

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

DEC 20 2013

S.C. Supreme Court

CLARENCE KENDALL COOK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000366

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN RATIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENTS AND SENTENCING SHEETS.....	650
APPLICATION FOR POST-CONVICTION RELIEF	658
RETURN	666
POST-CONVICTION RELIEF HEARING TRANSCRIPT	671
ORDER OF DISMISSAL	812

THE STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF MARLBORO)
THE STATE OF SOUTH CAROLINA)
PLAINTIFF)
VERSUS) APRIL 18, 2011
CLARENCE KENDELL COOK) 2010-GS-34-00466
DEFENDANT)

BEFORE

THE HONORABLE M. MICHAEL BAXLEY

APPEARANCES

Mary-Thomas Johnson-Lee, Esquire
Shipp Daniel, Esquire
ATTORNEYS FOR THE STATE

Myesha Brown, Esquire
Rosalind Sellers, Esquire
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

INDEX

Call of the case	Page 011
Voir Dire	Page 011
Jury Selection	Page 019
Correct the spelling of defendant's middle name	Page 048
Presentation of prior record	Page 049
Jury is Sworn at 3:14 P.m.	Page 071
Introduction to the case	Page 072
Opening Statement by Ms. Johnson-Lee	Page 080
Opening Statement by Ms. Brown	Page 083

STATE WITNESSES

NAME	VOIR DIRE	DIRECT	CROSS	REDIRECT	RE-CROSS
Kim T. Brown		088	103	137	---
DAY TWO OF TRIAL					
Yaronda Harley		142	145	---	---
Tonya Williams		150	156	159	---
Walter Covington		160	163	167	---
Bill James Williams		168	172	---	---
Kel William Hall		174	178	181	---
Terrance Bridges		181	189	206	---
Richard Wayne Lewis		207	210	---	---
DaShawn Bland		212	219	228	---
Nicholas I. Basalis, M.D	229	234	247	---	---
James Green	265	268	275	---	---
John Roberts	278	280	283	---	---
Ira Dease, III		284	289	291	---
Deborah Carter		292	294	301	---
Carlos Eaddy		302	308	325	---
Vivian Stubbs		326	329	335	---
John B. Hepburn		340	343	353	354
Deborah Young		360	378	425	---
DEFENSE WITNESSES					
Michael Troutman		434	438	---	---
Jimmy L. Ridges		444	452	455	---
Marie Clay		456	458	458	---
Quentin L. Covington		461	468	---	---
Taylor Locklear		470	481	483	---
Marquis Short		488	499	---	---
Jessie Simmons		505	517	518	---
Chasity Carter		519	544	555	---

State Rest	Page 428
Motion for a Directed Verdict	Page 429
Fifth Amendment Examination by the Court For Mr. Short	Page 485
Motion for a Directed Verdict	Page 556

DAY FOUR OF TRIAL

Charge on the law	Page 563
Closing Argument by Ms. Brown	Page 584
Closing Argument by Ms. Johnson-Lee	Page 620
The jury begins deliberation at 11:40 a.m.	Page 625
Foreperson excused seat alternate juror	Page 630
the jury begins deliberations anew at 2:38 p.m.	Page 630
Jury announces a verdict at 3:09 p.m.	Page 633
Poll the jury	Page 634
Sentencing Hearing	Page 640
Motion for a new trial	Page 637
Statement by April Hayes	Page 641
Defendant's criminal record	Page 643
Statement by Ms. Brown on behalf of the defendant	Page 644
Sentence by Mr. Cook	Page 645
Sentence of the Court	Page 646
Certificate of Reporter	Page 649

VOIR DIRE

Case No.: 2010-GS-34-00466 Date: April 18, 2011
 Plaintiff: The State Attorney: Mary T. Johnson-Lee
 Defendant: Clarence K. Cook Attorney: Myesha Brown
 Presiding Judge: J. Michael Baxley Reporter: Pamela Ozment-Cartee

* * * * *				* * * * Strikes * * * *		
JUROR #	JUROR NAME	RACE	SEX	STATE	DEFF	COURT
112	Jerry Simmons	B	M	X	--	
091	Debra K. Polson	W	F	✓	x	
141	Billy B. Weaver, Jr.	W	M	✓	x	
094	Ann W. Prince	B	F	✓	x	
014	Joshua Bostic	B	M	X	--	
126	Terry L. R. Sweatt	W	M	✓	✓	
030	Steven E. Davenport	B	M	✓	✓	
149	Freda M. Wright	B	F	✓	✓	
122	James W. Y. Staggers	B	M	✓	x	
119	Lee R. Spears	B	M	✓	✓	
002	Terry Anderson	B	F	✓	✓	
024	Andrea G. Coleman	N	F	✓	x	
028	Joan S. Covington	B	F	✓	x	
035	Charles Ray English	W	M	✓	x	
102	Patrick M. Ridges	B	F	✓	✓	
092	Debra S. Polson	W	F	✓	x	
050	Oliver Harrington	B	M	✓	✓	
129	Albert Lee Tedder, Sr.	B	M	✓	✓	
057	Travis R. Ingram	W	M	✓	✓	
020	Joseph W. Bridges	B	M	✓	x	
111	Avia P. Simmons	B	F	✓	✓	
150	Johnny W. Yarborough	W	M	✓	✓	
065	Laura L. Lattaker	B	F	✓	✓	

JUROR #	JUROR NAME	RACE	SEX	STATE	DEFF	COURT
	Alternate Jurors					
090	April M. Polson	W	F	✓	x	
025	Deborah S. Tobias	W	F	✓	x	
001	William A. Adams, Jr.	W	M	✓	✓	
064	Jamie C. Ladler	W	M	✓	✓	

STATE EXHIBITS

NUMBER	DESCRIPTION	PAGE
1	Defendant's Video Statement	366
2	Bullets	274
3	Victim's Phone	---
4	Autopsy Report	243
5	Victim's Clothes	177
6	Autopsy Pictures	WITHDRAWN
7	Autopsy Pictures	WITHDRAWN
8	Autopsy Pictures	237
9	Autopsy Pictures	237
10	Autopsy Pictures	WITHDRAWN
11	Autopsy Pictures	WITHDRAWN
12	Autopsy Pictures	237
13	Autopsy Pictures	237
14	Autopsy Pictures	237
15	Autopsy Pictures	WITHDRAWN
1SS6	Autopsy Pictures	WITHDRAWN
17	Photograph of crime scene	290
18	Photograph of crime scene	290
19	Photograph of crime scene	290
20	Photograph of crime scene	290
21	Photograph of crime scene	290
23	Photograph of crime scene	290
24	Photograph of crime scene	290
25	Photograph of crime scene	290
26	Photograph of phone	136
27	Photograph of phone	372
28	Photograph of phone	136

NUMBER	DESCRIPTION	PAGE
29	Photograph of phone	136
30	Photograph of phone	138
31	Photograph of phone	372
32	Photograph of phone	136
33	911 Tape	155
34	Statement of Terrance Bridges	187
35	Statement of Carlos Eaddy	307
36	Miranda Warning	365
37	Voluntary Statement of Larissa Devon Davis	WITHDRAWN
38	Voluntary Statement of T. Lock	WITHDRAWN
39	SLED Repot on Bullets	275
40	SLED Report of GSR	283
41	MUSC Evidence Transfer	246
42	SLED Evidence Transfer Sheet	375
43	North Carolina Conviction	WITHDRAWN
44	Marlboro County CAD Incident Detail 911	154

DEFENDANT'S EXHIBITS

NUMBER	DESCRIPTION	PAGE
1	Photograph of apartment complex	100
2	DVD	108
3	Photograph of Apartment Complex	244
4	Autopsy Photograph	249
5	Photograph	510
6	Photograph	510
7	Photograph	510
8	Cell Phone	543

COURT EXHIBITS

NUMBER	DESCRIPTION	PAGE
1	Note from the jury	628
2	N. C. Sentencing Sheet	---

THE STATE VERSUS CLARENCE KENDELL COOK

10

1 (Whereupon, this trial commenced at 10:35 a.m. on
2 Monday, April 18, 2011.)

-- DAY ONE OF TRIAL --

3
4 **THE COURT:** All right. Ladies and gentlemen, here on
5 the criminal court, the Solicitor has the responsibility to
6 prioritize the cases, and set the cases for trial. So,
7 Madame Solicitor, please call your first case.

8 **MS. JOHNSON-LEE:** The State calls Clarence Kendell
9 Cook. Docket 2010-GS-34-466, murder; 2011-GS-34-91,
10 possession of a weapon during the commission of a violent
11 crime; 2011-GS-34-92, unlawful possession of a pistol.

12 **THE COURT:** All right. And, then Ms. Brown, do you
13 represent Mr. Cook?

14 **MS. BROWN:** Yes, Your Honor. I do.

15 **THE COURT:** And how does he plea to these charges?

16 **MS. BROWN:** Not guilty, Your Honor.

17 **THE COURT:** All right. Then ladies and gentlemen, you
18 have heard the call of the case, or actually cases against
19 the Defendant Mr. Cook. You have heard the entry of a plea
20 of not guilty, which means the issues are joined for trial.
21 We now proceed to pick a jury.

22 Now, here is what I would like to do. What we are going
23 to do, and I have just asked a series of questions that has
24 to do with your qualifications. We are finished with that
25 now. We are going to ask questions about the specific case,

1 which has been called by the Solicitor. And, I know a lot of
2 times when you are sitting in a group as you, you hear a
3 question asked, and you think to myself, well, you know,
4 maybe that doesn't apply to me. Or I am just not going to
5 answer. I don't want to embarrass myself. I am going to ask
6 you to do just the opposite. I will tell you there are no
7 wrong answers in jury qualifications. The purpose of this
8 process is that whatever jury we choose, will be
9 disinterested with regard to this case. That is, you don't
10 have some connection to it, or a party that is a relative, or
11 something of that nature that would make you an inappropriate
12 juror for this case. So, if you have some inkling that you
13 should respond to a question, please stand up and give us the
14 benefit of whatever that answer may be.

15 We are going to start this process by having the lawyers
16 introduce themselves, as well as their client. Now, of
17 course, the charge that you heard called, the primary charge
18 was murder. Which means that the alleged victim in the case,
19 and I use the term alleged, because actually what happened
20 here is going to be decided by the jury. Not because of what
21 an indictment says, or what a particular term the court or a
22 lawyer uses. It is going to be based on what the evidence in
23 the case shows. But I am going to ask the state if you would
24 please introduce yourself, and the primary officer who will
25 be seated with you, as well as give us the name of the

THE STATE VERSUS CLARENCE KENDELL COOK

12

1 victim, the alleged victim in this case for the jury panel.

2 **MS. JOHNSON-LEE:** Yes, sir, Your Honor. My name is
3 Mary Johnson-Lee, and I am an Assistant Solicitor with
4 Marlboro County. Seated with me at the table is the
5 investigating officer, is Detective David Young of the
6 Bennettsville Police Department. The victim in this case is
7 Mr. Charles Hayes.

8 **THE COURT:** All right. And now let's switch to the
9 defendant's side of the case. And, Ms. Brown, if you would
10 make the same introductions, please.

11 **MS. BROWN:** Good morning. My name is Misha Brown. I
12 am with the MLB Law Firm in Florence. And I served
13 previously as a former public defender here in this county.
14 Sitting next to me is Mr. Clarence Cook. He is, in fact, the
15 defendant in this case. And also I have Ms. Rosalind
16 Sellers, and she is an attorney in Dillon with the Seller's
17 Law Firm. And she will also be representing Mr. Cook along
18 with me during this trial.

19 **THE COURT:** All right. Ladies and gentlemen, you just
20 heard the names called of individuals who are the principles,
21 that is the parties in the case.

22 I want too first ask about the lawyers. You were
23 introduced to Ms. Johnson-Lee, who is the Solicitor. And Ms.
24 Brown. It is Mary Johnson-Lee and Myesha Brown is the
25 defense counsel, and Ms. Rosalind Sellers, also seated at the

THE STATE VERSUS CLARENCE KENDELL COOK

13

1 defense table. Let me first ask about the prosecution. Now,
2 Ms. Mary Johnson-Lee works for the Solicitor's Office. I
3 want to know whether there is any member of this jury panel
4 related to Ms. Johnson-Lee by blood or marriage; has some
5 close connection to her, whether that be social, business,
6 professional, whatever it may be, or either now or in the
7 past been represented by Ms. Johnson-Lee or any other lawyer
8 who works in the Solicitor's Office? That is the prosecution
9 office here in Marlboro County. So, what I would like to
10 know again is, are you related to Ms. Johnson-Lee by blood or
11 marriage? Do you have some close connection to her, whatever
12 that may be? Or have you previously been represented by the
13 Solicitor's Office? If any of that applies to you, please
14 stand. All right. No one has stood, madame court reporter.

15 Now, I want to ask further. Is there any member of this
16 jury panel who does any business with the Solicitor's Office,
17 whether that may be as a vendor or some other connection to
18 the Solicitor's Office, or you have a relative by blood or
19 marriage who works in the Solicitor's Office? If any of that
20 applies to you, please stand. Let's let the record reflect
21 that no one has stood.

22 We are going to switch sides of the case now. I want to
23 ask you about defense counsel. Again, we have two lawyers at
24 the defense table, Ms. Brown and Ms. Sellers. Ms. Brown's
25 office is from Florence. Ms. Sellers's office is in Dillon.

THE STATE VERSUS CLARENCE KENDELL COOK

14

1 I want to ask now if there is any member of this jury panel
2 related to either of the defense attorneys by blood or
3 marriage, have some close business, professional, or social
4 connection to them, or either now or in the past been
5 represented by them on any other matter that may have been
6 pending. If that applies to you, if any of that does, please
7 stand. Let the record reflect that no one has stood.

8 All right. Ladies and gentlemen, I now want to ask
9 about the parties in the case. I have already asked about
10 the lawyers. Now, I want to ask about the parties. First of
11 all, on the prosecution side the deceased is Mr. Charles
12 Hayes. Also seated with the prosecution at the state's table
13 is the chief officer in this case, Ms. Deborah Young. I want
14 to ask if there is any member of this jury panel related by
15 blood or marriage, or have some close business, professional
16 association - I first want to ask about Ms. Deborah Young,
17 who is the chief officer in the case. If that applies to
18 you, if you are related to her by blood or marriage, have
19 some connection to her, whether it is business, professional,
20 or social; please stand. Let the record reflect that no one
21 has stood.

22 Now, I want to ask about the deceased, the alleged
23 victim. Again I use the term alleged, because this is for
24 the jury to determine what has happened here. And the
25 victim's name is Charles Hayes. I want to ask now, ladies

THE STATE VERSUS CLARENCE KENDELL COOK

15

1 and gentlemen, if there is any member of this jury panel
2 related by blood or marriage to Mr. Charles Hayes, has any
3 connection to him whether it is business, professional, or
4 social, or think you even know Mr. Charles Hayes, or knew
5 him, if that applies to you, please stand.

6 All right. Now, ma'am, before I ask you this question
7 let me say this to you. I live in Darlington County, where
8 like Marlboro, where a lot of people know a lot of people.
9 So, it is not uncommon that someone in the jury panel may
10 know someone who is connected to the case. But, the question
11 is this. If that would prevent you from being fair and
12 impartial. So, let's start this way. Tell me your name and
13 jury number, please?

14 JUROR: Kimba McQueen, and I am juror 78.

15 THE COURT: You said you are Ms. McQueen?

16 JUROR: Uh'huh.

17 THE COURT: And Ms. McQueen, how is it that you knew
18 Mr. Hayes, Mr. Charles Hayes.

19 JUROR: I don't know Charles Hayes.

20 THE COURT: Okay. Were you standing because you know
21 Ms. Deborah Young?

22 JUROR: No, I know him.

23 THE COURT: All right. I'll tell you what. We are
24 going to come right back to you then. We are going to go to
25 the defense case in just moment. I was actually asking about

THE STATE VERSUS CLARENCE KENDELL COOK

16

1 the prosecution.

2 So, let me first ask again. Is there anyone else now,
3 anyone who knows Charles Hayes, the alleged victim in the
4 case. Let the record reflect that no one has stood.

5 **THE COURT:** All right. Ma'am, you can stand right
6 back up, because now we are going to switch over to the other
7 side, and you have been introduced to the defendant, whose
8 name is Mr. Clarence Kendell Cook. Tell me, how is it that
9 you know Mr. Cook?

10 **JUROR:** I went to school, and he is someone that I
11 knew in the past.

12 **THE COURT:** Ma'am, let me ask you this. Would that
13 prevent you from being fair and impartial in this case in
14 your opinion?

15 **JUROR:** Yes.

16 **THE COURT:** All right. Then let's do this. I am
17 going to remove you as a juror from this case. Meaning, that
18 you don't have to answer any more questions about this case.
19 But I am going to let you remain with us, in case for some
20 reason we have to redraw or revisit the jury draw. Okay.
21 So, you just be seated, but you don't need to respond to any
22 further questions.

23 Now, ladies and gentlemen of the jury panel, I am asking
24 now if there is anyone related by blood or marriage to Mr.
25 Clarence Kendell Cook, or have some connection to him, or

THE STATE VERSUS CLARENCE KENDELL COOK

17

1 believe that you even know Mr. Clarence Kendell Cook. If
2 that applies to you, then please stand.

3 JUROR: All right. Then ma'am, you are standing. Did
4 you want to speak to the court individually?

5 JUROR: Yes.

6 THE COURT: All right. We will give you that
7 opportunity. Let me ask. Is there anyone else now who would
8 tell me though that you know Mr. Clarence Kendell Cook. If
9 that applies to you, anyone else on the jury panel, please
10 stand. Ma'am, I am going to get you to come down and speak
11 with us, and we will let the lawyers join us right there at
12 the court reporter's table.

13 JUROR: My name is Katie Platt, my number is 89.

14 THE COURT: Ma'am, tell me why you are coming forward,
15 please.

16 JUROR: My son was murdered, and I just don't feel
17 that I can be fair.

18 THE COURT: First of all, let me say that I am sorry.
19 And I don't want to make this difficult for you. To prevent
20 you from being chosen in this trial, I am going to remove you
21 from this jury panel. I am going to let you remain with us,
22 and be seated. Thank you for coming forward, ma'am.

23 All right. Is there anyone else now who would stand and
24 say that they know Mr. Clarence Kendell Cook. If that
25 applies to you, if you have any connection to him, please

THE STATE VERSUS CLARENCE KENDELL COOK

18

1 stand. Let the record reflect that no one further has stood.

2 Now, ladies and gentlemen, what I would like for you to
3 do is please listen to the names of the potential witnesses
4 who will be called out that may appear for the state. Now
5 again, this is a list of potential witnesses. And, if you
6 are in the courtroom ladies and gentlemen, and you are going
7 to be a witness and your name is called, please stand and
8 face the jury panel so that they might see you. And, counsel
9 please go ahead and call the names of the witnesses.

10 **MS. JOHNSON-LEE:** The potential witnesses for the
11 state are, Kim brown, Terrance Bridges, Officer Walter
12 Covington, of Bennettsville Police Department. Officer
13 Jonathan Caleb Baker, Bennettsville Police Department.
14 Officer Bill Williams, Detective Ira Dease, all from the
15 Bennettsville Police Department. Dr. Nicholas Basalis, of
16 the Medical University of South Carolina. Agent James Green
17 of SLED. Carlos Eaddy, Jessie Simons, Detective Deborah
18 Young, Detective Shawn Lucas, Deshawn Bland, Vivian Stubbs,
19 Larissa Davis, Detective John B. Hepburn, Investigator Kenny
20 Michael, of the Solicitor's Office. Investigator Tim Perry,
21 of the Solicitor's Office. Yaronda Harley, Deborah Canter,
22 Officer Greg Williams, Chief Larry McNeill, Detective Larry
23 Bowman, Lieutenant Larry Bowman, Lieutenant Larry Turner,
24 Mary Short, Chakema Bruce, Brooke Freeman. We have a
25 substitution. Amanda Hill of 911 was subpoenaed. We have

THE STATE VERSUS CLARENCE KENDELL COOK

19

1 been advised that Ms. Williams will have to substitute.
2 Coroner Tim Brown, Mary Davis, Jeffrey Locklear, Samuel
3 Haire, Jimmy David, Officer Jeffrey Locklear, Officer Sammy
4 Crosland, Agent Janice Bryson of SLED. Officer John Roberts
5 of SLED, April Hayes, Walk Jones, ADA from North Carolina.
6 And Kel Hall.

7 **THE COURT:** All right. Thank you. Now, ladies and
8 gentlemen, my question for the witnesses is not as close as
9 my questions for the parties. I asked you if you even knew
10 the parties. What I am looking for on witnesses is whether
11 you have some close business, professional, or social
12 connection to any of those individuals. If that applies to
13 you, if you are related by blood or marriage, have some close
14 connection to any of these witnesses, potential witnesses for
15 the state, please stand. Let the record reflect that no one
16 has stood in response to the court's question.

17 All right. Let me ask now the defense about potential
18 witnesses. But before I do that, let me just simply say to
19 all of us. In this courtroom the defendant has no burden of
20 proof. The burden of proof is always on the state to prove
21 the defendant's guilt. It never shifts to the defendant to
22 prove innocence. That is not how it works. So, the
23 defendant has no burden of proof. Not required to put up a
24 case. Not required to testify. And not required to call any
25 witnesses. But, I want to ask counsel, if whether you

THE STATE VERSUS CLARENCE KENDELL COOK

20

1 believe there may be some additional names not called by the
2 state for whom I should query this jury. If you have some
3 names, please call them out to the jury panel at this time.

4 **MS. BROWN:** Thank you, Your Honor. The potential
5 witness list for the defense includes, Mr. Walter Jones, Mr.
6 Michael Troutman, Sergeant John Hepburn, Vivian Stubbs, Marie
7 Clay, Jimmy Ridges, Quentin Covington, Taylor Locklear,
8 Marquis Short, Jesse Simmons, and Chasity Carter.

9 **THE COURT:** All right. Now, ladies and gentlemen you
10 have heard names of potential witnesses who may appear for
11 the defense. I ask you if there is any member of this jury
12 panel related by blood or marriage to any of those
13 individuals, or who have some close business, professional,
14 or social connection to any of them. If that applies to you,
15 please stand. Let the record reflect that no one has stood
16 in response to the court's question.

17 Now, ladies and gentlemen, I have in my hand three
18 indictments. The indictment is simply a piece of paper by
19 which the prosecution or the Solicitor, I should say,
20 commences a prosecution against a person.

21 All right. Sir, tell me your name and jury number,
22 please.

23 **JUROR:** Jack Hannan, and I don't know my number.

24 **CLERK OF COURT:** Juror Number 48.

25 **THE COURT:** All right, sir. And tell me, why you are

THE STATE VERSUS CLARENCE KENDELL COOK

21

1 standing?

2 JUROR: I wasn't paying much attention when the state
3 called the names, but you named a witness that is married to
4 my sister.

5 THE COURT: Tell me that officer's name, please.

6 JUROR: Walter Covington.

7 THE COURT: All right. Now, is that an individual who
8 you expect to testify in this case, Madame Solicitor?

9 MS. JOHNSON-LEE: Yes, Your Honor.

10 THE COURT: All right. And that person is your
11 brother-in-law?

12 JUROR: Yes, sir.

13 THE COURT: All right. Then for that reason, because
14 that is a fairly close connection, we are going to stand you
15 down for this case. Tell me agin, and I didn't hear it.
16 Tell me again your name sir, and your jury number?

17 JUROR: Jack Hannan.

18 THE COURT: That's close enough then. I'll figure
19 that out then. That is juror number 48.

20 And let me just say one word about jury numbers. I know
21 everybody arrived here today and they have a name when they
22 walked in the door, and really didn't really need a number.
23 The reason I ask you about your jury number is because we are
24 keeping a record here. Sometimes we will have jurors' names
25 that sound alike. Sometimes they are similar. And sometimes

THE STATE VERSUS CLARENCE KENDELL COOK

22

1 they are even the same name, we have had happen before. So,
2 we always want to make it clear to whom we are speaking when
3 we talk with the jury panel like this, which is why we ask for
4 your jury number. It is not to demean you, or make you feel
5 like we have some big bureaucracy here, it is just to make
6 sure we all know to whom we are speaking.

7 All right. And, sir, you won't need to answer any
8 further questions about this case, Mr. Hanna, we have removed
9 your name from this case. If you would just remain with us
10 if you will.

11 All right. Now, in my hand I have three indictments.
12 Again, the indictments are simply a piece of paper by which
13 the Solicitor commences a prosecution against a person. What
14 is contained in these indictments are simply accusations.
15 They are allegations against the defendant. They are not to
16 be accepted as evidence, because they are not evidence. And
17 they are not to be accepted as the truth automatically,
18 because whatever the truth is, is going to be determined by
19 the jury, based on evidence in the case. Not because a piece
20 of paper says something. But because the witnesses and the
21 evidence in the case show it.

22 I want to call out to you what the allegations are,
23 however, so that I can follow up with questions about some
24 knowledge you may or may not have about the case. Now,
25 please understand here in the courtroom you heard it. The

THE STATE VERSUS CLARENCE KENDELL COOK

23

1 defendant plead not guilty to these allegations. Meaning,
2 the defendant denies these allegations. But even more so,
3 even if the defendant sat silent, the defendant is presumed
4 innocent of these allegations.

5 All right. The first charge is for murder. And it
6 alleges that Clarence Kendell Cook, the defendant, did in
7 Marlboro County, on or about June 10, 2010; so that is the
8 date, June 10, 2010, did feloniously, and willfully, and
9 intentionally kill the victim Charles Hayes, with malice
10 aforethought by means of shooting the victim several times,
11 and that the victim did die as a result thereof. That is the
12 charge of murder. Arising out of the same incident, on the
13 same date, the defendant is also charged with possessing a
14 firearm, or visibly displaying what appears to be a firearm
15 during the commission or attempted commission of a violent
16 crime. And then also arising out of the same core set of
17 events on the same day, is the unlawful possession of a
18 pistol. And that alleges that the defendant did on June 10,
19 2010, knowingly possess or acquire a pistol against South
20 Carolina law. Now, again these are the allegations that are
21 brought against Mr. Cook.

22 I tell you those for this reason, is to ask you ladies
23 and gentlemen, is there anybody on this panel who knows
24 anything about this incident, and these three alleged charges
25 from whatever source that may come. If you know something

THE STATE VERSUS CLARENCE KENDELL COOK

24

1 about this case, or about this incident, please stand. Let
2 the record reflect that no one has stood in response to the
3 court's question.

4 Now, ladies and gentlemen, I want to ask a little bit
5 about your involvement, if I may, in the past with our court
6 system, or with law enforcement. I want to ask ladies and
7 gentlemen, if there is any member of this jury panel who is a
8 member of an organization that has as its purpose the
9 protection -- the protection or advocacy for victims' rights.
10 Now, I am going to say immediately that there is nothing
11 wrong with being a member of such an organization. That is
12 perfectly fully fine. I just wish to know if you are. And
13 some of these organizations such as Mothers against Drunk
14 Driving, known as MADD, Citizens against Violent Crime, which
15 is known as CADV. There is also CASA, which is Citizens
16 against Espousal Abuse. And I ask you, ladies and gentlemen,
17 if there is any member of this jury panel who is a member of
18 such an organization. If so, please stand. Let the record
19 reflect that no one has stood in response to the court's
20 question.

21 My next question for you is whether or not any member of
22 this jury panel, you, yourself has ever been previously
23 employed in law enforcement, or currently employed, part time
24 or full time. If that applies to you, you the jury, if you
25 have ever formally been employed with law enforcement, or

THE STATE VERSUS CLARENCE KENDELL COOK

25

1 currently employed somehow, please stand. All right. And,
2 then let's go to the front. Sir, tell me your name and jury
3 number again, please.

4 JUROR: My name is Joseph Bridges, juror number 28.

5 THE COURT: And Mr. Bridges, what position did you
6 have in law enforcement?

7 JUROR: I was a jailer, and also a correction's
8 officer.

9 THE COURT: Okay. And where was that, sir?

10 JUROR: In Marlboro County.

11 THE COURT: Okay. And how long has that been?

12 JUROR: Back in 98.

13 THE COURT: Would the fact that you have previously
14 worked in law enforcement, or in corrections, in detention,
15 would that prevent you from being fair and impartial in this
16 case in your opinion?

17 JUROR: No, sir.

18 THE COURT: All right. Then I find that you are
19 qualified by your response. Thank you, for your response.

20 Sir, in the back, please tell me your name and jury
21 number.

22 JUROR: Charles English, 35.

23 THE COURT: And Mr. English, I believe you said
24 earlier that you have previously been a deputy, a Chief
25 Deputy even in Marlboro County; is that correct?

THE STATE VERSUS CLARENCE KENDELL COOK

26

1 **JUROR:** Yes, sir.

2 **THE COURT:** And how long have you been retired from
3 law enforcement?

4 **JUROR:** January 2005.

5 **THE COURT:** Okay. And would that, in your opinion,
6 prevent you from being fair and impartial in this case, in
7 your opinion?

8 **JUROR:** No, sir.

9 **THE COURT:** Then I find that you are qualified by your
10 response. And thank you, sir. You may be seated.

11 All right. Ladies and gentlemen, is there anyone else
12 now who would say they, you the juror, have previously been
13 employed in law enforcement?

14 All right. Now, I want to expand it. I want to ask
15 about your immediate family, and this is how we are going to
16 define immediate family. Your immediate family is your
17 spouse or your children, regardless of where they live, and
18 anyone living in your household. So, spouse and children,
19 regardless of where they live, and anyone in your household.
20 I want to know if there is any member of this jury panel who
21 has someone in your family, as I just defined it currently,
22 employed in law enforcement. That is, employed in law
23 enforcement. If that applies to you please stand. All
24 right, sir. And then tell me, Mr. English, I believe you
25 just stood. Tell me, who do you have in your family

THE STATE VERSUS CLARENCE KENDELL COOK

27

1 currently employed?

2 JUROR: My wife is with the Department of Probation
3 and Parole.

4 THE COURT: All right. And that is Ms. English, who
5 is our agent in charge for probation here in Marlboro County.
6 And, I ask you sir, would that prevent you from being fair
7 and impartial, the fact that your wife works in law
8 enforcement?

9 JUROR: No, sir.

10 THE COURT: All right. Then I find that you are
11 qualified by your response. Thank you.

12 And, ma'am, please tell me your name and jury number.

13 JUROR: Patricia Bethel, my jury number is eight.

14 THE COURT: All right. Ms. Bethel, and what family
15 member do you have working in law enforcement?

16 JUROR: My daughter works at Evans Prison as a
17 correction officer. My son also works out there.

18 THE COURT: All right. Now, would the fact that you
19 have family members working in corrections prevent you from
20 being fair and impartial somehow in this case, in your
21 opinion?

22 JUROR: No, sir.

23 THE COURT: Then I find that you are qualified, Ms.
24 Bethel. Thank you for your response.

25 All right. Ladies and gentlemen, I want to ask now

THE STATE VERSUS CLARENCE KENDELL COOK

28

1 whether there is any member of this jury panel who has had an
2 --- I just defined your immediate family for you. So this
3 question now applies to your immediate family. I want to ask
4 if there is any member of this jury panel who has had an
5 immediate family member who has been the victim of a violent
6 crime. When I say a violent crime, I mean a crime where
7 there has been some interpersonal violence, or injury, or
8 potential for injury that occurred in the course of the
9 crime. If that applies to you, ladies and gentlemen, please
10 stand. Again, my question is, is there any member of this
11 jury panel who in the past has had an immediate family
12 member, as I have just defined it, either you or immediate
13 family member been the victim of a violent crime.

14 All right. Ma'am, please tell me your name and jury
15 number.

16 **JUROR:** Anne Prince, Number 94.

17 **THE COURT:** All right. And, Ms. Prince, tell me what
18 family member are you referring to, please?

19 **JUROR:** My niece.

20 **THE COURT:** All right. And can you tell me what was
21 the crime that occurred?

22 **JUROR:** Murder.

23 **THE COURT:** All right. And how long ago has this
24 been?

25 **JUROR:** About a month.

THE STATE VERSUS CLARENCE KENDELL COOK

29

1 **THE COURT:** Within the last year?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Ma'am, let me ask you. Given the
4 allegations that are in this case, would that event in your
5 life history prevent you, in you opinion, from being fair and
6 impartial here?

7 **JUROR:** No, sir.

8 **THE COURT:** All right. Let me ask it another way,
9 just to make sure we are all on the same wave length. Would
10 you be able to render a decision as a juror based solely on
11 the evidence in the case put forth here in this courtroom
12 from this witness stand, and put out of your mind all other
13 incidents that may have affected you in past? Can you do
14 that ma'am?

15 **JUROR:** Yes, sir.

16 **THE COURT:** All right. Then I find that you are
17 qualified by your response. Thank you.

18 And ma'am, please tell me your name and jury number.

19 **JUROR:** Harriett Hunt, number 55.

20 **THE COURT:** All right. And Ms. Hunt, tell me what
21 family member please?

22 **JUROR:** My companion for nine years was shot and
23 murdered in a robbery.

24 **THE COURT:** All right, ma'am. And tell me, when did
25 that happen?

THE STATE VERSUS CLARENCE KENDELL COOK

30

1 JUROR: In 2001.

2 THE COURT: Okay. And, would that event in your
3 history prevent you from being fair and impartial in a case
4 with these allegations in your opinion?

5 JUROR: (No response.)

6 THE COURT: Let me ask it the same way I just asked
7 Ms. Prince, which is this, ma'am. Would you be able to
8 render your decision as a juror based solely in the evidence
9 in the case, and put out of your mind any past experiences
10 that may have occurred in your life history. Can you do that
11 ma'am?

12 JUROR: Yes.

13 THE COURT: And my question to you now is, are you
14 certain of that?

15 JUROR: No.

16 THE COURT: All right. Out of fairness to the
17 parties, I will need for you to do one of two things. Either
18 tell me that you are certain that you can. But, if you are
19 not certain, that is fine. We all bring different life
20 histories. Then tell me that you are not certain, and the
21 court will stand you down in this case. Would you prefer to
22 be stood down, ma'am?

23 JUROR: I would.

24 THE COURT: All right. Then I will remove your name
25 from this jury. And what we would like to do is ask you to

THE STATE VERSUS CLARENCE KENDELL COOK

31

1 remain with us, because again, we may have to revisit this
2 jury draw. But just be comfortable, you don't need to answer
3 any further questions in this case. All right. Thank you.

4 Anyone else now who would stand, ladies and gentlemen?

5 All right. I asked about a violent crime, and members
6 of your immediate family. Now, I want to expand it and ask
7 if there is any member of this jury panel who has had a
8 family member who may not be in that immediate family
9 discussion, the definition that I gave you. But who has had
10 a member or their family who has been the victim of a murder.
11 If that applies to you, we have already had some that stood.
12 Anyone else please stand.

13 All right. Now, I want to reverse the question,
14 because remember, we have two sides in this courtroom to
15 every issue.

16 I want to ask now if there is any member of this jury
17 panel who has an immediate family member who has ever been
18 accused of perpetrating that is committing a violent crime.
19 If that applies to you, please stand. That is an immediate
20 family member who has been accused of committing a violent
21 crime.

22 And then ma'am, on the right, please tell me your name
23 and jury number.

24 **JUROR:** Terry Anderson, Juror Number 2.

25 **THE COURT:** And Ms. Anderson, what family member

THE STATE VERSUS CLARENCE KENDELL COOK

32

1 please?

2 **JUROR:** My brother.

3 **THE COURT:** And what was the alleged charge?

4 **JUROR:** Murder.

5 **THE COURT:** Okay. And tell me, would that event
6 prevent you from being fair and impartial in this case?

7 **JUROR:** No.

8 **THE COURT:** Then I find that you are qualified ma'am.
9 Thank you, and you may be seated.

10 And sir, please tell me your name and jury number?

11 **JUROR:** Jerry Simmons, Juror 111.

12 **THE COURT:** And, you are Mr. Simmons. Mr. Simmons,
13 tell me what family member, sir?

14 **JUROR:** My brother.

15 **THE COURT:** All right. And, I didn't ask previously,
16 but how long ago was this?

17 **JUROR:** Probably about a years ago.

18 **THE COURT:** Within the last year?

19 **JUROR:** Yes. And would that prevent you from being
20 fair and impartial in this case, in your opinion?

21 **JUROR:** No.

22 **THE COURT:** All right. Then I find that you are
23 qualified by your response.

24 Ms. Anderson, let me ask you ma'am, how long ago was
25 this?

THE STATE VERSUS CLARENCE KENDELL COOK

33

1 JUROR: It was in the early 80s.

2 THE COURT: Okay. It has been some time ago. Thank
3 you. All right. Thank you.

4 Now, anyone else who would say they have had an
5 immediate family accused of committing any violent crime?

6 Now, I want to take that question to you again by asking
7 this question. Is there any member of this jury panel who
8 has had an extended family member who has been accused of
9 committing a murder. If that applies to you, we have already
10 had some who may have responded, please stand. Extended
11 family who has been accused of committing murder. Let the
12 record reflect that no one has stood in response to the
13 court's questions.

14 All right. Ladies and gentlemen, there may have been
15 some media reports, that is news, whether it is news paper,
16 radio, or television report of this incident when it
17 occurred. Let me ask if there is any member of this jury
18 panel who has any recollection of hearing or seeing any media
19 reports about this event. That is, the incident itself on
20 June 10, 2010, or this upcoming trial today. If you have
21 seen something in the medial about this case, or this
22 incident, please stand. Let the record reflect that no one
23 has stood.

24 Ladies and gentlemen, now finally, we know nothing
25 about this case except for certain allegations which have

THE STATE VERSUS CLARENCE KENDELL COOK

34

1 been denied by the defendant. But based on these
2 allegations, is there any member of this jury panel who
3 believes you would not be an appropriate juror for any reason
4 personal to you. Now, several jurors we have already
5 disqualified. I am not speaking to them. But I am speaking
6 to our remaining jurors. Is there anyone who believes that
7 you would not be an appropriate juror for any reason personal
8 to you. If that applies to you, or you think it may; please
9 stand. Let the record reflect that no one further has stood.

10 Now, from the state, are there further questions for
11 jury qualifications? What says prosecution?

12 **MS. JOHNSON-LEE:** We have five strikes Your Honor, and
13 we are ready to go forward.

14 **THE COURT:** All right. Very good. No further
15 questions. From defenses, further questions for the jury
16 panel?

17 **MS. BROWN:** No, Your Honor.

18 **THE COURT:** All right. Now strikes claimed by the
19 state are five. Claimed by the defendant ten. That is what
20 the statute says. Is there any objection to that from either
21 side. Then hearing none, then ladies and gentlemen, let's
22 talk about what is going to happen now. I am going to stand
23 up, because we are going to ask you to stand up in just
24 moment individually. But have used -- can you hear me in
25 the back, ladies and gentlemen? All right. We have used a

THE STATE VERSUS CLARENCE KENDELL COOK

35

1 computer system to randomly draw the names of our remaining
2 jurors who have not been disqualified in this case. Now,
3 what is going to happen is, our clerk, or one of our
4 assistant clerks is going to call your name. We are going to
5 call individually from the top, number one straight on down.
6 And when your name is called, please stand. Just as I am
7 doing now. And here is what is going to happen. Each side
8 is going to have an opportunity to either seat you or excuse
9 you. Now, let me first of all say, you are going to stand
10 up, and they are going to be talking at their table. And
11 just psychologically, you know they are talking about you.
12 We know they are talking about you. And it is a little bit
13 uncomfortable. But I will tell, you that in some courts, you
14 have to get up out of your seat, come down here and stand in
15 the front while that goes on, and that is a little more
16 invasive. So, we are going to just let you stand where you
17 are, rather than come down front to make it a little easier
18 on you. Now, if you are not chosen, that is, if you are
19 excused, please don't be offended. And, of course, that may
20 suit you fine. That may be your preference. But, I don't
21 want you to think that it is something to be taken
22 personally. Because, it may have to do with a response given
23 here in the courtroom here today. It may have to do with an
24 answer that was placed on a jury return form that you sent
25 back in. But, I will tell you what it is not about. It is

THE STATE VERSUS CLARENCE KENDELL COOK

36

1 not because of your sex, and it is not because of your race.
2 It is against the law to strike for those two reasons. And
3 the sides have an opportunity to challenge the strikes of the
4 other side. So, please understand, it will not be for those
5 reasons. If you are chosen, just please bring your personnel
6 gatherings, not because you are going to be sequester
7 somewhere. It is because you are going to change seats, and
8 come and sit in the jury box. If you are not chosen, just
9 please be seated, and we will be back to you at the end of
10 the process when we can let everyone go. I cannot let you go
11 immediately, because again, we may have to revisit whatever
12 jury draw we do here in the next few moments.

13 All right. Mr. Clerk, are you ready? All right. Just
14 a moment while the computer draw is done, ladies and
15 gentlemen. We will be right with you.

16 (PAUSE.)

17 THE COURT: All right. Please proceed.

18 CLERK OF COURT: The ones that are pulled, please
19 watch your step when you step off the side.

20 Juror 112, Jerry Simmons. What says the state?

21 MS. JOHNSON-LEE: Please excuse the juror for this
22 case.

23 CLERK OF COURT: You can be seated, please sir.

24 Number 91, Debra K Polson. What says the state?

25 MS. JOHNSON-LEE: Please present the juror.

THE STATE VERSUS CLARENCE KENDELL COOK

37

1 CLERK OF COURT: What says the defendant?

2 MS. BROWN: We ask that you excuse this juror for the
3 trial of this case.

4 CLERK OF COURT: Have a seat please, ma'am.

5 Juror number 141, Billy B. Weaver, Jr. What says the
6 state?

7 MS. JOHNSON-LEE: Please present the juror.

8 CLERK OF COURT: What says the defendant?

9 MS. BROWN: Please excuse the juror for the trial of
10 this case.

11 CLERK OF COURT: You can have a seat, sir.
12 Ninety-four, Ann W. Prince. What says the state?

13 MS. JOHNSON-LEE: Please seat the juror.

14 CLERK OF COURT: What says the defendant?

15 MS. BROWN: Please excuse the juror for the trial of
16 this case.

17 CLERK OF COURT: Have a seat, please, ma'am.
18 Fourteen, Joshua Bostic. What says the state?

19 MS. JOHNSON-LEE: Please excuse the juror from this
20 case.

21 CLERK OF COURT: Have a seat please sir.
22 126, Terry L. Sweatt. What says the state?

23 MS. JOHNSON-LEE: Please present the juror.

24 CLERK OF COURT: What says the defendant?

25 MS. BROWN: Please swear the juror. Yes

THE STATE VERSUS CLARENCE KENDELL COOK

38

1 **CLERK OF COURT:** Watch your step, and come on up to
2 the front please.

3 Juror Number 30, Steven E. Davenport. What says the
4 state?

5 **MS. JOHNSON-LEE:** Please present the juror.

6 **CLERK OF COURT:** What says the defendant?

7 **MS. BROWN:** Please swear the juror.

8 **CLERK OF COURT:** Watch your step, and come on up to
9 the front please.

10 Number 149, Freda M. Wright. What says the state?

11 **MS. JOHNSON-LEE:** Please present the juror.

12 **CLERK OF COURT:** What says the defendant?

13 **MS. BROWN:** Please swear the juror.

14 **CLERK OF COURT:** Come on down to the front please.

15 Number 122, James W. Staggers. What says the state?

16 **MS. JOHNSON-LEE:** Please present the juror.

17 **CLERK OF COURT:** What says the defendant?

18 **MS. BROWN:** Please excuse the juror.

19 **CLERK OF COURT:** You can have a seat, please, sir.

20 Number 119, Lee R. Spears. What says the state?

21 **MS. JOHNSON-LEE:** Please present the juror.

22 **CLERK OF COURT:** What says the defendant?

23 **MS. BROWN:** Please swear this juror.

24 **CLERK OF COURT:** Come on down please sir.

25 Number 2, Terry Anderson. What says the state?

THE STATE VERSUS CLARENCE KENDELL COOK

39

1 MS. JOHNSON-LEE: Please present the juror.

2 CLERK OF COURT: What says the defendant?

3 MS. BROWN: Please swear this juror.

4 CLERK OF COURT: Come on down please ma'am.

5 Number 24, Andrea G. Coleman. What says the state?

6 MS. JOHNSON-LEE: Please swear the juror.

7 CLERK OF COURT: What says the defendant?

8 MS. BROWN: Please excuse the juror for the trial of
9 this case.

10 CLERK OF COURT: Please have a seat. Number 28, Joan
11 S. Covington. What says the state?

12 MS. JOHNSON-LEE: Please swear the juror.

13 CLERK OF COURT: What says the defendant?

14 MS. BROWN: Please excuse the juror for the trial of
15 this case.

16 CLERK OF COURT: Have a seat please.

17 Juror Number 35, Charles Ray English. What says the
18 state?

19 MS. JOHNSON-LEE: Please seat the juror.

20 CLERK OF COURT: What says the defendant?

21 MS. BROWN: Please excuse this juror.

22 CLERK OF COURT: Have a seat please sir.

23 Number 102, Patrick M. Ridges. What says the state?

24 MS. JOHNSON-LEE: Please present the juror.

25 CLERK OF COURT: What says the defendant?

THE STATE VERSUS CLARENCE KENDELL COOK

40

1 MS. BROWN: Please swear the juror.

2 CLERK OF COURT: Come on down please ma'am.

3 Juror number 92, Debra S. Polson. What says the state?

4 MS. JOHNSON-LEE: Please present the juror.

5 CLERK OF COURT: What says the defendant?

6 MS. BROWN: Please excuse this juror from the trial of
7 this case.

8 CLERK OF COURT: Have a seat please, ma'am.

9 Number 50, Oliver Harrington. What says the state?

10 MS. JOHNSON-LEE: Please swear the juror.

11 CLERK OF COURT: What says the defendant?

12 MS. BROWN: Please present this juror.

13 CLERK OF COURT: Come on down please, sir.

14 Number 129, Albert Lee Tedder. What says the state?

15 MS. JOHNSON-LEE: Please present the juror.

16 CLERK OF COURT: What says the defendant?

17 MS. BROWN: Please swear this juror.

18 number 57, Travis R. Ingram. What says the state?

19 MS. JOHNSON-LEE: Please present the juror.

20 CLERK OF COURT: What says the defendant?

21 MS. BROWN: Please swear this juror.

22 CLERK OF COURT: Come on down, please sir.

23 Number 20, Joseph W. Bridges. What says the state?

24 MS. JOHNSON-LEE: Please present the juror.

25 CLERK OF COURT: What says the defendant?

THE STATE VERSUS CLARENCE KENDELL COOK

41

1 MS. BROWN: Please excuse this juror from the trial of
2 this case.

3 THE COURT: The defense has one strike remaining.

4 CLERK OF COURT: You have been excused, sir.

5 Number 222, Avia P. Simons. What says the state?

6 MS. JOHNSON-LEE: Please present the juror.

7 CLERK OF COURT: What says the defendant?

8 MS. BROWN: Please seat this juror.

9 CLERK OF COURT: Come on down please, ma'am.

10 Number 150, John W. Yarborough. What says the state?

11 MS. JOHNSON-LEE: Please swear the juror.

12 CLERK OF COURT: What says the defendant?

13 MS. BROWN: Please present this juror.

14 CLERK OF COURT: Come on down, please.

15 Number 65, Laura Lattaker. What says the state?

16 MS. JOHNSON-LEE: Please swear the juror.

17 CLERK OF COURT: What says the defendant?

18 MS. BROWN: Please seat the juror.

19 CLERK OF COURT: Come on down, please.

20 THE COURT: Mr. Clerk, let's choose two alternates.

21 The strikes for the two alternates will be two for the
22 defense and one for the state.

23 CLERK OF COURT: Number 90, April M. Polson. What
24 says the state?

25 MS. JOHNSON-LEE: Please present the juror.

THE STATE VERSUS CLARENCE KENDELL COOK

42

1 CLERK OF COURT: What says the defendant?

2 MS. BROWN: Please excuse the juror for the trial of
3 this case.

4 CLERK OF COURT: Have a seat please, ma'am.
5 Juror number 134, Deborah S. Tobias. What says the state?

6 MS. JOHNSON-LEE: Please present the juror.

7 CLERK OF COURT: What says the defendant?

8 MS. BROWN: Please excuse the juror for the trial of
9 this case.

10 CLERK OF COURT: Have a seat please ma'am.

11 THE COURT: All right. The defendant has only
12 challenge for cause remaining.

13 MS. BROWN: Thank you, Your Honor.

14 CLERK OF COURT: Number 1, William A. Adams. What
15 says the state?

16 MS. JOHNSON-LEE: Please swear the juror.

17 CLERK OF COURT: Any cause for challenge from the
18 defendant?

19 MS. BROWN: None here, Your Honor.

20 CLERK OF COURT: Come on down, please, sir.
21 Juror number 64, Jamie C. Lafter. What says the state?

22 MS. JOHNSON-LEE: Please present the juror.

23 CLERK OF COURT: What says the defendant?

24 MS. BROWN: Please seat the juror.

25 CLERK OF COURT: Come on down, please sir.

THE STATE VERSUS CLARENCE KENDELL COOK

43

1 That completes it, Your Honor.

2 **THE COURT:** Thank you, Mr. Clerk. All right. Now,
3 let me ask before we proceed further. Are there any
4 objections to the procedure used by the court to draw this
5 jury, or the strikes imposed by the other side. What says
6 the state?

7 **MS. JOHNSON-LEE:** Not by the procedure by the court,
8 but there is an objection to the procedure by the other side.

9 **THE COURT:** All right. Then please step up if you
10 will. Just a moment, ladies and gentlemen. We will let you
11 just please be seated where you are.

12 (Whereupon, a bench conference was held in the
13 presence of the jury, but out of their hearing range.)

14 **THE COURT:** All right. Now, ladies and gentlemen, we
15 have had a discussion at the bench. And the issue is
16 resolved. So, let me ask now from the defense, Ms. Brown, is
17 there an objection to the procedure by this court or the
18 strikes imposed by the other side?

19 **MS. BROWN:** Your Honor, can you give me just one
20 moment, please.

21 **THE COURT:** All right. Go ahead. Now, let me go back
22 to the state while they are talking about that. Is there an
23 objection to the procedure now employed by the court or the
24 strikes imposed by the other side?

25 **MS. JOHNSON-LEE:** Not at this time, Your Honor.

THE STATE VERSUS CLARENCE KENDELL COOK

44

1 **THE COURT:** Very good.

2 **MS. BROWN:** No, Your Honor.

3 **THE COURT:** All right. Ladies and gentlemen, that
4 means you are going to be our jury in this first case for
5 trial. We will let our remaining panel be with us for just a
6 few moments while we talk to this panel. Let me ask, how
7 many of you have served on a jury before? If you have been
8 on a jury before, please raise your hand, civil or criminal.
9 All right. Is see we have some experience on the jury panel.
10 But, let me just say this. If you are sitting where you are
11 this morning for the first time, don't be uncomfortable about
12 where you find yourself. Jurors need two tools to serve
13 well, and you have them both. The first is your ability to
14 listen, and the second is your collective common sense.
15 Armed with those things, you are going to be in find shape.

16 All right. Now, it is going to take us a little while
17 to prepare this matter to actually start the trial of the
18 case. So, we are going to release you to have an extended
19 lunch, and ask you to be back at three o'clock today. Now,
20 when you come back at three, please don't come back to the
21 courtroom. I am going to let Mr. Brown go out with you and
22 show you where the jury room is, and we will let you come
23 back to the jury room at three o'clock today.

24 Now, tell your loved ones, if you speak with them over
25 the lunch hour, that we run this court on business hours.

THE STATE VERSUS CLARENCE KENDELL COOK

45

1 We will end around five o'clock today. You are not going to
2 be sequestered in a hotel somewhere. You will be home at
3 night where you ought to be, and with your family and loved
4 ones. And, over the lunch hour, please don't feel like you
5 need to undertake your own investigation into this matter,
6 whether it is by computer, or out on the street, or whatever
7 it may be. Just have a good lunch. You even have time for a
8 nap today. Come back at three o'clock, and we will be ready
9 to proceed at that time.

10 Any questions now about our schedule from any of the
11 jurors? All right. Then we will see you at three. We will
12 remain where we are out of respect for you while you depart
13 for lunch. Have a nice extended lunch, ladies and gentlemen.

14 (Whereupon, the jury exits the courtroom for
15 lunch at 11:44 a.m.)

16 **THE COURT:** All right. Now, to our remaining jury
17 panel, I know you are disappointed that you were not chosen.
18 But what I am going to let you do is leave. You are done for
19 the day here. After six o'clock tonight, please call the
20 jury number that you have. If you don't have it written on
21 your information, our bailiff can give you a piece of paper
22 with it on that paper when you leave. Please call that after
23 six o'clock tonight for further instructions for the
24 remaining jury panel. That will be you. If I knew what they
25 were, I would tell you now. But we don't know until the end

THE STATE VERSUS CLARENCE KENDELL COOK

46

1 of every day what the message is going to be that evening.
2 So, please call after six o'clock tonight. But you are
3 finished for the day. It is a beautiful day outside. Please
4 enjoy it, and you are free to go at this time.

5 (Whereupon, the jury panel is released from
6 the courtroom at 11:45 a.m.)

7 **THE COURT:** All right. Let's remain on the record and
8 go ahead and resolve certain issues, if we can, before we
9 take our own lunch break. I think the best thing that we
10 should do first would be to memorialize the discussion we had
11 at the bar --- at the bench, which was not reported by our
12 court reporter.

13 And, Ms. Johnson, just go ahead and state your objection
14 if you will for the strikes, and then we will hear an
15 explanation so that the record will reflect it. Go ahead.

16 **MS. JOHNSON-LEE:** Your Honor, the state objected
17 because the defense struck every white female.

18 **THE COURT:** All right. And, Ms. Brown, do you wish to
19 respond?

20 **MS. BROWN:** Certainly, Your Honor. When we look at
21 the jury panel, those individuals that were struck that were
22 in fact identified as white females were, Ms. Deborah Polson.
23 The reason we struck her, was my client was previously
24 married, and, in fact, we believe that she may have some
25 relationship, and know the wife and life in McColl.

THE STATE VERSUS CLARENCE KENDELL COOK

47

1 The same would be true for Ms. Polson.

2 **THE COURT:** All right. That was juror 91. Now,
3 please proceed to the next juror.

4 **MS. BROWN:** Thank you, Your Honor. Let me check the
5 numbers. Juror number 91 was Debra K. Polson. That would be
6 the same for juror number 92, Debra S. Polson. That would
7 also be the same for April Polson, and I am trying to find
8 her number, Your Honor; number 90, Your Honor. Then we have,
9 Your Honor, Ms. Andrea Coleman is juror number 24. And we
10 were concerned Your Honor, about her political affiliations
11 in this community, and that is why we struck that particular
12 juror. And the same would go for Ms. Debra S. Tobias,
13 number 134. And I just want to look at my notes again to
14 confirm the reason again for Ms. Andrea Coleman. I have
15 several notes over here, Your Honor. Yes, Your Honor, those
16 explanations are the reason we gave you at the bench, and we
17 stand by that Your Honor right now.

18 **MS. JOHNSON-LEE:** My recollection at the bench, Your
19 Honor, was that political affiliations with Ms. Tobias and
20 Ms. Coleman had something to do with them being educators
21 from McColl.

22 **MS. BROWN:** Your Honor, I apologize. That is correct.
23 She is in McColl. That is where she is located. She is a
24 preschool teacher in McColl. Also, her husband works for the
25 water department in McColl. Our location is our concern for

THE STATE VERSUS CLARENCE KENDELL COOK

48

1 her.

2 THE COURT: All right. And then after hearing these
3 explanations at the bench, Ms. Johnson, what was your
4 position?

5 MS. JOHNSON-LEE: The state is satisfied with the
6 jury. We accept the explanation.

7 THE COURT: Anything further now with regard to the
8 Batson issue that either side wishes to place on the record?
9 Then hearing none.

10 Let's talk about what motions remain outstanding before
11 we can begin the trial. What motions does the state have?

12 MS. JOHNSON-LEE: Your Honor, I failed to mention this
13 earlier, but we would like to clarify the spelling of Mr.
14 Cook's middle name. On the indictment it is spelled
15 K-E-N-D-E-L-L. When we received documents from North
16 Carolina, some of them have his middle name spelled K-E-N-D-
17 E-A-L-E. The state would like to inquire to what Clarence
18 Kendell Cook's middle name is, and the proper spelling. So
19 that if there is a scribe's error on the indictment, we can
20 correct that on the front.

21 MS. BROWN: Your Honor, the spelling of Mr. Cook's
22 middle name is K-E-N-D-E-L-L.

23 MS. JOHNSON-LEE: The state would then move to correct
24 the spelling of the scribe's error on the indictment, just
25 to reflect the spelling of his middle name, K-E-N-D-E-L-L.

THE STATE VERSUS CLARENCE KENDELL COOK

49

1 **THE COURT:** All right. That would be K-E-N-D-E-L-L.
2 Is there an objection from the defense?

3 **MS. BROWN:** Your Honor, there is no objections.

4 **THE COURT:** All right. Hearing none, then the court
5 will note on the indictments themselves, the spelling change.
6 And anything further now -- Well, again we are making a list
7 of what remains to be resolved.

8 **MS. JOHNSON-LEE:** Yes, Judge. The state would seek to
9 present Rule 609, prior record evidence for impeachment
10 purposes should Mr. Cook testify.

11 **THE COURT:** All right. Why don't you just state on
12 the record what you believe they are. And if that decision
13 is made that Mr. Cook will testify, we will resolve the
14 specifics of it at that time. Please tell us what you
15 believe are pertinent.

16 **MS. JOHNSON-LEE:** I believe he has an assault with a
17 deadly weapon with intent to kill, two counts. Discharging a
18 firearm into a dwelling, two counts. Also receiving stolen
19 goods, and that was in Marlboro County. Also, a drug charge.
20 And I am not sure if it was a possession or a PWID. And
21 those were convictions from 2008. The two Marlboro County
22 charges.

23 **THE COURT:** All right. Now, we will just leave that
24 record on the record, as stated to be resolved if there is a
25 decision that Mr. Cook will testify. We will make that

THE STATE VERSUS CLARENCE KENDELL COOK

50

1 decision at the appropriate time.

2 **MS. JOHNSON-LEE:** We would also make a motion that the
3 defense not be allowed to present any documentary evidence
4 that they have not provided to us as part of Rule 5. We have
5 made the reciprocal Rule 5 request beginning last fall. The
6 only material we have received is an audio statement on a
7 disc from Marquis Short. On the disc, Marquis also
8 references there being a written statement, which I have
9 verbally requested. But that has not been turned over. And
10 no other documents for the defenses case and chief, has been
11 presented to the state.

12 **THE COURT:** Is there a response?

13 **MS. BROWN:** Your Honor, we believe that we turned over
14 all documents relating to the reciprocal Rule 5. Of course,
15 she just indicated the audio statement that was provided to
16 her. We are not aware of any other documents that we should
17 have in fact, turned over to her, that we plan to use in this
18 case at this time.

19 **THE COURT:** Very good. Then, if there is something
20 that you believe that is volatile, that the defendant offers,
21 please object contemporaneously.

22 **MS. JOHNSON-LEE:** Yes, Your Honor. Lastly, from the
23 state, the Jackson v Denno. There is a video tape
24 confession, or a videotape statement made by Clarence Kendell
25 Cook on June 10, the night of the shooting.

THE STATE VERSUS CLARENCE KENDELL COOK

51

1 **THE COURT:** All right. And that would be the last
2 thing then for the state, would be the Jackson v Denno issue?

3 **MS. JOHNSON-LEE:** Yes, Your Honor.

4 **THE COURT:** All right. Tell me what motions do we
5 have that remain to be resolved from the defense?

6 **MS. BROWN:** Your Honor, Madame Solicitor has indicated
7 the prior conviction. Of course we would argue a rebuttal to
8 that. The suppression of the statement, of course, we would
9 argue whether or not it was voluntarily made. However, Your
10 Honor, we do have a subsequent motion that goes along with
11 that dealing with some statements that were in fact made on
12 that video. That video is about an hour in length. There
13 are some highly prejudicial statements we believe that should
14 not be included. And we would ask that if the court would
15 make a ruling whether or not we can exclude or limit the
16 testimony, or the admission of that particular video
17 statement, Your Honor. Because of Rule 403, as well as for
18 Rule 404(b), dealing with some prior bad acts that he
19 mentioned in that video.

20 **THE COURT:** All right. Again, still related to
21 Jackson v Denno, in a way, what other motions are there, if
22 any?

23 **MS. BROWN:** Your Honor, we also have the Motion in
24 Limine just to make sure that there will not be the
25 introduction of any prior bad acts. And, if so, we ask that

THE STATE VERSUS CLARENCE KENDELL COOK

52

1 the state disclose of any of those prior bad acts that they
2 would like to interject into this trial.

3 **THE COURT:** All right. Other than these prior
4 convictions that you have give us, which you believe would be
5 relevant and probative, what prior bad acts, if any, Lyle
6 Evidence do you have?

7 **MS. JOHNSON-LEE:** We would not be presenting any Lyle
8 Evidence, unless the defense opened the door. There was a
9 murder in North Carolina, which Mr. Cook received immunity in
10 exchange for testifying. The defense has on their witness
11 list the D.A. from North Carolina, who prosecuted that
12 matter. So, if they open the door concerning that case, then
13 I believe that the state at that time, we should be able to
14 walk in the door. But we will not be presenting anything
15 like that on direct.

16 **THE COURT:** Very good. Then you are hearing that
17 there is no Lyle Evidence to be offered in the case and
18 chief, only if there is an opportunity through an open door
19 in testimony.

20 **MS. BROWN:** And, Your Honor, in that case we do have a
21 motion to preclude evidence to limit the type of inquiry that
22 can be in fact called in cross examination. As Madame
23 Solicitor indicate, we plan to call the defense attorney from
24 High Point dealing with that charge, as well as the district
25 attorney from North Carolina. The sole purpose of those two

THE STATE VERSUS CLARENCE KENDELL COOK

53

1 individual testimony is just to inform the court of
2 information that they received from Mr. Cook relating to
3 retaliation, dealing with his testimony, or concerns about
4 threats. That is the only purpose we are calling them for.
5 We are not going to ask about the nature of the charge. We
6 are not going to ask about the circumstances that lead to the
7 arrest or the dismissal of those charges. It would be
8 limited in scope as to whether or not there was any
9 communications. Whether or not he relayed that he was in
10 fact threatened. And did he in fact give any names of those
11 individuals that were in fact threatening him. And, of
12 course, this is important, because it deals with the state of
13 mind, which is, in fact, the second and third element dealing
14 with self-defense.

15 THE COURT: And, do you want to reply to that?

16 MS. JOHNSON-LEE: Judge, I think if she opens the door
17 to that, we should be allowed to address that, because it is
18 going to put a question in the jury's mind if we keep it
19 limited as to why they are here. And just that limited
20 testimony to be accepted at face value. We think Clarence
21 Cook's involvement up there was more than that, and the DA
22 thinks so also. So, if she puts him on the stand, I think I
23 should be allowed to go there.

24 THE COURT: Just a moment.

25 (PAUSE.)

THE STATE VERSUS CLARENCE KENDELL COOK

54

1 **THE COURT:** All right. Anything further then with
2 regard to issues --- I am going to take that under
3 advisement. Anything further on the issues that the state
4 believes should be resolved prior to lunch?

5 **MS. BROWN:** And, Your Honor, the last motion that we
6 have is just a motion to sequester the witnesses. I
7 understand that maybe there are about forty witnesses
8 involved in this case. I guess my motion would be limited to
9 any lay witnesses, not necessarily law enforcement officers,
10 or any expert witnesses. Well, Your Honor, let me change
11 that. I request to sequester law enforcement officers as
12 well.

13 **THE COURT:** In other words, you don't wish to
14 sequester expert testimony?

15 **MS. BROWN:** Yes, Your Honor.

16 **THE COURT:** What says the state about that?

17 **MS. JOHNSON-LEE:** Your Honor, I would like to have my
18 main investigating officer, even though she won't be
19 testifying until after one or two of the lay witnesses.
20 Well, actually, her testimony probably won't take place until
21 tomorrow, but I think she should be out here, because she is
22 the main investigating officer. And then my record's
23 custodian is here, solely for purposes of overseeing the
24 evidence. I would just ask that they be allowed to remain
25 out here.

THE STATE VERSUS CLARENCE KENDELL COOK

55

1 **THE COURT:** And is the record's custodian going to
2 testify?

3 **MS. JOHNSON-LEE:** Yes, Your Honor, just concerning
4 chain of custody.

5 **THE COURT:** All right. First of all, the court will
6 permit your case officer, because sequestration rules always
7 allow that. So Ms. Young may remain. And, the defendant
8 may, of course remain. Now, what do you say about the
9 record's custodian being exempted from sequestration? Do you
10 have an objection to that, Ms. Brown?

11 **MS. BROWN:** No, Your Honor. We have no objection.

12 **THE COURT:** Then there is no objection.

13 **MS. JOHNSON-LEE:** And one other matter. My
14 Solicitor's Office Investigator, Kenny Michael, I put him on
15 our witness list, but he is really not going to be put on the
16 stand for our case in chief. His main purpose in being here
17 is because he interviewed several witnesses in the case. And
18 it would be for impeachment purposes of some of the
19 witnesses, if they were to present statements on the stand,
20 and they have actually given different statements to our
21 investigator.

22 **THE COURT:** All right. The general rule is that if
23 you may be a rebuttal, then they would be subject to
24 sequestration rules.

25 **MS. JOHNSON-LEE:** Yes, sir.

THE STATE VERSUS CLARENCE KENDELL COOK

56

1 **THE COURT:** And thus, if there is no objection, then
2 the court has no objection. But what do you say to that, Ms.
3 Brown?

4 **MS. BROWN:** I object, Your Honor.

5 **THE COURT:** All right. Then the court will require
6 that individual be sequestered, simply because that would
7 only be fair -

8 **MS. JOHNSON-LEE:** Yes, sir. I understand.

9 **THE COURT:** Very good. Is there anything further from
10 the defense?

11 **MS. BROWN:** No, Your Honor.

12 **THE COURT:** Now, that leaves us two issues that we
13 need to resolve in my thinking. This is a broad approach to
14 it. One would be to what extent of opening the door as best
15 as I can rule on that, because whenever you open a door in
16 testimony, it depends on what is said, as to how wide that
17 door is opened. But, the court will attempt to give you some
18 guidance on that. But I will need to look at some law on
19 that.

20 And then the Jackson v Denno issues, as well as within
21 that some more statements that Mr. Cook made in that tape.
22 What I need for you all to do is stand down now, and let us
23 take our lunch hour and look at the other issue, and give you
24 time for lunch as well. And let me cue the tape, so that we
25 can go through it piece-by-piece without having to watch an

THE STATE VERSUS CLARENCE KENDELL COOK

57

1 entire hours worth of tape, which will make this process so
2 much easier for the court. Will you have the technology to
3 do that Ms. Johnson?

4 MS. JOHNSON-LEE: It is my understanding that the law
5 enforcement agency has brought over their DVD player, and it
6 may work better than what we have.

7 THE COURT: All right. Then what I would ask you all
8 to do is, if you all would work together over the break, see
9 if you can resolve the issue among yourself fine. But then
10 go ahead and cue the tape so that we may know where to take
11 it on each point. I will need to see the Miranda Warnings,
12 obviously. Just watch that through. And after that, I will
13 need to go to the specific points that are of contention.

14 MS. BROWN: Thank you.

15 THE COURT: So, how long do you believe it will take
16 you to have some lunch, as well as to do that? Do you need
17 an hour and a half for lunch and this?

18 MS. BROWN: Well, the video is one hour in length.
19 So, if we are going to watch the video, Your Honor, yes, an
20 hour and a half.

21 THE COURT: Well, we will just come back at 1:30, and
22 then that will give us an hour and a half to resolve the
23 issues.

24 MS. BROWN: Yes, Your Honor.

25 THE COURT: The court will now be in recess until

THE STATE VERSUS CLARENCE KENDELL COOK

58

1 1:30.

2 (Whereupon, a lunch recess was taken from
3 12:02 p.m. until 1:33 p.m.)

4 **THE COURT:** All right. We are back on the record in
5 the case of the State versus Cook. And, again, when we stood
6 down to take the competency matters, I was getting ready to
7 advise about the question of opening the door.

8 The court finds that it is only fair to allow the state
9 to investigate. If you call a DA to the stand to put up
10 evidence that the defendant apparently had fear of
11 retribution or reprisal, or that others may have been
12 intending to get him, that it would only be fair for the
13 state to be able to investigate that. To illicit evidence.
14 To explain it, or even perhaps to rebut it. I rely on the
15 case of The State versus Dunlop, which is 579 SE2d 318, which
16 stands for the proposition that the adverse party when you
17 call a witness, is entitled to explain or rebut evidence that
18 is put forward, even if that evidence would not necessarily
19 have been relevant or competent in the trial. In other
20 words, the state could not put that in, in its case and
21 chief. But, I will give the state the opportunity to pursue
22 those areas if you open the door by calling that witness,
23 counsel. And then have the witness testify about the
24 defendant's state of mind, or fears, or concerns. And, if
25 you think about it, what would be happening here is, you

THE STATE VERSUS CLARENCE KENDELL COOK

59

1 would be calling that witness to testify to something that
2 your defendant could have testified to. That gives you the
3 benefit of not calling the defendant, and subjecting him to
4 cross examination. And getting the benefit of another
5 witness' testimony for the defendant. And it is not
6 appropriate for the state to then --- for the court to
7 somehow strap the state as to how far they can go in
8 questioning that. I think it is appropriate and relevant to
9 ask. Well, what were you doing talking to the district
10 attorney in the first place? And what was the outcome?
11 Because, that may go to bias, or prejudice, or reason for the
12 defendant's statement to that individual.

