

VOLUME TWO 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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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JANUARY 29, 2013.....	1
PRETRIAL MOTIONS.....	13
STATE CALLS THE CASE.....	26
VOIR DIRE	27
JURY SELECTION	91
JURY SWORN.....	112
PRELIMINARY REMARKS BY THE JUDGE TO THE JURY.....	112
OPENING STATEMENT BY MS. WALKER	120
OPENING STATEMENT BY MR. GASSER.....	126
TESTIMONY	
STEVEN L. TAYLOR	
Direct Examination by Ms. Walker.....	142
Cross Examination by Mr. Harris	145
CASSIE RADFORD	
Direct Examination by Ms. McDuffie	161
Proffer Examination by Ms. McDuffie	173
Direct Examination continued by Ms. McDuffie	183
Cross Examination by Mr. Gasser.....	184
Redirect Examination by Ms. McDuffie.....	189
JAMES HEYWARD	
Direct Examination by Ms. McDuffie	191
Cross Examination by Mr. Gasser.....	194
JAMES MARTIN	
Direct Examination by Ms. Campbell.....	199
Cross Examination by Mr. Harris	219

Redirect Examination by Ms.Campbell	243
TRIAL TRANSCRIPT DATED JANUARY 30- FEBRUARY 5, 2013	260
TESTIMONY	
GUY ECHENROTH	
Direct Examination by Ms. Campbell.....	268
Cross- Examination by Mr. Gasser	287
Redirect Examination by Ms. Campbell	304
JAMES ADAMS	
Direct Examination by Ms. Walker.....	305
Cross- Examination by Mr. Gasser	314
Redirect Examination by Ms. Walker	333
RHONDA ECHENROTH	
Direct Examination by Ms. McDuffie	341
Cross-Examination by Mr. Gasser	349
Redirect Examination by Ms. McDuffie.....	369
TRAVIS BROWN	
Direct Examination by Ms. Walker.....	371
Cross- Examination by Mr. Harris	376
BRIAN KERN	
Direct Examination by Ms. McDuffie	384
Cross- Examination by Mr. Harris	388
LAUREN COGGIN	
Direct Examination by Ms. Campbell.....	393
Cross-Examination by Mr. Gasser	414
Redirect Examination by Ms. Campbell	440
Recross Examination by Mr. Gasser	447
YVONNE WOODS	
Direct Examination by Ms. McDuffie	450
Cross Examination by Mr. Harris	459
HAROLD BOUKNIGHT	
Direct Examination by Ms. McDuffie	463
Direct Examination continued by Ms. McDuffie	494
Cross Examination by Mr. Harris	496
ADAM PAXTON	
Direct Examination by Ms. Campbell.....	507
Cross Examination by Mr. Gasser.....	521

Cross Examination continued by Mr. Gasser.....	542
Redirect Examination by Ms. Campbell	569
CLAY NICHOLS	
Direct Examination by Ms. McDuffie	575
Cross Examination by Mr. Gasser.....	583
DON ROBINSON	
Direct Examination by Ms. Campbell.....	586
Direct Examination- In Camera by Ms. Campbell	602
Cross Examination- In Camera by Mr. Gasser	606
Redirect Examination- In Camera by Ms. Campbell.....	609
Recross Examination- In Camera by Mr. Gasser.....	610
Direct Examination continued by Ms. Campbell.....	623
Cross Examination by Mr. Gasser.....	625
TRAVIS HOLDORF	
Direct Examination by Ms. Campbell.....	638
Cross Examination by Mr. Gasser.....	679
Redirect Examination by Ms. Campbell	712
Recross Examination by Mr. Gasser	717
STAN SMITH	
Direct Examination by Ms. Campbell.....	741
MOTION FOR DIRECTED VERDICT.....	757
COLLOQUY WITH DEFENDANT ON THIS RIGHT TO TESTIFY	762
STATE'S MOTION TO EXCLUDE TESTIMONY BY ALLEN JAMES	766
TESTIMONY	
ALLEN JAMES-IN CAMERA	
Direct Examination by Mr. Gasser.....	781
RULING BY THE COURT	791
STANFORD DRETEL- IN CAMERA	
Examination by the Court.....	796
DUSTIN LINDSEY	
Direct Examination by Mr. Gasser	799
Cross Examination by Ms. Campbell	841
Cross Examination- In Camera by Ms. Campbell	845
Cross Examination continued by Ms. Campbell	859
Redirect Examination by Ms. Gasser.....	893

MIKE DAVIS	
Direct Examination by Mr. Harris.....	895
Cross Examination by Ms. McDuffie.....	919
Redirect Examination by Mr. Harris.....	923
Recross Examination by Ms. McDuffie.....	924
JORDAN LINDSEY	
Direct Examination by Mr. Harris.....	926
Cross Examination by Ms. Walker	960
Redirect Examination by Mr. Harris	972
MARQUE HALL	
Direct Examination by Mr. Gasser.....	985
Cross Examination by Ms. Walker	998
DAVID BYRD	
Direct Examination by Mr. Harris.....	1003
Cross Examination by Ms. McDuffie	1015
STATE’S MOTION FOR THE JURY TO VIEW THE SCENE.....	1022
CLOSING ARGUMENT BY MS. MCDUFFIE.....	1037
CLOSING ARGUMENT BY MR. GASSER.....	1052
CLOSING ARGUMENT BY MS. CAMPBELL.....	1090
CHARGE ON THE LAW.....	1121
DANA OUTEN	
Examination by the Court.....	1160
VERDICT	1173
SENTENCING	1178
MOTION TO RECONSIDER SENTENCE TRANSCRIPT DATED MARCH 12, 2013	1308
MR. GASSER’S ARGUMENT.....	1310
MS. MCDUFFIE’S ARGUMENT	1332
MR. GASSER’S REPLY ARGUMENT.....	1342
MS. MCDUFFIE’S RESPONSE	1345
MR. HARRIS’ ARGUMENT.....	1346

MS. CAMPBELL'S ARGUMENT	1354
MR. HARRIS' ARGUMENT	1357
MS. MCDUFFIE'S REPLY	1372
<u>JACKSON V. DENNO</u> TRANSCRIPT DATED JANUARY 28, 2013.....	1379
TESTIMONY	
JAMES HEYWOOD- IN CAMERA	
Direct Examination by Ms. McDuffie	1383
Cross Examination by Mr. Gasser.....	1386
TRAVIS HOLDORF- IN CAMERA	
Direct Examination by Ms. McDuffie	1390
Cross Examination by Mr. Gasser.....	1402
MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SET ASIDE SENTENCE, OR IN THE ALTERNATIVE, TO REDUCE SENTENCE.....	1423
PROPOSED ORDER.....	1442
ORDER GRANTING MOTION TO REDUCE SENTENCE	1452
ORDER DENYING MOTION TO SET ASIDE SENTENCE	1456
ORDER DENYING MOTION FOR A NEW TRIAL.....	1457
STATE'S RESPONSE TO MOTION TO REDUCE SENTENCE	1458
INDICTMENT AND SENTENCING SHEET	1464
COURT'S EXHIBIT #1 (Alan James Affidavit)	1466-A
CERTIFICATE OF COUNSEL.....	1467

Harold Bouknight - Cross-Examination by Mr. Harris

1 to anyone other than one fingerprint, palm print of
2 Mr. Gasque. Is that essentially the essence of your
3 report?

4 A We weren't able to match the palm print to
5 Mr. Gasque because we didn't have his palm prints as a
6 reference. All the fingerprints we were able to match up
7 were to the victim.

8 Q And your report suggests that you did in fact find
9 some prints and an L.16 prints was of no value for
10 comparison through insufficient quality of latent print.
11 You see that on your report, sir?

12 A It was of no value on my report, yes, sir.

13 Q Is that a smudge or is that --

14 A There may be no value.

15 Q Yes.

16 A It's pretty basic and what it means is no value.
17 It could be a smudge or it could be just two ridges where
18 you can see there's a ridge, but there's not enough there
19 to do any type of meaningful comparison with.

20 Q There was -- you just don't know who that was or
21 what it was, correct?

22 A It was no value to make a comparison to anyone.

23 Q And the same with L.17, correct?

24 A Yes, sir.

25 Q And the same with L.18, correct?

Harold Bouknight - Cross-Examination by Mr. Harris

1 A No, sir. It was inconclusive to both subjects.

2 Q In addition to those -- we just don't know who it
3 was, correct? That's what that report basically says. We
4 don't know whose that is, correct?

5 A That one point -- yes, sir.

6 Q Additionally there were a number of smudges. We've
7 talked about smudges already, correct?

8 A Smudges on the vehicle, yes, sir.

9 Q Yes, sir. So there were, in fact, a number of
10 smudges and a number of prints that were inconclusive or of
11 no value, correct?

12 A Yes, sir.

13 Q Now, there are a lot of photos, if I can hopefully
14 go to one that I need real quick. Can you identify that?
15 Have you seen that photograph?

16 A Yes, sir.

17 Q Okay.

18 A That's the bed of the vehicle.

19 Q Okay. Can you hang onto that if you could, please.
20 You were also, in addition to this fingerprint analysis
21 that you've testified to, you were called upon to evaluate
22 the smudge and its contents, correct?

23 A Yes, sir.

24 Q And I believe that as part of your investigation or
25 your analysis of your -- you inventoried that truck,

Harold Bouknight - Cross-Examination by Mr. Harris

1 correct?

2 A Not a complete inventory, but I did search through
3 it, the passenger compartment to look for any items.

4 Q And on direct examination, I think you testified to
5 a dog kennel. You remember testifying to that?

6 A Yes, sir.

7 Q You testified that there were several items of
8 clothing. You recall that?

9 A Yes.

10 Q A rifle?

11 A I don't believe I specifically stated everything
12 that was in the passenger compartment, but it's in my
13 report.

14 Q Okay. There was a rifle in there?

15 A Yes, sir.

16 Q A CD?

17 A CD's, plural.

18 Q And hunting paraphernalia?

19 A Yes, sir.

20 Q There was also a cooler, was it not?

21 Q Yes, sir?

22 Q And the cooler is in that photograph in front of
23 you, is it not?

24 A Yes, sir.

25 Q Is that cooler empty or is it full?

Harold Bouknight - Cross-Examination by Mr. Harris

- 1 A Empty
- 2 Q Okay. Was any analysis of any sort done to that
- 3 cooler?
- 4 A No, sir.
- 5 Q They are also in that photograph, and you found
- 6 beer?
- 7 A Yes, sir.
- 8 Q Cans of beer?
- 9 A Open cases.
- 10 Q Okay. How many different types of beer were found
- 11 in the back of that truck?
- 12 A Two.
- 13 Q There was an open case of Budlight?
- 14 A Yes, sir.
- 15 Q And there was an open case of Busch Light?
- 16 A Yes.
- 17 Q Two different kinds of beer. Those are different
- 18 kinds of beer, right?
- 19 A Yes, sir.
- 20 Q How many unopened cans of beer were in the Budlight
- 21 case?
- 22 A I didn't count how many were in there.
- 23 Q How many open cans of beer, unopened cans of beer
- 24 were in the Busch Light case?
- 25 A I didn't count those either.

Harold Bouknight - Cross-Examination by Mr. Harris

1 Q Also in that photo are empty Cans of beer, are
2 there not?

3 A Yes, sir.

4 Q Can you tell us how many empty cans of beer were in
5 the back of that truck?

6 A No, sir.

7 Q Was any fingerprint analysis done on those cans of
8 beer?

9 A No, sir.

10 Q Did anyone ask for fingerprints?

11 A Excuse me?

12 Q Were you provided by investigators with Adam
13 Paxton's fingerprints?

14 A No, sir.

15 Q Did you empty that cooler or was it already empty
16 when you already got it as senior investigator?

17 A The photograph is the way it was whenever I saw it.

18 Q Fair enough.

19 MR. HARRIS: One moment, Your Honor.

20 THE COURT: All right.

21 BY MR. HARRIS:

22 Q Can I take that photograph?

23 MR. HARRIS: May I publish this to the jury, Your
24 Honor.

25 THE COURT: Which exhibit?

Harold Bouknight - Cross-Examination by Mr. Harris

1 MR. HARRIS: It is exhibit No. -- I can't even see
2 the exhibit No.

3 MR. HARRIS: Exhibit No. 43, Your Honor.

4 THE COURT: It's in evidence?

5 MR. HARRIS: Yes, ma'am.

6 THE COURT: You may.

7 MR. HARRIS: Thank you.

8 Thank you very much, sir. I appreciate your time.

9 THE WITNESS: Sure.

10 MS. CAMPBELL: Your Honor, the State would call
11 Adam Paxton.

12 ADAM PAXTON,
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 COURT: State your full name.

17 THE WITNESS: Adam Charles Paxton.

18 THE COURT: And spell your last name.

19 THE WITNESS: P-a-x-t-o-n.

20 THE COURT: Can you pull that microphone down a
21 little bit and straighten it. See if you can straighten it
22 out just a little bit. And this is really more of a sound
23 check than anything else.

24 THE WITNESS: Okay.

25 THE COURT: State your name again.

Adam Paxton - Direct Examination by Ms. Campbell

1 THE WITNESS: Adam Charles Paxton.

2 THE COURT: Very well. Just keep your voice up so
3 we can all hear you.

4 THE WITNESS: Okay.

5 THE COURT: Thank you so much.

6 Your witness.

7 MS. CAMPBELL: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q Mr. Paxton, how old are you?

11 A Twenty-three.

12 Q And where are you from?

13 A Myrtle Beach, South Carolina.

14 Q How long have you been living in the Myrtle Beach
15 area?

16 A Approximately fourteen years.

17 Q And who do you live in Myrtle Beach with?

18 A Myself.

19 Q Did you know Martin Gasque?

20 A Yes, ma'am.

21 Q And how did you know Martin Gasque?

22 A Friends of friends and hanging out with him for
23 several years.

24 Q And what kind of things would you do -- would you
25 and Martin do as friends?

Adam Paxton - Direct Examination by Ms. Campbell

- 1 A Hang out, eat, go to lunch, socialize, friends.
- 2 Q You're a hunter?
- 3 A Yes, ma'am.
- 4 Q Would he often go to hunting trips with you?
- 5 A No, ma'am.
- 6 Q But y'all would attend social functions?
- 7 A Oh, yeah, yes.
- 8 Q And when you attended those social functions, did
- 9 that ever include USC football games?
- 10 A Yes, ma'am.
- 11 Q And specifically -- where was Martin from?
- 12 A Marion, South Carolina.
- 13 Q Marion, South Carolina?
- 14 A That's where he was from, yes, ma'am.
- 15 Q I'm going to turn your attention back to October of
- 16 2010. That day, did y'all -- October 9th, did y'all make
- 17 plans to attend the USC Alabama game?
- 18 A Yes, ma'am.
- 19 Q And when did y'all get in town?
- 20 A I believe that morning, I believe.
- 21 Q Okay. And was it an afternoon game?
- 22 A Yes, ma'am.
- 23 Q When y'all came in town, how did y'all get here?
- 24 A I drove.
- 25 Q And what kind of car were you driving?

Adam Paxton - Direct Examination by Ms. Campbell

- 1 A A black pick-up truck.
- 2 Q And that's your vehicle?
- 3 A Yes, ma'am.
- 4 Q And who all was with you that day?
- 5 A Several people, a bunch.
- 6 Q Was Martin one of them?
- 7 A Yes, ma'am.
- 8 Q And tell the jury, did y'all go to the game that
- 9 day?
- 10 A We went to the tailgate. We didn't go inside that
- 11 day.
- 12 Q Where were y'all tailgating that date?
- 13 A The lumberyard.
- 14 Q And where is the lumberyard located in relation to
- 15 the scene?
- 16 A Next to it off of Shop Road.
- 17 Q And who -- was Martin one of the people tailgating
- 18 with you that day?
- 19 A Yes, ma'am.
- 20 Q Do you remember who else was there?
- 21 A Yes. There were a lot of people. I can't remember
- 22 all who.
- 23 Q And when you say you were tailgating, what were
- 24 y'all doing?
- 25 A Hanging out, talking, eating, drinking.

Adam Paxton - Direct Examination by Ms. Campbell

- 1 Q Did you drink that day?
- 2 A Yes, ma'am.
- 3 Q And how much were you drinking that day?
- 4 A I had two beers the whole day.
- 5 Q That's all?
- 6 A Yes, ma'am.
- 7 Q Why?
- 8 A Because I had to drive and I had several people
- 9 with me that I had to take care of.
- 10 Q Was Martin drinking that day?
- 11 A Yes, ma'am.
- 12 Q And he wasn't driving, was he?
- 13 A No, ma'am.
- 14 Q So did Martin drink more than you that day?
- 15 A Yes, ma'am.
- 16 Q As the afternoon progressed, you mentioned -- did
- 17 y'all go into the game?
- 18 A No, ma'am.
- 19 Q Where did y'all stay during the game?
- 20 A At the tailgate.
- 21 Q How did y'all listen to or see the game?
- 22 A I believe somebody had TV with satellite and we
- 23 watched it off of that.
- 24 Q So somebody had actually brought a TV?
- 25 A Yes, ma'am, two people, actually.

Adam Paxton - Direct Examination by Ms. Campbell

1 Q And that day were you pulling for either particular
2 team?

3 A Yes, ma'am.

4 Q Which team were you pulling for?

5 A The Gamecocks.

6 Q After the game, what happened?

7 A We all left and I drove to the Woodlands and
8 dropped a couple of people off, and then we left and were
9 headed to the hotel.

10 Q And you say you drove to the Woodlands from where
11 you were tailgating. Where is the Woodlands located?

12 A You go out of the lumberyard you got to take a left
13 to get to the Woodlands, it's like two miles up on the
14 right.

15 Q On which road?

16 A Shop Road.

17 Q So that would be going outbound from town?

18 A Yes, ma'am.

19 Q From the stadium?

20 A Yes.

21 Q And you mentioned that you dropped off a couple of
22 people --

23 A Yes.

24 Q -- after the game?

25 A Uh-huh.

Adam Paxton - Direct Examination by Ms. Campbell

- 1 Q And who else was in the car with you besides the
2 people that you dropped off?
- 3 A After I dropped the people off?
- 4 Q No. When you went -- who all was in the car when
5 you dropped the people off?
- 6 A I can't remember.
- 7 Q Was Martin one of them?
- 8 A Yes, ma'am.
- 9 Q After you went to the Woodlands, who was left in
10 the car?
- 11 A Martin and I.
- 12 Q And where were y'all seated?
- 13 A I was in the driver, he was in the passenger.
- 14 Q Tell the jury what you did as you were leaving the
15 Woodlands?
- 16 A I pulled out to take a left to go back into town on
17 Shop Road.
- 18 Q What was traffic line?
- 19 A Bumper-to-bumper.
- 20 Q Where were y'all headed?
- 21 A To the town -- into town.
- 22 Q Into town?
- 23 A Yes, ma'am.
- 24 Q And who all was going to be staying at that hotel?
- 25 A Me, Martin, my girlfriend at the time and her

Adam Paxton - Direct Examination by Ms. Campbell

1 friend.

2 Q Were the girlfriend and her friend with you at that
3 point?

4 A No, ma'am.

5 Q Where were they -- where had they gone?

6 A They were at the hotel already.

7 Q As you were going down Shop Road, again, what was
8 traffic like?

9 A Bumper-to-bumper.

10 Q And were y'all making progress going in towards
11 Columbia?

12 A Barely, but yes.

13 Q While y'all were going down the road, what were
14 y'all doing?

15 A Martin was celebrating for the Gamecocks, you know
16 telling people, you know, congratulations to the Gamecocks.
17 And that was it. He was talking on the phone and I was
18 just sitting in traffic.

19 Q So when you said Martin was talking to people, what
20 kind of people was he talking to from the truck?

21 A Carolina fans, people that would walk by.

22 Q And what was he saying to them?

23 A You know, go Gamecock, congratulations, WooHoo.

24 Q Tell te jury what you remember happening next.

25 A Ma'am?

Adam Paxton - Direct Examination by Ms. Campbell

1 Q Tell the jury what happened next as y'all were
2 driving down -- as you were stuck in traffic on Shop Road?

3 A Stuck in traffic.

4 Q And you were driving?

5 A Yes.

6 Q And where was Martin?

7 A In the passenger seat.

8 Q And something happened that afternoon that caught
9 your attention that caught your attention?

10 A Yes.

11 Q Tell the jury what happened.

12 A As I was getting up to a dirt parking lot where
13 they were trying to get out at, they weren't up to the road
14 yet so I didn't let them pass me. Then they blew on the
15 horn and Martin threw up his hand and was like, Hey, sorry,
16 we already passed you, you know. Sorry. And then that's
17 when Curtis Simms slammed open the door aggressively. Got
18 that girl off of her lap -- his lap. And charged to the
19 truck and also the driver got out also.

20 Q Let me slow you there, okay. You mentioned a man
21 named Curtis Simms. Did you know who he was at the time?

22 A No.

23 Q Had you ever seen him before?

24 A No.

25 Q Did you know anyone that was in the car or that you

Adam Paxton - Direct Examination by Ms. Campbell

1 could see in the car.

2 A No.

3 Q And where was your truck located when you first
4 noticed this person you now know as Curtis Simms?

5 A Parked on Shop Road.

6 Q And you mentioned that Curtis, not Curtis, Martin
7 had said something to them?

8 Q Yeah, because they was blowing the horn when I was
9 like passing them and he was, Hey, Buddy, sorry we've
10 already passed you. You know, next time, try again.
11 Sorry, you know.

12 Q And at that point, you saw someone exit the
13 vehicle?

14 A Yes.

15 Q And do you remember what kind of vehicle it was?

16 A I believe it was a gray SUV.

17 Q And when you saw them get out of the vehicle, where
18 did the person approach?

19 A Toward my truck.

20 Q And where was Martin at that point?

21 A In my passenger seat.

22 Q What do you remember happening next?

23 A As they got closer and closer and closer, Martin
24 opened up the door and stepped out of the truck.

25 Q And the person approached, they would have been

Adam Paxton - Direct Examination by Ms. Campbell

1 approaching on the passenger side?

2 A Yes, ma'am.

3 Q So you would have been further away?

4 A Yes.

5 Q And Martin was the one that was closer?

6 A Yes.

7 Q Was his window up or down?

8 A Down.

9 Q As Martin exited the truck, what do you remember
10 happening?

11 A I lost site of the driver and Simms. I lost site
12 of them and then as Martin stepped out, I lost site of him
13 through my third door.

14 Q You said you lost sight of the driver, did a second
15 person get out of that same vehicle that you saw? Or do
16 you remember?

17 A The driver of the SUV.

18 Q (Witness nodded head.)

19 A Yeah, he got out.

20 Q Too?

21 A Yes.

22 Q But you don't know where he went?

23 A No, ma'am.

24 Q And you don't know what he was trying to do?

25 A No, ma'am.

Adam Paxton - Direct Examination by Ms. Campbell

1 Q Did you see where Simms approached?

2 A Yes, towards my truck.

3 Q And as he came up towards your truck, did he get
4 actually next to your truck that you could see?

5 A Yes, ma'am.

6 Q And you mentioned that -- what happened -- what did
7 Martin do as he was approaching the truck?

8 A He stepped out of the truck and they exchanged
9 words and I can't remember what the words were and then I
10 lost sight of him.

11 Q Could you tell whether or not they were still close
12 to the truck or not?

13 A I mean I could tell they were at the truck, the way
14 they were talking. I don't remember what they said, but
15 they were right next to my truck.

16 Q What's the next thing you remember?

17 A I heard a loud punch, very loud punch and then I
18 didn't hear nothing else.

19 Q And that's what you remember?

20 A Yes, ma'am.

21 Q And you said you remember hearing a punch. It was
22 loud enough for you to hear it?

23 A Yes.

24 Q What was going through your mind?

25 A I need to do something. You know, figure out what

Adam Paxton - Direct Examination by Ms. Campbell

1 to do and get out of the way -- get out of the roadway.

2 Q At that point, did you know where Martin was?

3 A No, ma'am.

4 Q Did you have any idea what had happened to Martin?

5 A No, ma'am.

6 Q Did you know at that point whether he was conscious
7 or unconscious?

8 A No, ma'am.

9 Q So what did you do?

10 A I looked around and saw there was people everywhere
11 and I needed to get out of the roadway, people were behind
12 me, in front of me, next to me, so I slowly pulled up off
13 to the side of the road.

14 Q And as you pulled out of the side of the road?

15 A I realized I had ran something over.

16 Q What was going through your mind?

17 A Get out and see what it was and see what was going
18 on.

19 Q Did you have any idea at that point what had
20 happened?

21 A No, ma'am.

22 Q And as you got out of the vehicle, once you
23 stopped -- how fast did all this happen?

24 A Very fast.

25 Q What did you do?

Adam Paxton - Direct Examination by Ms. Campbell

1 A I pulled off to the side of the road and I got out
2 and I didn't see anything until I got to the tailgate and I
3 noticed Martin laying in the middle of the road and I ran
4 to him, you know, to check on him. Then at that time
5 several other people ran up to me and they said they knew
6 what they were doing, so I stepped back and let them, you
7 know, do their thing.

8 Q So where was he?

9 A Was he on the ground? Where was he?

10 A On the ground, laying on the ground.

11 Q And was he on the road or off the road?

12 A On the road.

13 Q What happened next?

14 A Several other people ran over and they said they
15 were EMS or something, so I let them do their thing because
16 I don't know anything, you know. If they can help, let
17 them help. Then I called my girlfriend at the time and
18 told her what happened and at that time I started giving
19 statements to police officers.

20 Q So you made contact with the police?

21 A Yes, ma'am.

22 Q Did you realize what had happened after you got out
23 of the truck?

24 A Yes, ma'am.

25 Q Did you actually talk with the police that night?

Adam Paxton - Direct Examination by Ms. Campbell

1 A Yes, several.

2 Q And what was going through your mind as you were
3 talking to the police?

4 A In a state of shock and worry and lots of things.

5 Q Where were you trying to get to?

6 A To a hotel.

7 Q After the -- what happened -- where were you trying
8 to go?

9 A I was just talking to them and letting them know
10 that I was going to go to the hotel -- or the hospital.

11 Q Once you had pulled your truck over and got out of
12 the car, did you see the same person that you saw approach?

13 A No, ma'am.

14 Q At some point, did you see him come back to the
15 scene?

16 A No, ma'am.

17 Q You didn't see him. That night did you meet with
18 investigators and try to tell them what you recall as far
19 as what happened?

20 A Yes, ma'am, uh-huh.

21 Q Did you ever have the opportunity to get to the
22 hospital that night?

23 A Yes, ma'am.

24 Q And what was the purpose of you going to the
25 hospital?

Adam Paxton - Cross-Examination by Mr. Gasser

1 A To check on Martin and talk to everyone and we were
2 all there so we all met up there and see what was going on.

3 Q Did you find out that night what happened to
4 Martin?

5 A Yes, ma'am.

6 Q The next day -- that night, did you make contact
7 with Martin's family?

8 A Yes, ma'am.

9 Q Did you tell them what had happened?

10 A Yes, ma'am.

11 Q The next day, did you go to the sheriff's
12 department?

13 A Yes, ma'am.

14 Q And did you talk with investigators there as well?

15 A Yes, ma'am.

16 Q And I believe you also picked up your truck?

17 A Yes, ma'am.

18 Q If you had known what had happened to Martin, would
19 you have ever tried to pull the truck over to help?

20 A No, ma'am.

21 MS. CAMPBELL: Thank you.

22 THE COURT: All right. Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. GASSER:

25 Q Good morning, Mr. Paxton.

Adam Paxton - Cross-Examination by Mr. Gasser

- 1 A Good afternoon.
- 2 Q You and I spoke briefly on the phone to introduce
3 myself last week, I believe?
- 4 A Uh-huh. I'm assuming it was you.
- 5 Q Okay. But you're not -- you and I have never met
6 before?
- 7 A No, no, no.
- 8 Q Okay. Did you -- did you drive from Myrtle Beach
9 to Columbia on Saturday morning, October 9th of 2010?
- 10 A Yes, sir.
- 11 Q Did you -- did you have to pick Martin Gasque up
12 somewhere or did he meet you at the tailgate?
- 13 A To be honest, I cannot remember.
- 14 Q And when you first got to Columbia, where did you
15 go personally?
- 16 A I don't remember. I think probably straight to the
17 tailgate, I guess.
- 18 Q Your girlfriend, does she live in Columbia?
- 19 A No.
- 20 Q Was she already here?
- 21 A I can't remember. I know we drove separate, so --
22 I believe she came later, I believe.
- 23 Q When is the first time you recall meeting up with
24 Martin Gasque?
- 25 Q At the tailgate, I believe.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Q So do you remember who you drove to the tailgate
2 with?

3 A No, sir.

4 Q The beer that's in the back of your truck that's
5 been testified about before, did you buy that or was that
6 Martin's beer?

7 A I have no idea.

8 Q You don't remember how the beer or the cooler got
9 in the back of your truck?

10 A I mean -- I was at the tailgate all day, so I'm
11 assuming people threw stuff in the back of my truck.

12 Q You didn't -- you didn't bring any beer with you to
13 Columbia?

14 A I don't think so. I know I didn't bring any to
15 Columbia with me, no.

16 Q Did you stop and get beer?

17 A I don't believe so.

18 Q Is that not your cooler in the back of your truck
19 with all of your other stuff? I'm sorry, State's Exhibit
20 43?

21 A No.

22 Q Is that your dog kennel?

23 A Yes.

24 Q Is that your hunting dog?

25 A Yes.

Adam Paxton - Cross-Examination by Mr. Gasser

- 1 Q You know whose cooler that is?
- 2 A No, sir.
- 3 Q Do you know what the Busch Light and the Budlight,
- 4 do you know whose that is?
- 5 A No, sir.
- 6 Q When is the first time -- approximately what time
- 7 did you get to the tailgate?
- 8 A I guess before kick off, I would guess.
- 9 Q Did you tailgate for a period of time?
- 10 A He hung out all day.
- 11 Q And it was a 3:30 nationally televised football
- 12 game, do you remember that?
- 13 A I believe so.
- 14 Q You're a Gamecock fan, so that means you're pretty
- 15 familiar with the Southeastern Conference, correct?
- 16 A Yeah, yes, sir.
- 17 Q And you've known for years the CBS network has the
- 18 rights to the -- whenever they choose the top SCC game on
- 19 Saturday afternoons.
- 20 A Yes, sir.
- 21 Q If we're on at 3:30 in the afternoon?
- 22 A Uh-huh.
- 23 Q And you knew that Alabama being number one in South
- 24 Carolina, that was the CBS National Game of the week on
- 25 October 9, 2013?

Adam Paxton - Cross-Examination by Mr. Gasser

1 A Yes, sir.

2 Q And you were coming to Columbia to watch this
3 pretty big -- I mean this huge game, was it not?

4 A Yes.

5 Q You're a Gamecock fan like myself, it was just
6 huge, correct?

7 A Yes, sir.

8 Q And it was real festive down there in and around
9 Williams Brice Stadium prior to the football game. Do you
10 remember that?

11 A Yes.

12 Q And you indicated that you were tailgating at the
13 lumberyard -- when you say lumberyard, that's actually
14 during a regular business day, that is a commercial lumber
15 business; is it not?

16 A Yes, sir.

17 Q So there were other -- a number of other cars that
18 were parked in there with people tailgating?

19 A Yes, sir.

20 Q How many people were in the group that you were in
21 with Martin?

22 A Probably twenty, twenty-five people.

23 Q And how many of those twenty to twenty-five people
24 did you know?

25 A Probably fifteen, maybe.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Q And did Martin Gasque know a number of those people
2 as well?

3 A Yes, sir, a few.

4 Q Now, you told the jury that you recall having two
5 beers. Do you recall that testimony?

6 A I know I had two beers.

7 Q So you don't recall whether or not you stopped and
8 got beer on the way to Columbia?

9 A No, I don't think I did, no, sir.

10 Q You don't recall what time you got to Columbia?

11 A No, sir.

12 Q You don't recall when -- did you even drive anybody
13 to the tailgate?

14 A I believe I did, yes, sir.

15 Q Do you know who that was?

16 A No, sir.

17 Q So you don't recall when you arrived in Columbia,
18 who you drove to Columbia?

19 A I know who I drove to Columbia.

20 Q You don't recall who you drove to tailgate?

21 A No, sir. But you have a specific memory that you
22 only had two beers.

23 A Yes, sir.

24 Q Now, Martin had way more than two beers, did he
25 not, Mr. Paxton?

Adam Paxton - Cross-Examination by Mr. Gasser

1 A He was drinking. I wasn't counting his beers, but
2 I know he was drinking.

3 Q And you would have been twenty-one at the time?

4 A Twenty-one or twenty-two.

5 Q And he would have been twenty at the time, correct?

6 A I believe so, I guess.

7 Q But you've been around individuals your age and
8 young people and you can tell people that drink all day
9 long; if they continue to drink and continue to drink on
10 into the night, you recognize a change in their behavior,
11 correct?

12 A Yes, sir.

13 Q Now, did Martin Gasque go into the football game?

14 A No, sir.

15 Q So did he watch the football game in the same
16 tailgate spot that you did?

17 A Yes, sir.

18 Q And then a number of y'all's friends, not go into
19 the game as well?

20 A Yes, sir.

21 Q So there would be a number of your friends that
22 would be tailgating with Martin Gasque that afternoon
23 before the game and during the game and shortly thereafter
24 the game that were with him and able to observe his state
25 of mind prior to this incident, correct?

Adam Paxton - Cross-Examination by Mr. Gasser

1 A I assume so, yes.

2 Q Because you indicated to the jury that ten or
3 fifteen friends that were in the -- at the tailgate spot
4 all afternoon and during the game; correct?

5 A Uh-huh.

6 Q And Martin continued to drink all afternoon and
7 during the game, didn't he?

8 Q I assume so, yes. Like I said I was watching him
9 or babysitting him?

10 Q And did you notice a change in his behavior from an
11 inebriation perspective from say one o'clock in the
12 afternoon to say eight o'clock at night. He's been
13 drinking all day?

14 A No, sir.

15 Q You didn't notice that?

16 A I mean, excitement, that's about it.

17 Q Do you recall approximately what time it was when
18 you made the decision it was time to leave the tailgate
19 spot?

20 A I believe it was before the game ended.

21 Q Now, it was dark out there was it not, Mr. Paxton?

22 A When we left the game, it was light and when we
23 left the Woodlands, it was getting dark.

24 Q So how long did you stay at a Woodlands?

25 A Ten minutes.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Q Now, if there's been testimony in the record that
2 the incident happened around 8:30, would you dispute that?

3 A I mean, it was nighttime. I'm assuming. I don't
4 know what time it was at all.

5 Q And 8:30 in October, you know, it's dark out. It
6 was dark out when this happened?

7 A Yes.

8 Q Now, the Woodland Apartments, those are apartments
9 on Shop Road, correct?

10 A Yes, sir.

11 Q And when you left the tailgate spot, who else was
12 in the truck other than you and Martin Gasque?

13 A I have no idea.

14 Q So you don't know remember who you drove to the
15 Woodlands?

16 A I'm assuming that it's the people that lived in the
17 Woodlands. There are a group of people, but I remember
18 essentially who it was.

19 Q And so they had -- they had to ride in the back of
20 the truck?

21 A I'm assuming, yes. Inside and outside.

22 MR. GASSER: Beg the Court's indulgence.

23 THE COURT: All right.

24 MR. GASSER: There's a number of photographs here.

25 (WHEREUPON there was a pause in the proceedings.)

Adam Paxton - Cross-Examination by Mr. Gasser

1 BY MR. GASSER:

2 Q Okay, I'm showing you what's been marked as State's
3 Exhibit number 36 in evidence. Do you recognize that
4 photograph?

5 A Yes, sir.

6 Q Okay. That's the front end -- that is the front
7 area of your truck?

8 A Passenger side, yes, sir.

9 Q But could -- do you remember if anyone else when
10 you were driving to the Woodlands was sitting in the front
11 cab of your truck? Do you remember that?

12 A No, sir.

13 Q So it was just you and Martin?

14 A I believe so, yes. Martin may not have been in the
15 passenger side at that time to the Woodlands.

16 Q Okay. And State's Exhibit No. 37, do you recognize
17 that photograph as well?

18 A Yes, sir.

19 Q Is there a -- there is a backseat area behind the
20 driver and the passenger; is there not?

21 A Yes, a small seat, yes, sir.

22 Q But did you have a lot of your hunting gear and
23 other stuff in the back there?

24 A Behind my seat I did, yes, sir.

25 Q So somebody could have sat behind Martin?

Adam Paxton - Cross-Examination by Mr. Gasser

1 A Yes, sir.

2 Q And then anybody else would have had to sit in the
3 back -- the back of the truck, right?

4 A I believe so, yes, sir.

5 Q But you weren't driving that far from the
6 lumberyard to the Woodlands Apartments, though, were you?

7 A Just a couple of miles.

8 Q Now, when you left the Woodlands Apartments, it was
9 just you and Martin though, however, correct?

10 A Yes, sir.

11 Q And South Carolina -- we -- South Carolina beat
12 Alabama that day, correct?

13 A Yes.

14 Q First time the University of South Carolina
15 football team ever beaten the number one team in the
16 country. Do you remember that?

17 A Yes, sir.

18 Q And people were -- Carolina fans were extremely
19 ecstatic, were they not?

20 A Yes.

21 A And it wasn't just another rare -- USC win. It was
22 a huge -- one of the biggest wins in school history.

23 A Yes, sir.

24 Q And you indicated Martin was a pretty good Gamecock
25 fan, was he not?

Adam Paxton - Cross-Examination by Mr. Gasser

1 A Yes.

2 Q And he was -- as many Gamecock fans was very, very
3 excited at this point, right?

4 A Yes.

5 Q And as you told the jury, he had had been drinking
6 all day long and into the evening, correct?

7 A I'm assuming. Like I said, I wasn't watching him.

8 Q Did you ever see him when he had a soda or water in
9 his hand?

10 A No, sir.

11 Q Okay. Have you been told what his blood alcohol
12 level was?

13 A No, sir. When you got onto Shop Road from the
14 Woodland Apartments, it is a -- it is several miles until
15 you get to the intersection of George Rogers Boulevard and
16 Shop Road; is it not.

17 A I believe it's a few miles, I believe, yes.

18 Q And in bumper-to-bumper traffic, it could take a
19 pretty good time to get those several miles after a home
20 Carolina, SCC football game, correct?

21 A Yes.

22 Q And so from the time you were in the Woodlands, it
23 was bumper-to-bumper traffic the entire way, touch and go,
24 touch and go, sometimes stationary for a period of time
25 before getting up to the location where this incident

Adam Paxton - Cross-Examination by Mr. Gasser

1 occurred, correct.

2 A Yes.

3 Q Now, isn't it true Mr. Paxton, that prior to --
4 prior -- on occasions, prior to even getting within a
5 couple hundred yards or even a half mile of where this
6 incident occurred, that --

7 MS. CAMPBELL: Objection, Your Honor, may we
8 approach.

9 THE COURT: You may.

10 (WHEREUPON, there was a bench conference out of the
11 hearing of the jury and the Court Reporter.)

12 THE COURT: Ladies and gentlemen, I'm going to ask
13 you to step to your jury room. There's a matter I need to
14 take up outside of your presence. Please do not discuss
15 this matter or allow anyone to discuss it with you. We'll
16 be with you shortly.

17 (WHEREUPON the jury left the courtroom at 10:40
18 a.m.)

19 THE COURT: I want to hear it. I think that I got
20 the objection, but -- but -- the objection is?

21 MR. HARRIS: Can we do this outside the presence of
22 this witness, Your Honor.

23 THE COURT: Yeah, we may -- I think probably so.

24 If you could just step outside for just a moment.
25 We won't be long.

Adam Paxton - Cross-Examination by Mr. Gasser

1 THE WITNESS: Okay.

2 THE COURT: Please don't talk to anyone about your
3 testimony with anyone while you step out.

4 (WHEREUPON the witness left the courtroom.)

5 THE COURT: All right. Ms. Campbell, please state
6 your objection so we've got it on the record.

7 MS. CAMPBELL: And, Your Honor, in -- to put it on
8 the record, I was somewhat surprised when Mr. Gasser went
9 into the allegations that the victim in this case at some
10 point stepped outside of the vehicle and urinated sometime
11 prior to this happening. That is not any information that
12 has gotten into this case, but information from another
13 witness that I understand he plans on calling.

14 I would rely on State versus Raymond Day, site 341
15 South Carolina 410(e). I could hand up that case, Your
16 Honor, testimony concerning other specific instances as in
17 this case of violence. This isn't even an incident of
18 violence and basically that case that I had that evidence
19 of specific incidents and in that case it was violence --
20 on the part of the deceased are not admissible unless they
21 were directly against the defendant or it's directed
22 against the defendant were so closely in nature to the case
23 with the --

24 THE COURT: Well, you've got to slow down, the
25 court reporter cannot take that down.

Adam Paxton - Cross-Examination by Mr. Gasser

1 MS. CAMPBELL: I can just hand up the case.

2 THE COURT: Sure.

3 MS. CAMPBELL: Thank you, Judge. I am sorry.

4 THE COURT: You know all lawyers do that. We read
5 so much faster than you can speak and your mouth can't even
6 keep up with your brain.

7 MS. CAMPBELL: The only evidence, Your Honor, that
8 I am aware of, Your Honor, and we would also rely on
9 608(b), specific incidents of conduct will not admissible.
10 Your Honor, I do not know how whether or not this victim
11 stepped out of the vehicle and urinated on the side of the
12 road sometime prior is any indicator of his tendency
13 towards violence, number one. This witness has been
14 cross-examined extensively and we did not object about his
15 perception as to his level of intoxication.

16 He has admitted that he saw him drinking. He's
17 admitted to all that. He's asking specifically if his
18 behavior changed, things of that nature. We are going to
19 bring out the fact that this victim had a blood alcohol
20 level of .23. We aren't trying to hide anything from this
21 jury, but just to go and try to trash the victim in front
22 of this jury, saying, Oh my gosh, he got out of the vehicle
23 to urinate. I don't know, how that indicates, number one,
24 whether he was intoxicated or number two, how that goes to
25 any specific instances of violence and if it did, it's not

Adam Paxton - Cross-Examination by Mr. Gasser

1 admissible under our laws under the Day case as well as the
2 rule, Your Honor.

3 THE COURT: Let me tell you, I've heard the -- and
4 I'm going to ask you to go ahead and speak to it. I heard,
5 of course, Mr. Gasser's argument, and no doubt we'll put it
6 on the record in just a moment. But address the issue of
7 impeachment, I think that is a stronger argument than the
8 argument of more evidence of intoxication. Talk to me
9 about that and the reason -- the reason is, is that there's
10 been some questioning of this witness, where, did his
11 behavior change? Was he acting inebriated, did you notice
12 he was acting inebriated and he has basically indicated,
13 you know, I don't know how many beers.

14 That is not unreasonable, but he was drinking all
15 day and drinking beer. I didn't care. I didn't see him
16 drink water or soda, but I wasn't watching. And then he
17 asks him did you notice any change in his behavior and in
18 terms of impeachment, terms of impeachment -- in terms of
19 that line of questioning to impeach basically, no, sir.
20 Did you notice a change in his behavior. I'm more
21 concerned about that. I think that's the stronger
22 argument. Just speak to me about that.

23 MS. CAMPBELL: Yes, Your Honor as far as relevance
24 as far as how that's an indicator of what's the level of
25 intoxication, but again, this specifically is being

Adam Paxton - Cross-Examination by Mr. Gasser

1 addressed in the rule, Your Honor. Under 608(b)., specific
2 instances of conduct of a witness for purposes of attacking
3 or supporting a witnesses credibility other than conviction
4 of a crime may not be proved by extensive evidence,
5 however, the only exception we would add is it's probative
6 as to truthfulness. I don't know how -- if that would go
7 to that, Your Honor.

8 **MR. GASSER:** Judge, for the -- along the same line
9 you're concerned with and I hadn't gotten to my impeachment
10 argument when we were up at the bench. That was the first
11 state of mind, but the second impeachment, I agree with
12 you. But -- so if you have a better understanding, Judge,
13 to the factual perspective, what this issue is, is more
14 than just what's come out before you. Ms. Campbell knows
15 and she says she was somewhat surprised at my opening
16 statement when -- I don't know why is that would surprise
17 her or anyone else on the prosecution team when they're the
18 ones that provided me this information; because two days
19 after the incident, Your Honor, a witness at the sheriff's
20 department interviewed had stayed at the scene. They
21 interviewed him that night on October 9th, a 49-year-old
22 businessman with three kids, he stayed there and provided
23 verbal statements to these investigators that night. He
24 then provided a statement to the sheriff's department on
25 October 11. He was in the car for a long period of time

Adam Paxton - Cross-Examination by Mr. Gasser

1 right behind the car that Adam Paxton was driving that
2 Mr. Gasque was in. He's a business owner and had just left
3 his business and had had nothing to drink and was driving
4 down to the game to watch the post-game show and
5 festivities. So he was totally sober and he got behind the
6 car.

7 He's the one that let the EMT's in at some point in
8 time, but before he did that, he told this sheriff's
9 department within forty-eight hours after the incident, I
10 noticed the kid inside yelling at fans walking up the road.
11 They were nice to the Gamecock fans, but not to the Alabama
12 fans. They almost got into a couple of fights and had
13 people flipping them off or cussing at them. I also
14 noticed the passenger getting out and going to the
15 bathroom. They also were revving up the engine with loud
16 mufflers and cutting people off so they could not get into
17 the road. I saw a lot of drivers that were cut off getting
18 angry about their aggressive driving. Less than a mile
19 away, I let a car in front of me and so I was one car
20 separated from the black truck the rest of the way in. And
21 then it goes on.

22 But that is information. The only reason we have
23 that information is because the sheriff's department,
24 within forty-eight hours after the incident, got a sworn
25 affidavit -- this is a sworn affidavit from this gentleman

Adam Paxton - Cross-Examination by Mr. Gasser

1 telling them this and the solicitor's office has known
2 about it and the solicitor's office went to his office two
3 weeks ago, sat in his office face to face and confirmed --
4 he told them everything that I just told you. And so Ms.
5 Campbell asked this witness on direct examination what they
6 were doing when they were bumper-to-bumper traffic and he
7 said, Martin was celebrating for the Gamecock win while
8 driving on Shop Road with Carolina fans.

9 So she opened the door -- and then she followed up,
10 is that it, and he said, Yes. So she asked him what Martin
11 was doing. He said he was celebrating the Gamecock win and
12 she says is that it and he says yes and moves on. And then
13 you have my direct examination up to the point where she
14 objected. So I -- I throw in the statement, clearly
15 impeachment is the primary reason it should come in because
16 she has opened the door trying to get this jury to believe
17 that the two of them were merely minding their own business
18 and all Martin Gasque was doing was just celebrating with
19 Gamecock fans, when they know right after the fact they've
20 got a witness within forty-eight hours that that's not true
21 and it impeaches this witness as to both what he was doing
22 and as to what Martin Gasque was doing.

23 So impeachment -- it's text book impeachment and
24 the rules and case law is clear, Your Honor. I just
25 thought it was appropriate for you to know, the full

Adam Paxton - Cross-Examination by Mr. Gasser

1 picture where we were going with this with not only this
2 witness, but subsequent witnesses as well.

3 (WHEREUPON there was a pause in the proceedings.)

4 THE COURT: Okay. Okay. Very well. I believe
5 that it is admissible on the issue of impeachment to
6 impeach this witness' testimony that he didn't see any
7 change in his behavior that would indicate changes in
8 behavior as a result of intoxication. I think it is
9 relevant to that and I would allow it in as impeachment.

10 MR. GASSER: Thank you, Your Honor.

11 MS. CAMPBELL: May I be heard on one additional
12 matter?

13 THE COURT: Okay. Sure.

14 MS. CAMPBELL: And if you are to allow this
15 impeachment, I think it would be lifted and I just want to
16 make sure and I know you will to this, but as far as just
17 to ask the question whether or not he observed that
18 behavior, but not to mention anything about another
19 statement.

20 THE COURT: Yes.

21 MS. CAMPBELL: It's, you know, under Glover and the
22 rule. Of course, any extrinsic evidence of that would not
23 be admissible period, even if it's admitted for impeachment
24 that you're allowing, then extrinsic evidence of the
25 testimony of another witness. So my concern would be, and

Adam Paxton - Cross-Examination by Mr. Gasser

1 I'm sure Mr. Gasser won't do this, but that he would then
2 try to say well, so and so says.

3 THE COURT: I'm going to caution --

4 MR. GASSER: I'm going to call Mr. James. I'm not
5 going to say that. But --

6 MS. CAMPBELL: We would have no argument once
7 Mr. James is called, but, of course, under the rules which
8 is clearly stated if you even -- if you allow the questions
9 for impeachment, it would not be allowed under 608(b). He's
10 not to put up extrinsic evidence about it, he can just
11 inquire of it. That's my understanding of the rule.
12 That's something we can take up.

13 THE COURT: I understand. I understand exactly.

14 MS. CAMPBELL: I know he won't do that, but..

15 MR. GASSER: Well, of course, I'm going to do that.

16 THE COURT: Whoa. Hold on. I think that's
17 appropriate to raise that. I think -- and I appreciate
18 that. You will not go into the statement.

19 MR. GASSER: No. Not with this witness. I
20 understand.

21 MS. CAMPBELL: I understand --

22 THE COURT: She's very talented and I know she
23 probably -- if she had another one of those typing things
24 our court reporter could type with her fingers and toes
25 that way she could get what you're saying, what I'm saying

Adam Paxton - Cross-Examination by Mr. Gasser

1 and --

2 MR. GASSER: I apologize, Your Honor.

3 THE COURT: -- so hang on.

4 MR. GASSER: Yes, ma'am.

5 THE COURT: So, you won't go into the statement.

6 MR. GASSER: No, ma'am.

7 THE COURT: Very well.

8 MS. CAMPBELL: Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. GASSER: Judge, may I approach on a different
11 matter unrelated to this case?

12 THE COURT: Yeah.

13 THE COURT: All right. Let's have our jury.

14 (WHEREUPON the jury entered the courtroom at 10:56
15 a.m.)

16 THE BAILIFF: All jurors are seated, Your Honor.

17 THE COURT: Thank you all so much.

18 Mr. Gasser, you may continue.

19 MR. GASSER: Thank you, Your Honor.

20 BY MR. GASSER:

21 Q Mr. Paxton, I believe we were at the point during
22 that brief recess with you and Martin Gasque were in your
23 truck and you were driving along Shop Road and having just
24 left the Woodlands. Do you recall that line of
25 questioning?

Adam Paxton - Cross-Examination by Mr. Gasser

1 A Yes.

2 Q Okay. You had indicated that in response to Ms.
3 Campbell, that as you were driving bumper-to-bumper, slowly
4 on Shop Road that at times Martin Gasque was celebrating
5 with the Carolina fans. You recall that testimony?

6 A Yes.

7 Q So his window was down?

8 A Yes.

9 Q And you're window was down?

10 A My window was actually half way up.

11 Q And were you also celebrating with Gamecock fans?

12 A No, I didn't have any to celebrate with but with
13 the cars.

14 Q But do you recall a period of time -- at some point
15 of time when you were stationary when Mr. Gasque actually
16 got out of the car?

17 A No.

18 Q You don't remember him getting out of the truck?

19 A No, he did not get out of the truck.

20 Q So you deny he got out of the truck and relieved
21 himself on the side of the road?

22 A He did not do that.

23 Q And isn't it true, Mr. Paxton, at times Mr. Gasque
24 was using profanity with the Alabama fans that were walking
25 by; isn't that true?

Adam Paxton - Cross-Examination by Mr. Gasser

- 1 A No, not at all.
- 2 Q You deny that from this witness stand?
- 3 A That's not true.
- 4 Q So as you remember driving on Shop Road, the first
- 5 time that you recognized what you say is a gray SUV, are
- 6 you sure about the make of the car that Mr. Simms got out
- 7 of as passenger?
- 8 A I don't know the make.
- 9 Q Are you sure about the model? SUV?
- 10 A Yeah, it was an SUV, yes, sir.
- 11 Q No question about that?
- 12 A Yes.
- 13 Q You're as such of that as everything else you told
- 14 this jury?
- 15 A Yes, I believe so, yes.
- 16 Q And that it was gray?
- 17 A Gray in color, yes.
- 18 Q And it's your testimony that that gray SUV was
- 19 attempting to leave another tailgate parking area on Shop
- 20 Road when you first recognized it; is that correct?
- 21 A I -- I didn't recognize it. They weren't trying to
- 22 leave. In my eyes they weren't trying to leave.
- 23 Q So what -- where was the car positioned at?
- 24 A It was parked back about 15, 20 yards off the paved
- 25 road.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Q I show you what's been marked State's Exhibit No.
2 53, okay? You recognize Shop Road?

3 A Yes, sir.

4 Q Okay. This is Gates, the condominiums. You
5 familiar with that? You familiar with the Gates
6 Condominiums right here?

7 A Yeah, yeah, yeah.

8 Q And you're -- the direction you were traveling in
9 is towards George Rogers Boulevard, correct?

10 A Yes, sir.

11 Q Okay. Now this incident happened right around
12 here, did it not?

13 A Yes, sir.

14 Q Okay. So point to the jury, if you will, please,
15 when you first saw what you say is a gray SUV point to
16 where you saw it?

17 A Right here.

18 Q And it was in the direction of -- it was faced
19 at -- the front of the vehicle was facing Shop Road, was it
20 not?

21 A Yes, sir.

22 Q And could you tell whether the headlights were on
23 or off?

24 A On.

25 Q And there was a significant amount of pedestrian

Adam Paxton - Cross-Examination by Mr. Gasser

1 traffic walking both -- on both sides of the road and in
2 both directions on both sides of the road; is that not
3 right? After the football game?

4 A I couldn't see the side. It was lined up with
5 cars. And there's people on this side, yes, sir.

6 Q And walking both ways?

7 A I recall, yes.

8 Q But there were people walking on the -- I believe
9 it would be pavement or dirt or grass on the side of Shop
10 Road?

11 A Yes.

12 Q Okay. And you indicated that you remember a horn
13 blowing?

14 A Yes.

15 Q And it was coming from the, what you say, the gray
16 SUV; do you recall that?

17 A Yes.

18 Q And your testimony is that Martin Gasque had the
19 passenger window rolled down and said something to the
20 effect, Sorry buddy?

21 A After the horn was blown, he threw up both his
22 hands and said, Sorry, buddy, you know, we're already
23 passed you. Sorry, you know.

24 Q And when you say he threw up both of his hands, did
25 he make any vulgar gestures with his hand or did you see

Adam Paxton - Cross-Examination by Mr. Gasser

1 that?

2 A No.

3 Q You didn't see that?

4 A No, I saw his two hands, no vulgar signals or
5 anything like that.

6 Q So your foot was on the break, obviously, because
7 you wouldn't be looking to your right?

8 A Yeah, my foot was on the break, yes.

9 Q And you look over to the right because the horn
10 blasted and that's what you see?

11 A Yes.

12 Q And you deny he was using any profanity at a that
13 time?

14 A Was not at all.

15 Q And at that point in time, you indicated Martin
16 opened up his door, correct?

17 A No.

18 Q All right. Well, when did he open up his door?

19 A As Curtis Simms and the driver were aggressive
20 coming towards my truck. Almost to my truck, he opened up
21 the door.

22 Q So it's your testimony that Mr. Simms got out of
23 his truck first?

24 A Yes.

25 Q So you were fixated staring through the passenger

Adam Paxton - Cross-Examination by Mr. Gasser

1 side of your truck?

2 A I was looking out to my right, yes, sir.

3 Q And at that point in time -- at some point in time
4 after you say Curtis Simms and the driver of that gray SUV
5 stepped from their vehicle, Martin Gasque got out of the
6 car. That's your testimony?

7 A No, not right away, no, sir.

8 Q Well, let me say the question again. At some point
9 in time after Curtis Simms and the driver of what you say
10 is a gray SUV get out of their car, at some point in time,
11 after them getting out of the car, it's your testimony
12 Martin Gasque got out of the car?

13 A Yes.

14 Q There's no doubt in you're mind of that fact,
15 correct?

16 A Yes.

17 Q So Martin Gasque opens up his passenger -- his
18 passenger door of your vehicle, right?

19 A Uh-huh.

20 Q Gets out of your pick-up truck, correct?

21 A Yes.

22 Q And you're seated -- before he did that, you were
23 seated as close as I am to this bailiff right here,
24 correct?

25 A Yes.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Q To Martin Gasque?

2 A Yes.

3 Q Before he got out of your truck?

4 A Yes.

5 Q Okay. And he gets out of your truck before --
6 according to your testimony -- Mr. Simms and he had
7 whatever goes on between the two of them?

8 A I mean he was at my truck. I had no idea what they
9 were doing. They were at my truck.

10 Q But he's outside of your truck?

11 A Yes.

12 Q Was the door shut?

13 A No.

14 Q Okay. So prior to any type of physical contact
15 occurring, isn't that true, Mr. Paxton, Martin Gasque is
16 standing on the side of the road or on the street; on the
17 road, standing there outside of your vehicle before
18 anything occurs between him and Curtis Simms, correct?

19 A I know words were said. As I said, I don't know.
20 I couldn't see them and he stepped away, so I couldn't see.
21 But he was standing, yes.

22 Q And when he was standing there, when he initially
23 got on the road -- hear me now -- when he initially gets
24 out of the seat and gets out on the road and they start
25 talking, whatever they were saying. No physical contact

Adam Paxton - Cross-Examination by Mr. Gasser

1 occurred between Curtis and Martin Gasque, correct?

2 A I didn't see any, no, sir.

3 Q No question about that?

4 A I don't believe so. I mean I couldn't see them
5 two. They may have threw a punch or something and missed.

6 Q You didn't say that on direct examination, correct?

7 A I didn't say that when?

8 Q You didn't say you saw some physical contact prior
9 to him getting out of the truck?

10 A Yes.

11 Q Because you didn't?

12 A Yes.

13 Q Because it didn't happen?

14 A I don't believe so, no.

15 Q And you were the closest one -- I mean you were
16 this close to Martin Gasque, correct, Mr. Paxton?

17 A Yes.

18 Q Being this close to Martin Gasque, on that night,
19 you would know if some person, whether it's Curtis Simms or
20 anybody else walked up to your pick-up truck and punched
21 your friend when you're this close to him. You would know
22 that, wouldn't you?

23 A I couldn't see him. He stepped out of my vision to
24 my third door.

25 Q That's not my question.

Adam Paxton - Cross-Examination by Mr. Gasser

1 **MS. CAMPBELL:** Objection, Your Honor, I believe
2 he's answered his question.

3 **MR. GASSER:** He has not yet, Your Honor. While
4 he's in the vehicle.

5 **THE COURT:** I will allow you to go once more, but
6 do this for me because our record needs to reflect because
7 your using a distance between you and our bailiff and our
8 record needs to know about what distance you're talking
9 about as you stand there, what was this just as it looks to
10 me to be a couple of feet. And just for the record. I
11 know the jury can observe it, but our record won't have it.

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

13 **BY MR. GASSER:**

14 **Q** Mr. Paxton, as close as I am to the Madame Bailiff,
15 right here, is that about the distance that you and
16 Mr. Gasque were separated when you were sitting down in the
17 truck before he exits the truck?

18 **A** Yes.

19 **Q** And you would say this is about 2, 2 and a half
20 feet?

21 **A** A little bigger than that, but yes.

22 **Q** About 3 feet between me and the bailiff?

23 **A** Three to four.

24 **Q** Okay.

25 **MR. GASSER:** For the record -- Let the record

Adam Paxton - Cross-Examination by Mr. Gasser

1 reflect that the witness says three or four feet.

2 BY MR. GASSER

3 Q State's Exhibit No. 36, that's the interior of your
4 car, correct?

5 A Yes.

6 Q Okay. And if you were seated in that passenger
7 seat -- he was sitting down in that passenger seat, correct?

8 A Yes.

9 Q Martin Gasque was, and while he was sitting there,
10 you were right next to him, correct?

11 A Well, the fold down console, yes.

12 Q Okay. And you just told the jury that your
13 concentration was, because the horn blow, was looking out
14 toward the passenger side of your car?

15 A Yes.

16 Q So you're looking out toward the passenger side of
17 your car while Mr. Gasque is sitting in the passenger seat,
18 correct?

19 A Yes.

20 Q And then he gets out of the passenger seat?

21 A Yes.

22 Q So isn't it true without any doubt that nobody
23 threw any punches at Martin Gasque when he was sitting in
24 your truck, correct?

25 A Yes.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Q Nobody did?

2 A I couldn't see them. They may have, I couldn't
3 see.

4 Q While he was sitting in your truck?

5 A Yes.

6 Q No punches were thrown?

7 A Not from Martin, no.

8 Q No punches were thrown at Martin while he's sitting
9 in your truck?

10 A No, not that I saw, no.

11 Q Okay. And then you indicated that you lost site of
12 him, correct?

13 A Yes.

14 Q So do you recall testifying on direct examination
15 that Martin opened up the door and stepped out of the truck
16 as they approached. I lost site of him. They were right
17 next to my truck. I heard a loud punch?

18 A Yes.

19 Q That's the sequence that you testified to, correct?

20 A Yes, sir.

21 Q Opens the door, you lose sight of him, but they're
22 right next to your truck and then you hear a loud punch?

23 A Yes, sir.

24 Q So he's outside your truck when you hear the punch?

25 A Yes.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Q Mr. Paxton, you remember meeting with Investigator
2 Robinson on the scene that evening? This gentleman in the
3 front row? You remember meeting -- talking with the law
4 enforcement officer down in the front row. I mean there
5 were law enforcement officers out at the scene that night?

6 A Yes, sir, several.

7 Q So you talked to several investigators prior to
8 giving your statement, correct?

9 A Highway patrol, not all of the Investigators, but
10 police officer's, sheriff's office, highway patrol, yes.

11 Q And then you went down at 11:50 PM Saturday night,
12 you told a written statement to Agent Robinson?

13 A I believe it was 10 minutes until 11.

14 Q 2350?

15 A I believe so.

16 Q 2350 military time is 11:50?

17 A I'm assuming, yes.

18 Q And you gave that to Agent Robinson as well?

19 A Yes, sir.

20 Q And out of this -- when you spoke verbally with law
21 enforcement, isn't it true you told law enforcement that
22 Martin was arguing with Curtis -- the suspect, Curtis
23 Simms, and they are engaging in a fight?

24 Q I wouldn't say arguing, but yes, engaging, yes.

25 Q And let me --

Adam Paxton - Cross-Examination by Mr. Gasser

1 **MR. GASSER:** Beg the Court's indulgence.

2 (WHEREUPON there was a pause in the proceedings.)

3 BY MR. GASSER:

4 Q Mr. Paxton?

5 (WHEREUPON Defendant's Exhibit No. 6 was marked for
6 identification.)

7 BY MR. GASSER:

8 Q I'm handing you what's marked Defendant's Exhibit 6
9 for identification. Take a look at it if you would,
10 please.

11 **MS. CAMPBELL:** Your Honor, may I see what he's
12 using just so I --

13 **THE COURT:** Certainly.

14 (WHEREUPON there was a pause in the proceedings.)

15 BY MR. GASSER:

16 Q That's your statement, correct?

17 A I didn't write this, but, yes.

18 Q Well, that's the statement that when Investigator
19 Robinson was speaking with you late that Saturday night and
20 on into Sunday morning at the sheriff's department,
21 those -- you were providing answers to his questions, were
22 you not?

23 A I mean, that night I was in a state of shock, so I
24 didn't write this. You know, I had a million things going
25 through my head. I was in a state of shock. Then the next

Adam Paxton - Cross-Examination by Mr. Gasser

1 morning, I met with him also.

2 Q I understand, Mr. Paxton. For you -- for everyone
3 that observed or witnessed whatever went on out there it
4 would be shocking for everybody, you would agree with that,
5 wouldn't you?

6 A Yes.

7 Q For all parties?

8 A Yes.

9 Q But that is your signature, correct, Mr. Paxton?

10 A My signature, yes.

11 Q Okay. When Mr. Gasque got out of the truck, did he
12 say anything to you?

13 A Anything to me, no, sir.

14 Q So he didn't say anything to you what he was
15 planning on doing?

16 A No, sir.

17 Q Now, in your written statement at 11:50, you made
18 an error in that written statement, did you not? When it
19 came to where Martin was when he was punched?

20 A Yes, sir.

21 Q And I just wanted to point that out, Mr. Paxton.
22 You indicated you were in some what of a state of shock
23 when you were being interviewed by the sheriff's
24 department?

25 A That night, yes, sir.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Q And in your written statement when Agent Robinson
2 asked you what had happened next, you indicated in your
3 written statement, that Martin Gasque was punched while he
4 was still seated in your truck. Do you recall that in your
5 written statement?

6 A Yes, sir.

7 Q And that's an error. That's incorrect?

8 A Yes, sir.

9 Q Okay. So I just wanted to clarify that to the
10 jury. When you made that statement down at the sheriff's
11 department.

