

VOLUME ONE OF THREE

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM RICHLAND COUNTY

Diane Schafer Goodstein, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

CURTIS J. SIMMS,

APPELLANT

APPELLATE CASE NO. 2013-001219

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STATE OF SOUTH CAROLINA,)
)
)
 vs.) TRANSCRIPT OF RECORD
)
 CURTIS JAMES SIMMS,)
)
 DEFENDANT.)
)

January 29, 2013

Columbia, South Carolina

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE.

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1 **THE COURT:** All right, Counsel. I have your voir
2 dire.

3 All right. First of all, I want to hear -- first of
4 all, good morning. And secondly, let me hear with regards
5 to the State and the concerns the State has about voir
6 dire of the defense. How about that?

7 **ASSISTANT SOLICITOR CAMPBELL:** May it please the
8 Court?

9 **THE COURT:** Yes. Good morning. Yes.

10 **ASSISTANT SOLICITOR CAMPBELL:** Judge, on Number One,
11 we just ask that it be made reciprocal.

12 **THE COURT:** Oh, yeah, absolutely. Absolutely. Of
13 course.

14 **ASSISTANT SOLICITOR CAMPBELL:** And then, skipping
15 down to Number Three, the only thing -- the only problem
16 we have with that is the verbiage.

17 Have you had any relationship with law enforcement
18 which might make you prejudice in favor of the State?

19 Just the general, you know, ask the question ---

20 **THE COURT:** I'll do that.

21 **ASSISTANT SOLICITOR CAMPBELL:** Thank you.

22 And on Number Four, that's just awfully broad. This
23 case involves a manslaughter case. And to say you were a
24 victim of any crime, Your Honor, we just think we could
25 narrow that field a little bit, and we would have no

1 problem.

2 **THE COURT:** You know what my problem is about that?

3 Let me tell you what happened to me.

4 **ASSISTANT SOLICITOR CAMPBELL:** Yes, ma'am.

5 **THE COURT:** I was trying a case, and I asked the
6 question: Have you ever been the victim of a violent
7 crime?

8 That's reasonable; right? I mean, that's kind of
9 where you're going, limit it in some form or fashion.

10 And the jury was deliberating, and one of the jurors
11 sent a message. The presiding juror sent a message and
12 said: I am concerned, because one of our jurors was the
13 victim of an armed robbery, and you asked that question,
14 was anyone a victim of a violent crime.

15 So I brought the woman in chambers, and we were in
16 the middle of deliberations, and I said: Were you the
17 victim of an armed robbery?

18 She said: Yes.

19 And I said: Well, why didn't you tell me that when I
20 asked you were the victim of a violent crime?

21 She said: Well, it wasn't violent. He didn't like
22 hit me or anything. I mean, he did have a gun, but you
23 know, I'm from New York. It wasn't like such a big deal.
24 So, I'm okay.

25 So I really sort of learned a lesson that when you

1 begin to use adjectives, you have to be very careful. So,
2 it really gets to be -- it's got to be more general.

3 **ASSISTANT SOLICITOR CAMPBELL:** Okay.

4 **THE COURT:** Because otherwise, you're going to have
5 -- and when it's so reasonable -- I mean, her
6 interpretation really was so reasonable, because in her
7 eyes, she wasn't hurt, and it wasn't violent, but it was
8 violent -- but it was what I had intended when I said
9 violent crime. So, I really need to try to be more --
10 we're going to do it that way.

11 **ASSISTANT SOLICITOR CAMPBELL:** Okay. And as long as
12 -- I think we requested that that be reciprocal, too. Has
13 anyone been accused of a violent crime?

14 **THE COURT:** Of course. Of course.

15 **ASSISTANT SOLICITOR CAMPBELL:** And I believe ---

16 **THE COURT:** I'm not going to ask Five. I'm not going
17 to ask Five.

18 **ASSISTANT SOLICITOR CAMPBELL:** Thank you.

19 **THE COURT:** And would ask Six.

20 **ASSISTANT SOLICITOR CAMPBELL:** Six is fine.

21 **THE COURT:** Yes.

22 **ASSISTANT SOLICITOR CAMPBELL:** Number Seven, ---

23 **THE COURT:** No. No Seven. No Eight.

24 **ASSISTANT SOLICITOR CAMPBELL:** All right. That's
25 perfect.

1 **THE COURT:** Okay.

2 Noting the exception of the defense to each and every
3 one of my exclusions.

4 **MR. HARRIS:** Thank you, Your Honor.

5 **THE COURT:** Absolutely.

6 **MR. HARRIS:** Not much of a concession, except we do
7 have one additional that I came up with last night.

8 **THE COURT:** Okay.

9 **MR. HARRIS:** I think they also object to it. I would
10 like to know, or rather we would like to know, ---

11 **THE COURT:** Yes?

12 **MR. HARRIS:** --- if any of these jurors regularly
13 attend USC football games. And I think, you know, that's
14 not the normal question that you would ask in any case,
15 other than this case.

16 **THE COURT:** What do you mean regularly, though?

17 **MR. HARRIS:** Well, and we may need to sharpen that
18 word, Your Honor, because I say if you attend, I'm
19 concerned that sixty will stand up and say: I went to a
20 game twenty years ago.

21 Regularly attend, by that I mean, have you been to
22 more than five USC football games? I think contextually,
23 that is an appropriate question.

24 **THE COURT:** Here's what I don't mind asking. I don't
25 mind asking: Ladies and gentlemen, -- and I'm going to do

1 backwards.

2 I'm going to say: Ladies and gentlemen, for
3 informational purposes, if you attend typically and
4 normally less than five USC football games, please stand,
5 in a year.

6 **MR. HARRIS:** That sounds good.

7 **THE COURT:** If I do it the other way, hands will get
8 cramped, probably, making a note of that.

9 **MR. HARRIS:** And, Judge ---

10 **THE COURT:** And the reason for that is I think -- the
11 reason for that is that I think it's information that
12 might be relevant really to both sides regarding simply
13 the environment.

14 **MR. HARRIS:** Thank you, Your Honor.

15 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, ---

16 **THE COURT:** Yes?

17 **ASSISTANT SOLICITOR CAMPBELL:** --- and I just want to
18 clarify. You're going to ask them if they attend less
19 than or more than five times a year?

20 **THE COURT:** Less than, because -- because here's
21 what's going to happen. And if you want to -- if you want
22 to change that a little bit -- in other words, you know,
23 do you attend USC football games on a regular basis?
24 They're all going to stand up, I'm afraid.

25 In other words, I want to have some limiting question

1 so you're not having to take down every name of every
2 juror. I'm trying to limit it, but I'm happy for a
3 suggestion, if you can think of something that's a little
4 crisper. I'm excited about that.

5 **ASSISTANT SOLICITOR CAMPBELL:** No, no, no. My only
6 concern was that you wanted people that regularly attend
7 games, ---

8 **MR. HARRIS:** I'm fine with the question, as she's
9 stated it.

10 **THE COURT:** In other words -- in other words: Well,
11 I went to one ten years ago.

12 Who cares?

13 **ASSISTANT SOLICITOR CAMPBELL:** Yeah.

14 **THE COURT:** You know what I'm saying? But if you go
15 to -- if you go to them and they are a part of your life,
16 ---

17 **ASSISTANT SOLICITOR CAMPBELL:** That's right.

18 **THE COURT:** --- and there are people in this state
19 that they are a part of your life, that is information
20 that I think is important really for both sides, because
21 that is an environment that they are very familiar with.

22 **ASSISTANT SOLICITOR CAMPBELL:** Okay. Thank you, Your
23 Honor.

24 **THE COURT:** And that's the reason for it. Now, if I
25 get there and y'all come up with something that's a little

1 bit crisper, do not keep it to yourself when I get there.
2 Okay?

3 **ASSISTANT SOLICITOR CAMPBELL:** Thank you.

4 **THE COURT:** And what I'm trying to find out, I'm not
5 -- I don't care if they went to one five years ago or
6 three years ago. I'm interested in those that that's a
7 part of their life. And there are lots of people in South
8 Carolina that that is very much a part of their life.
9 Okay?

10 **MR. HARRIS:** Thank you, Judge.

11 **THE COURT:** Yes.

12 **MR. HARRIS:** Appreciate it.

13 **THE COURT:** And I'm going to put myself a note,
14 because I'm going to forget.

15 All right. Now, have you looked at the State's?

16 **MR. HARRIS:** Voir dire?

17 **THE COURT:** Yes.

18 **MR. HARRIS:** Yes, ma'am. No objection.

19 **THE COURT:** Now, let me ask you this question, and I
20 really ask the State more than -- than -- well, I'll ask
21 both sides. Do you want me to ask if -- whether or not
22 any football games, any college, collegiate football games
23 more than five per year? Do you want me to ask that
24 question? Is that relevant? Does that have, you know ---

25 **MR. HARRIS:** I was -- we were more focused, Your

1 Honor, on USC, because of the specific ---

2 **THE COURT:** I understand. I understand.

3 How about the State? Are y'all -- you know, I'll ask
4 that, if you need it. I don't know that you do.

5 **ASSISTANT SOLICITOR CAMPBELL:** No, ma'am. We're
6 fine.

7 **THE COURT:** But you know how to try your case better
8 than me. Okay. Very well, then. Very well.

9 All right. Let me just tell y'all how I'm going to
10 do this, so I don't shock you. What I'm going to do is
11 that I'm going to do introductions. I'm going to ask you
12 to introduce the folks who are in your office here in
13 Columbia, such as -- just a quick list. I'm going to ask
14 you to do a quick list.

15 I'm going to read the indictment. I'm then going to
16 introduce everyone, and then I'm going to ask: Do you
17 know any of these folks? Have they ever represented you?

18 And then I'm going to go into the witnesses, and then
19 I'm going to go into your questions. Okay? Just to sort
20 of give you an overview.

21 Yes?

22 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, when you
23 said introduce those who work for our office in Columbia,
24 did you mean ---

25 **THE COURT:** Lawyers.

1 **ASSISTANT SOLICITOR CAMPBELL:** All lawyers?

2 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, we have
3 ,thirty-five lawyers in our office.

4 **THE COURT:** Ahh.

5 **ASSISTANT SOLICITOR MCDUFFIE:** I don't know if we can
6 name them all off the top of our head.

7 **ASSISTANT SOLICITOR CAMPBELL:** Can we just go get a
8 list real quick, so we won't look like absolute idiots?

9 **THE COURT:** Yes. That's absolutely fine.

10 **ASSISTANT SOLICITOR CAMPBELL:** Okay. Thank you,
11 ma'am.

12 **THE COURT:** You better believe it. Yeah, and that's
13 absolutely fine.

14 And, Counsel, let me see all of you for just a
15 second. Let me just see you up here just a second.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
17 RECORD. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD
18 ON THE RECORD OUT OF THE PRESENCE OF THE JURY:)

19 **THE COURT:** All right. Now, anything else before we
20 bring our jury up?

21 **MR. HARRIS:** Yes, ma'am.

22 **THE COURT:** Okay.

23 **MR. HARRIS:** Just a couple housekeeping matters. We
24 didn't discuss sequestering witnesses yesterday. We would
25 ask this Court to sequester witnesses. I recognize that

1 goes in two directions, but we would make that request.

2 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, it's my
3 understanding that they have statements from all
4 witnesses, except for one. I don't know the need for any
5 sequestration in this case or aware of anything.

6 We've provided them with any type of relevant
7 information that we have. We've also provided them with
8 the information from the one witness that they don't have
9 a statement from.

10 I know it's within your discretion whenever you think
11 it's appropriate. There are a number of witnesses on both
12 sides, lay witnesses, in this case.

13 I assume they're just asking the lay witnesses to be
14 sequestered, not law enforcement.

15 **MR. HARRIS:** Don't care about law enforcement, Judge.
16 Lay witnesses. That's fine.

17 **THE COURT:** Okay. Now -- now, when we do that, let
18 me ask this question, because the victim's family --
19 victims have a right to be present. The victim's family
20 has a right to be present. Talk to me about that.

21 **ASSISTANT SOLICITOR CAMPBELL:** The victims in this --
22 the family in this case, none of them are potential
23 witnesses in the case.

24 **THE COURT:** Very well. All right. Okay. So, other
25 than law enforcement, a sequestration order will be in

1 effect.

2 **MR. HARRIS:** Thank you, Judge.

3 **THE COURT:** Can we have somebody to relay?

4 **ASSISTANT SOLICITOR CAMPBELL:** As far as getting
5 people from in and out of the courtroom to try to expedite
6 things, yes, ma'am. Of course, that's reciprocal.

7 **MR. HARRIS:** Absolutely.

8 **THE COURT:** Y'all are wonderful for letting me talk
9 in codes. Thank you. Yes.

10 **ASSISTANT SOLICITOR CAMPBELL:** And, Your Honor, the
11 only other thing we would have, too, is we did file a
12 reciprocal Rule 5 in this case. They did provide us with
13 some statements last week, and we just would renew that at
14 this point, if there is anything else they would have as
15 far as documents or photographs or statements that we just
16 haven't been privy to.

17 **THE COURT:** In other words -- have y'all got anything
18 else?

19 **MR. HARRIS:** We -- we just got some photographs this
20 morning, Judge, that we're going to show them. It's no
21 surprise. It's of the same scene, same photographs that
22 they have, so we will certainly comply with that.

23 **THE COURT:** And you have this: Oh -- and it's like I
24 want to see them right now. Right?

25 **ASSISTANT SOLICITOR CAMPBELL:** We would just like to

1 see them prior to anybody testifying.

2 **MR. HARRIS:** Yes, ma'am.

3 **THE COURT:** She would like to see them now. Have you
4 got them now?

5 **MR. HARRIS:** I'm going to look at them right here. I
6 haven't seen them, Judge.

7 **THE COURT:** Okay. I mean, while the jury is not in
8 and we have a little down time, it would be a great time
9 to show them.

10 **ASSISTANT SOLICITOR CAMPBELL:** Okay. Anything else?

11 **MR. HARRIS:** And the last matter, Your Honor, we have
12 has to do with excusing witnesses. We would ask that no
13 witness currently under subpoena of either party be
14 released until we know that they are being released.

15 **THE COURT:** In other words, you are relying on some
16 subpoenas that have been served by the State, so you have
17 not served reciprocal subpoenas.

18 **MR. HARRIS:** That's correct.

19 **THE COURT:** And that you would appreciate just being
20 notified so you know that you need to pop a subpoena on
21 the individual.

22 **MR. HARRIS:** Yes, ma'am.

23 **THE COURT:** Do you have any concerns about that?

24 **ASSISTANT SOLICITOR CAMPBELL:** Not really, Your
25 Honor. If he gives me a list of who he wants for us to

1 make sure we keep, we'll be glad to do that.

2 **MR. HARRIS:** Perfect.

3 **THE COURT:** Wonderful.

4 **ASSISTANT SOLICITOR CAMPBELL:** The only -- there are
5 a couple witnesses, Your Honor, that we have flown in from
6 out-of-state. We have made flight arrangements, and they
7 have problems with their ---

8 **THE COURT:** Connecting flights.

9 **ASSISTANT SOLICITOR CAMPBELL:** --- flights, so if he
10 would give me a list, we can of course address that with
11 you, as far as any concerns.

12 **THE COURT:** Absolutely. That makes perfect sense.

13 So while the jury is coming in, you'll jot down that
14 quick list, too.

15 **MR. HARRIS:** I think it's just a very short list,
16 Judge. Thank you.

17 **THE COURT:** That will be great. That will be
18 wonderful.

19 Anything further?

20 **MR. GASSER:** Judge, just for the potential defense
21 witness list, would you add one witness for us?

22 **THE COURT:** Okay.

23 **MR. GASSER:** It's no surprise, either. Really, this
24 witness is probably not going to be called. It's just in
25 case if something develops ---

1 **THE COURT:** Sure.

2 **MR. GASSER:** --- in the testimony of another witness,
3 but one of our private investigators at the time is Dave
4 Lawrence, and he is now back at S.L.E.D.

5 **THE COURT:** How do you spell his last name?

6 **MR. GASSER:** L-A-W-R-E-N-C-E.

7 **THE COURT:** Lawrence.

8 **MR. GASSER:** Yes, ma'am.

9 **THE COURT:** Okay. Dave Lawrence. Okay.

10 **MR. GASSER:** Great. Thank you. If you would indulge
11 me one moment?

12 **THE COURT:** Okay.

13 **MR. GASSER:** And, Judge, yesterday you asked me at
14 the close of business about the two indictments.

15 **THE COURT:** These are the copies.

16 **MR. GASSER:** We have no objection to you publishing
17 the indictments. We believe that they are both accurate,
18 as far as -- of course we all know that the purpose of an
19 indictment is simply to put a defendant on notice for what
20 they need to be ---

21 **THE COURT:** And I tell them that, Mr. Gasser, before
22 I say one word about it and tell them the only reason, the
23 only reason, that I'm reading them is to find out if
24 anybody knows or think they know or have heard or think
25 they have heard anything about it.

1 **MR. GASSER:** The only other thing, just to be
2 complete, I guess, particularly at the end of the
3 involuntary manslaughter indictment, there is language
4 that indicates against the peace and dignity of the State,
5 and contrary to the statute, in such case made and
6 provided. And they actually cite the statute in the body
7 of the indictment. We would simply ask that after you
8 read the indictment to also read Section 16-3-60, since
9 they identify it in the indictment, obviously except for
10 the last sentence of the statute, which says the sentence,
11 which we know can't be read.

12 **THE COURT:** You know what I'm going to do? I'm going
13 to put this in violation of one of the statutory
14 provisions of the State of South Carolina, which I will
15 give to you at the conclusion of this case.

16 **MR. GASSER:** Okay. That's fine.

17 **THE COURT:** Very well. In other words, we're really
18 just trying to give them a little bit of information to
19 find out if they know anything about it. I don't want to
20 overwhelm them immediately, at least.

21 All right. Now, once more, anything further from the
22 State?

23 **ASSISTANT SOLICITOR CAMPBELL:** No, ma'am.

24 **THE COURT:** The defense?

25 **MR. HARRIS:** No, ma'am. Thank you.

1 **MS. ARMSTRONG:** Your Honor? I apologize. I'm here
2 with the victim's family. Obviously, we have a lot more
3 people than we had yesterday. If you wouldn't mind giving
4 the same instruction?

5 **THE COURT:** Oh, thank you. I will be happy to. And
6 just for our record, if you'll identify yourself?

7 **MS. ARMSTRONG:** Natalie Armstrong.

8 **THE COURT:** And Ms. Armstrong is counsel, and she is
9 counsel for the victim's family.

10 Very well. Happy to do that. Happy to do that.

11 Ladies and gentlemen, and again, I don't know if
12 there will be -- there's Mom and Dad, I don't know if
13 there will be any additional family members, but that
14 would also apply as well to them.

15 First of all, I'm going to address the victim's
16 family. I addressed Mr. Simms' family yesterday about
17 this. And this -- this is the reason why I'm going to
18 give you this instruction. These matters are
19 heartbreaking. They are emotional, and there's little I
20 can do about that, other than to give to everyone my
21 empathy and to acknowledge that these matters are
22 heartbreaking and very, very emotional, and I know that,
23 and I want to acknowledge that.

24 I want to also share with you that it is my
25 responsibility as the judge over this trial to be sure

1 that our jury is able to make the decisions and make the
2 findings of fact, based upon the evidence which is
3 presented in this court while court is in session and
4 based upon the law as I will give it to them.

5 It is inappropriate under our system for a jury to
6 make a determination based on emotion, based on prejudice,
7 based on matters extraneous to these proceedings. That's
8 a term that's used, matters extraneous to the courtroom.
9 What that means is, is that I must ask of all of you that
10 which is nearly impossible, and that is to keep your
11 emotions in check, understanding that these are
12 heartbreaking matters.

13 Now, to do that and to help you in that regard, this
14 is what I'm going to ask you to do. And I'm going to tell
15 you why I give you that instruction. Normally and
16 typically, these folks, these wonderful folks that assist
17 us, our bailiffs, our security, they'll lock down a
18 courtroom. And if there's testimony that's ongoing or
19 opening statements, closing arguments, they won't let
20 people move. You know, I've seen them grab them and sit
21 them down. But you guys are different, and the reason
22 that you are different is that I am asking you to keep
23 your emotions in check.

24 And there may be moments that you need to take your
25 leave, in order to keep your emotions in check. If you

1 need to do that, that is perfectly fine. These wonderful
2 bailiffs and security folks, we talked about that
3 yesterday, and they have been wonderful. They know who
4 you are. They are going to let you leave, if you need to.

5 Of course, you know, I'm going to ask you to be as
6 quiet as you can. I'm not quiet, so I appreciate it's
7 hard to be quiet. I'm one of those people that's noisy by
8 my very nature, but I am going to ask you to do so as
9 quietly as you can. Take your leave, compose yourself,
10 and when you are ready to return, you can return,
11 irrespective of what is going on in the courtroom.

12 You know, that doesn't sound like a big deal, but
13 it's actually a pretty big deal, and these folks are going
14 to help me. Normally folks are not allowed to move around
15 like that in the courtroom, but victims' families and
16 defendants' families need that ability, because I am
17 asking them to keep -- I am ordering them to keep their
18 emotions in check.

19 And the reason for that is that this jury must be
20 able to make the determinations which it will make free
21 from any bias or prejudice or emotional overlay. So
22 that's the reason for that.

23 Does anybody have any questions about that?

24 (NO RESPONSE.)

25 **THE COURT:** If you have any questions, ask Ms.

1 Armstrong, and she will relay your questions to me.

2 All right. Very well.

3 Now, let's have a jury.

4 (JANUARY 29, 2013, 10:25 A.M., WHEREUPON, THE JURY
5 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
6 WERE HELD IN THEIR PRESENCE.)

7 **THE COURT:** Good morning, ladies and gentlemen. And
8 thank you all so much for being here this morning. Ladies
9 and gentlemen, let me begin by introducing myself. I am
10 Diane Goodstein.

11 **BAILIFF:** I'm not sure we have all of them.

12 **THE COURT:** I should have asked you first; are all of
13 y'all here?

14 I thought it looked like all of y'all were here. I
15 would be so excited to be the very last person to walk in.
16 Wouldn't y'all? I think all of y'all maybe need to turn
17 around and look.

18 There he is. Good morning.

19 **BAILIFF:** All present, Your Honor.

20 **THE COURT:** Thank you so much. Thank you.

21 Now, I am going to try again. Good morning.

22 **JURORS:** Good morning.

23 **THE COURT:** Ladies and gentlemen, let me begin by
24 introducing myself. I am Diane Goodstein, and I am one of
25 the two judges from the First Judicial Circuit. The First

1 Judicial Circuit, just for your informational purposes, is
2 Dorchester County, Orangeburg County, and Calhoun County.
3 You live in the Fifth Judicial Circuit, which is Richland
4 County and Kershaw County.

5 So you might ask, well, what in the world are you
6 doing here?

7 Well, ladies and gentlemen, I am a circuit court
8 judge in South Carolina, and what that means is that we
9 ride the circuit, which means we go to our own home
10 circuit, but we also have the privilege of going to all
11 other circuits around the state. It's -- it's really a
12 wonderful position, because not only do we get to know the
13 people in our own circuit, but we get to know people all
14 over the state.

15 And our Chief Justice, Chief Justice Toal, has
16 assigned me the privilege of being here with you here in
17 the Fifth Circuit here in Richland County. I'm excited to
18 report to you that you live in the Fifth Judicial Circuit
19 in Richland County.

20 Now, ladies and gentlemen, what I am going to do is I
21 look forward in just a moment to introducing you to the
22 folks that are going to be involved in this matter. But
23 also, those of you that are selected to serve on a jury,
24 I'm going to introduce you to our bailiffs and our
25 security folks, our court reporter, and our clerk. I'll

1 do all that in just a moment, those of you that are
2 selected to serve on a jury, because I do want you to know
3 who is in the courtroom. I think that's good for you to
4 know, and I certainly want you to be informed.

5 But for those of you who are not selected to serve on
6 this jury, y'all probably want to get onto other things,
7 so I am going to dispense with that at this moment. Now,
8 ladies and gentlemen, you have been asked to be here this
9 morning for the selection of this jury in what's called
10 General Sessions Court, or Criminal Court. In South
11 Carolina, we call Criminal Court General Sessions.

12 So you all have come up here for that purpose, for
13 the selection of a jury in General Sessions. Now, in just
14 a moment, I am going to call on one of the assistant
15 solicitor's to call the first case for trial here this
16 morning, and even before I do that, I want to tell you
17 that the solicitor in South Carolina is what the
18 individuals in other states, I think in all forty-nine
19 other states, are called the district attorney.

20 And those of you that might watch, you know, the
21 news, CNN, Nancy Grace, some of those other television
22 shows, you have heard that term, district attorney. That
23 is the prosecuting person in other states. In South
24 Carolina, because we are unique, we call our prosecuting
25 attorneys solicitors. That is a holdover from England,

1 from the English. We are a product of English
2 jurisprudence.

3 I majored in English History. You have now heard the
4 only benefit from my parents having paid out-of-state
5 tuition for me to get a degree in English History. Thank
6 goodness I went to law school. I can tell you that we in
7 South Carolina have a holdover from English jurisprudence
8 by calling our solicitor, who is our prosecuting attorney.

9 Now, and at this time, I am going to call on the
10 solicitor's office, the prosecuting office here in
11 Richland County, and ask them to please call their first
12 case for trial this week.

13 **ASSISTANT SOLICITOR MCDUFFIE:** Thank you, Your Honor.
14 May it please the Court?

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

16 **ASSISTANT SOLICITOR MCDUFFIE:** At this time we call
17 the State of South Carolina versus Curtis James Simms,
18 Indictment Number 2011-GS-40-831, charge of involuntary
19 manslaughter; and, Your Honor, the State of South Carolina
20 versus Curtis James Simms, charge of breach of peace high
21 and aggravated in nature, Indictment Number
22 2011-GS-40-829.

23 **THE COURT:** Thank you so much, Ms. McDuffie.

24 Now, I am going to introduce you to her in just a
25 moment, but what has just occurred is that Ms. McDuffie

1 has called the first case for trial this week by calling
2 to the Court's attention two indictments.

3 Now, in just a moment, ladies and gentlemen, I am
4 going to read you some of the allegations of the
5 indictment, and I want to tell you the reason I am going
6 to be doing that is that I want to find out whether or not
7 any of you know or think you may know or have you heard or
8 think you may have heard anything about these allegations.

9 But before I do that, I'm going to hasten to tell you
10 two things. The first thing that I want to tell you is
11 what an indictment is and what it is not. And I will do
12 that now.

13 Ladies and gentlemen, the first thing I am going to
14 tell you is an indictment is a piece of paper. It's just
15 a piece of paper. It is a document. It is a document
16 that notifies a fellow citizen that the State maintains
17 that citizen, that person, has violated one or more of the
18 criminal laws of the State of South Carolina. It's a
19 notice document.

20 What it is not, meaning the indictment, what it is
21 not is any evidence of any of the allegations that it
22 contains. So, that's what indictment is and what it is
23 not.

24 Now, let me hasten to tell you that to these
25 allegations, that Mr. Simms has pled not guilty, not

1 guilty, and that places upon -- the burden upon the State
2 of South Carolina the burden of proving each and every
3 allegation of each of these two indictments, they must
4 prove Mr. Simms guilty beyond a reasonable doubt. It
5 places the burden on the State.

6 Now, so why would I be reading to you these
7 allegations? Again, to find out whether or not any of you
8 know or think you may know or have you heard or think you
9 may have heard anything about these allegations, to
10 include today?

11 Now, then, ladies and gentlemen, I am going to
12 introduce you to some folks, and you're going to hear me
13 ask you this question repeatedly: Are you related by
14 blood or marriage or acquainted with, and then I will give
15 you a name.

16 I'm going to ask you that several times. I need to
17 define for you my definition of acquainted with, because I
18 intend a very general definition of the term acquainted
19 with. Why? Because I'm trying to find out if you have
20 any connection with these people whatsoever. That's the
21 reason that I will be using the term acquainted with.

22 Let me give you a couple of examples. I may ask you
23 are you related by blood or marriage or acquainted with
24 Mr. John Doe?

25 Well, twenty years ago you went to school with John

1 Doe, and you know you went to school with John Doe twenty
2 years ago.

3 You haven't thought about John. He hasn't crossed
4 your mind in twenty years, but you know you went to school
5 with John twenty years ago.

6 Well, believe it or not, as old and moldy as that
7 relationship is, you would stand and say: I went to
8 school with John Doe twenty years ago.

9 And you would simply share that with me, because my
10 definition of acquainted with is so broad, it would
11 include that relationship twenty years ago.

12 It may be that you work at the same location with
13 John. Maybe you wave at each other occasionally across
14 the parking lot. That is the extent of your relationship.

15 Well, believe it or not, as limited as that
16 relationship is, you would stand and say: Well, I work at
17 the same place that John works and occasionally I'll wave
18 at him across the parking lot. That is the extent of my
19 relationship.

20 Believe it or not, that limited relationship would be
21 encompassed within my very general and broad definition of
22 the term acquainted with. Keep in mind, I am trying to
23 find out whether or not you have any relationship with
24 these folks I'll be asking you about, whatsoever. So,
25 please stand and tell me. Please keep that definition of

1 acquainted with in your mind as we go through this process
2 this morning.

3 Now, ladies and gentlemen, once I have read some of
4 the allegations of the indictment to you and ask you about
5 that, introduce you to some folks, I just have a few
6 additional questions that I am going to ask of you, and
7 then we are going to get right into the selection of our
8 jury for this trial, and then we are going to get right
9 into the trial.

10 Now, ladies and gentlemen, I know that you were sworn
11 in yesterday, but in an abundance of precaution, I am
12 going to ask you to please stand with me and raise your
13 right hand. And raise your right hand.

14 (WHEREUPON, THE JURY PANEL WAS DULY SWORN.)

15 **THE COURT:** Thank you. Was there anyone who failed
16 to take the oath? If so, please stand.

17 (NO RESPONSE.)

18 **THE COURT:** And I find no one standing.

19 Now, ladies and gentlemen, I'm going to read to you
20 the allegations, some of the allegations, of these
21 indictments, these two indictments. On the other side, my
22 question to you is going to be: Do you know or think you
23 know, have you heard or think you may have heard, to
24 include today, anything about these allegations?

25 That's going to be the question on the other side, if

1 you will.

2 Now, with regards to Indictment Number
3 2011-GS-40-0831, this indictment alleges the following:
4 That Curtis James Simms did in Richland County on or about
5 October the 9th, 2010, unintentionally kill Allen Martin
6 Gasque without malice, but while engaged in an unlawful
7 activity not naturally tending to cause death or great
8 bodily injury, or while engaged in a lawful activity with
9 reckless disregard for the safety of others, in violation,
10 and there is a section of law that is given. We will talk
11 about that later. That is the first indictment and the
12 allegations contained in that indictment.

13 The second indictment states in part and alleges in
14 part that Curtis James Simms did in Richland County on or
15 about October the 9th, 2010, knowingly, willfully, and
16 intentionally disturbed -- excuse me, public order and/or
17 public tranquility through his conduct, accompanied by
18 circumstances of aggravation, fighting in the roadway and
19 or disrupting traffic, such acts constituting the offense
20 of breach of peace, in violation of the common law of the
21 State of South Carolina.

22 Ladies and gentlemen, again, let me hasten to tell
23 you that to each of these allegations, to each of these
24 indictments, the defendant, Mr. Simms, has pled not
25 guilty.

1 Now, I ask this question of you. Do any of you know
2 or think you may know, or have you heard or think you may
3 have heard, anything about any of these allegations? If
4 so, please stand at this time.

5 Very well. I'm going to ask you to come up. Tell me
6 your name, first, or your number.

7 **JUROR:** 22.

8 **THE COURT:** Come on forward for me. I will meet you
9 right over there.

10 Counsel, y'all come up, too.

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
12 THE RECORD, OUT OF THE HEARING OF THE REMAINING JURY
13 PANEL:)

14 **THE COURT:** Now, here's what I need. I need for
15 Ronda to be able to hear you. I need enough volume for
16 her to hear, and y'all can gather around.

17 Tell me what you think you know or what you have
18 heard.

19 **JUROR:** I have read about it in the paper.

20 **THE COURT:** You have read about it in the paper.

21 **JUROR:** Yes.

22 **THE COURT:** When?

23 **JUROR:** Like several years. After it happened. You
24 know, it was the Alabama game a few years ago.

25 **THE COURT:** Okay. Okay.

1 **JUROR:** I just read it the other morning. It was in
2 the paper.

3 **THE COURT:** There was something else in the paper
4 about it?

5 **JUROR:** I also work at USC.

6 **THE COURT:** And you work at USC.

7 **JUROR:** (NODDED AFFIRMATIVELY.)

8 **THE COURT:** What do you do there?

9 **JUROR:** I'm Associate Director for online courses.

10 **THE COURT:** How interesting. Okay. Very well.

11 So if you had to estimate how many articles you have
12 read about this particular matter, how many would you say?

13 **JUROR:** Probably half a dozen.

14 **THE COURT:** Half a dozen. Are right. Now, as a
15 result of having read those articles, do you feel like you
16 have developed any sort of an opinion regarding this
17 particular matter?

18 **JUROR:** Yes, I do.

19 **THE COURT:** Okay. Very well.

20 What I am going to ask you to do is I am going to ask
21 you to sit this one out, but hang on, because we've got
22 lots more work to do.

23 **JUROR:** Okay. Great.

24 **THE COURT:** And I am also going to ask you, and I
25 know I don't need to, but I am going to do it in an

1 abundance of caution, is I am going to ask you not to
2 discuss this matter with your fellow jurors.

3 **JUROR:** Okay.

4 **THE COURT:** And thank you so much.

5 **JUROR:** Thank you, Your Honor.

6 **THE COURT:** Take your seat, and just hang with us.
7 Great.

8 **MR. GASSER:** Your Honor?

9 **THE COURT:** Yeah?

10 **MR. GASSER:** We had a little bit of a concern, and
11 the State may have some of the same concerns, a lot of
12 times people have read or heard on the news about a
13 situation, just a situation they remember reading about.
14 The names, the person's name that may be involved, the two
15 people's names that may be involved, they may not have
16 heard of. This case received ---

17 **THE COURT:** Y'all tell me what you want me to say. I
18 don't mind expounding.

19 **MR. GASSER:** Everybody recognizes, Your Honor, the
20 Alabama-USC football game incident. It was in the paper
21 again Monday, and I think that's probably a trigger, more
22 so than the names.

23 **THE COURT:** I don't care. I will say that.

24 Are y'all okay with that?

25 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, I think

1 you have sufficiently covered it. He was the only person
2 who stood up that said he knew anything about this.

3 **MR. GASSER:** Judge, it's going to come out that it
4 was the Alabama -- it's going to come out ---

5 **THE COURT:** I agree with you that -- that -- that it
6 was so unusual, and I understand there was a great deal of
7 publicity. I will say the Alabama -- but I want you to
8 help me, now. I'm going to note your exception, but help
9 me know what to do, because I don't -- you know, I am from
10 Dillon, but I live in Summerville, so I mean, I am not
11 nearly as into it. Y'all need to help me a little bit.

12 If I say, just so -- just say that -- and I will say
13 something like I am from Summerville, y'all, so these
14 lawyers are helping me. I want to tell you if it is of
15 any assistance, because I've got to be sure that I have
16 covered this matter, this is known as the incident at the
17 Alabama-USC game.

18 **MR. GASSER:** Yes, ma'am.

19 **ASSISTANT SOLICITOR MCDUFFIE:** In 2010.

20 **THE COURT:** Oh, thank you. In 2010. I thought I
21 said '09.

22 **ASSISTANT SOLICITOR MCDUFFIE:** '10. October the 9th,
23 2010.

24 **MR. GASSER:** 2010.

25 **THE COURT:** The 9th, 2010. South Carolina-Alabama.

1 I should say South Carolina and Alabama. I will do that,
2 but don't leave me, in case I mess up. Stay right here.

3 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
4 THE RECORD IN THE PRESENCE AND HEARING OF THE JURY PANEL:)

5 **THE COURT:** Ladies and gentlemen, I'm from
6 Summerville. I am originally from Dillon, and I am
7 visiting. These lawyers are wonderful. They are helping
8 me. So I'm going to -- I am going to define it a little
9 bit differently, just to be sure I am being fair to y'all.

10 This matter occurred at the -- or the incident -- let
11 me say this incident occurred, allegedly occurred, at a
12 South Carolina-Alabama game. I was told don't say the
13 Alabama-South Carolina game. Say the South Carolina
14 versus Alabama football game in 2010, 2010.

15 Now, ladies and gentlemen, if that is -- if you know
16 or think you know, or if you have heard or think you may
17 have heard, and that means newspaper, to the Internet, the
18 newspaper, the radio, the television, I'm going to ask you
19 to please stand.

20 I don't know if that -- that might -- see, I didn't
21 do a very good job the first time, now, did I? See how
22 the lawyers help me so much?

23 I'm going to ask you, here's what we are going to do,
24 we already chatted, and I can't see the rows. I want to
25 go by row, and just come on forward one at a time, and as

1 you come forward, tell me your name and number. Just one
2 at a time. Y'all have got to help me stop them. Come on
3 forward.

4 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
5 THE RECORD OUT OF THE HEARING OF THE REMAINING JURY
6 PANEL:)

7 **THE COURT:** And your name and number?

8 **JUROR:** Phillip Provence, 207.

9 **THE COURT:** Say again? 207?

10 **JUROR:** Yes, ma'am.

11 **THE COURT:** Not Ben Aflack.

12 **JUROR:** No, ma'am.

13 **THE COURT:** Okay. All right. Very well.

14 Here's what -- I just need enough volume so that Mrs.
15 Cummings can hear you as we gather around. All right.
16 Tell me what.

17 **JUROR:** I do remember. I was at the game.

18 **THE COURT:** Okay.

19 **JUROR:** So afterwards, I remember some people telling
20 me something had happened.

21 **THE COURT:** Okay.

22 **JUROR:** And the next few weeks, I kind of seen in the
23 paper that a fight had broken out and it kind of spilled
24 over later. There was a scuffle and somebody ended up
25 being shot or there was a stabbing or something like that.

1 **THE COURT:** I understand. I understand.

2 And let me ask you this question. As a result of
3 being told something had happened at the game and what you
4 have read, have you formed any opinions regarding this
5 matter?

6 **JUROR:** The only thing I remember and that I thought
7 at the time was that it just sounded like there was people
8 that really got out of control.

9 **THE COURT:** Okay.

10 **JUROR:** That, I mean, was pretty much like it's
11 something like that happened at a sporting event, whoever
12 the instigator was, I remember it was kind of -- what's
13 the right way to put it?

14 **THE COURT:** You are doing fine. You really are
15 articulating perfectly. Very well.

16 **JUROR:** I don't think that anybody acted in a very
17 good way on either side.

18 **THE COURT:** I understand. I am with you completely.
19 I am with you completely.

20 Now, here is what I am going to ask you to do. I am
21 going to ask you to just step back a little bit so that I
22 can talk about you.

23 **JUROR:** All right.

24 **THE COURT:** How about that?

25 **JUROR:** That's fine.

1 **THE COURT:** With these lawyers. Would you do that
2 for me? And thank you so much.

3 Y'all come closer. Come a little closer to me. I
4 guess I could come actually come closer to you, too, huh?

5 **MR. HARRIS:** I'm fine.

6 **THE COURT:** All right. Now, here is where I am. I
7 think if they have heard about it, if they have
8 experienced it -- that's where I am with it. Do y'all
9 want to be heard about that? I mean, I just ---

10 **MR. HARRIS:** Well, I think the last thing he said was
11 that he didn't think people on either side -- he didn't
12 like people on either side. That's basically what he
13 said.

14 **THE COURT:** Well, I think he said there was an
15 instigator.

16 **MR. HARRIS:** He said that, too.

17 **THE COURT:** I don't like it. I don't like it. I
18 don't think it is fair to him. I think that it was -- if
19 I understand it, it was a big deal, and I don't think it's
20 fair to people to ask them to put that, especially if he
21 was at the game, to put that out of his mind, and I am
22 going to excuse him. I just -- just don't think justice
23 is served if we do not.

24 I like your shoes.

25 **JUROR:** Thank you.

1 **THE COURT:** Here's what I think. Just because of the
2 knowledge base, I'm going to ask you to sit this one out
3 for me, but don't go anywhere, because we have lots of
4 other work this week, but I am going to ask you not to
5 discuss this matter with your fellow jurors. I know I
6 don't need to, but I'm going to ask you anyway.

7 **JUROR:** Fair enough.

8 **THE COURT:** All right?

9 **JUROR:** Thank you very much.

10 **THE COURT:** Thank you. Just take your seat, so that
11 I can give you some further instructions.

12 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, did you
13 excuse the first juror who came up? 22?

14 **THE COURT:** I got rid of him. I excused him.

15 **ASSISTANT SOLICITOR MCDUFFIE:** Okay.

16 **THE COURT:** That was ugly. I excused him.

17 **ASSISTANT SOLICITOR MCDUFFIE:** Thank you.

18 **THE COURT:** Hi. And your name and number?

19 **JUROR:** 145.

20 **THE COURT:** Thank you so much. Yeah, come on.
21 I just need Mrs. Cummings to be able to hear you.

22 **JUROR:** Okay.

23 **THE COURT:** That's sufficient volume.

24 **JUROR:** Okay.

25 **THE COURT:** Yes, ma'am. Tell me what you know or

1 heard or think you have heard.

2 **JUROR:** Just from the newspaper and the Internet and
3 the TV news.

4 **THE COURT:** All right. How recently?

5 **JUROR:** Yesterday.

6 **THE COURT:** Very well. Now, as a result of what you
7 have heard, have you had an opportunity to form any kind
8 of an opinion regarding this particular matter?

9 **JUROR:** No. I didn't witness it, so I tried not to
10 form an opinion.

11 **THE COURT:** I understand. Do you believe that the
12 fact that you have heard or read about this particular
13 matter would have any impact whatsoever on your ability to
14 listen to the evidence and make up your mind based solely
15 on what you hear in court while court is in session?

16 **JUROR:** No. I don't think so.

17 **THE COURT:** Okay. Can you set what you have heard
18 completely aside and make up your mind based on what you
19 hear in court?

20 **JUROR:** Yes.

21 **THE COURT:** Very well. Thank you so much. Please
22 step back.

23 And your number is?

24 **JUROR:** 168.

25 **THE COURT:** Thank you. Come on. I just need enough

1 volume so that Ms. Cummings can hear you. We will gather
2 around.

3 Yes, sir? Tell me what you know or have heard.

4 **JUROR:** I was at that same game when it happened. I
5 just heard about it on the news after the fact.

6 **THE COURT:** Okay. And do you remember did you see
7 anything or hear anything at the game?

8 **JUROR:** No.

9 **THE COURT:** All right. And did you -- how many news
10 reports or whatever have you read or heard?

11 **JUROR:** Mmm, I haven't read any reports. I just saw
12 it on the news.

13 **THE COURT:** Okay. How many -- do you remember how
14 many times you saw something on the news?

15 **JUROR:** Maybe twice.

16 **THE COURT:** Maybe twice? Do you remember how
17 recently you saw anything on the news?

18 **JUROR:** Well, it would have to be in 2010.

19 **THE COURT:** Okay. Okay. And as a result of what you
20 have heard, seen on the news, whatever, have you had an
21 opportunity to form any kind of an opinion regarding this
22 matter?

23 **JUROR:** No.

24 **THE COURT:** No. All right.

25 And do you believe the fact that you have, I gather,

1 heard some things on the news, do you believe that that
2 could or might have any impact on your ability to be
3 completely fair and impartial, both to the State, as well
4 as to Mr. Simms?

5 **JUROR:** No, ma'am.

6 **THE COURT:** Do you believe that you can set those
7 news reports out of your mind completely and make up your
8 mind based solely on what you hear in court while court is
9 in session?

10 **JUROR:** Yes, ma'am.

11 **THE COURT:** Thank you so much.

12 **JUROR:** Thank you.

13 **THE COURT:** Please stay with us.

14 And your number is?

15 **JUROR:** 84.

16 **THE COURT:** Yes, sir. Come on. Yes, sir. I just
17 need enough volume so Mrs. Cummings can hear you. We will
18 gather around.

19 Yes, sir. Tell me what you have heard or what you
20 know.

21 **JUROR:** I heard it on the news that they got in an
22 altercation.

23 **THE COURT:** Okay. And tell me when you heard that.

24 **JUROR:** Um, as late as last night.

25 **THE COURT:** Okay.

1 **JUROR:** On the news.

2 **THE COURT:** Okay. And how many news reports have you
3 seen?

4 **JUROR:** I've probably seen at least a half a dozen.

5 **THE COURT:** Okay. Have you read anything in the
6 newspaper or on the Internet about it?

7 **JUROR:** No, just on the news.

8 **THE COURT:** Okay. Just on the news. Okay.

9 And as a result of the opportunity to have heard
10 those things on the news, have you formed any opinions
11 regarding this matter whatsoever?

12 **JUROR:** Um, kind of. A little bit. Yeah.

13 **THE COURT:** Yeah. Yeah.

14 **JUROR:** Uh-huh.

15 **THE COURT:** And would you share this opinions with
16 me?

17 **JUROR:** You know, I just -- it appears that -- I just
18 feel like he might be guilty.

19 **THE COURT:** I understand. I understand. That's why
20 we ask these questions. Absolutely.

21 **JUROR:** Nothing against anybody.

22 **THE COURT:** And that -- I understand. That's why we
23 ask these questions. That's why I'm so grateful for your
24 candor.

25 What I'm going to ask you to do is sit this one out.

1 Guess what? We've got lots of other work to do.

2 I am, of course, going to ask you not to discuss this
3 matter with your fellow jurors. I know I don't need to,
4 but don't discuss this with your fellow jurors, but hang
5 with me, because I've got some instructions.

6 **JUROR:** Okay.

7 **THE COURT:** Thank you, sir.

8 **JUROR:** Thank you.

9 **THE COURT:** Yes, sir.

10 Hi. And if you would just as you come give me your
11 number.

12 **JUROR:** 104.

13 **THE COURT:** 104? Come on.

14 I just need enough volume for Mrs. Cummings to be
15 able to hear you.

16 **JUROR:** Okay.

17 **THE COURT:** All right. Now, tell me what you know or
18 think you know or have heard or think you have heard.

19 **JUROR:** I just heard on the news that somebody was in
20 a fight, that somebody got thrown in the roadway and got
21 killed in an accident while in a fight.

22 **THE COURT:** Okay. Tell me how many -- have you heard
23 that on the news or read that?

24 **JUROR:** On the news.

25 **THE COURT:** Heard it on the news?

1 **JUROR:** Uh-huh.

2 **THE COURT:** About how many times? You don't have to
3 be exact.

4 **JUROR:** At least two or three.

5 **THE COURT:** Two or three?

6 **JUROR:** Uh-huh.

7 **THE COURT:** Okay. How recently?

8 **JUROR:** Well, I heard it this morning, because they
9 said they were picking a jury, and I was saying, please
10 don't pick me.

11 **THE COURT:** Okay. So, have you had an occasion to
12 form any opinions regarding this matter?

13 **JUROR:** Somewhat. Not to say that he did it, because
14 of the fight or whatever, but not to say to what extent he
15 would be held accountable.

16 **THE COURT:** I understand. I understand.

17 Let me ask you this question. Do you believe that
18 you could set aside what you have heard on the news, and I
19 mean completely aside, and make up your mind based solely,
20 based only, on what you hear in court while court is in
21 session?

22 **JUROR:** I think I could.

23 **THE COURT:** Okay. And can you do that, being
24 completely fair and impartial, both to the State, as well
25 as to Mr. Simms?

1 **JUROR:** Yes. Yes. Yes, I can.

2 **THE COURT:** Very well. Thank you. Please stay with
3 us.

4 **JUROR:** Okay.

5 **BAILIFF:** 38.

6 **THE COURT:** Hi.

7 **JUROR:** Good morning.

8 **THE COURT:** Yes, sir. All right. I just need enough
9 volume for Mrs. Cummings to hear you, and we will gather
10 around.

11 **JUROR:** Okay.

12 **THE COURT:** Tell me what you know or think you know
13 or what you heard or think you may have heard.

14 **JUROR:** I don't know. I might have jumped the gun.
15 Does this have to do with somebody getting run over after
16 a game with a car?

17 **THE COURT:** Yes.

18 **JUROR:** Okay. That was pretty much the extent of it.
19 I know it was after the game, and that's about it, that I
20 know of.

21 **THE COURT:** Okay. All right. Tell me how you know
22 that.

23 **JUROR:** I think I might have read it in the paper.

24 **THE COURT:** Okay. Okay.

25 **JUROR:** But nobody -- nothing -- no one told me

1 anything about it.

2 **THE COURT:** I understand.

3 **JUROR:** I didn't discuss it with anybody.

4 **THE COURT:** I understand. Do you remember when you
5 think you read it in the newspaper?

6 **JUROR:** Probably that Sunday, the next day or
7 something.

8 **THE COURT:** All right. In other words, in the past.

9 **JUROR:** Yeah. Yeah.

10 **THE COURT:** Around 2010.

11 **JUROR:** Right after the game.

12 **THE COURT:** Okay. When these events allegedly
13 occurred. Right?

14 **JUROR:** Uh-huh. Yeah. Nothing since.

15 **THE COURT:** Have you seen anything recently about it?

16 **JUROR:** No. No, ma'am.

17 **THE COURT:** Very well. As a result of having read
18 that account a few years ago in the newspaper, do you
19 believe that you have formed any opinions at all regarding
20 this matter?

21 **JUROR:** Um, no, I don't think so.

22 **THE COURT:** All right. Do you believe that you could
23 set what you have read, do you believe that you could set
24 that aside, and I mean completely aside, and make up your
25 mind based solely on what you hear in court while court is

1 in session?

2 **JUROR:** Yes.

3 **THE COURT:** All right. Now, can you do that, being
4 completely, completely, fair and impartial, both to the
5 State, as well as to Mr. Simms?

6 **JUROR:** Yes.

7 **THE COURT:** Very well. Please stay with us.

8 **JUROR:** Okay.

9 **THE COURT:** And your number is?

10 **JUROR:** 200.

11 **THE COURT:** 293?

12 **JUROR:** 200.

13 **THE COURT:** 200. I can't hear. I can't hear.

14 Come on forward for me. I just need Mrs. Cummings to
15 be able to hear you. We will gather around.

16 Tell me what you know or think you know or have heard
17 or think you have heard.

18 **JUROR:** All I heard is what was listed on the news
19 this morning.

20 **THE COURT:** This morning.

21 **JUROR:** Right. I was getting ready.

22 **THE COURT:** Sure. Sure.

23 **JUROR:** I kind of recall an incident back in 2010,
24 but not quite, you know, and I heard it this morning on
25 the news.

1 **THE COURT:** Very well. As a result of what you may
2 have recalled back in 2010 and based on what you have
3 heard this morning, have you had occasion to have
4 developed any kind of opinions about this matter
5 whatsoever?

6 **JUROR:** No.

7 **THE COURT:** All right. Do you believe that you could
8 set aside what you have heard this morning, as well as
9 back in 2010, and set it completely aside and make up your
10 mind based solely on what you hear in court while court is
11 in session?

12 **JUROR:** Yes.

13 **THE COURT:** Can you do that, being completely fair
14 and impartial, both to the State, as well as to Mr. Simms?

15 **JUROR:** Yes.

16 **THE COURT:** Thank you so much. Please stay with us.

17 **BAILIFF:** 295.

18 **THE COURT:** Thank you so much. Come on forward. I
19 just need Mrs. Cummings to be able to hear you. We will
20 gather around.

21 Tell me what you know or think you know or what you
22 heard or think you have heard.

23 **JUROR:** I think this was the incident that was near
24 the corner of George Rogers Boulevard and Shop Road.

25 **THE COURT:** Okay.

1 **JUROR:** I think that the person that I am thinking of
2 is friends with the Lindsey twins.

3 **THE COURT:** Okay.

4 **JUROR:** Football players.

5 **THE COURT:** Okay.

6 **JUROR:** For Carolina.

7 **THE COURT:** Okay.

8 **JUROR:** I had heard about this incident from a local
9 watering hole, so to speak.

10 **THE COURT:** Yes.

11 **JUROR:** Just after it happened.

12 **THE COURT:** Yes.

13 **JUROR:** Details kind of sketchy.

14 **THE COURT:** Yes.

15 **JUROR:** But I think I have a general idea of what
16 happened.

17 **THE COURT:** All right. As a result of what you --
18 the information that you have gleaned, have you had
19 occasion to have formed any opinions whatsoever about this
20 matter?

21 **JUROR:** I would think so.

22 **THE COURT:** All right. Very well. Very well.

23 And as a result, here is what I am going to ask you
24 to do. I am going to ask you to sit this one out. I am
25 going to ask you not to discuss this matter with your

1 fellow jurors, but hang tight, because we've got other
2 work that needs to be done.

3 **JUROR:** Okay.

4 **THE COURT:** So, if you will, take your seat.

5 **JUROR:** Okay. Thank you.

6 **THE COURT:** Thank you.

7 **JUROR:** 171.

8 **THE COURT:** All right.

9 Are you figuring out who is out and who is in?

10 **CLERK:** (NO RESPONSE.)

11 **THE COURT:** Are you able to figure out who is out and
12 who is in?

13 **CLERK:** No.

14 **THE COURT:** I'm not helping you one little bit.

15 Have you got it?

16 **COURT REPORTER:** Yes, ma'am.

17 **THE COURT:** Ronda has got it. All right.

18 Yeah. Hi. Come on forward.

19 You can come on and join us, too, now. Don't feel
20 like you have got to sit there away from us. Come on
21 forward with us.

22 I need for Mrs. Cummings to hear you, but we will
23 gather around.

24 Your number is?

25 **JUROR:** 171.

1 **THE COURT:** Okay. Tell me what you know or think you
2 know or have heard or think you have heard.

3 **JUROR:** Well, I saw something on the news about this
4 trial coming up.

5 **THE COURT:** Sure.

6 **JUROR:** Recently. I was at the game when it
7 happened.

8 **THE COURT:** Okay. Okay.

9 **JUROR:** When it all happened, I guess.

10 **THE COURT:** Okay. Now, let's take first of all at
11 the game. Did you hear anything while you are at the
12 game? Did you experience anything?

13 **JUROR:** No, not until I watched the news that night.

14 **THE COURT:** Okay. Okay. So you heard about it at
15 the time of these alleged events.

16 **JUROR:** Yes, ma'am.

17 **THE COURT:** Okay. Do you remember approximately how
18 many -- I guess you are talking about news reports? Is
19 that right?

20 **JUROR:** Yes, ma'am.

21 **THE COURT:** Okay. Do you recall how many news
22 reports you heard? Approximately.

23 **JUROR:** Just the one recently on the news.

24 **THE COURT:** Okay.

25 **JUROR:** Maybe two or three nights ago.

1 **THE COURT:** Okay. Okay. And then at the time of
2 these events, alleged events?

3 **JUROR:** Yeah, I mean, I saw a handful of things about
4 it.

5 **THE COURT:** Sure. Sure.

6 As a result of the events that you heard on the news,
7 or the accounts that you heard on the news, and have heard
8 recently, the matters that you have heard recently on the
9 news, have you had occasion to have formed any opinions
10 regarding this matter whatsoever?

11 **JUROR:** Um, I don't believe so.

12 **THE COURT:** All right. Now, do you believe that you
13 can set aside all the matters that you have heard and set
14 them aside completely so that you are able to make up your
15 mind based solely on what you hear in court while court is
16 in session, being completely unaffected by matters that
17 you have heard?

18 **JUROR:** Um, I believe I can.

19 **THE COURT:** All right. And can you set these matters
20 aside, being completely fair and impartial, both to the
21 State, as well as to Mr. Simms?

22 **JUROR:** Yes, ma'am.

23 **THE COURT:** Very well.

24 **JUROR:** All right.

25 **THE COURT:** Please stay with us.

1 **MR. GASSER:** Can you hold off on him? Can you hold
2 off on him?

3 **THE COURT:** Hold on.

4 **MR. GASSER:** Of all the jurors, I mean, he hesitated
5 on both of those questions. I just want the record to
6 reflect that he hesitated on both of the questions a lot
7 longer than any of the other jurors. As the record will
8 reflect, we have not had any objection, so we would object
9 to that juror.

10 **THE COURT:** Thank you so much. Got it.

11 **MR. GASSER:** Okay.

12 **JUROR:** 222.

13 **THE COURT:** Perfect. Come on forward.

14 I just need enough volume for Mrs. Cummings to hear
15 you. We will gather around.

16 Tell me what you know or think you know or have heard
17 or think you have heard.

18 **JUROR:** Um, if it is the case I'm thinking about,
19 it's when two guys were fighting and one fell into the
20 road and got run over, and that's all, if that's the case.

21 **THE COURT:** And tell me how you know that
22 information.

23 **JUROR:** Newspaper.

24 **THE COURT:** Okay. Recently or in the past?

25 **JUROR:** Both.

1 **THE COURT:** Both?

2 **JUROR:** Yeah. I think there was something just
3 recently, real recently, in the paper about it.

4 **THE COURT:** Yes. Yes.

5 And approximately how many news matters do you think
6 you have read or heard? Approximately. You're not going
7 to remember exactly.

8 **JUROR:** I would say two or three.

9 **THE COURT:** Two or three?

10 **JUROR:** Uh-huh.

11 **THE COURT:** All right. As a result of having read or
12 heard those news accounts, have you had an occasion to
13 develop any opinions regarding this matter at all?

14 **JUROR:** No.

15 **THE COURT:** All right. Do you believe that you can
16 set those news accounts aside completely and make up your
17 mind based solely on what you hear in court while court is
18 in session?

19 **JUROR:** Yeah. Yeah.

20 **THE COURT:** And can you do that, being completely
21 fair and impartial, both to the State, as well as to Mr.
22 Simms?

23 **JUROR:** I think so. Uh-huh.

24 **THE COURT:** Thank you so much. Please stay with us.
25 All right.

1 All right. That's all of these folks.

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
3 THE RECORD IN THE PRESENCE AND HEARING OF THE JURY PANEL:)

4 **THE COURT:** Now, ladies and gentlemen, please allow
5 me to introduce you to the solicitors who will be involved
6 in this matter. I am going to call on Solicitor McDuffie,
7 and I am going to ask her to please introduce the
8 solicitors who are going to participate with her in this
9 trial and the solicitors in her office.

10 Now, the question that is going to follow her
11 introductions, the question is going to be this: Are you
12 related by blood or marriage or acquainted with or have
13 you or any member of your immediate family, to your
14 knowledge, ever been represented by any -- any of the
15 following lawyers?

16 And with that, Ms. McDuffie -- I am going to
17 introduce you to Assistant Solicitor McDuffie, and she is
18 going to take it from the top.

19 **ASSISTANT SOLICITOR MCDUFFIE:** Good morning. My name
20 is Joanna McDuffie. I'm an Assistant Solicitor for the
21 Fifth Judicial Circuit.

22 I am joined by fellow Assistant Solicitor's Meghan
23 Walker and Kathryn Luck Campbell. The three of us will be
24 prosecuting this case.

25 The other solicitor and assistant solicitors in our

1 office are Dan Johnson, ---

2 **THE COURT:** You are going to have to go very slow.

3 **ASSISTANT SOLICITOR MCDUFFIE:** Okay.

4 **THE COURT:** All right. And Dan Johnson is the
5 Solicitor. He is the elected Solicitor for the Fifth
6 Circuit.

7 Yes?

8 **ASSISTANT SOLICITOR MCDUFFIE:** The assistant
9 solicitors in our office are Brittan All, Brent Arant,
10 Kathryn Ashton, Kristen Bales, William Bilton, Margaret
11 Bodman, Richard Cathcart, Daniel Coble, John Conrad,
12 Kendall Corley, Rich Donaldson, Vance Eaton, Paulette
13 Edwards, Dolly Garfield, Jessica Godwin, Dan Goldberg,
14 Josh Golson, Raia Hirsch, Ivy Justice, Foster Mathews,
15 Jennifer McKeller, Hans Pauling, Carter Potts, April
16 Sampson, Jeremiah Shellenberg, Joseph Shenkar, Nicole
17 Simpson, Anne Spears, John Steadman, Saquisha Tobin,
18 Sandra Vriesinga, Justin Williams, and Sheila Mims.

19 **THE COURT:** Thank you so much, Ms. McDuffie.

20 Now, are you related by blood or marriage or
21 acquainted with, or have you or any member of your
22 immediate family, to your knowledge, ever been represented
23 by any of those attorneys? If so, please stand at this
24 time.

25 All right. Very well. And here is how I am going to

1 do this. I don't need any more information than I need.
2 So I am going to ask you to please just answer the
3 question that I ask. I don't need any more information
4 than I am going to ask for.

5 And we will start with you. Tell me your number,
6 please.

7 **JUROR:** 145.

8 **THE COURT:** Tell me who you know.

9 **JUROR:** Several of the assistant solicitors I have
10 worked with when I was the Coordinator for the Richland
11 County ---

12 **THE COURT:** Very well. Very well.

13 Now, what I am going to do -- do you know any of the
14 attorneys involved in this specific case? I should ask
15 that question.

16 **JUROR:** No.

17 **THE COURT:** Very well. Now, as a result of your
18 professional relationship, is that a fair way to describe
19 the relationship?

20 **JUROR:** (NODDED AFFIRMATIVELY.)

21 **THE COURT:** And let me ask this of you. Did you
22 visit in each other's homes, for example?

23 **JUROR:** No.

24 **THE COURT:** So your relationship was a professional
25 relationship? Yes?

1 **JUROR:** Yes.

2 **THE COURT:** All right. And how long ago are we
3 talking about?

4 **JUROR:** I left there in June of 2006.

5 **THE COURT:** Very well. Now, as a result of those
6 relationships, either singularly or all together, do you
7 believe that those relationships might or could in any
8 regard interfere with your ability to be completely fair
9 and impartial, both to the State, as well as to Mr. Simms?
10 And that is a yes or a no answer.

11 **JUROR:** Um, rephrase it?

12 **THE COURT:** You've got it.

13 **JUROR:** I got lost.

14 **THE COURT:** You've got it. As a result of those
15 relationships, just as you have described them, and I need
16 to say either singularly, meaning any one person, or the
17 whole group, you know, it's like if I knew one, it would
18 be okay, but gee, I know them all, so it makes a
19 difference. That's -- that's what that means.

