Little boys. A three-year-old and a

7 one-year-old.

8 Q Where do you currently live?

9 A On Lynwood.

10 Q What area of Lancaster is that in?

11 A In the country.

12 Q Mr. Peay, do you want to be here today?

13 A No, ma'am.

14 Q Why are you here?

15 A Because I had a bench warrant.

16 Q Were you served with a subpoena?

17 A Yes, ma'am.

18 Q And that required you to be here?

19 A Yes, ma'am.

20 Q You didn't even want to come as a result of that,

21 did you?

22 A No, ma'am.

23 Q Have you and I spoken before today?

24 A No, ma'am.

25 Q Just to get some things out of the way. You have

1 been convicted of stuff before?

2 A Yes, ma'am.

3 Q You have a prior unlawful carrying of a weapon,

4 2012.

5 A Yes, ma'am.

6 Q Burglary II from 2013?

7 A Yes, ma'am.

8 Q And unlawful carrying in 2016?

9 A Yes, ma'am.

10 Q But you don't have any current charges pending?

11 A No, ma'am.

12 Q I want to take you to September of 2017.

13 Can you remember back then?

14 A Not that much.

15 Q It was a long time ago?

16 A Yes, ma'am.

17 Q I will take you specifically to September 29,

18 2017, the date we are here about.

19 Do you remember the day that Joel McLemore was

20 killed?

21 A Yes, ma'am.

22 Q How did you know Joel McLemore?

23 A From my cousin, Lashawn White.

24 Q Your cousin is Lashawn White?

25 A Yes, ma'am.

1 Q What do people call Lashawn?

2 A They call him Deuce.

3 Q Where did Lashawn live at the time?

4 A On 16th Street.

5 Q Who did he live with?

6 A His girl.

7 Q Do you know his girl's name?

8 A I think Kaneisha.

9 Q Do you know what people call her?

10 A No.

11 Q Where did they live?

12 A 16th Street.

13 Q Did you ever go hang out on 16th Street?

14 A Yes, ma'am.

15 Q Where would you hang out when you were over there?

16 A Over at their house.

17 Q At their house?

18 A Yes, ma'am.

19 Q Did you ever hang out across the street?

20 A Yes, ma'am, a couple of times to play

21 basketball.

22 Q Can you describe the place that was across the

23 street? Whose house was it, do you know?

24 A Roger.

25 Q I will show you State's Exhibit 1K. Do you

1 recognize this picture?

2 A Yes, ma'am.

3 Q What is that?

4 A That's Roger's house.

5 Q This is the house you are talking about where you

6 used to go play basketball and hang out?

7 A Yes, ma'am.

8 Q Lashawn is your cousin. You have known him your

9 whole life?

10 A Yes, ma'am.

11 Q Would you say you-all are pretty close?

12 A Yes, ma'am.

13 Q Did you-all grow up together?

14 A Yes, ma'am.

15 Q How long had you known Joel?

16 A Probably about six, seven months. Not long. Less

17 than a year.

18 Q You met him through Lashawn?

19 A Yes, ma'am.

20 Q How often would you see him during the week?

21 A About three times.

22 Q Where do you see him?

23 A He be over there at Deuce house.

24 Q He was friends with Deuce?

25 A Yes, ma'am.

1 Q Did you know him separate from Deuce?

2 A No, ma'am.

3 Q How often would you be over at Deuce's house?

4 A Probably like every day.

5 Q Did you live there?

6 A No, ma'am.

7 Q How would you describe Joel?

8 A He was a good person. He had a good heart.

9 Q Did he ever give rides anywhere?

10 A Yes, ma'am.

11 Q Where would he take you?

12 A If I had anything with my kids or anything, I would

13 call him. He would come through.

14 Q How would you normally call him?

15 A I ain't never really had his number. We used to

16 talk on Facebook.

17 Q Did he ever charge you to drive you anywhere?

18 A No, ma'am.

19 Q Did he ever expect anything in return?

20 A No, ma'am.

21 Q As far as you know, was anybody arguing with Joel?

22 A No, ma'am.

23 Q Did you ever see anybody arguing with Joel?

24 A No, ma'am.

25 Q How would you describe Joel's attitude?

1 A I would say he had a good one.

2 Q I will take you to September 27, 2017, the date
3 that we are here talking about today.

4 What is the first thing you remember about being on
5 16th Street that day? When did you first get over
6 there, as far as you can remember?

7 A I had not been there at all that day.

8 Q Where had you been?

9 A Back and forth across the street.

10 Q You were over there when it was daylight?

11 A Yes, ma'am.

12 Q You were there when it got dark?

13 a Yes, ma'am.

14 Q Do you know Jakenia Stevens? Do you know Baka?

15 A Yes.

16 Q Did she have all of her children with her?

17 A She had all her kids earlier.

18 Q Do you know Demarcus Foster?

19 A No.

20 Q Do you know Bullet's little brother?

21 A No.

22 Q Do you know somebody who goes by D?

23 A No.

24 Q You said you saw Jakenia over there (Indicating).

25 Who else did you see over there?

1 A I can't remember. There was a lot of people out
2 there.
3 Q Did people start leaving at some point?
4 A No. It was like really the same people.
5 Q As it got dark, did the kids start to leave?
6 A Yes.
7 Q People took the kids home?
8 A Yes, ma'am.
9 Q Did Jakenia take her kids home?
10 A Yes.
11 Q At some point, did Joel come by?
12 A Yes, ma'am.
13 Q When did Joel come by?
14 A When I called him to give me a ride.
15 Q You called him to give you a ride?
16 A Yes, ma'am.
17 Q About what time did you call him?
18 A I can't remember. It was late. Around 10:00 or
19 11:00.
20 Q If I told you that he got shot around 8:30, what
21 time would you say you called him?
22 A It was about 6:00 or 7:00. I just remember it
23 being dark when he pulled up.
24 Q What kind of car does he drive?
25 A A little gray car.

1 Q Where did he pull up?
2 A In front of Deuce house.
3 Q Where did he go when he got out of his car?
4 A Across the street.
5 Q Who was across the street?
6 A All of us.
7 Q I will show you State's Exhibit 1B.
8 Do you recognize this photo?
9 A Yes.
10 Q What is this a picture of?
11 A Us sitting on the porch right there.
12 Q When you said you were sitting on the porch, where
13 were you sitting?
14 A On the steps.
15 Q Who were you talking to?
16 A I was talking to Dario.
17 Q Where was Dario?
18 A He was standing in front of him.
19 THE COURT: You need to speak louder than that.
20 THE WITNESS: I am speaking as loud as I can speak.
21 THE COURT: Talk into the microphone then.
22 THE WITNESS: She just told me not to speak into
23 the microphone.
24 THE COURT: Don't put your mouth on it. Back away
25 from it so we can hear you. Keep up your voice.

1 BY MS. WEISS:

2 Q You said you were talking to Dario?

3 A He was standing in front of me.

4 Q Who else were you talking to?

5 A Chris been out there. Like I say, Deuce and Joel,
6 I was on the side of them. More people out there.

7 Q You said that Deuce was out there?

8 A Yes.

9 Q Where was he?

10 A He was right over there.

11 Q Where was Joel?

12 A Over there (indicating).

13 Q How close were Deuce and Joel standing together?

14 A Probably about arm reach.

15 Q Did you see a car pull in?

16 A No, ma'am.

17 Q Do you remember talking to law enforcement?

18 A No, ma'am.

19 THE COURT: Speak up. You can speak louder than
20 that.

21 BY MS. WEISS:

22 Q You don't remember a car pulling in?

23 A No, ma'am.

24 Q Do you remember anybody getting out of the car?

25 A No, ma'am.

1 Q Do you remember talking to law enforcement at the
2 Lancaster County Detention Center?

3 A Yes. When they came and locked me up.

4 Q They came and locked you up?

5 A Yes, ma'am.

6 Q To talk to you at the detention center?

7 A Yes, ma'am. I had charges. All of a sudden, I got
8 locked up at Deuce house.

9 Q You were talking to them, and you gave them a
10 statement that day?

11 A Yes.

12 Q Do you remember what kind of shirt you were
13 wearing?

14 A I had a RIP t-shirt on.

15 Q What does RIP t-shirt mean?

16 A It says, RIP.

17 Q Who is that for?

18 A Merk.

19 Q Who is Merk?

20 A Well, he is another homeboy that got killed with
21 Bullet.

22 Q How long before this were they killed?

23 A A year.

24 Q In August?

25 A Probably a year before all of this.

1 Q They were killed in the summer?

2 A Yes, ma'am.

3 Q This was in September. It was that same year?

4 A That same time of year, I guess.

5 Q You-all were still remembering them, because you

6 were wearing the shirt?

7 A Yes, ma'am.

8 Q You called McLemore to give you a ride?

9 A Yes, ma'am.

10 Q Did anybody tell you to call McLemore?

11 A No, ma'am.

12 Q Do you remember talking about Demarcus Foster

13 coming up in a white car with an unknown girl?

14 A No, ma'am.

15 Q Do you know who Tweak Truesdale is -- quinterious

16 Truesdale is?

17 A No, ma'am.

18 Q Do you remember saying that the car backed into the

19 parking area?

20 A No, ma'am.

21 MR. GRIER: Your Honor, I will ask the Solicitor to

22 conduct direct examination as opposed to leading,

23 please. She is asking yes or no questions almost

24 exclusively.

25 MS. WEISS: Your Honor, at this time I would ask

1 that this witness be declared a hostile witness.

2 MR. GRIER: I don't know on what basis, Your Honor?

3 THE COURT: What is the basis for or the criteria
4 that he be considered hostile? It was obvious with the
5 last witness.

6 MS. WEISS: This witness has given a statement. I
7 am just going through to see if he remembers the
8 statement that he gave. He is saying he doesn't
9 remember it. So I am going through it to see if I
10 refresh his memory -- if he remembers the statement.

11 THE COURT: All right. I will not declare him
12 hostile at this time, but I will allow you to lead
13 somewhat in order to go through the statement with him.
14 The way you are doing it does not offend the Court in
15 any way at this point in time. I will let you proceed.
16 I will overrule Mr. Grier's objection with regard to the
17 leading questions, as long as you are talking about the
18 statement.

19 MS. WEISS: Thank you, Your Honor.

20 BY MS. WEISS:

21 Q How would you characterize, Joel McLemore?

22 A He was a good guy with a good heart.

23 Q How would you characterize him as far as related to
24 you?

25 A We was just good friends.

1 Q Do you remember when Joel McLemore was killed?

2 A Yes, ma'am.

3 Q At the time he was killed, where were you?

4 A I was outside.

5 Q Who was standing right next to him?

6 A Deuce.

7 Q Were they standing in your line of sight?

8 A Yes, ma'am.

9 Q Were you able to see what was going on between

10 Deuce and --

11 A In front of me.

12 Q At some point, did you hear a gunshot?

13 A Yes, ma'am.

14 Q Where did that gunshot come from?

15 A It just sounded like right on the side of me. I

16 wasn't really paying attention to hear a gunshot. I

17 looked, and I just ran.

18 Q Who was standing where the gunshot came from?

19 A I can't remember.

20 Q Do you remember telling law enforcement that 10 to

21 15 minutes after McLemore got there, that Foster

22 arrived?

23 A No, ma'am.

24 Q Do you remember telling law enforcement that Foster

25 walked past you onto the porch?

1 A No, ma'am.

2 Q Did you see what McLemore was drinking?

3 A No. I know he was drinking something, but I

4 didn't know at the time.

5 Q Did you see anyone shoot Joel McLemore?

6 A No, ma'am.

7 Q Did Lashawn White kill Joel McLemore?

8 A No, ma'am.

9 Q How do you know that?

10 A He was right beside me.

11 Q Did you see anybody leave immediately after the

12 gunshot?

13 A No. I ran in the house.

14 Q Ran in what house?

15 A In Deuce's house.

16 Q Where was Deuce's house?

17 A Right across street.

18 Q Did you say anything when you ran in the house?

19 A No, ma'am.

20 Q Did you go back outside?

21 A No. They came and snatched us up.

22 Q After you ran in the house, did you go back

23 outside?

24 A No, ma'am.

25 Q Who was in the house when you ran in?

1 A His girl.

2 Q What did she do?

3 A She went outside and called the police.

4 Q Did you see anybody drive up just as the shooting

5 happened?

6 A I remember people pulling up.

7 Q Do you know Kendrews Stover?

8 A Yes.

9 Q Did you see him pull up?

10 A Yes, ma'am.

11 Q Was he there before or after the gunshot?

12 A He just pulled up and missed it.

13 Q Did he drive up, or did someone drop him off?

14 A Somebody dropped him off.

15 Q Did you see who dropped him off?

16 A I can't remember.

17 Q Did you see if it was a male or female?

18 A I think it was a female.

19 Q That dropped him off?

20 A Yes.

21 Q Did Joel say anything after he was shot?

22 A No, ma'am.

23 Q Did anybody say anything before or after he was

24 shot that you heard?

25 A No, ma'am.

1 Q Why didn't you go right back out?

2 A It was an all-black neighborhood. A white person
3 outside, so I was just scared.

4 Q What were you-all scared of?

5 A We are all black, and there was a white person
6 outside. Nobody doing too much talking.

7 Q Do you remember talking to me just before you came
8 down here?

9 A Yes, ma'am.

10 Q Do you remember Investigator Grant being in the
11 room when you were talking to us?

12 A Yes, ma'am.

13 Q Do you remember at that time saying that you
14 remembered Kendrews as being dropped off by his cousin?

15 A Yeah. I don't know who was driving. They just
16 pulled up in the midst of it.

17 Q Right. Do you remember saying that he was dropped
18 off by his cousin?

19 A Yes.

20 Q Yawni?

21 A Yeah. He was there.

22 Q He was a witness?

23 A They were together.

24 Q What were they talking about?

25 A They just pulled up, and the Honda backed up in the

1 street and left. Kendrews stayed.

2 Q You said you heard them talking about something?

3 A They weren't talking about nothing.

4 Q Calling the police?

5 A He called the police.

6 Q Did you hear him talking about that somebody needs
7 to call the police?

8 A We was the one who said we need to call the police.

9 Q Do you remember telling Investigator Grant that you
10 knew who Demarcus Foster was?

11 A No.

12 Q Do you remember telling Investigator Grant that
13 Demarcus Foster was behind you when the gunshot went
14 off?

15 A No.

16 MS. WEISS: No further questions for Mr. Peay.

17 Please answer any questions the defense may have.

18 CROSS-EXAMINATION

19 BY MR. GRIER:

20 Q Good afternoon, Mr. Peay. How do you pronounce
21 your name?

22 A Peay.

23 Q Mr. Peay, you spent a lot of time on 16th Street
24 prior to this happening. Do you continue going there?

25 A No. I don't be out there anymore.

1 Q You don't have anybody out there anymore?

2 A I don't go out there period.

3 Q Do you know Roger Harris, Doc?

4 A Yeah.

5 Q Do you go see him? Are you friends with him?

6 A They good people. I just don't go over there

7 anymore.

8 Q You are friends with -- you are cousins with Deuce?

9 A Yes.

10 Q Are you friends with Ladario Jones.

11 A I know of him.

12 Q He goes by Dario.

13 Does he have a nickname?

14 A I don't know.

15 Q How about Kristavius Stevens?

16 A I know him, too.

17 Q How do you know him?

18 A I know him in the neighborhood, yes.

19 Q He spent a lot of time on 16th Street back then,

20 too?

21 A All of them did.

22 Q All of them spent time there.

23 D didn't spend time there, did he?

24 A I don't know.

25 Q Do you recall giving a statement to law

1 enforcement?

2 A Yeah. But that ain't what I said. I told them
3 what I said. They switched my words up.

4 Q You were definitely out there that day?

5 A Yes, sir.

6 Q You were definitely out when the gunshot went off?

7 A Yes, sir.

8 Q It was behind you?

9 A No. I was not looking to see where anybody shot
10 from.

11 Q So you didn't see anyone shoot?

12 A No, sir.

13 Q You don't recall having previously told law
14 enforcement that the gunshot was behind you, because you
15 thought it might have hit you?

16 A No, sir. It could have hit anybody, but I didn't
17 see it.

18 Q Do you recall being presented with this photo on
19 the day that you gave --

20 A No. They arrested me.

21 Q Did you make notes on this?

22 A No.

23 Q You didn't make these notes on this piece of paper?

24 A No. I just put the names on it. That is what they
25 asked.

1 Q You said you saw Deuce out there; correct?

2 A Yeah.

3 Q You saw Deuce out there that day, and you saw Joel

4 out there?

5 A I just be pointing to them.

6 Q So you were sitting on the steps?

7 A Yes.

8 Q Is that Ladario? Ladario was there?

9 A Right in front of me.

10 Q Kris. That is Kris Stevens. Is that who you were

11 talking about?

12 A Uh-huh.

13 Q You got a Kris and a Bree?

14 A It was just --

15 Q Everything that you have, as far as basically what

16 you just pointed out to the prosecutor -- that is

17 accurate, other than you don't understand why they would

18 both be there?

19 A Right.

20 Q Kris Stevens. They are brothers?

21 A Yes.

22 Q Bree is Kris. But he is Kristavius and his brother

23 is Christopher?

24 A I guess.

25 Q Actually, Chris was not out there?

1 A No.

2 Q Bree was there and Chris was not?

3 A No.

4 Q You saw Tweak over there?

5 A Yes.

6 Q Was he standing out there, too?

7 A I don't know.

8 Q You don't show anyone on the porch here?

9 A No.

10 MR. GRIER: Your Honor, may I have this marked for
11 identification?

12 THE COURT: Yes, sir.

13 (Marked for identification.)

14 BY MR. GRIER:

15 Q You-all know Tweak and Chris. It has Peay on
16 here. That is what we just looked at. Those two items
17 are not accurate, but others are accurate. That is what
18 you recall from where you were sitting?

19 A Yes, sir.

20 Q When you were sitting on the porch looking to your
21 right --

22 A I wasn't looking to the right. I was on my phone.

23 Q You have marked this. Deuce would have been to
24 your right?

25 A Yes.

1 Q Joel would have been to your right?

2 A Yes.

3 Q Beyond Deuce?

4 A Yes.

5 Q They were arm's length?

6 A Yes.

7 Q That is what you just testified to?

8 A Yes.

9 Q I will show you another picture. Is that a picture
10 of the crime scene as well?

11 A Yeah. The front of the house.

12 Q There is a note on there. Do you see that it says
13 Demarcus on there?

14 A I didn't write it.

15 Q You didn't write that on there?

16 A No, sir.

17 Q Do you remember being presented this when you were
18 doing the interviews?

19 A No, sir.

20 MR. GRIER: Can I have this marked as Defense
21 Exhibit 2?

22 THE COURT: Yes, sir.

23 (Marked as Exhibit 2 for identification.)

24 BY MR. GRIER:

25 Q Mr. Peay, it says Demarcus on there. There is a

1 star right there?

2 A Yeah.

3 Q It says D right there by that star.

4 A Yeah.

5 Q Mr. Peay, do you know who Jovan is?

6 A No.

7 Q Do you remember telling law enforcement that some

8 dude with long dreads was up on the bench on the porch?

9 A No.

10 Q Do you recall telling law enforcement that when the

11 shot went off, you ran down the path by Doc's house?

12 A No.

13 Q Do you recall telling law enforcement after the

14 shot, D ran off the porch and to the car?

15 A I didn't tell law enforcement none of that. I ran

16 in the house after the gunshot.

17 Q You didn't run down the path by Doc's house?

18 A I ran in the house.

19 Q You don't recall telling law enforcement that the

20 shooter was behind you?

21 A No.

22 Q You don't recall telling law enforcement that you

23 know the shot came from the porch, because the loud

24 echo --

25 A Like I said, someone was shooting a gun. I did not

1 look to see who it was. I told them I heard one
2 gunshot, and I went in the house.

3 Q You are sitting on the steps on the porch. That
4 is on the side steps?

5 A Yes.

6 Q Your back was facing the porch?

7 A Right.

8 Q Do you recall saying that your back was turned to
9 the shooter?

10 A I said it was turned, period. The gunshot went
11 off, and everybody went running. There is nowhere else
12 to go out there.

13 Q I understand, Mr. Peay. We are just going over
14 these statements.

15 When you gave that statement, you were really
16 shook up, because you know your name was the last one?

17 A They said I set them up. I was being harassed and
18 all of that. Of course they are going to make it seem
19 like that. That is not what I seen.

20 Q They were making it seem like you set him up?

21 A Yes.

22 Q Who is Merk?

23 A One of the people they was investigating.

24 Q They told you that if you talk, you would go from
25 an accessory to a witness?

1 A They showed me a gun with my fingerprints on it.

2 They said that is what they needed me for.

3 Q Mr. Peay, you said you ran in the house. Who did
4 you run in the house with?

5 A With myself. I ran into the house by myself.

6 Q You didn't run up the path. You ran in the house
7 by yourself. Nobody was with you. Jovan wasn't with
8 you?

9 A No. I don't know about Jovan.

10 Q Deuce wasn't with you?

11 A No. He came in afterwards, though.

12 Q Did you tell anyone that D shot McLemore?

13 A No.

14 Q You didn't tell Kaneisha Young that D shot
15 McLemore?

16 A I told them that I don't know why she made that lie
17 up.

18 Q Were you, Mr. Peay -- were you carrying a gun that
19 night?

20 A No, sir.

21 Q Did you see any children out there during the day?

22 A They was out there.

23 Q About when did they leave?

24 A About nightfall.

25 Q By nightfall they had left?

1 A Yes.

2 Q Was it dark completely when that gunshot went off
3 or was it dusk?

4 A It was dark.

5 Q The kids were gone by dark, but not that long
6 before dark?

7 A I just know it was dark.

8 MR. GRIER: I am not admitting these into evidence
9 at this time, Your Honor. Do you want me to leave them
10 with the court reporter?

11 THE COURT: If they have been marked, you can leave
12 them with the court reporter.

13 MR. GRIER: Thank you.

14 THE COURT: Ms. Weiss.

15 MS. WEISS: Just briefly.

16 REDIRECT EXAMINATION

17 BY MS. WEISS:

18 Q Mr. Peay, you have been shown Defendant's Exhibits
19 1 and 2?

20 A Yes, ma'am.

21 Q Whose signature is that right there?

22 A Mine.

23 Q Whose signature is that right there?

24 A Mine, too.

25 Q That is in your handwriting?

1 A No.

2 Q You didn't put your signature there?

3 A No.

4 Q But you admit that that is your signature?

5 A Yes.

6 Q Is that how you sign your name?

7 A No.

8 Q How do you sign your name?

9 A I didn't sign it.

10 Q Is your name Quaterious Peay?

11 A Yes.

12 Q Do you remember filling out these forms?

13 A No. Why are you-all asking me rhetorical

14 questions?

15 Q Do you remember filling these out?

16 A No.

17 MS. WEISS: No further questions.

18 THE COURT: Mr. Grier, anything else?

19 MR. GRIER: No. Thank you, Your Honor.

20 THE COURT: You can step down.

21 (Whereupon, the witness exited the witness stand.)

22 MS. WEISS: Your Honor, if you would remind Mr.

23 Peay that he is not released from his subpoena.

24 THE COURT: Mr. Peay, you have to stay around. We

25 are not going to release you from your subpoena yet. You

1 are still under subpoena. Stay out there with the other
2 group.

3 THE COURT: You may call your next witness.

4 MS. WEISS: Your Honor, at this time I would ask
5 The Court's permission to call Special Agent Kristen
6 Grant for the purposes of -- just as it relates to that
7 witness that we just heard.

8 THE COURT: Sure.

9 MS. WEISS: At this time the State calls Special
10 Agent Kristen Grant.

11 KRISTEN GRANT,
12 called as a witness by and on behalf of
13 the State to testify, being first duly
14 sworn was examined and testified as follows:

15 DIRECT EXAMINATION BY MS. WEISS

16 BY MS. WEISS:

17 Q Agent Grant, where are you employed?

18 A South Carolina Law Enforcement Division, commonly
19 referred to as SLED.

20 Q What is your position there?

21 A I am a special agent in the Midlands region.

22 Q What is your role as it pertains to the case we are
23 here about today?

24 A I was assigned as a case agent as part of this
25 investigation.

1 Q What does it mean to be a case agent?

2 A I was assigned as the investigator working the
3 case.

4 Q As a part of your investigation, did you have the
5 opportunity to interview Quaterious Peay?

6 A I did.

7 Q What is his nickname?

8 A Damu.

9 Q During the course of that interview, did you
10 present him with photos of the location of the murder?

11 A I did.

12 Q I will show you what has been marked as State's
13 Exhibits 12 and 13 for identification. Do you recognize
14 these photos?

15 A I do.

16 Q Are these the original photos that you presented to
17 Quaterious Peay?

18 A They are.

19 Q How do you know that?

20 A I am the one who presented them to him. I had him
21 mark them and sign them.

22 Q How do you know that these are the ones from
23 Quaterious Peay?

24 A Because he signed them, and they were marked in
25 their original case docket.

1 Q Whose signatures are just below that of Quaterious
2 Peay?

3 A Mine and Agent Bussard's.

4 Q Are those your signatures directly below
5 Quaterious Peay?

6 A That's correct.

7 Q Is there a date and time on there as well?

8 A There is.

9 Q What is that?

10 A 9-29-17 at 12:03 p.m.

11 MS. WEISS: Your Honor, at this time I would like
12 to enter State's Exhibits 12 and 13 into evidence.

13 MR. GRIER: No objection.

14 THE COURT: State's Exhibits 12 and 13 are admitted
15 into evidence.

16 (Whereupon, State's Exhibits 12 -13 were admitted
17 into evidence.)

18 BY MS. WEISS:

19 Q I want to show you State's 13 first. Show it to
20 the jury. While I am asking you, stay on the
21 microphone.

22 A Yes, ma'am.

23 Q What is that a photo of?

24 A Roger Harris' house.

25 Q At what point during the interview did you show

1 that to Quaterious Peay?

2 A Toward the end of the interview.

3 Q There are markings on there, other than his

4 signature. Can you point out the markings for the

5 jury?

6 A There are three markings. This one says Nasty

7 (indicating). This one says D (indicating.) This one

8 says Dreads (indicating.)

9 Q Whose handwriting is that?

10 A That is Mr. Peay's.

11 Q How do you know that?

12 A Because he did it in my presence.

13 Q Dreads, Nasty, and what is the third one?

14 A D.

15 Q Show the jury where D is marked?

16 A (Indicating.)

17 Q This is State's Exhibit Number 12.

18 Are there markings on that, other than his

19 signature and your signature?

20 A Yes.

21 Q Can you point out to the jury what those markings

22 are?

23 A I can. This one is marked Joel. This one is

24 marked Deuce. That one is marked Damu, Dario, Chris

25 Pete, Bree, Tweak, and this says car.

1 Q The one that says car, is there a star next to it?

2 A There is a star next to it, and an arrow pointing

3 towards 16th street from the driveway.

4 Q Who made those markings?

5 A Mr. Peay.

6 Q How do you know that?

7 A He did it in my presence.

8 Q The arrow, who made that marking?

9 A I am not sure.

10 Q Was it done in Mr. Peay's presence?

11 A Yes, ma'am.

12 Q What is that arrow in reference to?

13 A To where the car was parked.

14 Q You had the opportunity to interview Mr. Peay?

15 A I did.

16 Q How many times did you interview Mr. Peay?

17 A A total of three.

18 Q Did he identify each of the people that you just

19 pointed out on that photo?

20 A He did.

21 Q Did he say whether or not he knew Demarcus

22 Foster?

23 A He did. He referred to him as Bullet's brother.

24 Q Did he describe what he was wearing?

25 A He did.

1 Q What did he say he was wearing?
2 A He stated that Mr. Foster was wearing a RIP
3 t-shirt, all black clothes, pants, and a Clemson hat.
4 Q Did he say when he saw a car?
5 A He did.
6 Q What did he say about that car?
7 A He stated that Demarcus Foster came up in a white
8 car with an unknown girl driving.
9 Q Where did that car park?
10 A In Mr. Roger Harris' yard.
11 Q Did it pull in or back in?
12 A It backed in.
13 Q That is according to Mr. Peay?
14 A That's correct.
15 Q Who got out of that car?
16 A Mr. Foster and Quinterious Truesdale.
17 Q Did he say where Mr. Foster went once he got out
18 of the vehicle?
19 A Forster walked up to the porch by Mr. Peay.
20 Q Did he say where the gunshot came from?
21 A From on the porch behind him.
22 Q Did you have the opportunity to talk to Mr. Peay
23 before he testified today?
24 A I did.
25 Q Did he indicate the same statements that were on

1 that report?

2 A Yes.

3 MS. WEISS: Thank you. I have no further
4 questions, Your Honor.

5 THE COURT: Mr. Grier.

6 MR. GRIER: Thank you, Your Honor.

7 * * *

8 CROSS-EXAMINATION

9 BY MR. GRIER:

10 Q Agent Grant, Mr. Peay said several times that the
11 shot came off of the porch; correct?

12 A Yes.

13 Q Is that consistent with the other evidence in this
14 case?

15 A Other statements?

16 Q Other evidence that you are aware of, in your
17 professional opinion?

18 A We don't have any evidence, as far as that gun.

19 Q Are you familiar with the autopsy? Has it been
20 presented to you?

21 A Yes.

22 Q Is it consistent with the autopsy, in your opinion,
23 from your law enforcement experience?

24 MS. WEISS: Objection, Your Honor. Beyond the
25 scope of her knowledge.

1 THE COURT: I will sustain objection. She is not
2 capable of answering that question.

3 BY MR. GRIER:

4 Q Mr. Peay said he ran up the path after the shot;
5 correct?

6 A Correct. Yes.

7 Q He didn't say, like he testified today, that he ran
8 into the house?

9 A He initially ran in the path and then turned around
10 and came back around to Mr. White at Kaneisha's house.

11 Q Do you think that he said that in his statement?

12 A That may have been one of the other people who gave
13 that statement.

14 Yes, sir, he does. He said he ran the path. They
15 made it to the path. Then he stopped, turned around,
16 and said, "He just shot somebody," and walked back
17 across to Lashawn White's house.

18 Q He said who shot somebody?

19 A He said, "He."

20 Q Throughout his statement, he doesn't mention any
21 other gun, other than what he heard behind him coming
22 off the porch?

23 A That's correct.

24 MR. GRIER: Thank you. That's all.

25 THE COURT: Anything else, Ms. Weiss?

1 REDIRECT EXAMINATION

2 BY MS. WEISS:

3 Q Agent Grant, when you say "he" in quotations, can
4 you explain what that means?

5 A During the interview with Mr. Peay, as he had
6 given that description that they made it to the path and
7 stopped, he started saying, "He just shot somebody."
8 Then he stopped talking.

9 MR. GRIER: She is asking something inconsistent
10 with the testimony.

11 BY MS. WEISS:

12 Q Do you know what "he" he was talking about?

13 A I don't. No, ma'am. He just said "he" and
14 stopped talking.

15 MS. WEISS: No further questions.

16 THE COURT: Anything else, Mr. Grier?

17 MR. GRIER: No. Thank you, Your Honor.

18 THE COURT: You may step down. Thank you, ma'am.

19 (Whereupon, the witness exited the witness stand.)

20 MS. WEISS: The State calls Jakenia Stevens.

21 JAKENIA STEVENS

22 Called as a witness by and on behalf of

23 the State to testify, being first duly

24 sworn was examined and testified as follows:

25 THE COURT: Ms. Stevens, please answer the question

1 with a "yes" or "no" response and not "uh-huh" and
2 "huh-uh" or nodding or shaking your head.

3 THE WITNESS: Yes, sir.

4 DIRECT EXAMINATION BY MS. WEISS

5 BY MS. WEISS:

6 Q Good afternoon, Ms. Stevens.

7 A Good afternoon.

8 Q Your name is Jakenia Stevens?

9 A Yes, ma'am.

10 Q What do people call you?

11 A Baka.

12 Q How is that spelled?

13 A B-A-K-A.

14 Q How long have you been called Baka?

15 A All my life.

16 Q Jakenia, you have no pending charges now?

17 A No, ma'am.

18 Q You have had a couple minor arrests?

19 A Yes, ma'am.

20 Q For shoplifting and trespassing?

21 A Yes, ma'am.

22 Q But nothing pending now?

23 A Now.

24 Q Do you have any children?

25 A Yes, ma'am.

1 Q How many?

2 A I have three daughters.

3 Q Is one of their fathers deceased?

4 A Yes, ma'am.

5 Q Who is that?

6 A Markevis Foster (phonetic).

7 Q Who is Markevis Foster?

8 A My child's father.

9 Q Markevis Foster?

10 A Yes, ma'am.

11 Q Did he have a nickname that he went by?

12 A Yes, ma'am.

13 Q What was that?

14 A Bullet.

15 Q When was he killed?

16 A June 29, 2017.

17 Q Prior to his death, were you close to his family?

18 A His mom.

19 Q Did you know his brother?

20 A When he got out of prison, yes, ma'am.

21 Q After Bullet was shot, did his brother come to

22 visit MarKhyla?

23 A Yes, ma'am.

24 Q How often would he see MarKhyla?

25 A Two or three times a week.

1 Q What would he do when he would see MarKhyla?

2 A He would always give her a couple of dollars, like

3 \$3 or \$4 every time he seen her. Took her outside and

4 talked to her.