12 A It was correct.

13 Q It was incorrect, correct?

14 A No, no, no, no. That night it was a mistake.

15 Q That's what I mean.

16 A No, you said down at the sheriff's office. I
17 wasn't down there. I was on the scene when I gave this.

18 Q Oh, you were on the scene when you gave a written
19 statement?

20 A Yes, sir.

21 Q Oh, I apologize, but when you made your written
22 statement, that was an error, he wasn't seated in your car?

23 A Yes, like I said, I didn't write it. Yes.

24 Q Okay. And you clarified that the next morning when
25 you went town to the sheriff's department to get your keys.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Do you remember going down to the sheriff's department to
2 get your keys?

3 A Yes, the next morning I met with him and cleared it
4 up.

5 Q You met with Investigator Holdorf to clear it up,
6 right?

7 A Yes.

8 Q In fact, Investigator Holdorf asked you
9 specifically, was Martin hit when he was seated inside your
10 car, he asked you that question specifically, didn't he?

11 A Yes, sir.

12 Q And you were honest with Investigator Holdorf when
13 he asked you that and you said no, he was not -- Martin
14 Gasque was never hit when he was seated inside my pick-up
15 truck. You cleared that up with Investigator Holdorf,
16 correct?

17 A Yes, the next morning, yes.

18 Q Now, when did you lose sight of Mr. Gasque?

19 A The second after he stepped out of my truck.

20 Q And if this were the door right here, this area
21 right here at that edge -- this doesn't have a hinge of a
22 door, but if he opens the door and steps out of your truck
23 and the door is still opened, he's still in -- in the -- in
24 the area of the -- the cab area, the passenger side of your
25 truck, correct?

Adam Paxton - Cross-Examination by Mr. Gasser

1 A Yes.

2 Q And I believe previously you indicated that he took
3 another step forward before you heard anything, correct?

4 A No, he spun to the right and then stepped to the
5 back window.

6 Q Okay. So he steps away from your peripheral
7 vision?

8 A Yes.

9 Q So wen he stepped away from your peripheral vision,
10 you lost sight of him?

11 A Yes, sir.

12 Q But you indicated that you did -- you had observed
13 Mr. Simms approaching your truck, correct?

14 A Yes.

15 Q And you had observed the driver of the truck
16 approaching the side of your truck as well?

17 A I saw the driver of the other vehicle get out. I
18 didn't -- I lost sight of him half way up.

19 Q So you didn't know where he was?

20 A No, the driver, no, sir.

21 Q He was moving in the direction of your truck, but
22 you didn't know where he was?

23 A Yes.

24 Q So at that point in time, when you're seated in
25 your truck, do you remember putting your truck -- when he

Adam Paxton - Cross-Examination by Mr. Gasser

1 got out, do you remember putting your truck in park at all?

2 A I don't recall.

3 Q Could you have done that?

4 A I couldn't tell you. I don't know.

5 Q And needless to say, you knew at that point in time
6 there were at least -- there was Martin Gasque somewhere
7 near your truck, correct?

8 A Yes.

9 Q And another individual approaching Martin Gasque,
10 so he would be near your truck, correct?

11 A He was already at my truck.

12 Q So two people right there at your truck, Martin
13 Gasque, Curtis Simms?

14 A Yes.

15 Q And another individual that may have been -- the
16 last you saw him, he was approaching your truck?

17 A Yes.

18 Q The driver of what you say is the gray SUV?

19 A Yes, sir.

20 Q And this is all occurring while your truck -- at
21 least the passenger side of your truck is toward the right
22 side of the road, the white line so to speak, but the road?

23 A I mean, he's in the road. He wasn't on -- we
24 weren't off the side of the road, no.

25 Q Well -- in the driving lane, but on the right side

Adam Paxton - Cross-Examination by Mr. Gasser

1 of the road driving lane?

2 A On the right side, but to the --

3 Q On the road?

4 A I --

5 Q But on the right side?

6 A Yes. Yes.

7 Q Okay. Now, you've been driving since you were
8 what, 15 years old?

9 A 17.

10 Q 16? 17?

11 A Yeah.

12 Q And you know as the driver of a vehicle, all
13 drivers of cars are required to exercise due care when
14 they're driving a vehicle. You understand that, do you
15 not?

16 A Yes.

17 Q So it's the driver's obligation to make sure and be
18 aware of anybody around the vehicle on the roadway. You
19 understand that. That's basic knowledge of all drivers,?

20 A Yeah.

21 Q Now, you heard -- I believe you indicated you heard
22 a -- you heard a loud punch. You recall that testimony?

23 A Yes.

24 Q And then at that point in time, you stated to the
25 jury, did you not that in your statement you felt that you,

Adam Paxton - Cross-Examination by Mr. Gasser

1 quote, Needed to do something?

2 A Yes.

3 Q And there was a car parked right in front of you in
4 traffic, was there not?

5 A Yes, sir.

6 Q And there was a car behind you in traffic?

7 A Yes.

8 Q And when you heard that punch, did you have any
9 idea physically -- from a physical location perspective
10 where Martin Gasque was?

11 A I'm assuming on the right side of the truck.

12 Q And where Curtis Simms was?

13 A Yes.

14 Q Same area?

15 A Yes.

16 Q Did you know specifically where they were?

17 A No.

18 Q And so, because you felt you needed to do
19 something, I believe up indicated you needed to, quote, Get
20 out of the way?

21 A No, I was going to get out right there, but I
22 didn't want to because there was people everywhere, so I
23 thought I should get off to the side of the road.

24 Q And you -- did you not indicate to the jury in
25 direct examination you figured you needed to get out of the

Adam Paxton - Cross-Examination by Mr. Gasser

1 way?

2 A Pull off to the side of the road, yes, sir.

3 Q And you did not know where Martin was?

4 A No.

5 Q And that you looked around and there were people
6 behind you, people in front of you, people next to you?

7 A Yes.

8 Q So you knew that there were people next to you?

9 A There was people everywhere.

10 Q And you had your foot on the brake at the very
11 least, correct?

12 A Yes, foot on the break.

13 Q And you decided to pull off the side of the road?

14 A Yes.

15 Q And that's what you did?

16 A Yes.

17 Q Not knowing where Martin was?

18 A Yes.

19 Q Not knowing where Curtis was?

20 A Yes.

21 Q And that's when you realized you ran over
22 something?

23 A When I started to pull off to the right side of the
24 road, yes.

25 Q And that's your decision at the time based on what

Adam Paxton - Cross-Examination by Mr. Gasser

1 you knew?

2 A Yes.

3 Q And nobody forced you to move off the side of the

4 road?

5 A Yes.

6 Q And did you have a radio on, Mr. Paxton?

7 A I don't recall.

8 Q Could you have?

9 A Maybe. I mean there's radios in cars.

10 Q Did you hear anybody -- any male voices or any

11 female voices screaming, Stop?

12 A No.

13 Q Anybody banging on your truck?

14 A No.

15 Q And when you drove -- if this was the side of the

16 road and the white line and you drove off the side of the

17 road, you parked your car right up on the side where the --

18 where -- then you got out of the car?

19 A Pulled up to the side of the road, yes.

20 Q State's Exhibit 52; is that your truck?

21 A Yes.

22 Q And that's the side of the road you pulled off?

23 A Yes.

24 Q And that white shed looking building right there,

25 you see that?

Adam Paxton - Cross-Examination by Mr. Gasser

1 A Yeah.

2 Q Okay. That's that white shed right there, correct?

3 A Yeah.

4 Q Okay. And so you pulled off the side of the road
5 and parked it right in front of the white shed, correct?

6 A Yes.

7 Q When did you realize that you'd run over Martin
8 Gasque?

9 A When I got out of my truck and walked to my
10 tailgate.

11 Q You walked up to him?

12 A I ran up to him.

13 Q Realized there was nothing you could do?

14 A I was just sitting down when I got to him and then
15 a split second later more people ran over and said they
16 were EMS and they could try to work him or do whatever.

17 Q And in response to Ms. Campbell's direct
18 examination, when the police got there, you indicated that
19 you were in a state of shock, correct?

20 A Yes.

21 Q And that you were worried?

22 A Correct.

23 Q Yes.

24 Q And other things, I believe was your prize. I'm
25 not sure what you meant by that. But do you remember

Adam Paxton - Cross-Examination by Mr. Gasser

1 saying other things?

2 A Oh yeah, yeah, you know.

3 Q Like Martin help?

4 A Yes.

5 Q And what was happening, something like that?

6 A (Witness nodded head.)

7 Q Mr. Paxton, obviously, you didn't intend to run
8 over Martin Gasque, did you?

9 A No.

10 Q You never in a million years would have foreseen
11 that Martin Gasque was in the location where he was when
12 you started moving that car, would you?

13 A No, I didn't know.

14 Q It was totally unforeseeable for you?

15 A Yes.

16 Q Or else you wouldn't have moved the car?

17 A Yes.

18 Q If you hadn't moved the car -- you had to turn the
19 steering wheel to the right in order to get off the road,
20 correct?

21 A I can't turn it all the way, but I turned it to the
22 right.

23 Q You had to turn the wheel to the right -- of
24 course, when you turn the wheel to the right and you start
25 moving, powering forward the vehicle and all parts of the

Adam Paxton - Cross-Examination by Mr. Gasser

1 vehicle started moving to the right as well, correct?

2 A Yes.

3 Q Including the back right tire?

4 A I mean, eventually the back tire moved.

5 Q And you never in a million years would have
6 foreseen that that back tire would run over and kill your
7 friend?

8 A No.

9 MR. GASSER: Beg the Court's indulgence.

10 THE COURT: All right.

11 (WHEREUPON there was a pause in the proceedings.)

12 MR. GASSER: Thank you for the time, Your Honor.

13 BY MR. GASSER:

14 Q Mr. Paxton, when you gave your statement, your
15 written statement out at the scene where Sargent Robinson,
16 when asked about whether Martin was intoxicated, you
17 indicated he'd had a couple of beers; is that correct?

18 A Like I said, I wasn't watching him all day,
19 watching how many he drank.

20 Q Well, I guess that's the point I want to make. You
21 really don't know how much he had to drink?

22 Q No, I wasn't watching or counting them for him.

23 Q All right. This was a shocking experience for you
24 and everyone else at the scene, was it not, Mr. Paxton?

25 A Yes.

Adam Paxton - Cross-Examination by Mr. Gasser

1 Q I mean, you got sick out there, it shocked you so
2 much, did you not?

3 A No.

4 Q You don't remember getting sick?

5 A I didn't get sick at all.

6 Q Okay. And were you questioned by the highway
7 patrol that evening?

8 A Yes.

9 Q And by Richland County Sheriff's Department?

10 A Yes, and several others.

11 Q Columbia Police Department, maybe?

12 A Columbia, Lexington County Sheriff, highway patrol,
13 Columbia Police.

14 Q Okay. So three -- at least three different law
15 enforcement agencies talked to you that evening?

16 A Four.

17 Q Four?

18 A Four.

19 Q So SCPD would have been the fourth one?

20 A Yes.

21 Q Okay. And since that evening were you ever
22 questioned again by law enforcement authorities since after
23 the next day when you went down to get your truck, were you
24 questioned by law enforcement at all the rest of that week?

25 A That week?

Adam Paxton - Redirect Examination by Ms. Campbell

1 Q Yes.

2 A I don't recall.

3 Q How about within two or three weeks of the
4 incident?

5 A I don't remember. I don't think so, I don't
6 believe so.

7 Q Okay. So after not realizing where Martin Gasque
8 was, pulling off the side of the road and ultimately
9 Mr. Gasque dying, you were interviewed by law enforcement
10 that night, briefly the next morning and have you been
11 interviewed by them prior to come in and testifying?

12 A No.

13 Q Not even in preparation for trial?

14 A I've talked to them, but that's it.

15 Q All right.

16 MR. GASSER: That's all we have, Your Honor.

17 THE COURT: All right. Any redirect?

18 MS. CAMPBELL: Just briefly, Your Honor.

19 **REDIRECT EXAMINATION**

20 BY MS. CAMPBELL:

21 Q Mr. Gasser asked about foreseeable. Did you ever
22 foresee the fact that Curtis Simms would knock your friend
23 unconscious and leave him underneath your truck?

24 MR. GASSER: Objection, Your Honor. Can we
25 approach?

Adam Paxton - Redirect Examination by Ms. Campbell

1 THE COURT: Sure.

2 (WHEREUPON, there was a bench conference out of the
3 hearing of the jury and the Court Reporter.)

4 THE COURT: Here's what we're going to do actually.
5 Given the time, we will take a little morning break because
6 I know our jurors are tired and given that we've had that
7 little bit or -- we're going to take your morning break.

8 Ladies and gentlemen, we'll take fifteen minutes.
9 This will be our morning break. Please do not discuss this
10 testimony or allow anyone -- do not discuss this matter or
11 allow anyone to discuss it with you.

12 And again, we'll take fifteen minutes. Please step
13 to your jury room.

14 (WHEREUPON the jury left the courtroom at 11:34
15 a.m.)

16 THE COURT: All right. Yes, sir --

17 And you may also take a break, but you must not
18 discuss your testimony with anyone.

19 THE WITNESS: Okay.

20 THE COURT: Very well. Fifteen minutes. Thank you
21 everyone.

22 MS. CAMPBELL: Can I see if he wants water, Your
23 Honor?

24 THE WITNESS: Yes, please.

25 (WHEREUPON a recess was observed.)

Adam Paxton - Redirect Examination by Ms. Campbell

1 THE COURT: All right. Okay. Anything before we
2 bring our jury out.

3 MS. CAMPBELL: No, ma'am.

4 THE COURT: Mr. Harris? Nothing, thank you.

5 THE COURT: Jury, please.

6 (WHEREUPON the jury entered the courtroom at 12:07
7 p.m.)

8 THE BAILIFF: All jurors are seated, Your Honor.

9 THE COURT: Thank you, so much. Ladies and
10 gentlemen we will continue with the State's case and
11 redirect.

12 MS. CAMPBELL: Thank you, Your Honor.

13 THE COURT: Thank you, Ms. Campbell.

14 **REDIRECT EXAMINATION**

15 BY MS. CAMPBELL:

16 Q Mr. Gasser was asking about foreseeability, did you
17 foresee the fact that Curtis Simms would knock Martin
18 unconscious and leave him underneath your truck?

19 A Can you repeat that, please?

20 Q Could you have foreseen that Curtis Simms would
21 knock Martin unconscious and leave him under your truck?

22 A Could I see that? That he would do that?

23 Q Yeah. Did you foresee that in any way happening?

24 A I mean, the way he was charging at us and coming, I
25 was sure he was going to do something.

Adam Paxton - Redirect Examination by Ms. Campbell

1 Q Did you foresee the fact that he would leave him
2 underneath your truck?

3 A No.

4 Q Did you try to run over anybody that day?

5 A No.

6 Q What were you trying to do when you pulled off the
7 road?

8 A Get off to road and get out and see what was going
9 on.

10 Q Your truck, the engine on it, is it fairly loud?

11 A Yes, very loud.

12 Q Okay. You testified earlier that you heard one
13 punch?

14 A Yes.

15 Q That day. Could there have been more that you
16 didn't hear?

17 A There could have been more that I didn't hear.

18 Q How big was Martin?

19 A My size 5'10", 160 pounds.

20 Q The man that you saw coming up toward your truck,
21 the one you know as Curtis Simms, was he large or smaller
22 than him?

23 A Larger. Very.

24 Q Mr. Gasser asked you about how this has been a
25 shock and this has been traumatic. Is it still traumatic

Adam Paxton - Recross-Examination by Mr. Gasser:

1 for you?

2 A Yes.

3 Q Have you had to take any measures to deal with it?

4 A Counseling.

5 Q And what kind of counseling have you been in?

6 A Once a week and it's moved, once every three weeks.

7 Q Since this happened?

8 A Yes.

9 MS. CAMPBELL: That's all I have Your Honor, thank
10 you.

11 THE COURT: Recross?

12 MR. GASSER: Just very briefly, Your Honor.

13 THE COURT: Okay.

14 **RECROSS EXAMINATION**

15 BY MR. GASSER:

16 Q Ms. Campbell asked you that you only heard one
17 punch, correct?

18 A Yes.

19 Q And that one punch without a doubt was when -- that
20 you heard was when Curtis -- was when Martin Gasque had
21 already stepped not only out of your vehicle but also moved
22 to the right out of your vehicle, correct?

23 A Yes.

24 Q And you didn't see any punches?

25 A No.

Adam Paxton - Recross-Examination by Mr. Gasser:

1 Q None?

2 A No.

3 Q Because they didn't happen inside your vehicle?

4 A No.

5 Q And you heard one -- you have no idea whether there
6 were anymore; is that true?

7 A I didn't hear anymore, but I heard one loud one.

8 Q So it would be speculation on your part to suggest
9 that there were more because you didn't hear anymore?

10 A I didn't hear anymore after that first one, no.

11 Q Thank you, Mr. Paxton.

12 THE COURT: All right. You may come down.

13 Is this witness free to leave?

14 MS. CAMPBELL: Thank you, Your Honor.

15 THE COURT: Any objection.

16 MR. GASSER: No objection, Your Honor.

17 THE COURT: Very well. You are free to go.

18 THE WITNESS: Okay.

19 THE COURT: Call your next witness, please.

20 MS. MCDUFFY: At this time, the State would call
21 Dr. Clay Nichols.

22 DR. CLAY NICHOLS,

23 having been duly sworn, testified as follows:

24 THE CLERK: Please have a seat. State your full
25 name for the record.

Dr. Chris Nichols - Direct Examination by Ms. McDuffy

1 THE COURT: You go ahead and get situated. You go
2 pull that microphone down. Great. Would you state your
3 full name for the record.

4 THE WITNESS: Clay R. Nickels, N-i-c-h-o-l-s.

5 THE COURT: Your witness.

6 MS. MCDUFFY: Thank you, Your Honor.

7 **DIRECT EXAMINATION**

8 BY MS. MCDUFFY:

9 Q Dr. Nichols, where are you currently employed?

10 A I am the Deputy Chief Medical Examiner for the
11 State of North Carolina.

12 Q And in October of 2010, where were you employed?

13 A I was the Chief Medical Examiner for Richland
14 County.

15 Q Please tell the jury about -- a little bit about
16 your educational background and training in the areas of
17 pathology and forensic pathology?

18 A I received my Bachelor of Science Degree from the
19 University of Oklahoma in 1981. After that I received my
20 M. B. Degree also from Oklahoma in '85. Following that, I
21 entered a residency program in both anatomic and forensic
22 pathology in Charleston at MUSC, completing that in 1990.
23 For the next ten years I was on the faculty at MUSC as an
24 associate professor teaching pathology to medical students,
25 residents, fellows, dental students pharmacy students.

Dr. Chris Nichols - Direct Examination by Ms. McDuffy

1 After that I entered private practice here in
2 Richland County. Part of the private practice agreement
3 was to be the chief medical examiner for Richland County.
4 I left Richland County in 2010 and went to North Carolina.
5 I'm currently the deputy chief medical examiner for the
6 entire state. I'm responsible for 23 Counties within North
7 Carolina holding unrestricted license to practice medicine
8 and surgery in the State of both North Carolina and South
9 Carolina and I'm on the faculty at University of North
10 Carolina, Chapel Hill, clinical professor in pathology.
11 I'm also board certified in both anatomic and forensic
12 pathology.

13 Q And Dr. Nichols, have you testified in courts of
14 record in this state as an expert in both anatomical and
15 forensic pathology?

16 A Many times.

17 **MS. MCDUFFY:** Your Honor, at this time, we offer
18 Dr. Nichols as an expert in --

19 **MR. GASSER:** We have no objection, Your Honor.

20 **THE COURT:** Very well. So qualified. You may
21 proceed.

22 **BY MS. MCDUFFY:**

23 Q Dr. Nichols, can you please explain to the jury
24 what a pathologist does?

25 A A pathologist is a physician like any other

Dr. Chris Nichols - Direct Examination by Ms. McDuffy

1 physician because as opposed to other physicians, that see
2 patients at their practice, we see parts of patients.
3 We're the doctors that get the tissue that's removed at
4 time of surgery and we look at the tissue to see if there's
5 any disease present or no disease present. Any sort of
6 blood work goes to a laboratory where it's eventually
7 interpreted by a pathologist and another thing that a
8 pathologist does is the performance of an autopsy. The
9 difference between a hospital pathologist and a hospital
10 autopsy and a forensic pathologist is the fact that we have
11 additional specific training in performing autopsies on
12 people who die suspicious or a natural death.

13 Q And as a forensic pathologist, what do you like to
14 look at in doing an autopsy and examining the cause of
15 death in a case?

16 A The main things are the history, which is the story
17 that goes around the person's autopsy and then, of course,
18 the body.

19 Q So you look at the body and also what you know
20 about what happened at the scene, the incident, at the time
21 of the crime?

22 A That's correct.

23 Q And you said you're board certified in forensic
24 pathology?

25 A That's correct.

Dr. Chris Nichols - Direct Examination by Ms. McDuffy

1 Q Please explain to the jury what that means?

2 A That means that's the last test. There are no more
3 tests after that. I have national credentials in forensic
4 pathology.

5 Q And personally how many autopsies have you
6 performed in your career?

7 A Between seven and eight thousand.

8 Q And on October the 11th of 2010, did you perform an
9 autopsy on one Allen Martin Gasque?

10 A Yes, I did.

11 Q And that was done at Palmetto Health Richland?

12 A Yes, it was.

13 Q Please describe to the jury what the first thing
14 you do when you perform an autopsy?

15 A Well, the first thing is we look at the body. We
16 weigh it, measure the body. Then we look for any sort of
17 trauma which may be related to the person's death. After
18 that, an autopsy or a dissection is performed, removing the
19 organs one by one looking for the presence or absence of
20 disease after that a report is dictated and any sort of
21 toxicology evaluation is also added.

22 Q And please tell the jury what the height and weight
23 of Allen Martin Gasque was?

24 A Martin was 70 inches and weight was 168 pounds.

25 Q 70 inches would be?

Dr. Chris Nichols - Direct Examination by Ms. McDuffy

1 A 5 foot 10.

2 Q And 168 pounds?

3 A That's correct.

4 Q And you said you do an external examination?

5 A Correct.

6 Q Please tell the jury your finding?

7 A If I could combine the internal and external, it's
8 all put together?

9 Q Yes, please tell the jury your findings?

10 A Essentially, the story was that Martin Gasque was
11 run over by a vehicle causing massive head injury. This
12 was confirmed that there was hemorrhage underneath the
13 scalp subgaleal hemorrhage. The brain was removed. There
14 was bleeding around the brain, within the brain known as
15 cerebral contusion. But most importantly, there was a
16 skull fracture in the base of the skull. The skull is
17 actually removed to actually look at the brain and then
18 your brain sits on the bottom floor of your skull, that's
19 called the base and a hinge fracture was formed, which
20 means that there was a fracture merely going from ear to
21 ear at the base of the brain.

22 Hinge fracture is not only serious but it's
23 incompatible with life and once that fracture occurred,
24 Mr. Gasque was going to die. In addition there were some
25 minor abrasions around the right side of the face and to

Dr. Chris Nichols - Direct Examination by Ms. McDuffy

1 the back of the head.

2 Q And when you performed this autopsy, you noted all
3 that in your report?

4 A Yes.

5 Q And were you also aware that Mr. Gasque was struck
6 prior to being run over by the car?

7 A That's my understanding.

8 Q And whether he was knocked unconscious or
9 conscious, can an autopsy show that?

10 A Sometimes. Not every blow leaves a mark. If the
11 mark is there, that can be interpreted as a blow or what's
12 known as a contusion, a bruise or a laceration, but not
13 every blow leaves a mark and you can look at somebody who
14 plays football that they're out there getting beat up a
15 lot. Even wearing pads there's lots of unprotected skin
16 and they're not bleeding profusely or at all after every
17 game.

18 Q And if someone is knocked out under a vehicle --
19 let me rephrase the question.

20 Dr. Nichols have you had cases where someone has
21 been killed from a single punch?

22 A Yes, I have.

23 Q And describe for the jury how that happens?

24 A I have one memorable case from Paris Island where a
25 marine recruit upon graduation was known as the honor

Dr. Chris Nichols - Direct Examination by Ms. McDuffy

1 graduate or the first graduate of the platoon. The second
2 runner up took exception to this and there was a brief
3 altercation. The second place person threw one punch at
4 this individual. It hit him. He fell down and developed
5 intracranial hemorrhage as the result of one punch.

6 Q And Dr. Nichols in this case, you also said you
7 examined the or toxicology things of that nature?

8 A That's correct.

9 Q And did you make any other findings that
10 contributed to his death in those arenas?

11 A There was also what's known as annual aspiration of
12 blood as a result of the skull fracture. Blood leaked down
13 the back of the throat and was inhaled to some degree
14 during the terminal moments of his life. That did not
15 greatly contribute much to his death, but it was a
16 significant finding.

17 Q And were there any other natural conditions that he
18 had that would have contributed to his death?

19 A He had a chronic inflammation of his thyroid gland
20 which had nothing to do with his death.

21 Q And you also looked at the toxicology in this case?

22 A Yes, I did.

23 Q And what was the blood alcohol level of Allen
24 Martin Gasque?

25 A .32 -- excuse me .232.

Dr. Chris Nichols - Direct Examination by Ms. McDuffy

1 Q And that is -- he would have been inebriated?

2 A Yes.

3 Q Is there any way to tell how impaired he was based
4 on his blood alcohol level?

5 A You would expect some degree of impairment, but
6 with any individual, the results vary dramatically.

7 Q So he was impaired, but you can't tell how impaired
8 he was based on that blood alcohol level?

9 A Not for him personally.

10 Q And, Dr. Nichols did his blood alcohol level in any
11 way contribute to his death?

12 A No.

13 Q Dr. Nichols, to a reasonable degree of medical
14 certainty, what is the cause of death for Allen Martin
15 Gasque?

16 A Allen Gasque died as a result of post-head-trauma
17 due to motor vehicle collision where he was a pedestrian
18 and this was due to an altercation.

19 MS. MCDUFFY: Beg the Court's indulgence.

20 THE COURT: Yes.

21 BY MS. MCDUFFY:

22 Q Were his injuries consistent with his body being
23 run over by a truck after a fight or physical altercation?

24 A Yes.

25 Q Okay.

Dr. Chris Nichols - Cross-Examination by Mr. Gasser

1 MS. MCDUFFY: No further questions for this
2 witness.

3 THE COURT: Cross-examination.

4 MR. GASSER: Briefly, Your Honor.

5 THE COURT: Yes, sir.

6 **CROSS-EXAMINATION**

7 BY MR. GASSER:

8 Q Good afternoon, Dr. Nichols?

9 A Pleasure seeing you again, Mr. Gasser.

10 Q I'd say I would introduce myself, but we've known
11 each over for over twenty years, have we not?

12 A Thereabouts, yes, sir. We were much younger.

13 Q A little bit more hair, too, right?

14 A Well, maybe for me.

15 Q I've just got a few questions, Dr. Nichols.

16 You'd indicated there were cases -- you've worked
17 on cases before where someone's been killed with a single
18 punch. That's not the case here though, correct?

19 A No.

20 Q I just wanted to clarify that.

21 A No, he died as a result of having his head run over
22 by a truck.

23 Q By a tire of a truck?

24 A Yes, sir.

25 Q And the .232 percent blood alcohol level, that's a

Dr. Chris Nichols - Cross-Examination by Mr. Gasser

1 pretty significantly high blood alcohol level, is it not?

2 A Yes, it is.

3 Q For purposes, our legislature has put .08 percent
4 as the inference rate of impairment to drive a motor
5 vehicle. You're aware of that, are you not?

6 A Yes, I am and this is about three times that.

7 Q Three times that level?

8 A Yes.

9 Q And in certain cases, of course, alcohol has
10 different effects on different people's behavior; correct?

11 A That's correct.

12 Q Everybody's different as far as what affect that
13 alcohol may have on them, particularly a level .232
14 percent, correct?

15 A That's correct.

16 Q But some, in your experience, some behavioral
17 characteristics that may be evidence in certain cases may
18 be are resident, right?

19 A Excuse me? A resident?

20 Q Resident.

21 A Yes.

22 Q Some get a false sense of physical superiority?

23 A Yes.

24 Q Guys like to -- slang term I guess it's called like
25 beer muscle. You've heard that phrase before?

Dr. Chris Nichols - Cross-Examination by Mr. Gasser

1 A Not exactly, but I know what you're talking about.

2 Q Feelings of self-confidence can be a behavior
3 effect?

4 A Yes.

5 Q Driving when impaired, obviously, a person's
6 judgment might be impaired at that level?

7 A Yes, sir.

8 Q Inhibitions reduced?

9 A Yes.

10 Q Unstable emotions?

11 A Yes.

12 Q If there was evidence or testimony that the motor
13 vehicle -- a motor vehicle may strike a particular section
14 of a body, does that always necessarily mean that there
15 would be subsequent internal evidence on that?

16 A You would expect that, but not in every case. Once
17 again, we can go back to a football player who is beat up
18 or there's some sort of physical injury. Not every
19 physical injury leaves a mark.

20 Q Okay.

21 MR. GASSER: Beg the Court's indulgence.

22 THE COURT: All right.

23 MR. GASSER: Thank you, Your Honor, that's all we
24 have.

25 THE COURT: Redirect?

Don Robinson - Direct Examination by Ms. Campbell

1 MS. MCDUFFY: No, Your Honor.

2 THE COURT: Is this witness free to leave?

3 MS. MCDUFFY: Yes Your Honor.

4 THE COURT: Any objection?

5 MR. GASSER: No objection.

6 THE WITNESS: Judge, it's good to see you and it's
7 good to be in your court again.

8 THE COURT: All right. Would you call your next
9 witness, please.

10 MS. CAMPBELL: Please the Court, the State calls
11 Don Robinson.

12 DON ROBINSON,
13 having been duly sworn, testified as follows:

14 THE CLERK: Please have a seat. State your full
15 name for the record.

16 **DIRECT EXAMINATION**

17 BY MR. CAMPBELL:

18 Q Sargent Robinson, where are you employed?

19 A Richland County Sheriff's Department.

20 Q What do you do there, sir?

21 A I am currently a sargent in our investigative
22 division. I supervise our burglary unit.

23 Q And how long have you been in law enforcement, sir?

24 A Twenty years this past September.

25 Q And as far as your duties, are you familiar with

Don Robinson - Direct Examination by Ms. Campbell

1 the term of on-call investigator or --

2 A Yes.

3 Q -- what that means?

4 A Yes. What we do in terms of our duties, we work a
5 rotation for the evening shift hours. It's an on call
6 situation. I, myself, am supervisor of that unit.
7 Investigator Holdorf is on the same shift with I. What we
8 do is we work evening hours. We will respond to any major
9 incidents that would occur after the hours of five or so in
10 the evening up until the following day.

11 Q I want to turn your attention back to October 9th
12 of 2010. Did you receive a call from the supervisor in
13 your department?

14 A I did. I was standing by on call as my duties were
15 and I received a phone call from Major Smith, our desk
16 sargent, that there was an incident at the address of Shop
17 Road by the USC football game and we needed to respond.

18 Q And you say we needed to respond, on that evening,
19 who all was there to respond with you?

20 A At that point, it was myself, Investigator Holdorf,
21 were heading over there.

22 Q And you say you went to the scene after receiving
23 that call. Did you then proceed to the scene.

24 A I did.

25 Q Where did you go?

Don Robinson - Direct Examination by Ms. Campbell

1 A I went to the address on Shop Road.

2 Q Once you arrived at the scene, did you meet up with
3 certain people there at the scene?

4 A I did. When I first arrived on scene, naturally,
5 as you can tell, a large crowd of people -- it was pretty
6 chaotic. There was people in various areas. Part of the
7 roadway was blocked off. Crime scene was -- the perimeter
8 was being set up. It was being set up by deputies there on
9 the scene.

10 Q In fact, did you have problems even getting to the
11 scene because of the --

12 A It was -- it was horrible. You can't get through
13 the traffic. Everything was stopped. Pedestrians were
14 everywhere. Crowds of people agitated with the traffic
15 problems, so it was very difficult. There were numerous
16 officers there trying to maintain control. I think some of
17 the city officers with there, some of the county guys were
18 there, the highway patrol was working. I mean there was a
19 lot of different things. And once I got there and started
20 to get settled and find out what was going on, Major Smith
21 was on the scene and advised me what he had learned of at
22 that moment and as I was briefed by him, I then was briefed
23 by other deputies at the scene.

24 We were just constantly being berated by people
25 coming and telling us what was going on and it was kind of

Don Robinson - Direct Examination by Ms. Campbell

1 a little difficult for a while trying to get it all
2 organized and settled.

3 Q Once you arrived at the scene and were briefed, you
4 can't say what was told to you, but once you had learned
5 some of the basic information, did you then make contact
6 with some of the witnesses that were there at the scene?

7 A We did and we tried to track as many as we could,
8 tried to get a little control. We did. I met with a
9 Mr. Allen James for a brief moment. I met with a Mr.
10 Echenroth and his wife, Ms. Echenroth.

11 I also met Mr. Paxton, the driver of the truck.
12 Met him, spoke to him there and when he -- when I first saw
13 him, he was there standing on the side of the roadway. He
14 had been brought over by the deputy, one of the deputies
15 that were there at the scene and I think -- then near the
16 roadway, I believe, his girlfriend -- I saw her at the end
17 of the night. Might not have been that moment when I was
18 there for a while, but later on she appeared.

19 Q Okay. When you first made contact, I believe the
20 first person you said you made contact with was a Mr. Allen
21 James?

22 A I don't know if he was the first person, but it was
23 during the beginning of the point when I was there.

24 Q Let me back up for a minute. Prior to you getting
25 there, were you aware that Investigator Holdorf had been

Don Robinson - Direct Examination by Ms. Campbell

1 there?

2 A Well, I knew he was nearby.

3 Q Okay. And did he actually make contact with the
4 defendant in this case? At the scene?

5 A He was handling Mr. Simms as I was handling the
6 other part.

7 Q Okay. So he was the one handling Mr. Simms at that
8 point?

9 A Yes.

10 Q And when you say handling him, you mean talking to
11 him?

12 A Talking to him, meeting with him.

13 Q Okay. And you were at the scene and one of the
14 witnesses you got some information from was Mr. Allen
15 James?

16 A Yes, ma'am.

17 Q And you can't say what he said, but did he give you
18 certain information?

19 A He gave me an essential statement there on the
20 scene. He was prepared. He wanted to leave the scene and
21 get out of there. So he wanted to give us a quick
22 verbal --

23 Q And you also met with the Echenroths; is that
24 correct?

25 A I did.

Don Robinson - Direct Examination by Ms. Campbell

1 Q Mr. And Ms. Echenroth?

2 A I met with them as well.

3 Q And did you also get some information from them as
4 well?

5 A I did. I talked to them verbally. They too, like
6 everybody else, they wanted to go home.

7 Q And what was Ms. Echenroth's demeanor at that
8 point?

9 A She was nervous. You could tell she was shaken.
10 She was not happy to be there. She was ready to go home.
11 But she was very cooperative, she wanted to help. She
12 wanted to do anything she could. She just wanted to go
13 home.

14 Q Upset?

15 A Pardon.

16 Q She was upset?

17 A Oh, very upset.

18 Q That evening, there on the scene, did you meet with
19 Adam Paxton?

20 A I did.

21 Q And were you able to take a statement from him?

22 A I took a statement from him in my vehicle on the
23 scene, on the roadway.

24 Q And that pretty much sums up the people you
25 actually talked to at the scene that night?

Don Robinson - Direct Examination by Ms. Campbell

1 A Yes.

2 Q After meeting with those people at the scene, did
3 you then return to the sheriff's department headquarters.

4 A I did. I came back later. Eventually, I met up
5 with Investigator Holdorf later on in my office.

6 Q And once you got back to headquarters at the
7 sheriff's department, were you aware that Curtis Simms had
8 been transported there by Investigator Holdorf?

9 A I knew he was -- I'm assuming by Mr. Holdorf. I
10 knew he was transported there.

11 Q Okay. And once you went back -- where is
12 headquarters located?

13 A It's at our address on Two Notch Road, [REDACTED]
14 Notch Road. It's in the northeast portion of Richland
15 County.

16 Q Did you become aware too, after you got there --
17 did you make contact with Investigator Holdorf and Curtis
18 Simms that evening?

19 A I did. I did.

20 Q And when you made contact with them, were you aware
21 of whether or not Mr. Simms had been advised of his rights?

22 A I did. When I met with Investigator Holdorf to see
23 if he had provided a statement and he did provide a
24 statement and prior to the statement, he signs them with a
25 written Miranda warning, we have a written Miranda waiver

Don Robinson - Direct Examination by Ms. Campbell

1 and Investigator Holdorf wanted me to witness the statement
2 or notarize the statement that was provided by Mr. Simms.
3 So part of going through that notarized portion of the
4 statement is also recognizing the Miranda waiver, which is
5 the written form that's all attached.

6 Q And that evening, did you speak briefly with the
7 defendant in some oral communications?

8 A I --

9 MR. GASSER: Your Honor, may we approach?

10 THE COURT: Certainly.

11 (WHEREUPON, there was a bench conference out of the
12 hearing of the jury and the Court Reporter.)

13 THE COURT: Ladies and gentlemen, there is a matter
14 that I must take up outside your presence and I'm a little
15 bit concerned -- it's twenty until one and y'all have to
16 understand. I'm a Jewish mother and I worry about
17 everybody's blood sugar all the time and I think everybody
18 ought to eat all the time. That's why I have to watch it
19 or I'm going to have to change to a love seat behind the
20 bench instead of a big old chair.

21 So, because I must do what I must do and it may go
22 into the one o'clock hour and then I know your little din
23 din bells are going to screaming at me, I think what I'm
24 going to do is send you all to lunch. That way I at least
25 won't be worrying about your din din bell because this

Don Robinson - Direct Examination by Ms. Campbell

1 could take maybe 15 minutes.

2 So you'll be back there for five minutes then your
3 din din bells are going to be screaming at me.

4 So, here's what we're going to do. We're going to
5 take our break now. We're going to reconvene at two
6 o'clock. I know that gives you a little more than an hour,
7 but that will give me time to do what I must do. Y'all
8 might as well have a little bit longer for your lunch than
9 cut it too short. I think that's better for you.

10 Now, as you know at lunch, do not discuss this
11 matter or allow anybody to discuss it with you. No
12 research, no social media. You must not receive any
13 communication regarding this matter. Don't discuss this
14 with anyone. You must receive all of the information from
15 which you will make up your mind from here in court while
16 court is in session. Enjoy your lunch. Go to your jury
17 room then go off to your lunch. I'll see you at two.
18 Thank you so much.

19 (WHEREUPON the jury left the courtroom at 12:38
20 p.m.)

21 **THE COURT:** All right: Here's what we're going to
22 do. We're going to switch into, in the words of my beloved
23 Judge Cottingham a din din hearing. That would be d-i-n.

24 **MS. CAMPBELL:** And Your Honor, we would like to
25 incorporate the testimony from last Friday.

Don Robinson - Direct Examination by Ms. Campbell

1 **MR. GASSER:** We agree that the rights were read,
2 but that's something we want to get around. Mr. Harris
3 needs to know word for word what he can say to the jury.
4 Under the law, we have to know that.

5 **THE COURT:** This is called reflective listening, so
6 if y'all would listen to me reflectively, because that's
7 what this is. Here is what I recall from Monday. There
8 was the ride back -- there was not conversation with the
9 first officer that testifies. I don't remember his name.

10 **MR. GASSER:** That's right, Your Honor, there's a
11 Columbia police officer.

12 **THE COURT:** Exactly, and Mr. Simms walked up and he
13 said something and then at that point, that officer put him
14 in the back of a car and then released jurisdiction of this
15 to the sheriff's department.

16 The sheriff's department -- Investigator Holdorf
17 comes up, takes him and puts him in his truck and then they
18 go down to the police station. They then go through
19 Miranda, go through written Miranda and then he makes his
20 statement.

21 Now, is this -- is this -- I guess my question is
22 this, is this a different time or different event or we
23 just want to continue it at the same time.

24 **MS. CAMPBELL:** Judge, he came in. I think he just
25 testified that Investigator Holdorf had made contact with

Don Robinson - Direct Examination by Ms. Campbell

1 the defendant. He had transported him to headquarters, he
2 stated that he was aware he was advised of his rights and
3 he went in and talked to him briefly at the end of the
4 conversation and it's just some oral statements made at the
5 end after signing his written statement.

6 **THE COURT:** Got it. Now, is everybody clear that's
7 where we are? If y'all don't agree with that, is my memory
8 right.

9 **MR. GASSER:** No, your memory is correct. The
10 statements -- the statement the State says they we're
11 offering into evidence at the hearing on Monday that
12 Ms. McDuffy handled is the statement to investigate -- I
13 mean Officer Heyward, officer James Heyward with the
14 Columbia Police Department.

15 **THE COURT:** And then --

16 **MR. GASSER:** When Mr. Simms approached him out at
17 the scene. They then called Investigator Holdorf who also
18 came in contact with Mr. Simms, put him in his Ford 150
19 pick-up truck, advised him of his Miranda warning en route
20 to the Richland County Sheriff's Department and there
21 was -- there was some communication although it wasn't
22 much, but that was brought out on the record and then
23 Investigator Holdorf testified when he got back to the
24 sheriff's department advised for the purpose of taking a
25 written statement, advised him of his rights, written form

Don Robinson - Direct Examination by Ms. Campbell

1 and that came in, no objection; and then talked about the
2 written statement and that came in with no objection. And
3 then Ms. McDuffy handed it for you to --

4 **THE COURT:** And now we're moving onto oral
5 statements. I agree that the Jackson Denno needs to
6 continue to include the oral statement which we're doing
7 now.

8 **MR. HARRIS:** May I address an issue, Judge, on this
9 particular issue?

10 **THE COURT:** Why in the world would I keep you from
11 doing that.

12 **MR. HARRIS:** I appreciate it, Judge. I just want
13 the Court to know. This Court has the inherent authority
14 of this Court to exclude certain pieces of testimony.
15 That's one of the reasons we have pretrial motions.

16 **THE COURT:** Yes.

17 **MR. HARRIS:** And one of the reasons the Court
18 entertains pretrial motions is to allow the government, the
19 State and the defense, to figure out how they're going to
20 try the case. How they're going to call their witnesses.
21 How they examine certain witnesses. What they're not going
22 to say in opening statements. You know, that's why we had
23 that hearing.

24 Not only when witnesses were testifying judge, but
25 before when the Court and the judge and the defense had the

Don Robinson - Direct Examination by Ms. Campbell

1 opportunity to know exactly what was coming in, what they
2 were offering. That's part of the discovery process, part
3 of the open file process. Part of it is the lawyers talk
4 and figure out what is it that we want to present this
5 jury.

6 We would ask that the this evidence also be
7 excluded under this court's inherent authority to exclude
8 such testimony.

9 THE COURT: Very well. Let me ask you this
10 question as to how -- during the discovery process, were
11 you informed of what this oral statement was.

12 MR. HARRIS: Yes, ma'am.

13 THE COURT: Okay.

14 MR. GASSER: But we don't know what he's going to
15 say. We have these notes that indicates something, but --

16 THE COURT: Okay.

17 MR. HARRIS: We have no idea what he's going to say
18 today.

19 THE COURT: I understand.

20 MR. HARRIS: There was an oral statement made.

21 THE COURT: I understand.

22 MR. HARRIS: And Mr. Gasser can tell you
23 specifically verbatim what we were informed of.

24 MR. GASSER: Judge, I can tell you what we received
25 and I can tell you because he wasn't present at the Jackson

Don Robinson - Direct Examination by Ms. Campbell

1 Denno hearing, we just assumed they weren't going to call
2 him to say, based on what we received, we can deduce from
3 Investigator Robinson's notes at some point in time,
4 Mr. Simms said he was sorry because he puts in his notes,
5 he learned that his actions caused the victim's death.
6 That's clearly not Curtis Simms' statement. That's the
7 Investigator's statement. It's really a summary. I don't
8 even know if that's a statement. And was very apologetic
9 for that.

10 Well, I'm assuming, we just have to assume that
11 Mr. Simms didn't say I'm very apologetic for that.
12 Mr. Simms said, I'm sorry to hear this or something. I
13 don't think so. We have no idea what he said. We do not
14 know word for word what he said, which we do know word for
15 word what Officer Heyword was going to testify and we know
16 word for word what Investigator Holdorf, but we don't know
17 what he said other than he's sorry. I don't have a problem
18 with that. Nobody has a problem with that.

19 I'm assuming they want to put that in because they
20 didn't have him as a witness at the Jackson v. Denno
21 hearing because why would they want to tell the jury that
22 Mr. Simms is humanizing. That's exculpatory so to speak.
23 So the next thing is, he knew he was wrong and wanted it
24 resolved. That's an opinion of his. That's certainly not
25 a statement of Curtis Simms. He also stated that he was

Don Robinson - Direct Examination by Ms. Campbell

1 disgruntled. He also stated that he was acting alone and
2 did not attack the victim while he was still seated in the
3 truck. So that's it. So the discovery that they gave us
4 and you've got a copy of that statement. In the discovery
5 they gave us, I'm assuming, assuming that he said that I'm
6 sorry or something to that effect and now I know based on
7 his notice that he specifically stated that he was acting
8 alone and he did not attack the victim while he was still
9 seated in the truck.

10 Well, obviously we would want that and we just
11 assumed they were going to put in a self-serving statement.
12 So what they gave us was two self-serving statements and
13 that he stated he was actually alone and he did not attack
14 the victim while he was still sitting in the truck. They
15 gave us some discovery, two self-serving statements.
16 That's it two statements. That's what they gave us in
17 discovery. But they don't have Investigator or Sargent
18 Robinson at the scene. Again no hearing, which I
19 understand as a former prosecutor, why would a prosecutor
20 want to put that in.

21 So they do not have it and now all of a sudden,
22 they have Investigator Robinson here. If they're going to
23 offer those two statements, we have no objection. That's
24 all we want right now. But that's the only two
25 statements -- that's the only two statements they've given

Don Robinson - Direct Examination by Ms. Campbell

1 us in discovery that verbally he was very apologetic, so
2 I'm assuming he said he was sorry and he did not attack the
3 victim while he was seated. Now that's what we had. Under
4 the discovery rulings, if he's going to say something else
5 it's supposed to be stopped, Your Honor. If something else
6 is going to be coming out of his mouth -- here we are on
7 the fourth day of trial that they're going to try to offer
8 a verbal statement twenty-eight months after this incident
9 that they waited until the fourth day of trial while the
10 jury had to go for a lunch break, we'd like to see that.

11 THE COURT: All right. Here's where I am -- let me
12 tell you where I am. Now, the first thing is that
13 Detective Robinson is -- he's on the witness list.
14 Secondly, there is is summary of consent. Thirdly, Jackson
15 v -- there is no magical time for a Jackson v. Denno
16 hearing. We happened to have had it on Monday and all the
17 rule requires is that before the statement would be
18 introduced before the jury that the Court must make a
19 determination that it is voluntary and that Miranda was
20 given by the preponderance of the evidence and then it can
21 be submitted to the jury.

22 I am delighted, Mr. Gasser that you raised it and
23 grateful that you raised it because I think I could have
24 missed it and so I'm very grateful that you raised it
25 because I am required to have a Jackson Denno hearing, I

Don Robinson - Direct Examination - In Camera by Ms. Campbell

1 believe, even if defense counsel doesn't want it. I think
2 I have to have it.

3 So I think and I'm very grateful that you have
4 raised the issue. I think it is time to have it at this
5 point and I think that all the -- the -- the pieces which
6 the State should have given in discovery have been given;
7 however, comma, if you hear anything different there's not
8 a question in my mind that I'm going to have the
9 opportunity to hear about it and deal with it because I
10 know that you, you will be paying attention. Both of you.
11 So -- thank you.

12 **MS. CAMPBELL:** Thank you, Your Honor.

13 **THE COURT:** Now, does everybody know we are pausing
14 with the testimony and we are now shifting back into a
15 Jackson v. Denno hearing.

16 **MS. CAMPBELL:** Yes, ma'am Jackson Denno.

17 **DIRECT EXAMINATION - IN CAMERA**

18 **BY MS. CAMPBELL:**

19 **Q** Sargent Robinson, that evening after interviewing
20 some witnesses at the scene and being briefed, did you then
21 return to headquarters?

22 **A** I did.

23 **Q** And when you got to headquarters Curtis is already
24 there? He was already there?

25 **A** He was already there.

Don Robinson - Direct Examination - In Camera by Ms. Campbell

1 Q And who was he meeting with?

2 A Investigator Holdorf.

3 Q And were you aware of whether or not Investigator
4 Holdorf had advised him of his rights?

5 A I wasn't there in the presence earlier. I just
6 knew that he'd already commenced and had already done the
7 interview.

8 Q So once you entered the room after Investigator
9 Holdorf had done whatever he had done, you weren't there
10 for that. Was Investigator Holdorf was in the process of
11 taking a statement from him?

12 A It was finishing.

13 Q Finishing?

14 A Yes, ma'am.

15 Q And at that point, did you join them in that
16 interview?

17 A Well, I didn't go into the interview. I went there
18 to notarize his statement.

19 Q Okay. I'm sorry.

20 A And so --

21 Q At that point did the defendant make certain
22 statements to you?

23 A Not at that point.

24 Q Okay.

25 A At that point Investigator Holdorf presented me

Don Robinson - Direct Examination - In Camera by Ms. Campbell

1 with his statement. They were in there. They had
2 concluded, so I could see where the Miranda waiver had been
3 signed, so I knew that that process had gone through and
4 then he handed me the statement, presented the statement to
5 Mr. Simms. Is this your statement and yes, that it is and
6 then we notarized it that it was his. We notarized it and
7 went through and then we were done and started walking to
8 the elevator and while walking to the elevator he just
9 looked at me and said, Man, I'm sorry for what happened.
10 You know, I didn't go through an interview process with
11 him.

12 Q He made the statements to you?

13 A Yeah, he just in casual conversation walking out.

14 Q And are those statements summarized in your
15 followup?

16 A That is exactly what is in there.

17 Q And when you were walking him out, at any point did
18 he invoke any of his rights?

19 A No, ma'am.

20 Q Did he ever ask for lawyer?

21 A No, ma'am.

22 Q Did he tell you he didn't want to talk with you
23 anymore?

24 A No, ma'am.

25 Q At any point did he tell you that -- did you

Don Robinson - Direct Examination - In Camera by Ms. Campbell

1 threaten him in any way?

2 A Oh, no.

3 Q Did you promise anything?

4 A No, ma'am.

5 Q And at any point did he invoke any of his rights
6 that he had earlier waived that morning?

7 A Nothing changed.

8 Q And at that point, did he make certain comments to
9 you?

10 A The only thing he just said was -- I'm sorry it
11 happened, I didn't mean for it to be like that. That's --
12 that's it -- nothing --

13 Q In your followup, you basically said that he
14 indicated to you that he knew he was wrong and he wanted to
15 resolve it?

16 A Yes. He said that and you know, he also mentioned
17 where -- let me clarify that. The only thing that he
18 talked about on the way walking from there to the elevator
19 was that he was sorry, he didn't punch the guy while he was
20 in the truck and he just wanted to get past that one and
21 get through it and wanted to resolve it. He felt horrible
22 for it.

23 Q In your notes he indicated he said he knew he was
24 wrong?

25 A Yes.

Don Robinson - Cross-Examination by Mr. Gasser

1 Q And he indicated that to you --

2 A That's what he indicated.

3 Q That's what he said to you?

4 A Uh-huh, yes.

5 Q And that he wanted to resolve it?

6 A Yes.

7 Q And then he said he would you describe acting
8 alone?

9 A Yes.

10 Q What else did he say?

11 A That's it, I don't have anything more than -- there
12 are no additional statements. That were made.

13 Q To you?

14 A Not to me there was not.

15 Q And that's what's summarized in your followup?

16 A Yes, ma'am.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION IN CAMERA

19 BY MR. GASSER:

20 Q Investigate Robinson?

21 A Yes, sir.

22 Q Before Ms. Campbell started leading you, you
23 responded to her questions exactly what Curtis Simms told
24 you while standing by the elevator. He responded naturally
25 to her original questions as to what he said before then

Don Robinson - Cross-Examination by Mr. Gasser

1 she started specifically saying --

2 A Sure.

3 Q -- words didn't he?

4 A Yeah.

5 Q And you said, all he said was, Man I'm sorry for
6 what happened. Remember that?

7 A At that point, yes.

8 Q I didn't mean for it to be like that?

9 A Uh-huh.

10 Q That's what you told the judge and then you looked
11 at everybody and said that's it. That's what he said?

12 A I was looking at my notes while I was talking to
13 you, trying to read it all.

14 Q And added on -- the third thing you added on was
15 that he did not hit the victim or attack the victim while
16 he was seated in the truck?

17 A Yes, I was going by --

18 Q And those are the three things that he told you?

19 A Yes, that's what I have reflected in here.

20 Q I'm sorry what happened; I didn't mean for it to be
21 like that; and I didn't hit him when he was in the truck?

22 A That's what he told me.

23 Q Those were the three things?

24 A He said that as we were walking through the
25 hallway.

Don Robinson - Cross-Examination by Mr. Gasser

1 Q And anything else is just your opinion of what that
2 means, correct?

3 A That's my submission of what he told me, yes.

4 MR. GASSER: Judge, I can tell you right here, if
5 those are the only three things that the State's trying to
6 elicit, we don't have a problem with that. We do have a
7 problem with his opinion or his summarization, what he
8 summarized it to be. We only want what Curtis Simms said.
9 So if those are the three things, we can move on. My
10 understanding is they are now I'm sorry it happened, I
11 didn't mean for it to be like that. I didn't hit the
12 victim while he was seated in the truck.

13 Correct, Investigator Robinson?

14 THE COURT: I don't know what the question is.

15 THE WITNESS: Yeah, that is correct.

16 BY MR. GASSER:

17 Q Those are what -- those are what you're telling me
18 Curtis then said?

19 A Yes, right here.

20 Q We're clear on this. Man, I'm sorry for what
21 happened; I didn't mean for it to be like that; I didn't
22 hit him when he was in the truck?

23 A I mean in so many words, yes. I mean you're
24 talking a year and a half. I can't remember exactly come
25 word per se he said, but it was right at that point.

Don Robinson - Redirect Examination - In Camera by Ms. Campbell

1 That's what I noted here in the report here provided you:

2 Q And Sargent Robinson, you understand that the judge
3 has to make the determination what you have to say to the
4 jury when we resume after lunch?

5 A Yes.

6 Q And under oath, I accept what you're telling me
7 that you would say in response to Ms. Campbell, Man, I'm
8 sorry for what happened; I didn't mean for it to be like
9 that; I didn't hit him when he was in the truck?

10 A Yes.

11 A Anything other than those three sentences.

12 A No.

13 THE COURT: I didn't hear the response.

14 THE WITNESS: I said no, I'm sorry. No there's
15 nothing in addition to that.

16 MR. GASSER: Beg the Court's indulgence.

17 (WHEREUPON there was a pause in the proceedings.)

18 That's all we have, Your Honor.

19 THE COURT: Okay.

20 **REDIRECT EXAMINATION - IN CAMERA**

21 BY MS. CAMPBELL:

22 Q When he's tipped over --

23 MR. GASSER: Your Honor, I object. You gave me a
24 good bit of time and I asked him four times to make sure
25 for you, for the Court, I asked him four times are those

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 the three and only three things that he said and he
2 responded, yes.

3 THE COURT: Here's what I'm going to ask you to do
4 or call attention to his notes. I'm going to ask you
5 though, not to ask him leading questions.

6 Refresh his recollection.

7 BY MS. CAMPBELL:

8 Q I'm going to show you these notes and just ask you
9 to look at the underlined line.

10 A He knew that he was wrong and he wanted to resolve
11 it.

12 Q Is that information he gave you?

13 A Yes, and that's what I noted here. Right after I
14 did it.

15 Q And that's what he said.

16 A Yeah.

17 Q That would be the only additional thing we would
18 have, Your Honor.

19 THE COURT: Okay.

20 MR. GASSER: Judge --

21 THE COURT: Recross-Examination.

22 **RECROSS-EXAMINATION IN CAMERA**

23 BY MR. GASSER:

24 Q Sargent Robinson, that was your opinion when Curtis
25 Simms made those comments. You put down in your notes how

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 you accepted that; isn't that true --

2 THE COURT: Mr. Gasser, help me. I want you to be
3 very specific. What are you talking about -- you're asking
4 him a general question. I want you to be very specific for
5 me.

6 BY MR. GASSER:

7 Q The phrase in your notes -- you see your notes?

8 A Yes, sir.

9 Q You put down he learned that his actions caused the
10 victim's death. You see that?

11 A He learned that his actions caused the victim's
12 death and was have apologetic for that.

13 Q Okay. So he learned that his actions caused the
14 victim's death. That's not an oral statement like Curtis
15 Simms, Correct?

16 A That's correct. That would be my statement.

17 Q Okay. And so the man was very apologetic for that,
18 that was your way of summarizing something that he said
19 specifically?

20 A What I'm stating to is what -- that was his
21 behavior when we was walking out.

22 Q Okay.

23 A He acknowledged -- he said that he was responsible
24 for the victim's death and he was very apologetic for it.
25 I'm noting his condition, his response and his behavior.

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 Q So you're describing his behavior?

2 A Right.

3 Q And what -- and your memory of that, my
4 understanding is -- both in direct and cross -- is that he
5 actually said, Man, I'm sorry for what happened?

6 A Yes.

7 Q I didn't mean for it to --

8 A That's where I derived that he was apologetic for
9 it.

10 Q That's what I'm getting to. I didn't mean for it
11 to be like that. Those two sentences, Man I'm sorry for
12 what happened. I didn't mean for it to be like that.
13 That's what you mean in your notes when you say he was very
14 apologetic?

15 A Yes.

16 Q So we're clear on that?

17 A Yes.

18 Q And I'm going to skip over the next sentence. I'm
19 going to come back to it, but I'm going to skip over it and
20 go to the last sentence in that paragraph.

21 A Uh-huh.

22 Q The last sentence is he also stated he was, Acting
23 alone and that he did not attack the victim while he was
24 still seated in the truck. You see that?

25 A Yes.

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 Q And what you told us is -- what you recall him
2 specifically saying is, I didn't hit him while he was in
3 the truck?

4 A That's correct.

5 Q Okay. And so you then summarized that. I didn't
6 hit him while he was in the truck and your note says, He
7 did not attack the victim while he was still seated in the
8 truck?

9 A He was just explaining that as he was walking out.
10 Man, I didn't hit him while he was in the truck.

11 THE COURT: I can't hear you, I'm so sorry.

12 THE WITNESS: I said he was explaining that in his
13 own benefits as he walking out the door, walking out, he
14 says, Man, I didn't hit that guy while he was in the truck.
15 So I'm just making a note of that and that's what I'm doing
16 is making a note of that.

17 BY MS. CAMPBELL:

18 Q And I understand -- when I'm asking you these
19 questions and the judge knows, your note is what you're
20 explaining what Curtis Simms said, but it's not verbatim
21 what he said, correct?

22 A It's pretty close. It's not word for word, but
23 it's pretty much verbatim what he said.

24 Q So when you summarize in your notes that he was
25 very apologetic --

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 A Yes, sir.

2 Q -- that is your description of what he really told
3 you, correct?

4 A Well, you're mixing both sentences. You're going
5 back to the first sentence, that's what I described as his
6 behavior.

7 Q Right.

8 A The last sentence, I'm describing his explanation
9 or his comment.

10 Q Correct.

11 A Yes.

12 Q And your descriptions of his behavior and his
13 comments, but what he actually said you recall is for the
14 very apologetic, Man, I'm sorry for what happened, I didn't
15 mean for it to be like that, correct?

16 A (Witness nodded head.)

17 Q And what he actually said for your describing his
18 behavior, he did not attack the victim when he was still
19 seated in the truck. What he actually said was, Man, I
20 didn't hit him when he was in the truck?

21 A He said that, correct.

22 Q So we got those two sentences cleared up, correct?

23 A Yes.

24 Q Now, you -- your -- you're investigative report,
25 your notes said he knew that his relatives wanted him to

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 resolve it. What did he say to you to come to that
2 conclusion?

3 A Oh my God -- I can't recall exactly word for word
4 he said during that little small blurb, but I can convey to
5 you is he knew what he had done was wrong. He knew he
6 had -- I guess without trying to put words in his mouth, he
7 knew he had engaged in an attack -- attacked the guy, got
8 in the fight and attacked the guy and he knew that he was
9 responsible and he wanted to make it right. I don't know
10 how to convey that to you word for word, exactly how you
11 want me to say it. But to paraphrase that's what was said.
12 That's the only other way to do it.

13 Q Could it have been, man, I'm sorry for what
14 happened. I didn't mean for it to be like that?

15 A In so many words, yes. It was real close to that.
16 I'm paraphrasing it. I can't exactly tell you word for
17 word what he said because it's in conversation walking down
18 the hallway. I can paraphrase it to the best of my ability
19 from what I noted and what I've provided to you.

20 Q And isn't it true when you say he was very
21 apologetic, that's your summary of what he actually said,
22 correct?

23 A When I noted in here that he was apologetic for
24 that, he was sorry. I don't know how many other ways to
25 tell you, he said he was sorry for what he had done and his

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 behavior would support that.

2 Q What we need -- and I -- what we need to know and
3 understand is exactly what he said.

4 A That's what I told you. What I provided is the
5 best I can tell you. I don't know how many other ways I
6 can tell you this. But, I told you.

7 Q But he never said the words, I am wrong. That's
8 just your way of explaining to what he did say, isn't that
9 true?

10 A He said he had done wrong. He said that. He said
11 he done wrong and got in the fight with him. But he just
12 said I didn't punch the guy while he was seated in the
13 truck.

14 Q You're saying he used the words, I've done wrong?

15 A Okay. In so many words. I can't say he said I.
16 Done. Wrong. I mean I don't know how to tell you that.
17 Here's the summation, which is what was explained to me. I
18 mentioned that, I shouldn't have done that and I'm sorry.
19 That's it. I don't know what more to tell you and I don't
20 have an exact recording to tell you every single word that
21 he said. I mean he's saying that in the hallway passing as
22 he's walking out and I don't know what more to tell you.

23 Q Are you're sure it wasn't when he mentioned this --
24 there was all a string, it was really quickly done,
25 correct.

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 A Yes, going from one office to the door walking out
2 the hallway, getting ready to head out.

3 Q And if he was to have said, Man, I'm sorry what
4 happened. I didn't mean for it to be like that --

5 A Yes.

6 Q -- but I hit him when he was in the truck. That's
7 how this whole thing had to happen.

8 A (Witness nodded head.)

9 Q You go back and do your notes, you write it up this
10 way, but that's not verbatim for what he said, correct?

11 A Verbatim, no, paraphrase, yes.

12 Q But isn't it true when you're -- it's your -- you
13 interpreted that as him doing wrong and that's what you put
14 in your notes.

15 A He said that he was wrong. I just told you that.
16 And under the circumstances noted in here.

17 Q It's not noted in there. Would you show me where
18 it says that in there?

19 A He knew that he was wrong and wanted to resolve it.
20 That's what I put in my notes.

21 Q Okay. He knew, according to what you're saying in
22 your summary, he knew -- that's a summary statement and the
23 very next thing he'll actually put, he also stated he was
24 acting alone and did not attack the victim, which is a
25 statement from him?

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 A Are you asking if he just said, I'm wrong. No, he
2 doesn't say I'm wrong. I have a hard time putting words in
3 my mouth but, if that's what you want to -- if that's the
4 answer to your question --

5 A He didn't say it.

6 A He did not say I'm wrong. Okay. If that's what
7 you are trying to say.

8 MR. GASSER: Beg the Court's indulgence.

9 (WHEREUPON there was a pause in the proceedings.)

10 THE COURT: Okay. Any motions?

11 MS. CAMPBELL: None the State.

12 MR. GASSER: Judge, we -- we -- we were put on
13 notice for discovery that the only actual statement that
14 was -- he did not attack the victim while he was still
15 seated in the truck and here we are now. I mean, I'm
16 making a motion -- other than that, this -- I'm making a
17 motion pursuant to Rule 5 to exclude all of it.

18 THE COURT: Other than that statement.

19 MR. GASSER: Other than that statement because that
20 is really the only statement that has been provided to us.
21 And I think that we had a reasonable assumption that they
22 weren't going to -- he wasn't at the original Jackson Denno
23 hearing and just for the same reason Mr. Harris and I
24 thought because he didn't have -- other than that
25 statement, the only accurate statement that we knew that he

Don Robinson - Recross-Examination - In Camera by Mr. Gasser

1 could provide. Of course -- now all of a sudden -- I just
2 think it's been too late. We've been now put on notice on
3 multiple statements now and I think Investigator Robinson
4 was very honest. I've been honest throughout the whole
5 thing. I know he's trying to be very very honest. I've
6 known him for over 20 years. I know he's trying to be
7 honest and I can't tell you how much I appreciate that and
8 the last thing is, he didn't say I'm wrong. He never said,
9 I'm wrong. That's just -- the whole creation of this whole
10 issue, twenty-eight months after it happened when the only
11 thing we were really put on notice that was specific was
12 that he was apologetic and that he didn't hit him when he
13 was in the car. We ask that we exclude it all.

14 **THE COURT:** Okay. Yes, ma'am?