20 **JUROR:** Okay.

21 **THE COURT:** As a result of those professional
22 relationships, might they or could they, got that? Might
23 they or could they, in any respect interfere with your
24 ability to be completely fair and impartial, both to the
25 State, as well as to Mr. Simms?

1 **JUROR:** No.

2 **THE COURT:** Can you set those relationships aside and
3 make up your mind based solely, meaning based only, on
4 what you hear in court while court is in session?

5 **JUROR:** Yes.

6 **THE COURT:** Thank you so much. Please be seated.
7 And your number?

8 **JUROR:** Number 222.

9 **THE COURT:** Tell me who you know.

10 **JUROR:** I know Kathryn Ashton. She's our neighbor.
11 And I know Daniel Coble. He's good friends with my son,
12 went to law school together.

13 **THE COURT:** All right. And as a result of those
14 relationships, -- well, let me ask you this question.
15 Does Mr. Coble and the other ---

16 **JUROR:** Kathryn.

17 **THE COURT:** Yes. Do they visit in your home?

18 **JUROR:** Daniel has.

19 **THE COURT:** All right. And how frequently?

20 **JUROR:** Well, most recently when he was running for
21 City Counsel.

22 **THE COURT:** I understand. I understand.
23 And that's been a few months ago?

24 **JUROR:** Yes.

25 **THE COURT:** And your son, he's in law school. He's

1 -- they're not hanging out at your house anymore. They
2 don't want to hang out so much at your house.

3 **JUROR:** Well, my son who is in law school lives at my
4 house.

5 **THE COURT:** He lives in your house?

6 **JUROR:** Yes. He's in his last year of law school.

7 **THE COURT:** I understand. I'm with you.

8 **JUROR:** He worked with the solicitor's office before
9 he started law school. Now he works with the public
10 defender's office these last few months.

11 **THE COURT:** I understand. So he's doing that now?

12 **JUROR:** Yes.

13 **THE COURT:** All right. He's doing that now. Very
14 well.

15 Now, as a result -- okay. As a result of -- well,
16 I've got to really sort of dissect this. Let me dissect.
17 We're going to put -- were going to put the child aside
18 for just a moment.

19 As a result of their relationships with the two
20 attorneys from the solicitor's office, as a result of
21 those relationships, do you believe that they might or
22 could in any regard interfere with your ability to be
23 completely fair and impartial, both to the State, as well
24 as to Mr. Simms?

25 **JUROR:** I don't think so.

1 **THE COURT:** Okay. Now, let's talk about your child.
2 As a result of the fact that your child is working for the
3 public defender's office as an intern, ---

4 **JUROR:** Right.

5 **THE COURT:** --- do you believe that that might or
6 could in any regard, and any respect, interfere with your
7 ability to be completely fair and impartial, both to the
8 State, as well as to Mr. Simms?

9 **JUROR:** I don't think so.

10 **THE COURT:** Can you set those relationships aside,
11 either individually or in the conglomerate, can you set
12 those relationships aside and make up your mind based on
13 what you hear in court while court is in session?

14 **JUROR:** Yes, ma'am.

15 **THE COURT:** Very well. Thank you. Please be seated.
16 Your number?

17 **JUROR:** 247.

18 **THE COURT:** Tell me who you know.

19 **JUROR:** I actually grew up right around the corner
20 from Daniel Coble.

21 **THE COURT:** Daniel Coble. Anybody else?

22 **JUROR:** No, ma'am.

23 **THE COURT:** Very well. As a result -- well, how
24 often do you see him?

25 **JUROR:** I haven't seen him in ten years.

1 **THE COURT:** You haven't seen him. See, almost my
2 school example. All right. As a result of that
3 acquaintanceship, might that, could that, interfere with
4 your ability to be completely fair and impartial, both to
5 the State, as well as to Mr. Simms?

6 **JUROR:** No.

7 **THE COURT:** Can you set that relationship aside and
8 make up your mind based on what you hear in court while
9 court is in session?

10 **JUROR:** Yes, ma'am.

11 **THE COURT:** Thank you, sir. Please be seated.
12 I did ask you your number, didn't I?

13 **JUROR:** Yes, ma'am.

14 **THE COURT:** Okay.

15 **JUROR:** I can give it to you again.

16 **THE COURT:** No, that's fine.

17 Now, ladies and gentlemen, the alleged victim in this
18 matter, his name is Allen Martin Gasque. Are you related
19 by blood or marriage or acquainted with Allen Martin
20 Gasque? If so, please stand.

21 (NO RESPONSE.)

22 **THE COURT:** And I find no one standing.

23 Now, ladies and gentlemen, please allow me to
24 introduce you to Mr. Curtis James Simms.

25 And, Mr. Simms, if you would stand and face our jury

1 panel, please?

2 And this is Mr. Curtis James Simms.

3 Thank you so much, Mr. Simms. And you may be seated.

4 Ladies and gentlemen, are you related by blood or
5 marriage or acquainted with Mr. Curtis James Simms? If
6 so, please stand at this time.

7 (NO RESPONSE.)

8 **THE COURT:** And I find no one standing.

9 Ladies and gentlemen, please allow me to introduce
10 you to counsel for Mr. Simms.

11 I wonder which one of you is going to jump up first?

12 **MR. GASSER:** Good morning, ladies and gentlemen. My
13 name is Johnny Gasser, a lawyer here in Colombia.

14 **MR. HARRIS:** My name is Greg Harris. We are law
15 partners here on Laurel Street here in Columbia.

16 **THE COURT:** Very well. It's the two of you guys. Is
17 there anybody else in your office?

18 **MR. GASSER:** Sherry Lighten is, but she's not
19 associated with the firm, Your Honor.

20 **THE COURT:** In other words, she is located there
21 physically, but not a member of the firm.

22 **MR. GASSER:** That's correct.

23 **THE COURT:** Very well. Thank you so much.

24 Ladies and gentlemen, are you related by blood or
25 marriage or acquainted with, or have you or any member of

1 your immediate family, to your knowledge, ever been
2 represented by Mr. Gasser, or either of these gentlemen,
3 Mr. Harris? If so, please stand.

4 (NO RESPONSE.)

5 **THE COURT:** And I find no one standing.

6 Now, ladies and gentlemen, I am now going to read to
7 you a list of potential witnesses. The lawyers are so
8 good to me at this point, because they give to me a list
9 of their potential witnesses, because this is my
10 opportunity to ask if any of you know any of these folks.
11 So they do that for me.

12 And, again, these are potential witnesses, and I'm
13 going to go over the list with you. What I'm going to ask
14 you to do, ladies and gentlemen, is I'm going to go over
15 all of the names. Please know that if you need me to go
16 over this list again, it isn't a problem. If you think
17 you heard a name and you want to be certain of it and you
18 need for me to repeat it, please know that's not a
19 problem.

20 My question as to each and every one of these folks
21 is: Are you related by blood or marriage or acquainted
22 with any of these individuals?

23 Now, if you happen to be in the courtroom, I'm going
24 to ask you to please stand as your name is called, because
25 it is so much easier to put a face with a name than simply

1 the name itself. I'm going to begin that process now.

2 Are you related by blood or marriage or acquainted to
3 any of the following individuals: Steven Taylor, Dr. Eric
4 Brown, Travis Holdorf.

5 Thank you so much.

6 Don Robinson, Yvonne Woods, Guy Eckenroth, Rhonda
7 Eckenroth, James Heyward.

8 There he is, way in the back. Thank you, Mr.
9 Heyward.

10 Adam Charles Paxton.

11 Thank you, Mr. Paxton.

12 Lauren Coggin, Clarence Littlejohn, Cassie Radford,
13 John Sharpe, Dale Salmond, Brian Kurn, James Martin.

14 Ahh. Thank you.

15 There is Mr. Martin way back in the back.

16 Thank you, Mr. Martin.

17 James Adams.

18 Ahh, there is Mr. Adams.

19 Thank you, Mr. Adams.

20 Harold Bouknight, Dr. Clay Nichols, Travis Brown.

21 And there's Mr. Brown.

22 Thank you, Mr. Brown.

23 And if I repeat myself, please forgive me, ladies and
24 gentlemen. Dustin Lindsey, Jordan Lindsey.

25 I think I've said this name, forgive me if I am

1 repeating myself, Lauren Coggins. I did, although on one
2 there's an S and the other there isn't an S.

3 Mike Davis, Alan James, Marquis Hall, Ashlyn
4 Thompson, Ton Broome, ---

5 **MR. GASSER:** Your Honor, that would be Toni. I
6 apologize. Toni Broome. It's a female.

7 **THE COURT:** I'm sorry about that. Toni Broome, Dave
8 Byrd, and Dave --

9 Oh, Mr. Byrd, thank you. Thank you. I didn't point
10 you out.

11 There's Mr. Byrd.

12 Thank you, Mr. Byrd.

13 And Dave Lawrence, Dave Lawrence.

14 Are you related by blood or marriage or acquainted
15 with any of those individuals? If so, please stand at
16 this time.

17 (NO RESPONSE.)

18 **THE COURT:** And I find no one standing.

19 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, you failed
20 to call out Major Stan Smith.

21 **THE COURT:** I did?

22 **ASSISTANT SOLICITOR MCDUFFIE:** The tenth one down on
23 the State's witness list.

24 **THE COURT:** I am so sorry. Thank you so much for
25 staying with me.

1 Major Stan Smith. I am so sorry. I am so glad
2 you're here. Actually, I am not, since I skipped over
3 your name. I wish you weren't here. I'm sorry.

4 Are you related by blood or marriage or acquainted
5 with Major Stan Smith? If so, please stand.

6 (NO RESPONSE.)

7 **THE COURT:** And I find no one standing.

8 Thank you for that. Thank you for following along.

9 All right. Now, I have some questions to ask of you.
10 Ladies and gentlemen, just a little bit ago you were
11 introduced to the lawyers that are in the Fifth Circuit
12 Solicitor's Office. I would just ask are you or any
13 member of your immediate family related by blood or
14 marriage or acquainted with an employee in the Fifth
15 Circuit Solicitor's Office or in the office of Mr. Gasser
16 or Mr. Harris? If so, please stand. An employee, as
17 opposed to the lawyers.

18 (NO RESPONSE.)

19 **THE COURT:** All right. I find no one standing.

20 Oh, let me ask this question. All right. Ladies and
21 gentlemen, I'm just going to ask you a couple of questions
22 together, and I don't want you to respond to either
23 question until I have asked a couple of them together, and
24 then I am just going to have you approach. That's the way
25 we are going to do this.

1 The first question that I'm going to ask you is, have
2 you or any member of your immediate family ever been
3 employed by or had a business or professional relationship
4 with the Fifth Circuit Solicitor's Office, S.L.E.D., which
5 is the South Carolina Law Enforcement Division, the
6 Richland County Sheriff's Office, the South Carolina
7 Highway Patrol, the Columbia Police Department, Mr.
8 Gasser, or Mr. Harris? If so, please stand at this time.

9 Do I need to repeat that? I was going to do a couple
10 of them together.

11 Go ahead. Go ahead and tell me the answer to this
12 one. This is a big question. Yeah, I will go ahead and
13 handle this one separately.

14 **JUROR:** My mom works for the Highway Patrol for about
15 fifteen years.

16 **THE COURT:** Would that have an affect on your ability
17 to be completely fair and impartial?

18 **JUROR:** No, Your Honor.

19 **THE COURT:** And your number?

20 **JUROR:** 241.

21 **THE COURT:** Thank you.

22 Anyone else?

23 **JUROR:** Number 222. I just told you my son worked
24 for the solicitor's office prior to going to school.

25 **THE COURT:** Anyone else?

1 **JUROR:** My wife was on city council for twenty years.
2 She's not there anymore.

3 **THE COURT:** Very well. Thank you.

4 Would that have an affect on your ability to be
5 completely fair and impartial, ---

6 **JUROR:** No.

7 **THE COURT:** To both the State, as well as to the
8 defense?

9 **JUROR:** No, ma'am.

10 **THE COURT:** Thank you.

11 And now I am going to ask these two questions
12 together. The first question is this, and don't respond
13 until I've asked both: Have you or any member of your
14 immediate family ever been charged with or been the victim
15 of a crime, other than a traffic ticket?

16 Now, have you or any member of your immediate family
17 ever been charged with or been the victim of a crime?
18 That's the first question.

19 This is the second question. Do you typically and
20 normally attend more than four or five South Carolina
21 football games every year?

22 Let me do that again. Have you or any member of your
23 immediate family ever been the victim of a crime or
24 charged with a crime? That's the first question.

25 The second question is, are you a person who attends

1 normally, customarily, meaning about every year, more than
2 four or five University of South Carolina football games?

3 If you need to respond to either of those questions,
4 I'm going to ask you to please approach, just like we did
5 before.

6 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
7 THE RECORD OUT OF THE HEARING OF THE REMAINING JURY
8 PANEL:)

9 **THE COURT:** Do you want to come up here so that you
10 can keep up? You don't want to depend on my notes. You
11 can count on Ronda's, though. Not mine.

12 Hi. And your number?

13 **JUROR:** 87.

14 **THE COURT:** Great. Okay. Come on up. I just need
15 enough volume for Mrs. Cummings to hear you.

16 **JUROR:** Yes, ma'am.

17 **THE COURT:** Which one are you responding to?

18 **JUROR:** Football games.

19 **THE COURT:** Okay.

20 **JUROR:** I'm a graduate of USC. I graduated in 2011,
21 so I attended the 2010 football season, all home games.
22 And in the past couple of years, I've only attended --
23 actually attended approximately three or four games, but I
24 tailgated for almost all of the home games.

25 **THE COURT:** That's -- thank you for your response.

1 Thank you. Thank you so much.

2 Yes?

3 JUROR: 162.

4 THE COURT: Wonderful. Come on forward.

5 Yes?

6 JUROR: Okay. I recently -- I recently just
7 graduated from the University of South Carolina.

8 THE COURT: Yes.

9 JUROR: And went to the football games for the past
10 four years.

11 THE COURT: Yes.

12 JUROR: Well, five years, because I took another
13 semester.

14 THE COURT: Yes.

15 JUROR: So that was, I guess, the extent.

16 THE COURT: Thank you for your response.

17 JUROR: And I do have one real quick question.

18 THE COURT: Sure.

19 JUROR: When you mentioned the names, ---

20 THE COURT: Yes?

21 JUROR: --- you said Dr. Eric Brown.

22 THE COURT: Okay.

23 JUROR: I actually work -- I do landscaping and
24 maintenance in northeast Colombia.

25 THE COURT: Yes.

1 **JUROR:** I mean, is there any way I can identify if
2 that's him or not?

3 **THE COURT:** Well, let's play 'like it is. Let's
4 assume it is. How about that?

5 **JUROR:** Okay.

6 **THE COURT:** Lets assume. Let's assume ---

7 **JUROR:** Okay.

8 **THE COURT:** It's wonderful that you have done that,
9 but let's assume it is the Dr. Eric Brown. As a result --
10 do you do work for him as a part of your duties of your
11 company, or do you individually work for just him?

12 **JUROR:** No, as part of the company.

13 **THE COURT:** As part of the company.

14 **JUROR:** Yes, ma'am.

15 **THE COURT:** As a result of the fact that when working
16 for your company you do work for Dr. Eric Brown, might
17 that or could that interfere with your ability to be
18 completely fair and impartial, both to the State, as well
19 as to Mr. Simms?

20 **JUROR:** No, I don't think it would affect my ability.

21 **THE COURT:** And can you set that relationship, that
22 professional relationship aside, and make up your mind
23 based upon what you hear in court while court is in
24 session?

25 **JUROR:** Uh-huh.

1 **THE COURT:** Can you set that relationship aside?

2 **JUROR:** Yes. Yes, ma'am.

3 **THE COURT:** Okay. Now, does -- would he pay you
4 directly, or you just get paid by the company?

5 **JUROR:** I get paid by the company.

6 **THE COURT:** Okay.

7 **JUROR:** I mean, I work for my dad. It's a small
8 business.

9 **THE COURT:** I understand. All right. Very well.

10 **JUROR:** Okay. All right.

11 **THE COURT:** All right. Thank you. Please be seated.
12 Thank you so kindly.

13 **JUROR:** 241, Your Honor.

14 **THE COURT:** Hi. Yes, sir? Which one are you
15 responding to?

16 **JUROR:** Actually, I'm responding to both.

17 **THE COURT:** Okay. Yes?

18 **JUROR:** My brother-in-law is currently in the middle
19 of a felony DUI case.

20 **THE COURT:** Okay.

21 **JUROR:** Where he was involved with -- he was swerving
22 to miss a lady, but yet hitting someone else.

23 **THE COURT:** Okay. All right.

24 **JUROR:** And the person was very much injured.

25 **THE COURT:** Okay.

1 **JUROR:** And I attend at least half of the football
2 games.

3 **THE COURT:** Okay. Okay.

4 Now, as a result of this experience with your
5 brother, do you believe that that might or could in any
6 regard impact on your ability to be completely fair and
7 impartial, both to the State, as well as to Mr. Simms?

8 **JUROR:** Absolutely not.

9 **THE COURT:** Can you set that aside and make up -- can
10 you set your brother's situation aside and make up your
11 mind based upon what you hear in court while court is in
12 session?

13 **JUROR:** Yes, ma'am.

14 **THE COURT:** Very well. Stay with us.

15 **JUROR:** 145.

16 **THE COURT:** Yes, ma'am? Yes, ma'am?

17 **JUROR:** I was the victim of a break-in in 1980. A
18 young man broke into my house when I was there with both
19 of my daughters.

20 **THE COURT:** Do you believe that that experience might
21 or could have an affect on your ability to be completely
22 fair and impartial?

23 **JUROR:** No. No.

24 **THE COURT:** Thank you so much. Please stay with us.

25 And you are Juror Number 60?

1 **ASSISTANT SOLICITOR CAMPBELL:** 168.

2 **THE COURT:** 168.

3 **JUROR:** Yes, ma'am.

4 **THE COURT:** Hi. Yes, sir?

5 **JUROR:** I usually attend about four or five games a
6 year.

7 **THE COURT:** Okay. Thank you. That's it.

8 **JUROR:** Okay. Thank you.

9 **THE COURT:** Thank you, sir.

10 **JUROR:** 234.

11 **THE COURT:** Thank you. Yes, ma'am?

12 Which question are you responding to?

13 **JUROR:** Both.

14 **THE COURT:** Okay. We're listening.

15 **JUROR:** Oh. My cousin was kidnapped last summer and
16 shot a few times. And yes, I do go to football games.

17 **THE COURT:** Okay. And is that matter pending?

18 **JUROR:** Yes.

19 **THE COURT:** All right. Where is it pending?

20 **JUROR:** Richland County.

21 **THE COURT:** In Richland County.

22 All right. Here's what I'm going to do. I'm making
23 this decision. I'm going to ask you to sit this one out.

24 **JUROR:** Okay.

25 **THE COURT:** I'm going to ask you -- of course, I do

1 this in an abundance of caution. Please don't discuss
2 this matter with your fellow jurors.

3 I just -- I don't think that puts you in -- I don't
4 think that puts you in a fair position.

5 **JUROR:** Okay.

6 **THE COURT:** But hang with me.

7 **JUROR:** Okay. Thank you.

8 **THE COURT:** Thank you so much.

9 **JUROR:** 89.

10 **THE COURT:** Hi. Come on down.

11 All right. Which question are you responding to?

12 **JUROR:** Related to a family member who has been
13 convicted of a crime.

14 **THE COURT:** Yes.

15 **JUROR:** My younger brother was convicted. I can't
16 remember exactly, one of them was robbery.

17 **THE COURT:** Okay.

18 **JUROR:** And kidnapping, maybe.

19 **THE COURT:** Okay. How long ago?

20 **JUROR:** Mmm, ---

21 **THE COURT:** Years? Months?

22 **JUROR:** Maybe 2009. Three years ago?

23 **THE COURT:** Three years ago. All right. Where?

24 **JUROR:** In Marion County.

25 **THE COURT:** In Marion County. All right.

1 As a result of that experience, do you believe that
2 that might or could impact or affect your ability to be
3 completely fair and impartial, both to the State, as well
4 as Mr. Simms?

5 **JUROR:** No.

6 **THE COURT:** Thank you.

7 Can you set that experience aside and make up your
8 mind based on what you hear in court while court is in
9 session?

10 **JUROR:** Yes, ma'am.

11 **THE COURT:** Thank you so much.

12 **JUROR:** 38.

13 **THE COURT:** Yes? Hi. Good morning again.

14 Yes? Yes, sir? Tell me which question you're
15 responding to.

16 **JUROR:** Okay. I was the victim, and I was charged
17 with a crime.

18 **THE COURT:** Okay. Tell me about ---

19 **JUROR:** It's the same incident.

20 **THE COURT:** It's the same. Okay. When was it?

21 **JUROR:** June of 2000.

22 **THE COURT:** Okay. Very well.

23 **JUROR:** In Lexington.

24 **THE COURT:** Okay.

25 **JUROR:** I hired some movers.

1 **THE COURT:** Okay.

2 **JUROR:** And I was beat up by the mover in a storage
3 unit in Lexington.

4 **THE COURT:** Okay.

5 **JUROR:** And he went to the magistrate's court, and
6 the magistrate's court swore out a warrant against me.

7 **THE COURT:** Okay. Okay.

8 **JUROR:** So we had to go to a jury trial for that.

9 **THE COURT:** Okay.

10 **JUROR:** I was found not guilty.

11 **THE COURT:** Okay.

12 **JUROR:** And then I swore out a warrant against him.

13 **THE COURT:** Okay.

14 **JUROR:** And he pled nolo.

15 **THE COURT:** Got it. As a result of that experience,
16 do you believe that that experience could in any regard
17 interfere with your ability to be completely fair and
18 impartial, both to the State, as well as to Mr. Simms?

19 **JUROR:** Yeah, I mean, I wouldn't be partial. I'd be
20 impartial. How about that?

21 **THE COURT:** All right. That's a tough question. In
22 other words, can you set that experience completely aside
23 and make up your mind based upon what you hear in court
24 while court is in session?

25 **JUROR:** Yes.

1 **THE COURT:** Thank you. Please stay with us.

2 **JUROR:** 200.

3 **THE COURT:** Yes, ma'am? I'm listening. Which
4 question are you responding to?

5 **JUROR:** The first one.

6 **THE COURT:** The first one? Okay.

7 **JUROR:** While visiting in Spain, my mother's house
8 was broken into, a robbery.

9 **THE COURT:** All right. All right.

10 Now was the house in Spain, or the house ---

11 **JUROR:** Here.

12 **THE COURT:** Here.

13 **JUROR:** In Columbia.

14 **THE COURT:** Okay. And how long ago are we talking
15 about?

16 **JUROR:** 1997.

17 **THE COURT:** Okay. As a result of that experience, do
18 you believe that that might or could interfere with your
19 ability to be completely fair and impartial, both to the
20 State, as well as to Mr. Simms?

21 **JUROR:** Uh-uh.

22 **THE COURT:** No. Thank you. Please stay with us.

23 **JUROR:** 119.

24 **THE COURT:** Hi. Tell me which question you're
25 responding to.

1 **JUROR:** Family member convicted.

2 **THE COURT:** Okay.

3 **JUROR:** In I think '97, my uncle was involved in a
4 drug bust where he was convicted of distribution.

5 **THE COURT:** Okay. Okay. As a result of that
6 experience, do you believe that that might or could
7 interfere with your ability to be completely fair and
8 impartial, both to the State, as well as to Mr. Simms?

9 **JUROR:** No, ma'am.

10 **THE COURT:** Can you set that experience that your
11 uncle had aside and make up your mind based on what you
12 hear in court while court is in session?

13 **JUROR:** Yes, ma'am.

14 **THE COURT:** Thank you, ma'am.

15 **JUROR:** Thank you.

16 **MR. GASSER:** I couldn't hear her, Your Honor.

17 **THE COURT:** Her uncle was busted for drugs in '96.

18 **MR. GASSER:** Oh, okay.

19 **THE COURT:** Hi. Your number is?

20 **JUROR:** 34.

21 **THE COURT:** Okay. Yes, ma'am. 34.

22 Yes, ma'am? Tell me which question you're responding
23 to.

24 **JUROR:** Family members.

25 **THE COURT:** Yes?

1 **JUROR:** I had a son that was -- used to have drug
2 dealing and gun charges, but since then, he's gone to
3 college and got a couple degrees and working.

4 **THE COURT:** And so this was some time ago?

5 **JUROR:** Yes, ma'am.

6 **THE COURT:** Yes. All right. And where -- where was
7 your son?

8 **JUROR:** He was in Columbia.

9 **THE COURT:** He was in Columbia.

10 **JUROR:** Yes, ma'am.

11 **THE COURT:** All right. Very well.

12 Now, do you know -- do you know whether or not the
13 solicitor's office here in Richland County was involved?

14 **JUROR:** They were.

15 **THE COURT:** They were?

16 **JUROR:** But he went to drug court.

17 **THE COURT:** He went to drug court?

18 **JUROR:** In Kershaw County.

19 **THE COURT:** In Kershaw County. Very well. Very
20 well.

21 All right. As a result of those experiences -- and
22 how long are we talking about? We've got to be talking
23 about some time ago. How long?

24 **JUROR:** I think about 2004.

25 **THE COURT:** 2004. So several years ago.

1 **JUROR:** Yes, ma'am.

2 **THE COURT:** As a result of those experiences, do you
3 believe that those experiences might or could in any
4 regard interfere with your ability to be completely fair
5 and impartial, both to the State, as well as to Mr. Simms?

6 **JUROR:** It wouldn't affect me at all.

7 **THE COURT:** All right. And can you set those
8 experiences aside, ---

9 **JUROR:** Yes, ma'am.

10 **THE COURT:** --- and make up your mind based on what
11 you hear in court?

12 **JUROR:** Yes, ma'am.

13 **THE COURT:** While court is in session?

14 **JUROR:** Yes, ma'am.

15 **THE COURT:** Thank you. Please stay with us.

16 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, if I may
17 bring up one thing?

18 **THE COURT:** Sure.

19 **ASSISTANT SOLICITOR CAMPBELL:** I know there is one
20 juror out there, I just happened to see his number, who
21 has been convicted of a crime and did not come forward. I
22 don't know if you want me to wait until he gets called to
23 move to strike him for cause, or should I bring that up
24 now? There may be more than one. I just noticed one.
25 Because you were very specific, I kind of want to do it

1 now.

2 **THE COURT:** What's his number?

3 **ASSISTANT SOLICITOR WALKER:** 97.

4 **THE COURT:** I'd kind of like to get him out now.

5 **ASSISTANT SOLICITOR CAMPBELL:** I believe it's 97.

6 He's in the front row.

7 **THE COURT:** Juror Number 97, can you come here just a
8 second. I've got to ask a question.

9 **ASSISTANT SOLICITOR CAMPBELL:** I just happened to
10 notice his number.

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
12 THE RECORD OUT OF THE HEARING OF THE REMAINING JURY
13 PANEL:)

14 **THE COURT:** Hey. Now, I could be wrong. I could be
15 wrong, but let me ask. They would have asked you
16 downstairs if you've ever been convicted of a crime
17 punishable by imprisonment for more than a year and your
18 civil rights not restored by pardon or amnesty. Do you
19 know about that? Do you have a record?

20 **JUROR:** Not that I know of.

21 **THE COURT:** Have you ever been charged with a crime?

22 **JUROR:** I think so.

23 **THE COURT:** You have? Okay. Okay. And do you know
24 what the crime was? Do you remember?

25 **JUROR:** Falsely accused.

1 **THE COURT:** Okay. Okay. Of something.

2 **JUROR:** Uh-huh.

3 **THE COURT:** Do you know, has it been a long time ago?

4 **JUROR:** Yes.

5 **THE COURT:** Okay. Would you do me a big, big favor
6 and just go stand back near that table?

7 **JUROR:** Yes, ma'am.

8 **THE COURT:** So we can talk about you, and then I'll
9 have you come back up.

10 All right. Y'all need to tell me what y'all know
11 about him.

12 **ASSISTANT SOLICITOR CAMPBELL:** It was CDV and assault
13 and battery, Your Honor. They don't carry more than a
14 year; however, he didn't respond to your question: Have
15 you ever been charged with a crime?

16 That was your specific question. That would be the
17 basis for our moving to strike for cause, because he was
18 not truthful.

19 **THE COURT:** Okay. I'll strike him for not
20 responding. We'll just take him out.

21 **MR. HARRIS:** I would only ask if there are any
22 similarly situated individuals out there that didn't get
23 called up.

24 **THE COURT:** What do you mean?

25 **MR. HARRIS:** I don't have the information they have.

1 I wonder if there's anybody else ---

2 **ASSISTANT SOLICITOR CAMPBELL:** We don't know who else
3 is out there. I can't recognize them. I'll be glad to,
4 if you want me to, I can get the list and see if anybody
5 else didn't respond.

6 **THE COURT:** If you will let me know when they come
7 up?

8 **ASSISTANT SOLICITOR CAMPBELL:** I'll do that.

9 **MR. HARRIS:** Perfect.

10 **THE COURT:** That will be perfect.

11 **MR. HARRIS:** Thank you.

12 **THE COURT:** Just say: Can we approach?

13 **ASSISTANT SOLICITOR CAMPBELL:** Thank you.

14 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
15 THE RECORD IN THE PRESENCE AND HEARING OF THE JURY PANEL:)

16 **THE COURT:** All right. Ladies and gentlemen, I'm
17 going to stand here in case anybody needs to come up.
18 This is going to be my last question, and it's general,
19 and I mean it to be general.

20 Here it is: Do you know any reason why you ought
21 not, should not, could not, be a juror in this case, being
22 ready, willing, and able to be completely fair and
23 impartial, both to the State, as well as to Mr. Simms,
24 being ready, willing, and able to make up your mind, based
25 solely on what you hear in court while court is in

1 session, being completely unaffected by matters, a term
2 that is used, extraneous, by matters outside the court?

3 Now, it could be anything. It could be, you know,
4 you were downstairs a long time talking to the judge
5 downstairs. You were shy. Now you've been around now.
6 You've warmed up. You're a little more comfortable
7 telling me maybe what you didn't tell downstairs.

8 You know, it might be that in between being
9 downstairs and upstairs, somebody ran up to you and shook
10 you and said: I don't know what's going on at your house,
11 but there's somebody from Publisher's Clearing House, and
12 they've got a check and flowers and balloons, and you're
13 kind of distracted.

14 And this is a true story. This is a true story. I
15 reached this point in the qualification of the jury in
16 Dorchester County -- I shouldn't have told you that,
17 because y'all are going to have a funny feeling about
18 people from Dorchester County, I reached this point in
19 jury qualification, and this darling young man stood up
20 and said: Judge, my wife's in labor here at Trident
21 Hospital with our first baby. Can I go?

22 Is anybody in labor? Is anybody's loved one in
23 labor?

24 (NO RESPONSE.)

25 **THE COURT:** Okay. Because I would want you to go if

1 your loved one is in labor, or if you are in labor, I
2 definitely would like for you to go.

3 Very well. I find that our jury is qualified.

4 Now, let me tell you what happens next. Here's what
5 happens next. I'd like to tell you that many years, and
6 I'm not telling you how long ago, because then you will
7 know how old I am, and I don't want you to know that, so I
8 am not going to tell you that, but I was called, and this
9 is going to be a list that is going to be called. If your
10 name is called, I want you first of all stand up, make
11 your way, come, make your way and stand like somewhere in
12 here. Anywhere in here. Just stand somewhere in here.

13 **BAILIFF:** They stand in front of the microphone.

14 **THE COURT:** Huh?

15 **BAILIFF:** They stand in front of the microphone.

16 **THE COURT:** They would like you to stand in front of
17 the microphone, which is here.

18 When my name got called, I wish I could have left my
19 arms at my bench, because I didn't know what to do with my
20 hands when I got here. Bring your hands with you. It is
21 okay. Stand here.

22 You are first going to hear from the State, and
23 you're going to hear one of two things. They are either
24 going to say: Present the juror.

25 And that means just stand there.

1 Or you will hear: Excuse the juror.

2 If you hear, excuse the juror, please take your seat
3 back into the audience. If you hear, excuse the juror
4 from either one of these sides, I don't want anybody to be
5 embarrassed. There are about two million things that go
6 into the selection of a jury that goes through a lawyer's
7 head. I can promise you that the lawyers mean you no
8 embarrassment. I promise you that. So, if you hear you
9 are excused, you are just to go take your seat back in the
10 audience.

11 If you hear, present the juror, stay here. Then you
12 will hear from the defense and you will hear either, seat
13 the juror, at which point you will sit somewhere over
14 there. They will tell you where.

15 Or, if you hear, excuse to juror, again, please take
16 your seat back into the audience.

17 Now, one alternate? Two alternates? Two alternates.
18 All right, two-and-one on the two alternates. Very well.

19 And now, I am going to hush and turn it over to Madam
20 Clerk.

21 Oh, let me ask this question. Do you wave the
22 selection of the jury from a small child or blind person?
23 By the State?

24 **ASSISTANT SOLICITOR CAMPBELL:** We wave it, Your
25 Honor.

1 **MR. HARRIS:** Yes, Your Honor.

2 **THE COURT:** Thank you.

3 **CLERK:** Ladies and gentlemen, as I call your name, if
4 you will come forward, please bring all personal items
5 that you may have with you.

6 Juror Number 45, Sang Chi.

7 **THE COURT:** Come on down.

8 **CLERK:** Come in front of the microphone.

9 **THE COURT:** I did a really bad job. I'm sorry.

10 **CLERK:** What says the State?

11 **JUROR:** I'll tell what the truth is.

12 **THE COURT:** Hold on. Just listen to them. You just
13 hang right there.

14 **MR. HARRIS:** Judge, may we approach briefly?

15 **THE COURT:** Sure.

16 **MR. HARRIS:** Thank you very much.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
18 RECORD OUT OF THE HEARING OF THE JURY PANEL. THEREAFTER,
19 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
20 PRESENCE AND HEARING OF THE JURY PANEL:)

21 **THE COURT:** Pronounce your last name. Is it Chi or
22 Chi?

23 **JUROR:** Chi.

24 **THE COURT:** I don't want to mess it up. I want to do
25 it right. Thank you, sir. We got your communication.

1 Thank you. You may be seated. Thank you so much.

2 **CLERK:** Juror Number 168, Derrick McLellan.

3 What says the State?

4 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
5 juror.

6 **CLERK:** What says the defense?

7 **MR. GASSER:** Please seat Mr. McLellan.

8 **CLERK:** Please have a seat in the jury box.

9 Juror Number 250, Brigitte Stringfield.

10 **MR. GASSER:** The number again, please?

11 **CLERK:** 250.

12 **MR. GASSER:** Thank you.

13 **CLERK:** What says the State?

14 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
15 juror.

16 **CLERK:** What says the defense?

17 **MR. GASSER:** Please excuse the juror.

18 **CLERK:** Please return to the back of the courtroom.

19 Juror Number 287, William White.

20 What says the State?

21 **ASSISTANT SOLICITOR CAMPBELL:** Please excuse the
22 juror.

23 **CLERK:** Please return to the back of the courtroom.

24 Juror Number 63, Eric Dent.

25 What says the State?

1 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
2 juror.

3 **CLERK:** What says the defense?

4 **MR. GASSER:** Please present Mr. Dent.

5 **CLERK:** Please have a seat in the jury box.

6 Juror Number 186, Kathleen Naramore.

7 What says the State?

8 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
9 juror.

10 **CLERK:** What says the defense?

11 **MR. GASSER:** Please excuse Ms. Naramore.

12 **CLERK:** Please return to the back of the courtroom.

13 Juror Number 119, Jalise Jackson.

14 What says the State?

15 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
16 juror.

17 **CLERK:** What says the defense?

18 **MR. GASSER:** Please seat Ms. Jackson.

19 **CLERK:** Please have a seat in the jury box.

20 Juror Number 177, Yolanda Montgomery.

21 What says the State?

22 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
23 juror.

24 **CLERK:** What says the defense?

25 **MR. GASSER:** Please excuse Ms. Montgomery.

1 **CLERK:** Please return to the back of the courtroom.

2 Juror Number 185, Jennifer Myers.

3 What says the State?

4 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
5 juror.

6 **CLERK:** What says the defense?

7 **MR. GASSER:** Please seat Ms. Myers.

8 **CLERK:** Please have a seat in the jury box.

9 Juror Number 200, Kay Patterson.

10 What says the State?

11 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
12 juror.

13 **CLERK:** What says the defense?

14 **MR. GASSER:** Please excuse Ms. Patterson.

15 **CLERK:** Please return to the back of the courtroom.

16 Juror Number 246, Willa Stephens.

17 What says the State?

18 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
19 juror.

20 **CLERK:** What says the defense?

21 **MR. GASSER:** Please seat Ms. Stephens.

22 **CLERK:** Please have a seat in the jury box.

23 Juror Number 247, Carter -- Carter Stiglbauer.

24 What says the State?

25 **ASSISTANT SOLICITOR CAMPBELL:** Please excuse the

1 juror.

2 **CLERK:** Please return to the back of the courtroom.

3 Juror Number 184, Cherish Mullins.

4 What says the State?

5 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, may we
6 approach?

7 **THE COURT:** Sure.

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE

9 RECORD OUT OF THE HEARING OF THE JURY PANEL.

10 THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD ON
11 THE RECORD IN THE PRESENCE AND HEARING OF THE JURY
12 PANEL:)

13 **THE COURT:** You may take your seat.

14 **CLERK:** Juror Number 269, Charles Tolliver.

15 What says the State?

16 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
17 juror.

18 **CLERK:** What says the defense?

19 **MR. GASSER:** Please seat Mr. Tolliver.

20 **CLERK:** Please have a seat in the jury box.

21 Juror Number 5, Chrystal Anderson.

22 What says the State?

23 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, may we
24 approach?

25 **THE COURT:** Sure.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
2 RECORD OUT OF THE HEARING OF THE JURY PANEL. THEREAFTER,
3 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
4 PRESENCE AND HEARING OF THE JURY PANEL:)

5 **THE COURT:** You may take your seat.

6 **CLERK:** Number 87, Allison Forshay.

7 What says the State?

8 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
9 juror.

10 **CLERK:** What says defense?

11 **MR. GASSER:** Please seat Ms. Forshay.

12 **CLERK:** Please have a seat in the jury box.

13 Juror Number 222, Julian Ruffin.

14 What says the State?

15 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
16 juror.

17 **CLERK:** What says the defense?

18 **MR. GASSER:** Please excuse Mr. Ruffin.

19 **CLERK:** Please return to the back of the courtroom.

20 Juror Number 85, Etsuko Fonville.

21 What says the State?

22 **MR. GASSER:** May we approach?

23 **THE COURT:** Sure.

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
25 RECORD OUT OF THE HEARING OF THE JURY PANEL. THEREAFTER,

1 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
2 PRESENCE AND HEARING OF THE JURY PANEL:)

3 **CLERK:** Ms. Fonville, you may go back to your seat.
4 Juror Number 262, Theodore Thompson.

5 What says the State?

6 **ASSISTANT SOLICITOR CAMPBELL:** Please excuse the
7 juror.

8 **CLERK:** Please return to the back of the court.
9 Juror Number 198, Sharon Parker.

10 What says the State?

11 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
12 juror.

13 **CLERK:** What says the defense?

14 **MR. GASSER:** Please seat Ms. Parker.

15 **CLERK:** Please have a seat in the jury box.

16 Juror Number 171, Michael Meredith.

17 What says the State?

18 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
19 juror.

20 **CLERK:** What says the defense?

21 **MR. GASSER:** Please seat Mr. Meredith.

22 **CLERK:** Please have a seat in the jury box.

23 Juror Number 145, Patricia Lawter.

24 What says the State?

25 **ASSISTANT SOLICITOR CAMPBELL:** Please present the

1 juror.

2 **CLERK:** What says the defense?

3 **MR. GASSER:** Please excuse the juror.

4 **CLERK:** Please have a seat back in the courtroom.

5 **MR. GASSER:** I didn't get her number. I'm sorry.

6 **CLERK:** 145.

7 **MR. GASSER:** Thank you very much.

8 **CLERK:** Juror Number 103, Lesia H-A-B-T-E.

9 What says the State?

10 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
11 juror.

12 **CLERK:** What says the defense?

13 **MR. GASSER:** Please excuse the juror.

14 **CLERK:** Please return to the back of the courtroom.

15 Juror Number 169, Jacquelyn McNeil.

16 What says the State?

17 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
18 juror.

19 **CLERK:** What says the defense?

20 **MR. GASSER:** Please seat Ms. McNeil.

21 **CLERK:** Please have a seat in the jury box.

22 Juror Number 251, Monica Strother.

23 What says the State?

24 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
25 juror.

1 **CLERK:** What says the defense?

2 **MR. GASSER:** Please excuse the juror.

3 **CLERK:** Please return to the back of the courtroom.

4 Juror Number 242, Taibah Smith.

5 What says the State?

6 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
7 juror.

8 **CLERK:** What says the defense?

9 **MR. GASSER:** Please seat Ms. Smith.

10 **CLERK:** Please have a seat in the jury box.

11 Juror Number 241, John Smith.

12 What says the State?

13 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
14 juror.

15 **CLERK:** What says the defense?

16 **MR. GASSER:** Please seat Mr. Smith.

17 **CLERK:** Please have a seat in the jury box.

18 Juror Number 104, Marcie Hall.

19 What says the State?

20 **ASSISTANT SOLICITOR CAMPBELL:** Please excuse the
21 juror.

22 **CLERK:** Please return to the back of the courtroom.

23 Juror Number 89, April Frederick.

24 Does the State challenge for cause?

25 **ASSISTANT SOLICITOR CAMPBELL:** Please present the

1 juror.

2 **CLERK:** What says the defense?

3 **MR. GASSER:** Please seat Ms. Frederick.

4 **CLERK:** Please have a seat in the jury box.

5 Juror Number 254, Ribanug Tahsoh.

6 What says the State?

7 **ASSISTANT SOLICITOR CAMPBELL:** Please present the
8 juror.

9 **CLERK:** What says the defense?

10 **MR. GASSER:** Please seat Mr. Tahsoh.

11 **CLERK:** Please have a seat in the jury box.

12 **THE COURT:** Thank you so much.

13 Are there any matters regarding the qualification or
14 the selection of the jury from the State?

15 **ASSISTANT SOLICITOR CAMPBELL:** Beg the Court's
16 indulgence?

17 **THE COURT:** All right.

18 **ASSISTANT SOLICITOR CAMPBELL:** Nothing from the
19 State, Your Honor.

20 **THE COURT:** From the defense?

21 **MR. GASSER:** Nothing from the defense, Your Honor.

22 **THE COURT:** Very well.

23 (WHEREUPON, THE REMAINING JURY PANEL WAS RELEASED.

24 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE

25 PRESENCE AND HEARING OF THE JURY:)

1 **THE COURT:** Counsel, let me see you for a second,
2 please.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
4 RECORD OUT OF THE HEARING OF THE JURY. THEREAFTER, THE
5 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
6 PRESENCE AND HEARING OF THE JURY:)

7 **THE COURT:** Ladies and gentlemen, hello, hello again.
8 Let me -- I want to do -- in just a moment, I am going to
9 give you an overview of what we are going to be doing and
10 in just a few moments, I am going to be releasing you for
11 your lunch. But what I wanted you to do is go with our
12 bailiffs, and they are going to show you where your jury
13 room is and how you are going to come and go from your
14 jury room after your lunch.

15 When you return from your lunch, then there are going
16 to be a few preliminary remarks that I am going to make to
17 you. You are going to be sworn in as the jury in this
18 case, and then we are going to get right into the trial of
19 this case. I wanted to give you that overview.

20 Now, ladies and gentlemen, there are a few
21 preliminary remarks that I want to make to you even before
22 we leave each other while you go to your lunch. And I am
23 going to give you some, if not all, of these instructions
24 each and every time that we leave each other. The first
25 instruction that I'm going to give you each and every time

1 we leave each other is this, do not discuss this matter or
2 allow anyone to discuss it with you.

3 Now, why in the world would I tell you that,
4 particularly at this juncture when we haven't even started
5 a trial? Well, I've read you some of the allegations of
6 the indictment and you have met some folks, so you have a
7 little bit of information. Because you have a little bit
8 of information, it is appropriate that I would give you
9 that instruction now. Do not discuss this matter or allow
10 anyone to discuss it with you.

11 But what is the underlying reason that I would give
12 you that instruction at all? Well, it is this. We have
13 learned from trying cases in the United States for over
14 two hundred years, what we have learned is that apparently
15 the way we are put together as human beings, if we begin
16 to talk about something, we begin to form opinions about
17 it. Apparently it's the way we are made.

18 So the reason that I'm going to give you that
19 instruction is so that I may support your ability to
20 listen open-mindedly to all of the evidence that is
21 presented to you, evidence that is going to come in one
22 little piece at a time. And so it's important that you
23 listened open-mindedly to all of it and that you not make
24 up your mind about anything until you have heard all of
25 the evidence, the arguments of counsel, and my charge on

1 the law.

2 So the reason that I'm going to give you that
3 instruction is simply to support your ability to listen to
4 open-mindedly to all of the evidence that is presented to
5 you. And that's the reason for it.

6 Now, ladies and gentlemen, we've got to talk about
7 some other issues. We might as well sort of get to it
8 now. You mustn't have any communication device with you
9 while you are serving on a jury. Now, that's like
10 cellphones. It used to be beepers. Does anybody carry a
11 beeper anymore? I don't think so.

12 But you can't have a cellphone. You can't have a
13 little, teeny tiny, itty-bitty computer. You can't have
14 any communication device with you while you're serving on
15 a jury.

16 And you say: Well, why in the world would that be
17 so? Well, I will tell you.

18 We were trying a case in Charleston about five years
19 ago and the jury reached -- during its deliberations, the
20 jury reached a little bump in the road, and somebody said:
21 Ahh, I've got a buddy who knows all about this. I've got
22 this.

23 So they called him up on the cellphone and he asked
24 the buddy about what it was that the jury was having a
25 question about.

1 Well, guess what? That was evidence or information
2 that the jury had received while court wasn't in session
3 in the courtroom, and the entire trial had to be scrapped.

4 Since then, we tell jurors as strongly as we know, do
5 not bring your cellphone or computer or laptop or iPad or
6 Kindle. They've got lots of other new names. Your
7 windows-thing, anything that has the ability to
8 communicate with the outside world with you while you're
9 serving on jury duty.

10 Now, having said that, we are all tethered to
11 cellphones. If you forget and you bring it with you, if
12 you will just let one of our bailiffs know, they will take
13 it and they will keep it with them until we either take
14 the afternoon break or we are concluded for the day.

15 However, if you think you can turn that sucker off
16 and we won't know it, it will turn itself back on, and you
17 know it will ring, and it will ring and some ring you have
18 never heard. It will rat you out. You know it will.

19 So please, if you forget, just let us know and we
20 will take good care of your cellphone or other
21 communication device while you are serving on a jury. You
22 must not have it in your possession while you are serving.
23 So please just let us know, and we will take good care of
24 it.

25 Now, ladies and gentlemen, do not listen to anything,

1 do not read anything about this matter while you are
2 serving on the jury. And that means television, radio,
3 Internet, newspapers. You must receive all of the
4 information here in court while court is in session.

5 Now, I used to tell people no Columbo, but there is
6 no more Columbo. And y'all are too young probably to have
7 watched that television show. Columbo was this fellow who
8 used to go out and do all these investigations and was
9 sort of an interesting character.

10 Do not do any investigation regarding this matter.
11 Don't go on the Internet. Don't go to the place of these
12 events. Don't do anything that would even appear to be
13 any sort of investigation. Don't go looking up words on
14 the Internet. You must receive all of the information
15 from which you will make up your minds here in court while
16 court is in session, and that includes -- wait a minute
17 now. There is a word for it. Social networking. Don't
18 Link-In, don't Facebook, don't go to MySpace. Don't do
19 any of that social networking with regards to this case.

20 There have actually been -- I heard a lecture over
21 the weekend. There have actually been jurors who have
22 been doing that during the course of a trial. That would
23 be highly improper.

24 You must not communicate with regards to anyone about
25 this trial. That means your fellow jurors, your family,

1 your friends, anybody on Facebook or any other social
2 networking at all.

3 I am going to emphasize once more, you must receive
4 all of the information from which you will make up your
5 mind here in court while court is in session. In fact,
6 should anyone try to communicate with you about this case,
7 ladies and gentlemen, I'm going to ask you to please get
8 their name, if not their name, a description and report
9 that to me upon your return, and I will deal with that
10 individual.

11 Let me also mention, Columbia is a big old city,
12 especially when you are from Dillon; however, if you
13 happen to see anyone that has anything to do with this
14 trial and they don't even look at you, please know they're
15 not being rude. They just know they're not supposed to
16 interact with you, even so much as to say hello.

17 They are not supposed to communicate or interact with
18 you at all. So that's the reason they will be shying away
19 from you. So let me share that with you as well.

20 We're going to start back at 1:30. And at that time,
21 again, I have a few preliminary remarks I am going to make
22 to you, and we are going to -- you are going to be sworn
23 in as the jury in this case, and then we are going to get
24 right into the trial of this case.

25 Any remarks, any objections with regards to my

1 remarks to the jury from the State?

2 **ASSISTANT SOLICITOR MCDUFFIE:** No, Your Honor.

3 **THE COURT:** From the defense?

4 **MR. GASSER:** No, ma'am.

5 **THE COURT:** Very well.

6 Ladies and gentlemen, if you will go with your
7 bailiff and have a very lovely lunch, I will see you at --
8 I'm going to give you a little bit longer, 1:45. 1:45.
9 1:45. Thank you.

10 (JANUARY 29, 2013, 12:22 P.M., WHEREUPON, THE JURY
11 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
12 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

13 **THE COURT:** All right. Are there any other issues
14 that have arisen from the State before we begin the trial?

15 **ASSISTANT SOLICITOR CAMPBELL:** No, Your Honor, we
16 would, however, renew our reciprocal Rule 5. I believe
17 you instructed them to let us view the photographs, and
18 I'm sure they just haven't had a chance to comply with
19 that. We would like to do that at this time.

20 **THE COURT:** Very well. Do not leave the courtroom
21 until they have looked at the photos and anything else
22 they don't have under Rule 5.

23 **MR. HARRIS:** Yes, ma'am. Absolutely.

24 **THE COURT:** Anything from the defense?

25 **MR. HARRIS:** No, ma'am. Thank you.

1 **THE COURT:** I will see you -- yes?

2 **ASSISTANT SOLICITOR CAMPBELL:** The only other thing I
3 have, Your Honor, is my inconvenience -- I am scheduled to
4 be in front of Judge Benjamin at 2:30.

5 **THE COURT:** Okay. And are you concerned about the
6 trial? If we start back at 1:45, are you charged with
7 making the opening statement?

8 **ASSISTANT SOLICITOR CAMPBELL:** No, ma'am.

9 **THE COURT:** Are you -- do you object to the opening
10 statement proceeding without you?

11 **ASSISTANT SOLICITOR CAMPBELL:** No, ma'am. I can stay
12 until 2:30.

13 **THE COURT:** Yeah.

14 **ASSISTANT SOLICITOR CAMPBELL:** So we could get
15 through opening statements, I think, easily by that point.
16 I just don't want the jurors to think, you know, where did
17 she go? What is she doing?

18 **THE COURT:** I will tell them that you had a
19 commitment before another judge and we are picky. When we
20 want our lawyers, we want our lawyers, and we have to work
21 together.

22 Any objection to me telling the jury that?

23 **MR. HARRIS:** No, ma'am.

24 **THE COURT:** Any objection to me telling the jury
25 that?

1 **ASSISTANT SOLICITOR CAMPBELL:** No, ma'am.

2 **THE COURT:** Okay. I'll tell them if we could clone
3 you guys, we would.

4 Look at those photographs before you leave.

5 Y'all have a good lunch. Very well. And we will be
6 back -- what did I say? 1:45. 1:45.

7 (WHEREUPON, A BREAK WAS TAKEN. THEREAFTER, THE
8 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD, OUT OF
9 THE PRESENCE AND HEARING OF THE JURY:)

10 **THE COURT:** Anything from the State before we bring
11 the jury out?

12 (NO RESPONSE.)

13 **THE COURT:** Nope?

14 Anything from the defense?

15 **MR. HARRIS:** Nothing from the defense, Your Honor.

16 **THE COURT:** Very well. Let us have the jury, please.

17 (JANUARY 29, 2013, 1:57 P.M., WHEREUPON, THE JURY
18 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
19 WERE HELD IN THEIR PRESENCE.)

20 **BAILIFF:** The jury is present, Your Honor.

21 **THE COURT:** Thank you so much.

22 All right. Just a little bit about your seating
23 assignments before we proceed.

24 And Ms. Frederick?

25 **JUROR:** Yes.

1 **THE COURT:** And is it Tahsoh?

2 **JUROR:** Yes, ma'am.

3 **THE COURT:** You are our alternates. I'm going to ask
4 the two of you to please keep those seats during the
5 course of the trial, so I can keep up with you as our
6 alternates.

7 Now, if y'all want to swap, that's fine. You can
8 share, but I need y'all to keep those two seats for me so
9 that I can keep up with you. And I sure will be
10 appreciative if y'all will do that for me, so I can keep
11 up with you as our alternates.

12 And, ladies and gentlemen, our law provides that
13 there should be one of your number who is your presiding
14 juror. Now, the presiding juror has three additional
15 tasks of a juror.

16 First, the presiding juror will actually take
17 physical possession of the verdict form, and once the
18 deliberations of the jury are concluded, the presiding
19 juror will simply write the verdict of the jury on the
20 verdict form. The presiding juror will preside in the
21 jury room during the deliberations, and there will be no
22 question in your mind when that time has come, but the
23 presiding juror will preside in the jury room, just to be
24 sure everybody has a chance to participate.

25 Finally, the presiding juror is the jury's

1 spokesperson here in court. For example: Your Honor, we
2 sure would like to have some hot fudge sundaes in the jury
3 room. Or, could we have some coffee? Or gosh, it's
4 awfully hot. Or, could you please ask the witnesses to
5 speak up?

6 In other words, in the event that the jury needs to
7 communicate with me for whatever reason, the presiding
8 juror would take that down in writing, and will promptly
9 give it to our bailiff, who will in turn get that to me.
10 In other words, the presiding juror is also the jury's
11 spokesperson here in court.

12 Now, ladies and gentlemen, on one of our breaks, I am
13 going to ask you to select our presiding juror. We are
14 obviously at the end of the political season, you know,
15 keep the campaigns to a minimum. But if you would, select
16 your presiding juror.

17 And when that person has been selected, this seat
18 that is kind of front row closest to the door, take that
19 seat and keep that seat throughout this trial so that I
20 can keep up with you as the presiding juror.

21 Now, when your presiding juror has been selected, you
22 all can do one of three things to let me know. You can
23 tell me when you come into the courtroom: I have been
24 selected as the presiding juror.

25 Or, you can give me a note. I am so-and-so, and I

1 have been selected as the presiding juror.

2 Or, you can keep the seat and see if I'm smart enough
3 to figure out that you have been selected as the presiding
4 juror. Any one of those methods is perfectly fine.

5 Now, other than my seats for my alternates and the
6 presiding juror, there isn't any other assigned seating.
7 If you get a seat you like, keep it. If not, get here
8 early and get another seat. There isn't any other
9 assigned seating. So, enough of that.

10 Ladies and gentlemen, at this time, I am going to
11 call on our clerk to swear you in as the jury in this
12 case. Would you please stand and raise your right hand?

13 (WHEREUPON, THE JURY WAS DULY SWORN.)

14 **CLERK:** You may be seated.

15 **THE COURT:** Ladies and gentlemen, before we begin
16 this trial, I am going to tell you that this trial will
17 probably be different from what you might expect. Many
18 people, most people, do not have the chance to attend
19 actual court sessions, as you are now doing, and may think
20 from watching television or movies or reading books that
21 trials are always full of high drama, intense action, and
22 riveting circumstances.

23 While all of these things may be true at times, this
24 trial is not for entertainment. It is a fundamental part,
25 it may be the fundamental part, of our democracy, a search

1 for the truth in an effort to be sure that justice is done
2 between the parties before the court.

3 Searching for the truth and making sure that justice
4 is done is often slow, deliberate, and repetitive, the
5 opposite of what you may have seen on television or in
6 movies or even read in books. This courtroom is a place
7 of honor, dedicated to the protection and preservation of
8 citizens' rights, through what many have called, and I
9 submit to you, the greatest system of justice that people
10 have ever created.

11 Ladies and gentlemen, the attorneys appearing before
12 you today are advocates for the parties that they
13 represent, but before they became advocates, they were
14 first and they are foremost, officers of the court. They
15 are sworn to uphold the integrity and the fairness of our
16 judicial system, and they are here to help you in the
17 search for the truth.

18 You should expect them to be professional, competent,
19 and ethical in the representation of their client's
20 interests. Remember, that you now have taken an oath to
21 try this case, and you likewise, are expected to be
22 professional, reasonable, and ethical.

23 I want to thank you for accepting this important
24 responsibility of jury service, and I wish to thank you in
25 advance for your contribution, your critical, your

1 essential, your vital contribution to our justice system.

2 Now, ladies and gentlemen, the case that we are about
3 to try is the case of the State of South Carolina versus
4 Mr. Curtis James Simms. Mr. Simms I will refer to from
5 time to time as the defendant. He is the defendant in
6 this case.

7 Ladies and gentlemen, what I will say now to you is
8 intended to serve as an introduction to the trial of this
9 case. My remarks now are not a charge on the law
10 applicable to this case. I will instruct you on the law
11 applicable to this case at the end of the trial before you
12 retire to consider your verdict. This is merely an
13 explanation of the procedure that we will follow in the
14 trial of this case, so that you may better understand what
15 may be happening and better able to follow the procedure.

16 Ladies and gentlemen, Mr. Simms has been charged with
17 two crimes, and he has pled not guilty to each and to both
18 of them. The State, therefore, has the burden of proving
19 each of the elements of each of these charges or crimes
20 beyond a reasonable doubt. And it will be your duty,
21 ladies and gentlemen, to decide whether the State has met
22 that burden.

23 Your purpose as jurors is to find and to determine
24 the facts. You are the sole judges of the facts. If at
25 any time I make any comment or make any intimation

1 regarding the facts, I ask you in advance to please
2 disregard it, because I can assure you, I have no opinion
3 regarding these facts. I make no comment regarding the
4 facts. That is a matter solely for you to determine.

5 Ladies and gentlemen, you are to determine the facts
6 from the sworn testimony that you hear and from the other
7 evidence which will be introduced into court, or you will
8 hear it being introduced into evidence. It is up to you
9 to determine what, if any, inferences which you feel may
10 properly be drawn from the evidence.

11 Ladies and gentlemen, it is especially important that
12 you perform your duty of determining the facts diligently
13 and conscientiously, because you see, under our system of
14 justice, there is ordinarily no way to correct an
15 erroneous determination of the facts by a trial jury.
16 Facts as determined by a trial juror are ordinarily the
17 facts for all time.

18 If, or I should say, on the other hand and with equal
19 emphasis, the same law that makes you the judges of the
20 facts, makes me to judge of the law. The law as given to
21 you by the Court is the only law that you may consider.
22 You must accept and apply the law as I state it to you,
23 even though you may disagree with it. I cannot tell you
24 what the facts are, and you cannot disagree with me about
25 what the law is or should be.

1 That very well may be for a discussion at a later
2 time with your legislator. For our system to work
3 correctly, I cannot in any way tell you what the facts are
4 and you cannot disagree with me about what the law is.

5 Your job is to take the law as I give it to you and
6 apply it to the facts as you find them to be from the
7 testimony of the witnesses and any other evidence that is
8 introduced. After doing that, you will render your
9 verdict, a true and just verdict under the solemn oath
10 that you just took as jurors.

11 Now, until I advise you to begin your deliberations,
12 you must not discuss this case with anyone, including your
13 fellow jurors, your friends, your family members, and
14 anyone involved in the case. After the case is submitted
15 to you, you must discuss it only in the jury room with
16 your fellow jurors.

17 The attorneys and all the individuals involved in
18 this case know that they are not to talk to you at all.
19 And if you should see anyone involved with this case and
20 they do not even say hello, again, please understand they
21 are not being unfriendly, but they are following my
22 instructions.

23 Ladies and gentlemen, it is important that you keep
24 an open mind and that you not decide any issue in this
25 case until all of the evidence has been presented, the

1 parties have made their closing arguments, and I have
2 instructed you on the law applicable to this case.

3 Ladies and gentlemen, it is your solemn
4 responsibility to determine whether the defendant is
5 guilty or not guilty. And your verdict must be based
6 solely on the evidence as it is presented to you in this
7 trial and on the law as I instruct you during and at the
8 close of the trial.

9 Now in just a moment, the State will make what is
10 called an opening statement in which one of the attorneys
11 for the State will discuss with you, no doubt, what she
12 believes the issues are in this case. After the State
13 makes its opening statement, one of the attorneys for the
14 defendant may also make an opening statement.

15 Ladies and gentlemen, what the attorneys tell you
16 during the course of this trial and what they say to you
17 is important. I urge you, please give them your undivided
18 attention, but do understand that what the attorneys say
19 is not evidence. The evidence comes from the sworn
20 witnesses in this case and any exhibits which are admitted
21 into evidence.

22 Now, ladies and gentlemen, in determining what the
23 true facts are in this case, you must decide whether or
24 not the testimony of the witness and witnesses is
25 believable. It will be my responsibility to rule as a

1 matter of law as to whether certain testimony or evidence
2 is admissible at all or not, but once the testimony or
3 evidence is admitted, whether or not you believe it, what
4 inferences you choose to draw from it, are matters solely
5 for you to determine.

6 And in deciding whether to believe a witness, you
7 have the right to consider the interest of any witness,
8 the bias of any witness, the prejudice of any witness, the
9 opportunity for the witness to have seen the matters and
10 things about which the witness may testify, and the way
11 the witness acts on the witness stand. You have a right
12 to consider anything that is in the record that will help
13 you evaluate the testimony of the witnesses. That means
14 it is your duty to pay close attention to these witnesses,
15 observe them, listen to them, and to pay close attention
16 to the attorneys and to the Court.

17 Please do not let your thoughts wander, but give the
18 strictest attention to the testimony in this case so that
19 at the end of all of the evidence, after the arguments of
20 counsel, and my charge on the law, you will then be in a
21 position to determine what the true facts are and to apply
22 the law to those facts and thus render a true and just
23 verdict.

