

VOLUME I OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Charleston County

S.C. SUPREME COURT

Honorable George M. McFaddin, Circuit Court Judge

VALENTINO M. HAYWARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001530

APPENDIX

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF CHARLESTON) CASE NO. 2014-GS-10-03322

STATE OF SOUTH)
CAROLINA,)
Plaintiff,) Transcript of Record
vs.)
VALENTINO HAYWARD,) Date:
Defendant.) November 9-17, 2015

* * * * *

B E F O R E:
THE HONORABLE DEADRA JEFFERSON

* * * * *

Denise J. Lauder, RPR
Ninth Judicial Circuit

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E X H I B I T S

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16 STATE EXH. 1 - 40, were marked for 11 4
 17 identification

18

19 STATE EXH. 43, Copy of Subpoena with CD 589 13
 20 attached

21 STATE EXH. 44, Copy of Subpoena with CD 589 15
 22 attached

23 STATE EXH. 45, Copy of Subpoena with CD 589 17
 24 attached

25 COURT EXH. 2, CD 102 10

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1 (The following proceedings were had
2 November 9, 2015, 11:49 a.m., Charleston County
3 Circuit Court, in re State v. Valentino Hayward.)

4 (STATE EXH. 1 - 40, were marked for
5 identification.)

6 THE COURT REPORTER: Judge, there are
7 40 exhibits that have been premarked.

8 THE COURT: Mr. Mayer, has not agreed
9 to any of the exhibits?

10 MR. MAYER: Judge, I just now received
11 the list. I think there are ones on here that I
12 can agree to.

13 THE COURT: So why don't you, after we
14 pick the jury, talk about it and see what you can
15 agree upon. Let the Court Reporter know so that
16 she can premark them and we can admit them, and
17 then we will only have to deal with the ones where
18 you have an objection.

19 MR. SIMPSON: Judge, while we're
20 talking about some preliminary items, both parties
21 have agreed to stipulate to chain.

22 THE COURT: Okay.

23 MR. SIMPSON: Us for the defense and
24 the defense for us. I've got a written stipulation
25 I can enter as a Court's Exhibit at this time.

1 THE COURT: That's fine.

2 Is that correct, Mr. Mayer?

3 MR. MAYER: Yes, Judge.

4 (COURT EXH. 1, Stipulation, was marked
5 for identification.)

6 THE COURT: Would your client like to
7 have a formal arraignment?

8 MR. MAYER: We would like it outside
9 the presence of the jury.

10 THE COURT: I don't know that you can
11 do it outside the presence of the jury. The
12 purpose of the formal arraignment is for you to say
13 if you're guilty or not guilty in the presence of
14 the jury.

15 It's really superfluous. Some people
16 just do it because they feel like it's a good luck
17 charm.

18 MR. MAYER: We would elect not to do
19 it.

20 THE COURT: Okay. So it would be
21 waived.

22 Do we need one or two alternates? I'm
23 inclined to have two.

24 MR. SIMPSON: The State would prefer
25 two, Your Honor.

1 THE COURT: Are you-all going to call
2 all of these witnesses or did you just put them on
3 here just --

4 MR. SIMPSON: We put -- a large number
5 are precautionary, but I will tell you our intended
6 list is about 20 to 25.

7 THE COURT: And you recognize that
8 Wednesday is a holiday.

9 MR. SIMPSON: I do, and --

10 THE COURT: And you recognize that the
11 Court is going to stop at 5:00. I'm not going
12 beyond 5:00. People don't listen beyond 5:00.
13 It's a waste of time.

14 MR. SIMPSON: I do, Your Honor.

15 THE COURT: And we're going to start at
16 9:30. I will have a shortened lunch break,
17 depending on how the weather is, but I'm going to
18 ask the jury if they can -- there is a potential
19 for the case to go beyond Friday. I'm not going to
20 rush you all in trying your case and I'm not going
21 to rush Mr. Mayer. It would be a violation of
22 State law for me to require State employees to work
23 on a State holiday.

24 MR. SIMPSON: We're going to do our
25 best to prevent it, but I think that is--

1 THE COURT: I kind of felt that going
2 into it when I looked at everything on Friday. I
3 meant to ask the entire panel, but I can ask the
4 small panel -- that there's a small possibility the
5 case may go into Monday because there's a holiday,
6 and if anybody has any problem with that to let us
7 know so we can eliminate them from the panel.

8 Any exception, Mr. Mayer?

9 MR. MAYER: No, Judge.

10 THE COURT: Are we going forward on
11 both Indictments, murder and possession of a weapon
12 during the commission of a violent crime?

13 MR. SIMPSON: Yes, Your Honor.

14 (Jury panel in, 12:07 p.m.)

15 THE COURT: Ladies and gentlemen, we
16 are going to select a jury for the case of The
17 State of South Carolina versus Valentino M.
18 Hayward, Indictments 2014-GS-10-3323 and 3322,
19 which are for possession of a firearm during the
20 commission of a violent crime, and murder.

21 Those Indictments read as follows or
22 are alleged as follows: That in Charleston County,
23 on or about December 11, 2013, with malice
24 aforethought, Valentino M. Hayward, unlawfully did
25 kill Deontre Miles by shooting him, and that

VOIR DIRE

1 Deontre Miles did die in Charleston County as a
2 proximate result thereof on December 11, 2013,
3 alleging a violation of Code Section 16-3-10 of the
4 Code of Laws, as Amended.

5 And alleging that in Charleston County,
6 South Carolina on or about December 11, 2013, the
7 defendant, Valentino M. Hayward, did possess a
8 firearm or visibly display what appeared to be a
9 firearm during the commission, or attempted
10 commission, of murder, a violent crime, alleging a
11 violation of Code Section 16-23-490 of the Code of
12 Laws, as Amended, and alleging these actions to be
13 against the peace and dignity of the State of South
14 Carolina.

15 We are going to go through a process
16 called voir dire, which is simply a legal term
17 meaning that I am going to ask you some questions
18 so that the attorneys can more effectively exercise
19 their peremptory challenges during jury selection.

20 If a question applies to you, please
21 stand and in a loud and clear voice, give us your
22 name, your juror number, an answer to the question
23 if applicable, and remain standing until the Court
24 has completed questioning you.

25 Before we begin that process, I'm going

VOIR DIRE

1 to have Counsel for the State to stand and
2 introduce himself, anyone who will be assisting him
3 in the trial of this case, and have him publish the
4 names of the lawyers in his office.

5 And I'm going to have Counsel for the
6 defense to have his client stand and face the panel
7 and provide us with the same information.

8 You may proceed, Mr. Simpson.

9 MR. SIMPSON: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 MR. SIMPSON: Good morning. My name is
12 Chad Simpson. It's my honor this week to represent
13 the State of South Carolina. Assisting me in this
14 trial is Assistant Solicitor Lauren Mulkey. This
15 is Detective Paul Krasowski with the Charleston
16 Police Department. He may be at our table
17 assisting us. You may also see a gentleman coming
18 in and out, Thomas Walters. He's our investigator.

19 Other Assistant Solicitors, and that's
20 the local term for prosecutors, that work in my
21 office are as follows: Marian Askins, Jessica
22 Baldwin, Charles Condon, Daniel Cooper, Ted Corvey,
23 Shannon Elliott, Drew Evans, Amy Harrell, Debbie
24 Herring-Lash, Culver Kidd, Nick Lewis, Chris
25 Lietzow, Stephanie Linder, Ms. Mulkey, David

VOIR DIRE

1 Osborne, Jenna Newmann, Nina Savas, Jennifer
2 Shealy, Whit Sowards, Richard Waring, Burns
3 Whetmore, Tyler Whitaker, Todd Williams and Alex
4 Ziegler.

5 Our boss is the elected prosecutor for
6 Charleston and Berkeley County, her name is
7 Scarlett Wilson. Her deputy is Bruce Durant.

8 THE COURT: Mr. Mayer.

9 MR. MAYER: Thank you, Judge.

10 THE COURT: You're welcome.

11 MR. MAYER: This is my client,
12 Valentino Hayward. I'm Aaron Mayer; I'm a lawyer
13 practicing here in Charleston. Also in my office
14 we have Daniell Phillips, we have Morgan Edwards,
15 and we have Jeff Gibbs.

16 THE COURT: Ladies and gentlemen, if a
17 question applies to you, please stand and in a loud
18 and clear voice, give us your name, your juror
19 number, an answer to the question if applicable,
20 and remain standing until I have completed
21 questioning you.

22 Now, because of the holiday on
23 Wednesday and the number of witnesses that we have
24 scheduled for this case, there is a possibility
25 that this case may go into Monday. I need to know

VOIR DIRE

1 if there is anyone on the panel who will have a
2 conflict if this case goes into Monday of next
3 week. If so, please stand at this time.

4 Yes, ma'am; name and juror number.

5 PROSPECTIVE JUROR: 379, Katherine
6 White.

7 THE COURT: Yes, ma'am.

8 PROSPECTIVE JUROR: I have a --

9 THE COURT: You don't have to tell me
10 why. We subpoenaed you for a week. I just need to
11 know -- sometimes cases take a little longer than
12 we expect and I -- I'm just direct with people and
13 I feel like I need to let you know that. I don't
14 want to spring that on you when I know in advance.
15 It may not happen, but worst case scenario, it
16 could, and I don't want to put anybody in a problem
17 that may have other commitments or obligations.

18 Yes, ma'am.

19 PROSPECTIVE JUROR: Sonya Spruill,
20 juror number 343.

21 THE COURT: And, sir, your name?

22 PROSPECTIVE JUROR: My name is Fernando
23 Mateusnino, 227.

24 THE COURT: 227?

25 PROSPECTIVE JUROR: Yes, ma'am.

VOIR DIRE

1 THE COURT: Thank you very much. You
2 all can take your seats.

3 Yes, ma'am, I'm sorry.

4 PROSPECTIVE JUROR: Juror number 150,
5 Jennifer Haughney.

6 THE COURT: Thank you, ma'am. You may
7 take your seat.

8 Again, ladies and gentlemen, if a
9 question applies to you, please stand and in a loud
10 and clear voice, give us your name, your juror
11 number, an answer to the question, if applicable,
12 and remain standing until I have completed
13 questioning you.

14 Please take a moment to familiarize
15 yourself with your juror number so you don't have
16 to stumble around and figure out the number.

17 Is there any member of the jury panel
18 related by blood or marriage to Valentino M.
19 Hayward, Deontre Miles, or anyone who is related to
20 Deontre Miles? If so, please stand at this time.

21 JURY PANEL: (None)

22 THE COURT: Does any member of the
23 panel have a close personal or social relationship
24 with Valentino M. Hayward, Deontre Miles, or anyone
25 who is related to Deontre Miles? If so, please

VOIR DIRE

1 stand at this time.

2 JURY PANEL: (None)

3 THE COURT: The following are a list of
4 potential witnesses in this case. I would ask that
5 you listen carefully. Whitney Berry of the South
6 Carolina Law Enforcement Division, Agent Jonathon
7 Shealy of the South Carolina Law Enforcement
8 Division, Samuel Stewart, South Carolina Law
9 Enforcement Division, Sergeant Jason Bruder, Nada
10 Kerstein, Ashleigh Dockery, Detective Daniel
11 English, Officer Shaun Flaherty, Sarah Gladwell,
12 Detective Eugene Gordon, Detective Richard Holmes,
13 Detective James Jackson, Detective Paul Krasowski,
14 Officer Christopher Malinowski, Lauren Mosher of
15 the Charleston County --- all of the previous
16 officers I've named are of the Charleston Police
17 Department.

18 Lauren Mosher, formerly Charleston
19 Police Department, currently Charleston County
20 Sheriff's Office, Mary Philips, Detective Jason
21 Scurry, Sara Senn, Officer Karl Shehan, Detective
22 Dustin Thompson, Randall Unterbrink, Corporal
23 Rodney Van Horn, Detective Sylvester Williams,
24 Jennifer Wooley, all of the Charleston police
25 department.

VOIR DIRE

1 James W. Green, South Carolina Law
2 Enforcement Division, Wallace Bishop, Brian Bivens,
3 Marian Campbell, Latoya Carson, Antonio Gibson,
4 Elizabeth A. Littman, Anisha A. Pearson, Charles T.
5 Rodwell, Thomas Brown, Sidaysia Freeman, Vanessa
6 Singleton, Herbie Singleton, Sophia Nowell,
7 N-O-W-E-L-L, Officer Jay Miller, Officer Gerten,
8 Fred Sanders, Officer Broadwater, Shannon Fraley,
9 Ryan Gibbs, Kevin Sherbine, Charleston County
10 Sheriff's Office, Al Cannon Detention Center,
11 Investigator Thomas Walters.

12 Is there any member of the panel
13 related by blood or marriage to any of the people
14 that I have just listed, or does anyone have a
15 close personal or social relationship with any of
16 these individuals? If so, please stand at this
17 time.

18 JURY PANEL: (None)

19 MR. SIMPSON: Your Honor, may we
20 approach briefly?

21 THE COURT: Sure.

22 (Bench conference.)

23 THE COURT: Has any member of the
24 panel ever been represented by any of the attorneys
25 involved in this case or anyone in their offices?

VOIR DIRE

1 If so, please stand at this time.

2 JURY PANEL: (None)

3 THE COURT: Is there any member of the
4 panel related by blood or marriage, or have a close
5 personal or social relationship with any of the
6 attorneys involved in this case, any of the
7 attorneys in their offices, or anybody employed in
8 any capacity in their offices? If so, please stand
9 at this time.

10 Yes, sir; tell us your name and juror
11 number.

12 PROSPECTIVE JUROR: My name is Skyler
13 Salman, juror number 316.

14 THE COURT: And who are you --

15 PROSPECTIVE JUROR: I have a social
16 relationship with Daniel Cooper.

17 THE COURT: How often would you say you
18 see him?

19 PROSPECTIVE JUROR: Usually once a
20 month or so.

21 THE COURT: And would you classify him
22 as a social acquaintance?

23 PROSPECTIVE JUROR: Yeah, I guess. A
24 friend.

25 THE COURT: As a result of this

VOIR DIRE

1 experience, do you feel that you can remain fair
2 and impartial and render a fair and impartial
3 decision in this case, based solely on the evidence
4 as it will be presented and on the law as the Court
5 will instruct?

6 PROSPECTIVE JUROR: I believe so.

7 THE COURT: Thank you, sir. You may
8 take your seat.

9 Is there any member of the panel who
10 has formed or expressed an opinion about any matter
11 involved in this case? If so please stand.

12 JURY PANEL: (None)

13 THE COURT: Is there any member of the
14 panel aware of any bias or prejudice toward either
15 the State or the defense in this case? If so,
16 please stand at this time.

17 JURY PANEL: (None)

18 THE COURT: Is there any member of the
19 panel who is a member of the grand jury who issued
20 the Indictments in this case? If so, please stand
21 at this time.

22 JURY PANEL: (None)

23 THE COURT: Is there any member of the
24 panel who has read, watched, or listened to any
25 media accounts about this case? That includes

VOIR DIRE

1 anything that could have been read in the
2 newspaper, on the Internet, seen on television or
3 the Internet, or heard on the radio. If so, please
4 stand at this time.

5 Yes, sir; tell me your name and your
6 juror number.

7 PROSPECTIVE JUROR: Hubert Webb, juror
8 number 374.

9 I think I read this in the paper.

10 THE COURT: How long ago, sir?

11 PROSPECTIVE JUROR: I don't remember.

12 THE COURT: Would you estimate more
13 than five months ago?

14 PROSPECTIVE JUROR: Yes, ma'am.

15 THE COURT: Do you remember what you
16 read? Just a yes or no. I don't want you to tell
17 me --

18 PROSPECTIVE JUROR: Yes, ma'am.

19 THE COURT: You remember what you read?

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: As a result of what you
22 read, did you form a fixed opinion about this case?

23 PROSPECTIVE JUROR: No, ma'am.

24 THE COURT: Do you believe that you can
25 be fair and impartial?

VOIR DIRE

1 PROSPECTIVE JUROR: Oh, yes.

2 THE COURT: Do you feel you can render
3 a fair and impartial decision in this case, based
4 solely on the evidence as it will be presented and
5 on the law as the Court will instruct?

6 PROSPECTIVE JUROR: Yes, ma'am.

7 THE COURT: Thank you, sir. You may
8 take your seat.

9 Is there any member of the panel who is
10 a member of, or contributor to any group which has
11 as its primary concern the promotion of law
12 enforcement or victims' rights? These groups would
13 include, but are not limited to Mothers Against
14 Drunk Driving, Students Against Drunk Driving,
15 People Against Rape, Citizens Against Violent
16 Crimes, Citizens Empowered to Save Teens -- no,
17 Parents Empowered to Save Teens and Citizens
18 Advocating a Return to Decency and Ethics, or any
19 other type community watch group. If you feel this
20 applies, I would ask that you stand at this time.

21 Yes, ma'am.

22 PROSPECTIVE JUROR: Juror 379.

23 THE COURT: I've excused you from the
24 panel, ma'am, I'm sorry. Tell me your number just
25 for the record.

VOIR DIRE

1 PROSPECTIVE JUROR: 379, Katherine
2 white.

3 THE COURT: Thank you, ma'am.

4 Is there any member of the panel who
5 has a moral, philosophical -- a religious, moral,
6 or philosophical opposition to sitting in judgment
7 of a fellow human being? If so, please stand at
8 this time.

9 JURY PANEL: (None)

10 THE COURT: Is there any member of the
11 panel or a member of your family ever been the
12 victim of a violent crime? If so, please stand at
13 this time.

14 Yes, sir; tell me your name and juror
15 number.

16 PROSPECTIVE JUROR: Juror 137, Theis
17 Green.

18 THE COURT: And was it you, sir, or a
19 family member?

20 PROSPECTIVE JUROR: Family member.

21 THE COURT: Sir, as a result of this
22 experience, do you feel you can remain fair and
23 impartial?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Do you feel you can render

VOIR DIRE

1 a fair and impartial decision in this case, based
2 solely on the evidence as it will be presented and
3 on the law as the Court will instruct.

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Thank you, sir. You may
6 take your seat.

7 Yes, ma'am.

8 PROSPECTIVE JUROR: Juror 86, Cheryl
9 Dunmeyer.

10 THE COURT: Was it you or a family
11 member?

12 PROSPECTIVE JUROR: Family member.

13 THE COURT: As a result of this
14 experience, do you feel that you can remain fair
15 and impartial?

16 PROSPECTIVE JUROR: Yes, ma'am.

17 THE COURT: Do you feel that you can
18 render a fair and impartial decision in this
19 case --

20 PROSPECTIVE JUROR: Yes, ma'am.

21 THE COURT: -- based solely on the
22 evidence as it will be presented and on the law as
23 the Court will instruct?

24 PROSPECTIVE JUROR: Yes, ma'am.

25 THE COURT: Thank you, you may take

VOIR DIRE

1 your seat?

2 And, ma'am, you're number 150, correct?

3 PROSPECTIVE JUROR: (Nodding)

4 THE COURT: I've excused you from this
5 panel. You don't have to --

6 Is there any member of the panel who
7 has had what they would characterize as an
8 unpleasant experience with law enforcement such
9 that it would affect your ability to be fair and
10 impartial? If so, please stand at this time.

11 JURY PANEL: (None)

12 THE COURT: Is there any member of the
13 panel who is related by blood or marriage to
14 someone employed in law enforcement? If so, please
15 stand at this time.

16 We'll start on this side. State your
17 name, your juror number, what member of your family
18 it is, and what agency it is and remain standing.

19 Yes, sir.

20 PROSPECTIVE JUROR: 106, Jeff Fraley.
21 Several family members are in law enforcement,
22 uncle is the captain at Indiana State Police,
23 nephew is -- serves at the Indianapolis Police
24 Department, extended family, but...

25 THE COURT: Okay. Next to you. Yes,

VOIR DIRE

1 ma'am.

2 PROSPECTIVE JUROR: I'm Stacie Dede,
3 number 74. I have a cousin who is a retired State
4 Trooper and a cousin who is working for Charleston
5 Police Department.

6 THE COURT: Remain standing.

7 Yes, ma'am.

8 PROSPECTIVE JUROR: 133, Norell Grant.
9 I currently work for the City of Charleston and we
10 work closely with the police department and
11 recreation department.

12 THE COURT: Remain standing.

13 Yes, ma'am.

14 PROSPECTIVE JUROR: Cheryl Dunmeyer,
15 juror number 86. My son-in-law is currently a
16 Charleston County Deputy Sheriff and my daughter is
17 currently Homeland Security.

18 THE COURT: And in the back.

19 PROSPECTIVE JUROR: Karen Gooding, 124;
20 nephew is a police detective in Davidson, North
21 Carolina.

22 THE COURT: Yes, sir, in the back.

23 PROSPECTIVE JUROR: My name is Jerry
24 Goodwin, I believe it was 125.

25 THE COURT: Wait a second, we need to

VOIR DIRE

1 make sure that your number is correct.

2 Okay. Yes, sir.

3 PROSPECTIVE JUROR: Yes. Father is a
4 deputy sheriff, Mecklenberg County, North Carolina.

5 THE COURT: And starting on this side.
6 Yes, sir.

7 PROSPECTIVE JUROR: Kevin Young, 398.
8 My brother-in-law is a sergeant in the highway
9 patrol and my cousin is DNR.

10 THE COURT: And next to you, yes, sir.

11 PROSPECTIVE JUROR: Juror number 374.
12 My wife is retired instructor --

13 THE COURT: I'm sorry, retired
14 instructor for?

15 PROSPECTIVE JUROR: Customs --

16 THE COURT: Customs and borders?

17 PROSPECTIVE JUROR: Yes, ma'am.

18 THE COURT: And, ma'am, in the white
19 jacket?

20 PROSPECTIVE JUROR: My name is Sonya
21 Spruill, 343. My father works for the Barnwell
22 County Sheriff's Department.

23 THE COURT: And, yes, sir, in the blue
24 shirt.

25 PROSPECTIVE JUROR: Scott McGee, juror

VOIR DIRE

1 number 234. My uncle is a detective in the
2 Charlotte/Mecklenberg Police Department.

3 THE COURT: As a result of these
4 experiences, do you feel that you can remain fair
5 and impartial and render a fair and impartial
6 decision in this case, based solely on the evidence
7 as it will be presented and on the law as the Court
8 will instruct? If your answer is, yes, please take
9 your seats.

10 JURY PANEL: (Seated)

11 THE COURT: Let the record reflect that
12 all answered yes, with the exception of number 106.

13 Sir, you will be excused from the trial
14 of this case only.

15 I'm sorry, and, sir, in the back, 398,
16 you will be excused from the trial of this case
17 only.

18 THE COURT: You may both take your
19 seats.

20 I need you to listen to this question
21 carefully because it refers to former employment,
22 not current employment. Is there any member of the
23 panel who was formerly employed in law enforcement?
24 If so, please stand at this time.

25 JURY PANEL: (None)

VOIR DIRE

1 THE COURT: Is there any member of the
2 panel who has any personal knowledge of the alleged
3 facts and circumstances of this case? If so,
4 please stand at this time.

5 JURY PANEL: (None)

6 THE COURT: Is there any member of the
7 panel who is employed by or has any family members
8 employed at Azalea Motors? If, so please stand at
9 this time.

10 JURY PANEL: (None)

11 THE COURT: Is there any member of the
12 panel who has a moral, philosophical, or religious
13 opposition to the possession of a firearm? If so,
14 please stand at this time.

15 JURY PANEL: (None)

16 THE COURT: Is there any member of the
17 panel a member of the National Rifle Association?
18 If so, please stand at this time.

19 THE COURT: Yes, sir. Tell us your
20 name and your juror number.

21 PROSPECTIVE JUROR: Michael Buhmeyer,
22 juror 40.

23 THE COURT: Sir, as a result of this
24 experience, do you feel that you can be fair and
25 impartial and render a fair and impartial decision

VOIR DIRE

1 in this case, based solely on the evidence as it
2 will be presented and on the law as the Court will
3 instruct?

4 PROSPECTIVE JUROR: I do, Your Honor.

5 THE COURT: Thank you, sir. You may
6 take your seat.

7 Is there any member of the panel who
8 has a moral, philosophical or religious opposition
9 to the consumption of alcohol? If so, please stand
10 at this time.

11 JURY PANEL: (None)

12 THE COURT: Does any member of the
13 panel know of any reason whatsoever why he or she
14 should not serve in this case with particular
15 emphasis placed on your ability to be fair and
16 impartial to both the State and defense? If so,
17 please stand at this time.

18 JURY PANEL: (None)

19 THE COURT: Any additional questions
20 from the State?

21 MR. SIMPSON: None, Your Honor.

22 THE COURT: Any additional questions
23 from the defense?

24 MR. MAYER: Judge, just --

25 THE COURT: Just give me a number.

VOIR DIRE

1 If there was something I omitted that
2 you wish the Court to ask, I need to know what
3 number it is so that I can address it
4 contemporaneously for the record.

5 MR. MAYER: Number 20.

6 THE COURT: Number 20 goes into the
7 facts of the case and it would not be appropriate
8 and it is not elicited -- as the information that
9 is designed to be elicited by 14-7-1020. Request
10 is denied.

11 MR. MAYER: Judge, number 23.

12 THE COURT: That's overly broad.

13 MR. MAYER: 24?

14 THE COURT: That's cumulative. I asked
15 if someone was the victim of a violent crime.

16 MR. MAYER: 26?

17 THE COURT: You should have discovered
18 that in voir dire because that would have been
19 disclosed during roll call. I mean, roll call.
20 Not voir dire.

21 MR. MAYER: Number 28, Judge?

22 THE COURT: That's a matter of law for
23 the Court and not within the ambit of 14-7-1020.
24 Your request is denied.

25 MR. MAYER: Thank you, Judge.

VOIR DIRE

1 THE COURT: You're welcome.

2 Ladies and gentlemen --

3 Who is going to demonstrate for me?

4 Ladies and gentlemen, if your name is
5 called, please come forward as the bailiff is
6 doing, please stand where he is standing and turn
7 back facing the panel until we either excuse you as
8 a juror or seat you as a juror.

9 Again we appreciate your patience. I'm
10 going to turn you over to the capable hands of our
11 Deputy Clerk.

12 Mike, you may proceed when you're
13 ready.

14 MR. MAYER: May we approach, briefly?

15 THE COURT: Sure.

16 (Bench conference.)

17 THE COURT: You may proceed.

18 Is No. 266 present, Ms. Osborne?

19 JUROR NO. 266: (Standing)

20 THE COURT: Ms. Osborne, you're a
21 midwife, correct?

22 JUROR NO. 266: Yes.

23 THE COURT: Do you recall assisting in
24 the birth of Mr. Mayer's child? You've probably
25 helped deliver a lot of babies.

VOIR DIRE

1 JUROR NO. 266: Over 2,000.

2 THE COURT: And it was two years ago
3 so I would imagine you scarcely remember; would
4 that be accurate?

5 JUROR NO. 266: Right.

6 THE COURT: Okay. And -- but you
7 wouldn't dispute that you assisted?

8 JUROR NO. 266: No.

9 THE COURT: Okay. And are you also
10 Ms. Mulkey's neighbor.

11 JUROR NO. 266: Not that I know of.

12 THE COURT: Okay. Did your daughter
13 run for something recently?

14 JUROR NO. 266: No.

15 THE COURT: As a result of these
16 potential contacts that you've had with Ms. Mulkey
17 and Mr. Mayer, do you feel that you can remain fair
18 and impartial?

19 JUROR NO. 266: Yes.

20 THE COURT: Do you feel that you can
21 render a fair and impartial decision in this case,
22 based solely on the evidence as it will be
23 presented and on the law as the Court will
24 instruct?

25 JUROR NO. 266: Yes.

JURY SELECTION

1 THE COURT: Okay. Thank you, ma'am.

2 You may take your seat.

3 Any exceptions from the State?

4 MR. SIMPSON: No, Your Honor.

5 THE COURT: From the defense?

6 MR. MAYER: None, Judge.

7 THE COURT: Strikes will be 5 and 10.

8 Ladies and gentlemen, if you would give the clerk
9 your attention.

10 THE CLERK: Ladies and gentlemen, if
11 your name is called, please gather your belongings,
12 come up and stand by the podium.

13 Juror number 111, James Frolio.

14 What say you for the State?

15 MR. SIMPSON: Please present this
16 juror.

17 THE CLERK: What say you for the
18 defense?

19 MR. MAYER: Please seat this juror.

20 THE COURT: Please have a seat in the
21 jury box. You have been selected as a juror in the
22 trial of this case.

23 Juror number 332, Christopher Simpson.

24 What say you for the State?

25 MR. SIMPSON: Please present this

JURY SELECTION

1 juror.

2 THE CLERK: What say you for the
3 defense?

4 MR. MAYER: Please excuse this juror.

5 THE CLERK: Please return to your seat.
6 You have been excused as a juror in the trial of
7 this case.

8 Juror 349, Jacob Stoudermire.

9 What say you for the State?

10 MR. SIMPSON: Please present this
11 juror.

12 THE CLERK: What say you for the
13 defense?

14 MR. MAYER: Please seat this juror.

15 THE CLERK: Please have a seat in the
16 jury box. You have been selected as a juror in the
17 trial of this case.

18 Juror number 226, Kimberly Masten.

19 What say you for the State?

20 MR. SIMPSON: Please present this
21 juror.

22 THE CLERK: What say you for the
23 defense?

24 MR. MAYER: Please excuse this juror.

25 THE CLERK: Please return to your seat.

JURY SELECTION

1 You have been excused as a juror in the trial of
2 this case.

3 Juror number 374, Huber Webb, 374.

4 What say you for the State?

5 MR. SIMPSON: Please excuse this
6 juror.

7 THE CLERK: Please return to your seat.

8 You have been excused as a juror in the trial of
9 this case.

10 Juror number 225, Daniel Martinelli.

11 What say you for the State?

12 MR. SIMPSON: Please present this
13 juror.

14 THE CLERK: What say you for the
15 defense?

16 MR. MAYER: Please excuse this juror.

17 THE CLERK: Please return to your seat.

18 You have been excused as a juror in the trial of
19 this case.

20 Juror number 17, Michael Bell.

21 What say you for the State?

22 MR. SIMPSON: Please present this
23 juror.

24 THE CLERK: What say you for the
25 defense?

JURY SELECTION

1 MR. MAYER: Please seat this juror.

2 THE CLERK: Please have a seat in the
3 jury box. You have been selected as a juror in the
4 trial of this case.

5 Juror number 125, Jerry Goodwin.

6 What say you for the State?

7 MR. SIMPSON: Please present this
8 juror.

9 THE CLERK: What say you for the
10 defense?

11 MR. MAYER: Please seat this juror.

12 THE CLERK: Please have a seat in the
13 jury box. You have been selected as a juror in the
14 trial of this case.

15 Juror number 353, Tammy Swanson, 353.

16 What say you for the State?

17 MR. SIMPSON: Please present this
18 juror.

19 THE CLERK: What say you for the
20 defense?

21 MR. MAYER: Please excuse this juror.

22 THE CLERK: Please return to your seat.
23 You have been excused as a juror in the trial of
24 this case.

25 That's four strikes for the defendant.

JURY SELECTION

1 Juror number 331, Laurie Simmons.

2 What say you for the State?

3 MR. SIMPSON: Please present this
4 juror.

5 THE CLERK: What say you for the
6 defense?

7 MR. MAYER: Please seat this juror.

8 THE CLERK: Please have a seat in the
9 jury box. You have been selected as a juror in the
10 trial of this case.

11 Juror number 128, Claudia Gowden.

12 What say you for the State?

13 MR. SIMPSON: Please present this
14 juror.

15 THE CLERK: What say you for the
16 defense?

17 MR. MAYER: Please seat this juror.

18 THE CLERK: Please have a seat in the
19 jury box. You have been selected as a juror in the
20 trial of this case.

21 Juror number 39, Michael Budan, 39.

22 What say you for the State?

23 MR. SIMPSON: Please excuse this juror.

24 THE CLERK: Please return to your seat.
25 You have been excused as a juror in the trial of

JURY SELECTION

1 this case.

2 Juror number 133, Norell Grant.

3 What say you for the State?

4 MR. SIMPSON: Please present this
5 juror.

6 THE CLERK: What say you for the
7 defense?

8 MR. MAYER: Please seat this juror.

9 THE CLERK: Please have a seat in the
10 jury box. You have been selected as a juror in the
11 trial of this case.

12 Juror number 35, David Brown.

13 What say you for the State?

14 MR. SIMPSON: Please present this
15 juror.

16 THE CLERK: What say you for the
17 defense?

18 MR. MAYER: Please excuse this juror.

19 THE CLERK: Please return to your seat.
20 You have been excused as a juror in the trial of
21 this case.

22 Juror number 137, Theis Green, 137.

23 What say you for the State?

24 MR. SIMPSON: Please excuse this
25 juror.

JURY SELECTION

1 THE CLERK: Please return to your seat.
2 You have been excused as a juror in the trial of
3 this case.

4 That's three strikes for the State.
5 Juror number 369, Steven Vogel.
6 What say you for the State?

7 MR. SIMPSON: Please present this
8 juror.

9 THE CLERK: What say you for the
10 defense?

11 MR. MAYER: Please excuse this juror.

12 THE CLERK: Please return to your seat.
13 You have been excused as a juror in the trial of
14 this case.

15 Juror number 316, Skyler Salman, 316.
16 What say you for the State?

17 MR. SIMPSON: Please present this
18 juror.

19 THE CLERK: What say you for the
20 defense?

21 MR. MAYER: Please excuse this juror.

22 THE CLERK: Please return to your seat.
23 You have been excused as a juror in the trial of
24 this case.

25 That's seven strikes for the defendant.

JURY SELECTION

1 Juror number 40, Michael Buhmeyer.

2 What say you for the State?

3 MR. SIMPSON: Please excuse this
4 juror.

5 THE CLERK: Please return to your seat.
6 You have been excused as a juror in the trial of
7 this case.

8 That's four strikes for the State.

9 Juror number 163, Sean Houlihan.

10 What say you for the State?

11 MR. SIMPSON: Please present this
12 juror.

13 THE CLERK: What say you for the
14 defense?

15 MR. MAYER: Please seat this juror.

16 THE CLERK: Please have a seat in the
17 jury box. You have been selected as a juror in the
18 trial of this case.

19 Juror number 288, Margaret Pruett.

20 What say you for the State?

21 MR. SIMPSON: Please present this
22 juror.

23 THE CLERK: What say you for the
24 defense?

25 MR. MAYER: Please seat this juror.

JURY SELECTION

1 THE CLERK: Please have a seat in the
2 jury box. You have been selected as a juror in the
3 trial of this case.

4 Juror number 86, Cheryl Dunmeyer.

5 What say you for the State?

6 MR. SIMPSON: Please present this
7 juror.

8 THE CLERK: What say you for the
9 defense?

10 MR. MAYER: Please seat this juror.

11 THE CLERK: Please have a seat in the
12 jury box. You have been selected as a juror in the
13 trial of this case.

14 Juror number 234, Scott McGee.

15 What say you for the State?

16 MR. SIMPSON: Please present this
17 juror.

18 THE CLERK: What say you for the
19 defense?

20 MR. MAYER: Please excuse this juror.

21 THE CLERK: Please return to your seat.
22 You have been excused as a juror in the trial of
23 this case.

24 Juror number 392, Chester Wood, 392

25 What say you for the State?

JURY SELECTION

1 THE COURT: Mr. Wood, would you tell us
2 what you do for a living, please.

3 JUROR NO. 392: I work for a
4 landscaping company and I'm an instructor for a
5 health club.

6 THE CLERK: What say you for the State?

7 MR. SIMPSON: Please present this
8 juror.

9 THE CLERK: What say you for the
10 defense?

11 MR. MAYER: Please present this juror.

12 THE CLERK: Please have a seat in the
13 jury box. You have been selected as a juror in the
14 trial of this case.

15 Juror number 74, Stacie Dede, 74.

16 What say you for the State?

17 MR. SIMPSON: Please excuse this
18 juror.

19 THE CLERK: Please return to your seat.
20 You have been excused as a juror in the trial of
21 this case.

22 Five strikes for the State.

23 Juror number 91, Reba Evans, 91.

24 Any challenge from the State?

25 MR. SIMPSON: No challenge from the

JURY SELECTION

1 State.

2 THE CLERK: What say you for the
3 defense?

4 MR. MAYER: Please excuse this juror.

5 THE CLERK: Please return to your seat.
6 You have been excused as a juror in the trial of
7 this case.

8 That's nine strikes for the defendant.

9 Juror number 266, Judy Osborne, 266.

10 Any challenge from the State?

11 MR. SIMPSON: No challenge from the
12 State.

13 THE COURT: What say you for the
14 defense?

15 MR. MAYER: Please excuse this juror.

16 THE COURT: Ms. Osborne, please return
17 to your seat. You have been excused as a juror in
18 the trial of this case.

19 That's ten strikes for the defendant.

20 Juror number 298, Katherine Rawl, 298.

21 Any challenges from the State?

22 MR. SIMPSON: No challenge from the
23 State.

24 THE CLERK: Any challenge from the
25 defendant?

JURY SELECTION

1 MR. MAYER: No challenge from the
2 defendant.

3 THE CLERK: Please have a seat in the
4 jury box. You have been selected as a juror in the
5 trial of this case.

6 Now picking for the first alternate.

7 THE COURT: Strikes are one and two.

8 THE CLERK: Juror number 286, Bradley
9 Powers, 286.

10 What say you for the State?

11 MR. SIMPSON: Please present this
12 juror.

13 THE CLERK: What say you for the
14 defense?

15 MR. MAYER: Please present this juror.

16 THE CLERK: Please have a seat in the
17 jury box. You have been selected as a juror in the
18 trial of this case.

19 Now picking for the second alternate.

20 THE COURT: Give me one second.

21 Counsel could you approach for a second?

22 (Bench conference.)

23 THE COURT: Mr. Powers you're excused
24 from the trial of this case.

25 THE CLERK: Picking for the first

JURY SELECTION

1 alternate.

2 Juror number 20, Joseph Berry, 20.

3 What say you for the State?

4 MR. SIMPSON: Please present this
5 juror.

6 THE CLERK: What say you for the
7 defense?

8 MR. MAYER: Please excuse this juror.

9 THE CLERK: Please return to your seat.
10 You have been excused as a juror in the trial of
11 this case.

12 Juror number 37, Jerriel Brown, 37.

13 What say you for the State?

14 MR. SIMPSON: Please excuse this
15 juror.

16 THE CLERK: Please return to your seat.
17 You have been excused as a juror in the trial of
18 this case.

19 Juror number 2, Raven Adams.

20 Any challenge from the State?

21 MR. SIMPSON: No challenge.

22 THE CLERK: What say you for the
23 defense?

24 MR. MAYER: Please seat this juror.

25 MR. CLERK: Please have a seat in the

JURY SELECTION

1 jury box. You have been selected as a juror in the
2 trial of this case.

3 Now picking for the second alternate.

4 Juror number 335, Legare Smith, 335.

5 What say you for the State?

6 MR. SIMPSON: No challenge here.

7 THE COURT: This is for the second
8 alternate.

9 MR. SIMPSON: Oh, my apologies.

10 Please present this juror.

11 THE CLERK: What say you for the
12 defense?

13 MR. MAYER: Please excuse this juror.

14 THE CLERK: Please return to your seat.
15 You have been excused as a juror in the trial of
16 this case.

17 Juror number 124, Karen Gooding, 124.

18 What say you for the State?

19 MR. SIMPSON: Please present this
20 juror.

21 THE CLERK: What say you for the
22 defense?

23 MR. MAYER: Please excuse this juror.

24 THE CLERK: Please return to your seat.
25 You have been excused as a juror in the trial of

JURY SELECTION

1 this case.

2 That's two strikes for the defendant.

3 Juror number 25, Michelle Blair, 25.

4 What say you for the State?

5 MR. SIMPSON: What was the number?

6 THE CLERK: 25, Michelle Blair.

7 MR. SIMPSON: Please present this
8 juror.

9 THE CLERK: Any challenge from the
10 defense?

11 MR. MAYER: No. Please seat this
12 juror.

13 THE CLERK: Please have a seat in the
14 jury box. You have been selected as a juror in the
15 trial of this case.

16 Your Honor, the jury has been selected
17 and seated.

18 THE COURT: Any motions regarding the
19 selection of the jury from the State?

20 MR. SIMPSON: No, Your Honor.

21 THE COURT: From the defense?

22 MR. MAYER: Yes, Judge.

23 THE COURT: Please approach.

24 (Bench conference.)

25 THE COURT: To the balance of the

1 panel, we thank you for your time and your
2 attention and your patience. You're excused for
3 the remainder of the day. Please call the jury
4 information line after 6:00 this evening for
5 further instructions. Have a great afternoon.

6 (Jury panel out)

7 THE COURT: Ladies and gentlemen,
8 you've been selected for the case of The State of
9 South Carolina versus Valentino Hayward. You've
10 had a very long morning; we're going to break for
11 lunch.

12 During this break, please do not
13 discuss the case among yourselves or with anyone
14 else. Do not speculate about what you think it may
15 or could be about. You are strictly prohibited
16 from doing any independent research of any kind on
17 the Internet regarding any issue or matter involved
18 in this case, that includes any searches on any
19 newspaper sites or otherwise seeking out any
20 information outside of the evidence in this case.

21 We are going to resume at 2:15. You
22 will come directly to your jury room. The bailiffs
23 will show you how to do that. Actually, you may --
24 if you're waiting a few minutes for us, don't
25 panic. We have some matters of law that I need to

1 dispose of with the attorneys, but I think we will
2 be able to get through most of that before you
3 return.

4 During the break, please don't have any
5 contact with anyone in or about the courthouse.
6 Don't have conversation with anyone that does not
7 have on a blue juror sticker. Please do not make
8 any comment regarding your social status on any
9 social networking sites, that includes Facebook,
10 Instagram, Twitter, Snapchat, Vine, Periscope --
11 I've lost track of the rest of them.

12 You would be amazed the people that
13 read those, who are not on jury duty, who call us
14 and let us know what you said. So it's just best
15 to refrain from making any comments. An innocent
16 comment can so very easily be misinterpreted.

17 Hope you have a great lunch. We'll see
18 you at 2:15. As you leave, the bailiffs are going
19 to get your cell phone numbers so that we're able
20 to contact you in the event that something comes up
21 that is not anticipated. They will show you how to
22 come back directly to your jury room at 2:15.

23 (Jury out, 1:05 p.m.)

24 THE COURT: You can take your seats.

25 Are there any pretrial motions? If

1 there are I need them. I know that they were
2 e-mailed, but that doesn't count. It counts for me
3 to sort of peruse them, but it doesn't count if you
4 want them in the record.

5 All right. The State's motion to admit
6 business records, I will have to take it up at the
7 time you seek to admit them. We will do that in
8 camera.

9 What record is it exactly that you're
10 seeking to introduce?

11 MR. SIMPSON: Well, Judge, we aren't
12 actually seeking to introduce the -- some phone
13 records, but those phone records are the basis of
14 some cell phone tower expert testimony. So we --

15 THE COURT: So I assume you're going
16 to your expert -- the person from the cell phone
17 company here.

18 MR. SIMPSON: No, Your Honor. As I
19 laid out in my motion, the law changed March 27,
20 2015, addressing this very issue. Section 19-5-520
21 of the South Carolina Code was enacted. This was
22 legislation intended to address the often --
23 forgive me, I've struggled with it for ten years in
24 categorizing it, but it's a somewhat comical
25 situation where we have to fly a representative

1 thousands of miles and spend thousands of
2 taxpayer's dollars --

3 THE COURT: Why do you have to fly
4 somebody when you have somebody right here in town?

5 MR. SIMPSON: The records custodian
6 for phone companies are typically located at the
7 corporate headquarters and local, you know, reps
8 like at the TMobile store just stare at you
9 glassy-eyed from --

10 THE COURT: Have you already sent this
11 -- have you given this to Mr. Mayer?

12 MR. SIMPSON: I have, and --

13 THE COURT: And does he object to the
14 use of these records, I guess becomes the question?

15 MR. MAYER: Judge, we do object to the
16 use of these records --

17 THE COURT: Then I'll take it up in
18 camera at the time that you seek to introduce it.

19 MR. SIMPSON: Your Honor, if may note
20 just something for practical purposes. The only
21 reason I would be raising this pretrial is,
22 obviously, if Your Honor were to rule against me,
23 we've got -- I would be on the phone arranging
24 travel --

25 THE COURT: I wouldn't leave you -- I

1 mean, I'm going to look at it at lunch.

2 MR. SIMPSON: Okay. We understand.

3 THE COURT: I'll give you ample time if
4 you need to fly somebody in.

5 MR. SIMPSON: Thank you, Judge.

6 THE COURT: Let's see, autopsy photos,
7 I wouldn't take those up until such time the State
8 seeks to introduce them and I'll take those up in
9 camera.

10 The victim's phone records as a result
11 of a warrantless search? I assume you-all
12 subpoenaed these records?

13 MR. SIMPSON: Judge, I believe what
14 Mr. Mayer is referring to, a phone was found in the
15 hands of the deceased.

16 THE COURT: Oh, okay.

17 MR. SIMPSON: We obviously would object
18 on standing.

19 THE COURT: Yeah. You don't have any
20 expectation of privacy when the phone doesn't
21 belong to him. And even if he did, when you give
22 it to somebody else, you lose any expectation of
23 privacy you had.

24 MR. MAYER: We're talking about the
25 decedent, Judge.

1 THE COURT: Yeah. You don't have any
2 expectation of privacy when something is in his
3 hands. Is it your client's phone? Whose phone is
4 it?

5 MR. MAYER: No, it's not my client's
6 phone.

7 THE COURT: Then he has no standing to
8 object. You don't need a warrant to get something
9 from a deceased person. It doesn't belong to him.
10 The only person that is protected by the
11 Constitution is him.

12 The decedent, automatically their
13 rights are protected by the State, so ergo it would
14 be in their best interest -- or in the State's best
15 interest to inventory whatever was in that person's
16 possession at the time of their death, and whatever
17 comes up as a result of it, they have the right to
18 use it.

19 Elizabeth Littman. Who is Ms. Littman?

20 MR. SIMPSON: Your Honor, Ms. Littman
21 is a proposed eyewitness to these events.

22 THE COURT: What basis would there be
23 to exclude her testimony, Mr. Mayer?

24 MR. MAYER: Judge, she's called Crime
25 Stoppers in the past and has called out names.

1 THE COURT: That sounds like
2 credibility. I'm not aware of any basis that you
3 would exclude a witness.

4 MR. MAYER: She gave a statement to the
5 State that is in direct contradiction to the
6 statement she gave --

7 THE COURT: Sounds like something you
8 can impeach here with, huh? Maybe you might not
9 want to make yourself a witness. You might want to
10 have a prayer meeting over that before morning.

11 MR. MAYER: Thank you, Judge.

12 THE COURT: Motion to exclude texts.
13 What is that about?

14 MR. SIMPSON: Your Honor, the State
15 would propose -- obviously, I think if we took this
16 up as we went to introduce the evidence --

17 THE COURT: Do you plan to seek to
18 introduce --

19 MR. SIMPSON: Absolutely, Your Honor.
20 These are text messages taken directly from the
21 defendant's phone.

22 THE COURT: Did he send them to
23 somebody else?

24 MR. SIMPSON: Authored by him.

25 THE COURT: So you took them off of the

1 person that received them?

2 MR. SIMPSON: We took them off of the
3 defendant's phone.

4 THE COURT: Okay. We'll take those up
5 in camera. I don't really have a way of sort of
6 knowing what that's all about. And, also, before
7 -- excuse me, before Ms. Littman's testimony, since
8 all of these are in limine, Mr. Mayer, you'll have
9 to make a contemporaneous objection so the Court
10 can rule.

11 And you will have to make a
12 contemporaneous objection on all of these motions
13 because they're all in limine.

14 I don't take speaking objections. So
15 when you make an objection, you'll need to stand
16 and say you object, I will ask the basis of the
17 objection, and you should be able to state that
18 succinctly. I will either rule
19 contemporaneously -- if I need argument, I will
20 excuse the jury for that purpose. If I need to
21 create a profer, I will do that as well.

22 I assume this other motion is moot at
23 this point, motion for information concerning
24 prospective juror's criminal history through NCIC?
25 I would assume that's a moot issue at this point?

1 I always let my juror's take notes, so
2 that's a moot issue as well. I assume that the
3 State has no exception to that?

4 MR. SIMPSON: None, Your Honor.

5 MR. MAYER: Judge, on the NCIC issue, I
6 would love to just make the notes that were part of
7 the Batson hearing we had at the side bar part of
8 the record which seemed -- it seemed that the State
9 had done NCIC checks on all of the prospective
10 jurors. If we could make that part of the record.

11 THE COURT: Any exception from the
12 State?

13 MR. SIMPSON: Is he referring to your
14 review notes or ours?

15 THE COURT: My notes can't be made a
16 part of --

17 MR. SIMPSON: Our work product is our
18 work product.

19 THE COURT: It is their work product.

20 MR. SIMPSON: I can write down our --
21 the race neutral reasons we provided to the Court.

22 THE COURT: I don't think you need to.
23 You've already provided them. They're on the
24 record.

25 MR. MAYER: Judge, he already waived

1 the work product privilege when he shared it with
2 me.

3 THE COURT: He was generous with you.
4 I don't think he waived work product.

5 MR. SIMPSON: I shared the rap sheet
6 summary, not my notes written on the --

7 MR. MAYER: Well, then, if I may amend
8 my request, just to make the rap sheet summaries
9 part of the record.

10 THE COURT: Any exception from the
11 State?

12 MR. SIMPSON: Your Honor --

13 THE COURT: I think I'm just trying to
14 figure out why that's necessary. We had a motion,
15 the motion -- the State provided race neutral
16 reasons, the burden then shifted to you, Mr. Mayer,
17 to provide that those reasons were pretextual.

18 You asked at the bench to put the --
19 for you to see the actual records that these
20 individuals had where the State indicated they
21 struck a person, like, for example, number 374
22 because they had a prior CDV.

23 The rest of anybody else's record is
24 immaterial, it's not relevant, and you were not
25 able to meet your burden in saying that the reasons

1 given by the State were not race neutral and that
2 they were pretextual.

3 MR. MAYER: Judge, with all due
4 respect, I didn't really have time to go through
5 the full list --

6 THE COURT: That's your responsibility.
7 And if you needed additional time, you should have
8 asked for it. I would have given it to you. But,
9 generally, when you're picking a jury, you're
10 paying acute attention as to who is being struck
11 and you should make notes of that.

12 Those individuals that have criminal
13 records that rose to a level of felony, I talked to
14 them during jury qualifications and you should have
15 been able to identify who those were. One I
16 continued to check to see if his civil rights had
17 been restored because he wasn't sure, and one
18 gentlemen did not have a record. That was his
19 cousin; it was a mixup in his name. So there were
20 no members of the panel that have a felony.

21 I don't know that there is any
22 provision in State law that requires me to have
23 them provide their records to you. You can
24 subpoena those records. You can request them from
25 the State. I'm not aware of any statute that

1 precludes you from getting that information. You
2 have to pay for it. But you certainly could have
3 accessed that information if it was your desire
4 prior to jury selection.

5 MR. MAYER: Judge, with all due
6 respect, I've tried that before and there's a thing
7 where you can mail it off and there is a
8 turn-around period where makes it unfeasible to do
9 by the time the jury list is out. It's like \$10 a
10 person, you have to mail it off, and so there's
11 just no way --

12 THE COURT: The jury list is done well
13 more than 30 days in advance in time. You could
14 have gone to the jury clerk and they would have
15 given you a list and you could have gotten it in
16 more than ample time. So it is feasible.

17 We send out subpoenas more than 60 days
18 ahead of time. So the list is prepared then and
19 you could have gotten any of those individual's
20 information that you requested way in advance of
21 jury qualification.

22 I'm not going to require the State to
23 turn over their personal notes and their work
24 product, and I'm not aware of anything that
25 requires them to do that.

1 They were generous, they allowed you to
2 see what the extent of these individual's record
3 was that they were relying on providing their race
4 neutral reasons and certainly they could do that.
5 That doesn't waive their work product privilege.

6 MR. MAYER: And, Judge, just as a
7 completely unrelated thing, I know that my client
8 could really use a comfort break.

9 THE COURT: He can go to the rest room.

10 MR. MAYER: Okay.

11 THE COURT: You waived arraignment, so
12 that's moot as well.

13 I will have to determine if the jury
14 scene is appropriate, and I'll take that up at the
15 close of the State's case before the defense
16 decides how they're going to move forward. And at
17 that time you can determine whether you would still
18 request that.

19 Motion to redact inadmissible evidence
20 from admissible evidence; that is very overly broad
21 and I have no clue what that relates to. You will
22 have to make a contemporaneous objection.

23 Motion to suppress, include tangible
24 evidence; that's overly broad as well and I have no
25 clue as to what that is referring to. You'll have

1 to make a contemporaneous objection.

2 You asked for individual voir dire.

3 Our State law does not provide for that and it was
4 not requested before we got started and, therefore,
5 I would not have granted it in any event.

6 Motion for State to provide -- that's
7 actually cumulative and I have already addressed
8 that.

9 MR. MAYER: That's on witnesses, Judge.

10 THE COURT: I apologize.

11 MR. SIMPSON: That's been provided.

12 THE COURT: You-all provided that?

13 MR. SIMPSON: Yes.

14 THE COURT: Okay. Motion to require
15 the prosecution to -- I don't think they're
16 required to do that and I'm not going to require
17 them to do that. You have a witness list and I
18 think you are clear as to what they plan to -- the
19 testimony they plan to provide against your client
20 or in support of them meeting the elements of the
21 Indictments.

22 I assume you are not going to refer to
23 the decedent as the victim?

24 MR. SIMPSON: Judge, I may.

25 THE COURT: I know it happens. It sort

1 of -- I don't know of any other way unless you
2 refer to him by his name. Most of the time we'll
3 usually refer to him by his name and sometimes we
4 refer to him as the victim. I don't see that as
5 prejudicial to the defendant because he is, in
6 fact, the victim. By referring to him as the
7 victim doesn't mean that your client did it. He
8 died of unnatural causes, that being homicide.

9 This motion to suppress illegally
10 obtained statements, that's overly broad. You'll
11 have to make a contemporaneous objection. And
12 there's a motion challenging the array of jurors.
13 That's an overly broad motion that's not supported
14 by any statistical data.

15 MR. MAYER: Judge, may I make a proper
16 on that?

17 THE COURT: You would have had to make
18 this motion before I qualified the jury, and you
19 didn't. This deals with the entire panel, and I
20 have no way of knowing -- well, I know how the jury
21 panel is compiled.

22 So I don't have any reason to believe
23 there was some overt action by the State, in that
24 they have no control over who subpoenaed them --
25 the clerk's office does that -- as to the pool

1 being disproportionately non-minorities.

2 As a matter of fact, we have more
3 minorities in this panel than we usually have.
4 Almost the whole panel, now that I think about it.

5 MR. SIMPSON: By my informal count of
6 400 jurors summoned, 89 were listed on the
7 paperwork as African/American.

8 THE COURT: How many actually appeared?

9 MR. SIMPSON: I did not compile how
10 many actually appeared.

11 THE BAILIFF: 109 appeared. I'm not
12 sure --

13 MR. MAYER: 24 of the 109 were
14 minority, 22 percent.

15 MR. SIMPSON: And that's roughly
16 consistent with county demographics.

17 THE COURT: Yeah, it's proportionate.
18 Yes, sir. But in the future, you need to make that
19 motion before the jury panel is qualified.

20 MR. MAYER: Okay.

21 THE COURT: And I'm not giving the jury
22 a copy of my instructions, so that's denied. State
23 law and case law do not provide for that. I find
24 that to be confusing to the panel and I will give
25 them complete and accurate instructions at the

1 time. If they need any instructions repeated to
2 them, the Court will accommodate any requests, but
3 I don't give copies of my instructions to the jury.

4 Now, is there going to be any request
5 to sequester the witness?

6 MR. SIMPSON: I think that's a good
7 idea.

8 THE COURT: Any exceptions?

9 MR. MAYER: Sorry, I was --

10 THE COURT: That's okay. I asked if
11 there would be any request to sequester witnesses?

12 MR. MAYER: Judge, I would like to
13 sequester --

14 THE COURT: State has already said they
15 think it's appropriate.

16 MR. MAYER: My only concern is one of
17 our witnesses is Valentino's mother.

18 THE COURT: Then she's going to have to
19 stay out if you plan to call her as a witness.
20 Cuts both ways, either you want her as a witness or
21 you don't.