15 **MS. CAMPBELL:** Your Honor, I think the purpose of
16 the Denno hearing is to determine the voluntariness of the
17 statement, I certainly concede to that. Our position would
18 be we would like to make it a Court's exhibit what was
19 turned over. In addition to that I would note as an
20 officer of the Court that Mr. Gasser contacted this
21 investigator as recently as this morning about the
22 testifying for him: So he has had access to him. I know
23 that he earlier talked to him here in the courtroom today.
24 It's not like this is a surprise to them. We did provide
25 this in discovery and you're familiar with what was in his

1 followup as far as what was said and that's just the extent
2 of what we were trying to get to.

3 THE COURT: Here's where I am and maybe y'all can
4 help me.

5 MS. CAMPBELL: Yes, ma'am.

6 THE COURT: I don't think there's been any kind of
7 violation of Rule 5. So let me be clear. I think that the
8 defense has been put on notice with regards to this
9 gentleman was going to testify and give his notes. I don't
10 think that there's anything more that the solicitor office
11 can do in terms of Rule 5. So I think that's been complied
12 with.

13 Here's my problem. My problem is that I have two
14 extraordinary lawyers who told -- threw leading questions
15 have told him what the statements are. I don't know what
16 the statements are. I don't have a clue. I have had y'all
17 telling me what the statements are on leading questions,
18 but I don't know what the statements are. I have to know
19 what the statements are period. I don't know. I know what
20 you want them to be. I know what you want them to be and
21 he hasn't told me what the statements are and so as I sit
22 here, here's my problem I don't think there's a question in
23 this world that whatever was said was voluntary. But I
24 have to know what was said. I don't have a clue what was
25 said. Seriously. After the two of you have examined this

1 officer, I don't know what the statements are and I'm not
2 going to let him testify if I don't know what the
3 statements -- if I don't know what the statements of the
4 defendant are. I know I heard your wonderful leading and I
5 heard your wonderful leading. I don't know what the
6 statements are.

7 MS. CAMPBELL: Your Honor, may I have just a minute
8 to confer with Mr. Gasser. We may be about to resolve
9 this.

10 THE COURT: Sure, I don't mind asking, but I'm
11 scared that I don't think that's my ruling but I don't know
12 what the statements are.

13 MS. CAMPBELL: Your Honor, we will not offer the
14 testimony.

15 THE COURT: You will what?

16 MS. CAMPBELL: We will not offer the testimony out
17 of an abundance of caution.

18 THE COURT: I understand. Great.

19 Now, is anybody hungry?

20 MS. CAMPBELL: Would I have permission to instruct
21 the witness not to mention thinking that was said or we
22 could instruct him here in the courtroom.

23 THE COURT: Let's all do it.

24 MS. CAMPBELL: Just going into any of that.

25 THE COURT: Let's all do it together.

1 And let me explain to you why. These are
2 extraordinary lawyers and you've just been examined
3 thoroughly. They have both suggested to you what your
4 statements were as you went from that room to that
5 elevator. I don't know what they are. And I'm really
6 struggling. Do not talk about it. You know even if y'all
7 talk like Yankees. You're not talking about anything from
8 that room to that elevator. Got it?

9 THE WITNESS: I understand.

10 THE COURT: Do you have any questions about it?

11 THE WITNESS: I will not discuss that --

12 THE COURT: And even if you think that's where
13 they're going, you just clam up and look over here at me.
14 All right?

15 THE WITNESS: I understand.

16 THE COURT: I'll be here for you.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Anything additional from the State? On
19 that issue.

20 MS. CAMPBELL: Not on this issue.

21 MR. HARRIS: Absolutely nothing else.

22 THE COURT: Okay.

23 MR. HARRIS: Thank you.

24 THE COURT: Okay. All right. I will see y'all at
25 two. I'm sorry to cut your lunch short.

Don Robinson - Direct Examination by Ms. Campbell

1 Oh, you know don't talk about your testimony during
2 lunch?

3 THE WITNESS: When do I need to come back.

4 THE COURT: You're going to be back at two.

5 (WHEREUPON a recess for lunch was observed.)

6 THE COURT: Is the State ready?

7 MS. CAMPBELL: State is ready, Your Honor.

8 THE COURT: Defense?

9 MR. GASSER: Ready, Your Honor.

10 THE COURT: All right. Bring us our jury.

11 (WHEREUPON the jury entered the courtroom at 2:31
12 p.m.)

13 THE BAILIFF: All jurors are present, Your Honor.

14 THE COURT: Thank you, so much.

15 You may proceed.

16 **DIRECT EXAMINATION**

17 BY MS. CAMPBELL:

18 Q Sargent Robinson, we were talking about when you
19 went back to headquarters at the sheriff's department. Had
20 Investigator Holdorf been at headquarters taking a
21 statement?

22 A He was there, yes.

23 Q And who was he taking a statement from?

24 A The defendant.

25 Q And were you asked actually to notarize that

Don Robinson - Direct Examination by Ms. Campbell

1 statement?

2 A Yes.

3 Q The next morning, did you also participate in
4 obtaining statements in this case?

5 A I did. I met with Investigator Holdorf at my
6 office at the headquarters and a group of folks came in at
7 his request and we started taking statements from different
8 parties.

9 Q And specifically the next morning, who did you take
10 statements from?

11 A Lauren Coggin.

12 Q Lauren Coggin?

13 A Yes, ma'am.

14 Q And who else?

15 A I believe there was one more, but I don't have a
16 copy of it.

17 Q One other person?

18 A Yes, but I don't think I have a copy of it. There
19 was another one, one of the other girls.

20 Q Just a couple of followup questions.

21 A Okay.

22 Q At the scene that night, you mentioned the people
23 that you actually spoke to at the scene. Did you ever
24 actually talk to anyone from the car or the group that
25 Curtis Simms was with that night?

Don Robinson - Cross-Examination by Mr. Gasser

1 A I did not.

2 Q Were they there when you were at the scene that
3 night?

4 A No, they had already left.

5 Q Was their vehicle there on the scene that night?

6 A No, it was not.

7 Q And they weren't there when you got there?

8 A No.

9 MS. CAMPBELL: Thank you. I don't have anything
10 further.

11 THE COURT: Very well.

12 MR. GASSER: Beg the Court's indulgence.

13 THE COURT: Sure.

14 CROSS-EXAMINATION

15 BY MR. GASSER:

16 Q Sargent Robinson, I don't need to introduce myself.
17 You and I have known each other for quite some time, have
18 we not?

19 A We do.

20 Q Let me start back where Ms. Campbell left off.
21 When -- when you arrived at the scene -- or let me rephrase
22 that. You indicated that the people in the truck that
23 Curtis Simms got out of, it's your understanding that they
24 weren't present at the scene when you got there?

25 A I wasn't aware they were there.

Don Robinson - Cross-Examination by Mr. Gasser

1 Q Okay. That's -- that's what I wanted to clarify.

2 A Okay.

3 Q Isn't it a fact that if Dusty Lindsey and Jordan
4 Lindsey and Ms. Coggin that testified to the jury from
5 yesterday and the other folks from Alabama that had gone to
6 the game in Dustin Lindsey's truck with Curtis Simms, if
7 they had pulled back here and gone back to their tailgate
8 spot and waited for several hours while things were going
9 on, you weren't aware of that?

10 A I wasn't.

11 Q Okay. So when Ms. Campbell asked you so -- asked
12 you the question, so they left before you got there --

13 A Right.

14 Q -- you're not sure of that, correct?

15 A They weren't pointed out by any parties or anybody
16 there. So they were not there as far as I was aware of.

17 Q Okay.

18 A They were again as far as I knew.

19 Q But I want to be clear. You don't know whether
20 they left or not?

21 A No.

22 Q All right. I just want to be clear about that.
23 Your not testifying under oath that you know for an
24 absolute fact that they had left the scene before you got
25 there?

Don Robinson - Cross-Examination by Mr. Gasser

1 A I -- the car was not there is all I can tell you.

2 They were not present on the scene.

3 Q And you mean the scene right here, correct?

4 A I wasn't told that they were anywhere in that area.

5 So I personally did not see their vehicle there and no one
6 pointed me out that that vehicle remained there.

7 Q So if they were there, they didn't physically come
8 up to anybody in law enforcement, you wouldn't know that?

9 A That's correct.

10 Q All right. Now, one of the things when you get to
11 a scene, you acknowledge it was somewhat chaotic that
12 night?

13 A It was, very.

14 Q There were cars, first responders, law enforcement
15 cars everywhere?

16 A There were quite a few.

17 Q Have you had the opportunity to look at any of
18 these -- at the photographs, for instance State's Exhibit
19 No. 8?

20 A I haven't really been involved in this case since
21 right after these folks came to my office that night. So I
22 haven't seen the rest of those pictures.

23 Q All right. Well, while you were out there at the
24 scene, do you recall that there were actually first
25 responder vehicles, law enforcement, maybe even EMS that

Don Robinson - Cross-Examination by Mr. Gasser

1 had driven and were on both sides -- were on both sides of
2 where this -- apparently where this incident occurred.

3 A When I was there, there were no cars on that side
4 of the road. There were all on the other side of the roadway
5 when I was there. The fire truck was on the left side of
6 the roadway, if you're -- I mean, I guess that picture
7 doesn't show it as well. But if you're traveling inbound
8 on Shop Road --

9 Q Maybe on this side?

10 A They were on that side, yes.

11 Q Okay. And you could agree that when you first
12 arrive on a scene such as this where apparently there's
13 been some episode or some incident that occurred, part of
14 your training is that you don't want to immediately start
15 jumping to conclusions, correct?

16 A That is correct.

17 Q You want to make sure, first thing you do is you
18 want to -- you want to secure the scene, make sure that was
19 done?

20 A Security is the first part.

21 Q And there's other individuals responsible for that
22 within the Richland County Sheriff's Department, correct?

23 A That's correct.

24 Q And then you want to attempt to identify any
25 potential witnesses that may be at the scene location?

Don Robinson - Cross-Examination by Mr. Gasser

1 A Yes.

2 Q And either you or other people with the sheriff's
3 department were trying to do that to the best of their
4 ability?

5 A That's correct.

6 Q And as the investigation continues the next day and
7 several days thereafter you try to develop more potential
8 witnesses; is that correct?

9 A That's the process, yes.

10 Q And so you indicated to Ms. Campbell that one of
11 the witnesses -- one person that came up and indicated that
12 he was a possible witness was an individual by the name of
13 Allen James, correct?

14 A Yes.

15 Q And you briefly spoke to Mr. James?

16 A Yes, I did.

17 Q I'm not going to ask you to say what he said, but
18 he -- he indicated to you that he observed some conduct,
19 correct?

20 A Yes, that's correct.

21 Q As a result of that, I believe you stated in your
22 notes that you received his information.

23 A You mean his personal information, contact
24 information?

25 Q Yes.

Don Robinson - Cross-Examination by Mr. Gasser

1 A What we had done was -- because I think he was in a
2 rush like everyone else. So he gave me a quick verbal
3 statement, what he had observed and then said can we meet
4 later to get a more detailed statement.

5 Q And you received his contact information and were
6 able to get two days later an affidavit from Mr. James,
7 correct?

8 A I didn't. I think Investigator Holdorf acquired
9 it.

10 Q And also in -- your notes then reflect and you
11 testified on direct examination that you also met with a
12 couple by the name of Guy and Rhonda Echenroth?

13 A I did.

14 Q And I believe you sated that you had talked with
15 the Echenroths, correct?

16 A Briefly. Again just like in the same situation
17 with Mr. James.

18 MR. GASSER: May we approach very briefly?

19 THE COURT: Sure.

20 (WHEREUPON, there was a bench conference out of the
21 hearing of the jury and the Court Reporter.)

22 MR. GASSER: Thank you, Your Honor.

23 BY MR. GASSER:

24 Q Investigator Robinson, referring to your notes if
25 you need to refer to your notes to refresh your memory for

Don Robinson - Cross-Examination by Mr. Gasser

1 accuracy, you stated on direct examination in response to
2 Ms. Campbell that at least Ms. Echenroth was nervous. Very
3 cooperative but nervous; is that correct?

4 A Yes.

5 Q Okay.

6 A She was shaken.

7 Q Okay. Do you recall both Mr. Echenroth and Ms.
8 Echenroth telling you that their position as to where they
9 were in their vehicle and what they saw was not that great?

10 A Well, I noted here on that after reviewing a little
11 bit more of this -- this has been a long time now, but I
12 believe I did -- I flip-flopped the names on James and
13 Echenroth.

14 Q Okay.

15 A In other words, James was, I think two cars back if
16 my recollection is correct and Echenroths was one car back
17 and when I went back to the office to transcribe my
18 notes -- and the notes weren't transcribed that day. They
19 were transcribed several days later. James was actually in
20 the better position than the Echenroths. You understand
21 the difference in the vantage points.

22 Q Okay. I just --

23 A I understand.

24 Q You understand this note they have --

25 A My notes are in error. I understand that's what

Don Robinson - Cross-Examination by Mr. Gasser

1 you're saying --

2 Q Okay --

3 A -- in that portion --

4 Q So --

5 A -- in that one section because I was cutting and
6 pasting different parts of the report when I was doing it
7 to get it on the computer. So, you understand where I'm --

8 Q Well, I really don't.

9 A Okay. All right.

10 Q In your notes -- you separated your notes in
11 paragraphs.

12 A I did.

13 Q You finished talking about what Mr. James told you
14 and then you moved onto another paragraph, correct?

15 A Yes.

16 Q And this is the paragraph where you talk about
17 verbally speaking with Guy and Rhonda Echenroth who were
18 directly behind Adam Paxton's truck in your notes?

19 A Uh-huh.

20 Q Then you set up appointments -- your notes reflect
21 you set up an appointment --

22 A We set up the appointment and that was Investigator
23 Holdorf met with them to finish up to get a more defined,
24 better statement than what we did on the scene.

25 Q Then you talked about how they both -- they both

Don Robinson - Cross-Examination by Mr. Gasser

1 stated -- they both stated they saw a fight --

2 **MS. CAMPBELL:** Objection, Your Honor --

3 **MR. GASSER:** Well, I'm not going to offer this for
4 the truth of the matter asserted at all. I'm offering it
5 to demonstrate without looking at his notes. What I'm
6 looking at in the notes is the truth of the matter
7 asserted. The first part. I'm offering it from the
8 statement -- I'll just move on to get that.

9 BY MR. GASSER:

10 Q The one sentence at the end of the sentence, it
11 states that their position was not that great, correct?

12 A That is correct.

13 Q Okay. I just want to make sure that -- you
14 understand, I know you weren't here in this courtroom, but
15 I asked the Echenroths about this, based on your notes.

16 A Okay.

17 Q Okay. So in your notes, it clearly states that
18 when you talked with the Echenroths, they both say that
19 their position was not that great according to your notes?

20 A According to my notes, yes.

21 Q And you're telling me now that that's -- there 's
22 an error --

23 A I tell you, there was so much chaos going on over
24 there, I think I might have flip-flopped the car position
25 and put it -- transcribed it into my notes because one car

Don Robinson - Cross-Examination by Mr. Gasser

1 was right behind the other. There was people everybody and
2 all that stuff was going on.

3 Q When did you realize -- since October the 9th of
4 2010, when did you realize that you may have -- that that
5 may have been an error?

6 A I found this out when I came here, this morning. I
7 haven't been -- I haven't done anything in this case since
8 the beginning of this case. In other words, I started off
9 to help Investigator Holdorf and turned it over to him and
10 I've been out of the picture the entire time since.

11 Q Okay. Now, Adam Paxton, you had an opportunity to
12 briefly speak with Adam Paxton as well?

13 A Yes, I did.

14 Q And ultimately, you left the scene out there on
15 Shop Road?

16 A Yes.

17 Q Correct?

18 A That is correct.

19 Q And the next day, the next morning, I believe it
20 was early in the morning sometime around a little shortly
21 after nine o'clock. Dustin Lindsey, Jordan Lindsey, Lauren
22 Coggin and some other people came to the Richland County
23 Sheriff's Department to provide statements to the Richland
24 County Sheriff's Department; is that correct?

25 A Yes, they came as a group.

Don Robinson - Cross-Examination by Mr. Gasser

1 Q And I believe you also -- it's not in your notes,
2 but I think you -- and it's been a long time. I know
3 there's no way you'll remember this if it's not in your
4 notes, but you took -- you took Billy Jordan, goes by
5 Jordan Lindsey's statement. Well, I'd like to show it to
6 you.

7 A Sure. That will refresh my memory. I knew it was
8 someone else, but I didn't know which one of the group it
9 was. I knew it was one of the other members. Do you have
10 a copy of it, you can refresh me. I don't have a copy of
11 it.

12 MR. GASSER: Judge, do I need to mark this if I'm
13 just going to show it to him -- you want me to mark this
14 for identification purposes? I'm going to quickly show him
15 one sentence -- show something and then he can give it
16 back.

17 THE COURT: Yeah.

18 MR. GASSER: Okay.

19 THE WITNESS: Yeah, I did that.

20 BY MR. GASSER:

21 Q So you took the Lindsey twins statements and
22 Ms. Coggin's statements. At least we know that, correct?

23 A That's correct. That's all I did.

24 Q And when you're taking these statements of
25 individuals, just part of your procedure is to make sure

Don Robinson - Cross-Examination by Mr. Gasser

1 that you're only taking one statement at a time, correct?

2 A That's correct.

3 Q So you might bring Dustin Lindsey into a room and
4 you interview him and get his statement from Dustin Lindsey
5 just the investigator and Dustin Lindsey, correct?

6 A Yes.

7 Q And you do the same with Jordan Lindsey?

8 A Or whoever the next person would have been.

9 Q Yeah, in general. The point I'm trying to make,
10 each person is interviewed individually separate and apart
11 from everybody else, correct?

12 A That's correct.

13 Q And that was these individuals came down to the
14 sheriff's department on their own to do that the next
15 morning?

16 A Well, I don't know if it's on their own, but I
17 think per request.

18 Q That's what I mean. They were requested and then
19 they came?

20 A Yes.

21 Q Okay.

22 MR. GASSER: Beg the Court's indulgence.

23 THE COURT: Okay.

24 BY MR. GASSER:

25 Q So the request was made of the Lindsey twins and

Don Robinson - Cross-Examination by Mr. Gasser

1 the other individuals to come down to the sheriff's
2 department that morning?

3 A I didn't make the request.

4 Q Okay.

5 A I think Investigator Holdorf maybe explained that
6 to them.

7 Q Or --

8 A Some of the people.

9 Q Or if there was some law enforcement agency because
10 you said there were a number of law enforcement out there
11 at the scene?

12 A Well, they were doing varying duties.

13 Q Right. I believe you had some of the officers
14 doing traffic, some of the officers doing the perimeter.
15 They weren't -- they all weren't involved in this part here
16 of gathering witnesses and interviewing and scheduling and
17 all that stuff?

18 Q If somebody affiliated with the Richland County
19 Sheriff's Department told the Lindsey twins and the people
20 that were with them out there in the scene in the parking
21 lot area, call down to the sheriff's department, make
22 arrangements to come down the next morning to give your
23 statements, you wouldn't know that?

24 A I wouldn't know that. If they did, I wouldn't know
25 it.

Travis Holdorf - Direct Examination by Ms. Campbell

1 Q Thank you.

2 MS. CAMPBELL: Nothing further from the State.

3 THE COURT: Very well. Is this witness free to
4 leave? Are there any objections?

5 MR. GASSER: No objection.

6 THE COURT: You are free to go.

7 THE WITNESS: Thank you.

8 THE COURT: Please call your next witness.

9 MS. CAMPBELL: State would call investigator Travis
10 Holdorf.

11 TRAVIS HOLDORF,
12 having been duly sworn, testified as follows:

13 THE CLERK: Please have a seat and state your full
14 name for the record.

15 THE WITNESS: Travis Holdorf, H-o-l-d-o-r-f.

16 THE COURT: And can you bring that microphone just
17 a little bit closer.

18 THE WITNESS: Yes, sir.

19 DIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q Investigator Holdorf, where are you employed?

22 A I'm employed at the Richland County Sheriff's
23 Department.

24 Q Okay. I'm going to move this closer.

25 THE COURT: Thank you.

Travis Holdorf - Direct Examination by Ms. Campbell

1 BY MS. CAMPBELL:

2 Q And what do you currently do there?

3 A Currently, I'm with the sex crimes and child abuse
4 division, special victim's unit.

5 Q And back in the Fall of 2010, were you assigned to
6 what's called the on-call investigator or the homicide
7 duty?

8 A Yes, ma'am.

9 Q And tell the jury what your duties included in that
10 capacity.

11 A If you had a homicide or a death, a suspicious
12 death, you're called out to the scene, you're the case
13 investigator, basically given that position based upon
14 knowledge, skill, time in and you're responsible for the
15 case.

16 Q And once a case or once a crime or homicide in this
17 case happens, typically is there a lead investigator that
18 is assigned the case?

19 A Yes, ma'am.

20 Q And in this case did you come to be the
21 investigator?

22 A Yes, ma'am.

23 Q And as lead investigator what did your duties
24 include?

25 A My duties include -- I'm responsible for the case,

Travis Holdorf - Direct Examination by Ms. Campbell

1 everything that's done, not done, over seeing interviews.

2 It's my case.

3 Q I want to turn your attention to the evening of
4 October 9th of 2010. You were on call that night?

5 A Yes, ma'am.

6 Q And did you receive a call directing you to go to a
7 certain place?

8 A Yes, ma'am.

9 Q And as a result of receiving a telephone -- who
10 actually called you?

11 A I was notified by Sargent Robinson.

12 Q And as a result of that phone call, where did you
13 proceed?

14 A I went to Shop Road.

15 Q Shop Road? And is that here in Richland County
16 where the scene was?

17 A It's right in Richland County. Usually by the time
18 I get there, they tell me to look for the blue lights and
19 it's pretty easy to find out where I need to do.

20 Q That night, when you proceeded to Shop Road, you
21 remember that there was a football game earlier that day?

22 A Yes, ma'am.

23 Q And is this located in close proximity to the
24 stadium?

25 A Very close.

Travis Holdorf - Direct Examination by Ms. Campbell

1 Q And when you were traveling there that night, did
2 you encounter any difficulties actually getting to the
3 crime scene.

4 A It was all but impossible if you were not law
5 enforcement to get to the scene itself. I had to use my
6 blue lights and even then maneuvering on and off the road
7 to try to get to that spot.

8 Q And why was it so hard for you to get to the scene
9 that night?

10 A Even at that time, 9:45 is when I get the phone
11 call, traffic was still thick and then once you got closer
12 to where it was, it was just backed up. There was nowhere
13 to move.

14 Q And why was it backed up?

15 A Because of the incident here.

16 Q So did this actually disturb the peace in the
17 community that night?

18 A Very much so. It's pretty hard to shut down Shop
19 Road any day, much less right after a football game.

20 Q Once you were able to maneuver your way to the
21 scene, what did you do?

22 A Once I got to the scene, it was noted to me Curtis
23 Simms was sitting in the back of a patrol car. Because of
24 the scene and a lot of stuff going on, there's a lot of
25 traffic, there's a lot of people going about doing what

Travis Holdorf - Direct Examination by Ms. Campbell

1 they needed to do. I wanted to get Curtis away from the
2 scene and wanted to take him to our headquarters to
3 interview him.

4 Q And prior to making contact with Curtis, did you
5 get briefed about basically what information they had at
6 that point?

7 A When I get a lots -- the most major of events, the
8 amount of information you have to start with is growing.
9 It's growing by the hour. It's growing -- you're getting
10 very limited information just because no one really has a
11 lot of information. Your job as an investigator is to
12 verify this information. That becomes very important on
13 these cases. Take just a deep breath and methodically go
14 through it. Curtis was identified as someone who was
15 involved in this.

16 I identified myself as an investigator with the
17 sheriff's department and who I was. I asked him if he
18 wanted to come and talk with me. He indicated that he did.
19 We went to my truck. I drove him to our headquarters. He
20 sat in the front seat and we went to our headquarters.

21 Q Where was he when you first got to the scene?

22 A He was in the back of a patrol car.

23 A And was that a county car, a city car, or what. I
24 thought it was a city. It could have been a county. I
25 just remember it was a marked police car.

Travis Holdorf - Direct Examination by Ms. Campbell

1 Q And at that point, you had enough information that
2 you knew you needed to interview him?

3 A Yes, ma'am.

4 Q If possible. And prior to interviewing any suspect
5 or any defendant, are there certain precautions you take?

6 A Yes, ma'am.

7 Q If a person believes or if you believe that this
8 might end up being an arrest. You want to advise them of
9 their Miranda Rights. The same thing you see on TV
10 typically. And that's to safeguard their rights against
11 self-incrimination and it's also to make sure that you just
12 do things proper.

13 Q You mentioned earlier that you actually, once you
14 got to the scene, he was there at the scene and that you
15 asked him if he wanted to talk to you and he agreed to?

16 A Yes, ma'am.

17 Q And once you actually -- and you say that you
18 wanted to get him away from the scene?

19 A Yes, ma'am.

20 Q And why was that, sir?

21 A My experience, typically people involved in
22 incidents are less likely wanting to talk when they're
23 right there with it. I wanted to get his side out. It was
24 important for me as a law enforcement officer to get his
25 version of events. That's very important. If he says I

Travis Holdorf - Direct Examination by Ms. Campbell

1 don't want to talk to you, that doesn't help me at all.

2 Q Once you actually had him in your car and on the
3 way to headquarters, did you do anything to ensure his
4 rights were protected?

5 A Yes, ma'am.

6 Q What did you do?

7 A I start out just making small talk. I did advise
8 him of his rights and just like I told you guys, it's the
9 same rights you see on TV, that you have the right to
10 remain silent that anything I say can and will be used
11 against you in a court of law. You have a right to talk to
12 an attorney for advice before I ask you any questions and
13 to have an attorney with you during any questioning. If
14 you cannot afford an attorney, one will be appointed to you
15 before any questioning, if you wish and if you decide to
16 answer questions now without an attorney present, you still
17 have the right to stop answering questions at any time.

18 You also have the right to stop answering questions
19 at any time until you talk to an attorney. I did that
20 verbally as I'm driving. I also did that in written form
21 once we got to headquarters.

22 Q When you verbally advised him of his rights prior
23 to the written warning form which you had at headquarters,
24 was that prior to you asking him any questions about what
25 had happened that night?

Travis Holdorf - Direct Examination by Ms. Campbell

1 A Yes, ma'am.

2 Q So that was before you asked him any questions?

3 A Yes, ma'am.

4 Q And --

5 A Well, if I -- if I can fall back, before I asked
6 him if he wanted to talk with me, get his version out,
7 before I asked him any detailed questions about the event,
8 yes, ma'am.

9 Q Okay. Thank you. And did he appear to understand
10 what you were saying?

11 A Very much so.

12 Q Was he coherent?

13 A Very much so.

14 Q Once you advised him of his rights, did you promise
15 him anything to make him talk to you?

16 A I did not.

17 Q What if any threats did you make toward him?

18 A I made no threats.

19 Q Did you deny him of any of his rights?

20 A No, ma'am.

21 Q At any time, did he invoke his right to remain
22 silent?

23 A No, ma'am.

24 Q He just happened to tell you he didn't wish to talk
25 to you?

Travis Holdorf - Direct Examination by Ms. Campbell

1 A No, ma'am.

2 Q At any time did he ask for an attorney?

3 A No, ma'am.

4 Q And was he cooperative with you?

5 A Yes, ma'am.

6 Q And did he appear to understand the rights as you
7 explained them to him?

8 A Very much so.

9 Q Once you had verbally advised him of his right on
10 the ride into headquarters, what if any information did you
11 gain?

12 A I gained where they were. You kind of want to try
13 to get an outline of the sequence of events so that when
14 you are putting this down in written form you can go
15 through as methodically as possible. There's a different
16 way of taking statements when you at your headquarters.
17 You've got all the time you need to take that statement
18 versus someone who's in a hurry to go from one job to
19 another job. You may be meeting him on the side of the
20 road to just get a quick statement. This is something
21 where it's a very significant event. I wanted to take all
22 the time I needed and that's what we did. I explained to
23 him, you know, I'm not here to put words in your mouth, but
24 what I want is someone that doesn't know you and doesn't
25 know me can read your statement and have a fair and

Travis Holdorf - Direct Examination by Ms. Campbell

1 accurate depiction of what happened tonight so there would
2 have no question of what happened. You want to try and tie
3 in as much detail, who they were with, times, especially
4 when you're talking about the possibility of a criminal
5 charge being brought against someone.

6 Q And on the ride in, did you specifically ask him to
7 make sure that he understood you about any alcohol
8 consumption that day?

9 A Yes, ma'am.

10 Q And what, if anything, did he tell you about his
11 alcohol consumption at that point?

12 A That he'd had approximately 10 to 11 beers, a
13 couple of shots. He stated that he felt very sober.
14 You're gauging him -- his speech did not sound slurred, a
15 large indication of someone who's being intoxicated. His
16 manners did not appear to be that of someone who was
17 intoxicated to the point where they wouldn't understand
18 what's going on. I had no question in my mind he
19 understood what was going on. He understood what we were
20 doing and why we were doing it.

21 Q Once you got to headquarters, what do you do?

22 A I asked him if he needed to use the restroom,
23 wanted anything to drink. Ideally, when you sit down with
24 someone that's going to be a while, just to get that out of
25 the way.

Travis Holdorf - Direct Examination by Ms. Campbell

1 Q Okay. And prior to actually going into any
2 questioning or reducing anything to a statement form, did
3 you again advise him of his rights?

4 A I did.

5 Q And?

6 A The way I explain it to someone is, if we're going
7 to take a written statement, I want to put everything in
8 writing so we have a written advice of rights form and you
9 put a check mark as you read each one. At the bottom it's
10 called a waiver.

11 Q And I show you what's been marked as State's
12 Exhibit No. 1 for ID purposes at this point. Do you
13 recognize that?

14 A This is the original advice of rights with our
15 signature on it.

16 Q And is that the advice of rights that you used with
17 the defendant that night?

18 Q It is. It is signed by both of us?

19 Q Can you tell the jury basically how you filled it
20 out and what rights you went through with him that night.

21 A I filled out his name, the place where we were at,
22 which is our headquarters, 5623 Two Notch Road in Richland
23 County. Officers, it was just myself, so I just put my
24 name there. You've got the date, October 9th, 2010 and the
25 time is 10:40 and that's going to be in the p.m. Then as I

Travis Holdorf - Direct Examination by Ms. Campbell

1 read them off: Before I ask you any questions, you must
2 understand your rights. You have the right to remain
3 silent. Anything you say can be used against you in court.
4 You have a right to talk to a lawyer for advice before I
5 ask you any questions and to have a lawyer with you during
6 questioning. If you cannot afford a lawyer, one can be
7 appointed to you before any questioning if you wish. And
8 if you decide to answer questions now without an attorney
9 present, you still have the right to stop answering
10 questions at any time that you -- excuse me answer
11 questions at any time. You also have the right to stop
12 answering questions at any time until you talk to a lawyer.

13 Then I explain to them down here there is a waiver
14 of rights. They're really not waiving anything, any
15 rights, even though you sign this bottom part, you still
16 have all these rights. And it states that I read the
17 statement of my rights and I understand what my rights are.
18 I'm willing to talk and answer questions. I understand and
19 know what I'm doing. No promises have been made to me and
20 no pressure or coercion of any kind has been used against
21 me.

22 And then I asked him do you understand what
23 pressure and coercion is. If they do not understand what
24 pressure and coercion is, then I'll under line it. This is
25 not underlined, so he told me he understood what that

Travis Holdorf - Direct Examination by Ms. Campbell

1 means.

2 Q And at that point, did he indicate he understood
3 his rights and wished to waive his rights?

4 A Yes, ma'am.

5 Q And did he memorialize that in any way on that
6 form?

7 A He signed it and then I witnessed it.

8 MS. CAMPBELL: Your Honor, at this time, we'd offer
9 State's Exhibit No. 1 into evidence.

10 MR. GASSER: No objection.

11 THE COURT: Very well.

12 (WHEREUPON States Exhibit No. 1 was entered into
13 evidence.)

14 BY MS. CAMPBELL:

15 Q And I believe on State's Exhibit No. 1, he actually
16 signed, understanding his rights first and then he signed
17 his waiver of rights; is that correct?

18 A Yes, ma'am.

19 Q At any time during the time that you questioned him
20 in the next period of time, did he ever ask for an
21 attorney?

22 A No, ma'am.

23 Q At any time while you were questioning him that
24 night, did he tell you he didn't want to talk to you any
25 more?

Travis Holdorf - Direct Examination by Ms. Campbell

1 A No.

2 Q Did anyone pressure him, or threaten him or coerce
3 him in any way?

4 A There was none of that.

5 Q Did you deprive him of any creature comforts in
6 order to make him talk to you?

7 A No, ma'am.

8 Q And in your opinion, did he talk to you
9 voluntarily?

10 A Absolutely.

11 Q Once you advised him of his rights, tell the jury
12 basically how you took his statement that night.

13 A I'll ask him what happened just so I have an
14 understanding of what we're doing. It's difficult to type
15 and think of the next questions and try to get things
16 going, so you want to have an understanding of the sequence
17 of events. When I take statements, I like to ask a lot of
18 what next or what then. And then I proceeded to type up
19 what he told me on three pages typed almost the three full
20 pages typed and then wrote in the little paragraph at the
21 end.

22 Q Okay. And I show you what's been marked as State's
23 Exhibit No. 2. Is this the statement that you actually
24 took from him that night?

25 A This is the original statement, yes, ma'am.

Travis Holdorf - Direct Examination by Ms. Campbell

1 Q And I noticed that you typed the body of the
2 statement. The first two full pages and just a little bit
3 at the top of the third page is in typewritten form?

4 A Yes, ma'am.

5 Q And then on the last page, there's some handwriting
6 of events or explanations. Whose hand writing is that?

7 A That's Curtis Simms.

8 Q And tell the jury once the typewritten form is
9 written up, what you did in this case and how he happened
10 to add to his statement?

11 A Once we type -- we finish typing, you'll print it
12 out. I tell him to read it, make sure this is accurate and
13 correct. If there's anything that he wants to change, it's
14 very easy to do so, but once he signs it, it becomes an
15 official document. So he starts reading it. On the second
16 page, he actually makes a couple of corrections or adds a
17 couple of things. And then on the third page, he wrote
18 roughly a paragraph in his own handwriting.

19 Q And the reason you allow him to read it and review
20 it and everything is for what reason?

21 A I want to make sure it's right. Make sure it's
22 accurate.

23 Q His version of what happened?

24 A Yes, ma'am.

25 Q And once he had the opportunity to read through it

Travis Holdorf - Direct Examination by Ms. Campbell

1 and correct it and then add to it, did he sign off on it in
2 any way?

3 A Yes, ma'am.

4 Q He signs off on it on two pages. Excuse me two
5 spots on each page. I witnessed it and then Sargent
6 Robinson notarized it?

7 Q And as far as during the time period when you were
8 actually taking the written statement from him, was Sargent
9 Robinson there the entire time?

10 A No, ma'am. He was not. He arrived there right at
11 the end of the statement.

12 Q And that was when he came -- he notarized the
13 statement and make it an official document?

14 A Correct, yes, ma'am.

15 MS. CAMPBELL: Your Honor, at this time, we'd offer
16 State's Exhibit No. 2 into evidence.

17 MR. GASSER: No objection.

18 THE COURT: Very well.

19 (WHEREUPON State's Exhibit No. 2 was entered into
20 evidence.)

21 MS. CAMPBELL: Your Honor, permission for the
22 witness to publish to the jury.

23 THE COURT: Yes.

24 BY MS. CAMPBELL:

25 Q You may read the statement.

Travis Holdorf - Direct Examination by Ms. Campbell

1 A This is actually made up of a template where you
2 fill in the blanks basically. It's the statement of Curtis
3 Simms. I put his address. Is it all right if I don't
4 publish his address.

5 Q You don't have to publish his address.

6 A Okay. Made at Columbia, South Carolina and on this
7 one, I did not change the dates so it says the 28th of
8 September at 1354 hours in the present of Investigator
9 Holdorf of the Richland County Sheriff's Department. This
10 takes place the night of October 9th. I just did not
11 change the date.

12 And it says I, Curtis Simms, I have the right to
13 remain silent. His advice of rights are listed at the top
14 of this form. At the bottom is where I started typing. It
15 states that I got to the football game today around 11:30.
16 I went with Dusty Lindsey, Jordan Lindsey, Jerrod Hughes,
17 Lauren Coggin and a guy named Alex, I do not know his last
18 name. We were in Dustin's Green Chevy pick-up truck. We
19 were tailgating in a large fenced in area. I did not go
20 into the game. About halftime, we ran out of Bud, which is
21 going to be Budweiser, the beer. All we had was Miller,
22 which again is going to be Miller, the beer. I tried to
23 drink a Miller, but I did not like it. I did have three
24 Jell-O shots.

25 I started eating little popcorn sausage biscuit

Travis Holdorf - Direct Examination by Ms. Campbell

1 things. At the end of the game, I was in Dustin Lindsey's
2 truck. He was driving. I was in the front passenger seat
3 with Lauren Coggin in my lap. Marquis, last name unknown,
4 told him Lindsey and Mike Davis were in the back of the
5 truck. We were trying to get out and turn right onto Shop
6 Road. Traffic was bumper-to-bumper. No one was letting us
7 out. We were sitting there -- excuse me, we were sitting
8 there with our turn signal on, it should be R. I yelled
9 out, Hey and waived my hand. My intention was to get
10 someone's attention so we could get out.

11 A black truck that was jacked up stopped in front
12 of us. The passenger had on a yellow shirt and a bald
13 head. He looked at his driver and then looked at me and
14 said what's up. We both got out of our cars and bowed up
15 at each other. I got to his truck before he got to mine.
16 Both vehicles were stopped. When he bowed up, I swung and
17 hit him. I hit him in the face with either my knuckles or
18 my elbows. He fell back into the right -- the door of the
19 truck that he was in was open and he fell towards the door
20 and hit the door. When I hit him, I fell too. I fell to
21 the side of the truck. The guy fell to the ground and the
22 guy in the truck took off. The truck ran over his -- ran
23 his head over. I ran up to him and squatted town. I saw
24 blood coming out of his nose.

25 I ran down the road and saw a white female officer

Travis Holdorf - Direct Examination by Ms. Campbell

1 and a black male officer. I told them what had happened
2 and that the kid had been run over. I walked around for a
3 few minutes trying to process what happened. I walked back
4 up to an officer and told him I knew what happened. He
5 placed me in cuffs and put me in the back of the car. At
6 that point in time, I started to ask him questions to
7 include into his statement. I asked him how many times did
8 you hit him. He stated one time. I asked him what were
9 you wearing tonight. He stated, I was wearing the white
10 shorts that I have on now and a red Alabama Polo type
11 shirt. The shirt had a white A on it.

12 I also had on a black hat with a black A on it. I
13 asked him the question, where's your shirt. At this time,
14 he's in a white t-shirt. When I started running down the
15 road, I took off my shirt because it was dark. I thought
16 that it was in the back of my pants but it must have fallen
17 out. And I asked him the question, who got out of the
18 truck first. His response was that they were already
19 stopped. His door opened first. He was talking, but I
20 could not hear what he was saying. When I saw his door
21 open, I slid Lauren. I typed Jordan but he crossed it out
22 and hand writ Lauren over and got out of the truck. I
23 asked a question about how many alcoholic drinks did you
24 have tonight. And then we put from eleven o'clock in the
25 afternoon and his response was ten to fifteen beers and

Travis Holdorf - Direct Examination by Ms. Campbell

1 three Jell-O shots. But that was all day. We started
2 around 10:45 and it was hot. I was completely aware of
3 everything.

4 I asked the question, did you see anything in the
5 guy's hand when he got out of the truck. His response, I
6 did not see anything in his hand. I think his hands were
7 already balled up. I asked the question, why did you hit
8 him. His response. We both got out of the truck. He
9 bowed up and I hit him. There was a question. Was he in
10 the truck when you hit him. He stated no, if I hit him in
11 the truck he would have fallen on the driver.

12 At the end of each page I made the forgoing
13 statement freely and voluntarily without fear, threat,
14 promise, or reward of hope of any kind. There's another
15 spot where this is to certify that I have read or read to
16 me the forgoing statement consisting of true copies were
17 given to me. Because it was a template and I did not
18 change the date, it states 28th of September, 2010, but
19 it's actually going to be October.

20 On the beginning of the third page, and this is on
21 all of my statements: Is there anything that you would
22 like to add or change about your statement. He stated I
23 did not mean for this to happen. I punched him, yes, but
24 none of that was supposed to happen. When I handed him
25 this document, he started writing at the end of it. You

Travis Holdorf - Direct Examination by Ms. Campbell

1 want me to go with that?

2 Q So in his own handwriting, he added the next part?

3 A Yes, ma'am.

4 Q And this is in his actual handwriting?

5 A Yes, ma'am.

6 Q And you witnessed this?

7 A Yes, ma'am.

8 Q And what did he write?

9 A It's a little hard to read but it says, Yes, I
10 admit to hitting him though the events that took place
11 after the punch was thrown was not premeditated. It was a
12 very unfortunate event. I did everything possible to get
13 him immediate medical attention. In no shape or form did I
14 have control of the driver pulling forward. I will be
15 permanently scarred for life. I've never encountered
16 anything like this in my life. I am deeply sorry for the
17 victim, family. It could have been the other way around.
18 If I didn't swing first, he could have hit me and I could
19 have fallen forward, excuse me, fallen forward and out of
20 panic, drunkenness, the driver could have pulled over or
21 pulled fowards and run me over. It's handwritten so it's a
22 little bit harder to read. Not that mine's much better.

23 Q And once he had added that paragraph and changed
24 the things you mentioned earlier where he struck through
25 things and corrected them, did he then acknowledge that

Travis Holdorf - Direct Examination by Ms. Campbell

1 that was his version of events?

2 A Yes, ma'am.

3 Q And how did he do that?

4 A He signed the document stating that this was the
5 truth and it was notarized.

6 Q Once you had a statement from the defendant, was he
7 placed under arrest?

8 A At the time -- by the time we were done with the
9 statement, the solicitor's office had already been
10 contacted. We had additional information and it was
11 decided to charge him with breach of peace, which is for
12 the incident at the stadium, not to -- to charge him for
13 the death at this time until we figured out all the facts
14 of the case, but to charge him with breach of peace, it's
15 just a disturbance upon the land just a disturbance of
16 normal flow.

17 Q And at this point did you have an opportunity to
18 interview all of the witnesses in this case?

19 A Oh, no, ma'am.

20 Q But -- and there may be additional information to
21 determine what degree upon --

22 MR. GASSER: Objection, Your Honor, leading.

23 MS. CAMPBELL: I'll rephrase it, Your Honor. I
24 apologize.

25 THE COURT: Very well. All right.

Travis Holdorf - Direct Examination by Ms. Campbell

1 BY MS. CAMPBELL:

2 Q What were factors as far as what homicides to
3 charge him with?

4 MR. GASSER: Your Honor, objection. Your Honor,
5 may we approach?

6 THE COURT: Sure.

7 (WHEREUPON, there was a bench conference out of the
8 hearing of the jury and the Court Reporter.)

9 BY MS. CAMPBELL:

10 Q So that night -- or the initial charge was what?

11 A It's aggravated breach of peace, common law.

12 Q And at that point was your investigation complete?

13 A No, ma'am, it actually had only begun.

14 Q That night, was he booked into the Richland County
15 Detention Center?

16 A Yes, ma'am, he was.

17 Q At the Alvin S. Glenn Detention Center, I'm sorry.
18 And approximately what time was it when he was booked in
19 that night?

20 A It would have been after midnight. We finished the
21 statement up at midnight. On the arrest report, we put the
22 time that we effected the arrest and that's about the time
23 that we advised him that he was under arrest. You still
24 have more paperwork to do. You have to do an arrest
25 report, a lot of paperwork.

Travis Holdorf - Direct Examination by Ms. Campbell

1 Q Once you had made that determination, did you get
2 any additional information from the defendant about
3 contacting possible witnesses?

4 A Yes, ma'am. In his written statement he told me
5 who he was with. I explained to him that it was vital that
6 we get in touch with them. I called Dustin Lindsey, spoke
7 to him on the phone and asked him to bring everyone that he
8 was with at the football game into your office tomorrow
9 morning.

10 Q Prior to doing that, did you allow the defendant an
11 opportunity to make a phone call?

12 A Yes, ma'am.

13 Q And who did he want to call?

14 A He wanted to call his mother to give her a heads up
15 in case she saw the news. He called her at 1123 hours.

16 Q And information did he give his mother that night
17 prior to you calling Dustin Lindsey?

18 A What's in his statement about what had happened.

19 Q His version of what had happened?

20 A Yes, ma'am.

21 Q They're at the scene that night, were other
22 investigators assisting you as far as finding out -- make
23 contact with witnesses at the scene and got information for
24 you to contact them in the future?

25 A Yes, ma'am.

Travis Holdorf - Direct Examination by Ms. Campbell

1 Q Did any law enforcement as far as you being in
2 charge of the investigation make contact with any of the
3 other people named who were supposed to be in that car?

4 A No, ma'am. There was no forwarded information of
5 the Lindseys or anyone that Mr. Simms was with that night.
6 All that came from Mr. Simms at our headquarters.

7 Q And so as far as you know, no one made contact with
8 them at the scene?

9 A To the best of my knowledge and having talked to --
10 everyone that I talked to, no, ma'am.

11 Q Were you aware that night that the crime scene
12 investigative unit was called out?

13 A Yes, ma'am.

14 Q And they actually processed which vehicle?

15 A They would have processed the only vehicle that was
16 involved and that was still at the scene and that's going
17 to be Paxton's.

18 Q Why didn't they process the vehicle that Curtis
19 Simms and his friends and the Lindseys and all those were
20 in that night?

21 A It wasn't there. I mean if it was there, nobody
22 came forward and said, Hey, we were witnesses to what
23 happened. No one came forward to say, this is the vehicle
24 he got out of, otherwise it would have been.

25 Q That night when you booked in the defendant, did

Travis Holdorf - Direct Examination by Ms. Campbell

1 you get certain personal information about him?

2 A Yes, ma'am.

3 Q And what is the defendant as he represented to you,
4 what is his height?

5 A He represented as being 6'3".

6 Q And what was his weight then?

7 A I believe he told us it was 285.

8 Q 285 pounds?

9 A Yes, ma'am.

10 Q Is there a significant difference between the size
11 of the victim and the defendant in this case?

12 A Over a hundred pounds, several inches and this
13 isn't -- there's a difference between someone whose fat,
14 over weight or a big type person over weight. Curtis Simms
15 is a very stout person. He is a big boy.

16 Q I want to show you what's been marked as State's
17 Exhibit 15 and first ask if you recognize this?

18 A That is how Mr. Simms looked that night.

19 Q And was that photograph actually taken when he was
20 booked in that night?

21 A It is. It's the t-shirt he was still wearing.

22 MS. CAMPBELL: Your Honor, at this time I'd offer
23 State's Exhibit 59 into evidence.

24 MR. GASSER: No objection.

25 THE COURT: Very well. State's Exhibit 59 is in

Travis Holdorf - Direct Examination by Ms. Campbell

1 without objection.

2 (WHEREUPON State's Exhibit No. 59 was entered into
3 evidence.)

4 MS. CAMPBELL: Permission to publish?

5 THE COURT: Yes.

6 THE COURT: Now, ladies and gentlemen, please do
7 not allow the movement of the photograph to keep you from
8 listening to the testimony that will be with you in your
9 deliberations.

10 BY MS. CAMPBELL:

11 Q Is his appearance changed a little bit today?

12 A He's cleaner shaved. It looks like he may have
13 lost a little bit of weight. Hair's a little bit more cut.

14 Q The next morning, did you continue with your
15 investigation in this case?

16 A Yes, ma'am.

17 Q And this would have been on what date?

18 A The 10th.

19 Q Tell the jury what you did on the morning of the
20 10th?

21 A We had the Lindsey brothers coming in and everyone
22 that was with Curtis or as many as Dustin Lindsey could
23 come up with to come into our headquarters and give us
24 statements.

25 Q And who all came in that morning with Dustin

Travis Holdorf - Direct Examination by Ms. Campbell

1 Lindsey?

2 A I had Ashley Thompson, James Pettis, Lauren Coggin
3 and Jordan Lindsey.

4 Q And you can't say what they said to you, but did
5 y'all take written statements from those people?

6 A We did.

7 Q And what was the common theme -- what was their
8 relationship to either one of the parties in this case,
9 those people you -- that came in the next morning?

10 A They were all together. They were all there
11 tailgating. They left the scene together. They were all
12 there together throughout the night. It's just not your
13 ideal situation on how to take a written statement. If an
14 incident happens and you're there, I want to get what you
15 had right then and there at the time before you had a
16 chance to talk to someone else and that's just to try to
17 get what you saw, not what you saw her say or someone else
18 or influenced by anyone else's version but your own.

19 Q And their relation to the defendant was what?

20 A They're all friends. Very good friends.
21 Roommates.

22 Q That next day, did you make contact with Adam
23 Paxton?

24 A Yes, ma'am.

25 Q Had a statement already been taken from him the

Travis Holdorf - Direct Examination by Ms. Campbell

1 night before?

2 A Yes, ma'am.

3 Q Sargent Robinson had taken a written statement from
4 Adam Paxton at the scene?

5 Q That day did you also make -- become aware that you
6 needed to make contact with Rhonda and Guy Echenroth?

7 A Yes, ma'am.

8 Q And had they given information to the police
9 officers there at the scene that night?

10 A Yes, ma'am, they did.

11 Q And did you make an arrangement to take a statement
12 from them at a later time?

13 A Yes, ma'am.

14 Q Did you also make contact with Allen James that
15 day?

16 A Yes, ma'am.

17 Q And without saying what he told you, was he able to
18 give you some limited information?

19 A Yes, ma'am.

20 Q Okay. That day, did you make contact with the
21 victim's mother?

22 A I did.

23 Q And what information were you able to give her?

24 A Not as much as you would want to give a parent in
25 that situation. I tried to give her as much as I could,

Travis Holdorf - Direct Examination by Ms. Campbell

1 what we knew at the time. So that she knew that this
2 matter was being investigated. It was looking into.

3 MR. GASSER: Judge, I hate to interrupt, but may we
4 approach again?

5 THE COURT: Yes.

6 (WHEREUPON, there was a bench conference out of the
7 hearing of the jury and the Court Reporter.)

8 BY MS. CAMPBELL:

9 Q Did you actually give Ms. Gasque your contact
10 information?

11 A I did.

12 Q The next day, did y'all have a briefing on the
13 case?

14 A Yes, ma'am.

15 Q What's a briefing?

16 A The supervisors will come in, other parties that
17 were involved in this case will come in, your lab people
18 and it's a chance to see what we have, what we need to do
19 and decide the best course of action to follow on a case.
20 Each case is different. There's no such thing as a
21 one-side-fits-all. We wanted to make a press announcement
22 or press release asking for anyone who may have seen
23 something on this case to contact the sheriff's department.

24 Q And, in fact, did certain people, not you, but
25 people try to make arrangements for that to happen?

Travis Holdorf - Direct Examination by Ms. Campbell

1 A Yes, ma'am.

2 Q And when you're making that kind of request from
3 the community, what type of people are you hoping will come
4 forward?

5 A Witnesses who saw what happened at the scene.
6 People who are not affiliated with either party don't have
7 a care about one side or the other, but just want to tell
8 us what happened.

9 Q And you heard the term independent witness before?

10 A Yes, ma'am.

11 Q And what does that mean?

12 A It's just that. It's someone I'm not -- you're not
13 affiliated with someone who's accused of doing something
14 wrong or someone who's accused of coming being wrong done
15 to. You have no person to reward or penalize, you're just
16 here to tell your version of events. A good citizen, if
17 you will.

18 Q And the Echenroths, how would you characterize
19 them?

20 MR. GASSER: Objection. I object to his
21 characterization of any witness in this case regardless who
22 it is.

23 MS. CAMPBELL: I can rephrase, Your Honor.

24 THE COURT: Sustained. All right.

25 BY MS. CAMPBELL:

Travis Holdorf - Direct Examination by Ms. Campbell

1 Q The Echenroths, did they have any affiliation with
2 anyone in this case?

3 A No, ma'am.

4 Q Mr. Martin?

5 A No one. Actually, to keep the case simpler, once
6 we're done taking statements, we broke the case up on
7 people who were independent eyewitnesss and the people who
8 were not independent eyewitnesss just so that you're going
9 through it and you're explaining it, just an easier way to
10 cut through what's happening.

11 Q And now still on October 11, did you try to make
12 contact with some additional witnesses in the case?

13 A Yes, ma'am.

14 Q And who were those witnesses?

15 A I talked to Investigator Radford. I talked to -- I
16 received a call from a John Sharp. I talked to our lab
17 tech person Woods, Deputy Salman, received a Crime Stopper
18 tip from a Brian Kern.

19 A Brian Kern?

20 A Yes, ma'am.

21 Q And without saying what he said to you, did you
22 then get some information from him. Again, you can't say
23 what he said?

24 A Yes, ma'am, I did. I also talked to Allen James
25 again.

Travis Holdorf - Direct Examination by Ms. Campbell

1 Q And had you requested anything of Mr. James?

2 A Yes, ma'am. People who were right there at the
3 scene would have had a good view of what happened. We
4 wanted to get a written statement from them to make sure
5 there was no misunderstanding.

6 Q And did he come and give you a statement?

7 A He did not.

8 Q Eventually, did you receive the affidavit from
9 Mr. Allen James?

10 A I did.

11 Q How did that affidavit get to you?

12 A He was at work. He asked me if he could fax his
13 sworn affidavit in. And that was pretty odd because that's
14 not something I'd seen before. Usually you explain who you
15 are and that you want to sit down and talk with someone.
16 I've always found that people are very willing to come in
17 and sit down and talk with you. I can be very compliant,
18 if you've got to work in the morning, I can do it in the
19 afternoon. Come in the afternoon, I can -- you know, I'm
20 afforded the opportunity to spread my time out.

21 (WHEREUPON there was a disturbance in the hall.)

22 THE COURT: Just a second, sir.

23 (WHEREUPON there was a pause in the proceedings.)

24 You may proceed.

25 MS. CAMPBELL: Thank you, Your Honor.

Travis Holdorf - Direct Examination by Ms. Campbell

1 THE COURT: I think you need to go back to the
2 question. There was a lot of noise and I think folks were
3 distracted. So if you could remember maybe what your
4 last -- maybe two questions ago.

5 MS. CAMPBELL: Thank you.

6 THE COURT: You may proceed.

7 BY MS. CAMPBELL:

8 Q With Mr. James, did he come in and meet with you?

9 A He did not come in and meet with me.

10 Q And did he have an affiliation with anyone in this
11 case?

12 A He knew Mr. Simms and also the Lindsey brothers who
13 Mr. Simms was with.

14 Q As the case progressed, did you continue to
15 interview different people?

16 A Yes, ma'am.

17 Q Over the next several days?

18 A Yes, ma'am.

19 Q And did that include Mr. James Martin?

20 A Yes, ma'am.

21 Q Had you already talked to the Echenroths in this
22 case?

23 A I did. By the time I talked to Mr. Martin, I had
24 already interviewed the Echenroths. When you're
25 interviewing people in this case, do you interview them

Travis Holdorf - Direct Examination by Ms. Campbell

1 together or separately or how does that work.

2 A No, I -- we'll interview separately. If we meet
3 somewhere, I want it separate. I really want to know what
4 you know, not what you may have heard someone else say.
5 And I explain -- when I sit down and talk to people that
6 it's very easy to be influenced by what someone else said
7 they say, which is why I want to know what you saw.
8 There's no right or wrong answer. I just want to know what
9 you saw.

10 Q And did you also get statements from Mr. James
11 Adams?

12 A The faxed in one -- excuse me what was the name
13 again.

14 Q James Adams not the one we were just referring to?

15 A Yes, ma'am.

16 Q Later that week was a determination made as to the
17 appropriate charge to go forward in this case as far as the
18 homicide aspect?

19 A Yes, ma'am.

20 Q And what was Mr. Simms charged with as far as a
21 homicide was concerned?

22 A He was charged with involuntary manslaughter. That
23 is, he didn't mean for this to happen, but his actions --

24 MR. GASSER: Judge, I object.

25 THE COURT: Sustained.

Travis Holdorf - Direct Examination by Ms. Campbell

1 BY MR. CAMPBELL:

2 Q Was a warrant obtained for his arrest?

3 A Yes, ma'am.

4 Q And on the 18th, were arrangements made for
5 Mr. Simms to turn himself in on that warrant?

6 A Yes, ma'am.

7 Q Did you -- was contact made with his lawyer?

8 A Yes, ma'am.

9 Q And who was his lawyer?

10 A Mr. Gasser.

11 Q There was some questions earlier in this trial
12 about what Ms. -- the victim had been doing earlier in the
13 day. Did you attempt to make contact with anyone that had
14 seen him earlier in the day?

15 A No, ma'am. You had Mr. Paxton who was driving the
16 truck. We were very concerned on the incident itself. At
17 some point in the investigation, you need to have a
18 beginning and an end. I wasn't trying to write a biography
19 on his life. In talking with everyone involved, he wasn't
20 an aggressive person. He wasn't the type of person --

21 MR. GASSER: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MS. CAMPBELL:

24 Q Did you feel appropriate --

25 MR. GASSER: Judge, may we approach?

Travis Holdorf - Direct Examination by Ms. Campbell

1 THE COURT: Sure.

2 (WHEREUPON, there was a bench conference out of the
3 hearing of the jury and the Court Reporter.)

4 BY MS. CAMPBELL:

5 Q As far as your investigation as to what happened
6 that night, did you feel it necessary to find people that
7 had seen him, say that morning?

8 A No, ma'am.

9 Q Or earlier that day?

10 A No, ma'am.

11 Q And at that point you had talked to all the
12 independent witnesses in the case; is that correct?

13 A That is correct, yes, ma'am.

14 Q And there observations of him at and around the
15 time of the incident?

16 A Yes, ma'am.

17 Q The events as described by Curtis Simms in his
18 statement did those support your determination to charge
19 him with a homicide?

20 A It was a factor in it. Everything's a factor. You
21 take all the statements --

22 MR. GASSER: Judge, I object again. You
23 sustained -- he's offering his opinion. I object as to
24 relevancy, as to the charge -- Judge, they went to a
25 magistrate, they got a warrant --

Travis Holdorf - Direct Examination by Ms. Campbell

1 THE COURT: Hold on. The objection comes late, but
2 I will stop it at this point and ask you to ask another
3 question.

4 BY MS. CAMPBELL:

5 Q When you get a warrant as in this case, do you
6 relate information to a magistrate?

7 A Yes, ma'am.

8 Q That was done in this case?

9 A Yes, ma'am.

10 Q And did he sign the warrant for involuntary
11 manslaughter?

12 A Yes, ma'am.

13 Q Thank you. The driver in this case, Adam Paxton,
14 was he ever charged with anything?

15 A No, ma'am.

16 Q Why not?

17 A We feel he didn't do anything wrong. We find no
18 criminal law to --

19 MR. GASSER: Judge, I object. He's again offering
20 his opinion.

21 THE COURT: Hold on. Hold on. Sustained.

22 MR. GASSER: Thank you.

23 MS. CAMPBELL: Your Honor, may we approach?

24 THE COURT: Sure.

25 (WHEREUPON, there was a bench conference out of the

Travis Holdorf - Direct Examination by Ms. Campbell

1 hearing of the jury and the Court Reporter.)

2 BY MS. CAMPBELL:

3 Q Based on the investigation, was the driver in this
4 case charged with anything?

5 A He was not charged with anything.

6 Q There have been several mentions of distances in
7 this case. Did you go out to the scene -- actually at my
8 request this week -- and measure approximately where
9 Mr. Martin was to approximately where the event occurred?

10 A Yes, ma'am, I did.

11 Q And approximately how many feet is that?

12 A 96 feet. If I can qualify that, where I stopped
13 measuring it to is the end of the reel marker. On the
14 roadway, there's a cold white line and from the furthest
15 side of the white line from where I began. That's the only
16 landmark that's there that you can still see today. You
17 can't see the stain -- anything else to measure it to to
18 get a relative distance.

19 Q Okay. Also in this case, there's been some
20 testimony that there were DNA swabbs collected from the
21 truck that actually ran over the victim in the case?

22 A Yes, ma'am.

23 Q Did you request any testing be done on those?

24 A I did not.

25 Q Why not?

Travis Holdorf - Direct Examination by Ms. Campbell

1 A When you're collecting evidence, you don't know how
2 the case is going to unfold. There's no question who the
3 players are in the case. There's no -- what was in the
4 truck, who was around the truck. That's not in question in
5 this case. Had that been in question -- when the lab tech
6 has an opportunity to collect evidence, they don't know
7 what is going to be important or not. So they collect
8 everything.

9 Q And in this case, was there any dispute who was
10 actually in the black truck that night?

11 A There was no dispute.

12 MS. CAMPBELL: Beg the Court's indulgence.

13 THE COURT: All right.

14 BY MS. CAMPBELL:

15 Q The person that you interviewed and gave you a
16 statement about how he hit the victim, do you see him in
17 here in the courtroom?

18 A Mr. Simms is on the far side to the left of the
19 table.

20 Q Sitting next to his lawyers?

21 A Yes, ma'am.

22 MS. CAMPBELL: Your Honor, may the record reflect
23 he's identified the defendant?

24 MS. CAMPBELL: Thank you.

25 THE COURT: Very well. Thank you.

Travis Holdorf - Cross-Examination by Mr. Gasser

1 Ladies and gentlemen, we'll take our afternoon
2 break now. We'll take fifteen minutes. Please do not
3 discuss this matter or allow anyone to discuss it with you.
4 See you in fifteen.

5 Very well. You may step to your jury room.

6 (WHEREUPON the jury left the courtroom at 3:41
7 p.m.)

8 THE COURT: All right. Please be mindful during
9 the break not to talk about your testimony with anyone.
10 All right.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: All right. Very well.

13 THE WITNESS: May I step down?

14 THE COURT: We'll be at ease. I've just got a
15 matter I need to deal with. Please take your break.

16 (WHEREUPON a recess was observed.)

17 THE COURT: Ready.

18 (WHEREUPON the jury entered the courtroom at 4:04
19 p.m.)

20 THE BAILIFF: All jurors are present, Your Honor.

21 THE COURT: Thank you so kindly. Very well.

22 Ladies and gentlemen, at this time we'll continue with the
23 State's case and the cross-examination. You may proceed.

24 MR. GASSER: Thank you, Your Honor.

25 CROSS-EXAMINATION

Travis Holdorf - Cross-Examination by Mr. Gasser

1 BY MR. GASSER:

2 Q Investigator Holdorf, I believe towards the latter
3 part of their direct examination you were answering
4 questions from Ms. Campbell dealing with Dustin and Jordan
5 Lindsey and Ms. Coggin and Ashley Thompson and Mr. Pettis,
6 I believe coming down to the sheriff's department first
7 thing Sunday morning to give statements; is that correct?

8 A Yes, sir.

9 Q And you had called them actually late Saturday
10 night after taking a written statement from my client,
11 Curtis Simms, correct?

12 A Yes, sir.

13 Q So when you called them to come down and give a
14 statement, you also told them that Curtis had, in fact,
15 just been arrested and charged with breach of peace?

16 A I don't recall if I told them that or not. I would
17 have tried not to explain something like that, but I would
18 explain to them that we needed to get their side of what
19 happened.

20 Q You know that Curtis was one of their roommates;
21 you knew that correct?

22 A Yes, sir.

23 Q So you don't recall them asking by the way where is
24 our roommate? Do you know?

25 A No, sir. I have no independent recollection if

Travis Holdorf - Cross-Examination by Mr. Gasser

1 they would have asked. If they did ask I probably would
2 have told them.

3 Q Okay. And you mentioned that, I believe your words
4 were that it's not ideal to take a formal statement the
5 next day from somebody that may have been an eyewitness to
6 the event. You want to get it when it's freshest in their
7 mind, anybody who may have been a witness to an event or an
8 episode; is that correct?

9 A If I can qualify that, sir. I don't want all of my
10 witnesses together. And there's split documentation about
11 taking a statement right after a traumatic event versus
12 days after. I mean, there's -- there's literature on both,
13 sir. I like to try to take my statements in a timely
14 fashion, within -- if I can't get it that day, then within
15 a couple of days if I can.

16 Q But Dustin and Jordan Lindsey and Ms. Coggin and
17 the others that came down that Sunday morning, they weren't
18 the only individuals that gave formal statements after
19 Saturday evening, correct?

20 A No, sir. Most of our statements were taken after
21 Saturday evening. It's just --

22 Q In fact, the only person that you got a -- what you
23 refer as the formal statement from was Mr. Paxton, correct?

24 A No, sir. We also got one from Mr. Simms.

25 Q Okay. We're talking about potential witnesses to

Travis Holdorf - Cross-Examination by Mr. Gasser

1 this. The ultimate person that was charged?

2 A Yes, sir. That would be correct.

3 Q So other than Curtis Simms you are accurate, you
4 got a statement from Curtis Simms that evening because he
5 wasn't under arrest when he gave you the statement,
6 correct?