13 So, for all of these reasons, I find that if you call
14 that witness and put in that testimony, it fully opens the
15 door for the state to inquire about the circumstances of any
16 charges, any type of immunity that may have been granted, or
17 anything of that nature arising from or ultimately lead to
18 the defendant's statement to the DA that he was afraid that
19 someone was going to take revenge on him.

20 All right. I also rely on the cases of The State versus
21 Young, which is 613 SE2d 386, for the principle of that,
22 otherwise inadmissible evidence can be brought in after the
23 door is opened by the opposing side.

24 And that is the ruling of the court.

25 Now, how do you propose that we look at the video,

THE STATE VERSUS CLARENCE KENDELL COOK

60

1 counsel. Do I need to come around? It is facing around from
2 me, I believe.

3 MS. JOHNSON-LEE: No, Your Honor, I can roll this cart
4 around to face the court. And we can start the video tape.
5 And I believe what we talked about is, Ms. Brown at the
6 moments she wants to point out to Your Honor, she can pause
7 the tape, and then point them out, and then play it again.

8 THE COURT: In other words, you are talking about
9 watching the entire tape?

10 MS. JOHNSON-LEE: Yes, Your Honor. I believe that is
11 what she intends to do.

12 MS. BROWN: Well, are you going to -

13 MS. JOHNSON-LEE: The state's intention is to
14 introduce the entire tape.

15 THE COURT: All right. Well then, how about let's
16 turn it on and get started. Now, are you able to advance it
17 to a particular issue, if you wish to do so Ms. Johnson, or
18 is it not cued to particular points in the tape?

19 MS. JOHNSON-LEE: I don't think it is cued to
20 particular points. I think she just wanted to point out
21 various places that she wanted Your Honor to take notice of.
22 And that she wanted to have those portions excluded.

23 THE COURT: All right. Very good.

24 MS. BROWN: Your Honor, before we begin, I can tell
25 you the times that it will take place. The actual time on

THE STATE VERSUS CLARENCE KENDELL COOK

61

1 the video, if that helps. Otherwise we will just be
2 stopping.

3 **THE COURT:** Well, yes why don't you give me that
4 information then. It may be helpful.

5 **MS. BROWN:** At the point of 15:26, and these are just
6 short clips. There is a statement there, Your Honor. There
7 is also a statement at 20 minutes and 36 seconds. There is
8 also a statement at 21 minutes and 47 seconds. And there is
9 also a statement at 24 minutes and 39 seconds. 81 minutes
10 and 27 seconds, 33 minutes and 11 seconds, that goes on until
11 about 33 minutes and 34 seconds. Then we have 34 minutes and
12 8 seconds. We have 39 minutes and 49 seconds, that goes for
13 a while too. About 40 minutes. 49 minutes and 29 seconds.
14 Then again at 50 minutes and 39 seconds. And then finally at
15 one hour, 7 minutes and 25 seconds. That continues to one
16 hour, 8 minutes and 21 seconds.

17 **THE COURT:** All right. Go ahead, please.

18 **MS. JOHNSON-LEE:** And, Your Honor, we did bring
19 Investigator Crosland into the courtroom, because he had
20 actually Marandized Mr. Cook first in the vehicle, as well as
21 the police department. Before he was Marandized by the
22 Detective Young at the Police Department. That is the reason
23 he is seated in the courtroom. Do you want me to have him
24 leave as far as the sequestration, or do you wish for him to
25 remain in?

THE STATE VERSUS CLARENCE KENDELL COOK

62

1 **THE COURT:** I don't require it for this preliminary
2 hearing. I will ask whether or not Ms. Brown has any
3 objections?

4 **MS. BROWN:** I have no objections, Your Honor.

5 **THE COURT:** Then she is welcome to stay or welcome to
6 leave.

7 **MS. JOHNSON-LEE:** Thank you, sir.

8 (Whereupon, the video was published to the
9 court.)

10 **THE COURT:** Okay. First of all, you know, maybe it is
11 just me. But, are you able to understand what they are
12 saying? It is very hard --- it is almost as if it is lost in
13 the big room. I am definitely worried about the jury. Does
14 anyone have some computer speakers or something that would
15 plug into that, that would maybe direct sound a little bit
16 better?

17 **MS. JOHNSON-LEE:** We don't have any in the Solicitor's
18 Office. I could send someone to go buy some.

19 **THE COURT:** No, you don't have to do that for me.
20 But, again, the jury is going to have to hear this.

21 Are you trying to take down what they are saying, or are
22 you just leaving the tape as is?

23 **MADAME COURT REPORTER:** I am just leaving it as is.

24 **THE COURT:** All right.

25 **MS. JOHNSON-LEE:** I believe in the last trial they got

THE STATE VERSUS CLARENCE KENDELL COOK

63

1 to play it on the computer, and on the computer there was a
2 problem with sound then. And that is what we are trying not
3 to do this time.

4 THE COURT: Well, I want everybody to be able to see
5 it all at the same time.

6 (Whereupon, a recess was taken to correct the
7 problems with the video.)

8 THE COURT: Let me ask. Do you contest the
9 voluntariness of this statement?

10 MS. BROWN: Your Honor, not the statement itself.
11 However, any statements that were made prior to the transport
12 facility, we would ask that that be inadmissible.

13 THE COURT: But those are not on that tape?

14 MS. BROWN: Not on this tape, Your Honor.

15 THE COURT: So, you don't take the position then that
16 there is a problem with the Miranda Warnings.

17 MS. BROWN: Not from the point from where the tape
18 began, no, Your Honor. Anything prior, as he is being
19 transport, yes.

20 THE COURT: Well, is there going to be testimony about
21 comments and statements made on the transport?

22 MS. JOHNSON-LEE: What Officer Crosland is going to
23 testify to is that in the vehicle, while he was transporting,
24 Mr. Cook is already trying to talk. He said he was very
25 talkative. And Officer Crosland stops and told him, I don't

THE STATE VERSUS CLARENCE KENDELL COOK

64

1 want you to say anything. And he gave him the Miranda
2 Warnings, he said Mr. Cook became quiet and said nothing
3 else. So, I have no intention into introducing anything that
4 was said in the car before his Miranda Warnings were given.

5 **THE COURT:** All right. And I assume further you don't
6 anticipate putting into evidence that there was silence after
7 talking before, and silence after; am I correct?

8 **MS. JOHNSON-LEE:** Your Honor, the only thing that I
9 would put into evidence is just that officers transported
10 him, to show the time that he was captured and transported.

11 **THE COURT:** Very good. Now, I didn't realize that you
12 all were going to ask that the entire tape be viewed. It was
13 my understanding that you were going to cue it. I had that
14 understanding, and then arranged for the jury to come back at
15 three. I don't want the jury sitting back in the back while
16 I finish watching this tape, because that is unfair to them.
17 So, what we need to do at this time, and since voluntariness
18 is not an issue, then we need to discuss the --- and that
19 tells me the tape comes in, if it is not contested on the
20 issue of voluntariness, and whether it was informed. So, it
21 is coming in, meaning that you can refer to it in opening.
22 But as far as finishing review, I will just have to look at
23 it this evening, or will have to come early tomorrow morning,
24 and bring the jury in a little bit later, and look
25 specifically on the points that you want me to address as to

THE STATE VERSUS CLARENCE KENDELL COOK

65

1 whether somehow they are more prejudicial than probative.

2 But, again, this goes back to the point in order for us
3 to have this discussion, we will have that particular part of
4 the tape played. Take arguments from both sides, and then
5 make a decision. It is very unwieldy to have the whole tape,
6 and then watch one, and then play five more minutes, and then
7 go to the next one. It is just I loose the totality of it.
8 In order to have it and have it done appropriately, somebody
9 tonight is going to have to get that tape in a condition
10 where you can cue it. Go straight to one and then go
11 straight to the next. Do you have the capability to do that?

12 MS. JOHNSON-LEE: I do not.

13 MS. BROWN: Your Honor, I can try to make a phone call
14 to the videographer that actually made the chapter points
15 that you noticed, because I would refer to it. My main
16 concern is whether he will have it ready for tomorrow
17 morning. He is actually in Florence, and he --- I think he
18 has a copy of it right now, and he should have a copy of it
19 right now.

20 THE COURT: And how much more of the tape, and how
21 much have we watched, and how much more remains?

22 MS. BROWN: That's it, Your Honor, actually the leave
23 after that is just swabbing his hands, doing a GSR kit. I
24 think that is pretty much it. I think you just watched the
25 entire video. Maybe another five minutes, and I think a lot

THE STATE VERSUS CLARENCE KENDELL COOK

66

1 of that is silence, and they are going to get the GSR kit.

2 THE COURT: All right. What more do you need to know
3 for purposes of an opening, other than the tape is coming in?

4 MS. JOHNSON-LEE: Judge, my opening is going to be
5 very brief.

6 THE COURT: And what do you need for purposes of
7 opening, to know whether or not this specific incident you
8 are talking about will be included or excluded?

9 MS. BROWN: Just the fact that we will be talking
10 about things that will definitely be testified to. But I
11 don't think there is anything more that I would need to know.
12 I will say, Your Honor, that I do have a short, short video
13 clip, one minute and forty-two seconds that I would ask to be
14 played during the opening. All of this is for demonstrative
15 evidence. It is only to deal with the culture of snitching.
16 As you can see, he talked about snitching a number of times
17 throughout his statement. A lot of the witnesses that are
18 going to be testifying will be of this whole culture of
19 snitching, and how it works. So certainly it would be a very
20 short video, just explain why Clarence believe he was in
21 imminent danger that day.

22 THE COURT: And this is the video lifted from what we
23 have just watched?

24 MS. BROWN: Your Honor, it is relevant to the defense
25 theory, but it has nothing to do with his statements.

THE STATE VERSUS CLARENCE KENDELL COOK

67

1 **THE COURT:** What say you to that?

2 **MS. JOHNSON-LEE:** We would object to any demonstrative
3 evidence being published during opening statements.

4 **THE COURT:** I would sustain that objection. Opening
5 is not a time to put in a video that is not even in evidence
6 at the time. The court will not permit you to do that.
7 Perhaps closing, but we will have to wait and see whether or
8 not it comes into evidence, and it is appropriate to publish
9 to the jury. I will not let you do that in opening.

10 **MS. BROWN:** Thank you.

11 **THE COURT:** All right. Is there anything further then
12 before we stand down, take a break until three o'clock when
13 we bring in the jury.

14 Madame Court Reporter, do you have anything that you
15 need for exhibit marking, or anything?

16 **MADAME COURT REPORTER:** No, sir.

17 **THE COURT:** All right. We will be in recess now for
18 approximately five minutes or so.

19 (Whereupon, a recess was taken from 2:52 p.m.
20 until 3:07 p.m.)

21 **THE COURT:** Madame Court Reporter, the Miranda form
22 that you handed me, what is the exhibit number please?

23 **MADAME COURT REPORTER:** Number 36, sir.

24 **MS. JOHNSON-LEE:** Your Honor, I think we may need to
25 substitute. This looks like the original.

THE STATE VERSUS CLARENCE KENDELL COOK

68

1 **THE COURT:** Is there any objection to that, from the
2 defense? We are going to substitute the original Miranda
3 form for what appears to be a copy previously marked.

4 **MS. BROWN:** No, Your Honor.

5 **THE COURT:** All right. Without objection. Then let's
6 take a moment and do that.

7 **(PAUSE.)**

8 **THE COURT:** All right. Now, let's discuss on the
9 record, and we have already viewed a portion of the statement
10 given by the defendant. And the court notes that on Exhibit
11 36 for the signature block, where the defendant would have
12 signed, there is a blank. And let me first of all hear from
13 the state what explanation you may have, if any, of how that
14 came to be blank as opposed to being signed?

15 **MS. JOHNSON-LEE:** Your Honor, I believe it was really
16 just overlooked by Detective Young. But, if Your Honor will
17 notice, on the left-hand side, where she had asked Mr. Cook
18 to initial, he went down and initialed one through five, five
19 initials. And where she says to sign your name, if you will
20 notice, there is an additional set of initials here on the
21 line here just above the statement beginning; this is to
22 certify that. So, instead of signing his name below, he just
23 re-put his initials above the line.

24 **THE COURT:** All right. Again, this goes to the issue
25 of the voluntariness of the confession. And let me say, Ms.

THE STATE VERSUS CLARENCE KENDELL COOK

69

1 Brown, in light of the fact that there is no signature on
2 Exhibit 36, does that change your position?

3 MS. BROWN: Your Honor, if you will just give me one
4 moment to confer with my client?

5 THE COURT: Very good.

6 (PAUSE.)

7 MS. BROWN: Your Honor, I have conferred with Ms.
8 Sellers, as well as my client, and we have reached the
9 position that based on all of the indicators, the fact that
10 Mr. Cook did raise or stop talking, the fact that Mr. Cook
11 continued to sign or at least initial several portions of
12 that particular form, that we are standing by the position
13 that it is voluntary. The statement was voluntarily given.

14 THE COURT: All right. Very good. And let me just
15 say from my own view of this evidence, so the record will be
16 clear. It appears to me that clearly Mr. Cook was
17 cooperating at that point. He had reviewed the Miranda form,
18 he initialed each of the rights which he had waived in order
19 to speak. And then apparently in lieu of a signature, had
20 placed a second --- well, another set of initials on the line
21 above the signature line. But, I think, given all of this in
22 its totality, that clearly the defendant was advised prior to
23 his speaking of his right to remain silent, as well as his
24 other Miranda rights. That he waived those voluntarily.
25 That the statement was a free and voluntary waiver of those

THE STATE VERSUS CLARENCE KENDELL COOK

70

1 rights. And it was intelligently made after being advised of
2 his rights under both the fifth and sixth amendments to our
3 constitution.

4 So, not restating the fact that there is not a signature
5 on the appropriate signature blank;

6 The court finds that this is a voluntary statement. And
7 it will be permitted into evidence.

8 Now, again we still have to review it to determine
9 whether certain statements will be redacted within the
10 overall statement.

11 But, the court finds that it is a free and voluntary
12 statement.

13 Now, it will be my intention to bring in the jury at
14 this time. Give them the introduction. And then allow state
15 and defense to have opening arguments or opening statements
16 to the jury. Anything further before we do that from the
17 state?

18 MS. JOHNSON-LEE: No, Your Honor.

19 THE COURT: And from defense?

20 MS. BROWN: Yes, Your Honor. May we approach for just
21 one second?

22 THE COURT: You may.

23 (Whereupon, a bench conference was held.)

24 THE COURT: Very good. Then, Ms. Frye please bring in
25 the jury. And, Mr. Clerk, are you going to swear this jury

THE STATE VERSUS CLARENCE KENDELL COOK

71

1 when they come in?

2 **CLERK OF COURT:** Yes, sir.

3 **THE COURT:** All right. Thank you.

4 (Whereupon, the jury enters the courtroom at
5 3:11 p.m.)

6 **CLERK OF COURT:** If you would all stand and take the
7 oath of the jury please.

8 (Whereupon, the jury is sworn at 3:14 p.m. on
9 Monday, April 18, 2011.)

10 **THE COURT:** All right. Ladies and gentlemen, welcome
11 back to the courtroom. And let me ask, when you just came in
12 you took the oath as jurors in this specific case from our
13 clerk. Is there any juror who did not take the oath for any
14 reason? If you did not take the oath, then please raise your
15 hand. And let's let the record reflect that no one has
16 raised their hand, thus all of our jurors are appropriately
17 sworn.

18 Again, welcome back to the courtroom. We trust you had
19 a nice extended lunch hour today, ladies and gentlemen. We
20 won't be giving you three hour lunches for the rest of the
21 week. But, hopefully today it was a nice break for you.

22 Let me say to you, and I noticed as you were coming in
23 that people tended to sit in a particular seat. You are
24 welcome to sit in any seat that you wish. Our two
25 alternates, I am going to ask that you sit on the end seats

INTRODUCTION TO THE CASE

72

1 at all time. But, until we choose a foreperson, ladies and
2 gentlemen, you may mix and move around within the jury box.
3 If you have a place that you prefer, feel free to switch up.
4 It is not like the church where you have to sit in the same
5 seat every time you come in the door.

INTRODUCTION TO THE CASE

6
7 **THE COURT:** Now, what I want to do now is talk with
8 you about a few things that I think are important in the
9 beginning of the trial. I am going to call this the
10 introduction to the trial of a criminal case. But this is
11 not intended to take the place of a more detailed charge on
12 the law that I will give you at the end of the case. In
13 fact, before you retire to deliberate when we reach the end
14 of this case, I will give you --- usually the last thing that
15 you hear before you go back to deliberate is a detailed
16 charge on the law in the case. But these are a few things
17 that I think you need to know going into the case.

18 Again, this is a criminal case. It is commenced by the
19 state, which we refer to as the prosecution. And the case is
20 based on an indictment, and actually it is three indictments,
21 which the Solicitor, I am sure will discuss with you a little
22 further in opening statements. But the three charges are.
23 Murder, the possession of a weapon during the commission of a
24 violent crime, and then the possession of an unlawful pistol.
25 In other words there are three charges. And they all arise

INTRODUCTION TO THE CASE

73

1 out of the same core set of events. Now please understand
2 these indictments are simply a set of allegations, as I said
3 earlier. They are just simply a charge. They are not the
4 evidence in the case. They are not to be accepted as the
5 truth of the matter, because whatever the truth of the
6 matter, as you determine the truth to be, is going to be
7 based on what the testimony in the case shows. What the
8 witnesses say from this witness seat right here. And what
9 the exhibits put into the record show. Not because it says
10 something on a piece of paper that we call an indictment.

11 Now, please understand that the defendant plead not
12 guilty to these charges. You heard that plea here in open
13 court. But the defendant is not even required to put up a
14 plea to answer these charges in any way. Because the state
15 has the burden of proof of all times. And I will tell you
16 that one of the traditions in our courtroom is that the party
17 with the burden of prove sits closest to the jury. If you
18 will look out in the courtroom arena you will see that the
19 state, the prosecution is seated at the table closest to you.
20 And at all times the state has the burden of proof to prove
21 each of the essential elements of each of these charges
22 beyond a reasonable doubt. That is the burden. That is the
23 standard. And I will define that for you at the end. But, I
24 will tell you in advance, it is a high standard. And the
25 purpose of this trial is to determine whether or not the

INTRODUCTION TO THE CASE

74

1 state can meet that high burden. The defendant is presumed
2 innocent in this case. And that presumption of innocence
3 continues with the defendant, unless and until the state can
4 dispel it by evidence that satisfies you beyond a reasonable
5 doubt, that the defendant is guilty of one or all of the
6 offenses charged. Again, that is the purpose of the trial.

7 Now, let's talk a little bit about your role in this
8 trial. But, first I want to talk about mine. It is my
9 privilege to be the judge of the law here in the courtroom,
10 which means if there is some dispute about evidence or an
11 objection, well I will rule on that during the course of the
12 trial. And at the end of the trial, I will give you the
13 charge on the law. But your role is more important than
14 mine, or at least it is in my opinion. Because you are the
15 judges of the facts. And what that basically means is, that
16 you listen to the testimony in the case, and you will decide
17 what the facts are. You will apply those facts to the law
18 that I will give you, and from that working together is how
19 we are going to reach a verdict in this case.

20 Now, I will tell that just like you I have not heard the
21 testimony in this case. But, many times in courtroom
22 settings, whether it is civil or criminal court, which of
23 course this is criminal court, we will have witnesses that
24 will come in and they will take the witness stand, and they
25 will say things that sometime seem inconsistent, or sometimes

INTRODUCTION TO THE CASE

75

1 absolutely mutually exclusive and cannot be reconciled. Now,
2 if that happens, I am not telling you that someone is being
3 dishonest with you, that is for you to decide. But I think
4 we all know from human experience that people will observe an
5 event, and then you will hear descriptions of an event that
6 people observe that are so varied you wonder is this the same
7 event that everyone is talking about. Well, if you have
8 testimony that is inconsistent or mutually exclusive, you
9 will have to decide which of the witnesses are more credible
10 and believable in order to determine what the facts are.
11 This is why you sit where you do, and they sit right here
12 where they will, so that you can closely observe the
13 testimony. Now, if you will think about it, when you talk
14 with other people, whether that person be a child or an
15 adult. Outside of this courtroom, out in the real life,
16 every time you do that you gauge that person for credibility
17 and believability. We do it subconsciously. You should
18 apply those factors that you use every day here in the
19 courtroom to gauge credibility and believability. But some
20 other things in addition to those everyday factors you may
21 want to look at here in the courtroom is, well what is the
22 demeanor of the witness when they testify. Is it hesitant?
23 Is it straight forward? How did that witness come to know
24 what it is they are talking about? What is their ability to
25 know what they are talking about? Is the witness' testimony

INTRODUCTION TO THE CASE

76

1 consistent with itself? Is it weakened or strengthened by
2 the other evidence in the case as you find it to be? And
3 then finally, might there be a reason a witness would want to
4 help or hurt one side or the other of the case? Might that
5 witness have a bias or a prejudice? These are things that
6 you should consider as you listen and observe the testimony
7 of the witnesses who come into the court.

8 Now, let's talk a little bit further about our process,
9 and how this trial is going to work. When I finish these
10 comments to you in just a moment, both sides, the state and
11 the defense, are going to come forward and talk with you in
12 what we call opening statement. This is not some big
13 persuasive event like you might think of from television. It
14 is just simply an opportunity for each side to tell you what
15 they believe the evidence either will show or won't show
16 during the course of this trial. And after opening
17 statements are concluded, then we turn to the state, the
18 prosecution first. They have the burden of proof, they go
19 first. They call their witnesses, one after another. And
20 every time they call a witness, that witness is subject to
21 direct examination by state's counsel, and cross examination
22 by defense counsel. I tell you that because the rules are a
23 little bit different for direct and cross examination, and
24 you will probably see that occur during the course of the
25 trial.

INTRODUCTION TO THE CASE

77

1 After the state rests and puts up all of their
2 testimony, then they rest. And then we move to the
3 defendant. And again the defendant is not required to put up
4 a case. Not required to testify. Not required to answer any
5 of these charges. But if the defendant wishes to call
6 witnesses, we give him the same opportunity. And each
7 witness the defense calls is subject to direct examination by
8 defense counsel, and cross examination by the state counsel.
9 Then all the testimony closes, the lawyers come before you in
10 closing argument, which is an opportunity to make and
11 persuasively discuss with you what they believe the evidence
12 either has or has not shown. Then I will give you the charge
13 on the law. And you will retire to deliberate. In a
14 nutshell, that is how we are going to go forward.

15 But, I will tell you that as you know, this Friday is a
16 holiday. It is Good Friday. The courthouse will actually be
17 closed on Friday. It is our intention at this time that this
18 trial will end most likely during the day Thursday. I can
19 never tell you that exactly and with certainty. But that is
20 what we anticipate, based on the number of witnesses who may
21 be anticipated, and the evidence that we believe will be put
22 forth in the course of the trial. I just tell you that for
23 your own information. But we don't intend to be working at
24 this point in time on Friday.

25 Now, let's talk about one or two more things that I want

INTRODUCTION TO THE CASE

78

1 to tell you about our process here. And one is, that we
2 operate this courtroom on a system of rules that we call
3 either the rules of criminal procedure, or the rules of
4 evidence. And when one side or the other believes the other
5 is either about to or is breaking those rules, then they call
6 that to my attention by an objection. Well, just like you
7 are sitting where you are, and I am sitting over here where I
8 am, I don't know what the objections are, or when they are
9 coming. But when they do come, I rule on them based on my
10 training as a judge, my understanding and training in South
11 Carolina law. My experiences for many years in the courtroom
12 as both a judge and a lawyer before I became a judge. But
13 never do I somehow rule on a motion or an objection to send
14 you a message about how I feel about an issue, because I want
15 to tell you now, you are the judge of the facts. I don't
16 have a position on the facts. If I did I would be invading
17 your providence, because you are the judge of the facts. So,
18 please take no inference from any rulings you may see me
19 make, other than the fact the court has made a ruling here on
20 an issue that came up during the course of the trial.

21 Now, the next thing I want to mention to you is, we
22 normally go about an hour and a half or so before we take a
23 break. But I don't want you to feel like you are pinned over
24 there in the jury box. If you need to take a break before we
25 reach a break point, and I don't want you watching your clock

INTRODUCTION TO THE CASE

79

1 thinking it is almost an hour and a half, because it depends
2 on where we are in the testimony when we can break. But, if
3 you need to take a break before we reach the break point,
4 please raise your hand. I will understand what that means.
5 We will take a break immediately. I do that for two reasons.
6 Number one, you are performing a very high civic duty, an
7 important pivotal public purpose here in your service as
8 jurors. I want you to be comfortable about what you are
9 doing. But secondly, I don't want you worried about
10 something else, I want you to be able to listen to the
11 testimony and make a determination about what the facts are,
12 so please do not hesitate to stop us if you need to take a
13 break.

14 Secondly, when you do take a break, please, don't go
15 back in the jury room and discuss this case among yourselves.
16 You should not discuss it until it is given to you for
17 deliberation at the end of the case. And the reason for that
18 is this. If we took part of a witness, or maybe one witness
19 and took a break, and the jury went back and made some
20 preliminary decision with just that information, it would be
21 unfair. It would be unfair to the defendant. It would be
22 unfair to the rest of the witnesses. So, please don't
23 discuss the case among yourselves until it is given to you
24 for deliberation at the very end of the case.

25 Now, the last thing that I want to comment to you is

OPENING STATEMENT BY MS. JOHNSON-LEE

80

1 this. Please understand that when the lawyers come before
2 you in opening and again in closing, the lawyers are
3 advocates. And they are discussing with you the law and the
4 facts, what they believe they either will be or what they
5 have or have not been at the end of the case. But what the
6 lawyers argue to you is not evidence. The evidence is what
7 the witnesses say. They are the ones who are under cross and
8 direct examination, and the ones who are under oath. So,
9 please appreciate the distinction between a lawyer's argument
10 and evidence in the case. I am not saying the lawyer is
11 going to be dishonest with you, that is not my point. I am
12 just asking that you be sure to appreciate the distinction
13 between what is and what is not evidence.

14 All right. Ladies and gentlemen, I look forward to
15 working with you. Thank you again for coming forward for
16 juror duty.

17 At this time the Court recognizes the prosecution for
18 opening statements.

19 **MS. JOHNSON-LEE:** May it please the court?

20 **THE COURT:** Yes ma'am.

21 **OPENING STATEMENT BY MS. JOHNSON-LEE**

22 **MS. JOHNSON-LEE:** Ms. Brown, Ms. Sellers. My name is
23 Mary Johnson-Lee. I am the Assistant Solicitor here in
24 Marlboro County. I work with Will Rogers at the Solicitor's
25 Office. I am an attorney in that office, and it is my job to

OPENING STATEMENT BY MS. JOHNSON-LEE

81

1 prosecute cases that are brought into general sessions court.

2 We are here today because Clarence Kendell Cook has been
3 charged with murder, and unlawful carrying of a gun, and
4 possession of a gun during the commission of a violent crime.

5 We are here because on June 10th of last year, 2010,
6 Marlboro Court Apartments, out there, if you go down to
7 Walgreens, take a right, it is not too far down the road.
8 Building [REDACTED] Clarence Kendell Cook came down the
9 stairs with a gun. He had words with Charles Hayes, whose
10 family called him Snoop. He pulled out that gun and he shot
11 him with a gun that was less than a foot from his face. The
12 bullet went through the lip, through the gum, through the
13 brain, and logged in back of the skull. Snook immediately
14 fell back onto the ground. He just fell flat, and he is laid
15 out like this. Then Clarence Kendell Cook walked around the
16 body, passed the feet, he passed the legs, passed the arms,
17 and went to his head, and leaned over and popped a second
18 bullet.

19 Murder is the wilful and felonious killing of another
20 with malice aforethought. Malice means without just excuse,
21 without cause. And aforethought means that at the time evil
22 was conceived. Malice aforethought could have occurred at
23 the moment he pulled the gun out, or minutes before that. I
24 intend to prove to you that Clarence Kendell Cook, when he
25 came down the stairs with that gun, that he came down with

OPENING STATEMENT BY MS. JOHNSON-LEE

82

1 the purpose of killing Snook Hayes. And I intend to prove to
2 you that he was not suppose to have that gun, and should not
3 have been carrying it. After he shot Snook Hayes, he didn't
4 hang around. He took off. He disposed of the gun, and was
5 apprehended about two hours later by the Bennettsville Police
6 Department. The gun was never recovered. At the end of
7 this trial, I am going to ask that you find Clarence Kendell
8 Cook, guilty of all of those charges.

9 Now, self-defense can be a defense in a killing. But,
10 for someone to prove self-defense to a jury, they have to
11 prove that they were without any fault in bringing about the
12 difficulty between themselves and the victim. They have to
13 show they were in actual imminent danger of losing their
14 life, or serious bodily injury. They have to show that they
15 have no way to avoid the danger. I intend to prove to you
16 that this is not a self-defense case. I intend to prove to
17 you that when he fired his first bullet, he did not hesitate.
18 I intend to prove to you that when he fired that second
19 bullet, there was no need to do that. What I tell you is not
20 testimony. Like the judge said, what Ms. Brown tells you is
21 not testimony. Like the judge said, testimony is what
22 someone sitting in that chair right there tells you.
23 Evidence is any documents or items that are put into
24 evidence. When you go to the jury room at the end of the
25 case, you are going to take with you not only the physical

OPENING STATEMENT BY MS. BROWN

83

1 items, but you are going to take back there with you, your
2 remembrances of what folks on that stand said. And you get
3 to decide how much weight you give to any particular person's
4 testimony. Listen closely to what everybody has to say. And
5 I appreciate your being here. I know it has been a long day.
6 You will remain with us for most of the week. But thank you
7 for your attention in this matter, because it is important to
8 the family, who are present in the courtroom. And it is
9 important to the state. Thank you.

10 **THE COURT:** And for the defendant, opening statement,
11 Ms. Brown.

12 **MS. BROWN:** May it please the court?

13 **THE COURT:** Yes, ma'am.

OPENING STATEMENT BY MS. BROWN

14
15 **MS. BROWN:** Good afternoon, jurors. I want to
16 introduce myself again. My name is Myesha Brown. I am
17 representing the defendant in this case. That would be Mr.
18 Clarence Cook, along with Ms. Rosalind Sellers. And before
19 we begin court, I want to thank you for your service. I
20 understand that there are so many other things that you could
21 be doing at this hour. But we appreciate you being here,
22 because your role in this process is extremely important.
23 Now, it is certainly important for Mr. Hayes' family, but it
24 is also important for Clarence and his family as well.

25 Now, in the state of South Carolina, self-defense is an

OPENING STATEMENT BY MS. BROWN

84

1 absolute justification for homicide. Now, what is self-
2 defense? If you ask any individual, they will say, I have
3 the right to protect myself. I have the right to protect my
4 family. And I have a right to protect my home. But there is
5 more to it than that blanket statement. When an individual
6 pleads self-defense, which is what Clarence is doing today,
7 it requires more than just saying, I have a right to protect
8 myself, or my family, or my home. When I met Clarence in
9 June of last year, that is all he knew. I was protecting
10 myself. Now, South Carolina has clearly defined that self-
11 defense exist, and evidence must exist in order for one to
12 plead self-defense. And I have taken the liberty to just
13 give you the four elements that indicates self-defense, and
14 they are stated here.

15 Number one. The defendant must be without fault in
16 bringing on the difficulty.

17 Number two. The defendant must have actually believed
18 that he was in imminent danger of losing his life, or
19 sustaining serious bodily injury; or he was in such imminent
20 danger.

21 Number three. A reasonable prudent man of ordinary
22 firmness and courage would have entertained the same belief.
23 And,

24 Number four. The defendant has no other possible means
25 of avoiding the danger of losing his life, or sustaining

OPENING STATEMENT BY MS. BROWN

85

1 serious bodily injury rather than to act as he did under
2 those circumstances.

3 Now, what does all that mean? It clearly states that
4 Clarence must not have started the problems that existed on
5 June 10th of last year. And you will hear all of the
6 evidence, including those called by the State of South
7 Carolina, that he did not.

8 Second, Clarence had to believe on June 10th of last
9 year, that his life was in imminent danger, or that he was
10 going to face serious injury. And for this element, the
11 defense plans to show you through several witnesses, that
12 there were threats by Mr. Hayes toward Clarence. There will
13 be witnesses testifying. I will also show you evidence,
14 there is a text-message that came on the phone from Mr. Hayes
15 to Clarence several hours prior to the shooting. We also
16 plan for you to hear testimony that there was hostile words
17 by Mr. Hayes toward Clarence during that confrontation. Now
18 all of these things are important. Why? Because, they will
19 help you to decide two of the elements.

20 Number two. Whether or not Clarence believed he was in
21 danger. And whether or not his belief was reasonable; which
22 is number three. And the last requirement, of course, could
23 he have done anything to have avoid losing his life, and we
24 believe that after you hear all of the testimony, you will
25 reach the conclusion that Clarence was indeed protecting his

OPENING STATEMENT BY MS. BROWN

86

1 life.

2 Now we have trials because the state of South Carolina
3 and the defense view the facts in the case differently. We
4 view the facts differently than the state. See, the state of
5 South Carolina would like for you to believe that Clarence
6 decided to leave his apartment on June 10th, and take Mr.
7 Hayes life. But, I'm not sure of that. That is what the
8 state actually believes, because in July of last year,
9 Clarence was indicted for murder. However, in December of
10 that same year, he was indicted for voluntary manslaughter.
11 And then just last month he was indicted for the gun charge
12 that you will hear today. Well, let me tell you what I
13 think. I think the state of South Carolina knows that Mr.
14 Hayes died on June 10th of last year. But that is the extent
15 of what they know. They don't know whether or not Clarence
16 fired a shot because he was angry, and had malice. Whether
17 Clarence fired a shot because he was provoked, which is
18 required under manslaughter. This is just something for the
19 state to charge him. But they indicted him for what? For
20 both. Only one here today, but they indicted him for both.
21 Actually, there is evidence to suggest that Clarence may have
22 been protecting himself. I think that is why they indicted
23 him for the gun charges. And it appears from the position of
24 the state, that if you don't get him for something, if we
25 don't get him for murder or manslaughter, we can get him for

OPENING STATEMENT BY MS. BROWN

87

1 the gun. When I was in law school, we called it as a catch-
2 all. In this case I think it is a catch-all. Let's get him
3 for something. The state has one version to tell you, and
4 the defense has one version to tell you during the course of
5 this trial. It is the same thing that Clarence told law
6 enforcement on June 10th. It is the same exact thing I told
7 Madame Solicitor in December of last year. And it is the
8 same version of events that we stand by just as recent as
9 last night when these gun charges surfaced. Trials are like
10 cousins. And it is our responsibility as officers of the
11 court, defense attorney, the state prosecutor, as well as law
12 enforcement officer, to try to give you all of the pieces of
13 this puzzle. See, you have to put it together. What really
14 happened June 10th? And that puzzle will come from the
15 pieces. It is going to come from evidence. From people who
16 are going to testify. They are going to come from physical
17 evidence that you can see and hear. And then it may even
18 come from expert witnesses, if we have any. But sometimes
19 giving the jury all of the information is required. So, at
20 this point, I want to give you a little bit of background.
21 When did all of this begin between Charles --- Mr. Hayes and
22 Clarence? This case is about an underworld that exist in
23 some communities. But this is a way of life for some people.
24 In some communities it is commonly understood that you don't
25 help, you don't assist. You don't aid law enforcement under

KIM T. BROWN - DIRECT EXAMINATION

88

1 any circumstances, for any reasons. And there is a code of
2 silence in this community, and if you break that code of
3 silence, you have been tagged, or you have been labeled a
4 snitch, or a rat. You will hear that terminology throughout
5 this trial. He is a snitch. And he is a rat. We are going
6 to show you through the testimony where it all began. Forty-
7 three days before the shooting, Clarence broke that code of
8 silence. And on June 10th, he was confronted with protecting
9 his life at the cost of Mr. Hayes. If there has ever been a
10 case about self-defense, this is it.

11 I thank you all for your service. And I look forward to
12 working with you throughout the case of this trial.

13 **THE COURT:** All right. Prosecution, call your first
14 witness.

15 **MS. JOHNSON-LEE:** Kim Brown.

16 **THE COURT:** Ladies and gentlemen, the witnesses have
17 been sequestered, meaning that they are in a room outside.
18 The state is on one side, the defense is on the other. And
19 the witnesses are outside of these proceedings. So, it is
20 going to take us a moment for the witnesses to come around.
21 After they testify, they may remain in the courtroom.

22 Please come forward and take the oath of a witness.

23 **WHEREUPON, KIM T. BROWN**

24 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

25 **MS. BROWN:** Yes ma'am.

KIM T. BROWN - DIRECT EXAMINATION

89

1 **DEPUTY CLERK:** Please state your full name for the
2 record.

3 **MS. BROWN:** Kimberly ToNeal Brown.

4 **THE COURT:** Thank you.

5 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

6 Q. Ms. Brown, do you reside in Marlboro County?

7 A. Not anymore.

8 Q. Did you reside in Marlboro County in June of 2010?

9 A. Yes ma'am.

10 Q. Where did you reside at, at that time?

11 A. I lived at [REDACTED], in Bennettsville.

12 Q. Where is Marlboro Court Apartments located?

13 A. It is located on Oakwood Street.

14 Q. Is that if you go out --

15 A. -- It is by Walgreens, by the hospital.

16 Q. How long did you live at that apartment?

17 A. Between four and five years I stayed there.

18 Q. Who all resided in that apartment with you?

19 A. Me, my son, and my fiancé, on occasions he stayed with
20 me.

21 Q. All right. And who is your fiancé?

22 A. Charles Hayes.

23 Q. Did Charles have a nick name?

24 A. Snook.

25 Q. Did everybody call him Snook?

KIM T. BROWN - DIRECT EXAMINATION

90

1 A. Yes, mostly his friends and family call him Snook.

2 Q. And, you have one child or two children?

3 A. I have two. I have a daughter that is eleven, and I
4 have a son that is twenty-three months.

5 Q. And how old was your daughter on last year, on June
6 10th?

7 A. She was ten.

8 Q. Did she live with you at that time?

9 A. Yes. But, she was in Louisiana with her uncle on summer
10 vacation.

11 Q. And your baby, how old was he last year in June?

12 A. He was thirteen months. He had just turned one.

13 Q. And is he your child with Snook?

14 A. Yes. That was our son together.

15 Q. Did you work anywhere in June of last year?

16 A. Yes. I worked at Wal-Mart in Dillon.

17 Q. Did you also go to school?

18 A. Yes.

19 Q. Where did you go to school?

20 A. I just graduated from Florence, Darlington Tech., and I
21 be in classes on line with the University of Phoenix.

22 Q. Did you finish school?

23 A. Yes. I got my associate degree from Florence,
24 Darlington Tech., and now I am currently still going to
25 The University of Phoenix on line.

KIM T. BROWN - DIRECT EXAMINATION

91

1 Q. And what was your degree in from Tech?

2 A. Paralegal..

3 Q. And when did you finish the paralegal program?

4 A. I'm actually finish December of 2009. I graduated May
5 13, 2010.

6 Q. Now, how long has Snook been your fiancé?

7 A. He proposed December, Christmas of 09.

8 Q. And how long had the two of you been together?

9 A. We had been together approximately eighteen months.

10 Q. What were you and Snook doing on the afternoon of June
11 10th of last year, around six o'clock in the afternoon?

12 A. We were outside playing with my son. We bought him a
13 tricycle for his birthday. And he always wanted to go
14 outside and ride it, so we took him outside to play on
15 his tricycle.

16 Q. Was anybody else out there?

17 A. His nephew Terrance came. His sister dropped him off to
18 the house.

19 Q. How old was Terrance at that time?

20 A. I think Terrance was around seventeen.

21 Q. And who is Terrance's mother?

22 A. April Hayes. Charles' sister.

23 Q. How long had she dropped him off?

24 A. I think she had to be at work around about six or so.

25 Before the incident happened, he may have been out there

KIM T. BROWN - DIRECT EXAMINATION

92

1 about fifteen minutes.

2 Q. And where were you all at, outside of the apartment?

3 A. We was sitting on the porch of the apartments, in the
4 chairs. My son was by the door with Terrance. They had
5 a fan on the porch. It was hot. And Terrance was
6 standing by him trying to keep him from, you know,
7 putting his hand in the fan.

8 Q. What was the weather like that day other than being hot?

9 A. It tried to start raining a little bit. We kind of took
10 him from the bike, off the sidewalk and put it on the
11 porch, because it started to rain, but the sun came back
12 out.

13 Q. Are you aware of any problems between Snook and Clarence
14 Kendell Cook?

15 A. No. I was not.

16 Q. Where did Clarence Kendell Cook live at, at that time?

17 A. He lived in the apartment right upstairs from us.

18 Q. Who did he live with?

19 A. He lived with his girlfriend Chasity.

20 Q. Is that Chasity Carter?

21 A. I'm not sure of her last name.

22 Q. Do you know how long he had been staying there?

23 A. I know since --- wow, I know over a year. I'm not sure
24 a definite time. It was longer than a year.

25 Q. What was Snook wearing that afternoon?

KIM T. BROWN - DIRECT EXAMINATION

93

1 A. He was wearing some plaid shorts and a white T-shirt.

2 Q. Did he have a belt on?

3 A. No, ma'am. The shorts had draw ties on the side.

4 Q. Was he wearing any shoes?

5 A. He was wearing a pair of brown flip-flops.

6 Q. Did you have occasion to see Clarence Kendell Cook that
7 afternoon around six p.m.?

8 A. Yes.

9 Q. Tell the jury what happened?

10 A. That afternoon we were sitting on the porch, like I
11 said, with the baby playing. Terrance was over. And
12 Clarence came down the stairs, looked down at Charles,
13 and I came --- Charles was like, man you full of --- can
14 I say the word? Full of shit. So, he looked like, well
15 you know, well what's up. So, he came down the stairs
16 like, a little smirk. Came down, came around the
17 staircase, and Charles got up and came onto the
18 staircase this way, and he was facing him from this
19 direction at the end of the stairs. Charles was
20 standing here, standing up on the end of the sidewalk.
21 And he was like, man, keep my name out of all this mess
22 y'all got going on out here. I don't have nothing to do
23 with that. Keep my name out of this mess --- out of
24 this bull shit. That is the word he used. Out of this
25 bull shit that y'all got going on out here. I don't

KIM T. BROWN - DIRECT EXAMINATION

94

1 have nothing to do with it. The next thing I heard was
2 a gunshot. And, I saw Charles fall back like this. And
3 I'm just hysterical. I'm screaming, no, no, Snook, no.
4 And he walked --- Kendell walked over him and shot him
5 again. And I could see the gun powder blow back out of
6 the gun. That is how --- and I was just hysterical. I
7 ran. It was like I was in slow motion. When he shot
8 him, he dropped the bag and he ran. And I just went to
9 him. I was holding him. I was like no, please, don't
10 leave me. Don't leave me. Wake up. Say something.
11 You know, I was hysterical. I forgot about my son on
12 the porch and everything. I was just like I had never
13 seen so much blood before in my entire life. I had
14 never seen nobody like that. I was just holding him. I
15 was like, no, please, please, don't leave me, don't
16 leave me, don't leave me. I was like, somebody please
17 help me. Somebody help me. That was the worst day of
18 my life.

19 Q. Where did the baby go when you ran to Snook?

20 A. He was coming out to where his daddy was. And my cousin
21 ran down the stairs, and she got him right before he got
22 to where we were and took him on the porch.

23 Q. Who is your cousin?

24 A. Mary Davis.

25 Q. Where was she at?

KIM T. BROWN - DIRECT EXAMINATION

95

1 A. She was at home. She lives in an apartment across from
2 me, in the building --- Building ■, that is adjacent to
3 my building.

4 Q. Where was Terrance at when the shooting happened?

5 A. Terrance was standing right there in the doorway.

6 Q. So, he wasn't out in the grassy area?

7 A. No.

8 Q. He was on the sidewalk?

9 A. No.

10 Q. You referenced keeping somebody's name out of someone's
11 mouth. What was going on?

12 A. I really don't know to this day what it was. But I know
13 it was some, he say, she say, between other people that
14 stayed in our apartment complex. Who lives with this
15 person. Who don't live with that person. But it had
16 nothing to do with Charles or me. He wasn't even out
17 there enough, you know, to be involved in anything.
18 That is why he wanted to tell him, you know, man, why my
19 name in whatever you got going on. So, it is between
20 other people that was going on out there in the
21 apartments. I don't understand how it even concerned
22 us, because it didn't.

23 Q. Was that what some folks refer to as, he said, she said?

24 A. Yes ma'am.

25 Q. Had you ever gone to the apartment manager to make any

KIM T. BROWN - DIRECT EXAMINATION

96

1 complaints about Mr. Cook or his girlfriend?

2 A. No.

3 Q. Are you aware of any complaints being made to the
4 apartment manager about you or Snook?

5 A. No.

6 Q. Who is the apartment manager?

7 A. Vivian Smith.

8 Q. Would that also be Vivian Stubbs?

9 A. Yes. She did get married. Ms. Stubbs.

10 Q. Did you see the gun itself?

11 A. Yes.

12 Q. What did it look like?

13 A. It was about this big, silver.

14 Q. Did you put anything over Snook's body?

15 A. Yes.

16 Q. What was that?

17 A. Happened I asked Terrance to bring me a blanket. I
18 said, bring me something to put over him. Bring me
19 something to cover him up. Because I just didn't, you
20 know, --- out in the open. I know this is the age and
21 technology of pictures. I just couldn't see something
22 like that getting out. So, I got a blanket. He brought
23 me my daughter's blanket, and I just covered him up with
24 it.

25 Q. Is that a pink blanket?

KIM T. BROWN - DIRECT EXAMINATION

97

1 A. Yes, it was a pink Strawberry Shortcake blanket.

2 Q. Do you know if Snook had a gun on him?

3 A. No. He did not have a gun.

4 Q. Did he have anything in his right hand?

5 A. He had a telephone. He had a telephone in this hand,
6 and a cell phone in this hand. He had a cordless phone
7 in this hand, and a cell phone in this one.

8 Q. You are referring to the right hand having a cordless
9 telephone?

10 A. The right hand had a cordless phone. His left hand had
11 a cell phone.

12 Q. Did you call 911?

13 A. No. I did not.

14 Q. Do you know who called 911?

15 A. After they told me a neighbor called. But, I don't
16 know the neighbor.

17 Q. Did you take anything off of Snook's body, or out of his
18 hands?

19 A. No. I did not.

20 Q. Do you know what happened with the telephones?

21 A. Well, the cell phone that he had, it was on the ground.
22 And I picked his phone up. It was right there. I
23 grabbed it and called his brother. I told him to come
24 help me, come help me, Snook --- Snook got shot.
25 Somebody killed Snook. Come help me, come help me,

KIM T. BROWN - DIRECT EXAMINATION

98

1 please, please. And I had his black cell phone and I
2 called his brother.

3 Q. Do you know where that cell phone is now?

4 A. It is in police custody.

5 Q. What was Snook's telephone number; do you recall?

6 A. [REDACTED].

7 Q. I am going to show you what has been marked for
8 identification as Exhibit 3. Do you recognize this?

9 A. Yes ma'am.

10 Q. What is this?

11 A. That is his cell phone. That is Snook's cell phone.

12 Q. Snook's cell phone. Did you turn it over to the police
13 yourself?

14 A. Yes.

15 Q. Do you remember law enforcement officers arriving on the
16 scene?

17 A. Yes, I do.

18 Q. Do you remember who any of them were?

19 A. Yes. The first person --- the first officer that came
20 was Walter Covington.

21 Q. Did you have any conversations with any of the officers
22 when they first arrived on the scene?

23 A. When Walter came, he asked me to --- he said, let me ---
24 let the EMS --- I was holding onto him, and they could
25 not get me off of him. He was pulling me off of him,

KIM T. BROWN - DIRECT EXAMINATION

99

1 because I didn't want to leave him. And he said, Kim,
2 let them check him. Let them go get to him. And he
3 picked me up, and he walked me in the door of my house,
4 and he said, what happened? What happened? And I said,
5 Kendell just killed Snook. Kendell just killed Snook.
6 And he was like, calm down. And when he got ready to
7 back out, I went right back out, and I just went back
8 and I was just holding him again. I went back holding
9 Snook.

10 Q. Did you do any interviews with law enforcement on that
11 day?

12 A. Yes.

13 Q. Was that at the Police Department?

14 A. Yeah. They took me to the Police Department from the
15 apartment complex.

16 Q. And have you had follow-up interviews with both the
17 Police Department and the individuals from the
18 Solicitor's Office?

19 A. Yes, I have.

20 Q. Now the person that shot Snook, is he in the courtroom
21 today?

22 A. Yes ma'am.

23 Q. And can you please point him out to the jury?

24 A. He is sitting over there with the plaid shirt on between
25 those two ladies.

KIM T. BROWN - DIRECT EXAMINATION

100

1 MS. JOHNSON-LEE: Let the record reflect she is
2 pointing to Clarence Kendell Cook.

3 | Q. Did Snook ever threaten Kendell to your knowledge?

4 | A. No, ma'am.

5 Q. I am going to show you what has been marked for
6 identification as State's Exhibit Number 18, 22, and 23.
7 Do you recognize what is depicted in those photographs?

8 | A. (No response.)

9 Q. Take your time.

10 | A. Okay. Okay.

11 (PAUSE.)

12 A. Do I have to look at these? I have never seen this
13 before.

14 (PAUSE.)

15 **MS. JOHNSON-LEE:** And, Judge, the state is
16 stipulating, this is a defense exhibit. It has not yet been
17 marked. The state will stipulate to this coming into
18 evidence as Defense Exhibit 1.

19 **THE COURT:** Is there an objection?

20 MS. BROWN: No, Your Honor.

21 THE COURT: All right. Then let's mark that as
22 Defendant's 1.

23 WHEREUPON, DEFENDANT'S EXHIBIT
24 NUMBER 1 WAS ADMITTED INTO
25 EVIDENCE WITHOUT OBJECTION.

KIM T. BROWN - DIRECT EXAMINATION

101

1 **THE COURT:** All right. Without objection, in
2 evidence.

3 **MS. JOHNSON-LEE:** Let me show you what has been marked
4 as Defendant's Exhibit 21.

5 Q. Do you recognize what is depicted in that photograph?

6 A. Yes. That's the building that I lived in, in Marlboro
7 Court.

8 **MS. JOHNSON-LEE:** Can I have her come down so that I
9 can pull it up, and then point out some things?

10 **THE COURT:** You may. And please remember that your
11 back will be turned to our court reporter; so please speak up
12 ma'am, so that we can all hear you.

13 You may step down.

14 **MS. BROWN:** Okay.

15 **THE COURT:** If you got on this side, Ms. Johnson-Lee
16 and let the witness go to the other side, then the court
17 reporter can hear.

18 **MS. JOHNSON-LEE:** Come right over here, please ma'am.

19 Q. Can you show the jury where your apartment is located?

20 A. This is my apartment.

21 Q. And where is Clarence Kendell Cook's apartment?

22 A. It's --- that's his apartment here.

23 Q. All right. Are these the steps that Mr. Cook came down
24 from upstairs?

25 A. Yes.

KIM T. BROWN - DIRECT EXAMINATION

102

1 Q. Now, point out where you and Mr. Hayes were located when
2 he came down the stairs?

3 A. I was in a chair, and he was sitting here in a chair.

4 Q. So, two chairs.

5 A. Yes.

6 Q. Okay. Who else was sitting out there?

7 A. About here, the family was sitting about here. My baby
8 was right here.

9 Q. When you saw Snook and Mr. Cook first talking, where
10 were they located?

11 A. Snook was about here, and Kendell was here.

12 Q. Turned slightly to the left?

13 A. Yes.

14 Q. Where is the trash can for the apartment located? Is it
15 this way or that way?

16 A. Over this way.

17 Q. Over to the right.

18 A. Yes.

19 Q. Now, when Mr. Hayes fell back, which direction did he
20 fall?

21 A. When he fell back, he fell back this way.

22 Q. So, his head would have been -

23 A. -- Here.

24 Q. And when Mr. Cook shot him, which direction did he run
25 afterwards?

KIM T. BROWN - CROSS EXAMINATION

103

1 A. After he shot him, he was here and he ran this way.

2 MS. JOHNSON-LEE: Thank you.

3 (PAUSE.)

4 MS. JOHNSON-LEE: That is all of the questions that I
5 have at this time, Ms. Brown. Would you please answer any
6 questions that Ms. Myesha Brown or Ms. Sellers has.

7 MS. BROWN: Yes ma'am.

8 THE COURT: All right. Cross examination.

9 MS. BROWN: Thank you, Your Honor.

10 CROSS EXAMINATION BY MS. BROWN

11 Q. Ms. Brown, did you know Mr. Cook --- did you know
12 Clarence prior to the shooting incident?

13 A. Yes, I knew him.

14 Q. And how did you know Clarence?

15 A. I went to --- I remember him from middle school.

16 Q. And, did you --- do you know someone by the name of
17 Chasity Carter?

18 A. If you are referring to his girlfriend Chasity, I know
19 her.

20 Q. Yes, ma'am.

21 A. Yes.

22 Q. And how do you know Ms. Carter?

23 A. We were neighbors. She lived upstairs from me.

24 Q. Now you indicated that you lived in apartment [REDACTED] for
25 about four to five years?

KIM T. BROWN - CROSS EXAMINATION

104

1 A. Yes.

2 Q. And do you know how long Ms. Carter was living out
3 there?

4 A. She moved in after me. I'm not sure how long.

5 Q. Did you have any problems with Ms. Carter?

6 A. No.

7 Q. Now, looking at the exhibit that we just showed, and
8 your testimony indicated that you lived downstairs, and
9 directly above you --- Who lived above you?

10 A. Chasity lived above me.

11 Q. Chasity Carter lived above you. And was it possible
12 based on the closeness of these apartments for you to
13 hear statements or noise from Ms. Carter's house at any
14 point?

15 A. The only thing I mostly heard was walking. If anybody
16 else stay in the apartment, you know, you hear
17 footsteps.

18 Q. So, you were unable to hear. Were you able to hear any
19 discussions or any talks between Ms. Carter and
20 Clarence, or any visitors that they may have had?

21 A. From inside of the apartment?

22 Q. Yes, ma'am.

23 A. No.

24 Q. You indicated that you had given a statement to law
25 enforcement the day of the shooting?

KIM T. BROWN - CROSS EXAMINATION

105

1 A. Yes, I did.

2 Q. And, where was that statement given?

3 A. It was given at the Bennettsville Police Department.

4 Q. And how did you get there?

5 A. I was taken in a patrol car with one of the officers. I
6 am not sure of a name.

7 Q. Do you remember who all was present when you gave that
8 statement?

9 A. I'm not sure of all of them. That was a rough night.
10 But I know Ira, Shawn, and I'm not sure. Maybe Deborah,
11 I'm not sure of anybody else that was there.

12 Q. Okay. But you clearly remember giving a statement on
13 June 10th of last year?

14 A. Yes. I remember.

15 Q. And it was at the Bennettsville Police Department?

16 A. Yes, it was.

17 Q. And the officers that you can recall at this time
18 present was, Officer Ira Dease?

19 A. Yes. Ira Dease.

20 Q. Officer Shawn Lucas?

21 A. Shawn Lucas, and Deborah, I'm thinking.

22 Q. And Detective Deborah Young.

23 A. Uh'hum.

24 Q. Let's talk about the statement that you give June 10th
25 of last year. Okay?

KIM T. BROWN - CROSS EXAMINATION

106

1 Did you begin that interview informing law
2 enforcement that Mr. Hayes did not have an
3 attitude?

4 A. He didn't. He was a easy going person. He just went up
5 to him and asked him a question. He wasn't yelling out
6 loud or anything. He was talking to him just like I'm
7 talking to y'all.

8 Q. Okay. Do you recall that June 10th statement that you
9 refer to some text messages that were going back and
10 forth between Clarence and Mr. Hayes?

11 A. Yes.

12 Q. And do you recall about when those text messages
13 actually took place prior to the shooting?

14 A. No.

15 Q. Are you personally aware of those text messages?

16 A. Yes. I do know about some text messages.

17 Q. Did you get a chance to review those messages?

18 A. I'm not sure if I actually saw the actual text message.
19 But I have knowledge of some of the stuff that was on
20 the text messages.

21 Q. How did you gain knowledge, if you did not see the text
22 messages?

23 A. Because, that day Charles told me that Kendell had
24 texted him. And I'm not sure if he actually showed me
25 the text message while he was telling me what was going

KIM T. BROWN - CROSS EXAMINATION

107

1 --- what he texted him back. But, you know, I do know
2 about text messages.

3 Q. Do you recall June 10th, telling law enforcement what was
4 the nature of those text messages. What was said in
5 those text messages?

6 A. I can't recall. I can't remember if I told him. But I
7 know that one of the text messages was concerning
8 something that Kendell put about life goes on. And I
9 don't care if you moving and stuff. If you moving both
10 you and los [sic], and something like that. Something
11 of that nature. I am not sure of the exact words.

12 Q. Do you remember who texted whom first?

13 A. No.

14 Q. You do not recall that?

15 A. No.

16 Q. Do you remember telling law enforcement who texted
17 first?

18 A. No. I don't.

19 MS. BROWN: Your Honor, at this time could I have a
20 moment or two to prepare the video?

21 THE COURT: You may.

22 MS. BROWN: Thank you, Your Honor.

23 (PAUSE.)

24 MS. BROWN: Your Honor, this is the witness statement
25 that was given on June 10th. And at this time I would like

KIM T. BROWN - CROSS EXAMINATION

108

1 to mark it as Defense Exhibit 2.

2 MS. JOHNSON-LEE: No objection.

3 THE COURT: Without objection, then let's mark
4 Defendant's 2 as being in evidence, please.

5 MS. BROWN: Thank you, Your Honor.

6 WHEREUPON, DEFENDANT'S EXHIBIT

7 NUMBER 2 WAS ADMITTED INTO

8 EVIDENCE WITHOUT OBJECTION.

9 Q. Ms. Brown, I want to make sure that I understand you.
10 You intend to --- did you in fact inform law enforcement
11 that Mr. Hayes did not have an attitude?

12 A. I did say that when he spoke to him, it was not
13 forceful. He didn't speak to him --- he had a natural
14 tone talking to somebody just like you were talking to
15 anybody else. Just like I am talking to you all now.
16 That is how his voice was.

17 Q. And we also talked about these text messages that came
18 in the phone. Did you inform law enforcement that you
19 had read the text messages?

20 A. I'm not sure.

21 Q. You don't recall if you told law enforcement that?

22 A. (No response.)

23 Q. You indicated the telephone number that belonged to Mr.
24 Hayes on June 10th; is that [REDACTED]; is that correct?

25 A. Yes.

KIM T. BROWN - CROSS EXAMINATION

109

1 Q. And, as far as the order of text messages, did you
2 inform law enforcement that Mr. Hayes sent Clarence a
3 text message first?

4 A. No.

5 Q. Do you recall that?

6 A. I don't recall that.

7 Q. Do you recall whether or not you informed law
8 enforcement that Clarence and Mr. Hayes spoke on a
9 regular basis?

10 A. In passing, I am sure, yes.

11 Q. That they normally spoke by text message?

12 A. No.

13 Q. Now, Ms. Brown, I am now going to show you the statement
14 that you gave on June 10th, last year; the statement
15 involving the text messaging. And, also whether or not
16 Clarence and Mr. Hayes talked by text messaging. You
17 just indicated that they didn't. They just talked in
18 passing; is that correct?

19 A. I said that --- You asked me if that is how they usually
20 normally communicated. I said, no.

21 Q. Okay.

22 (Whereupon, Defendant's Exhibit Number 2 was
23 published to the jury.)

24 Q. Ms. Brown, on June 10th, you gave that statement.

25 According to your statement you indicated that Mr. Hayes

KIM T. BROWN - CROSS EXAMINATION

110

1 send Clarence a text message first. Do you recall
2 giving that statement after looking at it?

3 A. Well after looking at it. That has been a long time
4 ago. But, apparently I did.

5 Q. And you also indicated that in that statement that is
6 how they talked, by text.

7 A. They being people, period. That is how they talked. It
8 wasn't just singled out to one person. That's how most
9 people communicate through text.

10 Q. So, you are not referring to when you say they --- you
11 are not referring to Mr. Hayes and Clarence?

12 A. In that instance I was referring to Clarence and
13 Charles.

14 Q. So, is it your testimony today that they did in fact,
15 did talk?

16 A. Yes.

17 Q. By text message.

18 A. Yes.

19 Q. Was that the first time they contacted each other by
20 text that you are aware of?

21 A. I'm not sure.

22 Q. In your testimony you also indicated that Clarence
23 walked down his steps, and you showed us in this picture
24 where you were sitting. And if you were sitting where
25 you indicated, would you have been able to see who was

KIM T. BROWN - CROSS EXAMINATION

111

1 walking down the steps?

2 A. Yes. The back is open. You can see through the stairs
3 whose legs are coming down the stairs. You can see the
4 body when it comes down the stairs.

5 Q. And once Clarence stepped down the steps, were you able
6 to see him?

7 A. I saw the back. I could see the back of where his feet
8 were.

9 Q. Did you see when Clarence --- when the initial
10 confrontation began?

11 A. I didn't see when it first --- when he walked off, I
12 walked behind Charles and I saw him there. And I was
13 like, come on. When I turned around to come back to my
14 seat, to my chair, I heard a gunshot.

15 Q. Now, you told Charles to come on? You told Mr. Hayes
16 to come on? Why did you do that?

17 A. Because, there wasn't even a need to address an issue
18 you are not concerned with. You know. He likes to --
19 He is one --- He doesn't like for drama and stuff like
20 that. He's easy going. So, he wanted to clear it up.
21 You have to stay up under somebody or around somebody
22 who wants attention, or people not speaking, or stuff
23 like that or whatever, because he always spoke to them.
24 Everybody, anybody. So, when I told him, I was like,
25 just forget about it. Come on. So, when I turned to go

KIM T. BROWN - CROSS EXAMINATION

112

1 on the stairs, to go back on the porch, I guess he
2 didn't come behind me, because as soon as I got ready to
3 sit down, I heard a gunshot.

4 Q. So, you heard the gunshot after you had already tried to
5 stop Mr. Hayes from talking to Clarence; is that
6 correct?

7 A. Addressing him on the issue, yes.

8 Q. Why did you not want Mr. Hayes to talk with Clarence if
9 it was just going to be a friendly conversation?

10 A. He had said what he had to say. He was still speaking
11 to him. He was telling him, man, keep my name out of
12 this bullshit. He had done told him that. So, I was
13 like, you know, you said it, just don't worry about it.
14 And, when I got ready to go and sit down, he stayed up
15 there and they were standing up talking. When I got on
16 the porch, turned around to sit down, I heard a gunshot.

17 Q. So, you didn't see when Clarence pulled out the gun?

18 A. No. I didn't see.

19 Q. Do you remember telling law enforcement that you did see
20 when Clarence pull out the gun?

21 A. No. I didn't say that I saw him pull out the initial
22 shot. I heard the initial shot. I saw him shoot him
23 the second time.

24 Q. Ms. Brown, I am going to show you your testimony that
25 you gave on your interview that you gave on June 10th of

KIM T. BROWN - CROSS EXAMINATION

113

1 last year, when you informed law enforcement that you
2 saw from the beginning to very end.

3 (Whereupon, Defendant's Exhibit Number 2 was
4 published for the jury.)

5 Q. Ms. Brown, did you just hear on the tape -

6 A. -- I heard.

7 Q. According to you, on June 10th, you saw Clarence reach
8 behind his back, pull out the gun, and fire.

9 A. On the second shot he had the gun --- that is what I was
10 referring to. He shot him in his head the second time
11 right there. The second shot.

12 Q. So, you saw him reach behind his back for the second
13 shot and fired, not the first shot, but the second shot? A.
14 I heard the first shot. He fell back and he shot him
15 again. I remember that.

16 Q. So the statement is incorrect, it is not true? Is that
17 what you are telling me, Ms. Brown?

18 A. No. I am not saying that.

19 Q. Would you like for us to play it again?

20 A. No, you don't have to play it again. I saw him reach
21 and pull a gun out and shoot him in his head while he
22 was laying down, again after the first shot.

23 Q. So, after the first shot he fired, and you didn't see
24 that. Then he placed the gun behind him again -

25 A. -- He was walking with it. I mean, it could have been

KIM T. BROWN - CROSS EXAMINATION

114

1 like I just said, he reached. But it was down, so he
2 pulled it around him, and he reached and shot him again.

3 Q. Did you see when --- You indicated that you saw Clarence
4 walk down the steps?

5 A. Yes, I saw him walk down the stairs.

6 Q. You also indicated that Clarence looked over towards Mr.
7 Hayes?

8 A. Coming down the stairs, he looked right at him.

9 Q. And you are certain that you saw that; is that correct?

10 A. Yes.

11 Q. Do you recall September 14th, when you told law
12 enforcement that you couldn't see Clarence, because the
13 stairs were in fact, blocking your view, so you could
14 not see Clarence, but you could see Mr. Hayes?

15 A. You could see the feet, but you can't see the actual
16 body. But coming down the stairs, I could see him
17 coming down the stairs, because it is right there. But
18 when you walk around the stairs, all you can see is
19 feet. Just like I saw the back of Charles.

20 Q. Ms. Brown, on September 14th, you informed law
21 enforcement that you could not see Clarence. Are you
22 telling me today that is not true?

23 A. I could not see Clarence. I saw his feet. But, he just
24 came down the stairs, that's the only person that came
25 down the stairs, and it is evident that those are his

KIM T. BROWN - CROSS EXAMINATION

115

1 feet.

2 Q. Did you or anyone see Clarence, just only his feet, how
3 are you able to see that Clarence looked at Charles, Mr.
4 Hayes.

5 A. Unless he can stand with his feet turned the other way
6 talking to somebody, he was turned this way. His feet
7 were turned with the pointed part toward this way. They
8 were toe to toe.

9 Q. I understand that, and that is the direction of his
10 feet. However, how were you able to see what Mr. Cook
11 was looking at if you were unable to see only --- the
12 only thing that you could see was in fact his feet?

13 A. I don't know too many people that can stand forward with
14 their body turned in another direction. So, I guess I
15 assume that he was looking at him. But it was apparent
16 that he was, being that he shot him.

17 Q. So, you assume that he was looking --- you certainly
18 didn't see Clarence make eye contact with Mr. Hayes; is
19 that correct?

20 A. No, I didn't see eye contact. But I saw him shoot him
21 the second time --- walk over him and shoot him the
22 second time in his head. I saw that.

23 Q. And before Clarence walked down the steps, what was Mr.
24 Hayes doing?

25 A. We was sitting on the porch playing with my baby.

KIM T. BROWN - CROSS EXAMINATION

116

1 Q. And, isn't it true that as soon as Mr. Hayes saw
2 Clarence he jumped up from where ever he was sitting?

3 A. It wasn't as soon as he saw him. When he came down the
4 stairs and made eye contact with him, I guess that's
5 when he went --- that was his chance to ask him about
6 what was going on with all this, he say, she say mess at
7 the apartments, that he was putting his name in.

8 Q. Now, did you in fact show law enforcement the text
9 messaging that was sent back and forth between Clarence
10 and Mr. Hayes?

11 A. No. I took them --- I gave them the phone. I gave them
12 Snook's phone. I showed them text message that I had on
13 my phone that Kendell sent to Snook a couple of days
14 prior to killing him, about the same he say, she say
15 that had nothing to do with us, that he was talking
16 about somebody else in the apartments to him like, you
17 know, what could he do about it. You know, he didn't
18 care. He didn't even know the people.

19 (PAUSE.)

20 Q. This is marked as State's Exhibit 3. Have you ever seen
21 this phone before, Ms. Brown?

22 A. Yes, I have seen that phone.

23 Q. And do you know who owned this phone in June of last
24 year?

25 A. Yes. That was Charle's phone.

KIM T. BROWN - CROSS EXAMINATION

117

- 1 Q. How do you know that?
- 2 A. Because I bought it.
- 3 Q. You purchased it?
- 4 A. Yes.
- 5 Q. You are certain that this was Mr. Hayes phone?
- 6 A. Yes, it was.
- 7 Q. Does it have any power?
- 8 A. I'm not sure.
- 9 Q. Can you attempt to try to turn the phone on, Ms. Brown?
- 10 A. (No response.)
- 11 Q. Ms. Brown, can you look through that phone and find the
- 12 text message that you informed law enforcement you saw,
- 13 or at least had some prior personal knowledge that it
- 14 was in fact sent?
- 15 A. I saw this. I saw this text here. This is --- it is
- 16 from 843-439-7782. It says, I think this is from
- 17 Kendell where it says: "U aint shit 2 b talkn bout I
- 18 dnt care bout yal or wat u movn I dnt want u, it aint me
- 19 no words 4 u or los." [sic]
- 20 Q. Ms. Brown, let me stop you just one second, and let's
- 21 make sure we get them. You indicated that Mr. Hayes
- 22 sent the text message first. Can you first find the
- 23 message that Mr. Hayes sent to Clarence?
- 24 A. It says, no I never saw this one. It says: "U fuck
- 25 nigra I herd u being shit about me nigra and about the

KIM T. BROWN - CROSS EXAMINATION

118

1 bullshit that going on around here. I don't have shit
2 to do with it, so keep my name out your mouth." [sic]

3 Q. What time was that message sent, Ms. Brown, according to
4 that phone?

5 A. According to this phone it was sent Thursday, June 10th
6 at 4:05.

7 Q. 4:05. And, that would have been at least two hours
8 prior to the shooting; is that correct?

9 A. I'm not sure of the time of the shooting, but it sounds
10 about right.

11 Q. That is the text message, according to the phone, that
12 phone belongs to Mr. Hayes; is that correct?

13 A. Yes.

14 Q. Mr. Hayes sent someone that text message, is that
15 correct?

16 A. Yes.

17 Q. Can you state the number that that text message was sent
18 to?

19 A. It was sent to 843-439-7782.

20 Q. 439 - I'm sorry, can you repeat that?

21 A. It was sent to 843-439-7782.

22 Q. And according to you it was sent at 4:00 p.m. on June
23 10th?

24 A. No, I didn't say 4:00, I said 4:05. 4:05.

25 Q. Now, based on that message that you just read to the

KIM T. BROWN - CROSS EXAMINATION

119

1 court, you want us to believe that Mr. Hayes did not
2 have an attitude?