22 MR. SIMPSON: And, Your Honor, I would
23 address that sequestration usually excludes the
24 lead agent --

25 THE COURT: And the victim's family.

1 MR. MAYER: Judge, we would -- we would
2 join the request to sequester.

3 THE COURT: They would be sequestered
4 by agreement. Now, again, this does not alleviate
5 or eliminate your responsibility to make
6 contemporaneous objections as all of these things
7 are in limine.

8 MR. MAYER: Understood.

9 THE COURT: All right. Is there
10 anything else we need to take up before we break
11 for lunch? From the State?

12 MR. SIMPSON: No, Your Honor.

13 THE COURT: From the defense?

14 MR. MAYER: Judge, there were a couple
15 of -- or a couple of identifications done, and if
16 those are going to --

17 THE COURT: I'm sorry, say that one
18 more time.

19 MR. MAYER: Judge, there were a couple
20 of identifications done in the course of the
21 investigation, and if the State intends to make an
22 inquiry of the identification, then we want to have
23 a hearing ahead of time.

24 THE COURT: Do you plan to do that? Do
25 we need to have a Bigger's hearing.

1 MR. SIMPSON: There's a witness, Anisha
2 Pearson, whose testimony will come later. As an
3 officer of the court, I can point out to Your Honor
4 she knew Valentino Hayward, the defendant, quite
5 well.

6 THE COURT: Did you have her do a
7 six-pack?

8 MR. SIMPSON: No. She did a single
9 photo ID as supported by State v. Livermore. We'll
10 have a brief Neil v. Biggers hearing before her
11 testimony.

12 THE COURT: All right.

13 MR. SIMPSON: We do intend to admit the
14 statements of Mr. Hayward. We have prepared to
15 proceed with a short Neil v. Biggers -- a Jackson
16 v. Denno --

17 THE COURT: I'm sorry, right now I'm
18 going to eat.

19 MR. SIMPSON: Okay. We will be
20 prepared whenever we come back.

21 THE COURT: We'll do it when we come
22 back because we're going to go eat right now.

23 MR. SIMPSON: Okay. Understood, Your
24 Honor.

25 THE COURT: All right. We will break

1 and resume at 2:15.

2 Now let me ask a quick question: How
3 long do -- you have a statement you would seek to
4 introduce? Do we need a Jackson versus Denno and a
5 Neil versus Biggers?

6 MR. SIMPSON: Your Honor, the Neil v.
7 Biggers we would prefer to do right before the
8 testimony.

9 THE COURT: Any exception?

10 MR. MAYER: No, Judge.

11 THE COURT: And what about Jackson
12 versus Denno?

13 MR. SIMPSON: I think my questions for
14 the Jackson versus Denno will take --

15 THE COURT: No, my question is --

16 MR. SIMPSON: -- ten minutes.

17 THE COURT: I guess I need to be -- and
18 I'm sorry, I'm a little weary. Do you seek to
19 introduce the statement?

20 MR. SIMPSON: Yes.

21 THE COURT: Under what circumstances
22 was the statement taken and who was it given to?

23 MR. SIMPSON: It was a custodial
24 interrogation given to Detective Richard Holmes.

25 THE COURT: I guess the question then

1 becomes, does the defense object or have any basis
2 to object to the admissibility of the statement?

3 MR. MAYER: Yes, Judge.

4 THE COURT: Okay. How many witness do
5 you have, for the Jackson versus Denno?

6 MR. SIMPSON: One, Your Honor.

7 THE COURT: And who would you be
8 seeking to introduce this statement through?

9 MR. SIMPSON: Through the testimony of
10 Detective Holmes during my case in chief.

11 THE COURT: So we'll do him first
12 before -- before we start back, and then we'll do
13 the Neil versus Biggers without objection before --
14 and what was that witness's name again?

15 MR. SIMPSON: Anisha Pearson.

16 THE COURT: Pearson, before we do her
17 testimony. Is that acceptable to the State?

18 MR. SIMPSON: Yes, Your Honor.

19 THE COURT: To the defense?

20 MR. MAYER: Yes, Judge.

21 THE COURT: All right. I'll see you
22 back at 2:15.

23 (A luncheon recess transpired.)

24 THE COURT: As I understand it, State's
25 1 through 5, 7 through 9, 13, 15 through 18, 20

1 through 24, 26, 28, 30, 31, 34, and 38 are coming
2 in without objection.

3 Is that correct? From the State?

4 MR. SIMPSON: Yes.

5 THE COURT: From the defense?

6 MR. MAYER: Judge, you lost me at --

7 THE COURT: 1 through 5, 7 through 9,
8 13, 15 through 18, 20 through 24, 26, 28, 30, 31,
9 34, and 38.

10 MR. MAYER: Correct.

11 (STATE EXH. 1-5, 7-9, 13, 15-18, 20-24,
12 26, 28, 30, 31, 34, 38 in evidence.)

13 THE COURT: State ready to proceed with
14 the Jackson versus Denno?

15 MR. SIMPSON: We are, Your Honor.

16 THE COURT: Call your first witness.

17 MR. SIMPSON: State calls Detective
18 Richard Holmes.

19 THE COURT: Before we do that, I need
20 to ask, did the State extend any offers to Mr.
21 Hayward?

22 If anybody has a telephone on, it needs
23 to be turned off. Not silent, off. If any phones
24 go off, the deputy will take them. They will not
25 be returned to you.

1 MR. SIMPSON: No formal offers were
2 made. We had some discussion and we made it clear
3 that any sort of offer would include a plea to the
4 charge of murder, and that was a nonstarter --

5 THE COURT: I just wanted to make sure
6 for PCR purposes. If there was a definitive offer
7 made to him and it was rejected, I needed to
8 memorialize that for the record.

9 You may swear the witness.

10 RICHARD HOLMES,
11 being first duly sworn, testified as follows:

12 THE CLERK: Please state your whole
13 name and spell your last name for the record.

14 THE WITNESS: Richard Holmes,
15 H-O-L-M-E-S.

16 THE COURT: You may proceed.

17 MR. SIMPSON: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 DIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q. Detective Holmes, what agency do you
22 work for?

23 A. Charleston City Police Department.

24 Q. Can you just describe to the court a
25 little bit about your professional background, how

1 long you've been in law enforcement?

2 A. I've been in law enforcement for,
3 approximately, 26 years now, going on 26 years
4 working in the investigations, started with the
5 regular investigations and now I'm up to the
6 violent crime investigations.

7 Q. How long have you been at the rank of
8 detective for CPD?

9 A. Probably for the last -- probably about
10 14 years.

11 Q. Okay. How did you become involved with
12 Mr. Hayward?

13 A. I was advised December 12th that Mr.
14 Hayward was taken into custody by my supervisor at
15 the time, which was Sergeant Osborne, and he asked
16 me to respond to headquarters to conduct an
17 investigation.

18 Q. Did you know that investigation to
19 include an interview with the defendant?

20 A. Yes, sir.

21 Q. Okay. Were you familiar at all with
22 the course the investigation had taken thus far?

23 A. I was familiar with it, but I wasn't
24 the lead agent because I was on scene the night
25 that the actual incident took place.

1 Q. Okay. Did you know the basics of where
2 the investigation was at that time?

3 A. Yes, sir.

4 Q. Was Mr. Hayward a suspect?

5 A. Yes, sir.

6 Q. And you knew that at the time you were
7 coming into the police department?

8 A. Yes, sir.

9 Q. Have you conducted suspect
10 interrogations before?

11 A. Yes.

12 Q. And, approximately, how many times?

13 A. There is -- I can't tell you how many.

14 Q. Is that because it's so numerous?

15 A. Yes, sir.

16 Q. Are you familiar with the laws,
17 procedures, et cetera, relevant to giving a suspect
18 an interrogation?

19 A. Yes, sir.

20 Q. And let me ask you this now: What is
21 your personal style of conducting an interrogation?

22 A. I have different styles of conducting
23 an investigation. Normally, once I get in there, I
24 get a feel for who I'm interviewing, and then I get
25 the general logistics of how I'm going to interview

1 that person.

2 Q. Okay. Sometimes aggressive?

3 A. Sometimes aggressive, yes, sir.

4 Q. Sometimes conversational?

5 A. Yes, sir.

6 Q. And what track did your interrogation
7 take with Mr. Hayward?

8 A. More conversational. We started off
9 conversational, we sat down and talked about what
10 was going on.

11 Q. When you sit down to talk to a suspect,
12 what is the first thing -- sort of the first box
13 you check?

14 A. Before we get started in an interview,
15 he's given his Miranda warnings, and that's on any
16 interview. I give the Miranda warnings to make
17 them understand they don't have to talk to me.

18 Q. Did you do that?

19 A. Yes, sir.

20 Q. What sort of capabilities does
21 Charleston Police Department have as far as
22 memorializing interviews? Are they recorded?

23 A. They are recorded. And we, also, have
24 a card that the defendant, or whoever, is going to
25 sign to make sure they understand their rights as

1 we give them to him.

2 Q. Let's talk about Mr. Hayward and how he
3 appeared to you on December 12, 2013.

4 A. Yes, sir.

5 Q. Do you recall Mr. Hayward's age at that
6 time? You can approximate.

7 A. He was in his 20s.

8 Q. Was he to you at that time clearly an
9 adult?

10 A. Yes, sir.

11 Q. Any apparent mental defects as you
12 initiated this interrogation?

13 A. No, sir.

14 Q. Any mental defects come to light as the
15 interrogation continued?

16 A. No, sir.

17 Q. How long have you been a police
18 officer?

19 A. Twenty-six years now.

20 Q. Have you had the opportunity in those
21 26 years to come into contact with people who were
22 under the influence of alcohol?

23 A. Yes, sir.

24 Q. Have you experienced contact with
25 people who were under the influence of narcotics?

1 A. Yes, sir.

2 Q. Trained and aware of some of the
3 warnings signs of those conditions?

4 A. Yes, sir.

5 Q. Were any of those conditions present in
6 Mr. Hayward on the 12th?

7 A. No, sir.

8 Q. What about physical issues, did he make
9 known to you any physical problems?

10 A. He did tell me when I went in to start
11 that he was sore. And, at that time, I offered him
12 the comfortable chair in our interview room.
13 There's a standard chair that we use in there
14 that's a harder chair, and then we have cushioned
15 chairs that's in the room as well.

16 Q. And Mr. Hayward was allowed to sit in
17 the softer chair to accommodate his issue?

18 A. Yes.

19 Q. Other than that initial letting you
20 know about that, any other indication as the
21 interview continued that Mr. Hayward was in some
22 physical pain or discomfort?

23 A. No, sir.

24 Q. How long was this interview?

25 A. This interview lasted approximately

1 three hours.

2 Q. Okay. Were there breaks in that three
3 hours?

4 A. Yes, sir.

5 Q. Sometimes lengthy?

6 A. Yes, sir.

7 Q. Okay. But from beginning to
8 conclusion, three hours?

9 A. Yes, sir.

10 Q. Let me ask you this: Sometimes does an
11 interrogation get to the point where the police
12 decide they have to spoof the subject with
13 misrepresentation or falsehoods?

14 A. Misrepresentation?

15 Q. Well, I'll make it easy. At any time
16 during this interrogation, did it get to a point
17 where you felt that you had to misrepresent
18 something or present any false evidence to Mr.
19 Hayward?

20 A. No, sir.

21 Q. At any time during the course of this
22 interview, did you ever threaten physical violence
23 to Mr. Hayward?

24 A. No, sir.

25 Q. At any time during the course of this

JACKSON V. DENNO - RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 interview did you promise Mr. Hayward any leniency
2 going forward if he would answer questions?

3 A. No, sir.

4 Q. You mentioned Miranda warnings before.
5 Did you administer those to Mr. Hayward in this
6 case?

7 A. Yes, sir, I did.

8 Q. And what are those warnings?

9 A. The warnings that you have the right to
10 remain silent; anything you say can and will be
11 used against you in a court of law; you have the
12 right to talk with a lawyer and have them present
13 during the questions; if you cannot afford a
14 lawyer, one will be appointed to represent you for
15 the questions if you wish.

16 And, basically, I gave him all of those
17 warnings and make sure they understand, everybody
18 that comes in that they understand those rights.

19 Q. Did he appear to you on this occasion
20 to understand those rights?

21 A. Yes, sir.

22 Q. Each and every one?

23 A. Yes, sir.

24 Q. Did he acknowledge that he understood
25 those rights?

1 A. Yes, sir.

2 Q. Did you read them all and get a nod of
3 the head?

4 A. No. I make sure I get a verbal that he
5 understands what I'm saying to him.

6 Q. Did he do that after each substantive
7 right?

8 A. Yes, sir.

9 Q. Following the administration of those
10 warnings, did he agree to talk to you?

11 A. Yes, sir.

12 Q. And, again, can you describe your style
13 in this particular interrogation? What sort of
14 track did you take as far as the tone of the
15 interview?

16 A. This one was more conversational. Like
17 I said, we just carried on a conversation and just
18 continued talking.

19 Q. Were there jokes during the interview?

20 A. Yes, sir.

21 Q. Was there laughter during this
22 interview?

23 A. Yes, sir.

24 Q. Detective Holmes, I'm handing you
25 what's been marked for identification only as

1 State's 19 --

2 MR. SIMPSON: And if you'd like, Your
3 Honor, we can do a Court's 2.

4 THE COURT: Is that the statement?

5 MR. SIMPSON: Yes, Your Honor. We can
6 enter it as State's 19, but we can do a Court's 2.

7 THE COURT: Well, you can't have
8 anything go to the jury that has a Court's sticker
9 on it. Let's just leave it for now until I
10 determine what's going to happen, and then that's
11 going to determine how it gets marked. If I don't
12 let it in, it will become a Court's exhibit. If I
13 let it in, it will be a State's Exhibit. We'll
14 need an extra copy for this in camera hearing to be
15 marked as a Court's Exhibit.

16 MR. SIMPSON: I can do that, Your
17 Honor.

18 BY MR. SIMPSON:

19 Q. Detective Holmes, I'm showing you
20 what's been marked for ID only as State's 19. Do
21 you recognize that?

22 A. Yes, sir.

23 Q. What is that?

24 A. It's the video from the interview.

25 Q. Is this the entire interview?

1 A. Yes, sir.

2 Q. Are you sure this isn't clips?

3 A. Okay. Those are the clips of the
4 interview, yes, sir.

5 Q. But we were provided a full and
6 complete copy of the interview?

7 A. Yes.

8 Q. And that was provided to the defense?

9 A. Yes, sir.

10 MR. SIMPSON: Okay. Your Honor, at
11 this point I would like to just present to the
12 Court the short clip of the Miranda warnings in the
13 present case.

14 THE COURT: Did you all reduce that to
15 any sort of transcript?

16 MR. SIMPSON: We did not, Your Honor.
17 I didn't see any issues with --

18 THE COURT: All right.

19 (Video played in open court.)

20 BY MR. SIMPSON:

21 Q. Is this when you allowed him the soft
22 chair?

23 A. Yes.

24 (Video playing)

25 Q. Mr. Holmes, are you just getting basic

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1 information at this point?

2 A. Yes, sir.

3 THE COURT: I thought you were just
4 playing Miranda warnings.

5 MR. SIMPSON: He's getting to it right
6 now.

7 (Video playing)

8 BY MR. SIMPSON:

9 Q. Detective Holmes, following the
10 administration of the warnings, did your
11 questioning commence?

12 A. Yes, sir.

13 Q. Did he -- at any time prior to the end
14 of the interview, did he assert any of his rights
15 and tell you he wished to stop the interview?

16 A. No, sir.

17 Q. Did he demand that his lawyer be
18 present?

19 A. No, sir.

20 Q. Did there come a point where he did ask
21 for an attorney?

22 A. There was -- there became a time when
23 he said he didn't want to talk to me anymore.

24 Q. And did the interview cease?

25 A. Yes, sir.

1 Q. You may have noticed there were two
2 parts of that video clip we just viewed that were
3 muted. Do you recall the first part that was
4 muted?

5 A. No, sir.

6 Q. Do you recall him telling you what
7 caused the injury to his back?

8 A. He said that he had got shot previously
9 from a previous gunshot wound.

10 Q. Do you recall any time he was talking
11 about any court dates for an unrelated offense?

12 A. No, sir.

13 Q. You don't recall that?

14 A. No, sir.

15 Q. Did you hear any of that on the clip
16 you just saw?

17 A. I heard him say something about the
18 injury when I asked him what happened to his back.

19 Q. Okay. Again, what was the -- just the
20 overall tone of the interview when it proceeded?

21 A. It was conversational.

22 MR. SIMPSON: Please answer any
23 questions that Mr. Mayer would have.

24 THE COURT: Mr. Mayer you may proceed.

25 MR. MAYER: Thank you, Judge.

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1 THE COURT: You're welcome.

2 CROSS-EXAMINATION

3 BY MR. MAYER:

4 Q. Detective Holmes, Mr. Hayward asked you
5 more than once if he was free to leave from the
6 interview, didn't he?

7 A. Towards the end of the interview, if
8 that's what you're asking about.

9 Q. My question is, he asked more than once
10 if he was free to leave, right?

11 A. Yes, sir.

12 Q. And at the beginning of the interview
13 you kind of started by taking the handcuffs off of
14 him, right?

15 A. Yes, sir.

16 Q. Did you ever answer him to tell him he
17 was not, in fact, free to leave?

18 A. He was not free to leave because he was
19 brought in as a suspect on this case.

20 Q. I understand that. I'm asking if you
21 answered his question at the time?

22 A. I don't know what was told prior to me
23 coming from home, so I can't tell you that.

24 Q. But in terms of when he asked you
25 directly personally, yourself, am I free to leave,

1 what was your answer?

2 A. My answer to him was, he was not
3 leaving at that time, no, sir.

4 Q. So you did answer him?

5 A. Yes, sir.

6 Q. Can you say where in the period of the
7 interrogation you did answer him? When I watched
8 it, I never saw you answer him.

9 A. I don't recall where it was exactly,
10 sir.

11 Q. Have you interviewed Mr. Hayward
12 before?

13 A. Not that I recall.

14 Q. Do you know if someone from your agency
15 has interviewed him before?

16 A. He may have been interviewed before.
17 Like I said, I've done many interviews. I don't
18 recall who may have interviewed him.

19 Q. Do you know if he was picked up and
20 interviewed on the Marvin Lion case?

21 A. I'm not sure.

22 Q. Do you know if he was picked up and
23 interviewed about a Chinese robbery?

24 A. I'm not sure.

25 Q. Do you know whether they just released

1 him after both of those interviews?

2 A. If he was -- I'm not sure about his
3 release on those interviews.

4 Q. Did you make it clear to Mr. Hayward at
5 the time that he was the prime suspect in this
6 investigation?

7 A. I advised him of his rights and I
8 advised him that he was being interviewed in
9 reference to the shooting that took place.

10 Q. So you didn't tell him you guys had
11 already decided he was the guy?

12 A. I wasn't the case agent. I was just
13 doing the interview on it.

14 Q. And, in fact, you intentionally would
15 have omitted that information, right? You didn't
16 want him to think he was going to jail for murder
17 at that time, right? You wanted him to cooperate,
18 in other words?

19 A. When I do interviews, I don't basically
20 just come out and tell you what you're being
21 charged with. I give you the option of not talking
22 to me if you don't want to.

23 Q. Okay. So here you didn't tell him what
24 he was being charged with, correct?

25 A. Once again, prior to me coming -- this

1 was just an interview of trying to figure out what
2 was going on.

3 Q. And in terms of the process with your
4 agency, you guys had already taken out an arrest
5 warrant for Mr. Hayward at that time, correct?

6 A. Once again, I wasn't the case agent. I
7 was just the interviewing officer at the time.

8 MR. MAYER: Okay. Court's indulgence?

9 THE COURT: Uh-huh.

10 BY MR. MAYER:

11 Q. So you're saying that you did tell Mr.
12 Hayward why he was there? I know you didn't tell
13 him that he was the prime suspect. Did you tell
14 him he was there about the shooting in Ardmore?

15 A. Through the interview, once we got to
16 that, he learned what it was about, yes, sir.

17 Q. But that was well after the Miranda,
18 right?

19 A. He was given his Miranda warnings, but
20 it was in reference to a shooting that occurred on
21 the back dates. So he -- before I had arrived he
22 probably had information on what -- I don't know
23 where he got the information -- may have gotten it
24 from, but basically I told him I was in there to do
25 an interview with him.

1 Q. So you're assuming that he knew about
2 the shooting; is that what you're saying?

3 A. I wasn't making an assumption.
4 Basically, he knew he was brought down for
5 something that was going on in the Ardmore area.

6 Q. But just to be crystal clear, you
7 didn't tell him that it was for that shooting until
8 later on after you Mirandized him?

9 A. It was in the interview, yes, sir.

10 Q. Do you remember when in the interview
11 you told him that?

12 A. No, sir.

13 Q. Was it right before he said he was done
14 speaking with you?

15 A. Once again, I don't remember exactly
16 where it was.

17 MR. MAYER: Judge, no further questions
18 for this witness.

19 THE COURT: Any redirect?

20 MR. SIMPSON: Just briefly.

21 REDIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q. Detective Holmes, do you remember --
24 right following Miranda, do you remember the
25 question, so tell me why you're here?

1 A. He said it to me.

2 Q. What was his response to the question,
3 tell me why you're here?

4 A. He said it. It was in reference to the
5 shooting in Ardmore.

6 Q. Okay. So it was clear from the very
7 beginning why Mr. Hayward was there?

8 A. Yes, sir.

9 Q. Let's make no secret about this, was
10 this a custodial interview?

11 A. Yes, sir.

12 Q. Was Mr. Hayward free to leave?

13 A. No, sir, he wasn't.

14 Q. Was that ever a mystery?

15 A. No, sir.

16 MR SIMPSON: Okay. Your Honor, for
17 purposes of this hearing, I have no further
18 questions.

19 THE COURT: You may step down, sir.
20 Anything further?

21 MR. SIMPSON: Not on this matter.

22 THE COURT: Any witnesses from the
23 defense.

24 MR. MAYER: Court's indulgence? No
25 witnesses, Judge.

1 THE COURT: Any exception to the
2 admissibility of the statement?

3 MR. MAYER: Judge, I would think that
4 his understanding of what he was potentially being
5 charged with at that time and why he couldn't leave
6 would be extremely relevant to this interrogation.
7 He was the subject of several other interviews by
8 the police which, you know, he's like their usual
9 suspect; they'll stop him on the side of the street
10 and ask him questions and pat him down.

11 He'd had a lot of police contact. It
12 seemed pretty routine to him. And at the -- the
13 way that some of the youth in this neighborhood
14 interact with the police is very adversarial, where
15 they're not necessarily forthcoming by the youth
16 culture in that area, Judge.

17 And it just seems to me that statements
18 that may have been made to the officer out of
19 trying to play a game with the officer or messing
20 around with the officer are now going to be viewed
21 as him being dishonest and trying to hide the truth
22 and this sort of stuff when, in fact, it was just
23 gamesmanship. But here Mr. Hayward had no idea of
24 what was -- what he was staring into that the State
25 had coming to him there.

1 And he -- you know, he thought it was
2 the same old kind of jocular thing, and it
3 certainly wasn't. And we all know that, and the
4 State knew that at the time, but Mr. Hayward didn't
5 know that, Judge. You know, it would be like
6 someone is getting a practical joke played on them
7 almost and they're just not in the loop on it.

8 And so I fear that with less than a
9 10th grade education, being a mere 23-year-old or
10 something at the time, being a product of, you
11 know, that area and that culture, Judge, I would
12 think that Mr. Hayward's statement that he made
13 afterwards would only be admitted, if at all, only
14 on a statement-by-statement basis to determine if
15 they are more prejudicial than probative; and if
16 they're not, to suppress them in their entirety,
17 Judge.

18 THE COURT: Would the State like to
19 respond?

20 MR. SIMPSON: Just briefly, Your Honor.

21 In that statement, I heard no
22 challenges to the voluntariness of that statement.
23 We're here to determine whether or not it was a
24 statement voluntarily given, not to argue the
25 different interpretations of what was ultimately

1 said, and I think we've met our burden on that
2 point and the totality of the circumstances.

3 As you heard, it wasn't an adversarial
4 sort of confrontation. There's been no
5 accusations, no mental defect, intoxication,
6 physical defects, the length of the interview isn't
7 particularly burdensome, there were no police
8 misrepresentations, threats of violence, or
9 promises of leniency.

10 So when we look at all of the legal
11 factors which is the purpose of this motion, I
12 think the only conclusion the Court can come to is
13 that it was a voluntarily given statement and thus
14 admissible.

15 THE COURT: What's the substance of the
16 statement?

17 MR. SIMPSON: Your Honor, the substance
18 of the statement is that he was nowhere near where
19 this happened, he was in another location. And we
20 think it is certainly relevant as to Mr. Mayer's
21 point, of course, if a person comes in and gives a
22 statement which we later prove to be totally false,
23 that is relevant in a criminal matter --

24 THE COURT: Does he in any way
25 inculpate himself in the statement?

1 MR. SIMPSON: He makes some admissions
2 that are going to be very important. But does he
3 ever admit to the murder? No.

4 THE COURT: What does he say that
5 inculcates him?

6 MR. SIMPSON: He admits some phone
7 contact with the deceased victim at some point
8 after the interrogation. He says that he is at the
9 St. Andrews Gardens Apartments, however, during the
10 substantive time. And, obviously, when we give him
11 the opportunity to speak and he tells the police a
12 lie, that is admissible in a criminal trial, Your
13 Honor.

14 We have several portions of the
15 statement -- we're certainly not going to show a
16 three-hour interview, but we have several portions
17 of the statement --

18 THE COURT: And I guess that really
19 gets to the heart of what I'm asking. I haven't
20 asked for argument. I want to know -- since you
21 all didn't provide it to me in advance, I have not
22 had the benefit of seeing it or what it says. So I
23 need to know in order to make a reasonable decision
24 exactly what it is you're seeking to introduce and
25 what he says.

1 MR. SIMPSON: I can provide that to you
2 Your Honor before the time of admission --

3 THE COURT: What portions are you
4 seeking to admit?

5 MR. SIMPSON: He has basically given a
6 very general, what were you up to -- what happened
7 last night and where were you? He gives sort of
8 version one of the story of his whole entire night.
9 Later, he changes that to a slightly modified
10 version wherein he admits some of the phone contact
11 with the victim. And then, finally, Your Honor, he
12 is given one more chance on video, are you sure you
13 want to stick with this story? He said, yes, I was
14 in the SAG all night.

15 The SAG stands for an apartment complex
16 in the area, but not where this occurred.

17 It is fundamental in our case and
18 proper that we show any sort of dishonesty on his
19 part, and that is -- along with a few key
20 admissions, that is the purpose we are seeking to
21 introduce the statement.

22 THE COURT: In considering the
23 admissibility of the statement, the Court -- to
24 some extent the State is correct, the value or the
25 weight to be given to the statement is not what the

1 court is concerned with.

2 What I'm concerned about when you have
3 Jackson versus Denno hearing is the constitutional
4 rights of the defendant and whether those have been
5 abridged in any way. The Court needs to determine
6 the -- by a preponderance of the evidence, as it is
7 the jury's prerogative to determine whether the
8 State has met its burden beyond a reasonable doubt,
9 as the Court only acts as the gatekeeper.

10 The Court is required to look at
11 whether the State has established by a
12 preponderance of the evidence that the statement or
13 confession obtained by the defendant was freely and
14 voluntarily given. The Court needs to determine
15 whether it was given without duress, without
16 coercion, undue influence, threats, inducements,
17 promises, hopes of a reward, whether the defendant
18 was impaired in any way, whether he was under the
19 influence of any drugs or alcohol, suffered from
20 any mental defects that would have impaired his
21 ability to understand where he was or what he was
22 doing.

23 There are several factors that the
24 Court looks at. Should look at his physical
25 condition as well as his age, education, other

1 factors. While there was no testimony presented as
2 to his education, the defense has argued that he
3 has a tenth grade education. And I think if you
4 listen to anybody who has ever watched television,
5 with the plethora of shows that we have, and, I
6 mean, police-type dramas that come on television, a
7 first grader will tell you what your rights are.
8 They can rattle them off.

9 And I think that the way the Miranda
10 warnings are constructed, really a fourth or fifth
11 grader could understand what the Miranda warnings
12 are. I think a tenth grade education is more than
13 adequate for someone to be able to understand that
14 you have the right to remain silent, which means
15 you have the right not to talk, you have the right
16 to have counsel, and that anything you say can be
17 used against you.

18 I don't find anything ambiguous or
19 misleading in the way that the Miranda warnings
20 were given. They were straightforward; he
21 indicated that he understood them. He then
22 proceeded to talk with the police. I don't think
23 the police have to tell you why they have you
24 there.

25 They simply need to let you know that

1 you're not free to leave and that you have the
2 right to remain silent, that anything you say can
3 be used against you, which puts you on notice that
4 we plan to charge you with something if you
5 inculcate yourself; that any -- that this is not a
6 friendly situation, that it is adversarial in
7 nature and we are here to question you, and if
8 there's something that you say that can be used
9 against you, we plan to use it; and that if you
10 want an attorney and you can't afford one, we will
11 be happy to get you one.

12 And you all have indicated, both the
13 State and the defense, that this was not his first
14 contact with the system. I don't know how many
15 contacts he's had with the system, but I think
16 after you've had one contact with the system you
17 would know what Miranda is and you know that you
18 have the right to remain silent and that you talk
19 at your own risk.

20 There is no indication to me from what
21 was shown to the court that the statement was given
22 -- as that the statement was anything other than
23 freely and voluntarily given, there's no indication
24 of duress. In fact, the officers seems to go out
25 of his way to make Mr. Hayward comfortable.

1 There's no -- there's no indication in the video
2 that there was any duress, coercion, any undue
3 influence, threats, inducements, or hope of a
4 reward. And I also find Detective Holmes'
5 testimony creditable in that regard.

6 So, clearly, he was in custody. That
7 is not contested by the State. He was not free to
8 leave, he knew that. He was Mirandized before any
9 statements were given, and he made a free and
10 voluntary statement to the police, which is
11 admissible against him.

12 Now, I will -- that is, of course,
13 subject to the Court looking at the entirety of the
14 interview.

15 MR. SIMPSON: Judge, I can submit, I've
16 pulled off the portions we wish to play. I think
17 it's --

18 THE COURT: If you could provide that
19 to me, that would be helpful.

20 MR. SIMPSON: I can provide it that
21 way. I also have --

22 THE COURT: I need the full interview
23 to be marked as a Court's Exhibit and then I need
24 the redacted portion to be marked as a State's
25 Exhibit, that will be admitted subject to the

1 objection, and I need that same redacted version
2 for me to watch.

3 MR. MAYER: May I also request a
4 redacted version?

5 THE COURT: I would imagine they're
6 going to give you one.

7 MR. SIMPSON: We provided the entire
8 interview, but I can make a copy of what I have.
9 Sure.

10 (COURT EXH. 2, CD, was marked for
11 identification.)

12 THE COURT: I can watch the exhibit. I
13 don't have to have a copy. All right. Are you
14 ready to proceed? From the State?

15 MR. SIMPSON: I need to provide you
16 with the CD, Your Honor.

17 THE COURT: I thought you gave the
18 redacted version to the Court Reporter.

19 MR. SIMPSON: No; she has the full
20 version.

21 THE COURT: Is this the redacted
22 version?

23 MR. SIMPSON: No, Your Honor, it's not.
24 It's a mistake. I don't want to waste a lot of
25 time. We'll have that to you by the end of the

1 day.

2 THE COURT: All right. Is there
3 anything else before we proceed with opening
4 instructions and opening argument? From the State?

5 MR. SIMPSON: No, Your Honor.

6 THE COURT: From the defense?

7 MR. MAYER: No, Judge.

8 THE COURT: Please bring in the jury
9 and bring in -- give me a second, Ms. Simmons is
10 the foreperson, number 331.

11 MR. MAYER: Judge, my client jut asked
12 for a comfort break.

13 THE COURT: Go ahead. By the time they
14 get the jury --

15 Just knock before you bring them in so
16 I can make sure that he's back.

17 THE BAILIFF: Sure.

18 THE COURT: Do you mind if we do
19 opening arguments and opening instruction and wait
20 to start our opening because, apparently, flash
21 flood warnings has been extended? There's going to
22 be a high tide, there's going to be a mass exodus
23 out of town, and I don't want the jury to get
24 caught up in that. They still have to walk to
25 Cumberland and they still have to move their cars.

1 MR. SIMPSON: Could I ask one -- our
2 first witness is very brief and he --

3 THE COURT: How brief? I need you to
4 quantify that for me.

5 MR. SIMPSON: Direct, 15 minutes tops.
6 And he has been here all day.

7 THE COURT: Yeah. I want to
8 accommodate him, but he's probably going to thank
9 us. Do you know how bad it was this morning?

10 MR. SIMPSON: Bad.

11 THE COURT: And it's going to be even
12 worse and I really don't want to run the risk of
13 having a juror get their car flooded out. It's
14 going to be that bad.

15 MR. SIMPSON: Sure. It's your
16 courtroom.

17 THE COURT: The courthouse is going on
18 a skeleton crew at 4:00, everybody is leaving. So
19 that puts me in a really -- I would feel horrible
20 if something happened to a juror and I knew it in
21 advance.

22 MR. SIMPSON: We're starting all
23 witnesses in the morning?

24 THE COURT: I think that's a better
25 thing. I don't want -- I don't know if you've seen

1 the mass exodus. Not only do we leave, but the
2 businesses leave and that traffic is -- I don't
3 know how flooded it is down by the Market and
4 that's where they park. I just am concerned.

5 MR. SIMPSON: Okay. I understand, Your
6 Honor.

7 THE COURT: I'm concerned. It was
8 supposed to end at like noon or something, but they
9 have extended it and high tide is coming and I just
10 -- I've been the victim of a car that's flooded out
11 and I don't want that to happen to anybody.

12 MR. SIMPSON: Judge, I wanted to remind
13 you as well, we're a little worried about flying in
14 somebody on the TMobile stuff. Did you have a
15 chance to look at our --

16 THE COURT: Honestly, no. I worked on
17 something else at lunch administratively that got
18 my attention. I'll see if we can figure something
19 out before you leave today.

20 THE BAILIFF: Ready?

21 THE COURT: Yes, sir.

22 And, Mike, can you swear the jury for
23 me.

24 THE CLERK: Yes.

25 (Jury in, 3:14 p.m.)

1 THE BAILIFF: All jurors present.

2 THE COURT: Ladies and gentlemen, we
3 appreciate your patience. We had some matters of
4 law that we needed to take up before we started
5 that would allow us to not have to stop and start
6 as we go along, so please note that we do not take
7 your time for granted.

8 I'm aware -- I've been made aware that
9 the weather has become increasing inclement, that
10 we're expecting some high tide and flooding, so I'm
11 going to let you go a little early. I would prefer
12 to be safe than sorry. I don't know if any of you
13 have ever experienced a flooded-out car, I have.
14 It's a miserable feeling.

15 And we expect the high tide -- the
16 courthouse is going to go on a skeleton crew here
17 shortly. And so, again, I'm more concerned for
18 your safety. We'll just have to make up time as we
19 can, but I know that you have to walk to Cumberland
20 and I don't want you all to get caught in the mass
21 exodus that's going to ensue. Because not only do
22 the governmental buildings leave, but all the
23 surrounding businesses leave. I don't want you all
24 to get caught in traffic -- well, caught in -- my
25 main concern is caught in inclement weather. I

1 don't want anybody's car to flood out.

2 Tomorrow we've made arrangements for
3 you all to park next door, which should be a whole
4 lot easier for you and allow us to deal with this
5 weather. And we're hoping that -- according to the
6 weather station, it's supposed to clear up tomorrow
7 or Wednesday. Hopefully, tomorrow the weather will
8 not be as bad as it has been today.

9 What we plan to do today is, we're
10 going to have my opening instructions that will
11 give you some instructions as to how we proceed in
12 these type cases, and then we hope to get through
13 opening arguments from counsel. And then I'll see
14 where we are at that point and we'll probably go
15 ahead and break so I can give you a little bit of
16 leave time so you can get to Cumberland and then
17 get out of town before the tide rises and it gets a
18 little chaotic down here.

19 Once you hear flash flood, everybody
20 lets their employees go and it ends up being a real
21 sort of a gridlock with traffic.

22 Again, the case that we are going to
23 try is The State of South Carolina versus Valentino
24 M. Hayward. What I will say to you now is intended
25 to serve as an introduction to the trial of this

1 case. These remarks are not the charge on the law
2 in this case.

3 And so that you know, charge is a legal
4 term of art that simply means instruction. So when
5 you hear me say, charge or instruction, those terms
6 are interchangeable.

7 I will instruct you on the law
8 applicable to this case at the end of the trial
9 before you retire to consider your verdict in this
10 case. This is merely an explanation of the
11 procedure that we will follow in the trial of this
12 case so that you may better understand what is
13 happening.

14 During the course of this trial, you
15 will be given the opportunity to take notes, and I
16 will give you some further introductions regarding
17 note-taking at the conclusion of my instruction.

18 There should have been a notepad in
19 each of your seats and there is a white sticker on
20 the front of each notepad. Please write your juror
21 number on that sticker so that you will be able to
22 readily identify which notebook belongs to you.

23 And please be assured that we will
24 secure your notepads during breaks and recesses, no
25 one will invade your privacy, and they will be

1 under lock and key during the evening recess.

2 The defendant is charged by two
3 Indictments with the offenses of murder and
4 possession of a weapon -- firearm during the
5 commission of a violent crime. I will explain the
6 elements of these charges to you at the conclusion
7 of the case.

8 The Indictments, ladies and gentlemen,
9 are simply the charge or charges by which this case
10 is brought into court, and they are not in any
11 sense evidence of any of the allegations they may
12 contain.

13 The defendant has pled not guilty to
14 the Indictment. The State, therefore, has the
15 burden of proving each and every element of the
16 Indictments beyond a reasonable doubt, and it will
17 be your duty, ladies and gentlemen, to decide
18 whether the State has met that burden or not.

19 Your purpose as jurors is to find and
20 determine the facts in this case. You are the sole
21 judges of the facts in this case. If at any time I
22 make any comment regarding the facts, you must
23 disregard it. You are to determine the facts from
24 the testimony you hear and the other evidence
25 introduced into court. It is then up to you to

1 determine the inferences which you feel may be
2 properly drawn from the evidence.

3 It is especially important that you
4 perform your duty of determining the facts
5 diligently and conscientiously because, ordinarily,
6 there is no way to correct an erroneous
7 determination of facts made by a trial jury.

8 On the other hand, and with equal
9 emphasis, the same law that makes you the judges of
10 the facts makes me the judge of the law. The law
11 as given by the Court is the only law you may
12 consider. You must accept and follow it even
13 though you may disagree with it. The Court cannot
14 tell you what the facts are and you cannot disagree
15 with the Court about what the law is or what the
16 law should be.

17 Your responsibility, ladies and
18 gentlemen, is to take the law as I instruct it and
19 apply the law to the facts as you find them from
20 the testimony of the sworn witnesses and the other
21 evidence that may be introduced throughout this
22 trial. After doing that, you will render your
23 verdict, a true and just verdict, under the solemn
24 oath that I am going to have Mike give to you.

25 If you would stand for me please, and

1 raise your right hands.

2 THE JURY,

3 being first duly sworn, testified as follows:

4 THE CLERK: If you've accepted this
5 oath, please have a seat.

6 THE JURY: (Seated)

7 THE CLERK: Let the record reflect that
8 all 14 jurors took their seats.

9 THE COURT: Thank you. You all may be
10 seated.

11 Again, ladies and gentlemen, after
12 doing that, you all will render your verdict, a
13 true and just verdict, under the solemn oath that
14 you have just taken as jurors in this case.

15 Until I advise you to begin your
16 deliberations, you must not discuss this case with
17 anyone. That includes among yourselves, with your
18 family members or friends, or anyone involved in
19 this case.

20 After the case is submitted to you, you
21 must discuss it only in your jury room among your
22 12. Jury deliberations, of course, are secret and
23 they should be confined to your jury room.

24 The attorneys and the parties have been
25 advised they shouldn't speak to you, so if you

1 should run into them in the elevator, the hallway,
2 or even on your way to the garage, and they don't
3 speak with you, please don't think they're being
4 untoward or unfriendly. They're simply following
5 the Court's instruction. Again, we would not want
6 an innocent conversation to be misinterpreted or
7 misconstrued.

8 During the trial, do not read, listen
9 to, or watch any news reports about this case.
10 That includes anything that may be in the
11 newspapers, internet, radio or television. You
12 must not consider anything that you may have read
13 or heard about this case outside of the courtroom
14 whether before or during the trial.

15 Again, you are sworn to decide this
16 case according to the testimony that you hear from
17 the lips of the sworn witnesses and the other
18 evidence that will be introduced. It is essential
19 that you maintain an open mind and not decide any
20 issue in this case until all of the evidence has
21 been presented, the parties have made their closing
22 arguments, and I have instructed you on the law
23 applicable to this case.

24 It is your sole responsibility to
25 determine the guilt or innocence of the defendant,

1 and your verdict must be based solely on the
2 evidence as it is presented to you in this case and
3 on the law as I will instruct you during and at the
4 close of the trial.

5 In just a moment the Solicitor will
6 make what is called an opening statement in which
7 the Solicitor will explain to you what they believe
8 the issues to be in this case, or at least what
9 they believe the evidence will show in this case.

10 The attorney for the defendant may also
11 make an opening statement, although he's not
12 required to do so.

13 What the attorneys tell you during
14 their opening statements, ladies and gentlemen, is
15 not evidence in this case. It is only their
16 contention as to what they believe the evidence
17 will show in this case.

18 The evidence in this case will be
19 presented to you by the testimony of the sworn
20 witnesses from the witness stand and/or by exhibits
21 that may be introduced into evidence.

22 From time to time during the trial, you
23 will hear the attorneys say, Your Honor, I object.
24 Just as in sports, business, or any other
25 structured activity, there are certain rules that

1 the attorneys must obey in the presentation of
2 evidence. These rules have a definite purpose.
3 They ensure that you receive the most trustworthy
4 evidence available.

5 An objection is the procedure that the
6 attorneys use to call a possible violation of these
7 rules to my attention as the Judge of the court,
8 and for this reason you should never hold an
9 attorney's objection against them, nor should you
10 conclude from the Court overruling or sustaining an
11 objection that I favor one side or the other.

12 In fact, I will tell you in advance
13 that in any trial there will be many objections and
14 you should expect them. And, again, you should not
15 hold them against counsel.

16 Also, from time to time, you may hear
17 the attorneys say, Your Honor, we have a matter of
18 law to discuss. Or they may ask to approach the
19 bench, or I may ask them to approach the bench, or
20 it may be necessary for us to exclude you from the
21 courtroom for a short while, while we discuss
22 matters of law.

23 As I have explained to you, you are the
24 finders of the facts, and sometimes when I'm
25 discussing matters of law with the attorneys, it

1 might be necessary for me to make a comment about
2 the facts in connection with ruling whether a
3 statute applies or an evidentiary rule or
4 procedural rule, and for this reason we exclude you
5 from the courtroom so that in no way will you be
6 influenced by anything that the Court may say or do
7 in connection with the facts of this case.

8 In deciding what the true facts are in
9 this case, ladies and gentlemen, you must decide
10 whether or not the testimony of a witness or
11 witnesses is believable. It is my responsibility
12 to rule as a matter of law as to whether certain
13 testimony is admissible at all or not, but once it
14 is admitted, ladies and gentlemen, whether or not
15 you believe it is solely a matter for you to
16 determine in your fact-finding province.

17 In deciding whether to believe a
18 witness, you have the right to consider the
19 interest of any witness, the bias of any witness,
20 the prejudice of any witness, the opportunity for
21 the witness to have seen the matters and things
22 about which the witness may testify, and the way
23 the witness acts on the witness stand, something we
24 commonly refer to as their demeanor.

25 You have the right to consider anything

1 that is in the record that will help you evaluate
2 the testimony of the witnesses. That means, ladies
3 and gentlemen, that it is your duty to pay close
4 attention to the witnesses, to observe them, to
5 listen to them, and pay close attention to counsel
6 and to the Court.

7 Although I know sometimes it's very
8 difficult not to allow your thoughts to wander, but
9 give strict attention to the testimony so that at
10 the end of the testimony, after the arguments of
11 counsel and the charge on the law given by the
12 Court, you will then be in a position to determine
13 what the true facts are and apply the law to those
14 facts and thus render a true and just verdict in
15 this case.

16 During the course of this trial you
17 will be given the opportunity to take notes.
18 Note-taking is a privilege that you may choose to
19 exercise or choose not to exercise. Please don't
20 feel that you're required to take notes. Not
21 everyone finds note-taking helpful to them.

22 If you should decide to take notes,
23 please don't try to record everything that is said;
24 it's physically impossible. The average person
25 talks at over 200 words a minute and that's

1 somebody that talks slow. That's not someone that
2 speaks very quickly or very rapidly. And even if
3 -- and I'm a pretty good note-taker, but even with
4 that -- and that's just from years of experience.
5 Even with that, I find that I will substitute words
6 that I would commonly use. Sometimes I'll put what
7 is most important at the beginning of the sentence,
8 rather than the end of the sentence when it
9 happens. And that's just the way we process
10 information.

11 So please don't try to record
12 everything that is said. The only way everything
13 is accurate is because the Court Reporter takes it
14 down and she is trained in a very complex and
15 specialized form of shorthand that allows her to
16 take down what we say phonetically. But even with
17 that, she has a back-up tape, and before she
18 produces a transcript and certifies it, she goes
19 back and listens to every word from that digital
20 recording to make sure that what she has taken down
21 is accurate.

22 So please don't try to record
23 everything that is said. I also do not want it to
24 become a distraction to you, because you need to
25 observe the witnesses so that you can make the

1 appropriate decisions regarding their credibility
2 or your assessment regarding their credibility or
3 believability.

4 You may want to keep an outline of the
5 main points that are being made so that when you
6 retire to deliberate, you can allow your notes to
7 refresh your memory. Please do not share your
8 notes with anyone. Your notes are for your
9 specific and your individual purposes, and during
10 breaks and recesses your notes will be left in your
11 seat to ensure there is no premature temptation to
12 deliberate regarding something that you may have
13 heard prior to a break.

14 Again, ladies and gentlemen, your notes
15 are for your specific and individual purposes.
16 They are not to be used -- they're only to be used
17 to refresh your own memory and they're not to be
18 shared with anyone. And just as a reminder, your
19 notes should not be considered any more reliable
20 than a fellow juror's memory. A fellow juror's
21 memory should be considered just as reliable as
22 notes that may have been taken by a fellow juror.

23 Ladies and gentlemen, I have appointed
24 the foreperson in this matter. And just so you
25 know, the foreperson is simply an administrative

1 function. That person writes out any notes that
2 you may have during deliberations and they also
3 fill out the verdict form. It's a purely random
4 process that we employ in appointing a foreperson
5 so that a random cross section of the community is
6 represented in that capacity. That person does not
7 have any greater vote or voice than you do. It is
8 simply an administrative function.

9 Madame Forelady, I will give you
10 further instructions regarding that at the
11 conclusion of the case.

12 In order to preserve everyone's rights,
13 I will give both the State and the defense the
14 opportunity to take exception to anything that the
15 Court has said by way of opening instruction.

16 Any exceptions from the State?

17 MR. SIMPSON: No, Your Honor.

18 THE COURT: From the defense?

19 MR. MAYER: No, Judge.

20 THE COURT: Ladies and gentlemen, I
21 would ask that you give counsel your undivided
22 attention.

23 You may proceed.

24 MR. SIMPSON: Thank you.

25 Ladies and gentlemen, good afternoon.

OPENING STATEMENT BY MR. SIMPSON

1 Nice to see you again. We met briefly earlier; my
2 name is Chad Simpson. I work for the State of
3 South Carolina, the Solicitor Scarlett Wilson.
4 It's my honor to represent the State against
5 Mr. Valentino Hayward on the charge of murder. I
6 will be assisted by Lauren Mulkey, she had to step
7 out, and Detective Krasowski.

8 I would like to begin today how I begin
9 every trial, no matter how insignificant or
10 significant, which is by thanking you. As you are
11 I'm sure well aware at this hour of the day, we are
12 asking a lot of you. And I can tell you, I've been
13 doing this long enough that I've seen the groans
14 when both sides accept you and the looks on the
15 faces when you walk in.

16 Every juror I talk to -- and we do get
17 to talk to some after all is said and done. As you
18 heard from the Judge, I just can't talk to you
19 during the trial -- they all are glad they did it.
20 And I know you don't believe me now, but -- it's
21 going to be a long week, I'm not going to lie, but
22 when everything is said and done, it is really a
23 privilege to do this.

24 You often hear it said that sitting on
25 a jury is the -- short of military service is the

OPENING STATEMENT BY MR. SIMPSON

1 best service that you can give your country and
2 your community. And I thank you. All I ask of you
3 this week is to give me and Mr. Mayer your
4 attention, and I know that you will do that.

5 I ask for that in every case, but
6 especially this one because this is a case that's
7 going to unfold very much -- I know it's a bit of a
8 cheesy cliché, but very much like a jigsaw puzzle,
9 where items come in that don't show you the whole
10 picture, but at the conclusion of trial you will
11 see them. And so that means that some things that
12 may sound insignificant from the stand will be very
13 important later, so I ask for your attention.

14 Having said that, and with the weather
15 and the concerns that we have, I will be brief.
16 This is an opening statement. It is just an
17 opportunity to give you a review. The important
18 things happen tomorrow morning.

19 December 11, 2013, Valentino Hayward,
20 the man sitting here, had a problem. He was \$180
21 short. He needed \$180. Not a huge problem though,
22 because Valentino Hayward had a plan. Valentino
23 Hayward had what he thought was an easy way to make
24 up that \$180. And what the evidence is going to
25 show is that Valentino decided to rob someone with

OPENING STATEMENT BY MR. SIMPSON

1 a firearm. A firearm, the evidence is going to
2 show, that he had and owned.

3 You see, the problem is, when you're
4 \$180 short, you can't just go rob a stranger. I
5 can't think of the last time I had \$180 on me.
6 You've got to set somebody up. You've got to set
7 them up in a way where you know they're going to
8 have money. And the evidence in this case is going
9 to show that Valentino Hayward had the perfect
10 target ready to go.

11 He got to work that morning on his
12 plan. He got on the phone, started a setup.
13 You're going to see this, this is what the evidence
14 is going to show. Can't set up somebody you know
15 well. You're not going to set up somebody that you
16 like. You're going to set up somebody that you
17 kind of know. And he had the perfect person,
18 Deontre Miles; a person that didn't live in the
19 neighborhood. He lived way out in the Summerville
20 area.

21 So he gets on the phone with Deontre
22 and the set-up happens, but something happens that
23 he didn't count on. Two things really; one,
24 Deontre brought a girl that he liked, you'll hear
25 from her, and the second is, Deontre got lost. And

OPENING STATEMENT BY MR. SIMPSON

1 when you're going to meet somebody, what do you do
2 if you get lost? You call that person. And you
3 give them turn-by-turn directions to where you're
4 meeting them.

5 Valentino had the perfect place in his
6 plan, the perfect place. You will hear a lot about
7 it, it's called The Hole in the neighborhood, the
8 end of Evergreen Street and West Ashley. It's a
9 dead end, the proverbial dark alley. Led Deontre
10 right there.

11 But then the plan goes off script again
12 because, believe it or not, not everybody reacts
13 the same to having a gun pointed at them and
14 robbed. What the evidence in this case is going to
15 show, is that rather than just go gently, Deontre
16 tried to get away and he turned and ran. And that
17 is when Valentino Hayward, in the most cowardly way
18 that you can do, shot Deontre in the back as he
19 tried to get away.

20 You will hear the bullet entered the
21 shoulder, but, unfortunately -- sometimes the
22 bullet can hit soft tissue and just go through and
23 through and the person is fine, but when that
24 bullet goes in and hits bone, it ricochets on the
25 inside. It ricochets damaging the spinal column

OPENING STATEMENT BY MR. SIMPSON

1 and giving Deontre -- everybody called him Chucky,
2 so we'll probably call him Chucky -- giving Chucky
3 thankfully what seems to have been a quick and
4 painless death, instant death.

5 I'm going to ask you in this trial to
6 pay attention to that evidence leading up to the
7 murder, and that is certainly what that is, murder,
8 shooting someone in the back. I'm certainly going
9 to want you to pay attention to what happened at
10 the time of the crime, but I'm also going to ask
11 you to pay attention to what happened -- what
12 Valentino makes happen after the crime occurs.

13 An innocent man has nothing to hide. A
14 guilty man does everything that he can think of to
15 do to make sure this day never happens, that day
16 when 12 members of his community hears his case.

17 Deontre Miles, Chucky, is not perfect.
18 We're not going to hold him out as such. You may
19 hear some evidence or some suggestion that he may
20 have had some involvement with narcotics. But
21 guess what you'll also hear? Deontre Miles, 23,
22 young, full of life, was trying to do better. You
23 will hear that. You will hear that he was warm, he
24 was funny, he loved to joke, he brought life to
25 people's lives. You will hear that he was a son, a

OPENING STATEMENT BY MR. MAYER

1 nephew, and a friend.

2 Deontre Chucky Miles was not perfect,
3 but he did not deserve to go down like this.
4 Nobody does. Valentino Hayward did not want this
5 day to come and you will hear he did everything he
6 could to prevent it, but we are here. At the
7 conclusion of this trial, I'm going to ask you all
8 to find justice for Chucky, a person that was taken
9 way to early under circumstances that no one
10 deserves.

11 Thank you so much for your time and
12 attention this week. It will be long, but we will
13 both try to present our case as efficiently as we
14 can.

15 THE COURT: Mr. Mayer.

16 MR. MAYER: Thank you, Judge. May it
17 please the Court.

18 THE COURT: Yes, sir; you may proceed.

19 MR. MAYER: I want to join Mr. Simpson
20 in thanking you guys for being here, but for a
21 little bit different reason. You know, I think of
22 the United States as a wonderful place in part
23 because it's a democracy, and in part because there
24 is no taxation without our representatives being
25 our voice in government, and also in part because

OPENING STATEMENT BY MR. MAYER

1 of the jury system. It prevents us from getting
2 what the colonialists used to call the king's
3 justice; which was when the lawman decided someone
4 was guilty and, through a faulty investigation or
5 not, would go ahead and punish that person.

6 Well, in our system, you are the check
7 on now. You all are looking at an accused man who
8 is innocent. Okay. I want you to remember that.
9 You guys are the final check in the system where
10 when someone in our society has the terror of
11 having to sit in the chair where Mr. Hayward is
12 sitting today, you guys are the final check on the
13 system to make sure if someone is convicted that
14 he's guilty. And right now he's an innocent man.
15 I want you to think of him as an innocent man if
16 you would please.

17 This investigation that the police did
18 was funneled to Valentino Hayward from the very
19 beginning. Okay. A few minutes before this murder
20 occurred, Mr. Hayward was stopped in the street,
21 randomly stopped by the police. He lives in what
22 the police will say is a high-crime neighborhood, a
23 rough area of town, Ardmore.

24 And they commonly would stop him and
25 other young African American males who were walking

OPENING STATEMENT BY MR. MAYER

1 down the street; pat them down, check them for
2 warrants, check them for drugs, and let them go.
3 Well, that's what they did on December 11th, 2013,
4 about 20 or 30 minutes before this murder occurred.
5 They patted him down, checked him, found no weapons
6 on him and they sent him on his way. Okay. This
7 is a neighborhood, you will hear testimony, where
8 it's common for people to walk around like that.

9 Now, the investigation -- even though
10 they already checked Mr. Hayward, the investigation
11 was quickly funneled, and not tunnel vision, but
12 maybe funnel-vision by the State's main witness,
13 one of their main witnesses, this Latoya Carson
14 person. This was somebody in the car with Deontre
15 Miles, who I guess we'll call him Chucky, when he
16 went to the location in Ardmore.

17 Chucky and my client knew each other
18 from way back, have known each other for a long
19 time. My client had no interest in hurting Chucky
20 and nothing to do with it, but Latoya Carson is
21 somebody that came along with Chucky. And Latoya
22 Carson you'll hear, I'm sure, is now accused of
23 shooting Chucky's best friend.