7 A No, sir.

8 Q He voluntarily went down to the sheriff's
9 department with you?

10 A Yes, sir.

11 Q And without a lawyer, he wanted to give you his
12 side of the story?

13 A Yes, sir.

14 Q He could have stopped answering questions at any
15 time?

16 A Yes, sir.

17 Q And -- and I'll get further into that, but other
18 than the statement from Curtis, you got a statement from
19 Mr. Paxton that night or investigator or Sargent Robinson
20 did as well, correct?

21 A Yes, sir.

22 Q And of course, he was wrong on part of his
23 statement. He acknowledged that. You were in court when
24 he acknowledged that. And he acknowledged that even the
25 next morning, correct?

Travis Holdorf - Cross-Examination by Mr. Gasser

1 A Yes, sir.

2 Q In fact, isn't it true Investigator Holdorf that
3 when Dustin Lindsey and Jordan Lindsey and Lauren Coggin
4 gave their statements to Sargent Robinson that it was after
5 they gave their statements and you had an opportunity to
6 review them, you confronted Mr. Paxton about a real
7 important packet, didn't you.

8 A I asked him a question, yes, sir.

9 Q And he admitted he was wrong the night before,
10 correct?

11 A Yes, sir.

12 Q The reason you were asking him that is because the
13 information you got it from was from Dustin Lindsey, Jordan
14 Lindsey, and Lauren Coggin; isn't that true?

15 A I wanted to make sure that he was accurate in his
16 information. You make a mistake. You make a mistake. But
17 I didn't want to have the right information.

18 Q And we're talking about whether or not Martin
19 Gasque was drunk when he was sitting in the truck. Isn't
20 that what we're talking about?

21 A Yes, sir.

22 Q And Adam Paxton told you Sunday morning, after you
23 interviewed Dustin Lindsey and Jordan Lindsey and Lauren
24 Coggin that he had made a mistake the night before and
25 Martin Gasque was never struck while sitting in his truck,

Travis Holdorf - Cross-Examination by Mr. Gasser

1 didn't he?

2 A That's what he said and also in talking with him.

3 A lot of things -- and when you work with humans,
4 typically, I'm dealing with people on the worst days of
5 there lives. I'm dealing with them when they're not their
6 normal selves. I'm dealing with them when they've gone
7 through a tragic event or witnessed a tragic event and so
8 you have to understand their perspective at the time. He's
9 the driver of the vehicle. He's in traffic, he's trying to
10 get over to the side. He's not paying attention so much to
11 what's going on. He understands that there's a threat
12 there, that he's trying to get out of the way. He can't
13 say unequivocally it did not happen.

14 Q Investigator Holdorf --

15 MS. CAMPBELL: Objection. I think he has a right
16 to finish his answer before he asks another question.

17 MR. GASSER: I think he's characterizing somebody's
18 testimony, statement.

19 THE COURT: Just a second, was he not --

20 MR. GASSER: He was nonresponsive to my question.

21 THE COURT: So your --

22 MR. GASSER: He was characterizing somebody's
23 testimony before the jury.

24 THE COURT: Okay. Ask your question again.

25 BY MR. GASSER:

Travis Holdorf - Cross-Examination by Mr. Gasser

1 Q The fact of the matter is, that Adam Paxton came
2 down to the police department the sheriff's department the
3 next day to pick up his truck, correct?

4 A Yes, sir, he did.

5 Q And by the time he got down there to the sheriff's
6 department personnel independently interviewed Dustin,
7 Jordan -- Dustin Lindsey, Jordan Lindsey and Lauren Coggin
8 and taken written statements independent hadn't they?

9 A Yes, sir, we had. I was part of that.

10 Q And you had an opportunity to review some of those
11 statements, correct?

12 A I actually took some of them, yes, sir.

13 Q And you wanted -- at this point in time, it's not
14 about winning or losing, it's about determining what
15 happened, correct?

16 A There is no win or lose, you're trying to get the
17 facts out. All the facts.

18 Q Right. All the facts out, whatever the truth is,
19 correct?

20 A Yes, sir.

21 Q Whether it helps Curtis Simms or hurts Curtis
22 Simms, correct?

23 A You've got no dog in the fight for or against
24 Mr. Simms.

25 Q Whether it helps the State's case or hurts the

Travis Holdorf - Cross-Examination by Mr. Gasser

1 State's case, correct?

2 A I'm looking for the truth.

3 Q And after interviewing Dustin Lindsey and Jordan
4 Lindsey and Lauren Coggin about whether or not Martin
5 Gasque was struck when he was sitting in his truck, you got
6 that information from them, what they saw and approached
7 and confronted Adam Paxton with that, correct?

8 A Yes, sir.

9 Q As Adam Paxton told this jury earlier, he was
10 mistaken the night before when he told Sargent Robinson
11 that anyone was hit in his car, didn't he?

12 A To the best of his knowledge, yes, sir.

13 Q And that he was -- after the event -- after he had
14 calmed down with a clear mind, he told you that morning and
15 you put it in your notes Sunday morning when you
16 specifically asked him Martin Gasque was not struck when he
17 sat in the car. Didn't he tell you that first of all, then
18 you can explain?

19 A That's what his words were, but I doubt very
20 seriously if he had a clear mind. As he testified to on
21 the stand, he's still in counseling. You're not going to
22 have an event like that happen and not have anything going
23 on. Those are his words. That's what he said. But he's
24 also saying it -- if he didn't see it, he's not going to
25 say he saw something. And in asking him what he was doing

Travis Holdorf - Cross-Examination by Mr. Gasser

1 at the time, he was driving. He was concentrating on other
2 things. He doesn't see it, so he didn't say it happened.

3 Q He told you he was looking out the passenger
4 side -- looking out the passenger side because of the horn,
5 lost site of it -- looking out the passenger side because
6 the horn was blowing the entire time his friend he was
7 sitting right next to. Isn't that what he told you?

8 A No, sir. The way I recall it was that the horn
9 blows and that's what draws his attention to their vehicle.
10 Then he sees the driver and Mr. Simms get out of their
11 vehicle. As they're approaching their vehicle he says they
12 get up to his vehicle, he loses sight of them and he says
13 that he didn't -- recall or didn't see Allen get struck.
14 Allen steps out of the vehicle, then he hear's something.

15 Q Correct. So actually Dustin Lindsey and Jordan
16 Lindsey and Lauren Coggin, at least part of their
17 statements helped you clarify something with another
18 witness Adam Paxton, correct?

19 A I wouldn't characterize it as helping me clarify,
20 sir. I'm trying to gain information. I'm getting their
21 version of events and their version of events are different
22 than what independent eyewitnesss are.

23 Q Well, we'll get to those.

24 A So I wouldn't say it helped me clarify anything.

25 No, sir.

Travis Holdorf - Cross-Examination by Mr. Gasser

1 Q Let's talk about an independent eyewitness?

2 A Yes, sir.

3 Q How long have you been an investigator?

4 A Fifteen years.

5 Q The fact of the matter is every day, or every week
6 in every law enforcement agency investigating multitudes of
7 crimes, people unrelated to a particular victim or
8 unrelated to a particular suspect, they make mistakes all
9 the time?

10 MS. CAMPBELL: Objection, Your Honor. This is just
11 what he's objected to from me.

12 MR. GASSER: Not to say --

13 THE COURT: Hold on. Sustained.

14 MS. CAMPBELL: Thank you.

15 BY MR. GASSER:

16 Q Just because someone's an independent witness,
17 doesn't mean they can't be mistaken?

18 MS. CAMPBELL: Objection, Your Honor.

19 THE COURT: You may --

20 MR. GASSER: Judge --

21 THE COURT: Overruled.

22 MR. GASSER: Thank you.

23 BY MR. GASSER:

24 Q Just because somebody is an independent witness, it
25 doesn't mean they can't be mistaken; isn't that true?

Travis Holdorf - Cross-Examination by Mr. Gasser

1 A That is true.

2 Q In fact, the reason why you went out to measure the
3 distance that Ms. Campbell asked you to was because after
4 our investigator went out to do that, you decided -- you
5 were told to do that, correct?

6 A Yes, sir. An eyewitness can be mistaken, but I've
7 got five who are very consistent in seeing multiple hits.

8 Q We're talking -- I'm talking about --

9 A That are interviewed separately, different times.
10 That's hard for me to understand how I can have five people
11 wrong like that.

12 Q Well, Investigator Holdorf, I'll explain that to
13 the jury. I don't have to explain it to you.

14 MS. CAMPBELL: Objection.

15 THE COURT: Thank you. Sustained. No, sir.

16 BY MS. CAMPBELL:

17 Q But the fact of the matter is, you decided to go
18 out and make these measurements because one of your
19 eyewitnesss, actually two of your eyewitnesss claimed that
20 they were fifteen yards away and so you went out and took
21 the measurements, correct? Yes or no, then you can
22 explain.

23 A Yes.

24 Q Okay. And --

25 A You said I could explain. If I could explain,

Travis Holdorf - Cross-Examination by Mr. Gasser

1 please?

2 THE COURT: Yes, you may explain your response.

3 THE WITNESS: All right. When I'm interviewing
4 people, things like distance, things that are not part of
5 the actual event that they may have seen, it's very common
6 for someone to get it wrong. They can be very unclear
7 about what time the football game started. I don't care.
8 They can be unclear on, is it 15 yards, 20 yards, or 100
9 yards, if they can see it, they can articulate it. They
10 can tell me that when they were there, they had an
11 unobstructed view of the event.

12 That's what's important to me. Whether I'm going
13 to split hairs with them whether they're 15 yards or 50
14 yards, if they can see it and I believe they can see it,
15 and they can articulate to me that they saw it, it's pretty
16 powerful to me.

17 Q To you. Powerful to you. That's your opinion?

18 A I'm an investigator, yes, sir.

19 Q Okay. So you mean to tell me that you don't think
20 it's relevant as to whether or not somebody was 45 feet, 15
21 yards away, at night, in the dark?

22 A Ambient lighting.

23 Q As opposed to more than 40 yards away? That's what
24 you're telling the jury?

25 A If you hit --

Travis Holdorf - Cross-Examination by Mr. Gasser

1 Q 45 yards away?

2 A If you hit Mr. Pumpkin more than Tomkin more than
3 twice, I would be able to articulate that, yes, sir. I
4 would be able to see that, yes, sir.

5 Q You're telling the jury there's -- you don't think
6 there's a difference in somebody's opportunity to view
7 something from 45 feet away as opposed to 115 or 120 feet
8 away at night in the few seconds when you didn't expect
9 something to happen. You want this jury to believe you
10 don't think there's a difference?

11 A Well there's a difference, it still does not give
12 it any less credibility what they would have seen.

13 Q And so -- how about this one Investigator Holdorf,
14 the fact of the matter is, you were told by multitude of
15 witnesses that the vehicle that Curtis Simms got out of and
16 that Dustin Lindsey and Jordan Lindsey and Lauren Coggin
17 were sitting in was a green, dark green pick-up truck.
18 Isn't that what you were told?

19 A I was told that by the people that were in the
20 vehicle. I was also told by a number of other independent
21 eyewitnesss that it was not a green pick-up truck. I don't
22 know what color it was, sir. They weren't there for us.
23 There were officers there at the scene to tell me what
24 color it was. I don't know.

25 Q So the fact of the matter is that they were

Travis Holdorf - Cross-Examination by Mr. Gasser

1 actually in a dark green, four-door pick-up truck. Could
2 it just be that the independent witnesses were just
3 mistaken? Couldn't that be a possibility?

4 A That could also be a possibility. It could also be
5 a very possibility that there's another vehicle that maybe
6 they're worried about something silly like there's no
7 insurance on it or it's not properly registered or
8 something and they said, well, Hey, let's just use this
9 vehicle as the vehicle we were in. There's a number of
10 possibilities for what could have happened.

11 Q And that's just speculating on your part, correct?

12 A As much as yours, sir.

13 Q Curtis Simms told you before he was arrested, just
14 at the beginning of his statement, at the beginning of his
15 statement, before he's arrested, when he -- as far as he
16 knows is just a witness in this case, immediately tells you
17 we were driving Dustin Lindsey's dark green pick-up truck.
18 Doesn't he tell you that?

19 A Yes, sir.

20 Q And he has no idea whether he was going to be
21 arrested that night or not?

22 A No.

23 Q Correct?

24 A No.

25 Q He had no idea whether or not that the color or the

Travis Holdorf - Cross-Examination by Mr. Gasser

1 make of the vehicle is any way relevant to what you were
2 asking; isn't that true?

3 A It would be somewhat unlikely. He would know that
4 we would want to know what vehicle he got out of. He's
5 going to know that we want to know who he was with.

6 Q But this vehicle wasn't involved in the incident.
7 It was Mr. Paxton's vehicle, correct?

8 A It was not involved in the accident. He also
9 disappears for a bit of time after the incident. I don't
10 know where he went, sir.

11 Q That's not the question I asked you. His vehicle
12 was not involved in the incident, correct?

13 A We're splitting hairs. Is it involved in the
14 incident itself, you really can't say no to that. It honks
15 the horn. It starts a sequence of events that gets the
16 boys out of the car. It starts where they leave the car
17 and walk up to the black truck. Is it part of it, yes,
18 sir. Is it a major part of it, no.

19 Q And then that morning, you didn't tell Dustin
20 Lindsey or nobody would tell Dustin Lindsey or Jordan
21 Lindsey or Lauren Coggin, nobody would tell them what is or
22 what isn't important to your investigation, correct? You
23 wouldn't say anything like that?

24 A If -- I'm not trying to give out information. When
25 someone comes in, I'm going to try to be a sponge. I'm not

Travis Holdorf - Cross-Examination by Mr. Gasser

1 trying to tell you what to say or you what to say. I just
2 want to know what you meant.

3 Q Dustin Lindsey told the sheriff's department he was
4 driving a dark green pick-up truck?

5 A Yes, sir.

6 Q Same with Jordan Lindsey?

7 A All of them that were together said they were in
8 the green pick-up truck.

9 Q And this is -- this is clearly ten days before
10 Curtis Simms is ever charged with involuntary manslaughter.
11 I mean at that point in time, he's charged with breach of
12 peace, correct?

13 A Yes, sir.

14 Q Now, going back, you indicated it's not -- that
15 it's not ideal to wait to get a formal statement. The
16 Echenroths were sent home without getting a formal
17 statement from them, correct?

18 A Yes, sir. When something happens, we have an
19 incident happen, you have to decide what you're doing next.
20 You have to go with your most valuable peace of information
21 or who your most probative person to talk to and talk to
22 that person. I don't want an untrained investigator or new
23 person working on my case. Not on a case that could be
24 this significant where we're here in trial. I want someone
25 who wants to be there, who's going to take their time and

Travis Holdorf - Cross-Examination by Mr. Gasser

1 talk to people.

2 Q Allen James, although provided information at the
3 scene, he was sent home and wasn't asked to give a formal
4 statement that night?

5 A Yes, sir, all the persons who were not directly
6 involved in the accident, merely witnesses to it, their
7 information was gathered because they stayed around. They
8 gave it to the deputies who were out there in their blue
9 lights and in the uniforms.

10 I was witness, this is what I saw. This is my
11 information. I didn't get any of that from the people that
12 Curtis Simms was with. I had to get the people who he's
13 saying he was there with, from Curtis. After I'm
14 explaining it to him, if your side is correct, I need to
15 talk to people you were with.

16 Q James Martin, James Adams, they all left without
17 trying to give formal statements, correct?

18 A The only formal statements that were taken that
19 night were the ones directly involved.

20 Q So to answer my question is yes, they left without
21 giving a formal statement?

22 A Correct, yes, sir.

23 Q All right. Brian Kern, he leaves without even
24 giving you his information, correct?

25 A I believe so, I believe that is correct, yes, sir.

Travis Holdorf - Cross-Examination by Mr. Gasser

1 Q So Mr. Travis Brown that the State called as a
2 witness, his name didn't surface until twenty-seven months
3 after the incident, correct?

4 A Yes, sir.

5 Q All those witnesses where no formal statements were
6 taken from those witnesses until quite frankly after the
7 formal statement of Dustin Lindsey, Jordan Lindsey and
8 Lauren Coggin, correct?

9 A Yes, sir.

10 Q And Ms. Campbell did not ask you about two other
11 witnesses that also were either contacted by or called the
12 sheriff's department that were in the vehicle and that would
13 be Mike Davis. You got a statement from him did you not?

14 A Yes, sir. I did not get it the same date as the
15 other persons, but I got it on October 15th.

16 Q And when -- you remember Ms. Campbell asking you
17 about relationships to Mr. Simms? You recall that line of
18 questioning?

19 A Yes, sir.

20 Q That's the first night -- October 9th 2010, is the
21 first night that Mike Davis has ever met Curtis Simms;
22 isn't that true?

23 A I would have to review his statement if it's in
24 there, sir. I don't know.

25 Q She also didn't ask you about Marquis Hall who was

Travis Holdorf - Cross-Examination by Mr. Gasser

1 also in the truck, did she?

2 Q She did not, did she?

3 A There are a lot of names that are asked. I can
4 tell you who were taken statements from, sir.

5 Q And Marquis Hall also came to the sheriff's
6 department shortly after the incident and gave a
7 statement -- a formal statement to y'all, correct?

8 A He came on October 13th.

9 Q Four days later.

10 A Yes, sir. Three, four. We worked into the night
11 or the early morning hours of the 10th.

12 Q And of course, Curtis Simms was arrested and
13 charged with breach of peace at some point in time Saturday
14 night or early Sunday morning, taken to the Alvin S. Glenn
15 Detention Center as Ms. Campbell stated; therefore, he
16 could not have had any communication with anybody, could
17 he?

18 A No, sir. He very well could have -- there was
19 opportunity for that communication before he comes up to
20 the law enforcement officer, the CPD person that put him in
21 the back of the patrol car. You're also able to make phone
22 calls from jail. I mean, there's -- to say someone doesn't
23 have communication, the only way you can really do that is
24 to lock him in D cell where there is no phone and they have
25 no access to something.

Travis Holdorf - Cross-Examination by Mr. Gasser

1 Q And the Alvin S. Glenn Detention Center records
2 everything coming in and out on the phone call; isn't that
3 true?

4 A If you know the answer, well, yes, sir.

5 Q And you have access to that because you've
6 gotten -- the sheriff's department's gotten recorded phone
7 calls made out of the Alvin S. Glenn Detention Center on
8 cases all the time; isn't that true?

9 A We do, but again, you have to have the number
10 you're looking for.

11 Q You don't have any evidence whatsoever that Curtis
12 Simms communicated with anybody prior to Dustin, Jordan --
13 or Dustin Lindsey or Jordan Lindsey or anyone else coming
14 down to the sheriff's department to give their statements,
15 do you?

16 A No, sir, I do not.

17 Q And you wouldn't want to falsely accuse someone if
18 there's someone out there with that information would you?

19 A No, sir. But you were asking if I could be
20 positive of something and I could not be positive of
21 anything.

22 Q But you don't have any evidence that he did, do
23 you?

24 A No, sir, I do not.

25 Q Okay. And when you got to scene, at the point in

Travis Holdorf - Cross-Examination by Mr. Gasser

1 time, you don't know a thing about what happened other than
2 the fact that there's somebody being taken to the hospital
3 and it's a serious situation?

4 A I'm making phone calls, people are calling me.
5 It's very chaotic. You get a lot of information at once.
6 Sometimes it's good information, sometimes it's not good
7 information.

8 Q And one of the things that you don't want to do and
9 you're trained not to do is jump to conclusions as to what
10 may or may not have happened, correct?

11 A I can look at something and have a theory, but you
12 have to approach it with an open mind.

13 Q Because theories have been wrong before? Initial
14 theories?

15 A Yes, sir.

16 Q And so if you characterize it as a possible
17 homicide/manslaughter case; correct?

18 A Try to title what cases are. Shop Road is a pretty
19 big location. If I look at something later on then I have
20 an idea of which one it is.

21 Q So that's why you said it's a possible homicide
22 /manslaughter, according to report, correct?

23 A Yes, sir. Now, when you came into contact with
24 Curtis Simms, he actually was in handcuffs with his hands
25 behind his back in the Columbia police vehicle; isn't that

Travis Holdorf - Cross-Examination by Mr. Gasser

1 true.

2 A I remember he was in handcuffs. I do not remember
3 if they were behind his back or not.

4 Q And you took the handcuffs off, did you not?

5 A I did.

6 Q And put him in the front seat your Ford 150 pick-up
7 truck?

8 A Yes, sir. I drive an unmarked pick-up truck for
9 being in investigations. I can turn the lights on.

10 Q And Curtis was verbally advised of his rights,
11 those rights that you went through with the jury about
12 getting the rights signed and then anything you say can be
13 used against you. You have the right to have a lawyer
14 present -- you did that just out of habit?

15 A Yes, sir.

16 Q It's precautionary?

17 A Yes, sir.

18 Q If you --

19 A Well, if you -- if you advise them of their rights
20 when that person -- as an investigator, I will advise you
21 of your rights if I feel that there's a strong possibility
22 that you might be going to jail. If I talk to you about a
23 crime you may have committed, I don't necessary have to
24 advise you of your rights unless I'm going to take you to
25 jail or you believe that you're not free to leave. Because

Travis Holdorf - Cross-Examination by Mr. Gasser

1 this is a developing situation, I wanted to make sure that
2 I did it properly and I advised him verbally. Just because
3 I talk to someone that you may have committed, I don't have
4 to advise you there are certain rules to that.

5 Q Because he wasn't in custody, was he?

6 A At the time, no, sir.

7 Q Because you didn't really know what all the facts
8 were, correct?

9 A I did not.

10 Q And he agreed to go into the sheriff's department,
11 correct?

12 A Yes, he did.

13 Q And Curtis didn't have to go with you to the
14 sheriff's department, did he?

15 A No, sir.

16 Q He could have told you, look, I just -- you know
17 what, I just want to wait and talk to a lawyer. I want to
18 wait and talk to my parents, but he didn't do that, did he?

19 A No, sir, he did not.

20 Q And he went down to the sheriff's department and
21 you, after you advised him of his rights, he admitted to
22 you of having seven beers there while you were driving to
23 the sheriff's department, did he not?

24 A He'd admitted that he had several beers, I did not.

25 Q He admitted to having several beers?

Travis Holdorf - Cross-Examination by Mr. Gasser

1 A Yes, sir.

2 Q And you even put in your notes that he did not seem
3 drunk at the time. His answers to my questions were clear
4 and his speech was not slurred; correct?

5 A That is correct. And that's -- when I advise them
6 of their rights, I have to be able to articulate and
7 justify that I believe they know their rights. If you
8 don't read on a lower educational level or a child, I have
9 to understand your rights. Otherwise, whatever you tell me
10 can be thrown out. So...

11 Q And ultimately he had indicated to you that he's
12 not drinking beer or any other alcohol for hours before the
13 incident happened, correct?

14 A That's correct, sir.

15 Q And you didn't think he was under the influence or
16 impaired or else you would have put that in your notes?

17 A That's correct, yes, sir.

18 Q Because you're a trained investigator?

19 A Yes, sir.

20 Q Now even after you went through the written advice
21 of rights form that Ms. Campbell went over with you, he
22 still did not request to have a lawyer present, did he?

23 A No, sir.

24 Q At no time talking to Mr. Simms did he want a
25 lawyer with him?

Travis Holdorf - Cross-Examination by Mr. Gasser

1 A And he still didn't tell you, Look, I still -- he
2 never said answering whatever questions you wanted to ask
3 of him; isn't that true.

4 A That is correct.

5 Q And you asked questions and Curtis to the best of
6 his ability answered the questions under the circumstances,
7 correct?

8 A I asked the questions and he gave me his answers,
9 yes, sir.

10 Q And this was a pretty shocking experience for
11 everybody involved, was it not?

12 A Yes, sir.

13 Q For Mr. Paxton, who ran over his friend, correct?

14 A Yes, sir.

15 Q For Curtis Simms that was standing there and
16 watched that happen. You would agree with me there?

17 A He was in an excited state, yes, sir.

18 Q Being at the police department with someone even
19 though he hasn't asked for a lawyer after an incident like
20 this, it would make anybody nervous, would it not?

21 A Most people I talk to are nervous to a certain
22 degree, yes, sir.

23 Q And so if he gave you under the circumstances and
24 the environment he was in after witnessing what she just
25 witnessed, he gave you -- this was his first chance to give

Travis Holdorf - Cross-Examination by Mr. Gasser

1 you a statement of events, right then and there?

2 A Yes, sir. We went to my camp and sat down and we
3 started getting it on paper.

4 Q Now, with -- the Lindsey twins came down the next
5 morning. Do you know what vehicle they drove?

6 A No, sir.

7 Q You had in Curtis Simms statement that Dustin's Z71
8 pick-up truck --

9 A Z71, sir.

10 Q Z71 Chevy pick-up truck, but no one sent anybody
11 outside to check and see if the Lindsey's brought their
12 vehicle with them?

13 A Not that I recall, no, sir.

14 Q And Curtis had indicated to you that -- people that
15 were in his truck, you ultimately, I'm sure, would have
16 wanted to get statements from; is that correct?

17 A I'm sorry, one more time?

18 Q Curtis indicated and told you who was in the truck
19 at the time so that you could get statements from them as
20 well, if you wanted?

21 A Yes, sir, he did.

22 Q That was Dustin Lindsey, Jordan Lindsey, Mike
23 Davis, Lauren Coggin, Marquis, last name unknown?

24 A Yes, sir.

25 Q So Curtis Simms didn't even know that Marquis' last

Travis Holdorf - Cross-Examination by Mr. Gasser

1 time was Hall at that time when you were taking his
2 statement?

3 A I don't know if he didn't know it, but he couldn't
4 remember it and at the time when I'm asking him questions,
5 he didn't have it, which is why last name unknown is there.

6 Q Curtis explained to you in his statement, did he
7 not, as to why he took off his red shirt?

8 A Yes, sir. He gave a reason for it.

9 Q And you published that to the jury?

10 A Yes, sir.

11 Q And he also explained why he did when he left the
12 scene and who he ran up to and talked to, correct? And try
13 to get help for?

14 A Yes, sir.

15 Q And this is right after the incident, correct?

16 A Yes, sir.

17 Q And he came back?

18 A Yes, sir.

19 Q Now, you've described Investigator Holdorf, Curtis
20 Simms' statement that even after this event and
21 particularly what he witnessed as a state of excitement and
22 shock; is that correct?

23 A Yes, sir.

24 Q And you allowed him to do which you indicated you
25 allow many people to do that you take statements from,

Travis Holdorf - Cross-Examination by Mr. Gasser

1 which is, Is there anything else you would like to add in
2 your own handwriting and he did, correct?

3 A No, sir, that's actually almost contrary. Usually
4 if someone wants to add or change something to the
5 statement and we're typing it up, I'll type it up. But
6 because there had been prior alcohol consumption and it
7 might be a factor in this, I thought it looked good to have
8 it to where he's writing it in his own handwriting. It was
9 just a judgment call that I made at the time. He was
10 excitable. I was trying to keep him within, you know --
11 trying to keep him down, trying to accomplish this task of
12 taking his statement and I just went with it.

13 Q All right. And a lot of things go into somebody's
14 ability to write efficiently or effectively, not
15 particularly simply alcohol consumption, true?

16 A That's very true.

17 Q And mean he's somebody who has an education
18 background?

19 A A number of factors.

20 Q And somebody's statement as far as shock and state
21 of excitement, right?

22 A Yes, sir.

23 Q And no many misspelled words and not the best
24 grammar when Curtis was writing down what he said happened,
25 correct?

Travis Holdorf - Cross-Examination by Mr. Gasser

1 A I'm a terrible speller, I probably wouldn't have
2 noticed it.

3 Q But he did tell you that in no ship shape or form
4 did I have control on the driver pulling forward. He told
5 you that, didn't he?

6 A He also said other things, yes, sir.

7 Q Well, I understand that and you published it.
8 Everybody, the lawyers all had an opportunity to bring out
9 what is said and the jury, of course, will have this. But
10 I just want to make sure, he put that in his own
11 handwriting. In no shape, ship or form did I have control
12 of the driver pulling forward. He stated that, correct?

13 A Correct.

14 Q It could have been the other way around. What if I
15 didn't swing first? He could have hit me and I could have
16 fallen forward and out of panic or drunkenness, the driver
17 could of have pulled forward and run me over. In fact,
18 that's the last -- that's the last part of his written
19 statement, correct?

20 A Yes, sir.

21 Q And now, when you make contact with Dustin Lindsey,
22 that Saturday night, he agreed to come in tomorrow and he
23 actually indicated that he was going to make sure he
24 rounded everybody else that he could that you wanted, did
25 not?

Travis Holdorf - Cross-Examination by Mr. Gasser

1 A I asked him to bring everyone with him, that we
2 needed to talk to them as soon as possible, yes, sir.

3 Q And he agreed?

4 A Yes, sir.

5 Q And when -- is it part of your policy and other
6 investigators you work with, when you're taking a statement
7 from somebody, in any case, but particularly in a serious
8 case like this is where somebody's deceased, do you let
9 those people know just how serious this situation is and
10 how important it is to be truthful?

11 A Yes, sir.

12 Q Okay. Would you -- you did that with Curtis, of
13 course, that night?

14 A Yes, sir.

15 Q I'm sure it was done --

16 A I explained that oftentimes when you do take
17 statements from people involved in it and they end up lying
18 and that's what hurts them.

19 Q And it was, it was explained to the individuals
20 that were giving statements the next morning, that Sunday
21 morning, of how important it was to be truthful as well?

22 A Yes, sir. As of all the people we talked to
23 that -- just what they saw.

24 Q Every witness, regard legal conclusion if
25 somebody's associated with somebody or not, it's important

Travis Holdorf - Cross-Examination by Mr. Gasser

1 to the best of their memory, to the best of their ability
2 to provide information as to what they think they saw,
3 correct? Or they think they know, correct?

4 Q You saw what you saw, you know what I know. I just
5 need you to tell me what happened.

6 Q And you indicated that a decision on charges was
7 made on October 18th. I believe Ms. Campbell asked you
8 about the decision on whether to charge or not was -- the
9 decision to charge with involuntary manslaughter would be
10 on October 18th, correct? 2010?

11 A The date somewhere around there. I would have to
12 review my notes to get the exact date. The paperwork is a
13 little out of order.

14 Q And --

15 A Yes, sir, that's correct.

16 Q Because Ms. Campbell went into it, I need to ask
17 you a couple of questions. A warrant is simply a probable
18 cause standard. Probable cause I believe --

19 MS. CAMPBELL: Oh, Your Honor. This is just what he
20 objected me doing.

21 MR. GASSER: I didn't object to this.

22 (WHEREUPON, there was a bench conference out of the
23 hearing of the jury and the Court Reporter.)

24 BY MR. GASSER:

25 Q I believe that the decision to what the charges

Travis Holdorf - Cross-Examination by Mr. Gasser

1 were was made after you spoke to Ms. Campbell on October
2 18th. You contacted me, correct?

3 A Yes, sir, I did.

4 Q And made arrangements for me and Curtis to go down
5 and meet the next morning on October 19th, 2010, so that he
6 would be formally booked into the -- into the jail and have
7 the bond setting, correct?

8 A Yes, sir. The solicitor himself personally
9 responded --

10 MS. CAMPBELL: Objection, Your Honor, we have a
11 matter of law.

12 MR. GASSER: It's --

13 THE COURT: Hold on hold on. Come here.

14 (WHEREUPON, there was a bench conference out of the
15 hearing of the jury and the Court Reporter.)

16 BY MR. GASSER:

17 Q When were you asked, Investigator Holdorf
18 specifically to go make the measurement from the far right
19 end of -- I believe it was from the far right area of the
20 parking lot of Hood Construction on Shop Road, correct?

21 A Yes, sir.

22 Q And your spot was all the way to where the cement
23 and grass meet?

24 A No, sir.

25 Q You show me. I don't want to put words in your

Travis Holdorf - Cross-Examination by Mr. Gasser

1 mouth. You show me.

2 Q Now, this is a ballpark because it's a little bit
3 different. Mr. Martin placed himself as being right about
4 in this area here when he saw what he saw. And so I went
5 down and there's a little white line going across the road
6 somewhere in this area and measured the distance and that
7 was 96 feet?

8 Q Okay. 96 feet, which is if my math is correct, 32
9 yards -- football language, 32 yards is 96 feet, correct?

10 A Yes, sir.

11 Q Showing you State's Exhibit No. 8, you ended that
12 96 feet right there, correct?

13 A At the far side of the line going towards it, yes,
14 sir.

15 Q Okay. So there is still more distance from that
16 far side of the line to where the incident occurred,
17 correct?

18 A Yes, sir, but when I went there, I can't see where
19 it is. On the photograph it looks to be 8 more feet,
20 maybe.

21 Q 8 feet?

22 A Maybe. I don't know.

23 Q That's your testimony?

24 A I'm giving you -- there's no scale on the
25 photograph. From memory of seeing it out there,

Travis Holdorf - Cross-Examination by Mr. Gasser

1 ballpark -- there's no scale. I can't tell you how far
2 that is, sir.

3 Q Okay.

4 MR. GASSER: Beg the Court's indulgence.

5 THE COURT: Sure.

6 MR. GASSER: Thank you, Your Honor.

7 THE COURT: Surely.

8 BY MR. GASSER:

9 Q How many times -- you just -- you were out there
10 the night in question around the area, exiting the tailgate
11 area where the incident occurred, correct? You were out
12 there that night?

13 A Yes, sir.

14 Q And you've recently been out there?

15 A Yes, sir.

16 Q Okay. And just from a -- a -- grading perspective,
17 you know what I mean by that? A road paving, grading
18 perspective?

19 A Yes, sir.

20 Q Okay. Is there a slight bit of a decline from the
21 roadway in the driveway area. You recall that when you
22 were out there? I'm not talking about anything significant
23 but there's a slight -- for water run off purposes?

24 A Yes, sir. You can even see the substance on the
25 photograph is running down a way from the road itself but

Travis Holdorf - Redirect Examination by Ms. Campbell

1 down on the steep.

2 Q Well, that's my next question. I appreciate you
3 pointing that out. But you can see that depicted in the
4 photograph, can you not?

5 A This isn't the best photograph for it, but, yes,
6 sir, it is in there.

7 Q Okay. All right. That's all I have.

8 THE COURT: All right. Redirect?

9 MS. CAMPBELL: Yes, ma'am.

10 **REDIRECT EXAMINATION**

11 BY MS. CAMPBELL:

12 Q He asked you the measurements. You were asked to
13 go out there and measure the scene after we heard defense
14 counsel ask some witnesses about it being 124 or 148 or
15 something like that?

16 A Yes, ma'am.

17 Q And when you went out there, as you observed --

18 MR. GASSER: Judge, I hate to interrupt, but there
19 was no suggestion that anything was anywhere near 148 feet.
20 So I object to the characterization with Ms. Campbell.
21 There's no, no question Mr. Harris --

22 THE COURT: I - and I got your point very well.
23 Would you re-ask your question.

24 BY MS. CAMPBELL:

25 Q Did he ask questions about distance?

Travis Holdorf - Redirect Examination by Ms. Campbell

1 A Yes, ma'am.

2 Q Saying something about it being three times as far
3 or something to that effect?

4 A Yes, sir.

5 Q And in response to that, you went out to the scene?

6 A Yes, ma'am.

7 Q And when you were out at the scene, were you able
8 to see the line of sight that I believe it would be
9 Mr. Martin would have had that day?

10 A Yes, ma'am.

11 Q Would he have had a clear view to the point where,
12 where this --

13 MR. GASSER: Objection.

14 THE COURT: Sustained.

15 BY MS. CAMPBELL:

16 Q Were you able to see to the area where this event
17 occurred standing where you started your measurement?

18 A Very clearly. There's nothing between the two --

19 MR. GASSER: Judge, I object to relevancy at this
20 point of time. A relevancy should have --

21 THE COURT: Hold on one second.

22 MR. GASSER: We can approach?

23 THE COURT: You need to lay a foundation for that
24 question.

25 BY MS. CAMPBELL:

Travis Holdorf - Redirect Examination by Ms. Campbell

1 Q Did you go to the approximate spot where
2 Mr. Martin's car would have been?

3 A Yes, ma'am.

4 Q And were you able to look back to where this event
5 took place?

6 A Yes, ma'am.

7 Q Where this homicide happened?

8 A Yes, ma'am. There's --

9 Q And were you able to see from where you were in the
10 driveway where Mr. Martin was back to where this would have
11 happened?

12 A Yes, ma'am, clear sight.

13 Q He asked you about taking statements from witnesses
14 and everything like that. Is there more of a concern of
15 witnesses associated with part of the case?

16 A Very much so.

17 MR. GASSER: Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MS. CAMPBELL:

20 Q What, if any, concerns are there when witnesses
21 know other witnesses?

22 MR. GASSER: I object, Your Honor. His concerns
23 are irrelevant.

24 MS. CAMPBELL: He's the one that asked him about --

25 THE COURT: Overruled.

Travis Holdorf - Redirect Examination by Ms. Campbell

1 MS. CAMPBELL: I apologize.

2 BY MS. CAMPBELL:

3 Q You can respond to that?

4 A It's the same reason why we didn't take statements
5 from Mr. Allen's family. I like independent people. I
6 don't want you related to someone. My mother's a fantastic
7 Christian lady, goes to church, sings in the choir, but if
8 I was in trouble, my mama would lie for me. I'm not saying
9 anyone here lied to us. I have no proof of that. But
10 there's a different opinion between the people who are
11 acquainted with Mr. Simms and the people who are
12 independent eyewitnessss and it's a great distinction
13 between the two.

14 Q Is it unusual for -- can you -- when you take a
15 statement, you mentioned, I think you said something about
16 your kind of like a sponge, you just gather information?

17 A Try to be, yes, ma'am.

18 Q And can you actually force anybody to tell you the
19 truth?

20 A No.

21 Q You can try to -- you know, sometimes people want
22 to play word games or whatever else, but you need to try to
23 compel to their human nature. You know, I just need to
24 know the truth. For whenever reason, people just don't
25 want to do that.

Travis Holdorf - Redirect Examination by Ms. Campbell

1 Q There's been a lot of talk about what color the
2 vehicle was or anything. Were you in here when Lauren
3 Coggin testified?

4 A I was.

5 Q And she was actually in that vehicle that day,
6 according to the her?

7 A She was.

8 Q Was she able to tell you what kind of car or what
9 color it was?

10 A She was not.

11 Q Mr. Gasser talked about the defendant's opportunity
12 to talk to anyone after he was booked into the jail that
13 night?

14 A Yes, ma'am.

15 Q Didn't you tell this jury -- who did you allow him
16 to call and tell his story to that night?

17 A His mother.

18 Q And did he relate to her the facts as he had
19 related them to you?

20 A Yes, ma'am.

21 Q So he got his story out there?

22 A Yes, ma'am.

23 MS. CAMPBELL: That's all I have. Thank you, Your
24 Honor.

25 THE COURT: Recross?

Travis Holdorf - Recross-Examination by Mr. Gasser

1 RECCROSS-EXAMINATION

2 BY MR. GASSER:3 Q You said you didn't take statements from Mr. Gasque
4 family, correct?5 A I did not take statements from his mother or
6 father, no, sir.

7 Q Because they weren't at the scene, correct?

8 A That's correct.

9 Q There's a difference between people that are a
10 relation to somebody that are a hundred miles away than
11 people that are right there at the scene with a birds-eye
12 view. You would agree with me there, wouldn't you
13 Investigator Holdorf?14 A Yes, sir. I was just trying to summarize on people
15 I don't typically like to take statements from.16 Q You take -- you take statements, the sheriff's
17 department takes statements from friends and associates and
18 family members of both suspects and victims every week, do
19 you not?

20 A Just about everyday, yes, sir.

21 Q Let's change the timeline here, you do it every
22 week.23 A We try to get as much information about any event
24 as possible, yes, sir. What I prefer -- if I'm looking at
25 the facts of a case, I like independent witnesses. I will

Travis Holdorf - Recross-Examination by Mr. Gasser

1 take anyone's statement. If you've got something you want
2 to tell me about a case, I'll be happy to take a statement
3 from you.

4 Q If every week you take statements from people that
5 are associated with suspects and/or victims that are
6 truthful, correct?

7 A Yes, sir.

8 Q And they are corroborated by other evidence and
9 other facts, correct?

10 A Yes, sir.

11 Q Happens every week?

12 A Yes, sir.

13 Q And as you say, you have absolutely no evidence,
14 those are your words, correct, no evidence that anybody
15 associated with Curtis Simms has lied to you, correct?

16 A No, sir. There's just a difference in their
17 recount of the events.

18 Q There's a difference in the account of people that
19 were closest to the event as it's transpiring than
20 individuals that were farther away, correct?

21 A There's a difference on their recollection, there's
22 a difference on there as the night of the event. The other
23 independent eyewitnesss stayed around for deputies and
24 other law enforcement and say, Hey, I saw this. This is
25 what I saw. This is my name, this is how you can get ahead

Travis Holdorf - Recross-Examination by Mr. Gasser

1 of me. I had nothing from Mr. Simms friends there, sir.

2 That's problematic.

3 Q Not a lot of the other witnesses, not every single
4 one of the eyewitnesss stayed around?

5 A No, sir, not all of them stayed.

6 Q So you are mistaken I guess?

7 A A lot of them did, yes, sir.

8 Q But you were mistaken when you just told this jury
9 that all the other independent witnesses stuck around. You
10 were mistaken?

11 A Not all the eyewitnesss stuck around. As we've
12 heard this week.

13 Q But you were mistaken?

14 A That is correct.

15 Q Because people make mistakes every day?

16 A I misspoke, yes, sir.

17 Q Now, Ms. Campbell was asking you about your line of
18 sight when you went out -- what day did you go out there
19 this week?

20 A I believe it was Tuesday.

21 Q Okay. And what time of day?

22 A Actually it would have been Wednesday because
23 Martin testified on Tuesday. It was that morning.

24 Q Okay. I want you to tell this jury when you or
25 anybody else from the Richland County Sheriff's Department

Travis Holdorf - Recross-Examination by Mr. Gasser

1 went out, set up the scene at night around 8:30, any time
2 this week -- this week or last week around 8:30 at night
3 when cars are out there with bumper-to-bumper with
4 headlights and where you were sitting in a vehicle getting
5 ready to turn right out of Hood Construction company around
6 8:30 at night when it's dark with headlights in your eyes,
7 facing you, not expecting something to happen. When did
8 you or anybody at the sheriff's department do that,
9 Investigator Holdorf?

10 A I did not do that. I went there that morning. I
11 took the distance. I was not asked to recreate the scene.

12 Q And the question I just asked you and the scene
13 that I just asked you would be a heck of a lot more
14 consistent with what Mr. Adams and Mr. Martin, how they
15 were viewing this October 9th, 2010 than what you did on
16 Tuesday; isn't that true?

17 A I was asked to get the distance, sir. I think
18 their testimony serves to what they saw. They were very
19 adamant about what they saw.

20 Q My question is, is the question that I asked you,
21 the context. At 8:30 at night, dark with bumper-to-bumper
22 cars, with headlights staring at you, not knowing
23 something's going to happen, that is more consistent with
24 Mr. Adams and Mr. Martin's testimony than going out there
25 when it's light out this past Tuesday and staring at the

Travis Holdorf - Recross-Examination by Mr. Gasser

1 spot, correct?

2 A Yes, sir.

3 Q And you didn't do that?

4 A I did not recreate the scene, no, sir.

5 Q And nobody else at the sheriff's department did
6 that?

7 A No, sir.

8 Q And you believe that Mr. Martin and Mr. Adam's
9 testimony is critical, don't you?

10 A I believe it's just as credible as the Echenroths
11 and the other people who were saying the same thing, yes,
12 sir.

13 A I said critical.

14 A Yes, sir.

15 Q And nobody at the sheriff's department ever tried
16 to recreate what the -- the set of circumstances in any of
17 these independent eyewitnesses were facing. Nobody ever
18 tried to do that, did they?

19 A I've had no cause to challenge what they thought --

20 Q That's not my question. You didn't do that, did
21 you.

22 A You're asking if we did something. There needs to
23 be a reason for me to do something like that. I don't see
24 a reason to do that. I believe what they're saying.
25 They're clear with what they're saying. They are not

Travis Holdorf - Recross-Examination by Mr. Gasser

1 saying well maybe it could have been, they're telling what
2 they saw.

3 Q You didn't do it, did you?

4 A No, sir, that was not done. I've answered that
5 question.

6 Q That's -- okay. We'll move on. We'll see if the
7 jury will decide whether or not --

8 MS. CAMPBELL: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. GASSER:

11 Q Tell the jury this, when did you take any of these
12 independent eyewitnesss out to the scene and interview them
13 from where they say they were so that you could get a
14 better idea of where they said they were under the
15 circumstances? Did you ever do that?

16 A No, sir. The day of the measurement, as I'm
17 pulling in, Mr. Martin showed up. I asked him where he
18 was -- he said --

19 Q You can't, objection. You can't say what he said.
20 I'm asking you when did you -- a date, when did you take
21 any of the witnesses out there --

22 A I've taken no witnesses anywhere. Once an arrest
23 is made it's no longer just my case. It is part of the
24 solicitor's office. If I do much to change it or anything
25 else, it has to be more of a team approach. I don't just

Travis Holdorf - Recross-Examination by Mr. Gasser

1 take witnesses and try to do anything. These people have
2 very business lives. I'm doing the best I can to try to
3 track them down and say, Hey, I need a bit of your time to
4 get what happened. I'm meeting them in parking lots, I'm
5 meeting them out of county, in Sumter County, in
6 restaurants where a husband sits in one booth and I go to
7 another booth on the opposite side of the restaurant to try
8 to talk to them. I'm trying to inconvenience them as
9 little as possible. As far as getting them all back to the
10 scene, that was never done, sir?

11 Q Because you don't want to inconvenience anybody?

12 A I'm not trying to not to inconvenience, sir. I
13 don't have any reason to doubt what they told me or seeing
14 what they saw. Even if I did get them back to the scene,
15 it would have to be another football game day thing. That
16 is pretty limited.

17 Q Investigator Holdorf, are you saying that in your
18 entire career, isn't it true that you've come across
19 hundreds and hundreds and hundreds if not thousands of
20 people that you take statements from that were mistaken
21 about what they thought they saw. Happens all the time,
22 doesn't it?

23 A A person, yes. Five, that's -- no, sir. I've got
24 a problem with that. I cannot wrap my head around it. Of
25 course, the State of South Carolina cannot wrap our heads

Travis Holdorf - Recross-Examination by Mr. Gasser

1 around how five people can be mistaken like that.

2 Q Okay.

3 A That's why we're here today.

4 Q That's why we're here today. And that will be for
5 another time in trial. You understand that?

6 A Yes, sir.

7 Q Okay. Thank you.

8 MR. GASSER: Beg the Court's indulgence.

9 That's all we have.

10 THE COURT: All right. Very well. You can come on
11 down.

12 All right. Ladies and gentlemen, that will
13 conclude the work that we are going to do for today. The
14 same admonition that I have given you, I will continue with
15 that this evening. I do want you to know though that
16 incrementally each day when you go home, the curiosity is
17 going to be increased, but the same admonition does apply.
18 Do not discuss this matter or allow anyone to discuss it
19 with you. But again, I don't want anyone getting upset
20 with you. You remember to put it on the judge. I don't
21 want anybody getting upset with you, of course.

22 Now, ladies and gentlemen, still need 9:30? We had
23 a 9:30 needer. It is better still you'll do nine in the
24 morning 9:30? Very well.

25 Ladies and gentlemen, remember do not do any

1 research, no Columbo, do not use social media, do not do
2 any sort of investigation to include looking up the
3 definition on the internet or a dictionary. You must
4 receive all of the information on which you will make up
5 your mind when court is in session.

6 Remember to leave your cell phones and other
7 communication devices away from the courthouse. If you
8 forget, just let one of our bailiffs know and we will take
9 good care of your cell phone or communication device until
10 such time as you can take it to your car or whatever. Do
11 not read anything, do not listen to anything about the
12 case. That includes radio, television, newspapers and the
13 internet. Once more. You must receive all of the
14 information for which you will make up your mind here while
15 court is in session.

16 Ladies and gentlemen, I will see you in the morning
17 at 9:30. You may go with the bailiffs.

18 (WHEREUPON the jury left the courtroom at 5:03
19 p.m.)

20 THE COURT: All right. I will ask you first.
21 Anything before we take our leave of each other from this
22 evening from the State.

23 MS. CAMPBELL: No, ma'am.

24 THE COURT: From the defense?

25 MR. GASSER: Judge, if it looks like -- nothing --

1 this is pure guessing. I don't know if you want to talk --

2 THE COURT: That was going to be my topic. I just
3 wanted to make sure you guys were okay with any issues then
4 I got some.

5 MR. GASSER: We're finished now.

6 THE COURT: Okay. Very well. Approximately,
7 again, I won't hold you to it because I know a trial is
8 dynamic event, but how many more witnesses do you think you
9 may have.

10 MS. CAMPBELL: I'm hoping only one, Your Honor.

11 THE COURT: Okay. Very well. So you all, the
12 defense will need to be ready to begin tomorrow.

13 Now, just for scheduling purposes. I don't know if
14 I want to at this point tie the defense to a number of
15 witnesses. But let me just share with you that I have --
16 I'm supposed to be in Orangeburg County in general
17 sessions. I have spoken with Mr. Sorenson to tell him I'm
18 probably not going to be there on Monday. Is that
19 reasonable to say?

20 MR. GASSER: Unless we go Saturday, that's
21 reasonable.

22 THE COURT: All right. My concern about going on
23 Saturday is that adds tremendous expense to the County.
24 This courthouse is not equipped to go on Saturdays. I try
25 not to do that both for the public and for the expense of

1 operating. That means you have to have security that we
2 normally -- that we normally have here. You got the heat
3 the building, do whatever they do. Yeah, the heat is off
4 and -- yeah, it is off. I try not to do that and I don't
5 see any reason to alter that.

6 MR. GASSER: I see no way of us finishing tomorrow
7 because we have --

8 THE COURT: I don't mean to tie you down to that, I
9 just wanted to make sure that what I was making assumptions
10 that they seemed reasonable.

11 MR. GASSER: Yes, ma'am.

12 THE COURT: It is -- I wanted to ask. But I did
13 tell Mr. Sorenson. That will be great.

14 MR. GASSER: And I think it will be okay for us at
15 some point in time tomorrow so you could have them over the
16 weekend, we plan on giving you our requested jury
17 instructions.

18 THE COURT: Right. That was the next thing I had
19 for you this afternoon.

20 MR. GASSER: I apologize again.

21 THE COURT: And please don't -- you know I know you
22 got enough to do, don't give me all the stuff. But there
23 may be some particular ones that you have an interest in
24 and I don't want you to recreate the wheel. You've got too
25 much going onto have to do that. But if there's something

1 particular to this case.

2 All right. Now, the same -- so you have an
3 answer -- I know the press is interested in going to
4 Monday. So I figure that's something -- with regards to
5 where Mr. Simms will be again you all will probably -- you
6 will probably get that to your office to -- I would
7 anticipate that he would be going home --

8 MR. GASSER: He should be home by 8 p.m.

9 THE COURT: I would anticipate then he will go home
10 just so you need to let the GPS folks know.

11 THE COURT: Anything further from the State?

12 MS. CAMPBELL: No, Your Honor.

13 THE COURT: The defense?

14 MR. GASSER: No, ma'am.

15 THE COURT: Very well. I'll see you tomorrow at
16 930.

17 (WHEREUPON court was in recess until the following
18 day.)

19 -----END OF VOLUME II OF PARTIAL TRANSCRIPT-----
20
21
22
23
24
25

1. State of South Carolina)
) In the Court
2. County of Richland) Of General Sessions

3.
4. Indictment No.: 2011-GS-40-829, 831

5.
6. State of South Carolina,)
7. Plaintiff.)
8.)
9.) Partial
 vs.) Transcript of Record
)
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. A P P E A R A N C E S:

18. Kathryn Luck Campbell, Assistant Solicitor
19. Joanna McDuffie, Assistant Solicitor
20. Meghan Walker, Assistant Solicitor
 Attorneys for the State

21. Jonathan Gasser, Esquire
22. Gregory Harris, Esquire
 Attorneys for the Defendant

23.
24. Transcribed by Brenda J. Sigwald, Circuit Court Reporter
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1	<u>I N D E X</u>	
2		<u>Page</u>
3	Stan Smith	
4	Direct Examination by Ms. Campbell.....	482
5	Midtrial Motions.....	497
6	Proffer of Testimony	
7	Allen James	
8	Direct Examination by Mr. Gasser.....	521
9	Stanford Dreatel	
10	Examination by the Court.....	526
11	Dustin Lindsey	
12	Direct Examination by Mr. Gasser.....	529
13	Cross-Examination by Ms. Campbell.....	581
14	Examination In Camera by Ms. Campbell.....	585
15	Cross-Examination by Ms. Campbell.....	599
16	Redirect Examination by Ms. Campbell.....	633
17	Mike Davis	
18	Direct Examination by Mr. Harris.....	635
19	Cross-Examination by Ms. McDuffy.....	659
20	Redirect Examination by Mr. Harris.....	663
21	Recross-Examination by Ms. McDuffy.....	664
22	Jordan Lindsey	
23	Direct Examination by Mr. Harris.....	667
24	Cross-Examination by Ms. Walker.....	700
25	Redirect Examination by Mr. Harris.....	712

1	<u>STATE'S EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
3	1	Advice of Rights Form	
4	2	Statement of Curtis Simms	
5	3	Photograph	
6	4	Photograph	
7	5	Photograph	
8	6	Photograph	
9	7	Photograph	
10	8	Photograph	
11	9	Photograph	
12	10	Photograph	
13	11	Photograph	
14	12	Photograph	
15	13	Photograph	
16	14	Photograph	
17	15	Photograph	
18	16	Photograph	
19	17	Photograph	
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21	19	Photograph	
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8	30	Photograph
9	31	Photograph
10	32	Photograph
11	33	Photograph
12	34	Photograph
13	35	Photograph
14	36	Photograph
15	37	Photograph
16	38	Photograph
17	39	Photograph
18	40	Photograph
19	41	Photograph
20	42	Photograph
21	43	Photograph
22	44	Photograph
23	45	Photograph
24	46	Photograph
25	47	Photograph

1	48	Photograph
2	49	Photograph
3	50	Photograph
4	51	Photograph
5	52	Photograph
6	53	Blowup of Scene
7	54	Written Statement of James Martin
8	55	Statement
9	56	Fingerprint Card
10	57	Fingerprint Card
11	58	Clothes
12	59	Photograph
13	60	Statement
14	61	Statement
15	62	Statement
16	63	Photograph

DEFENDANT'S EXHIBITS

18	1	Photograph
19	2	Written Statement of James Martin
20	3	Statement
21	4	Statement
22	5	Statement
23	6	Statement of Paxton
24	7	Photograph
25	8	Photograph

1	9	Photograph
2	10	Photograph
3	11	Statement
4	12	Photograph
5	13	Photograph
6	14	Photograph
7	15	Photograph
8	16	Photograph
9	17	Photograph
10	18	Photograph
11	19	Photograph
12	20	Photograph
13	21	Photograph

14

15

COURT'S EXHIBITS

16	1	Statement of Alan James
17	2	Juror Note
18	3	Juror Note
19	4	Juror Note
20	5	Juror Note
21	6	Rap Sheet
22	7	Juror Note

23

24

25

FRIDAY, FEBRUARY 2, 2013

THE COURT: Good morning.

MS. CAMPBELL: Judge, we have an issue as to the next witness.

THE COURT: Okay.

MS. CAMPBELL: The next witness, the law on involuntary manslaughter I believe is that he commits a crime that does not amount to a felony but then it leads to death. I was going to bring out with the next witness that the addition issues are covered to a felony level, I know Mr. Gasser is going to object to me talking about any type of legal or law like that. I didn't know if we wanted to stipulate that you can just tell the jury that through your charge or however.

THE COURT: Okay.

MR. GASSER: Judge, I think it's up to the Court to explain to this jury what the law is in all cases.

THE COURT: Tell me specifically what the question could be.

MS. CAMPBELL: The question would be something to the effect of the initial assault by the defendant on the victim would have been a felony.

MR. GASSER: I --

MR. HARRIS: Well --

THE COURT: I've got that. I got that.

1 MS. CAMPBELL: It would not be any further than
2 that, it would just be so that we meet the element that's
3 required by law.

4 THE COURT: I got you.

5 MS. CAMPBELL: It's an element of the offense.

6 THE COURT: I got you. I got you.

7 MS. CAMPBELL: I don't know how we handle it. I
8 don't think it's something that's already been proved.

9 THE COURT: That it was a misdemeanor as opposed to
10 a felony.

11 MS. CAMPBELL: I think it just -- because the law
12 says it's --

13 MR. GASSER: Judge, what I'm assuming your charge
14 will say is, if you find -- because, of course, the jury is
15 the ultimate fact finder as to whether an illegal or
16 unlawful assault occurred, that's going to be up to the
17 jury. That's not -- we haven't stipulated to that and so I
18 assumed that part of your charge is going to be, if you --
19 if you find that there was an assault and battery third
20 degree, I can't if the law is simple assault and battery or
21 if the legislature had added assault and battery to third
22 degree I'm not exactly sure of the time period. But it's
23 up to you, the jurors, to determine whether or not
24 Mr. Simms, if you find that you're to consider that in
25 determining -- not only in determining the law about

1 involuntary manslaughter. That's up to the Court to charge
2 the jury on the law. They have to find all the facts.
3 There's no -- there's no -- they have to find even the
4 facts whether or not there's been unlawful activity on the
5 part of Mr. Simms.

6 THE COURT: Yes. I agree.

7 MS. CAMPBELL: I agree with that. And we aren't.

8 THE COURT: I know you're not. I know you're not.
9 Read to me -- read to me the part of the --

10 MS. CAMPBELL: Involuntary manslaughter?

11 THE COURT: Yes.

12 MS. CAMPBELL: Is the unintentional killing without
13 malice, but while engaged in an unlawful activity that's
14 not a felony and does not naturally tend to cause death or
15 great bodily harm.

16 MR. GASSER: But, Your Honor, that's why I asked
17 you at the beginning, I understand that that's the -- I
18 agree that the one of the definitions that the Supreme
19 Court has routinely used. I agree with that. But also the
20 legislature in passing the statute, you still have to meet
21 the statute as well and the statute still requires criminal
22 negligence. So we're getting into all these areas of law.
23 In every case, the statute has to be met as well.

24 So the jury is going to have to find criminal
25 negligence in order to convict somebody of a crime under

1 16-3-60. As well, if you look at the statute, I think
2 we're just going into an area where we're going to be
3 able -- we all know it, Judge Goodstein is going to be able
4 to thoroughly explain the law to the jury. I just think
5 it's very problematic having lawyers ask questions that I
6 don't think the witnesses have no idea. But I think it
7 just becomes problematic in direct examination and
8 cross-examination of trying to explain the law -- lawyers
9 in adversarial proceeding trying to explain the law as
10 opposed to a judge who, of course, they swore an oath that
11 they must apply the law that you charge them.

12 THE COURT: I -- I do and the way that the statute
13 is drafted but the solicitor is in an interesting position
14 when it says here is what it is. And what it is saying is,
15 is that it does not -- because it doesn't reach the level
16 of a felony that it is something less than a felony and you
17 know --

18 MS. CAMPBELL: And even, Judge, I think if -- I
19 don't think we disagree on anything. I agree with
20 everything that Mr. Gasser has said of what we have to
21 prove to some extent. But if you're going to charge them
22 the initial law -- I mean if he would just stipulate that
23 the initial assault is not a felony. That's all -- I'm not
24 trying to do anything sneaky or go anywhere or say anything
25 about the law. I'm just trying to merely bring out the

1 fact that the initial assault does not amount to felony and
2 that's why it's charged. If they find assault.

3 MR. GASSER: I assume that the -- Judge, that
4 you're going to charge them, ladies and gentlemen of the
5 jury, if you find that the defendant committed an assault
6 and battery, third degree or simple assault, we're going to
7 have to look and see which we have to play by.

8 THE COURT: Yeah.

9 MR. GASSER: If you find that, I charge you that
10 that is a misdemeanor in South Carolina law.

11 MS. CAMPBELL: Well --

12 MR. GASSER: And the elements are x, y and z. And
13 I know -- well, we know you're going to charge that, but
14 regardless of what we have here, we know that may be your
15 charge. I think that takes care of it because that surely
16 instructs the law. We're not going to charge -- I mean
17 we're going to argue to the jury -- obviously, we're not
18 going to -- I'm probably going to tell the jury that they
19 would have -- there are two definitions to voluntary
20 manslaughter, involuntary manslaughter and discuss that
21 with them as well. But I think it's just very problematic
22 when witnesses start trying to explain to the jury what the
23 law is.

24 THE COURT: I'll either do it that way or the way
25 that I'm going to do it and I'm going to say, ladies and

1 gentlemen, the State does not take the position that this
2 act was a felony. It simply doesn't take the position that
3 this act was a felony.

4 MS. CAMPBELL: As long as they're charged in some
5 manner that it didn't amount to --

6 THE COURT: Exactly. Exactly.

7 MR. GASSER: I agree with that.

8 THE COURT: In other words, I'm not going to put it
9 on the defense to do anything. I think that puts you in a
10 precarious position. I'm inclined to do that. I am
11 however inclined -- and you can ask me to take judicial
12 notice that it is the intent of the State that this jury
13 not -- not find the conduct of this defendant was a felony.
14 That it is the intent of -- even if the jury was inclined
15 to do that, then it is the position of the State that it
16 ought not do that. They don't have to find a lesser
17 included offense. And I think he's entitled to that. You
18 see what I'm saying?

19 In other words, I don't believe that is the element
20 that you have to prove. I think you can take the position
21 and you can ask them to take judicial notice of that and I
22 will do that.

23 MS. CAMPBELL: I know that we're doing it as a
24 lesser included, it's just --

25 THE COURT: Absolutely. I agree with you that I

1 will tell the jury, ladies and gentlemen, the State
2 maintains and has asked me to take judicial notice and I am
3 taking judicial notice of the decision of the State that
4 this offense is a misdemeanor. It's not -- it's not a
5 felony any way you want to go. Otherwise --

6 MS. CAMPBELL: Or assault --

7 THE COURT: Yes, yes, absolutely. And that way --
8 and I think you asked me to take judicial notice of it and
9 that's what it is.

10 MS. CAMPBELL: Okay. I just wanted to make sure.

11 THE COURT: Absolutely. That would be so
12 appropriate.

13 Okay. All right. Everybody ready? Yes? Yes?
14 Wonderful. Bring us our jury.

15 (WHEREUPON the jury entered the courtroom at 9:38
16 a.m.)

17 THE BAILIFF: Jury is present, Your Honor.

18 THE COURT: Thank you so much and good morning,
19 ladies and gentlemen. Good morning, good morning. We will
20 at this time continue with the State's case.

21 Please call your next witness.

22 MS. CAMPBELL: May it please the Court.

23 THE COURT: Yes, ma'am.

24 MS. CAMPBELL: Your Honor, the State calls Major
25 Stan Smith Smith.

Stan Smith - Direct Examination by Ms. Campbell

1 STAN SMITH NAME,

2 having been duly sworn, testified as follows:

3 THE CLERK: Please have a seat and state your full
4 name.

5 THE WITNESS: James Standin Smith, S-t-a-n-d-i-n.

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Major Smith, where are you employed?

9 A Richland County Sheriff's Department.

10 Q What do you do there, sir?

11 A I am a supervisor in the criminal investigative
12 division. I have the rank of major. I supervise generally
13 most crimes in the division of my detective's work and
14 occasionally I do get involved in a homicide case and some
15 robbery cases.

16 Q And tell this jury a little bit about how long
17 you've been in law enforcement and what your experience is.

18 A I just entered my 29th year at Richland County
19 Sheriff's Department. I was gone a couple of years in the
20 private sector in the private security type agency, but I'm
21 in my 29th year. I graduated from the University of South
22 Carolina with a degree in criminal justice. I was with
23 uniform patrol officer for several years. I kind of paid
24 my dues, made detective in 1987 and I've worked for three
25 sheriffs since then. I've been in investigations really

Stan Smith - Direct Examination by Ms. Campbell

1 since then.

2 Q And as an investigator in the sheriff's department
3 or in your unit, what do the duties include?

4 A We respond to crime scenes when needed, but the
5 primary duty we do is we follow up on cases when uniformed
6 officers go out and take incident reports about crimes,
7 they usually, most times, are unsolved crimes. They're
8 assigned to my detectives and they followup on whether it
9 be a burglary, an armed robbery, a homicide, that kind of
10 thing.

11 Q And I want to turn your attention back to October
12 9th of 2010. What were you doing that day?

13 A I attended the football game.

14 Q And where were you -- was your car actually located
15 that day?

16 A Ironically I was in the line of cars coming -- it
17 would be Eastbound on Shop Road, from George Rogers
18 Boulevard, stuck in traffic.

19 Q That evening, did it come to your attention what
20 we're here about? Did it come to your attention?

21 A Well I was -- actually we were trying to make our
22 -- I was with some family members. We were trying to make
23 our way into the actual parking lot where the defendant had
24 parked actually.