3 A. That's on text. That's just words. People say stuff on
4 the text message that doesn't have --- you know --- When
5 he spoke to him he did not have an attitude with him at
6 all.

7 Q. He did not have an attitude when he spoke to him, but he
8 sent the text message two hours before, and he certainly
9 wasn't nice was he? Is there another text message that
10 he sent that day?

11 A. I'm not sure.

12 Q. Can you look in the phone and see if there was a message
13 sent right after the 4:05 message?

14 A. It was a message to him, a reply back at 4:08. He got a
15 reply back.

16 Q. You can go on and read that message aloud as well.

17 A. It says: "U aint shit 2 b talkn bout I dnt care bout
18 yal or wat u movn I dnt want u it aint me no words 4 u
19 or los life goes on KC & CC." [sic]

20 Q. After that message was sent, didn't Mr. Hayes reply?

21 A. Yes. At 4:09 he replied: "Nigra fuck u." [sic]

22 Q. And based on that reply, does it appear as if Mr. Hayes
23 was angry? He did not have an attitude based on that
24 message; is that what you are telling this court?

25 A. Not to me.

KIM T. BROWN - CROSS EXAMINATION

120

1 Q. You don't believe that he had an attitude?

2 A. No.

3 Q. Now, the next time that Mr. Hayes had an opportunity to
4 talk to Mr. Cook was when Mr. Cook walked directly down
5 the steps; is that correct?

6 A. (No response.)

7 Q. After sending that text message that you just indicated
8 to the court, when was the next time Mr. Hayes had an
9 opportunity to talk to Clarence?

10 A. When he saw him again.

11 Q. Right after he saw him, as soon as he sent that text
12 message, as soon as he saw Mr. Hayes, isn't it true that
13 he jumped from where he was sitting to go confront
14 Clarence?

15 A. No. Because, actually they came back home --- after the
16 text messages were sent, they came back. He came home
17 and he came back down the stairs. Clarence did. So, he
18 saw him twice. The second time he came down to
19 supposedly take the trash out, he looked down at him and
20 that is when he asked him about it.

21 Q. And you are still saying he looked down at him, you
22 assume he looked down at him; is that correct?

23 A. He looked down at him.

24 Q. I am going to show you the statement you gave on
25 September 14th, about what you could see that day

KIM T. BROWN - CROSS EXAMINATION

121

1 related to Clarence when he walked down the steps.

2 (PAUSE.)

3 MS. BROWN: May it please the court, Your Honor?

4 THE COURT: Yes ma'am.

5 (Whereupon, Defendant's Exhibit Number 2 was
6 published for the jury.)

7 Q. Ms. Brown, according to you on September 14th, you could
8 clearly see Mr. Hayes, but you could not see Clarence.

9 A. I could see the back of Charles and Clarence's feet. No
10 I could not see Clarence.

11 Q. So, you were unable to see Clarence, but the very next
12 clip you stated that Clarence looked over to Charles.
13 You certainly could not see any of that; is that
14 correct?

15 A. That's coming out in the house. You are trying to mix
16 two separate incidences up. I said, when he came down
17 the stairs, he looked at Charles. When he was around
18 the corner, no I could not see him physically, but I saw
19 his feet. That's coming down the staircase.

20 Q. Can you show me on this exhibit at what point did you
21 see Clarence looking at Mr. Hayes. Can you show the
22 jury?

23 A. When I'm sitting here on my apartment. When you come
24 down these stairs, when you get here I can see you. You
25 know. You can see the person right here. When you come

KIM T. BROWN - CROSS EXAMINATION

122

1 around here and he is standing right there, and I'm
2 sitting right there, I can see his feet. I cannot see
3 his body, because the bottom of the staircase has like,
4 a little metal thing on it, and you can't see the
5 person's face, but you can see their feet. And where
6 Charles was, I could see the back of his legs, the back
7 of his body, and his feet. But I couldn't see the front
8 of him. But I saw Clarence's shoes. I could see his
9 shoes.

10 Q. Were you going to see if Clarence had anything in his
11 hands when he was walking down the steps?

12 A. He had a bag. He had a small grocery bag.

13 Q. Okay. And once he --- at some point Mr. Hayes jumped
14 from where he was, can you tell me where Clarence was at
15 that time on this picture?

16 A. When he got up from his seat to ask him --- to tell him
17 about it, keeping his name out of this mess that was
18 going on, he was coming from about here. Charles was
19 coming here. So, when he got here, Charles was on the
20 grass. He walked to the grass, he didn't go out this
21 way, Clarence didn't; he turned this way. And that is
22 where they were standing.

23 Q. At some point you stated that Clarence reached this
24 point here. Is that correct?

25 A. Uh'huh.

KIM T. BROWN - CROSS EXAMINATION

123

1 Q. If he had reached that point, would you have been able
2 to see Clarence?

3 A. No.

4 Q. Sitting right there?

5 A. No, I wasn't here. I was about here. From here you
6 can't see the person, because like I said, because of
7 how the stairs are, it blocks your actual view. I could
8 see Charles, because he was closer to me.

9 Q. I just want to make sure I understand this. You were
10 sitting about here?

11 A. Yes.

12 Q. So, where was Mr. Hayes sitting?

13 A. Can I see this? Thanks. The chairs --- one chair was
14 here, and one chair was here. We slid them over to my
15 neighbor's window, because when it rains it kind of
16 rains directly on her porch, so they were here and we
17 kind of moved the chairs over. So, he was kind of here
18 and my chair was right here. My one year old baby was
19 here, the fan there, and Terrance there.

20 Q. You mentioned a one year old baby, at any point during
21 the course of any of these proceedings, did you ever
22 indicate that Mr. Hayes had the one year old baby in his
23 hand at the time this confrontation took place? Do you
24 recall making that statement?

25 A. No, no, I don't. I don't recall making that statement.

KIM T. BROWN - CROSS EXAMINATION

124

1 Q. So, certainly your baby was closer to the door area?

2 A. He was by the window. His trike was about right here,
3 and he was standing like, right in here. But you can't
4 --- I can't really say what his position was during that
5 time, because he was a baby and they move. So, he was
6 somewhere in here, around in here.

7 Q. Now, were you able to hear any of the statements that
8 were made once Clarence stepped down to the very last --
9 -- when he was actually on the base, could you hear any
10 of the statements that were made?

11 A. Yes. I did hear some of the statements. But over time
12 I can't remember the exact words of everything. But,
13 yeah, there were statements.

14 Q. Were they statements by Mr. Hayes?

15 A. From what I remember, I know when I heard Charles say,
16 keep --- you know --- keep my name out of this bullshit
17 y'all got going on. I don't have nothing to do with
18 this. Everybody keep my name out of this mess. I
19 didn't hear nothing but a gunshot after that.

20 Q. You did not hear Clarence say anything to respond to
21 what Mr. Hayes say?

22 A. He may have mumbled something, but I heard --- all I can
23 remember hearing was the gunshot. I'm not real clear on
24 what might have been said; now it has been so long.

25 Q. You indicated that there is a Terrance Bridges that was

KIM T. BROWN - CROSS EXAMINATION

125

1 out there. How long was Mr. Bridges out there prior to
2 the shooting?

3 A. I'm not sure of the exact time, but he was out there for
4 a little while.

5 Q. Was he out there about two hours prior to the shooting?

6 A. No, it wasn't that long.

7 Q. Was he out there when Clarence and Ms. Carter left to go
8 to the store?

9 A. No, he was not there then.

10 Q. He was not there? What was Mr. Hayes doing before
11 Clarence came down to see him?

12 A. Just sitting outside with the baby. Me and him was
13 sitting out outside talking, and we were just enjoying
14 the day with our son.

15 Q. Was it possible for Mr. Hayes to see when Clarence
16 walked down the steps?

17 A. Yes.

18 Q. From where he was sitting?

19 A. Yes.

20 Q. And at some point you indicated that you went up to
21 Charles. Can you explain to us what took place once Mr.
22 Hayes jumped up from his chair where he was sitting, and
23 walked towards Clarence? Can you explain what happened
24 after that? What did you do.

25 A. When he stood up from his seat and walked on the

KIM T. BROWN - CROSS EXAMINATION

126

1 sidewalk, my baby, I think, wanted to go behind his
2 daddy, I'm not sure, but he didn't get off the sidewalk.
3 And I went up there where Charles was and I was like, no
4 just leave this mess alone. You know, just sit back.
5 You know, I was just trying to get him to come back, you
6 know, and to just sit down and leave it alone. And by
7 the time I could sit down I heard a gunshot. And that's
8 pretty much all I can remember about doing.

9 Q. Do you remember touching Mr. Hayes as he was walking
10 toward Clarence trying to get him to stop?

11 A. No. When I was still sitting down when he --- when he
12 was on the grass, I was still sitting down. I didn't
13 get up and try to stop him.

14 Q. Okay. I just want to make sure. So, when you indicate
15 I was trying to tell him, you know, this is not
16 important, leave this crap alone, you never moved. You
17 just sat in the chair?

18 A. No. I went --- when he got up and walked to the grass,
19 he was standing there. I told him, I said, just leave
20 it alone. I said, just come on and leave it alone. And
21 that is when I came back to my seat, to my chair.

22 Q. Did you observe Mr. Hayes having his hands in his
23 pockets prior to the shooting?

24 A. He did not have his hands in his pockets. He had phones
25 in his hands.

KIM T. BROWN - CROSS EXAMINATION

127

1 Q. Did you see Clarence back away from Mr. Hayes prior to
2 the shooting?

3 A. No, I don't recall him --- like I said, I couldn't see
4 anything but his feet. But, I didn't see --- If he had
5 walked past the stair block to go, I would have saw him.
6 Because once you get past the stairway you can see a
7 person. And I didn't see him go past that way, so I
8 assume he didn't move.

9 Q. You assume. But, is it possible that he did in fact
10 back away, since you were unable to see him. Is it
11 possible that he backed away?

12 A. If he had moved -

13 MS. JOHNSON-LEE: Objection, she can't speculate, Your
14 Honor.

15 THE COURT: Sustained to the form of the question.

16 Q. After the shooting, Ms. Brown, do you recall seeing
17 Chasity's daughter?

18 A. Yes. When I was laying out with Charles, I saw, when I
19 was looking around for someone to help me, I saw her run
20 from across the yard from --- where the other apartments
21 are, up the stairs to her mom's apartment, and then she
22 came back down stairs, ran back over there to the other
23 --- where she came from and she came back. And later,
24 you know, when you sitting around because that is all
25 you think about is something like this to happen to you,

KIM T. BROWN - CROSS EXAMINATION

128

1 you just go over stuff. And I was like, I wonder why
2 she do that. But I do remember seeing her run --- run
3 up, come down, and then run back up.

4 Q. So, you are certain that you saw her that day; is that
5 correct?

6 A. I saw her run up to the apartment and run back down
7 across the way. But that would be after the shooting?

8 Q. Do you remember seeing Chasity Carter after the
9 shooting?

10 A. After the shooting when, I watch Walter Covington pick
11 me up and take me in the house, I saw her. When I
12 looked up, she was looking over the balcony down, you
13 know, ahead of us. I saw her.

14 Q. Is that the only point you in fact saw her?

15 A. That is the only time I saw her.

16 Q. Do you recall leaving Mr. Hayes at any point going to
17 your house?

18 A. I didn't want to leave him at all. The only time that I
19 left him was when I had to, and that was when Walter
20 came and told me --- you know, to let him and they took
21 me in the house. And as soon as --- When he walked back
22 out I did, and I got right back down there. And the
23 next time I had to let him go was when Sammy and Greg
24 picked me up and told me I had to let him go, and I was
25 still grabbing and reaching for him. I didn't want to

KIM T. BROWN - CROSS EXAMINATION

129

1 let him go. They took me and put me inside the patrol
2 car, and took me to the Police Department.

3 Q. Do you recall telling law enforcement that you left and
4 you went into the house?

5 A. No.. No, I don't.

6 Q. You don't recall telling them that?

7 A. I don't recall telling them that.

8 Q. Do you recall informing law enforcement that you were
9 not paying attention to Chasity or to Taylor, because
10 you just went into the house?

11 A. No. I don't recall that.

12 Q. At any point, Ms. Brown, did you in fact remove any
13 items out of Mr. Hayes pockets?

14 A. No, I did not.

15 Q. You indicated the type of pants that Mr. Hayes had on
16 that day as plaid shorts; is that correct?

17 A. Yes. He had on plaid shorts.

18 Q. And, do you recall how his pockets would have been
19 turned inside out?

20 A. The pockets turned inside out?

21 Q. Yes, as if something had been pulled out of his pocket.
22 Do you know how his pockets would have been turned
23 inside out?

24 A. I'm not sure. Those are --- I am not aware of his
25 pocket being turned inside out.

KIM T. BROWN - CROSS EXAMINATION

130

1 Q. Do you recall having a statement with Officer Young
2 about some money taken off of Mr. Hayes; out of Mr.
3 Hayes' pockets?

4 A. No, I don't.

5 Q. Was there ever any concern about Mr. Hayes' family
6 members believing that there was money taken out of his
7 pocket after the shooting?

8 A. I recall in one interview that I had that I think it was
9 --- well, I know that Officer Young and Hepburn, and
10 they did a second interview with me, and they asked me
11 if Charles ever carried a wallet? Did he have a wallet?
12 And I said, he never carried a wallet. He didn't have a
13 driver's license, or anything like that. It was just
14 whatever he had, he never carried a wallet.

15 Q. Mr. Hayes was in fact your fiancé for how long?

16 A. We were engaged in December of 09.

17 Q. And during the course of your relationship, how did he
18 provide for you and your family?

19 A. He gambled. He gambled at the race track. He played
20 numbers. He sold junk. Anything that he could do to
21 help us out, that is what he did. I work. I took care
22 of most of the --- if he couldn't, I did. That is what
23 you do in a relationship. He didn't have his diploma,
24 he was working on that. And, you know, he didn't have a
25 driver's license, so.

KIM T. BROWN - CROSS EXAMINATION

131

1 Q. You said he sold junk, I just wanted to make sure I
2 understood that word.

3 A. Well, when I say junk, I mean like scrap. Like any old
4 car he could find. Any metal, copper, or whatever.

5 Q. Is that the only thing he sold?

6 A. That is the only thing he sold, yes. Junk.

7 Q. Do you ever recall at any point prior to this shooting,
8 Mr. Hayes asked Mr. Cook, or called Mr. Cook a snitch?

9 A. I know nothing about that.

10 Q. You don't recall that at all?

11 A. No.

12 Q. So, this whole incident or keep my name out of your
13 mouth, was that about snitching?

14 A. No. This was about two ladies that stayed in our
15 apartment complex that him and his girlfriend, it was
16 him, and his girlfriend mamma, and another girl that
17 stayed in the apartment, her mother, they were the two
18 out there that everybody thought was telling everything.
19 Who stayed with who, and who did what. We didn't care
20 about none of that. I mean, if you have a problem, she
21 will come to you and let you know about it. You know,
22 there wasn't no concern of ours what those two ladies
23 had going on with them. He wanted everybody to get
24 involved with that. And, you know, we had nothing to do
25 with it, so we didn't.

KIM T. BROWN - CROSS EXAMINATION

132

1 Q. Well, now you indicated that this had to do about two
2 other ladies, had nothing to do with Mr. Hayes, nothing
3 to do with Clarence, did in fact Mr. Hayes confront the
4 two ladies that you are referring to, who is telling
5 everything?

6 A. I did not say they did not have anything to do with
7 Clarence, I said it was Clarence, his girlfriend, and
8 his girlfriend's brother. That is who I said it had
9 something to do with. They were the ones that were
10 getting all of this mess started. I never knew what it
11 was about. This is what I later found out that it was
12 concerning, he say, she say about them.

13 Q. When you say later found out, when did you later find
14 that out?

15 A. After the text message that Charles sent me prior to all
16 of this happening, it stated something about from
17 Clarence, what he sent to Charles, why Kim won't tell
18 Ann that she told on Carlos cousin. I was like, what
19 does that have to do with anything. And then I thought
20 about who Ann was. And that is one of the ladies that
21 was out there. So, he wanted everybody to get involved
22 with their concern.

23 Q. Do you know how Mr. Hayes got Clarence's phone number?

24 A. Clarence got Charles phone, no I don't.

25 Q. Do you know how Mr. Hayes?

KIM T. BROWN - CROSS EXAMINATION

133

1 A. No, I don't. Unless he had the call --- Clarence must
2 have called him.

3 Q. Clarence must have called him?

4 A. Uh'huh. Or they exchanged numbers. I don't really
5 recall how he got it.

6 MS. BROWN: Court's indulgence.

7 (PAUSE.)

8 Q. Was there anybody around you at the time --- while you
9 were waiting for law enforcement to arrive?

10 A. When the incident happened, a lady and her daughter that
11 lived in the apartments, they were the first people to
12 come and actually come to where I was. I remember her
13 grabbing my wrist and doing like this, and like ---
14 can't leave me, come on baby let's go. And I was like,
15 no, I can't leave him alone. And I remember her, and
16 when she just left me. My cousin, she ran over to get
17 the baby, and she was on the porch talking --- calling -
18 -- I don't know who she was calling, but she was
19 hysterical on the phone. And, Terrance, those were the
20 only people that were in my vicinity. But the only
21 people who came where I was until law enforcement was
22 there, was Deborah and her daughter.

23 Q. One other question, Ms. Brown. Do you recall during
24 your interview being asked about the plastic baggies
25 that were in Mr. Hayes pockets?

KIM T. BROWN - CROSS EXAMINATION

134

1 A. Yes, I was asked about some bags that were in his
2 pockets. And yes, he did smoke marijuana. He may have
3 had two empty bags in his pockets. But as far as seeing
4 the plastic bags, I never saw them.

5 Q. Do you know --- since you brought up the issue of
6 marijuana. Do you know whether or not he smoked
7 marijuana that evening?

8 A. No. When he was around me or the baby, those types of
9 things he don't do. I don't allow no --- if we are out
10 or something like that. But as far as him doing
11 something like that around me or my son, if he is out
12 with his friends, that is --- whatever he do that is
13 what he does. But when he is at home, he is a family
14 man. He didn't bring that kind of stuff around me nor
15 the baby.

16 Q. And, how long were you with Mr. Hayes that evening
17 before the shooting?

18 A. We were together all day that day. We stayed in the
19 house and watched a movie.

20 Q. So, he certainly didn't smoke any marijuana that day; is
21 that correct?

22 A. Not that day.

23 MS. BROWN: I have no further questions, Your Honor.

24 THE COURT: All right. When a witness is presented,
25 you have direct by the person who calls the witness, then you

KIM T. BROWN - CROSS EXAMINATION

135

1 have cross. If there are new issues brought up on cross,
2 then you go back to the proponent to see if there any direct
3 questions again, called redirect. Is there redirect for the
4 witness?

5 MS. JOHNSON-LEE: Your Honor, at this time I wanted to
6 wait until the officer took the stand to put the phone and
7 text messages in, but since that has been addressed
8 extensively, I would move at this time to have the phone
9 admitted into evidence. And then move to have the
10 photographs that my investigator took of the text messages be
11 put into evidence.

12 THE COURT: All right. Is there an objection?

13 MS. BROWN: Certainly, Your Honor, we have no
14 objection to the phone being admitted. We did in fact, ask
15 questions about it. As far as the pictures, Your Honor, I am
16 not sure she was present when the pictures were taken.

17 THE COURT: We are talking about pictures of the text
18 messages?

19 MS. JOHNSON-LEE: Pictures of the text messages that
20 have already been read into the record.

21 THE COURT: If you wish to look at those over the
22 evening, we will give you that opportunity.

23 MS. BROWN: Yes, Your Honor.

24 THE COURT: Are there questions for the witness?

25 MS. JOHNSON-LEE: I had a question for the witness.

KIM T. BROWN - CROSS EXAMINATION

136

1 **THE COURT:** Are you going to use one of those texts?

2 **MS. JOHNSON-LEE:** Yes, Your Honor.

3 **THE COURT:** Come up and look at those to see if you
4 have an objection.

5 **(PAUSE.)**

6 **THE COURT:** And while they are doing that. Sir, is
7 your knee bothering you. You can do that. I'll stand up
8 with you. Go ahead.

9 **(PAUSE.)**

10 **MS. JOHNSON-LEE:** Your Honor, I believe without
11 objection, Exhibit 26, 28, 29, and 32 can come in.

12 **WHEREUPON, STATE'S EXHIBIT**
13 **NUMBERS 26, 28, 29 AND 32 WERE**
14 **ADMITTED INTO EVIDENCE WITHOUT**
15 **OBJECTION.**

16 **MS. BROWN:** No objections, Your Honor.

17 **THE COURT:** Let's mark those, and we will take up the
18 others in due time.

19 **MS. JOHNSON-LEE:** Your Honor, we would like to
20 question the witness about one of these, because there was a
21 question of the witness about this one, and I want to discuss
22 this on cross examination.

23 **MS. BROWN:** Your Honor, I don't believe there was a
24 foundation laid as to who took the photos. I am not sure if
25 the probative outweighs the -

KIM T. BROWN - REDIRECT EXAMINATION

137

1 **THE COURT:** Let's let our court reporter mark those
2 exhibits. Is this witness able to lay a foundation as to
3 those, counsel?

4 **MS. JOHNSON-LEE:** She can verify that this is the one
5 that she said was forwarded to her.

6 **THE COURT:** That is sufficient. Go ahead.

7 **MS. JOHNSON-LEE:** This has been marked for
8 identification purposes as State's Exhibit 30.

9 **REDIRECT EXAMINATION BY MS. JOHNSON-LEE**

10 Q. Would you please review that. Do you recognize that
11 text message?

12 A. Yes.

13 Q. How do you recognize that text message?

14 A. This was the text that was --- I was at work that day
15 and Charles forwarded me this text message. And she
16 said what in the world is Kendell talking about. And I
17 read it, and I was like, I don't know. You know.

18 Q. Is that the text message that you were talking about on
19 cross examination that was forwarded to you?

20 A. Yes. These are the text messages.

21 Q. Is that the text message that was, he said, she said
22 that y'all were just discussing?

23 A. Yes, this is the he said, she say.

24 **MS. JOHNSON-LEE:** At this time I would move to have
25 that admitted into evidence.

KIM T. BROWN - REDIRECT EXAMINATION

138

1 **THE COURT:** All right. Is there an objection at this
2 point after a foundation has been laid?

3 **MS. BROWN:** No, Your Honor.

4 **THE COURT:** Without objection. Let's take a moment
5 and mark that as being in evidence.

6 **WHEREUPON, STATE'S EXHIBIT**

7 **NUMBER 30 WAS ADMITTED INTO**

8 **EVIDENCE WITHOUT OBJECTION.**

9 **THE COURT:** Do you have questions about thirty?

10 Q. And to be completely certain, what is that text message.
11 Would you read that to the jury?

12 A. It says: "Y wont Kim tel Carlos wat ann was gon do 2
13 his cuzn bout stayn der Kim no but im done wit dat shit
14 wat ann was gon do 2 his cuzn bout stayn der Kim no but
15 im done wit dat shit." [sic]

16 Q. And that is from?

17 A. This was from 843-439-7782, which was Kendell cell
18 phone. And this was on Monday, June 7, at 10:56 a.m.

19 **MS. JOHNSON-LEE:** Thank you.

20 Q. And when you gave the first statement to the Police
21 Department, was that within hours of seeing your fiancé
22 being gunned down?

23 A. Yes. That was right after.

24 Q. Did you have your fiancé' blood on your clothing at that
25 first interview?

THE STATE VERSUS CLARENCE KENDELL COOK

139

1 A. On my clothing. On my hands and everything. Officer
2 Young told me I could go and wash my hands. And I had
3 blood all in my hair, in my mouth, everywhere.

4 Q. So, that was the condition that you were in when you
5 were giving that first police interview.

6 MS. JOHNSON-LEE: Thank you. No further questions.

7 THE COURT: Then ma'am, you may step down. Please
8 watch your step as you leave the witness chair.

9 MS. BROWN: Thank you.

10 THE COURT: Counsel, step up and let's talk about
11 scheduling a moment, so we can give our jury more specific
12 information before we end for the day.

13 (Whereupon, a bench conference was held in the
14 presence of the jury, but out of their hearing range.)

15 THE COURT: All right, ladies and gentlemen, what
16 we are going to do is, we are going to start at 9:00
17 tomorrow morning. We ask that you be back in the jury
18 room at 9:00, and we will begin. We are going to start
19 early, and we may work a little late tomorrow evening. It
20 may be a little after five o'clock, it may be as late as
21 six. The reason is we are going to take our Friday holiday
22 as best we can, and we are trying to make sure that here on
23 the front end we do a little more to make it easier for us
24 on the back end.

25 Now, when you go home, your spouse, your loved ones

THE STATE VERSUS CLARENCE KENDELL COOK

140

1 are going to say, what happened in court today? And,
2 please let me just tell you now. Please tell your loved
3 ones that the judge has told you not to discuss the facts
4 of the case, and this is why. I don't want them to say
5 something that somehow alters how you see this case.
6 Because, whatever your decision is, should be based on the
7 evidence right here under oath, under cross and direct
8 examination. Not something that a third person says that
9 nobody knows anything about. So, tell your loved ones
10 that you can fully discuss it with them when it is over,
11 but not until then. And I will ask you in the morning
12 when we start whether or not you have had a discussion
13 with anyone about the facts of the case.

14 Otherwise, have a nice evening. We will see you
15 tomorrow morning at 9:00. Let's everyone remain where they
16 are while the jury departs the courtroom. Have a good day.

17 (Whereupon, the jury exits the courtroom at
18 5:08 p.m.)

19 **THE COURT:** All right. Anything for our record before
20 we close our record for today?

21 **MS. JOHNSON-LEE:** Nothing from the state.

22 **THE COURT:** And from the defense? Hearing nothing,
23 then we will adjourn until 9:00 tomorrow morning. Counsel,
24 step up and let's talk about scheduling.

25 Court is in recess now until nine o'clock in the

THE STATE VERSUS CLARENCE KENDELL COOK

141

1 morning.

2 (Whereupon, the court concludes the day at
3 5:09 p.m. on Monday, April 18, 2010.)

4 -- END OF DAY ONE OF TRIAL --

THE STATE VERSUS CLARENCE KENDELL COOK

142

1 (Whereupon, court resumes these proceedings at
2 9:11 a.m. on Tuesday, April 19, 2011.)

3 -- DAY TWO OF TRIAL -

4 THE COURT: The jury is here. I told them that we
5 would start at nine. Are you ready with your first witness,
6 counsel?

7 MS. JOHNSON-LEE: Yes, Your Honor. She is seated in
8 the back hall.

9 THE COURT: Very good. Then please bring in the
10 jury.

11 (Whereupon, the jury enters the courtroom at
12 9:11 a.m.)

13 THE COURT: Well, good morning, ladies and gentlemen.

14 JURY: Good morning.

15 THE COURT: I trust you had a nice evening. Let me
16 ask, since we were last together, is there any member of the
17 jury panel who has had a discussion about the facts of this
18 case with anyone; if you have, please raise your hand. Let's
19 let the record reflect that no one has raised their hand.
20 Thank you again for complying with the court's request in
21 that regard.

22 As you will recall when we closed yesterday we were in
23 the state's case. Madame Solicitor, please call your next
24 witness.

25 MS. JOHNSON-LEE: Yaronda Harley.

YARONDA HARLEY - DIRECT EXAMINATION

143

1 **THE COURT:** Ma'am, please come forward and take the
2 oath of a witness.

3 **WHEREUPON, YARONDA HARLEY**

4 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

5 **MS. HARLEY:** Yes.

6 **THE COURT:** And if you would state your full name for
7 the record, ma'am.

8 **MS. HARLEY:** My name is Yaronda Harley.

9 **THE COURT:** Ma'am, would you please spell your first
10 name for our record, please?

11 **MS. HARLEY:** Yaronda Harley.

12 **THE COURT:** Thank you.

13 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

14 Q. First of all, Ms. Harley, when you got your subpoena, I
15 had your name incorrect; is that right?

16 A. Yes ma'am.

17 Q. What did we actually have on the subpoena?

18 A. I can't even pronounce it.

19 Q. Yuronda Harley?

20 A. Yes ma'am.

21 Q. Where did you reside at on June 10th of last year?

22 A. Marlboro Court apartments, apartment [REDACTED].

23 Q. Do you know where that apartment is in relation to where
24 Clarence Kendell Cook, or Kim Brown lived?

25 A. It is right across from where the stay. I could see

YARONDA HARLEY - DIRECT EXAMINATION

144

1 their front door.

2 Q. The next apartment building over?

3 A. Yes ma'am.

4 Q. There is a grassy area in between the two buildings?

5 A. Yes ma'am.

6 Q. Do you recall anything happening around 6:00 p.m. on
7 June 10th of last year?

8 A. Yes ma'am.

9 Q. Describe for the jury what happened?

10 A. Well, I was sitting in the house. I was watching tv,
11 and I heard --- I heard one shot and then I heard
12 another shot. So, I was like, it is too early to be,
13 you know --- it was around the 4th of July, so I wasn't
14 thinking it was that, so I looked out the side and I
15 couldn't see anything. So I came outside and that is
16 when I seen the victim on the ground. And that is when
17 I called the police.

18 Q. You say you saw the victim on the ground. But, did you
19 know who the victim was at that point?

20 A. No, ma'am. I just moved there. I didn't know nobody.

21 Q. Did you see anybody around the victim?

22 A. All I saw was the girlfriend.

23 Q. And what was she doing?

24 A. Crying.

25 Q. Where was she at in relation to the victim's body?

YARONDA HARLEY - DIRECT EXAMINATION

145

1 A. She was around him.

2 Q. Around him?

3 A. Well, holding him.

4 Q. Holding him?

5 A. Yes.

6 Q. She was basically almost on the ground also?

7 A. Yes ma'am.

8 Q. Did you ever see her leave his body while you were
9 watching?

10 A. No, ma'am.

11 Q. Did you see her take anything off of his body?

12 A. No, ma'am.

13 THE COURT: Counsel, just a moment. Ma'am, let me get
14 you to move a little closer to that microphone. Thank you.
15 That way we can hear a little better.

16 MS. HARLEY: Okay.

17 THE COURT: Go ahead, counsel.

18 Q. And you said you called the police?

19 A. Yes ma'am.

20 Q. Did you call 911?

21 A. Yes ma'am.

22 Q. What did you tell 911?

23 A. I told them that there was a man who looked like he was
24 deceased. I didn't know if he was deceased or not, but
25 I knew he had been shot. I said he had been shot.

YARONDA HARLEY - CROSS EXAMINATION

146

1 MS. JOHNSON-LEE: Thank you. I have no further
2 questions. Please answer any questions Ms. Brown may have.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION BY MS. BROWN

5 Q. Good morning, is it Ms. Harley?

6 A. Yes ma'am.

7 Q. You indicated that on June 10th, you heard two shots; is
8 that correct?

9 A. Yes ma'am.

10 Q. And at the time you heard the shots you were inside of
11 your apartment?

12 A. Yes ma'am.

13 Q. Therefore, you didn't see an altercation prior to the
14 shooting?

15 A. No, ma'am. I didn't see anything.

16 Q. And you didn't hear an altercation; is that correct?

17 A. No, ma'am.

18 Q. How long were you living in Marlboro Court prior to the
19 shooting?

20 A. Maybe a week.

21 Q. And, you just testified that you knew the victim who was
22 lying in the ground?

23 A. No, I didn't know any of them. I just seen them before.

24 Q. You didn't know his name?

25 A. I heard his name before, but I don't know him.

YARONDA HARLEY - CROSS EXAMINATION

147

1 Q. Did you know Mr. Cook?

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

3 Q. And as of today, you still don't know who Mr. Cook is?

4 And you indicated that there was a girlfriend who was
5 lying over the body?

6 A. Yes ma'am.

7 Q. Did you know Ms. Kim Brown?

8 A. No, ma'am. I do not know her.

9 Q. How did you know that she was the girlfriend?

10 A. Well, I just assumed that she was because of how she was
11 over him and crying.

12 Q. But you didn't know the relationship between the person
13 that was crying and the person that was lying on the
14 ground?

15 A. No, ma'am. But I know her when I see her, who it was.

16 Q. Had you seen the guy that was lying on the ground prior
17 to that shooting?

18 A. I think I seen him earlier that day. He was outside
19 playing with his son.

20 Q. You said earlier that day. Had you seen anyone else
21 earlier that day hanging around with the guy that was
22 lying on the ground?

23 A. No, ma'am. I really wasn't paying no attention. But I
24 had see him and his son outside.

25 Q. So, you are not aware of any problems that existed

YARONDA HARLEY - CROSS EXAMINATION

148

1 between Mr. Hayes, which will be the guy who was lying
2 on the ground and Clarence; is that correct?

3 A. No, ma'am.

4 Q. And you certainly were not privy to any text messaging
5 that took place prior to that shooting?

6 A. No, ma'am.

7 Q. So, all you know is that there were shots fired?

8 A. Yes ma'am.

9 Q. You are not sure why the shots were fired?

10 A. No, ma'am.

11 Q. You just heard two shots outside. Now, at any point
12 did you see anybody else around the body other than Ms.
13 Brown?

14 A. No, ma'am.

15 Q. You never saw anyone else around the body?

16 A. No, ma'am.

17 Q. Do you recall how long you were watching Ms. Brown
18 crying over the body?

19 A. Well, I stayed out there until a couple of police came.
20 I don't know why, but I just stayed out there. But it
21 was about maybe ten or fifteen minutes. I don't know.
22 Longer, because I went in the house.

23 Q. So, at a minimum, how long do you believe before an
24 officer arrived?

25 A. Well, when I called, I think they got there in like,

YARONDA HARLEY - CROSS EXAMINATION

149

1 three minutes, at the most. Because they got there real
2 fast because they were right around the corner.

3 Q. They came pretty fast?

4 A. Yes ma'am.

5 Q. And you said you stayed out there ten or fifteen
6 minutes?

7 A. (No response.)

8 Q. And had you had any conversation with Ms. Brown since
9 the shooting?

10 A. No, ma'am.

11 Q. So, do you still reside in Marlboro Court?

12 A. Yes ma'am.

13 Q. Do you remember seeing other people that came out there
14 after the shots were fired?

15 A. Not really. I just know it was a lot of officers out
16 there. I mean, I really didn't see anybody I knew,
17 because I was new to the area.

18 Q. You didn't see --- The only people you saw after the
19 shots were fired were law enforcement?

20 A. And I saw like, my neighbors, but that's about it.

21 Q. Neighbors. Do you know the names of any of those
22 neighbors?

23 A. No, because I just moved there.

24 Q. Can you describe any of those neighbors?

25 A. Tyler, it was a male and a female, I saw them. They

YARONDA HARLEY - CROSS EXAMINATION

150

1 stay above me.

2 Q. Anyone else that you remember seeing out there after the
3 shots were fired?

4 A. A lot of people came.

5 Q. There were a lot of people that came.

6 A. I mean, not --- After it happened, you know, a lot of
7 people gather --- not around him, but came to Marlboro
8 Court. There were a lot of people out there.

9 Q. And do you remember any of these people who were
10 standing relative to where the body was?

11 A. Well, when the police came they had already put the tape
12 around, so nobody was allowed past the tape.

13 Q. So, they are outside in the tape area?

14 A. Yes ma'am.

15 MS. BROWN: Beg court's indulgence, Your Honor. We
16 have no further questions, Your Honor.

17 THE COURT: Is there redirect from the state?

18 MS. JOHNSON-LEE: No, Your Honor. We would ask that
19 the witness be excused so she can leave.

20 THE COURT: All right. Ma'am, you are free to leave.
21 You don't have to leave. You may stay if you wish. But, if
22 you want to go, you are free to go.

23 MS. HARLEY: Yes, sir.

24 THE COURT: Please watch your step leaving the witness
25 chair.

TONYA WILLIAMS - DIRECT EXAMINATION

151

1 Please call your next witness.

2 MS. JOHNSON-LEE: Tonya Williams.

3 THE COURT: Please come forward and take the oath of a
4 witness.

5 WHEREUPON, TONYA WILLIAMS

6 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

7 MS. WILLIAMS: Yes.

8 THE COURT: And, ma'am, please state your name for the
9 record.

10 MS. WILLIAMS: Tonya Williams.

11 DIRECT EXAMINATION BY MS. JOHNSON-LEE

12 Q. Where are you employed?

13 A. Marlboro County 911.

14 Q. How long have you been employed there?

15 A. About four years.

16 Q. What are your duties at Marlboro County 911?

17 A. We answer 911 calls, and we send the appropriate law
18 enforcement, fire, and EMS.

19 THE COURT: Ma'am, would you please move up toward
20 that microphone? Thank you.

21 MS. WILLIAMS: Yes, sir.

22 Q. Were you on duty on June 10th of last year, around six
23 p.m.?

24 A. Yes ma'am.

25 Q. Did you receive a call about a shooting at Marlboro

TONYA WILLIAMS - DIRECT EXAMINATION

152

1 Court Apartments?

2 A. Yes ma'am.

3 Q. Were there multiple calls?

4 A. Yes ma'am.

5 Q. Are all incoming 911 calls recorded?

6 A. Yes ma'am.

7 Q. Does the recording start before you actually answer the
8 line?

9 A. Yes ma'am. As soon as it starts ringing, it starts
10 recording.

11 Q. Do you know how it works that way?

12 A. What it is, is when the phone rings it starts recording.
13 And when you pick up, it takes up from there.

14 Q. So, if someone dials 911, even before you have answered
15 the phone, your system has the capability of recording
16 whatever is going on while that phone is ringing on the
17 other end?

18 A. Yes ma'am.

19 Q. Do you know what a CAD is?

20 A. It is a Computer Aided Dispatch.

21 Q. What is the purpose of a CAD?

22 A. It generally gives us the capability of keying in
23 information of what the caller tells us what is going
24 on.

25 Q. I am going to show you what has been marked for

TONYA WILLIAMS - DIRECT EXAMINATION

153

1 identification purposes State's Exhibit Number 44. Can
2 you identify that document?

3 A. This is a CAD incident.

4 Q. Is that CAD from June 10th of 2010?

5 A. Yes ma'am.

6 Q. Does the CAD indicate who initiated the first phone call
7 about the shooting at Marlboro Court Apartments?

8 A. Yes ma'am.

9 Q. Who does it show?

10 A. Yaronda Harley.

11 Q. Does it show the time that call came in?

12 A. Yes ma'am.

13 Q. What time?

14 A. That call came in around 17:58.

15 Q. Now what would that be in layman's terms?

16 A. That would be around two minutes to six.

17 Q. Two minutes to six.

18 A. Yes ma'am.

19 Q. About 5:58 p.m.?

20 A. Yes ma'am.

21 Q. Does it show who the first responder at the scene was?

22 A. Yes ma'am.

23 Q. Who was that?

24 A. That would be our law enforcement officer, which is 228.

25 We go by numbers.

TONYA WILLIAMS - DIRECT EXAMINATION

154

1 Q. Do you know right off hand who 228 is?

2 A. At that time I want to say it was Officer Baker.

3 Q. Does it show who else responded?

4 A. Yes ma'am.

5 Q. Who else?

6 A. We also had medics and several other law enforcement
7 officers.

8 Q. Now, does it show what time the first responders got
9 there?

10 A. Yes ma'am.

11 Q. What time?

12 A. According to this they got there around 1800, which was
13 two minutes after the original call.

14 Q. Would that be six o'clock p.m.?

15 A. Yes ma'am.

16 MS. JOHNSON-LEE: At this time I would move to admit
17 the CAD into evidence.

18 MS. BROWN: Your Honor, may I see it?

19 THE COURT: You may. We will give you an opportunity
20 to look at it.

21 (PAUSE.)

22 MS. BROWN: No objection, Your Honor.

23 THE COURT: What number is that, madame court
24 reporter? Number 44, in evidence without objection for the
25 state.

TONYA WILLIAMS - DIRECT EXAMINATION

155

1 WHEREUPON, STATE'S EXHIBIT
2 NUMBER 44 WAS ADMITTED INTO
3 EVIDENCE WITHOUT OBJECTION.

4 MS. JOHNSON-LEE: Permission to publish this to the
5 jury?

6 THE COURT: You may publish that to the jury. Again,
7 ladies and gentlemen, all the exhibits you will have with you
8 when you retire to deliberate. If you wish to pass that
9 around and look at it, you are welcome to.

10 (Whereupon, State's Exhibit Number 44 was
11 published to the jury.)

12 Q. Next, I am going to show you what has been marked for
13 identification as State's Exhibit Number 33. Do you
14 recognize that item?

15 A. Yes ma'am.

16 Q. How do you recognize that?

17 A. This is a tape recording of the actual 911 call.

18 Q. Does that recording contain an authentic and correct
19 recording of the 911 calls made on June 10, 2010,
20 regarding the Marlboro Court Apartment shooting?

21 A. Yes ma'am.

22 Q. How do you know that?

23 A. My supervisor makes the copies of the CAD, which are on
24 a recorded line as we take the calls.

25 Q. Did you have an opportunity to listen to that tape this

TONYA WILLIAMS - DIRECT EXAMINATION

156

1 morning yourself?

2 A. Yes ma'am.

3 Q. And after listening to that this morning, does that
4 appear to be an authentic and correct recording of the
5 911 calls on June 10th, regarding that shooting?

6 A. Yes.

7 Q. And to your knowledge, has there been any changes,
8 additions, or deletions to any of those recordings;
9 specifically relating to the Marlboro Court Apartment
10 shooting?

11 A. To the best of my knowledge, nothing has been altered on
12 this tape.

13 MS. JOHNSON-LEE: At this time I would offer the tape
14 into admission into evidence.

15 MS. BROWN: No objection, Your Honor.

16 THE COURT: All right.

17 MS. JOHNSON-LEE: And permission to publish that
18 recording into evidence.

19 THE COURT: What is that exhibit number?

20 MADAME COURT REPORTER: Number 33, Your Honor.

21 THE COURT: Then 33 in evidence for the state without
22 objection. And, you may play it for the jury.

23 WHEREUPON, STATE'S EXHIBIT

24 NUMBER 33 WAS ADMITTED INTO

25 EVIDENCE WITHOUT OBJECTION.

TONYA WILLIAMS - CROSS EXAMINATION

157

1 MS. JOHNSON-LEE: We are going to stop and turn this
2 up, and back it up.

3 THE COURT: And it may be that --- have you tried to
4 use a microphone so it would be amplified, so everyone can
5 hear?

6 MS. JOHNSON-LEE: We have not, but we can do that.

7 THE COURT: Our courtroom comments that there is a
8 microphone attached to that.

9 (Whereupon, State's Exhibit Number 33 was
10 published for the jury.)

11 MS. JOHNSON-LEE: I have no further questions. Answer
12 any questions Ms. Brown has.

13 THE COURT: Cross examination.

14 MS. BROWN: Thank you, Your Honor.

15 CROSS EXAMINATION BY MS. BROWN

16 Q. Good morning, Ms. Williams.

17 A. Good morning.

18 MS. JOHNSON-LEE: We did not receive these as part of
19 Rule 5. This is the first time I have seen these documents,
20 Your Honor.

21 MS. BROWN: Your Honor, may we approach?

22 THE COURT: You may approach.

23 (Whereupon, a bench conference was held
24 in the presence of the jury, but out of their hearing range.)

25 THE COURT: You may proceed.

TONYA WILLIAMS - CROSS EXAMINATION

158

1 MS. BROWN: Thank you, Your Honor.

2 Q. Ms. Williams, I am providing you a copy of forms that at
3 the very top is listed as Marlboro County Rescue. Have
4 you ever seen a form like that before?

5 A. No, ma'am.

6 Q. That is not a copy of the form at your center?

7 A. No, ma'am.

8 Q. Thank you.

9 A. You are welcome.

10 Q. According to your testimony, you indicated that law
11 enforcement arrived two minutes after?

12 A. Yes ma'am.

13 Q. Where would they have arrived? Was the call given to
14 them, or would they have arrived on the scene two
15 minutes after?

16 A. They arrived on the scene.

17 Q. And how do you know that information?

18 A. They come across our radio system and advise when they
19 are on the scene.

20 Q. And who was the officer who advised he was on the scene
21 at 6:02?

22 A. I would actually have to look -- At 6:02?

23 Q. Is that the time they arrived?

24 A. Around six o'clock, 228 signed on.

25 Q. At six o'clock, which officer arrived on the scene?

TONYA WILLIAMS - CROSS EXAMINATION

159

1 A. 228, which would be Baker.

2 Q. Do you know who arrived after Officer Baker?

3 A. Not right off the top --- I would have to actually look
4 at the CAD.

5 Q. Do you have your CAD report with you?

6 A. I don't have mine.

7 MS. BROWN: Let me get this from the jury.

8 Q. Here is a copy of this as well.

9 A. Okay.

10 MS. BROWN: I'll give you the court's exhibit so you
11 can compare them.

12 A. I actually have Officer Williams, which is 226 that
13 advised he was on scene at 6:01. Corporal Covington,
14 which is Officer 214, which signed on the scene at the
15 same time, which is 18:01, which is 6:01. 204, which
16 was Lieutenant Hepburn, he arrived on the scene around
17 18:02, which is 6:02.

18 Q. So, you have a six o'clock, and your testimony is that
19 Officer Baker arrived?

20 A. Yes ma'am.

21 Q. And at 6:01 you have Officer Williams?

22 A. Yes ma'am.

23 Q. And at 6:01 you have Officer Covington?

24 A. Yes ma'am.

25 Q. And at 6:02 you have Lieutenant Hepburn?

TONYA WILLIAMS - REDIRECT EXAMINATION

160

1 A. Yes ma'am.

2 MS. BROWN: Your Honor, I have no further questions of
3 this witness.

4 THE COURT: Is there redirect?

5 MS. JOHNSON-LEE: Yes, Your Honor. May I see the
6 forms please?

7 REDIRECT EXAMINATION BY MS. JOHNSON-LEE

8 Q. And first of all, the arrival times that they called in,
9 do you know if that was the actual arrival time, or do
10 you know if that is when they actually picked up the
11 radio and said, hey, I'm here?

12 A. That is when they pick up the radio and say, I'm on
13 scene.

14 Q. But as far as you know somebody could have been there at
15 six o'clock, and at 6:04 say, hey, I'm here, as far as
16 you know?

17 A. Correct.

18 Q. And these forms that were shown to you, this is from
19 Marlboro County Rescue Squad?

20 A. I am assuming, Yes ma'am.

21 Q. And those officers' numbers that we were just going
22 over, those were police officers and not rescue squad
23 members?

24 A. Correct. Yes ma'am.

25 MS. JOHNSON-LEE: I have no further questions.

OFFICER WALTER COVINGTON - DIRECT EXAMINATION 161

1 **THE COURT:** All right. Then, ma'am, you are free to
2 step down. Watch your step please, leaving the witness
3 chair. You are free to leave, you are not required to leave,
4 but you may if you wish.

5 **MS. WILLIAMS:** Thank you.

6 **THE COURT:** Please call your next witness.

7 **MS. JOHNSON-LEE:** We call Officer Covington.

8 **THE COURT:** Please come forward and take the oath of a
9 witness.

10 **WHEREUPON, WALTER COVINGTON**

11 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

12 **OFFICER COVINGTON:** Yes ma'am.

13 **THE COURT:** And, sir, please state your name for the
14 record.

15 **OFFICER COVINGTON:** My name is Corporal Walter
16 Covington.

17 **DIRECT EXAMINATION BY MS. JOHNSON LEE**

18 Q. Where are you employed?

19 A. City of Bennettsville Police Department.

20 Q. How long have you been employed there?

21 A. For thirteen years.

22 Q. What is your job there?

23 A. I'm a corporal right now at the Police Department.

24 Q. What was your job on June 10, 2010?

25 A. I was the acting city supervisor.

OFFICER WALTER COVINGTON - DIRECT EXAMINATION

162

1 Q. Were you working on June 10, 2010?

2 A. Yes ma'am.

3 Q. Did you respond to a call at Marlboro Court Apartment
4 about a shooting?

5 A. Yes ma'am, I did.

6 Q. Was that around 6:00 p.m.?

7 A. Yes ma'am.

8 Q. Describe the scene when you arrived?

9 A. When I arrived, it was a lot of crying. A gentleman was
10 lying between building 3 and 4. There was just like
11 terrorist, sad.

12 Q. Who was the first officer on the scene?

13 A. Officer Williams.

14 Q. And do you know if you were the second or the third?

15 A. I was the second officer. I arrived just shortly after
16 he did.

17 Q. What did you do when you got there?

18 A. The first thing I did was try to remove Ms. Brown from
19 the victim. After that myself, Officer Williams, and
20 Lieutenant Crosland entered into the apartment to try to
21 make sure the subject wasn't still on the scene at that
22 time.

23 Q. Did you develop a suspect?

24 A. After I got there, Officer Baker was talking to some
25 folks, and come up with a name.

OFFICER WALTER COVINGTON - DIRECT EXAMINATION

163

1 Q. Who was the suspect?

2 A. It came up as Kendell.

3 Q. Would Kendell be Clarence Kendell Cook?

4 A. Yes ma'am.

5 Q. Where was Kim Brown in relation to the victim's body?

6 A. She was laying over him --- like lying from his side up
7 to his chest area.

8 Q. What was she doing?

9 A. She was just sobbing, crying.

10 Q. Did you see a pink blanket or a sheet over the victim?

11 A. There was a blanket over him.

12 Q. Do you know where that blanket came from?

13 A. No, ma'am. It was there when I got there.

14 Q. Did you see Ms. Brown attempt to take anything off of
15 the victim's body?

16 A. No, ma'am.

17 Q. Did you ever look at the victim?

18 A. Partially, yes.

19 Q. Could you identify the victim?

20 A. Not by his name. That was my first time ever seeing him
21 was at that time.

22 Q. Did you participate in the arrest of the suspects
23 related to this case?

24 A. I was on the way there, but no, I didn't.

25 Q. Do you know who was arrested for the killing of Charles

OFFICER WALTER COVINGTON - CROSS EXAMINATION

164

1 Hayes?

2 A. Yes ma'am.

3 Q. Who was that?

4 A. Clarence Kendell Cook.

5 Q. Just one final question. When you arrive on a scene,
6 and you pick up your radio to call dispatch, or 911, or
7 whoever to know you are present; do you always do it the
8 moment you pull into the parking lot?

9 A. It all depends. Sometimes it is when we pull into the
10 location we do a 10-23, which means we are actually on
11 the scene.

12 Q. But that is not a hundred percent certain that you do it
13 at that moment versus a few seconds later, or a minute
14 later?

15 A. No, ma'am.

16 **MS. JOHNSON-LEE:** Please answer any questions that Ms.
17 Brown has.

18 **OFFICER COVINGTON:** Yes ma'am.

19 **THE COURT:** Cross examination.

20 **CROSS EXAMINATION BY MS. SELLERS**

21 Q. Good morning, Corporal Covington.

22 A. Good morning, ma'am.

23 Q. Now you said --- You told the jury that you were the
24 supervisor on that particular night?

25 A. Yes ma'am.

OFFICER WALTER COVINGTON - CROSS EXAMINATION

165

1 Q. Let's back up a little bit. You have been a police
2 officer for thirteen years?

3 A. Yes ma'am.

4 Q. Therefore you have gone through the academy?

5 A. Yes ma'am.

6 Q. Gotten some extensive training?

7 A. Yes ma'am.

8 Q. And training in terms of crime scene investigation;
9 correct?

10 A. A little bit of that, doing the basic part. Yes ma'am.

11 Q. And also crime scene preservation?

12 A. Yes ma'am.

13 Q. At the time you arrived, did you all rope off the area
14 where the body was?

15 A. After we left out of the apartment, I instructed Officer
16 Williams to go ahead and tape up the area.

17 Q. Okay. Of the photographs you all took of the body that
18 night, if there is no rope present, does that mean it
19 wasn't done?

20 A. I couldn't tell you. I couldn't answer that.

21 Q. You said you started canvassing for witnesses; correct?

22 A. Ma'am?

23 Q. You said you all started canvassing for witnesses?

24 A. I never said I spoke with witness. Officer Baker spoke
25 with.

OFFICER WALTER COVINGTON - CROSS EXAMINATION

166

1 Q. Do you know who he spoke with?

2 A. I couldn't tell you.

3 Q. Now your role as supervisor is to supervise the
4 investigation; correct?

5 A. Yes ma'am.

6 Q. But you are not sure as to what they did?

7 A. No, ma'am. We had so much other stuff that we were
8 trying to get done at that time.

9 Q. But you said the victim was unresponsive when you
10 arrived; correct?

11 A. Yes ma'am.

12 Q. And the other stuff that you were doing was what?

13 A. I went into the apartment with two other officers. I
14 came back down, asked officer Williams to go ahead and
15 rope everything off. But, while we were in the
16 apartment, Officer Baker stood at the crime scene area
17 to make sure no one else entered while we were inside of
18 the apartment. After I make sure the offender wasn't on
19 scene, I then started contacting the main supervisor to
20 advise them as to what we had and what was going on.

21 Q. Now, when you said in the apartment, you mean Mr. Cook's
22 apartment?

23 A. It was his girlfriend from what I assume.

24 Q. And did you ever go into Ms. Brown's apartment?

25 A. We walked in there, yes.

OFFICER WALTER COVINGTON - CROSS EXAMINATION

167

1 Q. Did you ever search that apartment for weapons or drugs?

2 A. No, ma'am.

3 Q. And when you arrived, did you all for instance bag the
4 victim's hands?

5 A. No, ma'am, I didn't.

6 Q. Did you all check or look around for shell casings to
7 see how he was shot?

8 A. I didn't, no. I didn't.

9 Q. Do you know if anyone ever looked for multiple shell
10 casings?

11 A. I probably sure the investigators once they got there
12 actually looked for that, but I didn't.

13 Q. But you are trained for that aren't you?

14 A. I'm not sure. I didn't do it. I don't know if they did
15 or not.

16 Q. But it should have been done?

17 A. Yeah, it should have been done.

18 Q. And also as the supervisor that night, there was an
19 incident report that was created; right?

20 A. Yes ma'am.

21 Q. And that incident report actually talks about two
22 shootings; correct?

23 A. I'm not sure.

24 Q. Would you be surprised if it had two shootings in the
25 same location?

OFFICER WALTER COVINGTON - REDIRECT EXAMINATION

168

1 A. Not sure that there was two shootings at the location.

2 It was just one shooting that we responded to.

3 Q. And as the supervisor on that night, you approved the
4 incident report didn't you?

5 A. Yes ma'am.

6 Q. So, the incident report is suppose to be a detailed
7 statement of what occurred that night?

8 A. Yes ma'am.

9 Q. And if it is -

10 **MS. JOHNSON-LEE:** Objection, she is testifying to the
11 jury. The lawyer is trying to testify to the jury.

12 **THE COURT:** It's leading. Sustained.

13 Q. So, if this incident report that you approved, you are
14 basically saying this information is factual; correct?

15 A. Yeah.

16 **MS. SELLERS:** Beg court's indulgence, Your Honor.

17 **(PAUSE.)**

18 Q. Officer Covington, did you have a chance to read this
19 report in its entirety?

20 A. Yes.

21 **MS. SELLERS:** No further questions of this witness.

22 **THE COURT:** And is there redirect?

23 **MS. JOHNSON-LEE:** Yes, Your Honor. Just briefly.

24 **REDIRECT EXAMINATION BY MS. JOHNSON LEE**

25 Q. Are you the supervisor over the investigators?

BILL JAMES WILLIAMS - DIRECT EXAMINATION

169

1 A. No, ma'am, I'm not.

2 Q. So, you would not be the supervisor of Ira Dease?

3 A. No, ma'am.

4 Q. You would not be the supervisor of Deborah Young?

5 A. No, ma'am.

6 **MS. JOHNSON-LEE:** Thank you, sir. That's all the
7 questions.

8 **THE COURT:** All right. Sir, you are free to step
9 down. Free to leave if you wish. You are not required to
10 leave, but you may if you wish.

11 **OFFICER COVINGTON:** Yes, sir.

12 **THE COURT:** Call your next witness, counsel.

13 **MS. JOHNSON-LEE:** Bill Williams.

14 **THE COURT:** Please come forward and take the oath of a
15 witness.

16 **WHEREUPON, BILL JAMES WILLIAMS**

17 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

18 **OFFICER WILLIAMS:** I do.

19 **THE COURT:** Please start by giving us your full name
20 for the record, sir.

21 **OFFICER WILLIAMS:** My name is Bill James Williams.

22 **THE COURT:** Thank you.

23 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

24 Q. Where are you employed?

25 A. City of Bennettsville Police Department.

BILL JAMES WILLIAMS - DIRECT EXAMINATION

170

1 Q. And in what capacity?

2 A. Police officer.

3 Q. How long have you been a police officer?

4 A. Twenty-two years.

5 Q. Were you employed with the Bennettsville Police
6 Department on June 10th of last year then?

7 A. I was.

8 Q. What was your job duties with the Bennettsville Police
9 Department on June 10th of last year?

10 A. As a patrol officer to do traffic enforcement and to
11 answer calls.

12 Q. Did you respond to a call at Marlboro Court Apartments
13 on June 10th of last year?

14 A. I did.

15 Q. Was that around 10:00 p.m.?

16 A. I'm not sure of the time.

17 Q. Was it daylight or dark when you got there?

18 A. It was daylight.

19 Q. Describe the scene when you arrived?

20 A. We had received a call in reference to someone being
21 shot. Upon my arrival I saw a black male laying on the
22 ground, and a black female right beside him.

23 Q. Did you know who the male was on the ground?

24 A. I did not.

25 Q. Did you go over and look at the body?

BILL JAMES WILLIAMS - DIRECT EXAMINATION

171

1 A. I did.

2 Q. Did you recognize him?

3 A. I did not.

4 Q. Could you tell if he was shot?

5 A. I could not. All I saw was blood.

6 Q. What was the female doing?

7 A. She was sitting next to him crying and hugging him.

8 Q. Did you know who she was?

9 A. I did not.

10 Q. Did you do anything to try to get the female off of the
11 victim?

12 A. I did not.

13 Q. Did you say anything to her?

14 A. I did not.

15 Q. How long after the call came out over dispatch did you
16 arrive?

17 A. Within a minute and a half or two minutes.

18 Q. Did you see anybody else standing around?

19 A. I don't remember seeing anyone else.

20 Q. Do you remember anyone else at the body beside the young
21 lady?

22 A. That is the only person I remember being at the body.

23 Q. Did you ever see the young lady attempt to take anything
24 off of the body?

25 A. I did not.

BILL JAMES WILLIAMS - DIRECT EXAMINATION

172

1 Q. What did you do at the scene?

2 A. Once getting to the scene, I walked over and saw this
3 male on the ground. Saw the blood, saw the person. My
4 next step was to rope off the crime scene. At that time
5 another officer arrived. We got the crime scene tape,
6 and we roped off the crime scene.

7 Q. Do you remember which officers were there at the same
8 time you were?

9 A. Shortly after, maybe thirty seconds after I got there,
10 Officer Baker arrived. And probably fifteen to twenty
11 seconds after that, Officer Covington arrived.

12 Q. Pretty much there at the same time?

13 A. Yes.

14 Q. Did you develop a suspect?

15 A. I don't know.

16 Q. That was not part of your job duties?

17 A. It was not.

18 Q. And when you roped off that crime scene, there was
19 nobody around that body but the young lady?

20 A. That is the only person that I remember.

21 Q. How long were you at the crime scene?

22 A. From the time that I arrived it was fairly late, I want
23 to say around nine or ten o'clock.

24 Q. Did you allow anyone access to that body other than
25 first responders?

BILL JAMES WILLIAMS - CROSS EXAMINATION

173

1 A. The only ones that I remember having access were the EMS
2 guys, and the coroner when he got there.

3 MS. JOHNSON-LEE: Thank you. Please answer any
4 questions that Ms. Brown has.

5 THE COURT: Cross examination.

6 CROSS EXAMINATION BY MS. SELLERS

7 Q. Good morning, Officer Williams.

8 A. Good morning.

9 Q. Would you say it was your duty to preserve the crime
10 scene?

11 A. Yes, I was.

12 Q. And preserving the crime scene, did you have an
13 opportunity to walk around the area and look for shell
14 casings?

15 A. I did not. The only thing that I did was rope off the
16 crime scene, and the supervisors that night was Corporal
17 Covington, and we started calling people.

18 Q. In your training though, of twenty-two years in law
19 enforcement, is it standard procedure to rope off and
20 look for shell casings?

21 A. It is standard procedure to rope off an area.

22 Q. And was there anyone that night assisting you?

23 A. Officer Baker.

24 Q. Did you have an opportunity to speak with any witnesses?

25 A. I did not.

BILL JAMES WILLIAMS - CROSS EXAMINATION

174

1 Q. Did you have an opportunity --- You said that you went
2 and took a look at the victim's body?

3 A. I did.

4 Q. Did you have a chance to observe his pant's pockets?

5 A. I did not pay attention to that. The only thing I saw
6 was the blood and we started calling people in to
7 process the scene.

8 Q. So, you would not know if his pockets were turned inside
9 out?

10 A. I would not have that knowledge.

11 Q. Was there any information provided to you that items
12 were removed from the body?

13 A. No, ma'am.

14 Q. Did you all preserve the scene?

15 A. I did not.

16 MS. SELLERS: No further questions.

17 THE COURT: Thank you. Redirect?

18 MS. JOHNSON-LEE: No, Your Honor.

19 THE COURT: All right. Sir, you are free to step
20 down, free to leave if you wish.

21 OFFICER WILLIAMS: Thank you, sir.

22 THE COURT: Thank you.

23 MS. JOHNSON-LEE: Your Honor, at this time we are
24 going to call the Evidence Custodian. He worked third shift
25 and wants to get out of here.

KEL WILLIAM HALL - DIRECT EXAMINATION

175

1 Kel Hall.

2 **THE COURT:** Please come forward and take the oath of a
3 witness.

4 **WHEREUPON, KEL WILLIAM HALL**

5 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

6 **OFFICER HALL:** Yes.

7 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

8 Q. Please state your name.

9 A. William Hall.

10 Q. Do you go by Kel Hall?

11 A. Yes ma'am.

12 Q. Where are you employed?

13 A. Bennettsville Police Department.

14 Q. How long have you been employed there?

15 A. Six years.

16 Q. In what capacity?

17 A. Patrol officer, and also Evidence Custodian.

18 Q. What are your duties as evidence custodian?

19 A. I take the evidence out of the evidence locker, put it
20 into our evidence room until it is time for court.

21 Q. So, you basically preserve evidence so that it is not
22 tampered with?

23 A. Yes, ma'am.

24 Q. First, I am going to show you what has been marked for
25 identification as State's Exhibit Number 5. It is two

KEL WILLIAM HALL - DIRECT EXAMINATION

176

1 bags. Do you recognize these items?

2 A. Yes ma'am.

3 Q. Can you please tell the jury what these items are?

4 A. Clothing from the victim.

5 Q. Where did you get these items?

6 A. I got them out of the wall locker that is connected to
7 the outside of the evidence room that they place the
8 evidence in.

9 Q. And what causes you to recognize those items by looking
10 at those bags?

11 A. Because the red bag is clear to some extent.

12 Q. Do you know if these items are connected to the case of
13 State versus Clarence Kendell Cook?

14 A. Yes, ma'am.

15 Q. And how do you know that it is attached to this case?

16 A. It has a case number written on the Brown paper bag.
17 Also a report was given with the evidence.

18 Q. What is a chain of custody?

19 A. A chain of custody is a paper or a document saying who
20 has had the evidence in their possession, since it has
21 been collected as evidence.

22 Q. And does it have a unique case number written on here?

23 A. Yes ma'am.

24 Q. There is also a victim's name, Charles Angelo Hayes?

25 A. Yes, ma'am.

KEL WILLIAM HALL - DIRECT EXAMINATION

177

1 Q. And is there also a sticker from Dr. Basalis?

2 A. Yes ma'am.

3 Q. Do you know if he is from the medical university?

4 A. I'm not sure.

5 Q. Have these items been opened since they first came into
6 your possession in the evidence locker?

7 A. Only one time.

8 Q. Okay. What were they opened for?

9 A. For yourself and Ms. Brown to view them at the Police
10 Department.

11 Q. Is that Ms. Myesha Brown?

12 A. Yes, ma'am. Ms. Myesha Brown.

13 Q. Now, were they opened prior to my arrival?

14 A. Yes ma'am.

15 Q. Who were present when they were actually opened?

16 A. Just me and Ms. Brown.

17 Q. Okay. And did you close those up after I arrived?

18 A. Yes ma'am.

19 Q. Have they been opened since that time?

20 A. No, ma'am.

21 Q. Do you recall what specific items were in those bags?

22 A. I know there was a pair of shorts, a shirt, and I want
23 to say underwear.

24 Q. Did you do anything when it was opened in order to alter
25 those items in any way?

KEL WILLIAM HALL - DIRECT EXAMINATION

178

1 A. No, ma'am.

2 MS. JOHNSON-LEE: I would offer the bags of clothing
3 into admission as evidence.

4 THE COURT: Is there an objection to State's 5?

5 MS. BROWN: Your Honor, I just have one question.

6 (PAUSE.)

7 MS. BROWN: No objection.

8 THE COURT: No objection. Then let's take a moment
9 and let our court reporter mark it as admitted.

10 State's 5, in evidence.

11 WHEREUPON, STATE'S EXHIBIT

12 NUMBER 5 WAS ADMITTED INTO

13 EVIDENCE WITHOUT OBJECTION.

14 Q. I am also going to show you what has been marked for
15 identification purposes as State's Exhibit Number 2. Do
16 you recognize that packet?

17 A. Yes ma'am.

18 Q. What is that?

19 A. It is a package we received from SLED containing
20 projectiles.

21 Q. Does that packet have any identifying marks or
22 characteristics on it?

23 A. Yes, ma'am. It has the lab number from SLED, and also
24 our agencies case number on it.

25 Q. How was that obtained by you?

KEL WILLIAM HALL - CROSS EXAMINATION

179

1 A. Again, it was put into the wall locker that was
2 connected to the outside of the evidence room.

3 Q. Since that item was obtained from the evidence room by
4 you, has it been opened?

5 A. No, ma'am.

6 Q. It remains sealed to this day?

7 A. Yes, ma'am.

8 Q. Do you know or can you tell who sealed that item?

9 A. Somebody "JB" is all I know.

10 Q. Does it appear to have been sealed at the State Law
11 Enforcement Division?

12 A. Yes, ma'am. It was sealed by SLED.

13 Q. And how do you know that?

14 A. It has a SLED forensic tape on it. And SLED is the only
15 one with that tape, that has actual red evidence tape.

16 Q. Are there any other items of evidence concerning State
17 versus Clarence Kendell Cook that was in your
18 possession?

19 A. No, ma'am.

20 **MS. JOHNSON-LEE:** That's all the questions that I
21 have. Please answer any questions that Ms. Brown has.

22 **THE COURT:** Cross examination.

23 **CROSS EXAMINATION BY MS. SELLERS**

24 Q. Officer Hall, I didn't hear you explain. How did those
25 items get in that bag?

KEL WILLIAM HALL - CROSS EXAMINATION

180

1 A. When an officer goes to SLED, usually they send stuff
2 back. It was found in my wall locker.

3 Q. So, you don't know?

4 A. I don't know.

5 Q. So, you don't have any evidentiary about the log as to
6 how it would have gotten to your locker?

7 A. As far as how it got into the locker? No, ma'am.

8 Q. You don't. Now, as the evidence custodian, you are the
9 only person that handles the evidence, right?

10 A. Yes, ma'am.

11 Q. But evidence got into your locker, and you don't know
12 how?

13 A. It was put in there by somebody.

14 Q. By somebody. Okay. Anyone in your department has
15 access to this locker?

16 A. To the outside wall locker?

17 Q. To the locker.

18 A. Oh, nobody has any access to the evidence room.

19 Q. But somebody put this evidence into the room?

20 A. Yes, ma'am. That is where they put the evidence at.

21 Q. Now, do you recall getting some items as well from the
22 pathologist?

23 A. (No response.)

24 Q. You don't recall Officer Young brining you a packet from
25 the pathologist once the autopsy was done?

KEL WILLIAM HALL - CROSS EXAMINATION

181

1 A. No, ma'am.

2 Q. So, if that information is in writing, in a report, then
3 that information is incorrect?

4 A. I don't know.

5 Q. But to your knowledge as the evidence custodian you
6 never received any additional evidence?

7 A. Not from the pathologist.

8 Q. Now, when you are doing your evidence log, is there a
9 book that you log all the information in?

10 A. Yes, ma'am.

11 Q. Did you bring that book with you to court today?

12 A. I brought the paper that it was logged in.

13 Q. May I see it?

14 (PAUSE.)

15 Q. And will this entire log --- this entire piece of paper
16 refer to this case?

17 A. No, ma'am.

18 Q. There are multiple things on this log; correct?

19 A. Yes, ma'am.

20 Q. And the importance of having just one person control the
21 evidence is to decrease contamination?

22 A. Yes, ma'am.

23 Q. Or to keep from missing any evidence; correct?

24 A. Yes, ma'am.

25 MS. SELLERS: That's all I have.

KEL WILLIAM HALL - REDIRECT EXAMINATION

182

1 THE COURT: And is there redirect?

2 MS. JOHNSON-LEE: Just one, based on the question
3 about the lockers.

4 REDIRECT EXAMINATION BY MS. JOHNSON-LEE

5 Q. How many lockers are available for law enforcement
6 officers to actually put evidence in?

7 A. There are four lockers available at any given time.

8 Q. And when an officer puts evidence in there, does it lock
9 such that that officer and no other officer can reopen
10 that locker?