24 MR. SIMPSON: Objection, Your Honor.

25 THE COURT: Basis? Please approach.

OPENING STATEMENT BY MR. MAYER

1 (Bench conference.)

2 THE COURT: You may proceed.

3 MR. MAYER: I should say that Ms.
4 Carson is charged with murdering Chucky's best
5 friend, too.

6 So Latoya Carson, that's who was with
7 Chucky at the time. That's who heard the gunshot.
8 She was sitting in the car across the street from
9 where this murder occurred. This is her version of
10 events of course.

11 She was sitting in the car and heard
12 the gunshot, and then she'll say -- you'll hear her
13 testify that she then waited five or six minutes
14 before calling the police. She waited. And then
15 she made a big deal about this is Chucky and he's
16 dead. Somebody help us. But it was only after the
17 wait.

18 Now, I want you to pay attention to her
19 testimony really carefully because there are a
20 couple of important pieces to be aware of. You
21 will hear testimony that says she has something
22 called gunshot residue on her hands. Okay. You
23 will hear the significance of that, which is that
24 you don't get that except if you're in contact with
25 the gunshot residue. You will also hear that --

OPENING STATEMENT BY MR. MAYER

1 well, rather than give you too much of -- just bear
2 in mind to pay very careful attention to her
3 testimony.

4 There are some other witness biases
5 that will come up that we'll address at the time,
6 but please bear in mind that when the police spoke
7 with Ms. Carson at the scene, that was the
8 beginning and end of their investigation. They did
9 very little after that. You will hear that from
10 them. They pretty much took her word for it.
11 Okay. It was convenient enough and, unfortunately,
12 for my client close enough where they let it stay
13 for the time being. That's why you guys are here.
14 Okay?

15 Now, you'll hear a little bit about my
16 client. Okay. He has a learning disability. He
17 didn't get past the tenth grade. He has a
18 two-year-old child. He's got a good history of
19 full-time work and he even volunteered a DNA sample
20 to the police. Okay.

21 Now, you will also hear in this trial
22 that -- let's see. We may just talk about the rest
23 of that later.

24 Please, guys, bear in mind that my
25 client, Mr. Hayward, is innocent until proven

1 guilty. I don't think you will let that happen.
2 Hopefully, you guys will be the checking system.
3 Okay. Pay very close attention and remember that
4 this is a system that we all rely on. Thank you
5 very much.

6 THE COURT: Madame Forelady, ladies and
7 gentlemen, we are going to take advantage of this
8 break in the proceedings to allow you to get to
9 your cars and get home safely.

10 We're going to resume in the morning at
11 9:30. You will come directly to your jury room --
12 and the clerk's office has made arrangements for
13 you to park next door. I think they have given you
14 instructions regarding that.

15 Please do not have any contact with
16 anyone in or about the courthouse when you return.
17 Again, an innocent conversation can be
18 misinterpreted. Do not read, watch, or listen to
19 any media accounts about this case or do any
20 independent research on the Internet. Please do
21 not make any comments regarding your status on any
22 social networking sites.

23 Please leave your notepads in your
24 seats and we will secure them during the recess.
25 We will see you at 9:30 in the morning.

1 (Jury out, 3:44 P.M.)

2 THE COURT: You may be seated. Also,
3 one of our alternates has tickets for an event out
4 of town tomorrow evening and so we're going to
5 break as close to 5:00 as possible because she has
6 to go two hours away. And I promised her that I
7 would not require her to miss that event since she
8 bought the tickets prior to being summoned for jury
9 duty.

10 MR. SIMPSON: Judge, I found the
11 missing CD. I'm going to -- I will burn one for
12 Mr. Mayer right when we leave here.

13 THE COURT: That's fine. That's the
14 redacted version?

15 MR. SIMPSON: Yes.

16 THE COURT: Mr. Mayer, what is your
17 objection to the -- I guess it's a two-fold
18 question because one may be -- and I need to know
19 the basis. The State is seeking to admit certain
20 cell phone records as business records pursuant to
21 19-5-520. And I need to know if you have an
22 objection based on that statute. That's a
23 two-layer question.

24 You objected on relevance, that's
25 different than the statute. I think the statute is

1 clear on its intent.

2 MR. MAYER: Judge, and I have to admit,
3 I don't have much experience with this new statute.

4 THE COURT: It just passed in March.

5 MR. MAYER: It's my first interaction
6 with it. The last case I was in, I was asking --
7 with you, I was asking to admit the same type of
8 business record and it was denied because we needed
9 the person flown in.

10 THE COURT: I don't remember.

11 MR. MAYER: No, i understand. I'm just
12 saying that --

13 THE COURT: If you'd cited the statute
14 to me, I -- but I don't recall you doing that.

15 MR. MAYER: No, I understand. This was
16 long before the statute, Judge. So me not being
17 familiar with the statute, you know, I have to
18 leave it to the Court's interpretation. I don't
19 have any law on this new statute --

20 THE COURT: There isn't any. We've
21 researched it. There's a citation in South
22 Carolina Jurisprudence that says that it stands for
23 the proposition that the State says it stands for.
24 That's about it. And we don't have any legislative
25 history.

1 On its face it appears to eliminate the
2 need for bringing folks -- I mean, I don't think
3 you can really argue. It's perfunctory to have
4 somebody come here and say they kept the cell phone
5 records in the ordinary course. We know that
6 there's a way that cell phone records are compiled.
7 There's no mystery to it. They all do it the same
8 industry wide.

9 They don't have a dog in the fight, so
10 I'm just trying to figure out if you have some good
11 faith argument that these records have been
12 hypothecated in some way and they're not his cell
13 phone records.

14 MR. MAYER: Judge, you know, just to
15 the extent that I've got them in an Excel format,
16 that's how they were sent to me, which is easily
17 manipulable. And so I have concern about what, you
18 know -- what -- I'm not -- what might have happened
19 once they got here.

20 THE COURT: That's easily traced. All
21 you have to do is -- if you have any knowledge of
22 software, you can tell if somebody manipulated it.
23 There's always a trail. There's always
24 breadcrumbs. There is no anonymity with computers.

25 MR. MAYER: I have one that was created

1 and modified, but I don't know if that's the
2 State's file --

3 THE COURT: I would assume you all have
4 the exact file. They didn't send it to you in
5 Excel format, did they? The cell phone company
6 sent it to you electronically?

7 MR. SIMPSON: Electronically in Excel
8 format.

9 THE COURT: Why can't they send you the
10 actual information the same way they would send it
11 to their customers?

12 MR. SIMPSON: It's in a secure
13 attachment, I think it is.

14 THE COURT: Well, you all show
15 Mr. Mayer that so that he can be assured -- I have
16 no reason to believe it was manipulated or
17 hypothecated. They have too much to lose.

18 MR. MAYER: I'm not saying that anyone
19 here would have done anything to it. I just don't
20 know where it was before it got to the Solicitor's
21 Office.

22 THE COURT: Well, the certification
23 from their person, and I'm referring to TMobile's
24 person, says it was on their server I guess, but
25 this -- this affidavit to some extent is a little

1 problematic, and I'll tell you why. In the future
2 you may want to have a heads-up to do it this way.

3 Simply saying it was kept in the
4 ordinary course of business, if they were here
5 testifying they would have to tell me how they
6 compile those records, where they keep them, what
7 server they were on and how they got them off the
8 server. You can't just say I kept them in the
9 ordinary course of business.

10 The case law is very clear and the way
11 the statute is written, it says, it is subject to
12 Rule 8036, and Rule 8036 is the business record
13 exception. And our case law provides, one, that it
14 was made at or near the time of the event recorded
15 prepared by someone with or from information
16 transmitted by a person of knowledge. Made and
17 kept in the course of regularly conducted business
18 activity, identified by the custodian or qualified
19 witness that could testify regarding the mode of
20 preparation of the record -- which means we need to
21 know where they came from and how they compiled
22 them -- found to be trustworthy by the Court.

23 A business record without evidence
24 about the manner in which it is prepared, or the
25 source of this information, does not meet the

1 requirement of 19-5-510, which is the business
2 records exception.

3 So the affidavit in and of itself is
4 fine, but she needs to say, this is where we keep
5 this information, this is how we create this
6 report, this is the format it's in, and then it's
7 kept.

8 MR. SIMPSON: So I understand --

9 THE COURT: But other than that, I
10 think it meets the requirement of the statute. And
11 TMobile certainly has no dog in the fight. They
12 just pull those record off the server is the way it
13 works. And I'm sure it's the same records that
14 were mailed to your client.

15 MR. MAYER: And, Judge, my only concern
16 is they were sent to the police department, and
17 then they were sent from the police department on
18 to the Solicitor and so they touched, you know,
19 more hands than just Mr. Simpson. If they had just
20 been sent directly to Mr. Simpson --

21 THE COURT: But I would imagine they
22 are sent in a secure file and they can't be
23 modified.

24 MR. MAYER: Well, I certainly modified
25 the ones that were sent to me and sorted them --

1 THE COURT: They didn't probably send
2 them to you in a secure file and probably because
3 they knew you might want to do that with them.

4 MR. MAYER: Yeah.

5 THE COURT: But I would -- and you need
6 to -- the affidavit needs to also indicate the
7 format in which it was transmitted and what type
8 of -- you know, whether it was secure or not. But
9 I think on its face, really it's -- as a matter of
10 course, we know if they flew her in, she's going to
11 say, we keep these in the ordinary course of
12 business, they haven't been tampered with and it's
13 not going to change the format in which it's
14 provided. And she's just going to bring that same
15 Excel spreadsheet with her.

16 I don't know if it really makes a
17 difference, and I don't have a reason to believe
18 and there's been nothing presented to the Court
19 that TMobile tampered with these records.

20 Like I said, they don't have a dog in
21 the fight and to do so would be a violation of the
22 Federal Closed Door Act. And I don't think any of
23 them want to go to prison because it carries a very
24 long time, and it is subject to everybody that
25 deals with electronic media. That includes

1 everybody that deals with e-mails, cell phones, or
2 anything.

3 So you can't disclose it to anybody
4 without a subpoena, and you can't hypothecate it,
5 and you can't change it or you will go to prison.
6 So I don't -- I can't imagine that anyone at
7 TMobile would take that risk, not for this.

8 So you may have -- and I would assume
9 that your real objection is to the relevance of the
10 document, but I don't really think you have a good
11 faith argument as to the authenticity or to the
12 applicability of the statute.

13 MR. MAYER: And I'm happy -- I would be
14 delighted to take a look at the type of file that
15 was sent to the police and --

16 MR. SIMPSON: You have it in exactly
17 the format it was sent to our office.

18 MR. MAYER: So --

19 THE COURT: In cross-examining her, the
20 only thing you would be able to cross-examine her
21 about, are these TMobile's records? How did you
22 keep them? Did you copy them?

23 MR. MAYER: Yeah. And i'm not -- I'm
24 not saying that we need her brought down, Judge.
25 I'm just voicing --

1 MR. SIMPSON: I would point to the date
2 of the affidavit. These are records that were
3 reviewed that recently and deemed authentic as far
4 as the issue --

5 THE COURT: Is that how his name is
6 spelled on his record, H-A-Y-W-A-I-D?

7 MR. SIMPSON: That is how -- when a
8 person signs up for a phone, they can put in
9 whatever name they want. That is how --

10 THE COURT: People misspell my name all
11 the time. They put in extra letters and I never go
12 back and correct it. I don't know that that means
13 this is wrong. I just want to make sure it was not
14 a typo in the affidavit.

15 MR. SIMPSON: It's not a typo in the
16 affidavit.

17 THE COURT: That's the way he listed
18 his name?

19 MR. SIMPSON: Yes, ma'am.

20 THE COURT: Okay. Well, I suggest you
21 all look at that and show Mr. Mayer what format it
22 was sent.

23 MR. SIMPSON: It was sent in exactly
24 the format we gave Mr. Mayer.

25 THE COURT: I mean, the way it was

1 transmitted from TMobile to you all. Because she
2 really doesn't have any information to provide
3 other than she compiled the records and she sent
4 them here.

5 (Off-the-record conference.)

6 THE COURT: So does that resolve the
7 issue? They need to know if they are going to have
8 to fly this person in, so I need to know if there
9 is an objection based on the authenticity of the
10 records.

11 MR. MAYER: And, Judge, after they tell
12 me how they got them, I will be glad to --

13 THE COURT: Well, you all need to
14 resolve that right now. I need to make a decision
15 right now.

16 MR. SIMPSON: Judge, they were e-mailed
17 directly to members of the Charleston Police
18 Department who, according to the report, forwarded
19 copies to Detective Paul Krasowski, present here.
20 He then put them on a CDR which was transmitted to
21 us, copied by our office and provided to Aaron
22 Mayer.

23 I'm sure Detective Krasowski can
24 testify that at no point during the exchange was
25 anything tampered with or changed, should you want

1 testimony to that effect.

2 THE COURT: Well, I tell you what, the
3 best way to resolve this is, why don't you have the
4 records custodian send a copy of the records to
5 Mr. Mayer?

6 MR. SIMPSON: Okay.

7 THE COURT: That eliminates the whole
8 issue.

9 MR. SIMPSON: I do not know if they --
10 typically, they do not store them for this amount
11 of time, but I can check.

12 THE COURT: Well, if it's available,
13 have them do that. That was just since October 30,
14 that was just five days ago.

15 MR. SIMPSON: Well, we sent them back
16 to them to authenticate on October 30th.

17 THE COURT: So they were sent to you
18 before then?

19 MR. SIMPSON: Yeah. They sent them to
20 us back in December of 2013. When this law
21 changed, we sent what we had back to them
22 electronically and said, can you review these and
23 attest to the authenticity? That's when they sent
24 the --

25 THE COURT: So where did you get the

1 original records from?

2 MR. SIMPSON: From them, in December
3 2013.

4 THE COURT: Oh, I see what you're
5 saying.

6 They may not have them anymore,
7 Mr. Mayer. So if they don't -- if they have them,
8 fine. Have them send them directly. If they
9 don't -- it's my understanding they keep text
10 messages up to five years.

11 MR. SIMPSON: They don't keep text
12 messages usually for more than --

13 THE COURT: They keep them for five
14 years. They don't tell you that. I read something
15 recently, they keep them up to five years. They
16 just don't tell you that. It happened --

17 MR. SIMPSON: Then they should be
18 arrested for ignoring --

19 THE COURT: I came across it in a case
20 recently. They keep all those records for five
21 years, and they may not be able to access them, but
22 -- I was researching something on the Internet and
23 found out they keep text messages -- they keep
24 almost everything for up to five years.

25 And not for law enforcement's benefit,

1 but, you know, you have the right as a consumer to
2 challenge your bill up to a certain amount of time.
3 So they keep them for their benefit. You may want
4 to check and see.

5 They may have them, they may not. The
6 bottom line is, if they have it, have them send it
7 directly to him. And if not, show him the manner
8 and method in which it was transmitted to you.

9 MR. SIMPSON: Okay.

10 Anything else from the State?

11 MR. SIMPSON: No, Your Honor.

12 THE COURT: From the defense?

13 MR. MAYER: No, Judge.

14 THE COURT: Have a good evening. See
15 you at 9:30 in the morning.

16 (These proceedings were recessed at
17 3:59 p.m., to be resumed November 10, 9:30
18 a.m.)

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1 (The following proceedings were had
2 November 10, 2015 at 9:42 a.m., Charleston County
3 Circuit Court, State v. Hayward.)

4 THE COURT: Did you work out the
5 records thing?

6 MR. SIMPSON: Just as I e-mailed it to
7 your clerk, the custodian comes into work -- she
8 was off yesterday, she comes in at 2:00 p.m. today.
9 We've got Wednesday off all day, so we will know
10 this afternoon whether she can just e-mail those
11 right to Aaron. We don't know for certain she can,
12 but we have reason to think that she can.

13 Aaron received it in the exact same
14 format that we received it. It comes to us via CD
15 and that CD is directly copied and handed to
16 Mr. Mayer.

17 THE COURT: It sounds like it was
18 resolved. I gave you two options. That was one
19 and the other was --

20 MR. SIMPSON: I think we're going to
21 try both this afternoon.

22 THE COURT: Okay. But I still need to
23 know, Mr. Mayer, do you have any objection to the
24 admissibility of the documents pursuant to the
25 statute; in other words, eliminating the necessity

1 of the records custodian coming to Charleston?

2 MR. MAYER: Judge, provided that what
3 Mr. Simpson is working on pans out and they are
4 able to send me a direct copy from TMobile, like
5 what Mr. Simpson is trying to do, I have no
6 objection on it.

7 THE COURT: Okay. So we will wait to
8 see when she gets in after 2:00.

9 We're still missing four jurors. There
10 must be some accident on the interstate. I'm not
11 certain what it is. I was told there was a wreck
12 out there earlier this morning. I don't know
13 whether it wasn't resolved, I have no clue, but
14 it's odd that it would be four. It must be traffic
15 related for it to be four people. So as soon as
16 they arrive, we will get started.

17 (A recess transpired.)

18 THE COURT: All right. All of our
19 jurors are now here. Is the State ready to
20 proceed?

21 MR. SIMPSON: We are, Your Honor.

22 THE COURT: Is the defense ready to
23 proceed?

24 MR. MAYER: Yes, Judge.

25 THE COURT: Okay. Who is the State's

1 first witness going to be?

2 MR. SIMPSON: Your Honor, the State is
3 going to be calling Charles Rodwell.

4 THE COURT: And I guess a better way to
5 put what I was soliciting was -- do you have your
6 witnesses lined up and ready to go?

7 MR. SIMPSON: We do, Your Honor.

8 THE COURT: I don't want us to be out
9 looking in the hallway for them. You need to put
10 them someplace central for easy access, maybe in
11 one of these rooms, because I don't like the delay.
12 Okay?

13 MR. SIMPSON: Okay.

14 THE COURT: Is the first witness in the
15 courtroom?

16 MR. SIMPSON: No, Your Honor.

17 THE COURT: Go ahead and get the jury
18 for me.

19 THE BAILIFF: Yes, ma'am.

20 (Jury in, 9:57 A.M.)

21 THE BAILIFF: Jurors are all present.

22 THE COURT: Good morning, ladies and
23 gentlemen. I hope everyone had a pleasant evening.
24 I understand you had some challenges getting into
25 the garage this morning, and we apologize for the

CHARLES T. RODWELL - DIRECT EXAM BY MR. SIMPSON

1 inconvenience.

2 We are now going to proceed with
3 testimony. If you would give the attorneys your
4 attention. The State may proceed.

5 MR. SIMPSON: The State calls Charles
6 Rodwell.

7 CHARLES T. RODWELL,
8 being first duly sworn, testified as follows:

9 THE CLERK: Be seated. We need you to
10 speak into this microphone. You need to get kind
11 of close to it. State your full name and spell
12 your last name for the record.

13 THE WITNESS: Yes, sir. Charles Tarus
14 Edward Rodwell, last name is R-O-D-W-E-L-L.

15 THE COURT: You may proceed.

16 MR. SIMPSON: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 DIRECT EXAMINATION

19 BY MR. SIMPSON:

20 Q. Mr. Rodwell, good morning.

21 A. Morning.

22 Q. How are you?

23 A. Pretty good.

24 Q. Were you here yesterday?

25 A. Yes, sir.

CHARLES T. RODWELL - DIRECT EXAM BY MR. SIMPSON

1 Q. And this morning?

2 A. Yes, sir.

3 Q. Let me first thank you for your time.

4 I appreciate your patience with me.

5 A. You're welcome.

6 Q. Let me ask you a couple of questions
7 just generally about yourself. Where do you live?

8 A. I live on 640 Sequoia Street.

9 Q. How long have you lived there?

10 A. Five years.

11 Q. Do you work?

12 A. Yes, sir.

13 Q. How many jobs do you work?

14 A. Now, three.

15 Q. Now three?

16 A. Yeah.

17 Q. What jobs are those?

18 A. I work at Boeing, I work at the
19 Americano and I work at Jimmy John's.

20 Q. Sounds like a pretty busy life that you
21 have.

22 A. Yeah.

23 Q. So again, thank you for your time. I
24 do appreciate it.

25 A. You're welcome.

CHARLES T. RODWELL - DIRECT EXAM BY MR. SIMPSON

1 Q. Let me ask you, I don't mean to get too
2 personal, have you ever been in any trouble at all
3 with law enforcement or anything like that?

4 A. No, sir.

5 Q. Pretty hard-working guy?

6 A. Yes, sir.

7 Q. Who do you live with over there on
8 Sequoia Street?

9 A. My mom, my three brothers and my
10 girlfriend.

11 Q. And did you live -- I know you've kind
12 of already answered this, but did you live back
13 there on December 11, 2013?

14 A. Yes, sir.

15 MR. SIMPSON: Your Honor, may I
16 approach the exhibit table?

17 THE COURT: Yes.

18 MR. SIMPSON: Thank you.

19 THE COURT: You're welcome.

20 BY MR. SIMPSON:

21 Q. Mr. Rodwell, I'm going to put up here
22 on the screen what's been entered by consent as
23 State's Exhibit 1. Do you recognize that area?

24 A. Yes, sir.

25 Q. And what area is that?

CHARLES T. RODWELL - DIRECT EXAM BY MR. SIMPSON

1 A. The residence I live at.

2 Q. Could you -- I believe that's a touch
3 screen in front of you.

4 A. Okay.

5 Q. If you touch it, it will highlight an
6 area. See if it works.

7 A. (Complies)

8 Q. There you go. Can you indicate where
9 your place is?

10 A. Right here where this vehicle is at.

11 Q. And, again, that's where you -- were
12 you home on the evening of December 11, 2013?

13 A. Yes, sir.

14 Q. I may interrupt you from time to time,
15 but can you explain to the jury what you heard,
16 saw, what happened on December 11, 2013 from your
17 point of view?

18 A. From my point of view I was downstairs
19 with my mom watching TV and I heard -- I mean,
20 everyday I hear a noise, everything sounds the
21 same. I heard some shots, but I thought it was
22 firecrackers. It's the same noise all the time, so
23 I wasn't really aware. And what happened was, my
24 mom was doing laundry outside --

25 Q. Let me interrupt you there. Where are

1 the laundry facilities in the apartments?

2 A. Right here in the back. (Indicating)

3 Q. So do you exit the back of your
4 apartment to get to the laundry?

5 A. Yes, sir.

6 Q. And then --

7 A. There's, like, a door -- like, as soon
8 as you walk out, there's a door on the left-hand
9 side.

10 Q. And does each apartment have one?

11 A. Yes, sir.

12 Q. So they're not shared?

13 A. No.

14 Q. Continue, please. Thank you.

15 A. So my mom was doing laundry outside and
16 she told me that -- well, I heard somebody
17 screaming as well. And she told me that there was
18 a female screaming. I presumed she was coming from
19 door to door, and she was saying her boyfriend got
20 shot, come help.

21 I put some slippers on and ran outside
22 to the scene, which is over here. (Indicating) It
23 was over there somewhere.

24 Q. Okay. Let me interrupt you for a
25 second. When you went outside, did you see the

1 person screaming?

2 A. The female? Yes, sir, she was
3 screaming and running away, running towards the
4 scene.

5 Q. Describe the female's demeanor.

6 A. She was a little -- I can't say upset.
7 She was just crying and screaming, like looking for
8 the aid of help.

9 Q. And she was screaming and crying?

10 A. Uh-huh.

11 Q. And when you came out, how did you
12 proceed?

13 A. I mean, I kind of ran -- you know,
14 there's some trees in the way, I didn't want to
15 fall, so I just kind of ran to the scene.

16 Q. And make it a little more distinctive
17 if you can, where you're talking about when you're
18 talking about the scene.

19 A. Between the two cars, like right here.
20 (Indicating)

21 Q. Okay. And what did you see and observe
22 and do once you got to the scene?

23 A. I saw the guy kind of laying there. I
24 wasn't sure if he was deceased yet. So I wanted to
25 give him -- I went to check his pulse first and

CHARLES T. RODWELL - DIRECT EXAM BY MR. SIMPSON

1 then I just, you know, kind of shook him a little
2 bit. I was going to perform CPR, but I didn't.

3 Q. Are you qualified to perform CPR?

4 A. Yes, sir, I'm BLS certified.

5 Q. And where did you get that
6 certification?

7 A. There's a place off of -- it's right
8 across from where we live at. It's Richard
9 Shocks -- I forgot the name of it. He does CPR
10 though.

11 Q. And you went and got that training and
12 you were able to do that?

13 A. Yes, sir.

14 Q. So how did that proceed in this
15 instance?

16 A. I didn't use it because he was kind of
17 laying there. I didn't want to, you know, kind of
18 bother him, per say. So I just waited until the
19 officials arrived, the police arrived.

20 Q. That training that you have, did it
21 include training on how to check a pulse?

22 A. Yes.

23 Q. Did you do that?

24 A. Yes, sir.

25 Q. And what, through your training, did

CHARLES T. RODWELL - DIRECT EXAM BY MR. SIMPSON

1 that indicate?

2 A. I didn't get a pulse from him, so I
3 perceived him as being dead.

4 Q. Okay. Following that indication, were
5 you aware of what others were doing sort of around
6 you?

7 A. Yes, sir.

8 Q. Did you know, were the authorities
9 contacted?

10 A. Yes, sir, they were.

11 Q. How did that happen?

12 A. My mom got the house phone and the
13 female herself, she actually got -- contacted the
14 officials.

15 Q. So your mom handed your house phone to
16 the screaming and crying female?

17 A. Yes, sir.

18 Q. Approximately, how long did it take
19 from those calls until when officials arrived at
20 the scene?

21 A. Probably five to eight minutes max.

22 Q. Okay. And when I say officials, what
23 kind of people arrived after the phone call?

24 A. The first was the policemen and then
25 the ambulance arrived.

CHARLES T. RODWELL - DIRECT EXAM BY MR. SIMPSON

1 Q. Okay. Mr. Rodwell, when you got to the
2 scene and saw the deceased that you described, did
3 you see any guns or firearms whatsoever?

4 A. No, sir.

5 Q. Did you see any -- do you know what a
6 shell casing is?

7 A. I know what it is, yes, sir.

8 Q. Did you observe any shell casings?

9 A. No, sir.

10 Q. As all of this screaming and noise
11 happened, did others come out?

12 A. Yes, sir.

13 Q. Were you the first, though, to get
14 there?

15 A. Me and my mom were, yes, sir.

16 Q. Okay. Did -- at any time while you
17 were there, did you see anybody disturb anything or
18 take anything?

19 A. From the area?

20 Q. Yes.

21 A. No, sir.

22 Q. And once police arrived on-scene, what
23 did they do?

24 A. They kind of backed the crowd up.
25 There was a big crowd, not a real big crowd, a few

CHARLES T. RODWELL - DIRECT EXAM BY MR. SIMPSON

1 people around him and there were more people coming
2 out of the apartments, but they backed everybody
3 out and put them in one area.

4 Q. And, again, are you standing right
5 there while that's going on?

6 A. Uh-huh.

7 Q. Did you see anybody take anything?

8 A. No, sir.

9 Q. Did you ever observe a firearm?

10 A. No, sir.

11 Q. On the female who was screaming and
12 crying, observe any sort of weapons on her at any
13 point?

14 A. No, sir.

15 Q. Did she appear upset to you?

16 A. A little bit.

17 Q. Was she crying? You saw her crying?

18 A. I saw her crying.

19 Q. And she was screaming for help?

20 A. Yes, sir.

21 MR. SIMPSON: Court's indulgence?

22 THE COURT: Uh-huh.

23 MR. SIMPSON: Just a few more
24 questions. Your Honor, may I approach the witness?

25 THE COURT: (Nodding)

CHARLES T. RODWELL - CROSS EXAM BY MR. MAYER

1 BY MR. SIMPSON:

2 Q. Mr. Rodwell, I'm handing you what's
3 been marked as State's 41 for identification only.
4 Do you recognize the person depicted in that
5 picture?

6 A. No, sir.

7 Q. Did you see that person out there that
8 night?

9 A. No, sir.

10 MR. SIMPSON: Mr. Rodwell, thank you
11 for your time. Please answer any questions
12 Mr. Mayer has for you.

13 THE COURT: You may proceed.

14 MR. MAYER: Thank you, Judge. May it
15 please the Court?

16 THE COURT: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. MAYER:

19 Q. Did you ever play shuffleboard at the
20 Americana?

21 A. No.

22 Q. That's the old school one, right? With
23 the sticks?

24 A. Yeah.

25 Q. Yeah, I have to learn how to do that.

CHARLES T. RODWELL - CROSS EXAM BY MR. MAYER

1 So on this picture --

2 MR. MAYER: Could we put the picture
3 back up?

4 MR. SIMPSON: Sorry.

5 BY MR. MAYER:

6 Q. Mr. Rodwell, on this picture there's --
7 the bottom of it, can you describe what that is?
8 Looks like a barrier or something at the bottom of
9 that picture.

10 A. Barrier?

11 Q. Looks like there's something at the end
12 of Sequoia Street where it dead-ends there. Almost
13 looks like water.

14 A. Right here? (Indicating)

15 Q. Yes, sir.

16 A. Yes, sir.

17 Q. What is that?

18 A. It's like a little pond, per se. It
19 has a gate in front of it.

20 Q. Would you -- could it be described as a
21 canal?

22 A. Could be.

23 Q. Does it have cement walls on each side?

24 A. I'm not sure. Probably one side of it.

25 Q. Does it stay full of water most of the

1 time?

2 A. For the most part, yeah.

3 Q. How far is that from where this victim
4 was laying, this decedent?

5 A. I could kind of -- can I diagram it for
6 you?

7 Q. Yeah. If you want to mark the diagram
8 where the decedent was.

9 A. Right here. (Indicating)

10 Q. How would you characterize that
11 distance? It looks like one house away?

12 A. Yes, sir, one house away.

13 Q. Okay. And from -- from where the
14 deceased was lying, did you see where his car was
15 parked?

16 A. I never seen his car.

17 Q. Okay. How about this house that's
18 behind your house, can you just put a mark on the
19 house that's behind your apartment? Like you'd
20 come out and -- I know there's a fence there now.

21 A. Yeah.

22 Q. Was that fence there before?

23 A. No, sir.

24 Q. It used to be you would look out into
25 that house's driveway?

CHARLES T. RODWELL - CROSS EXAM BY MR. MAYER

1 A. Uh-huh. You can walk into it.

2 Q. You used to be able to walk right in
3 there?

4 A. Uh-huh.

5 Q. Can you mark where the house's driveway
6 is?

7 A. (Marking) Like under this tree and
8 this is the driveway right here.

9 Q. And that's the driveway or is that the
10 walkway to the front door? Is that the driveway?

11 A. That's the driveway. And the walkway
12 is right there. (Indicating)

13 Q. Okay. See, I was thinking that was the
14 driveway. Okay. And so before they put the fence
15 up, you could see from your back laundry room right
16 to their walkway or driveway area?

17 A. Correct.

18 Q. And then when you -- when you heard the
19 shots, what were you doing?

20 A. I was on the couch watching TV.

21 Q. And some amount of time passed before
22 -- then you went outside, right?

23 A. Correct.

24 Q. Okay. And then your mom, was she
25 outside when the shots were heard?

CHARLES T. RODWELL - CROSS EXAM BY MR. MAYER

1 A. Yes, sir.

2 Q. And how did she react to the shots?

3 A. I mean, she really didn't say anything
4 about it until the female came. Like I said, it's
5 an everyday noise, per se. Not every day, but it's
6 a common noise.

7 Q. In your neighborhood shots fired is
8 kind of a common noise?

9 A. Not really -- it's not really shots
10 fired all the time to me, because it could be
11 anything.

12 Q. Okay.

13 A. But it sounds -- it's a similar sound.

14 Q. Okay. How many shots did you hear?

15 A. I heard two.

16 Q. And so your mom didn't react. It
17 sounded like firecrackers is what you said, right?

18 A. Basically.

19 Q. Okay. And then it was on your house
20 phone that 911 got called; is that right?

21 A. Yes.

22 Q. Okay. And that was five to ten minutes
23 after the shots were fired?

24 A. About five minutes after the shots were
25 fired.

CHARLES T. RODWELL - REDIRECT EXAM BY MR. SIMPSON

1 Q. Okay. And now just to -- just to be
2 clear, these distances we're looking at from, say,
3 your laundry room to Sequoia, that's not a great
4 distance, is it? I mean, you could throw a tennis
5 ball that far easily, right?

6 A. Uh-huh.

7 Q. It wouldn't be a hard throw either,
8 would it?

9 A. (Shaking head)

10 Q. And then that Sequoia Street, is that a
11 particularly wide street? Pretty regular street?

12 A. Regular street.

13 Q. I mean, it's not like an interstate
14 where it's 150 yards wide?

15 A. No.

16 MR. MAYER: Court's indulgence?

17 No further questions.

18 THE COURT: Any redirect?

19 MR. SIMPSON: Just briefly, Your
20 Honor.

21 REDIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q. So, Mr. Rodwell, in this neighborhood
24 if you hear a pow, bang, that sort of noise, it
25 sounds like what you're saying is you don't react

1 to that immediately?

2 A. No, sir.

3 Q. Is that a common sound you might hear
4 in your neighborhood?

5 A. Yes, sir.

6 Q. So when it goes off, your first thought
7 isn't run out the door and see what's going on?

8 A. No, sir.

9 Q. And among other people that might live
10 in the neighborhood, do they sort of have the same
11 sort of reaction to that kind of thing? Is it
12 normal to hear the pow and let it be?

13 MR. MAYER: Objection; calls for
14 speculation.

15 THE COURT: Sustained; lack of
16 foundation.

17 BY MR. SIMPSON:

18 Q. Again, you described the female that
19 you saw as crying?

20 A. Yes, sir.

21 Q. Did you see tears?

22 A. Moderate.

23 Q. She was screaming for help?

24 A. Yes, sir.

25 Q. She wanted people to come help her?

CHRISTOPHER MALINOWSKI - DIRECT EXAM BY MS. MULKEY

1 A. Yes. She was going from door to door.

2 MR. SIMPSON: I have nothing further,

3 Your Honor.

4 THE COURT: Any objection to the

5 witness being excused?

6 MR. SIMPSON: No, Your Honor.

7 THE COURT: From the defense?

8 MR. MAYER: No, Judge.

9 THE COURT: Sir, you're excused.

10 You can call your next witness.

11 MS. MULKEY: State calls Officer

12 Malinowski.

13 CHRISTOPHER MALINOWSKI,

14 being first duly sworn, testified as follows:

15 THE CLERK: Be seated. Please state

16 your full name and spell your last name for the

17 record.

18 THE WITNESS: Christopher Malinowski,

19 Junior, M-A-L-I-N-O-W-S-K-I.

20 THE COURT: You may proceed.

21 MS. MULKEY: Thank you, Your Honor.

22 May it please the Court?

23 THE COURT: Yes, ma'am.

24 DIRECT EXAMINATION

25 BY MS. MULKEY:

1 Q. Tell the jury where you're employed.

2 A. With the City of Charleston Police
3 Department.

4 Q. And how long have you been with the
5 Charleston Police Department?

6 A. I've been with the department a little
7 over three years.

8 Q. What is your current assignment?

9 A. Currently, I work in Team 4 Patrol,
10 which is the West Ashley area.

11 Q. Have you worked in any other units
12 while you've been employed there?

13 A. I have not.

14 Q. Tell the jury what that assignment
15 entails.

16 A. Team 4 Patrol entails calls for
17 service. Anybody that calls 911, depending on who
18 is closest will respond to where that call is. It
19 also involves a little bit of proactive work, just
20 trying to spot crimes for anything that can occur.

21 Q. Could you please tell the jury a little
22 bit about your background, training and education,
23 and experience?

24 A. I graduated from the University of
25 Maryland with a bachelor's degree in criminology

CHRISTOPHER MALINOWSKI - DIRECT EXAM BY MS. MULKEY

1 and criminal justice, as well as a bachelor's
2 degree in journalism. I graduated from the South
3 Carolina Criminal Justice Academy in December of
4 2012, where I received basic training and law
5 enforcement certification.

6 Annually, I do our inservice training,
7 which is verified by the State, along with
8 extra-curricular training which is sought out by me
9 personally, and then I will be finishing my
10 master's in criminology in December.

11 Q. Thank you. Were you working for the
12 Charleston Police Department back on the evening of
13 December 11, 2013?

14 A. I was.

15 Q. And in what capacity were you working
16 that evening?

17 A. I was, again, in Team 4 Patrol for the
18 evening shift.

19 Q. And during the course of your duties
20 that evening, Officer, did you respond to a call
21 for service in reference to a shooting?

22 A. I did.

23 Q. And what time approximately was that?

24 A. It was approximately 8:50 p.m.

25 Q. And where were you dispatched to for

1 that call?

2 A. I was dispatched to 640 Sequoia Street.

3 Q. Is that in Charleston County?

4 A. It is in Charleston County.

5 Q. What neighborhood?

6 A. In the Ardmore community.

7 Q. Does that particular address you
8 mentioned, 640 Sequoia, does that go by any other
9 nickname?

10 A. A lot of us call it The Hole.

11 Q. Is that commonly referred to among the
12 neighborhood as that as well?

13 A. It is.

14 Q. When you arrived on scene, what did you
15 observe?

16 A. When I arrived on scene, I turned right
17 onto Sequoia and I saw a large group of -- a crowd
18 forming in the middle of the street. I approached
19 the crowd and to the right of the crowd I observed
20 the victim.

21 Q. And what happened next? What did you
22 do?

23 A. Immediately, I pushed the crowd back
24 across the street to create more of an interior
25 perimeter, and I addressed the needs of the victim.

CHRISTOPHER MALINOWSKI - DIRECT EXAM BY MS. MULKEY

1 Q. Did you approach the victim?

2 A. I did.

3 MS. MULKEY: May I approach the victim?

4 THE COURT: You may.

5 BY MS. MULKEY:

6 Q. Mr. Malinowski, I would like to show
7 you what has previously been entered by consent as
8 State's 2, 3, and 4. Briefly, could you look at
9 these? Are you familiar with these?

10 A. I am.

11 MS. MULKEY: Your Honor, may I publish
12 these to the jury?

13 THE COURT: You may.

14 BY MS. MULKEY:

15 Q. Beginning, with State's Exhibit Number
16 2, Officer, could you please tell us what this
17 picture depicts?

18 A. This picture is taken from, it looks
19 like, the middle of the street on Sequoia, and it's
20 taken facing away from where the victim was found
21 towards -- towards the opposite side of the street
22 where the vehicles are in the background.

23 Q. Now, you can use that as a touch
24 screen, but where -- could you show us where is
25 Sequoia Street?

1 A. Sequoia Street is going to be right
2 here. (Indicating)

3 Q. And where is 640 Sequoia on this
4 particular picture?

5 A. Yes, it is.

6 Q. And where?

7 A. 640, I want to say, is this apartment
8 complex right here.

9 Q. I would like to show you now State's
10 Exhibit 2. If you could tell us, please, what this
11 is.

12 A. In relation to the first picture, this
13 again is 640 Sequoia. This is taken 180 degrees
14 complete opposite from the first picture. This is
15 where the victim was located and this is the
16 vehicle that was on scene.

17 Q. And, again, for clarification, the
18 picture we just saw, you said this is 180 degrees
19 turned around?

20 A. Yes.

21 Q. And now I would like to show you
22 State's Exhibit 4. If you could please tell the
23 jury what this is?

24 A. Again, this is another picture of the
25 crime scene. What you'll have here is -- you'll

CHRISTOPHER MALINOWSKI - DIRECT EXAM BY MS. MULKEY

1 have -- this is -- with our first picture you had
2 the Buick in the background here. (Indicating)
3 You also had 640 Sequoia -- or Sequoia Street, and
4 this is the victim. So it's looking at all three
5 photographs together.

6 Q. Thank you. Just prior to looking at
7 these photographs, you testified that you
8 approached the victim that evening?

9 A. Yes, ma'am.

10 Q. Did you notice any outward signs of
11 injury?

12 A. No, ma'am. We could not see any signs
13 of injury or blood or anything like that.

14 Q. And did you speak with anyone on scene
15 that evening?

16 A. I did.

17 Q. Who was that?

18 A. I spoke with a resident, Mr. Charles
19 Rodwell.

20 Q. And based on your conversation with
21 Mr. Rodwell, what did you do?

22 A. Based on the conversation we had, I
23 asked him back to my patrol vehicle to separate him
24 from the crowd so he could speak to investigators
25 when they arrived on scene.

CHRISTOPHER MALINOWSKI - DIRECT EXAM BY MS. MULKEY

1 Q. And then what happened?

2 A. From there investigators did come on
3 scene, along with our crime scene investigators. I
4 held the inner perimeter that we had first created
5 until the scene was released.

6 Q. If you could please tell the jury what
7 an inner perimeter is?

8 A. With perimeters you want to establish
9 something immediately around the area that you're
10 focusing on. And that inner perimeter is where the
11 large focus of that crime scene is.

12 There's also an outer perimeter which
13 is a little bit -- actually much larger. And from
14 there it allows us, if we didn't catch it directly
15 in the inner perimeter, it's still a secure area
16 that no one else is allowed inside of so we can
17 preserve any evidence from the outside perimeter.

18 Q. And is that done to maintain and
19 preserve the integrity of the investigation?

20 A. Yes.

21 Q. Did you submit a report documenting
22 your role in this?

23 A. Yes, ma'am, I did.

24 MS. MULKEY: Court's indulgence?

25 THE COURT: Yes, ma'am.

CHRISTOPHER MALINOWSKI - CROSS EXAM BY MR. MAYER

1 MS. MULKEY: I have no further
2 questions at this time. Please answer any the
3 defense may have.

4 THE COURT: You may proceed.

5 MR. MAYER: May it please the Court?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. MAYER:

9 Q. Officer, you testified you were
10 dispatched about 8:50; is that accurate?

11 A. Yes.

12 Q. About what time did you arrive on
13 scene?

14 A. I believe I was close to the area. It
15 was only minutes later, but I can't approximate --

16 Q. About seven minutes, would that be
17 fair?

18 A. Yes, sir.

19 Q. Okay. The deceased was laying face up,
20 correct?

21 A. Yes, sir.

22 Q. And no one rolled the deceased over,
23 did they?

24 A. Neither I or the other officer on scene
25 did.

1 Q. From the get-go, the deceased was
2 laying face up?

3 A. I believe so.

4 Q. You said a lot of you call it The Hole.
5 Why do you call it The Hole?

6 A. It's an area where we generally have a
7 lot of crime, there's a lot of foot pursuit there,
8 and that's the name that I first learned it as when
9 I came into the department.

10 Q. Could you characterize the relationship
11 between the police and the residents in that
12 neighborhood?

13 A. It's a community that we spend a lot of
14 time in. It's an area where we have a community
15 action team specifically, because there are -- a
16 high call for service area and we devote a lot of
17 time in the area.

18 Q. Would it be fair to say that there is a
19 contingent of youth in that area who have friction
20 with the police?

21 A. It would depend on the attitude of the
22 youth or their outlook at it.

23 Q. Right. Okay. I guess what I'm asking,
24 would it be fair to say that there's an adversarial
25 relationship between some of the youth in that

1 neighborhood and some of the officers?

2 A. Again, I think that depends on the
3 youth that you're talking about and the officers
4 that you're talking about.

5 Q. I'm talking about the youth who hang
6 out outside in that neighborhood.

7 A. I think --

8 Q. Let me ask you this: Would it be --
9 has it ever happened to you -- do you patrol that
10 neighborhood?

11 A. I patrol a lot of the majority of West
12 Ashley. I'm in and out of the area occasionally.

13 Q. Has it happened to you in particular to
14 drive by a group of youth in that neighborhood and
15 have them yell out to you?

16 A. That has happened.

17 Q. And they are not yelling nice things,
18 are they?

19 A. Not all the time.

20 Q. Okay. I mean, do they ever yell out,
21 have a nice day?

22 A. I can't say for sure. I don't record
23 every encounter we have.

24 Q. Okay. Do you guys have the body
25 cameras now?

CHRISTOPHER MALINOWSKI - CROSS EXAM BY MR. MAYER

1 A. Yes, sir, we do. Well, some officers
2 do.

3 Q. And that's just recent, right?

4 A. Yes, sir.

5 Q. You didn't have those two years ago?

6 A. No, sir, we did not.

7 Q. Do you know how many times an officer
8 has stopped Valentino Hayward while he was walking
9 through that neighborhood?

10 A. No, sir, I do not.

11 Q. Would you be surprised to learn it's
12 more than a dozen times?

13 A. Again, that's not my main area so I
14 couldn't say if I would be surprised or not.

15 Q. Do you recall whether you in particular
16 have ever stopped Mr. Hayward while walking down
17 the road?

18 A. I don't recall.

19 Q. Would that be -- would stopping a youth
20 who is walking down the road, not actively breaking
21 the law, would that be the way that your team would
22 try to spot crime before it happens?

23 A. There's a number of different ways that
24 we approach citizens.

25 Q. And so one of them would be to stop a

1 youth that may look suspicious to you and frisk
2 them for weapons or drugs, correct?

3 A. It would all depend on the
4 circumstances.

5 Q. Have you personally done that?

6 A. What is that?

7 Q. Stopped a youth and frisked them for
8 weapons and drugs.

9 A. It would depend on the circumstances of
10 why I was speaking to them.

11 Q. Okay. Were you involved in
12 investigating the crime scene at all beyond
13 establishing the perimeter?

14 A. The only -- once the crime scene is
15 established, our crime scene technicians would then
16 do the investigation of the crime scene. It's my
17 job to establish the perimeter and hold the
18 perimeter as is.

19 Q. Were you involved in any searches that
20 were done for any sort of evidence, a line search
21 or any other type of search in that geographical
22 area?

23 A. We also walked the area.

24 Q. Did you guys search in the canal?

25 A. I don't recall.

1 Q. You personally didn't search in the
2 canal?

3 A. I don't believe I did.

4 Q. You didn't get wet?

5 A. No, sir, I did not get wet in the
6 water.

7 MR. MAYER: Court's indulgence?

8 THE COURT: Uh-huh.

9 MR. MAYER: Thank you.

10 THE COURT: Any redirect?

11 MS. MULKEY: Briefly, Your Honor.

12 THE COURT: You may proceed.

13 REDIRECT EXAMINATION

14 BY MS. MULKEY:

15 Q. You testified that you were on the
16 community action team?

17 A. I do not personally work on the
18 community action team. We have a community action
19 team devoted to that area.

20 Q. I apologize for that. What is the
21 purpose of the community action team?

22 A. The community action team focuses on
23 areas that have a large call for service, they work
24 on keeping a good relationship with the community,
25 they do a lot of events that involve youth in the

1 area and police relations with them.

2 Q. And that should bring the police and
3 community together, correct?

4 A. Yes.

5 Q. You said that there are frequent calls
6 to that area -- that neighborhood, Ardmore?

7 A. Yes.

8 Q. And do you also receive calls and tips
9 and information to assist in police investigations
10 from residents in that area?

11 A. Yes.

12 Q. So is it fair to say that not all the
13 calls are bad that are from that area?

14 A. No.

15 Q. You testified that you met Charles
16 Rodwell?

17 A. Yes, ma'am, I did.

18 Q. He lives in that neighborhood?

19 A. Yes, ma'am.

20 Q. Could you describe your interaction
21 with Mr. Rodwell?

22 A. On that date?

23 Q. Uh-huh.

24 A. When I was pushing the group -- not
25 pushing, moving the group back in order to form the

1 perimeter, I asked if anybody had been associated
2 with the victim since the incident occurred. And
3 Mr. Rodwell had told me that he was there, he was
4 checking the pulse and trying to help in any way
5 that he could.

6 Q. Nice guy, right?

7 A. Yes, ma'am.

8 Q. Cooperative with law enforcement?

9 A. Yes, ma'am.

10 Q. And you responded that evening because
11 you received information from dispatch, correct?

12 A. Yes, ma'am, I did.

13 Q. The information you received from
14 dispatch, was that, that a resident in the
15 neighborhood was calling in reference to help for a
16 shooting?

17 A. I don't recall.

18 MS. MULKEY: Court's indulgence?

19 THE COURT: Uh-huh.

20 MS. MULKEY: No further questions.

21 THE COURT: Any objection to the
22 witness being excused? From the State?

23 MS. MULKEY: None from the State.

24 THE COURT: From the defense?

25 MR. MAYER: No, Judge.

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 THE COURT: Sir, you're excused.

2 THE WITNESS: Thank you.

3 THE COURT: You're welcome.

4 Call the next witness.

5 MR. SIMPSON: Thank you. The State
6 calls Latoya Carson.

7 MR. SIMPSON: Your Honor, may we
8 approach?

9 THE COURT: Yes.

10 (Bench conference was had; following
11 proceedings held in open court.)

12 MS. MULKEY: Thank you.

13 THE CLERK: Ms. Carson, up here,
14 please.

15 LATOYA CARSON,
16 being first duly sworn, testified as follows:

17 THE CLERK: Be seated. Come up and
18 speak into this microphone. Get kind of close.
19 State your full name and spell your last.

20 THE WITNESS: Latoya Carson,
21 C-A-R-S-O-N.

22 THE COURT: You may proceed.

23 MR. SIMPSON: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. Ms. Carson, good morning.

3 A. Good morning.

4 Q. How are you today?

5 A. Fine.

6 Q. Doing okay? You know what events you
7 are here today to talk about; is that correct?

8 A. Yes, sir.

9 Q. I want to start by asking you a couple
10 of questions about you. Where do you live?

11 A. Leeds Avenue.

12 Q. Currently -- are you from Charleston?

13 A. Yeah.

14 Q. Okay. And what part of Charleston are
15 you from?

16 A. North Charleston.

17 Q. Okay. Lived there most of your life?

18 A. Yeah.

19 Q. Prior to your current situation, which
20 we'll talk about, did you have a job?

21 A. Yeah.

22 Q. Where are some places that you've
23 worked?

24 A. Housekeeping.

25 Q. I want to ask you now and I'm not

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 trying to make this hard on you, but I want to ask
2 you about Deontre Miles.

3 A. Right.

4 Q. What did you call Deontre?

5 A. Associate, friend.

6 Q. What name did you call him?

7 A. Chucky.

8 Q. And explain to the jury, if you would,
9 a little bit about your relationship. How did you
10 meet Chucky?

11 A. Facebook.

12 Q. Facebook? What was Chucky like?

13 A. He was a nice dude.

14 Q. Nice guy?

15 A. Yeah.

16 Q. How long did you know him before he
17 became deceased?

18 A. About seven months.

19 Q. Seven months?

20 A. Yeah.

21 Q. In the course of that seven months, did
22 he ever make you angry about anything?

23 A. No.

24 Q. Did you guys ever have any arguments or
25 anything?

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 A. No.

2 Q. You kind of laughed there. Was Chucky
3 an argumentative type of person?

4 A. No.

5 Q. Was he a pretty funny dude?

6 A. Yes.

7 Q. What kind of stuff did you and Chucky
8 do together?

9 A. He'd just take me places and stuff, go
10 out to eat and stuff.

11 Q. Was it a romantic relationship?

12 A. No.

13 Q. When you would go out to eat and
14 everything, did you all ever fuss and fight over
15 anything?

16 A. No.

17 Q. Would you cut up?

18 A. No. We didn't have that kind of
19 relationship.

20 Q. Oh, no, cut up, I mean -- sorry.
21 That's probably an old guy term. Would you laugh
22 together?

23 A. Yeah.

24 Q. Any animosity between you guys
25 whatsoever?

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 A. No.

2 Q. Did you like Chucky?

3 A. Yeah.

4 Q. A couple of other questions about
5 Chucky. We've talked before about this; is that
6 correct?

7 A. Right.

8 Q. Okay. Just as you remember from your
9 seven months of knowing him, what was Chucky trying
10 to do with his life at this time?

11 A. Change it.

12 Q. Change it?

13 A. Yeah.

14 Q. And what do you mean? Can you go into
15 that a little bit?

16 A. He just was always saying he was
17 changing his life around and doing stuff different.
18 That's all.

19 Q. So did that mean -- what did that mean
20 to you? What was he changing? What was his life
21 like before?

22 A. I know he used to be selling drugs and
23 stuff. He was, like, I ain't be doing that no
24 more.

25 Q. And he talked to you about trying to

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 change that?

2 A. Yeah.

3 Q. Okay. I want to go now to December 11,
4 2013. Can you -- I'm just going to have you go
5 through the night, and I'm not being rude, but from
6 time to time I might have to slow you down and
7 interrupt you and ask you questions. Is that okay?

8 A. Okay.

9 Q. What did you do on December 11th during
10 the day, if you remember?

11 A. I can't remember what I was doing. I
12 just -- I can't remember what I was doing.

13 Q. Okay. During that day?

14 A. Yeah.

15 Q. Do you remember at some point talking
16 to Chucky?

17 A. Yeah.

18 Q. Do you remember about when that
19 happened?

20 A. Nighttime.

21 Q. Okay. And what happened? How did you
22 hear from him?

23 A. He had called my phone -- and I used to
24 have pain pills prescription. And he called my
25 phone and he was asking me for some pain pills.

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 And he said he was in Goose Creek. And I was like,
2 why don't you go to the gas station and get some
3 Tylenol. He's like, no, I want what you got. So
4 --

5 Q. You had prescription strength pain
6 medicine.

7 A. Yeah, Percocet.

8 Q. Okay.

9 A. He was saying he'd come get it away
10 from me. And I was like, all right. And we get
11 off the phone.

12 Q. So he called you?

13 A. Yeah.

14 Q. You didn't call him --

15 A. No.

16 Q. Okay. What happened after, did he come
17 to your house like he said?

18 A. He called me back a couple minutes
19 later and he be like, he was stopping to get
20 something to eat and then he's coming. Did I want
21 to ride with him to West Ashley.

22 Q. Okay. Did he tell you why he was going
23 to West Ashley?

24 A. No.

25 Q. He just wanted a companion to ride with

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 him?

2 A. Yeah.

3 Q. Let me ask you this: You said you
4 lived in North Charleston most of your life; is
5 that correct?

6 A. Yes.

7 Q. Are you familiar with the West Ashley
8 area?

9 A. No.

10 Q. Okay.

11 A. Just the hospital, the mall, and the
12 Gardens.

13 Q. Okay. So are you familiar with
14 anything called The Hole in West Ashley?

15 A. No.

16 Q. So if it were up to you where you were
17 going and what happened that night, would you have
18 ended up in The Hole?

19 A. No.

20 Q. Or in Ardmore?

21 A. No.

22 Q. So what did you say when Chucky asked
23 you if you would like to take a ride with him, just
24 to keep him company while he took a ride? What did
25 you say?

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 A. Yeah.

2 Q. Did you have -- did you probe him? Did
3 you ask him any questions about what he was up to?

4 A. No.

5 Q. Just keeping him company?

6 A. Yeah.

7 Q. So did he come to your house?

8 A. Yes.

9 Q. Picked you up?

10 A. Yeah. He called me and said he was
11 outside.

12 Q. Outside. How did your evening go from
13 there? You went and got in the car with him?

14 A. I get in the car.

15 Q. Okay.

16 A. Said, what's up? And he be driving and
17 I was on the phone.

18 Q. Did you have a phone that night?

19 A. Yes, sir.

20 Q. Did -- I'm not making fun of you -- you
21 like being on your phone?

22 A. Yeah, all the time.

23 Q. Okay. When you're on your phone, do
24 you like to communicate with people like online
25 through websites?

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 A. Yeah.

2 Q. And your phone back then, you just
3 played it out loud? How did you listen to it?

4 A. Had a little Bluetooth, look like
5 headphones. A little Bluetooth that plug in both
6 ears, right behind my neck.

7 Q. Okay. And plugged into both ears?

8 A. Uh-huh.

9 Q. So you hop in the car with Chucky,
10 you're on the phone while you're in the car with
11 him?

12 A. Yeah.

13 Q. And how does it go from there?

14 A. Well, we start -- he didn't get on 526
15 until the end when you get to West Ashley. And I
16 just remember -- like, I remember being on my phone
17 on Zello. I just remember when we get into West
18 Ashley, like, by the McDonald's I think, getting
19 off the interstate, if I'm not mistaken, I can't
20 remember, but he was asking me if I know how to get
21 to Ardmore. And I was like, no, I don't know
22 nothing about that.

23 Q. Did Chucky seem to know a whole lot
24 about West Ashley?

25 A. I don't know. I just remember he

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 didn't know how to get there.