5 Q He got to be at least fairly close to his niece?

6 A Yes, ma'am.

7 Q What is the name of Bullet's brother -- Markevis'

8 brother.

9 A Markevis.

10 Q Demarcus is his brother.

11 A Yes.

12 Q Demarcus Foster?

13 A Yes, ma'am.

14 Q Do you see him in the courtroom today?

15 A Yes, ma'am.

16 Q Where is he?

17 A Right there with the colored shirt (Indicating).

18 MS. WEISS: Let the record reflect that the witness

19 has pointed out the defendant.

20 BY MS. WEISS:

21 Q Jakenia, did you grow up in Lancaster?

22 A Yes, ma'am.

23 Q Where in Lancaster did you grow up?

24 A The backside of Brooklyn Avenue.

25 Q What street was that on?

1 A Third Street.

2 Q Where did you go to school?

3 A Lancaster High School.

4 Q How far did you go at Lancaster?

5 A Eleventh grade.

6 Q Did you go to work after?

7 A Not soon after that.

8 Q Do you currently work?

9 A Yes, ma'am.

10 Q Where do you work?

11 A At McDonald's here in Lancaster.

12 Q How long have you been working there?

13 A About four-and-a-half months.

14 Q I want to take you back to September 27, 2017.

15 Do you remember that day?

16 A Yes, ma'am.

17 Q Did you work that day?

18 A Yes, ma'am, I did.

19 Q Where were you working then?

20 A Wendy's.

21 Q Do you know about what time you got off that day?

22 A 5:00.

23 Q When you got off, what was your plan?

24 A To take my kids to the field beside my brother's

25 house to play with my brother's kids.

1 Q When you say your brother, who is your brother?
2 A Kristavius.
3 Q What is his nickname?
4 A Bree.
5 Q Where did your brother live?
6 A On 16th Street.
7 Q Who did he live with?
8 A His girlfriend.
9 Q What was her name?
10 A Jalissa Stover.
11 Q Her father lived next door?
12 A Yes, ma'am.
13 Q Who is that?
14 A Roger Harris.
15 Q There was a lot in between those two houses? A
16 space?
17 A Yes, ma'am.
18 Q The kids would go out there and play?
19 A Yes, ma'am. He had a tire tied to a tree, so they
20 swung in the tree.
21 Q It is not an unusual thing for you to take your
22 daughter over there?
23 A I took all my kids. It's just something we did.
24 Q When you got off work, you took all your kids over
25 there?

1 A Yes, ma'am.

2 Q How did you get over there?

3 A My cousin, Lexis.

4 Q Lexis Grier?

5 A Yes, ma'am.

6 Q Does she have kids?

7 A No, ma'am.

8 Q Who else went over there with you?

9 A My kids, my sister. She picked up two other

10 friends. A friend-girl by the name of Tasha.

11 My little cousin walked from 12th Street to 16th

12 Street.

13 Q Who is that?

14 A Her name is Shay-shay.

15 Q What were you-all doing?

16 A Just out there mingling around, talking?

17 Q About what time was it when you finally got over

18 there with everybody?

19 A About 6:30.

20 Q Who did you see when you got out there?

21 A My brother, kids, Mr. Roger, a couple more guys in

22 the backyard, Deuce, Damu, my boyfriend, my sister was

23 out there.

24 Q Who is your boyfriend? Is that is Ladario?

25 A Yes, ma'am.

1 Q You said you knew Deuce. Do you know his real
2 name?
3 A Lashawn White.
4 Q Damu, who is that?
5 A Damu Peay.
6 Q Do you know somebody by the name of Joel McLemore?
7 A No.
8 Q Do you know somebody named Joel?
9 A I have seen him, but I don't know him.
10 Q How would you describe Joel?
11 A Just hung with Deuce in the neighborhood to fit in
12 with the other people.
13 Q So he fit in with everybody around there?
14 A Yes, ma'am.
15 Q Was he there when you got there?
16 A No. He wasn't there when I was there.
17 Q But who was he friends with?
18 A Deuce.
19 Q And you had seen him there before?
20 A I done seen him down that road, yes, ma'am.
21 Q When you were there, was anybody fighting?
22 A No, ma'am.
23 Q Had you planned to meet up with Demarcus that day?
24 A No, ma'am.
25 Q Was there anything going on out there that you

1 didn't think your kids should be around?

2 A No, ma'am.

3 Q At the time you were there, what was happening?

4 A When I got there, Quinterious was already there.
5 He asked me for my phone. He called Demarcus. He
6 pulled up. When he pulled up into the road, he had a
7 12-pack of beer. I asked if I could have one. He gave
8 me one. I told him I didn't like it. I was going to
9 throw it out. I didn't throw it out. He drunk the
10 beer. They pulled in on a dirt road.

11 His girlfriend -- she got out. She talked to me
12 for a little bit. She gave me a Mike's Hard Lemonade.
13 She was out there, whatever. He grabbed my daughter.
14 He talked to her by a tree. He was asking her what her
15 favorite color, whatever, you know, being Uncle D.

16 He asked me to take her home. I said, "I am not
17 going yet." It wasn't getting dark. I got home --

18 Q I am going to stop you right there -- just a little
19 bit.

20 You said when you got out there, you saw
21 Quinterious.

22 A Uh-huh.

23 Q What other names does he go by?

24 A Quinn.

25 Q Anything else?

1 A Tweak.

2 Q He asked to use your phone?

3 A Yeah. He was already there.

4 Q Did he have his own phone?

5 A No, he didn't.

6 Q Why did he want to use your phone?

7 A He called my baby uncle.

8 Q Did you know that that is what he was going to do?

9 A He asked me could he call D.

10 Q Did you think anything of it?

11 A No, ma'am. It's his niece out there. He had

12 respect for his niece. Like I said, he love my

13 daughter. She was out there. I was thinking that he

14 called him to have him come chill with us, you know what

15 I am saying? So come out here and chill with everybody

16 else.

17 Q So Quinn was out there talking to her?

18 A No, I was.

19 Q I mean, before he came out there?

20 A No. Quinn was on Mr. Roger's porch. He came down

21 and used the phone on the steps.

22 Q I will show you what has been marked as State's

23 Exhibit 5 for identification.

24 Do you recognize that picture?

25 A Uh-huh.

1 Q Who took that picture?

2 What's that a picture of?

3 A My daughter and her uncle.

4 MS. WEISS: Your Honor, at this time I would like
5 to introduce State's Exhibit 5 into evidence.

6 THE COURT: State's Exhibit 5 is admitted into
7 evidence.

8 (The aforementioned item was marked as
9 State's Exhibit 5 for identification and was
10 admitted into evidence.)

11 BY MS. WEISS:

12 Q So you took this picture.

13 Do you know about what time it was when you took
14 that picture?

15 A Not right off.

16 Q Was this taken on that day?

17 A The very exact same day.

18 Q Where is that tree located?

19 A In my brother's yard.

20 Q From the direction you were standing, where were
21 you standing when you took that picture?

22 A Right there.

23 Q Over here?

24 A On this.

25 Q That is where the white car was?

1 A Yes.

2 Q Who was driving the car?

3 A Maryam.

4 Q Do you know her last name?

5 A Taylor.

6 Q How do you know her?

7 A She is my cousin.

8 Q How long have you known her?

9 A Years now.

10 Q Are you close?

11 A No, ma'am.

12 Q What is Demarcus wearing in that picture?

13 A Khaki pants, Nike shoes, and a t-shirt.

14 Q Is he wearing a hat?

15 A Yes, ma'am. A toboggan.

16 Q How long did he talk to your daughter?

17 A Ten minutes at the most.

18 Q What kind of mood was he in?

19 A A good mood. He was drinking. He was in a good

20 mood. He was drinking his beer. I was drinking mine.

21 He was just out there at the time they all got there.

22 Q You said that he handed you a beer, and you didn't

23 like the taste of it. Do you know what kind of beer it

24 was?

25 A I don't know. It started with an L.

1 Q Bottle or a can?

2 A Glass bottle.

3 Q If I showed you a picture of it, would you

4 recognize it?

5 A Yes, ma'am.

6 Q This is State's Exhibit 10B. Do you recognize

7 anything in this picture?

8 A The beer bottle.

9 Q Is that the same type of beer bottle that he had?

10 A Yes, ma'am.

11 Q Do you recognize the cigarettes?

12 A No.

13 Q Was anyone else out there drinking that type of

14 beer?

15 A No. He brought that beer when he came.

16 Q How many did he drink?

17 A He had a 12-pack.

18 Q What was Maryam drinking?

19 A Mike's Hard Lemonade.

20 Q You shared one with her?

21 A She gave me one. She had two. She gave me one,

22 and she drunk one.

23 Q You said at some point Demarcus said that you-all

24 should go home?

25 A Yes, ma'am. He asked me to take his niece home. I

1 said, "No. We are still out here. It was daylight. It
2 was getting dark a little bit, too. She was still
3 playing, and not that long after, I took her home.

4 Q Do you have any idea why he was telling you to take
5 her home?

6 A No, ma'am.

7 Q Was that unusual?

8 A No. He care about his niece. You know what I am
9 saying? I just thought he was being a good man. He
10 really care about my baby. That is what I am thinking
11 about.

12 THE COURT REPORTER: Ma'am, you are talking way too
13 fast. Please repeat your answer.

14 THE COURT: Please keep your voice up, speak
15 clearly, and speak into the microphone so I can hear you
16 and understand you and everyone can hear you and
17 understand you.

18 BY MS. WEISS:

19 Q Slow down just a little bit for our court
20 reporter.

21 You said a little bit later you decided to take her
22 home?

23 A Yes, ma'am.

24 Q Who left first? Did you leave first, or did
25 Demarcus leave?

1 A He left before I left.

2 Q Who did he leave with?

3 A His girlfriend.

4 Q His girlfriend, Maryam?

5 A Yes, ma'am.

6 Q Was anybody else in the car?

7 A Tweak may have got involved in it. I know him and

8 his girlfriend -- they leave. So he left.

9 Q So he was gone before you were?

10 A Yes, ma'am, he was.

11 Q You decided it was time to take the kids home?

12 A Yes, ma'am.

13 Q Who all left?

14 A Me, my kids, my sister, her kids, and two other

15 girls that we picked up. Lexis. Mostly everybody left

16 but the boys.

17 Q Did your boyfriend stay out there?

18 A Yes, ma'am.

19 Q How far did you go? Where did you go?

20 A I live behind the Shrimp Boat on Baker Street.

21 Q How far away from 16th Street is Baker Street?

22 A Not even five minutes.

23 Q Did you walk, or were you driven there?

24 A My cousin, Lexis.

25 Q What did you do when you got home?

1 A I was home. I was about to put my kids halfway in
2 the tub, and then the phone rang.

3 Q When the phone rang, who was on the other end?

4 A My boyfriend.

5 Q That is Dario?

6 A Yes, ma'am.

7 Q What did his voice sound like, without saying what
8 he said. What did his voice sound like?

9 A He was scared.

10 Q You said -- you had been gone how long?

11 A I wasn't even home 10 minutes.

12 MR. GRIER: Your Honor, that is hearsay.

13 THE COURT: Yes. That would be hearsay. Don't
14 answer that question. I will sustain the objection.

15 MS. WEISS: Your Honor, I would like to use the
16 exception of excited utterance. She answered the phone,
17 and he sounded very scared and upset.

18 THE COURT: Any response, Mr. Grier?

19 MR. GRIER: I would like to take it up outside the
20 presence of the jury, if the Court will allow.

21 THE COURT: Okay.

22 Ladies and gentlemen, I am going to ask that you
23 retire to the jury room so we can take up this matter of
24 law. Do not discuss the case.

25 (Whereupon, the jury exited the courtroom.)

1 THE COURT: Yes, ma'am.

2 MS. WEISS: Thank you, Your Honor. If I may
3 inquire just a little bit further.

4 THE COURT: Yes, ma'am.

5 VOIR DIRE EXAMINATION BY MS. WEISS

6 BY MS. WEISS:

7 Q So you received a phone call, and you recognized
8 the voice?

9 A Yes, ma'am.

10 Q It was the voice of your boyfriend Dario?

11 A Yes, ma'am.

12 Q How did his voice sound?

13 A Scared.

14 Q Had you heard his voice sound that way before?

15 A No, ma'am.

16 Q What did he say?

17 A Your baby uncle just shot this white boy, that is
18 how he said.

19 MR. GRIER: I didn't understand that. She was
20 speaking so fast.

21 THE COURT: Slow down just a little bit. You do
22 speak awfully fast.

23 THE WITNESS: When he called the phone, he was
24 like, "Your baby uncle just shot this white boy in the
25 head."

1 I was, "What?"

2 I just hung the phone up and went back to 16th
3 Street.

4 BY MS. WEISS:

5 Q When you got back to 16th Street, what did you find
6 when you got there?

7 A Joel laying on the side of the road, on the curb by
8 Mr. Roger house bleeding. Basically, he was looking for
9 help.

10 Q Who was out there with Joel?

11 A Bay was standing on the porch, on her porch. Mr.
12 Roger, he was kind of like pushing out of the yard. The
13 police ain't even got there yet, and the ambulance was
14 just pulling in, and my cousin Lexis.

15 Q She is the one who drove you there?

16 A Yes, ma'am.

17 MS. WEISS: Your Honor, I would submit that this
18 was, obviously, a sudden event, upsetting event, that
19 had just happened in the time that Ms. Stevens was able
20 to go from her home back to the location.

21 Law enforcement still had not gotten there.
22 Ambulance had maybe just pulled up. Everybody had
23 scattered. In order for her to get the phone call,
24 leave her house, and get over there that quickly, that
25 would be consistent with him having been there at the

1 time of the shooting.

2 He said that there was a shooting, and she went
3 right back out there. So I would submit that it's an
4 excited utterance.

5 THE COURT: Mr. Grier?

6 MR. GRIER: Your Honor, may I inquire of the
7 witness?

8 THE COURT: Yes, sir.

9 VOIR DIRE EXAMINATION BY MR. GRIER

10 BY MR. GRIER:

11 Q Ms. Stevens, do you recall telling law enforcement
12 that D left before you did?

13 A I do.

14 Q D left before you did. Do you recall telling them
15 you got a private call?

16 A I didn't get a private call.

17 Q You didn't tell them that you got a private call?

18 A I had a phone. I didn't get a private call,
19 period.

20 Q So the only call you had was from Ladario?

21 A From my boyfriend. Yeah.

22 Q How long do you think that was after you got home?

23 A Not even 10 minutes.

24 Q How long did it take you to get home from Roger's
25 house?

1 A Not even five minutes. I live right on Baker
2 Street.

3 Q So within 15 minutes, you get a call?

4 A I don't even give it 15 minutes. I had just gotten
5 my kids and took their pants off to get ready to put
6 them in the tub before he called.

7 Q So within 10 minutes --

8 A Yeah.

9 Q -- of leaving, you get the call from Ladario?

10 A Yes.

11 Q But Demarcus had left before you did?

12 A You are right.

13 Q You don't know when he came back?

14 A I wasn't there when he came back. I wasn't there.

15 MR. GRIER: Thank you.

16 THE WITNESS: You're welcome.

17 THE COURT: Anything else, Ms. Weiss?

18 MS. WEISS: No, Your Honor.

19 THE COURT: All right. Based upon this testimony,
20 I am going to find that the statement made to her by Mr.
21 Jones was made or relates to the shooting, which is a
22 startling event.

23 I find that he made the statement while he was
24 under stress and excitement the whole time, and the
25 excitement was caused by the startling event, which was

1 the shooting.

2 I will now overrule the objection as far as hearsay
3 and find this is an exception to the hearsay rule, it is
4 admissible.

5 MS. WEISS: Thank you, Your Honor.

6 THE COURT: While the jury is out, let's take a
7 short break and resume.

8 MR. GRIER: I would like to take one.

9 THE COURT: While they are out let's take a short,
10 five-minute break.

11 (Whereupon, a recess was held.)

12 THE COURT: Is the State ready to resume?

13 MS. WEISS: Yes, Your Honor.

14 THE COURT: Is the defendant ready, Mr. Grier?

15 MR. GRIER: Yes, Your Honor.

16 THE COURT: Let's bring in the jury.

17 (Whereupon, the jury entered the courtroom.)

18 THE COURT: Ms. Weiss.

19 MS. WEISS: Thank you, Your Honor.

20 (Whereupon, the following proceedings were
21 held in open court. The defendant was
22 present with his attorney, along with
23 counsels for the State.)

24 DIRECT EXAMINATION BY MS. WEISS CONTINUES

25 BY MS. WEISS:

1 Q Ms. Stevens, you said you had just gotten home and
2 got the kids in the tub, and you got a phone call.
3 Who was on the other end of the phone call?
4 A Dario.
5 Q What did his voice sound like?
6 A Scared.
7 Q Had you ever heard his voice like that before?
8 A No, ma'am.
9 Q What did he say?
10 A "Your baby uncle just shot this white boy in the
11 head."
12 Q What did you do?
13 A Put my shoes on and left the home.
14 Q Where did you go?
15 A Back to 16th Street.
16 Q Who took you there?
17 A My cousin Lexis.
18 Q What did you find when you got there?
19 A Joel laying on the side of the road.
20 Q I will show you what is marked as State's Exhibit
21 4A.
22 Do you recognize this picture?
23 A Yes, ma'am.
24 Q Is that what you saw when you were out there?
25 A Yes, ma'am. He was out in the road.

1 Q I will show you State's Exhibit 4D.
2 Do you recognize this photo?
3 A Yes, ma'am.
4 Q Do you see yourself in that photo?
5 A Yes, ma'am.
6 Q Where are you? Who are you standing next to?
7 A My cousin Lexis.
8 Q Do you have several ways of getting in touch with
9 people on your phone?
10 A Yes, ma'am.
11 Q Phone calls?
12 A Yes, ma'am.
13 Q Text?
14 A Yes, ma'am.
15 Q And messenger?
16 A Yes, ma'am.
17 Q What is that?
18 A Facebook app, messenger.
19 Q You got out to the scene.
20 What did you do when you first got out there, when
21 you were first headed over there?
22 A I called Demarcus momma.
23 Q What was your purpose of calling his mom?
24 A To let her know that her son shot Joel on 16th
25 Street.

1 Q Did you talk to his mom?

2 A When I called her and told her, she started crying

3 on the phone and hung up.

4 Q Did you have the opportunity call back?

5 A Yes, ma'am. I tried to find her a ride. I called

6 Portia, and she pulled up on the scene with her two

7 kids.

8 Q Who is Portia?

9 A That is Demarcus cousin.

10 Q She came up to the scene?

11 A Yes, ma'am. She said she was leaving Dollar

12 General, and she was right on the way. She pulled right

13 up to the scene. She parked her car at the top of 17th

14 Street, and she came on the path beside Deuce's house.

15 Q Did she have her mom with her?

16 A No, ma'am.

17 Q Did you call anyone else?

18 A I called Quida.

19 Q Who is Quida?

20 A Demarcus' cousin.

21 Q Did she go and get --

22 A No, ma'am.

23 Q Did you have the opportunity to call his mom back?

24 A Yes, ma'am. The last time I talked on the phone to

25 her, it was like four minutes and nine seconds. When I

1 called the last time --

2 Q Stop you there. So you were out on the scene?

3 A Yes.

4 Q How long did you stay out there?

5 A Quite some time.

6 Q Did you know Joel?

7 A No, ma'am.

8 Q But you had seen him?

9 A Yes, ma'am.

10 Q Did you recognize him when you got there?

11 A Yes, ma'am.

12 Q When Dario said "The white boy," did you know who

13 he was talking about?

14 A Yes, ma'am. He was the only white boy who hung out

15 there.

16 Q Did you know of anybody to have any problems with

17 him?

18 A No, ma'am.

19 Q And did you know if Demarcus had any problems with

20 him?

21 A No, ma'am.

22 Q Did you have the opportunity to talk to law

23 enforcement?

24 A Yes, ma'am.

25 Q When you did, did they ask you for your phone?

1 A Yes, ma'am. The day after, I think.

2 Q Did you give it to them?

3 A Yes, ma'am.

4 Q Have you had the opportunity to look at the phone

5 calls on that phone?

6 A Some of them, but the phone wouldn't come back on.

7 Q I will show you what is marked as State's Exhibit

8 14 for identification.

9 Do you recognize these calls?

10 A Yes, ma'am.

11 Q Are they titled like you title calls in your phone?

12 A Yes, ma'am.

13 Q You said you received a call before you -- what did

14 you call Demarcus' mom?

15 A Angie.

16 Q So what time was the call that you received right

17 before you called Angie?

18 A 8:33.

19 Q What time did you call Angie the first time?

20 A 8:35.

21 Q What time did you call Portia.

22 A 8:37.

23 Q Those are the names that are in the phone?

24 A Yes, ma'am.

25 Q Did you have the opportunity to call Demarcus' mom

1 back again later that night?

2 A Yes, ma'am.

3 Q What was your purpose of calling her later that
4 night?

5 A To see if she had talked to Demarcus.

6 Q Did she answer the first time?

7 MR. GRIER: There is no feasible outcome of this
8 questioning, other than to elicit hearsay.

9 THE COURT: The question is, did she answer the
10 phone. I don't have a problem with that. I don't think
11 you can go beyond that. We will have to wait and see.

12 MS. WEISS: Yes, Your Honor. I am aware of what he
13 is saying, but I am not planning to go that way.

14 BY MS. WEISS:

15 Q Did she answer the phone the first time?

16 A Yes, ma'am.

17 Q Did you talk to her?

18 A Yes, ma'am.

19 Q After you left. Not this first time. Later when
20 you called her, when you called her, did she answer the
21 phone?

22 A Yes, ma'am.

23 Q Did you talk to her that time?

24 A For two seconds, then Demarcus got on the phone.

25 Q What did Demarcus say?

1 A When he got on the phone, it's like "Hello."

2 I said, "They said you just shot this white boy."

3 He was like, "No, I didn't. Tell them I was at the
4 cemetery."

5 When he said that -- he was done and the phone
6 hung up. He was gone then. That was the end of the
7 conversation.

8 Q So you asked him if he shot that white boy?

9 A Yeah. I said, "They said you just killed the white
10 boy on 16th Street."

11 He said, "Tell them people -- the police out
12 there." He said, "Say that I am at Big Richard's
13 house."

14 Then he said the cemetery, and then he said his
15 momma house.

16 After that, that ended the call.

17 Q Did you say anything back to him?

18 A No. He ended the conversation and hung up.

19 Q Did you send him the pictures with his niece?

20 A Yes, ma'am.

21 Q Did you see Demarcus again after that night?

22 A No, ma'am.

23 Q Before Demarcus left, did he make any statements
24 to you about his beer?

25 A Yeah. He said, "If I drink six of these beers, I

1 am going to turn up."

2 Then his girlfriend said, "No, babe. You said you
3 were only going to drink five of them."

4 MS. WEISS: No further questions, Your Honor.

5 Please answer any questions that the defense may
6 have.

7 THE COURT: Mr. Grier.

8 CROSS-EXAMINATION

9 BY MR. GRIER:

10 Q Ms. Stevens, you let Quinterious borrow your phone
11 during the day; correct?

12 A Yes.

13 Q He used your phone, but it would have shown up as
14 being your phone; correct?

15 A You are right.

16 Q So come to 16th Street, that means Demarcus knew
17 you were at 16th Street or assumed you were, because
18 your phone -- was coming from a message that said you
19 were on 16th Street; correct?

20 A Yes, sir.

21 Q Did you know he was going to be visiting with your
22 daughter that day?

23 A No, sir.

24 Q No arrangements had been made?

25 A No, he just pulled up on me and see her. No

1 problem.

2 Q Just to make sure I got the connections correct.

3 Ladario Jones -- you have a child with Ladario; is that

4 correct?

5 A Yes.

6 Q You had a child with Markevis Foster?

7 A Yes, ma'am.

8 Q His nickname was Bullet?

9 A Yes, sir.

10 Q He was a baseball player, wasn't he?

11 A Yes, sir.

12 Q He was known as Bullet because of his speed?

13 A Yes, sir.

14 Q Was he still playing baseball when he was killed,

15 or do you know?

16 A No, sir.

17 Q Everybody bragged about what a good ball player he

18 was and how fast he was, didn't they?

19 A Yes, sir.

20 Q Your daughter really loved him?

21 A Yes, sir.

22 Q Demarcus continued trying to cultivate that love?

23 A Yes, sir.

24 Q What are your connections to 16th Street?

25 A My brother.

1 Q Who is your brother?
2 A Kristavius.
3 Q He stayed with Camellia at the time of the
4 shooting?
5 A Yes.
6 Q So he was living there at the time?
7 A Yes.
8 Q Kristavius goes with Camilia, who is Roger Harris'
9 daughter?
10 A Yes, sir.
11 Q Roger Harris is not with Kris' mother, though;
12 correct?
13 A Roger is Camilia's mom. My brother is Chris.
14 Q After you left, you say you got a call within 10
15 minutes from Ladario?
16 A Yes, sir.
17 Q But you said that Demarcus had left before you
18 left?
19 A Yes.
20 Q Do you know how long before you left that he left?
21 A No. Not very long after I left, he was leaving
22 out. I told him that he only have one headlight. He
23 said, "Thank you for that."
24 He left out on 16th Street.
25 Q Joel wasn't there when you left?

1 A No, sir.

2 Q You don't know anything about when Joel got there?

3 A No, sir.

4 Q You don't know anything about when Demarcus got

5 back there?

6 A No, sir.

7 Q Deuce is just a friend of Ladario's.

8 A He was just hanging out with everybody out

9 there.

10 Q D didn't hang out there?

11 A Right.

12 Q The reason he initially came was because he was

13 getting a message to you or --

14 A Tweak always be on 16th Street.

15 Q Normally -- you said he visited your daughter?

16 A Yes.

17 Q Her name?

18 A MarKhyla.

19 Q He visits her two or three times a week?

20 A Yes, sir.

21 Q Do you know what he did after he visited her?

22 A No, sir.

23 Q Did he ever talk about going to visit Bullet's

24 grave site after visiting her?

25 A He would go out there from time to time, but we

1 didn't discuss that.

2 Q Everybody is pretty tight on 16th Street?

3 A Yes, sir.

4 Q You did not call D and tell him to come over to

5 16th Street?

6 A No, sir.

7 Q Normally, Demarcus would visit with your daughter

8 over by the Shrimp Boat? Is that on Baker Street?

9 A Yes, sir.

10 Q Does your name have anything to do with --

11 A My name is Baka.

12 Q So it has nothing to do with you living on Baker

13 Street?

14 A I have been called that as I was growing up.

15 Q So the answer is no?

16 A Yeah.

17 Q Did you continue to communicate with Demarcus on

18 Facebook?

19 A I sent him the pictures of him and my daughter. I

20 sent them twice.

21 Q So you sent the pictures of him and your daughter;

22 right?

23 A I sent pictures twice, yeah.

24 Q Did you send that picture as well?

25 A Yes.

1 Q It has Uncle D with a heart by it?

2 A Uh-huh.

3 Q What time was that sent?

4 A It was sent at 12:01 a.m. Maybe that is when he

5 received it on his laptop. The picture was sent out

6 before then from my phone.

7 Q Do you know when they were sent out, approximately?

8 A The 27th, the same day.

9 Q That was after you found out that he was being

10 accused of this?

11 A Yes.

12 Q Did you communicate with him further with a video

13 chat?

14 A I don't recall that.

15 Q Do you recall if he responded, "Got them. Almost

16 made me uncle for president?"

17 A Yes, sir.

18 Q There was some kind of video chat. You responded,

19 "Already, she loves you too"?

20 A Yes, sir. I don't recall the last messages he is

21 showing me.

22 Q Last message said, "We are going to the park

23 tomorrow. I will call you so you can join?"

24 A I don't recall those messages.

25 Q Is that on the same page as the one that was sent

1 with the picture of him that was posted?

2 A I don't recall saying that. This was sent on the

3 very exact same day, the 27th.

4 Q What is the last date and time on this message

5 exchange?

6 A 9/28, 12:05 a.m.

7 Q So on 12:05 a.m. it posts?

8 A Yes.

9 Q Were you aware of what time the 911 call came in?

10 A No, sir.

11 Q Within 10 minutes of you getting home -- are you

12 leaving or getting home?

13 You had gotten a call from Ladario.

14 A Exactly.

15 Q From you getting home or from the time you left?

16 A Getting home.

17 Q How long did it take you to get home?

18 A About five minutes at the most.

19 Q You hadn't seen Joel at all that date?

20 A That's right.

21 Q So when Demarcus was telling you, it's time to

22 take your daughter home, he was drinking?

23 A Yes, sir.

24 Q Everybody was drinking?

25 A Yes, sir.

1 Q Everybody is getting a little bit -- maybe not time
2 for kids to be around everybody drinking like this?

3 A It was kind of getting a little bit dark outside
4 anyway.

5 Q Do you recall giving your statement to law
6 enforcement about all of this?

7 A Yes, sir.

8 Q Do you recall saying you had received a phone call
9 approximately 20 minutes later from a male caller using
10 a private number?

11 A The number was never private.

12 Q Do you deny telling --

13 A No. It wasn't a private number. It was Ladario
14 calling. It wasn't no private number.

15 Q Did you tell them it was Ladario calling?

16 A I told them it was Ladario calling.

17 Q You told law enforcement that -- when you gave that
18 interview, that Ladario had called you and told you
19 that?

20 A Yes.

21 Q He gave his name?

22 A Yes.

23 MR. GRIER: That's all, Your Honor.

24 THE COURT: Thank you.

25 Ms. Weiss.

1 REDIRECT EXAMINATION

2 BY MS. WEISS:

3 Q Ms. Stevens, the first time that you talked to law
4 enforcement, you told them that Quinterious used your
5 phone to call Demarcus.

6 Do you remember the phone number that was on your
7 phone at the time?

8 A No.

9 Q The phone number for Demarcus? Your number at the
10 time.

11 A 980-269-9939.

12 Q What about Demarcus' number?

13 A I can't recall right off.

14 Q 803-342-4398?

15 A Yes, ma'am.

16 Q You said you talked to him different ways.

17 What Mr. Grier was just showing you, what type of
18 communication was that?

19 A Facebook Messenger.

20 Q Just showing you the same thing that he showed
21 you. What was the first message on this page that he
22 was showing you?

23 A Staying on 16th Street.

24 Q What time was that?

25 A 6:44.

1 Q That was Facebook Messenger?

2 A Yes, ma'am.

3 Q I will show you what was marked as State's Exhibit
4 14, you recognize this as being from your phone? The
5 call at 8:33, did it have a name by it?

6 A No, ma'am.

7 Q Does that mean it would have shown up on your phone
8 as unknown?

9 A Yes, ma'am.

10 Q Would it surprise you to know that that is what you
11 told law enforcement when you first talked to them?

12 A Yes, ma'am.

13 MS. WEISS: Thank you.

14 No further questions, Your Honor.

15 THE COURT: Mr. Grier.

16 MR. GRIER: No more questions, Your Honor.

17 THE COURT: All right. You may step down. Thank
18 you.

19 (Whereupon, the witness exited the witness stand.)

20 MS. WEISS: May Ms. Stevens be released?

21 MR. GRIER: No objection to her release.

22 THE COURT: You may be excused, Ms. Stevens.

23 MS. WEISS: The State calls Maryam Rivera.

24 * * *

25 MARYAM RIVERA,

1 called as a witness by and on behalf of
2 the State to testify, being first duly
3 sworn was examined and testified as follows:

4 THE COURT: Ms. Rivera, please speak loudly and
5 clearly. Get close to the microphone. Answer the
6 questions with a "yes" or "no" response. Don't nod your
7 head or say "uh-huh" or "huh-uh."

8 DIRECT EXAMINATION BY MS. WEISS

9 BY MS. WEISS:

10 Q Good afternoon, Ms. Rivera.

11 A Good afternoon.

12 Q What is your nickname?

13 A I just go by Maryam.

14 Q What is your name on Facebook?

15 A Maryam Mamacita.

16 Q Where did you grow up?

17 A In Lancaster.

18 Q Did you go to high school?

19 A Yes. Lancaster High School.

20 Q How far did you get?

21 A I graduated with my diploma.

22 Q Are you currently in school now?

23 A Yes, ma'am.

24 Q Where are you in school?

25 A Southern New Hampshire University online.

1 Q Prior to that, did you attend a local school?

2 A I went to USCL in Lancaster.

3 Q What have you been studying?

4 A Psychology.

5 Q How many credits -- how far are you in school at

6 this point?

7 A Right now, I am on my second semester.

8 Q Have you been working as well?

9 A Yes, ma'am.

10 Q Where have you worked?

11 A At Quinter Textile. It's in Charlotte, North

12 Carolina.

13 Q What do you do there?

14 A I'm a clothing inspector.

15 Q How long have you been working there?

16 A About two years.

17 Q Ms. Rivera, back on September 27, 2017, what was

18 your relationship to Demarcus Foster?

19 A I was his girlfriend.

20 Q Were you with him on that day?

21 A Yes, ma'am.

22 Q Are you currently charged with accessory after the

23 fact?