24 Now, ladies and gentlemen, I'm going to ask that you
25 not take notes during the course of this trial, but I want

1 you to understand why. Ladies and gentlemen, there is a
2 concern that if a juror is taking a note that he or she
3 may miss something as it is coming from the witness stand.

4 There is another concern with regards to the taking
5 of notes, and that is one juror has a note and another
6 juror doesn't have a note during deliberations, that there
7 can be an undue amount of influence placed upon the note.
8 Therefore, ladies and gentlemen, I ask that you please
9 give the strictest attention to these matters and not take
10 notes.

11 Now, ladies and gentlemen, in order to preserve
12 everyone's rights, I will give the parties an opportunity
13 to object to anything that I have just told you and said
14 to you.

15 Anything from the State?

16 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, we have no
17 objection to that, but can I approach about a scheduling
18 matter?

19 **THE COURT:** Yes, you may.

20 Anything from the defense?

21 **MR. GASSER:** No, ma'am. No objection.

22 **THE COURT:** Very well.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
24 RECORD. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD
25 ON THE RECORD:)

1 **THE COURT:** All right. Very well. All right.

2 Is the State ready to proceed?

3 **ASSISTANT SOLICITOR WALKER:** Yes, Your Honor.

4 **THE COURT:** Very well.

5 **ASSISTANT SOLICITOR WALKER:** May it please the Court?

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

7 **ASSISTANT SOLICITOR WALKER:** Good afternoon. Martin
8 Gasque died on October 9th, 2010. He was killed on Shop
9 Road here in Richland County.

10 He and his friend, Adam Paxton, were in town to watch
11 the University of South Carolina football team play the
12 University of Alabama. And the Gamecocks won that day.
13 We had just beaten the number one team in the country, and
14 Adam and Martin were ecstatic.

15 As they went to leave the Shop Road area, there's a
16 street that runs very close to Williams-Brice Stadium,
17 they got caught in traffic. They were in that stop-and-go
18 traffic.

19 Also in that traffic was the defendant, Curtis Simms.
20 He was in a pickup truck with some of his friends,
21 including Mike Davis, Marquis Hall, Lauren Hiott, and the
22 Lindsey twins, Jordan and Dustin.

23 Curtis Simms waved to the car that Martin was in.
24 His friend, Adam, was driving. He waved to let them over
25 into traffic.

1 According to Curtis Simms, Martin looked at him and
2 said: What's up?

3 What's up? And those two words caused the defendant
4 to get out of his car, cross over in traffic, punched the
5 victim in the face, knocking him under the car that he had
6 been in.

7 When Adam Paxton saw his friend being attacked, he
8 tried to pull the car over to the side of the road, but he
9 didn't know that his friend had been punched and knocked
10 under the car. Martin was run over and killed on Shop
11 Road that day.

12 Ladies and gentlemen, for his actions, the defendant
13 has been charged with two crimes, breach of peace of a
14 high and aggravated nature and involuntary manslaughter.

15 I am Mehgan Walker, and I'm one of the assistant
16 solicitor's, one of the prosecutors, here in Richland
17 County. And this week Assistant Solicitors Luck Campbell,
18 Joanna McDuffie, and I will prove to all of you beyond a
19 reasonable doubt that on October the 9th, the defendant
20 committed those two crimes.

21 Now, breach of peace of a high and aggravated nature
22 means that the defendant broke the tranquility and the
23 peaceful setting of the community that day. It means that
24 by his actions that were accompanied with aggravated
25 circumstances, he disturbed the public accord. When he

1 got out and punched Martin in the face, which led to
2 Martin's death, he disturbed the way in which the officers
3 were trying to get people to exit the stadium that day and
4 safely leave the Williams-Brice area. He disturbed the
5 way in which the other participants of the football
6 festivities that day were going about their business.

7 Now, for involuntary manslaughter, that is the
8 unintentional killing of a human being without malice, but
9 while engaged in an unlawful activity not naturally
10 tending to cause death or great bodily injury, or while
11 engaged in lawful activity, but doing so so recklessly
12 that there is a disregard for the safety of others.

13 Now, I want to be very, very clear about one thing.
14 There was nothing lawful about anything Curtis Simms did
15 that day.

16 It was illegal for him to get out of the car and
17 physically attack Martin Gasque. He was engaged in an
18 unlawful activity, that while not naturally causing -- or
19 tending to cause someone's death, did cause someone's
20 death that day. Curtis Simms broke the law. Someone
21 died, and that's why we're here.

22 When we say that he caused his death, it means that
23 he is the proximate cause of Martin Gasque's death. By
24 proximate cause, it means that Curtis Simms started a
25 chain of events that led to the injury that ultimately

1 killed the victim in this case.

2 Under the laws of this state, one who inflicts injury
3 on another, is deemed by law to be guilty of a homicide,
4 if that injury contributes to the death of the deceased.
5 The fact that other causes also contribute do not relieve
6 Curtis Simms of his responsibility.

7 What he did, what he started by that punch, is what
8 put Martin Gasque under the car that day and caused his
9 death when he was run over. But for the defendant's
10 actions back in October of 2010, Martin Gasque would not
11 have died on Shop Road that day.

12 But for the defendant removing Lauren Coggins from
13 his lap, but for him opening the door of that car, but for
14 him getting out and crossing the street and punching a man
15 in the face, a man who he was six inches taller than and
16 outweighed by a hundred pounds, but for him doing those
17 things, Martin Gasque would not have died on Shop Road
18 that day.

19 Now, as the judge told you earlier, in order to prove
20 those things, we have to prove it beyond a reasonable
21 doubt. And in order to do that, we're going to call
22 witnesses to the stand, and they are going to tell you
23 what they know about what happened back in October 2010.

24 You are going to hear from Deputy Heyward, or I'm
25 sorry Officer Heyward, from the Columbia Police

1 Department, and he is going to tell you that the defendant
2 walked up to him and said: I know what happened. I
3 punched him in the face.

4 You are going to hear from Adam Paxton, who was
5 driving the car that Martin was riding in that day. Adam
6 is going to tell you that as they were leaving the game,
7 he and Martin, they were shouting out and celebrating the
8 Gamecock's victory, and that a large man approached his
9 car, punched his friend, and then he didn't see his
10 friend.

11 And that when he saw Martin being attacked, he tried
12 to pull over to the side of the road, so he could get out
13 and help him. And when he pulled over to the side of the
14 road, he ran over Martin Gasque.

15 You are also going to hear from Guy and Rhonda
16 Eckenroth. They were traveling in one of the cars behind
17 Adam and Martin that day.

18 They are going to tell you that they saw a large man
19 get out, approach the car that the victim was in, and
20 punch the victim more than once, causing him to fall under
21 the car where he was run over.

22 James Martin is going to come in here and testify.
23 He is going to tell you that the victim was barely out of
24 the car when the defendant attacked him.

25 He is going to tell you that he was punched and

1 knocked under the car, like all the other witnesses are
2 going to say. After he was knocked under the car, that's
3 when he was run over.

4 Ladies and gentlemen, you are going to hear from
5 Investigator Holdorf of the Richland County Sheriff's
6 Department, and he is going to tell you about the written
7 confession that he took from Curtis Simms.

8 **MR. GASSER:** Objection. I object to that
9 characterization. He hasn't confessed to this crime. I
10 object to that characterization.

11 **THE COURT:** One moment.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
13 RECORD. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD
14 ON THE RECORD:)

15 **ASSISTANT SOLICITOR WALKER:** He is going to tell you
16 about the written statement that he took. And in that
17 statement, he told Investigator Holdorf that he punched
18 the victim, that after he punched him, he yelled out to
19 someone to call 911, and then he ran down the street.

20 As he was running down the street, he took off his
21 Alabama hat and his Alabama polo and walked around for a
22 little while to clear his head before finding another
23 officer and admitting to punching the victim in his face.

24 That is some of the evidence that you are going to
25 hear. And after you have heard that evidence, after we

1 have presented witnesses to you, after we have proven the
2 defendant's guilt, after we have proven that he committed
3 a crime that led to the victim's death, we are going to
4 come back before you and we are going to ask you to hold
5 Curtis Simms accountable for his actions that day.

6 We're going to ask you to return two guilty verdicts,
7 one for breach of peace of a high and aggravated nature
8 and one for involuntary manslaughter. Thank you.

9 **THE COURT:** Thank you, Ms. Walker.

10 On behalf of the defendant? Mr. Gasser?

11 **MR. GASSER:** May it please the Court, Your Honor?

12 **THE COURT:** Yes, sir.

13 **MR. GASSER:** Good afternoon, ladies and gentlemen.

14 On any given weekend in any town, city, or county in
15 America, fistfights occur between young men drinking,
16 particularly at sporting events. When fistfights occur,
17 nobody expects, anticipates, or foresees somebody is going
18 to die when the dust settles. More importantly, nobody
19 would ever foresee that one friend would run over and kill
20 another friend at the end of the fight.

21 You see, ladies and gentlemen, Curtis Simms, the man
22 that sits at that table, accused by the State of South
23 Carolina, has never killed anybody, not on October the
24 9th, 2010, not ever, because the man that killed Allen
25 Martin Gasque is not Curtis Simms. He is one of the

1 State's witnesses. That's right.

2 The man that was partying with Mr. Gasque all day and
3 night on October the 9th, 2010, the man that knew that two
4 to three other individuals were standing on the outside of
5 his car, his truck, while it was idling on Shop Road,
6 parked stationary, the man that did not account for those
7 people's whereabouts around his car and their safety,
8 which is required by South Carolina traffic law, that man
9 stepped on the gas, turned his steering wheel all the way
10 to the right, and ran over his friend's body and head,
11 killing him.

12 As I stand before you jurors this afternoon on
13 January 29, 2013, those basic facts are uncontradicted and
14 will be uncontradicted at the end of this case, and yet,
15 the State of South Carolina has charged Curtis Simms with
16 involuntary manslaughter, a homicide, and he never killed
17 anyone.

18 As I introduced myself to you earlier, my name is
19 Johnny Gasser. I live here in Colombia with my wife and
20 three children.

21 I practice law with my law partner, Greg Harris, who
22 was introduced to you, who also lives in Colombia with his
23 wife and three children. We have practiced law together
24 now for a little over five years, and it is a pleasure and
25 an honor to stand before you and represent Curtis Simms.

1 Curtis Simms is twenty-seven years old. He will
2 obviously be here throughout the trial.

3 His parents are seated in that first row, Jake and
4 Nancy Simms. His fiancé is seated next to them.

5 Curtis works at Palmetto Utilities here in Columbia.
6 He's been a resident of Richland County for three years.

7 He is originally from Mobile, Alabama, where his
8 parents still live. He works for a cabinet maker. She is
9 an office worker for a local utility. They are all
10 working class people, and Curtis Simms has never killed
11 anybody.

12 Ladies and gentlemen, as the State has indicated, Mr.
13 Simms is charged with two indictments, and an indictment
14 is not evidence, as the judge has told you. An indictment
15 is merely a charging paper. It is merely just a piece of
16 paper which puts a citizen on notice for which they are
17 charged with and what they have to defend themselves on.

18 He is charged with involuntary manslaughter, which is
19 the unintentional killing by one person of another person
20 with what is known as criminal negligence, which is
21 defined in our law as the reckless disregard for
22 somebody's safety, not careless disregard, not negligent
23 disregard, but the reckless disregard for another human
24 being's safety. One person killing another person with
25 reckless disregard, unintentionally. That's what they

1 have charged him with, and yet Curtis Simms has never
2 killed anyone, ever.

3 He is charged with aggravated breach of peace, but
4 let's be clear, what is driving this case, what has driven
5 this case for two years and four months is an involuntary
6 manslaughter charge. That's why we are here, ladies and
7 gentlemen.

8 Let me talk to you about some fundamental principles
9 that the judge will talk to you more about. It is
10 extremely important that you recognize these principles,
11 and even more important, ladies and gentlemen, that you
12 embrace these principles as you have sworn an oath to
13 right now before you hear the first witness. You are
14 going to recognize some of these terms.

15 Curtis Simms, like every citizen in Richland County
16 charged with a crime, like every citizen in South Carolina
17 and our great country, is presumed innocent. When a
18 charging authority, a law enforcement agency, the state,
19 the federal government, charges a citizen with a crime,
20 that citizen, whomever she or he may be, whatever they
21 look like, whatever their station in life, they are
22 presumed innocent. And each and every one of you jurors
23 has taken an oath to accept that.

24 Curtis Simms, as he sits there, is presumed innocent.
25 He is an innocent man by law, and the burden of proof in

1 this case is the same as it is in every case in South
2 Carolina and in every case in the United States. The
3 burden of proof is always on the government prosecuting
4 entity, in this case the State of South Carolina, to prove
5 Curtis Simms guilty beyond a reasonable doubt.

6 Curtis Simms, myself, Mr. Harris, we have no burden.
7 We do not have to prove anything to you jurors. The sole
8 and exclusive burden is on the State of South Carolina to
9 prove Curtis Simms guilty beyond each and every reasonable
10 doubt, and there will be dozens presented to you in this
11 case.

12 First and foremost, Curtis Simms has never killed
13 anyone. The burden is always on the State, never on a
14 defendant.

15 Ladies and gentlemen, these are fundamental
16 principles that the judge will talk to you more about in
17 her closing charge and that I will talk to you more about
18 when I come up before you at the conclusion of this case,
19 but I ask you, please, embrace these principles as you sit
20 in this courtroom. Far greater men and women have died
21 for those principles.

22 I am not going to get into significant areas of the
23 law, but I must touch on one area that Ms. Walker talked
24 about. Ladies and gentlemen, we submit to you that there
25 is a basically going to be three -- somewhat of a

1 three-step analysis from a legal perspective when you
2 ultimately go back in your jury room.

3 One of the legal factual questions we submit you must
4 determine is whether or not Curtis Simms had the legal
5 right to react the way he did standing out on the side of
6 the Shop Road when Martin Gasque, Allen Martin Gasque, got
7 out of his truck and made a move, because you are going to
8 hear testimony about that from multiple witnesses.

9 And if the State doesn't call them, we will call
10 them. Did Curtis Simms have the right to react to Martin
11 Gasque, is one issue.

12 A second issue that we submit you must determine is
13 whether or not Curtis Simms' reaction, did it rise to the
14 level of criminal negligence? Was he so reckless that he
15 is guilty of a crime?

16 Based on all of the facts and circumstances as they
17 were developing right then and there, not twenty-seven and
18 a half months later, not in the confines of this
19 courtroom, not with the benefit of hindsight, right then
20 and there in real time, based on Martin Gasque's actions,
21 was Curtis Simms' reactions, were they lawful and was he
22 reckless?

23 And significantly important, a third thing, this goes
24 along with what Ms. Walker was discussing with you, this
25 whole issue of proximate cause, well there is another area

1 of the law on proximate cause. It is a basic fundamental
2 Law School 101 area. It's the concept of intervening acts
3 in the area of proximate cause.

4 Those are legal terms that the lawyers will discuss
5 with you later on and the judge will charge you on, but
6 suffice it to say, under our law, one of the things that
7 you're going to have to decide is whether Adam Paxton, the
8 driver of the truck, the man that killed Allen Martin
9 Gasque, because he killed him, whether it was reasonably
10 foreseeable that one friend that night would step on the
11 gas pedal of his truck and run over and killed his own
12 friend, was that reasonably foreseeable? That is a
13 fundamental issue in this case that you will decide.

14 Now, Ms. Walker talked about the facts of the case
15 that the State -- that she says will be proven to you, so
16 I want to briefly touch on those, as well. We submit to
17 you that this is the picture that will be presented in
18 this courtroom today and tomorrow and Thursday and on into
19 Friday. This is part of the picture that you jurors will
20 see.

21 You are going to hear about the conduct of Mr. Gasque
22 and Mr. Paxton as they were in their truck driving up Shop
23 Road towards George Rogers Boulevard, prior to ever even
24 coming to a stop in front of the driveway of the tailgate
25 stop that Mr. Simms was exiting in with his friends.

1 You're going to hear from witnesses about their
2 conduct. You are going to hear about the taunting,
3 repeated taunting, that those two gentlemen were giving
4 Alabama fans, the profanity, the cursing, what their state
5 of mind was, because that's why it's relevant.

6 Was it a fighting state of mind on the part of Mr.
7 Gasque?

8 You're going to hear from one witness that prior to
9 even coming up to the stop, that Mr. Gasque got out of his
10 truck and urinated on the side of the road, right in front
11 of everybody to see, and got back into his truck and they
12 continued on down Shop Road.

13 The man you're going to hear that from, if the State
14 doesn't call that witness who they have interviewed from
15 day one, we will, despite the fact that we have no burden,
16 because Curtis Simms wants you to hear from everybody that
17 has something to say, everybody that was out there, not
18 hand-picked witnesses to fit a theme, because that's not
19 fair, I submit to you, for a jury.

20 You deserve to hear everything, because you are the
21 ones that have to decide Curtis Simms' fate, a fellow
22 citizen. And that's what you're going to hear, leading up
23 to this incident, the state of mind of these two
24 gentlemen, and you are going to hear from other witnesses
25 about what the intentions of the driver of the truck

1 Curtis Simms was in, Dustin Lindsey, and what Curtis
2 Simms' intentions were when they were pulling up to try
3 and get out of their tailgate spot, what their intentions
4 were, which was to get on Shop Road and go left, away from
5 George Rogers Boulevard, to take another friend, Mike
6 Davis, a former Carolina football player, take him to his
7 car.

8 So you are going to hear what their intentions were.
9 You are going to hear what the actions of Mr. Gasque were,
10 what his actions were, while he was parked parallel, while
11 he was parked in his truck that Adam Paxton was driving,
12 blocking the path of Dustin Lindsey's truck that Curtis
13 Simms was a passenger in and multiple other people were
14 passengers in, four ex-Carolina football players and
15 several Alabama fans.

16 And if they don't call those witnesses, whom they
17 have interviewed from way back and who they have
18 statements from, we will, because you have a right to hear
19 from everybody. And you are going to hear the taunting
20 and the cursing coming from Mr. Gasque and the calling
21 out.

22 You are going to hear that Curtis Simms got out of
23 that truck for two reasons. One, to help his friend get
24 into traffic, and two, to figure out what the passenger of
25 that truck's problem was.

1 Because you are going to hear that everybody in
2 Dustin Lindsey and Curtis Simms' truck were in a good
3 mood, everybody, the Alabama fans and the Carolina fans.
4 They had been ribbing each other at their tailgate spot.
5 Everybody was in a good mood.

6 You are not going to hear anything about them cursing
7 fans when they were walking down Shop Road. You are not
8 going to hear any of that testimony. You're not going to
9 hear about him urinating out in public. You are going to
10 see that they were all in a good mood.

11 Curtis Simms got out of that truck wondering what his
12 problem was and to help his friend driving his truck get
13 out on Shop Road, which he had the absolute legal
14 authority to do, just like anybody else at that point.

15 You are going to hear that Martin Gasque got out of
16 his truck and Curtis Simms and they confronted each other.
17 You are going to hear testimony that Martin Gasque was so
18 drunk, his blood alcohol level was three times the legal
19 limit, Mr. Gasque's, the man that was taunting people on
20 Shop Road. Three times the legal limit.

21 You are not going to hear anything about Curtis
22 Simms' level of intoxication, other than the fact that he
23 wasn't impaired or intoxicated or drunk.

24 And you're going to hear that Martin Gasque made a
25 move, a physical move. You are going to hear that from

1 multiple people, not people on the sides of the road in
2 cars, not people looking into headlights from -- from
3 thirty yards, forty yards away, not people not expecting
4 something to happen and all of a sudden being drawn to
5 some episode.

6 You're going to hear -- if the State doesn't call
7 them, we are going to call them. You are going to hear
8 from the witnesses who had the same bird's eye-view that
9 you do of me right now, the best viewpoint straight on
10 unobstructed, no headlights in their eyes, not obstructed
11 by cars in front of them.

12 If they don't bring you these witnesses, we will.
13 The people that had the perfect vision, including people
14 that were standing right where it happened, as close as I
15 am to this box, because you have a right to hear from
16 those people. If they don't call them, we will.

17 And you are going to hear how Mr. Gasque made a move,
18 and Curtis Simms' reaction was one punch. You're going to
19 hear one punch from a multitude of people. One punch.

20 He reacted to what he perceived at the time for which
21 he had a right to, for which everybody has a right to.
22 And you are going to hear how Mr. Gasque fell straight
23 down.

24 Curtis Simms -- you will not hear any legitimate
25 testimony that he was knocked under the truck, because

1 that did not happen. That did not happen, because that's
2 not credible.

3 You are going to see pictures of the truck, and you
4 are going to see how incredible. That could not have
5 happened.

6 A physics -- a law of physics impossibility, because
7 we are not talking about one of those big, huge trucks you
8 see at the Carolina Coliseum in those events that are six
9 feet off the ground. That's what you are going to hear.

10 You are also going to hear this, ladies and
11 gentlemen. After the incident, or after he went to the
12 ground, one of the most important things you are going to
13 hear is the conduct of Adam Paxton, a man driving the
14 truck at that time, a man that knows two to three people,
15 he will admit that, were standing on the side of that road
16 next to his truck, idling.

17 His truck is parked. And that he made the choice
18 solely on his own, independently, to turn the wheel of his
19 car all the way to the right, because he couldn't move
20 forward, because there was a car blocking him, to turn his
21 steering wheel all the way to the right and step on that
22 gas.

23 And those of you that drive cars, knows what happens
24 when you turn the car all the way to the right. The car,
25 including the back wheels, starts going to the right

1 sharp, and he begins to run over his friend.

2 But it doesn't stop there, because you know what
3 Curtis Simms does? Do you know what a multitude of
4 witnesses are going to tell you that Curtis Simms did?

5 And if they don't call them, we will. Do you know
6 what Curtis Simms -- this person they have just stood up
7 before you and said was acting recklessly, criminally, do
8 you know what he does?

9 He starts banging on the side of the car with his
10 fist, screaming for Mr. Paxton to stop. Other people in
11 the truck he got out of are screaming for Mr. Paxton to
12 stop, while Mr. Gasque is still alive, before that tire
13 ever reached his head.

14 You are even going to hear from a witness that Curtis
15 Simms tried to grab Mr. Gasque to pull him to safety and
16 that Mr. Paxton continued on and rolled over his friend
17 and drove off to the side of the road. That's what you're
18 going to hear.

19 Those are the facts you are going to hear, and you're
20 going to hear that Mr. Simms went running up to a car and
21 banged on the window to call 911, how he ran up to George
22 Rogers Boulevard and went to not one, but two, police
23 officers before he knew they called for EMS and police,
24 and how the reason why he took off his dark red Alabama
25 shirt was because he had a white T-shirt on underneath,

1 and he knew he was running along traffic and he didn't
2 want to get hit.

3 And then he came back to the scene, and he walked up
4 to a police officer, and that despite having the legal
5 right to do so, he went down to the police department, the
6 sheriff department and he gave not a confession, the
7 complete opposite. He told them what had happened. He
8 told them he was sorry about Mr. Gasque.

9 And in his own handwriting, in total shock over what
10 had just happened -- imagine the shock of watching
11 somebody get run over by a truck. He tells them it could
12 have been him. He did what he needed and felt he had to
13 do. That's the evidence you are going to hear, ladies and
14 gentlemen.

15 Now, you are going to hear discrepancies in a number
16 of the witnesses that are called before you over the next
17 three or four days, significant discrepancies from where
18 everybody was and where things happened, how many punches
19 were thrown, who did what. We are going to do the best we
20 can to examine the witnesses, to provide as clear a
21 picture for you as possible.

22 You are going to hear from Mr. Paxton, who gave
23 multiple statements verbal, and one written, to officers
24 that night and the next morning, and you are going to hear
25 my cross-examination, because he is filled with

1 discrepancies, significant ones.

2 Ladies and gentlemen, you are going to hear from
3 witnesses, and one of the things you are going to have to
4 determine is who had the best viewpoint? Who had the best
5 vantage point to see what they said they saw at that time
6 and place?

7 But the bottom line is this, the fundamental bottom
8 line that's running through every witness and throughout
9 this case right now and through the testimony and back in
10 your jury room, was it reasonably foreseeable that one
11 friend would run over and kill his own friend?

12 I thank you for your attention. You have given me
13 wonderful attention as I have stood before you to make
14 these opening remarks, and I respect and thank you for
15 that and I ask you to give the same attention to all of
16 the witnesses who come before you over the next few days,
17 ladies and gentlemen.

18 This is obviously an important case. It's important
19 to all the parties involved. It's clearly important to
20 Mr. Simms, who is a citizen charged with two very serious
21 crimes, and you are going to have the greatest tool any
22 juror brings with them into this courtroom with you while
23 you are listening to this testimony and examining this
24 evidence, your common sense. It's the best tool you are
25 going to have.

1 At the end of this case, we are going to come back
2 before you, and we are going to ask you to reach a verdict
3 that speaks the truth and find Curtis Simms not guilty.

4 Why? Because that's the truth.

5 **THE COURT:** Thank you, Mr. Gasser.

6 Call your first witness, please.

7 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, may I be
8 excused?

9 **THE COURT:** Yes, ma'am, you may be excused.

10 Ladies and gentlemen, we judges tend to need
11 solicitors a lot. We have to share them.

12 Ms. Campbell will be back shortly. There is another
13 judge who is needing her in a matter, but we will be
14 proceeding, and she will rejoin us as soon as she is
15 finished in the other court.

16 All right. If you will please call your first
17 witness?

18 **ASSISTANT SOLICITOR WALKER:** Your Honor, the State
19 calls Deputy Steven Taylor.

20 **THE COURT:** All right. Yes.

21 **BAILIFF:** Put your left hand on the Bible and raise
22 your right. Face the clerk.

23 STEVEN L. TAYLOR, after being duly sworn,
24 testified as follows:

25 **CLERK:** Please have a seat and state your full name.

1 **WITNESS:** Deputy Steven Lorenzo Taylor, Richland
2 County Sheriff's Department.

3 **THE COURT:** And would you spell your last name?

4 **WITNESS:** It's Taylor, T-A-Y-L-O-R.

5 **THE COURT:** Your witness.

6 **ASSISTANT SOLICITOR WALKER:** Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY ASSISTANT SOLICITOR WALKER:

9 **Q** Good afternoon, Deputy Taylor.

10 **A** Good afternoon.

11 **Q** Sir, where are you currently employed?

12 **A** Richland County Sheriff Department.

13 **Q** And how long have you been employed at the Sheriff's
14 Department?

15 **A** A little over three years.

16 **Q** And what do you do for the sheriff?

17 **A** I'm a patrol deputy.

18 **Q** I'm sorry?

19 **A** A patrol deputy.

20 **Q** And what does that involve?

21 **A** That involves taking initial calls for service, first
22 responder.

23 **Q** Can you speak up a little bit, sir?

24 **A** That entails being a first responder, taking initial
25 calls, calls for service. When someone calls 911, I'm the

1 one that personally responds to that type of call.

2 Q And on October 9th of 2010, did you respond to Shop
3 Road?

4 A Yes, I did.

5 Q Can you please tell me what you observed when you got
6 to Shop Road?

7 A When I got to Shop Road, I observed -- when I first
8 pulled up, I did observe a blood stain on the roadway. I
9 also observed a City of Columbia Officer, Officer Heyward.
10 He told me that he had an individual in his vehicle that
11 was involved in the incident.

12 I did also observe a pickup truck on the side of the
13 road that belonged to Mr. -- it belonged to Mr. Paxton.
14 At that point, I started to investigate the incident.

15 Q You said you started investigating the incident.
16 What did you do?

17 A The first thing I did was I tried to gather witnesses
18 that saw it. I was able to contact two witnesses that
19 were on the scene still.

20 Initially when I got there, the incident had
21 happened, I had gotten a call. There was a lot of
22 traffic, so it took me a little while to get there.

23 By the time I got there, it wasn't a lot of people
24 there. But I did -- I was able to talk to two witnesses,
25 Mr. Eckenroth, Guy, and Mrs. Eckenroth, Rhonda.

1 Also, talking to the city police officer who had Mr.
2 Simms in the backseat of his car.

3 Q So when you made contact with the Eckenroths, ---

4 A Yes, ma'am.

5 Q --- were they able to give you information about what
6 happened?

7 A They did.

8 Q Were they able to identify the individual who punched
9 the victim in this case?

10 A They did. Based on -- based on my interview with
11 them, I was able to determine that Mr. Simms was the
12 individual that had struck Mr. Gasque.

13 Q Now, did you also make contact with Adam Paxton that
14 day?

15 A I did. He was on-scene also, still.

16 Q And where -- where was he when you made contact with
17 him? Do you recall?

18 A When I got there, I believe he was by his truck.
19 When I got there, the victim had already been transported
20 by EMS.

21 So all I saw on the scene, I did see the blood on the
22 ground, and I started piecing together what had actually
23 happened, because the initial call was just a traffic
24 accident. And then as we looked into it, we determined it
25 obviously was more than just a traffic accident.

1 **Q** Yes, sir. When you made contact, you said Adam
2 Paxton was by his truck. The truck that the defendant had
3 been in, was that still on the scene?

4 **A** No. That was gone.

5 In fact, the witnesses that I spoke to could not tell
6 me what type of truck that he had gotten out of, what type
7 of vehicle. I had no idea that he was in a truck. I know
8 that he was in a vehicle, but that vehicle was gone and
9 anyone else that was with him was also gone.

10 **ASSISTANT SOLICITOR WALKER:** Beg the Court's
11 indulgence, Your Honor?

12 **THE COURT:** All right.

13 **Q** Sir, can you tell me what time you responded to the
14 scene that day?

15 **A** I responded around -- around 2050, that's 8:50, about
16 ten minutes to 9:00 p.m.

17 **Q** And the location you responded to, is that here in
18 Richland County?

19 **A** It is.

20 **Q** Thank you, sir. I have no further questions.

21 **THE COURT:** Cross-examination?

22 **MR. HARRIS:** Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. HARRIS:

25 **Q** Good afternoon, Deputy Taylor.

1 **A** Good afternoon.

2 **Q** My name is Greg Harris. How are you today?

3 **A** I'm good, Mr. Harris.

4 **Q** I'd like to talk about the Carolina football games a
5 little bit. You go to the football games; don't you?

6 **A** Just to work.

7 **Q** Just to work.

8 **A** Just to work. I don't pay my own money, just
9 working.

10 **Q** And working the football games means you have to
11 manage ninety-five thousand people on any given Saturday.

12 **A** A little more than that, but, yeah.

13 **Q** A lot of people.

14 **A** A lot of people.

15 **Q** Now, -- and isn't it a fair statement to say that the
16 major thoroughfares in and out of Williams-Brice Stadium
17 where Carolina plays, one of them is Shop Road; correct?

18 **A** That's one.

19 **Q** And one of them is Bluff Road.

20 **A** That's one.

21 **Q** And a feeder into Shop and Bluff Road is George
22 Rogers Boulevard.

23 **A** It is.

24 **Q** And another feeder on the other side is I-77.

25 **A** A little further down, but yes, it is.

1 Q In other words, those four roads form a square around
2 the stadium; correct?

3 A Yes.

4 Q Okay. And that's where all the traffic has to get
5 funneled, or a lot of the traffic from the games.

6 A The southbound traffic, they funnel in both
7 directions. They funnel northbound through the City of
8 Columbia, and also funnel down south towards 77.

9 Q And -- and to make sure I'm right, because I leave
10 the stadium on the side, not the Shop Road side, but Bluff
11 Road would be the other side. What's that street?

12 A I'm sorry?

13 Q On the other side of the stadium, what -- on the
14 other side of the stadium, on the visitor -- on the home
15 side, the stadium side, the press box side, what is that
16 road?

17 A Well, you have George Rogers. You have George
18 Rogers, and then you have Key Road, and you have Shop
19 Road, and you have Bluff Road.

20 Q Now, Bluff Road has four rows going out after a game;
21 right?

22 A Correct.

23 Q There's no southbound traffic.

24 A Correct.

25 Q But on Shop Road where this happened, it comes in

1 both directions.

2 A Right. Uh-huh.

3 Q Which is -- they're different on both sides of the
4 stadium; correct?

5 A Shop side and?

6 Q It's different on one side of the stadium.

7 A Yes.

8 Q And on the side where this incident occurred, traffic
9 is going in both directions.

10 A It was.

11 Q So if someone is pulling into traffic to go left, for
12 instance, they have to go over two lanes of traffic; don't
13 they?

14 A Um, coming from what direction?

15 Q Well, from the direction that ---

16 A From the direction of the incident?

17 Q Right.

18 A If people is trying to go towards 77, they would have
19 had to go left.

20 Q Okay. And to do that, you have to go through two
21 lanes of traffic.

22 A You would. Uh-huh.

23 Q Because the other direction, you can only go in one
24 direction.

25 A Right. Uh-huh.

1 Q Describe for us, if you would, any given Saturday,
2 let's say an hour after game time, bumper-to-bumper; is
3 that a fair statement?

4 A It's bumper-to-bumper. It's very congested. That's
5 a fair statement.

6 Q And it's not only bumper-to-bumper, but it's also a
7 lot of pedestrian traffic; isn't it?

8 A There is.

9 Q Okay. Talk to us about pedestrian traffic on Shop
10 Road. As a matter of fact, this particular night, there
11 was a lot of pedestrian traffic; wasn't it?

12 A Um, when I got there on-scene, again, like I said,
13 the initial incident was a traffic accident. The highway
14 patrol responded to that and determined that it wasn't.

15 Q Yes, sir.

16 A So by the time I got there, there was still a lot of
17 traffic, but it had started to thin out. It had thinned
18 out a lot by the time I got to the scene, myself.

19 Q Well, Deputy Taylor, let's just talk about previous
20 games.

21 A Previous games, yes.

22 Q There's a lot traffic.

23 A When the game is over, especially if it's a big SEC
24 game, there's a lot of traffic.

25 **ASSISTANT SOLICITOR MCDUFFIE:** Objection, Your Honor.

1 **ASSISTANT SOLICITOR WALKER:** Objection to him talking
2 about things that happened on previous Saturdays.

3 **MR. HARRIS:** I can rephrase the question, Your Honor.

4 **THE COURT:** All right.

5 **MR. HARRIS:** Thank you.

6 **Q** It's always crowded on that road after a game; isn't
7 it?

8 **A** Yes, sir.

9 **Q** Every game.

10 **A** Every game.

11 **Q** Now, isn't it true that on that road also there are
12 areas where people can park their cars for the game?

13 **A** There are private parking lots, and there are lots
14 that are owned by the University and also owned by the
15 fairgrounds. Yes, there are places for people to park
16 their vehicles.

17 **Q** And thousands of people walk to those parks after the
18 game, every game, every Saturday; correct?

19 **A** They do.

20 **Q** And that was the case, certainly, on this game also;
21 correct?

22 **A** Uh-huh.

23 **THE COURT:** Is that a yes?

24 **WITNESS:** Oh, I'm sorry. Yes.

25 **Q** If we could, I would also like to talk about

1 lighting. Okay? On that particular location, that's not
2 a well-lit area; is it, Deputy Taylor?

3 A Where the incident occurred at, ---

4 Q Yeah.

5 A --- there is a street light there, and there was some
6 ambi lighting there. So you could see. So it wasn't dark
7 in the area.

8 There are some lots that are very dark. That area,
9 there was some lighting.

10 Q And I'm not suggesting that it's a well-lit area.

11 A Uh-huh.

12 Q Would it be a fair statement -- have you been out
13 there lately?

14 A Not lately.

15 Q Okay. Would it be a fair statement that the closest
16 SCE&G pole was eight hundred yards away? Are you familiar
17 with that?

18 A I -- I don't remember how far the pole was, but I do
19 remember there was enough ambi light to see the blood
20 stain on the ground.

21 Q Okay.

22 A That I didn't have to use my flashlight at all.
23 There was enough lighting for me to see that.

24 Q Fair enough. The -- I want to move on from lighting.
25 I want to talk to the grade of the roadway. Are you

1 familiar with the way roads are graded and what are normal
2 on most highways?

3 A Just generally.

4 Q In traffic school, probably, don't you talk about the
5 grade of a roadway?

6 A Well, not in traffic school, but just in general.

7 Q In this particular case, the grade on the road in
8 question, Bluff Road grade was much higher than the side
9 where their truck was driving in from; wasn't it?

10 A I don't -- I don't recall that.

11 Q Okay.

12 A That detail, I didn't -- I didn't -- I didn't -- that
13 detail, I didn't cover. I can't talk to the grade.

14 Q Fair enough. Now, as the first responder of the
15 Richland County Sheriff's Department, one of your goals
16 was, I would imagine, to secure the scene. Is that a fair
17 statement?

18 A It was. Uh-huh.

19 Q And in securing the scene, Deputy Taylor, did you put
20 up cones? Is that one of the things you did?

21 A I put some tape up around the incident where the
22 victim was run over.

23 Q Okay.

24 A I put cones up around that area.

25 Q Okay. And the reason that you want to secure a scene

1 is because you want to preserve the evidence within a
2 parameter of where the incident occurred; correct?

3 A Yes.

4 Q And one of the things that you do in securing the
5 scene is you try to limit the traffic of law enforcement
6 inside that scene; correct?

7 A We're trying to limit all traffic, not just law
8 enforcement.

9 Q And both roadways were blocked off.

10 A Eventually. Not when I first got there, but yes,
11 when I got on-scene and made a determination of what I
12 had, then I started calling for additional resources to
13 assist.

14 And then, yes, I started to secure the scene and
15 start blocking it off and trying to interview witnesses to
16 get a better determination of what actually happened.

17 Q And the scene was secured, and I made a list. And if
18 you'll give me one second?

19 I believe that four Richland County Sheriff's
20 Deputies entered in the scene after you secured the scene
21 and started processing the scene.

22 A Right. I did -- I did notify our crime scene unit to
23 process it, and they did respond to process the scene.

24 Q Okay. And if I'm correct -- excuse me, I didn't mean
25 to turn my back to you.

1 **A** No problem.

2 **Q** Deputies Derrick, Salmond, Payne, and Woods were
3 responding and investigating and processing the scene;
4 correct?

5 **A** Uh-huh.

6 **Q** Okay.

7 **A** Woods was the technician.

8 **Q** Okay.

9 **A** And Payne was the Sergeant that was responsible for
10 the overall scene.

11 **Q** Yes, sir.

12 **A** And who was the other deputy you mentioned?

13 **Q** Salmond.

14 **A** Salmond, he was there assisting and trying to help
15 clear, because as you earlier mentioned, there is a lot of
16 foot traffic, a lot of foot traffic, and there's a lot of
17 traffic on the road. So it took some resources to try and
18 make sure, you know -- it just -- it takes longer to make
19 sure no one crossed that scene.

20 **Q** Yes, sir.

21 **A** So we were very insistent to make sure it was secure.

22 **Q** And when somebody does cross the threshold of the
23 scene, they actually have to sign in on a sign-in sheet;
24 correct?

25 **A** Right. They have to sign in. I assume you have the

1 Crime Scene Log. I would assume that you have that.

2 Q That's correct. That's where I've gotten these
3 names.

4 A Okay.

5 Q And also the Crime Scene Log, I believe, EMS Flarion,
6 Beckam, Stow, and Winger, they were also part of the crime
7 scene; correct?

8 A Like I said, like I mentioned earlier, when I got
9 on-scene, the victim had already been transported by EMS,
10 because initially, the call was just for a traffic
11 accident, which highway patrol -- in Richland County, the
12 highway patrol, they investigate all accidents, motor
13 vehicle accidents, so they initially responded.

14 They called us when they thought they had more than
15 an accident. And then once I got on-scene, I started a
16 further investigation, and that's when I established the
17 crime scene and notified Sergeant Payne, and he made
18 notifications for the other deputies to assist.

19 Q And that's something I want to follow up on, but I'll
20 get to it, since you've just mentioned it. The call
21 initially came in from the highway patrol; correct?

22 A No. Well, the initial call was not quite from the
23 highway patrol.

24 Q Yes, sir.

25 A In some cases, we have a central dispatch. I don't

1 remember the particulars in this call, if the initial call
2 was to the highway patrol and they called our central
3 dispatch or if the initial call was to our central
4 dispatch and because they said there was an accident, they
5 notified highway patrol.

6 So I can't tell you what the initial call or who they
7 called, our central dispatch or if they called the highway
8 patrol dispatch. But, in any event, if they called our
9 dispatch and said it was a motor vehicle accident, they
10 would call the highway patrol and have them respond. And
11 so either way, whoever they called, if they said an
12 accident, the highway patrol responded to do the accident.

13 **Q** Because highway patrol also responded to this
14 accident; correct?

15 **A** I believe they did, because I got a call saying that
16 they said it wasn't an accident. Who from highway patrol
17 responded, I mean, I don't know.

18 **Q** Yeah, I didn't see in your report -- there was no
19 record of who it was, but there was highway patrol
20 presence there; correct?

21 **A** I can't tell you -- no, not -- not when I was there
22 on the scene.

23 **Q** Okay.

24 **A** I can't tell you if a highway patrolman initially
25 responded to the -- said it was more than an accident and

1 left or who it was, because again, when I got there, when
2 I got the call, it was more than an accident, because
3 initially, it was an accident call.

4 Q Yes, sir.

5 A So I'm assuming the highway patrol went. I can't
6 speak to that, but when I got there, there was no highway
7 patrolman there.

8 Q When you got there, was the City of Columbia Police
9 Department there?

10 A There was. Officer -- Officer Heyward was there.

11 Q So -- and -- and -- so there was a presence from the
12 Richland County Sheriff's Department.

13 A Uh-huh.

14 Q And there was a presence from the City of Columbia.

15 A Uh-huh.

16 Q There was a presence from EMS.

17 A Uh-huh.

18 **THE COURT:** Is that a yes?

19 **WITNESS:** Yes. I'm sorry. Yes.

20 **MR. HARRIS:** I'm sorry.

21 Q And -- and -- and to the best of your -- you just
22 don't know if highway patrol was there, but you've kind of
23 got a feeling they kind of were there; correct?

24 A I have a feeling they were there, but I can't --
25 again, when I -- by the time I got there, there was no

1 highway patrol officers there, but the normal procedure,
2 they would have called them first, because it was called
3 an accident, and then they call us if it's more than an
4 accident, for us to investigate.

5 Q So it's a fair statement there was a fairly
6 substantial law enforcement presence securing the scene
7 and interviewing witnesses; correct?

8 A No, that's not the case.

9 Q Okay.

10 A Um, again, when I got there on the scene, because
11 again, initially, you know, the initial call was it was an
12 accident. So that doesn't require, you know, to call in
13 the crime scene lab. It doesn't require fifteen or twenty
14 officers to respond.

15 When I responded to the scene, and believed -- I
16 could obviously see that this was more than an accident,
17 again, it was after EMS had responded and EMS had already
18 transported the victim, I could see that it was more than
19 just a typical accident. That's when I started calling in
20 additional resources, and Sergeant Payne and other
21 deputies thought there was more than that for other
22 deputies to come.

23 Officer Heyward was already on-scene, but he was
24 on-scene with Mr. Simms.

25 Q Yes, sir.

1 **A** So, but no, it was not a -- it was a not a
2 significant number of officers there. When I got there, I
3 tried to secure the scene.

4 You know, there were people walking all over the
5 place. I was trying to find witnesses that saw it and
6 witnesses that were willing to speak.

7 **Q** Yes, sir.

8 **A** Because like you mentioned, it was after the game.
9 There was a lot of tailgating. A lot of people had been
10 using alcohol, so the witnesses that I was able to talk to
11 on-scene I did list in my report. They gave me some
12 information to help gather my investigation.

13 **Q** So -- and -- and maybe my impression of presence --
14 officer presence is different. There were at least seven
15 officers there; Derrick, Salmond, Payne, Woods, you,
16 Heyward.

17 **A** Okay. Heyward didn't stay long. Heyward -- once --
18 once -- once -- I mean, because he works for the City of
19 Columbia.

20 The incident happened in Richland County. So once I
21 got there, I took control of Mr. Simms, and I called for
22 additional county resources to help me secure the scene.

23 I can't -- I mean, if Salmond is on the Crime Scene
24 Log, then Salmond was there, but again, I don't remember
25 off the top of my head if there were seven, or eight, or

1 nine, but that would be a reasonable number to say about
2 seven was there.

3 **Q** Fair enough. Seven -- seven or so. That's a fair
4 number?

5 **A** Yes.

6 **Q** Fair enough.

7 **MR. HARRIS:** One moment, Your Honor, please?

8 **THE COURT:** All right.

9 **MR. HARRIS:** Deputy, thank you very much. I
10 appreciate you answering my questions.

11 **THE COURT:** Redirect?

12 **ASSISTANT SOLICITOR WALKER:** Nothing further, Your
13 Honor.

14 **THE COURT:** All right.

15 Is this witness free to leave?

16 **ASSISTANT SOLICITOR WALKER:** Yes, Your Honor.

17 **THE COURT:** Without objection?

18 **MR. HARRIS:** Yes, ma'am. Thank you.

19 **THE COURT:** Very well. You are free to go.

20 Call your next witness, please.

21 **ASSISTANT SOLICITOR MCDUFFIE:** The State calls Deputy
22 Cassie Radford.

23 **BAILIFF:** Put your left hand on the Bible and raise
24 your right.

25 CASSIE RADFORD, after being duly sworn,

1 testified as follows:

2 **CLERK:** Please have a seat. State your full name.

3 **WITNESS:** I'm Investigator Cassie Radford for the
4 Richland County Sheriff's Department.

5 **THE COURT:** Your witness.

6 **ASSISTANT SOLICITOR MCDUFFIE:** Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY ASSISTANT SOLICITOR MCDUFFIE:

9 **Q** Investigator Radford, where are you employed?

10 **A** I'm employed with the Richland County Sheriff's
11 Department.

12 **Q** And how long have you been with the sheriff's
13 department?

14 **A** Approximately eight years.

15 **Q** And in October -- I'm sorry. What are your current
16 duties with the sheriff's department?

17 **A** My current duties, I'm a juvenile investigator.

18 **Q** And please tell the jury what you do as a juvenile
19 investigator.

20 **A** Um, I pretty much walk juvenile offenders through the
21 system, trying to make sure that they are served to the
22 best of their abilities.

23 **THE COURT:** Can you move that microphone down just a
24 little bit? I'm having a little trouble hearing you.

25 Thank you very much.

1 Q Investigator Radford, what were your duties on
2 October the 9th of 2010 with the sheriff's department?

3 A October the 9th, I was working what we call Signal
4 30, which is an extra duty detail with the sheriff's
5 department. I was acting as a police officer and was
6 assigned to a tailgating facility called Cock's Corner,
7 which is on the corner of Shop and George Rogers
8 Boulevard.

9 Q So, that evening, you were working extra duty as a
10 police officer, just ---

11 A As a police officer for that facility.

12 Q And -- but during the day, your normal job with the
13 sheriff's department was what?

14 A At that particular time, I was assigned to Criminal
15 Investigations Division as a detective.

16 Q And on October the 9th of 2010, you said you were
17 working at Cock's Corner?

18 A Yes.

19 Q Where is that located?

20 A It's located on the corner of Shop and George Rogers
21 Boulevard.

22 Q And where in Cock's Corner were you located at
23 approximately 8:30 that evening?

24 A I was located on the back gate. The back gate of
25 this facility is considered the gate that sits on Shop

1 Road. We have a gate that sits on George Rogers, and then
2 we have a gate that sits on Shop Road, and I was assigned
3 to the back gate.

4 Q And, Investigator Radford, how were you dressed that
5 evening?

6 A I was dressed in full uniform, and it is county
7 policy that we wear a reflective type vest. So I had that
8 on as well.

9 Q And clearly identifiable as a member of law
10 enforcement?

11 A Yes.

12 Q And you said you were located again where that
13 evening at about 8:30?

14 A I was located on the back gate, Cock's Corner. It's
15 a tailgating facility.

16 Q And were you with any other officers that evening?

17 A I was. Allen Derrick was my partner that evening.
18 He and I were both assigned to the back -- to the back
19 gate.

20 Q And your duties are just to patrol the property, keep
21 the peace?

22 A Patrol the property, keep the peace on the inside of
23 the facility, monitor the immediate grounds for the
24 outside of the facility.

25 Q And around 8:30 that evening, did something catch you

1 and Deputy Derrick's attention?

2 **A** Yes. Deputy Derrick kind of turned back to me. He
3 had walked closer to the road. He turned back to me and
4 said: There's been an accident.

5 And he starts running down Shop Road toward 77, away
6 from what would be George Rogers.

7 **(WHEREUPON, State's Exhibit No. 53 was marked for**
8 **identification only.)**

9 **Q** I'm going to show you what's been marked as State's
10 Exhibit Fifty-three. Do you recognize this?

11 **A** I do.

12 **Q** And is this a fair and accurate depiction of the area
13 shown in this blowup?

14 **A** Yes.

15 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, at this
16 time, we would offer State's Fifty-three into evidence.

17 **MR. GASSER:** No objection.

18 **THE COURT:** Very well. State's Exhibit Fifty-three
19 into evidence, without objection.

20 **(WHEREUPON, State's Exhibit No. 53 was admitted into**
21 **evidence.)**

22 **Q** Investigator Radford, if you could show the jury
23 approximately where you were that evening?

24 **A** This is a -- I do believe this area right here is
25 called a tailgate zone. I was right on the other side of

1 it. And so when Deputy Derrick started running down Shop
2 Road, he was running in this direction, this way.

3 Q And what did you then do?

4 A Um, I took off behind him and started running down
5 Shop Road in this same direction. I apologize. I'm not
6 sure if it's east or west, but it's heading in this
7 direction across -- across -- there's a set of tracks
8 right here, and we were going in this direction.

9 Q A set of train tracks?

10 A Yes. A set of train tracks.

11 Q And please tell the jury what, if anything, you
12 observed when you ran down the road.

13 A As -- as I was running down the road, I observed
14 someone coming toward me. Um, as he got closer to me, I
15 could tell that -- I could tell that it was a gentleman.
16 Um, and it was almost as if his hands were kind of out. I
17 immediately went into a defensive stance, like this,
18 because I wasn't quite sure what was going to happen.

19 Um, the gentleman came up to me, almost grabbing my
20 vest, and told me that someone had been hurt and needed
21 help. I pushed him off. He continued to run behind me in
22 the opposite direction, and I continued down -- I
23 continued down Shop Road this way.

24 Q And the person that grabbed you and said someone
25 needed help, which direction did he continue to run?

1 **A** He continued to run toward George Rogers Boulevard,
2 which is going back this way past Cock's Corner, this way.

3 **Q** Away from the accident?

4 **A** Away from the accident.

5 **Q** And did you get a good look at the person who grabbed
6 you?

7 **A** It was -- yes.

8 **Q** Do you see him in the courtroom today?

9 **A** Um, Mr. Simms, the defendant, the very last gentleman
10 in this row.

11 **Q** So he grabbed you on October the 9th, 2010, and said
12 someone was hurt.

13 **A** Yes.

14 **Q** And had ran in the opposite direction from the
15 accident?

16 **A** Yes.

17 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, please let
18 the record reflect she's identified the defendant.

19 **THE COURT:** All right.

20 **Q** What did you do after that, Investigator Radford?

21 **A** Um, when I got to the scene, I observed a male
22 gentleman approximately in his late teens lying on the
23 roadway, not in the roadway like in the dead center, but
24 he was on the concrete. Um, there was a woman who had
25 knelt down and who was holding his head in her hand. I'm

1 sorry.

2 (WHEREUPON, THE WITNESS BEGAN CRYING.)

3 **A** Um, at that point, I started -- I knew that EMS had
4 already been called, but due to what I was observing, I
5 got on the radio and started yelling for them to step it
6 up, that EMS needed to get there very, very quickly.

7 While I'm standing there, someone hands me um the
8 victim, Martin Gasque's, cell phone and at that point, um,
9 I started looking through it, because I knew that that was
10 someone's child, and I needed to make contact with a
11 parent. Um, I did find his mom's phone number in his
12 phone and immediately called her. Um, ---

13 **MR. GASSER:** Your Honor, may we approach the bench,
14 please?

15 **THE COURT:** You may.

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
17 RECORD. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD
18 ON THE RECORD:)

19 **THE COURT:** Ladies and gentlemen, there is a matter
20 that I must take up outside your presence, and it's a good
21 time for your afternoon break. So we are going to take
22 about fifteen minutes.

23 Please do not discuss this matter or allow anyone to
24 discuss it with you. It might be a nice time, if you have
25 a couple extra minutes, to select your presiding juror.

1 And you will take your afternoon break. I'm going to
2 do the matters that we need to do, and we'll take a very
3 short break, and then we will reconvene.

4 Do not discuss this matter or allow anyone to discuss
5 it with you. And if you will go with your bailiff to your
6 jury room?

7 Enjoy those brownies. I'm just messing with you.

8 (JANUARY 29, 2013, 3:25 P.M., WHEREUPON, THE JURY
9 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
10 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

11 **THE COURT:** Thank you so much. All right.

12 Go ahead, Mr. Gasser, if you would be so kind as to
13 place your objection on the record?

14 **MR. GASSER:** Judge, we object on a number of grounds.
15 First of all, we have not been provided anything in
16 discovery, other than the fact that Investigator Holdorf
17 was certainly professional enough to take investigative
18 notes and type them up and does, in fact, mention
19 Investigator Radford in his investigative notes,
20 indicating that she advised him shortly after the incident
21 on the night of the incident that Mr. Simms had run up to
22 her and was in a panicked state and wanting help.

23 That's it. That's the extent of her involvement,
24 according to discovery that we have received, in which she
25 had every opportunity to either do her own report, which I

1 know that they are trained to do, per policy.

2 **THE COURT:** Let me ask. Let me inquire, first of
3 all, let me inquire about that.

4 Ms. McDuffie, have you received, based upon your
5 preparation for this trial, have you received any sort of
6 investigative notes or other information from this
7 witness?

8 **ASSISTANT SOLICITOR MCDUFFIE:** No, Your Honor. It's
9 my understanding that the extent of documentation about
10 what she did is contained in Investigator Holdorf's
11 follow-up, as Mr. Gasser just stated.

12 **THE COURT:** All right. Very well.

13 And my concern is that you talk about the approach
14 and what happens subsequent to that, and we're moving into
15 a different area. And have you had an opportunity to
16 inquire of this officer whether or not there are any sort
17 of investigative reports or notes or otherwise?

18 **ASSISTANT SOLICITOR MCDUFFIE:** We have, Your Honor.
19 She's indicated that there are none.

20 **THE COURT:** Okay.

21 **ASSISTANT SOLICITOR MCDUFFIE:** And for the Court's
22 information, as I said at the bench, my understanding of
23 the rest of her testimony would be that she -- EMS then
24 arrived. The victim was taken to the hospital. She
25 followed in her patrol car and he was pronounced dead at

1 the hospital, and that's the extent of the testimony that
2 we intend to elicit from this witness.

3 **THE COURT:** Okay. Okay.

4 Well, what I would have happen at this point is that
5 that testimony be proffered so that we know that that's
6 what it is, to begin with.

7 Now, your other objections, Mr. Gasser?

8 **MR. GASSER:** Well, I just object to relevance. First
9 of all, her following EMS to the hospital and hearing
10 somebody say something is hearsay. If that witness is on
11 the witness list, they can -- they can testify. Clearly,
12 we're not challenging it.

13 I -- I -- I'm concerned about this witness. I told
14 the judge my personal and professional concern, as well.
15 And quite frankly, I just don't -- I just don't -- I -- I
16 -- so far, everything that she just said before my
17 objection was irrelevant. If I had known that, we would
18 have objected beforehand, but her walking up to somebody
19 and holding the person's head in their lap and looking
20 through their cellphone and calling their mother is all
21 emotion. It has nothing to do with any issue.

22 Her having testified that Curtis Simms came up is
23 clearly relevant. That is relevant.

24 She had contact with Mr. Simms, but her walking up
25 and testifying to what she testified to, and here is a

1 seasoned investigator that investigates significant
2 crimes, and she's crying. This whole thing is just quite
3 frankly ridiculous, Your Honor.

4 **THE COURT:** Well, I don't know that I would
5 characterize it as ridiculous; however, let me ask this
6 question.

7 She will testify, as I understand your proffer, she
8 will testify that EMS arrived on the scene. She followed
9 EMS to the hospital, and at that point if she -- at that
10 point, we are going to have to deal with a hearsay
11 objection. Yes?

12 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, she
13 observed him being pronounced dead. Medical treatment was
14 stopped.

15 You know, then the family arrived. I was not going
16 to go into the family arrived. I mean, you know, things
17 of that nature.

18 I was trying to avoid calling the doctor to say he
19 pronounced him dead. I don't think that they're going to
20 argue that he didn't die as a result of this, so I was
21 just trying to avoid calling the doctor to do that.

22 She was there. He was pronounced dead. She saw he
23 was dead. I mean, I wasn't going to question her, you
24 know, in terms of stopping medical treatment and things
25 like that.

1 My question was: Was he pronounced dead?

2 I think her response would be: Yes.

3 That would be the end of it.

4 **MR. GASSER:** Your Honor, we object. It's hearsay,
5 and Mr. Harris has already -- is ready and has prepared
6 his cross-examination of the ER doctor. We don't need to
7 release what our strategy is for that purpose, but that
8 would be hearsay testimony. We object.

9 **THE COURT:** All right.

10 It's going to be hearsay. She can certainly testify
11 with regards to what she observed.

12 Let me ask this question, because here's my concern.
13 My concern is at this point, she's -- she's stated that
14 she placed a telephone call to the decedent's mother. And
15 do you intend to ask of this witness what his mother said?

16 **ASSISTANT SOLICITOR MCDUFFIE:** No, Your Honor. I
17 don't, but just for the Court's information, Ms. Radford
18 informed them there had been an accident and they needed
19 to come to Columbia. That was the extent of the
20 conversation, but I do not intend to go into that.

21 **THE COURT:** All right. All right.

22 And then, you intend to -- well, I want to hear it.
23 Go ahead and proffer it and let me listen to it.

24 (PROFFERED TESTIMONY, OUT OF THE PRESENCE OF THE
25 JURY:)

DIRECT EXAMINATION

BY ASSISTANT SOLICITOR MCDUFFIE:

Q Investigator Radford, while you were on-scene, EMS arrived?

A Yes.

Q And you observed what when EMS arrived?

A EMS started working on the victim, loaded him up, had a very difficult time getting out, due to the traffic. Um, once they were headed back towards George Rogers going toward the hospital, I got in my patrol car and followed them to the hospital.

ASSISTANT SOLICITOR MCDUFFIE: And that's the extent, Your Honor.

THE COURT: That would be all that you would ask?

ASSISTANT SOLICITOR MCDUFFIE: On -- on this, yes.

THE COURT: Any other -- any other testimony from this witness?

ASSISTANT SOLICITOR MCDUFFIE: Your Honor, I was going to ask her a few more follow-up questions about where she observed the victim lying when she arrived.

THE COURT: All right.

ASSISTANT SOLICITOR MCDUFFIE: But ---

THE COURT: Okay. All right. Go ahead.

And the reason for that -- the reason for that is I am concerned that there are no reports. I am concerned

1 that discovery, no doubt, has been exchanged, both sides,
2 and in that there is no report, there are no notes, and
3 there has been the passage of time, I think that in the
4 interest of fairness, it is appropriate that counsel have
5 an opportunity to know what they are meeting in terms of
6 this witness's testimony, in that she's an investigator.
7 She's investigating this particular incident, and there
8 are no reports and there are no records.

9 They've not objected to what they knew about. I'm
10 concerned that this may be new.

11 **MR. GASSER:** We are objecting to it.

12 **THE COURT:** I know.

13 **MR. GASSER:** Okay. I just wanted to make sure,
14 because in case anyone says that -- we are objecting to
15 all of this. She is ---

16 **THE COURT:** I've got it. I've got it.

17 **MR. GASSER:** Okay. Are you -- are you ---

18 **THE COURT:** I'm going to let her proceed at this
19 point.

20 I'll make a decision, but hold on.

21 **(WHEREUPON, State's Exhibit No. 16 was marked for**
22 **identification only.)**

23 **Q** Investigator Radford, I'm going to show you what's
24 been marked as State's Exhibit Sixteen. Do you recognize
25 that?

1 **A** Yes, I do.

2 **Q** And is that a fair and accurate depiction of what you
3 observed after EMS was there?

4 **A** Obviously, there were people standing around and that
5 sort of thing, but that's the general location, yes.

6 **Q** And then will you please ---

7 **ASSISTANT SOLICITOR MCDUFFIE:** I assume he wants to
8 see what she's going to point at.

9 **Q** When you observed Martin Gasque in the roadway, can
10 you please tell me where he was?

11 **THE COURT:** Now I can't hear you. I'm so sorry.

12 **ASSISTANT SOLICITOR MCDUFFIE:** I'm sorry.

13 **Q** When you observed Martin Gasque in the roadway, can
14 you please tell me the approximately location?

15 **A** It was not out to the side. He was kind of
16 straddling the line here.

17 **Q** The white line?

18 **A** Yes.

19 **ASSISTANT SOLICITOR MCDUFFIE:** That's all, Your
20 Honor.

21 **MR. GASSER:** Judge, they have multiple EMT people
22 that they can call. They've got crime scene individuals
23 that they call.

24 You know, here we are on January the 29th, 2013,
25 twenty-seven and a half, twenty-eight months after the

1 incident. We have no idea, even though her name is in one
2 of the investigator's reports, which is what we assumed
3 that she was going to be called to testify to, and then
4 all of a sudden, she's this -- they're using her for other
5 reasons, other than what was contained in the discovery
6 that we had asked. And they've got other witnesses that
7 can -- that can -- that can do this. So, that would be
8 our objection.

9 **THE COURT:** Very well.

10 I will allow you to ask her what you've just asked
11 her. It is -- it is not appropriate, based on what I've
12 heard at this point, and subject to a hearsay objection,
13 and I don't hear that you're offering from this witness
14 the response of the decedent's mother.

15 **ASSISTANT SOLICITOR MCDUFFIE:** No, not at all, Your
16 Honor.

17 **THE COURT:** We've sort of done that and moved beyond
18 that. You, then, as I understand it, wish to show a
19 photograph and have her identify on this photograph where
20 this young man was located. Yes?

21 **ASSISTANT SOLICITOR MCDUFFIE:** What she observed that
22 evening, Your Honor, is what I intend to ask her.