25 Q Why were you trying to go to that parking lot?

Stan Smith - Direct Examination by Ms. Campbell

1 A There was some other people, family members there
2 that we wanted to see before we departed home and I --
3 another family was trying to direct us in because we
4 weren't sure which place to turn into and indicated to me
5 on the cell phone that there'd been an incident, some sort
6 of incident involving a car. At that time he had not -- he
7 didn't know anymore had than that happened other than
8 somebody was hit.

9 Q Did you actually witness this assault?

10 A No.

11 Q Once it came to your attention what had occurred,
12 what then did you do?

13 A Well, I was not but probably twenty to thirty yards
14 away. I got out of the car because there was traffic
15 stalled just to see -- make sure that 9-1-1 had been
16 notified and authorities were on the way. When I got
17 there, there were enough victims (sic) administering aid to
18 the victim. I saw that there was nothing else that I could
19 really do. Law enforcement and EMS were on the way and
20 then I just waited for my family to come and just separated
21 myself from the situation because at that time I thought it
22 was just a vehicle versus pedestrian accident. I didn't
23 know that there was a precipitating event. I didn't think
24 my agency would be involved in it.

25 Q And while you were there at the scene, did it

Stan Smith - Direct Examination by Ms. Campbell

1 become evident to you -- you can't see who you talked to --
2 that your agency had become involved.

3 A Yes, I actually -- we sort of got trapped in by
4 virtue of the emergency vehicles and wound up being there
5 about two hours. Everybody else in the lot was in the same
6 situation. I watched as highway patrol came and left and I
7 wondered why -- why they were coming because I thought that
8 would be their case and then I saw CPD come and some of
9 them left and then I saw a black and silver unit pull up
10 and that's what our cars are and I -- I had a sinking
11 feeling this case was coming to us. I didn't really
12 understand why at the time, so I approached the fence area
13 of the lot and I think I spoke to Sargent Pain and he
14 indicated to me that there's been an assault prior to the
15 vehicle pedestrian.

16 Q Did you actually notify investigators that were on
17 call for you that night?

18 A Yes, I knew who my major crime sargent on call was
19 Sargent Robinson. I called him on the cell phone and told
20 him what I just learned and he dispatched the appropriate
21 units, including himself.

22 Q And they were the people that would be appropriate
23 to come to a homicide scene?

24 A Yes. We have an on call, a primary -- we call it a
25 primary or lead detective a veteran such as Investigator

Stan Smith - Direct Examination by Ms. Campbell

1 Holdorf is on call every weekend with a supervisor Sargent
2 and the two of them both responded.

3 Q Did you actually have any contact with the
4 defendant in this case that night?

5 A No.

6 Q But you were there at the scene?

7 A I was there at the scene briefly and did not
8 interact with any of the witnesses or the -- or the
9 defendant or any of the witnesses.

10 Q And that would include you never had any contact or
11 saw any of the people that were in the car that Curtis
12 Simms was in?

13 A No, I had no knowledge of any car he had been in.
14 There was no description later that night that we were
15 looking for any car. I wasn't working the case at that
16 time. I was very careful not to be involved in it, I
17 really was not working. And I did become involved in it
18 more later.

19 Q When you went to the scene though, you testified
20 earlier that you actually observed a young man that had
21 been run over in the roadway?

22 A I did. He was being administered to by several
23 individuals who apparently had some sort of medical
24 training. They were doing the best they could.

25 MS. CAMPBELL: And Your Honor, may the witness step

Stan Smith - Direct Examination by Ms. Campbell

1 down.

2 THE COURT: We don't have microphones for you, so
3 please keep your voice up for us.

4 THE WITNESS: Yes, sir -- yes, ma'am.

5 BY MS. CAMPBELL:

6 Q I'm going to show you State's Exhibit No. 16. Are
7 you familiar with that picture

8 A I am.

9 Q And can you show the jury approximately where the
10 body of Martin Gasque was located when you saw it.

11 A It was on the roadway in this area and of course,
12 this was caused by the incline of the roadway.

13 Q Okay. And I notice this is a dark area here. This
14 is the black and white picture that's why it's black and
15 white?

16 A Right.

17 Q And this big area here inside the white line --

18 A Yes.

19 Q -- was part of his body was right?

20 A Well, his body was in this area, where he was being
21 administered to.

22 Q You have to show the jury?

23 A He was being administered to in this area right in
24 here.

25 Q So his body was on the roadway?

Stan Smith - Direct Examination by Ms. Campbell

1 A Yes.

2 Q And this -- I apologize, where this blood is, is
3 that where his head would have been?

4 A Yes. I'm not sure where his head would have been
5 at the time of the incident, but he was being administered
6 to in -- maybe this is more accurate right here.

7 Q But that's where it was when you saw it?

8 A Yes.

9 Q In the roadway and slanted like this?

10 A That's correct.

11 Q And there is some runoff, what looks like blood on
12 the side of the road?

13 A Yes.

14 Q And can you explain that?

15 A Well, as I believe y'all heard yesterday, these
16 roads are slanted for any rain, so there was an incline.
17 I'm looking for the area of -- you know, it went down. It
18 went down -- goosed down.

19 Q But his head and body was up here?

20 A Yes.

21 Q One other picture and that's reflected more in
22 State's Exhibit No. 3 where the runoff is?

23 A Yes.

24 Q And then there's some, what appears to be tire
25 tracks in State's Exhibit's 9 and 10. It's the same

Stan Smith - Direct Examination by Ms. Campbell

1 pictures, just at different angles.

2 A Yes, those tire tracks were caused by another
3 vehicle because the vehicle that -- the vehicle that was
4 involved would have been going in this direction. So this
5 is either an EMS vehicle or another emergency vehicle that
6 had come through there afterwards.

7 Q Because the first responders on the scene, their
8 primary duties are --

9 MR. GASSER: Objection.

10 THE COURT: No leading, please.

11 BY MS. CAMPBELL:

12 Q I --

13 THE COURT: Go ahead and ask the question. I'm
14 just concerned --

15 THE WITNESS: Well EMS and --

16 THE COURT: Whoa. Got to have a question. Go
17 ahead.

18 BY MS. CAMPBELL:

19 Q What would the process -- what is their concern?

20 A Their concern is the victim. They're not worried
21 about the crime scene preservation. They're worried about
22 getting help to the person that's injured.

23 Q Thank you, sir. You can take your seat.

24 This assault that night and the ensuing incident,
25 can you describe to the jury how it affected everyone out

Stan Smith - Direct Examination by Ms. Campbell

1 there that night?

2 A Well, I was there for two hours.

3 MR. GASSER: Objection.

4 THE COURT: Sustained.

5 MS. CAMPBELL: Your Honor, may I approach?

6 THE COURT: Sure.

7 (WHEREUPON, there was a bench conference out of the
8 hearing of the jury and the Court Reporter.)

9 BY MS. CAMPBELL:

10 Q Can you describe the scene -- excuse me -- can you
11 describe the scene as it was when you were there that
12 night?

13 A It was actually gridlock. Nothing was moved. It
14 took a while to get things moving.

15 Q And why was nothing moving?

16 A Well, we had a homicide. We had a scene that had
17 to be preserved. We just couldn't have people coming and
18 going through that area. This happened on the roadway, so
19 you couldn't have cars all of a sudden opened up, just
20 because people needed to get home.

21 Q And you mentioned at least two hours that directly
22 affected you and your people?

23 Q Yes, I was stuck in that lot because I knew.

24 Q Over the course of -- you mentioned that you became
25 involved in this case after the initial investigation?

Stan Smith - Direct Examination by Ms. Campbell

1 A Yes, and that's not unusual. Sometimes I'm
2 directly involved with these cases whether I'm off or not.
3 Sometimes I'm indirectly involved. I'm indirectly involved
4 in most of them. In this case I became more involved
5 actually interacting with Mr. Gasser afterwards and
6 consulting with the solicitor's office afterwards.

7 Q Were you aware of what charge the defendant was
8 initially charged with?

9 A I was.

10 Q And was that going to be the only charge he was
11 charged with?

12 A Well, it remained to be seen as the investigation
13 proceeded. But potentially, no, it's not the only charge,
14 initially he could be charged with.

15 Q And why was there a delay in charging him with the
16 second charge?

17 A To make sure we got it right.

18 Q And I believe approximately a week or so later, was
19 a determination as to what the proper charge was?

20 A Yes, after reviewing the statements -- and this is
21 a statement oriented case. Things like DNA and
22 fingerprints, and that kind of thing, that didn't really
23 dictate, you know. This was a statement of witnesses
24 oriented case. What statements were reviewed, including
25 the defendant's statement --

Stan Smith - Direct Examination by Ms. Campbell

1 MR. GASSER: Judge, may we approach -- I hate to
2 interrupt a witness.

3 THE COURT: Okay.

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 Based on your investigation, major, what was the
8 appropriate charge?

9 A Involuntary manslaughter.

10 Q You -- over your how many years of experience? 29?

11 A I'm in my 29th, yes, ma'am.

12 Q Have you taken statements from eyewitnesss before?

13 A Many.

14 Q And in your experience in events such as this, can
15 it traumatize someone?

16 A Oh, yes, certainly. This was obviously a traumatic
17 event. Any death scene or any death --

18 MR. GASSER: Judge, I object.

19 THE COURT: Sustained.

20 BY MS. CAMPBELL:

21 Q In your -- there's been a lot of questions in this
22 courtroom about --

23 MR. GASSER: Objection, Your Honor. She needs to
24 ask a question. I object to her phrasing the questions in
25 narrative. I object to her narration.

Stan Smith - Direct Examination by Ms. Campbell

1 MS. CAMPBELL: I have to give him point reference,
2 Your Honor, that's all I'm trying to do.

3 THE COURT: Let me hear the question.

4 Hold on, don't answer it until I hear it.

5 MS. CAMPBELL: I was just going ask him if there's
6 been questions about distances, colors, details, is that
7 unusual for there to be -- is that unusual for people to
8 perceive things, how do people perceive things.

9 MR. GASSER: I object. He's not an expert on how
10 people perceive things. I object to this witness
11 testifying to that. The jury must weigh the evidence.

12 THE COURT: Ms. Campbell you're going to need to
13 lay a proper foundation.

14 MS. CAMPBELL: Okay.

15 BY MS. CAMPBELL:

16 Q Tell this jury a little bit about your experience
17 with the witnesses?

18 A Witnesses often times if you have five witnesses,
19 you'll have five different --

20 MR. GASSER: Judge, objection. He's not an expert
21 if she wishes to be qualified that should actually be done
22 outside the presence of the jury.

23 (WHEREUPON, there was a bench conference out of the
24 hearing of the jury and the Court Reporter.)

25 BY MS. CAMPBELL:

Stan Smith - Direct Examination by Ms. Campbell

1 Q Mr. Smith, tell us a little bit about your training
2 as far as the police work, taking statements,
3 investigation?

4 A I got -- I guess it starts when you're in school.
5 I generally learned grammar and spelling and that's part of
6 our training, I guess. I majored in criminal justice after
7 -- after I graduated from the criminal justice academy. I
8 went to numerous classes on interviewing and different
9 techniques about interviewing and I guess the biggest
10 training tool is just doing it over and over and over and
11 over again, experience and that -- there's no substitute
12 for that.

13 Q How long have you been an investigator?

14 A Since 1987.

15 Q And since 1987 can you even estimate how many
16 interviews you've done with eyewitnesss?

17 A I mean, I don't even know how to begin to estimate
18 that. It would be, obviously, hundreds. I don't know if
19 it would reach thousands, but it could be close to a
20 thousand, probably.

21 Q And in your experience in taking all those
22 eyewitness statements, have you observed anything about
23 general details as eyewitnesss giving statements?

24 A Yes.

25 Q Can you share that with the jury? Generally, not

Stan Smith - Direct Examination by Ms. Campbell

1 specific to this case. Generally.

2 A Often times there will be subtle differences
3 misinterpretations, that kind of thing. Sometimes it has
4 to do with things like we discussed here, lighting and
5 different things. Sometimes it's just an omission or not a
6 recollection that takes place. But I've had a number of
7 cases that you'll see a lot -- you'll have consistent
8 testimony and statements about what really happened, but
9 there will be differences about the minute details along
10 the way, like lighting or distances or the color of a car
11 here or that kind of thing, but what you're generally try
12 to look at is the common denominator and what's most
13 important about the statement. And in this case --

14 MR. GASSER: Objection.

15 MS. CAMPBELL: You can't comment specifically about
16 this case.

17 BY MS. CAMPBELL:

18 Q But those are the factors that are significant to
19 you in your experience?

20 A Yes, the common denominator and the focus of the
21 statements as far as the crimes being described by the
22 witness is really what you're looking for.

23 Q And you testified earlier about how DNA and
24 fingerprints weren't really a driving force in this case?

25 MR. GASSER: Excuse me, Your Honor, I just want

Stan Smith - Direct Examination by Ms. Campbell

1 hear.

2 THE COURT: Okay.

3 BY MS. CAMPBELL:

4 Q Do you remember your testimony earlier about DNA?

5 A I do.

6 Q Was the identity of the defendant ever an issue in
7 this case?

8 A No.

9 Q And that's when DNA can be probative?

10 A We have a lot of homicide or who-done-its and
11 things like DNA and fingerprints are critical in those
12 cases. This was never an issue in this case. It's a
13 statement oriented witness type case.

14 MS. CAMPBELL: Beg the Court's indulgence.

15 THE COURT: Sure.

16 BY MS. CAMPBELL:

17 Q And fingerprinting, you became aware that the
18 Lindsey twins were witnesses in this case?

19 A I did.

20 Q Did you know who they were?

21 A I did.

22 Q Did you see them that night?

23 A I did not.

24 Q Thank you.

25 THE COURT: Very well. Cross-examination.

1 MR. GASSER: We have no questions.

2 THE COURT: Very well, you may come down.

3 Call your next witness, please.

4 MS. MCDUFFY: Your Honor, the State rests.

5 THE COURT: Very well. Ladies and gentlemen, you
6 have now heard the witnesses and received the evidence
7 which you will from the State in the State's case in chief.
8 That signifies to me that there are matters that I need to
9 take up outside of your presence, therefore I'm going to
10 ask you to please step to your jury room. Do not discuss
11 this matter or allow anybody to discuss it with you. We
12 will be with you in just a little bit.

13 (WHEREUPON the jury left the courtroom at 10:10
14 a.m.)

15 THE COURT: All right.

16 MR. HARRIS: Thank you, Judge.

17 THE COURT: Yes, sir.

18 MIDTRIAL MOTIONS

19 MR. HARRIS: We on behalf of Mr. Simms asking this
20 court to enter a judgment acquitting him of the charge
21 conduct. I think the record, it's clear at this point the
22 problems with the government's case, the State's case.
23 Even in the light most favorable to the State that there
24 was intervening actions. We all know what caused -- which
25 would argue the cause of this accident and caused this

1 death. Without that act, we wouldn't be here today. I
2 don't know any other way to say it, but we wouldn't be here
3 today. You know, we can go through the witnesses and I'd
4 like to briefly. If you will look at what the witnesses
5 say, taking away the punch, taking away any of the
6 identification about who struck who at what time and where
7 they were standing. The one thing that, the trend that we
8 have going through their testimony, whether it's that the
9 individual was in the car behind, the passenger, we have a
10 black truck, whether it's an individuals right to --
11 whether it's individuals in the car 50 feet away. What we
12 do know is that there was being described as a huge event
13 to turn off the road.

14 It was described and that was by individuals in the
15 car behind the black pick-up truck. The individual driver
16 of the car admitted he wanted to get off of the roadway and
17 he drove his car out of the roadway. If you listen to the
18 testimony, what you would have -- what people had the view
19 of a hundred and some odd feet he drove off of the roadway.
20 Had it not been for that, we would not be here today. This
21 charge shouldn't go forward if this Court finds that we
22 wouldn't be here today.

23 Based on that evidence we would ask that you enter
24 a judgment acquitting our client of the competent charge in
25 this case.

1 THE COURT: Thank you so much. I'm going to
2 respectfully deny your motion for this reason. Criminal
3 negligence, which is -- which is an element of involuntary
4 manslaughter gets into proximate cause and there can be
5 more than one element of proximate cause. More than one
6 direct cause and this is really where we are and what we're
7 about in this matter. I'm going to take the evidence in
8 the light most favorable to the nonmoving party. It isn't
9 only for me to weigh the evidence. It is only for me to
10 ascertain whether or not there's evidence on each and every
11 element from which this jury could find guilt.

12 So when I say what I'm about to say, please
13 understand that's what I'm doing. I'm not making any
14 determinations of fact. I'm only doing what it is that I
15 am to do and that is to considering whether or not there is
16 evidence. This jury can make this determination, that
17 there was unlawful conduct on behalf of your client -- that
18 -- but for the fact of the punch that knocked him out that
19 caused him to fall under this car and roll under this car.
20 Then at the point in time when the driver of the vehicle
21 sought to get out of the way of the open to see what was
22 going on, that that -- that those two events are the direct
23 cause of the death.

24 So you take the evidence in the light, which I am
25 to do not most favorable, but it's -- there is evidence in

1 their elements. I do believe there is evidence on each and
2 every element and would respectfully deny your motion.

3 MR. HARRIS: Thank you, Your Honor. One moment as
4 to the second charge. We've not given a whole lot of
5 thought to the motion.

6 THE COURT: And this one is --

7 MR. HARRIS: Well, Judge, I hate when lawyers stand
8 up and say for the record, I want to say something.

9 THE COURT: I know you do.

10 MR. HARRIS: That's just not a good way to practice
11 law.

12 THE COURT: Absolutely.

13 MR. HARRIS: But, Your Honor --

14 THE COURT: You must make that motion.

15 MR. HARRIS: I --

16 THE COURT: You must make the motion.

17 MR. HARRIS: If you'll give me one moment, I have a
18 couple of thoughts with Mr. Gasser as to that motion,
19 please.

20 THE COURT: It's high and aggravated would be a
21 place to start.

22 MR. HARRIS: That's kind of where I was looking to
23 go. But thank you.

24 (WHEREUPON there was a pause in the proceedings.)

25 MR. HARRIS: Thank you we would start off with

1 where the Court has suggested again, the -- Your Honor, but
2 we would ask for the judgment from the Court to have
3 conduct that would support the aggravated breach of peace.
4 But Judge, it just dawned on me and Mr. Gasser and I talked
5 about this last week that you can make this charge in every
6 occasion involving any -- any circumstance where first
7 responders show up and the fact that it's not a suggestion
8 that there has to be some aggravating factor that would
9 allow the State to bring a citizen in and try it in general
10 sessions court for this.

11 We just don't have it here. We -- other than one,
12 two if I accept some of the testimony I think that's been
13 disputed by their own witnesses, but even if you accept the
14 closest person to it that there was one punch or even two
15 punches. I just don't think that rises to the level
16 suggested by our legislature for this charge to go forward
17 as to this charge.

18 **THE COURT:** Thank you, so much Mr. Harris. And I
19 again I will respectfully deny your motion. If you take
20 the evidence in its entirety, in its entirety, this many
21 people in the public. This many people present in the
22 public and you add to the fact this conduct, I do believe
23 that there are things in evidence on each and every element
24 to include high and aggravated, just as you take these
25 events on one punch, two punches, six punches and breach of

1 peace high and aggravated, based on the evidence, which I
2 have heard, there is evidence on each and every element and
3 I would respectfully deny your motion and note your
4 exception to my ruling as to denying your motions as to
5 both and each of these indictments.

6 MR. HARRIS: Thank you, Your Honor.

7 THE COURT: All right. Now, do you all need a few
8 moments. There's always -- are you ready to rock or do you
9 need a moment to sort of...

10 MR. HARRIS: Your Honor, just five minutes so we
11 can tell the witnesses --

12 THE COURT: I think that's reasonable, most
13 certainly. Take your time. I will -- you know, it's
14 always exciting to have e-mail to look at.

15 Y'all go ahead and do what y'all need to and we'll
16 be at ease.

17 Thank you.

18 (WHEREUPON a recess was observed.)

19 THE COURT: Very well. Please place Mr. Simms
20 under oath for me.

21 CURTIS SIMMS,
22 having been duly sworn, testified as follows:

23 THE COURT: All right. You are Curtis James Simms?

24 THE DEFENDANT: Yes, ma'am, that's correct.

25 THE COURT: Mr. Simms, I'm going to ask you some

1 questions. I'm going explain to you certain of your
2 rights. If you do not understand anything I say, please
3 let me know, all right.

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: It is absolutely essential that you
6 understand what I'm explaining to you. So if you need -
7 if you don't understand, let me know. If you need more
8 explanation, let me know, okay?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Very well. Now, we have reached the
11 stage of the trial where you may present your defense. You
12 have the right to claim the protections given to you by the
13 Fifth Amendment to the constitution of the the United
14 States, also part of the Constitution of the State of South
15 Carolina. And this amendment states in part, no person
16 shall be compelled in any criminal case to be a witness
17 against himself. This means that you cannot be required to
18 testify in this case. You have the right to testify in
19 your own behalf; however, no one -- no one can make you
20 testify. This is a personal right. Your Fifth Amendment
21 right belongs to you and no one can waive this right except
22 where you.

23 If you decide to testify, you will be subject to
24 the same rules that govern other witnesses and you may be
25 examined and cross-examined on any relevant issue in this

1 case. In addition, if you have any convictions involving
2 dishonesty or false statement or for crimes punishable by
3 imprisonment for more than a year and this Court determines
4 that the probative value of admitting this evidence
5 outweighs its prejudicial effect to you, the solicitor will
6 be able to introduce your record to attack your
7 credibility. However, only for the purpose of attacking
8 your credibility and I would give a limiting instruction to
9 that fact if you decide to testify, this decision on your
10 part must be freely, voluntarily and intelligently made,
11 with knowledge of the protections given to you by the Fifth
12 Amendment and the consequences of your decision to testify.
13 Because, you understand, Mr. Simms, you don't have to prove
14 anything. The burden is and remains on the state, of
15 course, to prove guilt beyond a reasonable doubt and you
16 are presumed innocent in this courtroom.

17 If you decide not to testify, Mr. Simms, I will
18 instruct the jury that they cannot give the fact that you
19 did not testify any consideration whatsoever and that there
20 is to be absolutely no prejudice to you because you did not
21 testify. That is a matter to be left entirely up to you
22 whether or not you testify. In fact, Mr. Simms, I will
23 tell the jury that they're not allowed to discuss -- the
24 fact that you didn't testify, they cannot even discuss it
25 in the jury room. It's not allowed to be mentioned in the

1 jury room as they deliberate on whether you are guilty or
2 not guilty.

3 Now, Mr. Simms, I know that you've been speaking
4 with your attorneys. I know these attorneys. I know that
5 they have been speaking to you. I know that there has been
6 an ongoing discussion with you regarding your decision to
7 testify or not to testify. I don't know that from anything
8 that they have told me, of course, I simply know that
9 because of the quality of the attorneys that they are.

10 But, here's what you must know. You should
11 continue to speak with your lawyers. I urge you to
12 continue your dialogue with your lawyers. I urge you to
13 speak to your family, your friends and to anyone else with
14 whom you value their opinion with regard to whether you
15 should testify or not testify. But, Mr. Simms at the end
16 of the day, this decision, this very important decision is
17 yours. You must make the decision and this decision is
18 only ultimately left entirely up to you. Do you understand
19 what I have explained to you?

20 THE DEFENDANT: Yes, ma'am, I do.

21 THE COURT: Do you have any questions about what
22 I've explained to you.

23 THE DEFENDANT: No, ma'am, I do not.

24 THE COURT: Mr. Simms, there are many -- as I
25 understand -- there may not be many, but there are

1 witnesses to be called. I know that you will continue your
2 discussions, but I also want you to know is that should you
3 have a question that you wish to ask me or if you wish for
4 me to go back over any of these matters with you or if you
5 have a question that pops up that you wish to ask me
6 regarding what I've just went over with you, you'll need
7 only let your lawyers know and they will let me know and I
8 will be more than happy to go back over any or all of these
9 matters or to my very best to explain these matters to you
10 or to answer any questions that you might have regarding
11 these matters. Do you understand.

12 MR. GASSER: Yes, ma'am, I do.

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

14 Anything further than that that you wish for me to
15 discuss with your client at this time.

16 MR. HARRIS: No, ma'am. Thank you, Your Honor.

17 THE COURT: There's another matter y'all needed to
18 talk about and I'm listening.

19 Yes, ma'am, Ms. McDuffy.

20 MS. MCDUFFY: Your Honor, I don't know know which
21 witnesses they're going to call, but I see Allen James in
22 the courtroom and we have a matter of law to take up prior
23 to calling that witness. Your Honor, it's my understanding
24 and my belief that Mr. Gasser intends to get testimony,
25 elicit testimony from this witness about the victim's

1 behavior a mile down to road prior to this incident that
2 Mr. James describes in his statement. He was flipping
3 people off, cursing at them, almost got in several fights.
4 He saw him get out and use the path room on the side of the
5 road and things of that nature.

6 Your Honor, you allowed Mr. Gasser to go into those
7 specific instances of conduct on cross-examination of Adam
8 Paxton. However, Your Honor, we would move that that
9 information be extrinsic evidence of those specific offense
10 sieve conduct are not admissible and we would rely on rule
11 608 and also Mizell v Glover for that proposition. In
12 Mizell v. Glover it says that the rules allow instances of
13 conduct to be inquired to on cross-examination, but it does
14 not allow any incidents of conduct to be proved by exigent
15 evidence, which is what we believe Mr. Gasser is trying to
16 do through Mr. James. We ask that that testimony be
17 excluded.

18 THE COURT: Hold on one second let me look -- hold
19 on one second.

20 MR. GASSER: Yes, ma'am.

21 THE COURT: Okay. Yes, sir?

22 MR. GASSER: Okay. First let me -- let me talk --
23 explain to you what the testimony in general will be.
24 Mr. James' affidavit he provided to the sheriff's
25 department forty-eight hours after the incident that was

1 then provided to us in discovery because we're not offering
2 any exigent evidence of anything Mr. Paxton or Mr. Gasque
3 did. Of course, we have exigent evidence an sufficient a
4 week before the incident, three months before the incident
5 or whatever such as your wife, you know, in case after
6 armed robbery isn't true that you beat your wife and you
7 beat your wife with that charge six months ago and that's
8 evidence extrinsic conduct.

9 Exigent to why we're all here why would we be in an
10 armed robbery trial. I want to be clear to show you that
11 this is just as all of the other testimony that has been
12 brought that you have allowed in of every witness is
13 intrinsic to the allegations intrinsic to the events that
14 we are here for. So I'm going to focus on the intrinsic
15 nature. Me and Mr. Harris have made this decision, okay.
16 We can't get exigent evidence about events days or weeks or
17 months prior to the incident.

18 I decided to go down to the stadium the victory
19 with some friends that had been there all day.

20 **THE COURT:** Slow down.

21 **MR. GASSER:** It was about 7:20 p.m.. when I left I
22 got caught in terrible traffic about four miles outside the
23 stadium and it took an hour. Over an hour to get the last
24 four miles. I followed directly behind a full -- a black
25 full size truck for most of the way. I noticed kids inside

1 yelling at fans walking up the road. They were nice to
2 Gamecock fans by not to the Alabama fans. They almost got
3 into a couple of fights and had people flipping them off or
4 cussing at them. I also noticed the passenger getting out
5 and going to the bathroom. They were also revving up the
6 engine with loud mufflers and cutting people off so they
7 could not get into the road.

8 I saw a lot of drivers that were cut off getting
9 angry about their aggressive driving. Less than a mile
10 away, I let a car in front of me so I was one car separated
11 from the black truck the rest of the way in. I got a
12 couple hundred yards from our tailgate spot when I noticed
13 someone approaching the black truck and then he'll go on
14 with his testimony.

15 So, Your Honor, the testimony that Mr. James -- the
16 reason why Mr. James -- we would call Mr. James is the same
17 reason why Ms. Campbell went into great detail with
18 Mr. Paxton, the extrinsic nature of what was going on that
19 day. She went into when he got to Columbia. Had -- what
20 their plans were with Mr. Gasque, how there were two ladies
21 at the hotel room, where they watched the game. They
22 watched the game in the lumberyard down Shop Road. After
23 the game they went -- they drove some people to the
24 Woodland Apartments then they got in the car, the truck.
25 It was just the two of them and they got on Shop Road and

1 they were driving on Shop Road and he asked Mr. Paxton if,
2 if, if Martin was doing anything when he was celebrating
3 the Gamecock fans.

4 This was all in direct examination, if you
5 remember. He was celebrating with Gamecock fans that were
6 going by. Anything unusual happen? No nothing unusual
7 happened and all of that testimony, of course, she elicited
8 as the prosecutor would or any lawyer would of their
9 witnesses all that events leading up to an episode for
10 which there is a civil or criminal case. The events
11 leading up to it all are intrinsic because it provides part
12 of the context of what's going on. It's part of the
13 context of the event. In this case, the allegations is
14 part of the fabric of the case. All intrinsic circumstance
15 to the facts that are being presented during this
16 proceedings. In this case, this trial.

17 And so, that's what this is, is part of the context
18 of that. They asked again on direct examination, they
19 asked the Echenroths the same questions about them going to
20 the game and then after the game and then going to a condo
21 and then observations let in by a car and then driving down
22 Shop Road and they asked them did they notice anything
23 unusual. The people in front of them, were they acting in
24 any way unusual that drew your attention and so they have
25 -- they have elicited testimony before this jury on what

1 was going on intrinsic to and in context with the episode,
2 the events that were getting ready to occur. And so,
3 there's another witness that they provide id us in discover
4 that has owe, with his observations testimony to offer in
5 the same time period on the same road that what his
6 observations were during the same time period in which the
7 State elicited testimony of Mr. Paxton and from the
8 Echenroths as part of the intrinsic nature and context of
9 the fabric of this case.

10 He's just another witness to provide relevant
11 evidence as to what his observations were. Because they
12 asked questions as to observations of Mr. Paxton and
13 observations of the Echenroths. And we're going to ask
14 Mr. James under the same theory. It's all intrinsic as to
15 the observations of what he observed. And if there were
16 ten other witnesses that observed the black vehicle, if
17 they were evidence that was favorable to the State, we, of
18 course, would have heard from five or six of those
19 witnesses and if we had some of those witnesses, we would
20 have offered evidence if it was -- if their observations
21 were we felt benefitted our theory of the case.

22 That's what -- that's what, as you well know,
23 that's what lawyers do. They provide testimony through
24 three witnesses of intrinsic evidence of the events leading
25 up to the incident in question and we have witnesses --

1 several witnesses quite frankly that have provided
2 testimony as to what they observed intrinsically leading up
3 to the actual event or the verse that we're here for. So,
4 I mean the case law there siting is irrelevant. We're not
5 offering expert evidence. 608 is irrelevant if we're not
6 offering exigent evidence and also 608(b) refers to
7 specific conduct of the witness, a witness.

8 So, of course, Mr. Gasque is not a witness. But
9 needless to say, we're not offering extrinsic evidence.
10 Mr. Harris, quite frankly was the one that talked to me
11 about this type of evidence last night when we were getting
12 ready to discuss the case after court. About this evidence
13 being extrinsic to the fabric of why we're here. This is
14 evidence of another witness that made observations that
15 were different than Mr. Paxton's and different from the
16 Echenroths as to what was going on of the participates.

17 So that's the purpose. It's relevant evidence.
18 It's relevant to the facts and circumstances leading up to
19 what occurred and we're offering it for the same reason
20 that the State offered their relevant, what they perceived
21 to be relevant evidence.

22 **THE COURT:** Let me see the affidavit. I'm going to
23 mark it as an exhibit here.

24 (WHEREUPON the Court's exhibit No. 1 was marked for
25 identification.)

1 **MR. GASSER:** And one other point, Your Honor, that
2 is very briefly. If you think about it -- if they' owe if
3 this is not allowed, then is only thing the jury will have
4 heard, Your Honor, is the testimony of Mr. Paxton as to
5 what, you know, his testimony as to what he observed as to
6 what was going on and the testimony of the Echenroths and
7 the defense does not have a right to point out testimony as
8 to what somebody else observed. Somebody else's
9 observations as part of the intrinsic goings on that was --
10 that were occurring right before, during the con sect of
11 these goings on. It's just part of the fabric of the case,
12 Your Honor.

13 **MR. HARRIS:** If I may make a comment, Your Honor.

14 **THE COURT:** Okay.

15 **MR. HARRIS:** And this is something that I want to
16 add. You know the first year of law school, you learn
17 about the case the --(unable to transcribe due to quality
18 of reporter's notes) and what I'm trying to figure out and
19 there 's got to be some.

20 **THE COURT:** I missed that one.

21 **MR. HARRIS:** What's good for the goose is good for
22 the gander.

23 **THE COURT:** Okay.

24 **MR. HARRIS:** There has to be some estoppel issue
25 here. You know, the government, the State has put in all

1 of this evidence leading up and they put it in, you know,
2 they put up their case and now they're taking what I
3 believe to be inconsistent in law as to this particular
4 issue with regard to the way, the manner in which we put up
5 the case. So to the extent that that has any bearing on
6 this decision about this court decision, I would ask the
7 Court to consider, you know, I haven't really looked into
8 the estoppel issue, but I think -- so it's me as to -- you
9 know look is the the together that they've taken in
10 previous investigation in terms of the objections in this
11 particular case. In this instance also.

12 THE COURT: Okay. Okay.

13 MR. HARRIS: I think it's inconsistent to say we
14 shouldn't put it in, when they've been putting it in.

15 THE COURT: Okay. Thank you.

16 MR. HARRIS: Thank you.

17 THE COURT: Thank you. All right. Well, let -- I
18 want to frame this discussion because the discussion falls
19 into the part of the law regarding character. That's what
20 it falls into without a question in my mind. And it really
21 isn't whether or not it's proof of extrinsic evidence as I
22 see the issue. The only possible means of admissibility
23 would be pursuant to 405(b) and -- and 405(b) and so my
24 problem with 405(b) is that this affidavit doesn't do that.
25 I don't know who the kids are. I noticed the kids inside

1 yelling at fans. The kids inside yelling at fans, walking
2 up the road. And so, what I originally -- originally
3 believed the purpose of this evidence would be, would be
4 specific instances of conduct regarding who was the first
5 aggressor because obviously at this point, I know that
6 there's some testimony and it is the position of the
7 defendant that -- that he perceived a threat. He perceived
8 a bow up and he took the first, if you will preemptive
9 strike and so I really was wondered whether or not this
10 evidence would be -- you would all ask to admit it under
11 405(b). It's not admissible under 405(b). It's not
12 admissible under any of the rules. As I recall the
13 cross-examination regarding the going to the bathroom and
14 did you see him going to the bathroom, I allowed that
15 cross-examination really to change the -- the specific
16 evidence of that witness, the driver regarding his
17 characterization of the decedent's conduct. Straight up
18 impeachment and that's the reason that I allowed it. I
19 really went to the credibility more of what he was
20 testifying to more so than the character.

21 If I allowed it at this point because of that
22 cross-examination of the driver, it is extrinsic evidence
23 at this point. And I'm not going to allow it on that
24 basis. So then I looked to what other means, what other
25 reason might the defense wish to put that evidence in?

1 Well, it would clearly be 405(b). To explain or to put
2 before this jury evidence consistent with what I understand
3 part of the defense to be and that is that the decedent was
4 the first aggressor and this won't do that for you. So,
5 there is no other reason that I would allow it into
6 evidence. So we will mark this as a Court's exhibit for
7 identification purposes so that it is reserved for purposes
8 of the record. However, I do want to tell you there is a
9 point that I absolutely believe that it is relevant and I
10 want to be clear. I think it's perfectly fine for this
11 witness -- because the witness has got to testify his
12 vantage and I think the purpose of -- this witness is to
13 say I was traveling behind this truck. I know -- this is
14 how I know this particular black truck can identify this
15 particular truck because I was behind this truck for a long
16 time.

17 However, let's -- about a mile away from where the
18 incident occurred, I let a car in, so that places me, now,
19 two cars back. There's a car between me and the black
20 truck. I think that's important so that this witness can
21 explain to the jury his vantage point. That's happened.
22 That's absolutely appropriate. So when we get down here
23 less than a mile away, I let a car in front of me so that
24 there was one car separating me from the black truck for
25 the rest of the way in, or however y'all want to do it. I

1 got a couple hundred yards from my tailgate shot when I
2 noticed some -- and the rest of this -- you certainly --
3 it's admissible.

4 Now, you will get into hearsay, of course. A few
5 moments later I had bystanders tell me that the kid had
6 been run over by the truck that he got out of, but I -- but
7 it may or may not be admissible, but it's only to that
8 question. So this -- so I don't want to mislead you to say
9 that none of this information can come in because it's put
10 in a lot of cases.

11 MR. HARRIS: Yes, ma'am.

12 THE COURT: But what was happening early early, an
13 hour earlier, this description about what the kids in the
14 black truck are doing, that's inadmissible.

15 MR. HARRIS: Just to be clear --

16 THE COURT: Sure.

17 MR. HARRIS: One of the reasons, one of the
18 critical issues in this case has to do with identification.
19 Okay.

20 THE COURT: Yeah.

21 MR. HARRIS: And why someone is looking in a
22 particular direction, why someone has reason to believe
23 what may happen. It's critical, we believe and I got that
24 you've ruled but I want to make this point that one of the
25 reasons that this next witness was so clear on what he saw

1 was because he had been watching conduct consistent to what
2 he saw for about -- for a good period of time. That's --
3 that's one of the reasons he was trained. It's not like
4 some witnesses say I was looking left because I was turning
5 right. Some witnesses say I was looking straight,
6 listening to the game because I was looking straight.

7 He says I was looking at this because of what I had
8 seen for the past half hour, hour, whatever the time period
9 is. Should the State go into that conduct or test that or
10 challenge that, his ability or why he's looking or whether
11 he saw it clearly, we believe that would possibly open the
12 door. We'd ask that the Court revisit the issue if the
13 government opens the door.

14 THE COURT: I'm always there if the door is opened.

15 MR. HARRIS: Okay. I just --

16 THE COURT: That's always the circumstance. And
17 again, when I look at this affidavit, I want to be clear.

18 MR. HARRIS: Yeah.

19 THE COURT: When I look at this affidavit, it
20 doesn't get you to 405(b) because of the generality of it.
21 You understand me?

22 MR. HARRIS: And I understand that, Judge.

23 THE COURT: Yeah.

24 MR. HARRIS: And --

25 THE COURT: Because it doesn't -- on 405(b)'s got

1 absolutely nothing to do with the driver of this vehicle.

2 MR. HARRIS: Yes.

3 THE COURT: He talks about going down, I guess he
4 said the Woodlands. If you've got 45 kids in this truck,
5 they're brandishing guns, they being shooting at people,
6 they're being awful. That's got absolutely -- that's what
7 will get you to 405(b)

8 MR. HARRIS: And Judge --

9 THE COURT: You see what I'm saying.

10 MR. HARRIS: So that I get that clearly and, you
11 know, what we're doing is we're taking one document. I
12 certainly don't want to sit here and take up a proffer for
13 the Court and --

14 THE COURT: I am where I am.

15 MR. HARRIS: I get that, but I could give you the
16 attorney proffer and I don't think the State would
17 disagree. The boys are the individuals in the black truck.
18 The individual that exited and went to the bathroom was a
19 passenger. The individual that was speaking loudly with
20 Alabama and Carolina fans was the passenger. When you're
21 seeing the boys, Judge, I can tell you without objection
22 that we are in fact discussing -- or that they are
23 referring to the individuals in the black truck.

24 So to the extent there's any question about who the
25 boys are, Your Honor, I would ask that you accept my

1 supplement of the affidavit you just reviewed, to accept
2 that we are talking about Mr. Paxton is the driver and
3 Mr. Gasque is the passenger.

4 THE COURT: Yes. I -- okay.

5 MR. HARRIS: Okay.

6 THE COURT: I'm with you. I don't care about him
7 going to the bathroom.

8 MR. HARRIS: Okay.

9 THE COURT: I don't -- let me tell you why. Let me
10 tell you why because -- because the specific character
11 trait which has any relevance with regards to this alleged
12 victim is peacefulness or aggressiveness that's it. I
13 don't care -- you know, become, you know -- going to the
14 bathroom in public may be crass, it may be rude, itself
15 actually a violation of the federal laws called exposing
16 on's self especially if it's not in the woods or in your
17 backyard with big bushes which it seems like most men like
18 to find themselves there.

19 However, comma, going to the bathroom, while it may
20 be many things, it is not evidence of aggressive behavior
21 to show that this alleged victim was the aggressor.

22 Now, that's why I've looked at this very carefully
23 and I hope you're with me. The fact that they are being
24 rude and ugly and cutting people off, that is not the kind
25 of character evidence that's going to put the -- get you to

Allen James - Direct Examination by Mr. Gasser

1 405(b).

2 Now, you've got something in here, but it's too
3 general. See what I'm saying.

4 MR. HARRIS: Yes, ma'am. We're talking about it.

5 THE COURT: All right.

6 MR. HARRIS: Judge, I think I would like to proffer
7 the testimony.

8 THE COURT: Okay. Sure.

9 MR. HARRIS: I think that would be -- rather than
10 being --

11 THE COURT: All right. I have no problem with
12 that.

13 MR. HARRIS: Thank you, Your Honor.

14 THE COURT: Yes.

15 MR. GASSER: The defense would call Allen James.

16 ALLEN JAMES,

17 having been duly sworn, testified as follows:

18 THE CLERK: Please have a seat. State your full
19 name for the record.

20 THE WITNESS: Allen James.

21 **DIRECT EXAMINATION - IN CAMERA**

22 BY MR. GASSER:

23 Q Mr. James, I know that you're not a lawyer and
24 you've been in the courtroom. What the judge is allowing
25 us to do is called proffering a prospective witness's --

Allen James - Direct Examination by Mr. Gasser

1 prospective witnesses testimony outside the presence of the
2 jury, so I'm going to have some questions for you and the
3 State may have some questions for you as well in
4 cross-examination and then your testimony will be taken in
5 front of the jury. Okay?

6 A Okay.

7 Q So, the judge has at least somewhat of a
8 foundational background of you, tell us, sir, how old are
9 you?

10 A I'm forty-nine.

11 Q Okay. And you're a resident of Columbia?

12 A I am. Elgin.

13 Q Elgin. What do you do for a living?

14 A Me and my brothers own Clothing World.

15 Q Okay. I want to draw your attention back to
16 October 9th of 2010. Did you have an opportunity to
17 actually attend the Alabama, USC football game?

18 A I did not because I was working.

19 Q Okay. Because you remember working at clothing
20 world that day?

21 A That's right.

22 Q And where did -- did you have an opportunity to
23 watch the game?

24 A We have a TV at Clothing World and, you know, in
25 between helping customers, I was able to watch part of the

Allen James - Direct Examination by Mr. Gasser

1 game.

2 Q At some point in time, did you leave Clothing
3 World?

4 A After we closed, yeah. I decided I was going to go
5 down to the stadium.

6 Q And just from a reference point perspective would
7 you tell the judge where Clothing World is located?

8 A Clothing World is out right across from the new
9 Harley Davidson place, the Thunder Tower out on I-20 at
10 Exit 82.

11 Q So that would be the northeast area of Columbia?

12 A That's right.

13 Q Before you get to the Kershaw County line?

14 A Yes, sir.

15 Q When you left your business establishment were you
16 by yourself?

17 A Yes, sir.

18 Q And what route did you take to go to the stadium
19 area?

20 A 77 to Shop Road.

21 Q And your final destination -- your intentional
22 final destination was where?

23 A The Farm Bureau Bank is where I have a tailgate
24 spot.

25 Q And the -- just for purposes of speeding up this

Allen James - Direct Examination by Mr. Gasser

1 particular hearing, the Farm Bureau Bank, tell me it's
2 about two spots down from where the incident took place,
3 correct.

4 A Correct.

5 Q When you exited I77 onto Shop Road, did there come
6 a time when you were on Shop Road that you noticed a black
7 pick-up truck in front of you?

8 A I did.

9 Q Would you describe what you noticed to the Court?

10 A Well, it was a really large truck with large wheels
11 and had some hunting club from some small down on the back
12 window, but what I really noticed was really just to
13 passenger and the driver were being very loud and obnoxious
14 and yelling at people and all kinds of stuff the whole way
15 in. And as I said, they were being very nice to the
16 Gamecocks but very rude to anybody with Alabama or anything
17 like that on their shirt.

18 Q Now, you say they. You need to distinguish between
19 what you call the driver of the vehicle doing and the
20 passenger of the vehicle doing?

21 A Right. I mean, there's differences. Both of them
22 were yelling a lot, but I did see the passenger got out and
23 used the bathroom in the pompous bushes in front of the
24 highway patrol center there with the driver's license
25 department. And like I say they were yelling at a lot of

Allen James - Direct Examination by Mr. Gasser

1 people, cutting a lot of people off. Obviously it's the
2 driver cutting people off. They were both yelling at
3 people. I saw several people literally almost get in a
4 fight with them or yell at them or argue with them or flip
5 each other off and things like that because they were being
6 very rude to everyone they were passing. It was the driver
7 and a passenger being rude but like I said, the driver was
8 cutting people off, so they couldn't get out. It was odd
9 because there was traffic going both ways and it was very
10 crowded both ways. It's unusual to have traffic crowded
11 going into a game, but it was that night because we beat
12 the number one team, Alabama and so there was traffic both
13 ways and when the cars coming out on our side would get an
14 opening, they would have to go all the way across the road
15 to try to go left to leave and this truck was revving up
16 their engine on purpose stopping them and stopping in front
17 of them so they couldn't get out and it was just upsetting
18 drivers a lot. Several times, but...

19 Q Now, had you had anything to drink while you were
20 working?

21 A I hadn't. I actually did buy a 12 pack and it was
22 still sitting in my seat when I got there, unopened.

23 Q And now this is -- for the purpose of this hearing
24 in the Court, while you were driving on Shop Road, I want
25 you to focus on the passenger in the black pick-up truck.

Allen James - Direct Examination by Mr. Gasser

1 Tell the judge what, if anything, observations you observed
2 the passenger doing from an aggressive nature perspective?

3 A Well, they were flipping people off.

4 Q Let me --

5 A I'm sorry.

6 Q You've got --

7 A I'm sorry.

8 Q You're using the word they.

9 A I'm sorry. The passenger in the truck was flipping
10 people off, cussing at people, yelling at people. Like I
11 said they were nice to the Gamecocks. Anybody with an
12 Alabama shirt, they were being total jerks too and I'll say
13 that again, the passenger.

14 Q Now, did you have your window rolled up or down?

15 A My window you was up part of the way and down part
16 of the way. I was doing both, I guess.

17 Q Okay. Could you specifically hear -- did you make
18 out and hear any words or any profanity that the passenger
19 was using directed at Alabama fans? Specificity?

20 A I'm not specifically saying I heard exact cuss
21 words. I know that what they were saying was obviously
22 upsetting the people because they were yelling back at him,
23 but --

24 Q Did you see any hand gestures?

25 A I did see them flipping -- or him flipping people

Allen James - Direct Examination by Mr. Gasser

1 off.

2 Q Who's him?

3 A The passenger in the car.

4 Q Okay. And this is a court of law, when you say
5 flipping people off, you just demonstrated, again go ahead
6 and demonstrate first and then I'll describe what you're
7 demonstrating?

8 A (Indicating).

9 MR. GASSER: Your Honor, let the record reflect
10 that he's extended his middle finger, Your Honor, for
11 purposes of this hearing.

12 BY MR. GASSER:

13 Q Did you actually see the passenger of that black
14 vehicle do that to people?

15 A Yes.

16 Q And were those individuals Alabama fans, that you
17 saw wearing Alabama gear?

18 A They all -- exactly, they were the Alabama fans.

19 Q Okay. Did there come a time that you let somebody
20 in?

21 A Yes.

22 Q Do you recall where that was?

23 A It was very close to where the scene actually
24 happened. I had made it most of the way and then I let
25 someone in right in front of me so the rest of the way in,

Allen James - Direct Examination by Mr. Gasser

1 like I say, it was less than a mile.

2 Q So, how many vehicles at that point in time when
3 you let that car in, did you still have a line of sight in
4 front of the black vehicle with the two individuals that
5 you described to the Court?

6 A Yeah, I could see them. Like I say, it was one car
7 between us. I couldn't see it perfectly and exactly,
8 because there was a car in between us, but I could
9 certainly still see them and what was going on.

10 Q Did that black pick-up truck that you described
11 where the occupants were doing to the Court, did it ever
12 turn off to the right into any other tailgate spot?

13 A No.

14 Q Did it ever turn left off to any tailgate spot that
15 you saw?

16 A I mean, the only thing I ever saw them do is pull
17 off of the road at the very end, which was --

18 Q Did you -- did you keep that pick-up truck in the
19 line of sight as you came up onto the incident location
20 before the incident occurred?

21 A Yes.

22 Q And then did you observe an incident?

23 A Yes.

24 Q And what did you observe?

25 A Well, I saw Curtis walking up towards the car and

Allen James - Direct Examination by Mr. Gasser

1 then I saw the fellow step out of the car and then that's
2 when I couldn't see when he went down, but apparently he
3 went down, but that's what I could see.

4 Q The person that you observed, Mr. Simms or the
5 truck -- the passenger side of the truck that you observed
6 Mr. Simms approach, is that the same black pick-up truck
7 that you had been following on Shop Road that you've
8 described these -- this comment to the Court?

9 A Yes.

10 Q No doubt in your mind?

11 A No doubt in my mind.

12 Q And the person that got out of the passenger side
13 of the truck that Mr. Simms and he engaged each other, is
14 that the same person that you saw going down Buff Road
15 (sic), flipping off Alabama fans?

16 A Yes, sir.

17 MR. GASSER: Beg the Court's indulgence.

18 THE COURT: Okay.

19 MR. GASSER: That's all we have, Your Honor, on
20 this.

21 THE COURT: Okay. Okay. Give me just a moment. I
22 want to see if I can put my hands on something.

23 (WHEREUPON there was a pause in the proceedings.)

24 THE COURT: Let me hear from the State.

25 MS. MCDUFFY: Your Honor, the conduct that that he

Allen James - Direct Examination by Mr. Gasser

1 is describing is to attack the character of the victim. No
2 comment that he has described fits a defendant witness. He
3 described conduct that was a file down the road. He cannot
4 attribute anything aggressive towards the victim based on
5 flipping someone off, Your Honor. He has not attributed
6 any conduct that the defendant could be aware of. He has
7 not attributed any of this conduct directed toward the
8 defendant in this case or even remotely close to the time
9 that the defendant would have been able to see the conduct
10 in this case.

11 He also said in his direct to Mr. Gasque that it
12 happened about a mile down the road and then he let a black
13 truck -- I'm sorry, then he let another car in front of
14 him. None of this -- none of this conduct was done in
15 approximately the time when the defendant could have seen
16 it nor did he say that he was done at the direction of the
17 defendant. And this testimony is purely to impugn the
18 credibility of the victim has no relevant basis, Your
19 Honor. And under either theory 405 or 608, Your Honor, we
20 don't believe that this evidence is admissible.

21 And Your Honor prior -- earlier in the week when we
22 brought this issue up we handed up State v. Day which talks
23 about conduct that the defendant did not know could have
24 occurred that was not toward the defendant and the
25 defendant had no knowledge of, there was no relevance.

1 That conduct was not allowed even if this conduct was more
2 on point with being violent.

3 THE COURT: All right. I -- what I told you
4 earlier will remain my ruling. I do not believe even
5 taking and hearing the proffer of this witness rises to the
6 occasion of 405(b) can't an extrinsic evidence part of it
7 is argument is preserved and it's not permitted. But even
8 more so under 405(b), rudeness, yes I got it. It would be
9 testifying to rudeness. It's clear that this gentleman's,
10 Mr. James had a fairly difficult time even distinguishing
11 between the two of them. Clearly the decedent in this
12 matter wasn't cutting anybody off. He wasn't driving, he
13 couldn't be cutting anyone off. As the conduct described,
14 it's described as both people, the people walking by
15 flipping off as well as what's going on in this -- in the
16 truck. Can't say that there were even curse words used.
17 It's just talking going on back and forth and I don't know
18 that you can describe it as this conduct as being anything
19 more than rude. And I don't -- rude conduct is not the --
20 sufficient to -- for this court to allow this type of
21 evidence because that is without o o would not be the
22 pertinent character trait involved here in this defense.
23 It must be aggressive conduct. Kind of aggressive in terms
24 of physical lines or actions which would reasonably -- a
25 reasonable person would see as causing this violence and I

1 simply do not see that here. I note the exception of the
2 defense to my ruling.

3 Now, having said that, again, what this witness
4 observed at the time of these events, just as every other
5 person has testified to is certainly -- he can testify to
6 it. He can testify where it was located. He can testify
7 that -- that he had seen this truck, that it was -- that he
8 was aware of this truck you -- how far away he was from
9 this truck and what he observed occur during this incident.
10 And of course, if the State opens the door, I'm not going
11 anywhere and beneath ready are y'all.

12 Very well. All right.

13 Don't y'all want to take -- I would like to take a
14 little bit of a break just to give us a little comfort
15 break before we begin, but I need you to just tell the jury
16 that we're about to be reconvene. We just finished our
17 work and we need to take a little comfort break and we're
18 going to take ten more minutes. Okay?

19 MR. GASSER: Judge, just for the record and I'm
20 going -- in the presence of Ms. McDuffy, I'm going to
21 explain all of this in cautionary terms to the witness
22 right here as soon as you walk out. I'm going to bring
23 Mr. James out down in this presence of Ms. McDuffy and
24 explain to him what he's not allowed to say so that we
25 don't have anything that we're not aware. We all

1 understand what's going on, but I just want to -- I would
2 again caution him what he's not allowed to say in the
3 presence of Ms. McDuffy.

4 THE COURT: You want -- are y'all comfortable with
5 that or you are want me to do it.

6 MS. MCDUFFY: Your Honor, we prefer that you do it.

7 THE COURT: I'll do it.

8 Yes, sir, let me tell you when you start, you can
9 answer these are wonderful lawyers, listen to their
10 questions carefully, okay. They'll ask -- they may very
11 well ask you were you following this black vehicle, but you
12 are not to talk about what you saw up until the point where
13 these events began to occur. You can -- you can say I
14 followed behind this truck for a good long while, but I let
15 a car in and therefore I got to be a vehicle away. I was
16 not behind them directly, but I was two cars behind them.
17 Not directly behind them, but there was a car in between
18 us. And then you can certainly talk about when you say
19 I've got a couple -- I got a couple hundred yards from our
20 tailgate spot when I noticed someone approach the black
21 truck and I vaguely knew him. Okay. At this point in your
22 statement.

23 Now, don't sandbag me because you will -- because
24 I'm telling you, you're not to talk about urination. You
25 are not to talk about the flipping off. You're not to talk

1 about the -- I like to call it nah nah. That's what we
2 call it at home. Nah nah -- nah nah going back and forth.
3 If you do that, you'll be violating my order and you and I
4 are going to have a problem.

5 Now, if this door gets open and that testimony is
6 allowed, I will be sure you understand.

7 THE WITNESS: I'm going to answer the questions
8 they ask me.

9 THE COURT: No, sir. No, sir: No, sir.

10 THE WITNESS: I'm just saying they shouldn't ask
11 those questions, should they not.

12 THE COURT: No, no, you need to stop and you need
13 to listen. I don't care what they ask you from the
14 perspective of what I'm ordering you to do. If they ask
15 you to tell them what happened four miles outside this
16 stadium, you don't answer that. You understand.

17 THE WITNESS: (Witness nodded head.)

18 THE COURT: If they ask you a question that would
19 prompt you to say that the nah nah and the urinating had
20 occurred they are violating my order and I'll take that up
21 with them. They're not going to do that, but if that
22 happens, I'm telling you, you don't answer. Am I clear?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Thank you so much. We're going to take
25 about ten minutes.

1 MS. MCDUFFY: Your Honor, can we also ask that you
2 tell the witness not to discuss his testimony.

3 THE COURT: Yes, you don't talk about your
4 testimony to anyone. Thank you.

5 (WHEREUPON a recess was observed.)

6 THE BAILIFF: You can go back there and have a
7 seat.

8 THE COURT: Anything before we bring our jury out
9 from the State.

10 MS. MCDUFFY: Yes, ma'am, Your Honor. Our
11 investigator was -- saw Allen James left the courtroom and
12 he was just discussing what had just happened in here with
13 one of the --

14 MR. GASSER: That's correct.

15 MS. MCDUFFY: With one of the ladies.

16 MR. HARRIS: That's not correct. Based on your
17 ruling -- based on your ruling, we decided to separate the
18 witnesses for tactical reasons based on your ruling, so the
19 fact that Mr. Lindsey -- Dustin Lindsey is going to be our
20 next witness and I separated Mr. James and when Mr. Lindsey
21 walked up here, he walked up to say, you know, to shake
22 hands with Mr. James and apparently Mr. Lindsey said, I
23 thought you were going first and Mr. James said something
24 to the fact of no, no, no, I'm a little shaken up or
25 something to that effect and you're going to go before me.

1 He did not in any way, shape or form discuss the substance
2 of his testimony as to what was questioned, the substance
3 of your rulings or anything. There's nothing wrong with
4 witnesses talking with each other about nonsubstantive
5 issues going on. So I just want to be clear on that.

6 THE COURT: I know.

7 MR. GASSER: Okay.

8 THE COURT: I don't think that's what Ms. McDuffy
9 was saying. Is that what you were saying? You were
10 concerned that he was discussing his testimony, is that
11 right?

12 MS. MCDUFFY: Correct, Your Honor.

13 THE COURT: Okay. And is your investigator
14 present?

15 Okay. Hi how are you good morning, good morning.
16 Raise your right hand.

17 STANFORD DREATEL,
18 having been duly sworn, testified as follows:

19 THE COURT: Tell me your name.

20 THE WITNESS: Stanford Dreatel, it's spelled
21 D-r-e-a-t-e-l.

22 THE COURT: Okay. Tell me what -- what you
23 observed.

24 THE WITNESS: I was just in the lobby Your Honor
25 during the break and I noticed Mr. Lindsey and the last

1 witness sitting on the bench. I could not hear the
2 conversation, but they were sitting over on a bench having
3 a conversation. I walked by them to see what they were
4 talking about about a lawyer, a female lawyer.

5 THE COURT: Okay. Okay.

6 MR. GASSER: We instruct our witnesses not to talk
7 about the substance of cases. We convict them that. We
8 know what the rules are. So there's nothing that us
9 talking about -- no testimony has been brought before the
10 jury so -- that's what we instructed him on, do not talk
11 about the case. Or Mr. Harris -- I didn't see him,
12 Mr. Harris can tell you all about the State's witnesses.

13 MR. HARRIS: Yesterday.

14 MR. GASSER: Yesterday, the day before, talking
15 amongst themselves. Between testimony talking about --
16 actually talking about Mr. Harris heard them talking about
17 their testimony when Mr. Paxton was sitting over there. We
18 brought it to the attention of the lawyers and we figured
19 as lawyers and professionals we would deal with this on our
20 own instead of bringing it to the Court's attention and so
21 Mr. Harris handled that manner.

22 And we all know what is a substantive violation of
23 what the rules are and I just -- we instructed our witness
24 not to talk about the testimony in front of the jury.
25 Testimony. And I believe they have adhered, Your Honor.

1 **THE COURT:** Well, I appreciate you bringing that to
2 my attention. Apparently, they had some conversation but I
3 can't make a determination whether or not the substance was
4 discussed or not and I'm satisfied.

5 All right. Anything else? No? No? Great.

6 Let me have the jury, please.

7 (WHEREUPON the jury entered the courtroom at 1:43
8 p.m.)

9 (WHEREUPON Defendant's Exhibits 7, 8, 9 and 10 were
10 marked for ID).

11 **THE BAILIFF:** Jurors are all present, Your Honor.

12 **THE COURT:** Thank you so much. Ladies and
13 gentlemen, as I told you before, you have heard the
14 witnesses and received the evidence from the State in the
15 State's case in chief. We will now turn to the defense.
16 If you would call your first witness.

17 **MR. GASSER:** Thank you, Your Honor, the defense
18 could call Dustin Lindsey.

19 **THE COURT:** Very well. Come along and be sworn.

20 DUSTIN LINDSEY,
21 having been duly sworn, testified as follows:

22 **THE CLERK:** Please have a seat and state your full
23 name for the record.

24 **THE COURT:** All right. Just just state your full
25 name for the record, sort of a sound check.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 THE WITNESS: My name is Dustin Arlin Lindsey.

2 THE COURT: And spell your last name.

3 THE WITNESS: L-I-N-D-S-E-Y.

4 THE COURT: Your witness.

5 MR. GASSER: Thank you, Your Honor.

6 **DIRECT EXAMINATION**

7 BY MR. GASSER:

8 Q Mr. Lindsey, how old are you, sir?

9 A Twenty-seven years old.

10 Q And where are you originally from?

11 A Mobile Alabama.

12 Q Are you married?

13 A No.

14 Q And where do you currently live?

15 A Columbia, South Carolina.

16 Q Okay. And what do you do for a living?

17 A Well, I'm an insurance adjuster and I own my own --

18 Q I'm sorry, what is --

19 A I mean, I inspect homes and I also own my own
20 catering company, so I barbecue.

21 Q And your parents, they still live in Mobile?

22 A Yes, sir.

23 Q How many siblings do you have?

24 A I have two brothers.

25 Q You have a twin brother?

Dustin Lindsey - Direct Examination by Mr. Gasser

- 1 A Yes, sir.
- 2 Q What's his name?
- 3 A Billy Jordan Lindsey.
- 4 Q And he goes by what?
- 5 A Jordan.
- 6 Q What brought you to the city of Columbia?
- 7 A Football scholarship under Lou Holtz.
- 8 Q To the University of South Carolina?
- 9 A University of South Carolina and when did you
10 arrive on campus at USC.
- 11 A 2004.
- 12 Q And how many years did you play football at USC?
- 13 Q Through the 2009 season?
- 14 A Yes.
- 15 Q Do you know the defendant, Curtis Simms?
- 16 A Yes, sir.
- 17 Q Tell the jury how you know Curtis?
- 18 A We went through like -- he played for Baker High
19 school, which was a rival of ours and we just knew each
20 other from football and knowing each other's family. We
21 never really were friends until after high school and we
22 started hanging out just random places parties stuff like
23 that and came to know each other and eventually, he came to
24 a couple of my games in college and we started to become
25 better friends and then a while back, he -- he wasn't doing

Dustin Lindsey - Direct Examination by Mr. Gasser

1 too good in Alabama, so we got him a good job up here in
2 South Carolina and he's been here since then.

3 Q Okay. Now what high school did you go to in
4 Mobile?

5 A Davidson High School.

6 Q And Curtis went to what high school?

7 A Baker high school.

8 Q Approximately -- well, did your brother Jordan, did
9 he also earn a football scholarship to Carolina?

10 A Yes, sir.

11 Q Was he there the same years that you were there?

12 A Yes, sir.

13 Q How many times -- do you know how many times Curtis
14 Simms came to Columbia for a home game during your five
15 year football the career?

16 A Three times, three, four times.

17 Q Now, your parents did they follow yours and
18 Jordan's careers while at USC?

19 A Yes, sir, never missed a game away or home.

20 Q And during your freshman year, you're familiar with
21 the concept of tailgating, are you not?

22 A Yes, sir.

23 Q During your freshman year, did your parents make
24 arrangements in some fashion that when they did attend your
25 games as far as where they would park?

Dustin Lindsey - Direct Examination by Mr. Gasser

1 A Yes. Well, our freshman year we started off, they
2 bounced around a little bit until they met a certain group
3 of older people and ever since then, they've been in the
4 same parking lot for going on eight years now.

5 Q So even though yours and your brothers football
6 careers ended in 2009?

7 MS. CAMPBELL: Objection, Your Honor to the
8 leading. If he could just ask the questions.

9 MR. GASSER: I have ask a question.

10 MS. CAMPBELL: I know.

11 THE COURT: Go ahead and ask a question.
12 Don't answer yet.

13 BY MR. GASSER:

14 Q Don't answer the question. Even though that your
15 football careers have ended in 2009, do your parents still
16 have a tailgating place in Columbia?

17 THE COURT: Okay. You may answer.

18 MR. GASSER: Thank you.

19 THE WITNESS: Yes, we basically took over my
20 parents actual spot with the original group we've been with
21 for so many years.

22 BY MR. GASSER:

23 Q And where is that spot?

24 A At Crawdad Customs across from the Gates on Shop
25 Road.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q I show you what's been marked State's Exhibit No.
2 53. Here you go Dustin. I'm showing you what's been
3 marked as State's Exhibit No. 53 and if you're standing up
4 that means talk a little louder and move that microphone
5 up.

6 Do you recognize this areal photograph?

7 A Yes, sir.

8 Q Okay. Would you point out Shop Road to the jury?

9 A (Indicating).

10 Q And point out the Gates the condo or apartment
11 complex on Shop Road.

12 A Right here.

13 Q Okay. So go ahead and point out the parking -- the
14 condo parking area where you -- where your parking tailgate
15 area is?

16 A This is my tailgate here. Here.

17 Q Okay. You can have a seat. In October of 2010,
18 where were you living?

19 A I have was living on Woodlands Golf Course.

20 Q And what area of Columbia is that?

21 A That's out off of Clemson road, I guess West
22 Columbia they call it.

23 Q Okay. Who were you living in the Woodlands -- in
24 that area of town -- who were you living with?

25 A My brother Jordan Lindsey and Curtis Simms.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q And where were you working in October of 2010?