24 A Yes, ma'am.

25 Q Your attorney is currently in the courtroom with

1 you?

2 A Yes, ma'am.

3 Q Has anyone talked to you about the resolution of

4 that charge at all?

5 A No, ma'am.

6 Q Ms. Rivera, how did you meet Mr. Foster?

7 A Through my cousin.

8 Q Who is your cousin?

9 A Quindricus Tinsley.

10 Q How long ago did you-all meet?

11 A Before it happened. We had just met about two

12 weeks before it happened.

13 Q You-all had been together about two weeks?

14 A Yes, ma'am.

15 Q Did you talk or anything before that, or that was

16 first time you met?

17 A That was the first time we had met.

18 Q How would the two of you communicate?

19 A Over the phone.

20 Q Phone calls? Texts?

21 A Yes, ma'am.

22 Q Both?

23 A Yes, ma'am. Both.

24 Q Did you also communicate on Facebook?

25 A Yes, ma'am.

1 Q Use Messenger?

2 A Yes, ma'am.

3 Q How often would you talk to Demarcus Foster?

4 A I'm sorry?

5 Q During those two weeks, how often would you-all

6 talk?

7 A Almost every day.

8 Q How often did you see each other?

9 A Almost every day we did.

10 Q What did you do together?

11 A Mostly -- we had sex mostly.

12 Q Did you-all go out to dinner or movies or anything?

13 A No, ma'am.

14 Q Do you have any children?

15 A No, ma'am.

16 Q Do you see Demarcus Foster in the courtroom today?

17 A Yes, ma'am.

18 Q Can you describe him? Point him out, what he is

19 wearing?

20 A He is wearing a striped shirt.

21 MS. WEISS: Let the record reflect the witness has

22 pointed out the defendant.

23 THE COURT: The record will so reflect.

24 BY MS. WEISS:

25 Q What is your current relationship with Demarcus

1 Foster?

2 A There is no relationship.

3 Q When was the last time you-all spoke?

4 A I would say -- when I got out of jail, a month
5 after. I am not sure exactly. It was like a month
6 after, he called me.

7 Q Do you still keep in touch with his family?

8 A No, ma'am.

9 Q When is the last time you spoke to anyone in his
10 family?

11 A I haven't spoken to anyone.

12 Q I will take you back to September 27, 2017, the
13 date that we are here about today.

14 Do you recall what time you talked to Demarcus that
15 day?

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

17 Q Were you working that day?

18 A Yes, ma'am.

19 Q What time did you get off work.

20 A We got off early. It had to be around 1:00 or
21 around that time.

22 Q Was that from the textile place?

23 A Yes.

24 Q Were you in school at the same time?

25 A Online school.

1 Q Were you in online school back then?

2 A No, ma'am.

3 Q You got off at 1:00, and then you were free after

4 1:00?

5 A Yes, ma'am.

6 Q Could you talk to Demarcus when you were at work?

7 A Yes, ma'am.

8 Q Sometimes you would talk to him while you were

9 working?

10 A Yes, ma'am.

11 Q Do you recall what your plans were for September

12 27?

13 A Yes, ma'am. The plan was just to go see his niece.

14 That was what the plan was.

15 Q Is that something you had done before?

16 A Yes, ma'am.

17 Q How often?

18 A Pretty often. I would go take him to go see her.

19 Q Did he have a car?

20 A No, ma'am.

21 Q So you were his ride?

22 A Yes, ma'am.

23 Q Where would you take him to go see her?

24 A It's a house behind Shrimp Boat. I'm not sure

25 exactly what the name of the road is.

1 Q Who is his niece's mother?

2 A I know her as Baka.

3 Q Are you some relation to Baka?

4 A No, ma'am.

5 Q Distant relation maybe?

6 A Yes, ma'am.

7 Q But you-all didn't grow up together?

8 A Yes, ma'am.

9 Q On that day, did you go to Baker Street to go see
10 his niece?

11 A No, ma'am.

12 Q When did you get together with Demarcus that day?

13 A After I got off of work.

14 Q How long after you and Demarcus got together did
15 you go to see his niece?

16 A Not too long after we got together, we went to go
17 see her.

18 Q Do you know about what time that was?

19 A No, ma'am. I can't recall at this moment.

20 Q Did you talk beforehand to know that that was the
21 plan -- talk to him beforehand?

22 A I'm sorry?

23 Q How far in advance did you know that that was your
24 plan for the day?

25 A When I got off of work, and he called me.

1 Q When you picked him up, where did you pick him up?
2 A I picked him up at Crenco, a gas station.
3 Q Where is the gas station?
4 A It's on Riverside.
5 Q What area of town is that on? What is that near?
6 A I would say going towards Pageland or that
7 way.
8 Q Was anybody with him when you picked him up?
9 A Yes, ma'am.
10 Q Who was with him?
11 A Tweak.
12 Q Who is that?
13 A I'm not sure. Quinterious is how you pronounce it.
14 I know him as Tweak.
15 Q When did you first meet Quinterious -- Tweak?
16 A We went to school together, but we never associated
17 in school. I remember him from school.
18 Q Did you recognize him when he was there?
19 A Yes, ma'am.
20 Q Had he been with Demarcus before?
21 A Yes, ma'am.
22 Q How often did he hang out with Demarcus?
23 A All the time.
24 Q And did you give him rides around, too?
25 A Yes, ma'am.

1 Q Once you picked them up, where did you go?
2 A We went over there.
3 Q Went over there where?
4 A To 16th Street.
5 Q Where were you going on 16th Street?
6 A He told me we was going to go see his niece. I am
7 not sure who was at the house where it was.
8 Q How did you know where to go?
9 A He told me where to go to.
10 Q So he gave you directions?
11 A Yes, ma'am.
12 Q Had you been there before?
13 A No, ma'am.
14 Q Where did you park when you got there -- when you
15 first got there?
16 A When I first got there, I pulled up on the side.
17 Q Who got out of the car?
18 A The first time we was there, Demarcus got out. I
19 had gotten out and spoke, and then I got back in the
20 car.
21 Q Did you-all bring any alcohol with you?
22 A Yes, ma'am.
23 Q What did you bring?
24 A I had some Mike's Hard Lemonade, he had some
25 Yuengling. It's some type of beer.

1 Q Bottle or can?

2 A Bottle.

3 Q Did you share your Mike's Hard Lemonade with

4 anyone?

5 A Yes, ma'am.

6 Q With who?

7 A Baka.

8 Q I will show you State's Exhibit Number 5. Do you

9 recognize this picture?

10 A Yes, ma'am.

11 Q What is this a picture of?

12 A It's a picture of Demarcus and his niece.

13 Q Where are they standing?

14 A Beside a tree in the yard.

15 Q Where were you parked compared to this picture?

16 A On this side.

17 Q Just outside the picture?

18 A Yes, ma'am.

19 Q Did you watch as Demarcus was talking to his

20 niece?

21 A No, ma'am.

22 Q What were you doing?

23 A I was in my car on the phone.

24 Q So you got out and talked to Baka for a minute.

25 Then you were on your phone?

1 A Yes. I was listening to music.

2 Q Was anybody in the car with you?

3 A Not the first time.

4 Q How long were you-all out there?

5 A We were out there for about 30 minutes.

6 Q Did you know any other people out there?

7 A I knew of them, but I don't know them very well.

8 Q Do you know them by name -- nickname?

9 A The only one I knew for sure by nickname would be

10 Bree, Baka, and Dario.

11 Q How did you know them?

12 A I went to school with Dario. I know of Baka and

13 Bree because of my cousins. They say they were kin down

14 the line.

15 Q You have just seen them around?

16 A Yes.

17 Q It was light, obviously, when this picture was

18 taken. It was light when you first got there?

19 A Yes, ma'am.

20 Q When you left, was it still light?

21 A No, ma'am. It was getting dark.

22 Q Do you have any idea what time that was?

23 A No, ma'am.

24 Q Why did you leave?

25 A We left to go pick up my cousin.

1 Q Who is your cousin?
2 A Mondra Tinsley.
3 Q Where was Mondra?
4 A He was close by. He was down the street. I don't
5 know the exact name of the road, but he was close by.
6 He had been texting me all day to come and get him.
7 Q Did he live over in Pardue?
8 A Yes.
9 Q Did you go over there to get him?
10 A No, ma'am.
11 Q Did you go in that direction?
12 A No, ma'am.
13 Q Why did you go pick him up?
14 A We always hang out.
15 Q When you say "we," who is we?
16 A Me and my cousin Mondra.
17 Q Did that include Demarcus?
18 A Yes.
19 Q Was anyone else in the car with you and Demarcus
20 and Mondra?
21 A Yes, Tweak.
22 Q Tweak got back in the car with you-all?
23 A Yes, when we left to go get my cousin, Mondra.
24 Q What was the purpose of going to get Mondra?
25 Where were you going to go after that?

1 A We were just going to hang out.

2 Q Hang out where?

3 A Wherever we were.

4 Q You went to go get Mondra?

5 A Yes, ma'am.

6 Q Did you get him from a home? From a house? From

7 an apartment? Where did you pick him up?

8 A He was outside.

9 Q Outside just walking down the road?

10 A Yes.

11 Q What did Demarcus do while you were going to pick

12 up Mondra?

13 Did he have anything with him?

14 A A bag.

15 Q What was in that bag?

16 A I am not sure. I knew for sure there was clothes

17 in the bag.

18 Q Did he do anything with those clothes?

19 A Yes. He did change his shirt when we went back

20 over there.

21 Q What did he change into?

22 A A black shirt.

23 Q Do you know why he changed?

24 A No, ma'am.

25 Q And he changed right there in your car?

1 A Yes, ma'am.

2 Q Was he still drinking?

3 A Yes, ma'am.

4 Q What about Mondra and Quinterious? Were they

5 drinking?

6 A No, ma'am.

7 Q Where did you go after you picked up Mondra?

8 A After I picked up Mondra, we went back over there

9 to 16th Street.

10 Q Why did you go back to 16th Street?

11 A He said we were to go chill, hang out.

12 Q So he chose to go back to 16th Street?

13 A Yes, ma'am.

14 Q In the two weeks that you-all had been together,

15 had you-all ever gone over to 16th Street before?

16 A No, ma'am.

17 Q When you got there, was it light or dark at that

18 point?

19 A When we came back the second time?

20 Q Yes.

21 A It was dark by that time.

22 Q Did you park in the same place?

23 A No, ma'am.

24 Q Where did you park?

25 A I backed in.

1 Q Backed in where?

2 A In the gravel part in the picture.

3 Q I will show you State's Exhibit 1B. Do you

4 recognize this photo?

5 A Yes, ma'am.

6 Q Is that the area you are talking about where you

7 backed in?

8 A Yes, ma'am.

9 Q Where was your car compared to the steps?

10 A On this side. I was parked, like, there.

11 Q If you looked out your driver's or passenger's

12 window, were you right next to the steps?

13 A Yes. On the passenger side, on the steps.

14 Q You backed in?

15 A Yes, ma'am.

16 Q Why did you back in?

17 A He told me to back in.

18 Q Did he tell you why?

19 A No, ma'am.

20 Q You went back to 16th Street and backed in, because

21 he told you to?

22 A Yes, ma'am.

23 Q Did you recognize anybody when you got there that

24 time?

25 A It was the same people.

1 Q Any women out there? Any girls out that?
2 A No, ma'am. Not that I noticed.
3 Q Any children?
4 A No, ma'am. Not that I noticed.
5 Q Did you get out and chill with Demarcus?
6 A No, ma'am.
7 Q What did you do?
8 A When we got out the second time?
9 Q Yes.
10 A I stayed in the car. I was listening to some music
11 and smoking and drinking.
12 Q Who was in the car with you?
13 A Me and my cousin Mondra.
14 Q Who got out of the car?
15 A Demarcus and Tweak.
16 Q What side of the car was Tweak sitting on?
17 A When we got there, he was sitting behind me. So on
18 my side.
19 Q Did you see where he went once he got out of the
20 car?
21 A He went around the car.
22 Q Did you see what Tweak did when he got out of the
23 car?
24 A No.
25 Q Did you see where Demarcus went when he got out of

1 the car?

2 A No, ma'am. The only thing I seen was they went to
3 my right side.

4 Q You were supposed to be chilling with Demarcus
5 that night?

6 A Yes.

7 Q What that chilling with Demarcus?

8 A Yes.

9 Q But he wasn't with you? You were in the car;
10 right?

11 A Yes.

12 Q He was out of the car?

13 A Yes, ma'am.

14 Q How long were you expecting to stay there?

15 A I wasn't expecting to stay there, but we was there
16 for a while.

17 Q What kind of car did you drive?

18 A A white Honda Accord.

19 Q How many doors did it have?

20 A It has four.

21 Q I will show you State's Exhibit 7B. Is that your
22 car?

23 A Yes, ma'am.

24 Q Where was your car when this picture was taken?

25 A At Sheriff's Department.

1 Q That is the same car that you were driving the
2 night of September 27?

3 A Yes, ma'am?

4 Q Did you see any weapons that night?

5 A No, ma'am.

6 Q Do you know what was in Demarcus' bag?

7 A No, ma'am. The only thing I knew for sure was
8 clothes.

9 Q Had you ever seen a weapon?

10 A No, ma'am.

11 Q Did you look around at the people that were out
12 there that you had gone to high school with?

13 A No, ma'am.

14 Q How long were you sitting there?

15 A The second time?

16 Q Yes.

17 A About 10, 15 minutes.

18 Q What was Mondra doing?

19 A He was sitting in my back seat on the phone.

20 Q What happened next?

21 A Explain.

22 Q What happened next?

23 A We were sitting in the car. At the time I was
24 listening to music. I heard one gunshot. When I heard
25 the gunshot, I didn't really react to it. I was really

1 high at the time, and I was listening to music. I know
2 I literally right -- I heard the gunshot from this side
3 of me. I say probably not even a minute, Demarcus and
4 Tweak came running back to the car. Then Demarcus got
5 in the car and he was like, "Let's go."

6 Q What was Demarcus' demeanor when he got in the car?

7 A It was kind of like -- not in a hurry, but not
8 really. It was kind of calm, but not really.

9 Q Did he still have his beer with him?

10 A Yes, ma'am.

11 Q How many beers had he had to drink at that point?

12 A We had a six-pack each. He didn't get back in the
13 car with any beer but that one that he had in his hand.
14 So he had to drink the whole six-pack.

15 Q He said, "Let's go?"

16 A Yes, ma'am.

17 Q Where did you go?

18 A When we left out -- when we were going down the
19 road, he told me to stop by some guy's house, Big
20 Richard.

21 Q When you went down the road, which way did you go,
22 left or right?

23 A I went left.

24 Q When you got to the end of that road, where did you
25 go?

1 A Another left.

2 Q Did you go up to Main Street, or did you go the

3 other way?

4 A I went the other way. Going down by the bridge.

5 Q Why did you go that way?

6 A He told me to go that way.

7 Q Did he say anything else?

8 A No. He said to turn here. I turned there. He

9 said to keep going straight to go by Big Richard's

10 house. He told me how to get there.

11 Q Who is Big Richard?

12 A I just know him as Big Richard.

13 Q Were you going to go chill at Big Richard's house?

14 A No. He just said he wanted to go by

15 there.

16 Q Did you go by there?

17 A Yes, ma'am.

18 Q How long were you there?

19 A About five minutes. Not long.

20 Q Did you get out of the car there?

21 A No, ma'am.

22 Q Did Mondra get out?

23 A No, ma'am.

24 Q Did Quinterious get out?

25 A No, ma'am.

1 Q Did Demarcus get out?
2 A Yes, ma'am.
3 Q Where did he go?
4 A He went inside the house.
5 Q How long was he inside?
6 A He was not in there long. Probably about a minute,
7 two minutes. It was not long.
8 Q Was Big Richard's house near the cemetery?
9 A Yes, ma'am. It's right behind the cemetery.
10 Q Did he take his bag in when he went in the house?
11 A Yes, ma'am.
12 Q Did he come out with the bag when he came out of
13 the house?
14 A Yes, ma'am.
15 Q Did you talk about anything else while you-all
16 were driving over there?
17 A No, ma'am.
18 Q Did you talk about the gunshot?
19 A No, ma'am.
20 Q Where did you go next?
21 A Next after we left Big Richard's house, we went to
22 the cemetery, which was right across the street.
23 Q Where did you go in the cemetery?
24 A He went to see his brother's grave.
25 Q Did you know where that was?

1 A I didn't know exactly where he was placed.

2 Q Had you been there?

3 A Yes, ma'am. I have been there before. Yes, ma'am.

4 Q You have been there with him?

5 A Yes, ma'am.

6 Q How many times have you been there?

7 A A couple of times. It has been a good

8 bit.

9 Q So you did know where to go in the cemetery?

10 A I didn't know exactly where he was placed. I knew

11 where to pull up in the cemetery.

12 Q Where did you pull up?

13 A On the side. They have the bodies inside the

14 walls. I pulled up by the side of the road by the

15 walls.

16 Q Who got out of the car?

17 A Demarcus and Tweak.

18 Q Where did they go?

19 A They walked up to the wall.

20 Q Did you watch them while they were there?

21 A No, ma'am. I did not.

22 Q What were you doing?

23 A I was sitting in my car on my phone.

24 Q Did Demarcus say anything about the gunshot?

25 A No, ma'am.

1 Q How long were you at the cemetery?
2 A I would say about 30 minutes we was there.
3 Q Where did you go after that?
4 A We went to Carolina Court?
5 Q What did you do in Carolina Court?
6 A I dropped my cousin off first. I dropped my cousin
7 at his baby's mother's house.
8 Q Is his baby's mother Pardue (phonetic)?
9 A Yes.
10 Q Did anybody say anything when they got out of the
11 car?
12 A No, ma'am.
13 Q Then where did you go?
14 A I dropped Demarcus off at his mother's house.
15 Q Did he take his bag with him?
16 A Yes, ma'am.
17 Q Did he take his beer with him?
18 A Yes, ma'am.
19 Q What did he say when he got out of the car?
20 A He just said, "I will see you. I'll hit you up
21 tomorrow. I love you." That was it.
22 Q Did you go inside with him?
23 A No. I had to go to work the next day.
24 Q Did you and Demarcus talk at all about the gunshot
25 that night?

1 A No, ma'am.

2 MS. WEISS: That's all, Your Honor.

3 THE COURT: Mr. Grier.

4 CROSS-EXAMINATION

5 BY MR. GRIER:

6 Q How were you feeling at that time about the
7 gunshot?

8 A It didn't, like, faze me. I was in the car. I
9 didn't see anything. I was smoking a cigarette when I
10 heard the gunshot.

11 Q Did you see anyone fall to the ground?

12 A No, ma'am.

13 Q Did you see people running?

14 A No, ma'am.

15 Q And your car was right next to the steps?

16 A Not right next to it.

17 Q How far away were the guys from your passenger
18 door?

19 A A couple of feet.

20 Q I am Mark Grier. I represent Mr. Foster.

21 Ms. Rivera, you talked about Demarcus visiting with
22 his niece. He cherished that niece, didn't he?

23 A Yes.

24 Q What is her name?

25 A I don't know her name.

1 Q You had visited a bunch with him when he was
2 visiting with his niece over there; is that correct?

3 A Yes.

4 Q When I say over there, that was over behind the
5 Shrimp Boat?

6 A Yes.

7 Q You never visited that child anywhere else?

8 A Yes, sir.

9 Q You had not; correct?

10 A Yes, sir.

11 Q How old was the child?

12 A I am not sure.

13 Q You had seen her quite a few times?

14 A She looked like she was probably about three. She
15 is a young little girl.

16 Q Demarcus would give her money and stuff?

17 A I am not sure.

18 Q On this particular day, you started out at the
19 Shrimp Boat, correct, to go in that direction?

20 A No, sir.

21 Q It's not?

22 A No, sir. He told me where we was going.

23 Q You didn't have any communication about going to
24 16th Street after you started out going over to the
25 niece's house -- over to Baker Street? He didn't get a

1 call?

2 A I didn't understand.

3 Q Did Demarcus get any communication while you-all
4 were headed over to visit the niece?

5 A I am not sure.

6 Q About where to go?

7 A No, sir. I am not sure.

8 Q At any rate, you ended up over at 16th Street?

9 A Yes, sir.

10 Q Did you go anywhere before you went to 16th
11 Street? You picked him up over on Riverside Road. You
12 said that is over in the direction of Pageland, you
13 think?

14 A I am not sure. I know I can go to my house that
15 way.

16 Q Do you know where the river is at?

17 A No, sir.

18 Q We are fine with that. Every time you would visit
19 his niece, afterwards he would go visit his brother at
20 the cemetery?

21 A Yes, sir.

22 Q That was a routine?

23 A Yes, sir.

24 Q His way of dealing with losing his brother.

25 MS. WEISS: Objection. Asking her a question about

1 the feelings of his client, and she doesn't have direct
2 knowledge of that.

3 THE COURT: Sustained. She doesn't know how he
4 feels.

5 MR. GRIER: Fair enough. She doesn't.

6 BY MR. GRIER:

7 Q You didn't see what would happen when he would go
8 visit his brother's grave?

9 A No, sir.

10 Q You would sit there and be on your phone or
11 whatever you were doing?

12 A Yes, sir.

13 Q Hanging out?

14 A Yes, sir.

15 Q Do you recall telling law enforcement that you
16 drove to 16th Street after he received a call from
17 Jakenia Stevens to come see his niece?

18 Do you recall telling law enforcement that during
19 your interview?

20 A No, sir.

21 Q You don't recall that?

22 A No, sir.

23 Q So you went to 16th Street twice?

24 A Yes.

25 Q The purpose of leaving was to go pick up your

1 cousin?

2 A Yes, sir.

3 Q You know that Demarcus went with you then?

4 A Yes, sir.

5 Q You are certain of that?

6 A Yes, sir.

7 Q And Tweak went with you?

8 A Yes, sir.

9 Q How long do you think you were gone?

10 A Not long, sir.

11 Q So you got back there. Then you testified you were

12 there for a while. What does that mean?

13 Can you suggest how long that while was, as far as

14 what your perception was -- how long you were there?

15 A What are you referring to?

16 Q You testified that you were there for the second

17 time, and you were there for a while.

18 A Yes. The second time, yes. We was there for about

19 10, 15 minutes the second time.

20 Q So after 10 or 15 minutes, you heard a gunshot.

21 You didn't think that much of it?

22 A No, sir.

23 Q You got your headphones on, or how are you

24 listening to music?

25 A I listen to music on my phone, but it's through my

1 car speakers.

2 Q You said within about a minute, Demarcus and Tweak
3 both came to the car?

4 A Yes, sir.

5 Q And you left. You didn't notice anything peculiar
6 about the behavior?

7 A No, sir.

8 Q No emotion? Everything seemed normal?

9 A Yes, sir.

10 Q You went to Big Richard's from 16th Street. How
11 did you leave 16th Street when you pulled out? Your
12 point now, was there anything unusual about that, having
13 backed in there?

14 A No, sir.

15 Q Which way did you turn? Left or right?

16 A Left.

17 Q Do you know where Brooklyn Drive is, the main drag
18 through there?

19 A No, sir.

20 Q You turn left. Do you know where Crenco is?

21 A Yes, sir.

22 Q If you left 16th Street and went to Crenco, what
23 would be the best way to go there if you pulled out?

24 A You would go left.

25 Q Left to go to Crenco?

1 A Yes.

2 Q So you wouldn't go up the hill. You go down the
3 hill to go to Crenco.

4 A Explain.

5 Q 16th Street is on a hill.

6 A Yes.

7 Q When you left, did you go up the hill or did you go
8 down the hill?

9 A Up the hill.

10 Q You went to the right? You were facing out?

11 A Yes.

12 Q You are backed in beside that house. You are
13 facing 16th Street. Left goes downhill. Do you recall
14 how that is laid out?

15 A Left would be uphill.

16 Q When you left and you went uphill, did you get to
17 a stop sign?

18 A Yes, sir.

19 Q Which way did you turn when you got to the stop
20 sign?

21 A When I left out?

22 Q Yes. When you got to the stop sign uphill --

23 A Yes.

24 Q -- which way did you turn when you got to the stop
25 sign?

1 A Left.

2 Q If you were going to the Crenco, which way would
3 you have turned?

4 A Right.

5 Q So you didn't go to the Crenco?

6 A No.

7 Q Any conversation about you having been spotted at
8 Crenco was incorrect?

9 A Yes, sir.

10 Q Going left took you towards Big Richard's house?

11 A Yes.

12 Q The quickest way to go to Big Richard's house?

13 A Yes.

14 Q Demarcus bought weed from Big Richard. You made
15 that statement previously, didn't you?

16 MS. WEISS: Objection, Your Honor.

17 THE COURT: Hang on. What is your objection?

18 MS. WEISS: He is asking her a question that is not
19 in evidence.

20 THE COURT: Sustained.

21 BY MR. GRIER:

22 Q Do you know if Demarcus Foster bought weed from Big
23 Richard?

24 A No. I don't know.

25 Q You don't recall telling law enforcement that he

1 did and that he gave you weed?

2 A No, sir. I said it was a possibility that he could
3 have bought weed.

4 Q On that particular day, you don't know what he
5 did?

6 A Yes, sir.

7 Q You had been told that he bought weed -- Demarcus
8 had told you that he bought weed from Big Richard
9 before; correct?

10 A Yes.

11 Q He shared that weed with you before, didn't he?

12 A Yes.

13 Q You don't know whether he bought weed or not? You
14 don't know what he did. He went in there and took his
15 bag. Did you ever see him -- after he changed
16 clothes, did you ever see him go in that bag or do
17 anything else with that bag other than carry it in and
18 come back with it?

19 A No, sir.

20 Q When you left Big Richard's, you went straight to
21 the cemetery as you recall?

22 A Yes, sir.

23 Q Where was Mondra at that time?

24 A He was still in the car with me.

25 Q That is the routine. Visit the niece. You-all

1 had a little interlude where you visited the niece and
2 Demarcus was drinking and hanging out over on 16th
3 Street -- after visiting the niece?

4 A Yes.

5 Q Then he started drinking, and he was there for a
6 while drinking some?

7 A Yes.

8 Q Do you have any idea how much he drank?

9 A He had to drink a whole six-pack, because that is
10 all he had was a six-pack.

11 Q You said when he got in the car, he still had a
12 beer?

13 A He had one in his hand.

14 Q You visited with Big Richard and went to the
15 cemetery. The niece and the cemetery were kind of the
16 routine from what you and Demarcus would do when you
17 would take him somewhere?

18 A Yes.

19 Q You said he said, "I love you."

20 A Yes.

21 Q Demarcus always had that bag with him, didn't he?

22 A Yes.

23 Q He always had a change of clothes with him?

24 A Yes.

25 Q It was not uncommon at all for him to change

1 clothes while you-all were together?

2 A Yes.

3 Q You dropped Tweak off. Who did you drop off last?

4 A Last Demarcus.

5 Q You dropped your cousin off first?

6 A Yes.

7 Q Tweak off second?

8 A Yes.

9 Q Did you-all spend any time together before you

10 dropped him off? Did you sit and talk or anything?

11 A No, sir.

12 Q Everything is normal? You don't sense anything is

13 wrong?

14 A Yes, sir.

15 Q How long do you think it was -- how long do you

16 estimate it was before you -- between the time that you

17 left 16th Street and you dropped Demarcus off? How long

18 did that take?

19 A I am not sure.

20 Q You went to Big Richard's. You went to the

21 cemetery?

22 A Yes, sir.

23 Q You spent a little bit of time at Big Richard's, a

24 few minutes?

25 A Yes.

1 Q And you stayed at the cemetery for how long?

2 A A while. I wasn't looking at the time.

3 Q Your sense was a while. How long?

4 A About 30 minutes is awhile for me.

5 Q You drop him off. He says, "I love you. I will
6 talk to you tomorrow?"

7 A Yes.

8 Q Did you-all talk the next day?

9 A He called me that morning when I was at work.

10 Q Did you-all discuss anything that had happened that
11 night before?

12 A He called me and told me that someone said that he
13 had did something that night. He said he wanted to go
14 check up on it or something like that. That is why we
15 went to the Sheriff's Department.

16 Q You didn't know you were going to be arrested?

17 A No, sir.

18 Q You didn't know he was going to be arrested?

19 A No, sir.

20 Q You didn't sense anything wrong at the time, other
21 than he is telling you he needs to go clear his name;
22 right?

23 A Yes.

24 Q He went to law enforcement. They didn't go find
25 him?

1 A Yes, sir.

2 Q Both of you got a surprise? Both of you got
3 arrested right then?

4 A Yes, sir.

5 MR. GRIER: Thank you, Ms. Rivera.

6 THE COURT: Anything further?

7 MS. WEISS: No, Your Honor.

8 Your Honor, may this witness be excused from her
9 subpoena?

10 MR. GRIER: I have no problem with that.

11 THE COURT: You may step down and be excused,
12 ma'am.

13 (Whereupon, the witness exited the witness stand.)

14 MR. FUSSNECKER: Your Honor, the State calls
15 Ladario Jones.

16 LADARIO JONES,
17 called as a witness by and on behalf of
18 the State to testify, being first duly
19 sworn was examined and testified as follows:

20 THE COURT: Please speak loudly and clearly, and
21 don't say "uh-huh" or "huh-uh."

22 DIRECT EXAMINATION BY MR. FUSSNECKER

23 BY MR. FUSSNECKER:

24 Q Good afternoon, sir. Please state your name for
25 the jury.

1 A Ladario Jones.

2 Q How old are you, sir?

3 A Twenty-four.

4 Q Are you from Lancaster?

5 A Yes, sir.

6 Q How long have you lived in Lancaster?

7 A Twenty-three years. We moved here when I was one

8 year old.

9 Q How far did you go in school?

10 A Tenth grade.

11 Q Do you know the defendant?

12 A Not really, but, yes.

13 Q How do you know him?

14 A My baby's mother.

15 Q Who is your baby's mother?

16 A Jakenia Stevens.

17 Q Does she go by the name Baka?

18 A Yes.

19 Q When did you first meet the defendant?

20 A Maybe in 2014.

21 Q So you had known him for a few years at the time

22 of the incident that we are here for today?

23 A Yes.

24 Q In the months leading up to this incident, would he

25 visit his niece sometimes?

1 A Yes.

2 Q How often would you see him with his niece?

3 A He comes every two weeks, week-and-a-half.

4 Q In the weeks leading up to this incident, did you
5 ever see him with a gun?

6 A Yes.

7 Q How many times did you see him with a gun?

8 A More than once.

9 THE COURT: Speak up. If you were out on the
10 street, you would be speaking a lot louder than that.
11 Speak up.

12 BY MR. FUSSNECKER:

13 Q What type of gun was it?

14 A It was a Ruger.

15 Q Could you describe it?

16 A It was gray, chrome.

17 Q Pistol or revolver?

18 A Pistol.

19 Q I want to direct your attention to September 27.

20 Were you at Roger Harris' house on that date?

21 A Yes, sir.

22 Q What time did you get there?

23 A Maybe 5:30, 6:00 that day.

24 Q Do you remember seeing the defendant there?

25 A Yes.

1 Q Do you remember what time he showed up?

2 A Maybe 6:30.

3 Q How did he get there?

4 A Maryam.

5 Q Did they drive there? Walk there?

6 A Drive.

7 Q What did they arrive in?

8 A White Honda.

9 Q Who was driving?

10 A Maryam.

11 Q When you saw the defendant, what was he wearing?

12 A Black shirt, blue jeans.

13 Q Did they ever leave?

14 A Yes.

15 Q After they left, did they ever come back?

16 A Yes.

17 Q When they came back, were there many people left at

18 that point in time?

19 A Not as much as there was.

20 Q Several people had left?

21 A Yes.

22 Q When he returned, around what time was that?

23 A 8:00, 815.

24 Q Around 8:15?

25 A Yes.

1 Q Was Joel McLemore there at that time?

2 A Not when he arrived. He came about five minutes
3 later.

4 Q So Joel got there about five minutes after
5 Demarcus Foster?

6 A Yes.

7 Q Handing the witness what has been marked as Exhibit
8 1D.

9 Do you recognize that?

10 A Yes, sir.

11 Q What is that?

12 A Roger Harris' yard.

13 Q Where were you standing when the defendant arrived?

14 A I was standing right here (indicating).

15 MR. FUSSNECKER: Let the record reflect that he is
16 pointing in the lot near the house, to the right of the
17 bush.

18 BY MR. FUSSNECKER:

19 Q Where did the defendant go when he arrived?

20 A He walked onto the porch.

21 Q So the defendant walked onto the porch?

22 A Yes.

23 Q Who was in the yard with you at that point in time?

24 A Kristavius, Monte, Lashawn.

25 Q Was Joel out there?

1 A Joel was out there.

2 Q Kristavius. Is that Kristavius Stevens?

3 A Yes.

4 Q Does he go by Bree?

5 A Yes, sir.

6 Q And Monte. Is that Quaterious Peay?

7 A Yeah.

8 Q Does he also go by Damu?

9 A Yes.

10 Q Lashawn White?

11 A Yeah.

12 Q Does he also go by Deuce?

13 A Yes.

14 Q And Joel. They were all out there?

15 A Yes.

16 Q Had you known Joel before?

17 A I had only known him for a couple of days.

18 Q How often would you see him?

19 A Like two days.

20 Q Would you please describe him for the jury?

21 A I mean, he was a cool dude. He ain't had no

22 problems with anybody.