11 A. Yes, ma'am. It has a locking mechanism on it.

12 Q. So, once it is locked, only you can access it?

13 A. Yes, ma'am.

14 MS. JOHNSON-LEE: Thank you. No further questions.

15 THE COURT: Sir, you may step down. You are free to
16 leave if you wish.

17 OFFICER HALL: Thank you, sir.

18 THE COURT: Please call your next witness.

19 MS. JOHNSON-LEE: Terrance Bridges.

20 THE COURT: Please come forward and take the oath of a
21 witness.

22 WHEREUPON, TERRANCE BRIDGES

23 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

24 MR. BRIDGES: I do.

25 THE COURT: Please state your full name for the

TERRANCE BRIDGES - DIRECT EXAMINATION

183

1 record, please.

2 MR. BRIDGES: My name is Terrance Bridges.

3 DIRECT EXAMINATION BY MS. JOHNSON-LEE

4 Q. Terrance, do you know Charles Hayes?

5 A. Yes ma'am.

6 Q. How did you know him?

7 A. He was my Uncle.

8 Q. And what was his nickname?

9 A. Snook.

10 Q. Did everybody call him Snook?

11 A. Yes, ma'am.

12 Q. Do you know Kim Brown?

13 A. Yes, ma'am.

14 Q. His fiancé, my Aunt.

15 Q. Did your Uncle and Aunt have a child together?

16 A. Yes, ma'am.

17 Q. And who is that child?

18 A. Trichemus. (Phonetic)

19 Q. How old is Trichemus?

20 A. One year old.

21 Q. One year old. Were you at your Aunt and Uncle's
22 apartment on June 10th of last year?

23 A. Yes, ma'am.

24 Q. What time did you go over there?

25 A. I believe it was around six.

TERRANCE BRIDGES - DIRECT EXAMINATION

184

1 Q. How did you get there?

2 A. My Mom brought me there.

3 Q. And who is your Mom?

4 A. April Hayes.

5 Q. And your Mom is related to Mr. Hayes, how?

6 A. That is her brother.

7 Q. Brother. Why did your Mom drop you off there?

8 A. I wanted to go spend some time with him.

9 Q. When you got there, what was your Uncle and Aunt doing?

10 A. We were just all playing with the little baby.

11 Q. What was Trichemus doing?

12 A. He was riding around on his new tricycle.

13 Q. A new tricycle?

14 A. Yes, ma'am.

15 Q. Were y'all outside?

16 A. Yes, ma'am.

17 Q. Describe what everybody was doing outside, where they
18 were located?

19 A. Well, my Uncle was located --- he was sitting beside my
20 Aunt. They were both sitting in chairs. And I was up
21 chasing my little cousin around. And you know, we were
22 just all talking about going to the track and stuff like
23 that.

24 Q. Was there ever an occasion when your little cousin would
25 try to get away from y'all?

TERRANCE BRIDGES - DIRECT EXAMINATION

185

1 A. Yeah, he kept running up on the porch, and up the stairs
2 and stuff.

3 Q. Who would get him and bring him back?

4 A. I would.

5 Q. Did you enjoy playing with your cousin?

6 A. Yes, ma'am.

7 Q. Do you know who Clarence Kendell Cook is?

8 A. No, not before then.

9 Q. Not before then.

10 A. Hu'huh.

11 Q. When was the first time you saw Clarence Cook that you
12 can recall?

13 A. The first time I seen him, I think he was riding in from
14 the beach and they had waived at each other.

15 Q. Okay. About how long was that before June 10th?

16 A. About three weeks.

17 Q. Three weeks before?

18 A. Uh'huh.

19 Q. Would you recognize him today?

20 A. Yes, ma'am.

21 Q. Do you see him here in the courtroom?

22 A. Yes, ma'am.

23 Q. Where is he at?

24 A. Right there.

25 MS. JOHNSON-LEE: Let the record reflect that he is

TERRANCE BRIDGES - DIRECT EXAMINATION

186

1 pointing in the direction of Clarence Kendell Cook at the
2 defense table.

3 Q. How old were you on June 10th of last year?

4 A. Seventeen.

5 Q. When is your birthday?

6 A. [REDACTED].

7 Q. So, you were about six months into your seventeenth
8 birthday?

9 A. Yes, ma'am.

10 Q. Was there anybody else at the apartment beside you, your
11 Aunt and Uncle, and your baby cousin?

12 A. No, ma'am.

13 Q. How long were you there before the incident happened
14 that brings us here today?

15 A. Approximately ten to fifteen minutes.

16 Q. Can you please describe what happened?

17 A. We was standing out there and he was calling my Aunt, my
18 other Aunt Jada, and they was talking about going to the
19 track together. From that point, Clarence had come down
20 the stairs. I believe he had a small bag of trash or
21 something. Words were said. At this point I'm really
22 not sure from the point of what they said first. But,
23 all I know is my Uncle had got up. He had walked to the
24 sidewalk. Clarence then came towards my Uncle. And
25 from there on they were just talking real softly. From

TERRANCE BRIDGES - DIRECT EXAMINATION

187

1 that point you could hardly tell it was an argument.

2 And then he stepped back, he pulled out a gun and shot
3 him. My Uncle had fell, and that is when he walked over
4 him, and he did some kind of gesture, and he shot him
5 again. And then he ran off.

6 Q. What did you do after the first shot?

7 A. I ran. I ran to go get my little cousin, because he was
8 also walking toward the front door.

9 Q. So, you grabbed the baby?

10 A. Yes, ma'am. I grabbed him the first time.

11 Q. You wanted to make sure the baby was safe?

12 A. Yes, ma'am.

13 Q. Did you actually see that second shot?

14 A. Yes, ma'am.

15 Q. Where were you standing when that second shot happened?

16 A. Inside the house in the doorway.

17 Q. In the doorway?

18 A. Yes, ma'am.

19 Q. Did you ever see a gun on your Uncle?

20 A. No, ma'am.

21 Q. Did you see anything in your Uncle's hands?

22 A. Yes. He had a little black cell phone, and he had his
23 house phone.

24 Q. A phone in each hand, or in his pocket, or where?

25 A. He had both in his hand. He had his cell phone in his

TERRANCE BRIDGES - DIRECT EXAMINATION

188

1 right hand, and I think his house phone in his left
2 hand.

3 Q. Did you write a statement for the police?

4 A. Yes, ma'am.

5 Q. Let me show you what has been marked for identification
6 as State's Exhibit Number 34. Do you recognize that?

7 A. Yes, ma'am.

8 Q. Did you write that statement?

9 A. Yes, ma'am.

10 Q. And is that your signature on that statement?

11 A. Yes, ma'am.

12 **MS. JOHNSON-LEE:** Your Honor, I would move to admit
13 into evidence his statement.

14 **THE COURT:** Is there any objection to State's 34?

15 **MS. BROWN:** No, sir, Your Honor.

16 **THE COURT:** All right. Without objection. Let's take
17 a moment and let our court reporter mark that to show that it
18 is in evidence.

19 **WHEREUPON, STATE'S EXHIBIT**

20 **NUMBER 34 WAS ADMITTED INTO**

21 **EVIDENCE WITHOUT OBJECTION.**

22 **THE COURT:** Further questions?

23 Q. Can you just read what your statement was for the jury?

24 A. I was on the porch with my Uncle, Charles Hayes. We
25 were playing with my little baby cousin when Kendell

TERRANCE BRIDGES - DIRECT EXAMINATION

189

1 came downstairs. My Uncle got up and he spoke to him.
2 The man pulled out a gun and shot him in the chest, and
3 walked over him and shot him in the face, and then ran
4 on around the corner.

5 Q. Thank you. And did you actually see Kendell run off?

6 A. Yes, ma'am.

7 Q. Did he still have the gun in his hand when he ran?

8 A. Yes, ma'am.

9 Q. What did Kim do after your Uncle was shot?

10 A. She got over him to try to cover the holes up that was
11 leaking.

12 Q. Where the blood was at?

13 THE COURT: Sir, would you pull a little closer to
14 that microphone so we can all hear you.

15 MR. BRIDGES: What was the question?

16 Q. You said Kim was trying to stop the blood?

17 A. Yes, ma'am.

18 Q. At some point did somebody get a pink blanket to put
19 over your Uncle?

20 A. Yes, that was me.

21 Q. Did you give it to Kim to put over him?

22 A. Yes, ma'am.

23 Q. Why did you do that?

24 A. We didn't --- the people in the --- We didn't want
25 people to pull out their camera phones and stuff like

TERRANCE BRIDGES - DIRECT EXAMINATION

190

1 that. You know how people is out there. And we just
2 didn't want him out there showing like that.

3 Q. Did anybody run over to help out?

4 A. Yes. I believe it was Kim's friend.

5 Q. Kim's friend came over? Was that a male or a female?

6 A. A female.

7 Q. And what did she do?

8 A. After the second time, I had to sit down and that is
9 when she had grabbed the baby the second time, because
10 the baby was walking toward his Daddy after he had been
11 shot and she grabbed him. And she grabbed the phone and
12 called 911.

13 Q. Did you ever see Kim take anything off of your Uncle?

14 A. No, ma'am.

15 Q. Do you remember how long it was before law enforcement
16 got there?

17 A. I believe it was five minutes, five to six minutes.

18 Q. Did it seem pretty quick?

19 A. Were you in a state of shock at that time?

20 A. Yes.

21 **MS. JOHNSON-LEE:** That's all the questions that I
22 have. Answer any questions that Ms. Brown has.

23 **THE COURT:** Cross examination.

24 **MS. BROWN:** Thank you, Your Honor.

25 **CROSS EXAMINATION BY MS. BROWN**

TERRANCE BRIDGES - CROSS EXAMINATION

191

1 Q. Good morning, Mr. Bridges.

2 A. Good morning.

3 Q. Mr. Bridges, you indicated that on June 10th, you went
4 to visit your Uncle that day; is that correct?

5 A. Yes, ma'am.

6 Q. And how often did you visit Mr. Hayes?

7 A. Very often.

8 Q. Very often. And, in the course of maybe three months
9 prior to the shooting, how often would you say you have
10 gone to Marlboro Court?

11 A. Almost every day.

12 Q. Every day. And every day you went over. You indicated
13 in your testimony that you had seen Clarence three weeks
14 prior to the shooting?

15 A. Yes, ma'am.

16 Q. That is how you knew him?

17 A. Yes, ma'am. That is when I first seen him.

18 Q. Did you see him when you went there every day? Did you
19 have the opportunity to see Clarence?

20 A. No.

21 Q. You didn't see Clarence?

22 A. Hu'huh.

23 Q. Now, at the time of the shooting, I am going to show you
24 an exhibit or a picture, can you indicate to me where
25 you were standing? This is Defendant Exhibit Number 1,

TERRANCE BRIDGES - CROSS EXAMINATION

192

1 Mr. Bridges.

2 A. Okay.

3 Q. Can you indicate to me where you were standing at the
4 time of the shooting?

5 A. Right there.

6 Q. And if you were right there, what about Ms. Brown?

7 A. She was sitting --- she was sitting right here.

8 Q. And what about Mr. Hayes, where was he standing?

9 A. He was standing right here, and walked out to right
10 there.

11 Q. He walked out to about the pavement area?

12 A. Yes, ma'am.

13 Q. And what about Mr. Cook, where was he standing?

14 A. Right here.

15 Q. Mr. Cook was center. So, if Mr. Cook was standing about
16 here, you clearly saw Clarence?

17 A. Yes.

18 Q. And, that means he would have been standing directly in
19 front of Ms. Brown, is that correct?

20 A. No, not Ms. Brown.

21 Q. Where was Ms. Brown standing at the time of the
22 shooting?

23 A. She wasn't standing, she was sitting.

24 Q. Where was she sitting?

25 A. She was sitting in a chair.

TERRANCE BRIDGES - CROSS EXAMINATION

193

1 Q. But there is nothing blocking her view of Mr. Cook.
2 Because, according to you, Mr. Cook is standing about
3 here?

4 A. Yes.

5 Q. So, Ms. Brown could see Mr. Cook?

6 A. Yes.

7 Q. Now, let's talk about when Mr. Hayes was sitting prior
8 to Clarence coming downstairs?

9 A. Yes.

10 Q. How long were you guys sitting out there before Clarence
11 came down the steps?

12 A. I would say about thirteen minutes.

13 Q. Thirteen minutes?

14 A. Yes.

15 Q. And you arrived at six o'clock?

16 A. Yes.

17 Q. And the shooting took place about six o'clock?

18 A. Yes. Somewhere around there. I'm not sure.

19 Q. So, you got there about thirteen minutes before. What
20 were you doing in that thirteen minute time frame?

21 A. I was just playing with my little cousin, and I just
22 wanted to make sure he didn't ride off.

23 Q. Were you aware of any text messaging that took place
24 between Mr. Hayes and Clarence?

25 A. No, ma'am.

TERRANCE BRIDGES - CROSS EXAMINATION

194

1 Q. You are not. How did you know that Mr. Hayes wanted to
2 talk to Clarence?

3 A. I didn't.

4 Q. You didn't know that?

5 A. Uh'huh.

6 Q. Did you say that on June 10th, in your interview?

7 A. Uh'huh.

8 Q. Do you recall being interviewed on June 10th, after the
9 shooting?

10 A. Yes, ma'am.

11 Q. And at the time you were interviewed, do you recall the
12 officers that interviewed you?

13 A. No, ma'am.

14 Q. You don't know the officer's names, but clearly you were
15 interviewed; is that correct?

16 A. Yes, ma'am.

17 Q. Do you know how long the interview lasted?

18 A. No, ma'am.

19 Q. Would you say about five or ten minutes? A very quick
20 interview?

21 A. Yes, ma'am.

22 Q. Now, in that interview, and I'm just looking at a
23 transcript here of what you said. The question was
24 posed to you --- But in your own words can you explain
25 to us what transpired this evening. Your response was.

TERRANCE BRIDGES - CROSS EXAMINATION

195

1 We were outside. I had came over to his house, because
2 I wanted to spend a little time with him. Does that
3 sound correct?

4 A. Yes, ma'am.

5 Q. When I came outside he was just sitting there. He was
6 on the phone talking with his friend. Does that sound
7 correct?

8 A. Yes, ma'am.

9 Q. You know, he was playing with his son. We was all
10 playing with him, talking. And when the dude came down
11 the stairs he got up and say to him. Now, who is the
12 him that you are referring to?

13 A. He didn't get up. He sat there first. Then he said
14 something.

15 Q. So, you didn't say that. He got up and say to him?

16 A. Huh?

17 Q. Your response to the officer was. He got up and say to
18 him.

19 A. I do not recall that.

20 Q. You do not recall.

21 A. Hu'huh.

22 Q. Do you recall saying. He didn't want to argue with him
23 or nothing like that. He just went --- he walked up and
24 he said to him --- whatever they was going through, he
25 wanted them to keep his name out of his mount. Do you

TERRANCE BRIDGES - CROSS EXAMINATION

196

1 recall saying that?

2 A. Yes.

3 Q. How did you know your Uncle did not want to have a
4 conversation with Clarence?

5 A. I didn't.

6 Q. You just indicated to me that he didn't want to have a -

7 A. -- I didn't know. As far as I am concerned, I didn't
8 know they knew each other.

9 Q. You didn't know they knew each other?

10 A. Uh'huh.

11 Q. You testified a few minutes ago Clarence waived by and
12 they said hey.

13 A. Yeah, but he does that to everybody.

14 Q. Okay. So, you were not sure they were friends?

15 A. Yes.

16 Q. And, when your Uncle got up and Clarence walked down the
17 stairs, was your Uncle angry at all?

18 A. No, not really.

19 Q. He wasn't upset?

20 A. Hu'huh.

21 Q. Do you recall seeing Ms. Brown trying to stop Mr. Hayes
22 from approaching Clarence?

23 A. No, ma'am.

24 Q. You didn't see that?

25 A. Hu'huh.

TERRANCE BRIDGES - CROSS EXAMINATION

197

1 Q. Do you recall hearing her say, come back. Don't talk to
2 him right now?

3 A. No.

4 Q. You don't recall that?

5 A. No. No, I really wasn't paying attention to any of
6 that. I was just after the baby.

7 Q. You were just holding the baby?

8 A. Yeah, and stopping him from riding his tricycle off of
9 the porch.

10 Q. At what point were you paying attention, Mr. Bridges?

11 A. After I heard the first gunshot. At first I thought it
12 was a firecracker, but once I seen him fall, I realized
13 it was a gunshot.

14 Q. Now, how many steps would your Uncle have to have taken
15 to get from the chair where he was sitting to go over to
16 where Clarence was?

17 A. I would say probably three or four.

18 Q. Three or four steps from --- Do you have that picture,
19 Mr. Bridges? The chair is sitting here, and your Uncle
20 made it out here. You said he took about three or four
21 steps.

22 A. Yes.

23 Q. And Clarence had just walked down the steps. Were you
24 able to see Clarence when he was coming down the stairs?

25 A. Yes.

TERRANCE BRIDGES - CROSS EXAMINATION

198

1 Q. So, you knew it was Clarence?

2 A. No, I didn't know who it was at the time.

3 Q. You were able to see him, but you didn't know who he
4 was?

5 A. Yes.

6 Q. How did you know who he was?

7 A. I didn't. I didn't even know his name.

8 Q. You didn't know his name. So, when you placed in this
9 statement Kendell, how did you know his name was
10 Kendell? Who told you his name when you wrote the
11 statement?

12 A. Kim.

13 Q. Kim told you his name?

14 A. Yes.

15 Q. And at what point did Kim tell you his name?

16 A. After --- when she started telling everybody that
17 Kendell had shot Snook and stuff like that. She was
18 very upset. She somehow knew his name.

19 Q. So, you just wrote down what Kim told you to write?

20 A. No. I wrote down the name of the person that Kim knew
21 that shot my Uncle.

22 Q. So, you had never had a conversation with Clarence
23 before that day?

24 A. No, ma'am.

25 Q. You didn't know him by Clarence before that day?

TERRANCE BRIDGES - CROSS EXAMINATION

199

1 A. No.

2 Q. And you only knew him by Kendell, because Kim told you;
3 is that correct?

4 A. No. Kim said --- Kim says his name. Kim knew it. So
5 that was his name. To me it was.

6 Q. Did you observe Mr. Hayes smoking any marijuana prior to
7 the shooting?

8 A. No, ma'am.

9 Q. Were you smoking any marijuana before the shooting?

10 A. No, ma'am.

11 Q. And you are not aware of any of the text messaging?

12 A. No, ma'am.

13 Q. Was there ever a conversation between Clarence --- I'm
14 sorry, let me rephrase that. Was there ever a
15 conversation that Mr. Hayes --- did Mr. Hayes ever say
16 anything about Clarence before the shooting?

17 A. No. No, not that I know. Not that I know of.

18 Q. He never spoke to you when you guys were just hanging
19 out together. The fifteen or twenty minutes that you
20 all were hanging out downstairs, he never mentioned
21 Clarence's name?

22 A. No. That's how I really didn't know his name at first.
23 When I got down there we were suppose to go get my other
24 Aunt and Uncle, and we were suppose to be headed to the
25 track. He was in a really good mood.

TERRANCE BRIDGES - CROSS EXAMINATION

200

1 Q. So, he never mentioned his name, but you stated that
2 your Uncle just wanted --- He just wanted to have a
3 conversation. He didn't want to argue.

4 A. Well, at the point when he actually said something to
5 him, yeah.

6 Q. So, who said something first?

7 A. I believe it was my Uncle.

8 Q. Your Uncle got up and he said something first?

9 A. He did not get up. He said, man keep my name out your
10 mouth.

11 Q. So, you heard your Uncle say that?

12 A. Yes.

13 Q. Was he angry when he said that?

14 A. No, he was just telling him that. Whatever squabble he
15 was having, he just wanted to be out of it. Because, he
16 really had nothing to do with it.

17 Q. And when he said, man, keep my name out of your mouth,
18 was he sitting down at that time?

19 A. Yes.

20 Q. What made him get up?

21 A. I think when Kendell had came around the stairs and
22 started coming over there to where we was.

23 Q. Clarence actually walked around the stairs where you
24 guys were?

25 A. Yes. It's probably the only way he could get there.

TERRANCE BRIDGES - CROSS EXAMINATION

201

1 Q. And he came directly toward you guys?

2 A. Not directly towards us, but down the sidewalk heading
3 toward our apartment. Well, their apartment.

4 Q. Let's talk about where Clarence walked towards. He came
5 around, he came down the steps. Show us how he walked
6 around?

7 A. He came down the stairs -

8 **THE COURT:** The jury is not able to see that.

9 **MS. BROWN:** I will stand here. I apologize, Your
10 Honor.

11 A. He came down the stairs and then he proceeded to walk
12 right here. Yeah, approximately right there, I believe.

13 Q. Is that walking around towards you guys?

14 A. Yes.

15 Q. Oh, I thought you meant that he walked --- he came down
16 the steps, and he came behind the stairs closer to where
17 you guys were.

18 A. No. What I meant -- No. What I meant is, when he
19 walked down the stairs, he walked over here to where my
20 Uncle was at. And my Uncle, when he started walking
21 over here, when he started walking toward here, that is
22 when my uncle got up.

23 Q. Were you able to see whether or not Clarence made any
24 motions towards your Uncle? Did Clarence say anything
25 to your uncle when he came down the stairs first?

TERRANCE BRIDGES - CROSS EXAMINATION

202

1 A. I wouldn't know.

2 Q. Isn't it true that your Uncle said something to Clarence
3 first?

4 A. Yes. And that was, keep my name out your mouth.

5 Q. At some point did you see your Uncle place his hands in
6 his pockets?

7 A. No, ma'am.

8 Q. At some point did you see where Clarence was backing
9 away from your Uncle?

10 A. Only when he took the first shot.

11 Q. He was backing away?

12 A. Nah, he took one step back to take the shot.

13 Q. Did he say anything at all? Did you hear any words come
14 out of Clarence's mouth when he was backing away?

15 A. No.

16 Q. Now, when law enforcement arrived on the scene, where
17 were you?

18 A. I believe I was in the house --- No, I was sitting in
19 the chair.

20 Q. You were sitting in a chair?

21 A. Yes.

22 Q. And did you give a statement to law enforcement when
23 they arrived?

24 A. I think so. Yes. Yes, I did. Yeah.

25 Q. You gave a statement. Do you remember what that

TERRANCE BRIDGES - CROSS EXAMINATION

203

1 statement was?

2 A. Something similar to what I wrote here. One of the
3 officers like, after we had walked around and we had
4 gone out to the parking lot, one of them had spoke to me
5 --- asked me about what had happened, and I told him.

6 Q. You told him exactly what you are telling us today?

7 A. I'm not pretty sure about that. That was a long time
8 ago.

9 Q. Did you mention Clarence name to the officer on this
10 evening?

11 A. I think so.

12 Q. You think so?

13 A. Yes.

14 Q. Did you mention that the guys were having a conversation
15 on the scene?

16 A. Yes. I believe so.

17 Q. Did you mention that your Uncle said something first?

18 A. I don't --- I don't recall. I'm not sure. I think I
19 did.

20 Q. So, you were stable enough to at least answer some
21 questions, weren't you?

22 A. Yes.

23 Q. Let's talk about this blanket that you placed --- that
24 you gave to Kim. Where did you get that blanket from?

25 A. From I think Kim's Aunt had handed me the blanket,

TERRANCE BRIDGES - CROSS EXAMINATION

204

1 because I really --- I was inside the house, and I was
2 looking for one, and she just picked up one and handed
3 it to me, and I went outside and handed it to Kim, and
4 she put it over him.

5 Q. So, you didn't actually find the blanket in the house,
6 someone gave it to you?

7 A. Yes. They just picked it up and gave it to me, and I
8 just took it out there to Kim.

9 Q. And Ms. Brown asked you to get the blanket? She didn't
10 go get the blanket herself?

11 A. No. She asked me to do it.

12 Q. Did you see Mr. Hayes with a gun that day?

13 A. No, I didn't see him --- I didn't see him with the gun
14 until he pulled it out.

15 Q. Mr. Hayes pulled out a gun?

16 A. I mean, I'm sorry. Dang. No.

17 Q. Isn't it true that Mr. Hayes did in fact reach for a
18 gun?

19 A. No, he didn't have a gun ordinarily.

20 Q. You weren't there.

21 A. He didn't have a gun.

22 Q. Mr. Hayes did not have a gun, and you are absolutely
23 positive of that.

24 A. Yes. I am a hundred percent sure.

25 Q. And that is because you had been with him the whole day?

TERRANCE BRIDGES - CROSS EXAMINATION

205

1 A. Yes. No, not the whole day, I'm sorry. He actually --
2 actually, naw. The only weapon he would have had would
3 be the one he had a long time ago, and that is the one
4 he gave me, and that is the one I have.

5 Q. He didn't have that weapon that day?

6 A. Hu'huh.

7 Q. You are sure?

8 A. Yes.

9 Q. So, he gave you a weapon before, but not that day?

10 A. Yes.

11 Q. What kind of weapon was that?

12 A. I don't even recall. It was a long time ago.

13 Q. Isn't it true that Mr. Hayes --- Did you often see Mr.
14 Hayes with a gun?

15 A. No, I never seen him with a gun. Hu'huh.

16 Q. You have never seen him with a gun?

17 A. Hu'huh.

18 Q. Except the gun he gave you.

19 A. Yes. I really hadn't ever seen him hold a gun. He just
20 gave me one that was in a box. I really didn't know
21 what was in the box, but the told me to put that box
22 under the shed and never look in it, or something like
23 that.

24 Q. Okay. Let's talk about what Mr. Hayes did for a living.
25 How did Mr. Hayes earn his money?

TERRANCE BRIDGES - CROSS EXAMINATION

206

1 A. He was --- I'm really not sure.

2 Q. You are not sure how he earned his money?

3 A. Hu'huh. He was just a businessman.

4 Q. What is a businessman? Explain that to the court?

5 A. I guess, you know, an entrepreneur. He just sold stuff.

6 Q. What kind of stuff did he sell?

7 A. I'm not sure. I hadn't been with my Uncle for about
8 three years. I'm not sure what kind of business he was
9 getting into or not.

10 Q. But you were with him just about every day three months
11 prior to this shooting?

12 A. Yes.

13 Q. Did you ever see him go to any job?

14 A. No. Every time I was with him we would either be
15 chilling at his house, or we would take a trip and watch
16 the cars on the drag strip at the track.

17 Q So, you are not sure how he earned his money, but
18 you know he was a businessman; is that correct?

19 A. Yes. The last time -- The last business I am sure he
20 was doing, he was selling furniture out of High Point.
21 But since he moved from there, I really don't know.

22 Q. How long ago was he selling furniture?

23 A. About three, four, five years; I'm not sure.

24 Q. Five years ago. I am talking about more recent. What
25 was he selling to people?

TERRANCE BRIDGES - REDIRECT EXAMINATION

207

1 A. I'm not sure.

2 Q. You are not sure.

3 MS. BROWN: Beg court's indulgence.

4 (PAUSE.)

5 Q. That gun that you mentioned, do you know where that gun
6 is that your Uncle asked you to put away for him? Do
7 you know where it is now?

8 A. No.

9 MS. BROWN: Thank you. No further questions, Your
10 Honor.

11 THE COURT: Is there redirect?

12 MS. JOHNSON-LEE: Just briefly.

13 REDIRECT EXAMINATION BY MS. JOHNSON-LEE

14 Q. If someone was coming down those steps to go to the
15 trash can. If someone is coming down these steps to go
16 to the trash can, would they have turned to come this
17 way toward the porch, or would they turn to go back off
18 to the right?

19 A. Yeah. They would have came down here, and they would
20 have continued to keep going toward the trash can.

21 Q. The trash can was off to the right?

22 A. Yes.

23 MS. JOHNSON-LEE: Thank you. No further questions.

24 THE COURT: All right. Sir, you may step down. You
25 are free to remain in the courtroom if you wish now that you

RICHARD WAYNE LEWIS - DIRECT EXAMINATION

208

1 have testified, or you are free to leave.

2 MR. BRIDGES: Thank you.

3 THE COURT: Thank you. Ladies and gentlemen, let's
4 take our morning break at this time. We have been in here
5 for a hour and twenty minutes or a little more. And if you
6 wish to go outside to take a break we will give you that
7 opportunity. And we will be in recess approximately fifteen
8 to twenty minutes, subject to your return.

9 (Whereupon, the jury exits the courtroom at
10 10:34 a.m.)

11 THE COURT: All right. We are in recess approximately
12 fifteen to twenty minutes, subject to the jury's return.

13 (Whereupon, a recess was taken from 10:35 a.m.
14 until 10:50 a.m.)

15 THE COURT: All right. Welcome back, ladies and
16 gentlemen. I trust you had a nice break. And we are in the
17 state's case, so please call your next witness.

18 MS. JOHNSON-LEE: Your Honor, we call Richard Lewis.

19 THE COURT: Please come forward and take the oath of a
20 witness.

21 WHEREUPON, RICHARD WAYNE LEWIS

22 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

23 MR. LEWIS: Yes, ma'am

24 THE COURT: And, sir, if you would, please state your
25 full name for the record.

RICHARD WAYNE LEWIS - DIRECT EXAMINATION

209

1 MR. LEWIS: My name is Richard Wayne Lewis.

2 DIRECT EXAMINATION BY MS. JOHNSON-LEE

3 Q. Mr. Lewis, where are you employed?

4 A. Marlboro Rescue.

5 Q. And how long have you been with Marlboro Rescue?

6 A. I have been there six years.

7 Q. What is your job duties there?

8 A. I am a paramedic on a twenty-four-hour emergency
9 vehicle.

10 Q. Is that your full time job?

11 A. Yes, ma'am.

12 Q. Were you employed in that particular position here in
13 Marlboro County on June 10th of last year?

14 A. Yes, ma'am.

15 Q. Were you working on June 10th of last year?

16 A. Yes, ma'am.

17 Q. Did you receive a call around six o'clock p.m. that day?

18 A. Yes, ma'am, I did.

19 Q. Was that to Marlboro Court Apartments?

20 A. Yes, ma'am, that is correct.

21 Q. Describe the scene when you arrived at Marlboro Court
22 Apartments?

23 A. When we arrived on the scene, I had a partner with me.
24 I observed a male subject lying on the ground, face up,
25 approximately twenty to feet from the doorway of a

RICHARD WAYNE LEWIS - DIRECT EXAMINATION

210

1 downstairs apartment. We went out and proceeded over to
2 him. My partner brought me a bag, a jump bag, in case,
3 you know, there was something, you know, we could do. I
4 observed the patient, and began to check him out once we
5 got up on the scene there.

6 Q. Were you able to perform any type of emergency actions
7 on this individual?

8 A. No, ma'am. Upon checking him, there was no respiratory
9 effort, there was no pulse, and upon finding that I
10 asked my partner to go back and get me a cardiac
11 monitor, so I could put him on the monitor and check him
12 out further. Some of the things I would check, of
13 course there is respirations, which were none. And no
14 effort to make any --- there was no pulse at his carotid
15 pulse, and his pupils were already fixed and dilated.
16 Approximately a seven on the scale of people dilation.
17 They were fixed, dilated, and unreactive, which would be
18 an indication that the patient was mortally wounded.

19 Q. And did you see obvious injuries?

20 A. Yes. I saw what appeared to be a small gunshot wound to
21 the front of his forehead with an exit to the rear,
22 which I did not check, because I did not want to move
23 him. But I did feel with my gloves to indicate that
24 there was an exit to the rear, and there was a large
25 amount of blood coming from that area.

RICHARD WAYNE LEWIS - DIRECT EXAMINATION

211

1 Q. Did you, yourself make an effort to ascertain any other
2 gunshot wounds to this individual?

3 A. No, ma'am, I did not. Actually, when I saw that wound,
4 and it appeared to be fatal, we try not to move the
5 subject any more, so that we don't in any way mess with
6 the police investigation.

7 Q. Did you know the identity of the deceased victim?

8 A. No, ma'am.

9 MS. JOHNSON-LEE: Thank you. Please answer any
10 questions Ms. Brown has.

11 MR. LEWIS: Certainly.

12 THE COURT: Cross examination.

13 MS. SELLERS: Thank you..

14 CROSS EXAMINATION BY MS. SELLERS

15 Q. Good afternoon. Good morning, I'm sorry. Just one
16 brief question. Could you describe the scene when you
17 arrived? Were there multiple officers around the scene?

18 A. Yes, ma'am. There were a good bit of law enforcement
19 officers. They were taping off the scene as I got
20 there. And there was an individual from that downstairs
21 apartment, a young lady, who was out by him at that
22 time. As a matter of fact, I had to kind of ask her if
23 I could get there, you know. She was very upset and
24 distraught. And, she moved back so I could check him,
25 you know.

RICHARD WAYNE LEWIS - DIRECT EXAMINATION

212

1 Q. Did you have an opportunity to observe the victim's
2 pockets?

3 A. No, ma'am. I did not.

4 Q. And did you also see many witnesses standing around?
5 Were there many people just standing around?

6 A. There were a good many people, yes, ma'am, in the area
7 there. You know, a lot of people would come out. I
8 don't know who may have seen anything or who didn't.
9 But by the time we got there, it was approximately,
10 maybe fifteen minutes from the time of the call coming
11 in and everything. It was a right large crowd gathered.
12 Yes, ma'am.

13 Q. And did you see people walking around in the area?

14 A. No, ma'am. Not a lot of people very close. Law
15 enforcement was putting up their yellow tape and stuff.
16 Other than that one lady, the one young lady, which I am
17 not sure who she was, I know she apparently knew the
18 subject. She was very distraught. But other than her,
19 I really didn't see anybody in the immediate area. No,
20 ma'am.

21 MS. SELLERS: Thank you. No further questions.

22 MR. LEWIS: Thank you.

23 THE COURT: And is there cross examination?

24 MS. JOHNSON-LEE: No, Your Honor. We would ask that
25 the witness be excused.

DASHAWN BRAND - DIRECT EXAMINATION

213

1 **THE COURT:** All right. Sir, you are free to leave,
2 sir.

3 **MR. LEWIS:** Thank you.

4 **MS. JOHNSON-LEE:** DeShawn Brand.

5 **THE COURT:** Please come forward and take the oath of a
6 witness.

7 **MS. JOHNSON-LEE:** May we approach, Your Honor?

8 **THE COURT:** You may. Go ahead and place the witness
9 under oath, please.

10 **(PAUSE.)**

11 **THE COURT:** All right. Please proceed.

12 **WHEREUPON, DASHAWN BRAND**

13 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

14 **MR. BRAND:** Yes.

15 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

16 Q. State your name for the record.

17 A. DaShawn Brand.

18 Q. And spell your first name, DeShawn.

19 A. D-A-S-H-A-W-N.

20 Q. And how old are you?

21 A. Seventeen.

22 Q. And when is your birthday?

23 A. [REDACTED].

24 Q. So, you have just turned seventeen this past September?

25 A. Yes, ma'am.

DASHAWN BRAND - DIRECT EXAMINATION

214

1 Q. So, you were sixteen on June 10th of last year?

2 A. Yes, ma'am.

3 Q. Do you live in Bennettsville?

4 A. Yes, ma'am.

5 Q. Where were you living in Bennettsville on June of last
6 year?

7 A. Marlboro Court.

8 Q. Did you have an occasion to go to Hill Crest Apartments
9 on June 10th of last year?

10 A. Yes, ma'am.

11 Q. Is that right across the road, or across the highway
12 from Marlboro Court Apartments?

13 A. Yes, ma'am.

14 Q. What were you doing at Hill Crest Apartments?

15 A. Visiting my God-mother house.

16 Q. Who is your God-mother?

17 A. Niki, I think, her last name Hughes.

18 Q. Were you visiting with any young folks that day, other
19 teenagers?

20 A. Yes, ma'am, my cousins.

21 Q. Who are your cousins?

22 A. Tanika Thomas and Marques Short. (Phonetic).

23 Q. And about what time were you over there?

24 A. I can't remember.

25 Q. Do you recall anything out of the ordinary happening

DASHAWN BRAND - DIRECT EXAMINATION

215

1 around six o'clock?

2 A. I can't remember.

3 Q. Did anything out of the ordinary happen that day?

4 A. Gunshots.

5 Q. Gunshots. Where were you at when you heard gunshots?

6 A. Staying with a friend at Hill Crest.

7 Q. At the Hill Crest Apartments?

8 A. Yes, ma'am.

9 Q. From what direction did you hear the gunshots coming
10 from?

11 A. Marlboro Court.

12 Q. Did you see anybody coming from Marlboro County after
13 the gunshots?

14 A. No, ma'am.

15 Q. Do you know who Clarence Kendell Cook is?

16 A. Yes, ma'am.

17 Q. How long have you know Clarence Kendell Cook?

18 A. About a year.

19 Q. Did you see Clarence Kendell Cook anytime after those
20 gunshots?

21 A. Yes, ma'am.

22 Q. Where did you see him at?

23 A. Past the Hill Crest Apartments.

24 Q. Okay. Was he in a vehicle?

25 A. No, ma'am.

DASHAWN BRAND - DIRECT EXAMINATION

216

1 Q. Was he on foot?

2 A. Yes, ma'am.

3 Q. Was he walking?

4 A. No, ma'am.

5 Q. Was he running?

6 A. Yes, ma'am.

7 Q. Did he have anything in his hands?

8 MS. BROWN: Objection, Your Honor, leading.

9 THE COURT: I am going to sustain that. Counsel, you
10 can't testify for your witness by asking him leading
11 questions.

12 Let's talk to the jury about that. When you have your
13 own witness, you call your own witness on the stand, you
14 can't testify for that witness by asking what we call a
15 leading question. And a leading question for example is, a
16 question that contains the answer. So, if you say, if this
17 were a car wreck, and you said, was the car blue, and you had
18 your own witness on the stand, that's inappropriate.
19 Because, inside of that question is the answer to the
20 question. The appropriate thing to say is, what color was
21 the car. Now, on cross examination you can lead a witness to
22 see if they hold to what they testified to on direct.

23 Counsel, don't testify for your witness. Don't lead
24 him. And please rephrase. Let's go back and start again to
25 your last question. Rephrase it, and let's go forward.

DASHAWN BRAND - DIRECT EXAMINATION

217

1 Q. DaShawn, tell the jury what happened that night after
2 you heard gunshots?

3 A. After it happened?

4 Q. Uh'huh.

5 A. When I walked up on the body?

6 Q. No, before then, from the time you heard the gunshots
7 onward. Just tell the jury what you saw and what you
8 heard.

9 A. I know I heard about three shots. Then I heard people
10 screaming. Then when I ain't heard people screaming, I
11 ran over there. When I ran over there I saw him --- I
12 saw Snook laying on the ground.

13 Q. Okay. Let's back up. You did say you saw Clarence
14 Cook?

15 A. Yes, ma'am.

16 Q. Tell the jury what you told the investigator about that?

17 A. Oh, when I was standing in front of Hill Crest, he had
18 ran past us.

19 Q. Okay. And did anything happen as he ran past?

20 A. He was just running fast. He was just running real
21 fast.

22 Q. Okay. And what else did you tell the investigator?

23 A. I had ran over there to Marlboro Court when I had heard
24 screaming.

25 Q. Did you tell the investigator anything about Clarence

DASHAWN BRAND - DIRECT EXAMINATION

218

1 saying anything?

2 A. Oh, yes, ma'am.

3 Q. What did you say?

4 A. I mean, can I say that word in here?

5 Q. Yes, please be truthful.

6 A. He said, "I killed that pussy ass nigger."

7 Q. You heard that from Clarence Kendell Cook's mouth?

8 A. Yes, ma'am.

9 Q. Where was he at when you heard him say that?

10 A. Running past us.

11 Q. Did you ever see a gun that evening?

12 A. No, ma'am. I couldn't remember.

13 Q. Okay. You said you ran over to Marlboro Court
14 Apartments?

15 A. Yes, ma'am.

16 Q. Was anybody with you?

17 A. Yes, ma'am.

18 Q. Who was with you?

19 A. My cousin Tanika Thomas and Marques Short. (Phonetic)

20 Q. What did you see when you got to the Marlboro Court
21 Apartments?

22 A. A body lying down on the ground.

23 Q. Did you know who it was?

24 A. Yes, ma'am.

25 Q. Who was it?

DASHAWN BRAND - DIRECT EXAMINATION

219

- 1 A. Snook.
- 2 Q. Did you see anyone else around the body?
- 3 A. Yes.
- 4 Q. Who?
- 5 A. Kim.
- 6 Q. What was happening?
- 7 A. She was holding his head.
- 8 Q. Did you see anybody else near the body?
- 9 A. No, ma'am.
- 10 Q. Who actually got over to Marlboro Court first, you,
- 11 Tanika, or Marques?
- 12 A. Me.
- 13 Q. Did you ever see Kim Brown take anything off of Snook?
- 14 A. No, ma'am.
- 15 Q. Did you see a gun out there at Marlboro Court?
- 16 A. No, ma'am.
- 17 Q. Were you there when law enforcement got there?
- 18 A. I had walked off after they got there.
- 19 Q. Did you ever see a police officer?
- 20 A. Yes, ma'am.
- 21 Q. Who did you see?
- 22 A. Mr. Walter, I think.
- 23 Q. Would that be Walter Covington?
- 24 A. I think so.
- 25 MS. JOHNSON-LEE: That's all the questions that I

DASHAWN BLAND - CROSS EXAMINATION

220

1 have.

2 THE COURT: Cross examination.

3 MS. BROWN: Thank you, Your Honor.

4 CROSS EXAMINATION BY MS. BROWN

5 Q. Mr. Bland, is that correct?

6 A. Yes, ma'am.

7 Q. Mr. Bland, you are seventeen years old?

8 A. Yes, ma'am.

9 Q. Are you presently in school?

10 A. Yes, ma'am.

11 Q. You are. What school are you attending?

12 A. Adult Ed.

13 Q. How long have you been attending Adult Ed?

14 A. Say, about a month or two.

15 Q. About a month or two. And how much longer before you
16 finish?

17 A. I have about one more month.

18 Q. One more month?

19 A. Uh'huh.

20 Q. And what degree will you obtain? Are you going to earn
21 your high school diploma or your GED?

22 A. My GED.

23 Q. And, Mr. Bland, do you in fact know me?

24 A. Yes, ma'am.

25 Q. How do you know me, Mr. Bland?

DASHAWN BLAND - CROSS EXAMINATION

221

1 A. When you was --- I think, came to my house.

2 Q. I came to your house?

3 A. Yes, ma'am.

4 Q. And do you remember when I came to your house?

5 A. Yes, ma'am.

6 Q. Did I in fact visit you after the shooting incident?

7 A. Yes, ma'am.

8 Q. And, did you know me prior to visiting you after the
9 shooting?

10 A. Yes, ma'am.

11 Q. How did you know me prior?

12 A. We was talking about what was going on.

13 Q. The first time you met me --- Are you telling me the
14 first time you met me was when I visited your home?

15 A. No, ma'am.

16 Q. Okay. Under what circumstances do you know me, Mr.
17 Bland?

18 A. From here, I guess.

19 Q. I'm sorry.

20 A. From here, I guess.

21 Q. From here. Now, you and I met, and you gave me --- you
22 answered some questions for me relating to this
23 incident; is that correct?

24 A. Yes, ma'am.

25 Q. And are you telling me today that you are giving the

DASHAWN BLAND - CROSS EXAMINATION

222

1 same version of events you told me several months ago?

2 A. Yes, ma'am.

3 Q. And how many shots did you hear that evening?

4 A. I heard about three.

5 Q. You heard three shots. Okay. And, at some point you
6 ran across the street or the road -

7 A. -- Yes, ma'am.

8 Q. And where did you head?

9 A. Marlboro Court.

10 Q. Marlboro Court. And where were you when you ran across
11 the street?

12 A. My cousin Tanika Thomas and Marques Short. (Phonetic)

13 Q. All three of you headed in that direction?

14 A. Uh'huh. But they were behind me though.

15 Q. But did they eventually arrive there?

16 A. Yes, ma'am.

17 Q. Okay. And when you guys arrived there, where were you
18 standing relative to where the body was lying?

19 A. Like --- I'd say about three or four yards away.

20 Q. Three or four yards away?

21 A. No, no, three or four -

22 Q. -- Let's say about this distance here, were you standing
23 about this distance away, or were you further?

24 A. I'd say about the bottom right here, I would say I was
25 right there.

DASHAWN BLAND - CROSS EXAMINATION

223

1 Q. Tell me when to stop?

2 A. Right there.

3 Q. Right here. So, the body was lying in that area where
4 you are, and you were standing about right here?

5 A. Yes, ma'am.

6 Q. Do you know where the trash receptacle is over there?

7 A. Yes, ma'am.

8 Q. Were you standing in front of the trash receptacle or
9 behind?

10 A. Behind.

11 Q. You were behind the trash receptacle?

12 A. Yes, ma'am.

13 Q. So, if you are behind the trash receptacle, would it be
14 blocking your view; is that correct?

15 A. No, like, cause when you first go to Marlboro Court and
16 you go to the back where the back trash can is at, it is
17 like facing --- facing like where you come in.

18 Q. Let me show you a picture. Mr. Bland, I am going to
19 show you a picture, and I want you to tell me what is on
20 this photo?

21 A. Right here.

22 Q. Can you show it to the --- tell me what you see in this
23 photo?

24 **THE COURT:** Mr. Bland, we are going to need for you to
25 speak into that microphone a little better so we can hear you

DASHAWN BLAND - CROSS EXAMINATION

224

1 and pick you up on the microphone; okay?

2 MR. BLAND: Yes, sir.

3 Q. Does this picture look familiar to you at all?

4 A. Yes, ma'am.

5 Q. Have you seen this picture before?

6 A. Yes, ma'am.

7 Q. Okay. Tell me what is in this picture?

8 A. This right here is where it happened at. Like, this is
9 where the body was at, and I was like, right here.

10 Q. Okay.

11 A. I was standing right here.

12 Q. Now is this the trash receptacle?

13 A. Just right beside here.

14 Q. And is this the building?

15 A. Yes, ma'am.

16 Q. That the body was in front of?

17 A. Yes, ma'am.

18 Q. Is this in fact a true and accurate depiction of what is
19 out there in Marlboro Court?

20 A. Yes, ma'am.

21 MS. BROWN: Your Honor, at this time we would like to
22 introduce this as Defendant Exhibit Number 2.

23 THE COURT: Is there an objection?

24 MS. BROWN: I'm sorry, Your Honor, it is actually
25 Exhibit Number 3.

DASHAWN BLAND - CROSS EXAMINATION

225

1 **MS. JOHNSON-LEE:** No objection.

2 **THE COURT:** All right. Then Defendant's 3 in evidence
3 without objection.

4 Let's mark that please as being admitted in evidence.

5 **WHEREUPON, DEFENDANT'S EXHIBIT**

6 **NUMBER 3 WAS ADMITTED INTO**

7 **EVIDENCE WITHOUT OBJECTION.**

8 Q. Mr. Bland, let's make sure that we understand. You were
9 standing, and can you point to the jury where you were
10 standing once you arrived at Marlboro Court?

11 A. Right here. Like right there beside -

12 Q. Let's do it again, DaShawn.

13 A. Right here beside.

14 Q. And where was the body lying?

15 A. Right up in here.

16 Q. And when you saw Ms. Brown, where was she standing?

17 A. Ms. Kim?

18 Q. Kim Brown.

19 A. Yeah, she was holding his head.

20 Q. So, she was over the body?

21 A. Yeah, she was screaming, telling him to get up.

22 Q. At any point did you see anyone else around the body
23 other than Ms. Kim Brown?

24 A. No, ma'am.

25 Q. Never saw anyone else came up?

DASHAWN BLAND - CROSS EXAMINATION

226

1 A. No, ma'am.

2 Q. And did you notice when there was a blanket that was
3 placed over the body?

4 A. I think I had walked off then.

5 Q. You had already left before the blanket got there?

6 A. Yes, ma'am.

7 Q. Okay. At any point did you see Ms. Kim Brown leave that
8 body?

9 A. No, ma'am.

10 Q. Do you recall meeting with Officer Deborah Young?

11 A. No, ma'am.

12 Q. Do you recall being interviewed by Officer Deborah
13 Young?

14 A. Yes, ma'am.

15 Q. And where did that interview take place?

16 A. Up town, at the Police Station.

17 Q. At the Police Station. And do you remember when that
18 interview happened?

19 A. No, ma'am.

20 Q. Would you say it was shortly after the shooting?

21 A. Ma'am?

22 Q. Would you say the interview took place shortly after the
23 shooting, maybe within a month after the shooting?

24 A. Yes, ma'am.

25 Q. And it took place at the police station?

DASHAWN BLAND - CROSS EXAMINATION

227

1 A. Yes, ma'am.

2 Q. Did you interview with Ms. Young before I met you?

3 A. Yes, ma'am.

4 Q. Are you sure Mr. Bland? Who did you speak to first, me
5 or Ms. Young?

6 A. Ms. Young, I remember Ms. Young.

7 Q. You spoke with Ms. Young at the Police Department first
8 before you talked to me?

9 A. Yes, ma'am.

10 Q. According to the statement, do you believe that you may
11 have given your interview, December 8th of last year?

12 A. I don't remember. I don't remember.

13 Q. Do you remember under what circumstances Ms. Young came
14 and met with you?

15 A. No, ma'am.

16 Q. How did Ms. Young know you were out there; do you know?

17 A. (No response.)

18 Q. Did she inform you how she knew that you were one of
19 those individuals present on the scene?

20 A. (No response.)

21 Q. How did Ms. Young know you were out there at Marlboro
22 Court after the shooting?

23 A. I let her know.

24 Q. Did you go and visit Ms. Young and tell her you were out
25 there, or did she find you?

DASHAWN BLAND - CROSS EXAMINATION

228

1 A. She found me.

2 Q. How did she find you?

3 MS. JOHNSON-LEE: Objection, he can't testify as to
4 how Detective Young found him, Your Honor.

5 THE COURT: Sustained as to way in which the question
6 was asked. Please rephrase.

7 MS. BROWN: Absolutely, Your Honor.

8 Q. When you met Ms. Young, you indicated in your testimony
9 that Mr. Cook made some statements when he ran by.

10 A. Yes, ma'am.

11 Q. And, did you ask him a question for him to make that
12 statement?

13 A. No, ma'am.

14 Q. How long have you known Clarence prior to this shooting?

15 A. I told you about a year.

16 Q. Do you have any problems with Clarence?

17 A. No, ma'am.

18 Q. How long did you in fact, know Ms. Brown prior to the
19 shooting?

20 A. Yes, ma'am.

21 Q. You did know Ms. Brown?

22 A. Yes, ma'am.

23 Q. When you interviewed, did you inform officer that you
24 didn't know who the girl was that was over the body?

25 A. No, ma'am.

DASHAWN BLAND - REDIRECT EXAMINATION

229

1 Q. Did you ever say that?

2 A. No, ma'am.

3 Q. And you mentioned you never saw Ms. Brown take anything
4 out of anyone's pockets?

5 A. Yes, ma'am.

6 Q. But you never saw her leave the body?

7 A. No, ma'am.

8 **MS. BROWN:** Beg court's indulgence.

9 **(PAUSE.)**

10 Q. One other question, Mr. Bland. Did you in fact inform
11 Officer Young that Ms. Brown went into the house to get
12 a rag and clean him off?

13 A. Oh, yes, ma'am.

14 Q. You did say that?

15 A. Yes, ma'am.

16 Q. So, she did leave the body at some point?

17 A. Yes, ma'am.

18 **MS. BROWN:** No further questions, Your Honor.

19 **THE COURT:** Is there redirect?

20 **MS. JOHNSON-LEE:** Just briefly.

21 **REDIRECT EXAMINATION BY MS. JOHNSON-LEE**

22 Q. What did she put on the body?

23 A. A rag.

24 Q. What color?

25 A. It was white.

NICHOLAS I. BATALIS, M.D. - VOIR DIRE EXAMINATION 230

1 Q. You thought you saw a white rag?

2 A. Yes, ma'am.

3 Q. Okay.

4 **MS. JOHNSON-LEE:** No further questions.

5 **THE COURT:** All right. Sir, you may step down. You
6 are free to leave if you wish, or you may remain here.

7 **MR. BLAND:** Yes, sir.

8 **THE COURT:** Please call your next witness.

9 **MS. JOHNSON-LEE:** Doctor Batalis.

10 **THE COURT:** Please come forward and take the oath of a
11 witness.

12 **WHEREUPON, NICHOLAS I. BATALIS, M.D.**

13 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

14 **DR. BATALIS:** I do.

15 **THE COURT:** And, sir if you would please state your
16 name for the record.

17 **DR. BATALIS:** My name is Nicholas I. Batalis,
18 B-A-T-A-L-I-S.

19 **VOIR DIRE EXAMINATION BY MS. JOHNSON-LEE**

20 Q. Dr. Batalis, what is your occupation?

21 A. I am a Forensic Pathologist.

22 Q. Are you a duly licensed physician and surgeon?

23 A. Yes. I have a full medical license here in South
24 Carolina.

25 Q. How long have you been licensed to practice in your

NICHOLAS I. BATALIS, M.D. - VOIR DIRE EXAMINATION 231

1 profession?

2 A. Approximately eight years.

3 Q. Are you presently engaged in the active practice of
4 pathology?

5 A. Yes. I am employed full time at the Medical University
6 of South Carolina, as a Forensic Pathologist.

7 Q. And where did you get your training?

8 A. I did my undergraduate and got my bachelor's degree at
9 Butler University in Indianapolis, Indiana. I went on
10 to medical school, four years of medical school at the
11 Indiana School of Medicine. Then I came down to
12 Charleston, to the Medical University of South Carolina,
13 for four years of training in general pathology, and
14 then did a one year fellowship training specifically in
15 forensic pathology at the Dallas County Medical
16 Examiner's Office in Texas, before coming back to South
17 Carolina.

18 Q. What are the duties of a pathologist in South Carolina?

19 A. Pathology in general --- pathology is a speciality in
20 medicine that deals with the study of disease. So, a
21 general pathologist would be somebody who looks at a
22 biopsy to determine if it is cancer or not cancer, or
23 help your physician interpret lab values. Forensic
24 Pathology is then a subspeciality of that, that is
25 primarily focused on legal aspects of medicine,

NICHOLAS I. BATALIS, M.D. - VOIR DIRE EXAMINATION 232

1 predominately performing autopsy.

2 Q. So, is pathology or autopsy a specialized area of
3 medicine?

4 A. Yes. Yes, it is.

5 Q. How many autopsies have you performed?

6 A. Approximately a thousand.

7 Q. Exactly what does the autopsy involve?

8 A. When somebody comes in for an autopsy, the first thing
9 we will do is take photographs as we receive the body to
10 document it. As the body comes in, we will then
11 document all of that. Take down the clothing. Cleanse
12 the body. Then do an external exam. The external exam,
13 the first thing we will note is height, weight, any
14 scars, tattoos, just distinguishing features. And then
15 if there are any injuries present, we will describe
16 those in detail. After that part is complete, we then
17 move on to the internal exam, which involves dissection
18 of the internal organs of the body to look for again,
19 disease, natural disease, and trauma. And then at the
20 completion of the examination we then generate a report.

21 Q. Are you a member of any specialized medical or
22 scientific groups?

23 A. Yes. I am a member of several different groups,
24 national groups that deal with pathology in general,
25 forensic pathology, and then also some state and local

NICHOLAS I. BATALLIS, M.D. - VOIR DIRE EXAMINATION 233

1 medical societies.

2 Q. What is the American Board of Pathology?

3 A. The American Board of Pathology is the group that is
4 responsible for credentialing and accrediting
5 pathologist.

6 Q. And what are the special requirements before you can
7 receive certification of a diploma in the American Board
8 of Pathology?

9 A. For certification, you have to complete a minimum years
10 of training. And then at the completion of that, then
11 pass a fairly rigorous examination. So, for the general
12 training, I completed four years of residency, and then
13 completed two different test. One in anatomic pathology
14 and clinical pathology. And then for the Forensic
15 Pathology Certificate you complete one year of training,
16 and then pass another examination.

17 Q. What is a forensic pathologist?

18 A. A forensic pathologist specializes in performing
19 autopsies to determine the cause and the manner of
20 death.

21 Q. Have you been granted certification as a diplomat by The
22 American Board of Pathology?

23 A. Yes. I am board certified in Anatomic Pathology,
24 Clinical Pathology, and Forensic Pathology.

25 Q. Is that certification on a national basis?

NICHOLAS I. BATALIS, M.D. - VOIR DIRE EXAMINATION 234

1 A. It is. They are the only certification organization,
2 and it is a national organization.

3 Q. And again, how many autopsies have you personally
4 performed?

5 A. Approximately a thousand.

6 Q. And, out of those percentage wise, how many of those
7 have you done where the cause of death was a homicide?

8 A. Approximately fifteen to twenty percent. So, a hundred
9 and fifty to two hundred cases total.

10 **MS. JOHNSON-LEE:** Your Honor, at this time the state
11 moves that Dr. Nicholas Batalis be declared an expert in the
12 field of Pathology.

13 **THE COURT:** All right.

14 **MS. BROWN:** No objection, Your Honor.

15 **THE COURT:** All right. Let's talk about that for a
16 moment. Ladies and gentlemen, the witness is offered as an
17 expert witness. Previous witnesses have been lay witnesses.
18 Lay witnesses come in and testify generally about what they
19 saw, or heard, or did. An expert witness, because of
20 training or knowledge, experience, or skill in a particular
21 technical area is allowed to come in and testify, as a lay
22 witness would about what they saw, heard, or did; but also to
23 go further and offer an opinion --- or offer further
24 testimony about what opinion they derived from what they saw,
25 heard, or did. That is the difference between a lay and

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

235

1 expert witness. Now, when a witness is offered as an expert,
2 we stop right there. We go to the other side, give them an
3 opportunity of their expertise. You heard counsel say she
4 has no objection to the witness being qualified as an expert.
5 So, the court is going to grant your request, and allow the
6 witness to testify by opinion as an expert.

7 Now, let's talk about the impact of that. You should
8 weigh an expert's testimony for credibility and believability
9 as you would weigh any other witness. The purpose of this
10 testimony is not given to control your judgment, but to
11 assist you in findings matters of fact within the purview of
12 the expert. And again, you give it the weight that you deem
13 it to be entitled to.

14 With that understanding, please proceed.

15 **MS. JOHNSON-LEE:** Thank you, Your Honor.

DIRECT EXAMINATION BY MS. JOHNSON-LEE

16
17 Q. Dr. Batalis, did you perform an autopsy on Mr. Charles
18 Hayes?

19 A. Yes. I performed the autopsy on June 11, 2010.

20 Q. Was that the first time you had ever seen that
21 particular individual?

22 A. Yes, ma'am.

23 Q. How long did the autopsy last?

24 A. The autopsy itself, the external and internal exam
25 lasted approximately two hours.

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

236

1 Q. Where did it take place?

2 A. It took place at the Medical University of South
3 Carolina, in Charleston.

4 Q. Describe what you did during the autopsy?

5 A. As the general description went, the body came in. We
6 took photos as we received. Documented all the
7 clothing, and everything as we saw the body. Then
8 removed the clothing, cleansed the body, then performed
9 an external exam looking for height, weight, and any
10 identifying features, scars, eye color, hair color, all
11 of that sort of stuff. And then examined the body for
12 injuries before moving onto the internal exam.

13 Q. Based on your autopsy of Charles Hayes, within the
14 bounds of medical certainty, have you formed an expert
15 opinion concerning his cause of death?

16 A. Yes, I have.

17 Q. And what is your opinion?

18 A. His cause of death was gunshot wounds of the head.

19 Q. And please describe those gunshot wounds.

20 A. The decedent had two separate gunshot wounds on his
21 head. The first wound was on the left side of the
22 forehead, located approximately here. The bullet from
23 this wound entered the head pretty much traveling from
24 front to back, and a little bit from his left to the
25 right side. The bullet then passed through the skin of

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

237

1 the forehead, through the skull, and then penetrated
2 into the brain where the bullet came to rest. As a
3 result of the damage from the bullet, there was some
4 bleeding around the brain, and some bruises from the
5 brain hitting against the skull. So, we recovered that
6 bullet. A second gunshot wound was located on the upper
7 lip, just left of midline. So, just about here. And
8 that bullet traveled also from front to back, towards
9 the decedent's back. But this one traveled in an upward
10 fashion. So, after going through the lip, it kind of
11 went through the mid face area. Came out in the brain,
12 and then hit the top of the head, but stayed in the
13 head, where we recovered the bullet. So, that one also
14 traveling through the brain caused extensive damage and
15 bleeding around the brain.

16 Q. When you refer to the first and then the second wound,
17 are you making a determination as to which shot was
18 fired first, and which shot was fired second?

19 A. No, determining number one and number two is just a way
20 of describing the wounds. It is not possible to tell
21 the sequence of the gunshots, or in this case which one
22 was fatal, which is why it is worded gunshot wounds.
23 Because in this case, either gunshot wound could have
24 lead to his death.

25 Q. You referenced some photographs being taken during the

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

238

1 autopsy; is that correct?

2 A. Yes.

3 Q. Let me show you what has been marked for identification
4 as States Exhibits 8, 13, 14, 9 and 12, and ask you to
5 tell if you can, identify those documents?

6 A. Okay.

7 Q. Are those all photographs that were taken at the time of
8 the autopsy?

9 A. Yes, these are photographs that I took during the course
10 of the autopsy.

11 Q. Now, are some of those of the physical evidence that was
12 removed from the body?

13 A. Yes. State's Exhibits 3, 8, and 12, are of the body
14 itself. While 13 and 14 are bullets that we recovered
15 during the course of the autopsy.

16 Q. Do they accurately depict what was there at the time you
17 took them on that day? Are those accurate depictions?

18 A. Yes, they are.

19 **MS. JOHNSON-LEE:** At this time, I would move to have
20 those particular photographs entered into evidence.

21 **MS. BROWN:** No objection.

22 **THE COURT:** All right. Without objection. Counsel,
23 if you would hand those to our court reporter so she can mark
24 those as being admitted.

25 **WHEREUPON, STATE'S EXHIBIT**

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

239

NUMBERS 8, 9, 12, 13, AND 14,
WERE ADMITTED INTO EVIDENCE
WITHOUT OBJECTION.

THE COURT: Madame Court Reporter tells me there are some discrepancies in those numbers. Give us those numbers again so we can be certain.

All right. 14, 13, 12, 9 and 8 in evidence without objection for the state.

Q. First of all, what does Exhibit 8 represent?

A. Exhibit 8 shows the gunshot entrance wound, the first wound I described on the left side of the forehead.

Q. And what does Exhibit 12 represent?

A. Exhibit 12 shows the second gunshot wound, which was on the upper lip just left of midline.

Q. What does Exhibit 9 represent?

A. Exhibit 9 is another picture of the second gunshot wound, the one that was on the lip.

Q. And let's discuss briefly what is in the photographs in 12 and 9.

MS. JOHNSON-LEE: Permission to publish?

THE COURT: You may.

(Whereupon, State's Exhibit Numbers 8, 9, and 12 were published to the jury.)

A. These photographs show a well circumscribed entrance wound on the upper lip. What is also surrounding this

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

240

1 gunshot wound that was not surrounding the other wound
2 is an area of soot and stippling.

3 Q. Describe what soot and stippling are to the jury?

4 A. When a gun is fired, it is not just the bullet that
5 comes out. So, the bullet obviously comes out, but then
6 other material comes out too. Some of the material is
7 soot, which is kind of the burned up gunpowder from the
8 explosion of the bullet being fired. And there is also
9 unburned pieces of gunpowder that will fly out. When
10 the soot, that is a kind of cloud of dirt as you will
11 have hit the skin, it will travel up to about a foot
12 away from the gun, and this will depend on the type of
13 gun, the type of ammunition, but no more than a foot
14 from the gun to have that soot also on the skin.

15 The stippling can travel a little bit further,
16 so there is unburned flakes of gunpowder that can
17 travel up to maybe, three or four feet and strike
18 the skin, and cause little scraps on the skin.

19 So, around the second gunshot wound we had a
20 pretty dense area of soot definition around that
21 wound, which would tell us that it is a close range
22 wound, or less than a foot from the body.

23 MS. JOHNSON-LEE: Permission to have him step down in
24 order to show the jury.

25 THE COURT: Yes, sir. Just step down there with

NICHOLAS I. BATALLIS, M.D. - DIRECT EXAMINATION

241

1 counsel. Thank you.

2 Q. And this that you are referring to right now is State's
3 Exhibit 9. Is the stippling, or the soot, or both
4 depicted in this photograph?

5 A. They are both present. This area here in the middle is
6 the actual gunshot wound. And this dark black area on
7 the upper left is the area of soot. And then on the
8 left side of the nose you can see a couple of scrape
9 marks.

10 Q. So, is that stippling was within three to four feet from
11 the gun.

12 A. Yes.

13 Q. But when soot is present, you stated that is within a
14 foot from the actual weapon being fired?

15 A. Yes.

16 Q. So, is it your opinion as an expert that the soot on the
17 lip shows that that gun was within a foot from his upper
18 lip?

19 A. Yes.

20 Q. And the second photograph. Does this photograph depict
21 a little more of the same?

22 A. It does. It is a little bit further. It is in the
23 middle here. The soot is dominate right there.

24 Q. Would you please repeat the last part please?

25 A. There is a gunshot wound is in the middle, and just

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

242

1 underneath the gunshot wound on the upper lip, there is
2 a dark black area which is the soot that is positioned
3 onto the skin. And then there is a couple of scrapes on
4 the nose and face, which will be the stippling.

5 Q. Thank you. State's 13 and 14, both have almost --- are
6 those two separate bullets depicted in those
7 photographs?

8 A. Yes. There are two separate bullets.

9 Q. Okay. And one of those photographs, which is numbered
10 13, it looks like there are two parts to that bullets.
11 Can you please explain to the jury why there are two
12 parts to that bullet?

13 A. Yes. State's Exhibit Number 13 is the bullet, and then
14 part of the jacketing. So, the jacketing is the metal
15 covering of the bullet that is separated from the bullet
16 when it struck the skull. So, State's Exhibit Number 13
17 was the bullet and jacket recovered from the gunshot
18 from the left forehead. So, after traveling through the
19 skull, there it separated the bullet from the jacketing,
20 which is why we have two separate objects in this photo.

21 Q. Do you know which wound that particular bullet was fired
22 into?

23 A. Yes. This was fired into the first gunshot wound which
24 was the one on the forehead.

25 Q. And again when you say first, that is your description.

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

243

1 That doesn't mean that was the actual first fired?

2 A. Right, just the first one I described, not in reference
3 to the chronology or the order that they were fired.

4 Q. And the second bullet?

5 A. So, State's Exhibit Number 14 is labeled bullet from
6 skull. And this one is actually the bullet that is
7 intact, with the jacketing surrounding it. And this is
8 the one we recovered from near the top of the head. And
9 that bullet corresponded with the gunshot wound that was
10 on the left side of the lip.

11 Q. Did you also prepare a report of your autopsy?

12 A. Yes.

13 Q. I am going to show you what has been marked for
14 identification as State's Exhibit Number 4, and ask you
15 if that is the autopsy report that you prepared?

16 A. Yes. State's Exhibit Number 4 contains the autopsy
17 report that I put together with a separate toxicology
18 report that was prepared by a different agency.

19 Q. And that toxicology report was on the deceased, Mr.
20 Hayes?

21 A. Yes.

22 MS. JOHNSON-LEE: At this time the state would move to
23 have autopsy report admitted into evidence.

24 THE COURT: Is there an objection?

25 MS. BROWN: No objection, Your Honor.

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

244

1 **THE COURT:** What number is that please? Number 4, in
2 evidence for the state without objection.

3 **WHEREUPON, STATE'S EXHIBIT**

4 **NUMBER 4 WAS ADMITTED INTO**

5 **EVIDENCE WITHOUT OBJECTION.**

6 Q. Do you have a copy in front of you?

7 A. I do.

8 Q. Now you said there is a copy of the tox attached. What
9 does that tox show?

10 A. During the course of an autopsy, one of the things we do
11 is draw fluids from the body for different testing. So,
12 in the case of this autopsy we drew some blood from his
13 leg, and placed it into some tubes to be sent to a
14 national laboratory to look for toxicology testing. And
15 this toxicology testing, they test for three to four
16 hundred different drugs. Some of them illicit drugs, or
17 illegal ones. And some of them are prescription
18 medications. So, we send that blood off. The testing
19 is done in a national lab. They prepare a report, and
20 then we incorporate their findings into our report.

21 Q. And what were the results of Mr. Hayes?

22 A. Mr. Hayes toxicology showed the chemical Delta-9 THC,
23 which is the active ingredient of marijuana. And then
24 also a breakdown product, or metabolite of marijuana.

25 Q. Does the report --- Is it able to show whether that

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

245

1 marijuana was consumed on the day he died versus the day
2 previous?

3 A. Yes. The Delta-9 THC, which is the parent drug, that
4 only stays in the body for minutes to hours after
5 somebody would ingest marijuana. So, this would tell us
6 that he would have ingested the marijuana within again,
7 minutes to hours before his death.

8 Q. But it could not tell us whether he was present with
9 certain individuals versus in the bathroom where he
10 consumed that marijuana; is that correct?

11 A. There is no way to tell that from the testing.

12 Q. I am going to show you what has been marked for
13 identification as State's Exhibit Number 41. Can you
14 identify that document?