23 **THE COURT:** Well, I don't want to split hairs. I
24 just want to know where I'm going. In other words, I
25 don't want to send the jury back out.

1 **ASSISTANT SOLICITOR MCDUFFIE:** Right.

2 **THE COURT:** And if you intend to ask other things,
3 other ---

4 **ASSISTANT SOLICITOR MCDUFFIE:** No, Your Honor, just
5 where she saw the victim lying when she got there.

6 **THE COURT:** All right. And then you intend to ask
7 her about following the EMS to the hospital.

8 **ASSISTANT SOLICITOR MCDUFFIE:** Correct.

9 **THE COURT:** And you're mindful of the hearsay
10 objections.

11 **ASSISTANT SOLICITOR MCDUFFIE:** Yes, Your Honor.

12 **THE COURT:** Which I would sustain.

13 **ASSISTANT SOLICITOR MCDUFFIE:** Yes, Your Honor.

14 **THE COURT:** Very well.

15 All right. Well, I will allow that. And, of course,
16 you'll have cross-examination with regards to the report,
17 or lack thereof.

18 But insofar as what I am hearing, then the -- I will
19 allow the testimony. We're to the phonecall. We've moved
20 beyond that.

21 You may certainly ask her: Where was this young man
22 located on the photograph?

23 I will certainly allow that. And if you wish to have
24 her elicit testimony that she followed the EMS to the
25 hospital, I will allow that, but apparently the responses

1 would be hearsay.

2 **ASSISTANT SOLICITOR MCDUFFIE:** Certainly, Your Honor.

3 **THE COURT:** Very well.

4 **MR. GASSER:** Your Honor, the only other point is that
5 if you remember at our hearing yesterday, we looked at
6 some photographs, we did not have any objection to any of
7 the photographs, per se, but there were two or three, ---

8 **THE COURT:** Yeah.

9 **MR. GASSER:** --- of the closeups that showed the very
10 -- the very bright red, sometimes coagulated blood,
11 because it was after the fact, after the incident. This
12 is one of those photographs.

13 Again, we don't have an objection to the photograph,
14 per se. We would just like a black and white, a copy of
15 it in black and white to be made, because what they are
16 trying to get out, the white lines, the roadway itself,
17 would all be contained. It would not in any way prohibit
18 the State from getting out ---

19 **THE COURT:** I understand.

20 **MR. GASSER:** --- the issue they want to get out.

21 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, if I may
22 approach and show you the photograph I intend to offer, I
23 don't think that a black and white -- this is a very dark
24 photograph, and the blood is not red and coagulated, as it
25 is in this one.

1 I understand what Mr. Gasser is saying in terms of
2 something like this, Your Honor, but I don't think that
3 black and white would do anything to the nature of the
4 blood. It looks black in this picture, Your Honor.

5 **MR. GASSER:** Well, that's one of two. I believe it
6 was just two. All the rest of them clearly show, and they
7 can say it's blood. I don't have any problem with that.
8 We're not objecting to those.

9 We're only objecting to the two that are the closest
10 ones that they're trying to introduce. And we're not
11 objecting to the photograph.

12 We just would rather have a black and white version
13 so that the redness does not stick out. It might offend
14 or go to the passions and the emotions of a particular
15 juror.

16 **THE COURT:** Is there a black and white? Do we have a
17 black and white that I can review?

18 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, I -- I
19 don't even know that this is one they're objecting to.

20 **MR. GASSER:** I'm -- I'm concerned about that picture.
21 So that's the one I care about now.

22 **THE COURT:** Was this one of the two yesterday?

23 **ASSISTANT SOLICITOR MCDUFFIE:** No.

24 **MR. GASSER:** They weren't numbered yesterday.

25 **THE COURT:** Okay. All right.

1 Do you have a black and white?

2 **ASSISTANT SOLICITOR MCDUFFIE:** We'll get one, Your
3 Honor.

4 **THE COURT:** Just if you could do that, let me just
5 compare them and see. I can't -- I can't make a
6 determination, unless I can see a black and white, but I
7 do see -- I get what you're trying to show. Let me see a
8 black and white photograph, because I can't tell whether
9 or not what the difference would be.

10 Very well. Now, anything else, or can we take a
11 break? Yes? Yes?

12 How long do you think it will take to do the
13 photograph?

14 **ASSISTANT SOLICITOR MCDUFFIE:** Five minutes, at the
15 most.

16 **THE COURT:** Really?

17 **ASSISTANT SOLICITOR MCDUFFIE:** Two minutes?

18 **THE COURT:** That's remarkable. Okay. Very well.

19 Let's -- let's take about ten, and I'll -- and then I
20 can look at the photograph.

21 And, please, and you know I don't need to,
22 Investigator Radford, to tell you, but please do not
23 discuss your testimony with anyone.

24 **WITNESS:** Yes, Your Honor.

25 **THE COURT:** Since you're on the stand.

1 **WITNESS:** Yes, Your Honor.

2 **THE COURT:** Thank you very much.

3 (WHEREUPON, AT 3:37 P.M., A BREAK WAS TAKEN.

4 THEREAFTER, AT 4:00 P.M., THE FOLLOWING PROCEEDINGS WERE
5 HELD ON THE RECORD OUT OF THE PRESENCE AND HEARING OF THE
6 JURY:)

7 **THE COURT:** All right. Anything before we bring the
8 jury out?

9 How about the photo?

10 **MR. GASSER:** Your Honor, they are trying to lighten
11 it up. This is the best they've been able to come up
12 with.

13 **THE COURT:** Have you seen the picture? I know you've
14 seen the pictures. You've seen this one?

15 I'm going to try to lighten this one up a little bit.
16 It's pretty dark. I think they can lighten it up a little
17 bit more to have sufficient detail. I'm little bit
18 concerned about how dark that one is.

19 **MR. HARRIS:** Your Honor, the purpose of this, my
20 understanding is at some point in time, she comes down,
21 not knowing who has moved what with the body, and is going
22 to say she saw the body in some general area close to the
23 white line. That's my understanding.

24 **THE COURT:** That's not what I understood her to say.
25 She said it was on the white line, is what I heard her

1 say.

2 **MR. GASSER:** Okay. I think she can do that with the
3 white line here.

4 **THE COURT:** I think -- I know. I understand where
5 you're coming from. I'd like to see it lightened up a
6 little bit more, and I gather that's ongoing as we speak.

7 **ASSISTANT SOLICITOR CAMPBELL:** Yes, ma'am. It is.

8 **THE COURT:** Okay. All right.

9 Excellent work. Yeah, I'm very satisfied with this
10 one. Yes.

11 **MR. GASSER:** Let the record reflect, I hired her, by
12 the way.

13 **THE COURT:** Well, you know what? You did a good
14 day's work. I don't know how that happened, but that's
15 extraordinarily well done.

16 Did you have a chance to see that one?

17 **MR. GASSER:** Yes, ma'am.

18 **THE COURT:** Wow! You have a couple of days to pack,
19 and we'll take her back to Dorchester.

20 That is excellent, really excellent.

21 Do you need some time?

22 **ASSISTANT SOLICITOR CAMPBELL:** No, Your Honor. We're
23 ready.

24 **THE COURT:** Okay. Let us have the jury, please.

25

1 (JANUARY 29, 2013, 1:57 P.M., WHEREUPON, THE JURY
2 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
3 WERE HELD IN THEIR PRESENCE.)

4 **THE COURT:** Great! PJ, Presiding Juror, thank you.
5 Thank you so much for serving in that capacity.

6 Very well. At this time, we will continue with the
7 State's case and the direct examination of Investigator
8 Radford.

9 You may proceed, and thank you, Ms. McDuffie.

10 DIRECT EXAMINATION

11 BY ASSISTANT SOLICITOR MCDUFFIE:

12 **Q** Ms. Radford, when you arrived on-scene, Martin
13 Gasque's body was still on the roadway?

14 **A** Yes.

15 **Q** I'm going to show you what's been marked as State's
16 Exhibit Sixteen for Identification. Is that a picture of
17 the roadway where you observed his body?

18 **A** Yes, it is.

19 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, at this
20 time, we'd offer Sixteen into evidence.

21 **THE COURT:** All right.

22 **MR. GASSER:** No objection.

23 **THE COURT:** Very well. Sixteen into evidence,
24 without objection.

25

1 (WHEREUPON, State's Exhibit No. 16 was admitted into
2 evidence.)

3 **Q** Ms. Radford, can you please show the jury where you
4 observed his body?

5 **A** Closer to the white line. He wasn't over here, and
6 he wasn't over here. He was in this area close to the
7 white line.

8 **Q** And you were also present when EMS arrived?

9 **A** Yes, I was.

10 **Q** And when EMS arrived, they loaded him into the
11 ambulance?

12 **A** Yes, they did.

13 **Q** And what did you then do?

14 **A** Tried to get EMS out of the traffic, assisted with
15 that, and then as soon as I knew that EMS was on its way
16 back toward George Rogers, I got in my patrol car and
17 followed the ambulance to the hospital.

18 **ASSISTANT SOLICITOR MCDUFFIE:** Thank you, Your Honor.
19 No further questions for this witness.

20 **THE COURT:** All right.

21 Cross-examination?

22 **MR. GASSER:** Beg the Court's indulgence?

23 **THE COURT:** Sure.

24 **MR. GASSER:** Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. GASSER:

2 Q Investigator Radford, I believe you indicated that it
3 was approximately 8:30 on the evening of Saturday, October
4 the 9th, 2010, that Mr. Simms approached you in an excited
5 state?

6 A It was after the game.

7 Q I guess -- well, and Ms. McDuffie used the
8 approximate 8:30 p.m. in her question. Is that -- does
9 that appear to be the time that you recall?

10 A To my best recollection.

11 THE COURT: I'm so sorry. I'm having trouble hearing
12 you. Thank you so much.

13 Q When Mr. Simms approached you in this excited state,
14 he told you that he needed help; correct?

15 A He didn't tell me that he needed help. He told me
16 that someone needed help.

17 Q Someone needed help. And you -- two days after this
18 incident, do you recall having a conversation with
19 Investigator Holdorf here about coming into contact with
20 Mr. Simms?

21 A It was after the incident, yes, sir.

22 Q And you told Investigator Holdorf basically what
23 you've just told me about coming into contact with Mr.
24 Simms; correct?

25 A Yes.

1 Q Did you mention anything else to Investigator Holdorf
2 at that time?

3 A Nothing more than there was a gentleman running
4 toward me, light colored shirt, was excited, told me that
5 someone needed help. He kept going in the opposite
6 direction that I was going in.

7 Q And I have Investigator Holdorf's notes, pursuant to
8 discovery, and have you had an opportunity to review his
9 notes, since it was your statement referencing you?

10 A I haven't looked at them. No, sir.

11 Q How long have you been an investigator with the
12 Richland County Sheriff's Department?

13 A I've been a juvenile investigator for three years,
14 and before that, I was a victim's advocate for
15 approximately two and a half. Before that, I was a school
16 resource officer.

17 Q And are you familiar with Investigator Don Robinson
18 with the sheriff's department, as well, that's been
19 mentioned as a potential witness in this case?

20 A I am.

21 Q Have you had an opportunity to look at Investigator
22 Robinson's notes that have been provided to us?

23 A No, sir.

24 Q Where are your notes, Investigator Radford, of what
25 you've just described to this jury that you heard and saw

1 and did on the evening of October the 9th?

2 A As a victim's advocate, which is the role that I took
3 on once I got there, notes as far as my own notes, what's
4 in -- what I recall, I have them in memory, but it's not
5 -- it -- when you're a victim's advocate, you don't turn
6 your notes over to investigators usually.

7 Q So you originally told the jury that you were present
8 at the football game in what capacity?

9 A I was working Signal 30 as a -- as a police officer.

10 Q And as a -- you are a trained investigator; correct?

11 A Yes, sir.

12 Q And at some point in time, Mr. Simms approached you
13 and told you somebody needed help, as you previously
14 testified to this jury; correct?

15 A That is correct.

16 Q And so you went to the scene, that the jurors have
17 already heard testimony about, immediately; correct?

18 A Yes, sir.

19 Q Were you present when Mr. Simms came back to the
20 scene?

21 A I do not recall him coming back to the scene, no,
22 sir.

23 Q Were you present -- you indicated you saw Mr. Simms
24 leaving towards the direction of George Rogers Boulevard;
25 correct?

1 **A** That is correct.

2 **Q** Were you present when he approached several law
3 enforcement officers there?

4 **A** The only one I know about is myself.

5 **Q** And so the testimony, other than what's recorded in
6 Investigator Holdorf's notes that you've provided this
7 jury in response to Ms. McDuffie, is based on your memory
8 from twenty-eight months ago?

9 **A** Yes, sir.

10 **Q** Okay. And you do specifically recall on State's
11 Exhibit Number Sixteen that Mr. Gasque's body was closest
12 to the white line. Was that -- was that your testimony?

13 **A** It was closer to the white line, that I recall, yes,
14 sir.

15 **Q** And that would be this white line, which is --
16 separates the road of travel from the cement pedestrian
17 travel, so to speak; is that correct?

18 **A** Yes, sir.

19 **Q** And, of course, you don't have any idea, do you,
20 Investigator Radford, how many people had touched him
21 prior to you coming to the scene; do you?

22 **A** I can only tell you what I saw when I arrived on the
23 scene.

24 **Q** So I guess the answer to that question is no.

25 **A** That's correct.

1 **MR. GASSER:** Beg the Court's indulgence?

2 **THE COURT:** All right.

3 **MR. GASSER:** That's all we have. Thank you, Your
4 Honor.

5 **THE COURT:** All right.

6 Redirect?

7 **ASSISTANT SOLICITOR MCDUFFIE:** Briefly, Your Honor.

8 **THE COURT:** All right.

9 REDIRECT EXAMINATION

10 BY ASSISTANT SOLICITOR MCDUFFIE:

11 **Q** Investigator Radford, do you vividly remember what
12 you observed that evening?

13 **A** Yes.

14 **Q** Why?

15 **A** Um, I am a parent.

16 **MR. GASSER:** Objection, Your Honor.

17 **THE COURT:** Sustained.

18 **ASSISTANT SOLICITOR MCDUFFIE:** No further questions
19 for this witness, Your Honor.

20 **MR. GASSER:** Your Honor, may we approach?

21 **THE COURT:** Yes.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
23 RECORD. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD
24 ON THE RECORD:)

25 **THE COURT:** All right. Ladies and gentlemen, I need

1 to explain this to you. The response that was just given
2 was not an appropriate response.

3 I'm going to strike that response, based on the
4 motion of the defense. I'm going to ask you to disavow it
5 from your mind.

6 When I get to the charge on the law, I'll have an
7 opportunity to discuss with you the fact that you will
8 make your determination based upon the facts that you
9 hear, based upon what you find to be the truth, but you
10 cannot be motivated by sympathy, passion, or prejudice for
11 or against any party. And it's important that you're able
12 to do that.

13 So I'm going to tell you that the response that was
14 just elicited from this witness was inappropriate. And
15 the question was fine, but the response was not
16 appropriate.

17 I'm going to ask you to please dis -- I love that
18 term, disavow it from your mind. That's -- you know,
19 that's another word from us from Dillon, forget about
20 that. It didn't -- play like it didn't happen. It was
21 not appropriate.

22 Yes, ma'am. Please proceed.

23 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, I have no
24 further questions for this witness.

25 **THE COURT:** Very well. Very well.

1 All right. Recross?

2 **MR. GASSER:** No, ma'am.

3 **THE COURT:** Very well.

4 Is this witness free to leave?

5 **MR. GASSER:** No objection.

6 **THE COURT:** All right.

7 You need to remain just for a moment longer.

8 Call your next witness, please.

9 **ASSISTANT SOLICITOR MCDUFFIE:** The State would call
10 Officer James Heyward.

11 **BAILIFF:** Place your left hand on the Bible and raise
12 your right.

13 JAMES HEYWARD, after being duly sworn, testified
14 as follows:

15 **CLERK:** Please have a seat and state your full name.

16 **WITNESS:** James Heyward.

17 DIRECT EXAMINATION

18 BY ASSISTANT SOLICITOR MCDUFFIE:

19 **Q** Officer Heyward, where are you currently employed?

20 **A** Columbia Police Department.

21 **Q** And what are your duties with the Columbia Police
22 Department?

23 **A** Patrol Officer, take calls of service.

24 **Q** And how long have you been with the Columbia Police
25 Department?

1 **A** Just over six years.

2 **Q** And on October the 9th of 2010, did you have the
3 occasion to respond to Shop Road?

4 **A** Yes, ma'am. I was working in the Rosewood area, the
5 south region.

6 **Q** And you were just patrolling the Rosewood area?

7 **A** Yes, ma'am.

8 **Q** And you got called to go to Shop Road?

9 **A** Yes, ma'am. If I remember correctly, the call came
10 out. An individual was struck by a vehicle. Due to that
11 nature of the call and the location, I figured it was in
12 the county, but I started my way heading over there. I
13 knew there was a big crowd over there and all, and if that
14 was highway patrol, it would take them quite a while to
15 get there, so I went ahead and started that way.

16 **Q** And when you got there, please tell the jury what you
17 observed.

18 **A** When I arrived on-scene, EMS was there. They were
19 working with the victim on the ground.

20 They were -- at some point while I was there, Mr.
21 Simms did come up to me, and he made a statement that he
22 had hit the guy. At that time, I placed him in the back
23 of the patrol car. I didn't talk to him about anything as
24 far as how the incident went down. I stayed with him
25 beside the patrol car.

1 Q And you said Mr. Simms approached you?

2 A Yes, ma'am.

3 Q And the person that approached you, do you see him in
4 the courtroom today?

5 A Yes, ma'am.

6 Q Can you please identify him for the jury?

7 A Black jacket on the end, ma'am.

8 **ASSISTANT SOLICITOR MCDUFFIE:** Your Honor, please let
9 the record reflect he's identified the defendant.

10 **THE COURT:** Very well.

11 Q And you weren't seeking anyone out. He just
12 approached you?

13 A Yes, ma'am.

14 Q And tell the jury again what he said to you.

15 A He just made a statement that he did hit him.

16 Q That he hit the victim?

17 A Yes, ma'am.

18 Q And you placed him in the back of your patrol car?

19 A Yes, ma'am.

20 Q And you did not question him any -- any further at
21 that point?

22 A No, ma'am.

23 Q And what did you do after that?

24 A I stood by until the County made -- dispatch, I
25 believe called the highway patrol and County. There was a

1 question of whose jurisdiction it was in, so I just hung
2 tight with him for a while until one of the deputies came
3 over and said that they were going to take the call. I
4 transferred him over to the County's custody.

5 Q And after that, you had no further contact with Mr.
6 Simms?

7 A No, ma'am.

8 ASSISTANT SOLICITOR MCDUFFIE: Thank you, Your Honor.
9 No further questions for this witness.

10 THE COURT: Very well.

11 Cross-examination.

12 MR. GASSER: Very briefly.

13 THE COURT: Yes.

14 CROSS-EXAMINATION

15 BY MR. GASSER:

16 Q Officer Heyward, were you the first City of Columbia
17 Police Officer on the scene?

18 A To my knowledge, no. And I say that because the
19 football game was going on, and it's a collective
20 agreement between several jurisdictions, and multiple
21 officers were working that area at the time.

22 Now, I was the only one from South Region that
23 responded that was working the street, but I do know there
24 were several other officers that were working the scene,
25 or that were working the football game that may have

1 showed up, but I don't recall if there were any other CPD
2 when I arrived on-scene.

3 Q Did you see other Richland County Sheriff's Deputies
4 there?

5 A Again, I don't -- I -- I don't want to sit here and
6 say no that I didn't because of all the officers that were
7 working the football game, and it was right -- right by
8 the stadium, but I don't recall. All I remember when I
9 rolled up was EMS I do know was there. And I would
10 imagine there were other officers there helping direct
11 traffic and whatnot, but I can't recall who and how many
12 there were.

13 Q When Mr. Simms approached you, did he -- did he
14 approach you face -- head-on, or did he have to kind of
15 tap you on the shoulder or come to your side? Do you
16 recall that?

17 A No, sir. I don't remember. I do not remember.

18 Q And he was respectful to you?

19 A Yes, sir. I had -- I had no problem, no issues with
20 him. He just made the comment to me, and at that point, I
21 just placed him in the patrol car and advised the County.
22 They said they were taking the call.

23 Q And just so the jury knows, when you -- you placed
24 handcuffs on him; correct?

25 A Yes, sir.

1 Q Is that known -- or that is known as investigative
2 detention; is it not?

3 A Yes, sir. He wasn't -- I wasn't placing him under
4 arrest. He was just being detained until the facts had
5 come out about what had occurred and the jurisdiction that
6 was taking the call. I would have either cut him loose
7 after they talked to him, or, you know, take him into
8 custody. That was up to them to make.

9 Q But there's absolutely no question, just so the jury
10 is clear, he approached you and came to you. And you were
11 wearing a uniform; correct?

12 A Yes, sir, dressed as I am today.

13 Q And told you that: I hit the guy.

14 A Yes, sir.

15 Q So you placed him in investigative detention to turn
16 him over to whatever agency ultimately would handle this
17 investigation.

18 A Yes, sir.

19 MR. GASSER: That's all I have, Your Honor.

20 THE COURT: All right.

21 Redirect?

22 ASSISTANT SOLICITOR MCDUFFIE: No questions for this
23 witness, Your Honor.

24 THE COURT: All right. Is he free to go?

25 ASSISTANT SOLICITOR MCDUFFIE: Please, Your Honor.

1 **THE COURT:** Any objection?

2 **MR. GASSER:** No objection.

3 **THE COURT:** You're welcome to go.

4 **WITNESS:** Thank you, Your Honor.

5 **THE COURT:** Yes.

6 Please call your next witness.

7 **ASSISTANT SOLICITOR CAMPBELL:** May it please the
8 Court?

9 **THE COURT:** Yes.

10 **ASSISTANT SOLICITOR CAMPBELL:** The State calls James
11 Martin.

12 Your Honor, these witnesses are sequestered, so it
13 takes a second to get them in.

14 **THE COURT:** I know, and y'all have done a wonderful
15 job of relaying it, and I really appreciate it.

16 Ladies and gentlemen, while we have just a moment,
17 I'm going to mention this to you. If you're having
18 difficulty seeing or hearing, I -- I -- I don't tend --
19 one of the things I tend not to do is look at jurors,
20 because, obviously, I wouldn't -- I just tend not to do
21 that, as a practice, because I wouldn't want my
22 expressions, it might be too much lunch or something, to
23 be perceived by the jurors as meaning something, so I tend
24 not to do that. But our bailiffs are so in tuned to you,
25 if you're having trouble hearing, I know I've had some

1 trouble hearing from time to time, but it might just be
2 because I'm old and going deaf, but it's critical that you
3 all are able to both hear and see.

4 I want you, if you're having trouble hearing, do
5 something. Put your hands on your ears.

6 If you're having trouble, if you just will make some
7 gesture, we will certainly correct that, because you must
8 be able to see and you must be able to hear, and I don't
9 want you struggling.

10 I've tried to watch when there have been the
11 diagrams, because they've been kind of small, and I'm
12 looking for people who are -- who are -- look like they're
13 having trouble seeing, and it appears that you're able to
14 see. I know I'm having a little bit of difficulty
15 hearing, but you are closer than I am. Again, do not be
16 shy about that.

17 You must be able to see. You must be able to hear.
18 If there are any problems as we proceed, you know, do
19 this. You know, just let us know. These bailiffs are
20 very in tune to you. Just let us know.

21 Thank you for that. You may proceed.

22 **ASSISTANT SOLICITOR CAMPBELL:** May it please the
23 Court?

24 **BAILIFF:** Put your left hand on the Bible. Raise
25 your right hand and face the clerk.

1 JAMES MARTIN, after being duly sworn, testified
2 as follows:

3 **CLERK:** Please have a seat and state your full name
4 for the record.

5 **ASSISTANT SOLICITOR CAMPBELL:** You need to state your
6 name for the record.

7 **WITNESS:** James Martin.

8 DIRECT EXAMINATION

9 BY ASSISTANT SOLICITOR CAMPBELL:

10 **Q** Mr. Martin, how old are you?

11 **A** Thirty.

12 **Q** And do you live here in the Columbia area?

13 **A** Yes, ma'am.

14 **Q** How long have you been living in the Columbia area?

15 **A** Approximately nine years.

16 **Q** And are you currently married?

17 **A** I am.

18 **Q** And do you have any children?

19 **A** Yes.

20 **Q** And how many children do you have?

21 **A** Two.

22 **Q** Are you employed?

23 **A** I am.

24 **Q** And what do you do for a living, sir?

25 **A** I'm a commercial insurance broker.

1 Q And as a commercial insurance broker, what do you do?

2 A I sell commercial property casualty insurance to
3 businesses across the state.

4 Q And do you and your wife live here in the Columbia
5 area?

6 A Yes.

7 Q I want to turn your attention back to October of
8 2010. Did you attend the USC game that day?

9 A I did.

10 Q And was there a certain place where y'all would park,
11 or you parked on that day on October the 9th, 2010, the
12 Alabama game?

13 A Yes, ma'am.

14 Q And where was that located, sir?

15 A Hood Construction parking lot.

16 Q And what road is that on? Do you recall?

17 A That's on Shop Road.

18 Q On Shop Road?

19 A Yes, ma'am.

20 Q And are there a lot of cars that park in there? Is
21 it one of those where they sell the parking places? Or do
22 they have rooms, or how does it work?

23 A They are sold prior to the season starting. You buy
24 one spot, and that gives you a spot for the -- for the
25 entire year.

1 Q And so that was the spot you traditionally went to
2 every week?

3 A Yes, ma'am.

4 Q That there was a home game?

5 A Yes, ma'am.

6 Q And on that day, did you actually attend the game?

7 A Yes.

8 Q And who all was with you that day?

9 A It was my brother-in-law, my father, my wife, my
10 grandfather, and some other just friends.

11 Q So this was kind of a family tradition?

12 A Yes, ma'am.

13 Q To go to the USC games?

14 A Yes, ma'am.

15 Q Did you, in fact, graduate from USC?

16 A Yes, ma'am.

17 Q That day -- what -- what time of day was the game,
18 that it actually took place?

19 A 3:30 was the game, when the game started.

20 Q And what was the outcome of the game?

21 A South Carolina won.

22 Q Was that a big win?

23 A I'd say so, yes.

24 Q After the game, what did y'all do?

25 A Um, we got back to the car and talked a little bit.

1 We typically wait thirty, forty, minutes, maybe pull out
2 some additional food until the traffic starts to die down,
3 because it gets kind of congested on Shop Road, you know,
4 immediately following the games.

5 Q So you were what's called tailgating after the game?

6 A Yes.

7 Q And were other people in the parking lot tailgating
8 with y'all?

9 A Yes.

10 Q And was that game -- was it pretty crowded in that
11 area?

12 A It had thinned out some.

13 Q Some?

14 A I mean, they were probably a half to a third full at
15 that time.

16 Q And as far as y'all, you said you were waiting and
17 y'all had actually pulled out some more food after the
18 game. Were you waiting for maybe the traffic to give a
19 little bit?

20 A Correct.

21 Q Was it pretty heavy?

22 A It was.

23 Q And the people that you were with and the people
24 around you, were you drinking that day?

25 A I had drank that day, yes.

1 **MR. HARRIS:** Your Honor, I object. I object to the
2 leading. I think every question has been a leading
3 question. I ask that they be direct questions.

4 **THE COURT:** All right. There's an objection to
5 leading. Sustained.

6 **ASSISTANT SOLICITOR CAMPBELL:** Okay, Your Honor.

7 **Q** What were you doing -- what had you had to drink that
8 day?

9 **A** Um, I had some -- some beer prior to the game.

10 **Q** After the game, though, y'all had pulled out just
11 some additional food?

12 **A** Correct.

13 **Q** And while you were in the parking lot, how close was
14 your tailgate area where y'all were -- how close were you
15 to actual Shop Road, itself?

16 **A** Um, our parking spot is about forty yards from our
17 spot to actual Shop Road.

18 **Q** As the evening wore on, can you tell this jury what
19 you observed as cars were leaving?

20 **A** I mean, just typical traffic congestion. You know,
21 it's at a standstill and move. You know, several cars go
22 by. Somebody might let someone out. You know, typical
23 what we see most times after the game.

24 **Q** That evening, did you observe a white SUV?

25 **A** Yes.

1 Q And what did you see it doing when you first noticed
2 it?

3 A It was waiting to get out onto Shop Road.

4 Q And had it actually -- how -- how was it positioned
5 in relation to Shop Road?

6 A Um, it was perpendicular to Shop Road at the time.

7 Q So, if Shop Road is here and this is the parking lot,
8 was it headed this way?

9 A Correct.

10 Q Trying to get into traffic?

11 A That's correct.

12 Q And could you see how many people were actually in
13 that car on that evening?

14 A No.

15 Q Once you observed the white SUV, did you ever see it
16 actually get out into the roadway on Shop Road?

17 A I saw it -- no, I didn't.

18 Q What did you observe about the white SUV next that
19 caught your attention?

20 A Well, I saw the SUV trying to get out into Shop Road
21 to get into the traffic, just like I was.

22 Q And where were you located in relation to the white
23 SUV?

24 A I was to the right of the SUV.

25 Q Were you in your car at that point?

1 **A** I was.

2 **Q** And who all was in the car with you?

3 **A** Myself and my brother-in-law.

4 **Q** What did you observe in the white SUV as it was
5 trying to pull out onto Shop Road?

6 **A** Um, I observed -- I didn't see -- I saw a guy get out
7 of the white SUV, a gentleman get out of the SUV.

8 **Q** And what area of the white SUV did he get out of, the
9 gentleman you observed first?

10 **A** The front passenger side.

11 **Q** And when you saw him get out of the white SUV, what
12 did you see happen next?

13 **A** I saw him go towards a black pickup truck.

14 **Q** And when you saw him going towards the black pickup
15 truck, what happened next?

16 **A** I saw the gentleman that was on the passenger side of
17 the black pickup truck had his window down. They were,
18 obviously, talking back and forth. I don't know what they
19 were saying.

20 I saw the gentleman reach into the car. I couldn't
21 tell what they were doing, because the car itself was
22 blocking my view of what was going on.

23 The gentleman opened the door. Um, ---

24 **Q** Which gentleman opened which door?

25 **A** Martin Gasque opened the door of the pickup truck.

1 Q Um, that was the person inside the truck?

2 A Correct.

3 Q Did you know his name at the time?

4 A I did not.

5 Q Had you ever seen him before?

6 A No, ma'am.

7 Q Did you know the defendant at the time?

8 A No, ma'am.

9 Q Had you ever seen him before?

10 A No, ma'am.

11 Q So you didn't know anybody involved?

12 A Correct.

13 Q You mentioned, and let me back up for a second, you
14 said you saw the person get out of the passenger door.

15 Was it a male or a female?

16 A Of the white SUV?

17 Q Uh-huh.

18 A Yeah, it was a male.

19 Q And you mentioned, and I believe it was your
20 testimony, don't let me misquote you, you said he went
21 over to where the truck was?

22 A Yes.

23 MR. HARRIS: Object to leading, Your Honor.

24 ASSISTANT SOLICITOR CAMPBELL: I'm just recapping,
25 Your Honor.

1 **THE COURT:** I understand. It's leading, though.

2 **ASSISTANT SOLICITOR CAMPBELL:** Yes, ma'am.

3 **Q** And when you saw the person get out of the white SUV
4 after that, how far away was it -- how far did he go to
5 get up to the truck he approached?

6 **A** How far was his car from the truck?

7 **Q** Did he have to walk there? Take one step? How far?

8 **A** Ten to fifteen yards, maybe. It wasn't far. Five,
9 ten yards.

10 **Q** Farther than you and I?

11 **A** Not -- not much farther. Yes.

12 **Q** Not much farther?

13 **A** Correct.

14 **Q** But who was the person -- where did the person come
15 from that you saw walking towards the other car?

16 **A** He came from the passenger side of the white SUV.

17 **Q** And walked over to the truck, which was located
18 where?

19 **A** On Shop Road.

20 **Q** And at that point, had anyone gotten out of the truck
21 on Shop Road?

22 **A** No.

23 **Q** That you observed.

24 **A** No.

25 **Q** And when you got -- when he got the ten to fifteen

1 yards over to the truck, what happened next?

2 **A** He reached into the -- the window was down. Um, so
3 he reached into the window of the black pickup truck.

4 **Q** And could you tell whether there was anyone sitting
5 on the passenger -- was this the passenger side or the
6 driver's side of the truck?

7 **A** Passenger's side.

8 **Q** And at that point, did you see whether or not there
9 was anyone sitting right in that passenger's side of the
10 truck?

11 **A** Well, I had seen the passenger. I saw his head out
12 the window talking back and forth with the gentleman in
13 the white SUV that got out on the passenger side.

14 **Q** And I believe your testimony was -- could you hear
15 what was actually being said?

16 **A** No, I could not.

17 **Q** And at that point, what did you observe?

18 **A** Um, I saw him reaching through the window, put his
19 hands into the window.

20 **Q** The person that you had seen exit from the white SUV?

21 **A** Yes, ma'am.

22 **Q** He put his hands into the window?

23 **A** Correct.

24 **Q** And at that point, was ---

25 **MR. HARRIS:** Your Honor, may we approach?

1 **THE COURT:** All right.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
3 RECORD. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD
4 ON THE RECORD:)

5 **Q** We were talking about when he -- when you observed
6 him reach in. What did you see next?

7 **A** Um, at that point in time, the door of the passenger
8 side of the black pickup truck opened.

9 **Q** What did you observe after you saw the door open?

10 **A** I saw the gentleman that came from the white SUV
11 punch the gentleman trying to get out of the black pickup
12 truck.

13 **Q** So who, actually, did you see throw the punch?

14 **A** The gentleman that came out of the passenger side of
15 the white SUV.

16 **Q** And did you see whether or not the punch -- was he
17 able to punch anyone?

18 **A** It appeared to me that he hit the -- the gentleman in
19 the passenger side of the black SUV.

20 **Q** What did you see next?

21 **A** I saw him hit, or attempt to hit, again, a second
22 time, and the gentleman in the black SUV basically fell
23 out of the door, right outside the door, of the black SUV
24 -- or the black pickup truck and fall directly onto the
25 ground.

1 Q Was there anything -- or tell the jury how you were
2 able to see this, as far as anything obstructing your view
3 or whatnot?

4 A Um, there really wasn't anything obstructing my view.
5 I had a clear line of it from where I was trying to get
6 out onto Shop Road to where the altercation occurred.

7 Q And how was the lighting that night?

8 A It was dark. It was at nighttime.

9 Q But was there any lighting around in the area?

10 A Oh, yeah. I mean, there was car lights, street
11 lights.

12 Q You said you observed what you observed after he came
13 out of the -- the person came out of the vehicle. What
14 happened to him?

15 A Well, he opened the door, and he kind of knocked the
16 gentleman back that was -- that had approached the
17 passenger side of the black pickup truck.

18 Q Uh-huh.

19 A Um, he then punched the gentleman that was in the
20 black passenger side of the pickup, tried to punch him
21 again, and the gentleman that was in the passenger side of
22 the black pickup truck fell directly to the ground.

23 Q How many people did you actually see throw punches
24 that day?

25 A One.

1 Q And that was the person that came from where?

2 A The passenger side of the white SUV.

3 Q Once you saw the person fall to the ground, did you
4 see what happened to the person that came out of the white
5 SUV?

6 A Um, not -- I saw him there. I didn't see exactly
7 what he was doing. My focus kind of turned to the guy on
8 the ground, because at that point in time, the car started
9 to roll.

10 Q The car started to roll?

11 A It did.

12 Q Which car started to roll?

13 A The black pickup truck started to roll.

14 Q And as the car started to roll, what was it doing?

15 A It was just slowly rolling forward.

16 Q What happened next?

17 A Um, the back passenger side wheel um -- well, the
18 gentleman in the black pickup truck on the passenger side
19 fell to where his head -- um, he was on his back, and his
20 head was -- was towards the front of the truck. So his
21 legs were towards the back of the truck.

22 Q What part of the road was he on?

23 A Um, I'm not sure what -- what you're asking. He was
24 on -- I mean, he was on the road.

25 Q On the road. That's what I'm asking. I'm sorry.

1 **A** Yeah, he was on the road right there on the side
2 where the car -- you know, where the car was.

3 **Q** And then what did you observe?

4 **A** I saw the car roll forward. Um, it kind of caught
5 him towards the upper part of his leg, roll over his
6 abdomen, um and his chest, and his head.

7 **Q** What happened next?

8 **A** Um, at that point in time, I looked at my
9 brother-in-law in kind of shock and said: Did you just
10 see what I saw?

11 And he said: Yeah.

12 Um, my father was behind me, directly behind me
13 getting out of the traffic. He's a physician, so I pulled
14 my car over to the side and ran around and grabbed my dad,
15 telling him that he needed to come help the boy that got
16 run over.

17 **Q** What happened next?

18 **A** Um, my brother-in-law and myself got out. I grabbed
19 my dad, and we ran directly to the guy that was on the
20 ground.

21 **Q** What did you observe when you got over there?

22 **A** Um, gosh. I observed a guy that got brutally hurt by
23 a pickup truck.

24 **Q** Was he moving?

25 **A** He was not.

1 Q When y'all got over there to help him, did anyone try
2 to help him?

3 A Um, I mean, when we were there, my dad did. My dad
4 tried to help.

5 There was another gentleman that was in the military
6 that had rescue survival skills and a nurse. There were
7 two or three people there trying to -- trying to help him
8 out at the time, until an ambulance could arrive.

9 Q And did y'all stay with him until that happened?

10 A Yes.

11 Q At any point, did you -- um, was the victim moved in
12 any way, that you observed?

13 A No.

14 Q So, from your car, who all was over there helping or
15 trying to help?

16 A There was my father, mainly, because he's the
17 physician, and then my brother-in-law and myself were
18 there to do whatever we could do, but we were right there
19 as well.

20 Q Eventually, did help come?

21 A Yes.

22 Q Um, did the police come?

23 A Yes.

24 Q Did anybody -- any other emergency responders?

25 A Yes.

1 Q You mentioned that you saw the truck actually roll
2 over him. Did you see it -- when you saw that happen, how
3 did it do it? What happened? Can you describe it to the
4 jury?

5 A Um, it -- it was very slow and methodical. It was um
6 -- it was -- to me, it appeared as though -- almost as
7 though you had taken your foot off the brake and it just
8 kind of slowly rolled, um, over him. Um ---

9 Q Did you see it turn in any direction or anything of
10 that sort?

11 A No, not until after it had already gone over him. I
12 didn't see anything past that.

13 Q After the young man was run over, did you see what
14 happened to the guy that got out of the white SUV?

15 A Uh, I did not. No.

16 Q Did he stay there at the scene?

17 A I did not see him at the scene, but again, my focus
18 was on the boy.

19 Q That night, did you make contact with the police?

20 A Um, I believe that a gentleman at the scene got my
21 name and number and then they contacted me the following
22 day.

23 Q And when the police contacted you, what, if anything,
24 information were you able to give them?

25 A I'm sorry?

1 Q What information were you able to relate to them?

2 A Just exactly what I kind of described to you.

3 Q I'll show you a copy of this. Is this a copy of your
4 actual statement?

5 A Yes, ma'am, it is.

6 Q I want to show you what's been marked as State's
7 Exhibit Number Fifty-three, before I show it to the jury.
8 Does this fairly and accurately show the general area
9 we've been talking about?

10 A Yes, ma'am.

11 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, at this
12 time, I would offer State's Exhibit Fifty-three into
13 evidence.

14 **MR. HARRIS:** No objection.

15 **THE COURT:** Very well.

16 (WHEREUPON, State's Exhibit No. 53 was admitted into
17 evidence.)

18 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, may the
19 witness step down?

20 **THE COURT:** He may.

21 **ASSISTANT SOLICITOR CAMPBELL:** Thank you.

22 **THE COURT:** What I'm going to ask you to do for me
23 is, you have benefit of the microphone now, you're about
24 to not have benefit of the microphone, so I'm going to
25 need you to keep your voice up so that all can hear you,

1 please.

2 **WITNESS:** Yes, ma'am.

3 **THE COURT:** Thank you.

4 **ASSISTANT SOLICITOR CAMPBELL:** If you can come over
5 on this side so they can hear you better?

6 State's Exhibit Number Fifty-three, what area does
7 this show, sir?

8 **A** Um, this is Shop Road, and ---

9 **THE COURT:** Hold on a second. Let's get the -- --
10 they're kind of hanging from the -- because obviously,
11 your body blocks the ---

12 **WITNESS:** Yes, ma'am.

13 **THE COURT:** --- the poster board, but at the point --
14 I think you can stand far enough away that you can point.

15 **WITNESS:** Sure.

16 **THE COURT:** Ladies and gentlemen, if you cannot see,
17 I need hands raised.

18 (NO RESPONSE.)

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

20 **WITNESS:** Um, ---

21 **THE COURT:** You need to ask the question again. I'm
22 so sorry, Ms. Campbell. I did that.

23 You can ask the question again.

24 **ASSISTANT SOLICITOR CAMPBELL:** Thank you, Your Honor.

25 **Q** What area does this show, sir?

1 **A** Um, this shows, obviously, Shop Road, as it's
2 labeled. This is a big condominium complex.

3 This is Shouman-Owens Supply, which is -- this is the
4 parking lot which I saw the white SUV coming out about
5 right here, and I was coming out at this point right here,
6 trying to get onto Shop Road to take a right-hand turn.

7 **Q** Approximately where was the black pickup when you
8 observed it and he approached it?

9 **A** Um, it was about right here.

10 **Q** Right in this area?

11 **A** Well, right about right here.

12 **Q** Okay. And was it in the roadway or off the roadway?

13 **A** It was on the roadway.

14 **Q** And which direction was it headed?

15 **A** It was headed this -- this way, I would guess you
16 would say.

17 **Q** This way?

18 **A** Yes, ma'am.

19 **Q** And, um, were you able to observe from your vantage
20 point from here?

21 **A** Yes.

22 **Q** And, again, where was the SUV?

23 **A** The SUV was right here, trying to -- trying to get
24 onto Shop Road.

25 **Q** So, you would approach the car on this side?

1 **A** Yes, ma'am.

2 **Q** And I'm going to show you State's Exhibit Number
3 Sixteen, which is a black and white photo, um this is
4 after the accident.

5 **A** Yes, ma'am.

6 **Q** Does that show the general area where this occurred?

7 **A** Um, yes. Just on the road?

8 **Q** Uh-huh.

9 **A** Yes. Yes, ma'am. That's correct.

10 **Q** Thank you, sir. You can take the stand.

11 Is this the build of the guy that you saw get out of
12 the SUV? Do you remember what he was built like?

13 **A** Uh, he was a heavier-set-gentleman, pretty tall.

14 **Q** Um, and did you ever observe the actual -- were you
15 able to observe the physical ability of the man who fell
16 out of the truck onto the ground?

17 **A** Um, yes, I did.

18 **Q** And who was the larger of the two?

19 **A** The gentleman in the white SUV.

20 **Q** At any point, the man that got out of the white SUV
21 and that went over and hit him, did he ever -- while you
22 were there, did you ever observe him rendering aid to the
23 victim?

24 **A** I do not recall that. No.

25 **Q** Thank you, sir. Nothing else.

1 **THE COURT:** Cross-examination?

2 **MR. HARRIS:** Thank you, Judge.

3 CROSS-EXAMINATION

4 **BY MR. HARRIS:**

5 **Q** Good afternoon, Mr. Martin.

6 **A** Thank you.

7 **Q** I'm Greg Harris. Just a couple of questions, before
8 we get into the meat of this thing.

9 The -- my understanding is that four days after the
10 incident, you went -- you were asked to go to the
11 sheriff's department; is that correct?

12 **A** Well, I got a -- I met a sheriff somewhere to give my
13 -- to give my statement.

14 **Q** And at that time, I believe you were told they had a
15 suspect?

16 **A** Uh, yes.

17 **Q** Okay. And where did this discussion occur with this
18 investigator?

19 **A** I believe I met him actually at a Rush's parking lot,
20 and I got into his pickup truck, and um, you know, he took
21 the statement there.

22 **Q** Okay. And I'm assuming he told you they pretty much
23 knew what had already happened that night. They had some
24 idea about there was a wreck. There was an accident.
25 Somebody was deceased; correct?

1 **A** Yes, that's correct.

2 **Q** Um, and he told you, before you gave that statement,
3 he told you that it's important that you accurately
4 describe everything that you saw that night; correct?

5 **A** He did. Yes.

6 **Q** And he -- he told you that it was important what
7 colors of cars were; correct? I mean, that's important.

8 **A** I don't know if he specifically said that, but, yeah.
9 I mean ---

10 **Q** And distances would be important?

11 **A** Yes.

12 **Q** Um, exactly what you saw and why you saw it would be
13 important.

14 **A** Yes.

15 **Q** It would be important that your basis -- the basis of
16 your recollection was your own and not someone else's.

17 **A** Yes.

18 **Q** What you actually saw.

19 **A** Correct.

20 **Q** He told you that it wouldn't be fair if someone else
21 colors your testimony or kind of told you what they saw
22 and that kind of morphs into your testimony. He told you
23 that, didn't he?

24 **A** Yes.

25 **Q** He told you that you have to get it right.

1 **A** Correct.

2 **Q** Um, he told you that your testimony, based on what
3 you've already told him, the fact that he was there
4 meeting in Rush's parking lot, would be important. Did
5 he?

6 **A** I don't remember exactly, but yeah, he expressed the
7 importance of telling what was true and fair and what I
8 saw.

9 **Q** But he successful -- he specifically interviewed you
10 about what you saw; correct?

11 **A** Yes. Correct.

12 **Q** With those guidelines.

13 **A** Correct.

14 **Q** That would be accurate?

15 **A** Yes.

16 **Q** You would be testifying most likely in a trial some
17 time down the road?

18 **A** Yes.

19 **Q** And that your creditability would be judged, in large
20 part, on your accuracy.

21 **A** Sure.

22 **Q** Now, he told you, I guess, you would have to be
23 positive in your identification, not just for Curtis, like
24 you've done today, but in terms of what you saw.

25 **A** Correct.

1 Q And your observation, your ability to observe
2 clearly, accurately.

3 A Yes.

4 Q Did he ask you, before giving that statement, what
5 time you arrived at the game?

6 A I don't recall.

7 Q It's not in your statement; is it?

8 A No.

9 Q So he didn't ask you what time you got to the game.

10 A No.

11 Q And what time you started drinking; did he?

12 A No, sir.

13 Q Did he even ask you if you were drinking alcohol that
14 night?

15 A (NO RESPONSE.)

16 Q He didn't ask you that; did he?

17 A No, sir.

18 Q Did he ask you the distance from your car to the
19 incident? He asked you that; didn't he?

20 A He did. Yes.

21 Q Did he ask you about lighting? How much lighting is
22 there? He didn't ask you about lighting and the ability
23 to accurately see what you have testified here today; did
24 he?

25 A Uh, no, sir.

1 Q It was dark. Correct?

2 A Correct.

3 Q Did he ask you whether you read anything in the paper
4 after -- during the four days leading up to this? Did he
5 ask you that?

6 A Not that I recall.

7 Q But you had read something; hadn't you?

8 A Yes.

9 Q You had seen it on the Internet; hadn't you?

10 A Yes.

11 Q You looked it up on the Internet; didn't you?

12 A Uh, yes.

13 Q You had talked to people about it; hadn't you?

14 A I had. Yes.

15 Q And they told you what they thought about this
16 incident.

17 A Yeah.

18 Q Didn't they?

19 A Sure.

20 Q You talked about the Internet. You were on the
21 Internet looking; weren't you?

22 A I did.

23 Q Now, you testified today that you were turning right.
24 Where do you live?

25 A I live in Lexington. Well, at the time, I lived in

1 Lexington. I live in Columbia now.

2 **Q** Okay. But you were turning right out of that parking
3 lot; weren't you?

4 **A** Yes, sir.

5 **Q** Okay. I'm going to show you a photograph and ask you
6 if that looks like the parking lot that you were exiting
7 that day?

8 **THE COURT:** Mark that for identification purposes,
9 please, for our record.

10 **MR. HARRIS:** Please. Please, Your Honor. Thank you.

11 **WITNESS:** What do I need to do?

12 **MR. HARRIS:** Just hand it to her, if you would,
13 please, and I'm going to have that marked as Defendant's,
14 for identification purposes only, Number One, Your Honor.

15 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
16 identification only.)

17 **Q** Is that not the parking lot you were leaving that
18 night?

19 **A** Yes, sir, that is.

20 **Q** Okay. And you were taking a right.

21 So, tell me, which of the cones in that photograph is
22 closest to where your car was exiting that parking lot.

23 **A** I would say I was probably between this cone and this
24 cone.

25 **Q** Okay. Between the third, the far right cone and the

1 next to the right cone.

2 A Yes, sir.

3 Q Okay. Now, Ms. Campbell has showed you this
4 photograph here. Just so we're clear about the distances
5 and what we talked about, what you just talked about, if
6 you would, I'm just going to do it the old-fashioned way
7 here.

8 A Okay.

9 Q Show us where that third and fourth cone were on that
10 picture.

11 A It would be right here.

12 Q Far right side of that; right?

13 A Yes, sir.

14 Q Okay. And tell me where the -- you've called it a
15 white SUV that Curtis got out of. Tell me where that was.

16 A Yes, sir. It was coming out of this parking lot.

17 Q Okay. So you're the far right side of that, and he's
18 on the far left side of this; correct?

19 A Um, yeah. I mean, I was right here, and he was right
20 there.

21 Q He's taking a left. You're taking a right.

22 A Yes.

23 Q Okay. Did they ask you if anybody was trying to take
24 a left right here on the side of him?

25 A There was not.

1 Q But -- but they didn't ask you that; did they?

2 A No, they didn't.

3 Q Okay. Did you, by any chance, go give this statement
4 with your -- with your brother?

5 A No, sir. It was not my brother. It was my
6 brother-in-law, but ---

7 Q Your brother-in-law. And, again, they told you to be
8 accurate.

9 Are you sure about that white SUV thing? You keep
10 calling -- you said a white SUV today, I guess I quit
11 counting at about ten times.

12 A I mean, I remember it being -- yeah, I mean, is that
13 what I said in my statement?

14 Q You tell me. You're the one who is testifying here
15 today, sir. I'm not trying to be difficult, but ---

16 A No, I understand.

17 **ASSISTANT SOLICITOR CAMPBELL:** Objection, Your Honor.

18 **THE COURT:** You don't need to argue.

19 Obviously, you don't need to argue with a witness,
20 but I'm trying to ascertain is he requesting his
21 statement? If he needs his statement and he wishes to see
22 his statement, he's entitled to see it.

23 Q I will hand you your statement.

24 A I have a copy of it.

25 **MR. HARRIS:** I think she left a copy with him, Your

1 Honor.

2 THE COURT: Okay.

3 MR. HARRIS: I apologize.

4 WITNESS: I've got it.

5 Q What does it reflect?

6 THE COURT: Just hold on a second.

7 MR. HARRIS: Yes, ma'am. I'll sit tight.

8 THE COURT: All right.

9 A Yeah, I mean, if that's -- if that's what I said in
10 my statement, that's what I felt like I saw.

11 Q Would it surprise you -- and that's what is in your
12 statement, and we'll go through your statement in a
13 second. My point is, you've said it ten or twelve times
14 today.

15 A Sure.

16 Q Would it surprise you that it was actually a dark
17 green pickup truck that Curtis exited that night? Would
18 that surprise you?

19 A Um, possibly, yeah. I mean, I thought I saw a white
20 SUV.

21 Q That's what you think you saw.

22 A Uh-huh.

23 Q You testified four days after the incident that's
24 what you saw, and that's what you're testifying today;
25 correct?

1 **A** Yes.

2 **Q** So you would be shocked if it was actually a Sierra
3 green pickup truck?

4 **A** No, as my wife will say, I've been wrong many, many
5 times before, so I mean...

6 **Q** Yeah. Your statement, if you would, and you have a
7 copy of it; don't you?

8 **A** Yes, sir, I do.

9 **Q** And I'd like to kind of go through it line-by-line,
10 and there are some parts I want you to read out loud. The
11 first sentence, how far away, four days after the incident
12 when you were told to be accurate, freshest in your mind,
13 how close did you say you were parked to the incident
14 location?

15 **A** I said I was fifteen yards away.

16 **Q** Okay. Fifteen yards, fifteen yards being -- being
17 the distance -- this is three feet. One, two, three,
18 four, fifteen feet times three, probably to the fourth
19 row, forty-five feet. That's what you told them.

20 **A** Yes.

21 **Q** And you told them that after how many -- you
22 reflected on this for four days. Have you been parking
23 there very long in Hood's Construction Lot?

24 **A** At that time, I had been parking there for probably
25 that would have been my second or third year.

1 Q Okay. So probably your eighth game?

2 A That would be fair.

3 Q Okay. So you were well familiar with this area,
4 then.

5 A Yes.

6 Q Would it surprise you if the distance is actually one
7 hundred and twenty-five feet?

8 A Yes.

9 Q That would shock you; wouldn't it?

10 A Yes.

11 Q We actually walked it off.

12 A I wouldn't have thought it would be that far.

13 Q That's forty-something feet, rather than fifteen
14 feet. That's significant, you would agree?

15 A Yes.

16 Q That's the distance, actually, from here well out
17 beyond the elevators, instead of from here to the fourth
18 row. You would be surprised; wouldn't you?

19 A Well, I thought it was fifteen yards, so, yeah.

20 Q You just weren't accurate, I guess; right?

21 **ASSISTANT SOLICITOR CAMPBELL:** Objection, Your Honor.

22 **MR. HARRIS:** That's a question.

23 **ASSISTANT SOLICITOR CAMPBELL:** It's been asked and
24 answered. Argumentative. And he's assuming facts not in
25 evidence.

1 **MR. HARRIS:** I'll rephrase the question, Your Honor.

2 **THE COURT:** Very well. Could we do this, since
3 there's a bit of a break in the action?

4 **MR. HARRIS:** Okay.

5 **THE COURT:** We need to mark this.

6 **MR. HARRIS:** Okay.

7 **THE COURT:** For the record purposes. It's not in
8 evidence, however, it is being referred to, and I think
9 for the record it should be marked for identification
10 purposes.

11 **MR. HARRIS:** I'll move it in at this time as
12 Defendant's One, Your Honor.

13 **THE COURT:** Any objection?

14 **ASSISTANT SOLICITOR CAMPBELL:** I just haven't seen
15 anything. I'll be glad to look at it.

16 **MR. HARRIS:** The photograph, please?

17 **WITNESS:** I don't have it.

18 **MR. HARRIS:** Oh, I'm sorry. Oh, I have it right
19 here.

20 **ASSISTANT SOLICITOR CAMPBELL:** Is he referring to a
21 photograph? I have no objection.

22 **MR. HARRIS:** Thank you.

23 **THE COURT:** All right. Have we had it marked?

24 **MR. HARRIS:** We'll mark it into evidence, Your Honor.

25 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, that's the

1 photograph he already had marked. Are you referring to
2 the statement?

3 **MR. HARRIS:** No, that is the -- it was marked as an
4 exhibit.

5 **THE COURT:** It's great to mark everything. We're now
6 referring, because you said you want to go line-by-line
7 through the statement. The statement hasn't been marked,
8 and it simply needs to be marked for identification
9 purposes for the record.

10 **MR. HARRIS:** Absolutely, Your Honor.

11 **THE COURT:** So, if you want Mr. Martin to use his
12 statement, then, Mr. Martin, if you would just for a
13 moment -- see her finger? She's going to put that --
14 there you go.

15 Thank you. There you go.

16 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
17 identification only.)

18 **THE COURT:** Now that we've marked that for
19 identification, what number is it, please?

20 **COURT REPORTER:** Number Two, Your Honor.

21 **THE COURT:** It's Defendant's Exhibit Number Two for
22 identification purposes.

23 **MR. HARRIS:** Perfect.

24 **THE COURT:** Thank you. Sorry for interrupting.

25 **Q** All right. Getting back to the statement, first

1 line, fifteen yards away. Do you see that?

2 A Yes, sir.

3 Q As a matter of fact, you say specifically, your
4 words, about fifteen yards; correct? In all fairness.

5 A Yes, sir.

6 Q Still forty-five yards and forty-five feet, you would
7 agree and a hundred and twenty-five feet is a significant
8 difference; wouldn't you?

9 A Um, yes.

10 Q Now, if you would move to the fifth line? Okay?

11 The second line there says: He reached in the
12 window.

13 Do you see that? Do you see where you wrote that?

14 A On the fifth line?

15 Q Yes.

16 A Yes, I do.

17 Q Are those your words?

18 A Yes.

19 Q Were those words influenced by anyone else?

20 A No, sir.

21 Q Okay. Were you with your brother-in-law when you
22 gave this statement?

23 A No, sir.

24 Q Go to the next line, if you would, please: The large
25 guy was pushed back a little.

1 Do you see that line?

2 A Yes, sir.

3 Q Are those your words?

4 A Yes, sir.

5 Q Were those words influenced by anyone else?

6 A No, sir.

7 Q Did you discuss that particular phraseology with
8 anyone?

9 A I mean, I spoke to my brother-in-law about it on the
10 way home. We talked about him getting pushed back, so I
11 mean, I guess so, possibly.

12 Q Okay. The next line: Before the passenger could get
13 out of the truck, he was hit twice by the large guy.

14 Your words?

15 A Yes, sir.

16 Q Influenced by anyone else?

17 A No, sir.

18 Q Discussed with anyone else?

19 A Yes.

20 Q With whom?

21 A I mean, I discussed it with my brother-in-law.

22 Q Did you and your brother-in-law give these statements
23 together?

24 A No, sir.

25 Q When you wrote this statement, were you allowed to

1 write it the way that you wanted to write it, sir?

2 A This is -- this was written by the gentleman who
3 questioned me. I guess I'm not sure I understand your
4 question.

5 Q Are these your words?

6 A Yes.

7 Q Were these what you were telling him?

8 A Yes, it is.

9 Q Were they in the order that you told him that they
10 should be in?

11 A It was -- yes. It was in the order I told him. Yes.

12 Q Were the distances the distances that you gave him?

13 A Yes.

14 Q Were the descriptions the descriptions that you gave
15 him?

16 A Yes.

17 Q Were the colors the colors that you gave him?

18 A It was.

19 Q Was the activity the activity that you gave him?

20 A Yes, sir.

21 Q So you're not here blaming the officer that wrote
22 this down; are you?

23 A No, sir.

24 Q So when you admitted to this jury that there are some
25 grave errors in this, you're not blaming that on the

1 officer, are you?

2 A No, uh-uh.

3 Q Okay. Just checking. Okay.

4 Now, if you go down three more lines with the
5 sentence beginning: The guy fell.

6 And ending with: Him from his leg to his head.

7 Do you see that line?

8 A The line starts?

9 Q The phrase beginning: Him with his leg to his head.

10 A Yes, sir. I see that.

11 Q Your words?

12 A Yes, sir.

13 Q Influenced by anyone else?

14 A No, sir.

15 Q You wrote that. You didn't write that, but you told
16 somebody to write that.

17 A Correct. Yes, sir.

18 Q Your words.

19 A Yes, sir.

20 Q Influenced by the Internet?

21 A No, sir.

22 Q Television?

23 A No.

24 Q Because we can talk about it. You saw it on
25 television, too; didn't you?

1 **A** Yes.

2 **Q** Okay. Every media available, you watched this story
3 from within the four days that you reported it; correct?

4 **A** Yes.

5 **Q** Next sentence: The truck was moving slowly.
6 Your words?

7 **A** Yes, sir.

8 **Q** Influenced by anyone else?

9 **A** No, sir.

10 **Q** Okay. Written down by somebody else, but your
11 recollection was the truck was moving slow, the way you've
12 described it here today as being as someone letting off
13 the gas and going slowly over someone.

14 **A** Yes, sir.

15 **Q** And finally, the last line: The large guy came back
16 later.

17 Your words?

18 **A** Yes, sir.

19 **Q** Okay. So that's your statement.

20 I mean, your statement is one page and five, six,
21 seven, eight, nine, ten, eleven, twelve, thirteen lines;
22 correct?

23 **A** Yes, sir.

24 **Q** One page, thirteen lines, and there are -- we've been
25 over about seven entries verbatim that are your words that

- 1 you say are your own words and yours alone; correct?
- 2 A It is the way I saw it, yes, sir.
- 3 Q The way you saw it, not influenced by anybody.
- 4 A No, sir.
- 5 Q Four days after the incident.
- 6 A Yes, sir.
- 7 Q Not the day of the incident.
- 8 A No, sir.
- 9 Q Nobody asked you if you had been drinking that day?
- 10 A No, sir.
- 11 Q You left.
- 12 A I'm sorry?
- 13 Q You left. You just left that night; right?
- 14 A Yes, sir.
- 15 Q Okay. Now, after having seen this and after having
- 16 waiting, after having given a statement later, you met
- 17 with the prosecutors in this case; didn't you?
- 18 A Um, ---
- 19 Q You were contacted by the solicitor's office.
- 20 A Recently, yes.
- 21 Q Okay. And I'm guessing, knowing them, that they told
- 22 you the same things. You had to be accurate.
- 23 A Yes, sir.
- 24 Q And they again asked you, is this what you remember;
- 25 correct?

1 **A** Yes.

2 **Q** And they again asked you if the colors and the
3 distances and everything else; correct?

4 **A** Yes, sir.

5 **Q** Did they ask you why your brother-in-law's statement
6 and yours were seemingly identical in so many ways?

7 **A** No, sir.

8 **Q** Nobody ever asked you that?

9 **A** No, sir.

10 **Q** Anybody ever ask you how many beers you had had
11 before you drove off that night, without giving your
12 statement?

13 **A** No, sir.

14 **Q** Did your dad -- your dad's a doctor?

15 **A** Yes, sir.

16 **Q** Did he advise you to leave before giving a statement
17 that night?

18 **A** No, sir.

19 **Q** You sure paused a long time. Who did?

20 **A** I'm sorry?

21 **Q** Who advised you to leave that night without giving a
22 statement?

23 **A** I didn't understand your question. Nobody advised
24 me. Say your question again. I'm sorry.

25 **Q** Who advised you to leave that night?

1 **A** After the officer got my name and telephone number
2 and I asked him if everything was okay. He said it was
3 fine, that somebody would be in contact with me. Does
4 that answer your question?