23 Q He never had any issues with anyone there?

24 A No.

25 Q I would like for you to go ahead and point for the

1 jury and show me where he was standing and where Lashawn
2 White was standing.

3 A Joel was standing right here (indicating).

4 MR. FUSSNECKER: Let the record reflect that the
5 defendant is pointing to the edge of the grass near
6 where the street and the driveway meet.

7 BY MR. FUSSNECKER:

8 Q Please continue.

9 A Lashawn was standing beside the bush.

10 Q Were they near each other?

11 A Yes.

12 Q Please show the jury where Quaterious Peay and
13 Kristavius were standing?

14 A Kristavius was beside me over here. He was right
15 beside the house.

16 Q How long was the defendant on the steps?

17 A No longer than seven or eight minutes.

18 Q When you-all were standing there together, were
19 Lashawn and Joel speaking?

20 A Yes.

21 Q What was said?

22 A Lashawn said, "This is my friend. He is my home
23 boy. I love you boy."

24 "I love you back."

25 Q Was he referring to Joel?

1 A Yeah.

2 Q What happened next?

3 A D got off the porch and he shot him in the head.

4 Q When you say, "D," are you talking about Demarcus

5 Foster?

6 A Yeah.

7 Q Is he in the courtroom today?

8 A Yes, sir.

9 Q Please identify him. What is he wearing?

10 A Blue shirt with blue stripes.

11 MR. FUSSNECKER: Let the record reflect that the

12 witness has identified the defendant.

13 THE COURT: The record will so reflect.

14 BY MR. FUSSNECKER:

15 Q Where was he when he shot Joel?

16 A He was stepping off the porch.

17 Q Please show the jury where he stepped off the

18 porch.

19 A There is a chair behind this bush right here. He

20 stepped off the porch right here.

21 Q Where did he -- these are the steps where he came

22 down?

23 A Yes.

24 Q Where did he go from there?

25 A To the car, man.

1 Q As he is coming down the porch, is he still on the
2 porch when he shoots, or is he in the grass? Where is
3 he at when he actually fires the gun?

4 A After he was coming off the porch, he shot him.
5 Coming off the porch.

6 Q Did you see the gun that he used?

7 A Yes.

8 Q Please describe it.

9 A A revolver.

10 Q How far was the gun from Joel's head when he
11 pulled the trigger?

12 A It wasn't far. Maybe a couple of inches.

13 Q What did the defendant do after he shot Joel?

14 A Passed the gun off to Quinn.

15 Q When you say, "Quinn," who is that?

16 A Quinn. We call him Tweak.

17 Q Is that Quinterious Truesdale?

18 A Yeah.

19 Q After he passed the gun to Truesdale, what did he
20 do?

21 A He turned around and grabbed his beer.

22 Q He grabbed his beer?

23 A Yeah.

24 Q What kind of beer?

25 A I don't recall.

1 Q Can or bottle?

2 A Bottle.

3 Q Do you remember the color of the bottle?

4 A Greenish.

5 THE COURT: Anybody who is in the courtroom, I
6 don't want any talking while the testimony is going on.
7 If you can't be quiet, leave now.

8 MR. FUSSNECKER: Your Honor, I am handing the
9 witness what has been marked as Exhibit 10C.

10 BY MR. FUSSNECKER:

11 Q Do you see a beer bottle in there that looks
12 similar to the one he had?

13 A It's the green bottle.

14 Q What did he do after he picked up the green bottle?

15 A Walked back to the car.

16 Q You said Maryam had brought him there.

17 Did she ever get out of the car?

18 A No, she didn't.

19 Q How far was the car away from where the defendant
20 was when he shot Joel?

21 A It wasn't far. I can show you on the picture.

22 Q Where was the car parked?

23 Please show the jury.

24 A (Indicating).

25 MR. FUSSNECKER: Let the record reflect that the

1 car was on the edge of the driveway closest to the
2 grass.

3 BY MR. FUSSNECKER:

4 Q So it was just a matter of feet?

5 A Yes.

6 Q After the defendant shot Joel and got in the car,
7 what happened to the car?

8 A It made a left going up the road.

9 Q When you say, "left," is that going up 16th Street
10 towards Brooklyn?

11 A Yeah.

12 Q What did you do?

13 A I was still running.

14 Q Where did you run?

15 A Behind Roger's backyard.

16 Q Did anyone run there with you?

17 A Damu.

18 Q Also known as Quaterious Peay?

19 A He turned around.

20 Q Then what did you do?

21 A I kept running.

22 Q Once you got done running, what did you do?

23 A I called my girlfriend.

24 Q When you say your girlfriend, that is Jakenia
25 Stevens?

1 A Yes.

2 Q Did she come to the scene shortly after that?

3 A Yes.

4 Q What did you say when you called her?

5 A I just told her that D had shot somebody.

6 Q And as a result, she came back?

7 A Yeah.

8 MR. FUSSNECKER: Thank you. I don't have any other
9 questions for you at this time, but the defense may have
10 some.

11 CROSS-EXAMINATION

12 BY MR. GRIER:

13 Q Mr. Jones, you hang around on 16th Street a lot?

14 A I used to.

15 Q Back during this time, you spent a lot of time over
16 there, didn't you?

17 A Yes.

18 Q Deuce is a good friend, buddy?

19 A I know him from school.

20 Q You hung out on 16th Street, and Deuce lived over
21 there?

22 A Yes, sir.

23 Q Did you know Baka?

24 A Yes, sir.

25 Q Did you go there in their house and hang out with

1 them?

2 A Baka doesn't stay over there.

3 Q So you didn't hang out over there with him and

4 chill over there with him?

5 A No, sir.

6 Q Are you friends with Damu?

7 A I know him from school.

8 Q He was there as well?

9 A Yes.

10 Q What brought you over there that day?

11 A It was a family gathering.

12 Q Family gathering?

13 A Yes.

14 Q Whose family?

15 A My girlfriend's. Her kids, her sister, her

16 family. All the other people out there.

17 Q Is Damu family?

18 A To me?

19 Q Yeah.

20 A No.

21 Q But he was there; right?

22 A Yes.

23 Q So family and other people?

24 A He stays over there with Deuce.

25 Q You testified that after the shooting, you called

1 your girlfriend; right?

2 A Yes, sir.

3 Q Why didn't you call the police?

4 A I was scared.

5 Q You don't think to call the police to help a man?

6 A He was in the yard.

7 Q You got a man shot right there. You didn't want

8 to get medical help to him? That didn't enter your

9 mind?

10 A Yeah.

11 Q But you didn't do it?

12 A I was scared.

13 Q What were you scared of? You didn't do anything

14 wrong.

15 A Demarcus told us not to say anything. He said we

16 didn't see nothing.

17 Q Did you tell law enforcement that Demarcus talked

18 to you before he shot him?

19 A He said it out loud in front of A-rod (phonetic).

20 Q In fact, you told law enforcement that he sat on

21 the bench up there -- Demarcus did -- didn't you?

22 A Yes.

23 Q So he did sit on the bench?

24 A Yes.

25 Q And he stood up and said, "You ain't seen nothing,"

1 and then he shot him?

2 A Yes.

3 Q That is what you told law enforcement; right?

4 A Yes, sir.

5 Q You didn't say nothing about him getting off the

6 porch or anything?

7 A Yes.

8 Q You believe that you did?

9 A I know I did.

10 Q You know you said that he went off the porch?

11 A Yeah.

12 Q Do you recall saying that Joel was there, and Joel

13 walked over there to where you-all were. You-all

14 chilled, I guess. D arrived. He walked on the porch

15 for a second. Did you say that, use those words, "For a

16 second?"

17 How long was D on the porch before something

18 happened?

19 A Like I said, seven to eight minutes.

20 Q So he says, "You ain't seen nothing."

21 So you don't call law enforcement, you don't call

22 for help for Joel?

23 A No, I didn't.

24 Q What was the relationship between Deuce and Joel?

25 A They were good friends.

1 Q They were very good friends, too? How did you
2 know that?

3 A That is what everybody was saying. Him coming over
4 there. Going to Deuce's house.

5 Q You saw him over there a lot?

6 A Who?

7 Q Joel?

8 A Yeah. I saw him over there a lot.

9 Q Did you see D over there a lot?

10 A No, I didn't.

11 Q Did you ever see D over there before this date?

12 A Not until that day.

13 Q Did you get charged with anything that day?

14 A No, sir.

15 Q Do you recall telling law enforcement that D went
16 to the white Honda after he got in the front passenger's
17 side, and Tweak was already in the car?

18 A No. I don't recall that. I said he was standing
19 beside the car.

20 Q So he was not in the car. He was beside the car?

21 A Yes, he was.

22 Q Do you recall telling law enforcement when you
23 spoke with them -- you spoke with them twice?

24 A Yes.

25 Q Were those on different days, or was that all

1 --

2 A The same day.

3 Q Do you remember telling law enforcement that you
4 didn't know where the gun was after the shooting because
5 you ran immediately?

6 A I don't recall that.

7 Q You didn't tell them that?

8 A I don't recall that.

9 Q You do know what happened to the gun after the
10 shooting? That is what you are saying today?

11 A I know what happened to it after he shot.

12 Q You said he gave it to Tweak?

13 A Yeah.

14 Q You deny having told law enforcement something
15 different?

16 A I guess so.

17 MR. GRIER: Good luck to you, Mr. Jones.

18 MS. WEISS: Objection, Your Honor.

19 MR. GRIER: I am done.

20 THE COURT: Any questions, Mr. Fussnecker?

21 MR. FUSSNECKER: Nothing further. Your Honor, may
22 this witness be released from his subpoena?

23 MR. GRIER: Your Honor, may I ask one more
24 question?

25 THE COURT: Yes, sir.

1 BY MR. GRIER:

2 Q How close was Deuce to Joel when you heard the
3 shot?

4 A They was standing directly beside each other.

5 Q Directly beside each other?

6 A Yes.

7 Q Is that arm's length, or even closer? You were
8 saying that they were talking, and he was saying, "I
9 love you."

10 A It was about that.

11 MR. GRIER: Thank you. That is all.

12 THE COURT: Mr. Fussnecker, any other questions?

13 MR. FUSSNECKER: No, Your Honor.

14 THE COURT: You can step down, sir. Thank
15 you.

16 MR. FUSSNECKER: May he be released from his
17 subpoena?

18 THE COURT: Any objection to him being released?

19 MR. GRIER: No, Your Honor. No objection.

20 THE COURT: You may be excused, sir.

21 (Whereupon, the witness exited the witness stand.)

22 MR. FUSSNECKER: Your Honor, we would like to call
23 Special Agent Jennifer Nates.

24 * * *

25 JENNIFER NATES,

1 called as a witness by and on behalf of
2 the State to testify, being first duly
3 sworn was examined and testified as follows:

4 DIRECT EXAMINATION BY MR. FUSSNECKER

5 BY MR. FUSSNECKER:

6 Q Ms. Nate, where do you work?

7 A I work for the South Carolina Law Enforcement
8 Division in the trace evidence section of the forensic
9 laboratory.

10 Q What do you do there?

11 A I am the lieutenant over the section. I am the
12 supervisor, so I supervise the daily activities and the
13 personnel. I also perform case work. I generate
14 reports and testify in court.

15 Q How long have you been with SLED?

16 A It will be 22 years this fall.

17 Q What is trace evidence?

18 A Trace evidence is one of the sections of the
19 laboratory. It entails many different types of
20 analysis. We analyze paint chips from hit-and-runs or
21 from breaking and entering. If someone breaks into a
22 house with a crowbar, we can try to match paint from
23 that to the door or the window.

24 We also look for paint on victims' clothing in
25 hit-and-runs. We analyze gunshot residue, fire debris

1 evidence from the arson team, explosive analysis, glass
2 analysis, tape analysis, fiber analysis, and other
3 miscellaneous items that are submitted to us.

4 Q I would like to focus on gunshot residue today.
5 What is gunshot residue?

6 A Gunshot residue is one of the analysis that we
7 perform. Gunshot residue is a term used by the forensic
8 community to describe all of the residue that is
9 discharged from a firearm whenever a gun is fired.

10 Specifically, we analyze what is called primer
11 gunshot residue, or PGSR. We don't look for all of the
12 different types of residue. We look for a specific
13 type, which is from the primer composition in the
14 cartridge.

15 Q What is your educational background?

16 A I have a Bachelor's of Science degree from a small
17 state school in Pennsylvania, called California
18 University of Pennsylvania. Once I received that
19 degree, I was hired at SLED and began a training program
20 in the drug analysis department. I completed that
21 program. I worked in that department for approximately
22 one year, and then I transferred into the trace evidence
23 section, where I began a four-year training program
24 under the lieutenant and the other senior analysts in
25 that department.

1 Q Have you testified previously in the field of trace
2 evidence and gunshot residue?

3 A I have.

4 Q How many times?

5 A 133.

6 MR. FUSSNECKER: Your Honor, I ask that Lieutenant
7 Nates be recognized as an expert in the field of trace
8 evidence and gunshot residue.

9 MR. GRIER: No objection.

10 THE COURT: I find her to be so qualified.

11 BY MR. FUSSNECKER:

12 Q Did you receive samples from Special Agent
13 Jennifer Miller in this case to analyze?

14 A I did.

15 Q Do you remember who those samples were from?

16 A There were several different GSR kits that we
17 submitted. I do know one was from Lashawn White. I
18 remember Item 41 was from the victim, but I do not
19 recall the other names.

20 Q Is there something that would refresh your memory?

21 A My actual report that I issued on the case.

22 Q So you said one was taken from the victim, Joel
23 McLemore. One was taken from Lashawn White. Who were
24 the other samples taken from?

25 A The remaining GSR kits were taken from Kaneisha

1 Young, Quaterious Peay, and Kendrews Stover.

2 Q Did you analyze those?

3 A I did.

4 Q How do you conduct these analyses?

5 A A GSR kit is collected usually in the field. An
6 agent or a police officer or a coroner will collect
7 them. They will take the particle lifts that are
8 provided, which is called a GSR kit, and dab over the
9 areas of the hands in an attempt to pick up any evidence
10 that may be present on the hands for a gunshot residue
11 analysis.

12 We will receive the kit. We observe the kits to
13 determine what condition the particle lifts are in. If
14 there is a lot of dirt, debris, or blood on the sample,
15 we have to perform what is called carbon coating, where
16 you put a thin layer of carbon on that sample to make
17 the analysis work properly.

18 Once we check this carbon coat, if we have to, we
19 use what is called a scanning electron microscope, which
20 basically just magnifies the sample and analyzes an
21 automation of each particle lift. If it is determined
22 that there is a particle interest present, it will hit
23 it with an electron beam and take an x-ray of it to tell
24 the analyst which element is present in that particle.

25 Once the automated run is completed, the analyst

1 will go back, which in this case was myself, and confirm
2 each of those particles that the instrument said was
3 GSR. We have to verify it and make certain that it was
4 correct, and then determine if the particle had the
5 correct morphology to be considered gunshot residue.
6 Once that is done, we generate our report to the
7 findings.

8 Q What were your findings in this case?

9 A In this case, the kit from Kaneisha Young was
10 negative. I did not find any particles characteristic
11 of gunshot primer residue.

12 The kit from Quaterious Peay was also negative. I
13 did not find any particles characteristic of primer
14 gunshot residue.

15 The kit from Kendrews Stover was negative. I did
16 not find any particles characteristic of primer gunshot
17 residue.

18 The kit from Lashawn White was positive. I did
19 find particles characteristic of gunshot primer residue.

20 The kit from Joel McLemore was negative. I did not
21 find any particles characteristic of gunshot primer
22 residue.

23 Q So with Joel McLemore, the victim, why would it be
24 that there be no GSR, no gunshot residue, on the victim?

25 A In this case with the victim, anything that comes

1 in contact with the victim after they are shot can
2 remove that residue. Normally, with victim kits, there
3 isn't a long time frame. In this case I learned after
4 the analysis that the victim survived for several days
5 prior to the collection of the kit.

6 So the kit was more than likely negative due to the
7 medical care that he had received after the shooting.

8 Q Turning to Lashawn White, you said there were
9 particles found on him.

10 Where were they, and how many were there?

11 A I found three particles on Lashawn White's hands.
12 I found two on his palm of his right hand and one on the
13 back of his right hand.

14 Q What does the presence of gunshot residue mean?

15 A As an analyst, if we detect gunshot residue on a
16 person, it means that person potentially fired a weapon.
17 They were near a weapon when it was fired, or they
18 handled an object that had gunshot residue on it, and it
19 transferred to their person.

20 Q What is the typical particle range you see on
21 someone's hands who had fired a weapon?

22 A Rephrase, please.

23 Q If someone fires a gun, like what is the typical
24 range of gunshot residue particles you see?

25 What is the highest amount you have seen on someone

1 who has fired a weapon, and what is the lowest number
2 you have seen?

3 A We can see hundreds of particles, or we can see
4 one. With our testing, we stop once we hit 25
5 particles. Once we confirm the presence of gunshot
6 residue, there is nothing more we can tell you with the
7 addition of the other particles.

8 Q When a gun is fired -- you said that the presence
9 of gunshot residue can mean that someone was standing
10 near them when the gun has fired.

11 How far does the gunshot residue travel?

12 A Gunshot residue can travel different distances. It
13 depends on the caliber of the gun, how it was fired, and
14 where it was fired.

15 There has been some testing done in a closed
16 environment, which means it's not in the elements, it's
17 in a closed room -- where they have detected gunshot
18 residue approximately 60 feet in front of the bullet.

19 So in the direction of the muzzle, they found
20 gunshot residence particles 60 feet ahead of it.

21 Q If someone fires a gun -- you said that a gunshot
22 residue particle can go out 60 feet. How about for
23 those standing near the person?

24 A In the same test, they had found that approximately
25 three feet to each side and to the back. It's almost as

1 much residue can be deposited on the shooter as the
2 person near the shooter.

3 Q How long does gunshot residue tend to last on a
4 person?

5 A Gunshot residue typically will no longer be present
6 on a living person usually three to four hours after
7 firing the weapon. It can be found with a
8 larger-caliber weapon up to six hours, which is why we
9 have a limit of a six-hour timeframe. If I fire a
10 weapon and I am apprehended, seven hours later we don't
11 recommend a collection kit, because there is no
12 reasonable expectation to find it that long after the
13 shooting.

14 Gunshot residue is very fragile, and anything you
15 do to your hands can remove it. You can put your hands
16 in and out of your pockets, touch things, wash your
17 hands, and your body will naturally absorb the particles
18 because they were microscopic.

19 Q In an inanimate object, such a car, how long would
20 you expect to see gunshot residue there?

21 A In an inanimate object such as a car or clothing,
22 it will remain until it's physically removed or its
23 cleaned. If I shoot you in this jacket and I wash the
24 jacket that night, that would more than likely remove
25 all of the residue.

1 If I shoot from a vehicle and then clean the
2 vehicle, it can remove it. So anything that would come
3 in contact with the areas, we look for transfer to a
4 vehicle. So if I look at the steering wheel for
5 transfer from a shooter, anything that touches that
6 steering wheel will remove it.

7 So if someone shoots a gun and then gets in the car
8 and drives away and then leaves the car and two days,
9 three days, four days later the police find the car and
10 collect samples, you would expect to find it, because no
11 one has done anything to that car in that time
12 frame.

13 If that car has been driven or people are in it,
14 out of it, clean it, you wouldn't expect to find
15 it.

16 Q So a car seized two days after an incident, you
17 would no longer expect to find gunshot residue if the
18 car had been used?

19 A I would not. I would not on a steering wheel. We
20 have two different types of cases that we receive from
21 vehicles. We have one where a suspected shooter fired a
22 weapon, got in a vehicle, and drove away. In that case
23 we look at the steering wheel and the gear shift.

24 The other type of case is if someone is suspected
25 of firing a weapon from within a vehicle. If it is

1 fired within the vehicle, I would expect to find it
2 beyond that two-day frame.

3 If it is trying to look for transfer on a steering
4 wheel or a gear shift, I would not.

5 Q Is it possible for an individual to have gunshot
6 residue on them merely from being patted down by a
7 police officer?

8 A It's a possibility that you don't expect to find a
9 lot of that. Usually the transfer is more from being
10 near the weapon when it was fired.

11 MR. FUSSNECKER: I don't have any further questions
12 for this witness. There may be questions from the
13 defense side.

14 THE COURT: Mr. Grier.

15 MR. GRIER: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. GRIER:

18 Q Ms. Nates, how are you doing? Ready to get home?

19 A I'm fine.

20 Q Ms. Nates, finding three particles doesn't confirm
21 somebody shot a firearm, but it certainly doesn't
22 exclude them from having shot a firearm; correct?

23 A We can never confirm the origin of gunshot residue.
24 We can determine they fired or were near a weapon when
25 it was fired, or they handled something that had gunshot

1 residue on it.

2 Q A lot of factors. If I fired a gunshot and I
3 washed my hand, I could still have particles on it after
4 washing my hands, even if I washed my hands immediately;
5 correct?

6 A Depending on how well you washed your hands, yes.

7 Q Exactly. If I fired a gun and I was sweating, I
8 could lose some particles, but I could still have
9 particles on my hand as well, depending on how much I
10 sweated; correct?

11 A Yes.

12 Q If I wiped my hands down without washing them, I
13 could remove the majority of particles as well; correct?

14 A That's correct. Anything you do can remove those
15 particles.

16 Q You said you wouldn't expect to find gunshot
17 residue after two days in a car?

18 A If someone is driving the vehicle and touching the
19 steering wheel, they are going to remove the gunshot
20 residue.

21 Q What about the passenger's seat?

22 Wouldn't you need to know whether anyone had been
23 there to come to any conclusion? You would need to know
24 something about the use of that vehicle before you can
25 draw any conclusions about what you expect; correct?

1 A We need to know whether we are looking to see
2 whether a firearm was discharged from within the
3 vehicle, or if they are looking for a specific transfer
4 from a person to a specific area in that vehicle.

5 Q Assuming you are looking for a transfer -- you have
6 a case where nobody is alleging that there was a
7 discharge of a firearm in the vehicle, and you are
8 looking for transfer. You really can't tell anything
9 about the vehicle, unless you know the use that it had;
10 correct?

11 A I can't tell anything about the vehicle anyway. I
12 don't have any knowledge of things beforehand. I
13 receive what they provide to me to analyze.

14 Q Nothing was provided in this particular case that
15 you are aware of; correct?

16 A Nothing was submitted from the vehicle for me to
17 analyze.

18 Q So you have no idea whether there was something
19 potentially in that vehicle or not, or of the use of
20 that vehicle between the time of the potential transfer
21 onto that vehicle and the time that it was taken into
22 custody; correct?

23 A I have no knowledge of that.

24 Q So you really can't opine on anything about the
25 potential for gunshot residue in the particular car in

1 this case that was taken into the custody of law
2 enforcement, can you?

3 A Can you repeat that?

4 Q You can't opine about any potential gunshot residue
5 that might have been recovered in a car that wasn't
6 tested as in this particular case?

7 A I can give my opinion as to what I would expect if
8 a car was driven and used and they were looking for
9 transfer on a steering wheel.

10 Q Do you know anything about this car?

11 A I do not.

12 Q So you can't opine about this particular car that
13 is the subject of this particular case?

14 A In generalities I can, but not specific to that
15 car. I have no knowledge of what that car went through
16 until it was impounded.

17 MR. GRIER: Thank you.

18 THE COURT: Anything else, Mr. Fussnecker?

19 MR. FUSSNECKER: No further questions, Your
20 Honor.

21 THE COURT: You can step down.

22 (Whereupon, the witness exited the witness stand.)

23 MR. FUSSNECKER: We ask that she be released from
24 her subpoena.

25 THE COURT: Any objection, Mr. Grier?

1 MR. GRIER: No objection, Your Honor.

2 THE COURT: You may be excused.

3 Counsel, I think this is a good time to break for
4 the evening.

5 Ladies and gentlemen, we have discussed during
6 lunch a legal matter that we have to take up tomorrow
7 morning. I will ask that you report downstairs at 10:00.
8 That will give us time to work on these legal issues and
9 matters of law tomorrow morning before we get started
10 with testimony.

11 Again, I ask you not to discuss this as you leave
12 the building. As you get home tonight, if there are any
13 news accounts, please don't read those. Do not discuss
14 the case with anyone.

15 Hope you have a good evening tonight.

16 Everyone remain seated while the jury leaves.

17 (Whereupon, the jury exited the courtroom.)

18 THE COURT: Anything before we meet tomorrow
19 morning at 9:30?

20 MS. WEISS: Yes, Your Honor. I am concerned with
21 the witnesses that testified today and the noises that I
22 heard from the back of the courtroom.

23 I am concerned that something -- it just makes me
24 nervous -- with Mr. Grier's comment to the last lay
25 witness -- I would just ask for an instruction from the

1 Court that there not be any communication with any of
2 the witnesses who testified today. I request some sort
3 of instruction from the Court. It just makes me
4 nervous.

5 THE COURT: Mr. Grier's comment could have been
6 taken a couple of ways. It could have also been taken
7 the wrong way.

8 MR. GRIER: It was not something that I am proud
9 of. I didn't intend for it to be intimidating or
10 anything. It was sarcastic, but it wasn't intended to
11 try to intimidate anyone or harm anybody.

12 THE COURT: I will caution about doing that with any
13 other witnesses in the trial.

14 For those of you in the audience, I do not want
15 anyone to try to contact any witness who has already
16 testified or who may testify in the next several days.
17 As I have already pointed out, I don't want any more
18 comments, talk, or discussion, any kind of outburst in
19 this courtroom.

20 If you do, you will be removed and not allowed to
21 sit through the rest of the trial.

22 Is that clear back there?

23 I want somebody to respond.

24 THE UNIDENTIFIED SPEAKER: Yes, sir.

25 THE COURT: No contact with -- if I find out

1 tomorrow morning from a witness that somebody has
2 contacted them, that person or persons will be held in
3 contempt of this Court for ignoring my instructions, and
4 I will send you to jail.

5 Anything else, Ms. Weiss?

6 MS. WEISS: Your Honor, as to the bench warrant, I
7 would ask that the bench warrant be lifted on Quaterious
8 Peay. He showed up voluntarily and testified.

9 THE COURT: He may be recalled.

10 THE UNIDENTIFIED DEPUTY: Law enforcement has an
11 active bench warrant right now.

12 THE COURT: As a result of the bench warrant, or
13 did he show up voluntarily?

14 MS. WEISS: He showed up voluntarily.

15 MR. GRIER: No objection, Your Honor. He did.

16 THE COURT: I will lift the bench warrant.

17 I was under the impression that he came as a result
18 of the bench warrant.

19 MS. WEISS: He had some encouragement.

20 THE COURT: Anything else this evening?

21 MS. WEISS: Not from the State.

22 MR. GRIER: No, Your Honor.

23 THE COURT: Let's meet in my chambers at 9:30
24 tomorrow morning to begin with.

25 MS. WEISS: That's fine, Your Honor.

1 MR. GRIER: Yes, Your Honor.

2 THE COURT: Everybody have a good evening.

3 (Whereupon, the proceedings were continued until
4 the following day without interruption.)

5 * * *

6 END OF VOLUME II

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1	I N D E X	
2	PROCEEDINGS	351
3	WITNESS: LASHAWN WHITE (Continued)	
	Direct Examination (W)	354
4	Cross-Examination	368
	Redirect Examination	378
5	WITNESS: JAMES GREEN	
6	Direct Examination (F)	380
	Cross-Examination	380
7	WITNESS: JANICE EDWARDS-ROSS, M.D.	
8	Direct Examination (W)	389
9	Direct Examination (W)	398
	Cross-Examination	446
10	Redirect Examination	461
11	STATE RESTS	463
12	PROCEEDINGS CONTINUED	467

14	E X H I B I T S	
15	ITEM NUMBER	DESCRIPTION PAGE
16	(S) 15	Forensic Log 379
	(S) 17A - 17B	Autopsy Photographs 393
17	(S) 19	Photograph 421
	(S) 18	Photograph 431
18	(S) 4A - 4D	Photographs 454
	(S) 14	Phone Log 111
19		
20		
21		
22		
23		
24		
25		

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 P R O C E E D I N G S

2 LANCASTER, SOUTH CAROLINA

3 (Whereupon, the following proceedings were
4 held in open court. The defendant was
5 present with his attorney, along with
6 counsel for the State.)

7 MR. GRIER: Your Honor, I would like to address the
8 issue of claiming attorney/client privilege for the
9 testimony of Lashawn White. My intention is to show
10 that he will conform his testimony to whatever was
11 advantageous to him as opposed to telling the truth. Of
12 course, he was advised to tell the truth, but I think
13 that it does go to his credibility, and I would ask the
14 Court to allow me to present that.

15 Your having slept on that -- I don't know if I
16 submitted that argument of the flawed crime exception in
17 my original motion.

18 THE COURT: Any response?

19 MS. WEISS: Your Honor, the response is the same.
20 It's the attorney/client privilege. I believe that Mr.
21 Grier would be arguing vehemently against this were it
22 any other situation for the same reasons that I am
23 arguing. Attorney/client privilege is attorney/client
24 privilege, and we need to recognize it as that.

25 THE COURT: All right. I am going to find that the

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 attorney/client privilege applies, and you will not be
2 able to go into that with that witness. I don't think
3 that removes attorney/client privilege.

4 MR. GRIER: Understood, Judge. To make the record
5 clear, that was Lashawn White and the renewal of that
6 motion.

7 THE COURT: Thank you, Mr. Grier.

8 Before we bring the jury in, I understand that
9 there has, in the last couple of days, there have been
10 some issues or problems out in the hallway with some of
11 the defendant's family and law enforcement. I am
12 cautioning everyone now as I did yesterday in this
13 courtroom.

14 There will be no outbursts, no shows of emotion, no
15 showing of emotion in this courtroom by anyone. If
16 there is, they will be removed from the courtroom. If I
17 find out there is a struggle out in the hallway, the
18 matter will be brought to my attention, and I will deal
19 with it at that point in time.

20 If somebody is being disruptive in or out of the
21 courtroom or in the courthouse itself or on the
22 courthouse grounds, I will deal with it, and somebody is
23 going to be found in contempt of this Court, and they
24 will be facing incarceration. That is the only warning
25 I am going to give.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Mr. Bailiff, if for some reason a deputy or
2 somebody indicates a disruption, you just wave your hand
3 like that (indicating) to me. You don't have to say
4 anything. Just wave your hand, and I will handle it
5 from there.

6 Ready for the jury?

7 MS. WEISS: The State is ready, Your Honor.

8 MR. GRIER: The defendant is ready, Your Honor.

9 THE COURT: Bring them in.

10 (Whereupon, the jury entered the courtroom.)

11 THE COURT: I realize it's somewhat later than
12 10:10 or 10:15. As I told you yesterday, we had some
13 matters of law to discuss this morning. Hopefully, some
14 of those matters that we discussed will shorten the
15 trial somewhat for you. We are not holding you hostage
16 for no reason at all.

17 We are now ready to proceed.

18 Ms. Weiss.

19 MS. WEISS: Thank you, Your Honor.

20 The State recalls Lashawn white.

21 * * *

22 LASHAWN WHITE,

23 called as a witness by and on behalf of
24 the State to testify, having being previously duly
25 sworn was examined and testified as follows:

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 THE COURT: Mr. White, you were directed to follow
2 my instructions yesterday. I will give you the same
3 instructions. I want you to speak loudly and clearly.
4 Answer these questions with a "yes" or "no" response and
5 not a nod of the head or "uh-huh" or "huh-uh."

6 Is that clear?

7 THE WITNESS: Yes, sir.

8 DIRECT EXAMINATION BY MS. WEISS

9 BY MS. WEISS:

10 Q Good morning, Mr. White. Please state your name
11 for the record.

12 A Lashawn White.

13 Q What is your nickname?

14 A I don't have a nickname.

15 Q Has anybody ever called you Deuce?

16 A Probably.

17 Q I will go back to where we were yesterday.

18 On September 27, 2017, do you remember that day?

19 A Not all of it, no, ma'am.

20 Q Do you remember the day that Joel McLemore was
21 shot?

22 A I remember him being shot.

23 Q Were you there when he was shot?

24 A Yes, ma'am.

25 Q Where were you standing when Joel McLemore was

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 shot?

2 A I don't know specific. In the yard
3 somewhere.

4 THE COURT: They can't hear you back here. You
5 have to speak up. These jurors have got to hear what
6 you are saying.

7 Mr. Grier, if you need to come forward, feel free
8 to do so.

9 THE WITNESS: I ain't specific, but I was in the
10 yard somewhere.

11 Q How do you know Joel McLemore?

12 A He used to take my girlfriend to work.

13 Q Who is your girlfriend?

14 A Kaneisha.

15 Q Is that who you lived with at the time?

16 A No. We was staying together all the
17 time.

18 Q Did you stay over there some?

19 A Yes, ma'am.

20 Q Did you spend a lot of time over there?

21 A Sometimes.

22 Q Where did Kaneisha live in regard to Roger's house?

23 A Across the street.

24 Q So that day, had you been talking to Joel
25 McLemore?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A I can't remember.