2 A Palmetto Utilities.

3 Q Where was Curtis Simms working?

4 A Same place, Palmetto Utilities.

5 Q I want to draw your attention to the morning of
6 October 9th of 2010, that Saturday morning. Do you
7 remember that weekend?

8 A Yes, sir.

9 Q What football game was -- what was Carolina playing
10 that weekend?

11 A University of Alabama.

12 Q And being from Alabama, what were your plans as far
13 as having out of state guests?

14 A Show them a good time. We had a lot of family and
15 friends that came up for that game that weekend.

16 Q How many people came that actually stayed at yours
17 and your brother's and Curtis' house?

18 A Around ten people.

19 Q And what day of the weekend did they come up and
20 stay? Do you remember?

21 A That Friday.

22 Q And can you name some of the people that came up?

23 A My older -- my oldest brother, Justin Lindsey and I
24 had my buddy Chris Garcia. Jerrod Hughes, Lauren Coggin
25 and a couple of their friends Adam, Jamie and a friend

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Benny Baker came up too.

2 Q Now, on Saturday morning when you -- well, did you
3 spend the night at your own house on Friday night?

4 A Yes, sir.

5 Q On Saturday morning, what was -- what were the
6 plans Saturday morning as far as the football game is
7 concerned?

8 A Well, we knew it was our early game, so we woke up
9 around 9:30; made breakfast, got ready; got packed up, got
10 everybody up to get ready and we probably left my house
11 between eleven and twelve to get down there before traffic
12 got too bad.

13 Q Do you -- in route to the stadium, what vehicle
14 were you in?

15 A I was in my green truck, my GMC Sierra, 2006.

16 Q And who was with you?

17 A We had to separate cars. We had me and my brother,
18 Curtis Simms, Lauren Coggin and Chris Garcia were riding in
19 my car down there.

20 Q How long have you had this 2006 green GMC Sierra?

21 A Since 2007.

22 Q And -- who -- who are the primary drivers -- who
23 had been the primary drivers of this pick-up truck?

24 A Myself and my brother Jordan.

25 Q I want to show you what's been marked as defense

Dustin Lindsey - Direct Examination by Mr. Gasser

1 exhibit 7, 78, 9, and 10 for identification purposes at
2 this time. Do you recognize that vehicle?

3 A Yes, sir.

4 Q Is it the same vehicle depicted in all four
5 photographs?

6 A Yes, sir.

7 Q And what -- what vehicle is depicted in Defense
8 Exhibit 7 through 10?

9 A My truck.

10 Q Okay. Is this the same truck that you owned and
11 operated in October of 2010?

12 A Yes, sir.

13 Q Is this the same truck that you were driving on
14 October 9th of 2010 to the football game?

15 A Yes, sir.

16 MR. GASSER: Your Honor, we would move these four
17 exhibits into evidence at this time.

18 MS. CAMPBELL: Without objection, Your Honor.

19 THE COURT: Very well.

20 (WHEREUPON Defense Exhibits 7 through 10 were
21 entered into evidence.)

22 MR. GASSER: And to publish them to the jury, Your
23 Honor?

24 THE COURT: You may.

25 BY MR. GASSER:

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q Did you stop anywhere after -- before getting to
2 your tailgate spot after you left your house?

3 A Yes, sir.

4 Q Did you eat anything before you left your house?

5 A Yes.

6 Q What did you eat?

7 A Me and my brother made a big breakfast for
8 everybody before we left.

9 Q And -- which consisted of what?

10 A Pancakes and eggs and -- fried eggs and toast, I
11 think.

12 Q So where did you stop prior to getting to your
13 tailgate spot?

14 A We stopped at the store to get some chips, drinks
15 and some beer.

16 Q You have an approximate time that y'all arrived
17 at the tailgate spot?

18 A Shortly before noon.

19 Q And what did you do when you first got to your
20 tailgate?

21 A First thing I usually always do, me and a friend of
22 mine, an older friend of mine named Rhonda and she usually
23 brings a TV and satellite and we usually spend the first
24 thirty minutes forty-five minutes setting that satellite up
25 and the TV up for the tailgate.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q And did you do that on this day?

2 A Yes, sir.

3 Q Now where is your tailgate spot, is it -- can you
4 actually see where you actually park on State's Exhibit No.
5 53?

6 A Actually right here. There's usually picnic tables
7 and a couple of port potties there also.

8 Q During football -- home football games?

9 A Football season, yes.

10 Q You use those picnic tables?

11 A Yes.

12 Q Does your group?

13 A Yes.

14 Q How many people that day were in your group that
15 were tailgating with you?

16 A In the midst of -- between twenty and thirty.

17 Q Did those twenty or thirty people arrive in the two
18 cars that left your house?

19 A No.

20 Q Are there regular tailgate people that -- for home
21 football games that also tailgate with you?

22 A They were there.

23 Q Okay. How many people would that be?

24 A Around twenty that we tailgate with every home
25 game.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q And does -- are there any families that tailgate
2 with you?

3 A Yes, sir.

4 Q And, and, what do you mean by families?

5 A Married couples, older got kids, the kids play in
6 there all the time, so that's what I mean by family.

7 Q And how many years have you been tailgating in that
8 spot?

9 A Since 2005.

10 Q Have you seen kids literally grow up in age over
11 the last eight years?

12 A Yes, sir.

13 Q Now, did you have tickets that afternoon to the
14 Carolina Alabama FaceBook game?

15 A Yes, sir, I did.

16 Q Did you actually go into the kick off before the --

17 A No, I didn't.

18 Q And why not?

19 A I decided to stay out because I had a bunch of
20 friends from my home down and from Tuscaloosa that came up
21 for the game and the plan was for them to get also find
22 tickets and buy tickets but they were unable to get tickets
23 so instead of just leaving them with people they just met,
24 I -- we stayed out there with them.

25 Q Was this considered a big Football game?

Dustin Lindsey - Direct Examination by Mr. Gasser

1 A Huge.

2 Q Why?

3 A At the time Alabama was number one and you know,
4 South Carolina was still coming out of its days of trying
5 to prove itself to the FCC and, of course, me being from
6 Alabama 90 percent of my friends are Alabama fans. So it's
7 always, you know, a huge rival between us when we're
8 playing.

9 Q Were there South Carolina fans at the tailgate that
10 afternoon with you?

11 A Yes, sir.

12 Q And were there Alabama fans?

13 A Yes.

14 Q And what was the mood there?

15 A It was happy, jovial, you know. It's game day,
16 getting ready. The occasional talking smack between
17 friends.

18 Q Do you remember how the weather was that day?

19 A It was a beautiful day.

20 Q Did your brother Jordan go into the football game
21 that you recall?

22 A Not that I recall. I don't think he did.

23 Q What about Curtis Simms, do you know?

24 A No.

25 Q Do you remember what time of the day the football

Dustin Lindsey - Direct Examination by Mr. Gasser

1 game started?

2 A 3:30.

3 Q CBS national televised game?

4 A Right.

5 Q Now, what were you doing during the day after you
6 set up the tailgate before the actual Carolina Alabama game
7 started, what were some of the things that you, your
8 friends and the people that were tailgating with you, some
9 of the things that y'all were doing?

10 A Well, as I said, we had to get the satellite set
11 up, so we'd been watching other football games throughout
12 the day leading up to our game and once our game started,
13 we had probably twenty-five people hovering around even
14 people that are in the parking lot but not friends with us
15 coming up to watch the game off the TV. So we pretty much
16 stayed there during our game to watch the game. Didn't
17 want to miss a second.

18 Q Were you drinking?

19 A Yes, sir.

20 Q And do you know how many beers estimate that you
21 had that day?

22 A Yes, sir. I estimate I had around ten considering
23 the fact that I was planning on going into the game, so I
24 didn't buy much for myself going into the game. So I guess
25 around ten beers throughout that six, seven hour period.

Dustin Lindsey - Direct Examination by Mr. Gasser

- 1 Q Did there come a time when you stopped drinking
2 beer?
- 3 A Yes, sir.
- 4 Q And when was that?
- 5 A That was shortly after halftime.
- 6 Q You were eating any food during that time period?
- 7 A Yes, sir, a bunch of food.
- 8 Q Now how tall are you, Mr. Lindsey?
- 9 A 6'4".
- 10 Q And how much, approximately, at that time, did you
11 weigh?
- 12 A 260 pounds.
- 13 Q Did you observe Curtis Simms that -- during the
14 game?
- 15 A Yes, sir.
- 16 Q And was he drinking alcohol?
- 17 A Yes, sir.
- 18 Q Now, did anything unusual happen while you were
19 tailgating out there before the football game?
- 20 A Before the football game, no, sir.
- 21 Q And were you at the same tailgate spot the whole
22 time during the South Carolina and Alabama football game?
- 23 A Yes, sir.
- 24 Q What time did the game end?
- 25 A At around 7:30, 8 o'clock.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q 3:30 game?

2 A Yeah.

3 Q About how long is normally a football game last
4 approximately?

5 A A regular three hour, three and a half hours.

6 Q Okay. So from 3:30, if you add three hours to
7 3:30, what would that normally be?

8 A That was 6:30. But considering like this is a big
9 game on TV. Add an hour.

10 Q Okay. Now, after the game, did you and your group
11 have a particular plan what you were going to do that
12 evening?

13 A Yes. We were leaving the tailgating. We were
14 planning ongoing to my house, which is up off Clemson Road,
15 take a shower and get dressed and gone for our night from
16 there.

17 Q What, what -- well, let me ask you this: Who made
18 the decision at what point in time it was time to leave?

19 A Me.

20 Q And who did you tell that to?

21 A My older brother and everybody that had came to the
22 game with me to get them -- my older brother got the other
23 car and they left approximately a few minutes before us.

24 Q And whose -- what did you have to do with
25 responsibility wise before leaving your tailgate?

Dustin Lindsey - Direct Examination by Mr. Gasser

1 A Help clean up and pack some stuff that people had
2 carried in ice chest and stuff like that.

3 Q And did you do that?

4 A Yes, sir.

5 Q Who was -- who was going to be driving in your pick
6 up -- in your green pick-up truck leaving the tailgate spot
7 after the football game?

8 A I was.

9 Q Pardon me?

10 A I was.

11 Q You were going to be driving?

12 A Yes, sir.

13 Q Who was going to be in your pick-up truck -- or who
14 ended up in your pick-up truck?

15 A Who ended up? It was Curtis Simms, Lauren Coggin
16 Jordan Lindsey, Marque Hall, Mike Davis and the guy, Adam
17 and Jamie.

18 Q All right. Let's --

19 A I can't remember their last names. They were
20 friends of mine.

21 Q You indicated you were driving, correct?

22 A Yes, sir.

23 Q All right. Where was Curtis seated?

24 A Passenger seat.

25 Q And where was your brother Jordan seated?

Dustin Lindsey - Direct Examination by Mr. Gasser

1 A Where a big console would be, mine lifts up for
2 bucket seats, so he was sitting in the middle in the front
3 seat.

4 Q Okay. What about Lauren Coggin, do you remember
5 where she was seated?

6 A She was straddling Curtis Simms and Jordan
7 Lindsey's laps. That's how she was sitting.

8 Q Now, Mike Davis, who is he?

9 A Mike Davis was a running back while I was in
10 college. He was a running back for us at the University of
11 South Carolina.

12 Q Is he a friend of yours?

13 A Yes, sir.

14 Q Okay. So did you play football with Mike Davis?

15 A Yes, sir. He came in 2005.

16 Q Did Mike Davis go to the football game with you?

17 A No.

18 Q How did Mike Davis come to your tailgate?

19 A He actually showed up shortly before we were
20 leaving and asked me to give him a ride to his car.

21 Q Had Mike Davis ever tailgated with you and your
22 parents during football season after games?

23 A Yes, sir.

24 Q So was it unusual for him to show up at your
25 tailgate?

Dustin Lindsey - Direct Examination by Mr. Gasser

1 A Not at all.

2 Q Now, you mention Marque Hall, who was he?

3 A He was defensive tackle for the Gamecocks for us
4 for years until he got hurt.

5 Q Is he a friend of yours?

6 A Yes, sir.

7 Q Did Marque haul, when he played after football
8 games was it unusual for him to show up at your tailgate?

9 A Not at all.

10 Q How did you come in contact with Marque?

11 A Marque showed up. He actually went into the game
12 and then came up after the game.

13 A Tell us, Mr. Lindsey, when you pulled out of your
14 spot that you've described to the jury, tell us what you
15 did with your pick-up truck.

16 A I went to pull out and got everybody loaded up.
17 When I went to pull out, it was heavy traffic and I
18 couldn't actually get out so we were sitting there trying
19 to take a left on Shop Road to take Mike Davis to his car
20 and after a few minutes of waiting, nobody opened up to let
21 me out so we were going to cross lanes to get out onto
22 shop. And the moment that I saw the opening to pull out, a
23 truck, a black truck pulled in front of me where I couldn't
24 get out onto the street.

25 Q What was the pedestrian traffic like on that side,

Dustin Lindsey - Direct Examination by Mr. Gasser

1 on the tailgate side of Shop Road?

2 A It was -- not as heavy as it was after the game,
3 but it was still heavy enough to where every few seconds
4 there was somebody crossing the road.

5 Q Was it dark out?

6 A It was getting dark.

7 Q So it was nighttime?

8 A Yes. Started then.

9 Q I want to show you State's Exhibit 53 again and I
10 want you to point out where you first pulled up and
11 stopped?

12 A Right here. Right there.

13 Q Okay. And the intention was to go which direction?

14 A Down Shop Road, this way.

15 Q So how many lanes of traffic then did you have
16 to --

17 A Two lanes.

18 Q I'm showing you State's Exhibit No. 5. Can you
19 even see where you pulled up in the general area in State's
20 Exhibit No. 5?

21 A Somewhere around in this area.

22 Q Okay. Right there?

23 A Yes.

24 Q Where my finger is?

25 A Yes.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q With regard to this black truck that you just
2 described to the jury, what was the first thing you recall
3 observing and/or hearing when you pulled up and stopped
4 where you just described?

5 A The passenger of the vehicle was hanging out the
6 window screaming slurs and all kinds of stuff.

7 Q What do you mean by that?

8 A He was waiving his arms, screaming stuff and when
9 we yelled back to let us out, he just had cuss words coming
10 back at us.

11 Q Mr. Lindsey, the rules allow you to say exactly
12 what was said from the profanity perspective, so I am
13 asking you to the best of your recollection, state exactly
14 what the passenger of that black pick-up truck was saying?

15 A Well, first off we were like -- because we were
16 starting out, we were like come on let us out, man. He was
17 like fuck y'all, all kind of shit and then we he was like
18 come on mother fucker let us out and with his hand gestures
19 and words, it was fuck you and says fuck you back. That's
20 what I recall.

21 Q So who started dropping the F word?

22 A The passenger of the black truck.

23 Q And in all honest city, did you or did anyone else
24 in your car return to foul language?

25 A Yes.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q And approximately how long did that profanity
2 between the two -- between the individuals in the two
3 vehicles approximately how long did that last?

4 A Twenty, thirty-seconds.

5 Q What's the next thing you recall observing or
6 hearing?

7 A Well, at that point, I was getting irritated
8 because Nebraska was letting me out, so Curtis Simms opened
9 the door to get out to stop traffic, but the moment help
10 opened that door, the passenger of the black truck opened
11 his door to -- I guess he thinking it was a confrontation
12 or something like that. That's pretty much like boom boom.

13 Q Do you remember what Mr. Simms was wearing?

14 A He wore an Alabama Polo and a hat and genes and
15 boots, I'm sure.

16 Q And when Mr. Sims got out of the car, what did you
17 think he was going to do?

18 A I thought he was stopping traffic the moment he got
19 out of the car, but the moment I saw the other car door
20 open up, that's when I put my truck in park considering
21 what just happened seconds before that.

22 Q So you put your car in park, what did you do?

23 A I got out of my driver's side door, got out and
24 went to the front of my truck.

25 Q And what did you observe Mr. Simms do.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 A The guy in the passenger seat of the black truck
2 got out, went and to do around the edge of the door to
3 where it opens and Curtis went and confronted him. And
4 when that happened, they kind of like butted chests and
5 then there was a push and then Curtis hit him once with his
6 right hand and the kid fell.

7 Q Let's step back briefly. When Curtis Simms got out
8 of his truck, your truck, I mean, the passenger side, and
9 you observed the passenger in the black truck get out of
10 his truck, was anything being said by either of those two
11 people?

12 A Oh yeah. The guy that got out on the passenger
13 side said -- like he got out like he was ready to fights
14 and so that's when I knew to put mine in park and go out to
15 get him because I knew something was going to happen.

16 Q Did you hear verbally what the passenger of the
17 black pick-up truck was saying when he got out of his
18 truck?

19 A Not exactly at that point.

20 Q How familiar -- tell this jury how familiar you are
21 -- or let me ask you this. Strike that, Madame Court
22 Reporter.

23 If you are a guest -- how many times have you
24 tailgated in this spot, Mr. Lindsey?

25 A Average of six to seven times each football season

Dustin Lindsey - Direct Examination by Mr. Gasser

1 since 2005.

2 Q Okay. So if you include the 2005 season through
3 the 2012 season, eight football seasons?

4 A Yes, sir.

5 Q Are you familiar with the exit area around your
6 tailgate spot after every tailgate driving in and out of
7 there all those times?

8 A Yes, sir.

9 Q Describe this area here I'm showing you on State's
10 Exhibit 53 and of State's Exhibit 5, describe the grading
11 -- the grading in this area around the exit of your -- or
12 the entrance of your tailgate, leading up to the edge of
13 the roadway. Describe that for the jury?

14 A Well, it's kind of like going up a hill actually.
15 Like the road is built up here pull the pulling out of the
16 parking lot until it actually hits the concrete it's all
17 gravel and once you hit the concrete, it starts going in
18 elevation up toward the road.

19 Q So somebody -- if a person was standing just inside
20 the roadway would they be on the higher ground or lower
21 ground if somebody walking towards them?

22 A Higher.

23 Q Higher ground?

24 A Yes, sir.

25 Q Showing you State's Exhibit -- I need my glasses.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Showing you State's Exhibit No. 47. Do you recognize that
2 black pick-up truck?

3 A Yes, sir.

4 Q How do you recognize that?

5 A That's the truck that the guy got out of.

6 Q Now, in this picture, the truck is parked where?

7 A On the side of the road.

8 Q Okay. This is the only picture I have to be able
9 to ask this question. When you said that the gentleman in
10 the pick-up truck, the black pick-up truck got out and
11 stood by his door, would you at least point to the area
12 that you're talking about?

13 A Yes. Around this area right here to where the door
14 opens and right on the corner to where it stops.

15 Q Okay. Around there?

16 A Yeah.

17 Q Okay. And when he did that, did he go anywhere
18 else before Mr. -- before Curtis Simms and he met up with
19 each other?

20 A No.

21 Q I'm showing you State's Exhibit No. 5.
22 Approximately where would he have been when you saw him
23 standing there outside of his truck?

24 A Right -- straddling the inside of that white line
25 right here.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q Right there?

2 A Yes.

3 Q Now when Curtis Simms was approaching him, what was
4 he having to walk up?

5 A The slope of the concrete.

6 Q Scribe for the jury again what happened when
7 Mr. Simms came up that slope that you described and became
8 stationary and stopped?

9 Q Well, at this time right when they were about to
10 get to each other, I'm already at the front of my truck and
11 they -- Curtis walked up to him he -- they kind of met
12 chests and the guy pushed Curtis and when he pushed Curtis,
13 Curtis hit him with his right hand.

14 Q Who initiated the first contact? Do you remember?

15 A The first push was by the passenger of the truck.

16 Q So the passenger of that black pick-up truck pushed
17 whom?

18 A Curtis Simms.

19 Q Where -- what part of Curtis' body?

20 A Upper chest.

21 Q And reacted to that, what did you see Curtis Simms
22 do?

23 A Punched him with his right fist.

24 Q Where.

25 A In the face.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q Okay. How far away. You said you were at the
2 front of your truck. Again where approximately would you
3 have been if you had to round your truck -- the hood area
4 of your truck?

5 A I would have been right here. Right in this area.

6 Q Did you have an you know obstructed view of what
7 you just described to the jury?

8 A No, sir.

9 Q Pardon me?

10 A No, sir.

11 Q Now did you have an you know obstructed view of
12 what you described?

13 A Oh -- was there anything between you and Mr. Simms
14 and the passenger of the other truck.

15 A No.

16 Q Okay. And how far away, approximately?

17 A Ten feet.

18 Q Okay.

19 A Within ten feet.

20 Q Use me where I'm standing right now. Do I need to
21 come closer to you or farther away?

22 A Closer. About right there.

23 Q Okay. So I'm you -- are you telling us that where
24 you're seated is where Mr. Simms and the passenger of the
25 black pick-up truck?

Dustin Lindsey - Direct Examination by Mr. Gasser

1 A Exactly.

2 Q Do you know now that individual's name was Martin
3 Gasque?

4 A Yes.

5 Q You know that now?

6 A Yes, I do now.

7 Q Did you know him at that time?

8 A No, sir.

9 Q What happened when -- after Mr. Gasque shoved
10 Curtis and Curtis punched him, what happened to Mr. Gasque?

11 A He fell to the ground.

12 Q Where?

13 A Along the side of the truck.

14 Q What was that truck doing? Prior to that incident
15 that you just described to the jury?

16 A Slowly.

17 Q What was -- no, prior to the incident, what was the
18 truck doing?

19 A Nothing.

20 Q So was it stationary?

21 A Yes.

22 Q From the time that the truck pulled up and stopped
23 according to your previous testimony to the time when
24 there's contact between Mr. Gasque and Mr. Simms and
25 Mr. Simms and Mr. Gasque, did the truck ever move?

Dustin Lindsey - Direct Examination by Mr. Gasser

1 A No.

2 Q When Mr. Gasque fell to the ground, in which
3 direction were his legs toward the back end of the truck?

4 A Yes.

5 Q And what position do you recall seeing him
6 sitting -- seeing him in at that point in time. What was
7 his actual position? How would you describe the position
8 he was in on the road prior to the truck moving?

9 A Kind of straddling the line on the white line.

10 Q Okay. Where was his back for instance?

11 A He was on his back.

12 Q Okay. Now, what then did you observe?

13 A Well, the incident that the passenger fell. The
14 moment he hit the ground, the truck started rolling, but at
15 the angle it was coming, it started slowly coming over his
16 upper right thigh and started coming -- it started -- and
17 that's when Curtis Simms and myself tried to grab him and
18 the moment we started grabbing Curtis Simms started
19 punching the side of the truck and I guess it freaked out
20 the driver and once he got to about right here the
21 passenger started to lean up put his hands up to try to
22 block it but once it was there it started -- there was no
23 stopping. We tried screaming stop. Had people behind us
24 screaming stop and I don't know if it freaked the driver
25 out or what happened, but he just kept going and then once

Dustin Lindsey - Direct Examination by Mr. Gasser

1 he ran him over, he took that sharp right on the grass over
2 there and got out of his truck.

3 Q Okay. All right. Let's break that down. You
4 indicated Mr. Gasque, the passenger was on the ground on
5 his back, correct?

6 A Yes.

7 Q And you previously described on State's Exhibit 5
8 where that was. Would you describe that again?

9 A He was straddling here.

10 Q And in what direction -- when the truck started
11 rolling, which direction was it going?

12 A That way.

13 Q You just --

14 A Yes.

15 Q Using the State's Exhibit -- but what direction was
16 it facing first of all?

17 A The truck was facing that way, going toward George
18 Rogers Boulevard.

19 Q So it was facing George Rogers Boulevard going this
20 way?

21 A Yeah.

22 Q Okay. So what -- when you saw the truck, what
23 direction was it that it started rolling?

24 A Directly to the right.

25 Q And when the truck started going to the right, what

Dustin Lindsey - Direct Examination by Mr. Gasser

1 did that back right tire start doing?

2 A It started going to the right over his leg.

3 Q And as soon as that truck made contact with
4 Mr. Gasque, what did Curtis Simms immediately start doing?

5 A He immediately grabbed him with his left hand
6 started trying to yank his shirt, but when he did that he
7 was punching the right side of the truck and screaming stop
8 like everybody EMS was.

9 Q Okay. I want you to --

10 MR. GASSER: May the witness stand up, Your Honor,
11 for demonstration purposes?

12 THE COURT: Yes.

13 THE WITNESS: Take my jacket off?

14 MR. GASSER: No, no, no, keep your jacket on.
15 Stand up.

16 BY MR. GASSER:

17 Q I want you -- if this -- turn around this way. If
18 this is the side of the truck that started to move, what do
19 you mean -- describe to the jury what you saw Curtis Simms
20 doing?

21 A Down like this pulling his shirt this way and
22 punching the truck like this and screaming stop all at the
23 same time.

24 Q Okay. You can take your seat.

25 Q Was Mr. Simms punching that truck with his right or

Dustin Lindsey - Direct Examination by Mr. Gasser

1 left fist?

2 A Right.

3 Q And you saw -- did you see that?

4 A Yes.

5 Q What part of the truck was he punching with his
6 closed fist?

7 A About right here.

8 Q Okay. For the record I'm showing -- what State's
9 Exhibit is that?

10 A 47.

11 Q For the record, Madame Court Reporter, I'm showing
12 him State's Exhibit 47. Show it again.

13 A Right there.

14 Q Okay. Now, I want you to push that microphone
15 away, would you please, Mr. Lindsey. Did you hear Curtis
16 Simms saying stop?

17 A Yes.

18 Q At what decibel level was he saying it?

19 A At the top of his lungs.

20 Q Push the microphone the other way. Describe how he
21 was saying it what decibel level?

22 A Top of his lungs.

23 Q Go ahead.

24 A Top of his lungs.

25 Q No, say the word stop.

Dustin Lindsey - Direct Examination by Mr. Gasser

- 1 (Laughter)
- 2 A Stop.
- 3 (Laughter)
- 4 Q All right. How many times did he say the word stop
- 5 at that decibel level?
- 6 Q At least a dozen times.
- 7 Q Did the truck ever stop?
- 8 A No.
- 9 Q Who else was screaming stop?
- 10 A Myself and a few of the passengers in my truck.
- 11 Q Okay. Did you hear any of the what appeared to be
- 12 female voices?
- 13 A Yes.
- 14 Q At any point in time would you or anyone in your
- 15 truck and Curtis Simms were screaming stop did the truck
- 16 ever stop?
- 17 A No.
- 18 Q Did you hear anything coming out of the truck's
- 19 cab?
- 20 A No.
- 21 Q Any music?
- 22 A No.
- 23 Q You indicated you own a pick-up truck, you drive a
- 24 pick up truck, correct?
- 25 A Yes, sir.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q How loud was this black pick-up truck, do you
2 recall?

3 A It had some exhaust on it, but not too loud.

4 Q Okay. Where did the truck ultimately after it went
5 over Mr. Gasque, where did -- did you see where it ended
6 up?

7 A Yes, sir. Onto the grass right outside a parking
8 space.

9 Q Showing you State's Exhibit 53. Go ahead and
10 point?

11 A Right there.

12 Q Okay. What did you see Curtis Simms do at that
13 point after the truck had completely run over Mr. Gasque?
14 What did you see Curtis Simms do?

15 A I stayed at that spot. Curtis Simms took off
16 running to find a police officer which was -- the nearest
17 one was at the crosswalk at George Rogers Boulevard and
18 Shop Road.

19 Q Did you see Mr. Gasque lose consciousness?

20 A Some --

21 Q The person, passenger of the truck, did you ever
22 see him lose consciousness when he --

23 A No, sir.

24 Q Okay. How many years did you play football?

25 A For five years.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q Before that did you play high school football?

2 A Yeah, since I was five years.

3 Q So how many years do you reckon you played?

4 A Nineteen years.

5 Q Okay. Had you seen people knocked unconscious at
6 practice or during games at football?

7 A Yes, sir.

8 Q Can you give me an estimate the number of times
9 you've seen people literally knocked unconscious as a
10 result of football?

11 A A couple dozen.

12 Q And when you observed what you described to the
13 jury, did you ever observe Mr. Gasque literally knocked
14 unconscious?

15 A No, sir.

16 Q In fact, what did you observe him try to do when
17 the truck came up onto his torso?

18 A Well, once it started coming up to his torso, he
19 put his hands up I guess more like thumbs together to block
20 it and the tire started going over his hands and then
21 everything started up.

22 Q After you saw Curtis, in your words run to get
23 help, what did you do?

24 A I stayed there and an older good friend of mine,
25 Rhonda was like in the parking lot. I screamed to her to

Dustin Lindsey - Direct Examination by Mr. Gasser

1 call 9-1-1.

2 Q Again showing you State's Exhibit No. 5,
3 Mr. Lindsey, if that truck would have pulled
4 straightforward would it have run over Mr. Gasque?

5 A No.

6 Q Did you see Curtis Simms return to where y'all --
7 that spot or that scene?

8 A Yes.

9 Q And was he with anyone?

10 A He was with a police officer.

11 Q About how long after he'd left? If you had to
12 estimate?

13 A A minute maybe.

14 Q Now, what was your state of mind when you just
15 witnessed what you just saw?

16 A I was actually shocked, you know. It's something
17 you don't see all the time, never. So I was kind of
18 shocked and freaked out and was like, fuck, you know.

19 Q And was that -- did you see other people, at least
20 from your observations that looked the same expressions?

21 A Oh, yeah.

22 Q Were you present when police cars and EMTs started
23 arriving?

24 A Yes, sir.

25 Q Did you ever see the driver of the truck after he

Dustin Lindsey - Direct Examination by Mr. Gasser

1 pulled over off the side of the road into the grass that
2 you described to the jury?

3 A Yes, sir.

4 Q And what did you see him do?

5 A When he got out of his driver's side door, he got
6 out, walked around to the back of the truck and put his
7 hands on his head and from what I appeared to me it looked
8 like he was throwing up behind his truck.

9 Q Now, at some point in time they're at the scene,
10 did you observe Curtis being placed in the back of a police
11 car?

12 A Yes.

13 Q And did you still stay there at the scene?

14 A Yes, sir.

15 Q What happened to your truck?

16 A Once the police and ambulance and everything
17 started showing up, I got in my truck and backed it up to
18 the parking lot and got back out and waited at the fence.

19 Q Go ahead and use the pointer. I'm showing you
20 State's Exhibit 53. Would you describe what did you do
21 with your truck?

22 A I pulled in and back it up right here.

23 A Right inside the gate.

24 Q Showing you State's Exhibit 7, again?

25 A That's my truck.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q Is there any doubt in your mind is that the truck
2 you were in that night?

3 A One hundred percent.

4 Q Do you own a white pick-up truck?

5 A No.

6 Q A station wagon? Do you own a station wag on?

7 A No.

8 MR. GASSER: Beg the Court's indulgence.

9 THE COURT: All right.

10 (WHEREUPON there was a pause in the proceedings.)

11 MR. GASSER: Thank you, Your Honor.

12 BY MR. GASSER:

13 Q At some point in time, Mr. Lindsey, did you have
14 opportunity to give a statement to law enforcement?

15 A That same night?

16 Q The next morning?

17 A Yes, sir.

18 Q Okay. Where did you go the next morning?

19 A The sheriff's station.

20 Q Would that have been Sunday morning, October 10th?

21 A Yes, sir.

22 Q Now, on Saturday evening, late Saturday evening --
23 well, let's go back to the scene. I apologize. How long
24 did you stay at the your tailgate spot where you just
25 described you pulled back into?

Dustin Lindsey - Direct Examination by Mr. Gasser

1 A Basically until every person was gone and they were
2 cleaned up and all.

3 Q Were there any other cars there when you ultimately
4 left in your truck?

5 A Rhonda's -- I think my friend Rhonda. She stayed
6 there with me until, you know, then left.

7 Q Did you talk to any law enforcement people out at
8 the scene?

9 A No.

10 Q And why not?

11 A My opinion, I stood there in case they went around
12 asking but at that time, I didn't know it was as severe as
13 it was until after the fact until the next morning.

14 Q Okay. Now, you saw, obviously you just saw
15 somebody get run over and killed, correct?

16 A Well, at the scene, I did not know that's what
17 happened. I didn't know he was killed. I didn't know he
18 died.

19 Q But obviously somebody getting run over by a car,
20 would you agree with me is a severe situation?

21 A Yes. I was freaked out.

22 Q Now, from a criminal -- somebody being charged --
23 did you have any idea at this point in time that somebody
24 was going to be charged?

25 MS. CAMPBELL: Objection, Your Honor.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 THE COURT: Sustained.

2 MS. CAMPBELL: Thank you.

3 MR. GASSER: Well, Judge, may we approach.

4 THE COURT: You can rephrase your question if you
5 would like to.

6 MR. GASSER: Okay. I'll do that.

7 BY MR. GASSER:

8 Q At that point in time, did -- did you see anybody
9 actually getting arrested, charged with a crime?

10 A No.

11 Q Okay. So what did -- what did you think this was
12 then?

13 A Well -- on Curtis, I thought was I got an assault
14 charge or something because hen he went up there to explain
15 what happened to the police they didn't look positive or
16 nothing. They sat him in the back of the cop car. I
17 thought they were going to talk to him and then the next
18 thing I know at the end of everything, they had taken off
19 with him. I didn't know he was getting arrested. I had
20 been thinking about maybe he was getting arrested for
21 assault or something. I didn't know it was anything like
22 that.

23 Q Okay. And then what did you think about anything
24 that might happen to the driver?

25 A That's what in my -- I thought.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 MS. CAMPBELL: Objection, Your Honor.

2 MR. GASSER: Your Honor, he --

3 THE COURT: Sustained.

4 MR. GASSER: May we approach though about an issue
5 I want to talk to you about...

6 THE COURT: Okay.

7 (WHEREUPON, there was a bench conference out of the
8 hearing of the jury and the Court Reporter.)

9 BY MR. GASSER:

10 Q Mr. Lindsey, you're a man of your word. Why didn't
11 you speak to law enforcement that night?

12 A Because I figured standing they're, I guess what
13 ended up happening, they would have came around asking for
14 -- asking people that were around the scene, you know,
15 their opinion of what happened. The first I hear of
16 anything was when Detective Holdorf called me that night
17 and I was told to meet them at the sheriff's station the
18 next morning with everybody.

19 Q So did anybody come up to you, any law enforcement
20 officer come up to you while you were present at the
21 tailgate?

22 A No, none at all.

23 Q And later that Saturday night, did you get a call
24 from somebody?

25 A Yes.

Dustin Lindsey - Direct Examination by Mr. Gasser

1 Q Do you even remember who that was?

2 A I can't remember his name.

3 Q Did the person identify themselves as law
4 enforcement?

5 A Yes.

6 Q And was a request made of you?

7 A Yes.

8 Q And what was that request?

9 A Request to get everybody that saw what happened and
10 bring them to the sheriff's station if next morning.

11 Q As you previously indicated would you have gone
12 down that Saturday night.

13 A Oh, yes.

14 Q If they asked you?

15 A Yes.

16 Q If somebody came to you that night while you were
17 out there at the scene, would you have given a statement?

18 A Yes I could.

19 Q Had you ever seen anything like this before?

20 A No, sir.

21 Q Do you know anything about the criminal laws in
22 South Carolina?

23 A Not 100 percent on them, but I know a few.

24 Q And I'm talking about in relation to traffic
25 incidents involving pedestrians do you know anything about

Dustin Lindsey - Direct Examination by Mr. Gasser

1 that? Have you ever been involved with an injury involved
2 in a car or anything about that?

3 A No, sir.

4 Q Okay.

5 MR. GASSER: Your Honor, I need to approach you on
6 one matter.

7 THE COURT: Okay.

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 When you were asked to round up any witnesses, did
12 you do that? When the request was made of law enforcement,
13 did you do that?

14 A Yes, sir.

15 Q And where did you go that next Sunday morning
16 again?

17 A To the sheriff's station.

18 Q Okay. And were you able to give a written
19 statement at that time?

20 A A written statement?

21 Q Well, did somebody -- did you give a statement to
22 somebody?

23 A Yes.

24 Q And did that person ask you to sign the statement?

25 A Yes.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 Q Did you answer whatever questions the sheriff's
2 department had of you that morning?

3 A Yes.

4 Q And who did you take down with you to the sheriff's
5 department that next morning?

6 A I took my brother, Lauren Coggin that Adam guy and
7 Jamie.

8 MR. GASSER: That's all we have, Your Honor.

9 THE COURT: Very well.

10 MS. CAMPBELL: May it please the Court.

11 THE COURT: Yes.

12 **CROSS-EXAMINATION**

13 BY MS. CAMPBELL:

14 Q Mr. Gasser asked you specifically when he's asking
15 you about why you didn't talk to the police did you ever
16 see anything like this before?

17 A No, I did oh, no --

18 Q And you said you'd never seen anything like this
19 before?

20 A No, ma'am.

21 MS. CAMPBELL: Your Honor, we have a matter of law.

22 THE COURT: Okay. Ladies and gentlemen, if you
23 would please step to your jury room. Do not discuss this
24 matter or allow anyone to discuss it with you. If -- let
25 me just share with you if it gets the to be longer than

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 five or six minutes, I will report to you, but right now,
2 please step to your jury room. Do not discuss this matter
3 or allow anyone to discuss it with you.

4 (WHEREUPON the jury left the courtroom at 12:39
5 p.m.)

6 THE COURT: Do you wish to to have the witness in
7 or out.

8 MS. CAMPBELL: Actually, Your Honor, I don't care
9 if he stays in.

10 THE COURT: Okay.

11 MS. CAMPBELL: If it please the Court, Your Honor.
12 He specifically -- and I can get to court reporter to play
13 it back. He was asked have you ever seen anything with a
14 vehicle causing injuries. It's my understanding that this
15 defendant -- and I don't think it's impeachable, has been
16 convicted of assault before, so he has witnessed an assault
17 situation on a prior occasion. In addition to that, Your
18 Honor, it's my understanding that he and his brother -- I'm
19 not sure which one -- I forget that information, were
20 involved in at least one brawl here.

21 There were some in Alabama, in which there were
22 severe to either he or his brother. So he has witnessed
23 traumatic events causing severe injuries to people before
24 and I would just be able -- I might be able to inquire into
25 just that much since he opened the door.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 **THE COURT:** Well, the first -- first of all, the
2 question is it this witness or another witness.

3 **MR. GASSER:** Have you ever witnessed an event like
4 this before.

5 **THE COURT:** I understand that, but is it this
6 gentleman -- because -- because you said, I don't know if
7 it's this gentleman or his brother so I guess my question
8 is, do you believe it's this gentleman or his brother.

9 **MS. CAMPBELL:** I do not know which -- they were
10 both present.

11 **THE COURT:** Okay.

12 **MS. CAMPBELL:** I do not know which -- they were
13 both present is my understanding. I don't know which one
14 got their throat slashed.

15 **THE COURT:** Okay.

16 **MR. HARRIS:** Judge, this is kind of an odd
17 situation. I represented the individual who was charged
18 with cutting his brother's throat. His brother was a
19 victim in their office.

20 **THE COURT:** Okay.

21 **MR. HARRIS:** So I can tell you and I can tell
22 Ms. Campbell that I represented the individual that cut
23 Jordan Lindsey's throat.

24 **THE COURT:** Okay.

25 **MR. HARRIS:** So that clears that up.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 THE COURT: It does. It does. To some extent.

2 MR. HARRIS: Well --

3 THE COURT: But have you -- the question of course
4 is the witnessing part.

5 MR. HARRIS: I don't know what her point is, so --

6 THE COURT: Okay. Because I understand her point.
7 The point is have you ever witnessed anything like this
8 being traumatic injury. She wants to cross-examine him
9 about the fact that he has been, for credibility purposes
10 has witnessed traumatic violent events. The silent event
11 being the slashing of his brother's throat. I gather. Or
12 the Curtises of the -- right.

13 MS. CAMPBELL: Yes, ma'am.

14 THE COURT: What about that.

15 MR. HARRIS: I have no idea whether he witnessed it
16 or not. I don't know.

17 THE WITNESS: I wouldn't --

18 THE COURT: Okay just wait. Believe it or not when
19 the lawyers and I have conversation it's not group
20 participation, so --

21 THE WITNESS: Okay. Yes, ma'am.

22 MS. CAMPBELL: It might be appropriate at this
23 point -- my information is from the media as well as they
24 were together when it happened, he witnessed it. In fact,
25 I could go ahead and ask him some questions and see if he

Dustin Lindsey - Examination - In Camera - by Ms. Campbell

1 witnessed it.

2 THE COURT: Oh.

3 MS. CAMPBELL: He drove him to the hospital,
4 apparently after his brother --

5 THE COURT: Okay. Yeah. So all right. They may
6 not have an objection.

7 MR. HARRIS: My understanding is -- what I remember
8 about it is he wasn't there when it happened and his
9 brother showed up somewhere later in the evening and he
10 drove him home. But I mean --

11 THE COURT: Okay.

12 (WHEREUPON there was a discussion off-the-record.)

13 EXAMINATION - IN CAMERA

14 BY MS. CAMPBELL:

15 Q Do you remember an event wherein you and your
16 brother are apparently walking in Five Points early on a
17 Saturday morning?

18 A Yes, ma'am.

19 Q And two men yelled at y'all from across the street?

20 A Yes, and heard footsteps.

21 Q You heard footsteps?

22 A Yes, I was was in crutches also because I had just
23 had a knee surgery a week and a half before that.

24 Q All right. And at that point your brother was
25 stabbed?

Dustin Lindsey - Examination - In Camera - by Ms. Campbell

1 A Yeah, the -- well, there was an origin -- my
2 brother turned and walked up the street because I was with
3 him and I wasn't in that mood or in any shape for that kind
4 of activity. And the next thing I knew run across the
5 street and hit Jordie in the back of the head with a beer
6 bottle and slashed his throat. Something I didn't actually
7 see it happen, but I turned around and they're fighting and
8 blood gushed out.

9 Q So you did witness a fight involving your brother
10 where your brother got injured, so you had seen that
11 before?

12 A Yes.

13 Q And after that did you take him to the hospital?

14 A No, I did not take him to the hospital. There was
15 -- my friends lived in Five Points, so I couldn't drive and
16 -- let me rephrase this. I had surgery on both knees, so I
17 had two leg casts on and I couldn't drive and I wasn't
18 drinking at all, but I somehow made it to my friend's house
19 that was in Five Points right there and so they took care
20 of me at the hospital.

21 Q But you did witness the events of the aftermath of
22 the events?

23 A The aftermath, yes.

24 Q So you -- what year was that in?

25 A 2006 or so. I can't remember the exact date.

Dustin Lindsey - Examination - In Camera - by Ms. Campbell

1 Q But your testimony here today is you didn't
2 actually witness the event occurring?

3 A Did I see him get hit with the bottle, no, but when
4 I turned around, yes I saw him. He'd already been on the
5 ground with the guy and blood pouring out of the neck.

6 Q And at that point they were fighting?

7 A Yes.

8 MR. GASSER: Judge, just for a full record, I'm
9 assuming she's trying to make a correlation, if it's
10 relevant, I haven't gone there yet, but I would ask her if
11 she wants to alter this since it's her proffer, I don't
12 think I'm allowed to ask the question or if the Court wants
13 to ask -- I may be wrong. I'm not telling the Court that
14 I'm right, but I thought that when the friends carried his
15 brother to the hospital that it was the people at the
16 hospital that contacted law enforcement.

17 In other words, if her point is that he's seen this
18 before and he contacted law enforcement and in this case,
19 he didn't immediately contact law enforcement, then there's
20 got to be more of a similarity than -- you see -- you
21 follow where I'm -- I'm glad. She's trying to say were you
22 well you contacted law enforcement in that case.

23 THE COURT: I got you.

24 MR. GASSER: Okay. Just right now so far where
25 it's at, there's no evidence that he as a result -- there's

Dustin Lindsey - Examination - In Camera - by Ms. Campbell

1 no evidence that he immediately approached or called law
2 enforcement. I don't know. There might be. That's why
3 I'm asking. I'm asking. I don't know.

4 **MS. CAMPBELL:** Your Honor, there's one other
5 accident that happened in Alabama in 2009 that he was also
6 involved in a fight situation that resulted -- actually
7 that one is a pending charge, but I don't know --

8 **THE COURT:** All right. You want to --

9 **MS. CAMPBELL:** May I proffer?

10 **THE COURT:** Yes.

11 **BY MS. CAMPBELL:**

12 **Q** Do you remember the incident that occurred in 2009
13 in Mobile Alabama?

14 **A** Yes.

15 **Q** Where you were ultimately charged with assault?

16 **A** Uh-huh.

17 **THE COURT:** That's yes or no?

18 **THE WITNESS:** Yes, ma'am.

19 **THE COURT:** Okay.

20 **BY MS. CAMPBELL:**

21 **Q** And what happened with that event that you
22 witnessed?

23 **A** It all got dropped.

24 **Q** No, it didn't actually, but I'm not going to
25 impeach you with that but what happened with that offense?

Dustin Lindsey - Examination - In Camera - by Ms. Campbell

1 What happened that night? What did you witness is what I
2 want to know?

3 A I don't understand the question. It was like -- I
4 don't understand what you're trying to tell me.

5 Q Was there a fight?

6 A I guess I'm saying I don't know what event you're
7 talking about.

8 Q This is the one that you got charged in September
9 of 2009. And there are other ones but this is what I'm
10 concentrating on?

11 A Yeah, sure, there was a fight.

12 Q There was a fight?

13 A (Witness nodded head.)

14 Q Were people, struck, injured?

15 MR. GASSER: If so, she could give him specific
16 times, dates, I mean this is --

17 MS. CAMPBELL: He just acknowledged --

18 THE WITNESS: There's something that I don't --

19 THE COURT: Hold on. Hold on. Hold on.

20 Heres what my concern is. My concern is that he
21 made the comment that that was dropped and you have a rap
22 sheet and you said no, it wasn't dropped, so here's my
23 concern, my concern is that there very well may have been
24 more than one incident. The one that you are curious about
25 and you may -- as I understand this is a little word about

Dustin Lindsey - Examination - In Camera - by Ms. Campbell

1 injury. So you may want to ask him about both but the one
2 that you're asking him about now, can you -- can you help
3 him with a date? What month and what year.

4 BY MS. CAMPBELL:

5 Q That was the one from September of 2009 in Mobile,
6 Alabama when you were charged. Do you remember that fight.

7 A The one Dalton and I was in? The one that was in
8 the newspaper, I guess? That one.

9 Q Well, do you remember being charged and arrested?

10 A Yes.

11 Q Okay. Let's talk about that one -- on that one?

12 A Okay.

13 Q And in that fight, where did that take place?

14 A A bar on Dolphin.

15 Q A bar on Dolphin Island? And were you involved
16 with a physical altercation with other people?

17 A Yes.

18 Q And were there were -- there -- blows were thrown,
19 firsts thrown, assaults occurred?

20 A Yes, there was.

21 Q Were people injured?

22 A No seriously injured at all in that. There was
23 some bloody noses.

24 Q So the people were bleeding?

25 A Is that a question?

Dustin Lindsey - Examination - In Camera - by Ms. Campbell

1 Q Yes, sir.

2 A Yes.

3 Q And the police responded?

4 A Yes.

5 Q And that took place in 2009 before or after this
6 event?

7 A Before this event.

8 Q Were there any other fights you witnessed or
9 assaulted you witnessed that ended up with people being
10 injured that you were injured or you were involved in or
11 witnessed? Either you were injured, you were involved in
12 it or people were injured that you recall?

13 A Yes.

14 Q And what -- we'll take them one at a time. What
15 were those?

16 A That's just a random -- I guess being out on the
17 sand bar fights. It happened, you know, 50 percent of the
18 time you go out to a bar and it's past midnight. That's a
19 fact. And then the altercation with Mr. Simms and the
20 passenger of that truck.

21 Q And you have seen other fights resulting in
22 injuries to people?

23 A As I said, nothing too serious to bring up.

24 Q And you have -- besides the ones that you've been
25 involved with, you've witnessed other ones too, people with

Dustin Lindsey - Examination - In Camera - by Ms. Campbell

1 bodily injuries?

2 A (Witness nodded head.)

3 THE COURT: You're nodding and I don't know if
4 that's a yes or no.

5 THE WITNESS: Yes.

6 MR. GASSER: And, Your Honor, just for the record,
7 just limiting to, you never said you had never witnessed
8 anything like this before and then just simply going into
9 that is not true, you have witnessed violent assaults
10 before and limit it to that.

11 THE WITNESS: Well, I didn't --

12 MR. GASSER: Judge, the issue was we just described
13 a truck running over somebody's head who else -- at least
14 he knew was at least seriously injured. The question is,
15 has he ever seen a situation where a truck has run over a
16 pedestrian before. That's the context that I was asking
17 him the question. That's the event that we're here on. I
18 just don't see relevancy of this. We're going down this
19 rabbit trail. I really don't think that it's relevant in
20 any manner. The question that I had for him is has he ever
21 seen anything like those facts, those specific facts
22 before. That's what I was asking. Have you ever seen
23 anything like those specific acts before. And then there's
24 -- and you know of course 403 analysis that you will make
25 if you get there, but I don't see -- this is a fished

1 expedition as far as comparing simple assaults, simple bar
2 fights to something as significant as this. I don't see is
3 linkage.

4 THE COURT: Well, here's the linkage, the first --
5 here's where we are. There are three pieces to it. The
6 first piece is whether or not he responded to the question
7 on direct examination, have you ever seen anything like
8 this and I'm going to have to hear that back because I
9 don't know -- I don't know if he said yes and then I went
10 onto say involving a vehicle. I don't know. That I'm
11 going to have to hear back.

12 But secondly, on cross-examination, the first
13 question that Ms. Campbell asked, have you ever seen
14 anything like this and he said no. Now, I need to hear
15 this back. The next -- so take that as being, if you will,
16 the issue then -- the issue is credibility.

17 Would I consider to be the -- I think the two
18 different categories. There's a category seeing someone
19 with their throat slit. That is a life threatening injury
20 and I'm going the put it in that category as bag a life
21 threatening injury. A bar fight would with bloody noses,
22 no. They're not. So, currently having seen that someone
23 who's had their throat cut is a life threatening injury.
24 Like it is -- that is a substantial injury. And -- and the
25 question is, is that impeachment with regards to his

1 credibility is what we're talking about. So, that's where
2 we were.

3 MS. CAMPBELL: I would note, Your Honor, the bar
4 fight that he referred to where somebody got a bloody nose,
5 my information was the nose was broken to the point where
6 the injured required surgery, so it wasn't just a bloody
7 nose.

8 THE COURT: I understand. Okay.

9 Well, I'm going to think about it. Let the jury go
10 to lunch. I'm going to think about it at lunch.

11 But -- and I do want you to pull it if you can over
12 the lunch break, just pull that colloquy with him and
13 Mr. Gasser. Let me hear that.

14 THE COURT REPORTER: Yes, ma'am.

15 THE COURT: And the question is for credibility
16 purposes only whether I'll allow the cross-examination on
17 the throat being cut. Not going to do the nose thing.
18 Even I know that's not as serious as the throat.

19 MS. CAMPBELL: And, Your Honor, I've just read the
20 rap sheet. I don't show that he was convicted in Alabama,
21 so I wanted to retract that. I misstated that.

22 THE COURT: Okay. Okay.

23 Well, I'm going to go that way. So that's what --
24 considering -- let me bring the jury back out so I can send
25 them to lunch.

1 (WHEREUPON the jury entered the courtroom at 12:56
2 p.m.)

3 THE BAILIFF: Jury is present, Your Honor.

4 THE COURT: Thank you, so much. All right. I am
5 going to send you to lunch because it did take longer than
6 three or four minutes. It's about one o'clock now, I'm
7 going ask you to please be back in your jury room ready to
8 continue with this matter at 2:15. It's one o'clock now.
9 2:15. Do not discuss this matter or allow anyone to
10 discuss it with you. Don't listen to anything. Don't read
11 anything about this matter. Of course that's radio,
12 television, internet and don't communicate with this
13 matter, don't do any investigation. Remember, of course,
14 if you have your cell phone or communication devices,
15 please take it outside of the courthouse, but if you for
16 get and bring it back in with you. Please ask and we will
17 take care of it until our afternoon break.

18 Y'all have a good lunch, I'll see you at 2:15.

19 (WHEREUPON the jury left the courtroom at 12:58
20 p.m.)

21 THE COURT: Anything before we take our break for
22 lunch, then I'm going instruct the witness not to --

23 Don't discuss your testimony with anyone because
24 you're on the stand. Okay.

25 Very well. All right. Anything from the State

1 before lunch?

2 MS. MCDUFFY: No.

3 THE COURT: Defense?

4 MR. HARRIS: No, ma'am.

5 THE COURT: See you guys.

6 (WHEREUPON a lunch recess was observed.)

7 THE COURT: All right. Yes.

8 You're going to play that back for me?

9 THE COURT REPORTER: Yes, ma'am.

10 (WHEREUPON a brief amount of testimony was played
11 back for the Court.)

12 THE COURT: Okay. Very well. I will allow -- for
13 purposes of credibility only, I will allow the
14 cross-examination on the --

15 MS. CAMPBELL: It will be very limited to one
16 question, Your Honor and I will make it just -- and I will
17 not cover any specifics.

18 I think the defense has an objection.

19 MR. GASSER: So she's going to ask about events you
20 ever witnessed or a crime of violence against you before.

21 THE COURT: No, what she's going to say is that --
22 I would think -- if it was me what I would say is, on
23 direct examination, you said X. That's not true, is it
24 because blah, blah, blah, blah, something like that.

25 What I'm not going to allow her to do is go beyond

1 the one incident involving his brother because that had to
2 do with the cutting of the throat. That to me is in a
3 different category than the punching of the nose. Then
4 I've got to get into how bad was the punch in the nose and
5 I'm not going there. And I'm going the exercise my
6 discretion because I do think it's legitimate impeachment
7 with regards to -- based on your question, have you ever
8 seen anything like this before.

9 MR. GASSER: And we use the word a violent incident
10 before.

11 THE COURT: Sorry?

12 MR. GASSER: Violent incident because at this point
13 in time, nobody has said that a crime had occurred yet.
14 Nobody knew that, you know, what I mean.

15 THE COURT: I took this to be a life threatening
16 injury.

17 MR. GASSER: Okay.

18 THE COURT: That's what I took it to be. I think
19 originally, you believed that that was the beginning of a
20 police report, if you will.

21 MR. GASSER: Yeah, right.

22 THE COURT: Then it wasn't, it really was intended
23 to be impeachment on the issue on you've never seen
24 anything like that before, a life threatening injury. I
25 believe the normal punch on the nose is not a life

1 threatening injury. A slashing of the throat is a life
2 threatening injury.

3 MR. GASSER: I would agree with your judgment.

4 THE COURT: That's the difference.

5 MR. GASSER: I agree.

6 THE COURT: And that's not limiting it to just that
7 one incident.

8 MR. GASSER: Okay.

9 THE COURT: Okay.

10 MS. CAMPBELL: Could we ask for a moment.

11 THE COURT: Sure. That's great.

12 MS. CAMPBELL: Your Honor, we've agreed to limit it
13 to what the defense wants us to do on that.

14 THE COURT: Okay. Go ahead. Very well. Working
15 things out. Concurring is always a good thing.

16 All right. Anything else before we bring the jury
17 out from the State.

18 MS. CAMPBELL: Nothing, Your Honor.

19 THE COURT: From the defense?

20 MR. HARRIS: No, ma'am, thank you very much.

21 THE COURT: That will be your cue.

22 (WHEREUPON the jury entered the courtroom at 2:27
23 p.m.)

24 THE BAILIFF: The jury is present, Your Honor.

25 THE COURT: Thank you, so much. Ladies and

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 gentlemen, we will continue with the defendant's case and
2 with the cross-examination.

3 Ms. Campbell?

4 MS. CAMPBELL: May it please the Court?

5 THE COURT: Yes.

6 MS. CAMPBELL: Thank you.

7 BY MS. CAMPBELL:

8 Q Mr. Lindsey, you've testified earlier that you had
9 never witnessed a violent incident before, but you have
10 seen violence before?

11 A Yes, ma'am.

12 Q Violent?

13 A Yes, ma'am.

14 Q Let me back up just a little bit. Curtis Simms,
15 when did you actually meet him? Did you say it was high
16 school?

17 A Back in high school.

18 Q So you're twenty-seven now, so you've known him for
19 the last twelve, thirty teen years, something in that
20 range?

21 A Around ten years.

22 Q Okay.

23 A It would --

24 Q And you mentioned around ten years?

25 A Yes, ma'am.

Dustin Lindsey - Cross-Examination by Ms. Campbell

- 1 Q I'm sorry, I don't want to put words in your mouth.
2 Okay, so don't let me do that.
- 3 A (Witness nodded head.)
- 4 Q You mentioned also that he would on occasion would
5 come up to see you play football?
- 6 A We played each other.
- 7 Q In high school?
- 8 A Yes.
- 9 Q And then when you were playing football in
10 college --
- 11 A Yes, he came up a few times.
- 12 Q Came up a few times and saw your games? And then
13 you also mentioned that things were going well for him down
14 in Alabama so you actually got him a job up here?
- 15 A Helped out, yes.
- 16 Q And he actually was working at the same place you
17 were working; is that correct?
- 18 A Yes, ma'am.
- 19 Q And what year did he actually come up here and you
20 got him a job?
- 21 A Two thousand -- or 2009, 2010.
- 22 Q This happened in 2010?
- 23 A About six months after I graduated, so 2009.
- 24 A Okay. And when did you graduate, 2009?
- 25 A Yes.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 Q And so it would have been sometime around the
2 Spring of 2009; that about right?

3 A Yes, ma'am.

4 Q So y'all have been living together in that time
5 period in between that; is that correct?

6 A No, he moved up here about three weeks before he
7 started working. Okay --

8 Q Okay. And once he moved up here, when he moved up
9 here in 2009, did he move in with you and your brother?

10 A Yes, ma'am.

11 Q And y'all were roommates for that next period of a
12 year, year and a half or so?

13 A Yes, ma'am.

14 Q And during that time were his parents still down in
15 Alabama?

16 A Yes, ma'am.

17 Q But you had had occasion to meet his parents?

18 A Yes.

19 Q And I assume they would call him occasionally and
20 talk to him?

21 A Yes, ma'am.

22 Q Because he lived with you?

23 A Yes, ma'am.

24 Q And as part of that, you would talk to them too?

25 A Yes, ma'am.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 Q Did you consider yourself close with his parents as
2 well?

3 A Yes, ma'am.

4 Q When did you become aware that this trial was
5 coming up?

6 A Less than a month ago.

7 Q Okay. Were you aware that people from your office
8 were looking for you after we tried to find you?

9 A Yes, ma'am.

10 Q Served you with a subpoena?

11 A Yes, ma'am.

12 Q But you didn't respond to any of our reaching out
13 to you, did you?

14 A Well, once I first heard about it because the house
15 we used to live in, a friend of mine lives there now and he
16 called me -- or he called a friend that he had now that I
17 remember or called us and said some officers were here to
18 serve something. He didn't tell me what, but --

19 Q The solicitor's office, do you remember that?

20 A Nobody actually called me. As I said, they just
21 told me. Then once that happened, the next day, I think,
22 my parents called me and said there was a subpoena -- they
23 got the letter at the house, so I just figured it was the
24 same thing.

25 Q Okay. And when you got the subpoena, did you call

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 my office? Did you get in touch with me?

2 A No, ma'am.

3 Q Did you acknowledge in any way that the subpoena
4 had been served on you?

5 A I acknowledged that it had been served. But it
6 wasn't to me.

7 Q Okay. Did you ever call the number that was on
8 there that said you need to to call us?

9 A I didn't get the subpoena until a few days ago.

10 Q Even --

11 A I was just told I had it.

12 Q You were told I had it before then and we've been
13 looking for you, but you never ever made contact with us?

14 A As I said, I was never told to. And then as I just
15 got the subpoena a few days ago.

16 Q Okay. Well, what about yesterday when you were up
17 at the courthouse. Do you remember talking to this man on
18 the front row, the investigator from our office?

19 A Yes, ma'am or --

20 Q He said he would like to talk to you about what had
21 happened?

22 A Yes, ma'am.

23 Q And you told him you didn't want to talk to him.
24 You weren't talking to us?

25 A Until I talked to the lawyer involved because I

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 didn't know ho he was at the time so I was --

2 Q So until you talked to the lawyers involved. But
3 you told him that you weren't talking to us at all, that
4 you would see us in the courtroom?

5 A I didn't say it in a rude manner.

6 Q I'm sorry. I didn't mean to say that you said it
7 in a rude manner. You understand?

8 A I just -- I didn't want to talk about outside the
9 case. I was told not to talk about it period.

10 Q Who told you not to talk about it period?

11 A I'm talking about the Court. Period. The lawyers.

12 Q The lawyers this week?

13 A Yeah.

14 Q Were you aware that I was one of the prosecutors on
15 the case?

16 A No, ma'am.

17 Q But you said you got the subpoena that would have
18 had our name on it. Were you aware that we were trying to
19 talk to you?

20 A I didn't know who you were.

21 Q Did you ask -- the lawyers should you talk to us?

22 A No, ma'am.

23 Q And just being perfectly frank, Curtis is a good
24 friend of yours?

25 A Yes, ma'am.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 Q Y'all have been together a while. You got him a
2 job up here. He's lived with you and your brother for a
3 long time?

4 A Yes.

5 Q You consider him kind of like a brother?

6 A Yes, ma'am.

7 Q I'm going to show you a bunch of photos. State's
8 Exhibit 64. You recognize that?

9 A It's my vehicle.

10 Q And he may have -- that's a photograph of your
11 vehicle taken where? Where was this taken?

12 A At the investigators parking lot.

13 Q At the investigator's parking lot?

14 MS. CAMPBELL: Your Honor, at this time I would
15 like to move State's Exhibit 63 into evidence.

16 THE COURT: Is it in evidence? I thought.

17 MS. CAMPBELL: It's one that's a little bit
18 different, just on different paper.

19 THE COURT: Okay.

20 MR. GASSER: No objection.

21 (WHEREUPON State's Exhibit 63 was moved into
22 evidence.)

23 BY MS. CAMPBELL:

24 Q And what's the date this photograph was taken? Is
25 it reflected there?

Dustin Lindsey - Cross-Examination by Ms. Campbell

- 1 A January 30th 2013.
- 2 Q And what's today's date?
- 3 A The first.
- 4 Q Of February?
- 5 A Yes.
- 6 Q This was taken in the last two days?
- 7 A Yes, ma'am.
- 8 Q Okay. That day you testified as to what you
- 9 remember; is that correct?
- 10 A Yes, ma'am.
- 11 Q And what you saw. And when you went up to the --
- 12 well, let me get some of this background stuff down first.
- 13 I want to show you two documents, State's Exhibit
- 14 60 and State's Exhibit 62 and first ask if you recognize
- 15 those?
- 16 A Yes, ma'am.
- 17 Q And State's Exhibit 60, what is that?
- 18 A That's my statement to Richland County.
- 19 Q To the Richland County Sheriff's Department?
- 20 A Yes, ma'am.
- 21 Q And what's the date on that statement?
- 22 A October 10th, 2010.
- 23 Q And what time was that statement taken that's
- 24 reflected on there?
- 25 A 9:10 in the morning.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 Q 9:10 in the morning. So that would have been the
2 Sunday morning after this happened, right?

3 A Yes, ma'am.

4 Q And the second document I handed you, State's
5 Exhibit 62 for identification purposes, do you recognize
6 that?

7 A Yes, ma'am.

8 Q And what is that?

9 A Another statement.

10 Q And what's the date on that statement?

11 A Where would it be.

12 Q I will show you, sir. Right there?

13 A 2:52 p.m.

14 Q If date on it?

15 A The date, January 13th, 2011.

16 Q January 13th, 2011. And who did you make that
17 statement to? Do you remember?

18 A Was it Johnny Gasser.

19 Q I wasn't there.

20 A Mr. Gasser.

21 Q To Mr. Gasser. And that would have been
22 approximately two or three months after this occurred,
23 January 13, 2011?

24 A Yes, ma'am.

25 Q Because this occurred on October 9th of 2010, is

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 that correct?

2 A Yes, ma'am.

3 Q And at the bottom of each of those pages, on both
4 of those statements, is that your signature?

5 A Yes, ma'am.

6 Q And is that the information that you gave first at
7 the Lexington County Sheriff's Department and then later
8 Mr. Gasser or whoever you gave it to?

9 A Yes, ma'am.

10 Q At a later date?

11 A (Witness nodded head.)

12 Q And I just wanted to refer to those for a moment.
13 You testified on direct examination as to who was in your
14 car that day? Your automobile?

15 A Yes, ma'am.

16 Q And who all was in that car that day?

17 A Mike Davis, Marque Hall, Jordan Lindsey, Lauren
18 Coggins, and this guy named Alex and Jamie.

19 Q So a total of how many people?

20 A Eight.

21 Q Eight people. And you also testified as to who was
22 in the front seat is that correct?

23 A Uh-huh.

24 Q And who did you testify to as who was in the front
25 seat?

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 A Curtis, Jordan and Coggin.

2 Q And back when you gave the statement on October
3 10th at 9:10 a.m. you didn't put the same people in the
4 front seat, did you?