15 A. Yes. This is our evidence transfer sheet of items we
16 collected at autopsy and signed over to authorities.

17 Q. What does that evidence transfer sheet show that you
18 obtained and signed over to authorities?

19 A. We transferred the decedent's clothing, so a pair of
20 boxer shorts, and regular shorts. Also in the pockets
21 there were two torn plastic baggies. There were
22 fingernail clippings from both hands. Some scalp hair.
23 And the two bullets we recovered, the one from the skull
24 and the one from the brain. And then what we call a
25 blood spot, which is a sample of the decedent's blood

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

246

1 placed on filter paper.

2 Q. Who were all of those items turned over to?

3 A. They were transferred to Detective Deborah Young of the
4 Bennettsville Police Department.

5 Q. And on what date were they transferred to Detective
6 Young?

7 A. The day of the autopsy, June 11, 2010.

8 Q. Now, fingernail clippings, items like that, why would
9 you pull those in a case where it was a shooting victim?

10 A. It is just standard protocol in many jurisdictions on
11 cases of homicide to collect fingernail clippings and
12 head hair. These sometimes can be useful for DNA
13 testing, if there happened to be a struggle, and the
14 decedent would scrape an assailant or somebody, you
15 could possibly get DNA from those clippings. The hair
16 could be used to compare against hair fibers down at the
17 scene.

18 Q. Is this something that you do as a matter of course on
19 every homicide victim?

20 A. Most cases, when it is requested by the authorities.

21 Q. Do you also do it when it is not specifically requested
22 by the detective?

23 A. Yes.

24 Q. And in this particular case, was it requested or not
25 requested?

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

247

1 A. I don't recall.

2 Q. And by pulling those items, it doesn't necessarily
3 indicate there was a struggle, you are just protecting
4 and preserving evidence should there be one?

5 A. Right. Because, that is really the only chance to get
6 this evidence. Once the decedent leaves our examination
7 room, it could be buried, the body could be cremated.
8 So, that could be our last chance to preserve this
9 evidence.

10 **MS. JOHNSON-LEE:** At this time, I would move to have
11 State's Exhibit Number 41 admitted into evidence.

12 **MS. BROWN:** No objection, Your Honor.

13 **THE COURT:** Without objection, 41 in evidence for the
14 State.

15 **WHEREUPON, STATE'S EXHIBIT**
16 **NUMBER 41 WAS ADMITTED INTO**
17 **EVIDENCE WITHOUT OBJECTION.**

18 Q. I am also going to show you what has been marked for
19 identification is State's Exhibit Number 2. Now, would
20 you have any way of knowing what is in that particular
21 envelope that is sealed up?

22 A. No.

23 Q. Now, you indicated that the bullets --- you did turn
24 over to Detective Young with the Bennettsville Police
25 Department; is that correct?

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

248

1 A. Yes.

2 Q. Okay. Have you seen those bullets since that time?

3 A. No, I have not.

4 Q. Did you follow the proper chain of custody procedure in
5 obtaining those bullets, and turning them over to the
6 detective?

7 A. Yes, we did.

8 Q. Was there any other evidence beside what is on that form
9 taken and turned over to law enforcement?

10 A. Not in the course of the autopsy.

11 **MS. JOHNSON-LEE:** That is all the questions that I
12 have at this time, Dr. Batalis. Would you please answer any
13 questions Ms. Brown has.

14 **THE COURT:** And now cross examination.

15 **MS. BROWN:** Thank you, Your Honor. Your Honor, before
16 I begin, may Madame Solicitor and I approach?

17 **THE COURT:** You may.

18 (Whereupon, a bench conference was held in the
19 presence of the jury, but out of their hearing range.)

20 **THE COURT:** All right. Cross examination.

21 **MS. BROWN:** Thank you, Your Honor.

22 **THE COURT:** You may proceed.

23 **CROSS EXAMINATION BY MS. BROWN**

24 Q. Good morning, Dr. Batalis.

25 A. Good morning.

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

249

1 Q. How are you?

2 A. Good, how are you?

3 Q. Good. Dr. Batalis, I would like to show you a photo,
4 and ask that you please describe what is in that photo,
5 please?

6 A. When I described earlier, I mentioned that we take
7 photographs of the bodies when they come to autopsy.
8 So, they would come in through our service, come up
9 stairs to our examination room, placed on the table for
10 examination, and then immediately photographed. This is
11 one of the photographs, we call it our "as is" photo, so
12 before we have done any examination with the body is
13 what this photograph shows.

14 Q. So, that would be a picture of the body at the time it
15 arrived at your facility?

16 A. Yes.

17 Q. There are no changes or anything done to the body at
18 that point? You guys had not done anything or performed
19 any examination at that point; is that correct?

20 A. All that would have happened is the body would have come
21 in on a stretcher, so that the body would be moved from
22 the stretcher onto the table. And usually the body
23 comes in a body bag, so we would usually take the body
24 out of that bag. But no manipulation of the body,
25 other than just transferring it onto the table.

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

250

1 Q. Thank you. Is that also in fact a correct and accurate
2 picture of what you recall as part of your examination?

3 A. Yes.

4 MS. BROWN: At this time, Your Honor, I would like to
5 mark this as Defense Exhibit 4.

6 MS. JOHNSON-LEE: No objection.

7 THE COURT: Without objection.

8 WHEREUPON, DEFENDANT'S EXHIBIT

9 NUMBER 4 WAS ADMITTED INTO

10 EVIDENCE WITHOUT OBJECTION.

11 Q. Dr. Batalis, now that that has been taken care of, can
12 you look in your report and tell the court the height
13 and the weight of Mr. Hayes?

14 A. The decedent, his body length was seventy-two inches,
15 which is six feet tall. And two hundred and sixty-five
16 pounds.

17 Q. Two hundred and sixty-five pounds, and six feet tall; is
18 that correct?

19 A. Yes.

20 Q. Thank you. And you also indicated that there were
21 baggies found in his pocket at the time the body
22 arrived?

23 A. Yes. There were two torn plastic baggies that were
24 recovered from the pocket.

25 Q. Do you recall which pocket you in fact located the

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

251

1 baggies?

2 A. No, I don't have that recorded.

3 Q. In your toxicology report that you reviewed, you
4 indicated that there were levels of THC. Can you look
5 at that report for me, the toxicology report.

6 A. The toxicology report from the laboratory, or my
7 interpretation of it?

8 Q. Your interpretation.

9 A. Okay. I'm there.

10 Q. Okay. Can you look at where it says summary and
11 comments? Do you see that section on the first page of
12 that report?

13 A. Okay. This is the area of the report, is the part that
14 is from the National Lab.

15 Q. Yes. And did you have an opportunity to review that
16 report?

17 A. I did.

18 Q. And if you would look at the first page, can you tell
19 the court what is under summary/comments, and it is not
20 very long.

21 A. Yes. The Summary/comments section says, "High levels of
22 THC and its metabolite were found in blood." And then
23 it is signed by the toxicologist who reviewed the
24 results.

25 Q. Now, I understand that you can not give us a time frame,

NICHOLAS I. BATALIS, M.D. - DIRECT EXAMINATION

252

1 but in order for high levels of THC to be present in Mr.
2 Hayes blood, what does that suggest about the time that
3 the marijuana cigarettes were in fact inhaled?

4 A. You know, high levels is his terminology. So, I won't
5 address the high level part. But, regardless, the
6 Delta-9 THC in the blood, we are talking minutes to
7 hours prior to death. A short time frame before he
8 would have died.

9 Q. Now, you also indicated, and Madame Solicitor asked you
10 about whether or not he could have been present, or in
11 the room with somebody when the marijuana cigarettes
12 were in fact inhaled. Is it possible for him to have
13 high levels and just be present, or would he have to
14 consume it himself?

15 A. To get to this concentration, it would be less likely or
16 unlikely that it would be due --- you are saying just
17 being present, so just second hand smoke?

18 Q. Exactly.

19 A. It would be unlikely for him to reach this concentration
20 based just on second hand smoke.

21 Q. Do you know what kind of effect high levels of marijuana
22 can have on an individual?

23 A. It can vary on an individual basis.

24 Q. Would you say that it can in fact cause aggression?

25 A. In some individuals it might.

THE STATE VERSUS CLARENCE KENDELL COOK

253

1 Q. It can cause aggression. Also, one thing, Dr. Batalis;
2 is it your testimony that either shot would have in fact
3 contributed to the death of Mr. Hayes?

4 A. Yes.

5 MS. BROWN: Your Honor, I have no further questions.

6 THE COURT: Is there redirect?

7 MS. JOHNSON-LEE: No, Your Honor.

8 THE COURT: All right. Then, any objection to the
9 release of the witness?

10 MS. JOHNSON-LEE: The state would ask that he be
11 allowed to return to Charleston.

12 THE COURT: Hearing none, sir. You are free to leave.
13 Have a good day.

14 DR. BATALIS: Thank you, Your Honor.

15 THE COURT: Counselor, are you ready for your next
16 witness?

17 MS. JOHNSON-LEE: May we approach, Your Honor?

18 THE COURT: You may.

19 (Whereupon, a bench conference was held in the
20 presence of the jury, but out of their hearing range.)

21 THE COURT: All right. Ladies and gentlemen, we are
22 going to take our lunch break at this time. Counsel tells me
23 rather than go forward in the witness and running into the
24 lunch hour, it is better at this time to go ahead and break,
25 and we will do that. We are going to give you lunch until

THE STATE VERSUS CLARENCE KENDELL COOK

254

1 two o'clock today. The court has some matters that I need to
2 resolve over the lunch period. And thus, you will be at
3 lunch until two. Lunch is on your own. Whomever you have
4 lunch with, please don't discuss the case. Just enjoy your
5 lunch. It is a beautiful day outside. We will all remain
6 where we are while you depart the courtroom. But we will see
7 you back at two o'clock.

8 (Whereupon, the jury exits the courtroom at
9 11:55 a.m.)

10 **THE COURT:** All right. Counsel, are you ready to now
11 go into the issue of the video?

12 **MS. JOHNSON-LEE:** There is a short portion remaining
13 to show. If we could have just a couple of minutes to set
14 that up, or if Your Honor wants to have lunch and then come
15 back at one, we will have that ready.

16 **THE COURT:** Let me say this. I don't need to see any
17 further of the video, because the issue for watching the
18 whole thing was for whether it was voluntary. And that
19 turned out not to be a disputed area. So, the video comes
20 in. What I want to do is come back and see, just in
21 succession going from one point to the next those that you
22 believe are prejudicial, and not watch the whole video, so do
23 that. So, if you want us to stand down for an hour, come
24 back at one o'clock to do that, I'll be glad to do that. Let
25 me ask before we go into this though, is the technology

THE STATE VERSUS CLARENCE KENDELL COOK

255

1 available today to move from point to point?

2 MS. BROWN: I'm not aware of anything that we did
3 yesterday Your Honor, to be more effective to try to get -

4 THE COURT: Well, let me ask it this way counsel. How
5 do you intend while this video is being shown, to cut out the
6 clip of what you believe is prejudicial if the court grants
7 you that?

8 MS. BROWN: Your Honor, what I have done is, I have
9 actually prepared a --- I have made a copy of the statement,
10 and there is a part of the statement that he gave that in
11 fact would in essence allow me to publish, but it is only
12 very short. It is only like twenty minutes. And I am not
13 sure if Your Honor wants to review the entire remaining
14 portion of that one hour statement. However, I do believe if
15 you look at it on the lap top, we can skip to it better than
16 on the DVD.

17 THE COURT: All right. That is fine. Then we will
18 have a lap top to do that. But again, remember, the real
19 exercise here is publishing it to the jury, and what I am
20 hearing sounds a little bit unwieldy unless counsel agrees to
21 cut out a portion, and that is up to the state. But, I will
22 leave you all to discuss that. But when we come back at one
23 o'clock, we will take it up at that time.

24 Court is in recess until that time.

25 (Whereupon, a lunch recess was taken from

THE STATE VERSUS CLARENCE KENDELL COOK

256

1 12:00 noon until 1:05 p.m..)

2 THE COURT: All right. Court come to order now. We
3 are ready to view those portions of the tape that the
4 defendant believes are prejudicial or more prejudicial than
5 they are probative. And how do you wish to proceed, counsel?

6 MS. JOHNSON-LEE: I will leave that to Madame Defense
7 Attorneys, because she would be able to show those parts.

8 MS. BROWN: Your Honor, what I would like to do at
9 this time, before we show any of the video is to --- I guess
10 I want to amend my motion, and I would let the portions of
11 the video, they were highly prejudicial. There were quite a
12 few portions.

13 THE COURT: All right.

14 MS. BROWN: I would refer to quite a few portions.

15 THE COURT: You gave us eleven.

16 MS. BROWN: Eleven, exactly. When I take into
17 consideration the difficulty is going to be to redact those
18 statements as well as maybe losing some of the contents of
19 the statement itself. I have decided only to refer to one
20 portion which will deal with the assault with a deadly
21 weapon, and we talked about that. And I believe that was at
22 33.2 on the --- Everything else he talked about bad acts,
23 such as smoking marijuana. He talked about purchasing
24 marijuana. He also talked about the issue of the 2005
25 charge. But, in light of your ruling yesterday, it appears

THE STATE VERSUS CLARENCE KENDELL COOK

257

1 that that may very well come out anyhow, because we are going
2 to call two witnesses who are going to testify. So, that
3 testimony may very well might come out.

4 Therefore, the only concern at this point for the
5 defense will be the issue dealing with the assault of the
6 weapon --- the assault charge with a deadly weapon which took
7 place in 1995.

8 **THE COURT:** And where did that charge arise; Marlboro?

9 **MS. BROWN:** That was in North Carolina.

10 **THE COURT:** Then you are telling me that the D.A.'s
11 testimony, and the attorney from North Carolina does not
12 involve that charge?

13 **MS. BROWN:** Not at all, Your Honor. It is only the
14 2005 dismissal.

15 **THE COURT:** Okay. Now, let's go forward and ask while
16 we consider that issue. Let me first ask whether you have
17 made a determination of whether or not your client intends to
18 testify, which you can reveal to us at this time. Has that
19 decision been made, counsel?

20 **MS. BROWN:** We have not made that decision at this
21 point. We are still believe he will not be testifying at
22 this point.

23 **THE COURT:** Okay. Then it would not be admissible as
24 to whether it would qualify remains to be seen. But it might
25 be admissible to impeach on credibility issues. So, what do

THE STATE VERSUS CLARENCE KENDELL COOK

258

1 you say about that assault charge that defense wishes to
2 exclude?

3 MS. JOHNSON-LEE: Now, is she referring to just
4 excluding it from the video tape from the discussion, because
5 it was discussed a couple of different times. Is that the
6 murder charge?

7 THE COURT: She says thirty-three minutes and twenty
8 seconds, there is a reference that she wishes to exclude.
9 That is what I understood her to say.

10 MS. JOHNSON-LEE: But the assault is referring to that
11 North Carolina murder.

12 MS. BROWN: The North Carolina murder, Your Honor, was
13 referred throughout the course of the testimony, because he
14 kept referring back to where this all began. Since there was
15 a ruling in the North Carolina murder charge that may very
16 well be shared with the jury, I'm not going to try to redact
17 that from the statement. That is going to come out when we
18 call our witnesses.

19 THE COURT: Let me stop you there and let me address
20 that issue, because this may later be reviewed. The court
21 perceives that the North Carolina murder is so inextricably
22 tied to these facts, because the defendant alleges that bad
23 blood, if I understand the defense theory arose with the
24 decedent at that time; am I correct, counsel?

25 MS. BROWN: It is our position that after Mr. Cook

THE STATE VERSUS CLARENCE KENDELL COOK

259

1 testified in the case, it was actually April 2010. After he
2 testified in that case, there were problems that were made
3 apparent to him between Mr. Hayes and Clarence. And it only
4 happened after he testified. Prior to that, there was no
5 appearance that he had any problems. And he was certainly
6 questioned about the testimony. Now the charge itself is
7 relevant we believe in this case. But the testimony relating
8 to that charge is relevant.

9 THE COURT: And thus it is the court's opinion that
10 that is just so inextricably tied to the core set of facts
11 that make up the *res gesta* in its entirety of this case that
12 it would be impossible to exclude that. It would be first of
13 all technologically, the way the video is set up to do it.
14 But secondly, it would be unfair. It would be unfair to both
15 sides to take that issue and somehow hide part of it, and put
16 part of it forward. There would be no completeness, no
17 understanding in the totality of the circumstances for this
18 jury. And for that reason the court believes that not only
19 is it the best technical decision for the defense to go ahead
20 and put this in, but the court just doesn't perceive how it
21 could be excluded, even if defense persisted.

22 Now, with that understanding, tell me what exactly it is
23 and where on the tape you wish to redact?

24 MS. BROWN: We are concerned about the part of the
25 tape that begins at thirty three minutes and twenty seconds.

THE STATE VERSUS CLARENCE KENDELL COOK

260

1 And I believe he talks further on into --- not very long.
2 And, they actually exceeds about thirty-four minutes, Your
3 Honor. It is not very long.

4 **THE COURT:** All right. So thirty-three twenty to
5 thirty-four zero-zero, roughly, is what you are asking the
6 court to review now?

7 **MS. BROWN:** Actually, Your Honor. I think it is
8 actually thirty-three twenty to about thirty-three thirty-
9 four.

10 **THE COURT:** All right. Yesterday that is what you
11 gave me was actually thirty-three eleven to thirty-three
12 thirty-four.

13 **MS. BROWN:** Well, thirty-three eleven to thirty-three
14 nineteen talks about he lost his job. So, when he begins
15 talking about the 1996 charge is at thirty-three twenty.

16 **THE COURT:** All right. So, now let's go --- May I
17 assume what I am looking at set upon this video is thirty-
18 three twenty?

19 **MS. BROWN:** I think we have it very close to it,
20 because we have seen it.

21 (Whereupon, the court views the video.)

22 **THE COURT:** Go ahead. Can we go back and re-cue it
23 again, and let me just watch it again. Before you turn it
24 on, let me speak to Joy.

25 **(PAUSE.)**

THE STATE VERSUS CLARENCE KENDELL COOK

261

1 **THE COURT:** While we are cuing that up, Ms. Johnson
2 would you step up. Ms. Brown, you may join us.

3 (Whereupon, a bench conference was held.)

4 **THE COURT:** All right. Ms. White, thank you for your
5 assistance with this. And are you ready to play it again?

6 **MS. WHITE:** Yes, sir.

7 **THE COURT:** Then please do.

8 (Whereupon, the court views the video again.)

9 **THE COURT:** All right. That is it right there? All
10 right. Now, from the state, so that I can weigh the
11 probative value of this. First of all do you object to it
12 being removed? Do you want it in?

13 **MS. JOHNSON-LEE:** Yes, but mainly because I don't want
14 the jury to be mislead or take something out of there being
15 something redacted from the video. I don't want them to
16 think we are trying to hide anything.

17 **THE COURT:** All right. Then taking out the fact that
18 the video will either skip or the volume is turned down, or
19 something is going to happen, just setting that aside. What
20 value do you get from what is in there? Tell me what is the
21 probative nature of that testimony?

22 **MS. JOHNSON-LEE:** Beg court's indulgence, Your Honor.

23 **(PAUSE.)**

24 **MS. JOHNSON-LEE:** The completeness, and he was given
25 Miranda Warnings, and this is part of the totality of his

THE STATE VERSUS CLARENCE KENDELL COOK

262

1 story.

2 THE COURT: All right. Just to make sure that I
3 understand, and back to you Ms. Brown. Apparently there was
4 a 2010 trial or event, and then this is a 1996 event. This
5 1996 event, was this a murder as well?

6 MS. BROWN: No, Your Honor. It was actually an
7 assault with a deadly weapon.

8 THE COURT: Okay.

9 MS. BROWN: And he plead to it. And he was fifteen or
10 sixteen years of age at that time. He received probation.
11 And he was referring on this particular statement because he
12 was expressing that he couldn't find a job because it is
13 still on his record, and he also has this murder on his
14 record.

15 THE COURT: Now, what capability do you have, if any,
16 to just cut that out of the tape? Or, Ms. Brown is it your
17 position if the court grants your request, that simply would
18 have to turn the volume down at one point and keep it down
19 for the next fourteen units on the tape?

20 MS. BROWN: Your Honor, certainly if there it is
21 impossible to redact it, certainly I would ask that in some
22 fashion be --- to not allow the jury to hear it. If we have
23 to turn it down, that is fine.

24 THE COURT: Well, now do you have the technology
25 available today to redact it, to cut that out?

THE STATE VERSUS CLARENCE KENDELL COOK

263

1 **MS. BROWN:** I can make a phone call and see. Once
2 again the videographer is in Florence. So, I am going to
3 have to go to Florence, get a copy of it, and return. I just
4 don't know what we are going to get for this particular
5 portion.

6 **THE COURT:** All right. And, I am assuming, or I
7 should ask actually, not assume. Does the state have the
8 technological capability here in the courtroom to cut that
9 tape portion out?

10 **MS. JOHNSON-LEE:** Not to cut it out, Your Honor.

11 **THE COURT:** Just a moment.

12 **(PAUSE.)**

13 **THE COURT:** All right. The court is prepared to rule.
14 I am going to grant your motion, Ms. Brown. Because, what I
15 am finding is that there is little probative value of that
16 excerpt, but it has a highly prejudicial value because it is
17 a violent crime. It is similar to the crime for which we are
18 here in trial. And thus, the court believes that it does not
19 survive a 403 analysis. So, we will remove thirty-three
20 twenty to thirty-three thirty-four. But, Ms. Brown, you are
21 the moving party, and thus, it is your responsibility to get
22 that part lifted or otherwise we will just simply have to
23 find some vigilant person to sit at the volume button and
24 take it down for fourteen seconds, and bring it back up after
25 that is concluded.

THE STATE VERSUS CLARENCE KENDELL COOK

264

1 **MS. BROWN:** Your Honor, if Madame Solicitor can tell
2 me when she plans to put it in, I can go ahead and call now
3 to see if I can get that portion redacted.

4 **THE COURT:** Well, she told us at the bench that this
5 will be her last witness. But, that if all went well in a
6 perfect world, she would close her case today.

7 Now, you know, counsel we can agree for Ms. Johnson-Lee
8 to take this witness first thing in the morning, which will
9 spill your case over, but nevertheless it appears that we are
10 moving with sufficient speed that we are not going to run
11 into Friday, which has been what my concern has been from day
12 one. If you are going to close your case with just that one
13 witness tomorrow, we should finish all the testimony
14 certainly tomorrow at the latest. And if we don't get to the
15 jury tomorrow, get to the jury first thing Thursday morning.
16 So, I don't think there is any damage done if we hold Ms.
17 Young, that is your final witness, until tomorrow morning,
18 and give Ms. Brown then an opportunity over night, to pick up
19 the tape and bring it back redacted. What do you say to that
20 Ms. Johnson-Lee?

21 **MS. JOHNSON-LEE:** Well, Your Honor, and I am just
22 asking. Is it possible to have Ms. White sit there and when
23 it starts, to get to that portion, mute it, and then un-mute
24 it when it gets past that portion?

25 **THE COURT:** Well, we can do that. But, if we do that,

THE STATE VERSUS CLARENCE KENDELL COOK

265

1 then I believe the court will need to give some sort of
2 contemporaneous charge that would say something like we are
3 not hiding things from you, which is probably less than
4 credible on its face. But, to the effect that there is a
5 comment made that is not relevant to the proceedings here in
6 this case. Certainly we can do that. And if you want to
7 push forward and just get your case done and be finished with
8 it, then I can't tell you how to structure or how to call
9 your case. But we would --- I would ask for your assistance
10 and Ms. Brown in crafting a contemporary charge, just again
11 just a brief sentence or two that would alleviate any
12 concerns the jurors may have that frankly something is being
13 hid from them.

14 All right. We are going to start back at two. I don't
15 think there is anything further we need to do in regard to
16 this. I'll just stand down and let y'all continue to prepare
17 and be back at two o'clock.

18 Court is in recess until that time.

19 (Whereupon, a recess was taken from 1:18 p.m.
20 until 2:00 p.m.)

21 **THE COURT:** We are told that our last juror has
22 returned from lunch. So they are all present. Are we ready
23 to bring in the jury, Madame Prosecutor?

24 **MS. JOHNSON-LEE:** Yes, Your Honor.

25 **THE COURT:** Very good. Please bring in the jury.

JAMES GREEN - VOIR DIRE EXAMINATION

266

1 (Whereupon, the jury enters the courtroom at
2 2:00 p.m.)

3 **THE COURT:** All right. Welcome back, ladies and
4 gentlemen. And Madame Prosecutor, please call your next
5 witness.

6 **MS. JOHNSON-LEE:** The state calls Jamie Green, James
7 Green.

8 **THE COURT:** Please come forward and take the oath of a
9 witness.

10 **WHEREUPON, JAMES GREEN**

11 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

12 **AGENT GREEN:** Yes, ma'am.

13 **THE COURT:** Please be seated and state your name for
14 the record, please.

15 **AGENT GREEN:** James Green. And it is spelled G-R-E-E-
16 N.

17 **VOIR DIRE EXAMINATION BY MS. JOHNSON-LEE:**

18 Q. And where are you employed?

19 A. I am employed by the State Law Enforcement Division,
20 commonly referred to as SLED in the Firearms Department,
21 in the Forensic Services Laboratory.

22 Q. How long have you been employed with SLED?

23 A. Approximately five and a half years.

24 Q. Is that your total law enforcement experience?

25 A. No, ma'am. Prior to working for SLED I worked with the

JAMES GREEN - VOIR DIRE EXAMINATION

267

1 Mt. Pleasant Police Department, which is a Police
2 Department just north of Charleston.

3 Q. Are you a graduate of the Criminal Justice Academy?

4 A. Yes ma'am.

5 Q. You are a certified law enforcement officer?

6 A. Yes ma'am.

7 Q. What are your duties at SLED?

8 A. In the Firearms Department, our primary duties are to
9 examine firearms and firearms related evidence, and tool
10 marks and tool mark related evidence.

11 Q. What is your educational background?

12 A. I have a Bachelor of Arts from Charleston Southern
13 University. And I also have a Masters of Science in
14 Criminal Justice from Charleston Southern. And I have
15 also completed the SLED Firearms and Tool Mark Course of
16 instruction; which is basically a three year course of
17 instruction studying under court qualified firearms
18 examiners, and going through the training process there.

19 Q. Have you had additional specialized training for your
20 present work?

21 A. During the firearm course of instruction, studying under
22 the court qualified examiners, at first you start off by
23 watching them perform their case work. Seeing how the
24 document the evidence. Learning the skills necessary to
25 do firearm identification. As I became more and more

JAMES GREEN - VOIR DIRE EXAMINATION

268

1 familiar with the process, and policies, and procedures,
2 and documentation, I started prepping cases for the
3 examiners, and eventually working cases on my own under
4 their supervision and guidance, and they would sign off
5 on the reports, and go back and check my work. At the
6 end of the training cycle, I was given a very
7 comprehensive final exam. It had oral interviews and
8 exercises, and particle problems and fake cases where
9 they made up --- they got some firearms or tools,
10 created evidence, and gave them to me, and I would work
11 it as if it were a real case, and then turn it in for
12 them for a review.

13 Q. Are you a member of any professional organizations
14 associated with your background in firearms?

15 A. Yes, ma'am. I am a member of the Association of Firearm
16 and Tool Mark Examiners, commonly called AFTE, or AFTE.
17 It is a worldwide organization of firearm examiners.

18 Q. Have you testified previously in the field of firearm
19 identification?

20 A. Yes, ma'am.

21 Q. Approximately how many times?

22 A. Twelve.

23 Q. In what courts?

24 A. Various courts throughout the state of South Carolina.

25 MS. JOHNSON-LEE: Your Honor, at this time I would

JAMES GREEN - DIRECT EXAMINATION

269

1 offer the witness as an expert in firearm identification?

2 **MS. SELLERS:** No objection, Your Honor.

3 **THE COURT:** Then without objection, you may proceed.

4 The witness is admitted as an expert in the area of firearm
5 identification.

6 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

7 Q. I am going to show you what has been marked for
8 identification as State's Exhibit Number 2. Do you
9 recognize that packet?

10 A. Yes, ma'am. This is a sealed manilla envelope with SLED
11 Laboratory Case Number L10-0456, Container Number C. It
12 is sealed right here with evidence tape seal, and my
13 initials and date of June 14, 2010.

14 Q. What are the contents of that?

15 A. Do you want me to open it?

16 **MS. JOHNSON-LEE:** With the court's permission, I would
17 ask the witness to open the package.

18 **THE COURT:** Without objection, you may.

19 A. There are two zip locked bags, also the seals have my
20 initial and the date of June 14, 2010. In this one
21 envelope right here, which --- let me back up.

22 When evidence is submitted to SLED, by
23 whatever agency submits it out of the forty-six
24 counties, it is given in addition to the agencies
25 case number, it is given a SLED laboratory case

JAMES GREEN - DIRECT EXAMINATION

270

1 number. Each item is given an item number. And
2 that is what we work with. So, when I refer to
3 things, I go by the item number that is given by
4 the SLED laboratory number.

5 This package is L10-6456, Item 6. It is one
6 fired bullet. When we get the evidence, we mark
7 the lab number, the item number, and the case
8 number, and the evidence items, if they are big
9 enough. And that is what I am looking for now. Is
10 to see if these markings are on these items. And
11 that is the bullet that I examined. And this is
12 SLED Laboratory Item Number 7, it is a small jacket
13 fragment and two lead fragments. And they have my
14 item number, case number, and initials on them as
15 well.

16 Q. When did those items first come into your possession?

17 A. It would have been --- Let me check my case file and see
18 the date that I opened them. I began working on the
19 case on June 14, 2010.

20 Q. Do you know on what date those items would have come to
21 the State Law Enforcement Division itself?

22 A. Let's see, it is showing they were submitted on June 11,
23 2010.

24 Q. Where would they have been between June 11th and brought
25 to SLED and June 14th, when you opened them to be

JAMES GREEN - DIRECT EXAMINATION

271

1 examined?

2 A. When evidence is submitted at SLED, it is submitted in
3 our Evidence Control Department. And then they have a
4 secure facility where the evidence is packaged when it
5 is brought to SLED. They give it the lab number, set up
6 the itemized item numbers in the evidence system we use,
7 which is called the beast, BEAST. It is just an
8 electronic record of the evidence that is put into the
9 secure evidence storage unit until whoever is assigned
10 the case, goes downstairs and retrieves it from evidence
11 control.

12 Q. And when you opened those items you did some sort of
13 examination on them?

14 A. Yes, ma'am. When I get evidence, what I will do is
15 first, take a picture of the packaging as I receive it,
16 so I can repackage it in a similar way. And then once I
17 have all the evidence out and photographed, I will
18 reconcile that with what was said to have been contained
19 to make sure there are no discrepancies. After I do
20 that and start documenting my evidence, taking photos, I
21 will weigh each item, measure each item, and start doing
22 the comparisons therefore.

23 Q. Did you make any conclusions as a result of your
24 examination of those bullets?

25 A. Yes, ma'am. SLED Item Number 6, I weighed it, measured

JAMES GREEN - DIRECT EXAMINATION

272

1 it, and found that it is most consistent with bullets
2 fired out of a .38 special, or a .357 caliber firearm.
3 If you remember I spoke about the SLED Item Number 7,
4 which was a fired bullet jacket and two lead fragments.
5 The lead fragments had no marks of value on them, and
6 they were unsuitable for identification. Which means,
7 even if somebody said this gun was used, there would be
8 no way I would be able to tie that back. So, when I
9 refer to Item 7, now I am just going to refer to the
10 jacket fragment.

11 Based on the land and groove measurements on
12 the complete fired bullet I have, lands are nothing
13 but --- lands and grooves rather are rifling in the
14 barrel of a firearm. When certain firearms are
15 made, the firearm manufacturer will say we want to
16 create a .99 millimeter Luger caliber firearm with
17 five lands and grooves in the barrel. They will
18 give certain measurements to those lands and
19 grooves. And the rifling in the barrel is nothing
20 more than to give a bullet stability in flight. If
21 you watch football, you know if you throw a nice
22 tight spiral it will go farther and it be more
23 accurate. If you are like me and you throw a duck,
24 the ball just wobbles all over the place. It will
25 not go very far if it is not accurate. The

JAMES GREEN - DIRECT EXAMINATION

273

1 riffing is placed in the barrel of the firearm to
2 give the bullet stability in flight to make it more
3 accurate.

4 What I did was I weighed the bullet to
5 determine the most consistent .38, .357 magnum
6 caliber, and then I looked at the small jacket
7 fragment. It is so damaged that I don't have the
8 whole bullet or the majority of it to even tell you
9 what caliber it is. But looking at the
10 measurements of the lands and grooves, they are
11 roughly similar to the Item 6 bullet. They are
12 both damaged. They both have very limited marks on
13 them. So my conclusion was, I don't know if they
14 were fired by the same firearm or not. There is
15 not enough marks for me to say they were fired by
16 the same firearm. But there is not enough marks to
17 say they were not.

18 Q. Following your examination, what did you do with that
19 bullet evidence?

20 A. At SLED we have a policy of a hundred percent
21 verification, which means, before I give any results to
22 anyone, my supervisors, the submitting agency whatever,
23 the one hundred verification policy means, I walk in and
24 say, I have some evidence I need you to look at. Please
25 come in and sit down, and look at it, and render your

JAMES GREEN - DIRECT EXAMINATION

274

1 own conclusion.

2 Q. Did you repack the bullets yourself?

3 A. Yes, ma'am.

4 Q. And that was the packaging you just opened?

5 A. Yes, ma'am. When I first opened this envelope, the
6 evidence items are inside the little envelopes inside
7 this Ziplock bag. And for re-containerizing or
8 repackaging purposes I just put them in a Ziplock bag.
9 So, if I needed to open them again, I would not have to
10 go through the process of opening up all the envelopes
11 again, they are just in this sealed Ziplock bag.

12 Q. And the seal that was on that main envelope, is that a
13 tamper evidence seal?

14 A. I'm sorry?

15 Q. On the envelope, the large package that it was in, is
16 that a tamper evidence seal?

17 A. If someone were to open this --- If you notice, I opened
18 it on the opposite side. If someone were to open this,
19 the evidence take --- you would be able to tell if
20 someone opened it or not.

21 Q. And had that been tampered with since repackaged at
22 SLED?

23 A. No, ma'am. It is still in tack with my seal on it.

24 MS. JOHNSON-LEE: At this time I would move for
25 admission of the bullets into evidence.

JAMES GREEN - DIRECT EXAMINATION

275

1 **THE COURT:** Is there an objection?

2 **MS. SELLERS:** No objection, Your Honor.

3 **THE COURT:** Very good. Tell me what number that would
4 be, counsel?

5 **MS. JOHNSON-LEE:** That would be number 2 for the
6 state.

7 **THE COURT:** Without objection, Number 2 in evidence
8 for the state.

9 **WHEREUPON, STATE'S EXHIBIT**
10 **NUMBER 2 WAS ADMITTED INTO**
11 **EVIDENCE WITHOUT OBJECTION.**

12 Q. Next, I am going to show you what has been marked for
13 identification as State's Exhibit Number 39. Do you
14 recognize that document?

15 A. Yes, ma'am.

16 Q. What is that?

17 A. This is the former report that I issued in reference to
18 this case.

19 Q. And what date did you do that report on?

20 A. June 15, 2010.

21 Q. And, that report sets forth the findings that you just
22 testified to?

23 A. Yes, ma'am.

24 **MS. JOHNSON-LEE:** At this time I would move to offer
25 the report into evidence.

JAMES GREEN - CROSS EXAMINATION

276

1 **THE COURT:** And did you say -

2 **MS. SELLERS:** -- No objection, Your Honor.

3 **THE COURT:** All right. Then without objection, 39 in
4 evidence for the state.

5 **WHEREUPON, STATE'S EXHIBIT**

6 **NUMBER 39 WAS ADMITTED INTO**

7 **EVIDENCE WITHOUT OBJECTION.**

8 **MS. JOHNSON-LEE:** I have no further questions. Answer
9 any questions that Ms. Brown has for you.

10 **THE COURT:** Cross examination?

11 **CROSS EXAMINATION BY MS. SELLERS**

12 Q. Good afternoon, Officer Green.

13 A. Good afternoon.

14 Q. I just have a couple of questions. Now, you said that
15 you could not tell, using your training and your
16 experience, that these two fragments were fired from the
17 same weapon?

18 A. Correct.

19 Q. Now, if you did not have --- You tested Items 6 and 7;
20 correct?

21 A. SLED Items 6 and 7, yes, ma'am.

22 Q. Let's say if you didn't have Item 6, would you be able
23 to draw any conclusion whatsoever, just testing Item 7?

24 A. Without Item 6, the only thing I could say --- Let's say
25 you are the submitted; the only thing that I could tell

JAMES GREEN - CROSS EXAMINATION

277

1 you is that Item 7 was a copper jacket fragment from a
2 fired bullet, the Item 7 --- the bigger core was a lead
3 core from a fired bullet. And the smaller lead core
4 could have been part of the bullet one time. I would
5 not have been able to give a GRC list, which is a
6 general rifling characteristics. And, if y'all remember
7 how I talked about when they are creating a firearm,
8 they give it a certain number of lands and grooves in
9 those measurements. When we measure complete bullets,
10 we can sometimes give a list of firearms that may have
11 fired that bullet. However, with Item 7, I would not
12 have been able to give you anything. I can't tell you
13 the caliber. And I would not be able to give you a list
14 of firearms that may have fired that bullet.

15 Q. So, out of the possible number, how many guns exist, how
16 many guns would you say could possibly fire the item
17 shot?

18 A. May I look at my report real quick?

19 Q. Sure.

20 A. In reference to .38 special --- Let me back up real
21 quick. The list of firearms that we can provide as
22 given to us, based on the report issued by a data base
23 that the FBI gives us. Whenever a firearm is created,
24 the firearm manufacturer will contact the FBI and say
25 hey, we hare making a firearm that has eight lands and

JAMES GREEN - CROSS EXAMINATION

278

1 grooves with a right hand twist, and these are the
2 measurements of those lands and grooves. Or, sometimes
3 if something slips through the cracks, as it sometimes
4 does, a firearms examiner will call the FBI and say,
5 hey, you need to add this. So, what I did was, I took
6 the measurements of the land and groove on the Item 6
7 bullet, plugged that into the GRC database supplied to
8 us by the FBI, and it gave us a list of possible
9 firearms that could have fired those bullets.

10 In .38 special, we have nine possible
11 firearms. And in .357 magnum, there are four
12 possible firearms.

13 Q. So, in reading your report is it possible that two guns
14 fired the different rounds?

15 A. It is possible, yes, ma'am.

16 MS. SELLERS: No further questions.

17 THE COURT: And redirect?

18 MS. JOHNSON-LEE: None, Your Honor.

19 THE COURT: Any objection to the release of the
20 witness?

21 MS. JOHNSON-LEE: None from the state.

22 THE COURT: Then, sir, you are free to leave if you
23 wish.

24 MR. GREEN: Thank you.

25 THE COURT: Have a good day.

JOHN ROBERTS - VOIR DIRE EXAMINATION

279

1 **MR. GREEN:** You too.

2 **THE COURT:** Please call your next witness.

3 **MS. JOHNSON-LEE:** John Roberts.

4 **THE COURT:** Mr. Roberts, please come forward and take
5 the oath of a witness.

6 **WHEREUPON, JOHN ROBERTS**

7 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

8 **MR. ROBERTS:** Yes, I do.

9 **THE COURT:** And, Mr. Roberts, if you would state your
10 full name for the record, please.

11 **MR. ROBERTS:** My name is, John Roberts.

12 **VOIR DIRE EXAMINATION BY MS. JOHNSON-LEE**

13 Q. Where are you employed?

14 A. I work for the State Law Enforcement Division, more
15 commonly called SLED, in the Forensic Services Unit, in
16 the Trace Evidence Department.

17 Q. What is your title there?

18 A. I am a Special Agent/Forensic Scientist.

19 Q. How long have you been doing that?

20 A. Just over six years.

21 Q. Do you have any previous law enforcement experience
22 also?

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

24 Q. What are your specific duties as a Special Agent?

25 A. What I do is work in the Trace Evidence Department. And

JOHN ROBERTS - VOIR DIRE EXAMINATION

280

1 in Trace Evidence, what we do is analyze evidence that
2 you can't see with your naked eye. We use a lot of
3 microscopes, a lot of chemical analysis, instruments.
4 And we do gunshot residue analysis. We do bullet hole
5 analysis. Arson, fired grade evidence analysis, paint,
6 fiber, glass, explosives, duck tape, and bank dye packs.

7 Q. What is gunshot residue commonly called?

8 A. Gunshot residue is commonly called GSR.

9 Q. Okay. What is your educational background as far as GSR
10 is concerned?

11 A. I have a Bachelors of Science degree in Chemistry from
12 Texas A&M, Corpus Christy. When I moved to South
13 Carolina and got my job at SLED, I went through our in
14 house training program in gunshot residue analysis. I
15 worked under my lieutenant, who had been doing it for
16 fifteen or twenty years before I got there. I worked
17 cases with him. I learned how to run the
18 instrumentation with him. And, basically I just learned
19 how to do it like an apprenticeship. After I did that
20 for a while, I was given a test by my peers, who had
21 been doing it for much longer than I had, and I got
22 court qualified. And I have been doing it since I
23 guess, 2006.

24 Q. Are you a member of any professional organizations
25 related to your field?

JOHN ROBERTS - DIRECT EXAMINATION

281

1 A. I am an associate member of the Southern Association for
2 Forensic Scientist.

3 Q. How many tests have you performed in the field of GSR?

4 A. Thousands.

5 Q. Have you testified in court before?

6 A. Yes, ma'am.

7 Q. How many times approximately?

8 A. Forty-one times.

9 Q. In what courts?

10 A. Mostly general sessions court, one time in a corner's
11 inquest.

12 Q. Have you been declared an expert in any of those courts?

13 A. Yes, ma'am.

14 Q. Is that an expert in the field of GSR?

15 A. Yes, ma'am, it is.

16 MS. JOHNSON-LEE: Your Honor, at this time I would
17 offer this witness as an expert in the field of GSR.

18 MS. SELLERS: No objection, Your Honor.

19 THE COURT: All right. Without objection then the
20 witness is so admitted. And you may proceed.

21 DIRECT EXAMINATION BY MS. JOHNSON-LEE

22 Q. Did you receive any evidence in The State versus
23 Clarence Kendell Cook?

24 A. Yes, ma'am, I did.

25 Q. And what did you receive?

JOHN ROBERTS - DIRECT EXAMINATION

282

1 A. I received two gunshot residue kits. One from, if you
2 will give me a second I will read it directly off of my
3 report. I got one gunshot residue kit from Clarence
4 Kendell Cook, and one gunshot residue kit from Charles
5 Hayes.

6 Q. What were the results of those two tests that you
7 performed.

8 A. The gunshot residue kit from Clarence Kendell Cook, I
9 found on the right palm, the right back of the hand, the
10 left palm, and the left back of the hand that the
11 quantities of metals found did not indicate the presence
12 of gunshot residue.

13 Q. If there was a period of time, such as two hours between
14 the time of shooting a gun and the time of the test
15 being or the GSR swab being done, would those findings
16 be considered out of the ordinary?

17 A. No, ma'am.

18 Q. Please explain to the jury why it is not abnormal for
19 somebody to have a negative GSR two hours after firing a
20 gun?

21 A. Okay. What happens when you fire a gun, the residue
22 that comes out of the primer, which is usually a silver
23 or gold colored disk on the back end of a bullet. That
24 primer residue comes out in the form of small droplets.
25 When it hits the air it cools and it lands on your

JOHN ROBERTS - DIRECT EXAMINATION

283

1 hands, if you are shooting the gun. If you are near the
2 gun it can land on anything that is basically near the
3 gun. Your body will absorb that material given a
4 certain amount of time. Our protocol at SLED is six
5 hours for a living person. Beyond that, we have found
6 that the residue has been absorbed into the body and we
7 can't detect it.

8 Now, given that this was two hours after the
9 shooting in June, when it is hot and muggy outside,
10 and there is no accounting for the activities of
11 whomever the GSR Kit was taken from, he could have
12 washed his hands. He could have been sweating and
13 wiped his hands on his pants or on his shirt.
14 Every time you touch something this material gets
15 removed. So, that is how it can come up negative,
16 with just a two hour delay.

17 Q. But even putting hands in a pants pocket deletes some of
18 that GSR?

19 A. Yes, ma'am. If you do it repeatedly.

20 Q. Did you prepare a report of your findings?

21 A. I did.

22 Q. I want to show you what has been marked as State's
23 Exhibit Number 40. Do you recognize that document?

24 A. Yes, ma'am. This is a copy of my report.

25 Q. And what date did you prepare that report?

JOHN ROBERTS - CROSS EXAMINATION

284

1 A. July 6, 2010.

2 MS. JOHNSON-LEE: At this time I move to have the
3 report entered into evidence.

4 MS. SELLERS: No objection.

5 THE COURT: Without objection, 40 in evidence for the
6 state.

7 WHEREUPON, STATE'S EXHIBIT
8 NUMBER 40 WAS ADMITTED INTO
9 EVIDENCE WITHOUT OBJECTION.

10 Q. And just one last question. It is not uncommon then for
11 someone to have a negative GSR two hours after a
12 shooting?

13 A. No, ma'am. It is not.

14 MS. JOHNSON-LEE: Thank you. Answer any questions Ms.
15 Brown or Ms. Sellers has.

16 AGENT ROBERTS: Yes ma'am.

17 CROSS EXAMINATION BY MS. SELLERS

18 Q. Good afternoon Agent Roberts; how are you?

19 A. I'm good. How are you?

20 Q. Fine. I just have a couple of brief questions for you.

21 A. Yes, ma'am.

22 Q. There are a number of elements though that could effect
23 the contamination to remove GSR from your hands; right

24 A. Yes, ma'am.

25 Q. For instance, if there were heavy bleeding that could

JOHN ROBERTS - CROSS EXAMINATION

285

1 also?

2 A. Heavy bleeding could wash it away, especially if you
3 have blood on your hands and you go to wipe your hands
4 off; yes, that could be it.

5 Q. And also any rough handling can also remove the GSR?

6 A. If you are constantly touching something after you have
7 fired a weapon, then yeah, you can remove it that way.

8 MS. SELLERS: No further questions. Thank you.

9 THE COURT: Is there redirect?

10 MS. JOHNSON-LEE: No, Your Honor. We would as that
11 the witness be excused.

12 THE COURT: All right. Then without objection we will
13 release you from the subpoena. You are free to leave.

14 AGENT ROBERTS: Thank you, sir.

15 THE COURT: Have a good day.

16 MS. JOHNSON-LEE: Ira Dease.

17 THE COURT: Good afternoon, Officer Dease. Please
18 come forward and take the oath of a witness.

19 WHEREUPON, IRA DEASE, III

20 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

21 OFFICER DEASE: I affirm.

22 THE COURT: Please state your full name for the
23 record.

24 OFFICER DEASE: Ira Dease, III

25 DIRECT EXAMINATION BY MS. JOHNSON-LEE

IRA DEASE, III - DIRECT EXAMINATION

286

1 Q. Where are you employed?

2 A. Bennettsville Police Department.

3 Q. And in what capacity?

4 A. Narcotic investigator.

5 Q. What was your job there in June of 2010?

6 A. Narcotic investigator.

7 Q. Do you also participate in any other types of
8 investigations?

9 A. Yes.

10 Q. Is that done on an as needed basis?

11 A. As needed.

12 Q. How long have you been with the Bennettsville Police
13 Department?

14 A. Thirteen years.

15 Q. Do you have any other law enforcement experience?

16 A. Pretty much I started in 92, with Bennettsville, but I
17 had a break in service.

18 Q. So, have you graduated from the Criminal Justice
19 Academy?

20 A. Yes, I did.

21 Q. So, you are a certified law enforcement officer?

22 A. I am.

23 Q. Did you receive a call on June 10, 2010, at
24 approximately six p.m.?

25 A. I did.

IRA DEASE, III - DIRECT EXAMINATION

287

1 Q. What was the nature of that call?

2 A. Homicide.

3 Q. Where was that located?

4 A. Marlboro Court Apartment.

5 Q. And where is Marlboro Court Apartments?

6 A. It is on Oakwood Street.

7 Q. Okay. Where is Oakwood Street?

8 A. It is down off Cheraw. It is in between Cheraw Street
9 and Hamlet Highway.

10 Q. And that is in Marlboro County?

11 A. Yes, it is.

12 Q. And that is in the city limits of Bennettsville?

13 A. That is correct.

14 Q. Describe the scene when you arrived there?

15 A. When I first got there, there was a lot of people out in
16 the parking lot.

17 Q. Did you see a victim of a shooting?

18 A. Not when I first got there.

19 Q. How long after you arrived did you see the victim?

20 A. Once I got there, I spoke with one of the officers on
21 the scene to find out what was going on. And then I
22 went and grabbed my camera afterward.

23 Q. Why did you grab your camera?

24 A. To take photos.

25 Q. Is that part of your job duties that day?

IRA DEASE, III - DIRECT EXAMINATION

288

- 1 A. Yes, it was.
- 2 Q. Do you recall who directed you to photograph the scene?
- 3 A. That's normal, what we do when we respond to a scene is
- 4 to take photographs.
- 5 Q. Do you recall approximately what time you arrived there?
- 6 A. No, I don't recall.
- 7 Q. Do you recall if Kim Brown was still present when you
- 8 arrived on scene?
- 9 A. Yes, she was there.
- 10 Q. What was she doing?
- 11 A. I don't recall.
- 12 Q. Do you recall where the victim was located?
- 13 A. He was lying on the ground.
- 14 Q. Do you know who the victim was?
- 15 A. Not at the time. Not until later.
- 16 Q. Okay. Who did you later determine the victim to be?
- 17 A. Charles Hayes.
- 18 Q. Do you recall anybody being in close proximity to Mr.
- 19 Hayes' body?
- 20 A. I can't recall.
- 21 Q. Was the crime scene tape already around the area when
- 22 you arrived?
- 23 A. It was.
- 24 Q. Was anybody inside the area where the crime scene tape
- 25 was marked off?

IRA DEASE, III - DIRECT EXAMINATION

289

1 A. They was standing outside when I got there.

2 Q. Was anybody inside the crime scene tape beside the
3 victim when you arrived?

4 A. I can't recall.

5 Q. All right. You stated that you took photographs; is
6 that correct?

7 A. I did.

8 Q. I am going to show you what is marked for identification
9 as State's Exhibit Number 17 through 25 for
10 identification. Would you please review those
11 documents?

12 (PAUSE.)

13 Q. Do you recognize those photos?

14 A. Yes, I do.

15 Q. Are those photographs that you took?

16 A. Yes, it is.

17 Q. Did you take those on June 10th, sometime after six
18 p.m.?

19 A. I did.

20 Q. Are they an accurate depiction of the scene as you saw
21 it on that day?

22 A. Yes, it is.

23 Q. Have those photos been altered or have anything deleted
24 from them in any way?

25 A. No.

IRA DEASE, III - CROSS EXAMINATION

290

1 MS. JOHNSON-LEE: At this time I would offer these
2 photographs into evidence.

3 (PAUSE.)

4 MS. SELLERS: No objection.

5 THE COURT: State's 17 through 25 then in evidence
6 without objection.

7 WHEREUPON, STATE'S EXHIBIT
8 NUMBERS 17, 18, 19, 20, 21, 22,
9 23, 24, AND 25 WERE ADMITTED
10 INTO EVIDENCE WITHOUT
11 OBJECTION.

12 MS. JOHNSON-LEE: That's all the questions I have.
13 Please answer any questions that Ms. Brown or Ms. Sellers
14 might have.

15 THE COURT: And is there cross examination?

16 MS. SELLERS: Yes, Your Honor.

17 THE COURT: Please proceed.

18 CROSS EXAMINATION BY MS. SELLERS

19 Q. Good afternoon, Mr. Dease. You took those photos;
20 correct?

21 A. I did.

22 Q. Did you have an opportunity to observe any cell phones?

23 A. No. I just take these pictures. That's all I saw.

24 Q. When you were at the crime scene, you had an opportunity
25 to observe the body as well. Did you notice if the

IRA DEASE, III - CROSS EXAMINATION

291

1 pockets had been turned out? Did it appear that the
2 pockets had been pulled out?

3 A. No, I did not.

4 Q. Did you have an opportunity to review any of the
5 evidence while you were there?

6 A. No. The only thing I was responsible for was taking the
7 photos at that time.

8 Q. So, who was the lead investigator?

9 A. That would be Detective Young.

10 Q. All right. So, Detective Young basically gave you all
11 assignments as you arrived at the scene?

12 A. When I got there, Detective Young was not there when I
13 first got there.

14 Q. Do you recall when Detective Young arrived?

15 A. She arrived shortly after I did.

16 Q. Now, how did you get this call about this investigation?

17 A. Normally 911 would call us and let us know what we have.
18 And then we respond.

19 Q. So, did that call go out over the radio?

20 A. No, it was a phone call.

21 Q. A phone call?

22 A. Yes.

23 Q. Does --- 911 would typically call you on your cell
24 phone?

25 A. Yeah, the majority of the time.

IRA DEASE, III - REDIRECT EXAMINATION

292

1 Q. Now at that time you were doing narcotics, but you had
2 done some investigations for murder as well?

3 A. Recently.

4 Q. Do you recall --- Could you give me an estimate of how
5 far the body was found from the staircase; from the
6 bottom of the steps?

7 A. I can't give you an estimation.

8 Q. Was it right beside?

9 A. It was close proximity.

10 MS. SELLERS: Beg court's indulgence.

11 (PAUSE.)

12 Q. Taking photographs is not the extent of your work? You
13 actually went and interviewed some other people;
14 correct?

15 A. Yes.

16 Q. You actually interviewed Mr. Cook?

17 A. I did.

18 MS. SELLERS: No further questions.

19 THE COURT: Redirect on those issues?

20 MS. JOHNSON-LEE: Just one clarification.

21 REDIRECT EXAMINATION BY MS. JOHNSON-LEE

22 Q. When you say you interviewed a Mr. Cook, did you
23 actually participate in a interview of Mr. Cook done by
24 another detective?

25 A. Detective Young.

DEBORAH CARTER - DIRECT EXAMINATION

293

1 MS. JOHNSON-LEE: Thank you. No further questions.

2 THE COURT: All right. Then sir, you are free to step
3 down. You are free to remain with us or to leave if you
4 wish.

5 Please call your next witness.

6 MS. JOHNSON-LEE: Deborah Carter

7 THE COURT: Please come forward and take the oath of a
8 witness.

9 WHEREUPON, DEBORAH CARTER

10 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

11 MS. CARTER: Yes, ma'am.

12 THE COURT: And, ma'am, if you would state your name
13 for the record, please.

14 MS. CARTER: Deborah Carter.

15 DIRECT EXAMINATION BY MS. JOHNSON-LEE

16 Q. Ms. Carter, where were you living on June 10, 2010?

17 A. Marlboro Court Apartments.

18 Q. Do you know Kim Brown?

19 A. Yes, ma'am.

20 Q. Where was your apartment in relation to hers?

21 A. My building is across from hers.

22 Q. Is that across the grassy area?

23 A. Like, my apartment is here and her's is like, across on
24 the other side. I can look out my bedroom window and
25 see her building.

DEBORAH CARTER - DIRECT EXAMINATION

294

1 Q. So, it is not the building straight across the gassy
2 area?

3 A. Hu'huh, it is across the parking lot.

4 Q. Across the parking lot, okay. But you can see from one
5 of your windows where her apartment is located?

6 A. Yes, ma'am.

7 Q. Were you at home on June 10th of last year, around six
8 p.m.?

9 A. Yes, ma'am.

10 Q. What happened around six p.m. on that evening?

11 A. I was in my bedroom and I heard what I thought was a
12 firecracker. And, a few seconds later I heard it again,
13 and I ran to my window. And as I ran to my window I
14 heard someone screaming, and I saw someone, which was to
15 my left with a white T-shirt on, running behind the
16 apartment building. And at that time I had a son, who
17 stayed in the next building, so I ran over to see what
18 was going on. And when I got there I saw Kim, and all I
19 know he go by is Snook. He apparently had been shot and
20 she was on top of him crying.

21 Q. Did you see her take anything off of him?

22 A. No, ma'am.

23 Q. Did you see her search his body in any way?

24 A. No, ma'am.

25 Q. What kind of condition was Kim in?

DEBORAH CARTER - CROSS EXAMINATION

295

1 A. Kim was hysterical. She was crying. She was still
2 saying, baby get up, get up. And, I tried to get her
3 off of him to see if he you know, was still breathing or
4 had a pulse, but I could not get her off of him.

5 Q. Were you present when law enforcement arrived?

6 A. Yes, ma'am.

7 Q. Do you recall which officers came?

8 A. The first one I remember seeing was Officer Walter
9 Covington.

10 Q. Do you recall who else was out there at the scene?

11 A. No, ma'am. I was just focused on Kim.

12 MS. JOHNSON-LEE: Thank you, ma'am. Answer any
13 questions Ms. Brown or Ms. Sellers has.

14 THE COURT: Cross examination.

15 MS. BROWN: Thank you, Your Honor.

16 CROSS EXAMINATION BY MS. BROWN

17 Q. Ms. Carter, how long have you lived --- first let me
18 begin. Are you still presently living in Marlboro
19 Court?

20 A. Yes, ma'am.

21 Q. How long have you been living out there?

22 A. This year will be three years.

23 Q. Three years. How long have you known Ms. Kim Brown?

24 A. Pretty much all of my life.

25 Q. And you consider Ms. Brown your friend; is that correct?

DEBORAH CARTER - CROSS EXAMINATION

296

1 A. Someone that I knew.

2 Q. And did you in fact know Mr. Hayes prior to June of last
3 year?

4 A. Which Mr. Hayes?

5 Q. Mr. Hayes, I'm sorry. Snook.

6 A. No, ma'am.

7 Q. You didn't know -

8 A. -- I mean, I didn't know him. I seen him, but I don't
9 personally know him.

10 Q. Had you had conversations with Snook prior to June of
11 last year?

12 A. No, ma'am.

13 Q. Were you aware --- Did you know whether or not Snook and
14 Ms. Brown had lived together?

15 A. Yes, ma'am.

16 Q. So, did you see Snook pretty often in the neighborhood?

17 A. I'd seen him, yeah. I would see him because we live
18 like opposite. But from time-to-time yeah, I would seen
19 him, but not like on a regular basis or anything.

20 Q. And, you stated that you arrived next to the body or
21 near the body shortly after the shooting?

22 A. Yes, ma'am.

23 Q. When you got there, was there anything covering Snook?

24 A. No, ma'am.

25 Q. Do you know whether or not at any point something came

DEBORAH CARTER - CROSS EXAMINATION

297

1 over his body?

2 A. Once the first officer arrived, I left. But there was
3 nothing covering his body when I was there.

4 Q. Nothing was ever covering his body?

5 A. No, ma'am.

6 Q. Could Ms. Brown place anything, a blanket, or a towel,
7 or anything on top of his body?

8 A. Not while I was there. She didn't never get off of him.

9 Q. She never did that. And you never saw anyone else do
10 that either?

11 A. No, ma'am.

12 Q. So, the entire time you were there the body was pretty
13 much exposed to everybody; is that correct?

14 A. Yes, ma'am.

15 Q. And how long did you say you stayed out there before law
16 enforcement arrived?

17 A. Maybe five or ten minutes.

18 Q. How long were you out there before law enforcement
19 arrived?

20 A. It took me probably from the time I heard her scream, it
21 took me a few seconds to get there, and I stayed there
22 until the first officer arrived; maybe five or ten
23 minutes.

24 Q. So, the officers arrived maybe about ten minutes later?

25 A. Uh'huh.

DEBORAH CARTER - CROSS EXAMINATION

298

1 Q. Now, let's talk about the officer who arrived. Do you
2 recall, prior to the officers arriving, anyone else next
3 to the body other than you and Ms. Brown?

4 A. No, ma'am.

5 Q. Do you recall --- Do you know Mr. Hayes or Snook's
6 nephew?

7 A. No, ma'am.

8 Q. You don't know. Do you remember seeing another guy out
9 there, a big guy; do you remember seeing him?

10 A. No, because I was focused on Kim at the time. So, no.

11 Q. Do you in fact know Ms. Mary Davis?

12 A. (No response.)

13 Q. Do you know Carlos Eaddy?

14 A. Yes.

15 Q. Do you know Carlos Eaddy's girlfriend?

16 A. I know her by nickname.

17 Q. What is her nickname?

18 A. Mama Girl.

19 Q. Mama Girl?

20 A. Yeah.

21 Q. Did you see Mama Girl out there?

22 A. I don't remember seeing her.

23 Q. Do you recall seeing Carlos Eaddy out there?

24 A. No, ma'am.

25 Q. You didn't see Carlos, you don't recall seeing Terrance

DEBORAH CARTER - CROSS EXAMINATION

299

1 Bridges, which is the nephew. You don't recall seeing
2 anybody other than Kim; correct?

3 A. Yes, ma'am.

4 Q. Do you in fact know Clarence?

5 A. Yes, ma'am.

6 Q. How do you know Clarence?

7 A. We use to go fishing together. I use to take him
8 fishing.

9 Q. Did you have any problems with Clarence?

10 A. No, ma'am.

11 Q. Never had any disputes with Clarence?

12 A. No, ma'am.

13 Q. Do you have a son?

14 A. Yes, ma'am.

15 Q. What is your son's name?

16 A. Oh, I have two sons.

17 Q. Tell me your two sons names?

18 A. Brandon Ray and Mario Ray.

19 Q. Are you aware of any problems that existed between
20 Brandon Ray and Clarence?

21 A. No, ma'am.

22 Q. Were you aware of any problems that existed between
23 Mario Ray and Clarence?

24 A. They had a dispute where -

25 Q. -- Well, don't tell me the details of the dispute. Just

DEBORAH CARTER - CROSS EXAMINATION

300

1 tell me if you were aware of any problems at some point?

2 A. Yes, ma'am.

3 Q. And were you upset with Clarence after that dispute?

4 A. I've never spoke with Clarence about that; only his
5 girlfriend.

6 Q. You spoke with Clarence girlfriend. Okay. Do you
7 remember --- Did you spoke to Clarence girlfriend in
8 front of your property manager, Ms. Vivian Stubbs?

9 A. Yes, ma'am.

10 Q. And when you spoke with Clarence girlfriend, do you
11 recall issuing a threat towards Clarence?

12 A. No, ma'am.

13 Q. Were you angry that day when you spoke to Clarence
14 girlfriend about the dispute between Clarence and Mario?

15 A. Yes, ma'am

16 Q. How long was that before the shooting?

17 A. That I do not remember.

18 Q. Do you know Clarence sister; Tamela -

19 A. -- No, ma'am.

20 Q. Do you recall having any problems with any of Clarence -

21 A. -- No, ma'am.

22 Q. You never had any problems with them?

23 A. (No response.)

24 Q. Now, you said that you stayed out there until law
25 enforcement arrived.

DEBORAH CARTER - CROSS EXAMINATION

301

1 A. Yes, ma'am.

2 Q. Did law enforcement talk to you?

3 A. No, ma'am.

4 Q. So, you are one of the people they didn't talk to when
5 they arrived?

6 A. No, ma'am. Because I went home, because I still had
7 blood on me. So, I went home and took a shower.

8 Q. So, you never talked with law enforcement when they
9 arrived? They allowed you to leave the scene -

10 A. -- Yes, ma'am --

11 Q. -- before they even got your name; is that correct?

12 A. Correct.

13 Q. At any point did you give an interview to any law
14 enforcement officers?

15 A. Not that day.

16 Q. Not that day. How long ago did you give an interview?

17 A. Maybe a few weeks after.

18 Q. A few weeks after, or maybe November 3rd?

19 A. No, it was before November 3rd.

20 Q. You think it was before November 3rd?

21 A. Uh'huh.

22 Q. So, a few weeks after. So, who did you give the
23 interview to?

24 A. Officer Deborah. I don't know her last name.

25 Q. And how did you get in contact with Ms. Young?

DEBORAH CARTER - REDIRECT EXAMINATION

302

1 A. She contacted me.

2 Q. She contacted you. So, you never contacted any officer
3 about what you saw that day?

4 A. No, ma'am.

5 Q. And, you didn't speak with an officer when they arrived?

6 A. No, ma'am.

7 MS. BROWN: Beg court's indulgence, Your Honor. One
8 second.

9 (PAUSE.)

10 Q. One other thing, Ms. Carter. When you arrived at the
11 scene, and you noticed that the body was laying -- do
12 you recall seeing any items around the body at all?

13 A. No, ma'am.

14 Q. Let me ask you specifically. Do you recall seeing a
15 cell phone around the body?

16 A. No, ma'am.

17 Q. Do you recall seeing a house phone around the body?

18 A. No, ma'am.

19 MS. BROWN: No further questions.

20 THE COURT: Is there redirect?

21 MS. JOHNSON-LEE: Just a couple of questions.

22 REDIRECT EXAMINATION BY MS. JOHNSON-LEE

23 Q. When you say you don't remember, are you saying it was
24 none there, or you just do not recall.

25 A. I do not recall.

CARLOS EADDY - DIRECT EXAMINATION

303

1 **MS. JOHNSON-LEE:** Thank you, ma'am. No further
2 questions.

3 **THE COURT:** All right. Ma'am, you are free to step
4 down and leave, or you may stay if you wish to. Watch your
5 step as you exit the chair.

6 **MS. CARTER:** Okay.

7 **MS. JOHNSON-LEE:** Carlos Eaddy.

8 **THE COURT:** Please come forward and take the oath of a
9 witness.

10 **WHEREUPON, CARLOS EADDY**

11 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

12 **MR. EADDY:** I do.

13 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

14 Q. State your name for the record.

15 A. Carlos Eaddy.

16 Q. I need you to speak up just a little bit.

17 A. Carlos Eaddy.

18 Q. Thank you. Perfect. Mr. Eaddy, do you know Kim Brown?

19 A. Yes.

20 Q. Do you know, or did you know Mr. Charles Shook Hayes?

21 A. I did.

22 Q. Do you know Clarence Kendell Cook?

23 A. Yes.

24 Q. Do you know Chasity Carter?

25 A. Chasity Carter?

CARLOS EADDY - DIRECT EXAMINATION

304

1 Q. Do you know who Clarence Kendell Cook's girlfriend is?

2 THE COURT: Just a moment. Madame Prosecutor, just a
3 moment. You are actually a little close to that microphone.
4 I am going to get you to come back just a touch, and that way
5 you will be more clear, and our court reporter will be able
6 to understand your testimony.

7 Let's go back and ask the question you were asking when
8 I interfered. Thank you.

9 Q. Would you know Mr. Cook's girlfriend by sight?

10 A. Yes, I do.

11 Q. In June of 2010, did you live at Marlboro Court
12 Apartments?

13 A. I did.

14 Q. Who were you staying with?

15 A. Mary Davis.

16 Q. Mary Davis. Speak up just a little bit.

17 A. Mary Davis.

18 Q. And who is Ms. Davis to you?

19 A. Girlfriend.

20 Q. Where is Ms. Davis' apartment located?

21 A. (No response.)

22 Q. Let me back up. In relation to Kim Brown's apartment,
23 where is Mary Davis' apartment?

24 A. Right across the yard.

25 Q. So, there is a grassy area between them?

CARLOS EADDY - DIRECT EXAMINATION

305

1 A. Yeah.

2 Q. Where were you at approximately six o'clock p.m. on June
3 10th of last year?

4 A. You mean, when everything went down?

5 Q. Yes, the incident we are here for. Where were you?

6 A. Standing up in the window.

7 Q. In the window where?

8 A. The big window right there on the porch.

9 Q. At whose house?

10 A. Mary.

11 Q. At Mary Davis' house. Why were you standing at the
12 window?

13 A. Checking to see if it was still raining outside.

14 Q. Okay. And did you see anything?

15 A. No rain, but I saw like, Kendell was coming down the
16 stairs, and like, Snook you know, was trying to, you
17 know, get his attention or something.

18 Q. I need you to speak up just a little bit so everybody
19 back here can hear.

20 A. Okay.

21 **THE COURT:** Move just a little bit closer to that
22 microphone one more time. Thank you.

23 A. Snook was trying to get his attention. And he stopped,
24 turned around and pulled out a gun.

25 Q. Who pulled out a gun?

CARLOS EADDY - DIRECT EXAMINATION

306

- 1 A. Kendell.
- 2 Q. And what did Kendell do with the gun?
- 3 A. Pulled the trigger.
- 4 Q. Did he shoot someone?
- 5 A. Yes.
- 6 Q. Who did he shoot?
- 7 A. Charles Hayes.
- 8 Q. What else did you see after that shot?
- 9 A. He stood over him and shot him.
- 10 Q. Shot him the second time?
- 11 A. Right.
- 12 Q. And you saw that from the window?
- 13 A. Right.
- 14 Q. Did you see where Kendell went after the shooting?
- 15 A. Ran around the building.
- 16 Q. Did you ever see Snook with a gun?
- 17 A. He had two phones.
- 18 Q. How do you know he had two phones?
- 19 A. I saw him talking before. I brought my baby in the
- 20 house because he was asleep.
- 21 Q. So, you had been over to see Snook earlier?
- 22 A. Right.
- 23 Q. How much earlier that day had you seen him?
- 24 A. It's been like probably, twenty minutes after it
- 25 happened.

CARLOS EADDY - DIRECT EXAMINATION

307

1 Q. Now, when you say you were over there to see Snook, and
2 you said he had two phones. What kind of phones did he
3 have?