2 Q You described him yesterday as a friend?

3 A Yes, ma'am.

4 Q How long had you and Joel been friends?

5 A For a couple of months probably.

6 Q What did you and Joel do together?

7 A Played games, video games. That was it.

8 Q Did you ever get high together?

9 A No, ma'am.

10 Q Did Joel ever buy anything from you?

11 A No, ma'am.

12 Q Do you know who Bullet is?

13 A Yes, ma'am.

14 Q Who is that?

15 A An old friend.

16 Q Where is Bullet now?

17 A He passed.

18 Q Did Bullet have a little brother?

19 A I don't know.

20 Q He was a good friend of yours -- Bullet was?

21 A Yes, ma'am.

22 Q It's your statement today that you don't know if he

23 had a little brother?

24 A No, ma'am.

25 Q Do know any of Bullet's family?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A Just his cousin, Kaneisha.

2 Q That was his cousin?

3 A Yes, ma'am.

4 Q But you don't remember if you knew any of his other
5 relatives?

6 A No, ma'am.

7 Q Going back to the 27th. You said you-all were
8 hanging out. Where were you all hanging out?

9 You said in the yard, but whose yard?

10 A Doc's yard.

11 Q Doc is Roger Harris?

12 A Yes, ma'am.

13 Q Do you recognize State's Exhibit 1L?

14 A No, ma'am.

15 Q Does that resemble the yard you were hanging out
16 in?

17 A It could be. I am not sure.

18 Q Are you under the influence of anything this
19 morning, Mr. White?

20 A No, ma'am.

21 Q So you remember being in a yard. You remember the
22 day that Joel was shot, but you don't remember what the
23 yard looked like?

24 A It was a lot of dirt.

25 THE COURT: Speak up.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 THE WITNESS: It was a lot of dirt. It might be.

2 BY MS. WEISS:

3 Q Do you remember a car pulling up prior to Joel
4 being shot?

5 A I remember a couple of cars coming.

6 THE COURT: Speak up. I have told you several
7 times. There is no reason for you to speak that softly.
8 The women who have testified here are much louder than
9 the men. I don't know what is wrong with the male
10 voices up here. Speak loudly and clearly.

11 BY MS. WEISS:

12 Q I will show you what is marked State's Exhibit 7C.
13 Do you remember a car like this pulling up?

14 A No, ma'am.

15 Q You don't remember it at all?

16 A No, ma'am.

17 Q Why do you think you don't remember anything?

18 A It has been a little minute.

19 Q Do you remember if there was any arguing out in the
20 yard where you were standing?

21 A No, ma'am.

22 Q You don't remember, or there wasn't?

23 A I don't think there was.

24 Q Who was out there with you?

25 A A couple of friends.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q What are their names?

2 A Peay. I can't remember the rest of anybody else.

3 Q Was Joel out there?

4 A Yeah, Joel.

5 Q What about Bree or Kristavius? Do you remember
6 him?

7 A I think he was out there.

8 Q Do you remember telling law enforcement that he was
9 out there?

10 A Probably.

11 Q How about Ladario Jones?

12 A I don't know.

13 Q Do you know Ladario Jones?

14 A I mean, if I seen him, I probably would. I don't
15 know him by name.

16 Q Do you remember telling law enforcement that he was
17 out there?

18 A Probably.

19 Q Do you recall telling law enforcement that a car
20 pulled up?

21 A I believe so. Yes, ma'am.

22 Q That it was in the driveway or in the dirt area you
23 were just describing?

24 A Might have been. I can't remember exactly for
25 sure.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Do you remember somebody getting out of that car?
2 A I mean -- there were a couple cars. I really can't
3 remember.
4 Q Do you remember what the person was wearing that
5 got out of that car?
6 A Not really. No, ma'am.
7 Q Do you remember what color that person was wearing?
8 A No, ma'am. I forget.
9 Q Were they wearing pink or green?
10 A I don't think so. No.
11 Q What do you think it was?
12 A It might have been all black.
13 Q Might have been all black?
14 A Yes, ma'am.
15 Q Do you know if the person wearing all black was
16 related to Kaneisha as well?
17 A No, ma'am.
18 Q Do you remember telling law enforcement that the
19 person in all black was Kaneisha's cousin?
20 A No, ma'am.
21 Q Was the person wearing all black there before the
22 shooting?
23 A I can't remember.
24 Q Do you remember when the shot went off?
25 A Yes, ma'am.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q What did you do when the shot went off?

2 A Ran.

3 Q Ran where?

4 A Across the street.

5 Q If you ran across the street and you had seen the
6 person wearing all black, then they were there before
7 the shooting?

8 A I don't know. I can't remember.

9 Q Were you able to see a gun on the person that got
10 out of that car?

11 A No, ma'am.

12 Q Were you able to see an outline of a gun on the
13 person who got out of the car?

14 A No, ma'am.

15 Q Do you recall telling law enforcement that you were
16 able to see an outline?

17 A I am not sure.

18 Q So you believe you told law enforcement you were
19 not sure if you saw an outline under the shirt?

20 A Yes, ma'am.

21 Q Do you remember talking about possibly seeing an
22 outline under the shirt?

23 A Yes, ma'am, but it's hard to remember.

24 Q In your memory, you said you possibly saw an
25 outline of a gun under the shirt?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A I think I said it could have been. I don't
2 remember now.

3 Q Do you remember saying that the person wearing that
4 black shirt was Bullet's brother?

5 A No, ma'am.

6 Q You called Bullet your homeboy?

7 A He was a good friend. Yes, ma'am.

8 Q Would that be a proper description of him, a
9 homeboy?

10 A I guess so.

11 Q If Demarcus Foster is his brother, that would be
12 your home boy's brother?

13 A I don't know.

14 Q Do you remember if the person in all black had been
15 there earlier wearing something different?

16 A No, ma'am.

17 Q Do you remember telling law enforcement that he was
18 wearing something different earlier?

19 A No, ma'am.

20 Q Do you remember telling law enforcement he was
21 wearing a black T-shirt with words on it?

22 A No, ma'am.

23 Q Khaki pants?

24 A No, ma'am.

25 Q Are you denying that you said it, or you just don't

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 remember?

2 A I don't remember.

3 Q You don't remember it, because it was a minute ago?

4 A Yes, ma'am.

5 Q I will take you to the moment the gunshot went
6 off. Do you remember that moment?

7 A Yes, ma'am.

8 Q I want you to think about that minute, that
9 second. Think about who was around you.

10 Did you see Joel? Were you talking to Joel before
11 that gunshot went off?

12 A I don't think I saw Joel when it went off.

13 Q Were you standing near Joel when the gunshot went
14 off?

15 A I can't remember.

16 Q Had you been drinking that day?

17 A Yes, ma'am.

18 Q Had you been smoking that day?

19 A Yes, ma'am.

20 Q You were waiting on Joel to come back over there?

21 A You mean after he got shot?

22 Q No. Not after he got shot. Before he got shot,
23 when he came back?

24 A I wasn't waiting for him. No.

25 THE COURT: I can't understand what you are saying.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 THE WITNESS: I said I wasn't waiting for him.

2 BY MS. WEISS:

3 Q You-all hang out on a regular basis, though?

4 You-all did at the time?

5 A I wouldn't say a regular basis, but we hung out
6 sometimes.

7 Q Did he drive you around some, too?

8 A If I needed to go somewhere, yes.

9 Q Did he bring you stuff from stores, like
10 McDonald's?

11 A He might have.

12 Q He was your friend?

13 A Yes, ma'am.

14 Q Were you arguing with Joel?

15 A No, ma'am.

16 Q Did you have a fight with Joel?

17 A No, ma'am.

18 Q Were you mad at Joel?

19 A No, ma'am.

20 Q Did you shoot Joel McLemore?

21 A No, ma'am.

22 Q Are you sure?

23 A I am positive.

24 Q How are you sure?

25 A I would have known if I shot someone.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q So where were you when you heard the shot?
2 A In the yard.
3 Q Did you see Joel go down?
4 A No, ma'am.
5 Q Did you see who fired the shot?
6 A No, ma'am.
7 Q You know that you had gunshot residue on your hand?
8 A I remember you-all saying that yesterday.
9 Q How did gunshot residue get on your hand?
10 A It might have been from the stuff they found in the
11 house.
12 Q What stuff is that?
13 A Bullets, ammunition.
14 THE COURT: Speak up. I can't understand you.
15 THE WITNESS: I said like bullets and stuff.
16 BY MS. WEISS:
17 Q Were you moving that stuff around after the
18 shooting?
19 A When the police came, yeah.
20 Q Was a gun found in your house -- in Kaneisha's
21 house?
22 A I don't know. Ain't nobody said nothing about no
23 gun.
24 Q Again, did you shoot Joel McLemore?
25 A No, ma'am.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Was he your friend?

2 A Yes, ma'am.

3 Q Did Quaterious Peay shoot Joel McLemore?

4 A No, ma'am.

5 Q Did Bree shoot Joel McLemore?

6 A No, ma'am.

7 Q You know that?

8 A I can't say I know that, but I don't think they

9 did, no.

10 Q You were standing out there?

11 A Yes, ma'am.

12 Q You were talking to them?

13 A I can't remember who I was talking to.

14 Q You and Joel and Bree and Damu and Dario -- that

15 was normal to be standing out there talking; right?

16 A I don't want to say normal, but we hung out there a

17 few times.

18 Q On 16th Street. It wasn't unusual to see any of

19 them on 16th Street?

20 A I didn't stay out there, so I can't say they be

21 there all the time.

22 Q But you weren't surprised to see any of them over

23 there?

24 A No, ma'am.

25 Q Were you arguing?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A No, ma'am.

2 Q Were there any problems between you-all?

3 A No, ma'am.

4 Q Did you consider all of them your friends?

5 A I can't say all of them my friends, but I know
6 them.

7 Q Did you have problems with any of them?

8 A No, ma'am.

9 Q Did you have a problem with any of them being over
10 there near your girlfriend's house?

11 A No, ma'am.

12 Q Were you planning to be at a murder that night?

13 A No, ma'am.

14 Q Did you expect anything to go down that night that
15 was going to cause someone's death?

16 A No, ma'am.

17 Q Did you tell anyone to shoot Joel McLemore?

18 A No, ma'am.

19 Q You are sure?

20 A I am sure. Yes, ma'am.

21 MS. WEISS: Your Honor, I have no further questions
22 of this witness. Please answer any questions that the
23 defense may have.

24 THE COURT: Mr. Grier.

25 MR. GRIER: Thank you, Your Honor.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 CROSS-EXAMINATION

2 BY MR. GRIER:

3 Q Mr. White, did you see any guns out there the day
4 that Joel got killed out there in the yard anywhere?

5 A No, sir.

6 Q Did you see what happened?

7 A Not really. No, sir.

8 Q Joel got killed by an accident, didn't he?

9 A I don't know. I just know he got shot.

10 Q He was your friend, and you-all fell out that day,
11 didn't you?

12 A What?

13 Q I am saying you-all were friends, but you fell out
14 that day, didn't you?

15 A No, sir.

16 Q You-all were business associates, weren't you? Do
17 you know what that means?

18 A No, sir.

19 Q You were selling him drugs, weren't you?

20 A No.

21 Q You didn't get him drugs that day?

22 A No, sir.

23 Q Did you communicate with him that day? Did you
24 talk to him or text him or call him?

25 A . No, sir.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q You-all didn't get into an excited conversation
2 where you told him that you needed to borrow something
3 from him?
4 A No, sir.
5 Q You didn't have some text messages back and forth
6 with him where you were arranging to get him some drugs?
7 A No, sir.
8 Q Do you deny going by Deuce?
9 A I am not denying it.
10 Q You are not denying it?
11 A People call me anything.
12 Q Mr. White, are there other "Deuces" around
13 Lancaster -- people named Deuce?
14 A Probably.
15 Q Were you aware of any other friends of Joel's that
16 were named Deuce? Was that a confusion?
17 A I don't know all of Joel's friends.
18 Q You didn't know anyone else named Deuce hanging
19 around with Joel?
20 A I don't know.
21 Q You had a phone, didn't you?
22 A I can't remember.
23 Q Mr. White, how much education have you got?
24 A I graduated from high school.
25 Q So you read well?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A Yes, sir.

2 Q You understand the English language?

3 A Yes, sir.

4 Q Have you used phones a lot?

5 A I guess so.

6 Q So you are familiar with what texting is all about;

7 right?

8 A Yes, sir.

9 Q Did you ever text with Joel?

10 A Probably.

11 Q Would you look at these text messages and see if

12 you recognize them.

13 A (Witness complies).

14 Q Would that be a communication between you and Mr.

15 McLemore -- Joel?

16 A I don't know.

17 Q It might be?

18 A I don't know.

19 Q Okay. Do you recognize the date? Did you see what

20 date that was on?

21 A Yes, sir.

22 Q Can you read off what day that was on for us?

23 A 9-27.

24 Q 2017?

25 A Uh-huh.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 THE COURT: Speak up.

2 BY MR. GRIER:

3 Q Ms. Weiss has asked you a lot about different
4 things that were going on, on that day; right?

5 A Yes, sir.

6 Q She asked you a lot of questions about what was
7 going on out there that day? When I say "that day,"
8 September 27, 2017. We know the date that we are
9 talking about in this courtroom, don't we?
10 We do know that, don't we? This is what this is all
11 about.

12 THE COURT: Speak up. Yes or no.

13 THE WITNESS: Yeah. I guess.

14 BY MR. FOSTER:

15 Q If I repeat what she asked you, I apologize. I
16 need to make sure that I am asking the right questions
17 as well.

18 A Okay.

19 Q You said one person, a black male. Did you tell
20 law enforcement on October 2, 2017 -- do you remember
21 talking to law enforcement?

22 A Yes, sir.

23 Q Several times, actually, right? At least twice?
24 One time, is that correct?

25 A That night. Yeah.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q You told them a black male got out and walked from
2 the vehicle up the side steps by Peay onto the porch.
3 Do you remember that?

4 A I don't know.

5 Q Do you remember telling law enforcement that when
6 the man walked up on the porch, the shot happened
7 seconds after he got on the porch?

8 A I don't want to say seconds. Probably. I don't
9 know.

10 Q Probably? Is that what you said?

11 A Yeah. I said probably.

12 Q Did you tell law enforcement that after the
13 shooting, the individual dressed all in black walked off
14 the porch?

15 A I don't know.

16 Q Did you see somebody on the porch shooting, Mr.
17 White?

18 A No, sir.

19 Q Did you know that a shot came off the porch?

20 A No, sir.

21 Q You did not see any shooting?

22 A No, sir.

23 Q Do you remember what you were doing at all?

24 A Drinking and smoking.

25 Q Were you doing other stuff?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A No, sir.

2 Q Mr. White, what is Kaneisha Young's nickname? Bay?

3 A Yes, sir.

4 Q It was her house, and you lived with her? Is that

5 what I am understanding you are saying, or it was

6 you-all's house?

7 A It was her house.

8 Q Were you working?

9 A Not at the time.

10 Q Did you testify that you had worked at Tyson at one

11 time?

12 A Yes.

13 Q How long ago has that been, Mr. White?

14 A A few years ago.

15 Q Okay. Was that the last job you had?

16 A No.

17 Q What other jobs have you had?

18 A I was making solar panels -- construction.

19 Q Installing solar panels?

20 A Yes, sir.

21 Q Who did you do that for?

22 A The solar plant in Monroe.

23 Q When did you last do that?

24 A I can't remember. It was a few years ago.

25 Q You were not working on September 27, 2017;

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 correct?

2 A I don't know.

3 Q I don't mean you were not working on that day. I
4 guess that is not a good question.

5 Did you work that day that Joel got killed?

6 A I don't think so.

7 Q Where were you working at the time?

8 A I don't know.

9 Q Did you have a job at that time where you went to
10 work?

11 THE COURT REPORTER: I didn't understand that, Your
12 Honor.

13 THE COURT: Speak up, Mr. White. Answer that
14 question again for the court reporter.

15 THE WITNESS: I don't know.

16 BY MR. GRIER:

17 Q Were you employed at the time that Joel was
18 killed?

19 A I can't remember.

20 Q Damu is Mr. Peay; correct? That was his nickname,
21 Damu?

22 A I don't know.

23 Q But you know Mr. Peay, but you don't know his
24 nickname. But he is your cousin?

25 THE COURT: Let him answer the question, please.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 One at a time. Let's start back over.

2 BY MR. GRIER:

3 Q Mr. Peay is your cousin?

4 A No, sir.

5 Q He is not? Okay.

6 Are you friends with Ladario Jones?

7 A Not as I know.

8 Q Friends with Bree Stevens, Kristavius Stevens?

9 A Yes, sir.

10 Q Mr. White, I asked you about that interview with

11 law enforcement.

12 MR. GRIER: Let's mark this as Defendant's Exhibit

13 3.

14 BY MR. GRIER:

15 Q Mr. White, this is a photograph of Roger Harris'

16 house.

17 Do you recognize it?

18 A It looks familiar.

19 THE COURT: Speak up.

20 THE WITNESS: It looks familiar.

21 BY MR. GRIER:

22 Q It is marked as Defendant's Exhibit 3, right?

23 A Yes.

24 Q Mr. White, it has markings on it; right? Do you

25 see those marks on it?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A Yes.

2 Q Do you recall seeing this the day that you spoke to
3 law enforcement?

4 A Yes.

5 Q Who made these marks on here?

6 A I guess me.

7 Q There is an X on one, and there is a name beside
8 one of the circles there. Can you tell me what the name
9 on there is?

10 MS. WEISS: Objection, Your Honor.

11 If the defense wants to publish this to the jury,
12 I would just ask that it be admitted into evidence.

13 MR. GRIER: As a State's exhibit?

14 MS. WEISS: It's his exhibit.

15 THE COURT: It's your exhibit.

16 MR. GRIER: It's my exhibit, but I am not putting
17 it into evidence.

18 MS. WEISS: You are showing it to the jury.

19 MR. GRIER: All right. Well, I will refrain from
20 doing that.

21 BY MR. GRIER:

22 Q Mr. White, you made these marks on here?

23 A Did I? I didn't make no marks.

24 Q Did you write anything on here?

25 A No.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Do you know who did?

2 A Law enforcement.

3 Q Do you recall where Joel was standing at the time
4 that he was shot?

5 A I can't remember where he was standing.

6 Q Can you point to it here -- anyplace that he was
7 standing? Did you talk to him out there?

8 A It's been a minute. I can't remember.

9 Q Can you point to where you talked to him out
10 there?

11 A No, sir.

12 Q You just don't remember where it was at?

13 A No.

14 Q You didn't make those marks on there?

15 A No, sir.

16 THE COURT: Speak up. What was your answer?

17 THE WITNESS: I said, no.

18 BY MR. GRIER:

19 Q Mr. White, I believe the Attorney General asked you
20 about your convictions. In 2018, you were convicted of
21 possession of cocaine and strong-armed robbery.

22 Did you say that yesterday?

23 A Yes, sir.

24 Q You have pending charges as well?

25 A Yes, sir.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Your pending charges, you understand, carry from
2 seven to 70 years total, if you got every bit of time?

3 A Yes, sir.

4 MR. GRIER: Thank you, Mr. White.

5 THE COURT: Anything else, Ms. Weiss?

6 REDIRECT EXAMINATION

7 BY MS. WEISS:

8 Q Just to be clear, Mr. White, all those pending
9 charges happened after the incident date that we are
10 talking about; right?

11 A Yes, ma'am.

12 MS. WEISS: No further questions, Your Honor.

13 THE COURT: Anything else, Mr. Grier?

14 MR. GRIER: No, Your Honor. Thank you.

15 THE COURT: You can step down.

16 (Whereupon, the witness exited the witness stand.)

17 MS. WEISS: We would ask that this witness be
18 excused.

19 THE COURT: Any objection, Mr. Grier, to Mr. White
20 being excused?

21 MR. GRIER: No objection.

22 THE COURT: He may be excused and transported back.
23 Thank you.

24 MR. FUSSNECKER: The State calls Special Agent
25 James Green.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 JAMES GREEN,

2 called as a witness by and on behalf of

3 the State to testify, being first duly

4 sworn was examined and testified as follows:

5 MR. FUSSNECKER: Your Honor, at this time I believe
6 this is the appropriate time to read the stipulation we
7 discussed in chambers into the record.

8 THE COURT: All right, sir.

9 MR. FUSSNECKER: On September 29, 2017, Special
10 Agent Brian Truex arrested Quinterious Truesdale and
11 seized a P95 Ruger from him that was analyzed by Special
12 Agent James Green at SLED.

13 Also, at this time, Your Honor, I would like to go
14 ahead and move into evidence what has been marked as
15 State's Exhibit 15. This is the chain of custody for
16 items seized by law enforcement and turned over to SLED
17 for analysis, including the gun found at 943 16th
18 Street, the gun seized from Quinterious Truesdale, and
19 the bullet that was collected at autopsy.

20 We have stipulated to this with the defense.

21 MR. GRIER: That is correct, Your Honor.

22 THE COURT: State's Exhibit 15 is admitted into
23 evidence.

24 (The aforementioned item was marked as
25 State's Exhibit 15 for identification and was

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 admitted into evidence.)

2 DIRECT EXAMINATION BY MR. FUSSNECKER

3 BY MR. FUSSNECKER:

4 Q Good morning, Agent Green. Where do you work?

5 A I am employed by SLED in the firearms department
6 at the Forensic Services Laboratory.

7 Q What do you do in that laboratory?

8 A I am a forensic firearms examiner.

9 Q How long have you been employed by SLED?

10 A Since June of 2005.

11 Q Have you been a forensics firearms examiner since
12 that time?

13 A Yes, sir.

14 Q What are your duties there?

15 A Primarily, I examine firearms and firearm-related
16 evidence. If there is a crime and cartridge cases are
17 recovered and there is a firearm recovered, they will
18 send it to us to see if we can tell if that firearm
19 fired those cartridge cases or not.

20 We also analyze tools and tool-mark related items
21 as well.

22 Q What makes firearm identification possible?

23 A Firearms, when they are recreated -- the process is
24 metal-on-metal contact. It leaves tiny, individual
25 identifying characteristics. It's basically scratches

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 that are unique from one firearm to the next to the
2 next. There have been countless studies, of which I
3 have taken part in at least five.

4 If you are ever going to get carryover from one
5 firearm to the next, you would think it would be from
6 tools made consecutively using the same tool. So we
7 have been given barrels, slides, parts of pistols that
8 have fired certain bullets and cartridge cases. Even
9 though you see some similarities, a trained examiner can
10 see enough different markings to say, "This was fired by
11 one. This was fired by two, three, four," so on.

12 Q What specialized training have you received in
13 firearms identification?

14 A Once being hired at SLED, I began the firearms and
15 tool mark course instruction. It's approximately three-
16 to four-year course instruction. We are studying under
17 court-qualified firearms examiners learning to do what I
18 do now.

19 Q Have you previously testified as an expert in the
20 field of firearms identification?

21 A Yes, sir.

22 Q How many times?

23 A Seventy-five. Seventy-three times in State court,
24 and twice in Federal Court.

25 MR. FUSSNECKER: Your Honor, I would ask that

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Special Agent Green be recognized as an expert in the
2 field of firearms identification at this time.

3 MR. GRIER: No objection.

4 THE COURT: I will find him to be an expert in the
5 field of firearms identification.

6 BY MR. FUSSNECKER:

7 Q The two guns that we mentioned, did you analyze
8 them in this case?

9 A Yes, sir.

10 Q What are those guns?

11 A The first firearm that was submitted was SLED Item
12 1. It was a Smith & Wesson Model SDVE, semi-automatic
13 pistol, .40 S&W caliber. Serial Number FXT4884. It had
14 a mag with un-fired cartridges with it.

15 The second firearm that was submitted was a Ruger,
16 Model P95, semi-automatic pistol, .09 Ruger caliber.
17 Serial Number 317-58447. It also had a magazine and
18 un-fired cartridges with it.

19 Q Did you also receive a fired bullet as part of your
20 examination?

21 A Yes, sir. SLED Item 40 was a fired bullet jacket,
22 a fired bullet jacket fragment, and a lead core.

23 Q Handing you what has been marked as State's Exhibit
24 16 for identification.

25 A Yes, sir. State's Exhibit 16 is SLED Item 40,

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 bullet jacket -- bullet jacket and fragment and core I
2 examined in this case.

3 Q Please come down and show this to the jury.

4 A While I am showing it to you, I will explain --
5 everyone likes M&Ms; right?

6 When I talk about a bullet jacket and a core, the
7 core is like the chocolate part of the M&M. The jacket
8 is the candy coating that covers the core -- or the
9 chocolate. Sometimes when bullets hit certain things
10 like a hard object -- like a road or a car -- the jacket
11 and the core separate.

12 It's like taking an M&M and throwing it on the
13 ground and seeing pieces of the candy coating chip off.

14 That is basically what it is. Item 40 was a bullet
15 jacket, a bullet jacket fragment, and a lead core.

16 Q Agent Green, given the spent bullet, the fired
17 bullet and the two guns, were you able to conduct an
18 examination?

19 A Yes, sir.

20 Q Please describe that examination.

21 A The first thing I did when I got the bullet was, I
22 decontaminated it since it came from autopsy. I soaked
23 it in hot water and cleaned it off and put it in some
24 foamicide, which kills any germs in the lab. Then I
25 examined it.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Since it came in three pieces -- even though it's
2 one item number, I treated them as three different parts
3 during my examination.

4 The first thing I did was look at the jacket, the
5 fired bullet jacket, which was the largest piece of the
6 three I received. From that I was able to measure the
7 base or the diameter and get an approximate
8 caliber.

9 The jacket fragment was just a small fragment. All
10 I could do is weigh it, so I can't tell the caliber of
11 that.

12 The core, I can weigh it and measure it and get a
13 diameter and also an approximate caliber from that.
14 Since I can't tell if all three of these were the same
15 bullet at some prior time, I can't say it's a .09 mm or
16 a .380.

17 So what I did was I said that the fired bullet
18 jacket and the core were consistent with the nominal .38
19 caliber. Nominal is approximate, and the .38 caliber
20 family includes a .38 Special, a .357 Magnum, and .09 mm
21 Ruger calibers, among others.

22 Q So after conducting your analysis of the bullet
23 and the two guns, did you reach any conclusion as to
24 whether those two guns could have fired the bullet?

25 A Yes, sir. When I received both firearms, I

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 examined to make sure they are safe. I will test fire
2 them myself, so I know that the fired bullets and the
3 fired cartridge case is fired out of that gun, or fired
4 by the gun because I shot them myself.

5 Then I will microscopically examine them on our
6 comparison microscopes. Two microscopes connected by a
7 single-optical bridge. That allows us to look at two
8 objects simultaneously.

9 So I can look at the cartridge cases and say, yes,
10 they look good, and they were fired by that gun. I can
11 do the same with the bullets.

12 Once I did that for both of the firearms in this
13 case, I microscopically compared them with the State's
14 Exhibit 16 or SLED Item 40, bullet jacket and bullet
15 jacket fragment. The results of both of those
16 examinations were negative. State's Exhibit 16 was not
17 fired by either one of the firearms that were submitted
18 in this case.

19 Q So the firearm that was seized from X43 16th Street
20 and the firearm that was seized from Quinterious
21 Truesdale -- neither one of them could have fired that
22 bullet?

23 A No, sir.

24 Q Could a revolver have fired that bullet?

25 A Yes. For the .38 Special and .357 Magnum calibers,

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 I would say 98 or 99 percent of those firearms are all
2 revolvers.

3 MR. FUSSNECKER: Thank you. I don't have any
4 further questions for you at this time.

5 THE COURT: Mr. Grier.

6 CROSS-EXAMINATION

7 BY MR. GRIER:

8 Q You are a Special Agent?

9 A Yes, sir.

10 Q Is everybody that works for SLED a Special Agent?

11 A Yes and no. We do have sworn law enforcement
12 agents, of which I am one. I am a Class I agent. We do
13 have law enforcement Class 3 agents. They are
14 technically law enforcement in the police retirement
15 system; however, they don't have a gun and a badge and
16 no arrest powers.

17 Their law enforcement authority is working cases,
18 handling evidence, and testifying in court. We also
19 have some non-sworn support personnel at SLED as well.

20 Q You are listed as a forensic scientist, and you
21 were introduced as a Special Agent. I wanted to
22 understand that relationship.

23 A I wear two hats. I am sworn law enforcement, and
24 I am also a forensic scientist.

25 MR. GRIER: Those are all the questions I have for

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 you. Thank you.

2 THE COURT: Anything else?

3 MR. FUSSNECKER: Nothing further from this witness,
4 Your Honor. We ask that he be released from his
5 subpoena.

6 (Whereupon, the witness exited the witness stand.)

7 THE COURT: Thank you, sir. You may be excused.

8 MS. WEISS: Your Honor, at this time if we could
9 just take a brief recess to get ready for the next
10 couple of witnesses.

11 THE COURT: All right.

12 Ladies and gentlemen, we have a matter to take care
13 of. Please retire to the jury room, and we will call
14 you back out very shortly. Do not discuss the case when
15 you go back into the jury room.

16 (Whereupon, the jury exited the jury room.)

17 THE COURT: Yes, ma'am.

18 MS. WEISS: Your Honor, before we call the next
19 witness, Dr. Ross, I would like to make a motion in
20 limine that we will not go into the toxicology results
21 of the victim in this case. I believe that is
22 irrelevant in this case.

23 MR. GRIER: Well, Judge, I have never had that
24 request before. I have always thought that it was
25 admissible. It was the state they found him to be in at

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 the time of his death, in terms of what was going on at
2 the time that he died. I think it's relevant, and I
3 think the jury should hear.

4 So not to impugn anybody, there is certainly issues
5 about the drug trade that should be considered. I just
6 think it's relevant what the autopsy revealed about his
7 consciousness at the time of death.

8 MS. WEISS: Your Honor, I would argue that it's
9 totally irrelevant. There was not testimony that there
10 was anything about the victim, anything was being said
11 or done, anything where there would be a relevance to
12 what was in his blood at the time.

13 SLED analyzed the blood, not the pathologist. She
14 would not be witness to say what was in his blood as
15 part of her report, obviously, because she sent it out.
16 I don't see how it is relevant at all in this case.

17 THE COURT: There has been testimony about drinking
18 and drugs being used at this particular location
19 throughout the trial.

20 MS. WEISS: Nobody is denying that, but we are not
21 getting into anybody else's blood levels or anything
22 else. It just puts an extra focus on the victim that I
23 think is unnecessary and irrelevant for this particular
24 case.

25 MR. GRIER: This whole trial is about the victim,

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Your Honor. It's an unspeakable loss. But what his
2 condition was at the time of the loss of his life, Your
3 Honor, is something the jury is entitled to know. I
4 certainly had no notice that this was going to be an
5 issue. If I had known, I would have been more prepared
6 to address it.

7 THE COURT: I am going to overrule the objection.
8 I will allow the testimony concerning his toxicology
9 report.

10 Bring in the jury.

11 (Whereupon, the jury entered the courtroom.)

12 THE COURT: The State may call its next witness.

13 MS. WEISS: Thank you, Your Honor.

14 The State calls Dr. Janice Ross.

15 * * *

16 JANICE EDWARDS-ROSS, M.D.,

17 called as a witness by and on behalf of

18 the State to testify, being first duly

19 sworn was examined and testified as follows:

20 DIRECT EXAMINATION BY MS. WEISS

21 BY MS. WEISS:

22 Q Good afternoon, Dr. Ross.

23 A Good afternoon.

24 Q Please state your name and occupation for the jury.

25 A Yes. I am Janice Edwards-Ross, forensic

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 pathologist.

2 Q What is your training?

3 A I have had four years of college at the University
4 of South Carolina, and four years of medical school and
5 received my M.D. I then did over five years of training
6 in pathology, field pathology, as opposed to something
7 like surgery or pediatrics.

8 We learn how to identify diseases by using the
9 microscope in the hospital laboratory. We also learned
10 how to do an autopsy to find a cause of death. Then
11 using all the materials available, we come up with the
12 manner of death.

13 I am board certified in three areas of pathology.

14 Q What are those areas?

15 A Anatomic pathology, which has to do with looking at
16 surgical tissue and identifying cancers, et cetera.
17 Clinical pathology, which has to do with looking at
18 laboratory testing to help diagnose diseases like
19 diabetes, and forensic pathology, which is a specialty
20 where we do autopsy for coroners, document evidence of
21 injury, and take materials for toxicology, and document
22 everything for a court of law.

23 Q Have you been qualified as an expert in forensic
24 pathology?

25 A Yes.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Approximately how many times?

2 A In South Carolina, over 200.

3 MS. WEISS: Your Honor, at this time I would like
4 to present Dr. Janice Ross as an expert in the field of
5 forensic pathology.

6 MR. GRIER: No objection.

7 THE COURT: I will find Dr. Ross to be an expert in
8 the field of forensic pathology.

9 BY MS. WEISS:

10 Q Dr. Ross, did you have the opportunity to perform
11 an autopsy on the victim in this case, Joel McLemore?

12 A Yes, I did.

13 Q What was the date of that autopsy?

14 A The autopsy was October 4, 2017.

15 Q We have been talking about the fact that the
16 incident date that we have been discussing is September
17 27, 2017. Do you know what happened between September 27
18 and the time you got the body?