2 Q. But you knew he didn't know where he
3 was going?

4 A. Yeah.

5 Q. Okay. So what happened then?

6 A. So I've been on the chat site, Zello,
7 and I wasn't paying attention. I just -- he had
8 called somebody and he asked them how to get there.
9 They gave him directions. He hang up the phone,
10 and then he must be getting lost again because I
11 remember looking up and him saying, man, you know
12 how to get to Pep Boys?

13 And I'm like, no, I told you I don't
14 know how to get there. So I get back on the -- I
15 finished with the phone, and he called somebody
16 back again to get directions.

17 Q. Okay. Now, this second time he gets
18 lost and calls to get directions, does he stay on
19 the phone with the person?

20 A. I can't remember if the second time --
21 I can't remember if it was the third time or not,
22 but I know at some point he asked them -- I think
23 he had called two times, and then he called a
24 person a third time, if I'm not mistaken, and he
25 had stayed on the phone and he directed him all the

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 way there.

2 Q. Okay. So at some point he gets on the
3 phone with this person and that person directs him
4 all the way?

5 A. Yeah.

6 Q. Okay. And where do you end up?

7 A. We end up by some apartments back in
8 the back, like in the back.

9 Q. Okay. When you get there, do you -- do
10 you park?

11 A. Yeah, he parked like in the back. And
12 I said, why you parking back here? It's dark. And
13 he said, I'll only be a minute.

14 MR. SIMPSON: Your Honor, may I
15 approach the evidence table?

16 THE COURT: You may.

17 BY MR. SIMPSON:

18 Q. Latoya, I'm going to show you what was
19 previously entered into evidence as State's Exhibit
20 2. Do you recognize that area?

21 A. Yeah.

22 Q. Is that the area you were just
23 describing to the jury?

24 A. Yes.

25 Q. What kind of car were you -- whose car

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 were you driving? You said he came and got you?

2 A. Driving his car.

3 Q. Do you see the car that you-all were
4 in, in this photograph?

5 A. Yeah.

6 Q. And that's a touch screen. You can
7 circle and it will show up on there. Can you show
8 the jury the car?

9 A. I can't.

10 Q. I'm sorry.

11 MR. SIMPSON: Judge, may we remove her
12 handcuffs? I don't believe that --

13 THE COURT: I thought they were, I
14 apologize.

15 Counsel, approach for me.

16 Ms. Sarji, could you approach as well?

17 (Bench conference was had; following
18 proceedings were held in open court.)

19 THE COURT: Could you get Ms. Sarji a
20 chair?

21 MS. SARJI: I'm happy to stand.

22 THE COURT: I don't want you to do
23 that. Could you get one of these chairs right here
24 and set it behind her?

25 (The bailiff complies.)

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 THE COURT: Thank you. You may
2 proceed.

3 MR. SIMPSON: Thank you, Your Honor.

4 BY MR. SIMPSON:

5 Q. Ms. Carson, who is this sitting next to
6 you?

7 A. My attorney.

8 Q. Your attorney. And you're currently
9 incarcerated at Leeds Avenue; is that correct?

10 A. Yeah.

11 Q. When we took a break there, you've done
12 a circle. That's the vehicle -- Chucky's car that
13 you arrived in.

14 A. (Nodding head)

15 Q. Is that where you parked that you
16 previously described to the jury?

17 A. Yeah.

18 Q. Okay. Is that where Chucky being lost
19 was -- at least it was apparent to you, was
20 directed to?

21 A. Yeah.

22 Q. And who directed him there?

23 A. Whoever he was on the phone with, I
24 guess.

25 Q. Okay. Whoever he was on the phone

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 with?

2 A. Yeah.

3 Q. Okay. So you pulled into this spot,
4 right?

5 A. (Nodding head)

6 Q. You're in the passenger seat?

7 A. Yes.

8 Q. What are you doing when you get there?
9 Are you still on the phone?

10 A. Yeah. I still on Zello. I had just
11 stopped for a second --

12 THE COURT REPORTER: Say again. Slow
13 down and say that again.

14 THE WITNESS: I still been on this
15 little chat website, and I asked him, why you
16 parked back here, because it's dark? And he said,
17 I'm just going to be a second. And he was hanging
18 up his phone.

19 BY MR. SIMPSON:

20 Q. Okay. Let me -- let's slow down here.
21 What happened -- you're in the passenger seat?

22 A. Yeah.

23 Q. Does someone meet you there when you
24 pull in?

25 A. Where? At the --

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 Q. I don't mean you, but did someone --

2 A. When we pull out, I don't see nobody at
3 first. I don't see nobody. And so he was getting
4 out -- he hanged up the phone getting out there. I
5 see somebody was over me and I looked --

6 Q. Let me stop you. So Chucky does not
7 hang up that phone until as he's getting out of the
8 car?

9 A. Yeah.

10 Q. And you look where? You're in the
11 passenger seat, where do you look?

12 A. Like, over my shoulder.

13 Q. Okay. And do you see somebody?

14 A. Yeah. They're in the process of
15 turning and leaving the car.

16 Q. Okay. Let's just be right up front, do
17 you get a great look at this person's face?

18 A. No.

19 Q. Okay. Are you -- were you later asked
20 to ID an individual?

21 A. Yes.

22 Q. Were you able to do that?

23 A. No.

24 Q. Were you later up front with the police
25 about you not getting a great look at him?

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 A. Yeah. I never saw him. I saw the back
2 of him.

3 Q. Okay. But you -- do you recall -- you
4 say you do remember talking to the police?

5 A. Yeah.

6 Q. Do you recall giving them a
7 description, to the best of your ability, of the
8 person that came up to the car?

9 A. Yes.

10 Q. And what can you tell the jury -- what
11 can you tell the jury you remember, or you can say
12 about this person who came up?

13 A. He was like five, nine and he had short
14 dreads.

15 Q. Do you remember spending some time
16 telling the police about his hair?

17 A. Yeah.

18 Q. You just said short dreads. Tell us a
19 little bit more about what you meant by that.

20 A. He just had short dreads. I seen them
21 from the back; they was like neck length, they were
22 short.

23 Q. Was he a chunky guy or a slender guy?

24 A. Slim.

25 Q. And you told police that, that night?

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 A. Uh-huh.

2 Q. Was he a tall guy?

3 A. I remember five, nine or five, eight.

4 Q. To you, is that tall or short?

5 A. That's tall when you're at five, two.

6 Q. Oh, okay. That's fair. Okay. Do you
7 remember telling police in your view what the
8 person was wearing?

9 A. Yeah.

10 Q. And what did you tell them?

11 A. I couldn't tell -- I know it was a dark
12 color, I don't remember blue or black, but I know
13 it was like a long-sleeved dark-colored shirt, like
14 a thermal or a sweatshirt.

15 Q. So dark in color, you say it could be
16 dark blue, but it could be black?

17 A. Could be black, could be dark.

18 Q. Thermal-type shirt?

19 A. Yeah.

20 Q. And you described that to the police?

21 A. Yeah.

22 MR. SIMPSON: Your Honor, permission
23 to approach?

24 THE COURT: You may.

25 BY MR. SIMPSON:

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 Q. Ms. Carson, I'm showing you what's been
2 entered into evidence by consent as State's Exhibit
3 5. Do you recognize that photograph?

4 A. Yes.

5 Q. What is that a picture of?

6 A. The passenger side.

7 Q. Is that where you were sitting when the
8 events unfolded?

9 A. Yes.

10 Q. And this individual you saw walked up
11 where?

12 A. To the passenger side.

13 Q. Okay. Do you recall telling the police
14 that evening about anything he did when he was at
15 that side where they might want to take a look at?

16 A. Yes.

17 Q. What did you tell the police?

18 A. That he -- it was like he was about to
19 look in the car, and he liked touch the top over
20 the passenger door.

21 Q. Okay. Can you --

22 A. Just basically I felt somebody. He --
23 I don't know if he ever looked in the car because
24 -- I just could, like, feel the person over my
25 shoulder, and I looked up. By the time I looked,

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 he was leaning back and walking off. I really just
2 catch the side of him walking off.

3 Q. Can you tell the jury -- again, you can
4 circle that screen -- where you told the police he
5 touched the car?

6 A. Well, I never tell them that part
7 because I really can't say because he was outside
8 the car. I just know he had touched the top, like,
9 over the passenger door, like, somewhere up in that
10 area. (Indicating)

11 Q. Okay. But you do remember telling the
12 Charleston Police Department you think he may have
13 touched the door up in that general area?

14 A. Yeah.

15 Q. Okay. So I want to ask you a little
16 bit more about this app on the phone. What kind of
17 app is that?

18 A. Zello.

19 THE COURT: Could you spell that for
20 us, please?

21 THE WITNESS: Z-E-L-L-O.

22 THE COURT: Thank you.

23 BY MR. SIMPSON:

24 Q. While this is occurring -- you're just
25 along for the ride, right?

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 A. Yeah.

2 Q. Okay. Are you paying a lot of
3 attention -- you don't know why you're going there?

4 A. No.

5 Q. And at this time you have your
6 headphones on?

7 A. Yeah.

8 Q. Are you on the chat, the Zello?

9 A. Yes.

10 Q. Does that Zello have a time indication
11 on it?

12 A. Yeah. It's like every message you send
13 to the next person is recorded and timed, the
14 actual time.

15 Q. Okay. Does Chucky exit the car when
16 the person comes up?

17 A. Yes.

18 Q. What do the two individuals do once
19 they're both outside of the car?

20 A. They walk off, but I never looked to
21 see, like, where or nothing.

22 Q. What direction do they walk off?

23 A. Like, behind the car.

24 Q. Okay. After they -- you're not
25 watching them?

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 A. No.

2 Q. Okay. And after they leave to go
3 towards the rear of the car, what happens?

4 A. I was on the Zello thing, just
5 chatting.

6 Q. Do you have your earphones in?

7 A. Yes.

8 Q. Do you hear anything after they walk to
9 the back of the car?

10 A. Yeah. Like, a couple of minutes after
11 they moved from the car, he got shot.

12 Q. Okay. And that's, like -- you hear,
13 like, a pow?

14 A. Yes.

15 Q. Do you hear it clearly through your
16 headphones?

17 A. I could hear the pow, but not real --
18 it wasn't close, but I just heard the gunshot.

19 Q. Latoya, we've already talked a little
20 bit about this, and I don't mean any -- to be
21 insulting or anything, but where you've grown up
22 and in your experiences in life, if you hear a pow
23 or a bang, do you react instantly to it?

24 A. No.

25 Q. The way that you heard this sound, did

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 you think it was coming from -- did you think
2 someone had been hurt?

3 A. No.

4 Q. Okay. As time went by, did you begin
5 to think, to worry?

6 A. Yeah. Like, a minute or two had went
7 by and I just was, like, hey, I got to get off. I
8 told the person I was talking to, I got to get off
9 and call my friend because I'm not sure where he's
10 at.

11 Q. Okay. And what happened then?

12 A. I get off and I start calling Chucky's
13 phone. And I was sitting inside the car, but I
14 hear the phone ringing, and I know he get out of
15 the car with the phone.

16 Q. Okay.

17 A. But at this point it's so dark out
18 there, and I'm scared of the dark so I really
19 didn't want to get out of the car.

20 Q. Do you even know where you are at this
21 time?

22 A. No.

23 Q. Okay.

24 A. And a lady was coming out of her back
25 doorway, so I used that opportunity to get out of

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 the car and try calling again.

2 Q. Okay. What do you hear when you try to
3 call him?

4 A. The phone ringing louder. So it draw
5 my attention to look back across the street and he
6 be laying on the ground.

7 Q. When you saw your friend laying on the
8 ground, what did you do?

9 A. I, like, passed out, I passed out, and
10 I kind of screamed because I know the lady she
11 ended up coming to me. Only thing she -- only
12 thing I could say to her was, like, I think my
13 friend's get shoot dead over there.

14 Q. Did you go up to your friend?

15 A. Yeah.

16 Q. What did you do when you went up to
17 him?

18 A. Like, hey, lifted his head up. I was
19 calling his name, trying to get him up.

20 Q. You called his name and you lifted his
21 head up?

22 A. Uh-huh.

23 Q. Again, you stated you gave the police a
24 statement that night?

25 A. Yeah.

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 Q. Do you also recall saying that you held
2 his hand?

3 A. Yeah.

4 Q. While all of this is going on, and I
5 know that was a lot to handle, do you know if 911
6 was called?

7 A. Yeah.

8 Q. Do you remember talking to 911 on the
9 phone?

10 A. I mean, I don't really remember until
11 they had played the tape back for me and I
12 remember.

13 Q. You just mentioned -- did you listen to
14 the 911 call in this case?

15 A. Yeah.

16 Q. Is that you on that call?

17 A. Yes.

18 Q. Is that a fair and accurate sort of
19 representation of your demeanor when learning that
20 Chucky had been shot?

21 A. Yeah.

22 MR. SIMPSON: Your Honor, at this
23 point, the State would seek to admit State's
24 Exhibit 6, I believe, by consent.

25 MR. MAYER: No objection.

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 THE COURT: Marked and admitted
2 without objection, State's Exhibit 6.

3 (STATE EXH. 6 in evidence.)

4 MR. SIMPSON: Permission to publish to
5 the jury?

6 THE COURT: Yes.

7 BY MR. SIMPSON:

8 Q. Ms. Carson, while this is loading, do
9 you remember if you called 911 -- I know this was a
10 hectic time, but did you call it from your phone?

11 A. I can't remember. I know -- I can't
12 remember. I can't remember if I called from my
13 phone, but I know the lady who helped me, I don't
14 know her husband's name, called from their phone.

15 Q. Did you get on their phone too?

16 A. Yeah, I think so. I think so.

17 (Audio played.)

18 THE COURT: I need you to stop it. I
19 can't hear it.

20 Ladies and gentlemen, bear with us, we
21 need to deal with some technology issues.

22 (Audio played.)

23 BY MR. SIMPSON:

24 Q. Ms. Carson, is that you?

25 A. Yeah.

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 Q. Can you describe for the jury a little
2 bit about what your demeanor was, what you were
3 feeling? Were you upset?

4 A. Yeah.

5 Q. Were you crying?

6 A. Yeah.

7 Q. Were you shocked at what you'd just
8 witnessed?

9 A. Yeah.

10 Q. Did you -- when you were on the call,
11 or later to police, did you have some feelings of
12 guilt?

13 A. Yes.

14 Q. And what were those about?

15 A. Because I -- I wasn't paying attention.
16 Like, I wasn't paying attention because, like, he
17 didn't strike me as somebody that would happen to
18 so...

19 Q. Okay.

20 A. I just didn't pay attention.

21 Q. Were you sad about what happened to
22 Chucky?

23 A. Yes.

24 Q. Are you sad today about what happened
25 to Chucky?

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 A. Yeah.

2 Q. Did you run away from this area or stay
3 put?

4 A. I stayed.

5 Q. You stayed until the police got there?

6 A. Yeah.

7 Q. And did you speak with the police when
8 they got there?

9 A. Yes.

10 Q. On the scene?

11 A. No.

12 Q. On the scene at the time they arrived?

13 A. Yeah. They put me in a car.

14 Q. Okay. Did you give an interview to
15 them that night?

16 A. Yeah.

17 Q. Long night? Was it a long night for
18 you?

19 A. Yeah.

20 Q. How long did you talk to the police?

21 A. I don't know; it was, like, the early
22 hours of morning.

23 Q. It went into the early hours of the
24 morning?

25 A. Yeah.

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 Q. Did you stick with it though?

2 A. Yeah.

3 Q. Did you want to help Chucky?

4 A. Yeah.

5 Q. Did you tell them all that you knew and

6 do all that you could to help in any way you could?

7 A. Yes.

8 Q. Are you here today to do that same

9 thing?

10 A. Yeah.

11 Q. Did you like Chucky?

12 A. Yeah.

13 Q. Any animosity between you all

14 whatsoever?

15 A. No.

16 Q. Okay. I'm going ask a really important

17 direct question. Did you have a gun that night?

18 A. No.

19 Q. Did you wish to harm Chucky in any way

20 whatsoever?

21 A. No.

22 Q. Did you have anything to do -- and we

23 talked about you having some guilt about being

24 distracted on the phone, right? But other than

25 that, do you bear any responsibility whatsoever for

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 what happened?

2 A. No.

3 Q. Did you shoot Chucky that night?

4 A. No.

5 Q. Would you have any conceivable reason
6 to shoot Chucky that night?

7 A. No.

8 Q. Was your relationship friendly with
9 him?

10 A. Yeah.

11 Q. Ms. Carson, you've had some trouble
12 with the law in the past; is that correct?

13 A. Yeah.

14 Q. You do have criminal convictions; is
15 that correct?

16 A. Yeah.

17 Q. Some involve narcotics; is that true?

18 A. Yeah.

19 Q. You once received time served on an
20 assault charge; is that true?

21 A. Yes.

22 Q. You have a few magistrate-level
23 convictions for giving false information; is that
24 true?

25 A. Yeah.

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 Q. Can you tell the jury a little bit
2 about what that's all about?

3 A. I always have something going on so I
4 use my sister's name. I just always use her name.

5 Q. When we see that saying there, giving
6 false information, would you come into a setting
7 like this and take an oath and lie to somebody?

8 A. No.

9 Q. Would you use your sister's name more
10 like on a traffic incident or something like that?

11 A. Any time the police would stop me, I
12 would basically use her name.

13 Q. You're currently at Leeds Avenue?

14 A. Yeah.

15 Q. And what charge are you in there for?

16 A. Murder.

17 Q. Did more than one person get charged
18 with that?

19 A. Yeah.

20 Q. Okay. Is the other person a male?

21 A. Yeah.

22 Q. Did you -- involving that charge, did
23 you shoot anybody?

24 A. No.

25 Q. Have you ever in your life shot

LATOYA CARSON - DIRECT EXAM BY MR. SIMPSON

1 anybody?

2 A. No.

3 Q. Did you have any reason to shoot

4 Chucky? I ask you again.

5 A. No.

6 Q. Did you shoot Chucky?

7 A. No.

8 Q. To this day are you sad that he's no

9 longer with us?

10 A. Yeah.

11 Q. May I approach?

12 THE COURT: You may.

13 BY MR. SIMPSON:

14 Q. Ms. Carson, I'm showing you what was
15 marked for ID only, State's 41. Do you recognize
16 that person?

17 A. No.

18 Q. Have you ever seen that person before
19 in your life?

20 A. No.

21 Q. Did you see that person out there on
22 the night this occurred?

23 A. No.

24 MR. SIMPSON: Court's indulgence?

25 THE COURT: Yes, sir.

LATOYA CARSON - CROSS EXAM BY MR. MAYER

1 BY MR. SIMPSON:

2 Q. Ms. Carson, just briefly. Thank you.

3 Ms. Carson, there's a period of time happens
4 between when you hear the shot and when you get out
5 of the car, right?

6 A. Yeah.

7 Q. And when you first heard the pow or the
8 bang, we've asked you is that a noise where you
9 grew up that you hear frequently?

10 A. Yeah.

11 Q. Is that a noise that you react to right
12 off the bat?

13 A. No.

14 MR. SIMPSON: Ms. Carson, thank you.
15 Please answer any questions Mr. Mayer has for you.

16 THE COURT: You may proceed.

17 MR. MAYER: Thank you, Judge. May it
18 please the Court?

19 THE COURT: Yes, sir.

20 (COURT, Photograph, was marked for
21 identification.)

22 CROSS-EXAMINATION

23 BY MR. MAYER:

24 Q. Ms. Carson, did you give Chucky the
25 Percocet he was looking for?

LATOYA CARSON - CROSS EXAM BY MR. MAYER

1 A. No. I mean, I gave it to him, but he
2 didn't take it.

3 Q. Chucky -- at that time, you and him
4 used to get high together?

5 A. No, he didn't get high.

6 Q. And he used to sell drugs, to your
7 knowledge, right?

8 A. I mean, from him -- from what he
9 stated, yeah.

10 Q. And you had gone with him before when
11 he went to sell drugs, haven't you?

12 A. No.

13 Q. You hadn't had an argument with Chucky
14 before about -- you didn't want to go with him when
15 he went to sell drugs anymore?

16 A. No.

17 Q. This Zello thing that you were on, on
18 your phone, as I understand it you were recording
19 the conversation? You were recording yourself and
20 then sending that to someone and vice versa?

21 A. Yeah.

22 Q. And you said you weren't paying
23 attention to what Chucky was doing, right?

24 A. Yeah.

25 Q. But yet, your testimony is that he got

1 directions step by step?

2 A. Yeah.

3 Q. That's what you testified to, right?

4 A. Yeah.

5 Q. So you're saying both, that you weren't
6 paying attention and you were paying pretty close
7 attention?

8 A. I'm saying that we got lost twice and
9 he called on the phone to someone who was giving
10 him directions.

11 Q. Is there anybody else's word besides
12 yours that we could get to -- I mean, you say he
13 was getting directions. Is there anyone else that
14 -- was that recorded on your app or anything?

15 A. That's the only way he could get
16 directions because he didn't know where he was
17 going. So somebody had to be giving him
18 directions.

19 Q. And that wasn't you?

20 A. It was the person he called. No, I
21 don't know how to go to where we were going.

22 Q. Do you recall telling the police that
23 the person who walked up to the car had on a
24 short-sleeved shirt?

25 A. No.

LATOYA CARSON - CROSS EXAM BY MR. MAYER

1 Q. You told the police it was a dark
2 shirt, but you said it was short sleeved. You
3 don't recall doing that?

4 A. No.

5 Q. And you told police that whoever walked
6 up put their left hand on the car; do you recall
7 doing that?

8 A. I don't know exactly if I said which
9 hand it was. I just know that he walked up on the
10 passenger side and touched the car, like, and
11 leaned in.

12 Q. Okay. But the police took your
13 statement shortly after this happened?

14 A. Yeah.

15 Q. When your memory was a lot fresher?

16 A. Yeah. My memory was fresher, but I had
17 a lot of thoughts going through my head.

18 Q. But if you had said at the time it was
19 a left hand, there wouldn't be any reason to think
20 that was wrong?

21 MR. SIMPSON: May we approach?

22 (Bench conference was had; following
23 proceedings were held in open court.)

24 THE COURT: Objection is withdrawn, you
25 may proceed.

LATOYA CARSON - CROSS EXAM BY MR. MAYER

1 And before you can impeach the witness,
2 you need to ask the exact question and give her the
3 opportunity to admit or deny the statement to
4 establish that it is inconsistent.

5 BY MR. MAYER:

6 Q. The car that you say you were sitting
7 in at the time of this gunshot was a stone's throw
8 away from where Chucky's body was found, wasn't it?

9 A. Yeah.

10 Q. And your window of this car that you
11 say you were in at the time was down at the time,
12 right?

13 A. Yeah.

14 Q. And from your preparation, your memory,
15 about five minutes passed before you got out of the
16 car and went to investigate and see what was going
17 on?

18 A. Yeah. Before I got out of the car to
19 call his phone. Actually, it wasn't about five
20 minutes. We been out there about five minutes. It
21 was like three minutes that he been out there that
22 I heard the gunshot. It was actually maybe a
23 couple of minutes, maybe two, before I got out to
24 call his phone.

25 Q. So your testimony today is that it was

1 just a couple of minutes?

2 A. My testimony was, like -- was that it
3 was, like, five minutes that we were there, three
4 minutes that we was out there before I heard the
5 gunshot, and then a couple minutes after that I
6 start calling him to see --

7 Q. And at some point --

8 A. -- where he was.

9 Q. Okay. At some point when you were
10 being interviewed by the police, you and the
11 officer went through the details of these calls and
12 you guys came up with a time frame, right?

13 A. Yeah, because I didn't know exactly
14 what time. I couldn't give him any times, but by
15 me being on that chat site and it being
16 prerecorded, the time that I mentioned that I heard
17 the gunshot, it was all prerecorded. You could
18 play it back and hear it and see the time.

19 Q. Okay. When you -- when you did go over
20 to Chucky's body, you touched his head and his --
21 the body was laying on his back, face up, right?

22 A. It was almost like to the side, yeah.

23 Q. Okay. But, I mean, his back was
24 against the asphalt?

25 A. Yeah. And his head was like to the

LATOYA CARSON - CROSS EXAM BY MR. MAYER

1 side.

2 Q. His head was to the side?

3 A. Yeah.

4 Q. You didn't lift his body up?

5 A. No.

6 Q. Okay. Were you working at the time?

7 A. Yes.

8 Q. What kind of work were you doing at the
9 time?

10 A. Housekeeping.

11 Q. Did you have kids at the time?

12 A. Yeah.

13 Q. So why would you want to hang out with
14 Chucky? Sounds like you had better things to do.

15 A. He was just a friend.

16 Q. Did you testify earlier, I couldn't
17 hear you, you passed out after you saw him?

18 A. I kind of -- like, my body went numb.
19 I kind of, like, fell out. I didn't, like, pass
20 out, pass out. I kind of, like, fell to the ground
21 screaming.

22 Q. And you said somebody came and found
23 you, but you were still awake?

24 A. Yeah. It was a lady outside. I don't
25 know if that's where they do laundry behind there,

LATOYA CARSON - CROSS EXAM BY MR. MAYER

1 but I know she had a laundry basket. And she was
2 outside, so she heard the scream and she came to
3 me.

4 Q. So you didn't lose consciousness?

5 A. No.

6 Q. Tell the jury about this feeling of
7 guilt.

8 A. I wasn't paying attention. Normal
9 friends -- like, I've got a lot of friends that are
10 in the streets, and if I was with one of them
11 knowing that they're in the streets, I would have
12 watched them, but I ain't -- me and him didn't have
13 that kind of relationship as far as me knowing what
14 his walk of life, what he was doing, or what he was
15 involved in.

16 He wasn't no messed up friend. Like,
17 we hadn't even known each other that long for me to
18 feel like I gotta pay attention to every move that
19 he made or who he came to see.

20 And I really wasn't paying attention,
21 so I feel kind of guilty about that. I was right
22 there and I had the phone, like, right under my
23 nose, basically, and I couldn't see what happened.

24 Q. Now, this murder that you're currently
25 in jail for, that you're accused of, who was the

LATOYA CARSON - CROSS EXAM BY MR. MAYER

1 decedent in that case?

2 A. I invoke my right, the Fifth Amendment.
3 I don't want to talk about my case.

4 Q. Somebody named Happy, though, right?

5 THE COURT: She's invoked her right.

6 You need to move on to your next question.

7 BY MR. MAYER:

8 Q. Are you aware that that person was
9 Chucky's best friend?

10 A. I'm invoking my right. I don't want to
11 speak about my case.

12 Q. So on the night that this happened with
13 Chucky, isn't it true that on the way there it was
14 you who was giving him directions?

15 A. No.

16 Q. And it was you who was on the phone
17 setting up someone to meet you there?

18 A. No.

19 Q. And that's all because of some kind of
20 outside beef that you guys were involved in?

21 A. No.

22 Q. Somebody named Raphael Ward?

23 A. No.

24 Q. Raphael Ward being a friend of yours?

25 A. I don't even know who that is.

LATOYA CARSON - CROSS EXAM BY MR. MAYER

1 Q. So you've lied to the cops before and
2 you lied to them again on this night, didn't you?

3 A. No.

4 Q. But there's nobody else who can say
5 whether Chucky was getting directions from somebody
6 on the phone or getting directions from you?

7 A. No.

8 Q. We just have to take your word for it;
9 huh? Is that right?

10 A. I'm pretty sure his phone records show
11 who he been on the phone with and the calls were
12 made and placed to somebody within the time frame,
13 so his phone can say. I'm the only person that I
14 can say that I was in the car when he was on the
15 phone with somebody getting directions, yes.

16 MR. MAYER: Court's indulgence?

17 BY MR. MAYER:

18 Q. Do you recall giving a recorded
19 statement to the police?

20 A. I guess.

21 MR. MAYER: Okay. No further
22 questions.

23 THE COURT: Any redirect?

24 MR. SIMPSON: Thank you, Your Honor.

25 THE COURT: You may proceed.

1 REDIRECT EXAMINATION

2 BY MR. SIMPSON:

3 Q. Ms. Carson, again, who is the person
4 sitting behind you there?

5 A. My attorney.

6 Q. Okay. And you're facing some charges
7 right now?

8 A. Yes.

9 Q. You're presumed innocent of those
10 charges?

11 A. Yeah.

12 Q. Has she advised you that the best
13 course for you is not to discuss this other case?

14 A. Yes.

15 Q. You said you didn't immediately react
16 to hearing the sound of pop, the bang, because you
17 didn't think Chucky was that kind of guy. Is that
18 a fair assessment of what you just said? I don't
19 want to put words in your mouth. You're not
20 concerned with Chucky's every move. Why is that?

21 A. Because now -- he don't strike me as
22 the kind of person that somebody would want to
23 harm.

24 Q. And you said you know some people who
25 were, to use your terms, kind of on the street?

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 A. Yeah.

2 Q. Chucky wasn't?

3 A. I mean, I don't know the extent if he
4 was on the streets or not, but he just -- like, I
5 wasn't -- I ain't know him like that. I didn't
6 know him long enough to know -- our relationship
7 wasn't about what he did in the street, like.

8 We had a brief conversation once about
9 him getting caught with drugs and him trying to
10 change his life around; other than that, our
11 relationship when we was together was about me and
12 him doing things. It wasn't about no streets or
13 nothing like that. He just didn't appear like he
14 would get killed and somebody would kill him.

15 Q. Did you ever think in a million years
16 that something like this would happen while you
17 were with Chucky?

18 A. No.

19 Q. Was he the kind of guy that struck you
20 that, that would happen to?

21 A. The Chucky that I knew, I would never
22 think something like this would happen to him.

23 Q. Ms. Carson, we've already discussed
24 that you stayed there and spoke with the police,
25 correct?

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 A. Yeah.

2 Q. They took you down to the station?

3 A. Yeah.

4 Q. Did you give a statement to them that
5 night?

6 A. Yes.

7 Q. Did they tell you that, that was being
8 recorded while you were in the room giving it?

9 A. No.

10 Q. Would it surprise you to know that it
11 was?

12 A. No.

13 Q. You were asked a couple of interesting
14 questions regarding a -- you saying it was a short
15 sleeved, that seemed to confuse you?

16 A. I can't remember.

17 Q. Were you to view a clip of your video
18 interview that night regarding the shirt that you
19 were impeached with, would you be able to say
20 that's me, that's me talking to the police on that?

21 A. Yeah.

22 Q. And that's what I told them?

23 A. Yes.

24 MR. SIMPSON: Your Honor, at this time
25 the State would seek to admit a clip of

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 Ms. Carson's interview.

2 THE COURT: Approach.

3 (Bench conference was had; following
4 proceedings were held in open court.)

5 THE COURT: All right. Proceed.

6 MR. SIMPSON: Court's indulgence?

7 THE COURT: Uh-huh.

8 Madame Court Reporter, that will be
9 marked for ID only.

10 THE COURT REPORTER: Yes, Judge.

11 THE COURT: What number is that going
12 to be?

13 THE COURT REPORTER: Number 42.

14 MR. MAYER: Judge, can we take a quick
15 comfort break?

16 THE COURT: Madame Forelady, ladies and
17 gentlemen, we will take a brief restroom break.
18 Please do not discuss the case and leave your
19 notepads in your seats.

20 (Jury out, 11:29 a.m.)

21 THE COURT: We will be at ease.

22 Ma'am, do you need to go to the
23 restroom?

24 THE WITNESS: No, ma'am.

25 THE COURT: You can stand up if you

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 need to. Don't discuss your testimony with anyone
2 during the break.

3 (A recess transpired.)

4 THE COURT: State ready to proceed?

5 MR. SIMPSON: State is ready to
6 proceed.

7 THE COURT: Did you all check the
8 technology and make sure that it's working?

9 MR. SIMPSON: We're ready to go,
10 Judge.

11 THE COURT: Please bring in the jury.

12 Did you give the disk to the Court
13 Reporter to be marked for ID only? You don't have
14 to take it out. Just give her the jacket that it's
15 in so she could mark it.

16 MR. SIMPSON: Judge, I have discussed
17 with defense counsel, this disk contains several
18 video clips I thought I might need, so I will have
19 to -- I'm only going into one. I will, with
20 consent, change -- make sure that the jury --
21 there's a version just with the clip I use on it.

22 THE COURT: Perfect.

23 MR. SIMPSON: I'll address that later.

24 THE COURT: So then we'll mark that one
25 as a Court's Exhibit since it's the full one, and

1 then the redacted one will be marked as a State's
2 Exhibit without objection.

3 (COURT EXH. 3, CD, was marked for
4 identification.)

5 THE COURT: Mr. Mayer, I assume you've
6 worked out the portion that you wanted to play?

7 MR. MAYER: Yeah, but, Judge, as Mr.
8 Simpson reminded me, this is one where both
9 parties' copies of the video, the audio is
10 terrible. And we -- Mike was kind enough to set up
11 a demo for me; we weren't able to hear anything
12 through the Court's system speakers.

13 So I know that I've heard this video
14 before because I have notes from May of 2014 when I
15 did hear it. I just need to figure out some
16 provision to get it so the courtroom can hear it.

17 THE COURT: Are you telling me you
18 can't hear what you're about to play?

19 MR. SIMPSON: We can hear ours. There
20 were two interviews given. In the second copy the
21 audio screwed up on both, the State and the
22 defense. We gave up on it. If you cut it all the
23 way up and put your ear to it, you can faintly hear
24 it.

25 I would propose, as we did at the

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 bench, that at whatever time Aaron can work out a
2 way to get to the audio, I will just consent to
3 having it entered at that time. Maybe over the
4 lunch break.

5 MR. MAYER: That would be great. I'm
6 just concerned then as to what they're about to
7 play.

8 MR. SIMPSON: We're about to play a
9 clip where she describes the person that approached
10 the car wearing a black long-sleeved shirt.

11 THE COURT: And I assume there is no
12 objection.

13 MR. MAYER: I don't think I have any --

14 THE COURT: Well, I don't need you to
15 backtrack. Based on what you told me at the bench,
16 you told me you didn't object.

17 MR. MAYER: Judge, I don't object.

18 THE COURT: All right. Are we ready?
19 State ready?

20 MR. SIMPSON: Yes, Your Honor.

21 THE COURT: Defense ready?

22 MR. MAYER: Yes, Judge.

23 THE COURT: Bring in the jury, please.

24 (Jury in, 11:58 a.m.)

25 THE COURT: We will resume testimony.

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 You may proceed.

2 MR. SIMPSON: Thank you, Your Honor.

3 BY MR. SIMPSON:

4 Q. Ms. Carson, you were asked on cross
5 about the description of the shirt, and you said
6 you remember giving an interview to police?

7 A. Yeah.

8 Q. I direct your attention to the screen
9 behind you.

10 (Video played)

11 Q. (BY MR. SIMPSON) Ms. Carson, is that an
12 accurate copy of the portion of the interview you
13 gave the police?

14 A. Yeah.

15 Q. On direct you described the shirt how?

16 A. Black, either like a thermal or
17 long-sleeved, like a cotton T-shirt.

18 MR. SIMPSON: Court's indulgence?

19 THE COURT: Yes, sir.

20 MR. SIMPSON: Thank you, Ms. Carson.
21 Please answer any questions Mr. Mayer has.

22 THE COURT: You may proceed.

23 RECROSS-EXAMINATION

24 BY MR. MAYER:

25 Q. Ms. Carson, do you know the date that

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 that interview was done?

2 A. No.

3 Q. Fair to say it was right after the
4 incident?

5 A. Yes.

6 Q. Okay. And you went in back to the
7 police station a couple weeks later, after
8 Christmas, and did another interview, correct?

9 A. Yeah.

10 Q. Okay. And it wouldn't surprise you to
11 learn that that interview was also recorded, right?

12 A. Yeah.

13 (Discussion between attorneys.)

14 MR. MAYER: Judge, can we approach?

15 THE COURT: You may.

16 (Bench conference was had; following
17 proceedings were had in open court.)

18 THE COURT: Proceed.

19 BY MR. MAYER:

20 Q. Ms. Carson, in the December 27th
21 interview that you did later on, not the one that
22 we just saw, do you recall that at about the
23 33-minute mark of that interview you stated that
24 the person that came to the car put his left hand
25 on top of the car door?

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 A. I can't remember.

2 Q. Do you recall saying that it was a very
3 dark area?

4 A. Yeah.

5 Q. Do you recall saying that it was a
6 black T-shirt or some other dark-colored T-shirt
7 for sure?

8 A. Yeah.

9 Q. And T-shirt would imply that it's
10 short-sleeved, right?

11 A. No.

12 Q. But it definitely wasn't a white
13 T-shirt?

14 A. No.

15 MR. MAYER: Judge, may we approach?

16 THE COURT: You may.

17 (Bench conference was had, following
18 proceedings were had in open court.)

19 THE COURT: Madame Forelady, ladies and
20 gentlemen, if you would please indulgence us, we
21 need to take a short break to take up some matters
22 of law. Please do not discuss the case and please
23 leave your notepads in your seats. If you would go
24 with the bailiffs, please.

25 (Jury out, 12:07 p.m.)

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 THE COURT: You need to find some
2 earplugs, or whatever it is you need to do, to give
3 her the opportunity to listen to her statement to
4 refresh her memory.

5 MR. MAYER: Thank you, Judge.

6 (A recess transpired.)

7 MR. SIMPSON: I have indicated to
8 Defense Counsel that if at any time he can overcome
9 this hurdle, I will consent to the publication of
10 the clip that he's seeking to the jury. I'm fine
11 with it. I just don't think it --

12 THE COURT: If you will agree -- I
13 don't have a dog in the fight.

14 MR. SIMPSON: To just the clip
15 addressing the shirt.

16 MR. MAYER: Exactly.

17 THE COURT: So what do we need to do?
18 Does she need to refresh her memory?

19 MR. MAYER: I think I'm through with
20 this witness.

21 MR. SIMPSON: As is the State.

22 THE COURT: All right. Bring in the
23 jury, please.

24 Who is the State's next witness?

25 MR. SIMPSON: The former detective

LATOYA CARSON - REDIRECT EXAM BY MR. SIMPSON

1 David Osborne, Your Honor.

2 (Jury in, 12:29 p.m.)

3 THE COURT: The disk needs to be given
4 to the Court Reporter to be marked for ID only.

5 THE BAILIFF: Jurors are all present.

6 THE COURT: Mr. Mayer, you may proceed.

7 MR. MAYER: Judge, we have nothing
8 further for this witness.

9 THE COURT: Anything further from the
10 State?

11 MR. SIMPSON: No, Your Honor.

12 THE COURT: Any objection to the
13 witness being excused? From the State?

14 MR. SIMPSON: No, Your Honor.

15 THE COURT: From the defense?

16 MR. MAYER: No, Judge.

17 THE COURT: Ma'am, you're excused.
18 Call your next witness.

19 MR. SIMPSON: The State calls former
20 Detective David Osborne.

21 DAVID OSBORNE,
22 being first duly sworn, testified as follows:

23 THE CLERK: Please state your full name
24 and spell your last.

25 THE WITNESS: David Osborne

DAVID OSBORNE - DIRECT EXAM BY MR. SIMPSON

1 O-S-B-O-R-N-E.

2 THE COURT: You may proceed.

3 MR. SIMPSON: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. Mr. Osborne, where are you currently
7 employed?

8 A. I work for the Charleston County
9 Solicitor's Office, for Scarlett Wilson.

10 Q. In what capacity?

11 A. I'm an assistance solicitor or
12 prosecutor.

13 Q. You and I are coworkers now?

14 A. That's correct.

15 Q. When did you begin as a prosecutor?

16 A. Almost two years ago.

17 Q. Okay. Let's backtrack way far back.
18 What was your profession prior to going to law
19 school and obtaining a law degree?

20 A. I was a police officer. I started
21 working for the New Orleans Police Department. I
22 worked there about five years. I then came back
23 home to Charleston. I worked for the Charleston
24 Police Department for over 11 years.

25 Q. And what was your position at the

1 Charleston Police Department?

2 A. I started off in patrol. I worked in
3 West Ashley mostly for a couple of years. I was
4 then a robbery detective for about two years. I
5 was then a homicide detective for several years,
6 and then before I left I was a detective sergeant
7 in charge of the homicide unit.

8 Q. And detective sergeant, is that a
9 supervisory role?

10 A. It is.

11 Q. And what department unit did you say
12 you were supervising at that time?

13 A. It was actually called the Violent
14 Crimes Unit, but we worked homicide and violent
15 crimes and I was the supervisor of that unit.

16 Q. Okay. We are here -- when did you go
17 to law school? What was your job while you were in
18 law school?

19 A. I was the detective sergeant in charge
20 of the homicide unit while I was in law school.

21 Q. And during that time period, you
22 managed to go to school at night and obtain your
23 law degree?

24 A. I did.

25 Q. And following that -- did you pass the

1 bar?

2 A. I did.

3 Q. And following that, did you come to
4 work for our office?

5 A. Yes.

6 Q. In that supervisory role, was that your
7 position in December of 2013?

8 A. It was.

9 Q. And in December of 2013, did you come
10 to be involved in this case?

11 A. I did.

12 Q. And on December 11th of 2013, how did
13 that involvement come to be?

14 A. I was off, I got a phone call stating
15 that we'd had a shooting in the Ardmore
16 subdivision, it was possibly going to end up being
17 a murder. I responded to the scene. While on the
18 way, I started trying to figure out what our
19 personnel was like, manpower issues, who we would
20 need to call out to help with the investigation.

21 Q. And so you did go to the scene that
22 night?

23 A. I did.

24 Q. And, again, you were the supervisor.
25 You were sort of running the investigative wing of

1 this investigation at the time?

2 A. Yes.

3 Q. Were you -- in your role as a
4 supervisor, were you briefed or apprised of the
5 statements given by Latoya Carson?

6 A. Yes, I was.

7 Q. And where -- as an investigator, where
8 did that information lead you?

9 A. It was my understanding when I got
10 there that Latoya was with the victim. The victim
11 had -- was speaking on the phone prior to the
12 murder. The person that he was speaking to was
13 directing him, giving him turn-by-turn directions
14 to a location that he would end up being shot and
15 killed.

16 So my main focus at that point was to
17 try to identify the number, then the person, that
18 the victim was speaking to just prior to his death.

19 Q. Okay. And how did you go about sort of
20 investigating that avenue?

21 A. The first thing we did was to take the
22 victim's phone, which he still had in his hand when
23 he passed away, then give that phone to our digital
24 evidence unit and they would try to download the
25 information from the phone.

DAVID OSBORNE - DIRECT EXAM BY MR. SIMPSON

1 Unfortunately, in this case, his phone
2 wasn't compatible to the software that would allow
3 us to do that.

4 Q. So where did you go from there?

5 A. So I went to the digital evidence unit
6 and actually retrieved the phone. I brought the
7 phone back to the station and manually went through
8 the phone myself and copied down every single
9 number that was in the call log.

10 MR. SIMPSON: And, Your Honor, may I
11 approach the witness?

12 THE COURT: You may.

13 BY MR. SIMPSON:

14 Q. Detective Osborne, let me backtrack a
15 little bit here. Okay. You stated when you were
16 giving us your history you spent some time working
17 in the West Ashley area.

18 A. I did.

19 Q. Are you familiar with that area?

20 A. Yes.

21 Q. Are you familiar with the Ardmore
22 subdivision in West Ashley?

23 A. Yes.

24 Q. I'm showing you what's been marked and
25 entered as State's Exhibit 7. Do you recognize

1 that exhibit?

2 A. I do.

3 Q. And you're able to mark on the screen
4 there in front of you. What is the main
5 thoroughfare of West Ashley?

6 A. Highway 17 and Highway 61.

7 Q. Do you see a little bit of 17 in that
8 exhibit?

9 A. I do. Here's 17 right here.

10 (Indicating)

11 Q. And I think you see a little of 61.
12 Can you see that up here?

13 A. Yeah. Right up here. (Indicating)

14 Q. Okay. And so what is the area that we
15 refer to when we say the Ardmore subdivision?

16 A. Do you want me to outline it?

17 Q. Sure.

18 A. Generally speaking, you would find
19 Ardmore to be this area right here. (Indicating)
20 And just for reference, this would be the
21 Bessinger's right here.

22 Q. You worked this area for a long time?

23 A. I worked West Ashley two years, yeah.

24 Q. Is Ardmore sort of a place that you
25 came to respond to quite a bit during this time?

DAVID OSBORNE - DIRECT EXAM BY MR. SIMPSON

1 A. Yes.

2 Q. Okay. Are you familiar with the
3 certain part of Ardmore referred to as The Hole?

4 A. I am.

5 Q. And where is that on that area?

6 A. It's generally referred to as the dead
7 end of Sequoia Street, The Hole.

8 Q. And is that a dead end that ends at the
9 end of the road?

10 A. Yes.

11 Q. Are you familiar in your time on the
12 force in this area with the Saint Andrews Gardens
13 apartments?

14 A. I am.

15 Q. Where is that on the map?

16 A. All right. Let me see here. In this
17 area right here. (Indicating)

18 Q. The circle?

19 A. This whole area in and out, and you
20 come right out.

21 Q. Okay. And Saint Andrews Gardens, does
22 that ever have, like, a -- referred to -- have you
23 ever heard it referred to by another name?

24 A. SAG, S-A-G, Saint Andrews Gardens.

25 Q. SAG, S-A-G?

DAVID OSBORNE - DIRECT EXAM BY MR. SIMPSON

1 A. Uh-huh.

2 MR. SIMPSON: Okay. May I approach
3 the witness?

4 THE COURT: You may.

5 BY MR. SIMPSON:

6 Q. Detective Osborne, I'm handing you
7 what's been marked as State's 9 and 10. Can you
8 review those items?

9 A. Yes.

10 Q. Do you recognize them?

11 A. I do.

12 Q. And what are those items?

13 A. State's 9 is a photograph of the victim
14 while still on the scene depicting his legs and his
15 hand. State's 10 is a closer photograph of the
16 victim's hand showing him still holding the phone.

17 MR. SIMPSON: At this point, the State
18 would seek to admit --

19 THE COURT: It's already been
20 admitted. Nine was admitted. Is there any
21 exception to number 10? Mr. Mayer?

22 MR. MAYER: I'm looking, Judge. It's
23 just duplicative.

24 THE COURT: I need to see them so I
25 can make a decision. Overruled. Nine is already

DAVID OSBORNE - DIRECT EXAM BY MR. SIMPSON

1 admitted, 10 will be admitted subject to the
2 objection.

3 The Court finds it is relevant and
4 probative.

5 (STATE EXH. 10 in evidence.)

6 BY MR. SIMPSON:

7 Q. If we could -- and I apologize for
8 jumping around on you --

9 THE COURT: I apologize. It's not in
10 any way prejudicial. You may proceed.

11 BY MR. SIMPSON:

12 Q. So if we could get back to your
13 investigation of the case. You said that you were
14 interested particularly in one piece of evidence.
15 And what was that?

16 A. At that point I was interested in
17 identifying the last phone number or the last
18 person that the victim spoke to.

19 Q. And that led you to the victim's phone?

20 A. Yes.

21 Q. And where was that recovered?

22 A. From his hand.

23 Q. I'm showing you State's 9. What is
24 that object in the victim's left hand?

25 A. That's his cell phone.

DAVID OSBORNE - DIRECT EXAM BY MR. SIMPSON

1 Q. States 10?

2 A. A closer up view of the victim
3 clutching his cell phone.

4 Q. So if you could repeat, you started
5 with the digital forensic unit?

6 A. That's correct.

7 Q. Why were they unable to process that
8 particular phone?

9 A. There are some phones that just aren't
10 compatible with downloading that software and that
11 particular model wasn't compatible.

12 Q. So you went directly to the phone; is
13 that correct?

14 A. Yes.

15 Q. And what did that reveal to you?

16 A. There was a phone call, it was the last
17 phone call on the victim's phone. It was a call
18 that lasted over 11 minutes, and that seemed
19 consistent with what Latoya had said, that her
20 boyfriend was on the phone -- or the victim was on
21 the phone for several minutes prior to the murder.

22 Q. That phone call, was it assigned a
23 contact name in that phone?

24 A. It was.

25 Q. And what contact name?

DAVID OSBORNE - DIRECT EXAM BY MR. SIMPSON

1 A. The contact name was Tino.

2 Q. In your experience with the Ardmore
3 area, did the name Tino have any meaning to you?

4 A. Yes, it did.

5 Q. Did you know of an individual named
6 Tino that lived in that area?

7 A. I did.

8 Q. Near the location of the body?

9 A. It was right around the corner.

10 Q. I'm showing you what's been marked as
11 State's 1, marked and entered. Do you recognize
12 this area?

13 A. I do.

14 Q. What area is that?

15 A. This is The Hole.

16 Q. And you were at the scene that night?

17 A. I was.

18 Q. Can you mark on the screen the
19 approximate location where the victim's body was
20 located?

21 A. I believe it was over in this area.
22 (Indicating)

23 Q. And do you recall what vehicle the
24 victim and Ms. Carson arrived in?

25 A. I don't recall the vehicle. I recall

1 where it was parked.

2 Q. Okay. Could you indicate that on
3 there?

4 A. It was my recollection that the vehicle
5 was parked on this side of the road. (Indicating)

6 Q. And this individual that you know as
7 Tino, where was his address?

8 A. Tino lived at [REDACTED] And this
9 is Evergreen here. (Marking) It's hard to tell
10 from this picture, but I believe his house may be
11 right here actually. It's either here or here.

12 Q. You said the contact number -- of that
13 call in the phone the contact was Tino?

14 A. That's correct.

15 Q. Was it also assigned a number?

16 A. It was.

17 Q. Okay. Did you -- just based on the
18 name -- did your investigation stop there?

19 A. No.

20 Q. And how did you proceed on this issue?

21 A. I took the number, I ran it through a
22 phone number database, and it came back to
23 Valentino Hayward, the same individual that I knew
24 as Tino.

25 Q. Detective Osborne, was there anything

DAVID OSBORNE - DIRECT EXAM BY MR. SIMPSON

1 else at this point in the investigation that led
2 you -- led to Valentino Hayward as a suspect?

3 A. Yes. His -- the description given by
4 Latoya Carson of the individual that the victim
5 walked off with was five-foot-seven. He was short,
6 five-foot-seven, five-foot-nine, a twist in his
7 hair, thin build. That was the same general
8 description as I knew of for Valentino Hayward.

9 Q. How did your team's investigation
10 continue from this point?

11 A. Well, at that point we were interested
12 in locating Mr. Hayward, so...

13 Q. Was that -- continue.

14 A. Well, so I contacted the CPD SWAT
15 commander or supervisor, then Sergeant Jason Bruder
16 and I asked him to try to locate Valentino.

17 Q. Did you have any direct involvement in
18 the locating and detention of Mr. Hayward?

19 A. No.

20 Q. That was assigned to whom?

21 A. The CPD SWAT Unit.

22 Q. Okay. Did you, nevertheless, come to
23 learn that Mr. Hayward had been detained?

24 A. I did. We -- well, they had a couple
25 of vehicles, a couple of addresses that they were

1 going to be looking for him. They ended up staking
2 out some of those addresses and they ended up
3 retaining him later that night.

4 Q. Later that night?

5 A. Or the next morning.

6 Q. Did you personally get a chance to view
7 or interact with Mr. Hayward the day following the
8 murder?

9 A. I briefly did. I had assigned the case
10 to Detective Sergeant Richard Holmes. While
11 Richard Holmes was responding to interview
12 Valentino, I briefly spoke to him in the CPD
13 interview room.

14 Q. You saw him that day?

15 A. I did.

16 Q. Was he arrested that day?

17 A. He was.

18 Q. And what happens to a person after
19 they're arrested? Where are they taken?

20 A. When an individual is placed under
21 arrest, we complete all the booking paperwork. We
22 then end up transporting him to the Charleston
23 County Detention Center or the Al Cannon Detention
24 Center.

25 Q. What happens there?

DAVID OSBORNE - DIRECT EXAM BY MR. SIMPSON

1 A. Once he's there, he's photographed and
2 fingerprinted.

3 MR. SIMPSON: Your Honor, may I
4 approach the witness?

5 THE COURT: You may.

6 BY MR. SIMPSON:

7 Q. Detective Osborne, I'm handing you
8 what's been marked as State's 11 and 12 for ID
9 only. Do you recognize those images?

10 A. I do.

11 Q. Are they a fair and accurate
12 depiction -- having seen Valentino Hayward on the
13 day of his arrest, is that a fair and accurate
14 depiction of his appearance on that day?

15 A. They are.

16 MR. SIMPSON: Your Honor, at this time
17 the State would seek to admit State's 11 and 12.

18 MR. MAYER: No objection.

19 THE COURT: Marked and admitted without
20 objection.

21 (STATE EXH. 11 in evidence.)

22 (STATE EXH. 12 in evidence.)

23 MR. SIMPSON: Thank you, Detective.
24 Please answer any questions Mr. Mayer has.

25 THE COURT: You may proceed.

1 CROSS-EXAMINATION

2 BY MR. MAYER:

3 Q. Detective Osborne, for this
4 investigation, you were in charge of the
5 investigation, correct?

6 A. No. I was in charge of the Violent
7 Crimes Unit. I thought this case was assigned to
8 Detective Richard Holmes, but it may have been
9 assigned to Detective Paul Krasowski.

10 Q. Would it indicate on the incident
11 report who the case was assigned to?

12 A. It may. I can't remember.

13 MR. MAYER: May I approach the witness,
14 Judge?

15 THE COURT: You may.

16 BY MR. MAYER:

17 Q. Does that refresh your memory at all?

18 A. Well, this does refresh my memory. It
19 doesn't help me answer your question.

20 Do you want me to explain what I mean?

21 Q. No. So at the time of this
22 investigation, Mr. Osborne, you think it was
23 Mr. Krasowski who was in charge of the
24 investigation?

25 A. I really can't recall at this point who

1 I assigned that case to. And a lot of times, just
2 so you understand, as a supervisor of the unit, I
3 might assign a case to an individual and he would
4 be the case agent, the detective. That could
5 change if we got bombarded by a lot of crime.
6 Maybe a specific detective might end up being --
7 just have too much going on where he can't handle
8 the case and I might have to reassign it to another
9 detective.

10 So I know that I asked
11 Detective Richard Holmes to do the interview. I
12 usually then assign it to them, but in this case I
13 just don't recall. We really work together as a
14 team more than anything else.

15 Q. If you didn't assign it to Mr. Holmes,
16 it would have been assigned to Krasowski?

17 A. I think so.

18 Q. Right. And in your role in -- the role
19 you were in at that time as being in charge of the
20 violent crimes and homicide division, did you also
21 supervise the narcotics division, or was that
22 separate?

23 A. That was separate.

24 Q. Okay. I'm going to show you what
25 Mr. Simpson showed you a few minutes ago entered as

1 State's 9. And I want to be clear here, from the
2 way the deceased body is positioned, there is red
3 stuff in this picture, but there is no blood; is
4 that correct?

5 A. I don't see any blood in this picture.

6 Q. I mean, anything red is something else,
7 a garment or something else, correct?

8 A. It looks like it, yeah.

9 Q. In policing the Ardmore area that you
10 testified you were familiar with, was it common to
11 stop and frisk people that were walking down the
12 street?

13 A. If you are going to stop and frisk
14 someone, then you would need reasonable suspicion
15 to do that. So, yeah, it wasn't uncommon. It's a
16 high drug area, lot of violence. If somebody is
17 acting suspicious, walking away from the police
18 car, then, yeah. It wasn't uncommon.

19 Q. And occasionally in searching people,
20 would you find more than one cell phone on them?

21 A. Two different questions. If I'm
22 frisking someone, I'm not searching them, but when
23 encountering someone in the Ardmore area in
24 particular, it wasn't all that uncommon, no.

25 Q. So it's -- it wouldn't be crazy to

DAVID OSBORNE - CROSS EXAM BY MR. MAYER

1 learn that somebody had not one cell phone, but
2 two?

3 A. No.

4 Q. Were you in charge of the officer that
5 made a cell phone recording of driving around the
6 Ardmore area?

7 A. Maybe. I'm not sure.

8 MR. SIMPSON: Objection, Your Honor.

9 THE COURT: Basis?

10 MR. SIMPSON: Relevance.

11 THE COURT: Sustained, subject to
12 connection.

13 BY MR. MAYER:

14 Q. Are you aware of any documentation or
15 video evidence that would document your old
16 agency's interactions with people in the Ardmore
17 neighborhood?