5 A I left out one, yes.

6 Q And in fact, the only person you said were in the
7 front seat were who?

8 A Curtis and Coggin, I believe.

9 Q Curtis and Coggin?

10 A Yes.

11 Q So Curtis and Lauren Coggin?

12 A Uh-huh.

13 Q And in that statement, specific, where do you say
14 your brother Jordan was sitting?

15 A In the back, but I didn't count when we got back
16 into the car actually.

17 Q And it that big a deal.

18 A Okay.

19 Q You remembered it differently back then?

20 A Well, can I explain something if I can? Can I
21 explain myself like why.

22 Q You answered the question. Okay, explain it why?

23 THE COURT: If you answer the question yes or no
24 and then feel as though you need to explain it, you
25 certainly may.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 THE WITNESS: Okay. That morning, I gave that, my
2 mind was a little out of whack considering I did not go to
3 sleep that entire night. It's been one of those shocking
4 things where, you could -- as I said, up, hearing somebody
5 got killed, it's kind of nerve racking and that's also why
6 my first statement was so short also because my mind was
7 still trying to collect all the evidence going through my
8 head of what happened. And I didn't get contacted again
9 until later to give another statement.

10 Q Well, let me ask you this, you knew -- you just
11 testified that someone had died. And you had seen someone
12 actually run over, his head smushed by a car?

13 A Yes, ma'am.

14 Q That was traumatic.

15 A (Witness nodded head.)

16 Q But you also knew when you got down there that it
17 was important to tell them everything you knew; is that
18 correct?

19 A I responded to questions that I was asked at the
20 sheriff's station. I didn't give full details.

21 Q And that's what I want to talk about, that it was
22 important to tell them what you saw and what you witnessed?

23 A Well, he said -- I had a short summary of it, but
24 other than that because I just responded to him with short,
25 one sentence questions or answers that he asked me. I

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 hadn't really extended any amount of like a statement,
2 statement because I was just responding to his questions.

3 Q And he asked you to say what happened?

4 A Just --

5 Q And you said --

6 A He just like short term, laid everything out and
7 sign it and I signed it because the things in there like --
8 were true at the moment, but they're not extended to
9 details like because I wasn't asked that.

10 Q Okay. Well, let's talk about what you did put in
11 there.

12 A Okay.

13 Q Can we do that?

14 A Yes, ma'am.

15 Q And what you put in there, you wanted to be
16 accurate about it, right?

17 A Yes, ma'am.

18 Q So you put in there -- it may be a short version,
19 but you put in there what happened. And did you know what
20 event we're talking about?

21 A Yes, ma'am.

22 Q And specifically, they wanted to know what you knew
23 about what you saw happen between Curtis and the young man
24 that was killed?

25 A Yes, ma'am.

Dustin Lindsey - Cross-Examination by Ms. Campbell

- 1 Q So you told them?
- 2 A Right.
- 3 Q And when you told them what happened, basically at
- 4 that point, you say -- and not like you testified here
- 5 today so much, but you said that basically, he -- you've
- 6 got he and Curtis were yelling back and forth?
- 7 A Uh-huh.
- 8 Q Is that correct?
- 9 A Yes, ma'am.
- 10 Q And at that point, you said that you thought they
- 11 both got out of the car at the same time?
- 12 A Uh-huh, yes, ma'am.
- 13 Q And then you said when Curtis got out of the truck,
- 14 you put your car in the thing and got out of the truck as
- 15 well, just like you testified to here today?
- 16 A Yeah, the shortened version.
- 17 Q Then you said as you were getting out of the truck,
- 18 you saw Curtis in the other guy's face?
- 19 A They were in each other's face. I didn't say
- 20 Curtis was in his face.
- 21 Q In each other's face?
- 22 A (Witness nodded head.)
- 23 Q And where was this occurring? Where were they?
- 24 A Beside the street.
- 25 Q And there's no dispute that Curtis walked up to

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 their car?

2 A No dispute.

3 Q That's true?

4 A Not to the car. He walked up to him.

5 Q Walked up to him next to his -- the truck he got
6 out of?

7 A Yes, ma'am.

8 Q According to you?

9 A Yes, ma'am.

10 Q But there's no question to that automobile? You
11 talked about how he had to walk up the incline, correct?

12 A No question.

13 Q Okay. And then according to you in this statement,
14 they were face to face?

15 A Yes, ma'am.

16 Q And then you said they chest bumped and Curtis hit
17 the guy was his right hand?

18 A I said chest bump push. That's what's in both
19 statements actually.

20 A No, it's not. Read the statement, the first
21 statement you gave the morning after this happened.

22 A It was a shortened statement.

23 Q Is it in the statement?

24 A Yes, ma'am.

25 Q It says they chest bumped and Curtis hit in the

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 face with his right hand.

2 A Okay.

3 Q There's no mention of any bumping. Bumping,
4 hitting by the victim, is there?

5 A Well, chest bump is kind of -- that would be hit,
6 wouldn't it.

7 Q No, I'm asking you. In your testimony earlier
8 today, your sworn testimony --

9 A Yes, ma'am.

10 Q Here today, twenty-four months later, you said,
11 specific and it's important, just details of the assault,
12 not so much who was in the front seat of the car, but
13 details of the assault. You said specifically to this
14 jury, I believe you demonstrated. That there was a chest
15 bump, that he -- how did you put it?

16 A Just a chest bump push.

17 Q Push. But you didn't put that in your statement
18 the morning that this happened?

19 A As I said, I was still in a traumatic state with
20 no sleep and I was too worried about him, worried about
21 getting everybody there. Like I said that's why it's so
22 short the first time because there was a lot of -- lot of
23 details left out.

24 Q But there's a lot of detail about the actual event
25 too, aren't there?

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 A Yes, ma'am.

2 Q And in that same detailed part, this whole
3 statement is about what happened, what you saw?

4 A Yes.

5 Q You stated that he hit him in his face with his
6 right hand and then the guy hit the passenger rare door and
7 his butt hit the ground?

8 A Up huh.

9 Q Right? That's how you remember it back then?

10 A Yes.

11 Q And then you said the guy rolled under the
12 passenger rear tire. And you would agree with me if
13 passenger rear tire is under the truck?

14 A Yeah, but considering the fact that the truck was
15 turned to go off the road, it wouldn't be like under the
16 truck where his body was at the moment of getting run over
17 because everybody knows in our vehicle, if you're taking a
18 back, where's that back right tire? It turns to the right
19 too and goes that way. It doesn't go in a straight line,
20 it goes to the right.

21 Q If the --

22 A And so at that time --

23 Q Moving --

24 A When he fell, he was not underneath the truck.

25 That's physically impossible unless it was lifted 20 inches

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 high. But when he fell --

2 Q You seen the picture of the truck?

3 A He was toward the back, but he did not roll.

4 MR. GASSER: Judge, could he please finish his
5 response before Ms. Campbell asks another question.

6 THE COURT: If he's being responsive he can and I
7 think he just finished. You may ask him another question.

8 MS. CAMPBELL: Thank you.

9 BY MS. CAMPBELL:

10 Q Is this the truck?

11 A Yes, ma'am.

12 Q And your testimony, or your sworn statement to the
13 police after this traumatic event was that he rolled under
14 the -- and you were specific about which tire, right?

15 A Yeah.

16 Q And is that what happened?

17 A As -- like not physically rolled meaning hit the
18 ground, rolled to the back, bike say he handed on his side
19 rolled to the back tire I didn't intend to say it rolled
20 under the truck like that. Because that's not what
21 happened.

22 Q I'm not saying that's what happened?

23 A I'm like rolling, not --

24 Q These with your words.

25 A I'm just explaining myself for what I meant in the

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 thing.

2 Q Okay.

3 A He hit the ground and rolled to the back, but then
4 that's when the tire started running over his upper hip
5 area and it slowly started going over him. That's when he
6 put his hands up to try to catch himself a little bit and
7 it slowly started going over him from there. And then --

8 Q Well, let's talk about that. You mentioned here
9 today and talked about it. The tires started rolling over
10 him, because he's underneath the tire at this point, right?

11 A No.

12 Q Okay. I don't -- explain it to me?

13 A He's not underneath the tire at this point. It's
14 like when he hit the ground and he rolled forward, it
15 started running over his right hip, meaning it's coming at
16 a right angle, so it's not going straight over him and it
17 wasn't -- like I said, he was paralegal, like on the white
18 line. His body wasn't turned. The truck started coming
19 over like the truck was taking a right to get off to the
20 right side of the road. Because it was bumper-to-bumper
21 traffic, still. And once it started going, once it got
22 over his hip area, we tried to pull him out during that
23 period.

24 Q Let me back up a little bit. Would you agree with
25 me at least this much, that the truck was in the road?

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 A At this point, yes.

2 Q And would you agree with me that when the assault
3 occurred, which you said was one punch, that the truck was
4 still in the road?

5 A Yes, ma'am.

6 Q And would you agree with me that the truck -- you
7 aren't saying the truck had moved, it was pointed going
8 straight down the road like trucks do when they're going
9 somewhere?

10 A I wouldn't say it was perfectly straight, but it
11 was inside the white line.

12 Q Would you agree with me that after the assault, you
13 said the guy rolled under the passenger rare tire and he
14 got run over from the groin to his head?

15 A I --

16 Q At least that's what's in your statement?

17 A Yeah, that's the point. That's why I'm trying to
18 explain myself in the whole rolling thing. It like rolled
19 underneath, yeah, he did a limb roll and the next thing I
20 know, he is underneath that truck because the way the tire
21 is coming up to him. So it's not like he rolled underneath
22 it, the guy was going straight. I don't understand like
23 why he's brought up because he rolled straight on back from
24 landing on his back and he ended up underneath the truck.

25 Q Okay. We agree he rolled under the truck. And

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 where was his body when he was getting run over, according
2 to you?

3 A On the white line.

4 Q On the white line?

5 A Yes, ma'am.

6 Q And we'll go back to that. Then you mentioned at
7 some point while it's rolling over the body that the guy
8 hit the gas? The driver?

9 A No. Once he -- once we try to start -- once we
10 hear the truck everything started yelling stop, he was
11 already to his chest by this point and it's like the moment
12 he got -- went all the way over, he hit the gas and gunned
13 it to the right side of the road.

14 Q He gunned it?

15 A Uh-huh.

16 Q Did the tires squeal?

17 A No.

18 Q Was he going fast?

19 A No.

20 Q What does gunned it mean?

21 A Going more than creeping like he was creeping onto
22 him and -- get away because in my opinion I thought --

23 Q No, no, no, no, you can't give your opinion. What
24 did you observe is what you can say. Okay?

25 A He didn't like gas it, cut a wheel on the body

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 himself, it's after he got off and he got to the side of
2 the road.

3 Q So when you say gun it, he was going fast. So
4 you're testimony is the car started going fast?

5 A Yeah, but it did not cut a wheel. Not to my
6 knowledge.

7 Q Then after that, you talked about how you got
8 Rhonda to call 9-1-1?

9 A Yes, ma'am.

10 Q And then you say, I got back in my truck and I
11 moved it back into the --

12 A Not instantly. It took maybe twenty or thirty
13 minutes before I did that. After cops and ambulances got
14 there.

15 Q So the cops and everybody was aware that your truck
16 was the one right next to it and they never approached you
17 or talked to you?

18 A They should have been there.

19 Q That's your testimony?

20 A Yes, ma'am.

21 Q And your testimony is you didn't go up and talk to
22 any of these police officers about this horrible traumatic
23 event you had just witnessed because why?

24 A Because I figured there was that -- because at the
25 time, I did not know what happened to the guy. Nothing,

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 but my opinion I stood there -- one of the main people that
2 stood there the whole entire time. And I figured if it was
3 something that big, a police officer would have walked
4 around and asked. Maybe I watch too much TV, I don't know.

5 Q So your testimony is that you didn't go up to the
6 police because they should have found you?

7 A They didn't have to find me. I was standing right
8 within 20 yards of them for four hours.

9 Q So you were standing next to the police officers
10 for four hours and they never came to you because you were
11 right there?

12 A That's right.

13 Q But by your own testimony, at some point, you
14 decided to move the truck all the way back into the back
15 part of the parking lot?

16 A Oh, I never said I pulled into the back of the
17 parking lot.

18 Q Well, where --

19 A I said I backed it into the parking lot because
20 there was ambulances, cop cars and my truck was in the way.

21 Q And you moved -- I think your testimony was back to
22 the parking space, right?

23 A No, my parking spot was in the back left of the
24 parking lot.

25 Q So where did you move it?

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 A I showed it before and I'll show it again if you
2 want me to.

3 MS. CAMPBELL: State's Exhibit 53, Your Honor.
4 Thank you.

5 THE WITNESS: My parking spot was originally over
6 here. When I backed it back into it, I backed it -- back
7 in the parking lot, I parked myself right here.

8 BY MS. CAMPBELL:

9 Q At any point, any of the people with you say, maybe
10 we should go tell them? I mean people were traumatized by
11 this. That's your testimony?

12 A It was.

13 Q Did you ever tell them?

14 A Ma'am?

15 Q Anybody ever say we ought to go talk to them, talk
16 to the police, tell them we witnessed this. We know what
17 just happened?

18 A We were sitting there talking about it, but we
19 thought for sure that somebody would come up to us
20 considering we were there.

21 Q And you said you were the last person to leave that
22 parking lot that night?

23 A One of the last people, yes.

24 Q Why did you stay there until every person,
25 including all the police officers were gone?

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 A Well, for one, just freaking out, trying to figure
2 out what's going on, wondering what's going on with Curtis
3 because he was in the back of the cop car the whole time
4 after he went and told them what happened. But I'm not
5 just going to leave and not know anything.

6 Q And you didn't -- you didn't go talk to the cops
7 because you didn't know how bad it was with that guy?

8 A No.

9 Q He got run over and his head got smushed by an
10 automobile and you didn't think it was that bad?

11 A I did not know his head had gotten smushed at the
12 time. It wasn't flattened on the road.

13 Q In your testimony here today is that the guy was
14 actually sitting up with his hands up trying to prop up --

15 A Yes, ma'am, that's what I said, 100 percent right.
16 I was right next to him when it was happening.

17 Q Was Marque Hall one of the people in your car?

18 A Yes, ma'am.

19 Q When Curtis got out of the car, in your statement
20 they asked you why did you get out of your truck. And what
21 did you answer?

22 A To get him.

23 Q And why did you think you needed to run after
24 Curtis and grab him?

25 A Why would anybody want their friends fighting in a

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 public place.

2 Q So there's no doubt in your mind Curtis was going
3 over to fight?

4 A Once I saw that other door open, I knew -- of
5 course, I knew something was going to happen.

6 Q And to be clear, Curtis went to him. That guy
7 didn't come to Curtis?

8 A But the guy was instigating the whole time.

9 Q You need to answer my question first. Curtis went
10 to the victim?

11 A He walked the majority of the way, the majority.

12 Q And this took place so close to the car that the
13 victim ended up under the car after he got punched by
14 Curtis?

15 A It didn't start out exactly right so close to the
16 car. It ended up that way, yeah.

17 Q Well, isn't that what's in your statement?

18 A Which one are you referring to? The short one or
19 the extended one.

20 Q Well, we can refer to either one of them. Then
21 three months later, and I may be off on my time a little
22 bit, you gave another statement, right?

23 A Yes, ma'am.

24 Q And in this statement and today, you testified that
25 you were very specific that you could hear what was going

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 on with profanity. You even quoted some of these vulgar
2 terms here in the courtroom, right?

3 A Yes, ma'am.

4 Q When you gave your statement on January 13th of
5 2010, and we can refer back to your first statement; you
6 see the last line on the first page?

7 A Uh-huh.

8 Q You see that --

9 A Yes, ma'am.

10 Q -- I could not understand exactly what he was
11 saying -- your referring to the passenger?

12 A Yeah.

13 Q But you could tell he was cursing.

14 A Yeah.

15 Q It appeared to be toward Curtis --

16 A Hang on -- you know to have a statement saying
17 something, exactly what somebody said when I didn't know
18 exactly what they said, but I just knew it was a bunch of
19 vulgar language. He was cussing, was being thrown out.

20 Q Well, earlier today you knew exactly what he said?

21 A Like I said --

22 Q You told this jury exactly what he said?

23 A I said -- I never said exactly -- I heard a bunch
24 of fuck you's and stuff of that nature, nothing exactly.

25 Q And you could definitely hear what Curtis was

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 saying?

2 A Uh-huh.

3 Q What was Curtis saying?

4 A Just responding back.

5 Q What was he responding?

6 A Fuck you too.

7 Q In your second statement, you give another version
8 of what happened that day; is that correct?

9 A Uh-huh, yes, ma'am.

10 Q In your second statement you give another version
11 of what happened that day; is that correct?

12 A Yes, ma'am.

13 Q And in this statement for the first time, you
14 mentioned that they bumped chests and the guy pushed him
15 and Curtis immediately hit the guy with his right fist.
16 Right?

17 A Yeah.

18 Q So the first time you told anybody anything
19 about --

20 A I didn't.

21 Q -- smushing was in the statement on January 13th
22 when talking to defense counsel or someone for them?

23 A And I didn't -- I didn't say it was a bump chest
24 step back push, no. It was all in the same motion, so it
25 wasn't like two separate things. I want you to know that.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 Q Well, actually, you did clarify it in your
2 statement. It says it was like bump, push, hit?

3 A Exactly. Bump, push, hit. There wasn't any
4 separation.

5 Q And in this statement, you testified here today
6 that Curtis was trying to grab the guy and pull him out
7 from under, you even demonstrated how he was down on one
8 knee trying to pull the guy out from underneath?

9 A Exactly.

10 Q You didn't mention that in your statement on
11 January --

12 A I wasn't asked that. I wasn't asked anything like
13 based off of reading it again. Which one are you talking
14 about.

15 A January 13th, yes, sir.

16 A Okay.

17 Q Okay and in this one where you say it was very very
18 very detailed, you don't mention anything about Curtis
19 trying to grab him?

20 A It was left out, but it's 100 percent true. When
21 you're trying to think up everything that went on out
22 there, of course, you're going to leave a couple of things
23 out.

24 Q And again in this one, you never -- in this
25 statement too, they asked you specifically about placement

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 of where the young man was run over; isn't that correct?

2 A Uh-huh.

3 Q And you were very specific in response to their
4 question, even though you left out some other details,
5 right?

6 A Uh-huh.

7 Q Right?

8 A (Witness nodded head.)

9 Q And in this one, they asked you specifically where
10 he was run over and you stated where the right rear wheel
11 ran over the guy, it was off the roadway as well?

12 A The front end of the car was definitely off the
13 road.

14 Q No, that's not what you said though, sir. You said
15 when the right wheel ran over -- which wheel ran over him?

16 A The back rear, back right.

17 Q And you said when the right wheel ran over the guy,
18 it was off the roadway as well?

19 A (Witness nodded head.)

20 Q So that would have meant according to to, that the
21 victim was off the roadway; is that correct?

22 A Never said he was off the roadway. I stated a
23 couple of times that it stayed inside the white line.

24 Q So the next morning, after you went after not
25 talking to the police that night, some ten or twelve hours

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 later, you met up with the police; is that correct?

2 A Yes, ma'am.

3 Q And at that time, you told one version of events
4 where there was a chest bump, according to you and then
5 Curtis hit him?

6 A Uh-huh.

7 Q And then in the next statement you give, three
8 months later, there is now a chest bump, a push by the
9 victim and Curtis hit him?

10 Q If it would have been a week later, it would have
11 been -- because the next statement started, I had time to
12 actually think about everything and relive it in my mind
13 hundreds of times since all of this has happened and what
14 came from it. Of course, I thought about a lot of things.
15 That same morning, of course my mind wasn't all the way
16 there. I was still freaked out worried, you know and
17 scared all at the same time, so, of course, there's going
18 to be a few things left out?

19 Q And the reason you got out of the car was because
20 you needed to go chase down Curtis because you knew he was
21 going to fight?

22 A I said I went to go get him because I knew it --
23 once you see a car door open and you've seen guys have been
24 cussing and all that stuff, you know that we -- you expect
25 something is going to happen.

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 Q And you tried to grab him, but you couldn't get to
2 him in time?

3 A Well, everything happened so fast. Once they met,
4 that action happened and then boom, he's getting run over
5 and we're trying to stop him and the kid keeps driving.

6 MS. CAMPBELL: Beg the Court's indulgence.

7 THE COURT: All right.

8 BY MS. CAMPBELL:

9 Q Finally, you testified on direct examination that
10 when Curtis got out of the car, in direct examination, you
11 said you thought he was going to direct traffic?

12 A Well, the whole start of the conversation when he
13 was hanging out of the window at the beginning, he was
14 trying to stop traffic and the driver of that vehicle
15 pulled in front of us and that's how the whole argument
16 began.

17 Q Okay. It's your testimony here today then that he
18 got out of the vehicle with intent of directing traffic to
19 aid you in you're exiting of the --

20 A As I said, that's my honest opinion, when he first
21 got out of the car, that's what I thought he was doing.
22 That he is' --

23 Q That's what you thought he was doing?

24 A Yeah.

25 Q So the testimony is not correct that they both

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 opened the doors and got out at the same time because that
2 would have already okay cured?

3 A That is correct considering I staid when I stated
4 he was getting out to stop tract. It was like he got out
5 of the car or when he opened that door or when he opened
6 the door or that car door opened, and that's when I put it
7 in park and I jumped around the front of the truck and
8 that's exactly how it happened.

9 Q So Curtis is the first one that got out of the car.
10 Is it yes or no?

11 A Yes.

12 Q So the other guy did not get out of the car,
13 according to testimony now until after Curtis got out of
14 the car?

15 A No, I said after his door opened. I didn't say
16 anything about when he got out of the car.

17 Q So when Curtis' feet hit the ground, he was going
18 to fight, he wasn't going to stop traffic?

19 A No, no, no, that's not true, ma'am.

20 Q Okay. Tell me?

21 A He, he -- if he had got out to fight, he would have
22 took off running at the guy when he opened the car door.
23 Because actually I was the one getting tired of waiting
24 because everybody was being rude of course and, like
25 moments before, somebody needs to start traffic. And when

Dustin Lindsey - Cross-Examination by Ms. Campbell

1 he opened the door, the moment he opened the door after the
2 little gibber jabber for a few seconds, he opened the door,
3 they opened their door and they met.

4 Q So the guy was cussing at him, yelling curse words
5 at him. Curtis was yelling F you back and your testimony
6 is here today when he opened the door and got out he was
7 going to direct traffic and that's your testimony?

8 A See, like, you're making it different than I'm
9 explaining it. I'm explaining that the whole intention for
10 him to get out of the car in the first place before all of
11 that was to stop tract and he was going to -- he was
12 opening the door -- he wasn't going, oh I'm going to kick
13 your ass, bull crap. He was getting out of the car and I
14 guess he took it as let's go then.

15 Q And your testimony was as soon as he got out of the
16 car, you shoved it into drive and you jumped out?

17 A I shoved it into park.

18 Q Into park, excuse me, I do apologize.

19 A Yes, ma'am.

20 Q Into park and you went after him because he was
21 trying to direct traffic?

22 A No -- as I told you, the moment I put it in park
23 was when I saw that truck door open and I went to
24 intervene.

25 Q Thank you, sir.

Dustin Lindsey - Redirect Examination by Mr. Gasser

1 **THE COURT:** All right. Redirect?

2 **MR. GASSER:** Very briefly.

3 **REDIRECT EXAMINATION**

4 BY MR. GASSER:

5 **Q** Your original statement, Mr. Lindsey to the
6 sheriff's department on the morning of October 10th, 2010,
7 do you have that with you? State's Exhibit 60 for the
8 record.

9 **A** Okay.

10 **Q** On State's Exhibit 60, the second sentence of the
11 statement that you gave on the morning of October 10th,
12 2010, did you let the sheriff's investigator know what
13 truck you drove to the football game with all your -- your
14 brother and all your friends?

15 **A** Yes.

16 **Q** Okay. So did you immediately let him know what
17 truck it was?

18 **A** I was driving my 2006 GMC green Sierra.

19 **Q** Okay. And it says that exactly in your statement,
20 2006, green Sierra?

21 **A** (Witness nodded head.)

22 **Q** Is that the same vehicle that's depicted in State's
23 Exhibit 65 that Ms. Campbell showed you with January 30th
24 date on it?

25 **A** Yes, sir.

Dustin Lindsey - Redirect Examination by Mr. Gasser

1 Q What vehicle did you drive to the Richland County
2 Sheriff's Department on October the 10th, 2010, when you
3 gave your statement and told them what vehicle did you
4 drive?

5 A That same vehicle.

6 Q Okay.

7 A My truck.

8 Q And did you keep anybody from going outside and
9 taking a photograph at the sheriff's department at that
10 point in time?

11 A They never asked.

12 MR. GASSER: That's all we have, Your Honor.

13 THE COURT: All right. Recross examination?

14 MS. CAMPBELL: No, ma'am.

15 THE COURT: You may come down.

16 Is this witness free to leave?

17 MS. CAMPBELL: Please, Your Honor.

18 THE COURT: Any objection.

19 MR. GASSER: No objection, Your Honor.

20 THE COURT: Very well. Mr. Lindsey you are free to
21 leave.

22 MR. GASSER: I believe our next witness is Mike
23 Davis and Mr. Harris has gone out to get him.

24 THE COURT: Thank you.

25 MIKE DAVIS,

Mike Davis - Direct Examination by Mr. Harris

1 having been duly sworn, testified as follows:

2 **THE CLERK:** Please have a seat. State your full
3 name for the record.

4 **THE COURT:** If you would state your full name for
5 the record, please.

6 **THE WITNESS:** -- --

7 **THE COURT:** That's another reason why we do that
8 for a sound check. Try it again.

9 **THE WITNESS:** Kenneth Michael Davis, Jr.

10 **THE COURT:** You can back up a little more and try
11 it again.

12 **THE WITNESS:** Kenneth Michael Davis, Jr.

13 **THE COURT:** Thank you.

14 Your witness.

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

16 **DIRECT EXAMINATION**

17 **BY MR. HARRIS:**

18 **Q** Could you introduce yourself to the jury briefly,
19 please?

20 **A** I'm Kenneth Michael Davis Jr., formerly played for
21 USC, formally CFL, formerly GFL and personal trainer and
22 me.

23 **Q** Okay. Mike, let's go a little bit slow. Take a
24 deep breath. You from Columbia?

25 **A** Yes, sir.

Mike Davis - Direct Examination by Mr. Harris

- 1 Q Family from here?
- 2 A Yes, sir.
- 3 Q Tell us what do your parents do, Mike?
- 4 A My father is a retired SCDC major. My mother is
- 5 retired SCDC, sargent. My sister is, right now, current
- 6 with the State. She's right now doing social services.
- 7 Q Okay.
- 8 A She also was a police officer. That's my family.
- 9 Q Now, you've kind of ran through a lot of formerly's
- 10 there. Let's slow down and --
- 11 A Okay.
- 12 Q -- let's talk about -- did you grow up in high
- 13 school in this area?
- 14 A Yes, went to Bruten Elementary. I went to Graton
- 15 Middle School and I went to Hopkins Middle School, I went
- 16 to St. Andrews Middle School, went to Columbia High School.
- 17 I went to Glenn Forest School, private school.
- 18 Q So you've been here all your life?
- 19 A All my life.
- 20 Q Where did you grow up? What area of Columbia?
- 21 A I've been in Pine Hurst. I've been to St. Andrews,
- 22 I've been to Hopkins, I've been to Merrow -- Merrow area.
- 23 Q And Mike, you're a fine athlete, did you have a
- 24 great- what kind of high school career did you have in
- 25 football?

Mike Davis - Direct Examination by Mr. Harris

1 A I did pretty good. Mostly average good high school
2 career. I had good grades I had a 3.4 going in high school.
3 Led the State in rushes. I have state records. I have
4 school records.

5 Q Mike, did you attend South Carolina on scholarship?

6 A I attended South Carolina on a full scholarship.

7 Q Did you graduate from USC?

8 A Yes, I graduated '09.

9 Q And what degree did you get?

10 A Criminal justice and psychology.

11 Q Since graduating -- did you play all four years?

12 A Yes, started all four years.

13 Q Now, when you were at USC did you participate in
14 organizations to help youth and things like that?

15 A Yes. Big brothers and sisters. I did that -- the
16 bully program, which is now just implemented. I'm also
17 part of that now. I do -- I talk to the youth, just to go
18 back from where -- I go Pine Hurst, St. Andrews, kids that
19 didn't have a lot coming up.

20 Q You deal with youth all the time?

21 A Yes.

22 Q Now, where do you currently reside?

23 A Right now, I'm actually living in Germany.
24 Hamberg, Germany. That's where my contract is for
25 football, but right now I'm home right now visiting family.

Mike Davis - Direct Examination by Mr. Harris

1 Q Now, let's talk about your relationship -- what
2 brings you here today.

3 A Okay.

4 Q You know Curtis Simms?

5 A Yes.

6 Q Tell us the first time you met Curtis Simms?

7 A My first time meeting Curtis was actually at the
8 one football game.

9 Q Okay. Which football game was that?

10 A Alabama versus USC.

11 Q And you're aware, are you not, that we're here
12 about that football game?

13 A Yes.

14 Q When was the second time do you recall that you've
15 met Curtis Simms?

16 A We was coming out of your office and I actually --
17 that's my second time meeting him.

18 Q So you consider yourself -- how would you
19 characterize your relationship with Curtis Simms?

20 A It's always been friendly. He's always been
21 friendly with me. He's a friendly person, laughs, I mean,
22 just a guy to me.

23 Q Had you -- had you seen him before you actually met
24 him at the Alabama, Carolina --

25 A I've actually seen him before.

Mike Davis - Direct Examination by Mr. Harris

1 Q Where had you seen him before?

2 A At the Lindseys.

3 Q At the Lindseys --

4 A Tailgate.

5 Q Now, the day of the USC Alabama football game, we
6 can all agree that was a big day for everybody?

7 A Yeah.

8 Q What I'd like to do is focus on your day if I
9 could?

10 A Yes, sir.

11 Q Did you have tickets for that game?

12 A Yes. I had sideline tickets.

13 Q And is that part of your relationship with the
14 University of South Carolina?

15 A Yes.

16 Q Do you have any specific duties on the sidelines
17 with recruits or the young people or anything like that or
18 just there watching the game like the rest of us?

19 A Really, we're just watching the games like the
20 rest, like the rest of the fans, but it's good for the
21 upcoming recruits and players to see the graduated players
22 to come back and still support their school.

23 Q Were you there with anyone that day?

24 A No, I was by myself.

25 Q How had you arrived at the game that day?

Mike Davis - Direct Examination by Mr. Harris

- 1 A I drove my car.
- 2 Q Okay. Where did you park?
- 3 A I parked at Bernies Chicken right down from the
- 4 stadium.
- 5 Q On -- which road is that -- is it on -- Shop Road?
- 6 A Shop Road.
- 7 Q No, that's not it. It's Bluff Road, Bluff Road?
- 8 Q How did you get from Bluff Road to the stadium?
- 9 A One of the managers came and picked me up in a golf
- 10 cart and I rode to the stadium.
- 11 Q Now, did you -- did you actually attend the game?
- 12 A Yes.
- 13 Q And where again were you -- on the sidelines the
- 14 entire game?
- 15 A Yes.
- 16 Q Did you watch the whole game?
- 17 A Yes.
- 18 Q How long was it after the game ended that you
- 19 decided to leave?
- 20 A Right after the game, I went to the locker room so
- 21 maybe fifteen minutes, I went and spoke to some of the
- 22 player ifs that I still knew that were currently playing
- 23 and I got in touch with some of the players that I played
- 24 with.
- 25 Q Okay.

Mike Davis - Direct Examination by Mr. Harris

1 A Just to see where they were going and everyone was
2 going to the Lindsey tailgate.

3 Q Okay.

4 Q How did you get in touch with each other?

5 A Just -- we keep in touch with each other.

6 Q Did you call anyone to ask about --

7 A Yes.

8 Q Where everyone was going?

9 A Yes.

10 Q Who did you call?

11 A I called Marque Hall and Dustin and Jordan.

12 Q And what did anyone of them say about the tailgate?

13 A They said tailgate, we're still at the same spot
14 and you're welcome to come by.

15 Q Did you know where the Lindsey tailgate spot was?

16 A Yes. Because after the games when I was currently
17 playing at USC, their parents already had their stable
18 since my freshman year. They've had that spot every year?

19 Q Do your families --

20 A Yes.

21 Q Does your family attend games?

22 A Yes.

23 Q Was your family friendly with the Lindseys?

24 A Yes.

25 Q What type of relationship did your family have with

Mike Davis - Direct Examination by Mr. Harris

1 the Lindseys? Was it a football relationship? Explain
2 that.

3 A It was just the fact that both of their sons played
4 for the same team and they both have the same ideas of, you
5 know, they want their sons to graduate to be friendly, to
6 have, you know, a family atmosphere.

7 Q Now this tailgate spot, while you were in football,
8 who attended tailgates at the Lindsey spot?

9 A Football players, friends and family of the
10 Lindseys, friends and family of any family, friends and
11 family of other players families. It's more like a family
12 oriented kind of family Gamecock, family oriented thing.

13 Q And on October the 9th, did you in fact attend --
14 did you go over to the tailgate?

15 A Yes.

16 Q When you got there, did you see anything different
17 -- what if anything did you see different than what you've
18 seen for the past four years, five years?

19 A I really didn't see nothing different other than
20 there was some faces there, but even with new faces, you
21 introduce yourself, I'm from here, I'm from here, my name
22 is this, I'm affiliated with you know this family or with
23 this person.

24 Q Who was there that day?

25 A Me, Marque Hall, Jordan Lindsey, all -- the whole

Mike Davis - Direct Examination by Mr. Harris

1 Lindsey family, Curtis, a couple of the Lindsey's friends,
2 I can't recall their name.

3 Q What fans were there? Were there different teams
4 fans there that day?

5 A Yes. There was some Alabama fans there.

6 Q Why was that?

7 A Just because the Lindseys are from Alabama. So
8 some of them are going to be Alabama fans, some are going
9 to be Gamecock fans.

10 Q Mike, do you drink alcohol?

11 A No.

12 Q Were you drinking alcohol that day?

13 A No.

14 Q Now, the -- the atmosphere, can you describe for
15 us, please, the atmosphere at the tailgate after you
16 arrived?

17 A After the game, I was there, we had just beat the
18 number one team in the nation and it was ecstatic and it
19 was a lot going on. Everybody was happy, everybody was
20 celebrating. It was a lot of traffic. It was a packed
21 game, sold out, so everybody was ecstatic. You can only
22 imagine how it feels to beat the number one team in the
23 nation.

24 Q Had you ever beaten Alabama?

25 A No, we never beat Alabama.

Mike Davis - Direct Examination by Mr. Harris

1 Q Did you personally play Alabama also?

2 A Yes, I personally plays against Alabama.

3 Q So how did you feel about the win, the victory?

4 A I was very very happy about it that we got a win
5 and we beat Alabama. Not even that the fact they're number
6 one by we beet Alabama.

7 Q Remember a moment ago I was asking you about the
8 atmosphere at the tailgate. Can you describe the
9 atmosphere for the Alabama fans?

10 A I'm a fan where, you know, they were -- they had to
11 take the loss. You're in South Carolina so you have to
12 keep your head up and you know, wait for the next game.
13 But everybody was still ecstatic.

14 Q Now, around 7:30 or so -- or you tell me -- do you
15 recall about what time everybody started packing up from
16 that tailgate?

17 A Well, I really can't really recall around what time
18 but I would say around -- the game was over about 9, so
19 around 10:30 or 11.

20 Q It was a 3:30 game?

21 A I mean it's two years ago I mean.

22 Q Okay.

23 A It's --

24 Q You recall it being a 3:30 game?

25 A Well, I recall when we were leaving it being night.

Mike Davis - Direct Examination by Mr. Harris

1 Q Okay. Do you recall what time everybody started
2 leaving though?

3 A No, I cannot recall the exact time everybody
4 started leaving, but I know it was nighttime.

5 Q Okay. And did you have a conversation that you
6 specifically call u recall about what you were going to do
7 that night?

8 A Yes, I talked to Marque Hall and asked what, you
9 know, what's his plans was he to go hang out with the team
10 or if he was going over to the Lindseys and he said he was
11 going to the Lindseys and I said you know, I'll meet you
12 there.

13 Q Now, was Mr. Hall in his own car or was he with --

14 A Actually he was with the Lindseys.

15 Q What was your plan on leaving the tailgate that
16 evening after speaking with Marque Hall?

17 A After leaving the tailgate, my plans were to either
18 go pick up my car or either go to the Lindsey's house.

19 Q Did you speak with Dustin Lindsey about your plans
20 for the evening?

21 A Yes.

22 Q What did you tell Dustin?

23 A I told him my car is parked at Bernies and you
24 know, if he have to go that way to hit the enter state to
25 either go to the Lindseys or to go to my car. So it's one

Mike Davis - Direct Examination by Mr. Harris

1 of those two things we were going to do.

2 Q Did you help them pack up?

3 A Yes.

4 Q Do you remember packing up food? Tell me what you
5 remember packing up?

6 A We packed up a lot of shrimp, a lot of fish, a lot
7 of drinks, packed up a lot of seats because they had a TV
8 there. We packed up the TVs, all the chairs the fold-up
9 chairs and we put them all in the Lindsey's family truck.

10 Q And -- not the Lindsey's truck but the Lindsey
11 family truck? Now, there's been some -- tell me what the
12 truck looks like?

13 A It's a green truck maybe a four by four, but I know
14 it's a green truck.

15 Q Let me ask you, if you can identify what has
16 opinion marked as Exhibit 9 -- Defendant's Exhibit 9. Do
17 you recognize that truck?

18 A Yes.

19 Q Now, have you ever been in that truck before that
20 night?

21 A Yes.

22 Q How many times?

23 A Plenty times. I've been to that truck going to
24 practice, going to where we had to speak at a certain
25 function or just going to the Lindsey's house with them

Mike Davis - Direct Examination by Mr. Harris

1 picking me up at the dorm and just going to their house.

2 I've been in that truck many times.

3 Q Whose truck is that?

4 A That's Jordan and Dusty's truck.

5 Q How long, if you know, have they toned that truck?

6 A As long as I've known them, so past my freshman
7 year.

8 Q You see the Lindseys in a car, what color is it
9 always that you see them in?

10 A It's that truck.

11 Q Now, the decision had been made and you began to
12 leave; is that correct? At some point?

13 A Yes, sir.

14 Q Can you describe whether it was dark outside?

15 A Yes, it was dark outside.

16 Q Tell us if you would where you got into the car and
17 with whom you were seated?

18 A I was in the back seat in the middle.

19 Q You know who was with you?

20 A Yes it was me, Marque, Jordan Lindsey, Dustin
21 Lindsey, and a female friend of them.

22 Q If you would, tell us what happened as you
23 proceeded to Bluff Road?

24 A Well, we all packed in the car afterward as always,
25 the games -- it was a sold out game, so the traffic was --

Mike Davis - Direct Examination by Mr. Harris

1 it was jam packed like always on Bluff Road and Shop Road.

2 We was turning out. We wanted to turn out to go left.

3 Q Mike, excuse me.

4 MR. HARRIS: Your Honor, I said Bluff Road and I
5 meant Shop Road. I apologize.

6 THE COURT: Yes, sir.

7 BY MR. HARRIS:

8 Q Go ahead, Mike?

9 A We were basically turning out -- we wanted to turn
10 out, but there was a lot of traffic in the thing, so it
11 happened to have a space where we could kind of maneuver
12 out to turn.

13 Q Let me ask you a question. At this point in the
14 evening, the point where we are right now, trying to turn,
15 would you describe the atmosphere in the car?

16 A We were all laughing, cracking jokes, talking about
17 other times, talking about what we were going to do when we
18 get there. So, basically just -- we were happy.

19 Q Okay. Was anybody angry?

20 A No.

21 Q What were the plans for the evening?

22 A Plans for the evening were either to take me to my
23 car to drop me off at my car so I could meet them at their
24 house or just me going to their house and then spend the
25 night and get my car in the morning.

Mike Davis - Direct Examination by Mr. Harris

1 Q At some point, you noticed the black truck. Talk
2 to us about it from that point on, please?

3 A Okay. The black truck, the space where we had to
4 turn out, there was a little space, so we went to, you
5 know, make a move to proceed to turn out and the next thing
6 you know the truck just (sound) kind of like came open owe
7 reared up and came to a complete stop. So when we first
8 looked, okay, so maybe he didn't see us. So we tried to
9 pull out again. He jumped forward again.

10 Q What's Curtis Simms doing at that point?

11 A At that point, we were just sitting in the car. We
12 were wondering why -- what's going on. Why is this person
13 doing this or what's wrong with that person. Is it
14 something going on in the car. We weren't really worrying
15 about it. And then at one point, Curtis was like, well,
16 you know, I'm going to see about holding traffic up. We
17 were sitting there for a while, so, that's how Curtis got
18 out of the car. That's how he first got out of a car.

19 Q Okay. When you saw Curtis get out of the car, did
20 you see anything else happen?

21 A Yes. One of the guys rolled down the window, the
22 passenger rolled down the window on the passenger side and
23 he went to talk -- I couldn't understand or hear him
24 because I was in the back seat and I wasn't really paying
25 attention to what he was saying. I just saw hand movement

Mike Davis - Direct Examination by Mr. Harris

1 and his mouth moving.

2 Q Describe the exiting of the vehicles?

3 A Exiting of the vehicles? Can you elaborate more?

4 Q Who got out? Tell me who was asking to get in and
5 who was get in who was asking to get out. What did you
6 see?

7 A Okay. Curtis wanted to direct traffic. So he went
8 up to direct traffic, but the guy was already talking, I
9 guess to us. So when he started talking to us, then we
10 started paying attention to him. So Curtis got out and the
11 guy got out of his truck, opened the door of the truck and
12 then started, you know, doing more -- doing more action, I
13 couldn't hear him, because I was in the back seat. So
14 then, also there's also, it's an incline at the turn. So
15 I'm -- I could only see so much.

16 Q Well, you heard -- again, where were you seated?

17 A In the backseat.

18 Q And do you recall a conversation, anything being
19 said about Curtis getting out to direct traffic.

20 A Yes. Well, we started laughing because he had an
21 Alabama shirt on and we had just played Alabama and beat
22 Alabama so we started laughing at him, you no, no one's
23 going to let you out because you got an Alabama shirt on.
24 You're not going to get no type of leniency here.

25 Q So when he got out, what happened?

Mike Davis - Direct Examination by Mr. Harris

1 A When he got out, the other guy proceeded to get
2 out. Then he just started going back and forth, back and
3 forth. And then again as a USC player and a being a fan
4 and back at the game, you see stuff like that, you see
5 stuff, arguing.

6 Q Now, back and going back and forth what you're
7 saying?

8 A Yeah.

9 Q Describe in terms of seconds, how much time we're
10 really talking about?

11 A The time we're talking about, maybe fifteen,
12 twenty-seconds of going back and forth and back and forth.
13 And then the next thing you know, the guy he just really
14 started getting really aggressive.

15 Q Step down for me.

16 MR. HARRIS: May I approach, Your Honor.

17 THE COURT: You may.

18 MR. HARRIS: Thank you.

19 BY MR. HARRIS:

20 Q If you could step down. Step down here if you
21 could, like -- tell me what you saw as the two approached
22 one another?

23 A Well, he got more into a defensive stance. He got
24 like this, his fists were already balled.

25 Q Then what did you see?

Mike Davis - Direct Examination by Mr. Harris

- 1 A He still kept talking. And the next thing you
2 know, he did like -- like a movement like this.
- 3 Q And Curtis hit him?
- 4 A Yeah, Curtis him him and that's all it was.
- 5 Q While you're standing there, if this is the door
6 frame of the car, from your vantage point, how far out, do
7 you believe the passenger of that vehicle was?
- 8 A Well, while the door was swung open, he was partly
9 still within the reach of the door, but he was out of the
10 car.
- 11 Q Okay. So he had taken how many steps out of the
12 car do you believe based on your vantage point.
- 13 A My vantage point, two or three steps.
- 14 Q Have a seat.
- 15 A (Witness complied)
- 16 Q You saw -- tell me what you saw Curtis do again,
17 please?
- 18 A After Curtis pop him one time --
- 19 Q You say he popped him?
- 20 A Yeah.
- 21 Q How many times?
- 22 A Once.
- 23 Q You sure about that?
- 24 A Positive about that.
- 25 Q What happened next?

Mike Davis - Direct Examination by Mr. Harris

1 A The guy dropped. I mean he -- he just hit the
2 ground.

3 Q Did he leave your view?

4 A Yes. He left my view after that.

5 Q Explain why that happened?

6 A Because the truck that we're in is a pretty high
7 truck and when you come out of Shop Road, it's kind of a
8 hill where you have to kind of drive up and get onto the
9 road and we were on that hill, so we were kind of at an
10 angle. And my angle was lower than what I could see than
11 where the truck was.

12 Q Now, the angle that you had, could you still view
13 -- what was your view of the traffic?

14 A My view of the traffic is, I could see the truck, I
15 could see -- I could see all the cars. Like, I can see all
16 the scars from maybe from the tires on up, but I could not
17 see the road.

18 Q Describe if you could, the distance between the
19 truck, the back of the truck and the car behind it?

20 A Probably, maybe -- maybe a foot.

21 Q Bumper-to-bumper traffic?

22 A Yeah, bumper-to-bumper traffic.

23 Q Describe if you can the distance in front of the
24 black truck and the car in front of it?

25 A Just maybe a foot and a half, maybe 12 inches. It

Mike Davis - Direct Examination by Mr. Harris

1 was bumper-to-bumper traffic?

2 Q Describe if you can whether the truck -- could the
3 truck have driven straight forward?

4 A No, if he had driven straightforward, he would have
5 driven into somebody.

6 Q What did you see after the passenger went down?

7 A When the passenger went down, the truck basically
8 he was trying -- I guess he wanted to find a way out or
9 something like that or scared, but he kind of turned the
10 wheel and jerked off to the side, a little half to the side
11 of the road.

12 Q You said kind of turned the wheel. Can you
13 describe in terms of this being straight?

14 A Uh-huh.

15 Q In being 90 degrees, can you describe in terms of
16 angles how far he jerked off -- how far he jerked off the
17 road?

18 A Probably about 45.

19 Q 45 degrees?

20 A Uh-huh.

21 Q And then what did you see?

22 A I didn't see nothing. I heard -- I heard -- I
23 heard a sound, which I still hear today -- I can still hear
24 to this day.

25 Q What, if anything, did you see the truck doing as

Mike Davis - Direct Examination by Mr. Harris

1 it proceeded on that 45 degree angle?

2 A I mean, once he locked it and drove, all you heard
3 was a whole bunch of popping, like bones breaking. That's
4 what the sound was. I've played football. I've broke many
5 bones. I know what the sound of bones breaking.

6 Q What did you see Curtis doing?

7 A Tapping on the car trying to tell him to stop.

8 Q Did you do anything?

9 A I saw him tapping on the car, hitting on the car
10 trying to tell him, like. Stop, stop, stop, stop.

11 Q How high up -- could you see Curtis?

12 A Yes. I could not see the ground, but I could see
13 Curtis. Curtis was still standing.

14 Q What did you see happen after the car drove off of
15 the roadway at a 45 degree angle?

16 A He stopped the car and then the passenger opened
17 the door and he threw up.

18 Q What, if anything, did you see Curtis Simms doing?

19 A He was still trying to tap the car telling the car
20 to stop. And then once the car did stop and the passenger
21 opened the door and threw up, Curtis immediately started
22 trying to find help.

23 Q Excuse me one moment, Mr. Davis?

24 (WHEREUPON there was a pause in the proceedings.)

25 BY MR. HARRIS:

Mike Davis - Direct Examination by Mr. Harris

- 1 Q Were you expecting that?
- 2 A No, that was the last thing I was expecting.
- 3 Q Now, the following thirty minutes of your life
- 4 after that, can you -- can you describe those for us,
- 5 please?
- 6 A Well, I got sick just for the fact that I know -- I
- 7 know that sound and when I got out the car, I actually saw
- 8 -- I actually saw the guy. It was more -- more than I
- 9 wanted to see.
- 10 Q What did you do?
- 11 A I threw up also.
- 12 Q Mike, where did you go in the following hour as the
- 13 scene you know folded?
- 14 A As the scene unfolded I had to walk away just
- 15 because I had to get myself together. I had to get my head
- 16 together. It really -- it really messed me up.
- 17 Q You didn't leave the parking lot, did you?
- 18 A No, I didn't leave the parking lot. I just walked
- 19 in the back just so I couldn't see it.
- 20 Q Did you sit there with anyone?
- 21 A No, it was me and Marque.
- 22 Q Did anyone come interview you?
- 23 A No.
- 24 Q Was law enforcement there?
- 25 A Yes.

Mike Davis - Direct Examination by Mr. Harris

1 Q What availability were you? Or did you make to law
2 enforcement?

3 A I didn't make no -- I was shocked myself. I was
4 still trying to get over what just happened. It all
5 happened so fast. Within the span of like thirty seconds
6 all that happened.

7 Q How long did you stay? Did you for instance see
8 the County police officers come and see?

9 A Yes, I stayed long enough to see the County police
10 officers and the ambulance come and then I walked to my
11 car.

12 Q Did you walk with anybody?

13 A No, Marque had his -- he had to find a ride so I
14 just told Marque, I just need to get my car.

15 Q Now, a couple of days later, did you inquire as to
16 whether someone had passed away?

17 A Yes.

18 Q From that accident?

19 A Yes.

20 Q Can you describe that for us, please?

21 A I knew someone was hurt -- when I saw that, I knew
22 someone was hurt, but I waited a couple of days just to get
23 myself together and then I wanted to find out if -- if what
24 happened really did happen, if it was bad. So I went to
25 the South Carolina coroner's office on Garner's ferry on my

Mike Davis - Direct Examination by Mr. Harris

1 own and I asked the guy, I said did anybody die on -- after
2 the USC game, and the officer said yes; and then after the
3 officer said yes, I felt it was my obligation to make a
4 statement. So I made a statement then.

5 Q Of our own volition you gave a statement?

6 A Yes.

7 Q Now, is there any question in your mind about --
8 you recall the testimony about passenger making a move and
9 Curtis punching him?

10 A Uh-huh.

11 Q Did that happen?

12 A Yes.

13 Q Tell us how many times did Curtis hit the
14 passenger?

15 A Once.

16 Q Did Curtis ever reach into the window?

17 A No.

18 Q What, if anything, did think that truck was going
19 to do?

20 A Stay still, turn the engine off, help your friend
21 or see --

22 MS. MCDUFFY: Your Honor, objection. Calls for
23 speculation.

24 THE COURT: Sustained.

25 MR. HARRIS: Thank you, Your Honor.

Mike Davis - Cross-Examination by Ms. McDuffy

1 Q And your statement was given to law enforcement
2 officer is that correct?

3 A Yes.

4 MR. HARRIS: One moment, Your Honor, please.

5 THE COURT: All right.

6 MR. HARRIS: Thank you, Mr. Davis. Would you
7 answer any questions the State may have of you.

8 THE WITNESS: Yes, sir.

9 THE COURT: Cross-examination.

10 MS. MCDUFFY: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MS. MCDUFFY:

13 Q Good afternoon, Mr. Davis.

14 A Good afternoon.

15 Q We've never spoken have we?

16 A No.

17 Q In fact, my investigator tried to speak with you
18 serve you a subpoena and you wouldn't return our phone
19 calls?

20 A Actually I did return the phone call and I didn't
21 -- I didn't leave a message, but I did return the phone
22 call.

23 Q So we've never spoken?

24 A No.

25 Q And my investigator, did he approach you yesterday

Mike Davis - Cross-Examination by Ms. McDuffy

1 and ask to speak with you?

2 A Yes.

3 Q And would you speak with him?

4 A Yes, I did speak with him.

5 Q Did you tell him about what you witnessed and what
6 you saw?

7 A He did not ask me of the details, he just told me
8 that I was served with a subpoena to come to court and I
9 told him I would do that and I'm here.

10 Q And just a minute ago while on direct, Mr. Harris
11 asked what you observed that night and you said you
12 observed Curtis get out of the car to direct traffic?

13 A He went with the intent to direct traffic.

14 Q And you saw him approach the black car where the
15 victim Martin Gasque was standing?

16 A No, he went to the victim, the passenger of the car
17 was already outside of the car.

18 Q But Curtis is the one that approached him. Curtis
19 went to the black car?

20 A He didn't go to the black car, he went to the
21 traffic but the guy was already, you know, already talking.
22 He already had the window down, speaking to us, but we
23 wasn't paying him no attention because we was laughing
24 about his -- Curtis having an Alabama shirt on trying to
25 direct traffic.

Mike Davis - Cross-Examination by Ms. McDuffy

1 Q How did the victim and Curtis meet? Where did they
2 meet?

3 A They met right at the -- right at the -- right
4 there where the white line is to the road.

5 Q By what vehicle?

6 A By the black vehicle.

7 Q So how did Curtis get there?

8 A Curtis walked.

9 Q So Curtis walked and approached the black truck?

10 A He didn't walk towards the black truck, he went to
11 -- walked toward to direct traffic. When the guy started
12 taunting him, saying, Oh, you Alabama, you Alabama, you
13 Alabama. Then that caught his attention.

14 Q So now you did hear what was said? A minute ago
15 you testified you couldn't hear because you were in the
16 backseat?

17 A I'm a criminal justice major so I have a little --
18 I can read lips a little bit and so I know that Alabama is
19 Alabama.

20 Q So on direct when you said you didn't know what was
21 being said, that's changed. Now, you do know what was
22 being said?

23 A No, I know that he was talking about Alabama.

24 Q So Curtis ultimately ends up at the black truck.
25 He doesn't approach it though?

Mike Davis - Cross-Examination by Ms. McDuffy

- 1 Q No, he ends up on the side of the black truck?
- 2 A On the side of the black truck.
- 3 Q Yeah, where the door is, where the passenger opened
- 4 the door?
- 5 Q And you said on direct that the passenger took a
- 6 defensive posture?
- 7 A Yes.
- 8 Q And then there was a punch by Curtis?
- 9 A There was a flinch of the passenger.
- 10 Q So the passenger took a defensive posture.
- 11 A Yes.
- 12 Q He then flinched and then Curtis punched him?
- 13 A Yes.
- 14 Q And then you couldn't see him after that because he
- 15 was on the roadway?
- 16 A Yeah, he was on the ground by then.
- 17 Q And you saw Curtis -- Curtis was standing up
- 18 tapping on the truck, trying to telling him to stop moving
- 19 the truck?
- 20 Q No doubt in your mind?
- 21 A No doubt in my mind. He told him to stop moving
- 22 the truck.
- 23 Q And Curtis was standing up the whole time?
- 24 A The whole time.
- 25 Q No doubt?

Mike Davis - Redirect Examination by Mr. Harris

1 A No doubt, he was standing the whole time.

2 Q Martin Gasque took a defensive posture?

3 A Yes.

4 Q Flinched?

5 A Yes.

6 Q And then Curtis knocked him out?

7 A If you want the call it getting knocked out, yes.

8 MS. MCDUFFY: No further questions for this
9 witness, Your Honor.

10 THE COURT: All right. Redirect?

11 **REDIRECT EXAMINATION**

12 BY MR. HARRIS:

13 Q Ms. McDuffy asked you about some comments that you
14 heard?

15 A Yes.

16 Q Do you recognize this statement?

17 A Yes, that is my statement.

18 Q Is that the first recollection about another
19 comment that you told them three days, four days after this
20 event?

21 A Yes.

22 Q Some something that was said?

23 A Yes.

24 Q What was -- what do you recall on that occasion,
25 something that you haven't recalled today?

Mike Davis - Recross-Examination by Ms. McDuffy

1 A Yeah.

2 Q What did you tell them?

3 A He called him out.

4 Q Who called who out?

5 A The passenger called Curtis out.

6 A You heard that.

7 A Yes.

8 Q You told law enforcement that?

9 A Yes.

10 Q Thank you.

11 MR. HARRIS: Judge, that's all I have. Thank you.

12 THE COURT: All right. Recross examination?

13 **RECROSS-EXAMINATION**

14 BY MS. MCDUFFY:

15 Q He called Curtis out?

16 A Yeah.

17 Q But Curtis was already out, was he not?

18 A Yeah, when Curtis got out to direct traffic, he
19 called Curtis out.

20 Q He was already out?

21 A He was already trying to go out to direct traffic.
22 When we were laughing telling him you're not going to get
23 nothing done.

24 MS. MCDUFFY: Thank you, Your Honor, no further
25 questions.

Mike Davis - Recross-Examination by Ms. McDuffy

1 **MR. HARRIS:** Nothing, further, Your Honor, thank
2 you.

3 **THE COURT:** All right. Very well. All right is
4 this witness free to leave?

5 **MR. HARRIS:** Yes, sir, he is, Your Honor.

6 **THE COURT:** Any objection.

7 **MS. MCDUFFY:** No, Your Honor.

8 **THE COURT:** Very well, you are free to go.

9 **THE WITNESS:** Thank you.

10 **THE COURT:** All right. Ladies and gentlemen, we're
11 going to take our afternoon break now, fifteen minutes.
12 Please step to your jury room. Do not discuss this matter
13 or allow anyone to discuss it with you and again we'll take
14 about 15.

15 (WHEREUPON the jury left the courtroom at 3:40
16 p.m.)

17 (WHEREUPON there was a brief recess.)

18 **THE COURT:** All right anything from the State
19 before we bring the jury out.

20 **MS. CAMPBELL:** No, Your Honor.

21 **THE COURT:** Anything from the defense?

22 **MR. HARRIS:** No, ma'am.

23 **THE COURT:** All right. Let's have our jury,
24 please.

25 (WHEREUPON the jury entered the courtroom at 4:06

Mike Davis - Recross-Examination by Ms. McDuffy

1 p.m.)

2 THE BAILIFF: Jury is present, Your Honor.

3 THE COURT: Thank you, so much.

4 Ladies and gentlemen, I believe we'll continue with
5 the defense.

6 Call your next witness, please.

7 MR. HARRIS: Please the Court, Your Honor. We'd
8 call Jordan Lindsey.

9 THE COURT: Come up and be sworn.

10 JORDAN LINDSEY,

11 having been duly sworn, testified as follows:

12 THE CLERK: Please have a seat. State your full
13 name for the record.

14 THE COURT: Would you move that microphone around.
15 Thank you so much. State your full name for the record.

16 THE WITNESS: Billy Jordan Lindsey.

17 THE COURT: And would you spell your last name.

18 THE WITNESS: L-i-n-d-s-e-y.

19 THE COURT: And that's a good sound check. Can you
20 move just a little bit closer to the mike.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: And I'm going to ask you to state your
23 name again, just for a sound check.

24 THE WITNESS: Billy Jordan Lindsey, L-i-n-d-s-e-y.

25 THE COURT: Can you all hear all right? Your

Jordan Lindsey - Direct Examination by Mr. Harris

1 ears are better than mine.

2 MR. HARRIS: Thank you, Judge.

3 DIRECT EXAMINATION

4 BY MR. HARRIS:

5 Q If you could keep that same distance, Mr. Lindsey,
6 please during your testimony.

7 A Yes, sir.

8 Q Mr. Lindsey, tell us where you live currently?

9 A I currently live in Mobile, Alabama.

10 Q How long have you lived in Mobile Alabama?

11 A Going on -- besides college, twenty-seven years.

12 Q Were you born there?

13 A Yes, sir.

14 Q Where's your family from?

15 A They're all from Mobile.

16 Q Now, where did you go to high school?

17 A Davidson High School.

18 Q College?

19 A College I went to South Carolina State -- or South
20 Carolina University.

21 Q You're a football player?

22 A Yes, sir.

23 Q And did you play football in high school?

24 A I did.

25 Q And if you could briefly, if you would please, tell

Jordan Lindsey - Direct Examination by Mr. Harris

1 us a little bit about high school football through -- how
2 you came to the University of South Carolina?

3 A I'm just one of those who tried hard in high
4 school, gave it my all and getting lucky enough to get a
5 scholarship to college.

6 Q Can you tell us your physical height and weight,
7 please?

8 A Now, it's 6'4", 250.

9 Q And at you're playing days, a senior in college,
10 can you tell us what your weight was?

11 A I was 6'4", 290.

12 Q And were you any special recognition when you were
13 a South Carolina football team your, senior year?

14 A My senior year, I was lucky enough to be a captain
15 on our defense.

16 Q Now, as part of your football career and part of
17 your high school career, did you come to know Curtis Simms?

18 A Yes.

19 Q Could you tell the jury a bit about your
20 relationship with Curtis Simms?

21 A Through high school, we knew each other from
22 sports, but never really became close friends until the end
23 of our high school days.

24 Q Is there an age difference in you and Curtis?

25 A He's a little bit older than I am. I believe it's

Jordan Lindsey - Direct Examination by Mr. Harris

1 close to a year.

2 Q And when you came to the University of South
3 Carolina, did you continue with that friendship?

4 A Yes, sir, they were real supportive with us making
5 a move to come to South Carolina. And actually we were
6 lucky for them to come to a few games.

7 Q Now the -- after your career -- when did you
8 graduate USC?

9 A I graduated in 2009.

10 Q And what degree?

11 A I was a history major.

12 Q What are you currently doing, Mr. Lindsey?

13 A I do individual contracting for sewer line work and
14 my brother and I over a couple of years have been trying to
15 build a catering business.

16 Q When your brother -- when you talk about your
17 brother, which brother do you mean?

18 A Dustin, my twin brother.

19 Q Now, the fact of the matter is you're here to
20 testify in this case, correct?

21 A Yes, sir.

22 Q And you were subpoenaed by both sides?

23 A Yes, sir.

24 Q How did you get here, sir?

25 A I flew in two days ago, just for this.

Jordan Lindsey - Direct Examination by Mr. Harris

1 Q Do you have a flight out any particular time?

2 A I left that open. It was supposed to be tomorrow
3 morning.

4 Q What is your relationship -- just to be clear, what
5 is your relationship with Curtis Simms?

6 Q Over the last few years we've become close friends?

7 Q Well, we are here and we've been here a week
8 talking about this Alabama Carolina football game. Just
9 generally speaking was that a good game for you and your
10 family?

11 A It was a huge game: I mean 80 percent of my friends
12 I grew up with are Alabama fans, been there whole life and
13 actually we were growing up too. So this game -- a couple
14 of months leading up to it was big for everybody.

15 Q Had you ever played Alabama?

16 A I played them twice.

17 Q And what was the result of those games?

18 A The first game, we were lucky enough to beat them,
19 she could game we ended up losing.

20 Q Now, it's a clear statement that Alabama is a big
21 game, correct?

22 A Yes, sir.

23 Q Did you have any special plans for the October 9,
24 2010, Alabama game?

25 A We'd been talking with a few friends that are

Jordan Lindsey - Direct Examination by Mr. Harris

1 actually graduated from Tuscaloosa, so we planned a couple
2 of weeks beforehand for all of them to come up. So around
3 seven people came up just for that game.

4 Q Where did they come in from?

5 A Actually two of them came in from Tuscaloosa and
6 the rest of them came up from Mobile.

7 Q All right. Can you tell us about when they started
8 arriving at your house?

9 A They arrived late the night before. So we had
10 meals late at night, so we just decided to cook dinner and
11 chill out at my house and prepare for the big game.

12 Q And you've talked about your house, can you give us
13 the address of where you were residing?

14 A It was [REDACTED], right off of Clemson Road
15 on the Woodlands Golf Course.

16 Q Okay. And who was living there at the time?

17 A It was Dustin and Curtis and I.

18 Q So how long had you been living there with Curtis
19 and Dustin?

20 A Prior to that, at least two years, I believe.

21 Q So these friends -- were they friends of everyone?

22 A We were associated with them. We were all friends.

23 Q How many people stayed there that night?

24 A That night I believe it was ten.

25 Q Now, can you describe if you can the next morning,

Jordan Lindsey - Direct Examination by Mr. Harris

1 the morning of the football game?

2 A Well, my brother ended up waking up first and we
3 thought we would cook everybody breakfast, thought that
4 would kind of drawing them out of bed, so we ended up
5 making them I believe it was pancakes and bacon for
6 everyone and thought it would get them up and lively and it
7 ended up working.

8 Q So the Lindsey twins were cooking breakfast for
9 everybody?

10 A Yes, sir.

11 Q Was there a particular plan to leave for the game?
12 What time was the game that day, do you remember?

13 A The game was a 3:30 game, I believe.

14 Q And was there to the best of your recollection a
15 plan to go anywhere particular that day?

16 A Well, everybody knew that we were going to our
17 parking spot that's been in the family for years now.

18 Q Okay. So what, first-degree did you do to make
19 preparations in leaving the house to go to the parking
20 spot? Describe that for us, please?

21 A We ended up taking two vehicles, we took my truck
22 and my buddy's SUV. And we pretty much put everything in
23 the back of my truck. That's what took the majority of the
24 time.

25 Q Now you said your truck, now --

Jordan Lindsey - Direct Examination by Mr. Harris

1 A Well the green four by four door.

2 Q I'm going to ask you if you can identify and tell
3 me if State's Exhibit 63 is the truck that you're referring
4 to?