19 A Yes. According to the coroner, the incident
20 occurred on September 27. He went to the hospital where
21 he was proclaimed brain dead the next day. They kept
22 him on life support until he could donate some organs.
23 He donated lungs, liver, and kidneys.

24 Q So it was after that that he was transported to
25 you?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A Correct.

2 Q Where is your office located?

3 A At that time, it was Newberry, South Carolina. We
4 do the autopsies in the hospital morgue there.

5 Q In this case, can you please describe for the jury
6 your procedures, what you do to determine the cause of
7 death for Joel McLemore?

8 A Yes. We do a thorough examination on the external
9 body. In this case we saw evidence of the gunshot
10 wound, so we further did X-rays to see that there was a
11 bullet still left in his head.

12 We looked for other injuries, which I did not see
13 any in this case, other than the incisions for the
14 donation of organs.

15 Q I will show you State's Exhibits 17A and 17B for
16 identification.

17 Do you recognize these two photos?

18 A Yes. That is the victim, Joel McLemore, at the
19 time of autopsy.

20 Q Would these help you in explaining to the jury what
21 you found at the time of the autopsy?

22 A Yes.

23 MS. WEISS: Your Honor, at this time I would like
24 to admit 17A and 17B.

25 MR. GRIER: Have we not stipulated to that?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 No objection to those.

2 THE COURT: State's 17A and 17B will be admitted
3 into evidence.

4 (The aforementioned items were marked as
5 State's Exhibits 17A and 17B for identification and
6 were admitted into evidence.)

7 BY MS. WEISS:

8 Q Dr. Ross, I will show you 17B. I am showing this
9 to the jury. Can you explain what this is a photo of?

10 A Yes. You can see mostly his left face. Just above
11 the left ear in the left temporal area is an entrance
12 gunshot wound. You can see little dots around it. The
13 other photograph shows it closer.

14 Q There is a shaved area. Is that something that
15 you do, or is it something that was done?

16 A We shaved it to visualize the entrance wound
17 better.

18 Q State's Exhibit 17A.

19 A That is a closer picture of the entrance wound.
20 These little dots are what we call stipling. When a
21 bullet comes out of the end of the gun, there is soot
22 and powder. The powder, when it hits the skin, will
23 cause these little dots. But the powder only goes a
24 certain distance, whereas obviously the bullet goes
25 further.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 So when you see stippling, you can say that the end
2 of the gun was probably within 2 feet of the victim.

3 Q Are you able to tell anything else about the gun
4 from the autopsy?

5 A No. We retrieved the bullet. When we did the
6 internal examination, we found that the bullet went from
7 the front to the back and stayed on the left side --
8 although it went a little bit towards the midline
9 (indicating). We found the bullet in the back of the
10 left brain. We sent that to SLED, to ballistics, to
11 identify further the caliber, et cetera.

12 Q Is it unusual to find bullet pieces still in the
13 head when somebody has been shot in the head?

14 A Not really.

15 Q You said that you also do toxicology?

16 A Yes.

17 Q How do you go about doing that?

18 A In this case, since he was in the hospital for
19 several days, we asked the coroner to get the blood that
20 was obtained from the person on admission to the
21 hospital. That was the blood that we sent to the SLED
22 laboratory to test.

23 The blood we get at the autopsy four or five days
24 later wouldn't show what was present at the time of the
25 incident. That blood went to SLED. They identified the

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 presence of cocaine and some cocaine metabolites.

2 Q Based on your expert opinion, did the cocaine have
3 anything to do with the cause of death?

4 A No.

5 Q I will ask you to stand down to help with one
6 thing. You are showing on yourself the path of the
7 bullet.

8 Can you show on me in front of the jury where the
9 bullet went in and where it lodged?

10 A It went in about here and lodged in the back of
11 the brain, more towards the midline. It's going front
12 to back and slightly to the right. It stays on the left
13 side of the brain. It lacerates the left side of the
14 brain.

15 Q Dr. Ross, what was your ultimate opinion in this
16 case? What was the cause of death of Joel McLemore?

17 A Encephalopathy. Brain death due to the laceration
18 of the brain due to a gunshot wound to the head.

19 Q Is there any question that Joel McLemore died as a
20 result of that one gunshot wound?

21 A No doubt, no.

22 MS. WEISS: Thank you.

23 I have no further questions. Thank you. Please
24 answer any questions the defense may have.

25 MR. GRIER: Good afternoon, Dr. Ross. I have no

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 questions. Thank you.

2 THE COURT: You may step down, Dr. Ross. Thank
3 you for being here.

4 (Whereupon, the witness exited the witness stand.)

5 MS. WEISS: I would ask that this witness be
6 excused and released from her subpoena.

7 MR. GRIER: No objection.

8 THE COURT: You are excused, Dr. Ross.

9 Counsel, this looks like a good time to break for
10 lunch, particularly because I have another matter I have
11 to take up with someone from the Attorney General's
12 Office. I understand counsel needs to review some other
13 matters before the next witness is called.

14 It's been sort of a slow process this morning,
15 ladies and gentlemen. As I explained to you earlier, it
16 can be inconvenient at times. Today is one of those
17 days. We try not to inconvenience you any more than we
18 have to. So when we get back from lunch, we can go full
19 speed ahead, so to speak.

20 But at this time -- we are going to take an
21 extended lunch today. We will take about two hours to
22 take care of everything that I have to do and the
23 attorneys have to do.

24 I will have you come back at 2:30. I know that is
25 a long lunch. I don't know what you can do in Lancaster

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 during that long of a lunch period, but I am sure you
2 will find something to do. Take a long, slow leisurely
3 lunch.

4 Again, I will remind you don't talk about the case
5 while you are on your lunch break. Thank you for your
6 patience.

7 (Whereupon, the jury exited the courtroom.)

8 (Whereupon, a luncheon recess was held.)

9 MS. WEISS: Your Honor, this is Samuel Wright. We
10 have been looking for him. We understood that he was
11 served with a subpoena. We had a bench warrant issued
12 for him. He is here now, but at this point in the case,
13 we are not going to call him to the stand. We would ask
14 that his bench warrant be vacated and he be released,
15 obviously subject to whatever the defense attorney --
16 unless Mr. Grier has an objection.

17 MR. GRIER: We are not going to call him, Your
18 Honor.

19 THE COURT: I will lift the bench warrant as far as
20 Mr. Wright is concerned so he will not be arrested.

21 Counsel, are we ready for the jury?

22 MS. WEISS: Ready, Your Honor.

23 MR. GRIER: Yes, Your Honor.

24 THE COURT: Bring them in.

25 (Whereupon, the jury entered the courtroom.)

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 THE COURT: Ladies and gentlemen, first of all, I
2 want to thank you for your patience. I know we have
3 required a lot of patience of you this week, and
4 particularly today. I can assure you that the attorneys
5 have been working diligently to try to streamline some
6 of the issues and some of the testimony to be presented,
7 and they have done so.

8 Again, I just apologize for having to inconvenience
9 you as we have. It's just a necessary evil with regards
10 to our system of trying cases.

11 At this time, I understand the State is ready to
12 proceed with its next witness.

13 MS. WEISS: Yes, sir, Your Honor.

14 The State calls Special Agent Kristen Grant to the
15 stand.

16 * * *

17 KRISTEN GRANT,
18 called as a witness by and on behalf of
19 the State to testify, being first duly
20 sworn was examined and testified as follows:

21 DIRECT EXAMINATION BY MS. WEISS

22 BY MS. WEISS:

23 Q Good afternoon, Agent Grant, how are you?

24 A Good.

25 Q I know we did some of this yesterday, but just for

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 the jury, if you can, talk for a minute about who you
2 are, where you work, and your background in law
3 enforcement.

4 A My name is Kristen Grant. I am an agent with the
5 South Carolina Law Enforcement Division, which is
6 commonly referred to as SLED. I have been at SLED for
7 six-and-a-half years?

8 Prior to that, I was with Lancaster for 16 years.
9 I am currently a special agent assigned to the Midlands
10 Region Investigative Services. That encompasses ten
11 counties within the State of South Carolina.

12 Q The Midlands Region includes Lancaster?

13 A It does, yes, ma'am.

14 Q You said you did 16 years with Lancaster County?

15 A Lancaster City.

16 Q Lancaster City?

17 A Yes, ma'am.

18 Q So you are very familiar with this area?

19 A I am.

20 Q Do you live in Lancaster County?

21 A I do.

22 Q Agent Grant, what type of training have you had in
23 law enforcement?

24 A I started out with the basics that all police
25 officers have to go through. Throughout the years, I

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 have some specialized training, as far as
2 investigations, homicide training, gangs, narcotics,
3 things like that.

4 Q Agent Grant, when you were with Lancaster City --
5 what were your roles with Lancaster City? Let's start
6 with that.

7 A I started out on patrol. I worked patrol for about
8 seven-and-a-half, and then I became an investigator for
9 about eight-and-a-half years. Before I left to go to
10 SLED, I was a lieutenant in gangs and narcotics.

11 Q What did you do as an investigator and a lieutenant
12 with gangs and narcotics in the last eight-and-a-half
13 years that you were with Lancaster City.

14 What were your general duties?

15 A Assigned to on-call and worked violent crimes. It
16 was anything from property crimes all the way up to
17 violent crimes, to include murders.

18 Q What year was it that you went over to SLED?

19 A 2012.

20 Q Did you start immediately with the Midlands Region?

21 A I did.

22 Q What are your duties as an agent with the Midlands
23 Region?

24 A SLED is primarily an assisting agency. There are
25 some times when agencies will call in SLED to work a

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 crime within their jurisdiction of their county if they
2 want to conflict the case out.

3 In this situation, that is why we were called in.

4 Q Let's just talk generally about investigating cases
5 with SLED. In general, what do you do with SLED as an
6 agent?

7 When you get assigned a case, what is your role
8 from the moment you get that first phone call?

9 A To respond and go to whoever the person is that is
10 our notification.

11 Q What do you do after that?

12 A Pretty much take the scene, if that is what they
13 ask us to do. If we need to call crime scene, we call
14 crime scene and have them respond as well. We start
15 doing interviews and just proceed with the investigation
16 at that point.

17 Q Were you the lead investigator on the case
18 involving Joel McLemore?

19 A I was.

20 Q When did you receive your first call letting you
21 know that you were going to be involved in the case
22 involving Joel McLemore?

23 A September 27, 2017.

24 Q About what time?

25 A Probably around 9:00 p.m.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q We have heard that the 911 call came in about 8:33.

2 So you were called pretty quickly?

3 A Yes.

4 Q So this was conflicted to SLED fairly quickly?

5 A Yes.

6 Q Are you-all usually called in that quickly?

7 A Initially, we were going to be assisting. Once we
8 got on scene and my supervisor arrived on scene, they
9 decided that it would become a SLED case.

10 Q Once you received that call at 9:00, approximately
11 how long did it take you to get to the scene?

12 A No more than 30 minutes, probably.

13 Q When you arrived on the scene, what did you find?

14 A The Sheriff's Office had the scene secured. They
15 had the streets taped off. They had several houses
16 taped off. We had to enter through the crime scene log.

17 Q What does that mean when you have to enter through
18 a crime scene log?

19 A Everybody that comes in and goes out has to be
20 documented as being in the scene.

21 Q Everybody who is currently inside the scene when
22 they tape it off, are they marked as well?

23 A They are.

24 Q Were you the first SLED agent to arrive on the
25 scene?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A I believe I was. I believe myself and my
2 lieutenant arrived right about the same time.

3 Q I will show you State's Exhibit 1L.

4 Do you recognize this residence?

5 A I do.

6 Q What is that?

7 A That is the house that Roger Harris lived, 926 16th
8 Street.

9 Q Is that in the County of Lancaster?

10 A It is.

11 Q Is that the house that you went to that night?

12 A It was.

13 Q When you arrived, was the ambulance still there?

14 A No, ma'am.

15 Q So they had cleared, but it was dark just after
16 this?

17 A That's correct.

18 Q 8:43?

19 A Yes.

20 Q Does Lancaster City and County assist you on that
21 scene?

22 A They did.

23 Q Is that common for the County or City that you are
24 assisting to assist you as you arrive on a scene like
25 that?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A It is.

2 Q Is that considered a relatively large scene or a
3 small scene?

4 A They had it fairly large, which is what we want.
5 They had pretty much the whole block blocked off at the
6 time for us.

7 Q Approximately how many murder scenes have you
8 worked in your career?

9 A If I would guess, I would say maybe 20.

10 Q When you got to this one -- who did you come in
11 contact with first?

12 Who was your point of contact?

13 A Major Matt Shaw with the Lancaster County Sheriff's
14 Office.

15 Q What information did you have when you first got
16 there to start your investigation?

17 A He told us who the victim was, and that we had
18 multiple individuals inside the house that were believed
19 to somehow be associated with what had taken place.

20 Q Did you have a suspect at the time?

21 A We did not.

22 Q What did you do next?

23 A At that point, I asked Major Shaw if I could borrow
24 his department-issued Body One cam, and he allowed me
25 to. Once we entered the crime scene, we started talking

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 to the individuals at the house across the street at X43
2 16th Street.

3 Q Whose house was that?

4 A That was the house of Kaneisha Young.

5 Q Does she have a nickname?

6 A She does, Bay.

7 Q Was she there when you went into her residence?

8 A We didn't go inside at first. She was sitting on
9 the front porch as we walked up to the residence.

10 Q Did you talk to her?

11 A We did.

12 Q What did you do next?

13 A We talked to her, and we told her that we had
14 information to believe that there were individuals
15 inside that we needed to speak with regarding the
16 investigation. We asked for consent to search, to go
17 into her home, and she allowed us.

18 Q What did you find when you went inside her home?

19 A I went inside. We found Quaterious Peay, Lashawn
20 White, and Kendrews Stover.

21 Q Were you able to talk to them at that time?

22 A We were.

23 Q What did you do next?

24 A Each one individually -- they were separated. Each
25 one was interviewed by using Body One camera.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q As a result of those interviews, did you have a
2 suspect?

3 A We did not.

4 Q Did any those three tell you that they saw the
5 shooting?

6 A They did not.

7 Q Did Kaneisha Young say that she saw the shooting?

8 A She did not.

9 Q What was the demeanor of the people that were in
10 that house and Kaneisha Young?

11 A Not cooperative, but not uncooperative. They just
12 didn't want to be a part of having to deal with
13 us.

14 Q Is that unusual for cases that you have
15 investigated in Lancaster?

16 A It is not.

17 Q Is it unusual for cases you have investigated
18 around the state?

19 A It is not.

20 Q What did you do next?

21 A Due to some things that were seen inside the house,
22 after we cleared everybody out when we were interviewing
23 them, we stopped and got a search warrant for the
24 residence of X43 16th Street, and at the same time we
25 got a search warrant for X46 16th Street.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q That is across the street?

2 A Correct. Mr. Harris' home.

3 Q So you got search warrants for both houses?

4 A We did.

5 Q At that point, what did you do with Young, Stover,
6 White, and Peay?

7 A After we interviewed each one of them -- crime
8 scene had arrived at this point. We asked crime scene
9 to complete a gunshot residue kit on each one of the
10 four.

11 Q Did you have to get search warrants for that?

12 A We did not. They gave consent.

13 Q Did they ask you questions about it?

14 A They did.

15 Q Once you answered those, did you have any issues
16 with them cooperating?

17 A We did not.

18 Q At this point, nothing had changed, as far as a
19 suspect?

20 A That's correct.

21 Q What did you do next?

22 A Once crime scene arrived, we explained to them what
23 we had, what we knew at the time, which wasn't much. We
24 just knew that we had an individual who had been shot by
25 an unknown person.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 They began processing -- they started at 9:43 with
2 that search warrant first, and then they crossed the
3 road at 9:46.

4 Q So crime scene works for SLED?

5 A That's correct.

6 Q They come from Columbia?

7 A That's correct.

8 Q How many agents did they send with crime scene?

9 A We had two.

10 Q Were you their primary point of contact?

11 A They had contact with me, but my supervisor was
12 also on scene while I was doing interviews.

13 Q At this point, were you aware that you were the
14 lead investigator on the case, or were you just working
15 the case waiting to find out?

16 A At that point, there were four SLED agents on the
17 scene. We were all just working and doing individual
18 things.

19 Q You said crime scene started at 9:43?

20 A Correct.

21 Q Did they retrieve anything of value from 943?

22 A They did.

23 Q What was that?

24 A They recovered several cell phones, various firearm
25 parts, ammunition, cartridge cases, magazines for

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 handguns, one handgun, another cartridge, two more
2 magazines, digital scales, marijuana, and a white powder
3 substance.

4 Q What did you instruct them to do, or what did they
5 do with that evidence?

6 A Anything that was associated with the firearm
7 stuff was forwarded to SLED to be submitted for an
8 analysis. The drugs were turned over to Lancaster
9 County Sheriff's Office.

10 Q At that time, did you know whether or not the
11 drugs had anything to do with the murder case you were
12 investigating?

13 A No.

14 Q So at this point, you have been primarily at 943?

15 A Correct.

16 Q At what point did you move across to 946?

17 A Our crime scene unit goes across the road, and they
18 started going into the inside of that house. They
19 cleared that residence with the search warrant, and then
20 they started processing that scene right after.

21 Q When you say "processing the scene," does that
22 include outside of the house, or had they already done
23 that?

24 A I don't know. At that point, I don't think they
25 had. I think that they did it all at one time, inside

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 and outside.

2 Q They cleared everybody out, and they started the
3 search warrant there?

4 A That's correct.

5 Q Did they ask you for any guidance on what they were
6 looking for there -- or your supervisor -- as far as you
7 know?

8 A Not to my knowledge. I am sure we relayed what we
9 had at that point, and we just had an unknown suspect at
10 this point.

11 Q I know it was dark out. As you were out there,
12 did you have the opportunity to survey the area where
13 the murder had occurred?

14 A I did.

15 Q Did you find anything of value there?

16 A We took a cell phone, one rag, and a T-shirt from
17 the crime scene.

18 Q Did you instruct them on what to take or what not
19 to take?

20 A I did not.

21 Q We have heard mention and we have pictures of beer
22 bottles that were on the porch that we later heard
23 testimony that may be involved with this case that were
24 not collected.

25 Do you know why those were not collected?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A I do not.

2 Q Were you aware at the time that they were not
3 collected?

4 A I was not.

5 Q Were you aware at the time of what was or wasn't
6 going to be relevant to your investigation?

7 A I did not.

8 Q What did you do next?

9 A Once we interviewed those three folks, we ended up
10 allowing them to leave the scene, once we had all of
11 their information and had the GSRs completed.

12 I left and got another search warrant for the
13 victim's vehicle.

14 Q At this point based on your interviews, were you
15 aware of how many gunshots had been fired or what people
16 were saying, as far as that was concerned?

17 A We were not sure. We had heard just one, but we
18 were not certain at that point. We knew that the victim
19 suffered one at that point.

20 Q Did you talk to anyone else on scene?

21 A We did. We talked to Mr. Harris and talked to his
22 daughter on the scene as well.

23 Q Which daughter is that?

24 A Jalissa.

25 Q Jalissa Stover?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A Yes, ma'am.

2 Q Based on your conversations with them, what else
3 did you learn about this case that was going to be
4 relevant to your investigation?

5 A That there had been a lot of people out there
6 earlier in the day. They had been having somewhat of an
7 in-memory party for a gentleman that had been murdered
8 approximately three months earlier.

9 Throughout the day, several people had been asked
10 to leave. At this point in time, most of the females
11 and the children had left. It was just men.

12 Q Did you have any leads on who those people were or
13 any vehicles involved at the time?

14 A We had been told about a vehicle that had sped off,
15 but we didn't have anything certain at that point.

16 Q What information did you have about that vehicle?

17 A That it was a white-in-color vehicle. It went up
18 16th Avenue towards Brooklyn.

19 Q What did you do later that evening? What did you
20 continue to do that night?

21 A We continued trying to talk to the folks in that
22 area to see if anybody had seen anything further.

23 Once we talked to everybody in that area, we leave
24 and go to the Sheriff's office and complete the search
25 warrant on the victim's vehicle.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q You took the victim's vehicle to the Sheriff's
2 Department?

3 A We did.

4 Q Did you find anything in the vehicle of value to
5 your investigation?

6 A We did not.

7 Q What did you do next?

8 A The following day we started interviewing folks. We
9 ended up talking to a Jakenia Stevens.

10 Q Prior to talking to Jakenia Stevens, did you have
11 any idea, any names, anything as far as who the suspect
12 was in this case?

13 A We did not.

14 Q Does Jakenia Stevens have a nickname?

15 A She does.

16 Q What is that?

17 A Baka.

18 Q How did you end up talking to her?

19 A I believe initially, the Sheriff Office's got
20 information that she may have had information on the
21 incident. So we went to her and asked her to come in
22 for an interview. She did.

23 Q When you interviewed her, do you record those
24 interviews?

25 A We do. They are audio and video recorded.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Do you do a memorandum of those interviews?

2 A We do.

3 Q Jakenia was the first person you met with on the
4 28th?

5 A That's correct.

6 Q Upon talking with Jakenia, did you at that point
7 have any information about who may be a suspect in the
8 case?

9 A We started developing information at that point.

10 Q What information did you -- based on the
11 information you gathered, who did you have as a
12 potential suspect at that point?

13 A Demarcus Foster.

14 Q Did Jakenia have a relationship to Demarcus Foster?

15 A Yes.

16 Q What was that relationship?

17 A She has a child by Demarcus' brother, who is
18 deceased.

19 Q What was Jakenia's demeanor when you spoke with
20 her?

21 A She was pretty excited, and she wanted to get the
22 information to us.

23 MR. GRIER: Your Honor, she is speculating about
24 what her state of mind is.

25 THE COURT: I agree. You can't testify as to what

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 you think that person thought.

2 So I will sustain the objection, Mr. Grier.

3 BY MS. WEISS:

4 Q She was excited?

5 A Yes.

6 Q Did she seem angry? Did she seem to have a beef or
7 anything?

8 A No.

9 Q She was just giving information?

10 A She was.

11 Q Based on her information, did you have any more
12 information about the white vehicle?

13 A We did.

14 Q What was that?

15 A She told us that Mr. Foster's girlfriend had a
16 white-in-color Honda Accord.

17 Q Did Ms. Stevens say that she had been out there
18 earlier in the day?

19 A She did.

20 Q Had she seen the vehicle?

21 A She had.

22 Q Did she tell you about whether she had seen
23 Demarcus Foster there that day?

24 A She did.

25 Q Did she provide you with anything?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A She did.

2 Q What was that?

3 A A photograph of Mr. Foster with her daughter on

4 16th Street.

5 Q Is that the photo that she provided you with?

6 A It is.

7 Q Who is in that photo?

8 A Mr. Foster and Jakenia's daughter.

9 Q Were you able to identify Demarcus Foster from the

10 photo?

11 A Yes.

12 Q Do you recognize where that picture was taken?

13 A On 16th Street.

14 Q Were you able to verify that as well?

15 A Yes, ma'am. Correct.

16 Q Was she able to give you any other information

17 about any of the other males? You said that the males

18 were the ones who were left. Did she give you any other

19 information about who the males were who were left at

20 the house?

21 A She did. She told us also that Quinterious

22 Truesdale was over there. She believed Bishop Blackman

23 was over there at one point. And Quaterious Peay and

24 Lashawn White. Eventually, she also led us to Dario

25 being over there.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q During this time, is Lancaster County, Lancaster
2 City, assisting trying to get information from anybody
3 they can?

4 A They were.

5 Q Were they getting some of the same information?

6 A They did.

7 Q Based on that information, what did you do next?

8 A We ended up talking to Ladario. We brought him in
9 for an interview. We conducted that at the Sheriff's
10 Office.

11 Q When was that interview?

12 A Ladario's interview was conducted the following day
13 on September 29.

14 Q How were you able to get in touch with Ladario?

15 A Through Jakenia.

16 Q What is Jakenia's relationship with Ladario?

17 A They are boyfriend and girlfriend. I believe they
18 have a child in common.

19 Q When Jakenia was first meeting with you, did she
20 say how she got the information that Demarcus had done
21 the shooting, had shot Joel McLemore?

22 A She did. She initially told us that she got a
23 phone call from a private number.

24 MR. GRIER: Your Honor, there has been testimony --
25 she is repeating testimony of the witness. It's hearsay

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 for her to be testifying to what has been testified to
2 by the witness. It's repeating. It's repetitious.

3 MS. WEISS: Your Honor, actually, it's different
4 from what was testified to by the witness. This is the
5 investigator who took that statement. They are just
6 clarifying what was actually said during the interview.

7 THE COURT: I will overrule the objection since she
8 is the investigator who took the statement. I will
9 permit her to testify to this.

10 MR. GRIER: I apologize for interfering with that
11 testimony, if that was your intention.

12 BY MS. WEISS:

13 Q Just to be clear, you did take Jakenia's statement?

14 A I did.

15 Q What did she tell you -- as far as the phone call?

16 A That she received a call from a private number from
17 a male caller.

18 Q Did she identify who that male caller was?

19 A She did not.

20 Q Before today, did you know for sure who that male
21 caller was -- before this trial, who that male caller
22 was?

23 A I did not.

24 Q Is it unusual for people to try to hide identities
25 and try to not put people in things?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A No. Not at all.

2 Q Have you come across that in your investigations in

3 Lancaster?

4 A I have.

5 Q Throughout the state?

6 A Yes.

7 Q You did not find out through Jakenia that Dario

8 was out there?

9 A That's correct.

10 Q But once you did find out that he was there, you

11 tied him to Jakenia?

12 A Correct.

13 Q She helped you get him into the police station?

14 A She did.

15 Q So you brought him in, and you were able to

16 interview him?

17 A We did.

18 Q Based on his interview, what were you able to

19 gather that was helpful to your investigation?

20 A That he was over there at the time, and to help

21 identify more people that were out there at the time of

22 the incident.

23 Q Was he able to identify who committed the shooting?

24 A He was.

25 Q Did he tell you at that time that he saw the

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 shooting?

2 A He did.

3 Q Was his information consistent with what you had
4 so far in this investigation -- as far as who had done
5 the shooting?

6 A Yes.

7 Q When you did his interview, was it audio and video
8 recorded as well?

9 A It was.

10 Q I am showing you what has been marked as State's
11 Exhibit 19.

12 Do you recognize this photo?

13 A I do.

14 Q And the markings on this photo?

15 A I do.

16 Q Who made those markings?

17 A Ladarion Jones.

18 Q I am going to point to -- can you see it over
19 there on your monitor?

20 A Yes.

21 Q If you can just tell us what they say. Here, can
22 you identify those markings?

23 A It says, Kris.

24 Q Did he identify who was out there that day?

25 A He did.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 q Going around and starting there -- going around,
2 can you identify who he pointed out as being out on the
3 scene?

4 A He started there with Kris. The next one says,
5 "L.J.," which was him, Ladario Jones. Next one is Peay,
6 which is Quaterious Peay. The next one to your left is
7 Joel. The one behind it was Lashawn white.

8 Q Is there another one on the porch up here?

9 A I believe it's D.

10 MS. WEISS: Your Honor, at this time I would like
11 to admit Exhibit 19 into evidence.

12 THE COURT: Any objection?

13 MR. GRIER: No objection.

14 THE COURT: State's Exhibit 19 is admitted into
15 evidence.

16 (The aforementioned item was marked as
17 State's Exhibit 19 for identification and was
18 admitted into evidence.)

19 BY MS. WEISS:

20 Q What was Ladario's demeanor when you were
21 interviewing him?

22 A He was scared.

23 Q Did he say whether or not he wanted to come in and
24 talk to you?

25 A He did not.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q He did come in, and he gave you the information?

2 A He did.

3 Q After talking to him and based on that
4 information, what did you do next?

5 A Once he provided all the names, we started looking
6 and going back out and reaching out to some folks that
7 we had already interviewed and some folks we hadn't
8 interviewed and started looking for.

9 Q Just to be clear, prior to Jakenia's information
10 and the other information that you got involving
11 Demarcus Foster, were you continuing to investigate any
12 and all possible suspects at that point?

13 A We were.

14 Q Did that include all the people that were in the
15 house across the street?

16 A It did.

17 Q Did you bring them into the Sheriff's Department?

18 A We did.

19 Q Who did you bring in next?

20 A I believe the next person that came in was Mr.
21 Peay, Quaterious Peay.

22 Q How did you get him into the Sheriff's Department?

23 A The Sheriff's Office had a warrant for the things
24 we found inside the residence.

25 Q He was brought in pursuant to that, and you were

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 given the opportunity to talk to him?

2 A Right.

3 Q And what was his demeanor when you were talking to
4 him?

5 A Same thing. Not happy to be there.

6 Q Was his interview also audio and video recorded?

7 A It was.

8 Q You testified briefly yesterday after Quaterious
9 Peay.

10 I will show you what has been entered as State's
11 Exhibit 12 into evidence.

12 Do you see that?

13 A Yes, ma'am.

14 Q After we talked yesterday, were you able to go back
15 and re-watch the video of his interview?

16 A I did.

17 Q Based on that, who wrote each of these annotations
18 that were discussed yesterday?

19 A Mr. Peay.

20 Q Who signed his name to the piece of paper?

21 A Mr. Peay.

22 Q Who drew the arrow on the car?

23 A Mr. Peay.

24 Q Other than the bottom where you signed your name
25 and perhaps the date and time, anything involved in the

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 writing around the house, who wrote that?

2 A Mr. Peay.

3 Q State's Exhibit 13.

4 Looking at this one. Were you able to watch the
5 interview where this was being filled out?

6 A I did.

7 Q Who filled this out?

8 A Mr. Peay.

9 Q The markings up on the porch, what do they say?

10 A The one to the left at the front door says,
11 "Kevis." The one closest to the American flag there
12 says, "D." The one closest to the double window says
13 "Dreads."

14 Q There are three different ones?

15 A Yes, ma'am.

16 Q You said "Dreads"?

17 A Yes, ma'am.

18 Q Who wrote those?

19 A Mr. Peay.

20 Q Whose signature is that?

21 A Mr. Peay.

22 Q Did Mr. Peay acknowledge that he knew Joel
23 McLemore?

24 A He did.

25 Q Did he acknowledge that he knew Demarcus Foster?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A He did.

2 Q Did he say, when he was talking to you, where the
3 gunshot came from?

4 A He did.

5 Q Where was that?

6 A Behind him off the porch.

7 Q Where was he during the shooting?

8 A Sitting on the side steps of Roger Harris' house at
9 X46 16th Street.

10 Q That would be right there?

11 A Yes.

12 Q You talked about yesterday that they were running
13 away. Who did he run off with?

14 A Ladario Jones.

15 Q What did he say he did as he ran off?

16 A He ran towards the path behind Roger's house.

17 Q Did he continue through the path?

18 A No. He stopped and turned around and went back to
19 Deuce's house.

20 Q Did he say anything when he stopped and turned
21 around?

22 A Mr. Peay stated that: He just shot somebody.

23 Q In watching the video, can you describe that any
24 better?

25 A I don't think he was referring to himself. He was

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 referring to someone who was on the scene back at X46

2 16th Street.

3 Q Who was he talking to?

4 A He was talking to Ladario.

5 Q He said -- talking about somebody back on 16th

6 Street -- he just shot somebody?

7 A That's correct.

8 Q That was on video as well?

9 A Yes.

10 Q Did he identify who committed the shooting, who

11 "he" was?

12 A No.

13 Q But he was able to identify that Demarcus Foster

14 was there?

15 A He did, yes.

16 Q What did you do next?

17 A We began -- we were still -- we attempted to look

18 for the individuals that were still being named.

19 We eventually provided some information to the

20 magistrate's office, and we were able to obtain

21 warrants.

22 Q So at that point, did you come to a decision that

23 you had enough information to charge somebody?

24 A We did. We felt we had probable cause.

25 Q Who did you charge?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A We got warrants on Demarcus Foster, Quinterious
2 Truesdale, and Maryam Rivera.

3 Q Demarcus Foster, what was he charged with?

4 A Initially, it was assault and battery first. We
5 had to go back and change it after.

6 Q Was it attempted murder?

7 A Maybe it was attempted murder. The warrant got
8 changed.

9 Q What was it changed to?

10 A Murder.

11 Q What was Maryam Rivera charged with?

12 A Accessory after the fact.

13 Q What about Quinterious Truesdale?

14 A Accessory after the fact.

15 Q Once you got the warrants, what did you do?

16 A We had some more of the teams from SLED come up,
17 the fugitive team. We came up and we started looking
18 for all three of them.

19 Q Who was the first one who was found?

20 A I believe it was Mr. Truesdale.

21 Q When he was found, did you find anything
22 potentially of value to the investigation when you found
23 him?

24 A We did. He had a gun and three cell phones on him.

25 Q Do you know who those cell phones belonged to?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A They were on his person, but we believed one of
2 them to be the property of Mr. Foster.

3 Q You talked about the gun that was retrieved from
4 Quinterious Truesdale, the gun that was retrieved from
5 943. Were you able to have both of those guns tested at
6 SLED?