18 A. Are you talking about for this case or
19 in general?

20 Q. I'm just talking about in general --

21 MR. SIMPSON: Objection, Your Honor.

22 THE COURT: Basis?

23 MR. SIMPSON: Relevance. May we
24 approach?

25 THE COURT: You may.

1 (Bench conference was had; following
2 proceedings were had in open court.)

3 THE COURT: Sustained; speculation,
4 lack of foundation, relevance.

5 BY MR. MAYER:

6 Q. Mr. Osborne, you testified on direct
7 that you made some notes as you looked through the
8 decedent's cell phone; is that correct?

9 A. That's correct.

10 Q. Were those all entered -- any notes you
11 made, were those all entered into the supplemental
12 report?

13 A. Yes.

14 Q. And have you had an opportunity lately
15 to review the supplemental report?

16 A. I have.

17 Q. Did you review that in preparation for
18 your testimony today?

19 A. Yes.

20 Q. And in that -- in your notes then,
21 there were no noted missed calls, correct?

22 A. I didn't go through every call, but I
23 thought I did see some missed calls in there.

24 MR. MAYER: May I approach, Judge?

25 THE COURT: You may.

1 BY MR. MAYER:

2 Q. Mr. Osborne, I may be skimming over it,
3 but if you can find where you say that in your
4 notes.

5 A. No, it looks like you're right. There
6 were only calls made and calls received.

7 MR. MAYER: Court's indulgence?

8 THE COURT: Yes, sir.

9 BY MR. MAYER:

10 Q. Just to clarify, you weren't in charge
11 of collecting evidence at the scene, correct? I
12 mean, other than the cell phone?

13 A. That's correct.

14 Q. You didn't process Ms. Carson's hands,
15 for instance?

16 A. No.

17 Q. Okay. All right. Do you know if her
18 hands were process?

19 A. I don't recall.

20 MR. MAYER: Judge, no further
21 questions.

22 THE COURT: Any redirect?

23 MR. SIMPSON: Just briefly, Your
24 Honor.

25 REDIRECT EXAMINATION

1 BY MR. SIMPSON:

2 Q. To refer you back to the phone,
3 Detective Osborne. You were investigating an
4 active murder at that time?

5 A. That's correct.

6 Q. And you looked at the phone and with a
7 particular eye for one call?

8 A. That's correct.

9 Q. You write a supplemental report?

10 A. Right.

11 Q. And you note the other calls that you
12 saw?

13 A. Right.

14 Q. Several?

15 A. Yeah. There was like two pages full of
16 calls.

17 Q. Okay. You note those?

18 A. Yes.

19 Q. You're noting calls made and calls
20 received; is that correct?

21 A. Yes.

22 Q. But not paying attention to missed
23 calls on that?

24 A. No.

25 MR. SIMPSON: Okay. Nothing further,

1 Your Honor.

2 THE COURT: Any objection to the
3 witness being excused? From the State?

4 MR. SIMPSON: None, Your Honor.

5 THE COURT: From the defense?

6 MR. MAYER: No.

7 THE COURT: Mr. Osborne, you're
8 excused.

9 THE WITNESS: Thank you, Judge.

10 THE COURT: You're welcome.

11 Madame Forelady, ladies and gentlemen,
12 we are going to take advantage of this break to
13 take our lunch recess. During the break, please do
14 not discuss the case among yourselves or with
15 anyone else. Please don't have any contact with
16 anyone in or about the courthouse when you return
17 and please leave your notepads in your seats. We
18 will secure those during the break.

19 You will return at 2:15, and you will
20 come directly to your jury room. As soon as all of
21 you have arrived, we will resume testimony. I
22 would caution you that it might not be wise to move
23 your car from the garage. Charleston is always
24 tourist season, it is always difficult -- it may
25 seem that an hour and fifteen minutes is a long

1 time, but it really isn't.

2 By the time you have to go in and out
3 of the building, you're coming back at the height
4 of when everyone is returning to the building. In
5 my experience sometimes it can take 30 minutes to
6 get from the Meeting Street exit back down to the
7 courthouse, even under the best of circumstances.

8 We encountered some difficulty this
9 morning with people -- this is a very popular
10 garage, people utilize it, especially litigants for
11 court, and so we had some difficulty, I understand,
12 this morning with people parking in your spaces. I
13 don't anticipate that that will happen after lunch,
14 but I can tell you that sometimes getting back into
15 the garage can take a long time.

16 I would caution you to be cognizant of
17 your time because of those impediments, as well as
18 the local restaurants, they can get really packed,
19 especially since the weather is rebounding and
20 should be a little bit better this afternoon.

21 So we'll see you all at 2:15. Have a
22 good lunch. Please leave your notepads in your
23 seats.

24 (Jury out, 12:57 p.m.)

25 THE COURT: You may be seated.

1 Anything before we break for lunch, from the State?

2 MR. SIMPSON: Yes, Your Honor. Just
3 to update you on the progress of the issues we
4 discussed yesterday. We got in touch with the
5 records custodian for TMobile. She said --
6 obviously, they are a little wary of just sending
7 out things willy-nilly, so she gave us two options.

8 THE COURT: Probably need to send her
9 another subpoena.

10 MR. SIMPSON: She said she would be
11 happy to send it directly to you and you could send
12 it directly to Mr. Mayer, and Mr. Mayer said he was
13 comfortable with that. I can send it to Ivey's
14 e-mail.

15 THE COURT: That's perfect. You read
16 my mind.

17 Mr. Mayer, is that acceptable?

18 MR. MAYER: That's terrific.

19 THE COURT: Anything else we need to
20 take up before we break for lunch?

21 MR. SIMPSON: No, Your Honor.

22 MR. MAYER: No, Judge.

23 THE COURT: Have a good lunch. See you
24 at 2:15.

25 (A luncheon recess transpired.)

1 THE COURT: State ready to proceed?

2 MR. SIMPSON: Yes, Judge.

3 THE COURT: Defense ready to proceed?

4 MR. MAYER: Yes, Judge.

5 THE COURT: Who is your next witness?

6 MS. MULKEY: Jason Bruder.

7 (Jury in, 2:26 p.m.)

8 THE BAILIFF: Jurors are all present.

9 THE COURT: Ladies and gentlemen, I
10 hope you enjoyed your lunch recess. The State may
11 proceed.

12 MS. MULKEY: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 MS. MULKEY: The State would call
15 Lieutenant Jason Bruder.

16 JASON BRUDER,
17 being first duly sworn, testified as follows:

18 THE CLERK: Be seated. Please state
19 your full name and spell your last name for the
20 record.

21 THE WITNESS: Jason Bruder,
22 B-R-U-D-E-R.

23 THE COURT: You may proceed.

24 MS. MULKEY: Thank you. May it please
25 the Court?

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 THE COURT: Uh-huh.

2 DIRECT EXAMINATION

3 BY MS. MULKEY:

4 Q. Where are you employed?

5 A. City of Charles Police Department.

6 Q. And how long have you been with the
7 Charleston Police Department?

8 A. Thirteen years this past March.

9 Q. Can you please tell the jury what your
10 current rank and assignment is?

11 A. My current rank is lieutenant. That
12 means I command the patrol area of West Ashley,
13 Team Four.

14 Q. And have you worked in any other unit
15 during your tenure with the Charleston Police
16 Department?

17 A. Yes, ma'am.

18 Q. And what other units are those?

19 A. I started out in patrol downtown in
20 Team 1, which was back then in the area north of
21 Calhoun Street, just answering calls for service,
22 that type of thing. Proceeded there, worked in our
23 special investigations unit for a period of years
24 and then moved onto a temporary assignment where I
25 helped set up the computers for our department, and

1 then from there I was promoted to sergeant.

2 When I was sergeant, I supervised the
3 crime analysis unit, the crime intelligence unit,
4 and the field intelligence unit, and one of those
5 capabilities while there was supervising the camera
6 in the security room for the department.

7 Q. And can you tell the jury about your
8 background and education?

9 A. I have a computer science degree from
10 Clemson, a bachelor's and a master's in homeland
11 security management.

12 Q. And were you working for the Charleston
13 Police Department back on December 12th, 2013?

14 A. Yes, ma'am.

15 Q. And in what capacity were you working
16 on that day?

17 A. My assignment on that day was a
18 sergeant with the school security response team,
19 but I was called out that day as a member of the
20 SWAT Team where I was the sergeant and supervisor
21 on that team as well.

22 Q. And during the course of your duties
23 that day, did you become involved in the
24 investigation of Valentino Hayward?

25 A. Yes.

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 Q. Tell the jury how you became involved
2 and what your role was in that investigation.

3 A. On that morning, like I said, the SWAT
4 Team was called out. That's the Special Weapons
5 and Tactics Team. We were called out to assist in
6 the case, as we do primarily in a lot of
7 support-type roles. I was briefed by the
8 detectives on the case of the suspect in the case
9 and the possible location so where we can make an
10 arrest without anyone getting injured or hurt.

11 Q. In that briefing were you given an
12 address?

13 A. I believe we were given two different
14 addresses as our locations as a SWAT Team, one of
15 them being on Evergreen Street and one of them
16 being [REDACTED] Alway Street.

17 Q. And you mentioned this briefing.
18 During the briefing, is there a brief summary of
19 the investigation thus far?

20 A. Briefings can vary. On this particular
21 case it was pretty informal, as in warrants have
22 been secured for this target and we'd like to take
23 him into custody. And then the detectives brief us
24 on that and what outcomes they would like to have
25 on the back end once he is in custody as far as

1 where he's to be taken, whether that's straight to
2 jail or to an interview or things to do with the
3 house securing and that type of thing.

4 So we discussed the different
5 possibilities there depending on how the arrest
6 took place.

7 Q. During the briefing, are you provided
8 images or pictures of a target or suspect in the
9 case?

10 A. Typically, yes.

11 Q. And what was your rank, again, at the
12 time of the incident?

13 A. On that date I was a sergeant.

14 Q. So were you in a supervisory role?

15 A. Correct. I was supervisory role with
16 the SWAT Team.

17 Q. And where was it believed that the
18 defendant was possibly staying?

19 A. I believe there were two different
20 possible locations. The one that I was primarily
21 focused on 12B Alway Street.

22 Q. And generally where is that, in what
23 neighborhood?

24 A. It's in the Gadsden Green housing area,
25 downtown Charleston.

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 Q. And prior to this briefing, were you
2 familiar with that area?

3 A. Yes. That was part of Team 1 when I
4 did, like I said, almost four years of patrol,
5 riding calls for service in that area, as well as
6 other areas of downtown.

7 MS. MULKEY: Your Honor, may I approach
8 the witness?

9 THE COURT: You may.

10 BY MS. MULKEY:

11 Q. I would like to show you what has been
12 admitted by consent as State's Exhibit 13.
13 Lieutenant, if you could look at the screen, it's a
14 touch screen, could you point out to the jury where
15 12B Alway Street is?

16 A. 12B Alway Street would be in this
17 apartment -- that building right there (Marking)
18 where I indicated on the screen, and it would be an
19 upstairs apartment.

20 Q. Could you make a little bit of a bigger
21 mark?

22 A. (Marking)

23 Q. And you said an upstairs apartment?

24 A. Correct.

25 Q. What kind of residences are those?

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 A. Well, these are apartment styles where
2 you have -- for this particular end of the
3 building, 12A is on the right-hand side as you walk
4 up this sidewalk here. So A would be right there,
5 (marking) and then B would be upstairs, C would be
6 the other downstairs apartment, and D would be
7 upstairs from there. So it's an A, B, C, D, with
8 one number of 12.

9 Q. And you mentioned during the briefing
10 roles were assigned. Were there other roles --
11 what other roles were assigned to other people
12 working?

13 A. We had officers in marked vehicles and
14 uniform as what we call the take-down element.
15 They are the ones who are actually going to
16 confront the target and try to take him into
17 custody.

18 And then we have additional people in
19 undercover, plain clothes officers that sit in the
20 area, follow the vehicle if they leave, or follow
21 the person on foot out of the area so we don't
22 create a more dangerous situation by trying to take
23 him into custody.

24 Q. In your supervisory role that day, were
25 you aware where these other unmarked undercover

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 vehicles were located?

2 A. Yes, ma'am.

3 Q. And could you show the jury using this
4 map where they were at?

5 A. They would position themselves here
6 with their car facing down the road this way.

7 (Marking)

8 Q. Thank you.

9 So going back to this briefing, you
10 testified the suspect is identified, or the target
11 of the investigation, units go into the area as
12 both marked and unmarked, and that you were
13 monitoring the cameras. What happens next?

14 A. I was monitoring the cameras, and given
15 that we do have city cameras in this particular
16 housing area, that's obviously a much more not only
17 convenient, but more tactful way for us to monitor
18 what's happening in there without having to get
19 officers burned or let anybody know that we're in
20 the area.

21 So I had the primary eye. That's what
22 we call the person that's responsible for --
23 primarily responsible for keeping an eye out for
24 the target. And I was just monitoring to see if
25 there was any activity. I believe in the briefing

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 we were also told there was a particular vehicle
2 that the suspect could be associated with.

3 So in that camera shot that I was
4 watching, we were keeping an eye on anybody coming
5 down from that apartment or the vehicle there.

6 So we were just really looking to see
7 when that target may get into the vehicle or leave
8 that area to give us an opportunity to take him
9 into custody.

10 Q. And, again, what was the plan if that
11 target or suspect showed up on the camera?

12 A. Ideally, our first plan was to follow
13 the target out of the area away from that residence
14 so that he couldn't run back in or anything like
15 that and create a potential more dangerous
16 situation, follow him out of the area and take him
17 into custody on a traffic stop.

18 Q. How was everyone able to know what was
19 going on while you were watching the cameras?

20 A. Everybody was communicating via police
21 radio. We were using a -- it's more than likely a
22 SWAT channel to coordinate that so that we were not
23 inferring with calls for service or anything like
24 that, but we could talk with each other live time
25 as I was watching the camera that was live time as

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 well.

2 Q. So you were able to relay exactly what
3 you saw realtime to officers?

4 A. Yes.

5 Q. Now, I would like to get into the
6 cameras. Can you please tell the jury a little bit
7 about them in general? Where they are, how they
8 operate.

9 A. I was the supervisor, like I mentioned,
10 over the intelligence unit when I became sergeant,
11 so that was one of the projects that was just
12 getting started underway. As I mentioned I have a
13 computer science degree, so I was in the role of
14 helping that get implemented.

15 It started out in a phase approach. We
16 phased on the end with cameras on -- in Gadsden
17 Green housing area, put them along the King Street
18 business corridor from Spring Street south, I
19 believe, and then in the Market area. And that's
20 now extended over into the east side area as well.

21 There are cameras that are deployed
22 around the city. They are static cameras which
23 means they don't move their locations, but they can
24 patrol different things.

25 I helped set up the different patrols;

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 in other words, how long is it going to point in
2 this direction and then change to here and change
3 to here? What time of day would they come on and
4 operate? Which they are all 24/7 operating and
5 recording.

6 And then I helped a little work with
7 the policy and procedures on maintaining that and
8 working with the ACLU and different groups like
9 that on retention of that, those different cameras
10 and the footage there.

11 Q. And you testified your roles have
12 changed, but do you maintain a proficiency, a
13 working knowledge of these cameras?

14 A. Yes, ma'am. I'm still called upon in
15 the command post to operate those cameras so we can
16 monitor various different things not only for
17 crime, but for flooding and that type of thing. So
18 we used them here recently in the command post to
19 monitor the flooding.

20 Q. And who maintains these cameras?

21 A. We have a working relationship with
22 ABRIO, who is the vendor, and they're contacted
23 through the intelligence unit. Whenever there's an
24 issue or a maintenance issue that needs to be
25 addressed, they're contacted through them. And so

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 far we've been very lucky to have them.

2 Q. When you watch these cameras, where are
3 you watching them from?

4 A. We typically watch them from the police
5 department because that has the most -- the best
6 connection I guess if you speed while you're
7 watching it so you're not interfering with someone
8 else.

9 That particular day I was watching them
10 from our central detective's office. I was
11 watching them on the computer. You can watch them
12 from just about any computer that's on the city's
13 network. So I was operating it and controlling it
14 from CPD headquarters that day.

15 Q. And when you watch it, is it in
16 realtime?

17 A. You can watch it realtime or you can
18 watch it retroactively, so I could look back over
19 different periods of time. The only difference to
20 watching it live time is I control it live time.
21 When I'm looking in the past. I can't control
22 where the camera is panning to and that type of
23 thing, or zooming in.

24 Q. In preparation for this trial, did you
25 view the recordings that -- that captured some

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 footage from 12B Alway Street on December 12, 2013?

2 A. Yes, ma'am.

3 MS. MULKEY: Your Honor, may I approach
4 the witness?

5 THE COURT: You may.

6 BY MS. MULKEY:

7 Q. I would like to show you what was
8 premarked as State's 14.

9 A. Yes, ma'am.

10 Q. Prior to coming in, did you see myself
11 and Mr. Simpson remove a CD from this envelope?

12 A. Yes, sir.

13 Q. How do you -- what do you know this
14 envelope to contain?

15 A. The CD of the videos from that morning.

16 Q. And how do you know that?

17 A. My initials are on the cover there.

18 Q. And as -- you testified you saw us
19 remove this. Did you see us load it into the
20 computer?

21 A. Yes.

22 Q. Did you see us cue it up?

23 A. Yes, ma'am.

24 Q. And did that appear to be the same
25 beginning of the video that we watched previously?

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 A. Yes, ma'am.

2 MS. MULKEY: Your Honor, at this time
3 the State would move to place State's 14 into
4 evidence.

5 THE COURT: Any objection?

6 MR. MAYER: I don't see how it's
7 relevant, Judge.

8 THE COURT: Please approach.

9 (Bench conference was had; following
10 proceedings were had in open court.)

11 THE COURT: Stand back.

12 Madame Forelady, ladies and gentlemen,
13 I have a brief matter of law to take up with the
14 attorneys. Please do not discuss the case and
15 please leave your notepads in your seat. We
16 appreciate your patience.

17 (Jury out, 2:37 p.m.)

18 THE COURT: You may be seated.

19 What does the video purport to show?

20 MS. MULKEY: Your Honor, the video, the
21 State would submit, shows the defendant leaving the
22 residence at 12B Alway and exiting. It
23 corroborates other statements and testimony that
24 has come in, and we anticipate coming in, and is
25 part of the investigation of where -- the

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 defendant's whereabouts throughout the
2 investigation.

3 THE COURT: Throughout what
4 investigation? Throughout what time period?

5 MS. MULKEY: This was at 9:05, the
6 morning after the shooting.

7 THE COURT: How is it relevant?

8 MS. MULKEY: It corroborates other
9 witness's testimony and --

10 THE COURT: What other witnesses?

11 MS. MULKEY: Excuse me?

12 THE COURT: What other witnesses?

13 MS. MULKEY: Marian Campbell.

14 THE COURT: Who has not testified
15 yet --

16 MS. MULKEY: I'm sorry?

17 THE COURT: Who has not testified yet.

18 MS. MULKEY: She has not --

19 THE COURT: How do I know it
20 corroborates her testimony?

21 MS. MULKEY: There is crucial evidence
22 found in the vehicle that he -- that he is in that
23 is stopped at the traffic stop.

24 THE COURT: Who finds that evidence?

25 MS. MULKEY: Charleston Police

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 Department.

2 THE COURT: Who on the Charleston
3 Police Department finds that evidence that you're
4 going to have testify?

5 MS. MULKEY: Jennifer Wooley.

6 THE COURT: And she hasn't testified
7 yet, correct?

8 MS. MULKEY: She has not.

9 THE COURT: So how do I know it's going
10 to corroborate anything?

11 MS. MULKEY: Because I'm an officer of
12 the court and she is two witnesses away.

13 THE COURT: Yeah, but you're an
14 advocate too. Your perspective can be skewed. I
15 can't take your word for it. Something can only be
16 corroborated if it's in the record.

17 MS. MULKEY: Court's indulgence, Your
18 Honor?

19 THE COURT: Uh-huh.

20 What's the basis of the objection?

21 MR. MAYER: Judge, it's -- there is no
22 allegation that the accused was aware that he was
23 being sought at the time. This is not like he was
24 -- cannot be shown to show that he was trying to
25 run from them --

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 THE COURT: That's not what they're
2 offering it for. Correct?

3 MR. MAYER: Judge, I don't know --

4 THE COURT: Are you offering it as
5 evidence of flight?

6 MS. MULKEY: No, Your Honor. We're
7 offering it as evidence of the defendant's arrest.
8 We believe it's important and relevant to the case.

9 MR. MAYER: We agree that he was
10 arrested.

11 THE COURT: Just because you agree to
12 something doesn't mean that they're required not to
13 prove it -- or as part of their case. What you
14 agree to doesn't restrict their offer.

15 MR. MAYER: I understand.

16 THE COURT: They have the burden of
17 proof.

18 MR. MAYER: I understand, Judge, but in
19 terms of getting a video in of him coming out of a
20 house that had nothing to do with this alleged
21 crime, had nothing to do with the time of the
22 incident that is at least 12 hours removed from all
23 of that. I just don't see the relevance.

24 THE COURT: Is this where your client
25 was arrested?

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 MR. MAYER: I believe he was arrested
2 in the vehicle that he got into.

3 THE COURT: That's not my question.

4 MR. MAYER: I'm sorry.

5 THE COURT: Was the car in proximity to
6 Alway Street?

7 MR. MAYER: I believe --

8 THE COURT: Where was your client
9 arrested?

10 MR. MAYER: By the Holiday Inn on 17.

11 THE COURT: So he was pursued, he was
12 surveilled away from the residence until they got
13 there, and then they stopped him.

14 MR. MAYER: That's my understanding.

15 THE COURT: Was he, in fact, a resident
16 on Alway Street?

17 MR. MAYER: Not to my knowledge. I
18 don't think he ever was, Judge.

19 THE COURT: He was visiting that
20 residence?

21 MR. MAYER: That's my understanding.

22 THE COURT: Was his car in proximity to
23 that residence?

24 MR. MAYER: The car that he got into
25 was, Judge.

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 THE COURT: Did he get in that car and
2 leave that residence?

3 MR. MAYER: That's my understanding.

4 THE COURT: Is the video in any way not
5 accurate as to what he was doing at 9:05 a.m. on
6 this particular day?

7 MR. MAYER: I don't think it's
8 inaccurate or prejudicial, Judge.

9 THE COURT: Does it in fact corroborate
10 other testimony as to what was later found in the
11 vehicle?

12 MR. MAYER: I have no way of knowing
13 that.

14 THE COURT: Does it not corroborate the
15 fact that this is the vehicle he was in?

16 MR. MAYER: Yes, it does.

17 THE COURT: I am going to overrule the
18 objection. I find that it is relevant and
19 probative and that -- in that the defense has
20 conceded it's not prejudicial; however, it's
21 subject to connection.

22 In the future, make sure you time the
23 witnesses such that if you're offering evidence to
24 corroborate something, the evidence needs to be in
25 the record when it's corroborated. And if it's not

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 corroborated, I'm going strike it from the record.

2 MS. MULKEY: Thank you, Your Honor.

3 THE COURT: Go ahead and get the jury
4 for me, I'm sorry.

5 (Jury in, 2:44 p.m.)

6 THE BAILIFF: All jurors are present,
7 Your Honor.

8 THE COURT: You may be seated.

9 Ladies and gentlemen, we appreciate
10 your patience. We will now resume testimony.

11 You may proceed.

12 MS. MULKEY: Thank you.

13 The State would request to enter
14 State's Exhibit 14 --

15 THE COURT: I've already entered it.

16 MS. MULKEY: -- and publish it for the
17 jury.

18 THE COURT: You may proceed.

19 MS. MULKEY: Thank you.

20 By MS. MULKEY:

21 Q. Detective Bruder, what I would like is
22 for you to explain this image right here to the
23 jury and let us know what's going on.

24 THE COURT: He can tell them what
25 street it is, but otherwise it speaks for itself.

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 It's self-authenticating. It does not need to be
2 editorialized.

3 THE WITNESS: This is Alway Street here
4 that the school bus is coming down.

5 BY MS. MULKEY:

6 Q. Lieutenant Bruder, what time was this
7 in the morning?

8 A. About 8:40 in the morning.

9 Q. And did you see any of your other units
10 out there that morning on this camera?

11 A. Yes, ma'am. That car that's on the
12 screen right now is one of our unmarked vehicles,
13 undercover vehicles.

14 Q. And were you relaying this information
15 over the radio?

16 A. Correct. I was relaying the direction
17 they were traveling and which way they were headed
18 to out of the area.

19 Q. Who was the one zooming in and out?

20 A. That was me.

21 Q. What was the purpose of that?

22 A. I was trying to confirm it was our
23 target on the video.

24 Q. And so what happened next?

25 A. What happened next? He was -- this

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 undercover car follows him out of the area where he
2 continues surveillance on him. I stayed monitoring
3 the camera there, monitoring that location in case
4 that wasn't our target. And then I was radioed
5 that they did have him taken into custody a few
6 minutes later.

7 Q. And did you continue to monitor the
8 cameras after that?

9 A. Once it was confirmed that we had our
10 target location and we had been briefed that the
11 detectives more than likely wouldn't be going back
12 to 12B Alway. So once we got that confirmed, I did
13 end surveillance on 12B Alway Street.

14 Q. Per that operational plan, what was to
15 happen with the defendant after he was -- or the
16 suspect or target after he was taken into custody?

17 A. Anybody taken out of the vehicle was to
18 be transported or escorted separately to CPD
19 headquarters to be interviewed by detectives and
20 the car was to be towed to crime scene.

21 Q. What would be the purpose of towing the
22 car to the crime scene office?

23 A. For the detectives to conduct a search
24 warrant.

25 Q. And that search warrant, would that

JASON BRUDER - DIRECT EXAM BY MS. MULKEY

1 have included the recovery of any evidence related
2 to this case?

3 A. I'm not sure. That would be done by
4 the detectives. I was just in a support role.

5 Q. Understood. Now, after the defendant's
6 traffic stop, did you attempt to go back and review
7 these cameras?

8 A. Typically, when we set up on those
9 things, we'll have somebody monitoring that as well
10 as reviewing prior footage to confirm or not
11 whether or not we're sitting at a valid target. So
12 we did review it that day and found that, that
13 vehicle was parked there about 11:20 the night
14 before.

15 Q. And that would have been on what night?

16 A. The 11th.

17 Q. And that was at 11:20?

18 A. P.m.

19 MS. MULKEY: Court's indulgence?

20 THE COURT: Yes, ma'am.

21 MS. MULKEY: No further questions at
22 this time. Please answer any questions the defense
23 may have.

24 THE COURT: You may proceed.

25 MR. MAYER: Judge, we have no

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 questions.

2 THE COURT: Any objection to the
3 witness being excused? From the State?

4 MS. MULKEY: None from the state.

5 THE COURT: From the defense?

6 MR. MAYER: None, Judge.

7 THE COURT: Sir, you're excused. You
8 may call your next witness.

9 MS. MULKEY: The State calls Marian
10 Campbell.

11 MARIAN CAMPBELL,

12 being first duly sworn, testified as follows:

13 THE CLERK: Be seated. Ms. Campbell, I
14 need you to speak into the microphone, you need to
15 get pretty close to it, and state your full name
16 and spell your last name.

17 THE WITNESS: Marian Campbell,
18 C-A-M-P-B-E-L-L.

19 THE COURT: You may proceed.

20 MS. MULKEY: Thank you, Your Honor.
21 May it please the Court?

22 DIRECT EXAMINATION

23 BY MS. MULKEY:

24 Q. Afternoon, Ms. Campbell.

25 A. Hello.

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 Q. Could you please tell the jury where
2 you're from?

3 A. Johns Island.

4 Q. And how long have you lived here in the
5 Charleston area?

6 A. Since 1998.

7 Q. And what do you do for a living?

8 A. I work at a restaurant.

9 Q. And how far did you go in school?

10 A. I got some college.

11 Q. Where did you attend college?

12 A. Trident Tech.

13 Q. Have you previously met with me and
14 other members of my office?

15 A. Yes.

16 Q. Let's be honest, do you want to be here
17 today?

18 A. No.

19 Q. Okay. Are we ordering you to be here
20 today?

21 A. Yes.

22 Q. Are you going to be truthful in all of
23 your answers today?

24 A. Yes.

25 Q. Do you know the defendant, Valentino

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 Hayward?

2 A. Yes.

3 Q. Do you see him here in the courtroom
4 today?

5 A. Yes.

6 Q. Could you please tell the jury what
7 he's wearing?

8 A. I can't see that far, I don't have my
9 glasses on. I know black and brown I guess, he got
10 on brown shoes...

11 THE COURT REPORTER: I need you to
12 speak into the microphone; I can't hear you.

13 THE WITNESS: I see he got on black
14 pants, brown shoes and black shirt.

15 BY MS. MULKEY:

16 Q. And where is he seated?

17 A. Over here. (Indicating)

18 MS. MULKEY: Could you please let the
19 record reflect that the witness has identified the
20 witness.

21 THE COURT: You may proceed.

22 BY MS. MULKEY:

23 Q. Ms. Campbell, how do you know the
24 defendant?

25 A. He's kind of a friend.

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 Q. I don't want to get into your business,
2 I know it's personal, but did you have a
3 relationship with the defendant at one point?

4 A. We had a friendship, yes.

5 Q. And did you know him back in December
6 of 2013?

7 A. Yes.

8 Q. And at that time back then, about how
9 long had you known him?

10 A. I would say about six months.

11 THE COURT: Ma'am, if you could tilt
12 that microphone down and speak directly into it for
13 me.

14 HE WITNESS: Like six or seven months
15 that I was hanging out with him, but I kind of knew
16 him before then.

17 BY MS. MULKEY:

18 Q. And how did you guys meet?

19 A. Through my cousin. He was friends with
20 my cousin.

21 Q. During that six or seven months, did
22 you have the opportunity to hang out a couple of
23 times a week or --

24 A. Yes.

25 Q. Regularly?

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 A. Uh-huh.

2 Q. Did he stay at your house?

3 A. Yes.

4 Q. I would like to go back to

5 December 11th of 2013.

6 A. Okay.

7 Q. Do you recall what you did that day?

8 A. Got up, went to go take him home, and
9 we got pulled over.

10 Q. I would like to --

11 A. Is that the day prior?

12 Q. Yeah, December 11th?

13 A. I don't know the date. That's why I'm
14 asking.

15 Q. The day before you got pulled over with
16 the defendant in the car.

17 A. I went to work.

18 Q. Where do you work?

19 A. I worked at Tides on Folly Beach, the
20 hotel, and I worked at Kangaroo.

21 Q. Two jobs in one day?

22 A. Yes.

23 Q. That's a long day. What time did you
24 get off that day?

25 A. Probably a little after ten.

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 Q. Is that p.m.?

2 A. Yes.

3 Q. And so that would have been on the
4 11th?

5 A. Uh-huh.

6 Q. Now, throughout the day did you and the
7 defendant communicate on the phone?

8 A. Yes.

9 Q. Was that via text?

10 A. Some text, yes.

11 Q. Did the defendant ever text you he was
12 about to rob someone?

13 A. Yes. He was -- no, he didn't say he
14 was about to. He said, I'm talk to somebody --

15 MR. MAYER: Judge, objection.

16 THE COURT: Basis?

17 MR. MAYER: May we approach?

18 (Bench conference was had; following
19 proceedings were had in open court.)

20 THE COURT: The objection is overruled.
21 It is relevant, probative. In addition to that, it
22 is an admission against interest. And you need to
23 lay the appropriate foundation to this line of
24 questioning as to time and place. You may proceed.

25 MS. MULKEY: Thank you, Your Honor.

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 THE COURT: You're welcome.

2 BY MS. MULKEY:

3 Q. Did you have the defendant's phone
4 number at this time?

5 A. Yes.

6 MR. MAYER: Objection; leading.

7 THE COURT: I'm going to give her a
8 little latitude. Sustained.

9 Watch the leading.

10 BY MS. MULKEY:

11 Q. Back on December 11, 2013, did you
12 communicate with the defendant?

13 A. Yes.

14 Q. Was it via text?

15 A. Yes.

16 Q. Prior to that, did you have his phone
17 number?

18 A. Yes.

19 Q. How did you get his phone number?

20 A. He gave it to me.

21 Q. Did you have him saved as a contact in
22 your phone?

23 A. Yes.

24 Q. On that day did you receive a text from
25 him?

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 A. I received several texts from him that
2 day.

3 Q. Did they all come from the same phone
4 number that you had in the contacts that you had in
5 your phone?

6 A. Yes.

7 Q. In any of those text messages did he
8 tell you he was about to rob somebody?

9 A. No, he didn't tell me he was about to
10 rob somebody. He said he was talking to somebody
11 about it, but that's not -- he didn't say he was
12 going to do that.

13 THE COURT: Watch the leading.

14 MS. MULKEY: Thank you, Your Honor.

15 BY MS. MULKEY:

16 Q. Was that a typical message to get from
17 him?

18 A. No. I was, like, why would you send
19 it...

20 THE COURT: Ma'am, I need you to speak
21 directly into the microphone.

22 THE WITNESS: I asked him why would he
23 send me that. And I was, like, whatever you do, I
24 can't tell you what to do, but be careful whatever
25 it is you do.

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 BY MS. MULKEY:

2 Q. Did the defendant call you later that
3 evening?

4 A. Uh-huh.

5 Q. And based on that conversation, what
6 did you do?

7 A. I went and picked him up.

8 Q. Where did you pick him up?

9 A. From off of -- North Charleston, off of
10 Azalea.

11 Q. I'm sorry, I --

12 A. Off of Azalea in North Charleston.

13 Q. Did you know where that was?

14 A. Kind of. I've been there before, but I
15 didn't know the exact directions to it, so he gave
16 it to me.

17 Q. Was it a residence or a business?

18 A. It was a residence.

19 Q. And do you know whose residence it was?

20 A. I believe it was somebody in his
21 family. I wasn't sure at the time who it was.

22 Q. What time would you estimate that you
23 picked him up?

24 A. I would say probably about 11, maybe.
25 I got off about ten.

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 Q. And where was that at again?

2 A. In North Charleston off of Azalea.

3 Q. Do you recall what he was wearing when
4 you picked him up?

5 A. I think he had on a spray-painted
6 T-shirt and some jeans, some black jeans.

7 Q. After you picked him up, where did you
8 go?

9 A. To my house.

10 Q. And where was that back then?

11 A. Downtown on Alway Street.

12 Q. What was the address?

13 A. 12B Alway.

14 Q. What time would you estimate you
15 arrived home?

16 A. Probably 11:30.

17 Q. And did the defendant stay at your
18 house that night?

19 A. Yes.

20 Q. Did he change his clothes while he was
21 there that night?

22 A. No.

23 Q. Did he have a change of clothes there?

24 A. No.

25 Q. When you went back to your house that

MARIAN CAMPBELL - DIRECT EXAM BY MS. MULKEY

1 night, were you aware that there had been a
2 shooting in West Ashley?

3 A. No.

4 Q. Was there ever a discussion between you
5 and the defendant about a shooting in West Ashley?

6 A. No.

7 Q. What was the defendant's demeanor like
8 that evening?

9 A. It was regular. I've never -- it
10 wasn't nothing out of the ordinary for me.

11 MS. MULKEY: Court's indulgence?

12 THE COURT: Uh-huh.

13 BY MS. MULKEY:

14 Q. Back in December of 2013, what kind of
15 car were you diving?

16 A. 2001 Honda Santa Fe.

17 Q. And is that the same vehicle that you
18 were pulled over by the Charleston Police
19 Department on December 12th?

20 A. Yes.

21 Q. When the defendant was in the car?

22 A. Yes.

23 MS. MULKEY: I have no further
24 questions.

25 THE COURT: Any cross-examination of

MARIAN CAMPBELL - CROSS EXAM BY MR. MAYER

1 the witness?

2 MR. MAYER: Please, Judge.

3 CROSS-EXAMINATION

4 BY MR. MAYER:

5 Q. Ms. Campbell, you and Valentino had
6 sort of an on-again off-again relationship; is that
7 right?

8 A. Kind of.

9 Q. Okay. And there were times in that
10 relationship when one of you may have wanted more
11 than the other wanted at that time, correct?

12 A. Okay.

13 Q. And at this particular time in your
14 knowing each other around December 11, 2013, would
15 it surprise you to know that Tino felt like you
16 wanted more at that time than he wanted at that
17 time?

18 A. No. I don't think that has anything to
19 do with it.

20 Q. Okay. And so when you guys were
21 texting that night --

22 A. Uh-huh. Well, that evening, because I
23 was at work when I was texting him.

24 Q. Okay. That evening you were texting
25 back and forth, but he also said to you, I

MARIAN CAMPBELL - CROSS EXAM BY MR. MAYER

1 appreciate it, just want to be alone?

2 A. Okay. I don't remember that text, but
3 okay.

4 Q. Okay. Do you remember what day of the
5 week December 11th was?

6 A. No. That was two years ago.

7 Q. Sure. Sure. Sure. The color shirt
8 that Tino was wearing when you saw him first that
9 night, you said it was spray-painted. What color
10 was it?

11 A. The shirt itself was white.

12 Q. Did he have any other clothing with
13 him?

14 A. No. Just everything that he had on,
15 shirt, pants, shoes.

16 MR. MAYER: Court's indulgence?

17 THE COURT: Yes, sir.

18 BY MR. MAYER:

19 Q. You would say when you saw Tino that
20 night his demeanor was normal, right?

21 A. Yes.

22 MR. MAYER: No further questions.

23 THE COURT: Any redirect?

24 MS. MULKEY: Nothing from the State,
25 Your Honor.

1 THE COURT: Any objection to the
2 witness being excused? From the State?

3 MS. MULKEY: None from the State.

4 THE COURT: From the defense?

5 MR. MAYER: No, Judge.

6 THE COURT: Ma'am, you're excused.

7 Madame Forelady, ladies and gentlemen,
8 we are going to take a very brief recess. During
9 the break, please do not discuss the case and leave
10 your notepads in your seats.

11 (Jury out, 3:05 p.m.)

12 THE COURT: We will be at ease for a
13 brief restroom break.

14 Who is your next witness?

15 MR. SIMPSON: Your Honor, we have
16 Jennifer Wooley.

17 THE COURT: Is she here?

18 MR. SIMPSON: She's here.

19 THE COURT: And who is after her?

20 MR. SIMPSON: Richard Holmes, and he
21 gives the interview, State's 14 ID only. I'm
22 hoping to play some half of an hour's worth of
23 video clips.

24 Ivey, is that about right?

25 JUDGE'S CLERK: Yes, it's about 35

1 minutes. And it's State's 19.

2 MR. SIMPSON: So witness Wooley should
3 be moderately brief.

4 THE COURT: What number is she on your
5 list? Oh, the last one. I found it.

6 We will be at ease about five minutes.

7 (A recess transpired.)

8 THE COURT: State ready to proceed?

9 MR. SIMPSON: We are.

10 THE COURT: Defense ready to proceed?

11 MR. MAYER: We are.

12 THE COURT: Call your next witness.

13 MR. SIMPSON: Thank you. State calls
14 Jennifer Wooley.

15 (Jury in, 3:18 p.m.)

16 THE BAILIFF: Jurors are all present,
17 Your Honor.

18 THE COURT: Ladies and gentlemen, we
19 will now resume testimony. You may call your next
20 witness.

21 MR. SIMPSON: Thank you. The State
22 calls Jennifer Wooley.

23 THE COURT: Swear the witness.

24 JENNIFER WOOLEY,

25 being first duly sworn, testified as follows:

JENNIFER WOOLEY - DIRECT EXAM BY MR. SIMPSON

1 THE CLERK: Be seated. Please state
2 your full name and spell your last name.

3 THE WITNESS: Jennifer Wooley,
4 W-O-O-L-E-Y.

5 THE COURT: You may proceed.

6 MR. SIMPSON: Thank you.

7 THE COURT: You're welcome.

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q. Ms. Wooley, what is your occupation?

11 A. I'm a police officer with the City of
12 Charleston.

13 Q. And in what capacity, what department?

14 A. Crime scene supervisor.

15 Q. Okay. And you said supervisor?

16 A. Yes, sir.

17 Q. So you're in charge of the entire crime
18 scene unit?

19 A. Yes, sir.

20 Q. How long have you been in that
21 particular role with CPD?

22 A. January will be four years.

23 Q. Okay. And how long have you been a
24 police officer generally?

25 A. 13 years.

JENNIFER WOOLEY - DIRECT EXAM BY MR. SIMPSON

1 Q. What are some of your job duties of a
2 crime scene investigator?

3 A. Respond to various scenes, anything
4 from a car break-in to homicide, document the scene
5 by photography, video, process things for
6 fingerprints, look for any evidentiary items.

7 Q. And do you receive any specialized
8 training to aid you in that endeavor?

9 A. Yes, sir. We have a pretty intense
10 in-service training. Once you're hired you would
11 go through, approximately, a three-months training
12 program and then you can go to additional training
13 classes outside of that later.

14 Q. And what's your educational background?

15 A. I have a degree in administration of
16 justice with an emphasis in forensic science and a
17 minor in chemistry.

18 Q. So you hold degrees in this area?

19 A. Yes, sir, along with countless training
20 hours from fingerprint classes to homicide
21 management, death investigation, leadership
22 training. A long list of additional training.

23 Q. Okay. And in your professional
24 capacity as a Charleston Police Department crime
25 scene supervisor, how did you become involved in

1 the present case?

2 A. I was called by the crime scene
3 technicians that were working in reference to a
4 death investigation.

5 Q. Did you go to the actual scene?

6 A. I did.

7 Q. And once there, were there others
8 working under your supervision?

9 A. Correct. I had two technicians that
10 were working that night, Sarah Gladwell and Jeff
11 Miller.

12 Q. And were they directly working under
13 your direction?

14 A. Yes.

15 Q. Are you familiar with the work they
16 did?

17 A. I am.

18 Q. And their results?

19 A. Yes, sir.

20 Q. And is that from your personal presence
21 on scene?

22 A. Correct.

23 MR. SIMPSON: Your Honor, may I
24 approach?

25 THE COURT: (Indicating)

JENNIFER WOOLEY - DIRECT EXAM BY MR. SIMPSON

1 BY MR. SIMPSON:

2 Q. Ms. Wooley, I'm showing you what's
3 previously been entered into evidence as State's
4 Exhibit 2 and 3. Can you take a moment to look at
5 those exhibits?

6 A. Yes.

7 Q. Do you recognize those images?

8 A. I do.

9 Q. And what do they depict?

10 A. Well, Exhibit 2 depicts where the
11 victim's car was located in the general scene.
12 Exhibit 3 is where -- the location where the victim
13 himself was located.

14 Q. Ms. Wooley, what is this here, the
15 yellow line?

16 A. It's crime scene tape.

17 Q. Is it fair to say that when we talk
18 about the crime scene here on scene, we're kind of
19 talking about two years?

20 A. Yeah. The body of the victim was
21 actually found a decent ways away from where the
22 victim's vehicle was parked.

23 Q. Is that depicted in State's 3?

24 A. Yes.

25 Q. Keep that on there. Could you just

JENNIFER WOOLEY - DIRECT EXAM BY MR. SIMPSON

1 sort of describe what you and your team would have
2 done that evening on the actual scene?

3 A. We were given a brief detail of what
4 information the officers had gathered at that
5 point, and then we do an overall photo
6 documentation of that area. We were looking not
7 only to document the scene, but we're also trying
8 to look for pieces of evidence, anything from maybe
9 shell casings, blood, you know, trying to determine
10 if the victim was shot exactly where he was found
11 or had moved locations.

12 We were looking for anything that's out
13 of place. You know, it could be ball caps, cell
14 phones, anything that looks unusual.

15 Q. And you mentioned that it's a shooting
16 so you'd be looking for some shell casings?

17 A. Correct.

18 Q. Were any shell casings found at that
19 scene on that night?

20 A. We did not locate any shell casings
21 that night.

22 Q. Explain what kind of searches would have
23 been conducted for the shell casings.

24 A. It's pretty extensive. First,
25 obviously, just a visual look as we're going around

1 the scene, but once they were not found, we
2 typically do what we call a line search. We line
3 up side by side and we walk grids. In this
4 situation, we would have walked a pretty large one
5 because, again, we weren't for sure that the victim
6 had moved in between the shooting and the time that
7 he fell or come to rest there.

8 And then we also this night brought out
9 metal detectors, and so they would beep off the
10 shell casings and we would search with that. And
11 we also called a K9 to the scene to also search
12 that area.

13 Q. And, again, following all of those
14 methods of searching, did you find any shell
15 casings?

16 A. No.

17 Q. In your experience as a crime scene
18 investigator, supervisor of the unit, what might
19 the absence of shell casings tell you at what is
20 clearly the scene of a shooting?

21 A. There was one of two things; either
22 that the shell casings were removed from the scene
23 or that the firearm that was used is a revolver.

24 Q. And I'm not a gun person. Can you
25 explain to me what that means, a revolver, and what

1 distinguishes a revolver from the different types
2 of firearms?

3 A. So a revolver has a cylinder that holds
4 various numbers of rounds and a firing pin
5 actually, like, hits the back of that round, but in
6 that case the shell casing stays in the gun. The
7 bullet goes out the front, but the shell casing
8 actually stays in there, which is different than a
9 semiautomatic where the shell casing is ejected
10 from the firearm itself.

11 Q. So some firearms you say eject the
12 shell casings?

13 A. Yes.

14 Q. And in a revolver, it stays with the
15 gun?

16 A. It stays with the gun.

17 Q. So if a gun is taken from the scene was
18 a revolver, there go the shell casings as well?

19 A. Correct.

20 Q. What other type items at the scene were
21 collected by you and your team?

22 A. I remember that there was a cell phone
23 that was located in the victim's hand, and based on
24 the information that we had received it seemed
25 pretty crucial.

JENNIFER WOOLEY - DIRECT EXAM BY MR. SIMPSON

1 Q. And what was done with that?

2 A. Because of the crucial nature of it, I
3 actually directly called the digital evidence
4 examiner in. And he came from home and directly
5 collected that cell phone from the scene and he
6 immediately began his process.

7 Q. Let me go now back to State's Exhibit
8 2. You mentioned, I believe, already in direct,
9 this vehicle here?

10 A. Yes.

11 Q. And what was up with that vehicle?

12 A. That vehicle was towed to the crime
13 scene office for additional processing.

14 Q. Okay. And did you conduct that
15 processing?

16 A. I did not process that vehicle.

17 Q. Do you know who did?

18 A. I believe Mary Phillips processed that
19 vehicle.

20 Q. And after that you say a person from
21 the digital evidence unit, do you know that
22 person's name?

23 A. Rodney Van Horn.

24 Q. Okay. Following that night and
25 processing of this scene, did your work on this

1 case continue?

2 A. It did.

3 Q. And in what capacity?

4 A. I completed a search warrant on a
5 vehicle the following day.

6 Q. What type of vehicle was that?

7 A. It was a Hyundai Santa Fe.

8 Q. And how did your department, as much as
9 you know, come into possession of that Santa Fe?

10 A. It came, from my understanding, through
11 the arrest of the suspect.

12 Q. Okay. I'm showing you what was entered
13 by consent as State's 15. Do you recognize -- do
14 you recognize that vehicle?

15 A. Correct. That is the vehicle that I
16 processed on the 12th.

17 Q. And when you're given a vehicle and a
18 search warrant and told to process it, what sort of
19 work are you doing on the vehicle?

20 A. A lot of it depends on the search
21 warrant and specifically what it was asking for.
22 And in this one it was more of an inventory of the
23 vehicle looking for clothing, ammunition, weapons,
24 and a cell phone.

25 Q. So you're mainly just sort of trying to

1 inventory what's in that vehicle?

2 A. Correct. I would start off with
3 overall photos, look at the vehicle, and then start
4 a complete inventory, you know, in a thorough
5 process there.

6 Q. Do you try, especially if you think
7 there might be some relevancy, do you try to
8 photograph items before they're disturbed in any
9 way?

10 A. Correct.

11 Q. I show you what's previously been
12 entered as State's 16. Ms. Wooley, what area of
13 the car is State's 16?

14 A. This is the center console in the front
15 between the driver's front seat backseat.

16 Q. What items of possible relevance did
17 you secure from that center console?

18 A. The cell phone, or a cell phone, was
19 located in the center console.

20 Q. Okay. Was it together?

21 A. The back of the cell phone was actually
22 missing and the battery had fell -- actually, I
23 don't know if I can draw on there.

24 Q. You can.

25 A. But the battery is there and the cell

JENNIFER WOOLEY - DIRECT EXAM BY MR. SIMPSON

1 phone itself without the back is located there.

2 (Indicating)

3 Q. So the battery was detached from the
4 cell phone when you found it?

5 A. Correct.

6 Q. And this was prior to disturbing this
7 in any way?

8 A. Correct.

9 Q. Ms. Wooley, showing you what's been
10 marked and entered as State's 17.

11 A. So this is a photo as I took -- removed
12 the cell phone and the battery from the center
13 console. It's laying on the seat and I photo
14 documented that.

15 Q. So you say you sort of follow the
16 processing from the search warrant?

17 A. Correct.

18 Q. Was the cell phone something that you
19 were instructed to maybe keep an eye out for?

20 A. Correct.

21 Q. Did you recognize this possibly as an
22 item of some relevance?

23 A. It fits the description of a cell
24 phone.

25 Q. How did you go -- what did you go about

JENNIFER WOOLEY - DIRECT EXAM BY MR. SIMPSON

1 doing with that cell phone after it was recovered?

2 A. I processed the cell phone for
3 fingerprints and I also collected a DNA swab from
4 the cell phone.

5 Q. When you say -- explain to the jury
6 what you mean when you process something for
7 prints.

8 A. Prints are made out of water and oils,
9 and so we use typically a powder -- fingerprint
10 powder that sticks to the oils leaving the detailed
11 shape of each of the lines. So I would have simply
12 taken a brush and gone over the area and then I
13 would have developed a fingerprint, laid a piece of
14 tape down over it, picked it up and put it on a
15 white fingerprint card, you know, to transfer that
16 to our fingerprint analyst.

17 Q. Do you then mark that card in any way?

18 A. Correct. On the back of the
19 fingerprint card, it's clear. It's white on one
20 side and nice and shiny. On the back side there's
21 information. So it has the case number, where I
22 got it from, but it's also very specific that I
23 recovered it off the cell phone.

24 Q. So it's marked in a way so that card
25 would be readily identifiable?

JENNIFER WOOLEY - DIRECT EXAM BY MR. SIMPSON

1 A. Correct.

2 Q. And you said -- repeat again, you get
3 that card with the print, where does that go?

4 A. It is transferred to our latent
5 examiners who analyze fingerprints.

6 Q. And so that's not you. It's a
7 different --

8 A. Correct, that's not me.

9 Q. Okay. Now, what about with the actual
10 phone. After you left the phone, what was done
11 with the phone?

12 A. I would package it and place it into
13 evidence.

14 Q. Okay. Again, would anything that was
15 placed into evidence be marked in a way that we
16 could recognize?

17 A. Yes, sir.

18 MR. SIMPSON: May I approach the
19 witness, Your Honor?

20 THE COURT: You may.

21 BY MR. SIMPSON:

22 Q. Ms. Wooley, I'm showing you what's been
23 marked for ID only as State's 27. Do you recognize
24 that?

25 A. I do.

JENNIFER WOOLEY - DIRECT EXAM BY MR. SIMPSON

1 Q. What item is that?

2 A. This is the cell phone I collected.
3 It's the cell phone and battery that are in the
4 pictures.

5 Q. And it's the same cell phone that you
6 see in State's 17 behind you?

7 A. Yes.

8 MR. SIMPSON: At this point, the State
9 would seek to admit State's 27 into evidence.

10 THE COURT: Any objection?

11 MR. MAYER: No objection.

12 THE COURT: Marked and admitted without
13 objection.

14 (STATE EXH. 27 in evidence.)

15 MR. SIMPSON: Court's indulgence?

16 THE COURT: Yes, sir.

17 MR. SIMPSON: Ms. Wooley, thank you so
18 much for being here. Answer any questions that
19 Mr. Mayer has for you.

20 THE COURT: You may proceed.

21 MR. MAYER: Thank you, Judge.

22 THE COURT: You're welcome.

23 CROSS-EXAMINATION

24 BY MR. MAYER:

25 Q. Ms. Wooley, you mentioned maybe Ms.

1 Mary Phillips processed the car that was shown to
2 you in one of the exhibits there, the Buick?

3 A. Correct.

4 Q. Is she under your supervision?

5 A. She is.

6 Q. Okay. And any reports she wrote up you
7 would have been the supervisor to review those?

8 A. Yes.

9 Q. Okay. Do you know whether she
10 collected fingerprints from that vehicle?

11 A. I have not read her reports recently,
12 but I do remember her recovering fingerprints from
13 the vehicle.

14 Q. Okay. Now on the crime scene, you
15 took a good hard look at this crime scene, right?

16 A. Correct.

17 Q. And the decedent was laying on his
18 back?

19 A. Honestly, I have not reviewed the
20 pictures and I don't remember that off the top of
21 my head.

22 MR. MAYER: May I approach?

23 THE COURT: You may.

24 BY MR. MAYER:

25 Q. I just want to refresh your memory.

1 Does that refresh your memory?

2 A. Yes.

3 Q. That photo I just showed you refreshes
4 your memory?

5 A. Yes.

6 Q. Was the decedent laying on his back?

7 A. Partially on his back, yes.

8 Q. And my understanding is his head was
9 turned there, but he's not, like, face down?

10 A. No, it's not -- his hips are slightly
11 rotated.

12 Q. His back is flat on the asphalt?

13 A. Yes.

14 Q. In part of your processing the crime
15 scene, you collected evidence from the decedent's
16 pockets, correct?

17 A. Yeah. I do remember some items. I
18 don't remember the details of what those items
19 were.

20 MR. MAYER: Court's indulgence?

21 THE COURT: Yes, sir.

22 BY MR. MAYER:

23 Q. Take a look at that photo I'm showing
24 you there. Does that refresh your recollection?

25 A. I don't know that it -- I remember it

1 directly, but I do remember those items being
2 photographed.

3 Q. Okay. And these would have been the
4 items removed from the decedent's pockets?

5 A. Correct.

6 Q. And those -- was this picture taken by
7 you?

8 A. Those photographs would have been taken
9 by Sarah Gladwell.

10 Q. And you would have been there while she
11 took them?

12 A. Correct.

13 Q. And as far as the photographs that you
14 just saw, would that be a fair and accurate
15 representation of what you guys removed and laid
16 out from the decedent's pocket?

17 A. Right. Typically, we do that with the
18 assistance of the coroner's office to document what
19 was in his pockets.

20 Q. And there what was removed was his
21 wallet?

22 A. (Nodding)

23 Q. There was money in the wallet?

24 A. Uh-huh.

25 Q. Correct?

JENNIFER WOOLEY - CROSS EXAM BY MR. MAYER

1 A. Yes.

2 Q. There were credit cards there or debits
3 card?

4 A. Correct.

5 MR. MAYER: Judge, we will move to
6 admit this as Defendant's 1.

7 THE COURT: Any objection?

8 MR. SIMPSON: None, Your Honor.

9 THE COURT: Marked and admitted without
10 objection.

11 (COURT in evidence.)

12 MR. MAYER: May we publish it, Judge?

13 THE COURT: You need to give it to the
14 Court Reporter before you publish it so she can
15 mark it.

16 MR. MAYER: Court's indulgence?

17 BY MR. MAYER:

18 Q. Ms. Wooley, you can see this is -- this
19 is the picture that we were discussing, right?

20 A. Yes.

21 Q. And those are the contents that were
22 removed from the decedent's pockets?

23 A. Correct.

24 Q. Okay. And I know this was a long time
25 ago, but as you recall, you had to use supplemental

1 lights for the crime scene; is that correct?

2 A. I do remember it being pretty dark.

3 Q. Were you there before they turned the
4 supplemental lights on?

5 A. I do not remember if I was there.

6 Q. So it was dark even with the lights is
7 what you're saying?

8 A. It was a pretty dark area, unless -- I
9 think there was some street lighting, but not
10 necessarily in that roadway that was between the
11 two vehicles you saw in Exhibit 2 and 3.

12 Q. Okay. When someone like your colleague
13 Mary Phillips processes a vehicle like she did with
14 the Buick, do you supervise her work?

15 A. It depends. I don't always directly
16 supervise the processing of a car. They are each
17 well trained and know how to, but I do remember
18 being there during part of that process.