5 **Q** Yes, it does.

6 **A** Okay.

7 **Q** Had you been tailgating that day?

8 **A** Yes.

9 **Q** How many beers did you have?

10 **A** I didn't have any after the game. I probably had
11 four or five prior to the game.

12 **Q** None after the game.

13 **A** No, sir.

14 **Q** Do you wear contact lenses?

15 **A** Yes, sir.

16 **Q** Were you wearing them that night?

17 **A** Yes, sir.

18 **Q** Did anybody ask you that?

19 **A** No, sir.

20 **Q** Did anybody ask you if you were turning left or right
21 that night?

22 **A** Not that I recall.

23 **Q** So nobody asked you if there was a car between you
24 and the white SUV that Curtis exited; correct?

25 **A** That's correct.

1 Q So nobody asked you if there was a car between you
2 and the forty-five feet between you and the incident,
3 which for your statement was forty-five feet.

4 A Correct.

5 Q So nobody has asked you that, until today when I
6 asked you that.

7 A No, sir.

8 Q So really, nobody has tested, at least law
9 enforcement, tested whether you had an unfavorable vantage
10 view, vantage point, to see what happened; have they?

11 A No, sir.

12 Q Nobody has questioned anything you've said; have
13 they?

14 A No, sir.

15 Q Has anybody questioned you about -- they haven't
16 questioned you about your psychological limitations,
17 whether you were drinking or anything; have they?

18 A No, sir.

19 Q They just accepted what you said about the green car
20 and the forty-five yards; correct?

21 A The ---

22 Q And that's what you stuck with.

23 A You mean the white car?

24 Q Yeah, the white car.

25 A Yes, sir.

1 **Q** Has anybody asked you if you had a football ticket
2 for that game?

3 **A** No, sir.

4 **Q** They didn't even ask you if you were there.

5 **A** No, sir.

6 **Q** Nobody asked you who you were with.

7 **A** No, sir.

8 **Q** Nobody asked you who you tailgated with; did they?

9 **A** No, sir.

10 **MR. HARRIS:** Excuse me, Judge.

11 **THE COURT:** Sure.

12 **Q** To be more thorough, I have a couple more questions.

13 **A** Yes, sir.

14 **Q** You were staring into headlights; weren't you?

15 **A** Um, not particularly, no.

16 **Q** Well, headlights are coming in your direction; aren't
17 they?

18 **A** Yes.

19 **Q** Were you listening to the post-game show?

20 **A** Not that I remember. I don't remember what I was
21 listening to.

22 **Q** You don't remember what you were listening to after
23 the Carolina-Alabama game?

24 **A** No, I don't. I don't remember what I was listening
25 to.

1 Q Were your windows up, or were your windows down?

2 A My windows were down.

3 Q You didn't hear anything that was said between them
4 from forty-five or whatever distance?

5 A I could not hear anything.

6 Q Probably because you're so far away, now that we know
7 that; correct?

8 A I couldn't hear anything.

9 Q Have you ever seen anything like this before?

10 A No, sir.

11 Q We just don't expect things like this to happen; do
12 we?

13 A No, sir.

14 Q And certainly you didn't expect anything like this to
15 happen; did you?

16 A No, sir.

17 Q It was a shock.

18 A Yes.

19 Q It was a surprise.

20 A Very much so.

21 Q Things happened very quickly.

22 A They did.

23 Q Less than eight seconds, probably; wouldn't you
24 guess?

25 A Sir?

1 Q Less than eight seconds? Fair statement?

2 A Thereabouts, yeah.

3 Q Okay. Is that in your statement?

4 A No, sir.

5 Q Did anybody ask you that?

6 A No, sir.

7 Q So in eight seconds, everything happened. You
8 recalled it four days after, and this is the most accurate
9 you can be; correct?

10 A Yes.

11 Q Thank you. That's all I have.

12 THE COURT: All right.

13 Redirect?

14 ASSISTANT SOLICITOR CAMPBELL: Thank you, Your Honor.

15 THE COURT: All right.

16 REDIRECT EXAMINATION

17 BY ASSISTANT SOLICITOR CAMPBELL:

18 Q When you met with the police, what were they asking
19 you about?

20 A They asked me general questions about what happened,
21 and what, you know, what was going on.

22 Q And he just asked you about whether or not they asked
23 you if you had a ticket to the football game. Did that
24 affect anything about what you saw that night?

25 A I'm sorry?

1 **Q** He asked you something about having a football
2 ticket. Did that have anything to do with what you
3 observed that night?

4 **A** No, no, ma'am.

5 **Q** Did you give them a statement?

6 **A** Not that night.

7 **Q** And he keeps saying that you gave a statement four
8 days later?

9 **A** Yes, ma'am.

10 **Q** What's the date you actually gave the statement?

11 **A** Um, 10/12/2010.

12 **Q** So that would have been a little less than three full
13 days later?

14 **A** Yes, ma'am.

15 **Q** And when you gave them that statement, did anyone
16 influence you?

17 **A** No, ma'am.

18 **Q** Do you have a dog in this fight?

19 **A** No, ma'am.

20 **Q** And do you have a copy of the actual statement that
21 they have been referring to?

22 **A** Yes.

23 **ASSISTANT SOLICITOR CAMPBELL:** And, Your Honor, at
24 this time we would offer his statement into evidence. I
25 would like to mark it.

1 **MR. HARRIS:** Oh, absolutely. No objection.

2 **THE COURT:** We've got one that's been marked.

3 **ASSISTANT SOLICITOR CAMPBELL:** Can I go ahead and use
4 that one?

5 **MR. HARRIS:** Absolutely no objection. None.

6 **THE COURT:** All right. No objection.

7 **ASSISTANT SOLICITOR CAMPBELL:** Your Honor, at this
8 time we would mark it as State's Exhibit Number
9 Fifty-four.

10 (WHEREUPON, State's Exhibit No. 54 was marked for
11 identification and received into evidence.)

12 **ASSISTANT SOLICITOR CAMPBELL:** Thank you so much.

13 **Q** Who is the person that you saw actually throw punches
14 that night?

15 **A** The larger gentleman that, in fact, got out of the
16 car.

17 **Q** That got out of what kind of car?

18 **A** Well, I guess it wasn't a white SUV, but ---

19 **Q** But you observed to be an SUV?

20 **A** Yes.

21 **Q** Thank you.

22 **THE COURT:** Anything further?

23 (NO RESPONSE.)

24 **THE COURT:** Recross?

25 **MR. HARRIS:** No, thank you.

1 **THE COURT:** Very well.

2 Is this witness free to leave?

3 **ASSISTANT SOLICITOR CAMPBELL:** Please, Your Honor.

4 **THE COURT:** Very well.

5 Any objection?

6 (NO RESPONSE.)

7 **THE COURT:** You are free to go.

8 **WITNESS:** Thank you.

9 **THE COURT:** Thank you.

10 **MR. GASSER:** I would ask you for a cautionary about
11 the rule regarding witnesses, Your Honor.

12 **THE COURT:** Ahh. All right. Very well.

13 **MR. GASSER:** Thank you.

14 **THE COURT:** Just -- if you would, just wait for one
15 second for me, Mr. Martin.

16 **WITNESS:** Okay. Where do you want me to wait?

17 **THE COURT:** You can sit right on that bench, and we
18 won't be but just a moment or two.

19 **WITNESS:** Okay.

20 **THE COURT:** Thank you so much.

21 That's going to conclude the work that we're going to
22 do today, ladies and gentlemen. And I do need to give you
23 some instruction, because you're going to be going home.
24 And no doubt, there's going to be somebody curious about
25 what you have been up to today.

1 Perfectly fine to say that you showed back up for
2 court and that you have been selected to serve on a jury.
3 And it's fine to say that it is a criminal matter, as
4 opposed to a civil matter, but beyond that, you must not
5 discuss this matter or allow anyone to discuss it with
6 you.

7 Now, don't you let anybody get upset with you. You
8 put it on the judge, and you tell them the judge is the
9 one that's told you you can't discuss it, because I
10 certainly don't want anyone upset with you. You put it on
11 the judge.

12 Now, ladies and gentlemen, I believe that there very
13 well may be publicity of some sort regarding this matter.
14 It is absolutely essential that you do not read anything,
15 that you do not listen to anything about this matter, and
16 that would be on the radio, the television, the Internet,
17 newspaper.

18 Have I missed anything? I think that's everything.

19 Don't blog. Don't go on Facebook. Don't do the
20 LinkedIn thing. Don't do any of the social media
21 regarding this matter.

22 You can talk about the Yankees, you know, spring
23 training or something like that. I don't want to restrict
24 your life that much, but you must not discuss this matter
25 or allow anyone to discuss it with you.

1 Again, please do not do any sort of investigation.

2 Don't go on the Internet to do any investigation.

3 If there was a word that came up and you didn't
4 understand that word, don't even go look at the Internet
5 or the dictionary about that word. Don't do any
6 investigation regarding this matter. You must receive all
7 of the information from which you will make up your mind
8 here in court while court is in session.

9 Now, do we have anybody that works at night? I
10 thought maybe. Well, not tonight.

11 **JUROR:** I -- I -- pardon me.

12 **THE COURT:** Sure.

13 **JUROR:** I actually asked my boss. He asked me to
14 come in tonight.

15 **THE COURT:** Put it on the judge.

16 **JUROR:** I'll put it on the judge, yes, ma'am.

17 **THE COURT:** You put it on the judge, and you tell him
18 that Judge Goodstein has said you cannot come in and
19 you're really sorry. You would love to come. You want to
20 come, but then there's this judge thing. You know? And
21 she has ordered me not to. I'm really sorry.

22 And tell him if he's upset, get upset with me. He
23 and I will chat in the morning. You just bring me his
24 name and phone number, and we will chat, and it will be
25 fine. I promise you. And the reason for that is that you

1 must be rested.

2 And anyone else think they're going to sneak in and
3 go to work tonight? Everybody else is excited. Nobody
4 else has got to go in?

5 (NO RESPONSE.)

6 **THE COURT:** Wonderful. Wonderful.

7 Ladies and gentlemen, we will reconvene in the
8 morning at 9:30. Please remember to leave your cellphone,
9 computers, all the communication devices, please, at home.
10 If you forget, again, we're all human, just let us know
11 and we will take possession of your communication device
12 and we will protect it until either our morning break or
13 lunch when you can take it to your car.

14 I believe that concludes my instructions, but
15 finally, do not discuss this matter or allow anyone to
16 discuss it with you. You have a very pleasant evening.
17 If you'll leave out this way with our bailiff? Thank you.

18 (JANUARY 29, 2013, 5:17 P.M., WHEREUPON, THE JURY
19 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
20 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

21 **THE COURT:** Mr. Martin, this is the only thing I
22 needed to mention to you about your participation in this
23 matter. The witnesses, the lay witnesses, and that would
24 be you, you're one of those, have been sequestered, and
25 what that means is that obviously, you weren't in the

1 courtroom as other people were testifying, and in order to
2 preserve my sequestration order, I've just got to ask you
3 not to talk about your testimony with anyone.

4 You know, I can tell you as a witness, that's a
5 pretty tough responsibility to put on you right now,
6 because then you've got to know who the witnesses are or
7 might be. That's too hard. Until this matter is
8 concluded, just don't talk about your testimony.

9 **MR. MARTIN:** Yes, ma'am.

10 **THE COURT:** Very well.

11 **MR. MARTIN:** Understood.

12 **THE COURT:** Thank you.

13 **MR. MARTIN:** Thank you.

14 **THE COURT:** Thank you very much.

15 All right. Any objection or additions to my
16 instructions to Mr. Martin, first of all, and to the jury?

17 (NO RESPONSE.)

18 **THE COURT:** Stomp once for yes, and twice for no.

19 **MR. HARRIS:** One question, Judge.

20 **THE COURT:** Yes?

21 **MR. HARRIS:** One is yes, I guess. What is your rule
22 on sequestered witnesses being -- the government
23 discussing with them prior testimony of prior witnesses?

24 **THE COURT:** That was too hard.

25 **MR. HARRIS:** Okay. Bad question.

1 **THE COURT:** Say it again.

2 **MR. HARRIS:** Can they -- can they discuss with the
3 next witness what I just crossed this witness on?

4 **THE COURT:** Oh. That's so interesting.

5 **MR. HARRIS:** I don't think they can, Your Honor.

6 **ASSISTANT SOLICITOR CAMPBELL:** There is a case on
7 point, Your Honor, that I can get you that says that we're
8 allowed to talk to witnesses. I don't think it's
9 specifically -- we aren't going to discuss any testimony,
10 but we're allowed to talk to witnesses.

11 **THE COURT:** In other words, you can prepare your
12 witnesses, and you can't help what's in your head, but
13 what you wouldn't do is you wouldn't say: Now, James
14 Martin said A.

15 **ASSISTANT SOLICITOR CAMPBELL:** That's correct.

16 **THE COURT:** So, brother-in-law, you've got to agree
17 with him.

18 **ASSISTANT SOLICITOR CAMPBELL:** Correct.

19 **THE COURT:** That's what you're -- that's where you
20 see the line of demarcation.

21 **MR. HARRIS:** I'm not suggesting anybody would be
22 unethical. My question is, drilling down, while preparing
23 a witness. She can prepare a witness, Judge. I would
24 expect them to prepare their witnesses.

25 **THE COURT:** Right.

1 **MR. HARRIS:** But drill them down specifically with
2 specific questions that this witness was asked to prepare
3 them specifically for cross-examination, is my question.
4 And I think that flies in the face of the order of this
5 Court, which is that one witness cannot be given
6 information regarding a prior witness's testimony. I know
7 it's a fine line, Judge, but I'm just ---

8 **THE COURT:** I know. It's a very fine line.

9 **MR. HARRIS:** The only reason I'm raising it is
10 because what we're about to run into is witnesses that I
11 wish they would call in the same day, because they gave
12 the same statement. Their statements are the same number
13 of lines. They say the same thing, and they're both ---

14 **THE COURT:** Right.

15 **MR. HARRIS:** --- as inconsistent as that one was.

16 **THE COURT:** Right.

17 **MR. HARRIS:** In some regards.

18 **THE COURT:** Right.

19 **MR. HARRIS:** I just don't know what to do, Judge.

20 **THE COURT:** You know, here's what happens -- here's
21 what happens in my head. Let me tell you what happens in
22 my head. What happens in my head is would I in any way
23 keep the defense from doing what they needed to do to
24 prepare their witness, so long as they didn't say: Now,
25 this person said this. Now, do you disagree or do you

1 agree with what they said?

2 And I couldn't do that to the defense. I don't feel
3 like I could do that.

4 **MR. HARRIS:** No, no.

5 **THE COURT:** So if I can't do that to the defense,
6 then I certainly can't do that to the prosecution. Do you
7 see what I'm saying?

8 **MR. HARRIS:** And, Judge, if that's -- maybe that's
9 all that I'm really asking for.

10 **THE COURT:** Yeah.

11 **MR. HARRIS:** Is that this witness said this. You've
12 got to stick to that.

13 She wouldn't say that. I don't know that that would
14 be ---

15 **THE COURT:** Yeah.

16 **MR. HARRIS:** --- if you're using the statement, that
17 wouldn't be improper.

18 **THE COURT:** In other words, I don't think that as a
19 preparation mode that it would be appropriate for either
20 side to use a particular individual as a reason why they
21 don't go into a particular area because so-and-so has
22 testified to thus-and-so.

23 You can't help what's in your head. It's in your
24 head. You're in this trial.

25 **ASSISTANT SOLICITOR CAMPBELL:** And, Your Honor, he's

1 been provided all of their statements anyway, so I mean,
2 the statements are not changing.

3 **THE COURT:** But beyond that, you can't -- you're in
4 this trial. You can't help the trial -- trials are these
5 live events. You've got to be able to prepare. Thank you
6 so much.

7 All right. Anything from the State for this evening?

8 **ASSISTANT SOLICITOR CAMPBELL:** Nothing from the
9 State, Your Honor.

10 **MR. HARRIS:** Nothing from the defense, Your Honor.

11 **THE COURT:** All right. We're going to start -- I'm
12 going to try to be here a little bit ---

13 **ASSISTANT SOLICITOR CAMPBELL:** The case has been
14 called, Your Honor, and usually at that point, his bond is
15 now up.

16 **THE COURT:** Okay.

17 **ASSISTANT SOLICITOR CAMPBELL:** So I think we need to
18 take him into custody.

19 **THE COURT:** Okay.

20 **MR. GASSER:** Judge, he has been out on a personal
21 recognizance bond, two personal recognizance bonds. So he
22 was charged originally with -- on the night in question
23 with aggravated breach of trust, and he got a PR bond the
24 next day.

25 Ten days later he was served with involuntary

1 manslaughter. It was self-report. He turned himself in
2 at the detention facility.

3 Another judge -- another additional charge of
4 homicide, and the judge issued a PR bond. So he's been
5 out on two PR bonds.

6 Since this incident, he has had absolutely no -- he's
7 met every single condition, has shown up whenever anybody
8 needed him to show up, and quite frankly, we need him for
9 our defense. We need him at night for our defense. This
10 is a serious case, and unless the State can show somehow
11 that he is a flight risk or a danger to the community, we
12 would ask this Court to do what most courts do, quite
13 frankly, which is allow the defendant who is out on
14 bond -- if he had a bond, we would have his bondsman here,
15 but he doesn't have a bond, because both judges trusted he
16 would show up, and he validated that trust, because he has
17 shown up everywhere. He hasn't -- he hasn't violated any
18 of the conditions of the bond, so we would ask you to
19 exercise your discretion, which it is your discretion, and
20 allow him to stay out on his PR bond so he can assist in
21 his defense.

22 **THE COURT:** Anything further?

23 **ASSISTANT SOLICITOR CAMPBELL:** No, Your Honor. I
24 mean, just at this point, the case has been called. He is
25 facing potential jail time, and we would be concerned that

1 he could be a flight risk.

2 **THE COURT:** In the face of the lack of consent on
3 behalf of the State and a raising of the issue, it has
4 never been my policy to allow a defendant to remain out on
5 bond, particularly not a PR bond, without electronic
6 monitoring and without a bond.

7 That is not our rule. That is not our practice, and
8 it is not mine. He must be taken into custody at this
9 time.

10 **MR. HARRIS:** Judge, how about if he just lives at my
11 office? I have an apartment at my office downtown. How
12 about if he -- how about if he is housed down at our
13 office downtown on Laurel Street and, you know, with the
14 doors locked or whatever, Judge?

15 He will not leave our office. That would -- you
16 know, I can't promise you anything, Judge, but I can
17 assure you, best that I can, that he will be here
18 tomorrow, especially if he is in my office. We have
19 showers. We have a place for him to sleep, and he will be
20 four blocks -- three blocks away from this courthouse, and
21 he will assist us early in the morning and late into the
22 evening.

23 **THE COURT:** I cannot do it, Mr. Harris. I am so
24 sorry.

25 If you could -- if we could have addressed this

1 earlier today and I could have addressed some GPS
2 monitoring, I would feel differently, but I find myself in
3 the position at this point. I cannot cause you to vouch
4 for him. I don't think that's appropriate to do under the
5 rules.

6 There's an objection. Of course, I did not know
7 until this moment there is not even a surety with regards
8 -- I tell you what, I do not mind at all if you can make
9 arrangements for GPS monitoring, I do not at all mind
10 addressing that in the morning.

11 **MR. HARRIS:** Thank you, judge.

12 **THE COURT:** All right.

13 **MR. HARRIS:** Judge, just to let you know, we had no
14 idea that they were going to do this either.

15 **THE COURT:** I'm with you.

16 **MR. HARRIS:** It was not brought to our attention at
17 all, because if it had been brought to our attention, ---

18 **THE COURT:** You would have done something.

19 **MR. HARRIS:** --- at a reasonable period of time, ---

20 **THE COURT:** I'm with you.

21 **MR. GASSER:** --- when someone is out of a PR bond, we
22 would have been able to address the issues that you would
23 have wanted to address.

24 **THE COURT:** I'm with you completely. What we will do
25 is, if you can find GPS monitoring for him tomorrow,

1 please bring that up. Okay?

2 I will see you all in the morning at about 9:15.

3 **(END OF REQUESTED TRANSCRIPT OF RECORD.)**

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CERTIFICATE OF REPORTER

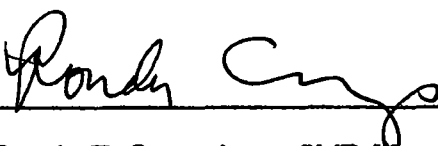
STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Ronda T. Cummings, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 29th day of
January, 2013.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

December 6, 2013


Ronda T. Cummings, CVR-M
Official Court Reporter

1 State of South Carolina) In the Court
2 County of Richland) Of General Sessions

3 Indictment No.: 2011-GS-40-829, 831
4

5
6 State of South Carolina,)
7 Plaintiff.)

8 vs.)

Partial
Transcript of Record
Volume I

9
10 Curtis Simms,)
Defendant.)

11
12 January 30-February 5, 2013
13 Columbia, South Carolina
14

15 B E F O R E:

16 The Honorable Diane S. Goodstein, Judge and a jury.
17

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20 2 Juror Note

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24 6 Rap Sheet

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1 WEDNESDAY, January 30, 2013

2 THE COURT: Anything from the State before we bring
3 the jury out?

4 MS. CAMPBELL: Yes, ma'am, Your Honor. Yesterday,
5 you instructed me to confirm with Investigator Radford that
6 she didn't have any notes. She went back and searched
7 through her office this morning. She said she has nothing
8 in her possession that we needed to make copies of.

9 THE COURT: Thank you so kindly for doing that for
10 us.

11 MR. GASSER: Yes, ma'am, the other matter we have
12 are the findings we haven't resolved those with
13 Ms. Campbell.

14 MS. CAMPBELL: We've still got her here. We'll
15 keep her here.

16 THE COURT: Thank you.

17 MR. GASSER: All right. Thank you.

18 THE COURT: Very well, let's have the jury, please.
19 You have someone retrieving your next witness?

20 MS. CAMPBELL: Yes, ma'am, we have someone going
21 for them.

22 THE COURT: Thank you.

23 (WHEREUPON the jury entered the courtroom at 9:32
24 a.m.)

25 THE BAILIFF: Jury is here, Your Honor.

Guy Echenroth - Direct Examination by Ms. Campbell

1 THE COURT: Thank you, so much.

2 Good morning, ladies and gentlemen. At this time
3 we're going to continue with the State's case.

4 Will you please call your next witness.

5 MS. CAMPBELL: May it please the Court?

6 THE COURT: Yes, ma'am, Ms. Campbell.

7 MS. CAMPBELL: The State calls Guy Echenroth.

8 GUY ECHENROTH,
9 having been duly sworn, testified as follows:

10 THE CLERK: Thank you have a seat in the witness
11 stand, please. State your name for the record.

12 THE WITNESS: Guy Echenroth.

13 THE COURT: And could you spell that for us,
14 please.

15 THE WITNESS: E-c-k-e-n-r-o-t-h. There's no others
16 in the state.

17 **DIRECT EXAMINATION**

18 BY MS. CAMPBELL:

19 Q Mr. Echenroth, where do you live?

20 A I live at [REDACTED] Drive in Camden, South
21 Carolina.

22 Q And how long have you been living in the Camden
23 area?

24 A Thirty-seven years.

25 Q You have any family?

Guy Echenroth - Direct Examination by Ms. Campbell

- 1 A Yes, I do.
- 2 Q And what family do you have?
- 3 A I have a wife and two boys.
- 4 Q Two boys?
- 5 A (Witness nodded head.)
- 6 Q And how old are they?
- 7 A Thirty-four and thirty.
- 8 Q And are you employed?
- 9 A Pardon?
- 10 Q Do you work?
- 11 A Yes, I do. Thomas Sumter Academy and I coach at
- 12 two other schools.
- 13 Q Okay. And what do you teach at Thomas Sumter
- 14 Academy?
- 15 A I'm the science department chairman.
- 16 Q And you also mentioned that you coach?
- 17 A Yes, I coach football at North Central High School
- 18 and I coach basketball at Camden High School.
- 19 Q And how long have you been in the educational
- 20 field?
- 21 A Thirty-seven years.
- 22 Q And your wife, is she also employed?
- 23 A Yes, she is.
- 24 Q What does she do, sir?
- 25 A She's a teacher at Lugoff Elgin Middle School, and

Guy Echenroth - Direct Examination by Ms. Campbell

- 1 She's also taught thirty-six years.
- 2 Q Do you sometimes attend the USC games?
- 3 A Yes, I do.
- 4 Q Football games?
- 5 A Yes.
- 6 Q And I want to turn your attention back to the Fall
- 7 of 2010, that October 9th, did you go to a game that day?
- 8 A Yes, I did.
- 9 Q And tell the jury what game you went to?
- 10 A I went to the Alabama USC game.
- 11 Q And do you remember what time of day the game
- 12 actually was going on?
- 13 A Yeah, it was a late afternoon TV game probably
- 14 three o'clock or so, something like that.
- 15 Q And did you and your wife -- who all went with you?
- 16 I'm sorry.
- 17 A Just my wife.
- 18 Q And when y'all went to the game, where would you
- 19 park?
- 20 A We parked right off Shop Road at that time.
- 21 Q And did you have a reserved space, or did you pay
- 22 for parking as you could get it or what?
- 23 A Paid for parking.
- 24 Q On that date you actually -- you and your wife, did
- 25 y'all actually attend the game?

Guy Echenroth - Direct Examination by Ms. Campbell

1 A Yes, we did.

2 Q And did you stay for the duration of the game while
3 it was ongoing?

4 A Yes, ma'am.

5 Q Who won that day?

6 A South Carolina did.

7 Q And you're a South Carolina fan?

8 A Not actually. I'm also employed -- I was employed
9 at Penn State University, so I worked there for twenty-one
10 years.

11 Q Okay. But you enjoy football?

12 A Oh, I do.

13 Q You coach?

14 A Yes, ma'am.

15 Q On that day after attending the game, what did you
16 and your wife do once the game was over?

17 A When the game was over, we went back to a
18 condominium that was behind the stadium to see some friends
19 and then from there, we went to our car.

20 Q And about what time of day was it when you got back
21 to your car?

22 A I'd say -- oh, I'd have to guesstimate around 6:30
23 or so, something like that.

24 Q Was it dark?

25 A No, ma'am.

Guy Echenroth - Direct Examination by Ms. Campbell

1 Q Getting dark?

2 A It was approaching darkness, yes.

3 Q And once you got back to your car, what did y'all
4 do for a period of time?

5 A We got in our car and got in line in traffic.

6 Q And that day, what was the traffic like when y'all
7 got in line for traffic?

8 A It was bumper to bumper both ways on Shop Road.

9 Q And that's where you were on Shop Road?

10 A Yes, ma'am.

11 Q And approximately do you remember how long you were
12 actually in traffic that day?

13 A Oh, we were at least fifteen minutes or so before
14 the accident, yes, ma'am.

15 Q You mentioned that you went to the game and then
16 you went to some friend's house afterwards. Were y'all
17 tailgating that day?

18 A No, we really didn't.

19 Q Okay. And were you drinking that day?

20 A No, ma'am.

21 Q Once you got into traffic and were there for a
22 period of time, tell this jury what you observed as you
23 were -- well, basically barely moving on Shop Road.

24 A Well, I'm like anybody else. I was listening to a
25 little bit of the post game show and just following traffic

Guy Echenroth - Direct Examination by Ms. Campbell

1 right down Shop Road.

2 Q Okay. Did you happen to notice as time went on --
3 let me ask you this. Did the lighting change outside as
4 y'all -- as time went by?

5 A No, no, I mean, it was plenty of light.

6 Q Plenty of light?

7 A Yes, ma'am.

8 Q And even after it got dark, is it --

9 MR. GASSER: Objection, Your Honor. Objection. He
10 says it's light out. I object. Leading the witness.

11 THE COURT: Sustained.

12 BY MS. CAMPBELL:

13 Q What kind of light was helping you see?

14 A Probably dusk. Our car lights. I didn't -- I
15 don't remember any car lights at all being on.

16 Q And what do you recall -- do you remember what kind
17 of car was in front of you?

18 A Yes, it was -- I think it was an F150 truck.

19 Q Do you remember what color it was?

20 A I think it was black.

21 A And tell this jury what you observed -- well, let
22 me back up. Do you remember how long you were actually
23 behind that truck.

24 A Oh, probably at least 15 minutes.

25 Q Tell this jury what you observed about the black

Guy Echenroth - Direct Examination by Ms. Campbell

1 truck as you were stuck on Shop Road?

2 A Nothing special, just bumper-to-bumper traffic
3 going down through. I didn't notice anything else.

4 Q As time wore on, did something change that caught
5 your attention?

6 A Absolutely.

7 Q And do you remember approximately what time of
8 night that was?

9 A Oh, I would say probably, maybe 6:45. Somewhere
10 like that because like I said, I think we were in traffic
11 about fifteen minutes or so at that time.

12 Q And what did you observe?

13 A I observed a car pulling up from a side parking lot
14 and like -- almost to say like, can I get in. You know how
15 it is when you're in traffic at football games and you're
16 going up and down if somebody wants to maybe get in to get
17 in traffic.

18 Q And which side of the road was the car that you
19 observed trying to get in traffic coming from?

20 A On the right side.

21 Q And you were going -- were you inbound or outbound
22 on Shop Road?

23 A I was going inbound toward town.

24 Q Towards town?

25 A Yes.

Guy Echenroth - Direct Examination by Ms. Campbell

1 Q And what did you see -- do you remember what kind
2 of car it was? Do you remember?

3 A You know, I -- I think it was maybe some sort of
4 SUV station wagon type vehicle.

5 Q You're not sure about that?

6 A Not real sure.

7 Q And as you observed this vehicle trying to get into
8 the line of traffic, would this have been in front of you
9 or behind you or where?

10 A Oh, right -- right in front of us.

11 Q And again, what vehicle was directly in front of
12 you?

13 A The truck.

14 Q And could you tell whether or not the vehicle that
15 was coming out of the parking lot, was it trying to get in
16 front of or behind or where as far as the truck?

17 A I think he was -- to my thinking about it was he
18 was trying to maybe -- that maybe the truck had let him in,
19 in the line of traffic.

20 Q What happened next that you observed?

21 A I notice the individual get out of the car.

22 Q Out of which car?

23 A Out of the car parked on the side of the road. I
24 mean, it pulled up abruptly. I observed him going up to
25 the truck and punching --

Guy Echenroth - Direct Examination by Ms. Campbell

- 1 Q Let me back up a little bit. You observe him get
2 out of the car?
- 3 Q (Witness nodded head.)
- 4 Q Could you tell which side of the car he got out of?
- 5 A I believe it was passenger side.
- 6 Q So you observed one individual?
- 7 A Yes, ma'am.
- 8 Q And could you tell if it was a male or female,
9 anything about him?
- 10 A Yes, it was male, large male.
- 11 Q And when you saw him get out of the truck, which
12 direction did he go in?
- 13 A He went right -- he went right to the truck.
- 14 Q And when you say he went right to the truck, which
15 truck are you referring to?
- 16 A The truck in front of me.
- 17 Q The one you described as a black truck?
- 18 A Yes, ma'am.
- 19 Q And was the black truck -- where was it located in
20 the roadway? Was it in the road all the way?
- 21 A Oh, it was definitely in the road and I was right
22 behind him. We were in a line of traffic, just like any
23 normal day.
- 24 Q And once you observed what you said about the man
25 getting out of the other car, had anybody gotten out of the

Guy Echenroth - Direct Examination by Ms. Campbell

1 black truck at that point?

2 A No, ma'am.

3 Q As you saw the man approach the black truck, could
4 you describe what happened next?

5 A The individual that approached the truck reached in
6 and punched the passenger that was in the truck. And I'm
7 sure maybe they -- I mean, to look at what I looked at, I
8 thought they probably had some words. And he reached in --

9 Q Could you hear what was being said?

10 A Oh, no, ma'am.

11 Q Okay. And who did you see actually throw this
12 punch you describe into the passenger area?

13 A The person that got out of the vehicle.

14 Q What happened next?

15 A He punched the vehicle -- he punched the person in
16 the vehicle and then that individual was in the passenger
17 side tried to open up the door and defend himself and the
18 door was not open very much.

19 Q Okay.

20 A But he did try to open and try to defend himself.

21 Q And at that point, the person that's inside the
22 vehicle, could you see whether or not he had thrown any
23 punches?

24 A No, ma'am.

25 Q What did you see next?

Guy Echenroth - Direct Examination by Ms. Campbell

1 A I saw several punches, I'd say three or four
2 punches thrown.

3 Q By whom?

4 A By Curtis Simms.

5 Q Did you know his name at the time?

6 A No, ma'am.

7 Q Did you know any of the people in the truck either?

8 A Oh, no, ma'am, huh-huh.

9 Q And the person that you now know as Curtis Simms,
10 he was the one that did what?

11 A He punched right through the open window. The
12 window was rolled down.

13 Q And at that point, the door was slightly open?

14 A Slightly. Well, let me go back and say, he punched
15 first and then reached in and then the individual tried to
16 open up the door after the punch.

17 Q And you say the individual tried to open the door,
18 who was trying to open the door?

19 A The passenger of the truck.

20 Q Okay. Could you see whether or not -- at this
21 point, was the individual from the truck inside or outside
22 of the truck? Could you tell?

23 A Pardon? Could you say that again?

24 Q Could you tell whether he was inside or outside the
25 truck?

Guy Echenroth - Direct Examination by Ms. Campbell

1 A Oh, the passenger was inside the truck.

2 Q And was he attempting -- excuse me, what was he
3 trying to do?

4 A Once he got punched, he was looking like he was
5 going to try to defend himself and he got out and never
6 really got to that point because he was struck several more
7 times.

8 Q And then what happened?

9 A He was knocked to the ground and when he was
10 knocked to the ground, he was on his side and he just
11 rolled over on his back.

12 Q What was your impression of his condition at that
13 point?

14 A Oh, he was out, cold. I was from here to the stand
15 right there from him. I knew he was knocked out. I've
16 been in athletics long enough, I know when somebody's been
17 knocked out.

18 Q How many people did you actually see throw punches
19 that day?

20 A Just one. I mean, it was -- it was over so quick.
21 I mean it was --

22 Q It happened quick?

23 A You know, the deceased was so -- you know the
24 smallest person I would say a little bit smaller than me as
25 height goes.

Guy Echenroth - Direct Examination by Ms. Campbell

1 Q Once you noticed him down on the ground, what did
2 you see?

3 A I saw -- I saw then -- as soon as that happened, it
4 was not even -- I'd say three to four seconds before I
5 realized that the truck had then gone over top of the
6 victim.

7 Q Was the truck -- what speed was it moving, could
8 you tell?

9 A Oh, it was relatively slow. My thought was that
10 the driver felt, I got to help my buddy.

11 MR. GASSER: Objection.

12 THE COURT: Sustained.

13 BY MS. CAMPBELL:

14 Q It was going slow?

15 A Oh, yes, ma'am.

16 Q And you actually observed the truck run over?

17 A Yes, ma'am.

18 Q And could you tell which wheel actually ran over
19 him?

20 A The right rear.

21 Q And could you tell --

22 A Pretty good size. It had pretty good size tires on
23 it.

24 Q Could you tell what part of the victim's body it
25 ran over?

Guy Echenroth - Direct Examination by Ms. Campbell

1 A Yes, ma'am, it was ironic that his legs were
2 between the tire when he rolled over. And the thing that
3 sticks in my mind, and I see it time and time again that
4 the tire ran right over his abdomen and right over his
5 head.

6 Q Is this something you remember clearly?

7 A Yes, ma'am. I've had -- I've only been involved in
8 only one other death and that was a basketball player put
9 on the floor dead, and I knew we were in trouble right
10 there.

11 Q Once you observed that, did you see where the man
12 that threw the punches went?

13 A He came toward our vehicle. And I will say this,
14 that as -- as the young man drove over the body, I was
15 actually afraid that I would get knocked into the body
16 because the body was on the road right there.

17 Q Right beside the road?

18 A Yes, ma'am.

19 Q Inside the line?

20 A Inside the line. And I was afraid I might get
21 knocked into the body, so I took my car and just kind of
22 veered a little bit to the left --

23 Q Okay.

24 A -- so I would not hit the body. And at that time
25 Mr. Simms came over and pounded on my wife's window, which

Guy Echenroth - Direct Examination by Ms. Campbell

1 we'd already started our 9-1-1 call.

2 Q Uh-huh.

3 A Of course, I'm sure that people going by were doing
4 the same thing, but we were calling 9-1-1 like everybody
5 else did. And then he took off running.

6 Q And could you hear -- did he say anything while he
7 was pounding on your wife's window?

8 A He was just screaming virtually out of control,
9 Call 9-1-1, call 9-1-1.

10 Q And at that point, you mentioned that he took off?

11 A Yes, ma'am.

12 Q And did you see what direction he went in?

13 A He went towards town.

14 Q And did you see him anymore that day?

15 A Not until -- not until he -- I did not notice him
16 until he came back with some -- with an officer.

17 Q Once you had pulled your car -- up to the left, I
18 believe you said?

19 A Just maybe a few feet, yes, ma'am.

20 Q What did you and your wife do?

21 A At that time when I saw Mr. Simms take off running,
22 I thought about getting out and chasing him. Okay.
23 Because I didn't know why -- my first thought was he took
24 off running because he knew he was in trouble.

25 MR. GASSER: Objection. She asked what he saw and

Guy Echenroth - Direct Examination by Ms. Campbell

1 what he did. And I object. It is narrating.

2 THE COURT: Just a second. As to what was in
3 Mr. Simms mind, I will sustain the objection.

4 MS. CAMPBELL: I believe he was saying what was in
5 his mind, Your Honor. For his reasons for that, not what
6 was in Mr. Simms mind.

7 THE COURT: He can testify about what -- why he did
8 what he did.

9 MS. CAMPBELL: Thank you.

10 BY MS. CAMPBELL:

11 Q Just tell us why you did what you did?

12 A I did -- because he took off running, I thought I
13 would try to go catch him, but as I did an officer had come
14 and told me I had to stay in my vehicle.

15 Q And did you do that?

16 A Yes, ma'am.

17 Q And while -- did you and your wife both stay in the
18 vehicle?

19 A I think my wife got out of the vehicle.

20 Q Okay.

21 A Once the officer told you to stay in the vehicle,
22 did you stay there at the scene for a period of time.

23 A Oh, yes, ma'am.

24 Q While you were there, did any kind of emergency
25 personnel show up?

Guy Echenroth - Direct Examination by Ms. Campbell

1 A Yes, ma'am.

2 Q And do you remember who all showed up?

3 A I remember, of course, the medical people, and a
4 highway patrolman, yes, ma'am.

5 Q Prior to the medical people getting there, was
6 anyone trying to help the young man that had been run over?

7 A I think -- yes, ma'am, if I remember correctly, I
8 think a woman -- I remember a woman coming over to to body.
9 Yes, and my wife was standing right there, but that's all I
10 can remember.

11 Q And eventually, you mentioned the police came too?

12 A Yes, ma'am.

13 Q Or sheriff's department?

14 A Yes, it was a deputy sheriff, yes, ma'am.

15 Q While you were there, did you talk to any of the
16 officers who showed up at the scene?

17 A Yes, ma'am.

18 Q And what, if any, information were you able to give
19 them?

20 A Just told them what we had seen.

21 Q Did you give them any kind of identifying
22 information as to who you were and how they could contact
23 you?

24 A Yes, ma'am.

25 Q As far as -- and do you remember approximately how

Guy Echenroth - Direct Examination by Ms. Campbell

1 long y'all were there that night?

2 A Until -- I know it was after midnight, yes, ma'am.

3 Q Later or the next day or two, did the police
4 actually make contact with you at the sheriff's department?

5 A Yes, they did.

6 Q And did you actually give them a statement?

7 A Yes.

8 Q And I'm showing you a copy of your statement. And
9 what's the date on that? Do you recognize it?

10 A 10/11.

11 Q That would be October 11?

12 A Yes, ma'am.

13 Q And did you give them information about what you
14 had observed?

15 A Yes, ma'am.

16 Q That night, you mentioned you were behind the black
17 truck I believe is what you said?

18 A Yes.

19 Q Was there anything obstructing your view?

20 A Oh, no, ma'am.

21 Q Were you -- and the events that you have just
22 described them is what you observed that night?

23 A Yes, ma'am.

24 Q Do you remember how many people did you see get out
25 of the car that was trying to pull into the lane in front

Guy Echenroth - Direct Examination by Ms. Campbell

1 of you?

2 A The only thing I remember -- I remember a --
3 because I remember turning my head and the driver of the
4 vehicle got out, but that was all I remember.

5 Q And was that before or after the actual incident
6 occurred?

7 A That was after the incident occurred, yes.

8 Q Did you ever see the driver of the black truck get
9 out of his car?

10 A No.

11 Q So you didn't observe him?

12 A No. I did not.

13 Q As far as Mr. Curtis Simms or anyone that was in
14 his truck, did you know any of them?

15 A Oh, no, ma'am.

16 Q Did you know the victim or the person that was
17 driving the truck?

18 A No, I sure didn't.

19 Q The person that you saw throw the punches, do you
20 see him in the courtroom?

21 A Yes, ma'am.

22 Q Could you point him out to the jury?

23 A Yes, ma'am. (Indicating).

24 Q Seated at the table?

25 A Yes.

Guy Echenroth - Cross-Examination by Mr. Gasser

1 Q On which end?

2 A On the far end (indicating).

3 MS. CAMPBELL: Your Honor, may the record reflect
4 he's identified the defendant.

5 THE COURT: Very well.

6 MS. CAMPBELL: Thank you.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. GASSER:

10 Q Good morning Mr. Echenroth. My name is Johnny
11 Gasser.

12 A Good morning.

13 Q You and I have never met, have we, sir?

14 A No.

15 Q Mr. Echenroth, you've been in education
16 thirty-seven years, correct?

17 A Yes, sir.

18 Q So you, based on your experience, would know the
19 difference between a person intentionally lying about
20 something versus somebody simply being mistaken. You
21 understand the difference, do you not, sir?

22 A Yes.

23 Q Happens all the time in your field, does it not?

24 A You deal with children like I deal with, yes, sir.

25 Q So at times people, for whatever reason, whatever

Guy Echenroth - Cross-Examination by Mr. Gasser

1 motivation might, in telling a story might intentionally
2 lie --

3 MS. CAMPBELL: Objection, Your Honor as to
4 relevance of this line of questioning.

5 MR. GASSER: Your Honor, I believe it's relevant
6 where I'm getting ready to go.

7 THE COURT: (Indicating.)

8 (WHEREUPON, there was a bench conference out of the
9 hearing of the jury and the Court Reporter.)

10 BY MR. GASSER:

11 Q Well, let me -- let's talk about when you left the
12 football game.

13 A Okay.

14 Q Okay. You indicated to this jury that it was
15 around -- after you got back -- you went down to the game
16 and stayed for the whole game, correct?

17 A Yes.

18 Q And after the game, you walked from the stadium and
19 went to some friend's condominiums, correct?

20 A Yes.

21 Q And so it would have taken you some time after the
22 football game to walk out of the stadium, because it was a
23 pretty crowded stadium, wasn't it?

24 A Yes, it was.

25 Q Alabama was ranked number one in the country at the

Guy Echenroth - Cross-Examination by Mr. Gasser

1 time. Do you recall that?

2 A Yeah. Yeah.

3 Q And so it took you time to walk from the stadium to
4 the condominiums where you visit your friends?

5 A Yes.

6 Q How long do you think it took you to do that?

7 A Five minutes.

8 Q And how long, approximately, did you stay at your
9 friend's condominium?

10 A Oh, maybe -- maybe -- long enough for the wife to
11 go to the restroom and just say goodbye to our friends then
12 walk to our car.

13 Q And you indicated -- and how long did it take you
14 to walk to your car to Shop Road then?

15 A Not long. Matter of fact, it was so -- it was so
16 crowded that a friend of ours there took us to Shop Road in
17 a vehicle because it was, maybe, maybe a -- pretty good
18 walk. Maybe not a mile, but I'd say maybe half a mile. He
19 took us to Shop Road and we got out and walked straight to
20 the parking lot where we parked our car.

21 Q And you indicated on direct examination that by the
22 time you got to your car and got in the car and got in the
23 traffic it was about 6:30; is that correct?

24 A I'd say it was approximately that, yes.

25 Q And you're absolutely certain it was light out?

Guy Echenroth - Cross-Examination by Mr. Gasser

1 A Oh, yes.

2 Q And you indicated that two or three times on
3 direct?

4 A Yes.

5 Q And it took about 15 minutes in traffic on Shop
6 Road to get to where this incident occurred that you've
7 described to the jury, correct?

8 A Yes, sir.

9 Q Now, Mr. Echenroth, you're absolutely positive
10 about the time and about how it was light out; are you not?

11 A Yes, sir.

12 Q And you're absolutely positive in front of this
13 jury, that Mr. Simms got out of an SUV? You're positive
14 about that, aren't you, Mr. Echenroth?

15 A Well it's an SUV or a station wagon type vehicle.
16 I didn't really --- I thought that was kind of -- I mean, I
17 saw him get out of the vehicle and I thought it was an SUV
18 at the time.

19 Q So --

20 A But --

21 Q Would it surprise you to know that this incident
22 occurred around 8:30?

23 A Oh, absolutely.

24 Q And would it surprise you to know that it was
25 completely dark out?

Guy Echenroth - Cross-Examination by Mr. Gasser

1 A Absolutely.

2 Q Surprise you?

3 A Yes, it does.

4 Q And -- I want to show you a document that the State
5 put into evidence yesterday. State's Exhibit No. 54. This
6 document that the State put into evidence, State's Exhibit
7 54 is a statement from a witness named James Martin?

8 MS. CAMPBELL: Objection, Your Honor.

9 THE COURT: Sustained.

10 MS. CAMPBELL: Thank you.

11 MR. GASSER: Your Honor, may we approach.

12 THE COURT: Okay.

13 (WHEREUPON, there was a bench conference out of the
14 hearing of the jury and the Court Reporter.)

15 BY MR. GASSER:

16 Q Was that SUV that you indicated you saw Mr. Simms
17 get out of, do you recall whether or not it was white or
18 not?

19 A No, sir, I don't think -- I don't think it was.

20 Q Now, would it surprise you to know that Mr. Simms
21 got out of a dark green pick-up truck? Would that surprise
22 you?

23 A It probably would, yes.

24 Q So you, in your direct examination, Mr. Echenroth
25 you are absolutely certain, based on your memory that the

Guy Echenroth - Cross-Examination by Mr. Gasser

1 incident occurred around 6:45 and it was light out and
2 Mr. Simms got out of an SUV? You're absolutely certain
3 about that?

4 A It was still light, it was dusk, yes. Yes. Now,
5 if I could add one thing to that question, where this
6 accident took place is blocked. The sun is blocked by a
7 building that is right there -- I believe it is a part of
8 South Carolina, I guess, right there in that particular
9 area which makes it seem a little bit later, but that's my
10 approximate time.

11 Q And do you recall meeting with an Investigator
12 Robinson at the scene?

13 A Yes, sir. An investigator, I don't recall his
14 particular name.

15 Q Okay. And Investigator Robinson briefly
16 interviewed you and your wife at the scene, did he not?

17 A Yes, he did.

18 Q Do you recall telling Investigator Robinson that
19 your position was not that great from an observation
20 perspective?

21 A Oh, no, sir.

22 Q So if Investigator Robinson put that in his notes,
23 he'd be wrong?

24 A Well, I'm the car -- I'm the car behind him. I
25 don't see how my vision could be any better.

Guy Echenroth - Cross-Examination by Mr. Gasser

1 Q My question was, if Investigator Robinson put in
2 his notes --

3 MS. CAMPBELL: Objection, Your Honor. Asked and
4 answered.

5 MR. GASSER: He didn't answer it, Your Honor. I'm
6 asking him is it his testimony that if an investigator put
7 in his notes that his position was not that great, whether
8 or not that investigator would be wrong.

9 THE COURT: Now, what is the objection.

10 MS. CAMPBELL: He's just asked the same question
11 and he answered it.

12 MR. GASSER: Well, I didn't hear the answer. So I
13 asked the witness to repeat it.

14 THE COURT: Sustain the objection. I believe he's
15 asked and answered it. Thank you.

16 BY MR. GASSER:

17 Q You indicated to Ms. Campbell that you had given a
18 written statement. Do you recall that Mr. Echenroth?

19 A Yes.

20 Q Okay. And --

21 MR. GASSER: May I approach the witness, Your
22 Honor?

23 THE COURT: Sure. Has that been marked for
24 identification purposes? I believe we would mark it for
25 Defendant's Exhibit No. 3 for ID. Well, just mark it for

Guy Echenroth - Cross-Examination by Mr. Gasser

1 ID for the record.

2 (WHEREUPON Defendant's Exhibit No. 3 was marked for
3 identification.)

4 BY MR. GASSER:

5 Q Mr. Echenroth, I show you what's been marked
6 Defendant's Exhibit No. 3. Sir, take whatever time you
7 need to make sure that that's a copy of your written
8 statement.

9 A Okay.

10 Q Now, the incident occurred approximately
11 twenty-seven and a half to twenty-eight months ago,
12 correct.

13 A Yes.

14 Q And you had an opportunity to give a verbal
15 statement to Investigator Robinson that evening; is that
16 true?

17 A Yes.

18 Q And then two days later, you met with Investigator
19 Holdorf here and you gave a written statement for
20 Investigator Holdorf, correct?

21 A Uh-huh.

22 Q And you've got a copy of that before you,
23 Defendant's Exhibit No. 3; is that correct?

24 A Yes.

25 Q And now twenty-seven and a half to twenty-eight

Guy Echenroth - Cross-Examination by Mr. Gasser

1 months later, you answered questions from Ms. Campbell and
2 myself here in court for this jury?

3 A Yes.

4 Q So three times, you've been asked questions about
5 this incident from somebody in an official capacity. Is
6 that a fair statement?

7 A Yes.

8 Q And when you gave your testimony on direct
9 examination, I believe you indicated to the jury that you
10 recall Mr. Simms getting out and approaching the black
11 pick-up truck and striking the passenger first one time --
12 you recall that testimony?

13 A Yes, through the window.

14 Q And then three or four more times?

15 A Approximately.

16 Q All inside the truck?

17 A No.

18 Q You didn't testify that all of those were in the
19 truck?

20 A No, I was asked if they -- once he was punched once
21 in the truck and the passenger tried to open the door, then
22 he was struck again.

23 Q Okay.

24 A That's what I testified to.

25 Q So when the passenger was opening the door he was

Guy Echenroth - Cross-Examination by Mr. Gasser

1 struck again. Was he seated?

2 A No, sir. I mean, he probably had one leg on the
3 ground, getting out.

4 Q So it's your testimony now that you recall him
5 getting out of the truck and was struck three or four more
6 times with one leg on the ground?

7 A He was struck a couple more -- it didn't take but
8 two or three more punches and he was down.

9 Q Was it two or three or three or four?

10 A Does it matter? I mean, I can't sit there and --
11 I'm not going to sit there and count punches, one, two,
12 three, when I know it had to be at least three.

13 Q Okay. You say it doesn't matter, Mr. Echenroth?

14 A Pardon.

15 Q You just indicated to the jury that it doesn't
16 matter?

17 A Well, I mean, when he was -- as far as -- when he
18 was knocked out, he was knocked out.

19 Q When you gave your statement, you indicated there
20 was one punch while he was seated in the car?

21 A Yes.

22 Q And then you indicated there was one, maybe two
23 punches outside the car?

24 A Two to three times is what I've written. And I see
25 one to two out of the truck. Didn't take many.

Guy Echenroth - Cross-Examination by Mr. Gasser

1 Q Was your memory of the event better two days after
2 the incident or is it better now sitting in this courtroom
3 almost twenty-eight months later?

4 A Of course, it's better -- of course it's better
5 then.

6 Q And you -- Ms. Campbell asked you about your line
7 of position. You were driving your vehicle, correct?

8 A Yes.

9 Q Okay. And your wife was seated right next to you?

10 A Yes.

11 Q And she's maybe a foot away from you?

12 A Yes.

13 Q So the two of you seated a foot apart are drawn to
14 this incident that you described to the jury?

15 A Yes, sir.

16 Q And you're the same exact distance away from the
17 incident, the two of you?

18 A Yes, sir.

19 Q Now, you're having to look at an angle because
20 you're diving the car, where she's passenger, correct?

21 A Correct.

22 Q And you weren't expecting anything to happen that
23 evening. You weren't expecting this to happen, were you?

24 A No, sir.

25 Q So you were concentrating on the traffic in front

Guy Echenroth - Cross-Examination by Mr. Gasser

- 1 of you, correct?
- 2 A We were stopped at the time.
- 3 Q Listening to the post-game show?
- 4 A Yes, sir.
- 5 Q Maybe conversing with your wife?
- 6 A No, not at that time.
- 7 Q And would you agree with me that the person that
- 8 was seated next to the passenger in the black pick-up truck
- 9 that you say was it --
- 10 A Huh-huh.
- 11 Q While he was sitting in the truck, was the person
- 12 sitting next to him?
- 13 A Yes.
- 14 Q Was it a better -- had a better opportunity to view
- 15 what was going on in the truck? The person sitting right
- 16 next to the passenger, than you?
- 17 A I don't think so.
- 18 Q So the person sitting --
- 19 A I mean, if you and I are sitting side by side,
- 20 we're both going to have a real good view of that.
- 21 Q Okay. Let me rephrase my question. I apologize if
- 22 I didn't ask my question right. The passenger that you
- 23 have described that was getting hit --
- 24 A Okay.
- 25 Q There was a driver of that black truck?

Guy Echenroth - Cross-Examination by Mr. Gasser

1 A Uh-huh.

2 Q Who was seated as close to the passenger as you
3 were to your wife in the car behind, correct?

4 A Probably so.

5 Q Would you agree with me that that driver of the
6 pick-up truck seated this far away from the passenger had a
7 better -- was in a better position to view what was going
8 on in the cab of that truck?

9 MS. CAMPBELL: Objection, Your Honor, calls for
10 speculation.

11 MR. GASSER: I'm just asking him about position,
12 Your Honor, and distances.

13 THE COURT: If he can answer, I will let him. If
14 he knows.

15 BY MR. GASSER:

16 Q The person sitting next to the person in the
17 pick-up truck -- the driver of the pick-up truck, the
18 passenger that was seated right next to him that you say
19 was hit while he was still seated in the truck. You recall
20 that testimony?

21 A Yes.

22 Q Okay. Would you agree with me that that driver of
23 the pick-up truck sitting this far away from the passenger
24 in the pick-up truck was in a better position to view what
25 was going on with his passenger than you and your wife from

Guy Echenroth - Cross-Examination by Mr. Gasser

1 a distance behind the windshield?

2 THE COURT: Let me stop. Having heard the question
3 again, sustained.

4 MS. CAMPBELL: Thank you.

5 BY MR. GASSER:

6 Q So you figure you were in a good position to view
7 what you've described to this jury?

8 A Yes, sir.

9 Q And, of course, the lighting was fantastic because
10 it wasn't dark out?

11 A I didn't say it was fantastic. Like I said,
12 there's a building right there too, that blocks some of the
13 dusk sunlight. But I don't remember any car lights. I
14 don't remember any lights being on.

15 Q And there's no question that that black pick-up
16 truck was stopped because you were stopped as well. It was
17 stationary when this incident happened?

18 A Yes, sir.

19 Q And you identified Mr. Simms here in court.

20 A (Witness nodded head.)

21 Q Is this the first time you've seen him in
22 twenty-eight months?

23 A Oh, yes, sir.

24 Q Okay. And tell the jury the identification
25 procedures that the Richland County Sheriff's Department

Guy Echenroth - Cross-Examination by Mr. Gasser

1 used with you back in October of 2010. What kind of
2 identification procedure did they use to get you to
3 identify Mr. Simms?

4 A I'll be honest with you, I don't -- I think that
5 they -- that they showed me a picture and I identified it,
6 but I'm not sure. I'm really not.

7 Q Okay. Well, if I tell you that that didn't happen
8 because they would be required to give that to us --

9 MS. CAMPBELL: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. GASSER: Okay. Well, let me see it, Your
12 Honor. I've got a discovery motion.

13 THE COURT: Why don't you finish your examination
14 then I'll handle that matter.

15 BY MR. GASSER:

16 Q Are you telling -- do you think that there was an
17 identification procedure, Mr. Echenroth?

18 A I don't remember.

19 Q But the one thing is certain that the only person
20 seated at the defense table other than the two lawyers is
21 Mr. Simms?

22 A Yes, sir.

23 Q So you identified Mr. Simms in front of the jury
24 because he's the only person seated at the defense table?

25 A Well, that 's the guy that came up and pounded on

Guy Echenroth - Cross-Examination by Mr. Gasser

1 my window. When a guy is that far from you and he's
2 pounding on your window to call 9-1-1, you remember that
3 face.

4 Q But my point is, do you recall any out-of-court
5 identification procedure at the time to make sure?

6 A No, sir.

7 Q Now, Mr. Simms was lively asking or banging on the
8 window call 9-1-1. That's your testimony?

9 A Yes, sir.

10 Q And he took off running and you told the jury that
11 you thought he was fleeing and which was the reason that
12 you thought about maybe going after him?

13 A Yes, sir.

14 Q And you also indicated, is it not true, to the
15 jury, that then you saw him coming back to the scene and
16 brought officers with him?

17 A I remember one officer with him. I don't remember
18 officers.

19 Q So your impression was wrong about him fleeing, to
20 run away if he brought officers back?

21 A That's speculation. I wouldn't know -- I can't --
22 I'm not in his mind. I don't know why he was running.

23 MS. CAMPBELL: Objection, Your Honor.

24 THE COURT: Let me see you, please.

25 (WHEREUPON, there was a bench conference out of the

Guy Echenroth - Cross-Examination by Mr. Gasser

1 hearing of the jury and the Court Reporter.)

2 MR. GASSER: Beg the Court's indulgence.

3 THE COURT: Sure.

4 (WHEREUPON there was a pause in the proceedings.)

5 MR. GASSER: Thank you, Your Honor, for the time.

6 THE COURT: Certainly.

7 BY MR. GASSER:

8 Q Mr. Echenroth, and just a couple more questions.

9 How -- how -- you indicated I believe that you were behind
10 the black pick-up truck for about a half a mile; is that
11 about right, sir?

12 A Yes. Half hour -- I'm sorry half a mile to a mile.
13 That's my estimate.

14 Q And is that because when you were trying to get
15 into traffic, did a car let you in?

16 A Yes, sir.

17 Q And this incident, I believe you said, just
18 happened rather quickly, this whole episode that you just
19 described to the jury.

20 A Yes, yes, once the car, the vehicle pulled up and
21 the gentleman got out, yes.

22 MR. GASSER: That's all we have, Your Honor.

23 THE COURT: All right. Redirect?

24 MS. CAMPBELL: Just a couple of questions, Your
25 Honor.

Guy Echenroth - Redirect Examination by Ms. Campbell

1 ///

2 REDIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q Sir, he asked you about, is there any doubt in your
5 mind about who you saw throw the punches?

6 A Oh, no, ma'am.

7 Q And who did you see throw punches?

8 A That gentleman over there.

9 Q Did you see anyone else throw any punches?

10 A No, ma'am.

11 Q Do you know any of the parties in this? The
12 victim, the driver?

13 A No, ma'am, no, ma'am.

14 Q Anyone one?

15 A No, ma'am, huh-huh.

16 MS. CAMPBELL: Thank you, Your Honor. Nothing
17 further.

18 THE COURT: All right. Recross?

19 Is this witness free to leave?

20 MR. GASSER: No objection.

21 MS. CAMPBELL: Thank you, Your Honor.

22 THE COURT: Thank you. You're all good to go.
23 Call your next witness, please.

24 MS. WALKER: The State would call James Adams.

25 THE COURT: I'm sorry, what was the name?

James Adams - Direct Examination by Ms. Walker

1 **MS. WALKER:** James Adams.

2 **THE COURT:** Okay. Thank you.

3 **JAMES ADAMS,**

4 having been duly sworn, testified as follows:

5 **THE CLERK:** Thank you, have a seat in the witness
6 box, please. State your name for the record.

7 **THE WITNESS:** James Adams.

8 **DIRECT EXAMINATION**

9 **BY MS. WALKER:**

10 **Q** Good morning Mr. Adams.

11 **A** Good morning..

12 **Q** Sir, where do you live?

13 **A** Columbia, South Carolina.

14 **Q** How long have you lived here in Columbia?

15 **A** Four years.

16 **Q** Four?

17 **A** Four.

18 **Q** And are you currently employed?

19 **A** Yes.

20 **Q** Where do you work?

21 **A** Blanchard Machinery.

22 **THE COURT:** I'm having a little trouble hearing you
23 if you would pull that mic down a little bit.

24 **MS. WALKER:** Thank you, Judge.

25 **THE COURT:** Thank you.