7 A We did.

8 Q What was the result of this test?

9 A It did not match the bullet that was removed from
10 Mr. McLemore.

11 Q What happened next in your investigation?

12 A While we were looking for Ms. Rivera and Mr.
13 Foster, they showed up at the Sheriff's Office, the
14 Lancaster County Sheriff's Office.

15 Q Did you have the opportunity to talk to Ms. Rivera?

16 A We did not.

17 Q You didn't talk to her at that point?

18 A We attempted.

19 Q What vehicle did they show up in?

20 A The white Honda Accord.

21 Q Is this the vehicle at the Sheriff's Department?

22 A It is.

23 Q What did you do about that vehicle?

24 A Contacted our crime unit, and they responded.

25 Q What did they do at that time?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A They responded, and they came up and documented and
2 photographed the vehicle.

3 Q Were you able to talk to them about we you were
4 looking for in the vehicle?

5 A We told him what we had. At that point, we did.

6 Q Were they looking for anything in particular in the
7 vehicle?

8 A Nothing in particular. We searched the vehicle for
9 its contents.

10 Q Other than the vehicle itself, was there anything
11 of value to the investigation found in the vehicle?

12 A No, ma'am.

13 Q At that point, you had Mr. Foster, Ms. Rivera, and
14 Mr. Truesdale in custody, what did you do next?

15 A We interviewed Mr. Foster.

16 Q What did you do after that?

17 A We continued to try to locate people who were
18 involved, and we completed some more interviews the
19 following day.

20 Q Who did you interview the following day?

21 A Lashawn White.

22 Q How did he come into the Sheriff's Department?

23 A He was also arrested for warrants from the things
24 found at the residence.

25 Q Is it fair to say that he didn't want to be there?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A That's correct.

2 Q You were able to talk to him?

3 A We did.

4 Q What was his demeanor when you were talking to him?

5 A He didn't want to be a part of the investigation.

6 Q Did he admit to being there?

7 A He did.

8 Q Did he identify who his girlfriend was?

9 A He did.

10 Q Who was that?

11 A Kaneisha Young.

12 Q That is the person you said earlier went by Bay?

13 A That's correct.

14 Q The first person you talked to in this case?

15 A Correct.

16 Q She lived across the street from Roger Harris'

17 house?

18 A Correct.

19 Q You had done gunshot residue tests on the people

20 who were in the house. Did you receive the results at

21 that time?

22 A We did not.

23 Q Did you talk to him about that at all?

24 A We did not.

25 Q Was he able to identify people who were out in the

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 yard at the time of the shooting?

2 A He did.

3 Q Were they basically the same people who had been
4 identified before?

5 A They were.

6 Q I will show you what was marked as State's Exhibit
7 18 for identification.

8 Do you recognize this photo?

9 A I do.

10 Q Whose handwriting is that?

11 A Lashawn White's.

12 Q Were you present when he was filling this out?

13 A I was.

14 MS. WEISS: Your Honor, at this time I would like
15 to enter State's Exhibit 18 into evidence.

16 MR. GRIER: No objection.

17 THE COURT: State's Number 18 is admitted into
18 evidence.

19 (The aforementioned item was marked as
20 State's Exhibit 18 for identification and was
21 admitted into evidence.)

22 BY MS. WEISS:

23 Q Who made these notations on the piece of paper?

24 A Lashawn White.

25 Q How do you know that?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A He did it in my presence.

2 Q It was audio and video recorded?

3 A It was.

4 Q Can you tell us about the circles on this piece of
5 paper? Do you know what that one is?

6 A That is where he marked "Joel."

7 Q What about this one?

8 A That is where he marked himself.

9 Q Those are his initials?

10 A They are.

11 Q Do you know who those were supposed to be?

12 A He named other names, but he did not mark them on
13 the sheet.

14 Q What about that?

15 A I think it says "Peay." Yes.

16 Q What was Lashawn's demeanor when he was in there?

17 A He wasn't happy to be there.

18 Q Was he willing to answer your questions?

19 A He did eventually.

20 Q When you were talking to him, did he talk about a
21 car coming into the driveway?

22 A He did.

23 Q What did he say about that car?

24 A He described it as a bright car.

25 Q Was he able to describe what color it was?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A No. He just described it as bright.

2 Q Did he remember if anyone got out?

3 A Yes.

4 Q How many people did he say got out?

5 A He said that a black male got out and walked from

6 the vehicle.

7 Q Where did the black male walk?

8 A Up the side steps by Quaterious Peay.

9 Q That would be these steps here?

10 A Yes.

11 Q How long did he say that person was up on the

12 porch or the steps before the shooting?

13 A Three to four minutes.

14 Q Did you ask him if anybody was arguing, if there

15 were any fights going on, or if there were any

16 disagreements?

17 A I did.

18 Q What did he say?

19 A He said there were none.

20 Q Did he express any concerns about the black male

21 who had just walked on the porch?

22 A He did. He talked about he had done in the past.

23 Q What about that night, as far as concerns about his

24 safety when that person was around?

25 A He stated that the individual was eyeballing them.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Was he able to recall that person's nickname?

2 A He did.

3 Q What was that?

4 A He called him "G" or "D." He said it was his
5 homeboy's brother.

6 Q Did he identify who his homeboy was?

7 A He did. He said it was Bullet, which is Markevis
8 Foster.

9 Q After the shooting, did he say what the subject did
10 next -- what that person did next?

11 A He walked off the porch and got back into the same
12 car he drove up in.

13 Q Did he identify if that was the person who did the
14 shooting?

15 A He did.

16 Q Did he identify who that person was?

17 A He did.

18 Q Who was that?

19 A He said it was Bullet's brother.

20 Q Did he identify a handgun on Bullet's brother?

21 A The imprint of a handgun.

22 Q Where was he able to see the imprint?

23 A He stated that he could see that the imprint was on
24 his side. The outline was under the shirt.

25 Q Did he say what the person was wearing?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A He said that he was wearing all black.

2 Q Any sort of hat?

3 A He described it as a white-boy hat, which he later

4 said was a ball cap.

5 Q Was he able to identify him further at that time?

6 A He did. He also stated that it was his girlfriend,

7 Kaneisha Young's, cousin.

8 Q Did he say if he had seen Demarcus Foster or his

9 homeboy's brother earlier in the day?

10 A He did.

11 Q How was he dressed earlier?

12 A He stated that he had a white T-shirt with a

13 picture and words on it and khaki pants.

14 Q After interviewing Lashawn White -- what name does

15 he go by?

16 A Deuce.

17 Q Did he confirm that when you were interviewing

18 him?

19 A I believe he did.

20 Q Did other people refer to him as that?

21 A They did.

22 Q Who did you talk to next?

23 A I believe we went back and re-interviewed some

24 folks and talked with Mr. Peay again, just to confirm

25 some things. Then we ended up talking to Kevis Wright

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 and Kristavius Stevens.

2 Q When did you talk to Kristavius Stevens?

3 A May 18, 2018.

4 Q Before that, did you have the opportunity to talk
5 to Maryam Rivera?

6 A We did.

7 Q When did you talk to her?

8 A The first time we talked to her was February 20,
9 2018.

10 Q When you spoke to her the first time, did she admit
11 everything? Did she admit to being there two times and
12 everybody that was out there and the shooting and
13 everything that she said now?

14 A She did not.

15 Q The first time you talked to her, what was
16 concerning to you about talking to her -- about what she
17 was saying?

18 A That she advised they were only there one time, and
19 they were not there during the shooting.

20 Q Why did she say they had gone there?

21 A To visit Demarcus' niece.

22 Q The first time you talked to her, she talked about
23 the niece and the gunshot all being at one time;
24 correct?

25 A Correct.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q But we know from the picture that when Demarcus was
2 talking to his niece, it was daylight?

3 A That's correct.

4 Q At this point, this is February of 2018, several
5 months later. You have done all the interviews and you
6 have been talking to everybody.

7 Did anyone else say that the shooting occurred
8 during the daytime?

9 A No.

10 Q What time did the 911 call come in?

11 A 8:33 p.m.

12 Q Was it light or dark at 8:33 p.m.?

13 A Dark.

14 Q So you talked to Maryam then. So she talked about
15 that. She admitted that they were there, but just the
16 one time?

17 A Correct.

18 Q Did you have another opportunity to talk to her?

19 A We did.

20 Q How many times did you talk to her in all?

21 A Three.

22 Q In the first two interviews, did she mention
23 picking up her cousin?

24 A She did not.

25 Q That was in the third interview?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A That's correct.

2 Q Basically, like everyone else, the first interview
3 did not reveal all the information. So you interviewed
4 them multiple times, just like you did most of the
5 witnesses?

6 A Yes.

7 Q Is that uncommon in your investigations --

8 A No.

9 Q -- to interview people multiple times?

10 A It is not.

11 Q What is the purpose of interviewing multiple times?

12 A As we receive new information, we follow up with
13 that information and re-interview.

14 Q You said you were able to talk to Kristavius
15 Stevens.

16 Just to be clear, you have heard mention of a Chris
17 Pete Stevens, and a Kristavius Stevens. What is the
18 relationship between those two men?

19 A They are brothers.

20 Q One spells his name with a "K," and one spells his
21 name with a "C," but they go by Bree and Pete?

22 A Correct.

23 Q Did you get some information earlier in the
24 investigation that both Bree and Pete were out there?

25 A We did.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Were you able to follow up on that?

2 A We did.

3 Q What were you able to determine?

4 A That Chris Pete Stevens was not out there at the
5 time.

6 Q How were you able to confirm that?

7 A Through his work.

8 Q Was there anyone else that was named as being out
9 there that you were able to show was not actually out
10 there?

11 A We did.

12 Q So you were continuing to work all of the names to
13 try to determine what was going on?

14 A We did.

15 Q You said you got to talk to Bree Stevens,
16 Kristavius Stevens, Kristavius with a "K"?

17 A Yes.

18 Q When was that?

19 A We talked to him on May 18, 2018.

20 Q Had you tried to get him to come in, in September
21 of 2017?

22 A We had.

23 Q How had you tried?

24 A We had tried through all of his family members and
25 all of the addresses that we had known for him, and even

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 a work location, which he no longer is employed at.

2 Q Did he ever return a call or come in?

3 A Not until he was arrested.

4 Q You were able to bring him in?

5 A We did.

6 Q What was Bree's demeanor when you talked to him?

7 A Same thing. He was not really happy to be talking
8 to us about the investigation.

9 Q Did he say why not?

10 A He just didn't want to be a part of what had
11 happened.

12 Q Did he express any concerns?

13 A He did.

14 Q When you talked to him, was he willing to give you
15 a statement?

16 A He did.

17 Q Did you know Bree Stevens to live in the
18 neighborhood?

19 A I didn't.

20 Q Were you able to find out later that he had a
21 girlfriend there?

22 A We did.

23 Q Who was that?

24 A Camilla Stover.

25 Q Did Bree admit to being there that night?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A He did.

2 Q Was he able to identify that he saw who committed

3 the shooting?

4 A He did.

5 Q Who did he identify?

6 A Demarcus Foster.

7 Q He was able to identify him -- you were able to

8 show him a lineup, and he was able to identify him?

9 A I did.

10 Q He knew him ahead of time?

11 A He did.

12 Q How did he know Demarcus Foster?

13 A He had seen him over there earlier. He also stated

14 that he had known him for two years. He knew that he

15 was the uncle of his sister Jakenia's daughter.

16 Q After talking to him, what did you do next?

17 A After we talked to him -- we were still talking to

18 people and trying to see if there was anyone else that

19 was over there at the time. We still didn't have

20 everything back through our crime scene unit. We waited

21 on those items to come back.

22 Q As your investigation continued, did you start

23 receiving results back from your lab?

24 A We did.

25 Q Initially, did any forensic evidence come back that

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 was helpful to your investigation?

2 A It did not.

3 Q Was there evidence that came back that eliminated
4 information from your investigation?

5 A It did not.

6 Q What about the guns?

7 A The guns did, yes.

8 Q As far as the gunshot residue, when did you get
9 those results back?

10 A The date on the report is February 22, 2019.

11 Q 2019? That is, like, last month?

12 A Yes.

13 Q Is that unusual for a gunshot residue to take that
14 long?

15 A I am not sure.

16 Q When you got those results -- we have heard the
17 testimony that Lashawn White came back positive for
18 gunshot residue.

19 A Correct.

20 Q Were you able to test Demarcus for gunshot residue?

21 A We were not.

22 Q Why not?

23 A It was approximately 48 hours after the shooting
24 that he was arrested.

25 Q How many hours do you have during which you can

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 test gunshot residue?

2 A Six hours.

3 Q So Lashawn White was there when you arrived?

4 A He was.

5 Q And he consented to a gunshot residue test?

6 A He did.

7 Q Did you instruct your crime scene to try to get

8 gunshot residue from the vehicle?

9 A I did not.

10 Q Why is that?

11 A At the time we didn't think that that was

12 necessary, based on the things that we had been told in

13 the past that it wouldn't stay on a vehicle.

14 Q Did you have any information that a gunshot came

15 from the car?

16 A We did not.

17 Q In fact, was there any statement that a gunshot

18 came from the car?

19 A There was not.

20 Q Did all the statements talk about the car leaving

21 after the gunshot?

22 A They did.

23 Q Did any of the DNA, anything else come back that

24 helped you in your investigation?

25 A No.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q When you got the gunshot residue test back last
2 month that said that Lashawn White was positive for
3 gunshot residue, did you evaluate that in light of the
4 evidence?

5 A We did.

6 Q What was your conclusion on that?

7 A We reached back out to Mr. White to re-interview
8 him.

9 Q Based on the information that you had from this
10 investigation and those results, did it change your
11 opinion on who was responsible for the shooting of Joel
12 McLemore?

13 A It did not.

14 Q Based on the information and your expert at SLED
15 that you were able to talk to, were you able to -- as an
16 investigator, did you feel confident that it did not
17 negate what your investigation had revealed?

18 A That's correct.

19 Q Agent Grant, did Demarcus Foster ask to speak to
20 law enforcement in the last few weeks?

21 A He did.

22 Q Did you provide him with that opportunity?

23 A We did.

24 Q Were you able to interview him?

25 A We were.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Was the interview audio and videotaped?

2 A It was.

3 Q Were you able to review that video?

4 A I was.

5 Q Did Demarcus Foster make any statements about where
6 he was at the time of the shooting?

7 A He did.

8 Q What did he say?

9 A He stated that he was there on 16th Street at the
10 time of the shooting.

11 Q Did he say who committed the shooting?

12 A He did not.

13 Q What did he say, as far as what he did?

14 Did he say if he heard the shot?

15 A He did.

16 Q What did he do after that?

17 A After he heard the shot, he ran and got in the car
18 and left.

19 MS. WEISS: Thank you, Investigator Grant. I have
20 no more questions for you at this time. Please answer
21 any questions the defense may have.

22 MR. GRIER: Your Honor, may I have a short break
23 before we begin, or should I just not take one?

24 THE COURT: If you need a break, we will be very
25 brief. Take five minutes, and then we will get started

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 back.

2 Ladies and gentlemen, I ask you to return to the
3 jury room for a short break. Do not discuss the case,
4 please.

5 (Whereupon, the jury exited the courtroom.)

6 (Whereupon, a recess was held.)

7 (Whereupon, the following proceedings were
8 held in open court. The defendant was present with
9 his attorney, along with counsel for the State.)

10 THE COURT: Bring them in.

11 (Whereupon, the jury entered the courtroom.)

12 THE COURT: All right, Mr. Grier.

13 CROSS-EXAMINATION

14 BY MR. GRIER:

15 Q Special Agent Grant, how are you doing?

16 A Doing good, sir.

17 Q Of all of these witnesses that you have gone
18 through, how many of them voluntarily showed up to talk
19 to the police?

20 A Voluntarily, I would say none.

21 Q Demarcus Foster came to speak to law enforcement,
22 didn't he?

23 They didn't arrest him or bring him in. He just
24 showed up at the police department, didn't he?

25 A He did, after we had started to look for him.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q You-all didn't have to take him into custody, and
2 you didn't have to find him. He showed up; correct?

3 A He showed up at the Sheriff's Office, and they took
4 him into custody, yes, sir.

5 Q You took -- Maryam Rivera was him. So she came
6 with him, and they turned themselves in?

7 A That's correct.

8 Q Did you have warrants on her as well?

9 A We did.

10 Q I just want to clarify who everybody is one more
11 time in one sitting for the jury and for my purposes of
12 clarity before we dive in.

13 Ms. Young, Bay. She is Deuce, Lashawn White's
14 girlfriend; right?

15 A She was.

16 Q They were living at the time on September 27,
17 2017 -- they were living at X43 16th Street together.

18 A Correct.

19 Q Did you interview her first? Kaneisha Young, was
20 she your first interview?

21 A On 16th Street that night?

22 Q Yes.

23 A I believe she was, yes, sir.

24 Q Did you-all develop anything from her that night --
25 any information?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A No, sir, not at that time.

2 Q But you did ultimately the next day got her in and
3 spoke with her?

4 A We did.

5 Q She denied Lashawn White, Deuce, was with her at
6 the time the gunshot was heard; correct?

7 A Ask that again, please.

8 Q She said they were sitting in the living room and
9 heard the gunshot; correct?

10 A I'm sorry.

11 Q Her and Deuce?

12 A She did, correct.

13 Q Deuce is friends with Mr. Peay, and Mr. Peay is
14 Damu; correct?

15 A Correct.

16 Q Deuce, Mr. White, is friends with Ladario Jones;
17 correct?

18 A I believe so.

19 Q Do you know if there is a relationship between
20 Kristavius Stevens and White of marriage or just
21 friendship or what to the people on 16th Street?
22 What did you learn from the investigation?

23 A Repeat that question, please.

24 Q Is there any relationship between Lashawn White,
25 Deuce, and Kristavius Stevens?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A Not that I know of.

2 Q Actually, your first interview was with Ms.
3 Jakenia Stevens? Is that how you developed the rest of
4 the --

5 A Once we were away from 16th Street, she was. Yes,
6 sir.

7 Q She is Ladario's baby momma?

8 A Yes.

9 Q They have a child together. Mr. Foster's brother
10 had a child with her as well?

11 A Correct.

12 Q Ladario and Ms. Stevens are still together?

13 A To my knowledge, yes.

14 Q And were at that time?

15 A They were.

16 Q Mr. Foster was coming around a lot, wasn't he? He
17 was coming around their house a lot and visiting his
18 niece?

19 A I don't know about a lot, but I know he was
20 visiting, yes, sir.

21 Q I think you testified just a minute ago that she
22 did not reveal Ladario's name at the time. Actually, my
23 understanding is that she may have encouraged him to
24 come in and speak with you?

25 A That's correct.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Ladario Jones, her boyfriend?

2 A Yes.

3 Q Do you believe he came in as a result of her
4 encouragement?

5 A Yes.

6 Q How do you distinguish who is nervous from somebody
7 who is scared?

8 A It's usually because of what they tell me.

9 Q You described one of the witnesses as
10 scared.

11 Do you have any training in that -- in determining
12 whether somebody is scared or just nervous or a reason
13 why they might be nervous or scared?

14 A No, sir.

15 Q Aren't there similar things in observing somebody's
16 demeanor though? Maybe?

17 A I couldn't say.

18 Q You just got GSR less than a month ago; correct?

19 A Yes, sir.

20 Q Would there have been any difference in the course
21 this investigation took from your perspective had you
22 gotten that GSR back within a couple weeks of this
23 incident?

24 A Not based on the witness statements we have. No,
25 sir, probably not.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Isn't it important to get that back quickly?

2 A It would have been nicer to have it back more
3 quickly. Yes, sir.

4 Q In fact, when you were at Lancaster Police
5 Department and other law enforcement agencies, you would
6 actually take it over and have it performed on an
7 expedited basis?

8 A I never have, no, sir.

9 Q Basically, have you not had many witnesses to a
10 murder scene that were nervous when they are
11 being questioned, and it's important to you that they
12 have been present?

13 A Ask me that again. I'm sorry.

14 Q Are witnesses to murder scenes generally -- do
15 they seem to be acting nervous when you are interviewing
16 them?

17 A They do.

18 Q Aren't most people nervous when they are being
19 questioned by the police?

20 A Possibly, yes.

21 Q How many phones were taken?

22 A I believe ten.

23 Q Was ownership of all of those phones determined?

24 A Not all of them. To the best of our ability, I
25 believe we did identify most of them.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Q Do you have an inventory of who the phones were
2 determined to belong to?

3 A The only inventory we have is what was provided by
4 our computer crime center.

5 Q So you can't tell us who the phones were alleged to
6 have belonged to?

7 A I can tell you on some of the phones, yes, I can.

8 Q Can you look at this?

9 A Sure. One of the phones belongs to Mr. Foster's
10 mother. One of the phones belongs to Quinterious
11 Truesdale. One of the phones belongs to Joel McLemore.
12 Two of the phones belong to Mr. Peay. I believe there
13 were two phones that we were unsure of who they belonged
14 to that came out of the search warrant at 943 16th
15 Street.

16 Q You took the -- did you mention Joel McLemore's
17 phone?

18 A I did.

19 Q Did you extract all of the information on those
20 phones?

21 A We did.

22 Q Did you become aware of potentially important
23 information on some of those phones?

24 A There was some information. Yes, sir.

25 Q Did you examine the extraction of Joel McLemore's

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 phone?

2 A I did.

3 Q Did you see text messages?

4 A I did.

5 Q Have you reviewed those?

6 A I have.

7 Q Did you see text messages that purport to be
8 between a person named Deuce and between Mr. McLemore?

9 A I did.

10 Q Take a look at this and see if you recognize this.

11 A Yes, sir.

12 Q There is a note on there to adjust the times at the
13 top of the page; is that correct?

14 A Yes.

15 Q What does that say?

16 A Note time is UTC plus zero, subtract four hours for
17 correct time.

18 MS. WEISS: Your Honor, has that been marked for
19 identification?

20 MR. GRIER: It has not, and it should have been.

21 BY MR. GRIER:

22 Q So these text messages are consistent with what you
23 reviewed on Mr. McLemore's phone?

24 A They are.

25 Q The times indicated on there -- based on that

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 notation, I think everybody would agree that the time
2 that is indicated on each of those texts, you should
3 subtract four hours from it?

4 Is that what that means?

5 A I believe so.

6 Q For instance, the first one says 3:45:30 on
7 September 27. We would subtract four hours from that.
8 That would mean 11:45:30 would be the way to read these
9 properly?

10 A Yes, sir. I believe so.

11 Q What was this communication about?

12 A I can only assume what it's about.

13 MR. GRIER: Your Honor, I would offer this into
14 evidence. We have a stipulation that it's authentic.
15 No further authentication is required for electronic
16 communications.

17 I would offer that it has been recognized by the
18 investigator as being a document which is on the
19 victim's phone. I would ask that it be admitted into
20 evidence.

21 THE COURT: Any objection?

22 MS. WEISS: Without objection, Your Honor.

23 THE COURT: Defendant's Exhibit 4 is admitted into
24 evidence.

25 (The aforementioned item was marked as

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Defendant's Exhibit 4 for identification and was
2 admitted into evidence.)

3 BY MR. GRIER:

4 Q So Investigator Grant, the first communication
5 that I mentioned to you would have been at 11:44:30,
6 according to this document.

7 Would you verify that?

8 A Yes, sir.

9 Q What was that communication?

10 A To Deuce. "What's up?"

11 Q What was the next communication?

12 A "I am ten minutes away." To Deuce.

13 Q What was the next communication?

14 A To Deuce. It says, "You home?"

15 Q What was the next communication?

16 A To Deuce. I'll get a hold 'em."

17 Q What time would you calculate that?

18 A 2:39:24 p.m.

19 Q That would be the time with the four hours?

20 A Correct.

21 Q What was the next communication?

22 A From Deuce. "What up?"

23 Q What was the next communication?

24 A To Deuce, "Yo. What's up?"

25 Q What was the next communication?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A To Deuce, "I am going to need another one here
2 shortly, brewsky. I text you when I am OTW there."
3 Q What time was that communication?
4 A That was at 6:24:43 p.m. adjusted.
5 Q What was the next communication?
6 A From Deuce, "K."
7 Q What was the next communication?
8 A To Deuce, "One."
9 Q The next communication?
10 A From Deuce, "K."
11 Q And the next communication?
12 A To Deuce, "OTW."
13 Q And that was the last communication?
14 A No, sir.
15 Q Well, at that time. "OTW," does that commonly mean
16 on the way?
17 A I assume, yes, sir.
18 Q What time was that?
19 A "OTW" was at 8:04:02.
20 Q That was p.m.
21 A Possibly.
22 Q We have no way of knowing where he was when he
23 communicated that; correct?
24 A No, sir.
25 Q Based on what you have before you?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A That's correct.

2 Q You could not possibly have known where he used
3 that phone -- or could you have known?

4 A Possibly, yes, sir.

5 Q What was the last communication?

6 A The last communication was from Deuce. It says,
7 "K."

8 Q Are you aware of any further communication on the
9 phone, period?

10 A Other than that, no, sir.

11 Q This was the last communication on the phone and
12 the person named Deuce; correct?

13 A Yes, sir, that I recall.

14 Q We know a Deuce in this case is Lashawn White;
15 correct?

16 A Correct.

17 Q Special Agent Grant, let's talk about Kristavius
18 Stevens for a moment.

19 Simply put, how many hours of video do you
20 suppose -- that you estimate that we have reviewed in
21 this case?

22 A I couldn't even guess. It's a lot.

23 Q Would you be surprised if it's around 25 or so?

24 A That would not surprise me.

25 Q Did you review the communications in the video of

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Kristavius Stevens?

2 A I did. Yes, sir.

3 Q Did you hear him testify yesterday?

4 A I did.

5 Q Did you hear me ask him if he remembers
6 testifying -- telling law enforcement in his interview
7 that D -- after he describes the defendant shooting Mr.
8 McLemore -- that he went and got his beer and then went
9 back to the car?

10 Did he deny having said that?

11 A I don't recall him -- I don't recall that.

12 Q You don't recall him stating in his initial
13 interview --

14 A He probably said it in his interview, but I just
15 don't recall everything he said yesterday.

16 Q Well, did he say that yesterday?

17 A I don't recall what he said yesterday.

18 Q Did you prepare a MOI, Memorandum of Information,
19 for him?

20 A I did. Yes, sir.

21 Q Well, that wouldn't tell you what he said
22 yesterday; right?

23 A Well --

24 MR. GRIER: May I have just a second to conference
25 about that issue?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 (Whereupon, a discussion was held between the
2 defendant and his counsel off the record.)

3 THE COURT: Yes, sir.

4 BY MR. GRIER:

5 Q Do you recall me asking him yesterday whether he
6 made that statement?

7 A I don't. No, sir.

8 Q So you don't know what his response was?

9 A I do not.

10 Q You just can't remember?

11 A No, sir.

12 Q Do you have a copy of the investigative report?

13 A I do. Yes, sir.

14 Q In that investigative report, was that a
15 reproduction from the videos?

16 A It is. It's from the video and from the MOI, yes,
17 sir.

18 Q Does that indicate that she stated that she drove
19 to **X46** 16th Street after Demarcus Foster received a call
20 from J. Stevens to come see his niece?

21 A I didn't understand your question.

22 Q Did Maryam Rivera say that Demarcus Foster went to
23 16th Street to go see his niece after he got a call?

24 A She did. Yes, sir.

25 Q From J. Stevens?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A Correct.

2 Q I believe the AG asked you about it, but going back
3 to Lashawn White.

4 Did he make the statement that the guy who was
5 dressed in black walked off the porch "After the
6 shooting, he walked off the porch?"

7 A That's correct.

8 Q Special Agent Grant, do you take GSR samples from
9 people yourself?

10 A I do not anymore.

11 Q You have done it, and you have been trained on
12 doing it; correct?

13 A I have.

14 Q What is the critical time period for collecting
15 GSR?

16 A Six hours.

17 Q In your training, is there any kind of degradation
18 immediately within the first hour? Is there any kind of
19 scale that you can relay to us about that?

20 A No, sir.

21 Q Do you know when Lashawn White's GSR was done?

22 A I don't have it in front of me, but I know it was
23 done on the scene. I would say within hours, but I
24 don't know the exact time.

25 MR. GRIER: Thank you.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 THE COURT: Ms. Weiss.

2 MS. WEISS: Thank you, Your Honor, just briefly.

3 REDIRECT EXAMINATION

4 BY MS. WEISS:

5 Q Agent Grant, let's just go through a couple of
6 things.

7 You were listing off the phones. Did you also take
8 a phone from Jakenia?

9 A We did. Yes, ma'am.

10 Q Was that taken at a separate time?

11 A It was.

12 Q When was that?

13 A I believe it was taken on the 28th of September,
14 2017.

15 Q Did you get a search warrant for that, or was that
16 voluntary?

17 A It was voluntarily.

18 Q When Mr. Grier was asking you about the
19 communication on the phone -- you were looking at Joel's
20 phone. There was also a communication -- did you see a
21 communication from Quaterious Peay?

22 A I did.

23 Q What was that?

24 A It was a phone call.

25 Q Was that one of the last phone calls as well?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 A It was.

2 Q That was also just before the 911 call in? It was
3 within an hour of the 911 call coming in?

4 A Correct.

5 Q Mr. Grier asked you about the difference about
6 scared versus nervous. You said it depends on what they
7 say to you.

8 You testified that Dario was scared. What did he
9 say to you that made you feel like he was scared?

10 A He actually told me that he was scared. In his
11 words, "It was scary as hell."

12 Q Quaterious Peay, he said he was scared?

13 A He did.

14 Q What did he say that made you think he was scared?

15 A He said that he was concerned for the safety of
16 his family and his children.

17 Q Did he give you any other reasons why he was scared
18 about testifying in this case?

19 A He was concerned about retaliation.

20 Q Bree, Kristavius Stevens, said he was scared?

21 A He did.

22 Q Did he tell you why he was scared?

23 A Same thing. Concern for his safety and his family.

24 Q In the course of your investigation and the
25 information that you gathered from Chester County --

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 Lancaster County and Lancaster City -- all the
2 information that you gathered in this case, the
3 investigation that you have done, has anyone ever
4 identified anyone other than Demarcus Foster as being
5 the shooter in this case?

6 A They have not.

7 MS. WEISS: Thank you. No further questions.

8 THE COURT: Mr. Grier?

9 MR. GRIER: No, Your Honor.

10 THE COURT: You may step down. Thank you.

11 (Whereupon, the witness exited the witness stand.)

12 THE COURT: Ms. Weiss.

13 MS. WEISS: There was one piece of evidence, the
14 phone log, that was marked as State's Exhibit 14 and
15 testified to by Jakenia Stevens, I would like to enter
16 into evidence at this time.

17 MR. GRIER: I have no objection.

18 THE COURT: State's Number 14 is admitted into
19 evidence.

20 (The aforementioned item was marked as
21 State's Exhibit 14 for identification and was
22 admitted into evidence.)

23 MS. WEISS: Your Honor, at this time, the State
24 rests.

25 STATE RESTS

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 THE COURT: Ladies and gentlemen, the State has now
2 rested its case. Rather than go into the defense's case
3 at this point in time, I think we will just take a break
4 for the evening and come back tomorrow morning ready to,
5 hopefully, conclude the trial of this case, depending on
6 how many witnesses are called by the Defense.

7 I will ask for you all to be back at 9:30. We will
8 plan to resume at that time.

9 Again, I appreciate your patience today. I hope
10 tomorrow will go much more smoothly. Again, my
11 instruction is, please do not discuss this with anyone
12 tonight, at home or out to dinner or whatever you might
13 do with each other as you go back and forth to the jury
14 room. I hope you all have a pleasant evening.

15 (Whereupon, the jury exited the courtroom.)

16 THE COURT: Any motions that you want to make now
17 at the close of the State's evidence?

18 MR. GRIER: Your Honor, I would like to wait until
19 tomorrow morning. I might be able to save some time
20 tomorrow morning to question my client about his
21 intentions and his rights about if he were to testify.

22 THE COURT: If you want to go ahead and go through
23 that procedure with him, so he can think about it
24 tonight. It might save us some time tomorrow.

25 MR. GRIER: That is what I was thinking.

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 THE COURT: All right.

2 Mr. Foster, I want you to understand, sir, that you
3 have the right to testify in your defense tomorrow when
4 you begin to present your defense, if there is any
5 defense presented. I don't know if you are going to do
6 that or not. You can't be made to testify. You don't
7 have to put up a defense if you don't want to.

8 But you do have the right to put up a defense if
9 you want to. Included in that defense is your right to
10 call witnesses on your behalf, and for you, yourself, to
11 testify. There again, you do not have to testify. You
12 can't be made to testify, but you have the right to.

13 You also have the right to remain silent. If you
14 exercise your right to remain silent and you do not
15 testify, I will explain to the jury that that cannot be
16 held against you in any way whatsoever.

17 I will give further instructions during my charge
18 to that effect; that they cannot consider the fact that
19 you did not testify. It is clear that you have the
20 right to testify in your own defense, if you so desire.

21 It's something that you need to give a great deal
22 of thought and consideration to. Since you have got
23 overnight to do so, you will have plenty of time to do
24 that. Obviously, you will need to discuss this with
25 your attorney. It's a matter, sometimes, as to trial

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 strategy as whether you should or should not
2 testify.