19 Q. Were you involved at all in processing
20 any gunshot residue?

21 A. Not that I recall.

22 Q. Okay. Whose job was that typically?

23 A. For the collection of gunshot residue?
24 It would depend on -- typically, the crime scene
25 technician that was working the scene.

JENNIFER WOOLEY - CROSS EXAM BY MR. MAYER

1 Q. Who did -- did you say it was a
2 Ms. Gladwell and Mr. Miller working this particular
3 scene?

4 A. Yes.

5 Q. So if there was gunshot residue
6 collected at the scene, it would have been one of
7 them?

8 A. Yes, it would have.

9 Q. And you would have been their
10 supervisor?

11 A. Yes.

12 Q. Do you know or is there a report that
13 you could refer to, to answer my question as to was
14 gunshot residue --

15 MR. SIMPSON: Objection, Your Honor.

16 THE COURT: Basis?

17 MR. SIMPSON: Asked and answered.

18 THE COURT: Finish the question.

19 MR. MAYER: Thank you, Judge.

20 THE COURT: You're welcome.

21 BY MR. MAYER:

22 Q. Was gunshot residue collected off the
23 hands of Latoya Carson?

24 THE COURT: Overruled.

25 THE WITNESS: It would be documented

JENNIFER WOOLEY - CROSS EXAM BY MR. MAYER

1 somewhere, but I don't have any reports to look at
2 currently.

3 MR. MAYER: May I approach the witness?

4 THE COURT: You may.

5 BY MR. MAYER:

6 Q. Please describe -- do you recognize
7 that?

8 A. Yes. This is a crime scene report by
9 Sarah Gladwell in reference to this case.

10 Q. And take a minute and see if you don't
11 see on the second page something about gunshot
12 residue collection. Let me know when you find that
13 portion.

14 A. I do see that Ms. Gladwell did collect
15 some gunshot residue from Latoya Carson.

16 Q. In your experience with Ms. Gladwell's
17 work, would that collection -- would you have any
18 reason to believe that that collection she did on
19 Latoya Carson would be somehow inaccurate or
20 improper?

21 A. No. She would do a very good job.

22 Q. Thank you. May I have the report back?

23 Is -- to your knowledge, is
24 Ms. Gladwell still employed with CPD crime scene?

25 A. She is.

1 MR. MAYER: Okay. Court's indulgence?

2 THE COURT: Yes, sir.

3 By MR. MAYER:

4 Q. I know, again, it was a long time ago.
5 Did you recover any illegal substances from the
6 crime scene?

7 A. Not that I recall. I don't remember
8 any, but that doesn't mean there weren't any.

9 Q. You have -- would you have any reason
10 to disagree if I told you there was heroin
11 recovered at the crime scene?

12 A. If it was documented in Sarah's report,
13 then it was certainly there.

14 MR. MAYER: No further questions.

15 THE COURT: Any redirect?

16 MR. SIMPSON: Briefly.

17 THE COURT: You may proceed.

18 MR. SIMPSON: Thank you.

19 THE COURT: You're welcome.

20 REDIRECT EXAMINATION

21 BY MR. SIMPSON:

22 Q. Ms. Wooley, you have a team out there
23 as we discussed; is that correct?

24 A. Correct.

25 Q. And does your crime scene team always

1 write reports?

2 A. Yes.

3 Q. And the purpose of those reports is so
4 they can document what they did at a crime scene?

5 A. Correct.

6 Q. And if testimony is needed on something
7 that they did, do they make themselves available
8 for court?

9 A. Yes.

10 Q. So a delay in talking about what other
11 people did is because that's in their report?

12 A. Yes, it's in theirs. Yes.

13 Q. Do you write a report about everything
14 that you do?

15 A. I write a report also.

16 MR. SIMPSON: Okay. May I approach
17 the witness, Your Honor?

18 THE COURT: You may.

19 BY MR. SIMPSON:

20 Q. And if any member of the team is
21 subpoenaed by any party to a criminal action, they
22 are available to come in and testify?

23 A. They are.

24 Q. Okay. Ms. Wooley, showing you what was
25 previously marked and entered as State's 10. You

1 earlier mentioned the cell phone?

2 A. Correct.

3 Q. And what is State's 10?

4 A. This is a photograph of the victim's
5 hand with a cell phone in his hand.

6 Q. If you can, Ms. Wooley, what is this?

7 A. That is from EMS. It's an electric
8 probe that -- that they would place on the victim.

9 Q. Okay. And so, I mean, the answer to
10 this I think is fairly obvious. Is the first
11 priority to document the crime scene or to render
12 aid and help?

13 A. Correct, yes. So rendering aid comes
14 as a priority for first responding officers, EMS,
15 fire department that's going to show up and do what
16 they can. In this case, clearly he was not
17 transported, so I don't think they found any life
18 there. So then it becomes our point to come in and
19 document the scene as it is when we arrive.

20 Q. Which in this case, can you conclude
21 from the EMS already on the hand, that your
22 documentation of the scene comes after EMS first
23 responders have attempted to save this man's life?

24 A. Correct.

25 Q. And what -- in a situation like that,

1 in all your training as a crime scene investigator,
2 can you then completely make a lot of conclusions
3 about the positioning of the body?

4 A. No, we can't. Typically, EMS or the
5 fire department will have to move the victim to
6 assess his injuries, whether or not he's still
7 alive.

8 MR. SIMPSON: Okay. Thank you for
9 your time, Ms. Wooley. I have no further
10 questions.

11 THE COURT: Any objection to the
12 witness being excused? From the State?

13 MR. SIMPSON: No, Your Honor.

14 THE COURT: From the defense?

15 MR. MAYER: No, Judge.

16 THE COURT: Ma'am, you're excused.
17 You may call your next witness.

18 MR. SIMPSON: Thank you, Judge. The
19 State calls Detective Richard Holmes.

20 THE CLERK: Please be seated. State
21 your full name and spell your last name for the
22 record.

23 RICHARD HOLMES,
24 being first duly sworn, testified as follows:

25 THE WITNESS: Richard Holmes,

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 H-O-L-M-E-S.

2 THE COURT: You may proceed.

3 MR. SIMPSON: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 DIRECT EXAMINATION

6 BY MR. SIMPSON:

7 Q. Detective Holmes, good afternoon.

8 A. Afternoon.

9 Q. How are you? What agency do you work
10 for?

11 A. Charleston City Police Department.

12 Q. And how long have you been with them?

13 A. I'm working on 26 years at the police
14 department.

15 Q. 26 years. You're getting close to that
16 brass ring, right?

17 A. Yes, sir.

18 Q. Can you explain a little bit to the
19 jury about sort of your history with the
20 department, start from the education, when you
21 joined, how long you've been there?

22 A. I joined the Charleston Police
23 Department immediately after coming out of high
24 school, I then went to college to continue further
25 education. After that, completing that, I started

1 uniform patrol and I was asked if I would be
2 willing to go in and do investigations at the time.

3 At this time I was somewhat skeptical
4 because I didn't have no training in
5 investigations. When I was given the opportunity
6 to go to additional training, I went to additional
7 training and did uniform for about six years.
8 After six years, I've been in investigations ever
9 since that time.

10 Q. Okay. And how long is that, that
11 you've been in investigations?

12 A. Probably about 20 years now.

13 Q. 20 years. Okay. So been with the
14 force for some time?

15 A. Yes, sir.

16 Q. How did you become -- in that role as
17 -- and what rank -- what position would be the best
18 way to describe your role back in December of 2013?

19 A. Detective.

20 Q. Detective?

21 A. Yes, sir.

22 Q. How did you become involved in the case
23 against Valentino Hayward?

24 A. The original night of the shooting, I
25 was notified by my supervisor in reference to a

1 shooting that occurred. And he asked me to respond
2 to the area to assist in the investigation at that
3 time.

4 Q. Okay. So were you present on the scene
5 that night?

6 A. Yes, sir, I was.

7 Q. Talked to anybody that night?

8 A. Yes, sir.

9 Q. Okay. Do you recall who you spoke with
10 that night?

11 A. His first name I believe is Rodwell.

12 Q. Okay. Mr. Charles Rodwell?

13 A. Yes, sir, Charles Rodwell.

14 Q. Okay. When -- were you in there in an
15 assisting role that night, the night of the crime?

16 A. Yes, sir, I was.

17 Q. Did that sort of role just as
18 assisting, however, change the next day?

19 A. Yes, sir. I was actually -- the next
20 day I was asked to do the interview on the case as
21 well.

22 Q. How did that come to be?

23 A. Because I've done so many interviews, I
24 was asked by the supervisor -- I was notified by
25 the supervisor.

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 Q. Who was that supervisor?

2 A. Detective Sergeant David Osborne.

3 Q. Okay.

4 A. And I was notified that the defendant
5 was taken into custody, and he asked me would I
6 respond from my residence to conduct an interview.

7 Q. So you had to drive in from home?

8 A. Yes, sir.

9 Q. Now, let's just be up front, at this
10 time when you're walking into the room, is
11 Valentino Hayward a suspect?

12 A. Yes, sir.

13 Q. Let me ask you this: Have you
14 conducted suspect interrogations before?

15 A. Yes, sir.

16 Q. If it's even possible, how many times
17 have you conducted these interrogations?

18 A. There's too many. I can't remember.

19 Q. And so with all of that experience and
20 training, are you familiar with sort of the laws
21 and procedures relevant to give suspects
22 interrogations?

23 A. Yes, sir.

24 Q. What is your first step in -- obviously
25 you know someone is a suspect. What do you take

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 care of first? What are some of the things you
2 want to do?

3 A. Well, coming into the room when I do
4 investigations, the first thing I want to do is get
5 the general information before I go into the
6 interview, but before immediately starting the
7 interview, I have to give the Miranda rights
8 advising them of their rights by the US
9 Constitution.

10 Q. And what were those -- what are those
11 rights, when you say Miranda rights?

12 A. Those Miranda rights are the rights
13 that says you're entitled to -- you have the right
14 to remain silent, anything you say can and will be
15 used against you in a court of law, you have the
16 right to talk to a lawyer and have them present
17 during any questioning, if you cannot afford to
18 hire a lawyer, one will be appointed to represent
19 you for the questioning if you decide to talk with
20 me about any case.

21 Q. Okay. Did you explain those Miranda
22 rights to Mr. Hayward?

23 A. Yes, sir, he was.

24 Q. Did he appear to you to understand
25 those rights?

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 A. Yes, sir, he did.

2 Q. What kind of steps do you take in
3 administering those rights to make sure that the
4 person understands?

5 A. On all of my investigations, I
6 basically read each one and ask them do they fully
7 understand what I said to them, and then I make
8 sure that I get a response back from that person
9 that they understand exactly what I said to them.

10 Q. Did Mr. Hayward appear to you to be an
11 adult?

12 A. Yes.

13 Q. Did he appear to you at any point --
14 let me get this out of the way. How long did this
15 interview last?

16 A. This was a lengthy one. It was
17 approximately about three hours.

18 Q. Now, you said three hours. Were there
19 breaks?

20 A. Yes, sir; he was given breaks in
21 between.

22 Q. Were these breaks sometimes lengthy?

23 A. Yes, sir.

24 Q. So the time frame from beginning to end
25 was three hours?

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 A. Yes, sir.

2 Q. Not three straight hours?

3 A. No, sir.

4 Q. Okay. During the whole course of this,
5 did you ever determine in your -- any mental --
6 apparent mental defects?

7 A. No, sir.

8 Q. Did Mr. Hayward seem to understand and
9 converse cogently with you?

10 A. Yes, sir, he did.

11 Q. In so many years in law enforcement,
12 have you ever come into contact with people who
13 were intoxicated, under the influence of alcohol?

14 A. Yes, sir.

15 Q. What about under the influence of
16 narcotics?

17 A. Yes, sir.

18 Q. Are you trained to recognize those
19 signs?

20 A. Yes, sir.

21 Q. Were any of those signs present when
22 you were doing the interview?

23 A. No, sir.

24 Q. About what time was this taking place?

25 A. This was approximately nine -- it

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 started about between -- when I came from home it
2 was about between 9 and 10.

3 Q. In the morning?

4 A. Yes, sir.

5 Q. In the a.m. Okay. Any physical
6 defects or physical pain that Mr. Hayward --

7 A. He advised me that he was in some
8 discomfort. So due to that fact -- we have chairs
9 in our interview rooms that we normally sit people.
10 So he was given the opportunity to sit in the more
11 comfortable chair to assist him inside the
12 interview room.

13 Q. He had the comfy chair for you guys,
14 right?

15 A. Yes, sir.

16 Q. He got the comfy chair?

17 A. Yes, sir.

18 Q. Did that happen at the beginning of the
19 interview?

20 A. Yes, sir.

21 Q. Any complaints about being in
22 discomfort during the interview?

23 A. No, sir.

24 Q. Any threats of violence by you to get
25 him to talk?

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 A. No, sir.

2 Q. Any promises of leniency to get him to
3 speak?

4 A. No, sir.

5 Q. Following the administration of that
6 Miranda rights, did he agree to talk to you?

7 A. Yes, sir, he did.

8 Q. And he appeared to understand each one?

9 A. Yes, sir.

10 Q. He acknowledged that too?

11 A. Yes, sir.

12 Q. Okay. I want to talk a little bit
13 about interviewing suspects. Again, you've been in
14 law enforcement a long time?

15 A. Yes.

16 Q. Are there different styles that you
17 have seen over the years in giving an
18 interrogation?

19 A. Yes, sir, there is.

20 Q. Is one of those styles to be very
21 aggressive with the person?

22 A. Yes, sir, it is.

23 Q. Is that your style?

24 A. I'm known to be that man.

25 Q. What about in this case?

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 A. In this case, no, sir.

2 Q. What is another way you can play that?

3 A. This -- there's different styles. In
4 this case it was more of a conversational because
5 we had a conversation going back and forth. It was
6 like a general conversation; we just started out
7 talking to each other.

8 Q. Did that remain the general tone of
9 this interview throughout, conversational?

10 A. Yes, sir.

11 MR. SIMPSON: Your Honor, may I
12 approach the --

13 THE COURT: Yes, sir.

14 BY MR. SIMPSON:

15 Q. Detective Holmes, I'm handing you
16 what's been marked and entered as State's 19. Do
17 you recognize that exhibit?

18 A. Yes, sir.

19 Q. And what is that?

20 A. This is the audio that we record in our
21 recording.

22 Q. Audio and void?

23 A. Yes, sir.

24 MR. SIMPSON: Your Honor, I believe
25 State's 19 has already been entered over objection?

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 THE COURT: (Nodding)

2 MR. MAYER: I just wanted to note my
3 objection for the record.

4 THE COURT: It's been noted and
5 preserved and overruled.

6 MR. MAYER: Judge, may we approach?

7 (Bench conference was had; following
8 proceedings were had in open court.)

9 THE COURT: You may proceed.

10 MR. SIMPSON: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MR. SIMPSON: Permission at this time
13 to publish portions of State's Exhibit Number 19?

14 THE COURT: You may proceed.

15 BY MR. SIMPSON:

16 Q. Your interviews in 2013, you had audio
17 and video recording capability?

18 A. Yes, sir.

19 Q. Did you record the entirety of your
20 interaction with the suspect?

21 A. Yes, sir.

22 Q. That's provided to the Solicitor's
23 office?

24 A. Yes, sir.

25 Q. Detective Holmes, I'm going to start

1 with what you just testified about.

2 (Video played)

3 Q. Detective Holmes, did you also provide
4 the suspect with his rights written down?

5 A. Yes, sir.

6 Q. What happens with that? Does he have
7 to sign it?

8 A. Yes, sir. There's a card that I'm
9 reading it off of and he's -- also signs that card
10 and understands that he -- that I read it to him
11 and he understood everything that I said to him.

12 Q. So you begin by getting basic
13 information from him?

14 A. Yes, sir.

15 Q. And that's proper under your
16 understanding of the law prior to Miranda?

17 A. Yes, sir.

18 Q. And the information in this case
19 includes the telephone number, correct?

20 A. Yes, sir.

21 Q. Do you recall what number he gave you?

22 A. It was 460 -- I wrote it down.

23 Q. It is what we just saw on the video?

24 A. Yes, sir. It was the number he gave.

25 Q. Now, let's talk about how you in an

1 interview where you're taking this conversational
2 tone, what's your first step of the interview? Do
3 you just lay out everything that you know for the
4 guy?

5 A. No, sir.

6 Q. So what's sort of your move number one
7 when you're interrogating a suspect?

8 A. In an interview, for me, I would
9 basically let them tell me what they want to tell
10 me. So I would give them the chance to lay out the
11 story, basically what they want to tell me, so I
12 would find out where I need to be and how I
13 interview that person.

14 Q. Would that be a tool in judging how
15 forthright they're being with you?

16 A. Yes.

17 Q. Because they don't know what you know,
18 correct?

19 A. No, sir.

20 Q. Did you do that in this case?

21 A. Yes, sir.

22 Q. Did Mr. Hayward respond to you?

23 A. Yes, sir.

24 MR. MAYER: May we approach again?

25 THE COURT: You may.

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 (Bench conference was had; following
2 proceedings were had in open court.)

3 THE COURT: Proceed. Overruled.

4 (Video played)

5 BY MR. SIMPSON:

6 Q. You offered Mr. Hayward a full open
7 accounting of his night on the night of this crime?

8 A. Yes, sir.

9 Q. And how does he describe that to you?

10 A. Basically, as he just laid it out, he
11 basically took me through the entire time.

12 Q. Are you familiar with the area where
13 this crime occurred?

14 A. Yes, sir.

15 Q. What is the S-A-G?

16 A. S-A-G is Saint Andrews Gardens
17 apartments.

18 Q. Is the SAG where this crime occurred?

19 A. It's in the general area, yes, sir.

20 Q. But not the crime scene?

21 A. No, sir.

22 Q. He said -- he said he was up at the SAG
23 hanging out, heard about it, and went to North
24 Charleston?

25 A. Yes, sir.

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 Q. Did you press him at all -- do you
2 recall pressing him on who took him to North
3 Charleston?

4 A. I asked him how did he get from West
5 Ashley to North Charleston.

6 Q. What did he tell you?

7 A. He told me that a friend, a male
8 friend, took him in a Charger.

9 Q. He tells you a male friend took me to
10 North Charleston in a Charger. Do you remember
11 what color he told you?

12 A. I believe he said it was blue or black.

13 Q. Were you skeptical of that answer?

14 A. Yes, sir.

15 Q. Sort of like, hey?

16 A. Yes, sir.

17 Q. And did he change that?

18 A. Yes, sir.

19 Q. So eventually in the interview he
20 changes that answer all together?

21 A. Yes, sir.

22 Q. And does he finally tell you how he got
23 to North Charleston?

24 A. The final version that I got from him
25 was that a female took him to North Charleston.

1 Q. Okay. Did he ever give you the name of
2 the person? Was he up front with you about the
3 name of the person that took him?

4 A. Not at first.

5 Q. Did he finally ultimately give you that
6 name?

7 A. Yes, sir.

8 Q. What name was that?

9 A. It was Anisha, something. Pearson?

10 Q. Anisha Pearson?

11 A. Anisha Pearson.

12 Q. Right. His story changed in another
13 important way, didn't it?

14 A. Yes, sir.

15 Q. In the clip we just saw, you gave him
16 the opportunity to explain the whole night,
17 correct?

18 A. Yes, sir.

19 Q. Did he ever mention knowing who the
20 deceased was?

21 A. Yes, sir --

22 Q. In that clip?

23 A. Not in that clip, no, sir.

24 Q. Did he ever mention anything -- any
25 contact with the deceased in that clip?

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 A. Not in that clip, no, sir.

2 Q. When you gave him this open opportunity
3 for him to tell you his whole night, did he mention
4 anything related to phone contact or knowing
5 anybody in that context?

6 A. No, sir.

7 Q. Did he eventually, about an hour into
8 the interview, change that?

9 A. Yes, sir, he did.

10 (Video played)

11 BY MR. SIMPSON:

12 Q. He changed his story fairly
13 significantly on the second go around; is that
14 correct?

15 MR. MAYER: Objection.

16 THE COURT: Basis?

17 MR. MAYER: Calls for
18 characterization.

19 THE COURT: It's more leading.

20 Watch the leading.

21 BY MR. SIMPSON:

22 Q. Detective Holmes, in what way on the
23 second go-through was the statement different?

24 A. He changed it and he added some things
25 in there that he didn't tell me on the first part

1 of the interview.

2 Q. Okay. Does he, however, stick to he's
3 in SAG the whole time this happens?

4 A. Yes.

5 Q. And, in fact, is that his story
6 throughout the interview that he's in the SAG?

7 A. Yes, sir.

8 Q. Near the conclusion of the interview,
9 do you give him one more chance to change the
10 story?

11 A. Yes, sir.

12 Q. Sort of the final, is this what it's
13 going to be?

14 A. Yes, sir.

15 Q. I'm sorry, Detective Holmes, do you
16 also ever ask him who he was with in the SAG?

17 A. Yes, sir, I did.

18 Q. What did he say?

19 A. He said he was with some friends in
20 Saint Andrews Gardens.

21 Q. Do you later ask him again who he was
22 with?

23 A. Yes, sir.

24 Q. And do you remember what he said then?

25 A. No, sir.

RICHARD HOLMES - DIRECT EXAM BY MR. SIMPSON

1 Q. Okay. Is this a fair and accurate
2 representation of your interview with the
3 defendant?

4 A. Yes, sir.

5 (Video played)

6 Q. So when asked about somebody who can
7 verify his location in Saint Andrews Garden, he
8 says he's by himself?

9 A. Yes, sir.

10 Q. And you give him one final chance to
11 change that story?

12 A. Yes, sir.

13 THE COURT: Watch the leading.

14 MR. SIMPSON: Yes, ma'am.

15 (Video played)

16 BY MR. SIMPSON:

17 Q. So having gone through that, what is
18 his final version of his whereabouts in all these
19 -- when his whole incident happened?

20 A. He said he was in Saint Andrews
21 Gardens.

22 Q. And did he laugh about it?

23 A. Yes, sir.

24 MR. SIMPSON: Okay. Court's
25 indulgence?

RICHARD HOLMES - CROSS EXAM BY MR. MAYER

1 THE COURT: Yes, sir.

2 MR. SIMPSON: Detective Holmes, answer
3 any questions that Mr. Mayer has.

4 THE COURT: Mr. Mayer, you may proceed.

5 MR. MAYER: Thank you, Judge.

6 THE COURT: You're welcome.

7 CROSS-EXAMINATION

8 BY MR. MAYER:

9 Q. Detective Holmes, if someone says to
10 you they're going to a person's house, like Tino
11 did in these clips, said that he was going to -- I
12 think the Bishops' or his cousin's house; is that
13 right?

14 A. Yes, sir.

15 Q. And he said he was over there for some
16 number of hours, didn't he?

17 A. Yes, sir.

18 Q. Isn't it reasonable to think that he
19 wouldn't always be in the presence of Wallace or
20 whoever else was there? He might have gone to the
21 bathroom. He might have stepped outside to smoke a
22 cigarette. I mean, is that unreasonable?

23 A. It's not unreasonable, no, sir.

24 Q. And, in fact, when you were speaking
25 with him -- well, let me back up. Did you ever

1 have any prior interviews with Valentino?

2 A. On this case?

3 Q. On anything.

4 A. To be honest, I can't remember exactly
5 when, so it would be hard for me to say yeah.

6 Q. But you've worked for CPD for some
7 number of years?

8 A. 26 plus years, yes, sir.

9 Q. And do you guys keep a tabulation or a
10 list of how often you talk to particular folks in
11 the community?

12 A. No, sir, we do not.

13 Q. Okay. So, I mean, would you have any
14 knowledge of whether this person -- whether
15 Valentino was picked up and interviewed previously
16 on other occasions?

17 A. Unless it's circulated in the office, I
18 wouldn't have -- unless I'm the leading agent in
19 the case, I wouldn't have information on that.

20 Q. Okay. And in your interviews with
21 folks, do you occasionally encounter people who
22 like to play games with you, for lack of a better
23 description?

24 A. Yes, sir.

25 Q. Okay. And with those types of folks

1 for your interviews, it's -- they're not
2 forthcoming, right?

3 A. No, sir.

4 Q. All right. But just because they're
5 not forthcoming with the police, wouldn't you agree
6 that doesn't necessarily mean that they're guilty
7 of a crime?

8 A. I wouldn't say guilty of a crime, but I
9 would say they're not being truthful about what I
10 need to find out about.

11 Q. And didn't -- once you -- at the end
12 clip there, once you questioned Valentino's
13 truthfulness and stuff about his final statement,
14 didn't he in fact offer to take a polygraph test?

15 A. He did.

16 Q. And polygraph is a lie detector test?

17 MR. SIMPSON: Objection.

18 THE COURT: Basis?

19 MR. SIMPSON: They're deemed
20 inadmissible by law.

21 THE COURT: There's some exceptions.
22 It's not necessarily true, but I don't know that
23 it's relevant based on what you would be required
24 to prove.

25 Mr. Mayer, you might want to move on.

1 BY MR. MAYER:

2 Q. And didn't Valentino also in fact -- he
3 voluntarily provided DNA evidence?

4 A. Yes, sir.

5 MR. MAYER: Court's indulgence?

6 THE COURT: Uh-huh.

7 BY MR. MAYER:

8 Q. He gave you the name Wallace Bishop.
9 Did you ever follow up with Wallace Bishop?

10 A. I didn't, no, sir.

11 Q. He also gave you the name Ryan Gibbs.
12 Did you ever follow up with Ryan Gibbs?

13 A. No, sir, I did not.

14 Q. You were brought in for a very limited
15 -- you were working on other investigations, but
16 you were brought in for the very limited purpose of
17 interviewing Mr. Hayward?

18 A. Yes, sir. As I said, I normally do
19 interviews -- a lot of times I do the interviews on
20 the cases.

21 Q. Does your division have other African
22 American detectives?

23 A. It does.

24 Q. Okay. Could they also do interviews?

25 A. They work in different bureaus. We

RICHARD HOLMES - REDIRECT EXAM BY MR. SIMPSON

1 have different bureaus, so it's hard to say.

2 Q. Are you the only African American
3 detective in your bureau?

4 A. No, sir.

5 Q. You don't think that's why they brought
6 you in for this?

7 A. No, sir.

8 MR. MAYER: No further questions.

9 THE COURT: Any redirect?

10 MR. SIMPSON: Briefly, Your Honor.

11 THE COURT: You may proceed.

12 REDIRECT EXAMINATION

13 BY MR. SIMPSON:

14 Q. Detective Holmes, you joined the police
15 force right out of high school?

16 A. Yes, sir.

17 Q. And went to college while a police
18 officer?

19 A. Yes, sir.

20 Q. You then took the training to become an
21 investigator?

22 A. Yes, sir.

23 Q. You've been lead agents on major cases
24 before -- have you been lead agent?

25 A. Yes, sir, I have.

RICHARD HOLMES - REDIRECT EXAM BY MR. SIMPSON

1 Q. Assigned by your supervisors to run
2 major investigations?

3 A. Yes, sir.

4 Q. Do you feel like you're some token
5 person they bring in to do interviews?

6 A. No, sir.

7 Q. Okay. Thank you.

8 THE COURT: Any objection to the
9 officer being excused? From the State?

10 MR. SIMPSON: I have --

11 THE COURT: Subject to recall?

12 MR. SIMPSON: I have one more
13 question.

14 THE COURT: Oh, I'm sorry. I thought
15 you said you were done. I apologize. You may
16 continue.

17 BY MR. SIMPSON:

18 Q. Mr. Mayer asked about Mr. Bishop and
19 Ryan Gibbs?

20 A. Yes, sir.

21 Q. In all versions of Mr. Hayward's
22 version, where is he when this occurred?

23 A. He stated he was at Saint Andrews
24 Gardens, SAG.

25 Q. Made a stop at Wallace and Ryan's?

RICHARD HOLMES - REDIRECT EXAM BY MR. SIMPSON

1 A. Yes, sir. And continued on to SAG.

2 MR. SIMPSON: Okay. Nothing further,
3 Your Honor.

4 THE COURT: Any objection to the
5 witness being excused? From the State?

6 MR. SIMPSON: No, Your Honor.

7 THE COURT: From the defense?

8 MR. MAYER: No, Judge.

9 THE COURT: Sir, you're excused.

10 THE WITNESS: Thank you.

11 THE COURT: You're welcome.

12 Madame Forelady, ladies and gentlemen,
13 we are going to take advantage of the break in
14 testimony to take our evening recess. During the
15 break, please do not discuss the case among
16 yourselves or with anyone else. Please do not
17 read, watch, or listen to any media accounts about
18 this case, if there are any, and please do not do
19 any independent research on the Internet.

20 That includes anything that could be
21 found on any type of sites including mapping sites
22 as well any sites that provide any other type of
23 factual information. That is strictly prohibited.
24 Under your oath you are to decide this case
25 according to the testimony that you hear from the

1 sworn witnesses and other evidence that would be
2 introduced.

3 As I told you on Monday, tomorrow is
4 Veteran's Day. It's a state and federal holiday,
5 so we will be in recess during that period. We
6 will resume on Thursday morning at 9:30. Come
7 directly to your jury room at that time and we will
8 resume testimony.

9 Please do not have any contact with
10 anyone in or about the courthouse when you return
11 and restrict your conversations to those that have
12 on a jury sticker. I know it might be tempting to
13 discuss with someone what you've heard so far, but
14 please strictly follow the Court's instructions and
15 not do that, because to even begin to discuss what
16 you've heard requires you to process that
17 information and to draw conclusions based upon it.
18 And that is, by its very nature, deliberations, and
19 you are only allowed to do that once you have heard
20 all of the testimony, the arguments, and the
21 Court's instructions.

22 People will ask you, they'll say, what
23 kind of case are you hearing? And it's only human
24 nature to respond out of being cordial, but just
25 tell them, the Judge told me I can't talk about

1 that. You can make me the heavy, it's okay.
2 Because I don't want you all to begin to process
3 what you've heard because you need to remain
4 impartial until you've heard all of the evidence,
5 all of the testimony and the Court's instructions
6 and argument.

7 You all have been very patient with us,
8 very indulgent. I hope that you all have a
9 wonderful evening and we will see you on Thursday
10 morning at 9:30.

11 Leave your notepads in your seats. We
12 will secure them during the break.

13 (Jury out, 4:48 p.m.)

14 THE COURT: You may be seated. Is
15 there anything we need to take up before we adjourn
16 for the evening? From the State?

17 MR. SIMPSON: No, Your Honor.

18 THE COURT: From the defense?

19 MR. MAYER: Judge, only that I have a
20 witness subpoenaed from SLED and she had a variety
21 of different -- I think five or six different court
22 appearances this week. Mr. Simpson and I tried to
23 coordinate with her to figure out when was best for
24 her to come for the defense's case. And at the
25 time we thought maybe Thursday afternoon.

1 THE COURT: You might want to call
2 her --

3 MR. SIMPSON: I believe the State will
4 now be calling her as a witness.

5 THE COURT: Okay.

6 MR. SIMPSON: Sometime Thursday.

7 THE COURT: Let me for clarity purposes
8 and more for -- so for scheduling ask this
9 question, are you all still -- I'm going to refer
10 to the numbers on your witness list. I'm not going
11 to go by names. Number 1, Ms. Berry?

12 MR. SIMPSON: That's who we were
13 talking about.

14 THE COURT: You're still calling her
15 then I assume?

16 MR. SIMPSON: Yeah.

17 THE COURT: Wallace Bishop?

18 MR. SIMPSON: No.

19 THE COURT: Bryan Bivens?

20 MR. SIMPSON: Probably not. There are
21 a couple that --

22 THE COURT: Nada Kerstein?

23 MR. SIMPSON: Yes.

24 THE COURT: Ashley Dockery?

25 MR. SIMPSON: No.

1 THE COURT: Daniel English?
2 MR. SIMPSON: No.
3 THE COURT: Shaun Flaherty?
4 MR. SIMPSON: No.
5 THE COURT: Antonio Gibson?
6 MR. SIMPSON: Another possibly.
7 THE COURT: Sarah Gladwell?
8 MR. SIMPSON: No.
9 THE COURT: Detective Eugene Gordon?
10 MR. SIMPSON: No.
11 THE COURT: James Green?
12 MR. SIMPSON: Yes.
13 THE COURT: James Jackson?
14 MR. SIMPSON: No.
15 THE COURT: Paul Krasowski?
16 MR. SIMPSON: Possibly.
17 THE COURT: Elizabeth Littman?
18 MR. SIMPSON: Possibly.
19 THE COURT: Lauren Mosher?
20 MR. SIMPSON: Yes.
21 THE WITNESS: Jeff Osborne, who is your
22 investigator?
23 MR. SIMPSON: Possibly.
24 THE COURT: Anisha Pearson?
25 MR. SIMPSON: Yes.

1 THE COURT: Mary Phillips?
2 MR. SIMPSON: Yes.
3 THE COURT: Jason Scurry?
4 MR. SIMPSON: No.
5 THE COURT: Sara Senn?
6 MR. SIMPSON: No.
7 THE COURT: Jonathan Shealy?
8 MR. SIMPSON: No.
9 THE COURT: Karl Shehan?
10 MR. SIMPSON: No.
11 THE COURT: Sherbine?
12 MR. SIMPSON: Yes.
13 THE COURT: Samuel Stewart?
14 MR. SIMPSON: Probably not, but I
15 don't want to --
16 THE COURT: Dustin Thompson?
17 MR. SIMPSON: No.
18 THE COURT: Randolph Unterbrink?
19 MR. SIMPSON: Yes.
20 THE COURT: Van Horn?
21 MR. SIMPSON: Yes.
22 THE COURT: Thomas Walters?
23 MR. SIMPSON: Possibly.
24 THE COURT: Sylvester Williams?
25 MR. SIMPSON: I'm sorry. I'm sure

1 enough to say yes to Walters.

2 THE COURT: Okay. And what would he
3 be offering?

4 MR. SIMPSON: Some -- he in
5 combination with Kevin Sherbine will be talking
6 about jail tapes and how we -- to lay a proper
7 foundation.

8 THE COURT: Sylvester Williams?

9 MR. SIMPSON: Yes.

10 THE COURT: State still has 16 witness
11 so you all can -- I don't know the length of those
12 witnesses, so I guess you all can guesstimate from
13 there how long it's going to take. I would think
14 they're not going to be through with their case
15 until Friday.

16 MR. SIMPSON: We hope that would be
17 the case. I don't recall you mentioning Dr.
18 Schandl.

19 THE COURT: She wasn't on the list.
20 Maybe you all inadvertently left her off.

21 MR. SIMPSON: If I didn't include
22 that, my apologies.

23 THE COURT: Spell her last name. Hold
24 on one second.

25 MR. SIMPSON: S-C-H --

1 THE COURT: Wait a second. Her first
2 name is Cynthia, right?

3 MR. SIMPSON: Yes. S-C-H-A-N-D-L.

4 THE COURT: On Thursday I will voir
5 dire the jury whether they know Dr. Schandl.

6 MR. SIMPSON: Judge, my apologies.
7 That was inadvertent.

8 THE COURT: It happens.

9 MR. MAYER: Judge, on that score, I
10 think that I might have a name that I don't know if
11 it was on my list or not.

12 THE COURT: What's the name?

13 MR. MAYER: Crime scene person who
14 processed the gunshot residue of Ms. Carson's hand.
15 I believe her name is Sarah Gladwell.

16 MR. SIMPSON: She's on the State's
17 list.

18 THE COURT: Yes, she is.

19 MR. MAYER: Okay. Great.

20 THE COURT: Okay. Anything else we
21 need to take up before we break for the evening?
22 From the State?

23 MR. SIMPSON: No, Your Honor.

24 THE COURT: From the defense?

25 MR. MAYER: No, Judge.

1 THE COURT: Okay. I need you to make
2 sure that the Court Reporter has all of the
3 exhibits before you leave.

4 (These proceedings were recessed at
5 4:56 p.m., to be continued November 12, 2015 at
6 9:30 a.m.)

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1 (The following proceedings were had
2 November 12, 2015, at 9:47 a.m., Charleston County
3 Circuit Court, State v. Hayward.)

4 THE COURT: You may be seated. State
5 ready to proceed?

6 MR. SIMPSON: Yes.

7 THE COURT: Defense ready to proceed?

8 MR. MAYER: We are, Judge. One
9 preliminary matter.

10 THE COURT: Yes, sir.

11 MR. MAYER: Judge, based on the
12 original timing that we talked about for the trial,
13 I have a couple of witness showing up here this
14 morning. The Solicitor and I briefly talked off
15 the record about timing and what to do. It's my
16 understanding that the State's case will run the
17 remainder of the day and the morning of tomorrow,
18 and I was wondering when I should tell them to
19 return.

20 THE COURT: You have to make that call.
21 I have no way of knowing. I think that you just
22 have to gauge how the testimony goes.

23 MR. MAYER: Okay.

24 THE COURT: Because I don't know -- I
25 don't know the length of the witnesses, I don't

1 know how long examinations are going to take, I
2 don't know if we're going to have any matters of
3 law. I have no way of making that call for you. I
4 think that you have to make that assessment.

5 MR. MAYER: Okay.

6 THE COURT: All right.

7 MR. MAYER: Thank you, Judge.

8 THE COURT: I didn't think the case --
9 frankly, I anticipated the State's case taking
10 today and tomorrow and then resuming on Monday, but
11 I anticipated that after I looked at the witness
12 list last week.

13 MR. MAYER: Right.

14 THE COURT: All right. Is there
15 anything else before we bring in the jury? From
16 the State?

17 MR. SIMPSON: No, Your Honor.

18 THE COURT: From the defense?
19 Mr. Mayer, is there anything else before I bring in
20 the jury?

21 MR. MAYER: No, Judge.

22 (Jury in, 9:49 a.m.)

23 THE BAILIFF: All jurors are present,
24 Your Honor.

25 THE COURT: You may be seated.

1 Ladies and gentlemen, I hope that you
2 all have had a pleasant morning so far. We are now
3 going to resume testimony.

4 The State may proceed.

5 MS. MULKEY: Thank you, Your Honor.
6 State calls Officer Gerten.

7 RICHARD RYAN GERTEN,
8 being first duly sworn, testified as follows:

9 THE CLERK: Be seated. Please State
10 your full name and spell your last name for the
11 record.

12 THE WITNESS: Richard Ryan Gerten.
13 Last name is spelled G-E-R-T-E-N.

14 THE COURT: Before we begin, I
15 neglected to do this when we first got started,
16 ladies and gentlemen, is there any member of the
17 panel related by blood or marriage or have a close
18 personal or social relationship with Dr. Cynthia
19 Schandl of the Medical University of South
20 Carolina? If so, please raise your hand.

21 THE JURY: (None)

22 THE COURT: Let the record reflect
23 there was no response.

24 You may proceed.

25 MS. MULKEY: May it please the Court?

RYAN GERTEN - DIRECT EXAM BY MS. MULKEY

1 THE COURT: Yes, sir. Ma'am, I'm
2 sorry.

3 DIRECT EXAMINATION

4 BY MS. MULKEY:

5 Q. Morning, Officer.

6 A. Morning.

7 Q. Could you please tell the jury where
8 you're employed?

9 A. Charleston Police Department.

10 Q. And how long have you been with the
11 Charleston Police Department?

12 A. It would be four years this January.

13 Q. What is your current assignment there?

14 A. I'm a Team Four investigator.

15 Q. And have you worked in any other
16 capacity while employed there?

17 A. Yes, ma'am. I was in regular patrol
18 for a little while and I spent sometime in part of
19 the Community Action Team.

20 Q. And can you explain to the jury what
21 the Community Action Team is and where -- what
22 community you were involved with?

23 A. The Community Action Team patrols
24 specific neighborhoods where we experience trouble.
25 Our job is to get to know the community and help

RYAN GERTEN - DIRECT EXAM BY MS. MULKEY

1 where we can, know the area extremely well. And I
2 was in the Ardmore area and I was there for two
3 years.

4 Q. And can you tell jury a little bit
5 about your education and background prior to police
6 work?

7 A. Sure. I got my bachelors from Spring
8 Arbor University in Michigan and I spent 12 years
9 working as a pastor before I became a police
10 officer. When I became a police officer, I worked
11 in the Community Action Team as well as regular
12 patrol. I was a patrol training officer. I'm a
13 member of the civil disturbance unit and currently
14 assigned as a team investigator.

15 Q. That's quite a shift in careers, a
16 member of the clergy to a member of the police
17 department. Would you mind explaining to the jury
18 why the change?

19 A. I was working with mostly high school,
20 middle school students at the time and just kind of
21 felt like it was time for a career change. I
22 couldn't see myself staying up all night with
23 middle school students with my own kids at home, so
24 I decided it was time for a career change.

25 Q. Thank you. Were you working for the

RYAN GERTEN - DIRECT EXAM BY MS. MULKEY

1 police department back on December 11, 2013?

2 A. Yes, ma'am.

3 Q. In what capacity?

4 A. I was part of the Community Action Team
5 patrolling Ardmore at that time.

6 Q. And during the course of your duties
7 that evening, did you make contact with the
8 defendant, Valentino Hayward?

9 A. Yes, ma'am.

10 Q. Do you see him in the courtroom today?

11 A. I do.

12 Q. Could you please point him out and
13 describe what he's wearing to the jury?

14 A. Mr. Hayward is sitting there.

15 (Pointing) He's got brown shoes, black shirt, and
16 a button-down shirt on.

17 MS. MULKEY: Your Honor, let the record
18 reflect that the witness has identified the
19 defendant.

20 THE COURT: You may proceed.

21 MS. MULKEY: Thank you.

22 BY MS. MULKEY:

23 Q. Now, do you recall when you made
24 contact with the defendant during the course of
25 your shift?

RYAN GERTEN - DIRECT EXAM BY MS. MULKEY

1 A. It was around 7:25 p.m.

2 Q. And where did you make contact with the
3 defendant?

4 A. We were at White Oak Drive and Juniper
5 Street.

6 Q. Is that in a particular neighborhood or
7 subdivision?

8 A. Yes. It's in the Ardmore area.

9 Q. Are you familiar with that area?

10 A. Yes.

11 Q. How long had you had opportunity to
12 work in that area?

13 A. I worked there two years.

14 Q. Is Sequoia Street within the Ardmore
15 subdivision?

16 A. Yes, ma'am.

17 Q. Do you know where 640 Sequoia Street is
18 located?

19 A. Yes.

20 Q. About how far was 640 Sequoia Street
21 from where you made contact with the defendant?

22 A. About a half mile.

23 MS. MULKEY: May I approach the
24 witness?

25 THE COURT: You may.

RYAN GERTEN - DIRECT EXAM BY MS. MULKEY

1 BY MS. MULKEY:

2 Q. Officer, I would like to show you what
3 was previously submitted by consent as State's
4 Exhibit 20. If you can look at the screen in front
5 of you, familiarize yourself with that. Do you
6 recognize this?

7 A. Yes, ma'am.

8 Q. And what is this?

9 A. That's the corner of Juniper Street and
10 White Oak Drive.

11 Q. Using --

12 THE COURT REPORTER: I'm sorry, could
13 you scoot up and speak into the microphone?

14 BY MS. MULKEY:

15 Q. Using the monitor, could you please
16 explain, like, where the streets are that you just
17 explained?

18 A. Juniper Street is running across the
19 screen and White Oak Drive is running up the
20 screen.

21 Q. You can mark that to show.

22 A. This is Juniper Street here and this is
23 White Oak Drive. (Marking)

24 Q. Is this a fair and accurate depiction
25 of the area that you stopped the defendant in that

RYAN GERTEN - DIRECT EXAM BY MS. MULKEY

1 evening?

2 A. Yes, ma'am.

3 Q. Could you briefly show where you made
4 contact with the defendant?

5 A. We were pretty much right at the
6 intersection here.

7 Q. And where is 640 Sequoia Street on this
8 map?

9 A. It's not on this map.

10 Q. And please tell the jury what the
11 purpose was for making contact with the defendant
12 that evening?

13 A. On that evening the defendant was seen
14 running down the street and at that time it was
15 unusual, out of place. He was not wearing athletic
16 clothing, he seemed to be in a really big hurry and
17 at that time part of my job was getting to know the
18 neighbors in that area and the people that lived in
19 that area. And I had never seen the defendant
20 running or in a hurry at any point during the time
21 I was working there.

22 Q. Do you recall what he was wearing?

23 A. Yes, ma'am. He had a black leather
24 jacket, black jeans, and white tennis shoes on.

25 Q. Does the law require you to have any

RYAN GERTEN - DIRECT EXAM BY MS. MULKEY

1 reason to stop somebody?

2 A. Yes, ma'am.

3 Q. And what is that?

4 A. Reasonable suspicion.

5 Q. And so could you elaborate what your
6 reasonable suspicion was that evening?

7 A. Yes. Again, he was running and it was
8 out of place for him, I had never seen him in a
9 hurry; he was wearing clothing that did not match
10 running in that area; I'd never seen him in
11 particular running in that area of the neighborhood
12 before.

13 So it just seemed unusual and I wanted
14 to make sure everything was okay since he was
15 running, and another officer had notified me that
16 he was running from a particular area. So I wanted
17 to make sure that he wasn't being chased by someone
18 and that he was okay.

19 Q. You just testified what the defendant
20 was wearing. How can you be so sure about that?

21 A. I documented it.

22 Q. How do you document that?

23 A. Through what's called a field contact.

24 Q. And can you explain to the jury what a
25 field contact is?

RYAN GERTEN - DIRECT EXAM BY MS. MULKEY

1 A. Yes. In our cars we have the in-car
2 computer system, and in that we can document all of
3 our stops that we make. So that's -- it's a field
4 contact and basically that documents the date,
5 time, place of the occurrence, and any notes that
6 we might add to the call about what the defendant
7 may have said or was wearing.

8 Q. Did he tell you where he was coming
9 from and going to?

10 A. He told me he was going to his boy's
11 house.

12 MS. MULKEY: Court's indulgence?

13 THE COURT: Uh-huh.

14 MS. MULKEY: May I approach the
15 witness?

16 THE COURT: You may.

17 BY MS. MULKEY:

18 Q. I would like to show you one more
19 picture, Officer Gerten. I show you what was
20 previously admitted by consent as State's
21 Exhibit Number 1. Familiarize yourself with this.
22 What is that?

23 A. 640 Sequoia Street.

24 Q. And can you point out on there where
25 640 Sequoia is?

RYAN GERTEN - CROSS EXAM BY MR. MAYER

1 A. This U-shaped area right here.

2 (Marking)

3 Q. And where in relation to that was the
4 stop that you made with the defendant?

5 A. Again, it's not on the map. It's down
6 this road and up White Oak Drive.

7 Q. And that was at, approximately, what
8 time?

9 A. 7:25 p.m.

10 MS. MULKEY: Thank you. No further
11 questions. Please answer any questions that the
12 defendant may have.

13 THE COURT: You may proceed.

14 MR. MAYER: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. MAYER:

17 Q. Officer Gerten, how many times had you
18 previously stopped Valentino while he was walking
19 down the road in this neighborhood?

20 A. I don't know the exact number.

21 Q. Okay. Fair to estimate it was about a
22 dozen times?

23 A. No, sir, I wouldn't say it was that
24 often.

25 Q. Not you personally -- you personally

RYAN GERTEN - CROSS EXAM BY MR. MAYER

1 you're talking about?

2 A. Yes.

3 Q. Okay. I'm talking about your agency.

4 A. I wouldn't know that.

5 Q. So you personally had stopped him more
6 than just on this occasion?

7 A. Yes, sir.

8 Q. And about how many times had you
9 stopped him?

10 A. I don't know the exact number.

11 Q. Okay. And on each of those prior
12 occasions when you stopped him, was -- was there
13 also reasonable suspicion to stop him?

14 A. Yes.

15 Q. Okay. Now -- I'm pulling it up now,
16 sir, but as I remember, there were different
17 reasons given for the stop at the time than the
18 ones that you gave in court today. Have you
19 reviewed your field interview lately?

20 A. Yes, sir.

21 Q. Are those field interviews searchable
22 by the name of the person interviewed?

23 A. Yes.

24 Q. You would be able to pull up -- if it
25 -- it had been previously documented, you would be

RYAN GERTEN - CROSS EXAM BY MR. MAYER

1 able to pull up the prior field interviews done
2 with Valentino?

3 A. Yes.

4 Q. Did you happen to do that in
5 preparation for your testimony today?

6 A. Not prior stops, just the one.

7 Q. Okay. You mentioned one of your
8 colleagues had seen Valentino coming down the
9 street. Is it documented somewhere -- I'm sorry,
10 he was the first person to see Valentino, correct?

11 A. Yes, sir.

12 Q. Okay. And is it documented anywhere
13 that at that time he first saw Valentino and
14 Valentino first saw him, whether Valentino was
15 walking or not?

16 A. I believe it says in my field contact
17 interview.

18 Q. And then do you recall, or did you
19 note, was Valentino on the phone when you stopped
20 him.

21 A. I don't recall. I know he had a phone
22 with him.

23 Q. Do you recall him saying something
24 like, why are you guys always harassing me?

25 A. No, sir.

RYAN GERTEN - CROSS EXAM BY MR. MAYER

1 Q. The officer who first saw Mr. Hayward
2 around that time was Officer Shehan, correct?

3 A. Yes, sir.

4 MR. MAYER: Judge, may I approach the
5 witness?

6 THE COURT: Yes.

7 BY MR. MAYER:

8 Q. Take a look at that and let me know
9 once you have familiarized yourself with it.

10 A. I'm familiar with it, sir.

11 Q. And these are the notes that you made
12 contemporaneously with the stop on Valentino,
13 right?

14 A. Yes.

15 Q. Okay. Where does it say on that, that
16 the first officer saw him -- saw him running?

17 A. It doesn't say specifically that he saw
18 him running.

19 Q. I don't want you to read it on there,
20 but doesn't this field interview that you filled
21 out at the time state a different reason other than
22 he was running for making a stop?

23 A. No, sir, it doesn't.

24 Q. I mean, the bottom line, Officer, is
25 that you stopped Valentino because he was in the

1 neighborhood and on a public street and you wanted
2 to search him, right?

3 A. No.

4 Q. And you did, in fact, search him?

5 A. No, sir.

6 Q. Okay. Let me get my terminology right.

7 Did you pat him down?

8 A. I checked him for weapons, sir.

9 Q. Okay. And how did you do that?

10 A. By patting him on the outside of his
11 clothing.

12 Q. I'm sorry, I was calling that a search.

13 And did you find any weapons on him?

14 A. No, sir.

15 Q. How would you feel if you felt like you
16 wouldn't walk around your neighborhood without
17 being stopped by the police?

18 MS. MULKEY: Objection, Your Honor;
19 relevance.

20 THE COURT: Sustained; relevance and
21 speculation and lack of foundation.

22 MR. MAYER: No further questions.

23 MS. MULKEY: Your Honor, may we
24 approach?

25 THE COURT: You may.

RYAN GERTEN - REDIRECT EXAM BY MS. MULKEY

1 (Bench conference was had; following
2 proceedings were had in open court.)

3 THE COURT: Proceed.

4 MS. MULKEY: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. MULKEY:

7 Q. You testified the defendant told you
8 where he was going?

9 A. Yes.

10 Q. Where was that?

11 A. His boys' house is what he said.

12 Q. Did you personally observe where he
13 went after?

14 A. Yes.

15 Q. And where was that?

16 A. There's a small apartment complex right
17 there on Juniper Street. He headed in that
18 direction and walked to the apartment complex.

19 Q. And do you know who lives there?

20 A. I know who used to live there.

21 Q. And who was that?

22 A. Mr. Wallace.

23 Q. Do you know Mr. Wallace by any other
24 name?

25 A. Richard Wallace I believe his name is.

RYAN GERTEN - REDIRECT EXAM BY MS. MULKEY

1 MS. MULKEY: Thank you. No further
2 questions.

3 THE COURT: Did you say no further
4 questions?

5 MS. MULKEY: That's correct.

6 THE COURT: Any objection to the
7 witness being excused? From time State?

8 MS. MULKEY: None.

9 THE COURT: From the defense?

10 MR. MAYER: No, Judge.

11 THE COURT: Sir, you're excused. Call
12 your next witness.

13 MS. MULKEY: The State calls Anisha
14 Pearson.

15 MR. SIMPSON: Judge, we have a matter
16 of law briefly before this witness.

17 THE COURT: Ladies and gentlemen, we
18 have a brief matter of law to take up. During this
19 break, please do not discuss the case and leave
20 your notepads in your seats.

21 You can go with the bailiffs, please.

22 (Jury out, 10:10 a.m.)

23 MS. MULKEY: The State calls Anisha
24 Pearson.

25 THE COURT: Do you want to sit by your

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 client, Ms. Sarji?

2 MS. SARJI: It would make her more at
3 ease. Thank you.

4 THE COURT: You're welcome.

5 ANISHA PEARSON,

6 being first duly sworn, testified as follows:

7 THE CLERK: Please be seated. Please
8 state your full name and spell your last name.

9 THE WITNESS: Anisha Pearson,
10 P-E-A-R-S-O-N.

11 THE COURT: You may proceed.

12 MS. MULKEY: Thank you. May it please
13 the Court?

14 THE COURT: Yes, ma'am.

15 DIRECT EXAMINATION

16 BY MS. MULKEY:

17 Q. Ms. Pearson, do you know the defendant
18 Valentino Hayward?

19 A. Yes.

20 Q. How do you know the defendant?

21 A. Just friends from --

22 THE COURT: I need you to speak up for
23 me, ma'am.

24 THE WITNESS: Friends from around the
25 neighborhood.

1 BY MS. MULKEY:

2 Q. Did you know the defendant back in
3 December of 2013?

4 A. Yes.

5 Q. And at that time about how long had you
6 known the defendant?

7 A. A couple of months.

8 Q. How did you meet the defendant?

9 A. Walking. I used to walk a lot around
10 the neighborhood and started talking.

11 Q. And did you ever have contact with the
12 defendant on the phone?

13 A. Yes.

14 Q. How did you get the defendant's number?

15 A. We switched numbers one of the times we
16 were talking.

17 Q. I'm sorry, I'm having a hard time
18 hearing you.

19 A. We switched numbers one of the times we
20 were talking and getting to know each other.

21 Q. By switching numbers, did you receive a
22 phone number from him?

23 A. I can't recall. I probably gave him a
24 number.

25 Q. Have you had conversations with him on

1 the phone?

2 A. Sometimes.

3 Q. Had you -- did you text back and forth
4 with the defendant on the phone?

5 A. Yes.

6 Q. And I don't want to get too personal,
7 Ms. Pearson, but had you been involved in a
8 physical relationship with the defendant?

9 A. No, just -- I had sex once -- like, a
10 couple of times.

11 Q. You had -- had sex --

12 A. Yeah.

13 Q. Okay. And do you happen to know any of
14 the defendant's friends or family?

15 A. Not personally.

16 Q. Did you know if he had any children?

17 A. Yeah, just one that I know of.

18 Q. And did you know where he lived?

19 A. Yes.

20 Q. Did you know who he lived with?

21 A. His mother.

22 Q. Right. Had you been to his house?

23 A. Not inside. Just, like, in the yard.

24 Q. And did he know generally where you
25 lived?

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 A. Yes.

2 Q. Did you physically see the defendant
3 back on December 11 of 2013?

4 A. Yes.

5 Q. How many times?

6 A. Between the time he called me, I can't
7 recall, like, how many times, but I think it was,
8 like, three or four maybe.

9 Q. And were you under the influence of
10 anything when you saw him?

11 A. No.

12 Q. Were you interviewed by detectives in
13 reference to the case?

14 A. Yes.

15 Q. And were you under the influence of
16 anything when you spoke to detectives?

17 A. No.

18 Q. Did you discuss the defendant during
19 your interview with the detectives?

20 A. Yes.

21 Q. And did they discuss with you a
22 relationship with the defendant?

23 A. They asked me if we were, like, friends
24 or, like, if we were in a relationship, yeah.

25 Q. After you told the detectives that, did

1 the detectives show you a picture?

2 A. Yes.

3 Q. And did you know the person in the
4 picture?

5 A. Yes.

6 Q. Did you immediately recognize the
7 person in the picture?

8 A. Yes.

9 Q. Who was it in the picture?

10 A. Valentino.

11 Q. Do you recall if they asked you to
12 write who it was?

13 A. I can't remember.

14 Q. Do you know Valentino Hayward by any
15 other nickname?

16 A. Just Tino.

17 Q. And was that the same person you had a
18 previous relationship with?

19 A. Yes.

20 Q. And is that the same person that you
21 refer to throughout your interview?

22 A. Yes.

23 MS. MULKEY: Thank you.

24 THE COURT: I think my question
25 becomes, Mr. Mayer, are you really challenging this

1 identification in light of the fact that she knew
2 your client and had sex with him?