James Adams - Direct Examination by Ms. Walker

1 BY MS. WALKER:

2 Q You said you work where?

3 A Blanchard Machinery, Caterpillar.

4 Q And do you live by yourself or do you...

5 A Married, three kids.

6 Q Married with three children. Do you attend USC
7 softball and football games?

8 A I do.

9 Q And back in October of 2010, did you attend the
10 Alabama, South Carolina game?

11 A I did.

12 Q And who did you go to that game with?

13 A My brother-in-law, my wife and sister-in-law and
14 probably at least eight other relatives and friends.

15 Q So it was a family event?

16 A Basically.

17 Q Do you remember the time of day of the game?

18 A 7:30 kick off -- it was an evening game. I don't
19 remember the exact time of the kick off.

20 Q And where were you parked that day? Where did you
21 guys park?

22 A Hood Construction. That's where we always
23 tailgate.

24 Q And where is that located?

25 A Right before you get to George Rogers off of Shop

James Adams - Direct Examination by Ms. Walker

1 Road -- on the railroad tracks.

2 Q Okay.

3 A Right near the railroad tracks.

4 Q And did you -- you said you went inside the game?

5 A Yes.

6 Q And when y'all came back -- did y'all go back to
7 that same tailgate spot on Shop Road?

8 A Yes.

9 MR. GASSER: Objection, leading, Your Honor.

10 MS. WALKER: I'm sorry?

11 THE COURT: His objection is leading and I'm
12 sustaining the objection. Please do not lead.

13 BY MS. WALKER:

14 Q Did y'all -- what did y'all do after the game?

15 A We went back to our tailgate spot and tailgate --

16 Q Which is located?

17 A Hood Construction, same spot we had previous to
18 the ball game.

19 Q Okay. Do you recall how long y'all stayed for --
20 you guys stayed at that spot after the game?

21 A Traffic was so bad, it was a couple of hours.

22 Q Now, when you guys left the tailgating spot, who
23 were you with?

24 A When we physically left?

25 Q Yes.

James Adams - Direct Examination by Ms. Walker

- 1 A In my vehicle with my brother-in-law.
- 2 Q And what's your brother-in-law's name?
- 3 A James Martin.
- 4 Q Was he driving or were you driving?
- 5 A He was driving.
- 6 Q When y'all were pulling out, did anything catch
- 7 your attention?
- 8 A We were pulling out trying to merge into traffic,
- 9 looked left to see what was going on with the traffic and
- 10 that's when I saw, I think the whole scene occur.
- 11 Q You saw the whole scene occur?
- 12 A Yes.
- 13 Q Now, describe to the jury, please, what you mean
- 14 when you say you saw the whole scene occur?
- 15 A Okay. Just kind of tell everything I saw?
- 16 Q Yeah.
- 17 A I picked it up at the point when I looked left,
- 18 the -- the -- I saw a large gentleman approaching the
- 19 truck. They were shouting back and forth.
- 20 Q You say a large gentleman was approaching a truck.
- 21 Do you remember what the truck looked like?
- 22 A It was a black GMC, I think. Large truck.
- 23 Q And you saw a large man approach that truck?
- 24 A Yes.
- 25 Q Where was he coming from, could you tell?

James Adams - Direct Examination by Ms. Walker

1 A Parallel to me. Just come out of the parking lot
2 right beside me.

3 Q Okay.

4 A About 20 meters if I had to guess.

5 Q And on what part of the truck did he approach, if
6 you remember?

7 A The driver's-side window.

8 Q He approached the --

9 A I'm sorry, it passed the driver's side window.

10 Q He approached the passenger-side window of the
11 black truck?

12 A Correct.

13 Q Once he did that, what happened?

14 A As he approached the truck, he reached in and -- at
15 the time, I really couldn't tell what was going on. I
16 couldn't tell if they were celebrating together or arguing.
17 It was -- I just heard a lot of shouting. Reached in the
18 vehicle, there was some wrestling. Next thing I know the
19 passenger door opened. The deceased stepped out and as he
20 was stepping out, the larger gentleman had already worked
21 his way to the door and met him as his foot hit the door
22 with a punch.

23 Q Okay.

24 A Knocking him back into the door. It's kind of hard
25 to explain. As the door was opened, I guess it created a

James Adams - Direct Examination by Ms. Walker

1 wedge, so the gentleman who was punched fell back into that
2 wedge and then he received a second punch at that same
3 time. About the same time, the vehicle started moving so
4 it was just the perfect storm and they -- just everything
5 happened pretty quick.

6 Q But it was two punches, the vehicle started
7 rolling?

8 A It slowly crept up his groin, up over his body and
9 over his head.

10 Q Okay. I want to slow down a little bit and kind of
11 go back to some of the things you said. You said the large
12 gentleman approached the car door?

13 A The passenger door.

14 Q And you saw him go inside of the car?

15 A I saw him reach in.

16 Q At that point in time, was the car door open -- or
17 the truck door open or closed?

18 A No, it's closed.

19 Q Closed?

20 A He was so far -- I assume he was reaching over to
21 the driver is what it almost appeared to me at first. In
22 that split second. I thought he -- his body was in the
23 vehicle.

24 Q And then the door opened?

25 A Then the door opened after --

James Adams - Direct Examination by Ms. Walker

1 Q When you said -- you kept saying large gentleman.

2 Was he larger than the person that got out of the car?

3 A Absolutely.

4 Q And as the person who was in the car got out, what
5 happened?

6 A The person that was in the car got out.

7 Q Right.

8 A Okay, as he got out -- the door opened, kind of
9 forcing the larger individual back. He stepped around and
10 as the victim was stepping out, his first foot hit the
11 ground and he received a punch at that moment. It was
12 almost in slow motion. The door was opening, the victim's
13 foot hit the ground, he was punched at that time, knocking
14 him back. I believe he was knocked out at that point, but
15 I couldn't tell for sure.

16 Q What do you believe? I'm sorry?

17 A I believe he was knocked out at that time after
18 that first punch.

19 Q Yes, sir.

20 A I couldn't tell you one way or the other, the way
21 that it looked to me after seeing people knocked out
22 before, it looked like he was knocked out. It flung him
23 into the door, into that wedge and a second punch followed
24 as the vehicle started moving.

25 Q The second punch followed after it appeared he got

James Adams - Direct Examination by Ms. Walker

1 knocked out?

2 A Yes.

3 Q And you described that the truck rolling over the
4 passenger of that car?

5 Q It was going into slowly working it's way over him?

6 Q Once that happened -- did you see the larger
7 gentleman again?

8 A To be honest, I had -- as soon as it happened, I
9 hopped out of the truck and -- and -- my brother-in-law's
10 father is a doctor, so we ran and knocked on the window.
11 He hadn't seen what happened. And by the time we ran over
12 there, I wasn't really focussed on anything other than the
13 individual laying on the ground.

14 Q Let's --

15 A There were -- to answer your question, I did see
16 him again. I saw him later come back wearing a different
17 shirt.

18 Q What was he wearing when you first saw him?

19 A I believe it was a red Polo.

20 Q And then --

21 A It was a reddish Polo.

22 Q And then what was he wearing later?

23 A A white t-shirt.

24 Q So his appearance changed?

25 A Yes.

James Adams - Direct Examination by Ms. Walker

1 Q Did you -- did you stay there with the victim?

2 A Yes. My brother-in-law's father, the doctor, was
3 trying to help out the best he could, and so we stayed
4 there and just wanted to make sure we could give our
5 testimony since we saw everything happened. Just to make
6 sure everything was handled properly.

7 Q You wanted to make sure you told the officers what
8 happened.

9 MR. GASSER: Leading, Your Honor.

10 MS. WALKER: I was trying to --

11 BY MS. WALKER:

12 Q Could you repeat what you said?

13 A I stayed there to make sure my testimony, what I
14 saw, was given appropriately, with that and we weren't
15 moving any ways. The traffic was bumper-to-bumper and that
16 just added to it, so...

17 Q You said that added to the bumper-to-bumper
18 traffic?

19 A Yes.

20 Q When the truck rolled over the victim, how fast was
21 it moving?

22 A Not very fast at all. I -- I assumed there wasn't
23 any gas applied to the pedal. I assumed it was just in
24 drive and it was just trying to ease over. It wasn't fast.
25 It was slow.

James Adams - Cross-Examination by Mr. Harris

1 MS. WALKER: No further questions.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. HARRIS:

5 Q Good morning, Mr. Adams.

6 A Good morning.

7 Q My name is Greg Harris. How are you today?

8 A Doing good.

9 Q I just want to start with the game and a little bit
10 of your testimony just so I understand a few things, then
11 we'll get into what you saw, okay?

12 A Okay.

13 Q Your testimony was it was a 7:30 game and that you
14 saw the whole game, correct?

15 A Yes, I saw the whole game.

16 Q Okay. Are you familiar -- do you go to a lot of
17 Carolina football games?

18 A I do.

19 Q Okay. And I believe was it not --

20 A I'm sorry?

21 Q This game was on television?

22 A Yes, it was -- it was on TV.

23 Q And we all know television games take a long time,
24 correct.

25 A Yes.

James Adams - Cross-Examination by Mr. Harris

1 Q Three-and-a-half hours?

2 A Yeah, sure.

3 Q Where do you sit in the stadium?

4 A I sit on the George Rogers side of the stadium.

5 Q And where?

6 A It's the east side, 45-yard line, upper deck.

7 Q And you stayed for the whole game, if it's a
8 three-and-a-half-hour game, you stayed until eleven
9 o'clock?

10 A Well, to be honest, now that you're saying that, it
11 couldn't have been a 7:30 game. I haven't thought about
12 what time it was in two years. So -- obviously, you know
13 don't -- is there an earlier game than that? It had to
14 have been.

15 Q One of the things we try to figure out in
16 someone's --

17 MS. WALKER: Objection, Your Honor to one of the
18 things --

19 MR. GASSER: Withdrawn, Your Honor.

20 THE COURT: Very well.

21 BY MR. GASSER:

22 Q It was a 3:30 game, wasn't it?

23 A Okay.

24 Q It wasn't a 7:30 game?

25 A No, there's no way it was a 7:30 game; you're

James Adams - Cross-Examination by Mr. Harris

1 right.

2 Q So all of that testimony earlier about it being
3 7:30 football game, that's just wrong.

4 A Yeah, correct. It was not a 7:30 game.

5 Q You know a lot of -- one questions your memory --
6 it was better then than it is now, obviously.

7 A Yes.

8 Q Memories fade?

9 A Yes.

10 Q Recollections sometime disappear?

11 A Yes.

12 Q Especially over two years and one month, correct?

13 A Over little things like that, yes.

14 Q Okay. Now, something you said in your statement is
15 the cab light came on in the truck when the individual got
16 out. You remember that?

17 A Yes.

18 Q And that was important because it was dark outside.
19 Do you remember that?

20 A Yes.

21 Q It was dark outside and the headlights on the cars
22 as you looked left were all on; were they not?

23 A Yes.

24 Q And the reason you said the cab light came on in
25 your statement -- we'll get into that in a second, because

James Adams - Cross-Examination by Mr. Harris

1 it's important that you describe for the investigator what
2 you saw and your vantage point; and it was lit, so that was
3 important for you to say, correct?

4 A Sure, yes.

5 Q Okay. Now, how much alcohol was in your car with
6 you and your brother? Tell me about that, that night on
7 the way to drive home, where were you going? Cooler?

8 A In the car or in the back of the truck?

9 A The back of the truck.

10 A There was a cooler. I'm sure there was a few beers
11 in there. I couldn't tell you one way or the other. For
12 all I know, the cooler could have been in another truck.

13 Q Okay. But y'all had a cooler of beer?

14 A We hadn't consumed any beer after the football
15 game, if that's what you're asking.

16 A Yeah, well, had you consumed before then?

17 A Yes.

18 Q You gave a statement in this case, did you not,
19 some three days after the event?

20 A Yes.

21 Q You remember that statement?

22 A Yes.

23 Q Have you been provided a copy of that statement in
24 preparation for your testimony here today?

25 A Yes.

James Adams - Cross-Examination by Mr. Harris

1 Q Okay. I'm going to hand you a copy and let you
2 have a moment to look at it, if you would, please?

3 A Okay.

4 THE COURT: Your Honor, could you I have this
5 marked for identification purposes only?

6 THE COURT: Thank you, yes.

7 (WHEREUPON Defendant's Exhibit 4 was marked for
8 identification.)

9 BY MR. HARRIS:

10 Q Okay. If you could just take a few moments to look
11 at that, please, sir.

12 A Thank you.

13 (WHEREUPON the witness was reading.)

14 THE WITNESS: Okay.

15 BY MR. HARRIS:

16 Q Now, this -- you were with your brother-in-law that
17 day, correct?

18 A Yes.

19 Q And how long have y'all been brother-in-laws?

20 A Too long -- nine years.

21 Q Are you close?

22 A Fairly close, yes, we're close.

23 Q You go to games together, you socialize together;
24 of course obviously?

25 A Yes.

James Adams - Cross-Examination by Mr. Harris

1 Q Your in-laws?

2 A Yes.

3 Q And after this incident occurred, I'm sure that you
4 and he had the opportunity to discuss what you both had
5 seen?

6 A Yes.

7 Q And did you, after this incident, review television
8 footage coverage of this incident before giving this
9 statement?

10 A I did not.

11 Q Did you look at the internet?

12 A I did not.

13 Q Did you read newspapers?

14 A I did not.

15 Q Did you discuss what you had seen and what you were
16 going to put in a statement with your brother-in-law?

17 A I'm sorry, say that again.

18 Q Did you and your brother-in-law discuss your
19 statements? The statements that you were going to be
20 giving to Richland County Sheriff's Department?

21 A We did not discuss the statements. We discussed
22 what we saw, if that's what you're asking.

23 Q Okay. Now, if you could, reviewing your statement,
24 let me just point out, just ask you a few questions about a
25 few passages in your statement..

James Adams - Cross-Examination by Mr. Harris

1 If you look at your statement, how far away -- the
2 first line -- the first line did you say you were how far
3 away you were from the incident?

4 A If I had to guess --

5 Q No, in your statement. What does it say?

6 A Fifteen.

7 Q Tell me exactly what it says.

8 A I was about 15 yards away.

9 Q Okay. It says I was about 15 yards away and that's
10 in the first line of your statement, correct?

11 A Correct.

12 Q Okay. If you would skip down to the third line and
13 read me exactly what it says on the third line regarding
14 when you began the short sentence -- the short sentence
15 after truck. Three letters -- three words.

16 A I'm sorry, He reached inside.

17 Q Okay. If you'll skip to the next line which would
18 be the fourth and fifth lines and read the portion
19 beginning the with big guy?

20 A The big guy was shoved back a little bit. The cab
21 light came on.

22 Q Period. That sentence -- the big guy was shoved
23 back a little bit, correct?

24 A Correct.

25 Q That's your statement on lines four and five?

James Adams - Cross-Examination by Mr. Harris

1 A From the truck door opening, yes.

2 Q If you would skip down from the third from the
3 bottom line with the sentence beginning, The truck rolled.
4 If you would read the next two sentences, please.

5 A Sorry, I'm having a hard time reading my own
6 handwriting here. Say that again.

7 Q Would you begin reading the line beginning -- the
8 two sentences beginning, The truck rolled on lines one,
9 two, three, four, five, six, seven, eight, nine, ten, and
10 eleven.

11 A The truck rolled over the groin and up his head.

12 MS. WALKER: Your Honor, may we approach?

13 THE COURT: Sure.

14 (WHEREUPON, there was a bench conference out of the
15 hearing of the jury and the Court Reporter.)

16 BY MR. HARRIS:

17 Q Who gave the first statement? You or your
18 brother-in-law?

19 A I believe I did.

20 Q You gave your statement first. Did you give your
21 brother-in-law a copy of your statement after you wrote it
22 or it was written for you?

23 A No.

24 Q So if we were to compare those two statements, the
25 fact that they look alike, would it surprise you?

James Adams - Cross-Examination by Mr. Harris

- 1 A We saw the same thing.
- 2 Q Okay. You've known each other seven years; is that
3 correct? Did you go to school together?
- 4 A We did not, we've known each other longer than
5 that.
- 6 Q Did you go to school together?
- 7 A We did not.
- 8 Q The statement you gave, I believe, also involved
9 the victim stepping out of the car. Do you remember that?
- 10 A Yes.
- 11 Q And his left foot hit the ground. Do you remember
12 saying that? I think you said that here today?
- 13 A Yes.
- 14 Q And he was punched in the face?
- 15 A Yes.
- 16 Q Consistent with what you said here today, correct?
- 17 A Yes.
- 18 Q He went down, fell to the ground?
- 19 A Not immediately.
- 20 Q What happened immediately?
- 21 A As I said earlier, the first punch pushed him
22 into -- forced him into -- however you want to say it --
23 into the vehicle door slash into the cab and the second
24 punch finished him off.
- 25 Q And you saw this -- I believe you described it as

James Adams - Cross-Examination by Mr. Harris

1 split second, correct?

2 A It was -- it was fast.

3 Q It was your testimony. Did you say split second on
4 direct examination?

5 A Yes, but you're spinning it a little bit.

6 Q Okay. I'm not trying to spin it with you.

7 A Okay.

8 Q I can have the testimony read back if you want me
9 to?

10 A I understand. It was --

11 Q This is on tape.

12 A It was fast. I had a poor choice of words. It was
13 fast. Okay. Did you refer to a split second or not.

14 A I did.

15 Q You did?

16 A If it's in there, then I did.

17 Q You said everything happened so quick, correct?

18 A It was fast.

19 Q And you, I believe, testified that you, at least
20 your testimony today was that you were 30 meters away?

21 A I'm sorry, say that again.

22 Q Thirty meters away. Is that what you testified to
23 earlier?

24 A I was mixing up my distance. I meant to say yards.
25 15 yards.

James Adams - Cross-Examination by Mr. Harris

1 Q Fifteen. What was it 30 yards or 15 yards.
2 A I'm not sure what I said earlier.
3 Q Okay.
4 A It was 15 to 20 yards, if I had to guess.
5 A Did you talk to your brother-in-law last night.
6 A No.
7 Q You had to look up and think about that. Did you
8 talk to your brother-in-law last night?
9 A I can't --
10 MS. WALKER: Objection, Your Honor.
11 MR. HARRIS: He's about to answer the question.
12 THE WITNESS: I'm okay answering it.
13 THE COURT: Well, what is the nature of your
14 objection?
15 MS. WALKER: Your Honor, the characterization of
16 his facial expressions are improper.
17 THE COURT: Okay. Just ask him the question. Just
18 ask the question.
19 BY MS. HARRIS:
20 Q Who did you talk to about your testimony today?
21 A Who did I talk to -- about coming here?
22 Q Yeah.
23 A Nobody.
24 Q Did you talk to your brother-in-law last night or
25 after his testimony?

James Adams - Cross-Examination by Mr. Harris

1 A When he walked out of this court, he said, I can't
2 talk about it. That was the conversation we had.

3 Q In your statement, you said you were 15 yards away.
4 Can you still stand by that?

5 A I didn't have a ruler out. I couldn't tell you
6 exactly what it was. If I had to guess, that's what I
7 would say, it's close.

8 Q Okay. Forty-five feet?

9 A Yeah.

10 Q Okay. I'm going to ask you to refer, if you would
11 to Defendant's Exhibit 2 and this is, is it not the
12 driveway that you were exiting that evening?

13 A I can't see what's behind it, but it looks close
14 enough, yes.

15 Q Were you taking a right or a left out of that
16 driveway that evening?

17 A We were trying to pull out right.

18 Q Okay. Of the cones you see in that photograph,
19 which cone is most closely depicts the distance for where
20 you were on that road?

21 A I'd say the one second to the left.

22 Q Okay. Second from the right, correct?

23 A Yes.

24 Q Okay. This was 25 feet. Would it surprise you if
25 your distance to that phone was actually inches of 115, 120

James Adams - Cross-Examination by Mr. Harris

1 feet?

2 A It would surprise me a little bit, but like I said,
3 I didn't have a measure out, so.

4 Q You're 66 percent off on the distance, correct?

5 A Okay.

6 Q On a dark evening, correct. It was dark that
7 night, correct?

8 A There were lights all over the place, but yes.

9 Q You had headlights coming towards, correct?

10 A Yes.

11 Q This happened in a split second, correct? Your
12 words, not mine?

13 A No, it was not a split second -- I mean a split
14 second is -- it wasn't a half second, it wasn't a split
15 second, it was a poor choice of words. It was a very quick
16 fast process.

17 A Okay. You didn't expect this to happen. Nobody
18 did, did you.

19 A Definitely did not.

20 Q It just all happened so fast, I think another
21 description, everything happened quick?

22 A Yes.

23 Q Now, the one thing we haven't talked about is the
24 car that Curtis got out of. What was your description in
25 your statement, that vehicle?

James Adams - Cross-Examination by Mr. Harris

1 A I didn't think I described the car.

2 Q It was described by your brother as a white --

3 MS. WALKER: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. HARRIS:

6 Q Do you have any independent recollection here today
7 as to what type of car Curtis exited?

8 A I didn't see Curtis get out of a car. I saw --
9 when I picked up on what was going on, he was already
10 walking and I -- it drew my attention because of the
11 shouting.

12 Q How close were the two cars, do you remember that?

13 A No.

14 Q How many people were in the other car?

15 A I didn't see the car. I just said that. I didn't
16 see him get out of the car. Now, what I did see because
17 I'm a Gamecock fan, were the Lindsey twins, one of them out
18 of the vehicle or -- well, I saw one of them.

19 Q You saw one of the Lindseys out of the vehicle
20 before the blows?

21 A No, no, no, after everything had happened.

22 Q But you can't tell --

23 A I didn't see a vehicle until everything was
24 finished. I saw the vehicle that I assumed he was in
25 because everyone was saying he was with one of the Lindsey

James Adams - Cross-Examination by Mr. Harris

1 twins. So after I recognized them -- but as far as the
2 vehicle that he got out of, I didn't physically see him get
3 out of the vehicle. I saw him walking toward the vehicle
4 and that's where I picked everything up.

5 Q Can you tell us what type of vehicle was the -- the
6 black car was? The black truck was? Do you know that?

7 A The -- the truck?

8 Q Yeah.

9 A That ran over --

10 Q Yes.

11 A It was --

12 Q The truck that ran over him.

13 A It was a black GMC truck.

14 Q But you don't know what type of truck Curtis
15 exited?

16 A No, like I said, I didn't see him get out of the
17 vehicle.

18 Q How long were you there?

19 A How long was I there after the scene had happened?

20 Q Yes.

21 A A long time. I was there until the ambulance had
22 picked up the victim.

23 Q But you have no recollection of the car that was
24 fifteen --

25 MS. WALKER: Objection, Your Honor, asked and

James Adams - Cross-Examination by Mr. Harris

1 answered.

2 MR. HARRIS: I'm asking him a way --

3 THE COURT: Okay. Just listen to the question
4 first. There might be an objection, so hold on.

5 BY MR. HARRIS:

6 Q At any time during that thirty minutes if you were
7 there fifteen minutes, however long it was, you never
8 noticed what the color of the other car was or even what
9 kind of car it was?

10 A There were more important things going on than
11 vehicles around me.

12 Q So --

13 A In my mind it was a greenish-mid-sized --

14 Q What you said earlier was a tall -- you're sure
15 it's not a tall car -- did you say that earlier?

16 A No, I didn't say that. I thought you said that
17 someone testified that it was a white Tahoe.

18 Q White SUV?

19 A Okay. SUV.

20 Q Okay. Now, again, your distance -- we've talked
21 about the distance you were. It was a dark night. Lights
22 in your eyes. How much had you had to drink that day?

23 A Not a lot because I had my kids with me that day.

24 Q You had been at a tailgate for two hours after the
25 game. Was that your testimony?

James Adams - Cross-Examination by Mr. Harris

1 A Yes.

2 Q So if the game was -- if it's a 3:30 game and it's
3 a three-and-a-half-hour game, you testified that you were
4 there for two hours, that would be nine o'clock?

5 A If I had to estimate, yes. Just based on traffic
6 and standard pattern after tailgating. Without a clock on
7 me, I couldn't tell you.

8 Q So you're off thirty minutes and the incident
9 occurs at 8:30?

10 A Say that again.

11 Q So if the incident occurred at 8:30, your time --
12 you would have been leaving at nine o'clock, that can't be
13 right either, can it?

14 A I couldn't tell you.

15 Q Okay. If you tailgated for two hours after a
16 four-hour game, your timing would be off, would it not?
17 Your testimony today regarding your timing would be off;
18 would it not?

19 A If I tailgated for two hours --

20 Q Yes.

21 A -- after the football game was over?

22 Q Yes.

23 A Well, as you stated earlier, I couldn't remember
24 what time even kick off was, so I didn't -- I can't recall
25 what time the actual game was over.

James Adams - Cross-Examination by Mr. Harris

1 Q So I will ask it again. Your timing would be off,
2 would it not, based on even after acknowledging that you
3 didn't know what time the game was --

4 A Yes.

5 Q -- your timing would be off?

6 A Yes.

7 A No matter what.

8 MS. WALKER: Objection. He asked his question and
9 he got answered three times.

10 THE COURT: Overruled. You may proceed.

11 BY MR. HARRIS:

12 Q So your timing is off, correct?

13 A Yes.

14 Q Your distances are off, correct?

15 A I measured them, yes.

16 MR. HARRIS: One moment, Your Honor.

17 THE COURT: Very well.

18 BY MR. HARRIS:

19 Q And as you sit there, you still don't know whether
20 that's your handwriting or not; is that --

21 A It's not my handwriting. There's things that I
22 notice that are not mine. I have horrible handwriting and
23 it tends to go all over the place depends on how hard I'm
24 trying how sloppy I am. So, you know, at first glance and
25 with it being printed out, looks like a couple of times,

James Adams - Cross-Examination by Mr. Harris

1 you know -- but there are certain things in here, that, yes
2 it's not my handwriting.

3 Q Okay. That is, however, your statement; is it not?

4 A Say that again?

5 Q That is your statement, is it not?

6 A Yes.

7 Q Those are your words, are they not?

8 A Yes.

9 Q Those are words that were written for you that you
10 articulated to an investigator, correct?

11 A Yes.

12 Q Verbatim, correct?

13 A Yes.

14 Q In the same order that you articulated them to the
15 investigator, correct?

16 A Yes.

17 Q And you have no explanation as to why -- it's the
18 same number --

19 MS. WALKER: Objection, Your Honor.

20 THE COURT: Let me hear the question and then there
21 may be an objection.

22 MR. HARRIS: Thank you, Judge.

23 BY MR. HARRIS:

24 Q And you have no explanation as to why it's the
25 exact same number of lines with several references just

James Adams - Redirect Examination by Ms. Walker

1 like your brother-in-law, do you?

2 THE COURT: Hold on. Is there an objection.

3 MS. WALKER: Objection, Your Honor, to the pitting.

4 THE COURT: I don't think that's pitting witnesses.

5 That's asking about a statement. I'll allow him.

6 MR. HARRIS: Thank you, Judge.

7 BY MR. HARRIS:

8 Q You have no explanation for that, do you?

9 A Say that again.

10 Q Why the statements are nearly identical.

11 A I have to repeat my answer earlier. We saw the
12 same thing.

13 Q Thank you.

14 A Or close enough.

15 MR. HARRIS: Thank you. That's all I have.

16 THE COURT: Redirect?

17 **REDIRECT EXAMINATION**

18 BY MS. WALKER:

19 Q So did you know the victim in this case?

20 A No.

21 Q Do you know the defendant?

22 A I do not.

23 MR. HARRIS: Judge, improper for redirect.

24 THE COURT: I'll allow it.

25 MR. HARRIS: Thank you.

James Adams - Redirect Examination by Ms. Walker

1 MS. WALKER: Thank you, Your Honor.

2 BY MS. WALKER:

3 Q I'm sorry, what did you say?

4 A No.

5 Q And you stated on cross-examination that you may
6 have been wrong about the time of the game?

7 A Yes. That's a little thing that I didn't care to
8 remember.

9 Q Is there any doubt in your mind --

10 MR. HARRIS: Leading. Objection, Your Honor.

11 That's two questions in a row.

12 THE COURT: Yeah, please do not lead.

13 MS. WALKER: Okay. Thank you, Your Honor.

14 BY MS. WALKER:

15 Q Is there any doubt in your mind --

16 MR. HARRIS: May we approach, Judge, please?

17 THE COURT: Sure.

18 (WHEREUPON, there was a bench conference out of the
19 hearing of the jury and the Court Reporter.)

20 BY MS. WALKER:

21 Q The man that was -- that was run over, did you see
22 him throw any punches that day?

23 A No.

24 Q Did you see him punched that day?

25 A Say that again.

James Adams - Redirect Examination by Ms. Walker

1 Q Did you see him punched that day?

2 A Punched, like getting punched?

3 Q Yes.

4 A Yes.

5 Q And describe the person that you saw punching him?

6 A Bigger, taller gentleman.

7 Q Wearing?

8 A The big guy, red -- reddish Polo.

9 MS. WALKER: No further questions.

10 THE COURT: Okay. Recross examination?

11 MR. HARRIS: No, thank you, Judge.

12 THE COURT: Very well. All right. You may come
13 down.

14 All right. Counsel, let me see you just a second,
15 please.

16 (WHEREUPON, there was a bench conference out of the
17 hearing of the jury and the Court Reporter.)

18 THE COURT: Ladies and gentlemen, our schedule
19 today is going to be a little bit different. There is an
20 obligation that I have and as a result, our lunch is going
21 to be a little bit early and a little bit longer. So we're
22 going to break now and we're going to reconvene at 1:30. I
23 know that's a little bit longer, was that -- that has to be
24 that way to accommodate my schedule that I need to do.

25 So, ladies and gentlemen, we are going to break

1 now. We're going to reconvene at 1:30.

2 Now, of course, over your lunch break, please do
3 not discuss this matter or allow anyone to discuss it with
4 you. Don't read anything, don't listen to anything about
5 this matter. That's radio, television, newspaper, or
6 internet. You must receive all of the information from
7 which you will make up your mind here in court while court
8 is in session. And please do not use any social media to
9 communicate with regards to this matter and I will see you
10 all at 1:30, if you will go, please with your bailiff.

11 (WHEREUPON the jury left the courtroom at 11:20
12 a.m.)

13 THE COURT: All right. I notice that Mr. Adams is
14 still present. Y'all want me to give him the same -- you
15 want me to just talk to him as I did with Mr. Martin
16 yesterday?

17 MR. GASSER: Please, Your Honor.

18 THE COURT: I'll be happy to do it.

19 Mr. Adams, can you hear me that far away.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Just as Mr. Martin did yesterday, if
22 you would be so kind as to not discuss your testimony to
23 other people who are to testify. The sequestration remains
24 in effect. You've been released. You're fine to stay and
25 observe if you choose to do that, but please do not discuss

1 your testimony with anyone yet to testify. All right?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Counsel, does that meet with your
4 approval?

5 MS. WALKER: Yes, ma'am.

6 MR. GASSER: Thank you, Judge.

7 THE COURT: All right. Very well. I will see you
8 all at 1:30. Thank you.

9 MS. CAMPBELL: Thank you.

10 (WHEREUPON a recess for lunch was observed.)

11 THE COURT: All right. I understand we are waiting
12 on one more juror, but I thought maybe y'all have an issue
13 and probably we do.

14 MR. GASSER: Well, Judge, I spoke with the clerk's
15 office. We have here today Carrie Wilson who is prepared
16 to put an ankle bracelet on my client. The clerk's office
17 indicates that if it was forced to reinstate the bond that
18 would be an appropriate way to handle the matter with
19 condition of instructing Ms. Wilson to strap him up, so to
20 speak. And they are ready to do that, Your Honor and my
21 understanding is he's still going to have to be discharged
22 from Richland County after court today, but he will be
23 discharged with the ankle bracelet.

24 THE COURT: That will be fine. Actually he'll be
25 monitored 24/7.

1 MR. GASSER: Absolutely.

2 THE COURT: And -- very well. And did you speak
3 with the bondsman with regard to the circumstances.

4 MR. GASSER: She is here, Your Honor.

5 THE COURT: If she would be willing to chase him
6 down now if she has to.

7 THE OFFICER: Am I willing to take him down?

8 THE COURT: Excuse me?

9 THE OFFICER: What did you say? I didn't hear you.

10 THE COURT: You just have to chase him down if he
11 doesn't come to court tomorrow morning.

12 THE OFFICER: Okay. I will, yes, ma'am.

13 THE COURT: Okay. All right. As I told you
14 yesterday, you could do that.

15 MR. GASSER: Thank you, Judge. I appreciate that.

16 MS. CAMPBELL: Just for clarity, Your Honor, is it
17 reinstated as a PR bond or a surety.

18 THE COURT: He's on GPS monitoring 24/7 and here's
19 what he can do. He's going to be on house arrest. Where
20 is he going to be this evening?

21 MR. GASSER: He is going to be at his residence.

22 THE DEFENDANT: [REDACTED], Elgin,
23 South Carolina.

24 THE COURT: He will drive from the jail to Elgin
25 and be in that house until he leaves in the morning to

1 return to court at -- what time.

2 MR. GASSER: He will be at my office at least an
3 hour before court.

4 THE COURT: Okay.

5 MR. GASSER: Potentially my office within an hour
6 after court every evening.

7 THE COURT: All right. Absolutely. So when court
8 is adjourned up until an hour and a half after court is
9 adjourned, he can be at your office.

10 MR. GASSER: At my office only.

11 THE COURT: Your office.

12 MR. GASSER: No dinner, no nothing.

13 THE COURT: Are you -- I'm looking at -- he can go
14 from his office -- his office -- Mr. Harris' office to
15 Elgin. He will not leave Elgin. He will go to the house
16 in Elgin. He will go to the house in Elgin back to
17 Mr. Harris' office an hour before court, an hour and a half
18 before court in the morning and then he'll come to the
19 courthouse. Anything other than that, go get him.

20 THE OFFICER: Yes, ma'am.

21 MR. GASSER: Thank you, Your Honor.

22 THE COURT: Uh-huh. Very well. I believe he's
23 here.

24 (WHEREUPON there was a pause in the proceedings.)

25 THE COURT: We have them all?

1 THE BAILIFF: Yes, ma'am.

2 THE COURT: Very well. Bring them in.

3 (WHEREUPON the jury entered the courtroom at 1:36
4 p.m.)

5 THE BAILIFF: The jury is present, Your Honor.

6 THE COURT: Thank you so much and Ms. Morshe, not a
7 problem.

8 THE JUROR: Thank you.

9 THE COURT: We will handle that immediately. I'm
10 going to give this to our clerk and I'm going to ask her to
11 get your documentation so you will have it every single
12 day.

13 She need's documentation like I use to do with my
14 children if they need to.

15 At this time, we will continue with the State's
16 case.

17 Please call your next witness.

18 MS. MCDUFFY: If it pleases the Court, the State
19 calls Rhonda Echenroth.

20 RHONDA ECHENROTH,
21 having been duly sworn, testified as follows:

22 THE CLERK: Thank you. Have a seat in the witness
23 box, please. State your name for the record and spell it,
24 please.

25 THE WITNESS: Okay. My name is Rhonda,

Rhonda Echenroth - Direct Examination by Ms. McDuffy

1 R-h-o-n-d-a, Echenroth, E-c-h-e-n-r-o-t-h.

2 DIRECT EXAMINATION

3 BY MS. MCDUFFY:

4 Q Good afternoon, Ms. Echenroth?

5 A Hi..

6 Q Ms. Echenroth, where are you currently employed?

7 A I'm currently employed with the Kershaw County
8 School District at Lugoff Elgin Middle School as a
9 sixth-grade-math teacher.

10 Q And how long have you been a teacher?

11 A Thirty-five years.

12 Q And you're married to Guy Echenroth?

13 A Yes, I am.

14 Q And did you and your husband on October 9th, 2010,
15 attend the USC, Alabama game?

16 A We did.

17 Q And who were you with that day?

18 A We attended the game as guests of the Campbells,
19 who are friends of my husbands at his school; and we had
20 lunch with them and then went into the game with them, and
21 sat with them at the game.

22 Q And where did you park your vehicle that day?

23 A We parked in a parking lot -- I'm not sure the name
24 of it. Somewhere on Shop Road.

25 Q And after the game, what did you and your husband

Rhonda Echenroth - Direct Examination by Ms. McDuffy

1 do?

2 A After the game, we went back to the condo owned by
3 the Campbells and we thanked them for their hospitality and
4 we took their wife to her car, which was parked away from
5 the condo and it was in another location on Shop Road, not
6 in the same parking lot that we were in, but nearby, so
7 that is the reason we were on Shop Road after the game to
8 take her to her car and then we were exiting the game in
9 that direction.

10 Q And you and your husband were in your vehicle on
11 Shop Road?

12 A Yes.

13 Q And who was driving?

14 A My husband.

15 Q And where were you seated?

16 A I was in the passenger side. Front seat.

17 Q And which direction were you headed, toward
18 Columbia or away?

19 A We were headed towards Columbia.

20 Q And the only two people in your car were you and
21 your husband?

22 A Yes.

23 Q And do you recall any vehicle in front of you that
24 day?

25 A Yes.

Rhonda Echenroth - Direct Examination by Ms. McDuffy

1 Q Please tell the jury what vehicle that was?

2 A It was a black -- I believe a GMC pick up.

3 Q Large truck? Small truck?

4 A It was large.

5 Q And did you notice any odd behavior from that truck
6 or anything that caught your attention prior to the
7 incident?

8 A No.

9 Q So you were just behind the truck, normal traffic?

10 A Right. It was stop and go, mostly stopped traffic
11 as it usually is after a game. And we saw -- or I saw no
12 unusual behavior from the people in front of us.

13 Q And approximately how long were you behind the
14 black truck?

15 A Time wise, in the vicinity of ten minutes and I
16 would say maybe as much as half a mile.

17 Q And traffic was moving slowly?

18 A Yes.

19 Q And were you doing anything in the car?

20 A We were listening to the after game show as we
21 always do.

22 Q And did something catch your attention that
23 afternoon?

24 A Yes.

25 Q Or that evening?

Rhonda Echenroth - Direct Examination by Ms. McDuffy

1 A Yes.

2 Q Please tell the jury what you observed.

3 A Well, we were sitting in traffic, sitting on the
4 road. It was like -- the road was like a parking lot
5 instead of a road; and I noticed a very quick action to the
6 right and I saw a person whom I did not know get out of his
7 vehicle and come up to the car -- or the truck in front of
8 us and appear to say something to the passenger -- not the
9 driver; and then appeared to hit the passenger and then the
10 door opened and the person who came from the right side of
11 us proceeded to hit the passenger and knocked him out and
12 onto the ground.

13 Q Approximately how many times did you see him hit
14 the passenger of the truck?

15 A Well, I would say several to use an adjective. In
16 my eyes, it was four, five, six, maybe, all total. It just
17 seemed to be a multiple number of times.

18 Q And did you see the passenger of the truck do
19 anything?

20 A No, I did not.

21 Q Did you see him hit the person who was assaulting
22 him in any way?

23 A No, I did not.

24 Q And you saw him fall to the ground?

25 A Yes.

Rhonda Echenroth - Direct Examination by Ms. McDuffy

1 Q And what happened after that?

2 A After the passenger fell, the truck began to move
3 very slowly. It just veered to the right. When the
4 passenger fell, it was obvious that he was unconscious and
5 he made no movement whatsoever and when he fell, the angle
6 that he fell, he was positioned in the direct line of the
7 back rear tire and the rear tire of the truck rolled over
8 him between his legs and up over his head.

9 Q And you observed Martin Gasque body in the roadway?

10 A Yes, I did.

11 Q Where exactly was it lying?

12 A It was lying within the white line. It was on the
13 right side of the road, not off to the side of the road,
14 but, you know where the white line is to keep -- the
15 guideline so to speak.

16 Q And the individual that you saw assaulting the
17 victim in this case, what did he look like?

18 A He looked like a large man, a young man. I would
19 estimate to be maybe 6-foot-2. My guess was that he was
20 probably -- I don't want to guess the weight, over 250
21 pounds, or around that maybe. He had on Alabama
22 paraphernalia, a hat and a shirt. And he seemed very
23 agitated when I saw him from only a few inches away from my
24 face.

25 Q And you were very close to where this occurred?

Rhonda Echenroth - Direct Examination by Ms. McDuffy

1 A Yes, I was.

2 Q Was there anything obstructing your view?

3 A Nothing.

4 Q Was the lane so dark that you couldn't see
5 anything?

6 A No.

7 Q And you had no trouble viewing what up observed --

8 MR. GASSER: Objection, Your Honor. I've been
9 letting her go, but I object.

10 THE COURT: Yes, sir.

11 BY MS. MCDUFFY:

12 Q Did you have any trouble --

13 A I had no trouble whatsoever. It was not dark. I
14 believe it was -- I would call it dusk and very, very light
15 dusk. It was not dark.

16 Q And after the vehicle ran over the victim in this
17 case, what did you then observe?

18 A I observed the young man who hit the passenger come
19 up to my window and start beating on my window and telling
20 me to call 9-1-1.

21 Q And approximately how close was he to you at that
22 point?

23 A Six inches.

24 Q And do you see that individual in the courtroom
25 today?

Rhonda Echenroth - Direct Examination by Ms. McDuffy

1 A Yes, I do.

2 Q Can you please identify him for the Court?

3 A He's sitting to the left of me and at the defense
4 table on the far left.

5 MS. MCDUFFY: Your Honor, please let the record
6 reflect she's identified the defendant.

7 THE COURT: Very well.

8 BY MS. MCDUFFY:

9 Q And you said at that time he was wearing Alabama
10 hat and shirt?

11 A Yes, ma'am.

12 Q And did you see him again later that evening?

13 A I did.

14 Q And had his appearance changed in any way?

15 A His appearance changed, yes.

16 Q And please tell the jury in what way it changed.

17 A He no longer had on the hat or Alabama shirt. He
18 had on a man's white t-shirt.

19 Q And after Curtis Simms banged on your window, what
20 happened after that?

21 A He ran.

22 Q In which direction?

23 A He ran towards Columbia.

24 Q Did you ever see him try to assist the victim in
25 any way?

Rhonda Echenroth - Direct Examination by Ms. McDuffy

1 A I did not.

2 Q You saw him running toward Columbia?

3 A Yes.

4 Q And then the next time you saw him was when?

5 A The next time I saw him, I would say, I don't -- I
6 do not know what time it was, but the next time I saw him,
7 he had returned to the scene and he was with a police
8 officer or a sheriff's deputy. I don't remember which law
9 enforcement officially it was.

10 Q And you had no contact with him at that point?

11 A I did not.

12 Q And after that, what did you then do.

13 A We stayed at the scene to help if there was
14 anything that we could do. We answered questions from law
15 enforcement. Then we did not do a written statement at
16 that time, but we stayed to answer any -- we were told not
17 to leave.

18 Q And you complied with what law enforcement directed
19 you to do?

20 A Yes, we did.

21 Q And then at a later date, two days -- or the
22 following Monday, October 11, 2010, did you meet with
23 Investigator Travis Holdorf?

24 A Yes.

25 Q And did you provide him with a written statement?

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 A I did.

2 Q And the statement that you gave him, whose words
3 are those.

4 A Those are my words.

5 Q And what did you tell him?

6 A I told him the same thing I just shared with you
7 and the Court. And, you know, he -- we spent -- he and I
8 spent I would say forty-five minutes to an hour together
9 and I shared with him everything that I have gone through
10 within the last few minutes.

11 Q And did he memorialize that into a written
12 statement?

13 A He did.

14 Q And you had no trouble viewing what happened that
15 day?

16 A I had no trouble viewing what happened.

17 MS. MCDUFFY: Beg the Court's indulgence, Your
18 Honor.

19 THE COURT: All right.

20 MS. MCDUFFY: Nothing further from this witness.

21 THE COURT: Very well. Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. GASSER:

24 Q Good afternoon, Ms. Echenroth?

25 A How are you?

Rhonda Echenroth - Cross-Examination by Mr. Gasser

- 1 Q Good, how are you doing today?
- 2 A Great.
- 3 Q My name is Johnny Gasser and you and I have never
- 4 spoke, have we, ma'am?
- 5 A Not to my knowledge.
- 6 Q Do you recall what time the football game started
- 7 that afternoon?
- 8 A It was a 3:30 game.
- 9 Q And you went over to the condo, the Campbell's
- 10 condo right after the game; is that correct?
- 11 A That is correct.
- 12 Q And didn't stay very long?
- 13 A No.
- 14 Q And then, it was just a short walk; your car that
- 15 was parked in the lot on Shop Road?
- 16 A Yes.
- 17 Q And got in the car and started coming home?
- 18 A We got in the car. Ms. Campbell went with us.
- 19 They were in separate cars and we took her to her car and
- 20 then we proceeded on our way home from that point.
- 21 Q Okay. And you indicated, ma'am, that -- what time
- 22 would that have been? About 6:45 or so?
- 23 A Well, a 3:30 game is usually over in about three
- 24 hours, so I would estimate between 6:30 and seven.
- 25 Q And do you -- about how long -- you were behind

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 this black truck I think you said about ten minutes. Does
2 that sound about right?

3 A That sounds right.

4 Q So the incident would have occurred then sometime
5 between seven and 7:15 at the latest?

6 A I -- it was -- that would be a good estimate. We
7 weren't looking at the clock at the time, but it was still
8 light and everything was very visible.

9 Q And there's absolutely no doubt in your mind that
10 everything was light and visible?

11 A Yes.

12 Q No question about it?

13 A No question.

14 Q Were your windows rolled up or down? You recall?

15 A My window was rolled up. I can only speak for my
16 window.

17 Q And were there people, pedestrian traffic, also
18 walking back and forth on both sides of Shop Road?

19 A I saw a few people on my side. I was not looking
20 to the left.

21 Q Could you tell whether or not there was any music
22 coming from the black truck in front of you?

23 A I didn't hear any.

24 Q And you had the post-game radio show on; is that
25 correct?

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 A Yes.

2 Q Now, would you agree that this was while you were
3 at Shop Road right before the incident, the scene was
4 commonly referred to as bumper-to-bumper traffic. Is that
5 a fair statement?

6 A Traffic was bumper-to-bumper.

7 Q So there were times when you were literally
8 stationary?

9 A Yes. I stated that earlier; that's correct.

10 Q And, in fact, at the time of the incident that you
11 just described to the jury, y'all were stationary, correct?

12 A Yes.

13 Q And the black truck was stationary?

14 A Yes.

15 Q Up until the time after whatever assault occurred
16 that you described, it wasn't until then that the driver of
17 the pick-up truck made the decision to go forward, correct?

18 A It was after the incident that he slightly edged
19 forward.

20 Q Okay. And veered to the right?

21 A He did not veer to the right.

22 Q Okay. So when you indicated and I can get the
23 court reporter to check, when you responded to Ms. McDuffy
24 that the truck veered to the right; do you remember
25 answering her question?

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 A I did not use the word veered.

2 MR. GASSER: Beg the Court's indulgence.

3 THE COURT: Yes.

4 MR. GASSER: Your Honor, may we approach?

5 THE COURT: All right.

6 (WHEREUPON there was a bench conference out of the
7 hearing of the jury and the Court Reporter.)

8 MR. GASSER: I just wanted to make sure that it's
9 completely accurate.

10 THE COURT: All right.

11 BY MR. GASSER:

12 Q Ms. Echenroth, I don't want to put words in your
13 mouth. That's the reason why I waited this long.

14 A Okay.

15 Q That wouldn't be fair to you, okay.

16 A Right.

17 Q Do you recall the question from Ms. McDuffy? Do
18 you recall Ms. McDuffy asking the question and what
19 happened after that and your response was?

20 A After the passenger in the truck and began to
21 move -- after the passenger fell, the truck began to move
22 very slowly, it just veered to the right. When the
23 passenger fell, it was obvious that he was unconscious. He
24 made no movement whatsoever.

25 Q Okay.

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 A Well, if I said it and this is a court of record,
2 then I did. And I want to reiterate, if I may, that the
3 truck moved slowly. It was not a jerking, quick, fast
4 motion and when I -- I guess we are looking at the
5 definition of veered. My definition of veered may not be
6 the same as yours. Mine is a slight little movement to the
7 right.

8 Q Okay.

9 A So if you will clarify what you mean by veered,
10 then I will clarify again what I meant.

11 Q Okay. So you mean to tell us, this jury, that your
12 definition of veered is not veering to the right? That's
13 not your definition of veered?

14 A Maybe I -- my definition of veered is angling to
15 the right. I'm a math teacher and it was a very acute
16 angle movement to the right.

17 Q So then the truck kept on going off the road to the
18 right eventually, did you see that?

19 A Yes, I did and it --

20 Q And parked on the side?

21 A -- moved about, maybe 25 feet.

22 Q And parked on the side of the road?

23 A I don't know where the parking place was, but it
24 was over in front, over to the right of where it had been.

25 Q There was a car in front of the black truck, was

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 there not, ma'am?

2 A I couldn't see in front of the black truck.

3 Q What were you then looking at when the truck moved
4 to the right and was off of the road 25 feet. What were
5 you then staring at?

6 A I was looking at Martin.

7 Q You don't remember anything in front of you? Any
8 vehicles?

9 A There was no vehicle in front of me after the truck
10 slowly angled to the right. And I was not paying
11 attention. It didn't matter about any cars at that point.
12 I was not focused on any other vehicles.

13 Q And it was when the car was slowly veering to the
14 right, your description, that it ran over Mr. Gasque,
15 correct?

16 A Yes.

17 Q And I believe you indicated in response right after
18 you stated that the truck veered to the right, that it was
19 then that Mr. Gasque was then in the position in the path
20 of the back tire?

21 A He wasn't in position behind the back tire after it
22 moved. He was there before it moved.

23 Q Okay. You stated in response to Ms. McDuffy also
24 that it was like a parking lot, meaning Shop Road. You
25 recall that?

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 A Yes.

2 Q Meaning cars were stopped, correct?

3 A Yes.

4 Q And that you noticed -- you noticed a quick action
5 to the right, person get out of a vehicle. You recall that
6 testimony?

7 A I do.

8 Q Okay. What vehicle did that person get out of?

9 A I was not aware of what vehicle he got out of. I
10 don't know what kind of vehicle he was in.

11 Q So when you told the jury that the person got out
12 of a vehicle, what did you mean by that?

13 A Well, he had to get out of the vehicle because he
14 was coming from the parking lot.

15 Q So --

16 A So, I don't know what car he -- or truck or -- I
17 don't know what vehicle he was in. He was not a
18 pedestrian.

19 Q But there were people tailgating. You understand
20 people tailgate over at Shop Road?

21 A Yes, I do.

22 Q Could that person not have walked out of the
23 parking lot area?

24 A He came from the parking lot and he came from a
25 vehicle. I did not notice the type of vehicle. I don't

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 pay attention to those things.

2 Q So you --

3 A I am --

4 Q So you definitely know he came from a vehicle, you
5 just don't know what kind of vehicle?

6 A Yes.

7 Q Then you've stated that he said something to the
8 passenger?

9 A It appeared that way, yes. He went up to the
10 passenger window and appeared to say something and then
11 appeared to hit the passenger.

12 Q So it's your testimony today that you recall
13 Mr. Simms walking up to the passenger window, saying
14 something to the passenger, hitting the passenger while he
15 was still seated in the vehicle. That's your testimony?

16 A That's my testimony.

17 Q Okay. And toward the end of your direct
18 examination, Ms. McDuffy was asking you about your written
19 statement at the sheriff's department a couple of days
20 later. You recall that line of questioning?

21 A I do.

22 Q You said those were your words, correct?

23 A Yes, I did.

24 Q And you said that you told the investigator the
25 same thing that I've shared with you in court today?

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 A Yes.

2 Q You remember telling Ms. McDuffy?

3 A I do.

4 Q So you told the investigator -- you put down in
5 your writing to tell this jury who sit here, Ms. Echenroth,
6 that you wrote in your own handwriting, the fact that the
7 person got out of a vehicle, said something to the
8 passenger, hit the passenger while he was still in the
9 vehicle; that's your statement?

10 A The written statement -- the statement was written
11 by the investigator. He did not offer or ask me to write
12 anything. He -- he -- you call it a written statement. It
13 was written by the investigator.

14 MR. GASSER: Your Honor, may I approach?

15 THE COURT: Sure.

16 THE WITNESS: I signed it.

17 (WHEREUPON Defendant's Exhibit No. 5 was marked for
18 ID.)

19 MR. GASSER: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 BY MR. GASSER:

23 Q Ms. Echenroth, I'm going to hand you a document and
24 ask you to take a look at that, okay?

25 A Yes. Ma'am, I just want to make sure that I heard

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 your testimony correctly. Did you not in direct
2 examination tell this jury that you told the investigator
3 to put in your written statement the very same thing that
4 you've told this jury under direct examination. Didn't you
5 tell them that.

6 A I did.

7 Q Okay. All right. Well, I want you to look -- take
8 whatever time you need -- at Defendant's Exhibit 5 and you
9 tell me where it's in your statement that Curtis Simms said
10 something to the passenger?

11 A I didn't say that he said -- I didn't say he said
12 anything, I said -- when you asked me what I saw, I said it
13 appeared. I said in this statement, which I have read many
14 times and relived many times, sir, he went up to the
15 passenger-side door. Which he did do.

16 Q I apologize. My question's -- if you didn't
17 understand my question, let me reiterate it. Not in
18 response to me, but in response to Ms. McDuffy on direct
19 examination, do you not recall telling this jury that he
20 walked up -- that you noticed a quick action to the right,
21 the person got out of the vehicle, said something to the
22 passenger and hit the passenger while he was in the
23 vehicle. You remember telling that jury this? Not in
24 response to me, but in response to Ms. McDuffy?

25 A If you have -- if you say that I said that -- I

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 don't remember. You know, that was -- I feel like you're
2 putting words in my mouth, sir.

3 Q So you don't recall telling the jury that?

4 A Telling the jury what?

5 Q That you noticed a quick action to the right. The
6 person got out of the vehicle and said something to the
7 passenger and hit the passenger.

8 A I said I saw the person go -- I have no way of
9 knowing if he said anything. I wasn't in the truck. I
10 said it appeared that he said something.

11 Q And did you put that in your written statement two
12 days after the incident on October 11, 2010?

13 A I said he went up to the passenger side door. Now,
14 I will tell you this, the gentleman may not have written
15 down every single word that I said. I don't know. I
16 was -- I do not know if he wrote down everything. I only
17 have his paper here.

18 Q You remember Investigator Holdorf?

19 A Yes.

20 Q The gentleman that took your statement?

21 A Yes.

22 Q And you indicated you spent forty-five minutes to
23 an hour?

24 A Yes.

25 Q And of course, you understand he's a trained

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 investigator, you know that?

2 A I understand. Yes, sir.

3 Q He gave you all the time in the world to read that
4 statement and make any changes; did he not?

5 A He didn't ask me to help him write it.

6 Q That's not my question.

7 A I understand that. I did not write it. I was not
8 behind his pencil and with his paper. I had no knowledge
9 of what he wrote while he was writing it.

10 Q Did Investigator Holdorf give you an opportunity to
11 review the statement before you signed it and make sure
12 it's everything that you recall? Did he give you that
13 opportunity?

14 A I'm sure he did.

15 Q And you would agree with me, would you not, that
16 your memory forty-eight hours after the incident is better
17 than it is twenty-eight months after the incident, is it
18 not?

19 A I'm sure it probably is.

20 Q And isn't it true, Ms. Echenroth, take whatever
21 time you need, that you never told Investigator Holdorf
22 that Curtis Simms struck Mr. Gasque while he was sitting in
23 his truck; isn't that true, Ms. Echenroth?

24 A I don't know.

25 Q It's not in your statement, is it?

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 A I don't see it written on the statement, no.

2 Q But now you're coming in twenty-eight months later
3 and telling the jury that you have a definitive memory that
4 Curtis Simms struck Mr. Gasque while he was sitting in his
5 truck. That's what you're telling this jury?

6 A I saw Curtis Simms hit Martin.

7 Q How many conversations have you had with your
8 husband about what he remembers seeing prior to coming in
9 here and testifying?

10 A I do not know the answer to that question.

11 Q But just to be clear so the jury understands, when
12 it's freshest in your mind forty-eight hours after the
13 fact, you never told Investigator Holdorf that Mr. Gasque
14 was struck while he was sitting in the truck, did you,
15 ma'am?

16 A I don't know.

17 Q It's not in your statement.

18 A I don't see it in my statement.

19 Q In fact, you -- you stated that he was outside of
20 the truck before you ever saw him get hit?

21 A I do not see that it says that.

22 Q Well, let me point you to line --

23 A I see -- I can see. I can see.

24 A Lines 5 and 6.

25 Q I see, sir. I said I saw the door open and the

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 passenger was out of the truck and was getting punched in
2 the face.

3 Q So in your written statement, forty-eight hours
4 after the fact, the first time you stated to Investigator
5 Holdorf you recall Mr. Gasque getting punched, he was out
6 of the truck. Your words, correct?

7 A I don't know.

8 Q Those aren't your words?

9 A Those are the words that the investigator wrote
10 down.

11 Q Okay. And he was writing down on a piece of
12 paper -- wasn't Investigator Holdorf writing down when you
13 were talking to him?

14 A I'm sure he was.

15 Q And you had an opportunity to review the document,
16 correct? Defendant's Exhibit 5?

17 A I signed it.

18 Q And as a schoolteacher and an adult, you would
19 never sign something that you didn't feel was completely
20 accurate, correct?

21 A That's the norm.

22 Q And even in this document, you indicate that he --
23 that you remember Mr. Gasque getting hit six to eight times
24 by Mr. Simms --

25 A Well, I will be glad to explain that, but I'm sure

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 you would object to it.

2 Q Well, no, ma'am, I wouldn't.

3 A Well, I will -- you probably -- somebody will and
4 as a mother, when you see something like this happening --

5 MR. GASSER: Your Honor, she's nonresponsive to my
6 question.

7 THE WITNESS: I would like to explain, I have --

8 THE COURT: Just hold on one second. Only one
9 person at a time now, you can certainly explain your answer
10 if that's.

11 THE WITNESS: That's what I'm trying to do.

12 THE COURT: That's been requested, but I am going
13 to ask you to be responsive if you will.

14 THE WITNESS: I will.

15 THE COURT: All right. Yes.

16 BY MR. GASSER:

17 Q My question is simply, do you remember putting in
18 your written statement that Curtis Simms hit Mr. Gasque six
19 to eight times?

20 A I do.

21 Q Okay. And your testimony today was a little bit
22 more in line of more or less punches than that. Can you
23 explain that?

24 A I gave this testimony based on my observation that
25 night. I would -- if I had the opportunity to explain in

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 detail, I would, but what I focused on that night was what
2 I have said and I have no other embellishment, anything to
3 say except that from my viewpoint, which was on the
4 right-hand side of the passenger side of my car, my husband
5 was sitting on the driver's side, that in my eyes, it
6 appeared to me that night to be multiple punches, six to
7 eight times. That was my viewpoint that night.

8 Q And that has changed since you're sitting here
9 today?

10 A No, it hasn't.

11 Q Okay. So three, four, five, six -- sorry four,
12 five, six, hits. Do you remember stating that in direct
13 examination?

14 A Four, five, six and I have six through eight.

15 Q How many times do you think you've talked to your
16 husband about this incident, ma'am?

17 A I do not know.

18 Q More than five?

19 A I don't know.

20 Q You told the jury that you remember being
21 questioned briefly by law enforcement that came to and
22 responded to the scene that night; is that true?

23 A That's true.

24 Q Do you remember talking with an investigator -- a
25 plain-clothed investigator with Richland County Sheriff's

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 Department?

2 A I do not remember what any one had on. There were
3 people from all areas of law enforcement there that night.
4 Highway patrol, sheriffs, city police. I don't know.

5 Q But you talked to somebody in law enforcement?

6 A Yes.

7 Q And do you -- you indicated that -- do you recall
8 indicating to a law enforcement officer that night right
9 after it happened that your possession was not great?

10 A I absolutely do not recall that, no.

11 Q So you're not saying you didn't say that, you just
12 don't recall?

13 A No, I did not say that. My viewpoint of the
14 accident was perfect.

15 Q Well --

16 A My viewpoint of the young man being run over was
17 unobstructed. My viewpoint of the man coming from the
18 parking lot was unobstructed. I do not remember in an
19 emotional situation, everybody views the whole scenario,
20 it's chaotic as everyone in this courtroom knows and
21 emotions, other things play into my numbers, other people's
22 numbers and it's not the number of times that is the issue.

23 Q Ms. Echenroth, I just have a simple question to
24 ask, do you remember, because you've responded two
25 different answers and I need to know which one it is, do

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 you remember telling a law enforcement officer that night,
2 shortly after the incident that your position was not that
3 great?

4 A I do not recall that and I do not believe that I
5 said that.

6 Q Curtis Simms was banging on your window, and was
7 begging y'all, telling y'all to call 9-1-1. You testified
8 to that, did you not?

9 A I did.

10 Q When he left the scene, you have no idea where went
11 to; isn't that true, ma'am?

12 A He ran towards Columbia, which I'm guessing is
13 north.

14 Q So you don't know who he went up to, who he talked
15 to, who he brought back to the scene, you don't know any of
16 that from your own knowledge; is that correct?

17 A That would be impossible because I was not with
18 him.

19 Q So the answer to my question is?

20 A No, I do not.

21 MR. GASSER: Beg the Court's indulgence.

22 THE COURT: All right.

23 MR. GASSER: Just a couple more questions, Your
24 Honor.

25 THE COURT: All right.

Rhonda Echenroth - Cross-Examination by Mr. Gasser

1 BY MR. GASSER:

2 Q Ms. Echenroth, on Defendant's Exhibit 5, your
3 statement that you gave two days after this incident with
4 Investigator Holdorf, do you see your signature on the
5 bottom of that statement?

6 A I do.

7 Q And as a teacher, you would not sign that without
8 reading everything on this statement, would you, ma'am?

9 A I don't expect I would, no.

10 Q So, you agree with me that you read the part that I
11 make this statement of my own free will and accord without
12 reward or intimidation. All of the above is the truth, the
13 whole truth and nothing but the truth?

14 A Yes.

15 Q There's your signature?

16 A Yes.

17 Q You remember that?

18 A That is correct.

19 Q And nowhere in that statement do you ever say
20 Curtis Simms struck Mr. Gasque while he was sitting in the
21 truck, do you?

22 A I don't see it written on the paper.

23 MR. GASSER: That's all we have.

24 THE COURT: Okay. Redirect?

25 MS. MCDUFFY: Yes, Your Honor.

Rhonda Echenroth - Redirect Examination by Ms. McDuffy

1 ///

2 REDIRECT EXAMINATION

3 BY MS. MCDUFFY:

4 Q Your statement, Defendant's Exhibit 5, is
5 everything in there true?

6 A Yes.

7 Q Did Investigator Holdorf write down every single
8 word you told him?

9 A I don't know.

10 Q But everything in that statement is true?

11 A Everything in this statement is true.

12 Q And what you observed on October 9 of 2010 is that
13 what you related to the jury today?

14 A Yes.

15 Q Any doubt in your mind about what you observed?

16 A There's no doubt in my mind.

17 Q Anything obstructing your view?

18 A There was nothing obstructing my view.

19 Q And you saw Curtis Simms?

20 MR. GASSER: Objection, Your Honor.

21 THE COURT: Going to be to leading.

22 MS. MCDUFFY: Your Honor, may I approach?

23 THE COURT: Okay.

24 (WHEREUPON, there was a bench conference out of the
25 hearing of the jury and the Court Reporter.)