5 A Yes, sir.

6 Q When you call that pick-up truck, explain that to
7 us please?

8 A Well, it's my brothers and mine. We used to have
9 two vehicles but we sold one off since we were together and
10 working together so much so we got rid of one and ended up
11 keeping this one. We've had it since I believe 2007.

12 Q And tell us what you did in packing up with regard
13 to that truck and the other vehicle that was going to the
14 game?

15 A We pretty much just had the chairs and tables and
16 like the people at the tailgate spot usually have there own
17 assignments on what to bring.

18 Q Uh-huh.

19 A So when he brought most of the chairs and tables.

20 Q Who was driving that day?

21 A And who was driving the other vehicle.

22 A My friend Jerrod Hughes.

23 Q Were both vehicles going to park?

24 A We both had bought prior tickets -- well, I had a
25 season pass to that parking spot and we bought them an

Jordan Lindsey - Direct Examination by Mr. Harris

1 extra spot the week before.

2 Q Let's talk about tickets to the game. Can you
3 explain to the jury who had tickets, who didn't have
4 tickets?

5 A My brother and I had tickets to be in the game and
6 two of my friends did but the rest of them didn't.

7 Q Was there any chance of finding tickets? Did you
8 try to find tickets to the Alabama, South Carolina game?

9 A A few -- they tried, but people were asking too
10 much money, so they decided to just watch it on TV that we
11 had set up in the parking lot.

12 Q Now, when you got to the parking lot, explain what
13 it takes to get this tailgate ready?

14 A Yes, sir, it's a squared parking lot. Pretty much
15 the whole outline is lined with cars and probably about two
16 lanes down the middle. We usually take up the back left
17 corner. So we had our two vehicles and one other vehicle
18 that's always stationed there. So we pretty much had to
19 set up our tables and a friend of ours, a woman that our
20 parents had been friends with for years also has a TV and
21 satellite, so that's what took the first 30 minutes after
22 arriving was spent setting up the satellite right for her
23 because she had no clue how to put it up.

24 Q Now let's talk about the tailgate spot, that
25 tailgate lot itself. How long have you been tailgating

Jordan Lindsey - Direct Examination by Mr. Harris

1 there, Mr. Lindsey?

2 A My parents actually made friends with the people
3 and they invited them over there probably 2005. And that's
4 when -- ever since then we kind of adopted it and continued
5 on tradition since then.

6 Q What was your freshman year in college?

7 A My freshman yeas was the end of 2004.

8 Q Okay. Did your parents park there your freshman
9 year or --

10 A No, sir, they actually parked on a different street
11 the year before, then they met this group of friends that
12 brought them over to the new parking lot.

13 Q Were your parents avid Gamecock fans?

14 A Growing up, no.

15 Q Were they avid Lindsey fans?

16 A Yes, sir.

17 A Oh yes -- oh, did they miss the games, oh, no,
18 never missed one.

19 Q Who parks in this area? This parking lot, parking
20 lot area?

21 A Tailgaters have probably tailgated together for
22 almost 30 years now that's around my parents age. So all
23 of them, their kids are usually the people who take up the
24 majority of the lot.

25 Q Well, when you were in football and your parents

Jordan Lindsey - Direct Examination by Mr. Harris

1 were coming, tell us what happened after football games.

2 A After football -- oh after football games?

3 Q Yeah.

4 A Pretty much that was our meeting spot. I mean we
5 knew the go there and our close friends on the team knew to
6 go there. We even didn't have to talk about.

7 Q Where the best place to get an autograph of a
8 Carolina football player after a football game when you
9 played?

10 A Probably that lot.

11 Q Now, the setting up of this lot involved
12 televisions?

13 A Yes, sir.

14 Q Coolers?

15 A Yes, sir.

16 Q Alcohol?

17 A Yes, sir.

18 Q Supposed to have alcohol. Do you drink?

19 A Yes, sir.

20 Q Were you a drinker in 2010?

21 A Yes, sir.

22 Q And on that particular day, did you have plans to
23 drink alcohol?

24 A Yes, sir.

25 Q Lets talk about that. Tell the jury what you

Jordan Lindsey - Direct Examination by Mr. Harris

1 did -- what everybody tailgating did to arrange for alcohol
2 to be served at tailgating.

3 A Well, we all brought our set number of beers. I
4 didn't have my first beer until we actually got done
5 setting up the TV and the whole spot, probably,
6 approximately thirty minutes after we got there.

7 Q Okay. Set number of beers, that's not a phrase --
8 what was your set number of beers?

9 A Well, we had planned coming up to the game to
10 actually go participate in the game, but since our friends
11 didn't have tickets and didn't have a chance to go and we
12 had a nice setup with a television, we decided to stay out
13 of the game, but coming up until -- we probably had around
14 a 12-pack a piece just up to going into the game, but we
15 ended up staying out, so we ran out.

16 Q So now, can you tell us how many beers -- I mean
17 you have any idea exactly how many did you have that day?

18 A I remember running out right after the about third
19 quarter. So up to that point, I probably had up to
20 12-pack of beer?

21 Q Any other alcohol you had that day?

22 A One of parent's close friends, she's an older
23 woman. She probably gave out three or four throughout the
24 first half or the first part of the game.

25 Q Now this sounds like a lot of beer.

Jordan Lindsey - Direct Examination by Mr. Harris

1 A Yes, sir.

2 Q Lot of ounces of beers. Over what time period did
3 you consume those 12 beers?

4 A Let's see we got there a little bit before noon and
5 after the time it took to set up the television and the
6 probably from around 12:30 up until about a 5:30, six
7 o'clock.

8 Q Were you eating?

9 A Yes, sir.

10 Q Now, did watch the entire game?

11 A Yes, sir.

12 Q What was the atmosphere? Let's just break it up
13 into segments of time starting with pre-game. What was the
14 pregame atmosphere?

15 A Pre-game, everybody was excited ant they were
16 heckling each other just like friends do with each other
17 just like friends do with each other. I mean everybody is
18 having a good time. Up until the beginning of the game,
19 that's when we had planned to go in up until we were having
20 such a good time hanging out with our buddies and our
21 buddies couldn't get in, so we decided to stay with them
22 and watch it on TV.

23 Q Any problem at all? Describe my problem at all
24 between the Alabama fans and the Carolina fans?

25 A Besides heckling there was no hostility between

Jordan Lindsey - Direct Examination by Mr. Harris

1 anybody. Everybody was friends.

2 Q Explain what you mean by heckle?

3 A Well, you know just picking fun because they were
4 Alabama grads and we were Carolina, and we actually -- up
5 to the point we were pretty -- they were undefeated and we
6 had been getting a little bit better, so, of course, we
7 were telling each other about it.

8 Q Was good nature heckling?

9 A Yes, sir.

10 Q As the game progressed and when Carolina first and
11 second --

12 A Yes, sir.

13 Q -- was there any -- did the atmosphere ever change
14 between -- you're telling it.

15 A Oh, no, sir it was all smiles. Of course, we were
16 having little bit more being funny just busting jokes with
17 them, but the atmosphere was still great. And when the
18 game ended and the final clock went off, what was the
19 atmosphere? Describe the atmosphere in that parking lot at
20 your tailgate.

21 A Well, they -- I, mean they understood we had a
22 chance to celebrate, so they were happy for us. I mean
23 we're all friends. We knew going into the game was going
24 to be tough. They were actually shocked that we won, so
25 they were proud and happy for us.

Jordan Lindsey - Direct Examination by Mr. Harris

1 Q Now, after the game ended you and your brother --
2 did other people join your tailgate that had actually gone
3 into the game.

4 A Yes, a couple of my buddies did. They knew after
5 big games and they knew we were in town they were going to
6 to come to that spot, just assuming we were there.

7 Q Can you name them, some of these people you recall?

8 A Mike Davis are two of the ones that came.

9 Q Oh they are the people that came?

10 A Yes, sir.

11 Q Did any other ballplayers come?

12 A That day -- I'm not sure, I don't think so.

13 Q Did you and your brother and the rest of the group
14 have plans for the evening or was it your intention to stay
15 there all night?

16 A No, we were going -- we knew it was an early game,
17 so we were going to try to get out of there because my
18 friends hadn't really had a chance so check out downtown
19 Columbia or any part of downtown. So our plans were to go
20 home and shower and just get ready to show them the town.

21 A How many of these friends had actually previously
22 been to Columbia.

23 A Two out of probably six or seven have been.

24 Q And your plans to go home and shower, did it
25 involve everyone or just a core group of people?

Jordan Lindsey - Direct Examination by Mr. Harris

1 A No that was everybody that was staying at my house.

2 Q And -- since you were going to do that, did there
3 come a point in time when everyone decided to pack up?

4 A Yes, sir. It was around an hour, hour and a half
5 after the game was when everybody was -- after the
6 commotion was coming down a little bit inside the parking
7 lot, so we thought we might as well pack up and get on the
8 road.

9 Q Explain packing up. What does that involve?

10 A Well, it took a few minutes to get the TV down for
11 Rhonda and set up our tables and clean up all the food,
12 three everything away. Like that. That's pretty much all
13 it took the clean up.

14 Q How many team, as you were packing up got into --
15 what car did you get into?

16 A I got into the green truck, the green four by four.

17 Q Was the green truck packed to leave the tailgate at
18 that point?

19 A At that point, no. The other car that drove
20 actually left prior to us leaving because we had all the
21 packing to do.

22 Q And you completed packing and you left, correct?

23 A Yes, sir.

24 Q Who else got in the car?

25 A Let's see, my brother Dustin was driving, I was in

Jordan Lindsey - Direct Examination by Mr. Harris

1 the middle. Curtis was in the front seat next to me in the
2 passenger seat and our friend Lauren was on top of his lab,
3 kind of on mine a little bit. And then Marque, mike and
4 one other was in the back, I believe, but they didn't have
5 enough room back there for her because they were all big
6 boys.

7 Q And who was driving again?

8 A Dustin.

9 Q What was -- you web game day traffic?

10 A Yes, sir.

11 Q How many times do you think you have tailgated that
12 lot over your lifetime?

13 A It's got to be at least close to thirty something
14 times.

15 A You've been doing it for seven, six years.

16 A Yes, sir.

17 Q For seven games a year?

18 A Yes, sir.

19 Q Could it be more than thirty?

20 A Uh-huh.

21 Q Much?

22 A Thirty something.

23 Q As you left that parking lot that evening, were you
24 turning to the left or were you turning to the right?

25 A We were trying to turn to the left.

Jordan Lindsey - Direct Examination by Mr. Harris

1 Q Are you familiar with turning to the left at that
2 enter section having been there so many times?

3 A Not at that time period after the game. We haven't
4 done that too many times.

5 Q It was crowded?

6 A Yes, sir.

7 Q On that particular evening was it crowded?

8 A Yes, sir.

9 Q How would you characterize traffic then?

10 A It was pretty much bumper-to-bumper.

11 Q Pretty much bumper-to-bumper?

12 A Yes, sir.

13 Q How old you characterize the foot traffic?

14 A It was pretty heavy.

15 Q And as you were -- as you approached the entrance
16 onto Shop Road, were you the first, second or third car?

17 A At that time we were first car.

18 Q Would you tell the jury what happened as you
19 approached the enter of Shop Road?

20 A We pulled up to the enter section and we started to
21 trying to turn, maneuver our way out with no success. We
22 probably had four to seven cars that slowly creeping that
23 wouldn't attempt to let us out. And up to the point just,
24 it didn't look successful.

25 Q At any point, did someone take to get out of the

Jordan Lindsey - Direct Examination by Mr. Harris

1 car to stop traffic or were you just going to try to move
2 in?

3 A Up to that point, we were going to try to move in.

4 Q And at any point did you notice a black truck?

5 A Yes, sir.

6 Q Could you talk to us about that, please?

7 A When I first actually noticed the truck it was to
8 the driver's side coming up on us. There was a car in front
9 of us at this time and Curtis had his window down seeing
10 that truck come up actually pointing, asking to let us in
11 with his hand, like, just let them know we needed a spot.

12 Q Show us what you're describing, just show us?

13 A He had his window down, Curtis was basically
14 hanging out pointing the hand signal to let us in.

15 Q What happened?

16 A The kid or the passenger of the vehicle was hanging
17 outside the door or outside the window. And I thought he
18 was just talking, but -- I didn't hear what he said coming
19 up on our vehicle. All I saw was hand gestures flipping
20 the bird, hanging out the window.

21 Q There's been some talk about flipping the bird.
22 Are you referring, -- tell me exactly what you mean by that.
23 Don't show me, describe it to me?

24 A Describe it to you? It's hanging out with your
25 middle finger up out the window.

Jordan Lindsey - Direct Examination by Mr. Harris

1 Q Did you hear anything that that individual that you
2 just described, what he was saying?

3 A At that point no, I didn't hear what he was saying.

4 Q Did you know whether he was targeting that language
5 toward anyone?

6 A His demeanor showed that it was toward Curtis.

7 Q Now, did you attempt or did your brother, driving,
8 attempt in any way to get in the traffic in front of them?

9 A No.

10 Q What happened next?

11 A Once the car kept creeping up and once it got to
12 his window, approximately, like on our passenger side of
13 the truck, that's when -- I thought Curtis was still trying
14 to talk to him to let him out and that's when I could hear
15 the cussing start, saying fuck you and stuff like that,
16 hanging out the window still.

17 Q Who was saying that?

18 A The passenger of the vehicle.

19 Q Was it going both ways?

20 A Yes, sir. At that point it started going both
21 ways.

22 Q Now, at some point after that dialogue between two
23 people, did anyone -- were you still trying to get in
24 traffic?

25 A Yes, sir.

Jordan Lindsey - Direct Examination by Mr. Harris

1 Q Explain that?

2 A Well, at that point -- I mean, I'm pretty much the
3 tallest anyone there, was that's when it came to the point
4 we thought Curtis was going to get out and actually stop
5 the traffic so we could finally get out. But as as soon as
6 he opened his door, we noticed the passenger side of the
7 door of the truck in front of us open also.

8 Q Now, you said we, I'm interested in what you saw.

9 A Okay.

10 Q I'm interested in -- the Court and the jury is
11 interested when you saw it and your view. Okay?

12 A Okay.

13 Q I want to know what you saw?

14 A Yes, sir.

15 Q What did you see to the right of you if you're in
16 the front seat?

17 A I saw Curtis getting out of the vehicle.

18 Q Was his window down or up?

19 A His window was still down.

20 Q What did you see straight ahead of you regarding
21 the black truck?

22 A I saw -- as as soon as I saw Curtis get out, that's
23 when I saw the passenger side door opening.

24 Q Can you tell us who got out first, who was on the
25 ground first?

Jordan Lindsey - Direct Examination by Mr. Harris

1 A Really couldn't tell who got out or cracked the
2 door first, but I know that it was pretty much the same
3 time the doors opened.

4 Q Now, what did you see next?

5 A I saw Curtis walking towards traffic and then I saw
6 the passenger of the vehicle walk to about the end of his
7 door where it would you describe open and that's pretty
8 much where there passing at.

9 Q How close -- tell me to either walk back or come
10 forward according to your vantage point of what your seeing
11 at the black truck?

12 A You can walk toward me.

13 Q Excuse me?

14 A You can walk towards me.

15 Q All right. Tell me when.

16 A About right there.

17 Q So you see Mr. Simms get out of the truck here?

18 A Yes, sir.

19 Q What did you see happen besides that?

20 A The door in front of me opened also.

21 Q What did Mr. Simms do?

22 A He was getting out and started walking to the front
23 of our truck.

24 Q Did hear what was being -- could you see whether
25 the two were engaging in conversation?

Jordan Lindsey - Direct Examination by Mr. Harris

1 A I didn't think they were talking to each other at
2 that point in time.

3 Q What happened then?

4 A Curtis walked up to him and he walked up to --
5 basically up to Curtis and they got, pretty much chest to
6 chest.

7 Q Why don't you step down.

8 MR. HARRIS: May I approach, Your Honor.

9 THE COURT: You may.

10 BY MR. HARRIS:

11 Q Step down here for me, please. Now, stop. Say
12 that this is the door that is open at this angle -- first
13 of all describe to us where the door was using this. How
14 far open was the door. Was it this open?

15 A Oh, the door was -- no, the truck was here. The
16 door was like this.

17 Q Okay. You can put that over there. Tell me
18 exactly what you saw when the two men were in front of one
19 another?

20 A Well, if that's the end of the passenger side door,
21 I saw the passenger about right here and Curtis about right
22 here.

23 Q What did you see? You're the passenger?

24 A From my angle, I saw this okay occur and then I saw
25 Curtis hit the passenger.

Jordan Lindsey - Direct Examination by Mr. Harris

1 Q Where on Curtis?

2 A Had to have been under the chest.

3 Q What did Curtis do?

4 A Curtis hit him one time and knocked him to the
5 ground.

6 Q Okay. Take your seat. How high on Curtis' body
7 did you see the passenger's hands?

8 A Right under his chest.

9 Q This area?

10 A Yes, sir.

11 Q Now, you just described for the jury the two men
12 leaving there confronting one another. Can you give us
13 some guess or to the best you can recall. How long did it
14 take? How long did this happen?

15 A From the doors opening?

16 Q From the doors opening.

17 Q Maybe ten seconds?

18 Q Just that quick?

19 A Yes, sir.

20 Q Now, when the passenger was hit, tell us what
21 happened?

22 A He fell to the ground and once I noticed anything
23 -- the next thing I really noticed was the vehicle moving
24 and once I -- from my angle, I looked down and it was on
25 top of the passenger on the ground.

Jordan Lindsey - Direct Examination by Mr. Harris

1 Q And slow down an anyone. Can you describe for us
2 the best that you could recall, the positioning of the
3 passenger's body?

4 A His feet were towards the rear end of the truck.

5 Q His feet would have been in this direction, is that
6 correct?

7 A The truck was in front of us, his feet were -- face
8 down.

9 Q Where was his body in relation to what has been
10 referred to in -- I'm referring at this time to
11 government's exhibit 3. Do you see the white line in that?

12 A Yes, sir.

13 Q Okay. You let me know -- what is that white line?

14 A That's the outer line of a two line road.

15 Q In relation to that white line, can you tell us
16 where the passenger's feet and torso was on the street?

17 A I felt his torso was right on the white line.

18 Q Now, you said you saw the truck moving forward.
19 What happened next?

20 A I saw the truck moving and before I even are alsoed
21 anything was wrong, I looked town and saw the truck tire on
22 top of the passenger on the ground.

23 Q On what part of the passenger on the ground did you
24 see --

25 A It looked like it popped up on his hip.

Jordan Lindsey - Direct Examination by Mr. Harris

1 Q Now, at this point as this is going on, do you have
2 a clear view of -- what is your view of the road in front
3 of you?

4 A My view is -- from the front of the truck, I could
5 see probably three feet past the white line.

6 Q Can you see to the right of the front right of the
7 truck?

8 A Yes.

9 Q How close is he -- that truck to the car in front
10 of you?

11 A Probably 3 -- 3 or 4 feet.

12 Q How close is the rear of the truck to the next car
13 behind you?

14 A About the same.

15 Q What room was there for him to back up or go
16 forward?

17 A Not really none at all.

18 Q You said you saw is tire moving toward and onto the
19 passenger?

20 A Yes, sir.

21 Q That was your testimony?

22 A Yes, sir.

23 Q Can you describe for us the positioning of the
24 wheels of the plaque truck as that was happening?

25 A The position there -- the back wheels are turning

Jordan Lindsey - Direct Examination by Mr. Harris

1 towards us, basely to go around.

2 A Looked like he was attempting to go -- pull off the
3 road or go around the car in front of us.

4 Q And as the car pulled forward, can you describe the
5 positioning of the black truck in relation to the road that
6 night -- the roadway that night?

7 A Just pulling -- angled off of the road, like
8 turning off.

9 Q After this incident and the black truck was past
10 the passenger can you describe how -- in what direction
11 that black truck continued until it parked?

12 A It was -- he was going off the road, probably --
13 was at 45 degrees off the road.

14 Q Did the black truck, as soon as it started that
15 turn, did it stop until it got off the road?

16 A It never stopped at all, no, he creaped up the
17 whole time and then once the yelling started, it pretty
18 much gassed it off the road.

19 Q Now, as what you have described was going on, as
20 the truck was going forward with the passenger in the
21 roadway, can you tell us what, if anything, you saw Curtis
22 Simms doing?

23 A Once I realized that the truck was on top of the
24 person, I saw Curtis with his left hand go to try to pull
25 the passenger off -- like out of harms way and I saw his

Jordan Lindsey - Direct Examination by Mr. Harris

1 right hand beating on the side of the truck.

2 Q What --

3 A To try to warn the driver.

4 Q What were you doing?

5 A I was watching the entire time like basically
6 stunned at what I was seeing.

7 Q Was there anyone in your car that was saying -- do
8 you recall people yelling? Do you recall anything,
9 Mr. Lindsey?

10 A I remember the girls yelling, yes.

11 Q Do you remember your brother -- where your brother
12 was at this time?

13 A By that time, I think he had down gotten out of my
14 vehicle.

15 Q Was he really in play in terms of what you were
16 watching?

17 A No, sir.

18 Q What were you focused on?

19 A I was focused on Curtis and the man on the ground.

20 Q Were you focused on the truck?

21 A Yes, sir.

22 Q Did you expect that that truck would veer or move
23 off the roadway?

24 A No, sir.

25 Q Now, after the car had moved off this roadway,

Jordan Lindsey - Direct Examination by Mr. Harris

1 what, if anything, did you see Curtis Simms doing with
2 regard to the cars in front and cars in the back?

3 A I saw Curtis trying -- the first thing he did was
4 react and try to find help.

5 Q Do you know -- what did you do?

6 A I was pretty much stunned the first few secondings.
7 I didn't want to get near or anything. I was just kind of
8 shell shocked kind of.

9 Q So your brother was out of the car at this time,
10 correct?

11 A Yes, sir.

12 Q Curtis Simms was out of the car at this time?

13 A Yes, sir.

14 Q Is the driver of the black truck out of the car?

15 A Well, after it was all over and he threw it into
16 park, yes, I saw him come to the end of the truck -- into
17 his truck.

18 Q The passenger side of the truck?

19 A No, he came -- I think he came from the back
20 driver to the end of the truck.

21 A But the passenger was out of the truck, obviously.

22 Q Did you get out of the truck immediately?

23 A No.

24 Q Did anyone get out of your truck?

25 A No, sir.

Jordan Lindsey - Direct Examination by Mr. Harris

1 Q Mike Davis, Marque Hall, anyone?

2 A No, sir.

3 Q What were you doing?

4 A Pretty much just looking, really.

5 Q Tell us what happened. What happened over the next
6 thirty minutes.

7 Q The next thirty minutes, I eventually got out and
8 everybody started coming up to see what was going on. I
9 found our original group of tailgating people and was like
10 consoling them because I didn't know what just happened.
11 So we pretty much were just watching everybody show up.
12 All the EMTs and everything like that?

13 Q Did you at any point during the rest of this
14 evening discuss anything with Curtis Simms?

15 A No.

16 Q Because he was busy trying to find help and by the
17 time that I realized and saw it again, he'd already been in
18 the cop car at that time?

19 Q Off to the side?

20 A Yes, sir.

21 Q Did you ever approach that car?

22 A No, sir.

23 Q To discuss anything with him?

24 A No.

25 Q Now, what did you do as EMS responded and as the

Jordan Lindsey - Direct Examination by Mr. Harris

1 officers roped off the scene. Tell us where you went
2 during that time?

3 A I was probably 40 feet back from the scene. I was
4 consoling one of you're like long time friends, one of my
5 parent's friends that was real close with us. Consoling
6 her pretty much the whole time and basically just waited
7 around for probably the next three hours New Mexico it was
8 all said and done just in case anybody needed anything.

9 Q Did anybody come up to you and ask you for a
10 statement?

11 A No, sir.

12 Q Did you know if anybody had been charged or not
13 charged that evening?

14 A No, sir.

15 Q With a criminal offense?

16 A No, sir.

17 Q Did -- at some point in time did you drive your
18 truck and move it to another part of the lot?

19 A No, sir.

20 A Did you know if someone did.

21 A It took a while before someone did.

22 Q When did your brother move the truck?

23 A Probably thirty minutes to an hour after it
24 happened.

25 Q And tell us where he moved it?

Jordan Lindsey - Direct Examination by Mr. Harris

1 A I think he just backed it up to our original spot.

2 Q Where did you go after that happened? Did you
3 leave the lot?

4 A No, sir, I stayed around until the last person
5 left.

6 Q When -- who left that evening together after the
7 last person as you described after the last person left?
8 Who left with you in the green truck?

9 A It was Dustin and I, Lauren. I think it was and
10 one other fellow. One other.

11 Q Four?

12 A Yes, sir.

13 Q Was Marque still there?

14 A No, sir.

15 Q Was Mike Davis still there?

16 A No, sir.

17 Q Do you have any recollection of when they left that
18 evening, Mr. Lindsey?

19 A They probably hung out for thirty minutes to an
20 hour and then kind of just left.

21 Q Okay. Were you contacted later that evening by law
22 enforcement?

23 A Me, personally, no. My brother Dustin was.

24 Q Okay. As a result of that conversation that Dustin
25 had with law enforcement, what did you do the next day?

Jordan Lindsey - Direct Examination by Mr. Harris

1 A We woke up first thing in the morning and went to
2 the sheriff's office.

3 Q And when you say we, tell us exactly who went the
4 next morning to the sheriff's office?

5 Q Lauren, Dustin and I and all our friends that were
6 in town?

7 Q And who drove you there?

8 A Dusty drove us there.

9 Q What happened when you arrived at the Richland
10 County Sheriff's Department?

11 A We were all taken individually to the back to give
12 our statements of what we'd seen.

13 Q Do you remember who actually took your statement?

14 A No, sir.

15 Q I'm going the hand you -- this is defense?

16 MR. HARRIS: Mark this for identification purpose,
17 please.

18 (WHEREUPON Defense Exhibit 11 was marked for
19 identification.)

20 MR. HARRIS: It's No. 11, Your Honor.

21 BY MR. HARRIS:

22 Q Could you take a look at that, please. Is that
23 your statement?

24 A Yes, sir.

25 Q Okay. You are billy Jordan Lindsey; is that

Jordan Lindsey - Direct Examination by Mr. Harris

1 correct?

2 A Yes, sir.

3 Q And can you -- you see your handwriting, can you
4 recognize that signature of the statement that was made in
5 the presence of? Do you know who that was?

6 A No, sir.

7 Q Was he with Richland County Sheriff's Department?

8 A Yes, sir.

9 Q On that day, did you attempt to leave early at any
10 point?

11 A No, sir.

12 Q On that day any questions that you evaded?

13 A No, sir.

14 MR. HARRIS: One moment, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON there was a pause in the proceedings.)

17 BY MR. HARRIS:

18 Q Mr. Lindsey, did you have any expectation at all
19 that anything like this would come about that brought us
20 here today?

21 A No, sir.

22 Q As you were leaving that game that night and
23 leaving that tailgate lot, what was the general demeanor of
24 everyone in that car?

25 A Everybody in that car was just trying to have a

Jordan Lindsey - Cross-Examination by Ms. Walker

1 good time with each other because we rarely got to do that
2 anymore so the plan was just to have a good time as a
3 group.

4 Q Okay. Thank you.

5 MR. HARRIS: That's all I have, Your Honor.

6 Please answer any questions the State has.

7 THE WITNESS: Yes, sir.

8 THE COURT: Cross-examination.

9 MS. WALKER: Thank you, Your Honor.

10 **CROSS-EXAMINATION**

11 BY MS. WALKER:

12 Q Hi, Mr. Lindsey.

13 A How you doing, ma'am.

14 Q I'm doing well, thank you. I'm Megan Walker with
15 the prosecutors. You and I haven't spoken have we?

16 A No, ma'am.

17 Q Have you spoken with anyone from my office?

18 A No, sir -- no, ma'am.

19 Q Have people from our office tried to contact you?

20 A No, ma'am.

21 Q No one from my office had tried to contact you?

22 A I don't think so. Not since we got in the lobby.

23 Q Not since -- before that, did you receive the
24 subpoena from our office?

25 A My old residence did and they contacted us about

Jordan Lindsey - Cross-Examination by Ms. Walker

1 it.

2 Q Okay. So you knew that our office was trying to
3 act you?

4 A Yes, ma'am.

5 Q And did you respond to that subpoena?

6 A I told Curtis' attorneys and they let us know that
7 it was that subpoena, so --

8 Q But you responded to the defense for the State's
9 subpoena?

10 A Yes.

11 Q Yesterday when you were in the lobby, did you speak
12 with an investigator from our office?

13 A Briefly, but anything about this case.

14 Q Did he ask to talk to you about this case?

15 A Yes.

16 Q And you told him you didn't want to talk to him?

17 A Yes.

18 Q Earlier, I think -- what year did you say that you
19 graduated from USC?

20 A 2009.

21 Q That's when you graduated?

22 A That's when I finished up at USC.

23 Q What do you mean by finished up?

24 A I have one class remaining.

25 Q I'm confused now. You fin -- you received a degree

Jordan Lindsey - Cross-Examination by Ms. Walker

1 from USC?

2 A I took my last semester in the Spring of 2009.

3 Q And then you received a degree from USC?

4 A No, ma'am.

5 Q So when you say you finished up, you mean you left
6 USC?

7 A Yes.

8 Q So on direct examination when you said you
9 graduated in 2009, that was a mistake?

10 A Yes.

11 Q Okay. I want to talk to you about the things that
12 you saw on the night of the USC Alabama game?

13 A Yes, ma'am.

14 Q Was it day or night when you guys were leaving?

15 A It was coming up on night, so it was in between.

16 Q It was in between day and night?

17 A Yeah.

18 Q How was the lighting out there that night? Could
19 you see things clearly?

20 A Yes, clearly.

21 Q Your view -- no one's view was obstructed, there
22 was plenty of light?

23 A Yes.

24 Q And you -- you said that you guys were trying to
25 get out and no one would let you out?

Jordan Lindsey - Cross-Examination by Ms. Walker

1 A No, ma'am.

2 Q No, ma'am, you didn't say that, or no, ma'am, no
3 one would let you out?

4 A No one would let us out.

5 Q Thank you. I'm sorry, I just wanted to make sure
6 that I understand what you're saying?

7 A That's fine.

8 Q Now, at some point you saw the black truck that
9 we've all been talking about?

10 A Yes, ma'am.

11 Q And you said that you saw the passenger hanging out
12 of the window?

13 A Yes.

14 A And you couldn't understand what he was saying.

15 A No.

16 Q Curtis was in the car with you?

17 A Yes.

18 Q Could you understand what Curtis was saying back to
19 him? Did you hear what Curtis was saying back to him?

20 A Yes.

21 Q What did Curtis say back to him?

22 A Up until -- you got -- there's three different
23 stages of where the truck was.

24 Q Once the passenger -- according to you once the
25 passenger started saying things in your direction, what did

Jordan Lindsey - Cross-Examination by Ms. Walker

1 Curtis say back?

2 A Curtis was still trying to ask him to get out, if
3 we could get out.

4 Q And at what point did Curtis say, you don't need to
5 be talking so big?

6 A Once the vehicle was completely in front of us and
7 they're pretty much lined up with each other.

8 Q Curtis said to him, you don't need to be talking so
9 big?

10 A Yes, and I could hear what the passenger was saying
11 at that time.

12 Q Okay. And right after he said you don't need to be
13 talking so big is when Curtis got out of the car?

14 A Yes, he got out right after that.

15 Q So Curtis says you don't need to be talking so big,
16 opens the door and gets out?

17 A Yes, ma'am.

18 Q And then he walked up to the black truck. Curtis
19 walked up to the black truck?

20 A He never walked -- veered toward the black truck
21 until the passenger was out of the truck.

22 Q Okay. Did Curtis walk up to the plaque truck?

23 A Eventually, yes. Yes, ma'am.

24 Q Once Curtis walked up to the black truck and you
25 stated they came and bumped chests?

Jordan Lindsey - Cross-Examination by Ms. Walker

- 1 A Yes, ma'am.
- 2 Q And -- and Mr. Harris asked you a lot of questions
3 about this. Then Curtis punched him?
- 4 Q After Curtis got pushed?
- 5 Q Curtis got pushed and then punched him?
- 6 A Yes, ma'am.
- 7 Q And there were a lot of questions asked about this
8 and you say he hit the ground?
- 9 A Yes.
- 10 Q Where did he hit the ground?
- 11 A He was pretty much following -- following the white
12 line of the road.
- 13 Q Following the white line. Do you remember giving a
14 statement to the Richland County Sheriff's Department?
- 15 A Yes, ma'am.
- 16 Q I think Mr. Harris just went over that statement
17 with you, didn't he?
- 18 A Yes, ma'am.
- 19 Q Do you city have it with you?
- 20 A Yes, ma'am.
- 21 Q You see page two of that statement?
- 22 A Yes, ma'am.
- 23 Q You see down -- let me show you where I'm looking,
24 right here?
- 25 A Okay.

Jordan Lindsey - Cross-Examination by Ms. Walker

- 1 Q It said what happened after Curtis punched him?
- 2 A Yes, ma'am.
- 3 Q What did you say then?
- 4 A You want me to lead it for you.
- 5 Q Yes, sir?
- 6 A It says I saw the guy fall under the truck and the
- 7 driver started to drive away with him under it.
- 8 Q You saw the guy fall under the truck?
- 9 A That's what it says, but I would like to explain
- 10 how -- that answer.
- 11 Q Because it's different now, today?
- 12 A No, it's not different at all.
- 13 Q Go ahead?
- 14 A What I meant by that was when the kid was on the
- 15 ground, I saw him under the truck and the driver drove off.
- 16 That's what I meant by that statement and that's what I
- 17 saw.
- 18 Q He was under the truck?
- 19 A The angle of the truck was going, he was under the
- 20 truck when he moved the truck. He was not in a stationary
- 21 position.
- 22 Q Curtis punches him?
- 23 A Yes, ma'am.
- 24 Q The goes under the truck?
- 25 A No.

Jordan Lindsey - Cross-Examination by Ms. Walker

1 Q That's okay --

2 MR. HARRIS: Whoa now, he's allowed to answer and
3 then he can explain, Your Honor.

4 THE COURT: He can explain his answer.

5 MR. HARRIS: Thank you, Your Honor.

6 THE COURT: If you find him not to be we
7 responsive, you direct that to me by megamega.

8 Q I'm sorry, Mr. Lindsey, I apologize?

9 A That's okay.

10 Q Go ahead?

11 A I'm sorry -- well, when I was describing that
12 answer, the truck went over the top of the young man when
13 he was laying on the ground going by the angle of the truck
14 driving off.

15 Q I mean, this is -- I'm just reading from the same
16 statement you're looking at, right?

17 A Yes, ma'am.

18 Q I saw the guy fall under the truck and the driver
19 started to drive away. That's what you said on the day
20 after this happened?

21 A I admit that's my signature, but that's not exactly
22 how I said it.

23 Q Okay. And today you testified that you -- that
24 Curtis was trying to pull him up?

25 A Yes.

Jordan Lindsey - Cross-Examination by Ms. Walker

1 Q Where was Curtis in relation to the truck? Was he
2 -- at that point?

3 A At that point he was right in front of the back
4 dire.

5 Q He's in front of the back tire?

6 A Yes.

7 Q Is he standing up or leaning down?

8 A He's leaning over.

9 Q He's leaning over and he?

10 A Has the man's arm in his left hand. He has his arm
11 in his left hand.

12 A Yes.

13 Q Like this?

14 A Yes.

15 Q And with his right hand -- no, it wasn't -- he was
16 doing like this on the side of the truck?

17 Q He was doing this?

18 A Yes, on the side of the truck to try to get the
19 driver's attention.

20 Q And then the truck rolled over --

21 A Not to -- basically crept up to the top and then
22 Curtis beat on the side of the truck trying to get the
23 driver's position, he sped off the top of the young man on
24 the ground.

25 Q But Curtis didn't get injured while he's right here

Jordan Lindsey - Cross-Examination by Ms. Walker

1 at the right tire?

2 A No --

3 THE COURT: You can't talk at the same time.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Our court reporter cannot take that
6 down. Been to her answer and then you respond. Thank you.

7 Now, stop. You ask him the question.

8 Wait for her to finish then you answer.

9 MS. WALKER: Thank you, Your Honor by megamega.

10 Q While Curtis is bending over by the right tire you
11 said, right?

12 A Yes, ma'am.

13 Q His hands are on this young man as he lays on the
14 ground, just his left hand?

15 A Just on his left hand, so he's not aggressively
16 trying to pull him out.

17 Q Because as soon as he grabbed to pull the young man
18 out, he was beating also to try to get the driver to stop?

19 Q I understand. And at that point in time, you said
20 you didn't know where your brother was?

21 A No.

22 Q You did see your brother later that night. He
23 moved the car?

24 A Later on that night, yes, ma'am.

25 Q And your brother, is he in the courtroom?

Jordan Lindsey - Cross-Examination by Ms. Walker

- 1 A I don't see him.
- 2 Q When he moved the car -- I'm going to show you
- 3 State's Exhibit 53. When your brother moved the car later
- 4 that night, where did he move it to?
- 5 A It's --
- 6 Q You can stand up?
- 7 A It's in this back over here in this corner.
- 8 Q He moved it back in the corner?
- 9 A Because that's our original tailgating spot is over
- 10 here in this corner.
- 11 Q Okay. So it's not on the picture where he moved
- 12 it?
- 13 A No, ma'am.
- 14 Q Okay.
- 15 A He never pulled it up to the fence, he just backed
- 16 it up to where our spot was.
- 17 Q Never pulled it up against the fence?
- 18 A No, ma'am.
- 19 Q And you said you guys waited there for another
- 20 hour?
- 21 A After the incident?
- 22 Q After the incident?
- 23 A No, we were there for around three hours.
- 24 Q Around three hours?
- 25 A Yes, ma'am.

Jordan Lindsey - Cross-Examination by Ms. Walker

1 Q And you saw the police come?

2 A Every stage.

3 Q You saw every stage?

4 A Yes, ma'am, up until there's not a person left.

5 Q And at no point do anyone come talk to you?

6 A No.

7 Q And you never went up to them and said, I saw what
8 happened. I saw everything?

9 A No, ma'am.

10 Q You never went up to the police and said anything
11 like too?

12 A No, ma'am.

13 Q Now, you said on direct examination that Curtis got
14 out to go help with the traffic?

15 A That's what I thought.

16 Q That's what you thought Curtis was going to do?

17 A Yes, ma'am.

18 Q So and if I'm wrong with the sequence of events, I
19 want you to stop me and tell me, okay?

20 A Okay.

21 Q The truck pulls up. There's a young man hanging
22 out to have passenger window. He's yelling?

23 A Uh-huh.

24 Q Curtis yells back, you need to stop talking so big
25 and then Curtis gets out to go direct traffic.

Jordan Lindsey - Redirect Examination by Mr. Harris

1 A That's not the first thing Curtis said.

2 Q That's not the first thing, that was the last thing
3 he said right before he got out to go direct the traffic?

4 A It was pretty close, yeah.

5 Q Okay.

6 MS. WALKER: Beg the Court's indulgence, Your
7 Honor.

8 THE COURT: All right.

9 MS. WALKER: No further questions, Your Honor.

10 THE COURT: Redirect?.

11 MR. HARRIS: Please the Court, briefly.

12 **REDIRECT EXAMINATION**

13 BY MR. HARRIS:

14 Q Mr. Lindsey, you remember those questions
15 Ms. Walker asked you, about I think she said now, today for
16 the first time you're saying that you say that Curtis tried
17 to help him up. You remember those questions? You
18 remember when she said that to you?

19 A Yes, ma'am, or yes, sir.

20 Q You still have exhibit 11, your statement that you
21 gave on October 10th?

22 A Yes, sir.

23 Q You still have that? I'm going to direct you to
24 this line right here?

25 A Yes, sir.

Jordan Lindsey - Redirect Examination by Mr. Harris

1 Q Was that statement that's typed right there made
2 within nine hours, ten hours of this incident?

3 A Yes, sir.

4 Q Tell us -- read that statement?

5 A I saw the guy fall under the truck and the driver
6 starts to driveway with him under it. I saw Curtis trying
7 to pull him away from the truck and the guy was already
8 moving.

9 Q Okay. So today's not the first time you've said
10 that?

11 A No, sir.

12 Q You told law enforcement that day, isn't that true?

13 MR. HARRIS: Judge, that's all I have, thank you.

14 THE COURT: Recross?

15 MS. WALKER: Nothing, Your Honor.

16 THE COURT: Very well. Is this witness free to
17 leave.

18 MR. HARRIS: Yes, ma'am, please.

19 THE COURT: All right. Any objection?

20 MS. WALKER: No, Your Honor.

21 THE COURT: No. Very well. You are free to go.

22 All right.

23 Ladies and gentlemen, it is now five o'clock on
24 Friday and we have concluded the work that we're going to
25 do for this week. We are going to reconvene in this matter

1 on Monday morning at 9:30. At 9:30.. So not only do you
2 have a heightened curiosity tonight, but you have
3 heightened curiosity over the weekend. So, please be
4 mindful. Do not discuss this matter or allow anyone to
5 discuss it with you and remember, put it on the judge if
6 anybody gets upset with you.

7 Now, in terms of your work, I just got to have you
8 rested on Monday, so I don't want you going in Sunday
9 night. I need you rested Monday morning so please keep
10 that in mind. And again if your employer is just upset,
11 just give him my name and phone number and I'd be happy to
12 intercede on your behalf. And I know we someone that needs
13 permission slips every day. Have you had them every day.

14 THE JUROR: (Juror nodded head.)

15 THE COURT: Does someone need one? We'll be happy
16 to get those for you. Something particularly for Monday.
17 We'd be delighted to get that for you. And I'll ask our
18 clerk to just work with you. If you will go back to your
19 jury room for just a moment, she will help you in that
20 regard.

21 Now, because I don't want -- in, I want your
22 employers to know that we are going into Monday and I want
23 them to be apprised of that for sure.

24 Now, again, don't do any research, don't read
25 anything, don't listen to anything about this matter.

1 That's on the radio. The television, the internet, don't
2 do any blogging, don't do any social networking regarding
3 this matter. You must receive all of the information from
4 what you will make up your mind from while court is in
5 session.

6 Ladies and gentlemen, again, we will reconvene at
7 9:30 on Monday.

8 Let me just mention this to you if I may because
9 you all have worked so very hard this week. I've watched you
10 and you have done what I've asked you to do when we began
11 this matter and that is to give me and give these witnesses
12 and give these attorneys your undivided attention and you
13 have done that. Now, I'm going to tell you to rest your
14 minds. You have been so intense with your attention to
15 which -- for which I'm so grateful. I urge you over the
16 weekend to rest your mind from these matters. Put them
17 aside, put them down. You can't talk about them, you can't
18 talk about them with anyone, so put them down. Rest. Rest
19 your mind and have a good weekend and when you return
20 Monday, then, of course, we'll be back to our duties on
21 Monday.

22 Ladies and gentlemen, we will keep our time 9:30.
23 Very well. Have a great weekend and I look forward to
24 seeing you on Monday morning at nine o'clock. Again those
25 of you who need something, our clerk will be in there in

1 just an in a moment to assist you. Thank you.

2 (WHEREUPON the jury left the courtroom at 5:01
3 p.m.)

4 THE COURT: All right. Anything from the State
5 before we adjourn for the week.

6 MS. MCDUFFY: Your Honor, are we going to have a
7 charging conference on requests to charge or are we going
8 to wait until the closing of the defense's case.

9 THE COURT: Oh, we are, but -- yes. It is my
10 intention to do that. I normally do that and I'm looking
11 forward to receiving your requests to charge so that I can
12 study them. I'd love to have them now. I think we talked
13 yesterday that you all would pass those up today. We are
14 working. We have been working on the charge. If you have
15 any specific, special requests for charge, we'd love to
16 have them now and yes, we will have a charge conference.

17 MS. MCDUFFY: Could we just have five minutes to go
18 over them and then hand them up.

19 THE COURT: Sure you can. I've got some time I've
20 got to get my papers in order here.

21 And do you know if we'll be in this courtroom do we
22 need to change courtrooms.

23 THE CLERK: As far as I know we'll be right here.

24 THE COURT: Very well. Then I'll leave some of my
25 things here and if you all need a few minutes, we'll be at

1 ease and you have so pass them up because we have some
2 packing up we have to do.

3 MR. HARRIS: Your Honor, may we have our client
4 from to five on Sunday. He's on monitoring and he
5 understands he cannot leave his house. We were just
6 wondering if we could have him from twelve to five on
7 Sunday. That one day.

8 THE COURT: Yes, you may.

9 MR. HARRIS: Thank you, Judge.

10 THE COURT: And if you need to do a little order
11 real quick just so there's no --

12 MR. HARRIS: I think -- they're pretty good -- I've
13 kept them informed of his whereabouts and -- as long as I
14 tell them twelve to five on Sunday. I just wanted to get
15 permission from the Court.

16 THE COURT: You have the permission from me. If
17 you need anything -- why don't you do this and see if they
18 need anything at all and if so, I'll do a handwritten order
19 real quick.

20 MR. HARRIS: Thank you.

21 -----End of Volume III of Partial Transcript-----
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1 State of South Carolina) In the Court
2 County of Richland) Of General Sessions

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4 Indictment No.: 2011-GS-40-829, 831
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7 State of South Carolina,)
8 Plaintiff.)
9 vs.) Partial
10) Transcript of Record
11) Volume IV
12)
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January 30-February 5, 2013
Columbia, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge and a jury.

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18
19
20
21
22
23
24
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I N D E X

Page

Marque Hall

Direct Examination by Mr. Gasser..... 726

Cross-Examination by Ms. Walker..... 729

David Byrd

Direct Examination by Mr. Harris..... 744

Cross-Examination by Ms. McDuffy..... 756

Closing Arguments

By Ms. McDuffy..... 778

By Mr. Gasser..... 793

By Ms. Campbell..... 831

Jury Charge..... 862

Verdict..... 914

Sentence..... 919

Certificate of Court Reporter..... 924

Keyword Index..... 925

1	<u>STATE'S EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
3	1	Advice of Rights Form	
4	2	Statement of Curtis Simms	
5	3	Photograph	
6	4	Photograph	
7	5	Photograph	
8	6	Photograph	
9	7	Photograph	
10	8	Photograph	
11	9	Photograph	
12	10	Photograph	
13	11	Photograph	
14	12	Photograph	
15	13	Photograph	
16	14	Photograph	
17	15	Photograph	
18	16	Photograph	
19	17	Photograph	
20	18	Photograph	
21	19	Photograph	
22	20	Photograph	
23	21	Photograph	
24	22	Photograph	
25	23	Photograph	

1	24	Photograph
2	25	Photograph
3	26	Photograph
4	27	Photograph
5	28	Photograph
6	28	Photograph
7	29	Photograph
8	30	Photograph
9	31	Photograph
10	32	Photograph
11	33	Photograph
12	34	Photograph
13	35	Photograph
14	36	Photograph
15	37	Photograph
16	38	Photograph
17	39	Photograph
18	40	Photograph
19	41	Photograph
20	42	Photograph
21	43	Photograph
22	44	Photograph
23	45	Photograph
24	46	Photograph
25	47	Photograph

1	48	Photograph
2	49	Photograph
3	50	Photograph
4	51	Photograph
5	52	Photograph
6	53	Blowup of Scene
7	54	Written Statement of James Martin
8	55	Statement
9	56	Fingerprint Card
10	57	Fingerprint Card
11	58	Clothes
12	59	Photograph
13	60	Statement
14	61	Statement
15	62	Statement
16	63	Photograph

DEFENDANT'S EXHIBITS

18	1	Photograph
19	2	Written Statement of James Martin
20	3	Statement
21	4	Statement
22	5	Statement
23	6	Statement of Paxton
24	7	Photograph
25	8	Photograph

1	9	Photograph
2	10	Photograph
3	11	Statement
4	12	Photograph
5	13	Photograph
6	14	Photograph
7	15	Photograph
8	16	Photograph
9	17	Photograph
10	18	Photograph
11	19	Photograph
12	20	Photograph
13	21	Photograph

COURT'S EXHIBITS

15	1	Statement of Alan James
16	2	Juror Note
17	3	Juror Note
18	4	Juror Note
19	5	Juror Note
20	6	Rap Sheet
21	7	Juror Note

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23
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1 MONDAY, FEBRUARY 4, 2013

2 THE COURT: All right. The bailiff is going to be
3 in here the one second.

4 Anything from the State before we bring the jury
5 out this morning?

6 MS. MCDUFFY: Your Honor, we would just ask that
7 for the conclusion of the trial that there will be no
8 speaking objections that, Browns v. State that had any
9 argument be done after the trial is over.

10 MR. GASSER: I agree, Your Honor.

11 THE COURT: We are waiting on one juror.

12 (WHEREUPON there was a pause in the proceedings.)

13 THE COURT: We shall begin this again.

14 (WHEREUPON the jury entered the courtroom at 9:38
15 a.m.)

16 THE BAILIFF: All jurors are seated, Your Honor.

17 THE COURT: Thank you so much. Good morning,
18 ladies and gentlemen. And I know what you want to say,
19 whoa that weekend sure did go by fast (laughter).

20 THE COURT: Ladies and gentlemen, at this time --
21 first of all, good morning again. And at this time we will
22 continue with the defense.

23 Mr. Gasser you may call your next witness.

24 MR. GASSER: Thank you, Your Honor may it please
25 the Court.

Marque Hall - Direct Examination by Mr. Gasser

1 **THE COURT:** Yes.

2 **MR. GASSER:** The defense would call Marque Hall.

3 THEREUPON,.

4 MARQUE HALL,

5 after being duly sworn, testified as follows:

6 **THE CLERK:** Please have a seat and state your full
7 name for the court.

8 **THE COURT:** All right. Now state your full name
9 for the record.

10 **THE WITNESS:** My name is Edward Marque Hall.

11 **THE COURT:** And do you spell Marque.

12 **THE WITNESS:** M-a-r-q-u-e.

13 **THE COURT:** Thank you, very much. One of the
14 things is that it's a sound check that we wanted to hear
15 you. So thank you. You've got good volume.

16 Your witness, Mr. Gasser.

17 **MR. GASSER:** Thank you, Your Honor.

18 **DIRECT EXAMINATION**

19 **BY MR. GASSER:**

20 Q Marque could you tell us, please, how old are you?

21 A Just turned 27.

22 Q Where are you originally from?

23 A Wingate, North Carolina.

24 Q Where did you go to high school in Wingate?

25 A Forest hills.

Marque Hall - Direct Examination by Mr. Gasser

- 1 Q What brought you to the Columbia area?
- 2 A Scholarship to USC to play football.
- 3 Q What year did you enroll and start playing football
- 4 at the University of South Carolina?
- 5 A 2004.
- 6 Q And how many years were you at USC?
- 7 A Five and a half.
- 8 Q Did you graduate?
- 9 A Yes, sir.
- 10 Q And what did you get your degree in at USC?
- 11 A HRTM.
- 12 Q What does HRTM stand for?
- 13 A Hotel, restaurant, tourism management.
- 14 Q Where are you currently employed?
- 15 A Sears.
- 16 Q What do you do for sears?
- 17 A I work in the HR department.
- 18 Q How long have you been with the sears corporation?
- 19 A Three years.
- 20 Q All right. Are you married?
- 21 A No, sir.
- 22 Q Do you have any children?
- 23 A No, sir.
- 24 Q And are you a member of any particular
- 25 organizations or affiliations?

Marque Hall - Direct Examination by Mr. Gasser

1 A I'm a member of the Word of God Church and
2 Ministries.

3 Q And how long have you been a member at Word Of
4 Good?

5 A Going on a year.

6 Q How long -- do you know Mike Davis?

7 A Yes, sir.

8 Q How do you know Mike Davis?

9 A We played together at USC.

10 Q What about Dustin and Jordan Lindsey, do you know
11 those two gentlemen?

12 A Yes, sir.

13 Q And how do you know the Lindsey twins?

14 A We also played at USC together.

15 Q Did you just play football with these gentlemen or
16 are you also currently still friends with them?

17 A Currently friends.

18 Q Do you know the defendant, Curtis Simms?

19 A Yes, I do.

20 Q And tell the jury, how do you know Curtis Simms?

21 A I met Curtis Simms through the Lindsey twins.
22 Maybe at a tailgate we use to hang out and stuff like that.

23 Q Have you ever just you, yourself, contacted Curtis
24 Simms to go socialize or do something?

25 A No, sir.

Marque Hall - Direct Examination by Mr. Gasser

1 Q I want to draw -- in a few moments, I'm going to
2 draw your attention to sat October 9th, 2010. But prior to
3 that, have you ever been to the Lindsey twins -- during the
4 course that you were playing football at USC, had you ever
5 had occasion to go to the tailgate spot of the Lindsey
6 twins parents?

7 A Yes, sir.

8 Q And why would you go there?

9 A It was just a place where after the game, everybody
10 showed up.

11 Q And when you say everybody, who you do mean by
12 everybody?

13 A Everybody on the team and their families.

14 Q And their families?

15 A Yes, sir.

16 Q So if you had to estimate the number of times that
17 you've been to the Lindsey twins parents tailgate spot on
18 Shop Road, could you even estimate?

19 A No, sir.

20 Q Do you still on occasion go to that spot after
21 Carolina or before Carolina football games?

22 A Yes, sir.

23 Q And did you have occasion to go to that spot on
24 October 9th, 2010?

25 A Yes, sir.

Marque Hall - Direct Examination by Mr. Gasser

1 Q Do you remember how -- how you went to -- or who
2 you went to the game with that day?

3 A I arrived by myself. So when I got there, I met
4 Jordan and dust tin Lindsey and Curtis.

5 Q Did you meet Jordan and Dustin and Curtis before
6 the game?

7 A No, sir.

8 Q Did you go in the game yourself?

9 A No, sir.

10 Q Where did you watch the game?

11 A From the tailgating spot.

12 Q Okay. What tailgating spot?

13 A The one on Shop Road in front of the autocenter.

14 Q So you watched the football game at the Lindsey
15 twins tailgating spot?

16 A Yes, sir.

17 Q Did you have anything to drink that whole day
18 Marque?

19 A I arrived later, like between first and second
20 quarter. I only had one beer because the rest of it was
21 gone.

22 Q Did you stay at the tailgate spot the entire
23 football game?

24 A Yes, sir.

25 Q And, of course, South Carolina beat Alabama,

Marque Hall - Direct Examination by Mr. Gasser

1 correct?

2 A Yes, sir.

3 Q How would you describe the mood of a lot of --
4 particularly South Carolina fans there at the tailgate
5 spot?

6 A It was joy full, lot of cheering and things like
7 that.

8 Q Were there individuals at the Lindsey tailgate
9 spot, people that you had never met before?

10 A Yes.

11 Q And where did you learn most of those people were
12 from?

13 A Most of those people were just locals from South
14 Carolina. Some came up from Alabama.

15 Q Did you see Curtis Simms at that tailgate spot?

16 A Yes, sir.

17 Q And did there come a time when you were going to
18 leave the tailgate spot?

19 A No, sir, until after the game.

20 Q So let's get -- let's -- the game was over with.

21 A Uh-huh.

22 Q And at some point in time, was a decision made to
23 leave the spot?

24 A Yes, sir.

25 Q And what were your plans?

Marque Hall - Direct Examination by Mr. Gasser

1 A My plans were to take Mike Davis to his car. That
2 was the first thing we were going to do.

3 Q And who were you going to ride with?

4 A The Lindsey twins.

5 Q And who did you ride with?

6 A The Lindsey twins.

7 Q And what vehicle did you ride in?

8 A It was a forrest green truck.

9 Q I show you what's been marked defense exhibit 7 and
10 8. You recognize that vehicle?

11 A Yes, sir.

12 Q What is this vehicle?

13 A That's the truck I road in that night.

14 Q Okay. Is this the Lindsey twins truck?

15 A Yes, sir.

16 Q Marque tell this jury how many times -- how long do
17 you think during your playing days you road in the
18 Lindsey's green truck?

19 A Usually when we hung out, I rode with them in their
20 truck.

21 Q Is that the truck that you got in when you were
22 getting ready to leave the tailgate spot on October 9th,
23 2010?

24 A Yes, sir.

25 Q And where did you get inside the truck? Where were

Marque Hall - Direct Examination by Mr. Gasser

1 you seated?

2 A I was behind the passenger seat in the back.

3 Q And was Curtis Simms in the vehicle?

4 A Yes, sir.

5 Q Marque tell the jury what you recall happening
6 right when y'all were trying to pull out of that parking
7 spot?

8 A When we was pulling out to Shop Road, we heard a
9 lot of commotion coming down Shop Road. Okay. Usually
10 kids yelling things like that. And what I seen was a black
11 truck. It had like real aggressive mud tires on it.
12 That's the first thing I noticed on it. They pulled up,
13 they were like hazing people a little bit and him and
14 Curtis started having a little bit back and forth.

15 Q Whose -- let me stop you right there. What do you
16 mean by him?

17 A Sorry, the passenger. I'm sorry. The passenger.

18 Q The passenger in what vehicle?

19 A In the black truck.

20 Q Started doing what?

21 A Kind of hazing Curtis because he -- Curtis had on
22 an Alabama shirt. So I'm guessing he was Alabama fan,
23 which Curtis kind of is and they just started going back
24 and forth.

25 Q What happened then, that you recall?

Marque Hall - Direct Examination by Mr. Gasser

1 A After that the passenger of the black truck stepped
2 out of the vehicle and Curtis stepped out of our vehicle.
3 Curtis approached him walking about maybe 10 or 15 yards.
4 Had a couple of words. The passenger then kind of pushed
5 Curtis back -- well pushed Curtis back because he was in
6 kind of personal area, so he kind of pushed him back.
7 That's when they -- when Curtis hit him.

8 Q Just gesture what you mean by the passenger pushing
9 Curtis back?

10 A Just kind of like -- kind of get separation, push
11 him back away as far as he can. He pushed him kind of hard
12 because he's a big fellow.

13 Q And what part of Curtis' body did the passenger's
14 hands hit?

15 A Lower chest, sternum area.

16 Q You used the word hazing, so I will use your word.
17 Who started the hazing?

18 A They initiated because we could hear them coming
19 down the road. I mean, they was kind of loud.

20 Q Had you ever seen that black truck before?

21 A No, sir.

22 Q Did you know who that passenger was?

23 A No, sir.

24 Q When the passenger got out of the truck, was that
25 truck stopped?

Marque Hall - Direct Examination by Mr. Gasser

1 A Yes, sir.

2 Q What did you see after Curtis Simms hit the
3 passenger?

4 A After Curtis hit the passenger, I mean, he pretty
5 much just dropped. As he was falling, he was trying to get
6 -- to hold himself up, so he reached -- he reached for
7 liked the flat bed part. He was lined up pretty much
8 between the back window and and right there. He was right
9 in the area. He reached up and when he hit the ground, I
10 mean, his friend -- I guess the driver pulled off in the
11 panic.

12 Q And which way do you remember seeing the car pull
13 off?

14 A It pulled off to the side of the road, going down
15 Shop Road, pulled to the right.

16 Q And when it started to pull off to the right, what
17 did you see happen?

18 A Curtis started banging on the side to have the
19 truck trying to get him to stop.

20 Q And did you hear Curtis said -- yelled at the top
21 of his lungs, stop, stop, just yelling.

22 Q Did the truck ever stop?

23 A No, sir.

24 Q And did the truck continue to roll forward?

25 A Yes, sir.

Marque Hall - Direct Examination by Mr. Gasser

1 Q So did you see that passenger get run over?

2 A Yes, sir.

3 MR. GASSER: Judge, may the witness just stand
4 briefly next to the witness box?

5 THE COURT: Yes, sir.

6 BY MR. GASSER:

7 Q Marque, using this wall as the side of the black
8 truck, I want you to demonstrate to the jury when that
9 truck started pulling off to the right of the road,
10 demonstrate what you saw Curtis doing?

11 A Curtis just pretty much was hitting it, pushing it,
12 trying his Beth to stop it.

13 THE WITNESS: Sorry, I didn't mean to hit the wall
14 so hard. (Laughter).

15 THE COURT: The question is what is the other
16 courtroom think is happening. We know. (Laughter.)

17 BY MR. GASSER:

18 Q After the truck rolled over the passenger, what did
19 you see Curtis do?

20 A Curtis, he looked at him for a second and then he
21 went to go get help.

22 Q When you owe' when y'all are pulling out of that --
23 when y'all were pulling out of that parking spot, what was
24 the mood of everybody in the truck? When you were first
25 pulling out. Before you ever heard or saw the black truck

Marque Hall - Direct Examination by Mr. Gasser

1 coming. What was everybody's mood like?

2 A We was -- we were pretty excited because we was
3 supposed to go downtown, just to, you know, celebrate with
4 everybody. We were proud to have a win. It been a long
5 time since we beat Alabama.

6 Q So that was your alternate plan to at some point in
7 time to go downtown?

8 A Yes, sir.

9 Q Now, what did you do after this incident? What did
10 you do Marque?

11 A After the incident, took Mike Davis to his car and
12 then went home.

13 Q Prior to -- how long do you think -- how long did
14 you stay at the incident site?

15 A At least an hour.

16 Q What did you see? Did you see emergency vehicles
17 coming?

18 A Yes, sir.

19 Q Law enforcement?

20 A Yes, sir.

21 Q And where were you when you were observing these
22 first responders coming to the scene?

23 A I was at the Lindsey twins tailgating area right
24 beside Shop Road.

25 Q And where -- the truck that you were driving in

Marque Hall - Direct Examination by Mr. Gasser

1 Jordan and Dustin Lindsey's truck, where did that end up?

2 A It ended upright back at the tailgate spot.

3 Q And so was Mike Davis there with you?

4 A Yes, sir.

5 Q And were the Lindsey twins there with you?

6 A Yes, sir.

7 Q You say you waited about an hour before you left?

8 A Yes, sir.

9 Q And who did you leave with?

10 A Mike Davis.

11 Q And where did you guys go?

12 A To his car.

13 Q And do you remember where his car was?

14 A Somewhere down on Shop Road. It wasn't far from
15 there.

16 Q Okay.

17 MR. GASSER: Beg the Court's indulgence.

18 THE COURT: All right.

19 (WHEREUPON there was a pause in the proceedings.)

20 BY MR. GASSER:

21 Q Did you actually see the green truck, the Lindsey
22 twins move their truck back?

23 A No, sir, I was not in the truck.

24 Q So you weren't in the truck?

25 A When they moved it back, no, sir.

Marque Hall - Cross-Examination by Ms. Walker

1 Q You had to walk up to where they were?

2 A Yes, sir.

3 Q Now four days later, on October the 13th, did you
4 have an opportunity to go to go down to the sheriff's
5 department and provide a written statement describing what
6 you observed -- what you just told this jury, did you tell
7 the sheriff's department that on October 13th?

8 A Yes, sir.

9 Q And did you sign it?

10 A Yes, sir.

11 Q Marque, you ever going to forget seeing what you
12 saw?

13 A No, sir.

14 Q Thank you Marque.

15 A Thank you, sir.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MS. WALKER:

19 Q Good morning Mr. Hall?

20 A Good morning.

21 Q My name is Megan Walker, I'm a prosecutor today?

22 A Okay.

23 Q You and I haven't had a chance to speak about this,
24 have we?

25 A No, ma'am.

Marque Hall - Cross-Examination by Ms. Walker

1 Q You haven't spoken with anyone from my office about
2 this, have you?

3 A No, ma'am.

4 Q Did you receive a subpoena from our office?

5 A Yes, ma'am.

6 Q And did you follow the subpoena's directions and
7 call my office when you got it?

8 A I did not.

9 Q Okay.

10 A Because I didn't get it until about a week later.
11 They sent it to the I don't think residence.

12 Q You got it a week later and you didn't call the
13 office then?

14 A Yes.

15 Q Do you remember one of your investigators asking
16 you to speak with you about this case last week?

17 A No, sir. I mean, I'm sorry, no, ma'am.

18 Q That's fine. Sitting on Shop Road, did he ask to
19 speak to you about this?

20 A Not until I got here last Thursday.

21 Q So that's a yes, sir he did ask to speak to you
22 about this?

23 A Yes, ma'am.

24 Q And you told him you didn't want to speak with him,
25 right?

Marque Hall - Cross-Examination by Ms. Walker

1 A Yes, ma'am.

2 Q Okay. Now, you said that your -- you guys were
3 leaving and you heard people yelling at Curtis -- I mean
4 Curtis Simms because he had an Alabama t-shirt?

5 A Well, he was coming down the road. There was too
6 much people. They were pretty much picking on -- kind of
7 like hazing people as they came down the road, you know,
8 because we won the game. They were Carolina fans, so I
9 mean, it got to the point where the traffic stopped right
10 in front of where we were trying to get on the road at.
11 There was a traffic jam and we couldn't go anywhere.

12 Q Right?

13 A And I guess it was an opportunity for them to go
14 back and forth.

15 Q With Curtis because he had on the Alabama t-shirt?

16 A Yes, ma'am.

17 Q At that point in time, was Curtis in or out of the
18 car?

19 A He was in the car.

20 Q And Lauren Coggins was sitting on his lap?

21 A Yes, ma'am.

22 Q It was dark that night?

23 A Yes, ma'am.

24 Q And -- but they were yelling at him because they
25 somehow knew he had on an Alabama t-shirt?