3 MR. MAYER: No, ma'am.

4 THE COURT: Okay. So we really don't
5 need to have a Bigger's hearing because there is no
6 challenge. You only have a Bigger's when there's a
7 challenge. If they're not challenging the
8 admissibility of the identification, you don't have
9 to have a Bigger's, unless there's some case law
10 I'm not aware of.

11 MR. SIMPSON: Judge, there is some PCR
12 cases that have established that if the defendant
13 fails to ask for one, it could be PCR so we's
14 rather be --

15 THE COURT: That's usually when they
16 don't know the person at all. You really don't
17 even need the ID in this case. She knew him.

18 MR. SIMPSON: Understood. State v.
19 Liberman talks about how we have to have it, that
20 even if they know a person --

21 THE COURT: Yeah, but that's when
22 they're challenging it, and I would assume that
23 Mr. Mayer has discussed -- you know, PCRs all turn
24 on different facts. Usually you have a problem
25 with a PCR when it hasn't been discussed with the

1 client or it's clearly -- I just don't see this as
2 a PCR issue.

3 I'll just cut to the chase. Mr. Mayer,
4 do you see this as a foundation for any sort of
5 post-conviction relief action?

6 MR. MAYER: No, Judge.

7 THE COURT: You've discussed it with
8 your client, I would assume, strategically why
9 you're proceeding the way that you're proceeding?

10 MR. MAYER: Yes.

11 MR. SIMPSON: Thank you.

12 THE COURT: Get the jury for me,
13 please.

14 And I would have also, in any event to
15 make a reasonable decision on Bigger's, I would
16 have needed the officer -- the issue is
17 suggestibility, whether the procedure itself is
18 suggestible, and based on the totality of the
19 circumstances whether it was suggestible or whether
20 it's prejudicial -- more prejudicial than
21 probative. I don't think that's an issue under
22 these circumstances.

23 MS. MULKEY: Thank you, Your Honor.

24 THE COURT: Yes, ma'am, we need to have
25 you sworn in the presence of the jury, so if you

VALENTINO HAYWARD - EXAM BY THE COURT

1 would indulge us with the clerk when the jury
2 comes in.

3 While the jury is out, Mr. Hayward
4 raise your right hand for me real quick.

5 VALENTINO HAYWARD,
6 being first duly sworn, testified as follows:

7 EXAMINATION

8 BY THE COURT:

9 Q. Has Mr. Mayer discussed with you the
10 admissibility of this identification?

11 A. Yes, ma'am.

12 Q. And you all have gone over it?

13 A. Yes.

14 Q. And he explained his strategy in
15 proceeding in this manner?

16 A. Yes.

17 Q. And you're in agreement with him?

18 A. Yes.

19 THE COURT: Okay. Thank you.

20 (Jury in, 10:16 a.m.)

21 THE COURT: You may be seated ladies
22 and gentlemen. We appreciate your indulgence.

23 You may swear the witness.

24 ANISHA PEARSON,
25 being first duly sworn, testified as follows:

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 THE CLERK: Please be seated. Speak
2 into the microphone, and state your full name and
3 spell your last name for the record.

4 THE WITNESS: Anisha, P-E-A-R-S-O-N.

5 THE COURT: You may proceed.

6 MS. MULKEY: Thank you, Your Honor.

7 May it please the Court?

8 THE WITNESS: Yes ma'am.

9 DIRECT EXAMINATION

10 BY MS. MULKEY:

11 Q. Good morning, Ms. Pearson. Could you
12 please tell the jury where you're from?

13 A. Originally, from New York. I moved
14 down here in, like, 2011 from --

15 THE COURT REPORTER: I can't hear you,
16 I'm sorry.

17 THE WITNESS: I'm originally from New
18 York City. I moved down here with my family in
19 2001 after the World Trade Center had crashed. We
20 resided in Beaufort, South Carolina and then we
21 moved to Charleston, I can't remember the year, but
22 now we're living in Charleston, South Carolina.

23 Q. What do you do for a living,
24 Ms. Pearson?

25 A. Sales associate and I go to school

1 part-time.

2 Q. And where do you go to school?

3 A. Grand Canyon University online.

4 Q. What are you trying to do with that
5 education?

6 A. Become a nurse or health care
7 administrator.

8 Q. And how far have you gone in school?

9 A. I graduated Trident in May 2015, and I
10 just started at Grand Canyon October 19th of 2015.

11 Q. Ms. Pearson, do you want to be here
12 today?

13 A. No.

14 Q. Are we ordering you to be here today?

15 A. Yes.

16 Q. Are you going to be truthful in front
17 of this court?

18 A. Yes.

19 Q. Now, Ms. Pearson were you charged in
20 this case?

21 A. Yes.

22 Q. And so who is sitting next to you?

23 A. My attorney, Leslie Sarji.

24 Q. Prior to being charged in this case,
25 have you ever been in trouble before?

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 A. No.

2 Q. Have you been in trouble since this?

3 A. No.

4 Q. Did you ever think in all of your life
5 that you would be in court testifying in a murder
6 case?

7 A. No.

8 Q. Have you previously met with members in
9 my office to include me?

10 A. Yes.

11 Q. And we've discussed a lot of things.
12 What did you understand was the most important
13 thing about your testimony today?

14 A. To tell the truth.

15 Q. Thank you. Now, do you know the
16 defendant, Valentino Hayward?

17 A. Yes.

18 Q. Do you see him here in the courtroom
19 today?

20 A. Yes.

21 Q. Could you please point him out and tell
22 the jury what he's wearing?

23 A. (Pointing) Collared shirt, black pants.

24 MS. MULKEY: Please let the record
25 reflect the witness has identified the defendant.

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 THE COURT: You may proceed.

2 MS. MULKEY: Thank you.

3 BY MS. MULKEY:

4 Q. How do you know the defendant?

5 A. In the neighborhood we live in, I used
6 to walk a lot and I met him while walking or doing
7 something, and we exchanged numbers and got to know
8 each other.

9 Q. I apologize, I'm having a hard time
10 hearing you. And without getting too personal, did
11 you ever have a relationship with the defendant?

12 A. Yes, I did.

13 Q. Did you know the defendant in December
14 of 2013?

15 A. Yes.

16 Q. And at that time, about how long had
17 you known the defendant?

18 A. A couple of months.

19 Q. And you testified you knew him from the
20 neighborhood. What neighborhood was that?

21 A. I guess Ardmore.

22 Q. Now, I would like to go back to
23 December 11th of 2013. At that point, were you and
24 the defendant in regular contact?

25 A. Not really, not that I can remember.

1 Not really. We didn't -- we done had, like,
2 stopped talking a lot.

3 Q. And when you had been in contact with
4 him, was that ever via phone or text?

5 A. I would say text messages.

6 Q. Do you recall the defendant's phone
7 number back then?

8 A. No, I can't remember.

9 Q. Did you meet with detectives in this
10 case and give a statement?

11 A. Yes.

12 Q. And at that time would you have been
13 able to provide them with the defendant's phone
14 number?

15 A. Probably, yes.

16 Q. And do you recall, going back to
17 December 11, 2013, what you did that day?

18 A. I was at work until, like, 5:30 and got
19 off and went home. And I was at home ever since I
20 got off work.

21 Q. And where were you working back then?

22 A. Walmart.

23 Q. And you got home around what time?

24 A. I got off at 5:30. Probably been
25 around 6:00 at that time.

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 Q. Okay. If you could take us through
2 when you got home, what did you do next?

3 A. I can't remember, like, that whole part
4 of what I did after I got off.

5 Q. Were you in school back then?

6 A. Yes.

7 Q. Did you have homework?

8 A. I had homework, but I didn't do it
9 until later on that night.

10 Q. That evening did you receive a phone
11 call from the defendant?

12 A. Yes.

13 Q. Do you recall around what time that
14 was?

15 A. It was around 8.

16 Q. And you previously testified you hadn't
17 been in regular contact?

18 A. No.

19 Q. And he called you around what time?

20 A. Like, 8:00 that night.

21 Q. And was that the first time that day
22 you had spoken or interacted with the defendant?

23 A. Yes.

24 Q. Where were you at when you got the
25 call?

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 A. I was in my room at my mom's house.

2 Q. What is that address?

3 A. 640 Sequoia.

4 THE COURT: Ma'am, please repeat that.

5 THE WITNESS: 640 Sequoia Street.

6 THE COURT: Thank you.

7 You may continue.

8 MS. MULKEY: Thank you, Your Honor.

9 At this time, may I approach the
10 witness?

11 THE COURT: You may.

12 BY MS. MULKEY:

13 Q. Ms. Pearson, I would like to show you
14 what was previously admitted as State's Exhibit 8.
15 Is this familiar to you?

16 A. No, I can't -- I don't -- I guess so,
17 yeah.

18 Q. What does this appear to be to you?

19 A. Is this a --

20 Q. You can't ask me questions.

21 A. (Inaudible)

22 Q. I'm sorry?

23 A. Where I lived at.

24 Q. What -- can you elaborate where -- what
25 address are you talking about?

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 A. 640 Sequoia.

2 Q. Do you see that on the map?

3 A. I can't really tell if it's right --
4 this part there. (Indicating)

5 Q. Okay. You're saying that appears to be
6 640 Sequoia?

7 A. Yes.

8 Q. Okay.

9 A. That area.

10 Q. Could you use that monitor to indicate
11 where? It's a little bit hard to see.

12 A. Right in here. (Marking)

13 Q. And is that where you were at when you
14 received the call from the defendant?

15 A. Yes.

16 Q. Okay. Thank you. Now, Ms. Pearson,
17 when you received the call from the defendant, what
18 does he say?

19 A. He asked me to -- if I could watch one
20 of his friend's two little girls. And I said yeah.

21 Q. What friend is this?

22 A. Wallace.

23 Q. Do you know who Wallace is?

24 A. Not really. I saw him once or twice,
25 but I didn't know him.

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 Q. Had you ever watched his children
2 before?

3 A. No.

4 Q. Where was the defendant?

5 A. When he told me -- he called me, he
6 told me they were outside of the door.

7 Q. Outside of what door?

8 A. Sequoia Street, my apartment.

9 Q. Did he say why he wanted you to watch
10 Wallace's kids?

11 A. No.

12 Q. So then what happened?

13 A. I went downstairs, opened the door and
14 let them in. He came in and dropped the girls off
15 and they left. Then I went on the computer, my
16 mom's computer, and after that I got another call
17 telling me to come to his mom's house. And I said
18 okay.

19 And I told my sister I would be right
20 back. I went upstairs -- I can't remember. I went
21 upstairs and got a jacket, but I didn't put it on.

22 Q. Let me stop you just for a second. I
23 don't mean to interrupt you, but just to go through
24 this carefully. Before he left, did he tell you
25 where they were going?

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 A. No.

2 Q. But he left the two kids there?

3 A. Uh-huh.

4 Q. And you testified he called you back?

5 A. Uh-huh.

6 Q. And, approximately, how long after he
7 showed up was that phone call?

8 A. It was really fast. I can't even say.

9 It -- like, it seemed, like, ten minutes afterward.
10 Ten or 15 minutes afterwards he called me right
11 back.

12 Q. And that was after he dropped the
13 children off?

14 A. Yes.

15 Q. And you previously testified that you
16 met with us in our office?

17 A. Uh-huh.

18 Q. And you gave a statement to detectives?

19 A. Yes.

20 Q. Do you recall saying that it was,
21 approximately, 30 minutes?

22 A. No.

23 Q. And he told you what when he called you
24 back?

25 A. When he called me back the second time?

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 Q. Yes, ma'am.

2 A. Just to come to his mom's house.

3 Q. Could you tell the jury what he sounded
4 like on the phone?

5 A. He just was telling me to come to his
6 mom's house. I don't remember how he sounded. The
7 second time he called, it was, like, just come to
8 my mom's house.

9 Q. Was he voice the same as it had been
10 earlier?

11 A. I don't recall.

12 MS. MULKEY: Court's indulgence, Your
13 Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. MULKEY:

16 Q. Ms. Pearson, you made a statement to
17 detectives, correct?

18 A. Yes.

19 Q. And in that statement, do you recall --

20 MR. MAYER: Objection, Judge.

21 THE COURT: Basis?

22 MR. MAYER: Improper impeachment.

23 THE COURT: You need to ask her -- you
24 need to give her the statement, allow her to
25 refresh her memory, ask her the exact question.

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 If she answers inconsistently, then you can use
2 extrinsic evidence.

3 MS. MULKEY: Court's indulgence?

4 THE COURT: Uh-huh.

5 BY MS. MULKEY:

6 Q. And do you remember giving that
7 statement to police?

8 A. Yes.

9 Q. Do you remember being asked about his
10 demeanor?

11 A. Yes.

12 Q. Do you remember describing it as a
13 hurried voice?

14 THE COURT: That's leading. It's not
15 within the rules. You need to give her the
16 statement and give her an opportunity to review it
17 and then ask her the exact question. She's allowed
18 to refresh her memory.

19 MS. MULKEY: Court's indulgence?

20 THE COURT: Yes, ma'am.

21 I anticipated Mr. Mayer making an
22 objection as he stood because I knew where he was
23 going.

24 BY MS. MULKEY:

25 Q. Now, so he asked you to do what?

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 A. Come to his mom's house. When I got
2 there, I sat in the car. I was still in the car, I
3 turned my lights off, he came from, like, the side
4 of his mom's house, but he didn't come to the car
5 yet.

6 And he walked -- he was, like, walking
7 around, like, the front of the car and then the
8 side of -- the passenger side of the car. I guess
9 he was, like, trying to call somebody.

10 Q. Can you describe his demeanor when you
11 went to pick him up?

12 A. At that time he was, like, rushing,
13 like, kind of nervous, and then he went on back,
14 like, on the side of his mom's house, and then came
15 to my -- the driver's side of the door. And then I
16 downed the window and he handed me the gun and
17 said, take this to your house.

18 Q. He handed you what?

19 A. A gun, and told me to take this to your
20 house. And when he handed it to me, I immediately
21 -- I had put it on the seat first and then I put it
22 on the floor of my car. Then I left and went back
23 to my house.

24 And I went -- and when I went into my
25 house, I went upstairs to my room. And I had a

1 jacket but I didn't put it on, so I wrapped it in
2 the jacket and I put it, like, on the side of my --
3 like, I had a refrigerator in my room. I put it on
4 the side of that, like, in the corner. And then I
5 went downstairs back -- I went on the computer.

6 Q. And let me go through some of that
7 again. You went to his mother's house?

8 A. Uh-huh.

9 Q. And what was he acting like?

10 A. He was kind of nervous, like, pacing
11 around the car. Well, the front and the side of
12 the car.

13 Q. Had you ever seen him act like that
14 before?

15 A. I mean, you know, he was, like, walking
16 fast and stuff. I didn't think nothing of it.

17 Q. Had he ever asked you to hold a gun
18 before?

19 A. No.

20 Q. And did he give you any explanation for
21 any of this?

22 A. No.

23 Q. Now let's talk about this gun.

24 A. Uh-huh.

25 Q. Are you familiar with guns?

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 A. No.

2 Q. Can you describe that gun to the best
3 of your ability to the jury?

4 A. I don't really know how it looked. I
5 just remember seeing, like, a point of the gun,
6 like.

7 Q. I'm sorry?

8 A. I just remember seeing, like, part of
9 the gun, like, maybe a tip I guess, but I didn't
10 know how -- it was, like, what it was. I don't
11 know what it was.

12 Q. What about the size?

13 A. I don't remember.

14 Q. Was it bigger than your hand?

15 A. I don't remember.

16 MS. MULKEY: Court's indulgence?

17 THE COURT: Yes, ma'am.

18 BY MS. MULKEY:

19 Q. Now, do you remember -- going back to
20 the interview with the detectives. Do you remember
21 them asking you about the gun?

22 A. Uh-huh.

23 Q. And as part of that statement, did they
24 ask you specific questions about the gun?

25 A. I believe they asked me, like, if --

1 what color was it. Or he was asking me if I could
2 identify it and if I saw it.

3 Q. Were you comfortable having that gun
4 that night?

5 A. No.

6 Q. So explain again what you did with it.

7 A. When he gave it to me, I put it on my
8 seat first and then on the floor of my car, the
9 passenger side. And then I drove off and went back
10 to my mom's house. I went in the house. I think I
11 -- I can't remember if I wrapped it up in the car,
12 but I don't remember walking in with just, like,
13 holding it in my hand.

14 So I had to wrap it up in the jacket
15 and I went into the house and went upstairs and put
16 it by my refrigerator, and then I went back
17 downstairs. And then he called me again and tell
18 me to bring the gun --

19 Q. And let me stop you right there. How
20 long had it been since you had left the defendant?

21 A. Not long. A couple of minutes.

22 Q. And what did he tell you?

23 A. He told me to just -- he told me to
24 bring the gun. It was, like, a hurried voice;
25 bring the gun, bring the gun. And I went back up

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 to my room, got it, ran downstairs, told my sister
2 I would be right back. And I went -- first, I
3 drove to his mom's house and then I drove to
4 another location, like, around the corner.

5 And I was, like, in a hurry at that
6 point because we were still on the phone, but he
7 had told me -- first, I went to his mom's house and
8 I guess he saw me going to his mom's house. And he
9 said come to another location and I was, like,
10 hurrying to get there.

11 Q. Let me interrupt you. Why were you in
12 such a hurry?

13 A. I wasn't in a hurry. He was rushing
14 me. The way he sounded on the phone, like, hurry
15 up.

16 Q. Did you meet up with him?

17 A. Not when I dropped the gun off the
18 second time. I didn't see him that time. He told
19 me to give it to somebody and I did.

20 Q. Who did you give the gun to?

21 A. I don't know who she was.

22 Q. And then what happened?

23 A. After I dropped it off, I just handed
24 it to her. I didn't look at her or anything. I
25 drove off and -- but I didn't go home. I went,

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 like -- I just went, like, a back way from Sequoia,
2 and I went driving. And then I got stopped by the
3 police because at that time the police were
4 arriving really quick.

5 So I just drove, like -- was going --
6 driving around the corner and they -- they saw me,
7 like, driving fast. And they stopped me, like, on
8 White Oak and told me I was kind of, like,
9 speeding. And they asked me where I was coming
10 from. And I told them my house. And then they was
11 checking I guess -- I didn't have nothing on me, my
12 wallet or anything, because I thought I was going
13 back home, but I didn't go back home.

14 Then they asked me -- after checking,
15 like, to see where I lived at, they asked me if
16 they could search my car. And I told them, yeah.
17 So I stood outside of the car while one policeman
18 searched it and one -- the other one was standing
19 by me.

20 And he was standing there and I heard
21 somebody say, somebody got shot, but I didn't know
22 who. I didn't hear anything, and so I told him I
23 didn't hear anything.

24 Q. And then what happened?

25 A. I went driving up the street to -- just

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 driving. I went into a Pizza Hut parking lot on 61
2 and sat there for, like, a minute. And then I
3 drove back to the neighborhood and got a call from
4 Valentino, and he was telling me to come back where
5 I had previously left, which was dropping the gun
6 off.

7 Q. Let me stop you there. You received
8 another call from the defendant?

9 A. Yes.

10 Q. And what did he ask or tell you?

11 A. He just told me to come back. I told
12 him I was coming back -- on my way back from
13 driving, and he was telling me to come back to the
14 -- that apartment where I dropped the gun off. It
15 wasn't, like, a specific apartment. I just drove
16 in the parking lot and I parked on the side of a
17 van.

18 Q. And did he direct you where to go?

19 A. No. I just drove into a parking space.

20 Q. Was it a well-lit parking lot?

21 A. It was dark. So the lights -- street
22 lights were on.

23 Q. And did he tell you where to meet him
24 there?

25 A. No. I just parked right there and he

1 came in the car and I drove off.

2 Q. Where did he come from?

3 A. I don't know. He just came to the car.
4 I don't know, like, from where, like, because there
5 was a long -- the way the apartments are, it was
6 this way, (Indicating) but the van was like
7 blocking me so I don't know where he came from.

8 Q. And where did you go after that?

9 A. After he got into the car, I drove off
10 and we drove to Cosgrove. And we went to this
11 first house and -- he told me to go there first,
12 make a right on Leeds. And we went to the first
13 house and he got out. And I guess he went to knock
14 on the door and nobody was there.

15 He got back in the car and I drove off,
16 and then we went across Leeds Avenue and we turned
17 on that first street. And he was telling me where
18 to go at. And he told me he was -- he got in the
19 car and said, take me to my aunt's house. And he
20 told me where to go at and that's when I dropped
21 him off.

22 Q. And on the ride up, did he provide any
23 explanation for why he asked you to watch Wallace's
24 kids?

25 A. No.

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 Q. Did he provide any explanation for why
2 he asked you to take the gun?

3 A. No.

4 Q. Did he provide any explanation for why
5 he wanted you to bring it back?

6 A. No.

7 Q. Did he explain his rushing or hurried
8 manner that you described?

9 A. No.

10 Q. Did he make any phone calls on the
11 ride?

12 A. Maybe, I can't remember.

13 Q. Did the defendant call you after you
14 had dropped him off that night?

15 A. When I got home, I got a call. I was
16 in my room, like, laying down. And he called me
17 again and just asked me, like, the police were
18 outside.

19 Q. Was it from a number you recognized?

20 A. I believe it was from his number. I
21 can't remember.

22 Q. Since this has happened, has the
23 defendant spoken with you?

24 A. No.

25 Q. Do you still live in Ardmore?

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 A. No.

2 Q. How come?

3 A. We had to move, my mom, because she was
4 on Section Eight. So it's -- the rules, you can't
5 have any drug-related charges so we had to move,
6 like, right after that.

7 Q. Because you were charged?

8 A. Yes.

9 Q. And going back to something we
10 discussed earlier, you testified you met with me
11 and members of my office?

12 A. Yes.

13 Q. Did anyone in my office, including
14 myself, make you any promises as to your charges?

15 A. No.

16 Q. Are you here today telling the truth?

17 A. Yes.

18 Q. You may want us to consider your
19 presence here today, but did we tell you or promise
20 you anything that would happen as a result of you
21 being here today?

22 A. No.

23 Q. Have your answers to my questions been
24 truthful?

25 A. Yes.

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 Q. Have your answers to my questions been
2 your answers?

3 A. Yes.

4 MS. MULKEY: Court's indulgence?

5 THE COURT: Yes, ma'am.

6 BY MS. MULKEY:

7 Q. Ms. Pearson, I want to make sure that I
8 understand a few things. I want to go back to your
9 testimony on the very first call that night. About
10 what time was that?

11 A. Around 8:00.

12 Q. And where was the defendant?

13 A. I mean, when he called me, he told me
14 he was outside the door.

15 Q. Outside whose door?

16 A. Outside my mom's door, outside the
17 apartment.

18 Q. And what did he ask you to do?

19 A. On the phone he asked me to watch
20 Wallace's kids.

21 Q. And then please clarify when the second
22 phone call was.

23 A. I don't remember the time, but it was
24 really fast. Maybe a couple of minutes after
25 dropping the kids off. It might have been longer,

ANISHA PEARSON - DIRECT EXAM BY MS. MULKEY

1 but I just -- it was just really fast.

2 Q. It seemed shortly thereafter?

3 A. Yeah.

4 Q. Did it seem like an adequate amount of
5 time to watch children?

6 A. Yes.

7 Q. And then he asked or told you what?

8 A. To come to his mom's house.

9 Q. And when you went to his mom's house,
10 how was he acting?

11 MR. MAYER: Judge, objection.

12 THE COURT: Basis?

13 MR. MAYER: Asked and answered.

14 THE COURT: It is asked and answered.

15 I'll give you one more shot.

16 You may answer the question, ma'am.

17 THE WITNESS: He was just, like, pacing
18 around the car, and when I got there, like, in a
19 hurry kind of.

20 BY MS. MULKEY:

21 Q. And after that interaction, did the
22 defendant call you a third time?

23 A. Yeah. When I left him that time, when
24 I got back to the house, he called me, like, really
25 quick back when I got in the house after giving me

1 the gun.

2 Q. And what was the reason for that phone
3 call?

4 A. To bring the gun back.

5 MS. MULKEY: Thank you. No further
6 questions at this time, Your Honor.

7 THE COURT: Any questions of the
8 witness?

9 MR. MAYER: Judge, we do, but could we
10 take a comfort break?

11 THE COURT: Madame Forelady, and
12 ladies and gentlemen, we are going to take a brief
13 recess. Please do not discuss the case and leave
14 your notepads in your seat. Go with the bailiffs.

15 (Jury out, 10:47 a.m.)

16 THE COURT: You may be seated. Who
17 needs to go to the restroom?

18 MR. MAYER: It's me.

19 THE COURT: When you get back, we will
20 resume.

21 Sir, do you want to use the restroom
22 while we're taking a break?

23 THE WITNESS: No, ma'am.

24 THE COURT: I would suggest anyone else
25 do the same, because I'm not taking anymore breaks

ANISHA PEARSON - CROSS EXAM BY MR. MAYER

1 until lunchtime.

2 (A recess transpired.)

3 THE COURT: Are we ready to proceed?

4 From the State?

5 MS. MULKEY: Yes, Your Honor.

6 THE COURT: Defense ready to proceed?

7 MR. MAYER: Yes, Judge.

8 THE COURT: Please bring in the jury.

9 (Jury in, 10:53 a.m.)

10 THE COURT: You may be seated.

11 We will now resume the witness's

12 testimony. You may proceed.

13 MR. MAYER: Thank you, Judge.

14 THE COURT: You're welcome.

15 CROSS-EXAMINATION

16 BY MR. MAYER:

17 Q. Morning, Ms. Pearson.

18 A. Morning.

19 Q. When the police took you to the station
20 and asked you to tell your story, you told them
21 something different than what you told today,
22 right?

23 A. I told them something before I told
24 them the real story. I didn't tell them -- I told
25 them the same thing I told them today, but I told

ANISHA PEARSON - CROSS EXAM BY MR. MAYER

1 them a different story the first time.

2 Q. Okay. And that was only after they
3 charged you with accessory to murder that you
4 changed your story; is that correct?

5 MS. MULKEY: Objection, Your Honor.

6 THE COURT: Basis?

7 MS. MULKEY: It's not true.

8 THE COURT: Approach.

9 (Bench conference was had, following
10 proceedings were had in open court.)

11 THE COURT: Sustained. Rephrase.

12 BY MR. MAYER:

13 Q. I made a mistake and I apologize. You
14 told one version of this, right? And then you told
15 a second version of this when the gun came into the
16 story, right?

17 A. Yes.

18 Q. And then you told a third version of
19 this when the gun was given by you to some
20 unidentified female, right?

21 A. Not given -- I didn't give a --

22 THE COURT REPORTER: I can't hear you.

23 THE WITNESS: I didn't give three
24 versions.

25 BY MR. MAYER:

1 Q. Okay. But was there -- okay. So just
2 to be clear, there was a version where there was no
3 gun?

4 A. Uh-huh.

5 Q. And then there was a version with a
6 gun?

7 A. Yes.

8 Q. And then there was a version with the
9 gun being given to an unidentified female?

10 A. No.

11 Q. Okay. That's what you told the court
12 here today, right? That you gave the gun to an
13 unidentified female?

14 A. Yes.

15 Q. And you -- let's see. Have you
16 reviewed your call logs or anything like that since
17 this first happened?

18 A. No, I don't have my phone. The same
19 phone.

20 Q. How many times would you say that you
21 have sat down with somebody from the State to talk
22 about this case?

23 A. Four -- about four times. I can't
24 remember.

25 Q. And those were all kind of formalized

1 discussions, right?

2 A. Yes.

3 Q. Okay. And did you review any notes
4 while you had the discussions with them?

5 A. No. I just kept on telling the same
6 story.

7 Q. Okay. What did you do to prepare for
8 your testimony here today?

9 A. Talked to my Solicitor. I didn't -- I
10 mean, I just talked to them before coming here
11 today a few weeks ago.

12 Q. And who is this sitting in the
13 courtroom with you?

14 A. Huh?

15 Q. Who is sitting in the courtroom behind
16 you?

17 A. My attorney.

18 Q. Okay. And even though the State claims
19 that you didn't make some express deal with them,
20 do you understand that if they were going to try
21 you for this charge, you would be in this trial
22 here today?

23 A. Yeah.

24 THE COURT: Be careful, Mr. Mayer.
25 That's not accurate. Rephrase the question.

1 BY MR. MAYER:

2 Q. To clarify, do you understand that
3 since you're not being tried on this charge today,
4 in order for them to try you on this charge, they
5 would have to do a whole other week-long murder
6 trial to do that?

7 A. Yes.

8 Q. Okay. Now, so Tino called you and
9 asked you to watch Wallace's kids. Is that Wallace
10 Bishop?

11 A. I don't know his last name, I guess.

12 THE COURT: Ma'am, I need you to speak
13 up.

14 THE WITNESS: I don't remember his last
15 name. I don't know.

16 BY MR. MAYER

17 Q. Are you clear that Wallace is his first
18 name?

19 A. Yes.

20 Q. Okay. I'm sorry?

21 A. That's what I knew him from.

22 Q. You knew him as Wallace?

23 A. Yes.

24 Q. And just to be clear, you didn't know
25 him as Rasheed?

ANISHA PEARSON - CROSS EXAM BY MR. MAYER

1 A. No.

2 Q. And then in terms of picking up the
3 children, it was Wallace that came back to pick up
4 the children?

5 A. I don't know. I don't remember. I
6 wasn't there when he came back, if he came back.

7 Q. Okay. But Wallace was there the first
8 time?

9 A. Dropping the kids off, yes.

10 Q. Okay. Who was there with the kids, did
11 you say it was your sisters?

12 A. Yes.

13 Q. Okay. And they would know if it was
14 Wallace who came back to pick the kids up?

15 A. Yes.

16 Q. Okay. Do you have an understanding of,
17 you know, who -- who picked the kids up at all? I
18 mean, you weren't there?

19 A. They told me when I got back into the
20 house -- I didn't ask them. They told me he came
21 back and got them.

22 Q. Who is he?

23 A. Wallace.

24 Q. So just to be abundantly clear,
25 Valentino came to your door one time that night?

1 A. Yes.

2 Q. Okay. And that was when he dropped the
3 children off?

4 A. Yes.

5 Q. And then you took him out of Ardmore?

6 A. Yes.

7 Q. You drove him out of Ardmore?

8 A. Yes.

9 Q. Okay. It's true that Valentino did not
10 have a car, correct?

11 A. Yes.

12 Q. So he relied on other people for rides?

13 A. I guess.

14 Q. And did you know the aunt whose house
15 you took him to?

16 A. No.

17 Q. But it's your understanding that he
18 asked you to take him to his aunt's house?

19 A. Uh-huh.

20 Q. And that was -- would you say that was
21 in North Charleston or --

22 A. Yes, North Charleston.

23 Q. So in all, how long did you live in
24 that neighborhood before you moved?

25 A. Maybe a year. We hadn't been there

1 almost a year.

2 Q. Okay. And you walked around the
3 neighborhood some?

4 A. Uh-huh.

5 Q. Did you observe some other young black
6 men being out on the street while you were walking
7 ever? Were they living in the neighborhood?

8 A. I mean, just plenty of black people
9 around there.

10 Q. Were there young black men who wore
11 their hair in twists? Was that a pretty common
12 style at the time?

13 A. Yeah.

14 Q. Is it fair to say that Valentino is not
15 the only young black man who wore his hair in a
16 twist right in that neighborhood?

17 A. No.

18 MR. MAYER: Okay. Court's indulgence?

19 THE COURT: Yes, sir.

20 BY MR. MAYER:

21 Q. Ms. Pearson, was this a safe
22 neighborhood that you lived in?

23 A. I mean, I never felt unsafe around
24 there. I mean, I was always at work or home.

25 Q. Did you know of any young men around

1 that area who routinely kept a gun on them or near
2 them?

3 MS. MULKEY: Objection, Your Honor.

4 THE COURT: Basis?

5 MS. MULKEY: Relevance.

6 THE COURT: Approach, please.

7 (Bench conference was had; following
8 proceedings were had in open court.)

9 THE COURT: You may proceed.

10 BY MR. MAYER:

11 Q. Ms. Pearson, you've given Valentino
12 rides before in the past?

13 A. Yes.

14 Q. And I know it was a long time ago and I
15 know that you may not have taken notes from way
16 long ago, but do you recall a time Valentino asked
17 you for a ride, long before the incident we're
18 talking about today, when he asked you for a ride
19 to go pick up a gun?

20 A. No.

21 Q. Where you took him to North Charleston
22 where he picked up a gun.

23 MS. MULKEY: Objection.

24 THE COURT: Basis?

25 MS. MULKEY: Asked and answered.

1 THE COURT: I'll give him a little
2 latitude.

3 You may proceed. Overruled.

4 BY MR. MAYER:

5 Q. Take your time and think about it
6 because it's not part of your prior interviews.

7 A. No.

8 Q. You don't recall that?

9 A. No.

10 Q. Is it possible that some of the times
11 when you've driven him around that -- that he may
12 have had a weapon on him and you might not have
13 known about it?

14 A. I mean, he could have, but I don't -- I
15 didn't check him to see if he did.

16 Q. Okay.

17 A. I didn't think that he did.

18 MR. MAYER: Okay. All right. Court's
19 indulgence?

20 BY MR. MAYER:

21 Q. Generally describing Valentino's
22 behavior, is he someone that kind of moves and acts
23 quickly?

24 A. Yeah.

25 Q. I mean, is he someone who maybe is a

ANISHA PEARSON - REDIRECT EXAM BY MS. MULKEY

1 little impatient in his demeanor?

2 A. Yeah.

3 Q. Just generally?

4 A. Uh-huh.

5 Q. Okay. And that's without any sort of
6 stress or anything; it's how he is in life, right?

7 A. Uh-huh.

8 THE COURT: Ma'am, say yes or no
9 please.

10 THE WITNESS: Yes.

11 MR. MAYER: Okay. Thank you very much.

12 THE COURT: Any redirect of the
13 witness?

14 MS. MULKEY: Briefly, Your Honor.

15 THE COURT: You may proceed.

16 REDIRECT EXAMINATION

17 BY MS. MULKEY:

18 Q. Ms. Pearson, it's been a while since
19 this happened; is that correct?

20 A. Yes, ma'am.

21 Q. And has it been a while since you gave
22 the statement to the detectives?

23 A. Yes.

24 Q. And you testified you gave that
25 statement to them right after it happened, more or

1 less, correct?

2 A. Yes.

3 Q. And would it refresh your recollection
4 to watch a portion of that statement as to what
5 your testimony was immediately after this incident
6 happened?

7 A. Yes.

8 MS. MULKEY: Your Honor, at this time
9 we would offer a portion of that testimony.

10 THE COURT: If she reviews it
11 privately, not in the presence of the jury. To
12 refresh her memory.

13 MS. MULKEY: Yes, Your Honor. May we
14 do that?

15 THE COURT: Madame Forelady, ladies and
16 gentlemen, we have a matter of law. Please do not
17 discuss the case and leave your notepads in your
18 seats.

19 (Jury out, 11:10 a.m.)

20 THE COURT: You may proceed.

21 MS. MULKEY: Thank you, Your Honor.

22 BY MS. MULKEY:

23 Q. Ms. Pearson, I direct your attention to
24 the monitor.

25 (Video played)

ANISHA PEARSON - REDIRECT EXAM BY MS. MULKEY

1 Q. Now, Ms. Pearson, as to the time
2 between the first and second call, does that
3 refresh your recollection as to how long the time
4 period was?

5 A. Yes.

6 Q. And how long was that?

7 A. Ten or 15 minutes.

8 Q. Did you hear your statement on there?

9 A. Yes.

10 Q. Did you hear the time period that you
11 gave in that statement?

12 A. Yes. I said 10 or 15 minutes.

13 MS. MULKEY: Can we replay that portion
14 again, Your Honor?

15 THE COURT: You may.

16 (Video played)

17 BY MS. MULKEY:

18 Q. Ms. Pearson, after re-watching that,
19 did you -- do you recall what the time period was
20 between the first and second phone call?

21 A. Fifteen minutes.

22 Q. Did you hear 15 to 20 minutes?

23 A. I didn't hear 20 minutes. I just heard
24 15.

25 Q. Would you agree that your statement

1 there was your recollection at the time?

2 A. Yes.

3 MS. MULKEY: Thank you. Thank you,
4 Your Honor. That would be all that we need to
5 refresh her recollection on. I just have a few
6 questions in front of the jury when they return.

7 THE COURT: You can get the jury.

8 (Jury in, 11:13 a.m.)

9 THE BAILIFF: All jurors are present,
10 Your Honor.

11 THE COURT: You may be seated. Ladies
12 and gentlemen, we appreciate your patience. You
13 can resume questioning the witness.

14 MS. MULKEY: Thank you.

15 THE COURT: You're welcome.

16 BY MS. MULKEY:

17 Q. After reviewing the previous statement,
18 can you now recall what the time period was between
19 the first and second phone call?

20 A. Fifteen minutes, 15 to 20 minutes.

21 MS. MULKEY: Thank you. No further
22 questions.

23 THE COURT: Any objection to the
24 witness being excused? From the State?

25 MS. MULKEY: None from the State.

SYLVESTER WILLIAMS - DIRECT EXAM BY MS. MULKEY

1 THE COURT: From the defense?

2 MR. MAYER: No, Judge.

3 THE COURT: Ma'am, you're excused.

4 Call your next witness.

5 MS. MULKEY: State calls Detective
6 Sylvester Williams.

7 SYLVESTER WILLIAMS,

8 being first duly sworn, testified as follows:

9 THE WITNESS: I affirm.

10 THE CLERK: Please be seated. State
11 your full name and spell your last name for the
12 record.

13 THE WITNESS: Detective S. Lamont
14 Williams, W-I-L-L-I-A-M-S.

15 THE COURT: You may proceed.

16 MS. MULKEY: Thank you, Your Honor.
17 May it please the Court?

18 DIRECT EXAMINATION

19 BY MS. MULKEY:

20 Q. Detective Williams, where are you
21 employed?

22 A. City of Charleston Police Department.

23 Q. And how long have you been with the
24 Charleston Police Department?

25 A. Approximately, 12 years.

SYLVESTER WILLIAMS - DIRECT EXAM BY MS. MULKEY

1 Q. Can you tell jury a little bit about
2 your background before you came to the police
3 department?

4 A. Well, I have to total of 22 1/2 years
5 in law enforcement; I have a bachelor's degree in
6 criminal justice, a master's degree in individual
7 family development, and postgraduate hours,
8 18 hours, of that, and a graduate of South Carolina
9 Criminal Justice Academy.

10 Q. And what is your current assignment
11 with the Charleston Police Department?

12 A. Currently assigned to the Bureau of
13 Alcohol Tobacco and Explosives, commonly known as
14 ATF, as a task force officer.

15 Q. Were you working for them back in
16 December of 2013?

17 A. Yes, I was.

18 Q. And in what capacity?

19 A. During that week I was the on-duty
20 detective.

21 Q. And during the course of your duties as
22 an on-duty detective, did you respond to 640
23 Sequoia Street?

24 A. I did.

25 Q. And what were you called out there for?

SYLVESTER WILLIAMS - DIRECT EXAM BY MS. MULKEY

1 A. I was called to Sequoia Street
2 regarding a homicide.

3 Q. If you could explain to the jury what
4 happens when you respond to the scene as an on-call
5 detective? If you could briefly tell them what
6 happened.

7 A. As on-call detective, when an incident
8 of that magnitude occurs, the officers on scene
9 will call central detective which I was on duty at
10 the time. I respond to the incident location,
11 interview witnesses, call other resources out to
12 assist regarding the investigation.

13 Q. And on that evening were you advised of
14 any potential witnesses or people to speak to in
15 this case?

16 A. Yes, I was.

17 Q. And who was that?

18 A. It was the name of Latoya Carson. She
19 was a witness.

20 Q. Did you, in fact, conduct an interview
21 with her?

22 A. I did.

23 Q. Where did you conduct that interview?

24 A. Conducted the interview right there on
25 Evergreen Street, the corner of Evergreen and

1 Sequoia.

2 Q. Did you eventually conduct an interview
3 with her at Charleston Police Department
4 Headquarters?

5 A. She was transported to headquarters.

6 Q. Now, you testified when you come on
7 scene you're given a brief summary by the
8 responding officers, but as you continue to
9 investigate a case, is it ever necessary for you to
10 pass on information or make further investigative
11 requests?

12 A. Yes, it is.

13 Q. And who would you typically pass on
14 that information to or make those requests of?

15 A. Well, it depends. Regarding this case,
16 the witness passed off some information to me that
17 I then relayed to Crime Scene and other detectives
18 that responded as well.

19 Q. What would be the purpose of making a
20 request through Crime Scene?

21 A. You make a request of Crime Scene
22 particularly to collecting and processing evidence.

23 Q. And in this particular case after
24 speaking with Ms. Carson, did you make a request
25 through Crime Scene?

SYLVESTER WILLIAMS - DIRECT EXAM BY MS. MULKEY

1 A. I did.

2 Q. Can you please elaborate what you -- on
3 what you requested from Crime Scene. I requested
4 Crime Scene to conduct latent prints to a
5 particular area on the vehicle that was involved in
6 the incident at this location?

7 MS. MULKEY: Your Honor, may I approach
8 the witness?

9 THE COURT: You may.

10 BY MS. MULKEY:

11 Q. Detective Williams, I would like to
12 show you what has previously been entered by
13 consent as State's Exhibit 5. Can you take a look
14 and tell me what that is?

15 A. It's a Buick, four-door vehicle.

16 Q. Do you recognize that?

17 A. Yes.

18 Q. What is the significance of that Buick?

19 A. This vehicle is where -- the victim and
20 the witness arrived in.

21 Q. And could you please show and explain
22 to the jury in relation to that vehicle what you
23 requested Crime Scene to do?

24 A. Particularly, I spoke with the witness,
25 and she advised me what happened and how it

SYLVESTER WILLIAMS - CROSS EXAM BY MR. MAYER

1 happened or what she saw. I advised the Crime
2 Scene techs that night to process the area of the
3 vehicle up here (indicating) for latent
4 fingerprints.

5 Q. And did you document your role in this
6 case in a report?

7 A. I did.

8 MS. MULKEY: Court's indulgence, Your
9 Honor?

10 Nothing further at this time, Your
11 Honor.

12 Please answer any questions the defense
13 may have.

14 THE COURT: Any questions for the
15 witness?

16 MR. MAYER: Yes, Judge.

17 THE COURT: You may proceed.

18 MR. MAYER: Thank you.

19 CROSS-EXAMINATION

20 BY MR. MAYER:

21 Q. Officer Williams, when you interviewed
22 Ms. Carson, did you have the benefit of listening
23 to the 911 call that she was recorded on?

24 A. Not at the time, no.

25 Q. Did you conduct -- was it one or two

SYLVESTER WILLIAMS - CROSS EXAM BY MR. MAYER

1 interviews with her?

2 A. Actually, it was two interviews. The
3 first interview was right there close to the scene
4 and, later on, she was transported to the
5 Charleston Police Department.

6 Q. What would you say is the distance from
7 the car that she claims to be sitting in to the
8 place where the shooting happened? Is that about
9 50 yards?

10 A. I would say about 70 or 75.

11 Q. Okay. And in your report you would
12 have written up the details of her statement,
13 right?

14 A. Yes, or summarized it because I taped
15 it at the police department.

16 Q. Okay. And did you happen to review
17 your report for your testimony today?

18 A. Yes.

19 Q. And is it your understanding that the
20 time lapse between the time when Ms. Carson heard
21 -- said she heard the gunshot and time she did
22 anything about it was about five minutes?

23 A. Yes.

24 Q. That's accurate, right?

25 A. Approximately. That's according to

SYLVESTER WILLIAMS - CROSS EXAM BY MR. MAYER

1 what -- the testimony from her, the witness'
2 statement.

3 Q. What she told you at the time?

4 A. Yes, at the time.

5 Q. In your investigation of that scene,
6 that area and the witnesses, were you able to find
7 anyone else who heard this alleged phone call
8 between the deceased and -- the deceased and
9 accused besides Ms. Carson?

10 A. No, I did not.

11 (The proceedings were interrupted.)

12 BY MR. MAYER:

13 Q. Did Ms. Carson's statements to you guys
14 that night direct your investigation?

15 A. Yes, it did.

16 MR. MAYER: Court's indulgence?

17 THE COURT: Yes, sir.

18 BY MR. MAYER:

19 Q. Detective, isn't it true that Latoya
20 Carson had a theory at the time about who might
21 have been involved?

22 MS. MULKEY: Objection, Your Honor.

23 THE COURT: Basis?

24 MS. MULKEY: Speculation, lack of
25 foundation.

SYLVESTER WILLIAMS - CROSS EXAM BY MR. MAYER

1 THE COURT: Please approach.

2 (Bench conference was had; following
3 proceedings were had in open court.)

4 THE COURT: You may proceed.

5 BY MR. MAYER:

6 Q. Did your investigation ever lead you to
7 a potential perpetrator named Raphael Ward?

8 A. No, not that night. No, sir.

9 Q. Do you recognize that name as being the
10 name that was part of this investigation?

11 A. No, sir.

12 Q. Are you aware that there was some
13 postings on social media about this incident
14 shortly after this happened?

15 A. No.

16 MR. MAYER: Court's indulgence?

17 THE COURT: Uh-huh.

18 MR. MAYER: No further questions.

19 THE COURT: Any redirect?

20 MS. MULKEY: Just one, Your Honor.

21 THE COURT: You may proceed.

22 REDIRECT EXAMINATION

23 BY MS. MULKEY:

24 Q. Just to be clear, Detective Williams,
25 when you made that request for Crime Scene to

1 process the door, I'm -- let me rephrase that. You
2 made a request through Crime Scene; is that
3 correct?

4 A. Yes.

5 Q. And you generally asked them to process
6 what portion of that vehicle?

7 A. I asked them to process the top portion
8 of the roof of the doorjamb of the vehicle, the
9 middle area of the vehicle.

10 Q. Was that on the passenger or driver's
11 side?

12 A. Passenger side.

13 MS. MULKEY: Thank you. No further
14 questions.

15 THE COURT: Any objection to the
16 witness being excused?

17 MS. MULKEY: None from the State.

18 THE COURT: From the defense?

19 MR. MAYER: No, Judge.

20 THE COURT: Sir, you're excused.

21 Proceed. Call your next witness.

22 MS. MULKEY: State calls Mary Phillips.

23 MARY PHILLIPS,

24 being first duly sworn, testified as follows:

25 THE CLERK: Thank you. Be seated

MARY PHILLIPS - DIRECT EXAM BY MS. MULKEY

1 please. Please state your full name and spell your
2 last name for the record.

3 THE WITNESS: Mary Katherine Phillips,
4 last name P-H-I-L-L-I-P-S.

5 THE COURT: You may proceed.

6 MS. MULKEY: Thank you, Your Honor.

7 May it please the Court?

8 THE COURT: Yes.

9 DIRECT EXAMINATION

10 BY MS. MULKEY:

11 Q. Morning, Ms. Phillips.

12 A. Good morning.

13 Q. Could you please tell the jury where
14 you're employed?

15 A. I work for the City of Charleston in
16 the Crime Scene Unit for the police department.

17 Q. How long have you worked in that
18 capacity?

19 A. I've been with the Crime Scene Unit
20 since October 2006.

21 Q. What is your current assignment?

22 A. Currently, I work in our latent
23 recovery. I process all the evidence inhouse that
24 can't be processed on the scene, but I also still
25 do respond to the scene to assist with the other

1 technicians.

2 Q. Could you please tell the jury a little
3 bit about your background and education?

4 A. I have a Bachelor's of Science Degree
5 in Criminal Justice and a minor in biology and I've
6 been to numerous classes for Crime Scene from
7 fingerprint processing techniques to blood splatter
8 interpretation and crime scene documentation.

9 Q. What are your duties in Crime Scene?

10 A. As far as Crime Scene goes, we respond
11 to the crime scenes for the purpose of documenting
12 the scene as it is when we find it and collecting
13 evidence for further analysis or for preservation.

14 Q. And describe the ways in which you
15 would process a crime scene.

16 A. Well, first, when we get there, we
17 would of course do an overall look-through of the
18 scene to see what all was there. We would
19 photograph everything as it is when we get there,
20 and then we would probably place markers to help us
21 determine what it is we're going to collect and
22 what is of most interest.

23 We, usually, talk to the detectives as
24 we go along so that we know what is important and
25 see if they have any information for us, and then

MARY PHILLIPS - DIRECT EXAM BY MS. MULKEY

1 we would document where everything is, measure it,
2 photograph it, and then collect it. And we collect
3 it in a manner so that it can be preserved for
4 later analysis.

5 Q. December 12, 2013, were you working in
6 the Crime Scene Unit?

7 A. Yes.

8 Q. Did you have the occasion to process a
9 vehicle as part of your duties?

10 A. I did.

11 Q. What type of vehicle was that?

12 A. It was a 2003 gray-colored, four-door
13 Buick La Sabre.

14 Q. Where was that vehicle located when you
15 processed it?

16 A. We have an enclosed vehicle bay at the
17 Crime Scene office and it was there.

18 Q. Do you know how the vehicle got to the
19 bay?

20 A. I don't. It would have been towed in.

21 Q. And what was your job in that
22 investigation?

23 A. My job is to process the vehicle. So
24 just like any other scene, it would have been to
25 photograph the vehicle, process it for

MARY PHILLIPS - DIRECT EXAM BY MS. MULKEY

1 fingerprints, and collect any pertinent evidence
2 from the vehicle.

3 Q. Was there any significance in keeping
4 that vehicle in the vehicle bay as you described
5 it?

6 A. So that it can't be tampered with and
7 no one can come into contact with it from the time
8 it was brought in and the time that we obtained a
9 search warrant to be able to process it.

10 Q. And if you could, take the jury through
11 how you would specifically process a vehicle.

12 A. Okay. So a vehicle is almost just like
13 a crime scene. I would take overall photographs of
14 the vehicle, both inside and outside, how I found
15 it, not move anything. We would note what doors
16 were locked, what windows were open, all of those
17 things. So we'd photograph all of that.

18 And then usually we'd process the
19 outside of it first so that we can obtain any
20 fingerprints from the outside of it, anything that
21 we note on it. And then we would do -- on the
22 interior of it we would do more photographs and
23 fingerprinting and processing, and we would also do
24 a complete inventory of everything in the vehicle.

25 Q. When you talk about fingerprinting and

1 processing the exterior of the vehicle, can you
2 explain to the jury that process?

3 A. Absolutely. So anytime that you touch
4 something and your finger comes into contact with
5 something, there's a possibility of you leaving a
6 fingerprint. And, basically, the quality of the
7 fingerprint has to do with a lot of factors, like
8 if you have enough oil on your skin, how long you
9 came in contact with it, but the oil and water
10 that's deposited from your fingerprint, we have a
11 black powder that we can put on it and the black
12 powder adheres to those oils and we're able to see
13 a fingerprint. And then we use tape to collect
14 those and put them on a card for analysis by our
15 latent print examiners.

16 Q. And you testified this was your role in
17 this particular investigation?

18 A. Yes, ma'am.

19 Q. Did you receive any request to process
20 any specific part of this vehicle?

21 A. I do believe that they told me that
22 they had -- to look specifically at the area above
23 the passenger -- the front passenger door.

24 Q. And are these type of requests typical
25 for a crime scene?

MARY PHILLIPS - DIRECT EXAM BY MS. MULKEY

1 A. Absolutely. As detectives come in to
2 see us with information, it allows us to look at
3 areas that might be of further interest.

4 MS. MULKEY: Your Honor, may I approach
5 the witness?

6 THE COURT: You may.

7 BY MS. MULKEY:

8 Q. Ms. Phillips, I would like to show you
9 what was entered into evidence by consent beginning
10 with State's Exhibit 21. Do you recognize this?

11 A. I do.

12 Q. Could you please tell jury what it is?

13 A. That's the crime scene vehicle with the
14 vehicle that I processed in this case.

15 Q. Is that a fair and accurate depiction
16 of what you processed on that day?

17 A. Yes.

18 Q. I would like to show you what's been
19 entered by consent as State's Exhibit 22. Could
20 you please -- do you recognize this?

21 A. I do.

22 Q. And what is this?

23 A. This would be -- whenever we see
24 fingerprints before we collect them and put them on
25 the card, we lay down a tape, which is how we

1 collect them, and we mark them and photograph them
2 in place so that we can articulate later where we
3 collected them from.

4 So just above on that molding almost
5 above the door is the tape that I placed down and
6 photographed.

7 Q. And that screen in front of you is a
8 touch screen. Could you point out for the jury
9 what you're referring to?

10 A. It's right there, that green area here.
11 (Marking)

12 Q. What is that?

13 A. That would be the fingerprint that I
14 dusted and then put tape down and photographed
15 prior to pulling it off of the vehicle.

16 Q. Why did you process that area?

17 A. Well, generally speaking, we processed
18 the whole entire vehicle, but we were told to
19 process that specific area in particular.

20 Q. I would like to show you what's been
21 entered as State's Exhibit 23 by consent. Would
22 you take a look at that and tell me if you
23 recognize that?

24 A. Just another close-up picture of the
25 same print.

MARY PHILLIPS - DIRECT EXAM BY MS. MULKEY

1 Q. And did you, in fact, personally
2 process this vehicle?

3 A. Yes, ma'am.

4 Q. And were you able to obtain any latent
5 lifts in this case?

6 A. I did.

7 Q. And where were you able to obtain that
8 from?

9 A. Let's see, I know I recovered five
10 prints, one from the exterior of the front
11 passenger door; the second one, the exterior of the
12 front passenger door; one from the exterior of the
13 rear passenger side quarter panel; the fourth one
14 came from the exterior of the rear driver's side
15 quarter panel; and the fifth one came from the
16 exterior of the driver's door.

17 MS. MULKEY: Your Honor, may I approach
18 the witness?

19 THE COURT: You may.

20 BY MS. MULKEY:

21 Q. Ms. Phillips, I'm handing you what's
22 been marked as State's Exhibit 24, and admitted by
23 consent. If you could look at that and tell me if
24 you know what that is?

25 A. Yes, these are the fingerprints that I

MARY PHILLIPS - DIRECT EXAM BY MS. MULKEY

1 recovered from the vehicle.

2 Q. And how do you know that's what they
3 are?

4 A. Well, it has my initials on them with
5 the case number and it also has -- each card would
6 have my name with the diagram and information from
7 where I obtained it from, and my initials -- we
8 also sign the tape sometimes too.

9 Q. In that packet is the lift that's on
10 the monitor. Is it contained in that packet?

11 A. Yes.

12 Q. What do you do with those latent lifts
13 once you collect them?

14 A. Once we collect them, we package them
15 in this and seal them up and submit them to the
16 latent fingerprint examiners so they can look at
17 them and compare them.

18 Q. Did you submit a report documenting
19 this?

20 A. Yes, ma'am, I did.

21 MS. MULKEY: And Court's indulgence,
22 Your Honor?

23 THE COURT: Yes, ma'am.

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

MARY PHILLIPS - CROSS EXAM BY MR. MAYER

1 THE COURT: You may proceed.

2 MR. MAYER: Thank you, Judge. May it
3 please the Court?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. MAYER:

7 Q. Ms. Phillips, of the prints that you
8 pulled off, you pulled off five different prints,
9 right?

10 A. Correct.

11 Q. And you know the results of what came
12 back, right?

13 A. I would have to have the lab report in
14 front of me. I don't actually analyze the prints.

15 Q. Okay. But is it -- from your
16 recollection, did those five prints all come back
17 to the same person?

18 A. I don't know.

19 MR. MAYER: May I approach?

20 THE COURT: You may.

21 BY MR. MAYER:

22 Q. My apologies, I was going to show you
23 someone else's report. All right. So tell us a
24 little bit about fingerprints. On a clean
25 vehicle -- this decedent's vehicle could be fairly

MARY PHILLIPS - CROSS EXAM BY MR. MAYER

1 characterized as a pretty clean vehicle on the
2 outside, right?

3 A. I suppose, yes.

4 Q. On a clean vehicle such as that, isn't
5 it true that a fingerprint could remain on that
6 vehicle for some period of time? Several days, in
7 that neighborhood of time?