Rhonda Echenroth - Redirect Examination by Ms. McDuffy

1 BY MS. MCDUFFY:

2 Q Ms. Echenroth, please tell the jury what you saw
3 that night.

4 A How far back would you like for me to go.

5 Q When Curtis Simms approached the victim's vehicle,
6 what did you see?

7 A When Curtis Simms approached the vehicle, there was
8 some type of altercation between Curtis and Martin. I had
9 no way of knowing what was said or even what precipitated
10 Curtis to get out of his car and do that because we had not
11 seen anything happen in the time we traveled behind their
12 vehicle to indicate that there was anything going on that
13 would agitate someone you didn't know.

14 It appeared to me that there was a conversation,
15 words, or something spoken between Martin and Curtis and
16 that there was punching going on. The door opened, Martin
17 came out. He never ever raised a hand to Curtis. He was
18 hit multiple times. He rolled onto the ground unconscious.
19 Curtis came up to my window and banged on my window and
20 said call 9-1-1, which I was frightened. We tried to do.
21 We did the best we could then -- that was after the truck
22 had rolled over Martin and he was lying on the ground
23 unconscious.

24 Q Any doubt in your mind about what you saw?

25 A There is no doubt in my mind what I saw.

Travis Brown - Direct Examination by Ms. Walker

1 MS. MCDUFFY: Thank you, no further questions.

2 THE COURT: All right. Any recross examination?

3 MR. GASSER: No, ma'am.

4 THE COURT: Thank you, can this witness be excused.

5 MS. MCDUFFY: Please, Your Honor.

6 THE COURT: Any objection.

7 MR. GASSER: No objection.

8 THE COURT: Very well. You are free to go.

9 Call your next witness, please.

10 MS. WALKER: State calls Travis Brown.

11 THE COURT: Very well.

12 TRAVIS BROWN,

13 having been duly sworn, testified as follows:

14 THE CLERK: Thank you, have a seat in the witness
15 stand, please. State your name for the record.

16 THE WITNESS: Travis Brown.

17 MS. WALKER: All right. Try that one more time for
18 us.

19 THE WITNESS: Travis Brown.

20 THE COURT: Keep your voice up for us. And thank
21 you very much.

22 Your witness.

23 MS. WALKER: Thank you, Your Honor.

24 THE COURT: Uh-huh.

25 DIRECT EXAMINATION

Travis Brown - Direct Examination by Ms. Walker

1 BY MS. WALKER:

2 Q Mr. Brown, where do you live?

3 A Lexington.

4 Q How long are you lived out there?

5 A Since 2005.

6 Q Almost eight years?

7 A Uh-huh.

8 THE COURT: That's a yes?

9 THE WITNESS: Yes.

10 BY MS. WALKER:

11 Q Are you currently employed?

12 A I'm employed, yes.

13 Q Where do you work?

14 A For Saluda Hill Landscapes.

15 Q And do you live by yourself?

16 A Yes, I do.

17 Q Do you attend USC football games?

18 A I do attend games, yes.

19 Q And did you attend the University of South
20 Carolina, Alabama football game back in 2010?

21 A Yes.

22 Q Who did you go to that game with?

23 A Brian Kern and his son, Grant.

24 Q Do you remember, did you guys tailgate that day?

25 A We did, yes.

Travis Brown - Direct Examination by Ms. Walker

1 Q Where did you park?

2 A Shop Road, tailgate spot on Shop Road. I'm not --
3 I can't remember the name of the actual parking area.

4 Q Yes, sir. And did you guys go into the game or
5 just tailgate?

6 A We went in and watched the game.

7 Q Do you remember what time the game started?

8 A Seven, I believe.

9 Q When you -- when you were leaving the game, who did
10 you leave with?

11 A Brian and his son, Grant.

12 Q Did y'all go back to Shop Road or what did y'all do
13 after the game?

14 A Yes, we went back to where we parked and tailgated
15 before the game.

16 Q How long did y'all stay there?

17 A Maybe an hour and a half.

18 Q When you were leaving -- did you guys eventually
19 leave that tailgating spot?

20 A Yes.

21 Q When you were leaving, did something happen that
22 caught your attention, sir?

23 A Yes.

24 Q Describe what happened when you were leaving.

25 A As we were leaving the game, we were trying to

Travis Brown - Direct Examination by Ms. Walker

1 get -- you know traffic was all backed up. We were trying
2 to get out in traffic and I noticed a young man come across
3 the cars that were parked in front of us go up to a truck
4 that was stopped on Shop Road --

5 Q Okay. Let me slow you down.

6 A Uh-huh.

7 Q Where were you exactly?

8 A Well, we were pulling out of the tailgate spot.

9 Q Onto Shop Road?

10 A Onto Shop Road, yes.

11 Q And you said there was a young man that got out of
12 a car. Where was he compared to where you were?

13 A They were two cars in front of -- there was a car
14 in between us and their car, so we were two cars back.

15 Q Okay. Sorry, continue. He got out of the car and
16 then what happened?

17 A I just saw him approach a truck parked there,
18 stopped on Shop Road. The door opened. I saw two, maybe
19 three punches, the gentleman that was in the car got
20 knocked unconscious and then I saw the truck try to pull
21 off the road or forward a little bit, running over the
22 person that was laying in the road.

23 Q The person that you saw get knocked unconscious,
24 did you ever see him throw any punches?

25 A I did not.

Travis Brown - Direct Examination by Ms. Walker

1 Q The -- can you describe the person that was
2 throwing the punches?

3 A I -- he was maybe 6'2", 6'3", kind of had a -- like
4 a goatee or beard, like short beard kind of. Kind of
5 short, short hair.

6 Q After -- you said that he was -- the car pulled up
7 went to the right. The car that the victim had been in?

8 A Uh-huh.

9 Q What happened?

10 A Oh --

11 Q Did you see the large guy you described?

12 A It appeared to me it kind of ran to the left back
13 toward maybe I-77, and then at that point, there were some
14 sheriff's deputies and we had pulled past the car that was
15 in front of us and left from there.

16 Q Did you see -- before you left the car that the
17 punched thrower --

18 MR. GASSER: Objection, Your Honor, she's leading.

19 THE COURT: Let me hear the question.

20 MR. GASSER: Thank you.

21 BY MS. WALKER:

22 Q You said -- you said you saw someone get out of the
23 car?

24 A Uh-huh.

25 Q The car that that person got out of, did you see

Travis Brown - Cross-Examination by Mr. Harris

1 it?

2 A I did while we were, you know, waiting to get out,
3 yes.

4 Q And then where did y'all go?

5 A Then we --

6 Q You and the people you were with?

7 A We left the parking area and went back to the
8 house. We went home.

9 MS. WALKER: Beg the Court's indulgence.

10 THE COURT: All right.

11 MS. WALKER: No further further questions.

12 THE COURT: All right. Cross-examination?

13 CROSS-EXAMINATION

14 BY MR. HARRIS:

15 Q Good afternoon, Mr. Brown.

16 A How you doing?

17 Q Greg Harris. I just want to ask you a few
18 question, okay?

19 A Okay.

20 Q The time -- you said the game started at what time?

21 A I believe it was a seven o'clock game.

22 Q And it would have been -- what time would the game
23 have been over that night?

24 A 11:30, maybe.

25 Q Okay. And you said that you tailgated for a little

Travis Brown - Cross-Examination by Mr. Harris

1 while after the game?

2 A Yeah.

3 Q About how long?

4 A Maybe an hour. We didn't tailgate, we were waiting
5 for traffic.

6 Q So, 12:30 or so, is that the time you would have
7 been leaving?

8 A Possibly, I really don't remember.

9 Q Okay.

10 A -- exactly the time.

11 Q I mean, you've been interviewed by a lot of people,
12 I imagine?

13 A Not really, no.

14 Q How about the last week or so?

15 A Yes.

16 Q Then you tried to pin down a time and the best you
17 can come up with is 12:30 that night?

18 A I really haven't pinned down an exact time. I
19 don't remember the exact time.

20 Q Okay. Was there any question in regards to what
21 time it was -- is there any question in your mind that it
22 was dark that night?

23 A Yes, it was dark.

24 Q Okay. Another question. This car that you've
25 testified about earlier that you said -- you said it was a

Travis Brown - Cross-Examination by Mr. Harris

1 dark car. Was it a dark green pick-up truck?

2 A I -- I really -- is that -- I really don't recall
3 what exact kind of vehicle it was or what color it was.

4 Q Okay. It was dark in color; is that correct?

5 A I don't recall.

6 Q I thought you testified earlier you thought it was
7 a dark color?

8 A I just said there was a second car.

9 Q Okay. And after you saw what happened, you and --
10 were you driving or was your buddy driving?

11 A I was driving.

12 Q You, I guess, pulled around everybody and left?

13 A I -- I -- I stayed where I was and pulled forward
14 and to the right to leave after the car in front of me
15 moved forward.

16 Q Okay. So after you saw somebody get run over, you
17 pulled forward and left?

18 A Yeah, yes, I did.

19 Q And the reason you haven't really talked about this
20 until last week is -- you just didn't tell anybody did you?
21 You didn't report it, did you?

22 A I did not.

23 Q And now, twenty-four months later you're trying to
24 recall that night, what you heard that night who you saw
25 get out, who you saw punch and things like that and the

Travis Brown - Cross-Examination by Mr. Harris

1 fact of the matter we're twenty-four months after the fact
2 and you just now reported it, correct, sir?

3 A Yeah.

4 Q Okay.

5 A Can you repeat the question, please.

6 Q You're just now reporting it, this is the first
7 time you've given your statement in court today, right?

8 A No. Today's not the first time I've given a
9 statement.

10 Q When did you start talking to people about this?

11 A Who are people.

12 Q Law enforcement.

13 A Two weeks ago.

14 Q Okay. And at 12:30, you saw something happen and
15 you just drove away from it until two weeks ago?

16 A Brian was talking, had talked to the
17 investigator --

18 Q I don't care about Brian. What did you do?

19 A I did not do anything since two weeks ago.

20 Q Okay. Now, you're saying there was two, maybe
21 three punches. Let me ask you this, you did say that it
22 was clear to you, the best that you can recall, that the
23 fellow that got punched was out of the car when he got hit,
24 correct? Would you remember that?

25 A I remember him being -- the door opened and seeing

Travis Brown - Cross-Examination by Mr. Harris

1 him. I don't know if he was completely out of the car or
2 if he was still sitting down in the car.

3 Q You just can't remember?

4 A I can't remember -- I couldn't see if he was
5 standing on the ground or if he was sitting in the car.

6 Q Okay. Do you remember whether somebody reached
7 into the car that was closed and grabbed somebody out the
8 window or grab somebody out? That didn't happen did it?

9 A I didn't see anybody grab anybody.

10 Q Did you see anybody reaching into a window or
11 anything like that?

12 A I did not see that.

13 Q Did it not happen, or do you just not recall?

14 A I do recall.

15 Q Okay.

16 A I'm just telling --

17 Q Nobody reached and grabbed anybody, did they?

18 A Nobody reached into the window. The door was
19 opened.

20 Q The door was open, someone exited and someone got
21 hit. That's what you saw, right?

22 A I didn't see anybody exit. I saw the door open, I
23 saw the punches and then I saw the person in the car go
24 unconscious and fall in the road.

25 Q From 40 feet away, you saw somebody on the road

Travis Brown - Cross-Examination by Mr. Harris

1 unconscious and you're telling us now that you know he was
2 unconscious?

3 A Yes.

4 Q Okay. And you said -- I think your testimony was
5 that you saw the cars move off -- the car try to pull over
6 off to the side of the road is your testimony, correct?

7 A Yes.

8 Q In other words, if this is the line of the road,
9 you saw the car turn at an angle off the side of the road,
10 correct?

11 A That's correct.

12 Q That's what you saw?

13 A Yes, that's what I saw.

14 Q And that's when the individual was run over,
15 correct?

16 A Correct.

17 Q And the car continued at this angle off the side of
18 the road until it parked approximately 30 feet away, didn't
19 it?

20 A I'm not sure how far away it was. I just know that
21 he -- it was maybe 10 feet.

22 Q Fair statement to say that he veered off the side
23 of the road -- off the side to hit the guy?

24 A Wouldn't.

25 Q And he kept going?

Travis Brown - Cross-Examination by Mr. Harris

1 A No, I wouldn't say veer, he was just trying to pull
2 off.

3 Q Pull off?

4 A Yes.

5 Q As he was running over his friend, correct?

6 A Yes. That's correct.

7 Q And you saw that and kept going, correct?

8 A I saw that. I was there for a few more minutes.
9 The sheriff's deputies had arrived and I decided to leave.

10 Q You had been tailgating that morning. Where do you
11 sit in games?

12 A We sat behind the home team.

13 Q Were you drinking?

14 A I had drunk -- I had a few beers before the game.

15 Q Let me guess, you didn't drink anything after the
16 game, did you?

17 A I didn't drink anything during or after the game.

18 Q Okay.

19 A I was driving.

20 Q Nobody in your group tailgates and drinks after the
21 game is that -- y'all just don't do that?

22 A Pretty much.

23 Q So the reason you left wasn't because you were
24 drinking, it was because you just didn't feel like -- you
25 wanted to get home.

Travis Brown - Cross-Examination by Mr. Harris

1 A We were waiting for traffic to die down and then we
2 were going to leave.

3 Q No, the reason you left after someone got run over
4 is because you wanted to get home?

5 A The reason I left after I saw somebody get run over
6 because there was a fifteen-year-old boy in the car and I
7 didn't feel like he needed to see any more of what was
8 going on.

9 Q Didn't have anything to do with you drinking that
10 night?

11 A No.

12 MR. HARRIS: Beg the the Court's indulgence.

13 THE COURT: All right.

14 BY MR. HARRIS:

15 Q And it was dark,, correct? 12:30 at night?

16 A It was dark outside. It was plenty of ambient
17 light.

18 Q All right. Thank you.

19 THE COURT: All right. Redirect?

20 MS. WALKER: Nothing, Your Honor.

21 THE COURT: And is this witness free to leave?

22 MS. WALKER: Yes.

23 THE COURT: Any objection?

24 MR. HARRIS: No, ma'am.

25 THE COURT: Thank you.

Brian Kern - Direct Examination by Ms. McDuffy

1 Call your next witness, please.

2 MS. MCDUFFY: State calls Brian Kern.

3 BRIAN KERN,

4 having been duly sworn, testified as follows:

5 THE CLERK: Thank you have a seat in the witness
6 stand, please. State your name for the record.

7 THE WITNESS: Brian Kern.

8 THE CLERK: Would you spell your last name for the
9 record?

10 THE WITNESS: K-e-r-n.

11 **DIRECT EXAMINATION**

12 BY MS. MCDUFFY:

13 Q Mr. Kern, where are you employed?

14 A Mongo Homes.

15 Q And you live here in Columbia?

16 A I do.

17 Q And on October 9th, 2010, did you attend a USC
18 Alabama game?

19 A I did.

20 Q And who did you attend that game with?

21 A Travis Brown and my son, Grant Kern.

22 Q And how old is your son?

23 A Fifteen.

24 Q At the time?

25 Q And where did you park that evening?

Brian Kern - Direct Examination by Ms. McDuffy

1 A We parked in the -- there's a car shop right there
2 on Shop Road right in front of where the accident happened
3 we were in that parking lot.

4 Q And did you actually go into the football game to
5 attend the game?

6 A We did.

7 Q And after the game, what did you do?

8 A We just kind of came back, hung out for a few
9 minutes and got in the car to head out.

10 Q And where were you seated in the car?

11 A I was in the passenger seat.

12 Q And please tell the jury that you observed while
13 you were waiting to get out onto Shop Road?

14 A The first thing that I remember is seeing Curtis
15 Simms standing in front of the vehicle and I assumed he was
16 trying to help that vehicle get out and go left on Shop
17 Road. Both of the vehicles in front of us were trying to
18 go left and then the truck pulled up right in front of
19 where we were and --

20 Q Let me stop you right there. The truck was on Shop
21 Road?

22 A The truck was on Shop Road headed towards George
23 Rogers.

24 Q Towards Columbia?

25 A Yes.

Brian Kern - Direct Examination by Ms. McDuffy

1 Q Okay. Keep going.

2 A And Martin then stepped out of the vehicle and
3 turned toward Curtis and then Curtis punched him in the
4 face twice.

5 Q Did you see Martin do anything?

6 A I didn't see him do anything.

7 Q Did you see Martin do anything?

8 A I didn't see him do anything.

9 Q And you said Curtis punched him in the face twice?

10 A Yes, ma'am.

11 Q And describe to the jury what happened after that?

12 A Martin went limp as though he'd been knocked out
13 and then he fell against the side of the truck and slid
14 down the truck.

15 Q What happened after that?

16 A Within seconds of hitting the ground, the truck
17 started to move and pulled -- was pulling off the road and
18 then kind of ran over Martin's side and face.

19 Q And --

20 A And then after that there was -- Curtis had kind of
21 turned and was starting the other way and I guess from the
22 noise, you could hear things as the car was rolling over
23 him. He turned around then by the time the truck was
24 finished, he had gotten back to the truck and said, What
25 did you do, yelling at the driver.

Brian Kern - Direct Examination by Ms. McDuffy

1 Q And it was after he had already been run over?

2 A Yes, ma'am.

3 Q And after that, what did you then observe?

4 A Well, Curtis went into kind of panic. He was
5 trying to look for help. He ran up the road for just a few
6 seconds, up to the left, the way they were trying to turn
7 and then after that, he ran to the right and found an
8 officer and within thirty seconds of everything having
9 happened -- between thirty seconds and a minute, they were
10 back with an officer on site, helping Martin.

11 Q And where were you during this time?

12 A Just seated in the passenger seat of the vehicle.

13 Q And you said there were two vehicles in front of
14 you?

15 A Yes.

16 Q Did you eventually leave the parking lot?

17 A We did.

18 Q What happened to those two vehicles that were in
19 front of you?

20 A The first vehicle was kind of -- I think that was
21 the one that Curtis was in and that one kind of stayed
22 there. The second vehicle -- and they were both trying to
23 go left, so we were kind of -- we couldn't get past the
24 fence to turn right. But both vehicles were on the left
25 and the second vehicle, once the accident happened, decided

Brian Kern - Cross-Examination by Mr. Harris

1 they could go right because we could drive down the grass
2 and leave that way and once they went right, we were able
3 to go right as well.

4 Q And you left almost immediately after that --

5 A Within a few minutes of the accident taking place.

6 Q And why did you leave?

7 A Bad situation. My son had seen enough, so we
8 decided to move on.

9 Q And so you didn't talk to the police that night?

10 A I did not.

11 Q And what did you then do -- did you do anything to
12 notify the police of what you had seen?

13 A Yes, I called them Monday once I found out how the
14 accident had ended up. They asked for people that were
15 witnesses to call and I called in.

16 Q And did you ultimately speak with the investigator
17 and tell him what you saw?

18 A I did speak with an investigator and tell him what
19 I saw.

20 Q And after that, you had no further involvement
21 until you were contacted by my office?

22 A Yes, ma'am.

23 MS. MCDUFFY: No further questions.

24 THE COURT: All right cross-examination.

25 CROSS-EXAMINATION

Brian Kern - Cross-Examination by Mr. Harris

1 BY MR. HARRIS:

2 Q How are you Mr. Kern?

3 A Good.

4 Q Just to be clear, this tailgate area -- the reason
5 that you know the cars in this crowd were turning left is
6 because it's a fairly wide exit?

7 A Yes, sir.

8 Q And turn signals on and you saw folks getting out
9 to move traffic, because he had to move traffic in two
10 directions, correct?

11 A I didn't see him get out.

12 Q Okay.

13 A He was in front of vehicle two what I was assuming
14 to move traffic.

15 Q Yes, sir. That was his purpose. And you said you
16 saw -- as you were watching, you saw something happen?

17 A Yes.

18 Q And someone exited the vehicle that was a black
19 truck that was 40 feet, approximately 40 feet in front of
20 you, correct?

21 A Yes, sir.

22 Q Did you see Curtis ever reach into the window of
23 that black truck?

24 A No, sir.

25 Q Did you see Curtis ever open the black truck door?

Brian Kern - Cross-Examination by Mr. Harris

- 1 A No.
- 2 Q Did you see or observe any banter between the
3 individual in that truck?
- 4 A No, I heard no commotion.
- 5 Q You just happened to see what occurred in the split
6 second on a Saturday evening at a Carolina football game?
- 7 A Yes, sir.
- 8 Q What you saw after the punch -- you say you saw two
9 swings?
- 10 A Yes, sir.
- 11 Q Then after that, you said you saw within seconds
12 the truck was pulling off of the road and ran over
13 Mr. Gasque; is that a fair characterization of what you
14 just testified to?
- 15 A I think that's pretty much what I said.
- 16 A It was less than seconds, it was within two or
17 three seconds, would you agree.
- 18 A It was very quickly.
- 19 Q All of this is the blink of an eye, basically isn't
20 it?
- 21 A It would -- yes, sir, it was very quickly.
- 22 Q And when you say pulling off, you mean pulling
23 off -- let me ask you, was it bumper-to-bumper traffic?
- 24 A It was, yes, sir.
- 25 Q And he couldn't drive that truck, couldn't pull

Brian Kern - Cross-Examination by Mr. Harris

1 forward, could he?

2 A I think at that time, the truck had moved a little
3 bit, but he may have been able to go forward a little bit,
4 but I don't --

5 Q But he chose to. He didn't, did he. According to
6 two people he veered off to the side, didn't he -- he
7 pulled off to the side of the road, didn't he?

8 A He was pulling off to the side of the road.

9 Q And that's when he ran over his passenger, correct?

10 A Yes, sir.

11 Q And then you saw, I think you have described Curtis
12 panic; is that a fair statement?

13 A Yes, sir.

14 Q Banged on the door and he looked at the driver of
15 the car and he said what did you do. Is that what he said?

16 A Yes, sir.

17 Q Then he ran to the left. I think you said away --
18 toward 77?

19 A Yes, sir.

20 Q My left, my right?

21 A Yeah, that way.

22 Q He ran toward 77 and started -- you saw him looking
23 for help?

24 A He was yelling for 9-1-1 or help, yes.

25 Q Did you see him then running right for help after

Brian Kern - Cross-Examination by Mr. Harris

1 he ran and left?

2 A Yes.

3 Q And then you saw him later come back with law
4 enforcement that ultimately led to part of the
5 investigation you saw?

6 A I saw the law enforcement come back.

7 Q Okay. That was as you were exiting. They were
8 coming back?

9 A They were already back when we left. There was a
10 crowd around Martin at that time.

11 MR. HARRIS: One moment, Your Honor.

12 THE COURT: All right.

13 BY MR. HARRIS:

14 Q Just to be clear, there's no -- regardless of what
15 time it was that night, there's no doubt in your MIND that
16 it was dark that night?

17 A It was dark.

18 Q There's no doubt in your mind that whatever
19 happened, happened once someone had exited that truck
20 between Curtis and the person next to them, correct?

21 A Explain that a little bit better.

22 Q Nothing happened until someone exited that black
23 truck?

24 A I did not see anything happen until -- yes, until
25 Martin exited the truck.

Lauren Coggin - Direct Examination by Ms. Campbell

1 Q And you'd seen Curtis before that, trying to get to
2 them --

3 A I had seen him in front of the other vehicle.

4 Q Thank you. That's all I have.

5 THE COURT: Okay. Redirect?

6 MS. MCDUFFY: No further questions.

7 THE COURT: May this witness be excused.

8 MR. HARRIS: No objection.

9 THE COURT: You are free to go.

10 Call your next witness.

11 MS. CAMPBELL: State calls Lauren Coggin.

12 LAUREN COGGIN,

13 Having been duly sworn, testified as follows:

14 THE CLERK: Thank you have a seat in the witness
15 stand, please. State your name for the record.

16 THE WITNESS: Lauren Coggin.

17 **DIRECT EXAMINATION**

18 BY MS. CAMPBELL:

19 Q Ms. Coggin, how old are you?

20 A I'm twenty-four.

21 Q And where do you currently live?

22 A In Mobile, Alabama.

23 Q And how long have you been living in Mobile?

24 THE COURT: I'm going to ask you to move up just a
25 little bit toward the mic, please. Give us a little more

Lauren Coggin - Direct Examination by Ms. Campbell

1 volume.

2 BY MS. CAMPBELL:

3 Q How long have you been living in Mobile?

4 A My entire life.

5 Q And do you know a young man named Curtis Simms?

6 A Yes, ma'am.

7 Q And tell this jury how you know Curtis Simms?

8 A Went to high school with Curtis.

9 Q And what year did y'all graduate from high school?

10 A I graduated in 2006. I think he graduated in 2004.

11 Q After y'all graduated from high school, did you
12 keep in touch somewhat?

13 A Very rarely. We kind of ran around the same crowd
14 here and there.

15 Q Let me turn your attention to October 9, 2010. Did
16 you have an occasion to go to a football game or go
17 tailgating with Curtis Simms and some of his friends?

18 A Yes.

19 Q And how is it that you happened to come up to South
20 Carolina?

21 A A big crowd of us came up to stay.

22 Q And who all was with the crowd -- I'm sorry. I
23 didn't mean to interrupt you. You okay?

24 A Okay.

25 Q Who all was with the crowd that came up to stay

Lauren Coggin - Direct Examination by Ms. Campbell

1 with Curtis and his friends.

2 A Me, a friend of mine named Ashlyn Thompson.

3 Q Ashlyn?

4 A Yes, ma'am. Jamie Pettis, Dusty Lindsey, Jerrod
5 Hughes, Chris Garcia -- me, Doreen -- I can't remember
6 anybody else.

7 Q You mentioned somebody named Jamie Pettis?

8 A Yes, ma'am.

9 Q And did y'all actually go to the game that day?

10 A We didn't go to the game, no.

11 Q Did you go tailgating?

12 A Yes, ma'am.

13 Q And who all went tailgating with y'all that day?

14 A Everyone that I just mentioned.

15 Q Everyone that you just mentioned and you mentioned
16 someone name Dusty, who is Dusty.

17 A I'm sorry, Dusty Lindsey.

18 Q You call him Dusty, though.

19 A Yes.

20 Q He's of friend of yours also?

21 A Yes, kind of.

22 Q You can tell -- I don't mean to put words in your
23 mouth.

24 A No, you're fine. We're off and on friends, here
25 and there, not close.

Lauren Coggin - Direct Examination by Ms. Campbell

- 1 Q Does he have a twin?
- 2 A Yes, ma'am.
- 3 Q And I believe you refer to him as Jordy?
- 4 A Yes, Jordan.
- 5 Q Was he present that day when y'all were tailgating?
- 6 A Yes, ma'am.
- 7 Q What time of day was it when y'all started
- 8 tailgating that afternoon?
- 9 A I can't remember.
- 10 Q Okay. Do you remember if it was morning or
- 11 afternoon?
- 12 A Morning.
- 13 Q And where all did y'all go to go tailgating?
- 14 A We were in some kind of parking lot with a house
- 15 type deal. I don't know where it was though.
- 16 Q And was there a particular reason y'all came up to
- 17 USC that day to see that game?
- 18 A No, ma'am.
- 19 Q Did y'all actually go into the game at sometime
- 20 that afternoon or that morning?
- 21 A I did not.
- 22 Q Did any of the people referred to go into the game?
- 23 A I can't remember, some of them didn't.
- 24 Q And what did the rest of y'all do while they went
- 25 into the game?

Lauren Coggin - Direct Examination by Ms. Campbell

1 A We hung around a tailgate area and some people
2 drank, some people ate, just kind of chilled.

3 Q General tailgating?

4 A Yes, ma'am.

5 Q And do you remember who all was there -- because if
6 y'all were there from the morning, how late -- how long
7 were y'all actually there that day? Do you remember?

8 A I don't. I know it was after the game was over for
9 a little while.

10 Q Okay. And had you driven that day?

11 A No, ma'am.

12 Q And who did you ride with when you went to
13 tailgating?

14 A I rode with Dustin and Jordan, Curtis, Jamie Pettis
15 Ashlyn Thompson and I think that was it. One other guy I
16 didn't know.

17 Q One other guy you didn't know?

18 A Uh-huh.

19 Q After the game, do you remember whether the twins
20 went to the game and watched it --

21 (WHEREUPON there was a pause in the proceedings.)

22 Q It's okay if you don't remember.

23 A I can't remember.

24 Q Okay. Do you remember whether or not Curtis went
25 in the game and watched it that day?

Lauren Coggin - Direct Examination by Ms. Campbell

1 A I honestly can't remember.

2 Q And do you remember whether Curtis was drinking
3 that day?

4 A I can't remember.

5 Q Do you remember whether you were drinking that day?

6 A I had one beverage earlier, but was not feeling
7 very well, so I quit.

8 Q You had one beverage early?

9 A Yes, ma'am.

10 Q And do you remember giving a statement to the
11 police?

12 A Yes, ma'am.

13 Q And then another investigator for the defense?

14 A Yes, ma'am.

15 Q And do you remember telling them that they had --
16 that you had approximately, maybe three liquor drinks?

17 A I do not remember, I'm sorry. It may have been
18 that many, I'm not sure, but not many.

19 Q As the evening wore on, do you remember about what
20 time it was when y'all decided to leave?

21 A I don't.

22 Q And who all decided to leave together that day?

23 A It was Dusty -- Dustin, Jordan, me, Curtis, Ashlyn,
24 Jamie, and one other guy, I didn't know his name.

25 Q That's all of who you remember was in the car; is

Lauren Coggin - Direct Examination by Ms. Campbell

1 that correct?

2 A Yes, ma'am.

3 Q And whose car were y'all in?

4 A I'm pretty sure it was Dustin and Jordan's.

5 Q And when y'all went to leave, did all of the people
6 you just named get into that same car?

7 A Yes, ma'am.

8 Q And where were you sitting?

9 A I was sitting on Curtis' lap in the front seat.

10 Q And who else would you describe in the front seat
11 with you?

12 A Dustin was driving, Jordan was in the middle,
13 Curtis was in the passenger seat and I was sitting on his
14 knee.

15 Q Sitting on his knee. That was all in the front
16 seat?

17 A Yes, ma'am.

18 Q And then the rest of them, how many were there in
19 the backseat?

20 A Yes, ma'am.

21 Q And describe when Curtis and the Lindsey twins what
22 kind of build do they have?

23 A They're pretty big.

24 Q Pretty big?

25 A Yes, ma'am.

Lauren Coggin - Direct Examination by Ms. Campbell

1 Q All of them?

2 A Yes, ma'am.

3 Q And I'm sorry, who did you say was driving, I
4 missed that.

5 A Dustin.

6 Q Dustin. And when you were sitting in Curtis' lap,
7 what part of the seat were y'all in, the middle part or a
8 passenger?

9 A The passenger.

10 Q Were your windows rolled up or rolled down that
11 day, do you remember?

12 A I don't remember.

13 Q What was the traffic like when y'all were trying to
14 exit the parking lot?

15 A It was very backed up.

16 Q And when y'all were trying to exit the parking lot,
17 tell the jury what you observed.

18 A We were trying to exit the driveway and it was
19 pretty backed up and we had tried to kind of scoot out a
20 little bit to get into traffic to be able to pull out
21 and --

22 Q Was Dustin -- I'm sorry, I don't mean to interrupt.
23 Was he in a hurry to get out that day?

24 A I wouldn't say hurry, I think we were just --

25 Q Anxious?

Lauren Coggin - Direct Examination by Ms. Campbell

1 A Not anxious but just trying to get out in there
2 because it was so backed up.

3 Q And what happened next?

4 A Then someone from the other truck in front of us
5 yelled out. I don't know what he said. So then I don't
6 know if the window was already rolled down or not, but
7 Curtis screamed out the window back.

8 Q I'm sorry, who screamed out the window?

9 A Curtis did.

10 Q Curtis?

11 A Yes, ma'am.

12 Q While you recall sitting in his lap?

13 A Yes.

14 Q And can you hear what he was saying?

15 A I don't remember.

16 Q You don't remember what Curtis was yelling back?

17 A No, ma'am.

18 Q And you said you heard someone screaming at you.

19 Could you tell where that person was?

20 A That was the passenger.

21 Q A passenger in what car?

22 A In the black truck in front of us.

23 Q That was in front of you?

24 A Yes, ma'am.

25 Q And was the truck directly in front of where y'all

Lauren Coggin - Direct Examination by Ms. Campbell

1 were trying to pull out?

2 A Yes, ma'am -- well, probably. It was almost
3 directly in front of us.

4 Q And you mentioned that you heard the passenger
5 yelling something, but you don't remember what he said?

6 A No, ma'am.

7 Q And you don't remember what Curtis yelled back?

8 A No, ma'am.

9 Q Was Curtis -- what was his demeanor like?

10 A I don't understand what you're asking me.

11 Q What was he acting like? How did he appear?

12 A I mean, he was yelling back at them, not --

13 Q Okay. He was yelling back at them?

14 A Yes.

15 Q And you don't remember what he was yelling?

16 A Huh-huh.

17 Q And do you remember any certain words he was
18 yelling?

19 A Not exactly, no.

20 Q None you want to repeat?

21 A I'm sorry.

22 Q Is it something you don't want to repeat? You can
23 say it, you know, in court?

24 A Oh no, I just don't remember the exact wording. I
25 don't want to tell you anything wrong.

Lauren Coggin - Direct Examination by Ms. Campbell

1 Q Then what happened as you recall?

2 A The passenger got out of the car and then Curtis
3 got out of the car and I had to get out with him since I
4 was on his lap and Curtis walked up to the passenger and
5 they exchanged some wording. I don't know what it was. I
6 didn't quite hear everything. The passenger in the car
7 kind of put his hand out. I don't know what he was doing.
8 And Curtis punched him. And the passenger's head kind of
9 flew back and hit the side of the car and he fell to the
10 ground.

11 Q Could you tell whether he was conscious or
12 unconscious?

13 A I couldn't tell.

14 Q Did he get back up?

15 A No, ma'am.

16 Q Where were the two of them standing when Curtis
17 threw the one punch you remember?

18 A The passenger was -- I don't know if there was a
19 back door to the truck or if it was like a cab, but he was
20 standing right next to the open door and Curtis walked up
21 to him and he was right in front of him.

22 Q So Curtis walked up to him?

23 A Yeah.

24 Q And then your testimony is what you saw?

25 A Yes, ma'am.

Lauren Coggin - Direct Examination by Ms. Campbell

1 Q I mean what did you see?

2 A Oh, I'm sorry. He punched once and the passenger
3 hit his head on the car and fell to the ground and after
4 that Curtis walked back to our truck.

5 Q He walked back?

6 A Uh-huh, started walking back. Not completely back,
7 but he started walking back and --

8 Q Walking slowly, quickly?

9 A Slowly.

10 Q And calling --

11 A I --

12 Q Where was the guy when he fell?

13 A He fell underneath the door.

14 Q Underneath the truck?

15 A Not completely underneath it.

16 MR. GASSER: Objection, Your Honor. She's leading
17 the witness. She said he fell underneath the door. I
18 object to Ms. Campbell changing her answer.

19 THE COURT: Excuse me, you can just say objection,
20 leading. That will work.

21 MR. GASSER: Okay. I said two objections, Your
22 Honor, that's the reason why.

23 THE COURT: Okay. Very well, don't lead.

24 MS. CAMPBELL: May I be heard, Your Honor on
25 611(c)?

Lauren Coggin - Direct Examination by Ms. Campbell

1 THE COURT: Sure, but I would like for you to
2 approach.

3 MS. CAMPBELL: Thank you.

4 (WHEREUPON, there was a bench conference out of the
5 hearing of the jury and the Court Reporter.)

6 BY MS. CAMPBELL:

7 Q You mentioned that you believe he was where when he
8 fell near the door?

9 A Yes, ma'am.

10 Q Was the door part of the truck that we're referring
11 to?

12 A Yes, but it was open.

13 Q And then you, I believe your testimony just to
14 recap was that Curtis walked away?

15 A Yes, ma'am.

16 Q Did he do anything to try to help the person who
17 was lying on the ground. Was he moving?

18 A I don't remember if he was moving, but -- can I
19 continue with what happened.

20 Q Did he --

21 THE COURT: I'm sorry, your voice dropped.

22 THE WITNESS: Sorry.

23 BY MS. CAMPBELL:

24 Q Did he do anything to try to help the person down
25 on the ground after he hit him?

Lauren Coggin - Direct Examination by Ms. Campbell

1 A Yes, when he started walking away, he at some point
2 turned around and realized --

3 Q Let me stop you there. Did he get all the way back
4 to the car?

5 A Not in time -- oh, to our car? No.

6 Q And then what happened that you remember, as you
7 remember?

8 A As I remember, he turned around and walked over
9 because the car -- the truck started moving and Curtis
10 started banging on the truck to tell him to stop and then
11 started freaking out and telling somebody to call the cops
12 and just broke down.

13 Q And that was after the young man that ran over him?

14 A Yes, because he was trying to get him to stop.

15 Q And did you see how he got one over?

16 A Yes.

17 Q At that point, what happened -- once the young man
18 had been run over, had the truck pulled out of -- of the
19 side of the road?

20 A Which truck.

21 Q The truck that the -- the black truck that the
22 young man was in?

23 A Yes. That's how he got ran over because he started
24 pulling out to the right.

25 THE COURT: I can't hear.

Lauren Coggin - Direct Examination by Ms. Campbell

1 THE WITNESS: Sorry.

2 THE WITNESS: Yes, the truck started moving over to
3 the right and that's when he got run over.

4 Q And was the young man when he got run over, was he
5 in the roadway?

6 A Yes, ma'am.

7 Q Do you remember what Dustin did after Curtis had
8 gotten out of the truck?

9 A Dusty had stepped out of the car and the truck we
10 were in and just was telling Curtis to come on and get back
11 in the truck.

12 Q And that was before the young man was run over?

13 A Yes, ma'am.

14 Q But Curtis wasn't listening to him?

15 A (Witness shook head.)

16 (WHEREUPON there was a pause in the proceedings.)

17 BY MS. CAMPBELL:

18 Q After this happened, did the police come?

19 A Yes, ma'am.

20 Q EMS came?

21 A I think so, yes, ma'am.

22 Q And you didn't make contact with the police that
23 night, did you?

24 A No, ma'am.

25 Q The next day, did Dusty get in touch with y'all and

Lauren Coggin - Direct Examination by Ms. Campbell

1 tell you to go talk to the police?

2 A We all decided we had to go give our statements.

3 Q And that was the next morning, I believe is that
4 correct?

5 A Yes, ma'am.

6 Q That night, where were you staying when you were in
7 Columbia?

8 A We were staying at Dustin's house.

9 Q Dustin's house.

10 Q And who did Dustin live with?

11 A Curtis and Jordan.

12 THE COURT: I'm having trouble hearing. I'm so
13 sorry, can you keep your voice up a little bit.

14 THE WITNESS: Yes, ma'am. Dustin, Jordan and
15 Curtis lived together as far as I knew.

16 BY MS. CAMPBELL:

17 Q Okay. And what was their relationship?

18 A They were friends.

19 A And that's where you were staying that night.

20 A Yes, ma'am.

21 Q And had stayed the night before?

22 A Yes, ma'am.

23 Q The entire time you were in Columbia?

24 A Yes, ma'am.

25 MS. CAMPBELL: Your Honor, if I may mark this?

Lauren Coggin - Direct Examination by Ms. Campbell

1 (WHEREUPON State's 61 was marked for
2 identification.)

3 BY MS. CAMPBELL:

4 Q When you made -- went and gave a statement, I show
5 you State's Exhibit 61 and first just look at this if you
6 want to. You recognize it?

7 A Yes, ma'am.

8 Q And you've had an opportunity to review that
9 statement recently, haven't you?

10 A Yes, ma'am.

11 Q And when you gave this statement to the police you
12 were trying to give them the information as you recalled
13 it?

14 A Yes, ma'am.

15 Q For what happened involving your friend Curtis?

16 A Yes, ma'am.

17 Q And in that statement, did they ask you who was the
18 aggressor of this situation?

19 A Yes, ma'am, they did.

20 Q And when I say the word aggressor, what does that
21 mean to you?

22 A Who's more angry, I guess.

23 Q And who would you say the aggressor in this
24 situation between the young man that got run over and
25 Curtis was?

Lauren Coggin - Direct Examination by Ms. Campbell

1 A I'd say Curtis.

2 THE COURT: I'm sorry?

3 THE WITNESS: I said Curtis.

4 THE COURT: Oh, okay.

5 BY MS. CAMPBELL:

6 Q And then later?

7 MS. CAMPBELL: I'm using what's marked State's
8 Exhibit 55, for ID, Your Honor.

9 BY MS. CAMPBELL:

10 Q Do you remember talking to a private investigator
11 for the defense?

12 A Yes.

13 Q And that would have occurred on January 19th, 2011?

14 A Yes.

15 Q And do you remember giving them certain
16 information?

17 A I remember speaking to them, but I don't remember.

18 Q Was that over the phone?

19 A Yes, ma'am.

20 Q Okay. Because you were back in Alabama at the
21 point?

22 A Yes, ma'am.

23 Q And when you gave them information, you gave them
24 some -- another account of what happened that you recall?

25 A Yes.

Lauren Coggin - Direct Examination by Ms. Campbell

1 Q And is that a copy of that?

2 A I assume, I guess.

3 THE COURT: I'm sorry?

4 THE WITNESS: Yes.

5 BY MS. CAMPBELL:

6 Q And is that information that you related to the
7 defense attorney's private investigator?

8 A Yes.

9 Q And did you know who you were talking to?

10 A No. I mean --

11 Q You did know who he was working for?

12 A Yes.

13 Q Okay. And when you told him your testimony here
14 today was what you told him?

15 A Yes.

16 Q But in your statement to him, back when you gave it
17 on January 19th of 2011; you told him that you heard the
18 guy yell at y'all, What the hell are y'all trying to do?

19 A I don't recall now.

20 Q No, you didn't -- and just for clarification, in
21 the statement you gave the day after it happened, you
22 didn't recall what anyone said either, did you? You can
23 look at that, it's in front of you isn't it. There you go.

24 A I'm sorry, what was the question again?

25 Q In your statement, when you gave a statement the

Lauren Coggin - Direct Examination by Ms. Campbell

1 day after it happened to the police department, about what
2 happened, you didn't recall anything anybody said; is that
3 correct?

4 A It's not in here, no, yes.

5 Q And did you sign off on this statement?

6 A Yes.

7 Q And your testimony today is you don't recall what
8 was said?

9 A Correct.

10 Q But when you talked to the defense attorney's
11 private investigator on January 19th; you said that the
12 victim in the case was yelling, What the hell are y'all
13 trying to do?

14 A Correct.

15 Q But you don't remember that now?

16 A No.

17 Q Then in your testimony here today, you mentioned
18 that according to you and what you saw, the victim from the
19 black truck got out first; is this correct?

20 A Yes.

21 Q But when you gave the information to the private
22 investigator on January 19th of 2011, do you recall telling
23 them Simms got out of the truck comma, the guy in the black
24 truck opened his door and got out as well?

25 A Yes.

Lauren Coggin - Direct Examination by Ms. Campbell

1 Q So that's what you remembered on January 19th?

2 A Yes.

3 Q Which is different from what you testified to here
4 today?

5 A (No response.)

6 Q Just --

7 A Yes.

8 Q I'm sorry I'm not trying to be -- okay...

9 A (Witness nodded head.)

10 Q Did you ever see the victim throw a punch or have a
11 weapon?

12 A No.

13 Q From your observation what caused the victim to hit
14 the ground?

15 A I honestly don't know. I mean -- the punch, I
16 guess or it could have been the truck hitting his head on
17 the truck.

18 Q Well, let me put it to you this way. You just
19 testified didn't you?

20 A Yes.

21 Q That when Curtis and --

22 A And --

23 Q I'm not trying to put words in your mouth, I
24 promise.

25 A Okay.

Lauren Coggin - Cross-Examination by Mr. Gasser

1 Q Curtis hit?
2 A Yes.
3 Q His head hit the truck?
4 A Yes.
5 Q And he was down?
6 A Yes.
7 Q And then it was after that that the truck started
8 moving slowly?
9 A Correct.
10 MS. CAMPBELL: Beg the Court's indulgence.
11 THE COURT: All right.
12 MS. CAMPBELL: I'm sorry, Your Honor. No further
13 questions.
14 THE COURT: All right. Cross-examination.
15 CROSS-EXAMINATION
16 BY MR. GASSER:
17 Q Miss Coggin, my name is Johnny Gasser. First of
18 all good afternoon.
19 A Good afternoon.
20 Q You and I have never met, have we, ma'am?
21 A No.
22 Q Never spoken together?
23 A No, I don't think so.
24 Q We haven't spoken with each other?
25 A No.

Lauren Coggin - Cross-Examination by Mr. Gasser

1 Q Since you've been here in Columbia -- you flew here
2 to Columbia; is that correct?

3 A Yes.

4 Q And the State -- solicitor's office arranged your
5 flights?

6 A Yes.

7 Q And you plan to go back to Mobile if not this
8 evening, then sometime tomorrow?

9 A Yes.

10 Q And how old are you, ma'am?

11 A I'm twenty-four.

12 Q And what do you do for a living?

13 A I work at a claim center.

14 Q You're single?

15 A I'm getting married.

16 Q Congratulations.

17 A Thank you.

18 Q I want to go back and I'm going to spend a little
19 bit of full-time, Ms. Coggin, talking about the events
20 leading up to the incident before we get to the incident,
21 okay?

22 A Okay.

23 Q At any time you don't understand my questions, just
24 let me know.

25 A Okay.

Lauren Coggin - Cross-Examination by Mr. Gasser

1 Q You arrived in Columbia on Friday before the
2 Alabama and South Carolina football game?

3 A Yes.

4 Q And Friday evening you spent the evening at the
5 Lindsey's house and I believe Curtis was there. The three
6 of them grew up together; is that correct?

7 A Yes.

8 Q Do you know anything about Columbia? Do you know
9 the Woodlands area of north Columbia?

10 A No.

11 Q So that won't -- that phrase doesn't mean anything
12 to you, does it?

13 A No.

14 Q And were there a number of guests staying at Dustin
15 and Jordan Lindsey and Curtis' house?

16 A Yes.

17 Q Approximately eight? Would that be about a round
18 number?

19 A Yes.

20 Q Okay.

21 A Approximately.

22 Q So do you recall getting up on Saturday morning and
23 everybody starting to get ready to go tailgate?

24 A Yes.

25 Q That included taking showers and all the normal

Lauren Coggin - Cross-Examination by Mr. Gasser

1 things that people do that are college age to go to a
2 tailgate football; is that correct?

3 A Yes.

4 Q How did you know Dustin and Jordan Lindsey?

5 A Just from Mobile. They went to school in Mobile.

6 Q And did you know that the two of them played
7 football at South Carolina?

8 A Yes.

9 Q Do you remember leaving the house, the Lindsey
10 residence and Curtis' residence that Saturday morning?

11 A I don't remember details, but, yes.

12 Q In fact, you left the residence to go to the game,
13 correct?

14 A Yes.

15 Q And you were in Dustin's pick-up truck?

16 A Yes.

17 Q And do you remember what Dustin's pick-up truck
18 looks like?

19 A I don't.

20 Q Do you have any idea?

21 A I don't, honestly.

22 Q Do you know whether it's even light colored or dark
23 colored?

24 A I think it's light colored.

25 Q You think?

Lauren Coggin - Cross-Examination by Mr. Gasser

- 1 A I don't know.
- 2 Q Okay. Do you remember stopping and getting like
- 3 supplies, beer, ice, chips, the type of stuff to tailgate?
- 4 A Uh-huh.
- 5 Q You do recall that?
- 6 A Yes.
- 7 Q And do you remember when you got to the tailgate
- 8 spot, people started setting up their tailgate spot. Do
- 9 you know what I mean by that?
- 10 A Yes.
- 11 Q Do you remember there was a satellite TV being set
- 12 up for people to watch the game that didn't have tickets?
- 13 A Yes, I think.
- 14 Q And during the -- before the game started, do you
- 15 recall that it was a 3:30 afternoon nationally televised
- 16 football game?
- 17 A I don't remember the actual time.
- 18 Q But you do remember tailgating when it was light
- 19 out?
- 20 A Yes.
- 21 Q And the spot where the Lindsey twins tailgate spot,
- 22 there were a number of people there, not just y'all that
- 23 come in his truck, correct?
- 24 A Yes, sir.
- 25 A In fact, some people even had kids there, did they

Lauren Coggin - Cross-Examination by Mr. Gasser

1 not.

2 A Yes.

3 Q So the atmosphere is that of adults of different
4 age and kids running around maybe throwing the football,
5 just enjoying a Saturday morning, afternoon in Columbia,
6 South Carolina. Is that a fair statement?

7 A Yes, sir.

8 Q Prior to the game, did you see anybody in your
9 tailgate spot being out of control? Do you know what I
10 mean by that?

11 A Yes, sir. No.

12 Q You didn't see anybody out of control?

13 A No.

14 Q Did you see anybody, you know, yelling at anybody
15 or jawing at anybody, any of that?

16 A Not that I can recall.

17 Q Now, you're an Alabama fan, correct?

18 A Yes.

19 Q And there were Alabama fans in your tailgate, is
20 that correct?

21 A Yes, sir.

22 Q And there were Carolina friends in your tailgate,
23 right?

24 A Yes, sir.

25 Q And all of y'all were getting along?

Lauren Coggin - Cross-Examination by Mr. Gasser

1 A Yes, sir.

2 Q Even after the game although half the fans may not
3 have liked it, everybody was still cheerful with one
4 another?

5 A Yes, sir.

6 Q And you watched the game there at tailgate?

7 A Yes, sir.

8 Q Do you remember Curtis watching the game at
9 tailgate as well?

10 A I'm not sure. Sorry.

11 Q At any time during the football game, did you see
12 anybody get out of control?

13 A No, sir, not that I can recall.

14 Q And when the game was over, some people were still
15 coming back that had gone into the football game were
16 coming back to tailgate, correct?

17 A Yes, sir.

18 Q Do you remember meeting two of the Lindsey twins
19 friends, an African American gentleman by the name of
20 Mike -- Mike Davis?

21 A Yes, I think I do.

22 Q Did they tell you that he was the former running
23 back at South Carolina, or that he was a former player?

24 A Yes.

25 Q And you remember also meeting a bigger, taller

Lauren Coggin - Cross-Examination by Mr. Gasser

1 athlete there, a gentleman named Marquis Hall?

2 A I don't recall.

3 Q You don't recall Marquis?

4 A No.

5 Q At some point in time, did Mike Davis join the
6 tailgate before y'all left?

7 A I think. I'm pretty sure.

8 Q Wasn't the man that y'all were going to go back to
9 the Lindsey's house and Curtis' house to chill out or
10 shower up and get ready to go back out on a Saturday night?
11 Was that the plan?

12 A Yes.

13 Q You remember when everybody started kind of packing
14 up the tailgate to go to do that?

15 A Yes.

16 Q Now, you indicated Jordan and Dusty were in the
17 truck, correct?

18 A Yes.

19 Q And Dusty was driving?

20 A Yes.

21 Q Curtis was in the truck, in fact, he was front
22 passenger seat and you were sitting on his lap?

23 A Yes.

24 Q Do you remember Mike Davis in the back seat? Do
25 you recall that?

Lauren Coggin - Cross-Examination by Mr. Gasser

1 A I remember him being there, I don't remember his
2 first name.

3 Q Okay. Do you have a copy -- I'm not sure what
4 State's Exhibit it is, of your statement you gave at the
5 sheriff's department? The --

6 Q Do you have it?

7 A Yes.

8 Q Just so the court reporter knows -- let me see
9 that, ma'am. Thank you.

10 MR. GASSER: We're referring to State's Exhibit 61

11 BY MR. GASSER:

12 Q Read that second paragraph to yourself. Not out
13 loud, I want to see if that refreshes your memory. Let me
14 know when you're done?

15 A I'm finished.

16 Q Now, in reading that, does that refresh your memory
17 was Mike Davis in the truck with you?

18 A Yes.

19 Q Now, you didn't list Marquis Hall there, correct?

20 A Correct.

21 Q Could he have been in the truck, you just don't
22 remember?

23 A Could have been.

24 Q Okay. There was a lot of people jammed in the
25 truck, was there not?

Lauren Coggin - Cross-Examination by Mr. Gasser

1 A Yes, sir.

2 Q Which is -- which was the reason you had to sit on
3 Curtis' lap in the front seat?

4 A Yes, sir.

5 Q And when you were leaving, was there anybody,
6 Dustin, Jordan, Curtis, anybody in your truck in a foul
7 mood?

8 A No.

9 Q Mad at anybody?

10 A No.

11 Q Mad at anything going on?

12 A No.

13 Q In fact, isn't it true that everybody was very
14 festive. It was a Saturday night, football fall night, was
15 it not?

16 A Yes.

17 Q Y'all were all in your 20's?

18 A Yes, I believe so.

19 Q And you're all friends right?

20 A Yes.

21 Q And friends that are in their 20's planning on
22 going out on a Saturday night in Columbia, South Carolina?

23 A Yes.

24 Q Life was good, wasn't it?

25 A Yes.

Lauren Coggin - Cross-Examination by Mr. Gasser

1 Q That changed, didn't it?

2 A Uh-huh.

3 THE COURT: Is that a yes?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Thank you.

6 BY MR. GASSER:

7 Q Okay. The person that took your statement the next
8 day at -- you gave a statement -- you went down on your own
9 to give a statement to the sheriff's department, correct?

10 A Yes.

11 Q And you did that -- the statement started around 10
12 a.m. in the morning. Doesn't it say that up top?

13 A Yes.

14 Q Okay. And the investigator that was -- that took
15 your statement was a gentleman by the name of Sargent
16 Robinson, was it not?

17 A Yes.

18 Q And I believe y'all -- he started -- the first
19 question he asked you was, Tell me what you observed last
20 night regarding a fight on Shop Road. You remember him
21 asking you that?

22 A Yes.

23 Q And he was typing, correct?

24 A Correct.

25 Q So the person that referenced this incident as a

Lauren Coggin - Cross-Examination by Mr. Gasser

1 fight was Sargent Robinson; was it not?

2 A Yes.

3 Q Now, was it your goal or Dustin's goal since he was
4 driving to pull up to the road -- you don't even know the
5 name of the road, do you?

6 A No.

7 Q If I told you it was Shop Road, you would have no
8 reason to dispute that, ma'am?

9 A No.

10 Q Wasn't Dustin's goal to get onto Shop Road so they
11 could go somewhere that would lead up ultimately to their
12 home, correct?

13 A Yes.

14 Q And the first time that you recall noticing this
15 black pick-up truck that you described -- is the first time
16 that you noticed it, was it already stationary right in
17 front of you?

18 A Yes.

19 Q Or did you actually see it pull up?

20 A I don't recall.

21 Q What was they -- was the radio on? Do you remember
22 that?

23 A I don't.

24 Q Was just normal, what you would expect talk going
25 on in the cab of the truck when you have that many people

Lauren Coggin - Cross-Examination by Mr. Gasser

1 on Saturday night in their mid 20'?

2 A Yes.

3 A So you don't recall any specific conversation, do
4 you ma'am.

5 A No.

6 Q You certainly weren't expecting anything this to
7 happen?

8 A No.

9 Q So the first memory you have of the black truck,
10 you're staring at the side door, basically; are you not?

11 A Yes.

12 Q And would you say that the -- you're about this
13 far? Or you tell me?

14 A Maybe a little closer.

15 Q Okay.

16 A Probably about there, so maybe a little bit closer.

17 Q And so you're -- there's a distance between what
18 you're staring at inside the truck; is that correct?

19 A Yes.

20 Q And the second thing you noticed wasn't --
21 Ms. Coggin, after you noticed the black truck stationary in
22 front of you, wasn't the second thing that you noticed was
23 the passenger in that black truck talking and pointing at
24 y'all; do you remember that?

25 A Yes.

Lauren Coggin - Cross-Examination by Mr. Gasser

1 Q Okay. And you remember indicating to Sargent
2 Robinson that less than twenty-four hours after the
3 accident, Ms. Coggin, you remember telling Sargent Robinson
4 that you believe that he -- meaning the passenger -- was
5 upset. You remember saying that?

6 A Yes.

7 Q And the reason you believed he was upset is because
8 he was cursing and using profanity, wasn't he?

9 A I don't know. I mean --

10 Q You don't recall him using profanity or you just
11 don't remember?

12 A I just don't remember right now.

13 Q But you remember he was upset about something?

14 A Yes, yes.

15 Q And Curtis was still sitting in the truck, isn't
16 he?

17 A Yes.

18 Q Now, again, when you were giving this statement
19 about thirteen or fourteen hours after the incident that
20 you observed, did you not indicate to Sargent Robinson that
21 the passenger in the black pick-up truck got out of the
22 truck first, correct?

23 A Yes, I --

24 Q And that when the passenger, Mr. Gasque got out of
25 the truck, the first thing he did was start taunting

Lauren Coggin - Cross-Examination by Mr. Gasser

1 Curtis; isn't that true?

2 A Yes.

3 Q This has been a very upsetting set of
4 circumstances, has it not, Ms. Coggin?

5 A Yes.

6 Q It's not easy sitting in here testifying, is it?

7 A (Witness shook head.)

8 Q You'd rather be anywhere else in the world,
9 wouldn't you?

10 A Yes.

11 Q And it was a pretty serious moment for you sitting
12 in a Richland County Sheriff's Department office at 10
13 o'clock on a Sunday morning in a city 600 miles from your
14 house?

15 A Yes.

16 Q And how old were you at the time?

17 A Twenty-two, I think.

18 Q You were twenty-two years old, without any parents,
19 correct?

20 A Correct.

21 Q You were by yourself with Agent Robinson?

22 A Correct.

23 Q Had just witnessed what you described to this jury
24 the night before?

25 A Yes.

Lauren Coggin - Cross-Examination by Mr. Gasser

1 Q You witnessed a young man getting run over, didn't
2 you?

3 A Yes.

4 Q And you knew how serious this was; didn't you,
5 Ms. Coggin?

6 A Yes.

7 Q And you wanted to be as truthful to the best of
8 your memory to Sargent Robinson, didn't you?

9 A Yes.

10 Q And you were that morning, weren't you?

11 A Yes.

12 Q And there was no doubt in you're mind that
13 Mr. Gasque got out -- out of his truck first; is there,
14 Ms. Coggin?

15 A Yes.

16 Q And there's no doubt in your mind he was mad;
17 wasn't he Ms. Coggin?

18 A Yes.

19 Q And he was taunting Curtis Simms; wasn't he,
20 Ms. Coggin?

21 A Yes.

22 Q And that was before Simms ever got out of his
23 truck; isn't that true?

24 A Yes.

25 Q And you had a bird's-eye view from where you and I

Lauren Coggin - Cross-Examination by Mr. Gasser

1 are right now; isn't that true, Ms. Coggin?

2 A Yes.

3 Q Curtis then got out of the truck; is that true?

4 A Yes.

5 Q And he walked towards him, correct?

6 A Yes.

7 Q Do you remember what Curtis was saying to him?

8 Could you hear what Curtis was saying to him?

9 A I don't remember now exactly what was said.

10 A Was the passenger window of the side door all the
11 way down? Do you even remember.

12 A I don't.

13 Q If it was up even halfway or just cracked, it would
14 be more difficult to hear what was going on than --

15 MS. CAMPBELL: Objection, Your Honor. I believe
16 she says she doesn't remember. Thank you.

17 MR. GASSER: Let me rephrase it.

18 BY MR. GASSER:

19 Q You don't recall hearing what was said at that
20 point between Curtis and Martin Gasque, do you? You don't
21 recall?

22 A No.

23 Q But again, when it was freshest in your mind the
24 next morning, the first mutual or physical contact you
25 observed was Martin Gasque making some sort of move in

Lauren Coggin - Cross-Examination by Mr. Gasser

1 physical contact with Curtis Simms; isn't that true,

2 Ms. Coggin?

3 A Yes.

4 Q No doubt in your mind, is it Ms. Coggin?

5 A No.

6 Q And you said this to an investigator long before
7 you knew whether Curtis Simms was going to be charged with
8 anything; didn't you.

9 A Correct, yes.

10 Q And you hadn't had time to even talk to your
11 parents or anybody about this, had you?

12 A No.

13 Q And you -- when you were being interviewed by
14 Sargent Robinson you wanted to tell him the truth because
15 you don't want to not tell the police officer the truth on
16 something this serious, do you?

17 A No.

18 Q So you looked at him and you told him the first
19 physical move and physical contact was Mr. Gasque on Curtis
20 Simms; isn't that true?

21 A Yes.

22 Q Because that is the truth, is it not, Ms. Coggin?

23 A Yes.

24 Q Now, you observed them -- Curtis' response was to
25 punch him one time, correct?

Lauren Coggin - Cross-Examination by Mr. Gasser

- 1 A Yes.
- 2 Q Now, you were seated in the confines and the safety
3 of the cab of the truck, were you not?
- 4 A I'm pretty sure I had gotten out with Curtis. I
5 was standing right there at the truck.
- 6 Q Oh, so you were standing right there at the truck?
- 7 A Yes.
- 8 Q With the open door?
- 9 A Yes.
- 10 Q When Curtis, he responded in the manner in which he
11 did by striking Mr. Gasque after Mr. Gasque made his move
12 at Curtis, do you recall Mr. Gasque had been in the truck;
13 is that correct?
- 14 A Yes.
- 15 Q And then he fell straight down on the side of the
16 road?
- 17 A Yes.
- 18 Q Right by the white line? You remember that? There
19 was a white line out there?
- 20 A I don't remember exactly where he was in, like,
21 with the white bin, I don't remember.
- 22 Q But there's no question that the truck was
23 stopped --
- 24 A Yes, it was.
- 25 Q When the contact between Mr. Gasque occurred

Lauren Coggin - Cross-Examination by Mr. Gasser

1 against Mr. Simms; and that when Mr. Simms then responded
2 to the punch of Mr. Gasque, that truck was stopped the
3 whole time?