4 A. His cell phone and a house phone.

5 Q. Now, at the time of the shooting, did you see anybody
6 else outside?

7 A. I didn't see nobody but Kim.

8 Q. You only saw Kim?

9 A. Snook nephew and his son.

10 Q. Could anybody else had been out there?

11 A. They could have been, but there wasn't I noticed.

12 Q. You didn't notice it?

13 A. No.

14 Q. Did you ever see Snook reach around behind him before
15 getting shot?

16 A. I never saw it.

17 Q. Did you see Kim take anything off of Snook after he was
18 on the ground?

19 A. I didn't see nothing.

20 Q. Did you stay around to see what happened after the
21 shooting?

22 A. I left after the two cops got there.

23 Q. Did you write a statement for law enforcement that
24 night?

25 A. I think I did.

CARLOS EADDY - DIRECT EXAMINATION

308

1 Q. I am going to show you what has been marked for
2 identification State's Exhibit Number 35. Do you
3 recognize that document?

4 A. I recognize it.

5 Q. Is that your statement?

6 A. That's it.

7 Q. Did you sign that statement?

8 A. Yes, I did.

9 MS. JOHNSON-LEE: At this time I move to have his
10 statement admitted into evidence.

11 MS. BROWN: No objection, Your Honor.

12 THE COURT: Very good. Would you tell me what number
13 that is again?

14 MS. JOHNSON-LEE: Thirty-five.

15 THE COURT: State's 35 in evidence without objection.

16 WHEREUPON, STATE'S EXHIBIT

17 NUMBER 35 WAS ADMITTED INTO

18 EVIDENCE WITHOUT OBJECTION.

19 Q. Now I have a question for you about the statement. In
20 the statement you said that you saw Kendell shoot
21 Charles in the side and the face. Why did you say he
22 shot him in the side and in the face?

23 A. Because when he fell, I think he shot in the side,
24 because I think the gun was angled down. I didn't know
25 --- he shot him.

CARLOS EADDY - CROSS EXAMINATION

309

1 Q. From the distance you were at, did it appear as though
2 he was shot in the side?

3 A. In the side, right.

4 Q. So, you were not close enough to see where he was
5 actually shot at; is that correct?

6 A. Not the first shot.

7 **MS. JOHNSON-LEE:** I have no further questions.

8 **THE COURT:** Is there cross examination.

9 **MS. BROWN:** There is. Thank you.

10 **THE COURT:** Please proceed.

11 **CROSS EXAMINATION BY MS. BROWN**

12 Q. Good afternoon, Mr. Eaddy.

13 A. Good afternoon.

14 Q. Mr. Eaddy, were you living in Marlboro Court in June of
15 last year?

16 A. Correct.

17 Q. Are you still living there now?

18 A. No.

19 Q. Now, when you were living in Marlboro Court last year,
20 did you have your hair the way you have it now?

21 A. Nope.

22 Q. How was your hair styled then?

23 **MS. JOHNSON-LEE:** Objection, Your Honor. What does
24 his hair style have to do with whether or not Kendell Cook
25 shot and killed Charles Hayes?

CARLOS EADDY - CROSS EXAMINATION

310

1 **MS. BROWN:** Your Honor, it is relative. It has
2 something to do with Jessie Simmons, who the state plans to
3 call as well. And his description of what the person looked
4 like.

5 **THE COURT:** Overruled. You may proceed.

6 **MS. BROWN:** Thank you, Your Honor.

7 **Q.** How did you have your hair in June of last year?

8 **A.** With dreads.

9 **Q.** You had dreads in it? Did you just have it pulled back?

10 **A.** No, I had it up under a stocking cap.

11 **Q.** Okay. Now, how long have you know Mr. Hayes prior to
12 the shooting?

13 **A.** About like, a year and a half.

14 **Q.** A year and a half?

15 **A.** Yeah.

16 **Q.** And, how did you become acquainted with Mr. Hayes?

17 **A.** Kim.

18 **Q.** So, you became acquainted with Mr. Hayes after he moved
19 into Marlboro Court?

20 **A.** Right.

21 **Q.** Did you in fact know Clarence prior to June 10th?

22 **A.** Yeah.

23 **Q.** How long have you known Clarence?

24 **A.** Since we was little.

25 **Q.** And, were you good friends with Mr. Hayes; it that true?

CARLOS EADDY - CROSS EXAMINATION

311

1 A. Yeah.

2 Q. Would you call yourself good friends?

3 A. That is correct.

4 Q. Did you guys hang out?

5 A. To the apartments, on the parking lot. We went a couple
6 of places together and that was it.

7 Q. Now, let's talk about June 10th. You mentioned that you
8 were outside with Mr. Hayes, was it before the shooting
9 took place?

10 A. Right.

11 Q. How long were you guys hanging out outside before the
12 shooting?

13 A. He was out there all day.

14 Q. All day?

15 A. Just about.

16 Q. And, what about his nephew, Mr. Terrance Bridges? Do
17 you know Mr. Terrance Bridges?

18 A. Terrance.

19 Q. How long was Terrance with you guys?

20 A. Terrance came out there a little later.

21 Q. How long would you say Terrance was out there prior to
22 the shooting?

23 A. Maybe couple of hours.

24 Q. A couple of hours?

25 A. Yeah.

CARLOS EADDY - CROSS EXAMINATION

312

1 Q. So, you it was like, fifteen minutes or anything like
2 that?

3 A. I'm not sure.

4 Q. But you believe he was out there a couple of hours prior
5 to the shooting?

6 A. Yeah.

7 Q. And what were you guys out there doing just hanging out?

8 A. Just sitting outside talking.

9 Q. Were you present when Mr. Hayes sent Clarence a text
10 message?

11 A. No, I wasn't.

12 Q. Were you aware of the text messages that were sent by
13 Mr. Hayes towards Clarence?

14 A. No, I wasn't.

15 Q. Were you aware of any text messaging that day that
16 Clarence sent to Mr. Hayes?

17 A. He showed me one.

18 Q. He did show you the text message that Clarence sent him?

19 A. Right.

20 Q. He didn't tell you or show you the message he sent to
21 Clarence?

22 A. It wasn't no threatening message.

23 Q. Excuse me?

24 A. It wasn't nothing threatening.

25 Q. Why do you say that?

CARLOS EADDY - CROSS EXAMINATION

313

1 A. He was he say. It wasn't nothing threatening.

2 Q. But, I didn't ask you anything about it being
3 threatening in nature.

4 A. I know you didn't.

5 Q. Did you see it?

6 A. Yes, I saw it.

7 Q. So, you did see the text message that Mr. Hayes sent to
8 Clarence?

9 A. He didn't send a text message.

10 Q. I'm sorry. Can you speak up into the Mic?

11 A. He didn't send a message.

12 Q. Who is he?

13 A. Mr. Hayes.

14 Q. Mr. Hayes did not send a message?

15 A. Right.

16 Q. You are sure of that?

17 A. Well, I didn't see one sent.

18 Q. How do you know whether or not one has been sent?

19 A. Well, actually, I don't know. He showed me one that he
20 received.

21 Q. And what was the message that --- do you recall the
22 nature of the message that Clarence sent to Mr. Hayes?

23 A. No, I don't.

24 Q. You don't know?

25 A. It's been a while.

CARLOS EADDY - CROSS EXAMINATION

314

1 Q. Can you talk up for me?

2 A. I don't remember, it has been a while.

3 Q. Now, why did you decide to go into the house after
4 hanging out for a couple of hours with Mr. Hayes and Mr.
5 Bridges?

6 A. I had to go to work.

7 Q. Oh, you went to work that day?

8 A. I didn't go that day, but I was getting ready for work.

9 Q. For the next day?

10 A. For that night.

11 Q. For that night. Okay. And, so you went in the house
12 because you were getting ready to go to work?

13 A. Right.

14 Q. How long were you in the house before you heard the
15 shots?

16 A. I saw the shots. I didn't hear them.

17 Q. Okay. How long were you in the house before you saw the
18 shots?

19 A. Not even five minutes.

20 Q. Not even five minutes. So, you left outside to head
21 into the house?

22 A. Right.

23 Q. What were you going to do in the house if you were
24 getting ready for the next day. Tell me what you were
25 going to do?

CARLOS EADDY - CROSS EXAMINATION

315

- 1 A. Took a shower, and get a nap, and go to work.
- 2 Q. Okay. Now, was your girlfriend in the house with you at
- 3 that time?
- 4 A. Yes, she was.
- 5 Q. And, you had just come from outside?
- 6 A. Right.
- 7 Q. You were heading into the house?
- 8 A. Right.
- 9 Q. Getting ready for the next day?
- 10 A. The night.
- 11 Q. Getting ready for that night?
- 12 A. Right.
- 13 Q. Getting ready to go to work?
- 14 A. Right.
- 15 Q. Why were you standing at the window at this particular
- 16 moment?
- 17 A. I told you, I looked back outside to see if it was still
- 18 raining.
- 19 Q. You had just left from outside.
- 20 A. Right. It was still drizzling.
- 21 Q. It was drizzling when you left?
- 22 A. Right.
- 23 Q. So, you decided to go back to the window to see if it
- 24 was still drizzling five minutes later?
- 25 A. My girlfriend asked me if it was still raining outside.

CARLOS EADDY - CROSS EXAMINATION

316

1 I said, I don't know. I will go and check.

2 Q. So, you looked out the window?

3 A. I looked out the window.

4 Q. Do you recall telling Ms. Brown or Mr. Hayes that you
5 were going inside to wash your hair?

6 A. I told my girlfriend I was going to wash my hair. I was
7 going to take a shower, and wash my hair, and get ready
8 for that night.

9 Q. Now, let's talk about what you saw in the window at that
10 time.

11 A. All right.

12 Q. When you stood by the window, what was Mr. Hayes doing?
13 You had just left from outside.

14 A. Right.

15 Q. When you left him outside, what was he doing?

16 A. He was standing up by the door.

17 Q. Standing by the door?

18 A. His door.

19 Q. His door?

20 A. Right. Playing with his son.

21 Q. With his son?

22 A. His son.

23 Q. And, tell me what happened next? At some point did he
24 go have a seat or at that point did he start walking
25 toward Clarence?

CARLOS EADDY - CROSS EXAMINATION

317

1 A. Clarence come down stairs. He see what asked him, you
2 know, about the he say, she say stuff.

3 Q. Hold on a second. How do you know he said he wanted to
4 ask him about he say, she say stuff -

5 A. -- He say earlier.

6 Q. You could hear that from your window?

7 A. He said it earlier before I went upstairs.

8 Q. Okay.

9 A. Right.

10 Q. So, you guys had a discussion about Clarence before you
11 went into your house?

12 A. He just told me about that. And I was, you know, that
13 was that.

14 Q. What was this he say, she say stuff?

15 A. I don't know. I mean, it is a lot of stuff going on.
16 You know, people talk. I don't know.

17 Q. Was there any snitching going on?

18 A. To tell you the truth, I don't know.

19 Q. So, Clarence --- So, Mr. Hayes say, I want to ask him
20 about he say, she say stuff, but he never went into the
21 details of he say, she say stuff?

22 A. I don't -

23 Q. -- Now, when you saw Mr. Hayes, was he sitting in a
24 chair when Clarence came downstairs, or was he standing
25 next to the door?

CARLOS EADDY - CROSS EXAMINATION

318

- 1 A. He was standing next to the door.
- 2 Q. Standing next to the door. So, he was not sitting in a
- 3 chair?
- 4 A. I didn't see him sitting.
- 5 Q. What about Mr. Bridges, the nephew, what was he doing?
- 6 A. He was sitting down.
- 7 Q. Bridges was sitting down?
- 8 A. Right.
- 9 Q. Did you observe Mr. Bridges jump up from that chair?
- 10 A. Yeah.
- 11 Q. He did at what point, did he jump?
- 12 A. When his Uncle got shot.
- 13 Q. What about Ms. Brown, what was she doing?
- 14 A. She was headed to the door.
- 15 Q. She was heading to her door?
- 16 A. Right.
- 17 Q. So, when the shots were fired, Ms. Brown was not sitting
- 18 in her chair?
- 19 A. I mean, everybody got up. She ran toward the door. I
- 20 mean, what you do when you heard a gunshot? You run.
- 21 Q. So, she ran to the door?
- 22 A. Right.
- 23 Q. She didn't run toward Mr. Hayes?
- 24 A. She ran to the door. And Snook laying on the ground.
- 25 Q. Why don't I show you a picture which is marked as

CARLOS EADDY - CROSS EXAMINATION

319

1 Defendant's Exhibit 1. Let's hold it this way so we can
2 show the jury.

3 Now, can you show me where you saw Mr. Hayes
4 standing when Clarence was coming down the steps?

5 A. He was standing next to the door.

6 Q. He was standing next to the door?

7 A. Right.

8 Q. And where were the chairs sitting? Where were the
9 chairs placed?

10 A. One was placed right there, one was placed right here.

11 Q. Do you know whether or not --- Did he look like he was
12 heading inside of that door?

13 A. No, he wasn't heading inside the door. I told you, he
14 was playing with his son.

15 Q. And his son was on a tricycle?

16 A. Right.

17 Q. And he is playing with his son; is that correct?

18 A. Right.

19 Q. And, he's got two phones in his hands, playing with his
20 son?

21 A. Right.

22 Q. When you left to go inside the apartment, did he have
23 those two phones in his hands?

24 A. He still had both of them.

25 Q. He had both one in each hand?

CARLOS EADDY - CROSS EXAMINATION

320

1 A. In each hand.

2 Q. And after he dropped, do you know where the phones went?

3 A. I don't know where the phones went after he dropped
4 them. I just saw him --- He was like holding his hands
5 up like, you know, holding his hands up, backing up.

6 Q. He was backing up?

7 A. Right.

8 Q. Now let's talk about this. When you saw Clarence walk
9 down the steps, which direction did Clarence head
10 towards?

11 A. The back like, he was going toward the trash can.

12 Q. So tell me, does that mean he was heading this way or
13 was he heading that way?

14 A. He was coming down the stairs, but somehow, I mean,
15 Shook called --- he turned around and was standing like,
16 about right here.

17 Q. Snook called him? How were you able to hear that? You
18 were in the apartment across -

19 A. -- like, I'm saying, you can see. I mean, you can see
20 like, somebody telling you to come here.

21 Q. So, Snook had motioned to come over here? And when
22 Snook did that, where was he standing?

23 A. He was standing about right here.

24 Q. So, that means that at some point Snook left from his
25 door and he headed toward Clarence?

CARLOS EADDY - CROSS EXAMINATION

321

1 A. I guess you can say that.

2 Q. Is that in fact what happened?

3 A. Yeah.

4 Q. So, Snook sees Clarence, and he heads toward Clarence?

5 A. I'd say he wanted to ask him something.

6 Q. Well, you don't --- Okay. But you certainly thought
7 Snook was heading toward Clarence, and Clarence was
8 heading toward the trash can?

9 A. If he was going toward the trash can he would have made
10 it past the stairs right here. He never made it past
11 this part here. So, he would have to walk back to this
12 area right here.

13 Q. So, when Clarence is walking down the steps and he stops
14 at some point. Show me the point where he stopped.

15 A. He dropped the bag and stopped. Do you know what I'm
16 saying? It is like, he is right here in the grass.

17 Q. Did you hear anything that Clarence said?

18 A. (No response.)

19 Q. You weren't able to hear?

20 A. No.

21 Q. But you are sure that Mr. Hayes said something first?

22 A. I don't even know if he said something. I don't think I
23 saw like, motion, you know, he say he wanted to keep his
24 name out of the he say, she say stuff. That was that.

25 Q. Are you aware that Clarence testified in a trial in

CARLOS EADDY - CROSS EXAMINATION

322

1 North Carolina?

2 A. I don't know nothing about none of that.

3 Q. You don't know anything about that?

4 A. I mean, people talk. I heard about it, but I'm not sure
5 if he did it or not.

6 Q. Okay. Did you ever question Clarence about testifying
7 in a North Carolina case?

8 A. No.

9 Q. Have you ever referred to Clarence as a snitch?

10 A. No, never.

11 Q. You have never called him a snitch?

12 A. Never.

13 Q. What about Mr. Hayes, has he ever referred to Clarence
14 as a snitch?

15 A. I never heard him say anything about a snitch.

16 Q. Now at some point you left --- You stayed out there
17 until law enforcement arrived?

18 A. Right.

19 Q. Did you give law enforcement a statement when they
20 arrived?

21 A. It was Sammy?

22 Q. You gave Sammy -

23 A. -- It wasn't Sammy I give a statement to, you know, he
24 was just talking to me. Asked me if I would give a
25 statement.

CARLOS EADDY - CROSS EXAMINATION

323

1 Q. And that was at the scene, at the incident scene?

2 A. Right.

3 Q. How did you get down to the Police Department?

4 A. Ms. Deborah.

5 Q. I can't hear you.

6 A. Ms. Deborah.

7 Q. Ms. Young took you there? So, you in fact gave a
8 statement. Did you give an audio statement?

9 A. Yeah.

10 Q. And, do you recall in your audio statement talking about
11 people telling the landlord things?

12 A. I'm not sure. I mean, I don't know. Probably so. I
13 don't know.

14 Q. Do you recall saying that your cousin was being evicted
15 because people were telling things? This is in your
16 statement.

17 A. Probably so. He didn't care, because he was moving
18 anyway.

19 Q. Were you angry at Clarence because your cousin was being
20 evicted?

21 A. For what? He ain't have nothing to do with it.

22 Q. Did you think that Clarence told the landlord that
23 something to be evicted?

24 A. I doubt it. I don't know.

25 Q. Now, prior to two days before the shooting, actually one

CARLOS EADDY - CROSS EXAMINATION

324

1 day before the shooting. Do you remember having a
2 conversation with Clarence about snitching? One day
3 before the shooting?

4 A. I don't know if it was the day before, but I asked him I
5 was like, somebody is trying to get me and you kicked
6 out. That is what I asked him. And he was like, he
7 don't know.

8 Q. One day before the shooting, do you recall whether or
9 not Mr. Hayes had a conversation with Clarence?

10 A. I'm not sure.

11 Q. About that snitching stuff?

12 A. I don't know. I doubt it if he did. You would have to
13 ask him.

14 MS. BROWN: Beg court's indulgence, Your Honor.

15 (PAUSE.)

16 Q. At some point, Mr. Hayes did --- did your girlfriend
17 leave the house after she heard the shots?

18 A. After the shooting.

19 Q. After the shooting she left? And where did she go?

20 A. Across the yard.

21 Q. I want to make sure your testimony is absolutely clear.
22 You are positive Mr. Hayes was sitting in a chair?

23 A. Earlier. Do you know what I'm saying? During that
24 time.

25 Q. Okay.

CARLOS EADDY - CROSS EXAMINATION

325

1 A. He probably was, I don't know.

2 Q. One other thing. You guys have been hanging out
3 together for quite some time. Do you remember whether
4 or not you and Mr. Hayes were smoking weed together?

5 A. I don't smoke.

6 Q. You don't smoke weed?

7 A. No.

8 Q. Do you know if Mr. Hayes smoked weed that day?

9 A. I mean, he smoke, but I don' know if he smoked that day.

10 Q. Was Mr. Hayes employed anywhere?

11 A. Was he what?

12 Q. Was he employed? Did he work?

13 A. I don't know. I mean, after he left, I ain't go with
14 him.

15 Q. Mr. Hayes.

16 A. I'm sorry. After he leave home, I didn't go with him.
17 I was home with my kids.

18 Q. So, you are not familiar if he had a job?

19 A. I'm not sure. I don't know.

20 Q. One other thing. Do you recall telling law enforcement
21 that before any shots were fired that Clarence in fact
22 backed up?

23 A. He didn't back up.

24 Q. He didn't back up?

25 A. No.

CARLOS EADDY - REDIRECT EXAMINATION

326

1 Q. You don't recall telling law enforcement that?

2 A. No, I don't.

3 MS. BROWN: That's all the questions that I have.

4 THE COURT: Is there redirect?

5 MS. JOHNSON-LEE: Briefly.

6 REDIRECT EXAMINATION BY MS. JOHNSON-LEE

7 Q. You said that you saw Clarence Kendell Cook fire two
8 shots. One that caused Snook to fall backwards, and
9 then one over the body -

10 THE COURT: Counsel, you are testifying.

11 MS. JOHNSON-LEE: I'm sorry.

12 THE COURT: Please do not lead your witness. Even
13 though it is redirect, it is still your witness.

14 Q. Were you telling the truth when you gave your testimony
15 about the actual shooting you saw?

16 A. Yes.

17 Q. Are you telling the truth about how many times you saw
18 the gun fired?

19 A. Right.

20 Q. Were you telling the truth about Clarence Kendell Cook
21 being the one that pulled the trigger?

22 A. Yes.

23 MS. JOHNSON-LEE: Thank you, no further questions.

24 THE COURT: All right. Sir, you may step down. You
25 are free to remain in the courtroom, or free to leave if you

CARLOS EADDY - REDIRECT EXAMINATION

327

1 wish.

2 **MS. JOHNSON-LEE:** Vivian Stubbs.

3 **THE COURT:** How long do you believe your direct will
4 be on your next witness?

5 **MS. JOHNSON-LEE:** Not very long at all.

6 **THE COURT:** Counsel, let me get you to step up just a
7 moment. And, ma'am, please come around and take the oath of
8 a witness while counsel steps up in the mean time.

9 (Whereupon, a bench conference was held
10 in the presence of the jury, but out of their hearing range.)

11 **WHEREUPON, VIVIAN STUBBS**

12 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

13 **MS. STUBBS:** I do.

14 **THE COURT:** And, ma'am would you begin by giving us
15 your full name please.

16 **MS. STUBBS:** Vivian Stubbs.

17 **THE COURT:** Thank you.

18 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

19 Q. Did you state your name, I'm sorry?

20 A. I did.

21 Q. Where are you employed at?

22 A. Marlboro Court Apartments.

23 Q. And what is your job at Marlboro Court Apartments?

24 A. I am site manager.

25 Q. How long have you been the manager there?

CARLOS EADDY - REDIRECT EXAMINATION

328

1 A. Five years.

2 THE COURT: And, ma'am, could you pull a little closer
3 to that microphone, so we can all hear in the courtroom.
4 Thank you.

5 Q. So, you would have been the apartment manager there on
6 June 10th of last year?

7 A. Yes.

8 Q. What are your job duties as apartment manager?

9 A. I oversee all of the paperwork that is done. Collect
10 rents. Move people in and out of their apartments.

11 Q. Had you ever received any complaints regarding Kim
12 Brown?

13 A. Not to my knowledge.

14 Q. Have you ever received any complaints regarding Charles
15 Hayes, also known as Snook?

16 A. I never knew who Charles Hayes was until y'all started -
17 -- after this happened and y'all started asking
18 questions. I had never heard his name.

19 Q. Before his death you did not know who he was?

20 A. I did not know who he was.

21 Q. Is Kim's apartment close to your office?

22 A. It is over to the right hand side.

23 Q. To the right hand side.

24 A. I can't see it from my office.

25 Q. If you step out to the parking lot right in front of

CARLOS EADDY - REDIRECT EXAMINATION

329

1 your office, can you look over and see her building?

2 A. I can see the building, but not the side that she lived
3 on.

4 Q. Had you ever received complaints regarding Chasity
5 Carter?

6 A. No.

7 Q. Have you ever received any complaints concerning
8 Clarence Kendell Cook?

9 A. No. Not that I can remember.

10 Q. Has Mr. Cook ever come to you to make complaints about
11 any of the neighbors out there?

12 A. I can't even remember him coming in and complaining
13 about anything.

14 Q. Did you ever tell Clarence Kendell Cook or Chasity
15 Carter that you were going to ask police to increase
16 foot patrol in the neighborhood?

17 A. I have no control over that. The Chief had volunteered
18 to do that, because of what happened, and because of the
19 criminal activity. But I had nothing to do with that.

20 Q. Was this before the incident?

21 A. No, this was after.

22 Q. After the incident?

23 A. Yes.

24 Q. So, before this shooting on June 10th, that had never
25 been an issue out there?

VIVIAN STUBBS - CROSS EXAMINATION

330

1 A. No. I had been and talked to the Chief about having
2 them --- They had started riding through the parking
3 lot. But, they were not actually out on foot.

4 Q. And has anybody asked you to write a statement regarding
5 this case that we are here for today?

6 A. No. His Mom had asked if I could write a statement.
7 And I am not saying that she was saying it was a false
8 statement. But she had asked if I could write a
9 statement saying that he had been in and complained
10 about the drug activity. But, I couldn't write one.

11 Q. Would that have been a false statement if you had
12 written it?

13 A. Yes.

14 MS. JOHNSON-LEE: Thank you. No further questions.

15 THE COURT: Cross examination.

16 MS. BROWN: Thank you, Your Honor.

17 CROSS EXAMINATION BY MS. BROWN

18 Q. Ms. Stubbs, I am not sure if you answered this question.
19 How long have you been a property manager at Marlboro
20 Court?

21 A. Five years.

22 Q. And during your five years of being a property manager,
23 you have not --- Have you in fact requested a law
24 enforcement presence in Marlboro Court?

25 A. I have.

VIVIAN STUBBS - CROSS EXAMINATION

331

1 Q. That would have been prior to the June 10th shooting; is
2 that correct?

3 A. I have.

4 Q. And why did you request the presence of law enforcement?

5 A. There are any number of reasons why I would have called
6 them. Sometimes we have fights in the parking lot.
7 Sometimes we have people there that is not suppose to be
8 there that I have to get removed. There are different
9 reasons.

10 Q. And you indicated that you know Chasity Carter?

11 A. I do.

12 Q. How long have you known Ms. Carter?

13 A. Many years.

14 Q. Prior to moving into Marlboro Court?

15 A. Yes.

16 Q. Was she a tenant at Marlboro Court on June 10th of last
17 year?

18 A. Yes.

19 Q. Do you recall Ms. Carter visiting your office in June of
20 last year?

21 A. I am sure she probably did sometime.

22 Q. Do you recall Ms. Carter visiting your office about
23 problems in the neighborhood in June of last year?

24 A. She came in and said, they were having some problems
25 with some he said, she said rumor stuff that had gotten

VIVIAN STUBBS - CROSS EXAMINATION

332

1 started.

2 Q. Okay.

3 A. She had went out. She didn't go into any big detail.

4 But, she went out --- I came in on a Wednesday, and I
5 remember this because I had to go to a funeral that day.
6 But, her and Clarence, and the lady that had supposedly
7 started all of this, they were all out on the sidewalk
8 talking. And when I got back from the funeral, they
9 were still out there talking. And then shortly after
10 that she came in and said that they got everything
11 straight.

12 Q. Did she say they got everything straight, or they had
13 resolved everything, or that the problems with this
14 particular person was in fact resolved?

15 A. She just said that we got everything straight.

16 Q. Now, you mentioned that it was Chasity Carter, Clarence,
17 and some other lady. Who is the other lady you are
18 referring to?

19 A. Ms. Ann. She was the lady that was starting the rumors.

20 Q. Ms. Ann was starting the problems?

21 A. The rumors.

22 Q. Now, when you saw Clarence, did Clarence have a
23 conversation with you?

24 A. No. They were out on the sidewalk in front of building
25 3.

VIVIAN STUBBS - CROSS EXAMINATION

333

1 Q. Okay. So, Clarence didn't talk to you that particular
2 day?

3 A. No.

4 Q. Do you recall whether or not Chasity Carter, Marie Clay,
5 --- before I ask you that question. Do you know Ms.
6 Marie Clay?

7 A. I do.

8 Q. Who is Ms. Marie Clay?

9 A. She is also one of my tenants.

10 Q. What is the relationship with Chasity Carter?

11 A. She is her mother.

12 Q. Do you recall having conversation with Chasity Carter --
13 - Marie Clay about problems in the neighborhood?

14 A. That could have been. I don't recall.

15 Q. Do you recall whether or not this conversation took
16 place shortly before the shooting?

17 A. It is hard to say. Because when they come in they don't
18 want it known what they say, and who said it. So, I
19 don't take notes on it.

20 Q. What do you mean they don't want to acknowledge or make
21 known that they are in there to complain?

22 THE COURT: Ma'am, before you answer that, pull that
23 microphone down to you a little bit, and lean just a touch
24 closer so we can hear you.

25 MS. STUBBS: Okay.

VIVIAN STUBBS - CROSS EXAMINATION

334

1 **THE COURT:** Much better. Thank you.

2 Q. Is it a fair statement to say that most of your tenants
3 do not want their names revealed that they have
4 complained?

5 A. Yes.

6 Q. And, was that request made with Ms. Carter came in and
7 visit you, and said there were problems?

8 A. That is normally the first thing they say.

9 Q. So, it is possible --- You are certainly acknowledging
10 that Chasity Carter came in and say there are problems
11 in the neighborhood?

12 A. Could have, yes.

13 Q. Do you recall having a conversation with Ms. Kim Brown
14 about problems in the neighborhood? Did she complain to
15 you?

16 A. Not that I remember.

17 Q. So, the only person that you can recall out of Kim
18 Brown, Charles Hayes, Mr. Hayes, Clarence Cook, Chasity
19 Carter, would be Chasity Carter?

20 A. Yes.

21 Q. Do you know Mr. Carlos Eaddy?

22 A. Who?

23 Q. Carlos Eaddy?

24 A. No.

25 Q. You have never heard that name?

VIVIAN STUBBS - CROSS EXAMINATION

335

1 A. I have heard the name, but I don't know him.

2 Q. Do you remember whether or not he was a tenant of yours
3 at Marlboro Court last year?

4 A. He was not.

5 Q. Do you know a Deborah Carter?

6 A. Yes.

7 Q. And how do you know Ms. Carter?

8 A. She is a tenant there.

9 Q. And do you recall a problem that existed between Deborah
10 Carter and Clarence cook?

11 A. There was an incident that happened at Hill Crest, which
12 is the complex across the street from me. Clarence was
13 over there, and there was a fight. So, I called the
14 police. I don't know who all was in the fight. But, I
15 called the police so that they would go over there.
16 Deborah Carter -- Chasity was out on the sidewalk.
17 Okay. I walked out of my office. Deborah Carter came
18 up, and she was upset, and she started saying some
19 things to Chasity. I don't remember exactly what it was
20 that she said, but she did say some things. And I
21 stopped her and I told her, we are adults, and we are
22 not going to act that way out here.

23 Q. Was Ms. Carter --- was it visible that Ms. Carter was
24 angry about something?

25 A. Yes.

VIVIAN STUBBS - REDIRECT EXAMINATION

336

1 Q. And was her anger directed toward Mr. Cook?

2 A. I don't think he was out there.

3 Q. No, but she was talking to Chasity Carter?

4 A. Could have been about him, yeah.

5 Q. And certainly it was after the incident happened at Hill
6 Crest?

7 A. Right.

8 Q. And you were present for that incident? You were
9 present when Deborah Carter made it clear that she was
10 unhappy with Clarence?

11 A. Yes.

12 Q. Now, is it possible Ms. Stubbs, that Clarence visited
13 you last year June and you just don't remember?

14 A. It is possible.

15 Q. It is possible. Thank you.

16 MS. BROWN: Beg court's indulgence, Your Honor.

17 THE COURT: Very good.

18 (PAUSE.)

19 MS. BROWN: Your Honor, I have no further questions.

20 THE COURT: Is there redirect?

21 REDIRECT EXAMINATION BY MS. JOHNSON-LEE

22 Q. The complaint from Chasity, was it about Kim Brown?

23 A. No.

24 Q. Was the complaint from Chasity about Charles Snook
25 Hayes?

VIVIAN STUBBS - REDIRECT EXAMINATION

337

1 A. When she came in --- I don't know if she called either
2 name. No, I can't remember.

3 Q. You don't recall. Okay. Did you ever get a call from
4 Kendell complaining about anybody?

5 A. No.

6 MS. JOHNSON-LEE: Thank you. No further questions.

7 THE COURT: All right. Ma'am, you may step down. You
8 are free to leave if you wish, or free to remain if you wish.
9 Please watch your step exiting the witness stand.

10 Ladies and gentlemen, we are going to take our afternoon
11 break at this time. We will let you return to your jury
12 room. If you wish to go outside we will make that available
13 to you. We will be down until about quarter till four, and
14 we all will remain where we are while you depart the
15 courtroom. Enjoy your break.

16 (Whereupon, the jury exits the courtroom at
17 3:22 p.m.)

18 THE COURT: Court will be in recess now approximately
19 fifteen minutes.

20 MS. BROWN: Thank you, Your Honor.

21 (Whereupon, a recess was taken from 3:23 until
22 3:40 p.m.)

23 THE COURT: All right. Ms. Johnson, tell me about
24 your remaining witnesses.

25 MS. JOHNSON-LEE: Two, Your Honor. The next one is

VIVIAN STUBBS - REDIRECT EXAMINATION

338

1 Lieutenant Hepburn. I will be brief with him. I think the
2 defense is going to play a video or something with him. So,
3 I don't know how long that is going to take. Then my last
4 witness is Detective Young. That will be the lengthy
5 witness, because it has the video with Mr. Cook.

6 **THE COURT:** All right. Depending on how long we go on
7 cross, we may just take the last witness in the morning.
8 Again, we will just see how long it takes us to get into our
9 next to the last witness.

10 All right. Anything for the record before we bring in
11 the jury?

12 **MS. JOHNSON-LEE:** Nothing from the state.

13 **MS. SELLERS:** Just, Your Honor, just to put on the
14 record that there were two members of the victim that did
15 come into the courtroom with photographs of the victim on the
16 front of their shirts, their T-shirts. Your Honor, you
17 caught it before anything, and they were asked to be removed.
18 Just for the record, I want to put that in.

19 **THE COURT:** All right. Let me ask. Do you wish for
20 some type of curative instruction. Let me say, I am not of
21 the belief that the jury even saw that. But, I ask --- as
22 soon as I saw it I asked Mr. Daniel, who was seated at the
23 prosecution table, I sent him a message, would he please ask
24 those individuals not to wear those T-shirts in the
25 courtroom. Again, I am not certain that any member of the

VIVIAN STUBBS - REDIRECT EXAMINATION

339

1 jury saw it. But do you wish for the court to give some type
2 of cautionary or follow-up instruction?

3 MS. BROWN: Your Honor, may we confer with our client
4 for just one second?

5 THE COURT: Very good.

6 (PAUSE.)

7 THE COURT: My personal impression is that it simply
8 would call attention to something that may not have been
9 noticed. But I will leave it to you as to how you wish to
10 proceed.

11 MS. BROWN: Yes, Your Honor. We don't believe that
12 there are any precautions that are necessary.

13 THE COURT: All right. Very good. And, Ms. Johnson-
14 Lee, let me speak beyond you to the family, if I may.

15 And, ladies and gentlemen, I don't want you to think
16 that there is something wrong with expressing your freedom of
17 speech, to wear a T-shirt that supports the deceased. I
18 don't want you to think that somehow by the court's reaction
19 that I don't support one side or the other, or that I favor
20 one over the other. All I am trying to do is here in the
21 courtroom just keep a level playing field, so that there
22 won't be some complaint by one side or the other, that there
23 was an atmosphere created that somehow gave a balance or
24 advantage to one side or the other. And it is not just in
25 this case, but in any case which we have a deceased victim,

VIVIAN STUBBS - REDIRECT EXAMINATION

340

1 we ask the participants or the witnesses not to wear buttons,
2 not to wear shirts that would depict the deceased, carry
3 banners, or have any other type of promotional activities
4 that may influence the jury. And this is the reason for
5 that, and I want to make sure we are on the same wave length.
6 I really wasn't going to discuss it on the record, but when
7 it was brought up by the defense, I want to make sure that
8 the family understands that this court takes no objection to
9 whatever you may do outside this courtroom, and respects your
10 rights to do so. I simply appreciate your cooperation here
11 inside the courtroom.

12 Now, there being nothing further, let's bring in the
13 jury please.

14 MS. JOHNSON-LEE: Briefly, Your Honor. What they were
15 told is, if they did not have another shirt they could turn
16 that inside out.

17 THE COURT: That's right. And the message again was
18 not that they were excluded from the courtroom, but please
19 change shirts and welcomed them.

20 MS. SELLERS: Your Honor, may we approach please. It
21 is a scheduling matter.

22 THE COURT: While the jury is coming in, you may.

23 (Whereupon, a bench conference was held.)

24 (Whereupon, the jury enters the courtroom at
25 3:45 p.m.)

JOHN B. HEPBURN, JR. - DIRECT EXAMINATION

341

1 **THE COURT:** Thank you, ladies and gentlemen. We were
2 talking about scheduling a little bit up here.

3 All right. I'll give you the benefit of our discussion.
4 Counsel for the state tells me that they have two remaining
5 witnesses. One of which is reasonably brief, which we are
6 going to take place now. And another which will be longer,
7 probably an hour or more than an hour actually on direct.
8 So, rather than wade into that this afternoon and stop
9 midway, we are going to take that witness first thing
10 tomorrow morning. So, we have one more witness for the day,
11 and then we will adjourn the proceedings for today.

12 All right. Please call your next witness.

13 **MS. JOHNSON-LEE:** Lieutenant John B. Hepburn.

14 **THE COURT:** Please come forward and take the oath of a
15 witness.

16 **WHEREUPON, JOHN B. HEPBURN, JR.**

17 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

18 **LIEUTENANT HEPBURN:** I do.

19 **THE COURT:** Please state your full name for the
20 record.

21 **LIEUTENANT HEPBURN:** My name is John B. Hepburn, Jr.

22 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

23 Q. Where are you employed?

24 A. City of Bennettsville.

25 Q. In what capacity?

JOHN B. HEPBURN, JR. - DIRECT EXAMINATION

342

1 A. Police Department.

2 Q. How long have you been with the Bennettsville Police
3 Department?

4 A. Well, I got broken time in there. I've been in law
5 enforcement twenty-six years.

6 Q. What is your current job title there?

7 A. Sergeant of Investigation.

8 Q. And what was your job in June of 2010?

9 A. Sergeant of Investigation.

10 Q. And I believe I referred to you as Lieutenant, is there
11 a retirement period in there?

12 A. I retired as a Lieutenant, and I came back as a
13 Sergeant.

14 Q. Now, were you on duty on June 10, 2010?

15 A. I was called back out on that day.

16 Q. Why were you called back out?

17 A. It was in reference to a shooting incident at Marlboro
18 Court.

19 Q. Do you remember what time you arrived there?

20 A. No, I sure don't. I don't know what time it was.

21 Q. Was it after six p.m.?

22 A. Probably approximately that time.

23 Q. Do you remember if it was still daylight at that time?

24 A. It was daylight.

25 Q. Describe the scene when you arrived?

JOHN B. HEPBURN, JR. - DIRECT EXAMINATION

343

1 A. Well, when I arrived there, there were a lot of people
2 around in the parking lot area and everything. And it
3 was just a little chaos at the time.

4 Q. Was there crime scene tape put up when you arrived?

5 A. At one of the apartments there were.

6 Q. Was there crime scene tape around where the victim, the
7 deceased victim was located?

8 A. I think so, when I looked over that way.

9 Q. What did you do?

10 A. Upon my arrival, I was instructed and I talked with one
11 Carlos Eaddy, and also a Terrance Bridges. I then
12 talked with him and got their information, and then they
13 was transported to the Bennettsville Police Department.

14 Q. And why were they transported there?

15 A. Because they was witnesses.

16 Q. Did you develop a suspect?

17 A. Through the conversation.

18 Q. And who was the suspect?

19 A. Clarence Cook.

20 Q. Was he immediately apprehended?

21 A. No, he was apprehended later on, around eightish, eight
22 o'clock, a little after eight or before eight that
23 evening.

24 Q. What did you do in order to try to find Mr. Cook?

25 A. Well, I received a phone call, and then from that we

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

344

1 went over to Forrest Drive area. And a lady saw a black
2 male running. I then called for the other officers to
3 come up and put up a parameter. And during the time
4 that we was waiting on them, dogs start barking. So,
5 myself, and Lieutenant William, and Lieutenant Crosland
6 went behind a residences, [REDACTED]. And when
7 we got to that area, Lieutenant Crosland spotted him on
8 a back porch.

9 Q. Were you present with Mr. Crosland when he spotted Mr.
10 Cook?

11 A. Yes.

12 Q. Did you participate in apprehending Mr. Cook?

13 A. Yes, after they apprehended him and he was transported
14 to the Police Department.

15 Q. And that was at least two hours after the murder?

16 A. At least.

17 **MS. JOHNSON-LEE:** Thank you. Please answer any
18 questions that Ms. Brown has.

19 **THE COURT:** Cross examination.

20 **CROSS EXAMINATION BY MS. SELLERS**

21 Q. Mr. Hepburn, you have been in law enforcement a long
22 time haven't you?

23 A. Twenty-six years.

24 Q. You actually retired and then came back?

25 A. Yes.

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

345

1 Q. So, you have been doing this job for quite some time
2 obviously?

3 A. Yes.

4 Q. Now, you are a Sergeant?

5 A. Yes.

6 Q. Sergeant in Investigations?

7 A. Yes.

8 Q. So, who is your supervisor?

9 A. Lieutenant Turner, Investigation Supervisor.

10 Q. But to your knowledge, Lieutenant Turner was there?

11 A. I think he was there. He was present.

12 Q. Now, you said you got directions --- you took Terrance
13 and Carlos to the Police Department?

14 A. No, they were transported by another officer. I don't
15 know who transported them.

16 Q. But you spoke to them at the scene?

17 A. At the scene, I got their information.

18 Q. Where did you receive that information from?

19 A. I got it from Terrance.

20 Q. How did you meet with Terrance? Did he just come up to
21 you and say hey, I have some information?

22 A. Someone sent him up to me and said that I needed to talk
23 with him.

24 Q. Do you remember who that was?

25 A. I sure don't.

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

346

1 Q. Did you all canvas the neighborhood?

2 A. Yes, we did.

3 Q. And how did you do that?

4 A. Well, I stayed there, but the other officers, they
5 canvassed the neighborhood, because we had help from
6 Chesterfield County also.

7 Q. About how many law enforcement officers would you say
8 were out there?

9 A. (No response.)

10 Q. More than fifteen?

11 A. I would say more than fifteen.

12 Q. More than thirty?

13 A. I would say somewhere around in that neighborhood.

14 Q. About thirty officers were out there?

15 A. Approximately, I would say.

16 Q. And, that is a lot of police; would you agree?

17 A. Presence, yeah.

18 Q. And out of the thirty officers that were there, did
19 anyone check to see if there were any shell casings?

20 A. Well, there were other officers doing other things also.
21 I don't know what everybody was doing. But everybody
22 had their part that they was playing in that one.

23 Q. Now, on that day, would you say that Larry Turner was
24 the lead investigator on the crime scene?

25 A. I don't know.

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

347

1 Q. Do you know who was giving directions?

2 A. Not exactly, because I didn't stick around for that
3 part.

4 Q. Now, you graduated from the Police Academy; correct?

5 A. Yes.

6 Q. Now, that was a few years ago?

7 A. That was back in 86.

8 Q. But since that time, you have gone through subsequent
9 training; correct?

10 A. Right.

11 Q. Okay. And those training they tell you how to collect
12 evidence; correct?

13 A. Yes.

14 Q. They tell you how to preserve evidence?

15 A. Yes.

16 Q. Tell you how to even talk to witnesses at a crime;
17 right?

18 A. Yes.

19 Q. Tell me, how do you utilize your training in your
20 thirty-three years of experience in law enforcement on
21 June 10th?

22 A. Just like I said, I interviewed Terrance. I talked with
23 him and got his information. And I talked to Carlos
24 Eaddy, and got his information.

25 Q. Is it fair to say that you were one of the most

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

348

1 experienced cops there?

2 A. I don't know.

3 Q. Well, out of your Police Department, would you say you
4 are probably in terms of years in experience?

5 A. Possibly.

6 Q. Who has more seniority than you?

7 A. I'm probably about the most experienced. I have been
8 there longer than anyone right now.

9 Q. So, you are the most experienced?

10 A. I think so.

11 Q. Do you recall any of the officers actually going door-
12 to- door within the apartment complex?

13 A. I don't know what their parts were. I don't know what
14 they were doing, the other officers, because we were all
15 in together. I don't know.

16 Q. You also said that you spoke with a lady who was talking
17 about her dog barking?

18 A. Yes.

19 Q. And at some point in time you left the apartment complex
20 and went out into the neighborhood to assist those
21 officers?

22 A. We went over to Forrest Drive.

23 Q. Okay. Forrest Drive?

24 A. Yes.

25 Q. And when you got to Forrest Drive, you said you heard

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

349

1 dogs barking; correct?

2 A. No, a lady informed a black male ran through her yard.
3 And then we went down to 126 Forrest Drive, and there I
4 called for officers to come down to set up a parameter.
5 Then we heard dogs barking, so we went on and checked
6 the area, and that is when we found Clarence Cook behind
7 126 Forrest Drive.

8 Q. Now, did you really find Mr. Cook, or did Mr. Cook come
9 out saying, here I am?

10 A. Lieutenant Crosland is the one who spotted him first.

11 Q. Did he ever utter those words?

12 A. Possibly, I don't know. I don't remember.

13 MS. SELLERS: Beg court's indulgence.

14 (PAUSE.)

15 Q. Officer Hepburn, did you have an opportunity to review
16 the body at the crime scene?

17 A. No, I didn't.

18 Q. You said you didn't go sort of close to him?

19 A. No, I didn't.

20 Q. Did you have an opportunity to interview some
21 individuals?

22 A. Terrance. Interview when?

23 Q. Anytime during the investigation. Tell me, how long did
24 the investigation last?

25 A. Oh, I don't know exactly. Detective Young can tell you

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

350

1 that. I know we did interview Kim Brown.

2 **MS. SELLERS:** Beg court's indulgence again, Your
3 Honor. If I could have just one moment Your Honor, to set up
4 the video.

5 **THE COURT:** Yes ma'am.

6 **(PAUSE.)**

7 Q. I would like to bring your attention to what has been
8 marked as Defendant's Exhibit Number 2-A. Officer
9 Hepburn, while we are setting this up, did you ever get
10 any phone calls from the victim's family?

11 A. No, I didn't.

12 Q. You don't remember receiving any phone calls about items
13 that were removed from the victim?

14 A. I did not receive any phone calls from the victim
15 family. We talked with the Solicitor, and they received
16 the phone call.

17 Q. They received the phone call. Did you ever have an
18 opportunity to question any person about that
19 information?

20 A. Yes. We questioned Kim Brown.

21 Q. You didn't believe Ms. Brown with what she was telling
22 you, did you?

23 A. Well, the only thing we were doing was talking with her,
24 and I think the question was asked.

25 Q. Let's talk about how you talk to a witness. There are

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

351

1 two ways right, that you can talk to a witness, and you
2 learned this in the academy. You can interview someone;
3 correct? And the interview is going to be asking
4 questions or basically let them tell you some
5 information; correct?

6 A. Yes.

7 Q. Then there is also interrogation.

8 A. I don't know.

9 Q. Have you ever interrogated?

10 A. No, I don't interrogate.

11 MS. SELLERS: Beg court's indulgence.

12 (PAUSE.)

13 Q. If you will take a brief look at this video for me,
14 Officer Hepburn, and then I have some questions for you.

15 (Whereupon, Defendant's Exhibit Number 2 was
16 published to the jury.)

17 Q. Officer Hepburn.

18 A. Yes.

19 Q. Would it be fair to say that this interview was taken a
20 couple of months after this incident occurred; correct?

21 A. Yes. I think it was. I don't know exactly what day it
22 was.

23 Q. Sometime in September; does that sound correct?

24 A. Could be.

25 Q. Now, were you present the first time Ms. Brown was

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

352

1 interviewed?

2 A. No, I wasn't.

3 Q. You didn't participate in that. But it is fair to say
4 that from this video you had doubts about what she was
5 telling you?

6 A. I just wanted to know the truth.

7 Q. And you had doubts months later; correct? Because,
8 again this was done in September.

9 A. No. I didn't have doubts. I just wanted to get all the
10 facts of what happened.

11 Q. Now, do you recall seeing on that video at this point in
12 time, back in September 2010, you don't know who is
13 telling the truth?

14 A. I said that on there, yeah.

15 Q. Now, there were a couple of voices on that video. You
16 have identified one as being Officer Deborah Young;
17 correct?

18 A. Uh'huh.

19 Q. Now, the second voice was actually an employee from the
20 Solicitor's Office; correct?

21 A. Yes.

22 Q. Now is it typical that you have employees from the
23 Solicitor's Office questioning the witnesses?

24 A. Sometimes.

25 Q. Sometimes. Okay. Now what was her role in that

JOHN B. HEPBURN, JR. - CROSS EXAMINATION

353

1 particular video?

2 A. She was asked to be there by the Solicitor.

3 Q. Okay. Who did the Solicitor ask?

4 A. What do you mean?

5 Q. Law enforcement, how did law enforcement know who was
6 coming?

7 A. Know who was coming?

8 Q. The young lady from the Solicitor's Office?

9 A. She was asked to be there.

10 Q. Okay. Do you know which Solicitor, or whom from the
11 Solicitor's Office ask that she be present?

12 A. Mary Lee Thomas.

13 Q. In your experience, have you ever had Ms. Monique
14 present for questioning?

15 A. No, but I have had Solicitors present while we interview
16 before.

17 Q. Solicitors themselves?

18 A. Yes.

19 **MS. SELLERS:** Beg court's indulgence.

20 **(PAUSE.)**

21 Q. One last question. It is clear that you had no idea who
22 was telling the truth from this video, the tape; is that
23 correct?

24 A. Like I said, we were trying to find out the truth.

25 Q. And this was done after Mr. Cook was arrested; correct?

JOHN B. HEPBURN, JR. - REDIRECT EXAMINATION

354

1 A. Yes.

2 Q. So, you arrested Mr. Cook first, and then tried to find
3 the truth later?

4 A. Yes, we arrested him.

5 MS. SELLERS: No further questions.

6 THE COURT: And now, redirect?

7 MS. JOHNSON-LEE: Yes, absolutely, Your Honor.

8 REDIRECT EXAMINATION BY MS. JOHNSON-LEE

9 Q. Was this actually a Solicitor's Office interview where
10 the secretary or the paralegal was sent down there and
11 asked to re-interview this young lady just to make sure
12 all bases were covered?

13 MS. SELLERS: Objection, Your Honor. Leading.

14 THE COURT: Sustained. To leading.

15 Q. Was this interview done at the request of law
16 enforcement or the request of the Solicitor's Office?

17 A. Solicitor's Office.

18 Q. And was it the law enforcement that opted to put the
19 interview on tape?

20 A. Yes.

21 Q. The Solicitor's Office did not request that?

22 A. That's right.

23 THE COURT: That is still leading, counsel.

24 Q. There was a question by Ms. Sellers regarding searching
25 for casings at the scene. Would a .38 revolver have

JOHN B. HEPBURN, JR. - RE-CROSS EXAMINATION

355

1 casings dropped at the scene?

2 A. A .38 revolver?

3 Q. Yes.

4 A. No.

5 Q. And there were some questions about Lieutenant Turner,
6 he is not here today because why?

7 A. His son is sick in Chapel Hill.

8 **MS. JOHNSON-LEE:** No further questions.

9 **THE COURT:** All right. Given the nature of the
10 questioning, do you wish to follow on any of those issues?

11 **MS. SELLERS:** Yes, Your Honor.

12 **THE COURT:** All right. Go ahead.

13 **RE-CROSS EXAMINATION BY MS. SELLERS**

14 Q. In terms of --- I am just going to try to recap quickly.
15 Now, you got information from the Solicitor's Office to
16 go back and re-interview this young lady; correct?

17 A. Yes.

18 Q. Okay. You didn't ask to interview her; correct?

19 A. No, I was assisting Deborah Young with it.

20 Q. Okay. But you were following the directions of this
21 Solicitor; correct?

22 A. Yes.

23 **MS. SELLERS:** No further questions.

24 **THE COURT:** With that, do you want to follow on that
25 point. This is your witness.

JOHN B. HEPBURN, JR. - REPLY EXAMINATION

356

1 MS. JOHNSON-LEE: Beg court's indulgence.

2 (PAUSE.)

3 REPLY EXAMINATION BY MS. JOHNSON-LEE

4 Q. Is it an uncommon thing for the Solicitor to be involved
5 with a major murder investigation and assisting law
6 enforcement?

7 A. No, it is not.

8 MS. JOHNSON-LEE: Thank you. No further questions.

9 THE COURT: All right. Any objection to the release
10 of Lieutenant Hepburn? Hearing none, you are not required to
11 leave, but you are free to go if you wish.

12 LIEUTENANT HEPBURN: Thank you.

13 THE COURT: All right. Counsel, step up one moment
14 more and let's talk a little bit about scheduling before we
15 conclude for the day.

16 (Whereupon, a bench conference was held
17 in the presence of the jury, but out of their hearing range.)

18 THE COURT: All right. The state tells me that they
19 have one witness in the morning, which direct will be longer
20 than an hour. So, we will start tomorrow, so we anticipate a
21 good bit of the first session tomorrow being taken up with
22 direct and cross on that final witness for the state. Then
23 we will move into the defense case.

24 I anticipate that we will at a minimum finish all of the
25 testimony tomorrow. Whether or not we will actually be able

THE STATE VERSUS CLARENCE KENDELL COOK

357

1 to argue and charge tomorrow, and give it to you, the jury to
2 deliberate, I cannot tell you that now. It just depends on
3 where we are after all the testimony finishes.

4 But I tell you those things in case you are worried
5 about the Friday deadline coming at us. I am sure that we
6 will conclude this case at the latest, sometime mid-day
7 Thursday. I just tell you that for information. I know your
8 loved ones are probably asking you about your schedule.

9 Now, let's start back at nine o'clock again tomorrow
10 morning. That will give us a full day. And please, when you
11 go home do not discuss the case with your loved ones, no
12 matter how curious they may seem to be. And we will just see
13 you back tomorrow morning at nine o'clock. Are there any
14 questions about scheduling from our jury? All right. We
15 will see you at nine o'clock tomorrow morning. We will
16 remain where we are while you depart the courtroom. Have a
17 nice evening, ladies and gentlemen.

18 (Whereupon, the jury exits the courtroom at
19 4:13 p.m.)

20 **THE COURT:** All right. Counsel, in your preparation
21 for tomorrow, please go ahead and prepare your closings, if
22 you have the opportunity to do so that if the opportunity
23 presents itself, we can go directly from testimony into
24 closings. We have given you a copy of what we believe the
25 charge will be. We will have a charge conference at some

THE STATE VERSUS CLARENCE KENDELL COOK

358

1 point tomorrow, so that you will have an opportunity to
2 comment on the charge and verdict forms. Otherwise we will
3 end the record for the day, unless there is something
4 further. Is there from either party, from the state?

5 MS. JOHNSON-LEE: Just put on the record that I am
6 giving a list of six names from the defense witness list
7 requesting information, so we can run rap sheets.

8 THE COURT: Anything further from the defense?

9 MS. BROWN: Your Honor, there is one issue. If we can
10 approach, we can talk about it briefly.

11 THE COURT: You may approach.

12 (Whereupon, a bench conference was held.)

13 THE COURT: It appears that there are no further
14 issues for the record. But, let me say to both sides of this
15 case. This is both for the defendant and the victim. What I
16 am going to ask you all to do today is please go ahead and
17 leave the court house immediately, both those who are here
18 for family, as well as for the defendant. Please don't hang
19 around the court house. We have people going and coming. We
20 don't want anyone somehow to feel that they may be --- that
21 they may have interaction one side with the other. Let's
22 just all go our different ways everyone to their own home.
23 And we will see you back at nine o'clock tomorrow morning.
24 Any questions now? Then hearing none, this court is
25 adjourned until nine o'clock tomorrow morning.

THE STATE VERSUS CLARENCE KENDELL COOK

359

1 (Whereupon, the court concludes the day at
2 4:20 p.m. on Tuesday, April 19, 2010.)

3 -- END OF DAY TWO OF TRIAL --

THE STATE VERSUS CLARENCE KENDELL COOK

360

1 (Whereupon, court resumes these proceedings at
2 9:10 a.m. on Wednesday, April 20, 2011.)

3 -- DAY THREE OF TRIAL --

4 THE COURT: All right. I am advised that all of our
5 jurors are here. And the state, are we ready to call your
6 final witness?

7 MS. JOHNSON-LEE: Yes, Your Honor.

8 THE COURT: Is there anything for the record before we
9 proceed this morning?

10 MS. JOHNSON-LEE: No, Your Honor.

11 THE COURT: Okay. From defense?

12 MS. BROWN: No, Your Honor.

13 THE COURT: Hearing nothing, then please bring in the
14 jury.

15 (Whereupon, the jury enters the courtroom at
16 9:11 a.m.)

17 THE COURT: Ms. Brown, were you able to get the video
18 redone so that that section is not in the video?

19 MS. BROWN: Your Honor, I did not. We decided that
20 she could just turn it down. So, I did not even attempt it
21 at all.

22 THE COURT: Very good. Good morning, ladies and
23 gentlemen. I trust you had a nice evening. Let me ask,
24 since we were last together, is there any member of the jury
25 panel that had a discussion with anyone concerning the facts

DEBORAH YOUNG - DIRECT EXAMINATION

361

1 of this case. If so, please raise your hand. Thank you
2 again for complying with the court's request.

3 You will recall at the end of the day yesterday, we
4 discussed the fact that the state has one remaining witness
5 they wish to call. Please call your witness.

6 **MS. JOHNSON-LEE:** The state calls Deborah Young.

7 **THE COURT:** Please come forward and take the oath of a
8 witness.

9 **WHEREUPON, DEBORAH YOUNG**

10 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

11 **DETECTIVE YOUNG:** Yes, ma'am.

12 **THE COURT:** And, ma'am, if you would state your full
13 name, please?

14 **DEBORAH YOUNG:** Deborah Young.

15 **DIRECT EXAMINATION BY MS. JOHNSON-LEE**

16 Q. Where do you work?

17 A. Bennettsville Police Department.

18 Q. And what is your job there?

19 A. Detective.

20 Q. How long have you been with the Bennettsville Police
21 Department?

22 A. Thirteen years.

23 Q. And is that the full extent of your law enforcement
24 experience?

25 A. Yes, ma'am.

DEBORAH YOUNG - DIRECT EXAMINATION

362

1 Q. Are you a graduate of the Criminal Justice Academy?

2 A. Yes, ma'am.

3 Q. So, you are a certified law enforcement officer?

4 A. Yes, ma'am.

5 Q. What are your job duties at the Bennettsville Police
6 Department?

7 A. I'm a criminal domestic investigator, sexual assault
8 investigator, child abuse investigator, vulnerable adult
9 investigator, juvenile investigator, and victim
10 advocate.

11 Q. What type of training do you have to do those types of
12 investigations?

13 A. I had to go to the Police Academy and take classes to
14 get certified.

15 Q. What was your job with the Bennettsville Police
16 Department on June 10th of last year?

17 A. Criminal investigator.

18 Q. Had you worked a murder case prior to that time?

19 A. No, ma'am.

20 Q. Did you work a murder on June 10th of last year?

21 A. Yes, ma'am.

22 Q. Where was that at?

23 A. Marlboro Court Apartments, in an apartment building.

24 Q. Ma'am?

25 A. In a apartment building at Marlboro Court.

DEBORAH YOUNG - DIRECT EXAMINATION

363

1 Q. And where is that located?

2 A. In the City of Bennettsville, next to Marlboro Park PR.

3 Q. Now, describe the scene when you arrived at Marlboro
4 Court Apartments?

5 A. It was hectic. It was people crying, people screaming,
6 it was just hectic.

7 Q. Did you see the body?

8 A. I seen a body at the time when I arrived. It was taped
9 already and there was a sheet over the body.

10 Q. Was anybody inside the crime scene tape besides the
11 victim's body?

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

13 Q. Do you recall about what time you arrived there?

14 A. It was a little after six, maybe twenty-five or thirty
15 minutes. About 6:30.

16 Q. Now, what has your job been with respect to this
17 investigation?

18 A. Interviewing witnesses, going to Charleston for the
19 autopsy, taking the evidence to SLED, and picking it up.

20 Q. You said interviewing witnesses. Did you interview
21 Clarence Kendell Cook?

22 A. Yes, ma'am. I interviewed him that night, June 10,
23 2010.

24 Q. Do you recall about what time that interview took place?

25 A. It was I believe, a little after eight, probably 8:25,

DEBORAH YOUNG - DIRECT EXAMINATION

364

1 8:27, or 8:28, when he was read his Miranda.

2 Q. So, it was not long after he was taken into custody?

3 A. No, ma'am.

4 Q. Did anybody else participate in that interview?

5 A. Yes, ma'am. Detective Ira Dease.

6 Q. Did you Marandize Mr. Cook before that interview?

7 A. Yes, ma'am.

8 Q. Describe what a Miranda Warning is?

9 (PAUSE.)

10 Q. I am going to hand you what has been marked for
11 identification as State's Exhibit Number 36.

12 A. Okay. A Miranda Warning is letting the person know
13 about their rights.

14 Q. Okay. And did you go over Mr. Cook's rights with him?

15 A. Yes, ma'am. We have five rights. The first one is.
16 You have a right to remain silent. Anything you say can
17 and will be used against you in a court of law. You
18 have a right to talk to a lawyer and have him present
19 with you while you are being questioned. If you cannot
20 afford to hire a lawyer, one will be appointed to
21 represent you before any questioning, if you wish. The
22 fifth and last one is. If you desire to make a
23 statement or answer questions, you have a right to stop
24 at any time. And then I would hand this to the
25 defendant, and I would tell him to read over it. And I

DEBORAH YOUNG - DIRECT EXAMINATION

365

1 would ask him to initial each one that he understands.

2 And Mr. Clarence, he initialed all five of them that he
3 understood his rights.

4 Q. Did he initial any other place on there?

5 A. Okay. At the bottom it have, name, address, date of
6 birth, height, weight, social security number, eye
7 color, hair, years completed in school, date, time of
8 the interview, and the location. And he filled that
9 out. And then he was asked to sign his name where it
10 said, defendant's name. But on this one, what he did
11 was he initialed at the bottom with his initials, "C.
12 C." standing for Clarence Kendell Carter or whatever.
13 Okay. I'm sorry, Cook.

14 Q. Did you sign to witness the Miranda Warning?

15 A. Yes, ma'am. There is a place on this where it says
16 witness, date, and time. I put my name, Detective D.
17 Young. The date, June 10, 2010. Time, 8:28 p.m.

18 Q. And is there a place at the bottom for the defendant to
19 put the time that he signed?

20 A. Yes, ma'am.

21 Q. And what time did he put?

22 A. He put 8:27.

23 Q. Is that p.m.?

24 A. P.M., ma'am.

25 MS. JOHNSON-LEE: At this time I would move to have

DEBORAH YOUNG - DIRECT EXAMINATION

366

1 State's Exhibit Number 36 admitted into evidence.

2 MS. SELLERS: No objection.

3 THE COURT: Without objection, State's Exhibit Number
4 36 then in evidence.

5 WHEREUPON, STATE'S EXHIBIT
6 NUMBER 36 WAS ADMITTED INTO
7 EVIDENCE WITHOUT OBJECTION.

8 Q. At any point in time after going over Mr. Cook's rights,
9 did he stop and ask for an attorney?

10 A. No, ma'am.

11 Q. Was he voluntarily interviewed?

12 A. Yes, ma'am.

13 Q. Did he give a statement to you and to Detective Dease?

14 A. Yes, ma'am.

15 Q. Was that statement videotaped?

16 A. Yes, ma'am.

17 Q. Was the entire length of the interview videotaped?

18 A. Yes, ma'am.

19 Q. I am going to show you what has been marked for
20 identification as State's Exhibit Number 1. Do you
21 recognize that item?

22 A. Yes, ma'am.

23 Q. What is that item?

24 A. It is a copy of the videotape of the interview.

DEBORAH YOUNG - DIRECT EXAMINATION

367

1 Q. And what interview is on that videotape?

2 A. Clarence Cook.

3 MS. JOHNSON-LEE: At this time I would move to offer
4 the videotape into evidence.

5 THE COURT: Is there an objection?

6 MS. SELLERS: No objection, Your Honor.

7 THE COURT: That is State's 1?

8 MS. JOHNSON-LEE: Yes, Your Honor.

9 THE COURT: In evidence without objection.

10 WHEREUPON, STATE'S EXHIBIT
11 NUMBER 1 WAS ADMITTED INTO
12 EVIDENCE WITHOUT OBJECTION.

13 Q. Before we play the videotape, let's go through some
14 other items. At any point in time during the interview
15 process did Mr. Cook appear agitated or upset?

16 A. No.

17 Q. Was he deprived of any basic human needs?

18 A. No, because I even asked him if he needed anything to
19 drink like soda, water, or something. And he was just
20 fine.

21 Q. Did he voluntarily go through this interview with you?

22 A. Yes, ma'am.

23 Q. Did he volunteer additional information over and above
24 the questions you were asking?

25 A. Yes, ma'am.

DEBORAH YOUNG - DIRECT EXAMINATION

368

1 Q. All right. Let's go through the other evidence items
2 before we play the video. You said you went to the
3 autopsy?

4 A. Yes, ma'am.

5 Q. Where was that at?

6 A. Charleston, MUSC.

7 Q. Did you receive any items from the pathologist?

8 A. Yes. I received a brown bag, and I received a toxic
9 bag, I think it was orange.

10 Q. I am going to show you what is in evidence as State's
11 Exhibit Number 41. What is that document?

12 A. Excuse me?

13 Q. What is that document?

14 A. The evidence transfer sheet by MUSC.

15 Q. And what does that document show?

16 A. It shows that --- what was in the bags, blue boxers,
17 plaid shorts, two torn plastic baggies, left fingernail
18 clippings, right fingernail clippings, pulled scalp
19 hair, bullet from skull, bullet from left brain, and
20 blood spot.

21 Q. Are those items that you received from the pathologist?

22 A. Yes, ma'am.

23 Q. Did you sign that form showing you received them?

24 A. Yes, ma'am. Down at the bottom.

25 Q. How were those items packaged when you received them

DEBORAH YOUNG - DIRECT EXAMINATION

369

1 from the pathologist?

2 A. Some was in a brown paper bag, and some were in a orange
3 bag.

4 Q. What did you do with those items?

5 A. I took them to Columbia to SLED, State Law Enforcement
6 Division.

7 Q. And do you recall what day you took those to SLED?

8 A. June 11, 2010.

9 Q. Was there anything else that you took to SLED along with
10 the items from autopsy?

11 A. The residue from the hands of Mr. Hayes and Mr. Cook.

12 Q. That would be the GSR kits?

13 A. Yes, ma'am.

14 Q. Now, did SLED keep all of the items that you took that
15 day?

16 A. No, ma'am.

17 Q. What items did they keep?

18 A. They kept the kit, and there was a --- They took the
19 bullets out at MUSC and they kept that.

20 Q. Now, how were those bullets packaged when you took them
21 to SLED?

22 A. I don't know. I just handed it to them what they handed
23 me at MUSC.

24 Q. All of it prepackaged?

25 A. Yes.

DEBORAH YOUNG - DIRECT EXAMINATION

370

1 Q. Did you ever open the package between The Medical
2 University and SLED?

3 A. No.

4 Q. Now, did you go back to SLED to bring those items, those
5 bullets back to Bennettsville?

6 A. Yes.

7 Q. When you received them from SLED, how were they
8 packaged?

9 A. They were sealed.

10 Q. In what?

11 A. Like, a manilla envelope.

12 Q. And did you ever try to open the seal on that envelope?

13 A. No.

14 Q. What did you do with that envelope when you got it back
15 to Bennettsville?

16 A. We have evidence lockers where we put our stuff in.
17 And, it locks. And nobody can get into it but the
18 evidence person, which is Kel Hall.

19 Q. And, the other items that SLED didn't keep, did you
20 bring those back to the Bennettsville Police Department?

21 A. Yes, ma'am.

22 Q. And what did you do with those items?

23 A. Put them in a evidence locker.

24 Q. I am going to show you what has been marked as State's
25 Exhibit Number 5. Do you recognize these two bags?

DEBORAH YOUNG - DIRECT EXAMINATION

371

1 A. Yes, it is the bags I brought back from SLED in
2 Columbia, and put in the evidence locker.

3 Q. To your knowledge, what is in the bags?

4 A. I don't know.

5 Q. You never opened it?

6 A. No, ma'am.

7 Q. You took it straight from The Medical University to
8 SLED?

9 A. Yes, and I picked them up from SLED and put them in the
10 evidence locker at the Police Department.

11 Q. Thank you, ma'am.

12 MS. JOHNSON-LEE: And, Madame Court Reporter, I
13 believe that Item 5 is already admitted into evidence?

14 MADAME COURT REPORTER: Yes ma'am.

15 MS. JOHNSON-LEE: For the record, Item 5 is in
16 evidence.

17 Q. Did you also receive a telephone belonging to the victim
18 in the case?

19 A. Yes, ma'am. I think it was on June 11th.

20 Q. Who did you get the telephone from?

21 A. Detective Shawn Lucas.

22 Q. And do you know who he got it from?

23 A. Kim Brown.

24 Q. Do you know for a fact he got it from Kim Brown?

25 A. I was standing next to him at the Bennettsville Police

DEBORAH YOUNG - DIRECT EXAMINATION

372

1 Department.

2 Q. So, it was handed to him and then to you, all three of
3 you together?

4 A. Yes, ma'am.

5 Q. Now, at some point did you check the telephone contents?

6 A. Yes.

7 Q. What did you look for?

8 A. Texting.

9 Q. At some point were photographs taken of any of those
10 text messages?

11 A. Yes, ma'am.

12 Q. Who took those photographs?

13 A. The investigator from the Solicitor's Office. I think
14 his name is Tim.

15 Q. Were you present when those photographs were taken?

16 A. Yes, ma'am.

17 Q. Did you assist in going to the various screens to get
18 those pictures?

19 A. Yes, ma'am.

20 Q. I am going to show you what has been marked for
21 identification, State's Exhibit Number 27 and 31. Do
22 you recognize those photographs?

23 A. Yes, ma'am.

24 Q. And what are those photographs of?

25 A. Texting from off the telephone, cell phone.

DEBORAH YOUNG - DIRECT EXAMINATION

373

1 Q. And, you were present when those photographs were taken?

2 A. Yes, ma'am.

3 Q. Do those photographs accurately depict the messages on
4 the cell phone on the date that those pictures were
5 taken?