8 A. I suppose. It would have to do with,
9 you know, the weather, where it was stored, all of
10 those types of things, but I suppose so.

11 Q. Sure. Did you also collect any
12 evidence off of the hands of Latoya Carson?

13 A. I don't know.

14 Q. Did you also, while you were at this
15 crime scene, process someone's hands for gunshot
16 residue?

17 A. I didn't respond to the scene. I
18 actually responded to the Crime Scene office where
19 the vehicle was towed into.

20 Q. Okay. Do you recall at some point you
21 did process someone's hands for gunshot residue?

22 A. I don't believe in this case I did.

23 MR. MAYER: Court's indulgence?

24 THE COURT: Uh-huh.

25 BY MR. MAYER:

MARY PHILLIPS - CROSS EXAM BY MR. MAYER

1 Q. In analyzing fingerprints, and through
2 your training, is it true that the print of an
3 individual's right palm would be different than the
4 print of that same individual's left palm?

5 A. I believe so, but I don't analyze the
6 prints. But I do believe so.

7 Q. Okay. My last question: Do you watch
8 the TV show "Dexter?"

9 A. No.

10 MR. MAYER: Okay. Thank you for your
11 time.

12 THE COURT: You may proceed.

13 MS. MULKEY: We have no further
14 questions, Your Honor.

15 THE COURT: Any objection to the
16 witness being excused? From the State?

17 MS. MULKEY: No.

18 THE COURT: From the defense?

19 MR. MAYER: No, Judge.

20 THE COURT: Ma'am, you're excused.
21 Call your next witness.

22 MR. SIMPSON: Thank you, Judge. The
23 State calls Nada Kerstein.

24 NADA KERSTEIN,

25 being first duly sworn, testified as follows:

NADA KERSTEIN - DIRECT EXAM BY MR. SIMPSON

1 THE CLERK: Be seated. Please State
2 your full name and spell your last name for the
3 record.

4 THE WITNESS: Nada Kerstein,
5 K-E-R-S-T-E-I-N.

6 THE COURT: You may proceed.

7 MR. SIMPSON: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q. Ms. Kerstein, good morning.

11 A. Morning.

12 Q. Where do you work?

13 A. I work for the City of Charleston
14 Police Department.

15 Q. And in what capacity for that
16 department?

17 A. I'm a senior criminal identification
18 specialist which is also a latent fingerprint
19 examiner.

20 Q. How long have you been in that
21 position?

22 A. I've been a latent print examiner doing
23 case work on my own since 2009. I started training
24 at the end of 2007.

25 Q. You mentioned training. Explain to the

NADA KERSTEIN - DIRECT EXAM BY MR. SIMPSON

1 jury sort of the process that a person must go
2 through to actually do case work in fingerprint
3 identification.

4 A. We have a formal training program in
5 the latent print division. I work with the
6 certified latent print examiners, I do case work
7 with them, and that's a little over a year long,
8 and then when I am done with the training, I was
9 given a proficiency test and then released to do
10 case work on my own.

11 Q. Can you explain to the jury a little
12 bit about your personal background and education
13 and your life history?

14 A. I started with the police department in
15 the ID unit doing ten-print cards. Ten-print cards
16 are eight-by-ten cards that are specifically
17 designed to capture the ten fingers individually
18 and then the slats at the bottom so it's
19 simultaneously.

20 My training was to classify and compare
21 ten-print to ten-print cards. I started that in
22 2004, and then started training with the latent
23 fingerprint division at the end of 2007.

24 Q. And you said there is a period of time
25 where you're not the person making the call on

1 cases until you've gone this period of time showing
2 the proficiency of your work and accuracy of your
3 work?

4 A. Yes. It's a training program that was
5 developed by the department. I have to list all of
6 the cases that I work on, and these are cases that
7 are not being worked as I'm working on them. They
8 are cases that were finished and they were given to
9 me as examples. And I have to list them, I have to
10 list my results, I have to list the standards and
11 make sure -- the other examiners make sure that
12 everything that I do on the case is correct, that
13 everything has been followed correctly.

14 Q. And since completed -- how many years
15 have you been working in this job since completing
16 all that training?

17 A. I started my own case work May of 2009.

18 Q. And to the present you've been doing
19 that?

20 A. Yes.

21 Q. Have you been qualified as an expert in
22 latent fingerprint analysis in a court of law?

23 A. Eleven times for the State of South
24 Carolina.

25 MR. SIMPSON: Your Honor, at this

NADA KERSTEIN - VOIR DIRE EXAM BY MR. MAYER

1 point, we would seek to admit Ms. Kerstein as an
2 expert in the area of latent fingerprint
3 examinations.

4 THE COURT: Any objection or questions?

5 MR. MAYER: Just a brief voir dire.

6 THE COURT: You may proceed.

7 VOIR DIRE EXAMINATION

8 BY MR. MAYER:

9 Q. Ms. Kerstein, the way that you're
10 analyzing these fingerprints and comparing them to
11 each other, is it just putting them side by side
12 and looking or how --

13 THE COURT: Voir dire is education,
14 training, and experience.

15 BY MR. MAYER:

16 Q. How do they train you to do that?

17 A. The process for the comparison is you
18 have the latent print on one side and you have the
19 ten print next to it, and I'm looking under two
20 magnifying glasses and I'm using the pointers. And
21 the process is, you start in one area and you look
22 for a group of characteristics that you can start
23 with and then you find it on the other side. And I
24 go ridge by ridge around the entire fingerprint.

25 And what I'm looking for is that the

1 characteristics are the same and in the same order.

2 Q. How many different match-ups in a
3 single print --

4 MR. SIMPSON: Judge, objection;
5 outside of the scope.

6 THE COURT: It is, sustained.
7 Education, training, and experience. Those are
8 expertise, not the weight of her opinion.

9 BY MR. MAYER:

10 Q. In your training, how many points did
11 they train you to look for to indicate if there is
12 a match between prints?

13 A. In the United States we do not have a
14 set minimum number of points that we have to have
15 in order to make an identification. We're looking
16 at the entirety of the fingerprint. We're looking
17 at pattern type, we're looking at ridge flow, we're
18 looking for scars, creases. The characteristics
19 are very important. They have to be there, but
20 you're taking the whole thing into consideration.

21 So what I'm looking for is that
22 everything that I'm seeing, all of the
23 characteristics are the same, but they have to be
24 in the same order around the entire same print.

25 Q. Are there national certification bodies

NADA KERSTEIN - DIRECT EXAM BY MR. SIMPSON

1 in your profession that you belong to?

2 A. Yes. I belong to the International
3 Association for Identification. They are the body
4 that sets the standards for latent print examiners.
5 They hold my certification as a ten-print examiner
6 and they hold my certification as a latent print
7 examiner.

8 MR. MAYER: No further questions.

9 THE COURT: Any objections to the
10 admission of the witness as an expert in latent
11 print examination?

12 MR. MAYER: No, not now, Judge.

13 THE COURT: Admitted without
14 objection. You may proceed.

15 MR. SIMPSON: Thank you.

16 THE COURT: You're welcome.

17 BY MR. SIMPSON:

18 Q. Ms. Kerstein, can we just begin at the
19 beginning by explaining what is a latent print?

20 A. Latent means not readily seen by the
21 naked eye. It's a print that's left at a scene and
22 it needs to be developed in some way, usually by
23 powder or some type of chemical. They can either
24 use light to be able to see it, but it's lifted
25 from the scene and then it is put on an evidence

1 card and then submitted to my office.

2 Q. Let me ask you a question about these
3 prints. What are fingerprints made of?

4 A. Fingerprints are basically moisture.
5 They are -- the majority of the fingerprint is what
6 you secret from your pores or what oil you lift
7 off. Now, there can be debris mixed in there or
8 dust in there, but for you to leave a print, there
9 has to be some type of moisture on your ridges.
10 And when you put your finger down, you transfer it
11 to whatever surface you're touching.

12 Q. And moisture can dissipate, evaporate;
13 is that true?

14 A. Yes.

15 Q. Is there any -- based on your
16 expertise, is there any sort of significant
17 scientific manner which you can look at a
18 fingerprint and put a time stamp on it?

19 A. You cannot put a time frame on a
20 fingerprint. If a fingerprint is exposed, it is
21 not going to last as long as a print that is put in
22 an area where nothing is going to disturb it.
23 There's no way to tell how long it's been there.

24 Q. Okay. Thank you. Nevertheless, even
25 though we lack that scientific capability, what

NADA KERSTEIN - DIRECT EXAM BY MR. SIMPSON

1 kind of exterior factors can affect the quality or
2 existence of a print?

3 A. If a print is outside, then you have
4 the sun, you have wind, you have rain, you have an
5 animal brushing up against it, you can have debris
6 blowing against it. There's a lot of facts that
7 can ruin a print. They're fragile.

8 If you have a print that's inside and
9 say underneath a counter where no one is going to
10 disturb it and you don't have air flow, that print
11 could last a very long time. Prints that are in
12 the elements will not last as long.

13 Q. So a print is susceptible to wind?

14 A. Yeah.

15 Q. Rain?

16 A. Yes.

17 Q. Sun?

18 A. Yes.

19 Q. Heat?

20 A. Yes.

21 Q. Light?

22 A. Sunlight, yes.

23 Q. Other people or other things touching
24 it?

25 A. Yes.

1 Q. So, again, understanding that you can't
2 time print a fingerprint, a fingerprint in an area
3 that was exposed to all of those things frequently
4 you would expect to last less time; is that fair to
5 say?

6 A. That's correct.

7 Q. Is the matching of fingerprints a
8 scientific endeavor? Do you follow a set
9 scientific practice?

10 A. We use -- I'm sorry.

11 Q. Go ahead.

12 A. We use scientific knowledge and
13 principles to arrive at a conclusion. Knowledge of
14 the skin, how it develops, how ridges form, what
15 happens in the womb when ridges are forming, those
16 types of things, why we can say that they're unique
17 and permanent. And our methodology is in line with
18 scientific method.

19 Scientific method is, you have an
20 observation, you form a hypothesis, you run a test,
21 there is a conclusion, and then you repeat it to
22 make sure that you get the same results.

23 Our methodology is called A, C. It's
24 an analysis, it's the comparison, the evaluation,
25 and then the last part is the verification and that

NADA KERSTEIN - DIRECT EXAM BY MR. SIMPSON

1 is a repeat of the first three steps. So we are in
2 line with the scientific method.

3 Q. And I believe you hit on this, but can
4 you explain what is meant by sort of peer review
5 and its importance in any undertaking?

6 A. Peer review is when a person's body of
7 work is looked at by another person who has the
8 same competency or skill level. And what they're
9 looking for is that the information is correct,
10 that your reports are correct, that your worksheets
11 are correct, that the information that you're
12 putting out is correct, that your conclusions are
13 in line.

14 It holds the person who is doing the
15 body of work accountable for the information that
16 they're putting out.

17 Q. And is that process followed in your
18 crime scene?

19 A. Yes, we do peer review.

20 Q. In recent years, who is the analyst
21 that you have most often worked with?

22 A. Kathleen Butler.

23 Q. And what -- did Kathleen Butler
24 recently retire?

25 A. Yes, she did.

1 Q. Does that make you sad?

2 A. Yes.

3 Q. It makes me sad too.

4 In the present case, however, did you
5 peer review her work?

6 A. Yes, I did.

7 Q. And if we look at the reports in this
8 case will we see your signature?

9 A. No.

10 Q. Whose signature will we see?

11 A. Well two of the reports are signed by
12 Kathleen, one of the reports was signed by me.

13 Q. Okay. And one signed by Kathleen, can
14 you testify today that you looked at the same
15 things she did?

16 A. Yes. I was the verifier for Kathleen's
17 envelopes that she worked on.

18 Q. And did you do the same -- would you
19 have done the same analysis that she did?

20 A. Yes.

21 Q. And you came to the same conclusions
22 that she did?

23 A. Yes.

24 Q. And so you have personal knowledge of
25 the work done in this case?

NADA KERSTEIN - DIRECT EXAM BY MR. SIMPSON

1 A. Yes.

2 Q. And you, in fact, repeated that?

3 A. Yes, I did.

4 Q. Okay. Ms. Kerstein, I'm handing you
5 what's been marked as State's Exhibit 18.

6 MR. SIMPSON: May I approach the
7 witness, Your Honor?

8 THE COURT: You may.

9 BY MR. SIMPSON:

10 Q. Take a moment and look at that envelope
11 and review that item.

12 A. Can I have a pair of scissors, please?

13 Q. Sure.

14 THE COURT: You may continue.

15 MR. SIMPSON: Thank you, Your Honor.

16 BY MR. SIMPSON:

17 Q. Have you had a moment with State's
18 Exhibit 18?

19 A. Yes.

20 Q. Do you recognize that item?

21 A. Yes.

22 Q. And what is that item?

23 A. This is the latent print card that was
24 in envelope number 2 on case number 1320144.

25 Q. Is that the case we're here on today?

NADA KERSTEIN - DIRECT EXAM BY MR. SIMPSON

1 A. Yes.

2 Q. Who submitted that item to your lab?

3 A. Jennifer Wooley.

4 Q. And how is it described in that
5 submission?

6 A. You want to know what she wrote on the
7 note card?

8 Q. Yes.

9 A. TMobile cell phone 301.

10 Q. And is that a latent lift card?

11 A. Yes, it us.

12 Q. Did you analyze that lift?

13 A. Yes, I did.

14 Q. What were your conclusions?

15 A. Latent fingerprint A was identified to
16 the number one finger, which is the right thumb of
17 the ten-print card bearing the name of Valentino
18 Hayward.

19 Q. Okay.

20 THE COURT: I'm sorry, could you please
21 repeat that name?

22 THE WITNESS: Valentino Hayward.

23 THE COURT: Thank you. You may
24 continue.

25 MR. SIMPSON: Thank you, Your Honor.

NADA KERSTEIN - DIRECT EXAM BY MR. SIMPSON

1 May I approach the witness again?

2 THE COURT: You may.

3 BY MR. SIMPSON:

4 Q. Ms. Kerstein, I'm handing you what was
5 entered as State's Exhibit 24.

6 A. I need the scissors again.

7 Q. Do you recognize those items?

8 A. Yes, I do.

9 Q. And what are they?

10 A. These are the five latent lift cards
11 that were submitted in envelope 3 on case 1320144.

12 Q. Is that the case we're here about
13 today?

14 A. Yes.

15 Q. And who submitted those cards to you?

16 A. Mary Phillips.

17 Q. And I would like to ask you about the
18 card containing the label, print one.

19 A. Okay.

20 Q. Can you locate that card?

21 A. Yes.

22 Q. Did you analyze that card?

23 A. Yes, I did.

24 Q. Describe your conclusions in that
25 analysis to the jury.

NADA KERSTEIN - DIRECT EXAM BY MR. SIMPSON

1 A. There was more than one conclusion on
2 here. Do you want everything?

3 Q. Sure.

4 A. Latent lift B was identified to the
5 right palm of the ten-print card bearing the name
6 Valentino Hayward. Latent lift A and C were
7 identified to the eight and nine finger of the
8 ten-print card bearing the name of Anna Dobson.

9 Q. There were other matches made from the
10 vehicle as a whole; is that correct? From the
11 other four prints?

12 A. Yes.

13 Q. And who were the three names that ended
14 up matching fingerprints?

15 A. Valentino Hayward, Anna Dobson --

16 THE COURT: Is that D-O-B-S-O-N?

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 THE WITNESS: And Deontre Miles.

20 BY MR. SIMPSON:

21 Q. And is it uncommon to find multiple
22 individuals on a vehicle print?

23 A. Not at all.

24 Q. Okay. And, again -- focussing again on
25 the print number 1, portion matching the palm of

NADA KERSTEIN - CROSS EXAM BY MR. MAYER

1 Valentino Hayward. According to the submission,
2 where was that print lifted?

3 A. Exterior of the front passenger door.

4 MR. SIMPSON: Ms. Kerstein, thank you
5 very much. Please answer any questions that Mr.
6 Mayer has for you.

7 THE COURT: You may proceed.

8 MR. MAYER: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. MAYER:

11 Q. Just to clarify, you said the print
12 that matched to Valentino is the right palm?

13 A. Yes.

14 Q. Okay. In your training and experience,
15 is a single person's right palm going to be a
16 different -- different print than that same
17 person's left palm?

18 A. I'm sorry, I don't understand. Do you
19 mean does it look different?

20 Q. No. I'm saying just like -- it's my
21 understanding our index fingers would be different.

22 A. Correct, yes.

23 Q. Our palms would also be different.

24 A. Yes.

25 Q. So you're not the person who did the

1 full analysis on these; is that correct?

2 A. It was not my original case. I was the
3 verifier on the case which means I repeated all of
4 the steps, the analysis, the comparison, and the
5 evaluation.

6 And it also means that I reviewed her
7 report, I reviewed her worksheet, so I reviewed the
8 entire body of her work.

9 Q. Okay. And from that review, how many
10 characteristics did your colleague at the time
11 match up on this fingerprint from Mr. Hayward?

12 A. We don't list a number. So I can't --
13 without taking it and looking at it under a
14 magnifying glass, I can't tell you how many.
15 That's not part of our worksheet. We don't list
16 the characteristics in number.

17 Q. Do you have a copy of the worksheet
18 from this case, from this print?

19 A. I do not. I have a copy of the report,
20 that's not the worksheet. But it's not -- that
21 number is not listed in the worksheet.

22 Q. So what's kind of the minimum number of
23 characteristics that you all would use to make an
24 identification?

25 A. We do not have a minimum number set in

NADA KERSTEIN - CROSS EXAM BY MR. MAYER

1 our office. We take the entire picture into
2 consideration.

3 Q. What would be typical for one of your
4 analyses? What would -- how many characteristics
5 would you find?

6 A. In a palm print, there can be 30 or 40.
7 It's a wide area.

8 Q. Okay.

9 A. A fingerprint, it would be much less,
10 but in a palm print it's not unusual to be 30 or
11 40.

12 Q. And is a palm print made up of similar
13 sort of characteristics as a regular fingerprint
14 that has the bifurcations, the endings, and the
15 dots?

16 A. Yes. There is just more of them.

17 Q. Okay. Isn't it true that often times
18 for a good print you could identify more than 100
19 characteristics?

20 A. On a fingertip, you can have hundreds
21 of characteristics. That would be a very clear
22 print. We don't see prints normally that have that
23 kind of clarity because when they're left at a
24 scene, you're not putting your finger down
25 gracefully.

1 Usually, it's -- (Indicating) There is
2 movement in there. There is some kind of
3 distortion. When you're talking about
4 characteristics of that number, that's usually seen
5 on the ten-print card where the finger is actually
6 rolled for identification purposes.

7 Q. For a palm print, do palms also include
8 the loops and whirls that are in fingerprints?

9 A. Generally, no. Palm prints have
10 different shapes to them than fingers do. You can
11 have loops in a palm print, but they're not shaped
12 the same as they are in fingerprints.

13 The area under the thumb can have very
14 different qualities, it's called a vestige, and
15 there can be loops in that, but they do not look
16 the same as the fingerprint does.

17 Q. Isn't it true that fingerprints are
18 actually more reliably different than are palm
19 prints?

20 A. I wouldn't say that there was a
21 difference. It's friction ridge skin. On a palm
22 print there is just more of them, but you're
23 looking at the same characteristics.

24 Q. In terms of individuality, isn't it
25 true that fingerprints can be more individual than

1 palm prints?

2 A. I would not agree with that, no.

3 Q. But fingerprints contain arches in
4 their characteristics where palm prints don't?

5 A. Well, if you're talking about an arch,
6 that's a pattern type. Fingerprints have three
7 pattern types. Everybody has one of the three.
8 There are arches, loops, and whirls, but that's a
9 class characteristic. You cannot use a pattern
10 type to identify. You have to use the
11 characteristics within that pattern to identify.

12 Q. Do you recall or do you have knowledge
13 of whether Valentino Hayward's fingerprints are of
14 the arch variety, the loop variety, or the whirl
15 variety?

16 A. If I can look at my notes, I can look
17 at what I used as the ten-print card.

18 Q. Do you have them there?

19 A. Yes, I do.

20 Q. Please.

21 A. He has a combination of loops and
22 whirls.

23 Q. And isn't it true that loops and whirls
24 are by far the most common in our society within
25 the population?

NADA KERSTEIN - CROSS EXAM BY MR. MAYER

1 A. A loop is the most common. Arches are
2 the least common.

3 Q. Arches are found, would you say, in
4 about 5 percent of the population only?

5 A. That's correct.

6 Q. And that's not what Valentino has?

7 A. Correct, he had loops and whirls.

8 Q. On the issue of the durability of these
9 prints, are you aware that prints have been
10 developed -- I'm sure you are -- from -- from
11 places that were touched -- that hadn't been
12 touched in the last 40 years?

13 A. Yes. Prints can last a long time.
14 There have been studies where they have found
15 prints that were there over a year.

16 MR. MAYER: Court's indulgence?

17 THE COURT: Yes, sir.

18 BY MR. MAYER:

19 Q. You didn't find the prints of Latoya
20 Carson on the door, did you?

21 A. On which envelope are you talking
22 about?

23 Q. Well, that's a great question. On the
24 envelope containing the latent prints from the
25 Buick.

NADA KERSTEIN - CROSS EXAM BY MR. MAYER

1 A. But which envelope is that? Is that
2 the one that has five in it?

3 Q. I believe so. Item number 11, 11-1
4 through 11-5.

5 A. Yes. Okay. So what is the name that
6 you're asking about?

7 Q. Latoya Carson.

8 A. No. There was no identification to
9 that name.

10 Q. And in those five prints that were
11 pulled, there are subparts of each of the five
12 prints, correct?

13 A. I don't understand what you mean by
14 subparts.

15 Q. In the results statement, it's broken
16 down as 11.1-A, 11.1-B, 11.1-C, correct?

17 A. Yes.

18 Q. And then it goes on through 11.2 the
19 same way, 11.3, this sort of thing. And so
20 throughout that series of prints, there are prints
21 in there that are not linked to any individual's
22 name in your report?

23 A. Yes. There are prints that were not
24 identified.

25 Q. Okay. And as with the timing of the

1 other prints, it's not possible to put an exact
2 time as to when the unknown prints were left on
3 that vehicle, correct?

4 A. That's correct.

5 Q. Okay. From your report of the prints
6 that were gathered, can you tell how many unknown
7 prints that there are?

8 A. There are two not identified, that's
9 latent lift 4 and latent lift 3. Latent lift 5 was
10 noncomparable.

11 Q. I'm sorry, I don't follow that answer.
12 Can you say that again?

13 A. On latent lift 3, that was not
14 identified -- oh, I'm sorry that was identified.
15 That was Anna Dobson. So latent lift 4, that one
16 was identified too. It's just latent lift 5, there
17 was no identification on that card and it was
18 noncomparable.

19 Q. I've got latent lift 3 also as being
20 unidentified. Is that accurate?

21 A. Latent lift 3 was identified to the
22 left palm of Anna Dobson.

23 Q. Okay. So there is one unidentified
24 print?

25 A. There is one latent lift card that

NADA KERSTEIN - REDIRECT EXAM BY MR. SIMPSON

1 there was no identification. What was on that card
2 was noncomparable.

3 MR. MAYER: Okay. Thank you very much.

4 MR. SIMPSON: Very briefly, Your
5 Honor.

6 THE COURT: Uh-huh.

7 REDIRECT EXAMINATION

8 BY MR. SIMPSON:

9 Q. So you mentioned something just then,
10 you mentioned an incomparable print. So if you
11 look at a print and it doesn't meet the standards
12 to allow you to do your job, do you take a guess?

13 A. Absolutely not.

14 Q. Okay. When you make conclusions, do
15 you follow the standards set by the
16 organizations -- national and international
17 organizations you've already referenced in your
18 direct testimony?

19 A. Yes. They set the standards for how
20 your examination should proceed, what a print
21 should look like in order for it to be considered
22 comparable, and if you do not see any ridge detail
23 or any characteristics, then there is nothing that
24 you can do with that print.

25 Q. So this isn't a situation where you're

1 just seeing, like, one little thing on two prints
2 that are the same and saying we got a match?

3 A. No.

4 Q. Okay. You follow the professional
5 guidelines in the field that you've outlined for
6 this jury earlier?

7 A. Yes.

8 Q. And when you can't make that
9 determination, you say you can't make a
10 determination?

11 A. That's correct.

12 Q. Okay. Are you confident in all of the
13 conclusions that you reached as an expert in this
14 case?

15 A. Yes, I am.

16 MR. SIMPSON: Nothing further, Your
17 Honor.

18 THE COURT: Any objection to the
19 witness being excused? From the State?

20 MR. SIMPSON: No, Your Honor.

21 THE COURT: From the defense?

22 MR. MAYER: No, Judge.

23 THE COURT: Ma'am, you're excused.

24 Madame Forelady, ladies and gentlemen,
25 we going to take advantage in this testimony to

1 take a restroom break. During this break, please
2 do not discuss the case and leave your notepads in
3 your seats.

4 (Jury out, 12:13 p.m.)

5 THE COURT: You may be seated. We will
6 be at ease for a few moments.

7 (A recess transpired.)

8 THE COURT: State ready to proceed?

9 MS. MULKEY: Yes.

10 THE COURT: Witness present?

11 MS. MULKEY: Yes, Your Honor.

12 THE COURT: Go ahead and have them
13 stand by the witness stand.

14 Defense ready to proceed?

15 MR. MAYER: Yes, Judge.

16 (Jury in, 12:49 p.m.)

17 THE COURT: All jurors are present,
18 Your Honor.

19 THE COURT: You may be seated.

20 Call your next witness.

21 MS. MULKEY: Thank you, Your Honor.

22 The State calls crime scene officer
23 Randal Unterbrink.

24 THE COURT: Please swear the witness.

25 RANDAL UNTERBRINK,

RANDAL UNTERBRINK - DIRECT EXAM BY MS. MULKEY

1 being first duly sworn, testified as follows:

2 THE CLERK: Please be seated. Please
3 state your full name and spell your last name for
4 the record.

5 THE WITNESS: Randal Unterbrink,
6 U-N-T-E-R-B-R-I-N-K.

7 THE COURT: You may proceed.

8 MS. MULKEY: May it please the Court?

9 THE COURT: Yes, ma'am.

10 DIRECT EXAMINATION

11 BY MS. MULKEY:

12 Q. Good afternoon.

13 A. Afternoon.

14 Q. Mr. Unterbrink, could you please tell
15 the jury where you're employed?

16 A. I'm employed with the Charleston Police
17 Department.

18 Q. And how long have you been employed
19 with the Charleston Police Department?

20 A. Twenty-five years.

21 Q. What is your current assignment there?

22 A. Working in the Crime Scene Unit.

23 Q. And during those 25 years at the
24 Charleston Police Department, have you served in
25 any other capacity?

RANDAL UNTERBRINK - DIRECT EXAM BY MS. MULKEY

1 A. Yes.

2 Q. Could you please tell the jury about
3 that?

4 A. When I first came on the department, I
5 was in patrol where we would respond to calls that
6 came on the streets. After that I went to foot
7 patrol down on King Street. It's a certain area
8 that we would cover and I would be assigned on a
9 specific area on King Street. I also worked in the
10 Identification Unit for a number of years. That's
11 where we deal with processing individuals who have
12 been arrested, photographed, that type of thing,
13 and after that I went to the Crime Scene Unit.

14 Q. And what are your duties in Crime
15 Scene?

16 A. Our duty is to process things where we
17 identify evidence, we collect, document, and
18 preserve that evidence.

19 Q. Were you working in that capacity as a
20 crime scene officer December 12, 2013?

21 A. I was.

22 Q. And on that day in the course of your
23 duties, did you have the occasion to respond to
24 2329 Bailey Drive?

25 A. Yes.

RANDAL UNTERBRINK - DIRECT EXAM BY MS. MULKEY

1 Q. Was that a business or residence?

2 A. Residence.

3 Q. What were you responding for? What was
4 your order to do?

5 A. I became aware there was a search
6 warrant being done and there was a request that it
7 be documented through videotape and also
8 photography. The point is to document anything of
9 interest and -- and document.

10 Q. And, just generally, where is 2329
11 Bailey Drive?

12 A. In North Charleston.

13 Q. And is that an assignment something
14 that would be typical for you?

15 A. Yes.

16 Q. Can you explain to the jury what was
17 done that day?

18 A. What I did in the capacity of this
19 particular event was to document through videotape
20 the condition of the residence at that time, and
21 then as the detectives would find something that
22 was of interest to them that pertained to the
23 search warrant, I would then photograph that
24 particular item and then also would secure it by
25 bagging it so it could be put into evidence.

RANDAL UNTERBRINK - DIRECT EXAM BY MS. MULKEY

1 Q. And did you collect any evidence from
2 that address in reference to this case?

3 A. Yes.

4 Q. And what was that?

5 A. It was a cell phone cover, TMobile.

6 Q. And what did you do with that after you
7 collected it?

8 A. Once I collected it, of course it's in
9 my custody at that point, so I need to have it
10 secured by putting it in a bag. We tape it, we
11 initial it, and then once that's done, it is then
12 put into the Evidence Unit where it will be stored
13 for future reference.

14 Q. Was that cell phone cover in your sole
15 custody and control from the time that you
16 collected it until the time that you placed it into
17 evidence?

18 A. That's the standard procedure. It
19 stays within your custody until it's turned over to
20 the Evidence.

21 MS. MULKEY: Your Honor, may I approach
22 the witness?

23 THE COURT: You may.

24 BY MS. MULKEY:

25 Q. I would like to show you what was

RANDAL UNTERBRINK - DIRECT EXAM BY MS. MULKEY

1 premarked as State's Exhibit Number 28. Excuse me,
2 25. Could you please take a look at this, sir?
3 Tell me if you recognize it.

4 A. I do recognize it, yes, ma'am.

5 Q. And what is it?

6 A. This is an envelope that had been
7 sealed and is said to contain a TMobile cell phone
8 cover.

9 Q. And how do you recognize that?

10 A. I recognize it because of my
11 handwriting, also by my initials that are on the
12 back of that envelope.

13 MS. MULKEY: Your Honor, may I get
14 scissors for the witness to open it?

15 THE COURT: Uh-huh.

16 BY MS. MULKEY:

17 Q. Please open it and view the contents
18 inside. Mr. Unterbrink, does that appear to be in
19 substantially the same condition when you recovered
20 it back on December 12, 2013?

21 A. Yes, ma'am.

22 MS. MULKEY: Your Honor, at this time
23 the State would move to admit State's Exhibit 25
24 into evidence.

25 THE COURT: Any objection?

RANDAL UNTERBRINK - DIRECT EXAM BY MS. MULKEY

1 MR. MAYER: No, Judge.

2 THE COURT: Marked and admitted
3 without objection.

4 (STATE EXH. 25 in evidence.)

5 THE COURT: You may proceed.

6 MS. MULKEY: Thank you.

7 THE COURT: You're welcome.

8 BY MS. MULKEY:

9 Q. Were you working the following day on
10 December 13, 2013?

11 A. I was.

12 Q. And in the capacity -- your duties as a
13 crime scene investigator, did you respond to MUSC?

14 A. I did.

15 Q. And what did you respond to MUSC for?

16 A. It was to pick up evidence that was in
17 relation to an autopsy.

18 Q. Is that a typical duty for you?

19 A. It is.

20 Q. Can you explain to the jury what that
21 duty actually entails?

22 A. The duty is to pick up any evidence
23 that had been removed during the autopsy which
24 typically involves such things as clothing, shoes,
25 socks, pants, shirts, dresses -- it depends on the

1 gender -- any jewelry that may have been removed.
2 Things of that type is turned over to me which I
3 then again do package and seal and initial it so
4 that it then can be sent to the Evidence Room for
5 storage.

6 Q. So it contains personal effects?

7 A. Yes, ma'am.

8 Q. Is there any other evidence that could
9 be collected in an autopsy?

10 A. Yes. Things that involve the body
11 itself such as -- hair is removed, a sample of
12 blood, fingernail clippings where fingernails are
13 clipped. So that is also collected and put into
14 storage as well.

15 Q. And could you tell the jury what you
16 collected that day, generally speaking?

17 A. I can go through the list if you wish.

18 Q. Sure.

19 A. I collected tennis shoes, pair of black
20 socks, black jeans pants with brown belt, a blue
21 plaid boxers, gray hooded sweatshirt, black
22 T-shirt, red T-shirt, gray top, a tank top, a
23 Magnum Condom, 7 baggies with powder in the bag,
24 whole scalped hair, left and right fingernail
25 clippings, a bullet, a Charleston County Coroner's

RANDAL UNTERBRINK - DIRECT EXAM BY MS. MULKEY

1 sealed blood spot, a CD with the images from the
2 autopsy as well as a form that's provided by MUSC
3 that has that list was turned over to me.

4 Q. And after you collect these items, what
5 do you do with them?

6 A. As with evidence we, again, put it in a
7 bag, generally it's a paper bag, and seal it in
8 much the same fashion as the envelope that you just
9 saw, where I then tape it and initial it so that we
10 can be sure that it's secured.

11 Q. And do those items remain in your sole
12 care and custody from pickup to the drop in
13 Evidence?

14 A. Yes.

15 Q. At this time, I would like to show you
16 what has been entered by consent as State's Exhibit
17 Number 26. Would you please look at that and let
18 us know if you recognize it?

19 A. Yes, ma'am.

20 Q. What is it?

21 A. Again, this is an envelope similar to
22 the first where I recognize it due to my
23 handwriting as well as my initials on the back.

24 Q. What is it?

25 A. It says here a bullet.

RANDAL UNTERBRINK - DIRECT EXAM BY MS. MULKEY

1 Q. Could you please open that?

2 A. (Complies)

3 Q. And what is that?

4 A. It's a bullet.

5 Q. And does that appear to be in
6 substantially the same condition as when you
7 retrieved it from the Coroner's Office?

8 A. Yes, ma'am.

9 MS. MULKEY: Your Honor, at this time,
10 the State would --

11 THE COURT: It has been admitted
12 without objection.

13 MS. MULKEY: I apologize.

14 BY MS. MULKEY:

15 Q. Did you submit a report documenting
16 your role in this investigation?

17 A. Yes, ma'am.

18 MS. MULKEY: Court's indulgence?

19 I have no further questions. Please
20 answer any the defense may have.

21 THE COURT: Any questions for the
22 witness?

23 MR. MAYER: No, Judge.

24 THE COURT: Any objection to the
25 witness being excused? From the State?

1 MS. MULKEY: None from the State, Your
2 Honor.

3 THE COURT: From the defense?

4 MR. MAYER: None.

5 THE COURT: Sir, you're excused.

6 Madame Forelady, ladies and gentlemen,
7 we're going to take advantage of this break in
8 testimony to take our lunch recess.

9 During this break, please do not
10 discuss the case among yourselves or with anyone
11 else. Do not have any contact with anyone in or
12 about the courthouse when you return. You will
13 come directly to your jury room as soon as all of
14 you have returned from lunch and we will resume
15 testimony. And just for your planning purposes, we
16 will go through 5:00 today with testimony.

17 Please leave your notepads in your
18 seats. We will secure them during recess. Please
19 do not read, watch, or listen to any media accounts
20 about this case or do any independent research on
21 the Internet, or post anything regarding your
22 status on any social networking sites.

23 Have a great lunch and we will see you
24 at 2:15.

25 (Jury out, 1:00 p.m.)

1 THE COURT: You may be seated.

2 Anything before we break for lunch? From the
3 State?

4 MR. SIMPSON: No, Your Honor.

5 THE COURT: From the defense?

6 MR. MAYER: No, Judge.

7 THE COURT: I assume Dr. Schandl is
8 going to be the next witness? Or who were you
9 planning on calling?

10 MR. SIMPSON: Schandl, likely Green --
11 Green, Van Horn, and Mosher in some order.

12 THE COURT: Okay. Just make sure you
13 have enough witnesses to take us through five.

14 MR. SIMPSON: We will.

15 THE COURT: Thank you very much. You
16 all have a good lunch. See you at 2:15.

17 (A luncheon recess transpired.)

18 THE COURT: State ready to proceed?

19 MS. MULKEY: Yes, Your Honor.

20 THE COURT: Defense ready to proceed?

21 MR. MAYER: Yes.

22 MS. MULKEY: Briefly, Your Honor?

23 THE COURT: Yes.

24 MS. MULKEY: Would you like to take up
25 the issue of the autopsy photos at this time or at

1 break?

2 THE COURT: I'm not going to take them
3 up in advance of testimony. I need to hear the
4 testimony. It's the only way I can make a
5 decision.

6 Are you seeking to -- have you
7 sanitized them? Are they black and white or in
8 color?

9 MS. MULKEY: They are black and white
10 x-ray photos, Your Honor.

11 THE COURT: And for what purpose would
12 you be offering them?

13 MS. MULKEY: They are being offered --

14 THE COURT: So that Dr. Schandl can say
15 where the bullet was lodged and where she found it?

16 MS. MULKEY: Yes.

17 THE COURT: And where it entered and
18 where it exited potentially? Are you really
19 objecting to that, Mr. Mayer?

20 MR. MAYER: Judge -- I just didn't
21 stipulate to it, Judge.

22 THE COURT: I don't know that there's
23 -- my question is a rather direct one. I need to
24 know if you object to it or not. Because those are
25 not typically -- I thought they were regular

1 autopsy photos showing the deceased and -- but this
2 is different.

3 Those are x-rays. I mean, that's just
4 the skeletal structures of the body, and I'm trying
5 to see how that would be prejudicial to your
6 client. It's not showing any blood. It would
7 clearly aid the forensic witness and their
8 testimony, because how else is she going to talk
9 about the mode and manner of death, where the
10 bullet entered and where it potentially exited?

11 MR. MAYER: I don't anticipate having
12 an objection to it.

13 THE COURT: Please bring in the jury.

14 Is Dr. Schandl here?

15 Hello, Dr. Schandl. How are you? You
16 can come and stand by the witness stand.

17 Did you provide Mr. Mayer with a copy
18 of the x-rays --

19 MS. MULKEY: Yes Your Honor.

20 THE COURT: -- that you intend to use?

21 MS. MULKEY: Yes.

22 THE COURT: How many are there?

23 MS. MULKEY: Two.

24 THE COURT: Have they been premarked?

25 MS. MULKEY: Yes, Your Honor.

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1 THE COURT: What are the numbers?

2 MS. MULKEY: 39 and 40.

3 (Jury in, 2:25 p.m.)

4 THE COURT: You may be seated. I hope
5 you had a pleasant lunch recess. We will now
6 resume with testimony. State may call their next
7 witness.

8 MS. MULKEY: The State calls
9 Dr. Schandl.

10 CYNTHIA SCHANDL, M.D.,
11 being first duly sworn, testified as follows:

12 THE CLERK: Be seated. Please state
13 your full name and spell your last name.

14 THE WITNESS: Cynthia Anna Schandl,
15 S-C-H-A-N-D-L.

16 THE COURT: You may proceed.

17 MS. MULKEY: Thank you.

18 THE COURT: Yes, ma'am.

19 DIRECT EXAMINATION

20 BY MS. MULKEY:

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

22 A. I'm employed at the Medical University
23 of South Carolina here in Charleston.

24 Q. And what is your position at MUSC?

25 A. I'm an associate professor and

CYNTHIA SCHANDL, M.D. - DIRECT EXAM BY MS. MULKEY

1 co-director of the forensic and medical autopsy
2 section.

3 Q. And what are the duties and
4 responsibilities of your position as they relate to
5 the autopsies?

6 A. As they relate to the autopsies and as
7 a physician there, I do perform autopsies on those
8 cases that are referred to our practice as -- in a
9 group, there are five of us altogether, five
10 forensic pathologists at the Medical University of
11 South Carolina.

12 I do with them perform autopsies, as
13 well as teach the fellows and residents who are
14 physician trainees coming through learning how to
15 do autopsies and forensic pathology autopsies, and
16 then I have many other administrative duties as
17 well.

18 Q. How long have you been with MUSC?

19 A. Well, I went to medical school there
20 and graduate school, so I've been at MUSC since
21 1991. I also did my postgraduate training after I
22 got my MD and my PhD. I did my residency training
23 there in pathology as well as a fellowship in
24 forensic pathology.

25 So I was a medical student, graduate

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1 student from '91 through '99, and then from '99 to
2 2004, I was a resident for a forensic pathology
3 fellow, and then I've been on faculty at MUSC since
4 2004.

5 Q. And are you board certified in forensic
6 pathology in the State of South Carolina?

7 A. Well, I'm a medical doctor so I carry
8 that licensure in the State of South Carolina and
9 North Carolina and Florida. The board licensure,
10 there's -- I have three boards and those are --
11 that's from a national organization called the
12 American Board of Pathology. And my boards are in
13 anatomic pathology, clinical pathology, and
14 forensic pathology.

15 Q. About how many autopsies would you
16 estimate that you have performed during your tenure
17 at MUSC?

18 A. More than 2,000.

19 Q. Have you been qualified as an expert to
20 testify in the field of forensic pathology?

21 A. Yes, ma'am.

22 Q. Could you estimate how many times?

23 A. About 100.

24 MS. MULKEY: Your Honor, at this time
25 the State would offer Dr. Schandl as an expert in

CYNTHIA SCHANDL, M.D. - DIRECT EXAM BY MS. MULKEY

1 the field of forensic pathology.

2 THE COURT: Any questions or
3 objections?

4 MR. MAYER: No, Judge.

5 THE COURT: So admitted without
6 objection. You may proceed.

7 BY MS. MULKEY:

8 Q. Dr. Schandl, in the scope of your
9 position as a forensic pathologist, did you have
10 the occasion to perform an autopsy on the victim in
11 this case, Deontre Miles?

12 A. Yes.

13 Q. Can you first explain to the jury how
14 you begin the process of performing an autopsy?

15 A. Yes, absolutely. So as I briefly
16 mentioned, we are a group of forensic pathologists.
17 It is the pathologist, the medical doctor who
18 performs autopsies, but we're not in the community
19 investigating the deaths in that way.

20 So when somebody dies, it is the
21 coroner of each county who will refer those cases
22 to our office if they desire to have an autopsy
23 performed. And that's the same in this case, the
24 Charleston County Coroner's Office referred this
25 deceased to our office for an autopsy.

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1 So we get what information they can
2 provide to us about the circumstances of the case
3 on the telephone, generally speaking, and then the
4 coroner's office will have the decedent, the dead
5 person, transported to our office if they're not
6 already at MUSC or in the emergency room, depending
7 on where they died.

8 And then at the next possible
9 scheduling opportunity the person's body will come
10 up from the morgue, up to the autopsy suite, and
11 that's when I'll get my first chance to take a look
12 at the deceased. At that point, we begin the
13 autopsy examination by taking a set of photographs
14 to document how that person came to us, and then
15 also writing down, for example, what clothing is on
16 the body and whatever else we might find that we
17 believe to be of value.

18 And then if there is clothing on the
19 body, we take the clothing off the body and then
20 turn our attention either to that clothing and
21 document anything on the clothing that might be
22 importance to the case. In this case, it was a
23 gunshot wound so I'm documenting things such as
24 defects to the clothing that might be in the area
25 where the person might have been shot, blood

1 stains, those sorts of the things. Any belongings
2 that were in the pockets, those are documented.

3 And then we turn our attention to the
4 body itself. In a case such as this where there is
5 allegedly a gunshot wound, we will take a series of
6 x-rays. And those are designed to help us
7 determine whether there is a bullet in the body.

8 So bullets are radio-opaque, meaning
9 that the x-ray does not go through them, does not
10 pass through them. So on x-ray they're bright
11 white, they're easy to see. And so that helps us
12 find bullets, locate where they are so that we're
13 able to provide those as evidence after the case to
14 law enforcement or other investigative officials.

15 So after taking x-rays, we will
16 continue with the external examination looking for
17 any signs of injury, in this case, a gunshot wound,
18 any identifying features. Are there tattoos? What
19 color are the eyes? How tall is the person? Those
20 sorts of things.

21 And then at that point, after the
22 external examination is complete, we turn our
23 attention to what is commonly thought of as the
24 autopsy which is the internal examination where we
25 perform the Y incision, open the chest cavity and

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1 the other body cavities and look at the organs
2 themselves to document any injuries or disease
3 processes that might be going on. And that's a
4 complete process that we do for everybody that
5 comes in for an autopsy.

6 Also, part of the autopsy procedure is
7 taking some samples to look at under the
8 microscope. And in my cases I like to do that with
9 each case. Again, that can help to document any
10 injury or any natural disease processes that are
11 going on that you might not see with the naked eye
12 or confirm what you're suspecting that you saw with
13 your eyes.

14 Also, part of the autopsy procedure is
15 taking fluid for toxicological analysis. Everybody
16 gets that done. The most common and frequently
17 used fluid is a blood sample. And so that's
18 another thing we do as part of the autopsy, to
19 obtain that blood sample and send it under -- send
20 it on to a reference laboratory where they report
21 the results of those testings back to us.

22 At the end of all that, we collect all
23 of that information and generate a report that we
24 then give to the coroner.

25 Q. Thank you. When you conduct an

CYNTHIA SCHANDL, M.D. - DIRECT EXAM BY MS. MULKEY

1 autopsy, are you looking for a cause of death for a
2 particular individual?

3 A. One of the things that we're charged
4 with as forensic pathologists is assigning the
5 cause of death, so the thing that actually killed
6 the person. Like, it was a heart attack, for
7 example.

8 And then the other thing that we're
9 tasked with trying to identify is the manner of
10 death, and that's actually limited in this State.
11 So you can choose between several options including
12 homicide, suicide, accident, natural, and
13 undetermined. So you have those five choices for
14 the manner of death.

15 So cause of death, that's what killed
16 the person, and then the other category is called
17 manner of death and that's sort of the state's
18 opinion what you can choose, and in this state we
19 can choose one of those five things.

20 Q. I would like to discuss your findings
21 here in this case. Mr. Miles, how old was he?

22 A. It's my information that he was 23.

23 Q. And, approximately, how tall was he?

24 A. He was about five-seven and a half.

25 Q. And his weight?

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1 A. I have him at one sixty-one. Now we do
2 weigh the body as they come in, and he had his
3 clothing on so he's a bit lighter than that.

4 Q. Did you observe any injury to the
5 victim during the external examination?

6 A. Yes. So there was what appeared to be
7 consistent with a gunshot wound to his upper right
8 back, sort of the shoulder area, sort of a round
9 defect there, looked very much like it would be a
10 gunshot wound. And since that was my history, that
11 was my suspicion. So that was the main finding as
12 far as injuries go.

13 Q. Were you able to determine the cause of
14 death?

15 A. Yes. So after the entire autopsy
16 procedure, the external examination, looking at the
17 x-rays and the internal examination, it turned out
18 that the bullet went from the back, through his
19 back, over to behind his neck, up near his head.
20 So from down here, up to here. (Indicating) And
21 what it went through on the way was his spinal
22 cord.

23 So the spinal cord is the -- it is
24 basically very near to your brain, and it's the --
25 it's a huge bundle of nerves essentially that takes

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1 all of the information from your brain, delivers it
2 to your body, and tells it what to do. And where
3 this went from the back up to the head, it went
4 through the spinal cord at the level of what they
5 call cervical vertebrae 2, 3, 4.

6 So you have little vertebrae, or bones,
7 that make up your backbone. And C1 is the very top
8 right next to your skull, and C2, C3, C4, C5 --
9 until you get to the thoracic vertebrae. So at C7
10 it switches to T1. So his went between T2 and T4,
11 which is up in the neck. So it went from here,
12 through the neck, through his spinal cord, and into
13 the back, sort of behind his left ear sort of
14 place. (Indicating)

15 And in going on through the spinal cord
16 at that level, a lot of things can go badly as you
17 can imagine. One of them happens to be that your
18 innervation to your diaphragm is at that level. So
19 if you can't -- if you don't have any nervous
20 activity to your diaphragm, you can't breathe
21 because your diaphragm is what moves down so your
22 lungs will inflate and then it moves back up.

23 So in this case his cause of death, and
24 I'm referring to the report that I generated for
25 the coroner, as I mentioned earlier, I list as

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1 cervical spinal cord disruption from C2 to C4, due
2 to penetrating gunshot wound to the upper right
3 back.

4 Q. Thank you. In coming to your
5 conclusion for the cause of death, did you rely on
6 a toxicology report?

7 A. Like I mentioned before, everybody that
8 comes for an autopsy is going to get a toxicology
9 report if there is something to test. In this
10 case, that was part of our examination.

11 Q. And that report, was that based on the
12 samples that you withdrew and submitted?

13 A. Yes, ma'am.

14 Q. And does the toxicology report screen
15 for commonly used narcotics?

16 A. About 300 different substances,
17 including everything that you might think of as
18 street drugs, cocaine, the benzos, alcohol, and 300
19 other things. So, yes, all the commonly abused
20 substances and a bunch of other things, including
21 medications.

22 Q. Was there anything in that toxicology
23 report that, in your training and experience, would
24 have led you to any other cause of death?

25 A. No, ma'am.

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1 Q. Now, were you able to determine the
2 manner of death for the victim?

3 A. Yes.

4 Q. And what was that?

5 A. The manner of death in this case is
6 homicide.

7 Q. Were you going to say something?

8 A. Sure. So I mentioned before there's
9 choice in this state. And homicide, to me, that
10 just defines that one person is dead due to the
11 actions or inactions of another person.

12 Q. Was the damage on the clothing that you
13 discussed earlier, was that consistent with the
14 injury?

15 A. Yes, ma'am.

16 Q. And consistent with your findings?

17 A. Yes, ma'am.

18 Q. Are you able to tell during an autopsy
19 if a gunshot is close or far in range?

20 A. Sometimes I can. So one of the things
21 that we can look for when we're examining someone
22 who's had a gunshot wound is marks around the
23 entrance wound. Where the bullet goes in you might
24 find soot directly around the gunshot entrance
25 wound, and that would suggest to me a very closer

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1 contact range. So soot is also coming out of the
2 muzzle, or the end of the gun, when a gun is fired
3 and that can be deposited on the skin.

4 As you back away, actual particulate
5 matters, pieces of debris and metal that are not
6 part of the bullet, are coming out of the muzzle
7 end of the gun as well, and those can come and
8 strike the skin and that can cause scrapes or what
9 we call stippling.

10 So right up against the skin you might
11 expect soot, and as you go back there's particulate
12 pieces of debris coming out and you might expect
13 stippling or the scraping of the skin, and as you
14 go further back, that stippling pattern starts to
15 go wider as the particles are spreading out, the
16 distance gets further. And then you get to about
17 two or three feet, you don't expect to see
18 anything, get to the bottom of the soot, nor those
19 particles.

20 So if we see there's soot or stippling,
21 we actually can have a fairly good idea of the
22 range of fire, how far was the muzzle from the
23 target.

24 In this case I didn't see any soot or
25 stippling. So from my point of view, that is an

1 indeterminate range because I'm relatively certain
2 that it was either more than two or three feet
3 away, or there was something between the muzzle and
4 him that stops that debris from getting to the
5 skin. So it could be far away, but it could be
6 close if something else was in the way.

7 So rather than calling those where I
8 find nothing long-distance gunshot wounds, I prefer
9 to call them indeterminate range because you can be
10 closer up if there's something in between the
11 muzzle and target.

12 Q. Now, you mentioned earlier x-rays and
13 photographs. As part of this workup, do you
14 participate in the use of those photographs and
15 x-rays to make your findings?

16 A. Yes, ma'am.

17 Q. Do you use any other diagrams?

18 A. Yes. So we diagram both the
19 identifying features on the body -- or I do, and
20 also any tattoos and those sorts of things, and I
21 also diagram injuries on a diagram. So, yes, we
22 have diagrams, we have photographs and we have
23 x-rays.

24 Q. And in your professional training and
25 experience, have you had considerable time devoted

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1 and experience in interpreting and explaining
2 x-rays?

3 A. A good number of them. Again, I'm not
4 a radiologist, but I can find a bullet and I can
5 point to fractures and those sorts of things, yes,
6 ma'am.

7 MS. MULKEY: Your Honor, at this time
8 the State would like to approach the witness and
9 introduce the State's Exhibit Number 38 that's
10 already been introduced by consent. The State
11 would now move to introduce State's Exhibits
12 Numbers 39 and 40.

13 MR. MAYER: No objection.

14 THE COURT: Marked and admitted without
15 objection.

16 (STATE EXH. 39 in evidence.)

17 (STATE EXH. 40 in evidence.)

18 BY MS. MULKEY:

19 Q. Dr. Schandl, I would like for you to
20 take a moment and review these, and tell me if
21 you're familiar with them.

22 A. Yes, I am.

23 Q. I'm going to go ahead and put them up
24 so you can explain them. Okay. I'm showing you
25 what was marked as State's Exhibit 38. Can you

1 tell the jury what this is?

2 A. This is one of the diagrams that I used
3 in this case with Mr. Miles and his gunshot wound,
4 and what it's showing us is his back. This is what
5 we call the naked man diagram. So this is the back
6 and then there's also one of the front. This is
7 the one of the back.

8 And so what we see for GSW, that is
9 standing for gunshot wound, and this mark here is
10 indicating approximately where the entrance gunshot
11 wound was on his body. (Indicating) The other
12 marks, this was a tattoo, so I'm indicating there
13 was a tattoo there; and I believe these are EKG
14 pads, basically, that were put on by emergency
15 medical personnel.

16 Q. Is there an exit wound marked on the
17 diagram?

18 A. There is no exit wound marked on the
19 diagram.

20 Q. Is there a reason for that?

21 A. I didn't find an exit wound. We found
22 a bullet in his body.

23 Q. I would like to show you what's been
24 entered as State's Exhibit 39. Could you please
25 look at that and tell the jury what this is?

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1 A. Yes. So this is an x-ray from front to
2 back of Mr. Miles' head and sort of his upper
3 chest. You can see part of his arm and whatnot
4 here. So this little thing here is indicating that
5 that's the right side of him. So if you were
6 looking at -- if you're looking at the person,
7 that's his right side and this would be over here
8 his left side.

9 And this here, this bright white thing
10 is what I thought was probably the bullet, it looks
11 like the bullet to me, and it did turn out to be
12 the bullet when we went ahead and did the autopsy
13 procedure. (Indicating)

14 Q. And you explained a very scientific
15 medical explanation when you described the manner
16 of death. Could you use what's been entered as
17 State's Exhibit 40 to explain that using this
18 picture to the jury?

19 A. Yes. And I believe you probably mean
20 the cause of death and I will go with that. So
21 here what we're seeing is an x-ray from side to
22 side. The last one you saw front to front, and you
23 could tell it was sort of over to the right side,
24 but to really get a feel for where the bullet is
25 you need an x-ray from the front and from the side

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1 to put it all together into a 3D sort of image in
2 your head.

3 So here again is this blue bright thing
4 that turned out to be the bullet. And through
5 here, you can see some fractures and some debris.
6 So really, really bright things like that, and
7 that, (Indicating) are probably little fragments of
8 the bullet as it went through his vertebrae, the
9 bones of his -- of his back bone in his neck.

10 And so this is the area that I put in a
11 big square here where that bullet passed through
12 his neck before it ended up over here on the left
13 side of his head.

14 Q. Now, you testified you collected that
15 bullet from the inside of Mr. Miles?

16 A. Yes, ma'am.

17 Q. And what do you do when you collect
18 that type of -- those pieces of evidence?

19 A. So when -- when we get the bullet out,
20 frequently, I like to take a picture where I got
21 the bullets from. So that's one of the things that
22 I like to do. And then after that you, I will
23 describe it, I'll measure it and describe what it
24 looks like; it's a gray metal projectile of
25 whatever size by whatever length. And then I'll

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1 package it up and transfer it as evidence to
2 whatever party is investigating the incident.

3 Q. And I just want to touch on that real
4 quick. Under your supervision, you -- where do
5 these items go?

6 A. Well, it would be whichever law
7 enforcement agency is investigating, and we use a
8 form -- a transfer form for that. So I can find
9 out exactly who it went to. And on that transfer
10 form it says it went to SPO Randal L., oh, dear,
11 Unterbrink maybe, Crime Scene, Charleston PD, which
12 is Charleston Police Department.

13 Q. And one more question, but
14 backtracking, you testified that you take samples
15 so toxicology reports can be performed; is that
16 correct?

17 A. Yes.

18 Q. And that you rely on those in your
19 autopsy?

20 A. Yes. I do report those results in my
21 autopsy.

22 Q. Were there any positive findings for
23 Mr. Miles?

24 A. Mr. Miles' toxicology report was
25 positive for caffeine, but nothing else. No