3 I won't get into that. I will let you get into
4 that with your attorney.

5 Do you have any questions for the Court concerning
6 your right to testify or your right to remain silent?

7 Do you have any questions you want to ask me?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you understand what I have explained
10 to you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand the two rights that
13 you have?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Grier, anything?

16 MR. GRIER: Nothing further at this point, Your
17 Honor.

18 THE COURT: You may be seated.

19 Any other motions that you have, we will take them
20 up tomorrow morning before we call the jury back in.

21 MR. GRIER: Thank you, Your Honor. I will bring
22 anything else up tomorrow morning with the
23 Court.

24 THE COURT: No problem.

25 Anything from the State tonight?

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2019-GS-29-00899, -0902, -903

1 MS. WEISS: Your Honor, I would just ask that --
2 with the Court's permission and defense -- that our
3 bench trial remain open until morning, just so -- we
4 have been focused on the jury trial side of this. There
5 may be something that we need to put in as far as the
6 bench trial.

7 I would just ask that that trial remain open
8 through tomorrow morning so we can review, in case there
9 is anything else that we need to enter in on that case.

10 THE COURT: Certainly. Before the jury comes in
11 tomorrow, you may be able to tell me you are resting
12 with regard to that, obviously.

13 MS. WEISS: Yes, sir, Your Honor.

14 MR. GRIER: She is reading my mind, Your Honor.
15 That was my purpose in waiting until the morning, is to
16 review that and give that thought as well -- that issue.

17 THE COURT: You may want to offer some defense
18 specifically to this charge.

19 Okay. If that is everything, we will break for the
20 evening. We will plan to resume at 9:30 tomorrow
21 morning.

22 (Whereupon, at 5:18 p.m., the proceedings were
23 continued to be resumed the following day without
24 interruption.)

25 END OF VOLUME III

STATE OF SOUTH CAROLINA v. DEMARCUS OBRIEN FOSTER
2018-GS-29-00899, -0902, -903

STATE OF SOUTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
LANCASTER COUNTY	CIRCUIT COURT DIVISION
	2018-GS-29-00899
	2018-GS-29-00902, -03

-----X		
STATE OF SOUTH CAROLINA,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	TRANSCRIPT OF TRIAL
	:	VOLUME IV
	:	PAGES 468 - 680
DEMARCUS OBRIEN FOSTER,	:	
	:	
Defendant.	:	
-----X		

March 21, 2019
Lancaster, South Carolina

B E F O R E

The Honorable Roger E. Henderson, Judge Presiding.

A P P E A R A N C E S

JARROD FUSSNECKER, ESQ.
HEATHER WEISS, ESQ.
Assistant Attorneys General
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549

MARK GRIER, ESQ.
Assistant Public Defender
104 South Main Street
Lancaster, South Carolina 29720

Kymberlee M. Williams, CSR/RPR
Official Circuit Court Reporter
P.O. Box 283
Pineville, North Carolina 28134

1	I N D E X	
2	PROCEEDINGS	470
3	WITNESS: KRISTEN GRANT	
	Direct Examination (G)	473
4	WITNESS: DEMARCUS FOSTER	
5	Direct Examination (G)	476
	Cross-Examination (W)	514
6	Redirect Examination	589
7	DEFENSE RESTS	595
8	CLOSING ARGUMENT BY MS. WEISS	597, 644
9	CLOSING ARGUMENT BY MR. GRIER	617
10	JURY CHARGE	650
11	READING OF THE VERDICT	666
12	SENTENCING HEARING	673
13	PROCEEDINGS CONCLUDED	679
14	CERTIFICATE OF REPORTER	680

15	E X H I B I T S	
16	ITEM NUMBER	PAGE
17	(D) 5	504
	(D) 6	504
18	(D) 7	511
	(S) 20A - 20C	582

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 * * *

3 THURSDAY, MARCH 21, 2019

4 LANCASTER, SOUTH CAROLINA

5 (Whereupon, the following proceedings were
6 held in open court. The defendant was
7 present with his attorney, along with
8 counsel for the State.)

9 THE COURT: All right, Ms. Weiss. Anything further?

10 MS. WEISS: No, sir, Your Honor. On the bench
11 trial, the State rests.

12 THE COURT: Mr. Grier.

13 MR. GRIER: Thank you, Your Honor. At this point
14 in time, I think it's appropriate for me to make motions
15 for a directed verdict. First of all, I would make a
16 motion for directed verdict on the charges of murder and
17 the gun charge that is not subject to the bench trial,
18 Your Honor.

19 I do not believe the State has submitted evidence
20 to present the case to the jury. I understand the
21 weight of the evidence is not something that the Court
22 is going to determine, but I believe the credibility of
23 the witnesses is something that the Court can consider.
24 In this circumstance, I would submit that the Court can
25 find insufficient evidence -- that the State has

1 presented insufficient evidence to present the case to
2 the jury.

3 Likewise, as far as the bench trial, Your Honor, I
4 would submit the State hasn't presented sufficient
5 evidence in the case to go to the jury, as well for the
6 same reasons. Pertaining to both of the motions, Your
7 Honor, the statements, excited utterance statements, of
8 course, I have objected to those. I ask that you
9 exclude those for consideration.

10 I would argue that based on my objections, they
11 should not have been considered. I would ask you to
12 reconsider the objections that I put in the trial record
13 as to the privilege and give curative instructions and
14 directed verdict based upon those reasons, Your Honor.

15 THE COURT: Any response?

16 MS. WEISS: Yes, Your Honor. In the light most
17 favorable to the State, taking the testimony in the
18 light most favorable to the State, the State has proven
19 through direct testimony of eyewitnesses that the person
20 who committed the crime was Demarcus Foster, the
21 defendant, in Lancaster County. He did kill Mr. Joel
22 McLemore with malice aforethought and the use of a
23 weapon.

24 In the bench trial, you have the prior conviction
25 of voluntary manslaughter, which is a prior violent

1 felony, which he is not allowed to possess a weapon at
2 all that night or at all since 2014, from the conviction
3 of that crime.

4 So Your Honor, in the light most favorable to the
5 State, I would ask you to deny the directed verdict
6 motion and let this case go to the jury and to Your
7 Honor.

8 THE COURT: Thank you, ma'am.

9 I am satisfied that there is more than sufficient
10 evidence that this be submitted to the jury, with regard
11 to the murder charge and the possession of a weapon
12 during a violent crime, and also to the bench trial
13 which is being submitted to me.

14 So I respectfully deny your motions for directed
15 verdict, Mr. Grier. We will proceed with the trial.

16 THE COURT: Ready for the jury?

17 MR. GRIER: Yes, Your Honor.

18 MS. WEISS: Yes, Your Honor?

19 (Whereupon, the jury entered the courtroom.)

20 THE COURT: Good morning, ladies and gentlemen. I
21 hope you had a good evening last night. We are ready to
22 resume work here this morning. The State has rested.

23 Is the defense ready to call its first witness?

24 MR. GRIER: Yes, Your Honor.

25 I call Agent Grant back to the stand.

1 * * *

2 KRISTEN GRANT,

3 called as a witness by and on behalf of
4 the defense to testify, being previously duly
5 sworn was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GRIER:

8 Q Good morning, Agent Grant.

9 A Good morning.

10 Q Ms. Grant, are you in possession of your statement,
11 your investigative report?

12 A I am.

13 Q I want to clarify how you learned about Ladario
14 Jones being even present on the scene.

15 My understanding from the investigative report is
16 that you interviewed him and he initially denied being
17 on 16th Street; is that correct?

18 A That's correct.

19 Q Then there is a statement in there. Based on
20 additional information you learned in the
21 investigation -- apparently this was sometime later in
22 the day that he was re-interviewed?

23 A He was.

24 Q What was the additional information that put him on
25 the scene? Do you recall?

1 A We were just told that he was there, and we asked
2 him to come back in to be re-interviewed, and he
3 agreed.

4 Q You had already interviewed Jakenia Stevens;
5 correct?

6 A Yes, sir.

7 Q So you never learned anything about his being
8 present on the scene through Jakenia Stevens?

9 A We had information he was there. He just denied
10 it initially, so we did a second interview.

11 Q That didn't come from Ms. Stevens -- in her
12 interview?

13 A Correct.

14 Q Or anything that was recorded as an interview with
15 her; correct?

16 A Correct.

17 Q Going to Mr. Peay on Page 9. When Mr. Peay was
18 interviewed by law enforcement, he stated that he walked
19 into the house across the street, and he talked to
20 Ms. Young, Baka; right?

21 He stated that McLemore had been shot. He didn't
22 give a name of who was shot, according to him in his
23 statement, on the recorded video statements of Peay;
24 correct?

25 A That's correct.

1 Q He didn't indicate that the shot came from anywhere
2 but the porch either, did he?

3 A I'm sorry?

4 Q He didn't indicate that the shot came from
5 anywhere but off of the porch?

6 A That's correct, yes.

7 Q He indicated he was sitting on the steps of the
8 porch as well; right?

9 A He did. Yes, sir.

10 MR. GRIER: That's all. Thank you.

11 THE COURT: Ms. Weiss.

12 MS. WEISS: No questions, Your Honor.

13 THE COURT: You can step down, Agent Grant. Thank
14 you.

15 (Whereupon, the witness exited the witness stand.)

16 MR. GRIER: We have no objection if this witness
17 needs to be excused.

18 THE COURT: Thank you. You are excused, Agent
19 Grant.

20 MR. GRIER: Thank you, Your Honor. I call Demarcus
21 Foster. We had given him a statement that he had the
22 option to not testify. He has elected to testify.

23 THE COURT: All right, Mr. Foster. Move forward.
24 I explained your rights to you yesterday.

25 * * *

1 DEMARCUS FOSTER,
 2 called as a witness by and on behalf of
 3 the defense to testify, being first duly
 4 sworn was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GRIER:

7 Q State your name for the jury.

8 A Demarcus Obrien Foster.

9 Q Mr. Foster, have you ever testified in a trial
 10 before?

11 A No, sir.

12 Q How old are you, Mr. Foster?

13 A Thirty-one years old.

14 Q Who is out here from your family today?

15 A My mother, aunts, uncles, a couple of my cousins,
 16 my sisters, close friends.

17 Q Mr. Foster, what kind of work have you done?

18 A Basically, most of the work I do is hands-on. I do
 19 a man's job. I work for McGee Boat (phonetic), Carolina
 20 Restoration and Waterproofing. I worked for my dad
 21 moving military equipment.

22 Q Where had you been doing that?

23 A Just about every state there is, sir.

24 Q Is that all you wanted to say about that -- as far
 25 as different places you worked?

1 A Yes, sir.

2 Q Where did you grow up?

3 A Fort Lawn, South Carolina.

4 Q Where is Fort Lawn in relation to Lancaster?

5 A Across the Catawba River.

6 Q Right on the other side of the Catawba River?

7 A Yes, sir.

8 Q Did you ever live in Lancaster?

9 A Yes, sir. When I was younger. I was in elementary

10 school. My granddaddy got sick, so my mom moved to Fort

11 Lawn to take care of my granddaddy.

12 Q So until you were in the sixth grade, you lived in

13 Lancaster? Then you moved to Fort Lawn? Explain that

14 to me. You said you grew up in Fort Lawn.

15 A Probably around third grade.

16 Q Did you ever live in Columbia with your dad?

17 A Temporarily for a few months.

18 Q Mr. Foster, you have a history, don't you?

19 A Yes, sir.

20 Q You have been convicted of four felonies and two

21 misdemeanors, haven't you?

22 A Yes, sir.

23 Q When did those happen?

24 A When I was a teenager, around 17, 18 years old.

25 Q You were convicted of them after you turned 20, but

1 all of those events that you were convicted of felonies
2 and misdemeanors for were prior to your 20th birthday?

3 A Yes, sir.

4 Q Those jobs you were talking about. You have done
5 those since then?

6 A Yes, sir.

7 Q What is your relationship with your family?

8 A I have a good relationship with my family, sir.

9 Q How about your brother, Markevis, Bullet?
10 What was your relationship with him?

11 A That was my brother, best friend.

12 Q Why was he called Bullet?

13 A His speed. He was fast.

14 Q What sport?

15 A Baseball.

16 Q Do you recall when he was killed?

17 A Yes, sir.

18 Q When was it?

19 A Two days after my father's birthday.

20 Q What year was it in?

21 A 2017, June.

22 Q How long had it been since your brother had passed
23 away to the time you were accused of this murder?

24 A Months, sir.

25 Q It had only been a few months?

1 A Yes, sir.

2 Q Now, after that happened to your brother -- tell me
3 about your relationship with your niece while your
4 brother was alive.

5 A She used to always come to the house, and we would
6 interact. She is my niece. I had just met her.

7 Q After your brother was gone, how did your
8 relationship with her change?

9 A Basically, I stepped in. I spent more time with
10 her. I went by there to see and be around her. I felt
11 close to my brother when I was around her.

12 Q Would you do something -- oftentimes you would
13 visit with her. Where did you go to visit with her?

14 A It's called Baker Street. It's right by Shrimp
15 Boat.

16 Q Is that where the lady who they called Baka, who is
17 the mother of your niece -- what is your niece's name?

18 A MarKhyla.

19 Q Baka or Jakenia Stevens, that is your niece's mom?

20 A Yes, sir.

21 Q She lived over there on Baker Street?

22 A Yes, sir.

23 Q Did you ever visit your niece anywhere besides
24 Baker Street?

25 A In September.

1 Q How did this come about that you were going to
2 visit your niece on that day, on September 27, 2017?
3 Was that what your plan was?

4 A Can I start from Richburg?

5 Q Yes, sir.

6 A I had just left from Richburg. One of my
7 homeboys -- we are gamers.

8 Q Is this on that day?

9 A Yes, sir. Boom. I was inboxing my girl, telling
10 my girl that when she get off work -- boom -- I was
11 going to meet her -- boom. I would meet her when she
12 gets off work.

13 I got my homeboy to take me to meet my girl. By
14 the time she got off work, we met on Riverside. The
15 store might be a Marathon. It's still on Riverside. I
16 got my girl and, boom, like -- I told her I was going to
17 see MarKhyla for a minute before we did anything else.
18 She was, like, okay. She was fine with it.

19 So we headed out like we was going towards Baker
20 Street. I get a message on FaceBook, Facebook
21 Messenger, and it tells me be on 16th Street.

22 Q Let me stop you there for just a minute. I want
23 you to tell the story.

24 Had you been to 16th Street before?

25 A When I first --

1 Q Not that day.

2 What was your relationship with 16th Street?

3 A I don't deal with 16th Street.

4 Q But you had been there before?

5 A Yes, sir.

6 Q You called to go over there.

7 What happened next?

8 A We pull up like -- it's a crowd of people out

9 there, kids and all. We pulled in. When we pulled in,

10 my cousin Ny is out there. My little homeboy Ny, Baka,

11 and a lot more people they was out there and come around

12 the car.

13 So we were just fellowshiping and politicking.

14 Q Politicking. What does that mean?

15 A We was just fellowshiping and talking,

16 communicating.

17 Q You are not running for politics, are you?

18 A No, sir.

19 Q You are not running for office?

20 A No, sir. So we just kicking the bo-bo and talking.

21 I see MarKhyla. So I go speak to MarKhyla.

22 Q That is your niece?

23 A So I go speak to MarKhyla-bug. She tell me that

24 her word for the day was horse, and her color was

25 orange. Me and her got talking about it. The way she

1 said orange -- we started laughing, because the way she
2 pronounced it was so funny. She started laughing. She
3 put her little hands on her hips. She basically was,
4 "Uncle D, you are laughing at me."

5 So I said, "No. I'm just playing with you there."

6 I talked to her for a few more minutes. I gave her
7 two money. And she go over there to play with the kids.

8 Q What does "two money" mean?

9 A Me and my brother started a thing. If you get any
10 two of the same bills, we call it two money.

11 Q Bills? Money?

12 A Yeah. Cash.

13 Q You did that that day?

14 A Yes, sir.

15 Q Do you know what you gave her?

16 A If I am not mistaken, it might have been two fives.

17 Q What would she do with that money?

18 A She get the money. She is just like me and my
19 brother. Whatever she get, she go to her cousin. She
20 be like, "I got money. I want to go to the store. Tell
21 me what you-all want."

22 She would take them to the store and get them what
23 they want, and then she do for herself.

24 Q She used that money to make friends, too?

25 A If you say so, sir.

1 Q This is September 27. Was it cold? Hot? What do
2 you recall about the weather that day?

3 A It was fair.

4 Q In between?

5 A Yes, sir.

6 Q What were you wearing?

7 A I had LeBrons on my feet. I had what we call Boss
8 Man pants. They got slashes and stuff, and they were
9 khaki. I had on a black-and-pink Nelson Mandela shirt,
10 I think I had my North Face toboggan on.

11 Q State's Exhibit Number 5. What is in that
12 picture? Who is in that picture?

13 A Me and MarKhyla.

14 Q When was this taken, as far as you know?

15 A September 27.

16 Q Was this from that visit that day?

17 A Yes, sir.

18 Q Who took it?

19 A I think it was MarKhyla's mom.

20 Q Did you get that picture sent to you on Facebook
21 later on?

22 A Yes, sir.

23 Q When did you get that?

24 A Probably about 12:00. Sometime around
25 there.

1 Q You were visiting with your niece. Did you want
2 to say anything else about that?

3 A After I got finished talking to MarKhyla, I went
4 back towards the crowd toward my car. I grabbed my beer
5 out of the backseat?

6 Q Let's talk about the beer.
7 Why do you drink that beer?

8 A My brother used to drink it. He introduced me to
9 it, and ever since then, I have been drinking it.

10 Q Anybody else have that beer out there?

11 A I passed out a couple of them.

12 Q But did anyone else that you are aware of bring
13 that beer out there?

14 A No, sir.

15 Q What kind of beer is it?

16 A Yuengling beer.

17 Q Yuengling beer?

18 A Yeah.

19 Q Hand you -- these are State's Exhibit 10B and
20 Exhibit 10D.

21 What kind of beer is that?

22 A Yuengling.

23 Q Did you have that beer when you pulled up there to
24 begin with?

25 A Yes, sir. I had a case that was in the backseat.

1 Q You had a case?

2 A Yes, sir.

3 Q What is a case?

4 A Probably a 12-pack.

5 Q So it wasn't 24 beers?

6 A No, sir.

7 Q How many -- over the course of that evening until

8 you left, how many of those beers do you suppose you

9 drank?

10 A Me personally? I don't drink much. I probably

11 drunk three or four.

12 Q You don't really know, because you were not

13 counting?

14 A Yes, sir.

15 Q Were you drinking when you were visiting with your

16 niece?

17 A No, sir.

18 Q What happened after -- what did your niece do after

19 you visited with her? Was she around?

20 A No, sir. I told her mother -- I knew we was going

21 to start drinking. Drinking had started, so it's time

22 for the kids to go. Take my niece home.

23 Q How did you know there was going to be drinking

24 going on?

25 A Because I brought beer, my lady friend had drinks,

1 and that is 16th Street.

2 Q What was the atmosphere over there outside of you
3 visiting with your niece?

4 A It was a good vibe out there, like. It was a good
5 day.

6 Q You don't seem to talk like 16th Street was a good
7 place to be.

8 A I do. It has a bad reputation, but on this day,
9 the vibe -- it was a fair vibe out there.

10 Q Who were you seeing over there?

11 A I came to see my niece.

12 Q After your niece -- and even before your niece --
13 who all was over there?

14 A A couple guys and a female. I know for sure my
15 conversation started with Ny and Little Ny.

16 Q Just after you visited your niece?

17 A Yes, when I left my niece.

18 Q Let's go back to your niece. What happened to your
19 niece, as far as you know?

20 Did she go anywhere or stay, hang around, or what?

21 While you were, where was your niece -- after you
22 visited with her?

23 A I sent her off to play with the other kids.

24 Q How long did she stay there?

25 A I can't say.

1 Q After you visited with her -- do you call that
2 chilling?
3 A Yes, sir.
4 Q Politicking?
5 A Yes, sir.
6 Q Who all were you hanging out with then?
7 A Me, Ny.
8 Q Does he not have a name? Is that his nickname?
9 A His nickname is Ny. His Government name is -- I
10 can't -- I don't know.
11 Q Who else?
12 A Quinterious Truesdale. Baka was at the car. Dario
13 was at the car, too.
14 Q Dario?
15 A Yeah.
16 Q At the car?
17 A All of us are around my girl's car.
18 Q How about Quaterious Peay? Do you recall him being
19 there?
20 A He wasn't around us the whole night. He was off in
21 another area.
22 Q So he wasn't in this group that you-all were
23 talking?
24 A He wasn't in our group.
25 Q Around the car?

1 A No, sir.

2 Q But he was out there?

3 A He was out there.

4 Q Who is Damu?

5 MS. WEISS: Objection, Your Honor. Defense is

6 leading.

7 THE COURT: That was a leading question.

8 MR. GRIER: Yes, Your Honor. It was.

9 BY MR. GRIER:

10 Q What is Quaterious Peay's nickname?

11 A They call him Damu.

12 Q Who else was out there? Was Ladario Jones out

13 there?

14 A Yeah. He was around the car.

15 Q You mentioned him?

16 A Yes, sir.

17 Q Does he have a nickname?

18 A We just call him Dario.

19 Q How about Lashawn White? Do you know Lashawn

20 White?

21 A Yes.

22 Q Are you aware of a nickname that he goes by?

23 A We call him Deuce.

24 Q How about Chris Stevens? Do you know if he was out

25 there or not?

1 A He probably was. There was a group of guys by the
2 light.

3 Q There is a light in Roger's backyard?

4 A Yes, sir.

5 A And you said there was a group of guys that were
6 under the light?

7 A Yes, sir.

8 Q How about Joel? Was he out there?

9 A No, sir.

10 Q Did you stay out there by the car?

11 A I stayed there for a minute.

12 Q Just tell me what happened next -- how things went.

13 A We were by the car talking. I can't think of my
14 man name, but his nickname is Bad Ass. That is what
15 they call him.

16 Me and him started joking. He had gotten into a
17 fight. It might have been the night before. We was
18 joking about his fight.

19 I ended up walking on the porch. There was some
20 dude -- I didn't know who it was. I had seen him in the
21 projects. Boom, he was speaking to me. We was speaking
22 to each other -- what was that's dude's name?

23 Q Are you trying to remember the name?

24 A I am trying to think of his name.

25 Q Was it anybody who was mentioned as being there in

1 this courtroom so far that you recall?

2 A No, sir.

3 Q Where was this person at?

4 A He was sitting on the bench that is on the porch.

5 Q Where were you sitting?

6 A At that time I wasn't sitting.

7 Q Okay. Tell me what happened.

8 A I just walked up and spoke to him for a brief
9 minute. I ended up going back towards the car. I think
10 my girl might have mentioned something about her cousin
11 texting or something. I can't really recall it.

12 Q Did you leave?

13 A I can't really say I left, but --

14 Q You might have left?

15 A We might have left, but I can't really say.

16 Q What do you recall then? Just keep telling us what
17 you can remember.

18 A Basically, we was fellowshiping for a minute.
19 Nightfall. It started getting dark. I remember the
20 same guy that I had spoke to earlier on the porch, he
21 asked me for a beer. So, boom. I had a beer already in
22 my hand.

23 I grabbed another beer out of the box. Boom. I
24 went to give him the beer. When I went to go get him a
25 beer, pow, hear a gunshot. I shoot to the car. Grabbed

1 the car door. Opened the door, and said to my girl,
2 "Let's go."

3 Q Well, where are you when you hear that?

4 A I am on the porch. The bench is right here. I'm,
5 like, right here (indicating), handing the guy the beer,
6 like.

7 Q When you were sitting on the porch, were you
8 facing the front -- to the road?

9 A Okay. The porch is right here. It's a wall.

10 Q I will hand you what is marked as Defendant's
11 Exhibit 2.

12 What is that a picture of?

13 A That is the front porch where we was at.

14 Q What is on that porch?

15 A You got your little bench right here.

16 Q This is daylight, apparently -- it looks like
17 daylight?

18 A I guess.

19 Q You said you were sitting on that bench?

20 A Yeah.

21 Q And you said you were talking to somebody.

22 Were you sitting or standing?

23 A I was standing right here (indicating).

24 Q Did you ever sit down on that porch?

25 A I didn't get to sit down, sir.

1 Q You said you ran off the porch. Which direction
2 did you run?

3 A This way. I ran this way, sir.

4 Q Did you see Quaterious Peay anywhere?

5 A When I ran -- I ain't going to lie -- I ain't see
6 no one.

7 Q Did you see anything? Did you see anybody on the
8 ground?

9 A No, sir. I was one way to the car. One shot out
10 to the car.

11 Q Did you ever sit down on that porch?

12 A I didn't get to sit down, sir.

13 Q Did you say anything when you got in the car?

14 A "Let's go."

15 Q Did you know if anybody had been shot?

16 A I just heard a gunshot and left.

17 Q Has that ever happened to you before?

18 A Well, yeah. You hear a gunshot, and you just get
19 up there and run.

20 Q It was dark when that happened?

21 A Yes, sir.

22 Q Was it light out there?

23 A No, sir.

24 Q Do you know where everybody was at on the ground
25 out there when the gunshot went off?

1 A No, sir. I only spoke to the guy that was sitting
2 on the porch.

3 Q Did you see a car pull up while you were out there?

4 A I can't recall if I seen a car.

5 Q Did you see any white people out there?

6 A No, sir. None.

7 Q Did you know Joel McLemore?

8 A No. Never.

9 Q Did you ever see any cars moving or anything while
10 you were leaving?

11 A No, sir.

12 Q The car was backed in; correct?

13 MS. WEISS: Objection, Your Honor. Leading.

14 THE COURT: Sustained.

15 BY MR. GRIER:

16 Q How was the car pointing when you got in it?

17 A We was backed in.

18 Q Which way did you leave?

19 A We made a left. We went up. We were basically
20 going towards Carolina Court.

21 Q Did you go uphill or downhill?

22 A It is a slope, so uphill.

23 Q Just describe what happened, where you went.

24 A You make a left out of the driveway. We come up
25 the hill. We get to the stop sign. I don't even think

1 you can see the lights, to be honest with you. We get
2 to the stop sign. Boom. Made another left going
3 towards -- Founders is right on the corner.

4 When we get right there, we make another left. Now
5 we are going towards Carolina Court. As soon as we get
6 right there, like, make a left going towards Carolina
7 Court, I tell my girl to take me to Big Richard's house.
8 Me and Richard, we cousins, like. We are related
9 through my aunt.

10 Q Why are you going there?

11 A I stop by Richard's house like -- medication.

12 Q What do you mean by "medication"? Just tell us
13 what you are talking about.

14 A I smoke, like -- I smoke, so --

15 Q Smoke what?

16 A Marijuana. I smoke reefer.

17 Q Was that your intention that day?

18 A Yes, sir.

19 Q Did that work out that day? Did you see Richard?

20 A Naw. When I got there, there was an older guy
21 there. He came to the door. I went in. Boom. He went
22 to the back where Richard was sleeping. He was, like,
23 "Come back later."

24 So I was like, "All right. I'll come back later."

25 So I left there, and I went to the cemetery to see

1 my brother. That's what I do. I see my brother. I got
2 videos on my phone. Every day I go by and see my
3 brother. That is part of my day, like. I stop by and
4 see my brother every day.

5 Q So that is not just when you go see your niece?

6 A No. She is part of my day as well. Every time I
7 leave from seeing my niece -- I live like -- people
8 might think it's crazy. I literally go see my brother.
9 When I go see my brother, I tell him about my day
10 I had with my niece. I literally speak to him about my
11 day I had with my niece. It's what I do, like.

12 Q Was there any conversation in the car about what
13 happened on 16th Street?

14 A No. Like, nobody spoke. That's Lancaster, like.
15 If you hear a gunshot, you don't speak about it. That's
16 what I am saying. Somebody take what you said, and
17 boom. They will try to put you in there.

18 The next thing you know, you are in a full-fledged
19 investigation.

20 Q Have you had that happen before -- to yourself?

21 A Yes, sir.

22 Q You left the cemetery. Let's keep going.

23 A Yes, sir.

24 Q Keep on. Tell us what happened next.

25 A When we leave the cemetery, we go Carolina Court

1 from Richard's house to the cemetery.

2 Q Tell us how long you stayed at the cemetery.

3 A It ain't no telling. Like, when I get there -- I
4 love my brother. It might be anywhere, like, 15 minutes
5 to an hour like that. That is just it.

6 Q Who all was in the car?

7 A I know it was me, my girl, and City (phonetic), my
8 homeboy. I know for sure we were in the car, like --
9 that's usually who I take along when I go see my
10 brother.

11 Q How about Mondra Tinsley?

12 A I can't say for sure if my cuz was in the car with
13 us or not. I can't say.

14 Q Might have been?

15 A Might have been. I know me and Truesdale was the
16 ones who got out of that cemetery, actually, when I
17 spoke to my brother.

18 Q You left the cemetery. What happened?

19 A So after we leave the cemetery, you come out. We
20 have to pass Truesdale's mom's trailer, come on around
21 the curve, and you turn -- right before you get to
22 Richard's house, you turn. You go past a little church.
23 It's like you bear off and come back up. My mom stay
24 right there, but we bypassed my mom's house.

25 We come around to the front side of Carolina Court.

1 The old folks' section is right here in the front. Then
2 it's a left. Make you a left, then you have to make
3 another left to turn into Carolina Court. We went into
4 Carolina Court. We dropped City off. Then I got
5 dropped off last at my mom's house. I told my girl
6 goodnight. I love her. I gave her a kiss. She had to
7 go to work the next morning.

8 Later on that night, my homeboy Slick -- Slick come
9 from Richburg. He picked me and Tweak, and we go
10 Murph's house. Her name is Ms. Poovey -- Angela
11 Patterson, I think.

12 Q Did you hear from Jakenia Stevens during that time
13 frame?

14 A Yeah. Baka probably inboxed me or call my mom's.
15 It was one or the two. She inboxed me or called my
16 mom's phone.

17 Q What does inbox mean?

18 A Messenger. Send a message on Messenger.

19 Q What kind of communication did you have with her,
20 and what was it about?

21 A Baka asked me, "D, did you see anything happen when
22 you was on 16th Street?"

23 Q Did you respond?

24 A Yeah. I told her, "Naw. I ain't seen nothing
25 happened."

1 Q Where were you when you became aware that she was
2 trying to communicate with you?

3 A I was at my mom's -- Carolina Court.

4 Q Did she tell you that you were --

5 MS. WEISS: Objection, Your Honor.

6 MR. GRIER: Your Honor, she has testified. I am
7 trying to impeach her testimony that she talked to the
8 defendant.

9 THE COURT: What is your objection?

10 MS. WEISS: The objection is leading and hearsay.

11 He can ask him what she said, but don't feed it to
12 him.

13 THE COURT: I will sustain the objection.

14 BY MR. GRIER:

15 Q Was there any other communication from her at that
16 time?

17 A No, sir.

18 Q Do you know what time you learned of that
19 approximately? What time did you learn that she was
20 communicating with you?

21 A This was -- I can't say exactly what time it was.

22 Q If you can't, you can't. Do you know where you
23 were when you learned when she was communicating with
24 you?

25 A I was at my mom's.

1 Q Did you stay at your mom's?

2 A Naw. I ended up leaving with my homeboy Slick.

3 Q Homeboy who?

4 A Slick.

5 Q What is his name?

6 A His name is Demarcus as well.

7 Q Do you know his last name?

8 A Demarcus Crawford.

9 Q You ended up leaving. Do you know what time you

10 left?

11 A I can't say exactly what time I left.

12 Q You were not keeping up with that?

13 MS. WEISS: Objection.

14 THE COURT: Sustained. Don't lead the witness.

15 BY MR. GRIER:

16 Q Were you keeping up with the time?

17 A No, sir.

18 Q You and Slick went where?

19 A We went over to Murph's mom's house, Ms. Poovey.

20 Q Who is Murph?

21 A Murph is -- his real name, I think, is, I think,

22 Rakine (phonetic) Patterson. He is the guy -- one of my

23 brother's friends who got killed. He was there when my

24 brother died. My brother actually got shot trying to

25 help Murph. That is how my brother ended up passing.

1 Q What was your purpose in going over there?

2 A His mom and my mom were close. Since they have
3 passed, I have been going by there and speaking with
4 her, trying to console her a little bit. We all going
5 through the same thing.

6 Q How did you know her before Murph got killed?

7 A Her and my mom -- our families like -- Murph's
8 sister -- we deal with each other. We be around each
9 other.

10 Q What happened while you were visiting her?

11 A We was out there chilling, drinking, have a good
12 time. My other cousin, Squirt, he sings. He telled me,
13 "Bro, I got some beats. You want to listen to them?"

14 So we started rapping.

15 Q Where was that?

16 A It's Newtown, but the street is Willow Lake.

17 Q Can you describe what area of town, north, south,
18 east or west, that's it in, if you can? If you can't
19 fine.

20 If I walked out of this courthouse, how would I go
21 to Newtown?

22 A From the parking lot across the street from the
23 courthouse, boom. You would have to come out and make a
24 right, like, going towards KFC.

25 Q What road is KFC on?