6 A. Yes, ma'am.

7 MS. JOHNSON-LEE: At this time I would move to admit
8 27 and 31 for the state into evidence.

9 THE COURT: That is 27 through 31?

10 MS. JOHNSON-LEE: Twenty-seven and 31 individually.

11 THE COURT: Very good.

12 MS. SELLERS: If I could just take a look at that.

13 MS. JOHNSON-LEE: Yes, ma'am.

14 (PAUSE.)

15 MS. SELLERS: Without objection.

16 THE COURT: All right. Then let's mark those as
17 admitted without objection

18 WHEREUPON, STATE'S EXHIBIT

19 NUMBERS 27 and 31 WERE ADMITTED

20 INTO EVIDENCE WITHOUT

21 OBJECTION.

22 Q. State's Exhibit Number 27, does that text message show
23 whether it was outgoing or incoming?

24 A. I believe it was incoming. I am not too familiar with
25 texting.

DEBORAH YOUNG - DIRECT EXAMINATION

374

1 Q. Does it say inbox or outbox?

2 A. Inbox.

3 Q. Okay. And what does the message state?

4 A. I'm going to try to read this language. "If u got a
5 zone of reg. My lil cuz want it 4 70 n he'll cum get it
6 im holdn bags." [sic] Initials KC & CC.

7 Q. And, do you know if that is Kendell Cook and Chasity
8 Carter?

9 A. I believe so. I'm not sure. It just have their
10 initials.

11 Q. Does it show what date and time that text message came
12 to the victim's cell phone?

13 A. I don't see it on here.

14 Q. Now, Item Number 31, is that an incoming inbox message
15 to the victim's phone or an outgoing?

16 A. Inbox.

17 Q. And what is that message?

18 A. "Tell Carlos 2 call me" [sic] KC & CC. That was Monday,
19 June 7, at 6:38 p.m.

20 Q. Thank you. Now the telephone that those were taken from
21 --- I am going to show you what has been marked as
22 State's Exhibit Number 3. Do you recognize that?

23 A. It looks like the phone where I got from Detective
24 Lucas, where he got from Kim Brown.

25 Q. And is that the victim's cell phone?

DEBORAH YOUNG - DIRECT EXAMINATION

375

1 A. Yes.

2 Q. Is that the phone that the photographs were taken from?

3 A. Yes, ma'am.

4 MS. JOHNSON-LEE: Thank you.

5 Q. Now, when you took items to SLED, did you have to
6 prepare a SLED Evidence Transfer Sheet?

7 A. Yes.

8 Q. I am going to show you what has been marked for
9 identification as State's Exhibit Number 42. Now, was
10 that item generated by a computer?

11 A. Computer.

12 Q. And is that done at the log in time, or at the time that
13 you pick something back up?

14 MS. SELLERS: Objection. She is leading the witness.

15 THE COURT: Sustained. When is that done, ma'am?

16 DETECTIVE YOUNG: During a log in time, when I take it
17 to SLED.

18 Q. What does that transfer sheet show?

19 A. It shows what was taken there. It shows a GSR Kit from
20 Clarence Kendell Cook, trace evidence. GSR Kit Charles
21 Hayes, trace evidence. Fingernail clipping from Charles
22 Hayes, needing DNA analysis. Fingernail clipping from
23 Charles Hayes, DNA analysis. Known hairs from Charles
24 Hayes. Fired bullets from the skull. Fired bullet
25 which came from the brain. And blood spot from Charles

DEBORAH YOUNG - DIRECT EXAMINATION

376

1 Hayes.

2 Q. Does it indicate a date?

3 A. Yes, ma'am.

4 Q. What is that date?

5 A. June 11, 2010, at 2:21 p.m.

6 MS. JOHNSON-LEE: At this time I would move to have
7 State's Exhibit Number 42 admitted into evidence.

8 MS. SELLERS: No objection.

9 THE COURT: Without objection, then 42 in evidence for
10 the state.

11 WHEREUPON, STATE'S EXHIBIT
12 NUMBER 42 WAS ADMITTED INTO
13 EVIDENCE WITHOUT OBJECTION.

14 MS. JOHNSON-LEE: At this time I would like to play
15 the video of Mr. Cook, and I need some assistance from my
16 tech support.

17 THE COURT: Very good.

18 (PAUSE.)

19 Q. Before you actually get started with the interview,
20 while you were Mirandizing Mr. Cook, did you promise him
21 anything or offer him any rewards in exchange for giving
22 this statement?

23 A. The only thing I offered him was a cup of water or some
24 soda.

25 THE COURT: Oh, we lost that.

DEBORAH YOUNG - DIRECT EXAMINATION

377

1 A. The only thing I offered him was some water or something
2 to drink, soda.

3 MS. JOHNSON-LEE: We want to start the tape from the
4 very beginning when he first comes into the room, Your Honor.

5 THE COURT: Very good.

6 (Whereupon, State's Exhibit Number 42 was
7 published to the jury.)

8 THE COURT: All right. Do you have further questions
9 for the witness on direct?

10 MS. JOHNSON-LEE: Just a couple of questions on the
11 record.

12 THE COURT: Let's finish that, and then we will take
13 our break. Go ahead.

14 Q. On the video Mr. Cook asked for you to look at his cell
15 phone. Did he have his cell phone with him?

16 A. I didn't see one.

17 Q. Did you ever ask any of his family for his telephone?

18 A. Yes.

19 Q. Did they ever turn it over?

20 A. No, ma'am.

21 Q. The gun was never recovered; is that correct?

22 A. No, ma'am.

23 Q. And how many times did he say he shot the victim?

24 A. Twice.

25 MS. JOHNSON-LEE: No further questions.

DEBORAH YOUNG - DIRECT EXAMINATION

378

1 **THE COURT:** All right. Then, we are going to step
2 down for our break. Ma'am, please don't speak with lawyers
3 on either side during the break as you are a witness under
4 testimony. Of course, you can step down, but please don't
5 talk with the lawyers.

6 Ladies and gentlemen, we will let you go outside. It is
7 a beautiful morning, if you wish. We will remain where we
8 are while you return to the jury room. Enjoy your break.

9 (Whereupon, the jury exits the courtroom at
10 10:38 a.m.)

11 **THE COURT:** Counsel, let me get you to step up just
12 one moment before we take our break.

13 Ladies and gentlemen, court is in recess.

14 (Whereupon, a recess was taken from 10:39 a.m.
15 until 10:55 a.m.)

16 **THE COURT:** Investigator Young, please return to the
17 witness seat. And, are we ready for cross examination?

18 **MS. SELLERS:** Yes, Your Honor.

19 **THE COURT:** Very good. Then please bring in the
20 jury.

21 (Whereupon, the jury enters the courtroom at
22 10:56 a.m.)

23 **THE COURT:** All right. Welcome back ladies and
24 gentlemen. I trust you enjoyed the break. We ended direct
25 examination at the end of the first morning session. We now

DEBORAH YOUNG - CROSS EXAMINATION

379

1 move to cross examination.

2 CROSS EXAMINATION BY MS. SELLERS

3 Q. Good morning, Officer Young.

4 A. Good morning, ma'am.

5 Q. Officer, you were the lead investigator in this case,
6 correct?

7 A. I was the investigator. We don't have a lead
8 investigator.

9 Q. Were you the supervising investigator?

10 A. No, ma'am.

11 Q. Were you the follow up investigator?

12 A. Something like that.

13 Q. You heard testimony from your other colleagues that work
14 in the Police Department?

15 A. Yes, ma'am.

16 Q. And basically they relied on you to make sure this
17 investigation was done properly; correct?

18 A. That is myself, and Lieutenant Turner, he is our
19 Lieutenant for investigations.

20 Q. Now, you mentioned as kind of chief investigating
21 officer, what were your duties then?

22 A. My duties that night?

23 Q. Yes.

24 A. My duties that night was to speak with witnesses. That
25 was my duties.

DEBORAH YOUNG - CROSS EXAMINATION

380

1 Q. Now, I noticed that the Solicitor provided you a copy of
2 your file. Could you tell the jury which witnesses you
3 spoke with?

4 A. I spoke with Taylor Locklear and I spoke with the
5 defendant Clarence Cook. I took a statement from Mr.
6 Terrance Bridges, and Mr. Carlos, I can't remember his
7 last name.

8 Q. Eaddy?

9 A. Yes, ma'am.

10 Q. Now, before you spoke with the jury, you explained to
11 them that you had gone to the Police Academy; correct?

12 A. Yes, ma'am.

13 Q. And in the Police Academy they teach you how to
14 investigate crime scenes?

15 A. Which time? Are you talking about -

16 Q. -- In the twenty years that you have been in law
17 enforcement, you have had several training -

18 A. -- Yes, ma'am -

19 Q. -- correct? And one of the most important things in the
20 investigation is the incident report; correct?

21 A. Yes.

22 Q. The incident report is suppose to be a factual basis of
23 everything that happened, and all of the information
24 that you learned while conducting your investigation;
25 correct?

DEBORAH YOUNG - CROSS EXAMINATION

381

1 A. I didn't do the initial incident report. Officer Baker
2 did it.

3 Q. On that incident report however, you were the follow-up
4 investigator; correct?

5 A. Yes, but I think he put me down as the victim advocate
6 at the bottom.

7 Q. And also as the follow-up investigator; correct?

8 A. Let me check. Can I see your copies?

9 (PAUSE.)

10 A. Yes, he still has me as victim advocate.

11 Q. So both?

12 A. Yes.

13 Q. What would you say the incident report should reflect?

14 A. I guess about the murder, but I didn't do the incident
15 report.

16 Q. Okay. Did you ever do any supplemental report?

17 A. I did a supplemental.

18 Q. Tell the jury, when you did this supplemental report?

19 A. About two weeks ago.

20 Q. And why was it done two weeks ago?

21 A. Because I had spoken to somebody --- Ms. Myesha, and I
22 thought that was what she needed was a supplemental.
23 But really a supplemental is a follow-up showing what I
24 did for like, maybe, about ten years from now somebody
25 wanting to know about the case, and I can pull it up and

DEBORAH YOUNG - CROSS EXAMINATION

382

1 it show what I did.

2 Q. Now in your supplemental report that was done two weeks
3 ago, that still wasn't an accurate reflection of what
4 you did was it?

5 A. To my knowledge.

6 Q. To your knowledge? If you could just review that. And
7 you just said that you spoke with Carlos Eaddy, Clarence
8 Cook, and Taylor Locklear. Is -

9 A. -- I didn't speak to Carlos. He wrote a statement. I
10 didn't speak to him.

11 Q. Is he -

12 A. -- let's see. Okay that night when I tried to speak to
13 Ms. Taylor, she wouldn't talk to me.

14 Q. But she did eventually write a statement?

15 A. She wrote a statement. This incident happened in June,
16 10, 2010. She didn't come up there to write a statement
17 til in August 2010.

18 Q. Okay. So, about a month later --- two months later she
19 came?

20 A. Yes.

21 Q. But it took you almost a year to write the supplemental
22 report?

23 A. Well, like I said, the supplemental is just showing what
24 I did in case somebody ask me.

25 Q. But actually this supplemental report does not show,

DEBORAH YOUNG - CROSS EXAMINATION

383

1 because none of that information is in that report;
2 correct?

3 A. Let's see. The interview with Clarence Cook is in the
4 report.

5 Q. But none of the other information that you have just
6 spoke of -

7 A. -- because like I say, Eaddy, I didn't interview him.
8 And with Mr. Terrance, I didn't interview him. The only
9 person I tried to talk to was Ms. Taylor Locklear that
10 night. She came back about --- it wasn't even four
11 weeks, it was a few months later. And it is not in the
12 report.

13 Q. But you would admit that this is not in the report?

14 A. It is not in the report.

15 Q. So, the report is incorrect?

16 A. Not exactly.

17 Q. The report doesn't show an accurate -

18 A. -- it is not incorrect neither.

19 Q. Now, Ms. Young, as an officer, how do you decide what
20 you are going to put in your report and what you are not
21 going to put in your report?

22 A. I didn't do the incident report. I just did the
23 supplemental.

24 Q. The supplemental. How do you decide what the jury
25 should hear and -

DEBORAH YOUNG - CROSS EXAMINATION

384

1 A. -- it is not something that you decide, it is just
2 something you write what you did. Some of the stuff you
3 did. Like I said, for a follow-up for a few years
4 later, if my Lieutenant or somebody asked about this
5 case, and then he might say well, what is some of the
6 stuff he did, and I have some of the stuff that I did on
7 the incident report, the supplemental. And this is some
8 of the stuff I did.

9 Q. Some of. What else have you left out of that report
10 that the jury may want to hear?

11 A. I don't have Ms. Taylor on here.

12 Q. I'm sorry, I didn't hear -

13 A. -- I don't know what you mean.

14 Q. What else was done during the course of this
15 investigation that is not surmised -

16 A. -- Are you talking about the part that I did or the
17 officer with the first incident -

18 Q. -- The part that you did. Since you had a year to think
19 about what you were going to write in your supplemental
20 report, what else has not been included in that report?

21 A. I don't know right now, because I don't know what you
22 are talking about.

23 Q. Now, when you went to the academy, they did stress the
24 importance of an incident report; correct?

25 A. No.

DEBORAH YOUNG - CROSS EXAMINATION

385

1 Q. So, you have never gotten any instruction on how to -

2 A. -- I never -- I came to the Police Department from who
3 was a field Sergeant at the time. But this wasn't with
4 the county how to write an incident report.

5 Q. So, you have never gone to those type training?

6 A. Not at the Police Academy.

7 Q. What type of training do you have at the Police Academy?

8 A. Legals, firearms, defense tackling, going into
9 buildings, driving, shooting, most of it was testes.

10 Q. Anything about murder investigations?

11 A. No.

12 Q. Anything about crime scene investigations?

13 A. No. I went in 2004 for that.

14 Q. Also in this supplemental report you had an opportunity
15 to speak with a Ms. Deborah Carter; correct? That is
16 the lady that testified yesterday that she came up and
17 was with Ms. Brown consoling her?

18 A. Yes.

19 Q. And you had an opportunity to speak with her?

20 A. Yes.

21 Q. That is not in that supplemental report is it?

22 A. No. Because I didn't have to put that in there.
23 Usually that would be with my notes.

24 Q. Okay. Again now, what do you --- how do you determine
25 what you have to put in the report and what you don't

DEBORAH YOUNG - CROSS EXAMINATION

386

1 have to put in the report?

2 A. It is up to the officer.

3 Q. Okay. So, you put whatever you want to put in your
4 report?

5 A. The truth. I mean, I just don't make up stuff.

6 Q. Well, isn't it the jury's job to decide what the truth
7 is?

8 A. Yeah, but you asked me about the incident report, not
9 about them. You asked me about this report,
10 supplemental.

11 Q. So, in your opinion, it is not your job to go out and
12 investigate, and get all the facts to the jury. It is
13 your job to basically try to solve the case in whatever
14 position you come up with, that is what you are going to
15 put in your incident report, to support -

16 A. -- I wouldn't say me or all of us, because we have like,
17 six different investigators in our department. A lot of
18 times we have a murder or something everybody do
19 something different.

20 Q. Everybody does something different, but on this
21 particular day you were responsible for that
22 supplemental report; correct?

23 A. Not on that day, but follow-up. It don't have to be on
24 that day.

25 Q. -- So -

DEBORAH YOUNG - CROSS EXAMINATION

387

1 A. -- it is no set day for a supplemental.

2 THE COURT: Ms. Young, just one at a time. Our court
3 reporter is trying to take down testimony, and there are two
4 talking at the same time, it is just not possible.

5 Q. Ms. Young, today we are talking about what you did.

6 A. Okay.

7 Q. And again, just to be clear for myself and for the jury,
8 how do you determine what should and should not go into
9 an incident report?

10 A. On a supplemental, just like I said, it is a follow-up.
11 It is some of the stuff that I did. Sometime the
12 officer might do a incident report and he don't have a
13 subject on the incident report. So, when they do get a
14 subject, the subject will be named in the supplemental
15 part of the incident report. But on this case they had
16 a subject.

17 Q. Let me show you what has been marked as State's Exhibit
18 Number 35. Do you recall being present when Mr. Eaddy
19 made that statement?

20 A. When he wrote the statement?

21 Q. Yes.

22 A. Yes, ma'am.

23 Q. He wrote that statement out, correct?

24 A. Yes.

25 Q. Did you promise him anything?

DEBORAH YOUNG - CROSS EXAMINATION

388

1 A. No.

2 Q. And he did it voluntarily?

3 A. Yes, ma'am.

4 Q. Now this statement is only two sentences; correct?

5 A. Yes.

6 Q. But Mr. Eaddy came back and testified -

7 A. -- What happened was they had started --- he started
8 writing a statement, and then my Lieutenant came in and
9 told him to just stop, and they took him into the
10 interview room, and he was put on tape in the interview
11 room.

12 Q. So, when he was writing this statement you told him to
13 stop?

14 A. Yes, he was told to stop.

15 Q. Okay. Was that mentioned in your supplemental report?

16 A. No, because I didn't interview him in the interview
17 room.

18 Q. Well, Officer Young, that happened almost a year ago;
19 right?

20 A. Yeah.

21 Q. You just did another supplemental report two weeks ago?

22 A. Yes.

23 Q. You didn't think it was important to put all that
24 information -

25 A. -- No, because most part of this case was when he was on

DEBORAH YOUNG - CROSS EXAMINATION

389

1 tape in a interview room making his statement, not on a
2 piece of paper.

3 Q. Now, also in that incident report --- Let me back up.
4 When you got to the scene, who was there?

5 A. It was a lot of people -

6 Q. -- Law enforcement.

7 A. The officers what was working that night. The ones I
8 seen was, Officer Covington, Officer Bill Williams,
9 Chief Larry McNeil, Lieutenant Turner, and Greg
10 Williamson.

11 Q. Now, they all testified that you were the lead
12 investigator on this case. So, at any point in time did
13 you pull your officers together -

14 A. -- I didn't do that.

15 Q. You don't do that?

16 A. No.

17 Q. At any point in time did you and the other officers that
18 were working this case, did y'all sit down and talk
19 about what -

20 A. -- No, I don't do that. We have a commander that do
21 that.

22 Q. Okay. Which commander would that be?

23 A. Chief Larry McNeil and the Lieutenant Turner.

24 Q. So, you are saying you never spoke to each individual
25 officer about -

DEBORAH YOUNG - CROSS EXAMINATION

390

1 A. -- I don't do that. That is not my responsibility.

2 Q. So, that would be a no?

3 A. No.

4 Q. And, you all never sat down one morning and briefed one
5 --- each other about the facts, and your investigation,
6 and talking with several people?

7 A. Myself and the investigators do that in back, not patrol
8 officers. We have a briefing --

9 Q. -- When was the first briefing?

10 A. We have briefings every morning.

11 Q. And what was discussed in your first briefing?

12 A. We have briefing every morning every day.

13 Q. I mean -

14 A. -- Not on this case, but briefings.

15 Q. On this particular case, when did you all meet and have
16 a briefing?

17 A. We met the next day, and Lieutenant Turner told us what
18 was expected of us with this case.

19 Q. Do you have your notes here?

20 A. We don't do notes for briefings.

21 Q. You don't take any notes -

22 A. -- no -

23 Q. -- when you were out in the field, did you take any
24 notes?

25 A. Yea.

DEBORAH YOUNG - CROSS EXAMINATION

391

1 Q. Did you -

2 A. -- it depends on what kind of case it is.

3 Q. Being that this is a murder case, do you have your notes
4 here?

5 A. No.

6 Q. Did you turn your notes over to the Solicitor's Office?

7 A. No. She never asked me for any.

8 Q. Did you have an opportunity to speak with a Ms. Mary
9 Bowing?

10 A. Not that I can remember.

11 Q. Do you know who Mary Bowing is?

12 A. Not that I can remember.

13 Q. Did you have a chance to read the incident report; the
14 first incident report?

15 A. Yes, ma'am.

16 Q. Because you were suppose to follow-up based -

17 A. -- I never spoke with her. We was assigned to people to
18 speak with. That night I was assigned to speak with
19 some witnesses. I was assigned to speak with Ms.
20 Taylor. And I also spoke with Ms. April Hayes.

21 Q. Ms. April who?

22 A. Hayes.

23 Q. April Hayes. Is that in your supplemental report?

24 A. No. Because at the time when she got out her vehicle,
25 she was --- Snook was her brother and she was

DEBORAH YOUNG - CROSS EXAMINATION

392

1 hysterical. And I couldn't get anything out of her.

2 Q. Ms. Hayes, is that the family member that called you
3 about the missing money?

4 A. Nope.

5 Q. Which family member called you about his missing wallet?

6 A. I think --- I can't remember. I think it was Jada.

7 Q. And what else was missing from the victim?

8 A. She just asked me about his money, about his wallet, and
9 I told her I would try to find out what happened to his
10 wallet. I spoke with a few people, but then I spoke
11 with Ms. April, the sister which he was close to. She
12 stated to me that he do not carry a wallet.

13 Q. Did you ever find his money?

14 A. I didn't see any money. I mean, when I find his stuff
15 and I took it to Charleston, they never gave me any
16 money. So, I don't know if he had money or not. I
17 cannot say.

18 Q. How long were you on the scene?

19 A. I was on the scene about a half hour.

20 Q. And what exactly did you do in that half hour?

21 A. I went upstairs to speak with Ms. Taylor Locklear, which
22 we spoke maybe about two minutes. Then I went down ---
23 then she refused to speak to me. I went down stairs and
24 that is when Ms. April got in her vehicle and I was
25 trying to comfort her.

DEBORAH YOUNG - CROSS EXAMINATION

393

1 Q. Now, Ms. Brown's apartment is right underneath Taylor's
2 apartment; correct?

3 A. Yes.

4 Q. At any time did you go into Ms. Brown's apartment?

5 A. No.

6 Q. At any time did you go in and look for a weapon in Ms.
7 Brown's apartment?

8 A. No.

9 Q. At any time did you go to Ms. Brown's apartment and look
10 for money?

11 A. No.

12 Q. At any time did you go and look for drugs?

13 A. Nope.

14 Q. Even after the family told you that the items were
15 missing, you never -

16 A. -- That wasn't that day.

17 Q. Well -

18 A. -- This was a few --- I think a week or so later when
19 they asked me about his money.

20 Q. Did you ever go and execute a search warrant?

21 A. No. I think Kim Brown at her residence --- she was not
22 staying there. I don't know where she was staying at.

23 Q. Tell us about your role as a victim's advocate?

24 A. I am there for the victim. If I had a incident say
25 like, with a victim got murdered, I go talk to their

DEBORAH YOUNG - CROSS EXAMINATION

394

1 family. I see if they have any insurance for the
2 burial. If they don't have any insurance, I get them
3 buried. I take care of doctor bills. I go to the
4 emergency room with them if they need to go. I tell
5 them about Pee Dee Coalition, if they a victim of CDV.
6 If they was a victim of a sex crime, I tell them where
7 to go for counseling and who to talk to. I'm just there
8 for the victim, because they have rights and I'm there
9 to make sure their rights go on.

10 Q. So, you are for the victim?

11 A. Huh?

12 Q. You are for the victim; right?

13 A. For the victim.

14 Q. Do you ever get confused about investigations?

15 A. No.

16 Q. Does being a victim's advocate hinder your ability to be
17 objective while doing your investigation, while
18 conducting an investigation?

19 A. No.

20 Q. And you said this was your first murder case you have
21 worked?

22 A. Yes, ma'am.

23 Q. Okay. And again, there was no direct point of contact
24 in the Police Department? There was no hierarchy in
25 terms of who the officers were taking direction from?

DEBORAH YOUNG - CROSS EXAMINATION

395

1 A. I don't do that. I just took my --- what I had to do
2 for my Chief and my Lieutenant. What they wanted me to
3 do.

4 Q. Did you ever give any instructions to other officers?

5 A. I don't do that. That is not my job.

6 Q. Now, Officer Young, we are going to go back briefly to
7 your training.

8 A. Yes, ma'am.

9 Q. Do you recall ever seeing this basic law enforcement
10 manual?

11 A. Not that one.

12 Q. Not that one. But in the basic law enforcement manual,
13 it does have a section about how to properly write an
14 incident report?

15 A. Yes, ma'am, but you asked me when I went to the academy.
16 The academy have changed. When I went it was eight
17 weeks. Now they change it to twelve weeks. They
18 changed from 1998 to now.

19 Q. But since your follow-up training, you never have had
20 any additional instruction on how to write an incident
21 report?

22 A. No, ma'am.

23 Q. Isn't an incident report very important with criminal
24 domestic violence cases?

25 A. Yes.

DEBORAH YOUNG - CROSS EXAMINATION

396

1 Q. So, you don't -

2 A. -- I don't write those. The officers whoever is out,
3 they write those. I do the follow-up.

4 Q. What about their child support, your child abuse cases,
5 do you ever --- are you ever the first responder?

6 A. I don't write that neither.

7 Q. Are you ever contacted by DSS about child abuse cases?

8 A. Yes, ma'am.

9 Q. And do you ever write -

10 A. -- I don't write that neither, officer do that.

11 THE COURT: Just one moment. Ms. Young, please
12 allow -

13 DETECTIVE YOUNG: I'm sorry -

14 THE COURT: -- counsel to ask the question before -

15 DETECTIVE YOUNG: -- go ahead, sir.

16 THE COURT: You cut them -

17 DETECTIVE YOUNG: -- Go ahead.

18 Q. So, basically that is not your job description either?

19 A. No, ma'am.

20 Q. Well, what use are you to the Police Department if you
21 it is not -

22 A. -- a lot of use. A lot of people think I am a lot of
23 use.

24 Q. In what way?

25 A. I do my job. I do my job as a victim advocate. I do my

DEBORAH YOUNG - CROSS EXAMINATION

397

1 job as a juvenile officer. I do my job as a criminal
2 domestic violence officer. I do my job as a victim
3 advocate.

4 Q. And in doing your job, it does not include writing a
5 police report?

6 A. No, ma'am.

7 Q. It does not include writing supplemental reports?

8 A. It include writing supplementals, but not incident
9 reports. Majority of time investigators do a follow-up.
10 If somebody get rob that day or night, the officer will
11 do the incident report. Investigators, when we come in,
12 our Lieutenant --- he go through the incident reports
13 and he issue the cases out to each investigator.

14 Q. But you all never work as a unit together?

15 A. Excuse me, ma'am?

16 Q. You all never work as a unit together?

17 A. We do.

18 Q. Well, let me ask you. On the night of June 10, 2010,
19 from June 10, 2010 to date, have you ever been in a
20 meeting with other officers and you all discuss this
21 case in detail?

22 A. With my Lieutenant. Like I say, we have a briefing
23 everyday. And then after this incident we had a
24 briefing for what to do and what we all need to do as a
25 whole, as a group. We try to work as a team to try to

DEBORAH YOUNG - CROSS EXAMINATION

398

1 get things done.

2 Q. And did you all ever as a Police Department sit down
3 together and talk about, well I found this information
4 out. I interviewed this person. This is what came to
5 light. I spoke to Subject A, and this is what came to
6 light. Did you all share that information?

7 A. Yes, ma'am.

8 Q. So, you all made informed decisions; correct?

9 A. We don't make a decision. Our Lieutenant make a
10 decision as he find what each of us did on that
11 particular case.

12 Q. But based on your previous statements, that decision is
13 based on the information that you all provide; correct?

14 A. Yes, the officers and investigators, and what each one
15 found out.

16 Q. And as an officer, you have the ability to withhold
17 information from your supervisor; correct?

18 A. No, I don't.

19 Q. But if you don't want to put information in the report,
20 then it is not in the report; correct?

21 A. I don't hold anything from my Lieutenant.

22 Q. So, you tell your Lieutenant, but you just failed to put
23 it in the report?

24 A. On the supplemental. He know what I do that night,
25 because we discuss it the next day when we had a

DEBORAH YOUNG - CROSS EXAMINATION

399

1 briefing. So, he know what I did already.

2 Q. Now, is there anybody that reads your reports to approve
3 or disapprove?

4 A. I don't do incident reports.

5 Q. Your supplemental report?

6 A. My Lieutenant.

7 Q. Your Lieutenant. And even though your Lieutenant knows
8 that information, that you are withholding information,
9 that report can still be approved?

10 A. I don't know about that.

11 Q. Well, it was approved in this case; correct?

12 A. He read my incident report --- he read my supplemental.

13 Q. And you stated that that supplemental did not have
14 accurate information, complete information?

15 A. Yeah, so you say.

16 Q. And, you do admit that you left some parts out; correct?

17 A. I didn't say that I intentionally left some parts out.
18 Like I say, a supplemental is something to summarize
19 what we did.

20 Q. But you also said it is to your discretion what you put
21 in your report and what you -

22 A. -- that is not like I am a liar and leave something out.

23 Q. -- I'm not calling you a liar.

24 A. -- I'm just saying -

25 **THE COURT:** Counsel, please don't break in. Go ahead,

DEBORAH YOUNG - CROSS EXAMINATION

400

1 Ms. Young. You may finish your statement. Go ahead.

2 DETECTIVE YOUNG: I'm finished.

3 THE COURT: All right. Go ahead. Thank you.

4 Q. But again, this report that was not complete, it did not
5 have every detail, every person that you spoke with.

6 You submitted that report to your supervisor; correct?

7 A. Negative. I wrote the stuff that I want to put in my
8 supplemental. I do not know how to write a computer. I
9 wrote everything down. My Lieutenant, he put it in.

10 Q. So, it is your Lieutenant's fault that -

11 A. -- I'm not saying it is his fault. He just put down
12 what I wrote on paper.

13 Q. He put down what you wrote on paper, but again you
14 didn't write down everything on paper; correct.

15 A. I left some of this stuff out.

16 Q. You left some of this stuff out, but you were still able
17 to get this report approved?

18 A. He put it in the computer. He did it. But I mean, it
19 ain't like he approved it, he just wrote it for me. He
20 just put it -- he put in the computer what I gave him.

21 Q. But this report was approved?

22 A. He put it in the computer. It ain't any place right
23 here where it says approved. Like on your first
24 incident report, it has that part on there. On the
25 supplemental it is not a place on here to put approved.

DEBORAH YOUNG - CROSS EXAMINATION

401

1 Q. But this report was given to the Solicitor's Office and
2 to Mr. Cook's attorney; correct?

3 A. It was given to --- Yes, to Solicitor's Office, and to
4 Ms. Myesha.

5 Q. So, you gave the Solicitor's Office information that was
6 not complete?

7 A. I wouldn't say it wasn't complete. I say, I just put
8 some of the stuff on there. I didn't think putting that
9 I talked to Ms. Taylor, but she didn't want to talk to
10 me at that time --

11 Q. -- Did you note in your report that Ms. Taylor did not
12 want to speak with you?

13 A. No.

14 Q. You didn't think that was important?

15 A. No. But I did let the Solicitor know.

16 **MS. SELLERS:** Beg court's indulgence.

17 **(PAUSE.)**

18 Q. Now, Officer Young, you had an opportunity to speak with
19 and interview Mr. Cook; correct?

20 A. Yes.

21 Q. That happened on June 10th; correct?

22 A. Yes, ma'am.

23 Q. In that time, did Mr. Cook tell you that he was in fear
24 of his safety and his life when Mr. Hayes approached
25 him?

DEBORAH YOUNG - CROSS EXAMINATION

402

1 A. That what he stated.

2 Q. Was that in any report that you did?

3 A. Nope.

4 Q. Was that even in the report that you submitted two weeks
5 ago?

6 A. No.

7 Q. Did your supervisor know that that wasn't in the report?

8 A. He read it. Like I say, he did the report.

9 Q. Now, when you all were at that briefing the next
10 morning, we are talking about June 11, 2010 -

11 A. -- yes -

12 Q. -- did you all speak about what Mr. Cook informed you
13 of?

14 A. We watched the tape.

15 Q. You watched the tape. And despite watching the tape,
16 those reports were still approved?

17 A. There is not a place for approval on the report.

18 Q. These reports were still passed on to the Solicitor's
19 Office?

20 A. Yes.

21 Q. They never had any knowledge whatsoever of the
22 statements that he had made?

23 MS. JOHNSON-LEE: Objection, Your Honor. Calls for a
24 conclusion about what the Solicitor's Office knows or doesn't
25 know.

DEBORAH YOUNG - CROSS EXAMINATION

403

1 **THE COURT:** I am going to sustain. It is also an area
2 that has been asked and answered. Please move forward.

3 **MS. SELLERS:** Thank you, Your Honor.

4 Q. So, you did not --- did Mr. Cook explain to you concerns
5 about being labeled as a snitch?

6 A. On the tape.

7 Q. On the tape.

8 A. In the interview.

9 Q. Was that ever in any report that you submitted?

10 A. No.

11 Q. That wasn't in the report in June?

12 A. No. But, Solicitor's Office had the tape and his
13 attorney Myesha had the tape to know what he said. Like
14 I say, the supplemental everything don't have to be in
15 the report, it is just a supplemental. It is not a
16 incident report.

17 Q. Well, when you were investigating a death, a homicide,
18 isn't motive one of the things that you look for?

19 A. This is my first homicide.

20 Q. But, you had other officers helping you; correct?

21 A. Yes.

22 Q. Because you work as a team?

23 A. Yes, but everybody do something different.

24 Q. But even doing your differences, coming together you
25 didn't know about self-defense?

DEBORAH YOUNG - CROSS EXAMINATION

404

1 A. I don't -

2 Q. -- You didn't think it was important?

3 A. I -

4 Q. -- You didn't think it was -

5 A. -- I don't know if it was self-defense or not, because I
6 wasn't there --

7 Q. -- Right -

8 A. -- when it happened -

9 Q. -- because it isn't for you to de -

10 A. -- I know -

11 Q. -- Decide -- it is for the -

12 A. -- Yes -

13 Q. -- Jury to decide -

14 THE COURT: Just a moment. We need to check on our
15 court reporter. How are you doing down there, madame court
16 reporter?

17 MADAME COURT REPORTER: Not good.

18 THE COURT: Now, listen to me. I am going to have to
19 stop this line of questioning with breaking in counsel on the
20 witness. And, ma'am, please don't break in on counsel. Our
21 court reporter is going to have a heart attack down there.
22 And it is important to keep a record. And I know that out on
23 the street you don't necessarily wait for everyone to finish.
24 But when you are here in the courtroom, you have to. So,
25 let's start it this way. Please ask your question Ms.

DEBORAH YOUNG - CROSS EXAMINATION

405

1 Sellers, and Ms. Young please wait until she is finished,
2 then respond and vice versa. Go ahead.

3 Q. You were aware that Mr. Cook was claiming self-defense;
4 correct?

5 A. I am aware of it now.

6 Q. And despite that information, you failed to put any of
7 that in your report; correct?

8 A. Yes.

9 Q. Ms. Young, you did not feel like that was vital
10 information?

11 A. Not in my supplemental.

12 Q. Would it be fair to say that because of your background
13 as a victim's advocate, that you didn't care about what
14 was being told to you?

15 A. That don't have anything to do with it.

16 Q. Isn't it true that information that was provided to you
17 by Ms. Brown was in your report?

18 A. Let me check and see.

19 (PAUSE.)

20 A. I don't have anything about Ms. Brown in my supplemental
21 report.

22 Q. But in the main incident report, that information was
23 all derived from Ms. Brown; correct?

24 A. I didn't do that incident report. Officer Baker did
25 that incident report.

DEBORAH YOUNG - CROSS EXAMINATION

406

1 Q. Was there any question as to whether or not the victim's
2 pockets were turned inside out?

3 A. Not that I know of.

4 Q. Was there any question --- I think you have already
5 answered this. But there was some concern about items
6 being removed?

7 A. Items, not from his pocket itself. It was mostly about
8 his money. They didn't state to me whoever I talked to
9 about was they talking about from his pocket or from the
10 residence. They was just asking where is his money;
11 where is his wallet.

12 Q. Let's move back to your supplemental report just
13 briefly. At the bottom of your report, do you recall
14 listing information or listing a statement that Mr. Cook
15 or any quotes from Mr. Cook?

16 A. I did not hear your question.

17 Q. At the bottom of this supplemental statement, you
18 indicate in that statement --- Do you have it with you?

19 A. Uh'huh.

20 Q. Could you read this?

21 A. Okay. During the interview, Cook admitted that he shot
22 the victim. The reason this is like that because he
23 told me he did not see a gun. It on interview tape that
24 I asked him, did he see a gun and he said that he did
25 not see a gun.

DEBORAH YOUNG - CROSS EXAMINATION

407

1 Q. Didn't he say that he thought that he had a gun, or that
2 he thought he had something in his pocket?

3 A. He stated that he reached in the back, that he never say
4 that he seen a gun. I asked him twice did he see a gun.
5 He said that he did not see a gun.

6 Q. Did you put that information into that supplemental
7 report?

8 A. No, I just put that Mr. Cook said that he was unarmed,
9 because he told me he didn't see a gun.

10 Q. Did Mr. Cook also tell you that he thought he was
11 protecting himself?

12 A. Yeah.

13 Q. He told you that, but you didn't put that in that
14 report; correct?

15 A. No.

16 Q. How many times during that interview did he tell you he
17 was protecting himself?

18 A. I can't remember, because he was going on, and on, and
19 talking this, and stuff, and the High Point, and about
20 cooking fish, and about snitching, and everything else.
21 So, I don't know how many times he said in the
22 interview.

23 Q. Did you think it was important?

24 A. Not at the time I did my supplemental. Like I stated
25 before, this is just something for us to look at in the

DEBORAH YOUNG - CROSS EXAMINATION

408

1 future if somebody ask us about it --- this case.

2 Q. Mr. Cook also told you that he was approached in a very
3 hostile manner?

4 A. That is what he said, but I don't know.

5 Q. And even the individuals that testified for the state
6 said that Mr. Cook was approached by Mr. Hayes?

7 A. Yes, ma'am.

8 Q. In a hostile manner?

9 MS. JOHNSON-LEE: Objection, I don't believe that is
10 what was testified to, Your Honor. She is pitting witnesses.

11 THE COURT: All right. Counsel, I am going to
12 overrule the objection. The jury will hear whether or not
13 there is a discrepancy in the testimony. But that was not a
14 direct pitting of the witness. You may proceed.

15 MS. SELLERS: Thank you, Your Honor.

16 Q. Was that in your incident report?

17 A. No, it wasn't.

18 Q. Isn't it true that Mr. Cook told you he reached for his
19 gun only after he thought Mr. Hayes reached for his gun?

20 A. Yes, but he told me he never seen a gun.

21 Q. That wasn't in the report though; correct?

22 A. No, but I put that he was unarmed, because he told me he
23 never seen a gun.

24 Q. So, some of the things he told you to put in and other
25 things you just chose not to?

DEBORAH YOUNG - CROSS EXAMINATION

409

1 A. If I put everything that was on that tape, I would have
2 five pages from what he told me. I mean, the interview
3 was more than an hour and something. A supplement is
4 just a short version of some of the stuff that he did.

5 Q. And is writing five pages of a incident report be too
6 much to ask when you are taking someone to trial?

7 A. Because, like I say, you watched the interview. You
8 seen what all he was talking about. I couldn't put all
9 of that on paper.

10 Q. Isn't it true that Mr. Cook told you that had Mr. Hayes'
11 hands been in front of him nothing would have happened?

12 A. Yes.

13 Q. That is not in the incident report either is it?

14 A. No.

15 Q. Now, during the interview, Mr. Cook seemed to be upset;
16 correct?

17 A. He didn't seem that upset to me.

18 Q. Was that in the incident report; his demeanor?

19 A. No, because he didn't seem too upset to me.

20 Q. Now, you got a statement from Ms. Taylor Locklear, who
21 you said wouldn't speak with you. You got a statement
22 from her on August 9, 2010?

23 A. Yes.

24 Q. And in that statement, didn't Ms. Locklear -

25 MS. JOHNSON-LEE: Objection, Ms. Locklear has not

DEBORAH YOUNG - CROSS EXAMINATION

410

1 testified, Your Honor.

2 **THE COURT:** And your objection is?

3 **MS. JOHNSON-LEE:** That would be hearsay at this point.
4 After Ms. Locklear testifies if the defense calls her.

5 Q. But you spoke with Ms. Locklear on August 9th?

6 A. Yes.

7 Q. Is there any information that she provided to you on
8 August 9th in a incident report?

9 A. No, but the defense attorney got a copy of that
10 statement, and the Solicitor got a copy of that
11 statement. So, it is not like I was trying to hide
12 anything.

13 Q. Even if Ms. Locklear's statement could support some
14 statements that Mr. Cook has made to you?

15 A. I repeat. The defendant lawyer got a copy of that
16 statement, and Solicitor Office got a copy of that
17 statement.

18 Q. Did you do any follow-up based on those statements?

19 A. I spoke with Ms. Mary Thomas about that. And no, I
20 didn't do a follow-up, because from what she wrote on
21 there, there wasn't nothing to follow-up.

22 Q. So, why would you need to speak with the Solicitor about
23 your investigation?

24 A. Because that is what we do. I mean, we get with the
25 Solicitor. She came to me asking me questions about it.

DEBORAH YOUNG - CROSS EXAMINATION

411

1 Who did I talk to. Who wrote me a statement. Who gave
2 me a interview.

3 Q. Did you also have a chance to listen to a recording by
4 Marques Short?

5 A. No.

6 Q. Do you know who Marques Short is?

7 A. Yes.

8 Q. You located DeShawn Bland about six or seven months
9 after this case; correct?

10 A. Yeah.

11 Q. What lead you to Mr. Bland?

12 A. Someone just mentioned his name to me, that he was out
13 there at the time.

14 Q. So, you followed up with that?

15 A. Yes.

16 Q. Is that in any of your reports?

17 A. No. But I do have a tape of the interview which Ms.
18 Myesha, the defendant lawyer got a copy and Ms. Mary
19 Thomas got a copy.

20 Q. It would be fair to say that you don't put all of your
21 information in your incident reports, but you want the
22 jury to believe that you have given the defense and the
23 Solicitor's Office every item that -

24 A. -- I didn't say that. You asked me about Mr. Marques,
25 which I told you I never talked to him. You asked me

DEBORAH YOUNG - CROSS EXAMINATION

412

1 about DeShawn Bland, which I stated to you that I gave
2 the defendant lawyer, she got a copy of the tape, and
3 Ms. Solicitor got a copy of the tape. So, I wasn't
4 hiding anything about what he said.

5 Q. Is it possible that even today you don't have everything
6 you know about this case?

7 A. I turned over everything what the Solicitor asked me to.
8 And she turned over everything I believe, to defense
9 lawyer.

10 Q. But it is only about what has been asked of you?

11 A. Yes. What I have.

12 Q. You had an opportunity to look at these cell phones;
13 correct?

14 A. I looked at that one cell phone.

15 Q. And you looked at the messages on the cell phone;
16 correct?

17 A. Yes.

18 Q. Was there any reference of threatening messages in your
19 report?

20 A. No. It's right up here in the report, because both of
21 them got copies of the text messages.

22 Q. Did you ever observe the photos of the crime scene?

23 A. Yes.

24 Q. Did you ever see a cell phone?

25 A. Yes.

DEBORAH YOUNG - CROSS EXAMINATION

413

1 Q. You saw a cell phone in the picture?

2 A. I believe so. May I look again?

3 Q. Yes, sure.

4 (PAUSE.)

5 Q. This is what has been marked as State's Exhibit Number
6 25-A, and 24-A, 17-A, 28-A, and 21,-A, and 22-A, 18-A,
7 and 19-A. Please tell me in which photo do you see a
8 cell phone?

9 A. Not on this. Not on these.

10 Q. But, you were told by Ms. Brown that he had a cell phone
11 in one, had and a house phone in the other hand.

12 A. I never said that she told me that.

13 Q. Did you interview her?

14 A. Not that day, not that night.

15 Q. So, you were never told that?

16 A. Not that I remember.

17 Q. Do you know how his cell phone was taken off of his
18 person?

19 A. No.

20 Q. Did you ever ask about that?

21 A. No.

22 Q. Did Carlos Eaddy ever mention that to you?

23 A. No.

24 Q. Did Terrance Bridges ever mention that?

25 A. No, I did not interview them. Somebody else interviewed

DEBORAH YOUNG - CROSS EXAMINATION

414

1 them.

2 Q. So, you never went back and spoke with any of these
3 individuals?

4 A. No.

5 Q. Let me also bring your attention to State's Exhibit
6 Number 18-A, as well as State's Exhibit Number 24-A. In
7 your opinion, does it look like his pant's pockets have
8 been turned inside out?

9 A. I cannot tell.

10 Q. Did you ever take a look at that prior to --- on the
11 night of the incident?

12 A. I never went to the body.

13 Q. Now, as chief investigating officer, you have had an
14 opportunity to review all of the videos?

15 A. I wasn't chief investigator.

16 Q. Was lead investigator.

17 A. I wasn't lead investigator.

18 Q. Was an investigator in this matter.

19 A. I was an investigator.

20 Q. Did you have an opportunity to review all of the video
21 in this case? All the videos and interviews?

22 A. I interview --- I seen Kim the second one. The one with
23 Clarence Cook. The one with Deshawn Bland. The one
24 with Deborah Carter.

25 Q. You were aware that Ms. Brown gave a statement on June

DEBORAH YOUNG - CROSS EXAMINATION

415

1 10th?

2 A. Yes.

3 Q. She also gave a statement on September 14th; correct?

4 A. Okay. I watched the one on the 14th, but I didn't
5 review the one on the 10th. I didn't interview her on
6 the 10th.

7 Q. But you did have an opportunity to review that?

8 A. The one on the 14th.

9 Q. But the one on the 14th you were present?

10 A. Yes.

11 Q. On the 10th, then you reviewed that video; correct?

12 A. Yes. Yeah.

13 Q. Now, did you do that with any other videos?

14 A. Like I said, I watched the video with Deborah Carter. I
15 watched the video with Deshawn Bland. I watched the
16 video with Chasity Carter.

17 Q. Okay. When you compare your videos from June 10th to
18 September 14th with Ms. Brown, did you see any
19 inconsistent statements?

20 A. Not really, because I think I was talking about one
21 thing on that interview on the 14th, and I think the
22 officer was talking about on the interview about the
23 incident what happened that day June 10th when Mr. Hayes
24 got shot.

25 Q. Now usually didn't Ms. Brown tell you that Mr. Hayes and

DEBORAH YOUNG - CROSS EXAMINATION

416

1 Mr. Cook didn't talk?

2 A. I don't remember her telling me that.

3 Q. Do you remember telling you that they usually talked
4 about text messages?

5 A. I don't remember her telling me that.

6 Q. Did you remember her telling you about any he said, she
7 said?

8 A. I remember her telling me that.

9 Q. From that statement, do you know who he is?

10 A. Who? Excuse me?

11 Q. The he and the she. Do you know who he or she is?

12 A. No. All I know is he say, she say with females, males.
13 I don't know what they was talking about.

14 Q. Did you ever ask what they were talking about?

15 A. I asked Ms. Brown, and she said something started about
16 who living with who man, and who man living with who
17 woman, and he say, she say.

18 Q. Did you ever ask the names of the individuals?

19 A. No. She just called one name, a Ms. Ann, I believe.

20 Q. Did you ever go and speak with Ms. Ann about any
21 problems she may have known about?

22 A. I went to Ms. Ann house twice, and -- No, I went there
23 the first time to get Ms. Chasity phone number to get up
24 with her about a interview, and then I went there twice
25 afterwards, and I didn't get any answer.

DEBORAH YOUNG - CROSS EXAMINATION

417

1 Q. Did you put any of that in your supplemental report?

2 A. No. I didn't see the need, because it is hearsay.

3 Q. Now, didn't Ms. Brown initially say she saw everything?

4 A. I don't remember her telling me that. I don't know ---
5 she didn't tell me that.

6 Q. She didn't tell you that. But did she later tell you
7 that she couldn't see Mr. Cook?

8 A. Can't recall her saying that.

9 MS. SELLERS: Beg court's indulgence, Your Honor,
10 while we set up the video.

11 THE COURT: Go ahead.

12 (PAUSE.)

13 Q. Officer Young, you said that in your belief --- Let me
14 ask you again. The statements on June 10th that Ms.
15 Kimberly Brown made versus the statements on September
16 14th, in your opinion those statements were pretty
17 consistent?

18 A. I don't know.

19 Q. You don't know?

20 A. No.

21 Q. But you did have an opportunity to watch both of those
22 statements?

23 A. Yes.

24 Q. And Ms. Kimberly Brown was a key witness for you all,
25 because she provided a lot of information; correct?

DEBORAH YOUNG - CROSS EXAMINATION

418

1 A. Yes.

2 Q. But you are not sure if she was telling the truth?

3 A. I can't tell if a person is telling the truth or not.

4 Q. But, most of the information or many of the statements
5 that she provided to law enforcement are surmising some
6 type of report whether you did it or not?

7 A. I don't understand your question.

8 Q. Ms. Brown's statements are in a report. I am not asking
9 whether or not you did that report, but a report that
10 you read, her statements are in the report?

11 A. Can I see that report again before I say that. My
12 supplemental.

13 (PAUSE.)

14 A. Madame Counselor, it don't say anything about Kim
15 statement on this incident report.

16 Q. Is there not a statement that says he shot him in front
17 of Ms. Brown?

18 A. Can you show me that?

19 (PAUSE.)

20 A. Okay.

21 Q. So, that is correct?

22 A. The part of it that says -

23 MS. JOHNSON-LEE: Objection. The incident report
24 itself is not admissible in a trial, it is my understanding
25 by law. So, I don't think she can actually read directly

DEBORAH YOUNG - CROSS EXAMINATION

419

1 from the incident report.

2 **THE COURT:** Counselor?

3 **MS. SELLERS:** And, Your Honor, I did not ask Ms. Young
4 to read from the incident report. My question to Officer
5 Young was whether or not information Ms. Brown provided was
6 inside of the incident report.

7 **THE COURT:** And, just without publishing, just answer
8 yes or no.

9 A. Okay. Madame Counselor, the part that you showed me
10 said that Ms. -

11 Q. -- Not reading anything. You can just say yes or no.

12 A. It say Mary Davis.

13 Q. Again. Not reading anything.

14 A. I don't see the part that says Kim.

15 Q. So, it would be no?

16 A. No.

17 **MS. SELLERS:** If you would just turn your attention to
18 the video please.

19 (Whereupon, a video was published to the
20 jury.)

21 **INVESTIGATOR YOUNG:** I can't hear that.

22 **MS. SELLERS:** Officer Young, I may need for you to
23 come down so you can hear a little better.

24 (PAUSE.)

25 Q. Did you take any notes when you saw the June 10th video?

DEBORAH YOUNG - CROSS EXAMINATION

420

1 A. Which video was that?

2 Q. That is the first video. But you weren't present for
3 it, but you did say you review that video?

4 A. Uh'huh.

5 Q. Did you ever take any notes?

6 A. On that one, no, ma'am.

7 MS. SELLERS: And we will just go ahead and play this
8 over. You can listen to everything, and then I will ask you
9 to return back to the witness stand.

10 (PAUSE.)

11 MS. SELLERS: Your Honor, we can just bypass that
12 while they are getting this together. I think I can still be
13 just as effective by asking questions.

14 THE COURT: All right. Ms. Young, we will let you
15 return to the witness stand.

16 Q. Ms. Young, on June 10th -

17 A. -- Yes, ma'am -

18 Q. -- I know you didn't take any notes, but do you remember
19 Ms. Brown saying that she just saw Mr. Cook pull the gun
20 out and shoot?

21 A. I can't recall.

22 Q. You can't recall. But September 14th when you were
23 present, do you recall or did you take notes down that
24 Ms. Brown said she couldn't see anything. That
25 something was blocking her view?

DEBORAH YOUNG - CROSS EXAMINATION

421

1 A. I can't recall.

2 Q. You can't recall that? Did you put any of that in your
3 supplemental report?

4 A. No, ma'am. I don't recall that.

5 Q. Now, another issue is whether or not Ms. Brown left the
6 body. Do you recall her saying that she never left at
7 all. That she stayed by his side the entire time?

8 A. Yes.

9 Q. But on September 14th when you were present, don't you
10 recall her saying that she had to go get some items?
11 She had to get a rag or something?

12 A. Negative.

13 Q. Negative?

14 A. I don't recall.

15 Q. You never recall her saying she went to go get anything?

16 A. No, ma'am.

17 Q. Did you ever ask her if she ever took anything off of
18 the body?

19 A. Yes. She stated, no.

20 Q. But she brought the cell phone in to you?

21 A. She didn't bring it to me, she gave it to Detective
22 Lucas and he gave it to me.

23 Q. But you were standing right there?

24 A. Yes.

25 Q. And you saw her bring the cell phone in?

DEBORAH YOUNG - CROSS EXAMINATION

422

1 A. Yes.

2 Q. Now, this week you have heard her testify that he had
3 that cell phone on his person?

4 A. Yes.

5 Q. Did you --- Did she ever explain to you how she was able
6 to -

7 A. -- Can I change the I remember that part?

8 Q. Can you change which part?

9 A. I don't remember her saying that part. Can you repeat
10 the question?

11 Q. Which part don't you remember me -

12 A. -- can you repeat the question?

13 Q. Do you recall hearing Ms. Brown say that Mr. Hayes had a
14 cell phone in his hand?

15 A. I don't recall her --- I remember the nephew saying
16 that.

17 Q. But not Ms. Brown?

18 A. I don't recall her saying that.

19 Q. But were you ever given any explanation as to how she
20 got that phone off his person if there was a phone?

21 A. No.

22 Q. You are not sure if there was a phone?

23 A. No.

24 Q. In any of your photographs you don't see a cell phone?

25 A. The ones you showed me I didn't.

DEBORAH YOUNG - CROSS EXAMINATION

423

1 Q. You didn't see a cell phone?

2 A. The ones that you showed me.

3 Q. Now these are photographs that your officers took;
4 correct?

5 A. I'm saying, the photos that you showed me, I didn't see
6 a phone.

7 Q. And it is correct that the -

8 A. -- I don't know if there are any more photos or not?

9 **THE COURT:** Please don't cut her off. Thank you.

10 **MS. SELLERS:** Officer Young, I am going to ask you to
11 step down. And we can adjust the volume if you can't hear
12 it.

13 (PAUSE.)

14 Q. Now that was the video of June 10th. You watched that
15 video; correct?

16 A. Yes.

17 Q. Now I am going to show you the video that you conducted
18 --- a interview that you and Mr. Hepburn conducted on
19 September 14th.

20 A. Okay.

21 (PAUSE.)

22 Q. Could you hear that video Officer Young? I know some
23 members of the jury couldn't hear it. Officer Young,
24 you did hear a completely different story; correct?

25 **THE COURT:** Counselor, let's bring her back to the

DEBORAH YOUNG - CROSS EXAMINATION

424

1 chair and get her to a microphone rather than answering your
2 questions there.

3 We will make the video available to the jury --- Well,
4 if it is in evidence, if not we are unable to do that. The
5 court had trouble hearing it as well.

6 Q. Officer Young you didn't have any problems hearing this
7 video did you?

8 A. I heard the part on the 10th where Kim stated that Mr.
9 Clarence reached in his pocket, I believe, and pull a
10 gun out and shot. But I didn't hear the part on the
11 14th about her seeing him pull a gun out.

12 Q. Because on the 14th didn't she say she couldn't see
13 anything?

14 A. I didn't hear that part.

15 Q. That she only heard?

16 A. I didn't hear that part about --- I know she said
17 something about the hearing, but I didn't hear the part
18 about she was saying about him pulling a gun out.

19 Q. Did you ever go back to the apartment complex and
20 actually sit where they would have been sitting, where
21 Ms. Brown would have been -

22 A. -- No.

23 Q. Did you ever take photographs or place yourself in the
24 position to see if you could be able to see out where
25 Ms. Brown said she could not see?

DEBORAH YOUNG - CROSS EXAMINATION

425

1 A. I been to apartment several times, the apartment
2 building, but I didn't do what you just said I did.

3 Q. Did you ever go to the complex and go to apartment [REDACTED],
4 where Mr. Eaddy said he was standing?

5 A. No.

6 Q. Did you ever take any measurements from the position of
7 the body versus where the step landing is?

8 A. No.

9 Q. Did you ever take any measurements from the victim's
10 porch to where the body was?

11 A. No.

12 Q. I noticed in the incident report that the officers
13 decided to knock on every door. Were you ever given a
14 list of names that -

15 A. -- No -

16 Q. -- other officers spoke with?

17 A. No.

18 Q. Did you yourself ever knock on any doors?

19 A. No.

20 Q. Did you all contact or try to reach out and speak with
21 anyone other than those that were related to the victim
22 or had some personal relationship with the victim?

23 A. Okay. When you say you all, I don't know what you all
24 are.

25 Q. Did you ever reach out to witnesses, individuals, that

DEBORAH YOUNG - REDIRECT EXAMINATION

426

1 lived in that community to ask them if they had any
2 information or knowledge?

3 A. No, I didn't. I don't know if one of the other officers
4 did. I know I didn't.

5 Q. Would it be fair to say that the majority of the
6 information that you received came from either Mr.
7 Hayes' family or friends?

8 A. No, I wouldn't say that.

9 MS. SELLERS: Beg court's indulgence.

10 (PAUSE.)

11 MS. SELLERS: No further questions, Your Honor.

12 THE COURT: Is there redirect?

13 MS. JOHNSON-LEE: Yes, Your Honor.

14 REDIRECT EXAMINATION BY MS. JOHNSON-LEE

15 Q. Were you the lead investigator on the case?

16 A. No.

17 Q. Does your Police Department have a chain of command
18 where people rank higher and lower?

19 A. Yes, ma'am.

20 Q. In this case did you perform every task that was
21 assigned to you?

22 A. Yes, ma'am.

23 Q. Did you do it to the best of your ability?

24 A. Yes, ma'am.

25 Q. And you were responsible for a small part of the

DEBORAH YOUNG - REDIRECT EXAMINATION

427

1 investigation; is that correct?

2 A. Yes, ma'am.

3 Q. Was there anything in the incident report to change your
4 belief as an investigator that the defendant shot the
5 victim twice?

6 A. No, ma'am.

7 Q. Ms. Sellers asked if you put in the report that the
8 defendant was claiming self-defense. Do you always note
9 in any report whether it is a supplemental or main any
10 and all explanations a suspect gives?

11 A. No, ma'am.

12 Q. If you think a defendant is lying or telling the truth,
13 do you put that in the report?

14 A. No, ma'am.

15 Q. When you complete an investigation and hand it to the
16 Solicitor's Office -

17 **MS. SELLERS:** Objection, Your Honor. I am going to
18 ask her to pose a question to the witness.

19 **THE COURT:** Is your objection leading?

20 **MS. SELLERS:** Yes.

21 **THE COURT:** Go ahead and state your next question,
22 counselor.

23 Q. The question was going to be. When you complete an
24 investigation and hand it over to the Solicitor's
25 Office, is the incident report the only item that you

DEBORAH YOUNG - REDIRECT EXAMINATION

428

1 hand over?

2 A. No, ma'am.

3 **THE COURT:** All right. I am going to overrule that
4 objection. Anything further?

5 Q. What other items do you give to the Solicitor's Office?

6 A. A Rule 5.

7 Q. What all is in the Rule 5 packet?

8 A. A copy of the incident report. If we made an arrest, a
9 copy of the arrest, a copy of the booking report, report
10 of the 911 tape, the NCIC on the victim, a photocopy, if
11 you have the defendant on there. Can't remember
12 anything else right now.

13 Q. Would you turn over video -

14 A. -- Yes, video tapes.

15 Q. Would you turn over written statements?

16 A. Yes, ma'am.

17 **THE COURT:** All right. Counsel, you are leading now.

18 **DETECTIVE YOUNG:** Okay.

19 **THE COURT:** Go to your next question.

20 **MS. JOHNSON-LEE:** Yes, Your Honor.

21 Q. The items that we have put into evidence, was the
22 majority of that provided to the Solicitor by your
23 office?

24 A. Yes, ma'am.

25 Q. So, the incident report is just one small piece of the

DEBORAH YOUNG - REDIRECT EXAMINATION

429

1 pie -

2 THE COURT: Now, that is testimony.

3 MS. JOHNSON-LEE: Yes, Your Honor.

4 THE COURT: Is there anything further?

5 MS. JOHNSON-LEE: No further questions.

6 THE COURT: All right. Very good. Ma'am, you may
7 step down.

8 DETECTIVE YOUNG: Thank you, Judge.

9 THE COURT: Thank you. Any further witnesses now for
10 the state?

11 MS. JOHNSON-LEE: Your Honor, at this time the state
12 respectfully rests its case.

13 THE COURT: State rest. Counsel, come up so we can
14 talk about scheduling, so we can give our jury some further
15 information about where we find ourselves.

16 (Whereupon, a bench conference was held in the
17 presence of the jury, but out of their hearing range.)

18 THE COURT: I have talked with the defense counsel.
19 What we are going to do is, we are going to take our lunch
20 break now until 1:45. That gives you an hour and a half for
21 you lunch. It also gives defense time to prepare, if they
22 wish, to call witnesses, which they tell me they do. So, we
23 will reconvene at 1:45.

24 Just one moment, ladies and gentlemen, while I resolve a
25 scheduling issue.

THE STATE VERSUS CLARENCE KENDELL COOK

430

1 (PAUSE.)

2 THE COURT: We may have to take a break when we are
3 not long back into our afternoon session, because of a matter
4 that was scheduled weeks ago, and I have to take that up.
5 But we will see how that works out. But we are going to give
6 you lunch until 1:45. Please be back at 1:45. And we look
7 forward to seeing you at that time.

8 Let's all remain where we are while the jury departs the
9 courtroom.

10 (Whereupon, the jury exits the courtroom at
11 12:12 p.m.)

12 MOTION FOR A DIRECTED VERDICT

13 THE COURT: All right. We are now outside the
14 presence of the jury. Are there motions here at the close at
15 the state's case from the defense?

16 MS. BROWN: Yes, Your Honor.

17 THE COURT: All right. Go ahead.

18 MS. BROWN: Your Honor, we believe that in light of
19 the evidence most favorable to the state of South Carolina,
20 there is no evidence presented for the jury to reach a
21 verdict weighting the elements required by the statute on 16-
22 23-30. That statute is entitled sale or delivery of handgun
23 to and possession by a certain person unlawful stolen
24 handgun. That is the charge that the state of South Carolina
25 has alleged to indict Mr. Cook. If you look at that statute,

THE STATE VERSUS CLARENCE KENDELL COOK

431

1 it refers to four sections. Persons convicted of crime of
2 violence. Or, number two. Members of a subversive
3 organization. Number three. Persons under the age of
4 eighteen. And number four. Persons adjudged to be unfit to
5 carry or possess a firearm. In order for the jury to reach a
6 decision of whether any one of those elements to this statute
7 has been met, the state must offer evidence regarding one of
8 those exceptions.

9 The state has concluded their case in chief, and there
10 is nothing presented during this trial that he has violated
11 any one of those four sections.

12 Now, just looking at the burglary first statute, just to
13 take it as an example. 16-11-31, states that one of the
14 elements that the defense must show is that the defendant had
15 prior record of two or more convictions of a burglary
16 housebreaking. So, that means in their case and chief they
17 have to show that there were two prior convictions, either a
18 housebreaking or burglary. The same rule applies here. Now
19 the state could have indicted him under 16-23-20, which
20 unlawful carrying of a handgun. And there is sufficient
21 evidence in the record as it is right now that he may have
22 had a gun in his hand. But there is nothing in the record at
23 this point that they have satisfied the statute of 16-23-30,
24 which requires that he is convicted of a crime of violence.
25 There is nothing in the record about that. Or that he is a

THE STATE VERSUS CLARENCE KENDELL COOK

432

1 member of a subversive organization. There is nothing in the
2 record about that. Or that he was a person under the age of
3 eighteen. Or that a judge has ordered him unfit to possess
4 or carry a firearm.

5 **THE COURT:** All right. What response do you make?

6 **MS. JOHNSON-LEE:** The state will withdraw docket 2011-
7 GS-34-92 for unlawful possession of a pistol. The primary
8 charge will be the possession of a weapon during the
9 commission of a violent crime, and the murder charge. So, we
10 will withdraw the other.

11 **THE COURT:** Very good. The charge is dismissed,
12 withdrawn. Anything further?

13 **MS. BROWN:** Yes, Your Honor. I would like to also
14 briefly put on the record a directed verdict motion for
15 murder as well. That you view the case most favorable to
16 the state. It is our opinion that there is no evidence that
17 Mr. Cook fired these shots with malice and aforethought. In
18 fact the evidence presented by the state, according to most
19 of them, and there are no arguments between these parties,
20 that according to a lot of the witnesses Mr. Hayes did not
21 have an attitude at all. Even if you look at the new law,
22 the presence of a gun alone does not infer malice.
23 Therefore, I am asking the court for a directed verdict
24 against the charge of murder.

25 **THE COURT:** All right. Without taking argument from

THE STATE VERSUS CLARENCE KENDELL COOK

433

1 the state --- Do you have something you wish to say, I will
2 allow you to.

3 MS. JOHNSON-LEE: Just dealing with the other
4 evidence, the defendant's statement alone on the video that
5 he did not see a gun. The only issue is the self-defense
6 issue. And I believe that was actually raised by counsel
7 during the opening argument, that the main issue was going to
8 be self-defense. Not that he was not guilty of the actual
9 shooting.

10 THE COURT: Very good. I am going --- do you want to
11 reply?

12 MS. BROWN: Your Honor, I just want to say even if we
13 plead self-defense, she is going to have an obligation to
14 prove that murder has occurred. And we have always argued
15 that there has never been any malice, nor has there ever been
16 any aforethought.

17 THE COURT: But, counsel again, the court receives
18 your motion, but I am going to deny it. Because, as we all
19 know, malice may be expressed or inferred. There is ample
20 evidence in this record to show both potentially expressed
21 and inferred malice. And for that reason the court is going
22 to deny your motion. Again, it is not for the court to weigh
23 evidence at this point. It just simply does this record
24 contain admissible, that is, appropriate evidence tending to
25 prove the guilt of the accused. I find that there is

THE STATE VERSUS CLARENCE KENDELL COOK

434

1 sufficient evidence for the murder charge as well as the
2 possession of a weapon during the commission of a violent
3 crime. And we will take those up when we reconvene at 1:45
4 in the defense case.

5 MS. BROWN: Thank you, Your Honor.

6 MS. JOHNSON-LEE: Thank you, Your Honor.

7 THE COURT: Court is in recess.

8 (Whereupon, a lunch recess was taken from
9 12:23 p.m. until 1:55 p.m.)

10 THE COURT: Defense, are you ready?

11 MS. BROWN: Yes, Your Honor.

12 THE COURT: And your client is here, also?

13 MS. BROWN: Yes, Your Honor. I thought we were going
14 to do a civil matter.

15 (PAUSE.)

16 THE COURT: All right. Please bring in the jury.

17 (Whereupon, the jury enters the courtroom at
18 1:55 p.m.)

19 THE COURT: Welcome back to the courtroom. I trust
20 you had a nice lunch. We are going to take one or two
21 witnesses, and then we are going to stand down for just a
22 moment while the court takes up a matter in another case,
23 completely unrelated to this. And during that time I am
24 going to ask you to elect your own foreperson, and I will
25 talk with you further about that at that time.

MICHAEL TROUTMAN - DIRECT EXAMINATION

435

1 Let me say to you that at the close of the state's
2 evidence, the state has withdrawn the charge of unlawful
3 possession of a pistol. You may remember that there were
4 three charges in this case. There was murder. There was
5 possession of a weapon during the commission of a violent
6 crime. And then there was possession of an unlawful weapon.
7 The state has withdrawn the possession of an unlawful weapon
8 charge. So, now we go forward only on the murder charge as
9 well as the possession of a weapon during the commission of a
10 violent crime. These are the two charges that remain. We
11 move into the defense case. And, do you intend to call
12 witnesses, Ms. Brown?

13 **MS. BROWN:** Yes, Your Honor.

14 **THE COURT:** Then please call your first witness.

15 **MS. BROWN:** The defense calls Mr. Michael Troutman.

16 **THE COURT:** Please come forward and take the oath of a
17 witness.

WHEREUPON, MICHAEL TROUTMAN**AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

19 **MR. TROUTMAN:** I do.

20 **THE COURT:** And if you would please state your full
21 name for the record.
22

DIRECT EXAMINATION BY MS. BROWN

23 **Q.** Mr. Troutman, good afternoon.
24

25 **A.** Good afternoon.

MICHAEL TROUTMAN - DIRECT EXAMINATION

436

1 Q. I understand that you traveled quite a distance to be
2 here. So, thank you for appearing today.

3 THE COURT: And let's get our witness' full name
4 please, to begin with. And would you pull that microphone
5 just a little bit sir, so we can hear you better in the
6 courtroom.

7 Q. Mr. Troutman, would you please state your full name.

8 A. Michael Troutman.

9 Q. And are you presently employed?

10 A. I am.

11 Q. And where are you presently employed?

12 A. Guilford County Public Defender's Office, High Point,
13 North Carolina.

14 Q. And what is your occupation with the Public Defender's
15 Office?

16 A. Assistant Public Defender.

17 Q. How long have you been there?

18 A. Nine years.

19 Q. And did you represent Mr. Clarence Cook in a criminal
20 matter last year?

21 A. I did.

22 Q. And what is the present status of that criminal case?

23 A. All cases were dismissed.

24 Q. Did Clarence provide any assistance to the state of
25 North Carolina last year?

MICHAEL TROUTMAN - DIRECT EXAMINATION

437

1 A. He did.

2 Q. Can you explain to the court what assistance Clarence
3 provided?

4 A. Well, he spoke with what I guess you call the Solicitor,
5 we call it a District Attorney about those matters, and
6 about other information that helped them prosecute the
7 case.