4 A Yes.

5 Q Correct?

6 A Yes.

7 Q And that truck was stopped when Mr. Gasque fell to
8 the street, on the side of the street; is that correct?

9 A Yes.

10 Q No question about that?

11 A No. Yes.

12 Q Then the truck started moving, didn't it?

13 A Yes.

14 Q And it started moving to the right off the road,
15 did it not?

16 A Yes.

17 Q Immediately?

18 A Yes.

19 Q And as soon as that truck started moving, it
20 started moving off the road, did it not?

21 Q And that's when you saw the back right tire --

22 A (Witness nodded head.)

23 Q -- the angle that it was in at that point in time,
24 started to run over Mr. Gasque?

25 A Yes.

Lauren Coggin - Cross-Examination by Mr. Gasser

1 Q Ms. Coggin, never in the million years did you
2 foresee that happening, did you?

3 A No.

4 Q And when Curtis Simms saw the driver of that
5 pick-up truck starting to move to the right off the road
6 and in the pathway of Mr. Gasque --

7 A I'm sorry, what?

8 Q When he saw that, when Curtis Simms ultimately saw
9 that --

10 A Uh-huh.

11 Q His reaction was to go and try to stop that truck,
12 wasn't it?

13 A Yes.

14 Q You saw that as clear as day, didn't you?

15 A Yes.

16 Q Still the same distance away, didn't you?

17 A Yes.

18 Q And you told that to Investigator Robinson fourteen
19 hours after the incident the next morning?

20 A Yes.

21 Q When it's freshest in your mind?

22 A Yes.

23 Q You hadn't talked to any lawyer, had you?

24 A No.

25 Q Hadn't talked to anybody about this, had you?

Lauren Coggin - Cross-Examination by Mr. Gasser

1 A No.

2 Q And you wanted to be positive about what you saw?

3 A Yes.

4 Q In fact, in your viewpoint you told Sargent
5 Robinson, and I'll get to that, that from your vantage
6 point, you thought Curtis was the aggressor. You told Ms.
7 Campbell that in direct examination, didn't you?

8 A Yes.

9 Q But you also said, did you not, that as the driver
10 started running over his friend, Curtis was banging on the
11 side of the truck; wasn't he?

12 A Yes.

13 Q And he was screaming, wasn't he?

14 A Yes.

15 Q You've got a soft voice. I know you do, but Curtis
16 wasn't saying stop, stop, was he?

17 A No.

18 Q He was screaming at the top of his lungs?

19 A Yes.

20 Q And after it was over Curtis ran to get help,
21 didn't he?

22 A Yes.

23 Q And came back didn't he?

24 A Yes.

25 Q With help?

Lauren Coggin - Cross-Examination by Mr. Gasser

1 A Yes.

2 Q And everything you just described to the jury, you
3 told Investigator Robinson fourteen hours later, didn't
4 you?

5 A Yes.

6 Q And he even asked you the question, did Curtis push
7 the guy under the truck and you said no, correct?

8 A Yes.

9 Q That never happened did it?

10 A No.

11 Q And he never rolled under the truck, did he?

12 A No.

13 Q And you had this view, didn't you?

14 A Yes.

15 Q And when it's freshest in your mind, you said, no,
16 Curtis didn't push him under the truck?

17 A Yes.

18 Q Because he never did, did he?

19 A Yes.

20 Q Because he was on the side of the truck in the same
21 pathway of that hope door, wasn't he?

22 A Yes.

23 Q And it wasn't until the driver of that truck made
24 the decision, the choice to veer off the road that
25 Mr. Gasque was run over; isn't that true?

Lauren Coggin - Cross-Examination by Mr. Gasser

1 A Yes.

2 Q And that's the same story you told Investigator
3 Robinson fourteen hours after it happened, isn't it,
4 Ms. Coggin?

5 A Yes.

6 Q And it's something you will never forget, is it?

7 A No.

8 Q As much as you want to, you will never forget that,
9 will you?

10 A No.

11 Q You never saw Curtis Simms approach that truck and
12 strike anybody that was sitting in that truck, did you?

13 A No.

14 Q Because that never happened, did it?

15 A No, never happened.

16 A No.

17 Q And Dustin got out of the truck as well?

18 A Yes.

19 Q Before that truck started running over his friend,
20 didn't he get out before that?

21 A Yes.

22 Q Now, when Investigator Robinson asked you in your
23 opinion who was being the aggressor, you actually answered
24 that question, if I had to say one, I would say Curtis,
25 correct?

Lauren Coggin - Cross-Examination by Mr. Gasser

1 A Correct.

2 Q Because there were two aggressors weren't there?

3 A Correct.

4 Q So you saw what Mr. Gasque did to Curtis and what
5 his response was, correct?

6 A Yes.

7 Q But you don't know what was going through Curtis'
8 mind, because you can't answer that, correct?

9 A Correct.

10 Q Just a few more questions, Ms. Coggin?

11 MR. GASSER: Beg the Court's indulgence.

12 THE COURT: All right. I tell you what I think
13 we're going to do, ladies and gentlemen. We will take your
14 afternoon break at this time. I'm going to ask you to step
15 to your jury room. Remember, of course, do not discuss
16 this matter nor allow anyone to discuss it with you. We're
17 doing to take 15 minutes. Step to your jury room.

18 (WHEREUPON the jury left the courtroom at 3:36
19 p.m.)

20 THE COURT: Ms. Coggin.

21 THE WITNESS: Yes, ma'am?

22 THE COURT: Because you are on the stand, you must
23 not discuss your testimony with anyone, but you also
24 certainly may also take a break.

25 THE WITNESS: Thank you.

Lauren Coggin - Cross-Examination by Mr. Gasser

1 THE COURT: Very well. Fifteen minutes.

2 (WHEREUPON a recess was observed.)

3 THE COURT: All right everyone ready?

4 Let us have our jury, please.

5 THE BAILIFF: Yes, ma'am.

6 (WHEREUPON the jury entered the courtroom at 4:11
7 p.m.)

8 THE COURT: All right.

9 THE BAILIFF: Jury is seated, Your Honor.

10 THE COURT: Thank you so much, ladies and
11 gentlemen. Of course, at this time, we will continue with
12 the State's case in the cross-examination of Ms. Coggin.

13 You may proceed Mr. Gasser.

14 MR. GASSER: Thank you, Your Honor.

15 BY MR. GASSER:

16 Q Ms. Coggin, when you were at the sheriff's
17 department on Sunday morning, October 10, 2010, and talking
18 with Investigator Robinson, you told him and described this
19 as a freak accident. Do you recall that?

20 A Yes.

21 Q Because as you were witnessing what you just
22 described to the jury, that's what you -- that was your
23 descriptive term, was it not?

24 A Yes.

25 Q Fourteen hours later, this whole thing is a freak

Lauren Coggin - Redirect Examination by Ms. Campbell

1 accident?

2 A Yes.

3 Q Now, after the incident, you recall getting back in
4 Dustin Lindsey's truck? Do you remember getting back in
5 the truck?

6 A Yes.

7 Q And he backed the truck back up and pulled into the
8 parking lot area and stayed there -- y'all stayed there
9 several hours, did you not?

10 A Yes.

11 Q Okay. And at some point in time, the next morning,
12 it was Dustin Lindsey that rounded everybody up to say you
13 got to talk to people at the sheriff's department. We've
14 got to go down and give statements at the sheriff's
15 department.

16 A Yes.

17 Q Everybody went down -- or people -- you went to the
18 sheriff's department, people were separated to give
19 statements, correct?

20 A Yes.

21 MR. GASSER: That's all we have, Your Honor.

22 THE COURT: Very well. Yes, ma'am?

23 REDIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q You stated that straight after this happened, you

Lauren Coggin - Redirect Examination by Ms. Campbell

1 say you stayed there for several hours?

2 A Yes.

3 Q And talked to the police?

4 A No. I was actually sick in the bathroom, very
5 upset.

6 Q Where did you stay that night after this happened?

7 A At Dusty Lindsey's.

8 Q And then who all stayed there that night after this
9 happened, before you gave your statement to the police?

10 A Everyone that was there.

11 Q Would that include you?

12 A Yes.

13 Q And Ashlyn?

14 A Yes.

15 Q Who else?

16 A Dusty -- Dustin, Jordan, Jamie, Jerrod, Curtis --
17 not Curtis -- Chris Garcia and several others that were
18 there as well.

19 Q Mike?

20 A No.

21 Q And -- but didn't everybody go there after this
22 happened?

23 A Everyone that I just listed.

24 Q And did y'all talk about what had happened?

25 A A little bit, not much.

Lauren Coggin - Redirect Examination by Ms. Campbell

- 1 Q Just to be sure, let me understand your
2 relationship with Curtis Simms. Curtis Simms lived with
3 the Lindeys there where you stayed that weekend, right?
- 4 A Yes.
- 5 Q And had you ever dated either Curtis or the
6 Lindseys?
- 7 A I've gone on a date with Dusty before, but that's
8 it.
- 9 Q And you felt comfortable enough to go and stay the
10 weekend with them for a football game?
- 11 A Yes.
- 12 Q So he would be your friend?
- 13 A Yes.
- 14 Q And you went to high school with all of them?
- 15 A No.
- 16 Q Just -- owe?
- 17 A Curtis.
- 18 Q Curtis.
- 19 A Uh-huh.
- 20 Q So Curtis was actually your link to the others?
- 21 A No.
- 22 Q Curtis wasn't friends with the Lindeys?
- 23 A No, they were. I just knew other people that had
24 gone up.
- 25 Q Mr. Gasser asked you a few questions about your

Lauren Coggin - Redirect Examination by Ms. Campbell

1 statement. I'm sorry to bring that back up. Do you still
2 have that in front of you?

3 A Yes.

4 Q The one that you gave in Richland County the next
5 day?

6 A Uh-huh.

7 Q And he asked you specifically about the first thing
8 where the investigator asked you about the fight; is that
9 right?

10 A Yes.

11 Q But he didn't ask you to finish that sentence, did
12 he?

13 A I'm sorry?

14 Q Did he ask you to finish the sentence after it
15 says, the fight on Shop Road near the USC football stadium?
16 What does it say right after that that wasn't mentioned to
17 the jury?

18 A Where Curtis Simms punched a guy and then we was
19 run over by a truck.

20 Q So that was the context in which the fight was
21 phrased, when Curtis Simms punched somebody and then the
22 guy was run over by a truck; is that correct?

23 A Yes.

24 Q And he also asked you at part of your thing about
25 the guy in the other truck was yelling and loud and mad at

Lauren Coggin - Redirect Examination by Ms. Campbell

1 y'all?

2 A Yes.

3 Q And he didn't ask you why you thought that he was
4 mad at y'all, did he?

5 A No.

6 Q And in your statement, don't you say why you
7 thought the guy might have been mad at y'all because of
8 something Dusty had done?

9 A Yes.

10 Q And what was that?

11 A I'm not even sure now.

12 Q Well, what did you put in your statement about how
13 Dusty's driving might have angered the guy in the other
14 passenger side?

15 A Want me to read it?

16 Q Sure.

17 A Or do you want to --

18 Q Either way.

19 A Okay. Like I said, Dusty was trying to get out
20 into it and I think the guy got upset about that, thought
21 we were maybe going to hit them or something.

22 Q Okay. Let's talk specifically about your
23 statement.

24 A Okay.

25 Q In the last line in that parking lot?

Lauren Coggin - Redirect Examination by Ms. Campbell

1 A Uh-huh.

2 Q Do you remember what you told them?

3 A I thought that Dusty was trying to hit them with
4 the truck.

5 A He thought Dusty was trying to hit him with the
6 truck. And then he also talked to you a lot about how the
7 first person who made contact in this was the victim who
8 got out of the truck; is that right.

9 A Yes.

10 Q Do you remember the question that the investigator
11 asked you, specifically -- it's the last paragraph on that
12 first page of your statement that you gave ten, twelve,
13 fourteen hours after this happened?

14 A Yes.

15 Q What was the question he asked you?

16 A Did the guy attack Curtis.

17 Q Did the guy attack Curtis. And what did you
18 answer?

19 A No, he slightly touched Curtis and then Curtis
20 punched him in the face and then Curtis punched him in the
21 face. After he was punched, he fell backward and hit his
22 head -- had hit -- his head had hit the back of the truck
23 as he fell to the ground.

24 Q Your answer was no?

25 A Yes.

Lauren Coggin - Redirect Examination by Ms. Campbell

1 Q When asked did the guy attack Curtis, your answer
2 was no?

3 A Yes.

4 Q And then you said he slightly touched Curtis? How
5 did he slightly touch Curtis?

6 A I mean -- I don't know how to describe that.

7 Q With one hand up?

8 A Yeah, I think so, yes.

9 Q He also asked you about what happened after this
10 and in your statement you were asked specifically about
11 what Dusty did before Curtis did -- before Curtis punched
12 the guy. What was Dusty trying to do?

13 A He was telling him to stop.

14 Q And when Dusty was telling Curtis Simms to stop,
15 had any punches been thrown at that point?

16 A I don't remember.

17 Q In your statement you did remember. He got out of
18 the truck at the same time Curtis did?

19 A Yes.

20 Q To try and get Curtis back into the truck?

21 A Yes.

22 Q Did Dusty try to prevent Curtis from punching the
23 guy? And your answer was?

24 A He was telling him to stop, but did not physically
25 stop him, no.

Lauren Coggin - Recross-Examination by Mr. Gasser

1 Q And Mr. Gasser asked you about whether this was
2 foreseeable that any of this would happen. Dusty was
3 trying to stop him; is that right?

4 A Yes.

5 Q Mr. Gasser also asked you about whether you said
6 who got out of which car first. In your statement on
7 January 19th, when you spoke to the defense attorneys'
8 private investigator, what did you say about the order of
9 people getting out of the truck?

10 A I said that Simms got out of the truck and then the
11 other guy did.

12 Q And that's what you told their investigator?

13 A Yes.

14 Q Okay. And we subpoenaed -- we flew you here and we
15 subpoenaed you so you had to come to court, right?

16 A Yes.

17 Q Okay. And you didn't want to be here?

18 A No.

19 Q Okay. Thank you, ma'am.

20 THE COURT: Recross examination?

21 MR. GASSER: Briefly, Your Honor.

22 THE COURT: Okay.

23 **RECROSS EXAMINATION**

24 BY MR. GASSER:

25 Q Ms. Coggin, the solicitor asked you -- do you

Lauren Coggin - Recross-Examination by Mr. Gasser

1 recall me asking you about the foreseeability of Dusty
2 trying to stop Curtis? I didn't ask you that, did I?

3 A No, you asked me about --

4 Q So when Ms. Campbell said that I asked you about
5 the foreseeability of Dusty trying to stop Curtis, that was
6 never asked of you, was it?

7 A No, I'm sorry.

8 Q What I asked you was this, was it not, Ms. Coggin:
9 Never in a million years on that night while you were
10 standing out there, did you ever foresee that one friend
11 would veer off the road and run over and kill another
12 friend not knowing where he was in the road; isn't that the
13 question I asked you?

14 A Yes.

15 Q And your answer to that was no, correct?

16 A Correct.

17 Q And you still can't believe that happened, correct?

18 A Correct.

19 Q Never in a million years was that foreseeable, was
20 it?

21 A No.

22 Q One friend running over and killing another friend
23 without realizing where he was?

24 A Yeah.

25 Q Thank you for your honesty. Two other questions.

Lauren Coggin - Recross-Examination by Mr. Gasser

1 When Ms. Campbell asked you about who went off --
2 who went back to the Lindseys, Curtis Simms didn't go back,
3 did he?

4 A No.

5 Q Because he was --

6 A No.

7 Q Because now you know he spent that one night in
8 jail, correct?

9 A Yes.

10 Q And when's the last time you've seen -- physically
11 seen Curtis?

12 A I don't think I've seen him at all.

13 Q Since October 9, 2010, correct?

14 A Correct.

15 Q Twenty-eight months ago?

16 A Correct.

17 Q Since the night this happened?

18 A Correct.

19 Q Until you saw him sitting here in court today?

20 A Correct.

21 Q Thank you.

22 THE COURT: All right. Is this witness free to
23 leave.

24 MS. CAMPBELL: Yes, Your Honor.

25 THE COURT: Any objection.

Yvonne Woods - Direct Examination by Ms. McDuffy

1 **MR. GASSER:** No objection.

2 **THE COURT:** You are free to go.

3 Call your next witness.

4 **MS. MCDUFFY:** State calls Yvonne Woods.

5 **YVONNE WOODS,**

6 having been duly sworn, testified as follows:

7 **THE CLERK:** Please have a seat. State your full
8 name for the record.

9 **THE WITNESS:** Yvonne Woods.

10 **DIRECT EXAMINATION**

11 **BY MS. MCDUFFY:**

12 **Q** Investigator Woods, where are you employed?

13 **A** Richland County Sheriff's Department.

14 **Q** And how long have you been employed with the
15 sheriff's department?

16 **A** Going on nine years.

17 **Q** And is that how long you've been in law
18 enforcement?

19 **A** No, ma'am, I've been in law enforcement for
20 eighteen years.

21 **Q** Please tell the jury a little bit about your
22 educational background and training in law enforcement?

23 **A** I've been -- I got -- thank you. I've been in law
24 enforcement for eighteen years. I started in another
25 County, came to this County. I got into crime scene and

Yvonne Woods - Direct Examination by Ms. McDuffy

1 had an internal training for twenty-four months and then I
2 have other schooling. And I have been trained in blood
3 pattern analysis, trajectory analysis, major crime scenes,
4 processing crime scenes, recovering of evidence.

5 Q And in October of 2010, what were your duties with
6 the Richland County Sheriff's Department?

7 A I responded to process a crime scene.

8 Q You worked in the crime scene investigation unit?

9 A Correct.

10 Q And when you first respond to a crime scene, what
11 do you first like to do?

12 A To observe, to identify any evidence.

13 Q And what are you looking for?

14 A Any evidence that pertains to the crime scene and
15 then I photograph it.

16 Q And why do you photograph it?

17 A To put the evidence back where -- so I can look
18 back and put the evidence back at the scene.

19 Q And when you arrive on a scene, do you have a lot
20 of information, typically?

21 A Yes, ma'am.

22 Q And where do you get information from?

23 A I get it from the responding deputies that are
24 there on the scene.

25 Q And witnesses that give statements and things like

Yvonne Woods - Direct Examination by Ms. McDuffy

1 that, are you usually privy to those when you first arrive
2 on a crime scene?

3 A No, ma'am.

4 Q Are those usually gathered at that point?

5 A No, ma'am.

6 Q And in this case, on October 9, 2010, did you
7 respond to Shop Road?

8 A Yes, ma'am.

9 Q And is that in Richland County?

10 A Yes, ma'am.

11 Q And approximately what time were you called out to
12 Shop Road that evening?

13 A I received the call at 2153, which is around 10
14 o'clock.

15 Q And what time did you actually arrive at the
16 incident location?

17 A 2030.

18 Q Which would be what time?

19 A 10:30.

20 Q And when you first arrived on this scene, what did
21 you do?

22 A I spoke with the responding deputy at the scene.

23 Q And your goal in speaking with them is what?

24 A To gather information.

25 Q And so you'll no what area to process?

Yvonne Woods - Direct Examination by Ms. McDuffy

1 A To process.

2 Q And when you arrived at this scene were you alerted
3 to an area to process?

4 A Yes, I was.

5 Q Did you also look over the entire crime scene?

6 A Yes, ma'am.

7 Q And how do you know where a crime scene is.

8 A Usually I look -- in this particular case, it was
9 on the side of the road and it was a pool of, believed to
10 be blood at that time.

11 Q And do you just look at the pool of blood or do you
12 look at the surrounding area?

13 A Surrounding area that was taped off.

14 Q And is it important for you to know if -- who's
15 been in the crime scene and if things have been touched or
16 moved?

17 A Correct.

18 Q And why is that important?

19 A That lets me know whose been in it. We keep a log
20 of people that go in and out of the scene.

21 Q And that -- a scene is secured when?

22 A The first responding deputy that arrives, he
23 secures the scene.

24 Q And so prior to that, you're not aware of who was
25 in or out of the scene?

Yvonne Woods - Direct Examination by Ms. McDuffy

1 A That's correct.

2 Q And in this case, when you arrived, you said you
3 were alerted to a pool of blood on the ground?

4 A That's correct.

5 Q And what did you do after you observed that?

6 A I photographed it.

7 Q Now, I'm going to show you what's been marked as
8 State's Exhibits 3 through 14 and ask you if you recognize
9 these photographs and do they fairly and accurately depict
10 what you observed on October 9th, 2010?

11 A Yes, ma'am.

12 MS. MCDUFFY: Your Honor, at this time, we offer
13 State's 3 through 14.

14 THE COURT: Have you shown them to the defense?

15 MR. GASSER: Yes, ma'am, no objection.

16 THE COURT: Very well.

17 (WHEREUPON State's Exhibits 3 through 14 were
18 admitted into evidence.)

19 BY MS. MCDUFFY:

20 Q And State's Exhibit 3, can you please describe
21 what's depicted in that photograph for the jury?

22 A It's liquid and items where EMS worked on the
23 victim.

24 Q Surrounding the stain in the roadway?

25 A In the roadway.

Yvonne Woods - Direct Examination by Ms. McDuffy

1 Q And is that Williams Brice Stadium in the
2 background?

3 A Yes, ma'am.

4 MS. MCDUFFY: Your Honor, permission to publish to
5 the jury?

6 THE COURT: Very well. Ladies and gentlemen,
7 you're being shown a photograph. At this time, there are
8 two things I want you to know. First of all, that
9 photograph will be with you in your jury room for your
10 deliberations and the reason that I mention that, is I
11 would not want you to allow the viewing of the photograph
12 to keep you from being able to listen to the testimony.

13 All right.

14 BY MS. MCDUFFY:

15 Q And when you arrived on the scene that night, it
16 was 10:30 p.m.?

17 A Yes, ma'am.

18 Q And it was dark outside?

19 A Yes, ma'am.

20 Q And State's Exhibit's 4, 5, and 6, those show the
21 pool of blood in the roadway and the surrounding area.

22 A Yes, ma'am.

23 Q And when you got there, the body of Allen Martin
24 Gasque was not at the scene?

25 A That's correct.

Yvonne Woods - Direct Examination by Ms. McDuffy

1 Q And did you also learn that the vehicle that was
2 involved in this had been moved?

3 A That was correct. It was not in its original
4 location.

5 Q And is that significant to you?

6 A Yes, ma'am.

7 Q Why?

8 A Usually that lets me know where actually the
9 incident had took place, but the vehicle had been moved.

10 Q And did you locate the vehicle a short distance
11 away on the side of the road?

12 A Yes, ma'am.

13 Q I'm showing you what's been marked as State's 47
14 through 52. Is that what you observed on October 9th of
15 2010?

16 A Yes, ma'am.

17 MS. MCDUFFY: Your Honor, at this time, we would
18 offer State's 47 through 52.

19 THE COURT: Any objection?

20 MR. GASSER: No, ma'am.

21 THE COURT: Very well.

22 (WHEREUPON State's Exhibits 47 through 52 ere
23 entered into evidence.)

24 BY MS. MCDUFFY:

25 Q State's 48, is that the vehicle, the black truck or

Yvonne Woods - Direct Examination by Ms. McDuffy

1 the dark-colored truck parked on the side of the road?

2 A Yes, ma'am.

3 Q And is that where it was when you observed it?

4 A Yes, ma'am.

5 Q And while you were there, no one moved or tampered
6 with that vehicle in any way?

7 A No, ma'am.

8 Q And did you secure that vehicle?

9 A Yes, ma'am.

10 Q And tell the jury what you did?

11 A I got consent to search the vehicle, which gave me
12 permission to have it towed and have it processed.

13 Q And did you search this vehicle at the scene?

14 A No, ma'am.

15 Q Why not?

16 A We had -- I had it towed.

17 Q And so you had it towed to your crime lab?

18 A Correct.

19 Q And why is processing typically down in your crime
20 lab if you can.

21 A We can see. It was dark that night. We can see
22 everything as far as under the vehicle and stuff.

23 Q And so you had it towed to your lab?

24 A Yes.

25 Q And did you actually process the vehicle or did

Yvonne Woods - Direct Examination by Ms. McDuffy

1 another crime scene investigator?

2 A Another crime scene investigator did.

3 Q Investigator Bouknight?

4 A Correct.

5 Q And when you arrive on scene, do you typically try
6 and make as accurate of record of what you observed as
7 possible?

8 A Yes, ma'am.

9 Q Do you sometimes take measurements, locations,
10 things of that nature?

11 A Yes, ma'am.

12 Q Were you able to do that in this case?

13 A No, ma'am.

14 Q And why not?

15 A I had nothing to measure. All --

16 Q Tell me why. What do you mean by that?

17 A I mean things had been moved around. The witness
18 wasn't there, the victim wasn't there. No one was there --

19 Q You didn't have an a point A or a point B.

20 A No fixed points.

21 Q And because you had no points, you couldn't take
22 measurements?

23 A That's correct.

24 Q And you didn't actually talk to any witnesses in
25 this case?

Yvonne Woods - Cross-Examination by Mr. Harris

1 A No, ma'am.

2 Q And again, you arrived at 10:30 that morning, and
3 what time did you depart the scene that evening?

4 A I left at 2305, which is 11:35.

5 Q And while you were there you collected all
6 pertinent evidence that you could locate?

7 A Yes, ma'am.

8 Q And the blood on the ground, you took swabs of that
9 for DNA analysis?

10 A That's correct.

11 Q And that was forwarded on?

12 A Ma'am?

13 Q And that was forwarded onto the DNA department?

14 A DNA, correct.

15 Q And after you left the scene that night, did you
16 have any further involvement with this case?

17 A Other than printing photo's for the coroner's
18 office.

19 MS. MCDUFFY: Beg the Court's indulgence.

20 THE COURT: All right.

21 MS. MCDUFFY: No further questions of this witness.

22 THE COURT: All right. Cross-examination.

23 MR. HARRIS: Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25 BY MR. HARRIS:

Yvonne Woods - Cross-Examination by Mr. Harris

1 Q Hey, Sargent Woods, how are you?

2 A I'm good.

3 Q Greg Harris. I think that part of -- you're like
4 CSI, kind of, right.

5 A Nothing like TV, I assure you.

6 A Nothing like TV. When you process a crime scene
7 and you come on a crime scene, sometimes as late as two
8 hours after the incident, you're kind of forced to
9 assimilate a bunch of information at one time, aren't you.

10 A As long as the scene is secure.

11 Q Right. And if -- you know you get as much
12 information as you can and gather as much to know where to
13 take photos and to know --

14 A Once I respond, yes, sir.

15 Q And you did that in this case?

16 A Yes, sir.

17 Q And you -- you -- as part of the assimilation of
18 this information, gathering this information, you
19 determined from reading from your report, the driver of the
20 truck attempted to pull off the roadway and ran over the
21 victim?

22 A This is information that was given to me by the
23 responding deputy.

24 Q But, but if basically he had attempted to run off
25 the roadway and ran into the victim is something you

Yvonne Woods - Cross-Examination by Mr. Harris

1 considered in taking those photographs, correct?

2 A That's correct.

3 Q And it was something that was vital that you
4 consider in processing the scene, correct?

5 A Yes, sir.

6 Q Because again, this simulation, the gathering of
7 information that helps you do your job?

8 A That's correct.

9 Q Take the correct photographs?

10 A Yes.

11 Q Set up cones where they need to be set up, things
12 like that, correct?

13 A Yes, sir.

14 Q Now, also part of the assimilation of information,
15 gathering of information, you were -- you obtained consent
16 to search the vehicle of Mr. Paxton, correct?

17 A That is correct.

18 Q You didn't --

19 A But I didn't.

20 Q You didn't come into contact with Mr. Paxton, did
21 you?

22 A No, I didn't.

23 Q After he gave consent to search, you did take
24 part -- or did you not take part in a brief search of that
25 vehicle looking for beer cans, things like that?

Yvonne Woods - Cross-Examination by Mr. Harris

1 A No, sir.

2 Q You didn't have anything to do with that?

3 A No, sir.

4 Q That's another witness?

5 A (Witness nodded head.)

6 Q Okay. But as far as you're -- the crime scene

7 itself, you did the photographs based on the information

8 that was available?

9 A What was there.

10 Q And what was there. And that's what you brought

11 here to court today?

12 A That's correct.

13 Q Didn't meet Mr. Paxton?

14 A No, sir.

15 Q Had no contact with the victim in this case,

16 correct?

17 A That is correct.

18 Q Didn't have any contact with Mr. Simms?

19 A No, sir.

20 Q You just did your job and took your pictures,

21 correct?

22 A Yes, sir.

23 Q Thank you. Thank you so much?

24 THE COURT: Redirect?

25 MS. MCDUFFY: Not at this time, Your Honor.

Harold Bouknight - Direct Examination by Ms. McDuffy

1 THE COURT: All right. Is this witness free to
2 leave?

3 MS. MCDUFFY: Yes, ma'am.

4 THE COURT: Any objection?

5 MR. HARRIS: No, ma'am.

6 THE COURT: Very well, you're free to go.

7 Please call your next witness.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Thank you.

10 MS. MCDUFFY: If it pleases the Court, State calls
11 Investigator Harold Bouknight.

12 HAROLD BOUKNIGHT,

13 having been duly sworn, testified as follows:

14 THE CLERK: Please have a seat. State your full
15 name for the record.

16 THE WITNESS: Harold balk night.

17 THE COURT: And if you could spell your last name.

18 THE WITNESS: B-o-u-k-n-i-g-h-t.

19 THE COURT: Your witness.

20 DIRECT EXAMINATION

21 BY MS. MCDUFFY:

22 Q Investigator Bouknight, where are you currently
23 employed?

24 A With the Richland County Sheriff's Department,
25 Crime Scene Unit.

Harold Bouknight - Direct Examination by Ms. McDuffy

1 Q And please tell the jury a little bit about your
2 educational background and training in the field of crime
3 scene investigation to include fingerprint identification?

4 A I have an associate's degree in criminal justice
5 from Midlands Technical College. I've been employed as a
6 crime scene investigator since August of 2005 at which time
7 I began our special training program, which consists of
8 reading, written testing, proficiency testing in the areas
9 of footwear, tire wear, documentation and collection and
10 comparison of latent fingerprint development, comparison,
11 bloodstain patter analysis, crime scene reconstruction, and
12 general crime scene photography.

13 I've taken a forty-hour course in forensic --
14 forensic ridgeology and advanced palm print and fingerprint
15 identification and complex latent print classes. In 2008,
16 I was certified by the International Association for
17 Identification as a crime scene investigator; and in 2011 I
18 was certified as a bloodstain pattern examiner.

19 MS. MCDUFFY: Your Honor, at this time, we'd offer
20 Investigator Bouknight as an expert in criminal crime scene
21 investigation to include fingerprint identification.

22 THE COURT: Is there any voir dire?

23 MR. GASSER: No, ma'am.

24 THE COURT: Any objection?

25 MR. GASSER: None.

Harold Bouknight - Direct Examination by Ms. McDuffy

1 THE COURT: Very well. Let me state to the jury
2 what has occurred.

3 Ladies and gentlemen, normally under our rules of
4 evidence, witnesses are not allowed to testify regarding
5 their opinions or the reasons for those opinions. However,
6 there is an exception and that is when by virtue of
7 someone's knowledge, training, education, experience, those
8 individuals have become an expert in the field of that art
9 or science and the like. And those individuals, those
10 folks are allowed to testify regarding their opinions and
11 the reasons for their opinions within their expertise.

12 Now, ladies and gentlemen, I will give you more
13 instruction when I give you concluding instructions about
14 expert testimony. I would in short though, tell you that
15 expert testimony is given for the purpose of helping you
16 understand the evidence and not for the purpose of
17 controlling your judgment.

18 Thank you very much.

19 You may proceed.

20 MS. MCDUFFY: Thank you, Your Honor.

21 THE COURT: Yes.

22 BY MS. MCDUFFY:

23 Q Investigator Bouknight, October the 10th of 2010,
24 were you asked to process a vehicle at the Richland County
25 Sheriff's Department Crime Scene Unit?

Harold Bouknight - Direct Examination by Ms. McDuffy

1 A Yes, ma'am.

2 Q And where was the vehicle located?

3 A It was secure in our forensic garage, which is an
4 area that's a separate garage from the sheriff's department
5 where the only people who have access are people in the
6 crime scene unit or the forensic science unit.

7 Q And that vehicle was secure from the time it was
8 towed to your compound until you processed it?

9 A Yes, ma'am. From the time it was towed into the
10 forensic garage until I processed it and released it.

11 Q And no one had the ability to tamper with it or to
12 do anything to it prior to your processing?

13 A Correct.

14 Q And please tell the jury what vehicle you processed
15 at your compound?

16 A It was a 2007 GMC Sierra, black in color with South
17 Carolina Ducks Unlimited tag, DU2340.

18 Q I'm going to show you what's been marked as State's
19 Exhibit 17 through 46 and ask if you recognize these photos
20 and do they fairly and accurately depict the vehicle in
21 evidence?

22 A (Looking at the evidence.) Yes, ma'am.

23 MS. WALKER: Your Honor, at this time we would
24 offer State's 17 through 46 into evidence.

25 MR. GASSER: No objection.

Harold Bouknight - Direct Examination by Ms. McDuffy

1 THE COURT: Very well.

2 (WHEREUPON State's Exhibits 17 through 46 were
3 entered into evidence.)

4 BY MS. MCDUFFY:

5 Q Investigator Bouknight, you said that the car was
6 secured in your compound?

7 A In our garage.

8 Q Your garage. I'm sorry. And what is the first
9 thing you did when you encountered this vehicle?

10 A The first thing that I do whenever I process any
11 vehicle in our garage is to take photographs of it and just
12 observe the general condition of it, anything that may be
13 visible from the outside. With pick-up trucks anything
14 that may be in the bed of the vehicle and then after I
15 photographed everything in place as it is, I will process
16 the vehicle depending on conversations with the
17 investigator as to what needs to be processed.

18 Sometimes, it may just be the interior of the
19 vehicle. Sometimes it's the whole exterior, sometimes it's
20 only the driver's side. And with this particular vehicle,
21 I was focussing on processing the exterior of the passenger
22 side of the vehicle and then the entire interior.

23 Q And when you started processing the vehicle, do you
24 start from the inside, outside, how do you do it?

25 A I began from the outside and worked my way into the

Harold Bouknight - Direct Examination by Ms. McDuffy

1 vehicle because if there's any evidence on the side and I
2 start going in, then there's a chance it could be
3 destroyed.

4 Q And prior to you doing any examination, you
5 photograph the exterior of the vehicle?

6 A Yes, ma'am.

7 Q State's Exhibits 40 and 41, are these photographs
8 of the exterior of the vehicle that you processed?

9 A Yes, ma'am, they are.

10 Q And when you -- when we say process a vehicle,
11 please tell the jury what exactly you're looking for?

12 A The methods that we use for processing are fairly
13 simple. First of all, we use our eyes and our flashlights
14 with oblique lighting to see if we see anything visible
15 before we start using powders. And the powders are just --
16 it's a black powder that we purchase and it adheres to the
17 moisture and the fingerprint that may be left on the
18 surface. And once we get a fingerprint developed, we look
19 at it and we can determine if it's of value or if it may be
20 a smudge or just something that's not enough for us to lift
21 and then we can either lift it and put it onto a latent
22 print card or try to swab it for DNA.

23 Q And in this case, you looked at the exterior of the
24 vehicle, first?

25 A Yes, ma'am.

Harold Bouknight - Direct Examination by Ms. McDuffy

1 Q And did you note any items on the exterior of the
2 truck in your report?

3 A One thing I noticed -- I processed for latent
4 prints and I developed seven areas of smudges and then one
5 area that had some ridge detail to it. That one area I
6 lifted, the prints that were on there and placed them on a
7 latent print card and the other areas that were just
8 smudges, I swabbed all of those for DNA. Those were all on
9 the passenger side of the vehicle and then under the under
10 carriage of the passenger side to the vehicle, there was a
11 red stain that I marked and photographed and then collected
12 a swab from that also?

13 Q Let me back up a little bit. When you're
14 processing for fingerprints, you said you put black powder
15 on the exterior of the vehicle?

16 A Yes, ma'am.

17 Q And what exactly are you looking for when you do
18 that?

19 A Fingerprints.

20 Q And how do you see if a fingerprint is there or
21 not?

22 A We look and you'll see it. If there's a
23 fingerprint there, the black powder will show up. Even on
24 a dark in color vehicle with oblique lighting with a
25 flashlight, when you hold it at a low angle, you'll be able

Harold Bouknight - Direct Examination by Ms. McDuffy

1 to see the fingerprint still.

2 Q And in this case, you said you were able to locate
3 how many potential fingerprints on this vehicle?

4 A There was one lift that had several fingerprints on
5 it.

6 Q And I'm going to show you what's been marked as
7 State's Exhibit 24. Can you please tell the jury what's
8 depicted in this photograph?

9 A These are all areas that were smudges that I
10 developed with latent print powder and then subsequently
11 swabbed them whenever I saw they were all smudges.

12 Q And tell the jury what a smudge is.

13 A Whenever you lay down a fingerprint, if you look at
14 the palm of your hand and your fingers, you see the lines
15 on there. Those are what makes the fingerprint. Think of
16 it as a rubber stamp. Whenever you have ink on a rubber
17 stamp, you stamp it and stamp it and it's going to make
18 that same impression over and over. Same thing with your
19 fingerprint or your palm print. The ink in this case is
20 your sweat or the oils that you have on your hand and you
21 lay down those -- and it just keeps laying down the exact
22 same thing. If you lay down a rubber stamp and you move
23 it, it's going to smear. That's what a smudge is, it's
24 basically a smeared fingerprint that has no detail that we
25 can tell anything from.

Harold Bouknight - Direct Examination by Ms. McDuffy

1 Q And when you say detail, what are you looking for
2 in a fingerprint?

3 A Those ridges that are on your hands, those are what
4 we look at. The first thing we look for is the general
5 pattern. Whenever we're doing a comparison especially, we
6 look for a general pattern; is that the same. Then we look
7 at the comparing the ridges and sequence. We look for any
8 minutia, which are changes in the ridge flow, which it may
9 be a ridge ending or a bifurcation where a ridge splits or
10 it's just a dot and there's other things, but they're all
11 combinations of those three details. And any of those
12 three details in those ridges and sequence we look at and
13 then we compare it to the known print and if they all match
14 up and there's no area of discrepancy, they can't be
15 explained due to distortion, depression pressure,
16 sub-straight matrix, anything like that, then we can
17 thereby call it a match.

18 Q So just because you lift a latent print doesn't
19 mean you're able to match that to someone, correct?

20 A Correct. It depends on what area of the hand it
21 comes from and we don't always have complete known prints
22 for a certain known person.

23 Q And what you marked as number two on the passenger
24 side of the vehicle, can you please tell the jury what that
25 is depicted in State's 25?

Harold Bouknight - Direct Examination by Ms. McDuffy

1 A It's a smudge.

2 Q So -- and you were not able to match those to
3 anything?

4 A A smudge, no, ma'am.

5 Q State's Exhibit 26, which you marked as item 3,
6 could you please tell the jury what's in that photograph?

7 A It's also a smudge.

8 Q And this is on the passenger side of the black
9 truck?

10 A Yes, ma'am. State's 27, which you marked as number
11 four.

12 A It's also a smudge.

13 Q It was not able to be matched to anything?

14 A Correct.

15 Q State's 28, which you marked number 5?

16 A It's also a smudge with no detail.

17 Q State's 30, which you marked number 6, could you
18 please tell the jury what that is.

19 A A smudge with no detail.

20 Q State's 32, marker number 7?

21 A That's a smudge with no detail.

22 Q And State's 34, marker number 8?

23 A A smudge, but no detail.

24 Q And so all of these potential prints you lifted
25 were not able to be matched to anything?

Harold Bouknight - Direct Examination by Ms. McDuffy

1 A I didn't lift the smudges. I collected swabs from
2 the smudges. The prints that I lifted were of value. They
3 had detail where you could see it on the card and that's
4 what I lifted.

5 Q Now, I'm showing you State's 56, do you recognize
6 that?

7 A Yes, ma'am.

8 Q Is that an item of evidence you collected?

9 A Yes, ma'am.

10 MS. MCDUFFY: Your Honor, at this time, we'd offer
11 State's 56.

12 MR. GASSER: No objection.

13 THE COURT: Very well.

14 (WHEREUPON State's Exhibit No. 56 was entered into
15 evidence.)

16 BY MS. MCDUFFY:

17 Q Could you please tell the jury what's contained in
18 State's 56?

19 A This is a palm print card, a palm print size latent
20 backing card that has the prints, the palm prints that I
21 lifted from that passenger side of the vehicle.

22 Q So you were able to lift palm prints from the
23 passenger side of the vehicle?

24 A Yes, ma'am.

25 Q Did you also attend the autopsy of Allen Martin

Harold Bouknight - Direct Examination by Ms. McDuffy

1 Gasque in this case?

2 A Yes, ma'am, on the 11th.

3 Q And did you take prints from him at that time?

4 A Yes, ma'am, I did.

5 Q I'm going to show you what's been marked as State's
6 57. Do you recognize that?

7 A Yes, ma'am, that's the postmortem prints from
8 Martin Gasque.

9 MS. MCDUFFY: Your Honor, at this time, we'd offer
10 State's 57.

11 MR. GASSER: No objection.

12 THE COURT: Very well. State's 57 is in without
13 objection.

14 (WHEREUPON State's Exhibit 57 was entered into
15 evidence.)

16 BY MS. MCDUFFY:

17 Q So you were able to lift identifiable prints from
18 the side of the truck?

19 A Yes, ma'am. The prints that I lifted on the side
20 of the truck -- the ones that we were able to identify were
21 to Martin Gasque, the victim.

22 Q And when you say you were able to identify them to
23 the victim, Martin Gasque, how do you do that?

24 A Like I was saying earlier, whenever we have -- the
25 first thing we do is we have a pattern and there's three

Harold Bouknight - Direct Examination by Ms. McDuffy

1 different patterns, main pattern groups. There's loops,
2 arches, and whirls, and if it's not the same pattern type,
3 then we quit looking. If it's the same pattern, then we go
4 into a second level of detail which is the minutia points
5 or the details I was talking about earlier, the dots,
6 bifurcations and any ridges. And if that matches and
7 depending on the clarity of the print, there's a third
8 level that we can go to where we actually look at the pores
9 that are in the fingerprints in the ridges and the edges of
10 the ridges to see if those also match.

11 The quality on these were not good enough for a
12 third level comparison, but level two details, we were able
13 to match them up.

14 Q And does every person in the world have a unique
15 fingerprint?

16 A Yes, ma'am.

17 Q And is that true for say DNA?

18 A No, ma'am. Identical twins will have the same DNA,
19 but still different fingerprints.

20 Q And in this case, the only identifiable prints on
21 the passenger side of the vehicle the victim was riding in
22 were those of the victim, Allen Martin Gasque?

23 A Yes, ma'am. There were palm prints that we weren't
24 able to identify to the victim because we didn't have palm
25 prints for the victim, so it was inconclusive to him.

Harold Bouknight - Direct Examination by Ms. McDuffy

1 Q And you also said that you swabbed the smudges for
2 DNA?

3 A Yes, ma'am.

4 Q And you don't have to test DNA yourself, do you?

5 A No, ma'am.

6 Q And you also photographed the contents of the
7 interior and the trunk of the vehicle?

8 A Yes, the interior and the bed of the vehicle, yes,
9 ma'am.

10 Q And did you find any items of evidentiary value in
11 the interior or in the bed of the vehicle?

12 A No, ma'am. State's 36 and 37, is that the interior
13 passenger side of the vehicle.

14 A Yes, ma'am.

15 Q And please tell the jury what items of evidentiary
16 value you found inside the vehicle?

17 A I collected some swabs from the interior door
18 handles and the steering wheel and gear shift in case there
19 was any question about who was sitting where.

20 Q And you also photographed items in the bed of the
21 truck?

22 A Yes, ma'am.

23 Q Were there any items of evidentiary value in the
24 bed of the truck?

25 A There was none that I collected, no, ma'am.

Harold Bouknight - Direct Examination by Ms. McDuffy

1 Q And what was in the bed of the truck?

2 A If I remember correctly, there were -- if I may
3 look at my notes?

4 A Please.

5 (WHEREUPON there was a pause in the proceedings.)

6 Q And depicted in State's 43?

7 A Dog kennel, empty cooler and an open case of
8 Budlight and open case of Busch Light.

9 Q And that was in the interior of the bed of the
10 truck?

11 A Yes, ma'am.

12 Q And you also mentioned earlier that you processed
13 underneath the vehicle?

14 A Yes, ma'am. I searched underneath the vehicle to
15 see if there was any transfers or stains or anything like
16 that. And there was one area that I located that was a
17 reddish, brown stain and I photographed it with and without
18 a scaled marker and then collected a swab of it.

19 Q State's 18, is that the under carriage of the
20 truck?

21 A Yes, ma'am.

22 Q And I'm sorry, please tell the jury again what you
23 were specifically looking for?

24 A Any kind of transfer stains or any type of what may
25 be bloodstains.

Harold Bouknight - Direct Examination by Ms. McDuffy

1 Q State's 20 and 21, would you please describe for
2 the jury what's depicted in those photographs.

3 A Yes, ma'am. There is some reddish transfer over on
4 the side of this.

5 Q And is this where you're referring to?

6 A In this area here. Right there. (Indicating.).

7 Q And that's on the under carriage of the vehicle?

8 A Yes, ma'am.

9 Q And you processed that?

10 A I took a swab from it, yes, ma'am.

11 Q And after you collected the fingerprints and the
12 swabs from the vehicle, were you able to further process
13 the vehicle or was there anything to do to further process
14 the vehicle?

15 A After I had finished the process and collecting the
16 swabs and the latent print card and photographing
17 everything and swabs from the interior, there was no other
18 processing that was requested.

19 Q And the vehicle was returned to the owner?

20 A There was -- the keys were turned over to -- I
21 believe Sargent Robinson. Yeah, Sargent Robinson, so he
22 could return the vehicle to the owner.

23 Q And you stated a few minutes ago that on October
24 the 11th of 2010, you attended an autopsy of Allen Martin
25 Gasque?

Harold Bouknight - Direct Examination by Ms. McDuffy

1 A Yes, ma'am.

2 (WHEREUPON there was a pause in the proceedings.)

3 MS. MCDUFFY: Your Honor, there's a matter of law
4 we need to take up. I think there's a matter of law we
5 need to take up.

6 THE COURT: Okay. All right.

7 Ladies and gentlemen, I'm noticing that there is a
8 matter we must take up outside of your presence and it's
9 five o'clock or four minutes until five.

10 Ladies and gentlemen if we change our schedule a
11 little bit in the morning and start at nine would anybody
12 just -- would that just be horrible for anybody? If so,
13 don't be shy.

14 (WHEREUPON a juror raised a hand.)

15 THE COURT: It would be horrible, 9:30 is much
16 better? That's okay. You're so wonderful for letting me
17 know. Thank you so much. We'll do 9:30. Wonderful.

18 Ladies and gentlemen, we're going to begin in the
19 morning at 9:30. And you have -- does anybody remember
20 that show Ally McBeal. Do not discuss this matter or allow
21 anyone to discuss it with you, but there's a phenomenon
22 that I have to tell you about -- tonight when you get home,
23 the person that was mildly curious about what you had been
24 up to yesterday is going to get heightened today. So
25 you've got to remember that you cannot discuss this matter

Harold Bouknight - Direct Examination by Ms. McDuffy

1 or allow them to discuss it with you. But you've got to
2 remember to put it on the judge so they don't get upset
3 with you. And I expect you to do that. It's okay. It's
4 fine. Tell them the judge has told you, you must not
5 discuss this matter or allow anyone to discuss it with you.

6 Now your employer, right.

7 **THE JUROR:** Everything's fine.

8 **THE COURT:** All right. Remember, blame it on the
9 judge, right? Right. Very well.

10 Now, ladies and gentlemen, do not do any
11 investigation. Do not do any investigation at all. Don't
12 go to the internet, don't do any special networking, no
13 blob, don't tweet, don't link in, don't FaceBook. There's
14 some other ones, I don't know. Any way let me be general.
15 No social networking. Do not do any investigations, do not
16 speak with anyone or allow anyone to speak with you about
17 this matter. It is absolutely critical that you receive
18 all of the information from which you will make up your
19 minds here in court while the court is in session.

20 Now, remember leave your cell phone and other
21 communication devices away from the courthouse. If you
22 forget, let us know and allow us to please take care of it
23 until our morning break or lunch and you can return it to
24 your car, or wherever, for safekeeping.

25 Ladies and gentlemen have a very pleasant evening

1 and I look so forward to seeing you in this morning at
2 9:30. Thank you.

3 (WHEREUPON the jury left the courtroom at 4:58,
4 p.m.)

5 THE COURT: Thank you so much. You know you're on
6 the stand, so you cannot talk about your testimony with
7 anyone, doesn't mean you can't talk about anything
8 whatever, you cannot speak about your testimony. Okay.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: We will see you in the morning.

11 THE WITNESS: Thank you, ma'am.

12 THE COURT: Very well, what is the matter that we
13 need to take up.

14 MR. HARRIS: Your Honor, I believe that the element
15 that the State now intended to offer in the case -- they
16 are wanting to enter a necklace that was obtained as a
17 result of the autopsy, a pair of shoes, a pair of
18 underwear, pair of shorts, a brown belt, a t-shirt, a Polo
19 shirt of the deceased. My guess is that they are not
20 intact. I don't know if they still are. I just don't
21 understand the probative value that those items have at
22 this point in this trial in introducing them in the form
23 and fashion for which the State intends to present them at
24 this time.

25 THE COURT: All right.

1 **MS. MCDUFFY:** Your Honor, we intend to introduce
2 this -- these are the items collected from the victim at
3 the autopsy. These are the sole contents of his positions
4 when the incident occurred. They are, I believe, alleging
5 some definite defense and it shows there was no deadly
6 weapon, there was nothing that would be inferred as a
7 weapon. There was nothing, you know, things of those
8 nature. Also, we don't have photographs of this evidence
9 and so we're not able to get this in other forms. We've --
10 at this point, we have not sought to introduce photographs
11 of the body and autopsy and things of that nature and
12 there's no other formal method for us to put this in
13 without -- unless they want to agree to photographs with
14 the body with these objects.

15 **THE COURT:** As I understand it, relevancy, if you
16 will, would be to establish that as part of the proof to
17 establish that the victim, the decedent was not in
18 possession of weapons.

19 **MS. MCDUFFY:** Your Honor --

20 **MR. GASSER:** That --

21 **MS. MCDUFFY:** If I may, as well. As to argument.
22 There's also been description of clothes that the subject,
23 that it was the person that through the punches was wearing
24 things of that nature. We also intend to introduce this so
25 that there's no confusion about this -- what this victim

1 was wearing at the time. So they were not scarred to the
2 victim, things of that nature.

3 MR. GASSER: I've not heard that. I guess to
4 answer the question before that.

5 THE COURT: Thank you. I don't know why this
6 witness can't say I inventoried the following items and
7 that's all that I have. I think that would serve their
8 same purpose. And their intent to serve here. You know
9 certainly the manual says what this Court must do is weigh
10 it's probative value and it's prejudicial effect. Putting
11 a bunch of plain clothes to show that he didn't have a
12 weapon, that's -- that's --

13 MR. HARRIS: Judge, when the witness is there, he
14 is an expert witness. He has been clothed with this charge
15 that you have given. I didn't object. I found a belt and
16 I found some under we're, I found some shorts, I found a
17 necklace. I've got the complete inventory of everything
18 and this is all there was. I think that's sufficient, Your
19 Honor.

20 MS. MCDUFFY: Your Honor, they've also called into
21 question the manner in which the officers who investigated
22 this case that they didn't do certain things or they lacked
23 certain things, Your Honor. That they continued to
24 question the integrity of the investigation, that we should
25 be able to show that the officers did do what they were

1 supposed to do and did do a thorough job in investigating
2 this matter.

3 THE COURT: Okay. Here, I think will be the order
4 of the Court. We will mark these exhibits for
5 identification purposes at this point. The -- certainly
6 testimony can be given that these were the items that the
7 victim wore. I am -- at this point would not allow the
8 State to introduce these items into evidence on the basis
9 that the probative value does not overcome the prejudicial
10 effect. However -- however, I don't know about if that's
11 self-defense at this point. You would have an opportunity
12 for rebuttal reply.

13 It seems to me that the Court at this juncture
14 would be put in a position if you will of making the
15 determination in a vacuum, which I'm not going to do. So
16 at this point, it's very difficult for me to make the
17 determination based on the stuff they received from the
18 defense. So at this point, we will mark them and it will
19 be testimony. But hear me, in reply rebuttal, if it
20 becomes relevant after the defense on the basis of
21 self-defense, and at that point we would be much more
22 educated.

23 MS. MCDUFFY: Thank you, Your Honor. It's marked
24 as 58.

25 (WHEREUPON State's Exhibit No. 58 was marked for

1 identification.)

2 THE COURT: All right. Now, we will continue to do
3 9:30, but here is what you all need to know. 9 o'clock as
4 I told you all Monday, I anticipate having an hour-long
5 hearing on Friday morning. That has resolved into a
6 consent. Therefore, we can start -- if we can't start at
7 nine it would be 9:30, so we do not have my other matter
8 that I was concerned with on Friday morning. That has gone
9 away by consent. So just for your planning purposes.

10 All right. Now, I'm not going to hold you to it,
11 but I am curious if you can give me an idea of how many
12 additional witnesses the State would have. Please
13 understand I'm not going to hold you to it, but I'm just --

14 MS. MCDUFFY: Three to five.

15 THE COURT: Three to five, to -- okay. I think
16 it's closer to three to five from my personal basis.

17 MS. MCDUFFY: I hope it's closer to three than
18 five.

19 THE COURT: Okay. Very well. So you all should be
20 ready to rock and roll -- you'll be ready sometime
21 tomorrow, yes?

22 MR. GASSER: I think, yes. Early as mid-morning.

23 MS. MCDUFFY: I believe we've got to just call
24 Investigator Holdorf, I can't imagine it not being lunch
25 with those witnesses.

1 **THE COURT:** Just because of the fact you're
2 cross-examining people and things like that.

3 **MR. GASSER:** Yeah, we'll be ready.

4 **MS. MCDUFFY:** Your Honor, if Mr. Gasser and
5 Mr. Harris could provide us with dates of birth on their
6 witnesses so we can run rap sheets on them prior to their
7 testimony?

8 **MR. GASSER:** They have Dustin Lindsey, Jordan
9 Lindsey, Mike Davis, Allen James, and I believe statements
10 from all of those individuals. That's -- and Marquis Hall.
11 Those five, I think they have that personal information.
12 The other would be if they don't call Investigator Don
13 Robinson, I intend to impeach him.

14 **MS. CAMPBELL:** Sorry, that does not make sense.

15 **MR. GASSER:** Well, I don't have --

16 **THE COURT:** Do what now?

17 **MR. GASSER:** I don't have the --

18 **MS. CAMPBELL:** I take that back I have an affidavit
19 of service on -- the statements.

20 **MR. GASSER:** Yeah. I'll get whatever they need
21 with these witnesses, Your Honor. I've got to call them
22 tonight anyway.

23 **THE COURT:** Okay. So, do they have -- do they have
24 a list -- you have a list of the one that is you all do not
25 have?

1 MS. CAMPBELL: We'll consult with them now and tell
2 them what they don't have.

3 THE COURT: That will be wonderful. Thank you so
4 much. I'll see you all in the morning.

5 (WHEREUPON the trial was adjourned until the next
6 morning, Thursday, February 1, 2013.)

7 -----End of Volume I of Partial Transcript-----
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1 State of South Carolina) In the Court
2 County of Richland) Of General Sessions

3 Indictment No.: 2011-GS-40-829, 831
4

5
6 State of South Carolina,)
7 Plaintiff.)

8 vs.)

Partial
Transcript of Record
Volume II

9
10 Curtis Simms,)
Defendant.)

11
12 January 30-February 5, 2013
13 Columbia, South Carolina
14

15 B E F O R E:

16 The Honorable Diane S. Goodstein, Judge and a jury.

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25	7	Juror Note

Harold Bouknight - Direct Examination by Ms. McDuffy

THURSDAY, FEBRUARY 1, 2013

THE COURT: Anything from the State before we bring the jury out?

MS. MCDUFFY: Not at this time, Your Honor.

THE COURT: Anything to --

MS. MCDUFFY: No, ma'am.

THE COURT: Thank you. From the defense?

MR. GASSER: No, ma'am.

THE COURT: Let's bring the jury in.

(WHEREUPON the jury entered the courtroom at 9:53 a.m.)

THE BAILIFF: All the jurors are seated, Your Honor.

THE COURT: Thank you so much.

Good morning, ladies and gentlemen. At this time, we will continue with the State's case in the direct examination and thank you, Ms. McDuffy.

DIRECT EXAMINATION

BY MS. MCDUFFY:

Q Investigator Bouknight, you attended the autopsy of Allen Martin Gasque on October 11th of 2010?

A Yes, ma'am.

Q And what does -- what are your duties when you attend an autopsy?

A We go there to collect any physical evidence that

Harold Bouknight - Direct Examination by Ms. McDuffy

1 may be on the body, get a cause of death from the
2 pathologist for our report, photograph any injuries and
3 things like that. Depending on the case, we may take nail
4 scrapings, fingerprints, a DNA swab as an elimination
5 standard; any projectiles or anything that may be in the
6 victim. We'll collect those and put them in our evidence.

7 Q And you have had the opportunity to look at State's
8 Exhibit 58, marked for identification purposes?

9 A Yes.

10 Q Investigator Bouknight, could you please tell the
11 jury what items you collected from the body of Allen Martin
12 Gasque at the autopsy on October 11, 2010?

13 A I got fingerprints and a buccal swab, which is just
14 a swab from the mouth as an elimination DNA standard. And
15 then there were some brown shoes, shorts, underwear, a
16 t-shirt, a rope necklace, Polo shirt and a brown belt.

17 Q And you also documented the autopsy through
18 photographs?

19 A Yes, ma'am.

20 Q And after you attended the autopsy, did you have
21 any further involvement in this case?

22 A No, ma'am -- I did later on on the 10th of May,
23 2012. I did a verification of a latent print, a comparison
24 that was done from the latent prints that I lifted off of
25 the vehicle that was in the garage.

Harold Bouknight - Cross-Examination by Mr. Harris

1 Q And those were -- all the identifiable print; you
2 were able to match, were matched to the victim, Martin
3 Gasque?

4 A Yes, ma'am.

5 THE COURT: Cross-examination?

6 MR. HARRIS: Thank you, Judge.

7 THE COURT: Thank you.

8 CROSS-EXAMINATION

9 BY MR. HARRIS:

10 Q Good morning.

11 A Morning.

12 Q How are you?

13 A Wonderful.

14 Q So you're Senior Investigator Bouknight, correct?

15 A Yes.

16 Q Been there how long?

17 A Sheriff's department --

18 Q Yes.

19 A -- almost eleven years and in crime scene, going on
20 eight.

21 Q And, my understanding is that -- based on your
22 testimony yesterday, general knowledge, that you were not
23 at the scene; is that correct?

24 A Correct.

25 Q Okay. And you were called upon to examine evidence

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1 that was presented to you that had evidentiary value,
2 correct? You were presented with evidence after the
3 incident.

4 A The vehicle.

5 Q Is that --

6 A You mean the vehicle?

7 Q Yes, sir.

8 A Yes, sir.

9 Q And as part of your investigation and your
10 expertise that you were qualified to, you were called upon
11 to take fingerprints?

12 A Yes, sir.

13 Q And do an analysis of those fingerprints?

14 A Yes, sir.

15 Q Okay. If you would just remain -- let's talk about
16 two things, ridge's and smudges.

17 A Okay.

18 Q Explain to me ridge detail on this hand as I hold
19 it up right here?

20 A Okay. You look at it.

21 Q Yes.

22 A On the palm and on the fingers --

23 Q Uh-huh.

24 A -- and it's also on the soles of your feet, there
25 are lines and those lines are the ridges. They have pores

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1 in them where sweat comes out and those ridges are what
2 make a fingerprint. If you remember yesterday, we talked
3 about a rubber stamp and how you put it down and it's going
4 to keep stamping the same thing as long as you have ink on
5 it. That's what ridges are. And smudges are --

6 Q Let's talk about ridges a little bit before you
7 move onto that.

8 A Okay.

9 Q Basically, when I touch -- if my hands have any oil
10 on them, which they do almost all the time, correct?

11 A It have have ink.

12 Q Uh-huh.

13 A Yes, and it could have too much ink sometimes where
14 the ridges can be obscure.

15 Q So I put my hand here. You're going to walk over
16 and take a pretty fingerprint, correct?

17 A It's possible. It's not always. We don't always
18 find fingerprints but depending on the sub-straight, the
19 matrix and the environmental conditions.

20 Q Because fingerprints can deteriorate for a number
21 of reasons, I guess that's kind of what you're talking
22 about now?

23 A Yes, sir.

24 Q Environmental conditions?

25 A They're 99 percent water.

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1 Q Okay. Time can cause them to deteriorate?

2 A Yes.

3 Q Weather?

4 A Yes, sir.

5 Q Wear?

6 A Yes, sir.

7 Q There are a number of factors why someone -- an
8 expert wouldn't find fingerprints, correct?

9 A Yes, sir.

10 Q Kind of like we just said, it might be there, but
11 there's a chance it might not be there, correct?

12 A Correct.

13 Q Let's move on to this point to smudges. Tell me
14 about smudges. Kind of describe for me how a smudge occurs
15 and exactly what a smudge is, please?

16 Q As I said yesterday, it's a smear. Usually there's
17 movement involved where something is placed down and moved
18 across something and obliterates the ridges. Is it always
19 from fingers? No. But something -- I mean it could be
20 somebody's head smudging against like a window inside or
21 something. You know, if you walk out after a convenience
22 store and you push the door open, your hand can smudge
23 across it or even your elbow. That's what a smudge is. We
24 can't tell what caused it, just that it is there.

25 Q And there's another description that I was going to

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1 demonstrate right here. You just don't know who left it
2 sometimes, correct?

3 A Correct.

4 Q And you can't not only identify whose oil that is
5 or whose water that is, but you can identify the ridges on
6 it, can't you?

7 A Correct. On a smudge, there are no ridges.

8 Q It can be this smudge -- it can be this; it could
9 be my head; it could be anything?

10 A Yes.

11 Q And in this -- now, as to this particular case, you
12 were presented with, I believe, palm and fingerprints that
13 had been provided by Curtis Simms, correct?

14 A Yes, sir.

15 Q He provided those and you also had been presented
16 with, I think you just testified, Mr. Gasque's palm --
17 postmortem palm and fingerprints, correct?

18 A Just his fingerprints.

19 Q Just his fingerprints. And that's the analysis
20 that I think was placed in evidence that you testified to
21 yesterday, correct?

22 A Yes, sir.

23 Q And you looked another number -- there's some
24 photographs, but you looked at a number of things on the
25 car and determined that you just couldn't match anything up