8 Q. At any point prior to -- let me back up. As part of his
9 assistance to the state of North Carolina, did he in
10 fact testify in a trial?

11 A. He did.

12 Q. In a criminal matter?

13 A. It was.

14 Q. Either prior to that testimony or at some point did he
15 ever express to you personally any concerns?

16 A. Prior to his testimony he did.

17 Q. Can you tell the court, or explain to the court what
18 concerns he expressed to you?

19 A. When he was --- Prior to his testimony he was in our
20 local jail. And the individual that he testifying
21 against, or in their trial, had individuals in the jail
22 as well those that were associated with him, and I think
23 they were harassing Clarence at that time.

24 Q. Were there any other concerns that Clarence expressed to
25 you?

MICHAEL TROUTMAN - DIRECT EXAMINATION

438

1 **MS. JOHNSON-LEE:** Object to the relevance to the case
2 at hand, Your Honor.

3 **THE COURT:** Overruled.

4 **MS. BROWN:** Thank you.

5 Q. You can answer the question. Did Clarence express any
6 concerns to you at any point?

7 **THE COURT:** Counsel, I am going to require you to be
8 more specific in your question please, so that I can
9 determine whether it is relevant.

10 **MS. BROWN:** Certainly, Your Honor.

11 Q. Did Clarence provide any names of individuals, people
12 who were threatening him?

13 **THE COURT:** Overruled. And you may answer the
14 question.

15 A. The individual that was on trial was named Bunting. The
16 individuals that he thought were threatening him were
17 somehow connected with Mr. Bunting. (Phonetic.) So, he
18 didn't give me the names, but he knew that they were
19 associated with him.

20 Q. Did he express where those threats were coming from?

21 A. Prior to his testimony, it was in the jail.

22 Q. Did he ever spoke to you after he testified and
23 expressed concerns?

24 A. Subsequent to that testimony when he had returned here
25 to Bennettsville, he called me to say that he was being

MICHAEL TROUTMAN - CROSS EXAMINATION

439

1 harassed by individuals that he also thought were
2 associated with Mr. Bunting.

3 Q. Did he give you any identities of those individuals?

4 A. He did not identify them that I can recall by name.

5 Q. Do you have any personal knowledge that Clarence
6 expressed concerns to anyone else that you know of?

7 A. When he called me, the District Attorney assigned to the
8 case that he was involved in, that I was involved in,
9 was Mr. Walt Jones. So, I contacted Mr. Jones --- well,
10 let me say it this way. I told Mr. Cook that I couldn't
11 help him in Bennettsville, since I was in North
12 Carolina, that he should go to the authorities. I then
13 talked to our District Attorney, Mr. Jones, who was
14 assigned to the case, prosecuting the case, and relayed
15 to him what Clarence had told me. And asked him to
16 contact the Solicitor here so that they could alert the
17 authorities.

18 Q. Do you know to your knowledge whether anyone offered any
19 help to Mr. Cook?

20 A. I don't know what happened from that point.

21 MS. BROWN: No further questions, Your Honor.

22 THE COURT: Cross examination.

23 CROSS EXAMINATION BY MS. JOHNSON-LEE

24 Q. What charges did you represent Clarence Cook for?

25 A. It was a murder charge.

MICHAEL TROUTMAN - CROSS EXAMINATION

440

1 Q. And you weren't in Bennettsville on the day of this
2 murder were you?

3 A. I was not.

4 Q. So, you don't have any idea what happened in this
5 particular murder?

6 A. I do not.

7 Q. Do you know when that murder case in North Carolina
8 arose, or occurred?

9 A. 2005.

10 Q. 2005?

11 A. Huh.

12 Q. And do you know when Mr. Cook was arrested on that
13 murder charge?

14 A. 2005.

15 Q. Where was he arrested at?

16 A. I believe he was in Tennessee.

17 Q. Tennessee. And was he extradited back from Tennessee
18 back to North Carolina?

19 A. Correct.

20 Q. And was he picked up in Tennessee by the U. S.
21 Marshalls?

22 A. My understanding, yes.

23 Q. The prosecution, would they have a case without Mr. Cook
24 cooperating against the co-defendants?

25 A. Well, I think they had a case, but he certainly was a

MICHAEL TROUTMAN - CROSS EXAMINATION

441

1 benefit to them.

2 Q. Was he actually granted immunity in exchange for
3 testimony against his co-defendants?

4 A. No, he was not.

5 Q. It was not immunity?

6 A. No.

7 Q. And were you the first public defender representing Mr.
8 Cook?

9 A. No, I came to the Public Defender's Office in 2007. At
10 that time Mr. Cook had been in jail for two years. The
11 lawyer prior to me had moved on. I took his position,
12 and talked to Mr. Cook in 2007.

13 Q. And are you aware that immunity was actually offered by
14 the prosecution to his prior defense attorney?

15 A. I know that Mr. Cook, based on my review of the record
16 and file, and speaking with Mr. Cook and the district
17 attorney at that time, because he subsequently left as
18 well. I know the second district attorney assigned to
19 the case. But my review of the file and speaking with
20 those individuals, I know he had met at least three
21 times with the district attorney and his lawyer prior to
22 my coming on board. But there were no guarantees made
23 to him.

24 Q. And Walt Jones, that is actually the district attorney
25 that dismissed the case after Mr. Cook testified?

MICHAEL TROUTMAN - CROSS EXAMINATION

442

1 A. Correct.

2 **MS. JOHNSON-LEE:** Thank you. No further questions.

3 **THE COURT:** Is there redirect?

4 **MS. BROWN:** No, Your Honor.

5 **THE COURT:** All right. Any objection to the release
6 of this witness?

7 **MS. JOHNSON-LEE:** None from the state, Your Honor.

8 **THE COURT:** Hearing none, sir. You are not required
9 to leave but you are free to leave if you wish.

10 **MR. TROUTMAN:** Thank you, Judge.

11 **THE COURT:** Thank you. Counsel, your second witness
12 was just referred to in testimony that you wish to call?

13 **MS. BROWN:** No, Your Honor.

14 **THE COURT:** All right. How long do you believe direct
15 will be on your next witness?

16 **MS. BROWN:** It will be longer than this, Your Honor.

17 **THE COURT:** Then let's do this. Ladies and gentlemen,
18 we have taken one witness, but we are going to stand down for
19 just a moment. What I would like for you to do is go back
20 and elect your foreperson. I am going to ask that we do it
21 in the following way. We have two alternate jurors who are
22 here, Mr. Adams and Mr. Ladler. Thank you gentlemen, for
23 serving as alternates. I would like for you to preside over
24 this decision. Preside in the jury room while this decision
25 is being made. You have a vote in the process, but it

MICHAEL TROUTMAN - CROSS EXAMINATION

443

1 shouldn't be you that is chosen, because we are not certain
2 yet if you will deliberate with the twelve. But, I would
3 suggest to you ladies and gentlemen, that the best foreperson
4 is someone who is a moderator of discussion, and a
5 facilitator of opinion, because ultimately your verdict in
6 this cases must be unanimous. So, it means it not only be a
7 consensus verdict, but ultimately a unanimous verdict. Well,
8 you may have known one another, several of you did before you
9 ever got here on Monday. But now you have had a chance to
10 spend some time alone with one another, and learn a little
11 bit more about one another, so you are in a better position
12 to make that choice than I am. So, I am going to let you
13 return to the jury room. When you make the choice, please
14 write the name on a piece of paper, and we will be glad to
15 receive that. We have sent you some refreshments earlier
16 today, so you can enjoy those again for a few moments if you
17 wish. And then we will resume this in just a few moments.
18 Let's all remain where we are while our jury returns to the
19 jury room.

20 (Whereupon, the jury exits the courtroom at

21 2:08 p.m.)

22 **THE COURT:** All right. And counsel, we will let
23 you stand down for a moment, if you wish to do so. We are
24 going to bring some other lawyers to be seated at counsel's
25 table.

MICHAEL TROUTMAN - CROSS EXAMINATION

444

1 (Whereupon, a recess was taken from 2:08 p.m.
2 until 2:29 p.m.)

3 **THE COURT:** All right. I am advised that the jury has
4 chosen Terry Sweatt, who is Juror Number 126 to be the
5 foreperson of the jury. So, please bring in the jury.

6 (Whereupon, the jury enters the courtroom at
7 2:29 p.m.)

8 **THE COURT:** All right. Welcome back, ladies and
9 gentlemen. And Mr. Sweatt, I see that you have been chosen
10 foreperson. So, let me first of all say, congratulations for
11 the confidence your colleagues have shown in you in making
12 that choice. I want to thank Mr. Ladler and Mr. Adams for
13 your helping the jury make that choice. And I will talk with
14 you a little bit more in the final charge about your
15 responsibilities as foreperson. But just here in advance, I
16 want to thank you for your willingness to serve in that
17 capacity.

18 All right. We were in the defense case. Please call
19 your next witness.

20 **MS. BROWN:** Thank you, Your Honor. The defense calls
21 Mr. Jimmy Ridges.

22 **THE COURT:** Please come forward and take the oath of
23 a witness.

24 **MS. JOHNSON-LEE:** May we approach, Your Honor?

25 **THE COURT:** You may.

JIMMY L. RIDGES - DIRECT EXAMINATION

445

1 (Whereupon, a bench conference was held in the
2 presence of the jury, but out of their hearing range.)

WHEREUPON, JIMMY L. RIDGES**AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

3
4
5 **MR. RIDGES:** Yes, ma'am.

6 **THE COURT:** Do you have what you need?

7 **MS. BROWN:** Yes, Your Honor. Thank you.

8 **THE COURT:** All right. Then please proceed with
9 direct examination.

10 And let's start. Sir, pull that microphone to you, and
11 give us your full name.

12 **MR. RIDGES:** Jimmy L. Ridges.

13 **THE COURT:** All right, sir. And how do you spell your
14 last name, sir?

15 **MR. RIDGES:** R-I-D-G-E-R-S.

16 **THE COURT:** All right. Thank you. Please speak up so
17 we can all hear you.

DIRECT EXAMINATION BY MS. BROWN

18
19 Q. Mr. Ridges, good afternoon. I need for you to do me a
20 favor. Can you please speak into the microphone so we
21 can all hear what you have to say. And thank you once
22 again for being here.

23 Mr. Ridges, I believe you just stated your
24 full name. Can you do that again for the court if
25 you have not?

JIMMY L. RIDGES - DIRECT EXAMINATION

446

1 A. It is Jimmy L. Ridges.

2 Q. What does the "L" stand for?

3 A. Lamont.

4 Q. Lamont, thank you. And, Mr. Ridges, are you presently
5 employed?

6 A. Yes, ma'am.

7 Q. And where are you employed?

8 A. Hemsay Trucking.

9 Q. And what do you do at Hemsay Trucking?

10 A. I am currently a truck driver/mechanic.

11 Q. How long have you been a truck driver; is that correct?

12 A. I've been driving trucks about three years. Well, I
13 have owned my own business for three years, and have
14 been a truck driver since 03.

15 Q. And do you know the defendant Mr. Clarence Cook?

16 A. Yes, ma'am.

17 Q. How long have you known Clarence?

18 A. School days. Just school days and growing up.

19 Q. So, just about for five or ten years?

20 A. Yes.

21 Q. Did you know Mr. Hayes or Snook?

22 A. No. Just by seeing him that he was with my cousin,
23 that's all I knew about.

24 Q. Okay. You mentioned that he went with your cousin. Who
25 is your cousin?

JIMMY L. RIDGES - DIRECT EXAMINATION

447

1 A. Kim Brown.

2 Q. And, how are you and Kim Brown related?

3 A. Her Dad is my Mom's Uncle.

4 Q. And what kind of relationship do you have with Ms.
5 Brown?

6 A. We was close. I left and went to college, and we have
7 always been close, just friends, good cousins.

8 Q. Did you spend time with Clarence last year?

9 A. Yes, ma'am.

10 Q. And, can you tell us about the times you spent with
11 Clarence last year?

12 A. Just mostly like I said, spent some time. I would go by
13 and see him, and we would call each other, you know. We
14 would go fishing. We just hang out and just talk.

15 Q. Do you know about what time of the year you spent time
16 with him?

17 A. It would have been May toward June.

18 Q. Sometime latter part of the year, mid part of the year?

19 A. Yes, ma'am.

20 Q. Were you aware of any problems that Clarence was having
21 with anyone particular in Marlboro Court?

22 A. Just with what I heard, Snook from what I seen.

23 Q. Okay. You can't tell me what you heard, not only what
24 you personally observed. Is that okay?

25 A. Yes, ma'am.

JIMMY L. RIDGES - DIRECT EXAMINATION

448

1 Q. Now, have you at any point personally observed problems
2 between Mr. Hayes and Clarence?

3 A. Yes, ma'am. It was just a couple of incidents in
4 Marlboro Court.

5 Q. Why don't we start and talk about the first incident
6 that you observed.

7 A. The first --- There was this one day, one afternoon we
8 were standing outside, me and some guys from Marlboro
9 Court that we knew standing outside, and he showed me
10 that Kim was coming out the door. I didn't know she
11 lived in Marlboro Court.

12 Q. Before you go any further, who is he that you are
13 referring to?

14 A. Kendell.

15 Q. Clarence?

16 A. Clarence. So, as me and Clarence was talking, Kim was
17 coming out the door and she was -- and I said I'm going
18 to go and talk to my cousin, and he was going into the
19 house. As I walked to my cousin's car she showed me ---
20 Kim showed me that she had just had a little boy, and
21 you know, I was catching on family issues. Then she
22 introduced me to her fiancé, that is how she introduced
23 me to him. I say hey, he said hey, and that was that.
24 I continued to play with her and the baby. As I was
25 playing at the back door, Kendell walked by my path and

JIMMY L. RIDGES - DIRECT EXAMINATION

449

1 I could just clearly see him, and Snook, they call him,
2 I don't know him, said he was talking to a passenger and
3 he made the comment --- I don't know if I can say some
4 of those words that I heard -

5 **MS. BROWN:** Go ahead.

6 A. He just said, they going to fuck his -- nigga die. And
7 you know, I just come back to Kim and said, I see you
8 later cousin. I closed the back door.

9 Q. Before you go any further, when Mr. Hayes made that
10 comment, was Ms. Brown present?

11 A. She was in the driver's seat.

12 Q. So, she clearly heard that statement as well?

13 A. She should have.

14 **MS. JOHNSON-LEE:** Objection.

15 **THE COURT:** On what basis?

16 **MS. JOHNSON-LEE:** He can't testify to anything that
17 Kim heard, only to what he heard.

18 **THE COURT:** Just one word. Is it hearsay?

19 **MS. JOHNSON-LEE:** It is hearsay, Judge.

20 **THE COURT:** Rephrase your question again and let me
21 hear the question.

22 **MS. BROWN:** My question was, when the statement was
23 made by Mr. Hayes, was Ms. Kim Brown present?

24 **THE COURT:** Right.

25 **MS. BROWN:** The next question, and I think he

1 answered, could Ms. Brown have heard what Mr. Hayes said.

2 **THE COURT:** Overruled. You may proceed.

3 **MS. BROWN:** You may answer the question.

4 A. She should have, she was in the front seat.

5 Q. So, she was certainly in close proximity of Mr. Hayes
6 when he made that remark?

7 A. Yes.

8 Q. Is that correct?

9 A. Yes.

10 Q. Did you mention the remarks made by Mr. Hayes or Snook
11 to Clarence?

12 A. No.

13 Q. Was Clarence, in fact, present when those remarks were
14 made?

15 A. He was going upstairs. He was never around us.

16 Q. Did you observe that particular day any confrontation
17 between Mr. Hayes or Snook, and Clarence?

18 A. No.

19 Q. Nothing. Do you remember any other incident that you
20 observed?

21 A. One night or one evening I called Kendell, Clarence, and
22 caught him and stopped by his house, and was standing
23 outside. It was a slight drizzle outside, a little
24 mist. We were sitting out there like fellows do, and
25 drink, talking, and a guy I went to school with named

JIMMY L. RIDGES - DIRECT EXAMINATION

451

1 Brandon, came up the stairs. He was looking for my
2 cousin and her fiancé door, and he came up the steps and
3 knocked on the door. So, Clarence told him well, they
4 downstairs, they live right below us. As that happened,
5 Snook opened the door. Brandon proceeded to go inside.
6 We continued to sit outside a couple of minutes, and
7 later Snook came outside on the phone, and made a
8 comment to whoever he was taking, he say, yeah, yeah,
9 dat punk upstairs --- and I looked at Clarence ---
10 looked and Clarence looked at me and he told me not to
11 say nothing, which I wasn't. But we clearly heard it.
12 So, whoever he was taking to that is what was said. And
13 that was the second time.

14 Q. Now, did Clarence say anything at that point to Snook or
15 Mr. Hayes after he heard that remark?

16 A. No. He didn't say anything.

17 Q. Was there in fact a confrontation that evening between
18 Snook or Mr. Hayes, and Clarence?

19 A. No.

20 Q. After that remark was made?

21 A. No.

22 Q. Do you recall any other problems that you observed?

23 A. No.

24 Q. Do you know if you ever saw any text messages?

25 A. I remember one --- just one really. And I don't know

JIMMY L. RIDGES - DIRECT EXAMINATION

452

1 what it was about, but I knew that it was from Snook. I
2 seen that on the phone, that it was from him.

3 Q. Without telling us what was said in that text message,
4 did you perceive it as threat?

5 A. I would take it as a threat. Yes, I would take it as a
6 threat.

7 Q. Did you personally observe any threats that Mr. Hayes or
8 Snook made towards Clarence?

9 A. No.

10 Q. Did Mr. Hayes or Snook ever confront Clarence in your
11 presence?

12 A. No.

13 Q. Based on just the relationship you had with Clarence,
14 and the fact that you have known him for a very long
15 time, did he appear to you to be afraid of Snook or Mr.
16 Hayes?

17 A. Yes.

18 Q. Have you ever had a conversation with Snook or Mr.
19 Hayes?

20 A. No. Nothing but what we exchanged, hey Mr. Hayes and
21 back.

22 Q. Did you have any problems with Mr. Hayes or Snook?

23 A. No. No problems.

24 Q. Were you present June 10th of last year when Mr. Hayes
25 was shot?

JIMMY L. RIDGES - CROSS EXAMINATION

453

1 A. No.

2 Q. What is your relationship like with Kim Brown now?

3 A. I still feel sorry for her. She is still my family. I
4 hate what happened, and I still love her.

5 Q. And you certainly don't want to do anything to hurt her;
6 is that correct?

7 A. No.

8 THE COURT: Don't lead your witness, counsel. You
9 complained earlier about leading questions. Please do not
10 lead.

11 MS. BROWN: No further questions, Your Honor.

12 THE COURT: Is there cross examination?

13 MS. JOHNSON-LEE: Yes, Your Honor.

14 THE COURT: Please proceed.

15 MS. JOHNSON-LEE: Thank you.

16 CROSS EXAMINATION BY MS. JOHNSON-LEE

17 Q. Mr. Ridges, where do you reside at?

18 A. [REDACTED].

19 Q. Where is that located?

20 A. Bennettsville.

21 Q. Is that where you lived on June 10th of last year?

22 A. Yes, ma'am. That was my residence.

23 Q. The incidence that you are referring to, beginning with
24 the first one where you said Kim came out; when was
25 that?

JIMMY L. RIDGES - CROSS EXAMINATION

454

1 A. That was sometime in May, right when I started coming
2 around last year. She had a newborn baby.

3 Q. Last year?

4 A. Yes, ma'am.

5 Q. And you say it was a new born baby?

6 A. I say newborn, because it was her son. That was the
7 first time I had seen him.

8 Q. Okay. How old did the baby appear?

9 A. I guess some months. I'm not really sure.

10 Q. A little baby?

11 A. He was big enough to be in a stroller.

12 Q. Okay. And, when you said there was a comment made;
13 there goes that punk ass "N" word. Did you hear any
14 threats made with that?

15 A. No, there were no threats.

16 Q. And the second incident that night when you heard Snook
17 on the phone say, "yeah that punk ass upstairs." Did
18 you see any threats made with that?

19 A. No, because he went back into the house.

20 Q. All right. What was Snook's telephone number?

21 A. That I don't know.

22 Q. How did you know the text was from Snook?

23 A. Because I seen the phone.

24 Q. So, it was actually programmed into Kendell's phone to
25 Snook?

JIMMY L. RIDGES - CROSS EXAMINATION

455

1 A. It was in there and it just came up Snook.

2 Q. Okay. It came up as just Snook?

3 A. Yes, ma'am.

4 Q. In the actual telephone inbox?

5 A. Snook.

6 Q. Do you put folks' names in your telephone?

7 A. Yeah, I do.

8 Q. What sort of folks do you save names for in your
9 telephone?

10 A. Just the important ones. If it is important it is
11 suppose to stay there.

12 Q. And you remember details from small conversations that
13 occurred a year ago; correct?

14 A. Just certain things.

15 Q. But you weren't at the apartments when the murder
16 occurred?

17 A. No, ma'am.

18 Q. So, you don't have any knowledge whatsoever about any
19 circumstances surrounding the murder?

20 A. No, ma'am.

21 Q. And you are lifelong friends with Kendell?

22 A. Yes, ma'am.

23 Q. You went fishing, hung out together?

24 A. Fishing.

25 Q. And you wouldn't want to see him go to prison?

JIMMY L. RIDGES - REDIRECT EXAMINATION

456

1 A. I don't want to see nobody go to prison.

2 MS. JOHNSON-LEE: Thank you. No further questions.

3 THE COURT: Redirect?

4 MS. BROWN: One question, Mr. Ridges.

5 **REDIRECT EXAMINATION BY MS. BROWN**

6 Q. What you have testified to today, is it in fact things
7 you observed?

8 A. Yes, ma'am.

9 Q. So, it is in fact true?

10 THE COURT: Don't lead.

11 A. Yes, ma'am.

12 MS. BROWN: Nothing further.

13 THE COURT: All right. Based on the fact the court
14 perceives that to be a leading question, do you want to
15 follow-up on that issue?

16 MS. JOHNSON-LEE: No, Your Honor.

17 THE COURT: All right. Then sir you may step down.
18 You are free to remain with us or you are free to leave if
19 you wish.

20 Please call your next witness.

21 MS. BROWN: The defense calls Ms. Marie Clay.

22 THE COURT: Please come forward and take the oath of a
23 witness.

24 **WHEREUPON, MARIE CLAY**

25 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

MARIE CLAY - DIRECT EXAMINATION

457

1 MS. CLAY: I do.

2 THE COURT: Please state your full name for the
3 record, ma'am.

4 MS. CLAY: Marie Clay.

5 THE COURT: Ma'am, how are you. Pull that Mic., on
6 down closer to you please.

7 Go ahead, counsel.

8 MS. BROWN: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MS. BROWN

10 Q. Good afternoon, Ms. Clay.

11 A. Good afternoon.

12 Q. Ms. Clay, can you please state your full name for the
13 court?

14 A. Marie Clay.

15 Q. And Ms. Clay, do you know Mr. Clarence Cook?

16 A. Yes.

17 THE COURT: Excuse me one moment, counsel. Your last
18 name is C-L-A-Y?

19 MS. CLAY: Yes, sir.

20 THE COURT: How about come just a little closer to
21 that microphone so we can make sure that not only the jury
22 can hear you, but our recording system picks you up.

23 Q. How do you know Clarence, Ms. Clay?

24 A. He dates my daughter, Chasity Carter.

25 Q. And, where do you live right now?

MARIE CLAY - DIRECT EXAMINATION

458

1 A. Marlboro Court Apartments.

2 Q. How long have you live out there?

3 A. Three years and eight months.

4 Q. So, you lived out there --- Did you live out there in
5 June of last year?

6 A. Yes, ma'am.

7 Q. What is the name of your property manager?

8 A. Vivian Stubbs.

9 Q. Was Ms. Stubbs the property manager June of last year?

10 A. Yes, ma'am.

11 Q. Do you know -- do you know personally whether Clarence
12 meet with Ms. Stubbs about any problems in the
13 neighborhood?

14 A. Yes.

15 Q. How do you know that?

16 A. Because one day I went over to talk with Ms. Stubbs
17 about the children coming to my apartment, tearing up my
18 flowers. And my daughter Chasity and my younger
19 daughter came over with me to the apartments, and she
20 was --- I told her --- I was telling her about my
21 flowers, and Chasity started talking about the problem --

22 MS. JOHNSON-LEE: Objection, Ms. Chasity has not
23 testified.

24 THE COURT: Sustained.

25 Q. Ms. Clay, without telling us what was said, please tell

MARIE CLAY - CROSS EXAMINATION

459

1 me, how do you know Clarence spoke with Ms. Stubbs? How
2 do you know Clarence met with Ms. Stubbs?

3 A. Because I was in the office.

4 Q. You were present; is that correct?

5 A. Yes.

6 **MS. BROWN:** No further questions.

7 **THE COURT:** And cross examination?

8 **CROSS EXAMINATION BY MS. JOHNSON-LEE**

9 Q. Ms. Clay, were you there the night the murder happened?

10 A. No, ma'am.

11 Q. So, you don't know what happened that night between
12 Clarence Kendell Cook and Snook?.

13 A. No, ma'am.

14 **MS. JOHNSON-LEE:** Thank you. No further questions.

15 **THE COURT:** Is there redirect?

16 **REDIRECT EXAMINATION BY MS. BROWN**

17 Q. Ms. Clay.

18 A. Yes, ma'am.

19 Q. Thank you for being here. Were you personally aware of
20 any problems -

21 **MS. JOHNSON-LEE:** This is improper, Your Honor. We
22 object.

23 **THE COURT:** How is this proper redirect? Again,
24 ladies and gentlemen, we have direct, where we take up issues
25 with the witness; then cross, and then redirect on new issues

MARIE CLAY - CROSS EXAMINATION

460

1 brought up during cross. How was that brought up during
2 cross?

3 MS. BROWN: Your Honor, she specifically asked about
4 the date June 10th; if she was present on June 10th. I just
5 want to ask her one question about it.

6 THE COURT: About June 10th. If it is not, I am going
7 to sustain the -

8 MS. BROWN: -- I understand. I understand. Your
9 Honor, I withdraw my question, and I have no further
10 questions.

11 THE COURT: Very good. Thank you, ma'am. You may
12 step down. Watch your step when you exit that witness box.
13 And you may remain in the courtroom or you may leave if you
14 wish.

15 MS. CLAY: Yes, sir.

16 THE COURT: All right. Please call your next witness.

17 MS. BROWN: The defense calls Quentin Covington.

18 WHEREUPON, QUENTIN LASHAWN COVINGTON

19 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

20 MR. COVINGTON: I do.

21 MS. JOHNSON-LEE: Judge, may we approach, please?

22 THE COURT: Is it the same issue?

23 MS. BROWN: We have the information, Your Honor.

24 THE COURT: You have that on Mr. Covington? You have
25 that information, Madame Solicitor?

MARIE CLAY - CROSS EXAMINATION

461

1 **MS. JOHNSON-LEE:** It takes times to run that, Your
2 Honor. We are just waiting on it.

3 **THE COURT:** All right. Counsel, step up just a
4 moment. And, Mr. Daniel join us please if you will here.

5 (Whereupon, a bench conference was held in the
6 presence of the jury, but out of their hearing range.)

7 **THE COURT:** All right. Ladies and gentlemen of the
8 jury, what we were discussing here is, we had a discussion
9 about providing certain information. And I don't like for
10 the jury to sit here in the dark while we are talking about
11 something, and the jury doesn't know what it is. What
12 happened a few moments ago is, the state came up and said the
13 defense has called a witness and we didn't have identifying
14 information, such as a social, date of birth, so they can run
15 the rap sheet to determine if the witness may be credible and
16 believable by whether they have previous charges in their
17 record. That is simply what we were discussing. Again, I
18 don't like for there to be communications going around in the
19 courtroom with the jury sitting there watching it, but not
20 being aware. I just simply tell you what that was about.

21 Now, you have called a witness. Sir, I am going to get
22 you to give us your full name please. And if you would, lean
23 up a little closer to the microphone.

24 **MR. COVINGTON:** Quentin LaShawn Covington.

25 **THE COURT:** And tell me that one more time, sir?

QUENTIN LASHAWN COVINGTON - DIRECT EXAMINATION

462

1 **MR. COVINGTON:** Quentin LaShawn Covington.

2 **THE COURT:** All right. And now, how do you spell your
3 last name, please?

4 **MR. COVINGTON:** C-O-V-I-N-G-T-O-N.

5 **THE COURT:** Thank you. And, direct examination.

6 **DIRECT EXAMINATION BY MS. BROWN**

7 Q. Mr. Covington, how old are you?

8 A. Twenty-one.

9 Q. Are you presently employed?

10 A. No, ma'am.

11 Q. Are you in school?

12 A. No, ma'am.

13 Q. Have you been convicted of any crimes?

14 A. Yes, ma'am.

15 Q. Would you please state those crimes for the court?

16 A. Burglary and receiving stolen goods.

17 Q. Anything else?

18 A. No, ma'am.

19 Q. Are you presently on parole or probation for any of those
20 offenses right now?

21 A. Not any more.

22 Q. Thank you. Since your release, have you been rearrested
23 or detained for any reason?

24 A. No, ma'am.

25 Q. Thank you. Do you know Mr. Clarence Cook?

QUENTIN LASHAWN COVINGTON - DIRECT EXAMINATION

463

1 A. Yes, ma'am.

2 Q. How do you know Clarence Cook?

3 A. He my cousin.

4 Q. Did you know Mr. Charles Hayes or Snook?

5 A. No, ma'am.

6 Q. Had you ever seen him before?

7 A. Yes. But I don't know him personally.

8 Q. June of last year, June 10th, do you recall spending any
9 time with Clarence that day?

10 A. Yes, ma'am.

11 Q. Where were you?

12 A. We was at his girlfriend Chasity apartment in Marlboro
13 Court.

14 Q. Do you know what time you arrived in Marlboro Court that
15 day?

16 A. Someone between ten and twelve.

17 Q. How do you remember the time?

18 A. Cuz, we suppose to go fishing, but we decided to go man
19 to man.

20 Q. Okay. What did you guys do when you got there in
21 Marlboro Court?

22 A. We was just sitting in the house playing video games and
23 talking.

24 Q. I'm sorry, can you please repeat that?

25 A. We was sitting in the house playing video games and

1 talking.

2 Q. Do you recall on that particular day seeing Clarence and
3 Mr. Hayes talk at all?

4 A. No, ma'am. He received text message.

5 Q. How do you know he received a text message?

6 A. Because I was with Clarence when the text message was
7 received.

8 Q. Where were you guys when the text message was received.

9 A. In the car headed to Piggly Wiggly.

10 Q. Do you remember what time that was?

11 A. Not the exact time.

12 Q. Who all was present when this text message came?

13 A. Me, Clarence, and his girlfriend Chasity.

14 Q. And where were you guys again?

15 A. Heading to Piggly Wiggly.

16 Q. Were you driving somewhere?

17 A. Yes, ma'am.

18 Q. Who was driving the car?

19 A. Chasity.

20 Q. Do you remember where you were sitting?

21 A. Behind the driver seat.

22 Q. So, where was Clarence?

23 A. He was in the passenger seat.

24 Q. Did you see the text message yourself?

25 A. Yes, ma'am.

QUENTIN LASHAWN COVINGTON - DIRECT EXAMINATION

465

1 Q. Do you recall what the text message said?

2 A. I don't know the exact word but you could tell there was
3 some problems.

4 Q. If I were to show you a copy --- if I were to show you a
5 text message, would you be able to confirm or deny that
6 was a message you in fact read that day?

7 A. Yes, ma'am.

8 Q. Mr. Covington, I have in my hand State's Exhibit Number
9 26-A and 32-A. I am going to hand them over to you.
10 And if you, would just read what is in your hand, not
11 out loud, to yourself. And tell me whether or not that
12 is the text message that you observed June 10th of last
13 year?

14 MS. JOHNSON-LEE: Object. Hearsay.

15 THE COURT: I am going to sustain that. In fact, you
16 asked the witness whether he could tell you, and he told you
17 could not. Now, this is in effect --- this is not really
18 proper or allowing him to refresh his recollection from a
19 writing that he has made. This is from some other origin.
20 And for that reason I am going to sustain the objection.

21 MS. BROWN: Your Honor, may I just be heard on the
22 objection?

23 THE COURT: Go ahead.

24 MS. BROWN: Certainly he didn't write it, but he
25 observed it, and had knowledge to it. And my only question

1 is whether or not this is in fact the message he observed
2 personally himself.

3 **THE COURT:** All right. Do you want to be heard on
4 this?

5 **MS. JOHNSON-LEE:** It sounds like hearsay upon hearsay.

6 **THE COURT:** Counsel, I am going to sustain it as well.
7 If the witness were able to give us an independent
8 recollection that would be one thing. But then to read and
9 then say, yes this is it. That is leading, but this is also
10 hearsay writing of some other person.

11 So, sustained. Please move to your next question.

12 **MS. BROWN:** Thank you, Your Honor.

13 **THE COURT:** And let me talk beyond you and explain
14 this to the jury.

15 You know, we all probably as children played a game
16 where we would sit in a circle, and you whispered something
17 started in one place and it went all the way around the
18 circle. And by the time it got back around it was totally
19 different than when it began. That is really what the
20 hearsay rule is about. It is to prevent bringing in
21 statements from witnesses that are out of court who either
22 said something or wrote something. The best evidence is to
23 bring that person in here and have him say what they said or
24 what they wrote, rather than have someone say what they heard
25 them say, or read. So, it makes the evidence more reliable

QUENTIN LASHAWN COVINGTON - DIRECT EXAMINATION

467

1 and credible. That is the reason for the hearsay rule. I
2 sustained the question. Please move to your next question.

3 MS. BROWN: Thank you.

4 Q. Did Clarence appear upset after receiving the message?

5 A. Not really.

6 Q. Did Clarence appear to be angry after receiving that
7 message?

8 A. No, ma'am.

9 Q. What was his demeanor after receiving that message?

10 A. Could you repeat the question, ma'am?

11 Q. After he received the message, to you, how did he
12 appear?

13 A. Well, he wasn't angry, or he didn't seem mad at what was
14 texted.

15 Q. Did you guys make it to Piggly Wiggly?

16 A. Yes, ma'am.

17 Q. And, I assume --- What was purchased?

18 A. Meat.

19 Q. Did you guys go anywhere else?

20 A. Yes, ma'am.

21 Q. Where?

22 A. Man to Man.

23 Q. Now, what is Man to Man?

24 A. It's a place that helps you find a job.

25 Q. After leaving Man to Man, where did you guys go?

1 A. We returned to Marlboro Court.

2 Q. When you arrived to Marlboro Court, did you see anyone?

3 A. Yes. I saw Mr. Hayes and someone standing outside.

4 Q. Where were they located?

5 A. By the porch.

6 Q. Whose porch were they located?

7 A. Mr. Hayes.

8 Q. And, can you describe --- Do you know the name of the
9 other guy?

10 A. No, ma'am.

11 Q. Can you describe the other guy to us?

12 A. He was kind of a heavy set --- kind of a heavy set guy,
13 probably about five eight.

14 Q. Would you say he was about your weight?

15 A. I really couldn't tell you.

16 Q. Can you describe maybe how his hair was?

17 A. I don't recall.

18 Q. Did you see Clarence say anything to Mr. Hayes upon you
19 all's return?

20 A. No, ma'am.

21 Q. Did you see Mr. Hayes say anything to Clarence upon you
22 all returning?

23 A. No, ma'am.

24 Q. When you guys got back to Marlboro Court, what did you
25 all do?

QUENTIN LASHAWN COVINGTON - CROSS EXAMINATION

469

1 A. Took the groceries back to the apartment.

2 Q. And how much longer did you guys stay out there?

3 A. After we took the grocery back to the apartment -

4 Q. -- When you left, where was Clarence?

5 A. In the house.

6 Q. What about Ms. Carter, Chasity Carter?

7 A. She was in the house putting up groceries.

8 Q. Did you see Clarence with a gun that day?

9 A. No, ma'am.

10 Q. Prior to June 10th, did Clarence express to you any
11 concerns he had about any problems?

12 A. No, ma'am.

13 Q. Did you personally observe any problems between Clarence
14 and Mr. Hayes?

15 A. No, ma'am.

16 **MS. BROWN:** Nothing further, Your Honor.

17 **THE COURT:** Cross examination.

18 **MS. JOHNSON-LEE:** Yes, Your Honor.

19 **CROSS EXAMINATION BY MS. JOHNSON-LEE**

20 Q. You said you are not on probation now?

21 A. No, ma'am.

22 Q. And you are not on parole right now?

23 A. No, ma'am.

24 Q. You said you were convicted of burglary and receiving
25 stolen goods?

1 A. Yes, ma'am.

2 Q. Were you placed on a YOA Sentence?

3 A. Yes, ma'am.

4 Q. And that YOA Sentence put you on parole for five years?

5 A. Yes, ma'am.

6 Q. And that was in 2009?

7 A. Yes, ma'am.

8 Q. If that was less than two years ago, how are you
9 finished with a five year parole sentence in less than
10 five years?

11 A. I was --- I payed my money for parole. I thought it was
12 over like that.

13 Q. You just assumed that your five years of parole was up
14 all ready?

15 A. Yes, ma'am.

16 Q. So, you haven't reported back to your probation and
17 parole officer?

18 A. I'm done with my parole.

19 Q. How do you know you are done with it?

20 A. Because after I pay my money, they terminated me.

21 Q. Who terminated you?

22 A. Albert and I think it was Monty.

23 Q. Okay. And when was that done?

24 A. I don't recall the actual date.

25 Q. Were you there the night of the actual murder happened,

QUENTIN LASHAWN COVINGTON - CROSS EXAMINATION

471

1 were you present?

2 A. No, ma'am.

3 **MS. JOHNSON-LEE:** Thank you. No further questions.

4 **THE COURT:** Is there redirect?

5 **MS. BROWN:** None, Your Honor.

6 **THE COURT:** Then sir, you are free to step down. You
7 may remain in the courtroom or you may leave if you wish.

8 **MR. COVINGTON:** Yes, sir.

9 **THE COURT:** Please call your next witness.

10 **MS. BROWN:** At this time the defense calls Ms. Taylor
11 Locklear.

12 **THE COURT:** Please come forward and take the oath of a
13 witness.

14 **WHEREUPON, TAYLOR LOCKLEAR**

15 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

16 **MS. LOCKLEAR:** I do.

17 **THE COURT:** All right. Ma'am, if you would begin.
18 Please by giving us your full name.

19 **MS. LOCKLEAR:** Taylor Locklear

20 **THE COURT:** And please spell your first name for us,
21 please?

22 **MS. LOCKLEAR:** T-A-Y-L-O-R.

23 **MS. BROWN:** Your Honor, before we approach, may we
24 approach, please.

25 **THE COURT:** Well, if you have an issue you wish to

TAYLOR LOCKLEAR - DIRECT EXAMINATION

472

1 state, please go ahead. State it from where you are.

2 MS. BROWN: My concern is, I have noticed the --- of
3 course the issue of rebuttal witnesses are still available to
4 the state. And I do notice that one of the witnesses on
5 their list is inside of the courtroom.

6 THE COURT: All right. I will decline to require the
7 witnesses to leave at this time. I am not certain whether
8 there will be rebuttal. And if they are called for rebuttal,
9 we will take it up at that time.

10 MS. BROWN: Thank you.

11 THE COURT: Go ahead.

12 DIRECT EXAMINATION BY MS. BROWN

13 Q. Ms. Locklear, how old are you?

14 A. Seventeen.

15 Q. And I know you are probably still in school?

16 A. Yes.

17 Q. What grade are you in?

18 A. Eleventh.

19 Q. And, do you know the defendant, Mr. Clarence Cook?

20 A. Yes.

21 Q. How do you know Clarence?

22 A. He goes with my Mother.

23 Q. About how long have you known Clarence?

24 A. About two and a half years.

25 Q. What kind of relationship do you have with Clarence?

TAYLOR LOCKLEAR - DIRECT EXAMINATION

473

1 A. It's good.

2 Q. Did you know Mr. Hayes or Snook --- Did you know Mr.
3 Hayes or Snook?

4 A. Yes.

5 Q. And how did you know Mr. Hayes?

6 A. He stay with Kim Brown.

7 Q. Now you mentioned Kim Brown, who is Kim Brown?

8 A. My neighbor, we use to be neighbors where I use to live
9 at.

10 **THE COURT:** Hang on just one moment. Ladies and
11 gentlemen of the jury, can you hear her? All right. Speak
12 up just a little bit. It is hard for me to hear, and I just
13 want to make sure everyone can hear. Thank you.

14 Go ahead, Ms. Brown.

15 **MS. BROWN:** Thank you.

16 Q. Now, Ms. Kim Brown, is she present your neighbor now?

17 A. No.

18 Q. Was she your neighbor on the 10th of last year?

19 A. Yes.

20 Q. And where did you guys live?

21 A. In --

22 Q. Can you tell me the address?

23 A. (No response.)

24 Q. Do you remember the apartment number?

25 A. [REDACTED].

TAYLOR LOCKLEAR - DIRECT EXAMINATION

474

1 Q. And what apartment building is [REDACTED] you are referring to?

2 A. What apartment building?

3 Q. Yeah. What is the name on the complex?

4 A. Marlboro Court.

5 Q. Do you know if Mr. Hayes lived --- Did he in fact live
6 with Ms. Brown last year?

7 A. Yes.

8 Q. Now, can you please tell the court what you observed
9 June 10th of last year?

10 A. I was at my friend house and I was watching TV, and she
11 was already looking out the window. Then we heard two
12 shots go off, and that's when we heard someone
13 screaming. And we both looked at each other and we ran
14 outside. And I saw Snook laying on the ground. And
15 that is when I ran into my house. I had to call my Mama
16 to see if she was alright.

17 Q. So, after you heard two shots --- At the time the shots
18 were fired, where were you?

19 A. At my friend house.

20 Q. And, can you tell me how far that is from where you
21 live?

22 A. It's two buildings over.

23 Q. Do you know the building number?

24 A. Five.

25 Q. And how long were you with your friend that day?

TAYLOR LOCKLEAR - DIRECT EXAMINATION

475

1 A. About the whole day. About a half a day.

2 Q. Do you remember what time you heard the shots?

3 A. No, ma'am.

4 Q. Now, where was Mr. Hayes' body lying when you ran up to
5 your house?

6 A. Right beside the steps.

7 Q. If I were to show you a picture, can you please point to
8 where you recall seeing the body?

9 A. Yes.

10 Q. I am going to show you a picture of Defendant's Exhibit
11 1. And in there, can you point to where you observed
12 Mr. Hayes lying?

13 A. It was like, somewhere I guess about here.

14 Q. And tell us what else happened? Anything else you
15 observed?

16 A. Well, that's when I saw Kim Brown take the stuff out of
17 his pockets?

18 Q. Where was Ms. Brown at the time that you were heading up
19 the steps?

20 A. She was beside his body.

21 Q. Did you see anyone else around Ms. Brown?

22 A. No, ma'am.

23 Q. And did you see anything over Mr. Hayes at the time?

24 A. No.

25 Q. Did you ever leave your --- ran you --- ran up the steps

TAYLOR LOCKLEAR - DIRECT EXAMINATION

476

1 --- did you stay in the house? Can you explain to us
2 what happened the first time --- How many times did you
3 run up your steps?

4 A. Twice.

5 Q. Twice. Now, why don't you tell us what happened?

6 A. I had ran up the stairs -

7 Q. -- When you ran up the stairs the first time, did you
8 see Ms. Brown take anything out of Mr. Hayes pockets?

9 A. Yes.

10 Q. When you ran up the steps, now tell me what happened?

11 A. That's when I went and got some items from the house.

12 Q. And what items did you get?

13 A. Marijuana and a scale.

14 Q. How was it? Was it packaged?

15 A. It was packaged.

16 Q. Who gave it to you?

17 A. My mother.

18 Q. And where did you take it?

19 A. To my friend house.

20 Q. Who is your friend?

21 A. Shakema Bruce. (Phonetic.)

22 Q. And then you --- What did you do next?

23 A. I stuck it under her bed and went to my house.

24 Q. And when you ran back to your house, what did you see at
25 that time?

TAYLOR LOCKLEAR - DIRECT EXAMINATION

477

1 A. I saw Kim Brown take the items out.

2 Q. And were you able to see what items were taken out?

3 A. Some yes.

4 Q. Tell us what you believe you saw?

5 A. A light, a cigarette paper, and other items.

6 Q. Did you inform anyone of this information?

7 A. No, ma'am.

8 Q. Did you in fact talk to law enforcement?

9 A. Yes.

10 Q. Miss Locklear, I am going to hand to you State's Exhibit
11 Number 38. Can you please take a look at it?

12 (PAUSE.)

13 Q. Is that the statement that you made to law enforcement?

14 A. Yes.

15 Q. Does it appear to be the way you wrote it?

16 A. Yes.

17 Q. Does it appear to have changed in any fashion?

18 A. No, ma'am.

19 Q. Can you look at the date and tell me the date that you
20 wrote that statement?

21 A. August 19, 2010.

22 Q. And is there a name next to witness?

23 A. Yes.

24 Q. And is there a name next to witness?

25 A. Yes.

TAYLOR LOCKLEAR - DIRECT EXAMINATION

478

1 Q. What name is that?

2 A. Detective Young.

3 Q. And, can you read to us your statement?

4 A. I saw him going.

5 **THE COURT:** Is that in evidence, counsel?

6 **MS. BROWN:** Yes, Your Honor. State's Exhibit Number -

7 **MS. JOHNSON-LEE:** It was pre-marked by the state. We
8 did not put it in, because she had not yet then testified.

9 **THE COURT:** All right. It is not in evidence,
10 counsel.

11 Q. This is your statement; is that correct?

12 A. Yes.

13 Q. Did you in fact write this statement?

14 A. Yes.

15 Q. Does it appear to be the statement that you wrote?

16 A. Yes.

17 **MS. BROWN:** Your Honor, at this time I would like to
18 admit this statement as a defendant's exhibit.

19 **MS. JOHNSON-LEE:** No, it is just bolstering the
20 witness' testimony that was pre-marked for the state. It is
21 not admissible.

22 **THE COURT:** Do you want to reply to that?

23 **MS. BROWN:** Your Honor, actually --- I believe she
24 testified to what is in fact --- I think she stated verbatim
25 to what is on this statement. So, she is absolutely right.

TAYLOR LOCKLEAR - DIRECT EXAMINATION

479

1 It would be bolstering.

2 THE COURT: All right. Then do you wish to withdraw
3 it?

4 MS. BROWN: Yes, Your Honor.

5 Q. Where was that statement taken? Where were you guys
6 when you gave that statement?

7 A. At the Police Station.

8 Q. And, when you gave this statement at the Police Station,
9 did you believe you saw those items?

10 A. Yes.

11 Q. As of today, have you changed your position at all?

12 A. No.

13 Q. Can you state once again what items do you believe you
14 observed removed from Mr. Hayes?

15 A. A light, a pack of cigarettes -

16 Q. -- And where were you standing when you observed those
17 items removed?

18 A. I was on the stairs.

19 Q. Can you point to it on that?

20 A. Right there.

21 Q. So, you were not at the very top of the stairs?

22 A. I had got up there, yes. I was looking down there.

23 Q. Why were you looking down there? Was there any reason
24 you were looking down at it?

25 A. No.

TAYLOR LOCKLEAR - DIRECT EXAMINATION

480

1 Q. Did you see where Ms. Brown went with those items?

2 A. In the house.

3 Q. Now, are you sure that you saw those items removed from
4 Mr. Hayes?

5 A. Yes.

6 Q. Do you remember if Ms. Brown said anything to you at all
7 that evening?

8 A. No.

9 Q. After you observed Ms. Brown remove the items, what did
10 you do?

11 A. After I saw it, I had told my mother.

12 Q. Where were you when you told your Mom?

13 A. I had just entered the apartment.

14 Q. Did you in fact go back outside?

15 A. Yes.

16 Q. Do you remember having a conversation with Detective
17 Young that evening?

18 A. Yes.

19 Q. Did you tell Detective Young that evening what you saw?

20 A. Yes. I gave her my statement.

21 Q. Well this statement was written August 9th. On June 10th
22 of last year, did you in fact inform Detective Young
23 what you observed?

24 A. That day?

25 Q. Yes.

TAYLOR LOCKLEAR - CROSS EXAMINATION

481

1 A. No.

2 Q. Why not?

3 A. I really didn't have a conversation with her that day.

4 Q. Did she ask you if you saw anything?

5 A. No.

6 MS. BROWN: Beg court's indulgence, Your Honor.

7 (PAUSE.)

8 MS. BROWN: Your Honor, I have no further questions.

9 THE COURT: And ma'am, the other side is going to ask
10 you questions. Cross examination.

11 CROSS EXAMINATION BY MS. JOHNSON-LEE

12 Q. When you heard the shots, your first instinct was not to
13 run and hide, it was to run towards the shots?

14 A. Yes.

15 Q. Okay. And isn't it true that you did speak to Detective
16 Young here the night of the murder?

17 A. Yes.

18 Q. But all you told her was you didn't see anything?

19 A. She didn't ask me.

20 Q. You didn't tell her you didn't see anything?

21 A. I don't understand what you are saying.

22 Q. Did you tell Detective Young that you didn't see
23 anything?

24 A. At all?

25 Q. On the night of June 10th did you tell -

TAYLOR LOCKLEAR - CROSS EXAMINATION

482

1 A. -- Yeah, I told her I saw the shooting.

2 Q. Okay. Did you refuse to talk to her anymore?

3 A. Yes.

4 Q. So, you didn't say anything else to her, you refused to
5 talk to her on the night of June 10th. Isn't it true
6 that in August, it was actually Clarence Kendell Cook's
7 Mamma, not your Mamma, but his Mamma who drove you to
8 the Police Department and told you to give that
9 statement to detective Young?

10 A. No.

11 Q. Clarence Kendell Cook's Mamma didn't take you up there?

12 A. She took me up there. My mother was with me too.

13 Q. Your mother was with you?

14 A. (No response.)

15 Q. Arlene Cook took you to the Police Station; is that
16 correct?

17 A. Yes.

18 Q. Who told you to go give that statement?

19 A. Both of them.

20 Q. Both of them told you to go do that, and that was in
21 August.

22 A. (Affirmative response.)

23 Q. You need to say yes or no.

24 A. Yes.

25 Q. And that was almost two months to the day after the

TAYLOR LOCKLEAR - REDIRECT EXAMINATION

483

1 murder?

2 A. Yes.

3 Q. Do you know what perjury is honey?

4 A. False information.

5 Q. Uh'huh. Do you know what that is?

6 A. Yes.

7 MS. JOHNSON-LEE: No further questions.

8 THE COURT: And redirect on those issues?

9 REDIRECT EXAMINATION BY MS. BROWN

10 Q. The only question I have, Ms. Locklear, is the statement
11 that you gave on August 9th in fact true?

12 A. Yes.

13 MS. BROWN: No further questions.

14 THE COURT: All right. Then you may step down. You
15 are free to stay in the courtroom if you wish, or you are
16 free to leave if you wish.

17 Counsel, how many more witnesses do you have?

18 MS. BROWN: Three, Your Honor.

19 THE COURT: Very good. Do you have a witness in which
20 Mr. Grove is involve; and is that your next witness?

21 MS. BROWN: That is our next witness.

22 THE COURT: Let's take a little break at this time,
23 ladies and gentlemen. We are going to have our afternoon
24 break. You all had one a little bit earlier, and we didn't
25 get to take one. So, we will be down for about fifteen

THE STATE VERSUS CLARENCE KENDELL COOK

484

1 minutes. Just enjoy your break. If you wish to go outside,
2 we will give you that opportunity. Let's remain where we are
3 while the jury departs the courtroom.

4 (Whereupon, the jury exits the courtroom at
5 3:21 p.m.)

6 **THE COURT:** Ladies and gentlemen, we are going to
7 stand down for about ten minutes, and come back and resolve
8 that issue before the next witness.

9 Court is in recess for about ten minutes.

10 (Whereupon, a recess was taken from 3:22 p.m.
11 until 3:30 p.m.)

12 **THE COURT:** Is your client in the courtroom?

13 **Mr. GROVE:** Yes, Your Honor. Can I go ahead and bring
14 her in the courtroom?

15 **THE COURT:** Yes, go ahead.

16 (PAUSE.)

17 **THE COURT:** All right. And Mr. Grove, I will be glad
18 to hear from you. You tell me that your client is a witness
19 about to be called. And please proceed.

20 **MR. GROVE:** Yes, Your Honor. I wanted to go on the
21 record briefly outside of the presence of the jury to address
22 any concerns that might arise. My client is being called as
23 a defense witness in a case. He is aware that he is
24 susceptible as are all testifying witness in any case that
25 perjury could be an issue. It is an element of not only

THE STATE VERSUS CLARENCE KENDELL COOK

485

1 proving a statement that was false, but that was knowingly
2 given was false. I have explained that to him, and the
3 confusion that was referenced earlier in chambers I think,
4 and I have explained as much with Marquis, I might be mostly
5 to blame for the confusion that arose. I don't think that I
6 explained to him well enough what was being addressed. And
7 all that was being addressed is if he testifies to what he
8 saw, outside of what statements were made, smelled,
9 experienced or whatever, that is perfectly and totally fine.
10 You know, as long as he testifies as to what he remembers and
11 what he believes, that is fine. I don't think that I
12 expressed upon him that enough, and that was causing concern
13 for him. But I think that has been remedied since then, and
14 we have spoken a couple of times today about it. I did just
15 want to make sure that was addressed for his benefit and for
16 mine.

17 **THE COURT:** All right. Very good. Now, I want you to
18 follow your Clerk's instruction, sir. We are going to place
19 you under oath and let me speak to you a moment.

WHEREUPON, MARQUIS SHORT**AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

21 **MR. SHORT:** Yes ma'am.

22 **THE COURT:** And, sir, tell me your full name, please.

23 **MR. SHORT:** Marquis Short.

24 **THE COURT:** All right. Mr. Short, we just had a
25

1 discussion with your lawyer, Mr. Grove. Of course you are
2 not the defendant in this case. You have other pending
3 charges against you.

4 MR. SHORT: Yes, sir.

5 THE COURT: I want to make sure that you understand
6 where you find yourself today.

7 Now, Mr. Grove has just explained to me the you intend
8 to testify. He has explained to you about what perjury
9 means. And how that may impact you here in your testimony in
10 this case. Do you understand that, sir?

11 MR. SHORT: Yes, sir.

12 THE COURT: And have you understood what Mr. Grove has
13 explained to you?

14 MR. SHORT: Yes, sir.

15 THE COURT: Do you have any questions for me about
16 perjury, or how it may work, or how it might impact or affect
17 you today?

18 MR. SHORT: No, sir.

19 THE COURT: All right. I also want to make sure that
20 when you testify today there is a record being made here, and
21 you are going to be under oath. So, if you say something
22 that may impact your other pending charges for which you are
23 currently in jail, that might be used against you today as
24 well. Do you understand that?

25 MR. SHORT: Yes, sir.

THE STATE VERSUS CLARENCE KENDELL COOK

487

1 **THE COURT:** I want you to understand that when you
2 take the stand you have a fifth amendment right to decline to
3 answer a question if it would incriminate you. And that
4 fifth amendment right applies to you here in this proceeding,
5 not just in the proceeding with your own criminal charges.
6 Do you understand that?

7 **MR. SHORT:** Yes, sir.

8 **THE COURT:** Have you discussed that with Mr. Grove as
9 well?

10 **MR. SHORT:** Yes, sir.

11 **THE COURT:** All right. Do you have any questions for
12 me about your fifth amendment rights?

13 **MR. SHORT:** No, sir.

14 **MR. GROVE:** And for what it is worth, Your Honor, my
15 advice to Marquis has been obviously that it is apparent that
16 he has pending charges. Based on his wardrobe, I don't think
17 he has any problems or any --- I don't think any issues will
18 arise into the admission of the existence of charges. But,
19 beyond that, my advice is --- And I don't think he will be
20 questioned about anything other than the existence of pending
21 charges, or past convictions. But discussion beyond the
22 fact that there are pending charges, my advice is to plead
23 the fifth amendment.

24 **THE COURT:** All right. Now, what we are going to do
25 is we are going to let you be seated over there in the box,

1 and soon as the jury comes back in we will call you as a
2 witness. We are going to place you under oath again, and in
3 the presence of the jury, I am going to have a discussion
4 with you about your fifth amendment rights. Okay?

5 MR. SHORT: Yes, sir.

6 THE COURT: Very good. The jury is back from their
7 break I am told, so please bring in the jury, Ms. Fry.

8 (Whereupon, the jury enters the courtroom at
9 3:37 p.m.)

10 THE COURT: All right. Welcome back, ladies and
11 gentlemen. And, defense please call your next witness.

12 MS. BROWN: Thank you. The defense calls Mr. Marquis
13 Short.

14 THE COURT: Please come forward and take the oath of a
15 witness.

16 WHEREUPON, MARQUIS SHORT

17 AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS

18 MR. SHORT: Yes ma'am.

19 THE COURT: Please give us your full name, sir.

20 MR. SHORT: Marquis Short.

21 THE COURT: All right. Mr. Short. You are wearing an
22 orange jumpsuit today, which tells me that you are currently
23 in the Marlboro County Detention Center, is that correct?

24 MR. SHORT: Yes, sir.

25 THE COURT: Do you have pending criminal charges

THE STATE VERSUS CLARENCE KENDELL COOK

489

1 against you at this time?

2 MR. SHORT: Yes, sir.

3 THE COURT: All right. I want to make sure that you
4 understand that here in this courtroom you are under oath,
5 and we are making a record. And anything that you say in
6 this proceeding that may somehow bear on your pending
7 charges, meaning they may be used against you at a later
8 time. Do you understand that, sir?

9 MR. SHORT: Yes, sir.

10 THE COURT: I want to make sure that you understand
11 that you have a fifth amendment right not to incriminate
12 yourself, meaning that if you don't wish to answer a question
13 because it will tend to incriminate you, you may take the
14 fifth amendment during the course of this testimony. Do you
15 understand that?

16 MR. SHORT: Yes, sir.

17 THE COURT: All right. Do you have any questions
18 about your fifth amendment rights?

19 MR. SHORT: No, sir.

20 THE COURT: And do you have any questions about what
21 you and I have just discussed?

22 MR. SHORT: No, sir.

23 THE COURT: Then counsel, you may proceed.

24 MS. BROWN: Thank you, Your Honor.

25 DIRECT EXAMINATION BY MS. BROWN

MARQUIS SHORT - DIRECT EXAMINATION

490

1 Q. Mr. Short, would you please do me a favor and try to
2 speak into the Mic., so we can all hear you. How old
3 are you, Mr. Short?

4 A. Seventeen.

5 Q. And as indicated, where are you presently living?

6 A. Marlboro County Detention Center.

7 Q. And, why are you being held at the Detention Center?

8 A. Pending charges.

9 Q. And the pending charges you have against you, is it
10 related in any fashion to this case today?

11 A. No, ma'am.

12 Q. Why don't we just get some things out of the way. Have
13 you been convicted of anything in the past?

14 A. Yes, ma'am.

15 Q. Why don't you tell the court what you have been
16 convicted of?

17 A. Criminal conspiracy.

18 Q. Anything else?

19 A. No, ma'am.

20 Q. What was the highest grade you completed?

21 A. I got my GED in 2009.

22 Q. And, June 10th of last year were you in the Detention
23 Center?

24 A. No, ma'am.

25 Q. June 10th of last year, do you know where you were?

MARQUIS SHORT - DIRECT EXAMINATION

491

1 A. Yes, ma'am.

2 Q. Where were you?

3 A. Hill Crest Apartment.

4 Q. And how far is Hill Crest Apartments from Marlboro
5 Court?

6 A. Cross the street.

7 Q. Did you observe the shooting yourself?

8 A. No, ma'am.

9 Q. Now, you said you were in Hill Crest Apartments; were
10 you out there with anyone else?

11 A. Yes, ma'am.

12 Q. Please name those individuals you were in Hill Crest
13 Apartments with?

14 A. DeShawn, Tyler. (Phonetic.)

15 Q. Do you know DeShawn full name?

16 A. No, ma'am.

17 Q. Do you know Tyneca's full name? (Phonetic.)

18 A. Yes, ma'am.

19 Q. What is Tyneca's full name?

20 A. Thomas.

21 Q. Where did you guys --- You said you were in the
22 apartments. Were you inside someone's apartment?

23 A. No, ma'am. We was on the front porch.

24 Q. And just tell me what you observed June 10th of last
25 year?

MARQUIS SHORT - DIRECT EXAMINATION

492

1 A. Me, DeShawn was sitting on the porch at Hill Crest
2 Apartment. We heard two gunshots. And one was --- we
3 see Clarence Cook run across the street, and he ran past
4 us --- as he ran past us, he ran from Marlboro Court --

5 Q. -- Before you go any further, I'm sorry. I should have
6 asked you this question. Do you in fact know Mr.
7 Clarence Cook?

8 A. I know of him. I don't really know him.

9 Q. How long have you known Clarence Cook?

10 A. About two years.

11 Q. And, do you know whether or not DeShawn knew Clarence on
12 June 10th of last year?

13 A. Yes, ma'am.

14 Q. What about Tyneca?

15 A. Yes, ma'am.

16 Q. Now, you indicated that you heard two shots?

17 A. Yes, ma'am.

18 Q. You weren't there when the shots were fired?

19 A. No, ma'am.

20 Q. And, after you heard the shots, what did you do?

21 A. Ran across the street.

22 Q. Did you run alone?

23 A. No, ma'am.

24 Q. Who ran with you?

25 A. Tyneca and DeShawn.

MARQUIS SHORT - DIRECT EXAMINATION

493

1 Q. Did you, Tyneca, and Deshawn run towards the bullets?
2 Where the shots were fired, the direction?

3 A. Yes, ma'am.

4 Q. And once you got to Marlboro Court, where did you stop?
5 Where did you end up?

6 A. By the trash can, by Building 3.

7 Q. And why the trash can by Building 3?

8 A. I decided to stop there.

9 Q. I am going to show you -

10 A. -- I stopped by the trash can because I see the body on
11 the ground.

12 Q. If I show you a photo, would you tell me where in fact
13 you see the body lying?

14 A. Yes, ma'am.

15 Q. Okay. Would you be able to identify where you saw that
16 body?

17 A. Yes, ma'am.

18 Q. I am going to give you two exhibits. One is Defense
19 Exhibit A-1, and the other one is 3-A and 1-A. Now,
20 let's look at Defense Exhibit 3-A. Do you see --- Have
21 you seen this picture before? Does this look familiar
22 to you?

23 A. The picture of -

24 Q. -- Yes. What is it a picture of?

25 A. Marlboro Court.

MARQUIS SHORT - DIRECT EXAMINATION

494

1 Q. Okay. Now, you mentioned a trash can. Was the trash
2 can that you were standing in front on this picture?

3 A. Yes, ma'am.

4 Q. Can you point toward the trash can?

5 A. (Indicating.)

6 Q. And can you show the court where you were standing?

7 A. Right there.

8 Q. And can you show the court where the body was lying?

9 A. Right there.

10 Q. And, where was DeShawn at that time?

11 A. He was standing on the sidewalk.

12 Q. What about Tyneca?

13 A. Her to.

14 **THE COURT:** Counsel, we cannot hear. Your witness is
15 off Mic.

16 **MS. BROWN:** I need for you to speak into the Mic.,
17 again for me.

18 Q. Now, when you arrived and you were standing in front of
19 the trash can, did you observe anyone near the body?

20 A. Yes, ma'am.

21 Q. Who did you observe near the body?

22 A. Kim.

23 Q. Do you know Kim's last name?

24 A. No, ma'am.

25 Q. Did you know Ms. Kim prior to June 10th?

MARQUIS SHORT - DIRECT EXAMINATION

495

1 A. I know of her. I know her like, cousin from a family
2 member. I don't know her.

3 Q. Had you seen Ms. Kim before prior to June 10th?

4 A. Yes, ma'am.

5 Q. Did you mention that you knew Mr. -- Did you know Mr.
6 Hayes prior to June 10th?

7 A. No, ma'am.

8 Q. Did you know who was lying on that ground?

9 A. Yes, ma'am.

10 Q. And when you were standing there, did you observe
11 anything else?

12 A. Yes, ma'am.

13 Q. Tell the court what you observed while you were standing
14 there?

15 A. Kim was on the ground crying by him. And a moment after
16 that, I observed her going through his pockets, and take
17 some items out, and past it to a lady who was standing
18 in the door.

19 Q. She went into the apartment; could you see in the
20 pockets?

21 A. Yes, ma'am.

22 Q. What items did you observe?

23 A. Money, a black gun, and a plastic bag that appeared ---
24 looked like drugs.

25 Q. Are you sure it was drugs?

MARQUIS SHORT - DIRECT EXAMINATION

496

1 A. No, ma'am.

2 Q. Can you tell me --- Can you describe the gun that you
3 observed?

4 A. Like I said, it was black.

5 Q. And when she removed those items, where did she take
6 them?

7 A. To the doorway of her apartment.

8 Q. And, did she go inside of the apartment?

9 A. No, ma'am.

10 Q. What did she do with the items that were in his pocket?

11 A. She passed it on to the lady that was standing in the
12 door.

13 Q. Do you know that lady?

14 A. I know her name.

15 Q. Can you tell us the name of that person?

16 A. Mary.

17 Q. Do you recall seeing anyone else there near the body at
18 the time Ms. Brown was removing those items?

19 A. No, ma'am.

20 Q. Are you sure no one else was there?

21 A. No, ma'am.

22 Q. Do you know Deborah Carter?

23 A. Yes, ma'am.

24 Q. How do you know Ms. Carter?

25 A. My friend Aunt.

MARQUIS SHORT - DIRECT EXAMINATION

497

1 Q. And the friend you are referring to? Who is the friend
2 you are referring to?

3 A. Ms. Carter.

4 Q. Did you recall seeing Ms. Carter near Ms. Brown?

5 A. Yes, ma'am.

6 Q. Did you recall seeing Ms. Carter near Ms. Brown at the
7 time the items were removed?

8 A. No, ma'am.

9 Q. At what point did Ms. Carter arrive?

10 A. A little bit after the items were removed.

11 Q. Now, who all --- Did you see anyone else out there?

12 A. Yes, ma'am.

13 Q. Can you tell us the names of those people you remember
14 seeing?

15 A. Taylor and Shakema. (Phonetic.)

16 Q. Who is Taylor?

17 A. Kendell step-daughter.

18 Q. And when you saw Taylor, where was she?

19 A. She was standing by Building 4.

20 Q. At the time the items were removed, do you remember
21 where Taylor was?

22 A. Yes, ma'am.

23 Q. Where was Taylor at the time the items were removed?

24 A. She was standing in the same spot.

25 Q. Did Ms. Brown say anything to you at all?

1 A. No, ma'am.

2 Q. How long were you out there before law enforcement
3 arrived?

4 A. About ten minutes.

5 Q. How long did it appear --- While you were there, how
6 long did it take before law enforcement arrived?

7 A. Excuse?

8 Q. While you were standing there, how long were you out
9 there before any law enforcement agency arrived?

10 A. About ten minutes.

11 Q. And did you know Taylor before June 10th?

12 A. Yes, ma'am.

13 Q. How do you know Ms. Taylor?

14 A. I went to school with her.

15 Q. Did you give a statement to law enforcement about what
16 you observed?

17 A. No, ma'am.

18 Q. Did any law enforcement agency or officer meet with you
19 or asked you any questions?

20 A. No, ma'am.

21 Q. No one ever questioned you about anything that happened
22 on June 10th?

23 A. No, ma'am.

24 Q. Law enforcement agency?

25 A. No, ma'am.

MARQUIS SHORT - CROSS EXAMINATION

499

1 Q. And once again, would you please testify to the items
2 you saw removed?

3 MS. JOHNSON-LEE: Asked and answered, Your Honor.
4 Objection.

5 MS. BROWN: That's fine, Your Honor. I will withdraw
6 it.

7 Q. Can you tell me what direction the body was lying?

8 A. Face up.

9 Q. And did anyone ask you to give a statement?

10 A. No, ma'am.

11 Q. Anyone promise you anything in exchange for this
12 statement?

13 A. No, ma'am.

14 Q. Is this in fact what you observed?

15 A. Yes, ma'am.

16 Q. And your testimony today, is it going to affect in any
17 fashion your pending charges?

18 A. No, ma'am.

19 MS. BROWN: Thank you. I have no further questions
20 for this witness.

21 THE COURT: And cross examination.

22 MS. JOHNSON-LEE: Yes, Your Honor.

23 CROSS EXAMINATION BY MS. JOHNSON-LEE

24 Q. Isn't it true that you told Detective Young and me
25 within days of that murder that you didn't see anything?

MARQUIS SHORT - CROSS EXAMINATION

500

- 1 A. No, ma'am.
- 2 Q. Out at Hill Crest Apartments?
- 3 A. No, ma'am.
- 4 Q. Do you remember us going in to talk to your Mamma?
- 5 A. Yes, ma'am.
- 6 Q. So, you remember us being out there?
- 7 A. Yes, ma'am.
- 8 Q. Do you remember a whole lot of cops being out there?
- 9 A. Yes, ma'am.
- 10 Q. And you don't remember telling any of them that you
- 11 didn't see nothing that day?
- 12 A. No, ma'am.
- 13 Q. Did you ever tell the cops on June 10th that you had
- 14 seen Clarence Cook running past Hill Crest?
- 15 A. No, ma'am.
- 16 Q. Did they ask you about it?
- 17 A. No, ma'am.
- 18 Q. You don't remember talking to the cops at all?
- 19 A. No, ma'am.
- 20 Q. Did you talk to any law enforcement on June 10th?
- 21 A. No, ma'am.
- 22 Q. Did you see the cops?
- 23 A. Yes, ma'am.
- 24 Q. Where were they at?
- 25 A. They were everywhere.